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The President

Presidential Determination No. 99–04 of November 14, 1998

Drawdown Under Section 506(a)(2)(A)(i)(II) of the Foreign Assistance Act To Provide Emergency Disaster Relief Assistance for Honduras, Nicaragua, El Salvador, and Guatemala

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2)(A)(i)(II) of the Foreign Assistance Act of 1961, as amended ("the Act"), 22 U.S.C. 2318(a)(2), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense, for the purpose of providing international disaster relief assistance to Honduras, Nicaragua, El Salvador, and Guatemala.

Therefore, I direct the drawdown of up to $45 million of articles and services from the inventory and resources of the Department of Defense for the Governments of Honduras, Nicaragua, El Salvador, and Guatemala for the purposes and under the authorities of chapter 9 of part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the *Federal Register*.

William J Clinton

THE WHITE HOUSE,
Washington, November 14, 1998.

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Memorandum of November 16, 1998

Delegation of Authority Under Section 5(d)(2) of the International Anti-Bribery and Fair Competition Act of 1998

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 5(d)(2) of the International Anti-Bribery and Fair Competition Act of 1998 (Public Law 105–366).

You are authorized and directed to publish this memorandum in the *Federal Register*.

William J. Clinton

THE WHITE HOUSE,
Washington, November 16, 1998.

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Rules and Regulations

Federal Register
Vol. 63, No. 230
Tuesday, December 1, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–083–3]

Mediterranean Fruit Fly; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an area in Riverside and Orange Counties, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective November 24, 1998. Consideration will be given only to comments received on or before February 1, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–083–3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–083–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective on August 13, 1998, and published in the **Federal Register** on August 20, 1998 (63 FR 44539–44541, Docket No. 98–083–1), we added a portion of San Diego County, CA, to the list of quarantined areas. In another interim rule effective on August 14, 1998, and published in the **Federal Register** on August 21, 1998 (63 FR 44774–44776, Docket No. 98–083–2), we added a portion of Orange County, CA, to the list of quarantined areas.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in an area in Riverside and Orange Counties, CA.

The regulations in 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending 301.78–3 by adding an area in Riverside and Orange Counties, CA, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register.** After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the Medfly regulations by adding an area in Riverside and Orange Counties, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This rule also restricts the interstate movement of regulated articles from the newly quarantined area. We estimate that there are 75 entities in the newly quarantined area that sell, process, handle, or move regulated articles. This estimate includes 26 fruit sellers, 16 nurseries, 26 growers, 4 packinghouses, 2 certified farmer's markets, and 1 swapmeet. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of these entities are small in size, since the overwhelming majority of businesses in California, as well as the rest of the United States, are small entities by SBA standards.

Few, if any, of the 75 entities will be significantly affected by the quarantine action taken in this interim rule because few of those entities move regulated articles outside the State of California during the normal course of their business. Nor do consumers of products purchased from those entities generally move those products interstate. The effect on any small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of those small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In 301.78–3, paragraph (c) is amended by adding an entry for Riverside and Orange Counties, CA, in alphabetical order, to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

CALIFORNIA

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Riverside and Orange Counties. That portion of Riverside County in the Lake Elsinore area bounded by a line beginning at the intersection of State Highway 74 and Margarth Street; then southeast along an imaginary line to the intersection of Juanita Drive and Goetz Road; then southeast along Goetz Road to Newport Road; then southeast along an imaginary line to the intersection of Holland Road and Byers Street; then south along Byers Street to Garboni Road; then east along Garboni Road to Murrieta Road; then south along Murrieta Road to Scott Road; then southeast along an imaginary line to the intersection of Clinton Keith Road and California Oaks Road; then south along California Oaks Road to Kalmia Street; then southwest along Kalmia Street to the boundary line of the Santa Rosa Plateau Ecological Reserve; then northwest, southwest, and northwest along the boundary line of the Santa Rosa Plateau Ecological Reserve to its second intersection with Kalmia Street; then west along an imaginary line to the intersection of Clinton Keith Road and Avenida La Cresta; then west along an imaginary line to the intersection of Valle Vista and Calle De Suenos; then northwest and southwest along Calle De Suenos to Calle Rosita; then south along Calle Rosita to Via Caballos; then west and north along Via Caballos to Avenida Castilla; then west along Avenida Castilla to Avenida La Cresta; then north along Avenida La Cresta to Calle De Companero; then north along Calle De Companero to Vista De Montanas; then southwest along Vista De Montanas to Via Sereno; then northwest along an imaginary line to the intersection of State Highway 74 and Teneja Trucktrail; then northwest along an imaginary line (extending into Orange County) to Los Pinos Peak; then north along an imaginary line to Trabuco Peak; then northeast along an imaginary line (extending into Riverside County) to the intersection of Estelle Mountain Road and Gavilan Springs Ranch Road; then east along an imaginary line to the intersection of Ellis Avenue and Belita Drive; then southeast along an imaginary line to the point of beginning.

* * * * *

Done in Washington, DC, this 24th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32076 Filed 11–30–98; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATES: The amendments to part 201 (Regulation A) were effective November 17, 1998. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunications Device for the Deaf (TDD), please contact Diane Jenkins, (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.*, of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit. In decreasing the basic discount rate, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. Although conditions in financial markets have settled down materially since mid-October, unusual strains remain. With the 75-basis-point decline in the federal funds rate since September, financial conditions can reasonably be expected to be consistent with fostering sustained economic expansion while keeping inflationary pressures subdued.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	4.5	Nov 18, 1998
New York	4.5	Nov 17, 1998
Philadelphia	4.5	Nov 17, 1998
Cleveland	4.5	Nov 19, 1998
Richmond	4.5	Nov 18, 1998
Atlanta	4.5	Nov 18, 1998
Chicago	4.5	Nov 19, 1998
St. Louis	4.5	Nov 19, 1998
Minneapolis	4.5	Nov 19, 1998
Kansas City	4.5	Nov 18, 1998
Dallas	4.5	Nov 17, 1998
San Francisco	4.5	Nov 17, 1998

By order of the Board of Governors of the Federal Reserve System, November 24, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–31976 Filed 11–30–98; 8:45 am]

BILLING CODE 6210–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Exemption of Sucraid

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to exempt from its child-resistant packaging requirements the oral prescription drug Sucraid. Sucraid is a new liquid formulation of sacrosidase, a yeast derived form of the sucrase enzyme, used for the treatment of congenital sucrase-isomaltase deficiency. It was approved by the Food & Drug Administration on April 10, 1998. The Commission has determined that this product is exempt because human experience has shown no evidence of serious toxicity. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

DATES: The rule will become effective on December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Laura Washburn, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400 ext. 1452.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" (also referred to as child-resistant (CR) packaging) of household substances, such as drugs, when CR packaging is necessary to protect children from serious personal injury or illness due to (1) handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for the substance. Accordingly, the Commission requires that oral prescription drugs be in CR packaging. 16 CFR 1700.14(a)(10).

The Commission's regulations allow companies to petition the Commission for exemption from CR requirements. 16 CFR Part 1702. On July 10, 1997, Orphan Medical, Inc. ("Orphan Medical") petitioned the Commission to exempt its product, Sucraid, from the special packaging requirements for oral prescription drugs. The petitioner stated that the exemption is justified because of lack of toxicity and lack of adverse human experience with the drug. The petitioner also stated that CR packaging is not technically feasible, practicable and appropriate for Sucraid. Because, as explained below, the Commission concluded that Sucraid lacks sufficient toxicity to justify special packaging, the Commission did not consider the technical feasibility, practicability, and appropriateness of special packaging for Sucraid.

2. The Proposed Rule

On June 12, 1998, the Commission issued a notice of proposed rulemaking (NPR) to exempt Sucraid from CR packaging requirements. 63 FR 32159. The Commission did not receive any comments on the proposed exemption.

3. Sucraid

Sucraid is a liquid formulation of sacrosidase, a yeast derived form of the sucrase enzyme. It is used to treat patients with congenital sucrase-isomaltase deficiency ("CSID"). The petitioner estimated that there are approximately 3,000 to 10,000 cases of CSID in the United States. CSID is a condition characterized by absent or low levels of sucrase and isomaltase, two enzymes in the small intestine. Sucrase breaks down sucrose (table sugar) so that it can be absorbed. Persons with CSID have such symptoms as diarrhea, abdominal pain, bloating, and gas. Patients with severe CSID may require hospitalization for diarrhea, dehydration, malnutrition, weakness and muscle wasting. Sacrosidase is an enzyme replacement therapy that reduces the symptoms of CSID.

B. Toxicity Data

Sacrosidase is derived from bakers yeast. It is Generally Recognized as Safe ("GRAS") for use in food by the Food and Drug Administration ("FDA"). 21 CFR 170.30. Sucraid contains about 1.5 milligrams per milliliter of the enzyme in a 50:50 solution of glycerol and water.

One bottle of Sucraid contains 150 mg of protein, 59 ml of water and 59 ml of glycerol. Similar to dietary proteins, the protein component of Sucraid is digested to amino acids that are used to make new protein and are not expected to cause toxicity. Glycerol is a sweet liquid used as a solvent, preservative, and moisturizer. FDA recognizes glycerol as GRAS for use as a food. 21 CFR 182.1320. It is also used as a drug, for example, to reduce intraocular and intracranial pressure. It also can be used as a laxative.

Possible adverse effects associated with glycerol include nausea, vomiting, headache, and dehydration. Less commonly reported effects include diarrhea, thirst, dizziness, and mental confusion. Some more serious effects have been reported with intravenous administration of glycerol and with certain high risk patients. However, the Hazardous Chemicals Desk Reference indicates that glycerol is only mildly toxic by ingestion. In addition, the Handbook of Common Poisonings in Children characterizes glycerol as a laxative, stating that "acute exposure to most laxatives produces nausea, vomiting, and diarrhea, which are usually mild and self-limiting."

The CPSC staff found three cases in the National Electronic Injury Surveillance System ("NEISS") of children under five years old ingesting products containing glycerol. The products involved were a glycerol suppository, a baby enema preparation, and an ear solution. In all three cases the child was treated and released or examined and released without treatment.

Thus, based on the information discussed above, the glycerol component of Sucraid is not likely to cause significant toxicity to children.

C. Human Experience Data

Investigators conducting clinical trials of Sucraid did not rate any of the adverse effects encountered as probably or definitely related to the drug. Some effects were considered to be possibly related to the drug.

The investigators considered most of the adverse effects to be unrelated to Sucraid and due to illnesses common to children (e.g., flu, ear infection and strep throat). Unrelated effects included sore throat, fever, cough, runny nose, diarrhea, cramping and abdominal pain.

The clinical investigator rated some adverse events as possibly related to Sucraid. These symptoms included abdominal pain, diarrhea, nausea, vomiting, constipation, dehydration, cramps, headache, insomnia, nervousness, and wheezing. The petitioner noted that many of these were gastrointestinal symptoms typical of CSID. Thus, the dose of Sucraid given may not have been adequate to alleviate all symptoms of the disease. An asthmatic child had an acute hypersensitivity reaction (wheezing) to Sucraid that resolved without sequelae. This patient was withdrawn from the trial.

D. Action on the Petition

After considering the information provided by the petitioner and other available toxicity and human experience data, the Commission concludes that the degree and nature of the hazard to children presented by the availability of Sucraid do not require special packaging to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting the substance. For these reasons, the Commission has decided to issue the proposed exemption on a final basis.

E. Effective Date

Because the rule issued below provides an exemption, the provisions of 5 U.S.C. 553(c) requiring a delay in the effective date is not applicable. Accordingly, the exemption issued below shall become effective on December 1, 1998.

F. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, an agency that engages in rulemaking generally must prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

In the proposed rule, the Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to exempt Sucraid from special packaging requirements. The staff reports that because of the small number of cases of CSID (3,000 to 10,000 in the U.S.), the market for Sucraid is expected to be small. The petitioner, Orphan Medical, is a small manufacturer based on its employment and sales. Orphan Medical has marketing exclusivity for Sucraid for seven years. The exemption from special packaging requirements will allow the company to avoid costs associated with providing CR packaging.

Based on this assessment, the Commission concludes that this regulation exempting Sucraid from special packaging requirements would not have a significant impact on a substantial number of small businesses or other small entities.

G. Environmental Considerations

The Commission's regulations governing environmental review procedures state that exemption of products from requirements for CR packaging under the PPPA normally has little or no potential for affecting the environment. (See 16 CFR 1021.5(c)(3).) The Commission does not foresee any special or unusual circumstances surrounding the exemption issued below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

H. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides generally that when a special packaging standard issued under the PPPA is in effect, "no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard." 15 U.S.C. 1476(a). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the PPPA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the final rule exempting Sucraid from special packaging requirements preempts non-identical state or local special packaging standards for the substance.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that this regulation does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, 16 CFR part 1700 is amended to read as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by republishing paragraph (a) introductory text and paragraph (a)(10) introductory text, and by adding new paragraph (a)(10)(xx) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(xx) Sacrosidase (sucrase) preparations in a solution of glycerol and water.

Dated: November 24, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(**Note.** This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Briefing memorandum from Jacqueline Ferrante, Ph.D., EH, to the Commission, "Petition (PP 97–1) to Exempt Sucraid from the Special Packaging Requirements for Oral Prescription Drugs," May 20, 1998.
2. Memorandum from Jacqueline Ferrante, Ph.D., EH, to Mary Ann Danello, Ph.D., Associate Executive Director, EH, "Sucraid Review," April 1, 1998.
3. Memorandum from Marcia P. Robins, EC, to Jacqueline Ferrante, Ph.D., EH, "Economic Considerations: Petition for exemption from PPPA Requirements for Oral Prescription Drug Sucraid," April 2, 1998.
4. Briefing memorandum from J. Ferrante to the Commission, "Final rule to Exempt Sucraid from CRP requirements, November 12, 1998."
5. Memorandum from Marcie Robins to J. Ferrante, "Exemption from CRP requirements for Preparations containing sacrosidase (sucrase): Small Business Effects," September 15, 1998.

[FR Doc. 98–31998 Filed 11–30–98; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 24, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201 May 14, 1987). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Chief Financial Officer, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1998, through September 30, 1999, the fees in this notice will become effective October 1, 1998. The fees will apply to fiscal year 1999 annual charges for the use of government lands.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry, Division of Financial Services, Office of Financial, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2885.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contract, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.W., Washington, D.C. 20426.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1998, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In Part 11, Appendix A is revised to read as follows:

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999

State	County	Rate per acre
Alabama	All Counties	$24.53
Arkansas	All Counties	18.41
Arizona	Apache	6.12
	Cochise.	
	Gila.	
	Graham.	
	La Paz.	
	Mohave.	
	Navajo.	
	Pima.	
	Yavapai.	
	Yuma.	
	Coconino North of Colorado River.	
	Coconino South of Colorado River	24.53
	Greenlee.	
	Maricopa.	
	Pinal.	
	Santa Cruz.	
California	Imperial	12.27
	Inyo.	
	Lassen.	
	Modoc.	
	Riverside.	
	San Bernardino.	
	Siskiyou	18.41
	Alameda	30.67
	Alpine.	
	Amador.	
	Butte.	
	Calaveras.	
	Colusa.	
	Contra Costa.	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999—Continued

State	County	Rate per acre
	Del Norte.	
	El Dorado.	
	Fresno.	
	Glenn.	
	Humboldt.	
	Kern.	
	Kings.	
	Lake.	
	Madera.	
	Mariposa.	
	Mendocino.	
	Merced.	
	Mono.	
	Napa.	
	Nevada.	
	Placer.	
	Plumas.	
	Sacramento.	
	San Benito.	
	San Joaquin.	
	Santa Clara.	
	Shasta.	
	Sierra.	
	Solano.	
	Sonoma.	
	Stanislaus.	
	Sutter.	
	Tehama.	
	Trinity.	
	Tulare.	
	Tuolumne.	
	Yolo.	
	Yuba.	
	Los Angeles	36.82
	Marin.	
	Monterey.	
	Orange.	
	San Diego.	
	San Francisco.	
	San Luis Obispo.	
	San Mateo.	
	Santa Barbara.	
	Santa Cruz.	
	Ventura.	
Colorado	Adams	6.12
	Arapahoe.	
	Bent.	
	Cheyenne.	
	Crowley.	
	Elbert.	
	El Paso.	
	Huerfano.	
	Kiowa.	
	Kit Carson.	
	Lincoln.	
	Logan.	
	Moffat.	
	Montezuma.	
	Morgan.	
	Pueblo.	
	Sedgwick.	
	Washington.	
	Weld.	
	Yuma.	
	Baca	12.27
	Dolores.	
	Garfield.	
	Las Animas.	
	Mesa.	
	Montrose	12.27
	Otero.	
	Prowers.	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999—Continued

State	County	Rate per acre
	Rio Blanco.	
	Routt.	
	San Miguel.	
	Alamosa	24.53
	Archuleta.	
	Boulder.	
	Chaffee.	
	Clear Creek.	
	Conejos.	
	Costilla.	
	Custer.	
	Denver.	
	Delta.	
	Douglas.	
	Eagle.	
	Fremont.	
	Gilpin.	
	Grand.	
	Gunnison.	
	Hinsdale.	
	Jackson.	
	Jefferson.	
	Lake.	
	La Plata.	
	Larimer.	
	Mineral.	
	Ouray.	
	Park.	
	Pitkin.	
	Rio Grande.	
	Saguache.	
	San Juan.	
	Summit.	
	Teller.	
Connecticut	All Counties ..	6.12
Florida	Baker	36.82
	Bay	
	Bradford	
	Calhoun	
	Clay	
	Columbia	
	Dixie	
	Duval	
	Escambia	
	Franklin	
	Gadsden	
	Gilchrist	
	Gulf	
	Hamilton	
	Holmes	
	Jackson	
	Jefferson	
	Lafayette	
	Leon	
	Liberty	
	Madison	
	Nassau	
	Okaloossa	
	Santa Rosa	
	Suwannee	
	Tayor	
	Union	
	Wakulla	
	Walton	
	Washington	
	All Counties ...	61.34
Georgia	All Counties ...	36.82
Idaho	Cassia	6.12
	Gooding	
	Jerome	
	Lincoln	
	Minidoka	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999—Continued

State	County	Rate per acre
	Oneida	
	Owyhee	
	Power	
	Twin Falls	
	Ada	18.41
	Adams	
	Bannock	
	Bear Lake	
	Benewah	
	Bingham	
	Blaine	
	Boise	
	Bonner	
	Bonneville	
	Boundary	
	Butte	
	Camas	
	Canyon	
	Caribou	
	Clark	
	Clearwater	
	Custer	
	Elmore	
	Franklin	
	Fremont	
	Gem	
	Idaho	
	Jefferson	
	Kootenai	
	Latah	
	Lemhi	
	Lewis	
	Madison	
	Nez Perce	
	Payette	18.41
	Shoshone	
	Teton	
	Valley	
	Washington	
Kansas	All Counties	6.12
	Morton	12.27
Illinois	All counties	18.41
Indiana	All counties	30.67
Kentucky	All counties	18.41
Louisiana	All counties	36.82
Maine	All counties	18.41
Michigan	Alger	18.41
	Baraga	
	Chippewa	
	Dickinson	
	Delta	
	Gogebic	
	Houghton	
	Iron	
	Keweenaw	
	Luce	
	Mackinac	
	Marquette	
	Menominee	
	Ontonagon	
	Schoolcraft	
	All Counties	24.53
Minnesota	All counties	18.41
Mississippi	All counties	24.53
Missouri	All counties	18.41
Montana	Big Horn	6.12
	Blaine	
	Carter	
	Cascade	
	Chouteau	
	Custer	
	Daniels	

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APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999—Continued

State	County	Rate per acre
	McCone	
	Meagher	
	Dawson	
	Fallon	
	Fergus	
	Garfield	
	Glacier	6.12
	Golden Valley	
	Hill	
	Judith Basin	
	Liberty	
	Musselshell	
	Petroleum	
	Phillips	
	Pondera	
	Powder River	
	Prairie	
	Richland	
	Roosevelt	
	Rosebud	
	Sheridan	
	Teton	
	Toole	
	Treasure	
	Valley	
	Wheatland	
	Wibaux	
	Yellowstone	
	Beaverhead	18.41
	Broadwater	
	Carbon	
	Deer Lodge	
	Flathead	
	Gallatin	
	Granite	
	Jefferson	
	Lake	
	Lewis & Clark	
	Lincoln	
	Madison	
	Mineral	
	Missoula	
	Park	
	Powell	
	Ravalli	
	Sanders	
	Silver Bow	
	Stillwater	18.41
	Sweet Grass	
Nebraska	All Counties	6.12
Nevada	Churchill	3.06
	Clark	
	Elko	
	Esmeralda	
	Eureka	
	Humboldt	
	Lander	
	Lincoln	
	Lyon	
	Mineral	
	Nye	
	Pershing	
	Washoe	
	White Pine	
	Carson City	30.67
	Douglas	
	Storey	
New Hampshire	All Counties	18.41
New Mexico	Chaves	6.12
	Curry	
	De Baca	
	Dona Ana	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999—Continued

State	County	Rate per acre
	Eddy	
	Grant	
	Guadelupe	
	Harding	6.12
	Hidalgo	
	Lea	
	Luna	
	McKinley	
	Otero	
	Quay	
	Roosevelt	
	San Juan	
	Socorro	
	Torrance	
	Rio Arriba	12.27
	Sandoual	
	Union	
	Bernalillo	24.53
	Catron	
	Cibola	
	Colfax	
	Lincoln	
	Los Alamos	
	Mora	
	San Miguel	
	Santa Fe	
	Sierra	
	Taos	
	Valencia	
New York	All Counties	24.53
North Carolina	All Counties	36.82
North Dakota	All Counties	6.12
Ohio	All Counties	24.53
Oklahoma	All Other Counties	6.12
	Beaver	12.27
	Cimarron.	
	Roger Mills.	
	Texas.	
	Le Flore	18.41
	Mc Curtain.	
Oregon	Harney	6.12
	Lake.	
	Malheur.	
	Baker	12.27
	Crook.	
	Deschutes.	
	Gilliam.	
	Grant.	
	Jefferson.	
	Klamath.	
	Morrow.	
	Sherman.	
	Umatilla.	
	Union.	
	Wallowa.	
	Wasco	12.27
	Wheeler.	
	Coos	18.41
	Curry.	
	Douglas.	
	Jackson.	
	Josephine.	
	Benton	24.53
	Clackamas.	
	Clatsop.	
	Columbia.	
	Hood River.	
	lane.	
	Lincoln.	
	Linn.	
	Marion.	
	Multnomah.	

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APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999—Continued

State	County	Rate per acre
	Polk.	
	Tillamock.	
	Washington.	
	Yamhill.	
Pennsylvania	All Counties	24.53
Puerto Rico	All	36.82
South Dakota	Butte	18.41
	Custer.	
	Fall River.	
	Lawrence.	
	Mead	18.41
	Pennington.	
	All Other Counties	6.12
South Carolina	All Counties	36.82
Tennessee	All Counties	24.53
Texas	Culberson	6.12
	El Paso.	
	Hudspeth.	
	All Other Counties	36.82
Utah	Beaver	6.12
	Box Elder.	
	Carbon.	
	Duchesne.	
	Emery.	
	Garfield.	
	Grand.	
	Iron.	
	Jaub.	
	Kane.	
	Millard.	
	San Juan.	
	Tooele.	
	Uintah.	
	Wayne.	
	Washington	12.27
	Cache	18.41
	Daggett.	
	Davis.	
	Morgan.	
	Piute.	
	Rich.	
	Salt Lake.	
	Sanpete.	
	Sevier.	
	Summit.	
	Utah.	
	Wasatch.	
	Weber.	
Vermont	All Counties	24.53
Virginia	All Counties	24.53
Washington	Adams	12.27
	Asotin.	
	Benton.	
	Chelan.	
	Columbia.	
	Douglas.	
	Franklin.	
	Garfield.	
	Grant.	
	Kittitas.	
	Klickitat.	
	Lincoln.	
	Okanagan.	
	Spokane.	
	Walla Walla	12.27
	Whitman.	
	Yakima.	
	Ferry	18.41
	Pend Oreille.	
	Stevens.	
	Callam	24.53
	Clark.	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999—Continued

State	County	Rate per acre
	Cowlitz.	
	Grays Harbor.	
	Island.	
	Jefferson.	
	King.	
	Kitsap.	
	Lewis.	
	Mason.	
	Pacific.	
	Pierce.	
	San Juan.	
	Skagit.	
	Skamania.	
	Snohomish.	
	Thurston.	
	Wahkiakum.	
	Whatcom.	
West Virginia	All Counties	24.53
Wisconsin	All Counties	18.41
Wyoming	Albany	6.12
	Campbell.	
	Cargon.	
	Converse.	
	Goshen.	
	Hot Springs.	
	Johnson.	
	Laramie.	
	Lincoln.	
	Natrona.	
	Niobrara.	
	Platte.	
	Sheridan.	
	Sweetwater.	
	Fremont.	
	Sublette.	
	Uinta.	
	Washakie.	
	Big Horn	18.41
	Crook.	
	Park.	
	Teton.	
	Weston.	
All Other Zones		6.53

[FR Doc. 98–31890 Filed 11–30–98; 8:45 am]

BILLING CODE 6719–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM93–24–001; Order No. 600–A]

Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source; Order Denying Rehearsing and Other Relief

Issued November 24, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order denying rehearing and other relief.

SUMMARY: The Federal Energy Regulatory Commission (Commission) denies a request, filed October 21, 1998, by Pacific Gas and Electric Company, for clarification, reconsideration or rehearing of the Final Rule, issued September 21, 1998, in which the Commission amended its regulations to state that where a regulatory body has jurisdiction over the price of fuel purchased from a company-owned or controlled source, and exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal, that the cost of fuel so purchased is reasonable and includable in the fuel adjustment clause.

FOR FURTHER INFORMATION CONTACT: Wayne W. Miller, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 208–0466.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

On October 21, 1998, Pacific Gas and Electric Company (PG&E) filed a request for clarification, reconsideration or rehearing of the Final Rule, issued September 21, 1998.[1] The Final Rule amended section 35.14(a)(7) of the Commission's regulations, 18 CFR § 35.14(a)(7) (1998), relating to fuel adjustment clauses, to state that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source, and that regulatory body exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal (rather than conclusively "deem") the cost of fuel so purchased to be reasonable and includable in the fuel adjustment clause. We deny the request for rehearing and other relief.

Background

In 1993, the Commission proposed to amend section 35.14(a)(7) of the Commission's regulations, relating to fuel adjustment clauses, to state that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source, and that regulatory body exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal (rather than conclusively "deem") the cost of fuel so purchased to be reasonable and includable in the fuel adjustment clause.[2] The Commission explained that the need for this amendment arises from the decision of the D.C. Circuit in *Ohio Power Company* v. *FERC*, 954 F.2d 779 (D.C. Cir.), *cert. denied*, 506 U.S. 981 (1992) (*Ohio Power*). In *Ohio Power*, among other things, the D.C. Circuit held that section 35.14(a)(7) establishes a *conclusive* presumption that a Securities and Exchange Commission (SEC)-approved price for an inter-affiliate fuel purchase is just and reasonable and, accordingly, cannot be upset by the Commission. In analyzing section 35.14(a)(7), the court focused on the meaning of the word "deemed," finding that it establishes a conclusive presumption regarding the reasonableness of SEC-approved prices. The court thus rejected the Commission's position that the word "deemed" sets only a rebuttable presumption.[3]

As a consequence, the Commission proposed to amend section 35.14(a)(7) to clearly specify only a rebuttable presumption of reasonableness, making it clear that the Commission has no intention of abdicating its statutory responsibility to independently review wholesale rates (including fuel adjustment clauses) to ensure that they are just and reasonable. The Commission noted a special need for Commission review when affiliate transactions are involved.

The Commission received 12 comments in response to this NOPR; PG&E did not submit any comments. While generally in accord with (or at least neutral to) the intent of the NOPR, the commenters suggested various changes to the proposed regulation. The suggested modifications principally involved three concerns: (a) whether the relevant sentence of section 35.14(a)(7) should simply be eliminated, rather than revised to set forth a rebuttable presumption; (b) the meaning of the term "regulatory body" in the proposed rule; and (c) retroactivity. After reviewing and considering the comments, the Commission issued its Final Rule amending section 35.14(a)(7) in the manner initially proposed in the NOPR.

As relevant here, in the Final Rule, the Commission stated that, as to challenges to affiliate fuel prices recovered through the fuel adjustment clause prior to the effective date of this rule change (November 6, 1998) (and which are not subject to an alternate ground for decision in *Ohio Power*), how the Commission should address such challenges is best decided in each individual case in which the issue arises, rather than generically in the abstract.[4]

PG&E's Request

PG&E requests clarification that the Commission did not intend to apply the new rule to inter-affiliate fuel purchases that occurred, and were approved by regulatory authorities with jurisdiction over the purchases, prior to the effective date of the Final Rule. If the Commission did intend to leave the door open to such retroactive application, then PG&E requests reconsideration or rehearing. PG&E contends that any retroactive application of the new rule to inter-affiliate fuel purchases before the effective date of the Final Rule exceeds the Commission's authority under the Federal Power Act (FPA), and the Administrative Procedure Act (APA). PG&E argues that the Commission may not circumvent this prohibition by implementing a new legislative rule retroactively in case-by-case adjudications.[5] Additionally, PG&E argues that, because the NOPR was silent on potential retroactive application of the rule, retroactive application violates the APA's notice and comment procedures.[6]

---

[1] Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source, Order No. 600, 63 FR 53,085 (October 7, 1998), FERC Stats. & Regs. ¶ 31,066 (1998) (Final Rule).

[2] Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source, 58 FR 51,259 (October 1, 1993), IV FERC Stats. & Regs. ¶ 32,502 (1993) (NOPR).

[3] 954 F.2d at 783–84.

[4] FERC Stats. & Regs. ¶ 31,066 at 30,727. The Commission noted that the fuel adjustment clause allows public utilities to pass through to their ratepayers increases or decreases in the cost of their fuel, without having to make separate filings to reflect each change in fuel cost and without having to obtain prior Commission review of each change in fuel cost. Consequently, the Commission stated that it has sanctioned after-the-fact review and refunds in later proceedings. Without later review and the ability to order refunds, the Commission explained, overcharges collected through the fuel adjustment clause would be exempt from all scrutiny and refunds. *Id.* at 30,727, n.21.

[5] PG&E maintains that the precedents cited by the Commission in footnote 21 of the Final Rule are inapplicable because in none of those cases did the Commission apply a new legislative rule retroactively in later adjudications. Instead, PG&E argues, the Commission retroactively reviewed the reasonableness of costs flowed through formula rates, applying the same regulations that were in effect at the time the costs were incurred. PG&E Request at 3.

Discussion

We will deny PG&E's request for clarification, reconsideration and rehearing.

We disagree with PG&E that the Commission must clarify or reconsider the Final Rule at this time because of retroactivity concerns. In the Final Rule, the Commission did not state that it necessarily would take any particular action. Rather, the Commission merely stated that challenges to affiliate fuel prices recovered through the fuel adjustment clause prior to the effective date of this rule change are best decided on a case-by-case basis. When the Commission is presented with a case involving fuel adjustment clause recovery before the effective date of the Final Rule of the price of affiliate fuel purchases, the Commission can determine at that time how best to proceed.

The Commission Orders

PG&E's request for clarification, reconsideration and rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(SEAL)

David P. Boergers,

Secretary.

[FR Doc. 98–31960 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 94F–0454]

Food Additives Permitted for Direct Addition to Food for Human Consumption; White Mineral Oil, USP

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of white mineral oil as a dust control agent for rough rice at an application rate of 800 parts per million (ppm). This action is in response to a petition filed by Lyondell-Citgo Refining Co., Ltd.

DATES: This regulation is effective December 1, 1998; written objections and requests for a hearing by December 31, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3106.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of January 25, 1995 (60 FR 4920), FDA announced that a food additive petition (FAP 5A4440) had been filed by Lyondell-Citgo Refining Co., Ltd., P.O. Box 2451, Houston, TX 77252–2451, proposing that the food additive regulations be amended in § 172.878 *White mineral oil* (21 CFR 172.878), to provide for the safe use of white mineral oil as a dust control agent for rough rice at an application rate of 800 ppm (0.08 percent of the weight of the rice). An application rate of 200 ppm (0.02 percent of the weight of the grain) is currently permitted under § 172.878(c) for use on wheat, corn, soybean, barley, rice, rye, oats, and sorghum as a dust suppressant. On September 17, 1996, the petitioner amended the petition to limit its request to the use of white mineral oil of ISO 100 oil viscosity (100 centistokes (cSt) at 100°F).

II. Comments

The agency has received nine comments from rice warehouses and an oil supply company in support of the proposed application rate of food grade white mineral oil for rough rice indicating that the current regulated rate of 200 ppm does not effectively control rice dust. Because the comments are consistent with the regulation as set forth in the codified section of this document, FDA sees no need to address them.

III. Conclusion

The agency has evaluated all the data in the petition and other information and concludes that the proposed use of white mineral oil of ISO 100 oil viscosity (centistokes (cSt) at 100 °F) is safe for use as a dust control agent for rough rice and that the additive will achieve its technical effect. Therefore, the agency concludes that the food additive regulations should be amended as set forth as follows.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Effects

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 31, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

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[6] 5 U.S.C. 553 (1994).

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.878 is amended in the table in paragraph (c) by adding an entry under the headings "Use" and "Limitation (inclusive of all petroleum hydrocarbons that may be used in combination with white mineral oil)" to read as follows:

§ 172.878 White mineral oil.

* * * * *

(c) * * *

Use	Limitation (inclusive of all petroleum hydrocarbons that may be used in combination with white mineral oil)
* * *	* * *
16. As a dust control agent for rice.	ISO 100 oil viscosity (100 centistokes (cSt) at 100°F) applied at a level of no more than 0.08 percent by weight of the rice grain.

Dated: November 7, 1998.

L. Robert Lake,

Director, Office of Policy, Planning, and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–31845 Filed 11–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 98F–0063]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Natamycin (Pimaricin)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a dry form of natamycin as an antimycotic in cheeses. This action is in response to a petition filed by Protein Technologies International, Inc.

DATES: This regulation is effective December 1, 1998; written objections and requests for a hearing by December 31, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3116.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 11, 1998 (63 FR 6945), FDA announced that a food additive petition (FAP 8A4581) had been filed by Protein Technologies International, Checkerboard Sq., St. Louis, MO 63164. The petition proposes to amend the food additive regulations in § 172.155 *Natamycin (pimaricin)* (21 CFR 172.155) to provide for the safe use of a dry form of the food additive for use on the surfaces of cuts and slices of cheese to inhibit mold spoilage, in accordance with various standards of identity for cheeses that allow the use of antimycotics and anticaking agents.

FDA received two comments from the food industry on the use of the dry mix of natamycin and cellulose on cheese to inhibit mold spoilage. Both comments favored the petitioned use of the additive. One comment listed several reasons for supporting the current petitioned use. They include possible extension of shelf life of shredded cheese, reduction of risks associated with antimycotic suspension spray application and minimal new technology investment by utilizing existing anticaking agent application technology. However, the other comment stated that "We realize that natamycin is permitted as a spray on the surface of cheese, but we are not comfortable with that method of application on grated cheese. We would like to test the efficacy of the method proposed in the cited petition."

FDA finds that the petitioner does not seek approval either for the use of the wet or dry application of the additive on grated cheese. The petitioner requests that FDA amend the food additive regulation for natamycin (pimaricin) found in § 172.155 to allow for the use of a dry form of the food additive only on the surfaces of cuts and slices of cheese to inhibit mold spoilage, and this does not extend to use of the additive on grated or shredded cheese. Therefore, the comments on grated or shredded cheese are outside the scope of this rulemaking.

Natamycin is currently approved in § 172.155 for use as an antimycotic agent on the surfaces of cuts and slices of cheese(s). Natamycin may be used on surfaces of cuts and slices of a cheese listed in 21 CFR part 133 only if the standards for such cheese provides for or the use of "safe and suitable" mold-inhibiting ingredients. The subject additive is defined in § 172.155 and may be applied by dipping or by spraying, using an aqueous solution containing 200 to 300 parts per million (ppm) of the additive. The proposed use is for the application of natamycin to cuts and slices of cheese as a dry mixture with safe and suitable anticaking agents, such as cellulose.

FDA has evaluated the data in the petition and other relevant material. As part of its review, FDA evaluated data on the technical effect of the additive, its stability, and the change in exposure resulting from the use of a dry mixture of natamycin and cellulose anticaking agent. The petitioner provided data to establish that a level of up to 20 ppm natamycin in the finished product is needed to obtain the same antimycotic effect as from the liquid application.

The petitioner, by measuring the antimycotic effect of a dry mixture of natamycin and cellulose on several cheeses resulting in no more than 20 ppm of natamycin in these cheeses, demonstrated that the additive will achieve its intended technical effect. The application of natamycin in dry form does not change the chemical composition of the additive, the uses in food, the use levels and, therefore, the dietary exposure to natamycin. Furthermore, the use of natamycin in the dry form does not result in any manufacturing changes that would affect the safety of the additive for this proposed use. The use of comparable levels of other safe and suitable anticaking agents, in addition to cellulose, would not change this conclusion. Therefore, the agency's safety evaluation of natamycin for the approved use in an aqueous application by dipping or spraying (47 FR 26823, June 22, 1982, as amended at 50 FR 49536, December 3, 1985) supports this proposed use of natamycin in dry form. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 172.155 should be amended.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8A4581 (63 FR 6945, February 11, 1998). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before December 31, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Foods and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.155 is amended by revising paragraph (c)(1) to read as follows:

§ 172.155 Natamycin (pimaricin).

* * * * *

(c) * * *

(1) The additive may be applied as a dry mix containing the additive and safe and suitable anticaking agents, resulting in no more than 20 parts per million of the additive in the finished product, or by dipping or spraying, using an aqueous solution containing 200 to 300 parts per million of the additive.

* * * * *

Dated: November 7, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–31855 Filed 11–30–98: 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 343

[Docket No. 77N–094A]

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-The-Counter Human Use; Final Rule for Professional Labeling of Aspirin, Buffered Aspirin, and Aspirin in Combination With Antacid Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of October 23, 1998 (63 FR 56802). The document provided for professional labeling for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid. The document published with some inadvertent editorial errors. This document corrects those errors.

EFFECTIVE DATE: The regulation is effective October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–28519, appearing on page 56802, in the **Federal Register** of October 23, 1998, the following corrections are made:

1. On page 56809, in Table 5, in the second entry in the fourth column, "-3.9" is corrected to read "-39".

2. On page 56810, in the third column, in the eighteenth line, "preoperative" is corrected to read "perioperative".

3. On page 56812, in the first column, in the third paragraph, in the eighteenth line, "were" is corrected to read "was".

§ 343.80 [Corrected]

4. On page 56817, in § 343.80(a)(1), the last paragraph is corrected to read "REV: October 23, 1998".

5. On page 56818, in § 343.80(a)(2), the entire page "**HIGHLIGHTS OF PRESCRIBING INFORMATION**" is corrected to read as follows:

Dated: November 20, 1998

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc 98–31854 Filed 11–30–98; 8:45 am]

BILLING CODE 4160–01–F

HIGHLIGHTS OF PRESCRIBING INFORMATION
ASPIRIN (FORMULATION)
(acetylsalicylic acid)

PROFESSIONAL INDICATIONS AND USAGE

Vascular Indications:
- Ischemic Strokes and Transient Ischemic Attacks (TIA)
- Suspected Acute Myocardial Infarction (MI)
- Prevention of Recurrent MI
- Unstable Angina Pectoris
- Chronic Stable Angina Pectoris

Revascularization Procedures in Select Patients:
- Coronary Artery Bypass Graft (CABG)
- Percutaneous Transluminal Coronary Angioplasty (PTCA)
- Carotid Endarterectomy

Rheumatologic Disease Indications:
- Rheumatoid Arthritis
- Juvenile Rheumatoid Arthritis
- Spondyloarthropathies
- Osteoarthritis
- Arthritis and Pleurisy of Systemic Lupus Erythematosus (SLE)

Warnings Regarding Use in Pregnancy

Pregnant women should only take aspirin if clearly needed. Because of the known effects of nonsteroidal anti-inflammatory drugs on the fetal cardiovascular system (closure of the ductus arteriosus), use during the third trimester of pregnancy should be avoided. Salicylate products have also been associated with alterations in maternal and neonatal hemostasis mechanisms, decreased birth weight, and with perinatal mortality. Salicylate is excreted in breast milk. (See "Pregnancy," "Labor and Delivery" and "Nursing Mothers" in the "Precautions" section of the Comprehensive Prescribing Information.)

Patients with a pre-existing condition for which aspirin is already indicated
See "Revascularization Procedures" under the "Indications and Usage" and "Clinical Studies" sections in the Comprehensive Prescribing Information

Dosage and Administration

General: Each dose should be taken with a full glass of water unless contraindicated. Doses may need to be individualized depending on indication

Indications	Recommended Daily Dose	Duration of Therapy
Vascular Indications:		
Ischemic Strokes and TIA	50-325 milligrams (mg) daily	Indefinitely
Suspected Acute MI	160-162.5 mg taken as soon as infarction is suspected, then once daily	For 30 days post infarction (after 30 days consider further treatment based on indication for previous MI)
Prevention of Recurrent MI	75-325 mg daily	Indefinitely
Unstable Angina Pectoris	75-325 mg daily	Indefinitely
Chronic Stable Angina Pectoris	75-325 mg daily	Indefinitely
Revascularization Procedures in Select Patients		
CABG	325 mg daily starting 6 hrs. postprocedure	1 year
PTCA	325 mg 2 hours presurgery Maintenance therapy: 160-325 mg daily	Indefinitely
Carotid Endarterectomy	80 mg daily to 650 mg twice a day started presurgery	Indefinitely
Rheumatologic Disease Indications		
Rheumatoid Arthritis	Initial dose 3 g daily. Target plasma salicylate levels 150-300 micrograms/milliliter (μg/mL)	As indicated
Juvenile Rheumatoid Arthritis	Initial dose 90-130 mg/kilograms/day. Target plasma salicylate levels 150-300 μg/mL	As indicated
Spondyloarthropathies	Up to 4 grams (g) daily	As indicated
Osteoarthritis	Up to 3 g daily	As indicated
Arthritis and Pleurisy of SLE	Initial dose 3 g daily. Target plasma salicylate levels 150-300 μg/mL	As indicated

CONTRAINDICATIONS

Aspirin is contraindicated in patients with known allergy to nonsteroidal anti-inflammatory drugs and in patients with the syndrome of asthma, rhinitis, and nasal polyps. Aspirin should not be used in children or teenagers for viral infections, with or without fever, because of the risk of Reye's syndrome with concomitant use of aspirin in certain viral illnesses.

PRECAUTIONS

General
- Renal Failure
- Hepatic Insufficiency
- Sodium Restricted Diets

Laboratory Tests

Drug Interactions
- Angiotensin Converting Enzyme (ACE) Inhibitors
- Acetazolamide
- Anticoagulant Therapy
- Anticonvulsants
- Beta Blockers
- Diuretics
- Methotrexate
- Nonsteroidal Anti-inflammatory Drugs (NSAID's)
- Oral Hypoglycemics
- Uricosuric Agents

Carcinogenesis, Mutagenesis, Impairment of Fertility
Pregnancy, Labor and Delivery, Nursing Mothers
Pediatric Use

WARNINGS
- Alcohol Warning
- Coagulation Abnormalities
- Gastrointestinal Side Effects
- Peptic Ulcer Disease

ADVERSE REACTIONS (Most common)
- Gastrointestinal (Abdominal Pain, Ulceration, Bleeding)
- Inhibition of Platelet Aggregation (Bleeding)
- Tinnitus
- Dizziness
- Hearing Loss

To report SERIOUS adverse drug reactions, call (manufacturer) at (phone number) or MEDWATCH at 1-800-FDA-1088

HOW SUPPLIED

(Insert specific information regarding, strength of dosage form, units in which the dosage form is generally available, and information to facilitate identification of the dosage form.) Store in a tight container at 25 °C (77 °F), excursions permitted to 15-30 °C (59-86 °F)

These highlights do not include all the information needed to prescribe aspirin safely and effectively. See aspirin's comprehensive prescribing information.

[FR Doc. 98–31854 Filed 11–30–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol Acetate and Lasalocid; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending and clarifying the animal drug regulations concerning melengestrol acetate (MGA) and the special considerations related to making type B and C feeds and lasalocid type B liquid feed specifications used for making lasalocid/MGA type C heifer feed.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center For Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, is sponsor of NADA's 39–402 and 140–288 that provide for combining separately approved melengestrol acetate (MGA) (dry and liquid) and lasalocid (dry and liquid) type A medicated articles to make lasalocid/MGA (dry and liquid) type B feeds. The type B feeds are used to make dry type C feeds for heifers fed in confinement for slaughter for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat). The sponsor requested that § 558.342 (21 CFR 558.342) be amended to change the special considerations in paragraph (c)(1) to read "type B or C medicated feeds" and to change the limitations in paragraph (d)(3)(ii) by adding the specification "The liquid medicated feeds are required to be manufactured in accordance with § 558.311(d)." FDA concurs with the sponsor's request and extends the amendments to special considerations to include all type B or C feeds for clarity as originally intended. The regulations are amended in paragraph (c) of § 558.342 as requested.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center For Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.342 [Amended]

2. Section 558.342 *Melengestrol acetate* is amended in paragraph (c) after the phrase "Type B" each place it appears by adding the phrase "or C" and in paragraph (d)(3)(ii) by adding a sentence after the first sentence to read "The liquid medicated feeds are required to be manufactured in accordance with § 558.311(d).".

Dated: November 10, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–31573 Filed 11–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–019A]

RIN 1218–AA51

Permit-Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule amends the Occupational Safety and Health Administration (OSHA) standard on Permit-Required Confined Spaces (permit spaces) (29 CFR 1910.146) to provide for enhanced employee participation in the employer's permit space program, to provide authorized permit space entrants or their authorized representatives with the opportunity to observe any testing or monitoring of permit spaces, and to strengthen and clarify the criteria employers must satisfy when preparing for the timely rescue of incapacitated permit space entrants. The revisions being made to the final rule will substantially enhance the protections being provided to permit space entrants and will additionally clarify a number of issues that have arisen since promulgation of the final Permit-Required Confined Spaces rule in 1993.

Specifically, OSHA is clarifying and strengthening the requirements in revised paragraphs (d), *Permit-required confined space program*, and (e), *Permit system*, to allow for greater employee participation in the permit-space program and for employee access to program information developed under the standard. The Agency is also revising paragraphs (c) and (d) to specify that employers must provide those employees who are authorized permit space entrants, or their authorized representatives, an opportunity to observe any testing of the space that is conducted prior to entry or subsequent to such entry. The Agency believes that these revisions are necessary to ensure that permit space entrants, whose work often requires entry into potentially life-threatening atmospheres, have the information necessary to protect themselves and their co-workers from confined space hazards. Allowing authorized entrants or their authorized representatives to observe the testing of the spaces they are required to enter will help to ensure that the testing has been done properly, that the respirators and other personal protective equipment being worn are appropriate, and that the entrants understand the nature of the hazards present in the space. In addition, paragraph (k) of the final rule, *Rescue and emergency services*, is being revised to clarify the criteria employers must satisfy when selecting a rescue team or service to rescue incapacitated permit space entrants, and a new paragraph (l), *Employee participation*, is being added to the final rule to ensure employee involvement in permit space program development and implementation. A non-mandatory appendix is also being added to the standard to assist employers in selecting appropriately trained and equipped rescuers.

EFFECTIVE DATE: This final rule will become effective February 1, 1999.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647, Washington, D.C. 20210, telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On January 14, 1993, the Occupational Safety and Health Administration (OSHA) issued a general industry standard (29 CFR 1910.146) to require protection for employees who enter permit-required confined spaces (permit spaces). The permit space standard, which provides a comprehensive regulatory framework for the safe performance of entry operations in general industry workplaces, became effective on April 15, 1993.

The United Steelworkers of America (USWA), the American Gas Association, and the Edison Electric Institute sought judicial review of the standard. In particular, the USWA argued that paragraph (k)(2) of the standard, which addresses the use of off-site rescue services, was vague and ineffective. The USWA also stated that OSHA had inappropriately omitted from the final rule a provision allowing affected employees or their designated representatives to observe any required testing or monitoring of permit spaces and a provision granting affected employees access to permit space testing or monitoring results. All three petitions were subsequently withdrawn pursuant to settlement agreements.

Based on settlement discussions with the USWA, OSHA agreed to initiate further rulemaking, and a notice of proposed rulemaking (NPRM) was accordingly issued on November 28, 1994. In the notice, the Agency specifically asked for public input on the USWA's suggestion that OSHA add provisions to the rule providing employees the opportunity to observe permit space monitoring or testing as well as granting them access to the results of such testing or monitoring. The notice also proposed changes to paragraph (k)(2) to clarify that host employers must ensure that rescue teams or services selected to perform permit space rescues at the host employer's facility have the capability to provide rescue in a timely manner, depending on the hazard(s) present in the permit spaces at the host employer's facility. In addition, on the basis of information received after the 1993 final rule was published, OSHA proposed to make the requirement for the point of attachment of a retrieval line more performance oriented by permitting any point of attachment to be used that enables the entrant's body to present the smallest possible profile during removal.

The NPRM set a 90-day comment period, ending on February 27, 1995, to receive written comments on the proposed revisions and the issues raised. OSHA received 51 written comments (Exs. 161–1 through 161–51). Several commenters (Exs. 161–21, 161–22, 161–38, 161–40, 161–44) requested that OSHA convene an informal public hearing to address their concerns.

OSHA published a notice of informal public hearing on August 2, 1995, scheduling a hearing for September 27, 1995, in Washington, D.C. In the hearing notice, OSHA also announced the extension, until September 13, 1995, of the public comment period to receive comments relating to the issues raised in the hearing notice. Twenty-seven additional comments (Exs. 161–52 through 161–78) were received as a result of the reopening of the record.

Twelve participants introduced testimony and evidence at the September 27 and 28 public hearing, which was presided over by Administrative Law Judge Joel Williams. At the conclusion of the hearing, Judge Williams set a post-hearing period for the submission of additional briefs, arguments and summations (ending on December 20, 1995). A total of 12 submissions (Exs. 178 through 189) were received during the post-hearing period. On February 14, 1996, the record for the rulemaking was closed and certified to OSHA. The record for this phase of the rulemaking contains a total of 90 submissions and more than 470 pages of hearing transcript. OSHA has carefully considered all of the materials submitted as part of this rulemaking in the drafting of this final rule. The materials submitted are available for review and copying in the OSHA Docket Office, Docket S–019A.

A few commenters appeared to believe that this revision constitutes an entirely new rulemaking proceeding (Exs. 161–33, 167). OSHA emphasizes, however, that this proceeding is properly viewed as a continuation of the rulemaking leading to the 1993 standard. Therefore, the Agency is not required to demonstrate that the relatively minor changes it is making to the PRCS standard are independently justified or that they, by themselves, effect a substantial reduction in significant risk. OSHA made that finding for the PRCS standard as a whole in 1993. In this case, the changes OSHA is making to paragraphs (c), (d), (e), and (k) essentially clarify what was always the Agency's intent with regard to employee representatives' access to information and employers' evaluation and selection of rescue services and teams. Although it is OSHA's view that the employee participation revisions it is making to paragraphs (c) and (d), and the addition of paragraph (l), will in fact substantially reduce the risks faced by permit space entrants, the revisions are proper so long as they are rationally related to the purposes of the OSH Act and the standard as a whole, and are supported by the rulemaking record.

II. Summary and Explanation of the Final Rule

The revisions to the final rule make changes to several provisions of paragraphs (c), (d), (e), and (k) of OSHA's permit-space standard (29 CFR 1910.146), and add a new paragraph (l). These changes, and the Agency's rationale for making them, are described below. References to exhibits in the docket (Docket S–019A) are designated "Ex.," followed by the exhibit number. References to the continuously paginated transcript of the public hearing held on September 27 and 28, 1995 (Exs. 192X, 193X), are designated Tr., followed by the page number.

Paragraphs (c), General Requirements, (d), Permit-required confined space program, and (e), Permit system

A. Clarification of the Need To Provide Authorized Representatives With Information Required by the Standard

Paragraphs (c)(5)(i)(E), (c)(5)(ii)(H), and (c)(7)(iii) have been revised to specify that OSHA intends authorized representative(s) of employees to have access to any information provided to employees under the standard. These wording changes are meant to clarify what has been longstanding OSHA policy and practice, i.e., to recognize the right of authorized representatives of employees to receive the same information as employees receive under the Agency's standards. In recognition of that policy, the Permit Space standard promulgated in 1993 specifically provides, in paragraph (c)(4), that the written program, which contains the employer's procedures and policies for implementing that program, be available for inspection and copying "by employees and their authorized representatives." Thus, the changes being made to paragraphs (c)(5)(i)(E), (c)(5)(ii)(H), and (c)(7)(iii) in this revised rule merely provide additional clarification of the Agency's intent.

The need to clarify these provisions was discussed by the USWA, which noted (Ex. 161–38) that "The right of employees and their representatives to relevant information has been a regular feature of OSHA standards since the beginning." In the same exhibit, the

USWA points to several OSHA standards, including the Hazard Communication standard (29 CFR 1910.1200), the Employee Access to Exposure and Medical Records standard (29 CFR 1910.1020), and the Process Safety Management standard (29 CFR 1910.119) that "give employees and their representatives very broad rights to information." The USWA reiterated this view in post-hearing comments (Ex. 188). OSHA agrees that it was the intent of the Permit Space standard to provide both employees and their authorized representatives with access to the information addressed by these provisions of paragraph (c), and the changes made to the final rule reflect this position and bring the Permit Space standard into conformance with the language traditionally used in OSHA standards.

B. Employee Observation of Atmospheric Testing

Paragraphs (c)(5)(ii)(C) and (c)(5)(ii)(F) have been revised by adding a sentence to each of them that specifically requires employers whose employees enter permit spaces to give these employees, or their authorized representatives, an opportunity to observe the testing of the space during pre-entry (paragraph (c)(5)(ii)(C)) and during entry (paragraph (c)(5)(ii)(F)). In the NPRM, OSHA solicited comment (59 FR 60737) about revising 29 CFR 1910.146 to allow affected employees or their authorized representatives to observe the testing and evaluation of confined space conditions, prior to and during entry. Specifically, the proposal stated, "* * * the Agency is considering whether such a provision [one requiring affected employees or their designated representatives to be permitted to observe any testing conducted under the confined space standard] should be added to the permit space standard based on the concerns expressed and on the record developed as a result of this notice."

The USWA (Ex. 161–38), which requested a hearing on this and other matters, urged OSHA to incorporate such a provision into the standard both on the grounds that employee protections would be enhanced and that Section 8(c)(3) of the Act mandated the inclusion of such a provision:

> The benefits of employee observation of monitoring are well established. Congress certainly thought employees should have the right to observe the monitoring for air contaminants to which they could be exposed * * *. We believe employee observation should be viewed as a matter of right. Employees now have the right to observe the monitoring of air contaminants outside confined spaces, even when the potential health effects may not occur for many years. A worker entering a confined space risks sudden death if the monitoring was not done properly. Surely that worker should have the right to observe the monitoring. (Ex. 161–38).

Many commenters argued that it was not necessary or appropriate to add an observation of monitoring provision to the Permit Space standard (see, for example, Exs. 161–9, 161–14, 161–20, 161–49, 161–55, 161–78, 184, 187, Tr. 40, 127, 170, 207). The issues raised by these commenters centered on the following points:

(1) That the existing standard is adequately protective and thus that no further changes are necessary;

(2) That the Act does not, at Section 8(c)(3), mandate such a requirement for safety, as opposed to health, standards;

(3) That allowing employees and their representatives to observe the testing of spaces would slow operations without adding to the safety of the entry and might actually increase risks; and

(4) That such a provision has the potential for abuse and could become a labor-management issue.

These issues, and OSHA's responses to them, are addressed in turn below.

Several commenters were of the opinion that adding an observation of monitoring provision is unnecessary because the existing Permit Space standard already adequately provides for the sharing of relevant testing information with entrants. For example, the Pennzoil Company (Ex. 161–49) stated, "Existing requirements at Section 1910.146(d)(5) and (e)(3) already provide for adequate employee access to the results of testing and monitoring in permit spaces." Arguing along similar lines, Union Electric (Ex. 161–35) noted that the existing standard "already requires that the results of initial and periodic tests performed under 1910.146(d)(5) be entered on the entry permit, and 1910.146(e)(3) now requires that the permit be made available to all authorized entrants at the time of entry. As a practical matter, affected employees are usually briefed on the results of the exposure monitoring during the pre-job briefing and before entry into the space."

OSHA is pleased to learn that some employers have taken the additional safety precaution of providing entrants with a pre-entry briefing that includes a report on the results of the monitoring of the space, and the Agency is also aware that the existing standard contains a number of provisions requiring employers to provide information on the results of testing to those employees who are entering a permit space. However, OSHA concludes that these provisions, although essential to the safety and health of entrants, are not a substitute for the observation of monitoring provisions being added to the standard, for the following reasons.

Having access to the entry permit will not prevent the kinds of errors that could be detected by having employees or their representatives observe the actual testing of the space. For example, evidence in the rulemaking record shows that monitoring errors, such as using the wrong monitor, monitoring for the wrong substance, or failing to test the space thoroughly, contribute to a number of confined space accidents (Tr. 286, 317). And if the evaluation or testing of the space is improperly performed, inaccurate information will unknowingly be recorded on the entry permit, and entrants relying on this inaccurate information could be placed at risk of sudden death or serious injury. In situations such as these, the presence of authorized employees or their representatives could well have detected the error and remedied the problem.

The record contains reports of several incidents where employees who observed improperly performed atmospheric tests were able to bring the errors to the attention of the testers before an accident occurred. For example, in one case, the person doing the atmospheric testing calibrated the testing instrument inside the confined space. The entrant pointed out this error and it was corrected (Ex. 161–38, Tr. 332–333). In other cases in the record, employee observation of testing and monitoring might have prevented an accident. The International Chemical Workers Union described an incident involving a vessel that had been tested by a poorly trained evaluator who had apparently failed to detect a flammable atmosphere. The vessel later exploded, killing several workers. There are a number of other dangerous situations that could arise that employee observation of monitoring could avert. For example, authorized employees and their representatives are often aware that significant changes may have occurred in conditions within the space, e.g., that the employer is considering reclassifying the space based on new monitoring data and can be expected to take extra precautions as a result. Observing the testing process would also permit employees or their representatives to detect human errors, such as the inadvertent recording of inaccurate data. In addition, OSHA believes that employees who directly observe the monitoring are likely to gain an enhanced appreciation for the hazards they face.

Thus, OSHA believes that providing employees or their representatives with the opportunity to observe the testing and monitoring of permit spaces will have the same kinds of benefits that such observation has had in the context of OSHA's health standards: knowledgeable employees who are given the opportunity to participate actively in protecting their own safety and health and that of their co-workers often identify potentially serious problems and help to solve them as well. Accordingly, paragraph (c)(5)(ii)(C) has been revised by adding the sentence "Any employee who enters the space, or that employee's authorized representative, shall be provided an opportunity to observe the pre-entry testing required by this paragraph." Similarly, the language of paragraph (c)(5)(ii)(F) has been revised to add the following sentence: "Any employee who enters the space, or that employee's authorized representative, shall be provided with an opportunity to observe the periodic testing required by this paragraph."

A number of commenters (see, e.g., Exs. 161–26, 161–35, 161–37, 161–48, 161–56, 161–72, 161–60, 187, Tr. 127, 170) expressed disagreement with the USWA's view that Section 8(c)(3) of the Act mandated such observation in the case of safety standards such as the permit space standard. Section 8(c)(3) of the Act directs OSHA to issue regulations requiring employers to maintain records of employee exposure to potentially toxic materials or harmful physical agents and providing employees or their representatives with "an opportunity to observe such monitoring or measuring, and to have access to the records thereof." This section of the Act provides the basis for the observation of monitoring provisions in virtually all of OSHA's health standards (see, for example, the asbestos, benzene, cadmium, lead, methylenedianiline, methylene chloride, and butadiene standards). Typical of these comments was one submitted by the Dow Chemical Company (Ex. 161–20):

> Section 8(c)(3) requires OSHA to promulgate regulations which provide employees, and their designated representatives, with the opportunity to observe the monitoring and measuring of, and have access to, employee exposure records (emphasis in the original). The atmospheric tests and space evaluations required under the Confined Space Standard are not the type of employee exposure monitoring that is envisioned by the Act.

In fact, OSHA stated in the NPRM its position that section 8(c)(3) does not require inclusion of a requirement for employee observation of monitoring in safety standards (59 FR 60737). Instead, the proposal explained that any decision to add an employee observation provision to the standard would be based on the record developed in this proceeding, including the concerns expressed about the original standard. OSHA does note, however, that the fact that Congress included a requirement that observation of monitoring be allowed for toxic substance standards indicates a Congressional preference for well-informed and involved employees. And as explained elsewhere in this section, OSHA has determined that the record in this rulemaking shows that employee observation can have substantial benefits for employee safety and health.

OSHA believes that this safety benefit adequately justifies any minimal slowing of operations caused by the employee observation requirement. In any event, as shown by other evidence in the record, the employees assigned to enter the permit space are often already in the area, waiting to enter it, while the space is being tested and monitored (Ex. 161–25). Indeed, in a great many cases, it is the permit space entrants themselves who perform the testing and monitoring (Ex. 161–09, Tr. 186–187, 190). Moreover, as with all of the employee participation provisions being added in this revision, the record shows that this practice is already fairly common and indicates that it has not caused any production problems (Exs. 161–57, 172, Tr. 202).

A few commenters suggested that employee observation could actually decrease employee safety, for example when monitoring must take place in a hazardous environment, such as an elevated location or one containing a toxic atmosphere (Exs. 161–56, 161–74, 167, 181). But the standard does not require employees to observe all monitoring or testing, it merely offers them the opportunity to do so. The employees and their representatives are less likely to take advantage of that opportunity in particularly hazardous situations. Moreover, even having an entrant or representative close by observing the actions of the person testing the atmosphere, and checking the instruments after the tests are complete could provide safety benefits. Employees already have extensive rights to observe monitoring under OSHA's health standards. OSHA has seen no evidence, and none was presented in this rulemaking, that this observation creates safety hazards (Tr. 92–93).

OSHA does not believe that the final rule's requirements that employers provide affected employees with an opportunity for employee observation, or those requiring employee participation in paragraph (l), are particularly subject to abuse or constitute an unwarranted infringement on labor-management relations. OSHA standards frequently require that work be performed in a particular way or by specific employees. For example, the Lockout/Tagout (LO/TO) standard, 29 CFR 1910.147(c)(8), requires that locks and tags be affixed by the workers who will be performing the service or maintenance covered by the standard and, as discussed above, numerous toxic substance standards provide affected employees and their representatives with the right to observe hazardous substance monitoring. The requirement that employees who are to enter hazardous confined spaces be allowed to observe the required monitoring of those spaces is analogous to these provisions. Like the LO/TO requirement, it recognizes that the employees whose lives could be endangered by inadequate completion of these preliminary safeguards have the strongest incentive to see that they are performed properly (see Tr. 333).

OSHA also is not persuaded that the monitoring observation requirement is especially subject to employee abuse. Some commenters suggested that during periods of labor management discord, employees could abuse the observation right to slow down or disrupt production (see, e.g., Exs. 161–12, 161–25). Others expressed concern that the provision could cause what one called a "logistical nightmare" if all of the employees and representatives insisted on observing each instance of testing and monitoring (see, e.g., Exs. 161–12, 161–26, 161–35, 161–78). But again, there was no evidence that this type of disruption is caused by the employee observation provisions in OSHA's health standards. The standard allows the opportunity for observation by an entrant or his authorized representative, not by every employee and representative at the workplace. Moreover, some employers, either contractually or otherwise, already provide employees with the right to observe monitoring and testing of confined space atmospheres (Exs. 161–57, 173–B, Tr. 184–185, 202). One witness pointed out that, even in those plants, confined space entrants did not always choose to observe the monitoring (Tr. 202). And of course nothing in this standard interferes with an employer's existing power to direct and control its workforce, so long as it does not attempt to do so in a manner inconsistent with the standard.

Nor does the provision interfere improperly in labor-management relations, as suggested by some commenters (e.g., Ex. 161–35). In a general sense, many safety and health issues could, in the absence of OSHA requirements, be dealt with through traditional labor management mechanisms. That does not mean, however, that OSHA does not have the authority to require that work be performed in the manner it determines can best reduce safety or health hazards. And OSHA's exercise of this authority may, in some cases, force employers to alter some aspects of their employee relations. For example, OSHA standards sometimes require employers to provide medical removal benefits to workers whose health may already have been affected by exposure to a toxic substance. These benefits may include job assignments in areas with less exposure to the toxic substance, continuation of pay, or training for new job assignments (29 CFR 1910.1025(k) (lead), 1910.143(f)(2)(iv) (cotton dust)). Although these issues would have been considered labor relations matters in the absence of the OSHA standards, it is clear that OSHA can impose such regulatory requirements to protect employee safety and health. *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1236 (D.C. Cir. 1980).

Paragraph (k)—Rescue and Emergency Services

OSHA is amending and reorganizing paragraph (k), the rescue and emergency services provision of the standard.

A. Evaluation and Selection of Rescue and Emergency Services

The revisions to paragraphs (k)(1) and (k)(2) clarify an employer's obligations to select a rescue service that is trained, equipped and available to respond to emergencies that occur during confined space entries. The emphasis of the revised language is on the employer's evaluation of potential rescue providers, and on the factors that the employer must consider in determining whether a particular provider is capable of providing effective rescue services for the particular situations that its confined space entrants may face. OSHA is also adding a new non-mandatory Appendix F to the standard to provide employers with additional assistance in evaluating potential rescue services.

In the 1993 Permit Required Confined Spaces standard, OSHA promulgated separate requirements for employers of rescue and emergency teams and employers who used teams they did not employ. The requirements were more specific for what the rule considered in-house teams employed by the employer (29 CFR 1910.146(k)(1), (k)(2)). The rule was criticized for its failure to contain equally explicit requirements for "outside" rescue teams, or to contain an explicit requirement that those teams be able to arrive at the worksite in a timely fashion (Ex. 162–1). In the NPRM, OSHA proposed to require employers to ensure that outside rescue teams be equipped, trained, capable of responding in a timely manner, and aware of the hazards they may encounter during rescue operations, and be provided with access to the employer's confined spaces for rescue plan development and rescue drill purposes (59 FR 60739).

OSHA received a wide array of comment on this proposal. Some commenters believed that the language of the 1993 rule, particularly as explained in the preamble to that rule, was adequate to assure effective and timely rescue (Exs. 161–48, 161–49, 161–56, 167, 184). Others argued that the proposed revisions did not go far enough, and that OSHA should either prohibit outside rescue teams altogether or, at a minimum, require that any rescuer be able to respond to an emergency within some specified time frame, generally four to six minutes (Exs. 161–38; 161–39; 161–40; 161–62; 170). A number of commenters criticized the distinction between in-house and outside rescue services, pointing out that some of the assumptions on which OSHA based this distinction were inaccurate (see, e.g., Ex. 161–20). Many of the comments emphasized the need for knowledgeable and well-trained rescuers, not only to provide more effective rescue to the endangered confined space entrants but also to assure that the rescuers do not unnecessarily endanger themselves (Exs. 161–7, 161–20, 170).

The commenters who believed that OSHA should not amend the existing rule generally made four points:

1. Properly interpreted, the 1993 rule already imposes a requirement for timely and effective rescue.
2. Making employers responsible for the performance of outside rescue teams is unrealistic for those employers who rely on outside teams because they lack the expertise to develop their own in-house teams.
3. Imposing a short time within which a rescue team must arrive at the location of the emergency amounts to an effective prohibition of outside rescue teams.
4. Requiring an employer to "ensure" the competence, timeliness, and effectiveness of outside rescuers is a requirement that employers guarantee successful rescue.

Typical of these comments is one by the Chemical Manufacturers Association:

> OSHA's proposed revisions to paragraph (k)(2) place an undue burden on host employers. The likely outcome is that host employers will not be able to use outside rescue services. Such an outcome is totally inappropriate. Under the proposed revision, if the host employer decides to use an outside rescue service, then it must also ensure that this outside rescue service is "capable of functioning appropriately." If a host employer is using the outside rescue service, presumably the host employer does not have the expertise to maintain a team in-house. In such a situation, how can the host employer ensure that the service is capable of functioning appropriately?

* * * * *

Paragraph (k)(2), as originally promulgated, required the correct amount of accountability for host employers (Ex. 161–29).

Dow Chemical stated its belief that "In essence, by requiring host employers to "ensure" that the outside rescuer can "effectively respond in a timely manner" and that the outside rescuer is equipped, trained and "capable of functioning appropriately," OSHA is requiring that host employers guarantee their performance" (Ex. 181).

Those commenters who supported more stringent requirements made two general points:

1. Without a clear requirement for rescuers to respond within a very short time after an emergency arises, entrants will often die while awaiting rescue.
2. Outside rescuers, particularly emergency responders, often do not have the information or equipment necessary for effective and timely rescue, and in some cases may not even know that employers are relying on them for confined space rescue.

These comments, and OSHA's responses to them, will be discussed in greater detail below.

A. Timely Response

OSHA has retained the language in the NPRM calling for timely rescue capability. Although virtually all rulemaking participants agreed on the need for "timely" rescue, a great deal of debate concerned whether OSHA should include a particular response time in the standard. Proponents of such a provision argued that in many confined space emergencies, an entrant is not receiving adequate breathing air and will suffer irreversible and frequently fatal effects within four to six minutes (Exs. 161–38, 161–39, 161–64, 161–71). Moreover, some of them claimed that if rescuers are not on the scene quickly enough, co-workers of the victim who are not equipped to perform rescue operations are more likely to endanger themselves by attempting rescue operations on their own (Ex. 161–38). They noted that a majority of deaths in confined spaces occur among would-be rescuers (Exs. 161–38, 161–64).

Opponents of the inclusion of a specific time frame in the standard pointed out that, realistically, a four to six minute response time would require having fully equipped rescuers standing by during the entire length of every permit space entry (Ex. 161–56). While others noted that this would be appropriate on some occasions, but would not be on many others (Tr. 51–52, 93, 210, 254). These commenters agreed that inadequately prepared rescuers are likely endanger themselves more than they assist the victim, but expressed concern that even designated rescuers could endanger themselves if they are under too much pressure to respond too quickly (Ex. 161–56). For example, Michael Roop of ROCO Corp. testified that, in training rescuers ROCO instructs them "that if you arrive at a scene and you're inside that confined space in two or three minutes to made a rescue, then you're doing something wrong. You're not being safe" (Tr. 248).

In the same context, ROCO and other rescue provider commenters pointed out that "response time" is not the same as rescue time, and that there are a number of discrete stages to a successful rescue operation (Tr. 246–249; Ex. 161–52).

OSHA does not believe these concerns are irreconcilable. OSHA's recently revised Respiratory Protection standard, 29 CFR 1910.134 (1998), promulgated at 63 FR 1152–1300 (Jan. 8, 1998), as well as the predecessor to that standard, 29 CFR 1910.134 (1997), require standby rescue personnel when employees are working in atmospheres that are immediately dangerous to life or health (IDLH). It is clear that the atmosphere in a permit space where an entrant could suffer irreversible impairment within four to six minutes would meet the definition of an IDLH atmosphere: "an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere" (29 CFR 1910.134(b)); see also the preamble discussion at 63 FR 1184–1185.

According to the Respiratory Protection standard, when employees enter such a space, the employer must ensure that:

(i) One employee, or when needed, more than one employee is located outside the IDLH atmosphere;

(ii) Visual, voice, or signal line communication is maintained between the employee(s) in the IDLH atmosphere and the employee(s) located outside the IDLH atmosphere;

(iii) The employee(s) located outside the IDLH atmosphere are trained and equipped to provide effective emergency rescue;

(iv) The employer or designee is notified before the employee(s) located outside the IDLH atmosphere enter the IDLH atmosphere to provide emergency rescue;

(v) The employer or designee authorized to do so by the employer, once notified, provides the appropriate assistance necessary to the situation;

(vi) Employee(s) located outside the IDLH atmospheres are equipped with:

(A) Pressure demand or other positive pressure SCBAs, or a pressure demand or other positive pressure supplied-air respirator with auxiliary SCBA; and either

(B) Appropriate retrieval equipment for removing the employee(s) who enter(s) these hazardous atmospheres where retrieval equipment would contribute to the rescue of the employee(s) and would not increase the overall risk resulting from entry; or

(C) Equivalent means for rescue where retrieval equipment is not required under paragraph (g)(3)(vi)(B) (29 CFR 1910.134(g)(3)); see also preamble discussion at 63 FR 1242–1245.

OSHA believes that compliance with these requirements will meet the concerns of those commenters who urged OSHA to require a rescue response time of only a few minutes. Because the standby personnel required by the Respiratory Protection standard will have been monitoring the confined space entrant's condition throughout the operation and will be fully equipped to begin rescue operations, they will be able to respond more quickly than rescue team members arriving from another location, whether inside or outside the plant, who would need to gather appropriate equipment, prepare to use that equipment, and be briefed on the emergency situation before beginning rescue operations. And because the standby personnel must be appropriately trained and equipped to perform rescue operations, other inadequately prepared employees will be less likely to endanger themselves by attempting hasty and dangerous rescues. (Note that at least one employee, serving as attendant, must still remain outside the permit space, as required by Section 1910.146(i)(4).) On the other hand, because the Respiratory Protection standard requirement only applies to IDLH atmospheres, a less resource-intensive and more measured response capability may be used for those situations where there is not the same need for virtually instant response.

OSHA has therefore decided to promulgate the requirement it proposed for "timely" rescue, a requirement that was not opposed by any rulemaking participant, rather than to define precisely what is timely. That determination will be based on the particular circumstances and hazards of each confined space, circumstances and hazards which the employer must take into account in developing a rescue plan. OSHA has added a note to paragraph (k)(1)(i) to clarify this point.

B. Evaluation, Selection, and Use of Rescue Services

OSHA has generally reorganized paragraph (k) to de-emphasize the distinction between in-house and outside rescuers and to focus instead on the employer's obligation to evaluate rescue services so that it can select one that is competent to provide the rescue services appropriate for that employer's operations. Several commenters explained that OSHA's assumption that in virtually all cases the "host" employer would be the employer of both the confined space entrants and any *in-situ* rescue team but would not be the employer of an off-premises team was erroneous (Ex. 181). These commenters described a number of situations where this assumption would be inaccurate. For example, in some cases, confined space entrants may be contractor employees, although the rescue team may be composed of on-site employees of either the host employer or another contractor (Ex. 179). In other cases, the host employer may arrange for the standby presence of an "outside," non-employee rescue team during particularly hazardous permit space entries. In still other situations, an employer may use a rescue team comprised of employees of a different facility that it operates.

As a result OSHA has revised paragraph (k)(1) to emphasize the evaluation that an employer must perform of available rescue and emergency resources before designating a rescue provider for purposes of this standard. This also responds to the concerns of a number of commenters that the language OSHA used in the NPRM, requiring the employer to "ensure" that the rescue service it selected was able to function adequately, appeared too result oriented. These commenters believed that compliance could only be determined by a *post hoc* consideration of the success or failure of an actual rescue effort. They said the focus should

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instead be on the employer's assessment of the rescuer's capabilities (Ex. 161–20). OSHA agrees that assessment of capabilities is the appropriate focus for employer efforts, and intended this result in both the 1993 standard and the NPRM. The language of this final rule, by explicitly framing the employer's obligations in terms of the evaluations it performs, will clarify this intent.

Paragraph (k)(1)(i) explains that the rescue service evaluation must take into account the rescuer's ability to respond in a timely manner to the types of emergencies that may arise in the employer's confined spaces. As noted above, the note to paragraph (k)(1)(i) explains that what will be considered timely rescue will vary according to the specific hazards involved in each confined space entry.

Paragraph (k)(1)(ii) requires that the evaluation also include an assessment of the skill and competence of the prospective rescuers. Several commenters pointed out that in some cases employers have designated local fire and rescue services as their rescuers without first confirming that those services even have a confined space rescue capability (Ex. 161–41). Although many emergency responders may be able to provide proper permit space rescue functions for all spaces that do not require immediate, stand-by rescue capability, not all responders have this ability (Ex. 161–41). Each employer relying on these services should verify that the emergency responder is indeed trained, equipped, able, and willing to perform rescue for confined spaces in its facility.

In evaluating a prospective rescue provider's abilities under this subparagraph, the employer must also consider the willingness of the service to become familiar with the particular hazards and circumstances faced during its permit space entries. Subparagraphs (k)(1)(iv) and (k)(1)(v) require the employer to provide its designated rescuers with information about its confined spaces and access to those spaces, both to allow the development of appropriate rescue plans and to perform rescue drills. A rescue service's receptiveness to this information is directly relevant to its ability to function appropriately during actual rescue operations.

A few commenters provided information on particular products, including communication equipment (Ex. 161–52) and *in-situ* resuscitation devices (Tr. 459–468) for use in permit space rescue operations. OSHA does not, of course, endorse specific products. However, the Agency notes that the equipment used by a rescue service, and that equipment's utility in enhancing rescue efforts, is a relevant factor for employers to consider during the rescuer evaluations required by this paragraph.

Paragraph (k)(1)(iii) requires the employer, after performing the evaluations required by paragraphs (k)(1)(i) and (k)(1)(ii), to select a rescue provider that has the ability to respond in a timely manner to the particular hazards at issue, and to provide proficient rescue services. In other words, it is not enough for an employer simply to perform the evaluations required. The employer must also utilize the results of those evaluations to select a rescue service that will meet the goals of this standard.

Paragraph (k)(1)(iv) requires the employer to notify the rescue service it selects of the hazards that may exist at the permit spaces in its facility. This requirement was included in the NPRM and was also present in the 1993 standard. In the context of this revised standard, this notification provision obviously includes notifying the rescue service that it has been selected and that the employer will be relying on it. In some cases compliance with this section, as well as with paragraphs (k)(1)(i) and (k)(1)(ii), may require the employer to notify the rescue service immediately prior to each permit space entry.

Paragraph (k)(1)(v) requires employers to provide the rescue service selected with access to all confined spaces from which rescue may be necessary so that the rescue service can develop appropriate rescue plans and practice rescue operations. This provision, which is essentially unchanged from both the NPRM and the 1993 standard, was the subject of a significant amount of comment from employer representatives who urged OSHA to require only that they provide access to "representative" or "typical" spaces (Exs. 161–29, 161–20, 161–25, 161–26, 161–2–9, 161–60, 184). These commenters pointed out that a number of an employer's confined spaces were likely to share identical configurations, and that it would therefore not be necessary for the rescue service to have access to each of them (Exs.161–25, 181, 184). Some also expressed concern that providing access to some permit spaces, which are only entered at rare intervals for cleaning or other servicing, could be costly and disruptive of the employer's ongoing operations.

OSHA recognizes the validity of these concerns but believes that the employer's needs can be accommodated within the context of the existing requirement. Accordingly, OSHA has not made the suggested change. Although OSHA agrees that a rescue service is unlikely to need access to every one of a group of similar spaces, OSHA believes that it should be the rescue service that decides which space, or spaces, will be used for planning and practice purposes. This is particularly true for off-site rescue services, who are less likely to be familiar with the layout of the host employer's workplace. The Agency also took this position in the January 14, 1993 final rule (58 FR 4529–4530), and at the September 27, 1995, public hearing (Tr. 22). Similarly, although providing access to some permit spaces may be disruptive of normal production operations, OSHA believes that employers should be able to work out with their designated rescue services mutually convenient times to provide access to those spaces, if the rescue service believes that access to those particular spaces is necessary for planning or practice drill purposes. Indeed, none of the commenters argued that such accommodations could not be made.

As proposed, OSHA has redesignated paragraph (k)(1) of the 1993 standard, dealing with the requirements for rescue service employers, as (k)(2) of this revision, but has not made substantive changes in this requirement. Most of the comment OSHA received on this provision dealt with the fact that employers have different obligations toward rescue teams comprised of their own employees than toward teams they do not employ directly. However, as a number of commenters recognized, to the extent that the "non-employee" rescue services are comprised of employees of another employer subject to the OSH Act, they also will receive the benefits of these provisions (Ex. 161–20). And to the extent that a service's failure to comply with these provisions affects its rescue skills and competence, employers should take this into account in deciding whether to select that service to provide its rescue operations.

OSHA has made some editorial changes in this paragraph. For example, revised paragraph (k)(2)(i) states that rescue PPE and related training are to be provided at no cost to affected employees. This language has been added so it is clear that this provision is consistent with existing § 1910.146(d)(4).

C. Retrieval Systems

OSHA proposed to revise paragraph (k)(3)(i) to allow attachment of retrieval lines at any point "which the employer can establish will ensure that the entrant will present the smallest possible profile during removal" rather than only at the entrant's back near shoulder level or above the entrant's head. The final rule changes this language somewhat, but retains the performance orientation of the proposal. OSHA explained in the NPRM that, subsequent to the 1993 promulgation, the Agency received information which indicated that other equally effective and safe points of attachment exist. Accordingly, OSHA proposed to add the new language to paragraph (k)(3)(i). The proposed paragraph, however, inadvertently omitted language providing for the use of wristlets in certain circumstances.

Commenters (Exs. 161–1, 161–9, 161–13, 161–14, 161–15, 161–20, 161–26, 161–29, 161–34, 161–37, 161–43, 161–45) uniformly supported the increase in flexibility allowed by the proposed revision. Some, however, suggested changes to OSHA's proposed language. The National Grain and Feed Association (Ex. 161–14) suggested that the standard allow attachment "in the manner determined by the employer most effective to ensuring that the entrant" will present the smallest possible profile during removal. OSHA has not adopted this suggestion because it believes the two points of attachment listed (the center of the entrant's back near shoulder level and above the entrant's head) should be emphasized because those points are preferred for most situations.

Another commenter (Ex. 161–45) suggested replacing the proposed "smallest possible profile" with "best possible profile." OSHA agrees that it may not always be desirable for the entrant to present the smallest possible profile during rescue. For instance, in situations where the size of the space or portal is not limiting, a point of attachment which results in the smallest possible profile may be less desirable than some other point of attachment which better facilitates the work to be done. Accordingly, OSHA has decided to replace the proposed language with the phrase "profile small enough for the successful removal of the entrant." OSHA also has not adopted a suggestion of the Tennessee Valley Authority (Ex. 161–34) that OSHA change the term "profile" to "cross sectional profile" because OSHA believes that the term "profile" is clear in this context. Finally, two commenters called to OSHA's attention the inadvertent omission in the NPRM of the option to use wristlets where the use of a body harness is infeasible or would create a greater hazard (Exs. 161–20, 161–26). The revised rule retains the language on wristlets.

OSHA did not propose, and has not made, any change to subparagraphs (k)(3)(ii) or (k)(4). Subparagraph (k)(3)(ii) requires a mechanical device to be available to retrieve entrants from a vertical confined space more than five feet deep. OSHA notes that it has always intended that the word "available" in this provision mean "at the access point of the vertical entry and ready for use."

Paragraph (l)—Employee Participation

A new paragraph (l) has been added to the standard, dealing with employee participation in confined space programs. Paragraph (l)(1) requires employers to consult with affected employees and their representatives in the development and implementation of their confined space programs; paragraph (l)(2) requires that those employees and representatives have access to all information developed under this standard.

OSHA's original Permit Required Confined Spaces standard hearing notice (54 FR 41462) requested comments on the subject of worker participation in the design and implementation of a PRCS program. OSHA received several comments on the subject (Exs. 14–318, 14–210, 14–215, 14–220, 14–222) and some testimony at the public hearings also addressed it (Tr. 225–226, 251, 386, 589–590; Tr. 1063–1064; Tr. 317–318, 348–352, 356, 376, 379–380, 411, 427–428, 532–533, 612–613, 622–623). The Agency addressed these comments in the preamble to the January 1993 standard (58 FR 4484–4485).

The standard encouraged the involvement by employees and clearly recognized it as vital to the creation of an effective permit space program. However, it did not require employee involvement in the development of the permit program, although it did provide for such involvement in permit space program inspection and review (paragraphs (c)(4) and (d)(13)), and in review of employee training upon evidence of deficiencies ((g)(2)(iv)). OSHA explained its decision not to require employee involvement in the development of confined space programs by referring to the difficulties of mandating labor-management collaboration in the development of the permit space program and of resolving conflicts between workers and employers (FR 4484–4485). As is discussed more fully below, OSHA believes this revision avoids both of these problems.

Although the NPRM on which this revision is based did not explicitly mention employee involvement in the development of confined space programs, some commenters submitted statements urging OSHA to include a provision explicitly allowing such participation (see, e.g., Ex. 161–38; 161–40). Further discussion of this issue occurred at the public hearing.

Commenters supporting the addition of an employee participation provision to the standard pointed out that employee participation in plan design is already done at many workplaces pursuant to collective bargaining agreements, and that such participation would be consistent with that occurring under other OSHA standards, particularly the Process Safety Management standard (29 CFR 1910.119) (Ex. 161–140). It was also pointed out that employees who actually work in confined spaces and their representatives are particularly well qualified to contribute to the task analysis that is a necessary step in developing a confined space program (Exs. 161–38; 161–140).

In contrast, even the American Petroleum Institute (API), the commenter who most explicitly opposed inclusion of such a requirement, acknowledged that involvement by employees in the program development process could be useful. API said that OSHA should continue to "encourage" such involvement but should not require it because such a requirement could expose the standard to "additional controversy or litigation" (Ex. 167). The American Gas Association made a similar statement (Ex. 161–770). Other more general comments on employee participation repeated the point made in the original rulemaking that such participation raises labor relations issues that should not be addressed by an OSHA standard (see, e.g., Exs. 184, 187).

OSHA has determined that the consultation requirement in new paragraph (l) will provide the benefits discussed by the participants who favored an employee involvement requirement. By leaving the final contents of the confined space program up to the employer, however, this provision should minimize controversy and avoid the need to develop a cumbersome procedure to resolve conflicts. OSHA expects that there will be few conflicts in any event, because it believes that the vast majority of employers and employees will cooperate to make confined space entry procedures as safe and efficient as possible. This requirement should only have a minimal effect on labor-management relations although, as noted in the discussion of paragraph (c) above, the importance of employee safety and health would justify such an effect even if it were substantial.

As the UAW pointed out, the employees who perform the actual entry can contribute immeasurably to the analysis of the tasks performed during a permit space entry to ensure that the hazards within the space remain under control and that additional hazards are not introduced (Ex. 161–40). These employees are the people most familiar with the actual practices during confined space entries. If those practices differ significantly from the practices intended by the employer, the employer needs to be made aware of the differences and to take appropriate steps to remedy any deficiencies in the permit entry procedures. Likewise, employees may be aware of hazards within the space that are not being taken into consideration by non-entrants.

In addition, OSHA's own experience in enforcing the Congressionally mandated employee participation requirement under the Process Safety Management standard has convinced the Agency of both the value and the workability of the new provisions being added in paragraph (l). OSHA believes that, as well as improving the quality of the permit space programs developed under the standard, this new provision will also enhance compliance with those programs. Clearly, employees who have participated in the development of programs will have a better understanding of the reasons for the various provisions of the program and will therefore be more likely to comply with those provisions. Similarly, any manager who might be tempted to bypass any of the program safeguards will be less able to convince an employee that such an action would not affect safety and health.

Finally, paragraph (l) is consistent with both the Congressional intent and OSHA's long practice of promoting employer-employee cooperation in safety and health matters. The Congressional intent is shown in part by Section 2(13) of the OSH Act, 29 U.S.C. 652(13), which states that one of the purposes of the Act is to "encourage joint labor-management efforts to reduce injuries and disease arising out of employment." More recently, Congress' intent can be seen in its directive to OSHA to promulgate a PSM standard that explicitly provides for employee involvement in the development of the process safety management programs mandated by that standard.

An example of OSHA's longstanding practice of encouraging and promoting employee involvement is the Agency's 1989 *Safety and Health Program Management Guidelines* (54 FR 3904), which recognize the importance of involving employees in safety and health programs at the workplace. Paragraph (c)(1)(iv) of those guidelines urges employers to provide for and encourage employee involvement in "the structure and operation of the [safety and health] program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives." Although the guidelines are voluntary, this provision demonstrates OSHA's belief that employee involvement is necessary to the day-to-day safety and health of workers. Additionally, the guidelines are being applied in many workplaces through several OSHA programs, such as the Voluntary Protection Program, the Safety and Health Achievement and Recognition Program, and in several State and Regional experimental programs. OSHA's 1998 Strategic Plan also emphasizes the importance of employee involvement in safety and health and establishes as an Agency objective the enhancement of such involvement in all OSHA initiatives, as appropriate.

New paragraph (l)(2) requires employers to share with employees and their authorized representatives all of the information generated under this standard. Comments objecting to this provision were generally limited to pointing out that it would be redundant with other provisions in the standard that already require the great majority, if not all, of this information to be made available to employees and representatives. OSHA recognizes this redundancy; it is adding this provision for purposes of emphasis and clarification.

For all of the reasons described above, OSHA has determined that the consultation requirement in paragraph (l)(1) is supported by the record of this rulemaking; it will contribute to confined space safety; and it is consistent with longstanding agency policy. The information provision requirement in paragraph (l)(2) is also consistent with agency policy, and will emphasize that employees and their representatives have a right to all information affecting their health and safety.

Section 1910.146 Appendix F—Example of Rescue Service Evaluation Criteria

As discussed above, OSHA has added a new, non-mandatory Appendix F. This appendix provides guidance to employers in choosing appropriate rescue services. The Agency received several comments (Exs. 161–4, 161–7, 161–44, 161–55) which addressed the need for criteria to assist employers in evaluating potential rescuers. As expressed by one commenter (Ex. 161–44): "If an employer does not have rescue knowledge and experience, how can he possibly evaluate a prospective rescue service? What evaluation and verification process is reasonable and acceptable to OSHA?"

The Agency recognizes that some employers will need information on how to evaluate prospective rescue services. However, presenting criteria that match every situation would be difficult. For this reason, OSHA has determined that the suggested criteria for rescue service evaluations should be presented in a non-mandatory appendix. Additionally, this appendix provides criteria for ongoing performance critiques for rescue services so that employers will have a means to judge whether a rescue service has maintained its ability to perform safe and effective permit space rescues. Although the Appendix is divided into a section addressing initial assessments and one addressing performance critiques for rescue services already operating at an employer's facility, the considerations in the two sections should not be seen as mutually exclusive. To the extent the employer can obtain enough information to make a determination, the same factors would be applicable to both determinations.

III. Final Economic Analysis

Introduction

In accordance with Executive Order 12866 and the Regulatory Flexibility Act (as amended), OSHA has prepared this Final Economic Analysis to accompany the final rule amending the Agency's Permit-Required Confined Spaces (PRCS) standard (29 CFR 1910.146). The final rule is being amended to require employers to provide authorized entrants (i.e., those employees who are authorized to enter PRCSs) or their designated representatives with the opportunity to observe the monitoring or testing of permit spaces and to request the reevaluation of any permit space that they believe may have been inadequately tested. The final rule also clarifies the criteria employers must satisfy when preparing for the timely rescue of incapacitated permit space entrants. Employee participation in the permit space program is enhanced in the final rule, which provides authorized employees and their designated representatives with access to program information developed under the standard and requires employers to consult with such employees about the implementation of the permit space program.

When the Permit-Required Confined Spaces standard was promulgated in 1993, the Regulatory Impact Assessment (RIA) that accompanied the rule was placed into the rulemaking docket [Docket S–019, Ex. 149]. The RIA evaluated the costs, benefits, impacts, and technological and economic feasibility of the 1993 final rule. The Final Economic Analysis presented here estimates the costs of those requirements of the amended rule that will impose new regulatory burdens on affected employers, analyzes the benefits that will accrue to employers, employees, and others as a result of these new provisions, examines the technological and economic feasibility of the amended provisions, and assesses the impacts of the costs of compliance on affected employers and on small businesses in particular. The Final Economic Analysis does not re-analyze the estimates presented in the RIA for the 1993 rule or assess the costs and benefits of provisions in the amended final rule that merely interpret or explain the intent of provisions in the 1993 rule because the costs and benefits of such provisions were fully taken into account in the earlier RIA.

This Final Economic Analysis assesses the costs, benefits, technological and economic feasibility, and impacts of two provisions of the amended final rule. These provisions include revised paragraph (d), which now requires employers to permit authorized employees or their designated representatives to observe the testing or monitoring of permit spaces, and paragraph (l), which requires employee participation in the development and implementation of the permit space program and requires employers to provide employees and their designated representatives with access to information developed under the standard. The Agency has determined that the revised provisions will enhance the safety and health protections provided to confined space entrants by the standard and will also benefit employers by saving some of the direct costs associated with deaths and serious injuries that now occur but will in future be prevented.

The following sections of this analysis briefly summarize the industry profile and the findings of the Agency's technological feasibility analysis for the amended rule.

Industry Profile

Tanks, vats and pits are examples of common confined spaces. Although confined spaces of these types are concentrated in the manufacturing and utilities sectors, they are also found in some trade and service sectors. The 1993 RIA estimated that 1.6 million workers in nearly 240,000 establishments enter confined spaces annually. A profile of these spaces is presented in Table I. A more detailed description of confined spaces in industry is available in the earlier RIA [Docket S–019, Ex. 149].

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TABLE I

PROFILE OF ESTABLISHMENTS AND EMPLOYEES AFFECTED BY THE CONFINED SPACES STANDARD

SIC	Industry	Number of Establishments with Permit Spaces	Number of Permit Spaces	Number of Employees	Number of Permit Space Entrants (a)
07	Agricultural Services	10,864	79,821	62,990	25,748
13	Oil & Gas Extraction	10,000	12,477	155,660	11,239
20	Food and Kindred Products	10,236	142,727	805,247	99,420
21	Tobacco Products	69	776	37,845	2,007
22	Textile Mill Products	1,491	17,062	186,752	27,831
24	Wood Products(except furniture)	10,290	39,400	146,042	31,035
25	Furniture and Fixtures	5,254	26,012	224,589	35,424
26	Paper Products	4,397	95,533	475,171	46,208
27	Printing and Publishing	47	206	2,196	94
28	Chemicals & Allied Products	8,098	170,982	593,738	71,962
29	Petroleum Refining	1,644	93,700	104,704	15,560
30	Rubber Products	6,282	143,818	319,262	143,522
31	Leather and Leather Products	151	514	6,395	1,055
32	Stone, Clay,Glass & Concrete	12,290	116,708	366,454	110,568
33	Primary Metals Industry	2,788	35,521	463,942	56,669
34	Fabricated Metal Products	8,441	88,507	346,800	33,959
35	Machinery, Except Electrical	4,330	34,670	437,200	116,987
36	Electric/Electronic Equipment	6,610	176,895	892,336	111,087
37	Transportation Equipment	3,302	1,085,966	1,043,403	31,706
38	Instruments & Related Products	64	901	7,296	514
39	Miscellaneous Manufacturing	885	31,267	18,926	5,744
42	Motor Freight Transportation	14,583	201,680	201,679	40,336
49	Electric, Gas, Sanitary Services	28,444	1,575,170	410,290	263,217
50	Wholesale Trade/Durables	2,753	3,965	36,485	3,359
51	Wholesale Trade/Nondurables	36,913	411,095	358,647	194,454
54	Food Stores	10,073	10,073	318,010	10,073
59	Miscellaneous Retail	7,149	28,201	57,923	10,694
65	Real Estate (Commercial)	13,582	45,190	391,923	12,442
70	Hotels and Other Lodging	5,099	77,672	163,323	80,224
72	Personal Services	3,577	24,604	198,447	7,154
76	Miscellaneous Repair Services	752	802	3,718	752
78	Motion Pictures	11	33	16,500	66
80	Health Services	8,252	71,709	3,357,391	27,308
84	Museums, Botanical Gardens, Zoos	130	1,183	7,338	781
	TOTAL	238,853	4,844,849	12,218,622	1,629,201

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

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Technological Feasibility

Paragraphs (d) and (l) of the amended final rule will impose new costs on some affected employers because they will be required to spend additional time consulting with employees, to allow employees or their representatives to spend time observing the testing or monitoring of permit spaces, and so forth. However, the amended rule will not require employers to employ additional or new technologies to achieve compliance. As explained in the RIA [Docket S–019, Ex. 149], compliance with all aspects of the standard can be achieved and is being achieved with readily available off-the-shelf equipment.

Costs of Compliance

Observation of Testing

The Agency is modifying paragraph (d)(5), by adding paragraphs (iv), (v), and (vi), which require employers to offer authorized entrants or their designated representatives the opportunity to observe the pre-entry testing or monitoring and any subsequent testing or monitoring of permit spaces (paragraph (d)(5)(iv)); to reevaluate any space that the entrant or representative believes was inadequately tested (paragraph (d)(5)(v)); and to provide entrants and their representatives with the results of such testing immediately (paragraph (d)(5)(vi)).

OSHA concludes, based on evidence in the record, that paragraphs (d)(5)(v) and (d)(5)(vi) will not impose new costs on affected employers because they simply restate or explain requirements that were implicit in paragraph (e)(3) of the existing permit space rule. Paragraph (e)(3) requires the posting of entry permits, which contain the results of initial or periodic testing or monitoring (including the results of any remonitoring or testing), to enable authorized entrants to verify that preentry preparations have been completed. As stated in the preamble to the original rule [58 FR 4505], this provision ensures that "Entrants will then be able to make their own judgments as to the completeness of pre-entry preparations and to point out any deficiencies that they believe exist." Commenters affirmed that permits are posted and used in this way and thus that this provision reflects current industry practice [Ex. 161–45; Ex. 161–72]. Paragraph (d)(5)(vi) of the amended rule, which requires employers to provide entrants and their representatives with the results of such testing or monitoring, is also implicit in paragraph (e)(3), which requires that "The completed permit shall be made available at the time of entry to all authorized entrants, by posting it at the entry portal or by any other equally effective means, so that the entrants can confirm that pre-entry preparations have been completed." As stated above, it is current industry practice to provide immediate access to the information on entry permits.

Paragraph (d)(5)(iv) may impose new costs on some employers, although there is evidence in the record that many employers already allow permit space entrants to observe the testing or monitoring of spaces. For example, different firms indicated that they routinely provide employees with assurances of safety, showing them the various pre-entry safety procedures, if necessary [Tr., p. 57] or allowing employees to do the monitoring themselves [Tr., p. 186]. Mike Roop of the Roco Corporation indicated that, in the companies with which he had worked, employee requests to observe testing were not denied [Tr., p. 267]. Other firms actually encourage employees to observe monitoring [Tr., p. 202]. Duane Barnes, speaking for Dow, indicated that his company's safety record was so good that, although it was company policy to provide employees with any reassurance that was required in the area of safety, Dow had simply not had such requests [Tr., p. 57].

OSHA notes that its economic analyses for health standards, which routinely allow employees and their representatives to observe any employee exposure monitoring required by such standards, do not estimate any costs for the observation of monitoring provision (see, for example, the RIAs for ethylene oxide [Ex. 163, Docket H–200], cadmium [Ex. L173, Docket H–057A]). The Agency also has not received comments suggesting that employers actually incur costs by permitting employees to observe monitoring for health standards. In the present rulemaking, an industry representative stated that allowing employees to observe the monitoring required by OSHA health standards did not present a problem [Tr. p. 93]. Based on this history and evidence, OSHA assumes that such costs are essentially negligible.

OSHA also believes, based on the record, that many employers will meet the requirement for employee observation of monitoring by allowing employees requesting such information to perform the monitoring themselves. The task of testing has been greatly simplified by the introduction and improvement of electronic "instant" monitoring devices; for many spaces, employers currently place the monitoring devices directly on the employees [Tr. pp. 186, 188]. To the extent entrants test the atmosphere themselves before entering spaces, there would be no cost to this requirement.

Nonetheless, although the Agency believes that the costs of compliance with paragraph (d)(5)(iv) will be negligible, it has assessed the costs this provision might impose under worst case conditions, i.e., assuming that no employer currently permits any employee to observe such monitoring or testing of permit spaces *and* that every authorized entrant or designated representative will do so in the future. At the time of the original rulemaking, OSHA estimated that a total of 1.2 million hours would need to be spent on pre-entry testing (this estimate includes those facilities that were considered already to be in compliance with the monitoring provisions of the original confined spaces standard).[1] After adjusting the compensation rates in the original RIA to 1994,[2] the annual costs of compliance with paragraph (d)(5)(iv) under this extreme scenario would amount to $22.6 million.

OSHA believes, based on the record and the Agency's experience in health standards rulemakings, that costs for this provision will be incurred in no more than 10 percent of permit space entries, i.e., that the actual costs of this provision will be one-tenth of those outlined in the "worst case" scenario, or $2.3 million. Estimated costs for this provision, by industry, are shown in Table II.

Employee Consultation

As indicated previously, the Agency is adding a new paragraph (l) to the amended final rule. This provision requires employers to consult with affected employees and their authorized representatives. The existing rule, at paragraph (c)(4), already requires that the written plan be available for review by employees and their authorized representative(s). However, the Agency believes that the requirements in new paragraph (l) will lead to a modest increase in the amount of time employees and employers spend in developing and implementing their confined spaces programs.

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[1] Based upon an assumption of an average of five minutes of labor time required for pre-entry testing. This assumption was presented in the Preliminary Regulatory Impact Analysis (PRIA) for the original rule [Docket S–019, Ex. 15], was not questioned in the record, and was therefore carried over into the final RIA [Docket S–019, Ex. 149]. The final RIA was not subsequently challenged.

[2] Thus comparing 1994 costs to 1994 financial data (discussed further in the Economic Impact Section). The compensation rate was also updated to reflect recent BLS data, which indicates a 39 fringe benefit rate [BLS, 1995], as opposed to the 30 percent rate used in original analysis [Docket S–019, Exhibit 149].

Although the Agency lacks specific data on current industry practice with regard to employee consultation in the development and implementation of permit space programs, the Agency believes it reasonable to assume that the requirements in paragraph (l) will require an average of 10 minutes for authorized entrants and attendants to meet with a member of management or an entry supervisor to discuss ways to improve the program and its implementation. The Regulatory Impact Analysis in support of the original rule assumed that programs would need to be updated fully on an average of once every five years. Therefore, the annual cost of this provision is estimated to be:

(We+Wm) X (# of entrants + # attendants) X 10/60 hour X .24 where We is the hourly compensation of affected employees and Wm is the hourly compensation of management. Hourly compensation is based on 1994 industry hourly wage rates for production workers [BLS, 1994], plus the average nonagricultural benefit rate of 39 percent [BLS, 1995]. Consistent with the PRIA [Docket S–019, Ex. 15] and RIA [Docket S–019, Ex. 149], management compensation is assumed to be 20 percent greater than that of the entrants and attendants. The annualization factor for a five-year period at a 7 percent rate of interest is .24. Given these assumptions, the Agency estimates that this provision will cost $3.6 million to implement. Estimated costs for this provision, by industry, are shown in Table II. Combined with the amended final rule's provision requiring employers to provide employees with the opportunity to observe testing, the Agency estimates the total costs of compliance for the amended final rule to be $5.8 million annually.

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TABLE II

ANNUAL COST OF EMPLOYEE INVOLVEMENT IN CONFINED SPACES PROGRAM

SIC	Industry	Annual Cost of Observing Testing	Annual Cost of Employee Consultation in Program Development	Total Annual Cost of Employee Involvement
07	Agricultural Services	$29,935	$50,694	$80,629
13	Oil & Gas Extraction	$2,019	$36,881	$38,900
20	Food and Kindred Products	$33,805	$161,200	$195,004
21	Tobacco Products	$156	$5,656	$5,812
22	Textile Mill Products	$995	$35,992	$36,987
24	Wood Products(except furniture)	$1,239	$73,902	$75,141
25	Furniture and Fixtures	$4,925	$53,800	$58,725
26	Paper Products	$27,951	$96,427	$124,377
27	Printing and Publishing	$7	$283	$290
28	Chemicals & Allied Products	$114,791	$170,192	$284,982
29	Petroleum Refining	$33,994	$45,331	$79,326
30	Rubber Products	$22,115	$217,948	$240,063
31	Leather and Leather Products	$0	$1,342	$1,342
32	Stone, Clay,Glass & Concrete	$22,750	$172,816	$195,566
33	Primary Metals Industry	$56,410	$122,447	$178,858
34	Fabricated Metal Products	$677,225	$69,194	$746,419
35	Machinery, Except Electrical	$62,081	$210,048	$272,128
36	Electric/Electronic Equipment	$96,953	$183,031	$279,984
37	Transportation Equipment	$156,623	$78,293	$234,916
38	Instruments & Related Products	$416	$992	$1,408
39	Miscellaneous Manufacturing	$1,499	$8,967	$10,466
42	Motor Freight Transportation	$305,633	$105,767	$411,401
49	Electric, Gas, Sanitary Services	$482,369	$679,265	$1,161,634
50	Wholesale Trade/Durables	$568	$9,390	$9,958
51	Wholesale Trade/Nondurables	$63,111	$370,891	$434,002
54	Food Stores	$918	$19,709	$20,627
59	Miscellaneous Retail	$298	$25,256	$25,554
65	Real Estate (Commercial)	$22,821	$403,564	$426,384
70	Hotels and Other Lodging	$21,809	$86,312	$108,121
72	Personal Services	$0	$13,072	$13,072
76	Miscellaneous Repair Services	$3	$139	$141
78	Motion Pictures	$20	$205	$225
80	Health Services	$17,536	$65,692	$83,228
84	Museums, Botanical Gardens, Zoos	$1,721	$1,414	$3,135
	TOTAL	$2,262,697	$3,576,110	$5,838,807

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

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Benefits

The benefits of providing employees with an opportunity to observe the testing of spaces are predictably difficult to quantify, although the Agency believes that the benefits of doing so are real. Allowing employees to observe the testing and monitoring of permit spaces will provide for safer confined space entry: the record shows that, had employees in the past been able to observe the testing of spaces before entry or to obtain a reevaluation of questionable testing results, it is likely that a number of fatalities could have been averted. For example, the Steelworkers [Ex. 188, p. 4] report a number of cases where employers have apparently tested spaces improperly, leading to fatal results both for the workers entering the space and the rescuers attempting to rescue their incapacitated co-workers.

However, defining the number of fatalities or injuries preventable annually by this provision is difficult because permit space accidents, like most safety accidents, are multi-causal in nature. Most confined space accidents reflect a number of failures in the permit program, which makes it difficult to isolate the effectiveness of any given provision of the program (or rule). At the time of the original rule, OSHA specifically asked in the **Federal Register** [54 FR 24080] for comment on the effectiveness of the permit space rule; there was general agreement that the standard would prevent 80–90 percent of accidents. There was little attempt, however, to try to break out the benefits of particular provisions, due to the substantial overlap of causes in accidents and the deliberate redundancy built into some provisions of the standard.

In addition, it is difficult to estimate how often authorized entrants or their designated representatives will avail themselves of the opportunity to observe the testing or monitoring of permit spaces. To gain an understanding of the magnitude of the potential benefits associated with new paragraph (d)(5)(iv), OSHA turned to the RIA, which estimated that 85% of permit space accidents would be eliminated by the standard but that 15% of such accidents would continue to occur [58 CFR 4543]. These 15% of fatal cases, or 9 cases annually, were attributed to "human error" but were also believed to be theoretically preventable.

The amended rule's provision for the observation of testing will function to provide a "check" on human error in those cases where monitoring was improperly performed. When these fatal accidents occur, more than one element of the safety system has typically failed; however, in almost all such cases, one critical element—the accurate monitoring of the atmosphere—has failed. Thus it is reasonable to assume that allowing authorized entrants or their designated representatives to observe the testing of spaces will prevent a substantial portion of the accidents attributed in the RIA to human error. Because approximately two-thirds of these fatalities were related to atmospheric hazards (toxic, explosive, or oxygen deficient atmospheres),[3] OSHA assumes in this benefits analysis that the same proportion of cases, or a total of approximately 6 fatalities annually, could be prevented if proper monitoring was assured in all cases of permit space entry.

How effective this provision will be in practice will depend on the number of employees who actually avail themselves of the opportunity to observe the testing of spaces. In the absence of data to quantify this effect specifically, the Agency is adopting the conservative assumption of direct proportionality—i.e., the Agency is assuming that if only a small number of employees observe such monitoring, only a small number of the potentially preventable fatal incidents will be prevented. In this case, since the cost analysis assumes that only 10 percent of employees will actually observe monitoring, the Agency assumes that only 10 percent of the 6 fatalities (or 0.6 fatalities) will be prevented annually. Borrowing similarly from the injury analysis of the RIA for the final rule, the Agency estimates that paragraph (d)(5)(iv) will prevent 50 lost workday injuries annually.[4] Finally, to the extent more employees than assumed here avail themselves of the opportunity provided by the final rule, both the benefits and costs will be higher.

Indirect benefits from this provision, as well as from paragraph (l), will come in the form of enhanced employee participation. A recent analysis of Oregon's mandatory safety and health program rule, which requires active employee participation, indicates that employers receive measurable safety benefits from enhanced employee participation in safety programs [Weil, 1994]. Consulting employees in the development of a confined spaces safety program, as required by paragraph (l), may also generate new ideas for more efficient confined spaces entry. As was noted by several commenters from industry in the original rulemaking [Docket S–019, Ex. 149, pp. V–68–71], confined spaces are frequently production vessels that cannot be used while they are being entered, and the employer therefore has an incentive to minimize the amount of time spent in the confined space. Therefore, extra time spent planning safe and efficient entry beforehand may pay dividends not only in increased labor productivity but in capital productivity as well. For example, an employee might have a suggestion for modifying the job so as to avoid the need to enter the space entirely.

Economic Impact

To assess the economic impact of these amendments to the permit required confined spaces standard, the Agency compared the estimated annual costs of these provisions against the revenues and profits of affected businesses. Revenue data were taken from the Bureau of the Census' Standard Statistical Establishment List data base; profit data were taken from Dun and Bradstreet's *Norms and Key Business Ratios* [Dun & Bradstreet]. Sales, profit and relevant cost data are all from 1994, the most recent year for which highly detailed small business data is currently available to the Agency.

The comparison of costs with revenue and profits for all affected establishments is shown in Table III. It indicates that costs to affected establishments in all industries are no more than .006% of revenues and are less than .07% of profits. Costs of this magnitude cannot be considered large enough to impose regulatory burdens on employers or to raise issues of economic feasibility.

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[3] Based on an examination of death certificates for 670 fatalities in confined spaces in NIOSH's National Traumatic Occupational Fatality (NTOF) data base [NIOSH, *Worker Deaths in Confined Spaces*, January 1994]. This is after excluding cases related to grain engulfment, which are dealt with under OSHA's grain handling standard (§ 1910.272). This figure is likely conservative, as NIOSH's figures include some trench cave-ins, which are dealt with under OSHA's excavation standard (§ 1926, Subpart P).

[4] The baseline number of lost-workday injuries in confined spaces was estimated to be 5,041 before the rule was published. (While the original projection of baseline injuries was based on a theoretical projection, it has subsequently been verified as being approximately correct, based on now-available 1993 BLS data [BLS, 1996, Table R64].) This leaves a residual of 756 (.15 × 5,041) such injuries annually that would not be prevented by the original rule. If this provision could theoretically prevent ⅔ of these cases, or 507 (.67 × 756), but will only be used 10 percent of the time, this suggests that 50 lost-workday injuries will be prevented annually as a result of this provision.

TABLE III

COST OF EMPLOYEE INVOLVEMENT AS A PERCENT OF REVENUES AND PROFITS

SIC	Industry	Cost/ Establishment	Revenues/ Establishment	Costs/ Revenue	Profits/ Establishment	Cost/ Profits
07	Agricultural Services	$7	$269,290	0.003%	$17,425	0.043%
13	Oil & Gas Extraction	$4	$11,234,630	0.000%	$1,021,330	0.000%
20	Food and Kindred Products	$19	$20,620,629	0.000%	$999,788	0.002%
21	Tobacco Products	$84	$869,935,367	0.000%	$204,319,114	0.000%
22	Textile Mill Products	$25	$7,611,245	0.000%	$438,223	0.006%
24	Wood Products(except furniture)	$7	$2,539,729	0.000%	$146,588	0.005%
25	Furniture and Fixtures	$11	$3,571,798	0.000%	$216,729	0.005%
26	Paper Products	$28	$22,478,383	0.000%	$1,260,152	0.002%
27	Printing and Publishing	$6	$2,096,632	0.000%	$152,975	0.004%
28	Chemicals & Allied Products	$35	$29,454,052	0.000%	$2,231,368	0.002%
29	Petroleum Refining	$43	$143,210,471	0.000%	$6,292,581	0.001%
30	Rubber Products	$38	$8,202,235	0.000%	$584,099	0.007%
31	Leather and Leather Products	$9	$7,267,252	0.000%	$429,429	0.002%
32	Stone, Clay,Glass & Concrete	$16	$4,184,931	0.000%	$228,219	0.007%
33	Primary Metals Industry	$64	$18,123,180	0.000%	$1,015,996	0.006%
34	Fabricated Metal Products	$88	$4,348,383	0.002%	$266,070	0.033%
35	Machinery, Except Electrical	$63	$6,924,099	0.001%	$482,589	0.013%
36	Electric/Electronic Equipment	$42	$11,591,397	0.000%	$684,846	0.006%
37	Transportation Equipment	$71	$44,334,058	0.000%	$1,948,012	0.004%
38	Instruments & Related Products	$22	$10,720,444	0.000%	$763,426	0.003%
39	Miscellaneous Manufacturing	$12	$1,568,937	0.001%	$111,245	0.011%
42	Motor Freight Transportation	$28	$1,286,872	0.002%	$58,437	0.048%
49	Electric, Gas, Sanitary Services	$41	$14,371,043	0.000%	$1,350,007	0.003%
50	Wholesale Trade/Durables	$4	$2,282,652	0.000%	$102,134	0.004%
51	Wholesale Trade/Nondurables	$12	$4,447,849	0.000%	$172,734	0.007%
54	Food Stores	$2	$2,179,673	0.000%	$61,031	0.003%
59	Miscellaneous Retail	$4	$547,141	0.001%	$30,254	0.012%
65	Real Estate (Commercial)	$31	$500,929	0.006%	$46,869	0.067%
70	Hotels and Other Lodging	$21	$1,243,240	0.002%	$97,027	0.022%
72	Personal Services	$4	$128,952	0.003%	$10,164	0.036%
76	Miscellaneous Repair Services	$0	$181,478	0.000%	$11,743	0.002%
78	Motion Pictures	$20	$1,597,336	0.001%	$142,792	0.014%
80	Health Services	$10	$1,167,682	0.001%	$71,435	0.014%
84	Museums, Botanical Gardens, Zoo	$24	$560,217	0.004%	$40,331	0.060%
	TOTAL	$24				

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

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The Agency has also, as required by the Regulatory Flexibility Act (as amended) analyzed the impact of the standard specifically on small entities potentially affected by the revisions being made to the final rule. The Agency examined the impact of the revisions both on establishments with fewer than 20 employees and on firms with fewer than 500 employees. An industry profile for establishments with fewer than 20 employees is available in the RIA accompanying the original rule (Ex. 149, Docket S–019). For firms with fewer than 500 employees, industry profile data were not readily available; the Agency therefore analyzed impacts using a "worst case" impact scenario. Under this scenario, OSHA assumed that all of the costs of the revised final rule would be borne by firms in this size class, i.e., that no impacts would be borne by larger firms, a highly unlikely scenario. The impacts projected in Table III for firms in the 500-employee size class thus substantially overstate costs for these firms. Nonetheless, as shown in Tables IV and V, even under this worst case scenario, costs were very small relative to sales and profits. Costs did not exceed .006 percent of sales or more than .08 percent of profits for establishments with fewer than 20 or fewer than 500 employees in any affected industry.

Certification of No Significant Impact

Based on the results of the analysis presented above, OSHA certifies, in accordance with the Regulatory Flexibility Act (as amended) that the revised rule for permit required confined spaces will not have a significant economic impact on a substantial number of small entities.

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TABLE IV

COST OF EMPLOYEE INVOLVEMENT
AS A PERCENT OF REVENUES AND PROFITS (ESTABLISHMENTS WITH 20 OR LESS)

SIC	Industry	Cost	Number of Establishments w/ spaces	Cost/ Establishment	Revenues/ Establishment	Costs/ Revenues	Profits/ Establishments	Cost/ Profits
07	Agricultural Services	$41,211	10,349	$4	$176,234	0.002%	$11,403	0.035%
13	Oil & Gas Extraction	$31,847	8,762	$4	$1,018,518	0.000%	$92,593	0.004%
20	Food and Kindred Products	$52,404	5,294	$10	$2,999,329	0.000%	$145,422	0.007%
21	Tobacco Products	$321	18	$18	$88,542,532	0.000%	$20,795,719	0.000%
22	Textile Mill Products	$2,887	303	$10	$2,216,970	0.000%	$127,644	0.007%
24	Wood Products(except furniture)	$18,043	5,813	$3	$639,173	0.000%	$36,892	0.008%
25	Furniture and Fixtures	$19,094	2,761	$7	$1,073,602	0.001%	$65,144	0.011%
26	Paper Products	$7,136	1,349	$5	$3,961,392	0.000%	$222,078	0.002%
27	Printing and Publishing	$85	13	$6	$501,718	0.001%	$36,607	0.018%
28	Chemicals & Allied Products	$38,223	4,220	$9	$3,733,702	0.000%	$282,856	0.003%
29	Petroleum Refining	$26,191	1,118	$23	$17,282,049	0.000%	$759,363	0.003%
30	Rubber Products	$73,151	2,849	$26	$2,348,479	0.001%	$167,240	0.015%
31	Leather and Leather Products	$178	90	$2	$1,832,993	0.000%	$108,313	0.002%
32	Stone, Clay Glass & Concrete	$98,854	8,464	$12	$1,462,893	0.001%	$79,777	0.015%
33	Primary Metals Industry	$1,381	192	$7	$6,754,239	0.000%	$378,647	0.002%
34	Fabricated Metal Products	$106,804	4,852	$22	$1,501,779	0.001%	$91,891	0.024%
35	Machinery, Except Electrical	$70,431	2,411	$29	$1,283,760	0.002%	$89,474	0.033%
36	Electric/Electronic Equipment	$71,336	3,115	$23	$1,974,741	0.001%	$116,689	0.020%
37	Transportation Equipment	$20,573	1,999	$10	$4,501,612	0.000%	$197,798	0.005%
38	Instruments & Related Products	$141	41	$3	$1,805,440	0.000%	$128,569	0.003%
39	Miscellaneous Manufacturing	$1,009	336	$3	$422,992	0.001%	$29,997	0.010%
42	Motor Freight Transportation	$132,282	10,937	$12	$484,432	0.002%	$21,998	0.055%
49	Electric, Gas, Sanitary Services	$508,510	18,248	$28	$4,468,716	0.001%	$419,788	0.007%
50	Wholesale Trade/Durables	$6,905	2,147	$3	$956,152	0.000%	$42,782	0.008%
51	Wholesale Trade/Nondurables	$331,752	33,360	$10	$1,575,151	0.001%	$61,172	0.016%
54	Food Stores	$11,491	5,612	$2	$633,938	0.000%	$17,750	0.012%
59	Miscellaneous Retail	$22,302	6,865	$3	$272,504	0.001%	$15,068	0.022%
65	Real Estate (Commercial)	$213,062	10,834	$20	$347,857	0.006%	$32,547	0.060%
70	Hotels and Other Lodging	$42,529	2,995	$14	$397,019	0.004%	$30,985	0.046%
72	Personal Services	$0	0		$86,133	0.000%	$6,789	0.000%
76	Miscellaneous Repair Services	$0	703	$0	$131,840	0.000%	$8,531	0.000%
78	Motion Pictures	$0	0		$485,136	0.000%	$43,368	0.000%
80	Health Services	$14,393	2,006	$7	$338,643	0.002%	$20,717	0.035%
84	Museums, Botanical Gardens, Zoos	$0	0		$145,699	0.000%	$10,489	0.000%
	TOTAL	$1,964,528	158,053	$12				

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

TABLE V

COST OF EMPLOYEE INOLVEMENT AS A PERCENT OF REVENUES AND PROFITS (FIRMS WITH 500 OR FEWER EMPLOYEES)*

SIC	Industry	Cost/ Firm*	Revenues/ Firm	Costs/ Revenues*	Profits/ Firm	Costs/ Profits*
07	Agricultural Services	$7	$250,669	0.003%	$16,220	0.046%
13	Oil & Gas Extraction	$4	$2,017,392	0.000%	$183,399	0.002%
20	Food and Kindred Products	$20	$7,070,622	0.000%	$342,818	0.006%
21	Tobacco Products	$92	$419,423,746	0.000%	$98,508,799	0.000%
22	Textile Mill Products	$26	$4,485,467	0.001%	$258,254	0.010%
24	Wood Products(except furniture)	$7	$1,520,435	0.000%	$87,756	0.009%
25	Furniture and Fixtures	$11	$2,063,881	0.001%	$125,232	0.009%
26	Paper Products	$31	$7,356,895	0.000%	$412,432	0.008%
27	Printing and Publishing	$6	$1,349,101	0.000%	$98,434	0.006%
28	Chemicals & Allied Products	$39	$7,758,606	0.001%	$587,773	0.007%
29	Petroleum Refining	$64	$11,906,004	0.001%	$523,143	0.012%
30	Rubber Products	$41	$4,132,970	0.001%	$294,318	0.014%
31	Leather and Leather Products	$9	$2,312,572	0.000%	$136,652	0.007%
32	Stone, Clay,Glass & Concrete	$18	$2,337,003	0.001%	$127,445	0.015%
33	Primary Metals Industry	$69	$6,447,895	0.001%	$361,473	0.019%
34	Fabricated Metal Products	$93	$2,782,599	0.003%	$170,263	0.054%
35	Machinery, Except Electrical	$64	$2,001,196	0.003%	$139,477	0.046%
36	Electric/Electronic Equipment	$44	$3,836,835	0.001%	$226,722	0.019%
37	Transportation Equipment	$73	$3,362,262	0.002%	$147,736	0.050%
38	Instruments & Related Products	$23	$3,239,263	0.001%	$230,675	0.010%
39	Miscellaneous Manufacturing	$12	$1,539,311	0.001%	$109,144	0.011%
42	Motor Freight Transportation	$30	$841,165	0.004%	$38,197	0.078%
49	Electric, Gas, Sanitary Services	$48	$3,943,703	0.001%	$370,469	0.013%
50	Wholesale Trade/Durables	$4	$4,660,033	0.000%	$208,507	0.002%
51	Wholesale Trade/Nondurables	$13	$7,126,957	0.000%	$276,779	0.005%
54	Food Stores	$2	$1,009,391	0.000%	$28,263	0.008%
59	Miscellaneous Retail	$4	$623,036	0.001%	$34,450	0.012%
65	Real Estate (Commercial)	$33	$616,130	0.005%	$57,647	0.058%
70	Hotels and Other Lodging	$22	$752,216	0.003%	$58,705	0.038%
72	Personal Services	$4	$215,289	0.002%	$16,970	0.024%
76	Miscellaneous Repair Services	$0	$375,598	0.000%	$24,303	0.001%
78	Motion Pictures	$24	$738,175	0.003%	$65,988	0.036%
80	Health Services	$11	$683,798	0.002%	$41,832	0.026%
84	Museums, Botanical Gardens, Zoos	$26	$875,842	0.003%	$63,053	0.042%

*Costs/Firm represent costs for all firms divided by the revenues and profits of firms with fewer than 500 employees.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

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Unfunded Mandates Reform Act

This amendment to the confined spaces standard has been reviewed by OSHA in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 USC 1501 *et seq.*) and Executive Order 12875. OSHA has determined, as explained below, that this regulatory action will not impose a significant cost on employers in the public sector and will impose costs of substantially less than $100 million on establishments in the private sector. This rule is therefore not a significant regulatory action within the meaning of Section 202 of UMRA (2 U.S.C. 1532). OSHA standards do not apply to state and local governments except in states that have voluntarily elected to adopt an OSHA State Plan. Consequently, the confined spaces standard does not meet the definition of a "federal intergovernmental mandate" (Section 421(5) of UMRA (2 USC 658(5)). Further, OSHA has found that any impact on such entities would be insignificant. In sum, this amendment to the confined spaces standard does not impose unfunded mandates on state, local, or tribal governments.

However, this action may have some benefits to state and local governments. The record indicates that fire departments around the country have been bearing the burden of rescuing employees from confined spaces [Ex. 161–41], typically the result of inadequate or nonexistent entry procedures. To the extent that the opportunity to observe monitoring results in better adherence to preventive measures required by the existing standard, or that employee participation in program development and implementation improves the effectiveness of the underlying permit spaces plan, these entities will garner benefits from the rule. Additionally, to the extent that employers better understand their obligations for rescue preparedness under the existing standard and coordinate with fire departments more effectively, local fire departments will also benefit.

Environmental Assessment

The final permit required confined spaces standard has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council of Environmental Quality (CEQ) (40 CFR part 1500), and DOL NEPA procedures (29 CFR part 11). As a result of this review, OSHA has concluded that the rule will not have a significant environmental impact.

References

Dun and Bradstreet, *Norms and Key Business Ratios*, Desk-Top Edition, 1994–1995.

U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, October 1994.

U.S. Department of Labor, Bureau of Labor Statistics, "Employer Costs for Employer Compensation", News Release, June 22, 1995.

U.S. Department of Labor, Bureau of Labor Statistics, "Number of nonfatal occupational injuries and illnesses involving days away from work by event or exposure leading to injury or illness and industry division, 1993". Available at BLS Web site at: ftp://146.142.4.23/pub/special.requests/ocwc/osh/

Weil, *Working Paper 112*, Economic Policy Institute, 1994.

IV. Federalism

This standard has been reviewed in accordance with Executive Order 12612 (52 FR 31685, October 30, 1987) regarding Federalism. This order requires that agencies, to the extent possible, refrain from limiting State policy options and consult with States prior to taking any action. Agencies may act only when there is clear constitutional authority and the presence of a problem of national scope. The order provides for preemption of State law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act of 1970 expresses Congress' clear intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by State Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as Federal standards. Where state standards are applicable to products distributed or used in interstate commerce, those standards may not unduly burden commerce and must be justified by compelling local conditions (see Section 18(c)(2) of the OSH Act).

This final rule has been drafted so that employees in every State will be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities caused by the terrain, the climate or other factors, States would be able, under the OSH Act, to develop their own State standards to deal with any special problems. And, under the Act, if a State develops an approved State program, it could set additional requirements in its standards. Moreover, the performance-oriented nature of this standard, of and by itself, allows flexibility to provide as much safety as possible using varying methods consonant with conditions in each State.

In short, there is a clear national problem related to occupational safety and health concerning entry into permit-required confined spaces. Those States that elect to participate in State plans under the statute would not be preempted by this standard and would be able to address special, local conditions within the framework provided by this performance-oriented standard, while ensuring that the state standards are at least as effective as that standard.

V. OMB Review Under the Paperwork Reduction Act

The collection of information requirements in this final rule are essentially the same as those in the current rule. OSHA does not believe the clarified language of the final rule increases or decreases the burden associated with the preparation, maintainence or disclosure of information beyond the current rule. OMB has approved the collection of information requirements in § 1910.146 under control number 1218–0203. The approval expires on June 30, 1999. OSHA anticipates that it will seek public comment on the burden associated with the information collection requirements in the entire standard in the early part of 1999, allowing the public the opportunity to comment on the need for, and the burden associated with, all collection of information requirements in the standard on permit required confined spaces.

VI. State Plans

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable amended standard within six months of the publication date of a final Federal OSHA standard. These 25 States and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming. Until such

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time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states and territories.

VII. List of Subjects in 29 CFR Part 1910

Confined spaces, Monitoring, Occupational safety and health, Personal protective equipment, Rescue equipment, Retrieval lines, Safety, Testing.

VIII. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to sections 4, 6(b) and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911, 29 CFR 1910.146 is amended as set forth below.

Signed at Washington, D.C. this 25th day of November, 1998.

Charles N. Jeffress

Assistant Secretary of Labor

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart J of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable.

§ 1950.141 [Amended]

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

2. Section 1910.146 is amended:

a. By revising paragraphs (c)(5)(i)(E), (c)(5)(ii)(C), (c)(5)(ii)(F), (c)(5)(ii)(H), (c)(7)(iii), (e)(3), (k)(1), (k)(2), and (k)(3)(i);

b. By redesignating paragraphs (d)(3)(ii), (d)(3)(iii), (d)(3)(iv), and (d)(3)(v) as paragraphs (d)(3)(iii), (d)(3)(iv), (d)(3)(v), and (d)(3)(vi), respectively; and

c. By adding new paragraphs (d)(3)(ii); (d)(5)(iv), and (d)(5)(v), and (d)(5)(vi) (immediately following paragraph (d)(5)(iii) and before the Note); and (l), to read as follows:

§ 1910.146 Permit-required confined spaces.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(E) The determinations and supporting data required by paragraphs (c)(5)(i)(A), (c)(5)(i)(B), and (c)(5)(i)(C) of this section are documented by the employer and are made available to each employee who enters the permit space under the terms of paragraph (c)(5) of this section or to that employee's authorized representative; and

* * * * *

(ii) * * *

(C) Before an employee enters the space, the internal atmosphere shall be tested, with a calibrated direct-reading instrument, for oxygen content, for flammable gases and vapors, and for potential toxic air contaminants, in that order. Any employee who enters the space, or that employee's authorized representative, shall be provided an opportunity to observe the pre-entry testing required by this paragraph.

* * * * *

(F) The atmosphere within the space shall be periodically tested as necessary to ensure that the continuous forced air ventilation is preventing the accumulation of a hazardous atmosphere. Any employee who enters the space, or that employee's authorized representative, shall be provided with an opportunity to observe the periodic testing required by this paragraph.

* * * * *

(H) The employer shall verify that the space is safe for entry and that the pre-entry measures required by paragraph (c)(5)(ii) of this section have been taken, through a written certification that contains the date, the location of the space, and the signature of the person providing the certification. The certification shall be made before entry and shall be made available to each employee entering the space or to that employee's authorized representative .

* * * * *

(7) * * *

(iii) The employer shall document the basis for determining that all hazards in a permit space have been eliminated, through a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification shall be made available to each employee entering the space or to that employee's authorized representative.

* * * * *

(d) * * *

(3) * * *

(ii) Providing each authorized entrant or that employee's authorized representative with the opportunity to observe any monitoring or testing of permit spaces;

* * * * *

(5) * * *

(iv) Provide each authorized entrant or that employee's authorized representative an opportunity to observe the pre-entry and any subsequent testing or monitoring of permit spaces;

(v) Reevaluate the permit space in the presence of any authorized entrant or that employee's authorized representative who requests that the employer conduct such reevaluation because the entrant or representative has reason to believe that the evaluation of that space may not have been adequate;

(vi) Immediately provide each authorized entrant or that employee's authorized representative with the results of any testing conducted in accord with paragraph (d) of this section.

* * * * *

(e) * * *

(3) The completed permit shall be made available at the time of entry to all authorized entrants or their authorized representatives, by posting it at the entry portal or by any other equally effective means, so that the entrants can confirm that pre-entry preparations have been completed.

* * * * *

(k) *Rescue and emergency services.*

(1) An employer who designates rescue and emergency services, pursuant to paragraph (d)(9) of this section, shall:

(i) Evaluate a prospective rescuer's ability to respond to a rescue summons in a timely manner, considering the hazard(s) identified;

Note to paragraph (k)(l)(i): What will be considered timely will vary according to the specific hazards involved in each entry. For example, § 1910.134, Respiratory Protection, requires that employers provide a standby person or persons capable of immediate action to rescue employee(s) wearing respiratory protection while in work areas defined as IDLH atmospheres.

(ii) Evaluate a prospective rescue service's ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing entrants from the particular permit space or types of permit spaces identified;

(iii) Select a rescue team or service from those evaluated that:

(A) Has the capability to reach the victim(s) within a time frame that is appropriate for the permit space hazard(s) identified;

(B) Is equipped for and proficient in performing the needed rescue services;

(iv) Inform each rescue team or service of the hazards they may confront when called on to perform rescue at the site; and

(v) Provide the rescue team or service selected with access to all permit spaces from which rescue may be necessary so that the rescue service can develop appropriate rescue plans and practice rescue operations.

Note to paragraph (k)(1): Non-mandatory Appendix F contains examples of criteria which employers can use in evaluating prospective rescuers as required by paragraph (k)(1) of this section.

(2) An employer whose employees have been designated to provide permit space rescue and emergency services shall take the following measures:

(i) Provide affected employees with the personal protective equipment (PPE) needed to conduct permit space rescues safely and train affected employees so they are proficient in the use of that PPE, at no cost to those employees;

(ii) Train affected employees to perform assigned rescue duties. The employer must ensure that such employees successfully complete the training required to establish proficiency as an authorized entrant, as provided by paragraphs (g) and (h) of this section;

(iii) Train affected employees in basic first-aid and cardiopulmonary resuscitation (CPR). The employer shall ensure that at least one member of the rescue team or service holding a current certification in first aid and CPR is available; and

(iv) Ensure that affected employees practice making permit space rescues at least once every 12 months, by means of simulated rescue operations in which they remove dummies, manikins, or actual persons from the actual permit spaces or from representative permit spaces. Representative permit spaces shall, with respect to opening size, configuration, and accessibility, simulate the types of permit spaces from which rescue is to be performed.

* * * * *

(3) * * *

(i) Each authorized entrant shall use a chest or full body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, above the entrant's head, or at another point which the employer can establish presents a profile small enough for the successful removal of the entrant. Wristlets may be used in lieu of the chest or full body harness if the employer can demonstrate that the use of a chest or full body harness is infeasible or creates a greater hazard and that the use of wristlets is the safest and most effective alternative.

* * * * *

(l) *Employee participation.* (1) Employers shall consult with affected employees and their authorized representatives on the development and implementation of all aspects of the permit space program required by paragraph (c) of this section.

(2) Employers shall make available to affected employees and their authorized representatives all information required to be developed by this section.

Appendices to § 1910.146 [Amended]

3. In the Note preceding Appendix A to § 1910.146, the phrase "Appendices A through E" is revised to read "Appendices A through F".

4. A new Appendix F to § 1910.146 is added to read as follows:

Non-Mandatory Appendix F—Rescue Team or Rescue Service Evaluation Criteria

(1) This appendix provides guidance to employers in choosing an appropriate rescue service. It contains criteria that may be used to evaluate the capabilities both of prospective and current rescue teams. Before a rescue team can be trained or chosen, however, a satisfactory permit program, including an analysis of all permit-required confined spaces to identify all potential hazards in those spaces, must be completed. OSHA believes that compliance with all the provisions of § 1910.146 will enable employers to conduct permit space operations without recourse to rescue services in nearly all cases. However, experience indicates that circumstances will arise where entrants will need to be rescued from permit spaces. It is therefore important for employers to select rescue services or teams, either on-site or off-site, that are equipped and capable of minimizing harm to both entrants and rescuers if the need arises.

(2) For all rescue teams or services, the employer's evaluation should consist of two components: an initial evaluation, in which employers decide whether a potential rescue service or team is adequately trained and equipped to perform permit space rescues of the kind needed at the facility and whether such rescuers can respond in a timely manner, and a performance evaluation, in which employers measure the performance of the team or service during an actual or practice rescue. For example, based on the initial evaluation, an employer may determine that maintaining an on-site rescue team will be more expensive than obtaining the services of an off-site team, without being significantly more effective, and decide to hire a rescue service. During a performance evaluation, the employer could decide, after observing the rescue service perform a practice rescue, that the service's training or preparedness was not adequate to effect a timely or effective rescue at his or her facility and decide to select another rescue service, or to form an internal rescue team.

A. Initial Evaluation

I. The employer should meet with the prospective rescue service to facilitate the evaluations required by § 1910.146(k)(1)(i) and § 1910.146(k)(1)(ii). At a minimum, if an off-site rescue service is being considered, the employer must contact the service to plan and coordinate the evaluations required by the standard. Merely posting the service's number or planning to rely on the 911 emergency phone number to obtain these services at the time of a permit space emergency would not comply with paragraph (k)(1) of the standard.

II. The capabilities required of a rescue service vary with the type of permit spaces from which rescue may be necessary and the hazards likely to be encountered in those spaces. Answering the questions below will assist employers in determining whether the rescue service is capable of performing rescues in the permit spaces present at the employer's workplace.

1. What are the needs of the employer with regard to response time (time for the rescue service to receive notification, arrive at the scene, and set up and be ready for entry)? For example, if entry is to be made into an IDLH atmosphere, or into a space that can quickly develop an IDLH atmosphere (if ventilation fails or for other reasons), the rescue team or service would need to be standing by at the permit space. On the other hand, if the danger to entrants is restricted to mechanical hazards that would cause injuries (e.g., broken bones, abrasions) a response time of 10 or 15 minutes might be adequate.

2. How quickly can the rescue team or service get from its location to the permit spaces from which rescue may be necessary? Relevant factors to consider would include: the location of the rescue team or service relative to the employer's workplace, the quality of roads and highways to be traveled, potential bottlenecks or traffic congestion that might be encountered in transit, the reliability of the rescuer's vehicles, and the training and skill of its drivers.

3. What is the availability of the rescue service? Is it unavailable at certain times of the day or in certain situations? What is the likelihood that key personnel of the rescue service might be unavailable at times? If the rescue service becomes unavailable while an entry is underway, does it have the capability of notifying the employer so that the employer can instruct the attendant to abort the entry immediately?

4. Does the rescue service meet all the requirements of paragraph (k)(2) of the standard? If not, has it developed a plan that will enable it to meet those requirements in the future? If so, how soon can the plan be implemented?

5. For off-site services, is the service willing to perform rescues at the employer's workplace? (An employer may not rely on a rescuer who declines, for whatever reason, to provide rescue services.)

6. Is an adequate method for communications between the attendant, employer and prospective rescuer available so that a rescue request can be transmitted to the rescuer without delay? How soon after notification can a prospective rescuer dispatch a rescue team to the entry site?

7. For rescues into spaces that may pose significant atmospheric hazards and from which rescue entry, patient packaging and retrieval cannot be safely accomplished in a relatively short time (15–20 minutes), employers should consider using airline respirators (with escape bottles) for the rescuers and to supply rescue air to the patient. If the employer decides to use SCBA, does the prospective rescue service have an ample supply of replacement cylinders and procedures for rescuers to enter and exit (or be retrieved) well within the SCBA's air supply limits?

8. If the space has a vertical entry over 5 feet in depth, can the prospective rescue service properly perform entry rescues? Does the service have the technical knowledge and equipment to perform rope work or elevated rescue, if needed?

9. Does the rescue service have the necessary skills in medical evaluation, patient packaging and emergency response?

10. Does the rescue service have the necessary equipment to perform rescues, or must the equipment be provided by the employer or another source?

B. Performance Evaluation

Rescue services are required by paragraph (k)(2)(iv) of the standard to practice rescues at least once every 12 months, provided that the team or service has not successfully performed a permit space rescue within that time. As part of each practice session, the service should perform a critique of the practice rescue, or have another qualified party perform the critique, so that deficiencies in procedures, equipment, training, or number of personnel can be identified and corrected. The results of the critique, and the corrections made to respond to the deficiencies identified, should be given to the employer to enable it to determine whether the rescue service can quickly be upgraded to meet the employer's rescue needs or whether another service must be selected. The following questions will assist employers and rescue teams and services evaluate their performance.

1. Have all members of the service been trained as permit space entrants, at a minimum, including training in the potential hazards of all permit spaces, or of representative permit spaces, from which rescue may be needed? Can team members recognize the signs, symptoms, and consequences of exposure to any hazardous atmospheres that may be present in those permit spaces?

2. Is every team member provided with, and properly trained in, the use and need for PPE, such as SCBA or fall arrest equipment, which may be required to perform permit space rescues in the facility? Is every team member properly trained to perform his or her functions and make rescues, and to use any rescue equipment, such as ropes and backboards, that may be needed in a rescue attempt?

3. Are team members trained in the first aid and medical skills needed to treat victims overcome or injured by the types of hazards that may be encountered in the permit spaces at the facility?

4. Do all team members perform their functions safely and efficiently? Do rescue service personnel focus on their own safety before considering the safety of the victim?

5. If necessary, can the rescue service properly test the atmosphere to determine if it is IDLH?

6. Can the rescue personnel identify information pertinent to the rescue from entry permits, hot work permits, and MSDSs?

7. Has the rescue service been informed of any hazards to personnel that may arise from outside the space, such as those that may be caused by future work near the space?

8. If necessary, can the rescue service properly package and retrieve victims from a permit space that has a limited size opening (less than 24 inches (60.9 cm) in diameter), limited internal space, or internal obstacles or hazards?

9. If necessary, can the rescue service safely perform an elevated (high angle) rescue?

10. Does the rescue service have a plan for each of the kinds of permit space rescue operations at the facility? Is the plan adequate for all types of rescue operations that may be needed at the facility? Teams may practice in representative spaces, or in spaces that are "worst-case" or most restrictive with respect to internal configuration, elevation, and portal size. The following characteristics of a practice space should be considered when deciding whether a space is truly representative of an actual permit space:

(1) Internal configuration.

(a) Open—there are no obstacles, barriers, or obstructions within the space. One example is a water tank.

(b) Obstructed—the permit space contains some type of obstruction that a rescuer would need to maneuver around. An example would be a baffle or mixing blade. Large equipment, such as a ladder or scaffold, brought into a space for work purposes would be considered an obstruction if the positioning or size of the equipment would make rescue more difficult.

(2) Elevation.

(a) Elevated—a permit space where the entrance portal or opening is above grade by 4 feet or more. This type of space usually requires knowledge of high angle rescue procedures because of the difficulty in packaging and transporting a patient to the ground from the portal.

(b) Non-elevated—a permit space with the entrance portal located less than 4 feet above grade. This type of space will allow the rescue team to transport an injured employee normally.

(3) Portal size.

(a) Restricted—A portal of 24 inches or less in the least dimension. Portals of this size are too small to allow a rescuer to simply enter the space while using SCBA. The portal size is also too small to allow normal spinal immobilization of an injured employee.

(b) Unrestricted—A portal of greater than 24 inches in the least dimension. These portals allow relatively free movement into and out of the permit space.

(4) Space access.

(a) Horizontal—The portal is located on the side of the permit space. Use of retrieval lines could be difficult.

(b) Vertical—The portal is located on the top of the permit space, so that rescuers must climb down, or the bottom of the permit space, so that rescuers must climb up to enter the space. Vertical portals may require knowledge of rope techniques, or special patient packaging to safely retrieve a downed entrant.

[FR Doc. 98–31946 Filed 11–30–98; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 980511124–8284–02]

Revision of Patent Cooperation Treaty Application Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office or USPTO) is confirming the amendment of its rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT). This amendment of the rules of practice conformed the United States rules of practice with the corresponding changes to the Regulations under the PCT which became effective July 1, 1998.

DATES: This final rule is effective on December 1, 1998. The interim rule, published at 63 FR 29614 (June 1, 1998), was effective on July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Lazarus, PCT Legal Office Supervisor, by telephone at (703) 308–6451; or by mail addressed to: Box PCT, Assistant Commissioner for Patents, Washington, DC 20231; or by facsimile to (703) 308–6459, marked to the attention of Richard Lazarus.

SUPPLEMENTARY INFORMATION: During a September–October 1997 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted amendments to the PCT Regulations. These amendments to the PCT Regulations took effect on July 1, 1998, and the amended PCT Regulations were published in the *Official Gazette* at 1210 *Off. Gaz. Pat. Office* 29 (May 12, 1998). An interim rule conforming the United States rules of practice to the corresponding changes in the PCT Regulations was published in the **Federal Register** at 63 FR 29614 (June 1, 1998), and in the *Official Gazette* at 1211 *Off. Gaz. Pat. Office* 76 (June 23, 1998).

The Office has received no comments on the changes to 37 CFR contained in the interim rule. Accordingly, the changes to 37 CFR contained in the above-mentioned interim rule are adopted as final in this final rule.

Applicants are again notified that PCT Rules 20.4(c) and 26.3ter (a) and (c) as amended are not compatible with the national law of the United States, and thus the USPTO has taken a reservation on adherence to these Rules through its notification to the Director General of WIPO to such effect. *See* PCT Rules 20.4(d) and 26.3ter (b) and (d). Similarly, the USPTO continues not to adhere to the unchanged provisions of PCT Rule 49.5(cbis) and (k) with respect to the translation requirements for United States national stage applications (35 U.S.C. 371(c)(2)). *See* PCT Rule 49.5(l).

The above-noted changes to the PCT Regulations include the addition of new PCT Rules 89bis and 89ter (directed to electronic filing and processing of international applications) which will enter into force at the same time as the modifications to the Administrative Instructions implementing those PCT Rules. Implementation of PCT Rules 89bis and 89ter is optional with each national office. In the event that the USPTO decides to implement PCT Rules 89bis and 89ter, the USPTO will provide notice to that effect in the **Federal Register** and *Official Gazette*.

Discussion of Specific Rules

A section-by-section discussion of the changes to title 37 of the Code of Federal Regulations adopted as final in this final rule is set forth in the above-mentioned interim rule at 63 FR 29614–17, and 1211 *Off. Gaz. Pat. Office* 77–78.

Other Considerations

The United States rules of practice contained in title 37, CFR, must conform to the PCT Articles and the Regulations annexed to the PCT. *See* PCT Article 27(1). This final rule adopts as final changes required to conform the United States rules of practice for international applications to the amendments to the PCT Regulations which became effective on July 1, 1998. Thus, this final rule is covered by the foreign affairs function exception of 5 U.S.C. 553(a)(1), and may be adopted without prior notice and opportunity for public comment. *See International Brotherhood of Teamsters* v. *Pena*, 17 F.3d 1478, 1486 (D.C. Cir. 1994).

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. This final rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612 (October 26, 1987). This final rule has been determined not to be significant for purposes of Executive Order 12866 (September 30, 1993).

This final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The principal impact of this final rule is to adopt as final changes that conform the United States rules of practice relating to applications filed under the PCT to the corresponding amendments made to the Regulations under the PCT.

The general purpose of the PCT is to provide a single set of standards and procedures for the filing of patent applications on the same invention in any of the over ninety PCT member countries. The PCT provides a common filing procedure and a standardized application format for international applications.

The collection of information in this final rule has been reviewed and approved by OMB under control number 0651–0021. The public reporting burden for this collection of information is estimated to average 0.95 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the information. Send comments regarding this burden estimate or any other aspect of the data requirement, including suggestions for reducing the burden to Richard Lazarus at the address specified above and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, D.C., 20503 (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act *unless* that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the interim rule amending 37 CFR Part 1 which was published at 63 FR 29614–29620 on June 1, 1998, is adopted as a final rule without change.

Dated: November 23, 1998.

Q. Todd Dickinson,

Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks.

[FR Doc. 98–31952 Filed 11–30–98; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

Copyright Rules and Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Technical amendment; correction.

SUMMARY: The Copyright Office is making one amendment to its rule at 37 CFR 201.22(e) and one correction to its interim rule at 37 CFR 201.5 to update these portions of the copyright regulations. The amendment concerns service of advance notice of potential infringement of certain works, the fixation of which is made simultaneously with their transmission, and the correction concerns applications for supplementary registration.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office is amending its regulation concerning service of Advance Notice of Potential Infringement of certain works pursuant to 17 U.S.C. 411(b), which was amended by section 6 of the Copyright Technical Amendments Act, Pub. L. 105–80 (1997). Section 411(b) provides that a copyright owner of a work consisting of sounds, images, or both, the fixation of which is made simultaneously with its transmission, may institute an action for copyright infringement if the copyright owner has served a notice on the infringer identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work. The copyright owner must also register the work within three months after its first transmission. Prior to the 1997 amendment, section 411(b) required that the notice be served on the infringer "not less than ten or more than thirty days before such fixation." The 1977 amendment changed the time period to "not less than 48 hours before such fixation." The amendment to 37 CFR 201.22(e) similarly changes the period of time in which notice must be served from "at least ten days but not more than thirty days" to "not less than 48 hours".

The Office also corrects recently amended language in 37 CFR 201.5(b)(2)(iii)(A) by inserting the word "As" at the beginning of the sentence that comprises that paragraph. The word "As" was inadvertently omitted when the amendment was made. See 63 FR 59235 (November 3, 1998).

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

For the reasons stated above, the rules at 37 CFR part 201 are corrected and amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.5 [Corrected]

2. In § 201.5(b)(2)(iii)(A), add "As" before the phrase "an amplification,".

3. Section 201.22 is amended by revising paragraph (e)(1) to read as follows:

§ 201.22 Advance notices of potential infringement of works consisting of sounds, images, or both.

* * * * *

(e) * * *

(1) An Advance Notice of Potential Infringement shall be served on the person responsible for the potential infringement not less than 48 hours before the first fixation and simultaneous transmission of the work as provided by 17 U.S.C. 411(b)(1).

* * * * *

Dated: November 20, 1998.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98–31852 Filed 11–30–98; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98–5 CARP]

37 CFR Part 253

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Gongress announces a cost of living adjustment of 1.5% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is based on the change in the Consumer Price Index from October, 1997, to October, 1998.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. 17 U.S.C. 118(c). The last proceeding to adjust the terms and rates for the section 118 license began in 1996. 61 FR 54458 (October 18, 1996).

On January 14, 1998, the Copyright Office announced final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works, including the 1998 rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities. 63 FR 2142 (January 14, 1998).

Pursuant to the regulations, on December 1 of each year "the Librarian of Congress shall publish a notice of the change in the cost of living during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1, of that year." 37 CFR 253.10(a). The regulations also require that the Librarian publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. 37 CFR 253.10(b).

Accordingly, the Copyright Office of the Library of Congress is hereby announcing the change in the cost of living Index and performing the annual cost of living adjustment to the rates set out in § 253.5(c). 63 FR 2142 (January 14, 1998).

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 1997, to the most recent Index published before December 1, 1998, was 1.5% (1997's figure was 161.6; 1998's figure is 164.0, based on 1982–1984=100 as a reference base). Rounding off to the nearest dollar, the adjustment in the royalty rate for the use of musical compositions in the repertory of ASCAP and BMI is $225, each, and $61 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for Part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. 37 CFR 253.5 is amended by revising paragraphs (c)(1) through (c)(3).

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, $225 annually.

(2) For all such compositions in the repertory of BMI, $225 annually.

(3) For all such compositions in the repertory of SESAC, $61 annually.

* * * * *

Dated: November 19, 1998.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98–31658 Filed 11–30–98; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 20

Global Package Link Rate Adjustments and Introduction of Service to Argentina

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: The Postal Service is adjusting the rates for Global Package Link and introducing a new structure for volume discounts. In addition, service to Argentina is being initiated.

DATES: The interim rule is effective 12:01 a.m., December 27, 1998. Comments must be received on or before December 31, 1998.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, Costing, and Classification, Room 370–IBU, International Business Unit, U.S. Postal Service, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Robert Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: Global Package Link (GPL) is an international mail service designed for companies sending merchandise packages to other countries. To use GPL, a customer is required to mail at least 10,000 packages per year using the service and agree to link its information systems with the Postal Service so that certain information about the contents of the customer's packages can be extracted for customs clearance and other purposes.

The Postal Service is announcing new rates and a new discount structure for GPL. The increased rates are the result of declining economic conditions in Japan and other countries and rising costs, including implementation of harmonization for all items to Japan. Overall, the base rates are increased approximately 9 percent. See Appendix 1 for specific rates to each GPL country.

Currently, GPL provides a volume discount within each country beginning at 100,000 packages. The new discount structure is based on a mailer's worldwide volume and discounts are available when volume reaches more than 25,000 packages per postal fiscal year. Discounts will increase with volume based on the following schedule:

Number of packages	Discount (percent)
25.001 to 50.000	1
50.001 to 75.000	2
75.001 to 100.000	3
100.001 and over	4

Each year's discounts will be calculated on the previous postal fiscal year's volume and will apply to mailings made during the next calendar year. For example, a mailer who mails 55,000 packages during postal fiscal year 1998 (September 13, 1997 through September 11, 1998) will receive a discount from the base rate for all GPL mailings made during calendar year 1999 (January 1, 1999 through December 31, 1999). Postal fiscal year 1998 will be used for discounts applied in calendar year 1999.

The Postal Service is also introducing GPL service to Argentina. Two levels of service, Premium and Standard, will be offered. The maximum weight of parcels to Argentina is 44 pounds with a maximum size of 42 inches in length and a maximum length and girth combined of 79 inches. Rates are shown in Appendix 1. Packages sent in Premium service are insured at no additional charge subject to the provisions of Domestic Mail Manual (DMM) S010 and S500. No insurance is available for packages sent to Argentina as Standard service.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service is amending Subchapter 620, Global Package Link, and the appropriate Individual Country Listings, International Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, incorporation by reference, international postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate program changes to Subchapter 620 Global Package Link as follows:

620 Global Package Link

621 Description

* * * * *

621.3 Availability

Global Package Link service is available only to Argentina, Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom.

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623 General

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623.3 Size and Weight Limits

623.31 Weight

The weight limits for Global Package Link service are 70 pounds for Chile, China, and Germany; 66 pounds for Brazil, Canada, France, Singapore, and the United Kingdom; 64 pounds for Mexico; 44 pounds for Argentina and Hong Kong; and 44 pounds for Japan with Premium service. * * *

623.32 Size

The maximum length of GPL packages is 60 inches. The maximum length and girth combined is 108 inches.

Exceptions: Maximum size for Germany is length 47 inches, height 23 inches, width 23 inches; for Japan Standard packages weighing less than 1 pound, the maximum length is 24 inches with a combined maximum length, depth, and height of 36 inches. The maximum size for packages to Argentina is 42 inches in length and 79 inches length and girth combined.

* * * * *

623.4 Postage

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623.44 Base Rates

The Postal Service will charge the base rates, in 1-pound increments, unless the mailer qualifies for the discounts in 623.441 by mailing more than 25,000 packages in a postal fiscal year. The discounts apply to mailings made during the following calendar year.

623.441 Discounts

Number of packages	Discount (percent)
25.001 to 50.000	1
50.001 to 75.000	2
75.001 to 100.000	3
100.001 and over	4

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626 Services Available

626.1 Delivery Options

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626.12 Standard Service

Standard service is available to Argentina, Canada, France, Japan, Singapore, and the United Kingdom. * * *

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626.4 Customs

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626.43 Payment of Customs Duty

626.431 All Countries Except China, Japan, Hong Kong, and Singapore

For all countries except China, Japan, Hong Kong, and Singapore, the Postal Service will arrange payment of customs duty on behalf of the recipient at the time the merchandise enters the country of destination. Any banking costs or foreign exchange fees applicable to the customs payments will be charged back to the mailer. The Postal Service will notify the mailer electronically of the amount of duty and fees paid, and the mailer will reimburse the Postal Service in a manner and within a time agreed between the mailer and the Postal Service. Because of the need to have funds available for customers at the time of clearance in Argentina, Brazil, Chile, and Mexico, mailers must make an advance deposit prior to the first mailing to cover anticipated duties and taxes in addition to postage. * * *

Appendix 1.—Global Package Link Rates

STANDARD SERVICE RATES—CANADA

Weight not to exceed (pounds)	US origin zone A: Buffalo, New York, Chicago Canadian entry: Toronto*				US origin zone B: Miami, Dallas Canadian Entry: Toronto*		
	Premium	Local	Regional	National	Local	Regional	National
1	$10.00	$5.50	$7.25	$7.50	$6.25	$7.75	$8.00
2	11.00	6.00	8.25	8.75	7.25	9.50	10.00
3	12.50	6.50	9.25	10.00	8.25	11.00	11.75
4	14.25	7.00	10.00	11.25	9.25	12.25	13.50
5	15.75	7.50	10.75	12.50	10.25	13.75	15.50
6	17.50	8.00	11.75	13.75	11.50	15.25	17.25
7	19.00	8.50	12.50	15.00	12.50	16.50	19.25
8	20.75	9.00	13.25	16.25	13.50	18.00	21.00
9	22.25	9.50	14.25	17.50	14.75	19.50	22.75
10	24.00	10.00	15.00	18.75	15.75	20.75	24.75
11	25.50	10.50	15.50	19.25	16.75	21.75	25.75
12	27.00	11.00	16.25	20.50	17.75	23.25	27.50
13	28.75	11.50	17.25	21.75	19.00	24.75	29.25
14	30.25	12.00	18.00	23.00	20.00	26.00	31.25
15	32.00	12.50	18.75	24.25	21.25	27.50	33.00
16	33.50	13.00	19.75	25.50	22.25	29.00	34.75
17	35.25	13.50	20.50	26.75	23.25	30.25	36.75
18	36.75	14.00	21.25	28.00	24.50	31.75	38.50
19	38.50	14.50	22.25	29.50	25.50	33.25	40.25
20	40.00	15.00	23.00	30.75	26.50	34.50	42.25
21	41.50	15.50	24.00	32.00	27.75	36.00	44.00
22	43.00	16.00	24.25	32.25	28.75	37.00	45.00
23	44.75	16.50	25.25	33.50	29.75	38.50	46.75
24	46.25	17.00	26.00	34.75	30.75	39.75	48.75
25	48.00	17.50	26.75	36.00	32.00	41.25	50.50
26	49.50	18.00	27.75	37.25	33.00	42.75	52.25
27	50.75	18.50	28.50	38.50	34.00	44.00	54.25
28	52.75	19.00	29.25	40.00	35.25	45.50	56.00
29	54.50	19.50	30.25	41.25	36.25	47.00	57.75
30	56.00	20.00	31.00	42.50	37.50	48.25	59.75
31	57.25	20.50	31.75	43.75	38.50	49.75	61.50
32	58.75	21.25	32.75	45.00	39.50	51.25	63.25
33	60.50	21.50	33.00	45.25	40.50	52.25	64.25
34	62.00	22.00	34.00	46.50	41.75	53.50	66.25
35	63.75	22.50	34.75	47.75	42.75	55.00	68.00
36	65.25	23.00	35.75	49.00	43.75	56.50	69.75
37	67.00	23.50	36.50	50.50	45.00	57.75	71.75
38	68.50	24.00	37.25	51.75	46.00	59.25	73.50
39	70.00	24.75	38.25	53.00	47.00	60.75	75.25
40	71.75	25.25	39.00	54.25	48.25	62.00	77.25
41	72.75	25.75	39.75	55.50	49.25	63.50	79.00
42	74.50	26.25	40.75	56.75	50.25	65.00	80.75
43	76.00	26.75	41.50	58.00	51.50	66.25	82.75
44	77.50	27.00	42.00	58.25	52.50	67.25	83.75
45	79.25	27.50	42.75	59.50	53.50	68.75	85.50
46	80.25	28.25	43.75	61.00	54.75	70.00	87.50
47	81.75	28.75	44.50	62.25	55.75	71.50	89.25
48	83.25	29.25	45.25	63.50	56.75	73.00	91.00
49	84.75	29.75	46.25	64.75	58.00	74.25	93.00
50	86.50	30.25	47.00	66.00	59.00	75.75	94.75
51	88.00	30.75	47.75	67.25	60.00	77.25	96.50

STANDARD SERVICE RATES—CANADA—Continued

Weight not to exceed (pounds)	US origin zone A: Buffalo, New York, Chicago Canadian entry: Toronto*				US origin zone B: Miami, Dallas Canadian Entry: Toronto*		
	Premium	Local	Regional	National	Local	Regional	National
52	89.75	31.25	48.75	68.50	61.25	78.50	98.50
53	91.25	31.75	49.50	69.75	62.25	80.00	100.25
54	92.75	32.25	50.00	70.25	63.25	81.00	101.25
55	94.50	32.75	50.75	71.50	64.25	82.50	103.00
56	95.25	33.25	51.50	72.75	65.50	83.75	105.00
57	97.00	33.75	52.50	74.00	66.50	85.25	106.75
58	98.50	34.25	53.25	75.25	67.50	86.75	108.50
59	100.00	34.75	54.25	76.50	68.75	88.00	110.50
60	101.75	35.25	55.00	77.75	69.75	89.50	112.25
61	103.25	35.75	55.75	79.00	71.00	91.00	114.00
62	104.75	36.25	56.75	80.25	72.00	92.25	116.00
63	105.50	36.75	57.50	81.50	73.00	93.75	117.75
64	107.25	37.25	58.25	82.75	74.25	95.25	119.50
65	108.75	37.75	58.75	83.25	75.25	96.25	120.50
66	110.25	38.25	59.50	84.50	76.25	97.50	122.50

*By special arrangement, Dallas origin mail may be entered in Vancouver. This mail will be charged Origin Zone C rates.

Weight not to exceed (pounds)	Schedule C, US origins: Seattle, Canadian entry: Vancouver			Schedule D, US Origins: San Francisco, Canadian entry: Vancouver			Returns
	Local	Regional	National	Local	Regional	National	
1	$7.50	$9.00	$11.50	$8.00	$9.50	$12.00	$7.00
2	8.00	9.25	11.75	9.00	10.50	13.00	7.75
3	8.25	9.75	12.25	10.00	11.50	14.00	8.50
4	8.75	10.25	12.75	11.00	12.50	15.00	9.25
5	9.25	10.50	13.00	12.00	13.50	16.00	10.00
6	9.50	11.00	13.50	13.00	14.50	17.00	10.75
7	10.00	11.25	13.75	14.00	15.50	18.00	11.50
8	10.25	11.75	14.25	15.00	16.50	19.00	12.25
9	10.75	12.25	14.75	16.00	17.25	19.75	13.00
10	11.25	12.50	15.00	17.00	18.25	20.75	13.50
11	11.75	13.00	15.50	18.00	19.50	22.00	14.25
12	12.25	13.75	16.25	19.00	20.50	23.00	15.00
13	12.75	14.25	16.75	20.25	21.75	24.25	15.75
14	13.00	14.75	17.25	21.25	22.75	25.25	16.50
15	13.50	15.25	17.75	22.25	24.00	26.50	17.25
16	14.00	16.00	18.25	23.25	25.00	27.50	18.00
17	14.50	16.50	19.00	24.50	26.25	28.75	18.75
18	15.00	17.00	19.50	25.50	27.25	29.75	19.50
19	15.50	17.50	20.00	26.50	28.50	31.00	20.25
20	16.00	18.00	20.50	27.50	29.75	32.25	21.00
21	16.50	18.75	21.25	28.75	30.75	33.25	21.50
22	17.00	19.25	21.75	29.75	32.00	34.50	22.25
23	17.50	19.75	22.25	30.75	33.00	35.50	23.00
24	18.00	20.25	22.75	31.75	34.25	36.75	23.75
25	18.50	20.75	23.25	33.00	35.25	37.75	24.50
26	19.00	21.50	24.00	34.00	36.50	39.00	25.25
27	19.50	22.00	24.50	35.00	37.50	40.00	26.00
28	20.00	22.50	25.00	36.00	38.75	41.25	26.75
29	20.50	23.00	25.50	37.25	39.75	42.25	27.50
30	21.00	23.50	26.00	38.25	41.00	43.50	28.25
31	21.50	24.25	26.75	39.25	42.00	44.50	29.00
32	22.00	24.75	27.25	40.25	43.25	45.75	29.50
33	22.25	25.25	27.75	41.50	44.25	46.75	30.25
34	22.75	25.75	28.25	42.50	45.50	48.00	31.00
35	23.25	26.25	28.75	43.50	46.50	49.00	31.75
36	23.75	27.00	29.50	44.50	47.75	50.25	32.50
37	24.25	27.50	30.00	45.75	48.75	51.25	33.25
38	24.75	28.00	30.50	46.75	50.00	52.50	34.00
39	25.25	28.50	31.00	47.75	51.00	53.50	34.75
40	25.75	29.00	31.50	49.00	52.25	54.75	35.50
41	26.25	29.75	32.25	50.00	53.25	55.75	36.25
42	26.75	30.25	32.75	51.00	54.50	57.00	37.00
43	27.25	30.75	33.25	52.00	55.50	58.00	37.75
44	27.75	31.25	33.75	53.25	56.75	59.25	38.25
45	28.25	31.75	34.25	54.25	57.75	60.25	39.00
46	28.75	32.50	35.00	55.25	59.00	61.50	39.75

Weight not to exceed (pounds)	Schedule C, US origins: Seattle, Canadian entry: Vancouver			Schedule D, US Origins: San Francisco, Canadian entry: Vancouver			Returns
	Local	Regional	National	Local	Regional	National	
47	29.25	33.00	35.50	56.25	60.00	62.50	40.50
48	29.75	33.50	36.00	57.50	61.25	63.75	41.25
49	30.25	34.00	36.50	58.50	62.25	64.75	42.00
50	30.75	34.50	37.00	59.50	63.50	66.00	42.75
51	31.25	35.25	37.75	60.50	64.50	67.00	43.50
52	31.50	35.75	38.25	61.75	65.75	68.25	44.25
53	32.00	36.25	38.75	62.75	66.75	69.25	45.00
54	32.50	36.75	39.25	63.75	68.00	70.50	45.75
55	33.00	37.25	39.75	64.75	69.00	71.50	46.25
56	33.50	38.00	40.50	66.00	70.25	72.75	47.00
57	34.00	38.50	41.00	67.00	71.25	73.75	47.75
58	34.50	39.00	41.50	68.00	72.50	75.00	48.50
59	35.00	39.50	42.00	69.00	73.50	76.00	49.25
60	35.50	40.00	42.50	70.25	74.75	77.25	50.00
61	36.00	40.75	43.25	71.25	75.75	78.25	50.75
62	36.50	41.25	43.75	72.25	77.00	79.50	51.50
63	37.00	41.75	44.25	73.25	78.00	80.50	52.25
64	37.50	42.25	44.75	74.50	79.25	81.75	53.00
65	38.00	42.75	45.25	75.50	80.50	83.00	53.75
66	38.50	43.50	46.00	76.50	81.50	84.00	54.25

STANDARD SERVICE RATES

Weight not over (lb.)	Argentina	France	Japan	Singapore	Mexico	UK	UK economy rate
1	$8.50	$7.25	$6.00	$11.50	$5.50	$12.2	$10.75
2	11.25	9.50	9.25	15.25	6.50	13.50	12.25
3	13.50	11.75	14.25	18.50	7.75	15.00	13.50
4	15.50	14.00	18.00	22.25	8.75	16.50	15.00
5	17.75	16.00	24.00	26.75	9.75	17.75	16.25
6	19.75	18.25	27.25	30.50	11.50	19.25	17.50
7	22.50	20.50		34.25	12.50	20.50	19.00
8	24.75	22.50		38.25	13.75	22.00	20.25
9	26.75	24.75		42.00	14.75	23.50	21.75
10	29.00	27.00		45.75	15.75	24.75	23.00
11	32.25	29.25		49.50	17.00	26.25	24.25
12	34.50	31.25		53.50	18.00	27.50	25.75
13	36.50	33.50		57.25	19.00	29.00	27.00
14	38.75	35.75		61.50	20.25	30.50	28.50
15	41.75	38.00		65.50	21.25	31.75	29.75
16	44.00	40.00		69.25	22.25	33.25	31.00
17	46.25	42.25		73.00	23.50	34.75	32.50
18	48.75	44.50		76.75	24.50	36.00	33.75
19	51.00	46.50		80.75	25.50	37.50	35.25
20	53.75	48.75		85.00	26.75	38.75	36.50
21	56.00	51.00		88.25	27.25	40.25	37.75
22	59.00	53.25		92.00	28.25	41.75	39.25
23	61.50	55.25		98.75	29.50	43.00	40.50
24	63.75	57.50		102.50	30.50	44.50	42.00
25	66.25	59.75		105.75	31.50	45.75	43.25
26	68.50	61.75		109.50	32.75	47.25	44.50
27	71.00	64.00		113.25	33.75	48.75	46.00
28	73.25	66.25		117.25	35.00	50.00	47.25
29	75.75	68.50		120.50	35.50	51.50	48.75
30	78.25	70.50		124.25	36.50	52.75	50.00
31	80.50	72.75		128.00	37.50	54.25	51.50
32	83.00	75.00		132.00	38.75	55.75	52.75
33	85.25	77.00		135.25	39.75	57.00	54.00
34	87.75	79.25		141.75	40.25	58.50	55.50
35	91.25	81.50		145.50	41.50	60.00	56.75
36	93.50	83.75		149.25	42.50	61.25	58.25
37	96.00	85.75		152.50	43.50	62.75	59.50
38	98.50	88.00		156.50	44.25	64.00	60.75
39	100.75	90.25		160.25	45.25	65.50	62.25
40	103.25	92.50		164.00	46.25	67.00	63.50
41	105.50	94.50		167.25	47.50	68.25	65.00
42	108.00	96.75		171.25	48.00	69.75	66.25
43	110.50	99.00		175.00	49.00	71.00	67.50
44	112.75	101.00		178.25	50.25	72.50	69.00

STANDARD SERVICE RATES—Continued

Weight not over (lb.)	Argentina	France	Japan	Singapore	Mexico	UK	UK economy rate
45		103.25		184.75	50.75	74.00	70.25
46		105.50		188.50	51.75	75.25	71.75
47		107.75		192.50	52.75	76.75	73.00
48		109.75		195.75	53.50	78.25	74.25
49		112.00		199.50	54.50	79.50	75.75
50		114.25		203.25	55.00	81.00	77.00
51		116.25		207.00	56.25	82.25	78.50
52		118.50		210.25	57.25	83.75	79.75
53		120.75		214.25	57.75	85.25	81.00
54		123.00		218.00	58.75	86.50	82.50
55		125.00		221.75	59.50	88.00	83.75
56				227.75	60.50	89.25	85.25
57				231.75	61.00	90.75	86.50
58				235.50	62.25	92.25	87.75
59				239.25	62.75	93.50	89.25
60				242.50	63.75	95.00	90.50
61				246.25	64.25	96.25	92.00
62				250.25	65.50	97.75	93.25
63				254.00	66.00	99.25	94.50
64				257.25	67.00	100.50	96.00
65				261.00		102.00	97.25
66				264.75		103.50	98.75

PREMIUM SERVICE RATES

Weight not over (lbs.)	Argentina	Brazil	Canada	Chile	China
1	$11.00	$13.50	$10.00	$10.50	$14.00
2	14.50	15.50	11.00	12.75	17.00
3	17.50	18.50	12.50	15.25	20.00
4	20.25	20.50	14.25	17.50	23.00
5	23.25	23.50	15.75	20.00	29.25
6	26.00	25.50	17.50	22.00	32.25
7	29.25	28.50	19.00	24.50	35.25
8	32.00	30.50	20.75	26.75	38.25
9	34.75	33.50	22.25	29.25	41.50
10	37.25	35.50	24.00	31.50	44.50
11	41.25	37.50	25.50	33.75	47.50
12	43.50	40.50	27.00	36.00	50.50
13	46.50	42.50	28.75	38.25	53.50
14	49.50	45.50	30.25	40.75	56.50
15	52.50	47.50	32.00	43.00	59.75
16	55.25	50.50	33.50	45.50	62.75
17	58.25	52.50	35.25	47.75	65.75
18	61.25	54.75	36.75	50.00	68.75
19	64.25	56.75	38.50	52.25	72.00
20	67.25	59.50	40.00	54.75	75.00
21	70.25	61.50	41.50	57.00	78.00
22	73.75	63.75	43.00	59.25	81.00
23	76.25	66.50	44.75	61.50	84.00
24	78.75	68.50	46.25	63.75	87.00
25	81.75	71.50	48.00	66.25	90.25
26	84.50	73.50	49.50	68.50	93.25
27	87.50	76.50	50.75	71.00	96.25
28	90.50	78.50	52.75	73.25	99.25
29	93.25	81.25	54.50	75.50	102.25
30	96.25	83.25	56.00	77.75	105.25
31	99.25	86.25	57.25	80.25	108.50
32	102.25	88.25	58.75	82.50	111.50
33	105.00	90.25	60.50	84.75	114.50
34	108.00	93.25	62.00	87.25	117.50
35	112.00	95.25	63.75	89.25	120.50
36	114.50	98.00	65.25	91.75	123.50
37	117.00	100.25	67.00	94.00	126.75
38	120.00	103.00	68.50	96.50	129.75
39	122.75	105.00	70.00	98.75	132.75
40	125.75	108.00	71.75	101.00	135.75
41	128.75	110.00	72.75	103.25	138.75
42	131.50	113.00	74.50	105.75	141.75

PREMIUM SERVICE RATES—Continued

Weight not over (lbs.)	Argentina	Brazil	Canada	Chile	China
43	134.50	115.00	76.00	108.00	145.00
44	137.50	117.00	77.50	110.25	148.00
45		119.75	79.25	112.75	151.00
46		121.75	80.25	114.75	154.00
47		124.75	81.75	117.25	157.00
48		126.75	83.25	119.50	160.00
49		129.75	84.75	122.00	163.25
50		131.75	86.50	124.25	166.25
51		134.50	88.00	126.50	169.25
52		136.75	89.75	128.75	172.25
53		139.50	91.25	131.25	175.25
54		141.50	92.75	133.50	178.50
55		143.50	94.50	135.75	181.50
56		146.50	95.25	138.25	184.50
57		148.50	97.00	140.50	187.50
58		151.50	98.50	142.75	190.50
59		153.50	100.00	145.00	193.50
60		156.25	101.75	147.50	196.75
61		158.25	103.25	149.75	199.75
62		161.25	104.75	152.25	202.75
63		163.25	105.50	154.25	205.75
64		166.25	107.25	156.75	208.75
65		168.25	108.75	159.00	211.75
66		170.25	110.25	161.25	215.00
67				163.75	218.00
68				166.00	221.00
69				168.25	224.00
70				170.50	227.00

Weight not over (lbs.)	Germany	Hong Kong	Japan	Mexico	Singapore	UK
1	$11.75	$17.00	$15.75	$8.25	$14.75	$15.00
2	13.50	20.50	18.00	9.75	18.50	16.50
3	15.25	24.00	20.75	11.50	22.25	18.00
4	17.00	27.50	23.50	13.00	26.25	19.50
5	18.75	31.00	26.25	14.75	31.00	21.00
6	20.50	34.50	29.50	16.25	35.00	22.50
7	22.25	38.00	32.25	17.50	39.25	23.75
8	24.00	41.50	35.00	19.00	43.00	25.75
9	25.75	45.00	37.50	20.75	48.00	27.25
10	27.50	48.50	40.25	22.25	51.75	29.00
11	29.25	52.00	43.00	24.00	55.50	30.50
12	31.00	55.50	45.75	25.00	60.00	32.00
13	32.75	59.25	48.50	26.75	64.25	33.75
14	34.50	62.50	51.25	28.25	68.75	35.25
15	36.25	66.25	54.00	29.50	72.50	37.00
16	38.00	69.75	56.75	31.00	76.75	38.50
17	39.75	73.25	59.50	32.75	81.25	40.25
18	41.50	76.75	62.25	33.75	85.50	42.25
19	43.25	80.25	64.75	35.50	89.50	44.25
20	45.00	83.75	67.50	36.50	93.75	45.75
21	46.75	87.25	70.25	38.25	98.00	47.50
22	48.50	90.75	73.00	39.25	102.00	49.00
23	50.25	94.25	75.75	41.00	110.75	50.50
24	52.00	97.75	78.50	42.00	115.00	52.00
25	53.75	101.25	81.25	43.50	118.75	53.50
26	55.75	104.75	84.00	44.75	122.75	55.25
27	57.50	108.25	86.75	46.25	127.00	58.25
28	59.25	111.75	89.50	47.50	130.75	59.75
29	61.00	115.25	92.00	48.50	134.50	61.50
30	62.75	118.75	94.75	50.25	138.50	63.00
31	64.50	122.25	97.50	51.25	142.75	64.75
32	66.25	126.00	100.25	52.25	146.50	66.25
33	68.00	129.50	103.00	53.50	150.50	67.75
34	69.75	133.00	105.75	55.00	159.75	69.50
35	71.50	136.50	108.50	56.25	163.50	71.00
36	73.25	140.00	111.25	57.25	167.25	72.75

Weight not over (lbs.)	Germany	Hong Kong	Japan	Mexico	Singapore	UK
37	75.00	143.50	114.00	58.25	171.75	74.25
38	76.75	147.00	116.75	59.50	175.50	75.75
39	78.50	150.50	119.25	60.50	179.25	79.00
40	80.25	154.00	122.00	61.50	183.75	80.50
41	82.00	157.50	124.75	63.25	187.50	82.25
42	83.75	161.00	127.50	64.25	191.25	83.75
43	85.50	164.50	130.25	65.50	195.00	85.50
44	87.25	168.00	133.00	66.50	199.50	87.25
45	89.00	—	—	67.50	208.25	88.75
46	90.75	—	—	68.25	212.00	90.50
47	92.50	—	—	69.25	216.25	92.00
48	94.25	—	—	70.25	220.25	93.75
49	96.00	—	—	71.50	224.00	95.25
50	97.75	—	—	72.50	228.25	97.00
51	99.50	—	—	73.50	232.25	98.50
52	101.25	—	—	74.75	236.00	100.25
53	103.00	—	—	75.25	239.75	101.75
54	104.75	—	—	76.25	244.25	103.50
55	106.50	—	—	77.50	248.00	105.00
56	108.25	—	—	78.50	256.75	106.75
57	110.00	—	—	79.00	261.00	108.25
58	111.75	—	—	80.00	264.75	110.00
59	113.50	—	—	81.25	268.75	111.50
60	115.25	—	—	81.75	273.00	113.25
61	117.25	—	—	82.75	276.75	114.75
62	119.00	—	—	83.50	280.75	116.50
63	120.75	—	—	84.50	284.50	118.25
64	122.50	—	—	85.50	288.75	119.75
65	124.25	—	—	—	292.75	121.50
66	126.00	—	—	—	296.50	123.00
67	127.75	—	—	—	—	—
68	129.50	—	—	—	—	—
69	131.25	—	—	—	—	—
70	133.00	—	—	—	—	—

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–31973 Filed 11–30–98; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Parts 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965 and 966

Rules of Procedure Before the Judicial Officer

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the Rules of Procedure Before the Judicial Officer to reflect a new address for the Judicial Officer, Office of Administrative Law Judges, Office of the Board of Contract Appeals, and the Office of the Recorder, to correct titles and references, and to make other technical and grammatical changes.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Diane M. Mego, (703) 812–1905.

SUPPLEMENTARY INFORMATION: The Judicial Officer, Office of Administrative Law Judges, Office of the Board of Contract Appeals, and the Office of the Recorder were relocated effective October 1, 1998. The Rules of Practice are being updated to reflect the new address for these offices. Additional amendment is needed to update and correct the titles of the Docket Clerk, Department Head, Law Librarian, and Law Library, to the Recorder, Vice President, Librarian, and Library, respectively. Also, several grammatical amendments reflecting gender neutrality are being made, and references to other regulations are corrected as necessary to reflect past revision or renumbering of those rules.

These revisions are changes in agency rules of procedure before the Judicial Officer and do not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

List of Subjects

39 CFR Part 952

Administrative practice and procedure, Fraud, Lotteries, Postal Service.

39 CFR Part 953

Administrative practice and procedure, Mailability, Postal Service.

39 CFR Part 954

Administrative practice and procedure, Periodicals, Postal Service.

39 CFR Part 955

Administrative practice and procedure, Contract Disputes Act of 1978, Postal Service.

39 CFR Part 956

Administrative practice and procedure, employment, Postal Service.

39 CFR Part 957

Administrative practice and procedure, Debarment, Suspension, Postal Service.

39 CFR Part 958

Administrative practice and procedure, Postal Service.

39 CFR Part 959

Administrative practice and procedure, Private Express Statute, Privacy, Postal Service.

39 CFR Part 960

Administrative practice and procedure, Claims, Equal Access to Justice Act, Postal Service.

39 CFR Part 961

Administrative practice and procedure, Claims, Debt Collection Act, Postal Service.

39 CFR Part 962

Administrative practice and procedure, Fraud, Program Fraud Civil Remedies Act, Postal Service.

39 CFR Part 963

Administrative practice and procedure, Advertising, Postal Service.

39 CFR Part 964

Administrative practice and procedure, Fictitious names or addresses, Fraud, Lotteries, Postal Service.

39 CFR Part 965

Administrative practice and procedure, Mail Disputes, Postal Service.

39 CFR Part 966

Administrative practice and procedure, Claims, Debt Collection Act, Postal Service.

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

The Postal Service adopts amendments to 39 CFR Part 952 as specifically set forth below:

1. The authority citation for Part 952 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 3005.

§ 952.4 [Amended]

2. Section 952.4 is revised to read as follows:

§ 952.4 Office business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, and are open Monday through Friday except holidays from 8:15 a.m. to 4:45 p.m.

§ 952.8 [Amended]

3. Section 952.8(a) is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "Washington, DC 20260".

4. Section 952.14 is revised to read as follows:

§ 952.14 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

§ 952.15 [Amended]

5. Section 952.15(c) is amended by substituting "Arlington, VA" for "Washington, DC".

PART 953—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAILABILITY

The Postal Service adopts amendments to 39 CFR Part 953 as specifically set forth below:

1. The authority citation for Part 953 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

2. Section 953.2 is revised to read as follows:

§ 953.2 Initiation.

Mailability proceedings are initiated upon the filing of a written appeal with the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

3. Section 953.8 is amended to read as follows:

§ 953.8 Location of hearing.

Unless otherwise ordered by the presiding officer, the hearing shall be held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, on the date set in the notice.

§ 953.9 [Amended]

4. Section 953.9(a)(3) is amended by substituting "Arlington, VA" for "Washington, DC".

PART 954—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION, OR REVOCATION OF PERIODICALS PRIVILEGES

The Postal Service adopts amendments to 39 CFR Part 954 as specifically set forth below:

1. The authority citation for Part 954 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

2. Section 954.4 is revised to read as follows:

§ 954.4 Office business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078 and are open Monday through Friday from 8:15 a.m. to 4:45 p.m.

3. Section 954.11 is revised to read as follows:

§ 954.11 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

§ 954.12 [Amended]

4. Section 954.12(c) is amended by substituting "Arlington, VA" for "Washington, DC".

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

The Postal Service adopts amendments to 39 CFR Part 955 as specifically set forth below:

1. The authority citation for Part 955 continues to read as follows:

Authority: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

§ 955.1 [Amended]

2. Section 955.1 (b)(1) and (d)(5) are revised to read as follows:

§ 955.1 Jurisdiction, procedure, representation of parties.

* * * * *

(b) *Organization and location of the Board.* (1) The Board is located in Arlington, VA and its mailing address is 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

* * * * *

(d) * * *

(5) Place of filings. Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Recorder of the Board at its office at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

* * * * *

§ 955.18 [Amended]

3. Section 955.18 is amended by substituting "Arlington, VA" for "Washington, DC".

§ 955.29 [Amended]

4. Section 955.29 is amended by substituting "Arlington, VA" for "Washington, DC".

PART 956—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DISCIPLINARY ACTION FOR VIOLATION OF RESTRICTIONS ON POST-EMPLOYMENT ACTIVITY

The Postal Service adopts amendments to 39 CFR Part 956 as specifically set forth below:

1. The authority citation for Part 956 continues to read as follows:

Authority: 18 U.S.C. 207(j), 39 U.S.C. 204 401.

2. Section 956.3(c) is revised to read as follows:

§ 956.3 Definitions.

* * * * *

(c) The *Recorder* means the Recorder of the U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

Section 956.13(a) is revised to read as follows:

§ 956.13 Hearings.

(a) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

* * * * *

PART 957—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DEBARMENT AND SUSPENSION FROM CONTRACTING

The Postal Service adopts amendments to 39 CFR Part 957 as specifically set forth below:

1. The authority citation for Part 957 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

§ 957.1 [Amended]

Section 957.1 is amended by substituting "chapter 3, section 7 of the Postal Service Purchasing Manual" for "sec. 1, part 6 of the Postal Contracting Manual".

§ 957.2 [Amended]

2. Section 957.2 is amended by substituting "chapter 3, section 7 of the Postal Service Procurement Manual" for "sec. 1, part 6 of the Postal Contracting Manual".

3. Section 957.3(a) is revised to read as set forth below.

4. Section 957.3(b) is amended by substituting "the General Counsel's" for "his".

5. Section 957.3(f) is amended by substituting "chapter 3, section 7 of the Postal Service Purchasing Manual" for "Section 1, part 6 of the Postal Contracting Manual".

6. Section 957.3(g) is revised to read as follows:

§ 957.3 Definitions.

(a) the term Vice President means a Vice President with purchasing authority in the Postal Service or the Vice President's representative for the purpose of carrying out the provisions of chapter 3, section 7 of the Postal Service Purchasing Manual.

* * * * *

(g) The Recorder means the Recorder of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

§ 957.4 [Amended]

7. Section 957.4(a) is amended by substituting "Vice President" for "Department Head".

8. Section 957.4(c) is amended by substituting "Vice President" for "Department Head".

9. Section 957.4(d) is amended by substituting "the Judicial Officer" for "he" wherever it appears.

§ 957.5 [Amended]

10. Section 957.5 is amended by substituting "Vice President" for "Department Head".

§ 957.7 [Amended]

11. Section 957.7 is amended by substituting "Vice President" for "Department Head".

§ 957.8 [Amended]

12. Section 957.8 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

13. Section 957.8(d) is amended by substituting "Vice President" for "Department".

14. Section 957.8(d) is amended by adding "or her" after "his".

15. Section 957.8(d) is amended by substituting "Vice President" for "Department Head".

§ 957.9 [Amended]

16. Section 957.9 is amended by substituting "Vice President's" for "Department Head's".

§ 957.10 [Amended]

17. Section 957.10 is amended by substituting "Vice President" for "Department Head" wherever it appears.

18. Section 957.13(a) is revised to read as follows:

§ 957.13 Hearings.

(a) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the Judicial Officer.

* * * * *

19. Section 957.13(b) is amended by substituting "The party" for "He" and adding "or her" after "his".

20. Section 957.13(b)(3) is amended by substituting "Arlington, VA" for "Washington, DC".

§ 957.14 [Amended]

21. Section 957.14(e) is amended by substituting "Vice President" for "Department Head".

§ 957.15 [Amended]

22. Section 957.15(f) is amended by substituting "the Judicial Officer" for "he".

23. Section 957.15(h) is amended by substituting "or her" after "his".

§ 957.16 [Amended]

24. Section 957.16(e) is amended by substituting "or her" after "his".

§ 957.18 [Amended]

25. Section 957.18(a) is amended by substituting "Recorder" for "Docket Clerk".

§ 957.19 [Amended]

26. Section 957.19(a) is amended by deleting "to him".

27. Section 957.19(a) is amended by substituting "Recorder" for "Docket Clerk".

28. Section 957.19(b) is amended by substituting "the party" for "he".

29. Section 957.19(b) is amended by adding "or her" after "his" wherever it appears.

§ 957.20 [Amended]

30. Section 957.20(a) is amended by substituting "Recorder" for "Docket Clerk".

§ 957.23 [Amended]

31. Section 957.23 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

§ 957.26 [Amended]

32. Section 957.26 is amended by substituting "Librarian" for "Law Librarian".

33. Section 957.26 is amended by substituting "Library" for "Law Library".

34. Section 957.26 is amended by substituting "Recorder" for "Docket Clerk".

§ 957.27 [Amended]

35. Section 957.27 is amended by substituting "the" for "his" wherever it appears.

36. Section 957.27(a) is amended by substituting "chapter 3, section 7 of the Postal Service Purchasing Manual" for "section 1, part 6 of the Postal Contracting Manual".

37. Section 957.27(b) is amended by substituting "Vice President" for "Department Head".

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO PROVIDE POST OFFICE BOX OR CALLER SERVICE AND THE TERMINATION OF POST OFFICE BOX OR CALLER SERVICE

The Postal Service adopts amendments to 39 CFR Part 958 as specifically set forth below:

1. The authority citation for Part 958 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

2. Section 958.3(a) is amended by removing the last sentence thereof and adding the following in its place:

§ 958.3 Petition; notice of hearing; answer; summary judgment.

(a) * * *

The postmaster shall immediately forward two copies of the Petition to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

* * * * *

§ 958.4 [Amended]

3. Section 958.4 is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "the Headquarters Office of the United States Postal Service, Washington, DC".

4. Section 958.4(c) is amended by substituting "Arlington, VA" for "Washington, DC".

§ 958.13 [Amended]

5. Section 958.13 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

The Postal Service adopts amendments to 39 CFR Part 959 as specifically set forth below:

1. The authority citation for Part 959 continues to read as follows:

Authority: 39 U.S.C. 204, 401; 39 CFR 224.1(c)(6)(ii)(D).

§ 959.3 [Amended]

2. Section 959.3 is revised to read as follows:

§ 959.3 Office, business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078 and are open Monday through Friday from 8:15 a.m. to 4:45 p.m.

§ 959.5 [Amended]

3. Section 959.5(a) is amended by substituting "Recorder" for "Docket Clerk".

§ 959.6 [Amended]

4. Section 959.6 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

5. Section 959.6(a) is amended by substituting "the General Counsel's" for "his".

6. Section 959.6(a) is amended by substituting "may be designated" for "he may designate".

7. Section 959.6(b)(1) is amended by substituting "being" for "he is".

8. Section 959.6(b)(5) is amended by substituting "respondent's" for "his".

§ 959.7 [Amended]

9. Section 959.7 is amended by substituting "Recorder" for "Docket Clerk".

§ 959.8 [Amended]

10. Section 959.8 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

11. Section 959.8 is amended by substituting "the postmaster's designee" for "his designee" wherever it appears.

12. Section 959.8(a) is amended by substituting "respondent's agent" for "his agent" wherever it appears.

§ 959.9 [Amended]

13. Section 959.9 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

§ 959.10 [Amended]

14. Section 959.10(a) is amended by substituting "the respondent" for "he".

§ 959.11 [Amended]

15. Section 959.11(a) is amended by substituting "Recorder" for "Docket Clerk".

16. Section 959.11(b) is amended by adding "or she" after "he".

17. Section 959.11(d) is amended by substituting "the objecting party" for "him".

18. Section 959.13 is revised to read as follows:

§ 959.13 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

§ 959.14 [Amended]

19. Section 959.14 is amended by substituting "The party" for "He" and "the" for "his".

20. Section 959.14(c) is amended by substituting "Arlington, VA" for "Washington, D.C.".

§ 959.16 [Amended]

21. Section 959.16(b)(6) is amended by adding "or she" after "he".

22. Section 959.16(b)(8) is amended by adding "or her" after "his".

§ 959.17 [Amended]

23. Section 959.17(e) is amended by adding "or her" after "his".

§ 959.20 [Amended]

24. Section 959.20(a) is amended by substituting "Recorder" for "Docket Clerk".

§ 959.21 [Amended]

25. Section 959.21(a) is amended by removing "to him".

26. Section 959.21(b) is amended by adding "or her" after "his" wherever it appears.

§ 959.22 [Amended]

27. Section 959.22(a) is amended by adding "or she" after "he".

28. Section 959.22(b) is amended by substituting "Recorder" for "Docket Clerk".

§ 959.23 [Amended]

29. Section 959.23(a) is amended by adding "or her" after "his".

30. Section 959.23(c) is amended by adding "or she" after "he".

§ 959.24 [Amended]

31. Section 959.24 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

32. Section 959.24(a) is amended by substituting "party" for "part".

§ 959.27 [Amended]

33. Section 959.27 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

§ 959.30 [Amended]

34. Section 959.30 is amended by substituting "Librarian" for "Law Librarian".

35. Section 959.30 is amended by substituting "Library" for "Law Library".

36. Section 959.30 is amended by substituting "Recorder" for "Docket Clerk".

PART 960—RULES RELATIVE TO IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN POSTAL SERVICE PROCEEDINGS

The Postal Service adopts amendments to 39 CFR Part 960 as specifically set forth below:

1. The authority citation for Part 960 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 39 U.S.C. 204, 401(2).

§ 960.22 [Amended]

2. Section 960.22 is amended by substituting "Judicial Officer, 2101 Wilson Boulevard, Suite 600, Arlington VA 22201–3078" for "Judicial Officer, Room 10833, U.S. Postal Service, 475 L'Enfant Plaza W., S.W., Washington, D.C. 20260–6100".

PART 961—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO EMPLOYEE HEARING PETITIONS UNDER SECTION 5 OF THE DEBT COLLECTION ACT

The Postal Service adopts amendments to 39 CFR Part 961 as specifically set forth below:

1. The authority citation for Part 961 continues to read as follows:

Authority: 39 U.S.C. 204, 401; 5 U.S.C. 5514(a).

2. Section 961.3(g) is revised to read as follows:

§ 961.3 Definitions.

* * * * *

(g) Recorder refers to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

§ 961.4 [Amended]

3. Section 961.4(a) is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "475 L'Enfant Plaza, SW, Washington, DC 20260–6100".

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

The Postal Service adopts amendments to 39 CFR Part 962 as specifically set forth below:

1. The authority citation for Part 962 continues to read as follows:

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

2. Section 962.2(j) is revised to read as follows:

§ 962.2 Definitions.

* * * * *

(j) Recorder refers to the Recorder of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

* * * * *

§ 962.22 [Amended]

3. Section 962.22(b) is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "475 L'Enfant Plaza West SW., Washington, DC 20260–6100".

PART 963—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO VIOLATIONS OF THE PANDERING ADVERTISEMENTS STATUTE, 39 U.S.C. 3008

The Postal Service adopts amendments to 39 CFR Part 963 as specifically set forth below:

1. The title of Part 963 is revised to read as set forth above.

2. The authority citation for Part 963 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 3008.

§ 963.3 [Amended]

3. Section 963.3(a) is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "Washington, DC 20260–6100".

4. Section 963.7 is revised to read as follows:

§ 963.7 Location of hearing.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

§ 963.8 [Amended]

5. Section 963.8(c) is amended by substituting "Arlington, VA" for "Washington, DC".

§ 963.22 [Amended]

6. Section 963.22 is amended by substituting "Librarian" for "Law Librarian".

7. Section 963.22 is amended by substituting "Library" for "Law Library".

PART 964—RULES OF PRACTICE GOVERNING DISPOSITION OF MAIL WITHHELD FROM DELIVERY PURSUANT TO 39 U.S.C. 3003, 3004

The Postal Service adopts amendments to 39 CFR Part 964 as specifically set forth below:

1. The authority citation for Part 964 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 3003, 3004.

§ 964.3 [Amended]

2. Section 964.3(a) is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "Washington, DC 20260–6100".

3. Section 964.4 is amended by removing the first sentence thereof, and adding the following in its place:

§ 964.4 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer. * * *

4. Section 964.4(c) is amended by substituting "Arlington, VA" for "Washington, DC".

§ 964.22 [Amended]

5. Section 964.22 is amended by substituting "Librarian" for "Law Librarian".

6. Section 964.22 is amended by substituting "Library" for "Law Library".

PART 965—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAIL DISPUTES

The Postal Service adopts amendments to 39 CFR Part 965 as specifically set forth below:

1. The authority citation for Part 965 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

§ 965.2 [Amended]

2. Section 965.2 is amended by substituting "the chief field counsel" for "Regional Counsel" and "Postal Operations Manual section 616.21" for "Domestic Mail Manual 153.72".

§ 965.3 [Amended]

3. Section 965.3 is amended by substituting "the chief field counsel" for "Regional Counsel".

4. Section 965.3 is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "475 L'Enfant Plaza, SW, Washington, DC 20260–6100".

5. Section 965.8(b) is revised to read as follows:

§ 965.8 Hearings.

* * * * *

(b) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or such other place as may be designated by the presiding officer.

§ 965.14 [Amended]

6. Section 965.14 is amended by substituting "Librarian" for "Law Librarian".

7. Section 965.14 is amended by substituting "Library" for "Law Library".

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES OF THE POSTAL SERVICE

The Postal Service adopts amendments to 39 CFR Part 966 as specifically set forth below:

1. The authority citation for Part 966 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 2601.

§ 966.3 [Amended]

2. Section 966.3(i) is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "475 L'Enfant Plaza, SW, Washington, DC 20260–6100".

§ 966.4 [Amended]

3. Section 966.4(b) is amended by substituting "2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078" for "475 L'Enfant Plaza, SW., Washington, DC 20260–6100".

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–31577 Filed 11–30–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–6187–8]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Three Local Air Agencies in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority.

SUMMARY: EPA is promulgating direct final approval of the state of Washington Department of Ecology (Ecology) request for program approval and delegation of authority for three local agencies in Washington to implement and enforce locally-adopted hazardous air pollutant (HAP) regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained within 40 CFR Parts 61 and 63, as these regulations apply to all sources (i.e., both Part 70 and non-Part 70 sources). In this action EPA is delegating these programs to Ecology for the purpose of redelegating them to three local agencies in Washington, consistent with Ecology's statute, the Revised Code of Washington (RCW) 70.94.860. EPA is also promulgating approval of a mechanism by which these three agencies will receive delegation of future NESHAPs; and is waiving its notification requirements such that sources will only need to send notifications and reports to the delegated local agencies. Additionally, EPA is promulgating direct final approval of certain local air agency potential-to-emit limiting regulations which will now be recognized as federally enforceable.

The adopted regulations approved as part of this action will be implemented and enforced by the following local air authorities within the state of Washington: the Northwest Air Pollution Authority (NWAPA); the Puget Sound Air Pollution Control Agency (PSAPCA); and the Southwest Air Pollution Control Authority (SWAPCA) collectively referred to as "NWAPA, PSAPCA, and SWAPCA." (For purposes of this action and consistent with RCW 70.94.860, "delegation to NWAPA, PSAPCA, and SWAPCA" means "delegation to Ecology for the purpose of redelegation to NWAPA, PSAPCA, and SWAPCA"). Delegation to Ecology to directly implement 40 CFR Parts 61 and 63 and to redelegate the same authority to the remaining four Washington local agencies (the Benton Clean Air Authority, the Olympic Air Pollution Control Authority, the Spokane County Air Pollution Control Authority, and the Yakima Regional Clean Air Authority) is anticipated in the near future and will be the subject of a separate rulemaking.

DATES: This action will be effective on February 1, 1999 without further notice, unless EPA receives relevant adverse comments by December 31, 1998. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Comments must be submitted to Doug Hardesty at the Region X office listed below. Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Andrea Wullenweber, US EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553–8760.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the federal Clean Air Act (CAA) enables the EPA to approve State and local air toxics programs or rules to operate in place of the federal air toxics program or rules. The federal air toxics program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by EPA if the Agency finds that: (1) the State (or local) program is "no less stringent" than the corresponding federal program or rule, (2) the State (or local) has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA.

On February 16, 1996 (*see* 61 FR 6184), EPA proposed to approve the request of Ecology and the Washington local agencies, including NWAPA, PSAPCA, and SWAPCA, for delegation of authority to implement and enforce certain 40 CFR Parts 61 and 63 NESHAP rules, as they apply to Part 70 sources. On August 26, 1996 (*see* 61 FR 43675), under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA promulgated final interim approval of this request. EPA also promulgated interim approval of NWAPA, PSAPCA, and SWAPCA's mechanism for receiving future delegation of CAA section 112 standards that are adopted unchanged from federal standards as promulgated. Additionally, EPA promulgated interim approval of PSAPCA and SWAPCA's potential-to-emit limiting regulations to be recognized as federally enforceable.

In the August 26, 1996, rulemaking, EPA granted only interim approval of the request for delegation because EPA determined that the criminal authorities under Ecology's statute, RCW 70.94.430, did not meet the stringency requirements of 40 CFR 70.11. In this respect, EPA retained implementation and enforcement authority for these rules as they applied to non-Part 70 sources during the interim period or until such time as Ecology and the local agencies could demonstrate that their criminal authorities met EPA stringency requirements. Full approval has been contingent upon a demonstration that Ecology and the local agencies' criminal enforcement authorities are consistent with the requirements of 40 CFR 70.11(a), and therefore 40 CFR 63.91(b)(1) and (b)(6). Specifically, in the proposed interim approval notice (see 61 FR 6184), EPA requested the following of Ecology and the local agencies:

(1) Revise RCW 70.94.430 to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii),

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, and

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation, or

(4) Demonstrate to the satisfaction of EPA that these authorities are consistent with 40 CFR 70.11, and therefore 40 CFR 61.91.

In response to EPA's request, Ecology submitted a letter dated October 7, 1996, that addressed these issues. This documentation included a legal memorandum from the Washington State Attorney General's Office dated May 23, 1996, explaining how the statutory authority in RCW 70.94.430(1) may be interpreted to provide the required authority, which satisfied condition 1. In addition, Ecology amended the state regulation at Washington Administrative Code (WAC) 173–400–105(7) and (8) to include prohibitions against knowingly making false statements and knowingly rendering inaccurate any monitoring device, thus satisfying requirements 2 and 3. Furthermore, in a letter dated February 28, 1997, Ecology provided supporting documentation from NWAPA, PSAPCA, and SWAPCA describing how they each have addressed these issues. NWAPA and PSAPCA committed to enforcing WAC 173–400–105(7) and (8) until such time as they might adopt their own equivalent regulations on this subject. SWAPCA is requesting delegation based on its local regulation, SWAPCA 400–105(7) and (8), which contains the same language as the state rule. Based on information provided by Ecology, NWAPA, PSAPCA, and SWAPCA, EPA has determined that these actions adequately address the issue of adequate criminal authorities needed to meet the requirements of 40 CFR 70.11 and 61.91, and to obtain final delegation for all sources within NWAPA, PSAPCA, and SWAPCA's jurisdiction.

After resolving the above issues related to criminal authorities, this delegation was again delayed due to certain state regulations which EPA believed conflicted with the enforcement authorities required for delegation of federal programs. The regulation in question was the State of Washington's Regulatory Reform Act of 1995 ("Act"), codified at Chapter 43.05 RCW. The Act precludes "regulatory agencies", as defined in RCW 43.05.010, from assessing civil penalties except for a violation of a specific permit term or condition; a repeat violation; a violation that is not corrected within a reasonable period of time; or a violation that has a probability of placing a person in danger of death or bodily harm, a probability of causing more than minor environmental harm, or of causing physical damage to the property of another in excess of one thousand dollars. Counsel for PSAPCA has provided EPA with a legal opinion stating that the Act does not apply to local air pollution control authorities in Washington because local air pollution control authorities are not "regulatory agencies" within the meaning of the Act. EPA has reviewed the statutory and regulatory language relied on by PSAPCA's counsel in reaching this conclusion and agrees that the Act does not constrain the enforcement authority of local air pollution control authorities and therefore does not pose a bar to delegation of CAA programs to local air pollution control agencies in Washington.[1]

In the August 26, 1996, rulemaking, EPA granted interim approval for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR Part 63, Subpart B. After further review, EPA recognizes that Subpart B need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing CAA section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements" (*see* 59 FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to grant direct final delegation of 40 CFR Part 63, Subpart B, to NWAPA, PSAPCA, and SWAPCA.

Since the August 26, 1996, rulemaking, Ecology has submitted updated delegation requests on behalf of NWAPA, PSAPCA, and SWAPCA. Ecology submitted requests on behalf of NWAPA on March 21, 1997, May 5, 1997, and August 28, 1998, to update NWAPA's delegation request such that its current request includes certain subparts in 40 CFR Parts 61 and 63 in effect on May 14, 1998, as adopted into NWAPA Regulation Section 104.2 (effective May 14, 1998). On November 18, 1996 and October 27, 1997, Ecology submitted requests on behalf of PSAPCA to update its delegation request such that its current request includes certain subparts in 40 CFR Parts 61 and 63 in effect on July 1, 1997, as adopted into PSAPCA Regulation III, Section 2.02 (effective November 1, 1997). On February 28, 1997, and May 14, 1998, Ecology submitted requests on behalf of SWAPCA to update its delegation request such that its current request includes certain subparts in 40 CFR Parts 61 and 63 in effect on August 1, 1996, as adopted into SWAPCA Regulation 400 Section 075 (effective November 21, 1996), and to add SWAPCA Regulation 400 Section 111 to its delegation request for potential-to-emit regulations.

Additionally, Ecology submitted a request on behalf of PSAPCA for approval of rule adjustments for 40 CFR Part 63, Subparts M and N (Drycleaning and Chromium Electroplating, respectively). The original request for the 40 CFR Part 63, Subpart M rule adjustment was dated January 16, 1997, with a correction letter dated September 4, 1997. The request for the 40 CFR Part 63, Subpart N rule adjustment was dated June 26, 1997. Because EPA approval of the requested rule adjustments will require a more detailed review under 40 CFR 63.92, EPA will address PSAPCA's request for rule adjustments in a separate notice to avoid further delay of this delegation.

NWAPA, PSAPCA, and SWAPCA have also requested that EPA waive the Part 63 General Provisions notification requirements, in accordance with 40 CFR 63.9 and 63.10, such that sources would not need to send notifications and reports to EPA, Region X. Ecology submitted this request for PSAPCA in a letter dated January 10, 1997, for NWAPA in a letter dated May 5, 1997, and for SWAPCA in a letter dated May 14, 1998. These three local agencies prefer to be the sole recipient of notifications and reports to reduce the burden on sources and EPA.

Ecology submitted a letter dated July 31, 1998, describing the Washington state process for delegating the federal hazardous air pollutants program to local agencies in Washington. Pursuant to RCW 70.94.860, Ecology must first accept delegation of this program on behalf of the local agency and then redelegate the program to that agency. In its July 31, 1998, letter, Ecology included the delegation orders to be signed by the local agencies and Ecology. These orders outline this redelegation process. Ecology signed the orders for each agency on August 4, 1998, and NWAPA, PSAPCA, and SWAPCA signed these orders on August 11, 1998, August 14, 1998, and August 12, 1998, respectively. As described in these orders, the effective date of the orders is the same as the effective date of this rule. Therefore, the delegation to these agencies via Ecology will cause no delay in this delegation to NWAPA, PSAPCA, and SWAPCA.

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[1] As for the Act's applicability to Ecology's enforcement authorities, in letters dated June 10, 1997, and November 20, 1997, EPA advised Ecology that the Act conflicted with the necessary enforcement authority required for authorization or approval of federal environmental programs to Ecology. Subsequently, on December 10, 1997, in accordance with RCW 43.05.902, Ecology formally notified the Governor of Washington that a conflict existed between the Act and the requirements for State authorization or approval of certain federal environmental programs. As a result of the determination of an existing conflict, RCW 43.05.040, .050, .060(3), and .070, which prohibit the State from issuing civil penalties except under certain circumstances, were deemed to be inoperative to several State environmental programs administered by the Department of Ecology, including the CAA program. In reliance on this determination, EPA believes that the conflict between the Act and the requirements for EPA approval of Ecology's CAA programs has been addressed by rendering inoperative those portions of the Act that conflicted with Ecology's required enforcement authorities.

II. EPA Action

A. Delegation of specific standards

In this action, under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA is promulgating direct final approval of Ecology's request, on behalf of NWAPA, PSAPCA, and SWAPCA, for program approval and delegation of authority to implement and enforce specific 40 CFR Parts 61 and 63 subparts, as listed in the tables at the end of this rule. Consistent with RCW 70.94.860, EPA is delegating this authority to Ecology for the purpose of redelegating to NWAPA, PSAPCA, and SWAPCA.

With this delegation (and redelegation from Ecology) NWAPA, PSAPCA, and SWAPCA will have primary implementation and enforcement responsibility, but EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Specifically, the EPA Administrator has the authority to approve certain changes to, or make decisions under, certain requirements in the General Provisions. This authority is in 40 CFR Part 63, Subpart A. EPA is granting NWAPA, PSAPCA, and SWAPCA some of these authorities, and is retaining other authorities, as explained below.

In a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies," EPA clarified which of the authorities in the General Provisions may and may not be delegated to state and local agencies under 40 CFR Part 63, Subpart E. Such delegations, as authorized, would enable the state or local agency to carry out the Administrator's responsibilities in Subpart A. In delegating these authorities, EPA is granting NWAPA, PSAPCA, and SWAPCA the authority to make decisions which are not likely to be nationally significant or to alter the stringency of the underlying standard. The intent is that these agencies will make decisions on a source-by-source basis, *not* on a source category-wide basis.

EPA, Region X, has determined that NWAPA, PSAPCA, and SWAPCA have sufficient resources and expertise to implement certain sections of the General Provisions, and EPA is promulgating direct final authority for these sections. Listed below are the Part 63, Subpart A, sections that EPA is delegating to NWAPA, PSAPCA, and SWAPCA. Also, listed in the footnotes of the Parts 61 and 63 delegation tables at the end of this rule are the authorities which cannot be delegated to any state or local agency; which EPA therefore retains.[2]

Part 63, Subpart A, General Provisions Authorities Which EPA Is Delegating to NWAPA, PSAPCA, and SWAPCA

Section	Authorities
63.1	Applicability Determinations.
63.6(e)	Operation and Maintenance Requirements—Responsibility for Determining Compliance
63.6(f)	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance.
63.6(h) [except 63.6(h)(9)]	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance.
63.7(c)(2)(i) and (d)	Approval of Site-Specific Test Plans.
63.7(e)(2)(i)	Approval of Minor Alternatives to Test Methods.
63.7(e)(2)(ii) and (f)	Approval of Intermediate Alternatives to Test Methods.
63.7(e)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors.
63.7(e)(2)(iv) and (h) (2), (3)	Waiver of Performance Testing.
63.8(c)(1) and (e)(1)	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans
63.8(f)	Approval of Minor Alternatives to Monitoring.
63.8(f)	Approval of Intermediate Alternatives to Monitoring.
63.9 and 63.10 [except 63.10(f)]	Approval of Adjustments to Time Periods for Submitting Reports.

In delegating 40 CFR 63.9 and 63.10, "Approval of Adjustments to Time Periods for Submitting Reports," these three agencies have the authority to approve adjustments to the timing that reports are due, but do not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by Part 70 and nothing herein changes that requirement.

Certain General Provisions authorities are automatically granted to NWAPA, PSAPCA, and SWAPCA as part of their Part 70 operating permits program approval (regardless of whether the operating permits program approval is interim or final). These are 40 CFR 63.6(I)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction."[3] Additionally, for 40 CFR 63.6(I)(1), NWAPA, PSAPCA, and SWAPCA do not need to have been delegated a particular standard or have issued a Part 70 operating permit for a particular source to grant that source a compliance extension.

EPA is also promulgating direct final approval of PSAPCA Regulation I, Article 6, and Regulation III, Appendix A; and, SWAPCA Regulation 400–091, –110, –111, –112, –113, and –114 under the authority of section 112(l) of the Act in order to recognize these regulations as federally enforceable for purposes of establishing potential-to-emit limitations.

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[2] For authorities which are not addressed in this rulemaking and not identified in any Part 61 or 63 Subparts as authorities that cannot be delegated, the agencies may assume that the authorities in question are delegated.

[3] Sections 112(l) (1) and (3) state that "Extension of Compliance with Emission Standards" and "Approval and Disapproval of Construction and Reconstruction" can be implemented by the "Administrator (or a State with a permit program approved under Title V)." EPA interprets that this authority does not require delegation through subpart E and, instead, is automatically granted to States as part of their Part 70 operating permits program approval.

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency (in this case, NWAPA, PSAPCA, and SWAPCA) becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region X waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to NWAPA, PSAPCA, and SWAPCA. Therefore, notifications and reports required by the NESHAPs must be submitted to NWAPA, PSAPCA, and SWAPCA, and sources within those jurisdictions will not need to send a copy to EPA.

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, EPA requires that these delegated agencies input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. This information must be entered into the AIRS system by September 30, 1999, and must be updated by September 30 every year thereafter. Additionally, these delegated agencies must also report to EPA, Region X, all MACTRAX information upon request, which is typically semiannually. (MACTRAX provides summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program.) EPA also expects NWAPA, PSAPCA, and SWAPCA to provide any additional compliance related information to EPA, Region X, as agreed upon in the Compliance Assurance Agreement.

Finally, in receiving delegation for specific General Provisions authorities, NWAPA, PSAPCA, and SWAPCA must submit to EPA, Region X, copies of determinations issued pursuant to these authorities. Such determinations include: applicability determinations (63.1); approval/disapprovals of construction and reconstruction [63.5 (e) and (f)]; approval/disapprovals of compliance extensions [63.6(I)(1)]; approval of shorter sampling times and volumes [63.7(e)(2)(iii)]; waiver of performance testing [63.7(e)(2)(iv) and (h)(2), (3)]; approval of adjustments to time periods for submitting reports (63.9 and 63.10); approvals/disapprovals of minor [63.7(e)(2)(I)] or intermediate [63.7(e)(2)(ii) and (f)] alternative test methods; and approvals/disapprovals of minor or intermediate alternative monitoring methods [63.8(f)]. NWAPA, PSAPCA, and SWAPCA must also forward to EPA, Region X, copies of any notifications received pursuant to 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system. Additionally, EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division must receive copies of any approved intermediate changes to test methods or monitoring. (For definitions of *major*, *intermediate* and *minor* alternative test methods or monitoring methods, see the July 10, 1998, memorandum from John Seitz, referenced above.) NWAPA, PSAPCA, and SWAPCA should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

B. Delegation Mechanism for Future Standards

Under the authority of CAA section 112(l)(5) and 40 CFR 63.91, EPA is promulgating direct final approval of NWAPA, PSAPCA, and SWAPCA's mechanism for streamlining future delegation of those federal NESHAP regulations that are adopted unchanged into local law. In this respect, NWAPA, PSAPCA, and SWAPCA will only need to send a letter of request to Ecology, and Ecology will forward that request to EPA for those future NESHAP regulations which the local agencies have adopted by reference. EPA will respond to this request by sending a letter back to Ecology (and sending a copy to the local air agency) delegating the NESHAP standards requested. Consistent with RCW 70.94.860, Ecology will forward the letter to the local agency, thus redelegating the future NESHAPs to that agency. No further formal response from Ecology or the local agency will be necessary, and if no negative response is received from Ecology or the local agency within 10 days, the delegation becomes final. A notice of the delegation will be published in the **Federal Register** to inform the public that the delegation has taken place and to indicate where source notifications and reports should be sent. Furthermore, NWAPA, PSAPCA, and SWAPCA shall update their incorporations by reference of 40 CFR Parts 61 and 63 standards and request updated delegation annually, as current standards are revised and new standards are promulgated.

C. Opportunity for Public Comment

The public was provided the opportunity to comment on the proposed interim approval of the request for delegation of certain 40 CFR Parts 61 and 63 standards, as apply to Part 70 sources, on February 16, 1996 (*see* 61 FR 6184). EPA received public comments on that proposal and responded to them in the August 26, 1996, **Federal Register** (*see* 61 FR 43675). The public has not been given an opportunity to comment on requests submitted since the February 16, 1996, **Federal Register** and on delegation of these standards as they apply to non-Part 70 sources. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this direct final rule without prior proposal. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This action will be effective February 1, 1999 without further notice unless the Agency receives relevant adverse comments by December 31, 1998.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 1, 1999 and no further action will be taken on the proposed rule.

III. Summary of Action

Pursuant to the authority of CAA section 112(l) of the Act and 40 CFR Part 63 subpart E, EPA is promulgating direct final approval of Ecology's request, on behalf of NWAPA, PSAPCA, and SWAPCA, for program approval and delegation of authority to implement and enforce specific 40 CFR Parts 61 and 63 federal NESHAP regulations (as apply to both Part 70 and non-Part 70 sources) which have been adopted into local law. EPA is delegating this authority to Ecology for the purpose of redelegating it to NWAPA, PSAPCA, and SWAPCA. Additionally, EPA is promulgating direct final approval of the mechanism by which NWAPA, PSAPCA, and SWAPCA will receive delegation of future NESHAP regulations that are adopted unchanged into local law; and is waiving the requirement for sources to send copies of notifications and reports to EPA. Finally, EPA is promulgating direct final approval of PSAPCA and SWAPCA's potential-to-emit regulations as federally enforceable.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

This rule is not subject to E.O. 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government entities with jurisdiction over populations of less than 50,000.

Delegation of authority to implement and enforce unchanged federal standards under section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the State (or local) agency. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements [*see* section 307(b)(2)].

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl Chloride.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 29, 1998.

Chuck Clarke,

Regional Administrator, Region X.

Title 40, chapter I, parts 61 and 63 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended in paragraph (a) by revising the "Region X" address; by revising paragraph (b)(WW) (ii), (iii), and (vii), by removing paragraph (b)(WW)(viii); and by designating the existing paragraph (c) and table as (c)(8), adding a new (c) introductory text, adding and reserving paragraphs (c) (1) through (7) and (9), and by adding paragraph (c)(10) to read as follows:

§ 61.04 Address.

(a) * * *

Region X (Alaska, Idaho, Oregon, Washington), Director, Office of Air Quality, U.S. Environmental Protection Agency, 1200 Sixth Avenue (OAQ–107), Seattle, WA 98101.

(b) * * *

(WW)(i) * * *

(ii) Northwest Air Pollution Authority (NWAPA), 1600 South Second Street, Mount Vernon, WA 98273–5202.

Note: For a table listing NWAPA's delegation status, see paragraph (c)(10) of this section.

(iii) Puget Sound Air Pollution Control Agency (PSAPCA), 110 Union Street, Suite 500, Seattle, WA 98101–2038.

Note: For a table listing PSAPCA's delegation status, see paragraph (c)(10) of this section.

* * * * *

(vii) Southwest Air Pollution Control Authority (SWAPCA), 1308 NE 134th Street, Vancouver, WA 98685–2747.

Note: For a table listing SWAPCA's delegation status, see paragraph (c)(10) of this section.

* * * * *

(c) The following tables list, by Region, the specific Part 61, National Emission Standards for Hazardous Air Pollutants that have been delegated to state and local agencies.

(1)a–(7) [Reserved].

(8) * * *

(9) (Reserved)

(10) The following table lists the specific Part 61 standards that have been delegated unchanged to state and local air pollution control agencies in Region X. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 61 STANDARDS—REGION X

Subpart	ADEC[1]	IDEQ[2]	ODEQ[3]	LRAPA[4]	Ecology[5]	BCAA[6]	NWAPA[7]	OAPCA[8]	PSAPCA[9]	SCAPCA[10]	SWAPCA[11]	YRCAA[12]
A[13] General Provisions							X		X		X	
B Radon from Underground Uranium Mines												
C Beryllium							X		X		X	
D Beryllium Rocket Motor Firing							X		X		X	
E Mercury							X		X		X	
F Vinyl Chloride							X		X		X	
H Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J Equipment Leaks of Benzene							X		X		X	
K Radionuclides from Elemental Phosphorus Plants												
L Benzene from Coke Recovery							X		X		X	
M Asbestos							X		X		X	
N Arsenic from Glass Plants							X		X		X	
O Arsenic from Primary Copper Smelters ...							X		X		X	
P Arsenic from Arsenic Production Facilities							X		X		X	
Q Radon from Dept of Energy facilities												
R Radon from Phosphogypsum Stacks												
T Radon from Disposal of Uranium Mill Tailings												
V Equipment Leaks							X		X		X	
W Radon from Operating Mill Tailings												
Y Benzene from Benzene Storage Vessels							X		X		X	
BB Benzene from Benzene Transfer Operations							X		X		X	
FF Benzene Waste Operations							X		X		X	

[1] Alaska Department of Environmental Conservation

[2] Idaho Division of Environmental Quality

[3] Oregon Department of Environmental Quality

[4] Lane Regional Air Pollution Authority

[5] Washington Department of Ecology

[6] Benton Clean Air Authority

[7] Northwest Air Pollution Authority (5/14/98)

[8] Olympic Air Pollution Control Authority

[9] Puget Sound Air Pollution Control Agency (7/[illegible])

[10] Spokane County Air Pollution Control Authority

[11] Southwest Air Pollution Control Authority (8/1[illegible])

[12] Yakima Regional Clean Air Authority

[13] Authorities which may not be delegated include 40 CFR 61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; 61.14(g)(1)(ii) for approval of major alternatives to monitoring; 61.16; 61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated.

Note to paragraph (c)(10): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.13 is amended in paragraph (a) by revising the "Region X" address to read as follows:

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) * * *

EPA Region X (Alaska, Idaho, Oregon, Washington), Director, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, WA 98101.

* * * * *

3. Section 63.99 is amended by adding and reserving paragraphs (a)(29) through (a)(46), and adding (a) (47) to read as follows:

§ 63.99 Delegated Federal Authorities.

(a) * * *

(29)–(46) [Reserved]

(47) Washington.

(i) The following table lists the specific Part 63 standards that have been delegated unchanged to state and local air pollution control agencies in Washington. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—WASHINGTON

Subpart		Ecology[1]	BCAA[2]	NWAPA[3]	OAPCA[4]	PSAPCA[5]	SCAPCA[6]	SWAPCA[7]	YRCAA[8]
A	General Provisions[9]			X		X		X	
D	Early Reductions			X		X		X	
F	HON-SOCMI			X		X		X	
G	HON-Process Vents			X		X		X	
H	HON-Equipment Leaks			X		X		X	
I	HON-Negotiated Leaks			X		X		X	
L	Coke Oven Batteries			X		X		X	
M	Perc Dry Cleaning			X		X		X	
N	Chromium Electroplating			X		X		X	
O	Ethylene Oxide Sterilizers			X		X		X	
Q	Industrial Process Cooling Towers			X		X		X	
R	Gasoline Distribution			X		X		X	
T	Halogenated Solvent Cleaning			X		X		X	
U	Polymers and Resins I			X		X			
W	Polymers and Resins II-Epoxy			X		X		X	
X	Secondary Lead Smelting			X		X		X	
Y	Marine Tank Vessel Loading			X		X		X	
CC	Petroleum Refineries			X		X		X	
DD	Off-Site Waste and Recovery			X		X		X	
EE	Magnetic Tape Manufacturing			X		X		X	
GG	Aerospace Manufacturing & Rework			X		X		X	
II	Shipbuilding and Ship Repair			X		X		X	
JJ	Wood Furniture Manufacturing Operations			X		X		X	
KK	Printing and Publishing Industry			X		X		X	
OO	Tanks—Level 1			X		X			
PP	Containers			X		X			
QQ	Surface Impoundments			X		X			
RR	Individual Drain Systems			X		X			
VV	Oil-Water Separators and Organic-Water Separators.			X		X			
JJJ	Polymers and Resins IV			X		X		X	

[1] Washington Department of Ecology
[2] Benton Clean Air Authority
[3] Northwest Air Pollution Authority (5/14/98)
[4] Olympic Air Pollution Control Authority
[5] Puget Sound Air Pollution Control Agency (7/1/97)
[6] Spokane County Air Pollution Control Authority
[7] Southwest Air Pollution Control Authority (8/1/96)
[8] Yakima Regional Clean Air Authority.
[9] Authorities which may not be delegated include: 40 CFR 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods, 63.8(f) for approval of major alternatives to monitoring, 63.10(f), and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

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Note to paragraph (a)(47): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

[FR Doc. 98–31240 Filed 11–30–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICE

42 CFR Part 50

Rin 0930–2A00

Simplification of Grant Appeals Process

AGENCY: Health and Human Services Department.

ACTION: Final rule.

SUMMARY: Pursuant to 42 CFR part 50, subpart D, the Indian Health Service (IHS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) (formerly, the Alcohol, Drug Abuse and Mental Health Administration) have provided an informal level of appeal on those grant related disputes subject to the departmental appeal procedures codified at 45 CFR part 16.[1] The Department of Health and Human Services is amending its regulations to remove IHSA and ADAMHA (now SAMHSA) from the list of agencies to which those informal appeal procedures apply and thus permit aggrieved grantees direct access to the Departmental Appeals Board and that Board's original jurisdiction.

DATES: The regulation is effective December 31, 1998.

FOR FURTHER INFORMATION: For the Indian health Service, Ms. M. Kay Carpentier, (301) 443–5204; for the Substance Abuse and Mental Health Services Administration, Thomas M. Reynolds, (301) 443–0179.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking (NPRM) was published in the **Federal Register** on February 25, 1998 (Vol. 63, No. 37, pages 9499–9500). That Notice proposed to amend 42 CFR part 50, subpart D, to eliminate the requirement that grantees must exhaust their appeal rights at the IHS or SAMHSA level prior to bringing a grant dispute before the Departmental Appeals Board. Accordingly, this proposed change would permit affected grantees immediate access to the Departmental Appeals Board. No comments were received.

Consequently, the Department is amending 42 CFR part 50, subpart D, to remove IHS and ADAMHA (now SAMHSA) from the list of agencies to which the regulations apply as proposed by the NPRM. As a result, grantees wishing to appeal IHS's and SAMHSA's eligible adverse determinations will be entitled to appeal such determinations directly to the Departmental Appeals Board. In addition, 42 CFR part 50, subpart D, is revised to reflect organizational changes in the Department, particularly that pertaining to the public Health Service.

Economic Impact

This rule does not have cost implications for the economy of $100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis. Further, this regulation will not have a significant impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order and so has been exempted from review by the Office of Management and Budget under that Order.

Paperwork Reduction Act

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 50

Administrative practice and procedure, Grant programs—Health, Health care.

Approved: November 20, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, sub part D of part 50 of Title 52 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

1. The authority citation for part 42, Subpart D, continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

2. Section 50.401 is revised to read as follows:

§ 50.401 What is the purpose of this subpart?

This subpart establishes an informal procedure for the resolution of certain postaward grant and cooperative agreement disputes within the agencies and offices identified in § 50.402.

3. Section 50.402 is revised to read as follows:

§ 50.402 To what programs do these regulations apply?

This subpart applies to all grant and cooperative agreement programs, except block grants, which are administered by the National Institutes of Health; the Health Resources and Services Administration; the Centers for Disease Control and Prevention; the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; and the Office of the Assistant Secretary for Public Health and Science. For purposes of this regulation, the entities are hereinafter referred to as "agencies."

4. The third sentence of § 50.403 is revised to read as follows:

§ 50.403 What is the policy basis for these procedures?

* * * This subpart provides such an informal preliminary procedure for resolution of disputes in order to preclude submission of cases to the Departmental Appeals Board before an agency identified in § 50.402 has had an opportunity to review decisions of its officials and to settle disputes with grantees.

5. In § 50.404, paragraph (a) introductory text and the first sentence of paragraph (b) are revised to read as follows:

§ 50.404 What disputes are covered by these procedures?

(a) These procedures are applicable to the following adverse determinations under discretionary project grants and cooperative agreements (both referred to in this subpart as grants) issued by the agencies identified at § 50.402;

* * * * *

(b) A determination subject to this subpart may not be reviewed by the review committee described in § 50.405 unless an officer or employee of the agency has notified the grantee in writing of the adverse determination.

* * *

6. In § 50.405, the second sentence is removed and the first sentence is revised to read as follows:

---

[1] Section 161 of the ADAMHA Reorganization Act, Pub. L. 102–321 (July 10, 1992), provides that references in any regulations to ADAMHA shall be deemed to refer to SAMHSA and, accordingly, the informal level of appeal was available to SAMHSA's grantees.

§ 50.405 What is the structure of review committees?

The head of the agency, or his or her designee, shall appoint review committees to review adverse determinations made by officials for programs under their jurisdiction. * * *

7. § 50.406, paragraphs (a), (c), (d) and (g) and the first sentence of (e) are revised to read as follows:

§ 50.406 What are the steps in the process?

(a) A grantee with respect to whom an adverse determination described in § 50.404(a) above has been made and who desires a review of that determination must submit a request for such review to the head of the appropriate agency or his or her designee no later than 30 days after the written notification of the determination is received, except that if the grantee shows good cause why an extension of time should be granted, the head of the appropriate agency or his or her designee may grant an extension of time.

* * * * *

(c) When a request for review has been filed under this subpart with respect to an adverse determination, no action may be taken by the awarding agency pursuant to such determination until the request has been disposed of, except that the filing of the request shall not affect any authority which the agency may have to suspend assistance or otherwise to withhold or defer payments under the grant during proceedings under this subpart. This paragraph does not require the awarding agency to provide continuation funding during the appeal process to a grantee whose noncompeting continuation award has been denied.

(d) Upon receipt of a request for review, the head of the agency or his or her designee will make a decision as to whether the dispute is reviewable under this subpart and will promptly notify the grantee and the office responsible for the adverse determination of this decision. If the head of the agency or his or her designee determines that the dispute is reviewable, he or she will forward the matter to the review committee appointed under § 50.405.

(e) The agency involved will provide the review committee appointed under § 50.405 with copies of all relevant background materials (including applications(s), award(s), summary statement(s), and correspondence) and any additional pertinent information available. * * *

* * * * *

(g) The review committee may, at its discretion, invite the grantee and/or the agency staff to discuss the pertinent issues with the committee and to submit such additional information as the committee deems appropriate.

* * * * *

[FR Doc. 98–31869 Filed 11–30–98; 8:45 am]

BILLING CODE 4162–20–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2500, 2501, 2502, 2503, 2504, 2505, and 2506

RIN 3045–AA20

Removal of Regulations for the Former Commission for National and Community Service

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service hereby removes obsolete regulations. These regulations are related to the programs of its predecessor agency, the Commission on National and Community Service, and are no longer needed. The part numbers of the removal regulations are being reserved for future Corporation for National and Community Service regulations.

DATES: The removal of these regulations is effective on December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas H. Hilton, (202) 606–5000, ext. 396.

SUPPLEMENTARY INFORMATION: The National and Community Service Act of 1990, Public Law 101–610, 104 Stat. 3127, created the Commission on National and Community Service and authorized a number of programs to provide federal financial assistance to organizations that conducted national service programs. Pursuant to Public Law 101–610, the Commission adopted regulations to implement its programs as 45 C.F.R. Parts 2500, to 2506.

Subsequently the National and Community Service Trust Act of 1993, Public Law 103–82, 107 Stat. 785, amended the 1990 Act by: substituting new provisions replacing the programs originally authorized under the 1900 Act; creating the Corporation for National and Community Service to carry out the new programs; and transferring the functions and personnel of the Commission to the Corporation. The Corporation has published its own regulations implementing national service programs as authorized under the 1993 amendments to the 1990 Act. Because the Corporation does not implement programs under the terms of the original 1990 Act and former Commission regulations, these regulations are being removed. However, the part numbers for those regulations are being reserved for future Corporation regulations.

List of Subjects

45 CFR Part 2500

Grant programs—social programs, Volunteers.

45 CFR Part 2501

Elementary and secondary education, Grant programs—social programs, Volunteers, Youth.

45 CFR Part 2502

Colleges and universities, Grant programs—social programs, Volunteers.

45 CFR Part 2503

Grant programs—social programs, Natural resources, Volunteers, Youth.

45 CFR Part 2504

Community action programs, Grant programs—social programs, Volunteers.

45 CFR Part 2505

Community development, Grant programs—social programs, Volunteers.

45 CFR Part 2506

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

PARTS 2500 THROUGH 2506 [REMOVED AND RESERVED]

For reasons stated in the preamble, the Corporation for National and Community Service, under the authority of 43 U.S.C. 12501 *et seq.*, hereby amends 45 CFR Chapter XXV by removing and reserving Parts 2500, 2501, 2502, 2503, 2504, 2505, and 2506.

Dated: November 25, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–31971 Filed 11–30–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. NHTSA–98–3429]

RIN 2127–AF37

Minimum Driving Range for Dual Fueled Electric Passenger Automobiles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule establishes a minimum driving range of 7.5 miles for dual fueled electric passenger automobiles, otherwise known as hybrid electric vehicles (HEVs), when operating on the EPA urban cycle and a minimum driving range of 10.2 miles on the EPA highway cycle. The purpose of establishing the range is to meet statutory requirements intended to encourage the production of HEVs. An HEV which meets the range would qualify to have its fuel economy calculated according to a special procedure that would facilitate the efforts of its manufacturer to comply with the corporate average fuel economy standards.

DATES: This final rule is effective February 1, 1999. Petitions for reconsideration must be submitted by January 16, 1999.

ADDRESSES: Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. P.L. Moore, Motor Vehicle Requirements Division, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590, (202) 366–5222.

SUPPLEMENTARY INFORMATION:

I. Background

A. Alternative Motor Fuels Act of 1988

Section 6 of the Alternative Motor Fuels Act of 1988 amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 513, "Manufacturing Incentives for Automobiles." Section 513 contained incentives for the manufacture of vehicles designed to operate on alcohol or natural gas, including dual fuel vehicles, i.e., vehicles capable of operating on one of those alternative fuels and either gasoline or diesel fuel.

Section 513 provided that dual fuel vehicles meeting specified criteria qualify for special treatment in the calculation of their fuel economy for purposes of the corporate average fuel economy (CAFE) standards. The fuel economy of a qualifying vehicle is calculated in a manner that results in a relatively high fuel economy value, thus encouraging its production as a way of facilitating a manufacturer's compliance with the CAFE standards. One of the qualifying criteria for passenger automobiles was to meet a minimum driving range, which was to be established by NHTSA.

NHTSA was required to establish two minimum driving ranges, one for "dual energy" (alcohol/gasoline or diesel fuel) passenger automobiles when operating on alcohol, and the other for "natural gas dual energy" (natural gas/gasoline or diesel fuel) passenger automobiles when operating on natural gas. In establishing the driving ranges, NHTSA was to consider the purposes of the Alternative Motor Fuels Act, consumer acceptability, economic practicability, technology, environmental impact, safety, driveability, performance, and any other factors deemed relevant.

The Alternative Motor Fuels Act and its legislative history made it clear that the driving ranges were to be low enough to encourage the production of dual fuel passenger automobiles, yet not so low that motorists would be discouraged by a low driving range from actually fueling their vehicles with the alternative fuels.

B. Energy Policy Act of 1992

The Energy Policy Act of 1992 amended section 513 of the Cost Savings Act to expand the scope of the alternative fuels it promotes. The amended section provided incentives for the production of vehicles using, in addition to alcohol and natural gas, liquified petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), and any fuel NHTSA determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

Section 513 continued to provide incentives for the production of dual fuel vehicles, i.e., vehicles that operate on one of a now expanded list of alternative fuels, including electricity, and on gasoline or diesel fuel. NHTSA notes that some statutory terminology was changed by the 1992 amendments. Among other things, the terms "dual energy" and "natural gas dual energy" were dropped, and the terms "alternative fueled automobile," "dedicated automobile," and "dual fueled automobile" were added.

Section 513 also continued to require dual fueled passenger automobiles to meet specified criteria, including meeting a minimum driving range, in order to qualify for the special treatment in the calculation of their fuel economy for purposes of the CAFE standards.

The 1992 amendments necessitate amending Part 538. The agency must establish a minimum driving range for the expanded scope of dual fueled vehicles. Minimum driving range standards for all dual energy passenger automobiles except electric vehicles were established by a final rule issued on March 21, 1996. (61 FR 14507)

On July 5, 1994, the Cost Savings Act was revised and codified "without substantive change." The provisions formerly found in section 513 of the Cost Savings Act are now at 49 U.S.C. 32901, 32905, and 32906. In setting the minimum driving range for dual energy electric passenger automobiles, NHTSA is required by 49 U.S.C. 32901(c)(3) to consider the purposes set forth in section 3 of the Alternative Motor Fuels Act of 1988 as amended by the 1992 Energy Policy Act:

> (1) To encourage the development and widespread use of methanol, ethanol, natural gas, other gaseous fuels, and electricity as transportation fuels by consumers; and
>
> (2) To promote the production of alternatively fueled motor vehicles.

Section 32901(c)(3) also requires that the agency consider consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and other relevant factors in setting a minimum driving range.

C. Regulatory Background

To aid the agency in relating the data on driving range for dual fueled electric vehicles to the unique characteristics of dual fueled passenger automobiles, NHTSA published a Request for Comments in the **Federal Register** (59 FR 48589) on September 22, 1994. In that document, the agency posed a number of questions on the use of dual fueled electric passenger automobiles relating to the determination of a driving range that would serve the purposes of the Alternative Motor Fuels Act and the Energy Policy Act.

NHTSA published a notice of proposed rulemaking (NPRM) on January 3, 1997 (62 FR 375). Based on

NHTSA's review of comments in response to the Request for Comments, a review of current literature, studies of current industry capabilities, an assessment of the available technology, and existing statutory requirements, the agency proposed to set the minimum driving range for HEVs, even though operating solely on electricity, at 17.7 miles—the range required to complete one EPA urban/highway cycle under the current Federal Test Procedure (FTP).

The NPRM stated the agency's view that setting a minimum driving range at 17.7 miles would ensure that HEVs will have sufficient driving range to meet the needs of consumers while also encouraging HEV development. NHTSA tentatively concluded that a 17.7 mile minimum range would not be so stringent as to foreclose the development of vehicles relying on new technologies or entry into the market without unduly large expenditures of capital resources. The proposed range was considered to be sufficient to meet the needs of many vehicle users. The agency also noted that setting the minimum driving range at 17.7 miles would allow the use of EPA test procedures, where one complete highway and urban cycle consists of 17.7 miles.

The NPRM also indicated that the proposed minimum driving range contemplated operation of the vehicle solely on electric power when some hybrid designs under consideration are full-time hybrids. In these vehicles, electric and internal combustion engines are designed to complement each other and may not have sufficient power alone to adequately propel the vehicle. NHTSA also observed that other designs in which the vehicle may be operated on electric power alone may not have sufficient range to meet the proposed 17.7 mile minimum range. The agency tentatively concluded that calculation of the fuel economy of a dual fueled automobile under Section 513 of the Cost Savings Act (now 49 U.S.C. 32905) requires that the vehicle be operated solely on the alternative fuel and, as set forth in 49 U.S.C. 32904(c), have its energy consumption measured through use of the EPA combined urban and highway cycle. In the NPRM, NHTSA indicated its tentative view that this statutory requirement compelled a minimum driving range specifying electric-only operation for a distance equivalent to one EPA cycle.

D. Hybrid Electric Vehicle Driving Range Requirements

NHTSA received comments regarding driving range proposed in the NPRM from Toyota, Mercedes Benz, the American Automobile Manufacturers Association (AAMA) and Jeffrey J. Ronning. In addition, the agency received comments from the Department of Energy (DOE) in response to a draft NPRM which NHTSA had forwarded to DOE for review.

Toyota expressed opposition to the proposed 17.7 mile electric-only minimum driving range. The company stated that such a range will limit the development of HEVs by forcing increased battery volume. This increased battery volume, in Toyota's view, would drive up costs and make HEVs less attractive to consumers. Toyota also indicated that the proposed range would force an emphasis on the employment of batteries and electricity in comparison to other configurations in which fuel powered engines and batteries are used together. Toyota further suggested that the minimum driving range should be set at zero in order to promote the maximum development of new technologies.

The American Automobile Manufacturers Association (AAMA) also suggested that the minimum driving range for HEVs be set at zero because any other driving range would serve as a disincentive for the development of HEVs. The AAMA submission argued that the use of an electric-only mode of operation for measuring driving range would provide an advantage to vehicles capable of driving on electricity only. As some hybrid designs would not have this capability but may also be able to recharge their batteries from an external source, AAMA contends that a driving range greater than zero would unnecessarily restrict development of hybrids that would otherwise be eligible for CAFE incentives. AAMA further suggested that if NHTSA concludes that it must set a driving range greater than zero, that HEVs with an all electric range should be required to meet only 7.5 miles on the urban cycle and 10.2 miles on the highway cycle in two separate tests with charging allowed prior to each test. For vehicles that do not have the capability to complete this suggested test cycle on electric power, AAMA suggested that an alternative test procedure for measuring range be developed.

Mercedes-Benz also opposed the proposed 17.7 mile minimum driving range. In its comments, Mercedes advocated that no minimum driving range be set in the final rule and that doing otherwise would limit the ability of manufacturers to introduce promising designs and configurations. Mercedes also agreed with the agency's view that section 32905 requires that alternative fueled vehicles be operated solely on an alternative fuel to calculate fuel economy and that 49 U.S.C. § 32904(c) requires the use of a combined urban and highway cycle that is 55% urban and 45% highway. The company argued, however, that the selection of the 17.7 mile EPA cycle ignores the provisions in § 32904(c) allowing fuel economy calculations to be based on procedures giving comparable results to the EPA cycle. In Mercedes' view, a fuel economy test comparable to the existing EPA cycle which does not require a vehicle to travel 17.7 miles could be developed. Therefore, Mercedes contended that the agency's determination that a 17.7 mile driving range must be used to measure fuel economy was incorrect. Mercedes also argued that the agency's preliminary finding that the 17.7 mile range was appropriate for meeting consumer needs and expectations is unsupported by any facts.

Mr. Jeffrey J. Ronning, an engineer with experience in the development of automotive electric propulsion systems, supported the proposed 17.7 mile range. Mr. Ronning indicated that the proposed range would foster development of "electric dominant hybrids" as opposed to "combustion dominant hybrids." Mr. Ronning described "electric dominant hybrids" as vehicles with a battery range of about 70 miles, which use 1/6th of the petroleum of a conventional vehicle and operate with zero emissions in urban and local use. Such vehicles, Mr. Ronning argues, are superior in terms of energy independence, environmental benefits and technological feasibility.

The Department of Energy (DOE) submitted comments generally applicable to driving range. DOE noted that it has not specified a minimum driving range in its HEV development programs. In DOE's view, electric and conventional power sources employed in HEVs are intended to complement each other and are often not sized to propel the vehicle alone. Batteries pose specific difficulties in that they are heavy and take up large amounts of space. Many HEV designs, according to DOE, use smaller batteries that are ill suited to the task of providing propulsion. DOE cautioned that setting a minimum driving range at too high a level will force the use of larger batteries and limit the development of alternative technologies.

DOE suggested that, if the legislative scheme made such an option possible, NHTSA should establish a sliding scale that would set the minimum driving range in inverse proportion to the fuel economy of an HEV when compared to that of conventional vehicles. Under this scheme, an HEV with fuel economy three times greater than a conventional vehicle achieving 26.5 mpg would only be required to have a range of 5 miles on electric power alone. HEVs with fuel economy equivalent to conventional vehicles would be required to have a range of 35 miles. In DOE's view, such a sliding scale would reward those designs that achieved the highest fuel economy while ensuring that maximum flexibility be provided to HEV developers.

DOE also urged NHTSA to consider data showing that a range of 10 miles would satisfy 77 percent of daily vehicle trips in setting a driving range. Thus, according to DOE, a modest driving range would satisfy consumer needs.

DOE further suggested that NHTSA consider an alternative test procedure to the EPA cycle and suggested that the draft Society of Automotive Engineers (SAE) Hybrid Vehicle Test Procedure (SAE J1711) be used as a guide to developing such a test. The use of the electric-only mode of operation for specifying driving range and measuring fuel economy, in DOE's view, operates on the assumption that an HEV must "be charged from the grid" or derive its electrical energy from a source other than its conventional petroleum fuel engine to qualify for the incentives contained in Chapter 329. DOE believes that HEVs may not have this capability and also may be designed so that the operator may not have control over the mode of operation. Therefore, DOE stated, a fuel economy test using a single mode of operation may be wholly inappropriate for HEVs.

II. Analysis of Comments

Hybrid electric vehicle technology is still in its infancy. Developers of these vehicles are pursuing a variety of configurations, including vehicles which use both conventional and alternative fuels simultaneously. A number of HEV designs include vehicles in which the alternative fuel used (electricity) is generated solely by the petroleum fueled engine incorporated into the vehicle. These hybrid designs are not intended to rely on the alternative fuel to propel the vehicle for an appreciable distance or under all anticipated driving conditions. Instead, the alternative fuel propulsion system is designed to either supplement the conventional fuel powerplant or to work in conjunction with that powerplant when demand for energy is relatively high.

Two commenters, DOE and AAMA, indicated that the selection of an electric-only mode of operation for determining driving range is inconsistent with current developments in HEV technology. DOE noted that HEVs may not even provide operators with the option of selecting a particular power source. Instead, the vehicle itself will determine when to use its conventional or electric propulsion system. AAMA argued that a dual fueled automobile that uses electricity as one of its fuels should not be restricted by the requirement that it be capable of operating only on electricity in order to qualify for CAFE incentives.

The comments of DOE and AAMA raise the issue of whether an HEV that uses electricity and petroleum fuel simultaneously can qualify for CAFE incentives under the Cost Savings Act and the subsequent EPACT amendments. Section 32901(a)(2) defines an alternative fuel vehicle as either a dedicated vehicle or a dual fueled vehicle. Dedicated vehicles are defined in Section 32901(a)(7) as automobiles that operate only on an alternative fuel. Dual fueled vehicles are defined in Section 32901(a)(8) as follows:

> (8) "dual fueled automobile" means an automobile that—
>
> (A) is capable of operating on alternative fuel and on gasoline or diesel fuel;
>
> (B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alternative fuel as when operating on gasoline or diesel fuel;
>
> (C) for model years 1993–1995 for an automobile capable of operating on a mixture of an alternative fuel and gasoline or diesel fuel and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alternative fuel and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and
>
> (D) for a passenger automobile, meets or exceeds the minimum driving range prescribed under subsection (c) of this section.

Examination of this Section compels the conclusion that Congress intended that, for the purposes of Chapter 329's incentive program, dual fueled vehicles are, with one limited exception, vehicles operating either on an alternative fuel or a petroleum fuel but not on a mixture of the two. Subsection (A) describes a vehicle that operates on a petroleum or alternative fuel but not a mixture of both. Subsection (B) limits dual fuel vehicles to those vehicles that offer equal or superior energy efficiency when operating on an alternative fuel, thereby indicating that the two modes of operation are exclusive. Subsection (C) indicates that vehicles operating on a mixture of alternative fuel and gasoline or diesel fuel may only be considered as dual fueled automobiles for the 1993–1995 model years (unless extended by the Administrator of the Environmental Protection Agency to the 2004 model year) when such vehicles offer equal or superior energy efficiency when operating on a 50/50 mix of alternative fuel and diesel fuel or gasoline. Therefore, the statutory text of Section 32901(A)(8) indicates that Congress did not intend to make incentives available for dual fueled vehicles operating on a mix of fuels except under the limited circumstances enunciated in 32901(a)(8)(C). As the period set by Congress in which such vehicles could be considered as dual fueled vehicles has expired and the EPA has not extended this period by regulation, NHTSA concludes that under Chapter 329 a dual fueled vehicle is one that is capable of operating on either an alternative fuel or gasoline or diesel fuel but not a mixture of both simultaneously.

HEVs that are not capable of operating on electric power alone cannot, under Chapter 329, be said to be dual fueled vehicles. Similarly, HEVs capable of operation in an electric-only mode but incapable of recharging their batteries from an external source are not dual fueled automobiles; a vehicle which is entirely dependent on a petroleum fuel for its motive power, regardless of whether electricity is used in the powertrain, is powered by petroleum. NHTSA concludes, therefore, that in order to qualify as a dual fueled vehicle under Chapter 329 an HEV must be capable of electric-only operation and must have the capability to recharge its batteries from an external source.

Sections 32901(c) and 32905 of Chapter 329 require the Secretary of Transportation to establish a minimum driving range for dual fueled passenger automobiles when operating on an alternative fuel. NHTSA does not agree with those commenters who suggest that the minimum driving range for HEV's, when operating on electricity alone, be set at zero. If the agency were to establish a minimum driving range of zero miles for HEV's, as some commenters suggest, such a driving range would be inconsistent with the Congressional command that a minimum driving range be established. While the EPACT amendments expressly relieved electric powered dual fueled passenger automobiles from the 200 mile minimum range requirement imposed on other dual fuel passenger automobiles, Congress did not eliminate the range requirement altogether. Setting a minimum driving range of zero miles would result in a range requirement having no practical effect. Furthermore, as discussed in the NPRM, an HEV must be capable of some meaningful operation in the electric-only mode to allow measurement of its fuel economy when operating on that alternative fuel.

Mercedes argued against NHTSA's tentative conclusion that the proposed 17.7 mile range was compelled by sections 32904(c) and 32905. While agreeing that a combined urban/highway cycle must be used to determine the fuel economy of an HEV, Mercedes stated that section 32904(c) does not require the use of the established EPA test cycle. Noting that section 32904(c) enables the Administrator of the EPA to use an alternative procedure or procedures "that give comparable results," Mercedes suggests that manufacturers propose an alternative procedure that gives such comparable results so that HEVs need not have an electric-only range sufficient to complete one EPA driving cycle.

The agency agrees with Mercedes' contention that section 32904(c) authorizes the use of a fuel economy test other than the established EPA test cycle if such an alternative test provides comparable results. If such an alternative test existed, it might well be used to measure the fuel economy of HEVs. However, despite the suggestions made by DOE and Mercedes, the agency has determined that there is no test that is as yet sufficiently developed to measure the fuel economy of HEV's and provide comparable results to the existing EPA test. The (SAE) Hybrid Vehicle Test Procedure (SAE J1711) has been under development for several years and remains in draft form. The SAE procedure, as it presently exists, relies on the current EPA urban and highway cycles and proposes an electric-only mode of operation as one test option. As Chapter 329 requires that HEVs must be dual fueled vehicles capable of operation in an electric-only mode to qualify for CAFE incentives, use of the SAE procedure would not eliminate the need for a passsenger automobile to travel a minimum distance—equivalent to one EPA urban cycle and one EPA highway cycle or both—to determine its electric-only fuel economy.

Mercedes also suggests that in the event that HEVs are unable to complete the EPA driving cycle that manufacturers be afforded the opportunity to propose an alternative procedure that gives comparable results. NHTSA concludes that any test procedure for measuring HEV fuel economy must be uniform and applicable to all manufacturers. The SAE test, which is being developed but is not yet final, is an example of a uniform industry standard. Such a test might possess the uniformity required to serve as a standard for all vehicles in a certain class. The SAE test or any other industry developed test would not, however, necessarily be appropriate for measuring fuel economy for the purposes of the CAFE incentive program. Lastly, section 32904(c) directs that fuel economy testing be conducted by the EPA Administrator rather than the prospective beneficiaries of the incentive program.

The lack of an acceptable test procedure for determining electric-only fuel economy precludes consideration of the sliding scale minimum driving range suggested by DOE. Regardless of whether NHTSA has the authority to set the minimum driving range for HEVs along a range of values determined by the vehicle's measured fuel economy, the lowest minimum range suggested by DOE, 5 miles, would not be sufficient to allow fuel economy testing in the electric-only mode of operation.

NHTSA has concluded that the lack of any available test procedure other than the existing EPA urban/highway test requires that the minimum driving range for HEV's be set at a distance that will allow use of this test. In its comments, AAMA suggested that if a range other than zero miles is set, an HEV with an electric-only range should be required to have a range equivalent to 7.5 miles while traveling on the EPA urban cycle and 10.2 miles while traveling on the EPA highway cycle, with charging allowed prior to each test. NHTSA concurs with this view. Setting the minimum driving range at 7.5 miles, or one EPA urban cycle, for urban driving and 10.2 miles, or one EPA highway cycle, for highway driving, while allowing the vehicle to recharge prior to attempting each test, will allow manufacturers maximum flexibility in developing HEV's while satisfying the considerations set forth in section 32901(c)(3).

In the agency's view, setting a minimum driving range at 7.5 miles for urban use and 10.2 miles for highway use will provide incentives for manufacturers to develop HEVs while ensuring that these vehicles will meet the basic needs of consumers. According to the 1990 National Personal Transportation Survey (NPTS), a 6 to 10 mile range would be adequate for 77% of daily vehicle trips and 32% of daily vehicle miles traveled. Therefore, even with a range of 10.2 miles or 7.5 miles when operating on electricity alone, an HEV would be adequate for most of the daily vehicle trips taken by consumers.

III. Final Rule

The agency is modifying its earlier proposal to establish a minimum driving range of 17.7 miles for HEVs when operating on electricity alone. A review of the comments submitted in response to that proposal indicates that HEV technology has not yet reached a point where vehicles can attain driving ranges even remotely comparable to those attainable by other alternative fuel vehicles. The agency is, however, rejecting the arguments of those commenters seeking to have the minimum driving range set at zero miles.

NHTSA notes that HEV's currently in development and in production outside the United States often use electric and internal combustion power either simultaneously or alone depending on specific needs at certain points while the vehicle is being driven. In these HEVs, the driver does not control when a particular power source is used nor is the vehicle intended to be operated on one power source alone for extended periods during normal operation.

The incentives contained in Chapter 329 to encourage the development of dual fuel vehicles are not applicable to these HEVs. The language and structure of the incentive provisions in Chapter 329 make it clear that the incentive program was intended to foster the development of vehicles that may operate on petroleum or an alternative fuel depending on the mode selected by the operator. There is no indication in the legislative history of the Alternative Motor Fuels Act that Congress at any time considered applying the Act to a vehicle that operates on petroleum at all times rather than being able to operate on the alternate fuel alone.

While HEVs, regardless of their configuration, appear to further many of the goals of the incentive program, the absence of provisions applicable to HEV's under the existing statutory scheme obliges NHTSA to restrict the availability of those incentives to vehicles that are capable of operating independently on electric power that is not generated by an on-board petroleum fueled engine. As the incentive program requires that the vehicle's fuel economy while operating on an alternative fuel must be measured by use of the EPA test procedure or its equivalent, any vehicle qualifying for the incentive program must be capable of having its fuel economy measured while operating on an alternative fuel. NHTSA has concluded that at this time there is no fuel economy test available for measuring the fuel economy of HEV's while operating on electricity alone other than the existing EPA test cycle. Completion of this cycle normally requires that a vehicle travel two circuits totaling 17.7 miles—7.5 miles in an urban portion and 10.2 miles in the highway portion.

In the January 3, 1997, NPRM, the agency proposed that the minimum driving range for HEVs be set at 17.7 miles—the equivalent of one urban and one highway cycle. NHTSA has concluded, based on the comments submitted in response to the NPRM and the state of HEV development at this time, that this 17.7 mile range requirement is too stringent. Accordingly the agency has concluded that the driving range be set at the absolute minimum possible under existing test procedures by specifying a range that allows HEVs to be fully charged prior to completion of one EPA urban or highway cycle. Therefore, the minimum driving range established by this final rule is 7.5 miles while traveling on the EPA urban cycle and 10.2 miles while traveling on the EPA highway cycle, with charging allowed prior to each test.

This final rule also establishes a petition process by which manufacturers may apply for exemption from the minimum range requirement. These provisions remain unchanged from those contained in the agency's earlier proposal.

IV. Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this rulemaking action and has determined that the action is not "significant" under the Department of Transportation's regulatory policies and procedures. In this final rule, the agency is setting the minimum driving range for all dual fueled electric passenger vehicles at one EPA urban cycle after recharging and one EPA highway cycle after recharging. None of these changes will result in an additional burden on manufacturers. They do not impose any mandatory requirements but implement statutory incentives to encourage the manufacture of alternative fuel vehicles. For these reasons, NHTSA believes that any impacts on manufacturers are so minimal as not to warrant preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires each agency to evaluate the potential effects of a final rule on small businesses. Establishment of a minimum driving range for HEVs affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or less.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market an HEV. For this reason, NHTSA believes that this final rule would not have a significant impact on any small business. Moreover, production of passenger automobiles with the minimum ranges that are established by this regulation would be voluntarily undertaken in order to achieve beneficial CAFE treatment of those vehicles. Therefore, no significant costs are imposed on any manufacturers or other small entities.

C. National Environmental Policy Act.

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment. The minimum driving range established for HEVs in this rule is set at the lowest level possible to accommodate the present state of HEV technology and the existing statutory framework. It is anticipated that this may encourage continued development of HEVs. HEVs are, however, not being produced or imported at this time and it is not possible to determine the degree to which the establishment of the minimum driving range in this final rule will have on future production of HEVs.

D. Paperwork Reduction Act

The procedures in this final rule for passenger automobile manufacturers to petition for lower driving ranges are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 538 will be submitted to the OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Executive Order 12612 (Federalism) and Unfunded Mandates Act

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

In issuing this final rule establishing a minimum driving range for HEVs, the agency notes, for the purposes of the Unfunded Mandates Act, that this rule facilitates the granting of incentives to manufacturers choosing to produce qualified HEVs. The rule does not impose any costs.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 538

Administrative practice and procedure, Fuel economy, Motor vehicles, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, amend part 538 of title 49 of the Code of Federal Regulations as follows:

PART 538—MANUFACTURING INCENTIVES FOR ALTERNATIVE FUEL VEHICLES

1. The authority citation for part 538 continues to read:

Authority: 49 U.S.C. 32901, 32905, and 32906; delegation of authority at 49 CFR 1.50.

2. Amend § 538.5 by adding paragraph (b) to read as follows:

§ 538.5 Minimum driving range.

* * * * *

(b) The minimum driving range that a passenger automobile using electricity as an alternative fuel must have in order to be treated as a dual fueled automobile pursuant to 49 U.S.C. 32901(c) is 7.5 miles on its nominal storage capacity of electricity when operated on the EPA urban test cycle and 10.2 miles on its nominal storage capacity of electricity when operated on the EPA highway test cycle.

3. Revise § 538.6 to read as follows:

§ 538.6 Measurement of driving range.

The driving range of a passenger automobile model type not using electricity as an alternative fuel is determined by multiplying the combined EPA urban/highway fuel economy rating when operating on the alternative fuel, by the nominal usable fuel tank capacity (in gallons), of the fuel tank containing the alternative fuel. The combined EPA urban/highway fuel economy rating is the value determined by the procedures established by the Administrator of the EPA under 49 U.S.C. 32904 and set forth in 40 CFR part 600. The driving range of a passenger automobile model type using electricity as an alternative fuel is determined by operating the vehicle in the electric-only mode of operation through the EPA urban cycle on its nominal storage capacity of electricity and the EPA highway cycle on its nominal storage capacity of electricity. Passenger automobile types using electricity as an alternative fuel that have completed the EPA urban cycle after recharging and the EPA highway cycle after recharging shall be deemed to have met the minimum range requirement.

4. Add § 538.7 to read as follows:

§ 538.7 Petitions for reduction of minimum driving range.

(a) A manufacturer of a model type of passenger automobile capable of operating on both electricity and either gasoline or diesel fuel may petition for a reduced minimum driving range for that model type in accordance with paragraphs (b) and (c) of this section.

(b) Each petition shall:

(1) Be addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590.

(2) Be submitted not later than the beginning of the first model year in which the petitioner seeks to have the model type treated as an electric dual fueled automobile.

(3) Be written in the English language.

(4) State the full name, address, and title of the official responsible for preparing the petition, and the name and address of the petitioner.

(5) Set forth in full data, views, and arguments of the petitioner, including the information and data specified in paragraph (c) of this section, and the calculations and analyses used to develop that information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition.

(6) Specify and segregate any part of the information and data submitted under this section that the petitioner wishes to have withheld from public disclosure in accordance with part 512 of this chapter.

(c) Each petitioner shall include the following information in its petition:

(1) Identification of the model type or types for which a lower driving range is sought under this section.

(2) For each model type identified in accordance with paragraph (c)(1) of this section:

(i) The driving range sought for that model type.

(ii) The number of years for which that driving range is sought.

(iii) A description of the model type, including car line designation, engine displacement and type, electric storage capacity, transmission type, and average fuel economy when operating on:

(A) Electricity; and

(B) Gasoline or diesel fuel.

(iv) An explanation of why the petitioner cannot modify the model type so as to meet the generally applicable minimum range, including the steps taken by the petitioner to improve the minimum range of the vehicle, as well as additional steps that are technologically feasible, but have not been taken. The costs to the petitioner of taking these additional steps shall be included.

(3) A discussion of why granting the petition would be consistent with the following factors:

(i) The purposes of 49 U.S.C. chapter 329, including encouraging the development and widespread use of electricity as a transportation fuel by consumers, and the production of passenger automobiles capable of being operated on both electricity and gasoline/diesel fuel;

(ii) Consumer acceptability;

(iii) Economic practicability;

(iv) Technology;

(v) Environmental impact;

(vi) Safety;

(vii) Driveability; and

(viii) Performance.

(d) If a petition is found not to contain the information required by this section, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further consideration until the required information is received.

(e) The Administrator may request the petitioner to provide information in addition to that required by this section.

(f) The Administrator publishes in the **Federal Register** a notice of receipt for each petition containing the information required by this section. Any interested person may submit written comments regarding the petition.

(g) In reaching a determination on a petition submitted under this section, the Administrator takes into account:

(1) The purposes of 49 U.S.C. chapter 329, including encouraging the development and widespread use of alternative fuels as transportation fuels by consumers, and the production of alternative fuel powered motor vehicles;

(2) Consumer acceptability;

(3) Economic practicability;

(4) Technology;

(5) Environmental impact;

(6) Safety;

(7) Driveability; and

(8) Performance.

(h) If the Administrator grants the petition, the petitioner is notified in writing, specifying the reduced minimum driving range, and specifying the model years for which the reduced driving range applies. The Administrator also publishes a notice of the grant of the petition in the **Federal Register** and the reasons for the grant.

(i) If the Administrator denies the petition, the petitioner is notified in writing. The Administrator also publishes a notice of the denial of the petition in the **Federal Register** and the reasons for the denial.

Issued on: November 24, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–31779 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 960318084–8274–04; I.D. 071596C]

RIN 0648–AG55

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

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SUMMARY: NMFS, upon application from the U.S. Department of the Navy (U.S. Navy), issues regulations to govern the unintentional take of a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast. Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy's proposed activity, such authorization is provided by 10 U.S.C. 2366, and is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective May 1 through September 30 of any single year between the years 2000 and 2004, inclusive.

ADDRESSES: Copies of the application, Biological Opinion, Incidental Take Statement (ITS) and a list of the references used in this document may be obtained by writing to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed under the section **FOR FURTHER INFORMATION CONTACT**.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the preceding address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

A copy of the final environmental impact statement (FEIS) may be obtained from Will Sloger, U.S. Navy, at (803) 820–5797.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for a period of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of these species for subsistence uses and that regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such a taking.

Summary of Request

On June 7, 1996, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take marine mammals incidental to shock testing the USS SEAWOLF submarine off the U.S. Atlantic coast in 1997. The USS SEAWOLF is the first of a new class of submarines being acquired by the Navy. In accordance with 10 U.S.C. 2366, each new class of ships constructed for the Navy cannot proceed beyond initial production until realistic survivability testing of the ship and its components are completed. Realistic survivability testing means testing for vulnerability in combat by firing munitions likely to be encountered in combat. This testing and assessment are commonly referred to as "Live Fire Test & Evaluation (LFT&E)." Because realistic testing by detonating torpedoes or mines against a ship's hull could result in the loss of a multi-billion dollar Navy asset, the Navy has established an LFT&E program consisting of computer modeling, component and surrogate testing, and shock testing the entire ship. Together, these components complete the survivability testing as required by 10 U.S.C. 2366.

The shock test component of LFT&E is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. While computer modeling and laboratory testing provide useful information, they cannot substitute for shock testing under realistic, offshore conditions. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The Navy proposes to shock test the USS SEAWOLF by detonating a single 4,536–kg (10,000–lb) explosive charge near the submarine once per week over a 5-week period between May 1 and September 30, 2000, off Mayport, FL, although scheduling delays may postpone the detonation into a future year. Detonations would occur 30 m (100 ft) below the ocean surface in a water depth of 152 m (500 ft). The USS SEAWOLF would be underway at a depth of 20 m (65 ft) at the time of the test. For each test, the submarine would move closer to the explosive so the submarine would experience a more severe shock.

The Mayport site is located on the continental shelf off Georgia and northeast Florida. The Mayport site is the U.S. Navy's preferred location for the shock trial because of an observed low abundance of marine mammals at that site. However, because there is still a potential impact to marine mammals, the Navy has requested NMFS to grant an exemption under section 101(a)(5)(A) of the MMPA that would authorize the incidental taking and issue regulations governing the take.

Comments

On August 2, 1996 (61 FR 40377), NMFS published a proposed rule to issue an incidental small take exemption under the MMPA to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast in 1997. A correction notice on the proposed regulations was published on August 23, 1996 (61 FR 43517). During the 45-day comment period, NMFS received 5 letters (Marine Mammal Commission (MMC), Humane Society of the United States (HSUS), Defenders of Wildlife (DoW), People for the Ethical Treatment of Animals (PETA) and one private citizen) commenting on the proposed rule. Comments contained in these letters are addressed under the Comments and Responses section. Comments regarding issues other than the contents of the proposed rule have been addressed in the FEIS prepared by the U.S. Navy.

On March 11, 1997, the U.S. Navy submitted a petition to NMFS amending its June 7, 1996, application and requesting a modification to the proposed regulations for an incidental small take exemption under the MMPA to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast in 1997. The petition states that the U.S. Navy, for reasons unrelated to the environment, will not be able to conduct the shock trial from April 1, 1997, through September 30, 1997, and requests that the period of effectiveness for the regulations and the shock trial be extended until 1999. No modification to the proposed seasonal restriction (which would prohibit any marine mammal takings from October 1 through March 31 at the Norfolk site and from October 1 through April 30 at the Mayport site) to protect marine mammal and sea turtle species is requested. Because section 101(a)(5)(A) of the MMPA provides for small take authorizations to be effective for periods up to 5 years, NMFS believed that granting this request to modify the effective date of the proposed rule was warranted, the requested modification was proposed on April 22, 1997 (62 FR 19553). During the 30-day comment period, no comments were received. Subsequent to that action, the U.S. Navy informed NMFS that the shock test would be delayed until the year 2000 or beyond.

Comments and Responses

General Concerns

Comment 1: PETA believes that accepting the proposed rule would set a dangerous precedent for other entities to apply for similar legal exceptions and would make a mockery of current measures which are designed to protect marine mammals from harm.

Response: NMFS disagrees. The MMPA provides authority under section 101(a)(5)(A) for the taking of small numbers of marine mammals while conducting lawful activities provided the taking is having no more than a negligible impact on marine mammals and provided regulations are prescribed setting forth permissible methods of taking and other means of effecting the least practicable impact on marine mammal species and their habitat. The U.S. Navy first applied for a small take authorization on May 13, 1993, under section 101(a)(5)(A) of the MMPA. That application resulted in a final authorization to incidentally take small numbers of marine mammals during the shock trial of the USS JOHN PAUL JONES in 1994 (59 FR 5111, February 3, 1994). Monitoring that shock trial indicated that no marine mammals were seriously injured or killed and only a few dolphins were potentially harassed. The small take application for the incidental take of marine mammals for the USS SEAWOLF follows, and improves upon, the mitigation and monitoring protocols established during the earlier shock trial.

Comment 2: Three commenters (HSUS, PETA, citizen) recommended NMFS adopt the no action alternative and not issue a small take authorization to the U.S. Navy.

Response: NMFS wishes to make clear that the Navy conducts ship shock tests under the authority of 10 U.S.C. 2366. The Navy does not require NMFS authorization to conduct these tests. However, under the MMPA, the taking of marine mammals is prohibited unless authorized by exemption or permit. Since there is a possibility that marine mammals may be unintentionally taken (harassed, injured or killed) incidental to the ship shock trial, the Navy applied to NMFS for a small take authorization under section 101(a)(5)(A) of the MMPA. Thus, it is the taking of marine mammals incidental to the Navy's ship shock tests that NMFS is authorizing, not the shock trial itself. Unless scientific evidence contradicts NMFS' preliminary determination (61 FR 40377, August 2, 1996) that the ship shock trial is likely to result in only small numbers of marine mammals being taken and that this taking would have no more than a negligible impact on marine mammal stocks (provided the recommended mitigation and monitoring are conducted), a small take authorization is appropriate.

Comment 3: DoW questions the need for shock testing with the advent of computer modeling and sophisticated model simulations. With billions of dollars already spent on engineering and design for the vessel, this mode of testing seems dated. If testing is necessary, then DoW recommends the Navy moderate the size of the charge rather than the distance (between the charge and the submarine). DoW also recommends the Navy should investigate the use of "shaped" charges similar to those used for building demolition to direct more of the shockwave towards the vessel and less into the surrounding environment.

Response: According to the Navy, data from previous shock tests and wartime experience have been incorporated into computer models which are used to help predict the survivability of SEAWOLF-class submarines. Modeling however, is only one of three components of the SEAWOLF LFT&E program which together provide the data necessary to assess the SEAWOLF's survivability. The components are computer modeling and analysis, component and surrogate testing, and a shock test of the entire ship. Computer modeling and component testing on machines or in surrogates do not provide adequate information to assess the survivability of the submarine in accordance with 10 U.S.C. 2366. In addition, combat experience has demonstrated that computer models and component testing, while helpful, cannot predict the broad range of complex failure mechanisms which could occur inside sophisticated electronic components or complex mechanical systems.

Unfortunately, smaller charges and shaped charges do not energize the entire submarine at the desired level of shock intensity. According to the Navy, the use of smaller charges would require many more detonations to excite the entire submarine to the desired level.

Comment 4: DoW believes NMFS did not provide adequate notice of public meetings and opportunity for hearings. In addition, they believe that the title published in the *Federal Register* was insufficiently detailed to elicit response. A secondary, descriptive title would have been very helpful.

Response: The U.S. Navy's proposal to shock test the USS SEAWOLF off the U.S. East Coast has been noted in the *Federal Register* and the following newspapers on at least three occasions: Washington Post, Beaches Leader, Florida Times Union, Southeastern Georgian and Virginian Pilot. NMFS and the Navy first notified the public and held scoping meetings in Silver Spring, MD, Norfolk, VA and Atlantic Beach, FL in March, 1995. These meetings were announced in the above newspapers and in the *Federal Register*. The notice of availability of the draft environmental impact statement (DEIS) was published by the Environmental Protection Agency in the *Federal Register* on June 14, 1996 (61 FR 30233); a copy of the DEIS was mailed to DoW and a number of other interested organizations. The publication of the proposed rule by NMFS on August 2, 1996 (61 FR 40377) announced the schedule for public meetings under the National Environmental Policy Act (NEPA) and the MMPA. The comment period on the DEIS was reopened (61 FR 40204, August 1, 1996) until September 17, 1996 to incorporate the comments expected from these meetings. A widely distributed press release on the Navy proposal was also issued on August 2, 1996, by NOAA, two weeks prior to public hearings in mid-August, 1996.

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NOAA press releases are also available to the public through the NOAA Homepage. As a result, NMFS believes the general public has had ample opportunity to review and prepare comments prior to the MMPA/NEPA public meetings and an additional period of time afterwards to submit written comments.

The title of the proposed action published in the *Federal Register* is limited to the title of the codified part (Taking and Importing of Marine Mammals) and the subpart (Taking Marine Mammals Incidental to Naval Activities). Secondary descriptive titles are not authorized by the Office of the Federal Register.

Comment 5: DoW finds the site selection for the shock trial to be problematic. They note that the coastal areas in Florida, particularly those within the euphotic zone are some of the most productive biologically. Any detonations of the magnitude described in the notice would therefore not only affect marine mammals, but could have devastating effects on local ecosystems and food chains. This could have profound implications on the eastern recreational and commercial fisheries.

Response: The environmental impacts of the shock trial on the Florida east coast ecosystems have been described in the DEIS prepared as part of this action. Readers are encouraged to refer to that document or the recently released FEIS for an analysis of environmental and economic impacts (see ADDRESSES).

Comment 6: The MMC recommends that NMFS carefully examine the data, assumptions, and methods used to estimate the numbers of animals that might be killed, injured or harassed to ensure that the estimates appropriately reflect any possible sources of error or bias. Recognizing that if the take is greater than authorized the Navy would be required to stop testing before completion, even though the effects on marine mammal distribution, abundance and productivity would still be negligible, the MMC further recommends that the number of animals authorized to be taken be increased if, after further examination, it is determined that (1) the present estimates do not adequately reflect possible sources of error and bias and (2) the possible effects on the distribution, size, and productivity of the potentially affected species and population stocks would remain negligible.

Response: NMFS believes that the U.S. Navy used the best scientific information available in making its assessment of the potential impact on marine mammals from the detonation of 5 explosive charges. In addition to using documented sources (e.g., CETAP, stranding records), the Navy conducted monthly aerial marine mammal surveys of the two preferred geographic areas for a period of 6 months. This survey was repeated at Mayport in 1997. The resulting estimate of the number of marine mammals that might potentially be harassed, injured or killed is provided in Tables 4–5 and 4–6 of the FEIS. It should be noted that the U.S. Navy reviewed this concern as part of its NEPA review, and, for reasons stated in response to Comment 7, these take levels have been modified from the proposed rule and DEIS. A more detailed response to this concern can be found in the FEIS (please refer to comment H4 in Appendix H). Also, a complete description of the methodology used by the Navy, and adopted by NMFS for this exercise, can be found in the FEIS.

For discussion on the comment that the Navy would be required to stop testing before completion if the take is greater than authorized, please refer to comment 12.

Comment 7: The MMC notes that the Navy has introduced a new criterion—acoustic discomfort—for determining how and how many animals may be harassed by anthropogenic sounds in the marine environment. The MMC therefore recommends that NMFS take such steps as necessary to ensure that (1) the estimates of the numbers of marine mammals that potentially could be taken by harassment are in fact, overestimates, rather than underestimates; and (2) the planned monitoring program is adequate to verify that any disruption of vital behavior is momentary and that no more than the authorized number of animals are harassed.

Response: As explained in detail in the FEIS, previous determinations for explosives were based on peak pressure. However, several sources recognize that peak pressure may not be the best basis for predicting the effects of impulsive noise, such as underwater explosives, on marine mammals (e.g., Richardson *et al.* 1995). In terms of mammal hearing, a better measure may be total energy received in 1/3–octave frequency bands (i.e., the approximate filter bandwidth of the hearing system) within the integration time of the ear. As pulsed sound sources with differing peak pressures could deliver the same energy over a certain time period, the acoustic harassment criterion can be improved over the standard 160 dB (re 1 μPa @ 1 m) used previously during shock testing the USS JOHN PAUL JONES and other explosive detonation events.

The 160–dB criterion is based on a behavioral response which may be of questionable biological significance in the context of a *single* acoustic pulse. In the case of a continuous source (e.g., industrial noise) or repeated transient sources (e.g., seismic pulses), avoidance by a marine mammal could result in changes to migration, feeding, or reproduction patterns that could affect the energetics of both individuals and populations. However, in the context of a single, brief pulse from a detonation, a momentary startle response causing an animal to dive or momentarily change course or speed is not likely to affect either the individual or the population. Such a minor response is well within the range of normal behaviors that an animal might exhibit at any time in response to other animals or other environmental stimuli. As a result, NMFS does not normally consider these simple, singular, reflex actions (e.g., alert, startle, dive response to a stimulus) by marine mammals to be sufficient on their own to warrant an incidental harassment authorization. On the other hand, NMFS does not concur with statements made by the Navy in response to a different rulemaking that the term "harassment" in the MMPA should be limited to changes in behavioral patterns of a magnitude that reflect an adverse reaction on the part of the animals such as intense fear or pain or behavior that is likely to harm the animal or its offspring. By statutory definition, the *de minimus* level (for Level B harassment) should be less intrusive on the animal than suggested by the Navy.

Therefore, the information provided in the FEIS supports the Navy's selection of temporary threshold shift (TTS) as a harrasment criterion for shock testing the USS SEAWOLF. NMFS concurs. TTS is being used as a measure of quantifiable harassment, as TTS may also result in behavior reflecting an adverse reaction, and TTS meets the definition of both Level A and Level B harassment definitions found in the MMPA. On a cellular level, TTS could be considered a very slight "injury" in the sense of damage to hair cells in the ear and because TTS is temporary hearing loss, it could lead to a temporary disruption of behavioral patterns as specified in the statutory definition of Level B harassment. For additional information please refer to the FEIS, in particular, Appendix E. Based upon information provided in Appendix E, a dual criterion for acoustic harassment has been developed: (1) an energy-based TTS criterion of 182 dB re 1 uPa^2-sec derived from experiments with bottlenose dolphins (Ridgway *et al.* (1997), and (2) 12 lbs/in² (psi) peak pressure cited by Ketten (1995) as associated with a "safe outer limit for the 10,000 lb charge for minimal, recoverable auditory trauma" (i.e., TTS). The harassment range therefore is the minimum distance at which neither criterion is exceeded. Using the 182 dB (energy) criterion separate harassment ranges were calculated for odontocetes and mysticetes based on their differing sensitivity to low frequencies. For the Mayport area, the harassment range is predicted to be 15.7 km (8.5 nautical miles (nm)) for odontocetes and 23.5 km (12.7 nm) for mysticetes. Estimated take levels based upon the above criterion for Mayport can be found in Tables 4–5 and 4–6 of the FEIS. For a single detonation at Mayport about 358 marine mammals could be harassed; for five detonations, 1,788 animals could be harassed. Because the U.S. Navy will seek a site for detonation that has the lowest real-time abundance of marine mammals, these numbers should be regarded as upper limits. The species most likely affected at Mayport are the bottlenose dolphin, Risso's dolphin, Atlantic spotted dolphin, and the *Stenella* spp.

NMFS has concerns that focusing monitoring efforts on the possibility that there may be more than a momentary disturbance of one or more marine mammals located either inside or outside the acoustic harassment zone would result in diminished monitoring within the safety zone where, with lowered detection effort, marine mammals might be seriously injured or killed. Because aircraft safety precludes more than one survey aircraft being within the area at any one time (a second aircraft will be held in reserve ashore), and because the survey aircraft will operate (after completion of aerial monitoring) in a circular holding pattern 4.6 km (2.5 nm) from the site to ensure no marine mammals enter the safety zone, there will be limited opportunity to observe marine mammal behavior at the instant of detonation. Furthermore, it is unclear whether stationing an aircraft in the area beyond the acoustic harassment zone would provide meaningful scientific results. Based on current scientific information, the low frequency of the explosive would potentially affect only marine mammals with the ability to detect low frequency sounds, mainly mysticete and sperm whales. Other than sperm whales, these species are not expected off Mayport, FL during the summer. To accommodate MMC concerns however, the Navy plans to locate and monitor any marine mammals, including behavioral changes, found inside the acoustic harassment zone for a period of 48 hours post-detonation, as detailed in the FEIS.

Comment 8: The MMC recommends NMFS (1) consider whether monitoring and comparing marine mammal vocalizations before and after detonation of charges would provide a reasonable means for validating the apparent assumption that any disruption of behavior beyond the "acoustic discomfort" range will be momentary; and (2) if judged reasonable, require that the monitoring program be reviewed accordingly.

Response: The Marine Mammal Acoustic Tracking System will be employed during the ship shock trial to acoustically detect marine mammals that are within the safety zone to avoid injury or death of these animals as a result of the detonation. Acoustic monitoring will therefore focus primarily on marine mammals vocalizing within the safety and buffer zone and secondarily on animals outside those zones prior to detonation. Unfortunately, for security reasons, recordings of vocalizing marine mammals after detonation cannot be made, either inside or outside the acoustic harassment zone. Therefore, the suggested experiment cannot be conducted.

Comment 9: HSUS recommends that post-detonation monitoring continue for a period of time no less than 4 weeks after the final detonation in order to account for animals who may not experience an immediately observable negative impact.

Response: NMFS believes that 4-week post-detonation surveys would be an unnecessary imposition on the U.S. Navy that would not provide the public with meaningful information on the impact of explosions on marine mammal populations. First, NMFS believes that any marine mammals that might be killed by a detonation and sink would resurface within 1 week of their demise. Second, marine mammals that are injured might not remain in the same area of the detonations after the shock trial is completed. This would require the U.S. Navy to conduct extensive aerial and ship surveys over a large area of the East Coast to locate injured and deceased marine mammals. Finally, a cause-and-effect relationship between dead marine mammals and the ship shock trial is not likely to be evident by external examination (but see comment 10).

NMFS will require the U.S. Navy to conduct post-detonation surveys for marine mammals a minimum of 48 hours and a maximum of 1 week following each detonation. In addition, the U.S. Navy will be coordinating follow-up investigations with local stranding networks.

Comment 10: HSUS recommends that the U.S. Navy fund necropsy efforts of stranding networks for a period of one year in an attempt to account for long-term impacts that result in mortality. HSUS recommends this measure be a required element in the monitoring scheme in 50 CFR 216.165.

Response: In the Navy's FEIS, the Navy states that the stranding networks will be requested to forward tissue samples from stranded marine mammals and sea turtles to the Armed Forces Institute of Pathology (AFIP) for analysis. The U.S. Navy will fund necropsy sample analyses by the AFIP for one year following the last detonation. This recommendation has been incorporated as a monitoring requirement under 50 CFR 216.165.

Comment 11: The MMC recommends that the Letter of Authorization (LOA) make clear that the authorization is automatically revoked if marine mammals are taken in ways or numbers not authorized. The HSUS recommends that § 216.166(b) be amended to require the LOA be suspended or revoked (without prior notice or opportunity for public comment).

Response: Prior to revocation of an LOA, NMFS must satisfy the statutory notice and comment requirement of section 101(a)(5)(B). However, under section 101(a)(5)(C) of the MMPA, the notice and comment requirements do not apply prior to suspending an LOA due to emergency conditions that pose a significant risk to the well-being of the marine mammal stock. While, section 101(a)(5)(B), allows NMFS to withdraw (revoke) or "suspend for a time certain" an LOA, subsequent to notice and comment, section 101(a)(5)(C) does not waive the notice and comment requirement where NMFS seeks to withdraw the authorization. Conditions for suspension or withdrawal of an LOA are described in 50 CFR 216.106 of this part.

Comment 12: The HSUS recommends that if the incidental take limits in 50 CFR 216.161(c) are exceeded, or if more than 1 mortality or serious injury of a threatened or endangered species occurs (and this should include all affected sea turtle species as well), then the LOA should be immediately suspended or revoked. The Navy would then have to make its findings governing the SEAWOLF based on the results of the tests conducted at that time.

Response: Please see the response to comment 11. The serious injury or death of even 1 marine mammal listed under the ESA is prohibited by the regulations governing the incidental take of marine mammals during the SEAWOLF shock trial (50 CFR 216.161(c)). However, the serious injury or death of these listed species, or the taking of any marine mammal species after the harassment, injury or mortality quota(s) is (are) reached will not necessarily result in the suspension of the LOA. Suspension of an LOA will occur (1) if NMFS determines that additional takings are having, or may have, a more than negligible impact on the marine mammal stock(s); or (2) all quotas (harassment, injury and death) have been reached. Nevertheless, any taking that is in excess of the respective quota is prohibited and therefore a violation of the MMPA.

The incidental taking of sea turtles is authorized under an ITS as part of a Biological Opinion issued to the U.S. Navy under section 7 of the Endangered Species Act, not under the MMPA. Under that authority, the taking of listed species in excess of the take limits provided in the ITS (including the taking of endangered marine mammals) requires a reinitiation of consultation under section 7. Information on sea turtle incidental take levels can be found in Appendix G of the FEIS.

Comment 13: HSUS recommends that 50 CFR 216.163(c) only apply if the take is within the limits specified in 50 CFR 216.161(c).

Response: While 50 CFR 216.163 of the proposed rule did not contain a paragraph (c), the incidental take authority provided in § 216.163(a) applies until all the quotas contained in § 216.161(c) are reached provided all other terms, conditions, and requirements of the regulations and LOA are complied with. However, should these quotas be reached, NMFS presumes that should the U.S. Navy decide to continue their shock trial without a marine mammal authorization, the mitigation described in § 216.163(b) would be continued by the U.S. Navy to ensure additional takings did not occur.

Comment 14: The MMC recommends that the reporting requirement be revised to require that the results of the monitoring program be provided to NMFS following each of the five tests, rather than 120 days after the last test.

Response: NMFS disagrees. Submission of a written report after each test is not warranted because of the potential delay in notifying NMFS of takings, which in turn may result in a delay in the next shock test while NMFS evaluates the data and discusses its findings with the Navy. NMFS intends to require instead that the U.S. Navy notify NMFS, immediately upon discovery, that a marine mammal has been sighted by the post-detonation monitoring team, that either may have been seriously injured or killed as a result of the detonation, or is determined to have been within the safety zone at the time of detonation. If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods will be reviewed with NMFS and appropriate changes must be made, if at all possible, prior to conducting the next detonation.

Description of Habitat and Marine Mammals Affected by Shock Testing the USS SEAWOLF

A description of the U.S. Atlantic coast environment, its marine life and marine mammal abundance, distribution and habitat can be found in the draft and FEIS on this subject and is not repeated here. Additional information on Atlantic coast marine mammals can be found in Blaylock *et al.* (1995). These documents are available upon request (see **ADDRESSES**).

Summary of Potential Impacts

Potential impacts to the marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Death or injury may occur as a result of the explosive blast, and harassment may occur as a result of non-injurious physiological responses to the explosion-generated shockwave and its acoustic signature. The Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur. While the Navy does not anticipate any lethal takes would result from these detonations, theoretical calculations indicate that the Mayport site has the potential to result in up to 1 lethal take, 5 injurious takes, and 1,788 harassment takes. Detailed descriptions on the definitions of take categories; calculation of ranges for potential mortality, injury, and harassment; incidental take calculations; and impacts on marine mammal habitat can be found in the Navy application and the FEIS, which are available upon request (see **ADDRESSES**).

Summary of Proposed Mitigation and Monitoring Measures

The Navy's proposed action includes mitigation and monitoring that would minimize risk to marine mammals and sea turtles. As recently revised, the Navy would:

(1) Through pre-detonation aerial surveys, select a test area with potentially, the lowest number of marine mammals and turtles;

(2) monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if (a) any marine mammal, sea turtle, large sargassum raft or large concentration of jellyfish is visually detected within a safety zone of 3.7 km (2.0 nm), (b) any marine mammal is acoustically detected within a safety zone of 4.3 km (2.35 nm), or (c) any large fish school, or flock of seabirds is detected within a safety zone of 1.85 km (1 nm);

(3) monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if any marine mammal or sea turtle is within a buffer zone of an additional 1.85 km (1.0 nm) buffer zone, unless the marine mammals are on a course within the buffer zone that is taking them away from the 3.7 km (2.0 nm) safety zone, except that no detonation will occur if a listed marine mammal is detected within the buffer zone, and subsequently cannot be detected, until sighting and acoustic teams have searched the area for 2.5 hours (approximately 3 times the typical large whale dive duration). If a northern right whale is seen, the shot will not occur until the animal is positively reacquired outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer zone shows that no other right whales are present;

(4) delay detonation if the sea state exceeds 3 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), or the visibility is not 5.6 km (3 nm) or greater, and the ceiling is not 305 m (1,000 ft) or greater;

(5) no detonations would occur earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for pre- and post-detonation monitoring; and

(6) monitor the area for 48 hours after each detonation, and for 7 days following the last detonation, to find and treat any injured animals. If post-detonation monitoring shows that marine mammals or sea turtles were killed or injured as a result of the test, or if any marine mammals or sea turtles were observed in the safety range immediately after a detonation, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary.

Detailed descriptions of the measures for mitigation and monitoring the shock test can be found in the FEIS (chapter 5), which is available upon request (see **ADDRESSES**).

Reporting

Within 120 days of the completion of shock testing, the Navy is required to submit a final report to NMFS. This report must include the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and their populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and numbers that may have been harassed due to undetected presence within the safety zone; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Changes From the Proposed Rule

NMFS has modified the final rule as follows:

1. The regulations specify that the incidental taking is authorized for the waters off Mayport, FL (i.e., a negligible impact determination has not been made for the Norfolk, VA site).
2. Amended the incidental harassment levels to reflect the change from an acoustic discomfort criterion to one based upon TTS.
3. Harbor seals (*Phoca vitulina*) have been removed from the list of authorized species for taking since it is remote that one would be off the Florida coast in mid-summer.
4. Modified detonation postponement criteria in § 216.163 for certain marine mammals present in the buffer zone based on swimming speeds and dive durations.
5. Modified post-detonation criteria in 50 CFR 216.163(b)(3) to require that if post-test surveys determine that any marine mammals are in the safety range immediately after a detonation, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.
6. Requires the U.S. Navy to conduct during the first detonation, and provide a report on, prior to the second detonation, the attenuation of the sound pressure levels of the HBX1 explosive charge. Based upon the results of this test, the monitoring and safety zones described in the LOA, may be modified accordingly.
7. Reporting requirements have been modified to indicate that reports must be submitted to the Regional Administrator, NMFS and a new definition for "Administrator, Southeast Region" has been added.
8. A final report on results of necropsies of stranded marine mammals funded by the U.S. Navy is now required to be submitted to NMFS no later than 18 months after completion of shock testing the USS SEAWOLF.
9. Minor, nontechnical, changes have been made to the regulations for clarification and ease of understanding.

Conclusions

While NMFS believes that detonation of five 4,536–kg (10,000–lb) charges may affect some marine mammals, the latest abundance and seasonal distribution estimates indicate that such taking will have a negligible impact on the populations of marine mammals inhabiting the waters of the U.S. Atlantic Coast. NMFS concurs with the U.S. Navy that impacts can be mitigated by mandating a conservative safety range for marine mammal exclusion, incorporating aerial, shipboard, and acoustic survey monitoring efforts in the program both prior to, and after detonation of explosives, and provided detonations are not conducted whenever marine mammals are either detected within the safety zone, or may enter the safety zone at the time of detonation, or if weather and sea conditions preclude adequate aerial surveillance.

NEPA

On June 14, 1996 (61 FR 30232), the Environmental Protection Agency noted the availability for public review and comment a DEIS prepared by the U.S. Navy under NEPA on this action. NMFS is a cooperating agency as defined by the Council on Environmental Quality regulations (40 CFR 1501.6) and in this regard submitted comments on the DEIS to the U.S. Navy on October 9, 1996. The U.S. Navy responded to NMFS' concerns on December 11, 1996. NMFS has reviewed the Navy's response and the FEIS and concludes that its comments and suggestions have been satisfactorily addressed. As a result, NMFS hereby adopts the Navy FEIS as its own as provided by 40 CFR 1506.3. Because NMFS' comments have been addressed satisfactorily, NMFS finds that it is unnecessary to either prepare its own NEPA documentation nor to recirculate the Navy FEIS for additional comments.

Endangered Species Act (ESA)

NMFS has consulted with the Navy under section 7 of the ESA for this shock trial. As the required mitigation measures, as well as monitoring, will be conducted as described, the shock trial is expected to provide adequate protection for listed species. As a result, NMFS has determined that the activity, while not likely to jeopardize the continued existence of those endangered or threatened species under the jurisdiction of NMFS, may adversely affect certain sea turtle species. A copy of the Biological Opinion and Incidental Take Statement resulting from this consultation is available upon request (see **ADDRESSES**).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration, when this rule was proposed, that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. If implemented, this rule will affect only the U.S. Navy, and an undetermined number of contractors providing services related to the shock trial, including the monitoring of impacts on marine mammals. Although the U.S. Navy, by definition, is not a small business, some of the affected contractors may be small businesses. The economic impact on these small businesses is dependent upon the award of contracts for such services. The economic impact cannot be determined with certainty, but will either be beneficial or have no effect, directly or indirectly, on small businesses. As such, a regulatory flexibility analysis is not required.

This rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). This collection has been approved previously by OMB under section 3504(b) of the PRA. The control number used by OMB is 0648–0151. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for this collection is estimated to be approximately 80 hours, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. It does not include time for monitoring the activity by observers. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES)

A list of the references used in this document may be obtained from NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: November 23, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 216.3, a new definition for "Administrator, Southeast Region" is added in alphabetical order to read as follows:

§ 216.3 Definitions.

* * * * *

Administrator, Southeast Region means Administrator, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

* * * * *

3. Subpart O is added to read as follows:

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS SEAWOLF by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

Sec.

216.161 Specified activity, geographical region and incidental take levels.
216.162 Effective dates.
216.163 Permissible methods of taking; mitigation.
216.164 Prohibitions.
216.165 Requirements for monitoring and reporting.
216.166 Modifications to the Letter of Authorization.
216.167—216.169 [Reserved]

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS SEAWOLF by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

§ 216.161 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the U.S. Atlantic Coast offshore Mayport, FL for the purpose of shock testing the USS SEAWOLF.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Blue whale (*Balaenoptera musculus*); fin whale (*B. physalus*); sei whale (*B. borealis*); Bryde's whale (*B. edeni*); minke whale (*B. acutorostrata*); humpback whale (*Megaptera novaeangliae*); northern right whale (*Eubalaena glacialis*); sperm whale (*Physeter macrocephalus*); dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whales (*Globicephala melas, G. macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); Pantropical spotted dolphin (*S. attenuata*); striped dolphin (*Stenella coeruleoalba*); spinner dolphin (*S. longirostris*); Clymene dolphin (*S. clymene*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); killer whale (*Orcinus orca*); false killer whale (*Pseudorca crassidens*); pygmy killer whale (*Feresa attenuata*); Fraser's dolphin (*Lagenodelphis hosei*); harbor porpoise (*Phocoena phocoena*); melon-headed whale (*Peponocephala electra*); northern bottlenose whale (*Hyperoodon ampullatus*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); Sowerby's beaked whale (*M. bidens*); True's beaked whale (*M. mirus*); common dolphin (*Delphinus delphis*); and Atlantic white-sided dolphin (*Lagenorhynchus acutus*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total of 1 mortality, 5 injuries and 1,788 harassment takes for detonations in the area described in paragraph (a) of this section, except that the taking by serious injury or mortality for species listed in paragraph (b) of this section that are also listed as threatened or endangered under § 17.11 of this title, is prohibited.

§ 216.162 Effective dates.

Regulations in this subpart are effective May 1 through September 30 of any single year between the years 2000 and 2004, inclusive.

§ 216.163 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, injury or mortality in the course detonating five 4,536 kg (10,000 lb) conventional explosive charges within the area described in § 216.161(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or within the buffer zone prescribed in the Letter of Authorization and on a course that will put them within the safety zone prior to detonation, detonation must be delayed until marine mammals are either no longer within the safety zone or are on a course within the buffer zone that is taking them away from the safety zone, except that no detonation will occur if a marine mammal listed as threatened or endangered under § 17.11 of this title is detected within the buffer zone and subsequently cannot be detected until such time as sighting and acoustic teams have searched the area for 2.5 hours (approximately 3 times the typical large whale dive duration). If a northern right whale is seen within the safety or buffer zone, detonation must not occur until the animal is positively reacquired outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer zone shows that no other right whales are present.

(2) If weather and/or sea conditions as described in the Letter of Authorization preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, or if any marine mammals are observed in the safety range immediately after a detonation, the test procedure and the monitoring methods must be reviewed by NMFS in

consultation with the Navy and appropriate changes made prior to conducting the next detonation.

§ 216.164 Prohibitions.

Notwithstanding takings authorized by § 216.161(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.165 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the Administrator, Southeast Region at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (g) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to record the effects of explosives detonation on marine mammals that inhabit the Atlantic Ocean test area.

(c) The Atlantic Ocean test area must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, approximately 3 weeks prior to detonation, 48–72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial, shipboard, and acoustic surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone immediately prior to, or at the time of, detonation.

(d) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(e) The holder of the Letter of Authorization is required to measure during the first detonation, and provide a report on, prior to the second detonation, the attenuation of the sound pressure levels of the HBX1 explosive charge. Measurements must be made at a number of distances from the detonation sufficient to verify the model predictions for the 3.7 km (2 nm) safety zone. Based upon the results of this test, the monitoring and safety zones described in the Letter of Authorization, may be modified accordingly.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place observer(s) on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(h) A final report must be submitted to the Administrator, Southeast Region, no later than 120 days after completion of shock testing the USS SEAWOLF. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

(i) A final report on results of necropsies of stranded marine mammals funded by the U.S. Navy must be submitted to the Director, Office of Protected Resources, no later than 18 months after completion of shock testing the USS SEAWOLF.

§ 216.166 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.161(b), or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 216.161(a), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 98–31993 Filed 11–30–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 230
Tuesday, December 1, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–36–AD]

Airworthiness Directives; MT-Propeller Entwicklung GMBH Model MTV–3–B–C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to MT-Propeller Entwicklung GMBH Model MTV–3–B–C propellers, that currently requires initial and repetitive dye penetrant or eddy current inspections for cracks in the propeller hub, and rework of the propeller hub or replacement with a new model propeller hub. This action would allow the repetitive dye penetrant inspections to be performed on-wing as opposed to at approved propeller repair stations, and to mark B–050 propeller hubs that have been modified in accordance with the current AD or this revision. This proposal is prompted by issuance of a revised service bulletin that describes procedures for on-wing inspections. The actions specified by the proposed AD are intended to prevent propeller hub cracks, which could result in propeller blade separation and possible loss of control of the aircraft.

DATES: Comments must be received by February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–36–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: "propeller@aol.com". This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–36–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–36–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On September 26, 1997, the Federal Aviation Administration (FAA) issued AD 97–21–01, Amendment 39–10154 (62 FR 52225, October 7, 1997), applicable to MT-Propeller Entwicklung GMBH Model MTV–3–B–C propellers, to require initial and repetitive dye penetrant or eddy current inspections for cracks in the propeller hub, and rework of the propeller hub or replacement with a new model propeller hub. That action was prompted by reports of cracks in the propeller flange area of the hub detected during overhaul. That condition, if not corrected, could result in propeller hub cracks, which could result in propeller blade separation and possible loss of control of the aircraft.

Since the issuance of that AD, MT-Propeller Entwicklung GMBH issued Service Bulletin (SB) No. 12C, dated April 3, 1998, that describes procedures for optional on-wing inspections. The FAA has revised the compliance section of this proposed rule to clarify when on-wing inspections are permissible.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 97–21–01 to allow repetitive dye penetrant inspections to be performed on-wing as opposed to at approved propeller repair stations, and to mark B–050 propeller hubs that have been modified in accordance with the current AD or this revised AD.

There are approximately 122 propellers of the affected design in the worldwide fleet. The FAA estimates that 57 propellers installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per propeller to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $17,100.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10154 (62 FR 52225, October 7, 1997), and by adding a new airworthiness directive, to read as follows:

MT-Propeller Entwicklung GMBH: Docket No. 97–ANE–36–AD. Revises AD 97–21–01, Amendment 39–10154.

Applicability: MT-Propeller Entwicklung GMBH Model MTV–3–B–C/L250–21 propellers. These propellers are installed on but not limited to Sukhoi 29 aircraft.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller hub cracks, which could result in propeller blade separation and possible loss of control of the aircraft, accomplish the following:

(a) Within 50 hours time in service (TIS) after the effective date of this AD, accomplish the following:

(1) Perform an initial dye penetrant or eddy current inspection of propeller hub, part number (P/N) B–050 or A–909–A, in accordance with paragraph (a) of MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 12C, dated March 4, 1998. The dye penetrant inspection may be done on-wing, but the eddy current inspection must be performed in an FAA-approved propeller repair station.

(2) If cracks are found, prior to further flight, remove the existing propeller hub and replace with a serviceable propeller hub.

(3) Rework propeller hubs, P/N B–050, by chamfering the hub bore to 0.08 inch x 45 degrees (for further information, see Detail Y of MT-Propeller Entwicklung GMBH SB No. 12C, dated March 4, 1998). Mark hubs that have been reworked in accordance with AD 97–21–01, or this revised AD, with the letters SB12C using a metal impression stamp (1/8 inch round bottom characters) above the propeller hub serial number and part number, located in the transition area between propeller blades 1 and 2 and the pitch change cylinder.

(b) Thereafter, perform dye penetrant or eddy current inspections, in accordance with paragraph (a) of MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 12C, dated March 4, 1998. The dye penetrant inspection may be done on-wing, but the eddy current inspection must be performed in an FAA-approved propeller repair station:

(1) For propellers with hubs, P/N B–050, inspect at intervals not to exceed 50 hours TIS, or 6 months since last inspection, whichever occurs first.

(2) For propellers with hubs, P/N A–909–A, inspect at intervals not to exceed 200 hours TIS, or 12 months since last inspection, whichever occurs first.

(3) If cracks are found, prior to further flight, remove the existing propeller hub and replace with a serviceable propeller hub.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 23, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–31859 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–019–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of Montana's 1998 Vegetation Guidelines which are required by the Administrative Rules of Montana (ARM) at 26.24.726(1). The amendment is intended to revise the Montana program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [m.s.t.] December 31, 1998. If requested, a public hearing on the proposed amendment will be held on December 28, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., [m.s.t.] on December 16, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett, Director, Casper Field Office, at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–6550
Steve Welch, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, MT 59620–0901, Telephone: (406) 444–4964

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–6550. *Internet address:* gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

II. Proposed Amendment

By letter dated November 4, 1998, Montana submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT–16–01). Montana submitted the proposed amendment in response to a March 29, 1990, letter (Administrative Record No. MT–6–13) that OSM sent to Montana in accordance with 30 CFR 732.17(c), and in response to a subsequent required program amendment at 30 CFR 926.16(i). The proposed amendment contains the 1998 Vegetation Guidelines in which Montana proposes to meet the requirements of ARM 26.4.726(1) regarding acceptable field and laboratory methods.

Specifically, Montana proposes to address sampling methods by requiring a range site map with community descriptions, production sampling, the estimation of percent cover by one of four methods, the measurement of vegetation density, and documentation of the premine condition. The Guidelines provide the requirements for reference areas, as well as the levels of technical standards. Also in the Guidelines is a list of normal husbandry practices which meet the criteria established in ARM 17.24.725. Specifications for the grazing management plan are given. Phase III bond release evaluations are described with respect to: (1) hypothesis testing for production, cover, and density; and (2) evaluations not requiring hypothesis testing, such as diversity, utility, season of use, the 80/60 rule, and predominantly native composition. Appendix A contains statistical formulas for determining sample adequacy; Levene's test for homogeneity of variances; the one-sample, one-sided t test; the one-sided t test for two independent samples; the one-sample, one-sided sign test; the one-sided Mann-Whitney test for two independent samples; the Satterthwaite correction; and data transformation. Appendix B contains a list of rules addressing vegetation and land use requirements. Appendix C contains a list of Montana range plants.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [m.s.t.] December 16, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, underground mining.

Dated: November 23, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 98–31914 Filed 11–30–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 90

[FRL–6195–2]

RIN 2060–AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Engines At or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Notice of Availability.

SUMMARY: The Environmental Protection Agency (EPA) is publishing notice of the availability for public review information received by the Agency following the publication of its Notice of Proposed Rulemaking (NPRM) for new nonroad spark-ignition (SI) engines at or below 19 kilowatts (25 horsepower). These engines are used principally in lawn and garden equipment, both in nonhandheld applications such as lawnmowers, and also in handheld applications such as trimmers and chainsaws. The NPRM was published in the **Federal Register** on January 27, 1998, and the close of the comment period for the NPRM was March 13, 1998. The additional information received since the publication of the NPRM relates to whether final standards more stringent than those contained in the NPRM would be achievable by the regulated industry.

The additional information cited in this document was gathered in response to the NPRM. This additional notice of availability is not required, but is intended to inform the public of information included in the rulemaking record upon which EPA may rely when adopting the final program. Due to the short deadline for a final rulemaking, EPA is not reopening the comment period on the NPRM, but will endeavor to review and place in the docket any comments submitted in response to this document, to the extent time allows.

ADDRESSES: Materials relevant to this rulemaking are contained in EPA Air and Radiation Docket, Attention Docket No. A–96–55, Room M–1500 (mail code 6102), 401 M Street, SW, Washington, DC 20460. These materials may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Robert Larson, Office of Mobile Sources, Engine Programs and Compliance Division, (734) 214–4277, larson.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document contains two sections. The first section provides background on the pending small SI engine rulemaking. The second section contains a listing of relevant information available in the docket for the pending rulemaking made available to the Agency since the publication of the NPRM.

I. Background

On January 27, 1998, EPA issued a NPRM proposing a second phase of regulations to control emissions from new nonroad SI engines at or below 19 kilowatts (25 horsepower) ("small SI engines") (63 FR 3950). This action was preceded by a March 27, 1997, Advanced Notice of Proposed Rulemaking (62 FR 14740). EPA solicited comment on virtually all aspects of the NPRM. The public comment period for the NPRM closed March 13, 1998.

EPA held a public hearing on February 11, 1998, and the oral testimony and written material provided at that hearing have been added to the docket for this rule. This information was supplemented by more extensive documentation provided as written comment to the NPRM, which is also included in the docket for this rule.[1] At the public hearing, in response to a request by the Engine Manufacturers Association (EMA) to extend the comment period so as to allow written comments to reflect the information provided at a March 26, 1998, hearing of the California Air Resources Board (ARB) concerning its rules impacting many of these same engines, EPA committed to also consider all publicly available information of which EPA was informed and which was provided to the State of California for their deliberations. This information regarding the recently adopted small engine standards by the State of California has also been incorporated in the docket.[2]

Section 213(a)(3) of the Clean Air Act requires EPA's standards to achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy and safety factors. The NPRM contained lengthy discussion of the proposed standards, the expected costs of their implementation, and the potential costs and benefits of adopting more stringent standards such as those that were under consideration by the California ARB. In the NPRM, EPA explicitly asked for comment regarding the level of the proposed standards and the impacts and timing for implementing more stringent standards, so as to allow it to establish the most appropriate standards in the final rule. In particular, EPA requested comment on the impacts and timing for implementing emission standards that would require the same types of technology as anticipated by proposed rules under consideration at that time by the California ARB.

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[1] A listing of these items is in Section II.A. of this document.

[2] A listing of these items is in Section II.B. of this document.

After the close of the comment period and upon reviewing the information supplied during the comment period, EPA determined that it was desirable to get further details regarding the technological feasibility, cost and lead time implications of meeting standards more stringent than those contained in the NPRM. EPA's NPRM already contained estimates of the costs and feasibility of more stringent standards. Some commenters had charged that, based on these discussions, EPA's proposed standards would not satisfy the stringency requirements of Clean Air Act Section 213(a)(3). For the purpose of gaining additional information on feasibility, cost and lead time implications of more stringent standards, EPA had several meetings, phone conversations, and written correspondence with specific engine manufacturers, with industry associations representing those manufacturers, with representatives of state regulatory associations, and with members of Congress. Summaries of those meetings, phone conversations, and written correspondence have also been placed in the docket.[3] EPA also sought information relating to the impact on equipment manufacturers, if any, of changes in technology potentially required to meet more stringent standards than were contained in the NPRM. Summaries of this information have been placed in the docket.[4] Additionally, EPA received numerous comments on the NPRM requesting closer harmonization with the compliance program provisions adopted by the State of California. In some cases, EPA also discussed these harmonization issues with manufacturers to improve the Agency's understanding of the needs and benefits to the industry of such harmonization; when applicable, these conversations are also noted in the meeting documentation provided to the docket.[5]

Finally, EPA received numerous pieces of correspondence, much of it after the formal comment period closed, from representatives of the model airplane and related hobbyist community. This correspondence has also been included in the docket and will be considered by EPA in developing its final rule.[6]

As EPA has stated on prior occasions, in adopting the final small SI engine rule EPA intends to consider all relevant information that becomes available. This includes information received during the comment period on an NPRM, and, to the extent possible, important information which becomes available after the formal NPRM comment period has concluded. Regarding the small SI engine rulemaking, to the extent that post-NPRM information has expanded or updated the knowledge of the Agency regarding technological feasibility, production lead time estimates for incorporating improved designs, cost to manufacturers, cost to consumers and similar factors, it is reasonable to expect that the improved information may result in changing assessments of how the pending rule can best achieve regulatory goals compared to what had been expected at the time of the NPRM. This is especially true in the case of a rulemaking concerning an industry, like small SI engines, that is undergoing relatively rapid technological achievement.

II. Summary of Information Available in Docket to This Rule

The following is a listing of information received by EPA after the publication of the NPRM that is available in the docket to the pending rulemaking, EPA Air Docket #A–96–55. This listing may be incomplete, as new material may be added to the docket, and may have already been added following signature of this document but before its publication in the **Federal Register**. Readers may wish to review docket materials for information other than that specifically identified in this document.

A. Oral and Written Comment Submitted During the Comment Period to the NPRM

Oral testimony was presented on behalf of 8 individuals or organizations at the February 11, 1998, public hearing. The docket contains a transcript of the hearing and a listing of hearing attendees (Items IV–F–01 and IV–F–02), as well as copies of written materials presented at the hearing (Item IV–D–28). In addition, written comments from 22 individuals or organizations were submitted to the docket (Items IV–D–01 through IV–D–22) by the close of the comment period.

B. Information Relating to the California ARB Small Off-Road Engine Program

The California ARB issued a Mail-Out (#MSC 98–02) on January 27, 1998, noticing a March 26, 1998, Public Hearing to Consider Amendments to the Small Off-Road Engine Regulations, and containing the staff proposal and report on this topic (Item IV–G–06). At the March 26, 1998, Public Hearing, California ARB staff made available a modified version of the regulation portion of Mail-Out 98–02, which staff proposed to the Board at the hearing (Item IV–G–07). The California ARB staff presentation made at the hearing, as well as written materials submitted in response to the hearing notice are also contained in the docket (Items IV–G–05, and Item IV–D–27). Finally, on March 9, 1998, the Portable Power Equipment Manufacturers Association (PPEMA) forwarded to EPA the "PPEMA Proposal for ARB Tier II Emissions Regulations" (Item IV–D–23).

C. Summaries of Meetings, Phone Conversations, and Correspondence Received by the Agency Regarding Programs for Nonhandheld and Handheld Engines

First, summaries of substantive correspondence, conversations, or meetings with nonhandheld engine manufacturers or industry associations representing those manufacturers, including EMA, Tecumseh Products, Briggs & Stratton, Honda, and Kohler, between May 1998 and September 1998, regarding topics such as standards and implementation dates for Class I engines, in-use verification testing and compliance, useful life definitions, a technology to reduce emissions on OHV engines, and Class I and II Phase 2 Final Regulations, are contained in the docket (see Items IV–C–01, IV–C–02, IV–D–25, IV–D–26, IV–E–15, IV–E–16, IV–E–19, IV–E–25. IV–E–44, IV–E–45, IV–E–46, IV–E–48, IV–E–49, IV–E–53, IV–E–54, IV–E–57, IV–E–59, IV–E–60, IV–E–63, IV–E–64, and IV–G–26).

Second, summaries of substantive correspondence, conversations, or meetings with handheld engine manufacturers or industry associations representing those manufacturers, including PPEMA, John Deere, Poulan, McCulloch, Dolmar, Tanaka, and Stihl, between June 1998 and September 1998, regarding topics such as a PPEMA proposal for Phase 2 standards and effective dates, including Phase 3 standards in the Phase 2 final rule, standards for handheld engines that would skip Phase 2 levels and go directly to Phase 3 levels, appropriate emission standards for commercial products, a technology for reducing handheld 2-stroke emissions, and Phase 2 handheld engine emission standard feasibility, are contained in the docket (see Items IV–C–03, IV–E–09, IV–E–11 through IV–E–14, IV–E–17, IV–E–18, IV–E–20, IV–E–21, IV–E–23, IV–E–26, IV–E–40, IV–E–43, IV–E–50, IV–E–51, IV–E–56, IV–E–62, IV–E–65, IV–E–66, IV–G–22, IV–G–27, and IV–G–28).

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[3] A listing of these items is in Section II.C. of this document.

[4] A listing of these items is in Section II.D. of this document.

[5] A listing of these items is in Section II.C. of this document.

[6] A listing of these items is in Section II.E. of this document.

Third, summaries of separate discussions held between EPA and Honda, American Suzuki Motor Corporation, and Tecumseh Products concerning the displacement cutoff for an additional nonhandheld class are contained in the docket (see Items IV–E–24, IV–E–52).

Fourth, summaries of a September 16, 1998 telephone conversation between EPA and Tom Cackette (California Air Resources Board) and a September 17, 1998 telephone conversation between EPA and Jason Grumet (NESCAUM) regarding the development of final Phase 2 regulations for small engines is contained in the docket (see Items IV–E–61 and IV–E–22).

Fifth, summaries of correspondence between EPA and members of Congress, including Representative Jo Ann Emerson and three colleagues to EPA, regarding pending Phase 2 regulations for small SI engines, Senator Herb Kohl to EPA on behalf of constituent Cliff Feldmann, President of the Auger and power Equipment Manufacturers Association (APEMA), Representative Frank Lucas to EPA on behalf of constituent Mr. Dick Roberts, a member of the Auger and Power Equipment Manufacturers Association (APEMA), are contained in the docket, (Items IV–C–06, IV–C–05 and IV–C–04).

Finally, summaries of substantive correspondence, conversations, or meetings with other individuals or organizations, including May 20, 1998 information from and September 3, 1998 meeting with Boswell Energy Systems regarding a technology for reducing emissions from small SI engines and June 22, 1998 correspondence from Autonnic Research to EPA regarding the Autonnic Maintenance Alert Meters, June 16, 1998 meeting and October 20 telephone conversations between EPA, Pyrotek Inc. and others regarding Spark Plug Technology for Emission Reductions for Small SI Engines At or Below 19 kW, and correspondence from MECA to EPA regarding catalytic technology for small SI nonroad engines, are contained in the docket (Items IV–D–24, IV–E–07, IV–G–13, IV–E–42 and IV–E–41, and IV–G–25).

D. Information on the Impact of More Stringent Standards on Equipment Manufacturers

EPA sought information on the impact on equipment manufacturers, if any, of changes in technology potentially required to meet more stringent standards than were contained in the NPRM. Summaries of substantive correspondence received or conversations or meetings held regarding the impact of standards on equipment manufacturers are contained in the docket (see Items IV–E–27 through IV–E–39, IV–E–52, IV–E–55, IV–E–58 , IV–E–67, and IV–G–20).

E. Correspondence from Representatives of the Model Airplane and Hobbyist Community

EPA received numerous pieces of correspondence before and after the close of the comment period on the NPRM from representatives of the model airplane and related hobbyist community (Items IV–D–07; IV–G–08 through IV–G–12; IV–G–14 through IV–G–19; IV–G–21; IV–G–23, and IV–G–24).

Dated: November 20, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 98–32001 Filed 11–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–6187–7]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Three Local Air Agencies in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the state of Washington Department of Ecology (Ecology) requested program approval and delegation of authority for three local agencies in Washington to implement and enforce locally-adopted hazardous air pollutant (HAP) regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained within 40 CFR Parts 61 and 63, as these regulations apply to all sources (i.e., both Part 70 and non-Part 70 sources). On behalf of these agencies, Ecology also requested approval of a mechanism by which these agencies will receive delegation of future NESHAPs; and requested that EPA waive its notification requirements such that sources will only need to send notifications and reports to the delegated local agencies. Additionally, Ecology also requested approval of certain local air agency potential-to-emit limiting regulations which would then be recognized as federally enforceable. The local air agencies that would be implementing and enforcing these regulations are: the Northwest Air Pollution Authority (NWAPA); the Puget Sound Air Pollution Control Agency (PSAPCA); and the Southwest Air Pollution Control Authority (SWAPCA) collectively referred to as "NWAPA, PSAPCA, and SWAPCA."

In the Rules section of this **Federal Register**, EPA is promulgating direct final approval of Ecology's request, on behalf of NWAPA, PSAPCA, and SWAPCA, for program approval and delegation of authority to implement and enforce specific 40 CFR Parts 61 and 63 federal NESHAP regulations which have been adopted into local law (as apply to both Part 70 and non-Part 70 sources). EPA is delegating these programs to Ecology for the purpose of redelegating them to NWAPA, PSAPCA, and SWAPCA, consistent with Ecology's statute, the Revised Code of Washington (RCW) 70.94.860. Additionally, EPA is promulgating direct final approval of the mechanism by which NWAPA, PSAPCA, and SWAPCA will receive delegation of future NESHAP regulations that are adopted unchanged into local law; and is waiving the requirement for sources to send copies of notifications and reports to EPA. Finally, EPA is promulgating direct final approval of PSAPCA and SWAPCA's potential-to-emit regulations as federally enforceable.

EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments will be addressed in a subsequent final rule based on this proposed action. The EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

DATES: Comments must be received in writing by December 31, 1998.

ADDRESSES: Written comments must be submitted to Doug Hardesty at the

Region X office listed below. Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Andrea Wullenweber, US EPA, Region 10 (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553–8760.

SUPPLEMENTARY INFORMATION:

This document concerns delegation of unchanged NESHAPs to the Northwest Air Pollution Authority, the Puget Sound Air Pollution Control Agency, and the Southwest Air Pollution Control Agency. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 28, 1998.

Chuck Clarke,

Regional Administrator, Region X.

[FR Doc. 98–31241 Filed 11–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6190–5]

RIN 2060–AF26

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: A proposed rule for the publicly owned treatment works (POTW) source category is required to implement section 112 of the Clean Air Act as amended (Act) and reflects the Administrator's determination that POTW sources emit hazardous air pollutants (HAP) identified on the EPA's amended list of 188 HAP. The primary HAP emitted by these sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene.

The emission standards that the EPA is proposing with today's notice would require control for HAP emissions from each new or reconstructed POTW treatment plant which is a major source of HAP. The standards would also require each existing and new POTW treatment plant that treats specific industrial waste streams from an industrial user, for the purpose of allowing that industrial user to comply with another National Emission Standard for Hazardous Air Pollutants (NESHAP), to meet the treatment and control requirements of the relevant NESHAP. The EPA is not proposing any standard for publicly owned sewage and wastewater collection systems at this time, because sufficient information is not available at present to determine the amount of HAP emissions from such systems or to evaluate the practicality of controlling such emissions.

Although section 112(e)(5) of the Act required the EPA to promulgate a maximum achievable control technology (MACT) standard for POTW by November 15, 1995, the EPA was unable to collect and evaluate the necessary information to meet that deadline. Under the separate schedule for promulgation of MACT standards established by the EPA pursuant to sections 112(e)(1) and (e)(3), the EPA was required to promulgate a MACT standard for POTW by November 15, 1997. However, because the EPA was unable to meet that deadline as well, the MACT "hammer" date may eventually apply to the POTW source category. Under section 112(j)(2), the MACT "hammer" date is the date by which affected facilities will be required to apply for a case-by-case MACT emission limitation if the EPA has not promulgated a generally applicable MACT standard. This date is May 15, 1999.

DATES: Comments. Comments must be received on or before January 15, 1999.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for POTW sources. If anyone contacts the EPA requesting to speak at a public hearing by December 16, 1998, a public hearing will be held on December 31, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), (LE–131), Attention, Docket No. A–96–46, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of comments also be sent to Mr. Robert B. Lucas (see **FOR FURTHER INFORMATION CONTACT** for address). Comments and data may also be submitted electronically by following the instructions below. No confidential business information (CBI) should be submitted through e-mail.

Electronic comments can be sent directly to the EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disk in WordPerfect in 5.1 file format or ASCII file format. All comments and data submitted in electronic form must note the docket number A–96–46. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Public Hearing: If requested, the public hearing will be held in Research Triangle Park, North Carolina, beginning at 9:30 a.m. Persons interested in attending a public hearing should contact JoLynn Collins, (919) 541–5671, Waste and Chemical Processes Group (MD-13) to determine whether a hearing will be held and to obtain information on the exact location.

Request to Speak at a Hearing. Persons wishing to make an oral presentation at a hearing must notify Jo Lynn Collins, Waste and Chemical Processes Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5671.

Docket. The official record for this rulemaking will be compiled under docket number A–96–46, (including comments and data submitted electronically as described above). All materials in the docket (including a printed version of each electronic comment), excluding any portion of any materials claimed by the submitter as confidential business information, will be available for inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public docket for this rulemaking is located at the address in **ADDRESSES** at the beginning of this document. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Mr. Robert B. Lucas, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0884; facsimile (919) 541–0246; e-mail lucas.bob@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action are publicly owned treatment works. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Not affected.
Federal government.	Sewerage Systems (SIC 4952), Sewage Treatment Facilities (NAICS 22132).
State/local/ tribal government.	Sewerage Systems (SIC 4952), Sewage Treatment Facilities (NAICS 22132), Municipal Wastewater Treatment Facilities, Publicly Owned Treatment Works.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the Agency is now aware could potentially be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility or company is regulated by this action, you should carefully examine the applicability criteria in section III.A of this document and in § 63.1580 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Internet. The text of today's notice also is available on the EPA's web site on the Internet under recently signed rules at the following address: http://www.epa.gov/ttn/oarpg/rules.html. The EPA's Office of Air and Radiation (OAR) homepage on the Internet also contains a wide range of information on the air toxics program and many other air pollution programs and issues. The OAR's homepage address is: http://www.epa.gov/oar/.

Electronic Access and Filing Addresses. The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–96–46 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to the EPA's Air and Radiation Docket and Information Center at: "A-and-R-Docket@epamail.epa.gov." Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–96–46). No CBI should be submitted through electronic mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. This proposal is available on the technology transfer network (TTN) on the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air emissions control. The service is free and may be accessed via the TTN web site at http://www.epa.gov/ttn/oarpg.

The following outline is provided to aid in reading the preamble to today's proposal.

I. Background
  A. Requirements of Section 112 of the Clean Air Act
  B. Source Category Description
  C. Overview of HAP Emissions from POTW
  D. Stakeholder and Public Participation
II. Description of HAP Sources and Controls
  A. Summary of Available Information
  B. Hazardous Air Pollutant Types
  C. Hazardous Air Pollutant Sources
  D. Estimated Hazardous Air Pollutant Emissions
  E. Hazardous Air Pollutant Control Options
III. Proposed Approach for Source Category Subcategorization
IV. Determination of MACT
  A. MACT for Existing Sources in the Non-Industrial POTW Treatment Plants Subcategory
  B. MACT for New Sources in the Non-Industrial POTW Treatment Plants Subcategory
  C. MACT for Existing Sources in the Industrial POTW Treatment Plants Subcategory
  D. MACT for New Sources in the Industrial POTW Treatment Plants Subcategory
V. Solicitation of Comments
  A. Pretreatment
  B. Wastewater Collection Systems
VI. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Regulatory Flexibility Act
  E. Unfunded Mandates
  F. Executive Order 13045
  G. National Technology Transfer and Advancement Act
  H. Executive Order 12875: Enhancing the Intergovernmental Partnership
  I. Executive Order 13084: Consultation and coordination with Indian Tribal Governments

I. Background

A. Requirements of Section 112 of the Clean Air Act

Section 112 of the Act addresses stationary sources of HAP. Section 112(b) of the Act, as amended, lists 188 chemicals, compounds, or groups of chemicals as HAP. The EPA is directed by section 112 to regulate the emissions of HAP from stationary sources by establishing national emission standards.

The statute requires the EPA to establish standards to reflect the maximum degree of reduction in HAP emissions through application of MACT to major sources. Section 112(a)(1) of the Act defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit, considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

Section 112(d)(3) prescribes a minimum level of control for major sources of HAP, referred to as the MACT floor.

Section 112(e)(5) of the Act required the EPA to promulgate a MACT standard for publicly owned treatment works by November 15, 1995. The EPA was unable to gather and evaluate the necessary information to meet that deadline. Another deadline for promulgation of the POTW MACT standard of November 15, 1997, was established separately by the EPA when it included the POTW standard in the seven-year group in the schedule for MACT standards established pursuant to sections 112 (e)(1) and (e)(3). Under section 112(j)(2) (the "MACT hammer"), if the EPA fails to promulgate a POTW MACT standard by November 15, 1997, major sources in the POTW category would be required to submit within 18 months thereafter (by May 15, 1999) an application for a permit which would impose MACT requirements on a case-by-case basis. Although the EPA was unable to meet the deadline for a POTW standard established by section 112(e)(5), the EPA intends to promulgate a final MACT standard applicable to this source category before any obligation for facilities to file an application under section 112(j)(2) can arise.

B. Source Category Description

The EPA's initial list of categories of major sources of HAP emissions, established under section 112(c)(1) of the Act, included POTW. This list was published on July 16, 1992 (57 FR 31576).

Section 112(e)(5) of the Act defines POTW by referring to the definition of treatment works in title II of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act. As set forth in section 212(2), 33 U.S.C. 1292(2), treatment works include the wastewater treatment units themselves, as well as intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. Thus, any of these types of facilities which are publicly owned may be a POTW. The wastewater collected, transmitted, and treated by such POTW may be generated by industrial, commercial, and/or domestic sources.

C. Overview of HAP Emissions from POTW

Some POTW are estimated by the EPA to be major sources of HAP emissions. The primary HAP constituents currently associated with POTW sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene. There are potential adverse health impacts associated with exposure to these HAP. For example, exposure to methylene chloride adversely affects the central nervous system and results in increased liver and lung cancer in animals, and benzene is a known human carcinogen.

The HAP emitted by POTW originate in wastewater streams discharged by industrial, commercial, and other facilities to the POTW for treatment. Hazardous air pollutants present in wastewater entering POTW treatment plants can biodegrade, adhere to sewage sludge, volatilize to the air, or pass through (remain in the discharge) to receiving waters. Within the POTW category, wastewater treatment units are the most likely source for HAP emissions, but wastewater collection systems (including transport systems) may also have emissions.

The EPA has assessed available information regarding HAP emissions from POTW and currently-used add-on controls. The information supports nationwide requirements for treatment and controls at a subcategory of POTW treatment plants. This subcategory includes POTW treatment plants that treat specific industrial waste streams for the purpose of allowing an industrial user to comply with another NESHAP. The information also supports nationwide requirements for add-on controls at new or reconstructed POTW treatment plants. For detailed information on these requirements see section IV. (Determination of MACT) of today's proposal.

Today's proposal addresses only the wastewater treatment portion of publicly owned treatment works. At this time, insufficient information is available for the EPA to determine whether publicly owned wastewater collection systems are themselves major sources of HAP and whether HAP emissions from such systems can be effectively controlled. The EPA is asking the public for additional information on emissions and controls for wastewater collection systems, as well as the use of pretreatment to reduce emissions (see section V.A., Pretreatment, of today's proposal). The EPA is also asking if today's proposal makes clear the difference between POTW treatment plants and publicly owned treatment works. All information collected as a result of this solicitation will be included in the docket.

D. Stakeholder and Public Participation

As prescribed in section 112(n)(3) of the Act:

> The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions.

During the development of the proposed standards, representatives of POTW and sanitation districts were extensively consulted. The EPA has been working with a trade association known as the Association of Metropolitan Sewerage Agencies (AMSA) for approximately six years. During that time, the AMSA members assisted the EPA in identifying, gathering, and assessing available information regarding HAP emissions from POTW, arranging site visits, and providing technical review. In addition, State and local agencies assisted in data gathering and technical review. A database comprising information supplied by the AMSA was used in the evaluation of HAP emissions and emissions control for POTW. Estimates of organic HAP emissions from model sources were developed by the EPA based on information supplied by the AMSA, including most of the modeling inputs used for the EPA WATER8 emissions estimation model (see section II.D., Estimated Hazardous Air Pollutant Emissions, of today's proposal).

The AMSA is an organization that comprises 150 member agencies representing approximately 450 POTW sources that each treat 37.9 thousand cubic meters per day (cmpd) (10 million gallons per day (MGD)) or more. Of the 193 largest cities in the nation, 110 (approximately 60 percent) are represented. The POTW sources associated with these 110 cities treat approximately 49.2 million cmpd (13,000 MGD), and serve approximately 100 million people (out of the 175 million people in the nation that have sewer service).

II. Description of HAP Sources and Controls

A. Summary of Available Information

There are approximately 15,600 publicly owned treatment works nationwide that receive and treat approximately 113.6 million cmpd (30,000 MGD) of domestic, commercial, and industrial wastewater. These POTW range in size from less than 0.4 thousand cmpd to greater than 1.9 million cmpd (less than 0.1 to greater than 500 MGD). However, the majority of these facilities (approximately 80%) treat less than 3.8 thousand cmpd (less than one MGD).

The EPA has reviewed the general literature, conducted site visits, and conducted studies resulting in the development of model wastewater treatment facilities and model waste streams for this source category. In addition, the EPA has interacted with State and local agencies. The most comprehensive information obtained to date has been supplied by the AMSA, as a result of surveys of their members.

The AMSA conducted two separate surveys of their members within the last four years. During 1992–1993, the AMSA surveyed approximately 200 member agencies with well over 300 POTW under their jurisdiction. This survey requested facilities to provide data on liquid phase compounds that could possibly volatilize in the treatment process. In 1994, the AMSA conducted a national survey of over 100 member agencies representing many of the largest POTW in the nation. This survey requested influent monitoring data, with corresponding flow rate through the facilities for the sampling day(s). This data was collected for calendar years 1993 and 1994 for 108 compounds identified by the EPA as potentially being present in wastewater. The information provided to the EPA as a result of these two surveys has been reviewed and analyzed, and is the primary basis for the Agency's conclusions thus far regarding HAP emissions from POTW treatment plants and emission controls.

B. Hazardous Air Pollutant Types

The primary HAP associated with POTW sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene. These primary HAP have the highest concentrations in the influent waste stream, according to data provided to the EPA by the AMSA. In addition, emissions estimation modeling indicates that these primary HAP would be emitted from wastewater treatment units when the compounds are present in the influent at significant concentrations and when treatment units are uncontrolled for air emissions. Most of these primary HAP are discharged to the collection system by industrial sources.

C. Hazardous Air Pollutant Sources

Hazardous air pollutants present in wastewater entering POTW treatment plants can biodegrade, adhere to sewage sludge, volatilize to the air, or remain in the discharge to receiving waters. Wastewater treatment processes have traditionally been designed to remove solids and degrade organic matter to meet effluent guidelines, and the fate of HAP in wastewater has not been a design consideration. Chemical properties of each individual HAP, along with the design of POTW treatment plants, determine whether the HAP volatilizes to the atmosphere, or is eliminated through another means. Hazardous air pollutants may be shifted from one medium to another (to the air through volatilization or to sludge through adsorption), or destroyed through biodegradation. In addition, volatilization of HAP may occur in the wastewater collection system prior to reaching the POTW treatment plant.

Typical wastewater treatment is a combination of physical, chemical, and biological processes designed to remove suspended solids and organic matter from solution. Publicly owned treatment works include wastewater collection systems, treatment units, and outfall or disposal units. Although wastewater treatment at most POTW use similar processes, such as settling processes and biological treatment, no two facilities are identical. Each facility differs in design and operation due to varying conditions such as flow, composition of the influent wastewater, and the environmental conditions and treatment requirements of the system. Treatment processes may also differ among facilities.

Different levels of treatment that a POTW treatment plant may employ include primary, secondary, and advanced treatment. In general, primary treatment refers to physical operations to remove floating and settleable solids. Secondary treatment refers to the use of biological processes, in addition to primary processes, to remove organic matter. Advanced treatment refers to the use of additional combinations of unit operations and processes to remove specific constituents such as nitrogen or phosphorous not removed by prior processes.

A typical POTW consists of a collection system, a series of processes that remove solids, organics, and other pollutants from the wastewater, and a series of processes for managing and treating sludge. In general, most HAP releases at these facilities occur from kinetic stripping caused by turbulent wastewater flow, aeration stripping caused by the addition of air to wastewater, or evaporation. Emissions occur at the first treatment units with both turbulent flow and exposure to the atmosphere. Some POTW have wastewater collection systems that meet these criteria. For other POTW, emissions may not occur until the first open treatment units (i.e., headworks, primary clarifiers, and biotreatment units).

As the waste stream passes through each stage of treatment, the mass of organics is reduced, and thus the potential for emissions of organics is also reduced. Therefore, the potential HAP emissions from advanced treatment, chlorination and dechlorination, sludge digesters, and sludge dewatering are expected to be comparably small. Although the HAP chlorine is used to disinfect treated wastewater prior to discharge, facilities control chlorine feed by monitoring chlorine demand. As a result, minimal free chlorine is available to be emitted. Thus chlorine emissions are expected to be extremely low.

In addition to the wastewater treatment processes at a POTW, other sources of HAP emissions, such as sewage sludge incinerators, may be co-located at the same site. Sewage sludge incineration will be regulated under section 129 of the Act, and will be included in the source category Other Solid Waste Incinerators, that is scheduled for promulgation in the year 2000. Combustion sources at POTW will also be regulated, under section 112, as part of the Industrial Combustion Coordinated Rulemaking. Although these other sources may be regulated separately from POTW, HAP emissions from any source co-located at the same site must be included when determining if the POTW is a major source.

D. Estimated Hazardous Air Pollutant Emissions

Of the approximately 15,600 publicly owned wastewater treatment facilities nationwide, only six facilities have been identified thus far as potential major sources of HAP emissions (see section III., Proposed Approach for this Source Category, of today's proposal, for a description of the determination of major sources). Through the use of emission modeling, these six POTW treatment plants are estimated to emit a total of 245 megagrams per year (Mg/yr) of HAP. The average estimated emissions of HAP from each of these POTW treatment plants is 41 Mg/yr.

The EPA acknowledges that there are uncertainties inherent in any estimate of HAP emissions for sources as diverse as those in the POTW source category. However, the EPA believes that the engineering judgments and methodologies used in developing the HAP emissions estimates for this source category are reasonable given the available information. Documentation of the EPA's analysis is available for public inspection in the docket supporting this rulemaking (see **ADDRESSES** for further information on the docket). The EPA used the emissions estimation model WATER8 to estimate emissions from POTW, and believes it provides an accurate representation of emissions. However, the EPA requests comment on the use of the WATER8 model for determination of emissions from wastewater treatment processes.

E. Hazardous Air Pollutant Control Options

Two different control options, add-on controls (i.e., covers or covers vented to a control device) and pretreatment (i.e., source control), may be utilized by POTW treatment plants. Existing add-on controls are typically used at POTW treatment plants to control odors and are not designed and operated to provide HAP emission reduction. Pretreatment is typically required of industrial users of POTW treatment plants to limit discharge of pollutants that might inhibit treatment operations at the facility or cause exceedences of the outfall discharge requirements by allowing certain compounds to pass through the treatment process in the water phase. Typically, existing add-on controls and pretreatment programs are not designed to prevent emission of HAP, although some incidental reduction may be achieved. Add-on controls and pretreatment programs are discussed further in the following paragraphs.

Add-on controls. Some POTW treatment plants have covers on their existing treatment units. These covers are typically either: (1) Vented using a high ventilation rate (e.g., 12 or more air changes per hour); (2) vented using a low ventilation rate; or (3) not vented. When the high ventilation rates are used, the effectiveness of the covers at suppressing emissions is greatly

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diminished, if not negated, by the increased air flow across the surface of the wastewater in the process. When the low ventilation rates are used, or the treatment unit is not vented, emissions from the treatment unit covered may be suppressed. Some equipment described by personnel at the POTW as "covers" are actually walkway grates placed over open channels designed to prevent personnel from falling into the treatment unit, and provide no air emission control.

Typically, not all processes at a POTW treatment plant are covered. For example, some facilities cover only the screening unit. While the cover provides suppression of emissions from the treatment unit covered, it is likely that the suppressed emissions are released from the uncovered physical processes downstream. Therefore, even though suppression of the emissions in the covered treatment unit reduces emissions from that treatment unit, the suppressed emissions likely occur from the next physical process in the wastewater treatment. Thus, the covered treatment unit results in only a very small, if any, overall emission reduction from the POTW treatment plant. Using the WATER8 emissions estimation model, the EPA has estimated emissions from the six identified major POTW treatment plants. The results of this modeling indicate that overall emission reduction due to these covers is minimal (less than one percent).

The covers used at existing POTW treatment plants are sometimes vented to odor control devices. Odor control devices currently in use include caustic scrubbers and granulated activated carbon (GAC) adsorption units. Caustic scrubbers are used to remove sulfur compounds by venting process emissions through a caustic water solution. Recent studies indicate that these odor control devices have little, if any, effect on removing the HAP of concern for POTW treatment plants. In addition, the AMSA has indicated, and the EPA concurs, that caustic scrubbers are ineffective at HAP emission reduction.

Properly designed, operated, and maintained GAC adsorption units have been demonstrated to achieve at least a 95% reduction in HAP and volatile organic compound (VOC) emissions in some applications. According to the AMSA, however, GAC installed at POTW treatment plants (with one identified exception) are designed and operated for the purpose of odor control. Such GAC adsorption units have much less frequent replacement or regeneration of the carbon than GAC adsorption units designed for HAP control and, as a result, provide no effective overall HAP emission reduction. Therefore, the EPA has concluded that GAC adsorption units in place and operated for the purpose of odor control at POTW treatment plants are ineffective at reducing HAP emissions.

The one exception identified is a POTW treatment plant where GAC adsorption units have been installed at the facility and are operated and maintained, at the expense of a petroleum refinery, to reduce risk from benzene emissions associated with refinery wastewater. This exception is discussed in section III (Source Category Subcategorization) of today's proposal.

Pretreatment. The pretreatment program is authorized by the Clean Water Act. Regulations at 40 CFR 403.8(a) require all POTW that have a total design flow greater than five MGD and receiving pollutants from industrial users which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards to establish pretreatment programs. POTW agencies establish programs of pretreatment requirements for the industrial users discharging to their POTW. The programs must include the legal authority to allow the agencies to control the concentration of pollutants entering the POTW treatment plants. Such pollutants, if not limited in the POTW influent, may cause treatment process inhibition (e.g., adversely affecting the biotreatment organisms or present a safety/health concern to facility workers). They may also cause the facility to exceed its outfall discharge requirements by allowing certain compounds to "pass-through" the treatment process and be discharged in the outfall waters at concentrations greater than permitted allowances. Finally, these pollutants can reduce sludge quality and limit sludge disposal options.

The AMSA and representatives of State and local agencies, in meetings with the EPA, have recommended pretreatment as the preferred method for reducing HAP emissions from POTW treatment plants. Pretreatment would reduce HAP emissions from POTW treatment plants by reducing the concentration of HAP entering the facilities. Pretreatment would also reduce HAP emissions from the wastewater collection systems between the source and the POTW treatment plants. Studies of HAP emissions from wastewater collection systems indicate that such losses could be significant.

The EPA's review of available information regarding pretreatment has revealed little substantive data on its effectiveness at reducing HAP emissions. However, the EPA believes that pretreatment for HAP may be a viable means to further reduce HAP emissions from POTW. Examples of pretreatment for HAP include reduction of HAP at the source (e.g., industrial process modifications; substitution of HAP compound with a non-HAP compound) or physical/chemical treatment of the waste stream prior to discharge from the industrial/commercial facility (e.g., steam stripping). For certain POTW, pretreatment could reduce HAP emissions from both the collection system and the POTW treatment plant. However, information available to the EPA on the use of pretreatment to control HAP emissions from POTW is insufficient to propose any regulatory action at this time. The EPA intends to investigate the potential for HAP emission reduction as a result of pretreatment, based on information received as a result of today's proposal (see section V., Solicitation of Comments, of today's proposal).

III. Proposed Approach for Source Category Subcategorization

As prescribed in section 112(d) of the Act, the level of control for existing major sources shall be no less stringent than:

> * * * the average emission limitation achieved by the best performing 12 percent of the existing sources . . . for categories and subcategories with 30 or more sources, or . . . the average emissions limitation achieved by the best performing five sources . . . for categories or subcategories with fewer than 30 sources.

This minimum level of control is referred to as the "MACT floor." The MACT floor level for new major sources:

> * * * shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source.

After determining any applicable MACT floor for each category or subcategory, the EPA then adopts a MACT standard for that category or subcategory which reflects the maximum degree of reduction in emissions of HAP which is achievable, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements.

The MACT floors and MACT standards for a source category are based on available information. As prescribed in section 112(n)(3) of the Act (see section I.D., Stakeholder and Public Participation, of today's proposal), the EPA utilized information provided by the AMSA to assist in determining MACT for this source category. As discussed in section II.A. (Summary of Available Information) of today's proposal, the AMSA provided the EPA with data received from some of its members. The AMSA identified a group of 19 POTW treatment plants from which they believed potential major sources could be identified. These 19 facilities were identified by the AMSA because they had influent HAP loadings of more than 10 tpy for a single constituent or more than 25 tpy for a combination of constituents, or because the AMSA believed they had the ability to be potential major sources based on knowledge and professional judgment. Based on a modeling of these 19 POTW treatment plants, only six are potential major sources. The EPA based its determination of the MACT floor for this source category on these six sources.

Of the six potential major sources identified, one POTW treatment plant is substantially different from the others. Until recently, the EPA believed that this source was used by a petroleum refinery to treat benzene-containing wastes to meet their obligations under the National Emission Standard for Benzene Waste Operations (40 CFR Part 61, Subpart FF). Based on new information from the POTW, the EPA recently learned that the POTW controls benzene emissions in response to the California Air Toxics Information and Assessment Act of 1987 (AB2588) (see section IV., Determination of MACT, of today's proposal), rather than in response to the Benzene Waste Operations NESHAP.

Although the EPA is not at this time aware of any instance where an industrial user uses a POTW treatment plant to comply with emission reductions required by any other NESHAP, the EPA believes that such dischargers may exist now or in the future. Over the years, many industries have used POTW treatment plants designed to treat industrial wastewater along with the municipal wastewater. As NESHAP that require the control of HAP emissions from wastewater are promulgated, industrial users may elect, where it is permissible under the NESHAP, to comply with these standards through off-site treatment of their wastewater at POTW rather than by adding emission controls to on-site industrial wastewater treatment plants. When an industrial user elects to utilize controls installed and operated at POTW to comply with another NESHAP (e.g., carbon adsorbers operated in a manner that controls HAP emissions, closed conveyance of wastewater between processes, operation of leak detection and repair programs), these controls will likely be considerably more stringent than those which would otherwise be typical at POTW treatment plants not treating regulated industrial waste streams. In such instances, the POTW would operate the controls as the agent of the industrial user, who would in turn be responsible for compliance with the other NESHAP. By establishing a subcategory for POTW treatment plants that treat regulated industrial waste streams, the EPA will also be able to directly enforce compliance by POTW with the wastewater provisions of any corresponding industrial NESHAP when off-site wastewater treatment is used.

Currently, many chemical plants are deciding how to comply with the wastewater provisions of the Hazardous Organic NESHAP (40 CFR Part 63, Subpart G), and some may elect to add air pollution controls to a POTW treatment plant providing off-site treatment. As more NESHAP are promulgated, more of these industrial POTW treatment plants are likely to be identified.

Therefore, the EPA intends to establish the following two subcategories for the POTW source category: (1) The industrial POTW treatment plants subcategory, that would include POTW treatment plants where treatment of a specific industrial waste stream discharged to the facility is expressly required to comply with the requirements of another NESHAP, and (2) the non-industrial POTW treatment plants subcategory, that would include all remaining POTW treatment plants that do not meet the characteristics of an industrial POTW treatment plant.

The industrial POTW treatment plants subcategory would include only those POTW treatment plants that are treating a specific regulated industrial waste stream to allow an industrial user to comply with another NESHAP. Such facilities would be determined on an individual basis. The industrial POTW treatment plants subcategory would not include POTW treatment plants that accept industrial waste for treatment from an industrial user whose waste is not specifically regulated under another NESHAP. Examples of POTW that would not be in the industrial POTW treatment plants subcategory, as proposed, would include POTW treatment plants that accept waste from local manufacturing facilities whose waste is typically characterized as a permitted industrial discharge by the POTW's source control program.

IV. Determination of MACT

As prescribed in section 112(d) of the Act, the MACT floor for existing sources in each subcategory within the POTW source category is determined by the average emissions limitation achieved by the best performing five sources, because fewer than 30 major sources have been identified within each subcategory. For the non-industrial POTW treatment plants subcategory, only six potential major sources have been identified. The MACT floor was determined for existing sources from the average emission reduction attributed to the controls among the five best performing sources of the six potential major sources.

During the development of this proposed rule, no major source has been identified which would be included in the proposed industrial POTW treatment plants subcategory. Therefore, in determining MACT for existing sources in this subcategory, the EPA has not identified any corresponding MACT floor. The MACT standard for existing sources in the industrial POTW treatment plants subcategory will be equivalent to the control requirements specified by the applicable NESHAP for the specific regulated industrial waste streams discharged to the facility.

As prescribed in section 112(d)(3) of the Act, the maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. For the non-industrial POTW treatment plants subcategory, the best performing source has been identified based on a review of emission controls in place at the six identified potential major sources. In addition, the EPA may consider technology that has been demonstrated at one or more similar facilities in identifying the best controls for new sources.

The EPA has identified one POTW treatment plant that has covered all wastewater treatment units up to, but not including, the secondary influent pumping station. In addition, the air in the headspace of the bar screens, grinders, grit chambers, and aerated distribution channels is ducted to control devices which use activated carbon to remove hazardous air pollutants. Therefore, the MACT floor for new sources in the non-industrial POTW treatment plants subcategory was determined based on the controls at the one identified best performing source.

For the industrial POTW treatment plants subcategory, the MACT floor for new sources was determined based on the emission controls at the best performing source in the non-industrial POTW treatment plants subcategory. MACT for new sources in this category was determined to be the MACT floor as defined for non-industrial POTW treatment plants, or the emission controls which would be imposed by the appropriate industrial NESHAP, whichever is more stringent.

The Agency has discretion to use its best engineering judgment in collecting and analyzing the data, and in assessing the data's comprehensiveness, accuracy, and variability, to determine which sources achieve the best average emission reductions. The term "average," as it pertains to MACT floor determinations, is not defined in section 112 of the Act. Therefore, the Agency has discretion in determining the appropriate "average" (i.e., mean, mode, median, or some other measure of central tendency) in each category or subcategory of HAP sources (59 FR 29196).

A description of the MACT floor and MACT determinations for the treatment portion of existing and new sources in the POTW subcategories is presented in the following subsections. The EPA believes that, in addition to the add-on controls considered in determining the MACT floor, there are opportunities for controlling HAP emissions from POTW through pretreatment. However, as described in section II.E. (Hazardous Air Pollutant Control Options) of today's notice, information available to the EPA thus far on pretreatment programs at individual POTW is insufficient to propose any action regarding the use of pretreatment for the purpose of HAP emission reduction from POTW.

A. MACT for Existing Sources in the Non-Industrial POTW Treatment Plants Subcategory

Based on information available to the EPA on HAP emissions from wastewater to date, the EPA believes there are fewer than 30 potential major sources in the non-industrial POTW treatment plants subcategory. Therefore, the MACT floor for this subcategory would be based on the average emissions limitation achieved by the best performing five sources of the identified potential major sources.

Six potential major sources have been identified in the non-industrial POTW treatment plants subcategory (see section III., Proposed Approach for this Source Category, of today's proposal). The information provided by the AMSA on the six potential major sources was reviewed to determine the extent of controls currently in operation for each stage of wastewater treatment at the POTW treatment plant (i.e., headworks, primary clarification, high purity oxygen activated sludge, and conventional activated sludge).

Of the five potential major sources considered to be the best controlled, one POTW treatment plant reduces HAP emissions with covers on all treatment units up to and including the aerated distribution channels following the primary clarifiers. In addition, all covered treatment units, except the primary clarifiers, have headspace ducted to a two-stage control device. The control device combines a first-stage caustic scrubber to remove odors, with second-stage activated carbon adsorption which removes hazardous air pollutants. Plant operators replace carbon monthly based on routine monitoring for benzene breakthrough. Two other POTW treatment plants have various configurations including treatment units in highly ventilated buildings, treatment units covered with open grates, and open treatment units, none of which provide any HAP emission reduction. Neither of these two sources have treatment units with air emission controls. Finally, the two remaining sources have no covers on their wastewater treatment units up to and including the aerated distribution channels following the primary clarifiers.

All of the five best-controlled potential major sources utilize conventional activated sludge processes, which are either diffused air or mechanically mixed activated sludge. None of these processes are controlled for air emissions. Two of the five best-controlled potential major sources also utilize high purity oxygen activated sludge. Neither of these processes have air pollution control devices.

Computation of an arithmetic average of the performance among the one POTW treatment plant with HAP emission controls and the four POTW treatment plants without controls would be meaningless because there is no continuum of performance among the sources. The EPA has discretion in determining the appropriate "average" in each category or subcategory. Computation of an arithmetic average, or mean, is not appropriate in this case because the average emission reduction calculated from one well-controlled facility and four uncontrolled facilities does not correspond to any treatment technology. Therefore, a measure of central tendency other than the mean must be used to determine the MACT floor. On the basis of either the median or the mode, the MACT floor would be no control. Therefore, based on this rationale, the MACT floor for existing sources in the non-industrial POTW treatment plants subcategory is no additional control for HAP emissions.

In addition to the MACT floor analysis, the EPA has evaluated the available options for HAP control at existing sources in the non-industrial POTW treatment plants subcategory. Although pretreatment by dischargers may be a viable option for controlling HAP emissions, the EPA has not identified any additional emission controls which could be installed at the POTW treatment plants themselves which would achieve meaningful HAP reductions at a reasonable cost. Therefore, the EPA is not proposing any MACT requirements for existing sources in this subcategory.

B. MACT for New Sources in the Non-Industrial POTW Treatment Plants Subcategory

Of the five best-controlled potential major sources considered in the MACT floor determination for the non-industrial POTW treatment plants subcategory, one source clearly has the best controls in place. This POTW installed controls to reduce benzene emissions and to lower risk as part of a good neighbor policy in response to the California Air Toxics Information and Assessment Act of 1987 (AB2588). This source has covers on all wastewater treatment units up to, but not including, the secondary influent pumping station. In addition, this source uses a closed-vent system to duct the headspace of all covered treatment units, except primary clarifiers, to granular activated carbon control devices which are effective at reducing HAP emissions. This source sets the MACT floor and is the basis for the MACT standard for new or reconstructed sources in the non-industrial POTW treatment plants subcategory.

C. MACT for Existing Sources in the Industrial POTW Treatment Plants Subcategory

Because the EPA has not at this time identified any sources in this proposed subcategory, determination of a MACT floor for this subcategory is not feasible. Any existing source in this subcategory will be a POTW treatment plant which installs and operates specific HAP controls because it receives from an industrial user a waste stream which requires controls pursuant to another NESHAP. The industrial facility discharging the waste stream to the POTW is responsible for compliance with the emission control requirements of the industrial NESHAP, and the POTW may be considered its agent for purposes of such compliance. A POTW receiving regulated waste streams from multiple sources would need to install and operate controls which meet all requirements of the NESHAP applicable to the sources. In the case of conflicting NESHAP requirements, the more stringent of the requirements will apply. This proposed standard would establish an equivalent MACT control requirement directly applicable to affected sources in the industrial POTW treatment plants subcategory.

D. MACT for New Sources in the Industrial POTW Treatment Plants Subcategory

New sources within the industrial POTW treatment plants subcategory would be new or reconstructed POTW treatment plants receiving from an industrial user a waste stream subject to another NESHAP where the discharger has elected to comply with the NESHAP by utilizing off-site treatment. As in the case of existing sources in this subcategory, the EPA is proposing to establish a parallel control requirement directly applicable to new and reconstructed sources in the industrial POTW treatment plants subcategory.

As noted earlier, the control requirements for new and reconstructed sources cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. There is no logical reason why new or reconstructed sources in the industrial subcategory cannot achieve emission reductions at least as great as those for other new or reconstructed POTW treatment plants. Accordingly, the MACT floor for new or reconstructed industrial POTW treatment plants is based on the same source as was utilized for new or reconstructed sources in the non-industrial category. In order to assure that control requirements are at least equivalent to those established by the applicable industrial NESHAP, the MACT standard proposed for new or reconstructed sources in the industrial POTW treatment plants subcategory is the HAP controls required by the specific NESHAP applicable to the industrial user, or the control requirement(s) for new sources in the non-industrial POTW treatment plants subcategory (see section IV.B., MACT for New Sources in the Non-Industrial POTW Treatment Plants Subcategory, of today's proposal), whichever is more stringent.

V. Solicitation of Comments

Comments are specifically requested on two aspects of today's proposal, pretreatment and wastewater collection systems, as described in the following paragraphs. The Agency has determined that it needs more information on these two aspects to assist in defining the importance of their effect on HAP emissions from POTW. Information received as a result of this solicitation will be reviewed, analyzed, and summarized by the EPA. If the EPA receives information indicating that its original conclusions regarding HAP emissions and controls are substantially incorrect, the EPA will review its current proposal in light of such information. In addition to information received as a result of this solicitation, the EPA intends to provide information that has been reviewed and analyzed during the proposal development process thus far (e.g., emissions estimation models, emissions control techniques) as guidance on the reduction of HAP emissions from POTW.

A. Pretreatment

The pretreatment program is authorized by the Clean Water Act. Regulations at 40 CFR 403.8(a) require all POTW that have a total design flow greater than five MGD and that receive pollutants from industrial users which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards to establish pretreatment programs. Industry representatives and State and local agency representatives have indicated that pretreatment is the preferred means of HAP emissions control for POTW. The use of pretreatment processes to control HAP emissions from POTW would control HAP emissions from wastewater collection systems, in addition to HAP emissions from POTW treatment plants. Further, additional information on pretreatment practices by industry may also give some insight concerning future HAP emissions from POTW.

The EPA is soliciting quantitative data on the effectiveness of pretreatment program implementation in reducing overall HAP loading to POTW (including wastewater collection systems); the effectiveness of pretreatment in reducing emissions of HAP from POTW (including wastewater collection systems); the cost of implementing and operating an effective pretreatment program; observed trends in industrial HAP discharges via wastewater; and any other information relevant in the assessment of POTW HAP emissions as they are affected by pretreatment programs.

B. Wastewater Collection Systems

Wastewater collection systems have been identified as significant sources of HAP emissions from certain POTW. However, little information is currently available to the EPA regarding these systems.

The EPA is soliciting quantitative data on the design and operation of wastewater collection systems, and scientifically supported data on the measurement or estimation of emissions from wastewater collection systems; information on industry trends to reduce or eliminate HAP emissions; and any other information relevant to the assessment of POTW collection system HAP emissions.

VI. Administrative Requirements

A. Docket

The docket number for this action is A–96–46. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A) of the Act]. This docket contains copies of the supporting information considered by the EPA in the development of this proposal. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this proposal.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1891.01) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

Generally, respondents are required to submit one-time reports of (1) start of construction for new facilities and (2) anticipated and actual start-up dates for new facilities. For sources constructed or reconstructed after the effective date

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of the relevant standard, the regulation requires that the source submit an application for approval of construction or reconstruction. The application is required to contain information on the air pollution control that will be used for each potential HAP emission point.

For POTW facilities, the public reporting and recordkeeping burden is estimated to average 41 hours per respondent per year. This estimate includes time for preparing and submitting notices, preparing and submitting demonstrations and applications, reporting releases, gathering information, and preparing and submitting reports. No capital costs are anticipated.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 1, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by December 31, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Executive Order 12866

Under Executive Order 12866 [58 FR 5173 (October 4, 1993)], the EPA must determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The criteria set forth in section one of the Executive Order for determining whether a regulation is a significant rule are as follows: (1) It is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal government communities; (2) it is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) it is likely to materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients thereof; or (4) it is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The OMB has deemed this regulatory action significant and has requested review of this proposed rulemaking package. Therefore, the EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

D. Regulatory Flexibility Act

The EPA's findings in this section are the result of the statutory requirements of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act.

This proposed rule would impose no new requirements on existing industrial or non-industrial POTW treatment plants or new industrial POTW treatment plants. The EPA is uncertain whether any new non-industrial POTW treatment plants would be of sufficient size to be subject to this rule, but the number of affected sources would be very small in any case. Therefore, the EPA finds that this proposed rule would not have a significant impact on a substantial number of small entities. As such, neither a formal Initial Regulatory Flexibility Analysis nor a detailed small business analysis is necessary. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Pursuant to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA has determined that the action proposed today would not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that the EPA determines: (1) "economically significant" as defined under Executive Order 12866; and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonable feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking includes technical standards and requirements for taking measurements. Consequently, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Institute (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods and tests required by this proposed rule, all of which are methods or tests previously promulgated. The proposed rule includes methods that measure: (1) vapor leak detection (EPA Method 21); (2) volatile organic compound concentration in vented gas stream (EPA Method 18); (3) volumetric flow rate of the vented gas stream (EPA Methods 2, 2A, 2C, or 2D); and (4) sampling site location (Method 1 or 1A). These EPA methods are found in Appendix A to parts 60, 63, and 136.

Except for EPA Methods 2 and 2C (Appendix A to part 60), no other potentially equivalent methods for the methods and tests in the proposal were found in the NSSN database search. The EPA identified one Chinese (Taiwanese) National Standard (CNS) which may potentially be an equivalent method to EPA Methods 2 and 2C. The CNS method is CNS K9019 for measuring velocity and flow rates in stack gases.

However, the EPA does not believe that CNS K9019 is a voluntary consensus method. It is unlikely that CNS K9019 was considered by industry groups or national standards setting organizations because it was not developed in the U.S. and there is no available information about it in the U.S.

To confirm EPA's belief, the EPA is asking for comment on whether any U.S. industry has adopted CNS K9019 as a voluntary consensus method. The EPA is also asking for comment on whether any potential voluntary consensus methods exist that could be allowed in addition to the methods in the proposal. Methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

H. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

The EPA has concluded that this rule may create a mandate on local governments and that the Federal government will not provide the funds necessary to pay the direct costs incurred by local governments in complying with the mandate. Today's rule does not create a mandate on State or tribal governments, or impose any enforceable duties on these entities. State, local, and tribal governments will have the responsibility to carry out this rule by incorporating it into permits and enforcing it, as delegated. They will collect permit fees that pay for the costs of applying the rule.

In developing this rule, the EPA consulted with these governments to enable them to provide meaningful and timely input in the development of this rule. As discussed in section I.D., consultation opportunities included presumptive MACT partnerships, stakeholder meetings, and participation on the internal working group that prepared the proposed standards. State and local regulatory agencies are expected to be in favor of this proposal. Some representatives of local governments have expressed concerns about the emission models and testing used to determine area source status. The EPA will continue to work with them to resolve their concerns.

Under this proposed rule, new air pollution control requirements are imposed only on new non-industrial POTW treatment plants. Representatives of local governments have told the EPA that a new non-industrial major POTW treatment plant is not likely to be built within the next five years. Should such a facility be built, it would likely recover any costs of air pollution controls through increased user fees applied to the industries responsible for the discharge of hazardous air pollutants to the sewer system. Under any scenario, the EPA believes that the health and environmental benefits of this proposed rule outweigh any potential costs to local government entities.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule would impose no new requirements on existing industrial or non-industrial POTW treatment plants or new industrial POTW treatment plants. The EPA is uncertain whether any new non-industrial POTW treatment plants would be of sufficient size to be subject to this rule, but the number of affected sources would be very small in any case and would not be located in the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Pretreatment, Publicly owned treatment works, Reporting and recordkeeping requirements.

Dated: November 12, 1998.

Carol M. Browner,

Administrator.

Chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

2. Part 63 is amended by adding subpart VVV to read as follows:

Subpart VVV—National Emission Standards for Hazardous Air Pollutants From Publicly Owned Treatment Works

Applicability

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63.1580 Am I subject to this subpart?
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Industrial POTW Treatment Plant Description and Requirements

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63.1595 How do I determine if my POTW treatment plant is a major source of HAP emissions?
63.1596 Are there any other ways for me to control HAP emissions from my POTW treatment plant?
63.1597 List of definitions.
Table 1 to subpart VVV—List of Hazardous Air Pollutants of Concern for Subpart VVV
Table 2 to subpart VVV—Applicability of 40 CFR part 63 General Provisions to Subpart VVV

Subpart VVV—National Emission Standards for Hazardous Air Pollutants From Publicly Owned Treatment Works

Applicability

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if:

(1) You own or operate a new or existing publicly owned treatment works (POTW); and

(2) Your POTW treatment plant is a major source of HAP emissions. Major source means that stationary sources at your POTW treatment plant emit or have the potential to emit a single hazardous air pollutant (HAP) of concern (see Table 1. List of Hazardous Air Pollutants of Concern for Subpart VVV, of this subpart) at a rate of 10 tons or more per year or any combination of HAP of concern at a rate of 25 or more tons per year; or

(3) Your POTW treatment plant is an area source that increases its emissions of (or its potential to emit) HAP such that it is a major source of HAP emissions.

Note 1 to paragraph (a) of this section: Section 63.1595 presents the procedures for determining if a POTW treatment plant is a major source of HAP emissions. Though this subpart addresses only wastewater emissions, the determination should consider emissions from all stationary sources at the facility, including sewage sludge incinerators, stationary internal combustion engines, boilers, and turbines.

Note 2 to paragraph (a) of this section: To determine if your POTW treatment plant is a major source due solely to wastewater emissions, you need to understand industrial loadings of HAP into your sewer system. Publicly owned treatment works treatment plants which treat mostly high-strength industrial wastewater can be major sources with a daily flow rate as low a 4 million gallons per day (MGD). Publicly owned treatment works treatment plants with low concentrations of HAP in their influent may not be major sources (due to wastewater emissions) even with a flow rate of 300 MGD.

(b) If your POTW treatment plant is not a major source then you are not subject to this subpart, and as such:

(1) You do not have to notify the Administrator that you are an area source.

(2) You do not have to apply for a title V permit under 40 CFR Part 70. However, your State has the option to require you to apply for such a permit.

Note to paragraph (b) of this section: Although you are not required to maintain any records of your determination that you are not a major source, if your POTW treatment plant is unique (e.g., you are very close to the 25/10 tpy criteria defining a major source, your influent waste stream contains a high percentage of industrial waste, you have a fairly high average annual flow rate) it may be to your advantage to maintain such a record in case the EPA or your State authority requests proof of your major source determination.

§ 63.1581 How will the EPA determine if I am in compliance with this subpart?

(a) If you fail to comply with any or all of the provisions of this subpart, you will be considered in violation of this regulation. For example, failure to perform any or all of the following, specified in § 63.1589 of this subpart, would be a violation: failure to visually inspect the cover on your treatment unit; failure to repair a defect on a treatment unit in use within the specified time period; or failure to report a delay in repair.

(b) The Administrator will determine compliance with this subpart by reviewing your records or inspecting your POTW treatment plant.

(c) Your POTW treatment plant may be exempted from compliance with this regulation if the President determines that it is in the national security interests of the United States to do so. This exemption may last for up to two years at a time, and may be extended for additional periods of up to two years each.

§ 63.1582 Does the subpart distinguish between different types of POTW treatment plants?

Yes, the subpart divides all POTW treatment plants into two subcategories. A POTW treatment plant which does not meet the characteristics of an industrial POTW treatment plant belongs in the non-industrial POTW treatment plant subcategory. These terms are defined in § 63.1597 List of Definitions, of this subpart.

Industrial POTW Treatment Plant Description and Requirements

§ 63.1583 What are the characteristics of an industrial POTW treatment plant?

(a) Your POTW treatment plant is an industrial POTW treatment plant if wastewater treatment at your POTW treatment plant enables an industrial user to comply with the treatment requirements of its own national emission standards for hazardous air pollutants (NESHAP). Industrial POTW treatment plant is defined in § 63.1597 of this subpart.

(b) If, in the future, you begin accepting a specific industrial waste stream for treatment at your POTW treatment plant to enable an industrial user to comply with the treatment requirements of another NESHAP(s), then your POTW treatment plant will be considered an industrial POTW treatment plant.

(c) If your POTW treatment plant accepts one or more specific regulated industrial waste streams as part of compliance with one or more other NESHAPs then you are subject to all the requirements of each appropriate NESHAP for each waste stream, as described in the following section. In the case of conflicting NESHAP requirements, the more stringent of the requirements will apply.

§ 63.1584 What are the emission points and control requirements for an industrial POTW treatment plant?

(a) The emission points and control requirements for an existing industrial POTW treatment plant are specified in the appropriate NESHAP(s) for the industrial user(s) (see above). For example, an existing industrial POTW treatment plant which provides treatment for a facility subject to subpart FF of this part, the National Emission Standard for Benzene Waste Operations, must meet the treatment and control requirements specified in § 61.348(d)(4).

(b) The emission points and control requirements for a new or reconstructed industrial POTW treatment plant that is a major source of HAP emissions are also specified in the appropriate NESHAP(s) for the industrial user(s), or in § 63.1587, whichever is more stringent. Reconstruction is defined in § 63.1597 of this subpart.

§ 63.1585 When do I have to comply?

(a) *Existing industrial POTW treatment plant.* If you have an existing industrial POTW treatment plant, the appropriate NESHAP(s) for the industrial user(s) will set your compliance date(s). For example, an industrial POTW treatment plant providing treatment for chemical plants regulated by the Hazardous Organic NESHAP will have to comply by April 22, 1999.

(b) *New industrial POTW treatment plant.* If you have a new industrial POTW treatment plant, you must be in compliance as soon as you begin accepting the waste stream(s) for treatment. If, in the future, you begin accepting a specific regulated industrial waste stream(s) for treatment, you must be in compliance by the time specified in the appropriate NESHAP(s) for the industrial user(s).

§ 63.1586 How does an industrial POTW treatment plant demonstrate compliance?

(a) An existing industrial POTW treatment plant demonstrates compliance by operating treatment and control devices which meet all requirements specified in the appropriate industrial NESHAP(s). Requirements may include performance tests, routine monitoring, recordkeeping, and reporting.

(b) A new or reconstructed industrial POTW treatment plant that installs controls required by the appropriate industrial NESHAP(s), demonstrates compliance by operating treatment and control devices which meet all requirements specified in the appropriate industrial NESHAP(s). A new or reconstructed industrial POTW treatment plant that installs controls specified by § 63.1587, demonstrates compliance by meeting all requirements in §§ 63.1588 through 63.1592.

Non-industrial POTW Treatment Plant Requirements

§ 63.1587 What are the emission points and control requirements for a non-industrial POTW treatment plant?

There are no control requirements for an existing non-industrial POTW treatment plant. The control requirements for a new or reconstructed non-industrial POTW treatment plant that is a major source of HAP emissions are covers on the emission points up to, but not including the secondary influent pumping station. These emission points are treatment units that include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations. In addition, all covered units, except primary clarifiers, must have the air in the headspace ducted to a control device in accordance with § 63.693, the standards for closed-vent systems and control devices in subpart DD. Reconstructed is defined in § 63.1597 of this subpart.

(a) Covers must be tightly fitted and designed and operated to minimize exposure of the waste to the atmosphere. This includes, but is not limited to, the absence of visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(b) If waste is in a treatment unit, each opening must be maintained in a closed, sealed position, unless plant personnel are present and conducting waste sampling or removal, or equipment inspection, maintenance, or repair.

(c) If a treatment unit is not equipped with a closed-vent system and control device, it must be designed to operate with minimal ventilation (e.g., at or near zero) of the airspace under the cover to reduce both air emissions and energy consumption.

(d) You must operate and maintain your POTW treatment plant at all times to minimize HAP emissions.

§ 63.1588 When do I have to comply?

If your POTW treatment plant began construction on or after December 1, 1998, and your POTW treatment plant is a major source of HAP emissions, you must comply with all provisions of this subpart either immediately upon startup, or by the date of promulgation of this subpart, whichever date is later.

§ 63.1589 What inspections must I conduct?

If your treatment units are required to have covers, you must conduct the following inspections:

(a) You must visually check the cover and its closure devices for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(b) You must perform an initial inspection at start-up with follow-up inspections at least once per year.

(c) In the event that you find a defect on a treatment unit in use, you must repair the defect within 45 days. If you cannot repair within 45 days, you must notify the EPA or the designated State authority and report the reason for the delay and the date you expect to complete the repair. If you find a defect on a treatment unit not being used, you must repair the defect before using the treatment unit.

(d) If you own or operate a control device used to meet the requirements for § 63.1587, you must comply with the inspection and monitoring requirements of § 63.695(c).

§ 63.1590 What records must I keep?

(a) You must prepare and maintain the following records:

(1) A record for each treatment unit inspection required by § 63.1589(b) of this subpart. You must include the following information: a treatment unit identification number (or other unique identification description as selected by you) and the date of inspection.

(2) For each defect detected during inspections required by § 63.1589(b) of this subpart, you must record the following information: the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and the date the repair to correct the defect is completed.

(3) In the event that repair of the defect is delayed, in accordance with the provisions of § 63.1589(c) of this subpart, you must also record the reason for the delay and the date you expect to complete the repair.

(4) If you own or operate a control device used to meet the requirements for § 63.1587, you must comply with the recordkeeping requirements of § 63.696 (a), (b), (g), and (h).

(b) [Reserved]

§ 63.1591 What reports must I submit?

(a)(1) You must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether your POTW treatment plant has complied with this regulation. This notification must be submitted before a title V permit is issued to you, and each time a notification of compliance status is required under this subpart. The notification must list—

(i) The methods that were used to determine compliance;

(ii) The results of any monitoring procedures or methods that were conducted;

(iii) The methods that will be used for determining continuing compliance;

(iv) The type and quantity of HAP emitted by your POTW treatment plant;

(v) A description of the air pollution control equipment (or method) for each emission point; and

(vi) Your statement that your POTW treatment plant has complied with this regulation.

(2) You must send this notification before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in this regulation.

(b) After you have been issued a title V permit, you must comply with all requirements for compliance status reports contained in your title V permit, including reports required under this subpart. After you have been issued a title V permit, and each time a notification of compliance status is required under this subpart, you must submit the notification of compliance status to the appropriate permitting authority, as described in § 63.1591(d) of this subpart, following completion of the relevant compliance demonstration activity specified in this regulation.

(c) You must comply with the delay of repair reporting required in § 63.1589(c).

(d) If your State has not been delegated authority you must submit reports to your Regional Office of the EPA. If your State has been delegated authority you must submit reports to your delegated State authority and you must send a copy of each report submitted to the State to your Regional Office of the EPA. Your Regional Office may waive this requirement for any reports at its discretion.

(e) You may apply to the Administrator for a waiver of recordkeeping and reporting requirements if you believe your source is already in compliance with this standard. This application must accompany the compliance status report required under § 63.1592 of this subpart, or your title V permit. The application must include whatever information you consider useful to convince the Administrator that a waiver of recordkeeping and reporting is warranted.

(f) If you own or operate a control device used to meet the requirements for § 63.1587, you must submit the reports required by § 63.697(b), including a notification of performance tests, a performance test report, a startup, shutdown, and malfunction report, and a summary report.

General Requirements

§ 63.1592 What are my notification requirements?

(a) If your State has not been delegated authority you must submit notifications to the appropriate Regional Office of the EPA. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate Regional Office of the EPA. The Regional Office may waive this requirement for any notifications at its discretion.

(b) You must notify the Administrator in writing when your POTW treatment plant becomes subject to this standard. The notification, which must be submitted not later than 120 calendar days after the effective date of this standard (or within 120 calendar days after your POTW treatment plant becomes subject to the relevant standard), must provide the following information:

(1) Your name and address;

(2) The address (i.e., physical location) of your POTW treatment plant;

(3) An identification of this standard as the basis of the notification and your POTW treatment plant's compliance date; and

(4) A brief description of the nature, size, design, and method of operation of your POTW treatment plant, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each HAP.

§ 63.1593 Which General Provisions apply to my POTW treatment plant?

The General Provisions (40 CFR Part 63, subpart A) are NESHAP that apply to owners and operators of major sources of HAP emissions in all the source categories, including the POTW source category. Table 2 of this subpart lists the General Provisions which apply to POTW treatment plants.

§ 63.1594 Who enforces this subpart?

If the Administrator has delegated authority to your State, then the State enforces this subpart. If the Administrator has not delegated authority to your State, then the EPA Regional Office enforces this subpart.

§ 63.1595 How do I determine if my POTW treatment plant is a major source of HAP emissions?

(a)(1) If your POTW treatment plant is co-located with another major source of HAP emissions (e.g., a sewage sludge incinerator) then your POTW treatment plant is subject to this subpart.

(2) If your POTW treatment plant has total emissions (or potential emissions) of less than 10 tpy of any single HAP compound, or less than 25 tpy of any combination of HAP compounds, and it is co-located with one or more additional sources that also have total emissions (or potential emissions) of less than 10 tpy of any single HAP compound, or less than 25 tpy of any combination of HAP compounds, but together all sources have total emissions (or potential emissions) of 10 tpy or greater of any single HAP compound, or 25 tpy or greater of any combination of HAP compounds, then your POTW treatment plant and the other source are subject to this subpart.

(b) If your POTW treatment plant has total emissions (or potential emissions) of 10 tpy or greater of any single HAP compound, or 25 tpy or greater of any combination of HAP compounds, then your POTW treatment plant is a major source of HAP emissions. You may use the following methods, as a tiered approach, to determine if your POTW treatment plant meets or exceeds these emission limitations.

(1) If your POTW treatment plant's annual average wastewater throughput multiplied by the annual average HAP concentration of all HAP compounds present in the influent is 25 tpy or greater, or the annual average wastewater throughput multiplied by the annual average influent concentration of any single HAP compound in the influent is 10 tpy or

greater, then you are a major source of HAP emissions.

(2) You may use the emission factors provided in Table 1 of this subpart, to conservatively estimate emissions from your POTW treatment plant. Multiply your POTW treatment plant's annual average wastewater throughput by the annual average HAP concentration of each HAP compound in the influent by the compound-specific fraction emitted (f_e) value to calculate estimated emissions of each HAP compound from your POTW treatment plant. If the estimated emissions are 10 tpy or greater of any single HAP compound, or 25 tpy or greater of any combination of HAP compounds, then your POTW treatment plant is a major source of HAP emissions.

(3) You may utilize an approved fate model to determine emissions from your POTW treatment plant. The EPA has approved the fate model entitled Wastewater Treatment Compound Property Processor and Air Emissions Estimator, commonly known as WATER8, for determination of emissions from wastewater treatment processes. If the results of applying WATER8 to your POTW treatment plant indicate that your emissions are 10 tpy or greater of any single HAP as compound, or 25 tpy or greater of any combination of HAP compounds, then your POTW treatment plant is a major source of HAP emissions. In the event that your POTW treatment plant's emissions have already been determined using another fate model, you may be able to use the results from that modeling effort as an initial screening tool to determine if your POTW treatment plant is a major source of HAP emissions. However, if there is any ambiguity concerning your POTW treatment plant's status as a major source of HAP emissions, the EPA will rely exclusively on the use of emissions estimates generated using WATER8.

(c) If you use your average influent wastewater HAP concentration and flow to determine if you are a major source, you may determine the HAP concentration of your influent waste stream using either direct measurement or knowledge of your waste stream. Your average annual wastewater flow must be determined as specified in your NPDES permit.

(1) To use direct measurement to determine your influent HAP concentration, you must collect samples of your influent waste stream that represent the complete range of HAP compositions and quantities that occur in your waste stream during the entire averaging period. You must collect each sample in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, and insure that minimum loss of organics throughout the sample collection and handling process occurs and that sample integrity is maintained. You must prepare and analyze each collected sample in accordance with the requirements of Method 305 in 40 CFR part 63, appendix A or Method 25D in 40 CFR part 60, appendix A.

(2) To use your knowledge of the waste stream to determine the average HAP concentration you must prepare and record sufficient information that documents the basis for that knowledge. Examples of information that may be used as the basis for knowledge of the waste stream include: samples analyzed using test methods other than Method 305 or Method 25, such as EPA Methods 600 and 8000; industrial pretreatment/source control permit information, including compliance sampling and analysis; species-specific HAP chemical test data for the waste stream from previous testing still applicable to the current operations; or other previous test data.

(i) If you use test data as the basis for knowledge of the waste stream, then you must document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the HAP concentration. For example, you may use HAP concentration test data that are validated in accordance with Method 301 in appendix A of 40 CFR part 63 as the basis for knowledge of the waste stream.

(ii) If you use species-specific HAP chemical concentration test data as the basis for knowledge of the waste stream you must adjust the test data results to the corresponding total HAP concentration value that would be reported had the samples been analyzed using Method 305 in the appendix to 40 CFR part 63, subpart G.

(d) If you make any changes or modifications to your POTW treatment plant that could cause your HAP emissions (or potential HAP emissions) to increase you must consider those changes or modifications when determining if your POTW treatment plant is a major source. Such changes may include, but are not limited to:

(1) If at any time you add new equipment to your POTW treatment plant or implement a process change, the added equipment or process change is considered an integral part of your POTW treatment plant and must be considered when determining if your POTW treatment plant is a major source;

(2) If you expand your existing POTW treatment plant by adding a new treatment line within a contiguous area and under common control, the new treatment line is considered an integral part of your existing POTW treatment plant and must be considered when determining if your POTW treatment plant is a major source; or

(3) If you reconstruct your POTW treatment plant (as defined in § 63.1597 List of Definitions, of this regulation) then you must comply with the requirements for a new or reconstructed POTW treatment plant in this subpart.

§ 63.1596 Are there any other ways for me to control HAP emissions from my POTW treatment plant?

(a) You may request permission to use an alternative means of emission limitation to control HAP emissions from your plant. You must collect, verify, and submit to the Administrator information demonstrating that the alternative achieves emission reductions which are at least equivalent to the reductions which would be achieved under this subpart.

(b) If it appears that the alternative means of HAP emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from your source achieved under this regulation, the Administrator will propose to amend this subpart to permit you to use the alternative means for purposes of compliance with this subpart. Such an amendment may include specific requirements for operation and maintenance as a condition of the permission. Any amendment to permit you to use an alternative means of emission limitation will be adopted only after notice and an opportunity for comment.

§ 63.1597 List of definitions.

Affected Source means a stationary POTW treatment plant that is regulated by this standard.

Area Source means any stationary source of HAP that is not a major source.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the waste material managed in a treatment unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the treatment unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the treatment unit or a cover may be formed by structural features permanently integrated into the design of the treatment unit. The cover and its closure devices must be made of suitable materials that will minimize exposure of the waste material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life.

HAP means hazardous air pollutant.

Industrial User means a non-domestic source introducing any pollutant or combination of pollutants into a POTW. Industrial users can be commercial or industrial facilities whose wastes enter local sewers.

Industrial POTW Treatment Plant means a POTW treatment plant that accepts one or more specific regulated industrial waste streams for treatment that enables an industrial user to comply with the treatment requirements of its own NESHAP. For example, an industry discharges its benzene-containing waste to the POTW treatment plant for treatment to comply with 40 CFR part 61, subpart FF, the National Emission Standard for Benzene Waste Operations. This definition does not include POTW treatment plants that accept industrial waste for treatment from an industrial user whose waste is not specifically regulated under another NESHAP. Examples include POTW treatment plants that accept waste from industries, such as local manufacturing facilities, typically characterized as a significant industrial user by the POTW treatment plant in the POTW's approved pretreatment program.

Non-industrial POTW Treatment Plant means a POTW treatment plant as defined by this § 63.1597 of this subpart that does not meet the definition of an industrial POTW treatment plant as defined by this § 63.1597 of this subpart.

Publicly Owned Treatment Works (POTW) means a treatment works as defined by section 112(e)(5) of the Clean Air Act, which is owned by a State or municipality (as defined by section 502(4) of the Clean Water Act). This definition includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities are generated by industrial, commercial, and domestic sources.

POTW Treatment Plant means a treatment works as defined by section 112(e)(5) of the Clean Air Act, which is owned by a State or municipality (as defined by section 502(4) of the Clean Water Act), with the exception that this definition includes ONLY the facilities, units, and processes used to treat municipal wastewater from the time it is discharged from the collection system to begin treatment until treatment is completed. This definition DOES NOT include any sewage collection and conveyance systems, intercepting sewers, or outfall sewers.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary source such that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of HAP from that source.

Treatment Works or Treatment Unit(s) means any devices and systems located at a POTW treatment plant that is used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment. In addition, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste.

Waste and Wastewater means a material, or spent or used water or waste, generated from residential, industrial, commercial, mining, or agricultural operations or from community activities that contains dissolved or suspended matter, and that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated in a publicly owned treatment works.

You (including other possessive pronouns such as I, my, our, your) means an owner or operator of a POTW treatment plant.

TABLE 1 TO SUBPART VVV.—LIST OF HAZARDOUS AIR POLLUTANTS OF CONCERN FOR SUPART VVV

CAS No.	Chemical name	Fraction emitted(f_e)
75070	Acetaldehyde	0.2099
75058	Acetonitrile	0.0878
107028	Acrolein	0.1328
107131	Acrylonitrile	0.1130
107051	Allyl chloride	0.9552
71432	Benzene (including benzene from gasoline)	0.7729
100447	Benzyl chloride	0.1873
92524	Biphenyl	0.0999
75252	Bromoform	0.2300
106990	1,3-Butadiene	0.9924
75150	Carbon disulfide	0.9643
56235	Carbon tetrachloride	0.9628
43581	Carbonyl sulfide	0.3401
108907	Chlorobenzene	0.3386
67663	Chloroform	0.7485
126998	Chloroprene	0.6644
98828	Cumene	0.8481
3547044	DDE	0.1128

TABLE 1 TO SUBPART VVV.—LIST OF HAZARDOUS AIR POLLUTANTS OF CONCERN FOR SUPART VVV—Continued

CAS No.	Chemical name	Fraction emitted(f_e)
334883	Diazomethane	0.0739
132649	Dibenzofurans	0.2125
106467	1,4-Dichlorobenzene(p)	0.5492
542756	1,3-Dichloropropene	0.7174
119904	3,3′-Dimethoxybenzidine	0.4736
121697	N,N-Dimethylaniline	0.0885
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.0966
106887	1,2-Epoxybutane	0.4049
140885	Ethyl acrylate	0.2299
100414	Ethyl benzene	0.7986
75003	Ethyl chloride (Chloroethane)	0.9633
106934	Ethylene dibromide (Dibromoethane)	0.3134
107062	Ethylene dichloride (1,2-Dichloroethane)	0.4363
151564	Ethylene imine (Aziridine)	0.6887
75218	Ethylene oxide	0.1944
75343	Ethylidene dichloride (1,1-Dichloroethane)	0.7142
0	Glycol ethers[a]	0.0591
76448	Heptachlor	0.2064
118741	Hexachlorobenzene	0.1340
87683	Hexachlorobutadiene	0.7761
77474	Hexachlorocyclopentadiene	0.6313
67721	Hexachloroethane	0.7643
110543	Hexane	0.9998
74839	Methyl bromide (Bromomethane)	0.9165
74873	Methyl chloride (Choromethane)	0.9125
71556	Methyl chloroform (1,1,1-Trichloroethane)	0.3848
78933	Methyl ethyl ketone (2-Butanone)	0.2357
74884	Methyl iodide (Iodomethane)	0.6365
108101	Methyl isobutyl ketone (Hexone)	0.3142
80626	Methyl methacrylate	0.0679
1634044	Methyl tert butyl ether	0.3498
75092	Methylene chloride (Dichloromethane)	0.7593
91203	Naphthalene	0.2248
79469	2-Nitropropane	0.1561
75445	Phosgene	0.9739
1336363	Polychlorinated biphenyls[b] (Aroclors)	0.0241
123386	Propionaldehyde	0.1235
78875	Propylene dichloride (1,2-Dichloropropane)	0.5914
75569	Propylene oxide	0.5101
100425	Styrene	0.8462
96093	Styrene oxide	0.0718
79345	1,1,2,2-Tetrachloroethane	0.1870
127184	Tetrachloroethylene (Perchloroethylene)	0.9693
108883	Toluene	0.7382
8001352	Toxaphene (chlorinated camphene)	0.6473
120821	1,2,4-Trichlorobenzene	0.3248
79005	1,1,2-Trichloroethane	0.3848
79016	Trichloroethylene	0.9197
121448	Triethylamine	0.1025
540841	2,2,4-Trimethylpentane	0.9999
108054	Vinyl acetate	0.4541
593602	Vinyl Bromide	0.9149
75014	Vinyl chloride	0.9958
75354	Vinylidene chloride (1,1-Dichloroethylene)	0.9737
1330207	Xylenes (isomers and mixture)	0.7241
95476	o-Xylenes	0.7085
108383	m-Xylenes	0.7787
106423	p-Xylenes	0.7856

Key:

[a] Ethylene glycol dimethyl ether is the glycol ether of concern.

[b] The following PCB's are of concern: PCB 1221, PCB 1232, PCB 1242, PCB 1248, and PCB 1254.

TABLE 2 TO SUBPART VVV.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Comment
§ 63.1		APPLICABILITY.
§ 63.1(a)(1)	Yes	Terms defined in CAAA.
§ 63.1(a)(2)	Yes	General applicability explanation.

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TABLE 2 TO SUBPART VVV.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Comment
§ 63.1(a)(3)	Yes	Cannot diminish a stricter NESHAP.
§ 63.1(a)(4)	Yes	Not repetitive. Doesn't apply to 112(r).
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6)–(8)	Yes	Contacts and authorities.
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes	Time period definition.
§ 63.1(a)(11)	Yes	Postmark explanation
§ 63.1(a)(12)–(14)	Yes	Time period changes. Regulation conflict. Force and effect of subpart A
§ 63.1(b)(1)	Yes	Initial applicability determination of subpart A.
§ 63.1(b)(2)	Yes	Operating permits by States.
§ 63.1(b)(3)	No	Subpart VVV specifies recordkeeping of records of applicability determination
§ 63.1(c)(1)	Yes	Requires compliance with both subpart A and subpart VVV
§ 63.1(c)(2)(I)	Yes	State options regarding Title V permit.
§ 63.1(c)(2) (ii)–(iii)	No	State options regarding Title V permit.
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes	Extension of compliance.
§ 63.1(c)(5)	No	Subpart VVV addresses area sources becoming major due to increase in emissions.
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes	Title V permit before a relevant standard is established.
§ 63.2	Yes	DEFINITIONS
§ 63.3	Yes	UNITS AND ABBREVIATIONS
§ 63.4		PROHIBITED ACTIVITIES AND CIRCUMVENTION.
§ 63.4(a)(1)–(3)	Yes	Prohibits operation in violation of subpart A.
§ 63.4(a)(4)	No	Section reserved.
§ 63.4(a)(5)	Yes	Compliance dates.
§ 63.4(b)	No	Circumvention discussion not applicable to Subpart VVV
§ 63.4(c)	Yes	Severability.
§ 63.5		CONSTRUCTION AND RECONSTRUCTION.
§ 63.5(a)(1)	Yes	Construction and reconstruction.
§ 63.5(a)(2)	Yes	New source—effective dates.
§ 63.5(b)(1)	Yes	New sources subject to relevant standards.
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes	No new major sources w/out Administrator approval
§ 63.5(b)(4)	Yes	New major source notification.
§ 63.5(b)(5)	Yes	New major sources must comply.
§ 63.5(b)(6)	Yes	New equipment added considered part of major source
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes	Implementation of 112(l)(2)—application of approval of new source construction.
§ 63.5(d)(2)	Yes	Application for approval of construction for new sources listing and describing planned air pollution control system.
§ 63.5(d)(3)	Yes	Application for reconstruction.
§ 63.5(d)(4)	Yes	Administrator may request additional information
§ 63.5(e)	Yes	Approval of reconstruction.
§ 63.5(f)(1)	Yes	Approval based on State review.
§ 63.5(f)(2)	Yes	Application deadline.
§ 63.6		COMPLIANCE WITH STANDARDS AND MAINTENANCE REQUIREMENTS.
§ 63.6(a)	Yes	Applicability of compliance with standards and maintenance requirements.
§ 63.6(b)	Yes	Compliance dates for new and reconstructed sources.
§ 63.6(c)	Yes	Compliance dates for existing sources apply to existing industrial POTW treatment plants.
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes	Operation and maintenance requirements apply to new sources.
§ 63.6(f)	Yes	Compliance with nonopacity emission standards applies to new sources.
§ 63.6(g)	Yes	Use of alternative nonopacity emission standard applies to new sources.
§ 63.6(h)	No	POTW treatment plants do not typically have visible emissions.
§ 63.6(i)	Yes	Extension of compliance with emission standards applies to new sources.
§ 63.6(j)	No	Subpart VVV addresses the Presidential exemption from compliance with emission standards.
§ 63.7		PERFORMANCE TESTING REQUIREMENTS.
§ 63.7(a)	Yes	Performance testing is required for new sources.
§ 63.7(b)	Yes	New sources must notify the Administrator of intention to conduct performance testing.
§ 63.7(c)	Yes	New sources must comply with quality assurance program requirements.
§ 63.7(d)	Yes	New sources must provide performance testing facilities at the request of the Administrator.
§ 63.7(e)	Yes	Requirements for conducting performance tests apply to new sources.
§ 63.7(f)	Yes	New sources may use an alternative test method.
§ 63.7(g)	Yes	Requirements for data analysis, recordkeeping, and reporting associated with performance testing apply to new sources.
§ 63.7(h)	Yes	New sources may request a waiver of performance tests
§ 63.8		MONITORING REQUIREMENTS.
§ 63.8(a)	Yes	Applicability of monitoring requirements.
§ 63.8(b)	Yes	Monitoring shall be conducted by new sources.
§ 63.8(c)	Yes	New sources shall operate and maintain continuous monitoring systems (CMS)
§ 63.8(d)	Yes	New sources must develop and implement a CMS quality control program

TABLE 2 TO SUBPART VVV.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Comment
§ 63.8(e)	Yes	New sources may be required to conduct a performance evaluation of CMS.
§ 63.8(f)	Yes	New sources may use an alternative monitoring method.
§ 63.8(g)	Yes	Requirements for reduction of monitoring data.
§ 63.9		NOTIFICATION REQUIREMENTS.
§ 63.9(a)	Yes	Applicability of notification requirements.
§ 63.9(b)	Yes	Initial notification requirements.
§ 63.9(c)	Yes	Request for extension of compliance with subpart VVV.
§ 63.9(d)	Yes	Notification that source is subject to special compliance requirements as specified in § 63.6(b)(3) and (4).
§ 63.9(e)	Yes	Notification of performance test.
§ 63.9(f)	No	POTW treatment plants do not typically have visible emissions.
§ 63.9(g)	Yes	Additional notification requirements for sources with continuous emission monitoring systems.
§ 63.9(h)	Yes	Notification of compliance status when the source becomes subject to subpart VVV.
§ 63.9(i)	Yes	Adjustments to time periods or postmark deadlines or submittal and review of required communications.
§ 63.9(j)	Yes	Change of information already provided to the Administrator.
§ 63.10		RECORDKEEPING AND REPORTING REQUIREMENTS.
§ 63.10(a)	Yes	Applicability of notification and reporting requirements.
§ 63.10(b)	Yes	General recordkeeping requirements.
§ 63.10(c)	Yes	Additional recordkeeping requirements for sources with continuous monitoring systems.
§ 63.10(d)	Yes	General reporting requirements.
§ 63.10(e)	Yes	Additional reporting requirements for sources with continuous monitoring systems.
§ 63.10(f)	Yes	Waiver of recordkeeping and reporting requirements.
§ 63.11		FLARES AS A CONTROL DEVICE.
§ 63.11(a) & (b)	Yes	If a new source uses flares to comply with the requirements of subpart VVV, the requirements of § 63.11 apply.
§ 63.12	Yes	STATE AUTHORITY AND DESIGNATION.
§ 63.13	Yes	ADDRESSES OF STATE AIR POLLUTION CONTROL AGENCIES AND EPA REGIONAL OFFICES.
§ 63.14	Yes	INCORPORATION BY REFERENCE.
§ 63.15	Yes	AVAILABILITY OF INFORMATION AND CONFIDENTIALITY.

[FR Doc. 98–31399 Filed 11–30–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 268, 269 and 271

[FRL–6195–4]

RIN 2050–AE22

Requirements for Management of Hazardous Contaminated Media (HWIR-media)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of proposed rule.

SUMMARY: For the reasons set out in the HWIR-media final rule, officially titled "Hazardous Remediation Waste Management Requirements (HWIR-media)" published in the **Federal Register** of November 30, 1998, and the Phase IV LDR final rule, official titled "Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters; Final Rule" (63 FR 28556 (May 26, 1998)) this document withdraws all portions of the HWIR-media proposed rule (61 FR 18780 (April 29, 1996)) except those that were finalized in the above two final rules, or on which action was expressly deferred (i.e., the Treatability Sample Exclusion Rule, that EPA requested comments on expanding in the HWIR-media proposal at 61 FR 18817), in those documents.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–MHWF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Michael Fitzpatrick, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–8411, fitzpatrick.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The index and supporting materials are available on the Internet. Follow these instructions to access the information electronically:

WWW:http://www.epa.gov/epaoswer/hazwaste/id/hwirmdia.htm

As discussed in the HWIR-media final rule, officially titled "Hazardous Remediation Waste Management Requirements (HWIR-media)" published in the **Federal Register** of November 30, 1998, EPA decided to promulgate only selected elements of the HWIR-media proposal, rather than go forward with a more comprehensive approach as proposed.

Although EPA conducted a lengthy outreach process before developing the HWIR-media proposal and made every effort to balance the concerns and interests of various stakeholder groups, public comment on the proposal made it clear that stakeholders fundamentally

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disagree on many remediation waste management issues.

EPA agreed with commenters' concerns that the Bright Line approach would be too difficult to implement, and that a Bright Line that would satisfy commenters who wanted the Bright Line levels to consist of very conservative levels would not sufficiently reform the system to remove the existing barriers to efficient, protective remediation waste management. EPA has concluded that pursuing broader regulatory reform would be a time-and resource-intensive process that would most likely result in a rule that would provoke additional years of litigation and associated uncertainty. This uncertainty would be detrimental to the program and have a negative effect on ongoing and future cleanups. Based on these conclusions, the Agency has decided not to finalize either the Bright Line or the Unitary Approach, and recognizes that a purely regulatory response will not solve all of the remediation waste management issues that HWIR-media was designed to solve.

While EPA believes the elements finalized in the final HWIR-media rule published in the **Federal Register** of November 30, 1998 along with the retention of the CAMU rule, will improve remediation waste management and expedite cleanups, the Agency is also convinced that additional reform is needed to expedite the cleanup program, especially to provide greater flexibility for non-media remediation wastes like remedial sludges, address certain statutory permitting provisions, and more appropriate treatment requirements for remediation wastes (for example, treatment that focuses on "principal threats" rather than all underlying hazardous constituents). Therefore, the Agency continues to support appropriate, targeted legislation to address application of RCRA Subtitle C land disposal restrictions, minimum technological and permitting requirements to remediation waste and will continue to participate in discussions on potential legislation. If legislation is not forthcoming, the Agency may reexamine its approach to remediation waste regulation and may take additional administrative action.

The elements finalized in the final HWIR-media rule published in the **Federal Register** of November 30, 1998 are:

1. streamlined permitting for treating storing and disposing of remediation wastes generated at cleanup sites and the elimination of the requirement for facility-wide corrective action at remediation-only facilities;

2. a variation on the proposed remediation piles, called staging piles, modified in response to public comments;

3. a RCRA exclusion for dredged materials managed under Clean Water Act (CWA) or Marine Protection Research and Sanctuaries Act (MPRSA) permits; and

4. streamlined procedures for State authorization.

EPA also finalized, in a separate document (63 FR 28604 (May 26, 1998)), the LDR treatment standards specific to hazardous contaminated soil that were proposed in the HWIR-media proposal. EPA is deferring action on the Treatability Sample Exclusion Rule, that EPA requested comments on expanding in the HWIR-media proposal at 61 FR 18817.

EPA is withdrawing all other portions of the proposal, such as:

1. the proposal under the "Bright Line" option to distinguish between lower- and higher-risk contaminated media and give regulatory agencies the flexibility to exempt lower-risk contaminated media from RCRA requirements, and all other comprehensive options discussed in the preamble to the proposed rule (such as the "Unitary Approach");

2. the "Category 2" proposal for streamlined authorization, and;

3. the portion of the proposal that would have withdrawn the Corrective Action Management Unit or "CAMU" rule.

Existing areas of flexibility for managing remediation waste, such as the contained-in and AOC policies, and site-specific land disposal restrictions treatability variances, continue to be available.

Authority: 42 U.S.C. 6912(a), 6921, 6924 6926, and 6927.

Dated: November 23, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 98–32000 Filed 11–30–98; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–35

RIN 3090–AG79

User Fees; Network Registration Services

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes fees for registration services provided by GSA to Government agencies and commercial organizations in order to provide and maintain unique global names and network addresses for X.400 Private Management Domains (PMRD) and the X.500 Organizational Units (OU), Administrative Authority Identifiers (AAI) and Internet .GOV Domain names.

DATES: Comments must be submitted February 1, 1999 to be considered in the formulation of the final rule.

ADDRESSES: Written comments should be sent to Mr. Jack L. Finley, Director, Center for Electronic Messaging Technologies (TOT), General Services Administration, 1800 F Street, NW, Suite G–222, Washington DC 20405. E-mail comments may be sent to jack.finley@fed.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jack L. Finley, 202–501–3932.

SUPPLEMENTARY INFORMATION:

A. Background

The Open Systems Interconnection (OSI) Reference Model uses naming hierarchies in order to provide global unambiguous identities. The International Organization for Standardization (ISO) defines two major naming hierarchies or "trees." The ISO 3166 Codes for the Representation of Names of Countries assigns the United States with an alpha-2 code of US and a numeric code of 840. The American National Standards Institute (ANSI) has assigned the Federal Government with the alpha code of "GOV" and the numeric code of 101.

Another ISO naming structure is ISO 6523, Structure for the Identification of Organizations. The British Standards Institute (under ISO authority) has issued an International Code Designator (ICD) of 0005 to the National Institute of Standards and Technology (NIST). The NIST has delegated the responsibility of managing and administering the ICD of 0005 to the GSA. The NIST has also delegated to GSA the authority for the namespace "U.S. Government" as an organization domain subordinate to country level of "US" for the purposes of Governmentwide Directories (X.500/LDAP).

X.400 PRMD

The GOSIP standard is based on the Open Systems Interconnection (OSI) profile, which incorporate several series of international protocol standards. The X.400 series define a protocol for electronic Messaging Handling Systems (MHS). Top level Management Domains (MD) are assigned and delegated into

Administrative Management Domains (ADMD) and subordinately Private Management Domain (PRMD). The GSA assigns the PRMDs for the U.S. Government using a prefix of the characters "GOV+" followed by the assigned name. For example, a PRMD for the Department of Transportation may be shown as P=GOV+DOT. The service provided by GSA allows government to use unique PRMD names, regardless of the ADMD provider.

X.500/LDAP

The International Telecommunication Union Telecommunication Standardization Sector (ITU–T) issued a X.500 Series of Recommendations for distributed directory services. The GSA has developed a governmentwide X.500 schema for a Distributed Information Tree (DIT). Under C=US, O=U.S. Government, agencies may establish a directory container as an Organizational Unit (OU). The GSA also provides operational Directory Support Services at the C=US level to public entities in cooperation with ANSI. Services include root Directory Systems Agents (DSA) with links to other Top Level Domains (TLD). The Lightweight Directory Access Protocol (LDAP) servers will also require registration services and operational services to connect with the distributed X.500 DSAs.

Object Identifier (OID)

In the context of this document, an arc is a point where branches of the hierarchical tree are connected together and to the superior reference. The GSA is responsible for registration of technical objects identifiers under the arc joint-iso-ccitt(2) country(16) us(840) organization(1) us-government(101) as well as (joint-iso-ccitt(2) countries(16) usa(840) US Government). There is a second US branch of the OID tree, 1.2.840 (iso(1) member-bodies(16) usa(840) US Government(101), but new registrations are made under the 2.16.840.1.101 arc. Typical use of Object Identifiers (OID) is to identify attributes and object classes that are not currently described in OSI standards.

NSAP AAI

Globally unique network addresses are important in communicating across various networks. The GOSIP V2 profile established a method of assigning Network Service Access Point (NSAP) addresses using the ICD 47 0005 (ISO 6523) under the authority of the NIST. The administration and registration of the ICD is delegated to the GSA. The octet following the ICD is 80 to indicate that the remaining octets are in the GOSIP V2 format. An Administrative Authority Identifier (AAI) consisting of three octets are delegated to organizations in order to complete the assignments of network addresses. Thus, a registration for a GOSIP NSAP AAI will be:

47 0005 80 NNNNNN (where N is assigned by GSA)

The organization may use the remaining octets to further define according to their requirements.

INTERNET .GOV and FED.US DOMAIN NAMES

The National Science Foundation (NSF) has delegated to GSA through the Federal Networking Council (FNC), the authority to manage and administer the GOV (dot-gov) domain used by Internet Domain Name Service (DNS). The GSA is also providing second-level domain registrations in the GOV domain (e.g. Fed.gov). Similarly, the GSA is providing second-level domain registrations in the fed.us domain under authority from the Internet Assigned Numbers Authority (IANA). Internet registration services are limited to Federal, State, and local Government organizations. GSA is not responsible for and will not charge fees for any further delegation of a domain name assigned to an agency. For example, if USDA were to register usda.fed.us, the registrations such as region1.usda.fed.us would be the responsibility of the domain manager for USDA.

B. E.O. 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed regulation does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.* This rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–35

Archives and records, Computer technology, Government property management.

Therefore, it is proposed that 41 CFR 101–35 be amended as follows:

PART 101–35—TELECOMMUNICATIONS MANAGEMENT POLICY

1. The authority citation for part 101–35 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 31 U.S.C. 9701.

2. Subpart 101–35.7 is added to read as follows:

Subpart 101–35.7—Network Address Registration

Sec.	
101–35.701	Scope of subpart.
101–35.702	Registration services.
101–35.703	Procedures for using GSA's registration services.
101–35.704	Fee schedule.
101–35.705	Method of payment.

Subpart 101–35.7—Network Address Registration

§ 101–35.701 Scope of subpart.

This subpart addresses registration services provided by GSA to Government agencies and the public.

§ 101–35.702 Registration services.

(a) The National Institute of Standards and Technology (NIST) Department of Commerce has designated GSA as the Government Open Systems Interconnection Profile (GOSIP) Address Registration Authority for unique naming assignments of X.400 Private Management Domains (PRMD), X.500 Organizational Units (OU) and Network Service Access Point (NSAP) Administrative Authority Identifiers (AAI). (See FIPS PUB 146–2, Section 5.2.1.) GOSIP registration is limited to government agencies, with the exception of NSAP AAI's, which may be used by commercial organizations to identify private Asynchronous Transfer Mode (ATM) networks.

(b) For purposes of global interoperability, GSA will operate an X.500/LDAP Directory Service at the "country=US" level and at the "O=U.S. Government" level. Federal Agencies may link operational directories to the "O=U.S. Government" and Commercial organizations may link "country=US" level in accordance with the fees set forth in section 101–35.704.

(c) The National Science Foundation (NSF) has delegated to GSA through the Federal Networking Council (FNC), the authority to manage and administer the

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GOV (dot-gov) domain used by Internet Domain Name Service (DNS). The GSA is also providing second-level domain registrations in the GOV domain (e.g. Fed.gov). Similarly, the GSA is providing second-level domain registrations in the fed.us domain under authority from the Internet Assigned Numbers Authority (IANA). Internet registration services are limited to Federal, State, and local Government organizations. GSA is not responsible for and will not charge fees for any further delegation of a domain name assigned to an agency. For example, if USDA were to register usda.fed.us, the registrations such as region1.usda.fed.us would be the responsibility of the domain manager for USDA.

§ 101–35.703 Procedures for using GSA's registration services.

Individuals or organizations who wish to register or would like more information should contact the registration officials at GSA by sending an e-mail message to *registration@fed.gov* or by web access at http://registration.fed.gov.

§ 101–35.704 Fee schedule.

GSA will assess Government agencies and commercial organizations nominal fees to cover the cost of registration and other services as listed in the table below. The fees are based on anticipated costs for providing the services and are consistent with industry charges.

Service	Set-up	Recurring (Annual)
(a) Network Address Registration (GOSIP)	$1000.00	$500.00
(b) Government-wide Directory Operation (X.500/LDAP)	1000.00	500.00
(c) Domain Name Registration	250.00	50.00

Note to 101–35.704. Set-up fees may be waived at the discretion of the GSA. When levied, set-up fees include annual fee for one year.

§ 101–35.705 Method of payment.

GSA will invoice registrants according to the fee schedule in section 101–35.704. Government registrations must be paid by credit card (IMPACT). Commercial organizations are encouraged to pay by credit card. All other payments should be made to GSA Registration Services, 1800 F Street NW, Suite G–222, Washington, DC 20405

Dated: July 30, 1998.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 98–31828 Filed 11–30–98; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 73 and 76

[MM Docket No. 98–204, FCC 98–305]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this *Notice of Proposed Rule Making* (NPRM), the Commission proposes new broadcast and cable Equal Employment Opportunity (EEO) rules and policies. The NPRM proposes to retain the existing ban on discrimination and to promulgate recruitment-oriented outreach rules. The proposed EEO rules make clear that broadcasting and cable entities, including multichannel video programming distributors, are not required to employ a staff that reflects the racial or other composition of the community or to use racial preferences in hiring. The NPRM also proposes to streamline the Commission's broadcast EEO requirements, while, at the same time, maintaining an effective broadcast EEO program. These proposals include the possibility of granting administrative relief to small broadcasters and crediting joint recruitment efforts. Finally, the NPRM terminates the Commission's EEO streamlining proceeding in MM Docket No. 96–16, 60 FR 9964, March 12, 1996, with the exception of the one petition for reconsideration filed in that docket, which will now be considered in this proceeding. The intended effect of the NPRM is to invite comments on all aspects of the Commission's proposals and on the Commission's belief that it has the statutory authority to retain the anti-discrimination provisions of its broadcast EEO rule.

DATES: Comments are due January 19, 1999; reply comments are due February 18, 1999. Written comments by the public on the proposed information collections are due January 19, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before February 1, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C–1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Hope Cooper or Kathy Harvey, Mass Media Bureau, Enforcement Division (202) 416–1450. For additional information concerning the information collections, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 98–204, adopted November 19, 1998, and released November 20, 1998.

The complete text of this NPRM, which was adopted in MM Docket No. 98–204, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 202–857–3800, 1231 20th Street, NW, Washington, D.C. 20037.

Synopsis of Notice of Proposed Rule Making

1. The NPRM proposes and requests comments regarding new broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in *Lutheran Church—Missouri Synod* v *FCC*, 141 F.3d 344 (D.C. Cir. 1998) (*Lutheran Church*), rehearing denied, September 15, 1998. In *Lutheran Church*, the D.C. Circuit held that the Commission's broadcast EEO program requirements were unconstitutional because they pressured stations to maintain a workforce reflecting the racial composition of their communities, thus inducing them to grant illegal hiring preferences on the basis of race. The court also remanded the case back to the Commission to determine whether it had the authority to promulgate its ban on employment discrimination, which was not invalidated.

2. The NPRM proposes new broadcast and cable EEO rules which ensure non-discrimination in employment and broad dissemination of recruitment information. None of the proposals

create an incentive to hire on the basis of race or gender. In fact, the proposed rules remove all references to any comparison to minority and female labor force statistics, including sections concerning evaluation of employment profile and job turnover. One proposal would require entities to recruit for each vacancy with a certain number of national and/or local sources, including minority and female sources. The Commission believes that this kind of approach would ensure that all qualified potential applicants are informed of, and have an opportunity to apply for, vacancies. Another proposal would leave to an entity's good faith discretion what methods it would use to ensure broad dissemination of vacancy information. In order to provide guidance to entities, the proposed rules also clearly describe what records of EEO efforts must be kept by broadcast and cable entities, and detail how an entity should analyze its EEO program.

3. The NPRM also proposes to reinstate the preexisting EEO requirement that broadcasters file an Annual Employment Report, but with the understanding that the Report's data would only be used to monitor industry employment trends.

4. The NPRM retains the Commission's prohibition against employment discrimination and details the Commission's statutory authority to promulgate an employment non-discrimination rule as well as EEO program requirements. Specifically, the NPRM outlines the Commission's belief that Congress has ratified the Commission's authority to adopt broadcast EEO rules; that equal employment of minorities and women furthers the Commission's public interest goal of diversity of programming; and that the statutory goal of fostering minority and female ownership in the provision of commercial spectrum-based services, as directed by Section 309(j) of the Communications Act, is furthered by EEO requirements. With respect to broadcasters, the NPRM proposes modifying the anti-discrimination prohibition so that religious radio broadcasters may establish religious belief or affiliation as a *bona fide* occupational qualification for all station employees.

5. The NPRM notes the Commission's intent to limit undue administrative burdens on broadcasters generally, and particularly on those licensees of smaller stations and other distinctly situated broadcasters, consistent with maintaining an effective EEO program. Specifically, the NPRM invites comment on whether and, if so, how the Commission can reduce undue burdens on stations with small staffs or those located in small markets. Options include exempting qualifying stations from EEO reporting and recordkeeping requirements entirely; or permitting qualifying stations the option of attending a minimum number of recruiting events annually, such as job fairs, in lieu of vacancy specific recruitment. Further, the NPRM invites comment on how to award credit for licensees generally who participate in joint recruitment efforts and minority training and internship programs. Finally, the NPRM terminates the Commission's EEO streamlining proceeding in MM Docket No. 96–16 (with the exception of the one petition for reconsideration filed in that docket, which will now be considered in this proceeding) because MM Docket No. 96–16 concerned the provisions of our EEO Rule invalidated by the Court.

6. The NPRM invites comments on all aspects of the Commission's proposals and on the Commission's belief that it has the statutory authority to retain the anti-discrimination provisions of its broadcast EEO rule.

Initial Paperwork Reduction Act of 1995 Analysis

This NPRM contains proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

This NPRM contains proposals that are proposed to affect the following existing information collections that collectively make up the Commission's EEO program.

Rules: 47 CFR 73.2080 and 76.75

Form Numbers: FCC 395–A, FCC 395–B, FCC 395–M, FCC 396, FCC 396–A

Respondents: Businesses or other for-profit, Not-for-profit institutions

These estimates represent the existing burden as currently approved by OMB under the individual OMB approval numbers.

OMB Approval Number: 3060–0212
Title: Section 73.2080 Equal Employment Opportunity Program
Number of Respondents: 15,290
Estimated Time Per Response: 52 hours
Total Annual Burden: 679,744.

OMB Approval Number: 3060–0349
Title: Section 76.73/76.75—Cable TV EEO Policy and Programs
Number of Respondents: 5,600
Estimated time per response: 2,125 cable employment units/MVPD with 6 or more employees will have an average burden of 52 hours/year; 3,475 cable employment units/MVPD with fewer than 6 employees will have an average burden of 8 hours/year
Total annual burden: 138,300 hours.

OMB Approval Number: 3060–0095
Title: Annual Employment Report—Cable Television (FCC 395–A)
Number of Respondents: 2,564
Estimated time per response: 1.75 hours/form; 0.25/certification; 2.417 hours/supplemental information sheet
Total annual burden: 4,683 hours.

OMB Approval Number: 3060–0390
Title: Broadcast Station Annual Employment Report (FCC 395–B)
Number of Respondents: 14,000
Estimated Time Per Response: 0.88 hours per report
Total Annual Burden: 12,320 hours.

OMB Approval Number: 3060–0574
Title: MVPD Annual Employment Report (FCC 395–M)
Number of Respondents: 155
Estimated time per response: 1.75 hours/form; 0.25/certification; 2.417 hours/supplemental information sheet
Total annual burden: 233 hours.

OMB Approval Number: 3060–0113
Title: Broadcast Equal Employment Opportunity Program Report (FCC 396)
Number of Respondents: 235
Estimated Time Per Response: 3.0 hours per report
Total Annual Burden: 705 hours.

OMB Approval Number: 3060–0120
Title: Broadcast Equal Employment Opportunity Model Program Report (FCC 396–A)
Number of Respondents: 2,068
Estimated Time Per Response: 1.0 hours per report
Total Annual Burden: 2,068 hours.

Needs and Uses: This rulemaking proceeding is initiated to obtain comments concerning the

Commission's proposed EEO rules and policies that would be consistent with the D.C. Circuit's decision in *Lutheran Church*. This rulemaking proposes a new broadcasting EEO program rule and to change the Commission's cable EEO program rules emphasizing recruitment outreach programs. These information collections are necessary to monitor industry trends and to ensure that broadcast stations and cable entities do not engage in discriminatory practices and afford equal employment opportunity.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. *See* 5 U.S.C. 603. [The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

A. Need for, and Objectives of, the Proposed Rule Changes

The D.C. Circuit court in *Lutheran Church* held that the Commission's EEO minority outreach requirements for broadcasters were unconstitutional and remanded to the Commission to determine whether we have authority to enforce an employment non-discrimination rule. The NPRM seeks comment on proposed new EEO rules and policies for broadcast and cable entities, including multichannel video programming distributors (MVPDs), that are designed to be consistent with the *Lutheran Church* decision. We also request comment on our statutory authority to retain the anti-discrimination prong of our EEO rules. We invite comment on EEO rules which seek to ensure that broadcast stations and cable entities do not engage in discriminatory practices. In addition, our proposed rules would require broadcasters and cable entities to establish and maintain an EEO program designed to provide equal opportunity for minorities and women. Another proposal would grant administrative relief to small entities based on various criteria. One of the criteria proposed involves the number of employees at a station, *e.g.*, if a station has 10 or fewer full-time employees, it would be entitled to relief. The Commission's earlier attempt at implementing a similar proposal was declared arbitrary and capricious by the court in *Office of Communications of the United Church of Christ* v. *FCC*, 560 F.2d 529, 532 (2nd Cir. 1977) because the Commission had failed to provide a reasoned justification for departing from its prior precedent. Therefore, the Commission requests that commenters who favor this proposal provide ample evidence as to why this type of station deserves this type of relief. To accomplish the goals set forth, the NPRM proposes: (1) to initiate a new broadcasting EEO program rule and to change the Commission's cable EEO program rules, that would emphasize recruitment outreach and provide that entities are not to use racial, ethnic, or gender preferences in hiring; and (2) to permit administrative relief to small entities that meet proposed qualifying factors.

B. Legal Basis

Authority for the actions proposed in this NPRM may be found in Sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

C. Recording, Recordkeeping, and Other Compliance Requirements

The NPRM proposes that broadcasters and cable entities be required to retain records to demonstrate that they have recruited for each hire. Such recordkeeping may include: listings of recruiting sources utilized for each vacancy; copies of all advertisements, bulletins and letters announcing vacancies; and compilations totaling the race, ethnic origin, and gender of all applicants generated by each recruiting source according to vacancy.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

1. *Definition of a "Small Business"*

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. 5 U.S.C. 604(a)(3). Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Pursuant to 4 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this NPRM, we utilize the SBA's definition in determining the number of small businesses to which the rules would apply. We reserve the right, however, to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules proposed in this NPRM and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. *See Report and Order* in MM Docket No. 93–48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981, August 12, 1996, *citing* 5 U.S.C. 601(3). The new rules would apply to broadcast stations and cable entities, including multichannel video programming distributors (MVPDs).

2. *Issues in Applying the Definition of a "Small Business"*

We could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. *Estimates Based on Census Data*

The rules proposed in this NPRM will apply to television and radio stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. 13 CFR 121.201, Standard Industrial Code (SIC) 4833. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995). Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. *Id.* Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 [Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs)].

There were 1,509 full-service television stations operating in the nation in 1992. FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A–9. That number has remained fairly constant as indicated by the approximately 1,584 operating full-service television broadcasting stations in the nation as of October 1998. FCC News Release, Broadcast Station Totals as of October 30, 1998 (released November 18, 1998). For 1992[1] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. (The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.) Thus, the proposed rules will affect approximately 1,584 television stations; approximately 77%, or 1,219 of those stations are considered small businesses. (We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1998 total of 1,584 TV stations to arrive at stations categorized as small businesses.) These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In August 1998, minorities owned and controlled 32 (2.6%) of 1,209 commercial television stations in the United States. *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't. of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (August 1998). (MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.) According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States. *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business*, WB87–1, U.S. Department of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, the Commission recently amended its Annual Ownership Report Form 323 to require information on the gender and race of broadcast license owners in future filings. *See 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes, Report and Order*, MM Docket No. 98–43 (adopted October 22, 1998).

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[1] Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 53, III.

The proposed rule changes would also affect radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. 13 CFR 121.201, SIC 4832. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A–9. Included in this industry are commercial, religious, educational, and other radio stations. *Id.* Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. *Id.* However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. *Id.* The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. The Census Bureau counts multiple radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release No. 31327, Jan. 13, 1993. As of October 1998, official Commission records indicate that 12,448 radio stations are currently operating. FCC News Release, Broadcast Station Totals as of October 30, 1998 (released November 18, 1998).

The proposed rule changes would also affect small cable entities, including MVPDs. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201 (SIC 4841). This definition includes cable system operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), satellite master antenna systems, and subscription television services. According to the Bureau of the Census, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We discuss these services to provide a more succinct estimate of small entities:

Cable Systems: The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. 47 CFR 67.901(3). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 6393 (1995), 60 FR 544919, September 15, 1995. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000." 47 U.S.C. 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $520 million in the aggregate. 47 CFR 76.1403(b) (SIC 4833). Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995). Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

MDS: The Commission has defined "small entity" for purposes of the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589 (1995), 60 FR 36524, July 17, 1995. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. (One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.)

MDS also includes licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may be subject to our amended EEO rules.

DBS: As of October 1997, there were nine DBS licensees, some of which were not in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS services requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

An alternative way to classify small entities is by the number of employees. We estimate that the total number of full-service broadcast stations with 4 or fewer employees is 5,186. We base this estimate on a compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395–B), performed by staff of the Equal Employment Opportunity Branch, Mass Media Bureau, FCC. Similarly, we estimate that in 1997, the total number of cable employment units with six or more full-time employees was 2,750, and that 1,900 cable employment units employed fewer than six full-time employees. Also, in 1997, the total number of other MVPDs employing six or more full-time employees was 725, and 225 such MVPDs employed less than six full-time employees.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

This NPRM solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. As an example, the NPRM requests comment on whether we should grant administrative relief to stations with small staffs or in small markets. Finally, the NPRM seeks comment on whether to raise the employment threshold for EEO reporting and recordkeeping requirements. This change may create a new definition of small business requiring approval from the SBA before doing so.

F. Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

The proposed rules do not overlap, duplicate or conflict with any other rules.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies)

47 CFR Part 73

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television

47 CFR Part 76

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0, 73 and 76 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.283 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 0.283 Authority delegated.

* * * * *

(b) * * *

(1) * * *

(iii) present documented allegations of failure to comply with the Commission's Equal Employment Opportunity rules and policies.

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PART 73—RADIO BROADCAST SERVICES

3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

4. Section 73.2080 is revised as follows:

§ 73.2080 Equal employment opportunities (EEO).

(a) *General EEO policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

(b) *General EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice. Under terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure a vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) *Specific EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and non-discrimination in every aspect of station employment policy and practice. Under the terms of its program, a station must:

(1) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a bona fide occupational qualification for a job position are not required to comply with these recruitment requirements with respect to that job position only, but will be expected to make reasonable, good faith efforts to recruit minorities and women who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, ethnic origin, religion, or gender.

(2) Analyze its efforts to recruit, hire and promote without discrimination on the basis of race, ethnic origin, color, religion, and gender and address any difficulties encountered in implementing its equal employment opportunity program. As part of its license renewal application, a station shall submit a statement detailing its analysis of such efforts for the 12 months prior to license expiration. Analysis should occur on an ongoing

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basis. A station's analysis shall include measures taken to:

(i) Disseminate its equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are non-discriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, ethnic origin, color, religion, or sex discrimination;

(iv) Assess the productivity of recruiting sources;

(v) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, ethnic origin, color, religion or sex over another;

(vi) Offer promotions of qualified minorities and women in a nondiscriminatory fashion to positions of greater responsibility;

(vii) Where union agreements exist, cooperate with the union or unions in the development of programs to assure qualified minority persons or women of equal opportunity for employment, and include an effective non-discrimination clause in new or renegotiated union agreements; and

(viii) Avoid the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(3) Retain records to prove that it has satisfied the requirements of (c)(1) and (c)(2) of this section. Such recordkeeping shall include:

(i) Listings of recruiting sources utilized for each vacancy and the date the vacancy was filled;

(ii) Dated copies of all advertisements, bulletins and letters announcing vacancies; and

(iii) Compilations totaling the race, ethnic origin, and gender of all applicants generated by each recruiting source according to vacancy.

(d) *Mid-term review for television broadcast stations.* The Commission will conduct a mid-term review of the employment practices of each broadcast television station four years following the station's most recent license expiration date as specified in § 73.1020 of this part. Television licensees are required to submit a narrative statement, as described in paragraph (c)(2) of this section, four months before the date specified in the previous sentence.

(e) *Enforcement.* The Commission will review a station's EEO program at renewal time and may conduct random audits, including on-site audits, throughout the license term to enforce this rule.

(f) *Sanctions.* The Commission may impose appropriate sanctions for any violation of this rule.

PART 76—CABLE TELEVISION SERVICE

5. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

6. Section 76.75 is amended by revising paragraphs (b), (c) and (f) and by adding paragraph (g) to read as follows:

§ 76.75 EEO program requirements.

* * * * *

(b) Recruit for every job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a cable entity to grant preferential treatment to any individual or group based on race, ethnic origin, color, or gender.

(c) Retain records to prove that it has satisfied the requirements of (b) and (f) of this section. Such recordkeeping shall include:

(1) Listings of recruiting sources utilized for each vacancy and the date the vacancy was filled;

(2) Dated copies of all advertisements, bulletins and letters announcing vacancies; and

(3) Compilations totaling the race, ethnic origin, and gender of all applicants generated by each recruiting source according to vacancy.

* * * * *

(f) Analyze its efforts to recruit, hire, promote and use services without discrimination on the basis of race, ethnic origin, color, religion, and gender and explain any difficulties encountered in implementing its equal employment opportunity program. As part of its Form 395–A/395–M supplemental investigation, an employment unit shall submit a statement detailing its analysis of such efforts for the previous 12 months. Analysis should occur on an ongoing basis. A unit's analysis shall include measures taken to:

(1) Where union agreements exist, cooperate with the union or unions in the development of programs to assure qualified minority persons or women of equal opportunity for employment, and include an effective non-discrimination clause in new or renegotiated union agreements;

(2) Review seniority practices to ensure that such practices are non-discriminatory;

(3) Examine rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, ethnic origin, color, religion, age, or sex discrimination;

(4) Assess the productivity of recruiting sources;

(5) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, ethnic origin, color, religion, age, or sex over another; and

(6) Avoid the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(g) The Commission may impose appropriate sanctions for cable entities not found to be in compliance with paragraphs (b), (c), or (f) of this section.

[FR Doc. 98–32013 Filed 11–30–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 111998B]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Atlantic Sea Scallop Fishery, and Atlantic Salmon Fishery; Fishery Management Plan (FMP) Amendments to Designate Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an omnibus amendment to FMPs; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (NEFMC) has submitted for review and approval by the Secretary of Commerce (Secretary) an omnibus amendment that includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. The document also includes Amendment 1 to the Monkfish FMP prepared jointly by NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC). Because MAFMC has not yet adopted Monkfish Amendment 1, the FMP amendment is not being considered for Secretarial approval at this time. Finally, the omnibus amendment includes the EFH components of the

Atlantic Herring FMP that is being developed by the NEFMC. The EFH information for Atlantic Herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial approval. These EFH provisions implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The omnibus amendment describes and identifies EFH for the specified fisheries, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH. The amendment includes no new fishery management measures, so no regulations are proposed.

DATES: Public comments must be received on or before February 1, 1999.

ADDRESSES: Comments on this amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the outside of the envelope: "Comments on Essential Fish Habitat Amendment."

Copies of the amendment and the environmental assessment are available from the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Jonathan M. Kurland, Assistant Habitat Program Coordinator, 978–281–9204.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment. Therefore, NMFS solicits comments on the approval, disapproval, or partial approval of these amendments.

The portions of the omnibus EFH amendment that NMFS presently is considering for approval would designate EFH in waters of the United States for 14 species of groundfish, as well as Atlantic sea scallops and Atlantic salmon. The MAFMC has not yet adopted Monkfish Amendment 1. Once adopted, the NEFMC will submit Amendment 1 for Secretarial review and a notice of availability will be published in the **Federal Register**. The omnibus amendment also includes the EFH components of the Atlantic Herring FMP that is being developed by NEFMC. The EFH information for herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial review and a notice of availability will be published in the **Federal Register**. NMFS will consider approval, disapproval, or partial approval of Amendment 1 to the Monkfish FMP and the EFH components of the Atlantic Herring FMP separately after their submission by the NEFMC, following separate notices of availability.

The omnibus amendment would also designate Habitat Areas of Particular Concern (HAPC) for Atlantic salmon and juvenile Atlantic cod in accordance with 50 CFR 600.815(a)(9). Although no new management measures are proposed for these HAPC, the Atlantic cod HAPC would be protected from potential adverse effects from fishing by maintaining the existing restrictions on fishing for the region known as Closed Area II on Georges Bank, pursuant to 50 CFR 648.81(b). In addition to the original rationale for implementing Closed Area II in 1994 (reducing overfishing of severely depleted groundfish stocks, as noted in the preamble to the emergency interim rule published in the **Federal Register** on December 12, 1994 (59 FR 63926)), under the omnibus amendment these management measures would be retained for habitat protection reasons.

NMFS solicits comments on the approval, disapproval, or partial approval on Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. To be considered, comments must be received by close of business on February 1, 1999; that does not mean postmarked or otherwise transmitted by that date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 24, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31996 Filed 11-30-98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 112498A]

RIN 0648–AL52

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 11

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. The amendment was prepared with the intention of bringing the FMP into compliance with provisions of the Sustainable Fisheries Act (SFA) regarding overfishing, bycatch, essential fish habitat, and fishing communities. This action also is intended to improve the types and amounts of scientific information available for use in stock assessments and management of the Pacific coast groundfish fishery.

DATES: Comments on Amendment 11 must be received on or before February 1, 1999.

ADDRESSES: Comments on Amendment 11 or supporting documents should be sent to William Stelle, Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or to William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 11 and the Environmental Assessment/ Regulatory Impact Review are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier at 206–526–6140, Jim Morgan at 562–980–4000, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve the amendment for implementation.

The SFA amended the requirements for FMPs in section 303(a) of the Magnuson-Stevens Act. The SFA established a 2-year deadline (October 11, 1998) by which each Regional Fishery Management Council had to submit amendments to NMFS to bring all the FMPs into compliance with the SFA/Magnuson-Stevens Act requirements.

Amendment 11 seeks to make the Pacific Coast Groundfish FMP consistent with the Magnuson-Stevens Act by: amending the FMP framework that defines "optimum yield" for setting annual groundfish harvest limits; setting framework control rules on defining rates of "overfishing" and levels at which managed stocks are considered "overfished;" defining Pacific Coast groundfish essential fish habitat; setting a bycatch management objective and a framework for bycatch reduction measures; establishing a management objective to take the importance of fisheries to fishing communities into account when setting groundfish management measures; providing authority within the FMP for the Council to require groundfish use permits for all groundfish users; authorizing the use of fish for compensation for private vessels conducting NMFS-approved research; removing jack mackerel from the fishery management unit; and updating FMP objectives, definitions and industry descriptions.

Public comments on Amendment 11 must be received by February 1, 1999 to be considered by NMFS in the decision to approve/disapprove Amendment 11. A proposed rule to implement Amendment 11 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on proposed regulations to implement Amendment 11 in the near future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32018 Filed 11–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 111798A]

RIN 0648–AL89

Fisheries of the Exclusive Economic Zone Off Alaska; Revision of Definitions of Overfishing, Maximum Sustainable Yield, and Optimum Yield for the Crab and Scallop Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted for Secretarial review Amendment 7 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BSAI crab FMP) and Amendment 6 to the FMP for the Scallop Fishery Off Alaska. These amendments would revise definitions of overfishing, maximum sustainable yield (MSY), and optimum yield (OY) for the crab and scallop fisheries. These actions are necessary to ensure that conservation and management measures continue to be based on the best scientific information available and are intended to advance the Council's ability to achieve, on a continuing basis, the OY from fisheries under its jurisdiction.

DATES: Comments on the amendments must be received by February 1, 1999.

ADDRESSES: Comments on these amendments should be submitted to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of Amendment 7 to the BSAI Crab FMP, Amendment 6 to the Scallop FMP, and the Environmental Assessment prepared for each amendment are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit each FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a document announcing that the FMP or FMP amendment is available for public review and comment. This action constitutes such notice for Amendment 7 to the FMP for the Bering Sea/Aleutian Islands King and Tanner Crabs and Amendment 6 to the FMP for the Scallop Fishery Off Alaska. NMFS will consider the public comments received during the comment period in determining whether to approve these FMP amendments.

Section 301 (a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all FMPs create management measures consistent with those standards. National standard 1 requires that conservation and management measures shall "prevent overfishing while achieving, on a continuing basis, the optimum yield" from fisheries in Federal waters. The Magnuson-Stevens Act, in section 303(a)(10), requires that each FMP specify objective and measurable criteria (status determination criteria) for identifying when stocks or stock complexes covered by the FMP are overfished and for rebuilding overfished stocks. Pursuant to section 301(b) of the Magnuson-Stevens Act, NMFS issued national standard guidelines (50 CFR 600.305) to provide comprehensive guidance for the development of FMPs and FMP amendments that comply with the national standards. The national standard guidelines require that when data are insufficient to estimate any of the determination criteria, the use of reasonable proxies is required.

The guidelines for national standard 1 (50 CFR 600.310) are based on the Magnuson-Stevens Act's definitions of "optimum yield," "overfishing," and "overfished"; the requirement for the establishment of objective and measurable criteria for determining the status of a stock or stock complex; and the requirement for remedial action in the event that overfishing is occurring or that a stock or stock complex is overfished.

The guidelines identify the following components as objective and measurable criteria for determining the status of the stock or stock complex to be defined in the FMP. First, MSY is established for the stock or stock complex. MSY is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions. To achieve a long-term average catch approximating MSY, an MSY control rule is determined. The MSY control rule can be a harvest rate equal to a conservative estimate of natural mortality. The MSY stock size is then determined as the average size of the stock that would be achieved under the MSY control rule. MSY stock size is measured in terms of mature biomass, or a proxy thereof. MSY stock size is the minimum standard for a rebuilding target when a stock is considered overfished.

MSY, the MSY control rule, and MSY stock size are then used to determine the minimum stock size threshold (MSST) and maximum fishing mortality threshold (MFMT), which are used to determine whether a stock or stock complex is overfished. The MSST is the greater of one half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the MFMT. If the actual size of the stock in a given year falls below MSST, the stock is considered "overfished." MFMT is defined by the MSY control rule and is expressed as the MSY fishing mortality rate, $F_{msy} = M$, a conservative estimate of the natural mortality value. Exceeding the MFMT for a period of 1 year or more constitutes overfishing.

The OY from a fishery provides a target harvest level and provides for rebuilding overfished stocks to a level consistent with producing MSY. OY equals the amount of fish that will provide the greatest overall benefit to the Nation. OY is based on MSY as reduced by relevant social, economic, and ecological factors. OY is calculated to determine the optimum harvest level over the long term. In the case of an overfished fishery, OY provides for rebuilding to a level consistent with producing the MSY for the fishery.

NMFS is required to notify the Council once NMFS determines that overfishing is occurring, a stock or stock complex is overfished, a stock or stock complex is approaching its MSST, or the rate or level of fishing mortality for a stock or stock complex is approaching MFMT. The Council then must take action to develop a rebuilding plan within 1 year. The Council may implement interim measures to reduce overfishing until the rebuilding plan is in place. The rebuilding plan can either be an FMP, an FMP amendment, or a proposed rule that accomplishes the purposes outlined in the national standard guidelines to end overfishing and rebuild the overfished stock or stock complex. Furthermore, the Council action must specify a time period for rebuilding the stock or stock complex that satisfies the Magnuson-Stevens Act.

In April 1998, the Council and its Advisory Panel (AP) and Scientific and Statistical Committee (SSC) reviewed a draft analysis of alternatives for revising the existing overfishing definitions. On May 1, 1998, NMFS published revised advisory guidelines to assist regional fishery management councils in updating FMPs for consistency with the Magnuson-Stevens Act. In June 1998, the Council took final action on amendments to bring the BSAI crab and scallop FMPs into compliance with the Magnuson-Stevens Act and the national standard guidelines (50 CFR 600.310). Each of these proposed amendments, if approved, would redefine overfishing, MSY, and OY based on the biology of the stock, the fishing history, and the quality of available data.

Bering Sea/Aleutian Islands King and Tanner Crabs

NMFS manages the king and Tanner crab fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) of the Bering Sea and Aleutian Islands off Alaska under the BSAI crab FMP. The Council prepared this FMP pursuant to the Magnuson-Stevens Act. NMFS approved the FMP, and it became effective in 1989. It is a framework FMP that, with oversight from the Council and NMFS, defers management of the crab resources in the BSAI to the State of Alaska (State). The FMP contains three categories of management measures: (1) Specified Federal management measures that require an FMP amendment to change; (2) framework type management measures, with criteria set out in the FMP that the State must follow when implementing changes in State regulations; and (3) measures that are neither rigidly specified nor frameworked in the FMP and that may be freely adopted or modified by the State, subject to applicable Federal laws and review (explained in the BSAI crab FMP, available from the Council: see **ADDRESSES**).

Amendment 7 to the BSAI crab FMP would improve management of the BSAI crab fisheries by instituting conservation and management measures that would (1) prevent overfishing, (2) achieve OY on a continuing basis, and (3) update the BSAI crab FMP with new information.

Revised Definitions of OY, MSY, and Overfishing

Amendment 7 would establish criteria for estimating OY and overfishing levels for BSAI crab stocks. The BSAI Crab Plan Team developed these criteria based on species life history characteristics and trends in stock biomass estimates. OY, MSY, and threshold levels proposed in Amendment 7 were derived from definitions contained in the Magnuson-Stevens Act and the national standard guidelines.

MSY represents the average of sustainable yield (SY) over a suitable period of time, where SY is a fraction of the total mature biomass (male and female) for a given year. The BSAI Crab Plan Team estimated MSY from the best scientific information available. However, the scientific information required to determine MSY was not available for several BSAI crab stocks. In these cases, proxy stocks have been used to estimate MSY. Table 1 of the Environmental Assessment for Amendment 7 sets forth estimates of MSY for BSAI crab species (see **ADDRESSES**). The MSY control rule for king and Tanner crabs is the mature biomass of a stock, or proxy thereof, exploited at a fishing mortality rate equal to a conservative estimate of natural mortality, M, which is $M=0.2$ for all king crab species and $M=0.3$ for all Tanner crab species. For BSAI crab, the MSY stock size is the average mature biomass observed over the past 15 years, from 1983 to 1997.

Amendment 7, in establishing the MSY, allows the establishment of the threshold level of abundance below which the stock is considered overfished. Overfishing is defined for king and Tanner crab stocks in the BSAI as any rate of fishing mortality in excess of the MFMT for a period of 1 year or more. MFMT, defined by the MSY control rule, is expressed as the MSY fishing mortality rate, $F_{msy} = M$. The MSST is specified as one-half of the MSY stock size. If stock abundance falls below MSST, the stock is considered overfished and the guidelines specify that a rebuilding plan must be prepared for the stock.

These definitions are part of the FMP framework. The Crab Plan Team and the Council will review the definitions every 5 years or when environmental conditions indicate a regime shift. At that time, MSY can be recalculated to take into account changes in the environment, in which case MSY, OY, and MSST would be changed in the FMP.

The State determines the allowable catch for the commercial crab fisheries by annually setting guideline harvest levels (GHLs) based on estimates of stock abundance. Annual establishment of crab GHLs is a "category two" management measure, which means the State determines the GHLs following criteria established in the FMP and with Federal oversight. Because they are based on crab abundance, GHLs can be set higher than MSY and the upper range of OY for a given fishing season, as long as the MSY and OY are not exceeded on a continuing basis. Therefore, in a year when stock abundance is higher than the MSY stock size, the GHL can exceed OY and MSY, without constituting overfishing. For example, if the Bristol Bay red king crab stock continues to rebuild as projected, the stock may be abundant enough to warrant a GHL higher than the MSY. If that occurs, the fleet would still be allowed to harvest the GHL in that year.

Currently, the Bering Sea *C. bairdi* Tanner crab spawning biomass is below the MSST and, hence, would be deemed "overfished" under Amendment 7. Estimated spawning biomass of Tanner crabs from the 1997 survey was 64.2 million lb (29,121 metric tons (mt)), well below the MSST of 94.8 million lb (43,001 mt). If Amendment 7 is approved by NMFS, the Council will be required to develop a rebuilding plan for this stock within 1 year.

Update the BSAI Crab FMP

The BSAI Crab FMP has never been updated from the original draft of January 24, 1989. Since that time, six FMP amendments have been approved, but the amendment language has not been included in the FMP text. The 1989 BSAI Crab FMP does not provide readers with a clear understanding of conservation and management measures that have been implemented for the BSAI crab fisheries. In addition, the 1989 FMP does not include catch data and other scientific information from the past 10 years. Other changes have also occurred, including changes to the Magnuson-Stevens Act and other laws, a Russian/U.S. boundary agreement, and development of a Federal/State Action Plan.

For these reasons, the Crab Plan Team and the Council have proposed revisions to the FMP to bring it up to date. These proposed changes were discussed and reviewed over the course of several public meetings that occurred during the period 1995–1998. Proposed changes would include incorporating previously approved FMP amendment language, updating figures, tables, and appendix language, editorial housekeeping changes, and adding language in accordance with requirements of the Magnuson-Stevens Act. New sections would be added to include an Executive Summary, a Federal/State Action Plan, the Alaska Board of Fisheries regulations on Category 2 petitions, Species Profiles, and Coastal Community Profiles.

Scallops

A Federal FMP for the scallop fishery was recommended by the Council in April 1995, and NMFS approved it on July 26, 1995. The FMP defers scallop management to the State because the State has managed the scallop fishery in the EEZ and in Alaskan State waters since the fishery began in 1968. The FMP covers all fisheries for weathervane scallops (*Patinopecten caurinus*), pink scallops (*Chlamys rubida*), spiny scallops (*Chlamys hastata*), rock scallops (*Crassadoma gigantea*), and all other scallop species in the waters off Alaska. Only weathervane scallops are harvested commercially at this time.

Amendment 6 is proposed to amend the scallop FMP by redefining overfishing, OY, and MSY, to bring the FMP into compliance with the Magnuson-Stevens Act. This amendment also would add information on State bycatch monitoring and reduction programs.

The Scallop Plan Team recommended definitions of MSY, OY, and overfishing for weathervane scallop stocks based on life history data and observed catch history. For the weathervane scallop stocks, biomass has not been estimated, age data from the fishery are lacking, and no comprehensive surveys have been conducted. Therefore, MSY can not be estimated based on scallop biomass.

MSY for weathervane scallops is based on the average catch from 1990–1997, excluding 1995, when the fishery was closed due to overfishing concerns. The 1990–1997 time frame reflects prevailing ecological conditions. OY is specified as a range extending from zero to MSY. The MSY control rule for weathervane scallops consists of a constant harvest rate equal to the estimated natural mortality rate of 0.13. MSY stock size is MSY divided by natural mortality. A MSST for weathervane scallops is established based on ½ MSY stock size. If the stock fell below this threshold, the stock would be considered overfished. Overfishing of weathervane scallop stocks is then defined as a fishing rate in excess of the natural mortality rate, $F_{overfishing}=M=0.13$. It should be noted that the current upper ends of the GHL ranges for each scallop management area, when combined, exceed the upper bound of OY.

In the future, better quantitative estimates of appropriate scallop yields by area may be generated based on analysis of observer data. Additional information on biomass and long-term potential yield of pink, spiny, and rock scallops also may be available in the future. At such time, MSY and OY would be re-estimated and the FMP amended.

Information on Bycatch

The Magnuson-Stevens Act emphasizes the importance of bycatch effects on achieving sustainable fisheries. National standard 9 mandates that conservation and management measures shall, to the extent practicable, (1) minimize bycatch and (2), to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Amendment 6 to the Scallop FMP identifies the following bycatch reduction and monitoring measures the State has implemented in accordance with national standard 9 of the Magnuson-Stevens Act: At-sea catch sampling, area closures, bycatch limits, and gear restrictions.

In 1993, the State implemented an observer program to monitor crab bycatch, as well as collect biological and fishery information on weathervane scallops in an effort to answer critical management questions. Efforts are underway to use data collected by observers to estimate abundance of scallops using a fishery-based stock assessment model. Other data are collected to define the biological season, define the time period of highest quality and quantity of product, gain insights into scallop recruitment and maturity, estimate the number and weight of discarded scallops, map scallop beds, determine the extent of bottom area dredged, and calculate catch per unit effort.

Observers collect bycatch data during the fishing season. Observers identify, count, and record the number of crab and Pacific halibut encountered, and collect information on the retained and discarded scallop catch. In addition to enumerating crab, carapace measurements, shell age, sex, injuries, and mortality are recorded. All Pacific halibut encountered are measured for length and examined for injuries and overall body condition. Management areas are closed by emergency order if established crab bycatch limits are reached.

The Council prepared an EA for each amendment that describes the management background, the purpose and need for action, the management action alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of each EA can be obtained from the Council (see **ADDRESSES**).

The Director of the Alaska Fisheries Science Center, NMFS, has certified with reservations that the proposed definitions of overfishing comply with the provisions of the guidelines at 50 CFR 600.310(d)(5) that an overfishing definition must (1), have sufficient scientific merit, (2) are likely to result in effective Council action to protect the stock from closely approaching or reaching an overfished status, (3) provide a basis for objective measurement of the status of the stock against the criteria, and (4) are operationally feasible. The crab and scallop overfishing definitions satisfy criteria (1), (3), and (4). However, there is not enough information to determine if the overfishing definitions satisfy criterion (2). Data currently available for species covered by these FMPs are inadequate to determine whether the selected MSSTs are greater than the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the MFMT.

NMFS will consider the public comments received during the comment period in determining whether to approve Amendment 7 to the BSAI crab FMP or Amendment 6 to the Scallop FMP. To be considered, comments must be received by the close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Dated: November 24, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31997 Filed 11-30-98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 230
Tuesday, December 1, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Crystal Mountain Master Development Plan, Mt. Baker-Snoqualmie National Forest, Pierce County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for Crystal Mountain's proposal to update its Master Development Plan. The proposed development includes the replacement and addition of chairlifts and surface lifts; construction of an aerial tram; expansion of the snowmaking system; as well as the addition and expansion of parking areas, day lodges, overnight lodging and other related facilities, and utilities to support new ski and other recreation opportunities. The proposed action also includes watershed restoration projects that have been identified in the watershed.

The proposed action would increase the year-round recreational opportunities within the existing Special Use Permit Boundary (4,350 acres). Implementation of the proposed Master Development Plan would increase the skiers-at-one-time (SAOT) capacity from 7,150 to 10,990. If implemented, the resulting persons-at-one-time (PAOT) capacity of the resort would increase from 7,865 to 12,090.

DATES: Comments concerning the scope of this analysis should be in writing and postmarked by January 15, 1999.

ADDRESSES: Send written comments to Daniel T. Harkenrider, Acting Forest Supervisor, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, Attention: Crystal Mountain Master Plan.

FOR FURTHER INFORMATION CONTACT: Larry Donovan, Winter Sports Specialist, Mt. Baker-Snoqualmie National Forest Supervisor's Office, 21905 64th Avenue West, Mountlake Terrace, Washington 98043–2278. Phone: (425) 744–3403. Internet: l.donovan/r6pnw__mbs@fs.fed.us.

SUPPLEMENTARY INFORMATION: Crystal Mountain has been operating under a Special Use Permit from the USDA Forest Service since it opened for business in 1962. Presently, alpine skiing/snowboarding and other four-season resort activities are provided to the public through a Special Use Permit administered by the Mt. Baker-Snoqualmie National Forest. The current Special Use Permit includes a requirement that an updated Master Development Plan be prepared, as most projects identified in the existing (1983) Master Development Plan have been developed.

The purpose (objective) of this project is an updated Master Plan for long range (10–15) years management and development of the Crystal Mountain Ski Area. The goal of the Master Plan will be to ensure the long-term economic viability of Crystal Mountain; maintain the competitive position of Crystal Mountain with other ski areas in the Puget Sound Basin; maintain and restore a healthy ecosystem; and be consistent with the Mt. Baker-Snoqualmie National Forest Plan.

The proposed action is the submitted 1998 Master Development Plan proposal. It includes: replacing three existing chair lifts; constructing seven new chair lifts, two new surface lifts, and an aerial tram, resulting in an additional of 265.8 acres of lift-served ski terrain. The tram provide improved four-season public access to the summit of Crystal Mountain. Also proposed: an expanded snowmaking system (from 30 acres of coverage to 249 acres); and increased night skiing (from 65 to 175 acres). The proposed action also includes the addition of 57,000 square feet of support facilities, including two on-mountain restaurants. Expansion of the existing Alpine Inn and construction of a new hotel would provide public lodging for an additional 690 overnight visitors. An additional base area (Bullion Basin) is proposed for development in a portion of the existing Parking Lot B. Overall parking would be expanded by 11–12 acres. New employee housing facilities are proposed, serving 285 employees. A new sewage treatment facility is also proposed; it would serve the Crystal Mountain ski area as well as other Forest Service Special Use Permit areas and private development in the watershed. In order to meet the increased snowmaking and domestic water consumption needs, several wells would be developed. The proposed action also includes watershed restoration projects as identified in the Silver Creek Watershed Condition Assessment. Implementation could begin in the summer of 2000 and would continue for approximately 10–15 years.

The site-specific environmental analysis provided by the Crystal Mountain Master Development Plan EIS will assist the Forest Supervisor in determining which improvements are needed to meet the goals and objectives, as stated above.

An environmental document will be produced which will display alternativers considered, including (1) no action, and (2) the proposed action. Three additional alternatives have been tentatively identified: (3) reduced expansion into the East Peak area; (4) no development in the North Country, South Country and East Peak Areas; and (5) reduced disturbance to riparian reserves. The EIS will analyze the direct, indirect, and cumulative effects of the alternatives. Past, present, and projected activities on both private and National Forest System lands will be considered. The EIS will disclose the effects of site-specific mitigation.

Comments from the public will be used to:

- Identify potential issues.
- Identify major issues to be analyzed in depth.
- Eliminate minor issues or those that have been covered by a previous environmental analysis, such as the Mt. Baker-Snoqualmie Land and Resource Management Plan.
- Identify alternatives to the proposed action.
- Identify potential environmental effects of the proposed action and alternatives.

Issues Identified as the result of internal scoping include:

- Consistency with the Forest Plan/Aquatic Conservation Strategy Objectives;
- Maintenance of Visual Quality Objectives in Mount Rainier National Park and along the Pacific Crest Trail;
- Transportation impacts to Highway 410 and Crystal Mountain Boulevard;

- Increased access to "Back Country" terrain;
- Maintenance of snags, large downed wood and old growth habitat; and
- Maintenance of habitat for Threatened & Endangered, Sensitive and Survey & Manage species.

Scoping and public involvement are continuing. An initial scoping letter will be mailed on November 19, 1998. Two public scoping meetings will be held: December 8, 1998, from 6:00 PM to 9:00 PM, at the Seattle Sea-Tac Marriot Hotel, 3201 South 176th Street, Seattle, WA 98189; and December 9, 1998, from 5:30 PM - 9:00 PM at the Enumclaw Senior High School cafeteria, 226 Semanski South, Enumclaw, WA 98022. The information and comments received will be used in preparation of the draft EIS.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within (30) days.

The draft EIS is expected to be filed in April 1999. Following release of the draft EIS, there will be a public comment period of at least 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes that it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the EIS. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in November 1999. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The lead agency is the Forest Service. The Forest Supervisor of the Mt. Baker-Snoqualmie National Forest is the responsible official. The responsible official will document the decision and the reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations 36 CFR Parts 215 or 251.

Dated: November 13, 1998.

Dennis E. Bschor,

Forest Supervisor.

[FR Doc. 98–31906 Filed 11–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Clean State Ecosystem Management Project, Nez Perce National Forest, Idaho County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent.

AUTHORIZATION: 40 CFR 1508.22.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement for the Clean State Ecosystem Management Project in March 6, 1997 in the Federal Register (Vol. 62, No. 44, Page 10253–10254). Forest Service Policy mandates that a revised notice of intent (NOI) be filed when there is a major change is the information shown in the notice of intent. For the Clean State Ecosystem Management Project, there are two major changes:

1. *A delay of more than 6 months in filing either a draft for final EIS*

◆ The draft impact statement is anticipated to be done by May of 1999 with the final EIS to be published in July 1999. This will be a 12 month delay of the draft and final EIS from the original notice of intent.

2. *A change in the proposed action or the decision to be made.*

◆ The following actions have been removed from the Clean State Ecosystem Management Project proposed action:

◆ Modify existing fish structure in Slate Creek;

◆ Develop and enhance dispersed recreation sites; and

◆ Provide interpretive sites for the public.

DATES: Written comments and suggestions should be received by **Federal Register** to receive timely consideration in the preparation of the draft EIS.

ADDRESSES: Send written comments and suggestions, request for maps, or request to be placed on the mailing list to Jack Carlson, District Ranger, Salmon River Ranger District, Nez Perce National Forest, HC 01, Box 70, Whitebird, Idaho, 83554 or by e-mail at: cseis/r1_nezperce@fs.fed.us

FOR FURTHER INFORMATION CONTACT: Mike McGee or Marsha Hollander, Salmon River Ranger District, HC 01, Box 70, Whitebird, Idaho 83554. Phone (208) 839–2211 or by e-mail at: cseis/r1_nezpere@fs.fed.us

Dated: November 18, 1998.

Elayne M. Murphy,

Acting Forest Supervisor, Nez Perce National Forest.

[FR Doc. 98–31871 Filed 11–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Committee of Scientists will hold a public teleconference call on Tuesday, December 15, 1998. The teleconference call will begin at 1:00 p.m. and end at 4:00 p.m. (eastern standard time). The purpose of the telephone conference call is for the Committee of Scientists to continue discussion of its report and recommendation to the Secretary of Agriculture and the Chief of the Forest Service. The public is invited to attend this teleconference call and may be provided an opportunity to comment on the Committee of Scientists' deliberations during the teleconference, only at the request of the Committee.

DATES: The teleconference call will be held on Tuesday, December 15, 1998, from 1:00 p.m. to 4:00 p.m (eastern standard time).

ADDRESSES: The teleconference will be held at the USDA Forest Service headquarters, Auditor's Building, 201 14th Street, S.W., Washington, D.C., in the Roosevelt Conference Room and at all Regional Offices of the Forest Service, which are listed in the table under Supplementary Information.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the teleconferences, contact Bob Cunningham, Designated Federal Office to the Committee of Scientists, by telephone (202) 205-1523.

SUPPLEMENTARY INFORMATION:

The public may attend the teleconference at the following field locations:

USDA Forest Service Regional Office Locations

Region 1, Northern Region, Federal Building, 200 E Broadway, Missoula, MT
Region 2, Rocky Mountain Region, 740 Simms St., Golden, CO
Region 3, Southwestern Region, Federal Building, 517 Gold Ave., SW., Albuquerque, NM
Region 4, Intermountain Region, Federal Building, 324 25th St., Ogden, UT
Region 5, Pacific Southwest Region, 630 Sansome St., San Francisco, CA
Region 6, Pacific Northwest Region, 333 SW 1st Ave., Portland, OR
Region 8, Southern Region, 1720 Peachtree Rd. NW, Atlanta, GA
Region 9, Eastern Region, 310 W. Wisconsin Ave, Room 500, Milwaukee, WI
Region 10, Alaska Region (office will open early), Federal Office Building, 709 W. 9th St., Juneau, AK

The Committee of Scientists was chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795).

Dated: November 25, 1998.

Paul Brouha,

Associate Deputy Chief, National Forest System.

[FR Doc. 98–31972 Filed 11–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity to Comment on the Applicants for the Central Illinois (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the geographic area assigned to Central Illinois Grain Inspection, Inc. (Central Illinois).

DATES: Comments must be postmarked, or sent by telecopier (FAX) by December 30, 1998.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1998, **Federal Register** (63 FR 52678), GIPSA asked persons interested in providing official services in the Central Illinois area to submit an application for designation by October 30, 1998. There were two applicants: Central Illinois and Turner Grain Services, Inc. (Turner). Central Illinois applied for designation to provide official services in the entire area currently assigned to them. Turner applied for designation to provide official services in the western portion of the Central Illinois area: bounded on the North by Interstate 74; bounded on the East by Interstate 155; bounded on the South by Illinois Route 136 and the southern Tazewell County Line; and bounded on the West by the western Peoria County line north to Interstate 74.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 19, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–31748 Filed 11–30–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Correction of the October 1, 1998, Federal Register Notice Extending Pilot Programs

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice correction.

SUMMARY: On October 1, 1998, GIPSA published in the **Federal Register**, a Notice extending three pilot programs, timely service, open season, and barge until September 30, 2000. The Notice inadvertently omitted referencing an earlier **Federal Register** Notice that reduced from 6 months to 3 months the period for which grain facilities had to have been without official services to qualify for the "Open Season" pilot program. GIPSA is correcting the October 1, 1998, **Federal Register** Notice by adding reference to the omitted earlier **Federal Register** Notice.

EFFECTIVE DATE: November 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: The October 1, 1998, **Federal Register** (63 FR 52682) noted that the pilot program provisions would remain the same as announced in the September 27, 1995, and January 15, 1998, **Federal Registers**. A third **Federal Register** Notice that changed one of the "open season" pilot program's provisions was inadvertently omitted. That Notice, published on October 3, 1996 (61 FR 51674), reduced from 6 months to 3 months the period that facilities had to have been without official sample-lot or official weighing services to qualify.

GIPSA is publishing this notice to correct the omission.

Correction

In FR Doc. 98–26091, beginning on page 52683 (63 FR 52683) in the issue of Thursday, October 1, 1998, make the following correction:

1. On page 52683, in the second column, insert the following as the new second paragraph. "The three pilot program provisions will remain the same as announced in the September 27, 1995, October 3, 1996, and January 15, 1998, **Federal Registers**."

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 19, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–31749 Filed 11–30–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–808]

Chrome-Plated Lug Nuts From the People's Republic of China; Amendment of Final Results of Antidumping Duty Administrative Review

ACTION: Notice of Amendment to Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China.

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On October 7, 1998, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping order on chrome-plated lug nuts (lug nuts) from the People's Republic of China (PRC). *See Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Duty Review*, 63 FR 53872 (October 7, 1998) (final results). The review covered the period September 1, 1996 through August 31, 1997.

We gave interested parties the opportunity to provide comments concerning ministerial errors. We received comments from Jiangsu Rudong Grease Gun Factory (Rudong) alleging a ministerial error. After considering this comment, we have amended the final results of the review.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Maureen Flannery, Antidumping/Countervailing Duty Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0648 and (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 353 (April 1, 1997).

Scope of Review

The products covered by this review are one-piece and two-piece chrome-plated and nickel-plated lug nuts from the PRC. The subject merchandise includes chrome-plated and nickel-plated lug nuts, finished or unfinished, which are more than $^{11}/_{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hx) size of at least $^{3}/_{4}$ inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus $^{1}/_{16}$ of an inch (1.59 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Excluded from the order are zinc-plated lug nuts, finished or unfinished, stainless steel capped lug nuts, and chrome-plated lock nuts.

The merchandise under review is currently classifiable under item 7318.16.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Amendment of Final Results

Rudong alleges that the Department made a clerical error in calculating the Indian inflation factor it applied to certain surrogate Indian data. In the preliminary results, Rudong states, for certain inputs the Department used surrogate Indian data obtained from the period September through December 1996. This surrogate Indian data was adjusted upwards by an average inflation index for the period of September through December 1996. In the final results, the Department extended its use of surrogate Indian data to include newly available data for the months of January through May 1997. Rudong contends that the Department should have therefore extended its inflation index to include inflation data for the months of January through May 1997.

We agree with Rudong. The Indian inflation index should cover the same period as the surrogate Indian data. Therefore, the Indian inflation index applied to steel wire rod data should be extended to include the months of January through May 1997. This affects the calculations of steel wire rod value as this is the only value for which the data period was expanded in the final results. As defined by section 751(h)

Act, the term "ministerial error" includes errors "in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the [Department] considers ministerial." The Department's error in not extending the inflation index period when it expanded the data period was clearly an oversight of this nature. Therefore, we are amending the final results.

Amended Final Results of Review

We determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Jiangsu Rudong, Grease Gun Factory	9/1/96–8/31/97	1.23
PRC-Wide rate	9/1/96–8/31/97	44.99

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value (NV) may vary from the percentage stated above for Rudong. We have calculated importer-specific duty assessment rates for lug nuts by dividing the total dumping margins (calculated as the difference between NV and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of the importer's/customer's entries during the review period. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of this notice of final results of review for all shipments of lug nuts from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Rudong, which was found to merit a separate rate for the final results of this review, the cash deposit rate will be 1.23 percent; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to a PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. See 63 FR 24391, 24403 (May 4, 1998). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: November 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–31981 Filed 11–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Pipes and Tubes From India; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On July 22, 1998, the Department of Commerce published in the **Federal Register** (63 FR 39269) the amended final results of administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from India. The period of review is May 1, 1996 through April 30, 1997. Subsequent to the publication of the amended final results, we received a comment from the respondent alleging a ministerial error. After analyzing the comment submitted, we are amending our amended final results to correct the ministerial error. Based on the correction of the ministerial error, we have changed the margin for Rajinder Pipes Ltd. and Rajinder Steel, Ltd.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3477 or 482–4023, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1998, the Department published in the **Federal Register** (63 FR 39269) the amended final results of administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from India covering the period May 1, 1996 through April 30, 1997. After publication of the amended final results, we received a timely allegation from Rajinder Pipes Ltd. and Rajinder Steel, Ltd. (collectively called "RSL") that we had made a ministerial error. However, because RSL had filed a summons and complaint with the Court of International Trade (CIT), we did not issue amended final results of review reflecting the correction of the clerical error. In accordance with *Zenith Elec. Corp.* v. *United States*, 699 F. Supp. 296

(CIT 1988), *Aff'd* 884 F.2d 556 (Fed Cir. 1989), the Department may not amend an administrative result while it is under the CIT's exclusive jurisdiction unless it has leave of the CIT.

On November 2, 1998, pursuant to the order issued in *Rajinder Pipes Ltd.* v. *United States*, Court No. 98–07–02504, the CIT granted the Department leave to correct the clerical error in the calculation of RSL's weighted-average margin. Therefore, we are correcting the calculation, in accordance with section 751(h) of the Act.

Clerical-Error Allegation

RSL alleges that, while making corrections to the final results, the Department caused another clerical error to occur inadvertently. Specifically, RSL asserts that, after the Department corrected the clerical error regarding the home market credit-expense adjustment for direct sales, it did not deduct the excise duty when making comparisons to U.S. price.

We agree with RSL and have made the appropriate change in the margin program so that we have deducted excise duty from home market price before making a comparison to U.S. price. This was an inadvertent error in our computer programming.

Amended Final Results of Review

As a result of the amended margin calculations, the following weighted-average percentage margin exists for the period May 1, 1996, through April 30, 1997:

Manufacturer/exporter	Percentage margin
RSL	14.05

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated, wherever possible, an exporter/importer-specific assessment rate for RSL's sales to the United States. We will also direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of review (63 FR 32825, 32833) and as amended by this notice. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 353.28(c).

Dated: November 18, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–31982 Filed 11–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Final Results of New Shipper Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of New Shipper Countervailing Duty Administrative Review.

SUMMARY: On Septmember 1, 1998, the Department of Commerce published in the **Federal Register** the preliminary results of its new shipper administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1997, through December 31, 1997. We have now completed this review and determine the net subsidy to be 0.95 percent *ad valorem*. We will instruct the Customs Service to assess countervailing duties with respect to all shipments of the subject merchandise by Co. R. EX. S.r.L., the new shipper to this review, entered during this period.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Sally Hastings, Office of AD/CVD Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815 or 482–3464, respectively.

Applicable Statute: Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA), effective January 1, 1995 (the Act). The Department of Commerce (the Department) is conducting this administrative review in accordance with section 751(a) of the Act. All other references are to the Department's regulations codified at 19 CFR Part 351 *et seq*. Antidumping Duties; Countervailing Duties; Final Rule 62 FR 27296 (May 19, 1997), unless otherwise indicated.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1998, the Department published in the **Federal Register** (63 FR 46411) the preliminary results of the new shipper administrative review of the countervailing duty order on certain pasta from Italy. The Department has now completed this new shipper administrative review pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214. We invited interested parties to comment on the preliminary results. We received no comments. The review covers CO.R.EX., an exporter of the subject merchandise, and CO.R.EX.'s subcontractor. (CO.R.EX. does not produce pasta but has a subcontractor produce pasta for it from semolina supplied by Co.R.EX.) This review covers 24 programs.

Scope of the Review

The merchandise under review consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethyelen or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by one of the following agencies: Instituto Mediterraneo Di Certificazione, Bioagricoop Scrl pasta imported in kitchen display bottles of decorative glass, which are sealed with cork or paraffin and bound with raffia, is excluded from the scope of this review.

The merchandise under review is currently classified under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, or written description of the scope of this review is dispositive.

Furthermore, on July 30, 1998, the Department issued a scope ruling that multipacks consisting of six one-pound packages of pasta, which are shrink wrapped into a single package, are within the scope of the orders. (*See* July 30, 1998, letter from Susan H. Kunbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc.)

Period of Review

The period of review ("POR") for which we are measuring subsidies is calendar year 1997.

Subsidies Valuation Information

Benchmark for Long-term Loans and Discount Rate: The companies under review did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under investigation were given. In the *Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Wire Rod from Italy,* 63 FR 87077 (July 29, 1998), the Department determined, based on information gathered during verification, that the Italian Bankers' Association (ABI) prime rate is the most suitable benchmark for long-term financing to Italian companies. Therefore, we used the Italian ABI prime rate increased by the average spread over the ABI prime rate charged by banks on loans to commercial customers as the benchmark for long-term loans and the discount rate.

Allocation Period: In *British Steel plc.* v. *United States,* 879 F. Supp. 1254, 1289 (CIT 1955), *aff'd in part and rev'd in part on other grounds,* 127 F.3d 1471 (Fed. Cir. 1997), the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix,* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37225 (July 9, 1993) ("*GIA*"). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life ("AUL") of non-renewable physical assets. This remand determination was affirmed by the Court on July 4, 1996. *See British Steel plc* v. *United States,* 929 F. Supp 426, 439 (CIT 1996). Accordingly, the Department has applied this method to determine the appropriate allocation period in this review.

Consistent with our approach in the investigation segment of this proceeding, *Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy* (61 FR 30288, June 14, 1996) ("*Pasta from Italy*"), we determined that the Law 64/86 grant received by CO.R.EX.'s subcontractor was non-recurring. For purposes of allocating the Law 64/86 grant, CO.R.EX.'s subcontractor submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. This AUL was derived by dividing the sum of average gross book value of depreciable fixed assets over the past ten years by the average depreciation charges over this period. We found this calculation to be reasonable and consistent with our company-specific AUL objective. In this manner, we calculated an AUL for CO.R.EX.'s subcontractor. We have used this calculated AUL for the allocation period for the Law 64/86 industrial development grant, the only non-recurring subsidy received by respondents.

Analysis of Programs

I. Programs Conferring Subsidies

Based upon our analysis of the responses to our questionnaires and the record of this review, we determine the following:

Programs Previously Determined to Confer Subsidies

In the preliminary results, we found that the programs listed below conferred countervailable benefits on the subject merchandise. We did not receive any comments on these programs from interested parties. Our review of the record, however, has led us to modify the calculations for each of these programs. First, we revised the denominator used to calculate the subsidy rate for each of the programs listed below. For the preliminary results, we based the denominator on f.o.b. sales values calculated on the basis of estimates of inland freight charges. For these final results, we have used actual inland freight charges in calculating f.o.b. sales values. These revised f.o.b. sales values served as the denominators for calculating the subsidy rate for each of these programs.

Further, we corrected an error in the calculation of the discount rate used to allocate the benefit amount for a Law 64/86 industrial development grant to CO.R.EX.'s subcontractor and for the Law 341/95 consolidation loan received by CO.R.EX. For a further discussion of this correction, see Memorandum to File: Calculation Notes for Final Results, dated November 22, 1998 (a public version of which is on file in room B099 of the main Commerce Building).

As a result of the calculation changes described above, the subsidy rates for the programs listed below changed as follows:

A. Industrial Development Grants Under Law 64/86

The subsidy rate for this program decreased from 0.18 percent to 0.15 percent *ad valorem.*

B. Social Security Reductions and Exemptions

1. Sgravi Benefits

The subsidy rate for this program decreased from 0.01 percent to 0.00 percent *ad valorem.*

2. Fiscalizzazione Benefits

The subsidy rate for this program decreased from 0.06 percent to 0.04 percent *ad valorem.*

3. Law 407/90 Benefits

The subsidy rate for this program decreased from 0.06 percent to 0.04 percent *ad valorem.*

4. Law 863 Benefits

The subsidy rate for this program decreased from 0.03 percent to 0.01 percent *ad valorem.*

Program Determined in This Review to Confer Subsidies

In the preliminary results, we found that the program listed below conferred countervailable benefits on the subject merchandise. We did not receive any comments on this program from interested parties. Our review of the record, however, has led us to modify the calculations for this program, as described above in the section.

Programs Previously Determined to Confer Subsidies

Debt Consolidation Law 341/95

The subsidy rate for this program decreased from 0.93 percent to 0.88 percent *ad valorem.*

II. Programs Determined To Be Not Used

We determine that CO.R.EX. and its subcontractor did not apply for or receive benefits under the following programs during the POR:

A. VAT Reductions
B. Export Credits Under Law 227/77
C. Capital Grants Under Law 675/77
D. Retraining Grants Under Law 675/77
E. Interest Contributions on Bank Loans Under Law 675/77
F. Interest Grants Financed by IRI Bonds
G. Preferential Financing for Export Promotion Under Law 394/81
H. Corporate Income Tax (IRPEG) Exemptions
I. European Agricultural Guidance and Guarantee Fund
J. Urban Redevelopment Under Law 181
K. Local Income Tax (ILOR) Exemptions
L. Industrial Development Loans Under Law 64/86
M. Export Marketing Grants Under Law 304/90
N. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy
O. Remission of Taxes on Export Credit Insurance under Article 33 of Law 227/77
P. European Social Fund
Q. European Regional Development Fund
R. Export Restitution Payments

We did not receive any comments on these programs from the interested parties and our review of the record has not led us to change our findings from the preliminary results.

Final Results of Review

For the period January 1, 1997 through December 31, 1997, we determine the net subsidy for CO.R.EX. to be 0.95 percent *ad valorem.* We will instruct the Customs Service to assess countervailing duties at this net subsidy rate on all entries of the subject merchandise from CO.R.EX. entered, or withdraw from warehouse, for consumption on or after January 1, 1997 and on or before December 31, 1997.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.95 percent of the f.o.b. invoice value on all shipments of the subject merchandise from CO.R.EX. entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this new shipper review. The cash deposit rates for all other producers/exporters remain unchanged from the last completed administrative review (see *Final Results of Countervailing Duty Administrative Review: Certain Pasta from Italy* 63 FR 35665 (August 14, 1998)).

This administrative review and notice are in accordance with sections 751(a)(2) (B) and 777 (i) (1) of the Act and 19 CFR 351.214.

Dated: November 23, 1998.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

[FR Doc. 98–31983 Filed 11–30–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111398E]

Eligibility To Participate in the 1999 Directed Pollock Fishery in the Bering Sea and Aleutian Islands Management Area and Eligibility To Be Considered for Disbursement of Funds Pursuant to the American Fisheries Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Solicitation of applications.

SUMMARY: NMFS invites owners of vessels that meet the requirements in either section 208(b)(8) or (e)(21) of the American Fisheries Act (AFA) to apply for eligibility to participate in the offshore directed pollock fishery in the Bering Sea and Aleutian Islands Management Area (BSAI) after January 1, 1999. Section 208(b)(8) requirements apply to catcher vessels that deliver to catcher/processors in the offshore component. Section 208(e)(21) requirements apply to catcher/processors in the offshore component. Owners of vessels that are not specifically named in section 208(b) or (e) must apply to participate in the offshore directed pollock fishery in the BSAI after January 1, 1999.

NMFS also invites owners of vessels that meet the requirements in either section 207(d)(2)(A) or (B) to apply for consideration of the disbursement of funds. If a contract for a cooperative pursuant to section 210(a) is filed by vessels listed in section 208(e), then vessels listed in section 208(e)(10) through (14) will receive the disbursement of funds. However, if no such contract is under section 208(b) or 208(e)(1) through (20) that provide applications will be considered for the disbursement of funds.

Vessel owners may use a single application for both purposes; however, applications for the disbursement of funds must be received by NMFS prior to December 15, 1998. This action is necessary to meet the statutory deadline of December 31, 1998, specified in the AFA and is intended to meet the objectives of the U.S. Congress for vessels participating in the directed pollock fishery in the BSAI.

DATES: Effective November 25, 1998.

ADDRESSES: Applications should be addressed to Philip J. Smith, Administrator, Restricted Access Management, Alaska Region. NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802. Copies of the relevant portions of the AFA also are available at the above address. Comments regarding the collection of information burden can be sent to the above address and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

1. General Information

The AFA, Pub. L. 105–277, was signed into law on October 21, 1998. Section 208 of the AFA specifies which vessels and processors are eligible to harvest pollock in the directed pollock fishery in the BSAI, either by directly naming the eligible vessels or processors, or by providing criteria to determine eligibility. Section 208(h) provides that in the event that the Secretary of Commerce (Secretary) is unable to make a final determination about the eligibility of a vessel under section 208(b)(8) or (e)(21) before January 1, 1999, such vessels, upon the filing of an application asserting eligibility, shall be eligible to participate in the directed pollock fishery in the BSAI pending a final determination by the Secretary.

2. Eligibility Under Section 208(b)(8) To Participate in the Directed Pollock Fishery in the BSAI

Section 208(b)(8) sets out three requirements that must be met by catcher vessels not specifically named in section 208(b)(1) through (7) in order for those vessels to deliver to catcher/processor vessels fish harvested in the directed pollock fishery after January 1, 1999. First, a catcher vessel must have delivered at least 250 metric tons (mt) of pollock in the directed pollock fishery in 1997. Second, at least 75 percent of the pollock harvested by a catcher vessel must have been delivered to a catcher/processor for processing by the offshore component. Third, a catcher vessel must be eligible to harvest pollock in the directed pollock fishery under the License Limitation Program (LLP) (63 FR 52642, October 1, 1998). For purposes of this action, a catcher vessel means a vessel that is used for harvesting fish and that does not process pollock onboard.

3. Eligibility Under Section 208(e)(21) To Participate in the Directed Pollock Fishery in the BSAI

Section 208(e)(21) sets out two requirements that must be met by catcher/processors not specifically named in section 208(e) for those vessels to participate in the directed pollock fishery after January 1, 1999. First, a catcher/processor must have harvested more than 2,000 mt of the pollock in the 1997 directed pollock fishery. Second, a catcher/processor must be eligible to harvest pollock in the directed pollock fishery under the LLP. Catcher/processors determined to be eligible under section 208(e)(21) will be prohibited from harvesting more than one-half of one percent of the pollock apportioned to the offshore component by section 206(b)(2). For purposes of this action, a catcher/processor means a vessel that is used for harvesting fish and processing that fish.

4. Temporary Eligibility To Participate in the Directed Pollock Fishery in the BSAI

Although the potential exists for NMFS, on behalf of the Secretary, to determine eligibility for catcher vessels based on the first two requirements in section 208(b)(8) and for catcher/processor vessels based on the first requirement in section 208(e)(21) by January 1, 1999, NMFS cannot determine the requirement of eligibility under the LLP until applications for the LLP are solicited and eligibility for that program is determined. NMFS anticipates that will not occur until late 1999. Because eligibility for the LLP cannot be determined before January 1, 1999, owners of vessels that qualify under section 208(b)(8) or (e)(21) will need to submit an application asserting eligibility to participate in the directed pollock fishery, as provided in section 208(h). If NMFS determines, based on a submitted application that a vessel does not meet the first two requirements in section 208(b)(8) or the first requirement in section 208(e)(21), an initial administrative determination (IAD) will be issued denying eligibility to participate in the 1999 directed pollock fishery in the BSAI. An applicant can appeal that IAD under 50 CFR 679.43.

5. Disbursement of Funds to Eligible Vessels

Section 207(d)(2) of the AFA provides that the Secretary shall pay by December 31, 1998, $5,000,000 to the owners of the catcher vessels eligible under section 208(b) and the catcher/processors eligible under section 208(e)(1) through (20), if a contract for a cooperative has not been filed by that date. This payment will be divided among the owner(s) of catcher vessels named in section 208(b)(1) through (7), catcher vessels for which an application has been submitted for eligibility under section 208(b)(8), and catcher/processor vessels named in section 208(e)(1) through (20). This apportionment will be based on the proportional amount of pollock harvested by each of these vessels in the 1997 directed pollock fishery minus any obligation to the Federal government that has not been satisfied by the owner(s) of any such vessels. If a contract for a cooperative is filed, only the named vessels in section 208(e)(10) through (14) will receive the disbursement.

To provide NMFS with time to meet the statutory deadline for the $5,000,000 disbursement, applications from owners of vessels that are eligible under section 207(d)(2) must be received by December 15, 1998, to be considered for the disbursement. Regardless of the status of the cooperative, the applications from owners of vessels that meet the requirements of section 208(b)(8) will be used to establish eligibility to participate in the 1999 directed pollock fishery.

6. Application Table

The following table provides a quick reference for who should apply.

Owners of the category of vessels set out below must apply if they wish to .	Fish in 1999	Receive payments
Catcher Vessels named in sections 208(b)(1) through (7)	NO	YES[1]
Catcher Vessels eligible based on criteria in sections 208(b)(8)	YES	YES[1]
Catcher/processor vessels named in sections 208(e)(1) through (20)	NO	YES[2]
Catcher/processor vessels eligible based on criteria in section 208(e)(21)	YES	N/A

[1] Will receive payment only if no contract has been filed under section 210(a)

[2] If contract is filed under section 210(a), only vessels listed in section 208(e)(10) through (14) will receive payment. If contract is not filed under section 210(a), $5,000,000 will be divided among vessels that are eligible under sections 208(b) and (e)(1) through (20) based on the amount of harvest of pollock in the directed pollock fishery by each such vessel in 1997 in such a manner as the Secretary deems appropriate

7. Application Information

Applications must be submitted to NMFS (see **ADDRESSES**). Applications for payments under section 207(d)(2) must be received by December 15, 1998, to be considered for disbursement. Applications submitted to NMFS must contain: (1) the name of the vessel; (2) the owner(s) of the vessel; (3) the business address(es) and telephone and FAX number(s) of owner(s); (4) the section of the AFA under which the vessel is eligible to participate; (5) the amount of pollock harvested in the directed pollock fishery in the BSAI in 1997; and (6) evidence supporting the amount of pollock harvested in the directed pollock fishery in the BSAI in 1997. NMFS will review applications submitted pursuant to section 208(h) and will issue temporary permits so that vessels may participate in the 1999 directed pollock fishery pending a final determination of eligibility.

8. Eligibility Determination

Eligibility to participate in the directed pollock fishery pursuant to AFA does not confer any right of compensation, monetary or otherwise, to the owners of vessels named specifically in the AFA or owners who submit applications. When NMFS is able to determine the status of vessels under the LLP, the privilege to participate in the directed pollock fishery will be revoked if a vessel is not eligible to participate based on the requirements of the LLP.

9. Paperwork Reduction Act Requirements

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0366. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**)

Authority: Title II, Pub. L. 105–277.

Dated: November 25, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31956 Filed 11–25–98; 3:05 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112398C]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Executive Committee, Law Enforcement Committee, Large Pelagics Committee, Comprehensive Management Committee and Tilefish Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, December 15, 1998 to Thursday, December 17, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA, telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: On Tuesday, December 15th, the Council will meet from 10:00 a.m. until 5:00 p.m. The Large Pelagics Committee will meet from 5:00–6:00 p.m. On Wednesday, December 16th, the Executive Committee will meet from 8:00–9:00 a.m. The Tilefish Committee and Law Enforcement Committee will meet simultaneously from 9:00–10:00 a.m. The Council, together with the Atlantic States Marine Fisheries Commission (ASMFC) will meet from 10:00 a.m. until 5:00 p.m. On Thursday, December 17th, the Comprehensive Management Committee will meet from 8:00–9:00 a.m. Council will meet from 9:00 a.m. until approximately 2:00 p.m.

Agenda items for this meeting are: Discussion and possible adoption of management measures for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish; review and adopt Amendment 1 to the Monkfish Fishery Management Plan (FMP) for Secretarial submission; review public comments and adopt the Spiny Dogfish FMP for Secretarial approval; review Highly Migratory Species (HMS) FMPs and make possible recommendations; develop plans for Tilefish FMP development for 1999; review Monitoring Committee recommendations and develop recommendations on summer flounder, scup, and black sea bass 1999 recreational management measures; discussion of commercial management measures for summer flounder, scup, and black sea bass; discuss plans for comprehensive management for 1999 and possible recommendation on scup discards; discuss law enforcement concerns regarding management measures for Mid-Atlantic FMPs; discussion and possible adoption of management measures for bluefish, species managed by the New England Council, and dolphin and wahoo, and other fishery management matters.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 24, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31994 Filed 11–30–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.112598A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a scientific research permit (1187).

SUMMARY: Notice is hereby given that Stephen M.H. Connett, St. George's School, has applied in due form for a scientific research permit (1187) to take listed sea turtles.

DATES: Written comments or requests for a public hearing on this application must be received on or before December 31, 1998.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (978–281–9250).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

FOR FURTHER INFORMATION CONTACT: Michelle Rogers, Endangered Species Division, Office of Protected Resources, (301–713–1401).

SUPPLEMENTARY INFORMATION: Stephen M.H. Connett, St. George's School, requests a scientific research permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Mr. Connett has requested a five-year scientific research permit to take 200 loggerhead (Caretta caretta), 300 green (Chelonia mydas), 200 hawksbill (Eretmochelys imbricata), 5 leatherback (Dermochelys coriacea), 5 Kemp's ridley (Lepidochelys kempii), and 5 olive ridley (Lepidochelys olivacea) sea turtles annually in the Northwestern Atlantic Ocean for the purpose of obtaining life history data on all turtles captured, and determining migratory behavior and habitat utilization of juvenile turtles captured on foraging grounds. Turtles will be captured by hand and/or dip net, weighed, measured, flipper tagged, tissue

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sampled and released at the site of capture. This is a continuation of work permitted under scientific research permit 886, which expires on December 31, 1998.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: November 25, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–31995 Filed 11–30–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Information Collection Activity—Customer Satisfaction Surveys

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the August 11, 1998 **Federal Register** (63 FR 42832), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek approval of surveys and other information-collection activities to determine the kind and quality of services CPSC customers want and customers' level of satisfaction with existing services. The Commission now announces that it has submitted to the Office of Management and Budget a request for approval of that collection of information.

CPSC will use the information it obtains in these surveys to improve its work on behalf of the American public. In addition, the CPSC Office of Planning and Evaluation will use information from the surveys to prepare sections of the agency's annual performance report (required by the Government Performance and Results Act (GPRA)). This information will provide measures of the quality and effectiveness of agency efforts related to three goals in its strategic plan (informing the public, industry services, and customer satisfaction).

CPSC will collect this information in several ways, using contractors and/or in-house staff. These ways include (1) Using CPSC's web site to solicit feedback on the level of satisfaction with CPSC's services, (2) using brief customer service follow-up queries (on-line) with samples of telephone hotline callers, (3) surveying a sample of firms using the Fast-Track Product Recall Program to assess their views and suggestions for improvements in the service aspects of the program, (4) including customer comment cards within the pages of the *Consumer Product Safety Review*, and (5) conducting mail surveys of state partners and samples of customers of the National Injury Information Clearinghouse. Fewer than 10 customer surveys or information collection activities a year would be conducted using this clearance.

Additional Information About the Request for Approval of Information Collection Activity

Title of information collection: Customer Satisfaction Surveys.

Type of request: Approval.

Frequency of collection: Occasional.

General description of respondents: (1) Persons telephoning the Hotline; (2) persons or companies contacting the National Injury Information Clearinghouse for information; (3) State representatives who work with CPSC on cooperative programs; (4) firms using CPSC's Fast-Track Product Recall Program; (5) small businesses that have contacted the CPSC's small business ombudsman; and (6) other individuals CPSC is providing information to, such as those through the CPSC's Office of Information and Public Affairs.

Estimated number of respondents: 1,550 per year.

Estimated average number of responses per respondent: One per year.

Estimated number of responses for all respondents: 1,550 per year.

Estimated number of hours per response: 1/30 hour each.

Estimated number of hours for all respondents: 51.7 per year.

Estimated cost of collection for all respondents: $620 per year.

Comments: Comments on this request for approval of an information collection activity should be submitted by December 31, 1998 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Comments may be delivered to the Office of the Secretary, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127, or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for approval of an information collection activity are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2264.

Dated: November 23, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–31857 Filed 11–30–98; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. § 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its proposed new AmeriCorps Application for Membership. This application will be used to screen and place applicants into the various AmeriCorps programs, and will replace the previously approved individual applications for the National Civilian Community Corps (NCCC) and Volunteers in Service to America (VISTA). Applicants will be able to use this single, new application to apply to any of the AmeriCorps programs, thereby eliminating the need for multiple applications should the individual wish to be considered for multiple programs, either concurrently or consecutively.

Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 1, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Office of AmeriCorps Recruitment, 8th Floor, Attn: Ms. Susie Zimmerman, 1201 New York Avenue, N.W. Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Ms. Susie Zimmerman, (202) 606–5000, ext. 104.

SUPPLEMENTARY INFORMATION:

I. Background

In the past, AmeriCorps*VISTA and AmeriCorps*NCCC required separate applications for their programs. A combined member application will gather similar data from applicants, including background information, educational history, skills and experience, and a motivational statement that AmeriCorps may use in evaluating the applicant's suitability for becoming a member and to place them in the most appropriate program(s) that match their skills and interests.

II. Current Action

The Corporation seeks approval of its new AmeriCorps Application for Membership. If approved, this application will streamline the process for applicants by enabling them to complete one application and be considered for multiple programs within AmeriCorps. This new application will also be more cost-effective for the government by providing a centralized information source and streamlined process for receiving applications and placing them into the proper programs.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application for Membership.

OMB Number: None.

Agency Number: None.

Affected Public: Any individual interested in applying to become a member of AmeriCorps*NCCC, AmeriCorps*VISTA, or a state and local AmeriCorps program located throughout the United States.

Total Respondents: Approximately 60,000. (Approximately 40,000 individuals serve each year in AmeriCorps programs; (collection totals are inexact as the bulk of these completed applications are submitted to local programs and not back to the Corporation for National Service).

Frequency: An applicant need only complete the application once. Applicants may make copies of their completed forms; and submit copies (each, however, with an original signature) to several different AmeriCorps programs for consideration.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 45,000 hours (if 60,000 individuals complete the form per year).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 24, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–31851 Filed 11–30–98; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Reserve Affairs.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Reserve Affairs announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 1, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Assistant Secretary of Defense for Reserve Affairs, Room 2D521, 1500 Pentagon, Washington, DC 20301–1500, ATTN: Mr. John Paul Galles, Special Assistant for Employer Support Metrics, Washington, DC or e-mail at jgalles@osd.pentagon.mil.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. John Paul Galles at 703/695–1677, x137.

Title; Associated Form; and OMB Number: Employer Support of the Guard and Reserve Training and Service, A Survey of Employer Characteristics, Opinions, Attitudes and Behaviors; OMB Number: 0704–[to be determined].

Needs and Uses: The information collection requirement is necessary to learn about employer tolerance for leaves of absence caused by the departure of National Guard and Reserve members from their workplaces to attend military training or to provide military service. Increasingly, National Guard and Reserve members are being called upon to provide frequent and protracted service for national defense. As a result, they are increasingly absent from the workplaces of their full-time employers. In order to sustain and not to diminish employer support, it is important to learn about employer tolerance of absences due to Guard/Reserve obligations, and how such absences can be least disruptive to the employer when Guard and Reserve members are called to training or service.

Affected Public: Employers, Managers, and Supervisors with employment oversight in businesses, both public and private.

Annual Burden Hours: 3600.

Number of Respondents: 7200.

Responses per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are employers, managers and supervisors with hiring/firing authority within a diverse set of employers. They vary by size, type and location. Results gathered from this survey will provide military leadership with new and important information to help them plan and manage more effectively, with a better understanding of the limits to removing National Guard and Reserve members from their workplaces for military training and service. Without this survey, military leaders will continue to utilize Guard and Reserve members without knowing the impact of their demands on the employer population. Having a regular and consistent survey to learn about employer characteristics, opinions, attitudes and behavior will initially establish a baseline and, over time, indicate trends regarding employer tolerance of National Guard and Reserve member training and service.

Dated: November 24, 1998.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–31917 Filed 11–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Inspector General

Privacy Act of 1974; System of Records

AGENCY: Inspector General, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Inspector General, DoD, proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 31, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Chief, FOIA/PA Office, Assistant Inspector General for Administration, Information Management, 400 Army Navy Drive, Room 405, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley J. Landes at telephone (703) 604-9777

SUPPLEMENTARY INFORMATION: The Inspector General notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on November 20, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 24, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG 17

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Inspector General, Department of Defense, Personnel and Security Directorate, Employee Relations Division, 400 Army Navy Drive, Suite 512, Arlington, VA 22202-2884.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or a recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, and the status of that hardship.

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number, position title, grade, and pay level, leave balances, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6331 et seq., Leave; 10 U.S.C. 141, Inspector General; E.O. 9397 (SSN); and 5 CFR part 630.

PURPOSE(S):

The file is used in managing the DoD Inspector General Voluntary Leave Transfer Program. The recipient's name, position data, organization, and a brief hardship description are published internally for passive solicitation purposes. The Social Security Number is sought to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(a)(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness; where leave donor and leave recipient are employed by different Federal agencies, to the personnel and pay offices of the Federal agency involved to effectuate the leave transfer.

The 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employee Relations Division, Office of the Inspector General, 400 Army Navy Drive, Suite 512, Arlington, VA 22202-2884.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Branch, Room 405, 400 Army Navy Drive, Arlington, VA 22202-2884.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquires to the Privacy Act Officer at the address above.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 and may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–31916 Filed 11–30–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps (ROTC) Program Subcommittee

AGENCY: U.S. Army Cadet Command.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Reserve Officers' Training Corps (ROTC) Program Subcommittee.

Dates of Meeting: 8 Feb 99 thru 9 Feb 99.

Place of Meeting: The Pentagon, Washington DC.

Time of Meeting: 08:30 to 1700 on 8 Feb 99 and 0830–1100 on 9 Feb 99.

Proposed Agenda: Review and discussion of the status of Army ROTC since the July 1998 meeting in Tacoma, WA.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Spadafora, U.S. Army Cadet Command, ATCC–TE, Fort Monroe, Virginia 23651–5000; phone (757) 727–4595.

SUPPLEMENTARY INFORMATION:

1. The Subcommittee will review the significant changes in ROTC scholarships, missioning, advertising strategy, marketing, camps and on-campus training, the Junior High School Program and ROTC Nursing.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management office in writing at least five days prior to the meeting of their intent to attend the meeting.

3. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits, the Committee chairman may allow public presentations or oral statements at the meeting.

4. All communications regarding this Advisory committee should be addressed to Mr. Roger Spadafora, U.S. Army Cadet Command, ATCC–TE, Fort Monroe, Virginia 23651–5000, telephone number (757) 727–4595.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–31949 Filed 11–30–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Implementation of the Defense Table of Official Distances (DTOD) for Personal Property Shipments

AGENCY: Military Traffic Management Command, DoD.

ACTION: Final Notice (Policy Statement).

SUMMARY: The Department of Defense (DOD) has decided as a matter of procurement policy and internal agency procedures to change the distance calculation source used for transportation payments and audits in the DOD personal property program. Beginning on the effective dates listed below, DOD will use the Defense Table of Official Distances (DTOD) as the standard source for distance calculations worldwide. Carriers participating in the current International and Domestic household goods program must agree to be bound by DTOD mileage for payment and audit purposes. This policy decision is in furtherance of DOD's goal to use a single integrated, electronic distance calculation source for its transportation programs. On-going reengineering initiatives using mileage calculation as a basis for payment and audit will transition to DTOD at the earliest opportunity.

EFFECTIVE DATES: April 1, 1999 (international shipments) and May 1, 1999 (domestic shipments).

FOR FURTHER INFORMATION CONTACT: Mr. Alex Moreno, HQ, Military Traffic Management Command, ATTN: MTOP–T–PR, Room 625, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 681–6190, FAX: (703) 681–9681.

SUPPLEMENTARY INFORMATION: In furtherance of DOD's goal of making its transportation programs more standard and efficient, the DOD Comptroller tasked MTMC to find a commercially available, integrated, automated distance calculation source capable of supporting all DOD's transportation and travel-related requirements. After an extensive proof of concept and market analysis phase, MTMC contracted to acquire, install, integrate, and maintain a system (DTOD) adaptable to DOD's global transportation and travel mission responsibilities. DTOD, commercially known as PC*Miler by ALK Associates, will become the DOD standard, automated source for distance calculations worldwide. A notice of proposed implementation of DTOD in the DOD personal property program was published in the **Federal Register**, Vol. 63, No. 111, Pages 31761–31762, Wednesday, June 10, 1998. In response to this notice, numerous comments were submitted and were carefully considered in the decision to implement this policy change. Listed below are the comments and MTMC's response:

Comment 1: The cost to purchase and maintain a separate distance calculation product for DOD shipments is too high.

Response: MTMC is aware of the economic impact implementation of DTOD may have on personal property carriers, particularly small businesses. Therefore, MTMC did not mandate that carriers purchase and maintain DTOD in order to participate in the DOD personal property program. Instead, MTMC only requires that participating carriers agree to be bound by DTOD mileage for payment and audit purposes. MTMC believes that carriers may choose to adapt to the DTOD implementation in a variety of ways, to include:

a. Carriers not purchasing DTOD may rely on the payment process to identify the distances used for payment.

b. Carriers may subscribe to the DTOD-compliant commercial product (PC*Miler) through the Internet for an estimated price of $375 per 500 look-ups.

c. Carriers may purchase and install ALK's PC*Miler in a manner best suited to their own business strategies and computer operations.

d. Carriers may explore the possibility of acquiring hard copy versions of PC*Miler.

e. Carriers may rely on the comparison of variances between Rand McNally's Milemaker and ALK's PC*Miler distances for the 100 busiest traffic lanes. Copies of the comparison are available on request.

Additionally, MTMC is exploring automated methods of annotating all GBLs to reflect the DTOD distance.

Comment 2: Serving the commercial market and participating in the DOD personal property program will require them to purchase and maintain two different systems—one for DOD and another for commercial customers.

Response: MTMC does not require carriers to purchase PC*Miler and maintain two different distance systems. Carriers may continue to use the mileage software they are currently using. However, for DOD shipments, payment and audit will be based on the DTOD distance calculations. Carriers will have the options listed in Comment 1 or other options suited to each carrier's business strategy/business relationships and market situation.

Comment 3: No benefit to be gained by replacing the currently used distance calculation product, which does not need to be replaced.

Response: In response to the National Performance Review and other Government improvement initiatives, DOD has looked to find more economical and efficient ways to conduct its business processes. Currently, DOD uses several distance information sources and manual processes to support its various transportation programs. The result is a variance in distance computations produced by different products and a high cost to DOD for licensing and maintaining multiple sources. DOD's DTOD initiative will create a standard source within DOD for distance calculations worldwide and will reduce costs, increase efficiency, and help streamline the transportation payment and audit process. An electronic mileage system enables more accurate invoice processing, while reducing the expense of auditing and rebilling for both the Government and carriers. DOD believes these benefits clearly justify the costs associated with implementing DTOD.

Comment 4: DOD claims to favor use of commercial practices, but DTOD is a DOD-unique product and not the commercial standard in the household goods industry.

Response: DTOD is a commercial product and is, therefore, consistent with commercial business practices. DTOD is based on ALK's PC*Miler, which is a commercial off-the-shelf product modified to include the DOD standard point of location codes (SPLCs) and several locations within CONUS and overseas. While DOD recognizes that Rand McNally is the mileage basis for the household goods industry's commercial tariff, DOD points out that its personal property program is a separate system not directly tied to the mileage sources used in the commercial market. Use of DTOD will move DOD closer to a single, automated, and widely used commercial standard for all its various transportation programs. DTOD and PC*Miler will be subject to the same version control process and will feature delivery systems compatible with current commercial usage for like products.

Comment 5: PC*Miler provides premium features that are not needed by small businesses.

Response: A basic (no frills) PC*Miler will be made available on the Internet for an estimated price of $375 per 500 look-ups. It will contain the necessary information for mileage verification.

Comment 6: PC*Miler's routing system ignores the reality of the Alaska transportation network.

Response: MTMC is currently working with representatives from the Alaska Movers Association to discuss the Alaska transportation network. An initial meeting was held on 18 September 98 and a second meeting is scheduled for mid-November.

Comment 7: DOD's intent to use the shortest miles may put carriers competing for Government traffic at a disadvantage because the motor carrier industry's operating systems are geared toward the use of practical miles.

Response: Household goods shipments are not normally over-dimensional shipments and are, therefore, routed via the shortest truck-navigable route. DOD has always used shortest miles for freight shipments not involving munitions or overweight/over-dimensional cargo. Hence, there will be no change in the distance standard used for household goods shipments.

Comment 8: Carrier information systems use AS400 and Unix operating systems. It is not clear whether DTOD will run on these larger systems.

Response: DOD has chosen to use a Windows NT operating system. However, carriers are free to license a PC*Miler version that will run on an operating system of their choice. ALK currently has versions of PC*Miler for AS400 and Unix operating systems.

Comment 9: System duplicity would increase the probability for error in distance 5 calculations.

Response: DOD transportation and payment activities, including DFAS, will base mileage computations on DTOD. Transportation audit by GSA will also be based on DTOD. PC*Miler, which is a DTOD-compliant commercial product, and DTOD are identical and will produce consistent, error-free mileages. The use of commercial mileage software other than PC*Miler may produce mileages different from DTOD. In such instances, DTOD will govern.

Comment 10: Many small businesses do not have updated computer capability or do not use computers.

Response: MTMC realizes that all carriers do not operate their businesses in the same way. However, current and future business practices are centered on the use of computers in one way or another. As the business process changes to embrace principles of electronic commerce (e.g., electronic data interchange and electronic funds transfer), MTMC is anxious to capitalize on the economies and efficiencies those changes represent. MTMC is confident that commercial shippers and transportation providers are moving in the same direction.

Comment 11: PC*Miler is unproven in industry and lacks version control.

Response: Currently, over 9,500 shippers and carriers in commercial transportation are using PC*Miler. The DTOD project office, in conjunction with the software vendor, will maintain precise version control of the distance software to ensure all parties (finance centers, audit agencies, shippers, and carriers) have the same version of DTOD/PC*Miler at the same time.

Comment 12: DOD's proposed implementation of DTOD in its personal property program violates the Regulatory Flexibility Act by failing to include an initial regulatory flexibility analysis.

Response: DOD's decision to adopt and implement a single, integrated mileage calculation source is a procurement policy decision that directly related to the basis DOD will use to pay for commercial transportation services. The decision and steps taken to implement it in DOD's personal property program relate to public contracts and are exempt from the Regulatory Flexibility Act, 5 U.S.C. 601–612. This policy decision to implement a single distance calculation source for procurement purposes is not considered rule making within the meaning of the Administrative Procedure Act or the Regulatory Flexibility Act.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 98–31950 Filed 11–30–98; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Implementation of the Defense Table of Official Distances (DTOD) for Passenger Transportation and Travel Services

AGENCY: Military Traffic Management Command, DoD.

ACTION: Final Notice (Policy Statement).

SUMMARY: The Department of Defense (DoD) has decided as a matter of procurement policy and internal agency procedure to change the distance calculation source used for payment under DoD passenger transportation and travel entitlement programs. Beginning on the effective date, the DoD will use the Department of Defense Table of Distances (DTOD) for computing highway distances traveled by the DoD personnel in connection with temporary duty (TDY) or to permanent change of station (PCS). The DTOD will also be used with the Groups Operational Passenger System (GOPAX) in situations where mileage is used as the basis for payment of commercial transportation services. Carriers and passenger service providers participating in the DoD passenger transportation and travel services programs must agree to be bound by the DTOD distance calculations for payment and audit purposes in all procurements using mileage-based rates. This policy decision is in furtherance of DoD's goal to use a single integrated, electronic distance calculation source for its passenger, freight and personal property programs.

EFFECTIVE DATE: 1 June 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Cox, Headquarters, Military Traffic Management Command, ATTN: MTOP-TC, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050; Telephone (703) 681–9444; telefax (703) 681–3265.

SUPPLEMENTARY INFORMATION:

a. Background

In furtherance of DoD's goal of making its transportation programs, including passenger transportation and travel entitlement, more economical and efficient, the DoD Comptroller tasked MTMC to find a commercially available, integrated, automated distance calculation source capable of supporting all DoD's transportation and travel related requirements. After an extensive proof of concept and market analysis phase, MTMC contracted for delivery and installation of a commercial-off-the-shelf distance calculation system adaptable to DoD's global transportation and travel environment. The DTOD, commercially known as PC*MILER by ALK Associates, Inc., will become the DoD standard, automated source for surface vehicular distance information worldwide. A notice of proposed implementation of DTOD in DoD passenger transportation and travel entitlement programs was published in the **Federal Register**, Vol. 63, No. 130, pages 36886–36887, Wednesday, July 8, 1998. In response to this notice, two comments were submitted and were carefully considered in the decision to implement this policy change. Concerns raised by the comments include:

Concern: The use of "truck safe" or practical mileage to determine mileage calculation for personal travel will result in systematic overpayment.

Response: "Truck safe" and practical mileage considers the use of the interstate highway system and other heavily traveled routes. DoD travelers generally use these routes and are entitled to reimbursement for mileage traveled.

Concern: DTOD will significantly impact passenger carriers.

Response: Nearly all DoD passenger movements using commercial transportation service providers are procured on a point-to-point or seat-mile basis. Mileage sources are not used in the payment and audit process. Commercial passenger transportation providers submitted no comments describing significant operational impact resulting from DTOD implementation.

Concern: The DTOD product lacks version control and flexible delivery systems.

Response: The DoD is confident that DTOD includes management controls and delivery systems well suited to the DoD and commercial user movement.

Concern: DTOD creates a DoD unique system and is contrary to commercial practice.

Response: DTOD is based on ALK's PC*MILER which is a well-established and widely used commercial product. DTOD will be accessible through the internet, as well as in mainframe, personal, computer network or CD-ROM stand-alone versions.

Concern: DTOD will require costly, complicated and risky program transitions.

Response: The impact of transition to DTOD will be minimal. Passenger transportation service providers who contract on a mileage-based rate basis will be able to access PC*MILER on the worldwide web for a fee of $375 for 500 look-ups. The cost to the DoD in transitioning to DTOD will be more than offset by the economies and efficiencies of using, maintaining and training on a standard, integrated distance calculation product.

Concern: MTMC did not do an initial regulatory flexibility analysis as required under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612.

Response: MTMC is a procurement activity rather than a regulatory agency. The decision to implement DTOD in DoD's passenger transportation acquisition program is a policy decision relating to public contracts and agency personnel entitlements and is not "rulemaking" within the meaning of the Administrative Procedures Act, 5 U.S.C. 552 et seq., and is exempt from its procedural rules. Implementation of DTOD in DoD's travel and travel entitlement programs involves matters of internal agency procedure, namely the distance basis for paying DoD personnel for travel expenses related to temporary duty (TDY) and permanent change of station (PCS), and is also not considered rulemaking.

b. Regulatory Flexibility Act

Implementation of this policy change in DoD passenger transportation and travel entitlement programs involves public contracts and DoD personnel entitlements and is designed to standardize distance calculation in the payment and audit process. This change is not considered rule making within the meaning of the Administrative Procedures Act or the Regulatory Flexibility Act, 5 U.S.C. 601–612.

c. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection, reporting or records keeping responsibilities are imposed on offerors, contractors, or members of the public.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–31951 Filed 11–30–98; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a Computer Matching Program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between VA and DoD that their records are being matched by computer. The purpose of this agreement is to obtain an accurate reconciliation between DoD/USCG and VA as to the correct pay and allowances to be paid by the military services to the individual for duty performed and the proper disability compensation or pension to be paid to, or waived by, certain veterans in the Reserve Forces.

DATES: This proposed action will become effective December 31, 1998, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program. The purpose of this agreement is to obtain an accurate reconciliation between the DoD/USCG and VA as to the correct pay and allowances to be paid by the military services to the individual for duty performed and the proper disability compensation or pension to be paid to, or waived by, certain veterans in the Reserve Forces.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by the DVA to identify those individuals who are receiving both VA compensation and DoD/USCG payments for those periods when they are performing Reserve Duty. By law, the individual must waive his or her entitlement to VA disability compensation or pension if he or she desires to receive DoD/USCG pay and allowances for the period of duty performed. This matching agreement will result in an accurate reconciliation of such payments by permitting the VA to determine which individuals are being paid by DoD/USCG for duty performed and are being paid VA disability compensation or pension benefits for the same period of time without a waiver on file with the VA. If this reconciliation is not done by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all such dual payments would be detected.

A copy of the computer matching agreement between VA and DoD is available upon request. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 4, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 16, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE FOR RESERVE PAY RECONCILIATION

A. *Paticipating agencies:* Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of this agreement is to obtain an accurate reconciliation between DoD/USCG and VA as to the correct pay and allowances to be paid by the military services to the individual for duty performed and the proper disability compensation or pension to be paid to, or waived by, certain veterans in the Reserve Forces. The agreement will not only cover current individuals receiving dual payments but those who may have received them for Fiscal Years 1993 through 1997.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is 38 U.S.C. 5304(c) which provides that VA disability compensation or pension based upon his or her previous military service shall not be paid to a person for any period for which such person receives active service pay. 10 U.S.C. 12316 further provides that a reservist who is entitled to disability payments due to his or her earlier military service and who performs duty for which he or she is entitled to DoD/USCG compensation may elect to receive for that duty either the disability payments or, if he or she waives such payments, the DoD/USCG compensation for the duty performed.

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The VA will use 58 VA 21/22, entitled 'Compensation, Pension, and Education and Rehabilitation Records - VA' first published on March 3, 1976, at

41 FR 924, and last amended on April 24, 1995, at 60 FR 20156, with other amendments as cited therein.

2. The DMDC will use S322.10 DMDC, entitled 'Defense Manpower Data Center Data Base', last published on July 14, 1998 at 63 FR 37860.

E. *Description of Computer Matching Program:* Annually, VA will submit to DMDC an electronic file of all VA pension and disability compensation beneficiaries as of the end of September. Upon receipt of the electronic file, DMDC will match this file by SSN with a file of days drilled as submitted to DMDC by the military services and the USCG. Upon a SSN match, or a 'hit,' of both files, DMDC will provide VA the individual's name and other identifying data, to include the number of days drilled, by Fiscal Year, for each matched record.

The hits will be furnished to VA which will be responsible for verifying and determining that the data in the DMDC electronic file is consistent with the VA files and for resolving any discrepancies or inconsistencies on an individual basis. VA will initiate actions to obtain an election by the individual of which pay he or she wishes to receive and will be responsible for making final determinations as to positive identification, eligibility for, or amounts of pension or disability compensation benefits, adjustments thereto, or any recovery of overpayments, or such other action as authorized by law.

The annual electronic file provided by the VA will contain information on approximately 2.2 million pension and disability compensation recipients.

The DMDC computer database file contains information on approximately 885,000 DoD and 7,000 USCG reservists who receive pay and allowances for performing authorized duty.

VA will furnish DMDC the name and SSN of all VA pension and disability compensation recipients and DMDC will supply VA the name, SSN, date of birth, and the number of days drilled by fiscal year of each reservist who is identified as a result of the match.

F. *Inclusive dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time on a annual basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 98–30996 Filed 11–30–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice.

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on December 31, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: November 23, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–2

SYSTEM NAME:

Naval Attache Files *(February 22, 1993, 58 FR 10695).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Files: Naval Attache Affairs Office, Office of Naval Intelligence (ONI-3), 4251 Suitland Road, Washington, DC 20395–5720.

Marine Corps Files: Commandant of the Marine Corps, Headquarters, United States Marine Corps, (ATTN: CI/CIRP), 2 Navy Annex, Washington, DC 20380–1775.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File contains copies of questionnaires (i.e., Naval Attache Background Inventory, Naval Attache Opinion Inventory; Naval Attache Relationship Questionnaire; and Substance Abuse Subtle Screening Inventory (SASSI)), data collected during personal interviews; information from the individual's military personnel file; etc.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To provide data to Navy, Marine Corps and Defense Intelligence Agency officials to determine suitability of Navy and Marine Corps officer personnel for assignment to the Defense Attache System.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access is provided on need-to-know basis only. Manual records are stored in a controlled access area and are accessible only to a very limited number of authorized personnel with proper security clearance. Access to computerized data is controlled by password or other user code.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are opened on individuals when first nominated for attache duty. Records are destroyed when personnel are transferred, separated, or when files

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are no longer needed, whichever is earlier.'

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RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual; family members; Defense Security Service; Naval Criminal Investigative Service; and personnel files.'

* * * * *

N01070-2

SYSTEM NAME:

Naval Attache Files.

SYSTEM LOCATION:

Navy Files: Naval Attache Affairs Office, Office of Naval Intelligence (ONI-3), 4251 Suitland Road, Washington, DC 20395-5720.

Marine Corps Files: Commandant of the Marine Corps, Headquarters, United States Marine Corps, (ATTN: CI/CIRP), 2 Navy Annex, Washington, DC 20380-1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Navy and Marine Corps Officers nominated and/or assigned to duty in the Defense Attache System (DAS).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains copies of questionnaires (i.e., Naval Attache Background Inventory, Naval Attache Opinion Inventory; Naval Attache Relationship Questionnaire; and Substance Abuse Subtle Screening Inventory (SASSI)), data collected during personal interviews; information from the individual's military personnel file; etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1974, as amended: 5 U.S.C. 301, Departmental Regulations; 10 5013; 44 U.S.C. 3101; and E.O. 9397 (SSN).

PURPOSE(S):

To provide data to Navy, Marine Corps and Defense Intelligence Agency officials to determine suitability of Navy and Marine Corps officer personnel for assignment to the Defense Attache System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to determine suitability of personnel for security clearances and assignment to the Defense Attache System.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated files.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are stored in a controlled access area and are accessible only to a very limited number of authorized personnel with proper security clearance. Access to computerized data is controlled by password or other user code.

RETENTION AND DISPOSAL:

Records are opened on individuals when first nominated for attache duty. Records are destroyed when personnel are transferred, separated, or when files are no longer needed, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Files: Naval Attache Affairs Office, Office of Naval Intelligence (ONI-3), 4251 Suitland Road, Washington, DC 20395-5720

Marine Corps Files: Commandant of the Marine Corps, Headquarters, United States Marine Corps, (ATTN: CI/CIRP), 2 Navy Annex, Washington, DC 20380-1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Naval Attache Affairs Office, Office of Naval Intelligence (ONI-3), 4251 Suitland Road, Washington, DC 20395-5720 (for Navy files) or to the Commandant of the Marine Corps, Headquarters, United States Marine Corps, (ATTN: CI/CIRP), 2 Navy Annex, Washington, DC 20380-1775 (for Marine Corps files).

Request should contain name and Social Security Number of individual and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Naval Attache Affairs Office, Office of Naval Intelligence (ONI-3), 4251 Suitland Road, Washington, DC 20395-5720 (for Navy files) or to the Commandant of the Marine Corps, Headquarters, United States Marine Corps, (ATTN: CI/CIRP), 2 Navy Annex, Washington, DC 20380-1775 (for Marine Corps files).

Request should contain name and Social Security Number of individual and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; family members; Defense Security Service; Naval Criminal Investigative Service; and personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98-31766 Filed 11-30-98; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 1, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202-708-9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 24, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Data Collection for Third International Mathematics and Science Study—Report (TIMSS-R).

Frequency: One-Time Student Assessment.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 11,250

Burden Hours: 24,583

Abstract: In order to provide international benchmarks against which to measure the performance of American students in mathematics and science, with comparisons of data for 1995 and 1999, and to measure progress toward the U.S. national goal of being first in the world in mathematics and science in the year 2000, the National Center for Education Statistics (NCES) wishes to repeat TIMSS for the 8th grade in U.S. schools in 1999.

Office of Postsecondary Education

Type of Review: Revision.

Title: Annual Performance for the Student Support Services (SSS) Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 800

Burden Hours: 3,600

Abstract: SSS grantees must submit the report annually so the Department can evaluate the performance of grantees prior to awarding continuation grants and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information and analyze program impact.

[FR Doc. 98–31893 Filed 11–30–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of information collection activity.

SUMMARY: This notice announces that the National Assessment Governing Board (NAGB) will submit an Information Collection Request (ICR) to the Office of Management and Budget for approval.

The ICR is: Similarities Classification Validation Research Study of the Achievement Levels for the Writing National Assessment of Educational Progress (NAEP) and the Civics National Assessment of Educational Progress.

DATES: Public comments must be submitted on or before February 1, 1999.

ADDRESSES: Written comments should be submitted by February 1, 1999. Mail to Patricia Hanick, NAEP ALS Project Manager, ACT, Inc., 2255 North Dubuque Road, P.O. Box 168, Iowa City, IA 52243–0168. Copies of the complete ICR and accompanying appendices may be obtained from the NAEP ALS Project Manager at the address above.

Comments may also be submitted electronically by sending electronic mail (e-mail) to *Hanick@ACT.org*. Electronic comments must be identified by the title of the ICR. No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marketing any part or all of that information as confidential business information (CBI). Information so market will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not market confidential may be disclosed publicly by NAGB without prior notice.

FOR FURTHER INFORMATION CONTACT: Patricia Hanick, NAEP ALS Project Manager, ACT, Inc., 2255 North Dubuque Road, P.O. Box 168, Iowa City, IA 52243–0168, Telephone: (319) 337–1452 or (800) 525–6930, e-mail: *Hanick@ACT.org*.

SUPPLEMENTARY INFORMATION: Electronic copies of this ICR can be obtained from the contact person listed above.

I. Information Collection Request

NAGB is seeking comments on the following Information Collection Request (ICR).

Title: Similarities Classification Validation Research Study of the Achievement Levels for the Writing NAEP and the Civics NAEP.

Affected Entities: Parties affected by this information collection are civics and writing teachers who served as grade 8 achievement levels-setting (ALS) panelists for pilot studies and ALS meetings. Additional parties include the eighth grade students of these teachers as well as their school administrators.

Abstract: The purpose of this information collection activity is to gather information for NAGB relating to the issue of the validity of the achievement levels and the achievement levels-setting process for the 1998 NAEP in Writing and in Civics. In particular, Congress has denied that the achievement levels must be shown to be reasonable, valid, and informative to the public. The research design class for administration of an extended NAEP. The students to be assessed are currently enrolled in courses taught by teachers who participate in setting the achievement levels. The focus of the study is to assess the correspondence between the teachers' estimates of the performance of their students on this assessment and the empirical performance of the student on the assessment. The teachers who will be asked to participate in this study are familiar with the content of the assessment framework and with the pool of items developed for the 1998 assessment. They also are familiar with the meaning of the achievement levels describing what students should know and be able to do and the abilities of the students who will be assessed. Teachers will not know how their individual students performed on the assessment. If the achievement levels are "reasonable, valid, and informative," there should be relatively high correspondence between the teachers' estimates of performance and the actual performance of students with respect to the achievement levels.

No third party notification or public disclosure burden is associated with this collection.

Burden Statement: The estimated maximum total respondent burden is 6957 hours, and the average burden per student is 1.92 hours. This is a one-time data collection effort. Neither small businesses nor other small entities are included in the survey.

II. Request for Comments

NAGB solicits comments to:

(i) Evaluate whether the proposed data collection is an appropriate method to determine whether the achievement levels are valid.

(ii) Enhance the accuracy, quality, and utility of the information to be collected.

Records are kept of all public comments and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C. from 8:30 a.m. to 5:00 p.m.

Dated: November 25, 1998.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–31913 Filed 11–30–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Record of Decision on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) has decided to prepare the categories of plutonium residues and scrub alloy listed below for disposal or other disposition as specified in the Preferred Alternative contained in the Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (the Final EIS, DOE/EIS–0277F, August 1998). The material categories covered by this Record of Decision are: (1) Sand, slag and crucible residues, (2) Direct oxide reduction salt residues (low plutonium concentration), (3) Combustible residues, (4) Plutonium fluoride residues, (5) Ful Flo filter media residues, (6) Glass residues, (7) Graphite residues, (8) Inorganic (metal and other) residues, and (9) Scrub alloy.

Additional Copies: Copies of the Final EIS and this Record of Decision are available in the public reading rooms and libraries identified in the **Federal Register** Notice that announced the availability of the Final EIS (63 FR 46006, August 28, 1998), or by calling the Center for Environmental Management Information at 1–800–736–3282 (toll free) or 202–863–5084 (in Washington, DC).

FOR FURTHER INFORMATION CONTACT: For information on the management of plutonium residues and scrub alloy currently stored at the Rocky Flats Environmental Technology Site, contact: Ms. Patty Bubar, Acting Director, Rocky Flats Office (EM–64), Office of Nuclear Material and Facility Stabilization, Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Telephone: 301–903–7130.

For information concerning development of the Final EIS or this Record of Decision, contact: Mr. Charles R. Head, Senior Technical Advisor, Office of Nuclear Material and Facility Stabilization (EM–60), Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Telephone: 202–586–5151.

For information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585 Telephone: 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Synopsis of the Decision

The U.S. Department of Energy (DOE) announced issuance of the Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (the Final EIS, DOE/EIS–0277F) on August 28, 1998 (63 FR 46006, August 28, 1998). In the Final EIS, DOE considered the potential environmental impacts of a proposed action to prepare certain plutonium residues and scrub alloy currently stored at the Rocky Flats Environmental Technology Site (Rocky Flats) near Golden, Colorado, for disposal or other disposition. After consideration of the Final EIS, including public comments submitted on the Draft EIS, and public comments submitted following issuance of the Final EIS, DOE has decided to implement the Preferred Alternative specified in the Final EIS for the following categories of material: (1) Sand, slag and crucible residues, (2) Direct oxide reduction salt residues (low plutonium concentration), (3) Combustible residues, (4) Plutonium fluoride residues, (5) Ful Flo filter media residues, (6) Glass residues, (7) Graphite residues, (8) Inorganic (metal and other) residues, and (9) Scrub alloy.

Implementation of the Preferred Alternative will involve the following:

1. Up to approximately 6,587 kg of plutonium residues (containing up to approximately 351 kg of plutonium) will be processed at Rocky Flats and packaged in preparation for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico. These residues consist of direct oxide reduction salt residues containing low concentrations of plutonium, combustible residues, Ful Flo filter media residues, glass residues, graphite residues and inorganic (metal and other) residues. The processed residues will remain in storage at Rocky Flats until they are shipped to WIPP for disposal.

2. Approximately 3,377 kg of sand, slag and crucible residues and plutonium fluoride residues (containing approximately 271 kg of plutonium), and approximately 700 kg of scrub alloy (containing approximately 200 kg of plutonium) will be packaged and shipped to the Savannah River Site near Aiken, South Carolina, where these materials will be stabilized in the F-Canyon by chemically separating the plutonium from the remaining materials in the residues and scrub alloy. The separated plutonium will be placed in safe and secure storage, along with a larger quantity of plutonium already in storage at the Savannah River Site, until DOE has completed the Surplus

Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283, under preparation, draft issued in July 1998; see Section VII. A. 2, below, for additional discussion of the plutonium disposition topic) and made final decisions on the disposition of the separated plutonium. Transuranic wastes generated during the chemical separations operations will be sent to WIPP for disposal. Other wastes generated during the chemical separations operations will be disposed of in accordance with the Savannah River Site's normal procedures for disposing of such wastes.

The actions summarized above are scheduled to take place at Rocky Flats between 1998 and 2004, and at the Savannah River Site between 1998 and 2002.

As specified in Section 1.4.2 of the Final EIS, DOE will issue a second Record of Decision in the near future regarding the remaining categories of plutonium residues within the scope of the Final EIS, after consideration of any comments submitted during an additional public comment period from August 28, 1998 through October 12, 1998. The material categories to be covered by the second Record of Decision are: (1) Incinerator ash residues, (2) Graphite fines residues, (3) Inorganic ash residues, (4) Molten salt extraction/electrorefining salt residues, (5) Direct oxide reduction salt residues (high plutonium concentration), (6) High-efficiency particulate air (HEPA) filter media residues, and (7) Sludge residues.

II. Background

During the Cold War, DOE and its predecessor agencies conducted various activities associated with the production of nuclear weapons. Several intermediate products and wastes were generated as a result of those operations, some of which are still in storage at various DOE sites, including Rocky Flats. Now that the Cold War is over and the United States has ceased production of fissile nuclear weapons materials, DOE is conducting activities to safely manage, clean up, and dispose of (where appropriate) the intermediate products and wastes from prior nuclear weapons production activities. Among the intermediate products and wastes requiring proper management and preparation for disposal or other disposition are approximately 106,600 kg of plutonium residues and 700 kg of scrub alloy currently stored at Rocky Flats.

The Defense Nuclear Facilities Safety Board (the Board) in its Recommendation 94–1, addressed health and safety concerns regarding various materials at Rocky Flats, including the plutonium residues and scrub alloy. The Board concluded that hazards could arise from continued storage of these materials in their current forms and recommended that they be stabilized as expeditiously as possible. Approximately 64,400 kg of the plutonium residues in storage at Rocky Flats contain very low concentrations of plutonium and are currently being stabilized and prepared for disposal under the Solid Residue Treatment, Repackaging, and Storage Environmental Assessment/Finding of No Significant Impact (DOE/EA–1120, April 1996). However, the remaining 42,200 kg of plutonium residues, which contain higher concentrations of plutonium, and all 700 kg of scrub alloy still require processing for stabilization and to prepare them for disposal or other disposition. These materials are addressed in the Final EIS.

The approximately 42,200 kg of plutonium residues consist of nine heterogeneous categories of materials (e.g., ashes, salts, combustible materials, sludges, pieces of glass, pieces of graphite). On average, the plutonium residues contain about 6% plutonium by weight, although a small amount of the plutonium residues contains well above the average percentage of plutonium by weight. For example, the 315 kg of plutonium fluoride residues (less than 1 percent of the material addressed in the Final EIS) contains approximately 45% plutonium by weight. The approximately 700 kg of scrub alloy (less than 2 percent of the material addressed in the Final EIS) consists primarily of a metallic alloy of magnesium, aluminum, americium, and plutonium, containing approximately 29% plutonium by weight.

Although the average concentration of plutonium in the 42,200 kg of residues is small, there is still enough plutonium present (about 2,600 kg) to subject the residues to a special set of requirements (referred to as "safeguards and security" requirements) to maintain control of the materials and ensure that the plutonium in them is not stolen or diverted for illicit use, perhaps in a nuclear weapon. The 700 kg of scrub alloy, with its greater plutonium concentration, is also subject to safeguards and security requirements. Prior to disposal or other disposition of the residues and scrub alloy, action must be taken to reduce the plutonium concentration in the materials, make the plutonium more difficult to remove from the materials, or otherwise implement steps to ensure that the plutonium would not be stolen or diverted for illicit purposes. This process is referred to as "termination of safeguards" or "meeting safeguards termination limits."

Accordingly, the Purpose and Need for Agency Action addressed in the Final EIS was to evaluate action alternatives for processing the approximately 42,200 kg of plutonium residues and 700 kg of scrub alloy currently in storage at Rocky Flats to address the health and safety concerns regarding storage of the materials, as raised by the Board in its Recommendation 94–1, and to prepare the materials for offsite disposal or other disposition (including termination of safeguards, when appropriate). The action alternatives evaluated would be implemented in a manner that supports closure of Rocky Flats by 2006 and limits worker exposure and waste production. Disposal or other disposition would eliminate the health and safety concerns associated with indefinite storage of these materials.

Subsequent to completion of the Final EIS, DOE has completed its compliance process under the requirements of the Endangered Species Act. Section 7 of the Endangered Species Act provides Federal agencies with the authority to determine whether a proposed Federal action may affect protected species or habitats and, if the agency determines that it will not (i.e., makes a "no effect" determination), then no consultation with the Fish and Wildlife Service is required. Rather than specifying a "no effect" determination, the Final EIS concludes that the proposed processing of plutonium residues and scrub alloy is not likely to adversely affect threatened or endangered species or critical habitats in areas involved in this proposal. Although indicating some effect on threatened or endangered species, a "not likely to adversely affect" determination falls short of a determination that a species or critical habitat is likely to be adversely affected overall by the proposed action.

Upon further review of the likely impacts of the proposed processing, DOE concludes that a "no effect" determination would have been more appropriate in this case because DOE does not believe that the proposed processing will affect protected species or critical habitats overall. Therefore, no consultation with the Fish and Wildlife Service is required.

The decision process reflected in this Record of Decision complies with the requirements of the National Environmental Policy Act (42 U.S.C., Sec. 4321 *et seq.*) and DOE's NEPA implementing regulations at 10 CFR Part 1021. Further, Section 308 of the Fiscal Year 1999 Energy and Water

Development Appropriations Act (Public Law 105–245) specifies that "None of the funds in this Act may be used to dispose of transuranic waste in the Waste Isolation Pilot Plant which contains concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment of this Act, or is generated after such date." The decisions specified in this Record of Decision comply with the requirements of Pub. L. 105–245.

III. Alternatives Evaluated in the Final EIS

DOE evaluated the following alternatives for management of the Rocky Flats plutonium residues and scrub alloy covered by this Record of Decision:

III.A. Alternative 1 (No Action—Stabilize and Store)

This alternative consists of stabilization or repackaging to prepare the material for interim storage as described in the Rocky Flats Solid Residue Environmental Assessment (Solid Residue Treatment, Repackaging, and Storage Environmental Assessment/Finding of No Significant Impact, DOE/EA–1120, April 1996). Under this alternative, further processing to prepare the material for disposal or other disposition would not occur. Since scrub alloy was not addressed in the Rocky Flats Solid Residue Environmental Assessment, the "No Action" alternative for scrub alloy has been defined as continued storage at Rocky Flats with repackaging, as necessary. Under this alternative, approximately 40 percent of the Rocky Flats plutonium residues and all of Rocky Flats scrub alloy would be left in a form that would not meet the requirements for termination of safeguards, thus making these materials ineligible for disposal. Thus, while implementation of this alternative would address the immediate health and safety concerns associated with near-term storage of the materials, the health and safety risks associated with potential long-term storage of these materials would remain.

III.B. Alternative 2 (Processing Without Plutonium Separation)

Under this alternative, the materials would be processed to convert them into forms that would meet the requirements for termination of safeguards. The materials would be ready for shipment to WIPP in New Mexico for disposal.

The technologies evaluated for use under this alternative for the material categories covered by this Record of Decision are listed in Table 1.

TABLE 1.—ALTERNATIVE 2 PROCESSING TECHNOLOGIES

Material category	Processing technology
Sand, slag and crucible residues	Calcination/vitrification, or blend down.
Direct oxide reduction salt residues (low plutonium concentration)	Blend down.
Combustible residues	Blend down, catalytic chemical oxidation, or sonic wash.
Plutonium fluoride residues	Blend down.
Ful Flo filter media residues	Blend down or sonic wash.
Glass residues	Calcination/vitrification, blend down, or sonic wash.
Graphite residues	Cementation, calcination/vitrification, or blend down.
Inorganic (metal and other) residues	Calcination/vitrification, or blend down.
Scrub alloy	Calcination/vitrification.

All of the technologies specified in Table 1 would be implemented onsite at Rocky Flats. The blend down technology referred to in Table 1 would consist of mixing the plutonium residues within the scope of the Final EIS with other, lower plutonium content residues that are also planned for disposal in WIPP, or with inert material, so that the resulting mixture would be below the safeguards termination limits.

III.C. Alternative 3 (Processing With Plutonium Separation)

Under this alternative, the plutonium residues and scrub alloy would be processed to separate plutonium from the material and concentrate it so that the secondary waste would meet the requirements for termination of safeguards and be ready for disposal, while the separated and concentrated plutonium would be placed in safe and secure storage pending disposition in accordance with decisions to be made under the Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283, under preparation, draft issued in July 1998). DOE would not use this plutonium for nuclear explosive purposes.

The technologies evaluated for use under this alternative for the material categories covered by this Record of Decision are listed in Table 2. These technologies would be implemented at the sites specified in Table 2.

TABLE 2.—ALTERNATIVE 3 PROCESSING TECHNOLOGIES

Material category	Processing technology	Processing site
Sand, slag and crucible residues	Purex processing	Savannah River Site.
Direct oxide reduction salt residues (low plutonium concentration).	Acid dissolution/plutonium oxide recovery, or	Los Alamos National Lab
	Salt scrub followed by Purex processing, or	Salt scrub at Rocky Flats, Purex at the Savannah River Site.
	Water leach, or	Rocky Flats
	Water leach	Los Alamos National Lab.
Combustible residues	Mediated electrochemical oxidation	Rocky Flats.
Plutonium fluoride residues	Purex processing, or	Savannah River Site
	Acid dissolution/plutonium oxide recovery	Rocky Flats.
Ful Flo filter media residues	Mediated electrochemical oxidation	Rocky Flats.
Glass residues	Mediated electrochemical oxidation	Rocky Flats.

TABLE 2.—Alternative 3 Processing Technologies—Continued

Material category	Processing technology	Processing site
Graphite residues	Mediated electrochemical oxidation, or	Rocky Flats
	Mediated electrochemical oxidation	Savannah River Site.
Inorganic (metal and other) residues	Mediated electrochemical oxidation, or	Rocky Flats
	Mediated electrochemical oxidation	Savannah River Site.
Scrub alloy	Purex processing	Savannah River Site.

III. D. Alternative 4 (Combination of Processing Technologies)

Under this alternative, the residues would be stabilized and blended down, if necessary, and repackaged in preparation for shipment of the material to WIPP. Termination of safeguards would be accomplished through use of a variance to the safeguards requirements. A variance is the record of a review process whereby DOE's Office of Safeguards and Security approves a proposal by another part of DOE to terminate safeguards on specific quantities of safeguarded materials because of special circumstances that make the safeguards controls unnecessary. The variance to safeguards termination limits that is required to allow implementation of this alternative was approved by the DOE Office of Safeguards and Security after conducting a detailed review and extensive vulnerability assessment regarding the alternative mechanisms that would be used to protect and control access to the material. The Office of Safeguards and Security concluded that the nature of the residues, the relatively low concentration of plutonium in the residues after blend down (if necessary), and the waste management controls that would be in effect during the transportation to and staging at WIPP prior to disposal would be sufficient to provide a level of protection for the materials comparable to that required by safeguards.

The plutonium fluoride residues and the scrub alloy were not analyzed under this alternative because their higher plutonium content would make application of a safeguards termination limit variance impractical. In addition, the Ful Flo filter media residues were not analyzed under this alternative because they had not been identified in the Draft EIS as materials for which a variance to the safeguards termination requirements had been requested. Accordingly, application of a variance to these materials was not considered in the Final EIS.

III. E. Strategic Management Approaches

Theoretically, it would be possible to process all of the residues using only one of the alternatives listed above (e.g., all the materials would be processed under a single alternative, except for certain material categories for which there is no processing technology under that alternative). Nevertheless, in practice, DOE recognized in preparing the EIS that the most appropriate technologies were likely to be chosen separately for each material category by selecting from among the technologies in all the alternatives. However, there are too many combinations of material categories, processing technologies and processing sites to address each individual combination in the EIS in a manner that would be easily understandable. As a result, in addition to individually evaluating technologies that could be used to implement the alternatives for each material category, DOE also evaluated several "Strategic Management Approaches". These approaches involve compilations of sets of processing technologies which would allow a specific management criterion to be met. The management criteria addressed in the Strategic Management Approaches are as follows:

1. No Action (i.e., Alternative 1 discussed above)
2. Preferred Alternative (Discussed in more detail in Section III. F. below)
3. Minimizing Total Processing Duration at Rocky Flats
4. Minimizing Cost
5. Conducting all Processing at Rocky Flats
6. Conducting the Fewest Actions at Rocky Flats
7. Processing with the Maximum Amount of Plutonium Separation
8. Processing without Plutonium Separation

The decisions on which technology to implement have been made separately for each material category covered by this Record of Decision; the Strategic Management Alternatives were merely illustrative. Nevertheless, evaluation of the Strategic Management Approaches allowed presentation of the environmental impacts of the proposed action as one set of data, instead of separate sets of data representing the impacts from management of each of the material categories individually. Examination of the various Strategic Management Approaches also allowed DOE and the public to determine whether there are any significant differences between the impacts that would result from implementation of one Strategic Management Alternative as compared to any other.

III. F. Preferred Alternative

The preferred alternative was constructed by selecting a preferred technology for each material category from among the action alternatives (i.e., Alternatives 2, 3 and 4) described above.

The technologies that comprise the Preferred Alternative for the material categories covered by this Record of Decision are listed in Table 3 (the bases for selection of these technologies are discussed in Section 2.4 of the Final EIS, and again in Section VII. of this Record of Decision). These technologies would be implemented at the sites specified in Table 3.

TABLE 3.—PREFERRED ALTERNATIVE PROCESSING TECHNOLOGIES

Material category	Processing technology	Processing site
Sand, slag and crucible residues	Purex processing (Alternative 3)	Savannah River Site.
Direct oxide reduction salt residues (low plutonium concentration).	Repackage (Alternative 4)	Rocky Flats.
Combustible residues	Stabilize, if necessary, and repackage (Alternative 4) (see Note 1).	Rocky Flats.
Plutonium fluoride residues	Purex processing (Alternative 3)	Savannah River Site.
Ful Flo filter media residues	Blend down (Alternative 2)	Rocky Flats.

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TABLE 3.—PREFERRED ALTERNATIVE PROCESSING TECHNOLOGIES—Continued

Material category	Processing technology	Processing site
Glass residues	Stabilize (i.e., neutralize and dry) and repackage (Alternative 4).	Rocky Flats.
Graphite residues	Repackage (Alternative 4)	Rocky Flats.
Inorganic (metal and other) residues	Repackage (Alternative 4)	Rocky Flats.
Scrub alloy	Purex processing (Alternative 3)	Savannah River Site.

Note 1—Aqueous contaminated residues would be stabilized by neutralizing and drying. Organic contaminated residues would be stabilized by thermal desorption/steam passivation.

IV. Other Factors

In addition to comparing the environmental impacts of implementing the various alternatives, DOE also considered other factors in reaching the decisions announced here. These other factors included issues raised by comments received during scoping, or on the Draft and Final versions of the EIS. The other factors considered are briefly summarized in the following paragraphs.

IV.A. Nonproliferation

Preventing the spread of nuclear weapons has been a fundamental national security and foreign policy goal of the United States since 1945. The current U.S. policy is summarized in the White House Fact Sheet on Nonproliferation and Export Control Policy, dated September 27, 1993. This policy makes it clear that the United States does not encourage the civil use of plutonium and, accordingly, does not itself engage in plutonium reprocessing (that is, separation of plutonium from spent nuclear fuel) for either nuclear power or nuclear explosives purposes. In addition, it is U.S. policy to seek to eliminate where possible the accumulation of stockpiles of plutonium.

The alternatives analyzed in the Final EIS, including plutonium separation alternatives, would result in varying levels of risk associated with potential use of the plutonium in nuclear weapons, either by the U.S. or an adversary. None of the alternatives would eliminate the plutonium from the current inventory. Nevertheless, as discussed in Section 4.1.9 of the Final EIS, all of the action alternatives would result in appropriate management of the plutonium residues and scrub alloy to ensure that they are not stolen or diverted for illicit purposes. Furthermore, all of the action alternatives set the stage for ending the proliferation risk posed by the plutonium in the plutonium residues and scrub alloy by preparing these materials for disposal or other disposition in a form that is proliferation resistant (i.e., a form which contains very little plutonium per unit weight, from which the plutonium would be especially difficult to extract, or for which other measures are taken to ensure sufficient security). In addition, because of the potential concern regarding any processing and consolidating of plutonium that might be accomplished by DOE, the Secretary of Energy has committed that any separated or stabilized plutonium-239 would be prohibited from use for nuclear explosive purposes (Secretarial Action Memorandum approved December 20, 1994). This prohibition would apply to plutonium-239 separated as a result of actions implemented under this Record of Decision.

IV.B. Technology Availability and Technical Feasibility

DOE considered technology availability and technical feasibility in identifying processing technologies to be evaluated in the Final EIS and in making the decisions specified in Section VI of this Record of Decision. DOE considered the extent to which technology development would be required and the likelihood of success of such endeavors. All of the technologies evaluated in the Final EIS are technically feasible. In general, however, the more that processing technologies vary from the historical processes and facilities used by DOE, the greater the technical uncertainty and extent to which new facilities or modifications to existing facilities would have to be made (as discussed in Section 4.17.7 of the Final EIS).

IV.C. Timing

DOE considered the degree to which the various technologies that could potentially be used in management of the plutonium residues and scrub alloy would support DOE's plans for cleanup of the radioactive, chemical and other hazardous wastes left after 50 years of nuclear weapons production by the United States, as outlined in the document titled Accelerating Cleanup: Paths to Closure (DOE/EM–0362, June 1998), including the goal of closing Rocky Flats by 2006.

IV.D. Cost

In reaching decisions on processing technologies, an important consideration for DOE was cost. DOE evaluated the costs of implementing the various processing technologies for each material category on both an individual basis and collectively. DOE estimates it would cost from approximately $428 Million to $814 Million to implement the Strategic Management Approaches (other than No Action) analyzed in the Final EIS. An even larger expenditure (approximately $1.1 Billion) would be required to pay for continued storage of the nuclear materials if DOE chose to implement the No Action alternative. On the other hand, DOE expects that the annual costs of operating and maintaining Rocky Flats facilities will decrease as nuclear materials are removed from the site. DOE expects further reductions in costs as the Rocky Flats facilities are deactivated.

V. Comments on the Final EIS

After issuing the Final EIS, DOE received two letters commenting on the preferred alternative, one from Alternatives in Action, and the other from the Environmental Evaluation Group. In addition, while DOE was in the process of distributing the Final EIS, DOE received a copy of a letter from the Institute for Energy and Environmental Research to the South Carolina State Department of Health and Environmental Control commenting on an issue that is relevant to this Record of Decision. Finally, during consultations conducted after completion of the Final EIS, DOE received a comment on the Final EIS from the U.S. Fish and Wildlife Service of the Department of the Interior. DOE's responses to these comments are as follows:

V.A.

The letter from Alternatives in Action (signed by Virginia Dollar and dated September 23, 1998) expressed a preference for implementation of the No Action alternative because it would not involve separation of plutonium; would reduce the number of people who would move, handle, treat and repackage the materials; and would result in management of the materials close to their point of origin. The No Action alternative is fully evaluated in the Final EIS, along with the action alternatives. Section VII. of this Record of Decision specifies the technologies that DOE has decided to implement for each material category addressed in the Final EIS and explains why DOE chose those technologies. DOE did not choose to implement the No Action alternative for any material category because implementation of the No Action alternative would leave the plutonium residues and scrub alloy in forms that could not be disposed of or otherwise dispositioned. Such an action would only postpone eventual action necessary to terminate storage of these materials and would result in continuation of the risks and costs associated with their indefinite storage.

V.B.

The letter from the Environmental Evaluation Group[1] (signed by Robert H. Neill and dated October 6, 1998) contained several comments on two topics, (1) safeguards termination limits, and (2) treatment of ash residues and other residues containing fines or powder. DOE's responses to the Environmental Evaluation Group comments are provided below:

V.B.1. Safeguards Termination Limits

The Environmental Evaluation Group letter raised several issues that relate to "safeguards termination limit variances". The comments requested more details regarding the process used to review and approve applications for variances, and raised issues relating to the basis for any variances.

The Office of Safeguards and Security is the organization within DOE that is responsible for determining when special nuclear materials (such as plutonium) must be subject to physical safeguards to prevent theft or diversion. To that end, the Office of Safeguards and Security has established concentrations of plutonium that DOE organizations use to determine which materials containing plutonium must be safeguarded and which can be held or disposed of without maintaining physical safeguards. However, the Office of Safeguards and Security recognizes that there are circumstances under which the threat of theft or diversion would be very small even if these concentrations were exceeded. Accordingly, it has a procedure under which a DOE site may petition for a variance from the safeguards termination limits. To obtain a variance, the site must demonstrate that " given the nature of the materials, their plutonium concentrations, and the other management controls that would be in effect during their transportation and storage—safeguards controls would not be needed to adequately ensure that the material would not be stolen or diverted for illicit purposes. This process was discussed in Section 1.3.1 of the Final EIS.

The Environmental Evaluation Group letter states that some of the residues are above the Economic Discard Limits for plutonium. With the termination of plutonium production in the United States, the Economic Discard Limit concept has become obsolete and has been replaced by criteria that comprise DOE's current plutonium disposition methodology. These criteria include consideration of security and nonproliferation, waste minimization and costs. All of these criteria were satisfied in the development of the safeguards termination limit variance associated with Alternative 4, the Combination Alternative analyzed in the Final EIS (see Section III. D.).

The Environmental Evaluation Group letter also refers to the Office of Safeguards and Security Version 1.2 formula supposedly used to calculate safeguards termination limits. The Version 1.2 formula was a draft proposal developed in 1995 that was not used in the development of the safeguards termination limits established in 1996. After detailed technical evaluations of the Version 1.2 formula, DOE concluded that the formula had no relationship to actual capability to recover plutonium from plutonium residues and other plutonium bearing materials. Therefore, the formula is not pertinent to making decisions regarding the plutonium contained in the Rocky Flats plutonium residue inventory.

Current DOE policies allow a variance to safeguards termination limits to be approved for materials containing plutonium above the limits when vulnerability assessments conclude that no additional significant risk would occur by approving a variance. To support a variance request for certain categories of plutonium residues, Rocky Flats conducted vulnerability (or risk) assessments. The vulnerability assessments for the residues and their disposition paths were conducted to evaluate risks and determine acceptable protection measures needed to mitigate any unacceptable risks. These vulnerability assessments were thoroughly reviewed by the DOE Office of Safeguards and Security and were a primary basis for DOE's decision to grant the safeguards termination limit variance for the Rocky Flats plutonium residues. These assessments included consideration of all design based threats and adversary capabilities for diversion, theft and sabotage, not only at Rocky Flats, but also during transportation and final staging and disposal at WIPP.

The Environmental Evaluation Group opposes granting a variance to safeguards termination limits until there is a review by affected state technical oversight agencies of the Rocky Flats application, the Office of Safeguards and Security review and decision, and the vulnerability assessments. Normally DOE does not involve outside organizations, including state government agencies, in the nuclear safeguards and security vulnerability review process. Furthermore, the governments of states potentially impacted by the issuance of safeguards termination limit variances have expressed no concerns on this matter to DOE. Moreover, the Office of Safeguards and Security received a letter from the Director of the State of Colorado Department of Public Health and Environment, dated December 30, 1997, that strongly endorsed DOE's approval of Rocky Flats request for variances to safeguards termination limits. The letter states that "* * * approval of the proposal [a Safeguards Termination Limit (STL) variance] would result in processing which is strictly designed to stabilize residue material and meet the WIPP Waste Acceptance Criteria rather than requiring further processing only to meet STLs." Comments on the Draft EIS from the State of New Mexico Environment Department (see Chapter 9 of the Final EIS) include no mention of variances to safeguards termination limits.

V.B.2. Treatment of Residues Containing Fines and Powders

The Environmental Evaluation Group recommends that certain residues that contain fines and powders be "fixed" to minimize dispersibility in the event of accidents, reduce their attractiveness for diversion, or improve short and long term performance in WIPP. The Environmental Evaluation Group specifically identifies incinerator ash, graphite fines, inorganic ash, molten salt extraction salt/electrorefining salts, sludges and HEPA filter residues as being subject to this comment and mentions cold ceramification and vitrification as potential fixation processes.

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[1] The Environmental Evaluation Group is an independent group established in 1979 as a part of the New Mexico Institute of Mining and Technology with funds provided to the State of New Mexico by DOE. Pursuant to Pub.L. 100–456, the Environmental Evaluation Group conducts an independent technical evaluation of WIPP to assist in ensuring protection of the environment and the public health and safety.

DOE's decisions on future management of each material category covered by these comments will be included in the second Record of Decision, as discussed in Section I of this Record of Decision (above). Nevertheless, DOE is responding to these comments in this Record of Decision, thus making the responses available to the public sooner, and addressing the comments in the same document that addresses the preceding comment on safeguards termination limits.

DOE considers that the actions recommended by the Environmental Evaluation Group to control dispersibility in the event of accidents under the preferred alternative are not necessary. As stated in Section 2.6.1 of the Final EIS, the residues would be packaged in multiple layers of sealed packages specifically to preclude dispersion if an accident were to occur. The residues would first be packaged in either metal containers or plastic bags. They would then be placed in stainless-steel pipe components, as appropriate, which in turn would be placed inside 55-gallon drums. When ready for transport to WIPP, the drums would be placed into TRUPACT-II containers, which are Type B shipping packages, certified by the Nuclear Regulatory Commission and approved by the Department of Transportation. The multiple containment afforded the residues would virtually eliminate the possibility for their dispersion into the environment, even in the unlikely event of an accident.

Concerning the improvement of short and long term performance in WIPP, the specific residues identified by the Environmental Evaluation Group (and certain other residues) do not require further stabilization prior to repackaging to meet the WIPP waste acceptance criteria (WIPP WAC), except that some of the sludges would have to be filter-dried and some of the HEPA filters neutralization-dried prior to being repackaged in order to meet the WIPP WAC. This is discussed in Section 2.1 of the Final EIS. Compliance with the WIPP WAC would demonstrate that requirements for disposal at WIPP have been met. While "fixing" some of the residues, as evaluated in the Final EIS under several of the Alternative 2 technologies, could improve performance at WIPP, the improvement would be modest, and would be accompanied by additional costs, delays in the time when the residues would be ready to leave Rocky Flats, and additional hazards to workers who would perform the "fixing" process. Although the "fixing" would make extraction of the plutonium from these residues more difficult, DOE's analyses (see Section V. B. 1, above) demonstrate that the residues are suitable for termination of safeguards (including consideration of the potential for diversion of the material) without such additional processing. Furthermore, conducting the operations necessary to "fix" the residues would subject workers to unnecessary radiation exposure. Nevertheless, DOE will consider all of the alternatives evaluated for these material categories in the Final EIS in the process of preparing the second Record of Decision.

V. C.

The letter from the Institute for Energy and Environmental Research to the South Carolina Department of Health and Environmental Control (signed by Brian Costner and dated September 24, 1998) questioned whether the proposal in the Draft EIS to ship the plutonium fluoride residues from Rocky Flats to the Savannah River Site for processing through the canyons is consistent with the requirements of the Resource Conservation and Recovery Act (RCRA) and asserted that the public has been largely excluded from the decision making process in this matter.

DOE's management of the plutonium fluoride residues will comply with all applicable RCRA requirements. DOE will transport the plutonium fluoride residues to the Savannah River Site in compliance with RCRA transportation requirements, and will store them there pursuant to RCRA storage requirements prior to processing. The applicability of RCRA requirements to the processing of the plutonium fluoride residues in the canyons is the subject of ongoing discussions between DOE and the South Carolina Department of Health and Environmental Control.

DOE currently is in the process of preparing the Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283), which addresses the extent to which two surplus plutonium disposition approaches (immobilization and use in mixed oxide fuel [MOX]) would be implemented. Even after completion of the Surplus Plutonium Disposition Environmental Impact Statement, currently scheduled for early 1999, DOE does not expect to make decisions about which, if any, of the plutonium to be separated in the canyons would be used in MOX fuel until shortly before the material would be transferred to a MOX fabrication facility. Those decisions are not expected to be made until the plutonium separation operations under this Record of Decision have been completed.

DOE does not believe that the public has been excluded from the decision making process regarding the management of the plutonium fluorides. The public was provided an opportunity to comment on management of the plutonium fluoride residues through this NEPA process. The Draft EIS discussed processing of the plutonium fluorides in the Savannah River Site canyons, followed by either immobilizing the separated plutonium or using it in MOX fuel.

V. D.

The comment from the Fish and Wildlife Service (from Craig Miller of the Fish and Wildlife Service office in Lakewood, Colorado on September 4, 1998) pertained to the listing of Federal threatened, endangered and candidate species that may be found on or in the vicinity of Rocky Flats, as provided in Section 3.1.6, Table 3–6 of the Final EIS. During discussions on the Final EIS between DOE and the Fish and Wildlife Service office in Lakewood, Colorado, the Fish and Wildlife Service requested that DOE update the list of Federal threatened, endangered and candidate species in Table 3–6 as follows (new entries are marked with an *, other changes are noted in italics):

Revise the list of Federal Endangered Species to read as follows:

American peregrine falcon
whooping crane*
eskimo curlew*
black-footed ferret*

Revise the list of Federal Threatened Species to read as follows:

bald eagle
pawnee mountain skipper*
Mexican spotted owl*
Preble's meadow jumping mouse
greenback cutthroat trout*
utes ladies-tress orchid*
Colorado butterfly plant (proposed)* *[moved from "Candidate Species" list]*
Canada lynx (proposed)*

Revise the list of Federal Candidate Species to read as follows:

mountain plover
boreal toad*
swift fox*
[the Southwest willow flycatcher has been deleted from this list]

VI. New Information

Since the Final EIS was issued, DOE has improved its estimate of the number of shipments that would be required to transport certain residues off-site for processing. While the amount of residues (and the amount of plutonium in the residues, both measured in terms of their weight) that would be shipped under the Preferred Alternative has not changed, the number of shipments that would be required to implement the Preferred Alternative is now projected to be greater than the number discussed in the Final EIS (Chapter 2, "Alternatives").

Specifically, routine characterization of the sand, slag and crucible residues that was conducted in parallel with preparation of the Final EIS found these residues to be less dense (i.e., they occupy more volume per unit mass) than had been assumed during preparation of the Final EIS. As a result, less sand, slag and crucible residues could be placed in any shipping container, resulting in a projected increase in the number of shipments that would be required from Rocky Flats to the Savannah River Site.

In addition, the precise radiation levels being emitted by the plutonium fluoride residues are not known at the present time. If the radiation level emitted by the plutonium fluoride residues is found to be higher than had been assumed during preparation of the Final EIS, then the amount of plutonium fluoride residues that could be included in any shipment would have to be reduced to avoid exceeding a transportation regulatory limit, thus also requiring the number of shipments to be increased. The actual radiation levels being emitted by the plutonium fluoride residues would not be known until they were repackaged for shipment. To avoid unnecessary radiation exposures to workers, DOE has deferred taking these measurements until the repackaging operation, when personnel would have to be near the material in any case.

Finally, if it becomes necessary to change from use of the 6M shipping container, the container assumed in the Final EIS, to the 9975 shipping container, the number of scrub alloy shipments could also increase. This is due to the fact that, after the 9975 container is certified, DOE will phase out use of the 6M containers as sufficient numbers of 9975 containers become available, and the 9975 container can hold less scrub alloy than the 6M container could.

Overall, the changes in the number of shipments, as discussed above, increase shipments that might be made under the Preferred Alternative from 39, as estimated in the Final EIS, to a current estimate of between 60 and 90 shipments.

DOE has considered the environmental implications of this increase in the estimated number of shipments that would be necessary to implement the Preferred Alternative and has concluded that there would be no significant change to the small impacts as estimated in the Final EIS for the following reasons:

VI. A.

First, the estimate of the incident free radiological impacts from each individual shipment would remain the same as in the Final EIS. Such impacts were calculated under a simple, but conservative, assumption that all shipments emit radiation at the regulatory limit. Accordingly, the total of the incident free radiological impacts for all shipments would increase, in proportion to the increased number of shipments. However, the incident free radiological impacts would remain low. For example, the highest incident free radiological impact (that of the transportation crew for 90 shipments) would be 0.0055 latent cancer fatalities (as opposed to 0.0024 latent cancer fatalities as estimated in the Final EIS).

VI. B.

Second, the radiological impacts associated with accidents would remain unchanged because the increased likelihood of an accident (due to the increased number of shipments) is offset by the decrease in the amount of radioactive material that would be present in an accident[2].

VI. C.

Third, although the nonradiological impacts (incident free and accident) would be increased in proportion to the increased number of shipments, the estimate remains small (approximately 0.0012 emission related latent cancer fatalities and approximately 0.010 traffic accident related fatalities for the new shipment values, as opposed to 0.00051 and 0.0039, respectively, as estimated in the Final EIS).

In summary, the transportation impacts from the current estimated number of shipments from Rocky Flats to the Savannah River Site would be small, and the current impact estimates differ insignificantly from corresponding estimates presented in the Final EIS.

VII. Decision

DOE has decided to implement the proposed action in the manner described in this section. The alternatives that DOE has decided to implement are presented separately below for each material category because the decisions on the selected technology were based on considerations that are unique to the chemical and physical characteristics of the individual material categories. Furthermore, these decisions are independent of one another and are not connected to the decisions to be made in the upcoming second Record of Decision. Although alternative technologies analyzed in the EIS might use certain common facilities or personnel, sufficient facility capacity and personnel are available to allow use of any technology without interfering with any other.

For clarity and brevity, this section also includes the discussion of the environmentally preferable alternative (as required by CEQ regulations [40 CFR 1505.2]) and the basis for selection of the alternative to be implemented.

The analysis of alternative technologies presented in the Final EIS indicates that all of the alternative technologies, including those in the Preferred Alternative and the No Action alternative, would have only small impacts on the human environment on or around the DOE management sites and on the populations along transportation routes (see Sections 4.23 and 4.24 of the Final EIS). Using conservative assumptions (i.e., assumptions that tend to overestimate risks), the potential risks from incident-free operations and postulated accidents that are of most interest would be (1) Those associated with radiation exposure to workers performing processing operations on the plutonium residues and scrub alloy or near loaded transportation containers, and (2) radiation risks to the general public in and around the DOE management sites and along the transportation routes. The Final EIS also estimates (1) the risks from incident-free operations and postulated accidents associated with chemical releases and transportation accidents; (2) the amounts of various wastes and other materials that would result from implementation of the various alternative technologies; (3) the cost of implementing the various alternative technologies; (4) the effect on nuclear weapons nonproliferation; and (5) air quality impacts.

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[2] Note that the radiological impacts of incident free transportation and transportation accidents are calculated differently. As noted above, incident free impacts are calculated under the simplifying assumption that all shipments contain enough radioactive material to cause them to emit radiation at the regulatory limit. This assumption overstates impact estimates for some shipments, but more precise calculations were not needed in this case to estimate the nature of the impacts. Accident impacts, however, are estimated based on the likely contents of the shipping containers.

Environmentally Preferable Alternative—Although there are differences among the estimated impacts for the various alternatives, the impacts would be small for any of the alternative technologies, and the magnitude of the differences in potential impacts between alternatives is small. In addition, the nature of the potential impacts is such that comparing them is a very judgmental process. For example, under the preferred alternative for scrub alloy (plutonium separation), only 61 drums of transuranic waste would be generated; whereas the other action alternative for this material (calcination and vitrification) would generate 2,809 drums of transuranic waste. However, the plutonium separation would also result in generation of 200 kg of separated plutonium; whereas calcination and vitrification would result in no separated plutonium. Comments received from members of the public on the Draft EIS demonstrate that different individuals would make different value judgments as to which of these product/waste materials is of most concern. Furthermore, in addition to having no indisputable means of identifying which waste or product stream would be most important to minimize, there is no indisputable way to trade off differences between the amounts of various types of waste and separated plutonium against differences in levels of radiological risk or chemical hazards; or between risks to workers versus risks to the public (risks to the public would be lower than those to workers for all technologies evaluated in the Final EIS).

In general, because of the small risks that would result from any of the action alternatives (as demonstrated by Tables 2–9 through 2–26, and 4–8 through 4–54 of the Final EIS) and the absence of any clear basis for discerning an environmental preference, DOE concludes that no one of the action alternatives is clearly environmentally preferable over any other action alternative.

On the other hand, under the No Action alternative, the materials would be left in storage at Rocky Flats with no defined disposal path. There would be additional risk associated with both the indefinite storage and whatever processing may ultimately be determined to be necessary to prepare the material for ultimate disposition. There would also be risks from potential degradation of storage facilities and containers. Accordingly, in consideration of the long term risks that would be associated with implementation of the No Action alternative, DOE considers that all of the action alternatives are environmentally preferable over the No Action alternative.

The processing technologies that DOE has decided to implement are as follows for each material category addressed in this Record of Decision:

VII.A. Sand, Slag and Crucible Residues

VII.A.1. Selected Alternative

DOE has decided to preprocess the sand, slag and crucible residues at the Rocky Flats site and then transport them to the Savannah River Site for stabilization in the F-Canyon. The Purex process will be used to chemically separate the plutonium from the other residue constituents (i.e., Alternative 3). The separated plutonium will then be placed in storage at the Savannah River Site until it is dispositioned as determined by DOE after completion of the Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283, under preparation, draft issued in July 1998).

VII.A.2. Basis for the Decision

Transporting the residues and processing them at the Savannah River Site was chosen as the technology to be implemented for this material category because it provides the most expeditious approach for stabilization of these residues. The Savannah River Site is now processing in the canyons sand, slag, and crucible residues that were produced at the Savannah River Site. Consideration of alternative processing technologies that would result in sending the Rocky Flats sand, slag and crucible residues directly to WIPP for disposal as transuranic waste revealed that significant further characterization of the material would be required to verify its suitability for disposal in WIPP, due to the presence of reactive calcium in the residues. Resolution of the issues raised by the reactive calcium would require (1) Further testing to demonstrate that no more than 5 percent of the residues contain enough reactive calcium to be pyrophoric, (2) approval by the Nuclear Regulatory Commission of a change to the WIPP TRUCON Shipping Code to change the allowable passivated calcium metal content from a trace (i.e., less than 1 percent) to a minor (i.e., 1 to 10 percent) constituent, and (3) obtaining WIPP certification of the material. This strategy, if successful, would take about one year longer to implement than processing at the Savannah River Site. Therefore, in conformance with Defense Nuclear Facilities Safety Board Recommendation 94–1 concerning expeditious stabilization of plutonium bearing materials to resolve health and safety concerns, DOE has decided to stabilize the sand, slag and crucible residues as quickly as possible by transporting them to the Savannah River Site for processing, even though this technology would cost $25 Million more than the more technically uncertain calcination/vitrification technology (see Section 4.17.7 of the Final EIS).

The Final EIS specified that any plutonium separated under any alternative analyzed in this EIS would be disposed of using the immobilization process. (Final EIS, page 2–2.) Upon further review, DOE has decided for the following reasons not to make a determination at this time on the disposition of any plutonium separated under the decisions announced in this ROD. In December 1996, DOE published the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (DOE/EIS–0229, the PEIS). That PEIS analyzed, among other things, the potential environmental consequences of alternative strategies for the long term storage and disposition of weapons-usable plutonium that has been or may be declared surplus to national security needs. DOE announced the Record of Decision for that PEIS in January 1997, which outlines an approach to plutonium disposition that would allow for both the immobilization of some of the surplus plutonium, and the use of some of the surplus plutonium as MOX fuel in existing domestic, commercial reactors (62 FR 3014).

As a follow-on analysis to that PEIS, DOE is in the process of preparing the Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283, draft issued July 1998), which addresses the extent to which each of the two surplus plutonium disposition approaches (immobilization and MOX) would be implemented. Thus, at the present time, DOE has not decided the extent to which either the immobilization or the MOX approach to surplus plutonium disposition would be implemented. Moreover, as noted above, even after completion of the Surplus Plutonium Disposition Environmental Impact Statement, DOE does not expect to make decisions about which, if any, of the surplus plutonium would be used in MOX fuel until shortly before any such material would be transferred to a MOX fabrication facility. Thus, DOE believes at this time it is appropriate not to make any commitment as to which approach would be implemented for the disposition of any plutonium to be separated under the decisions announced in this Record of Decision.

The plutonium declared to be surplus includes any weapons-useable plutonium resulting from the stabilization (for health and safety reasons) of the Rocky Flats plutonium residues and scrub alloy discussed under this Record of Decision. As a result, weapons-useable plutonium that is separated under actions from this Record of Decision is a candidate for both of the surplus weapons-useable plutonium disposition alternatives that have been identified by DOE (i.e., MOX and immobilization).

VII. B. Direct Oxide Reduction Salt Residues (low plutonium concentration)

VII. B. 1. Selected Alternative

DOE has decided to repackage the low plutonium concentration direct oxide reduction salt residues to prepare them for disposal in WIPP (Alternative 4). A portion of these residues may be pyro-oxidized, if this additional processing is found to be necessary during examination of the residues prior to repackaging. During the repackaging operation, the residues may be mixed with other, lower plutonium concentration residues from the same material category, or with an inert material.

VII. B. 2. Basis for the Decision

Repackaging at Rocky Flats was chosen as the technology to be implemented for this material category because it is the simplest and least costly of all processing technologies considered, and the one that will allow DOE to complete processing and ready the material for disposal most expeditiously. This approach will also allow use of resources that would otherwise be required to manage these residues to speed up other activities required to close the site.

VII. C. Combustible Residues

VII. C. 1. Selected Alternative

DOE has decided to stabilize, if necessary, and repackage the combustible residues to prepare them for disposal in WIPP (Alternative 4). Aqueous-contaminated combustible residues will be neutralized and dried, with any fines stabilized by cementation or repackaging. Organic contaminated combustible residues will be stabilized with a combination of washing, low-temperature thermal desorption, stabilization of plutonium fines, mixing with an absorbent material, and cementation. Dry combustible residues will just be repackaged because they are in a form that does not require stabilization. During the repackaging operation, the residues may be mixed with other, lower plutonium concentration residues from the same material category, or with an inert material.

VII. C. 2. Basis for the Decision

Stabilizing and repackaging at Rocky Flats was chosen as the technology to be implemented for this material category because it is the simplest of all processing technologies considered and the one that will allow the site to complete processing and ready the material for disposal most expeditiously. This approach will also allow use of the resources that would otherwise be required to manage these residues to speed up completion of other activities required to close the site. Finally, selection of stabilization and repackaging avoids the technical uncertainty (discussed in Section 4.17.7 of the Final EIS) that would be associated with implementation of the $10 Million less expensive blend down alternative.

VII. D. Plutonium Fluoride Residues

VII. D. 1. Selected Alternative

DOE has decided to transport the plutonium fluoride residues to the Savannah River Site and use the F-Canyon to stabilize the material (i.e., Alternative 3). The separated plutonium will then be placed in storage at the Savannah River Site until it is dispositioned as determined by DOE after completion of the Surplus Plutonium Disposition Environmental Impact Statement (under preparation—see Section VII. A. 2. above). No decision concerning the final disposition of any plutonium separated from the plutonium fluoride residues, however, is expected in the near future, and not until after completion of the plutonium separation operations at the Savannah River Site. Even after completion of the Surplus Plutonium Deposition Environmental Impact Statement, currently scheduled for early 1999, DOE expects to make decisions about which, if any, of the plutonium would be used in MOX fuel shortly before the material would be transferred to a MOX fabrication facility. As a result, DOE does not expect to know soon whether the separated plutonium will be used in MOX fuel and will keep it in storage pending such a decision.

VII. D. 2. Basis for the Decision

Purex plutonium separation at the Savannah River Site was chosen as the technology to be implemented for this material category because it poses less technical risk and will cost less than would establishment of a new acid dissolution/plutonium oxide recovery capability at Rocky Flats. Blend down, while technically feasible, would result in a very large increase in the amount of transuranic waste requiring disposal, and would result in higher costs.

VII. E. Ful Flo Filter Media Residues

VII. E. 1. Selected Alternative

DOE has decided to shred and blend down the Ful Flo filter media residues with an inert material to below the safeguards termination limits, and to repackage the product for disposal in WIPP (Alternative 2).

VII. E. 2. Basis for the Decision

Shred and blend down at Rocky Flats was chosen as the technology to be implemented for this material category because the other alternatives are aqueous processes that would be more difficult and more costly to implement. The increase in the amount of material to be disposed of after blend down is much less of a concern because of the relatively small amount of material in this category and the small amount of plutonium it contains (about 800 kg of residues containing about 20 kg of plutonium).

VII. F. Glass Residues

VII. F. 1. Selected Alternative

DOE has decided to stabilize (i.e., neutralize and dry) and repackage the glass residues to prepare them for disposal in WIPP (Alternative 4). During the repackaging operation, the glass residues may be mixed with other, lower plutonium concentration residues from the same material category, or with an inert material.

VII. F. 2. Basis for the Decision

Stabilizing and repackaging at Rocky Flats was chosen as the technology to be implemented for this material category because it is the simplest and least costly of all processing technologies considered, and the one that will allow the site to complete processing and ready the material for disposal most expeditiously. This approach will also allow use of the resources that would otherwise be required to manage these residues to speed up other activities required to close the site.

VII. G. Graphite Residues

VII. G. 1. Selected Alternative

DOE has decided to repackage the graphite residues to prepare them for disposal in WIPP (Alternative 4). During

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the repackaging operation, these residues may be mixed with other, lower plutonium concentration residues from the same material category, or with an inert material.

VII. G. 2. Basis for the Decision

Repackaging at Rocky Flats was chosen as the preferred processing technology for this material category because it is the simplest and least costly of all processing technologies considered, and the one that will allow the site to complete processing and ready the material for disposal most expeditiously and at least cost. This approach will also allow use of the resources that would otherwise be required to manage these residues to speed up other activities required to close the site.

VII. H. Inorganic (Metal and Other) Residues

VII. H. 1. Selected Alternative

DOE has decided to repackage the inorganic (metal and other) residues to prepare them for disposal in WIPP (Alternative 4). During the repackaging operation, these residues may be mixed with other, lower plutonium concentration residues from the same material category, or with an inert material.

VII. H. 2. Basis for the Decision

Repackaging at Rocky Flats was chosen as the preferred processing technology for this material category because it is the simplest and least costly of all processing technologies considered, and the one that will allow the site to complete processing and ready the material for disposal most expeditiously, and at the least cost. This approach will also allow use of the resources that would otherwise be required to manage these residues to speed up other activities required to close the site.

VII. I. Scrub Alloy

VII. I. 1. Selected Alternative

DOE has decided to package the scrub alloy, transport it to the Savannah River Site and use the F-Canyon to stabilize the material (i.e., Alternative 3). The separated plutonium will then be placed in storage at the Savannah River Site until it is dispositioned as determined by DOE after completion of the Surplus Plutonium Disposition Environmental Impact Statement (under preparation—see Section VII. A. 3. above).

VII. I. 2. Basis for the Decision

Purex plutonium separation at the Savannah River Site was chosen as the preferred processing technology for this material category because this alternative will allow the most expeditious and least expensive removal of the scrub alloy from Rocky Flats. Furthermore, scrub alloy has traditionally been processed at the Savannah River Site using the Purex technology, and it is a well understood operation that has been demonstrated to work. By comparison, the calcine and vitrify technology (Alternative 2) would involve more technical risk because vitrification operations have never been conducted at Rocky Flats on a production basis.

VIII. Use of All Practical Means to Avoid or Minimize Harm

Implementation of this decision will result in low environmental and health impacts. However, DOE will take the following steps to avoid or minimize harm wherever possible:

VIII. A.

DOE will use current safety and health programs and practices to reduce impacts by maintaining worker radiation exposure as low as reasonably achievable and by meeting appropriate waste minimization and pollution prevention objectives.

VIII. B.

DOE will provide a level of health and safety for DOE transportation operations that is equivalent to or greater than that provided by compliance with all applicable Federal, State, Tribal, and local regulations. In addition to meeting applicable shipping containment and confinement requirements of the Nuclear Regulatory Commission regulations on Packaging and Transportation of Radioactive Material (10 CFR Part 71) and Department of Transportation regulations at 49 CFR, all packaging for transportation of the material covered by this Record of Decision will also be certified by DOE. DOE also provides Federal, State, Tribal and local authorities with access to training and technical assistance necessary to allow them to safely, efficiently, and effectively respond to any incident involving transportation of the materials covered by this Record of Decision.

Items A and B above will be accomplished under existing business practices in the normal course of implementing this Record of Decision.

VIX. Conclusion

DOE has decided to implement the Preferred Alternative specified in the Final EIS to prepare the plutonium residue categories and scrub alloy specified in Sections I and VII. of this Record of Decision for disposal or other disposition. This decision is effective upon being made public, in accordance with DOE's NEPA implementation regulations (10 CFR 1021.315). The goals of this decision are to prepare the plutonium residues and scrub alloy for disposal or other disposition in a manner that addresses immediate health and safety concerns associated with storage of the materials and to support Rocky Flats' closure. Disposal or other disposition of these materials will also eliminate health and safety concerns and costs that would be associated with indefinite storage of these materials.

Issued in Washington, D.C. this 25th day of November, 1998.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 98–32011 Filed 11–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Petition for Waiver of Sanyo Electric Co., Ltd., From the Department of Energy Central Air Conditioner and Central Air Conditioning Heat Pump Test Procedure. (Case No. CAC–009)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Sanyo. Sanyo's Petition for Waiver requests the Department of Energy (Department or DOE) to grant relief from the DOE heat pump test procedure for the Sanyo lines of gas source heat pumps, which operate in both the cooling and heating modes. Sanyo requests that the heating mode tests be waived for its gas burner-assisted heat pumps because the DOE procedure has no provision for testing gas burner-assisted heat pumps. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than December 31, 1998.

ADDRESSES: Written comments and statements shall be sent to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CAC–009, Mail Stop EE–43, Room

1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586–9145.

FOR FURTHER INFORMATION CONTACT: Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, Telephone: (202) 586-9611, E-mail: michael.raymond@ee.doe.gov or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, Telephone: (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions, and will determine whether a product complies with the applicable energy conservation standard. The test procedures appear at 10 CFR Part 430, Subpart B, Appendix M.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Subsequently, DOE further amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR Part 430, § 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

On March 3, 1998, Sanyo filed a Petition for Waiver and an Application for Interim Waiver regarding the heat pump tests. On July 21, 1998, Sanyo withdrew its request for an interim waiver. Sanyo's application seeks a Waiver from the DOE test of heating mode operation for its burner-assisted heat pumps because the current DOE test procedure does not address burner-assisted heat pumps.

The Department has granted a waiver to Kool-Fire (Division of Friedrich Corporation) for a burner assisted heat pump product similar to Sanyo's. Pursuant to paragraph (b) of 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, on November 23, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Sanyo Electric Co., Ltd.

March 3, 1998

ATTN: Ms. Christine Ervin, Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–1, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585

CC: Mr. T. Hada (Gas Appliances), Mr. W. C. Ryan (Ryan Co., Inc.)

RE: Petition for Waiver and Application for Interim Waiver for Sanyo Gas Source Heat Pump

Dear Ms. Ervin: Sanyo described a gas source heat pump product to your Mr. Mike Raymond and Mr. Ed. Pollock during a meeting on June 24, 1997. The recommendation from this meeting was for Sanyo to submit an application for Interim Waiver and Petition for Waiver from the Department of Energy central air conditioning heat pump test procedure for Sanyo's gas source heat pump. Sanyo's business plan is to provide our unique cooling and heating design for the United States domestic market. Our business will suffer economic hardship without a waiver from Department of Energy heating operation test procedures and efficiency standard for this product line.

Sanyo's ductless split type air conditioner-gas source heat pump product operates as a conventional air conditioner for cooling. Cooling efficiency is to be evaluated under DOE test procedures for the seasonal energy efficiency ratio (SEER) product rating. The cooling mode test procedure is specified in 10 CFR Part 430. Subpart B, Appendix M, Section 2.1.

For heating operation this product employs a fuel gas burner to apply heat to the interior wall of a second heat exchanger located in the outdoor section. The exterior wall of this heat exchanger is in close contact with tubing containing a refrigerant. Refrigerant is heated through intimate contact with the exterior wall of this heat exchanger and circulated by the refrigerant compressor from the outdoor tubing to the indoor tubing of the evaporator coil. The indoor fan motor and blower system extracts heat from the circulated refrigerant into the conditioned space. During heating operation the outdoor fan motor and air conditioning heat transfer tubing are isolated from the active circuit by valves and electrical controls.

Accordingly, a DOE test procedure for heating mode of such a gas source heat pump is not developed. Sanyo has no knowledge of an industry standard or test method for evaluating heating efficiency of this type of product. Requirements in 10 CFR Part 430, Subpart B, Appendix M, Section 2.3 do not apply for gas source heat pump units.

In order for this product to comply with the requirements of the Energy Policy and Conservation Act (Pub. L. 94–163) and amendments, Sanyo's business needs require that DOE favorably consider our application for an interim waiver and petition for waiver from the heating efficiency requirements for our combination ductless split air conditioner and gas-source heat pump product line.

Your review and consideration is appreciated. If more information is needed, we will be pleased to provide what you need.

Truly yours,

S. Ukai,

Engineer.

K. Mori,

Manager, International Operation, Air Conditioning Division, Environmental Systems, Business Head Quarter, Sanyo Electric Co., Ltd.

Mike Raymond, U.S. Department of Energy

Sanyo's letter dated March 3, 1998 was a request for a waiver and interim waiver of DOE heating test procedures for their gas source heat pump products.

Sanyo requests you disregard their request for an interim waiver and proceed to extend the final waiver in response to their letter request.

This modification is due to Sanyo's product introduction schedule having sufficient time to allow for completion of the final ruling.

If you have questions or need more information please contact me.

Sincerely,

W. C. Ryan,

Ryan Company, Inc.

[FR Doc. 98–32008 Filed 11–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response × proposed frequency of response per year × estimated number of likely respondents.)

DATES: Comments must be filed on or before December 31, 1998. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–1, 3, 3A, 4, 5, 5A, 6A, 6Q, 7A, and 20, "Coal Program Package."
2. Energy Information Administration; OMB No. 1905–0167; Revision of a Currently Approved Collection; Mandatory.
3. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.
4. Business or other for-profit; Federal Government; State, Local or Tribal Government.
5. 10,137 hours (6,733 respondents × 1.7 responses per year × .9 hours per response).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, November 23, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–32010 Filed 11–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–156–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 25, 1998.

Take notice that on November 20, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 1999:

Fourth Revised Sheet No. 344
Fifth Revised Sheet No. 345

CNG states that the purpose of its filing is to implement Article II, Section 1.7 of the January 21, 1998, "Stipulation and Agreement Concerning GRI Funding" as approved by the Commission in Docket Nos. RP97–149–003, et al. (the GRI Settlement). CNG has incorporated a mechanism to permit shippers to make voluntary contributions to the GRI, at Section 13.4 of the General Terms and Conditions of its tariff. The inserted provision allows CNG's Customers to make voluntary contributions to GRI, in addition to the existing GRI Adjustment Charge. Through this mechanism, CNG will continue to serve as a GRI collection agent consistent with Article II of the GRI Settlement.

CNG states that copies of its letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boegers,

Secretary.

[FR Doc. 98–31990 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 25, 1998.

Take notice that on November 20, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 1999:

Eighteenth Revised Sheet No. 31
Forty Second Revised Sheet No. 32
Forty Second Revised Sheet No. 33

CNG states that the purpose of this filing is to adopt the GRI surcharges established by Article II, Sections 1.2 through 1.5 of the January 21, 1998, "Stipulation and Agreement Concerning GRI Funding" as approved by the Commissin in Docket Nos. RP97–149–003, et al. (the GRI Settlement). CNG further states that the rates established by its filing correspond to those set forth in Appendix A to the GRI Settlement; the unit rate impact on CNG's GRI Adjustment Charge for each affected rate schedule is summarized in CNG's transmittal letter.

CNG states that copies of its letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–31991 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Thirty-first Revised Sheet No. 25
Thirty-first Revised Sheet No. 26
Thirty-first Revised Sheet No. 27
Thirtieth Revised Sheet No. 28

Columbia states that this filing is being submitted in accordance with the Commission's order issued on April 29, 1998 in Gas Research Institute's (GRI) Docket Nos. RP97–149–003, RP97–149–004, RP97–391–001, RP97–391–002, and RM97–3–001 (Order Approving Settlement) (83 FERC ¶ 61,093), and in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff, Columbia is submitting revised tariff sheets to reflect the 1999 GRI funding mechanism.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31886 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–70–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Twentieth Revised Sheet No. 18
Tenth Revised Sheet No. 18A
Twenty-first Revised Sheet No. 19

Columbia Gulf states that this filing is being submitted in accordance with the Commission's order issued on April 29, 1998 in Gas Research Institute's (GRI) Docket Nos. RP97–149–003, RP–149–004, RP97–391–001, RP97–391–002, and RM97–3–001 (Order Approving Settlement) (83 FERC ¶ 61,093), and in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff, Columbia Gulf is submitting revised tariff sheets to reflect the 1999 GRI funding mechanism.

Columbia Gulf states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31888 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–6–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Commission two firm Transportation Service Agreements (TSAs) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Eleventh Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSAs for Commission approval since the TSAs contain provisions which differ from El Paso's Volume No. 1–A Tariff. The tariff sheet, which references the TSAs, is proposed to become effective on December 20, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

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or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commissions in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-31878 Filed 11-30-98; 8:45 am]

BILLING CODE 6717-07-M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. CP99-92-000]

Equitrans, L.P.; Notice of Application

November 25, 1998.

Take notice that on November 18, 1998, Equitrans, L.P. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, for an order approving pre-granted blanket abandonment of Equitable Gas Company's (Equitable) FERC Rate Schedule SS-3 storage as requested by Equitable in the future. Equitrans states that upon approval of this application, Equitrans will convert on an as-necessary basis in the future Equitable's Rate Schedule SS-3 storage entitlements to equivalent firm storage entitlements under Equitrans' open-access Rate Schedule 115SS. Equitrans application is on file with the Commission and open to public inspection.

Equitrans states that future storage conversions will permit Equitable to release its storage entitlements to its own customers as part of its retail customer choice program in the State of Pennsylvania. Equitrans states the pre-granted abandonment will allow Equitable to comply with the short notification requirements for customer choice. Equitrans states that the certificate level of service entitlements to all other customers will remain unchanged, and that no modification of Equitrans' rates is required by this application. Equitrans states that blanket pre-granted abandonment authorization will facilitate the elimination of anticipated Section 7(c) services on the Equitrans system and a fuller conversion to uniform open-access services.

Any person desiring to be heard or to make any protest with reference to said applicated should on or before December 16, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in an subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Equitrans to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98-31986 Filed 11-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-84-001]

Gas Transport, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998, Gas Transport, Inc. (GTI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets, with a proposed effective date of November 2, 1998.

GTI states that the purpose of this filing is to comply with the Commission's letter order issued on November 4, 1998 in the above-referenced proceeding. The November 4 order directed GTI to file revised tariff sheets to rectify certain matters with respect to GTI's October 9, 1998 filing made to comply with the Commission's Order No. 587-H, issued July 15, 1998. Specifically, the revised tariff sheets address bumping notice procedures, the incorporation of GISB Standards 1.3.2(I) through 1.3.2(iv), version 1.3 verbatim, and the incorporation of GISB Standard 1.3.2(v) by reference in GTI's General Terms and Conditions, Section 22.

GTI states that copies of this filing were served upon its firm customers, interested state commissions, and on all interruptible customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-31882 Filed 11-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-66-002]

High Island Offshore System; Notice of Proposed Change in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998, High Island Offshore System, (HIOS) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 2, 1998:

Third Revised Sheet No. 57A
First Revised Sheet No. 57B
First Revised Sheet No. 57C
Fifth Revised Sheet No. 58
Eighth Revised Sheet No. 110
Sub Fourth Revised Sheet No. 110A

HIOS states that the filing is being made in compliance with the

Commission's letter dated November 18, 1998 in the above referenced proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31880 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–82–001]

KO Transmission Company; Notice of Tariff Filing

November 24, 1998.

Take notice that on November 20, 1998, KO Transmission Company (KO Transmission) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 92
Second Revised Sheet No. 93
Second Revised Sheet No. 94
Original Sheet No. 94A
Second Revised Sheet No. 96
Second Revised Sheet No. 106
Third Revised Sheet No. 147

KO Transmission tendered this tariff filing in compliance with the Commission's November 5, 1998 Letter Order in the above-captioned proceeding. Therein the Commission required KO Transmission to further modify its Tariff in compliance to Order Nos. 587–G and 587–H, wherein the Commission amended Section 284.10 of its regulations governing standards for conducting business practices.

KO Transmission states that copies of this filing were served to all of its customers.

Any person desiring the protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31881 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–81–000]

Natural Gas Pipeline Company of America; Notice of Application

November 24, 1998.

Take notice that on November 17, 1998, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP99–81–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale to Stingray Pipeline Company (Stingray) a dual 4-inch platform measuring facility located in East Cameron Block 286, offshore Louisiana (EC 286), all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural states that the facilities were originally constructed to allow Natural to measure system supply gas that it had purchased in EC 286, which gas Stingray had received for Natural's account and transported and redelivered to Natural onshore at Holly Beach in Cameron Parish, Louisiana. Natural states that its gas purchase and transportation agreements related to these facilities have been terminated and that currently the facilities are used to measure gas that stingray receives and transports onshore for the accounts of Stingray's shippers. Moreover, Natural states that said facilities no longer hold sufficient value to Natural to warrant the expenditures required to maintain them as a result, Natural intends to sell said facilities to Stingray.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 15, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211 and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no motion to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31877 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–60–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

November 24, 1998.

Take notice that on November 6, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. CP99–60–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate certain facilities in Arkansas under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to

Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT specifically requests authority to continue operating three delivery taps installed and one that is in the process of being constructed solely to provide service authorized under Section 311 of the Natural Gas Policy Act and Subpart B, of the Commission's Regulations under Subpart G of Part 284 of the Commission's Regulations to ARKLA, a distribution division of NorAm Energy Corp. (ARKLA). The estimated volumes to be delivered through these facilities are approximately 10,200 MMBtu annually and 91 MMBtu on a peak day. The facility upgrades have an estimated cost of $6,975, and $5,985 will be reimbursed by ARKLA.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31873 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–034]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 25, 1998.

Take notice that on November 20, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective November 1, 1998:

Substitute Seventh Revised Sheet No. 7E

NGT states that the purpose of this filing is to reflect a corrected publication for determination of an index price and replaces Seventh Revised Sheet No. 7E filed on October 30, 1998 (RP96–200–034).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–31987 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–77–000]

Northern Natural Gas Company; Notice of Application

November 24, 1998.

Take notice that on November 16, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP99–77–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for an order permitting and approving the abandonment of certain individually certificated agreements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to abandon service under Rate Schedules T–27 with Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation and Columbia Gas Transmission Company (Columbia); X–59 and X–60 with Trunkline Gas Company (Trunkline) and Panhandle Eastern Pipe Line Company (Panhandle); X–77 with Tennessee Gas Pipeline Company (Tennessee) and Columbia; X–92 with ANR Pipeline Company; X–102 with Tennessee; and X–104 with Trunkline and Panhandle, all of which are contained in Northern's FERC Gas Tariff, Original Volume No. 2.

Northern states that no facilities will be abandoned as a result of this proposed abandonment of service. Northern states the contracts underlying these arrangements have been terminated pursuant to the terms of the underlying contracts and that Northern does not currently provide service under any of these agreements. Northern asserts that abandonment of the services under the referenced rate schedules will not impair any of Northern's remaining service obligations. Northern relates that these agreements are a carry-over from years past and need to be abandoned solely as a housekeeping event. Northern says that because its merchant obligation has terminated, it no longer purchases natural gas volumes which were the supply source for most of these agreements.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 15, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission on its own review of the matter will determine whether granting permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31876 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–155–000]

Panhandle Eastern Pipe Line Company; Notice of Reconciliation Report

November 24, 1998.

Take notice that on November 20, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its reconciliation report in accordance with the Commission's order issued October 30, 1992 in Docket No. RP91–229–000, *et al.*, 60 FERC 61,160 (1992) and letter order issued August 28, 1998 in Docket No. RP98–360–000. The Canadian Reservation and Volumetric Surcharges were established in an October 2, 1992 Stipulation and Agreement (October 2, 1992 Settlement) in Docket No. RP91–229–000, et al. The Commission's orders required the filing of a reconciliation report as soon as practicable following the termination of the Canadian Resolution Surcharges.

Panhandle states that its filing on July 31, 1998, in Docket No. RP98–360–000 removed the Canadian Resolution Reservation Surcharge applicable to firm transportation services provided under Rate Schedules FT, EFT and LFT, the Canadian Resolution Volumetric Surcharge applicable to service provided under Rate Schedule SCT and the Canadian Resolution Volumetric Surcharge applicable to service provided under Rate Schedules IT and EIT effective September 1, 1998. Panhandle's July 31, 1998 filing was approved by Commission letter order issued August 28, 1998.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 3, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31885 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–425–003]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

November 25, 1998.

Take notice that on November 20, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, November 1, 1998:

Third Substitute Second Revised Sheet No. 206C
Substitute Second Revised Sheet No. 206D
Third Substitute Ninth Revised Sheet No. 207

Texas Gas states that the instant filing revises specific tariff sheets filed on November 10, 1998 in the same docket listed above and replaces those sheets filed on November 18, 1998 in their entirety which Texas Gas has sought to withdraw due to various errors. The revised tariff sheets simply correct mistakes of an omission of previously approved timelines and the deletion of GISB Standards 1.3.2(v) and (vi). The instant tariff sheets continue to reflect those revisions filed in the November 10, 1998 filing in order to comply with the Commission's directives in the October 29, 1998 Order which conditionally accepted Texas Gas's September 30, 1998 filing to comply with the Commission's Order No. 587–H.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions, and all parties on the official service list in Docket No. RP98–425.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–31988 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–85–001]

Texas-Ohio Pipeline, Inc.; Notice of Compliance Filing

November 25, 1998.

Take notice that on November 23, 1998, Texas-Ohio Pipeline, Inc. (Texas-Ohio), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective November 2, 1998:

Original Sheet No. 53B
Original Sheet No. 53C
Substitute Second Revised Sheet No. 54
Substitute Second Revised Sheet No. 54A
Substitute Second Revised Sheet No. 78

Texas-Ohio states that the purpose of this filing is to comply with the Commission's Letter Order issued November 5, 1998 in this proceeding.

Texas-Ohio further states that copies of this filing have been served on Texas-Ohio's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–31989 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–76–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

November 24, 1998.

Take notice that on April 20, 1998, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP99–76–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing Transco to construct and operate the proposed Southeast Louisiana Crossover Project (SELA Crossover), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the SELA Crossover is designed to provide incremental capacity for new firm and interruptible transportation service in the supply area by interconnecting Transco's Southeast Louisiana Gathering System with its Central Louisiana Gathering System. Transco states that the SELA Crossover will be able to provide 256,762 Mcf per day of incremental firm transportation service from an interconnection with Garden Banks Gas Pipeline, L.L.C. (Garden Banks), at South Marsh Island, Block 76 (SMI 76) to Transco's Compressor Station 50 onshore at Eunice, Louisiana. Transco states that the SELA Crossover also will create 141,970 Mcf per day of firm transportation capacity from SMI 76 to Vermillion Block 67 offshore.

Specifically, Transco seeks authority to construct, own, and operate approximately 53.23 miles of 24-inch diameter pipeline extending from an existing Transco-owned platform at South Marsh Island Block 66 (SMI 66) on the Southeast Louisiana Gathering System to an existing Transco-owned platform at Vermillion Block 678 on the Central Louisiana Gathering System, 7,400 horsepower of compression at SMI 66, 1,200 horsepower of compression at South Marsh Island Block 106 (SMI 106), and separation and measurement facilities and other appurtenant facilities. Transco estimates that the proposed facilities will cost $80,060,542.

Transco states that it is also seeking approval of initial rates for firm and interruptible transportation service over the SELA Crossover based upon the incremental cost of service of the project's facilities. Transco states that it has submitted for approval Rate Schedules FTP–1, FTP–2, and FTP–3 for incremental firm projects in the supply area. Transco further states that it seeks Commission approval of a negotiated fixed rate with an anchor tenant, which has executed a precedent agreement for firm transportation service from SMI 76 to Station 50.

Any person desiring to be heard or making any protest with reference to said application should on or before December 15, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments of any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have the intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31875 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–153–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A to the filing. The tariff sheets are proposed to be effective November 1, 1998.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS. The filing is being made pursuant to tracking provisions under Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedule LSS.

Transco states that included in Appendix B attached to the filing are the explanations of the rate changes and details regarding the computation of the revised Rate Schedule GSS and LSS rates.

Transco states that copies of the filing are being mailed to each of its GSS and LSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31883 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–154–000]

Transwestern Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 18, 1998:

First Revised Sheet No. 37A
First Revised Sheet No. 37B
First Revised Sheet No. 37C
First Revised Sheet No. 37E
First Revised Sheet No. 37F
First Revised Sheet No. 156

Transwestern proposes to amend its Rates Schedule PNR to include a Valet Hub Service in addition to Parking Service and Riding Service, Valet Hub Service shall be an interruptible service in which a Shipper (via a transportation agreement) or a Buyer (via a PNR Agreement) may nominate gas quantities to be delivered to a Valet Point for subsequent delivery to another Buyer at the Valet Point or for subsequent delivery from such Valet Point to an associated point(s) as designated by such Buyer.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31884 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–61–000, CP99–62–000, CP99–63–000, and CP99–64–000]

TriState Pipeline, L.L.C.; Notice of Applications for Certificates and for a Presidential Permit and Section 3 Authorization

November 24, 1998.

Take notice that on November 9, 1998, TriState Pipeline, L.L.C. (TriState), Fairlane Plaza South, 330 Town Center Drive, Suite 900, Dearborn, Michigan 48126–2712, filed applications pursuant to Sections 7(c) and 3 of the Natural Gas Act. In Docket No. CP99–61–000, TriState seeks a certificate of public convenience and necessity to construct, install, own, lease, operate and maintain a new interstate natural gas pipeline and ancillary facilities. Further, in Docket No. CP99–62–000, TriState requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations to perform certain routine activities and operations. In addition, in Docket No. CP99–63–000, TriState seeks a blanket certificate pursuant to Subpart G of Part 284 of the Commission's Regulations to provide open-access transportation of natural gas for others. TriState also seeks approval of its initial rates and pro forma tariff provisions included in its certificate application. Finally, in Docket No. CP99–64–000, TriState requests a Presidential Permit and Section 3 authorization under Section 153 of the Commission's Regulations, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

TriState reports it is a limited liability company formed under the laws of the State of Michigan, with its principal place of business in Dearborn, Michigan. TriState further states that it is jointly owned by CMS Gas Transmission and Storage Company and Westcoast Energy (U.S.) Inc.

In Docket No. CP99–61–000, TriState proposes to construct and operate the United States segment of the TriState Pipeline System which will be comprised of approximately 148 miles of new 30-inch diameter natural gas transmission pipeline running from near Joliet, Illinois to White Pigeon, Michigan; approximately 66 miles of new 36-inch diameter natural gas transmission pipeline looping the existing Consumers Energy Company (Consumers) and Michigan Gas Storage (MGS) systems in three segments between White Pigeon and St. Clair; approximately 12 miles of new 24-inch diameter natural gas transmission pipeline running from the St. Clair compressor station to the United States-Canadian International Boundary in the St. Clair River; a new approximately 30,000 hp compressor station at Joliet, and approximately 18,570 hp of additional compression at Consumers' existing St. Clair compressor station; and 450 MDth per day of leased pipeline capacity between White Pigeon, Michigan and the St. Clair compressor station located in St. Clair County, Michigan, which leased capacity is available from Consumers and MGS as a result of the looping and added compression that TriState will undertake.

TriState asserts that its approach of combining new pipeline construction with the expansion of existing pipeline facilities and the lease of the expanded capacity created on those existing facilities will make a pipeline sized to meet market demand efficiently and cost-effectively. TriState believes its lease satisfies the *Texas Eastern* standards as reiterated by the

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Commission in *Wyoming Interstate Company, Ltd.*, 84 FERC ¶ 61,007 (1998), because its lease (1) avoids the construction of duplicative facilities and has the least environmental impact; (2) provides shippers with access to new supply and market areas and/or allows shippers to avoid administrative burdens from dealing with multiple pipelines; (3) is actively supported by shippers using the capacity; and (4) can be managed or integrated into the acquiring pipeline's open-access operations.

TriState states that it held an open season in which it made capacity on its system available to interested shippers on a nondiscriminatory basis. As a result, TriState says it executed binding precedent agreements with six shippers for 435 MDth of firm transportation service. TriState asserts that the results of its open season demonstrates that there is market demand for natural gas transportation service on TriState from the Chicago Hub to the Dawn Hub and to points in between in Michigan. TriState indicates it is negotiating with other potential shippers and will file additional precedent agreements after they are executed.

TriState proposes to provide firm transportation service for the following shippers:

Shipper	Maximum daily quantity (MDth/day)	Term (years)
Consumers Energy Co. (affiliate)	100	Ten
CMS Marketing Services and Trading (affiliate)	100	Ten
Union Gas Ltd. (affiliate)	80	Fifteen
Shipper A (confidential)	100	Ten
Shipper B (confidential)	25	Ten
Shipper C (confidential)	30	Ten

TriState proposes to provide firm transportation service under Rate Schedule FT–1 and interruptible transportation service under Rate Schedule IT, under rates, terms and conditions provided in its pro forma tariff submitted with the application. TriState proposes to offer both negotiated and recourse rates. TriState explains its recourse rates are traditional cost-of-service based rates, designed under the straight-fixed variable method. TriState explains its negotiated rates are different from the recourse rates in that they are fixed rates plus an agreed upon escalator for either a 10-year or 15-year term. TriState says that during its open season process it offered firm shippers the choice of negotiated or recourse rates and each one who executed a precedent agreement elected negotiated rates.

TriState estimates the total capital cost of constructing the U.S. segment of the pipeline and appurtenant facilities will be approximately $361 million, excluding AFUDC. TriState relates that $305 million would be the cost of pipeline and ancillary facilities and $56 million would be the cost of the compressor stations. TriState says to date this project has been financed by equity furnished by the project sponsors. TriState states following issuance of the Commission's Preliminary Determination, the project will be financed during the remainder of the construction phase through a combination of debt and equity capital. After the project is in-service, Tristate relates that the construction financing will be replaced by permanent capital to consist of 60% debt and 40% equity. TriState states the project sponsors will furnish the equity capital. TriState says that it is anticipated that the construction of the pipeline project will be funded primarily through debt raised in the commercial bank market and equity provided by the project sponsors. Further, TriState says the credit support for the debt will be the shipper contracts and the debt will be non-recourse to project sponsors during the initial term of the shipper contracts. TriState states it has not yet finalized precise financing plans.

In Docket No. CP99–64–000, TriState has filed a companion application for a Presidential Permit and Authority, pursuant to Section 3 of the NGA, 15 U.S.C. § 717b and 18 CFR Part 153, to site, construct, install, own, operate, and maintain facilities at the United States-Canadian International Boundary in the St. Clair River near Marine City, Michigan. TriState relates that the border facilities will connect TriState's proposed United States facilities with Canadian facilities owned by TriState's Canadian affiliate, TriState-Canada.

TriState has requested a waiver of Section 154.109(c) of the Commission's regulations which requires that the General Terms and Conditions of a tariff contain a statement regarding discounts that specifies the order in which various rate components will be discounted in accordance with Commission policy. As a new pipeline, TriState does not have separate rate components, and therefore, it believes that the order of discounting requirement is not applicable to its operations.

TriState has stated that it will lease capacity from Consumers and MGS. Consumers is a Hinshaw pipeline subject to the jurisdiction of the Michigan Public Service Commission and is currently authorized to perform service on behalf of others under Section 311 of the NGPA. MGS is an interstate pipeline regulated by the Commission. Consumers has authorized TriState to state that it is willing to accept a limited jurisdiction certificate authorizing Consumers to act as operator of the capacity leased to TriState, provided Consumers' status as a Hinshaw Pipeline is not affected and that Consumers is not otherwise subject to Commission jurisdiction as a result of its lease of capacity to TriState. TriState requests that the Commission's Preliminary Determination of this project confirm that Consumer's Hinshaw status is unaffected.

TriState's proposed in-service date is November 1, 2000. TriState requests that the Commission issue a Preliminary Determination with respect to non-environmental issues by May 1, 1999, and a final certificate by January 15, 2000, so that TriState can meet its proposed in-service date.

Any person desiring to participate in the hearing process or to make any protest with reference to said applications should on or before December 15, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenors can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificates is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TriState to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31874 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–371–004]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Effective September 3, 1998
Second Substitute Fourth Revised Sheet No. 6A
Effective November 1, 1998
Substitute Fifth Revised Sheet No. 6A

Williams states that this filing is being made in compliance with Commission order issued November 4, 1998, in Docket No. RP98–371–002. The Commission directed Williams to file tariff sheets providing for two PLS rates, one for the Production Area and one for the Market Area.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31879 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–43–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1998.

Take notice that on November 19, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of January 1, 1999:

Sixth Revised Sheet No. 6A

Williams states that pursuant to Order Approving Settlement, issued April 29, 1998, in Docket No. RP97–391–002, *et al.* and Williams FERC Gas Tariff, Original Volume No. 1, Article 25, Williams is filing to reflect the new GRI surcharges to be collected on nondiscounted transportation services.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31887 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–119–000]

Young Gas Storage Company, Ltd.; Notice of Tariff Filing

November 25, 1998.

Take notice that on November 20, 1998, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with an effective date of December 1, 1998:

Seventh Revised Sheet No. 4

Young states it is adjusting the rates for Rate Schedules FS–1 and IS–1 resulting from the currently effective Average Thermal Content of Gas in Storage (ATC) posted on Young's electronic bulletin board on November 11, 1998, pursuant to Section 1.2 of the General Terms and Conditions of this tariff. Further, Young states the combination of the revised ATC, the revised contractual entitlements and the revised storage rates will not change the current customer storage reservation payments under the instant proposal.

Young states that copies of this filing have been served on Young's affected jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–31992 Filed 11–30–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations, Notice of Intent To Consult Under Section 202(a)

November 24, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Intent to Consult with State Commissions.

SUMMARY: The Federal Energy Regulatory Commission (Commission) intends to consult with State commissions for the purpose of affording them a reasonable opportunity to present their views with respect to the Commission's use of authority under section 202(a) of the Federal Power Act.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

As part of a broader inquiry concerning the Commission's policies on independent system operators (ISOs) and other regional transmission organizations (RTOs) in the electric utility industry,[1] the Commission is considering whether and how to use its authority under section 202(a) of the Federal Power Act (FPA), 16 U.S.C. § 824a(a) (1994), which was recently delegated to the Commission by the Secretary of Energy.[2] As a first step in that process, the Commission gives notice of its intent to initiate a consultation process with State commissions pursuant to section 202(a). The purpose of this initial consultation is to afford State commissions a reasonable opportunity to present their views and recommendations with respect to dividing the country into regional districts for development of independent regional transmission organizations.

The Commission intends initially to seek the views and recommendations of State commissions on the issues of what criteria should be used to establish regional boundaries for RTOs, and what should be the appropriate role of States in the formation and governance of RTOs, in the event that the Commission decides to exercise its authority. We will do so through one or more conferences to be held in January or early February 1999. After these conferences, there will be additional consultation, during which the Commission will solicit and consider the views of the States, and others, in a rulemaking or other generic proceeding on RTOs. Among the issues to be examined then will be whether to exercise section 202(a) authority to establish regional boundaries for RTOs.

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[1] *See* Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 at 62,142 (1998), *reh'g pending (Midwest ISO)*.

[2] A copy of section 202(a) is attached to this notice and will also be published in the **Federal Register**.

Background

In Order Nos. 888[3] and 889,[4] the Commission required all public utilities that own, operate or control interstate transmission facilities to provide open access transmission services and to separate their transmission operations functions from their wholesale power marketing functions. The Commission took this step to "remedy undue discrimination in access to monopoly owned transmission lines" in order to "remove impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation's electricity consumers."[5] During the course of that proceeding, the Commission received comments urging it to require generation divestiture or structural institutional arrangements such as regional ISOs to better assure non-discrimination. The Commission responded at that time that, while it believed that ISOs had the potential to provide significant benefits, efforts to remedy undue discrimination should begin by requiring the less intrusive functional unbundling approach.[6] Order No. 888 stated:

> [W]e see many benefits in ISOs, and encourage utilities to consider ISOs as a tool to meet the demands of the competitive marketplace.
>
> As a further precaution against discriminatory behavior, we will continue to monitor electricity markets to ensure that functional unbundling adequately protects transmission customers. At the same time, we will analyze all alternative proposals, including formation of ISOs, and, if it becomes apparent that functional unbundling is inadequate or unworkable in assuring non-discriminatory open access transmission, we will reevaluate our position and decide whether other mechanisms, such as ISOs, should be required.[7]

Order No. 888 also set forth eleven principles that would be used to assess ISO proposals that may be submitted to the Commission.[8] Since Order No. 888 was issued, the Commission conditionally approved proposals for the establishment of five ISOs. These are the California ISO,[9] the PJM ISO,[10] ISO New England,[11] the New York ISO,[12] and the Midwest ISO.[13] In addition, the Texas Commission has ordered an ISO for the Electric Reliability Council of Texas (ERCOT).[14] These organizations, and others rumored to be in development, vary widely with respect to their operational responsibilities, geographic scope, governance, and structure.

On April 15–16, 1998, the Commission held a public conference in Washington, D.C., in Docket No. PL98–5–000, to examine the future of ISOs in administering the electric transmission grid on a regional basis. The Washington conference highlighted the industry's change in thinking about types of regional transmission organizations other than ISOs that the Commission should consider. As a follow-up to the Washington conference, the Commission held seven regional conferences at locations around the country between May 28 and June 8, 1998. These regional conferences focused on specific regional characteristics and institutional factors that bear on the formation of regional transmission organizations. As a result of these conferences, the Commission received numerous oral and written comments on the appropriate size, scope, organization and functions of regional transmission organizations.

In our recent order conditionally approving the Midwest ISO, the Commission noted that many issues had been raised in that proceeding about the proper size and configuration of the ISO; the relative merits of ISOs, transcos, and other possible forms of regional organization; how much control the regional entity should have over various facilities, and other issues. The Commission stated that it would not attempt to resolve industry-wide issues in that proceeding, but that it would address such issues in a rulemaking or other generic proceeding in the future.[15]

On October 1, 1998, the Secretary of Energy delegated his authority under section 202(a) of the FPA to the Commission. The Secretary stated that section 202(a) "provides DOE with sufficient authority to establish boundaries for Independent System Operators (ISOs) or other appropriate transmission entities."[16]

Discussion

Under section 202(a) of the FPA, "the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy." The purpose of this division into regional districts is for "assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources." Section 202(a) states that it is "the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts."

The Commission believes that an abundant supply of electric energy throughout the United States with the greatest possible economy can be best achieved with fully competitive wholesale power markets and open and non-discriminatory access to interstate transmission facilities. Order No. 888 has laid the necessary predicate for competition but, after more than two years of experience, the requirements of Order Nos. 888 and 889 may not alone

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[3] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 at 30,278–79 (1997), *order on reh'g,* Order No. 888–B, 62 FR 64688 (Dec. 9, 1997) 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998).

[4] Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996); *order granting request for clarification,* 62 FR 610 (Jan. 1, 1997), 77 FERC ¶ 61,335 (1996); *order on reh'g,* Order No. 889–A, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997); and *order denying reh'g,* Order No. 889–B, 62 FR 64715 (Dec. 9, 1997), 81 FERC ¶ 61,253 (1997).

[5] Order No. 888, FERC Stats. & Regs. at 31,634.

[6] Functional unbundling requires the separation of transmission system functions and wholesale generation marketing functions, and a code of conduct to define impermissible contact between generation and transmission personnel. Under functional unbundling, a public utility must: (1) take transmission services under the same tariff of general applicability as do others; (2) state separate rates for wholesale generation, transmission, and ancillary services; and (3) rely on the same electronic information network that its transmission customers rely on to obtain information about its transmission system when buying or selling power. *See* Order No. 888, FERC Stats. & Regs. at 31,654–55.

[7] Order No. 888, FERC Stats. & Regs. at 31,655.

[8] *Id.* at 31,730.

[9] Pacific Gas & Electric Company, *et al.*, 77 FERC ¶ 61,204 (1996), *order on reh'g,* 81 FERC ¶ 61,122 (1997).

[10] Pennsylvania-New Jersey-Maryland Interconnection, *et al*., 81 FERC ¶ 61,257 (1997), *reh'g pending.*

[11] New England Power Pool, 79 FERC ¶ 61,374 (1997), *order on reh'g,* 85 FERC ¶ 61,242 (1998) (order conditionally authorizing ISO New England); New England Power Pool, 83 FERC ¶ 61,045 (1998), *reh'g pending* (order on NEPOOL tariff and restructuring).

[12] Central Hudson Gas & Electric Corporation, *et al.*, 83 FERC ¶ 61,352 (1998), *reh'g pending*

[13] *Midwest ISO*, 84 FERC ¶ 61,231 (1998)

[14] *See* 16 Texas Administrative Code § 23.67(p).

[15] *Midwest ISO*, 84 FERC at 62,142. The Commission also stated therein, among other things, that "at this early stage in the restructuring of the U.S. electric power industry" it believes that there is no "single structural or operational arrangement that must apply universally to all utilities seeking to form regional transmission entities" and that the better approach "at this time" is "to encourage and accommodate regional experimentation." *Id* The Commission further stated that coordination in the public interest is best served if a proposed transmission entity is as large as possible. *Id* at 62,145.

[16] 63 FR 53889 (Oct. 7, 1998)

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be sufficient to accomplish a completely competitive market. The Commission therefore is considering whether the goals of full competition and non-discriminatory access can be achieved in the absence of broad participation by transmission-owning electric utilities in regional transmission organizations.

The Commission has identified in earlier orders several issues inherent in the present system that may interfere with the development of fully competitive markets. These include lack of sufficient separation between transmission and merchant functions, multiple pancaked transmission rates within a region, congestion management issues, loop flow issues, the complexities of current transmission planning, and generation market power that results when market size is constricted by transmission constraints.[17] As the Commission has previously explained, the establishment of and participation in properly structured regional transmission organizations can foster fully competitive markets. To be effective, the Commission believes that these regional transmission organizations must, at a minimum, have adequate operational authority, ensure comparable treatment for all transmission users, address loop flow issues, eliminate pancaked transmission rates, manage short-term transmission reliability, manage congestion, and plan transmission expansion.[18]

The Commission does not have preconceived notions as to what types of structures would be optimal for such regional transmission organizations, and they may in fact vary from region to region. ISOs are one type of regional institution, but there are other ways that interests in generation and transmission can be separated. These may include the creation of separate transmission companies.

Section 202(a) requires that before the Commission exercises its authority to establish regional districts and to fix or modify their boundaries:

> The Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

Accordingly, the Commission intends to hold one or more conferences during January or early February 1999 for the purpose of beginning the consultative process with the State commissions. The Commission currently envisions that one representative from each State commission would attend and discuss questions that would include, but not necessarily be limited to, the following:

(1) What criteria and policy considerations should be used to establish the boundaries for effective RTOs if the Commission later decides to do so?

(2) Are there factors that make it appropriate for the utilities in your state to belong in a specific region?

(3) What is the appropriate role of the States in the formation of RTOs?

(4) What is the appropriate role of the States in the governance of RTOs?

This notice is being given at this early time to permit interested State commissions sufficient time to consult with each other or with the industry on these technical matters. Details about the specific time, place, and format of this conference (or conferences) will be announced in the future.

Finally, as noted above, the Commission views the consultation with State commissions as an initial step in a broader inquiry on RTOs. If the Commission determines there is a need to establish regional boundaries for RTOs to further the goals of full competition and non-discriminatory access, it will do so as part of a rulemaking or other generic proceeding on RTOs. That proceeding will afford State commissions and others an opportunity to comment on the broader policy issues involved in creating RTOs, as well as specific regional boundaries.

By direction of the Commission. Commissioner Bailey concurred in part and dissented in part with a separate statement attached. Commissioner Breathitt concurred with a separate statement attached.

David P. Boergers,

Secretary.

Section 202(a) of the Federal Power Act, 16 U.S.C. § 824a(a) (1994).

Interconnection and Coordination of Facilities; Emergencies; Transmission to Foreign Countries

Sec. 202. (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

Regional Transmission Organizations

[Docket No. RM99–2–000]

Issued: November 24, 1998.

BAILEY, Commissioner, concurring in part and dissenting in part

I support the initiation of a consultation process with State commissions. I do not support, however, at this time the exercise of whatever authority we possess under section 202(a) of the Federal Power Act, 16 U.S.C. § 824a(a) (1998), to divide up the country and to establish regional boundaries for the development of regional transmission organizations (RTOs). For these reasons, I respectfully concur in part and dissent in part with today's notice.

Today's notice does not decide the threshold question of whether the Commission should do anything more at this time other than to consult with State commissions. The notice is clear in its very first sentence that the Commission has not decided whether and how to use its authority under newly-delegated section 202(a) to establish regional boundaries for RTOs. In addition, the notice does not limit the scope of State consultation. While the notice articulates a number of questions for State consideration, focusing on the criteria that the Commission should employ in establishing regional boundaries for RTOS, those questions are decidedly inclusive rather than exclusive.

I have not reached any conclusions as to the issue of whether the Commission, acting pursuant to section 202(a), needs to establish regional districts to further the goals of full competition and non-discriminatory access. I am interested in hearing from the States as to whether it is imperative for the Commission to take this aggressive and immediate step. My own view is that after two years of operational experience under the procedures of Order Nos. 888 and 889, less aggressive steps could be pursued.

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[17] *See, e.g.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,730–32; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,247–51; Notice of Conference, Inquiry Concerning the Commission's Policy on Independent System Operators, Docket No. PL98–5–000; Louisville Gas and Electric Company, *et al.*, 82 FERC ¶ 61,308 at 62,222 (1998); *Midwest ISO* at 62,142, 62,145, 62,153–165.

[18] *Id.*

As the notice indicates, in Order Nos. 888 and 889, the Commission purposefully favored functional unbundling of utility operations over more dramatic structural separation. I understand that transmission customers have challenged whether transmission providers are continuing to offer their wholesale merchant function or affiliates with preferential access to transmission and transmission information. But I am not convinced that functional unbundling, backed by the Commission's vigilance and commitment in responding to customer complaints, is ineffectual in deterring and detecting preferential access and undue discrimination.

However, as events in the last year have demonstrated, transmission providers are increasingly reaching the conclusion that competitive market forces—as opposed to Commission directive—favor some type of structural disaggregation. The Commission has acted on a number of recent filings that seek Commission authorization for the divestiture of generation assets. The Commission also is aware of a number of recent proposals to place transmission assets in the control and operation of a separate regional transmission entity (going under various names and forms).

I continue to encourage all of these undertakings, and I do not want to see these efforts stymied awaiting the outcome of our process. I am pleased to see that utilities are voluntarily agreeing to go beyond the directions of Order Nos. 888 and 889. I expect these types of voluntary undertakings to increase in the future, as utilities increasingly come to the conclusion that they can best respond to competitive market pressures by transforming themselves into generation- or transmission-only entities, thus providing the type of structural separation that better protects against undue discrimination or preference in the provision of transmission services. I am wary of Commission action that might act to undermine the initiative of utilities to come forward with their own voluntary proposals.

Moreover, I am not convinced that the Commission, should it decide to provide greater guidance and prescription as to regional or unbundling filings, necessarily must proceed to an action pursuant to this newly-delegated section 202(a) authority. I am willing to commit to some type of generic proceeding, as I believe that it is in the public interest to do more to encourage the filing of regional transmission entities that enhance competition and offer improvements with respect to pricing, reliability, and market monitoring. I understand that voluntary efforts to promote and develop these type of regional entities have stalled, or have failed to commence, in many parts of the country. I am willing to provide Commission instruction on the subject, beyond that already found in Order No. 888 and our ISO orders, to jump start dormant or otherwise lagging discussions on the subject.

But why must that instruction necessarily come in the form of a generic initiative intended to result in the formation of regional districts, encompassing all regions of the country? While today's notice is drafted very carefully, I feel there is a strong bias in favor of the Commission's exercising its section 202(a) authority—whatever that entails—and establishing regional boundaries and districts in which all public utilities will be urged, subtlely or more overtly, to join. I am not endorsing such a process, especially when I do not know where that process is heading. I want the States to answer that threshold question for me.

At this juncture, I believe that the Commission is endorsing a process that is among the most aggressive it could have chosen to encourage the formation of RTOs. There are a number of alternatives to consider, and I urge the States to consider and consult with us as to whether less aggressive steps can be taken by the Commission to encourage the formation of ISOs.

There are other options the Commission could consider in encouraging the formation of RTOs. I enumerate them below, proceeding from the most mild and passive to the most aggressive option. Of course, there are numerous variations on these options for us all to consider.

First, the Commission could issue nothing in this docket. It could simply provide generic instruction in the context of its review of the filings it receives proposing ISOs, transcos, and related structures. In the Midwest ISO proceeding, for example, in an order issued only two months ago, the Commission, noting the early stage of restructuring of the U.S. electric power industry, proceeded very cautiously and refrained from endorsing any particular ISO model or ideal.[1]

Second, the Commission could issue a non-binding statement of Commission policy indicating more proactively what it is seeking when it receives and reviews a voluntary utility-specific or region-specific filing. This would provide badly-needed guidance to utilities which are now uncertain as to the size and configuration, for example, of any regional entity they propose.

Third, the Commission could do more to encourage the voluntary filing of RTO initiatives. Specifically, it could issue a policy statement or rulemaking that encourages voluntary regional filings that satisfy certain minimum criteria. Or, in addition to such minimum criteria (or "lowest common denominators"), the Commission could articulate various incentives encouraging utilities to participate actively in RTOs—such as transmission pricing or rate of return incentives.

Fourth, moving to the more aggressive of options, the Commission could require utility participation in RTOs, establishing basic criteria but leaving many or most of the details for the utility participants themselves. In other words, the Commission could let the participants decide for themselves, in consultation with appropriate state officials, how best to comply with Commission criteria and mandates.

Fifth, the Commission could issue a rulemaking that not only requires participation in RTOs, but also involves the Commission in the setting and review of regional boundaries. Such a process could involve the invocation of section 202(a) authority in combination with the Commission's obligation under sections 205 and 206 of the Federal Power Act to act to ensure against undue discrimination and preference in the provision of jurisdictional services.

Today's notice, according to my reading, places the Commission solidly on steps 4 and 5. Since the Commission is initiating a consultative process, I ask the States to offer their advice as to how aggressive a posture the Commission should assume.

From a policy perspective, I personally much prefer providing incentives to encourage utilities to voluntarily step forward in promoting the development of regional entities. I am very wary of sitting here in Washington, D.C., and acting as a central planner with a large map of the utility grid on my wall, with a magic marker at my disposal. The competitive evolution of the industry has been very dramatic and is ongoing and quite fluid. I am exceedingly uncomfortable dictating to utilities how best to configure the industry in order to best take advantage of competitive opportunities, or how best to alleviate concern for unfair competitive advantages. Despite the expert advice of this Commission's staff, I believe that I am not situated in as good a position as

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[1] *See* Midwest Independent Transmission System Operator, 84 FERC ¶61,231 at 62.142 (1998), *reh g pending*.

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the utilities we regulate in determining the map and boundaries of utility companies, acting alone or in concert with other utilities, operating in the future.

From a legal perspective, I have many questions as to the legitimacy of any generic Commission action that forces utilities, overtly or subtlely, into regional districts of our choosing. This is a difficult matter. Neither the Department of Energy nor the Commission has exercised section 202(a) authority to divide the country into regional districts. Moreover, the case law and legislative history on this point are obscure, and provide no definitive judgment as to the extent of the Commission's authority to encourage or compel utility participation in regional districts.

In a separate attachment, I lay out for the interested reader my understanding of relevant legislative history and precedent. It is my opinion that while the Commission can act affirmatively to encourage, promote and supervise utility participation in regional districts, it lacks the power to compel participation. Rather, Congress left it, in the language of the legislative history of section 202(a), to the "enlightened self-interest" of utilities to work cooperatively in the advancement of the cause of utility interconnection and coordination. I think the Commission should work to better "enlighten" utilities why it may be in their best economic self-interest to cooperate with their neighbors in advancing regional solutions to lingering competitive problems, rather than adopt a more heavy-handed approach.

While today's notice has compelled me to lay out my views in as comprehensive a manner as possible, I do appreciate its provisions to the extent the notice stops short of endorsing any one model of regional cooperation. I certainly agree that there are a number of types of structures that, depending on circumstances, might be optimal for a particular RTO. I leave it to individual utilities to decide for themselves whether, if they decide to proceed, a classic ISO structure best suits their needs, or whether a separate transmission company or other structure may be most appropriate.

For all of these reasons, I concur with today's notice to the extent it initiates a process allowing for consultation with the States as to how best to proceed to encourage utility participation in regional groupings. I dissent with today's notice to the extent it can be perceived as formally initiating a process intended to lead to the creation of regional districts, and to the extent this process might undermine the ability of utilities to determine for themselves how best to respond to emerging competitive opportunities and challenges.

Vicky A. Bailey,
Commissioner.

Attachment to Commissioner Bailey's Concurrence in Part/Dissent in Part

Presented below is the text and legislative history of section 202(a) of the Federal Power Act (FPA), 16 U.S.C. § 824a(a) (1994), as well as a brief discussion as to how it has been administered by the Department of Energy (DOE) and the Federal Energy Regulatory Commission. Relevant case law and Commission precedent, adding context to section 202(a), follows.

This analysis has been prepared entirely by the Office of Commissioner Bailey. It is intended to further explain her interpretation of the scope of section 202(a).

The Statute

Section 202(a) reads in its entirety as follows:

> (a) Regional districts; establishment; notice to State commissions
>
> For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

Broken down into its most important constituent parts, section 202(a):

> (1) "empowers" and "directs" the Commission "to divide the country into regional districts for the voluntary interconnection and coordination of facilities;"
>
> (2) obligates the Commission "to promote and encourage such interconnection and coordination within each such district and between such districts;" and
>
> (3) obligates the Commission to work in concert with affected states prior to "establishing any such district and fixing or modifying the boundaries thereof."

Section 202(a) is part of a more comprehensive section of the Federal Power Act—section 202, 16 U.S.C. § 824a (1994)—entitled "Interconnection and coordination of facilities; emergencies; transmission to foreign countries." Other subsections of section 202 deal with: (1) Commission-directed interconnections in certain limited circumstances (section 202(b)); (2) Commission-directed temporary interconnections in emergency circumstances (sections 202 (c)–(d)); (3) limitations on the transmission or sale of electricity to or from foreign countries (Canada and Mexico) (sections 202 (e)–(f)); and (4) utility reports to the Commission and contingency plans in times of electricity shortages.

Legislative History

There is little legislative history that illuminates the precise meaning of section 202(a). The single best piece of legislative history that is particular to section 202(a) focuses on the "enlightened self-interest" of utilities and Congress' preference for voluntary coordination and interconnection:

> Under this subsection the Commission would have authority to work out the ideal utility map of the country and supervise the development of the industry toward that ideal. The committee is confident that enlightened self-interest will lead the utilities to cooperate with the commission and with each other in bringing about the economies which can alone be secured through the planned coordination which has long been advocated by the most able and progressive thinkers on the subject.

Senate Report No. 621 (Senate Committee on Interstate Commerce), 74th Cong., 1st Sess. (1935) at p. 49.

Courts reviewing this piece of legislative history appear to have reached the conclusion that Congress, in enacting section 202(a) (and related subsections) in 1935, was motivated by a desire to leave the coordination and joint planning of utility systems to the voluntary judgment of individual utilities, "and it was not willing to mandate that they do so." *Central Iowa Power Cooperative* v. *FERC*, 606 F.2d 1156, 1167–68 (D.C. Cir. 1979); *see also Municipalities of Groton* v. *FERC*, 587 F.2d 1296, 1298 (D.C. Cir. 1978).

Other passages from the legislative history amplify the "voluntary" nature of utility conduct under section 202(a) and the absence of Commission mandates. Another section of the Senate Report provided as follows:

> Section 202(a) of [the original Senate bill] imposed upon each public utility the duty to furnish energy to, exchange energy with and transmit energy for any person upon reasonable request. This provision has been eliminated, and the other subsections of the old section 202 which relate to rates have been removed to the general rate sections (sec. 205). While imposition of these duties may ultimately be found to be desirable, the committee does not think that they should be included in this first exercise of Federal power over electric companies. It relies upon the provision for the voluntary coordination of electric facilities in regional districts contained in the new section 202(a) * * * for the first Federal effort in this direction * * * Furthermore, the provisions of the old section 203(b) empowering the Federal Power Commission to require one utility to permit the use of its facilities by another * * * have been eliminated; these matters are left to the voluntary action of the utilities.

Senate Report No. 621, 74th Cong., 1st Sess. (1935) at p.19. In addition, the report of the House Committee on Interstate and Foreign Commerce similarly emphasized the voluntary character of the coordination of utility facilities:

> This section authorizes the Commission to establish regional districts and to encourage the voluntary interconnection and coordination of facilities within and between such districts, but the coordination of facilities is left to the voluntary action of the utilities.

H.R. Report No. 1318, 74th Cong., 1st Sess. (1935) at p.27.

Taken together, the pieces of legislative history quoted above focus on the voluntary conduct of utilities and the cautious, limited exercise of federal authority in this area. There is no apparent discussion of the extent of the Commission's authority to divide the country up into regional districts—or what the Commission affirmatively can do under section 202(a) if utilities are not "voluntarily" moving in the manner (or as quickly as that) favored by the Commission.

Exercise of Section 202(a) Authority

Section 202(a) authority to "divide the country into regional districts for the voluntary interconnection and coordination of facilities" originally was vested in the Federal Power Commission (FPC). This authority was transferred to DOE in 1977 when Congress enacted the Department of Energy Organization Act. The DOE Act vested in the newly-created FERC only specifically-enumerated statutory authority. Because the DOE Act did not specifically vest in the FERC the FPC's existing section 202(a) authority with respect to dividing the country into regional districts, that authority remained with DOE.

The DOE did not exercise its section 202(a) authority during the 21 years in which it controlled that authority. On October 1, 1998, DOE Secretary Richardson, in DOE Delegation Order No. 0204–166, "delegated and assigned to the [Commission] the authority to carry out such functions as are vested in the Secretary under section 202(a) of the Federal Power Act."

In delegating section 202(a) authority, Secretary Richardson concluded that the Commission is the "most appropriate agency" to exercise this authority. In support, Secretary Richardson explained, without citation to any legal authority, that section 202(a) affords the Commission "sufficient authority to establish boundaries for Independent System Operators (ISOs) or other appropriate transmission entities." He added that "[p]roviding FERC with the authority to establish boundaries for ISOs or other appropriate transmission entities could aid in the orderly formation of properly-sized transmission institutions and in addressing reliability-related issues, thereby increasing the reliability of the transmission system." The press release accompanying the delegation order added that the DOE delegation of section 202(a) authority "gives FERC much-needed authority it now lacks."

Judicial Precedent

Not surprisingly, given the dormant nature of this section for its 63-year history, the United States Supreme Court has never ruled directly on the precise meaning of section 202(a). It has, however, addressed more generally the "voluntary" scheme of utility action running throughout the Federal Power Act.

In the landmark case of *Otter Tail Power Company* v. *United States*, 410 U.S. 366 (1973), the Supreme Court ruled that Commission regulation of electric utility rates and practices under the FPA does not immunize electric utilities from antitrust scrutiny and liability. In so ruling, the Supreme Court rejected the utility argument that its refusal to deal with certain municipal customers was immune from antitrust prosecution because the Commission has the authority to compel involuntary electrical interconnections pursuant to section 202(b) of the FPA. The Court responded that "[t]he essential thrust of § 202, however, is to encourage voluntary interconnections of power." *Id.* at 373 (citing legislative history).

The Court continued with an analysis of the overall scheme of Part II the FPA (which includes section 202) and its legislative history:

> As originally conceived, Part II would have included a "common carrier" provision making it "the duty of every public utility to * * * transmit energy for any person upon reasonable request. * * *" In addition, it would have empowered the Federal Power Commission to order wheeling if it found such action to be "necessary or desirable in the public interest." These provisions were eliminated to preserve "the voluntary action of the utilities."
>
> It is clear, then, that Congress rejected a pervasive regulatory scheme for controlling the interstate distribution of power in favor of voluntary commercial relationships.

Id. at 374 (citations to legislative history omitted).

In an earlier Supreme Court citing section 202, the Court ruled in *Penn Water & Power Company* v. *FPC*, 343 U.S. 414 (1952), that the statutory language of sections 202(a), 202(b), and 206(b) of the FPA justified a bilateral, existing contractual "practice" of two utilities integrating their power output. In relevant part, the Court found that the regional coordination of power facilities "ready made by prior contractual arrangements" was precisely the type of coordinated action authorized under section 202(a) of the FPA. *Id.* at 423.

The few lower court decisions to address section 202(a), like the *Penn Water* case, address situations in which utilities voluntarily banded together to coordinate their activities in such a manner as to achieve efficiencies and economies unachievable by unilateral, utility-specific conduct. Two cases in particular—involving voluntary pooling arrangements by utilities—are instructive as to the reach of section 202(a) and the Commission's historical hesitation to invoke that statutory authority to compel utilities to do more than what they voluntarily had committed to do.

In *Central Iowa Power Cooperative* v. *FERC*, 606 F.2d 1156 (D.C. Cir. 1979), the D.C. Circuit affirmed the Commission's approval of the Mid-Continent Area Power Pool (MAPP), a tight power pool among Midwestern utilities, as modified in only one respect (membership). In so doing, the court affirmed the Commission's judgment not to accede to the request of intervenors to try to turn the power pool—which provided for the coordinated operation of generating facilities and short-term exchanges of power (reserve sharing)—into a better power pool.

Specifically, the court upheld the Commission's judgment to decline to expand the scope of pool services, as requested by intervenors, to require

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MAPP utilities to construct larger generating units and to engage in single-system planning with central dispatch. The Commission had reasoned that section 202(a) of the FPA does not compel the Commission, against the wishes of the pool utilities, to transform MAPP from its limited scope to one offering a wider array of pool services:

> While Section 202(a) of the Federal Power Act speaks in terms of "voluntary interconnection and coordination" and to "promote and encourage" the same, the pooling agreement is an FPC tariff which must pass muster under Sections 205 and 206 of the Federal Power Act. For example, we have already found the membership provisions unacceptable. Nevertheless, the scope of a power pool is in the first instance a matter for the utilities involved. The mere fact that a particular pool does not offer the same range of services as another pool does not permit the Commission to direct expansion of the narrower pools' scope. Unless the limited scope of the MAPP Agreement is for some other reason unjust, unreasonable or unduly discriminatory, we are not authorized under Part II of the Federal Power Act to direct the pool to offer more services. While we can and do "encourage and promote" greater use of pooling, the peculiarities of each region necessitate that the member utilities determine the services to be offered. One cannot automatically apply the broader scope of NEPOOL, based upon very different geography, industry history and make-up in New England, to the mid-continent region with its tremendous area, sparse load and different industry make-up.

Id. at 1167 (quoting underlying Commission order).

The reviewing court found the Commission's reluctance to direct the pooling utilities to do more than what they had voluntarily committed to do to represent an "informed and reasoned decision consistent with congressional purposes." *Id.* In support, the court reviewed the language and legislative history of section 202(a) and concluded that Congress intended to leave the coordination of electric systems to the *voluntary* decisions of utilities acting in their "enlightened self-interest." For this reason,

> Given the expressly voluntary nature of coordination under section 202(a), the Commission could not have mandated adoption of the Agreement, and failure of the MAPP participants to establish a fully-integrated electric system could not justify rejection of the [MAPP] Agreement filed.

Id. at 1168. The court recognized that, pursuant to section 202(a), regional coordination of electric power systems is in the public interest. Nevertheless,

> This does not mean, however, that a pooling plan is unlawful * * * merely because a more comprehensive arrangement might better achieve the purposes of section 202(a). To so conclude would undermine Congress' determination that coordination under section 202(a) be voluntary. Moreover, we cannot agree with South Dakota that in approving the [MAPP] Agreement the Commission abdicated its duty under section 202(a) to promote and encourage regional interconnection and coordination of electric facilities.

Id.

The findings and rationale of the D.C. Circuit, in upholding the Commission's limited exercise of its section 202(a) authority, mimic its conclusions in an earlier case, also involving the voluntary actions of utilities to create a coordinated power pool in another region of the country. In *Municipalities of Groton* v. *FERC,* 587 F.2d 1296 (D.C. Cir. 1978), the court affirmed the Commission's approval, with one modification (as to a deficiency charge), of the New England Power Pool (NEPOOL), a tight power pool among New England utilities.

In so doing, the court affirmed the Commission's judgment to reject the argument of certain municipal electric systems that the NEPOOL Agreement was necessarily discriminatory and anticompetitive because it omits certain services (including firm power sales). The court explained that section 202(a) of the FPA "sanctions and encourages these voluntary pooling agreements," and that the Commission's conclusions that the NEPOOL Agreement is not unduly discriminatory or anticompetitive, despite its limited size and scope, "is reasonable in light of the voluntary nature of this agreement." *Id.* at 1298–99. *See also Duke Power Company* v. *FPC,* 401 F.2d 930, 943–44 (D.C. Cir. 1968) (emphasizing that section 202(a) encourages *voluntary* interconnection and coordination of facilities, that the Commission's responsibility under that section is only to *promote* and *encourage* such interconnection and coordination, and that the Commission is not authorized to "*compel* any particular interconnection or technique of coordination.").[2]

BREATHITT, Commissioner, concurring

I view today's Notice of Intent to Consult Under Section 202(a) as the initiation of important discussions between the FERC and state commissions and others on whether and how the Commission will use its authority under Section 202(a) of the Federal Power Act. These initial discussions will begin to shape the debate of how and under what time frame the Commission intends to proceed with a broader inquiry into the formation of regional transmission organizations. The direction we take in this endeavor is of utmost importance to me. It is for this reason that I respectfully concur with today's Notice of Intent to Consult. As I will explain, the Notice does not adequately frame our initial discussion with state commissioners.

I believe it is crucial that we conduct thorough and meaningful discussions with our state colleagues. Efforts by this Commission to draw regional boundaries for transmission organizations will have a tremendous impact on state commissions and on the utilities and their customers that conduct business and reside in those states. We must acknowledge that states are at varying points in the development of retail open access plans and that actions by this Commission will have different impacts on states depending on the level of functional unbundling and retail competition that has occurred in those states. Furthermore, we must consider the significant regional differences that exist in this country and the degree to which transmission planning and pricing issues will affect a state's analysis and consideration of RTOs. Obviously, this consultation process is not a simple exercise. Indeed it is one that requires a great deal of consideration. That is why the Commission must ensure that every pertinent question, even the most fundamental ones, are asked and answered.

The Notice we are voting on today asks important and relevant questions and invites comments from state commissioners on issues pertaining to the formation of regional transmission organizations and the establishment of boundaries for these RTOs. However, the Notice does not invite state commissioners, in this initial discussion, to comment on, what I believe to be, the fundamental, threshold question. That is, whether there is a need to establish regional boundaries in order to further the goals of full competition and non-discriminatory access or whether there are other means that can be equally as effective. This should be the first question we ask ourselves and state commissioners. Furthermore, I believe it is crucial that we define the scope of our authority under Section 202(a).

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[2] In *Duke Power Company,* the court reviewed the language and legislative history of section 202(a), and other subsections of section 202 ((b)–(d)) dealing with interconnections and emergency authorizations, as part of its interpretation of the statutory reach of section 203 of the FPA, dealing with the sale, lease, disposition, merger or consolidation of jurisdictional facilities. The court found that the Commission does not have jurisdiction under section 203 to review the utility acquisition of limited local distribution facilities.

I fully support the Notice of Intent to Consult and look forward to our discussions with state commissioners and, later on, with other parties. This dialogue is important and necessary. However, I do not want the Commission to lose sight of fundamental, threshold issues pertaining to the establishment of regional boundaries and the formation of RTOs. I therefore respectfully concur with this decision.

Linda K. Breathitt,

Commissioner.

[FR Doc. 98–31959 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; New System of Records

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of existence and character of new system of records.

SUMMARY: The Federal Energy Regulatory Commission (“Commission” or “FERC”), under the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, is publishing a description of a new system of records.

DATES: Comments may be filed on or before February 1, 1999.

ADDRESSES: Comments should be directed to the following address: Julia A. Lake, Privacy Act Officer, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Room 91–21, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Julia A. Lake, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Room 91–21, Washington, DC 20426; 202–208–0457.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a, requires that each agency publish a notice of the existence and character of each new or altered “system of records.” 5 U.S.C. 552a(a)(5). This Notice identifies and describes the Commission’s new system of records. There are no altered systems to report. A copy of this Notice identifies and describes the Commission’s new system of records. There are no altered systems to report. A copy of this report has been distributed to the Speaker of the House of Representatives and the President of the Senate, as the Act requires.

The new system of records does not duplicate any existing agency systems. In accordance with 5 U.S.C. 552a(e)(4), the Commission lists below the following information about this system: name; location; categories of individuals on whom the records are maintained; categories of records in the system; authority for maintenance of the system; each routine use; the policies and practices governing storage, retrievability, access controls, retention, and disposal; the title and business address of the agency official responsible for the system of records; procedures for notification, access and contesting the records of each system; and the sources of the records in the system.

Linwood A. Watson, Jr.,

Acting Secretary.

FERC/36

SYSTEM NAME:

Management, Administrative, and Payroll System “MAPS” FERC/36.

SYSTEM LOCATION:

Hard copy of personnel and timekeeping data is located at the Federal Energy Regulatory Commission (FERC), Washington, D.C. 20426. Hard copy of payroll transactions and reports are located at the Department of Veterans Affairs, Shared Services Center (SSC), Topeka, Kansas 66604 and the Department of Veterans Affairs, Financial Services Center (FSC), Austin, Texas 78772, respectively. Computerized data is located at the Department of Veterans Affairs, Austin Automation Center (AAC), Austin, Texas 78772.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees (Senior Executive Service and non-Senior Executive Service, bargaining unit and non-bargaining unit) employed by the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

All official personnel action and/or payroll transaction information on Commission employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 2302(b)(20)(B), 2302(b)(10), 7311, 7313; Executive Order 10450; 5 CFR 731.103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

- To the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, in connection with functions vested in those agencies.
- To a Congressional office in response to an inquiry made at the request of that individual.
- To the Office of Management and Budget in connection with private relief legislation.
- In litigation before a court or in an administrative proceeding being conducted by a Federal agency.
- To the National Archives and Records Administration for records management inspections.
- To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained for related studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper in Official Folders located at the FERC, SSC, and FSC. Computerized on a DEC Alpha Server which resides at the AAC.

RETRIEVABILITY:

Data can be retrieved by employee’s name, employee identification number, or social security number.

SAFEGUARDS:

The Austin Automation Center is located in a secured Federal complex. Within this secured building, the Computer Operations Center is located in a controlled access room. Specific employees have been identified as system and database administrators having specific responsibilities allowing access to FERC personnel and payroll data. Security is embedded within the software, in both the operating system and at the application level. Individuals not granted access rights cannot view or change data. The database is monitored by software applications that provide audits of log-ins, both successful and failed.

Output documents from the system are maintained as hard copy documents by FERC’s Human Resources Division and the VA’s Payroll Operations and Finance Offices and are safeguarded in secured cabinets located within secured rooms.

SYSTEM MANAGERS(S) AND ADDRESS:

The Federal Energy Regulatory Commission and the Department of Veterans Affairs share responsibility for system management. The first point of contact is the Director, Division of Management, Administrative and

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Payroll Support, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

NOTIFICATION PROCEDURES:

Director, Division of Management, Administrative, and Payroll Support.

RECORDS ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Involvement by the Office of Personnel Management may be necessary, as provided in the Federal Personnel Manual, Chapter 731.

RECORD SOURCE CATEGORIES:

Department of Energy's Corporate Human Resource Information System (CHRIS); FERC's Payroll Utilization Reporting System (PURS); the employee's supervisors; and the employee.

[FR Doc. 98–31889 Filed 11–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Power Allocation Issues

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Inquiry on the Impact of Electric Utility Industry Restructuring.

SUMMARY: The Western Area Power Administration (Western) is initiating an inquiry to explore the impact of electric utility industry restructuring on Western's power allocation policies.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end January 15, 1999. A public comment forum at which Western will receive oral and written comments will be held on Wednesday, January 6, 1999, beginning at 1 p.m., Mountain Standard Time, at the Four Points Denver Central Hotel, 3535 Quebec Street, Denver, Colorado. To be assured of consideration, written comments must be received by the end of the consultation and comment period.

ADDRESSES: Written comments may be hand-delivered, mailed, emailed, or faxed to Robert C. Fullerton, Project Manager, Corporate Services Office, Western Area Power Administration, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401–0098, telephone (303) 275–2700, fax (303) 275–1290, email: fullerto@wapa.gov. All documentation developed or retained by Western during the course of this public process will be available for inspection and copying at this address.

FOR FURTHER INFORMATION CONTACT:

Robert C. Fullerton, Project Manager, Corporate Services Office, Western Area Power Administration, 1627 Cole Boulevard, P. O. Box 3402, Golden, CO 80401–0098, telephone (303) 275–2700, email: fullerto@wapa.gov.

Joel K. Bladow, Regional Manager, Rocky Mountain Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, telephone (970) 490–7201, email: bladow@wapa.gov.

J. Tyler Carlson, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2453, email: carlson@wapa.gov.

David Sabo, Customer Service Center Manager, Colorado River Storage Project, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, telephone (801) 524–6372, email: sabo@wapa.gov.

Jerry W. Toenyes, Regional Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4418, email: toenyes@wapa.gov.

Gerald C. Wegner, Regional Manager, Upper Great Plains Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, telephone (406) 247–7405, email: wegner@wapa.gov.

SUPPLEMENTARY INFORMATION:

Authorities

This public process is being conducted pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 371, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

Background

Western is a Federal power marketing administration, charged with the responsibility of marketing electricity generated by power plants operated by the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission. Created in 1977, Western markets on a wholesale basis and transmits Federal hydroelectric power throughout 1.3 million square miles to more than 600 customers, including rural electric cooperatives, municipal utilities, public utility districts, Federal and State agencies, and irrigation districts. Western's power customers, in turn, provide service to millions of consumers in 15 western States.

Western markets power on a project-specific basis. A marketing plan for each project is developed through a public process, with opportunity for comment on a marketing proposal before publication of the final marketing plan in the **Federal Register**. Reclamation law governs how Western markets electricity, including the requirement that Western offer power first to non-profit entities such as rural electric cooperatives and municipalities.

In the first decade of Western's existence, marketing plans were relatively inflexible. Unless new generation was available, the amount of power made available for potential new customers was relatively small. Contracts with terms up to 30 years were negotiated and signed. No capability existed under contracts to adjust Western's marketable resources in the event that power plant operational changes were necessary due to environmental considerations.

In recent years, Western added more flexibility to its marketing policies and power sales contracts. On October 20, 1995, Western adopted a final rule for the Energy Planning and Management Program (Program) (60 FR 54151), which established a framework for the project-specific allocation of hydropower. Pursuant to the Program, Western signed resource extension contracts with existing customers for the sale of power from the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects. These 20-year contracts contain withdrawal opportunities at 5 and 10 years to meet the needs of potential new customers and other purposes as determined by Western. Western also reserved the contractual ability to adjust power commitments in response to changes in operations and hydrology. In addition, Western has full flexibility to adjust its power rates under the terms of the contracts. Resource pools of up to 6 percent of the marketable resource were set aside to meet the needs of new customers, including Indian tribes.

While the Program did not immediately impact the marketing of power from the Central Valley Project (CVP), Washoe Project, and Salt Lake City Area Integrated Projects (SLCA/IP), Western anticipated that Program application would be evaluated for these projects in the future. Much work has already been done to advance the completion of the marketing plans for the CVP, Washoe Project, and SLCA/IP, pursuant to the Program's framework.

There is now a further need to consider the impact of electric utility industry restructuring on the way that we allocate power. Western seeks public input on six questions to help in this consideration.

Upon completion of this public process, Western will consult with the Department of Energy (DOE) prior to taking further action to complete pending power marketing plans.

While this public process was triggered by marketing proposals for CVP, Washoe Project, and SLCA/IP firm power, Western regards the issues addressed in this public process as relevant to all of our power allocation efforts. However, the conclusions we reach will be applied prospectively, and will not impact existing marketing plans and contracts.

As electric utility industry restructuring progresses over time, Western likely will evaluate the impact of industry change on a periodic basis to assure that our power marketing policy continues to be responsive to public needs.

Regulatory Procedure Requirements

Review Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

DOE National Environmental Policy Act (NEPA) regulations categorically exclude marketing plans from NEPA documentation unless they involve new generation, new transmission, or a change in operations. Therefore, Western will not conduct further evaluation under NEPA. Considerable environmental evaluation has already occurred under the Energy Planning and Management Program and during project-specific marketing plan development.

Scope of Issues

Public comment is requested on the following questions:

1. Should Western's power allocations system, including the term of firm power contract renewals, be modified to take into account changes in electricity markets that have occurred, and are expected to occur in the future, due to the enactment of California Assembly Bill 1890 and other State retail competition statutes? If so, please explain what modifications would be desirable. If not, please explain why the present system should be preserved.

2. To the extent a utility with an allocation of preference power loses load due to retail competition, should it receive the same allocation as it received previously or should its allocation be reduced proportionately?

3. Should Western allocate power directly to electricity end-users that are preference entities such as publicly-owned schools in States or localities that permit retail access? If so, how much power should be allocated for this purpose? Alternatively, should Western continue to allocate power primarily to its traditional customers such as municipal and cooperative utilities and Federal and State agencies?

4. In a retail choice environment, what additional steps, if any, should Western take to ensure that the full economic benefits of preference power are passed through to end-users served by the distribution utility that receives a power allocation from Western?

5. Should a distribution utility be permitted to transmit the economic benefits of preference power exclusively to industrial and/or commercial end users? Conversely, should a distribution utility be required to pass on the benefits of preference power exclusively to a certain class of customers such as residential or small business?

6. Should a distribution utility be required to offer retail access to its distribution customers as a condition of receiving a preference power allocation in the future?

Dated: November 20, 1998.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 98–32009 Filed 11–30–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6195–3]

Stakeholder Meeting on the Draft Consumer Confidence Report (CCR) Implementation Guidance

AGENCY: Environmental Protection Agency.

ACTION: Announcement of Stakeholder Meeting.

SUMMARY: The Consumer Confidence Report (CCR) rule published on August 19, 1998 in the **Federal Register** requires community water systems to provide to customers annual consumer confidence reports on the quality of the water delivered by the systems. Draft CCR implementation guidance has been developed based on input from an Environmental Protection Agency (EPA) Headquarters and Regional staff workgroup. On November 19 and 20, 1998, a CCR State-EPA workgroup meeting was held to obtain State comments on the draft implementation guidance. At this time, the EPA would like to obtain stakeholder comments on the draft guidance and will hold a public meeting to solicit comments and suggestions from parties who will be affected by or are otherwise interested in the Draft CCR Implementation Guidance. EPA will consider the comments and views expressed at the meeting in developing the final version of the implementation guidance. EPA encourages the full participation of all stakeholders throughout this process.

DATES: The stakeholder meeting regarding the Draft CCR Implementation Guidance will be held on December 18, 1998, 9 a.m. to 5 p.m. ET., in Washington, DC.

ADDRESSES: The December 18, 1998 stakeholder meeting will be held in the Washington Information Center (WIC) Conference Room 3 North, U.S. EPA Headquarters, 401 M Street SW, Washington, DC.

To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Kathleen Williams of EPA's Office of Ground Water and Drinking Water at (202) 260–2589. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines are limited and will be allocated on the basis of first-reserved, first served.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on activities related to CCR implementation, contact: Kathleen Williams, U.S. EPA at (202) 260–2589 or e-mail at williams.kathleena@epamail.epa.gov.

Elizabeth R. Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–31806 Filed 11–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6195–6]

National Drinking Water Advisory Council; Shallow Injection Wells (Class V)/Drinking Water Source Protection Program Integration Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Shallow Injection Wells (Class V)/Drinking Water Source Protection Program Integration Working Group of the National Drinking Water Advisory Council, established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on January 7, 1999 from 9:00 am to 5:00 pm and January 8, 1999 from 9:00 a.m. to 5:00 p.m. in Denver, Colorado. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to discuss the proposed Class V well regulation (63 FR 40586); the Class V Study methodology and regulatory decision rationale for the remaining Class V well types; and source water assessment and protection as it relates to the Class V proposal. The meeting is open to the public to observe. Statements from the public will be taken at the end of the meeting if time allows.

The Designated Federal Officer for this meeting will be Connie Bosma, Chief of the Regulatory Implementation Branch. For more information, please contact Amber Moreen, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street, SW, Washington, D.C. 20460. The telephone number is (202) 260–4891 and e-mail address is moreen.amber@epamail.epa.gov.

Dated: November 24, 1998.

Charlene Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 98–32007 Filed 11–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6196–2]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that several Committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Drinking Water Committee (DWC)

The Drinking Water Committee (DWC) of the Science Advisory Board (SAB) will hold a public meeting beginning at 8:00 am Thursday, December 10, 1998 and ending not later than 5:30 pm Friday, December 11, 1998. The meeting will be held at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, VA 22202; telephone (703) 418–1234. At this meeting, the Committee will receive briefings on the status of various research efforts being conducted in support of the Safe Drinking Water Act Amendments (SDWA) of 1996 and conduct a review of the US EPA ORD comparative risk approach for balancing the chemical and microbial risks from drinking water.

Background

In accordance with the Safe Drinking Water Act (SDWA), regulations have been promulgated or proposed by U.S. EPA to provide maximum control of exposures to pathogenic organisms in water while minimizing concomitant exposures to the disinfection byproducts (DBPs). The SDWA Amendments of 1996 additionally require the Agency to conduct cost-benefit analyses of the regulatory impacts in order to identify cost-effective drinking water treatment options.

The National Center for Environmental Assessment-Cincinnati Office (NCEA-Cin) has developed a methodology for risk analysis and comparison that might assist the Agency in supporting its SDWA regulatory activities. The Agency's document Comparative Risk Framework Methodology and Case Study (Framework Document) presents a methodology for such comparisons that applies the prevention-effectiveness approach developed by the Centers for Disease Control for structuring and analyzing this complex risk trade-off problem. Prevention-effectiveness research combines tools of decision and economic analysis to look at the cost-effectiveness of different public health interventions and employs decision trees to explicitly and graphically structure the problem. The document consists of a Comparative Risk Framework Methodology (CRFM) and a Case Study. The application of this approach explicitly recognizes disinfection and treatment of drinking water to be a primary public health intervention and prevention measure designed to minimize the transmission of microbial pathogens in drinking water.

Charge

The Drinking Water Committee is requested to review the strategy proposed for structuring and analyzing this comparative risk/risk tradeoff problem, including the overall concept, the use of population-based probabilities for expressing both cancer and noncancer health risks and mechanisms for arriving at these numbers, and the pros and cons of the different common metrics/weights proposed for comparing qualitatively and quantitatively different health risks. Specific charge questions are available by contacting the Office of the Science Advisory Board at the address noted below. Charge questions are included for the following areas: overall approach; the comparative risk framework methodology; the case study; engineering and water treatment issues; risk characterization; microbial risks; chemical dose-response assessment; exposure; health conditions; the common health metric; the results of the methods application; and research needs.

FOR FURTHER INFORMATION CONTACT: Single copies of the background information for the review of the risk comparison framework can be obtained by contacting Dr. Glenn Rice, US EPA

National Center for Environmental Assessment, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; or by telephone at (513) 569–7813. Additional information for this meeting, or the meeting agenda, can be obtained by contacting Mr. Thomas O. Miller, Designated Federal Officer (DFO) for the Drinking Water Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202) 260–5886; by fax at (202) 260–7118 or via the E-Mail at: miller.tom@epa.gov, or by contacting Ms. Dorothy Clark at (202) 260–6555, by fax at (202) 260–7118, and by E-Mail at: clark.dorothy@epa.gov. Anyone wishing to make an oral presentation to the Committee must contact Mr. Miller, in writing (by letter, fax, or E-mail) no later than 12 noon, Thursday, December 3, 1998, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public.

2. Secondary Data Use Subcommittee of the Executive Committee

The Secondary Data Use Subcommittee of the Science Advisory Board's (SAB) Executive Committee, will meet Tuesday and Wednesday, December 15 and 16, 1998 in the SAB Conference Room, Room 3709, U.S. Environmental Protection Agency Headquarters Building, 401 M Street SW, Washington, DC 20460. The meeting will begin at 9:00 am on December 15th and adjourn no later than 5:00 pm on December 16th.

Purpose

The purpose of this meeting is to begin the SAB's project to provide advice to the Agency on the appropriate secondary use of EPA regulatory data bases. This review was requested by the Center for Environmental Information and Statistics (CEIS) in EPA's Office of Policy. The CEIS is in the process of reviewing 30 major EPA regulatory databases for their potential use in secondary data analyses (i.e., for uses other than that for which they were originally collected). The Agency's regulatory data bases were designed to be used in making enforcement, compliance, and standard setting decisions. The CEIS reviews will try to determine the extent to which these observational data bases can be used for other purposes such as assessment of environmental conditions and trends, scientifically based studies of cross-media relationships, and human health or environmental risk assessment.

The tentative overall charge to the Secondary Data Use Subcommittee is to: (a) provide consultations on the overall process of suitability review; (b) review CEIS's reviews for technical quality, comprehensiveness and clarity; (c) provide consultation on developing minimum criteria or characteristics that a database should possess if it is to be used for scientific purposes such as exposure assessment; (d) make recommendations for areas where the CEIS should develop new quantitative methods for the use of secondary EPA databases; and (e) set up a workshop which brings together Agency and external experts to discuss the various issues and concerns regarding the secondary use of administrative and observational EPA databases.

On July 30, 1998, the Subcommittee held its first meeting which was a consultation on the overall process of suitability review. At the December 15–16, 1998 meeting, the Subcommittee plans to review CEIS's initial descriptive reviews for technical quality, comprehensiveness and clarity; provide consultation on the next round of case studies, and receive a briefing on CEIS's approach to reviewing geographically based environmental indices.

For Further Information

Copies of the review documents and background materials are available from Dr. N. Phillip Ross, Chief Statistician, Center for Environmental Information and Statistics (2163), U.S. EPA, 401 M Street SW, Washington, DC 20460, telephone (202) 260–5244, fax (202) 260–5880, or via E-mail at ross.np@epa.gov. The review documents are also available on the Internet at: *http://www.epa.gov/ceisweb1/ceishome/quality.html.* Copies of the agenda are available from Ms. Betty Fortune, Science Advisory Board (1400), U.S. EPA, 401 M Street SW, Washington DC 20460, telephone (202) 260–4126, fax (202) 260–9232, or via E-mail at fortune.betty@epa.gov.

Any member of the public wishing to present brief oral comments to the Subcommittee must contact Mrs. Anne Barton, Designated Federal Officer (DFO) for the Secondary Data Use Subcommittee, in writing, no later than noon Tuesday, December 8 at Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; FAX (202) 260–9232; or via E-Mail at barton.anne@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Subcommittee and the interested public. To discuss technical aspects of the meeting, please contact Mrs. Barton by telephone at (202) 260–9280.

3. Radiation Advisory Committee (RAC)

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC) will conduct a public teleconference meeting on Tuesday, December 15, 1998. The teleconference meeting will convene at 11:00 a.m. and adjourn at approximately 1:00 p.m. that day. At this meeting, the RAC will review and discuss edits to their draft advisory concerning of low-activity mixed radioactive waste. The RAC began this advisory at their November 17–19, 1998 public meeting (See 63 **Federal Register** 207, Tuesday, Oct. 27, 1998, pp. 57295–57298). The charge focused on technical aspects of the Office of Radiation and Indoor Air (ORIA) performance assessment analyses. The charge questions to be answered include, but are not limited to the following: (a) Does the EPA dose assessment reasonably cover the hydrogeologic and climatic settings that might be used for the disposal of low-activity mixed waste? (b) What modeling time frame does the Committee recommend be used to project potential doses from disposal of low-activity mixed waste?, and (c) Is it reasonable to assign a constant "high" release rate for the duration of the simulation, or does the SAB advise an alternative approach such as assuming a lower release rate at the start and increasing it incrementally over the modeling period, thereby mimicking the gradual deterioration of the concrete?

For Further Information

Any member of the public wishing further information concerning the teleconference meeting, such as copies of the proposed meeting agenda, information to connect to the teleconference, the current public draft of the advisory, or who wish to submit written comments should contact Mrs. Diana L. Pozun at Tel. (202) 260–8432; FAX (202) 260–7118, or via E-mail at: pozun.diana@epa.gov. Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO) for the Radiation Advisory Committee, in writing no later than 12 noon Eastern Time, Thursday, December 10, 1998 in order to be included on the Agenda. Dr. Kooyoomjian can be reached at: Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, fax (202) 260–7118; or via E-Mail at: kooyoomjian.jack@epa.gov. Public comments at teleconferences will be normally limited to three minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, and at least 35 copies of an outline of the issues to be addressed or the presentation itself. For technical information pertaining to the teleconference meeting please contact Dr. Kooyoomjian at (202) 260–2560.

For questions pertaining to the advisory, as well as background documents provided to the SAB's RAC, or to discuss any other aspects of this review or any supporting or background information please contact Dr. Mary E. Clark, ORIA, U.S. Environmental Protection Agency (6601J), 401 M Street, SW, Washington, DC 20460, tel. (202) 564–9348; fax (202) 565–2043; or E-mail: clark.marye@epa.gov.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889. Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 25, 1998.

John R. Fowle, III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 98–31963 Filed 11–30–98; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, December 9, 1998, at 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 L Street, N.W., Washington, D.C. 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes, and
2. Panel on Small Business and the EEOC.

Note: Any matters not discussed or concluded may be carried over to a later meeting. (In addition to published notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission meetings). Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Date: November 25, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–32050 Filed 11–27–98; 11:22 am]

BILLING CODE 6750–06–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Tuesday, December 15, 1998, at 9:30 a.m. The meeting will be held at the Export-Import Bank in room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

AGENDA: This meeting (the last meeting of the year) will include a discussion summarizing the year at Ex-Im Bank and will additionally focus on next year's agenda, Small Business outreach.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 8, 1998, Megan Becher, room 1215, Vermont Avenue, NW, Washington, DC 20571, voice: (202) 565–3507 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Megan Becher, room 1215, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3507.

Kenneth Hansen,

General Counsel.

[FR Doc. 98–31937 Filed 11–30–98; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 1, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0127 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0567.

Title: Section 76.962, Implementation and Certification of Compliance.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 500.

Estimated Time per Response: .5 hours (30 minutes).

Frequency of Response: Once.

Total Annual Burden: 250 hours.

Total Annual Costs: $1,000 (photocopying and stationary).

Needs and Uses: Section 76.962 requires any cable operator that has been deemed subject to remedial requirements to certify to the Commission its compliance with the Commission order requiring prospective rate reductions, refunds, or other remedial relief to subscribers. The certification must be filed with the Commission within 90 days from the date the Commission released the order mandating a remedy. These certifications are used by the Commission to monitor a cable operator's compliance with Commission rate orders.

OMB Control Number: 3060–0638.

Title: Section 76.934(g), Alternative Rate Regulation Agreements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Time Per Response: 0.5 hours (30 minutes).

Frequency of Response: Once.

Total Annual Burden: 50 hours.

Total Annual Costs: $300 (postage and photocopying).

Needs and Uses: Section 76.934(g) states that certified local franchising authorities and small systems owned by small cable companies may enter into alternative rate regulation agreements affecting the basic service tier and the cable programming service tier. Small systems must file with the Commission a copy of the operative alternative rate agreement within 30 days after its effective date. Alternative rate regulation agreements are filed with the Commission so that verification can be made such that agreements have been entered into and executed pursuant to Commission rules.

OMB Control Number: 3060–0644.

Title: Establishing Maximum Permitted Rates for Regulated Cable Services on Small Cable Systems.

Form Number: FCC 1230.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; State, local and tribal governments.

Number of Respondents: 350 (250 cable systems and 100 local franchise authorities).

Estimated Time Per Response: 2.0 to 2.25 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 763 hours.

Total Annual Costs: $500.

Needs and Uses: On May 5, 1995, the Commission adopted rules that allow a small cable system owned by a small cable company to use a simplified cost-of-service procedure to set its maximum permitted rate. Pursuant to these rules, a cable system is eligible to set its maximum permitted rate with FCC form 1230 if it is a system with 15,000 or fewer subscribers, and it is not owned by a cable company with more than 400,000 subscribers. The data collected are used by the Commission and local franchise authorities to determine whether cable rates for basic service, cable programming service, and associated equipment are reasonable under Commission regulations.

OMB Control Number: 3060–0673.

Title: Section 76.956, Cable Operator Response.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 50

Estimated Time Per Response: 4 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 200 hours.

Total Annual Costs: $250.

Needs and Uses: Section 76.956 states that unless the Commission notifies a cable operator to the contrary, the cable operator must file with the Commission a response to a rate complaint, filed on the applicable form, within 30 days of the date of service of the complaint. In addition to responding to the merits of a complaint, the cable operator may also move for dismissal of the complaint for failure to meet the minimum showing requirement. Any such motion for dismissal must state with particularity the reasons the cable operator believes the complaint is defective and shall not relieve the cable operator of its obligation to respond to the merits of the complaint. The Commission has clearance for use of its cable rate regulation forms under each form's respective OMB control number. This collection, OMB 3060–0673, is designed to account for the burden to respondents when filing motions for dismissal of rate complaints. The Commission sponsors this information collection requirement in order to ensure a process for cable operators to file a motion to dismiss a rate complaint filed against them if they feel that the complaint fails to meet the minimum showing.

OMB Control Number: 3060–0668.

Title: 76.936, Written Decisions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal governments.

Number of Respondents: 1,200.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,200 hours

Total Annual Costs: $12.000.

Needs and Uses: Section 76.936 states a franchising authority must issue a written decision in a rate-making proceeding whenever it disapproves an initial rate for the basic service tier or associated equipment in whole or in part, disapproves a request for a rate increase in whole or in part, or approves a request for an increase in whole or in part over the objections of interested parties. Public notice must be given of any written decision required in this section, including releasing the text of any written decision to the public. Franchising authorities are required to issue a written decision in rate-making proceedings pursuant to Section 76.936 so that cable operators and the public are made aware of the results of the proceeding.

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Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31849 Filed 11–30–98; 8:45 am]

BILLING CODE 6712–10–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–2395]

North American Numbering Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 24, 1998, the Commission released a public notice announcing the December 16 and December 17, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, at (202) 418–2330 or via the Internet at lsimms@fcc.gov or Jeannie Grimes at (202) 418–2313 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

The next meeting of the North American Numbering Council (NANC) will be held on Wednesday, December 16, from 8:30 a.m., until 5:00 p.m., and on Thursday, December 17, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C., on December 16th. The December 17th meeting will be held at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, N.W., Washington, DC.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda—Wednesday, December 16, 1998

1. Approval of meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report. Update on Wireline Wireless Integration Subcommittee report regarding its further report on integration issues due to NANC by December 31, 1998.
3. Industry Numbering Committee (INC) Report. Presentation of INC work plan regarding issues relating to number portability for 500 and 900 numbers, pursuant to paragraph 41 of CC Docket 95–116, In the Matter of Telephone Number Portability, *Second Memorandum Opinion and Order on Reconsideration* (rel. Oct. 20, 1998).
4. Numbering Resource Optimization (NRO) Working Group Report. Presentation of NRO work plan for development of a recommendation regarding a successor model to the current Central Office Code Utilization Survey (COCUS).
5. Definition of Reserved Telephone Numbers. Discussion of new contributions regarding characterization of a "legally enforceable written agreement." NANC decision on a single definition of reserved telephone numbers.
6. North American Numbering Plan Billing and Collection Agent (NBANC) Report. Discussion of carrier-specific interest credits.

Thursday, December 17, 1998

7. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Discussion of Chairman Hasselwander's proposal on how to proceed regarding NANPA responsibilities and the assumption of duties of the incumbent code administrators under the FCC order; the Requirements Document and industry guidelines. Discussion of Lockheed Martin anticipated FCC filing regarding divesture of its CIS unit to a neutral third party. Review and discussion regarding 11/30/98 draft number pooling administrator (PA) Requirements Document. NANC will provide guidance pertaining to the appropriate bid pricing to be inserted in the PA Requirements Document.
8. Steering Group (SG) Report. Discussion of proposed SG revisions to the July 23, 1998, version of the NANC Working Group Operating Principles. Discussion of other matters discussed at the SG meetings of November 18 and December 16, including efficient utilization of meeting time, working group mentors and audits of code holders.
9. Discussion of potential further action regarding System Beta.
10. Other Business.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–32014 Filed 11–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2318; Report No. AUC–98–23–A (Auction No. 22)]

C Block PCS Spectrum Auction Scheduled for March 23, 1999 Comment Sought on Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: This Public Notice announces the auction of C block broadband personal communications services ("PCS") licenses set to begin on March 23, 1999, and seeks comment on procedural issues relating to the C block broadband PCS auction.

DATES: Comments are due on or before November 30, 1998. Reply comments are due on or before December 7, 1998.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Wireless Telecommunications Bureau Reference Center, Room 5608, 2025 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Bob Reagle, or Jeff Garretson, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Public Notice was released on November 12, 1998, and is available in its entirety, including the Attachment, for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, Room 5608, 2025 M Street N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Synopsis of the Public Notice

1. By this Public Notice, the Wireless Telecommunications Bureau ("Bureau") announces an auction of C block broadband personal communications services ("PCS") licenses set to begin on March 23, 1999 (Auction No. 22). Auction No. 22 will cover licenses for operation on frequencies that were previously licensed under now-cancelled licenses, licenses for operation on 30 MHz and 15 MHz spectrum blocks that were returned to the Commission pursuant to elections, and licenses for operation on frequencies that had not been previously licensed. A list of licenses is included at Appendix A. In addition, future public notices could include information about other Commission licenses in conjunction with Auction No. 22. Future public notices will include further details regarding application filing and payment deadlines, a seminar for potential bidders, and other pertinent information. In this Public Notice, the Bureau seeks comment on procedural issues relating to Auction No. 22.

I. Reserve Price or Minimum Opening Bid

2. The Balanced Budget Act of 1997 ("Budget Act") calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (i.e., because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest.

3. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction.

4. The Commission in the *Second Report and Order and Further Notice of Proposed Rule Making ("C Block Further Notice")*, 62 FR 55375 (October 24, 1997), sought comment on the use of a minimum opening bid and/or reserve price for the upcoming C block PCS auction. The Commission stated that, for the upcoming C block auction, employing a minimum opening bid, more than a reserve price, would help make certain that the public is fairly compensated, the auction is expedited, and the Commission is able to make adjustments based on the competitiveness of the auction. Accordingly, the Commission proposed to use a minimum opening bid, rather than a reserve price, for the upcoming C block auction and requested comment on this proposal, as well as on which methodology to employ and factors to consider in establishing minimum opening bids. The Commission proposed minimum opening bids for each market equal to ten percent of the corresponding net high bid for the market in the original C block auction. The Commission asked commenters to explain whether this proposal would be reasonable or would result in a substantial number of unsold licenses. The Commission asked further whether the amount of the minimum opening bid should be capped and whether the Commission should establish a different amount.

5. In the *Fourth Report and Order ("C Block Fourth Report and Order")*, 63 FR 50791 (September 23, 1998), which resolved issues raised in the *C Block Further Notice*, the Commission decided that it would be appropriate to establish minimum opening bids for each market in the upcoming C block auction equal to ten percent of the corresponding net high bid for the market in the original C block auction. The Commission stated, however, that the Bureau may exercise its discretion to set forth minimum opening bids smaller than ten percent if, based upon further evaluation, the Bureau believes that a smaller amount is warranted. In considering a reduction of the minimum opening bid, the Bureau would consider such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors that could reasonably affect valuation of the spectrum being auctioned.

6. The Commission made no adjustment to the minimum opening bid for those licenses which, in Auction No. 22, will be 15 MHz rather than 30 MHz. The Bureau, however, believes that such an adjustment is appropriate and, accordingly, proposes to establish as the minimum opening bid for each 15 MHz license available in Auction No. 22 an amount equal to five percent of the most recent net high bid for the corresponding 30 MHz license, but in no event lower than the upfront payment amount for that license in Auction No. 22 (see discussion of upfront payments immediately below). For 15 MHz licenses with minimum opening bids that would otherwise be lower than upfront payment amounts, the Bureau proposes to establish minimum opening bids that equal the upfront payment amounts. For each 30 MHz license available in Auction No. 22, the Bureau plans to establish a minimum opening bid equal to ten percent of the most recent corresponding net high bid for the license, but in no event lower than the upfront payment amount for that license in Auction No. 22. For 30 MHz licenses with minimum opening bids that would otherwise be lower than upfront payment amounts, the Bureau plans to establish minimum opening bids that equal the upfront payment amounts. Minimum opening bid amounts are provided in Attachment A.

II. Upfront Payments and Initial Maximum Eligibility for Each Bidder

7. In the *C Block Further Notice*, the Commission explained that, in the *Second Report and Order*, 59 FR 22980 (May 4, 1994), (*"Competitive Bidding Second Report and Order"*), it had indicated that the upfront payment should be set using a formula based upon the amount of spectrum and population ("pops") covered by the license(s) for which the parties intend to bid and that the amount of the upfront payment should be determined on an auction-by-auction basis. The Commission proposed in the *C Block Further Notice* to set an upfront payment for the upcoming C block auction at $0.06 per MHz per pop. The Commission determined that this amount was appropriate to further its goal of allowing only serious, qualified applicants to participate in the auction. The Commission noted that it had adopted the same upfront payment for its most recent broadband PCS auction, the D, E, and F block auction.

8. In the *C Block Fourth Report and Order*, the Commission noted that there was support among commenters for setting the upfront payment amount at the proposed $0.06 per MHz per pop and expressed its belief that in the upcoming C block auction the upfront payment should be no higher than this amount. Accordingly, the Bureau plans to set the upfront payment amount for each license in Auction No. 22 at $0.06 * MHz * Pops (rounded up to the next dollar). The Bureau notes, however, that in the *C Block Fourth Report and Order* the Commission stated that the Bureau may establish a lower upfront payment if it deems a lower amount to be reasonable.

9. As required by the *C Block Fourth Report and Order*, the upfront payment amount for "former defaulters," i.e., applicants that have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency, will be fifty percent more than the normal amount required to be paid.

10. For Auction No. 22, the Commission proposes that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Commission seeks comment on this proposal.

III. Attribution Rules

11. The attribution rules set forth in Section 24.709 of the Commission's rules will apply to Auction No. 22.

IV. Other Auction Procedural Issues

12. The Budget Act requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *" Consistent with the provisions of the Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific issues prior to the start of each auction. The Bureau therefore seeks comment on the following issues.

a. Auction Sequence and License Groupings

13. In the *C Block Further Notice*, the Commission proposed a simultaneous multiple-round design for the upcoming C block auction, and it received no comments opposing this proposal. Accordingly, in the *C Block Fourth Report and Order*, the Commission stated that the simultaneous multiple-round design would be appropriate for the upcoming C block auction. The Commission noted, however, that it remains within the Bureau's authority to seek comment on, and to modify, the competitive bidding design of the upcoming C block auction, if the Bureau determines that another design might be warranted. In light of this history, and because a simultaneous multiple-round design allows bidders to take advantage of any synergies that exist among licenses, the Bureau proposes to award all C block PCS licenses currently available for auction in a single, simultaneous multiple-round auction. The Bureau seeks comment on this proposal.

b. Structure of Bidding Rounds, Activity Requirements, and Criteria for Determining Reductions in Eligibility

14. In the *C Block Further Notice*, the Commission tentatively concluded that a C block auction should be conducted in three stages. The Commission proposed to use high activity requirements, with bidders required to be more active in each subsequent stage than they had been in the last. The Commission also proposed requiring the Bureau to use its delegated authority to schedule bidding rounds aggressively, to move quickly into the next stage of the auction when bidding activity falls, and to use higher minimum bid increments for very active licenses. In the *Third Report and Order and Second Further Notice of Proposed Rule Making*, 63 FR 2315 (January 15, 1998), ("*Part 1 Third Report and Order*"), the Commission directed the Bureau to seek comment prior to the start of each auction on activity requirements for each stage of the auction and activity rule waivers.

15. No party opposed the Commission's tentative conclusion to conduct a C block auction in three stages. Accordingly, in the *C Block Fourth Report and Order*, the Commission expressed its continued belief that this structure would be reasonable for the upcoming C block auction. The Commission noted, however, that the Bureau normally determines the structure of the auction and stated that it remains within the Bureau's discretion to deviate from the proposed three-stage structure if, after appropriate notice and comment, the Bureau determines that a different structure would better serve the public interest.

16. Accordingly, the Bureau proposes to divide the auction into three stages: Stage One, Stage Two and Stage Three. The auction will start in Stage One. The Bureau proposes that the auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below ten percent for three consecutive rounds of bidding in each Stage. However, the Bureau further proposes that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

17. In order to ensure that auctions close within a reasonable period of time, the Commission imposes an activity rule that requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of an auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver.

18. For Auction No. 22, the Bureau proposes that, in each round of Stage One of the auction, a bidder desiring to maintain its current eligibility must remain active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In each round of the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on at least 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be

calculated by multiplying the current round activity by ten-ninths ($^{10}/_{9}$). In each round of Stage Three, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty forty-ninths ($^{50}/_{49}$). The Bureau seeks comment on these proposals.

c. Minimum Accepted Bids

19. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For Auction No. 22, the Bureau proposes to use a smoothing methodology to calculate bid increments. This methodology will be designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. A similar methodology was used in previous auctions, including the original LMDS auction and the 220 MHz auction. The Bureau proposes initial values for the maximum of 0.2 or 20% of the license value, and a minimum of 0.1 or 10% of the license value. The Bureau seeks comment on this proposal.

20. The Bureau retains the discretion to change these values if circumstances so dictate, such as raising the minimum increment toward the end of the auction to enable bids to reach their final values more quickly. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau further seeks comment on the advantages and disadvantages of using the discretion to adjust the minimum bid increment without prior notice. The Bureau additionally seeks comment on the advantages and disadvantages of, as an alternative approach, adjusting the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment. The Bureau also retains the discretion to use alternate methodologies for Auction No. 22 if circumstances warrant. The Bureau seeks comment on these proposals.

d. Activity Rule Waivers and Reducing Eligibility

21. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

22. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility thereby meeting the minimum requirements.

23. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

24. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

25. The Bureau proposes that each bidder in Auction No. 22 be provided with five activity rule waivers that may be used in any round during the course of the auction as set forth above. The Bureau seeks comment on this proposal.

e. Information Regarding Bid Withdrawal and Bid Removal

26. In the *C Block Fourth Report and Order*, the Commission directed the Bureau, in conducting the upcoming C block auction, to follow the Part 1 rule on bid withdrawal, Section 1.2104(g), to the extent applicable. Accordingly, for Auction No. 22, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

27. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

28. In the *Part 1 Third Report and Order*, the Commission recently explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons, including to delay the close of the auction for strategic purposes. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

29. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 22 to withdrawals in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

f. Stopping Rule

30. For Auction No. 22, the Bureau proposes to employ a simultaneous stopping approach. The Bureau has

discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." *See*, Section 1.2104 of the Commission's Rules, 47 CFR 1.2104(c). A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

31. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

32. The Commission proposes that the Bureau retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual; and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

33. Finally, the Commission proposes that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

g. Information Relating to Auction Delay, Suspension or Cancellation

34. For Auction No. 22, the Commission proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Commission emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 98–32015 Filed 11–27–98; 11:51 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2337; Report No. AUC–98–22–B (Auction No. 22)]

Additional Information Regarding Broadband PCS Spectrum Included in the Auction Scheduled for March 23, 1999; Comment Sought on Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: This Public Notice provides additional and corrected information about the broadband personal communications services ("PCS") spectrum to be included in Auction No. 22, including the addition of three D, six E, and five F block broadband PCS licenses.

DATES: Comments are due on or before November 30, 1998, and reply comments are due on or before December 7, 1998.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Room TWA–325, 445 Twelfth Street S.W., Washington, D.C. 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room 239, 1919 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: For further information contact Audrey Bashkin, Bob Reagle, or Jeff Garretson, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Public Notice was released on November 19, 1998, and is available in its entirety, including the Attachment, for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, Room 5608, 2025 M Street N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Synopsis

1. This Public Notice provides additional and corrected information about the broadband personal communications services ("PCS") spectrum to be included in Auction No. 22, including the addition of three D, six E, and five F block broadband PCS licenses. See *C Block PCS Spectrum Auction Scheduled for March 23, 1999, Comment Sought on Auction Procedural Issues, Public Notice, DA 98–2318* (November 12, 1998) (*"Procedural Public Notice"*). In addition, the *Procedural Public Notice* listed as part of the auction certain spectrum blocks associated with the cancelled licenses of DCR PCS, Inc. ("DCR"), a licensee currently in bankruptcy. DCR's licenses were subject to a preliminary injunction preventing the alienation of those licenses through November 16, 1998. That injunction has been removed, and the relevant spectrum blocks are listed in the Attachment to the Public Notice,

as released by the Wireless Telecommunications Bureau, with an update reflecting this change in status. As a general matter, the Attachment contains an updated inventory of all licenses that will be made available in Auction No. 22. Future public notices could include information about other Commission licenses in conjunction with Auction No. 22. Additionally, in this Public Notice, the Bureau seeks comment on procedural issues relating to the auction of the D, E, and F block licenses in Auction No. 22.

I. Reserve Price or Minimum Opening Bid

2. Based on the approach taken in the *Procedural Public Notice*, for each D, E, and F block license for which there was a winning bidder in the 1996 D, E, and F block auction, the Bureau proposes to establish as the minimum opening bid an amount equal to ten percent of the corresponding net high bid for the market in the 1996 auction, but in no event lower than the upfront payment for that license in Auction No. 22. For each D, E, and F block license for which there was no winning bidder in the 1996 auction, the Bureau proposes to establish as the minimum opening bid an amount equal to 3.33 percent of the most recent net high bid for the C block license in the same Basic Trading Area ("BTA"), but in no event lower than the upfront payment amount for that license in Auction No. 22. Thus, for licenses with minimum opening bids that otherwise would be lower than upfront payment amounts, the Bureau proposes to establish minimum opening bids that equal the upfront payment amounts. Minimum opening bid amounts are provided in the Attachment

II. Upfront Payments and Initial Maximum Eligibility for Each Bidder

3. The Bureau proposed in the *Procedural Public Notice* to set the upfront payment amount for each license in Auction No. 22 at $0.06 * MHz * Population ("Pops") (rounded up to the next dollar). The Bureau seeks comment on its proposal to apply the same upfront payment amount to each of the D, E, and F block licenses to be auctioned.

4. In accordance with the Commission rule governing C block applicants, the Bureau stated in the *Procedural Public Notice* that the upfront payment amount for "former defaulters" (i.e., applicants that have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency) will be fifty percent more than the normal amount required to be paid. Consistent with this rule, any former defaulter that applies to bid on "all markets" or designates D, E, or F block licenses *in addition to* at least one C block license will be subject to the higher upfront payment requirement. Former defaulters that apply to bid *only* on D, E, or F block licenses will not be subject to the higher upfront payment requirement.

5. In the *Procedural Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on its proposal to use this same approach for the D, E, and F block licenses to be auctioned.

III. Attribution Rules

5. As stated in the *Procedural Public Notice*, the attribution rules set forth in Section 24.709 of the Commission's rules will apply to Auction No. 22.

IV. Other Auction Procedural Issues

6. In the *Procedural Public Notice*, the Bureau set forth proposals for Auction No. 22 with respect to the following issues: (1) Auction sequence and license groupings; (2) structure of bidding rounds, activity requirements, and criteria for determining reductions in eligibility; (3) minimum accepted bids; (4) activity rule waivers and reducing eligibility; (5) information regarding bid withdrawal and bid removal; (6) stopping rule; and (7) information relating to auction delay, suspension or cancellation. Because the remaining D, E, and F block licenses will be included in Auction No. 22, the Bureau proposes to adopt these same proposals for the auction of these licenses.

Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 98-32016 Filed 11-27-98; 11:51 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Pursuant to Section 19 of the Federal Deposit Insurance Act Concerning Participation in the Conduct of the Affairs of an Insured Institution by Persons Who Have Been Convicted of Crimes Involving Dishonesty, Breach of Trust or Money Laundering or Who Have Entered Pretrial Diversion Programs For Such Offenses

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final policy statement.

SUMMARY: The FDIC is updating its statement of policy (SOP), which is issued pursuant to section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829). Section 19 prohibits, without the prior written consent of the FDIC, any person from participating in banking who has been convicted of a crime of dishonesty or breach of trust or money laundering, or who has entered a pretrial diversion in connection with such an offense. Section 19 was significantly expanded by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101–73, 103 Stat.183 (1989) and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (Crime Control Act), Pub. L. No. 101–647, 104 Stat. 4789 (1990). As a result, the two existing policy statements for section 19 are outdated, and the new SOP is intended to replace them and to supersede prior guidelines. While the SOP maintains the FDIC's current requirement that an application seeking the FDIC's consent must be filed by an insured depository institution (insured institution), it provides blanket approval for certain de minimis crimes, and allows for a waiver of the institution filing requirement where an individual can demonstrate substantial good cause for such a waiver. Other significant provisions include the exclusion from section 19's coverage of a conviction that has been completely expunged, pretrial diversion and similar programs entered before November 29, 1990, and youthful offender adjudgments. The SOP clarifies that the scope of section 19's coverage applies to employees of an insured institution, and also to other persons who are in a position to influence or control the management or affairs of an insured institution.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: James M. Orlowsky, Review Examiner, Division of Supervision (202) 898–6763 or Andrea Winkler, Counsel, Legal Division (202) 898–3727, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

As amended by FIRREA and the Crime Control Act, section 19 prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, owning or controlling, directly or indirectly an insured institution, or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. It imposes a ten-year ban against the FDIC's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the FDIC and approval by the sentencing court.

A proposed SOP was published in the **Federal Register** on July 24, 1997 (62 FR 39840 (1997)). The FDIC invited comments on all aspects of the proposal, as well as on a number of specific aspects of the SOP. Comments were due by September 22, 1997. The FDIC received a total of 19 comment letters: 12 from banks, savings associations or bank holding companies; two from law firms; one from a state banking department; and four from trade associations. Based upon the comments, as discussed below, the final SOP is a significant revision of the proposal.

II. Final Statement of Policy

A. Scope of Section 19

(1) Participation

Section 19 covers institution-affiliated parties, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an insured depository institution. Therefore, all employees of an insured institution fall within the scope of section 19. The proposed SOP indicated that, additionally, persons employed by an institution's holding company or an affiliate, subsidiary or joint venture of an insured institution or of its holding company may be within the scope of section 19 where such person is engaged in performing banking or banking-related activities on a regular and material basis. For independent contractors, the proposal indicated that participation by an independent contractor or an employee of an independent contractor would occur where either is performing banking or banking-related activities on behalf of, or for the benefit of, an insured institution on a regular and material basis so as to be involved in the ordinary course of operations or to be exercising control over such operations. The proposal did not define what constitutes such activities. The SOP stated that "person," for purposes of section 19, means a natural person, and does not include a corporation, firm, or other business entity.

The FDIC received fourteen comments relevant to what constitutes "participation" and what classes of individuals should be considered "participants." Ten of the comments were received from banks, savings associations or bank holding companies; one from a law firm; one from a state banking department; and two from trade associations. In general, the commenters expressed the view that the FDIC's definition of participation was overly broad and ambiguous, particularly with regard to affiliates and independent contractors, and did not adequately consider the risk of particular positions to the safety and soundness of an insured institution or its depositors. For example, one commenter indicated that under the proposal, section 19 could cover a computer technician employed by the institution's holding company who periodically performs routine maintenance at the institution's facilities, despite the low level of risk associated with the position. Concern was expressed that the proposal might have a crippling effect on independent contractors who employ large numbers of employees. Commenters felt that although independent contractors engage in activities that are related to banking, many do not exercise any decision-making authority with regard to the activities of the insured institution, and thus should not be subject to section 19. For example, if having access to sensitive bank data is a banking-related activity, then providers of automated teller machines and securities systems firms might arguably be included within the scope of section 19. Commenters requested that the FDIC specifically define the positions or types of independent contractors and activities that are covered by section 19.

After considering the comments, the FDIC believes that it is not the purpose of the SOP to define precisely what activities constitute "participation." Rather, agency and court decisions should provide the guide as to what standards should be applied. As a general proposition, participation will be determined by the degree of influence or control over the management or affairs of an insured institution. Furthermore, given the changes in banking, including financial modernization and the rapid pace of technology, a listing of activities in the SOP is neither practical nor advisable. The FDIC must maintain flexibility in such determinations, and in reaching such determinations, the FDIC will consider the facts and circumstances and the degree of involvement of the individual in the institution's affairs. Under this standard, persons who function as "de facto" employees regardless of their relationship to the institution, will be covered by section 19. Likewise, the SOP need not specifically define what activities constitute direct as distinguished from indirect participation. The relevant inquiry is whether the individual personally participates in an institution's affairs, or whether the individual does so through another person or entity, i.e., "indirectly."

The final SOP adopts the standard that whether persons, other than institution-affiliated parties of an insured institution, are participants covered by section 19 depends upon their degree of influence or control over the management or affairs of an insured institution. It retains the definition of "person" set forth in the proposed SOP as not including corporations, firms or other business entities. Thus, section 19 would not apply to persons who are simply employees of a bank holding company, but would apply if those persons were in a position to influence or control the management or affairs of the insured institution. To the extent that the holding company's officers and directors have the power to define and direct the policies of the subsidiary insured institution, such persons would be deemed to be participants in the affairs of those subsidiaries, and therefore covered by section 19.

Similarly, directors and officers of affiliates, subsidiaries or joint ventures of an insured institution or its holding company will be covered if they are in a position to influence or control the management or affairs of the insured institution. In those cases in which such individuals exercise policymaking functions for the insured institution, they should be deemed "participants." For example, officers of an electronic data processing (EDP) affiliate would not typically exercise a controlling influence to the extent that the affiliate simply provides a processing service to the bank. On the other hand, if a mortgage banking affiliate sends loans to an insured institution that the institution is obligated to purchase, then the officers of the affiliate may be participants in the insured institution's affairs. Where an employee of an EDP service has access to sensitive bank records and the ability to manipulate data so as to influence or control the management or affairs of an insured institution, that person will be covered by section 19. The degree of such influence may be controlled by reliance upon the safeguards and internal controls put in place by the affiliate and the bank.

Insured depository institutions continue to out source increasing numbers of banking tasks. To the extent that independent contractors are utilized, an analysis similar to that for affiliates may be applied. Typically an independent contractor does not have a relationship with the insured institution other than the activity contracted for by the depository institution. Independent contractors are not considered institution-affiliated parties unless they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which result in the consequences set forth in 12 U.S.C. 1813(u). Those who do so, and who have been convicted of or entered pretrial diversion programs for covered offenses would, of course, be covered by section 19. In terms of participation, however, the typical independent contractor does not influence or control the bank's management or affairs. This would also be true of consultants who perform a specific defined task for the insured institution. Additionally, it has been determined that "person" within the context of section 19 means individuals, but not companies. This approach may eliminate coverage for many independent contractors. It would eliminate, for example, marketers of special promotions and similar independent contractors whose activity is not commonly thought to pose a risk to the operation of a financial institution. To the extent that any officer of such a company or any individual contractor attempts to use their position to influence or control the management or affairs of a financial institution, they would be covered as participants.

The FDIC is aware that an effort can be made to evade the coverage of section 19 by "converting" an employee to an independent contractor. In those cases, generally applicable standards of employment law will be used to identify such arrangements, and to find that the person is a "de facto" employee. This same analysis will be used where an individual is employed by the holding company simply to avoid section 19 coverage.

The FDIC believes that the approach adopted in the final SOP preserves the distinction between employees and independent contractors for contractual, regulatory and tax purposes, and avoids the criticism that the FDIC is imposing an excessive regulatory burden upon institutions without commensurate benefit. Furthermore, the FDIC expects that the relationship between an independent contractor and an insured institution is to be governed by a written contract, through which the insured institution may require typical safeguards such as warranties and bond coverage.

(2) "Ownership" and "Control"

Section 19 specifically prohibits a person subject to its coverage from owning or controlling an insured institution. The proposed SOP did not specifically define "own" or "control," although the accompanying Preamble indicated that the FDIC was using the definition of "control" set forth in Regulation Y (12 CFR Part 225) which the Board of Governors of the Federal Reserve System (Federal Reserve Board) uses to implement the Change in Bank Control Act (CBCA) (12 U.S.C. 1817(j)). The proposal stated that a controlling shareholder or a member of a control group subject to section 19 could not, without the prior written consent of the FDIC engage in the following conduct: (i) exercise any voting rights in any shares of stock of an insured institution or its holding company; (ii) own or control such shares of stock so as to result in controlling the management or policies of an insured institution; (iii) control such shares of stock so as to result in controlling the management or policies of an insured institution; (iv) solicit, procure, transfer, or attempt to transfer, vote, or attempt to vote any proxy, consent or authorization with respect to any voting rights in any insured institution; or (v) modify or set aside any voting agreement previously approved by the appropriate federal banking agency.

The FDIC received six comments regarding the issue of ownership and control-three from depository institutions; one from a state banking department; and two from trade associations. Most commenters supported the conclusion that "control" should have the same meaning as set forth in the CBCA. Generally, the commenters indicated that absent an influence on the operations of an insured operation, mere ownership should not impose a section 19 obligation, nor should the ownership of a *de minimis* interest in the outstanding shares of an institution.

As a general rule, since the 1990 Crime Control Act amendments, the FDIC has followed the interpretation found in the CBCA regarding "control." "Control" under the CBCA occurs where the person has the power to direct the management or policies of an institution (12 U.S.C. 1817(j)(8)(B)). The statute and the FDIC's implementing regulation (12 CFR Part 303) deem the power to vote 25 percent or more of a class of voting securities to constitute such control. In addition, the FDIC's regulation creates a presumption of control, i.e., that the person can direct management or policies of the institution, where the person owns, controls, or has the power to vote ten percent or more of the institution's voting securities if that person is the largest shareholder.

The FDIC agrees with the commenters that "own" must mean more than simply owning a few shares. In order to give meaning to the ownership prohibition contained in section 19, the FDIC will apply the 25 percent limitation regarding the power to vote shares to include an ownership limitation of 25 percent. The FDIC will also apply the ten percent limitation to ownership of voting shares where that person is the largest shareholder. Consequently, a person would be prohibited from owning or having the power to vote 25 percent or more of an institution's voting shares, or ten percent of those shares where that person is the largest shareholder. These standards would also apply to an individual acting in concert with others so as to have such ownership or control. The FDIC believes that this approach will avoid the absurd result of requiring a convicted person who owns one share or ten shares of stock in a large publicly traded insured depository institution from having to divest his or her ownership interest.

Absent the FDIC's consent, persons subject to the prohibitions of section 19 will be required to divest their ownership of shares above the foregoing limits. Section 19 does not contain specific statutory prohibitions regarding specific activities relating to the voting of stock. Therefore, the FDIC has decided not to incorporate into the final SOP any prohibitions on specific voting activities other than the aforementioned limitations regarding ownership, control, and participation.

It should be noted that while the Preamble accompanying the proposed

SOP referred to the Federal Reserve Board's Regulation Y (12 CFR Part 225) as enunciating the standards for "own" and "control," the FDIC has decided that use of its own regulations in this area would be more appropriate. Regulation Y has wide reaching attribution rules for stock ownership among family members. An attempt to restrict ownership or control of shares by family members simply because of a person's conviction raises significant due process issues that are best avoided, however, control of a convicted person's shares by family members may be precluded where such control is detrimental to the bank, based upon the facts in a particular case.

B. Standards for Determining Whether an Application Is Required

The Proposed SOP contained the requirement that an application seeking the consent of the FDIC prior to engaging in banking activities be submitted in all cases in which any adult or minor treated as an adult was convicted or entered into a pretrial diversion program with regard to a covered offense. As discussed more fully in section (5), below, based upon its experience in processing section 19 applications, and in light of comments received, the final SOP reflects the FDIC's determination that it will provide automatic approval and dispense with the application requirement in certain cases involving *de minimis* crimes.

(1) Convictions

The proposal required that there be a conviction of record, and excluded arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal. Under the proposed SOP, a conviction with regard to which an appeal is pending required an application until or unless reversed. The proposal stated that a conviction which has been expunged, or for which a pardon has been granted, required an application.

The FDIC received seven comments regarding the issue of expunged convictions—five from depository institutions; one from a law firm; and one from a trade association. The commenters overwhelmingly favored excluding expunged convictions from section 19's coverage. As the commenters pointed out, under most state laws, an expunged conviction is deemed not to have occurred, and is not a conviction "of record." Further problems arise regarding the ability of an institution to discover whether someone has an expunged criminal record, and in some states, laws prohibit and punish disclosure of information regarding expunged records.

Historically, the FDIC has taken the position that convictions which have been completely expunged are not covered by section 19. The FDIC proposed a change in that position in the proposed SOP based upon the rationale that the Crime Control Act amendments require a person who has entered into a pre-trial diversion or similar program to file a section 19 application. This requirement appears to create an anomalous result when compared with the FDIC policy that those with expunged convictions need not file.

Based upon the comments, however, and because it appears that expunged convictions do not constitute convictions of record, the final SOP excludes expunged convictions from the coverage of section 19. Furthermore, institutions have been advised in the past that expunged convictions were not covered by section 19. Excluding expunged convictions would avoid the significant practical problems of a change in policy which would require those previously allowed to work at institutions to now file section 19 applications. Therefore, the final SOP adopts the FDIC's current interpretation that persons with completely expunged convictions are not required to file section 19 applications.

(2) Pretrial Diversions

The proposed SOP defined a pretrial diversion as a program entry, as determined by relevant federal, state or local law, whether formal or informal, which is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other noncriminal or nonpunitive alternatives. The FDIC received two comments on the issue of what should constitute a "pretrial diversion program," one from a law firm and one from a trade association. Each made suggestions as to whether certain specific programs ought to be included in the definition.

The FDIC believes that it would be impractical to attempt to identify in the SOP all of the specific programs which might constitute pretrial diversion programs. As is the current practice, the final SOP states that the FDIC will continue to determine whether a program constitutes a pretrial diversion on a case-by-case basis. In addition, in 1990, the Crime Control Act amendments made pretrial diversion programs subject to section 19 for the first time. Persons working in financial institutions at the time of the 1990 amendments who had previously entered into a pre-trial diversion program would be unaware that they were suddenly prohibited from working in banking. In order to avoid the issue of retroactive application, and to provide a "bright line" test, the FDIC has decided to except pre-trial diversions entered before November 29, 1990, from section 19's coverage. In addition, since most offenses eligible for pre-trial diversion are relatively minor, and since only those offenses more than seven and a half years old would be excluded from coverage, the risk to financial institutions from this proposal is slight.

(3) Covered Offenses Involving Dishonesty or Breach of Trust

The proposed SOP indicated that for section 19 to apply, the conviction or program entry must be for a criminal offense involving dishonesty, breach of trust or money laundering. Under the proposal, "dishonesty" was defined as directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest. "Breach of trust" means a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

The proposed SOP made clear that all convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances required an application (drug offenses). The proposal indicated that a "controlled substance" shall mean those so defined by federal law. While the proposal acknowledged that use of a controlled substance does not per se constitute a covered offense, the circumstances of the offense may contain elements of dishonesty or breach of trust or money laundering, and that the FDIC would determine on a case-by-case basis whether to approve an application regarding a person convicted of such an offense.

The FDIC received three comments regarding the definitions of "dishonesty" and "breach of trust"—two from insured institutions and one from a law firm. The commenters requested clarification of what constitutes a conviction involving "dishonesty" and "breach of trust," and requested that the SOP contain a specific list of crimes to which section 19 will apply, or safe harbors to which it will not apply. Concern was expressed that crimes of violence may not be covered, while one expressed the view that all crimes are dishonest.

With regard to drug offenses, the FDIC received four comments-three from insured institutions and one from a bank holding company-all of which were generally unfavorable regarding the approach the proposal took regarding drug offenses. The commenters felt that no application should be required of those convicted of using or possessing drugs, citing concerns regarding laws pertaining to disabilities and rehabilitation. In addition, concern was expressed regarding the proposed case-by-case method of reviewing the underlying circumstances of each drug offense to determine whether an application should be approved.

After considering the comments, the FDIC has altered its approach in the final SOP. The FDIC has generally acknowledged that not all crimes are covered by section 19, and that many crimes involving violence do not have dishonesty and breach of trust as elements. The FDIC believes that whether a crime involves "dishonesty" or "breach of trust" must be determined from the statutory elements of the crime itself, rather than the factual circumstances surrounding a crime, and the final SOP adopts this approach. To do otherwise would require insured institutions and the FDIC to analyze the factual background of every conviction, including such offenses as disturbing the peace. For many convictions, records of a factual background are not available. All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application. A "controlled substance" shall mean those so defined by federal law.

(4) Youthful Offender Adjudgments

The proposed SOP indicated that an adjudgment by a court against a person as a "youthful offender" under any youth offender law, or any adjudgment as a "juvenile delinquent" by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudications are not considered convictions for criminal offenses.

The FDIC received three comments-all from insured institutions, which strongly favored the stated approach. Historically, the FDIC has followed the approach of exempting youthful offender adjudgments from the coverage of section 19, with no perceived ill effects upon institutions. Furthermore, it is questionable whether the institution or the FDIC would be able to obtain records regarding such adjudgments. Therefore, the final SOP adopts, without change, the position set forth in the proposed SOP.

(5) *De minimis* Offense

The proposed SOP required any person with a conviction or program entry concerning a covered offense to submit an application. The FDIC received six comments—four from insured institutions or holding companies, one from a law firm and one from a trade association—regarding whether there should be an exemption for a *de minimis* crime. All commenters favored an approach whereby a *de minimis* crime would not require an application, although there was no general consensus as to the precise definition of such offenses.

Suggestions were made that a *de minimis* offense should include any misdemeanor committed by a juvenile, any one-time crime of dishonesty or breach of trust where the amount of loss was small, and a single misdemeanor committed by an adult. Further, commenters suggested that there should be a distinction between felonies and misdemeanors, and consideration of the time that has elapsed since the conviction, a person's present integrity and the risk associated with the position sought. A list of the specific crimes or the factors which should be taken into account in determining whether an offense is *de minimis* was requested. An alternative suggestion was a streamlined approach with a shortened approval period based upon the level of risk the person's position presents to the institution.

Section 19 applies, without exception, to convictions for crimes involving dishonesty or breach of trust. The FDIC, therefore, must provide prior written consent before covered persons may participate in banking. However, based upon the comments, and in light of its experience in processing and approving many applications involving minimal offenses, the FDIC has determined to grant blanket approval, through the final SOP, to certain defined categories of offenses. Such offenses are considered to be of such a minimal nature and of such low risk that the affected person may be employed at any institution, in any position. The foregoing approach would have the advantage of addressing a large number of pretrial diversion applicants, since in most cases, the crimes involved in such programs are not serious ones which would involve risk to an insured institution.

The final SOP provides that approval is automatically granted and application will not be required where the covered offense is considered *de minimis*, because it meets the following criteria: there is only one conviction or program entry of record for a covered offense; the offense was punishable by imprisonment for a term of less than one year and/or a fine of less than $1000, and the individual did not serve time in jail; the conviction or program was entered at least five years prior to the application; and the offense did not involve an insured institution or insured credit union. The above factors generally encompass offenses that are less than felonies. This exception represents the FDIC's view that an individual should generally not be prohibited from participating in banking because of a singular offense of lesser consequence. The basic underlying premise of section 19 is to prevent risk to the safety and soundness of an insured institution or the interests of its depositors, and to prevent impairment of public confidence in the insured institution. We find it incongruous to accord blanket approval to individuals who have previously committed an offense against an insured institution or insured credit union, and an application therefore will be required in such cases. Any person who meets the foregoing criteria shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction or program entry to all insured institutions in the affairs of which he or she wishes to participate.

C. Procedures

The proposed SOP indicated in the section regarding procedures that section 19 imposes a duty upon the insured institution to make a reasonable inquiry regarding an applicant's history, which consists of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or program entry for a covered offense. It stated that an institution might believe that undertaking a minimal inquiry might not be necessary in certain circumstances, however, the FDIC believes that at a minimum, each insured institution should establish a screening process which provides the insured institution with information concerning any conviction or program entry pertaining to a job applicant. The

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proposed SOP provided examples of what would constitute a reasonable inquiry, including, the completion of a written employment application which requires a listing of all convictions and program entries; (2) fingerprinting and (3) periodic inquiries to determine whether a person has a conviction or program entry. The proposed SOP indicated that the foregoing were not requirements, and that the FDIC would look to the circumstances of each situation to determine whether the inquiry is reasonable.

The procedures set forth in the proposed SOP were that upon notice of a conviction or program entry, an application seeking the FDIC's consent prior to the person's participation must be filed. When an application is required, forms and instructions should be obtained from, and the application filed with, the appropriate FDIC Regional Director.

The proposed SOP stated that the application must be filed by an insured institution on behalf of a person, but contained an exception to this requirement for a shareholder seeking to exercise voting rights if the insured institution has refused to file an application on that person's behalf. Where a person currently employed by an insured institution is discovered to have a conviction or program entry, the proposed SOP allowed that, upon request, the Regional Director could grant a conditional approval pending the processing of the application.

Fourteen comments were received pertaining to whether the screening process, including the idea of fingerprinting, was burdensome—nine from depository institutions, one from a bank holding company, one from a law firm and three from trade associations. The comments were generally not favorable, or found the proposed SOP confusing about what was being required. One commenter took exception to the FDIC imposing any duty upon insured depository institutions for making a reasonable inquiry into whether a person has a conviction or program entry based upon the argument that section 19 imposes no duty to discover such offenses, it only demands action once the presence of a conviction becomes known. The FDIC believes that the commenter's approach does not comport with the intent of the law which is designed as a preventive measure to protect against risk to the safety and soundness of insured institutions and their depositors.

(1) Fingerprinting

The issue of fingerprinting generated more discussion than any other. It is apparent that fingerprinting as a recommended practice, even though explicitly not required in the SOP, is not welcomed by the banking community. The smaller banks, especially, appear to be opposed to the practice. They maintain that because of the smaller communities they serve, they are familiar with their applicants and view fingerprinting as an unnecessary burden. Many commenters expressed concern that a recommendation or guideline that fingerprinting is advocated would be interpreted as an industry standard, and by field examiners as mandatory.

Others feared that bankers would deem fingerprinting a requirement and feared liability for any loss which could have been prevented by fingerprinting. Others suggested that a written application listing previous convictions or program entries would suffice, but that the screening process must be coordinated with the standards in the institution's fidelity bond to avoid any loss of insurance. One commenter stated that the SOP should only contain minimum standards, and that institutions should be encouraged to develop even stricter standards. Others suggested restricting fingerprinting to high-risk positions, or using bonding or other companies to perform such screening. The remainder of the comments addressed the difficulty of obtaining criminal background information and fingerprints, the delay and cost inherent in fingerprinting, the burdensome impact of the process would have upon small institutions, and the need to ensure that requirement of criminal background checks was consistent with other laws which protect against disclosure of criminal or arrest information.

After considering the comments, the FDIC has decided not to address fingerprinting in the final SOP. Instead, the FDIC will allow each insured institution to determine what screening methods it will use, and will look to the circumstances of each situation to determine whether an inquiry was reasonable. The FDIC believes that at a minimum, each institution should have a screening process to uncover information regarding a job applicant's convictions and program entries, which would include, for example, a written application listing such convictions and program entries, although other alternatives may be appropriate. The final SOP reflects this guidance.

(2) Periodic Inquiries

Seven commenters addressed the issue of periodic inquiries. The majority of comments were not favorable, and indicated that using periodic inquiry to determine whether current employees were subject to recent convictions would be burdensome on institutions and that such an inquiry was not mandated by section 19. Others stated that periodic inquires on recent convictions were not useful because employees would be afraid of losing their jobs. Others stated that there are regular channels by which institutions learn about recent convictions or program entries by their employees other than having routine inquires. Alternatively it was suggested that periodic inquiries should be optional or limited to high-risk positions, only required at the beginning of employment or only conducted at lengthy intervals such as every ten years.

Similar to the analysis regarding fingerprinting, after considering the comments, the FDIC believes that whether periodic background checks are used should be optional, and that the major responsibility should be upon the individual to bring to the institution's attention any change in "conviction" status for purposes of section 19.

(3) Who May Be an Applicant?

The proposed SOP requires that an application be filed by an institution rather than an individual. This policy is based upon the rationale that in determining whether to approve a section 19 application, the FDIC must assess whether the person's participation in an insured institution constitutes a risk to the safety and soundness of the insured institution or its depositors or impairs public confidence in the institution. In making this determination, the FDIC has traditionally considered the position the person will occupy at the institution, the extent of the supervision of the person that the institution will provide, the size and condition of the institution and the fidelity bond coverage by the institution's bonding company. Where an individual is filing an application without institution sponsorship, the FDIC may not have the foregoing information available to it. Furthermore, an application may be filed by an individual who has no prospect of employment by an insured institution, and is merely seeking agency certification for potential employment. On the other hand, the FDIC is mindful that such a requirement may be unfair to an individual in certain circumstances. Therefore, the notice accompanying the proposed SOP sought comments whether the FDIC should change this longstanding policy.

There were ten comments on this issue-seven from depository institutions, one from a bank holding company and two from trade associations. Only one commenter believed that individuals should be permitted to file a section 19 application, although one indicated that independent contractors, if covered by section 19, might be allowed to file applications without bank sponsorship since the FDIC would be able to assess from the application what services the independent contractor provides for the financial institution.

The remaining comments were opposed to permitting an individual to file a section 19 application without institution sponsorship. The reasons generally were that insured institutions should maintain control over the process because they are in the best position to have available information to determine when section 19 applications should be submitted on behalf of an individual based upon the person's position and the risk to the institution. Further, the FDIC's resources should be available to handle section 19 applications filed by institutions on an expedited basis, and such handling should not be delayed because the FDIC is reviewing applications by individuals who may or may not have a legitimate interest in working for an insured institution. Another concern expressed was that if an individual filed an application without institution sponsorship and received approval for a particular position, the individual could later be employed in that position at another institution without the prior notice or consent of the FDIC.

After considering the comments, the FDIC has decided to maintain its requirement that an institution file a section 19 application on behalf of an individual. However, the FDIC is aware that many institutions will not file applications on behalf of a convicted individual under any circumstance. For those with relatively minor convictions this appears to be a harsh result, and the FDIC has attempted to lessen this harsh effect by adopting the de minimis exception discussed above. In addition, the FDIC is mindful that others may not fall within the de minimis exception, yet the institution filing requirement may result in a harsh result. Therefore, while the final SOP retains the institution filing requirement, it provides that an individual may seek a waiver of this requirement where substantial good cause for granting a waiver is shown. For example, a waiver is likely to be granted where the person requesting consent is a shareholder seeking to exercise voting rights and the insured institution has refused to file an application on his or her behalf. The FDIC expects that waivers will be granted on an infrequent basis, and only in truly meritorious cases.

(4) Conditional Approvals

The proposed SOP provided for a conditional approval by the Regional Director upon request, pending the processing of an application. Two comments received from depository institutions strongly supported this approach. At the time the proposed SOP was issued, the FDIC had not proposed a de minimis exception to filing. In light of the fact that under this new approach, the number of applications will decrease, the FDIC believes it will be able to act in an expedited manner on an application where necessary. Therefore, there is no provision for conditional approval in the final SOP.

D. Evaluation of Section 19 Applications

The proposed SOP stated that the essential criteria in assessing an application are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured institution, and whether the affiliation, ownership, control or participation by the person in the conduct of the affairs of the insured institution may constitute a threat to the safety and soundness of the insured institution or the interests of its depositors or threaten to impair public confidence in the insured institution. Factors listed as relevant to this determination were the conviction or program entry and the specific nature and circumstances of the covered offense; evidence of rehabilitation including the person's reputation since the conviction or program entry, the person's age at the time of conviction or program entry, and the time which has elapsed since the conviction or program entry; the position to be held or the level of participation by the person at an insured institution; the amount of influence and control the person will be able to exercise over the management or affairs of an insured institution; the ability of management of the insured institution to supervise and control the person's activities; the degree of ownership the person will have of the insured institution; the applicability of the insured institution's fidelity bond coverage to the person; the opinion or position of the primary Federal and/or state regulator; and any additional factors in the specific case that appear relevant.

The proposed SOP indicated that the foregoing criteria will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to its expiration date. The proposal stated that approval orders will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions, and that when deemed appropriate, approval orders may also be subject to the condition that the prior consent of the FDIC will be required for any proposed significant changes in the person's duties and/or responsibilities. Such proposed changes may, in the discretion of the Regional Director, require a new application. In situations in which an approval has been granted for a person to participate in the affairs of a particular insured institution and that person subsequently seeks to participate at another insured institution, approval does not automatically follow. In such cases, another application must be submitted. The proposed SOP also indicated in its introduction that some applications can be approved without an extensive review because the person will not be in a position to constitute any substantial risk to the safety and soundness of the insured institution. Persons who will occupy clerical, maintenance, service or purely administrative positions, generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured institution.

Only one comment was received, which requested that the FDIC define what constitutes a substantial change in duties so as to require a new application. The FDIC believes, however, that an institution should itself be aware whether a person's duties have changed to the extent that their influence and risk upon the institution would require a section 19 application.

The final SOP incorporates all of the standards and factors set forth in the proposed SOP. In addition, it addresses the policy regarding a waiver by stating that in cases in which a waiver of the institution filing requirement has been granted to an individual, approval of the application will be conditioned upon that person disclosing the presence of the conviction to all insured institutions in the affairs of which he or she wishes to participate. The FDIC believes this is essential to ensuring that institutions are aware of the potential risks to safety and soundness posed by their employees and participants, and are able to fully apprise their fidelity insurers of such risks.

The Board of Directors of the FDIC has rescinded two earlier policy statements regarding section 19—Consent to Service of Persons Convicted of Offenses Involving Dishonesty or Breach of Trust as Directors, Officers or Employees of Insured Banks (41 FR 42699 (Sept. 22, 1976)) and Applications Under Section 19 of the Federal Deposit Insurance Act (March 31, 1980), and adopted the following Statement of Policy for Section 19 of the FDI Act:

FDIC Statement of Policy for Section 19 of the FDI Act

Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) prohibits, without the prior written consent of the Federal Deposit Insurance Corporation (FDIC), a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. It imposes a ten-year ban against the FDIC's consent for persons convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the FDIC and court approval.

Section 19 imposes a duty upon the insured institution to make a reasonable inquiry regarding an applicant's history, which consists of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or program entry for a covered offense. The FDIC believes that at a minimum, each insured institution should establish a screening process which provides the insured institution with information concerning any convictions or program entry pertaining to a job applicant. This would include, for example, the completion of a written employment application which requires a listing of all convictions and program entries. The FDIC will look to the circumstances of each situation to determine whether the inquiry is reasonable. Upon notice of a conviction or program entry, an application seeking the FDIC's consent prior to the person's participation must be filed.

Section 19 applies, by operation of law, as a statutory bar to participation absent the written consent of the FDIC. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, a person is fit to participate in the conduct of the affairs of an insured institution without posing a risk to its safety and soundness or impairing public confidence in that institution. The burden is upon the applicant to establish that the application warrants approval.

A. Scope of Section 19

Section 19 covers institution-affiliated parties, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an insured institution. Therefore, all employees of an insured institution fall within the scope of section 19. In addition, those deemed to be de facto employees as determined by the FDIC based upon generally applicable standards of employment law, will also be subject to section 19. Whether other persons who are not institution-affiliated parties are covered depends upon their degree of influence or control over the management or affairs of an insured institution. For example, section 19 would not apply to persons who are merely employees of an insured institution's holding company, but would apply to its directors and officers to the extent that they have the power to define and direct the policies of the insured institution. Similarly, directors and officers of affiliates, subsidiaries or joint ventures of an insured institution or its holding company will be covered if they are in a position to influence or control the management or affairs of the insured institution. Those who exercise major policymaking functions of an insured institution would be deemed participants in the affairs of that institution and covered by section 19. Typically, an independent contractor does not have a relationship with the insured institution other than the activity for which the insured institution has contracted. Under 12 U.S.C. 1813(u), independent contractors are institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an insured institution. In terms of participation, an independent contractor who influences or controls the management or affairs of the insured institution, would be covered by section 19. In addition, "person" for purposes of section 19 means an individual, and does not include a corporation, firm or other business entity.

Section 19 specifically prohibits a person subject to its coverage from owning or controlling an insured institution. For purposes of defining "control" and "ownership" under section 19, the FDIC has adopted the definition of "control set forth in the Change in Bank Control Act (12 U.S.C. 1817(j)(8)(B)). A person will be deemed to exercise "control" if that person has the power to vote 25 percent or more of the voting shares of an insured institution (or ten percent of the voting shares if no other person has more shares) or the ability to direct the management or policies of the insured institution. Under the same standards, person will be deemed to "own" an insured institution if that person owns 25 percent or more of the insured institution's voting stock, or ten percent of the voting shares if no other person owns more. These standards would also apply to an individual acting in concert with others so as to have such ownership or control. Absent the FDIC's consent, persons subject to the prohibitions of section 19 will be required to divest their ownership of shares above the foregoing limits.

B. Standards for Determining Whether an Application Is Required

Except as indicated in paragraph (5), below, an application must be filed where there is present a conviction by a court of competent jurisdiction for a covered offense by any adult or minor treated as an adult, or where such person has entered a pretrial diversion or similar program regarding that offense.

(1) Convictions. There must be present a conviction of record. Section 19 does not cover arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal. A conviction with regard to which an appeal is pending will require an application until or unless reversed. A conviction for which a pardon has been granted will require an application. A conviction which has been completely expunged is not considered a conviction of record and will not require an application.

(2) Pretrial Diversion or Similar Program. Program entry, whether formal or informal, is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other noncriminal or nonpunitive

alternatives. Whether a program constitutes a pretrial diversion is determined by relevant federal, state or local law, and will be considered by the FDIC on a case-by-case basis. Program entries prior to November 29, 1990, are not covered by section 19.

(3) Dishonesty or Breach of Trust. The conviction or program entry must be for a criminal offense involving dishonesty, breach of trust or money laundering. "Dishonesty" means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest. "Breach of trust" means a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the crime itself. All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application.

(4) Youthful Offender Adjudgments. An adjudgment by a court against a person as a "youthful offender" under any youth offender law, or any adjudgment as a "juvenile delinquent" by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudications are not considered convictions for criminal offenses.

(5) *De minimis* Offenses. Approval is automatically granted and an application will not be required where the covered offense is considered *de minimis*, because it meets all of the following criteria:

- There is only one conviction or program entry of record for a covered offense;
- The offense was punishable by imprisonment for a term of less than one year and/or a fine of less than $1000, and the individual did not serve time in jail;
- The conviction or program was entered at least five years prior to the date an application would otherwise be required; and
- The offense did not involve an insured depository institution or insured credit union.

Any person who meets the foregoing criteria shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction or program entry to all insured institutions in the affairs of which he or she intends to participate.

C. Procedures

When an application is required, forms and instructions should be obtained from, and the application filed with, the appropriate FDIC Regional Director. The application must be filed by an insured institution on behalf of a person unless the FDIC grants a waiver of that requirement. Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown.

D. Evaluation of Section 19 Applications

The essential criteria in assessing an application are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured institution, and whether the affiliation, ownership, control or participation by the person in the conduct of the affairs of the insured institution may constitute a threat to the safety and soundness of the insured institution or the interests of its depositors or threaten to impair public confidence in the insured institution. In determining the degree of risk, the FDIC will consider:

(1) The conviction or program entry and the specific nature and circumstances of the covered offense;

(2) Evidence of rehabilitation including the person's reputation since the conviction or program entry, the person's age at the time of conviction or program entry, and the time which has elapsed since the conviction or program entry;

(3) The position to be held or the level of participation by the person at an insured institution;

(4) The amount of influence and control the person will be able to exercise over the management or affairs of an insured institution;

(5) The ability of management of the insured institution to supervise and control the person's activities;

(6) The degree of ownership the person will have of the insured institution

(7) The applicability of the insured institution's fidelity bond coverage to the person;

(8) The opinion or position of the primary Federal and/or state regulator; and (9) Any additional factors in the specific case that appear relevant.

The foregoing criteria will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to its expiration date.

Some applications can be approved without an extensive review because the person will not be in a position to constitute any substantial risk to the safety and soundness of the insured institution. Persons who will occupy clerical, maintenance, service or purely administrative positions, generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured institution. Approval orders will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions. In cases in which a waiver of the institution filing requirement has been granted to an individual, approval of the application will be conditioned upon that person disclosing the presence of the conviction to all insured institutions in the affairs of which he or she wishes to participate. When deemed appropriate, approval orders may also be subject to the condition that the prior consent of the FDIC will be required for any proposed significant changes in the person's duties and/or responsibilities. Such proposed changes may, in the discretion of the Regional Director, require a new application. In situations in which an approval has been granted for a person to participate in the affairs of a particular insured institution and subsequently seeks to participate at another insured institution, approval does not automatically follow. In such cases, another application must be submitted.

By order of the Board of Directors.

Dated at Washington, DC, this 17th day of November, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–31915 Filed 11–30–98; 8:45 am]

BILLING CODE 6714–01–P

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FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 15, 2998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Elmo Greer, Phyllis Greer Eversole; Elmo Lee Greer; Marsha Greer; Jason Greer; Randell Greer; Rex Greer; Peggy Greer; Verdie Greer; Warren Greer; Don L. Young; all of London, Kentucky, and Jerry D. Greer; Carolyn Greer; Lanny Greer, all of East Bernstadt, Kentucky, to retain voting shares of Cumberland Valley Financial Corporation, London, Kentucky, and thereby indirectly retain voting shares of Cumberland Valley National Bank & Trust Company, London, Kentucky.

2. Margaret C. Fouts, and the Estate of John C. Fouts, both of Lacey, Washington; G.W. Griffin, Jr.; George William Griffin; W.R. Griffin; Winston Robert Griffin; and Laurel Grocery Co.; all of London, Kentucky; Linda Griffin, Lexington, Kentucky; Margaret Griffin, Atlanta, Georgia; Martha Griffin, Naples, Florida; Marynell G. Halbleib, and Ross Halbleib, both of Corbin, Kentucky; Elizabeth Griffin McCoy, Hal McCoy, both of Hopkinsville, Kentucky; and Gale G. Warburton, Wilmore, Kentucky; all to retain voting shares of Cumberland Valley Financial Corporation, London, Kentucky, and thereby indirectly retain voting shares of Cumberland Valley National Bank & Trust Company, London, Kentucky.

Board of Governors of the Federal Reserve System, November 25, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31978 Filed 11–30–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Area Bancshares Corporation, Owensboro, Kentucky; to acquire 100 percent of the voting shares of Alliance Bank, Somerset, Kentucky. This action will take place following the conversion of Alliance Bank, FSB, Somerset, Kentucky, from a federal savings bank, to a state nonmember bank.

2. First Security Bancorp, Searcy, Arkansas; to acquire an additional 75.88 percent, for a total of 100 percent, of the voting shares of Baxter County Bancshares, Inc., Mountain Home, Arkansas, and thereby indirectly acquire Peoples Bank and Trust Company, Mountain Home, Arkansas.

Board of Governors of the Federal Reserve System, November 25, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31977 Filed 11–30–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Superior Financial Holding Corporation, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial State Bancorporation, Two Harbors, Minnesota, and thereby indirectly acquire Commercial State Bank of Two Harbors, Two Harbors, Minnesota.

In connection with this application, Applicant also has applied to acquire Commercial State Insurance Agency, Inc., Two Harbors, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

In addition, Applicant has also applied to engage directly in extending credit and servicing loans, pursuant to 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31848 Filed 11–30–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Mellon Financial Markets, Inc., Pittsburgh, Pennsylvania, in underwriting and dealing in all types of debt and equity securities on a limited basis, pursuant to the conditions set forth in 12 CFR 225.200; in agency transaction services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; in investment transactions as principal, pursuant to § 225.28(b)(8) of Regulation Y; and in providing financial and investment advice, pursuant to § 225.28(b)(6) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Philippine Commercial International Bank, Manila, Philippines; to engage *de novo* through its subsidiary, PCI Express Padala (Hawaii), Honolulu, Hawaii (in organization) in money remittance activities. See, *Philippine Commercial International Bank*, 77 Fed. Res. Bull. 270 (1991); *Bergen Bank A/S*, 76 Fed. Res. Bull. 457 (1990); and *Norwest Corporation*, 81 Fed. Res. Bull. 974 (1995).

Board of Governors of the Federal Reserve System, November 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31847 Filed 11–30–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, December 7, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 27, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32144 Filed 11–27–98; 3:44 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information or respondents, including through the use of automated collection techniques or other forms of information technology.

Title and Description of Information Collection: Multi-site Evaluation of the Welfare-to-Work Grants Program—Baseline Forms—NEW—As required by the Balanced Budget Act of 1997, DHHS is planning a four-year project to evaluate the effectiveness of welfare-to-work initiatives undertaken through competitive and formula grants awarded by the US Department of Labor. DHHS' Office of the Assistant Secretary for Planning and Evaluation, in conjunction with DoL and the US Department of Housing and Urban Development (HUD), has designed an evaluation that will involve several rounds of data collection from grantees and grant program participants. The information collection instruments in this request for OMB approval consist of a sample intake form, a contact information form, and a study participation consent form to be used to gather baseline and administrative information on study participants.

Respondents: Individuals, State and Local Governments, Businesses or Other For-profit Organizations, Not-for-profit Institutions; Burden Information for the Intake Form—*Number of Respondents:* 10,000; *Number of Responses per*

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Respondent: one; *Average Burden per Response:* 5 minutes; *Total Burden for Intake Form:* 830 hours—Burden Information for the Contact Information Form—*Number of Respondents:* 10,000; *Number of Responses per Respondent:* one; *Average Burden per Response:* 3 minutes; *Total Burden for Contact Information Form:* 500 hours—Burden Information for the Consent Form—*Number of Respondents:* 10,000; *Number of Responses per Respondent:* one; *Average Burden per Response:* 2 minutes; *Total Burden for Consent Form:* 330 hours. Total Burden: 1,660 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: November 23, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–31863 Filed 11–30–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Health Impact of Chemical Exposure During the Gulf War: A Research Planning Conference

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), in coordination with the Office of Public Health and Science (Department of Health and Human Services), the National Institutes of Health, and the Agency for Toxic Substances and Disease Registry announces the following meeting:

Name: The Health Impact of Chemical Exposures During the Gulf War: A Research Planning Conference.

Times and Dates: 8 a.m.–9 p.m., February 28, 1999. 8 a.m.–10 p.m., March 1, 1999. 8 a.m.–12 noon, March 2, 1999.

Place: Crowne Plaza Hotel—Atlanta Airport, 1325 Virginia Avenue, Atlanta, Georgia 30344. Telephone 404/768–6660.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 500 people.

Purpose: The purpose of this conference is to provide a forum for broad public input into the development of a multi-year research plan for investigating the relationship between chemical exposures during the Gulf War and illnesses affecting Gulf War veterans.

Matters To Be Discussed: Agenda items include a discussion of the current research findings on the health impact of the Gulf War; a panel discussion of the experience of Gulf War veterans; possible health outcomes of low level chemical exposures; research and clinical findings regarding multiple chemical sensitivity among Gulf War veterans and civilian populations; possible mechanisms of action of chemical exposures; methodological considerations in studying the health impact of chemical exposures during the Gulf War.

Concurrent workgroups will be held to develop research recommendations in the areas of pathophysiology/etiology of illnesses among Gulf War veterans; the most appropriate methods for assessing and diagnosing the health impact of chemical exposures; the most appropriate treatment approaches; and the prevention of similar illnesses in future military deployments.

There will be a special Veterans Forum on Sunday, February 28, 1999 at 7:00 p.m. This will serve as an opportunity for veterans to provide input regarding research priorities. In addition, a social is scheduled for 8:00 p.m. on Monday, March 1, 1999. Additional information and registration material is available at our website: http://www.cdc.gov/nceh/meetings/1999/gulfwar/.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Phillip M. Talboy, Deputy Chief, Veterans' Health Activity Working Group, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), m/s F–28, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724. Telephone 770/488–3546, e-mail,pmt0@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 24, 1998.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–31908 Filed 11–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84G–0218]

American Feed Industry Association; Withdrawal of Generally Recognized as Safe (GRAS) Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of the petition (GRASP MF–3891) proposing affirmation that selenium (as sodium selenite or selenate) is generally recognized as safe (GRAS) when used in animal feeds as a nutritional supplement in accordance with current good manufacturing and feeding practices. The petition also proposes removal of the selenium food additive regulation.

FOR FURTHER INFORMATION CONTACT: Sharon A. Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6657.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 29, 1984 (49 FR 26814), FDA announced that a GRAS affirmation petition (GRASP MF–3891) had been filed by American Feed Manufacturers Association, Inc., 1701 North Fort Myer Dr., Arlington, VA 22209. The American Feed Manufacturers Association, Inc., has since changed its name and address to American Feed Industry Association, 1501 Wilson Blvd., suite 1100, Arlington, VA 22209. The petition proposed to: (1) Amend the regulations for affirmation of GRAS status in part 582 (21 CFR part 582) of Subpart F—Nutrients and/or Dietary Supplements to affirm that selenium (as sodium selenite or selenate) is GRAS when used in animal feeds as a nutritional supplement in accordance with current good manufacturing and feeding practices and (2) remove the selenium food additive regulation at 21 CFR 573.920. The American Feed Industry Association has withdrawn the petition without prejudice to a future filing.

Dated: November 5, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–31853 Filed 11–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health; Office of the Director; Notice of Call for Nominations for the Director's Council of Public Representatives

The National Institutes of Health (NIH), the Federal government's primary agency for supporting and conducting medical research leading to the improvement in the nation's health, has established a new national advisory council—the Director's Council of Public Representatives (COPR). The Chair of the COPR is the Director of the National Institutes of Health. This notice lays out a process for the selection of members of the first COPR and seeks nominations.

Background

On September 23, 1998, the NIH Director chaired a meeting on public participation in NIH activities (FR Doc. 98–24463 Filed 9–10–98; 8:45 a.m.). At the meeting, 23 individual public participants invited by the NIH discussed future activities and responsibilities of the proposed NIH Director's Council of Public Representatives (COPR), which will serve as a forum for discussing issues and concerns and exchanging viewpoints that are important to NIH policies, programs, and research priorities. The individual participants at the meeting also discussed the processes, mechanisms, and criteria that should be used for identifying appropriate candidates to serve on the COPR. A notice about the creation of the COPR was published in the **Federal Register** on November 17, 1998 (FR Doc. 98–30695 Filed 11–16–98; 8:45 a.m.).

The COPR will help bring to NIH the concerns and interests of the many external publics that have a stake in the agency's activities, programs, policies, and research. In addition to serving as a forum, the COPR will assist the NIH in enhancing the participation of the public in myriad NIH activities that have an impact upon the public, in increasing public understanding of the NIH and its programs, and in bringing important matters of public interest forward for discussion in public settings.

The COPR will consist of up to 20 individuals who have an interest in the NIH's mission. The NIH will bring together these individuals from diverse backgrounds approximately twice each year, enabling them to interact directly with NIH leaders on a wide range of programs and issues. In addition to these two meetings annually, the COPR may suggest other activities, subject to approval by the Chair of the COPR, the Director of the NIH. Members of the first COPR will serve one, two, or three-year terms. In subsequent years, members will serve three-year terms.

Eligibility Requirements for Individual Members

To serve on the COPR, an individual must meet the following *minimum* eligibility requirements:

- Have some interest in the work of the NIH, for example, as a patient or family member of a patient; a health care professional; a member of a patient advocacy group; an individual who works as a volunteer in the health field; a scientist or a student of science; a communicator in health, medicine, or science; an individual in public service, academia, or in a professional society touching the medical field. These examples are not meant to limit nominations to those listed—any member of the public with special interests in the NIH may be nominated or may nominate themselves.
- Be in a position (formally or informally) to communicate regularly with the broader public or segments of the public about the activities of the COPR and the NIH.

Another essential requirement is a commitment to participating fully in activities of the COPR, including possibly in subcommittee activities that may take time in addition to meeting attendance. In addition, members—while participating in COPR activities—will have to agree to subordinate disease-specific or program-specific interests to broader, cross-cutting matters of importance to the NIH and its commitment to public representation. These additional requirements will not be used in the initial screening of nominees, but will be assessed as part of a more in-depth evaluation of qualified candidates.

A. Criteria for Evaluating Individual Candidates

Nominees who meet the minimum eligibility requirements will be further assessed on the following criteria:

1. Interest in NIH's research, programs, activities, and policies broadly, and some understanding of, or familiarity with, the NIH mission and medical science.
2. Ability to communicate effectively.
3. Ability to consider broad issues and think "globally," beyond narrow personal or professional interests.
4. Ability to contribute to an effective group process (e.g., cooperative, constructive, flexible, innovative).
5. Leadership ability (members of the COPR are not required to hold a formal leadership position within any organized group, but must have leadership skills).
6. Understanding of, and ability to express or represent, a "public" view of issues.
7. Ability to identify a problem, analyze it, and put forth solutions.

B. Characteristics of the COPR as a Group

In addition to the criteria for individual candidates, the following characteristics of the COPR as a group are intended to ensure that it reflects the breadth and diversity of the publics interested in the NIH:

1. Multi-cultural diversity.
2. A broad spread across the various "publics" interested in the NIH (see examples cited in the minimum eligibility requirements above).
3. Representation of the medically underserved (examples might include the medically uninsured or underinsured, people who for various reasons do not have adequate access to good medical care, and people who do not take advantage of available medical services).
4. A range of organizations (if applicable), local/regional and national.
5. Men and women.
6. Age diversity.
7. Geographic diversity (rural/urban mix; nationwide spread).

Screening, Scoring and Review Process

After nominees are screened for basic eligibility they will be reviewed and scored in terms of the criteria for evaluating individual candidates (as listed in section A.1–7) by external people familiar with the responsibilities of the COPR. A list of highly qualified candidates who reflect balance and diversity of representation will be forwarded to the Director of NIH for selection of COPR members. The Director may determine to interview candidates (possibly in groups) prior to final selection.

Nomination Process

The call for nominations is being disseminated through this **Federal Register** notice and through ancillary distribution to a broad range of groups, including national organizations, to encourage nominations of candidates reflecting the diversity sought for the COPR.

Nominations may come from organizations or from individuals. Self-nominations will be accepted. Interviews may be conducted with the most qualified candidates during the selection process.

Each nomination package must include:

1. A brief cover letter stating why the individual nominated wants to be a member of the COPR and comments about what they can contribute to fulfilling the mission of the COPR. This letter should address the individual's particular interests in the work of the NIH. Because the COPR will represent the varied publics served by NIH, it will be important to include information about the public, or segments of the public, with which the nominee would communicate, i.e., describe the group briefly in terms of geographic location, age, gender, ethnicity, whether or not the group includes the medically

underserved, and if it is local, regional, or national (for guidance, see characteristics of the COPR and minimum eligibility requirements above).

2. Brief comments relevant to *each* of the 7 criteria cited above under A. 1–7. All 7 criteria should be addressed in no more than 3 pages.

3. Two letters of recommendation from individuals familiar with the nominee (these individuals may be contacted during the selection process).

4. A statement of assurance that, if selected, the individual will: (a) agree to participate fully in activities of the COPR, and (b) subordinate individual disease-specific or program-specific interests to broader, cross-cutting matters of importance to the NIH and its commitment to public representation.

5. *If the nomination is from a third party,* verification that the individual nominated is cognizant that he or she is being nominated and wishes to be considered for membership on the COPR.

The items noted above in "Nomination Process" (1–5) should be mailed to: Palladian Partners, Inc., Call for Nominations (COPR), 7315 Wisconsin Avenue, Suite 440W, Bethesda, Maryland 20814. Nominations must be postmarked by the January 15, 1999, closing date. Incomplete or late nomination packages will not be considered. If you have any questions, please call the NIH Office of Communications [and Public Liaison] at the National Institutes of Health: (301) 496–4461.

Final selections will be made by the NIH Director. The schedule calls for contacting selected members in February 1999. The first COPR meeting is planned for late April 1999.

Dated: November 19, 1998.

Anne Thomas,

Associate Director for Communications, NIH.

[FR Doc. 98–31919 Filed 11–30–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Opportunity for a Cooperative Research and Development Agreement (CRADA) to Develop Eosinophil-Derived Neutralizing Agent (EDNA) to Treat Infections in Children and the Elderly Caused by Respiratory Syncytical Virus and Parainfluenza Virus

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the National Institutes of Health (NIH) is seeking capability statements from parties interested in entering into a Cooperative Research and Development Agreement (CRADA) to develop eosinophil-derived neutralizing agent (EDNA) for the treatment of infections in children and/or the elderly caused by respiratory syncytical virus (RSV) and parainfluenza virus (PIV). RSV and PIV are medically the most important single-stranded enveloped RNA viruses; infections caused by these viruses hospitalize over 100,000 infants per year in the U.S.

EDNA is the major eosinophil ribonuclease. Recombinant human EDNA is envisioned as an agent for direct inhalation therapy in patients with established RSV or PIV bronchiolitis, in those with a high index of suspicion, and as prophylactic therapy in children with predisposing conditions (prematurity, bronchopulmonary, dysplasia, congenital heart disease, and immunodeficiency).

Recombinant human EDNA has been produced in bacterial and baculovirus expression systems and is not toxic to respiratory epithelial cells. ENDA is a soluble and thermostable low molecular weight protein not requiring demanding conditions for storage or administration. *In vitro* experiments have shown it to have potent antiviral activity against RSV (Domachowske, JB et al. 1998. J. Infect. Dis. 177:1458–1464). Initial studies in the Balb/C mouse model of RSV infection support its effectiveness against this virus. This project is part of the study of ribonucleases and host defense in the Laboratory of Host Defenses (LHD), Division of Intramural Research, NIAID.

DATES: Only written capability statements received by the NIAID on or before March 1, 1999 will be considered.

ADDRESSES: Capability statements should be submitted to Dr. Michael R. Mowatt, Office of Technology Development, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 31 Center Drive MSC 2137, Building 31, Room 3B62, Bethesda, MD 20892–2137; Tel: 301/496–2644, Fax: 301/402–7132; Electronic mail: mmowattanih.gov.

SUPPLEMENTARY INFORMATION: Under the CRADA the production of biologically active recombinant human EDNA will be optimized and the agent evaluated in a series of preclinical studies in animals as well as initial safety testing in humans. Positive outcomes of these studies will indicate continued clinical development aimed at supporting regulatory approval of a product to be labeled for use in children and/or the elderly. The Public Health Service (PHS) has filed patent applications both in the U.S. and internationally related to this technology. Notice of the availability of the patent application for licensing was first published in the **Federal Register** (Vol. 62, No. 219, page 60909) on November 13, 1997.

NIAID's principal investigator has extensive experience with recombinant technology as applied to ribonucleases, their purification and testing. The Collaborator in this endeavor is expected to assist NIAID in evaluating its current system for producing recombinant EDNA and to develop and optimize an alternative expression system, if necessary, to manufacture sufficient quantities of the product for preclinical testing in animals and initial safety studies in humans. The Collaborator must have experience in the manufacture of recombinant protein products according to applicable FDA guidelines and Points to Consider documents to include Good Manufacturing Procedures (GMP). In addition, it is expected that the Collaborator would provide funds to supplement the LHD's research budget for the project and to support the preclinical and initial human testing.

The capability statement should include detailed descriptions of: (1) Collaborator's expertise in the expression of recombinant proteins, (2) Collaborator's ability to manufacture sufficient quantities of the product according to FDA guidelines and Points to Consider documents, (3) the technical expertise of the Collaborator's principal investigator and laboratory group in preclinical safety testing (e.g., expertise in *in vitro* and *in vivo* toxicity and pharmacology studies) and initial human safety studies, and (4) Collaborator's ability to provide adequate funding to support preclinical and initial human safety studies required for marketing approval.

Dated: November 17, 1998.

Mark Rohrbaugh,

Director, Office of Technology Development, NIAID.

[FR Doc. 98–31920 Filed 11–30–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 1998.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 3, 1998.

Time: 11:00 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31926 Filed 11–30–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel. A contract proposal concerning the use of 2-deoxyglucose as an anti-aging agent.

Date: December 11, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 7201 Wisconsin, Suite 502C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31921 Filed 11–30–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 9, 1998.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31922 Filed 11–30–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications, and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 4, 1998.

Time: 10:30 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C—26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH

[FR Doc. 98–31923 Filed 11–30–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 4, 1998.

Open: 8:00 AM to 12:00 PM.

Agenda: For the review of intramural research programs and scientific presentations.

Place: NICHD Conference Room, Building 31, Room 2A52, Bethesda, MD 20892.

Closed: 1:00 PM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: NICHD Conference Room, Building 31, Room 2A52, Bethesda, MD 20892.

Contact Person: Igor B. Dawid, MD, Acting Scientific Director, NICHD, Division of Intramural Research, National Institutes of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31924 Filed 11–30–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research. National Advisory Board for Medical Rehabilitation Research—December Meeting.

Date: December 1, 1998.

Time: 7:30 AM to 5:00 PM.

Agenda: A report on fiscal issues concerning the NCMRR and NICHD; (2) reports on the program activities of the Center; (3) a discussion of general priority areas of research for the Center; and (4) a discussion of support for medical rehabilitation research by government agencies.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mary Ellen Cheung, PhD, Chief, Biological Sci. & Career Dev. Prog., National Ctr. for Medical Rehabilitation Research, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 2A03, Bethesda, MD 20892 (301) 402–2242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: November 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31925 Filed 11–30–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in December 1998.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: December 14–16, 1998.

Place: Hyatt Regency Hotel, Diplomat/Ambassador Room, One Bethesda Metro Center, Bethesda, MD 20814.

Closed: December 14–15, 1998, 8:30 a.m.–5:00 p.m., December 16, 1998, 8:30 a.m.–adjournment.

Panel: Substance Abuse and Mental Health Services Administration Knowledge Dissemination Conference Grants PA 98–090.

Contact: Peggy Thompson, Room 17–89, Parklawn Building, Telephone: 301–443–9912 and FAX: 301–443–3437.

Dated: November 24, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–31864 Filed 11–30–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in December 1998.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Dates: December 2, 1998, 2:00 p.m.–4:00 p.m.

Place: Parklawn Building, Room 17–89—Telephone Conference, 5600 Fishers Lane, Rockville, Maryland 20852

Closed: December 2, 1998 2:30 p.m.–4:00 p.m.

Panel: FEMA—The Del Rio Flood Recovery Project

Contact: Sarah Silverman, Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–6092 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: November 24, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–31865 Filed 11–30–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4430–D–01]

Order of Succession

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Deputy Secretary for the Department of Housing and Urban Development designates the Order of Succession for the Office of Assistant Secretary for Policy Development and Research, and revokes all prior Orders of Succession for this office.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: John P. Opitz, Assistant General Counsel for Procurement and Administrative Law, Department of Housing and Urban Development, Room 10176, 451 7th Street, S.W., Washington, D.C. 20410, (202) 708–0622. (This is not a toll-free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (Toll-free).

SUPPLEMENTARY INFORMATION: The Deputy Secretary for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office.

Accordingly, the Deputy Secretary designates the following Order of Succession:

Section A. Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office of Assistant Secretary for Policy Development and Research, the following are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy Assistant Secretary for Policy Development;

(2) Deputy Assistant Secretary for Research, Evaluation, and Monitoring;

(3) General Deputy Assistant Secretary;

(4) Deputy Assistant Secretary for Economic Affairs.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Revoked

The Order of Succession revokes all prior Orders of Succession of the Office of Assistant Secretary for Policy Development and Research.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: November 19, 1998

Saul Ramirez,

Deputy Secretary.

[FR Doc. 98–31943 Filed 11–30–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3918–N–17]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of a Computer Matching Program—HUD and Department of Justice (DOJ).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Department of Justice (DOJ) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with DOJ's debtor files. The CAIVRS data base now includes delinquent debt information from the Departments of Agriculture, Education and Veterans Affairs and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government. Before granting a loan, a lending agency and/or an authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and debtor files of the DOJ and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: Effective date: Computer matching is expected to begin 40 days after publication of this notice in the **Federal Register** unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later. Comments due by: December 31, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION AND FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–2374. (This is not a toll-free number.)

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Diane J. Watson, Debt Collection Management, Department of Justice, 10th and Constitution Avenue, NW, Washington, DC 20530. Telephone number (202) 514–5343. [This is not a toll-free number.]

REPORTING: In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

AUTHORITY: The matching program will be conducted under the authority of 28 U.S.C. 2301(e) (section 3611 of the Federal Debt Collection Procedures Act of 1990, Pub. L. 101–647), and Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs.

OBJECTIVES TO BE MET BY THE MATCHING PROGRAM: By identifying those individuals or corporations against whom the DOJ has filed a judgment, the Federal Government can expand the prescreening search of their loan applicants to further avoid lending to applicants who are credit risks.

RECORD TO BE MATCHED: HUD will utilize its system of records entitled, Accounting Records, HUD/DEPT–2. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and coborrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAICVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans—Delinquent/Dafault.

The DOJ will provide HUD with its debtor files contained in its system of records entitled, Debt Collection Management System, JUSTICE/JMD–006. HUD is maintaining DOJ's records only as a ministerial action on behalf of DOJ, not as a part of HUD's HUD/DEPT–2 system of records. DOJ's data contain information on individuals or corporations who have defaulted on Federal judgments. The DOJ will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for DOJ's data.

NOTICE PROCEDURES: HUD will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the DOJ will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine loan applicant's credit status with the Federal Government.

CATEGORIES OF RECORDS/INDIVIDUALS INVOLVED: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statement, records of foreclosures, and Federal judgment liens.

Categories of individuals include: Former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, rehabilitation loan debtors who are delinquent or in default on their loan, and individuals or corporations against whom judgments have been filed by DOJ.

PERIOD OF THE MATCH: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 40 days from the date this notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: November 23, 1998.

Leslie H. Graham, Jr.

Deputy Director, Office of Information Technology.

[FR Doc. 98–31944 Filed 11–30–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Deadline for Submitting Completed Applications to Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2000 or Calendar Year 2000

AGENCY: Office of Self-Governance, Office of the Secretary, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 1999, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2000 or calendar year 2000.

DATES: Completed application packages must be received by the Director, Office of Self-Governance by March 1, 1999.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2548, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW, Mail Stop 2548, Washington, DC 20240, 202–219–0240.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208), the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into an annual written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in an area and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30, fiscal year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 fiscal year need to be signed and submitted by October 1.

Background

On February 15, 1995, an interim rule was published in the **Federal Register** announcing the criteria for tribes to be included in an applicant pool and the establishment of the selection process for tribes/consortia to negotiate agreements pursuant to the Tribal Self-Governance Act of 1994. This interim rule was added to Title 25 of the Code of Federal Regulations at part 1001 of Chapter VI. While it may be changed by later rulemaking, the Act stipulates that the lack of promulgated regulations will not limit its effect. It should be noted that a proposed rulemaking was negotiated between tribal and Federal members of a self-governance negotiated rulemaking committee and published in the **Federal Register** on February 12, 1998, for review and comment. Comments on the proposed rulemaking have been received. Final rules are being negotiated by the self-governance negotiated rulemaking committee and are not expected to be promulgated before spring 1999.

Purpose of Notice

The interim rules established at 25 CFR 1001.1 to 1001.5 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2000 and calendar year 2000. Applicants should be guided by the requirements in 25 CFR 1001.1 to 1001.5 in preparing their applications. Copies of the interim rules published in the **Federal Register** on February 15, 1995, may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2000 or calendar year 2000 must respond to this notice, except for those which are (1) currently involved with negotiations with the Department; (2) one of the 66 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

The Director's decision on the actual number of tribes that will enter negotiations will be made at a later date. Tribes already in the applicant pool will retain their existing ranking with tribes entering the applicant pool under these rules receiving a lower ranking. Being in the applicant pool will not guarantee that a tribe will actually be provided the opportunity to negotiate in any given year. However, it does mean that a tribe will not be passed over by a tribe with a lower ranking in the applicant pool or by a tribe not in the applicant pool, with the exception of a tribe already in the negotiation process.

For example, if the Department determines that five tribes will be afforded the opportunity to negotiate self-governance agreements for fiscal year 2000 and calendar year 2000, the five tribes with the highest rankings would be notified and negotiations would be scheduled. The tribe ranked sixth on the list would then have the highest ranking to negotiate a self-governance agreement for 2001 or might enter negotiations for 2000 if one of the first five tribes discontinued negotiations. In such a case, the tribe that discontinued negotiations would remain in the applicant pool with its original ranking and would be the first to be selected in 2000 for negotiating agreements commencing in 2001.

Dated: November 25, 1998

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 98–31961 Filed 11–30–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act

(Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, Jan. 7 and 8, 1999, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA.

SUPPLEMENTARY INFORMATION: On Thursday, Jan. 7, the council will convene at 10 a.m. in the Conference Room of the Eagle Lake Field Office. Agenda items include orientation matters, discussion of healthy rangeland standards and guidelines, an update on grazing permit renewal, a status report on development of the BLM-California strategic plan, a status report on geothermal development at Medicine Lake and reports from the BLM's Alturas, Eagle Lake and Surprise field offices. The council will also elect new officers. Time has been set aside at 3:45 p.m. for public comments. Depending on the number of persons wishing to speak, a time limit may be imposed.

On Friday, Jan. 8, the council will convene at 8 a.m. at the Eagle Lake Field Office and depart immediately for a field tour of the BLM Wild Horse and Burro Corrals at Litchfield, California. Discussion of wild horse and burro management will be the topic during the tour. Members of the public are welcome on the tour, but they must provide their own transportation.

FOR ADDITIONAL INFORMATION: Contact Jeff Fontana, public affairs officer, at (530) 257–5381.

Linda D. Hansen,

Eagle Lake Field Manager.

[FR Doc. 98–31910 Filed 11–30–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–00; WYW 82535]

Notice Providing for Opening of Public Land; Wyoming; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: This notice will correct an error in the land description published in the **Federal Register**, Vol. 63, No. 219, page 63491, on November 13, 1998.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003–1828, 307–775–6115.

Correction

The land description published in the **Federal Register**, Vol. 63, No. 219, page 63491, on November 13, 1998, is hereby corrected as follows:

In the opening order notice, on page 63491, column 1, line 34, the legal description which reads T. 36 N., R. 108 W., is changed to read T. 34 N., R. 108 W.

Dated: November 24, 1998.

Tamara Gertsch,

Realty Specialist.

[FR Doc. 98–31907 Filed 11–30–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service.

ACTION: Public notice.

SUMMARY: On November 13, 1998, the National Park Service Concessions Management Improvement Act of 1998 was signed into law, repealing the National Park Service Concessions Policy Act (16 U.S.C. 20 *et seq.*). The new legislation requires substantive changes in the manner in which the National Park Service awards concession contracts and permits, as well as changed in the terms and conditions of future concession contracts and permits. As a result of the new legislation, the Nation Park Service is cancelling all outstanding solicitations for concession contracts and permits. The only statutory exception to this cancellation is the prospectus issued February 19, 1998, under which concession permits will be open for competition for the operation of cruise ship services within Glacier Bay National Park and Preserve. The cancellation applies to all concession contracting or permitting actions that have not been executed on behalf of the National Park Service prior to November 13, 1998, except as provided above.

EFFECTIVE DATE: November 13, 1998.

FOR FURTHER INFORMATION CONTACT: For further information on this action, contact Robert Yearout, Concession Program Manager, National Park Service (202) 565–1212, or Wendelin Mann, Senior Concession Contract Analyst, National Park Service (202) 565–1219.

Dated: November 23, 1998.

Robert K. Yearout,

Concession Program Manager.

[FR Doc. 98–31894 Filed 11–30–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/General Management Plan, Death Valley National Park, California; Notice of Extension of Public Comment Period

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement (DEIS) assessing three alternatives for, and potential impacts of, a proposed General Management Plan for Death Valley National Park, California. In deference to public interest expressed by local governmental agencies, organizations, and other interested parties, the original 90-day public comment period has been extended an additional five weeks through January 15, 1999.

SUPPLEMENTARY INFORMATION: Copies of the DEIS can be reviewed at local libraries, and internet access is available at www.nps.gov/deva. A limited number of copies may still be available upon phone request at (760) 786–2331. All written comments must be postmarked *not later than January 15, 1999*, and should be sent to the Superintendent, Death Valley National Park, Furnace Creek, CA 92328.

Dated: November 20, 1998.

Cynthia L. Ip,

Acting Regional Director, Pacific West.

[FR Doc. 98–31896 Filed 11–30–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Part Service

Draft Environmental Impact Statement/General Management Plan, Mojave National Preserve, California; Notice of Extension of Public Comment Period

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement (DEIS) assessing three alternatives for, and potential impacts of, a proposed General Management Plan for Mojave National Preserve, California. In deference to public interest expressed by local governmental agencies, organizations, and other interested parties, the original 90-day public comment period has been extended an additional five weeks through January 15, 1999.

SUPPLEMENTARY INFORMATION: Copies of the DEIS can be reviewed at local libraries, and internet access it available at "www.nps.gov/moja". A limited number of copies may still be available upon phone request at (760) 255–8800. All written comments must be postmarked *not later than January 15, 1999*, and should be sent to the Superintendent, Mojave National Preserve, 222 E. Main St., Suite 202, Barstow, CA 92311.

Dated: November 11, 1998.

Cynthia L. Ip,

Acting Regional Director, Pacific West.

[FR Doc. 98–31895 Filed 11–30–98; 8:45 am]

BILLING CODE 4311–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Boston Harbor Islands Advisory Council will meet on Thursday, December 3, 1998. The meeting will convene at 7:00 p.m. in the Conference Center of New England Aquarium Exploration Center, First Floor of the Boston Garage at India Wharf, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan, and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Review of minutes of September 10 meeting.
2. Presentation on Council activities and update on planning for the Boston Harbor Islands.
3. Public Comment.

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA, telephone 617–223–8667.

Dated: November 23, 1998.

George Price,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 98–31897 Filed 11–30–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 21, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by December 16, 1998.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Sharp County

Bates, Sherman, House (Hardy, Arkansas MPS), Jct. of US 63 and Echo Ln., Hardy, 98001515

Carter, Fred, House (Hardy, Arkansas MPS), School Ave., N of jct. with 4th St., Hardy, 98001510

Daugherty, Ernest, House (Hardy, Arkansas MPS), Third St., W of jct. with Kelly Ave., Hardy, 98001513

Jackson, Floyd, House (Hardy, Arkansas MPS), Jackson St., Hardy, 98001516

Locke, Esther, House (Hardy, Arkansas MPS), Jct. of Spring and Third Sts., Hardy, 98001509

Long, Web, House and Motel (Hardy, Arkansas MPS), US 63, E of jct. with Springwood Rd., Hardy, 98001512

Shaver, William, House (Hardy, Arkansas MPS), School Ave., N of jct. with 4th St., Hardy, 98001511

Sherrill, Silas, House (Hardy, Arkansas MPS), Jct. of 4th and Spring Sts., Hardy, 98001514

Weaver, Lee, House (Hardy, Arkansas MPS), Jct. of Main and Cope Sts., Hardy, 98001508

COLORADO

Denver County

Motor Coach Division Building—Denver Tramway Company, 3500 Gilpin St., Denver, 98001517

GEORGIA

Barrow County

Statham Historic District, Roughly bounded by Elizabeth, 8th, and 1st Sts., and CSX RR tracks, Statham, 98001521

Glynn County

Needwood Baptist Church and School, US 17, 1 mi. S of Hofwyl-Broadfield Plantation State Historic Site., Brunswick vicinity, 98001520

Troup County

Fannin—Trutti—Handley Place, 2159 Whitesville Rd., GA 219, LaGrange vicinity, 98001541

INDIANA

Bartholomew County

Haw Creek Leather Company, Jct. of Washington and First Sts., Columbus, 98001526

Carroll County

Delphi City Hall, 105–109 Washington St., Delphi, 98001525

Marshall County

Plymouth Downtown Historic District, Roughly bounded by Center, Washington, and Water Sts., and Yellow R., Plymouth, 98001524

Vanderburgh County

Ohio Street Bridge, Ohio St. over Pigeon Cr., Evansville, 98001523

Wayne County

Wescott Stock Farm, 36 East North St., Centerville, 98001522

NEW YORK

Essex County

Frazier Bridge (Ticonderoga MRA), Champlain Ave., at Lachute R., Ticonderoga, 98001540

Otsego County

Hyde Hall Covered Bridge, East Lake Rd., over Shadow Brook, East Springfield vicinity, 98001539

Ulster County

Grant Mills Covered Bridge, Mill Brook Rd., over Mill Brook, Hardenbergh vicinity, 98001538

NORTH CAROLINA

Buncombe County

Camp, William Nelson, Jr., House, 92 Flat Top Mountain Rd., Fairview, 98001530

Gaston County

Hoyle, Eli, House, 1111 Dallas-Stanley Hwy, Dallas, 98001529

Orange County

West Chapel Hill Historic District, Roughly bounded by W. Cameron Ave., Malette St., Ransom St., Pittsboro St., University Dr. and the Westwood Subdivision, Chapel Hill, 98001528

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TENNESSEE

Shelby County

Fountain Court Historic District (Memphis MPS), 1155–1229 Fountain Court, Memphis, 98001531

St. Paul Avenue Historic District (Memphis MPS), 751–53 to 775–77 St. Paul Ave., and 558 Boyd St., Memphis, 98001533

Strathmore Place Historic District (Memphis MPS), Strathmore Circle East, North, and South, and 280 and 292 East Parkway, Memphis, 98001532

UTAH

Salt Lake County

Morrison—Merrill Lumber Company Office and Warehouse (Salt Lake City Business District MRA), 205 North 400 West, Salt Lake City, 98001534

Utah County

Lehi Commerical and Savings Bank—Lehi Hospital (Lehi, Utah MPS), 206 E. State St., Lehi, 98001537

WISCONSIN

Milwaukee County

Miwaukee County Home for Dependent Children School, 9658 Watertown Plank Rd., Wauwatosa, 98001535

WYOMING

Natrona County

Casper Federal Building, 111 S. Wolcott St., Casper, 98001536

A Request for Removal has been made for the following Resource:

WASHINGTON

Clark County

Anderson—Beletski Prune Farm 4119 N.W. McCann Rd. Vancouver, 86001100

[FR Doc. 98–31912 Filed 11–30–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Overseas Private Investment Corporation (OPIC) on December 15, 1998. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on December 15, 1998, and will begin promptly at 10:00 a.m. Prospective participants must submit to OPIC before close of business December 8, 1998, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1100 New York Avenue, N.W., 12th Floor, Washington, D.C. Notices and prepared statements should be sent to Harvey Himberg, Financial Management and Statutory Review Department, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527.

Procedure: (a) Attendance; Participation. The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before December 8, 1998. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements. Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 11, 1998. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) Duration of Presentations. Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda. Upon receipt of the required notices, OPIC will prepare an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings. A verbatim transcript of the hearing will be compiled. The transcript will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects which confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC reviews any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (P.L. 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: Harvey A. Himberg, Financial Management and Statutory Review Department, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527 (202) 336–8614 or by facsimile at (202) 218–0177.

Dated: November 24, 1998.

Richard C. Horanburg,

Office of Congressional and Intergovernmental Affairs.

[FR Doc. 98–31911 Filed 11–30–98; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 16, 1998, and published in the **Federal Register** on

July 29, 1998, (63 FR 40542), American Radiolabeled Chemical, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	
Cocaine (9041)	II
Morphine (9300)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of American Radiolabeled Chemical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated American Radiolabeled Chemical, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security system, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 17, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–31968 Filed 11–30–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 27, 1998, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2, 5-Dimethoxyamphetamine (7396).	
4-Methoxyamphetamine (7411)	
Amphetamine (1100)	
Methylphenidate (1724)	II

The firms plans to manufacture amphetamine for distribution of the bulk active substances to its customers, 4-methoxyamphetamine as an intermediate in the manufacturer of a non-controlled substance, methylphenidate for product research and development and 2,5-dimethoxyamphetamine to develop, manufacture and sell compounds to pharmaceutical and agrochemical industries.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Adminstrator, Office of Diversion Control, Drug Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 1, 1999.

Dated: November 18, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–31969 Filed 11–30–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Withdrawal

As set forth in the **Federal Register** (FR Doc. 98–8085) Vol. 63, No. 59 at page 14964, dated March 27, 1998, Inhalon Pharmaceuticals, Inc., 3998 Schelden Circle, Bethlehem, Pennsylvania 18017 made application to the Drug Enforcement Administration for registration as a bulk manufacturer of amphetamine (1100) and methylphenidate (1724).

A registered bulk manufacturer of methylphenidate submitted an objection to the proposed registration of Inhalon Pharmaceuticals for the manufacture of methylphenidate. Inhalon Pharmaceuticals has requested that its application be withdrawn. Therefore, Inhalon Pharmaceuticals application to manufacture amphetamine and methylphenidate is hereby withdrawn.

Dated: November 18, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–31967 Filed 11–30–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–172N]

Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Clandestine Production of Controlled Substances or Listed Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Publication of Proposed Special Surveillance List.

SUMMARY: On October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) was signed into law. The MCA provides for a civil penalty of not more than $250,000 for the distribution of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with reckless disregard for the illegal uses to which such laboratory supply will be put. The term "laboratory supply" is defined as "a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals." DEA is hereby providing notice of its intent to publish this Special Surveillance List. Upon review of written comments or objections, DEA will publish the Special Surveillance List in a final notice.

DATES: Written comments or objections must be received no later than December 31, 1998.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, DC, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT:

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Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: On October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) was signed into law. The MCA broadens controls on listed chemicals used in the production of methamphetamine and other controlled substances, increases penalties for the trafficking and manufacturing of methamphetamine and listed chemicals, and expands regulatory controls to include the distribution of lawfully marketed drug products which contain the listed chemicals ephedrine, pseudoephedrine and phenylpropanolamine. The MCA (Section 205) also provides for the publication of a Special Surveillance List by the Attorney General. The proposed Surveillance List identifies laboratory supplies which are used in the manufacture of controlled substances or listed chemicals. The MCA defines "laboratory supply" as "a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals." (21 U.S.C. 842 (a))

The MCA provides for a civil penalty of not more than $250,000 for the distribution of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with "reckless disregard" for the illegal uses to which such a laboratory supply would be put. For purposes of this provision, the term "distribution" includes the exportation of a laboratory supply. For any succeeding violation, the MCA provides for a civil fine of not more than $250,000 or double the last previously imposed penalty, whichever is greater.

Section 205 of the MCA further states that, for purposes of 21 U.S.C. 842(a)(11), there is a "rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer."

The CSA contains other sections relating to the illegal manufacture of controlled substances. Section 841(d)(2) of Title 21 provides that any person who knowingly or intentionally distributes a listed chemical knowing, or having reasonable cause to believe, that it will be used in the illegal manufacture of a controlled substance, is subject to criminal prosecution. Section 843(a)(7) of Title 21 provides that any person who distributes any chemical, product, equipment or material which may be used to manufacture a controlled substance or listed chemical, knowing, or having reasonable cause to believe, that it will be used in the illegal manufacture of a controlled substance or listed chemical, is subject to criminal prosecution.

In developing the proposed Special Surveillance List, the DEA consulted with both DEA and State/Local law enforcement and forensic laboratory authorities. The DEA examined clandestine laboratory seizure reports for information regarding (1) illicit drug production methods; (2) chemicals actually used in clandestine production of controlled substances and listed chemicals; and (3) the role and importance of chemicals used in the syntheses. In addition, the DEA considered the legitimate uses and market for these chemicals.

The proposed Special Surveillance List focuses on chemicals used in the domestic production of controlled substances and listed chemicals. Therefore the list includes those chemicals used not only in the production of methamphetamine, but also of controlled substances such as PCP, LSD, methcathinone and amphetamine. The list does not focus on chemicals used in the production of heroin or cocaine since these drugs are seldom produced domestically. However, the proposed Special Surveillance List includes all listed chemicals as specified in 21 CFR 1310.02 (a) or (b). The phrase "all listed chemicals" includes all chemical mixtures and all over-the-counter (OTC) pharmaceutical products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.

The following is the proposed Special Surveillance List for laboratory supplies used in the manufacture of controlled substances and listed chemicals:

Special Surveillance List Published Pursuant to Title 21, United States Code, Section 842(a)(11)

Chemicals

All listed chemicals as specified in 21 CFR 1310.02 (a) or (b). This includes all chemical mixtures and all over-the-counter (OTC) products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.

Ammonia Gas
Ammonium Formate
Bromobenzene
1,1-Carbonyldiimidazole
Cyclohexanone
1,1-Dichloro-1-fluoroethane (e.g. Freon 141B)
Diethylamine and its salts
2,5-Dimethoxyphenethylamine and its salts
Formamide
Formic Acid
Hypophosphorous Acid
Lithium Metal
Lithium Aluminum Hydride
Magnesium Metal (Turnings)
Mercuric Chloride
N-Methylformamide
Organomagnesium Halides (Grignard Reagents) (e.g. ethylmagnesium bromide and phenylmagnesium bromide)
Phenylethanolamine and its salts
Phosphorus Pentachloride
Potassium Dichromate
Pyridine and its salts
Red Phosphorus
Sodium Dichromate
Sodium Metal
Thionyl Chloride
ortho-Toluidine
Trichloromonofluoromethane (e.g. Freon-11, Carrene-2)
Trichlorotrifluoroethane (e.g. Freon 113)

Equipment

Hydrogenators
Tableting Machines
Encapsulating Machines
22 Liter Heating Mantels

Individuals and firms which distribute listed chemicals and chemicals, products, materials, or equipment on the above list, are hereby officially notified that these materials may be used in the illicit production of certain controlled substances or listed chemicals.

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to the Administrator of the DEA pursuant to 28 CFR 0.100. The Administrator, in turn, has redelegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104.

This surveillance list may be revised as appropriate. The list will be republished as changes occur. While publication in the **Federal Register** satisfies the notification requirements for the Surveillance List, DEA is attempting to disseminate the list as widely as possible. Therefore, copies of the list will be sent to appropriate industry associations and trade journals, and to the extent practical, to individual manufacturers and distributors of "laboratory supplies." In addition, a current surveillance list will be available on the DEA homepage at http://www.usdoj.gov/dea/.

Small Business Impact and Regulatory Flexibility Concerns

The proposed Special Surveillance List applies to all individuals and firms which distribute the listed chemicals and laboratory supplies (chemicals, products, materials, or equipment) on the list. The notice does not impose any recordkeeping or reporting requirements for any of the laboratory supplies which are not listed chemicals. Thus the suveillance list will have a negligible impact on affected parties.

The notice serves two purposes. First, it informs individuals and firms of the potential use of the items on the list for the production of listed chemicals and illicit drugs. Second, it advises individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person anytime after the two week period following receipt of written notification by the Attoney General that the person has used, attempted to use, or distributed the laboratory supply further for the unlawful production of controlled substances or listed chemicals.

DEA chose to limit the number of chemicals on the proposed Special Surveillance List to those most frequently used in the clandestine production of controlled substances or listed chemicals. Limiting the number of chemicals on the list minimizes the impact on wholesalers and retailers of the chemicals.

The Acting Deputy Administrator hereby certifies that this proposed notice has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed notice will provide an increased level of law enforcement control to prevent the diversion of laboratory supplies used for the production of listed chemicals and controlled substances. It will not however impose any new regulatory burden on the public. This proposed notice fulfills the requirement imposed by section 205 of the Methamphetamine Control Act (MCA) of 1996 that the Attorney General shall publish a special surveillance list which contains chemicals, products, materials, or equipment used in the manufacture of listed chemcials and controlled substances. A copy of this proposed notice has been provided to the Chief Counsel for Advocacy at the Small Business Administration.

This proposed notice has been drafted and reviewed in accordance with Executive Order 12866. This proposed notice has not been determined to be a significant action. Therefore, this proposed notice has not been reviewed and approved by the Office of Management and Budget.

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this proposed notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed notice will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This proposed notice is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed notice will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: July 24, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–31962 Filed 11–30–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

AGENCY: Notice of Information Collection Under Review; Extension of a currently approved collection.

Drug Court Grantee Data Collection Survey

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 26, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 31, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarded the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Drug Courts Grantee Data Collection Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form Number: none. Drug Courts Program Office, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal.

Other: none. This survey will assist in the National Evaluation of Drug Courts. The data to be collected will assist in determining the effectiveness of those grants and the information will be shared with the drug court field to improve program quality.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 300 respondents to complete a 1–1.5 hour survey semi-annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 annual hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 24, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–31899 Filed 11–30–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Program

Office for Victims of Crime; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Reinstatement, without change, of a previously approved collection for which approval has expired).

Victims of Crime Act, Crime Assistance Grant Program, Sub-Grant Award Report

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 28, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 31, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Victims of Crime, Crime Victim Assistance Grant Program, Subgrant Award Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is OJP Admin Form 7390/2A (Rev. 11–95) Office of Justice, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Government.

Other: none. The information requested is necessary to ensure compliance with statutory criteria which allows the Director of OVC to collect performance data from recipients of VOCA victim assistance grant funds. The affected public include up to 57 states and territories administering the crime victim assistance provisions of the Victims of Crime Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 53 respondents to complete a 3 minute subgrant award report, however a State can be responsible for entering subgrant data for as many as 186 programs to as few as 10 programs. Additionally, 4 respondents will be submitting 14 subgrant award reports manually, estimated time 2 hours per report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The combined estimated hours (manual and electronic submission) for the 57 respondents to submit information is 189 hours (159 electronic submissions +28 hours manual submissions).

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 24, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–31898 Filed 11–30–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Notice of Meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established under Section 7 of the Occupational Safety and Health Act of 1970 to advise the

Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United States, will meet in New Orleans, Louisiana.

DATES: The Committee will meet: on January 13, 1999, from 9:00 a.m. until approximately 5:00 p.m. and on January 14, 1999, from 8:30 a.m. until approximately 5:00 p.m.

ADDRESSES: The Committee will meet in the Carmen/Otello Rooms at the Best Western Inn on Bourbon, 541 Bourbon Street, New Orleans, LA 70130; telephone (504) 524–7611.

Mail comments, views, or statements in response to this notice to Larry Liberatore, Maritime Facilitator, Office of Maritime Standards, OSHA, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW, Washington, D.C. 20210. Phone: (202) 693–2086; fax: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA; Phone (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than January 5, 1999, to obtain appropriate accommodations.

Meeting Agenda

This meeting will include discussion of the OSHA shipyard strategic planning goals; vertical tandem lifts in the marine cargo handling environment; ship scrapping initiatives and developments; training partnerships; and a general OSHA update (including a standards update and an update on the shipyard fire protection negotiated rulemaking committee). MACOSH subgroups will also present overviews of their activities.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with copies, to Larry Liberatore. Submissions received by December 31, 1998, will be provided to the members of the committee and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Larry Liberatore. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC this 25th day of November 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–31947 Filed 11–30–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [98–167]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Eclypse International Corporation of Ontario, California, has applied for an exclusive license to practice the invention described and claimed in NASA Case No. KSC–11866 entitled "Non-Intrusive Impedance-Based Cable Tester," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATES: Responses to this notice must be received by February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Beth A. Vrioni, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: November 23, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–31868 Filed 11–30–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [98–165]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that the partnership of Joel D. Goldhar and Jonathan E. Jaffe, of Chicago, Illinois, has applied for an exclusive patent license to practice the invention described and claimed in U.S. Patent Number 5,499,294, entitled "Digital Camera with Apparatus for Authentication of Images Produced from an Image File," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Messrs. Goldhar and Jaffe should be sent to John H. Kusmiss, Assistant Patent Counsel of the NASA Management Office at the Jet Propulsion Laboratory.

DATES: Responses to this notice must be received by February 1, 1999.

FOR FURTHER INFORMATION CONTACT: John H. Kusmiss, Patent Attorney, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109, telephone (818) 354–7770.

Dated: November 23, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–31866 Filed 11–30–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [98–166]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Polaroid Corporation, of Memorial Drive, Cambridge, Massachusetts has applied for an exclusive license to practice the invention described and claimed in U.S. Patent Number 5,499,294, entitled "Digital Camera with Apparatus for Authentication of Images Produced from an Image File," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Polaroid Corporation should be sent to John H. Kusmiss, Assistant Patent Counsel of the NASA Management Office at the Jet Propulsion Laboratory.

DATES: Responses to this notice must be received by February 1, 1999.

FOR FURTHER INFORMATION CONTACT: John H. Kusmiss, Patent Attorney, NASA

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Management Office-JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109, telephone (818) 354–7770.

Dated: November 23, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–31867 Filed 11–30–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 15, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2. nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, National Institute of Standards and Technology (N1–167–98–2, 2 items, 2 temporary items). Records of the NIST Library in Boulder, Colorado. The records consist primarily of correspondence, reports, memorandums, meeting minutes, and expenditure reports that document Library operations during the period 1955 to 1971.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–99–2, 3 items, 3 temporary items). Records relating to agreements and memorandums of understanding between NOAA and other public and private entities covering data sharing, technical assistance, and other program support responsibilities. The records include agreements, background and progress reports, change and revision documentation, and correspondence and other reports related to the agreements. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–99–4, 6 items, 6 temporary items). Records relating to National Weather Service sites at airports. Included are photographs of equipment and buildings, maps, cost estimates, Federal Aviation Administration permits, licenses for using real property, site engineering drawings, notices of proposed construction or alteration, and related correspondence. Also included are electronic copies of documents created using electronic mail and word processing.

4. Department of Defense, Defense Logistics Agency (N1–361–99–1, 6 items, 6 temporary items). Electronic copies of records relating to contracts created using electronic mail and word processing. Recordkeeping copies were previously approved for disposal.

5. Department of Health and Human Services, National Institutes of Health (N1–443–98–1, 7 items, 7 temporary items). Microfilmed copies of prescriptions. This schedule also increases the retention period for logs, requisitions, and other pharmacy

records which were previously approved for disposal.

6. Department of Health and Human Services, National Institutes of Health (N1–443–98–2, 4 items, 4 temporary items). Forms and attendance records relating to radiation safety training. This schedule also increases the retention period for records relating to the handling of radioactive material which were previously approved for disposal.

7. Department of Justice, Executive Office of the United States Attorneys (N1–60–99–1, 5 items, 2 temporary items). Input documents and ad hoc reports associated with automated case management systems used to record case status and compile statistical reports. The annual compiled national data set, with documentation, and annual statistical reports are proposed for permanent retention.

8. Department of Justice, United States Attorney District Offices (N1–118–99–1, 6 items, 6 temporary items). Automated case management systems used to record case status and compile statistical reports. Annual compilations of data accumulated by the Executive Office of the United States Attorneys are proposed for permanent retention in schedule number N1–60–99–1 (item 7 of this notice).

9. Department of Justice, Office of the Solicitor General (N1–60–98–11, 2 items, 2 temporary items). Docket cards dating between 1927 and 1992, and a subsequent electronic tracking system, which serve as an index to cases referred to the Solicitor General. The OSG returns case files to the originating litigation division upon completion of OSG action so the cards and tracking system do not serve as an index to OSG records.

10. Department of Justice, Immigration and Naturalization Service (N1–85–99–1, 2 items, 2 temporary items). Reduction in retention period of clinical records of illegal aliens detained at INS Servicing and Processing Centers, which were previously approved for disposal. The request also includes electronic copies of records created using electronic mail and word processing.

11. Department of the Treasury, United States Secret Service (N1–87–98–1, 1 item, 1 temporary item). Investigative case files of the Inspection Division where the investigation reveals that the office having jurisdiction is the Office of Investigations. Procedurally or historically significant case files of the Office of Investigations are permanent in a previously approved schedule.

12. Department of Veterans Affairs, Veterans Health Administration (N1–15–98–4, 6 items, 6 temporary items). Files relating to applications for grants to providers of services for the homeless, including funds for acquisition of facilities, purchase of vans, and per diem expenses. Also included are electronic copies of documents created using electronic mail and word processing.

13. Environmental Protection Agency, Office of Pesticide Programs (N1–412–95–2, 48 items, 43 temporary items). Electronic and textual records that document review and approval processes relating to the registration of pesticides, including electronic copies of documents created using electronic mail and word processing. Temporary records include Pesticide Registration Documents and Reregistration Case Files, Notice of Supplemental Distribution of Registered Product, Novel Microbial Pesticide Files, Child-Resistant Packaging Files, Pesticide Chemical Inert Ingredient Master Files, Reregistration Fees Case Files, Pesticide Registration Maintenance Fee Records, Company Name and Address Correspondence Files, Requests for EPA Company Number, Laboratory Test Reports, and the Pesticide Product Label System. Series proposed for permanent retention include the Endangered Species Map Files, Label Use Information System Files, Established Tolerances Files, State Plans for Applicator Certification Files, and Preliminary Qualitative Biological Usage Analysis of Pesticide Active Ingredients Files.

14. Export-Import Bank (N1–275–98–1, 1 item, 1 temporary item). Draft loan agreements reflecting technical changes. Records relating to policy issues, minutes of meetings, and final loan cases are permanent in a previously approved schedule.

15. National Aeronautics and Space Administration (N1–255–97–1, 22 items, 22 temporary items). Magnetic tapes pertaining to the Pioneer 10, Pioneer 11, and Pioneer 12 spacecraft projects. The records consist of master data record tapes containing real-time telemetry data and electronic information concerning spacecraft location during orbit (trajectory and engineering data).

16. National Science Foundation, Agency-wide (N1–307–98–1, 2 items, 2 temporary items). Reduction in retention period for Congressional Correspondence Files and Congressional Correspondence Routing Sheet Files, which were previously approved for disposal. Records consist of correspondence from the Congress with replies from NSF and a reference card file to incoming correspondence from the Congress.

17. President's Advisory Board on Race (N1–220–99–1, 17 items, 6 temporary items). Audio and video tapes of meetings for which written transcripts were created, routine administrative correspondence, calendars and invitations, and web site and related design and management records. Also proposed for disposal are electronic copies of records created using electronic mail and word processing. Transcripts of meetings, reports, general correspondence, and other program records are proposed for permanent retention.

18. Securities and Exchange Commission, Office of International Affairs and Office of Investor Education and Assistance (N1–266–98–1, 10 items, 10 temporary items). Routine correspondence, such as public inquiries and complaints and SEC requests for information from foreign governments, including electronic copies of documents created using electronic mail and word processing; requests for technical assistance from the United States Agency for International Development; paper working copies of foreign utility company reports filed electronically; commercial and financial information submitted in confidence; and duplicate copies of records relating to treaty negotiations with Switzerland (originals are held as permanent by the Department of State).

Dated: November 24, 1998.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 98–31979 Filed 11–30–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 1, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the National Heritage Preservation Program, submitted to the Division of Preservation and Access at the July 1, 1998 deadline.

2. *Date:* December 4, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1 1998 deadline.

3. *Date:* December 7, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration in Literature and the Arts, submitted to the Division of Research and Education at the October 15, 1998 deadline.

4. *Date:* December 8, 1998.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Music and Literature, submitted to the Division of Research and Education at the September 1, 1998 deadline.

5. *Date:* December 9, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration in World History and Geography, submitted to the Division of Research and Education at the October 15, 1998 deadline.

6. *Date:* December. 10, 1998.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in African, Pacific, and Asian Studies, submitted to the Division of Research and Education at the September 1, 1998 deadline.

7. *Date:* December 11, 1998.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 2 1998 deadline.

8. *Date:* December 11, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration in Civics and Philosophy, submitted to the Division of Research and Education at the October 15, 1998 deadline.

9. *Date:* December 11, 1998.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Philosophy and History of Science, submitted to the Division of Research and Education at the September 1, 1998 deadline.

10. *Date:* December 14, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration in Western Civilization, submitted to the Division of Research and Education at the October 15, 1998 deadline.

11. *Date:* December 16, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration in American Studies I, submitted to the Division of Research and Education at the October 15, 1998 deadline.

Nancy E. Weiss,
Advisory Committee Management Officer.

[FR Doc. 98–31980 Filed 11–30–98; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 36—Licenses and Radiation Safety Requirements for Irradiators.

2. *Current OMB Approval Number:* 3150–0158.

3. *How often the collection is required:* There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license. In addition, recordkeeping must be performed on an on-going basis, and reports of accidents and other abnormal events must be reported on an as-necessary basis.

4. *Who is required or asked to report:* Irradiators licensed by NRC or an Agreement State.

5. *The number of annual respondents:* 32 NRC licensees and 64 Agreement State licensees.

6. *The number of hours needed annually to complete the requirement or request:* 44,768 (approximately 466 per licensee).

7. *Abstract:* 10 CFR Part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption; design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is

being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

Submit, by February 1, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 23rd day of November, 1998.

For the U.S. Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–31934 Filed 11–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants".

2. *Current OMB approval number:* 3150–0155.

3. *How often the collection is required:* One-time submission with application for renewal of an operating license for a nuclear power plant and occasional collections for holders of renewed licenses.

4. *Who is required or asked to report:* Commercial nuclear power plant licensees who wish to renew their operating licenses.

5. *The number of annual respondents:* 1–2 respondents based on an estimate of 4 renewal applications during the requested 3-year clearance period.

6. *The number of hours needed annually to complete the requirement or request:* Approximately 89,333 hours (85,333 hours one-time reporting burden and 4,000 hours recordkeeping burden).

7. *Abstract:* 10 CFR Part 54 of the NRC regulations, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," specifies the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements, so that the NRC may make determinations necessary to promote the health and safety of the public.

Submit, by February 1, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 24th day of November, 1998.

For the Nuclear Regulatory Commission.

Michael D. Collins,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–31935 Filed 11–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412]

Duquesne Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company; The Toledo Edison Company; Notice of Withdrawal of Application For Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duquesne Light Company, et al. (the licensee) to withdraw its October 16, 1998, application for proposed amendment to Facility Operating License No. NPF–73 for the Beaver Valley Power Station, Unit No. 2, located in Beaver County, Pennsylvania.

The proposed amendment would have extended on a one-time only basis, the surveillance interval for technical specifications 4.8.1.1.1.b and 4.8.1.2 until the first entry into Mode 4 following the seventh refueling outage (2R7), but not later than May 1, 1999.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 4, 1998 (63 FR 59591). However, by letter dated November 10, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 16, 1998, and the licensee's letter dated November 10, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial

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Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 24th day of November, 1998.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31932 Filed 11–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Florida Power Corporation (FPC) to withdraw its October 31, 1997, application for an amendment to Facility Operating License No. DPR 72, issued to FPC for operation of the Crystal River Nuclear Generating Unit 3 (CR3) located in Citrus County, Florida. Notice of consideration of issuance of this amendment was published in the **Federal Register** on November 12, 1997 (62 FR 60735).

The proposed amendment would have revised the CR3 Technical Specifications (TS) relating to decay heat removal requirements in Mode 4. The proposed modification would have revised the TS and associated Bases to require in Mode 4, one operable emergency feedwater (EFW) train and associated equipment, including the EFW tank, emergency feedwater initiation and control actuation instrumentation for EFW, post accident monitoring instrumentation, and the turbine bypass valves. Additionally, the TS and associated Bases would have been revised to require in Mode 4, a low-pressure injection (LPI) train, dedicated to the borated water storage tank, and to reflect that the available loops for decay heat removal do not include this dedicated LPI train. Editorial changes would also have been made to clarify the description of Mode 4 accidents requiring emergency core cooling system injection, and to revise the title of TS limiting condition for operation 3.7.5.

FPC's letter of November 18, 1998, informed the staff that the request was being withdrawn because the NRC staff had indicated that the subject of reactor decay heat removal requirements during Mode 4 operation would be treated as a generic industry issue. In this letter, FPC committed to continue to maintain administrative controls for the additional equipment and capability to remove decay heat identified in the October 31, 1997, request during Mode 4 operation of CR–3.

For further details with respect to this action, see the application for amendment dated October 31, 1997, and FPC's withdrawal letter dated November 18, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 24th day of November, 1998.

For the Nuclear Regulatory Commission.

Leonard A. Wiens,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31936 Filed 11–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Special Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Description of material		End use	Country
	Material type	Total qty		
Transnuclear, Inc., October 30, 1998, November 2, 1998, XSNM03060.	High-enriched Uranium (93.3%).	130.65 kg	Production of medical isotopes.	Canada.

For the Nuclear Regulatory Commission.

Dated this 24th day of November 1998 at Rockville, Maryland.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 98–31929 Filed 11–30–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; Notice of Withdrawal of Application For Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its March 21, 1996, application for proposed amendments to Facility Operating License Nos. NPF–4 and NPF–7 for the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

The proposed amendments would have clarified the requirements for testing charcoal adsorbent in the Waste Gas Charcoal Filter System, the Control Room Emergency Habitability System, and the Safeguards Area Ventilation System.

The Commission had previously issued a Notice of Consideration of

Issuance of Amendment published in the **Federal Register** on April 24, 1996 (61 FR 18175). However, by letter dated November 23, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 21, 1996, and the licensee's letter dated November 23, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 25th day of November, 1998.

For the Nuclear Regulatory Commission.

Nageswaran Kalyanam,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31930 Filed 11–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 30, December 7, 14, and 21, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED

Week of November 30

Monday, November 30

2:00 p.m.
Meeting on DC Cook (Public Meeting) (Contact: John Stang, 301–415–1345)
3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 7—Tentative

Tuesday, December 8

9:00 a.m.
Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)
11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 14—Tentative

Tuesday, December 15

11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 1—Tentative

There are no meetings scheduled for the week of December 21, 1998.

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on November 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (a) Final Rule, Part 2, Subpart J, 'Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository', (b) International Uranium (USA) Corporation Commission Review Of Presiding Officer's Memorandum and Order (Aug 19, 1998) Dismissing Envirocare, (c) Final Rule, Part 2, Subpart M; Public Notification, Availability Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications, and (d) North Atlantic Energy Corporation (Seabrook Station Unit No. 1); Motion to Withdraw Applications and to Terminate Proceedings" (PUBLIC MEETING) be held on November 22, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: November 27, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–32110 Filed 11–27–98; 3:01 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, December 10, 1998.

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary,

Office of Personnel Management,
Federal Prevailing Rate Advisory
Committee, Room 5559, 1900 E Street,
NW., Washington, DC 20415 (202) 606–1500.

Dated: November 24, 1998.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–31892 Filed 11–30–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23545; File No. 812–11196]

Aetna Variable Fund, et al.; Notice of Application

November 23, 1998.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of any current or future series of each Fund and shares of any other investment company that is offered as a funding medium for insurance products and for which ALIAC, Aeltus, or any of their affiliates, may now or in the future serve as investment adviser, principal underwriter or administrator (each Fund and such other investment companies referred to collectively as the "Funds") to be offered and sold to, and held by (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"), (2) qualified pension and retirement plans held outside of the separate account context ("Qualified Plans" or "Plans"), and (3) the investment adviser of any Fund or any of the Adviser's affiliates (the "Adviser" and collectively, the "Advisers").

APPLICANTS: Aetna Variable Fund, Aetna Income Shares, Aetna Variable Encore Fund, Aetna Balanced VP, Inc., Aetna Generation Portfolios, Inc., Aetna Variable Portfolios, Inc., Aetna Get Fund, Portfolio Partners, Inc., Aetna Life Insurance and Annuity Company ("ALIAC") and Aeltus Investment Management, Inc. ("Aeltus") (collectively, the "Applicants").

FILING DATE: The application was originally filed on June 25, 1998, and an amended and restated application was filed on November 20, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 18, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Amy R. Doberman, Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06156–8962.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Each Fund is an open-end management investment company. Aetna Variable Fund, Aetna Income Shares, Aetna Variable Encore Fund, and Aetna Get Fund are each organized as a Massachusetts business trust. Aetna Balanced V.P., Inc., Aetna Generation Portfolios, Inc., Aetna Variable Portfolios, Inc., and Portfolio Partners, Inc., are each organized as a Maryland Corporation. Certain of the Funds issue shares in multiple series. Additional series of these Funds may be established in the future.

2. ALIAC, a registered broker-dealer and member of the National Association of Securities Dealers, Inc., serves as the investment adviser and administrator for Portfolio Partners, Inc., and as the principal underwriter for each Fund. Aeltus, which is registered with the Commission as an investment adviser, serves as the investment adviser and administrator for each Fund other than Portfolio Partners, Inc. ALIAC and Aeltus are both indirect wholly-owned subsidiaries of Aetna Inc.

3. Shares of each Fund are currently offered to separate accounts of ALIAC and its affiliates to serve as the investment medium for variable annuity contracts and variable life insurance policies issued by ALIAC and its affiliates. The Funds also may in the future offer shares of their existing and future series to separate accounts of other insurance companies, including insurance companies that are not affiliated with ALIAC, to serve as the investment vehicle for various types of insurance products, which may include, among others, variable annuity contracts, variable group life insurance contracts, scheduled premium variable life insurance contracts, single premium and modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, "Variable Contracts"). Insurance companies whose separate account or accounts may in the future own shares of the Funds are referred to herein as "Participating Insurance Companies."

4. Each Fund may offer its shares directly to Qualified Plans described in Treasury Regulation § 1.817–5(f)(3)(iii). Fund shares sold to Qualified Plans would be held by the trustee(s) of the Plan. No Adviser will act as investment adviser to any Qualified Plan which purchases shares of a Fund advised by that investment adviser, unless permitted under the Employment Retirement Income Security Act ("ERISA").

5. Shares of each Fund may also be offered to an Adviser or any of its affiliates for purposes of providing necessary capital required by Section 14(a) of the 1940 Act. Any shares in a Fund purchased by an Adviser or its affiliate will be automatically redeemed if and when the Adviser's investment advisory agreement with that Fund terminates.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act exempting the Applicants and the Participating Insurance Companies and their separate accounts (and, to the extent necessary, any investment adviser, principal underwriter, sponsor, or depositor for such accounts) from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) thereof, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of each Fund to be offered and sold to, and held by

(1) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company ("mixed funding"); (2) separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) ("shared funding"); (3) Qualified Plans; and (4) any Adviser or its affiliates.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or an affiliated life insurance company. The relief granted by Rule 6e–2(b)(15) also is not available if the variable life insurance separate account owns shares of an underlying fund that also offers its shares to separate accounts of unaffiliated life insurance companies, Qualified Plans, and Advisers or their affiliates.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offers their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the underlying fund is engaged in shared funding or sells its shares to Qualified Plans or Advisers and their affiliates.

4. Applicants state that the current tax law permits the Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of separate accounts funding variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by the Treasury Department. To meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations contain certain exceptions to this requirements, however, one of which permits shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life insurance contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

5. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same underlying investment company to separate accounts and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants request relief for a class or classes of persons and transactions consisting of Participating Insurance Companies and their separate accounts (and Investment advisers, principal underwriters, and sponsors or depositors of such separate accounts) investing in any of the Funds.

7. Section 6(c) of the 1940 Act authorizes the Commission, to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Sections 9. Applicants assert that it is not necessary for the protection of investors of the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies managed, administered, or invested in by that organization. Applicants also assert that it is unnecessary to apply the restrictions of Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as the funding medium for variable contracts.

10. Applications maintain that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding and sales to Qualified Plans. Applicants do not expect the Participating Insurance Companies and Qualified Plans to play any role in the management or administration of the Funds. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use the Funds. The increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. In addition, since the Plans are not investment companies and will not be deemed affiliated by virtue of

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their shareholdings, no additional relief is required with respect to Qualified Plans.

11. Applicants further state that no regulatory purpose is served by extending the Section 9(a) monitoring requirements in the context of the Funds selling shares to an Adviser or its affiliate. Rules 6e–2 and 6e–3(T) provide relief from the eligibility restrictions of Section 9(a) only for officers, directors or employees of Participating Insurance Companies or their affiliates. The eligibility restrictions of Section 9(a) will still apply to any officers, directors or employees of the Adviser or an affiliate who participate in the management or administration of the Fund. Applicants maintain that the monitoring requirement should not extend to all officers, directors, and employees of the Participating Insurance Companies and their affiliates simply because the Funds sell certain shares to an Adviser or its affiliate. This monitoring would not benefit contract owners and Plan participants and would only increase costs, thereby reducing net rates of return.

Pass-Through Voting

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a "pass-through voting' requirement with respect to management investment company shares held by a separate account. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority, subject to certain conditions. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that an insurance company may disregard voting instructions of contract owners in favor of any change in the investment company's investment policies, principal underwriter or investment adviser, provided that such disregard of voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

13. Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts; and is subject to extensive state regulations. applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Applicants state that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, the corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

14. Applicants further represent that the offer and sale of the fund shares to Qualified Plans and Advisers and their affiliates will not have any impact on the relief requested in this regard. Shares of the funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. In this respect, the voting rights to be exercised by the qualified Plans will be no different than the exercise of voting rights with respect to "retail" mutual funds that are available to the public. Similarly, the exercise of voting rights by Advisers and their affiliates do not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans or Advisers and their affiliates.

Conflicts of Interest

15. Applicants state that the prohibitions on mixed and shared funding may reflect some concern with possible divergent interests among different classes of investors. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, the Applicants submit that the fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants submit that shared funding by unaffiliated Participating Insurance Companies, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(15) permit. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth in the application and later in this notice are designed to safeguard against, and provide procedures for resolving, and adverse effects that differences among state regulatory requirements may produce.

17. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Affiliation does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specified good faith determinations.

18. A particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of a Fund, to withdraw its separate account's investment in the Fund, and no charge or penalty would be imposed as a result of such withdrawal.

19. Applicants believe that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans. Applicants represent that the transfer agent for the Funds will inform each

shareholder including each variable contract and each Qualified Plan, of its respective share of ownership in the respective Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement.

20. Applicants submit that investment by the Plans in any of the Portfolios will present no conflict. Applicants assert that the likelihood that voting instructions of insurance company separate account holders will be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure to any Qualified Plan choosing to invest in a Fund. Moreover, Applicants state that even if a material irreconcilable conflict involving Qualified Plans arises, the Plans may simply redeem their shares and make alternative investments.

21. Applicants submit that investments by the Adviser or an affiliate will similarly present no conflict. Applicants state that each Adviser or its affiliate, as applicable, will agree to vote its shares of Fund in the same proportion as all contract owners having voting rights with respect to that fund for in such other manner as may be required by the Commission or its staff.

22. Applicants state that there is no reason why the investment policies of a Fund would or should be materially different from what those policies would or should be if such Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium contracts. In this regard, Applicants note that each type of insurance product is designed as a long-term investment program. Moreover, Applicants submit that each Fund will be managed to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. Applicants note that the success of all variable insurance products depends, in part, on satisfactory investment performance, which provides an incentive for the participating insurance company to seek optimal investment performance.

23. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers.

24. Applicants submit that permitting mixed and shared funding will provide economic justification for the growth of the Funds. In addition, permitting mixed and shared funding will facilitate the establishment of additional series of Funds serving diverse goals, since a broader base of contract owners can be expected to provide economic justification for the creation of additional Funds with a greater variety of investment objectives and policies.

25. Applicants further note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii) specifically permits "qualified pension or retirement plans" and insurance company separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity separate accounts, and variable life separate accounts all invest in the same management investment company.

26. Applicants note that while there are differences in the manner in which distribution for variable annuity contracts, variable life insurance contracts and Qualified Plans are taxed, these differences do not raise any conflicts of interest. When distributions are to be made, and a separate account or Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan, and the insurance company will make distributions in accordance with the terms of the variable contract.

27. Applicants submit that the ability of the Funds to sell their shares directly to Qualified Plans and Advisers and their affiliates does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Plan or an Adviser or its affiliate. Regardless of the rights and benefits of participants under the Plans, or contract owners under their variable contracts, the Plans, Advisers and their affiliates, and the separate accounts have rights only with respect to their respective shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

28. Finally, Applicants state that there are no conflicts between contract owners and the participants under Plans with respect to the state insurance commissioner's powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Complex and time-consuming transactions must be undertaken to accomplish such redemption and transfers. Conversely, trustees of Plans may redeem shares from a Fund, and reinvest in another funding vehicle without the same regulatory impediments; most Plans may even hold cash pending suitable investment. Based on the foregoing, Applicants represent that should issues arise where the interests of variable contract owners and the interests of Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Fund.

29. Applicants submit that mixed and shared funding should provide benefits to contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise available through the Funds, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment, thereby promoting economies of scale, permitting greater diversification, and making the addition of new portfolios more feasible. Additionally, making the Funds available for mixed and shared funding and permitting the purchase of Fund shares by Qualified Plans may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

30. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding and sales of Fund shares to Qualified

Plans and an Adviser or its affiliates. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Qualified Plans or an Adviser or its affiliates will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each the Board of Trustees or Board of Directors (the "Board") of each Fund shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the Fund for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all separate accounts and of Plan participants investing in the Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) an action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a pubic ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Fund or series are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and Plan trustees; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. The Participating Insurance Companies, the Adviser or an affiliate, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (collectively, "Participants") will report any potential or existing conflicts to the Board. Participants and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation in the Fund, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners and, if applicable, Plan participants.

4. If it is determined by a majority of the Board of the Fund, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies, and Qualified Plans, shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) withdrawing the assets allocable to some or all the separate accounts from the relevant Fund or any series therein and reinvesting such assets in a different investment medium (including another series, if any, of such Fund); (ii) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (iii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a participating insurance company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the participating insurance company may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of the contract owners and, as applicable, Plan participants.

For purposes of Condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contract owners materially and adversely affected by the material irreconcilable. No Qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be

made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Fund or series thereof held in their registered separate accounts in a manner consistent with timely voting instructions received from such contract owners. Each Participating Insurance Company will vote shares of each Fund or series held in its registered separate accounts for which no timely voting instructions are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts investing in a Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote a Fund's shares and to calculate voting privileges in a manner consistent with all other registered separate accounts investing in a Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges for contract owners whose contracts are funded through a registered separate account, the Adviser, or, if applicable, any of its affiliates, will vote shares of any Fund or series thereof in the same proportion as all variable contract owners having voting rights with respect to that Fund or series thereof; provided, however, that the Adviser or any such affiliates shall vote its shares in such other manner as may be required by the Commission or its staff.

8. A Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that (1) shares of the Fund are offered to insurance company separate accounts which fund both annuity and life insurance contracts, and to Qualified Plans, (2) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund might at some time be in conflict, and (3) the Board will monitor the Fund for any material conflicts and determine what action, if any should be taken.

9. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Fund and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and in particular each Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16(c) of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. The Participants shall at least annually submit to the Board of a Fund such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, material and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of a Participant (not including an Adviser or affiliate) to provide these reports, materials, and data to the Board of the Fund when it so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing participation in each Fund.

13. If a Qualified Plan should become an owner of 10% or more of the assets of a Fund, such Plan will execute a participation agreement with such Fund which includes the conditions set forth in the application to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31891 Filed 11–30–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23571; 812–10868]

Baker, Fentress & Company, et al; Notice of Application

November 24, 1998.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 17(a) of the Act; under section 6(c) granting an exemption from sections 18(d) and 23(a) and (b) of the Act, under section 23(c) of the Act granting an exemption from section 23(c) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Baker, Fentress & Company ("BKF") and Levin Management Co., Inc. ("Levco," together with BKF, "applicants") request an order to permit applicants to adopt an equity-based employee compensation plan.

FILING DATES: The application was filed on November 12, 1997 and amended on September 28, 1998.

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HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 1998 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Baker, Fentress & Co., Attn. James P. Gorter, Chairman, 200 West Madison Street, Suite 3510, Chicago, Illinois 60606; and Levin Management Co., Inc., Attn. John A. Levin, Chairman, One Rockefeller Center, 25th Floor, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Adviser, at (202) 942–0574, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. BKF is a non-diversified closed-end management investment company registered under the Act. BKF's common stock is traded on the New York Stock Exchange ("NYSE"). Levco, a Delaware corporation, is a wholly-owned subsidiary of BKF. John A. Levin & Co., Inc. ("Adviser"), a wholly-owned subsidiary of Levco, is an investment adviser registered under the Investment Advisers Act of 1940 and serves as BKF's investment adviser. The Adviser also provides investment advisory services to other clients and has two wholly-owned subsidiaries, one of which is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), and the other is a commodity pool operator registered under the Commodity Exchange Act.

2. As an internally managed investment company, BKF has 10 employees. The Adviser and its subsidiaries have 70 employees. Applicants propose to implement an equity-based employee compensation plan ("Plan") for officers, directors and employees of BKF and the Adviser ("Participants").

3. Applicants state that, in order for BKF and the Adviser to be successful, they must be able to offer their professional staff compensation packages that are comparable to those offered by other investment advisory firms. Applicants assert that top professionals in the investment management business have come to expect to receive equity-based compensation, and that asset management firms offer it generously. Applicants have been advised by an executive compensation consulting firm that BKF and the Adviser will suffer a competitive disadvantage if they are unable to provide equity-based compensation to key executives, portfolio managers, traders, analysts, marketing professionals and other personnel.

4. The Plan has been approved by BKF's board of directors ("Board"), including a majority of the independent directors ("Independent Directors"). The Plan will be submitted to BKF's shareholders for their initial approval and subsequent reapproval five years after the Plan is adopted. The Plan will be administered by a committee of at least two Independent Directors ("Committee"). The Committee will consist exclusively of Independent Directors.

5. Pursuant to the Plan, the Committee will have the discretion to grant both non-qualified and incentive stock options for BKF and Levco common stock,[1] stock appreciation rights ("SARs"),[2] as well as make various types of grants of BKF and Levco common stock (collectively, "Awards"). The number of shares available for issuance under the Plan would be 10% of BKF's shares outstanding on the effective date of the Plan,[3] and 20% of Levco's outstanding shares.

6. Under the Plan, the Independent Directors would receive only automatic grants of options on BKF's stock. Automatic option grants will be made to each Independent Director (i) on the date of approval of the Plan by BKF's shareholders; (ii) on the effective date of any new Independent Director's initial election to the Board ((i) and (ii) collectively, "Initial Option"); and (iii) annually on the date of final adjournment of each annual meeting of BKF's shareholders ("Annual Option"). Applicants state that this compensation method is designed to assure that director and shareholder interests are aligned.

7. Pursuant to the Plan, options and SARs expire ten years from the date of grant and expire immediately upon termination of employment, unless the Committee determines otherwise. The Awards will be nontransferable except by gift or as permitted by the Committee for estate planning purposes.

8. The Board will review the Plan at least annually. The Committee periodically, but in no event less frequently than annually, and prior to any decision to grant the Awards, will review the potential impact that the grant, exercise, or vesting of the Awards could have on BKF's and Levco's earnings and NAV per share. The Committee will be authorized to take appropriate steps to assure that the grant, exercise or vesting of the Awards would not have an effect contrary to the interests of BKF's shareholders. This authority will include the authority to prevent or limit the grant of additional Awards.

9. Under the Plan, when a Participant exercises an option for Levco stock or otherwise receives Levco stock pursuant to an Award, the Participant may require BKF to repurchase the stock at its then FMV ("Repurchase Right"). The Committee may determine to pay the Participant with BKF's stock and/or cash. The Plan also provides that BKF may make loans to Participants in connection with the Awards, such as to enable a Participant to exercise an option or pay income taxes relating to an Award ("Participant Loans"). The Plan also permits a Participant to pay for an Award with a previous Award, for example, by paying the exercise price for an option on BKF stock with shares of Levco received as a previous Award.

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[1] Under the Plan, the exercise price of the stock options would be equal to the fair market value ("FMV") of BKF or Levco stock, as applicable, on the date of grant. The FMV of BKF stock will equal the closing price on the NYSE on the date of grant of the option. The FMV of Levco stock will be the value at which BKF carries the stock for purposes of calculating BKF's net asset value ("NAV").

[2] Under the Plan, SARs would be granted based on the excess of the FMV of BKF or Levco stock, as relevant, on the date of exercise over the SAR's grant price. Stock issued when an SAR is settled (or, in the case of an SAR settled for cash, stock that would have been issued if the SAR were settled in stock) will be deducted from the number of shares available for issuance under the Plan.

[3] That number could be increased (or decreased) in proportion to the changes in the number of BKF's shares outstanding resulting from any stock split or reverse split, stock dividend, recapitalization or similar corporate event, or in connection with stock issuances other than those in connection with the Plan (*i.e.*, dividend reinvestments or an acquisition that is paid for with BKF stock).

Applicants' Legal Analysis

1. Applicants request an order exempting them from various provisions of the Act to implement the Plan. The requested order would supersede a prior order with respect to the incentive compensation plan.[4]

Sections 18(d) and 23(a) and (b) of the Act

2. Section 18(d) of the Act generally prohibits a registered management investment company from issuing rights to purchase the company's shares.[5] Applicants state that section 18(d) would prohibit the issuance of options and SARs for BKF's stock under the Plan.

3. Section 23(a) of the Act generally prohibits a registered closed-end investment company from issuing securities for services. Applicants state that this provision would prohibit the issuance of Awards for BKF's stock under the Plan as compensation for employees' services.

4. Section 23(b) of the Act prohibits a registered closed-end investment company from selling common stock at below its current NAV. Applicants state that, since BKF's stock historically has traded at a discount to its NAV, and Awards under the Plan will be valued at the current market price of BKF's stock, section 23(b) would prohibit the issuance of the Awards.

5. Section 6(c) of the Act provides, in part, that the SEC may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(d) and 23(a) and (b) of the Act to the extent necessary to implement the Plan.

6. Applicants state that the concerns underlying those sections included (i) preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (ii) complication of the investment company's structure that made it difficult to determine the value of the company's shares; and (iii) dilution of shareholders' equity in the investment company. Applicants state that the Plan does not raise the concern about preferential treatment of BKF's insiders because the Plan is a bona fide employee compensation plan of the type that is common among corporations generally. BKF also asserts that the Plan would not become a means for insiders to obtain control of BKF because the number of shares of BKF issuable under the Plan would be limited to 10% of BKF's outstanding shares. Moreover, as a condition to the requested order, no individual Participant could be issued more the 35% of shares reserved for issuance under the Plan.

7. Applicants further state that the Plan will not unduly complicate BKF's structure because equity-based employee compensation arrangements are widely used among corporations and commonly known to investors. Applicants note that the Plan will be submitted to BKF's shareholders for their approval. Applicants represent that a concise, "plain English" description of the Plan, including its potential dilutive effect, will be provided in the proxy materials that will be submitted to BKF's shareholders. Applicants also state that they will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Exchange Act. Applicants further note that the Plan will be disclosed to investors in accordance with the requirements of Form N–2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, as a condition to the requested order, BKF will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act. BKF thus concludes that the Plan will be adequately disclosed to investors and appropriately reflected in the market value of BKF's shares.

8. Applicants acknowledge that, while Awards granted under the Plan would have a dilutive effect on the shareholders' equity in BKF, that effect would be outweighed by the anticipated benefits of the Plan to BKF and its shareholders. Applicants assert that they need the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, applicants suggest, in turn are likely to increase BKF's and the Adviser's performance and shareholder value. Applicants also assert that equity-based compensation would more closely align the interests of BKF's and the Adviser's employees with those of BKF's shareholders.

9. In addition, applicants state that BKF's shareholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plan by BKF's Board. Under these conditions, the Board will review the Plan at least annually. In addition, the Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on BKF's earnings and NAV per share, such review to take place prior to any decisions to grant stock options, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have an effect contrary to the interests of BKF's shareholders. This authority will include the authority to prevent or limit the grant of additional Awards.

Section 17(a) of the Act

10. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person ("second-tier affiliate"), acting as principal, from selling any security to the company. Section 2(a)(3) of the Act, in relevant part, defines an affiliated person of another person to include any officer, director or employee of that person and, in the case of an investment company, the investment adviser.

11. Applicants state that officers, directors and employees of BKF are deemed affiliated persons of BKF, and officers, directors and employees of the Adviser are deemed second-tier affiliates of BKF. Thus section 17(a)(1) would prohibit the Repurchase Rights under the Plan (i.e., prohibit BKF from purchasing from a Participant Levco stock received as an Award under the Plan).

12. Section 17(a)(2) of the Act generally prohibits an affiliated person or second-tier affiliate of a registered investment company, acting as principal, from purchasing any security from the company. Applicants state that this provision would prohibit transactions contemplated under the Plan that would enable a Participant to pay for an Award with a prior Award, such as paying the exercise price for an option for BKF's stock with Levco stock received as a prior Award.

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[4] Baker, Fentress & Company, Investment Company Act Release Nos. 21890 (Apr. 15, 1996) (notice) and 21949 (May 10, 1996) (order).

[5] Section 18(d) permits a fund to issue only warrants or rights, ratably to a class of shareholders, that have an exercise period of no more than 120 days or in exchange for warrants in connection with a reorganization.

13. Section 17(a)(3) of the Act prohibits an affiliated person or second-tier affiliate of a registered investment company from borrowing money or other property from the company. Applicants state that this provision would prohibit Participant Loans.

14. Section 17(b) of the Act provides that the SEC may, by order upon application, exempt a proposed transaction from section 17(a). Section 17(b) further provides that the SEC shall grant the exemption if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of the registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an order under sections 6(c) and 17(b) of the Act permitting transactions incident to the Plan described above.

15. Applicants state that valuation of the Awards for purposes of the Repurchase Right and to permit a Participant to pay for an Award with a previous Award will be fair and reasonable and will not involve overreaching on the part of any person concerned because BKF's shares will be valued in accordance with the Act and Levco stock will be valued in the same manner as it is valued for purposes of calculating BKF's NAV. Applicants also state that these transactions will be consistent with BKF's policies and with general purposes of the Act.

16. With regard to Participant Loans, applicants state that the terms of the Loans will be fair to BKF because the Loans will be recourse loans that must be secured by collateral acceptable to the Committee, will bear a rate at least equal to the "applicable federal rate" as defined by the Internal Revenue Code of 1986, as amended ("IRC"), and will have a maturity of less than five years. Applicants also state that, because BKF's fundamental investment restrictions might prohibit Participant Loans, BKF will seek shareholder approval to amend that investment restriction to specifically permit Participant Loans. Applicants also state that the Participant Loans, Repurchase Rights, and the ability to pay for an Award with a previous Award are typical transactions incident to corporate equity-based compensation plans.

Section 17(d) of the Act

17. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company or second-tier affiliate from participating in a joint enterprise, joint arrangement or profit-sharing plan in which the company is a participant, unless the SEC by order approves the transactions. Rule 17d–1(c) defines a joint enterprise to include any stock option or stock purchase plan. Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the SEC will consider (i) whether the participation of the registered investment company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

18. Applicants request an order pursuant to section 17(d) and rule 17d–1 to permit the Plan. Applicants state that the Plan, although benefiting the Participants and BKF in different ways, is in the interests of BKF's shareholders because the Plan will help BKF attract and retain talented professionals, help align the interests of BKF's employees with those of its shareholders, and in turn help produce a better return to BKF's shareholders. Thus, applicants assert that the Plan is consistent with the policies and purposes of the Act and that BKF's participation in the Plan will be on a basis no less advantageous than that of other participants.

Section 23(c) of the Act

19. Section 23(c) of the Act prohibits a registered closed-end investment company from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers, or under other circumstances as the SEC may permit to insure that the purchase is made on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

20. Applicants state that a purchase by BKF of BKF stock from a Participant in connection with an Award might be prohibited by section 23(c) and request an order under section 23(c) to permit these purchases. Applicants state that these purchases will be made on a basis which does not unfairly discriminate against BKF shareholders because BKF will purchase its shares from the Participants at their market price on the date of the repurchase, the same price at which all other shareholders of BKF could sell their shares on the NYSE.

Applicant's Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. BKF will not dispose of the capital stock of Levco or the Adviser if as a result thereof, BKF would own, directly or indirectly, 50% or less of the outstanding capital stock of each of Levco and the Adviser, unless BKF disposes of 100% of its interest in the Adviser.

2. The Board will maintain Audit, Compensation, and Nominating Committees, none of the members of which will be "interested persons" of BKF as defined in the Act and as modified by the Prior Order. The Committee will administer the Plan and will be composed of two or more directors of BKF who are not interested persons of BKF or Levco and who are (i) non-employee directors within the meaning of rule 16b–3 under the Exchange Act, and (ii) outside directors as defined under section 162(m) of the IRC.

3. The Board will review at least annually the investment management business of BKF and the Adviser to determine whether the benefits derived by BKF warrant the continuation of such business and BKF's ownership, directly or indirectly, of the Adviser and, if appropriate, approve at least annually such continuation.

4. The cash incentive plan covered by the Prior Order will be approved and administered by the Compensation Committee of the Board. No new cash incentive awards will be made under that plan after approval of the Plan by BKF's shareholders.

5. The Plan will not be implemented unless the Plan has been approved by the holders of a majority of BKF's outstanding common stock present at a meeting called to consider the Plan. Any amendment to the Plan will be subject to the approval of BKF's stockholders to the extent such approval is required by law or the Board otherwise determines. Unless terminated or amended, during the fifth year of the Plan (and each fifth year thereafter), the Plan shall be resubmitted for reapproval to BKF's stockholders and the SEC and all Awards made during that year shall be contingent upon stockholder reapproval and receipt of an SEC exemptive order. BKF will not implement the Plan until stockholders have approved a new investment advisory agreement that describes the possible indirect compensation that the Adviser may receive if its officers, director and employees receive Awards.

6. Awards are not transferable or assignable, except as the Committee shall specifically approve to facilitate estate planning or to a beneficiary upon a Participant's death or by will or the laws of descent and distribution.

7. The existence and nature of the Awards granted will be disclosed in accordance with standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the SEC under Item 402 of Regulation S–K, Item 8 of Schedule 14A under the Exchange Act and Item 18 of Form N–2.

8. The maximum number of shares of BKF stock available for delivery in connection with Awards under the Plan shall be (i) 10% of BKF stock outstanding on the effective date of the Plan, plus (ii) 10% of the number of shares of BKF stock issued or delivered by BKF (other than pursuant to compensation plans) during the term of the Plan, subject to adjustment for corporate transactions. The maximum number of shares of Levco stock available for delivery in connection with Awards under the Plan shall be (i) 2,498, plus (ii) 19.99% of the number of shares of the Levco stock issued or delivered by Levco (other than pursuant to compensation plans) during the term of the Plan. The total amount of shares of BKF stock and Levco stock with respect to which incentive stock options may be granted shall not exceed three million and two thousand respectively.

9. The Board will review the Plan at least annually. In addition, the Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on BKF's and Levco's earnings and NAV per share, such review to take place prior to any decisions to grant Awards, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review, and the Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have any effect contrary to the interests of BKF's investors. This authority will include the authority to prevent or limit the grant of additional Awards. All records maintained pursuant to this condition will be subject to examination by the SEC and its staff.

10. Awards are issuable only to BKF's directors, officers and employees and the officers and employees of certain of its subsidiaries. No one person shall be granted Awards relating to more than 35% of the shares reserved for issuance under the Plan. In any fiscal year, no person may be granted Awards related to more than one million shares of BKF stock and 1,000 shares of Levco stock, which amounts may be adjusted by the Committee as it deems equitable to reflect certain corporate transactions or events that affect the stock of BKF and/or Levco.

11. The maximum amount of BKF stock subject to each Independent Director Initial Option is 1,000, and the maximum number of shares of BKF stock subject to each Independent Director Annual Option is 250, subject to adjustments for corporate transactions. The exercise price per share of BKF stock purchasable upon exercise of a director option will be equal to 100% of the FMV of a share of BKF stock on the date of grant of such option. A director option will expire at the earlier of (i) ten years from the date of grant or (ii) three months after the date the Independent Director ceases to serve as director of BKF for any reason.

12. Any loan made pursuant to the Plan will be required to be made with recourse against the borrower and be secured by the BKF stock and/or Levco stock to be acquired or other acceptable collateral. Furthermore, no loan may have a maturity of more than five years or bear interest at a rate below the "applicable federal rate" as defined in section 1274(d) of the IRC.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31940 Filed 11–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23548; 812–11248]

Bankers Trust Company et al.; Notice of Application

November 24, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants seeks an order that would permit registered open-end management investment companies to invest their uninvested cash in affiliated money market funds.

APPLICANTS: Bankers Trust Company; Cash Management Portfolio, Treasury Money Portfolio, Tax Free Money Portfolio, NY Tax Free Money Portfolio, International Equity Portfolio, Equity 500 Index Portfolio, Short/Intermediate U.S. Government Securities Portfolio, Asset Management Portfolio, Capital Appreciation Portfolio, Intermediate Tax Free Portfolio, BT Investment Portfolios, BT Institutional Funds, BT Insurance Funds Trust, BT Pyramid Mutual Funds, BT Alex. Brown Cash Reserve Fund, Inc., Flag Investors Communications Fund, Inc., Flag Investors International Fund, Inc., Flag Investors Emerging Growth Fund, Inc., Flag Investors Short-Intermediate Income Fund, Inc., Flag Investors Value Builder Fund, Inc., Flag Investors Real Estate Securities Fund, Inc., and Flag Investors Equity Partners Fund, Inc. (and each of their current series and each subsequently created series), and any other currently existing or subsequently created registered open-end management investment company advised or sub-advised by Bankers Trust Company or an entity controlling, controlled by, or under common control with Bankers Trust Company ("Bankers Trust") (collectively, the "Affiliated Funds").

FILING DATES: The application was filed on August 5, 1998, and amended on November 24, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 17, 1998, and should be accompanied by proof or service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, One Bankers Trust Plaza, 31st Floor, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's

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Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Affiliated Funds are open-end management investment companies registered under the Act. Nine of the Affiliated Funds are money market funds subject to rule 2a–7 under the Act (together with any future money market Affiliated Fund, the "Money Market Funds"). The remaining Affiliated Funds are variable net asset value funds (together with any future variable net asset value Affiliated Fund, the "Non-Money Market Funds").

2. Bankers Trust serves as investment adviser to the Affiliated Funds. Bankers Trust, a New York banking corporation, is exempt from registration as an investment adviser under section 202(a)(11)(A) of the Investment Advisers Act of 1940. Bankers Trust and any entity controlling, controlled by, or under common control with Bankers Trust that serves as investment adviser to the Affiliated Funds are referred to as the "Investment Adviser." Bankers Trust also serves as custodian to all of the Affiliated Funds.

3. Each of the Affiliated Funds has, or may be expected to have, cash reserves that have not been invested in portfolio securities ("Uninvested Cash") in an account at its custodian that either may be invested directly in individual short-term money market instruments or may not otherwise be invested in any portfolio securities. Uninvested Cash may result from a variety of sources, including dividends or interest received or portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, or new monies received from investors. Uninvested Cash of the Affiliated Funds which are Money Market Funds also may result from a variety of sources, including late trades on portfolio securities, unsettled securities transactions, or new monies received from investors.

4. Applicants seek an order that would permit each of the Affiliated Funds, including the Money Market Funds, to utilize their Uninvested Cash to purchase shares of one or more of the Money Market Funds (the "Underlying Money Market Funds") (each Affiliated Fund purchasing shares of the Money Market Funds, an "Investing Fund," and collectively, "Investing Funds"), and would permit the Underlying Money Market Funds to sell their shares to, and redeem shares from, the Investing Funds. Applicants state that the proposed transactions may reduce transaction costs, create more liquidity, increase returns on the Uninvested Cash, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that a registered investment company may not acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any persons or transactions from section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) to permit the Investing Funds to purchase and redeem shares of the Underlying Money Market Funds in excess of the limits in sections 12(d)(1)(A) and (B), provided however, that in all cases each Investing Fund's aggregate investment of Uninvested Cash in shares of the Underlying Money Market Funds will not exceed 25% of the Investing Fund's total assets at any time.

3. Applicants maintain that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants submit that the Underlying Money Market Funds contain a highly liquid portfolio and there would be no undue influence from an Investing Fund. Applicants state that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Underlying Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee, or service fee. In addition, the Investment Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fees of an Underlying Money Market Fund incurred by the Investing Fund.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines "affiliated person" to include persons under common control. Section 2(a)(9) of the Act defines "control" to mean the power to exercise a controlling influence over the management or policies of a company. Because the Affiliated Funds share a common investment adviser, each of the Affiliated Funds may be deemed to be under common control with the other Affiliated Funds. Accordingly, applicants state that the sale of shares of the Underlying Money Market Funds to the Investing Funds would be prohibited under section 17(a) of the Act.

5. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

6. Applicants state that the terms of the proposed transactions meet the standards of sections 6(c) and 17(b). Applicants state that the shares of the Underlying Money Market Funds will be purchased and redeemed at their net asset value, which is the same consideration paid and received for the shares by any other shareholder. Applicants also state that the Investing Funds will retain their ability to invest their Uninvested Cash directly in money market instruments if they believe they can obtain a higher return. Applicants assert that the purchase of shares of the Underlying Money Market Funds by the Investing Funds will be effected in accordance with each Investing Fund's investment policies and that the proposed transactions are consistent with the general purposes of the Act.

7. Section 17(d) of the Act and rule 17d–1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement within the investment company unless the SEC has issued an order authorizing the arrangement.

Applicants state that the Investing Funds, by purchasing shares of the Underlying Money Market Funds, the Investment Adviser, by managing the assets of the Investing Funds invested in the Underlying Money Market Funds, and the Underlying Money Market Funds could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. Rule 17d–1 under the Act permits the SEC to approve a joint transaction covered by the terms of section 17(d). In determining whether to permit a transaction, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants assert that the investment by the Investing Funds in shares of the Underlying Money Market Funds will be on the same basis as any other shareholder and will be consistent with the policies and purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Underlying Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in Rule 2830 of the NASD's Conduct Rules).

2. The Investment Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fees of an Underlying Money Market Fund incurred by the Investing Fund.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Underlying Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Underlying Money Market Funds does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Underlying Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, each Underlying Money Market Fund, and any future fund that may rely on the order shall be advised by the Investment Adviser, or a person controlling, controlled by, or under common control with the Investment Adviser.

6. No Underlying Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31938 Filed 11–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23549; 812–11392]

MFS Institutional Trust; Notice of Application

November 24, 1998.

AGENCY: Notice of application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant, MFS Institutional Trust ("Trust") on behalf of MFS Institutional Emerging Equities Fund ("Fund"), seeks an order to permit an in-kind redemption of shares of the Fund by an affiliated person of the Fund.

FILING DATES: The application was filed on October 30, 1998. Applicant has agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on December 18, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (tel. no. 202–942–8090).

Applicant's Representations

1. The Trust, organized as a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Fund is a series of the Trust. Massachusetts Financial Services Company ("Adviser"), registered under the Investment Advisers Act of 1940 ("Advisers Act"), is the Fund's investment adviser.

2. ICMA Retirement Trust ("Affiliated Shareholder") is a retirement trust for deferred compensation plans and qualified retirement plans established by state and local governments and their agencies and instrumentalities for their employees. The Affiliated Shareholder is not registered under the Act in reliance upon section 2(b) of the Act. The ICMA Retirement Corporation ("Retirement Corporation"), registered under the Advisers Act, serves as the investment adviser to the Affiliated Shareholder. The Affiliated Shareholder owns approximately 20.02% of the outstanding shares of the Fund.

3. The Retirement Corporation, acting in its fiduciary capacity with respect to the Affiliated Shareholder, has concluded that the assets of the Affiliated Shareholder invested in the Fund should be managed directly by the Adviser. Consequently, the Affiliated Shareholder has notified the Fund that it expects to redeem all of its shares of the Fund and place the proceeds in a separate account managed by the Retirement Corporation and subadvised by the Adviser. On October 28, 1998, the Fund's board of trustees, including all of the independent trustees, and the Adviser determined that it would be in the best interests of the Fund and its shareholders to redeem the shares of the Affiliated Shareholder in-kind.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, acting as principal, form knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines "affiliated person" of another person to include any person owning

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5% or more of the outstanding voting securities of the other person.

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant states that the Affiliated Shareholder is an affiliated person of the Fund under section 2(a)(3)(A) of the Act because it owns beneficially in excess of 5% of the Fund's shares. To the extent that the proposed in-kind redemption would be considered to involve the "purchase" of the Fund's portfolio securities by the Affiliated Shareholder, applicant states that the proposed in-kind redemption would be prohibited by section 17(a)(2) of the Act.

4. Applicant submits that the terms of the proposed in-kind redemption meet the standards set forth in section 17(b) of the Act. Applicant asserts that neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicant further states that the portfolio securities to be distributed to the Affiliated Shareholder will be valued according to an objective, verifiable standard and that the in-kind redemption is consistent with the investment polices of the Fund. Applicant also states that the proposed in-kind redemption is consistent with the general purposes of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Fund distributed to the Affiliated Shareholder pursuant to the in-kind redemption (the "In-Kind.Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by the Fund on a pro rata basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind Securities distributed to the Affiliated Shareholder will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value which, in the case of securities traded on a public securities market for which quotations are available, is the last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the most recent bid price.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of the redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31939 Filed 11–30–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 31, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and *OMB Reviewer,* Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: Disaster Business Loan Application.

Form No's: 5,739A, and 1368.

Frequency: On Occasion.

Description of Respondents: Small Businesses.

Annual Responses: 16,853.

Annual Burden: 48,561.

Dated: November 23, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–31918 Filed 11–30–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities; Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Organization Profile–0960–NEW. The Social Security Administration (SSA) will use the information collected on the Organization Profile questionnaire to create a database of third party stakeholders. This database will support the delivery of information

about Social Security programs to these interested parties, and enable SSA to target relevant information to those organizations while restricting unwanted material. The respondents are community organizations, state and local government agencies, advocacy groups, community service organizations.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 1,167 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Time Report of Personnel Services for Disability Determinination Services—0960–0408. Form SSA–4514 is used by the Social Security Administration (SSA) to collect data necessary for detailed analysis and evaluation of costs incurred by State Disability Determination Services (DDS) in making determinations of disability for SSA. The data are also used in determining funding levels for each DDS. The respondents are State DDSs making determinations of disability for SSA.

Number of Respondents: 54.

Frequency of Response: 4.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 108 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: November 24, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–31903 Filed 11–30–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Amarillo International Airport, Amarillo, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Amarillo, Texas, for Amarillo International Airport, under the provisions of Title 49, USC, Chapter 475 and CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On April 30, 1998, the FAA determined that the noise exposure maps submitted by the City of Amarillo under Part 150 were in compliance with applicable requirements. On October 26, 1998, the Administrator approved the noise compatibility program. All of the recommendations of the programs were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Amarillo International Airport noise compatibility program is October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Stoltz, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137, (817) 222–5608. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Amarillo International Airport effective October 26, 1998.

Under Title 49 USC, Section 47504 (hereinafter referred to as "Title 49"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and Title 49 and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The City of Amarillo submitted to the FAA on December 16, 1997, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 4, 1996, through October 26, 1998. The Amarillo International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 30, 1998. Notice of this determination was published in the **Federal Register** on May 13, 1998.

The Amarillo International Airport Part 150 study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2003. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program on April 30, 1998, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained four proposed actions for noise mitigation (on and/or off) the airport. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 26, 1998.

Outright approval was granted for all of the four specific program elements. The approved elements constitute a continuation of noise compatibility programs and the implementation of a new, voluntary flight procedure for military and other training operations which would reduce the numbers of people exposed to overflights within the DNL 65dB noise contour.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 26, 1998. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Amarillo International Airport, 10801 Airport Boulevard, Amarillo, TX 79111–1211.

Issued in Fort Worth, Texas, November 16, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–31942 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Luis Obispo County Airport-McChesney Field, San Luis Obispo, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at San Luis Obispo County Airport-McChesney Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Klaasje Nairne, Airport Administrative Officer of the San Luis Obispo Airport-McChesney Field, at the following address: County of San Luis Obispo, County Government Center, Room 460, San Luis Obispo, CA 93408. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of San Luis Obispo under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Luis Obispo County Airport-McChesney Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 29, 1998, the FAA determined that the application to impose and use a PFC submitted by the County of San Luis Obispo was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 29, 1999.

The following is a brief overview of the impose and use application No. 99–05–C–00–SBP:

Level of proposed PFC: $3.00.

Proposed charge effective date: July 1, 2012.

Proposed charge expiration date: June 30, 2015.

Total estimated PFC revenue: $1,229,113.

Brief description of the proposed projects: Land Acquisition and Master Plan Environmental Assessment and Environmental Impact Report.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of San Luis Obispo.

Issued in Hawthorne, California, on November 3, 1998.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 98–31941 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Caldwell and Guadalupe Counties, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed new location highway/tollway project in Caldwell and Guadalupe Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Walter C. Waidelich, District Engineer, Federal Highway Administration, Room 850, Federal Building, 300 East 8th Street, Austin, Texas 78701. David Kopp, P.E., Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701–2483.

SUPPLEMENTARY INFORMATION: State Highway 130, as currently envisioned, is a proposed controlled access highway which will extend from IH 35 at State Highway 195 north or Georgetown in Williamson County, Texas, to IH 10 near Seguin in Guadalupe County, Texas. State Highway 130 will be located generally parallel to and east of Interstate Highway 35 and the urban areas of Austin, San Marcos, and New Braunfels. The total length of the proposed facility is 143.5 kilometers (89 miles). The proposed State Highway 130 facility is being developed by the FHWA in cooperation with the Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation (TxDOT). It is being developed in three projects with each project having logical termini and independent utility. FHWA and TTA will prepare an Environmental Impact Statement for each of the three independent projects.

This Notice of Intent (NOI) focuses on the southern project, Segment C, of State Highway 130. As announced herein, the FHWA in cooperation with TTA will prepare an Environmental Impact Statement on a proposal to construct Segment C of State Highway 130. Segment C of proposed State Highway 130 extends from the junctions of US Highway 183 and Farm-to-Market Road 1185 north of Lockhart in Caldwell County, Texas, to Interstate Highway 10 near Seguin in Guadalupe County, Texas. The length of Segment C varies depending on the alternative selected. The proposed action is intended to relieve congestion on Interstate 35 by providing an alternative route for those who commute between the metropolitan areas of Austin or San Antonio and surrounding areas as well as drivers desiring to bypass Austin and other central Texas cities located along the heavily traveled Interstate 35 corridor. The proposed action will also provide improved access and increased mobility to urbanized areas in the proposed corridor; help support planned business and residential growth in various areas throughout the project corridor; and provide needed freeway access from surrounding areas to the proposed Austin Bergstrom International Airport.

A Major Investment Study, addressing the entire length of the proposed State Highway 130, was endorsed in July 1997 by the Austin Transportation Study Policy Advisory Committee, the metropolitan planning organization for the Austin, Texas area.

The proposed Segment C facility is being developed as a candidate toll road; thus, in conjunction with the EIS and selection of a preferred alternative, the TTA will conduct a toll feasibility study to evaluate the ability of developing the selected alternative as a toll road and financing it, in whole or part, through the issuance of revenue bonds. The toll road designation will not influence the selection of a preferred alternative. Proposed alternatives, including alternative alignments, will be evaluated for how well they meet the stated purpose and need for the proposed project. Any impacts owing to the toll road designation will be discussed in the environmental impact statement.

The draft EIS for Segment C will address a build alternative including multiple alternative alignments. Alternatives to the proposed action, which will also be discussed in the EIS, will include (1) taking no action, or the "no build" alternative, and (2) improving existing roadways in the project area. The build alternatives include multiple alternative alignments along new location and existing highway rights-of-way within the Segment C project limits.

Impacts caused by the construction and operation of Segment C of State Highway 130 will vary according to the alternative alignment utilized. Generally, impacts would include the following: transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction and operation of the roadway; water quality impacts from construction activities and roadway storm water runoff; impacts to waters of the United States including wetlands from right-of-way encroachment; and impacts to residences and businesses.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. Public meetings for the Segment C project were held in June and September 1997 in Seguin, Texas and in June and September 1997 in Lockhart, Texas. At these meetings, public comments on the proposed action and alternatives were requested.

In continuation of the scoping process for Segment C of State Highway 130, an additional set of public meetings has been scheduled. These meetings will be held on Wednesday, December 2, 1998, at the Sequin Coliseum, 810 South Guadalupe Street, Sequin, Texas, and on Tuesday, December 8, 1998, in the cafeteria of Plum Creek Elementary School, 710 Flores Street, Lockhart, Texas. Two meeting are planned for the convenience of those wishing to attend. TTA, and its consultants, will present the same information at each meeting. From 6:00 to 7:00 pm, displays showing the preliminary alternative corridors will be available for review. During this period, TTA staff will be available to answer questions. Beginning at 7:00 pm, a formal presentation of the project will be made and will be followed by a public comment period. All interested persons are encouraged to attend one or both of these public meetings.

A public hearing will be held for the Segment C project subsequent to publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to proposed Segment C of State Highway 130 are addressed and all significant issues identified, comments and suggestions are invited from all parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or TTA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 18, 1998.

Walter C. Waidelich,

District Engineer, Austin, Texas.

[FR Doc. 98–31372 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4334]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petitions and intent to grant applications for exemption; request for comments.

SUMMARY: This notice announces the FHWA's preliminary determination to grant the applications of 24 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations. Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thomas, Office of Motor Carrier Research and Standards, (202) 366–8786, or Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Twenty-four individuals have requested a waiver of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Their requests were filed with the FHWA on various dates before June 9, 1998. When they were filed, the FHWA was authorized by 49 U.S.C. 31136(e) to waive application of the vision standard if the agency determined the waiver was consistent with the public interest and the safe operation of CMVs. Because the statute did not limit the effective period of a waiver, the agency had discretion to issue waivers for any period warranted by the circumstances of a request.

On June 9, 1998, the FHWA's waiver authority changed with enactment of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. No. 105–178, 112 Stat.107. Section 4007 of TEA–21 amended the waiver provisions of 49 U.S.C. 31136(e) and 31315 to change the standard for evaluating waiver requests, to distinguish between a waiver and an exemption, and to establish term limits for both. Under revised section 31136(e), the FHWA may grant a waiver for a period of up to 3 months or an exemption for a renewable 2-year period. The 24 applications in this proceeding fall within the scope of an exemption request under the revised statute.

The amendments to 49 U.S.C. 31136(e) also changed the criteria for exempting a person from application of a regulation. Previously an exemption was appropriate if it was consistent with the public interest and the safe operation of CMVs. Now the FHWA may grant an exemption if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." According to the legislative history, Congress changed the statutory standard to give the agency greater discretion to consider exemptions. The previous standard was judicially construed as requiring an advance determination that absolutely no reduction in safety would result from an exemption. Congress revised the standard to require that an "equivalent" level of safety be achieved by the exemption, which would allow for more equitable resolution of such matters, while ensuring safety standards are maintained. (See H.R. Conf. Rep. No. 105–550, at 489 (1998)).

Although the 24 petitions in this proceeding were filed before enactment of TEA–21, the FHWA is required to apply the law in effect at the time of its decision unless (1) its application will result in a manifest injustice or (2) the statute or legislative history directs otherwise. *Bradley* v. *School Board of the City of Richmond,* 416 U.S. 696 (1974). There is nothing in the statute, its history, or the facts in this proceeding which meets either of these two tests. In fact, the new standard is more equitable as it allows an exemption to be based on a reasonable expectation of equivalent safety, rather than requiring an absolute determination that safety will not be diminished. In addition, the "public interest" finding required under the previous standard is not necessary under the new exemption standard. These changes enhance the FHWA's discretion to consider exemptions, thus benefitting the 24 applicants rather than causing an injustice.

Although applying TEA–21's new exemption standard does not adversely affect the applicants, subjecting their applications to the new procedural requirements would adversely affect them. Section 4007 requires the Secretary of Transportation to promulgate regulations specifying the procedures by which a person may request an exemption. The statute lists four items of information an applicant must submit with an exemption petition and gives the Secretary 180 days to implement the new procedural regulations. Although the FHWA intends to meet that deadline, it would be manifestly unjust to the 24 applicants to delay publication of this notice until the new procedural regulations are in place, and then at that time, require them to submit conforming information to support their exemption request. To avoid this delay and injustice, we will not apply the new procedural requirements of Section 4007 to exemption petitions filed before its effective date, June 9, 1998.

Accordingly, the FHWA has evaluated each of the 24 exemption requests on its merits, as required by the decision in *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration,* 95 F.3d 715 (8th Cir. 1996), applying the new exemption standard in 49 U.S.C. 31136(e). Based on our evaluation, we have made a preliminary determination that exempting these 24 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

Qualifications of Applicants

1. Gary R. Andersen

Mr. Andersen is a 34-year-old individual who has operated CMVs for 15 years.

A congenital irregularity called amblyopia was discovered in his left eye when he was about 9 years old, and his optometrist believes the condition was present much earlier. Because of this condition, Mr. Andersen is unable to meet the vision requirement of 49 CFR 391.41(b)(10).

A 1997 letter from the optometrist states Mr. Andersen has 20/20 vision in his right eye without glasses and 20/200 unaided in the left eye. In the optometrist's opinion, Mr. Andersen can perform the tasks necessary to operate a CMV.

Mr. Andersen holds a Nebraska commercial driver's license (CDL) with a tank vehicle endorsement. He has driven straight trucks and tractor-trailer combinations almost 1 million miles since 1982, and his driving record contains no traffic violations and no accidents in such vehicles. One of his previous employers, Gerhold Concrete Company, says Mr. Andersen "operated equipment safely" while in its employ.

2. Joe F. Arnold

Mr. Arnold, 40, has been blind in his right eye since he was 6 months old. A 1997 medical report indicates he has 20/20 vision in his left eye without glasses. In his optometrist's opinion, Mr. Arnold is capable of operating a CMV.

Mr. Arnold has been a professional truck driver for 22 years and has operated straight trucks and tractor-trailer combinations. He holds an Arkansas CDL, and his official State driving record reflects no moving violations in any vehicle. His CMV was in a collision with an automobile in February 1996. There were no injuries, and Mr. Arnold did not receive a citation.

3. Jack E. Atkinson

Mr. Atkinson is 59 years old and has been employed as a commercial truck driver for 36 years. He has a macular defect in his left eye which prevents him from meeting the vision requirement of 49 CFR 391.41(b)(10). His optometrist believes the defect is "long standing."

A 1997 examination indicates Mr. Atkinson has 20/20 vision in his right eye and 20/60 in the left eye with corrective lenses. In the optometrist's opinion, Mr. Atkinson is capable of operating a CMV. Because the eye condition is an old one, he has had many years to adapt his driving skills to accommodate his vision deficiency.

Mr. Atkinson holds a Missouri CDL with tank vehicle and double- and triple-trailer endorsements. He has driven CMVs more than 1.2 million miles since 1961. His official driving record for the past 3 years reflects no traffic violations in a CMV and no accidents in any vehicle. Mr. Atkinson has operated straight trucks and tractor-trailer combinations for Southern Supply Company since 1981; the president of the company calls him "an outstanding employee."

4. Gary A. Barrett

Mr. Barrett, 46, was born with amblyopia in his left eye. The vision in his right eye was 20/20 with glasses in a 1998 examination. His optometrist says Mr. Barrett is able to perform the tasks necessary to operate a CMV.

Mr. Barrett has an Iowa CDL with hazardous materials and tank vehicle endorsements. He received his first commercial license in 1969 and has driven straight trucks and tractor-trailer combinations more than 900,000 miles. His official State record for the past 3 years contains no accidents and one citation for failure to obey a traffic signal.

5. Ivan L. Beal

Mr. Beal, 63, has been employed as a commercial truck driver for 29 years. He has had amblyopia in his right eye since he was a child. Because of this eye condition, Mr. Beal is unable to meet the Federal vision requirement.

A 1997 medical report indicates Mr. Beal has 20/200 vision in his right eye and 20/20 vision in the left eye with corrective lenses. His optometrist states Mr. Beal has the skills to operate a CMV safely. Having had amblyopia since childhood, he has had almost his entire life to adapt to it.

He has driven tractor-trailer combinations and straight trucks approximately 2.4 million miles since 1968. He has a Nebraska CDL and his driving record for the past 3 years reflects no traffic violations and no accidents. Mr. Beal operates CMVs for his family's company and intends to continue driving for it if his exemption is granted.

6. Johnny A. Beutler

Mr. Beutler, 53, has amblyopia of the right eye and cannot meet the Federal vision standard. A 1997 examination by an optometrist revealed the vision in his left eye to be 20/20 without correction; the amblyopic right eye measures 20/400 unaided. The optometrist stated Mr. Beutler has had the condition for many years and has had "no difficulty performing the appropriate driving skills" in a CMV.

Mr. Beutler is self-employed and holds a South Dakota CDL. He has driven more than 2.6 million miles in a 35-year professional driving career and has operated straight trucks and tractor-trailer combinations. His official State driving record reflects no traffic citations in any vehicle for the past 5 years. In 1996, his CMV was involved in an accident. There was property damage but there were no injuries, and he did not receive a citation.

7. Richard D. Carlson

Mr. Carlson lost the sight in his right eye when he was 11 years old. Now 51, his vision in the left eye is 20/15 without glasses, according to a 1997 examination. His ophthalmologist states Mr. Carlson can operate a CMV.

Mr. Carlson holds a Minnesota CDL with hazardous materials and tank vehicle endorsements. He is a self-employed owner-operator who has driven tractor-trailer combination vehicles for 20 years and 2 million miles. His official State driving record reveals no traffic citations or accidents in a CMV.

8. David John Collier

Mr. Collier, 42, has been blind in his right eye since 1970. His left eye was measured at 20/20 with glasses in a 1998 examination, and the optometrist says Mr. Collier has "adapted very well" to his condition and can perform the tasks required to operate a CMV.

David Collier has an Iowa CDL with a tank vehicle endorsement. He has operated tractor-trailer combination vehicles for 4 years and has driven them more than 400,000 miles. His official State driving record lists no moving violations and no accidents in a CMV. Like the other applicants, Mr. Collier's safe driving record indicates he has adjusted successfully to his vision impairment.

9. Tomie L. Estes

Mr. Estes is a 40-year-old individual who has been blind in his left eye since he was 10. He has 20/25 unaided vision in his right eye and 20/15 with corrective lenses, according to a 1998 examination. The optometrist who conducted the examination asserts Mr. Estes is able to drive a CMV.

Mr. Estes has 24 years' experience operating tractor-trailer combinations and 10 years of experience driving straight trucks. For the past 7 years, he

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has operated CMVs for a company which calls him one of its top five drivers and lauds his job performance and safety record. Mr. Estes holds a Missouri CDL and has no traffic violations or accidents in the past 3 years on his official State driving record.

10. Jay E. Finney

Mr. Finney is a 50-year-old man who lost his left eye in an accident when he was 6. He has 20/25 vision in his right eye with corrective lenses. An optometrist examined him in November 1997 and asserted Mr. Finney "is able to perform the driving tasks required to operate a truck."

Mr. Finney has 20 years of experience operating straight trucks and tractor-trailer combinations. He holds a Missouri CDL with a tank vehicle endorsement and has driven more than 1 million miles in commercial vehicles. He has no traffic citations or accidents on his official driving record. Mr. Finney is a self-employed dump truck driver.

11. Britt D. Hazelwood

Mr. Hazelwood, 34, has had amblyopia in his right eye since early childhood. The vision in his left eye is 20/20 without glasses. His ophthalmologist states Mr. Hazelwood is able to perform the duties of a CMV driver.

Mr. Hazelwood has a Missouri CDL and has operated tractor-trailer combinations for 12 years and straight trucks for 16 years. He has accumulated more than 750,000 miles behind the wheel. His official State driving record reveals no accidents or citations in a CMV. This safe driving record indicates Mr. Hazelwood has adapted successfully to a vision impairment he has had almost all his life. His employer, for whom he has driven since 1987, calls him a "valuable employee."

12. Jon R. Houston

Mr. Houston, 33, has had amblyopia in his left eye since he was 4 years old. The vision in his right eye was 20/20 without glasses in a 1998 examination. His optometrist says Mr. Houston "has excellent peripheral vision" and is able to perform the tasks necessary to operate a CMV.

Mr. Houston has an Iowa CDL with a tank vehicle endorsement. He has 3 years' experience driving straight trucks and has driven tractor-trailer combinations for 11 years and more than 1 million miles. His official State driving record contains one speeding ticket and no accidents in a CMV in the past 3 years.

13. Jerome R. Jessen

Mr. Jessen, 53, has partial amblyopia in the right eye which makes him unable to meet the Federal vision standard. The condition has existed since childhood. His ophthalmologist examined him in 1997 and found Mr. Jessen's vision in the left eye to be 20/20 with glasses. The doctor says Mr. Jessen is able to perform the tasks required to operate a CMV.

Mr. Jessen is a self-employed dump truck driver with a Minnesota CDL and intrastate vision waiver. He has been a professional truck driver for 10 years and has driven 500,000 miles. There are no traffic violations or accidents in any vehicle in the past 3 years on his official driving record.

14. Chad M. Kallhoff

Mr. Kallhoff had an accident when he was 12 which left him blind in his left eye. The vision in his right eye is 20/20 without glasses. His optometrist states Mr. Kallhoff is able to perform the duties of a CMV driver.

Mr. Kallhoff, 28, has a Nebraska CDL and has operated tractor-trailer combinations for 7 years and straight trucks for 10 years. He has accumulated more than 1 million miles behind the wheel. His official driving record for the past 3 years reveals no accidents and one speeding ticket in a CMV. This safe driving record indicates Mr. Kallhoff has adapted successfully to a vision impairment he has had for more than half his life.

15. Loras G. Knebel

Mr. Knebel is a 59-year-old individual whose scar on the cornea in his left eye prevents him from meeting the vision requirement of 49 CFR 391.41(b)(10). The scar is a result of a 1981 accident. Mr. Knebel has 20/20 vision in his right eye with corrective lenses, according to a 1997 examination. The ophthalmologist who conducted the examination asserts Mr. Knebel "is able to drive any vehicle and perform any tasks" driving might require.

Mr. Knebel has 25 years' experience operating straight trucks. For the past 2 years, he has operated tractor-trailer combinations for an Iowa company and averaged 60,000 miles annually in those vehicles. He holds an Iowa CDL and has one speeding ticket and no accidents in a CMV on his official State driving record.

16. Rodney D. Lemburg

Mr. Lemburg, 41, has had amblyopia in his left eye since childhood. A 1998 examination by an ophthalmologist confirmed vision in the right eye to be 20/20 without glasses. The doctor believes Mr. Lemburg is able to perform the tasks required to operate a CMV and is "a proper candidate to drive."

Mr. Lemburg has a South Dakota CDL with hazardous materials and tank vehicle endorsements. He has been a professional truck driver for 14 years and has driven straight trucks and tractor-trailer combination vehicles more than 2 million miles. There are no traffic violations or accidents in the past 3 years on his official driving record.

17. Dexter L. Myhre

Mr. Myhre, 54, has been blind in his left eye since 1994. His right eye was measured at 20/20 without glasses in a January 1998 examination, and the optometrist asserts Mr. Myhre can perform the tasks required to operate a CMV.

Dexter Myhre has a Minnesota CDL and intrastate vision waiver. He has operated tractor-trailer combination vehicles for almost 13 years. In the 3 years since he lost the sight in his left eye, Mr. Myhre has driven those vehicles more than 200,000 miles and has not received any traffic citations or been involved in an accident. He received a driving safety award from his employer's insurance company in 1996. Mr. Myhre has been employed by the same motor carrier since 1985; a member of its safety department says he has "excellent safety habits" and is a very capable driver whom the company would like to have on the road more frequently.

18. James H. Oppliger

Mr. Oppliger, 52, has been a commercial truck driver for 36 years. He has had an artificial right eye since 1973 and cannot meet the Federal vision requirement. He has had almost half his life to adapt to his medical condition.

A 1998 medical report indicates Mr. Oppliger has 20/20 vision in the left eye without corrective lenses. His optometrist states Mr. Oppliger can perform the tasks required to operate a CMV.

He has driven tractor-trailer combinations and straight trucks approximately 700,000 miles in his career. He has a Nebraska CDL with a tank vehicle endorsement, and his driving record for the past 3 years reflects no traffic violations and no accidents in a CMV. Mr. Oppliger is a self-employed professional driver who hauls grain and feed.

19. Stephanie D. Randels

Ms. Randels has had amblyopia of the left eye since birth. Her vision in the eye with corrective lenses has generally varied between 20/50 and 20/60 in the past 12 years, but this is not sufficient to meet the vision standard of 49 CFR 391.41(b)(10). According to a 1998 examination, her right eye is correctable to 20/20. Her optometrist states

Ms. Randels can perform the tasks associated with driving a CMV.

Ms. Randels is 39 years old and holds a Missouri CDL with a hazardous materials endorsement. She has operated tractor-trailer combinations for 18 years and driven more than 2 million miles. She has driven for the same company for the past 10 years and has not received a moving violation or been involved in an accident. The company's safety director calls Ms. Randels "one of the safest, most conscientious drivers on the road."

20. Duane L. Riendeau

Mr. Riendeau, 50, has amblyopia in the right eye which makes him unable to meet the Federal vision standard. The condition has existed since childhood. An optometrist examined him in 1997 and found Mr. Riendeau's vision in the left eye to be 20/30 unaided and 20/20 with glasses. The doctor recommends Mr. Riendeau be permitted to continue operating a CMV.

Mr. Riendeau holds a North Dakota CDL with a tank vehicle endorsement. He has been a professional truck driver for 25 years and has driven straight trucks and combination vehicles more than 1.5 million miles. There are no traffic violations or accidents in any vehicle on his official driving record.

21. Darrell Rohlfs

Mr. Rohlfs, 38, had his left eye removed in 1988 due to a cancerous tumor. The vision in his right eye was 20/20 without glasses in a 1997 examination. His optometrist says Mr. Rohlfs is able to perform tasks necessary to operate a CMV.

Mr. Rohlfs has an Iowa CDL and has driven straight trucks and tractor-trailer combinations almost 900,000 miles in a 19-year professional driving career. Several of his employers lauded his safe driving practices. His official State record for the past 3 years contains two speeding tickets in a CMV; in each case, Mr. Rohlfs was going less than 15 miles per hour over the posted limit. He has had no accidents in any vehicle.

22. Marvin L. Swillie

Mr. Swillie is a 53-year-old man with a retinal scar in his left eye, making him unable to meet the Federal vision standard. He has 20/20 vision in his right eye with corrective lenses. An ophthalmologist examined him in 1998 and asserted Mr. Swillie is capable of driving a CMV.

Mr. Swillie has 25 years of experience operating tractor-trailer combinations; he has driven them more than 3 million miles. He holds a Nebraska CDL with hazardous materials and tank vehicle endorsements. He has no traffic citations or accidents in a CMV on his official driving record. Mr. Swillie has driven for the same company since 1987 and will continue there if his exemption is granted.

23. Larry Waldner

Mr. Waldner, 43, lost the sight in his left eye when he was 6 years old. A 1998 examination by an optometrist revealed the vision in his right eye to be 20/20 without correction. The optometrist stated Mr. Waldner "could certainly operate a commercial vehicle" despite his condition.

Mr. Waldner holds a South Dakota CDL. He has 15 years' experience operating straight trucks and has operated tractor-trailer combinations for the past 3 years. He has driven for the same company since February 1995 and intends to continue with it if he is granted an exemption. Mr. Waldner's official State driving record reflects no traffic citations or accidents in a CMV.

24. Ronald Watt

Mr. Watt, 66, lost the vision in his right eye in 1992 due to an injury. A 1997 medical report indicates he has 20/20 vision in his left eye with glasses. In his ophthalmologist's opinion, Mr. Watt is capable of operating a CMV.

Mr. Watt has operated straight trucks since he was a teenager and tractor-trailer combinations professionally since 1975. He has driven the combination vehicles 2 million miles. Mr. Watt has a North Dakota CDL with tank vehicle and double-and triple-trailer endorsements. His driving record for the past 3 years reflects no traffic violations in a CMV and no accidents in any vehicle.

Basis for Preliminary Determination To Grant Exemptions

Independent studies support the principle that past driving performance is a reliable indicator of an individual's future safety record. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrates the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996). That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 24 applicants have qualifications similar to those possessed by drivers in the waiver program. Their experience and safe driving record operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. For that reason, the FHWA believes exempting these individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in Section 391.41(b)(10). As a condition of the exemption, therefore, the FHWA proposes to impose requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are (1) that each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests he or she is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with revised 49 U.S.C. 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the FHWA. The exemption will be revoked if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the FHWA for a renewal under procedures in effect at that time.

Request for Comments

In accordance with 49 U.S.C. 31136(e), the FHWA is requesting public comment from all interested parties on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue exemptions from the vision requirement to the 24 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 31136 and 31315; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: November 20, 1998.

Kenneth R. Wykle,

Federal Highway Administration Administrator.

[FR Doc. 98–31927 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4805]

Notice of Receipt of Petition for Decision That Nonconforming 1999 Harley Davidson FX, FL, and XL Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 Harley Davidson FX, FL, and XL motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 31, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1999 Harley Davidson FX, FL, and XL motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1999 Harley Davidson FX, FL, and XL motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999 Harley Davidson FX, FL, and XL motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1999 Harley Davidson FX, FL, and XL motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 Harley Davidson FX, FL, and XL motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model head lamp assemblies; and (b) Installation of U.S.-model taillamp assemblies and front and rear side reflectors if the vehicles are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: Installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal**

Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 24, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–31900 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4804]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Honda Accord Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Honda Accord passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1991 Honda Accord that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 31, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1991 Honda Accord passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 Honda Accord that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 Honda Accord passenger cars to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Honda Accord, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 Honda Accord is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1991 Honda Accord complies with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 24, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–31901 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3869; Notice 02]

Western Star Trucks, Inc.; Grant of Application for Decisions of Inconsequential Noncompliance

Western Star Trucks Inc. (Western Star) of Kelowna, British Columbia, Canada, has determined that some of its vehicles fail to comply with the labeling requirements of 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials," and has filed an appropriate report pursuant to 49 CFR Part 573 "Defect and Noncompliance Reports." Western Star has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published with a 30-day comment period, on June 12, 1998, in the **Federal Register** (63 FR 33434). NHTSA received no comments on this application.

FMVSS 205, paragraph S6 *Certification and marking,* requires that each piece of glazing material shall be marked in accordance to section 6 of the American National Standard "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a July 3, 1980 (ANS Z26). This specifies all safety glazing materials shall be legibly and permanently marked in letters and numerals at least 0.070 inch (1.78 mm) in height, with the words "American National Standard" or the characters "AS" and, in addition, with a model number that will identify the type of construction of the glazing material. They shall also be marked with the manufacturer's distinctive designation or trademark. In addition, FMVSS 205, paragraph S6.2 requires that each piece of glazing material be marked with the symbol "DOT."

From January 17, 1996, to February 3, 1998, Western Star Trucks manufactured approximately 891 Western Star Constellation series truck/tractors equipped with 58 inches or 72 inches sleeper windows which were not marked per the requirements of S6 of FMVSS 205.

Western Star supports its application for inconsequential noncompliance with the following:

1. All performance requirements of FMVSS 205 are met or exceeded.
2. The sleeper window is located out of the truck/tractor driver's compartment in an area not requisite for driver visibility.

NHTSA has reviewed Western Star's application and, for the reasons discussed below, concludes that the noncompliance of the Western Star windows is inconsequential to motor vehicle safety. Western Star has provided documentation that the windows do comply with all other safety performance requirements of the standard, except the labeling. This documentation is a surrogate for the certification labeling. NHTSA believes that the lack of labeling would not result in inadvertent replacement of the windows with the wrong glazing. Broken tempered glass can readily be identified as tempered glass, rather than plastic or laminated glass. Anyone who intended to replace the window with an identical tempered glass window would have to contact Western Star for the proper part, since tempered glass windows cannot be easily manufactured by small field facilities. At that point, Western Star, or their representative, would be able to provide the correct replacement window by use of their parts system.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety.

Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8.

Issued: November 24, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–31928 Filed 11–30–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Privacy Act of 1974; System of Records

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed new Privacy Act system of records.

SUMMARY: The Treasury Department, Customs Service, gives notice of a proposed new system of records which is subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: Comments must be received no later than December 31, 1998. This new system of records will be effective January 11, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the Office of Regulations and Rulings, Disclosure Law Branch, U.S. Customs

Service, 1300 Pennsylvania Ave. NW., Washington, DC 20229. Comments will be available for inspection and copying at the Disclosure Law Branch, 1300 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Assistant Commissioner, Office of Information and Technology, U.S. Customs Service, (202) 927-0800.

SUPPLEMENTARY INFORMATION: The Office of Information and Technology is redesigning their non-integrated tracking systems: The Seized Currency Tracking System, Seized Property Management System, Seized Property Tracking System, and the Automated Commercial System Module for Fines, Penalties and Forfeitures to be replaced by the Seized Asset and Case Tracking System (SEACATS). The purpose of the newly proposed system of records is to provide Customs and the Treasury Forfeiture Fund with a comprehensive system for tracking seized and forfeited property, penalties, and liquidated damages from case initiation to final resolution.

The Seized Asset and Case Tracking System (SEACATS), as a computerized database, has terminals located at Customs Management Centers and ports of entry located throughout the United States, at U.S. Secret Service, Bureau of Alcohol, Tobacco and Firearms, Internal Revenue Service, Executive Office of Asset Forfeiture and the field and headquarters offices of the contractor custodian of all seized property. The system will permit the retrieval of information related to internal review and consideration of request for relief related to property that was seized by components of the Department of the Treasury and the names and other identifying information for persons and businesses who purchase forfeited property from the government.

Exemption from provisions of the Privacy Act is claimed in a separate document. The system notice is published in its entirety below.

Dated: November 19, 1998.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

Treasury/Customs .213

SYSTEM NAME:

Seized Asset and Case Tracking System (SEACATS).

SYSTEM LOCATION:

Office of Information and Technology, U.S. Customs Service, 1300 Pennsylvania Ave. NW., Washington, DC 20229.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Owners, claimants, and other interested parties to seized property; (2) those who have been administratively or criminally charged with violations of Customs laws and regulations, and other laws and regulations enforced by the Customs Service, U.S. Secret Service, Bureau of Alcohol, Tobacco and Firearms, and the Internal Revenue Service; (3) purchasers of forfeited property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes records containing information related to property that was forfeited or seized by the U.S. Customs Service, the U.S. Secret Service, the Bureau of Alcohol, Tobacco and Firearms, such as: (1) Individual and business names, (2) phone numbers, (3) identifying numbers, (4) dates, (5) types of violations, (6) parties entitled to legal notice, (7) parties who are legally liable, (8) case information pertaining to violation, (9) bond information, (10) entry documentation, (11) petitions and supplemental petitions, (12) reports of investigation concerning the fine, penalty or forfeiture, (13) information related to internal review and consideration of request for relief, (14) offer information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order No. 165, Revised, as amended. 19 U.S.C. 66, 1618, 1624; 19 CFR parts 171 and 172.

PURPOSE(S):

The purpose is to provide Customs and the Treasury Executive Office of Asset Forfeiture with a comprehensive system for tracking seized and forfeited property, penalties, and liquidated damages from case initiation to final resolution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, or in response to a subpoena, in connection with criminal law proceedings;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relates to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

By identification codes, name, phone number, identifying number, and date and type of violation.

SAFEGUARDS:

Access to the computer area is controlled by a security pass arrangement and personnel not connected with the operation of the computer are prohibited from entering. At ports of processing, terminal rooms are under close supervision during working hours and locked after the close of business. Users gain access to the system by unique identification code and password. Access is on a need-to-know basis only. Passwords are changed frequently to enhance security.

RETENTION AND DISPOSAL:

Files are periodically updated to reflect changes and are disposed of in accordance with the requirements of the National Archives and Records Administration's record retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Office of Information and Technology, U.S. Customs Service, 1300 Pennsylvania Ave. NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual. (See 5 U.S.C. 552a (e)(4)(G) and (f)(1).)

RECORD ACCESS PROCEDURES:

This system of records may not be accessed under the Privacy Act for the purpose of inspection.

CONTESTING RECORD PROCEDURES:

Since this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual and those records, if any, cannot be inspected, the system may not be accessed under the Privacy Act for the purpose of contesting the content of the record.

RECORD SOURCE CATEGORIES:

This system of records is exempt from the Privacy Act provision which requires that record source categories be reported. (See "Exemptions Claimed for the System," below.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4) (G), (H) and (I), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

[FR Doc. 98-31870 Filed 11-30-98; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Worcester Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36113 to reflect this addition:

Company Name: Worcester Insurance Company. Business address: 120 Front Street, Suite 500, Worcester, MA 01608–1408. Phone: (508) 751–8100. Underwriting limitation b/: $8,000,000. Surety licenses c/: CT, ME, MA, MI, NH, NY, RI, VT. Incorporated in: Massachusetts.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00516–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: November 16, 1998.

Judith R. Tillman,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 98–31948 Filed 11–30–98; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations, "Letters in Gold: Ottoman Calligraphy from the Sakib Sabanci Collection"

Republication FR98–13767 published @ Page 28452 in the **Federal Register** of May 22, 1998 is republished in its entirety.

ACTION: Notice.

This notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, "Letters in Gold: Ottoman Calligraphy from the Sakib Sabanci Collection", Istanbul. (See List), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance.

These objects are imported pursuant to a loan agreement with the foreign lenders.

I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about September 10, 1998, to on or about December 13, 1998, and at the Los Angeles County Museum of Art, Los Angeles, California, from on or about February 25, 1999, to on or about May 17, 1999, and the Harvard University Art Museums from on or about October 9, 1999 through on or about January 12, 2000 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at (202) 619–6982. The address is U.S. Information Agency, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: November 25, 1998.

R. Wallace Stuart,

Deputy General Counsel.

[FR Doc. 98–31975 Filed 11–30–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 230
Tuesday, December 1, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[DOCKET 49-98]

Foreign-Trade Zone 1–New York, New York; Application for Subzone Pfizer Inc. (Pharmaceutical Products), Brooklyn, New York

Correction

In notice document 98–30415, beginning on page 63451, in the issue of Friday, November 13, 1998, make the following correction:

On page 63454, in the second column, in the second full paragraph, in the sixth and seventh lines, "[60 days from date of publication]" should read, "January 12, 1999".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

Correction

In notice document 98–30621, beginning on page 63916, in the issue of Tuesday, November 17, 1998, make the following correction:

On page 63917, in the first column, in the fourth line, under the heading **DATES:**, "December 1998 (800 am to 1600 pm) " should read "December 3, 1998 (800 am to 1600 pm) ".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 432

[Docket No. EE–TP–98–550]

RIN 1904–AA85

Energy Conservation Program: Test Procedures for Distribution Transformers

Correction

In proposed rule document 98–30140, beginning on page 63360, in the issue of Thursday, November 12, 1998, make the following correction:

On page 63366, in the first column, in Table 3, in the table column heading, "Low voltage, > 1.2 kV" should read "Low voltage, ≤ 1.2 kV" and "Medium voltage, ≤ 1.2 kV" should read "Medium voltage, > 1.2 kV".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ACE-40]

Amendment to Class E Airspace; Pittsburg, KS

Correction

In rule document 98–30930, appearing on page 64179, in the issue of Thursday, November 19, 1998, make the following correction:

On page 64179, in the third column, the subject line is corrected to read as set forth above.

BILLING CODE 1505-01-D

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federal register

Tuesday
December 1, 1998

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, and 1926

Powered Industrial Truck Operator Training; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, and 1926

[Docket S–008]

RIN 1218–AB33

Powered Industrial Truck Operator Training

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising its existing requirements for powered industrial truck operator training (codified at 29 CFR 1910.178(l)) and issuing new requirements to improve the training of these operators. The new requirements are intended to reduce the number of injuries and deaths that occur as a result of inadequate operator training. They apply to all industries (general industry, construction, shipyards, marine terminals, and longshoring operations) in which the trucks are being used, except agricultural operations.

These provisions mandate a training program that bases the amount and type of training required on: the operator's prior knowledge and skill; the types of powered industrial trucks the operator will operate in the workplace; the hazards present in the workplace; and the operator's demonstrated ability to operate a powered industrial truck safely. Refresher training is required if: the operator is involved in an accident or a near-miss incident; the operator has been observed operating the vehicle in an unsafe manner; the operator has been determined during an evaluation to need additional training; there are changes in the workplace that could affect safe operation of the truck; or the operator is assigned to operate a different type of truck. Evaluations of each operator's performance are required as part of the initial and refresher training, and at least once every three years.

OSHA estimates that this rule will prevent 11 deaths and 9,422 injuries per year. OSHA estimates that the annualized cost of this rule is approximately $16.9 million for all affected industries.

DATES: Effective Date: The effective date is March 1, 1999.

Compliance Dates: The dates by which powered industrial truck operators must be trained are shown on the following table.

If the employee was hired	The initial training and evaluation of that employee must be completed
Before December 1, 1999.	By December 1, 1999.
After December 1, 1999. ..	Before the employee is assigned to operate a powered industrial truck.

On November 18, 1998, the Office of Management and Budget granted approval of the information collection requirements under Office of Management and Budget Control Number 1218–0242.

ADDRESSES: Send petitions for review of the provisions of this standard to the Associate Solicitor for Occupational Safety and Health; Office of the Solicitor, Room S–4004; U.S. Department of Labor; 200 Constitution Avenue, N.W.; Washington, D.C. 20210.

For additional copies of this publication contact USDOL, OSHA, Office of Publications, Room N3101; 200 Constitution Avenue, N.W.; Washington, D.C. 20210; telephone (202) 219–4667, FAX (202) 219–9266.

FOR FURTHER INFORMATION CONTACT: **Direct press inquiries to:** Bonnie Friedman, Director, Office of Information and Consumer Affairs; OSHA, U.S. Department of Labor, Room N3637; 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 693–1999, FAX (202) 693–1634.

Direct technical inquiries to: Richard Sauger, OSHA, Directorate of Safety Standards Programs, Room N3621; telephone (202) 693–2082; FAX (202)693–1663; Larry Liberatore, OSHA, Office of Maritime Safety Standards, Room N3621; telephone (202) 693–2086; FAX (202) 693–1663; or Laurence Davey; OSHA, Office of Construction Standards and Compliance Assistance, Room N3621; telephone (202) 693–2073; FAX (202) 219–6599, all at U.S. Department of Labor, 200 Constitution Avenue, N.W.; Washington, D.C. 20210.

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I. Background

A. General Industry

On May 29, 1971 (36 FR 10466), OSHA adopted many existing Federal standards and national consensus standards as OSHA standards under Section 6(a) of the Occupational Safety and Health Act (OSH Act) (29 U.S.C. 655 et al.). Section 6(a) permitted OSHA to adopt these standards without rulemaking for a period of two years after the effective date of the OSH Act.

One of the consensus standards that was adopted under the Section 6(a) procedure was the American National Standards Institute (ANSI) B56.1–1969, *Safety Standard for Powered Industrial Trucks.* Among the provisions adopted from that consensus standard was the operator training requirement subsequently codified by OSHA at 29 CFR 1910.178(l). That requirement states:

> "Only trained and authorized operators shall be permitted to operate a powered industrial truck. Methods shall be devised to train operators in the safe operation of powered industrial trucks."

In that consensus standard, a powered industrial truck is defined as a mobile, power-driven vehicle used to carry, push, pull, lift, stack, or tier material. Vehicles that were commonly referred to as high lift trucks, counterbalanced trucks, cantilever trucks, rider trucks, forklift trucks; high lift platform trucks; low lift trucks, low lift platform trucks; motorized hand trucks, pallet trucks; narrow aisle rider trucks, straddle trucks; reach rider trucks; single side loader rider trucks; high lift order picker rider trucks; motorized hand/rider trucks; or counterbalanced front/side loader lift trucks[1] are included. Vehicles used for earth moving or over-the-road haulage are excluded from the scope of the consensus standard, and consequently from coverage by the OSHA standard.

B. Shipyards and Marine Cargo Handling

In 1958, Congress amended the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901 *et seq.*) to provide maritime employees with a safe work environment. The amendments (Pub. L. 85–742, 72 Stat. 835) required employers covered by the LHWCA to "furnish, maintain and use" equipment and to establish safe working conditions in accordance with regulations promulgated by the Secretary of Labor. Two years later, the Bureau of Labor Standards issued the first set of safety and health regulations for shipyards as parts 6, 7, and 8, and longshoring activities as 29 CFR part 9 (25 FR 1565, February 20, 1960). However, the longshoring regulations only covered those activities taking place aboard vessels.

As discussed earlier, the OSH Act authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the LHWCA, as occupational safety and health standards. Accordingly, the Secretary adopted the existing shipyards and longshoring regulations (39 FR 22074, June 19, 1974). These regulations are at 29 CFR part 1915 for shipyards and 29 CFR part 1918 for longshoring. Because the OSH Act comprehensively covers all private employments, the longshoring standards also were applied to shoreside cargo handling operations (i.e., marine terminal operations). (See 29 CFR 1910.16.) OSHA's requirements for using mechanically powered vehicles aboard vessels were codified at § 1918.97, which includes a general requirement for the training of all vehicle operators.

In addition, in accordance with established policy codified at 29 CFR 1910.5(c)(2), OSHA has applied its general industry standards to shoreside activities not covered by its older longshoring rules. Under section 1910.5(c)(2), a general industry standard covering a hazardous condition applies to shoreside activities not covered by a specific standard addressing that hazard. Shipyards are covered by the general industry standard.

On July 5, 1983 (48 FR 30886), OSHA published its final standard for Marine Terminals (29 CFR part 1917). This rule was intended to further address the shoreside segment of marine cargo handling. Section 1917.27, Personnel, states:

> (a) *Qualifications of machinery operators.* (1) Only those employees determined by the employer to be competent by reason of training or experience, and who understand the signs, notices and operating instructions and are familiar with the signal code in use shall be permitted to operate a crane, winch or other power operated cargo handling apparatus, or any power operated vehicle, or give signals to the operator of any hoisting apparatus.
>
> Exception: Employees being trained and supervised by a designated person may operate such machinery and give signals to operators during training.

The marine terminals standard also includes requirements for powered industrial trucks at § 1917.43, Powered industrial trucks. However, these requirements are for operating, maintaining, and outfitting these vehicles and do not expand on the training requirements found at § 1917.27.

On July 25, 1997, OSHA published in the **Federal Register** (62 FR 40147) final rules revising the marine terminals standard (29 CFR part 1917) and the longshoring standard (29 CFR part 1918). Those final rules left to this rulemaking the issue of improving the training requirements for powered industrial truck operators in the marine cargo handling industries. Accordingly, the final rule being published today includes requirements for the training of powered industrial truck operators in shipyards, longshoring operations, and marine terminals to ensure that all covered employees operating such vehicles have improved protection.

C. Construction

In 1969, Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 *et seq.*) by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (Pub. L. 91–54; August 9, 1969), significantly strengthened employee protection by providing for the adoption of occupational safety and health standards for employees of the building trades and construction industry working on Federally financed or Federally assisted construction projects. Accordingly, the Secretary of Labor issued safety and health regulations for construction at 29 CFR part 1518 (36 FR 7340, April 17, 1971) pursuant to section 107 of the CWHSA.

As noted earlier, the OSH Act authorized the Secretary of Labor to adopt existing Federal standards issued under other statutes as occupational safety and health standards. Accordingly, in 1971, the Secretary of Labor adopted the standards that had been issued under the CWHSA at 29 CFR 1518 as OSHA construction standards. These standards were redesignated as part 1926 on December 30, 1971 (36 FR 25232). The provisions pertaining to powered industrial trucks used in construction are contained at § 1926.602(c). Paragraph 1926.602(c)(1)(vi) states:

> (vi) All industrial trucks in use shall meet the applicable requirements of design, construction, stability, inspection, testing, maintenance, and operation, as defined in American National Standards Institute B56.1–1969, Safety Standards for Powered Industrial Trucks.

Therefore, by incorporating by reference the same ANSI standard that was the source document for 29 CFR 1910.178, this provision imposes the identical truck operator training requirements on the construction industry as they apply to general industry.

D. Development of Proposal

Since promulgation of the OSHA standards for powered industrial trucks in 1971, interested persons have requested that OSHA improve its training requirements for powered industrial truck operators. In the interval since 1971, the ASME B56.1 Committee has also substantially upgraded its training provisions for powered industrial truck operators.

On March 15, 1988, the Industrial Truck Association (ITA) petitioned

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[1] The use of a single characteristic to describe a truck, such as "high lift" truck, does not fully describe a single type of truck but rather defines a group of different trucks that have that same characteristic. A given truck can only be accurately described by referring to all of its characteristics. For example, the common type of truck used in a warehouse is a high lift, counterbalanced, sit-down rider truck.

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OSHA to revise its standard for the training of powered industrial truck operators (Ex. 3–2). The petition contained suggested language for a proposed requirement and a model operator training program that would meet the ITA-recommended requirement. OSHA responded to the petition on April 8, 1988, stating that it would revise the OSHA powered industrial truck operator training requirements when it completed work on other priority rulemaking projects.

Congress has expressed a special interest in this rulemaking. A resolution urging OSHA to revise its regulations on powered industrial truck operator training was introduced in the Senate during the 103rd Congress. Senate Concurrent Resolution 17 had 55 cosponsors and broad bipartisan support. Its companion measure in the House of Representatives, H. Con. Res. 92, had 236 cosponsors from both parties. No formal vote was ever taken on either resolution, however.

On March 14, 1995, OSHA published in the **Federal Register** (60 FR 13782) a notice of proposed rulemaking (NPRM) to revise the training requirement of the general industry standard for powered industrial trucks (§ 1910.178(l)). This notice also proposed to add training requirements for powered industrial truck operators in the shipyard industry (1915.120(a)), marine terminal industry (1917.43(i)), and the longshoring industry (1918.77(a)).

OSHA provided copies of a draft of the March 14, 1995, **Federal Register** NPRM to the Advisory Committee on Construction Safety and Health (ACCSH) at the Committee's meetings on February 28 and March 1, 1995. The Committee advised OSHA that it would like additional time to study the proposal and would finalize its recommendations by its next meeting on May 25–26, 1995. Because ACCSH had provided no recommendations or other information, OSHA decided to delay proposing the revision of the training requirements for powered industrial truck operators in the construction industry until the Committee had concluded its deliberations.

ACCSH met on May 25–26, 1995, at which time the Committee prepared its comments and recommendations. The Committee recommended that OSHA propose somewhat different requirements for powered industrial truck operator training for construction workers than the Agency had proposed for general industry, longshoring, shipyards, and marine terminals. OSHA reviewed the ACCSH recommendations and determined that these changes might be appropriate for other industries as well. OSHA decided that the most effective way to fully consider the Committee's recommendations was to raise a series of issues in the preamble of the proposed training requirements for construction and to invite public comment.

On Jan. 30, 1996, OSHA published an NPRM in the **Federal Register** (61 FR 3094) proposing to adopt as a new paragraph 1926.602(d) essentially the same training requirements for powered industrial truck operators in the construction industry as had been proposed for general industry and the shipyard and marine cargo handling industries. OSHA also published in that notice the following four issues that responded to the ACCSH recommendations:

1. In the construction industry, should an employer be allowed to accept the certification of training by a third party such as a union, manufacturer, consultant, or other private or public organization? Since OSHA does not accredit certifiers, what criteria should be used to establish their credibility?

2. What type of testing should be conducted during initial training to judge the competency of the trainee (performance testing and oral and/or written tests)?

A. If tests are administered, what subjects should be tested, and what methods, if any, should be used to judge that the tests are reliable and address the subject matter adequately?

B. What, if any, should be the acceptable pass/fail requirement for the tests?

3. Are some of the listed training subjects not needed?

4. Should an employee receive refresher or remedial training only if operating a vehicle unsafely or if involved in an accident? Is there any fixed operator retraining frequency suitable for the construction industry?

In a companion **Federal Register** notice (61 FR 3092), OSHA announced that a public hearing would be held. The hearing was to cover all industry sectors. That notice also advised the public that the issues raised in the construction notice should be considered for general industry and the shipyard and marine cargo handling industries and invited public comment. The hearing was held on April 30 through May 2, 1996.

There were 109 commenters who responded to the proposals outlined above and 22 participants at the public hearing. The presiding Administrative Law Judge allowed 60 days for post-hearing comments and an additional 30 days for post-hearing briefs. All comments, transcripts, and other evidence have been placed in the rulemaking record and are available for public inspection and copying. The rulemaking record was closed and certified as complete and final by the Administrative Law Judge on June 1, 1998. In preparing these final rules, OSHA has considered the entire rulemaking record and has made changes to the general industry, construction, shipyard, and marine cargo handling industries standards, as appropriate, based on the comments, testimony, and other evidence received.

As the following discussion demonstrates, OSHA concludes that upgrading the training requirements for powered industrial truck operators will substantially reduce the significant risk of death and injury caused by the unsafe operation of powered industrial trucks driven by untrained or inadequately trained operators.

E. Updated Consensus Standard

Since promulgation of the OSHA safety and health standards in 1971, the consensus standard (ANSI B56.1–1969) (now ASME B56.1) on which the general industry powered industrial truck standard was based has undergone four complete revisions (dated 1975, 1983, 1988, and 1993). The current edition standard, ASME B56.1–1993 (Ex. 3–1), addresses truck operator training as follows.

4.19 Operator Training

4.19.1 Personnel who have not been trained to operate powered industrial trucks may operate a truck for the purposes of training only, and only under the direct supervision of the trainer. This training should be conducted in an area away from other trucks, obstacles, and pedestrians.

4.19.2 The operator training program should include the user's policies for the site where the trainee will operate the truck, the operating conditions for that location, and the specific truck the trainee will operate. The training program shall be presented to all new operators regardless of previous experience.

4.19.3 The training program shall inform the trainee that:

(a) The primary responsibility of the operator is to use the powered industrial truck safely following the instructions given in the training program.

(b) Unsafe or improper operation of a powered industrial truck can result in: death or serious injury to the operator or others; damage to the powered industrial truck or other property.

4.19.4 The training program shall emphasize safe and proper operation to avoid injury to the operator and others and prevent property damage, and shall cover the following areas:

(a) Fundamentals of the powered industrial truck(s) the trainee will operate, including:

(1) characteristics of the powered industrial truck(s), including variations between trucks in the workplace;

(2) similarities to and differences from automobiles;

(3) significance of nameplate data, including rated capacity, warnings, and instructions affixed to the truck;

(4) operating instructions and warnings in the operating manual for the truck, and instructions for inspection and maintenance to be performed by the operator;

(5) type of motive power and its characteristics;

(6) method of steering;

(7) braking method and characteristics, with and without load;

(8) visibility, with and without load, forward and reverse;

(9) load handling capacity, weight and load center;

(10) stability characteristics with and without load, with and without attachments;

(11) controls—location, function, method of operation, identification of symbols;

(12) load handling capabilities; forks, attachments;

(13) fueling and battery charging;

(14) guards and protective devices for the specific type of truck;

(15) other characteristics of the specific industrial truck.

(b) Operating environment and its effect on truck operation, including:

(1) floor or ground conditions including temporary conditions;

(2) ramps and inclines, with and without load;

(3) trailers, railcars, and dockboards (including the use of wheel chocks, jacks, and other securing devices);

(4) fueling and battery charging facilities;

(5) the use of "classified" trucks in areas classified as hazardous due to risk of fire or explosion, as defined in ANSI/NFPA 505;

(6) narrow aisles, doorways, overhead wires and piping, and other areas of limited clearance;

(7) areas where the truck may be operated near other powered industrial trucks, other vehicles, or pedestrians;

(8) use and capacity of elevators;

(9) operation near edge of dock or edge of improved surface;

(10) other special operating conditions and hazards which may be encountered.

(c) Operation of the powered industrial truck, including:

(1) proper preshift inspection and approved method for removing from service a truck which is in need of repair;

(2) load handling techniques, lifting, lowering, picking up, placing, tilting;

(3) traveling, with and without loads; turning corners;

(4) parking and shutdown procedures;

(5) other special operating conditions for the specific application.

(d) Operating safety rules and practices, including:

(1) provisions of this Standard in Sections 5.1 to 5.4 addressing operating safety rules and practices;

(2) provisions of this Standard in Section 5.5 addressing care of the truck;

(3) other rules, regulations, or practices specified by the employer at the location where the powered industrial truck will be used.

(e) Operational training practice, including;

(1) if feasible, practice in the operation of powered industrial trucks shall be conducted in an area separate from other workplace activities and personnel;

(2) training practice shall be conducted under the supervision of the trainer;

(3) training practice shall include the actual operation or simulated performance of all operating tasks such as load handling, maneuvering, traveling, stopping, starting, and other activities under the conditions which will be encountered in the use of the truck.

4.19.5 Testing, Retraining, and Enforcement

(a) During training, performance and oral and/or written tests shall be given by the employer to measure the skill and knowledge of the operator in meeting the requirements of the Standard. Employers shall establish a pass/fail requirement for such tests. Employers may delegate such testing to others but shall remain responsible for the testing. Appropriate records shall be kept.

(b) Operators shall be retrained when new equipment is introduced, existing equipment is modified, operating conditions change, or an operator's performance is unsatisfactory.

(c) The user shall be responsible for enforcing the safe use of the powered industrial truck according to the provisions of this Standard.

Note: Information on operator training is available from such sources as powered industrial truck manufacturers, government agencies dealing with employee safety, trade organizations of users of powered industrial trucks, public and private organizations, and safety consultants.

Since 1971, the national consensus committee has adopted other volumes[2] for specific types of vehicles that fall within the broad definition of a powered industrial truck. Supplementary volumes have been developed and adopted for: guided industrial vehicles; rough terrain forklift trucks; industrial crane trucks; personnel and burden carriers; operator controlled industrial tow tractors; and manually propelled high lift industrial trucks. The training provisions OSHA is adopting are performance-oriented and could be applied to operator training for all types of industrial trucks. However, this final rule covers only those types of powered industrial trucks that fall within the scope of 29 CFR 1910.178(a) for general industry, construction, and shipyards. That scope includes some types of powered industrial trucks that have supplementary ASME volumes, such as rough terrain forklift trucks, but does not include earth moving equipment or vehicles for over-the-road haulage, for which ASME has also developed specific volumes.

II. Powered Industrial Truck Characteristics

The term "powered industrial truck" is defined in the ASME B56.1 (formerly the ANSI B56.1) standard as a "mobile, power propelled truck used to carry, push, pull, lift, stack, or tier material." Vehicles that are used for earth moving and over-the-road hauling are excluded.

Powered industrial trucks are classified by their manufacturers according to their individual characteristics. There are seven classes of powered industrial trucks:

Class 1—Electric Motor, Sit-down Rider, Counter-Balanced Trucks (Solid and Pneumatic Tires).

Class 2—Electric Motor Narrow Aisle Trucks (Solid Tires).

Class 3—Electric Motor Hand Trucks or Hand/Rider Trucks (Solid Tires).

Class 4—Internal Combustion Engine Trucks (Solid Tires).

Class 5—Internal Combustion Engine Trucks (Pneumatic Tires).

Class 6—Electric and Internal Combustion Engine Tractors (Solid and Pneumatic Tires).

Class 7—Rough Terrain Forklift Trucks (Pneumatic Tires).

Each of the different types of powered industrial trucks has its own unique characteristics and some inherent hazards. To be most effective, training must address the unique characteristics

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[2] The national consensus committees call the standards for different pieces of equipment "volumes" and all of the volumes produced by the committee the "standard."

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of the type of vehicle(s) the employee is being trained to operate.

Powered industrial trucks may operate on almost any type of surface, from smooth and level floors to rocky, uneven ground, provided they were manufactured to operate on that type of floor or ground and the surface does not have an excessive slope. For example, construction forklift trucks (most commonly, those that are classified as Class 7, rough terrain forklifts) are more often operated on uneven, ungraded terrain than is the case for trucks in other industries.

Different trucks are designed and manufactured to operate in different work environments. Some powered industrial trucks are used for moving material in a particular type of workplace. For example, high lift trucks can be used to raise loads up to 30 or 40 feet above the ground, deposit the material on a rack, mezzanine, roof under construction, scaffold, or another elevated location, and subsequently retrieve and lower the material. Some vehicles are used to raise a palletized load just a few inches above the floor and move that load to another location in a warehouse or other indoor workplace.

Powered industrial trucks can be equipped with, or can be modified to accept, attachments that permit the truck to move odd-shaped material or carry out tasks that may not have been envisioned when the truck was designed and manufactured. Many of these attachments are added to or installed on the vehicle by the dealer or the employer. For example, there are powered industrial truck attachments for grasping barrels or drums of material. Some of these attachments not only grasp a barrel or drum but allow the vehicle operator to rotate the barrel or drum to empty it or lay it on its side.

OSHA recognizes that certain attachments may limit the safe use of the vehicle. To ensure that modifications or additions do not adversely affect the safe use of the vehicle, OSHA requires at § 1910.178(b)(4) that:

> (ii) Modifications and additions which affect capacity and safe operation shall not be performed by the customer or user without manufacturer's prior written approval. Capacity, operation, and maintenance instruction plates, tags, or decals shall be changed accordingly.
>
> **Note:** A similar provision for construction is contained at § 1926.602(c)(1)(ii).

When a powered industrial truck is used with specialized attachments, or when the truck is used for hazardous operations (such as when the truck is used to lift people), operator training must include instruction on the safe conduct of those operations so that the operator knows and understands the restrictions or limitations imposed on vehicle operation in these situations.

III. Powered Industrial Truck Hazards

Powered industrial trucks are used in almost all industries. They can be used to move, raise, lower, or remove large objects or a number of smaller objects on pallets or in boxes, crates, or other containers. Because powered industrial truck movement is controlled by the operator and is not restricted by the frame of the machine or other impediments, virtually unrestricted movement of the vehicle about the workplace is possible.

The hazards commonly associated with powered industrial trucks vary for different vehicle types, makes, and models. Each type of truck presents different operating hazards. For example, a sit-down, counterbalanced high lift rider truck is more likely than a motorized hand truck to be involved in a falling load accident, because the sit-down rider trucks can lift a load much higher than can a hand truck.

The method or means to prevent an accident and to protect employees from injury varies for different types of trucks. For example, operators of sit-down rider trucks are often injured in tipover accidents when they attempt to jump clear of the vehicle as it tips over. Because the operator's natural tendency is to jump downward, he or she lands on the floor or ground and is then crushed by the vehicle's overhead guard. Therefore, operators of sit-down trucks need to be trained to remain in the operator's position in a tipover accident and to lean away from the direction of fall to minimize the potential for injury.

On the other hand, when a stand-up rider truck tips over, the truck operator can exit the vehicle by simply stepping backward, perpendicular to the direction of the vehicle's fall, to avoid being crushed. In this situation, the operator usually should attempt to jump clear of the vehicle, and should be trained accordingly.

Driving a powered industrial truck at excessive speed can result in loss of control, causing the vehicle to skid, tip over, or fall off a loading dock or other elevated walking or working surface. This condition can be made more dangerous because the load being carried sometimes partially obscures the operator's vision. A vehicle that is out of control or being operated by a driver whose view in the direction of travel is restricted can strike an employee, run into a column or other part of the building, or strike stored material, causing the material to topple and injure employees in the area. Effective driver training teaches operators to act properly to minimize these hazards to themselves and other employees.

Other characteristics of a powered industrial truck that affect safe truck operation are: the truck's tendency to become unstable; its ability to carry loads high off the ground; and its characteristic mode of steering, i.e., with the rear wheels while being powered by the front wheels. Moving loads upward, downward, forward, and backward causes a shift of the center of gravity and can adversely affect the vehicle's stability. When a load is raised or moved away from the vehicle, the vehicle's longitudinal stability is decreased.[3] When the load is lowered or moved closer to the vehicle, its longitudinal stability is increased. Training also is needed to avoid accidents that can be caused by these characteristics.

To reduce the instability hazard caused by the shifting of the material being handled, the ANSI B56.1–1969 standard had seven provisions that addressed proper operation of a powered industrial truck. Knowledge of these principles, as well as the requirements of the OSHA standard, are essential for safe vehicle operation:

604 Q. While negotiating turns, speed shall be reduced to a safe level by means of turning the hand steering wheel in a smooth, sweeping motion. Except when maneuvering at a very low speed, the hand steering wheel shall be turned at a moderate, even rate.

605 A. Only stable or safely arranged loads shall be handled. Caution shall be exercised when handling off-center loads which cannot be centered.

605 B. Only loads within the rated capacity of the truck shall be handled.

605 C. The long or high (including multiple-tiered) loads which may affect capacity shall be adjusted.

605 D. Trucks equipped with attachments shall be operated as partially loaded trucks when not handling a load.

605 E. A load engaging means shall be placed under the load as far as possible; the mast shall be carefully tilted backward to stabilize the load.

605 F. Extreme care shall be used when tilting the load forward or backward, particularly when high tiering. Tilting forward with load engaging means elevated shall be

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[3] This assumes that the load is moved forward of the vehicle. When a load is on a side loader vehicle, moving the load away from the vehicle will reduce the longitudinal and lateral stability of the vehicle.

prohibited except to pick up a load. An elevated load shall not be tilted forward except when the load is in a deposit position over a rack or stack. When stacking or tiering, only enough backward tilt to stabilize the load shall be used.

Note: The corresponding provisions appear at §§ 1910.178(n)(15) and (o)(1) through (o)(6) of the general industry standard and are also incorporated by reference in part 1926.

The hazards addressed in this final rule are those associated with industrial trucks in general, as well as those posed by specific makes or models of truck. Each powered industrial truck has distinct characteristics that make its operation different from the operation of other trucks. Therefore, operators must know how these differences affect safe truck operation.

The workplaces where these trucks are being used also present a variety of different hazards. The safety of industrial truck operations can be decreased by workplace conditions such as rough, uneven, or sloped surfaces; unusual loads; hazardous areas; narrow aisles, blind spots, or intersections; and pedestrian traffic or employees working close to the path of travel. Finally, there are hazardous work practices that relate to all trucks, including driving at excessive speed, poor loading, and carrying unauthorized passengers. In addition, poor truck maintenance can contribute to accidents.

The record contains evidence of many accidents that have occurred because of unsafe truck operation, as discussed below. For example, employees have fallen from trucks while using them to change light bulbs on overhead fixtures or riding on the forks to manually retrieve items from high racks. Many accidents have occurred when an operator has attempted to drive with an obstructed view in the direction of travel and has run into another employee. Improper truck maintenance has caused death from over exposure to carbon monoxide, loss of brakes, or rupture of hydraulic lines.

As the above discussion indicates, it is not possible to identify all the hazards that are encountered in all industrial truck operations. Accordingly one cannot develop a single "generic" training program that covers in detail all hazards for all powered industrial trucks and all workplaces.

Four major areas of concern need to be addressed in an effective powered industrial truck training program: (1) the general hazards that apply to the operation of all or most powered industrial trucks; (2) the hazards associated with the operation of particular types of trucks; (3) the hazards of workplaces generally; and (4) the hazards of the particular workplace where the vehicle operates. The requirements that OSHA is promulgating are performance-oriented to permit employers to tailor a training program to the characteristics of their workplaces and the particular types of powered industrial trucks operated.

IV. Studies of Accident and Injury Data and Training Effectiveness

This section of the preamble discusses the reports, studies, and other sources of data and information that were analyzed to determine the magnitude and extent of the problems that powered industrial truck operator training can mitigate. It also contains a discussion of the studies that demonstrate how better training can improve safety.

A. Accident and Injury Data

1. The Census of Fatal Occupational Injuries

The Bureau of Labor Statistics (BLS) maintains a database entitled *Census of Fatal Occupational Injuries (CFOI).* The CFOI is a compilation of information on fatal work injuries that occurred in the 50 States and the District of Columbia. BLS gathers pertinent information from death certificates, workers' compensation reports, and other Federal and State records. Information is verified by using at least two source documents.

The census contains a collection of information on the workers and the circumstances surrounding each fatality. The data are compiled annually.

In April, 1994, BLS published a booklet entitled *Fatal Workplace Injuries in 1992:* A Collection of Data and Analysis (Ex. 3–4). This booklet contains an article written by Gary A. Helmer entitled *Fatalities Involving Forklifts and Other Powered Industrial Carriers, 1991–1992*. This report contains information from the CFOI on 170 fatal powered industrial truck accidents. Table 1 lists the reported causes of these accidents.

TABLE 1.—CLASSIFICATION OF FORKLIFT FATALITIES, CFOI, 1991–1992

How the accident occurred	Number	Percent
Forklift overturned	41	24
Forklift struck something or ran off dock	13	8
Worker pinned between objects	19	11
Worker struck by material	29	17
Worker struck by forklift	24	14
Worker fell from forklift	24	14
Worker died during forklift repair	10	6
Other accident	10	6
Total	170	100

Source: Bureau of Labor Statistics, *Fatal Workplace Injuries in 1992, A Collection of Data and Analysis*, Report 870, April 1994.

2. Characteristics of Work-Related Injuries Involving Forklift Trucks

In 1987, Nancy Stout-Wiegand of the National Institute for Occupational Safety and Health (NIOSH) published an article in the *Journal of Safety Research* (Winter 1987, Vol. 18, No. 4, pp. 179–190) entitled *Characteristics of Work-Related Injuries Involving Forklift Trucks* (Ex. 8–6). This article contained an analysis of powered industrial truck injuries reported in two occupational injury databases—the National Electronic Injury Surveillance System (NEISS) and the Bureau of Labor Statistics' Supplementary Data System (SDS).

The NEISS database is composed of records from a national sample of 200 hospital emergency rooms and burn centers handling all types of injuries. The NEISS database was originally established by the Consumer Product Safety Commission, and its original intent was to gather data about accidents involving consumer products rather than industrial injuries. The hospital emergency rooms included in the sample were not necessarily those located in industrial areas, predominantly treating industrial injuries and illnesses. The data from this sample are weighted to represent the nation in numbers and characteristics of traumatic injuries treated in emergency rooms and burn centers.

A subset of this database—the work-related injuries— is maintained by NIOSH. Because the NEISS database records only injuries treated in emergency rooms and burn centers, traumatic work injuries treated by private practitioners or by industry or private clinics are not included. Moreover, chronic injuries, such as those caused by overexertion, are not as likely to be treated in emergency rooms as are acute traumatic injuries and, therefore, are probably under-represented in the NEISS database. Other probable sources of error in calculating accident rates include misclassification of the sources of injury or the agent of injury. For example, if an employee fell from the elevated forks of a powered industrial truck, the accident could be misclassified as a fall from elevation rather than a fall from a forklift. Similarly, if an employee were struck in the head by part of a load that fell from a powered industrial truck, the accident could be classified as an "employee struck by falling object" accident. In either case, the accident would have involved a powered industrial truck, but in neither case would it be classified as a powered industrial truck accident.

The Supplementary Data System (SDS) database is composed of workers' compensation claims for injuries involving lost workdays. Thirty states provide information to the SDS system. The SDS system reports the occupations of injured workers and states where the claims are filed. The SDS includes only compensable injuries. The definition of a compensable injury varies from state to state. In some states, injuries are compensable, for example, if they result in one day or more away from work. In other states, the time away from work may be up to 7 days before the injury becomes compensable.

The SDS and NEISS data do not necessarily include the same injuries because injuries treated in emergency rooms do not always result in lost workdays. At the same time, compensable injuries included in the SDS may not have been treated in emergency rooms and thus would not be represented in NEISS. However, both of these databases represent the more serious injuries involving powered industrial trucks, that is, those requiring treatment in emergency rooms and those that result in compensable injuries.

In 1983, the SDS system identified 13,417 workers' compensation claims for lost-workday injuries involving powered industrial trucks. Assuming that the 30 states in the SDS system are representative of and proportional in population to the whole country (50 states), approximately 22,400 compensation claims (5/3 x 13,417) are filed nationally for lost-workday injuries involving powered industrial trucks. This number is comparable to the estimated 24,000 forklift-related injuries that were treated in U.S. emergency rooms in 1983 as reported by NIOSH from information gathered by the NEISS system. In 1985, the NEISS system reported a total of approximately 34,000 powered industrial truck-related accidents that were treated in emergency rooms. This reflects an increase in the number of such accidents reported by NEISS studies of about 39% over the three-year period from 1983 to 1985.

The SDS report also contained a tabulation of the occupations of the injured workers. The breakdown of the occupations of those employees and the corresponding percentage of accidents are listed in Table 2.

TABLE 2.—PERCENTAGE DISTRIBUTION OF POWERED INDUSTRIAL TRUCK INJURIES BY OCCUPATION OF INJURED EMPLOYEE

Occupation	Percentage
Professional, technical, and kindred workers	0.3
Managers and administrators (except farm)	2.0
Sales workers	0.8
Clerical and kindred workers	5.0
Craftsmen and kindred workers	(15.5)
Mechanics	6.5
Foremen	3.0
Other craftsmen and kindred workers	6.0
Operatives (except transportation)	(17.5)
Assemblers	1.4
Packers/wrappers	1.1
Welders	0.9
Miscellaneous/unspecified operatives	9.2
Other operatives	4.9
Transportation equipment operatives	(20.8)
Powered industrial truck operators	12.3
Truck drivers	5.5
Motor men	1.7
Deliverymen	1.2
Other transportation equipment operators	0.1
Laborers (except farm)	(33.9)
Warehousemen	10.4
Freight and material handlers	7.3
Stock handlers	4.4
Construction laborers	2.2
Miscellaneous/unspecified laborers	8.0
Other laborers	1.6
Farmers (managers and laborers)	1.5
Service workers	1.8
Occupation Unspecified	1.1

Source: Characteristics of Work-Related Injuries Involving Forklift Trucks, Journal of Safety Research, Vol. 18, No. 4, Winter 1987, pp. 179–190.

3. Industrial Forklift Truck Fatalities—A Summary

OSHA's Office of Data Analysis (ODA) examined 53 investigative case files involving powered industrial truck fatalities that occurred between 1980 and 1986 (Ex. 3–7). The results of ODA's analysis are summarized in Table 3, below. Note: the columns do not always add to 100 percent in various tables because of rounding.

TABLE 3. OFFICE OF DATA ANALYSIS—TYPE ACCIDENTS, 53 POWERED INDUSTRIAL TRUCK FATALITIES

Type Accident	Number	Percent
Crushed by tipping vehicle	22	42
Crushed between vehicle and surface	13	25
Crushed between two vehicles	6	11
Struck or run over by vehicle	5	10
Struck by falling material	4	8
Fall from platform on forks	2	4
Accidental activation of controls	1	2

Source: *Industrial Forklift Truck Fatalities—A Summary*, Report from Office of Data Analysis, Office of Statistics, OSHA, Dated June 1990.

The single largest cause of accidents was vehicle tipovers (percentages attributed to specific causes may not track those in Table 3 because a single specific cause—tipover—may be classified under more than one accident type in that table). These tipovers were attributed to the following: (1) The vehicle was out of control (speeding, elevated loads, mechanical problems, etc.; 7 instances—13 percent); (2) the vehicle was run off/over the edge of the surface (4 instances—8 percent); (3) the operator attempted to make too sharp a turn (excessive speed, unbalanced load, etc.; 4 instances—8 percent); (4) an employee jumped from an overturning vehicle being pulled by another vehicle (2 instances—4 percent); (5) the vehicle skidded or slipped on a slippery surface (2 instances—4 percent); (6) the wheels on one side of the vehicle ran over a raised surface or object (2 instances—4 percent); and (7) the vehicle tipped over when struck by another vehicle (1 instance—2 percent).

The second highest number of fatalities reported in the ODA study resulted from accidents when employees were crushed between a vehicle and a surface. These accidents were attributed to the following: (1) The operator got off the vehicle while it was running (7 instances—13 percent); (2) a worker on a platform was crushed between the platform and an overhead surface (2 instances—4 percent); (3) an employee's leg was caught when a vehicle sideswiped a metal surface (1 instance—2 percent); (4) an employee attempted to prevent a vehicle tipover by holding up the overhead guard (1 instance—2 percent); (5) an employee changed a tire and the vehicle fell from the jack (1 instance—2 percent); and (6) an empty 55 gallon drum used to support the vehicle during maintenance collapsed (1 instance—2 percent).

Four of the six accidents where employees were crushed between two vehicles were caused by contact between two moving powered industrial trucks, and the other two involved contact between a powered industrial truck and a stationary vehicle.

Of the five accidents that were identified as being caused by an employee being struck or run over by a vehicle, four were accidents where employees other than the vehicle operator were struck by the vehicle. The remaining one involved an operator trying unsuccessfully to board a free rolling vehicle.

4. Selected Occupational Fatalities Related to Marine Cargo Handling as Found in Reports of OSHA Fatality/Catastrophe Investigations

In 1992, the OSHA Office of Data Analysis (ODA) published a study of fatalities and catastrophes that had occurred in the marine terminal industry (SIC 4491, Marine Cargo Handling) between the years 1975 and 1984. This report is entitled *Selected Occupational Fatalities Related to Marine Cargo Handling as Found in Reports of OSHA Fatalities/Catastrophe Investigations* (Ex. 27). This report contains an analysis of the causes of and other information about 141 accidents that resulted in 165 fatalities that occurred during the period of the report. Of those accidents, 19 (11.5 percent) were attributed to the unsafe use of powered industrial trucks.

5. The OSHA Fatality/Catastrophe Reports

OSHA records a summary of investigation results of accidents resulting in fatalities, catastrophes, amputations, and hospitalizations of two or more days, and those accidents that have received significant publicity or involved extensive property damage. These summaries are recorded on an OSHA Form 170 and include an abstract describing the activities taking place at the time of each accident and the causes of the accident. These reports are stored in a computerized database system, and cover inspection data from 1984 to 1991. There were 4268 reports of accidents in the system that resulted in 3038 fatalities, 3244 serious injuries, and 1413 "non-serious" injuries (many of the accidents resulted in multiple fatalities and/or injuries).

OSHA queried the database for all reports that contained the keyword "industrial truck." This produced a printout of 208 accidents (Ex. 8–8). These 208 accidents resulted in 147 fatalities, 115 serious injuries, and 34 "non-serious" injuries.

By adding the number of fatalities, serious injuries, and "non-serious" injuries and dividing that sum by the number of accidents, OSHA determined that 1.4 injuries of some nature occurred per serious accident reported. OSHA also determined that 4.8 percent of the fatalities, 3.5 percent of the serious injuries, and 2.4 percent of the "non-serious" injuries were attributable to an accident that involved a powered industrial truck.

These percentages are derived by dividing truck-related fatalities, serious injuries, and other injuries by the corresponding total number of reported fatalities, serious injuries, and other injuries. For example, the 147 forklift fatalities were divided by the 3038 total fatalities to arrive at the 4.8 percent figure.

OSHA examined the OSHA Form 170s to determine the causes of the accidents that were attributable to the use of powered industrial trucks. Table 4 is a compilation of the causes of these accidents.

TABLE 4.—CAUSES OF ACCIDENTS[1]: OSHA INVESTIGATION SUMMARIES (OSHA 170S)

Cause	Number of reports
No training[2]	19
Improper equipment	10
Overturn	53
Unstable load	45
Overload, improper use	15
Obstructed view	10
Carrying excess passenger	8
Operator inattention	59
Falling from platform or curb	9
Falling from trailer	6
Elevated employees	26
Operator struck by load	37
Other employee struck by load	8
Accident during maintenance	14
Vehicle left in gear	6
Speeding	5
Not powered industrial truck accident	[illegible]

[1] The causes of the accidents were determined by the narrative in the accident report. In most cases, the narrative emphasized the cause of the accident; however, in a few cases, reasonable and appropriate assumptions were made. In some cases, multiple accident causes were described in the narrative portion of the report, or were assumed to have caused the accident. (See Ex. 8–8.) Note that some of the accidents that were originally attributed to powered industrial truck operations were, on review, determined not to be caused by truck operations and are reflected in the final row of the table.

[2] Of the 19 instances when the report contained an indication that a lack of training was one of the causal factors of the accident, citations were issued for 6 serious violations, and 2 non-serious violations. In 11 instances, no violation was issued.

Source: Office of Electrical/Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

It should be noted that many of the accidents could have been caused by improper training. For example, when a vehicle tipped over, an employee might have been transporting an unbalanced load because that employee had not been trained about load balance.

Using the OSHA Form 170 data, OSHA also compiled a listing of the industries in which these accidents occurred. Table 5 provides list of industries, and the number of accidents that occurred in those industries. (For a complete listing of the individual industries, see Ex. 3–9.)

TABLE 5—INDUSTRIES WHERE ACCIDENTS OCCURRED, OSHA INVESTIGATIVE SUMMARY REPORTS (OSHA FORM 170)

SIC division	Industry description	Times cited
B	Oil and Gas Extraction	4
C	Construction	25
D	Manufacturing	95
E	Transportation, Communication, and Utilities.	22
F	Wholesale Trades	25
G	Retail Trades	18
I	Services	7
J	Public Administration	4

Note: The breakdown of accidents does not include agricultural accidents because establishments of 10 or fewer employees in that industry are exempt from OSHA jurisdiction.

Source: Office of Electrical/Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs OSHA.

6. OSHA Emergency Communications System Reports

OSHA has another internal system for collecting information about serious accidents. This system requires that serious and/or significant accidents be reported to the National Office over the telephone.

This telephone system is part of the OSHA emergency communications system. Regional Administrators are required to file a first report of fatalities, catastrophes, and other important events (such as those that receive significant publicity) with the National Office. The information contained in these reports is disseminated to responsible officials in OSHA. The National Office receives approximately 1200 reports yearly. (See Ex. 8–10.)

None of the reports is screened before the OSHA National Office receives them. Although these reports are not considered statistically significant for the purpose of calculating the total number of serious workplace accidents, OSHA believes that they represent a reasonable sampling of the most serious type of accidents and that the causes of the accidents closely parallel the distribution of the causes of all accidents.

OSHA has examined the First Report of Serious Injury reports for the years 1980–1991 and has identified 247 that involved powered industrial trucks. Table 6 lists the number of reports received each year, the number of those accidents that involved powered industrial trucks (PITs), and the corresponding percentages.

TABLE 6.—YEARLY SUMMARY OF FIRST REPORTS OF SERIOUS ACCIDENTS

Year	Total reports	PIT accidents	Percentage
1980	200	2	1
1981	125	2	1.6
1982	113	0	0
1983	115	3	2.6
1984	181	1	.6
1985	456	15	3.3
1986	1,147	44	3.8
1987	1,236	38	3.1
1988	1,330	47	3.5
1989	1,150	44	3.8
1990	1,105	41	3.7
1991	[1]215	10	4.7
Totals[2]	6,424	247	3.6

[1] These are the number of reports received between the first of the year and March 31.

[2] The total number of reports, the number of accidents involving powered industrial trucks and the percentage were calculated using the figures from 1985 to 1990. The number of accidents reported during the period 1980 through 1984 and those reported during 1991 were too few to be representative.

Source: Office of Electrical/Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

Each of the reports involving powered industrial trucks was examined to determine the causes of the accidents. In some instances, multiple causes were identified. Table 7 lists the number of the accidents that were attributable in whole or in part to each cause.

TABLE 7.—CAUSES OF ACCIDENTS (POWERED INDUSTRIAL TRUCKS) FIRST REPORTS OF SERIOUS ACCIDENT

Cause of the accident	Number of accidents
Tipover	58
Struck by powered industrial truck	43
Struck by falling load	33
Elevated employee on truck	28
Ran off loading dock or other surface	16
Improper maintenance procedures	14
Lost control of truck	10
Truck struck material	10
Employee overcome by carbon monoxide or propane fuel	10
Faulty powered industrial truck	7
Unloading unchocked trailer	7
Employee fell from vehicle	7
Improper use of vehicle	6
Electrocutions	2

Source: Office of Electrical/Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

7. OSHA General Duty Clause Citation Analysis

OSHA's Office of Mechanical Engineering Safety Standards analyzed the citations that were issued between 1979 and 1984 for violations of the general duty clause [section 5(a)(1) of the OSH Act]. During that period, there were 3637 inspections that resulted in the issuance of at least one such citation. (See Ex. 8–11.)

Sixty-five general duty clause citations involved powered industrial truck operation. These citations were issued under the general duty clause because the dangerous condition did not appear to be covered by a specific requirement in Section 1910.178. Each was examined to determine the nature of the violation. Table 8 lists the type and number of violations that were cited.

TABLE 8.—SUMMARY OF GENERAL DUTY CLAUSE CITATIONS

Violation	Number of instances
Employee elevated on forks of vehicle	44
Improper operation of vehicle	13
Improper maintenance of vehicle	5
No vehicle operator training	2
Order picker without fall protection	1

Source: Office of Electrical/Electronic and Mechanical Engineering Safety Standards, Directorate of Safety Standards Programs, OSHA.

B. Studies Measuring the Effectiveness of Powered Industrial Truck Safety Training Programs

In 1984, H. Harvey Cohen and Roger C. Jensen, working under contract with the National Institute for Occupational Safety and Health (NIOSH), published an article in the Journal of Safety Research (Fall 1984, Vol. 15, No. 3, pp. 125–135) entitled *Measuring the Effectiveness of an Industrial Lift Truck Safety Training Program* (Ex. 3–5). The authors analyzed two studies undertaken to measure objectively the effects of safety training on powered industrial truck operators' driving performance and safety practices.

This article detailed the results of an experiment that was conducted to evaluate powered industrial truck operator training using a work sampling procedure to obtain objective data about work practices that correlate with injury risk. Two separate studies were conducted in this experiment, one at each of two similar warehouses. These studies were conducted to assess the value of training and the influence of post-training actions on workers' safety performance. These studies demonstrate that training powered industrial truck operators reduced the operators' error rates (number of unsuccessful operations divided by the total number of operations) and that training combined with feedback further reduced error rates.

The studies were conducted at different warehouses using similar training techniques. The training emphasized those operator driving behaviors that were measurable, frequently observed, capable of being reliably observed, related to frequent accident occurrence, and amenable to corrective action through training. Fourteen driving behaviors were evaluated in these studies. Positive reinforcement during the training (use of praise rather than criticism) was used with some trainees to measure its effectiveness. The experiment was conducted in four phases:

(1) The pre-training phase, during which none of the operators had been trained;

(2) The post-training 1 phase, during which the control group remained untrained, the training group (called the treatment group in the study) had been trained, and the training-plus-feedback group had been trained and had also received performance feedback;

(3) The post-training 2 phase, during which all three groups had been trained but only the training-plus-feedback group had received performance feedback; and

(4) The retention phase, which started three months after the end of the post-training 2 phase (and the end of the feedback program).

TABLE 9.—SUMMARY OF MEAN ERROR RATES[1]

[Warehouse 1]

Group	Pre-training	Post-training 1	Post-training 2	Retention
Control	.34	.32	.23	
Training	.33	.27	.26	
Training + Feedback	.35	.27	.25	
All Operators After Training	.34	.27	.25	.19

[1] The mean error rate is defined in the study as the number of incorrect behaviors observed divided by the total number of behaviors observed.

Note: The mean error rate for all operators began at .34, that is, for 34 percent of the observed behaviors, the tasks observed and evaluated were performed improperly.

Source: Measuring the Effectiveness of Industrial Lift Truck Safety Training Program, Journal of Safety Research, Vol. 15, No. 3, Fall 1984, pp. 125–135.

Following the initial training (post-training 1), all three groups showed a decrease in their mean error rates, with the training-plus-feedback group showing the largest decrease (from .35 to .27, a 23 percent decrease), followed by the training-only group (from .33 to .27, an 18 percent decrease), and the control group (from .34 to .32, a 6 percent decrease). The control group's reduction in error rate from the pre-training to the post-training 1 phase of the study was attributed to the influence of peer modeling, i.e., the untrained control group operators were copying the behavior of their trained counterparts. Toward the end of the post-training 1 phase, the error rates of the three groups converged, suggesting that the effects of the training program had begun to wear off. Observers also noted that some behaviors were being compromised when employees with different knowledge levels were required to interact, particularly in conflict-avoidance situations such as signaling and yielding at blind intersections.

During the post-training 2 phase of the study, all groups' performance improved. The control group's performance improved by 28 percent (from a mean error rate of .32 to .23), while the training group experienced a four percent improvement (from a mean error rate of .27 to .26) and the training-plus-feedback group had a seven percent improvement (from .27 to .25). There was further evidence of a peer modeling effect because all three groups' performance continued to improve although no additional instruction was given.

The retention phase was conducted three months after the completion of the post-training 2 phase of the study to determine the longer term effects of the training. During this phase of the study, mean error rates were checked, as they were during the other phases of the study. The results of this phase of the study indicate a further improvement in the operators' performance, with the mean error rate decreasing from .25 to .19, a 24 percent improvement in performance. The total performance gain achieved during this study was a 44 percent improvement from the pre-training (baseline) phase through the retention phase (from a mean error rate of .34 to a final error rate of .19). These data indicate that there were significantly fewer errors at each successive phase of the study.

The second study was conducted to verify and extend the findings of the first study. A modified experimental design was used to eliminate the mitigating influence of the untrained control group. In the second study, all operators were trained at the same time and all received performance feedback. Comparisons were made only before and after training. The study was divided into three phases: pre-training; post-training; and retention. The retention phase of the study was again conducted three months after the conclusion of the prior phase.

TABLE 10.—SUMMARY OF MEAN ERROR RATES—WAREHOUSE 2

Pre-training	Post-training	Retention
.23	.09	.07

Source: Measuring the Effectiveness of Industrial Lift Truck Safety Training Program, Journal of Safety Research, Vol. 15, No. 3, Fall 1984, pp. 125–135.

After the vehicle operators were trained, they experienced a 61 percent improvement in performance scores (from an error rate of .23 to .09). During the retention phase of the study, there was a further reduction of 22 percent in mean error rates (from .09 to .07 mean error rate). The overall improvement in mean error rates between the pre-training error rate (.23) and that achieved during the retention phase (.07) was a reduction of 70 percent.

Not all errors cause accidents; however, most accidents are caused by one or more errors. The final rule is intended to minimize operator errors. The studies show that better training reduces operator errors. OSHA, the authors of the studies described in the preamble, and other experts believe that accidents will be reduced by about the same percentage as the reduction in the error rate. The studies that OSHA has used are among the best available for cause and effect.

V. Basis for Agency Action

OSHA concludes that, as the above discussion indicates, there are sufficient data and information on which to base a revision of the existing standard for powered industrial truck operator training. The data indicate that a substantial number of fatalities and injuries result from industrial truck accidents in all industries. Studies indicate that better training would substantially reduce the number of accidents that result in fatalities and serious injuries.

OSHA concludes that adherence to these new powered industrial truck operator training requirements will prevent 11 fatalities and 9422 injuries annually that result from accidents involving powered industrial trucks. (See also the analysis of benefits in the Final Economic Analysis section and the analysis of substantial reduction of significant risk in the Statutory Considerations section, below.)

OSHA further concludes that this improved operator training standard is needed to reduce powered industrial truck injuries and fatalities in maritime (including shipyards, marine terminals, and longshoring), construction, and general industry. As noted above, OSHA's Office of Data Analysis found that about 11.5 percent of the fatalities that occurred in marine terminals between 1975 and 1984 were attributable to the use of powered industrial trucks. Additionally, an OSHA-sponsored contractor study found that 28.1 percent of the fatalities that occurred in the marine cargo handling industries were forklift-related. This is much higher than the percentage of such fatalities occurring in general industry. Clearly, these numbers indicate the need to ensure better powered industrial truck operator training in the marine cargo handling industries covered by this final standard. OSHA has not specifically analyzed truck-related fatalities in the shipyard industry, but believes that the accident experience in shipyards is likely to be similar to that in manufacturing.

In the study of the OSHA Fatality/Catastrophe reports that was previously discussed, 25 of the 208 accidents (about 12 percent) that were reported on the OSHA Form 170 occurred in the construction industry. OSHA has determined that there are approximately 46,456 powered industrial trucks in use in construction. This is less than 5 percent of the total 998,671 powered industrial trucks in use. Although the number of powered industrial trucks in use in the construction industry is less than 5 percent of the total number of such vehicles, accidents involving them account for about 12 percent of the total number of construction accidents reported on the OSHA Form 170.

In addition, OSHA's Final Economic Analysis estimates that there were, on average, 16 powered industrial truck related fatalities and 2,380 injuries per year in the construction industry. This also indicates that fatality and injury rates are higher per truck user in the construction industry than in general industry. Accordingly, OSHA concludes that these high accident rates justify covering the construction industry with a better training standard. (See also the discussion of scope, below.)

Many actions taken by other organizations also point to the need to address the hazards posed by unsafe operation of powered industrial trucks: the voluntary consensus standard on this subject has been updated several times since OSHA adopted 29 CFR 1910.178 in 1971; OSHA has been petitioned to improve the requirements for industrial truck training; the Advisory Committee on Construction Safety and Health has recommended improving the standard; and resolutions have been introduced in the Senate and House urging OSHA to revise its outdated powered industrial truck operator training standards.

VI. Training

Training provides a person with the necessary specialized instruction and practice to become proficient at a particular task. Training is the means by which an employer ensures that employees have the knowledge and skills they need to do their jobs correctly and safely. The alternative to formal training is learning by trial and error, an approach that results in an inadequate knowledge base and relies on mistakes (which often involve accidents, injuries, and near-miss incidents) for learning to occur. Reliance on this approach would create a greater chance of injuries and fatalities.

After employees have received initial training, acquired the basic knowledge, and perfected their operating skills, the employer may rely on refresher training to reinforce or improve the employee's knowledge of the basic training material; to impart new information; to teach material in a new manner; or simply to maintain an acceptable level of awareness of workplace conditions, operating hazards, and truck-related characteristics.

There are several approaches to assembling the necessary materials and methods for an effective training program. One approach is to make use of existing literature and model programs already developed. Another approach is to look at problems that occur during ongoing operations and identify what an operator must know to avoid or otherwise minimize the potential for an accident due to those problems.

A third approach to developing a training program is to analyze the accidents that have occurred and develop a training program that will minimize the potential for a recurrence of the conditions that caused the accident. A problem with this third method of program development is that it is reactive rather than proactive, i.e., tends to emphasize the problems that have caused an accident (the training is in reaction to an accident). By contrast, proactive training teaches employees to prevent accidents rather than waiting for accidents to occur before recognizing the need for the training and determining what the scope and content of the training should be.

According to one hearing participant, a professional trainer (Tr. p. 129):

> In principle we are in support of the proposed training rule. The key issue as we see it is that any prescribed training has to be both effective and efficient. Our viewpoint is that the need for prevention of accidents among lift truck operators is not arguable but we also believe that the current rule is ineffective. Additionally, our view is that the final rule must use what is at this time, common knowledge among the professional training community in the United States regarding effective and efficient training strategies. For the purpose of clarifying our testimony, we're defining operator training as instructional or other influence strategies used to help operators learn to change their on-truck behavior. We believe that effective training of operators is that which results in fewer injuries and fatalities. In that regard, the most important issue for the training rule to address in our viewpoint, is not to just require traditionally accepted training strategies but to require operator training strategies that actually transfer to the operating environment.

Another benefit of proactive training is that the person observing the worksite and the work being conducted to develop a training program for powered industrial truck operators may identify other problems in the workplace and offer solutions to those problems. Identifying and resolving these other problems can reduce the total number and/or severity of accidents in the workplace, not only those related to powered industrial truck use but also those associated with other workplace activities. According to another hearing participant (Tr. p. 425):

> Our processes include an evaluation of the facility and recommendations for improvement. We do not pass a problem within a company without trying to correct that problem before the training is implemented.

The training requirements in the final rule reflect all three approaches discussed above. They require training in specific topics unless a particular topic is not relevant to the types of vehicles or the employer's workplace. They require the training to address topics specific to the employer's workplace and to cover information learned from accidents or near-misses that have occurred in the employer's workplace. As discussed below, OSHA believes that this approach will result in operator training that is most effective in reducing truck-related deaths and injuries.

The topics OSHA requires to be covered in the training mandated by this standard can also be used to evaluate the effectiveness of a powered industrial truck operator's training. For example, an employer can use the list of required topics to determine what should be taught and then compare that with what is being taught. In this manner, employers can ensure that the training is appropriate for the types of trucks being used and the conditions in the workplace that affect the safe operation of those trucks.

Training comes in many forms. It may be as simple and informal as a supervisor discussing the correct way to operate a vehicle, correcting an error in the way an employee is doing a job, or showing an employee how to perform a particular task properly. Alternatively, training may consist of detailed, structured instruction using formal training methods (e.g., lectures, formal demonstrations, practical exercises, examinations, etc.). Formal training is usually used to provide trainees with a large amount of information. OSHA believes, and the record confirms, that a combination of training methods is most effective in training powered industrial truck operators.

For the most part, employees do not start out with the knowledge and skills they need to operate a powered industrial truck safely. Although many employees selected or assigned to operate powered industrial trucks are licensed to drive automobiles, there are enough differences between these two types of vehicles and their operation to require additional knowledge and skills to operate a powered industrial truck safely. For example, industrial trucks, compared with cars, have limited forward visibility when carrying a large load, have rear wheel steering and front wheel drive, have different centers of gravity and balance, have different control configurations, and can carry heavy loads with the weight concentrated at one end of the vehicle. Employees need formal training and practice to gain the knowledge and to master the skills they need to safely operate powered industrial trucks with these characteristics.

Effective employee training and supervision also can lessen the frequency with which employees perform unsafe acts such as speeding, failing to look in the direction of travel, and failing to slow down or stop and sound the vehicle's horn at blind intersections and other areas where pedestrian traffic may not be observable. This, in turn, reduces the frequency and severity of accidents.

Another case where training can prevent accidents or lessen their severity is when powered industrial trucks travel with an elevated load. Effective operator training must emphasize that the operator moves the vehicle only when the load is at its lowest practical point. In addition, even if a sit-down rider truck operator fails to follow this practice and the vehicle tips over, both the chance and severity of injury are reduced if the operator is trained to stay with the vehicle and lean away from the direction of fall. When a sit-down rider truck tips over and the operator attempts to jump off the vehicle while it is tipping over, the operator is often crushed when struck by the overhead guard. In these cases, since the normal tendency is for a person to jump downward, the operator lands on the floor or ground in the path of the overhead guard, and receives a crushing injury to the head, neck, or back. Training an employee to stay with this type of vehicle and lean away from the direction of fall will reduce the severity of or eliminate these injuries.

On the other hand, when a stand-up rider truck tips over laterally, the operator must be trained to step off the vehicle toward the rear of the vehicle. The operator can safely do this because he/she is not moving in the direction in which the truck is falling, but rather is moving perpendicular to the direction of the vehicle's fall.

The studies conducted by Cohen and Jensen, discussed under *Studies of Accident and Injury Data and of Training Effectiveness* earlier in this preamble, found that training reduced operator error rates by as much as 70 percent. Although a 70 percent error rate reduction does not necessarily correspond with an equivalent reduction in the number of accidents that a given group of operators will experience, improper or unsafe operation of powered industrial trucks is clearly the major cause of accidents and their resultant fatalities and injuries. Therefore, reducing the number of unsafe acts that are committed when operating these trucks will reduce the number of accidents, fatalities, and injuries.

Proper employee training must take into account different operating conditions (including the type and size of the load, the type and condition of the surface on which the vehicle is being operated, and other factors that can adversely affect vehicle operation). Operator training must emphasize two points regarding potential accidents: (1) the employee must not engage in activities that will increase the potential for an accident to occur; and (2) the employee must take appropriate action to minimize the potential for injury to himself/herself or to other employees if an accident occurs.

OSHA's current powered industrial truck training standard (codified at 1910.178(l)), has a very general training requirement. It states:

> Only trained and authorized operators shall be permitted to operate a powered industrial truck. Methods shall be devised to train operators in the safe operation of powered industrial trucks.

As discussed above, this provision has not been adequate to reduce the large number of fatalities, accidents, and injuries caused by untrained or poorly trained operators. Consequently, OSHA proposed more extensive training requirements to improve operator training (60 FR 13782, March 14, 1995, and 61 FR 3094, January 30, 1996).

There were 64 commenters who discussed the need for training powered industrial truck operators (Exs. 7–1, 7–5, 7–8, 7–10, 7–19, 7–22, 7–28, 7–29, 7–31, 7–32, 7–34, 7–36, 7–38, 7–39, 7–40, 7–43, 7–45, 7–46, 7–47, 7–48, 7–49, 7–50, 7–51, 7–59, 7–66, 7–67, 7–69, 7–71, 11–1, 11–2, 11–6, 11–12, 11–13, 11–15, 11–17, 11–18, 11–19, 11–22, 11–25, 11–27, 11–29, 11–31, 11–35, 11–36, 11–40, 11–41, 11–44, and 11–46; Tr. Pp. 22–24, 27–29, 35 and 44, 49, 62, 75, 94, 129 and 143, 172, 196, 306, 331, 340, 383, 398, 416, 443). The great majority of these commenters agreed on the need to train powered industrial truck operators.

For example, one commenter (Ex. 7–66) stated:

> The WGMA [West Gulf Maritime Association] supports operator skill and safety training for powered industrial truck operations. We have for years had operator training and certification requirements for certain equipment. These requirements are part of our collective bargaining agreement between management and labor.

A second commenter (Ex. 11–2) stated:

> AGC [Associated General Contractors] believes that worker training is the key to worker protection and AGC commends OSHA for its recent emphasis on powered industrial truck operator training.

A third commenter (Ex. 7–34) said:

> In general, Dow agrees with OSHA that there are risks associated with the operation of powered industrial trucks and that those persons operating them must be knowledgeable and skilled prior to being authorized to operate the vehicle. Dow believes that the training its people receive on these vehicles has been adequate. As a result, comments will focus on retaining the performance language in this training so that we can continue the success we have had thus far.

One commenter (Ex. 7–48), however, expressly disagreed that there is a need for OSHA to issue a standard for training powered industrial truck operators. It stated:

> Overall, UPS [United Parcel Service] questions the need for a standard regulating the training of powered industrial truck operators. UPS has never experienced a noteworthy amount of workplace accidents involving powered industrial trucks. We do not expect that implementation of this type of standard will reduce the already low number of accidents in this category. This proposed standard would substantially increase costs to employers without a corresponding reduction in injuries, providing little justification for its implementation. As such, UPS cannot support the promulgation of this standard.

Many commenters generally supported OSHA's proposal to make the training requirements more explicit. For example, one commenter (Ex. 7–29) stated:

> UTC [United Technologies Corporation] agrees with OSHA's stated purpose "to amend the current powered industrial truck operator training requirements for general industry and to adopt the same requirements for the maritime industries", which will eliminate redundant standards for separate industries. In addition, UTC approves of OSHA's approach in mandating "the development of a training program that would base the amount, type, degree and sufficiency of training on the knowledge and the skills and abilities that are necessary to safely operate the truck" rather than mandating specific universal training requirements that would not take into consideration the variety of truck, necessary operator knowledge and training levels, and operating situations.
>
> Overall, OSHA's proposed changes to the original 1971 powered industrial truck standard are reasonable and provide a sound basis for enhancing the safe operation of powered industrial trucks in the workplace while allowing a maximum of flexibility in the methods employers may select for implementation.

A second commenter (Ex. 7–31) stated:

> As an association, we [American Warehouse Association] have urged our members to adopt training programs. One member reports that although one-third of the accidents in the warehouse were lift truck-related, one-half of the costs associated with accidents were lift truck related. Although this example is just a snapshot of the industry, this anecdotal information confirms that proper training is in the best interests of our industry.
>
> It is appropriate to consider revising the existing OSHA regulations. A more defined standard will be of benefit to both employers and employees. However, as our comments will suggest, the revised standard need not be overwhelming or unnecessarily complex to achieve the desired result.

A third commenter (Ex. 7–36) stated:

> API [American Petroleum Institute] generally supports the standard proposed by OSHA, with minor revisions, to replace the existing requirements under 29 CFR 1910.178(l) and to be added as new requirements under 29 CFR 1915.120, 1917.43, and 1918.77, provided the proposed standard remains performance oriented. Powered industrial trucks vary greatly in configuration and application, making operator training requirements very site specific. Accordingly, API supports OSHA's development of a flexible, performance based standard that will allow each facility to best address the specific training needs of operators at that location.

Finally, one commenter (Ex. 7–28) said:

> NAWGA/IFDA appreciates the concerns that have led OSHA to propose this rule, and believes that benefits can flow to companies and their workers through the dissemination of guidance on appropriate training for employees who operate powered industrial trucks. While we have comments and suggestions regarding certain aspects of the proposal's requirements, our organization believes that many of the training elements noted in the rule are appropriate topics to be covered in the instruction provided to powered industrial truck operators.

Some commenters opposed changing OSHA's existing training requirement (Exs. 7–1, 7–5, 7–6, 7–8, 7–19, 7–20, 7–22, 7–27, 7–28, 7–33, 7–34, 7–38, 7–40, 7–69, 11–7, 11–15, 11–16, 11–20, 11–23, 11–35, 11–42, Tr. pp. 121, 151, 246).

One reason given for not changing the existing requirement is that it is written in general language and therefore allows employers complete freedom to tailor their powered industrial truck operator training program. These commenters generally stated that they already conduct the appropriate operator training. For example, one commenter (Ex. 7–8) stated:

> The proposed training requirements that would mandate the development of a training program that would base the amount, type, degree and sufficiency of training on the knowledge of the trainee and the ability of the vehicle operator to acquire, retain and use the knowledge and skills and abilities that are necessary to safely operate the truck would require quite a bit of additional time and categories of paperwork and would be, in many instances very subjective and difficult to document. The basic requirements that presently exist are quite sufficient and any safety professional worth their salt is going to look at the things you are proposing anyway.

Some of these commenters also suggested that the proposed standard, if adopted, would create too structured a program and would be overly burdensome to the employer. For example, one commenter (Ex. 7–19) stated:

> Current regulations, 29 CFR 1910.178, have provided Mobil and other companies like Mobil sufficient direction and discretion to develop and implement effective training processes for its powered industrial truck operators. Mobil is concerned that the more detailed nature of these proposed regulations will require costly changes to currently effective training processes.

Other commenters stated that OSHA's proposed training requirements were appropriate and not overly burdensome. For example, one commenter (Tr. p. 418) stated:

> I * * * commend your efforts and give you my profound support. Your proposed rules were well researched and, if passed into law, will assist industry leaders by providing the needed guidelines to develop, implement and follow up their operator training programs * * *
>
> From our company's conception in 1987, it was apparent that our present occupational safety at 1910.178 Code of Regulations for material handling and storage did, in fact, supply some foundation for training materials content, but did not supply enough direction to allow the meeting of the minds within a single company.
>
> Although there was a starting point, technical advances have caused tremendous pressures on our industries, manufacturers, as well as the end user.
>
> New problems were identified as a result of these advances that never had to be addressed in the past. Professionally, I believe that the proposed rules are on target and will prove to be a sufficient step forward in providing guidelines and benchmarks for industries.

Another commenter (Ex. 7–17) stated:

> I also believe that inadequate operator training and supervision are the cause of the great majority of industrial truck accidents. Your proposed rule change therefore not only has the potential to substantially reduce the number of fatalities and serious accidents that occur each year; it also has the potential to reduce the large number of unreported accidents and near-misses that occur every day. It is a step in the right direction that should be applauded.

Several representatives of the longshoring and marine terminals industries, however, opposed the proposed rule (Exs. 7–43, 7–46, 7–63, 11–7, 11–20, 11–42, Tr. p. 246). These commenters contended that they already have regulations that cover powered industrial truck operator training (§§ 1917.27(a) and 1918.98(a) respectively) and that those regulations have served their industry well. Indeed, one commenter claimed that there were few powered industrial truck injuries or fatalities in the industry. (See Tr. p. 248.) According to this commenter:

> Again, there is no proof of a significant risk to injury to employees to warrant this additional training regulation in our industry. We've heard some raw data quoted yesterday. This is all dependent on the number of truck hours and the amount of exposure the employees have, personal injury and property damage. Our people are exposed to this every day and our record is not that bad.

Another commenter from this industry stated (Tr. p. 248):

> The PMA [Pacific Maritime Association] conducts forklift training based on ASME B56.1 to provide skilled operators for employers to meet the requirements of § 1917.27(a) and § 1917.97(a)). This program has served the industry well. Also, on-the-job training is a tradition on the waterfront and qualification by experience and training have proved to be effective.

On the other hand, several witnesses at the hearing testified about powered industrial truck accidents that resulted in deaths and serious injuries in the marine cargo-handling industry. They supported OSHA's proposal to improve training for operators in this sector.

For example, one commenter (Tr. p. 437) stated:

> One of the port authorities in the U.S. contracted [with] me to conduct training for the stevedoring and the ILA on the east coast.
>
> We conducted a three-day training program and we had a 54 percent failure factor on basic knowledge.

Another hearing participant (Tr. p. 393) reported:

> In fact, last year I investigated a death on a stevedoring area where a supervisor was driving a lift truck with no training that ran over an employee on a shipping dock.

It is clear to OSHA that powered industrial truck accidents are a major cause of injuries and deaths in the marine cargo handling industry. An OSHA contractor that studied fatality reports for the period 1991–1993 collected by the National Institute for Occupational Safety and Health for the Census of Fatal Occupational Injuries Program determined the number of fatal and serious injury accidents reported during the period of study (Ex. 38). According to this study the longshoring and marine terminal industries experienced a percentage of powered industrial truck accidents that was 10 times greater then the second highest industry (28.1 percent of all fatal accidents in the maritime industries compared with 2.8 percent in the second-ranked industry). An OSHA study of fatalities in the marine cargo handling industry indicated that 19 of 165 fatalities that occurred between 1975 and 1984 were attributable to the improper operation of powered industrial trucks. (See section IV. A. 4 above.)

Based on this information and other evidence discussed elsewhere in this preamble, OSHA concludes that powered industrial truck accidents are a major cause of serious injuries and deaths in the marine cargo handling industry. OSHA further concludes that the Agency's current training requirements do not sufficiently protect employees in that industry from death and serious injury from powered industrial truck accidents, and that it is necessary to issue these training requirements to protect those employees from a significant risk of injury and death.

There are a number of additional responses to those commenters in all industries who recommended that OSHA retain the present, very general, training requirements. First, the statistics demonstrate a high level of accidents, injuries, and deaths resulting from improper powered industrial truck operation in all industries. (See the discussion at part IV.A. above.) The Agency's existing training requirements have not worked well enough to reduce those injury rates.

However, without the existing requirements, rates would likely have been much higher. The studies demonstrate that trained operators make fewer errors. The FEA points out that a percentage of current operators are trained. Therefore, it is reasonable to conclude that the existing general training requirement has resulted in the training of a percentage of the operators and without this existing training there would be more errors and, therefore, more accidents. The new standard will increase the number of trained operators and the quality of the training, further reducing accidents.

Second, the existing requirement is so general that employers may believe that they have fulfilled their obligation by providing very little effective training. Third, the existing provisions provide very little guidance on what training is necessary and effective. Fourth, as discussed above, studies are available that show that effective training will reduce accidents (Ex. 38). Finally, many commenters told OSHA that their experience demonstrates that better training will reduce fatalities and injuries, and some provided examples of how their training programs (similar to the program required by the final rule) had reduced accidents.

The revised training provisions require the employer to develop a training program based on the general principles of safe truck operation, on the type of vehicle(s) being used in the workplace, the hazards of the workplace created by the use of the vehicle(s), and the general safety requirements of the OSHA standard. OSHA is not specifying the time that must be spent on the training or the exact methods that must be used to train operators. OSHA is, however, requiring that trained operators know how to do the job properly and do it safely, as demonstrated by workplace evaluations at the time of initial and refresher training and at periodic intervals (at least once every three years). This approach gives employers the flexibility to develop training programs appropriate to their workplace and avoids unnecessary specification. Thus, this final standard will be both performance-oriented and effective.

VII. The Issues

In the January 30, 1996, **Federal Register** notices, 61 FR 3092 and 3094, OSHA asked for comment on four specific issues as well as any other relevant issues. These four issues were developed by OSHA after input from the Advisory Committee on Construction Safety and Health (ACCSH). The following is a restatement of each issue, a summary of the comments and hearing testimony received, and the Agency's decision on each issue.

1. Should an employer be allowed to accept the certification of training by a third party such as a union, training institute, manufacturer, consultant, or other private or public organization? Since OSHA does not accredit certifiers, what criteria should be used to establish their credibility?

OSHA specified in the proposals that all training must be conducted by a designated person. In those proposals, OSHA defined a designated person as one who has the requisite knowledge, training, and experience to train powered industrial truck operators and judge their competency. (See proposed § 1910.178(l)(2)(iii) and the corresponding provisions of the other proposed standards.)[4] OSHA did not, however, specify that the training must be conducted by the employer, a supervisor, or any other particular person, but only that the training be conducted by a person who is qualified to do so.

There were 50 commenters who addressed this issue. (See Exs. 7–11, 7–15, 7–29, 7–38, 7–39, 7–48, 7–50, 7–51, 7-56, 7–64, 7–65, 7–70, 11–1, 11–3, 11–5, 11–6, 11–8, 11–9, 11–10, 11–15, 11–16, 11–18, 11–19, 11–24, 11–25, 11–28, 11-29, 11–31, 11–33, 11–34, 11–36, 11–37, 11–39, 11–40, 11–43, 11–46, Tr. pp. 20, 25–27, 52, 83, 92, 94, 104, 137, 153, 324, 333, 340–341, 384–386, 422.) These participants all agreed that trainers must have basic knowledge of training methods and/or powered industrial truck operations that enables them to conduct the training of these vehicle operators. There was, however, one comment (Ex. 7–11) that suggested specific requirements for a qualified trainer. This commenter stated:

> * * * A competency standard for the "designated person" [should] be incorporated in the proposed rule change. Such a competency standard * * * could include, but would not be limited to:
>
> 1. Experienced and skilled in the safe and efficient operation of a powered industrial truck(s).
> 2. Is familiar with, comprehends, understands and employs applicable OSHA codes and all consensus standards as they apply to worker safety and economic impact on the employer.
> 3. Is skilled and practiced in the training of adults or has the ability, knowledge and desire to attain such skills.

Some commenters recommended that trainers be accredited by OSHA or have some other professional certification (see Exs. 7–29, 7–56, 7–64, 7–73, 11–5, 11–40, Tr. p. 326). One of these commenters (Ex. 11–5) stated:

> The ASSE believes it is appropriate for OSHA and the ACCSH to create general qualification guidelines when establishing the criteria for lift truck trainers. However, we strongly recommend that OSHA not get into the business of "certifying" these trainers. The society believes that OSHA does not have the resources to undertake such an endeavor, and the private sector professional safety and health organizations have been certifying qualified safety and health professionals for decades. To have OSHA take on this responsibility would be equivalent to a "reinventing the wheel". Certified Safety Professionals (CSPs), as an example, could be recognized as a level of expertise appropriate to develop/implement this type of training.

OSHA has decided not to include trainer accreditation requirements in the final rule for several reasons. First, OSHA believes that the training criteria are sufficiently detailed so that employers and professional trainers who follow the criteria will provide adequate training. Second, a large number of trainers and individual employers (potentially in the tens of thousands) would need to be accredited, which would overwhelm OSHA's resources. Finally, many small businesses choose to conduct their own training, and requiring them to become accredited to do so would be unnecessarily burdensome.

Since the proposal, OSHA has changed the language of the final rule to clarify that the employer does not need to administer the training but may have it provided by an outside training provider. The employer may need to provide additional training on site-specific or truck-specific matters. OSHA believes that this clarification of the language of the final rule responds to the suggestions of ACCSH and the needs of the construction industry. In addition, as a style change the term "designated" has been omitted. Instead "person" is used followed by the same qualifications that had been required of "designated person."

2. What type of testing should be conducted during initial training to judge the trainee's competency (performance testing and oral and/or written tests)?

A. If tests are administered, what subjects should be tested, and what methods, if any, should be used to judge that the tests are reliable and address the subject matter adequately?

B. What, if any, should be the acceptable pass/fail requirement for the tests?

OSHA proposed that operators must successfully complete their training and be evaluated. OSHA believes that evaluation is an essential element of any training program. Evaluation provides a measure not only of the effectiveness of the training but also the trainees' ability to understand the need for and the important elements of the training. Evaluation also allows the trainer to reemphasize the most important points of the training.

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[4] Throughout this preamble, OSHA uses the reference to the general industry standard, § 1910.178, when discussing this final rule. Because the provisions of the final rule also apply to construction, shipyards, marine terminals, and longshoring, the discussion applies equally to these other sections.

Most of the 32 participants who commented on this issue agreed that some evaluation is necessary when training is conducted. (See Exs. 11–1, 11–3, 11–5, 11–8, 11–10, 11–18, 11–19, 11–24, 11–25, 11–28, 11–30, 11–33, 11–34, 11–36, 11–37, 11–39, 11–40, 11–41, 11–46, Tr. pp. 21, 35, 53, 77, 99, 130, 202, 254, 309, 326, 342, 385, 400.) There was general agreement on the need to conduct written as well as practical testing during the training.

One commenter (Ex. 11–10), in response to the question about written and performance testing, stated:

> API [American Petroleum Institute] feels that the current proposed language in paragraph (5)(i) of the general industry standard adequately addresses any concerns of testing during initial training. Specific requirements for how to test operators would take away the flexibility allowed by the currently proposed language, convert the rule to a specification standard, and greatly increase the information collection burden without necessarily improving the safety performance of operators.

The Advisory Committee on Construction Safety and Health (ACCSH) recommended that OSHA establish a pass/fail requirement for written tests. Some commenters stated that OSHA should specify a passing percentage (such as 70 to 85 percent correct answers)(see Exs. 7–52, 11–19). On the other hand, six commenters generally supported the need for the trainee to perform all the necessary procedures correctly during practical tests. (See Exs. 11–8 and 11–19, Tr. pp. 78, 132, 427, 434.) Their concerns were that if the trainee cannot operate the vehicle safely when that trainee knows that an evaluation is being conducted, there is no guarantee that the trainee will perform the operation correctly under less controlled circumstances. Other commenters stated that OSHA should leave the evaluation of the trainees' grasp of the classroom instruction to the trainer (Exs. 11–34, 11–36).

OSHA has concluded, as proposed, that the evaluation of the classroom part of the training should be left to the trainer. There are many ways to evaluate whether material has been learned, and this evaluation can be accomplished in a number of ways.

Consequently, OSHA has retained a performance-oriented approach that allows the employer to determine that the employee has successfully completed the training, including the classroom and practical training/demonstration elements. The employer may demonstrate this for the classroom element based on evidence that the employee has successfully completed a written or oral test, or by other appropriate means, such as an evaluation by the instructor. OSHA agrees with these comments that successful completion of the practical training requires the trainee to perform all required operations safely.

OSHA concurs with those commenters who recognize the need for both more formal and practical testing and evaluation. If training is conducted without the means to evaluate its effectiveness, there is no way to ensure that the material was adequately presented, that the trainee understood the material, and that the trainee will use the training when operating the vehicle.

OSHA does not believe, however, that it is possible, given the variety of powered industrial trucks, workplace conditions, employee backgrounds, and types of effective training, to specify standardized tests or methods, or to specify passing grades. Although ACCSH did recommend that OSHA specify passing grades, OSHA believes that, by listing topics and requiring demonstrations of proficiency and triennial evaluations, the rule will achieve the goal envisioned by ACCSH for effective training.

3. Are some of the training areas listed not needed?

In developing this final rule, OSHA took its lead from the national consensus standard, ASME B56.1–1993, which contains a listing of those subject areas that the consensus committee felt were important for the trainee to know to successfully operate a powered industrial truck. These subjects were written in general terms so that the training program could be tailored to fit the employer's particular circumstances. The OSHA rule relies on ASME B56.1 and covers essentially the same subject areas.

There were 43 comments (Exs. 7–14, 7–16, 7–21, 7–22, 7-25, 7–28, 7–34, 7–39, 7–40, 7–47, 7–51, 7–53, 7–63, 7–64, 11–3, 11–5, 11–10, 11–11, 11–13, 11–15, 11–19, 11–25, 11–28, 11–29, 11–32, 11–33, 11–34, 11–36, 11–37, 11–38, 11–39, 11–43, 11–45, 11–46, 28, 29, 31, Tr. pp. 27, 40, 43, 79, 198, 255, 400) on the various subjects that were proposed and some additional subjects recommended by some commenters. These commenters, for the most part, supported the topics contained in OSHA's proposal.

For example, one commenter (Ex. 7–28) stated:

> NAWGA/IFDA appreciates the concerns that have led OSHA to propose this rule, and believes that benefits can flow to companies and their workers through the dissemination of guidance on appropriate training for employees who operate powered industrial trucks. While we have comments and suggestions regarding certain aspects of the proposal's requirements, our organization believes that many of the training elements noted in the rule are appropriate topics to be covered in the instruction provided to powered industrial truck operators.

There were several suggestions for improving the language of the listed items. ACCSH suggested that most of the topics OSHA included were appropriate but urged OSHA to improve the wording that addresses the similarities to and differences from the automobile. In the final rule, OSHA has done so. (See discussion below.) OSHA has reviewed each comment and suggested change and has used those changes to improve the final rule, as discussed below.

4. Should an employee receive refresher or remedial training only if operating a vehicle unsafely or if involved in an accident? Is a one-year interval too frequent for retraining or recertification?

In the proposals that OSHA published in the **Federal Register** on March 14, 1995 and January 30, 1996, the Agency proposed that the employer conduct an evaluation of each powered industrial truck operator's performance at least annually to ensure the operator's continued safe operation of the vehicle(s) in the workplace. However, OSHA did not specify a fixed period for refresher training and evaluation but instead proposed that refresher training be provided when there is reason to believe that there has been unsafe operation, when an accident or near miss occurs, when an evaluation indicates that the operator is not capable of performing the assigned duties, or when a new type of truck has been introduced into the workplace.

Some commenters opposed the requirement for refresher training and evaluation unless there was documented evidence of employee misconduct or the training/evaluation was provided at a set interval. (See Exs. 7–13, 7–16, 7–20, 7–45, and 7–58.) Other commenters suggested that OSHA require refresher training on a regular basis, for example at three year intervals. For example, one commenter (Ex. 7–16) stated:

> Refresher training should have an established time frame to ensure operators will be given up-to-date information on safe powered industrial truck operation. This supports the goal of OSHA to prevent the first accident and not serve as the source of

consolation for the first victim. Refresher training should be required at least every three years, and sooner if there is just cause, as set forth by the proposed revision.

ACCSH commented that yearly retraining and evaluation are not as useful in the construction industry as other industries because relatively few employees remain with the same employer for an entire year. This also is the case for the longshoring industry.

OSHA has structured the final rule to address these commenters' concerns. First, the rule stipulates no fixed period for refresher training and evaluation; instead, such training is triggered when the triennial evaluation or an incident or workplace change indicates that it is necessary. OSHA concludes that this performance approach will ensure that the necessary refresher training occurs but does so in a way that is not overly burdensome.

Second, by requiring formal evaluations of operators' proficiency only at three year intervals, OSHA is addressing ACCSH's concerns and the concerns of employers in other industries with high turnover rates. If an employee stays less than three years with the same employer, no periodic evaluation is required (although the evaluation associated with initial training and any refresher training would be required). In addition, when an employee changes jobs, the final rule allows the employer to evaluate the employee's previous training adequacy and appropriateness to determine that the employee can do the job safely. As discussed below, duplicative training would not be required in this situation.

VIII. Summary and Explanation of the Final Standard

A. General

In this final rule, OSHA requires that operators of powered industrial trucks be trained in the operation of such vehicles before they are allowed to operate them independently. The training must consist of instruction (both classroom-type and practical training) in proper vehicle operation, the hazards of operating the vehicle in the workplace, and the requirements of the OSHA standard for powered industrial trucks. Operators who have completed training must then be evaluated while they operate the vehicle in the workplace. Operators must also be periodically evaluated (at least once every three years) to ensure that their skills remain at a high level and must receive refresher training whenever there is a demonstrated need for it. The new standard replaces very general training provisions that have had only a modest impact in reducing truck-related accidents, injuries, and fatalities.

To accomplish the goal of improved powered industrial truck operator training, OSHA is revising its existing general industry standard at § 1910.178(l), and is adding for shipyards a new § 1915.120 with a cross reference to § 1910.178 (l). For construction, a new § 1926.602(d), with a cross reference to 1910.178(l), has been added. The new § 1926.602(d) supplements the current cross-reference to the 1969 ANSI standard, to the extent that the ANSI standard specifies that only trained operators be permitted to operate powered industrial trucks (the same language as was contained at § 1910.178(l)). The standards in parts 1917 and 1918 provide safety and health coverage for longshoring and marine terminal employment. The specific standards in these parts are supplemented by a limited number of general industry standards to provide a comprehensive package of standards for each industry. These general industry standards are listed in §§ 1910.16, 1917.1, and 1918.1. To assure that new paragraph (l) of § 1910.178 covers longshoring and marine terminal employees, OSHA is adding it to the list of applicable general industry standards.

In developing this final standard, OSHA has relied on the training requirements in the latest national consensus standard for powered industrial trucks, ASME B56.1–1993, as well as the training requirements from other standards (both industry and government). In this final rule, the language of these standards has been modified, as appropriate, where the consensus standard uses non-enforceable language (such as in paragraphs 4.19.1 and 4.19.2 of the ASME standard), or for other reasons, as discussed below.

B. Scope

The scope of OSHA's existing training provisions for operators of powered industrial trucks for general industry, construction and shipyards is set forth at 29 CFR 1910.178(a)(1). That paragraph states:

> This section contains safety requirements relating to fire protection, design, maintenance, and use of fork trucks, tractors, platform lift trucks, motorized hand trucks, and other specialized industrial trucks powered by electric motor or internal combustion engines. This section does not apply to compressed air or nonflammable compressed gas-operated industrial trucks, nor to farm vehicles, nor to vehicles intended primarily for earth moving or over-the-road hauling.

Because § 1910.178 adopted the ANSI B56.1–1969 provisions under section 6(a) of the Act, the scope of that standard covering both general industry and shipyards employment is the same as the scope of the ANSI B56.1–1969 standard. The construction standard for powered industrial trucks incorporates ANSI B56.1–1969 by reference and, therefore, also has the same scope as the ANSI standard. The requirement for powered industrial truck use in the marine terminal industry is at § 1917.43. Paragraph (a) states:

> This section applies to every type of powered industrial truck used for material or equipment handling within a marine terminal. It does not apply to over-the-road vehicles.

The standard that applies to powered industrial truck training in the longshoring industry is codified at § 1918.97. That standard does not use the term "powered industrial truck" but provides that any employee driving "any power operated vehicle" shall be competent by reason of training and experience.

In the preamble of the powered industrial truck operator training proposal published on March 14, 1995, OSHA did not propose to revise the scope of the existing rules. However, OSHA solicited comment on whether the scope of the training requirements should be expanded to cover operators of a broader classification of vehicles than is covered by 29 CFR 1910.178(a).

There were eight commenters who generally discussed the scope of these final rules. (See Exs. 7–43, 11–7, 11–9, 11–17, 11–20, 11–31, 11–42, 11–44, Tr. pp. 99, 240.) Most of these commenters suggested limiting the scope to those vehicles covered by the ASME B56.1–1993 standard, which has a narrower scope than the ANSI B56.1–1969 standard because it does not cover certain types of vehicles that have their own specialized ASME volumes. These commenters believed that operators of specialized types of vehicles needed more specialized training.

Additionally, commenters from the marine terminals and longshoring industries pointed out that they have specialized equipment and/or use different names for some of the types of vehicles that are used in other industries. Some vehicles that are unique to the marine cargo handling industry, or are differently named, are: container top handlers; container reach stackers; straddle carriers; semi-tractors/utility vehicles; sidehandlers; combination vacuum lifts; and yard tractors.

OSHA has considered the comments received on the issue of scope and has decided not to change the scope provisions of § 1910.178(a). This means that the final rule's training requirements in paragraph (l) will apply to any truck covered by the specific industry standard. Thus, these training requirements would apply, e.g., to container top handlers in longshoring and marine terminals.

OSHA concludes that the new standard will improve operator training and reduce fatalities and injuries among those vehicle operators covered by § 1910.178(a)(1). The accident statistics discussed above indicate that there is a high incidence of job-related deaths and injury for operators of all vehicle types. Therefore, narrowing the scope of the final rule would decrease employee protections and increase the risk confronting operators, and would thus be contrary to the goals of the OSH Act. In response to the commenters who recommended a narrower scope, OSHA notes that the new standard is flexible enough to allow training to be tailored to the special characteristics of the workplace and the vehicles used.

Accordingly, the scope of the final standard is broader than that of the ASME B56.1–1993 standard, which covers only some types of powered industrial trucks. The final OSHA standard covers all the types of powered industrial trucks specified at § 1910.178(a)(1), which is equivalent to the broader scope of the ANSI B56.1–1969 standard. Therefore, this final rule applies to the vehicles covered by the following volumes of the consensus standard: Low Lift and High Lift Trucks, ASME B56.1; Guided Industrial Vehicles, ASME B56.5; Rough Terrain Forklift Trucks, ASME B56.6; Industrial Crane Trucks, ASME B56.7; as well as other vehicles that fall within the definition of a powered industrial truck in § 1910.178(a).

As discussed above, OSHA's existing operator training requirements for the marine terminal and longshoring industries essentially cover all powered industrial trucks used in those sectors no matter what specialized name they are given. OSHA concludes that it is important to retain this coverage in these sectors, for the same reasons stated above. There are high accident rates for operators of powered industrial trucks in these sectors, and the new training provisions are flexible enough to tailor the training to address the needs of the operators of specialized vehicles.

Therefore, the final rule applies to all powered industrial trucks defined as such in ASME B56.1–1969, as well as to other specialized equipment found in marine cargo handling operations, including but not limited to straddle carriers, hustlers, toploaders, container reach stackers, and other vehicles that carry, push, pull, lift, or tier loads. Training requirements for other material handling equipment, such as container gantry cranes or derricks, will continue to be covered by §§ 1917.27 and 1918.98.

The final rule does not, however, apply to earth moving equipment or vehicles used for over-the-road hauling. Three commenters suggested that OSHA clarify the scope of these training requirements (Exs. 7–25, 7–37, and 11–2). These commenters stated that the discussion of the scope issue in the proposal's preamble could mislead employers into thinking that earth moving equipment and over-the-road vehicles were included in the scope because these vehicles can lift and move material. OSHA agrees that these vehicles are not powered industrial trucks for the purposes of this rule. Therefore, equipment that was designed to move earth but has been modified to accept forks is not covered by this final rule.

C. Paragraph (l)(1)—Safe Operation

At paragraph (l)(1), OSHA requires the employer to ensure that each powered industrial truck operator is competent to operate such trucks safely, as demonstrated by the completion of the training and evaluation required by the final rule. The language of this paragraph has been changed from that proposed to emphasize the desired result, i.e., the operator's ability to operate a truck safely.

Twenty one commenters (Exs. 7–3, 7–12, 7–14, 7–25, 7–26, 7–29, 7–34, 7–39, 7–47, 7–58, 7–59, 7–64, 7–65, 7–69, 11–4, 11–9, 11–15, 11–32, 11–35, 11–38, Tr. p. 153) discussed this proposed requirement. Their principal concern was that, although all employees can be considered "potential" truck operators, this paragraph should apply only to those employees who actually are, or are being trained to be, powered industrial truck operators. For example, one commenter (Ex. 7–25) stated:

> Section 1910.178(1)(i)—We recommend the statements * * * "ensure that each potential operator" * * * be changed to * * * "ensure that each candidate for operator qualification" * * * This will avoid any confusion about who needs to be evaluated. Every employee can be considered a potential operator, but only select employees will be candidates for certification as qualified and authorized operators by the employer.

OSHA agrees with these commenters and has revised the language of the final rule to make clear that only powered industrial truck operators and trainees, and not all "potential" operators, as proposed, are covered. However, an employee who has other duties, but sometimes operates a powered industrial truck, is covered by this paragraph.

Paragraph (l)(1)(ii) requires the employer to ensure that before an employee is permitted to operate a powered industrial truck, except for training purposes, the employee has successfully completed the required training, including an evaluation of the efficacy of that training, except as permitted by paragraph (l)(5) of this section. The language of this paragraph has been changed from that of the corresponding proposed paragraph. The requirement that the operator "successfully complete" the training and evaluation required by the new standard has been retained, and the paragraph has been simplified for clarity.

Proposed paragraph (l)(1)(ii) had three elements; however, the final rule focuses only on one major point because the other two are addressed elsewhere in the final rule. In the proposal, the employer was required to have each operator trained, evaluated by a designated person, and determined by that person to be "performing the required duties safely." As now written, the employer must ensure that each operator has successfully completed the required training and evaluation except as permitted by paragraph (l)(5). There are a number of ways the employer can do this. Outside qualified training organizations can provide evidence that the employee has successfully completed the relevant training topics, both classroom and practical. The employer may also have an employee perform the training, which would allow the employer to certify that the employee has successfully completed the training. In the final rule, paragraph (l)(1)(ii) does not stipulate that a designated person conduct the training and evaluation of each operator and make a determination that the operator is performing safely. This is because paragraph (l)(2)(iii) specifically sets out the capabilities of persons performing the training, and paragraph (l)(2)(ii) stipulates that the training is to include both a demonstration and evaluation component ("Training shall consist of a combination of formal instruction * * *, practical training (demonstrations * * * by the trainee), and evaluation of the operator's performance in the workplace."). There

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is no reason to identify a person with the required capabilities as a "designated" person, as proposed.

During this rulemaking, there was some comment about training resources available to the employer. (See Exs. 7–15, 7–16, 7–27, 7–51, 7–60, 11–1, 11–8, 11–41, 11–46, 28, Tr. pp. 37, 49, 76, 94.) For example, one commenter (Ex. 11–1) stated:

> As North America's largest Powered Industrial Truck training organization (established in 1981), we welcome the opportunity to provide input into these long overdue regulations. To date, our organization's mobile equipment training programs have trained over 125,000 operators and 3500 trainers.

It is clear to OSHA from the comments and testimony of training organizations that there are adequate resources if employers choose to hire outside training providers. Additionally, truck manufacturers and dealers can provide information and assistance in developing a training program.

OSHA concludes that an evaluation component must be an integral part of the training process if accidents, injuries, and deaths resulting from unsafe powered industrial truck operation are to be reduced. As discussed above (see especially the discussion of the Jensen and Cohen studies in section IV of this preamble), the training and reinforcement that will be done in part through the formal training, demonstration, and evaluation process is a highly effective way of reducing unsafe practices. The practical exercises, demonstrations, and evaluations required as part of each operator's training also will determine whether the employee can competently perform an operator's duties safely.

Finally, paragraph (l)(1)(ii) does not permit an employee to operate a powered industrial truck without supervision until the required training has been completed (see the exception discussed below in connection with paragraph (l)(2)(i)). This requirement is included in the final rule to minimize driving by untrained operators.

D. Training Program Implementation—Paragraph (l)(2)

Paragraph (l)(2) permits trainees to receive practical training in truck operation only in areas where it is safe to do so, sets forth the types of training that are to be given to all powered industrial truck operators, and establishes the qualifications of trainers and evaluators. This paragraph has been revised slightly from the corresponding provisions in the proposal.

Paragraph (l)(2)(i) allows trainees to operate powered industrial trucks provided that the operation is under the direct supervision of a person with the requisite knowledge, training, or experience and the training is conducted in areas where there is minimum danger to the trainee and other employees. This is a change from the proposal, which included the further restriction that no other employee be present while practical training is being conducted. OSHA has revised this requirement based on comments that stated that the proposed restriction might not be possible at some businesses. For example, one commenter (Ex. 7–34) stated:

> Paragraph (l)(2)(i) requires that trainees, under the supervision of the designated person, be allowed to operate a powered industrial truck "provided the operation of the vehicle is conducted in an area where other employees are not near and the operation of the truck is under controlled conditions." Dow believes that this provision needs to be modified. The requirement that other employees may not be near the training area implies that a segregated area must be established. Not only would this add a significant cost to training (especially for low frequency training and space-limited work areas), but also ignores the fact that without great expense to recreate the work environment, the training then would not reflect real work scenarios. The trainee must learn how to maneuver appropriately around the facility including around obstacles such as other employees, etc. It is more appropriate that those working in or around the training area be made aware of the training activities. Instead of segregating the area, the area should be controlled. The presence of the "designated person" conducting the training can assist in this regard. As a result, Dow recommends that this provision be modified to read,
>
> Trainees under the direct supervision of the designated person may be allowed to operate a vehicle in a controlled area. Employees in the surrounding area should be alerted to the training activities which are occurring in their area.
>
> The above language allows the employer the flexibility to determine how best to comply with this requirement. It allows those employers who have the resources and the inclination to create a segregated area to do so while preserving the flexibility of other employers to select another adequate method.

Another commenter (Ex. 7–71) stated:

> While the flexibility provided by allowing trainees to operate a powered industrial truck under direct supervision is appropriate and necessary, the restriction that operation be conducted "*in an area where other employees are not near and the operation of the truck is under controlled conditions*" [1910.178(l)(2)(i)(sic)] is vague and [potentially] impractical or unreasonable. Because of space limitations and training program requirements, training may need to be conducted in work areas. Since it is stipulated that training be under the direct supervision of a qualified trainer, we believe that additional restriction is unnecessary and perhaps redundant.

OSHA agrees with these commenters, and is making the final provision more flexible than the proposed requirement. The final rule allows practical (hands-on) training in truck operation even if other employees are present, providing that the training is done in a safe manner.

Proposed paragraph (l)(2)(i) included provisions that were duplicative of other proposed provisions. OSHA has removed the duplicative provisions from the final rule. The proposed language stating that employers must "implement training" has been dropped, to eliminate the implication that the employer could not contract out the training to an outside trainer or training organization. However, the employer's responsibility for training remains clearly stated at paragraph (l)(1)(ii) to ensure that employees successfully complete the required training and evaluation, no matter who provides it.

OSHA requires at paragraph (l)(2)(ii) that the training consist of a combination of classroom type instruction, demonstrations by the trainer, practical training, and evaluation of the operator's ability to apply the training in the workplace. The Agency believes that only a combination of training methods will ensure effective employee training. Classroom type training is necessary to teach some of the principles of vehicle operation and provide the basis for practical training. Hands-on (practical) training provides the trainee with the necessary physical skills and enhances the employee's ability to operate a powered industrial truck safely. Demonstrations by the trainer will impart important information to the trainee. In addition, evaluation of the trainee's ability to operate the truck safely in the workplace will ensure that the trainee has successfully transferred the skills learned to the work environment.

No commenters opposed the need for practical training. There was some comment about the need for classroom training, however.

One commenter (Tr. p. 212), in response to a question about whether classroom or practical training was preferable, responded:

> We think both are necessary. Number one, we need the reinforcement of the hands-on plus the classroom training, however.
>
> The other issue, there are several issues that need to be covered in a classrooom for them to be understood when they're on the truck. Let me give you one example.

> Lift trucks, as you know, are three point suspension. You can have an operator sitting on a lift truck and you try to explain that. But unless he's seen it, he or she has seen it and unless it has been explained to them and illustrated to them, it's very difficult for them to grasp the concept of three point suspension on a four wheel truck. That can be explained in a classroom and then, hopefully, it won't have to be demonstrated because demonstrated would mean a tipped over truck.
>
> But there are certain things that cannot be demonstrated as adequately as they can be shown in graphs, slides and explained and tested in the book and there are certain things that cannot be covered in the operation. But those things that can, it simply reinforced them.
>
> I think most of us, in our education, understand that any reinforcement we can get all the way from demonstration to illustration, in print and in slides or videos is just reinforcement and helps the learning process to take effect much more deeply.

Another commenter (Ex. 7–31) stated:

> The proposal requires that training consist of a combination of classroom instruction and practical training. In small workplaces with few employees classroom instruction, per se, may not be practicable. Training needs to include a combination of methods and be flexible enough to work in different work environments and applications. Classroom instruction is but one way that preliminary instruction can be provided as a prelude to practical training exercises. The method of providing face-to-face instruction should be at the instructor's discretion.
>
> We suggest that subparagraph (ii) be modified to read: Training shall consist of a combination of instruction (classroom, lecture, audiovisual aids, and/or conference) and practical training (demonstrations and practical exercises by the trainee).

Several commenters (Exs. 7–31, 7–35, 7–36, 7–47, 7–49, 11–15, Tr. pp. 24, 153) suggested that classroom training was impractical, particularly when a small business employer has one trainee being trained by a supervisor. Both the proposed and final standard make clear that the "classroom" part of the training need not take place in a classroom, but can consist of other methods such as discussions, review of printed material, or viewing of video tapes. Discussions can consist of the trainer talking to the trainee and explaining the training material, either in the workplace or in another location. The Agency's intent was not to limit the flexibility of the employer by requiring that any phase of the training be conducted in a classroom. Rather, the rule requires that the training include an explanatory element as well as a practical element. To make this clearer, the word "classroom" has been changed to the word "formal," and examples of different kinds of formal training have been listed in parentheses.

Some of the topics that OSHA lists at paragraph (l)(3) lend themselves to being taught in a formal way. For example, teaching a trainee about vehicle stability by having the trainee tip over a powered industrial truck does not make sense and is not an effective way to learn about that principle. Stability is best learned initially by having the trainer explain the concept of stability, the causes of instability, and the ways to avoid instability. Practical training then may reinforce how to avoid creating an unsafe condition. On the other hand, telling someone what it is like to drive a powered industrial truck with front wheel drive and rear wheel steering is not sufficient to teach the trainee how to operate the vehicle safely, and considerable practical training is also necessary to teach the necessary skills.

The training also includes an evaluation of the operator's performance in the workplace. This is necessary to determine that the operator can effectively utilize all the training to drive safely in the workplace. This is similar to the requirement that was part of paragraph (l)(2)(ii) of the proposal. There was no opposition to the requirement.

OSHA concludes that powered industrial truck operators need to be trained using a combination of classroom type and practical training. Some elements are better taught using one or the other type of training, and often both methods of training are needed. As one hearing participant (Tr. p. 35) stated:

> The first point that I would like to comment on is I believe that initial certification training should include both classroom and operational training. This belief is based on the fact that in many cases what I have seen is without giving the correct instruction prior to individuals getting onto equipment, is they tend to develop some very bad habits quickly. I believe giving them the appropriate information initially and then reinforcing that while on the truck is the most effective way to train that. I also believe that with the initial certification, both evaluation of the classroom and the operational performance should be required. Again, this is to identify that they do have the correct knowledge of the equipment and that they have the skills to operate the equipment effectively.

At paragraph (l)(2)(iii), OSHA requires that all training and evaluation required by this standard be conducted by persons with the requisite knowledge, training, or experience to train operators. As discussed elsewhere in this preamble, the employer may have the necessary prerequisites to qualify as a trainer and evaluator, or he or she may assign the responsibility for training and evaluation to one or more employees or an outside trainer and evaluator having those prerequisites. There were several comments on this provision.

One commenter (Ex. 7–34) stated:

> Paragraph (l)(2)(iii) provides that training and evaluations must be conducted by a "designated person." Dow is concerned as to what OSHA means by the term "designated person." Hopefully, OSHA does not envision that one person must be hired to specifically conduct the training and evaluations. Dow recommends that the term "designated person" be broadly defined to include employees who have been through the training (or possibly an instructor from the training course) and have demonstrated sufficient knowledge and skill to fulfill this role.
>
> Moreover, Dow believes paragraph (l)(2)(iii) must be modified to reflect that training may be handled by a variety of instructors, not merely one "designated person." For large facilities with multiple departments it may be more appropriate that there be multiple trainers with each focusing on specific elements of the training program. For example, one person would discuss the technical characteristics of the vehicle while another person would discuss the specific loading types for their particular department. Therefore, Dow recommends OSHA modify this section to allow facilities the flexibility to have multiple "designated persons."

OSHA has concluded that the final rule should adopt a performance-oriented approach to the qualifications of trainers and evaluators. As discussed above under issue 1, OSHA does not have the resources to evaluate and certify trainers and does not consider it necessary to do so. Trainers and evaluators with different backgrounds can achieve the level of ability necessary to teach and evaluate trainees. To meet these commenters' concerns, OSHA has eliminated the term "designated person" from the final rule and has instead described the knowledge, skills, or experience any trainer or evaluator must have under the standard.

The Agency finds that this approach will eliminate problems, especially in the construction industry, where terms such as "designated person," "authorized person," "competent person," "qualified person," and others, have distinct meanings and definitions. As written in the final rule, an employee with the requisite knowledge, training, and experience could himself or herself conduct the required training (both initial and refresher) and evaluations. An employer could also employ one or more such persons, or could contract with an outside training organization to conduct the required training and evaluation activities.

This change responds to comments (see, e.g., Exs. 11–10A, 11–29, 11–5, 11–

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6A) submitted to the record. For example, a comment submitted by Constangy, Brooks & Smith, LLC, on behalf of a client, the Miller Brewing Company, explains that, in today's environment, which is characterized by "declining levels of supervision and increasing employee participation and empowerment," the person conducting the training and evaluation would in all likelihood be an employee (Ex. 11–29). Another comment from the American Society of Safety Engineers (ASSE) urged OSHA to use language in the final rule that would clearly recognize training given by "qualified third parties when a company does not have a qualified staff instructor" (Ex. 11–5). The Mobil Oil Company (Ex. 11–6A) expressed the view that a designated person was not needed succinctly: "the requirement for operator certification by a "designated person" is not practical and would hinder the quality and timeliness of operator training."

E. Training Program Content—Paragraph (l)(3)

To ensure that the training provided to powered industrial truck operators contains the appropriate information for the operator, the final rule includes a list of subjects that must be mastered in order to operate a truck safely. Paragraph (l)(3) states that all of the topics must be covered in operator training unless the employer can demonstrate that one or more of these topics is not necessary for safe operation in a particular workplace. It is the employer's responsibility to ensure that operators successfully complete all needed training and that the appropriate subjects are taught, including those that are pertinent to the type(s) of truck the operator will be allowed to operate and the work environment in which the vehicle(s) will be operated. Paragraph (l)(3) permits the employer to exclude those topics that are not relevant to safe operation at the employee's work location. However, the employer has the responsibility of demonstrating that these topics are not needed.

For example, if the operator will be operating an order picker, that employee must be trained in, e.g., the location and function of the controls; the location and operation of the engine or motor; steering and maneuvering; visibility; inspection and maintenance that the operator will be expected to perform; and the other general operating functions of the vehicle listed in paragraphs (l)(3)(i)(A) through (M) as well as the workplace-related topics covered in paragraph (l)(3)(ii)(A) through (I). The employee also must be taught and understand, for example, that he or she must be restrained from falling when the platform of the truck is in an elevated position and that he/she must never drive the truck when the platform is elevated (except as specified in the operator's manual). Under paragraph (l)(3), it is the employer's responsibility to ensure that the necessary elements of the training for the type(s) of vehicle to be used and the workplace in which that vehicle(s) will be operated are included in the training.

Some of the elements may be omitted if the employer can demonstrate that they are not relevant to safe powered industrial truck operation in the employer's workplace. In such cases, the employer must be able to demonstrate that a particular topic on the list is not relevant to the training program because that element does not apply to the type of vehicle(s) in use, or because the workplace condition addressed by the element does not exist. For example, if a powered industrial truck is not used in a hazardous environment (gases, vapors, combustibles—see paragraph 1910.178(c)), no training in this element is needed. Similarly, if the truck will be operated on smooth concrete floors, no training needs to be given on operating on rough terrain.

There were several comments (Exs. 7–7, 7–12, 7–13, 7–14, 7–16, 7–34, 7–36, 7–39, 7–65, 7–67, 7–69, 7–70, 11–5, 11–10, 11–11, 11–12, 11–14, 11–15, 11–18, 11–24, 11–29, 11–30, 11–31, 11–32, 11–37, 11–44, 11–45, 29, Tr. pp. 49, 54, 71, 336) that discussed one or more of the topics included in the training program. Some commenters and ACCSH (Exs. 11–5, 7–13, 11–18) suggested that describing the similarities of powered industrial trucks and automobiles could lead a trainee to believe that being able to drive a car automatically means being able to safely operate a powered industrial truck. On the other hand, according to these commenters, emphasizing the differences between driving a car and operating a powered industrial truck would help to clarify important differences, e.g., in steering, stability, and other characteristics.

For example one commenter (Ex. 7–13) stated:

> In section (3)(i)(B), delete * * * "Similarities to and differences from the automobile * * *" What does this have to do with operating industrial trucks and why does it have to be included in training? It should be noted that experience with automobiles on the country's highways is far worse than the experience of industry with the use of industrial trucks. Section (3)(iii) should be deleted or reworded. As stated, an employer could be cited for violations if they have not covered the OSHA Standard as a mandatory part of training. However, it is not agreed that this would significantly improve the overall safety of industrial truck operations.

Another commenter (Ex. 11–5) disagreed:

> ASSE believes it is appropriate to differentiate between operating a powered industrial truck and a car. The different steering techniques and the hazards unique to industrial truck operations, we believe, makes such training necessary.

The language of paragraph (l)(3) has been changed slightly in the final rule to emphasize the need to explain the differences between industrial trucks and automobiles.

There also was comment about whether operators must learn all about servicing and maintaining a powered industrial truck if they will not have to perform that servicing and maintenance. For example, one commenter (Ex. 7–39) stated:

> Subparagraph (i)(D) should be deleted in its entirety. The phrase "and maintenance" should be deleted from subparagraph (i)(J).
>
> These topics have no bearing on the operator's ability to operate a forklift in a safe manner. The operator does not require knowledge in how an internal combustion power plant or an electrical battery works or is maintained in order to safely operate a forklift. Unless the operator is going to perform this specialized work, there is no need to train the operator in such topics.

OSHA agrees with these commenters' contentions and has changed the final rule accordingly. Paragraph (l)(3)(i)(J) is now written to clarify that if an operator has no servicing responsibilities, that operator need not be trained in how to conduct that servicing activity. On the other hand, if the operator is required to perform any servicing or maintenance on a vehicle, that operator should know how to perform that servicing or maintenance.

The training topics included in this final rule were developed from those contained in the ASME B56.1–1993 standard. Much professional expertise has gone into their development. Many commenters (see, e.g., Exs. 11–10A, 11-18, 11–19, 11–25) generally supported the topics listed. For example, one hearing participant (Tr. p. 54) stated:

> In my opinion, there are a vast number of industries, many largely diversified within themselves, using a multitude of various classifications of lift trucks. Within these classifications there may be multiple attachment applications. Thus, I support the position of OSHA giving the employer the option to eliminate a topic from the list of required subjects provided the employer can demonstrate that the topic is unrelated to the work environment. There are certain topics which are necessary for operators to thoroughly understand and appreciate.

Another commenter (Ex. 11–18) stated:

> The International Brotherhood of Teamsters feels that the current list of topics is comprehensive and should not be substantially altered.

OSHA concludes that the topics proposed, as modified in the final rule based on public input, are appropriate as the basis of effective powered industrial truck operator training programs.

In developing training programs for different types of vehicles, there are certain elements that are common to each program. When training operators of different types of vehicles, employers can take advantage of these similarities by only training employees once on these common subjects. This principle reflects the Agency's desire to allow employers to conduct the training as efficiently and inexpensively as possible while ensuring that the training is adequate.

F. Refresher Training and Evaluation—Paragraph (l)(4)

Paragraph (l)(4)(i) requires employers to provide refresher training as required by paragraph (l)(4)(ii) to ensure that the operator continues to have the knowledge and skills to operate the powered industrial truck safely. Refresher training, which is triggered by the occurrence of the events listed in paragraph (l)(4)(ii), complements the initial training required by paragraph (l)(3) and serves to reinforce that initial training. The refresher training also includes an informal evaluation component that might involve, for example, observing the operator to ensure that he or she has mastered the skills necessary to address any performance deficiency or has developed the skills to operate a new type of truck safely.

An instance of unsafe operation, or an accident, or a near-miss incident, triggers refresher training as specified in paragraph (l)(4)(ii). Such refresher training also is needed if evaluation reveals that an operator is not operating the truck safely, or if an operator is assigned to drive another type of powered industrial truck or to work in substantially different or changed conditions. The type and amount of training needed in the refresher training depend on several factors, including: the different characteristics of the new type of truck or terrain; the practice or practices that the evaluation indicated needed improvement; the nature of the unsafe act; and the potential for an accident to occur. OSHA's decision not to specify the frequency of refresher training but to require it to be provided on an as-needed basis is discussed elsewhere in this preamble. The final rule provides a performance-oriented and cost-effective approach to refresher training. It also requires, at paragraph (l)(4)(i), evaluation of the effectiveness of the refresher training, to ensure that safe practices have been reinforced. This evaluation can be brief and informal. Many comments addressed this provision (Exs. 7–13, 7–16, 7–20, 7–21, 7–23, 7–25, 7–26, 7–28, 7–29, 7–31, 7–34, 7–35, 7–38, 7–39, 7–43, 7–44, 7–45, 7–46, 7–47, 7–48, 7–49, 7–52, 7–56, 7–58, 7–59, 7–61, 7–65, 7–67, 7–69, 7–70, 113, 11–4, 11–5, 11–10, 11–12, 11–15, 11–19, 11–20, 11–27, 11–29, 11–31, 11–32, 11–36, 11–38, 11–44, 28, 29, Tr. pp. 27, 36–39, 55, 63–65, 78, 82, 101, 179, 210, 319, 345, 395, 421–422). Some commenters supported the proposed rule's approach of relying on certain events, operator practices or workplace conditions to trigger refresher training. For example, one commenter (Ex. 11–3) stated:

> Bell Atlantic believes unsafe operation, accidents or near-misses are important criteria for determining if refresher/remedial training is required; however, it is also appropriate for employers to evaluate employees to ensure the employee retains and uses the skills, knowledge, and ability needed to operate the powered industrial truck safely. This evaluation can be accomplished by the employer conducting periodic work observations of the employee's operation of the vehicle to identify areas where remedial training may be needed. The timing of these evaluations should be left to the discretion of the employer.

Another commenter (Ex. 7–46) stated:

> The NAM agrees that employees should be retrained when they are shown to have operated equipment in an unsafe manner * * *

The final rule, at paragraph (l)(4)(ii), contains the triggers for refresher training that were proposed, but adds two others: when a different type of truck or different conditions are introduced or occur in the workplace. This could include a different type of paving, reconfiguration of storage racks, new construction leading to narrower aisles or restricted visibility, etc. These triggers have been added to the final rule because they are specified in the current ASME standard (B56.1–1993, section 4.19.5) and because some commenters (see e.g., Ex. 11–5) recommended that OSHA "follow the requirements of * * * [that standard] as a guide for refresher/remedial training."

Some commenters (see, e.g., Exs. 11–3, 11–4, 11–5, 11–10, 11–14, 11–15, 11–25, 11–27, 11–32, 7–13, 7–25, 7–36, 7–45, 7–58) recommended that periodic evaluations be conducted at less frequent intervals, rather than annually, as proposed. These commenters suggested that more frequent evaluations were unnecessary, would interrupt the production process, and would be burdensome for employers.

OSHA believes that the triennial evaluations required by the final rule need not take excessive time, be unduly burdensome, or interrupt the production process. In most cases, the person conducting the evaluation would do two things: first, observe the powered industrial truck operator during normal operations to determine if the operator is performing safely, and second, ask pertinent questions to ensure that the operator has the knowledge or experience needed to operate a truck safely. In some cases, because of the danger or complexity of the operation, the extent of the change in conditions, or the operator's need for additional skills, the evaluation will need to be lengthier and more detailed.

The proposed rule would have required employers to evaluate the driving performance of powered industrial truck operators on an annual basis. Commenters from general industry, construction, and the maritime industries (shipyards, marine terminals, and longshoring operations) objected to the frequency of the proposed evaluations (see e.g., Exs. 7–13, 7–25, 7–28, 7–34, 7–36, 7–45, 7–58, 7–59, 7–69, 7–70, 11–5, 11–10, 11–14, 11–15, 11–25, 11–27, 11–29, 11–32, 11–36, 11–46). For example, the American Petroleum Institute (API)(Ex. 11–10) stated:

> API * * * emphasizes our position that * * * it would be unnecessary to evaluate operators annually. Rather, API suggests that operators be evaluated every three years. This would substantially reduce the information collection burden, while still attending to those operators who may require additional training or who are operating in an unsafe manner.

Arguing along similar lines, the National Association of Home Builders (NAHB) (Ex. 11–14), stated:

> NAHB finds it an unreasonable burden on small employers for OSHA to require an annual evaluation of each operator * * * This will just be an unnecessary requirement and expense to small employers with no clear benefit.

The West Gulf Maritime Association (Ex. 7–66) held the same view, stating:

> Refresher and/or evaluation training shall be provided [only] when determined necessary by performance.

The Office of Advocacy of the U.S. Small Business Administration (SBA) also questioned the need for annual

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evaluations. Jere W. Glover, Chief Counsel for Advocacy, stated (Ex. 7–41):

> * * * I question whether * * * it is necessary to perform official evaluations annually. Particularly in a small workplace, evaluations—albeit informal—may be ongoing. Furthermore, coupled with the need for written certification and the requirement for maintaining records, I am concerned about the paper trail that this provision would generate as well.

A few commenters (Exs. 7–29, 7–52) favored a biennial evaluation period rather than the proposed annual interval, but did not present data to support biennial, rather than triennial, evaluation.

In response to these concerns, the final rule requires that periodic evaluations of operator performance be conducted only once every three years. OSHA has revised this provision of the proposal because the Agency concludes that the final rule's comprehensive training requirements—initial training and evaluation for all powered industrial truck operators needing such training; refresher training and evaluation for any operator observed to be operating unsafely, involved in an accident or near-miss, determined by evaluation to need retraining, or called upon to operate a different kind of truck or to operate under changed workplace conditions; and triennial evaluation to ensure that the necessary knowledge and skills have been retained—provide a complete and systematic approach to powered industrial truck operator training. Given this three-tiered approach to training—initial training and evaluation, refresher training and evaluation as needed, and periodic evaluations—annual evaluations are unnecessary. The final rule, at paragraph (l)(4), reflects this finding.

Paragraph (l)(4)(iii) requires employers to conduct an evaluation of each powered industrial truck operator's performance once every three years to ensure that the employee has retained and continues to use the knowledge and skills necessary for safe operation of the vehicle. The required evaluation does not have to be a formal, structured exercise. For example, an evaluation could be as simple as having a person with the requisite skills, knowledge, and experience observe the operator performing several typical operations to ensure that the powered industrial truck is being operated safely and asking the operator a few questions related to the safe operation of the vehicle.

G. Avoidance of Duplicative Training—Paragraph (l)(5)

In paragraph (l)(5), the final rule allows employers to forego those portions of the required training that operators have previously received. OSHA proposed two similar provisions, one pertaining to new hires and one to current operators. The final rule combines these two provisions into one paragraph. The provision at paragraph (l)(5) is intended to prevent unnecessary or duplicative training both for newly hired operators and those already on the payroll. For example, if an operator is already trained in certain aspects of powered industrial truck operation, knows the necessary information, has been evaluated, and has proven to be competent to perform the duties of an operator, there is no reason to require an employer to repeat that operator's training.

There was a general consensus of opinion supporting the utility of this provision. (See Exs. 7–25, 7–31, 7–34, 7–39, 7–67, 7–68, 7–69, 11–12, 11–15, 11–17, 11–18, 11–20, 11–27, 11–28, 11–29, 11–30, 11–37, 11–42, Tr. pp. 283.) These commenters pointed out that unnecessary and repetitive training does not use the employer's or the operator's time productively. If an operator already knows how to operate a powered industrial truck safely and can demonstrate that ability, there is no need to further train that operator. OSHA agrees with these commenters, and the final rule reflects this conclusion.

Paragraph (l)(5) of the final rule provides that an employer need not provide further training to any operator (whether currently on the payroll or a new hire) in any training topic in which the operator has previously received training, if the operator, after evaluation, is found to be competent to perform the operator's duties safely. The operator would need additional training in any element(s) for which the evaluation indicates the need for further training, and for any new type of equipment or changes in workplace conditions.

In evaluating the applicability and adequacy of an operator's prior training, the employer may wish to consider these factors: the type of equipment the operator has operated; how much experience the operator has had on that equipment; how recently this experience was gained; and the type of environment in which the operator worked. The employer may, but is not required to, use written documentation of the earlier training to determine whether an operator has been properly trained. The operator's competency may also simply be evaluated by the employer or another person with the requisite knowledge, skills, and experience to perform evaluations. The employer can determine from this information whether the experience is recent and thorough enough, and whether the operator has demonstrated sufficient competence in operating the powered industrial truck to forego any or some of the initial training. Some training on the site-specific factors of the new operator's workplace is likely always to be necessary.

H. Certification—Paragraph (l)(6)

OSHA proposed to require that employers certify that the required training and evaluation had been conducted and that the operator was competent to perform the duties of an operator safely by keeping a record with the name of the trainee, the dates of the training, and the signature of the person performing the training or evaluation. OSHA also proposed that the employer retain the training materials and course outline and, if the training was conducted by an outside trainer, the name and address of the trainer.

OSHA has, in this final standard, switched the order of the paragraphs on Certification and Avoidance of Duplicative Training. It is more logical to complete all elements of the training program before reaching the requirement to certify that training has been provided. Accordingly, the Certification paragraph in the final rule is in paragraph (l)(6) and the Avoidance of Duplicative Training is at paragraph (l)(5).

There was considerable comment on the proposed certification requirements. (See Exs. 7–13, 7–14, 7–16, 7–19, 7–21, 7–25, 7–26, 7–27, 7–34, 7–39, 7–40, 7–44, 7–47, 7–57, 7–58, 7–59, 7–62, 7–67, 7–69, 7–71, 11–3, 11–5, 11–6, 11–10, 11–12, 11–14, 11–15, 11–18, 11–24, 11–27, 11–28, 11–29, 11–30, 11–31, 11–32, 11–36, 11–37, 11–44, 28, 29, Tr. pp. 25, 51, 56, 102, 122, 155, 178, 203, 308, 321, 335, 341–344, 385, 408, 423.)

Some commenters pointed out that maintaining written certification records, particularly of training, provides a good means of measuring compliance with a standard. They pointed out that many conscientious employers already maintain records of employee training. For example, one commenter (Ex. 7–39) stated:

> Subparagraph (l)(5) requires employers to certify that each operator has been trained or evaluated. Since training for training's sake should never be the focus of a training standard, and since keeping such documentation will not make some a safer driver, CMA believes that OSHA should require the employer to document the verification of the knowledge and skill of the forklift operator. Consistent with the above, CMA recommends that the documentation include: (1) the authorized operator's name and personal identifier; (2) the date of

verification; (3) a reference to the verification method; and (4) the name of the verifier and personal identifier. The verifier should not be required to be signed because this prevents the use of electronic filing.

A second commenter (Ex. 11–3) stated:

> In addition, OSHA requested specific comments on the collection of information requirement proposed in 1910.178(l)(5) which requires employers to prepare and maintain a record to certify that employees have been trained and evaluated as required by the proposed standard. Bell Atlantic provides a four (4) hour training program to approximately 300 employees who operate powered industrial trucks, at a cost of $224 per trainee, total training costs = $67,200. This training is documented on the employee's training record and maintained in their personnel file. Bell Atlantic fully supports the use of electronic collection and submission of information wherever possible.

One hearing participant (Tr. p. 423) stated:

> Training records are an important tool for industries. It has been proven time and time again that analyzing prior training records before conducting refresher training will enable companies to identify employee conceptions of existing safety rules and standard operating procedures.

Some commenters agreed with the need to maintain records, but suggested that the requirement for a signature be deleted so it would be easier to computerize the records. (See Exs. 7–13, 7–21, 7–26, 7–27, 7–39, 7–40, 7–47, 7–59, 7–69.) OSHA agrees with these commenters and, accordingly, has changed the wording of this provision of the final rule to indicate that the identity of the person performing the training and evaluation is sufficient; a signature is not required. In addition, the final rule has substantially streamlined the proposed certification requirements, reducing the number of items needing to be certified, and eliminating the requirement to maintain training materials, course outlines, and other information when outside trainers are relied on.

Some commenters questioned the need for the employer to retain written records of the training on the grounds that the purpose of training is to prepare the trainee to operate a powered industrial truck in a safe manner and that observing that the operator is driving safely should be sufficient. For example, one commenter (Ex. 11–14) said:

> These requirements will be a tremendous burden to builders, especially small builders, who are already overwhelmed by onerous existing recordkeeping requirements. This new request for information from the employer seems inappropriate considering the recent inquiries by OSHA about ways to reduce the paperwork burden on employers. Why mandate these requests for information now when they will most likely be identified at a later date as a source of unnecessary paperwork?

OSHA has been responsive to this comment. The Agency believes that the final rule's certification requirements will provide the assurance necessary that the operator has been trained and evaluated, as required by the standard. However, in response to those who felt that some of the recordkeeping was unnecessary, OSHA has eliminated the requirement for employers to maintain training materials and information from outside trainers. OSHA believes that the certification required by the final rule is sufficient written evidence that the training and evaluation required by the standard has occurred.

I. Dates—Paragraph (l)(7)

The proposal did not include start-up dates. There are approximately 1.5 million powered industrial truck operators, and there is substantial turnover among these operators. Consequently, employers will need a reasonable period of time to implement the training and evaluation required by this final rule. There were a few comments on start-up dates ranging from immediately to three years. The period OSHA has chosen is based on its experience in implementing other safety standards.

The table in the final rule sets out the operator's employment status, and when the initial training and evaluation of operators must be completed. OSHA finds that the use of a table, rather than several written requirements, increases clarity and avoids confusion.

J. Appendix

OSHA has included a non-mandatory appendix in the final rule. Appendix A provides guidance to employers and employees on understanding the basic principles of truck stability. The information contained in this appendix is not intended to provide an exhaustive explanation; rather, it is intended to introduce basic concepts that the employer may use in developing and implementing a training program. The material in the appendix does not add to or reduce any of the mandatory requirements of these standards.

OSHA proposed a non-mandatory Appendix A that contained lists of training topics and other guidance and was primarily based on the current consensus standard, ASME B56.1–1993. Because most of the information in proposed Appendix A is included in the final rule itself at paragraph (l)(3), OSHA has not included proposed Appendix A in the final rule.

The appendix proposed as Appendix B is retained, and has been designated Appendix A in the final rule.

K. Statement of Reasons for Publishing This Standard in Lieu of the National Consensus Standard

In accordance with section 6(b)(8) of the OSH Act, the National Technology Transfer and Advancement (NTTAA) and OMB circular A–119, which implements the NTTAA, OSHA has reviewed the voluntary consensus standard, Safety Standard for Low Lift and High Lift Trucks (ASME B56.1–1993), and has made extensive use of it in developing its final rule. Where there are differences between OSHA's standard and the consensus standard, they are based on several considerations. First, the Agency bases its standards on the rulemaking record. Second, voluntary consensus standards are not always written with enforcement in mind. Third, the consensus standard contains more detail than is necessary in an OSHA standard. OSHA has developed a final rule that is flexible and protective, as well as performance-based. For these reasons, the Agency finds that the final rule better effectuates the purposes of the Act than the consensus standard.

IX. Statutory Considerations

Section 2(b)(3) of the Occupational Safety and Health (OSH) Act authorizes "the Secretary of Labor to set mandatory *occupational safety and health standards* applicable to businesses affecting interstate commerce," and section 5(a)(2) provides that "each employer shall comply with *occupational safety and health standards* promulgated under this Act" (emphasis added). Section 3(8) of the OSH Act (29 U.S.C. 652(8)) provides that "the term 'occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

OSHA considers a standard to be "reasonably necessary or appropriate" within the meaning of section 3(8) if it meets the following criteria: (1) The standard will substantially reduce a significant risk of material harm; (2) compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with

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technology that can reasonably be developed; (3) compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; and (4) the standard is cost effective in that it employs the least expensive of equally protective measures capable of reducing or eliminating significant risk.

Additionally, safety standards that differ from national consensus standards must better effectuate the Act's protective purpose than the corresponding national consensus standards, must be compatible with prior agency action, must be responsive to significant comment in the record, and, to the extent allowed by statute, must be consistent with applicable Executive Orders. OSHA believes that applying these criteria results in standards that provide a high degree of worker protection without imposing an undue burden on employers. (See the discussion of 60 FR 13796–13799, March 14, 1995, for a detailed analysis of the case law.)

As discussed in various places in this preamble, OSHA has determined that the operation of powered industrial trucks by untrained or inadequately trained operators poses significant risks to employees. There have been, on average, 101 fatalities and 94,570 injuries annually due to unsafe powered industrial truck operation. OSHA estimates that compliance with these revised training requirements for powered industrial truck operators will prevent approximately 11 fatalities and 9,422 injuries annually. This constitutes a substantial reduction in the significant risk of material harm currently posed to these employees.

There are no technological obstacles to compliance with the final rule. There are currently training requirements for powered industrial truck operators in general industry (§ 1910.178(1)), in construction (§ 1926.602(c)(1)(vi))(adopted by reference), and in the marine cargo handling industries (§§ 1917.27(a) and 1918.98(a) (requirements for all vehicle operators)). Shipyard employment is covered by the general industry standard. The final rule merely specifies in more detail what is to be taught to powered industrial truck operators and requires the employer to retrain operators when workplace conditions, other changes, or accidents or near-misses indicate that such retraining is necessary, and to institute effective evaluation measures to ensure continued safe vehicle operation. In many companies, the vehicle operator's training and periodic evaluations required by the standard have already been implemented.

OSHA also concludes that compliance is economically feasible because, as documented in the Final Economic Analysis, all regulated sectors can readily absorb or pass on compliance costs. OSHA estimates total annualized costs of $16.9 million, a cost that imposes only a negligible impact of 0.0002 percent of sales and less than 0.01 percent of pretax profits on firms in the regulated industries.

No industry segment or subsegment will experience substantial economic impact. The largest impact for any two-digit SIC is 0.0014 percent of sales or 0.021 percent of pretax profits and for the small business component of affected SICs, the largest impact is 0.001 percent of sales or 0.024 percent of pretax profits. Because of the large amount of data supplied by the Industrial Truck Association, OSHA has been able to prepare an analysis at the three-digit SIC level. No significant impacts were found at any level. Consequently, the new standard is determined to be economically feasible for firms in affected industries.

The standard's costs and compliance requirements are reasonable, amounting to approximately $16.9 million per year. An estimated 11 fatalities and 9422 injuries will be averted per year by compliance with the standard.

As discussed above, many of the provisions of the final standard are based on the training provisions of the current ASME consensus standard (ASME B56.1–1993). Pursuant to section 6(b)(8) of the OSH Act, OSHA has explained why the provisions of the final rule that differ from the ASME standard better effectuate the purpose of the Act.

Conclusion

This final powered industrial truck standard, like other safety standards, is subject to the constraints of section 3(8) of the OSH Act, and must be "reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

The Agency concludes that allowing an untrained or poorly trained employee to use a powered industrial truck poses significant risks, both to the operator and to other workers in the vicinity of the truck. To protect employees from those risks, it is necessary to require that only properly trained employees operate these vehicles. OSHA has determined that compliance with this operator training standard is technologically feasible because many companies currently offer the type of training that this standard requires. OSHA also concludes that compliance is economically feasible, because, as documented by the Final Economic Analysis (Ex. 38), all regulated sectors can readily absorb or pass on initial compliance costs while realizing substantial benefits. In addition to reducing fatalities and injuries, the Agency believes that compliance with the powered industrial truck training requirements will result in substantial cost savings and productivity gains at facilities that use powered industrial trucks, as discussed below.

As detailed in OSHA's March 14, 1995 notice (60 FR 13799), in the January 30, 1996 notice (61 FR 3092 and 3094), in this preamble, and in the Final Economic Analysis, the standard's costs, benefits, and compliance requirements are consistent with those of other OSHA safety standards.

X. Summary of the Final Economic Analysis, including the Regulatory Flexibility Analysis

Introduction

The OSH Act requires OSHA to demonstrate the technical and economic feasibility of its rules. Executive Order 12866 and the Regulatory Flexibility Act require Federal agencies to analyze the costs, benefits, and other consequences and impacts, including small business impacts, of their rules. Consistent with these requirements, OSHA has prepared a Final Economic Analysis (FEA) to accompany the final standard being published today. The final powered industrial truck operator training requirements will supplement and expand on the minimal training requirements previously found in OSHA's general industry standard (29 CFR 1910.178(l)) and will also apply to powered industrial truck operators in the marine cargo handling and construction industries.

It has been determined that this is an economically significant regulatory action under E.O. 12866, and a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act. Accordingly, OSHA has provided OIRA with an assessment of the costs, benefits and alternatives, as required by section 6(a)(3)(C) of E.O. 12866, which is summarized below.

This economic analysis includes a description of the industries affected by the standard, an assessment of the benefits attributable to adoption of the final standard, a determination of the technological feasibility of the standard's provisions, an estimate of the costs of compliance, a determination of the economic feasibility of compliance with the final provisions, and an analysis of the economic and other impacts of the final rule on establishments, including small establishments, in the affected industries. For a full discussion of the data, analysis, and results presented in this summary, see the Final Economic Analysis in this rulemaking docket [Ex. 38].

Affected Industries

Using powered industrial truck sales data provided by the Industrial Truck Association (ITA), OSHA estimates that there are 998,671 industrial trucks in use in industries covered by the final standard. These industries include the agricultural services segment (SIC 07) of the agricultural industry, the oil and gas extraction segment of the mining industry (which are covered by OSHA's general industry standards), the construction sector (SICs 15–17), manufacturing (SICs 20–39), the transportation and utilities sectors (SICs 41–49), the wholesale and retail sectors (SICs 50–59), the finance, insurance, and real estate sectors (SICs 60–67), and the services sectors (SICs 70–89). Industries with the largest number of powered industrial trucks include wholesale trade-non-durable goods (SIC 51), with an estimated 127,259 powered industrial trucks, and food and kindred products (SIC 20), with an estimated 82,144 such trucks. The construction and marine cargo handling (SIC 4491) sectors are estimated to have about 46,456 and 3,243 powered industrial trucks, respectively.

This final OSHA standard covers workers who operate powered industrial trucks. This includes operators using these vehicles in the general industry, construction, and maritime sectors (including shipyards, marine terminals, and longshoring operations). The population-at-risk in powered industrial truck accidents consists primarily of the operators of these trucks. Operators of powered industrial trucks include workers employed as designated truck operators as well as those who might operate powered industrial trucks as part of another job. These alternate users of powered industrial trucks include shipping and receiving clerks, order pickers, maintenance personnel, and general temporary workers. Non-driving workers such as warehouse personnel, material handlers, laborers, and pedestrians who work on or are present in the vicinity of powered industrial trucks are also injured and killed in powered industrial truck accidents.

OSHA estimates that approximately 1.5 million workers are employed as industrial truck operators in the industries covered by this rule. Industries with the largest number of operators include wholesale trade (SIC 51), with 190,889 operators, and food and kindred products (SIC 20), with 123,215 operators. OSHA estimates that there are 69,684 and 12,973 powered industrial truck operators in the construction and marine cargo handling sectors, respectively.

Technological Feasibility

OSHA could not identify any requirement in the final standard that raises technological feasibility problems for establishments that use industrial trucks. On the contrary, there is substantial evidence that establishments can achieve compliance with all of the final rule's requirements using existing methods and equipment. In addition, the standard introduces no technological requirements of any type. Therefore, OSHA has concluded that the standard is technologically feasible for firms in all affected sectors.

Costs of Compliance

This final industrial truck operator training standard expands the training of truck operators already required by OSHA's existing standards (29 CFR 1910.178(l), 1917.27(a), 1918.98(a), and 1926.602(c)) to include information on operating trucks safely and on warnings appropriate to the type of truck used, the specific hazards found in the workplace where the truck will be operated, and the requirements of this standard. Additionally, the final standard requires employers to monitor the performance of industrial truck operators through a triennial evaluation and to provide refresher training when this evaluation, or other events, suggest that such training is needed.

OSHA estimates the annual cost of compliance with the final standard to be about $16.9 million for all affected establishments in all covered industries. Table 11 outlines the annual costs by each sector affected by the final standard. Industry sectors with the highest estimated annualized compliance costs are manufacturing, with annual costs of $8.3 million, and wholesale and retail trade, with annual costs of $4.5 million. The annual costs of compliance for the construction and marine cargo handling sectors are estimated to be $1.0 and $0.2 million, respectively. Existing industry practice was taken into consideration when calculating costs, i.e., where employers have already voluntarily implemented practices that would be required by the final standard, no cost for these practices is attributed to the standard.

These estimates of the costs of compliance are lower than was the case for the proposed standard. The lower costs principally result from a change to the final rule that permits evaluations of operators to be performed once every three years rather than once every year, as proposed. Other minor changes to the standard also will result in lower costs and improved compliance, such as simplified certification, and these are discussed above in this Preamble as well as in the full FEA.

TABLE 11.—ESTIMATED ANNUALIZED COMPLIANCE COSTS FOR THE FINAL INDUSTRIAL TRUCK OPERATOR TRAINING STANDARD, BY PROVISION AND INDUSTRY

Industry sector	Initial training	Triennial evaluation	Refresher training	Total annual cost
Agriculture	$13,023	$3,788	$940	$17,751
Mining—Oil and Gas Extraction (SIC 13)	21,667	6,302	1,564	29,533
Construction	706,888	205,607	51,031	963,527
Manufacturing	6,061,548	1,763,078	437,594	8,262,220
Transportation and Utilities except SIC 4491	1,454,997	423,204	105,039	1,983,241
Longshoring and Marine Terminals (SIC 4491)	157,261	58,810	11,353	227,424
Wholesale and Retail Trade	3,282,343	954,711	236,958	4,474,012
Finance, Insurance, & Real Estate	47,594	13,843	3,436	64,873
Services	626,186	182,134	45,205	853,525
Total	12,371,500	3,611,478	893,121	16,876,105

Source: US Department of Labor, OSHA, Office of Regulatory Analysis, 1997.
Costs are annualized over 10 years at a 7 percent discount rate (annualization factor 0.1424).

Note: totals may not add due to rounding.

Many commenters (see, e.g., Exs. 11–3, 11–21, 7–60) to the record stated that the Agency had underestimated the costs of the standard. In most cases, these commenters failed to note that about 75 percent of affected establishments currently provide training that is equivalent, or nearly equivalent, to that required by the final standard. The Agency's estimate of 5.5 hours for initial training was within ranges provided by several commenters (4 hours, Bell Atlantic, Ex. 11–3; 8 hours, Tennessee Valley Authority, Ex. 11–21 and Monaco Group, Inc., Ex. 7–60).

Many commenters also questioned the utility of the annual evaluations proposed by OSHA, and several suggested that triennial evaluations of operator competence would be sufficient (see, e.g., American Society of Safety Engineers, Ex. 11–5; U.S. Small Business Administration, Ex. 7–41; and International Brotherhood of Teamsters, Ex. 11–18). The Agency has required triennial evaluations in the final standard. Similarly, many commenters stated that the proposed certification requirements were unduly burdensome (see, e.g., National Association for Home Builders, Ex. 11–14; Storax, Ex. 7–9; and Air Transport Association, Ex. 7–40). Several commenters objected to the requirement for a signature on the certification, noting that requiring a signature would mean that the form could not be handled electronically (Union Electric, Ex. 11–18; Edison Electric Institute, Ex. 7–44, for example). In response to these comments, the final standard does not require a signature for training certification and contains a much simpler certification than the one proposed, including only the operator's name, date of evaluation or training, and name of trainer.

Benefits

An estimated 101 fatalities and 94,570 injuries are caused annually by industrial truck-related accidents. As presented in Table 12, OSHA estimates that compliance with the final standard by establishments in all covered industries will avert 11 of these fatalities and 9,422 injuries per year. These fatalities and injuries are in addition to the lives saved and injuries prevented by OSHA's existing powered industrial truck operator training requirements, i.e., they represent only the incremental benefits of the new requirements. Estimates of benefits from the Final Economic Analysis are based on both general industry (including shipyards) and construction data, which were analyzed separately in the respective published proposals. In addition, the data sources for the Final Economic Analysis were expanded to include far more data than were available for the preliminary regulatory analysis published with the proposed standard. For example, estimates of the injuries potentially avoided as a result of the final rule are based on a national source (Bureau of Labor Statistics' "Survey of Occupational Injuries and Illnesses") rather than on data from only one state (California).

TABLE 12.—NUMBER OF FATALITIES AND INJURIES JUDGED TO BE POTENTIALLY AVERTED ANNUALLY BY COMPLIANCE WITH THE FINAL POWERED INDUSTRIAL TRUCK TRAINING STANDARD

Sector	Total number of powered industrial truck fatalities	Estimated number of fatalities potentially averted by compliance with the final standard	Total number of powered industrial truck injuries	Estimated number of injuries potentially averted by compliance with the final standard
Agriculture—Agricultural Services	0	0	47	5
Mining—Oil and Gas Extraction	1	0	0	0
Construction	16	2	2,380	237
Manufacturing	35	4	44,976	4,481
Transportation, Communications, and Utilities except Longshoring and Marine Terminals	16	2	10,698	1,066
Longshoring and Marine Terminals	3	0	275	27
Wholesale and Retail Trade	23	2	31,649	3,153
Finance, Insurance, and Real Estate	0	0	79	8
Services	7	1	4,466	445
All Covered Industries	101	11	94,570	9,422

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 1997

OSHA has also adopted a more conservative methodology for estimating the number of fatalities and injuries that could be prevented by the final standard. This approach explains why the estimates of lives saved and injuries averted are lower than those projected in the Preliminary Regulatory Impact Analysis. Based on published reports, the Agency had estimated in the proposal that 44 to 77 percent of accidents could be avoided by compliance with the Agency's proposed rule. OSHA has since decided that a more conservative estimate of 25 percent of accidents more accurately reflects the percentage of accidents that will be averted by compliance with the final standard. This 25 percent reduction in fatalities applies to the Agency's estimated 42 fatalities each year that are potentially preventable, which results in an estimated 11 fatalities avoided each year under the final standard.

The Agency has also included estimates of the direct cost savings, or economic benefits, that occur when accidents are avoided. These economic benefits include the savings in medical costs, value of lost output, savings in administrative costs of workers' compensation claims, and indirect costs to employers associated with injuries to employees. OSHA estimates that the value of the direct cost savings associated with these final rules is $83 million per year. This estimate of cost savings considers only those powered industrial truck-related injuries that involve lost workdays, and thus is a substantial underestimate of the standard's true benefits.

The final standard will also reduce accident-related property damage and litigation costs. OSHA finds that the improved training required by the final standard will reduce property damage by an estimated $52 million annually.

No economic benefits or savings are calculated either for avoiding loss of life or for the pain and suffering of injured workers. This means that the benefits presented here substantially underestimate the benefits of this rule.

Economic Impacts and Regulatory Flexibility Analysis

OSHA has assessed the potential economic impacts of compliance with the final standard and has determined that the standard is economically feasible for firms in all covered industry groups. On average, the annualized compliance costs of the standard amount only to 0.0001 percent of the sales and less than 0.01 percent of estimated pre-tax income for affected firms (Table 13).

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Table 13
Economic Impact of the Final Powered Industrial Truck Operator Training Standard

SIC	Industry	Value of Industry Shipments, Receipts or Sales a ($millions)	Annualized Compliance Costs	Compliance Costs as a Percent of Sales	Pre-tax Profit ($millions)	Compliance Costs as a Percent of Pre-tax Profit
7	Agricultural Services	NA	$17,751			
13	Oil and gas extraction	$70,832	$29,533	negligible	-	-
15	General building contractors	$216,936	$180,646	0.0001%	-	-
16	Heavy Construction - other than building	$79,373	$430,300	0.0005%	-	-
17	Construction - specialty trades	$203,096	$352,581	0.0002%		
20	Food and kindred products	$430,994	$1,397,532	0.0003%	$36,817	0.004%
21	Tobacco products	$30,021	$35,018	0.0001%	[1]	[1]
22	Textile mill products	$78,267	$306,318	0.0004%	$1,609	0.019%
23	Apparel and other textile products	$76,898	$87,368	0.0001%	$2,932	0.003%
24	Lumber and wood products	$103,643	$396,048	0.0004%	$3,063	0.013%
25	Furniture and fixtures	$50,039	$154,574	0.0003%	$2,274	0.007%
26	Paper and allied products	$143,761	$604,501	0.0004%	$17,659	0.003%
27	Printing, publishing, and allied industries	$176,381	$347,349	0.0002%	$14,188	0.002%
28	Chemicals and allied products	$333,259	$740,328	0.0002%	$49,776	0.001%
29	Petroleum refining and related industries	$143,150	$72,865	0.0001%	$16,656	0.000%
30	Rubber and miscellaneous plastics products	$134,533	$415,970	0.0003%	$5,779	0.007%
31	Leather and leather products	$9,545	$37,494	0.0004%	[2]	[2]
32	Stone, clay, glass, and concrete products	$71,227	$314,807	0.0004%	$4,156	0.008%
33	Primary metal industries	$160,771	$452,049	0.0003%	$11,052	0.004%
34	Fabricated metal products	$190,172	$568,422	0.0003%	$8,290	0.007%
35	Industrial & commercial machinery & computer equip	$314,423	$1,104,183	0.0004%	$22,957	0.005%
36	Electric and electronic equipment	$257,800	$392,625	0.0002%	$35,497	0.001%
37	Transportation equipment	$452,363	$548,260	0.0001%	$28,339	0.002%
38	Instruments and related equipment	$138,798	$112,482	0.0001%	$15,558	0.001%
39	Miscellaneous manufacturing industries	$44,156	$174,028	0.0004%	$2,049	0.008%
41	Local, suburban, and interurban passenger transit	$10,441	$39,876	0.0004%	-	-
42	Trucking and warehousing	$103,723	$1,399,336	0.0013%	-	
44	Water transportation	$19,956	$246,141	0.0012%	-	-
45	Transportation by air	$96,263	$146,892	0.0002%	-	-
46	Pipelines, except natural gas	$2,008	$3,255	0.0002%		-
47	Transportation services	$64,356	$120,850	0.0002%	-	-
48	Communications	[illegible]	$47,201	negligible	-	-
49	Electric, gas, and sanitary services	$345,852	$207,113	0.0001%		
50	Durable goods	$1,088,903	$1,061,474	0.0001%	$8,364	0.013%
51	Nondurable goods	$980,445	$1,760,781	0.0002%	$8,801	0.020%
52	Building materials and garden supplies	$122,533	$341,167	0.0003%		-
53	General merchandise stores	$286,447	$327,935	0.0001%	$10,641	0.003%
54	Food stores	$397,800	$552,887	0.0001%	$5,261	0.011%
55	Automotive dealers and service stations	$668,512	$53,505	negligible	-	
56	Apparel and accessory stores	$109,603	$31,643	negligible		
57	Furniture and home furnishings stores	$119,626	$109,312	0.0001%	-	
58	Eating and drinking places	$228,351	$22,438	negligible	-	
59	Miscellaneous retail	$266,358	$212,870	0.0001%	-	
60	Banking	$503,386	$12,693	negligible	-	
61	Credit agencies other than banks	$198,163	$5,289	negligible	-	
62	Security and commodity brokers and services	$76,066	$4,231	negligible	-	
63	Insurance carriers	$837,166	$22,917	negligible	-	
64	Insurance agents, brokers, and services	$39,333	$2,468	negligible	-	
65	Real estate	$116,629	$11,282	negligible	-	
67	Holding and other investment offices	$129,685	$5,994	negligible	-	
70	Hotels and other lodging places	$66,964	$10,748	negligible	-	
72	Personal services	$60,348	$10,748	negligible	-	
73	Business services	$335,807	$452,271	0.0001%	-	
75	Auto repair, services, and parking	$85,494	$120,506	0.0001%		
76	Miscellaneous repair services	$36,306	$33,546	0.0001%	-	
78	Motion pictures	$48,130	$13,679	negligible		
79	Amusement and recreation services	$59,382	$19,867	negligible	-	
80	Health services	$304,135	$57,973	negligible		
81	Legal services	$101,104	$3,583	negligible	-	
82	Educational services	$4,764	$51,460	0.0011%	-	
83	Social services	$16,502	$17,587	0.0001%	-	
84	Museums, art galleries, botanical & zoological gardens	$101,104	$977	negligible		
86	Membership organizations	NA	$6,188		-	
87	Engineering, accounting, research & management svcs	$223,700	$41,689	negligible		
89	Miscellaneous services, n e c	NA	$12,702			
		$12,445,881	$16,876,105	0.0001%		<0.01%

Source US Department of Labor, OSHA, Office of Regulatory Analysis, 1997

NEC Not elsewhere classified

Negligible denotes less than .0001 percent

[1] included in SIC 20

[2] included in SIC 23

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These figures suggest that even under the worst-case assumption of no cost pass-through, prices would be little affected by the standard. The two-digit industry sectors with the highest costs of compliance, trucking and warehousing (SIC 42) and water transportation (SIC 44), have costs of compliance that are 0.0013 and 0.0012 percent of revenues respectively. The industry with the greatest reduction in profits, nondurable goods (SIC 51), has a reduction in profits of 0.02 percent. Clearly, such potential small increases in prices and reductions in profits are economically feasible, and the Agency therefore concludes that the final standard is economically feasible for all affected industries.

These potential economic impacts overestimate the likely economic impact of the standard because they do not include any consideration of the economic benefits of the standard that may accrue to employers, such as reduced worker compensation costs and reduced property damage. OSHA estimates that reduced property damage alone would be sufficient to more than offset the total costs of the standard. In the Preliminary Regulatory Impact Analysis developed in support of OSHA's 1995 proposal [Ex. 2], the Agency examined the impact of the proposed standard on different sizes of establishments. Based on that analysis, the Agency certified that the proposed standard would not have a significant economic impact on a substantial number of small entities. Upon review of comments and other data submitted to the record of this rulemaking, the Agency has analyzed the final rule's impact on small entities, as defined by the Small Business Administration (SBA) and in accordance with the Regulatory Flexibility Act. In addition, in order to ensure that the smallest entities are not significantly impacted, the Agency also performed an analysis of impacts on the smallest establishments, i.e., those with fewer than 20 employees.

The impacts of the standard on sales and profits did not exceed 1 percent for small firms in any covered industry, whether the analysis used the SBA's definitions or the fewer-than-20-employee size class definition. In fact, the largest reduction in profit in any sector was 0.024% for small businesses in trucking and warehouses (SIC 42). Because the incremental costs of the final rule are primarily related to the number of powered industrial truck operators per establishment, the standard does not have a differential impact on small entities. If the costs of compliance were influenced by economies of scale, such effects would have been demonstrated by OSHA's analysis of the smallest firms, i.e., those with fewer than 20 employees. However, no such effects were seen, even among firms in this smallest size-class. Therefore, the Agency has no reason to conclude that establishments or firms in intermediate size groupings, i.e., those in the range between 20 employees and the employment size cutoff for the applicable SIC-specific SBA definition, would experience larger impacts.

Based on this finding, the Agency certifies that the final Powered Industrial Truck Operator Training standard will not have a significant adverse economic impact on a substantial number of small entities. The results of OSHA's analysis of small business impacts on firms within the SBA's size classifications are shown in Table 14.

Unfunded Mandates

The final Powered Industrial Truck Operator Training standard has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (U.S.C. 1501 et seq.) and Executive Order 12875. For purposes of the UMRA as well as the Executive Order, the Agency certifies that the final standard does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector of more than $100 million in any year.

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Table 14
Annual Cost of the Final Standards for Powered Industrial Truck Operator Training as a Percent of Sales and Profit for Small Firms as Defined by the Small Business Administration

SIC Industry	Affected Firm Size Class	Number of Affected Firms	Value of Industry Shipments or Sales ($millions)	Pre-Tax Profit ($millions)	Annual Compliance Costs	Compliance Costs as a Percent of	
						Sales	Pre-tax Profits
078 Agricultural services	$5 million*	[illegible]	$9,538	NA	$7,906	0.0001%	NA
08 Forestry	$5 million*	[illegible]	$951	$37	$2,753	0.0003%	0.007%
09 Fishing, hunting, and trapping	[illegible]	[illegible]	$425	$14	$1,349	0.0003%	0.010%
13 Oil and gas extraction	500 employees	[illegible]	$31,887	$1,682	$12,699	0.0000%	0.001%
15 General contractors and operative builders	[illegible]	[illegible]	$164,776	$6,653	$130,607	0.0001%	0.002%
16 Heavy construction, except building	[illegible]	[illegible]	$51,202	$2,467	$208,265	0.0004%	[illegible]
17 Special trade contractors	[illegible]	[illegible]	$180,459	$9,152	$290,174	0.0002%	0.003%
20 Food and kindred products	500 employees	[illegible]	$110,387	$5,205	$394,104	0.0004%	0.008%
21 Tobacco products	500 employees	[illegible]	[illegible]	[illegible]	$2,206	0.0003%	0.003%
22 Textile mill products	500 employees	4,804	$21,281	$1,184	$90,670	0.0004%	[illegible]
23 Apparel and other textile products	500 employees	[illegible]	$37,597	$1,619	$49,800	0.0001%	0.003%
24 Lumber and wood products	500 employees	[illegible]	$52,306	$2,778	$264,164	0.0005%	0.010%
25 Furniture and fixtures	500 employees	[illegible]	$21,528	$1,019	$77,287	0.0004%	[illegible]
26 Paper and allied products	500 employees	[illegible]	$29,526	$1,890	$162,006	0.0005%	[illegible]
27 Printing and publishing	500 employees	54,608	$79,992	$4,860	$180,622	0.0002%	0.004%
28 Chemicals and allied products	500 employees	[illegible]	$62,139	$3,919	$139,922	0.0002%	0.004%
29 Petroleum and coal products	500 employees	[illegible]	$12,392	$547	$12,241	0.0001%	0.002%
30 Rubber and miscellaneous plastics products	500 employees	[illegible]	$51,865	$3,747	$194,674	0.0004%	0.005%
31 Leather and leather products	500 employees	[illegible]	$4,071	$139	$16,310	0.0004%	0.012%
32 Stone, clay, and glass products	500 employees	[illegible]	$27,843	$1,746	$146,700	0.0005%	[illegible]
33 Primary metal industries	500 employees	[illegible]	$32,264	$2,012	$135,163	0.0004%	0.007%
34 Fabricated metal products	500 employees	[illegible]	$89,152	$6,157	$321,158	0.0004%	0.005%
35 Industrial machinery and equipment	500 employees	[illegible]	$100,346	$7,637	$526,695	0.0005%	0.007%
36 Electronic and other electronic equipment	500 employees	12,586	$53,944	$3,712	$114,254	[illegible]	0.003%
37 Transportation equipment	500 employees	[illegible]	$31,584	$1,737	$77,305	[illegible]	0.004%
38 Instruments and related products	500 employees	[illegible]	$31,106	$2,196	$29,695	0.0001%	0.001%
39 Miscellaneous manufacturing industries	500 employees	[illegible]	$25,232	$1,450	$117,295	0.0005%	[illegible]
41 Local and interurban passenger transit	$5 million*	[illegible]	$6,450	$212	$18,343	0.0003%	[illegible]
42 Trucking and warehousing	[illegible]	[illegible]	$64,742	$2,575	$590,520	[illegible]	0.023%
44 Water transportation	500 employees	[illegible]	$12,523	[illegible]	$114,948	[illegible]	0.019%
45 Transportation by air	1,500 employees	4,582	$10,599	$441	$14,542	0.0001%	0.003%
46 Pipelines, except natural gas	1,500 employees	39	[illegible]	$227	[illegible]	[illegible]	[illegible]
47 Transportation services	$5 million*	33,266	$13,914	$576	$69,489	0.0005%	0.012%
[illegible] Communication	1,500 employees	12,509	$30,662	$4,674	$9,204	[illegible]	[illegible]
49 Electric, gas, and sanitary services	$5 million*	[illegible]	$6,926	$523	$7,456	[illegible]	0.001%
50 Wholesale trade - durable goods	100 employees	[illegible]	$897,053	$46,824	$596,548	0.0001%	0.001%
51 Wholesale trade - nondurable goods	100 employees	[illegible]	$773,401	$30,654	$820,524	0.0001%	0.003%
52 Building materials and garden supplies	$5 million*	50,830	$35,838	$1,391	$118,044	[illegible]	[illegible]
53 General merchandise stores	$5 million*	[illegible]	$3,845	[illegible]	$5,247	[illegible]	[illegible]
54 Food stores	$5 million*	[illegible]	$97,965	$2,420	$165,866	[illegible]	0.007%
55 Automotive dealers and service stations	$5 million*	[illegible]	$135,133	$3,498	$15,302	[illegible]	[illegible]
56 Apparel and accessory stores	$5 million*	[illegible]	$22,281	$1,337	$5,632	[illegible]	0.000%
57 Furniture and homefurnishings [illegible]	$5 million*	[illegible]	$42,755	$2,062	$43,725	[illegible]	[illegible]
58 Eating and drinking places	$5 million*	[illegible]	$112,289	$4,756	$11,802	[illegible]	[illegible]
59 Miscellaneous retail	$5 million*	[illegible]	$99,082	$5,012	$82,168	0.0001%	0.002%
[illegible] Depository institutions	$5 million*	[illegible]	$16,124	NA	$597	[illegible]	NA
61 Nondepository institutions	$5 million*	[illegible]	$10,932	[illegible]	[illegible]	[illegible]	0.000%
62 Security and commodity brokers	$5 million*	[illegible]	$10,790	$641	[illegible]	0.0000%	0.000%
63 Insurance carriers	$5 million*	[illegible]	$4,412	NA	$252	[illegible]	NA
[illegible] Insurance agents, brokers, and service	$5 million*	[illegible]	$36,821	NA	$1,723	[illegible]	NA
65 [illegible]	$5 million*	[illegible]	$109,143	$15,272	$7,774	0.0000%	[illegible]
67 Holding and other investment offices	$5 million*	[illegible]	$16,609	$1,608	$1,271	[illegible]	[illegible]
70 Hotels and other lodging places	$5 million*	[illegible]	$18,992	$1,618	$2,751	0.0000%	0.000%
72 Personal services	$5 million*	[illegible]	$31,608	$2,096	$7,352	0.0000%	0.000%
73 Business services	$5 million*	[illegible]	$124,891	$7,686	$143,822	0.0001%	0.002%
75 Auto repair, services, and parking	$5 million*	[illegible]	$50,584	$2,866	$89,657	0.0002%	0.003%
76 Miscellaneous repair services	$5 million*	[illegible]	$22,430	$1,433	$23,113	0.0001%	0.002%
78 Motion pictures	$5 million*	[illegible]	$8,836	$654	$2,968	[illegible]	0.000%
79 Amusement and recreation services	$5 million*	62,496	$35,211	$1,382	$10,808	[illegible]	0.001%
[illegible] Health services	$5 million*	[illegible]	$210,585	$10,804	$14,899	[illegible]	0.000%
[illegible] Legal services	$5 million*	[illegible]	$44,099	$6,091	$1,662	[illegible]	0.000%
82 Educational services	$5 million*	[illegible]	$22,279	[illegible]	$12,968	0.0001%	0.001%
[illegible] Social services	$5 million*	[illegible]	$36,264	$1,565	$9,022	0.0000%	0.001%
84 Museums, botanical, zoological gardens	$5 million*	[illegible]	$1,535	$99	[illegible]	0.0000%	0.000%
[illegible] Membership organizations	$5 million*	[illegible]	$68,120	$3,082	$4,771	0.0000%	0.000%
[illegible] Engineering and management services	$5 million*	[illegible]	$100,639	$6,220	$19,635	0.0000%	0.000%
89 Services, n.e.c	$5 million*	10,585	$5,317	$354	$8,498	0.0002%	0.002%

Source: US Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, 1997.
* Annual Receipts.
[a] As per 61 FR 3289, January 31, 1996

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OSHA standards do not apply to State and local governments, except in States that have voluntarily elected to adopt an OSHA State Plan. Consequently, the Powered Industrial Truck Operators Training rule does not meet the definition of a "Federal intergovernmental mandate" (Section 421(5) of the UMRA (2 U.S.C. 658(5)). In addition, the Agency has concluded, based on review of the rulemaking record, that few, if any, of the affected employers are State, local, and tribal governments.

XI. Environmental Impact

The final rule has been reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Part 1500 through 1517), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, OSHA has determined that the final standard will have no significant environmental impact.

XII. OMB Review Under the Paperwork Reduction Act

This final rule contains collection of information requirements. Under paragraph (l)(6), employers are required to prepare a certification record whenever an operator has received training or has been evaluated. The certification record includes the name of the operator, the date of the training or evaluation, and the identity of the person(s) who performed the training or evaluation. Paragraph (l)(3) requires initial training and evaluation; paragraph (l)(4) establishes conditions requiring refresher training and evaluation and periodic evaluations (once every three years); and paragraph (l)(5) requires the employer to evaluate the adequacy of previous training. A certification record must be prepared whenever one of these activities occurs.

OMB submitted comments on the proposed collections of information (paperwork) (Exs. L–39, L–40) for powered industrial truck operator training. OMB's concerns focused on the burden associated with some elements of operator training, the need for annual evaluations, and the need for comprehensive certification requirements contained in the proposed rules. The final rule addresses OMB's concerns and greatly reduces information collection burdens, as discussed below.

OSHA received 109 written comments on the proposed rule, along with testimony from 22 participants at the public hearings. There was significant opposition to the paperwork burdens associated with the proposed standard. Some indicated that the proposed requirements were too extensive. Others believed that they were a necessary tool to make the training program effective. Based on its review of this information, OSHA has made several changes that substantially reduce both the amount and the frequency of information collection, but retain the minimum necessary for an effective training program. First, OSHA has determined that the proposed annual evaluation of operators should be changed to triennial evaluation. Second, the Agency has eliminated the initial evaluation of employees to determine their training needs, and added an evaluation of the employee's performance after receiving training. Third, OSHA has removed the proposed requirement for employers to sign training and evaluation records. Finally, OSHA has eliminated the proposed requirement for the employer to retain training materials. Section VIII of this Preamble discusses at length the record evidence on these provisions and other issues relating to information collection.

In summary, OSHA estimates that there are 1,540,315 operators of powered industrial trucks in the industries covered by this final rule. A total of 759,571 hours will be needed for employers to comply with the information collection requirements for training and evaluation of these employees in the first year, and 543,860 hours in each subsequent year. These estimates are based on information in OSHA's Final Economic Analysis for the final rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OSHA requested OMB approval of the collection of information requirement described above. On November 18, 1998, the Office of Management and Budget granted approval of the information requirements under Office of Management and Budget Control Number 1218–0242.

XIII. State Plan Standards

The 25 States with their own OSHA-approved occupational safety and health plans must adopt comparable standards within six months of the publication date of this final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in those States.

XIV. Federalism and Children's Executive Order

These regulations have been reviewed in accordance with Executive Order 12875 (52 FR 58093, Oct. 28, 1993) regarding Federalism. The orders require that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

In accordance with Executive Order 13045, OSHA has evaluated the environmental safety and health effects of the rule on children. The Agency has determined that the final rule will have no effect on children.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. When such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions.

The Federal standard on powered industrial truck operator training addresses hazards that are not unique to any one State or region of the country. Nonetheless, States with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems that might be encountered in a particular State. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility for State Plans to require, and

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for affected employers to use, methods of compliance that are appropriate to the working conditions covered by these standards.

In brief, these rules address a clear national problem related to occupational safety and health in general industry, construction, shipyard, and the marine cargo-handling industries. Those states that have elected to participate under section 18 of the OSH Act are not preempted by these standards, and will be able to address any special conditions within the framework of the Federal Act while ensuring that the State standards are at least as effective as the Federal standard.

XV. List of Subjects

29 CFR part 1910

Motor vehicle safety, Occupational safety and health, Transportation.

29 CFR part 1915

Shipyards industry, Motor vehicle safety, Occupational safety and health, Transportation.

29 CFR part 1917

Marine terminals, Motor vehicle safety, Occupational safety and health, Vessels.

29 CFR part 1918

Longshoring, Motor vehicle safety, Occupational safety and health, Vessels.

29 CFR part 1926

Construction industry, Motor vehicle safety, Occupational safety and health, Transportation.

XVI. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Construction Work Hours and Safety Act (Construction Safety Act) (40 U.S.C. 333), section 41 of the Longshore and Harbor Workers Compensation Act (33 U.S.C. 941), Secretary of Labor's Order 6–96 (62 FR 111), and 29 CFR part 1911, 29 CFR parts 1910, 1915, 1917, 1918, and 1926 are amended as set forth below.

Signed at Washington, DC, this 17th day of November, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS [AMENDED]

1. The authority citation for subpart B of part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; Sec. 41, Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; and 29 CFR Part 1911.

2. Section 1910.16 is amended by adding new paragraphs (a)(2)(x) and (b)(2)(xiv), by removing the word "and" from the end of paragraph (b)(2)(xii) and by removing the period at the end of paragraph (b)(2)(xiii)(D) and adding in its place a semicolon and the word "and" as follows:

§ 1910.16 Longshoring and marine terminals.

(a) * * *

(2) * * *

(x) Powered industrial truck operator training, Subpart N, § 1910.178(l).

(b) * * *

(2) * * *

(xiv) Powered industrial truck operator training, Subpart N, § 1910.178(l).

* * * * *

3. The authority citation for subpart N of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033) or 6–96 (62 FR 111), as applicable.

Sections 1910.176, 1910.177, 1910.178, 1910.179, 1910.180, 1910.181, and 1910.184 also issued under 29 CFR part 1911.

4. Section 1910.178 is amended by revising paragraph (l) and by adding Appendix A at the end of the section to read as follows:

§ 1910.178 Powered industrial trucks.

* * * * *

(l) Operator training.

(1) *Safe operation.* (i) The employer shall ensure that each powered industrial truck operator is competent to operate a powered industrial truck safely, as demonstrated by the successful completion of the training and evaluation specified in this paragraph (l).

(ii) Prior to permitting an employee to operate a powered industrial truck (except for training purposes), the employer shall ensure that each operator has successfully completed the training required by this paragraph (l), except as permitted by paragraph (l)(5).

(2) *Training program implementation.* (i) Trainees may operate a powered industrial truck only:

(A) Under the direct supervision of persons who have the knowledge, training, and experience to train operators and evaluate their competence; and

(B) Where such operation does not endanger the trainee or other employees.

(ii) Training shall consist of a combination of formal instruction (e.g., lecture, discussion, interactive computer learning, video tape, written material), practical training (demonstrations performed by the trainer and practical exercises performed by the trainee), and evaluation of the operator's performance in the workplace.

(iii) All operator training and evaluation shall be conducted by persons who have the knowledge, training, and experience to train powered industrial truck operators and evaluate their competence.

(3) *Training program content.* Powered industrial truck operators shall receive initial training in the following topics, except in topics which the employer can demonstrate are not applicable to safe operation of the truck in the employer's workplace.

(i) Truck-related topics:

(A) Operating instructions, warnings, and precautions for the types of truck the operator will be authorized to operate;

(B) Differences between the truck and the automobile;

(C) Truck controls and instrumentation: where they are located, what they do, and how they work;

(D) Engine or motor operation;

(E) Steering and maneuvering;

(F) Visibility (including restrictions due to loading);

(G) Fork and attachment adaptation, operation, and use limitations;

(H) Vehicle capacity;

(I) Vehicle stability;

(J) Any vehicle inspection and maintenance that the operator will be required to perform;

(K) Refueling and/or charging and recharging of batteries;

(L) Operating limitations;

(M) Any other operating instructions, warnings, or precautions listed in the operator's manual for the types of vehicle that the employee is being trained to operate.

(ii) Workplace-related topics:

(A) Surface conditions where the vehicle will be operated;

(B) Composition of loads to be carried and load stability;

(C) Load manipulation, stacking, and unstacking;

(D) Pedestrian traffic in areas where the vehicle will be operated;

(E) Narrow aisles and other restricted places where the vehicle will be operated;

(F) Hazardous (classified) locations where the vehicle will be operated;

(G) Ramps and other sloped surfaces that could affect the vehicle's stability;

(H) Closed environments and other areas where insufficient ventilation or poor vehicle maintenance could cause a buildup of carbon monoxide or diesel exhaust;

(I) Other unique or potentially hazardous environmental conditions in the workplace that could affect safe operation.

(iii) The requirements of this section.

(4) *Refresher training and evaluation.* (i) Refresher training, including an evaluation of the effectiveness of that training, shall be conducted as required by paragraph (l)(4)(ii) to ensure that the operator has the knowledge and skills needed to operate the powered industrial truck safely.

(ii) Refresher training in relevant topics shall be provided to the operator when:

(A) The operator has been observed to operate the vehicle in an unsafe manner;

(B) The operator has been involved in an accident or near-miss incident;

(C) The operator has received an evaluation that reveals that the operator is not operating the truck safely;

(D) The operator is assigned to drive a different type of truck; or

(E) A condition in the workplace changes in a manner that could affect safe operation of the truck.

(iii) An evaluation of each powered industrial truck operator's performance shall be conducted at least once every three years.

(5) *Avoidance of duplicative training.* If an operator has previously received training in a topic specified in paragraph (l)(3) of this section, and such training is appropriate to the truck and working conditions encountered, additional training in that topic is not required if the operator has been evaluated and found competent to operate the truck safely.

(6) *Certification.* The employer shall certify that each operator has been trained and evaluated as required by this paragraph (l). The certification shall include the name of the operator, the date of the training, the date of the evaluation, and the identity of the person(s) performing the training or evaluation.

(7) *Dates.* The employer shall ensure that operators of powered industrial trucks are trained, as appropriate, by the dates shown in the following table.

If the employee was hired:	The initial training and evaluation of that employee must be completed:
Before December 1, 1999	By December 1, 1999.
After December 1, 1999	Before the employee is assigned to operate a powered industrial truck.

(8) Appendix A to this section provides non-mandatory guidance to assist employers in implementing this paragraph (l). This appendix does not add to, alter, or reduce the requirements of this section.

* * * * *

Appendix A—Stability of Powered Industrial Trucks (Non-mandatory Appendix to Paragraph (l) of This Section)

A–1. *Definitions.*

The following definitions help to explain the principle of stability:

Center of gravity is the point on an object at which all of the object's weight is concentrated. For symmetrical loads, the center of gravity is at the middle of the load.

Counterweight is the weight that is built into the truck's basic structure and is used to offset the load's weight and to maximize the vehicle's resistance to tipping over.

Fulcrum is the truck's axis of rotation when it tips over.

Grade is the slope of a surface, which is usually measured as the number of feet of rise or fall over a hundred foot horizontal distance (the slope is expressed as a percent).

Lateral stability is a truck's resistance to overturning sideways.

Line of action is an imaginary vertical line through an object's center of gravity.

Load center is the horizontal distance from the load's edge (or the fork's or other attachment's vertical face) to the line of action through the load's center of gravity.

Longitudinal stability is the truck's resistance to overturning forward or rearward.

Moment is the product of the object's weight times the distance from a fixed point (usually the fulcrum). In the case of a powered industrial truck, the distance is measured from the point at which the truck will tip over to the object's line of action. The distance is always measured perpendicular to the line of action.

Track is the distance between the wheels on the same axle of the truck.

Wheelbase is the distance between the centerline of the vehicle's front and rear wheels.

A–2. *General.*

A–2.1. Determining the stability of a powered industrial truck is simple once a few basic principles are understood. There are many factors that contribute to a vehicle's stability: the vehicle's wheelbase, track, and height; the load's weight distribution; and the vehicle's counterweight location (if the vehicle is so equipped).

A–2.2. The "stability triangle," used in most stability discussions, demonstrates stability simply.

A–3. *Basic Principles.*

A–3.1. Whether an object is stable depends on the object's moment at one end of a system being greater than, equal to, or smaller than the object's moment at the system's other end. This principle can be seen in the way a see-saw or teeter-totter works: that is, if the product of the load and distance from the fulcrum (moment) is equal to the moment at the device's other end, the device is balanced and it will not move. However, if there is a greater moment at one end of the device, the device will try to move downward at the end with the greater moment.

A–3.2. The longitudinal stability of a counterbalanced powered industrial truck depends on the vehicle's moment and the load's moment. In other words, if the mathematic product of the load moment (the distance from the front wheels, the approximate point at which the vehicle would tip forward) to the load's center of gravity times the load's weight is less than the vehicle's moment, the system is balanced and will not tip forward. However, if the load's moment is greater than the vehicle's moment, the greater load-moment will force the truck to tip forward.

A–4. *The Stability Triangle.*

A–4.1. Almost all counterbalanced powered industrial trucks have a three-point suspension system, that is, the vehicle is supported at three points. This is true even if the vehicle has four wheels. The truck's steer axle is attached to the truck by a pivot pin in the axle's center. When the points are connected with imaginary lines, this three-point support forms a triangle called the stability triangle. Figure 1 depicts the stability triangle.

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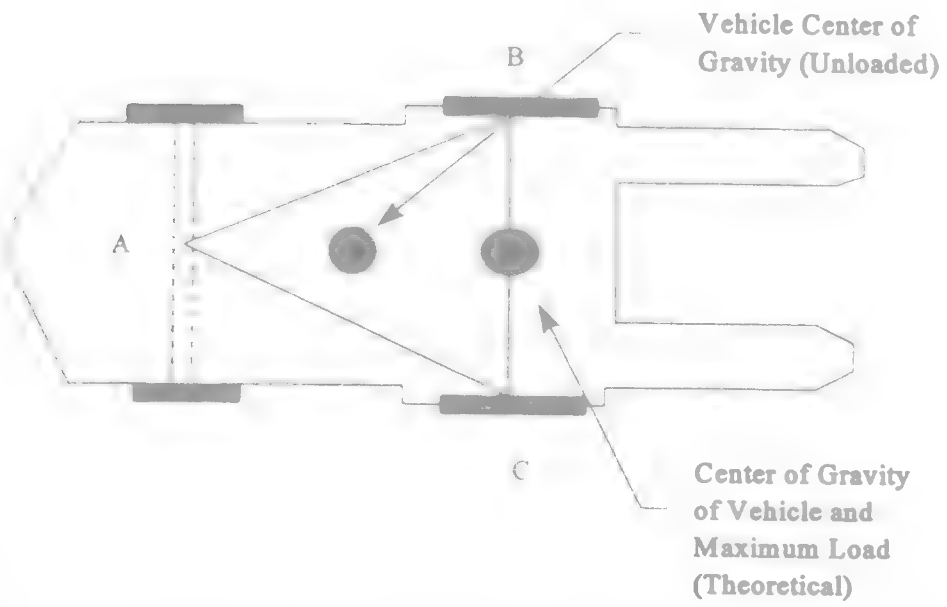
Figure 1.

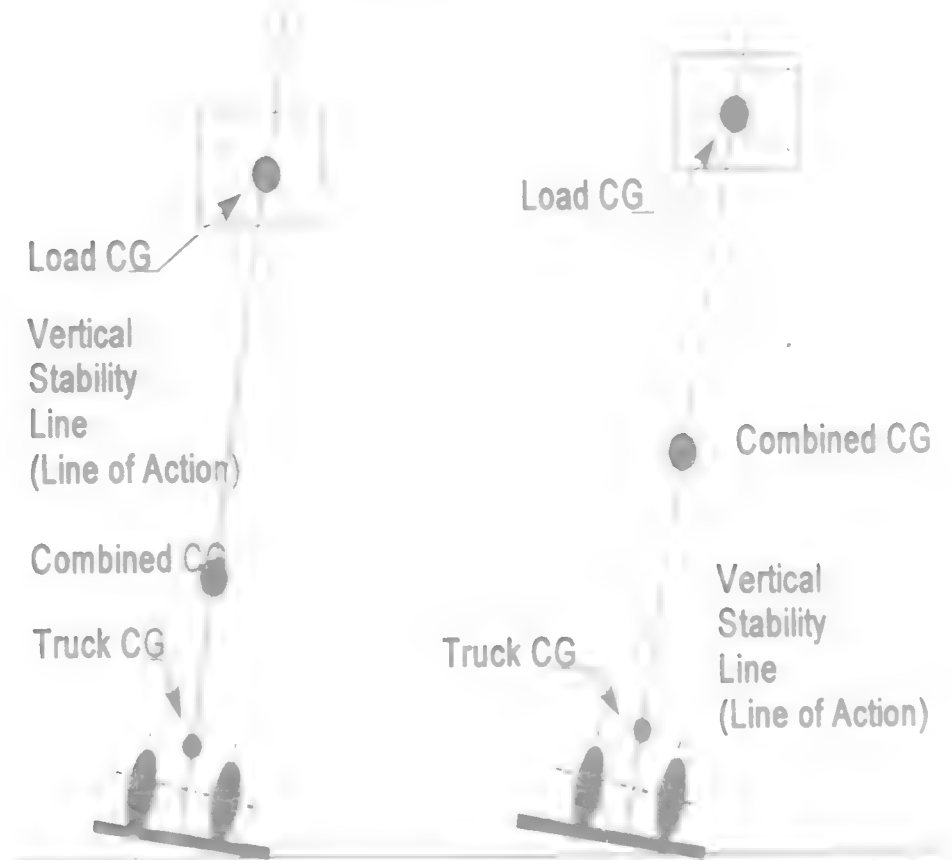

Vehicle Center of Gravity (Unloaded)
B
A
C
Center of Gravity of Vehicle and Maximum Load (Theoretical)

Notes:

1. **When the vehicle is loaded, the combined center of gravity (CG) shifts toward line B-C. Theoretically the maximum load will result in the CG at the line B-C. In actual practice, the combined CG should never be at line B-C.**
2. **The addition of additional counterweight will cause the truck CG to shift toward point A and result in a truck that is less stable laterally.**

A-4.2 When the vehicle's line of action or load center falls within the stability triangle, the vehicle is stable and will not tip over. However, when the vehicle's line of action or the vehicle/load combination falls outside the stability triangle, the vehicle is unstable and may tip over. (See Figure 2.)

Figure 2.



The vehicle is stable

This vehicle is unstable and will continue to tip over

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A–5. *Longitudinal Stability.*

A–5.1. The axis of rotation when a truck tips forward is the front wheels' points of contact with the pavement. When a powered industrial truck tips forward, the truck will rotate about this line. When a truck is stable, the vehicle-moment must exceed the load-moment. As long as the vehicle-moment is equal to or exceeds the load-moment, the vehicle will not tip over. On the other hand, if the load moment slightly exceeds the vehicle-moment, the truck will begin to tip forward, thereby causing the rear to lose contact with the floor or ground and resulting in loss of steering control. If the load-moment greatly exceeds the vehicle moment, the truck will tip forward.

A–5.2. To determine the maximum safe load-moment, the truck manufacturer normally rates the truck at a maximum load at a given distance from the front face of the forks. The specified distance from the front face of the forks to the line of action of the load is commonly called the load center. Because larger trucks normally handle loads that are physically larger, these vehicles have greater load centers. Trucks with a capacity of 30,000 pounds or less are normally rated at a given load weight at a 24-inch load center. Trucks with a capacity greater than 30,000 pounds are normally rated at a given load weight at a 36- or 48-inch load center. To safely operate the vehicle, the operator should always check the data plate to determine the maximum allowable weight at the rated load center.

A–5.3. Although the true load-moment distance is measured from the front wheels, this distance is greater than the distance from the front face of the forks. Calculating the maximum allowable load-moment using the load-center distance always provides a lower load-moment than the truck was designed to handle. When handling unusual loads, such as those that are larger than 48 inches long (the center of gravity is greater than 24 inches) or that have an offset center of gravity, etc., a maximum allowable load-moment should be calculated and used to determine whether a load can be safely handled. For example, if an operator is operating a 3000 pound capacity truck (with a 24-inch load center), the maximum allowable load-moment is 72,000 inch-pounds (3,000 times 24). If a load is 60 inches long (30-inch load center), then the maximum that this load can weigh is 2,400 pounds (72,000 divided by 30).

A–6. *Lateral Stability.*

A–6.1. The vehicle's lateral stability is determined by the line of action's position (a vertical line that passes through the combined vehicle's and load's center of gravity) relative to the stability triangle. When the vehicle is not loaded, the truck's center of gravity location is the only factor to be considered in determining the truck's stability. As long as the line of action of the combined vehicle's and load's center of gravity falls within the stability triangle, the truck is stable and will not tip over. However, if the line of action falls outside the stability triangle, the truck is not stable and may tip over. Refer to Figure 2.

A–6.2. Factors that affect the vehicle's lateral stability include the load's placement on the truck, the height of the load above the surface on which the vehicle is operating, and the vehicle's degree of lean.

A–7. *Dynamic Stability.*

A–7.1. Up to this point, the stability of a powered industrial truck has been discussed without considering the dynamic forces that result when the vehicle and load are put into motion. The weight's transfer and the resultant shift in the center of gravity due to the dynamic forces created when the machine is moving, braking, cornering, lifting, tilting, and lowering loads, etc., are important stability considerations.

A–7.2. When determining whether a load can be safely handled, the operator should exercise extra caution when handling loads that cause the vehicle to approach its maximum design characteristics. For example, if an operator must handle a maximum load, the load should be carried at the lowest position possible, the truck should be accelerated slowly and evenly, and the forks should be tilted forward cautiously. However, no precise rules can be formulated to cover all of these eventualities.

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PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT [AMENDED]

1. The authority citation for part 1915 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable.

Sections 1915.120 and 1915.152 also issued under 29 CFR 1911.

2. A new § 1915.120 is added to subpart G to read as follows:

§ 1915.120 Powered Industrial Truck Operator Training

Note: The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.178(l) of this chapter.

PART 1917—MARINE TERMINALS [AMENDED]

1. The authority citation for part 1917 continues to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR Part 1911.

Section 1917.28 also issued under 5 USC 553.

Subpart A—Scope and Definitions

2. Section 1917.1 is amended by adding a new paragraph (a)(2)(xiv), by removing the word "and" from the end of paragraph (a)(2)(xii) and by removing the period at the end of paragraph (a)(2)(xiii)(D), and adding in its place a semicolon and the word "and" as follows:

§ 1917.1 Scope and applicability.

(a) * * *

(2) * * *

(xiv) Powered industrial truck operator training, Subpart N, § 1910.178(l).

* * * * *

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING [AMENDED]

1. The authority citation for part 1918 is revised to read as follows:

Authority: Section 4, 6, and 8 of the Occupational Safety and Health Act of 1970 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; Sec. 41 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Order No. 6–96 (62 FR 111); and 29 CFR part 1911.

Subpart A—Scope and Definitions

2. Section 1918.1 is amended by adding a new paragraph (b)(10), by removing the word "and" from the end of paragraph (b)(8) and by removing the period from the end of paragraph (b)(9)(iv) and adding in its place a semicolon and the word "and" as follows:

§ 1918.1 Scope and application

* * * * *

(b) * * *

(10) Powered industrial truck operator training, Subpart N, § 1910.178(l).

PART 1926—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR CONSTRUCTION [AMENDED]

1. The authority citation for subpart O of part 1926 is revised to read as follows:

Authority: Section 107, Construction Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable. Section 1926.602 also issued under 29 CFR part 1911.

2. Section 1926.602 is amended by adding a new paragraph (d) to read as follows:

§ 1926.602 Material Handling Equipment [Amended]

* * * * *

(d) *Powered industrial truck operator training.*

Note: The requirements applicable to construction work under this paragraph are identical to those set forth at § 1910.178(l) of this chapter.

* * * * *

[FR Doc. 98–31283 Filed 11–30–98; 8:45 am]

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federal register

Tuesday
December 1, 1998

Part III

Federal Deposit Insurance Corporation

12 CFR Parts 303, 337, and 362
Activities of Insured State Banks and Insured Savings Associations; Proposed and Final Rules

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 337 and 362

RIN 3064–AC12

Activities of Insured State Banks and Insured Savings Associations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC has revised and consolidated its rules and regulations governing activities and investments of insured state banks and insured savings associations. The rule implements sections 24, 28, and 18(m) of the Federal Deposit Insurance Act, and also establishes certain safety and soundness standards pursuant to the FDIC's authority under section 8. The FDIC's final rule establishes a number of new exceptions and allows institutions to conduct certain activities after providing the FDIC with notice rather than filing an application. Subject to appropriate separations and limitations, the activities that may be conducted through a majority-owned subsidiary under these expedited notice processing criteria are real estate investment and securities underwriting. The FDIC combined its regulations governing the activities and investments of insured state banks with those governing insured savings associations. In addition, the FDIC's final rule updates its regulations governing the safety and soundness of securities activities of subsidiaries and affiliates of insured state nonmember banks. The FDIC's final rule modernizes this group of regulations and harmonizes the provisions governing activities that are not permissible for national banks with those governing the securities underwriting and distribution activities of subsidiaries of state nonmember banks. The FDIC's final rule makes a number of substantive changes and amends the regulations by deleting obsolete provisions, rewriting the regulatory text to make it more readable, conforming the treatment of state banks and savings associations to the extent possible given the underlying statutory and regulatory scheme governing the different charters. The FDIC's final rule also conforms most of the disclosures required under the current regulation to the Interagency Statement on the Retail Sale of Nondeposit Investment Products.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, (202/898–6759), Division of Supervision; Linda L. Stamp, Counsel, (202/898–7310) or Jamey Basham, Counsel, (202/898–7265), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) required that the FDIC review its regulations for the purpose of streamlining those regulations, reducing any unnecessary costs and eliminating unwarranted constraints on credit availability while faithfully implementing statutory requirements. Pursuant to that statutory direction, the FDIC reviewed part 362 "Activities and Investments of Insured State Banks," subpart G of Part 303, effective October 1, 1998, (formerly § 303.13) "Filings by Savings Associations", and § 337.4 "Securities Activities of Subsidiaries of Insured State Banks: Bank Transactions with Affiliated Securities Companies", and proposed making a number of changes to those regulations. That proposal is found in the September 12, 1997, issue of the **Federal Register** at 62 FR 47969.

The FDIC's final rule restructures existing part 362, placing the substance of the text of the current regulation into new subpart A. Subpart A addresses the Activities of Insured State Banks implementing section 24 of the Federal Deposit Insurance Act (FDI Act). 12 U.S.C. 1831a. Section 24 restricts and prohibits insured state banks and their subsidiaries from engaging in activities and investments of a type that are not permissible for national banks and their subsidiaries. Through this new final rule, the FDIC introduces a new streamlined notice processing concept for insured state nonmember banks that want to engage in certain activities that are impermissible for national banks and their subsidiaries.

Due to the experience that the FDIC has gained in reviewing applications from insured state nonmember banks since the enactment of section 24, the FDIC has standardized the eligibility criteria and conditions for two activities. This mechanism gives insured state nonmember banks a level of certainty that has been lacking for banks that want to diversify their earnings and maintain their competitiveness by investing in subsidiaries that engage in activities not permissible for national banks. This framework sets forth the eligibility criteria and conditions for majority-owned subsidiaries of insured state nonmember banks to engage in real estate investment and securities underwriting. This framework allows insured state nonmember banks to proceed with their business plans in these areas with relative certainty that the FDIC will consent to the execution of their plans and with assurance that consent will be forthcoming on a predictable schedule. This framework allows the insured state nonmember banks to be creative and innovative in their business plan within the structure appropriate to the activities being undertaken. The FDIC hopes that this rule will assist the insured state nonmember banks as they progress into the competitive financial environment of the 21st century in which they operate their business.

The FDIC's final rule moves the part of the FDIC's regulations governing securities underwriting not permissible for national banks (currently at 12 CFR 337.4) into subpart A of part 362. Although the proposal contemplated that the entire regulation, Securities Activities of Insured State Nonmember Banks, found in § 337.4 of this chapter would be removed and reserved, we have postponed that action while redeveloping some of the safety and soundness criteria that govern insured state bank subsidiaries that engage in the public sale, distribution or underwriting of securities and other activities that are not permissible for a national bank but that are permissible for national bank subsidiaries. The redeveloped regulatory language that will amend subpart B of this regulation is published as a proposed rule elsewhere in this issue of the **Federal Register** for further public comment. During the period that § 337.4 still exists, where activities are covered by both § 337.4 and this final rule, we have provided relief from the requirements of § 337.4 in this rulemaking.

For those activities that were covered under § 337.4 and are now covered under this part 362, we have attempted to modernize the regulations governing those activities by updating the requirements, revising the regulations by deleting obsolete provisions, rewriting the regulatory text to make it more readable, removing a number of the obsolete current restrictions on those activities, and removing the disclosures required under the current regulation.

Safety and Soundness Rules Governing Insured State Nonmember Banks is found in the new subpart B. Subpart B establishes modern standards for insured state nonmember banks to conduct real estate investment activities through a subsidiary, and for those insured state nonmember banks that are not affiliated with a bank holding company (nonbank banks), to conduct securities activities in an affiliated organization. The existing restrictions on these securities activities are found in § 337.4 of this chapter.

Subpart G of part 303, effective October 1, 1998, (formerly § 303.13) of this chapter which relates to activities and filings by savings associations is revised in a number of ways. First, the substantive portions applicable to state savings associations of subpart G are placed in new subpart C of part 362. The substantive requirements applicable to all savings associations when Acquiring, Establishing, or Conducting New Activities through a Subsidiary are moved to new subpart D.

In the proposal, subpart E contained the revised application and notice procedures as well as delegations of authority for insured state banks, and subpart F contained the revised application and notice procedures as well as delegations of authority for insured savings associations. On a parallel track, the FDIC has completed its revision of part 303 of the FDIC's rules and regulations. Part 303 contains substantially all of the FDIC's applications procedures and delegations of authority. Subparts G and H of part 303 were designated as the place where the text of subparts E and F of our proposed rule would be located. As a part of the part 303 review process and for ease of reference, the FDIC is removing the applications procedures relating to activities and investments of insured state banks from part 362 and placing them in subpart G of part 303. The procedures applicable to insured savings associations are consolidated in subpart H of part 303. These subparts are published as an amendment to part 303 as a part of this final regulation.

Part 362 of the FDIC's regulations implements the provisions of section 24 of the FDI Act. Section 24 was added to the FDI Act by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). With certain exceptions, section 24 limits the direct equity investments of state chartered insured banks to equity investments of a type permissible for national banks. Section 24 prohibits an insured state bank from directly, or indirectly through a subsidiary, engaging as principal in any activity that is not permissible for a national bank unless the bank meets its capital requirements and the FDIC determines that the activity will not pose a significant risk to the appropriate deposit insurance fund. In addition, section 24 prohibits the subsidiary of an insured state bank from directly or indirectly engaging as principal in any activity that is not permissible for a national bank subsidiary unless the bank meets its capital requirements and the FDIC determines that the activity will not pose a significant risk to the appropriate deposit insurance fund. The FDIC may make such determinations by regulation or order. The statute requires institutions that held equity investments not conforming to the new requirements to divest no later than December 19, 1996. The statute also requires that banks file certain notices with the FDIC concerning grandfathered investments.

Part 362 was adopted in two stages. The provisions of the current regulation concerning equity investments appeared in the **Federal Register** on November 9, 1992, at 57 FR 53234. The provisions of the current regulation concerning activities of insured state banks and their majority-owned subsidiaries appeared in the **Federal Register** on December 8, 1993, at 58 FR 64455.

Subpart G of Part 303, effective October 1, 1998, (formerly § 303.13) of the FDIC's regulations (12 CFR 303.140) implements FDI Act sections 28 (12 U.S.C. 1831e) and 18(m) (12 U.S.C. 1828(m)). Both sections were added to the FDI Act by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). While section 28 of the FDI Act and section 24 of the FDI Act are similar, there are a number of fundamental differences between the two provisions which caused the implementing regulations to differ in some respects.

Section 18(m) of the FDI Act requires state and federal savings associations to provide the FDIC with notice 30 days before establishing or acquiring a subsidiary or engaging in any new activity through a subsidiary. Section 28 governs the activities and equity investments of state savings associations and provides that no state savings association may engage as principal in any activity of a type or in an amount that is impermissible for a federal savings association unless the FDIC determines that the activity will not pose a significant risk to the affected deposit insurance fund and the savings association is in compliance with the fully phased-in capital requirements prescribed under section 5(t) of the Home Owners' Loan Act (12 U.S.C. 1464(t)) (HOLA). Except for its investment in service corporations, a state savings association is prohibited from acquiring or retaining any equity investment that is not permissible for a federal savings association. A state savings association may acquire or retain an investment in a service corporation of a type or in an amount not permissible for a federal savings association if the FDIC determines that neither the amount invested in the service corporation nor the activities of the service corporation pose a significant risk to the affected deposit insurance fund and the savings association continues to meet the fully phased-in capital requirements. A savings association was required to divest itself of prohibited equity investments no later than July 1, 1994. Section 28 also prohibits state and federal savings associations from acquiring any corporate debt security that is not of investment grade (commonly known as "junk bonds").

Section 303.13 of the FDIC's regulations was adopted as an interim final rule on December 29, 1989 (54 FR 53548). The FDIC revised the rule after reviewing the comments and the regulation as adopted appeared in the **Federal Register** on September 17, 1990 (55 FR 38042). The regulation established application and notice procedures governing requests by a state savings association to directly, or through a service corporation, engage in activities that are not permissible for a federal savings association; the intent of a state savings association to engage in permissible activities in an amount exceeding that permissible for a federal savings association; or the intent of a state savings association to divest corporate debt securities not of investment grade. The regulation also established procedures to give prior notice for the establishment or acquisition of a subsidiary or the conduct of new activities through a subsidiary. Section 303.13 was recently moved with stylistic, but not substantive changes, to subpart G of part 303, effective October 1, 1998 of the FDIC's regulations.

Section 337.4 of the FDIC's regulations (12 CFR 337.4) governs securities activities of subsidiaries of insured state nonmember banks as well as transactions between insured state nonmember banks and their securities subsidiaries and affiliates. The regulation was adopted in 1984 (49 FR 46723) and is designed to promote the safety and soundness of insured state nonmember banks that have subsidiaries which engage in securities activities, including activities that are impermissible for banks directly under section 16 of the Banking Act of 1933

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(12 U.S.C. section 24 (seventh)), commonly known as the Glass-Steagall Act. For those subsidiaries that engage in underwriting activities that are prohibited for a bank, the regulation requires that these subsidiaries qualify as bona fide subsidiaries, establishes transaction restrictions between a bank and its subsidiaries or other affiliates that engage in such securities activities, requires that an insured state nonmember bank give prior notice to the FDIC before establishing or acquiring any securities subsidiary, requires that disclosures be provided to securities customers in certain instances, and requires that a bank's investment in such a securities subsidiary be deducted from the bank's capital.

On August 23, 1996, the FDIC published a notice of proposed rulemaking (61 FR 43486, August 23, 1996) (August 1996 proposed rule) to amend part 362. Under that proposed rule, a notice procedure would have replaced the application currently required in the case of real estate, life insurance, and annuity investment activities provided certain conditions and restrictions were met. The proposed rule set forth notice processing procedures for real estate, life insurance policies, and annuity contract investments for well-capitalized, well-managed insured state banks. While the August 1996 proposed rule would have amended existing part 362, this new final rule replaces existing part 362.

After considering the comments to the August 1996 proposed rule and reconsidering the issues underlying the current regulation, the FDIC withdrew that proposed rule in favor of the more comprehensive approach presently adopted. One major change was the elimination of a life insurance policy and annuity contract investment notice due to intervening guidance provided by the Office of the Comptroller of the Currency (OCC) that appears to eliminate the necessity for an application with respect to virtually all of the life insurance and annuity investments received by the FDIC in the past. While section 24 and the part 362 application process would continue to apply to those life insurance and annuity investments which are impermissible for national banks, the FDIC has decided that there is no need to adopt a notice process that specifically addresses what we expect to be an extremely small number of situations.

II. Description of the Final Rule

The FDIC divided part 362 into four subparts and changed some of the structure of the rule. Generally, we moved substantive aspects of the regulation that were formerly found in the definitions of terms like "bona fide subsidiary" to the applicable regulation text. This reorganization should assist the reader in understanding and applying the regulation. Next we deleted most of the provisions relating to divesture because we found them to be unnecessary due to the passage of time. Third, we combined the rules covering the equity investments of banks and savings associations into part 362 to regulate these investments as consistently as possible given the limitations imposed by the different statutes that govern each kind of insured institution. Finally, although the FDIC agrees with the principles applicable to transactions between insured depository institutions and its affiliates contained in sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1), our experience over the last five years in applying section 24 has led us to conclude that extending 23A and 23B by reference to bank subsidiaries is inadvisable. For that reason, the final regulation does not incorporate sections 23A and 23B of the Federal Reserve Act by cross-reference; rather, the regulation adapts similar principles to those set forth in sections 23A and 23B to the bank/subsidiary relationship as appropriate. In drafting the final rule, we have considered each of the requirements contained in sections 23A and 23B in the context of transactions between an insured institution and its subsidiary and refined the restrictions appropriately. We are comfortable that this approach strikes a better balance between caution and commercial reality by harmonizing the capital deductions and the principles of 23A and 23B.

Subpart A of the final rule deals with the activities and investments of insured state banks. Except for those sections pertaining to the applications, notices and related delegations of authority (procedural provisions), existing part 362 essentially becomes subpart A under the current proposal. The procedural provisions of existing part 362 have been transferred to subpart G of part 303. Subpart A addresses the activities of insured state banks in § 362.3. The activities carried on in subsidiaries of insured state banks are addressed separately in § 362.4.

Under a safety and soundness standard, subpart B of the final regulation requires subsidiaries of insured state *nonmember* banks engaged in certain activities to meet the standards established by the FDIC, even if the OCC determines that those activities are permissible for a national bank subsidiary. The FDIC has determined that real estate investment activities may pose significant risks to the deposit insurance funds. For that reason, the FDIC established standards that an insured state nonmember bank must meet before engaging in real estate investment activities that are not permissible for a national bank, even if they are permissible for the subsidiary of a national bank.

Subpart B also establishes modern standards for insured state nonmember banks to govern transactions between those insured state nonmember banks that are not affiliated with a bank holding company (nonbank banks) and affiliated organizations conducting securities activities. The existing restrictions on these securities activities are found in § 337.4 of this chapter. The new rule only covers those entities not covered by orders issued by the Board of Governors of the Federal Reserve System (FRB) governing the securities activities of those banks that are affiliated with a bank holding company or a member bank.

In addition, subpart B prohibits an insured state nonmember bank not affiliated with a company that is treated as a bank holding company (see section 4(f) of the Bank Holding Company Act. 12 U.S.C. 1843(f)), from becoming affiliated with a company that directly engages in the underwriting of securities not permissible for a bank itself unless the standards established under the proposed regulation are met.

Subpart C of the final rule concerns the activities and investments of insured state savings associations. The substantive provisions applicable to activities of savings associations currently appearing in subpart G of part 303, effective October 1, 1998, (formerly § 303.13) would be revised in a number of ways and placed in new subpart C. To the extent possible, activities and investments of insured state savings associations are treated consistently with the treatment accorded insured state banks. Thus, we revised a number of definitions currently contained in subpart G of part 303 to track the definitions used in subpart A of part 362.

Subpart D of the final rule requires that an insured savings association provide a 30-day notice to the FDIC whenever the institution establishes or acquires a subsidiary or conducts a new activity through a subsidiary. This provision does not alter the notice required by statute and current subpart G of part 303. We moved this requirement to a new subpart to accommodate Federally chartered savings associations by limiting the amount of regulation text they would have to read to learn how to comply with this statutory notice.

III. Comment Summary

The FDIC received 129 comments in response to the proposed regulation. The overall comments generally favored the FDIC's approach to streamlining the consent process for banks and savings associations to engage in activities using standardized criteria with seven comments specifically supporting the FDIC's efforts to streamline these rules. Comments were received from 102 financial institutions, 2 one bank holding companies, 3 state banking departments, 14 trade associations, 2 investment companies, 4 Congressmen, 1 federal banking regulator and 1 individual.

The overwhelming majority of the comments (107), primarily from Massachusetts, were focused on concerns over proposed changes to the standards governing holding equity securities in subsidiaries by banks having grandfathered authority to hold the securities at the bank level. We have responded to these comments by reinstating the exception for a grandfathered bank to hold equity securities in a subsidiary. A complete discussion of this issue is found in the section by section analysis.

With regard to the structure of the rule and the consolidation of the banking and savings activities into a single rule, five comments expressly supported the FDIC's efforts to accomplish these goals. However, one comment suggested using a table like the Office of Thrift Supervision (OTS) has used to aid understanding this complex and difficult regulation. Three comments support cross-referencing the Interagency Statement rather than restating disclosure requirements. A readability analysis was submitted by one individual and, based upon the results, the individual questioned whether the FDIC was successful in achieving the stated objective of using plain English. This individual offered his services to the FDIC as a writing consultant. Other general comments observed that diversifying into new activities increases safety and soundness and were pleased that the FDIC supports state institutions' exercising of new powers. Two comments indicated that in the preamble, the FDIC had overstated the authority of the FRB to impose more stringent standards on any activity conducted by a state member bank. This statement is derived from section 24(i); however, we intended to refer to those activities not permissible for national banks. At least one bank and the state banking departments advocate further streamlining of the regulations to make it easier for banks to use their capital through subsidiaries. The bank suggested that banks must have more flexibility to keep their capital in the banking system, rather than paying out more dividends to shareholders. Although we favor diversifying the banks' income stream and making bankers' compliance burden as light as possible, we also are charged with maintaining safety and soundness and meeting the requirements of section 24 of the FDI Act. Thus, we strive to balance these interests in crafting more flexible regulations.

Most of the remaining comments addressed the substance of the regulation and provided constructive feedback on the regulation text. Two comments focusing on the Purpose and Scope Section suggested a definition of what is meant by "acting as principal," although we already had a definition of "as principal." Two comments objected to the FDIC accepting the time period imposed by the National Bank Act on real estate that is acquired for debts previously contracted as a limitation that carries over to state banks. We believe that the authority of a national bank to own real estate is governed by the statute and that this limitation is inherent in that authority. Thus, we believe that a state bank is constrained by this same limitation unless relief can be granted by the FDIC. Relief may be granted by the FDIC only if the state bank transfers the property to a majority-owned subsidiary with appropriate capital and complies with whatever other constraints the FDIC deems adequate to protect the deposit insurance fund from significant risk.

In the definitions section, eight comments requested that we expand the definition of majority-owned subsidiary to include limited liability companies and limited partnership interests. One comment suggested that the qualified housing exception also include limited liability companies. Four comments expressed concern over the change to the definition of "change of control." Four comments expressed concern about the change to the definition of "significant risk to the deposit insurance fund." One comment suggested a definition of "investment in subsidiary" and further clarification of the items to be included in debt and equity.

With regard to the activities of insured state banks, two comments supported the FDIC's new interpretation of when the "in an amount" limitation is applicable. Six comments addressed insurance activities, including three addressing the appropriate disclosures. Five comments addressed the change in the measurement of the applicable capital limit for adjustable rate and money market preferred stock. Six comments addressed the 4(c)(8) list (closely related to banking) activities, including specific alternatives on real estate leasing. One comment supported the change in the qualified housing projects exception to conform the meaning of lower income to that used in the community reinvestment regulations in defining low and moderate income.

With regard to the activities of subsidiaries of insured state banks, one comment thought the control concept was unnecessary for lower tier subsidiaries. Over one hundred ten comment letters addressed the various issues involving the holding of equity securities through a majority-owned subsidiary, with the overwhelming majority of the comments coming from Massachusetts banking interests to advocate not changing the constraints governing banks in that state owning grandfathered equity securities in a subsidiary. Several of these comment letters identified more than one issue. Twenty comments addressed the issues involved with engaging in real estate investment activity through a majority-owned subsidiary. Nine comments addressed the issues identified in securities underwriting activity through a majority-owned subsidiary. Eleven comments addressed the eligible depository institution criteria. Twelve comments addressed the eligible subsidiary criteria and generally expressed the view that the eligible subsidiary was an improvement over the bona fide subsidiary concept found in the old rule. Seventeen comments addressed the investment and transaction limits criteria. Eight comments were directed to the way the capital requirements operate. One comment said that banks should have the option of complying with original conditions or the new rule.

With regard to the real estate activities covered by subpart B, five comments addressed this issue and generally thought that the FDIC should not impose additional regulations on state nonmember banks.

With regard to subpart C governing savings associations, one comment expressed the view that thrifts do not know what is permissible for national banks and needed greater specificity in the regulation. There were no comments on subpart D; however, no substantive change was made to this statutory filing requirement.

With regard to subparts E and F governing the notice and application processing and content, two comments were received in favor of firmer processing deadlines.

IV. Section by Section Analysis

A. Subpart A—Activities of Insured State Banks

Section 362.1 Purpose and Scope

As described in the preamble accompanying the proposal, included within the proposed changes to the regulation was the inclusion of a purpose and scope paragraph describing the statutory background, intent, and nature of items covered by this subpart. Several commenters acknowledged the FDIC's efforts to restructure the regulation and agreed that the proposed reorganization simplifies what continues to be complex material. These commenters stated that the use of purpose and scope paragraphs helps clarify the coverage of each subpart.

The intent of § 362.1 is to clarify that the purpose and scope of subpart A is to ensure that activities and investments undertaken by insured state banks and their subsidiaries do not present a significant risk to the deposit insurance funds, are not unsafe and are not unsound, are consistent with the purposes of federal deposit insurance, and are otherwise consistent with law. Subpart A implements the provisions of section 24 of the FDI Act that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments of a type that are not permissible for national banks and their subsidiaries. The phrase "activity permissible for a national bank" means any activity authorized for national banks under any statute including the National Bank Act (12 U.S.C. 21 *et. seq.*), as well as activities recognized as permissible for a national bank in regulations, official circulars, bulletins, orders or written interpretations issued by the OCC.

This subpart governs activities conducted "as principal" and therefore does not govern activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, conducted as trustee, or conducted in any substantially similar capacity. As explained in the preamble accompanying the proposal, we moved this language from § 362.2(c) of the former version of part 362 where the term "as principal" was defined to mean acting other than as agent for a customer, acting as trustee, or conducting an activity in a brokerage, custodial or advisory capacity. The FDIC previously described this definition as not covering, for example, acting as agent for the sale of insurance, acting as agent for the sale of securities, acting as agent for the sale of real estate, or acting as agent in arranging for travel services. Likewise, providing safekeeping services, providing personal financial planning services, and acting as trustee were described as not being "as principal" activities within the meaning of this definition. In contrast, real estate development, insurance underwriting, issuing annuities, and securities underwriting would constitute "as principal" activities.

Further, for example, travel agency activities have not been brought within the scope of part 362 and would not require prior consent from the FDIC even though a national bank is not permitted to act as travel agent. Agency activities are not covered by the regulations because the state bank would not be acting "as principal" in providing those services. Thus, the fact that a national bank may not engage in travel agency activities is of no consequence. Of course, state banks would have to be authorized to engage in travel agency activities under state law. We intend to continue to interpret section 24 and part 362 as excluding any coverage of activities being conducted as agent. To highlight this issue, provide clarity, and alert the reader of this rule that activities being conducted as agent are not within the scope of section 24 and part 362, this language was moved to the purpose and scope paragraph in the proposal.

Comments addressing the proposed treatment of "as principal" were submitted by two industry trade groups. One group agreed that moving the applicable language to the purpose and scope paragraph helps clarify that section 24 does not apply to activities conducted in an agency or similar capacity. However, both commenters recommended that the FDIC define "as principal" by specifying what is meant by acting as principal rather than providing a list of capacities exempt from that definition. In other words, the commenters desired a definition consisting of an inclusive list rather than a list of exemptions. Additionally, one commenter expressed concern that the current list of exempt capacities may omit certain agency-like roles. As such, the commenter recommended that the FDIC include "substantially similar capacities" in the list of capacities that are not considered to be conducted "as principal".

The FDIC continues to believe that including the "as principal" language in the purpose and scope paragraph provides clarity regarding activities coming within the scope of section 24. As such, the FDIC elects not to separately define "as principal", and has deleted as redundant an overlapping definition of "as principal" contained in § 362.2(c) of the proposal. Additionally, the FDIC cannot reasonably list all capacities that will be considered to be "as principal". Therefore, the FDIC is not persuaded that changing the nature of the definition to an inclusive list of capacities that are considered "as principal" would alleviate confusion. Instead, "as principal" activities will continue to be described as being all capacities other than the listed exceptions. The FDIC nonetheless agrees that the current list may exclude certain agency-like roles and is therefore adding the phrase "or in any substantially similar capacity" to the regulatory language of § 362.1(b)(1). Also, the FDIC has added a list of examples of activities that are not "as principal" to provide the public with additional guidance.

The preamble of the proposal also explains that equity investments acquired in connection with debts previously contracted (DPC) are not within the scope of this subpart when held within the shorter of the time limits prescribed by state or federal law. The exclusion of equity investments acquired in connection with DPC was moved from the definition of "equity investment" in the former regulation to the purpose and scope paragraph to highlight this issue, provide clarity, and alert the reader of this rule that these investments are not within the scope of section 24 and part 362. Interests taken as DPC are excluded from the scope of this regulation provided that the interests are not held for investment purposes and are not held longer than the shorter of any time limit on holding such interests (1) set by applicable state law or regulation or (2) the maximum time limit on holding such interests set by applicable statute for a national bank. The result of the modification would be to make it clear, for example, that real estate taken DPC may not be held for longer than 10 years (see 12 U.S.C. 29) or any shorter period of time set by the state. In the case of equity securities taken DPC, the bank must divest the equity securities "within a reasonable time" (i.e, as soon as possible consistent with obtaining a reasonable return) (see OCC Interpretive Letter No. 395, August 24, 1987, (1988–89 Transfer Binder) Fed Banking L. Rep. (CCH) p. 85619, which interprets and applies the National Bank Act) or no later than the time permitted under state law if that time period is shorter. Of course, a state bank permitted to hold such interests under state law may apply to the FDIC for consent to continue to hold the real property through a majority-owned subsidiary. In the final rule, the FDIC has added some general information about the manner in which a national bank may hold DPC.

Two commenters objected to the FDIC imposing the national bank holding period limits on insured state banks if those limits are shorter than otherwise permitted under state law. One commenter suggested applying a "reasonable time period" divestiture standard similar to that concerning equity securities acquired DPC. The holding periods governing a national bank's ability to own real estate acquired DPC are contained within section 29 of the National Bank Act (12. U.S.C. 29). Because a national bank can hold real estate acquired DPC in limited circumstances, section 24 only allows a state bank to hold such interests under the same constraints, *i.e.*, for a maximum of 10 years. Conversely, section 29 does not contain divestiture periods for equity securities acquired DPC and the FDIC has therefore elected to defer to a "reasonable time" standard. However, due to the statutory limitation in section 29, no changes are made to the exception for real estate acquired DPC and the regulation will continue to apply the holding periods in the manner proposed.

As discussed in the proposal's preamble, the intent of the insured state bank in holding equity investments acquired in connection with DPC is also relevant to the analysis of whether the equity investment is permitted. Any interest taken DPC may not be held for investment purposes. For example, a bank may be able to expend monies in connection with DPC property and/or take other actions with regard to that property. However, if those expenditures and actions are not permissible for a national bank, the property will not fall within the DPC exception. For an additional example, if the bank's actions are speculative in nature or go beyond what is necessary and prudent in order for the bank to recover on the loan, a national bank would not be permitted to take these actions. The FDIC expects bank management to document that DPC property is being actively marketed; current appraisals or other means of establishing fair market value may be used to support management's decision not to dispose of property if offers to purchase the property have been received and rejected by management.

Similarly, the proposal also moved to the purpose and scope paragraph language governing any interest in real estate in which the real property is (1) used or intended in good faith to be used within a reasonable time by an insured state bank or its subsidiaries as offices or related facilities for the conduct of its business or future expansion of its business or (2) used as public welfare investments of a type permissible for national banks. Again, this language was moved from the definition of "equity investment" in the former regulation to highlight this issue, provide clarity, and alert the reader of this rule that such investments are not within the scope of this subpart. In the case of real property held for use at some time in the future as premises, the holding of the property must reflect a bona fide intent on the part of the bank to use the property in the future as premises. We are not aware of any statutory time frame that applies in the case of a national bank which limits the holding of such property to a specific time period. Therefore, the issue of the precise time frame under which future premises may be held without implicating part 362 must be decided on a case-by-case basis. If the holding period allowed under state law is longer than what the FDIC determines to be reasonable and consistent with a bona fide intent to use the property for future premises, the bank will be so informed and will be required to convert the property to use, divest the property, or apply for consent to hold the property through a majority-owned subsidiary of the bank. We note that the OCC's regulations indicate that real property held for future premises should normally be converted to use within five years after which time it will be considered other real estate owned and must be actively marketed and divested within no more than ten years (12 CFR part 34). We understand that the time periods set forth in the OCC's regulations reflect safety and soundness determinations by that agency. As such, and in keeping with what has been to date the FDIC's posture with regard to safety and soundness determinations of the OCC, the FDIC will make its own judgment to determine when a reasonable time has elapsed for holding property for future premises.

The purpose and scope paragraph also explains that a subsidiary of an insured state bank may not engage in activities that are not permissible for a subsidiary of a national bank unless the bank is in compliance with applicable capital standards and the FDIC has determined that the activity poses no significant risk to the deposit insurance fund. Subpart A provides standards for certain activities that are not permissible for a subsidiary of a national bank. Additionally, because of safety and soundness concerns relating to real estate investment activities. subpart B reflects special rules for subsidiaries of insured state nonmember banks that engage in real estate investment activities of a type that are not permissible for a national bank, but that may be otherwise permissible for a subsidiary of a national bank.

The FDIC intends to allow insured state banks and their subsidiaries to undertake safe and sound activities and investments that do not present a significant risk to the deposit insurance funds and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state bank to make investments or to conduct activities that are not authorized or that are prohibited by either state or federal law.

Section 362.2 Definitions

Revised subpart A § 362.2 contains the definitions applicable to this subpart. Most definitions are unchanged from those used in the current regulation. Nonetheless, the proposal contains edits to enhance clarity and readability, define additional terms, and delete certain definitions as unnecessary.

To standardize as many definitions as possible, we incorporated the following definitions from section 3 of the FDI Act (12 U.S.C. 1813): "depository institution", "insured state bank", "bank", "state bank", "savings association", "state savings association", "insured depository institution", "federal savings association", and "insured state nonmember bank". This standardization required that we delete the definitions of the first two terms, "depository institution" and "insured state bank", currently found in part 362. No substantive change was intended by this modification. The remaining terms were added by reference to provide clarity throughout the proposed part 362 because we incorporate many of the definitions from subpart A into the other part 362 subparts. The FDIC received no comments concerning these changes and is therefore adopting the referenced definitions as proposed.

Several definitions were carried forward in the proposal from the current regulation either unchanged or containing only minor edits to enhance clarity or readability without changing the meaning. The following definitions were carried forward without any substantive meaning changes: "control", "extension of credit", "executive officer", "director", "principal shareholder", "related interest", "national securities exchange", "residents of state", "subsidiary", and "tier one capital". Again, the FDIC received no comments on the referenced definitions which are adopted as proposed.

The name of one definition was simplified without substantively changing its meaning. The subject definition was formerly found in § 362.2(g) and was described as follows "an insured state bank will be considered to convert its charter". This definition is now provided by § 362.2(f) and is named "convert its charter". No commenters addressed this simplified title which is adopted as proposed.

The definitions of "activity permissible for a national bank", "an activity is considered to be conducted as principal", and "equity investment permissible for a national bank" were deleted in the proposed and final rule because the substance of the information contained in those definitions was incorporated into the scope paragraph in § 362.1. When developing the proposal, the FDIC concluded that moving the information contained in these definitions to the scope paragraph made the coverage of the rule clearer. Additionally, placing this information at the beginning of the subpart is consistent with the purpose of a scope paragraph. Some readers may save time by realizing sooner that the regulation may be inapplicable to conduct contemplated by a particular bank. It also may be more logical for the reader to consider the scope paragraph to determine the rule's applicability, rather than having to rely on the definition section. Moreover, we concluded that it would be unnecessary to duplicate this same information in the definition section. The FDIC received no specific comments on the proposed treatment, but respondents commenting on the overall structure of the proposal generally favored the use of the purpose and scope paragraphs. The final regulation incorporates the changes as proposed. The proposed definition of "as principal" at § 362.2(c) duplicates material set out in the scope section at § 362.1(b)(1), and has therefore been eliminated in the final rule. Appropriate definitional language has been added to § 362.1(b)(1).

The proposal also deleted the definition of "equity interest in real estate" and moved the recitation of the permissibility of owning real estate for bank premises and future premises, owning real estate for public welfare investments, and owning real estate from DPC to the scope paragraph for the reasons stated in the preceding paragraph. These activities are permissible for national banks and we concluded that it was unnecessary to continue to restate this information in the definition section of the regulation. No substantive change is intended by the simplification of this language. Further, we determined that the remainder of the definition of "equity interest in real estate" did little to enhance clarity or understanding; therefore, we are relying on the language defining "equity investment" to cover real estate investments.

Conforming changes were made to the definition of "equity investment" by removing the reference to the deleted definition of "equity interest in real estate". Additionally, the remaining part of the "equity investment" definition was shortened and edited to enhance readability. This definition is intended to encompass an investment in an equity security, partnership interest, or real estate as it did in the former regulation. No substantive changes were intended by the changes described in this or the preceding paragraph. The FDIC received no comments on these changes which are adopted as proposed.

With regard to the definition of "equity security", we modified the definition by deleting references to circumstances where holding equity securities is permissible for national banks, such as when equity securities are held as a result of a foreclosure or other arrangements concerning debts previously contracted. Language discussing the exclusion of DPC and other investments that are permissible for national banks was relocated to the scope paragraph for the reasons previously stated. Like the exceptions concerning equity investments in real estate, no substantive change is intended by the relocation of the subject exceptions to the purpose and scope paragraph. No comments were received on this proposed treatment which is adopted as proposed.

The definitions of "investment in a department" and "department" were deleted because they are no longer needed in the revised regulation text. The core standards applicable to a department of a bank are detailed in § 362.3(c) and defining the term "department" is therefore unnecessary. If a calculation of an "investment in a department" needs to be made, the FDIC intends to defer to governing state law. As a result, a definition of "investment in a department" is unnecessary and was deleted. There were no comments addressing the removal of these definitions.

Similarly, we deleted the definition of "investment in a subsidiary" because the definition is no longer needed in the revised regulation text. Amounts subject to the investment limits of § 362.4(d) are listed clearly in that subsection. The FDIC opted to list amounts subject to investment limits in § 362.4(d) to separate those debt-type investments from the equity-type investments subject to the capital treatment of § 362.4(e). The regulation also contains other investment limits applicable to both debt and equity investments. Because of these different types of investment limits, the FDIC did not find a single "investment in a subsidiary" definition helpful. Therefore, the FDIC has elected not to incorporate such a definition despite a request by one commenter. However, as the same commenter suggested, the FDIC has attempted to clearly delineate amounts subject to the various investment limits, transaction restrictions, and capital requirements when applicable through both the regulation text and the corresponding preamble language.

We deleted the definition of "bona fide subsidiary" and chose to make similar characteristics part of the "eligible subsidiary" criteria in § 362.4(c)(2). Including these criteria as a part of the substantive regulation text in the referenced subsection, rather than as a definition, makes reading the rule easier and the meaning clearer. No commenters addressed this treatment. Comments concerning the various elements of the eligible subsidiary criteria are discussed elsewhere in this preamble under the appropriate section.

The regulation substitutes the current definition of "lower income" with a cross reference in § 362.3(a)(2)(ii) to the definition of "low income" and "moderate income" used for purposes of part 345 of the FDIC's regulations (12 CFR 345) which implements the Community Reinvestment Act (CRA). 12 U.S.C. 2901, et. seq. Under part 345, "low income" means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a census tract or a block numbering area delineated by the United States Census in the most recent decennial census. "Moderate income" means an individual income that is at least 50 percent but less than 80 percent of the area median or a median family income that is at least 50 but less than 80 percent in the case of a census tract or block numbering area.

The "lower income" definition is relevant for purposes of applying the exception in the regulation which allows an insured state bank to be a partner in a limited partnership whose sole purpose is direct or indirect investment in the acquisition, rehabilitation, or new construction of qualified housing projects (housing for lower income persons). As we anticipate that insured state banks will seek to use such investments in meeting their community reinvestment obligations, the FDIC is of the opinion that conforming the definition of lower income to that used for CRA purposes will benefit banks. This change has the effect of expanding the housing projects that qualify for the exception. The FDIC received one comment addressing the altered definition with the respondent favorably noting and supporting the resultant effect. The final regulation adopts this change as proposed.

The regulation includes an altered definition of the term "activity". As modified, the definition includes both activities and investments. Where equity investments are intended to be excluded from a particular section of the regulation, we expressly exclude those investments in the regulatory text. Previously, the term "activity" was defined differently depending upon whether it was used in connection with the direct conduct of business by an insured state bank or in connection with the conduct of business by a subsidiary of the bank. This change was made both to simplify the regulation and to reflect the section 24 definition of "activity". No comments were received on this proposed change.

It is noted that no comments were received regarding the proposed suggestion also to modify the "activity" definition to incorporate a recent interpretation by the agency that determined that the act of making a political campaign contribution does not constitute an "activity" for purposes of part 362. The referenced interpretation uses a three prong analysis to help determine whether particular conduct should be considered an activity and therefore subject to review under part 362 if the conduct is not permissible for a national bank.

First, any conduct that is an integral part of the business of banking as well as any conduct which is closely related or incidental to banking should be considered an activity. In applying this factor, it is important to focus on what banks do that makes them different from other types of businesses. For example, lending money is clearly an "activity" for purposes of part 362. The second factor asks whether the conduct is merely a corporate function as opposed to a banking function. For example, paying dividends to shareholders is primarily a general corporate function and not one associated with banking because of some unique characteristic of banking as a business. Generally, activities that are not general corporate functions will involve interaction between the bank and its customers rather than its employees or shareholders. The third factor asks whether the conduct involves an attempt by the bank to generate a profit. For example, banks make loans and accept deposits in an effort to make money. However, contracting with another company to generate monthly customer statements should not be considered to be an activity in and of itself as it simply is entered into in support of the "activity" of taking deposits. If at least two of the factors yield a conclusion that the conduct is part of the authorized conduct of business by the bank, the better conclusion is that the conduct is an activity. Because of the lack of interest received on expanding the definition to reflect this interpretation, no change is made to the definition proposed. The FDIC intends to continue to apply the above analysis when determining whether particular conduct should be considered an activity.

The definition of "real estate investment activity" was shortened to mean any interest in real estate held directly or indirectly that is not permissible for a national bank. This term is used in § 362.4(b)(5) of subpart A. Additionally, it is used in § 362.8 of subpart B which contains safety and soundness restrictions on real estate activities of subsidiaries of insured state nonmember banks that may be deemed to be permissible for operating subsidiaries of national banks but that would not be permissible for a national bank itself. The proposed definition contained a parenthetical excluding real estate leasing from the definition of real estate investment activities. By excluding leasing from the proposed "real estate investment activity" definition, the FDIC was attempting to clearly separate leasing activity from other real estate investment activities.

Under the current regulation, banks and their majority-owned subsidiaries are allowed to engage in real estate leasing under the regulatory exceptions enabling them to engage in activities closely related to banking.[1] These regulatory exceptions were carried forward in the proposal. However, the FDIC is concerned about certain activities encompassed within this section. For example, the 4(c)(8) list includes real estate leasing. When an individual or entity engages in leasing activity as the lessor of a particular parcel, the landlord has an ownership interest in the underlying real estate. Under section 24 of the FDI Act, insured state banks are limited in their ability to own real estate. We are concerned that an insured state bank could consider this regulation and its certain conditions as the FDIC having permitted the bank or its majority-owned subsidiaries to own real estate interests that would not be permissible for a national bank or a subsidiary of a national bank. To prevent insured state banks from attempting to use this consent to leasing activity as a way to avoid the corporate separations, transaction limitations and restrictions, and capital treatment applicable to other real estate investment activities, the proposed definition expressly excluded leasing. Additionally, the FDIC was attempting to ensure that banks using the notice procedure to engage in real estate investment activities were not, in effect, operating a commercial business by virtue of the terms of the leasing activity.

The FDIC recognizes, however, that the proposed definition would have effectively prevented an insured state bank's majority-owned subsidiary that was proceeding under the notice procedure from leasing property that it is otherwise permitted to own or develop.[2] As a result, the insured state bank would have been required to submit an application to seek further consent from the FDIC to lease real property it was allowed to own. To correct this anomaly, the FDIC has deleted the parenthetical from the definition and deals with the activities of real estate leasing and other real estate investment activities separately as discussed elsewhere in this preamble. The subject definition is otherwise unchanged from the proposal.

The final rule includes a modified definition of "company" to which we added limited liability companies to the list of entities considered to be a company. This change was made to recognize the creation of limited liability companies and their growing prevalence in the market place. Four

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[1] These regulatory exceptions were provided by § 362.4(c)(3)(ii)(A) and (B) depending upon whether conducted by the bank or through a majority-owned subsidiary, respectively. The exceptions provided that insured state banks or their majority-owned subsidiaries could engage in principal in activities that the FRB by regulation or order has found to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)).

[2] Provided it meets the conditions imposed by § 362.4(b)(5).

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commenters suggested explicitly adding limited liability partnerships to the list of business structures included in the "company" definition. The FDIC believes the suggested change is unnecessary because limited liability partnerships are already included in the definition through the term "partnership".

As proposed, the FDIC adopted the modified definition of "significant risk to the fund" with the second sentence that clarifies that this definition includes the risk that may be present either when an activity or an equity investment contributes or may contribute to the decline in condition of a particular state-chartered depository institution or when a type of activity or equity investment is found by the FDIC to contribute or potentially contribute to the deterioration of the overall condition of the banking system. Our interpretation of the definition remains unchanged. Significant risk to the deposit insurance fund is understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss. The preamble accompanying the adoption of this definition in 1992 (57 FR 53220, November 9, 1992) indicated that the FDIC recognizes that no investment or activity may be said to be without risk under all circumstances and that such a fact alone will not cause the agency to determine that a particular activity or investment poses a significant risk of loss to the fund. The definition emphasizes that there is a high degree of likelihood under all of the relevant circumstances that an investment or activity by a particular bank, or by banks in general or in a given market or region, may ultimately produce a loss to either of the funds. The relative or absolute size of the loss that is projected in comparison to the fund is not determinative of the issue. The preamble indicated that the definition is consistent with and derived from the legislative history of section 24 of the FDI Act. Previously, the FDIC rejected the suggestion that a risk to the fund be found only if a particular activity or investment is expected to result in the imminent failure of a bank. The suggestion was rejected in 1992 as the FDIC determined that it was inappropriate to approach the issue this narrowly in light of the legislative intent.

Four commenters addressed the proposed change to the wording of this definition. One industry trade association complimented the change. However, two other groups expressed concern that the added sentence results in a definition that is overly broad, and a state bank stated that the change makes the definition incoherent. The latter three commenters expressed concern that the added sentence contains no qualifications or limitations. These commenters state that numerous activities may negatively impact the condition of an institution or may contribute to deterioration in the overall banking system without causing loss to the insurance fund. The commenters suggest that section 24 requires the FDIC to consider the extent of the impact before determining that an activity presents a significant risk to the fund. The FDIC agrees with the commenters that consideration must be given to the extent that a negative event may harm an institution or the overall banking industry. However, the FDIC believes that both sentences contained in the definition must be read together. The second sentence clarifies that significant risk is present whenever there is a high probability that an activity or an equity investment will or could result in a loss to an insurance fund administered by the FDIC, regardless of whether the loss results from one or multiple institutions. After consideration of the comments and the wording, the FDIC adopts the expanded definition as proposed.

The proposal re-defined the term "well-capitalized" to incorporate the same meaning set forth in part 325 of this chapter for an insured state nonmember bank. For other state-chartered depository institutions, the term "well-capitalized" has the same meaning as set forth in the capital regulations adopted by the state. Importing the capital definitions used by the various state-chartered depository institutions should simplify the calculations when they deal with their appropriate federal banking agency. The other terms defined under § 362.2(x) of the current regulation were deleted as unnecessary due to the other changes in the regulation text.

The proposal added definitions of the following terms: "change in control", "institution", "majority-owned subsidiary", "security" and "state-chartered depository institution."

After reconsideration of the proposed definition of "change in control", the FDIC decided to adopt certain changes to bring the definition back into substantive consistency with the broader reach of the term as is provided by the current regulation. The change in control definition comes into play primarily in connection with section 24's grandfather with respect to common or preferred stock listed on a national securities exchange and shares of registered investment companies. Section 24 states that the grandfather ceases to apply if the bank converts its charter or undergoes a change in control.

The definition proposed at § 362.2(c) covered any instance in which the bank undergoes a transaction which requires a notice to be filed under section 7(j) of the FDI Act (12 U.S.C. 1817(j)) except a transaction which is presumed to be a change in control for the purposes of that section under FDIC's or FRB's regulations implementing section 7(j), or in which the bank is acquired by or merged into a bank that is not eligible for the grandfather. This proposed definition eliminated two other instances which the current regulation, at § 362.3(b)(4)(ii), treats as a change in control: any transaction subject to section 3 of the Bank Holding Company Act (12 U.S.C. 1842) other than a one bank holding company formation (section 3 transactions), and a transaction in which control of the bank's parent company changes (parent control changes).

In the preamble to the proposal, the FDIC indicated that elimination of the section 3 transactions and the parent control changes would bring the definition more in line with what constituted a true change in control. For example, the section 3 transaction language in the current rule would encompass all mergers between the holding company of a grandfathered bank and another bank holding company, regardless of which holding company was the survivor. However, upon further reflection, the FDIC has decided that total elimination of the section 3 transactions would create anomalous results. If a controlling interest in a grandfathered bank was acquired by an unrelated holding company (which requires approval under section 3), it is difficult to argue how this is materially less of a change in control than if control of the bank was acquired by an individual in a section 7(j) transaction. Still, there are cases in which a rigid application of the section 3 transactions would reach too far. In contrast to the example in which a bank holding company acquires control of a grandfathered bank, the FRB's approval under section 3 is required if a bank holding company acquires anything more than five percent of any outstanding class of a bank's voting shares. The revised definition at § 362.2(c) contained in the final rule therefore includes transactions subject to section 3 approval only when a bank holding company acquires control of a grandfathered bank through the section 3 transaction. The current exclusion for one bank holding company formations also is maintained in the final rule.

Also, the elimination of the parent control changes in the proposed rule created potentially confusing ambiguities, particularly when coupled with the elimination of the section 3 transactions. For example, if the holding company of a bank eligible for the grandfather is acquired and merged into an unrelated bank holding company (again, which requires approval under section 3), it is difficult to argue how this is materially less of a change in control than if the bank itself was merged with an unrelated bank. But the merger and acquisition language in the proposed definition referred only to the bank itself. The final rule expands the merger language to holding companies, accordingly. As another example, it is difficult to argue that a transaction requiring the holding company of a grandfathered bank to submit a change in control notice under section 7(j) is materially less of a change in control than a transaction requiring the grandfathered bank itself to file such a notice, and the 7(j) language in the proposed rule did not expressly refer to holding company transactions. In the final rule, the FDIC has therefore revised the 7(j) language to clarify its applicability to both scenarios.

The FDIC received three similar comments expressing concern about the proposed changes to the "change in control" definition. The commenters acknowledge that deleting certain instances from the current definition reduces the instances in which a bank would lose its grandfathered rights. Nonetheless, the commenters feel that it is unclear whether the proposed changes may have also inadvertently broadened the reach of the remaining transactions causing the grandfathered right to be terminated. This ambiguity appears to result from an incomplete understanding of whether the definition continues to exclude transactions presumed to be a change in control under the FDIC's and FRB's regulations implementing section 7(j) of the FDI Act. The FDIC wants to assure commenters that the regulatory language of the final definition, like that of the proposal, continues to exclude such presumed changes in control from the events that result in a loss of the subject grandfathered rights.

One additional commenter took exception to the FDIC's position concerning the ability to look to the substance of a transaction in determining whether grandfather rights terminate. The commenter objected to the FDIC's statement in the preamble to the proposed rule that state banks should be aware that, depending upon the circumstances, the grandfather could be considered terminated after a merger transaction in which an eligible bank is the survivor. For example, if a state bank that is not eligible for the grandfather is merged into a much smaller state bank that is eligible for the grandfather, the FDIC may determine that in substance the eligible bank has been acquired by a bank that is not eligible for the grandfather. The commenter argues that the FDIC's interpretation is inconsistent with the FDIC's current regulations, and claims that if the FDIC subjects such transactions to subjective criteria such as relative asset size, institutions considering mergers or acquisitions will be disadvantaged because of the uncertainty regarding the potential loss of grandfathered status. The commenter also asserts that the FDIC's interpretation is inconsistent with congressional intent because section 24 did not define change in control; Congress clearly intended the use of "change in control" language in section 24(f)(5) to reference the meaning of the phrase "change in control" established by the Change in Bank Control Act (CBCA) (12 U.S.C. 1817(j)). In the commenter's view, since the CBCA predates section 24 by nine years, Congress intended to use "change in control" as a term of art.

The interpretation set out in the preamble to the proposal is consistent with the FDIC's current regulation and is in fact set out in the preamble accompanying the FDIC's original adoption of the change in control provisions under part 362 in 1992. 57 FR 53227 (Nov. 9, 1992). The commenter's argument takes too narrow a view of section 24(f)(5), as the FDIC pointed out in proposing the change of control provisions of current part 362. In light of the broader congressional action under section 24 to generally prohibit equity investments by state banks which are not permissible for a national bank, and the limited nature of the grandfather exception, it is appropriate to define the universe of events constituting a change in control so as to encompass transactions constituting a true acquisition. 57 FR 30444 (July 9, 1992). In modifying the change in control provisions of part 362, the FDIC has narrowed the definition somewhat, as discussed above, to approximate more closely when a true change in control of the bank has taken place. If, as the commenter argues, change in control only includes transactions subject to the CBCA, the exclusion under the CBCA for all transactions reviewable under the Bank Merger Act (12 U.S.C. 1828(c)) or the Bank Holding Company Act would be brought to bear. Therefore, the FDIC rejects the arguments provided by the commenter as being an overly narrow interpretation of the statute.

We defined "state-chartered depository institution" and "institution" to mean any state bank or state savings association insured by the FDIC. These definitions should enhance readability and eliminate ambiguity concerning the subject terms. Defining "institution" enables us to shorten the drafting of the rule. No comments were received regarding these definitions which are adopted as proposed.

Additionally, the proposal added a definition of "majority-owned subsidiary" which was defined to mean any corporation in which the parent insured state bank owns a majority of the outstanding voting stock. This definition was added to clarify our intention that expedited notice procedures only be available when an insured state bank interposes an entity providing limited liability to the parent institution. We interpret Congress's intention in imposing the majority-owned subsidiary requirement in section 24 of the FDI Act to generally require that such a subsidiary provide limited liability to the insured state bank. Thus, except in unusual circumstances, we have and will require majority-owned subsidiaries to adopt a form of business that provides limited liability to the parent bank. In assessing our experience with applications, we have determined that the notice procedure will be available only to banks that engage in activities through a majority-owned subsidiary that takes the corporate form of business. We welcome applications that may take a different form of business such as a limited partnership or limited liability company, but would like to develop more experience with appropriate separations to protect the bank from liability under these other forms of business enterprise through the application process before including such entities in a notice procedure.

Eight commenters objected to the FDIC's decision to construct the definition around the corporate form of business. The commenters were unanimous in suggesting that the FDIC expand the definition to include limited liability companies (LLCs), limited liability partnerships (LLPs), and limited partnerships. Several of the commenters note that these forms of business have been in existence in many states for a number of years, and they project that the presence of such

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structures will continue to increase given the tax benefits, limited liability, and flexible structure provided by these business forms. The respondents contend that these business forms sufficiently insulate the members and partners from liability. One commenter noted that they are aware of no significant judicial challenge to the liability insulation provided by these business forms. As such, the commenter asserts that the proposed definition contravenes congressional intent because it does not recognize a business form that would provide limited liability to the insured state bank. Finally, the commenters note that both the FRB and the OCC have recently permitted the limited liability organizational form for operating subsidiaries.

Limited liability partnerships and companies are both relatively new business forms. There is little definitive legal guidance concerning the liability protection offered by these organizational structures. Among the unresolved issues is the question of how to structure the management of LLCs and LPs to afford the same level of separateness provided by the corporate form under the eligible subsidiary criteria. Because of the limited existing case law regarding piercing the veil of LLCs and LLPs, the FDIC is unable to determine the appropriate objective separation criteria that will provide the parent bank with substantially the same liability protection offered by an independent corporate structure. Thus, we have not expanded the definition to include LLCs and LLPs at this time. The FDIC views this decision to preclude LLCs and LLPs as consistent with the agency's interpretation of the congressional intent to limiting liability for subsidiaries' activities from accruing to the insured state bank.

The effect of the FDIC's decision is that the notice process is limited to banks with subsidiaries organized using the corporate form. We encourage banks to submit applications when they want to use an alternative business form. Then, the banks can propose appropriate objective separations that fit the particular activity and the FDIC can evaluate these separations on a case-by-case basis. At some future date, more standardized criteria may emerge. Then, the FDIC may consider re-visiting this issue. The FDIC does not intend any exclusion of these forms by omitting them from the notice processing criteria. They simply do not allow for the more limited review involved in an expedited notice processing system.

Although the FDIC requires the first level majority-owned subsidiary to be a corporation, it is noted that the final regulation contains a provision, at § 362.4(b)(3), allowing lower level subsidiaries to assume other business forms including LLCs and LLPs. Please refer to the applicable discussion of this section elsewhere in this preamble.

The final rule also incorporates the definition of "security" from part 344 of this chapter to eliminate any ambiguity over the coverage of this rule when securities activities and investments are contemplated.

Section 362.3 Activities of Insured State Banks

Equity Investment Prohibition. Section 362.3(a) restates the statutory prohibition on insured state banks making or retaining any equity investment of a type that is not permissible for a national bank. The prohibition does not apply if one of the statutory exceptions contained in section 24 of the FDI Act (as restated in the current regulation and carried forward in the final regulation) applies. As discussed in the preamble accompanying the proposal, the final regulation eliminates the reference to "amount" that is contained in the current version of § 362.3(a). The FDIC reconsidered our interpretation of the language of section 24 in which paragraph (c) prohibits an insured state bank from acquiring or retaining any equity investment of a type that is impermissible for a national bank and paragraph (f) prohibits an insured state bank from acquiring or retaining any equity investment of a type or in an amount that is impermissible for a national bank. We previously interpreted the language of paragraph (f) as controlling and read that language into the entire statute. We reconsidered this approach and decided that it was not the most reasonable construction of this statute and determined that the language of the earlier paragraph (c) is controlling without the necessity to import the language of (f). We believe that the second mention as contained in paragraph (f) should be limited to those items discussed under paragraph (f). Thus, the language of paragraph (c) controls when any other equity investment is being considered. Therefore, we deleted the amount language from the prohibition stated in the regulation. The FDIC received comments from two parties expressly approving this revised interpretation.

Exception for subsidiaries of which the bank is majority owner. The final regulation retains the exception allowing investments in subsidiaries of which the bank is majority owner as currently in effect without any substantive change. However, the FDIC has modified the language of this section to remove negative inferences and make the text clearer. Rather than stating that the bank may do what is not prohibited, the FDIC affirmatively states that an insured state chartered bank may acquire or retain investments in these subsidiaries. If an insured state bank holds less than a majority interest in the subsidiary, and that equity investment is of a type that would be prohibited to a national bank, the exception does not apply and the investment is subject to divestiture.

Majority ownership for the exception is understood to mean ownership of greater than 50 percent of the outstanding voting stock of the subsidiary. National banks may own a minority interest in certain types of subsidiaries. (*See* 12 CFR 5.34 (1998)). Therefore, an insured state bank may hold a minority interest in a subsidiary if a national bank could do so. Thus, section 24 does not necessarily require a state bank to hold at least a majority of the stock of a company in order for the equity investment in the company to be permissible.

For purposes of the notice procedure, the regulation defines the business form of a majority-owned subsidiary to be a corporation. As is discussed above in connection with the definition of a "Majority-owned subsidiary", there may be other forms of business organization that are suitable for the purposes of this exception such as partnerships or limited liability companies, but the FDIC prefers to review such alternate forms of organization on a case-by-case basis through the application process to assure that appropriate separation between the insured depository institution and the subsidiary is in place.

To qualify for the exception, the majority-owned subsidiary may engage only in the activities described in § 362.4(b). The allowable activities include exceptions to the general statutory prohibition, some of which have a statutory basis and others of which are derived through the FDIC's power to create regulatory exceptions.

Investments in qualified housing projects. Section 362.3(a)(2)(ii) of the final regulation provides an exception for qualified housing projects. The final regulation combines the language found in two paragraphs of the current regulation with the resulting paragraph retaining substantially the same language. Changes were made to clarify some technical aspects of the manner in which the qualified housing rules work and are not intended to be substantive. In addition, the FDIC modified the language of the text to remove negative inferences and make the text clearer.

Under this exception, an insured state bank is allowed to invest as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a residential housing project intended to primarily benefit lower income persons throughout the period of the bank's investment. The bank's investments, when aggregated with any existing investment in such a partnership or partnerships, may not exceed 2 percent of the bank's total assets. The FDIC expects a bank to use the figure reported on the bank's most recent consolidated report of condition (Call Report) prior to making the investment as the measure of its total assets. If an investment in a qualified housing project does not exceed the limit at the time the investment is made, the investment shall be considered to be a legal investment even if the bank's total assets subsequently decline.

The current exception is limited to instances in which the bank invests as a limited partner in a partnership. In the proposal, comment was invited on (1) whether the FDIC should expand the exception to include limited liability companies and (2) whether doing so is permissible under the statute. (Section 24(c)(3) of the FDI Act provides that a state bank may invest "as a limited partner in a partnership".). No comments were received on the legal issue. One comment applauded our suggestion to expand this statutory exception by regulation. In the final rule, we have expanded § 362.3(a)(2)(ii) to permit insured state banks to invest in qualified housing projects as a limited partner or through a limited liability company.

Although the statutory language in the paragraph allowing an investment in qualified housing projects explicitly allows only a limited partnership investment, it does not prohibit other forms of ownership. For the purpose of this investment and consistent with the underlying public policy purposes of this statute, we consider limited liability companies to be substantially equivalent to limited partnership interests. It is consistent with the FDIC's authority under the statute to extend the qualified housing projects exception by regulation to cover the limited liability company form of business enterprise in this circumstance. Limited partnership interests and limited liability companies provide similar forms of business enterprise. Although we have been unwilling to expand the regulatory exceptions to allow limited liability companies to substitute for corporate forms of business enterprise where uniform separation standards were required to protect the bank from the liability of its subsidiaries that conduct activities not permissible for national bank subsidiaries, we believe that no similar impediments exist here. We also acknowledge that we have been reluctant to extend this exception to limited liability companies in the past when informal interpretations were requested.[3] However, we believe, and no commenter raised any contrary argument, that it is appropriate to extend the statutory exception to cover these substantially similar organizational structures through this regulation. Thus, subject to the other limitations in the rule, we are allowing by regulation insured state banks to invest in limited liability companies that invest in the acquisition, rehabilitation or construction of a qualified housing project.

Grandfathered investments in listed common or preferred stock and shares of registered investment companies. Available only to certain grandfathered state banks, § 326.3(a)(2)(iii) of the final regulation carries forward the statutory exception for investments in common or preferred stock listed on a national securities exchange and for shares of investment companies registered under the Investment Company Act of 1940. Although there is no substantive change, the FDIC has modified the language of this section to remove negative inferences and make the text clearer.

To use the grandfathered authority, section 24 requires, among other things, that a state bank file a notice with the FDIC before relying on the exception and that the FDIC approve the notice. The notice requirement, content of notice, presumptions with respect to the notice, and the maximum permissible investment under the grandfather also are set out in the current regulation. The references contained in the current regulation describing the notice content and procedures were deleted because we believe that most, if not all, of banks eligible for the grandfather already have filed notices with the FDIC. Thus, we eliminated language governing the specific content and processing of notices and cross-referencing the notice procedures under subpart G of part 303. Any bank that has filed a notice need not file again.

Paragraph (B) of this section of the final regulation provides that the exception for listed stock and registered shares ceases to apply in the event that the bank converts its charter or the bank or its parent holding company undergoes a change in control. This language restates the statutory language governing when grandfather rights terminate. As is discussed in the preamble above in connection with the definition of "change in control", the FDIC has revised both the current and proposed scope of transactions encompassed in the notion of a change in control.

The regulation continues to provide that in the event an eligible bank undergoes any transaction that results in the loss of the exception, the bank is not prohibited from retaining its existing investments unless the FDIC determines that retaining the investments will adversely affect the bank and the FDIC orders the bank to divest the stock and/or shares. This provision has been retained in the final rule without any change except for the deletion of the citation to specific authorities the FDIC may rely on concerning divestiture. Rather than containing specific citations, the final regulation merely references the FDIC's ability to order divestiture under any applicable authority. State banks should continue to be aware that any inaction by the FDIC would not preclude a bank's appropriate banking agency (when that agency is an agency other than the FDIC) from taking steps to require divestiture of the stock and/or shares if, in that agency's judgment, divestiture is warranted.

The FDIC has moved, simplified, and shortened the limit on the maximum permissible investment in listed stock and registered shares. The final regulation limits the bank's investment in grandfathered listed stock and registered shares, when made, to a maximum of 100 percent of tier one capital as measured on the bank's most recent Call Report prior to the investment. The final rule modifies the proposed regulatory language somewhat, to clarify how the maximum investment limit is to be determined. The final rule uses the lower of the bank's cost or the market value of the stock and shares as the measure of compliance with this limit. The proposal referred to book value. At the time the FDIC adopted the current version of the rule, call report instructions and generally accepted accounting principles (GAAP) provided that equity securities were generally to be carried at the lower of cost or market value. The FDIC adopted the book value approach at that time, in response to industry comments that a market value approach would exhaust a bank's grandfather authority as the value of its stock and shares appreciated. Now that call report instructions and GAAP require stock and shares covered by the rule to be reported at market value in many cases, the book value approach no longer serves the desired purpose. The FDIC is expressly referring to the lower of cost or market approach in the final rule, in order to maintain consistency with the current rule. The lower of cost or market approach is also consistent with the federal banking agencies' rules for determining tier one capital, which require exclusion of net unrealized holding losses on available-for-sale equity securities with readily determinable fair values.

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[3] *See* 2 FDIC Law, Regulations, Related Acts (FDIC) 4903; 1994 WL 763183 (F.D.I.C.) and FDIC 94–50, 1994 FDIC Interp. Ltr. LEXIS 89, October 12, 1994.

Language indicating that investments by well-capitalized banks in amounts up to 100 percent of tier one capital will be presumed not to present a significant risk to the fund was deleted, as was language indicating that it will be presumed to present a significant risk to the fund for an undercapitalized bank to invest in amounts that high. In addition, the proposed rule deleted the language stating the presumption that, absent some mitigating factor, it will not be presumed to present a significant risk for an adequately capitalized bank to invest up to 100 percent of tier one capital. The FDIC received one comment asking that we retain regulatory language describing these presumptions for well- and adequately-capitalized banks. The commenter believes that removal of the presumptions will create uncertainty and may cause banks to hesitate to take full advantage of these investment opportunities. The FDIC nonetheless believes at this time that it is not necessary to expressly state these presumptions in the regulation. However, this action does not alter the FDIC's position regarding the presumptions.

Language in the current regulation concerning the divestiture of stock and/or shares in excess of that permitted by the FDIC (as well as such investments in excess of 100 percent of the bank's tier one capital) has been deleted under the proposal as no longer necessary due to the passage of time. In both instances, the time allowed for such divestiture has passed.

We note that the statute does not impose any conditions or restrictions on a bank that enjoys the grandfather in terms of per issuer limits. The proposal invited comment on whether the FDIC should impose restrictions under the regulation that would, for example, limit a bank to investing in less than a controlling interest in any given issuer. Additionally, we asked whether the regulation should incorporate other limits or restrictions to ensure the grandfathered investments do not pose a risk. Although no comments specifically addressed these questions, several commenters referred to the fact that most institutions to which the grandfather is applicable have already filed notices with the FDIC regarding those investments. These institutions have since complied with any imposed conditions, or subsequently applied to have the conditions altered or removed. The commenters do not feel that banks should now be subject to requirements the FDIC did not originally impose. Moreover, the commenters point out that the FDIC and state banking authorities routinely review investment portfolios as part of the supervisory process and can address any deficiencies on a case-by-case basis. Upon further reflection, the FDIC is persuaded not to impose any new regulatory requirements on these grandfathered institutions for directly held investments. However, the FDIC wants to emphasize that it expects banks using this grandfathered investment authority to establish prudent limits and controls governing these investments. Equity securities and registered shares that are held by the bank must be consistent with the institution's overall investment goals and will be reviewed by examiners in that context. The FDIC will not take exception to listed stock and registered shares that are well regarded by knowledgeable investors, marketable, held in moderate proportions, and meet the institution's overall investment goals.

Stock investment in insured depository institutions owned exclusively by other banks and savings associations (banker's banks). Section 362.3(b)(2)(iv) of the final regulation continues to reflect the statutory exception that an insured state bank is not prohibited from acquiring or retaining the shares of depository institutions that engage only in activities permissible for national banks, are subject to examination and are regulated by a state bank supervisor, and are owned by 20 or more depository institutions not one of which owns more than 15 percent of the voting shares. In addition, the voting shares must be held only by depository institutions (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees). Note that the proposal modified this exception to no longer limit the bank's investment in such depository institutions to "voting" stock. This change was made to allow banks to hold non-voting interests in these entities because section 24(f)(3)(B) of the FDIC Act does not limit the exception to voting stock. However, the final regulation retains the reference to "voting" stock in determining the various ownership and control thresholds. The FDIC received no comments on this provision which is adopted as proposed.

Stock investments in insurance companies. Section 362.3(a)(2)(v) of the final regulation incorporates statutory exceptions permitting state banks to hold equity investments in insurance companies. The exceptions are provided by statute and are implemented in the current version of part 362. For the most part, the exceptions are carried forward into the final regulation with no substantive editing. The exceptions are discussed separately below.

Directors and officers liability insurance corporations. The first exception permits insured state banks to own stock in corporations that solely underwrite or reinsure financial institution directors' and officers' liability insurance or blanket bond group insurance. A bank's investment in any one corporation is limited to 10 percent of the outstanding stock. Consistent with the proposal, we eliminated the present limitation of 10 percent of the "voting" stock and changed the present reference from "company" to "corporation" conforming the language to the statutory exception.

While the statute and regulation provide a limit on a bank's investment in the stock of any one insurance company under this provision, there is no statutory or regulatory "aggregate" investment limit in all insurance companies, nor does the statute combine these investments with any other exception under which a state bank may invest in equity securities. In the past, the FDIC has addressed investment concentration and diversification issues on a case-by-case basis. Nonetheless, the FDIC invited comment on whether it should incorporate aggregate limits on grandfathered bank investments in insurance companies. Responses addressing this issue were submitted by two trade associations and one bank consortium. While one trade association suggested that it would be prudent for the FDIC to incorporate some form of investment limit, the other two parties strongly opposed the imposition of any regulatory limit on what are statutory exceptions. The FDIC has elected not to impose aggregate investment limits on equity investments specifically permitted by statute, nor will it combine the bank's investments in insurance companies with other equity investments made pursuant to any regulatory exception. Instead, the FDIC will continue to address investment concentration and diversification issues on a case-by-case basis.

Stock of savings bank life insurance company. The second exception for equity investments in insurance companies permits any insured state bank located in New York, Massachusetts, or Connecticut to own stock in savings bank life insurance companies provided that certain consumer disclosures are made. Again, this regulatory provision mirrors the specific statutory exception found in section 24. The savings bank life insurance investment exception is broader than the director and officer liability insurance company exception discussed above. There are no individual or aggregate investment limitations for investments in savings bank life insurance companies.

Consistent with the proposal, the provision implementing this exception in the current regulation was carried forward into the final regulation with some modifications. The language describing this exception was revised to affirmatively permit banks located in New York, Massachusetts, or Connecticut to own stock in a savings bank life insurance company provided the company provides the required disclosures. Additionally, the final regulation alters the required disclosure from that provided by the current regulation. Rather than continue the disclosure language currently contained in § 362.3(b)(3), the FDIC has decided to require disclosures of the type provided for in the Interagency Statement. As a result, these companies are required to provide their retail customers with written and oral disclosures consistent with the Interagency Statement when selling savings bank life insurance policies, other insurance products, and annuities. The required disclosures in the Interagency Statement include a statement that the products are not insured by the FDIC, are not a deposit or other obligation of, or guaranteed by, the bank, and are subject to investment risks, including the possible loss of the principal amount invested. While the existing regulatory language is similar to the Interagency Statement in what it requires to be disclosed, it is not identical. The last disclosure—that such products may involve risk of loss—is not required under the current regulation.

Although commenters generally supported referencing the Interagency Statement rather than incorporating a different disclosure standard, a savings bank life insurance company and a United States Congressman objected to the "risk of loss" disclosure. The savings bank life insurance company claims that a disclosure of that nature is a falsehood unsupported by factual data. Both commenters are concerned that the "risk of loss" disclosure places savings bank life insurance companies at a competitive disadvantage relative to other entities selling life insurance products. The Congressman suggested replacing the required disclosure concerning "may involve risk of loss" with "may involve market risk, if applicable".

It is the FDIC's view that FDIC-insured deposits differ from savings bank life insurance products and annuities because investors in such products are exposed to a possible loss of the principal amount invested. The Interagency Statement does not distinguish between the relative loss exposure presented by various nondeposit investment products. The distinction is simply between insured deposits and other investment products. Savings bank life insurance, other insurance products, and annuities contain an investment risk component exposing the investor to a loss of principal despite the assertion offered by one commenter. Further, investors in nondeposit products are exposed to more than market risks. The FDIC is therefore unwilling to change the nature of the required disclosure.

Nevertheless, the FDIC recognizes that the language proposed in § 362.3(a)(2)(v)(B) may be interpreted to mean the subject disclosure must contain the phrase "may involve risk of loss". The FDIC intends for the disclosures to be consistent with the Interagency Statement and was simply paraphrasing the respective disclosure content in the event the Interagency Statement is succeeded by another statement or regulation. Included in the required disclosures is a statement specifying that the nondeposit product is "subject to investment risks, including possible loss of the principal amount invested". The actual Interagency Statement language may convey a less threatening tone concerning the possibility of loss. To avoid confusion and reflect the FDIC's actual intent, the phrase "may involve risk of loss" was replaced with "are subject to investment risks, including possible loss of the principal amount invested" in the final rule.

The FDIC is aware that insurance companies, including savings bank life insurance companies, typically offer annuity products and that many states regulate annuities through their insurance departments. The FDIC agrees with the OCC that annuities are investment products that are subject to the requirements found in the Interagency Statement when sold to retail customers on bank premises as well as in other instances specified in the Interagency Statement.

Other activities prohibition. Section 362.3(b) of the final regulation restates the statutory limit prohibiting insured state banks from directly or indirectly engaging as principal in any activity that is not permissible for a national bank. Activity is defined in the rule as the conduct of business by a state-chartered depository institution and includes acquiring or retaining any investment. Because acquiring or retaining an investment is an activity by definition, the proposal added language to make clear that this prohibition does not supersede the equity investment exceptions of § 362.3(a)(2). The prohibition does not apply if one of the statutory exceptions contained in section 24 of the FDI Act (restated in the current regulation and carried forward in the final regulation) applies. The FDIC has also provided a regulatory exception to the prohibition on other activities concerning the acquisition of certain debt-like instruments. Insured state banks desiring to engage in other activities must submit an application to the FDIC pursuant to § 362.3(b)(2)(i).

Consent through Application. The limit on activities contained in section 24 states that an insured state bank may not engage as principal in any type of activity that is not permissible for a national bank unless the FDIC has determined that the activity would pose no significant risk to the appropriate deposit insurance fund, and the bank is and continues to be in compliance with applicable capital standards prescribed by the appropriate federal banking agency. Section 362.3(b)(2)(i) establishes an application process for the FDIC to make the determination concerning risk to the funds. The substance of this process is unchanged from the current regulation.

Insurance underwriting. This exception tracks the statutory exception in section 24 which grandfathers: (1) Certain insured state banks engaged in the underwriting of savings bank life insurance through a department of the bank; (2) any insured state bank that engaged in underwriting of insurance on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation; and (3) certain well-capitalized banks engaged in insurance underwriting through a department of a bank. The exception is carried forward from the current regulation with a number of modifications.

The savings bank life insurance exception applies to insured state banks located in Massachusetts, New York, or Connecticut. To use this exception, banks must engage in the activity through a department of the bank meeting the core standards discussed below. The standards for conducting this activity are taken from the current regulation with the exception of the disclosure standards which are discussed below. We moved the requirements for a department from the definitions section to the substantive portion of the regulation text.

The exception for underwriting federal crop insurance is unchanged from the current regulation, and there are no regulatory limitations on the conduct of the activity.

An insured state bank that wishes to use the remaining grandfathered insurance underwriting exception may do so only if the insured state bank was lawfully providing insurance, as principal, as of November 21, 1991. Further, the insured state bank must be well-capitalized if it is to engage in insurance underwriting and the bank must conduct the insurance underwriting in a department that meets the core standards described below. Banks taking advantage of this grandfather provision may underwrite only the same type of insurance that was underwritten as of November 21, 1991, and may operate and have customers only in the same states in which it was underwriting policies on November 21, 1991. The grandfather authority for this activity does not terminate upon a change in control of the bank or its parent holding company.

Both savings bank life insurance activities and grandfathered insurance underwriting must take place in a department of the bank which meets certain core operating and separation standards. Consistent with the disclosure requirements of the current regulation, the core operating standards require the department to inform its customers that only the assets of the department may be used to satisfy the obligations of the department. Note that this language does not require the bank to say that the bank is not responsible for the obligations of the department. The bank and the department constitute one corporate entity. In the event of insolvency, the insurance underwriting department's assets and liabilities would be segregated from the bank's assets and liabilities due to the requirements of state law. The regulatory language of the final rule has been changed to clarify that a bank seeking to operate its department under separation standards different than the core standards in the rule may submit an application to the FDIC.

The final regulation eliminates the proposed operating standard requirement that the department provide customers with written disclosures consistent with those in the Interagency Statement. The FDIC proposed replacing the disclosure statement currently imposed by § 362.4(g)(1)(iii) with that required in the Interagency Statement to increase consistency and reduce the regulatory burden of differing requirements. Upon further reflection, the FDIC has decided that while it is prudent to eliminate the disclosure currently required by part 362, the proposal to impose the Interagency Statement in connection with this activity in this regulation is unnecessary. Unlike the statutory exception permitting banks to engage in savings bank life insurance activities, the authorizing statute does not require a customer disclosure as a condition of engaging in other grandfathered insurance activities. Nevertheless, banks engaged in grandfathered insurance underwriting continue to be subject to the Interagency Statement in connection with sales to bank customers, including the disclosure provisions of that statement. Comments support this change and recognize that any retail sale of nondeposit investment products to bank customers is subject to the Interagency Statement if made on bank premises, by a bank employee, or pursuant to a compensated referral.

The FDIC cannot, however, eliminate the regulatory requirement that insured state banks engaged in savings bank life insurance activities make disclosures to all consumers. Section 24(e) of the FDI Act authorizes this activity only if the bank meets the consumer disclosure requirements. Thus, under the statute, the FDIC must promulgate consumer disclosures for savings bank life insurance. Section 362.4(c)(1) of the current regulation addresses banks engaging in savings bank life insurance underwriting activities. The referenced section requires the bank to make certain disclosures to purchasers of life insurance policies, other insurance products, and annuities. As discussed previously in this preamble, these disclosures are similar to those set out in the Interagency Statement but they are not identical. Currently, banks engaging in savings bank life insurance underwriting are covered by the Interagency Statement and part 362. As a result, banks have been required to comply with both of these similar but somewhat different requirements. The final regulation replaces the current disclosure requirement with a cross reference to the Interagency Statement to make compliance easier. Banks engaging in savings bank life insurance activities should note, however, that consistent with the proposal and the current regulation, the final rule carries forward the requirement that the department also inform purchasers that only the assets of the insurance department may be used to satisfy the obligations of the department. Comments and the FDIC's response are described elsewhere in this preamble.

The core separation standards in the final rule restate the requirements currently found in the definition of department. These standards require the department to: (1) Be physically distinct from the remainder of the bank; (2) maintain separate accounting and other records; (3) have assets, liabilities, obligations, and expenses that are separate and distinct from those of the remainder of the bank; and (4) be subject to state statutes that permitting the obligations, liabilities, and expenses to be satisfied only with the assets of the department. The standards are unchanged from those in the current regulation, but they have been moved from the definitions section to ensure that the requirements are shown in connection with the appropriate regulatory exception.

Acquiring and retaining adjustable rate and money market preferred stock. The proposal provides an exception that allows a state bank to invest in up to 15 percent of the bank's tier one capital in adjustable rate preferred stock and money market (auction rate) preferred stock without filing an application with the FDIC. The exception was adopted when the 1992 version of the regulation was adopted in final form. After reviewing comments at that time, the FDIC found that adjustable rate preferred stock and money market (auction rate) preferred stock were essentially substitutes for money market investments such as commercial paper and that these investments possess characteristics closer to debt than to equity securities. Therefore, money market preferred stock and adjustable rate preferred stock were excluded from the definition of equity security. As a result, these investments are not subject to the equity investment prohibitions of the statute or the regulation and they are considered to be an "other activity" for the purposes of this regulation.

This exception focuses on two categories of preferred stock. This first category, adjustable rate preferred stock, refers to shares where dividends are established by contract through the use of a formula based on Treasury rates or some other readily available interest rate levels. Money market preferred stock refers to those issues where dividends are established through a periodic auction process that establishes yields in relation to short-term rates paid on commercial paper issued by the same or a similar company. The credit quality of the issuer determines the value of the security. Money market preferred shares are sold at auction.

Consistent with other parts of the proposal, the FDIC has modified the exception by limiting the 15 percent measurement to tier one capital, rather than total capital. Throughout the final regulation, all capital-based limitations are measured against tier one capital to increase uniformity within the regulation. The FDIC recognizes that this change may lower the permitted amount of these investments held by institutions already engaged in the activity. An insured state bank that has investments exceeding the proposed limit, but within the total capital limit, may continue holding those investments until they are redeemed or repurchased by the issuer. The 15 percent of tier one capital limitation should be used in determining the allowable amount of new purchases of money market preferred and adjustable rate preferred stock. Of course, institutions wanting to increase their holdings of these securities may submit an application to the FDIC.

The FDIC received five comments regarding this proposed change. Although the commenters applaud the desire for consistency, they contend that the results of such a change are unjustified when done principally for the sake of uniformity. Thus, the commenters suggest that the FDIC either leave the measurement base unchanged or increase the limit to offset the impact of the change. While the FDIC acknowledges the concerns expressed by commenters, it is not persuaded that changing the capital base from total to tier one capital creates a significant hardship. Therefore, the final regulation uses the tier one capital base to measure the applicable limit. The FDIC will handle applications to exceed the governing threshold in an expeditious manner according to procedures detailed in subpart G of part 303.

The final regulation incorporates a provision allowing insured state banks to acquire and retain other instruments of a type determined by the FDIC to have the character of debt securities provided the instruments do not represent a significant risk to the deposit insurance funds. In response to investor and client needs, the financial markets continually develop new financial products. A recent example of such an instrument is trust preferred stock. Trust preferred stock is a hybrid instrument possessing characteristics typically associated with debt obligations. Trust preferred securities are issued by an issuer trust that uses the proceeds to purchase subordinated deferrable interest debentures in a corporation. The corporation guarantees the obligations of the issuer trust and agrees to indemnify third parties for other expenses and liabilities incurred by the issuer trust. Taken together, the debentures, guarantee, and expense indemnity agreement constitute a full, irrevocable, and unconditional guarantee of the obligations of the issuer trust by the issuer corporation. With the exception of credit risk, investors in trust preferred stock are protected from changes in the value of the instruments. Like investors in debt securities, trust preferred stock investors do not share any appreciation in the value of the issuer trust and have no voting rights in the management or ordinary course of business of the issuer trust. Additionally, trust preferred stock is not perpetual and distributions on the stock resemble the periodic interest payments on debt. In essence, such investments are functionally equivalent to investments in the underlying debentures. In the future, as such new instruments come to the FDIC's attention, the FDIC will provide public notice of its determinations under the rule by issuing Financial Institution Letters describing its decisions. Any investments in such instruments would be aggregated with investments in adjustable rate and money market preferred stock for purposes of applying the 15 percent of tier one capital limit.

Activities that are closely related to banking. The language in the proposal providing a regulatory exception allowing insured state banks to engage in activities closely related to banking has been eliminated. The proposed regulation continued language found in the current regulation entitled "Activities that are closely related to banking". Section 362.3(b)(2)(iv) of the proposal permitted an insured state bank to engage as principal in any activity that is not permissible for a national bank provided that the FRB by regulation or order has found the activity to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)). However, the proposed exception was subject to the statutory restrictions prohibiting the bank from directly holding equity investments that a national bank may not hold or which are not otherwise permissible investments for insured state banks pursuant to § 362.3(b). Additionally, the proposal imposed limits on certain of the activities authorized by the 4(c)(8) reference. Included in the limits was a provision requiring the bank, when acting as a real property lessor, to either re-lease the real estate or dispose of the same within two years after the lease expires.

The FDIC received six comments on this provision, four of them objecting to the two-year disposition period at the conclusion of a real estate lease. Another opined that the bank's survival depends on its ability to diversify by engaging in real estate leasing through a subsidiary. An industry trade association supports continued reliance on activities authorized by the FRB pursuant to 4(c)(8) of the Bank Holding Company Act.

Upon further analysis, the FDIC has deleted the reference to the 4(c)(8) list because the activities included on that list generally are of a type permissible for national banks. The one exception that clearly is not generally permissible for a national bank involves real estate leasing. It is noted that national banks are permitted to engage in certain real estate leasing activities. As with other activities permissible for national banks, insured state banks can engage in the same real estate leasing activities subject to any limitations imposed by the applicable state law. However, since section 24 of the FDI Act does not permit the FDIC to allow insured state banks, at the bank level, to hold equity investments that are not permissible for national banks, any FDIC authorization for real estate leasing raises a question whether, under a particular leasing arrangement, the bank as lessor holds an interest in real estate tantamount to an equity investment. Given the variety of potential lease structures, it is not practicable for the FDIC to deal with this issue categorically, under a regulatory exception, at this time. If authorized under state law, state banks are permitted to engage in leasing activities through majority-owned subsidiaries. This exception is discussed in the description of § 362.4(b) in this preamble.

Guarantee activities. The current regulation contains a provision that permits a state bank with a foreign branch to directly guarantee the obligations of its customers as set out in what was formerly § 347.3(c)(1) of the FDIC's regulations without filing any application under part 362. A technical amendment to part 362 was recently made to update this reference to § 347.103(a)(1) as published in the **Federal Register** on April 8, 1998 (63 FR 17090). The current regulation also permits a state bank to offer customer-sponsored credit card programs in which the bank guarantees the obligations of its retail banking deposit customers. This provision has been deleted as unnecessary since these activities are permissible for a national bank. In its current rule, the FDIC used this provision to clarify that part 362 does not prohibit these activities. To shorten the regulation, such clarifying language has been deleted since the activity is permissible for a national bank. The FDIC received no comments addressing this provision and it is dropped as proposed.

Section 362.4 Subsidiaries of Insured State Banks

General prohibition. The regulatory language implementing the statutory prohibition on an insured state bank engaging in "as principal" activities that are not permissible for a national bank is separated from the prohibition on an insured state bank subsidiary engaging in activities which are not permissible for a subsidiary of a national bank. For ease of reference we separated bank and subsidiary activities. Section 362.4 deals exclusively with activities that may be conducted in a subsidiary of an insured state bank. Five commenters supported this restructuring of the regulation. The FDIC believes that separating the activities that may be conducted at the bank level from the activities that must be or may be conducted by a subsidiary makes it easier for the reader to focus on the analysis of the regulation. Therefore, the general prohibition in the final regulation is adopted as proposed.

Exceptions. First, the regulation provides that activities not permissible for a national bank subsidiary may not be conducted by the subsidiary of an insured state bank unless one of the exceptions in the regulation applies. This language is similar to the current part 362 and we received no comments on the provision. The final regulation contains no changes to the proposed language.

Consent obtained through application. The revised regulation allows approval by individual application provided that the insured state bank meets and continues to meet the applicable capital standards and the FDIC finds there is no significant risk to the fund. Language from the current regulation is deleted that expressly provides that approval is necessary for each subsidiary even if the bank received approval to engage in the same activity through another subsidiary. Deleting this language does not automatically permit a state bank to establish a second subsidiary to conduct the same activity that was approved for another subsidiary of the same bank; however, the issue will be handled on a case-by-case basis by the FDIC pursuant to order. For example, if the FDIC approves an application by a state bank to establish a majority-owned subsidiary to engage in real estate investment activities, the order may (in the FDIC's discretion) be written to allow more than one subsidiary to conduct the activity or to require that any additional real estate subsidiaries must be individually approved.

Application procedures may be used by a bank to request the FDIC's consent to engage in an activity that is limited but not specifically prohibited by this part. For instance, the notice procedures require that the subsidiary take the corporate organizational form. Several comments expressed concern about the restriction on the form of business enterprise. Any subsidiary that is organized as a limited liability company would be required to use the application procedures. The FDIC does not intend to prohibit insured state banks from organizing subsidiaries in a form other than a corporation, or to make it more difficult to establish these other forms of business enterprise. However, the FDIC would like to review other forms of organizations, on a case-by-case basis, to satisfy itself that adequate separations are placed between the bank and its subsidiary. At this time, we have not found a way to craft standardized separation criteria for these other forms of business enterprise. No commenters suggested any criteria. Other requests that do not meet the notice criteria or that desire relief from a limit or restriction included in the notice criteria also are encouraged. Application instructions have been moved to subpart G of part 303.

Consistent with the proposal, the final rule eliminates language that prohibited an insured state bank from engaging in insurance underwriting through a subsidiary except to the extent that such activities are permissible for a national bank. Eliminating this language does not result in any substantive change as section 24 of the FDI Act clearly provides that the FDIC may not approve an application for a state bank to directly or indirectly conduct insurance underwriting activities that are not permissible for a national bank. The FDIC received no comment on this change. Therefore, the language is unnecessary and has been eliminated as proposed.

The current part 362 allows state banks that do not meet their minimum capital requirements to gradually phase out otherwise impermissible activities that were being conducted as of December 19, 1992. These provisions are eliminated due to the passage of time. The relevant outside dates to complete the phase out of those activities have passed (December 19, 1996, for real estate activities and December 8, 1994, for all other activities).

Grandfathered Insurance Underwriting. The regulation provides for three statutory exceptions that allow subsidiaries to engage in insurance underwriting, covering "grandfathered" insurance activities, title insurance, and crop insurance.

Subsidiaries may engage in the same grandfathered insurance underwriting as the bank if the bank or subsidiary was lawfully providing insurance as principal on November 21, 1991. The limitations under which this subsidiary may operate have been changed.

The current standard that the bank must be well-capitalized has been changed. Consistent with the proposal, the final rule requires the bank to be well-capitalized after deducting its investment in the insurance subsidiary. One comment on this change argues that the risk involved in insurance underwriting depends upon the type of insurance and that not all insurance underwriting is inherently risky enough to justify an automatic capital deduction. The FDIC believes that this capital treatment is an important element to separate the operations of the bank and the subsidiary. This treatment clearly delineates and identifies the capital that is available to support the bank and the capital that is available to support the subsidiary. Capital standards for insurance companies are based on different criteria from bank capital requirements. Most states have minimum capital requirements for insurance companies. The FDIC believes that a bank's investment in an insurance underwriting subsidiary is not actually "available" to the bank in the event the bank experiences losses and needs additional capital. As a result, the bank's investment in the insurance subsidiary should not be considered when determining whether the bank has sufficient capital.

Another commenter objects to the introduction of the "capital deduction" arguing that providing insurance as principal under the "grandfather" provision is not an activity for which a state bank must obtain a risk to the fund determination. The comment asserts that the provision is self-operative in the absence of any determination or regulations of the FDIC, since Congress evaluated the risk to the insurance funds created by the activity and found that risk to be acceptable. The FDIC agrees that, other than the requirement that the bank must be well-capitalized, section 24 itself imposes no additional conditions or restrictions on the activity. Nevertheless, ever since the FDIC originally promulgated its part 362 rules regarding the conduct of this activity, the FDIC has noted that the activity can involve material risks, and it is therefore prudent to separate those risks from the insured state bank. *See* 58 FR 64482 (Dec. 8, 1993). The FDIC has always imposed conditions on this activity, over and above those addressed in section 24 itself, to protect bank safety and soundness and protect the deposit insurance funds. *See* 58 FR 6465 (January 29, 1993). As noted at the time, the FDIC is not precluded from imposing such restrictions, as section 24(i) itself clearly indicates.

Commenters disagreed on the need for an aggregate investment limit for equity investments in grandfathered insurance activities. One comment argues that it is important to limit the maximum exposure to the depository institution. Another comment states that such a limit is not suggested by the statute, and the FDIC should retain the flexibility to act on a case-by-case basis. After further consideration of this issue, the FDIC is not convinced that the risks from the different types of insurance subject to grandfather provisions are similar. Therefore, an aggregate limit would not necessarily enhance the safety and soundness of the banks involved in this activity. After considering the comments received and for the reasons stated above, the language in the final regulation is unchanged from the proposal.

The revisions to the regulation require a subsidiary engaging in grandfathered insurance underwriting to meet the standards for an "eligible subsidiary" discussed below. This standard replaces the "bona fide" subsidiary standard in the current regulation. The "eligible subsidiary" standard generally contains the same requirements for corporate separateness as the "bona fide" subsidiary definition but adds the following provisions: (1) The subsidiary has only one business purpose; (2) the subsidiary has a current written business plan that is appropriate to its type and scope of business; (3) the subsidiary has adequate management for the type of activity contemplated, including appropriate licenses and memberships, and complies with industry standards; and (4) the subsidiary establishes policies and procedures to ensure adequate computer, audit and accounting systems, internal risk management controls, and the subsidiary has the necessary operational and managerial infrastructure to implement the business plan. No comment was received relating to the effect of these additional requirements on banks engaged in insurance underwriting. We believe that the standards for adequate separation between an insured state bank and any subsidiary engaged in insurance underwriting should be similar to those that separate other subsidiaries that engage in activities not permitted to the bank. Therefore, no changes have been made to the proposed separation standards.

In lieu of the prescribed disclosures contained in the current regulation and in a departure from the proposal, the revision does not prescribe disclosures. Instead, the FDIC is relying on the terms of the Interagency Statement as applicable guidance when the subsidiary's products are sold on bank premises, are sold by bank employees, or are sold when the bank receives remuneration for a referral. The FDIC has made the change primarily because it recognizes that there is a reduced likelihood of customer confusion when sales of insurance products by a subsidiary of an insured state bank are not made on bank premises, are not made by bank employees, and are not a result of a referral from the bank.

However, there is an increased risk of customer confusion where the insured state bank and the subsidiary selling the product have similar names. Those cases are addressed in part by a separation standard which is discussed below. The separation standard requires that the subsidiary conduct its business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the state-chartered depository institution and that the state-chartered depository institution is not responsible for and does not guarantee the obligations of the subsidiary. The institution and its subsidiary should take any steps necessary to avoid customer confusion on behalf of non-bank customers, or bank customers in transactions not covered by the Interagency Statement.

Under § 362.5(b)(2), banks with subsidiaries engaged in grandfathered insurance underwriting activities are expected to meet the new requirements, and have 90 days from the effective date to achieve compliance or apply to the FDIC for approval to operate otherwise. The FDIC will consider any such applications on a case-by-case basis.

The regulation provides that a subsidiary may continue to underwrite title insurance based on the specific statutory authority from section 24. This provision is currently in part 362 and is carried forward with no substantive change. The insured state bank is permitted only to retain the investment if the insured state bank was required, before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under state law. The authority to retain the investment terminates if a change in control of the grandfathered bank or its holding company occurs after June 1, 1991. There are no statutory or regulatory investment limits on banks holding these types of grandfathered investments.

The exception for subsidiaries engaged in underwriting crop insurance is continued. Under section 24, insured state banks and their subsidiaries are permitted to continue underwriting crop insurance under two conditions: (1) They were engaged in the business on or before September 30, 1991; and (2) the crop insurance was reinsured in whole or in part by the Federal Crop Insurance Corporation. While this grandfathered insurance underwriting authority requires that the bank or its subsidiary had to be engaged in the activity as of a certain date, the authority does not terminate upon a change in control of the bank or its parent holding company.

Majority-owned subsidiaries ownership of equity investments that represent a control interest in a company. In proposed § 362.4(b)(3), the FDIC would have allowed majority-owned subsidiaries of insured state banks to hold controlling interests in lower-level subsidiaries engaged in certain activities which the FDIC authorized to be conducted at the bank level in proposed § 362.3(b)(2). These activities were holding adjustable rate and money market preferred stock; and engaging in activities found by the FRB to be closely related to the business of banking under section 4(c)(8) of the Bank Holding Company Act (subject to certain restrictions). Proposed § 362.4(b)(3) differed from current § 362.4(c)(3)(iv)(C), which effectively authorizes the majority-owned subsidiary to own stock of a corporation engaged in 4(c)(8) activities by authorizing the ownership of stock of a corporation that engages in activities permissible for a bank service corporation but imposes no control requirement. Proposed § 362.4(b)(3) also contained no counterpart to current § 362.4(c)(3)(iv)(D), authorizing a majority-owned subsidiary to invest in 50 percent or less of the stock of a corporation engaging solely in activities which are not "as principal'.

In the final version, at § 362.4(b)(3), the FDIC has broadened the proposed language, so that the overall effect of the section is to authorize insured state banks to have lower-level subsidiaries engaged in many of the same types of activities which the FDIC previously found do not pose a significant risk when conducted at the bank level or through a majority-owned subsidiary. The FDIC has received questions concerning the types of activities and the restrictions on these activities if conducted by lower-level subsidiaries. This addition to the final regulation is intended to clarify that generally, the same limitations are imposed on the lower-level subsidiary as are imposed on the majority-owned subsidiary conducting the same type of activity. As discussed below, the FDIC has retained the control requirement (subject to one modification), because the overall design of the section is to authorize lower-level subsidiaries to engage in approved activities. Of course, banks also may apply to the FDIC for permission to make additional investments in excess of or which differ from those where general consent is granted under the rule.

As is also discussed below, the activities covered by the final version of § 362.4(b)(3) still differs from current § 362.4(c)(3)(iv)(C) and current § 362.4(c)(3)(iv)(D), but changes made from the proposed language narrow the gap.

First, the FDIC has found that it is not a significant risk to the deposit insurance funds if a majority-owned subsidiary holds a controlling interest in a company engaged in real estate or securities activities authorized under the real estate investment activities and securities activities sections of this regulation at § 362.4(b)(5), discussed below. The bank must file notice with the FDIC, and may proceed if the FDIC does not object. The bank must meet the same core eligibility criteria in § 362.4(c)(1) that would apply if the bank were conducting the activity directly through a majority-owned subsidiary. The bank's investments in and transactions with the lower tier company are subject to the same limits under § 362.4(d) as would apply if the bank were conducting the activity directly through a majority-owned subsidiary. The majority-owned subsidiary must also comply with the investment and transaction limits, to ensure that the majority-owned subsidiary is not used as a conduit to the lower tier company in derogation of the § 362.4(d) limits on the lower tier company. The bank must also deduct its equity investment in the majority-owned subsidiary and the lower tier company from its capital in accordance with § 362.4(e), as would be the case if the bank were conducting the activity directly through a majority-owned subsidiary. If the lower tier company is engaged in securities activities of the type contemplated by § 362.4(b)(5)(ii), the bank and the lower tier company must observe the additional requirements set out in that section. Finally, either the majority-owned subsidiary must observe the core eligibility criteria in § 362.4(c)(2), or the lower tier company must observe them. However, absent an application to the FDIC, the latter option is available only if the lower tier company takes corporate form. The FDIC's rationale for each of these limits on the activities authorized by § 362.4(b)(5) is discussed in detail below.

Second, the FDIC also has found that it is not a significant risk to the deposit insurance funds if a majority-owned subsidiary holds a controlling interest in a company which engages in: (1) Any activity permissible for a national bank including such permissible activities that may require the company to register as a securities broker; (2) acting as an insurance agency; (3) acquiring or retaining adjustable rate and money market preferred stock or other instruments of a similar character to the same extent allowed for the bank itself under § 362.3(b)(2)(iii) and combined with the 15 percent limit therein; or (4) engaging in real estate leasing activities to the same extent permissible for the majority-owned subsidiary under § 362.4(b)(6), discussed below.

One comment, on the use of the control test for defining activities for lower level subsidiaries, indicated concern over the change from the current regulation. Specifically, concern was expressed relating to a group of insured depository institutions that collectively own through majority-owned subsidiaries a company engaged in securities brokerage and insurance underwriting. None of the banks involved own a control interest. The structure of the ownership was set up in reliance upon the exception in current § 362.4(c)(3)(iv)(D). The FDIC recognizes that many community banks rely on formation of a consortium of banks to provide permissible financial services for its customers that one bank could not efficiently provide. We believe it would be imprudent to penalize institutions that have invested in these activities through a majority-owned subsidiary. Therefore, the proposed regulatory language has been changed, creating an exception to the control requirement where the company in question is controlled by insured depository institutions.

The scope of the activities authorized under final § 362.4(b)(3) differ from current § 362.4(c)(3)(iv)(C) and current § 362.4(c)(3)(iv)(D). The FDIC eliminated proposed § 362.3(b)(2)(iv), which would have authorized 4(c)(8) activities at the bank level. In a parallel fashion, we eliminated current § 362.4(c)(3)(iv)(C), which effectively authorizes the majority-owned subsidiary to own stock of a corporation engaged in 4(c)(8) activities. As is discussed above in connection with that change, the activities included on the 4(c)(8) list are generally of a type permissible for national banks, and the authorization in § 362.4(b)(3)(ii)(A) of the final rule authorizes the lower-level subsidiary to engage in activities permissible for national banks. As is also discussed above, the 4(c)(8) list's inclusion of real estate leasing is the one significant exception that was not otherwise dealt with in this regulation. To address the elimination of real estate leasing under the 4(c)(8) list, the FDIC has created § 362.4(b)(6) to govern real estate leasing by a majority-owned subsidiary. Such activity also is authorized for a lower-level subsidiary under § 362.4(b)(3)(ii)(D) of the final rule.

With regard to current § 362.4(c)(3)(iv)(D), authorizing a majority-owned subsidiary to invest in 50 percent or less of the stock of a corporation engaging solely in activities which are not "as principal", the final version of § 362.4(b)(3) has the effect of authorizing non-principal activities which are financially-related. Section 362.4(b)(3)(ii)(B) of the final rule authorizes insurance agency activities by the lower-level subsidiary; and 362.4(b)(3)(ii)(A), authorizing the lower-level subsidiary to engage in activities permissible for national banks, encompasses certain non-principal activities, such as securities brokerage and investment advisory services.

We have previously required applications to hold savings association stock, although a savings association could be owned, controlled or operated if the savings association engages only in deposit-taking and other activities that are permissible for a bank holding company.[4]

If a bank was relying on a previous regulatory exception that has now been eliminated, § 362.5(b)(3) of the final rule provides the activity may continue as previously conducted for 90 days after the effective date of this regulation. If the activity of the lower-level subsidiary is not authorized by the new rule, or the control standard is not met in that time frame, the insured state bank must apply to the FDIC for permission to continue the activity.

Equity securities held by a majority-owned subsidiary. The FDIC sought comment on whether the final regulation should contain an exception that would allow an insured state bank to hold equity securities at the subsidiary level. In light of comments received on this issue, Staff is further analyzing the proposal. Thus, the final rule does not contain the provision that would have permitted a majority-owned subsidiary of a state bank and savings association to engage in equity securities investment activities. At this time, we are proceeding with the remainder of the final regulation so as to avoid further delay in the streamlining benefits that state banks and savings associations will enjoy from the revisions. As a part of this regulation, we are inserting provisions from the current regulation that allow: (1) An insured state bank through a majority-owned subsidiary to invest in up to ten percent of the stock of another insured bank; and (2) an insured state bank that has received approval to invest in equity securities pursuant to the statutory grandfather to conduct these activities through a majority-owned subsidiary without any additional approval from the FDIC. The provisions have been continued to allow previously approved activities to continue while staff is analyzing equity securities investment activities further.

The FDIC proposed to eliminate the notice for these activities, the specific reference to grandfathered activity, and to allow similar activity for all insured state banks. However, the exception provided that the bank's investment in the majority-owned subsidiary be deducted from capital and that the activity be subject to certain eligibility requirements and transaction limitations. Comment was frequent and strong that this proposal was unacceptable to the banks that held stocks under the current regulation.

Numerous commenters argued that the statutory grandfather for banks holding common and preferred stock investments and registered shares extends to the bank and its subsidiaries. Section 24(f) is the governing statute in this matter. The exception contained in this provision extends only to the insured state bank. The statute makes no mention of the bank's subsidiary. Section 24(c) of the FDI Act does allow the bank to hold common or preferred stock or shares of registered investment companies through a majority-owned subsidiary. Activities conducted in a majority-owned subsidiary are subject to the bank's compliance with applicable capital standards and the FDIC's finding under section 24(d) that the activity poses no significant risk to the funds.

Most of the comments received came from interested parties in the Commonwealth of Massachusetts and referred to a type of subsidiary authorized in Massachusetts to hold all types of securities, whether permissible or impermissible for a national bank. These subsidiaries were established to take advantage of specialized tax treatment under Massachusetts law. The FDIC understands the tax-favored treatment of these subsidiaries; however, that tax treatment is a matter of state tax law and is not a factor in the FDIC's risk to the fund determination under this statute. However, the FDIC is not unsympathetic to the plight of insured state banks that have acted lawfully in structuring their business to achieve tax-favored treatment. The FDIC is unwilling to upset such good faith arrangements without considering other alternatives.

Reflecting a sentiment that is contained in many comment letters, one commenter stated, "as a practical matter, we are unaware of any circumstance where banks have been harmed by conducting these activities through a subsidiary, and thus we believe that conducting the grandfathered activities in that manner poses no risk to the deposit insurance funds". The FDIC recognizes that for the past 15 years there has been an unprecedented rise in the value of common and preferred stock and registered shares, and these markets have experienced no sustained, appreciable downturn in value in over 10 years. The FDIC does not base its risk to the fund determination on the recent history of markets for listed common and preferred stock and registered shares. The FDIC's policy regarding holding individual stocks is to not take exception to holding corporate equities which are well regarded by knowledgeable investors, marketable and held in moderate proportions. In reviewing equities held on an aggregate basis, the bank's portfolio of common and preferred stock and registered shares is reviewed in context of its overall investment portfolio. The holding of common and preferred stock and registered shares must be in the context of the bank's overall goals of investment quality, maturity pattern, diversification of risks, marketability of the portfolio, and income production. The bank's overall investment strategies are then judged in relationship to the: (1) General character of the institution's business; (2) analysis of funding sources; (3) available capital funds; and (4) economic and monetary factors.

The FDIC proposed that the bank's investment in a subsidiary investing in equity securities be deducted from the bank's capital before determining the adequacy of the bank's capital. This treatment would separate the capital that is available to support the bank from the capital that is available to support the activities of the subsidiary. In that scenario, because the risks of holding equity securities is borne by the capital of the subsidiary, the portfolio of equity securities and registered shares does not have to be analyzed in context of the bank's overall investment strategies. If the capital separations are not present, then the risks of holding equity securities through a fully consolidated subsidiary must be considered in context of the bank's overall investment strategies. In addition, if a bank chooses to hold investments that are permissible for a national bank in a subsidiary that also may hold investments that are not permissible for a national bank, the FDIC will treat the entire subsidiary as engaged in an activity that is not permissible for a national bank.

Many comments say that the FDIC's proposal for deducting a bank's investment in its securities subsidiary from the bank's capital before determining capital adequacy is inconsistent with the capital treatment for recognition of 45% of net unrealized gains in the equities portfolio under the FDIC's capital regulations (12 CFR part 325).[5] The argument that has been made by these comments is persuasive to the FDIC. The two approaches to treatment of gains on securities do seem inconsistent, and the capital regulation is consistent with the other federal financial institution regulators' approach to capital treatment of common and preferred stock and shares of registered investment companies.

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[4] 12 U.S.C. 1843(c) and 12 CFR 225.28(b)(4)(ii)

[5] 63 FR 46518 (Sept. 1, 1998).

State law in Massachusetts permits a state bank to establish a subsidiary to hold the equity security and investment company share of investments that the bank is permitted to make under state law. Those investments if made directly by the bank are eligible for the "grandfather" provided for by section 24(f) of the FDI Act and § 362.3(a)(2)(iii). According to the comments, such subsidiaries should be given the same treatment accorded to the bank, i.e., if the bank is permitted by the FDIC to exercise its direct investment authority, the bank should be permitted to invest in those securities and investment company shares through a subsidiary under the same terms as exist under the current rule without a capital deduction.

After considering the comments, the FDIC has decided to retain the current provision allowing grandfathered banks to hold their investments in common or preferred stock and shares of investment companies through a majority-owned subsidiary until the staff analysis of equity securities investments is completed. Section 362.4(b)(4)(i) of the final regulation provides that any insured state bank that has received approval to invest in common or preferred stock or shares of an investment company pursuant to § 362.3(a)(2)(iii) may conduct the approved investment activities through a majority-owned subsidiary provided that any conditions or restrictions imposed with regard to the approval granted under § 362.3(a)(2)(iii) are met. Section 362.3(a)(2)(iii) provides that no insured state bank may take advantage of the "grandfather" provided for investments in common or preferred stock listed on a national securities exchange and shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*) unless the bank files a notice with the FDIC of the bank's intent to make such investments and the FDIC determines that such investments will not pose a significant risk to the deposit insurance funds. In no event may the bank's investments in such securities and/or investment company shares exceed 100% of the bank's tier one capital. The FDIC may condition its finding of no risk upon whatever conditions or restrictions it finds appropriate. The "grandfather" will be lost if certain events occur (see § 362.3(a)(2)(iii)).

The maximum permissible investment by the consolidated bank and majority-owned subsidiary engaged in this activity is 100 percent of the bank's consolidated tier one capital. If the bank also holds listed common or preferred stock or shares of registered investment companies at the bank level pursuant to the grandfather, such securities will count toward the limit. For a particular bank, the FDIC may impose a limit on a case-by-case basis at its discretion of less than the maximum permissible investment of 100 percent of tier 1 capital. The FDIC may require divestiture of some or all of the investments if it is determined that retention of the investments will have an adverse effect on the safety and soundness of the consolidated bank. The limitation of up to 100 percent of tier one capital, the requirement for bank policies, and the reservation of the authority to require divestiture are taken directly from the current regulation of these activities when conducted at the bank level.

Bank stock. Section § 362.4(b)(4)(ii) of the final regulation restores the exception which allows an insured state bank to invest in up to ten percent of the outstanding stock of another insured bank without the FDIC's prior consent provided that the investment is made through a majority-owned subsidiary which was organized for the purpose of holding such shares. This exception is restored to the regulation to provide relief for those state banks which are permitted under state law to invest in the stock of other banks and have done so in reliance on the current regulation. Insured state banks should note, however, that the holding of such shares must of course be permissible under other relevant state and federal law.

The FDIC has become aware that some insured state banks own a sufficient interest in the stock of other insured state banks to cause the bank which is so owned to be considered a majority-owned subsidiary under part 362. It is the FDIC's posture that such an owner bank does not need to file a request under part 362 seeking approval for its majority-owned subsidiary that is an insured state bank to conduct as principal activities that are not permissible for a national bank. As the majority-owned subsidiary is itself an insured state bank, that bank is required under part 362 and section 24 of the FDI Act to request consent on its own behalf for permission to engage in any as principal activity that is not permissible for a national bank.

Again, we are reinstating the provision in the current rule that permits a majority-owned subsidiary of a state bank to invest in up to ten percent of the outstanding stock of another insured bank. No other restrictions on this investment are imposed until the staff analysis of equity securities investment activities is complete.

Majority-owned subsidiaries conducting real estate investment activities and securities underwriting. The FDIC has determined that real estate investment and securities underwriting activities do not represent a significant risk to the deposit insurance funds, provided that the activities are conducted by a majority-owned subsidiary in compliance with the requirements set forth. These activities require the insured state bank to file a notice. Then, as long as the FDIC does not object to the notice, the bank may conduct the activity in compliance with the requirements. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activities when the facts and circumstances warrant such action.

Engage in real estate investment activities. Section 24 of the FDI Act and the current version of part 362 generally prohibit an insured state bank from engaging in real estate investment activities not permissible for a national bank, absent FDIC approval. Section 24 does not grant FDIC authority to permit an insured state bank to directly engage in real estate investment activities not permissible for a national bank. The circumstances under which national banks may hold equity investments in real estate are limited. If a particular real estate investment is permissible for a national bank, an insured state bank only needs to document that determination. If a particular real estate investment is not permissible for a national bank and an insured state bank wants to engage in real estate investment activities (or continue to hold the real estate investment in the case of investments acquired before enactment of section 24 of the FDI Act), the insured state bank must file an application with FDIC for consent. The FDIC may approve such applications if the investment is made through a majority-owned subsidiary, the institution meets the stated capital requirements and the FDIC determines that the activity does not pose a significant risk to the affected deposit insurance fund.

The FDIC evaluates a number of factors when acting on requests for consent to engage in real estate investment activities. In evaluating a request to conduct equity real estate investment activity, the FDIC considers the type of proposed real estate investment activity to determine if the activity is suitable for the insured depository institution. Where appropriate, the FDIC fashions conditions designed to address potential risks that have been identified in the context of a given request. The FDIC also reviews the proposed subsidiary structure and its management policies and practices to determine if the insured state bank is adequately protected and analyzes capital adequacy to ensure that the insured institution has sufficient capital to support its banking activities.

In all of the applications that have been approved to conduct a real estate investment activity to date, the FDIC has imposed a number of conditions in granting the approval. In short, the FDIC has determined on a case-by-case basis that the conduct of certain real estate investment activities by a majority-owned corporate subsidiary of an insured state bank will not present a significant risk to the deposit insurance fund provided certain conditions are observed. In drafting these notice provisions, the FDIC has evaluated the conditions usually imposed when granting approval to insured state banks to conduct real estate activities and incorporated these conditions within the revised regulation where appropriate.

The revised rule allows majority-owned subsidiaries to invest in and/or retain equity interests in real estate not permissible for a national bank under an expedited notice process, provided certain criteria are met. Institutions not meeting the criteria must make application to the FDIC and obtain the FDIC's approval on a case-specific basis. To use the notice process, the insured state bank must qualify as an "eligible depository institution", as that term is defined within the revised regulation, and the majority-owned subsidiary must qualify as an "eligible subsidiary", which is also defined within the revised rule. These criteria are discussed below. The insured state bank must also abide by the investment and transaction limitations set forth in the revised regulation.

Under the revisions, the insured state bank may not invest more than 20 percent of the bank's tier one capital in all of its majority-owned subsidiaries which are conducting activities subject to the investment limits. This language reflects two changes from the proposal. First, the 10 percent per subsidiary limit has been eliminated. Second, the revisions provide that the 20 percent aggregate investment limit applies to all subsidiaries engaged in activities that are being separated from the insured depository institution. Under the regulation, the activities subject to the investment limit are real estate investment activities and securities underwriting. These investment limits may cover any other activities that the FDIC deems appropriate by regulation or any FDIC order. For the purpose of calculating the dollar amount of the investment limitations, the bank would calculate 20 percent of its tier one capital after deducting all amounts required by the regulation or any FDIC order.

Comments received were generally supportive of the overall investment limit but were critical of a provision in the proposed regulation that the bank could invest no more than 10 percent of its tier one capital in any one subsidiary engaged in real estate activities. The comments questioned the rationale for requiring more than one subsidiary if a bank is investing up to its aggregate limit in real estate investment activities. The FDIC in its proposal attempted to have the restrictions on transactions between an insured state bank and its subsidiaries reflect as closely as possible the same restrictions that are imposed on a bank/affiliate relationship. The 10 percent limitation per subsidiary in the proposal reflected the desire of the FDIC that a bank engaging in real estate investment activities diversify its risks. Upon reflection, the FDIC believes an arbitrary limit on the amount that can be invested in any one subsidiary does not necessarily accomplish the desired diversification. In reviewing notices of intent to engage in this activity, the FDIC will look at the bank's diversification of risks when making a determination of whether to consent to the planned activity. Therefore, the final rule drops the proposed 10 percent limit on investment in each subsidiary. The 20 percent limitation on the investment in real estate investment activities provides an important safeguard against excessive investment in these activities, and is retained in the final regulation. However, that limit now includes all subsidiaries engaged in activities that are being separated from the insured depository institution. This change occurred when the FDIC reassessed the limit and decided to make it more closely parallel the 23A standard governing affiliates. Thus, the 20 percent limit will apply to all activities that are separated from the insured depository institution. Under the final regulation, the activities subject to the investment limit are real estate investment activities and securities underwriting. Of course this limit may be modified by application.

The FDIC recognizes that some real estate investments or activities are more time, management and capital intensive than others. Our experience in reviewing the requests submitted under section 24 has led us to conclude that small equity investments in real estate—held under certain conditions—do not pose a significant risk to the deposit insurance fund. As a result, the final rule provides relief to insured state banks having small investments in a majority-owned subsidiary engaging in real estate investment activities. The FDIC is attempting to strike a reasonable balance between prudential safeguards and regulatory burden in its revisions. As a result, the final rule establishes certain exceptions from the requirements necessary to establish an eligible subsidiary whenever the insured state bank's investment is of a de minimis nature and meets certain other criteria. Under the final rule, whenever the bank's investment in its majority-owned subsidiary conducting real estate activities does not exceed 2 percent of the bank's tier one capital and the bank's investment in the subsidiary does not include extensions of credit from the bank to the subsidiary, a debt instrument purchased from the subsidiary or any other transaction originated from the bank to the benefit of the subsidiary, the subsidiary is relieved of certain of the requirements that must be met to establish an eligible subsidiary under the regulation. For example, the subsidiary need not be physically separate from the insured state bank; the chief executive officer of the subsidiary is not required to be an employee separate from the bank; a majority of the board of directors of the subsidiary need not be separate from the directors or officers of the bank; and the subsidiary need not establish separate policies and procedures as described in the regulation in § 362.4(c)(2)(xi). Commenters did not object to the elimination of these eligible subsidiary standards in these circumstances. Several commenters expressed concern that the de minimis investment level is too low. The comments suggested that 2 percent of tier one capital is an arbitrary limit and should be raised to 5 percent. Another commenter supported the limit stating that it is an appropriate safe harbor limit. The FDIC recognizes that arguments can be made for varying limits in this regard. We have chosen a conservative limit. With further experience that provides evidence that this limit can be safely increased, we can reconsider the appropriate level to be considered de minimis activity in the future.

One commenter suggested that both investment limits should be measured against tier one and tier two capital rather than using only tier one capital. The FDIC believes that certain elements of tier two capital such as the allowance for loan and lease losses do not provide protection against activities such as real estate investment. Therefore, the FDIC has decided to retain tier one capital as the appropriate capital against which to measure risk in these activities.

Another commenter suggested that extensions of credit should be permitted subject to an aggregate limit. This same comment added that the restriction to a single subsidiary could be eliminated. In creating the de minimis exception, the FDIC wanted this exception to be used primarily for the passive holding of real estate. Multiple subsidiaries and bank lending to fund the investments is indicative of a more active investment.

If the institution or its investment does not meet the criteria established under the revised regulation for using the notice procedure, an application may be filed with the FDIC. A description of the requisite contents of notices and applications, and the FDIC's processing thereof, is contained in subpart G of part 303. The FDIC encourages institutions to file an application if the institution wishes to request relief from any of the requirements necessary to be considered an eligible depository institution or an eligible subsidiary. The FDIC recognizes that not all real estate investment should require a subsidiary to be established exactly as outlined under the eligible subsidiary definition. However, the FDIC is unwilling to eliminate those criteria under the expedited notice process.

Engage in the public sale, distribution or underwriting of securities that are not permissible for a national bank under section 16 of the Banking Act of 1933. The current regulation provides that an insured state nonmember bank may establish a majority-owned subsidiary that engages in the underwriting and distribution of securities without filing an application with the FDIC if the requirements and restrictions of § 337.4 of the FDIC's regulations are met. Section 337.4 governs the manner in which subsidiaries of insured state nonmember banks must operate if the subsidiaries engage in securities activities that would not be permissible for the bank itself under section 16 of the Banking Act of 1933, commonly known as the Glass-Steagall Act. In short, the regulation lists securities underwriting and distribution as an activity that will not pose a significant risk to the deposit insurance funds if conducted through a majority-owned subsidiary that operates in accordance with § 337.4. The proposed revisions made significant changes to that exception. Most of the proposal has been adopted without significant change in the final rule.

Due to the existing cross reference to § 337.4, the FDIC reviewed § 337.4 as a part of its review of part 362 for CDRI. The purpose of the review was to streamline and clarify the regulation, update the regulation as necessary given any changes in the law, regulatory practice, and the marketplace since its adoption, and remove any redundant or unnecessary provisions. As a result of that review, the FDIC is making a number of substantive changes to the rules which govern securities sales, distribution, or underwriting by subsidiaries of insured state nonmember banks. Although the FDIC has chosen to place the exception in the part of the regulation governing activities by insured state banks, by law, only subsidiaries of state nonmember banks may engage in securities underwriting activities that are not permissible for national banks. As we have previously stated, subpart A of this regulation does not grant authority to conduct activities or make investments. Subpart A only gives relief from the prohibitions of section 24 of the FDI Act. Insured state banks must be in compliance with applicable state law when engaging in any activity.

Since the FDIC issued its proposal to amend part 362, the OCC has given its consent to an operating subsidiary of a national bank to conduct municipal revenue bond underwriting. This activity currently is not permissible for the national bank even though the activity has been approved for a subsidiary of a national bank. Concurrent with these revisions, the FDIC is issuing a proposal to address activities that are permissible for a subsidiary of a national bank that are not permissible for the national bank itself. Until that regulation is finalized, § 337.4 will remain operative to govern only activities that are not covered by the final rule in subpart A of part 362.

The FDIC is also issuing a technical amendment to § 337.4, at § 337.4(i), in connection with this rulemaking to make this clear. It provides that any state nonmember bank subsidiary or affiliate conducting securities activities governed by § 362.4(b)(5)(ii) or § 362.8(b) must comply with such rules, and such compliance satisfies their obligations under § 337.4.

Background of section 337.4. On August 23, 1982, the FDIC adopted a policy statement on the applicability of the Glass-Steagall Act to securities activities of insured state nonmember banks (47 FR 38984). That policy statement expressed the opinion of the FDIC that under the Glass-Steagall Act: (1) Insured state nonmember banks may be affiliated with companies that engage in securities activities; and (2) securities activities of subsidiaries of insured state nonmember banks are not subject to section 21 of the Glass-Steagall Act (12 U.S.C. 378) which prohibits deposit taking institutions from engaging in the business of issuing, underwriting, selling, or distributing stocks, bonds, debentures, notes, or other securities.

The policy statement applies solely to insured state nonmember banks. As noted in the policy statement, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) places certain restrictions on non-banking activities. Insured state nonmember banks that are members of a bank holding company system need to take into consideration sections 4(a) and 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843 (a) and (c)) and applicable FRB regulations before entering into securities activities through subsidiaries.

The policy statement also expressed the opinion of the Board of Directors of the FDIC that there may be a need to restrict or prohibit certain securities activities of subsidiaries of state nonmember banks. As the policy statement noted, "the FDIC * * * recognizes its ongoing responsibility to ensure the safe and sound operation of insured state nonmember banks, and depending upon the facts, the potential risks inherent in a bank subsidiary's involvement in certain securities activities".

In November 1984, after notice and comment proceedings, the FDIC adopted a final rule regulating the securities activities of affiliates and subsidiaries of insured state nonmember banks under the FDI Act. 49 FR 46709 (Nov. 28, 1984), regulations codified at 12 CFR 337.4 (1986).[6] Although the rule

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[6] After the regulations were adopted, the representatives of mutual fund companies and investment bankers brought another action challenging the regulations allowing insured banks, which are not members of the Federal Reserve System, to have subsidiary or affiliate relationships with firms engaged in securities work. The United States District Court for the District of Columbia, Gerhard A. Gesell, J., 606 F. Supp. 683, upheld the regulations, and representatives appealed and also petitioned for review. The Court of Appeals held that: (1) representatives had standing to challenge regulations under both the Glass-Steagall Act and the FDI Act, but (2) regulations did not violate either Act. *Investment Company Institute* v. *Federal Deposit Insurance Corporation*, 815 F.2d 1540 (D.C. Cir. 1987).

A trade association representing Federal Deposit Insurance Corporation-insured savings banks also brought suit challenging FDIC regulations respecting proper relationship between FDIC-insured banks and their securities-dealing "subsidiaries" or "affiliates." On cross motions for summary judgment, the District Court, Jackson, J., does not prohibit such securities activities outright, it does restrict these activities in a number of ways and only permits the activities if authorized under state law.

Section 337.4 is structured to ensure the separateness of the subsidiary and the bank. This separation is necessary as the bank would be prohibited by the Glass-Steagall Act from engaging in many activities the subsidiary might undertake and the separation safeguards the soundness of the parent bank.

Section 337.4 adopted a tiered approach to the activities of the subsidiary and limits the underwriting of securities that would otherwise be prohibited to the bank itself under the Glass-Steagall Act unless the subsidiary and bank meet the separation standards in the regulation and the activities are limited to underwriting of investment quality securities. Section 337.4 permitted a subsidiary to engage in additional underwriting if it meets the separation standards and the subsidiary is a member in good standing with the National Association of Securities Dealers and management has at least five years experience in the industry.

The subsidiaries engaged in activities not permissible for the bank itself also are required to be adequately capitalized, and therefore, these subsidiaries are required to meet the capital standards of the NASD and SEC. As a protection to the deposit insurance fund, a bank's investment in these subsidiaries is not counted toward the bank's capital.

An insured state nonmember bank that has a subsidiary or affiliate engaging in the sale, distribution, or underwriting of stocks, bonds, debentures or notes, or other securities, or acting as an investment advisor to any investment company is prohibited under § 337.4 through a series of restrictions from engaging in transactions which could create a conflict of interest or the appearance of a conflict of interest.

Under § 337.4, the FDIC created an atmosphere in which bank affiliation with entities engaged in securities activities is very controlled. The FDIC has examination authority over bank subsidiaries. Under section 10(b) of the FDI Act (12 U.S.C. 1820(b)), the FDIC has the authority to examine affiliates to determine the effect of that relationship on the insured institution. Nevertheless, the FDIC generally has allowed these entities to be functionally regulated, that is the FDIC usually examines the insured state nonmember bank and primarily relies on the SEC and the NASD oversight of the securities subsidiary or affiliate. The FDIC views its established separations for banks and securities firms as creating an environment in which the FDIC's responsibility to protect the deposit insurance funds has been met without creating too much overlapping regulation for the securities firms. The FDIC maintains an open dialogue with the NASD and the SEC concerning matters of mutual interest. To that end, the FDIC has entered into an agreement in principle with the NASD concerning examination of securities companies affiliated with insured institutions.

The number of banks which have subsidiaries engaging in securities activities that can not be conducted in the bank itself is very small. These subsidiaries engage in the underwriting of debt and equity securities and distribution and management of mutual funds.

The FRB permits a nonbank subsidiary of a bank holding company to underwrite and deal in securities through its orders under the Bank Holding Company Act and section 20 of the Glass-Steagall Act.[7] The FDIC has reviewed its securities underwriting activity regulations in light of the FRB's recently-adopted operating standards that modify the FRB's section 20 orders.[8] The FDIC also reviewed the comments received by the FRB. The FRB conducted a comprehensive review of the prudential limitations established in its section 20 decisions. The FRB sought comment on modifying these limitations to allow section 20 subsidiaries to operate more efficiently and serve their customers more effectively.[9] The FDIC found the analysis of the FRB instructive and has determined that its regulation already incorporates many of the same modifications that the FRB has made.

In the final rule, the FDIC is not adopting all of the standards of the FRB. For instance, the FDIC is not requiring a separate statement of operating standards. The final regulation applies certain standards to insured state banks engaging in securities underwriting activities through majority-owned through the "eligible subsidiary" requirements. Separate operating standards are unnecessary because each of these safeguards provides appropriate protections for bank subsidiaries engaged in underwriting activities.

However, the FDIC has retained the proposed requirement that the chief executive officer of the subsidiary may not be an employee of the bank and a majority of the subsidiary's board of directors must not be directors or officers of the bank. This standard is the same as the operating standard on interlocks adopted by the FRB to govern its section 20 orders.

One of the reasons for these safeguards involves the FDIC's continuing concerns that the bank should be protected from liability for the securities underwriting activities of the subsidiary. Under the securities laws, a parent company may have liability as a "controlling person".[10] The FDIC views management and board of director separation as enhanced protection from controlling person liability as well as protection from disclosures of material nonpublic information. Protection from disclosures of material nonpublic information also

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held that: (1) trade association had standing, and (2) regulations were within authority of FDIC. *National Council of Savings Institutions* v. *Federal Deposit Insurance Corporation*, 664 F.Supp. 572 (D.C. 1987

[7] The affiliate restrictions under § 337.4 were created prior to the time the FRB had approved securities activities under section 20 of the Glass-Steagall Act as an activity that is closely related to banking. Given the regulatory structure now in place for affiliates of banks engaged in securities activities, the FDIC's affiliate restrictions are no longer necessary except for those holding companies that are not subject to the restrictions of the Bank Holding Company Act. The restrictions on affiliation have been moved to subpart B of this regulation and are focused only on those companies that are not registered bank holding companies.

[8] 62 FR 45295, August 21, 1997.

[9] 61 FR 57679, November 7, 1996, and 62 FR 2622, January 17, 1997.

[10] Liability of "controlling persons" for securities law violations by the persons or entities they "control" is found in section 15 of the Securities Act of 1933, 15 U.S.C. 77o, and section 20 of the Securities and Exchange Act of 1934, 15 U.S.C. 78t(a). Although the tests of liability under these statutes vary slightly, the FDIC is concerned that under the most stringent of these authorities liability may be imposed on a parent entity. Under the Tenth Circuit's permissive test for controlling person liability, any appearance of an ability to exercise influence, whether directly or indirectly, and even if such influence cannot amount to control, is sufficient to cause a person to be a controlling person within the meaning of sections 15 or 20. Although liability may be avoided by proving no knowledge or good faith, proving no knowledge requires no knowledge of the general operations or actions of the primary violator and good faith requires both good faith and nonparticipation. *See First Interstate Bank of Denver, N.A.* versus *Pring*, 969 F.2d 891 (10th Cir. 1992), rev'd on other grounds, 511 U.S. 164 (1994); *Arena Land & Inv. Co. Inc.* versus *Petty*, 906 F.Supp. 1470 (D. Utah 1994); *San Francisco-Oklahoma Petroleum Exploration Corp.* versus *Carstan Oil Co., Inc.*, 765 F.2d 962 (10th Cir. 1985); *Seattle-First National Bank* versus *Carlstedt*, 678 F.Supp. 1543 (W.D. Okla. 1987). However, to the extent that any securities underwriting liability may have been reduced due to the enactment of The Private Securities Litigation Reform Act of 1995, Pub. L. 104–67, then the FDIC's concerns regarding controlling person liability may be reduced. It is likely that the FDIC will want to await the development of the standards under this new law before taking actions that could risk liability on a parent bank that has an underwriting subsidiary.

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may be enhanced by the use of appropriate policies and procedures.[11]

Substantive changes to the subsidiary underwriting activities. Generally, the regulations governing the securities underwriting activity of state nonmember banks have been streamlined to make compliance easier. In addition, state nonmember banks that deem any particular constraint to be burdensome may file an application with the FDIC to have the constraint removed for that bank and its majority-owned subsidiary. The FDIC has eliminated those constraints that were deemed to overlap other requirements or that could be eliminated while maintaining safety and soundness standards. For example, the FDIC has eliminated the notice requirement for all state nonmember bank subsidiaries that engage in securities activities that are permissible for a national bank. Under the final regulation, a notice is required only of state nonmember banks with subsidiaries engaging in securities activities that would be impermissible for a national bank. The FDIC has determined that it can adequately monitor the other securities activities through its regular reporting and examination processes.

As indicated in the following discussion on core eligibility requirements, the final rule permits a state nonmember bank meeting certain criteria to conduct, as principal, securities activities through a subsidiary that are not permissible for a national bank after filing an expedited notice with the FDIC, rather than a full application. The insured state bank must be an "eligible depository institution" and the subsidiary must be an "eligible subsidiary". Briefly, an "eligible depository institution" must be chartered and operating for at least three years, have satisfactory composite and management ratings under the Uniform Financial Institution Rating System (UFIRS) as well as satisfactory compliance and CRA ratings, and not be subject to any formal or informal corrective or supervisory order or agreement. These requirements are uniform with other part 362 notice procedures for insured state banks to engage in activities not permissible for national banks. These requirements are not presently found in § 337.4 but the FDIC believes that only banks that are well-run and well-managed should be given the opportunity to engage in securities activities that are not permissible for a national bank under the streamlined notice procedures. These criteria are imposed as expedited processing criteria rather than substantive criteria. Other banks that want to enter these activities should be subject to the scrutiny of the application process. Although operations not permissible for a national bank are conducted and managed by a separate majority-owned subsidiary, such activities are part of the analysis of the consolidated financial institution. The condition of the institution and the ability of its management are an important component in determining if the risks of the securities activities will have a negative impact on the insured institution. The "eligible subsidiary" definition, discussed below, recognizes the level of risk present in securities underwriting activities. Commenters did not object to using these standards for institutions that wish to engage in these securities activities.

One of the other notable differences between the current and final regulations is the substitution of the "eligible subsidiary" criteria for that of the "bona fide subsidiary" definition contained in § 337.4(a)(2). The definitions are similar, but changes have been made to the existing capital and physical separation requirements. Also, new requirements have been added to ensure that the subsidiary's business is conducted according to independent policies and procedures. With regard to those subsidiaries which engage in the public sale, distribution or underwriting of securities that are not permissible for a national bank, additional conditions also must be met. The conditions are that: (1) The state-chartered depository institution must adopt policies and procedures, including appropriate limits on exposure, to govern the institution's participation in financing transactions underwritten or arranged by an underwriting majority-owned subsidiary; (2) the state-chartered depository institution may not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by a majority-owned subsidiary unless the state-chartered depository institution notifies the customer that the majority-owned subsidiary is underwriting, making a market, distributing or dealing in the security; (3) the majority-owned corporate subsidiary is registered and is a member in good standing with the appropriate self-regulatory organization (SRO), and promptly informs the appropriate regional director of the Division of Supervision (DOS) in writing of any material actions taken against the majority-owned subsidiary or any of its employees by the state, the appropriate SROs or the SEC; and (4) the state-chartered depository institution does not knowingly purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the majority-owned subsidiary unless the purchase is approved by the state-chartered depository institution's board of directors before the securities are initially offered for sale to the public. These additional requirements are similar to but simplify the requirements currently contained in § 337.4. Commenters did not offer objection to these simplified standards and they have been adopted as proposed.

In addition, the FDIC has eliminated the five-year period limiting the securities activities of a state nonmember bank's underwriting subsidiary's business operations. Rather, with notice and compliance with the safeguards, a state nonmember bank's securities subsidiary may conduct any securities business set forth in its business plan after the notice period has expired without an objection by the FDIC. The reasons the FDIC initially chose the more conservative posture are rooted in the time they were adopted. When the FDIC approved establishment of the initial underwriting subsidiaries, it had no experience supervising investment banking operations in the United States. Because affiliation between banks and securities underwriters and dealers was long considered impractical or illegal, banks had not operated such entities since enactment of the Glass-Steagall Act in 1933. Moreover, pre-Glass-Steagall affiliations were considered to have caused losses to the banking industry and investors, although some modern research questions this view.[12] Thus, the affiliation of banks and investment banks presented unknown risks that were considered substantial in 1983. In addition, although the FDIC recognized that supervision and regulation of broker-dealers by the SEC provided significant protections, the FDIC had little experience with how these protections operated. The FDIC has now gained experience with supervising the securities activities of banks and is better able to assess which safeguards are appropriate to impose on these activities to protect the bank and the deposit insurance funds. For those reasons, the limitations and restrictions contained in § 337.4 on underwriting other than "investment quality debt securities" or "investment quality equity securities" have been eliminated from the regulation. It should be noted that certain safeguards have been added to the system since § 337.4 was adopted. These safeguards include risk-based capital standards and the Interagency Statement. The FDIC has removed the disclosures currently contained in § 337.4, which are similar to the disclosures required by the Interagency Statement. In lieu of the prescribed disclosures, the FDIC will rely on the Interagency Statement as applicable guidance when the subsidiary's products are sold on bank premises, by bank employees or when the bank receives remuneration for a referral. This change makes compliance easier. Comments support this change and recognize that any retail sale of nondeposit investment products to bank customers is subject to the Interagency Statement when the subsidiary's products are sold on bank premises, by bank employees, or as a result of a compensated referral.

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[11] *See* "Anti-manipulation Rules Concerning Securities Offerings", Regulation M, 17 CFR part 242 (1997) where the SEC grapples with limiting trading advantages that might otherwise accrue to affiliates by limiting trading in prohibited securities by affiliates. The SEC is attempting to prevent trading on material nonpublic information. To reduce the danger of such trading, the SEC has a broad ban on affiliated purchasers. To narrow that exception while continuing to limit access to the nonpublic information that might otherwise occur, the SEC has limited access to material nonpublic information through restraints on common officers. Alternatively, the SEC could prohibit trading by affiliates that shared any common officers or employees. In narrowing this exception to "those officers or employees that direct, effect or recommend transactions in securities", the SEC stated that it "believes that this modification will resolve substantially commenters" concerns that sharing one or more senior executives with a distribution participant, issuer, or selling security holder would preclude an affiliate from availing itself of the exclusion". 62 FR 520 at 523, fn. 22 (January 3, 1997). As the SEC also stated, the requirement would not preclude the affiliates from sharing common executives charged with risk management, compliance or general oversight responsibilities.

The FDIC has changed its disclosure standards relating to subsidiaries engaged in insurance underwriting to those found in the Interagency Statement for reasons similar to those discussed above. In addition, securities firms are subject to a comprehensive Federal supervisory and regulatory system designed to inform investors of risks inherent in their transactions. However, as was also discussed above in connection with insurance subsidiaries, there is a risk of customer confusion where the insured state bank and the subsidiary selling the product have similar names. Those cases are addressed in this part by a separation standard which is discussed below. The separation standard requires that the subsidiary conduct its business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the state-chartered depository institution and that the state-chartered depository institution is not responsible for and does not guarantee the obligations of the subsidiary. The institution and its subsidiary should take any steps necessary to avoid customer confusion on behalf of non-bank customers, or bank customers in transactions not covered by the Interagency Statement.

Finally, the FDIC will continue to impose many of the safeguards found in section 23A of the Federal Reserve Act and to impose the types of safeguards found in section 23B of the Federal Reserve Act. Although section 23B did not exist until 1987 and only covers transactions where banks and their subsidiaries are on one side and other affiliates are on the other side, the FDIC had included some similar constraints in the original version of § 337.4. Now, most of the transaction restrictions found in section 23B are adopted by the FDIC in the final rule to promote consistency with the restrictions imposed by other banking agencies on similar activities. These restrictions require that bank/subsidiary transactions be on an arm's length basis and that the subsidiary disclose that the bank is not responsible for the subsidiary's obligations. The bank also is prohibited from purchasing certain products from the subsidiary. While imposing the arm's length restrictions, the FDIC is eliminating any overlapping safeguards. Comments received did not recommend reinstating any of the restrictions from the current § 337.4.

In contrast to the arm's length transaction restrictions, transaction limitations did exist and were incorporated into § 337.4 by reference to section 23A of the Federal Reserve Act. To simplify compliance for transactions between state nonmember banks and their subsidiaries, the FDIC has placed the transactions limits and arm's length requirements in the regulatory text language and only included the restrictions that are relevant to a particular activity. The FDIC hopes that this restatement will clarify the standards being imposed on state nonmember banks and their subsidiaries.

On June 11, 1998, the FRB requested comment on an interpretation of section 23A that would exempt certain transactions between an insured depository institution and its affiliates. These interpretations would be published in part 250 of the FRB's regulations. 63 FR 32766 (June 16, 1998). Specifically, the interpretation would expand the exemption of section 23A(d)(6), which permits a bank to purchase assets of an affiliate when the assets have a "readily identifiable and publicly available market quotation". The proposal would, with some caveats, bring within the exemption securities that have a "ready market", as defined by the SEC.

The second interpretation would create two exemptions to the provision of section 23A relating to transactions with third parties that benefit the bank (and are therefore treated as "covered transactions".) The context for this exemption is an extension of credit by a bank to a third party to purchase securities through the bank's registered broker-dealer affiliate. The first exemption would apply when the affiliate acts solely as broker or riskless principal in a securities transaction. The second exemption would apply when the extension of credit is made pursuant to a preexisting line of credit that was not established for the purpose of buying securities from or through an affiliate.

In light of the FRB's proposals, we have re-evaluated our proposed coverage of similar transactions and have determined that the language we have crafted to govern securities underwriting subsidiaries would already allow the transactions that the FRB proposes to exempt under these interpretations. We believe that these transactions do not raise safety and soundness issues if conducted under the arm's length standards that we proposed and adopt in our final rule. Thus, we will allow a bank to purchase assets (including securities) when those transactions are carried out on terms and conditions that are substantially similar to those prevailing at the time for comparable transactions with unaffiliated parties. In addition, we already allow an extension of credit to buy an asset from the subsidiary when those transactions are carried out on terms and conditions that are substantially similar to those prevailing at the time for comparable transactions with unaffiliated parties. We consider that language to be broad enough to include purchasing securities, including when the subsidiary acts solely as broker or riskless principal in a securities transaction. A preexisting line of credit that was not established for the purpose of buying securities from or through the subsidiary is also allowed, if it otherwise meets the terms of the FDIC's exception.

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[12] *See, e.g.*, George J. Benston, The Separation of Commercial and Investment Banking: The Glass-Steagall Act Revisited and Reconsidered 41 (1990).

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In addition, the FDIC has sought to eliminate transaction restrictions that would duplicate the restrictions on information flow or transactions imposed by the SROs and/or by the SEC.[13] The FDIC does not seek to eliminate the obligation to protect material nonpublic information nor does it seek to undercut or minimize the importance of the restrictions imposed by the SROs and SEC. Rather, the FDIC seeks to avoid imposing burdensome overlapping restrictions merely because a securities underwriting entity is owned by a bank. Further, the FDIC seeks to avoid restrictions where the risk of loss or manipulation is small or the costs of compliance are disproportionate to the purposes the restrictions serve. In addition, the FDIC defers to the expertise of the SEC which has found that greater flexibility for market activities during public offerings is appropriate due to greater securities market transparency, the surveillance capabilities of the SROs, and the continuing application of the anti-fraud and anti-manipulation provisions of the federal securities laws.[14]

Consistent with the current notice procedure found in § 337.4, an insured state nonmember bank may indirectly through a majority-owned subsidiary engage in the public sale, distribution or underwriting of securities that would be impermissible for a national bank provided that the bank files notice prior to initiating the activities, the FDIC does not object prior to the expiration of the notice period and certain conditions are, and continue to be, met. The FDIC has shortened the notice period from the existing 60 days to 30 days and placed filing procedures in subpart G of part 303. Previously, specific instructions and guidelines on the form and content of any applications or notices required under § 337.4 were found within that section. With regard to those insured state nonmember banks that have been engaging in a securities activity covered by the new § 362.4(b)(5) under a notice filed and in compliance with § 337.4, § 362.5(b) of the regulation allows those activities to continue as long as the bank and its majority-owned subsidiaries meet the core eligibility requirements, the investment and transaction limitations, and capital requirements contained in § 362.4 (c), (d), and (e). The revised regulation requires these securities subsidiaries to meet the additional conditions specified in § 362.4(b)(5)(ii) that require securities subsidiaries to adopt appropriate policies and procedures, register with the SEC and take steps to avoid conflicts of interest. The revisions also require the state nonmember bank to adopt policies concerning the financing of issues underwritten or distributed by the subsidiary. The state nonmember bank and its securities subsidiary will have one year from the effective date of the regulation to meet these restrictions and would be expected to be working toward full compliance over that time period. Failure to meet the restrictions within a year after the adoption of a final rule will necessitate an application for the FDIC's consent to continue those activities.

To qualify for the streamlined notice procedure, a bank must be well-capitalized after deducting from its tier one capital the equity investment in the subsidiary as well as the bank's pro rata share of any retained earnings of the subsidiary. The deduction must be reflected on the bank's consolidated report of income and condition and the resulting capital will be used for assessment risk classification purposes under part 327 and for prompt corrective action purposes under part 325. However, the capital deduction will not be used to determine whether the bank is "critically undercapitalized" under part 325. Since the risk-based capital requirements had not been adopted when the current version of § 337.4 was adopted, no similar capital level was required of banks to establish an underwriting subsidiary, although the capital deduction has always been required. This requirement is uniform with the requirements found in the other part 362 notice procedures for insured state banks to engage in activities not permissible for national banks. The well-capitalized standard and the capital deduction recognize the level of risk present in securities underwriting activities by a subsidiary of a state nonmember bank. This risk includes the potential that a bank could reallocate capital from the insured depository institution to the underwriting subsidiary. Thus, it is appropriate for the FDIC to retain the capital deduction even though the FRB eliminated the requirement that a holding company deduct its investment in a section 20 subsidiary on August 21, 1997.

Comment was divided on the issue of whether the FDIC should impose revenue limits similar to those the FRB has established for section 20 affiliates. One comment noted that in order to provide for consistency between regulators and limit exposure to risk, the FDIC should adopt a limitation similar to that adopted by the FRB for section 20 affiliates that a securities subsidiary may earn no more than 25 percent of its income from activities that are ineligible for the bank. Other comments countered that there is not a legal or safety and soundness reason to apply such a revenue limit. We agree that there is no legal reason for a revenue limit. Because of the restrictions on transactions, the capital deduction, and separations required between a bank and a subsidiary, the FDIC does not believe that the revenue limit is necessary to control the risk to the affected deposit insurance fund.

One comment asserts that there are significant benefits of securities underwriting and no material disadvantages. The revisions that have been made are intended to strike a balance between enabling banks to compete in the financial services arena and allowing activities without consideration of risks involved. With appropriate safeguards, any material disadvantages can be mitigated or eliminated.

Notice for change in circumstances. The regulation requires the bank to provide written notice to the appropriate Regional Office of the FDIC within 10 business days of a change in circumstances in its real estate or securities subsidiary. Under the revised regulation, a change in circumstances is described as a material change in a subsidiary's business plan or management. The standard of material change would indicate such events as a change in chief executive officer of the subsidiary or a change in investment strategy or type of business or activity engaged in by the subsidiary. The regional director also may address other changes that come to the attention of the FDIC during the normal supervisory process. The FDIC received two comments concerning the change of circumstance notice. Both comments indicated that the notice is burdensome and unnecessary. The comments argue that a change in the chief executive office or investment strategies are routine. The FDIC is putting significant reliance on the management and the business plan presented when an activity is approved for a majority-owned subsidiary. The FDIC does not consider either change to be routine and believes that it is important that the FDIC be aware of material changes in the operations of the subsidiary. One comment requested that the notice period be extended from ten days to 30 days. The FDIC believes that both a change in management and a change in the business plan of the subsidiary should be matters that have received significant prior consideration before these events occur. It is not unreasonable to request notice of these events within ten days of the change. Therefore, after careful consideration of the comments, we have not changed the proposed requirement for a notice of change of circumstances to be submitted within 10 business days after any such change.

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[13] *See* "Anti-manipulation Rules Concerning Securities Offerings," 62 FR 520 (January 3, 1997); 15 U.S.C. 78o(f), requiring registered brokers or dealers to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information; and "Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information," A Report by the Division of Market Regulation, U.S. SEC, (March 1990).

[14] Id. at 520.

In the case of a state member bank, the FDIC will communicate our concerns to the appropriate persons in the Federal Reserve System regarding the continued conduct of an activity after a change in circumstances. The FDIC will work with the identified persons within the Federal Reserve System to develop the appropriate response to the new circumstances.

The FDIC does not intend to require a bank which falls out of compliance with eligibility conditions to immediately cease any activity in which the bank had been engaged. The FDIC will deal with each situation on a case-by-case basis through the supervision and examination process. In short, the FDIC intends to utilize its supervisory and regulatory tools in dealing with a bank's failure to meet the eligibility requirements on a continuing basis. The issue of the bank's ongoing activities will be dealt with in the context of that effort. The FDIC views the case-by-case approach to whether a bank will be permitted to continue an activity as preferable to forcing a bank to, in all instances, immediately cease the activity. Such an inflexible approach could exacerbate an already poor situation.

Real estate leasing. As was discussed above, the FDIC has deleted the current exception allowing a majority-owned subsidiary to engage in activities included on the referenced list of activities determined by the FRB to be closely related to the business of banking under section 4(c)(8) of the Bank Holding Company Act, because the activities included on that list are generally of a type permissible for national banks. The one exception that clearly is not generally permissible for a national bank involves real estate leasing. The FDIC has inserted a real estate leasing provision to allow continuation of activities that are permitted under the current exception but may be lost with the elimination of the reference to the 4(c)(8) list.

For the purposes of part 362, the FDIC studied real estate leasing to make a determination if there is a significant risk to the fund. The FDIC's determination requires that we look at the possibility of loss inherent in the leasing transaction.

In a real estate leasing transaction, the lessor is the owner of the parcel subject to the lease. The FDIC has defined equity investment to include any interest in real estate. A threshold question for the FDIC involves whether an ownership interest as lessor carries all of the risks and rewards of ownership when there is no lease.

By inserting a reference to the 4(c)(8) list, the FDIC consented that real estate leasing could be conducted under the standards set by the FRB. These standards provided that leasing real property or acting as agent, broker, or adviser in leasing such property is allowed if: (1) The lease is on a nonoperating basis which means that the banking holding company may not engage in operating, servicing, maintaining, or repairing leased property during the lease term; (2) the initial term of the lease is at least 90 days; (3) at the inception of the lease, the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated cost of financing the property over the term of the lease from rental payments, estimated tax benefits, and the estimated residual value of the property and the expiration of the initial lease; and (4) the estimated residual value of the property shall not exceed 25 percent of the acquisition cost of the property to the lessor. In defining the real estate leasing parameters, the FRB's definition focuses on characteristics that make the activity closely related to banking.

In making its risk to the fund determination, the FDIC looked not only at banking standards for leasing transactions but also at GAAP. Under GAAP, a lease is defined as the right to use an asset for a stated period of time. Generally, a transaction is not a lease if the right to use the property is not transferred; the transaction involves the right to explore natural resources; or the transaction represents licensing agreements. Also under GAAP, leases are considered under two broad categories: (1) Capital leases which effectively transfer the benefits and risks of ownership from the lessor to the lessee; and (2) operating leases which is everything that is not a capital lease and represents a series of cash flows. If any one of the following criteria is met, a lease may be considered to be a capital lease:

- Ownership of the property is transferred to the lessee at the end of the lease term; or
- The lease contains a bargain purchase option; or
- The lease term represents at least 75 percent of the estimated economic life of the leased property; or
- The present value of the minimum lease payments at the beginning of the lease term is 90 percent of more of the fair value of the leased property to the lessor at the inception of the lease less any related investment tax credit retained by and expected to be realized by the lessor.

Two other criteria must be present in order for the lessor to determine that a lease is a capital lease: (1) Collection of minimum lease payments is reasonably predictable; and (2) no important uncertainties exist for unreimbursable costs to be borne by the lessor.

The FDIC has decided that a majority-owned subsidiary acting as lessor under a real property lease which meets certain criteria does not represent a significant risk to the deposit insurance fund. To meet these criteria, the lease must qualify as a capital lease under GAAP and the bank and the majority-owned subsidiary may not provide servicing, repair, or maintenance to the property except to the extent needed to protect the value of the property. In addition, the majority-owned subsidiary may not acquire real estate to be leased unless it has entered into a capital lease, or has a binding commitment to enter into such a lease, or has a binding written agreement that indemnifies the subsidiary against loss in connection with its acquisition of the property. Any expenditures by the majority-owned subsidiary to make reasonable repairs, renovations, and necessary improvements shall not exceed 25 percent of the subsidiary's full investment in the property. These standards provide a framework in which the risks and rewards of ownership of the leased property have effectively been transferred from the lessor to the lessee.

A majority-owned subsidiary that acquires property for lease under this provision may not use this exception as a vehicle to acquire an equity investment in real estate. Upon expiration of the initial lease, the majority-owned subsidiary must as soon as practicable, but in any event in less than two years, re-lease the property under a capital lease or divest itself of the property. An application will be required if the subsidiary cannot meet the two-year deadline.

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Acquiring and retaining adjustable rate and money market preferred stock. The proposed regulation text has been revised in the final rule to provide that a majority-owned subsidiary may acquire and retain adjustable rate and money market preferred stock and any other instrument that the FDIC has determined to have the character of debt securities to the same extent that these activities may be conducted by the bank itself. Since these subsidiaries are fully consolidated with the bank, the 15 percent of tier one capital limitation will be calculated against the consolidated tier one capital of the bank and subsidiary. If a bank and its majority-owned subsidiary both engage in this activity, the authority to conduct this activity in a majority-owned subsidiary may not be used to exceed the 15 percent limitation on this type of activity without further consent of the FDIC. This exception is provided to allow consistency between the authorized activities of the bank and its majority-owned subsidiary.

Core eligibility requirements. Consistent with the proposal, the revised regulation has been organized much differently from the current regulation where separation standards between an insured state bank and its subsidiary are contained in the regulation's definition of "bona fide" subsidiary. The revised regulation introduces the concept of core eligibility requirements. These requirements are defined in two parts. The first part defines the eligible depository institution criteria and the second part defines the eligible subsidiary standards.

Eligible depository institution. An "eligible depository institution" is a depository institution that has been chartered and operating for at least three years; received an FDIC-assigned composite UFIRS rating of 1 or 2 at its most recent examination; received a rating of 1 or 2 under the "management" component of the UFIRS at its most recent examination; received at least a satisfactory CRA rating from its primary federal regulator at its last examination; received a compliance rating of 1 or 2 from its primary federal regulator at its last examination; and is not subject to any corrective or supervisory order or agreement. The FDIC believes that these criteria are appropriate to ensure that expedited processing under the notice procedures is available only to well-managed institutions that do not present any supervisory, compliance or CRA concerns.

The standards for an "eligible depository institution" are being coordinated with similar requirements for other types of notices and applications made to the FDIC. In developing the eligibility standards, several items have been added that previously were not a stated standard for banks wishing to engage in activities not permissible for a national bank.

The requirement that the institution has been chartered and operated for three or more years reflects the experience of the FDIC that newly formed depository institutions need closer scrutiny. Therefore, a request by this type of institution to become involved in activities not permissible for a national bank should receive consideration under the application process rather than being eligible for a notice process. Several comments noted that the provision requiring the bank to be operating for three or more years ignores the presence of an established bank holding company or seasoned management. The FDIC is persuaded by the arguments that an exception is appropriate when there is an established holding company or seasoned management is present. Therefore, the criterion has been changed to require that the bank must have been chartered and operating for 3 or more years unless the appropriate regional director (DOS) finds that the bank is owned by an established, well-capitalized, well-managed holding company or is managed by seasoned management.

The revised regulation provides that the notice procedures should be available only to well-managed, well-capitalized banks. Banks which have composite and management ratings of 1 or 2 have shown that they have the requisite financial and managerial resources to run a financial institution without presenting a significant risk to the deposit insurance fund. While lower-rated financial institutions may have the requisite financial and managerial resources and skills to undertake such activities, the FDIC believes that those institutions should be subject to the formal part 362 application process as opposed to the streamlined notice process. Institutions that do not meet the eligibility criteria have been evaluated and have been determined to have some weaknesses that may require additional attention before allowing them to engage in additional activities. For that reason, the FDIC has concluded that it is more prudent to require institutions rated 3 or below to utilize the application process.

Comments received did not object to the standard of a composite rating of 1 or 2 or a management rating of 1 or 2; however, the regulatory language that the ratings used be assigned by the appropriate federal banking agency was questioned. Some comments contended that this provision fails to consider that the FDIC and FRB recognize and generally adopt the ratings assigned by the state banking departments under an alternate examination program. The language does not ignore ratings assigned by the state banking authorities. All ratings, whether state or Federal, considered by the FDIC for purposes of processing applications must be assigned by the FDIC after reviewing the results of an examination conducted by another banking agency. Although the language differs between this processing criteria and the proposal to amend our applications processing regulation (part 303), there is no intention of establishing a different standard. To reduce confusion, the language in the revised regulation has been changed to reflect that the ratings are the FDIC-assigned rating at the institution's most recent state or Federal examination.

In setting criteria to define which banks are eligible to use the notice process, the FDIC has determined it is appropriate to take into account all areas of managerial and operational expertise. In particular, the revised regulation requires that the institution have a satisfactory or better CRA rating, a 1 or 2 compliance rating, and not be subject to any formal or informal enforcement action before it may use the notice procedures.

The proposal to use the CRA ratings as an eligibility criteria drew negative comments. One commenter even expressed the opinion that the FDIC's use of a CRA rating as an eligibility criterion for expedited processing is a violation of the CRA itself. The FDIC is not proposing some alternative method of CRA enforcement. The CRA criterion is not intended to "punish" any bank which the FDIC has previously criticized for substandard CRA performance; nor is it intended to "reward" a bank with satisfactory performance. The CRA criterion acts solely as a procedural device for application processing, in connection with the other criteria, to identify applications for further review if they come from banks which have not been meeting all the primary supervisory requirements. If a bank has not complied with all of these primary supervisory expectations, it may be a symptom of financial, management, or operational deficiencies which could be exacerbated by undertaking the proposed additional activities. The consequence of failing to meet all the eligibility criteria is only that the request will be subject to exactly the same kind and level of review to which it is subject under the current rules which have no expedited processing procedures. Therefore, the FDIC retains the same eligibility criteria in the final regulation as proposed.

Eligible Subsidiary. The eligible subsidiary requirements are also used to determine which institutions qualify for notice processing. Additionally, the requirements are also criteria the FDIC is likely to take into account when reviewing and considering applications. The FDIC's support of the concept of the expansion of bank powers is based in part on establishing a corporate separateness between the insured state bank and the entity conducting activities that are not permissible for the depository institution directly. The revised regulation establishes these separations as well as standards for operations through the concept of "eligible subsidiary". An entity is an "eligible subsidiary" if it: (1) Meets applicable statutory or regulatory capital requirements and has sufficient operating capital in light of the normal obligations that are reasonably foreseeable for a business of its size and character; (2) is physically separate and distinct in its operations from the operations of the bank, provided that this requirement shall not be construed to prohibit the bank and its subsidiary from sharing the same facility if the area where the subsidiary conducts business with the public is clearly distinct from the area where customers of the bank conduct business with the institution—the extent of the separation will vary according to the type and frequency of customer contact; (3) maintains separate accounting and other business records; (4) observes separate business formalities such as separate board of directors' meetings; (5) has a chief executive officer who is not an employee of the bank; (6) has a majority of its board of directors who are neither directors nor officers of the bank; (7) conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that the bank is not responsible for and does not guarantee the obligations of the subsidiary; (8) has only one business purpose; (9) has a current written business plan that is appropriate to the type and scope of business conducted by the subsidiary; (10) has adequate management for the type of activity contemplated, including appropriate licenses and memberships, and complies with industry standards; and (11) establishes policies and procedures to ensure adequate computer, audit and accounting systems, internal risk management controls, and has the necessary operational and managerial infrastructure to implement the business plan.

The separations currently necessary between the bank and subsidiary are outlined in the definitions of "bona fide" subsidiary contained in § 337.4 and part 362. The broad principles of separation upon which the "bona fide" subsidiary definition and the "eligible subsidiary" definition are based include: (1) Adequate capitalization of the subsidiary; (2) separate corporate functions; (3) separation of facilities; (4) separation of personnel; and (5) advertising the bank and the subsidiary as separate entities. In developing the standards for an "eligible subsidiary", the FDIC has modified some of the criteria used in the current regulation. The changes are found in the capital requirement, the physical separation requirement, the separate employee standard, and the requirement that the subsidiary's business be conducted pursuant to independent policies and procedures.

The language in the current part 362 allows the subsidiary and the parent bank to share officers so long as a majority of the subsidiary's executive officers were neither officers nor directors of the bank. Section 337.4 contains a requirement that there be no shared officers. The "eligible subsidiary" concept adopts a standard that the chief executive officer of the subsidiary should not be an employee of the bank. The eligible subsidiary requirements in this regard are thus less restrictive than those found in both § 337.4 and the current version of part 362, as well as those in many FDIC orders authorizing real estate activities. The eligible subsidiary definition only requires that the chief executive officer not be an employee of the bank. Officers are employees of the bank. This limitation would allow the chief executive officer to be an employee of an affiliated entity or be on the board of directors of the bank. Two comments indicated that the requirement for an independent chief executive officer is too restrictive. One comment suggested that this requirement be dropped for small banks. The FDIC is sympathetic to the concerns of small banks; however, banks that desire relief from this standard may apply to the FDIC for approval. The FDIC recognizes that there may be instances in which this standard may not be needed. The FDIC will consider such requests and waive the standard in appropriate situations.

The current rule's requirement that the subsidiary be adequately capitalized was revised to provide that the subsidiary must meet any applicable statutory or regulatory capital requirements, that the subsidiary have sufficient operating capital in light of the normal obligations that are reasonably foreseeable for a business of its size and character, and that the subsidiary's capital meet any commonly accepted industry standard for a business of its size and character. This definition clarifies that the FDIC expects the subsidiary to meet the capital requirements of its primary regulator, particularly those subsidiaries involved in securities and insurance. No comments objected to this change. This standard is unchanged in the final rule.

The physical separation requirement of the current rule was clarified by the addition of a sentence which indicates that the extent to which the bank and the subsidiary must carry on operations in physically distinct areas will vary according to the type and frequency of public contacts. The FDIC does not intend to require physical separation where such a standard adds little value such as where a subsidiary engaged in developing commercial real estate has little or no customer contact. The possibility of customer confusion should be the determining factor in deciding the physical separation requirements for the subsidiary.

One commenter stated that this clarification is an improvement over the existing regulation; however, the comment encourages the FDIC to clarify that the subsidiary and the bank may conduct activities in the same location if the subsidiary is engaging in activities that are permissible for the bank to engage. The FDIC agrees that this point is important. The requirements of this regulation apply to activities that are not permissible for a national bank. Activities such as the sale of securities are covered by the requirements of the Interagency Statement. We have decided that no change in the regulation language is necessary to further clarify that these standards do not apply to subsidiaries engaging solely in activities permissible for a national bank. We believe it is clear that the coverage of the core eligibility requirements is for institutions to conduct as principal activities through a subsidiary that are not permissible for a subsidiary of a national bank.

We eliminated the provision contained in the current regulation that required employees of the bank and subsidiary to be separately compensated when they have contact with the public. This requirement was imposed to reduce confusion relating to whether customers were dealing with the bank or the subsidiary. Since the adoption of the current regulation, the Interagency Statement was issued. The Interagency Statement recognizes the concept of employees who work both for a registered broker-dealer and the bank. Because of the disclosures required under the Interagency Statement informing the customer of the nature of the product being sold and the physical separation requirements, the need for separate public contact employees is diminished. No objections to the proposed changes were offered, and the requirement for separate public contact employees is dropped from the revised regulation.

Language was added that the subsidiary must conduct business in a manner that informs customers that the bank is not responsible for and does not guarantee the obligations of the subsidiary. This standard is taken from section 23B of the Federal Reserve Act which prohibits banks from entering into any agreement to guarantee the obligations of their affiliates and prohibits banks as well as their affiliates from advertising that the bank is responsible for the obligations of its affiliates. In the proposal, we made this standard an affirmative duty of disclosure. This type of disclosure is intended to reduce customer confusion concerning who is responsible for the products purchased. Two comments questioned the affirmative nature of the standard. The duty to inform customers would in many cases be unnecessary. For instance, when a transaction is covered by the Interagency Statement disclosures are already required to inform customers that the product is not an obligation of the bank. The commenters believe that the requirement should be analogous to section 23B and only require that the subsidiary not mislead its customers. The FDIC has not been persuaded by the arguments. The affirmative requirement to make disclosures applies to the subsidiary and the Interagency Statement disclosures apply to the bank. One of the most important steps the subsidiary can take to assure a separate corporate existence from the parent bank is to make affirmative disclosures to its customers as prescribed. Therefore, the disclosure requirement remains as proposed.

The regulation contains a standard that a majority of the board of directors of the eligible subsidiary act as neither a director nor an officer of the bank. Commenters suggested that this standard be altered. One comment suggested that the standard be eliminated for small banks. The issue of the need for management separation is not an issue that clearly relates to the size of the bank. We recognize that this requirement for some small banks may present a challenge. The FDIC believes that management separations are an important safeguard. If an institution desires a different structure than that proposed in these standards, they may submit an application for FDIC consideration. Another commenter suggested that the FDIC defer to the OCC standard that permits ⅔ of the subsidiary's board members to be directors of the depository institution. The FDIC believes that the majority of the board standard provides a structure in which decisions relating to the subsidiary are being made by a majority of persons who are not associated with the bank. This standard provides an easily identifiable level of separation. If the standard creates a burden for a bank, the FDIC will consider a request for relief. After considering the comments, the FDIC has decided not to change this standard.

In a previous proposal a question was raised if this standard prohibited directors of a subsidiary from serving as directors and officers of the parent holding company or an affiliated entity. The FDIC is primarily concerned about risk to the deposit insurance funds and is therefore looking to establish separation between the insured bank and its subsidiary. The eligible subsidiary requirement is designed to assure that the subsidiary is in fact a separate and distinct entity from the bank. This requirement should prevent "piercing of the corporate veil" and insulate the bank, and the deposit insurance fund, from any liabilities of the subsidiary.

We recognize that a director or officer employed by the bank's parent holding company or a sister affiliate is not as "independent" as a totally disinterested third party. The FDIC is, however, attempting to strike a reasonable balance between prudential safeguards and regulatory burden. The requirement that a majority of the board not be directors or officers of the bank will provide certain benefits that the FDIC thinks are very important in the context of subsidiary operations. The FDIC expects these persons to act as a safeguard against conflicts of interest and to be independent voices on the board of directors. While the presence of "independent" directors may not, in and of itself, prevent piercing of the corporate veil, it will add incremental protection and in some circumstances may be key to preserving the separation of the bank and its subsidiary in terms of liability. In view of the other standards of separateness that have been established under the eligible subsidiary standard as well as the imposition of investment and transaction limits, we do not believe that a connection between the bank's parent or affiliate will pose undue risk to the insured bank.

In addition to the separation standards, the "eligible subsidiary" concept introduces operational standards that are not part of the current regulation. These standards provide guidance concerning the organization of the subsidiary that the FDIC believes important to the independent operation of the subsidiary.

The revised regulation requires that a bank that wishes to file a notice to establish a subsidiary to engage in insurance, real estate or securities have only one business purpose among those categories. Several comments objected to this standard. One comment stated that the subsidiary should be allowed to engage in similar business lines rather than being held to a strict sole purpose standard. Other comments encouraged a broad definition of the term "one business purpose". Other comments recommended eliminating the requirement stating the FDIC should rely on the business plan for information needed to address any concerns. Because the FDIC is limiting a bank's transactions with subsidiaries engaged in real estate, or securities activities authorized under subpart A, and the aggregate limits only extend to subsidiaries engaged in the activities subject to the investment limits, the FDIC believes it is important to limit the scope of the subsidiary's activities when using the expedited procedures. The FDIC will use the business plan as a tool to review the lines of business engaged in by the subsidiary. The FDIC will be flexible in its interpretation of the term "one business purpose." For instance, the FDIC would consider a subsidiary engaged in underwriting a financial product and also selling that product to have one business purpose.

The regulation contains a standard that the subsidiary have a current written business plan that is appropriate to its type and scope of business. The FDIC believes that an institution that is contemplating involvement with activities that are not permissible for a national bank or a subsidiary of a national bank should have a carefully conceived plan for how it will operate the business. We recognize that certain activities do not require elaborate business plans; however, every activity should be considered by the board of the bank to determine the scope of the activity allowed and how profitability is to be attained. We received no comments on this requirement. This standard is adopted without change.

The requirement for adequate management of the subsidiary establishes the FDIC's view that insured depository institutions should consider the importance of management in the success of an operation. The requirement to obtain appropriate licenses and memberships and to comply with industry standards indicates the FDIC's support of securities and insurance industry standards in determining adequacy of subsidiary management. We received no comments, and this standard is adopted without change.

An important factor in controlling the spread of liabilities from the subsidiary to the insured depository institution is that the subsidiary establishes necessary internal controls, accounting systems, and audit standards. The FDIC does not expect to supplement this requirement with specific guidance since the systems must be tailored to specific activities, some of which are otherwise regulated. We received no comments on this standard, and it is unchanged.

Investment and transaction limits. The revised regulation contains investment limits and other requirements that apply to an insured state bank and its subsidiaries that engage in "as principal" activities that are not permissible for a national bank if the requirements are imposed by order or expressly imposed by regulation. The provision is not contained in the current regulation; however, § 337.4 imposes by reference the limitations of section 23A of the Federal Reserve Act (§ 337.4 was adopted prior to the adoption of section 23B of the Federal Reserve Act). Both section 23A and section 23B restrictions have been imposed by the FDIC through its orders authorizing insured state banks to engage in activities not permissible for a national bank.

Some of the provisions of sections 23A and 23B are inconsistent when applied in the context of a bank/subsidiary relationship. The FDIC believes that merely incorporating sections 23A and 23B by reference raises significant interpretative issues and only promotes confusion in an already complex area.

For these reasons, the FDIC has adopted a separate subsection which sets forth the specific investment limits and arm's length transaction requirements. In general, the provisions impose an aggregate investment on all subsidiaries that engage in activities covered by the investment limits, require that extensions of credit from a bank to its subsidiaries be fully-collateralized when made, prohibit the bank from taking a low quality asset as collateral on such loans, and require that transactions between the bank and its subsidiaries be on an arm's length basis. The comments received state that the investment and transaction limits which have been proposed are preferable to incorporating sections 23A and 23B by reference. Two comments suggested that this section be eliminated if the FRB adopts its proposal to expand sections 23A and 23B coverage to subsidiaries engaged in activities not permissible for a national bank. The FDIC will not respond to this scenario until the FRB has issued a final regulation. Another comment expressed the opinion that in view of the explicit statutory exception in sections 23A and 23B for transactions between an insured bank and its subsidiaries, the restrictions in these provisions should not be applied in any form by the FDIC. The FDIC agrees that section 23A and 23B should not be applied to a bank/subsidiary relationship that is fully consolidated for capital reporting purposes. For subsidiaries that are engaged in activities for which the FDIC imposes a requirement that capital of the subsidiary be deducted from the bank's capital in determining the bank's capital adequacy, we believe that restrictions on transactions between the bank and the subsidiary are also necessary. Another comment indicated that the investment and transaction limits proposed are unnecessarily complex and would make many activities uneconomic. Specifically, the cost of collateral requirements would diminish if not eliminate the potential profit from the permitted activity. The FDIC is concerned that an insured bank not be allowed to easily and cheaply transfer risks from the uninsured entity to the insured depository institution. Collateral requirements are a method of assuring that any money lent by the bank to its subsidiary will ultimately be repaid. This comment also suggests that Regulation K of the FRB would provide a more appropriate analogue than sections 23A and 23B. In this regulation, appropriate safeguards are provided by focusing on the capital strength of the bank and the extent of its investment in the entity. We believe that capital strength of the bank and the extent of its investment in a subsidiary are important considerations. The revised regulation addresses each of those areas. In addition, restrictions on the flow of funds from an insured bank to a subsidiary engaged in activities not permissible for the bank itself are necessary. We have chosen to keep the investment and transaction limitations in the final regulation.

The revised regulation expands the definition of bank for the purposes of the investment and transaction limitations. A bank includes not only the insured entity but also any subsidiary that is engaged in activities that are not subject to these investment and transaction limits. Sections 23A and 23B of the Federal Reserve Act combine the bank and all of its subsidiaries in imposing investment limitations on all affiliates. The FDIC is using the same concept in separating subsidiaries conducting activities that are subject to investment and transaction limits from the bank and any other subsidiary that engages in activities not subject to the investment and transaction limits. This rule will prohibit a bank from funding a subsidiary that is subject to the investment and transaction limits through a subsidiary that is not subject to the limits. One comment expressed support for this concept but emphasized that there is no need to include "eligible subsidiaries" in the restrictions since these entities have already been separated from the insured depository institution. The FDIC did not intend to extend these restrictions to transactions between "eligible subsidiaries". Therefore, this language has not been changed.

Investment limit. Under the proposed rule, the FDIC limited bank investments in certain subsidiaries. Those limits are basically the same as would apply between a bank and its affiliates under section 23A. As is the case with covered transactions under section 23A, extensions of credit and other transactions that benefit the bank's subsidiary would be considered part of the bank's investment. The only exception would be for arm's length extensions of credit made by the bank to finance sales of assets by the subsidiary to third parties. These transactions would not need to comply with the collateral requirements and investment limitations of section 23A, provided that they met certain arm's length standards.

In contrast to the bank-affiliate relationship being governed by the statutory limits of sections 23A and 23B, inherent in the idea of a subsidiary is the subsidiary's value to the bank as an asset. That value increases as the subsidiary earns profits and decreases as the subsidiary loses money. The increases are reflected in the subsidiary's retained earnings and the consolidated retained earnings of the bank as a whole. The FDIC wants to

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separate the bank's equity investment in the subsidiary from any lending to or covered transactions with the subsidiary. Thus, the FDIC proposed to treat the bank's equity investment as a deduction from capital, while limiting any lending to or covered transactions with the subsidiary in a similar fashion as these transactions are limited in the bank-affiliate relationship. Then, the question arises as to how to properly treat retained earnings at the subsidiary level. If retained earnings at the subsidiary level were treated as subject to the investment limits, the bank could be forced to take the retained earnings out of the subsidiary to stay under the applicable limits. If retained earnings are allowed to accumulate without limit, then the bank could declare dividends to its shareholders based on the retained earnings at the subsidiary. Later, in the event that the subsidiary incurred losses, the bank's capital could become inadequate based on the subsidiary's losses. Thus, the FDIC decided that retained earnings should be deducted from capital in the same way as the equity investment is deducted.

Comments were supportive of the proposed concept of investment limits for loans to and debt of the subsidiary in contrast to the capital deduction for equity investments in and retained earnings of the subsidiary. One commenter expressed reservations about the structure of the investment limits. The proposal to limit transactions between a bank and its eligible subsidiary to 10 percent of capital to any one subsidiary and 20 percent of capital to all eligible subsidiaries conducting the same activity was questioned. By including the 10 percent limitation to any one subsidiary, the FDIC would only create burden to institutions without the benefit of appreciably limiting or diversifying risk. The commenter points out that since the eligible subsidiaries are not subject to transaction limitations between each other, it would be easy to structure the use of the entire 20 percent investment provision between the two subsidiaries but really for the benefit of the same project or business. The comment accepts that the 20 percent aggregate limit is appropriate, and recommends that the regulation be amended to apply only the 20 percent limitation. The FDIC is persuaded by this argument, and the final rule has dropped the 10 percent to any one subsidiary limitation.

The definition of "investment" under this provision has four components. The first component is any extension of credit by the bank to the subsidiary. The term "extension of credit" is defined in part 362 to have the same meaning as that under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) and would therefore apply not only to loans but also to commitments of credit. The second component is "any debt securities of the subsidiary" held by the bank. This component recognizes that debt securities are very similar to extensions of credit. The third component is the acceptance of securities issued by the subsidiary as collateral for extensions of credit to any person or company. The fourth and final component addresses any extensions or commitments of credit to a third party for investment in the subsidiary, investment in a project in which the subsidiary has an interest, or extensions of credit or commitments of credit which are used for the benefit of, or transferred to, the subsidiary. Commenters did not object to these components of "investment," and the definition is unchanged.

The revised regulation calculates the 20 percent limit based on tier one capital. Also, the revisions limit the aggregate investment to all subsidiaries conducting activities subject to the investment limits. Comments note that the 20 percent limit is calculated against tier one capital instead of capital and surplus as is the standard for section 23A. One comment goes on to state that even though the FDIC has proposed a more restrictive standard, the 20 percent limit applies to an aggregate of the same activity rather than the section 23A standard covering all affiliates. In that respect, the 20 percent limit in the proposal is less restrictive. Although the FDIC does not intend to mimic section 23A in all respects, the FDIC has determined that an aggregate limit on activities that are covered by the investment limits is appropriate. The standard established is intended to reflect an appropriate limitation for subsidiary activities. The FDIC continues to use the more restrictive tier one capital as its measure to create consistency throughout the regulation. The FDIC does not find the burden of this more restrictive capital base to be unreasonable.

Arm's length transaction requirement. For subsidiaries engaged in activities covered by the investment and transactions limitations, the revisions require that any transaction between a bank and its subsidiary must be on terms and conditions that are substantially the same as those prevailing at the time for comparable transactions with unaffiliated parties. This "arm's length transaction" requirement is intended to make sure that the business of the subsidiary does not take place to the disadvantage of the bank. The types of transactions covered by the requirement include: (1) Investments in the subsidiary; (2) the purchase from or sale to the subsidiary of any assets, including securities; (3) entering into any contract, lease or other agreement with the subsidiary; and (4) paying compensation to the subsidiary or any person who has an interest in the subsidiary. The revised regulation indicates, however, that the restrictions do not apply to an insured state bank giving immediate credit to a subsidiary for uncollected items received in the ordinary course of business.

The arm's length transaction requirement is meant to protect the bank from abusive practices. To the extent that the subsidiary offers the parent bank a transaction which is at or better than market terms and conditions, the bank may accept such transaction since the bank is receiving a benefit, as opposed to being harmed. It may be the case, however, that a bank will be unable to meet the regulatory standard because there are no known comparable transactions between unaffiliated parties. In these situations, the FDIC will review the transactions and expect the bank to meet a "good faith" standard.

This section and the language therein is not a substantive change from the proposal. Comments had mixed messages about this section of the regulation. Commenters agreed that this proposal is preferable to the incorporation by reference to section 23B. One comment stated that if the FRB's proposal to impose section 23B on subsidiaries is finalized, the FDIC should withdraw its regulatory language to avoid confusion. The FDIC is aware of the FRB proposal and will react once the final position of the FRB is known. Another comment stated that in view of the explicit statutory exception in section 23B between an insured depository institution and its subsidiaries, these restrictions in any form should not be applied by the FDIC. When engaging in transactions with a subsidiary, banks and bank counsel should be aware of the FDIC's separate corporate existence concerns. Bank subsidiaries should be organized and operated as separate corporate entities. Subsidiaries should be adequately capitalized for the business they are engaged in and separate corporate formalities should be observed. Frequent transactions between the bank and its subsidiary which are not on an arm's length basis may lead to questions as to whether the subsidiary is actually a separate corporate entity or merely the alter ego of the bank. One of the primary reasons for the FDIC requiring that certain activities be conducted through an eligible subsidiary is to provide the bank, and the deposit insurance funds, with liability protection. To the extent a bank ignores the separate corporate existence of the subsidiary, this liability protection is jeopardized. We believe setting forth the exact requirements will reduce regulatory burden and confusion as banks and bank counsel will more readily know what requirements are to be followed.

Banks will be prohibited from buying low quality assets from their subsidiaries. We received no comments objecting to this standard. The FDIC has taken the definition of "low quality asset" from the proposal without modification.

The revised regulation contains provisions addressing insider transactions and product tying. The arm's length standard addresses transactions between an insured depository institution and its subsidiaries. The FDIC is adding a provision that an arm's length standard applies to transactions between the subsidiary and insiders of the insured depository institution. The revised regulation requires that any transactions with insiders must meet the requirements that transactions be on substantially the same terms and conditions as generally available to unaffiliated parties. Banks engaging in such transactions should retain proper documentation showing that the transactions meet the arm's length requirement. The FDIC will review transactions with insiders in the normal course of the examination process and take such actions as may be necessary and appropriate if problems arise. Questionable transactions will have to be justified under the standards of the regulation.

Comments were not supportive of this standard. One comment stated that the new restriction is unnecessary since such insiders would already be subject to the restrictions set forth in Regulation O. The FDIC has recognized this overlap by excluding transactions covered by § 337.3, which implements many of the restrictions contained in Regulation O for insured state nonmember banks. The comment also contends that if the subsidiary is isolated from the bank as would be required by the revised regulation, there should be no need to regulate transactions between bank insiders and the eligible subsidiary. The FDIC is implementing these provisions in an abundance of caution. The standard is that insider transactions should be on the same terms and conditions as those prevailing at the time for comparable transactions with persons not affiliated with the insured state bank. The standard does not prohibit transactions; it merely sets parameters that does not allow insiders to engage in transactions that are on terms more favorable than those available in the market. Another comment states that, for example, this standard potentially would prohibit an executive officer from participating in an employee benefit program that waives trustee fees for IRA accounts if the assets of such accounts are invested in mutual funds distributed by a securities firm affiliate of the bank. The FDIC is persuaded by this argument and has added an exception that the standard shall not prohibit any transaction made pursuant to a benefit or compensation program that is widely available to employees of the insured state bank and that does not give preference to any insider of the insured state bank over other employees of the insured state bank.

The proposed regulation also contained a requirement that neither the insured state bank nor the majority-owned subsidiary may require a customer to either buy a product or use a service from the other as a condition of entering into a transaction. While the condition may duplicate existing standards under applicable law for banks to some extent, it is not clear that all circumstances addressed by the proposed condition are covered by the existing statutory and regulatory restrictions. Banks are subject to statutory anti-tying restrictions at 12 U.S.C. § 1972. The OCC extends anti-tying provisions to national bank subsidiaries. *See* OCC Bulletin 95–20. The extension of anti-tying restrictions to savings and loan holding companies and their affiliates in transactions involving a savings association is statutory. Consequently, the OTS is not authorized to exempt savings and loan holding companies and their affiliates entirely from all tying restrictions. 62 FR 15819.

The FDIC specifically requested public comment on whether the proposed anti-tying restriction was appropriate. The FDIC received five comments opposed to the proposed anti-tying requirement. One commenter objected to the requirement on general grounds. The other four asserted that statutory tying limits imposed by Congress in 1970 (12 U.S.C. 1972) are sufficient, and that the FDIC should not impose additional restrictions on tying by bank subsidiaries. Of these, two commenters were of the view that statutory tying limits are based on outdated views of banks' market power and constitute a competitive disadvantage for banks which should not be compounded by the addition of the FDIC's proposed tying restriction for real estate investment and securities underwriting subsidiaries. These commenters also made note of recent FRB action (as discussed in the FDIC's preamble to the proposed rule) eliminating the FRB's extension of tying restrictions to bank holding companies and their nonbank affiliates. The FRB based its action on its experience that bank holding companies and their nonbank affiliates do not possess the market power over credit or other unique competitive advantages that Congress assumed that banks enjoyed in 1970, when Congress adopted 12 U.S.C. 1972, and nonstatutory blanket anti-tying restrictions are therefore not justified. 62 FR 9312. The commenters suggest the FDIC take a similar approach.

The FDIC is concerned that opportunities may exist for abusive tying arrangements. It is this concern which has caused the FDIC to include particular tying restrictions of varying types in its approval orders governing real estate investment activities, and in its rules under § 337.4 on securities underwriting. In the real estate orders, the FDIC has typically prohibited the bank from conditioning an extension of credit on the borrower's agreement to also acquire real estate from the real estate development subsidiary. Under § 337.4, a bank could not directly or indirectly condition an extension of credit on the borrower's agreement to contract with the securities subsidiary to underwrite or distribute the borrower's securities, or to purchase any security currently underwritten by the subsidiary. The inclusion of these conditions highlighted the FDIC's concerns with these particular practices. Because of the FDIC's concern about the potential for abusive tying practices, and because the tying restrictions as proposed are only used to further delineate the circumstances in which a notice, rather than an application, is required, the FDIC has decided to adopt the tying restriction as proposed. Any bank wishing to conduct business on a basis different than the general rule set out in the tying restriction may submit an application. Then, the FDIC can evaluate the arrangement in light of its particular facts, including the permissibility of the arrangement under other applicable tying laws, its safety and soundness, and what risk it poses to the fund.

Collateralization requirements. The revised regulation provides that an insured state bank is prohibited from

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making an extension of credit to a subsidiary covered by the investment and transaction limits unless such transaction is fully-collateralized at the time the bank makes the loan or extension of credit. This requirement is intended to protect the bank in the event of a loan default. "Fully collateralized" under the regulation means extensions of credit secured by collateral with a market value at the time the extension of credit is entered into of at least 100 percent of the extension of credit amount for government securities or a segregated deposit in a bank; 110 percent of the extension of credit amount for municipal securities; 120 percent of the extension of credit amount for other debt securities; and 130 percent of the extension of credit amount for other securities, leases or other real or personal property. One comment objected to the fact that the FDIC proposed to use this schedule as minimum guidance. The comment questions if the FDIC intends to require collateral standards that are more rigid than those in effect under section 23A. As stated, the FDIC intends to look to the collateralization schedule as minimum guidance, but wants to retain flexibility in making the determination if additional collateral is necessary. Maintaining flexibility does not mean that the FDIC intends to impose harsh new standards; however, we intend on a case-by-case basis to reserve the ability to require greater collateral in situations where the risk potential is higher.

Two comments were received on this issue. Both commenters believe the collateral requirements are unnecessary. The comments argue that if collateralization were a normal term of the transaction, it would be required by the arms length transaction requirements. One commenter noted that the cost of the collateral requirements would diminish if not eliminate the potential profit from the permitted activity. The FDIC understands the concerns about the collateral requirement; however, this provision provides a higher level of protection to the insured state bank. If there are instances in which the collateral requirements are uneconomical, the insured state bank may use the application procedures of this regulation to request relief. Therefore, the FDIC has decided to make no change to the collateral requirements of this section.

Capital requirements. Under the revised rule, a bank using the notice process to invest in a subsidiary engaging in certain activities authorized by subpart A would be required to deduct its equity investment in the subsidiary as well as its pro rata share of retained earnings of the subsidiary when reporting its capital position on the bank's consolidated report of income and condition, in assessment risk classification and for prompt corrective action purposes (except for the purposes of determining if an institution is critically undercapitalized). Such a capital deduction may be required as a condition of an order issued by the FDIC, is required to use the notice procedure to request consent for real estate investment activities and securities underwriting and distribution, and is required to engage in grandfathered insurance underwriting. The purpose of the restriction is to ensure that the bank has sufficient capital devoted to its banking operations and that it would not be adversely impacted even if its entire investment in the subsidiary is lost.

This treatment of the bank's investment in subsidiaries engaged in activities not permissible for a national bank creates a regulatory capital standard. Section 37 of the FDI Act (12 U.S.C. 1831n) generally requires that accounting principles applicable to depository institutions for regulatory reporting purposes must be consistent with, or not less stringent than, GAAP. The FDIC believes that this requirement does not extend to the Federal banking agencies' definitions of regulatory capital. It is well established that the calculation of regulatory capital for supervisory purposes may differ from the measurement of equity capital for financial reporting purposes, and section 37 by its terms contemplates the necessity of such differences. For example, statutory restrictions against the recognition of goodwill for regulatory capital purposes may lead to differences between the reported amount of equity capital and the regulatory capital calculation for tier one capital. Other types of intangible assets are also subject to limitations under the agencies' regulatory capital rules. In addition, subordinated debt and the allowance for loan and lease losses are examples of items where the regulatory reporting and the regulatory capital treatments differ.

The capital deduction as contained in the revised regulation is not a new concept for the federal banking regulators. The FDIC has required a capital deduction for investments by state nonmember banks in securities underwriting subsidiaries for years. *See* 12 CFR 325.5(c). In addition, the OCC recently endorsed the idea of deducting from capital a national bank's investments in certain types of operating subsidiaries. *See* 12 CFR 5.34(f)(3)(i), 61 FR 60342, 60377 (Nov. 27, 1996).

The calculation of the amount deducted from capital in this proposal includes the bank's equity investment in the subsidiary as well as the bank's share of retained earnings. The calculation does not require the deduction of any loans from the bank to the subsidiary or the bank's investment in the debt securities of the subsidiary.

Several comments questioned the capital deduction requirement. One commenter suggested that the FDIC should consider the impact of this provision on state laws, standards and policies. For example, state loan-to-one borrower restrictions that are determined by the bank's capital level may be affected. The FDIC is setting a capital standard for regulatory purposes. The effect of this standard on limitations based on capital under state law depend on the construction of state laws and regulations.

One comment was supportive of the capital deduction concept but also encouraged the FDIC to reconsider activities at a future date to determine whether it is appropriate to eliminate this requirement. The FDIC agrees with this suggestion and will consider such requests as experience is gained. Affected institutions also have the option of applying to the FDIC and setting forth their arguments why the capital deduction is unnecessary in their cases.

One other comment suggests that if the FDIC imposes the capital deduction, then it is essential that the deduction be limited to the bank's investment in the subsidiaries and not include retained earnings. The commenter contends that this requirement would result in the bank's capital being adversely affected by the subsidiary's success. The FDIC does not agree with this conclusion. The capital deduction required by this standard is a requirement for calculating regulatory capital. Under GAAP, a majority-owned subsidiary is fully consolidated with the bank and included in the amount reported on Statements of Condition and Income in the Consolidated Reports of Condition and Income. The subsidiary's retained earnings are incorporated into the bank's capital through this consolidation process. The treatment required by § 362.4(e) simply isolates the capital used to support the insured state bank from that supporting the subsidiary for regulatory capital purposes. The referenced requirement accomplishes that goal by subtracting both the bank's stock investment in the subsidiary and the bank's share of the subsidiary's retained earnings from the parent bank's capital. This requirement is not punitive as the only amounts subtracted are those equity investments already included on the balance sheet (and thereby balance sheet capital) through consolidation.

Other underwriting activities. The regulatory text does not directly address the underwriting of annuities. The FDIC has opined that annuities are not an insurance product and are not subject to section 24(b) and 24(d)(2), prohibiting the FDIC from authorizing insurance underwriting. The FDIC has approved two requests from insured state banks to engage in annuity underwriting activities through a majority-owned subsidiary. The revised regulation does not provide a notice procedure to engage in such activities. No comment was received on this activity. The FDIC has decided to continue handling such requests on a case-by-case basis through the applications procedures established under this regulation.

Section 362.5 Approvals Previously Granted

There are a number of areas in which the final rule differs in approach from the current part 362. Because of these differing approaches, the revised regulation contains a section dealing with approvals previously granted.

Insured state banks that have previously received consent by order or notice from this agency should not need to reapply to continue the activity, including real estate investment activities, provided the bank and subsidiary, as applicable, continue to comply with the conditions of the order of approval. It is not the intent of the FDIC to require insured state banks to request consent to engage in an activity which has already been approved previously by this agency. Section 362.5(a) of the final rule makes this clear.

One comment stated that banks that have previously received approval from the FDIC should have the option of complying with the original order or the new regulation. The FDIC agrees with this approach. Because previously granted approvals may contain conditions that are different from the standards that are established in this proposal, in certain circumstances, the bank may elect to operate under the restrictions of this proposal. Specifically, the bank may comply with the investment and transaction limitations between the bank and its subsidiaries contained in § 362.4(d), the capital requirement limitations detailed in § 362.4(e), and the subsidiary restrictions as outlined in the term "eligible subsidiary" and contained in § 362.4(c)(2) in lieu of similar requirements contained in its approval order. Any conditions that are specific to a bank's situation and do not fall within the above limitations will continue to be effective. Language has been added to the final rule to clarify that once a bank elects to follow the regulatory restrictions instead of those in the approval order, the bank may not elect to revert to the applicable conditions of the order.

An insured state bank that has received a previous approval and qualifies for the exception in § 362.4(b)(5)(i) relating to real estate investment activities that do not exceed 2 percent of the bank's tier one capital may take advantage of the exceptions contained in that section without further application or notice to the FDIC. Additional regulatory language clarifying this point has been added to the final rule in § 362.5(a).

The FDIC has also approved certain activities through its current regulations. Specifically, the FDIC has incorporated and modified the restrictions of § 337.4 in this revision. The revised rule will allow an insured state nonmember bank engaging in a securities activity covered by § 362.4(b)(5)(ii), which has engaged in such activity prior to this rule's effective date in accordance with § 337.4, to continue those activities if the bank and its subsidiary meet the restrictions of § 362.4(b)(5)(ii), (c), (d), and (e). For securities activity covered by § 362.4(b)(5)(ii), the FDIC intends that these requirements replace the restrictions contained in § 337.4.

The FDIC recognizes that the requirements of the final rule differ from the requirements of § 337.4. Because the transition from the current § 337.4 requirements to the new regulatory requirements may have unforeseen implementation problems, the bank and its subsidiary will have one year from the effective date to comply with new restrictions and conditions without further application or notice to the FDIC. If the bank and its subsidiary are unable to comply within the one-year time period, the bank must apply in accordance with § 362.4(b)(1) and subpart G of part 303 to continue with the securities underwriting activity. Commenters did not object to this transition language and it is being implemented as proposed.

The restrictions for engaging in grandfathered insurance underwriting through a subsidiary have also been changed from the current regulation. The current regulation prescribes disclosures, requires that the subsidiary be a bona fide subsidiary, and requires that the bank be adequately capitalized after deducting the bank's investment in the grandfathered insurance subsidiary. The revisions rely on disclosures to bank customers when required by the Interagency Statement, require that the subsidiary meet the requirements of an eligible subsidiary, and require that the bank be well-capitalized after deducting its investment in the grandfathered insurance subsidiary. The FDIC recognizes that these standards are not the same as previous requirements, and the capital standard in particular is more stringent. For grandfathered insurance conducted at the bank level, the final rule also makes certain changes from the current rule, including the requirement that the bank disclose the separate nature of the department to insurance customers. Section 362.5(b)(2) of the final rule provides that an insured state bank which is engaged in providing insurance as principal may continue that activity if it complies with the final rule within 90 days of the effective date of the regulation. If the bank is unable to comply with these provisions setting forth the FDIC's guidance for conducting grandfathered insurance activities in a safe and sound manner, the bank should submit a notice to the FDIC concerning the deficiencies.

Insured state banks that have subsidiaries that have been operating under the exceptions relating to owning stock of a company engaged in activities permissible for a bank service corporation or activities that are not "as principal" in the current regulation are now subject to new requirements including the requirement that the subsidiary have at least a control interest in the company conducting the activity. The scope of authorized activities has also been changed slightly. Any bank affected by these changes will have 90 days to meet the requirements of the final rule. If the bank or its subsidiary does not meet these requirements, the bank must apply for the FDIC's consent. The FDIC does not intend to use this request for consent as a punitive measure; however, the FDIC would like to review a bank's investment in these equity securities of companies that are engaged in these activities. Comments did not indicate any circumstance in which this request for consent may be necessary.

The FDIC also is requiring that an insured state bank that converts from a savings association charter and engages in activities through a subsidiary, even if such activity was permissible for a subsidiary of a federal savings association, shall make application or provide notice, whichever applies, to the FDIC to continue the activity unless the activity and manner and amount in which the activity is operated is one that the FDIC has determined by regulation does not pose a significant risk to the deposit insurance fund. Since the statutory and regulatory systems developed for savings associations are different from the bank systems, the FDIC believes that any institution that converts its charter should be subject to the same regulatory requirements as other institutions with the same type of charter.

If, prior to conversion, the savings association had received approval from the FDIC to continue through a subsidiary the activity of a type or in an amount that was not permissible for a federal savings association, the converted insured state bank need not reapply for consent provided the bank and subsidiary continue to comply with the terms of the approval order, meet all the conditions and restrictions for being an eligible subsidiary contained in § 362.4(c)(2), comply with the investment and transactions limits of § 362.4(d), and meet the capital requirement of § 362.4(e). If the converted bank or its subsidiary, as applicable, does not comply with all these requirements, the bank must obtain the FDIC's consent to continue the activity. The FDIC has imposed these conditions to fill a regulatory gap. Savings associations and their service corporations are subject to regulatory standards of separation, the savings association is limited in the amount it may invest in the service corporation, and the savings association must deduct its investment in the service corporation from its capital if the service corporation engages in activities that are not permissible for a national bank. The eligible subsidiary standard, the investment and transaction limits, and the capital requirements replace these standards once the savings association has converted its charter to a bank.

If the bank does not receive the FDIC's consent for its subsidiary to continue an activity, the bank must divest its nonconforming investment in the subsidiary within two years of the date of conversion either by divesting itself of its subsidiary or by the subsidiary divesting itself of the impermissible activity. The FDIC did not receive comment concerning these transition issues for charter conversions. The final rule adopts the language as proposed.

B. Subpart B—Safety and Soundness Rules Governing State Nonmember Banks

Section 362.6 Purpose and Scope

This subpart, along with the notice and application provisions of subpart G of part 303, applies to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. The FDIC intends to allow insured state nonmember banks and their subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of federal deposit insurance and other law. The safety and soundness standards of this subpart apply to activities undertaken by insured state nonmember banks through a subsidiary if those activities are permissible for a national bank subsidiary but that are not permissible for the national bank itself. This subpart addresses only real estate investment activities undertaken through a subsidiary; however, the FDIC is issuing concurrently a notice of proposed rulemaking published elsewhere in today's **Federal Register** which addresses securities underwriting and distribution activities conducted by a subsidiary of an insured state nonmember bank if those activities are permissible for a national bank only through a subsidiary. The FDIC has a long history of considering the risks from activities such as real estate investment and securities underwriting and distribution to be unsafe and unsound for a bank to undertake without appropriate safeguards to address that risk. The FDIC also proposes a notice requirement for other activities permissible for a national bank only through a subsidiary.

Additionally, this subpart sets forth the standards that apply when affiliated organizations of insured state nonmember banks that are not affiliated with a bank holding company conduct securities activities. The collective business enterprises of these entities are commonly described as nonbank bank holding company affiliates. The FDIC has a long history of considering the risks from the conduct of securities activities by affiliates of insured state nonmember banks to be unsafe and unsound without appropriate safeguards to address those risks. This rule incorporates many of the standards currently applicable to these entities through § 337.4 of the FDIC's regulations. This rule will replace § 337.4 although that section of the FDIC's rules will not be eliminated until the FDIC finalizes its rule regarding securities activities of subsidiaries. The scope of this regulation is narrower than § 337.4 due to intervening regulations promulgated by other Federal banking agencies that render more comprehensive rules unnecessary. In addition, the FDIC has updated the restrictions and brought them into line with modern views of appropriate securities safeguards between affiliates and insured banks.

Section 362.7 Definitions

The definitions of "activity", "company", "control", "equity security", "insured state nonmember bank", "real estate investment activity", "security", and "subsidiary" apply as is described above in subpart A. These definitions remain consistent to avoid confusion among the various subparts of this regulation.

This subpart introduces restrictions on activities of entities that are commonly owned with the insured state bank by a holding company that is not considered to be a bank holding company under the Bank Holding Company Act. Therefore, for the purposes of this subpart, "affiliate" is defined as any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state nonmember bank. The proposed definition of the term "affiliate" was not intended to include a subsidiary of an insured state nonmember bank, and language expressly stating this has been added in the final rule to clarify this point. Subsidiaries of insured state nonmember banks engaged in these activities are already covered by § 362.4(b)(5)(ii).

Section 362.8 Restrictions on Activities of Insured State Nonmember Banks

Real Estate. Since national banks are generally prohibited from owning and developing real estate, insured state banks have been required to apply to the FDIC under section 24 before undertaking or continuing such real estate activities. The FDIC has concluded as a result of its experience in reviewing these applications that while real estate investments generally possess many risks that are not readily comparable to other equity investments, institutions may contain these risks by undertaking real estate investments within certain parameters. The FDIC has considered the manner under which an insured state nonmember bank may undertake real estate investment activities and determined that insured state nonmember banks and their subsidiaries should generally meet certain standards before engaging in real estate investment activities that are not permissible for national banks. As a result, the final rule establishes standards under which insured state nonmember banks may participate in real estate investment activities. These standards address the FDIC's safety and soundness concerns with real estate investment activities permissible for a national bank subsidiary but not for the national bank itself. Providing this listing of such standards will allow insured state nonmember banks to initiate investment activities with knowledge of what the FDIC considers when evaluating the safety and soundness of the operations of the institution and its subsidiaries. This rule simplifies and clarifies the standards under which insured state nonmember banks may conduct their investment activities while providing comprehensive and flexible regulation of the dealings between a bank and its subsidiaries.

Certain standards under the regulation also pertain to the FDIC's willingness to allow an eligible institution to commence the activity after expedited notice to the FDIC, rather than a full application process. Under the FDIC's regulation, if an institution and its real estate investment operations meet the standards established, the institution need only file notice with the FDIC as outlined in subpart G of part 303. However, if the institution and its operations do not meet the general standards set forth in this rule, or if the institution so chooses, it may file application with the FDIC for the FDIC's consent, in accordance with procedures set out in subpart G of part 303.

One commenter stated that establishing additional regulations on insured state nonmember banks is excessive. Such banks are already regulated by the state in which they are domiciled. The FDIC believes that the risks associated with real estate investment activities are such that it must establish standards for the conduct of that activity. The notice of proposed rulemaking contained an extensive discussion of these risks. In addition to the high degree of market variability, real estate markets are, for the most part, localized; investments are normally not securitized; financial information flow is often poor; and the market is generally not very liquid. A financial institution—like any other investor—faces substantial risks when it takes an equity position in a real estate venture. Market participants face a general trade-off: the riskier the project, the higher the required rate of return. A key aspect of that trade-off is the notion that a riskier project will entail a higher probability of significant losses for the investor. Assessments of the degree of risk will depend on factors affecting future returns such as cyclical economic developments, technological advances, structural market changes, and the project's sensitivity to financial market changes.

The FDIC recognizes its ongoing responsibility to ensure the safe and sound operation of insured state nonmember banks and their subsidiaries. Although this subpart creates new regulation for insured state nonmember banks, the FDIC does not believe that this burden is too great in relation to the risks of real estate investment activities.

Another commenter expressed concern about consistency stating that the unintended consequence of this approach may result in different regulatory treatment applicable to insured state nonmember banks as opposed to national banks and state member banks. Another comment echoes this sentiment stating that it is likely that national banks will be subject to case by case restrictions of the OCC but these restrictions will not carry the weight and force of those set by regulation. The commenter recommends parallel treatment between national and state banks. The FDIC does not believe it is in the best interest of insured state nonmember banks to automatically follow the safety and soundness restrictions of an interpretation, order, circular or official bulletin issued by the OCC regarding real estate investment activities that are permissible for the subsidiary of a national bank but are not permissible for a national bank itself. The process established in this subpart gives insured state nonmember banks the option to apply to the FDIC to engage in real estate investment activities suggesting whatever criteria the applicant believes to be appropriate for the risk involved with the activity. The standards set forth in this regulation allow applicants to use an expedited notice procedure. These standards are not absolute criteria that the FDIC cannot vary. If the FDIC adopted the regulatory and interpretive standards set by the OCC, insured state nonmember banks would have no flexibility to request variance from these standards. The FDIC believes that the risks may be different for different real estate investment activities. Therefore, the flexible approach established in this regulation is important in finding appropriate standards for the risks presented. State nonmember banks are treated consistently with national banks in that each must submit a request to their primary Federal regulator to engage in real estate investment activities through a subsidiary.

Another comment states that the regulatory differences between state and national institutions harm the dual banking system especially during a period of rapid interstate expansion. The FDIC is a strong supporter of the dual banking system. For insured state nonmember banks to compete effectively, the supervisory system should be expeditious in its response to the industry. This regulation establishes procedures in which insured state nonmember banks may use a notice procedure and follow standards established in this regulation or may file an application and request variance from these standards. The FDIC believes that a system that allows an insured state nonmember bank to directly petition its primary federal regulator to conduct real estate investment activities in a subsidiary is more appropriate than a situation in which these activities of insured state nonmember banks are restricted by regulations, orders and interpretations of the OCC.

Section 362.8(a) of the regulation addresses the FDIC's ongoing supervisory concerns regarding real estate investment activities and imposes procedures to address the FDIC's concerns about the safety and soundness of these activities. Depending upon the facts, the potential risks inherent in a bank subsidiary's involvement in real estate investment activities may make restrictions and limitations necessary to protect the bank and ultimately the deposit insurance funds from losses associated with the significant risks inherent in real estate investment activities.

To address its safety and soundness concerns about real estate investment activities not permissible for a national bank, the FDIC has adopted the same standards when insured state banks conduct those real estate investment activities regardless of whether those real estate investment activities are permissible for a national bank subsidiary. This subpart addresses the impact on insured state nonmember banks if the OCC were to approve applications submitted by national banks to conduct real estate investment activities through operating subsidiaries.

Unless the FDIC has previously given its approval for the bank to engage in the particular real estate investment activity that is not permissible for a national bank, an insured state nonmember bank must file a notice or application with the FDIC in order to directly or indirectly undertake a real estate investment activity, even if the real estate investment activity is permissible for the subsidiary of a national bank. To qualify for the notice provision under this new regulation, the insured state nonmember bank and its subsidiary must meet the standards established in § 362.4(b)(5)(i). After filing a notice as provided for in subpart G of part 303 to which the FDIC does not object, the institution may then proceed with its investment activities. If the insured state nonmember bank and its subsidiary do not meet the standards established under the rule, or if the institution so chooses, an application for the FDIC's consent may be filed under the procedures set out in subpart G of part 303.

Affiliation With Securities Companies. Section 362.8(b) reflects the FDIC's longstanding view that an unrestricted affiliation with a securities company may have adverse effects on the safety and soundness of insured state nonmembers banks. This section reiterates the § 337.4 prohibition against any affiliation by an insured state nonmember bank with any company that directly engages in the underwriting of stocks, bonds, debentures, notes, or other securities which is not permissible for a national bank unless certain conditions are met. The final rule permits the affiliation only if:

(1) The securities business of the affiliate is physically separate and distinct in its operations from the operations of the bank, provided that this requirement shall not be construed to prohibit the bank and its affiliate from sharing the same facility if the area where the affiliate conducts retail sales activity with the public is physically distinct from the routine deposit taking area of the bank;

(2) The affiliate has a chief executive officer who is not an employee of the bank;

(3) A majority of the affiliate's board of directors are not directors, officers, or employees of the bank;

(4) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and the state-chartered depository institution is not responsible for and does not guarantee the obligations of the affiliate;

(5) The bank adopts policies and procedures, including appropriate limits on exposure, to govern their participation in financing transactions underwritten by an underwriting affiliate;

(6) The bank does not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by an affiliate unless it notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is an affiliate of the bank;

(7) The bank does not purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the affiliate unless the purchase is approved by the bank's board of directors before the securities are initially offered for sale to the public;

(8) The bank did not condition any extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's affiliate to underwrite or distribute the company's securities;

(9) The bank did not condition any extension of credit or the offering of any service to any person or company on the requirement that the person or company purchase any security underwritten or distributed by the affiliate; and

(10) The bank complies with the investment and transaction limitations of § 362.4(d). These standards have been adopted as proposed although the language of § 362.8(b)(4) has been changed to be consistent with that proposed in subpart A.

Many of the restrictions and prohibitions listed above are contained currently in § 337.4. Additionally, the conditions that are imposed, under § 362.4(b)(5)(ii), on subsidiaries which engage in the sale, distribution, or underwriting of securities such as adopting independent policies and procedures governing participation in financing transactions underwritten by an affiliate, expressing opinions on the advisability of the purchase or sale of particular securities, and purchasing securities as principal or fiduciary only with prior board approval have been added. As indicated earlier, the prohibition against shared officers has been eased and now only refers to the chief executive officer. Comments did not object to these standards and they are not being adopted as proposed.

As written, the regulation only applies these restrictions to an insured state nonmember bank affiliated with a company not treated as a bank holding company pursuant to section 4(f) of the Bank Holding Company Act (12 U.S.C. 1843(f)), that directly engages in the underwriting of stocks, bonds, debentures, notes, or other securities which are not permissible for a national bank. Other affiliates now covered by the safeguards of § 337.4 would no longer be covered under the FDIC's regulations. Other affiliates are adequately separated from the banks by the restrictions imposed by the FRB. Therefore, the final regulation has been streamlined to eliminate duplicative coverage of these affiliates.

Because of the bank/affiliate relationship covered by this subpart, the term "investment" also includes the bank's investment in the equity securities of the affiliate. This treatment is consistent with section 23A. No comment was received on this treatment and the definition of investment for subpart B is adopted as proposed.

Disclosure provisions contained in § 337.4 are not contained in this rule. If securities underwritten, distributed or sold by the affiliate are sold on bank premises, are sold by employees of the bank, or are sold subject to the bank receiving remuneration for the transaction, the sale is covered by the disclosures contained in the Interagency Statement on Retail Sales of Nondeposit Investment Products. Sales occurring outside these parameters are not likely to generate customer confusion; however, the affiliate is responsible for informing its customers that the affiliate is a separate organization from the bank and the bank is not responsible for and does not guarantee the obligations of the affiliate whenever confusion is likely to occur.

C. Subpart C—Activities of Insured State Savings Associations

Section 362.9 Purpose and Scope

The intent of § 362.9 is to clarify that the purpose and scope of subpart C is to ensure that activities and investments undertaken by insured state savings associations and their service corporations do not present a significant risk to the deposit insurance funds, are not unsafe and are not unsound, are consistent with the purposes of federal deposit insurance, and are otherwise consistent with law. This subpart, together with the notice and application procedures of subpart H of part 303, implements the provisions of section 28 of the FDI Act that restrict and prohibit insured state savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for federal savings associations and their service corporations. The phrase "activity permissible for a federal savings association" means any activity authorized for federal savings associations under any statute including the Home Owners Loan Act (HOLA), as well as activities recognized as permissible for a federal savings association in regulations, official thrift bulletins, orders or written interpretations issued by the OTS, or its predecessor, the Federal Home Loan Bank Board.

Regarding insured state savings associations, this subpart governs only activities conducted "as principal" and therefore does not govern activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, conducted as trustee, or conducted in any substantially similar capacity. In the final rule, the FDIC has added a list of examples of what types of activities are not "as principal." This change is consistent with the addition of such material to the purpose and scope section of subpart A. However, this subpart covers all activities regardless of whether conducted "as principal" or in another capacity at the service corporation level. This subpart does not restrict any interest in real estate in which the real property is (a) used or intended in good faith to be used within a reasonable time by an insured state savings association or its service corporations as offices or related facilities for the conduct of its business or future expansion of its business or (b) used as public welfare investments of a type and in an amount permissible for federal savings associations. Equity investments acquired in connection with debts previously contracted that are held within the shorter of the time limits prescribed by state or federal law are not subject to the limitations of this subpart.

The FDIC intends to allow insured state savings associations and their service corporations to undertake only safe and sound activities and investments that do not present a significant risk to the deposit insurance funds and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state savings association to make investments or conduct activities that are not authorized or that are prohibited by either federal or state law.

Section 362.10 Definitions

Section 362.10 of the final regulation contains the definitions used in this subpart. Rather than repeating terms defined in subpart A, the definitions contained in § 362.2 are incorporated into subpart C by reference. Included in the definitions are most of the terms currently defined in subpart G of Part 303, effective October 1, 1998, (formerly § 303.13) of the FDIC's regulations. The proposed rule made editing changes primarily to enhance clarity without changing the meaning. However, certain changes were made to alter the meaning of the terms and these changes are identified in this discussion. The final rule adopts the proposed definitions without further change.

The terms "corporate debt securities not of investment grade" and "qualified affiliate" have been directly imported into subpart C from subpart G (§ 303.141) without substantive change. Substantially the same "control" and "equity security" definitions are incorporated by reference to subpart A. The last sentence of the current "equity security" definition, which excludes equity securities acquired through foreclosure or settlement in lieu of foreclosure, was deleted for the same reason that similar language was deleted from several definitions in subpart A. Language is now included in the purpose and scope paragraph explaining that equity investments acquired through such actions are not subject to the regulation. No substantive change from current rules is intended by this modification.

Consistent with the proposal, modified versions of "activity", "equity investment", "significant risk to the fund", and "subsidiary" were also carried forward by reference to subpart A. As proposed, the definition of activity was expanded to encompass all activities including acquiring or retaining equity investments. This change was made to conform the "activity" definition used in the regulation to that provided in the governing statutes. Both sections 24 and 28 of the FDI Act define activity to include acquiring or retaining any investment. Sections of this part governing activities other than acquiring or retaining equity investments include statements specifically excluding the activity of acquiring or retaining equity investments.

Consistent with the proposal, the "equity investment" definition was modified to better identify its components. The definition includes any ownership interest in any company. This change was made to clarify that ownership interests in limited liability companies, business trusts, associations, joint ventures and other entities separately defined as a "company" are considered equity investments. Additionally, as proposed, the definition was expanded to include any membership interest that includes a voting right in any company, and a sentence was added excluding from the definition any of the identified items when taken as security for a loan. The intended effect of these changes is not to broaden the scope of the regulation, but instead to clarify the FDIC's position that such investments are all considered equity investments notwithstanding the form of business organization.

Consistent with the proposal, the definition of "significant risk" was effectively retitled "significant risk to the fund" by the reference to subpart A. As proposed, a second sentence was added to the definition explaining that a significant risk to the fund may be present either when an activity or an equity investment contributes or may contribute to the decline in condition of a particular state-chartered depository institution or when a type of activity or equity investment is found by the FDIC to contribute or potentially contribute to the deterioration of the overall condition of the banking system. This sentence is intended to elaborate on the FDIC's position that the absolute size of a projected loss in comparison to the deposit insurance funds is not determinative of the issue. Additionally, it clarifies the FDIC's position that risk to the fund may be present even if a particular activity or investment may not result in the imminent failure of an institution. The FDIC received four comments addressing this definition which are detailed in the discussion of the applicable definition in subpart A.

With the exception of substituting the separately defined term "company" for the list of entities such as corporations, business trusts, associations, and joint ventures currently in the "subsidiary" definition, the final rule makes little change from the current definition. It is noted that limited liability companies are now included in the company definition and, by extension, are included in the subsidiary definition. The only other change from current rules is that in the definition of subsidiary, the exclusion of "insured depository institutions" for purposes of § 303.146 (as effective October 1, 1998, formerly § 303.13(f)) has been moved to the purpose and scope section of proposed subpart D. No substantive changes are intended by these modifications. The FDIC received no comments on these definitions which are adopted as proposed.

While proposed subpart C retained substantially the same "service corporation" definition as the current rule, the proposal deleted the word "only" from the phrase "available for purchase only by savings associations". This change was intended to make it clear that a service corporation of an insured state savings association may invest in lower-tier service corporations if allowed by this part or FDIC order, and it is consistent with the recently

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amended part 559 of the OTS' regulations (12 CFR part 559). The change was not intended to alter the nature of the requirements governing the savings association's equity investment in the first-tier service corporation. No comments were received on this change and the final rule adopts it as proposed.

As in subpart A and consistent with the proposal, the definition of "equity interest in real estate" was deleted in the final regulation. The exceptions detailed in § 303.141(e) (as effective October 1, 1998, formerly § 303.13(a)(5)) of the current definition were moved to the purpose and scope paragraph. As a result, readers are now informed that these excepted real estate investments are not subject to this regulation. The FDIC believes that the remaining content of the current definition fails to provide any meaningful clarity or understanding. Therefore, the FDIC will instead rely on the "equity investment" definition to include relevant real estate investments. A related change was made to the "equity investment" definition by deleting the reference to "equity interest in real estate" and replacing it with language to include any interest in real estate (excluding real estate that is not within the scope of this part). No substantive changes are intended by these modifications.

Consistent with the proposal, a definition for the term "insured state savings association" is added to the final rule. Because this term is not explicitly defined in section 3 of the FDI Act, this definition was added to ensure readers clearly understand that an insured state savings association means any state chartered savings association insured by the FDIC.

Other terms that were previously undefined, but that are added by the general incorporation of the definitions in subpart A should not result in any substantive changes to the meanings of those terms as currently used in subpart G of part 303. effective October 1, 1998, (formerly § 303.13) of the FDIC's regulations.

Section 362.11 Activities of Insured State Savings Associations

Equity investment prohibition. Section 362.11(a)(1) of the final regulation replaces the provisions of § 303.144(a) (as effective October 1, 1998, formerly § 303.13(d)) of the FDIC's current regulations and restates the statutory prohibition preventing insured state savings associations from making or retaining any equity investment of a type, or in an amount, not permissible for a federal savings association. The prohibition does not apply if the statutory exception (restated in the current regulation and carried forward in the proposal) contained in section 28 of the FDI Act applies. With the exception of deleting items no longer applicable due to the passage of time, this provision is retained as currently in effect without any substantive changes.

Exception for service corporations. The final regulation retains the exception now in § 303.144(b) (as effective October 1, 1998, formerly § 303.13(d)(2)) which allows investments in service corporations as currently in effect without any substantive change. However, consistent with the proposal, the FDIC has modified the language of this section using a structure paralleling that found in proposed subpart A permitting insured state banks to invest in majority-owned subsidiaries. Similar to the treatment accorded insured state banks, an insured state savings association must meet and continue to be in compliance with the capital requirements prescribed by the appropriate federal banking agency and the FDIC must determine that the activities to be conducted by the service corporation do not present a significant risk to the relevant deposit insurance fund. However, unlike the treatment accorded banks, the FDIC must also determine that the amount of the investment does not present a significant risk to the relevant deposit insurance fund. The criteria identified in the preceding sentences are derived directly from the underlying statutory language. For an insured state savings association to invest in service corporations engaging in activities that are not permissible for a service corporation of a federal savings association, the service corporation must be engaging in activities or acquiring and retaining investments described in § 362.12(b) as regulatory exceptions to the general prohibition.

We moved language currently in § 303.144(b)(2) (as effective October 1, 1998, formerly § 303.13(d)) concerning the filing of applications to acquire an equity investment in a service corporation to § 303.141 of the amended subpart H of part 303.

Activities other than equity investments. Section 362.11(b) of the final regulation replaces the sections now found at §§ 303.142, 303.143 and 303.144 (as effective October 1, 1998, formerly §§ 303.13(b), 303.13(c), and 303.13(e), respectively) of the FDIC's regulations. As proposed, some portions of the existing sections have been eliminated because they are no longer necessary due to the passage of time, and other portions have been edited and reformatted in a manner consistent with the corresponding sections of subpart A. Language currently in the referenced sections of part 303 concerning notices and applications has been edited, reformatted, and moved to the amended subpart H of part 303.

Prohibited activities. Section 362.11(b)(1) of the final regulation restates the statutory prohibition that insured state savings associations may not directly engage as principal in any activity of a type, or in an amount, that is not permissible for a federal savings association unless the activity meets a statutory or regulatory exception. Similar to language found in subpart A for insured state banks, the proposed rule added language to clarify that this prohibition does not supersede the equity investment exception of § 362.11(a)(2). The FDIC added this language because acquiring or retaining any investment is defined as an activity. The language has been adopted in the final rule without change from the proposal.

The statutory prohibition preventing state and federal savings associations from directly, or indirectly through a subsidiary (other than a subsidiary that is a qualified affiliate), acquiring or retaining any corporate debt that is not of investment grade after August 9, 1989, is also carried forward from what is now § 303.145 (as effective October 1, 1998, formerly § 303.13(e)) of the FDIC's regulations. However, consistent with the proposal, the § 303.145 requirement was deleted. The referenced section required savings institutions to file divestiture plans concerning corporate debt that was not of investment grade and that was held in a capacity other than through a qualified affiliate. Divestiture was required by no later than July 1, 1994, rendering that provision unnecessary due to the passage of time.

Exceptions to the other activities prohibition. The statutory exception to the other activities prohibition contained in section 28 of the FDI Act continues to function in a manner similar to the relevant provisions of what is now found in subpart H of part 303. The regulation continues to permit an insured state savings association to retain any asset (including a nonresidential real estate loan) acquired prior to August 9, 1989. However, corporate debt securities that are not of investment grade may only be purchased or held by a qualified affiliate. Whether or not the security is of investment grade is measured only at the time of acquisition.

Additionally, the FDIC has provided regulatory exceptions to the other activities prohibition. The first exception retains the application process now found at § 303.142 (as effective October 1, 1998, formerly §§ 303.13(b)(1)) and provides insured state savings associations with the option of applying to the FDIC for approval to engage in an activity of a type that is not permissible for a federal savings association. Additionally, the notice process currently found at § 303.143 (as effective October 1, 1998, formerly § 303.13(c)(1)) is carried forward for insured state savings associations that want to engage in activities of a type permissible for a federal savings association, but in an amount exceeding that permissible for federal savings associations. The final regulation adds a regulatory exception enabling insured state savings associations to acquire and retain adjustable rate, money market preferred stock, and instruments determined by the FDIC to have similar characteristics without submitting an application to the FDIC if the acquisition is done within the prescribed limits.

The final regulation deletes a proposed exception that would have allowed an insured state savings association to engage as principal in any activity that is not permissible for a federal savings association provided that the FRB has found the activity to be closely related to banking pursuant to 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)). Upon further analysis, the FDIC determined that this exception would have little utility because most of the activities authorized by the FRB under the referenced authority are already permissible for federal savings associations or are otherwise addressed in this regulation. In the preamble to the proposal, the FDIC requested comment from savings associations on whether the proposed standard was appropriate and beneficial. The FDIC received only one comment, indicating that state savings associations were generally unaware of what is authorized by the 4(c)(8) list and that the FDIC should be more specific. The FDIC has decided to eliminate the reference and specifically address those activities that are allowed. The elimination of this proposed authority is consistent with the FDIC's elimination of the corresponding authority for state banks in subpart A.

Consent obtained through application. Section 28 prohibits insured state savings associations from directly engaging in activities of a type or in an amount not permissible for a federal savings association unless: (1) The association meets and continues to meet the capital standards prescribed by the appropriate federal financial institution regulator; and (2) the FDIC determines that conducting the activity in the additional amount will not present a significant risk to the relevant deposit insurance fund. Section 362.11(b)(2)(i) establishes an application option for savings associations that meet the relevant capital standards and that seek the FDIC's consent to engage in activities that are otherwise prohibited. The substance of this process is unchanged from the relevant sections of part 303 of the FDIC's current regulations. The regulation is being adopted without change from its proposed form.

Nonresidential realty loans permissible for a federal savings association conducted in an amount not permissible. Consistent with the proposal, the final regulation carries forward and modifies the provision now found at § 303.142 (as effective October 1, 1998, formerly § 303.13(b)(1)) of this chapter requiring an insured state savings association that wants to hold nonresidential real estate loans in an amount exceeding the limits described in section 5(c)(2)(B) of HOLA (12 U.S.C. 1464 (c)(2)(B)) to apply for the FDIC's consent. Unlike the current regulation, the final regulation enables the insured state savings association to submit a notice to seek the FDIC's approval instead of an application. This change is nonsubstantive and is made to expedite the process for insured state savings associations wanting to exceed the referenced limits. None of the comments submitted addressed this change.

Acquiring and retaining adjustable rate and money market preferred stock. The final regulation extends to insured state savings associations a revised version of the proposed regulatory exception allowing an insured state bank to invest in up to 15 percent of its tier one capital in adjustable rate preferred stock and money market (auction rate) preferred stock without filing an application with the FDIC. By statute, however, insured savings associations are restricted in their ability to purchase debt that is not of investment grade. This regulatory exception does not override that statutory prohibition and any instruments purchased must comply with that statutory constraint. Additionally, this exception is only extended to savings associations meeting and continuing to meet the applicable capital standards prescribed by the appropriate federal financial institution regulator.

When this regulatory exception was adopted for insured state banks in 1992, the FDIC found that adjustable rate preferred stock and money market (auction rate) preferred stock were essentially substitutes for money market investments such as commercial paper and that their characteristics are closer to debt than to equity securities. Therefore, money market preferred stock and adjustable rate preferred stock were excluded from the definition of equity security. As a result, these investments are not subject to the equity investment prohibitions of the statute and the regulation, and they are considered an "other activity" for the purposes of this regulation.

This exception focuses on two categories of preferred stock. This first category, adjustable rate preferred stock refers to shares where dividends are established by contract through the use of a formula based on Treasury rates or some other readily available interest rate levels. Money market preferred stock refers to those issues where dividends are established through a periodic auction process that establishes yields in relation to short term rates paid on commercial paper issued by the same or a similar company. The credit quality of the issuer determines the value of the security, and money market preferred shares are sold at auction.

The FDIC continues to believe that the activity of investing up to 15 percent of an institution's tier one capital in the referenced instruments does not represent a significant risk to the deposit insurance funds. Furthermore, the FDIC believes the same funding option should be available to insured state savings associations and extends a similar exception to savings associations subject to the same revised limits.

Additionally, like a similar provision in subpart A, the final regulation allows the state savings associations to acquire and retain other instruments of a type determined by the FDIC to have the character of debt securities provided the instruments do not represent a significant risk to the deposit insurance funds. A recent example of such an instrument is trust preferred stock. Trust preferred stock is a hybrid instrument possessing characteristics typically associated with debt obligations. Trust preferred securities are issued by an issuer trust that uses the proceeds to purchase subordinated deferrable interest debentures in a corporation. The corporation guarantees the obligations of the issuer trust and agrees to indemnify third parties for other expenses and liabilities incurred by the issuer trust. Taken together, the debentures, guarantee, and expense indemnity agreement constitute a full, irrevocable, and unconditional guarantee of the obligations of the issuer trust by the issuer corporation. With the exception of credit risk, investors in trust preferred stock are protected from changes in the value of the instruments. Like investors in debt securities, trust preferred stock investors do not share any appreciation in the value of the issuer and have no voting rights in the management or ordinary course of business of the issuer. Additionally, trust preferred stock is not perpetual and distributions on the stock resemble the periodic interest payments on debt. In essence, such investments are functionally equivalent to investments in the underlying debentures. Investments in such instruments are aggregated with investments in adjustable rate and money market preferred stock for purposes of applying the limit of 15 percent of tier one capital.

Guarantee activities. When drafting the proposal, the FDIC considered adding an exception for guarantee activities including credit card guarantee programs and comparable arrangements that would have been similar to that which we proposed to delete from subpart A. These programs typically involve a situation where an institution guarantees the credit obligations of its retail customers. Although the FDIC continues to believe that these activities present no significant risk to the deposit insurance funds, the FDIC proposed deleting this activity from subpart A because it was determined that national banks, and therefore insured state banks, may already engage in the activities. The FDIC determined that federal savings associations, and by extension insured state savings associations, may engage in these activities as well. The FDIC received no comments advocating the addition of an exception for these activities and, as a result, no exception was crafted.

Section 362.12 Service Corporations of Insured State Savings Associations

Section 362.12 of the final regulation governs the activities of service corporations of insured state savings associations and generally replaces what is now found at § 303.144(b) (as effective October 1, 1998, formerly § 303.13(d)(2)) of the FDIC's regulations. The section reorganizes the substance of the current regulation and consolidates all provisions concerning the activities of service corporations into the same section. Language currently in § 303.144(b) (as effective October 1, 1998, formerly § 303.13(d)(2)) concerning applications was revised and moved to §§ 303.141 and 303.142 of subpart H of part 303. Additionally, the FDIC extended several regulatory exceptions closely resembling similar exceptions provided to subsidiaries of insured state banks in subpart A of this final regulation. The FDIC notes that if the service corporation is a new subsidiary or is a subsidiary conducting a new activity, all of the exceptions in § 362.12 remain subject to the notice provisions contained in section 18(m) of the FDI Act which are now being implemented in subpart D of this regulation.

General prohibition. A service corporation of an insured state savings association may not engage in any activity that is not permissible for a service corporation of a federal savings association unless the savings association submits an application and receives the FDIC's consent or the activity qualifies for a regulatory exception. This provision does not represent a substantive change from the current regulation. The regulatory language implementing this prohibition has been separated from the restrictions in § 362.11 prohibiting an insured state savings association from directly engaging in activities which are not permissible for a federal savings association. By separating the savings association's activities and those of a service corporation, § 362.12 deals exclusively with activities that may be conducted by a service corporation of an insured state savings association.

Consent obtained through application. Consistent with the proposal, the final regulation continues to allow insured state savings associations to submit applications seeking the FDIC's consent to engage in activities through a service corporation that are otherwise prohibited. Section 362.12(b)(1) carries forward the substance of the application option in § 303.144(b) (as effective October 1, 1998, formerly § 303.13(d)(2)) of the FDIC's current regulations. Approval will be granted only if: (1) The savings association meets and continues to meet the applicable capital standards prescribed by the appropriate federal banking agency; and (2) the FDIC determines that conducting the activity in the requested amount will not present a significant risk to the relevant deposit insurance fund.

Service corporations conducting unrestricted activities.

The FDIC has found that it is not a significant risk to the deposit insurance fund if a service corporation engages in certain activities as long as the insured state savings association continues to meet the applicable capital standards prescribed by the appropriate federal banking agency. One of these activities, authorized by § 362.12(b)(2)(i) of the final rule, is owning a control interest in a company that engages in securities activities authorized by § 362.12(b)(4), provided the activity is conducted pursuant to the limitations and requirements of § 362.12(b)(4), including the requirement that the insured state savings association files a notice with the FDIC to which the FDIC does not object. The regulation specifies that both the service corporation and the lower tier company must meet the investment and transaction limits, and the capital deduction, that would apply if the service corporation engaged in the securities activities directly under § 362.12(b)(4), to ensure that the service corporation is not used as a conduit to the lower tier company in derogation of these requirements. The savings association must also meet the same core eligibility requirements that would apply if the service corporation engaged in the activity directly, and the savings association and the lower tier company must meet certain additional requirements in § 362.12(b)(4). However, with regard to the core eligibility requirements applicable to a service corporation conducting the activity under § 362.12(b)(4), these may be observed by the service corporation, or in the alternative by the lower tier company if the company takes corporate form.

The FDIC also extended a regulatory exception enabling service corporations to acquire and retain equity securities of a company engaged in the following activities: (1) Activities permissible for a federal savings association; (2) any activity permissible for the savings association itself under § 362.11(b)(2)(iii); or (3) insurance agency activities. The service corporation must either own a controlling interest in a company engaging in these activities, or the company must be controlled by insured depository institutions. The FDIC provided similar exceptions to majority-owned subsidiaries of insured state banks in subpart A. Sections 362.12(b)(2) (i) through (ii) are intended to cover a service corporation's investment in lower level subsidiaries engaged in activities that the FDIC has found to present no significant risk to the deposit insurance fund.

The final version differs from the proposal in that, as is the case in the corresponding provision of subpart A, the FDIC created a limited exception to the control requirement under § 362.12(b)(2)(ii) if the company is controlled by a group of insured depository institutions. This accommodates community associations wishing to form a consortium of associations to provide financial services for their customers that one association cannot provide on a cost effective basis.

The final version also differs from the proposal in that, as is the case in the corresponding provision of subpart A, the activities authorized for the lower-level company are not identical to the activities proposed.[15] The FDIC made this change to remain consistent with subpart A. The rule as adopted does not eliminate any authorization granted by current rules, and the FDIC received no comments on the proposal, so the change from the proposed activities will have no impact on state savings associations.

Section 28 of the FDI Act requires the FDIC's consent before a service corporation may engage in any activity that is not permissible for a service corporation of a federal savings association. While the language of section 28 governs only activities conducted "as principal" by insured state savings associations, the "as principal" language was not extended to service corporations in the governing statute. This means that even if the activity is not conducted "as principal", the subpart C prohibition applies if the activity is not permissible for a service corporation of a federal savings association.

Because the FDIC believes that activities conducted other than "as principal" present no significant risk to the relevant deposit insurance fund, we provided an exception in § 362.12(b)(2)(iii) allowing a service corporation of an insured state savings association to act other than "as principal," if the savings association meets and continues to meet the applicable capital standards prescribed by its appropriate federal banking agency. The FDIC received no comments on this exception. The final regulation also requires a savings association to own a control interest in a service corporation conducting the activities. The control requirement was added to more closely approximate the treatment accorded to insured state banks and their subsidiaries. Insured state bank subsidiaries can act other than "as principal." However, a subsidiary is defined as being a company controlled by a depository institution. Therefore, the control standard imposed in this section equates the ownership interest requirements of insured state savings associations and insured state banks. Additionally, it helps differentiate between an insured state savings association controlling a company and simply investing in the shares of a company.

The FDIC also provided, at § 362.12(b)(2)(iv) of the final rule, an exception allowing service corporations of qualifying savings associations to invest in adjustable rate preferred stock, money market (auction rate) preferred stock, and other instruments of a type determined by the FDIC to have the character of debt securities provided the instruments do not represent a significant risk to the deposit insurance funds. Investments by a service corporation in these instruments are combined with and subject to the same limits applicable to the parent savings association. The FDIC did not receive any comments on extending this exception to insured state savings associations and the exception is adopted as proposed.

Owning equity securities that do not represent a control interest. For the same reasons previously stated in the preamble discussion of subpart A, no notice procedure is being adopted at this time. Staff has been instructed to undertake further study of the proposal.

Securities underwriting. Section 362.12(b)(4) of the final regulation allows an insured state savings association to acquire or retain an investment in a service corporation that underwrites or distributes securities that would not be permissible for a federal savings association to underwrite or distribute if notice is filed with the FDIC, the FDIC does not object to the notice before the end of the notice period, and a number of conditions are and continue to be met.

This exception enabling service corporations to underwrite or distribute securities is patterned on the exception found in subpart A (see § 362.4(b)(5)(ii)). In both cases, the state-chartered depository institution must conduct the securities activity in compliance with the core eligibility requirements, the same additional requirements listed for this activity in subpart A, and the investment and transaction limits. The savings association also must meet the capital requirements and the service corporation must meet the "eligible subsidiary" requirements as an "eligible service corporation". Since the requirements are the same as those imposed in subpart A and the risks of the activity are identical, the discussion in subpart A is not repeated here.

Notice of change in circumstance. Like subpart A, the final rule requires the insured state savings association to provide written notice to the appropriate Regional Office of the FDIC within 10 business days of a change in circumstances concerning its securities subsidiary authorized by § 362.12(b)(4). Under the regulation, a change in circumstances is described as a material change in the service corporation's business plan or management. Together with the insured state savings association's primary federal financial institution regulator, the FDIC believes that it may address a savings association's falling out of compliance with any of the other conditions of approval through the normal supervision and examination process.

The FDIC is concerned about changes in circumstances which result from changes in management or changes in a service corporation's business plan. If material changes to either condition occur, the regulation requires the association to submit a notice of such changes to the appropriate FDIC regional director (DOS) within 10 days of the material change. The material change standard includes such events as a change in chief executive officer of the service corporation or a change in investment strategy or type of business or activity engaged in by the service corporation. The FDIC received two comments concerning the change of circumstance notice. Both comments indicated that the notice is burdensome and unnecessary. The comments argue that a change in the chief executive office or investment strategies are routine. The FDIC places significant reliance on the management structure and business plan presented when an activity is approved for a service corporation. The FDIC does not consider either change to be routine and believes that it is important that the FDIC be aware of material changes in the operations of service corporations engaging in activities that are not permissible for a service corporation of a federal savings association. One comment requested that the notice period be extended from 10 to 30 days. The FDIC believes that both a change in management and a change in the business plan of the service corporation are matters that should receive significant consideration before these events occur. The FDIC does not believe that it is unreasonable to require notices of these events within 10 days. Therefore, the final regulation retains the requirement that a notice of change of circumstances be submitted to the

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[15] The proposal would have authorized the lower tier company to engage in any activity permissible for a federal savings association; hold adjustable rate or money market preferred stock up to 15 percent of tier one capital; engage in activities (subject to certain exceptions) authorized by the FRB under section 4(c)(8) of the Bank Holding Company Act; or engage in activity not as principal.

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Regional Director within 10 business days after any such change.

The FDIC will communicate its concerns regarding the continued conduct of an activity after a change in circumstances with the appropriate persons from the insured state savings association's primary federal banking agency. The FDIC will work with the identified persons from the primary federal banking agency to develop the appropriate response to the new circumstances.

The FDIC does not intend to require any savings association which falls out of compliance with eligibility conditions to immediately cease any activity in which the savings association had been engaged. Instead, the FDIC will deal with each situation on a case-by-case basis through its supervision and examination process. In short, the FDIC intends to utilize its supervisory and regulatory tools in dealing with any savings association's failure to meet the eligibility requirements on a continuing basis. The issue of the savings association's ongoing activities will be dealt with in the context of that effort. The FDIC believes that the case-by-case approach to whether a savings association will be permitted to continue an activity is preferable to forcing a savings association to, in all instances, immediately cease the activity. Such an inflexible approach could exacerbate an already unfortunate situation that probably is receiving supervisory attention.

Core eligibility requirements. The proposed regulation imports by reference the core eligibility requirements listed in subpart A. Refer to the discussion on this topic provided under subpart A for additional information. When reading the referenced discussion, "subsidiary" and "majority-owned subsidiary" should be replaced with "service corporation". Additionally, "eligible subsidiary" should be replaced with "eligible service corporation". Finally, "insured state savings association" should be read to replace "bank" or "insured state bank". Comments addressing these provisions and the FDIC's response are discussed in the relevant section of the preamble for subpart A. The FDIC received no comments directly relating to the application of these requirements to insured state savings associations.

Investment and transaction limits. The final regulation contains investment limits and other requirements that apply to an insured state savings association and its service corporations engaging in activities that are not permissible for a federal savings association if the requirements are imposed by FDIC order or expressly imposed by regulation. In general, the provisions: (1) Impose an aggregate limit on a savings association's investment in all service corporations that engage in an activity that is covered by the investment limits; (2) require extensions of credit from a savings association to these service corporations to be fully-collateralized when made; (3) prohibit low quality assets from being taken as collateral on such loans; and (4) require that transactions between the savings association and its service corporations be on an arm's length basis. The proposed limit restricting a savings association's investment in any one service corporation engaging in the same activity that is not permissible for a service corporation of a federal savings association was deleted for the same reason the requirement was dropped from subpart A.

Like the treatment accorded insured state banks, the regulation expands the definition of insured state savings association for the purposes of the investment and transaction limitations. A savings association includes not only the insured entity, but also any service corporation or subsidiary that is engaged in activities that are not subject to these investment and transaction limits. Sections 23A and 23B of the Federal Reserve Act combine a bank and all of its subsidiaries in imposing investment limitations and transaction restrictions between the bank and its affiliates. The FDIC is using the same concept in separating subsidiaries and service corporations conducting activities that are subject to investment and transaction limits from the insured state savings association and any other service corporations and subsidiaries engaging in activities not subject to the investment and transaction limits.

The only exception to these restrictions is for arm's length extensions of credit made by the savings association to finance sales of assets by the service corporation to third parties. These transactions do not need to comply with the collateral requirements and investment limitations, provided they meet certain arm's-length standards. The imposition of section 23A-type restrictions is intended to make sure that adequate safeguards are in place for the dealings between the insured state savings association and its service corporations.

Investment limits. In a manner similar to that applied to insured state banks in subpart A, the final rule imposes limits on certain of the insured state savings association's investments in service corporations conducting activities that are not permissible for a service corporation of a federal savings association. These investments are limited to 20 percent of the association's tier one capital for the aggregate of all activities covered by the investment limits. As is the case with the "investment" definition used in the relevant section of subpart A, investments subject to the applicable limits include: (1) Extensions of credit to any person or company for which an insured state savings association accepts securities issued by the service corporation as collateral; and (2) any extensions or commitments of credit to a third party for investment in the subsidiary, investment in a project in which the subsidiary has an interest, or extensions of credit or commitments of credit which are used for the benefit of, or transferred to, the subsidiary. These provisions also resemble items included in covered transactions subject to the section 23A limits.

However, the "investment" definition also is somewhat dissimilar from that used in subpart A due to underlying statutory differences. The definition of investment for insured state savings associations excludes extensions of credit provided to the service corporation and any of its debt securities owned by the savings association. While these items are included in the investment definition in subpart A, insured state banks are not, unlike state savings associations, required by law to deduct these items from regulatory capital. The investment definition coverage in subpart C has been limited because an insured state savings association is required by the Home Owners' Loan Act or OTS regulations to deduct from its regulatory capital any extensions of credit provided to a service corporation and any debt securities owned by the savings association that were issued by a service corporation engaging in activities that are not permissible for a national bank. 12 U.S.C. 1464(t)(5)(A). Since the regulatory exceptions in subpart C that invoke the investment limits are not activities permissible for a national bank, insured state savings associations are required by the referenced statute to deduct these items from regulatory capital. The FDIC finds no reason to impose investment limits on amounts completely deducted from capital and therefore imposes the investment limit only on items that are not deducted from regulatory capital.

Like subpart A, the regulation calculates the 20 percent limit based on tier one capital while section 23A uses total capital. As was discussed in reference to subpart A, the FDIC is using tier one capital as its standard to create consistency throughout the regulation.

Transaction requirements. The arm's length transaction requirement, prohibition on purchasing low quality assets, the insider transaction restriction, and the anti-tying restriction are applicable between an insured state savings association and a service corporation to the same extent and in the same manner as that described in subpart A between an insured state bank and certain majority-owned subsidiaries. The discussion of this topic in subpart A discusses the comments and changes from the proposal.

Collateralization requirement. The collateralization requirement in § 362.4(d)(4) also is applicable between an insured state savings association and a service corporation to the same extent and in the same manner as described in subpart A. Refer to the discussion of this topic in subpart A for the treatment of the comments.

Capital requirements. Under the final rule, an insured state savings association using the notice process to invest in a service corporation engaging in certain activities not permissible for a federal savings association must be "well-capitalized" after deducting from its regulatory capital any investment in the service corporation, both debt and equity, unless otherwise relieved of this requirement. The bank's risk classification assessment under part 327 is also determined after making the same deduction. This standard reflects the FDIC's belief that only well-capitalized institutions should be allowed, either without notice or by using the notice process, to engage through service corporations in activities that are not permissible for service corporations of federal savings associations. All savings associations failing to meet this standard and wanting to engage in such activities should be subject to the scrutiny of the application process. The FDIC received no comments concerning this provision.

Approvals previously granted. The final regulation, at § 362.13, does not require insured state savings associations that have previously received consent by order or notice from this agency to reapply to continue the activity provided the savings association and service corporation, as applicable, continue to comply with the conditions of the order of approval. The FDIC does not intend to require insured state savings associations to request consent to engage in an activity which has already been approved.

Because previously granted approvals may contain conditions that are different from the standards that are established in the final rule, in certain circumstances, the insured state savings association may elect to operate under the restrictions of the rule, instead of the order. In that case, the insured state savings association may comply with the investment and transaction limitations between the savings association and its service corporations contained in § 362.12(c), the capital requirement detailed in § 362.12(d), and the service corporation restrictions as outlined in the term "eligible service corporation" (by substitution) and contained in § 362.4(c)(2) in lieu of any similar requirements in its approval order. Any conditions that are specific to a savings association's situation and do not fall within the above limitations will continue to be effective. The FDIC intends that once a savings association elects to follow these proposed restrictions instead of those in the approval order, it may not elect to revert to the applicable conditions of the order.

Real estate investment activities. Comments describing the contents of subpart A include an extensive discussion of the FDIC's concerns with real estate investment activities. Subpart A of the final regulation contains significant provisions regarding the real estate investment activities of majority-owned subsidiaries of insured state banks. Additionally, subpart B addresses real estate activities of majority-owned subsidiaries that may become permissible for national bank subsidiaries.

The FDIC believes real estate investment activities present similar risks when conducted by a service corporation of an insured state savings association. However, subpart C of the proposal does not incorporate any of the requirements imposed in subparts A and B on real estate activities conducted by bank subsidiaries. While the FDIC attempted to conform the treatment of insured state banks and their subsidiaries and that of insured state savings associations and their service corporations, differences in the governing statutes resulted in some variances.

Service corporations of federal savings associations may engage in numerous real estate investment activities and, therefore, these activities are permissible for service corporations of insured state savings associations. However, because real estate investment activities are not permissible for a national bank, insured state savings associations are required by the Home Owners' Loan Act or regulations issued by the OTS to deduct from their regulatory capital any investment in a service corporation engaging in these activities. This deduction includes both the savings association's investments in debt and equity of, and extensions of credit to, the service corporation. There are also statutory limitations on the amount of a savings association's investments in and credit extensions to service corporations.

Given that: (1) Real estate investment activities are permissible for service corporations of federal savings associations; (2) there are statutory requirements regarding the capital deduction; and (3) there are statutory limitations on investments and credit extensions, the proposal did not contain any provisions concerning the real estate investment activities of service corporations of insured savings associations. As a result, the arm's length transaction requirements, the prohibition on purchasing low quality assets, the insider transaction restriction, and the collateralization requirements were not applied to transactions between an insured savings association and a service corporation engaging in real estate investment activities. Additionally, neither the insured savings association nor the service corporation was required to meet the eligibility standards; nor was a notice required to be submitted to the FDIC (unless a notice is needed pursuant to proposed subpart D).

The FDIC specifically requested comment on whether provisions should be added to part 362 subjecting service corporations of insured savings state savings associations to the eligibility requirements and various restrictions implemented in subparts A and B. Despite this request, no comments were received addressing this issue. After further consideration, the FDIC has decided not to impose any of the discussed requirements at this time. The FDIC will instead continue to defer to the statutory authority enabling service corporations to engage in the subject real estate activities.

Notice that a federal savings association is conducting activities grandfathered under section 5(i)(4) of HOLA. Section 303.147 (as effective October 1, 1998, formerly § 303.13(g)) of the FDIC's current regulations requires any federal savings association that is authorized by section 5(i)(4) of HOLA to conduct activities that are not normally permitted for federal savings associations to file a notice of that fact with the FDIC. Section 5(i)(4) of HOLA provides that any federal savings bank chartered as such prior to October 15, 1982, may continue to make investments and continue to conduct activities it was permitted to conduct prior to October 15, 1982. It also provides that any federal savings bank organized prior to October 15, 1982, that was formerly a state mutual savings bank may continue to make investments and engage in activities that were authorized to it under state law. Finally, the provision confers this grandfather on any federal savings association that acquires by merger or consolidation any federal savings bank that enjoys the grandfather.

The notice requirement contained in § 303.147 (as effective October 1, 1998, formerly § 303.13(g)) was deleted in the final regulation. The notice was not required by law and was formerly imposed by the FDIC as an information gathering tool. The FDIC determined that eliminating the notice will reduce burden and will not materially affect the FDIC's supervisory responsibilities.

D. Subpart D of Part 362 Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

Section 362.14 Purpose and Scope

Subpart D implements the statutory requirement of section 18(m) of the FDI Act. Section 18(m) requires that prior notice be given to the FDIC when an insured savings association, either federal or state, establishes or acquires a subsidiary or engages in any new activity in a subsidiary. This requirement is based on the FDIC's role of ensuring that activities and investments of insured savings associations do not represent a significant risk to the affected deposit insurance fund. In fulfilling that role, the FDIC needs to be aware of the activities contemplated by subsidiaries of insured savings associations. It is noted that for purposes of this subpart, a service corporation is a subsidiary, but the term subsidiary does not include any insured depository institution as that term is defined in the FDI Act. Because this requirement applies to both federal and state savings associations, the final regulation segregates the implementing requirements of the FDIC's regulations into a separate subpart D. In that manner, the requirement is highlighted for both federal and state savings associations. The FDIC adopts § 362.14 without change from the proposal.

Notice of the acquisition or establishment of a subsidiary, or notice that an existing subsidiary will conduct new activities. Section 303.146 (as effective October 1, 1998, formerly § 303.13(f)) of the FDIC's current regulations establishes an abbreviated notice procedure concerning subsidiaries created to hold real estate acquired pursuant to DPC (after the first notice, additional real estate subsidiaries created to hold real estate acquired through DPC could be established after providing the FDIC with 14 days prior notice) and lists the content of the notice. The second item is also deleted because the FDIC seeks to conform all notice periods used in this regulation. While § 362.15 continues to require a prior notice, the required content of the notice was revised in a manner consistent with that required for other notices under this regulation and moved to § 303.141 of subpart H of part 303. The FDIC wants to make it clear that any notice or application submitted to the FDIC pursuant to a provision of subpart C of this regulation will satisfy the notice requirement of this subpart D.

The FDIC received no comments on either the proposed structure of this subpart or the proposed treatment of the required notices. The final regulation incorporates these changes as proposed, with one exception. Consistent with the current rule, the savings association must submit the notice at least 30 days before establishing the new subsidiary or commencing the new activity.

Part 303

Subpart G—Activities of Insured State Banks

Overview

As a part of this rulemaking, Part 303—Filing Procedures and Delegations of Authority, is amended to include a new subpart G containing application procedures and delegations of authority for the substantive matters covered by the regulation for insured state banks.[16] As discussed above, the FDIC has prepared a complete revision of part 303 of the FDIC's rules and regulations containing the FDIC's applications procedures and delegations of authority. As part of these revisions to part 303, subpart G of part 303 has been reserved for this purpose. The application procedures were detailed in subpart E of the part 362 proposal but are now being relocated to subpart G of part 303, to centralize all banking application and notice procedures in one convenient place.

The FDIC received four comments about its proposed application procedures. One commenter generally applauded the FDIC's adoption of expedited notice procedures as being consistent with congressional intent to reduce regulatory burden on banks. The remaining three comments are discussed in turn below. After careful consideration of these comments, the FDIC has decided they raise no issues warranting substantive changes to the proposed procedures. The FDIC has made certain technical changes to the proposed procedures, but these consist of minor revisions in order to make the procedures consistent with the other subparts of part 303, as adopted in its final form and published at 63 FR 44686 (August 20, 1998).

Section 303.120 Scope

This subpart contains the procedural and other information for any application or notice that must be submitted under the requirements specified for activities and investments of insured state banks and their subsidiaries under subparts A and B of part 362, including the format, information requirements, FDIC processing deadlines, and other pertinent guidelines or instructions. The regulation also contains delegations of authority from the Board of Directors to the director and deputy director of the Division of Supervision.

Definitions. The proposed subpart E of part 362 contained definitions of the following terms: "Appropriate regional director", "appropriate deputy regional director", "appropriate regional office", "associate director", "deputy director", "deputy regional director", "DOS", "director", and "regional director". These definitions have been eliminated since these terms are defined in part 303, and separate definitions are unnecessary.

Although other subparts of part 303 rely on part 303's definition of an "eligible insured depository institution" in connection with granting expedited processing for certain FDIC applications, subpart G does not rely on the part 303 definition. A bank's eligibility for expedited notice processing in connection with an approval required under subpart A or B of part 362 is determined under the criteria contained in part 362.

Section 303.121 Filing Procedures

This section explains to insured state banks where they should file, how they should file and the contents of any filing, including any copies of any application or notice filed with another agency.

This section also explains that the appropriate regional director may request additional information. The FDIC does not anticipate that there will be a need routinely to request additional information; however, this reservation is made in anticipation of differences in the way activities are proposed to be conducted.

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[16] Under the FDIC's current rules, these application requirements are located in various sections of three different regulations: 12 CFR 303, 12 CFR 337.4 and 12 CFR 362.

One commenter expressed concerns regarding the regulation's requirement that the bank submit a copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity, if such approval is necessary and has already been granted. The commenter was concerned that this would foreclose the bank from making simultaneous submissions to state regulatory authorities and the FDIC. To the contrary, the language at the end of the sentence, "if such approval * * * has already been granted" will accommodate parallel processing. The bank need not wait until the state has issued an approval before applying to the FDIC. The regulatory language permits the bank to make necessary submissions to the state and FDIC in whatever order the bank sees fit. Of course, banks are reminded that an FDIC approval under subpart A or B of part 362 is not sufficient on its own; the activity in question must still be authorized under state law, including any approvals thereunder, before the bank may commence the activity. Where the pendency of state approval creates uncertainty as to the manner or extent to which the activity will be conducted, the appropriate regional director will request additional information from the bank concerning the state approval, and the notice or application may not be sufficiently complete for the FDIC to be able to process it until such uncertainties are resolved.

Section 303.122 Processing

This section sets out the procedures for the FDIC's processing of notices and applications. The expedited processing period for notices will normally be 30 days, subject to extension for an additional 15 days upon written notice to the bank. If the FDIC removes a notice from expedited processing because of significant supervisory concerns, legal or policy issues, or other good cause, as set out in the rule, standard processing will be used. For notices removed in this manner, or for activities requiring a full application rather than a notice, the FDIC will normally review and act within 60 days after receipt of a completed application, subject to extension for an additional 30 days upon written notice to the bank. One comment supported the notice process as regulatory burden reduction. Two comments questioned the time periods for processing. One stated that the 30- and 60-day time frames do not reflect business reality. The commenter requested that institutions have advanced approval to invest up to 10 percent of capital. The other questioned the notice process, stating that the FDIC will not have sufficient opportunity to review the request. Because of the differences among the activities presented, the FDIC does not feel that advance approval is a viable alternative. Given normal lead times for business planning appropriate to a bank's decision to enter into a new field of business activity, and given that the regulation does not require FDIC approval on a project-by-project basis, the FDIC does not believe the proposed time periods will impede banks' ability to compete effectively. The notice and application procedures provide an expedited processing time, but the FDIC feels the time constraints are sufficient for appropriate supervisory consideration. Therefore, no changes have been made to the proposed processing times.

Section 303.123 Delegation of Authority

The authority to review and act upon applications and notices is delegated in this section. One substantive change to the existing delegation is the addition of the deputy director of the Division of Supervision. Another change authorizes the Director (DOS) to make determinations concerning instruments having the character of debt securities. This authority is granted to allow the FDIC to efficiently respond to market changes. Section 24 prohibits insured state banks from investing in equity securities. The FDIC has found that certain instruments have sufficient characteristics of debt securities that they may be excluded from the prohibition of investment in equity securities. If the capital markets create similar such instruments in the future, this provision permits the Director (DOS), either upon request or at the FDIC's instigation, to identify them as such and designate them as being eligible investments for state nonmember banks, subject to the 15 percent of tier one capital limit set under § 362.3. The FDIC would notify state banks of such determination by issuing a Financial Institution Letter, or through other appropriate means.

Subpart H—Activities of Insured Savings Associations

Overview

As a part of this rulemaking, part 303—Filing Procedures and Delegations of Authority, is amended to include a revised subpart H containing application procedures and delegations of authority for the substantive matters covered by the regulation for insured state savings associations. As discussed above, the FDIC has prepared a complete revision of part 303 of the FDIC's rules and regulations containing the FDIC's applications procedures and delegations of authority. As part of these revisions to part 303, subpart H of part 303 has been reserved for this purpose. The application procedures were detailed in subpart F of the part 362 proposal but are now being relocated to subpart H of part 303 to centralize all savings association application and notice procedures in one convenient place.

The FDIC received no comments about its proposed application procedures. The FDIC has made certain technical changes to the proposed procedures, but these changes consist of minor revisions to make the procedures consistent with the other subparts of part 303, as adopted in its final form.

Section 303.140 Scope

This subpart contains the procedural and other information for any application or notice that must be submitted under the requirements specified for activities and investments of insured state savings associations and their subsidiaries under subparts C and D or part 362, including the format, information requirements, FDIC processing deadlines, and other pertinent guidelines or instructions. The regulation also contains delegations of authority from the Board of Directors to the director and deputy director of the Division of Supervision.

Section 303.141 Definitions

The proposed subpart F contained definitions of the following terms: "Appropriate regional director", "appropriate deputy regional director", "appropriate regional office", "associate director", "deputy director", "deputy regional director", "DOS", "director", and "regional director". These definitions have been eliminated since these terms are defined in part 303 and separate definitions are unnecessary.

Although other subparts of part 303 rely on part 303's definition of an "eligible insured depository institution" in connection with granting expedited processing for certain FDIC applications, subpart H does not rely on the part 303 definition. A savings association's eligibility for expedited notice processing in connection with an approval required under subpart C or D of part 362 is determined under the criteria contained in part 362.

Section 303.141 Filing Procedures

This section explains to insured savings associations where they should file, how they should file and the contents of any filing, including any copies of any application or notice filed with another agency.

This section also explains that the appropriate regional director may request additional information. The FDIC does not anticipate that there will be a need routinely to request additional information; however, this reservation is made in anticipation of differences in the way activities are proposed to be conducted.

Section 303.142 Processing

This section sets out the procedures for the FDIC's processing of notices and applications. The expedited processing period for notices will normally be 30 days, subject to extension for an additional 15 days upon written notice to the bank. If the FDIC removes a notice from expedited processing because of significant supervisory concerns, legal or policy issues, or other good cause, as set out in the rule, standard processing will be used. For notices removed in this manner, or for activities requiring a full application rather than a notice, the FDIC will normally review and act within 60 days after receipt of a completed application, subject to extension for an additional 30 days upon written notice to the savings association.

Section 303.148 Delegation of Authority

The authority to review and act upon applications and notices is delegated in this section. One substantive change to the existing delegation is the addition of the deputy director of the Division of Supervision. Another change authorizes the Director (DOS) to make determinations concerning instruments having the character of debt securities. This authority is granted to allow the FDIC to efficiently respond to market changes. Section 28 prohibits insured state associations from investing in equity securities. The FDIC has found that certain instruments have characteristics of debt securities and may be excluded from the prohibition of investment in equity securities. If the capital markets create similar such instruments in the future, this provision permits the Director (DOS), either upon request or at the FDIC's instigation, to identify them as such and designate them as being eligible investments for state nonmember banks, up to the 15 percent of tier one capital limit set under § 362.3. The FDIC would notify state banks of such determination by issuing a Financial Institution Letter, or other appropriate means.

V. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public comment was invited on two collections of information contained in the part 362 notice of proposed rulemaking and the two collections were submitted to the Office of Management and Budget (OMB) for review. No comment was received regarding either collection. OMB approved the first collection, Activities and Investments of Insured State Banks, under control number 3064–0111, which will expire November 30, 2000. OMB approved the second collection, Activities and Investments of Insured Savings Associations, under control number 3064–0104, which will expire November 30, 2000. The FDIC continues to welcome comment about the PRA aspects of this regulation. Such comment should identify the particular subpart and information collection for which consideration is desired and should be sent to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4062, 550 17th Street NW, Washington, DC 20429.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule streamlines requirements for all insured state banks and insured state savings associations. The requirements for insured federal savings associations are statutory and remain unchanged by this rule. It simplifies the requirements that apply when insured state banks and insured state savings associations create, invest in, or conduct new activities through majority-owned corporate subsidiaries and service corporations, respectively, by eliminating requirements for any filing or reducing the burden from filing an application to filing a notice in other instances. The rule also simplifies the information required for both notices and applications. Whenever possible, the rule clarifies the expectations of the FDIC when it requires notices or applications to consent to activities by insured state banks and insured state savings associations. The rule will make it easier for small insured state banks and insured state savings associations to locate the rules that apply to their investments.

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Public Law 1004–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when a federal agency issues a final rule. Accordingly, the FDIC will file the appropriate reports with Congress as required by SBREFA.

The Office of Management and Budget has determined that this final rule does not constitute a "major rule" as defined by SBREFA.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Bank merger, Branching, Foreign branches, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby amends 12 CFR chapter III as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831*o*, 1831p–1, 1835a, 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. Revise the subpart G heading and add subpart G, consisting of §§ 303.120 through 303.123, to read as follows:

Subpart G—Activities of Insured State Banks

Sec.

303.120 Scope.
303.121 Filing procedures.
303.122 Processing.
303.123 Delegation of authority.

Subpart G—Activities of Insured State Banks

§ 303.120 Scope.

This subpart sets forth procedures for complying with notice and application requirements contained in subpart A of part 362 of this chapter, governing insured state banks and their subsidiaries engaging in activities which are not permissible for national banks and their subsidiaries. This subpart also sets forth procedures for complying with notice and application requirements contained in subpart B of part 362 of this chapter, governing certain activities of insured state nonmember banks, their subsidiaries, and certain affiliates.

§ 303.121 Filing procedures.

(a) *Where to file.* A notice or application required by subpart A or subpart B of part 362 of this chapter shall be submitted in writing to the appropriate regional director (DOS).

(b) *Contents of filing*—(1) *Filings generally.* A complete letter notice or letter application shall include the following information:

(i) A brief description of the activity and the manner in which it will be conducted;

(ii) The amount of the bank's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage limitation detailed in subpart A or B of part 362 of this chapter;

(iii) A copy of the bank's business plan regarding the conduct of the activity;

(iv) A citation to the state statutory or regulatory authority for the conduct of the activity;

(v) A copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted;

(vi) A brief description of the bank's policy and practice with regard to any anticipated involvement in the activity by a director, executive office or principal shareholder of the bank or any related interest of such a person; and

(vii) A description of the bank's expertise in the activity.

(2) [Reserved]

(3) *Copy of application or notice filed with another agency.* If an insured state bank has filed an application or notice with another federal or state regulatory authority which contains all of the information required by paragraph (b)(1) of this section, the insured state bank may submit a copy to the FDIC in lieu of a separate filing.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

§ 303.122 Processing.

(a) *Expedited processing.* A notice filed by an insured state bank seeking to commence or continue an activity under § 362.4(b)(3)(i), § 362.4(b)(5), or § 362.8(a)(2) of this chapter will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided a basis for that decision. The FDIC may remove the notice from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, a notice processed under expedited processing is deemed approved 30 days after receipt of a complete notice by the FDIC (subject to extension for an additional 15 days upon written notice to the bank) or on such earlier date authorized by the FDIC in writing.

(b) *Standard processing for applications and notices that have been removed from expedited processing.* For an application filed by an insured state bank seeking to commence or continue an activity under § 362.3(a)(2)(iii)(A), § 362.3(b)(2)(i), § 362.3(b)(2)(ii)(A), § 362.3(b)(2)(ii)(C), § 362.4(b)(1), § 362.4(b)(2), § 362.4(b)(4), § 362.5(b)(2), § 362.8(a)(2), or § 362.8(b) of this chapter or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured state bank with written notification of the final action as soon as the decision is rendered. The FDIC will normally review and act in such cases within 60 days after receipt of a completed application or notice (subject to extension for an additional 30 days upon written notice to the bank), but failure of the FDIC to act prior to the expiration of these periods does not constitute approval.

§ 303.123 Delegations of authority.

(a) *Instruments having the character of debt securities.* Authority is delegated to the Director (DOS) to make determinations contemplated under §§ 362.2(h) and 362.3(b)(2)(iii)(B) of this chapter.

(b) *Other applications, notices, and actions.* The authority to review and act upon applications and notices filed pursuant to this subpart G and to take any other action authorized by this subpart G or subparts A and B of part 362 of this chapter is delegated to the Director (DOS), and except as limited by paragraph (a) of this section, to the Deputy Director and where confirmed in writing by the Director to an associate director and the appropriate regional director and deputy regional director.

3. Revise subpart H to read as follows:

Subpart H—Activities of Insured Savings Associations

Sec.

303.140 Scope.
303.141 Filing procedures.
303.142 Processing.
303.143 Delegation of authority.

Subpart H—Activities of Insured Savings Associations

§ 303.140 Scope.

This subpart sets forth procedures for complying with the notice and application requirements contained in subpart C of part 362 of this chapter, governing insured state savings associations and their service corporations engaging in activities which are not permissible for federal savings associations and their service corporations. This subpart also sets forth procedures for complying with the notice requirements contained in subpart D of part 362 of this chapter, governing insured savings associations which establish or engage in new activities through a subsidiary.

§ 303.141 Filing procedures.

(a) *Where to file.* All applications and notices required by subpart C or subpart D of part 362 of this chapter are to be in writing and filed with the appropriate regional director.

(b) *Contents of filing*—(1) *Filings generally.* A complete letter notice or letter application shall include the following information:

(i) A brief description of the activity and the manner in which it will be conducted;

(ii) The amount of the association's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage limitation detailed in subpart C or D of this chapter;

(iii) A copy of the association's business plan regarding the conduct of the activity;

(iv) A citation to the state statutory or regulatory authority for the conduct of the activity;

(v) A copy of the order or other document from the appropriate regulatory authority granting approval for the association to conduct the activity if such approval is necessary and has already been granted;

(vi) A brief description of the association's policy and practice with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the association or any related interest of such a person; and

(vii) A description of the association's expertise in the activity.

(2) [Reserved]

(3) *Copy of application or notice filed with another agency.* If an insured savings association has filed an application or notice with another federal or state regulatory authority which contains all of the information required by paragraph (b) (1) of this section, the insured state bank may submit a copy to the FDIC in lieu of a separate filing.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

§ 303.142 Processing.

(a) *Expedited processing.* A notice filed by an insured state savings association seeking to commence or continue an activity under § 362.11(b)(2)(i), § 362.12(b)(2)(i), or § 362.12(b)(4) of this chapter will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided a basis for that decision. The FDIC may remove the notice from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, a notice processed under expedited processing is deemed approved 30 days after receipt of a complete notice by the FDIC (subject to extension for an additional 15 days upon written notice to the bank) or on such earlier date authorized by the FDIC in writing.

(b) *Standard processing for applications and notices that have been removed from expedited processing.* For an application filed by an insured state savings association seeking to commence or continue an activity under § 362.11(a)(2), § 362.11(b)(2), § 362.12(b)(1) of this chapter or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured state savings association with written notification of the final action as soon as the decision is rendered. The FDIC will normally review and act in such cases within 60 days after receipt of a completed application or notice (subject to extension for an additional 30 days upon written notice to the bank), but failure of the FDIC to act prior to the expiration of these periods does not constitute approval.

(c) *Notices of activities in excess of an amount permissible for a federal savings association; subsidiary notices.* Receipt of a notice filed by an insured state savings association as required by § 362.11(b)(3) or § 362.15 of this chapter will be acknowledged in writing by the appropriate regional director (DOS). The notice will be reviewed at the appropriate regional office, which will take such action as it deems necessary and appropriate.

§ 303.143 Delegations of authority.

(a) *Instruments having the character of debt securities.* Authority is delegated to the Director (DOS) to make determinations contemplated under §§ 362.2(h) and 362.3(b)(2)(iii)(B) of this chapter.

(b) *Other applications, notices, and actions.* The authority to review and act upon applications and notices filed pursuant to this subpart H and to take any other action authorized by this subpart H or subparts C and D of part 362 of this chapter is delegated to the Director (DOS), and except as limited by paragraph (a) of this section, to the Deputy Director and where confirmed in writing by the Director to an associate director and the appropriate regional director and deputy regional director.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

4. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831f, 1831f–1.

5. In § 337.4, a new paragraph (i) is added to read as follows:

§ 337.4 Securities activities of subsidiaries of insured nonmember banks; bank transactions with affiliated securities companies.

* * * * *

(i) *Coordination with part 362 of this chapter*—(1) *New subsidiary or affiliate relationships.* Beginning January 1, 1999, every insured state nonmember bank that establishes a new subsidiary relationship subject to the provisions of § 362.4(b)(4) or § 362.4(b)(5)(ii) of this chapter or a new affiliate relationship that is subject to § 362.8(b) of this chapter shall comply with § 362.4(b)(4), § 362.4(b)(5)(ii) or § 362.8(b) of this chapter, respectively, or to the extent the insured state nonmember bank's planned subsidiary or affiliate will not comply with all requirements thereunder, submit an application to the FDIC under § 362.4(b)(1) or § 362.8(b) of this chapter, respectively. This section shall not apply to such subsidiary or affiliate.

(2) *Existing insured state nonmember bank subsidiaries subject to § 362.4.* Applicable transition rules for insured state nonmember bank subsidiaries engaged, before January 1, 1999, in securities activities pursuant to this section and also subject to § 362.4 of this chapter are set out in § 362.5 of this chapter.

(3) *Continued effectiveness of this section.* Insured state nonmember banks establishing or holding subsidiaries or affiliates subject to this section, but not covered by § 362.4 or § 362.8 of this chapter, remain subject to the requirements of this section, except that to the extent such subsidiaries or affiliates engage only in activities permissible for a national bank directly, including such permissible activities that may require the subsidiary or affiliate to register as a securities broker, no notice under paragraph (d) of this section is required.

6. Part 362 is revised to read as follows:

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

Subpart A—Activities of Insured State Banks

Sec.

362.1 Purpose and scope.
362.2 Definitions.
362.3 Activities of insured state banks.
362.4 Subsidiaries of insured state banks.
362.5 Approvals previously granted.

Subpart B—Safety and Soundness Rules Governing Insured State Nonmember Banks

362.6 Purpose and scope.
362.7 Definitions.
362.8 Restrictions on activities of insured state nonmember banks.

Subpart C—Activities of Insured State Savings Associations

362.9 Purpose and scope.
362.10 Definitions.
362.11 Activities of insured state savings associations.
362.12 Service corporations of insured state savings associations.
362.13 Approvals previously granted.

Subpart D—Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

362.14 Purpose and scope.
362.15 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

Authority: 12 U.S.C. 1816, 1818, 1819(a)(Tenth), 1828(m), 1831a, 1831e.

Subpart A—Activities of Insured State Banks

§ 362.1 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter, implements the provisions of section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries. The phrase "activity permissible for a national bank" means any activity authorized for national banks under any statute including the National Bank Act (12 U.S.C. 21 *et seq.*), as well as activities recognized as permissible for a national bank in regulations, official circulars, bulletins, orders or written interpretations issued by the Office of the Comptroller of the Currency (OCC).

(b) This subpart does not cover the following activities:

(1) Activities conducted other than "as principal," defined for purposes of this subpart as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services;

(2) Interests in real estate in which the real property is used or intended in good faith to be used within a reasonable time by an insured state bank or its subsidiaries as offices or related facilities for the conduct of its business or future expansion of its business or used as public welfare investments of a type permissible for national banks; and

(3) Equity investments acquired in connection with debts previously contracted (DPC) if the insured state bank does not hold the property for speculation and takes only such actions as would be permissible for a national bank's DPC. The bank must dispose of the property within the shorter of the period set by federal law for national banks or the period allowed under state law. For real estate, national banks may not hold DPC for more than 10 years. For equity securities, national banks must generally divest DPC as soon as possible consistent with obtaining a reasonable return.

(c) A subsidiary of an insured state bank may not engage in real estate investment activities that are not permissible for a subsidiary of a national bank unless the bank does so through a subsidiary of which the bank is a majority owner, is in compliance with applicable capital standards, and the FDIC has determined that the activity poses no significant risk to the appropriate deposit insurance fund. This subpart provides standards for majority-owned subsidiaries of insured state banks engaging in real estate investment activities that are not permissible for a subsidiary of a national bank. Because of safety and soundness concerns relating to real estate investment activities, subpart B of this part reflects special rules for subsidiaries of insured state nonmember banks that engage in real estate investment activities of a type that are not permissible for a national bank, but may be otherwise permissible for a subsidiary of a national bank.

(d) The FDIC intends to allow insured state banks and their subsidiaries to undertake only safe and sound activities and investments that do not present significant risks to the deposit insurance funds and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state bank to make investments or to conduct activities that are not authorized or that are prohibited by either state or federal law.

§ 362.2 Definitions.

For the purposes of this subpart, the following definitions will apply:

(a) *Bank, state bank, savings association, state savings association, depository institution, insured depository institution, insured state bank, federal savings association,* and *insured state nonmember bank* shall each have the same respective meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(b) *Activity* means the conduct of business by a state-chartered depository institution, including acquiring or retaining an equity investment or other investment.

(c) *Change in control* means any transaction:

(1) By a state bank or its holding company for which a notice is required to be filed with the FDIC, or the Board of Governors of the Federal Reserve System (FRB), pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) except a transaction that is presumed to be an acquisition of control under the FDIC's or FRB's regulations implementing section 7(j);

(2) As a result of which a state bank eligible for the exception described in § 362.3(a)(2)(iii) is acquired by or merged into a depository institution that is not eligible for the exception, or as a result of which its holding company is acquired by or merged into a holding company which controls one or more bank subsidiaries not eligible for the exception; or

(3) In which control of the state bank is acquired by a bank holding company in a transaction requiring FRB approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842), other than a one bank holding company formation in which all or substantially all of the shares of the holding company will be owned by persons who were shareholders of the bank.

(d) *Company* means any corporation, partnership, limited liability company, business trust, association, joint venture, pool, syndicate or other similar business organization.

(e) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting securities of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(f) *Convert its charter* means an insured state bank undergoes any transaction that causes the bank to operate under a different form of charter than it had as of December 19, 1991, except a change from mutual to stock form shall not be considered a charter conversion.

(g) *Equity investment* means an ownership interest in any company; any membership interest that includes a voting right in any company; any interest in real estate; any transaction which in substance falls into any of these categories even though it may be structured as some other form of business transaction; and includes an equity security. The term "equity investment" does not include any of the foregoing if the interest is taken as security for a loan.

(h) *Equity security* means any stock (other than adjustable rate preferred stock, money market (auction rate) preferred stock, or other newly developed instrument determined by the FDIC to have the character of debt securities), certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing.

(i) *Extension of credit, executive officer, director, principal shareholder,* and *related interest* each has the same respective meaning as is applicable for the purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) and § 337.3 of this chapter.

(j) *Institution* shall have the same meaning as "state-chartered depository institution."

(k) *Majority-owned subsidiary* means any corporation in which the parent insured state bank owns a majority of the outstanding voting stock.

(l) *National securities exchange* means a securities exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System, i.e., the top tier of the National Association of Securities Dealers Automated Quotation System.

(m) *Real estate investment activity* means any interest in real estate (other than as security for a loan) held directly or indirectly that is not permissible for a national bank.

(n) *Residents of the state* includes individuals living in the state, individuals employed in the state, any person to whom the company provided insurance as principal without interruption since such person resided in or was employed in the state, and companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the state.

(o) *Security* has the same meaning as it has in part 344 of this chapter.

(p) *Significant risk to the deposit insurance fund* shall be understood to be present whenever the FDIC determines there is a high probability that any insurance fund administered by the FDIC may suffer a loss. Such risk may be present either when an activity contributes or may contribute to the decline in condition of a particular state-chartered depository institution or when a type of activity is found by the FDIC to contribute or potentially contribute to the deterioration of the overall condition of the banking system.

(q) *State-chartered depository institution* means any state bank or state savings association insured by the FDIC.

(r) *Subsidiary* means any company controlled by an insured depository institution.

(s) *Tier one capital* has the same meaning as set forth in part 325 of this chapter for an insured state nonmember bank. For other state-chartered depository institutions, the term "tier one capital" has the same meaning as set forth in the capital regulations adopted by the appropriate federal banking agency.

(t) *Well-capitalized* has the same meaning set forth in part 325 of this chapter for an insured state nonmember bank. For other state-chartered depository institutions, the term "well-capitalized" has the same meaning as set forth in the capital regulations adopted by the appropriate federal banking agency.

§ 362.3 Activities of insured state banks.

(a) *Equity investments.* (1) *Prohibited equity investments.* No insured state bank may directly or indirectly acquire or retain as principal any equity investment of a type that is not permissible for a national bank unless one of the exceptions in paragraph (a)(2) of this section applies.

(2) *Exceptions.* (i) *Equity investment in majority-owned subsidiaries.* An insured state bank may acquire or retain an equity investment in a subsidiary of which the bank is a majority owner, provided that the subsidiary is engaging in activities that are allowed pursuant to the provisions of or by application under § 362.4(b).

(ii) *Investments in qualified housing projects.* An insured state bank may invest as a limited partner in a partnership, or as a noncontrolling interest holder of a limited liability company, the sole purpose of which is to invest in the acquisition, rehabilitation, or new construction of a qualified housing project, provided that the bank's aggregate investment (including legally binding commitments) does not exceed, when made, 2 percent of total assets as of the date of the bank's most recent consolidated report of condition prior to making the investment. For the purposes of this paragraph (a)(2)(ii), *Aggregate investment* means the total book value of the bank's investment in the real estate calculated in accordance with the instructions for the preparation of the consolidated report of condition. *Qualified housing project* means residential real estate intended to primarily benefit lower income persons throughout the period of the bank's investment including any project that has received an award of low income housing tax credits under section 42 of the Internal Revenue Code (26 U.S.C. 42) (such as a reservation or allocation of credits) from a state or local housing credit agency. A residential real estate project that does not qualify for the tax credit under section 42 of the Internal Revenue Code will qualify under this exception if 50 percent or more of the housing units are to be occupied by lower income persons. A project will be considered residential despite the fact that some portion of the total square footage of the project is utilized for commercial purposes, provided that such commercial use is not the primary purpose of the project. *Lower income* has the same meaning as "low income" and "moderate income" as defined for the purposes of § 345.12(n) (1) and (2) of this chapter.

(iii) *Grandfathered investments in common or preferred stock; shares of investment companies.* (A) *General.* An insured state bank that is located in a state which as of September 30, 1991, authorized investment in:

(*1*)(*i*) Common or preferred stock listed on a national securities exchange (listed stock); or

(*ii*) Shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (registered shares); and

(*2*) Which during the period beginning on September 30, 1990, and ending on November 26, 1991, made or maintained an investment in listed stock or registered shares, may retain whatever lawfully acquired listed stock or registered shares it held and may continue to acquire listed stock and/or registered shares, provided that the bank files a notice in accordance with section 24(f)(6) of the Federal Deposit Insurance Act in compliance with § 303.121 of this chapter and the FDIC processes the notice without objection under § 303.122 of this chapter. Approval will be granted only if the FDIC determines that acquiring or retaining the stock or shares does not pose a significant risk to the appropriate deposit insurance fund. Approval may be subject to whatever conditions or restrictions the FDIC determines are necessary or appropriate.

(B) *Loss of grandfather exception.* The exception for grandfathered investments under paragraph (a)(2)(iii)(A) of this section shall no longer apply if the bank converts its charter or the bank or its parent holding company undergoes a change in control. If any of these events occur, the bank may retain its existing investments unless directed by the FDIC or other applicable authority to divest the listed stock or registered shares.

(C) *Maximum permissible investment.* A bank's aggregate investment in listed stock and registered shares under paragraph (a)(2)(iii)(A) of this section shall in no event exceed, when made, 100 percent of the bank's tier one capital as measured on the bank's most recent consolidated report of condition (call report) prior to making any such investment. The lower of the bank's cost as determined in accordance with call report instructions or the market value of the listed stock and shares shall be used to determine compliance. The FDIC may determine when acting upon a notice filed in accordance with paragraph (a)(2)(iii)(A)(*2*) of this section that the permissible limit for any particular insured state bank is something less than 100 percent of tier one capital.

(iv) *Stock investment in insured depository institutions owned exclusively by other banks and savings associations.* An insured state bank may acquire or retain the stock of an insured depository institution if the insured depository institution engages only in activities permissible for national banks; the insured depository institution is subject to examination and regulation by a state bank supervisor; the voting stock is owned by 20 or more insured depository institutions, but no one institution owns more than 15 percent of the voting stock; and the insured depository institution's stock (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees) is owned only by insured depository institutions.

(v) *Stock investment in insurance companies*—(A) *Stock of director and officer liability insurance company.* An insured state bank may acquire and retain up to 10 percent of the outstanding stock of a corporation that solely provides or reinsures directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions.

(B) *Stock of savings bank life insurance company.* An insured state bank located in Massachusetts, New York, or Connecticut may own stock in a savings bank life insurance company, provided that the savings bank life insurance company provides written disclosures to purchasers or potential purchasers of life insurance policies, other insurance products, and annuities that are consistent with the disclosures described in the Interagency Statement on the Retail Sale of Nondeposit Investment Products (FIL–9–94,[1] February 17, 1994) or any successor requirement which indicates that the policies, products, and annuities are not FDIC insured deposits, are not guaranteed by the bank and are subject to investment risks, including possible loss of the principal amount invested.

(b) *Activities other than equity investments*—(1) *Prohibited activities.* An insured state bank may not directly or indirectly engage as principal in any activity, that is not an equity investment, and is of a type not permissible for a national bank unless one of the exceptions in paragraph (b)(2) of this section applies.

(2) *Exceptions*—(i) *Consent obtained through application.* An insured state bank that meets and continues to meet the applicable capital standards set by the appropriate federal banking agency may conduct activities prohibited by paragraph (b)(1) of this section if the bank obtains the FDIC's prior written consent. Consent will be given only if the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund. Applications for consent should be filed in accordance with § 303.121 of this chapter and will be processed under § 303.122(b) of this chapter. Approvals granted under § 303.122(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(ii) *Insurance underwriting*—(A) *Savings bank life insurance.* An insured state bank that is located in Massachusetts, New York or Connecticut may provide as principal savings bank life insurance through a department of the bank, provided that the department meets the core standards of paragraph (c) of this section or submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedures in § 303.122(b) of this chapter, and the department provides purchasers or potential purchasers of life insurance policies, other insurance products and annuities written disclosures that are consistent with the disclosures described in the Interagency Statement on the Retail Sale of Nondeposit Investment Products (FIL–9–94, February 17, 1994) and any successor requirement which indicates that the policies, products and annuities are not FDIC insured deposits, are not guaranteed by the bank, and are subject to investment risks, including the possible loss of the principal amount invested.

(B) *Federal crop insurance.* Any insured state bank that was providing insurance as principal on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation, may continue to do so.

(C) *Grandfathered insurance underwriting.* A well-capitalized insured state bank that on November 21, 1991, was lawfully providing insurance as principal through a department of the bank may continue to provide the same types of insurance as principal to the residents of the state or states in which the bank did so on such date provided that the bank's department meets the core standards of paragraph (c) of this section, or submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedures in § 303.122(b) of this chapter.

(iii) *Acquiring and retaining adjustable rate and money market preferred stock.* (A) An insured state bank's investment of up to 15 percent of the bank's tier one capital in adjustable rate preferred stock or money market (auction rate) preferred stock does not represent a significant risk to the deposit insurance funds. An insured state bank may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(B) An insured state bank may acquire or retain other instruments of a type determined by the FDIC to have the character of debt securities and not to represent a significant risk to the deposit insurance funds. Such instruments shall be included in the 15 percent of tier one capital limit imposed in paragraph (b)(2)(iii)(A) of this section. An insured state bank may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to

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[1] Financial institution letters (FILs) are available in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. 20429.

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the activities if the facts and circumstances warrant such action.

(c) *Core standards.* For any insured state bank to be eligible to conduct insurance activities listed in paragraph (b)(2)(ii)(A) or (C) of this section, the bank must conduct the activities in a department that meets the following core separation and operating standards:

(1) The department is physically distinct from the remainder of the bank;

(2) The department maintains separate accounting and other records;

(3) The department has assets, liabilities, obligations and expenses that are separate and distinct from those of the remainder of the bank;

(4) The department is subject to state statute that requires its obligations, liabilities and expenses be satisfied only with the assets of the department; and

(5) The department informs its customers that only the assets of the department may be used to satisfy the obligations of the department.

§ 362.4 Subsidiaries of insured state banks.

(a) *Prohibition.* A subsidiary of an insured state bank may not engage as principal in any activity that is not of a type permissible for a subsidiary of a national bank, unless it meets one of the exceptions in paragraph (b) of this section.

(b) *Exceptions*—(1) *Consent obtained through application.* A subsidiary of an insured state bank may conduct otherwise prohibited activities if the bank obtains the FDIC's prior written consent and the insured state bank meets and continues to meet the applicable capital standards set by the appropriate federal banking agency. Consent will be given only if the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund. Applications for consent should be filed in accordance with § 303.121 of this chapter and will be processed under § 303.122(b) of this chapter. Approvals granted under § 303.122(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(2) *Grandfathered insurance underwriting subsidiaries.* A subsidiary of an insured state bank may:

(i) Engage in grandfathered insurance underwriting if the insured state bank or its subsidiary on November 21, 1991, was lawfully providing insurance as principal. The subsidiary may continue to provide the same types of insurance as principal to the residents of the state or states in which the bank or subsidiary did so on such date provided that:

(A)(*1*) The bank meets the capital requirements of paragraph (e) of this section; and

(*2*) The subsidiary is an "eligible subsidiary" as described in paragraph (c)(2) of this section; or

(B) The bank submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedures in § 303.122(b) of this chapter.

(ii) Continue to provide as principal title insurance, provided the bank was required before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under state law and neither the bank nor its parent holding company undergoes a change in control.

(iii) May continue to provide as principal insurance which is reinsured in whole or in part by the Federal Crop Insurance Corporation if the subsidiary was engaged in the activity on or before September 30, 1991.

(3) *Majority-owned subsidiaries' ownership of equity investments that represent a control interest in a company.* The FDIC has determined that investment in the following by a majority-owned subsidiary of an insured state bank does not represent a significant risk to the deposit insurance funds:

(i) Equity investment in a company engaged in real estate or securities activities authorized in paragraph (b)(5) of this section if the bank complies with the following restrictions and files a notice in compliance with § 303.121 of this chapter and the FDIC processes the notice without objection under § 303.122(a) of this chapter. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activity if the facts and circumstances warrant such action. If changes to the management or business plan of the company at any time result in material changes to the nature of the company's business or the manner in which its business is conducted, the insured state bank shall advise the appropriate regional director (DOS) in writing within 10 business days after such change. Investment under this paragraph is authorized if:

(A) The majority-owned subsidiary controls the company;

(B) The bank meets the core eligibility criteria of paragraph (c)(1) of this section;

(C) The majority-owned subsidiary meets the core eligibility criteria of paragraph (c)(2) of this section (including any modifications thereof applicable under paragraph (b)(5)(i) of this section), or the company is a corporation meeting such criteria;

(D) The bank's transactions with the majority-owned subsidiary, and the bank's transactions with the company, comply with the investment and transaction limits of paragraph (d) of this section;

(E) The bank complies with the capital requirements of paragraph (e) of this section with respect to the majority-owned subsidiary and the company; and

(F) To the extent the company is engaged in securities activities authorized by paragraph (b)(5)(ii) of this section, the bank and the company comply with the additional requirements therein as if the company were a majority-owned subsidiary.

(ii) Equity securities of a company engaged in the following activities, if the majority-owned subsidiary controls the company or the company is controlled by insured depository institutions, and the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate federal banking agency. The FDIC consents that a majority-owned subsidiary may conduct such activity without first obtaining the FDIC's consent. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activity if the facts and circumstances warrant such action:

(A) Any activity that is permissible for a national bank, including such permissible activities that may require the company to register as a securities broker;

(B) Acting as an insurance agency;

(C) Engaging in any activity permissible for an insured state bank under § 362.3(b)(2)(iii) to the same extent permissible for the insured bank thereunder, so long as instruments held under this paragraph (b)(3)(ii)(C), paragraph (b)(7) of this section, and § 362.3(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.3(b)(2)(iii);

(D) Engaging in any activity permissible for a majority-owned subsidiary of an insured state bank under paragraph (b)(6) of this section to the same extent and manner permissible for the majority-owned subsidiary thereunder; and

(4) *Majority-owned subsidiary's ownership of certain securities that do not represent a control interest.* (i) *Grandfathered investments in common or preferred stock and shares of*

investment companies. Any insured state bank that has received approval to invest in common or preferred stock or shares of an investment company pursuant to § 362.3(a)(2)(iii) may conduct the approved investment activities through a majority-owned subsidiary of the bank without any additional approval from the FDIC provided that any conditions or restrictions imposed with regard to the approval granted under § 362.3(a)(2)(iii) are met.

(ii) *Bank stock.* An insured state bank may indirectly through a majority-owned subsidiary organized for such purpose invest in up to ten percent of the outstanding stock of another insured bank.

(5) *Majority-owned subsidiaries conducting real estate investment activities and securities underwriting.* The FDIC has determined that the following activities do not represent a significant risk to the deposit insurance funds, provided that the activities are conducted by a majority-owned subsidiary of an insured state bank in compliance with the core eligibility requirements listed in paragraph (c) of this section; any additional requirements listed in paragraph (b)(5) (i) or (ii) of this section; the bank complies with the investment and transaction limitations of paragraph (d) of this section; and the bank meets the capital requirements of paragraph (e) of this section. The FDIC consents that these listed activities may be conducted by a majority-owned subsidiary of an insured state bank if the bank files a notice in compliance with § 303.121 of this chapter and the FDIC processes the notice without objection under § 303.122(a) of this chapter. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activities if the facts and circumstances warrant such action. If changes to the management or business plan of the majority-owned subsidiary at any time result in material changes to the nature of the majority-owned subsidiary's business or the manner in which its business is conducted, the insured state bank shall advise the appropriate regional director (DOS) in writing within 10 business days after such change. Such a majority-owned subsidiary may:

(i) *Real estate investment activities.* Engage in real estate investment activities. However, the requirements of paragraph (c)(2) (ii), (v), (vi), and (xi) of this section need not be met if the bank's investment in the equity securities of the subsidiary does not exceed 2 percent of the bank's tier one capital; the bank has only one subsidiary engaging in real estate investment activities; and the bank's total investment in the subsidiary does not include any extensions of credit from the bank to the subsidiary, any debt instruments issued by the subsidiary, or any other transaction originated by the bank that is used to benefit the subsidiary.

(ii) *Securities activities.* Engage in the public sale, distribution or underwriting of securities that are not permissible for a national bank under section 16 of the Banking Act of 1933 (12 U.S.C. 24 Seventh), provided that the following additional conditions are, and continue to be, met:

(A) The state-chartered depository institution adopts policies and procedures, including appropriate limits on exposure, to govern the institution's participation in financing transactions underwritten or arranged by an underwriting majority-owned subsidiary;

(B) The state-chartered depository institution may not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by a majority-owned subsidiary unless the state-chartered depository institution notifies the customer that the majority-owned subsidiary is underwriting or distributing the security;

(C) The majority-owned subsidiary is registered with the Securities and Exchange Commission, is a member in good standing with the appropriate self-regulatory organization, and promptly informs the appropriate regional director (DOS) in writing of any material actions taken against the majority-owned subsidiary or any of its employees by the state, the appropriate self-regulatory organizations or the Securities and Exchange Commission; and

(D) The state-chartered depository institution does not knowingly purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the majority-owned subsidiary unless the purchase is approved by the state-chartered depository institution's board of directors before the securities are initially offered for sale to the public.

(6) *Real estate leasing.* A majority-owned subsidiary of an insured state bank acting as lessor under a real property lease which is the equivalent of a financing transaction, meeting the lease criteria of paragraph (b)(6)(i) of this section and the underlying real estate requirements of paragraph (b)(6)(ii) of this section, does not represent a significant risk to the deposit insurance funds. A majority-owned subsidiary may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activity if the facts and circumstances warrant such action.

(i) *Lease criteria*—(A) *Capital lease.* The lease must qualify as a capital lease as to the lessor under generally accepted accounting principles.

(B) *Nonoperating basis.* The bank and the majority-owned subsidiary shall not, directly or indirectly, provide or be obligated to provide servicing, repair, or maintenance to the property, except that the lease may include provisions permitting the subsidiary to protect the value of the leased property in the event of a change in circumstances that increases the subsidiary's exposure to loss, or the subsidiary may take reasonable and appropriate action to salvage or protect the value of the leased property in such circumstances.

(ii) *Underlying real property requirements*—(A) *Acquisition.* The majority-owned subsidiary may acquire specific real estate to be leased only after the subsidiary has entered into:

(*1*) A lease meeting the requirements of paragraph (b)(6)(i) of this section;

(*2*) A legally binding written commitment to enter into such a lease; or

(*3*) A legally binding written agreement that indemnifies the subsidiary against loss in connection with its acquisition of the property.

(B) *Improvements.* Any expenditures by the majority-owned subsidiary to make reasonable repairs, renovations, and improvements necessary to render the property suitable to the lessee shall not exceed 25 percent of the majority-owned subsidiary's full investment in the real estate.

(C) *Divestiture.* At the expiration of the initial lease (including any renewals or extensions thereof), the majority-owned subsidiary shall, as soon as practicable but in any event no less than two years, either:

(*1*) Re-lease the property under a lease meeting the requirement of paragraph (b)(6)(i)(B) of this section; or

(*2*) Divest itself of all interest in the property.

(7) *Acquiring and retaining adjustable rate and money market preferred stock and similar instruments.* The FDIC has determined it does not present a significant risk to the deposit insurance

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funds for a majority-owned subsidiary of an insured state bank to engage in any activity permissible for an insured state bank under § 362.3(b)(2)(iii), so long as instruments held under this paragraph, paragraph (b)(3)(ii)(C) of this section, and § 362.3(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.3(b)(2)(iii). A majority-owned subsidiary may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activity if the facts and circumstances warrant such action.

(c) *Core eligibility requirements.* If specifically required by this part or by FDIC order, any state-chartered depository institution that wishes to be eligible and continue to be eligible to conduct as principal activities through a subsidiary that are not permissible for a subsidiary of a national bank must be an "eligible depository institution" and the subsidiary must be an "eligible subsidiary".

(1) A state-chartered depository institution is an "eligible depository institution" if it:

(i) Has been chartered and operating for three or more years, unless the appropriate regional director (DOS) finds that the state-chartered depository institution is owned by an established, well-capitalized, well-managed holding company or is managed by seasoned management;

(ii) Has an FDIC-assigned composite rating of 1 or 2 assigned under the Uniform Financial Institutions Rating System (UFIRS) (or such other comparable rating system as may be adopted in the future) as a result of its most recent federal or state examination for which the FDIC assigned a rating;

(iii) Received a rating of 1 or 2 under the "management" component of the UFIRS as assigned by the institution's appropriate federal banking agency;

(iv) Has a satisfactory or better Community Reinvestment Act rating at its most recent examination conducted by the institution's appropriate federal banking agency;

(v) Has a compliance rating of 1 or 2 at its most recent examination conducted by the institution's appropriate federal banking agency; and

(vi) Is not subject to a cease and desist order, consent order, prompt corrective action directive, formal or informal written agreement, or other administrative agreement with its appropriate federal banking agency or chartering authority.

(2) A subsidiary of a state-chartered depository institution is an "eligible subsidiary" if it:

(i) Meets applicable statutory or regulatory capital requirements and has sufficient operating capital in light of the normal obligations that are reasonably foreseeable for a business of its size and character within the industry;

(ii) Is physically separate and distinct in its operations from the operations of the state-chartered depository institution, provided that this requirement shall not be construed to prohibit the state-chartered depository institution and its subsidiary from sharing the same facility if the area where the subsidiary conducts business with the public is clearly distinct from the area where customers of the state-chartered depository institution conduct business with the institution. The extent of the separation will vary according to the type and frequency of customer contact;

(iii) Maintains separate accounting and other business records;

(iv) Observes separate business entity formalities such as separate board of directors' meetings;

(v) Has a chief executive officer of the subsidiary who is not an employee of the institution;

(vi) Has a majority of its board of directors who are neither directors nor officers of the state-chartered depository institution;

(vii) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the state-chartered depository institution and that the state-chartered depository institution is not responsible for and does not guarantee the obligations of the subsidiary;

(viii) Has only one business purpose within the types described in paragraphs (b)(2) and (b)(5) of this section;

(ix) Has a current written business plan that is appropriate to the type and scope of business conducted by the subsidiary;

(x) Has qualified management and employees for the type of activity contemplated, including all required licenses and memberships, and complies with industry standards; and

(xi) Establishes policies and procedures to ensure adequate computer, audit and accounting systems, internal risk management controls, and has necessary operational and managerial infrastructure to implement the business plan.

(d) *Investment and transaction limits*—(1) *General.* If specifically required by this part or FDIC order, the following conditions and restrictions apply to an insured state bank and its subsidiaries that engage in and wish to continue to engage in activities which are not permissible for a national bank subsidiary.

(2) *Investment limits*—(i) *Aggregate investment in subsidiaries.* An insured state bank's aggregate investment in all subsidiaries conducting activities subject to this paragraph (d) shall not exceed 20 percent of the insured state bank's tier one capital.

(ii) *Definition of investment.* (A) For purposes of this paragraph (d), the term "investment" means:

(*1*) Any extension of credit to the subsidiary by the insured state bank;

(*2*) Any debt securities, as such term is defined in part 344 of this chapter, issued by the subsidiary held by the insured state bank;

(*3*) The acceptance by the insured state bank of securities issued by the subsidiary as collateral for an extension of credit to any person or company; and

(*4*) Any extensions of credit by the insured state bank to any third party for the purpose of making a direct investment in the subsidiary, making any investment in which the subsidiary has an interest, or which is used for the benefit of, or transferred to, the subsidiary.

(B) For the purposes of this paragraph (d), the term "investment" does not include:

(*1*) Extensions of credit by the insured state bank to finance sales of assets by the subsidiary which do not involve more than the normal degree of risk of repayment and are extended on terms that are substantially similar to those prevailing at the time for comparable transactions with or involving unaffiliated persons or companies;

(*2*) An extension of credit by the insured state bank to the subsidiary that is fully collateralized by government securities, as such term is defined in § 344.3 of this chapter; or

(*3*) An extension of credit by the insured state bank to the subsidiary that is fully collateralized by a segregated deposit in the insured state bank.

(3) *Transaction requirements*—(i) *Arm's length transaction requirement.* With the exception of giving the subsidiary immediate credit for uncollected items received in the ordinary course of business, an insured state bank may not carry out any of the following transactions with a subsidiary subject to this paragraph (d) unless the

transaction is on terms and conditions that are substantially the same as those prevailing at the time for comparable transactions with unaffiliated parties:

(A) Make an investment in the subsidiary;

(B) Purchase from or sell to the subsidiary any assets (including securities);

(C) Enter into a contract, lease, or other type of agreement with the subsidiary;

(D) Pay compensation to a majority-owned subsidiary or any person or company who has an interest in the subsidiary; or

(E) Engage in any such transaction in which the proceeds thereof are used for the benefit of, or are transferred to, the subsidiary.

(ii) *Prohibition on purchase of low quality assets.* An insured state bank is prohibited from purchasing a low quality asset from a subsidiary subject to this paragraph (d). For purposes of this subsection, "low quality asset" means:

(A) An asset classified as "substandard", "doubtful", or "loss" or treated as "other assets especially mentioned" in the most recent report of examination of the bank;

(B) An asset in a nonaccrual status;

(C) An asset on which principal or interest payments are more than 30 days past due; or

(D) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(iii) *Insider transaction restriction.* Neither the insured state bank nor the subsidiary subject to this paragraph (d) may enter into any transaction (exclusive of those covered by § 337.3 of this chapter) with the bank's executive officers, directors, principal shareholders or related interests of such persons which relate to the subsidiary's activities unless:

(A) The transactions are on terms and conditions that are substantially the same as those prevailing at the time for comparable transactions with persons not affiliated with the insured state bank; or

(B) The transactions are pursuant to a benefit or compensation program that is widely available to employees of the bank, and that does not give preference to the bank's executive officers, directors, principal shareholders or related interests of such persons over other bank employees.

(iv) *Anti-tying restriction.* Neither the insured state bank nor the majority-owned subsidiary may require a customer to either buy any product or use any service from the other as a condition of entering into a transaction.

(4) *Collateralization requirements.* (i) An insured state bank is prohibited from making an investment in a subsidiary subject to this paragraph (d) unless such transaction is fully-collateralized at the time the transaction is entered into. No insured state bank may accept a low quality asset as collateral. An extension of credit is fully collateralized if it is secured at the time of the transaction by collateral having a market value equal to at least:

(A) 100 percent of the amount of the transaction if the collateral is composed of:

(*1*) Obligations of the United States or its agencies;

(*2*) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(*3*) Notes, drafts, bills of exchange or bankers acceptances that are eligible for rediscount or purchase by the Federal Reserve Bank; or

(*4*) A segregated, earmarked deposit account with the insured state bank;

(B) 110 percent of the amount of the transaction if the collateral is composed of obligations of any state or political subdivision of any state;

(C) 120 percent of the amount of the transaction if the collateral is composed of other debt instruments, including receivables; or

(D) 130 percent of the amount of the transaction if the collateral is composed of stock, leases, or other real or personal property.

(ii) An insured state bank may not release collateral prior to proportional payment of the extension of credit; however, collateral may be substituted if there is no diminution of collateral coverage.

(5) *Investment and transaction limits extended to insured state bank subsidiaries.* For purposes of applying paragraphs (d)(2) through (d)(4) of this section, any reference to "insured state bank" means the insured state bank and any subsidiaries of the insured state bank which are not themselves subject under this part or FDIC order to the restrictions of this paragraph (d).

(e) *Capital requirements.* If specifically required by this part or by FDIC order, any insured state bank that wishes to conduct or continue to conduct as principal activities through a subsidiary that are not permissible for a subsidiary of a national bank must:

(1) Be well-capitalized after deducting from its tier one capital the investment in equity securities of the subsidiary as well as the bank's pro rata share of any retained earnings of the subsidiary;

(2) Reflect this deduction on the appropriate schedule of the bank's consolidated report of income and condition; and

(3) Use such regulatory capital amount for the purposes of the bank's assessment risk classification under part 327 of this chapter and its categorization as a "well-capitalized", an "adequately capitalized", an "undercapitalized", or a "significantly undercapitalized" institution as defined in § 325.103(b) of this chapter, provided that the capital deduction shall not be used for purposes of determining whether the bank is "critically undercapitalized" under part 325 of this chapter.

§ 362.5 Approvals previously granted.

(a) *FDIC consent by order or notice.* An insured state bank that previously filed an application or notice under part 362 in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), and obtained the FDIC's consent to engage in an activity or to acquire or retain a majority-owned subsidiary engaging as principal in an activity or acquiring and retaining any investment that is prohibited under this subpart may continue that activity or retain that investment without seeking the FDIC's consent, provided that the insured state bank and its subsidiary, if applicable, continue to meet the conditions and restrictions of the approval. An insured state bank which was granted approval based on conditions which differ from the requirements of § 362.4(c)(2), (d) and (e) will be considered to meet the conditions and restrictions of the approval relating to being an eligible subsidiary, meeting investment and transactions limits, and meeting capital requirements if the insured state bank and subsidiary meet the requirements of § 362.4(c)(2), (d) and (e). If the majority-owned subsidiary is engaged in real estate investment activities not exceeding 2 percent of the tier one capital of a bank and meeting the other conditions of § 362.4(b)(5)(i), the majority-owned subsidiary's compliance with § 362.4(c)(2) under the preceding sentence may be pursuant to the modifications authorized by § 362.4(b)(5)(i). Once an insured state bank elects to comply with § 362.4 (c)(2), (d), and (e), it may not revert to the corresponding provisions of the approval order.

(b) *Approvals by regulation*—(1) *Securities underwriting.* If an insured state nonmember bank engages in securities activities covered by § 362.4(b)(5)(ii), and prior to January 1, 1999, engaged in securities activities under and in compliance with the restrictions of § 337.4 (b) through (c), § 337.4(e), or § 337.4(h) of this chapter,

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having filed the required notice under § 337.4(d) of this chapter, the insured state bank may continue those activities if the bank and its majority-owned subsidiaries comply with the restrictions set forth in §§ 362.4(b)(5)(ii) and 362.4 (c), (d), and (e) by January 1, 2000. During the one-year period of transition between January 1, 1999, and January 1, 2000, the bank and its majority-owned subsidiary must meet the restrictions set forth in § 337.4 of this chapter until the requirements of §§ 362.4(b)(5)(ii) and 362.4 (c), (d) and (e) are met. If the bank will not meet these requirements, the bank must obtain the FDIC's consent to continue those activities under § 362.4(b)(1).

(2) *Grandfathered insurance underwriting.* An insured state bank which is directly providing insurance as principal pursuant to § 362.4(c)(2)(i) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), may continue that activity if it complies with the provisions of § 362.3(b)(2)(ii)(C) by April 1, 1999. An insured state bank indirectly providing insurance as principal through a subsidiary pursuant to § 362.3(b)(7) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), may continue that activity if it complies with the provisions of § 362.4(b)(2)(i) by April 1, 1999. During the ninety-day period of transition between January 1, 1999 and April 1, 1999, the bank and its majority-owned subsidiary must meet the restrictions set forth in § 362.4(c)(2)(i) or § 362.3(b)(7) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), as applicable, until the requirements of § 362.3(b)(2)(ii)(C) or § 362.4(b)(2)(i) are met. If the insured state bank or its subsidiary will not meet these requirements, as applicable, the insured state bank must submit an application in compliance with § 303.121 of this chapter and obtain the FDIC's consent in accordance with § 303.122(b) of this chapter.

(3) *Stock of certain corporations.* An insured state bank owning indirectly through a majority-owned subsidiary stock of a corporation that engages solely in activities permissible for a bank service corporation pursuant to § 362.4(c)(3)(iv)(C) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), or stock of a corporation which engages solely in activities which are not "as principal" pursuant to § 362.4(c)(3)(iv)(D) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), may continue that activity if it complies with the provisions of § 362.4(b)(3) by April 1, 1999. During the ninety-day period of transition between January 1, 1999 and April 1, 1999, the bank and its majority-owned subsidiary must meet the restrictions set forth in § 362.4(c)(3)(iv)(C) or § 362.4(c)(3)(iv)(D) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), as applicable, until the requirements of § 362.4(b)(3) are met. If the insured state bank or its subsidiary will not meet these requirements, as applicable, the insured state bank must apply for the FDIC's consent under § 362.4(b)(1).

(4) [Reserved]

(5) [Reserved]

(6) *Adjustable rate or money market preferred stock.* An insured state bank owning adjustable rate or money market (auction rate) preferred stock pursuant to § 362.4(c)(3)(v) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), in excess of the amount limit in § 362.3(b)(2)(iii) may continue to hold any overlimit shares of such stock acquired before January 1, 1999, until redeemed or repurchased by the issuer, but such stock shall be included as part of the amount limit in § 362.3(b)(2)(iii) when determining whether the bank may acquire new stock thereunder.

(c) *Charter conversions.* (1) An insured state bank that has converted its charter from an insured state savings association may continue activities through a majority-owned subsidiary that were permissible prior to the time it converted its charter only if the insured state bank receives the FDIC's consent. Except as provided in paragraph (c)(2) of this section, the insured state bank should apply under § 362.4(b)(1), submit any notice required under § 362.4(b) (4) or (5), or comply with the provisions of § 362.4(b) (3), (6), or (7) if applicable, to continue the activity.

(2) *Exception for prior consent.* If the FDIC had granted consent to the savings association under section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831(e)) prior to the time the savings association converted its charter, the insured state bank may continue the activities without providing notice or making application to the FDIC, provided that the bank and its subsidiary as applicable are in compliance with:

(i) The terms of the FDIC approval order; and

(ii) The provisions of § 362.4(c)(2), (d), and (e) regarding operating as an "eligible subsidiary", "investment and transaction limits", and "capital requirements'.

(3) *Divestiture.* An insured state bank that does not receive FDIC consent shall divest of the nonconforming investment as soon as practical but in no event later than two years from the date of charter conversion.

Subpart B—Safety and Soundness Rules Governing Insured State Nonmember Banks

§ 362.6 Purpose and scope.

This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter apply to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. The FDIC intends to allow insured state nonmember banks and their subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of federal deposit insurance and other law. The following standards shall apply for insured state nonmember banks to conduct real estate investment activities through a subsidiary if those activities are permissible for a national bank subsidiary but are not permissible for the national bank parent itself. Additionally, the following standards shall apply to affiliates of insured state nonmember banks that are not affiliated with a bank holding company if those affiliates engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities.

§ 362.7 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Affiliate* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state nonmember bank, but does not include a subsidiary of an insured state nonmember bank.

(b) *Activity, company, control, equity security, insured state nonmember bank, real estate investment activity, security,* and *subsidiary* have the same meaning as provided in subpart A of this part.

§ 362.8 Restrictions on activities of insured state nonmember banks.

(a) *Real estate investment activities by subsidiaries of insured state nonmember banks.* The FDIC has found that real estate investment activities may have adverse effects on the safety and soundness of insured state nonmember banks. Notwithstanding any interpretations, orders, circulars or official bulletins issued by the Office of the Comptroller of the Currency regarding activities permissible for subsidiaries of a national bank that are not permissible for the parent national bank itself under 12 CFR 5.34(f), insured state nonmember banks may not establish or acquire a subsidiary that engages in such real estate investment activities unless the insured state nonmember bank:

(1) Has an approval previously granted by the FDIC and continues to meet the conditions and restrictions of the approval; or

(2) Meets the requirements for engaging in real estate investment activities as set forth in § 362.4(b)(5), and submits a corresponding notice in compliance with § 303.121 of this chapter and the FDIC processes the notice without objection under § 303.122(a) of this chapter; or submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedure in § 303.122(b) of this chapter.

(b) *Affiliation with securities companies.* The FDIC has found that an unrestricted affiliation between an insured state nonmember bank and a securities company may have adverse effects on the safety and soundness of insured state nonmember banks. An insured state nonmember bank which is affiliated with a company that is not treated as a bank holding company pursuant to section 4(f) of the Bank Holding Company Act (12 U.S.C. 1843(f)) is prohibited from becoming or remaining affiliated with any company that directly engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities which is not permissible for a national bank unless it submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedure in § 303.122(b) of this chapter, or:

(1) The securities business of the affiliate is physically separate and distinct in its operations from the operations of the bank, provided that this requirement shall not be construed to prohibit the bank and its affiliate from sharing the same facility if the area where the affiliate conducts retail sales activity with the public is physically distinct from the routine deposit taking area of the bank;

(2) The affiliate has a chief executive officer who is not an employee of the bank;

(3) A majority of the affiliate's board of directors are not directors, officers, or employees of the bank;

(4) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and the state-chartered depository institution is not responsible for and does not guarantee the obligations of the affiliate;

(5) The bank adopts policies and procedures, including appropriate limits on exposure, to govern its participation in financing transactions underwritten by an underwriting affiliate;

(6) The bank does not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by an affiliate unless it notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is an affiliate of the bank;

(7) The bank does not purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the affiliate unless the purchase is approved by the bank's board of directors before the securities are initially offered for sale to the public;

(8) The bank does not condition any extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's affiliate to underwrite or distribute the company's securities;

(9) The bank does not condition any extension of credit or the offering of any service to any person or company on the requirement that the person or company purchase any security underwritten or distributed by the affiliate; and

(10) The bank complies with the investment and transaction limitations of § 362.4(d). For the purposes of applying these restrictions, references to the term "subsidiary" in § 362.4(d)(2), (3), and (4) shall be deemed to refer to the affiliate. For the purposes of applying these limitations, the term "investment" as defined in § 362.4(d)(2)(ii) shall also include any equity securities of the affiliate held by the insured state bank.

Subpart C—Activities of Insured State Savings Associations

§ 362.9 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart H of part 303 of this chapter, implements the provisions of section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) that restrict and prohibit insured state savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for federal savings associations and their service corporations. The phrase "activity permissible for a federal savings association" means any activity authorized for federal savings associations under any statute including the Home Owners' Loan Act (HOLA, 12 U.S.C. 1464 *et seq.*), as well as activities recognized as permissible for a federal savings association in regulations, official thrift bulletins, orders or written interpretations issued by the Office of Thrift Supervision (OTS), or its predecessor, the Federal Home Loan Bank Board.

(b) This subpart does not cover the following activities:

(1) Activities conducted by the insured state savings association other than "as principal", defined for purposes of this subpart as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

(2) Interests in real estate in which the real property is used or intended in good faith to be used within a reasonable time by an insured savings association or its service corporations as offices or related facilities for the conduct of its business or future expansion of its business or used as public welfare investments of a type and in an amount permissible for federal savings associations.

(3) Equity investments acquired in connection with debts previously contracted (DPC) if the insured savings association or its service corporation takes only such actions as would be permissible for a federal savings association's or its service corporation's DPC holdings.

(c) The FDIC intends to allow insured state savings associations and their service corporations to undertake only safe and sound activities and investments that do not present significant risks to the deposit insurance funds and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state savings association to make investments or conduct activities that are not authorized or that are prohibited by either federal or state law.

§ 362.10 Definitions.

For the purposes of this subpart, the definitions provided in § 362.2 apply. Additionally, the following definitions apply to this subpart:

(a) *Affiliate* shall mean any company that directly or indirectly, through one

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or more intermediaries, controls or is under common control with an insured state savings association.

(b) *Corporate debt securities not of investment grade* means any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of HOLA (12 U.S.C. 1464(c)(1) (D), (E), (F)).

(c) *Insured state savings association* means any state-chartered savings association insured by the FDIC.

(d) *Qualified affiliate* means, in the case of a stock insured state savings association, an affiliate other than a subsidiary or an insured depository institution. In the case of a mutual savings association, "qualified affiliate" means a subsidiary other than an insured depository institution provided that all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(e) *Service corporation* means any corporation the capital stock of which is available for purchase by savings associations.

§ 362.11 Activities of insured state savings associations.

(a) *Equity investments*—(1) *Prohibited investments.* No insured state savings association may directly acquire or retain as principal any equity investment of a type, or in an amount, that is not permissible for a federal savings association unless the exception in paragraph (a)(2) of this section applies.

(2) *Exception: Equity investment in service corporations.* An insured state savings association that is and continues to be in compliance with the applicable capital standards as prescribed by the appropriate federal banking agency may acquire or retain an equity investment in a service corporation:

(i) Not permissible for a federal savings association to the extent the service corporation is engaging in activities that are allowed pursuant to the provisions of or an application under § 362.12(b); or

(ii) Of a type permissible for a federal savings association, but in an amount exceeding the investment limits applicable to federal savings associations, if the insured state savings association obtains the FDIC's prior consent. Consent will be given only if the FDIC determines that the amount of the investment in a service corporation engaged in such activities does not present a significant risk to the affected deposit insurance fund. Applications should be filed in accordance with § 303.141 of this chapter and will be processed under § 303.142(b) of this chapter. Approvals granted under § 303.142(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from significant risk, to prevent unsafe or unsound practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(b) *Activities other than equity investments*—(1) *Prohibited activities.* An insured state savings association may not directly engage as principal in any activity, that is not an equity investment, of a type not permissible for a federal savings association, and an insured state savings association shall not make nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of HOLA (12 U.S.C. 1464(c)(2)(B)), unless one of the exceptions in paragraph (b)(2) of this section applies. This section shall not be read to require the divestiture of any asset (including a nonresidential real estate loan), if the asset was acquired prior to August 9, 1989; however, any activity conducted with such asset must be conducted in accordance with this subpart. After August 9, 1989, an insured state savings association directly or through a subsidiary (other than, in the case of a mutual savings association, a subsidiary that is a qualified affiliate), may not acquire or retain any corporate debt securities not of investment grade.

(2) *Exceptions*—(i) *Consent obtained through application.* An insured state savings association that meets and continues to meet the applicable capital standards set by the appropriate federal banking agency may directly conduct activities prohibited by paragraph (b)(1) of this section if the savings association obtains the FDIC's prior consent. Consent will be given only if the FDIC determines that conducting the activity designated poses no significant risk to the affected deposit insurance fund. Applications should be filed in accordance with § 303.141 of this chapter and will be processed under § 303.142(b) of this chapter. Approvals granted under § 303.142(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from significant risk, to prevent unsafe or unsound practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(ii) *Nonresidential realty loans permissible for a federal savings association conducted in an amount not permissible.* An insured state savings association that meets and continues to meet the applicable capital standards set by the appropriate federal banking agency may make nonresidential real property loans in an amount exceeding the amount described in section 5(c)(2)(B) of HOLA, if the savings association files a notice in compliance with § 303.141 of this chapter and the FDIC processes the notice without objection under § 303.142(a) of this chapter. Consent will be given only if the FDIC determines that engaging in such lending in the amount designated poses no significant risk to the affected deposit insurance fund.

(iii) *Acquiring and retaining adjustable rate and money market preferred stock.* (A) An insured state savings association's investment of up to 15 percent of the association's tier one capital in adjustable rate preferred stock or money market (auction rate) preferred stock does not represent a significant risk to the deposit insurance funds. An insured state savings association may conduct this activity without first obtaining the FDIC's consent, provided that the association meets and continues to meet the applicable capital standards as prescribed by the appropriate federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(B) An insured state savings association may acquire or retain other instruments of a type determined by the FDIC to have the character of debt securities and not to represent a significant risk to the deposit insurance funds. Such instruments shall be included in the 15 percent of tier one capital limit imposed in paragraph (b)(2)(iii)(A) of this section. An insured state savings association may conduct this activity without first obtaining the FDIC's consent, provided that the association meets and continues to meet the applicable capital standards as prescribed by the appropriate federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(3) *Activities permissible for a federal savings association conducted in an amount not permissible.* Except as provided in paragraph (b)(2)(ii) of this section, an insured state savings association may engage as principal in any activity, which is not an equity investment of a type permissible for a federal savings association, in an amount in excess of that permissible for a federal savings association, if the savings association meets and continues to meet the applicable capital standards set by the appropriate federal banking agency, the institution has advised the appropriate regional director (DOS) under the procedure in § 303.142(c) of this chapter within thirty days before engaging in the activity, and the FDIC has not advised the insured state savings association that conducting the activity in the amount indicated poses a significant risk to the affected deposit insurance fund. This section shall not be read to require the divestiture of any asset if the asset was acquired prior to August 9, 1989; however, any activity conducted with such asset must be conducted in accordance with this subpart.

§ 362.12 Service corporations of insured state savings associations.

(a) *Prohibition.* A service corporation of an insured state savings association may not engage in any activity that is not permissible for a service corporation of a federal savings association, unless it meets one of the exceptions in paragraph (b) of this section.

(b) *Exceptions*—(1) *Consent obtained through application.* A service corporation of an insured state savings association may conduct activities prohibited by paragraph (a) of this section if the savings association obtains the FDIC's prior written consent and the insured state savings association meets and continues to meet the applicable capital standards set by the appropriate federal banking agency. Consent will be given only if the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund. Applications for consent should be filed in accordance with § 303.141 of this chapter and will be processed under § 303.142(b) of this chapter. Approvals granted under § 303.142(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(2) *Service corporations conducting unrestricted activities.* The FDIC has determined that the following activities do not represent a significant risk to the deposit insurance funds:

(i) A service corporation of an insured state savings association may acquire and retain equity securities of a company engaged in securities activities authorized in paragraph (b)(4) of this section if the bank complies with the following restrictions and files a notice in compliance with § 303.141 of this chapter and the FDIC processes the notice without objection under § 303.142(a) of this chapter. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activity if the facts and circumstances warrant such action. If changes to the management or business plan of the company at any time result in material changes to the nature of the company's business or the manner in which its business is conducted, the insured state savings association shall advise the appropriate regional director (DOS) in writing within 10 business days after such change. Investment under this paragraph is authorized if:

(A) The service corporation controls the company;

(B) The savings association meets the core eligibility criteria of § 362.4(c)(1);

(C) The service corporation meets the core eligibility criteria of § 362.4(c)(2) (with references to the term "subsidiary" deemed to refer to the service corporation), or the company is a corporation meeting such criteria;

(D) The savings association's transactions with the service corporation comply with the investment and transaction limits of paragraph (c) of this section, and the savings association's transactions with the company comply with such limits as if it were a service corporation;

(E) The savings association complies with the capital requirements of paragraph (d) of this section with respect to the service corporation and the company; and

(F) The savings association and the company comply with the additional requirements of § 362.4(b)(5)(ii) (with references to the term "majority-owned subsidiary" deemed to refer to the company).

(ii) A service corporation of an insured state savings association may acquire and retain equity securities of a company engaged in the following activities, if the service corporation controls the company or the company is controlled by insured depository institutions, and the association continues to meet the applicable capital standards as prescribed by the appropriate federal banking agency. The FDIC consents that such activity may be conducted by a service corporation of an insured state savings association without first obtaining the FDIC's consent. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(A) *Equity securities of a company that engages in permissible activities.* A service corporation may own the equity securities of a company that engages in any activity permissible for a federal savings association.

(B) *Equity securities of a company that acquires and retains adjustable-rate and money market preferred stock.* A service corporation may own the equity securities of a company that engages in any activity permissible for an insured state savings association under § 362.11(b)(2)(iii) so long as instruments held under this paragraph (b)(2)(ii)(B), paragraph (b)(2)(iv) of this section, and § 362.11(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.11(b)(2)(iii).

(C) *Equity securities of a company acting as an insurance agency.* A service corporation may own the equity securities of a company that acts as an insurance agency.

(iii) *Activities that are not conducted "as principal"*. A service corporation controlled by the insured state savings association may engage in activities which are not conducted "as principal" such as acting as an agent for a customer, acting in a brokerage, custodial, advisory, or administrative capacity, or acting as trustee, or in any substantially similar capacity.

(iv) *Acquiring and retaining adjustable-rate and money market preferred stock.* A service corporation may engage in any activity permissible for an insured state savings association under § 362.11(b)(2)(iii) so long as instruments held under this paragraph (b)(2)(iv), paragraph (b)(2)(ii)(B) of this section, and § 362.11(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.11(b)(2)(iii).

(3) [Reserved]

(4) *Service corporations conducting securities underwriting.* The FDIC has determined that it does not represent a significant risk to the deposit insurance funds for a service corporation to engage in the public sale, distribution or underwriting of securities provided that the activity is conducted by a service corporation of an insured state savings association in compliance with the core eligibility requirements listed in

§ 362.4(c); any additional requirements listed in § 362.4(b)(5)(ii); the savings association complies with the investment and transaction limitations of paragraph (c) of this section; and the savings association meets the capital requirements of paragraph (d) of this section. The FDIC consents that these listed activities may be conducted by a service corporation of an insured state savings association if the savings association files a notice in compliance with § 303.141 of this chapter and the FDIC processes the notice without objection under § 303.142(a) of this chapter. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activities if the facts and circumstances warrant such action. If changes to the management or business plan of the service corporation at any time result in material changes to the nature of the service corporation's business or the manner in which its business is conducted, the insured state savings association shall advise the appropriate regional director (DOS) in writing within 10 business days after such change. For purposes of applying § 362.4 (b)(5)(ii) and (c) to this paragraph (b)(4), references to the terms "subsidiary" and "majority-owned subsidiary" in §§ 362.4(b)(5)(ii) and (c) shall be deemed to refer to the service corporation. For the purposes of applying § 362.4(c), references to the term "eligible subsidiary" in § 362.4(c) shall be deemed to refer to the eligible service corporation.

(c) Investment and transaction limits. The restrictions detailed in § 362.4(d) apply to transactions between an insured state savings association and any service corporation engaging in activities which are not permissible for a service corporation of a federal savings association if specifically required by this part or FDIC order. For purposes of applying the investment limits in § 362.4(d)(2), the term "investment" includes only those items described in § 362.4(d)(2)(ii)(A) (*3*) and (*4*). For purposes of applying § 362.4(d) (2), (3), and (4) to this paragraph (c), references to the terms "insured state bank" and "subsidiary" in § 362.4(d)(2), (3), and (4), shall be deemed to refer, respectively, to the insured state savings association and the service corporation. For purposes of applying § 362.4(d)(5), references to the terms "insured state bank" and "subsidiary" in § 362.4(d)(5) shall be deemed to refer, respectively, to the insured state savings association and the service corporations or subsidiaries.

(d) *Capital requirements.* If specifically required by this part or by FDIC order, an insured state savings association that wishes to conduct as principal activities through a service corporation which are not permissible for a service corporation of a federal savings association must:

(1) Be well-capitalized after deducting from its capital any investment in the service corporation, both equity and debt.

(2) Use such regulatory capital amount for the purposes of the insured state savings association's assessment risk classification under part 327 of this chapter.

§ 362.13 Approvals previously granted.

FDIC consent by order or notice. An insured state savings association that previously filed an application and obtained the FDIC's consent to engage in an activity or to acquire or retain an investment in a service corporation engaging as principal in an activity or acquiring and retaining any investment that is prohibited under this subpart may continue that activity or retain that investment without seeking the FDIC's consent, provided the insured state savings association and the service corporation, if applicable, continue to meet the conditions and restrictions of approval. An insured state savings association which was granted approval based on conditions which differ from the requirements of §§ 362.4(c)(2) and 362.12 (c) and (d) will be considered to meet the conditions and restrictions of the approval if the insured state savings association and any applicable service corporation meet the requirements of §§ 362.4(c)(2) and 362.12 (c) and (d). For the purposes of applying § 362.4(c)(2), references to the terms "eligible subsidiary" and "subsidiary" in § 362.4(c)(2) shall be deemed to refer, respectively, to the eligible service corporation and the service corporation.

Subpart D—Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

§ 362.14 Purpose and scope.

This subpart implements section 18(m) of the Federal Deposit Insurance Act (12 U.S.C. 1828(m)) which requires that prior notice be given the FDIC when an insured savings association establishes or acquires a subsidiary or engages in any new activity in a subsidiary. For the purposes of this subpart, the term "subsidiary" does not include any insured depository institution as that term is defined in the Federal Deposit Insurance Act. Unless otherwise indicated, the definitions provided in § 362.2 apply to this subpart.

§ 362.15 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

No state or federal insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, unless it files a notice in compliance with § 303.142(c) of this chapter at least 30 days prior to establishment of the subsidiary or commencement of the activity and the FDIC does not object to the notice. This requirement does not apply to any federal savings bank that was chartered prior to October 15, 1982, as a savings bank under state law or any savings association that acquired its principal assets from such an institution.

By order of the Board of Directors.

Dated at Washington, D.C. this 5th day of November, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–31152 Filed 11–30–98; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 337, and 362

RIN 3064–AC20

Activities of Insured State Banks and Insured Savings Associations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is seeking public comment on its proposal to amend its rules and regulations governing activities and investments of insured state banks. The FDIC proposes to add safety and soundness standards to govern insured state nonmember banks that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities through a subsidiary if those activities are permissible for a national bank subsidiary but are not permissible for the national bank itself. In addition, the FDIC proposes to require that insured state nonmember banks file a notice before commencing any activities permissible for subsidiaries of a national bank that are not permissible for the parent national bank itself. The FDIC also proposes to remove and reserve the provisions addressing, "Securities Activities of Subsidiaries of Insured State Banks: Bank Transactions with Affiliated Securities Companies." The proposed effect of these amendments will be to require banks to notify the FDIC prior to conducting securities or other activities through subsidiaries that are not permissible for the bank itself. These amendments also will consolidate all securities activities regulation.

DATES: Comments must be received by February 1, 1999.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet Address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W. Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, (202/898–6759), Division of Supervision; Linda L. Stamp, Counsel, (202/898–7310) or Jamey Basham, Counsel, (202/898–7265), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Recently, the FDIC reassessed part 362 of its rules, "Activities and Investments of Insured State Banks" (12 CFR part 362) and § 337.4 of its rules, "Securities Activities of Subsidiaries of Insured State Banks: Bank Transactions with Affiliated Securities Companies" (12 CFR 337.4). That reassessment resulted in an amended part 362 that is published as a final rule elsewhere in this issue of the **Federal Register**. Although, in connection with that reassessment, FDIC proposed removing § 337.4, the FDIC decided to leave that rule in place to retain the safety and soundness standards governing securities activities that are not subject to section 24 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831a) (discussed below) during a further comment period on rules that would govern those activities.

In this proposal, the FDIC seeks comment on proposed safety and soundness standards governing an insured state nonmember bank subsidiary engaging in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities permissible for a subsidiary of a national bank that are not permissible for the parent national bank directly. The proposal also requests comment on a proposed requirement that a notice be filed before an insured state nonmember bank subsidiary engages in any other activity permissible for a subsidiary of a national bank that is not permissible for the parent national bank directly. Under the proposal, the FDIC would remove and reserve § 337.4. The proposal is described in more detail below.

Part 362 of the FDIC's regulations implements the provisions of section 24 of the FDI Act. Section 24 was added to the FDI Act by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242). With certain exceptions, section 24 limits the direct equity investments of state chartered insured banks to equity investments of a type permissible for national banks. In addition, with certain exceptions, section 24 prohibits an insured state bank from engaging as principal in any type of activity that is not permissible for a national bank unless the bank meets applicable capital requirements and the FDIC determines that the activity will not pose a significant risk to the appropriate deposit insurance fund. Section 24 also prohibits an insured state bank subsidiary from engaging as principal in any activity or making any equity investment of a type that is not permissible for a national bank subsidiary unless the bank meets applicable capital requirements and the FDIC determines that the activity will not pose a significant risk to the appropriate deposit insurance fund.

Since section 24 was enacted, the Office of the Comptroller of the Currency (OCC) has confirmed—through its rule governing operating subsidiaries—that there may be activities that are not permissible for a national bank itself, but that are permissible for national bank subsidiaries. Effective December 31, 1996, the OCC amended its regulations governing the acquisition and establishment of operating subsidiaries by national banks. 12 CFR part 5. These regulations establish a process through which a national bank may seek approval to conduct activities in an operating subsidiary that are part of or incidental to the business of banking as determined by the OCC pursuant to 12 U.S.C. 24 (Seventh) or other statutory authority but that differ from the activities that are permissible for the national bank itself. The OCC always requires an application from a bank seeking to conduct a bank-impermissible activity in an operating subsidiary. If the activity proposed for the operating subsidiary has not been approved previously by the OCC, the OCC will publish a notice of the application in the **Federal Register** and solicit comment. The OCC may also follow this notice and comment procedure if the activity is one that the OCC has previously approved. 12 CFR 5.34(f).

The framework in the regulation sets up a review process that has two, equally important components. First, the OCC reviews operating subsidiary applications to determine whether the proposed activities are legally permissible for an operating subsidiary. Second, the OCC evaluates the proposal to determine whether it is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the particular parent national bank.

The operating subsidiary rule sets out a number of conditions, or firewalls, that the OCC will impose each time it approves the conduct of an activity in an operating subsidiary that the parent

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bank could not do directly.[1] In addition, the rule contemplates the imposition of other bank-specific conditions tailored to the facts and circumstances presented by the individual application. To date, the OCC has received and published notice of three applications to conduct activities, through an operating subsidiary, which would not be permissible for a national bank. Two applications were filed by NationsBank, National Association, (Charlotte, North Carolina) to engage in limited real estate development activities in connection with bank premises and to provide real estate lease financing through operating subsidiaries of the bank. The FDIC, in its final rule published elsewhere in today's **Federal Register**, dealt with state nonmember banks which seek to engage in real estate activities permissible for a national bank only through a subsidiary (subpart B of the amended part 362).

Another application was filed by Zions First National Bank, (Salt Lake City, Utah) (Zions) to conduct municipal revenue bond underwriting activities on April 8, 1997. The OCC published notice and requested comment in the **Federal Register** on April 18, 1997. 62 FR 19171. On December 11, 1997, the OCC announced its approval of the Zions' application allowing an operating subsidiary of a national bank to engage in the activities of underwriting, dealing in, and investing in state and municipal revenue bonds, subject to certain safety and soundness requirements.[2]

This OCC approval means that the requirement under section 24 and subpart A of part 362, that an insured state nonmember bank apply to the FDIC for consent to engage in this activity through a subsidiary, no longer applies. However, the FDIC did not remove § 337.4 as proposed, but instead left § 337.4 in place to require that an insured state nonmember bank file a notice and comply with the FDIC's safety and soundness requirements to engage in the distribution or underwriting of stocks, bonds, debentures, notes or other securities through a subsidiary.[3]

Section 337.4 of the FDIC's regulations governs securities activities of subsidiaries of insured state nonmember banks as well as transactions between insured state nonmember banks and their securities subsidiaries and affiliates. The regulation was adopted in 1984 (49 FR 46723) and is designed to promote the safety and soundness of insured state nonmember banks that have subsidiaries which engage in securities activities that are impermissible for banks directly, under section 16 of the Banking Act of 1933 (12 U.S.C. 24 (Seventh)), commonly known as the Glass-Steagall Act. Section 337.4 requires that these subsidiaries qualify as bona fide subsidiaries; establishes transaction restrictions between a bank and its subsidiaries or other affiliates that engage in securities activities that are prohibited for banks under section 16; requires that an insured state nonmember bank give prior notice to the FDIC before establishing or acquiring any securities subsidiary; requires that disclosures be provided to securities customers in certain instances; and requires that a bank's investment in a securities subsidiary engaging in activities that are impermissible for a bank under section 16 be deducted from the bank's capital.

Under the current version of § 337.4, a subsidiary of a state nonmember bank that wanted to underwrite, deal in, and invest in municipal revenue bonds (securities of states and their political subdivisions that do not qualify under the OCC's current definition of general obligation bonds) would have to file a notice under § 337.4 and meet its requirements. To underwrite, deal in, or invest in municipal revenue bonds, the bank and its subsidiary would be required to:

1. File a notice at least 60 days prior to the consummation of the operation of the subsidiary;
2. Meet the "bona fide subsidiary" requirements as set forth in definition in § 337.4;
3. Deduct the capital invested in subsidiary from bank's total capital;
4. Underwrite only debt securities of investment grade, unless the subsidiary has been in continuous operation for the five year period preceding the notice.[4]

The applicability of § 337.4 is not impacted by the OCC's approval of the Zions application. The application of § 337.4 is independent of and was adopted prior to section 24 of the FDI Act and part 362. Section 337.4 is invoked based on the securities activities of the bank subsidiary and was adopted pursuant to an analysis of the Glass-Steagall Act undertaken in the early 1980s. In short, the regulation lists securities underwriting and distribution as an activity that will not pose a significant risk to the fund if conducted through a majority-owned subsidiary that operates in accordance with § 337.4. Now, in this rulemaking proceeding, the FDIC proposes to remove and reserve § 337.4 and address the FDIC's standards governing bank subsidiary activities through part 362.

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[1] Under these conditions, the § 5.34(f) operating subsidiary generally must: be physically separate from the parent; hold itself out as a separate and distinct entity; use a different name; have adequate capital; maintain separate accounting and corporate records; have independent policies and procedures designed to inform customers of the independence of the subsidiary; negotiate contracts with the parent at arm's length; hold separate board meetings; have at least one-third of the members of the board who are not directors of the bank who have relevant expertise; and have internal controls to manage financial and operational risks. Moreover, if the operating subsidiary will be conducting activities as principal, additional safety and soundness conditions are imposed, including that the bank's equity investment in the subsidiary must be deducted from the bank's capital and assets, and the assets and liabilities of the subsidiary may not be consolidated with those of the bank. In addition, the OCC will apply sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) to transactions between the parent bank and its operating subsidiary.

[2] Zions applied to the OCC pursuant to 12 CFR 5.34(f) to commence a new activity in an existing operating subsidiary. The subsidiary would underwrite, deal in, and invest in securities of states and their political subdivisions. These securities include the following: (1) Obligations presently defined by the OCC as general obligations of states and political subdivisions (General Obligation Securities); and (2) other obligations of states and their political subdivisions that do not qualify under the OCC's current definitions as general obligations (Revenue Bonds). The OCC determined that the activity was permissible for an operating subsidiary under the authority of 12 U.S.C. 24 (Seventh) that allows a national bank to own operating subsidiaries that conduct activities that are incidental to the business of banking. In this case, the OCC determined that the activity of underwriting revenue bonds is incidental to banking by finding that underwriting revenue bonds is the functional equivalent or a logical outgrowth of activities that are currently conducted by national banks. However, the OCC reiterated that section 20 of the Glass-Steagall Act prohibits the affiliation of member banks with firms that principally engage in underwriting bank-ineligible securities. As a result, the OCC imposed a 25 percent revenue limitation on the Zions' subsidiary to conform to the limitation for section 20 subsidiaries set by Board of Governors of the Federal Reserve System. The OCC imposed the conditions set forth in § 5.34(f), including corporate separateness requirements and the applications of sections 23A and 23B of the Federal Reserve Act to transactions between the oank and its subsidiary. In addition, the OCC imposed other conditions tailored to the Zions' application. For example, it required disclosures to customers, including use of the Interagency Statement on Retail Sales of Nondeposit Investment Products (Interagency Statement), and limited opinions on the bonds by bank directors, officers and employees.

[3] Section 362.4 of the final regulation establishes rules by which subsidiaries of insured state banks may conduct certain securities activities which are not permissible for a national bank subsidiary. Section 362.8(b) established similar rules for securities affiliates of insured state nonmember bank subsidiaries of so-called "nonbank bank holding companies." As is specified in § 337.4(i), the activities of such subsidiaries and affiliates are controlled by part 362, not § 337.4.

[4] According to the information provided in the application, the Zions' subsidiary appears to meet the 5-year operation test that § 337.4 would apply to a state nonmember bank subsidiary. Section 337.4 has no procedure for a bank to file an application to be relieved of the five year operation requirement; however, there is a waiver application procedure in § 337.10. Any such application would be granted at the discretion of the FDIC's Board of Directors.

II. Description of the Proposal

In this proposal, the FDIC imposes safety and soundness constraints on insured state nonmember bank subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that may be permissible for a national bank subsidiary but are not permissible for a national bank directly. In this proposal, the FDIC also requires that an insured state nonmember bank file a 30-day advance notice before the bank's subsidiary may engage in other activities not permissible for a national bank directly that may be permissible for a national bank subsidiary. This 30-day advance notice is designed to allow the FDIC to review any such activity and consider whether safety and soundness considerations make it prudent that conditions be placed on FDIC's consent to allow such activities. The FDIC believes it gave sufficient notice in its August 26, 1997, proposal to amend part 362 that the FDIC could adopt a final rule governing the insured state nonmember bank subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a national bank that are permissible for national bank subsidiaries. However because regulatory text was not provided in its earlier proposal, the FDIC believes that it is appropriate to provide an additional opportunity for public comment before approving a final rule to govern insured state nonmember bank subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that may be permissible for a national bank subsidiary but are not permissible for a national bank.

A. Requirements for Securities Activities

There are three general reasons the FDIC proposes the imposition of certain standards upon a state nonmember bank seeking to engage in the sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that may be permissible for a national bank subsidiary but are not permissible for a national bank itself: to ensure the bank is independent and operated in a manner consistent with safe and sound banking practices; to protect the insurance fund (the FDIC wants to avoid claims against the bank arising out of the public's misperception as to with whom it is dealing and in what capacity); and to comply with section 21 of the Glass-Steagall Act (12 U.S.C. 378), which prohibits securities companies from taking deposits and banks from engaging in certain securities activities. The FDIC has attempted to meet these goals in a manner that minimizes the burden to insured state nonmember banks without jeopardizing the FDIC's goals.

Thus, the FDIC proposal contains more flexible physical separation standards than exist in the current version of § 337.4. The FDIC views these proposed physical separation standards, coupled with the comprehensive requirements that include affirmative disclosures, investment limits, transaction requirements and capital standards, as adequate to protect bank safety and soundness, maintain the legal separation between the bank and its subsidiary and avoid customer confusion.

The FDIC also proposes to eliminate the different treatment of state nonmember bank subsidiaries depending upon the type of securities underwritten by the subsidiary. Instead, the FDIC is focusing on prudent management policies and practices, and the sufficiency of the subsidiary's capitalization. Additionally, the FDIC proposes to eliminate the tiered approach to the securities activities of the subsidiary, which limited for five years the underwriting by a new subsidiary to investment quality debt securities, investment quality equity securities, mutual funds that invest exclusively in investment quality equity securities and/or investment quality debt securities. Section 337.4 currently does not permit a subsidiary to engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a bank under section 16 of the Glass-Steagall Act, unless the subsidiary meets the bona fide definition and the activities are limited to underwriting of investment quality securities. Later, a subsidiary can engage in additional underwriting if it meets the definition of a bona fide subsidiary and the following additional conditions are met:

(a) The subsidiary is a member in good standing of the National Association of Securities Dealers (NASD);

(b) The subsidiary has been in continuous operation for a five-year period preceding the notice to the FDIC;

(c) No director, officer, general partner, employee or 10 percent shareholder has been convicted within five years of any felony or misdemeanor in connection with the purchase or sale of any security;

(d) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10 percent shareholders is subject to any state or federal administrative order or court order, judgment or decree arising out of the conduct of the securities business;

(e) None of the subsidiary's directors, officers, general partners, employees or 10 percent shareholders are subject to an order entered within five years issued by the Securities and Exchange Commission (SEC) pursuant to certain provisions of the Securities Exchange Act of 1934 or the Investment Advisors Act of 1940; and

(f) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years experience in similar activities at NASD member securities firms.

Current § 337.4 requires a bona fide subsidiary to be adequately capitalized, and therefore, these subsidiaries are required to meet the capital standards of the NASD and SEC. As a protection to the insurance fund, a bank's investment in these subsidiaries engaged in securities activities that would be prohibited to the bank under section 16 are not counted toward the bank's capital; that is, the investment in the subsidiary is deducted before compliance with capital requirements is measured.

The FDIC views its established separations for banks and securities firms as creating an environment in which the FDIC's responsibility to protect the insurance fund has been met without creating too much overlapping regulation for the securities firms. The FDIC maintains an open dialogue with the NASD and the SEC concerning matters of mutual interest. To that end, the FDIC entered into an agreement in principle with the NASD concerning examination of securities companies affiliated with insured institutions and has begun a dialogue with the SEC concerning the exchange of information which may be pertinent to the mission of the FDIC.

The number of banks which have subsidiaries engaging in securities activities that cannot be conducted by the bank itself is very small. These subsidiaries engage in the underwriting of debt and equity securities and distribution and management of mutual funds.

Since implementation of the FDIC's § 337.4 regulation, the relationships between banks and securities firms have not been a matter of supervisory concern due to the protections FDIC has in place. However, the FDIC realizes that in a time of financial turmoil these protections may not be adequate and a program of direct examination could be necessary to protect the insurance fund. Thus, the continuation of the FDIC's examination authority in that area is important.

B. Notice Requirement for Other Activities Generally

Under a safety and soundness standard, subpart B of the revised part 362 requires insured state nonmember bank subsidiaries engaging in certain enumerated activities to meet certain standards established by the FDIC, even if the OCC has determined that the activity in question is permissible for a subsidiary of a particular national bank. Under the modifications contained in this proposal, the FDIC would obtain the opportunity to review situations in which a state nonmember bank subsidiary seeks to engage in any activity determined by the OCC to be permissible for a national bank through its subsidiary, rather than through the national bank itself. This review would be analogous to the safety and soundness evaluation undertaken by the OCC with respect to operating subsidiary applications filed under § 5.34(f) of its rules (12 CFR 5.34(f)). It also would provide the FDIC with an opportunity to impose appropriate conditions on the operations of the subsidiary. The FDIC's Board of Directors wants to ensure that the FDIC can make a determination if there are adverse effects on the safety and soundness of the insured state nonmember bank and reserve authority to impose appropriate conditions.

C. Authority

The FDIC's action in proposing this regulation is fully within the agency's authority and is consistent with its stated goal of safeguarding the safety and soundness of insured state nonmember banks. The courts have recognized that defining what constitutes an unsafe or unsound banking practice in a particular fact situation is within the domain of the banking agencies. The United States Court of Appeals for the Fifth Circuit, on two occasions, stated that "[o]ne of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies." *Groos National Bank* v. *Comptroller of the Currency,* 573 F.2d 880, 897 (5th Cir. 1978); *First National Bank of LaMargue* v. *Smith,* 610 F.2d 1258, 1265 (5th Cir 1980). The United States Court of Appeals for the D.C. Circuit has stated with regard to the OCC's authority under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818)—one of the statutory provisions from which the FDIC derives authority for this rulemaking—that "the Comptroller is entitled to accomplish his regulatory responsibilities over "unsafe and unsound" practices both by cease and desist proceedings and by rules defining and explicating the practices which in his discretion he finds threatening to a stable and effective national banking system." *Independent Bankers Association of America* v. *Heimann,* 613 F.2d 1164, 1169 (D.C. Cir. 1979). In his testimony on financial modernization, the FDIC's Chairman recently confirmed the view that barriers between banking and commerce should be lowered cautiously and incrementally with safeguards to protect the insured bank.[5]

Under the proposed regulation, the FDIC is not waiving its right to address on a case-by-case basis practices, conduct, or acts that are not specifically addressed by this regulation which it finds constitute unsafe and unsound practices. The FDIC will continue to monitor bank direct and indirect involvement in securities activities and will take whatever future action is appropriate.

The FDIC requests comments about all aspects of this proposed revision to part 362. In addition, the FDIC is raising specific questions for public comment as set out in connection with the analysis of the proposal below.

III. Section by Section Analysis

A. Majority-owned Subsidiaries Engaging in the Public Sale, Distribution or Underwriting of Stocks, Bonds, Debentures, Notes or Other Securities That Are Not Permissible for a National Bank Under Section 16 of the Banking Act of 1933

1. Description of the Rule

In connection with its recent adoption of restrictions, under subpart A of part 362, for insured state bank subsidiaries seeking to engage in the sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a national bank and its subsidiary, the FDIC has determined that such activities may involve risk. The FDIC consequently requires insured state banks to file a notice to conduct this activity through a majority-owned subsidiary. As long as the FDIC does not object to the notice, the bank may conduct the activity in compliance with the requirements set out in the rule. The fact that prior consent is not required by subpart A does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

In developing the proposed amendments under consideration here, the FDIC did not see a need for differing treatment based on whether the insured state nonmember bank subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a national bank are engaging in a similar activity that is permissible for a national bank subsidiary. In either instance, the proposal would provide the same comprehensive structure for insured state nonmember bank subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a national bank.

Thus, the standards being proposed as amendments to subpart B addressing safety and soundness concerns are the same as those that were adopted in subpart A in the final rule. The difference is that the activities addressed in subpart A are not permissible for a national bank subsidiary while the activities addressed in subpart B are those that are permissible for a national bank subsidiary. Thus, the activities addressed in subpart A are addressed primarily under the authority found in section 24 of the FDI Act whereas the activities addressed in subpart B are addressed under the authority found in section 8 of the FDI Act.

The revised language would be located in subpart B of part 362 and would become part of proposed § 362.8(a).

Subpart A of part 362 does not grant authority to conduct activities or make investments; subpart A only gives relief from the prohibitions of section 24 of the FDI Act. In subpart A, the FDIC grouped the exception for insured state bank subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a national bank together with the real estate exception in the structure of the regulation to promote uniform standards across activities. In a parallel fashion in subpart B, the FDIC proposes to group the exception for insured state nonmember banks that acquire or establish subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are permissible for a national bank only through a subsidiary together with the real estate exception in the structure of the regulation, to promote uniform standards across activities.

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[5] *See* "Testimony on Financial Modernization" of Andrew C. Hove, Jr., Chairman, Federal Deposit Insurance Corporation, Before the Subcommittee on Finance and Hazardous Materials, Committee on Commerce, United States House of Representatives July 17, 1997.

Similarly, the authority, constraints and notice process refers back to subpart A and incorporates the same requirements and limitations as govern securities underwriting activities thereunder. In both instances the proposal would require the insured state nonmember bank and its subsidiary to meet and continue to meet the following standards to engage in the activity after notice to the FDIC, rather than making a full application:

1. The bank must meet the requirements for an "eligible depository institution;"[6]
2. The bank must be well capitalized after deducting its investment in the subsidiary;
3. The subsidiary must be an "eligible subsidiary;"[7]
4. The bank and the subsidiary must comply with the investment limits, transaction requirements and collateralization requirements in dealing with each other;
5. The bank must adopt policies and procedures to govern its participation in financing transactions arranged by the subsidiary;
6. The bank may not express an opinion of value or advisability of securities underwritten by the subsidiary unless the customer is notified of the bank's relationship with the subsidiary;
7. The subsidiary must be registered with SEC and agree to notify the regional office of any material actions against the subsidiary by any state authorities or the SEC; and
8. The bank may not buy securities underwritten by the subsidiary as principal or fiduciary unless the bank's board of directors approves.

The proposed requirements are uniform with other part 362 notice procedures for insured state bank subsidiaries to engage in activities not permissible for national banks or their subsidiaries, and would recognize the level of risk present in subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a national bank itself. These requirements are not all presently found in § 337.4 but the FDIC believes that only banks that are well-run and well-managed should be given the opportunity to engage in securities activities that are not permissible for a national bank under the streamlined notice procedures. These criteria are imposed as expedited processing criteria rather than substantive criteria. Banks not meeting these criteria that want to engage in these activities should be subject to the scrutiny of the application process. Although operations not permissible for a national bank are conducted and managed by a separate majority-owned subsidiary, such activities are part of the analysis of the consolidated financial institution. The condition of the institution and the ability of its management are an important component in determining if the risks of the securities activities will have a negative impact on the insured institution.

When the FDIC initially implemented § 337.4 on securities activities of subsidiaries of insured state nonmember banks, the FDIC determined that some risk may be associated with those activities. The FDIC continues to see a need to address that risk. The FDIC requests comment on the application of these safeguards to these activities, including the utility of management and board separations to limit controlling person liability and the inappropriate disclosure of material nonpublic information; the extent that any securities underwriting liability may have been reduced due to the enactment of The Private Securities Litigation Reform Act of 1995, Public Law 104–67; and the efficacy of more limited restrictions on officer and director interlocks to prevent both liability and information sharing and any related issues.[8]

2. Substantive Changes to the Subsidiary Underwriting Activities

Generally, these proposed amendments to subpart B, as compared to the current provisions of § 337.4 governing the state nonmember bank subsidiaries that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a bank under section 16 of Glass-Steagall, have been streamlined to make compliance easier. In addition, state nonmember banks that deem any particular constraint to be burdensome may file an application with the FDIC to have the constraint removed for that bank and its majority-owned subsidiary.

The FDIC has proposed to eliminate those constraints that were deemed to overlap with other requirements or that could be eliminated and still maintain safety and soundness. The FDIC has determined that it can adequately monitor other securities activities through its regular reporting and examination processes. We invite comment on whether the elimination of the other notices now found in § 337.4, such as the notice requirement for any securities activity in § 337.4(d), is appropriate.

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[6] An "eligible depository institution" is a depository institution that: (1) Has been chartered and operating for at least three years or is in an acceptable holding company structure; (2) received an FDIC-assigned composite UFIRS rating of 1 or 2 at its most recent examination; (3) received a rating of 1 or 2 under the "management" component of the UFIRS at its most recent examination; (4) received at least a satisfactory CRA rating from its primary federal regulator at its last examination; (5) received a compliance rating of 1 or 2 from its primary federal regulator at its last examination; and (6) is not subject to any corrective or supervisory order or agreement.

[7] An entity is an "eligible subsidiary" if it: (1) Meets the capital requirements; (2) is physically separate and distinct in its operations; (3) maintains separate accounting and other records; (4) observes separate business formalities; (5) has a chief executive officer who is not an employee of the bank; (6) has a majority of its board of directors who are neither directors nor officers of the state-chartered depository institution; (7) conducts business pursuant to independent policies and procedures; (8) has only one business purpose; (9) has a current written business plan that is appropriate to the type and scope of business conducted by the subsidiary; (10) has adequate management; and (11) establishes policies and procedures to ensure adequate computer, audit and accounting systems, internal risk management controls, and has the necessary operational and managerial infrastructure to implement the business plan.

[8] Liability of "controlling persons" for securities law violations by the persons or entities they "control" is found in section 15 of the Securities Act of 1933, 15 U.S.C. 77o and section 20 of the Securities and Exchange Act of 1934, 15 U.S.C. 78t(a). Although the tests of liability under these statutes vary slightly, the FDIC is concerned that liability may be imposed on a parent entity that is a bank under the most stringent of these authorities in the securities underwriting setting. Under the Tenth Circuit's permissive test for controlling person liability, any appearance of an ability to exercise influence, whether directly or indirectly, and even if such influence cannot amount to control, is sufficient to cause a person to be a controlling person within the meaning of section 15 or section 20. Although liability may be avoided by proving no knowledge or good faith, proving no knowledge requires no knowledge of the general operations or actions of the primary violator and good faith requires both good faith and nonparticipation. *See First Interstate Bank of Denver, N.A.* v. *Pring*, 969 F.2d 891 (10th Cir. 1992), rev'd on other grounds, 511 U.S. 164 (1994); *Arena Land & Inv. Co. Inc.* v. *Petty*, 906 F. Supp. 1470 (D. Utah 1994); *San Francisco-Oklahoma Petroleum Exploration Corp.* v. *Carstan Oil Co., Inc.*, 765 F.2d 962 (10th Cir. 1985); *Seattle-First National Bank* v. *Carlstedt*, 978 F. Supp. 1543 (W.D. Okla. 1987). However, to the extent that any securities underwriting liability may have been reduced due to the enactment of The Private Securities Litigation Reform Act of 1995, Pub .L. 104–67, then the FDIC's concerns regarding controlling person liability may be reduced. It is likely that the FDIC will want to await the development of the standards under this new law before taking actions that could risk liability on a parent bank that has a subsidiary that engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities that are not permissible for a national bank.

The FDIC proposes the removal of the customer disclosures currently contained in § 337.4. Instead, the FDIC will be relying on the Interagency Statement on the Retail Sale of Nondeposit Investment Products (FIL–9–94,[9] February 17, 1994) (or any successor requirement) as applicable guidance to ensure that appropriate disclosures are made when the subsidiary's products are sold on bank premises, are sold by bank employees or are sold when the bank receives a referral fee. While the current regulation requires disclosures, those disclosures are similar but not identical to the disclosures required by the Interagency Statement. This change makes compliance easier. Comments submitted to the FDIC in connection with its recent revisions to subpart A of part 362 support this change and recognize that any retail sale of nondeposit investment products to bank customers under such circumstances are subject to the Interagency Statement. The FDIC requests comment on whether the Interagency Statement provides adequate disclosures for retail sales in a securities subsidiary and whether required compliance with that policy statement needs to be specifically mentioned in the regulatory text. Comment is invited on whether any other disclosures currently in § 337.4 should be retained or if any additional disclosures would be appropriate.

The FDIC proposes to continue to impose many of the safeguards found in section 23A of the Federal Reserve Act (12 U.S.C. 371c) and to impose the safeguards similar to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1). The FDIC requests comment on the restrictions that have been removed, including whether any of these restrictions should be reimposed for securities activities. The FDIC also invites suggestions for further improvements.

The FDIC proposes that the notice period be shortened from the existing 60 days to 30 days and that the required notice and application procedures be located in subpart G of part 303. Previously, specific instructions and guidelines on the form and content of any applications or notices required under § 337.4 were found within that section.

With regard to any insured state nonmember banks that have been engaging in these activities under a notice filed and in compliance with § 337.4, the proposed regulation would allow those activities to continue under the terms of that approval. This result differs from the approach set out in § 362.5(b) (applicable to state banks engaging in securities activities impermissible for a national bank and its subsidiary), which requires that the bank and its majority-owned subsidiaries meet the core eligibility requirements, the investment and transaction limitations, and capital requirements contained in § 362.4(c), (d), and (e). The FDIC did not consider the additional requirements to be necessary in subpart B, because we are not aware of any insured state nonmember banks having subsidiaries that are underwriting only securities that would fall under subpart B. We believe that any subsidiaries that are underwriting the types of securities regulated under subpart B already are required to follow the continuation requirements found in subpart A.

3. Notice for Change in Circumstances

The final rule in subpart A applicable to state banks engaging in securities activities impermissible for a national bank and its subsidiary (§ 362.4(b)(5)) requires the bank to provide written notice to the appropriate Regional Office of the FDIC within 10 business days of a change in circumstances. A change in circumstances is described as a material change in a subsidiary's business plan or management. Under the proposal, subpart B incorporates this requirement by reference. The FDIC believes that it can address a bank's falling out of compliance with any of the other requirements of the regulation through the normal supervision and examination process.

B. Other Activities Permissible for Subsidiaries of a National Bank That Are Not Permissible for a National Bank

In this proposal, the FDIC requires that an insured state nonmember bank file a 30-day advance notice before the bank's subsidiary may engage in other activities not permissible for a national bank that may be permissible for a national bank subsidiary. This 30-day advance notice is designed to allow FDIC to review any such activity and consider whether safety and soundness considerations make it prudent that conditions be placed on FDIC's consent to allow such activities.

Since section 24 was enacted, the OCC has confirmed through its rule governing operating subsidiaries that there may be activities that are permissible for national bank subsidiaries even though the parent national bank may not conduct them directly. The FDIC needs to review the activities and assess their safety and soundness in determining whether the activity is appropriate for an insured state nonmember bank's subsidiary. The FDIC also needs to determine whether any conditions should be placed on the conduct of that activity. The FDIC cannot assess the activities that may be approved in the future and adopt specific standards to govern those activities. This safety and soundness review and, if appropriate, the imposition of conditions should be done on a case-by-case basis. The FDIC has elected to limit its review to a 30-day period to limit the burden from this requirement.

IV. Additional Requests for Comments

The FDIC is specifically requesting comments that address the following:

(1) What criteria should the FDIC use to decide whether an activity that is permissible for a national bank subsidiary but not permissible for the national bank may be conducted in a safe and sound fashion by a subsidiary of an insured state nonmember bank?

(2) Should activities that are permissible for a national bank subsidiary but are not permissible for the national bank be limited to subsidiaries of insured state nonmember banks of a certain asset size, with a certain composite rating, *etc.*?

(3) What are the likely competitive effects of authorizing insured state nonmember banks to engage (through subsidiaries) in activities that are permissible for a national bank subsidiary but are not permissible for the national bank?

(4) Alternately, are there other approaches or methods which would facilitate access without compromising traditional safety and soundness concerns?

Comments addressing these issues and any other aspects of the general subject of permitting subsidiaries of insured state nonmember banks to engage in activities that are permissible for a national bank subsidiary but are not permissible for the national bank will be welcomed.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this proposed rule has been submitted to

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[9] Financial institution letters (FILs) are available in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. 20429.

OMB for review. Comments on the collection of information should be sent to the desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Copies of comments should also be sent to: Steven F. Hanft, FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, (202) 898–3907. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. [Fax number (202) 898–3838; Internet address: COMMENTS@FDIC.GOV]. For further information on the Paperwork Reduction Act aspect of this rule, contact Steven F. Hanft at the above address.

Comment is solicited on:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of the collection: The proposed rule will modify an information collection previously approved by OMB titled "Activities and Investments of Insured State Banks" under control number 3064–0111.

Summary of the collection: Generally, the collection includes the description of the activity in which an insured state bank or its subsidiary proposes to engage that would be impermissible absent the FDIC's consent or nonobjection, and information about the relationship of the proposed activity to the bank's and /or subsidiary's operation and compliance with applicable laws and regulations.

Need and Use of the information: The FDIC uses the information to determine whether to grant consent or provide a nonobjection for the insured state bank or its subsidiary to engage in the proposed activity that otherwise would be impermissible pursuant to section 8 of the FDI Act and 12 CFR part 362.

Proposed changes to the collection: The proposed rule will modify the collection in two ways. First, by adding, at § 362.8(a)(2), the requirement of a notice to the FDIC before the state nonmember bank through a subsidiary engages in either the public sale, distribution or underwriting of stocks, bonds, debenture, notes or other securities if those activities are permissible for a national bank subsidiary but are not permissible for the national bank itself. Second, by adding, at § 362.8(b), the requirement of a notice to the FDIC before the state nonmember bank through a subsidiary engages in activities that are permissible for a national bank subsidiary but are not permissible for the national bank itself. The contents of both notices are described at § 303.121(b) of the final part 362 rule also published in today's **Federal Register**.

Respondents: Banks or their subsidiaries desiring to engage in activities that would be impermissible absent the FDIC's consent or nonobjection.

Estimated annual burden resulting from this proposed rulemaking:

Frequency of response: Occasional

Number of responses: 1

Average number of hours to prepare a response: 8 hours

Total annual burden: 8 hours

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. As noted above in connection with the Paperwork Reduction Act, the FDIC estimates that the incidences in which insured state nonmember banks will be required to file a notice under the rule will be infrequent, and will not require significant time to complete. Furthermore, the proposed rule streamlines requirements for insured state nonmember banks. It simplifies the requirements that apply when insured state nonmember banks conduct certain securities activities through majority-owned corporate subsidiaries. Whenever possible, the rule clarifies the expectations of the FDIC when it requires notices or applications to consent to activities by insured state banks. The proposed rule will make it easier for small insured state banks to locate the rules that apply to their investments.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Bank merger, Branching, Foreign branches, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments, Reporting and recordkeeping requirements.

For the reasons set forth above and under the authority of 12 U.S.C. 1819(a) (Tenth), the FDIC Board of Directors hereby proposes to amend 12 CFR chapter III as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1835a, 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. In § 303.122, the first sentence of paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 303.122 Processing.

(a) *Expedited processing.* A notice filed by an insured state bank seeking to commence or continue an activity under § 362.4(b)(3)(i), § 362.4(b)(5), § 362.8(a)(2), or § 362.8(b) of this chapter will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided a basis for that decision. * * *

(b) *Standard processing for applications and notices that have been removed from expedited processing.* For an application filed by an insured state bank seeking to commence or continue an activity under § 362.3(a)(iii)(A), § 362.3(b)(2)(i), § 362.3(b)(2)(ii)(C), § 362.4(b)(1), § 362.4(b)(2), § 362.4(b)(4), § 362.5(b)(2), § 362.8(a)(2), or § 362.8(c) of this chapter or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured state bank with written notification of the final action as soon as the decision is rendered. * * *

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

4. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831f, 1831f–1.

§ 337.4 [Removed and Reserved]

5. § 337.4 is removed and reserved.

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

6. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a) (Tenth), 1828(m), 1831a, 1831e.

Subpart B—Safety and Soundness Rules Governing Insured State Nonmember Banks

7. In § 362.6, remove the third sentence and add two sentences in its place to read as follows:

§ 362.6 Purpose and scope.

* * * The following standards shall apply for insured state nonmember banks to conduct either real estate investment or to engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities through a subsidiary if those activities are permissible for a national bank subsidiary but are not permissible for the national bank itself. The FDIC also requires that notices be filed before insured state nonmember banks conduct any other activities through a subsidiary if those activities are permissible for a national bank subsidiary but are not permissible for a national bank. * * *

8. In § 362.8, revise paragraph (a), redesignate paragraph (b) as paragraph (c) and add new paragraph (b) to read as follows:

§ 362.8 Restrictions on activities of insured state nonmember banks.

(a) *Real estate investment or engaging in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities through a subsidiary if those activities are permissible for a national bank subsidiary but are not permissible for the national bank itself.* The FDIC Board of Directors has found that, depending on the facts and circumstances presented by a particular case, real estate investment or engaging in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities activities may have adverse effects on the safety and soundness of an insured state nonmember bank. Therefore, an insured state nonmember bank may not establish or acquire a subsidiary that engages in such real estate investment or in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities activities unless the insured state nonmember bank:

(1) Has an approval previously granted by the FDIC and continues to meet the conditions and restrictions of the approval; or

(2) Meets the requirements for engaging in real estate investment or securities underwriting activities (as relevant) as set forth in § 362.4(b)(5), and submits a corresponding notice under § 303.121 and § 303.122(a) of this chapter to which no objection is taken by FDIC, or applies for and obtains the FDIC's consent in accordance with the procedures of § 303.121 and § 303.122(b) of this chapter.

(b) *Other activities permissible for subsidiaries of a national bank that are not permissible for a national bank.* The FDIC Board of Directors has found that depending on the facts and circumstances of a particular case, the conduct of an activity in a subsidiary of an insured state nonmember bank that is not permissible for a national bank may have adverse effects on the safety and soundness of the insured state nonmember bank. The FDIC Board of Directors has found that the FDIC cannot make a determination whether there are adverse effects on the safety and soundness of an insured state nonmember bank engaging through a subsidiary in an activity not permissible for a national bank but permissible for a subsidiary of a national bank, unless the FDIC has had an opportunity for prior review of the activities. Therefore, an insured state nonmember bank may not establish or acquire a subsidiary that engages in such an activity unless the insured state nonmember bank obtains the FDIC's consent. Consent will be given only if the FDIC determines the activity poses no adverse effects on the safety and soundness of the insured state nonmember bank. Notices should be filed in compliance with §§ 303.121 and 303.122(a) of this chapter. Approvals granted under § 303.122(a) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, prevent unsafe or unsound banking practices, and/or ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law. If the FDIC previously granted an approval to the insured state nonmember bank to engage in the activity, the bank need not file another notice under this section.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of November 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–31151 Filed 11–30–98; 8:45 am]

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federal register

Tuesday
December 1, 1998

Part IV

Department of the Treasury

Office of Thrift Management

12 CFR Part 563

Financial Management Policies: Financial Derivatives; Final Rule and Thrift Bulletin 13a; Notice

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 98–116]

RIN 1550–AB13

Financial Management Policies; Financial Derivatives

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule on financial derivatives. The final rule permits savings associations to engage in transactions involving financial derivatives to the extent that these transactions are authorized under applicable law and are otherwise safe and sound. In addition, the final rule describes the responsibilities of a savings association's board of directors and management with respect to financial derivatives. Elsewhere in today's **Federal Register**, OTS is publishing a Thrift Bulletin that provides supplemental supervisory guidance on the use of financial derivatives.

EFFECTIVE DATE: This final rule is effective January 1, 1999. OTS will not object if an institution wishes to apply this final rule beginning December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Anthony G. Cornyn, Director of Risk Management, (202/906–5727), Ed Irmler, Senior Project Manager, (202/906–5730), Jonathan D. Jones, Senior Economist (202/906–5729), Risk Management; or Vern McKinley, Senior Attorney (202/906–6241), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS's current regulations on financial derivatives were first adopted over fifteen years ago.[1] These regulations have remained virtually unchanged, notwithstanding the development of new financial derivative instruments. On April 23, 1998, OTS proposed a comprehensive revision of these outmoded regulations.[2]

One of the goals of the proposed rule was to address the broad range of financial derivative transactions in which thrifts may currently engage. The current regulations address three types of financial derivatives: forward commitments, futures transactions and financial options transactions. *See* 12 CFR 563.173, 563.174 and 563.175. The current rules, thus, do not address all of the derivative instruments that have been developed over the past twenty years. Significantly, these rules do not address interest rate swaps, a derivative instrument that thrifts commonly use to address interest rate risk.

The overriding goal of the proposed rule, however, was to ensure the safe and sound management of the risks associated with financial derivatives. Accordingly, the proposed regulation emphasized that derivatives activities must be conducted in a safe and sound manner, and set forth the responsibilities of the board of directors and management with respect to financial derivatives.

The proposed rule was also intended to reduce regulatory burden consistent with statutory requirements for safe and sound operations. Accordingly, OTS proposed to delete regulatory requirements that were no longer considered to be essential for safety and soundness, redrafted other requirements as guidance, and revised the remaining existing requirements as broader and more flexible regulatory requirements for all types of financial derivative transactions. OTS's proposed approach, which relied more on guidance than detailed regulations, more closely resembled the bank regulatory agencies' approach with regard to banks' use of financial derivatives.[3]

At the same time it issued the proposed rule, OTS proposed comprehensive guidance regarding savings associations' risk management practices, including those pertaining to derivatives transactions.[4] Proposed Thrift Bulletin 13a (TB 13a) ("Management of Interest Rate Risk, Investment Securities, and Derivatives Activities") included specific guidance on how thrifts should implement the Federal Financial Institutions Examination Council's "Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities" (FFIEC policy statement).[5]

II. Summary of Public Comments

The public comment period on the proposed rule and the proposed thrift bulletin closed on June 22, 1998. One commenter, a savings association, filed a comment supporting the proposed rule.

The OTS received twenty-seven comments on proposed TB 13a. The substance of these comments is addressed in connection with the related TB 13a. Some of the commenters also addressed issues related to the proposed rule.

Several commenters suggested that the proposed thrift bulletin and the proposed regulation on financial derivatives should be finalized simultaneously. The OTS believes that TB 13a provides important and necessary guidance on the management of interest rate risk, investment securities and derivatives activities. Accordingly, it has made this guidance effective on the date of publication in the **Federal Register**. Subject to certain exceptions, however, 12 U.S.C. 4802(b) provides that new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on an insured depository institution shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. Section 4802(b) also permits persons who are subject to such regulations to comply with the regulation before its effective date. Accordingly, OTS will not object if an institution wishes to apply the provisions of this final rule beginning with the date it is published in the **Federal Register**.

One commenter, a law firm representing numerous savings associations, noted that the proposed rule text would incorporate TB 13a in several places. Proposed § 563.172(c)(2), for example, states that the savings association's board of directors should review TB 13a and other applicable agency guidance on establishing a sound risk management program. Similarly, proposed § 563.172(d)(2) states that management should review the thrift bulletin and other applicable agency guidance on implementing a sound risk management program. The commenter also noted that OTS sought public comment on TB 13a, a procedural step that it does not generally follow for thrift bulletins. The commenter asked OTS to clarify whether the cross-references in the rule text and the procedures followed in promulgating the thrift bulletin were intended to change the legal status of guidance in the bulletin.

The inclusion of cross-references to TB 13a and other agency guidance in the rule text merely serves as a reference point to the board of directors and management in establishing and implementing written policy and procedures on financial derivatives. As such, the cross-references to TB 13a only provide guidance on how financial derivatives activities may be conducted in a safe and sound manner.[6] They do not alter the legal status of the guidance contained in the bulletin. Similarly, publication of TB 13a for public comment does not change its legal status as a thrift bulletin. Rather, the bulletin represents the Agency's best judgment in interpreting regulations and statutes which it administers. The administrative procedures used specifically to develop TB 13a were intended to provide OTS with public comment on all possible aspects of the management of interest rate risk, investment securities and derivative activities.

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[1] 44 FR 29870 (May 23, 1979) (Forward commitments); 46 FR 36832 (July 16, 1981) (Futures transactions); 47 FR 36625 (August 23, 1982) (Financial options).

[2] 63 FR 20252 (April 23, 1998).

[3] *See e.g.*, OCC Banking Circular 277 (October 27, 1993).

[4] 63 FR 20257 (April 23, 1998).

[5] 63 FR 20191 (April 23, 1998). The FFIEC policy statement provides general guidance on sound practices for managing the risks of investment securities and derivatives activities.

One commenter on the Thrift Bulletin urged the OTS to amend its capital regulations to eliminate the interest rate risk component at 12 CFR 567.7. The agency believes that a review of § 567.7 may have merit. However, neither the proposed Thrift Bulletin nor the notice of proposed rulemaking suggested that the OTS was considering any revision to its capital rules.

In order to get the full benefit of public comment on this issue, the OTS will shortly initiate a rulemaking that will examine the need to retain § 567.7 in light of the tools that are currently available to measure and control interest rate risk.

III. Final Rule

Since no commenter suggested substantive changes to the proposed rule and OTS has identified no other reasons to modify the text, OTS has adopted the proposed rule without substantive change. Elsewhere in today's **Federal Register**, OTS is also publishing a final TB 13a, which provides supplemental supervisory guidance on the use of financial derivatives.

IV. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS has determined that this final rule does not have a significant economic impact on a substantial number of small entities. The final rule reduces the burden of complying with detailed regulations and allows for more flexible treatment of derivatives activities for all institutions, including small institutions.

VI. Paperwork Reduction Act

The recordkeeping requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0094. Comments on all aspects of this information collection should be sent to Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503 with copies to the Office of Thrift Supervision, Regulations and Legislation Division, Chief Counsel's Office, 1700 G Street, NW., Washington, D.C. 20552.

The information collection requirements contained in this rule are found in 12 CFR 563.172. OTS requires this information for the proper supervision of interest rate risk for its regulated savings associations. The likely respondents/recordkeepers are OTS-regulated savings associations.

Respondents/recordkeepers are not required to respond to the collections of information unless the collection displaces a current valid OMB control number.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed above, this final rule reduces regulatory burden by eliminating unnecessarily restrictive regulations. OTS has, therefore, determined that the effect of the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision amends part 563, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806, 42 U.S.C. 4106.

§§ 563.173, 563.174, 563.175 [Removed]

2. Sections 563.173, 563.174, and 563.175 are removed.

3. Section 563.172 is added to read as follows:

§ 563.172 Financial derivatives.

(a) *What is a financial derivative?* A financial derivative is a financial contract whose value depends on the value of one or more underlying assets, indices, or reference rates. The most common types of financial derivatives are futures, forward commitments, options, and swaps. A mortgage derivative security, such as a collateralized mortgage obligation or a real estate mortgage investment conduit, is not a financial derivative under this section.

(b) *May I engage in transactions involving financial derivatives?* (1) If you are a federal savings association, you may engage in a transaction involving a financial derivative if you are authorized to invest in the assets underlying the financial derivative, the transaction is safe and sound, and you otherwise meet the requirements in this section.

(2) If you are a state-chartered savings association, you may engage in a transaction involving a financial derivative if your charter or applicable state law authorizes you to engage in such transactions, the transaction is safe and sound, and you otherwise meet the requirements in this section.

(3) In general, if you engage in a transaction involving a financial derivative, you should do so to reduce your risk exposure.

(c) *What are my board of directors' responsibilities with respect to financial derivatives?* (1) Your board of directors is responsible for effective oversight of financial derivatives activities.

(2) Before you may engage in any transaction involving a financial derivative, your board of directors must establish written policies and

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[6] OTS has incorporated other similar cross-references into its regulations. *See* 12 CFR 562.2(b) which cross-references guidance in OTS bulletins, and examination handbooks.

procedures governing authorized financial derivatives. Your board of directors should review Thrift Bulletin 13a, "Management of Interest Rate Risk, Investment Securities, and Derivatives Activities," and other applicable agency guidance on establishing a sound risk management program.

(3) Your board of directors must periodically review:

(i) Compliance with the policies and procedures established under paragraph (c)(2) of this section; and

(ii) The adequacy of these policies and procedures to ensure that they continue to be appropriate to the nature and scope of your operations and existing market conditions.

(4) Your board of directors must ensure that management establishes an adequate system of internal controls for transactions involving financial derivatives.

(d) *What are management's responsibilities with respect to financial derivatives?* (1) Management is responsible for daily oversight and management of financial derivatives activities. Management must implement the policies and procedures established by the board of directors and must establish a system of internal controls. This system of internal controls should, at a minimum, provide for periodic reporting to the board of directors and management, segregation of duties, and internal review procedures.

(2) Management must ensure that financial derivatives activities are conducted in a safe and sound manner and should review Thrift Bulletin 13a, "Management of Interest Rate Risk, Investment Securities, and Derivatives Activities" (available at the address listed at § 516.1 of this chapter), and other applicable agency guidance on implementing a sound risk management program.

(e) *What records must I keep on financial derivative transactions?* You must maintain records adequate to demonstrate compliance with this section and with your board of directors' policies and procedures on financial derivatives.

Dated: November 20, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–31673 Filed 11–30–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 98–117]

Financial Management Policies

AGENCY: Office of Thrift Supervision.

ACTION: Notice of final thrift bulletin.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting Thrift Bulletin 13a, which provides guidance on the management of interest rate risk, investment securities, and derivatives activities. The Bulletin also describes the guidelines OTS examiners will use in assigning the "Sensitivity to Market Risk" component rating under the Uniform Financial Institutions Rating System.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ed Irmler, Senior Project Manager, (202) 906–5730 or Anthony G. Cornyn, Director, Risk Management Division, (202) 906–5727, Office of Thrift Supervision.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision is today adopting the attached document, Thrift Bulletin 13a (TB 13a), Management of Interest Rate Risk, Investment Securities, and Derivatives Activities. This Bulletin provides guidance on a wide range of topics in the area of interest rate risk management, including several on which the Federal Financial Institutions Examination Council (FFIEC) has issued related guidance. OTS believes that adoption of this Bulletin will simultaneously improve its supervision of interest rate risk management and reduce regulatory burden on thrift institutions.

The Bulletin updates OTS's minimum standards for thrift institutions' interest rate risk management practices with regard to board-approved risk limits and interest rate risk measurement systems. The guidance in this Bulletin, thus, replaces Thrift Bulletin 13 (Responsibilities of the Board of Directors and Management with Regard to Interest Rate Risk), Thrift Bulletin 13–1 (Implementation of Thrift Bulletin 13), and Thrift Bulletin 13–2 (Implementation of Thrift Bulletin 13). The Bulletin makes several significant changes. First, under TB 13a, institutions no longer set board-approved limits or provide measurements for the plus and minus 400 basis point interest rate scenarios prescribed by the original TB 13. The Bulletin also changes the form in which those limits should be expressed. Second, the Bulletin provides guidance on how OTS will assess the prudence of an institution's risk limits. Third, the Bulletin raises the size threshold above which institutions should calculate their own estimates of the interest rate sensitivity of Net Portfolio Value (NPV) from $500 million to $1 billion in assets. Fourth, the Bulletin specifies a set of desirable features that an institution's risk measurement methodology should utilize. Finally, the Bulletin provides an extensive discussion of "sound practices" for interest rate risk management.

TB 13a also contains guidance on thrifts' investment and derivatives activities. As described in the FFIEC's Supervisory Statement on Investment Securities and End-User Derivative Activities, (FFIEC Policy Statement),[1] the FFIEC-member agencies have discontinued use of the three-part test for suitability of investment securities. Accordingly, the Bulletin describes the types of analysis institutions should perform prior to purchasing securities or financial derivatives. The Bulletin also provides guidelines on the use of certain types of securities and financial derivatives for purposes other than reducing portfolio risk. The final regulation on financial derivatives, published elsewhere in this issue of the **Federal Register**, as supplemented by the guidance in this final TB 13a, replaces existing regulations governing futures (12 CFR 563.173), forward commitments (12 CFR 563.174), and options (12 CFR 563.175). TB 13a also replaces guidance contained in Thrift Bulletin 52 (Supervisory Statement of Policy on Securities Activities), Thrift Bulletin 52–1 ("Mismatched" Floating Rate CMOs), and Thrift Bulletin 65 (Structured Notes).

Finally, TB 13a provides detailed guidelines for implementing part of the Notice announcing the revision of the Uniform Financial Institutions Rating System (i.e., the CAMELS rating system), published by the FFIEC.[2] That publication announced revised interagency policies, that among other things, established the Sensitivity to Market Risk component rating (the "S" rating). TB 13a provides quantitative guidelines for an initial assessment of an institution's level of interest rate risk. Examiners have broad discretion in implementing those guidelines. It also provides guidelines concerning the factors examiners consider in assessing the quality of an institution's risk management systems and procedures. Guidance on the topic of assigning the "S" rating is largely new, though TB 13a replaces the rather limited guidelines contained in New Directions Bulletin 95–10.

Differences Between Proposed and Final Versions of TB 13a

On April 23, 1998, OTS published a proposed TB 13a.[3] The content of the final TB 13a is, in most respects, the same as the proposed TB 13a. Two significant changes were made, however, in response to comment letters.

1. Guidelines for Assessing the Level of Risk

The guidelines examiners will use to initially assess the level of interest rate risk at an institution, for purposes of assigning the Sensitivity to Market Risk ("S") component rating were contained in a matrix shown as Table 1 in the proposed TB. Based on comments received and on further analysis, OTS has decided to revise those guidelines. The revised guidelines are contained in Part IV.A.3 of TB 13a. A comparison of the ratings that are likely to result from the final guidelines with those from the proposed guidelines is contained in Part 1.d of the discussion of comments, below.

2. Transactions in Financial Derivatives or Complex Securities that Do Not Reduce Risk

Part III.A.3 of the proposed TB stated that the use of financial derivatives or complex securities with high price sensitivity should generally be limited to transactions that lower an institution's interest rate risk. An institution using such instruments for purposes other than reducing portfolio risk should do so in accordance with safe and sound practices and:

(a) Obtain written authorization from its board of directors to use such instruments for a purpose other than to reduce risk; and

(b) Ensure that, after the proposed transaction(s), the institution's Post-shock NPV Ratio would not be less than 6 percent.

As a result of comments received, OTS has decided to reduce the 6 percent threshold in condition (b), above, to 4 percent. The reasons for this change are discussed below in Part 3.g of the discussion of comments.

Summary of Comments

The comment period ended on June 22, 1998. OTS received twenty-seven comments. Commenters included: twenty savings associations, five trade associations, one law firm, and one registered investment adviser. Furthermore, OTS met with representatives of several institutions and an industry trade group to discuss the proposed TB. The following summary identifies and discusses the major issues raised in the comment letters and OTS's responses to the issues.

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[1] 63 FR 20191 (April 23, 1998).

[2] 61 FR 67021 (December 19, 1996).

[3] 63 FR 20257 (April 23, 1998).

1. General Issues

a. Coordination With Banking Agencies

Several commenters argued that OTS should coordinate the TB with guidance issued by the other banking agencies. A number suggested that OTS should adopt the guidance that the other federal banking agencies have adopted with respect to the management of both interest rate risk and investment and derivatives activities.

As a member of the FFIEC, OTS works closely with the other banking agencies on the coordination of supervisory policies. When appropriate, OTS and the other members of the FFIEC adopt uniform policies.[4] At the same time, the members of the FFIEC recognize that it is not possible to achieve uniformity in all areas of supervision and regulation. OTS's supervisory efforts have, since at least the mid-1980s, placed more emphasis on interest rate risk than have other regulators. This difference in emphasis reflects the nature of the thrift industry's basic business which has historically given thrift institutions a propensity toward maturity mismatching. OTS has utilized the economic value concept (as described in the proposed TB) to measure interest rate risk since the adoption of the original TB 13 in 1989. The guidelines described in the proposed TB do not represent so much a new initiative to be coordinated with the other agencies, as an attempt to update and improve consistency across OTS-regulated institutions in the application of OTS's existing approach to assessing interest rate risk.

The proposed guidelines for investment securities and financial derivatives are more detailed than those published in the FFIEC Policy Statement, but are completely consistent with that policy statement. OTS believes the added level of detail in its guidelines will be helpful to examiners and will result in greater consistency of application. OTS also believes the level of detail will be helpful to institutions, not because OTS has a desire to "micromanage" those institutions, but because OTS wants to reduce needless uncertainty about how to interpret the guidance and how examiners will apply it.

b. Competitive Equity

A number of commenters argued that thrifts would be harmed competitively because other financial institutions do not have comparable guidelines, with respect to either the acquisition of securities and derivatives or the "S" rating. This is not a valid criticism. The purpose of TB 13a is two-fold: (1) to provide guidance to thrift institutions on the management of interest rate risk, including investment and derivative activities, and (2) to describe the framework that OTS examiners will use in assigning the "S" rating component. Both the proposed guidelines on the management of interest rate risk and the framework for assigning "S" ratings are consistent with guidelines issued by the other federal banking agencies. The only significant constraint in the guidelines is on the ability of a small fraction of the thrift industry to acquire financial derivatives and some volatile securities for purposes other than reducing market risk. This aspect of the guidelines is appropriate, as the limitation applies only to those institutions least able to bear additional risk.

Comparing the fairness of "S" ratings at OTS-regulated institutions with those at other institutions is not a straightforward exercise because of the typically higher levels of interest rate risk that one might expect at thrifts. As stated earlier, the proposed guidelines for the "S" rating do not so much reflect a new approach in the way OTS assesses interest rate risk but rather provide quantitative guidance to examiners in applying the current assessment process. Thrifts have competed successfully under that process for a number of years. Moreover, it is highly unlikely that the guidelines would result in harsher "S" ratings than OTS examiners have assigned historically. Available evidence (see section 1.d below) indicates that the opposite might occur.

c. De Facto Capital Requirement

A number of commenters asserted that the proposed guidelines for assigning the "S" rating would create a *de facto* higher capital requirement. This criticism is not valid for several reasons. First, the proposed TB reflects the concept that institutions with higher levels of capital should have greater freedom to engage in risk-taking. Thus, for a given amount of interest rate risk—as indicated by the Sensitivity Measure—institutions with higher Post-shock NPV Ratios receive better "S" components ratings under the guidelines (see Glossary in TB 13a for definitions of these terms). The fact that examiners also assign a capital adequacy (i.e., "C") component rating to the institution under the CAMELS rating system does not undermine the validity of this approach for gauging the level of risk. If capital appears to be "double counted" with this approach to assigning the S rating, it is only because capital adequacy—the ability to absorb unexpected losses—is central to evaluating an institution's safety and soundness.

Second, the CAMELS rating system explicitly calls for consideration of an institution's capital position in assessing the "S" component rating. For example, the description of the 2 rating says in part : "The level of earnings and capital provide adequate support for the degree of market risk taken by the institution [emphasis added]."[5] Moreover, other risk assessments under the CAMELS rating system also consider capitalization. For example, the rating level of 1 of the asset quality ("A") component rating is described in the interagency document as: "A rating of 1 indicates strong asset quality and credit administration practices. Identified weaknesses are minor in nature and risk exposure is modest in relation to capital protection and management's abilities . . . [emphasis added]."[6]

Third, unlike a regulatory minimum capital requirement, the guidelines do not establish a minimum level of capital. There are only two ways in which an institution can achieve compliance with a regulatory minimum capital requirement—raise additional capital or shrink the asset base. Under the guidelines, however, institutions have the third option of reducing the level of interest rate risk in their portfolio. Even institutions with very low Post-shock NPV Ratios can receive ratings of 1 or 2 if their level of interest rate risk is also very low.

Finally, even if one subscribes to the view that the guidelines are a form of capital requirement, it is doubtful that the guidelines would require generally higher capital requirements for the industry because overall CAMELS ratings are unlikely to change, as will be discussed in section 1.d, below.

Several commenters argued that the guidelines would create incentives to take additional credit risk. Some institutions that anticipate receiving a lower "S" rating under the proposed guidelines might choose to reduce interest rate risk, while simultaneously increasing credit risk to maintain profitability levels. Determining the tradeoff between these two types of risk is not new, however, it is a normal part of the business of running a depository institution. The institution must decide for itself what it will do, subject to safety and soundness considerations.

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[4] See Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. Pub.L. 103–325 (September 25, 1994).

[5] 61 FR at 67029.

[6] 61 FR at 67027.

Several commenters claimed that the guidelines would disadvantage "traditional" portfolio lenders that concentrate on making fixed-rate mortgage loans. Some institutions that concentrate on fixed-rate mortgages are highly interest rate sensitive and are, therefore, more prone to receiving a poor "S" rating. Nonetheless, many such institutions would fare quite well under the proposed guidelines because they maintain relatively high levels of economic capital (NPV), mitigating the high sensitivity. Other alternatives available to such an institution are to reduce the extent of the maturity mismatch by adjusting their product mix or to engage in hedging activities.

Another commenter suggested that OTS should not revise TV 13 at this time because interest rates have been relatively stable. The present time offers an ideal opportunity to adopt the proposed changes. Establishing sound regulatory policies is most difficult during times of stress or when the industry is unhealthy, because even good policies may exacerbate problems in some segments of the industry. Today's industry is stronger than it has been in years, interest rates have been generally falling, earnings have been solid, the industry is well-capitalized, and the number of problem institutions is very low. This is an ideal environment in which to revise sound interest rate risk guidelines.

d. Anticipated Impact of Guidelines

Table 1, in Part IV.A.3 of the proposed TB, was a matrix containing the guidelines OTS proposed to use in initially assessing the Level of Interest Rate Risk in determining the "S" component rating. Many commenters were concerned that those proposed guidelines would adversely affect the "S" component ratings of the industry. Several commenters urged OTS to review empirical evidence on how institutions would be affected by the guidelines before adopting the proposal. OTS did analyze how institutions might be rated under the proposed guidelines. A summary of this analysis is shown in the table below.

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Comparison of Actual Component Ratings with Proposed Rating Guidelines and Final Rating Guidelines

	1	2	3	4
Actual S Ratings	32%	57%	10%	1%
Using Proposed Rating Guidelines[1]:				
o Alone	63	23	14	1
o With "M" Rating as Proxy for Qualitative Assessment	25	52	20	3
Using Final Rating Guidelines[2]:				
o Alone	73	20	6	1
o With "M" Rating as Proxy for Qualitative Assessment	28	55	14	3

[1] The "Proposed Rating Guidelines" ratings matrix had four rows in which the Post-shock NPV Ratio had the following ranges: Under 4%, 4% to 8%, 8% to 12%, and Over 12%. The matrix had four columns in which the Interest Rate Sensitivity Measure had the following ranges: 0 to 100 b.p., 100 to 200 b.p., 200 to 400 b.p., and Over 400 b.p.

[2] The "Final Rating Guidelines" matrix has four rows in which the Post-shock NPV Ratio has been changed to the following ranges: Under 4%, 4% to 6%, 6% to 10%, and Over 10%. The four columns of the matrix are unchanged from the Proposed Guidelines.

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The first row of the table shows the distribution of the actual "S" component ratings assigned during the most recent examination cycle. About one-third of all institutions received an "S" rating of 1 at their most recent examination. More than half received a rating of 2.

The second row shows what the distribution would have been if those same component ratings had been determined by applying the Proposed Rating Guidelines in a totally mechanical way (i.e., with no consideration for the quality of risk management practices, using the NPV data available at the time of each institution's examination). Although the proportion of institutions with "S" ratings of 3 increased (from 10% of all institutions to 14%), the ratings of many more institutions improved than worsened under this simple analysis. These results, however, omit the effect of the examiner's assessment of the institution's risk management practices.

Table 2, in Part III.C of the proposed TB, described how various combinations of Level of Interest Rate Risk and Quality of Risk Management Practices would likely translate into different ratings for the "S" component. The third row of the table here shows the ratings distribution that would have occurred had the guidelines in Tables 1 and 2 of the proposed TB both been applied mechanically—and had examiners assessed each institution's Quality of Risk Management Practices to be of identical quality as the actual Management ("M") component rating assigned the institution. The ratings in this row are significantly harsher than those in the previous row. In fact, they overstate considerably the amount by which the ratings would worsen from the previous row. An institution's "M" rating is often downgraded for reasons other than concerns about its interest rate risk management practices (e.g., asset quality problems, credit underwriting deficiencies, etc.). Consequently, the ratings that result from using the "M" component rating as a proxy for an examiner's qualitative assessment of an institution's risk management practices will be overly severe. If the guidelines in Tables 1 and 2 of the proposed TB had actually been applied, the proportions of the industry receiving each "S" rating would probably have fallen between the proportions shown in the second and third rows of the table. While broadly similar to the "S" ratings actually assigned, it is likely they would have resulted in somewhat greater numbers of 3 and 4 ratings than were actually assigned.

After considering the comments and the updated analysis, OTS has decided to adopt a less stringent set of guidelines for assessing the level of risk (see Table 1 in the final TB). The remaining two rows of the table above show how these "Final Rating Guidelines" compare with the actual "S" ratings and with the "Proposed Rating Guidelines." The reasons for this change are as follows.

The current "S" ratings reflect the evaluation of experienced OTS examiners. OTS believes that, in the aggregate, its examiners' conclusions appropriately characterize the current distribution of risk and risk management practices in the thrift industry. The purpose of the guidelines is to provide examiners with a common starting point for assessing an individual institution's sensitivity to interest rate risk. This, in turn, should help produce more consistent ratings. While individual institutions' ratings may change as examiners use their discretion in applying these guidelines, OTS believes the overall distribution of ratings will likely remain the same.

Consequently, the choice between the two sets of rating guidelines was based on two factors. First, during the last examination cycle, the Final Rating Guidelines would have produced more 1 ratings than the Proposed Rating Guidelines, but would have produced fewer 3 ratings. A high proportion of 1 ratings might raise ratings expectations of some institutions that may be unfounded because of examiner concerns with risk management practices, but this disparity is not a major flaw in the guidelines. Whether the "S" component rating turns out to be a 1 or 2 rarely has a significant effect on the outcome of the overall examination.

The second factor, the difference in the 3 ratings assigned under the two sets of rating guidelines, has a greater potential to substantively affect an institution because it heightens the possibility that a composite rating of 3 or worse may be assigned. Absent any consideration of the institution's risk management practices, the Proposed Rating Guidelines would have resulted in about 15% of OTS thrifts receiving ratings of 3 or worse. In fact, only about 11% of thrifts received ratings of 3 or worse. This suggests that the Proposed Rating Guidelines might be too harsh, particularly when qualitative assessments are factored in. The Final Rating Guidelines would, by themselves, have assigned ratings of 3 or worse to only about 7% of institutions. With the effects of the qualitative assessments factored in, that proportion might well have increased, but it likely would have been closer to the proportion of 3s and 4s actually assigned (11%) than would have been the case under the Proposed Rating Guidelines. On that basis, the Final Rating Guidelines are preferable.

2. Legal Status of TB 13a and Interest Rate Risk Capital Component Regulation

OTS received comments regarding the legal status of Thrift Bulletin 13a and the future of the interest rate risk component of the risk based capital requirement. OTS has addressed these issues in its final rule on financial derivatives, published elsewhere in today's issue of the **Federal Register**.

3. Comments Pertaining to Specific Parts of Proposed TB 13a

a. Limits on Change in NPV

One commenter criticized the two exhibits in Part II.A.1 of the proposed TB. These exhibits illustrated the interest rate risk limits a board of directors might establish. The commenter argued that the exhibits were unrealistically conservative and should be revised to portray a more typical institution. OTS has decided the exhibits and much of the accompanying discussion are unnecessary. The final Bulletin replaces the two exhibits with a simple discussion of how a board might choose to specify its limits.

b. Prudence of IRR Limits

As described in Part II.A.3 of the proposed TB, an institution's interest rate risk limits generally will not be considered prudent if the limits permit NPV ratios that would ordinarily be considered to be of "Significant Risk" or to warrant an "S" rating of 3 or worse. Several commenters objected that this approach is too restrictive of the board's choices.

OTS has decided to retain this approach for several reasons. First, it is no more restrictive than the guidelines contained in Table 1 for assessing the level of interest rate risk (discussed above). Moreover, this approach is a reasonable basis for assessing board limits and is consistent with the measurement approach used throughout the TB. If the board permits a level of risk that would ordinarily be considered "Significant" based on OTS's rating guidelines, it would be inconsistent for OTS to consider those limits to be sufficiently conservative. The final TB, however, emphasizes that this evaluation is not a simple pass-or-fail judgment, and, moreover, that it is just one factor in the examiner's qualitative assessment.

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c. Revision of IRR Limits

Another commenter criticized the discussion in Part II.A.4 of the proposed TB regarding revisions to a board's interest rate risk limits. The commenter argued that this discussion imposed unnecessary "micromanagement" on the industry. This section addresses the practice of revising board limits to accommodate existing violations of previously set limits. This practice is generally inappropriate, has occurred too frequently at some institutions, and may be indicative of deficiencies in board oversight. Explicit discussion of such practices should reduce their incidence.

d. Interest Rate Sensitivity of NPV for Institutions Above $1 Billion in Assets

Under Part II.B.2 of the proposed TB, institutions with more than $1 billion in assets would be expected to determine their own NPV measures. Several commenters recommended that OTS, like the FFIEC, accept any reasonable model for measuring risk, not just NPV models. For internal management purposes, institutions are free to use whatever risk measurement systems they find most useful. However, from a regulatory perspective, NPV measurements provide a valuable characterization of an institution's interest rate risk. NPV provides a consistent measure that considers all future cash flows expected to result from all on- and off-balance sheet financial instruments, while also considering embedded options. NPV, thus, provides the agency with a yardstick against which risk at any thrift may be measured and compared with that of other institutions. For that reason, OTS collects financial data that permits it to calculate NPV for all institutions over $300 million, and many under that size. These NPV estimates are, however, necessarily based on generic assumptions regarding such factors as prepayment rates and deposit decay rates. Because of the importance of ensuring the safety and soundness of large institutions, OTS believes large institutions should have the means of improving these regulatory measures and be able to accurately measure NPV internally, taking into account the institution's individual characteristics.

Rather than expecting institutions to calculate NPV even if they do not use it as a management tool, one commenter recommended that OTS should simply provide such institutions with the OTS NPV results. However, large institutions have already incurred the cost of establishing an NPV measurement system based on the guidelines in Thrift Bulletin 13, published in January 1989. As there will be some ongoing costs of maintaining that system, OTS did consider exempting some large institutions from internal NPV modeling. OTS agrees with the other FFIEC agencies, however, that large, sophisticated institutions should be capable of measuring the economic value of equity and assessing their interest rate sensitivity. Accordingly, OTS has not changed this guideline.

One commenter argued that institutions with internal models should not have to file Schedule CMR, which provides the financial data used by the OTS Model. OTS believes there is value in collecting such data and calculating the OTS NPV estimates even for institutions that also calculate their own. Any two models will seldom produce exactly the same results because of differences in their calculation methodologies, factual data inputs, or assumptions. Hence, the two sets of results may be used to provide a check on one another. The cost of filing Schedule CMR for an institution that maintains a sophisticated measurement system of its own should be minimal. Further, this process permits the production of peer group comparisons, which provide useful information for OTS and for boards of directors. No change is being made to the CMR filing requirements.

e. Investment Securities and Financial Derivatives

Several commenters stated that the proposed guidelines for investment securities and derivatives in Part III of the proposed TB are not necessary, and that OTS should adopt the FFIEC Policy Statement without modification. In issuing that Statement, OTS and the other agencies recognized that the guidance contained in the FFIEC Policy Statement might not be sufficient for the purposes of each agency. In fact, the FFIEC Policy states that, "Each agency may issue additional guidance to assist institutions in the implementation of the statement."[7] This language provides the member agencies, including OTS, with the ability to issue more detailed guidance on securities and derivatives activities, including guidance on pre-purchase analysis and stress testing.

While the FFIEC Policy Statement provides sound guidance on investment securities and end-user derivatives activities, OTS determined it would be desirable to explain to the industry how it will interpret and implement the FFIEC Policy Statement, particularly in those areas where some additional clarification or specificity is needed. Accordingly, OTS has decided to use TB 13a to implement the FFIEC Policy Statement.

f. Analysis and Stress Testing

Several commenters objected to the guidance in Part III.A of the proposed TB addressing pre-purchase analysis and stress testing of complex securities and financial derivatives. These commenters also stated that such guidance conflicts with, or is more onerous than, the FFIEC Policy Statement. The commenters also asserted that the OTS guidance would place OTS-supervised institutions at a competitive disadvantage vis-a-vis non-OTS-supervised institutions.

The FFIEC Policy Statement states that institutions should conduct a pre-purchase analysis for "complex instruments, less familiar instruments, and potentially volatile instruments."[8] (The FFIEC Policy Statement does not define the terms "complex instruments," "less familiar instruments," or "potentially volatile instruments.") The FFIEC Policy Statement states that:

> For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analyses in their policies. Price sensitivity analysis is an effective way to perform the pre-purchase analysis of individual instruments. For example, a pre-purchase analysis should show the impact of an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Where appropriate, such analysis should encompass a wider range of scenarios, including non-parallel changes in the yield curve. A comprehensive analysis may also take into account other relevant factors, such as changes in interest rate volatility and changes in credit spreads.[9]

Some commenters may have interpreted this statement to mean that a pre-purchase analysis showing the price impact of parallel shifts in the yield curve of plus and minus 100, 200, and 300 basis points is not expected for complex securities and derivatives. OTS, however, disagrees with that interpretation. Management should understand the price sensitivities of investments and derivatives prior to their acquisition. Moreover, the pre-purchase analysis guidance in the proposed TB is consistent with the FFIEC Policy Statement. This guidance is designed to foster sound investment practice and should not disadvantage savings associations vis-a-vis other depository institutions.

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[7] 63 FR 20191.

[8] 63 FR at 20195.

[9] 63 FR at 20195.

Several commenters indicated that the proposed guidelines for analyzing/testing securities and derivatives are too detailed and go beyond the guidance in the FFIEC Policy Statement. OTS has concluded that the detail in the proposed guidelines is appropriate and is consistent with the FFIEC Policy Statement.

One commenter stated that the guidelines for analyzing/testing securities and derivatives should focus only on the plus and minus 200 basis point scenarios. There is considerable benefit to be derived from evaluating potential investment and derivative transactions in the context of several alternative scenarios. The advantage of conducting multiple scenario analysis is that decision-makers will consider environments that they might otherwise ignore. Moreover, as shown in the portion of the FFIEC Policy Statement quoted above, OTS and the other members of the FFIEC agree that the stress testing of securities and derivatives should not be limited to the plus and minus 200 basis point rate scenario.

g. Limitation on Transactions Involving Derivatives and Complex Securities With High Price Sensitivity

A number of commenters criticized Part III.A.3 of the proposed TB on transactions involving derivatives and complex securities with high price sensitivity. Under the proposal, an institution should not engage in a "risk increasing transaction" involving derivatives or complex securities with high price sensitivity if the transaction would cause the institution's Post-shock NPV Ratio to fall below 6 percent.

One commenter stated that the 6 percent threshold is not needed because guidelines calling for self-imposed risk limits will serve the purpose of constraining excessive risk taking. Another commenter noted that the 6 percent threshold is problematic because some hedging transactions may reduce risk in some—but not all—interest rate scenarios. One commenter noted that the threshold may discourage transactions where the incremental increase in risk may be insignificant. Another commenter noted that the proposed 6 percent limitation is more onerous that the former FFIEC "high-risk test," which was recently eliminated.

Upon reconsideration, OTS has concluded that the proposed 6 percent threshold may be too restrictive, particularly in light of the other safeguards in the TB. For example, board-approved interest rate risk limits should discourage institutions from engaging in risk-increasing transactions that would cause their institution's Post-shock NPV Ratio to fall to a low level. Moreover, if an institution intends to use derivatives or complex securities with high price sensitivity for purposes other than reducing market risk, it should obtain the prior approval of its board of directors. In addition, the examiner guidance for assigning "S" ratings should discourage institutions with relatively low Post-shock NPV Ratios from using such instruments for non-risk-reducing purposes. Accordingly, OTS is lowering the 6 percent threshold to 4 percent in the final Thrift Bulletin 13a. Under the guidelines for the "S" rating, institutions with less than a 4 percent Post-shock NPV Ratio will typically receive adverse ratings unless they have very low interest rate sensitivity. In general, the use of financial derivatives or complex securities with high price sensitivity should be limited to transactions that lower an institution's interest rate risk.

h. Significant Transactions

Several commenters objected to guidance, in Part III.A.1 of the proposed TB, that institutions should conduct a pre-purchase portfolio sensitivity analysis for any "significant transaction" involving securities or financial derivatives. Under the proposed guidelines, a significant transaction is defined as any transaction that might reasonably be expected to increase an institution's Sensitivity Measure by more than 25 basis points. The definition of a "significant transaction," was intended to provide a wide "safe harbor" for savings associations by limiting the number of transactions subject to the incremental portfolio analysis. Very few transactions are likely to be large enough to meet the 25 basis point test.

Several commenters noted that by defining a "significant transaction" in quantitative terms, OTS might encourage institutions to circumvent the guidance for pre-purchase analysis by entering into a series of smaller transactions. One commenter noted that the FFIEC Policy Statement is silent on what is a significant transaction and indicated that the definition should be left to management. The FFIEC Policy states, "When the incremental effect of an investment position is likely to have a significant effect on the risk profile of the institution, it is a sound practice to analyze the effect of such a position on the overall financial condition of the institution."[10] Another commenter suggested that the definition of "significant" transaction should vary depending on an institution's financial condition and management sophistication.

Although some institutions might enter into smaller transactions to avoid the proposed guidance on incremental portfolio analysis, institutions would have little to gain by doing so. It is clearly in an institution's self-interest to understand how significant transactions might alter its overall interest rate sensitivity. Moreover, while few transactions meet the proposed 25 basis point threshold, the analysis called for by the guidelines should not be a burden to well-run institutions that have adequate risk monitoring systems in place.

The suggestion that the definition of "significant" should vary with the financial condition and management sophistication of the institution is reasonable and is consistent with OTS's risk-based approach to supervision. In this instance, however, OTS believes that it is more beneficial to provide certainty by adopting a simple rule of thumb under which incremental portfolio analyses would be expected only relatively infrequently. Accordingly, OTS has decided to retain the 25 basis point threshold for defining a significant transaction.

i. Definition of Complex Securities

Several commenters criticized the proposed definition of a "complex security" in Part III.A of the proposed TB. Several commenters also noted that identifying selected types of complex securities for special analysis is inconsistent with the FFIEC Policy Statement, which did not define the term. A few respondents argued that the term should be left undefined, fearing that an explicit definition would discourage thrifts from buying complex securities because such securities might be viewed negatively by examiners.

OTS and the other members of the FFIEC agree that "complex securities" require more analysis than non-complex securities. The FFIEC Policy states: "For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analysis in their policies."[11] OTS recognizes that the proposed definition of a "complex security" is imprecise. Nevertheless, we believe the definition will provide guidance and will avoid—or at least reduce—disagreements between examiners and thrift management.

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[10] 63 FR at 20195.

[11] 63 FR at 20195.

Some commenters thought that the proposed definition of a "complex security" was overly broad. Others noted that the proposed definition included securities that few would consider to be truly complex and excluded others—such as mortgage-pass-through-securities—that are actually highly complex. As defined in proposed TB 13a, the term "complex security" includes any collateralized mortgage obligation, real estate mortgage conduit, callable mortgage-pass through security, stripped-mortgage-backed-security, structured note, and any security not meeting the definition of an "exempt security." An "exempt security" includes: (1) standard mortgage-pass-through securities, (2) non-callable, fixed rate securities, and (3) non-callable floating rate securities whose interest rate is (a) not leveraged (i.e., not based on a multiple of the index), and (b) at least 400 basis points from the lifetime rate cap at the time of purchase.

While OTS recognizes that the proposed definition is imperfect and that certain securities that would be classified as "complex" under the proposed definition, such as "plain vanilla" CMO tranches, are viewed as non-complex securities by some market participants, OTS doubts that attempts to develop a highly refined definition of a complex security would be well received. Accordingly, OTS has decided to leave the proposed definition of a complex security substantially intact. However, OTS is simplifying the definition of an "exempt security." Under the modified definition, an "exempt security" includes non-callable, "plain vanilla" instruments of the following types: (1) mortgage-pass-through securities, (2) fixed-rate securities, and (3) floating rate securities.

j. Overemphasis on Price Sensitivity

One respondent suggested that the guidelines for pre-purchase analysis in the proposed TB should focus on earnings sensitivity and total return analysis, not just on price sensitivity. OTS agrees that institutions should not focus on price sensitivity to the exclusion of other relevant considerations. Accordingly, the final Bulletin has been modified to stress the importance of taking other factors, such as total return, into account in conducting pre-purchase analysis.

k. Use of Dealer/Issuer Information

One commenter suggested that Part III.A.1 of the proposed TB be modified to permit the use of dealer/issuer information in conducting pre-purchase analysis. The FFIEC Policy states that institutions should conduct their own in-house pre-acquisition analysis, or to the extent possible, make use of specific third party analyses that are independent of the seller or counterparty. Similarly, the proposed TB states that an institution may rely on an analysis conducted by an independent third party (i.e., someone other than the seller or counterparty), provided management understands the analysis and its key assumptions. Nothing in the FFIEC Policy or TB 13a prohibits an institution from using information provided by a dealer or issuer; however, both caution against relying solely on dealer/issuer generated analysis for pre-purchase analysis.

l. Assessing the Level of Interest Rate Risk

Several commenters objected to the guidelines for determining the level of interest rate risk, in Part IV.A of the proposed TB. Commenters argued that NPV is a liquidation model that is not relevant for a going concern. As defined in the proposed TB, NPV does not attempt to account for the effects of all future actions by an institution (e.g., reinvestment decisions, business growth, strategy changes, etc.). As such, it may technically be considered a liquidation analysis, but that does not diminish its relevance for "going concerns." Mutual funds are going concerns, yet their net asset value is clearly of interest to shareholders. Borrowers may be viewed as going concerns, yet their net worth is of interest to lenders. A depository institution's NPV represents the major part of its total economic value and is, therefore, of concern to both shareholders and regulators. Furthermore, the value of existing holdings is subject to less uncertainty than other components of an institution's economic value, such as the net value of possible future business, the measurement of which relies on a host of assumptions beyond those necessary to calculate NPV.

Many commenters argued that the proposed guidelines relied too heavily on the OTS Model. Most institutions do not have a means of calculating NPV internally. For those that do, the TB permits examiners to use internal results in lieu of the results of the OTS Model. The degree of reliance the examiner will place on the institution's model is a matter of judgment. It will depend on many factors, including the perceived quality of the institution's model, the quality of the data and assumptions used to drive it, and how well the examiner believes the OTS Model fits the circumstances at the institution. If an institution has no internal model, or uses an unacceptable method of calculation, OTS will place primary reliance on the OTS Model to measure interest rate risk. This is appropriate because it provides examiners with a means of assessing the level of IRR of all institutions using a single, objective, standard of measure.

A number of commenters argued that the proposed guidelines are too focused on NPV, rather than on earnings. Though the proposed TB encourages institutions to have a means of calculating the interest rate sensitivity of their projected earnings, NPV provides a superior measure for regulatory purposes. NPV sensitivity considers all projected cash flows from all financial instruments and contracts to which an institution is currently a party. Earnings measures do not take adequate account of the significant customer options that are often embedded in financial instruments. Earnings measures also typically are relatively short-term in nature—most often just 1 to 3 years of future earnings are projected. Earnings measures may, thus, ignore net cash flows farther in the future, where serious earnings shortfalls might occur.

Many commenters argued that the proposed guidelines place too much emphasis on capital, which is already separately evaluated by examiners. As discussed above, the TB relies strongly on the concept that institutions with higher levels of economic capital should have greater freedom to engage in risk-taking. Thus, for a given amount of interest rate risk—as indicated by the Sensitivity Measure—institutions with higher Post-shock NPV Ratios receive better "S" component ratings under the guidelines in Table 1. The fact that examiners also assign a capital adequacy (*i.e.*, "C") component rating to the institution does not change the validity of this approach to gauging the level of risk. If capital appears to be "double counted" by this approach, it is only because capital adequacy—the ability to absorb potential losses—is central to evaluating an institution's safety and soundness. Moreover, this approach is consistent with the language of the interagency Uniform Financial Institutions Rating System for the "S" rating. For example, the description of the 2 rating says in part: "The level of earnings and capital provide adequate support for the degree of market risk taken by the institution [emphasis added]."[12]

Several commenters argued that the proposed guidelines for the level of IRR should not focus on the level of the NPV Ratio, but rather only on its sensitivity. As explained above, the Uniform Financial Institutions Rating System explicitly incorporates consideration of capitalization into the assessment of the "S" component rating. It would be unfair and largely counterproductive to good management to assign the "S" rating on the basis of the Sensitivity Measure alone, as suggested in this comment.

Consider, for example, two institutions. The first has a Post-shock NPV Ratio of 1% and the second has a Post-shock NPV Ratio of 15%. Both have Sensitivity Measures of 300 basis points, indicating that their Post-shock NPV Ratios are 3 percentage points below their respective Pre-shock Ratios. While both institutions would suffer the same decline in economic value in an adverse interest rate environment, the first institution has much less of a buffer against that risk than the second. In fact, the level of interest rate risk at the first is "high" relative to its ability to bear that risk, while the level of interest rate risk at the second is "minimal." The proposed rating guidelines appropriately reflect that difference.

Several commenters argued that OTS provided no rationale for the NPV levels in Table 1. The matrix in Table 1 establishes guidelines that, for a given level of the "S" rating, permits institutions with a greater ability to absorb potential losses to take more interest rate risk. The guidelines also broadly reflect the component ratings actually assigned by examiners in the past.

Under OTS's New Directions Bulletin 95–10, institutions with Post-shock NPV Ratios below 4 percent and more than 200 b.p. of interest rate sensitivity were generally presumed to warrant a component rating of 4 or 5. Those two thresholds provided the initial features of the matrix: Post-shock Ratios below 4 percent would be in the lowest row. The line between "significant risk" and "high risk" in that row would be a Sensitivity Measure of 200 b.p. From that starting point, successively higher rows in the matrix were defined as corresponding to better levels of the "S" rating. Thresholds were chosen to approximate the proportionate distributions of actual ratings. (As discussed earlier, in the final TB some thresholds have been modified.)

In recognition of the practical limits on an institution's ability to reduce risk, the leftmost column of Table 1 (Sensitivity Measure between 0–100 b.p.) was established so that institutions with very low Post-shock Ratios but lower than average Sensitivity Measures would not be adversely rated. Such institutions may have capital adequacy problems, but are not considered interest rate risk problems.

Several commenters argued that the ratings guidelines should not be based on today's extremely healthy industry statistics. The economic environment for the past several years has been highly conducive to producing healthy, very well-capitalized thrift institutions. It is possible that OTS may revise the guidelines in the future should circumstances change. As discussed earlier, the guidelines in the final TB are somewhat less stringent than the proposed guidelines and may, thus, mitigate this criticism.

Several commenters suggested alternative matrices for the guidelines for the level of risk in Table 1.

One commenter proposed determining the level of risk by comparing an institution's Sensitivity Measure with qualitative factors, such as planned corrective actions to be taken if rates move adversely. This proposal, however, would be highly speculative and not take into account the Post-shock NPV Ratio, which is critical in assessing an institution's ability to bear risk.

Another commenter objected to the guidelines in Table 1 because the guidelines suggest that an institution with a Post-shock NPV Ratio of 11.99% and an interest rate Sensitivity Measure of 401 b.p. poses "significant risk" while an institution with 2% and 99 b.p. poses only "moderate risk." The commenter is correct in arguing that the former institution is better suited to absorb the risk than the latter. Institutions in the lower left cell of the matrix are, however, special cases. Institutions in that cell have low NPV ratios and, thus, little capacity to absorb risk of any kind. There are, however, practical limits to how far they can reduce their level of interest rate risk. Thus, if an institution with a Post-shock NPV Ratio below 4% has a Sensitivity Measure of less than 100 b.p. (which is typically well below average) the guidelines treat it as having only moderate risk (a 2 rating), rather than significant risk (a 3 rating).

Another commenter proposed revising Table 1 to compare the Interest Rate Sensitivity Measure with the Pre-shock NPV Ratio (instead of the Post-shock NPV Ratio actually used in the Table). The commenter argued that this would avoid "double counting" the adverse impact of the rate shock. The commenter's proposal is based on the premise that the percentage change in NPV is the relevant measurement standard. OTS believes that the amount of capital remaining after the adverse shock is more pertinent. An institution with a large percentage change in NPV that retains a large amount of NPV is able to bear that risk safely.

A fourth commenter proposed that institutions with a Post-shock NPV Ratio exceeding 6% warrant a rating of 1, whatever the Sensitivity Measure. Higher levels of interest rate sensitivity require higher Post-shock NPV. OTS does not believe the commenter's approach is sufficiently conservative given (1) the possibility of rapid changes in interest rates (not necessarily immediate shocks) of more than 200 b.p., (2) the possibility of changes in the shape or the slope of the yield curve, and (3) inaccuracies in measuring risk.

m. Examiner Use of Guidelines on Level of Risk

One commenter recommended that the guidelines in Table 1, of Part IV.A.3 of the proposed TB, should focus on more than one time period. Explicit procedures for analysis of multiple time periods would complicate the guidelines and would add to the unfounded perception that OTS is attempting to micromanage the examination process. The proposed TB stated that examiners should take into consideration any relevant trends in an institution's interest rate risk. Additional guidance is not necessary.

One commenter recommended that OTS should warn its examiners that the NPV levels in the guidelines are "for discussion purposes and not standards for assessing risk." The proposed guidelines are exactly that: guidelines. The proposed guidelines establish a common set of criteria for translating quantitative risk estimates into the categories described in the ratings descriptions (*i.e.*, "minimal risk", "moderate risk", etc.). Rather than relying on hundreds of examiners to invent their own standards independently and hoping that those standards will be consistent with one another, the guidelines provide a common starting point for examiners. They are only starting points because examiners must consider many complex facts, both quantitative and qualitative, in their evaluation of the institution's risk level and in assigning the rating.

Several commenters opined that examiners will not deviate from the guidelines. The final version of the TB emphasizes that the guidelines are only a starting point in an examiner's assessment of the "S" rating. For example, New Directions Bulletin 95–10, a precursor to the proposed TB, stated that, "Institutions with a [Post-shock NPV] Ratio below 4% and a Sensitivity Measure over 200 basis points will ordinarily receive a 4 or 5 rating for the "L" component [rating]." Yet, examiners did not assign ratings of 4 or 5 to all institutions that fit this description.

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[12] 61 FR at 67029.

n. Calculation of NPV Ratios

Several commenters discussed the calculation of NPV and the NPV Ratio. Two argued that the NPV Ratio should be redefined so that "deposit intangibles" (*i.e.*, the difference between the face value of deposits and their economic value) are not treated as assets. OTS initially presented deposit intangibles as assets on the Interest Rate Risk Exposure Report to resemble the presentation of core deposit intangibles on the balance sheet under GAAP. Commenters, however, pointed out that treating deposit intangibles as assets depresses NPV ratios. For example, the NPV ratio of the average institution in December 1997 would have been 10 basis points higher in the base case (10.34 vs. 10.24 percent) and 19 basis points higher (8.96 vs. 8.77 percent) in the +200 b.p. rate shock scenario, if the deposit intangibles had been presented as contra-liabilities or if deposits had simply been shown at their present values. Removing the deposit intangibles from the asset side would also be more logically consistent with the purpose of the NPV ratio, which is to relate an institution's NPV to the size of the institution. An institution does not actually grow if it replaces a $100 borrowing with $100 of retail accounts, yet because the latter type of liability contributes to the deposit intangible, the denominator of the NPV ratio increases.

Accordingly, OTS will study whether it should to move deposit intangibles to the liability side of the Interest Rate Risk Exposure Report by reporting deposits at their present value. Though NPV ratios would generally rise as a result of this format change, the amount of the change is so small that OTS would not modify the guidelines in Table 1 to compensate for it. There are many data processing considerations involved in making such a change, however. The small amount of improvement in the NPV ratios may not warrant the cost and potential confusion the change would entail.

One commenter urged OTS to solve the analytical problems involved in estimating core deposit value sensitivity before finalizing the proposed TB. Refining the OTS Model is an ongoing activity. Among other issues, OTS is working on updating its modeling of core deposits. Examiners are currently using the results of the OTS Model during their safety and soundness examinations. There is no reason to wait for all revisions to be completed before finalizing the TB. While the OTS Model does not yet fully customize its treatment of core deposit behavior to individual institutions, a degree of customization is performed for institutions that report several items of additional optional information (on Schedule CMR, lines 659 through 661). Yet, relatively few institutions avail themselves of that opportunity.

Another commenter argued that by valuing purchased goodwill as zero in the calculation of NPV, OTS disadvantages institutions that have been involved in mergers using purchase accounting. OTS disagrees with that criticism.

NPV is defined as the economic value of an institution's existing assets, less the economic value of its existing liabilities, plus the net economic value of any existing off-balance sheet contracts. In other words, NPV is the net economic value of an institution's portfolio of identifiable assets and liabilities. If two institutions merge, the NPV of the resulting entity will consist of the combined net economic value of the two portfolios, or more simply, the combined NPV will be the sum of the individual NPVs. The value of the two portfolios will not change merely because the institutions have merged. Yet, that is exactly what would occur if goodwill were included as a component of the combined institution's NPV; the resulting NPV would be larger than the sum of the two constituent NPVs. The source of the confusion is that the commenter is attempting to measure more than just the value of the portfolio.

Goodwill is defined as the amount by which the purchase price of an acquired entity exceeds the net fair value of its identifiable assets, liabilities, and off-balance sheet financial instruments. Thus, by definition, goodwill represents value over and above the net economic value of the acquired institution's portfolio of identifiable assets and liabilities. As a practical matter, goodwill reflects the buyer's (and seller's) assessment of the economic value of unidentifiable intangibles (such as a well-trained staff, a good franchise from which to conduct future business, etc.) at the acquired institution. All institutions, not just those involved in acquisitions, possess unidentifiable intangibles that may be expected to have economic value. Unfortunately, the economic value of such intangibles is extremely difficult to quantify, and determining how their economic value will change under different interest rate scenarios makes the task even more difficult. For those reasons, OTS limits itself to estimating the interest rate risk inherent in institutions' portfolios of identifiable financial and non-financial assets and liabilities. It is not that a broader measure is undesirable, but simply that such a measure is impractical as a regulatory measure of risk.

Several institutions commented that the OTS Model does not accurately reflect every institution's circumstances, and that ratings based on those results are unfair. The OTS Model does rely on many generic, industry-wide assumptions and circumstances at individual institutions may differ from these assumptions. There will often be offsetting errors so that the "bottom line" result will still be reasonable for such an institution, but it is certainly possible that the OTS Model might materially over-or understate the level of risk at an institution. There are, however, two defenses against an unfair rating. The first is the judgment of the examiner. The second defense is the institution itself. The guidelines explicitly permit the use of institutions' internal results in assessing the level of risk in situations where the OTS Model is demonstrably incorrect.

o. Assessing the Quality of Risk Management

One commenter recommended that in assessing the quality of risk management practices at an institution, discussed in Part IV.B of the proposed TB, examiners should consider the institution's historical earnings results. Examiners may well consider an institution's historical earnings stability in judging the quality of its risk management practices. All factors that an examiner considers relevant may bear on his or her assessment.

p. Combining Assessments of the Level of Risk and Risk Management Practices

A number of commenters stated that the guidelines in Table 2, of Part IV.C of the proposed TB, place too much weight on quantitative factors and insufficient weight on qualitative ones (*i.e.*, good risk management should be able to offset a higher level of risk). The proposed guidelines shown in Table 2 represent an accurate implementation of the interagency CAMELS rating system. Moreover, the proposition that good risk management can fully offset higher levels of risk is questionable. The interest rate sensitivity of NPV is a measure of the amount of risk embedded in the current portfolio. There is little evidence that managers can successfully anticipate the magnitude or direction of movements in interest rates. While skillful management may be able to alter an institution's risk level quickly in response to changes in market conditions, it is not certain that management will actually take any action in such an eventuality. For example, during the interest rate shock that occurred in 1994, few institutions responded with swift portfolio restructuring.

Practically speaking, however, both the assessment of risk management practices and the assignment of the S component rating are currently—and will remain—inexact processes that are heavily dependent on examiner judgment. Strong risk management practices cannot help but influence examiners to be inclined favorably toward the institution in assigning the "S" component rating. Accordingly, no change is being made to the guidelines in Table 2 of the proposal.

The final Thrift Bulletin is set forth below.

Thrift Bulletin 13a: Management of Interest Rate Risk, Investment Securities, and Derivatives Activities

Summary: This Thrift Bulletin provides guidance to management and boards of directors of thrift institutions on the management of interest rate risk, including the management of investment and derivatives activities. In addition, it describes the framework examiners will use in assigning the "Sensitivity to Market Risk" (or "S") component rating.

Thrift Bulletin 13a replaces Thrift Bulletins 13, 13–1, 13–2, 52, 52–1, and 65, and New Directions Bulletin 95–10.

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Part I: Background

An effective interest rate risk (IRR) management process that maintains interest rate risk within prudent levels is important for the safety and soundness of any financial institution. This is especially true for thrift institutions, which by the nature of their business, are particularly prone to IRR. In recognition of that fact, 12 CFR 563.176 requires institutions to implement proper IRR management procedures. In January 1989, OTS issued Thrift Bulletin 13 (TB 13), Responsibilities of the Board of Directors and Management with Regard to Interest Rate Risk, to provide guidance in the area of IRR management. Since TB 13 was first issued, a great deal of progress has been made in the areas of IRR measurement technology and IRR management. The present Thrift Bulletin, TB 13a, updates the guidelines contained in the original TB 13. It also provides guidance implementing the Federal Financial Institutions Examination Council's Supervisory Policy Statement on Investment Securities and End-User Derivative Activities (63 Fed. Reg., 20191 [1998]) and OTS's final rule on financial derivatives at Section 563.172. The following Thrift Bulletins are hereby rescinded:

TB 13: Responsibilities of the Board of Directors and Management with Regard to Interest Rate Risk;
TB 13–1: Implementation of Thrift Bulletin 13;
TB 13–2: Implementation of Thrift Bulletin 13;
TB 52: Supervisory Statement of Policy on Securities Activities;
TB 52–1: "Mismatched" Floating Rate CMOs; and
TB 65: Structured Notes.

Also rescinded is New Directions Bulletin 95–10, Interim Policy On Supervisory Action to Address Interest Rate Risk.

A. Definition and Sources of Interest Rate Risk

The term "interest rate risk" refers to the vulnerability of an institution's financial condition to movements in interest rates. Although interest rate risk is a normal part of financial intermediation, excessive interest rate risk poses a significant threat to an institution's earnings and capital. Changes in interest rates affect an institution's earnings by altering interest-sensitive income and expenses. Changes in interest rates also affect the underlying value of an institution's assets, liabilities, and off-balance sheet instruments because the present value of future cash flows (and in some cases, the cash flows themselves) change when interest rates change.

Savings associations confront interest rate risk from several sources. These include repricing risk, yield curve risk, basis risk, and options risk.

1. *Repricing Risk.* The primary form of interest rate risk arises from timing differences in the maturity and repricing of assets, liabilities, and off-balance sheet positions. While such repricing mismatches are fundamental to the business, they can expose a savings association's income and economic value fluctuations as interest rates vary. For example, a thrift that funded a long-term, fixed-rate loan with a short-term deposit could face a decline in both the future income arising from the position and its economic value if interest rates increase. These declines occur because the cash flows on the loan are fixed, while the interest paid on the funding is variable, and therefore increases after the short-term deposit matures.

2. *Yield Curve Risk.* Repricing mismatches can also expose a thrift to changes in both the slope and shape of the yield curve. Yield curve risk arises when unexpected shifts of the yield curve have adverse effects on an institution's income or economic value. For example, suppose an institution has variable-rate assets whose interest rate is indexed to the 1-year Treasury rate and which are funded by variable-rate liabilities having the same repricing date but indexed to the 3-month Treasury rate. A flattening of the yield curve will have an adverse impact on the institution's income and economic value, even though a parallel movement in the yield curve might have no effect.

3. *Basis Risk.* Another source of interest rate risk arises from imperfect correlation in the adjustment of the rates earned and paid on different financial instruments with otherwise similar repricing characteristics. When interest rates change, these differences can cause changes in the cash flows and earnings spread between assets, liabilities and off-balance sheet instruments of similar maturities or repricing frequencies. For example, a strategy of funding a three-year loan that reprices quarterly based on the three-month U.S. Treasury bill rate, with a three-year deposit that reprices quarterly based on three-month LIBOR, exposes the institution to the

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risk that the spread between the two index rates may change unexpectedly.

4. *Options Risk*. Interest rate risk also arises from options embedded in many financial instruments. An option provides the holder the right, but not the obligation, to buy, sell, or in some manner alter the cash flows of an instrument or financial contract. Options may be stand alone instruments such as exchange-traded options and over-the-counter (OTC) contracts, or they may be embedded within standard instruments. Instruments with embedded options include bonds and notes with call or put provisions, loans which give borrowers the right to prepay balances, adjustable rate loans with interest rate caps or floors that limit the amount by which the rate may adjust, and various types of non-maturity deposits which give depositors the right to withdraw funds at any time, often without any penalties. If not adequately managed, the asymmetrical payoff characteristics of instruments with option features can pose significant risk, particularly to those who sell them, since the options held, both explicit and embedded, are generally exercised to the advantage of the holder.

Part II: OTS Minimum Guidelines Regarding Interest Rate Risk

OTS has established specific minimum guidelines for thrift institutions to observe in two areas of interest rate risk management. The first guideline concerns establishment and maintenance of board-approved limits on interest rate risk. The second, concerns institutions' ability to measure their risk level.

A. Interest Rate Risk Limits

Effective control of interest rate risk begins with the board of directors, which defines the institution's tolerance for risk. OTS regulation § 563.176 requires all institutions to establish board-approved interest rate risk limits.

1. *Limits on Change in Net Portfolio Value*. All institutions should establish and demonstrate quarterly compliance with board-approved limits on interest rate risk that are defined in terms of net portfolio value (NPV).[1] These limits should specify the minimum NPV Ratio[2] the board is willing to allow under current interest rates and for a range of six hypothetical interest rate scenarios. The hypothetical scenarios are represented by immediate, permanent, parallel movements in the term structure of interest rates of plus and minus 100, 200, and 300 basis points from the actual term structure observed at quarter end.[3] The level of detail with which the limits are specified depends on the board's preferences. In their simplest form, the limits could specify a single minimum NPV Ratio which would apply to all seven rate scenarios, while more detailed limits might specify a different minimum NPV Ratio for each of the scenarios.

2. *Limits on Earnings Sensitivity*. Many institutions also set risk limits expressed in terms of the interest rate sensitivity of projected earnings. Such limits can provide a useful supplement to the NPV-based limits. Although institutions are not required by OTS to establish limits and conduct analysis in terms of earnings sensitivity, OTS considers it a good management practice for institutions to estimate the interest rate sensitivity of their earnings and to incorporate this analysis into their business plan and budgeting process. The institution has total discretion over the type of earnings sensitivity analysis and all details of how that analysis is performed. However, OTS encourages institutions to develop earnings simulations utilizing base case and adverse interest rate scenarios and to compare results to actual earnings on a quarterly basis.

3. *Prudence of IRR Limits*. In assessing the prudence of their institution's NPV limits, as well as in evaluating their institution's current level of risk relative to the rest of the industry, the board of directors will find it useful to refer to the quarterly OTS publication, Thrift Industry Interest Rate Risk Measures.[4] This publication contains statistical data about key interest rate risk measures for the industry. The board should also be aware that examiners will evaluate the institution's IRR limits as part of their assessment of the quality of the institution's risk management practices. See Part IV.B.2, Prudence of Limits, and Appendix A, Evaluating Prudence of Interest Rate Risk Limits, for discussion of this topic.

4. *Revision of IRR Limits*. Interest rate risk limits reflect the board of directors' risk tolerance. Although the board should periodically re-evaluate the appropriateness of the institution's interest rate risk limits, particularly after a significant change in market interest rates, any changes should receive careful consideration and be documented in the minutes of the board meeting.

If the institution's level of risk at some point does violate the board's limits, that fact should be recorded in the minutes of the board meeting, along with management's explanation for that occurrence. Depending on the circumstances and the board's tolerance for risk, the board may elect to revise the risk limits. Alternatively, the board may wish to retain the existing limits and direct management to adopt an acceptable plan for an orderly return to compliance with the limits.

Recurrent changes to interest rate risk limits for the purpose of accommodating instances in which the limits have been, or are about to be, breached may be indicative of inadequate risk management practices and procedures.

B. Systems for Measuring Interest Rate Risk

Key elements in managing market risk are identifying, measuring, and monitoring interest rate risk. To ensure compliance with its board's IRR limits and to comply with OTS regulation § 563.176, each institution must have a way to measure its interest rate risk. OTS guidelines for interest rate risk measurement systems are as follows, though examiners have broad discretion to require more rigorous systems.

1. *Interest Rate Sensitivity of NPV for Institutions below $1 Billion in Assets*. Unless otherwise directed by their OTS Regional Director, institutions below $1 billion in assets may usually rely on the quarterly NPV estimates produced by OTS and distributed in the Interest Rate Risk Exposure Report. If such an institution owns complex securities (see Glossary for definition) whose recorded investment exceeds 5 percent of total assets, the institution should be able to measure or have access to measures of the economic value of those securities under the range of interest rate scenarios

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[1] Net portfolio value (NPV) is defined as the net present value of an institution's existing assets, liabilities, and off-balance sheet contracts. In the original TB 13, this measure was referred to as the "market value of portfolio equity" (MVPE). A detailed description of how OTS defines and calculates NPV is provided in the manual entitled, The OTS Net Portfolio Value Model.

[2] An institution's NPV Ratio for a given interest rate scenario is calculated by dividing the net portfolio value that would result in that scenario by the present value of the institution's assets in that same scenario and is expressed in percentage terms. The NPV ratio is analogous to the capital-to-assets ratio used to measure regulatory capital, but NPV is measured in terms of economic values (or present values) in a particular rate scenario. These limits represent a change in format from those called for by the original TB 13. They will provide a greater degree of comparability across institutions and will mesh better with the OTS guidelines for the Sensitivity to Market Risk component rating, described later in this Bulletin.

[3] Institutions that do not file Schedule CMR of the Thrift Financial Report and do not have a means of calculating NPV should have suitable alternative limits.

[4] Thrift Industry Interest Rate Risk Measures is published for a particular quarter approximately seven weeks after the end of that quarter. It may be retrieved using the OTS PubliFax system, at (202) 906–5660, or from the OTS World Wide Web site, http://www.ots.treas.gov/quarter.html

described in Part II.A.1, Limits on Change in Net Portfolio Value. The institution may rely on the OTS estimates for the other financial instruments in its portfolio, unless examiners direct otherwise.

2. *Interest Rate Sensitivity of NPV for Institutions above $1 Billion in Assets.* Those institutions with more than $1 billion in assets should measure their own NPV and its interest rate sensitivity. OTS examiners will look for the following desirable methodological features in evaluating the quality of such institutions' NPV measurement systems:

(a) The institution's NPV estimates utilize information on its financial holdings that is generally more detailed than the information reported on Schedule CMR.

(b) Value is ascribed only to financial instruments currently in existence or for which commitments or other contracts currently exist (i.e., future business is not included in NPV).

(c) Values are, where feasible, based directly or indirectly on observed market prices.

(d) Zero-coupon (spot) rates of the appropriate maturities are used to discount cash flows.

(e) Implied forward interest rates are used to model adjustable rate cash flows.

(f) Cash flows are adjusted for reasonable non-interest costs the institution will incur in servicing both its assets and liabilities.

(g) Valuations take account of embedded options using, at a minimum, the static discounted cash flow technique, but preferably using more rigorous options pricing techniques (which normally produce a value greater than zero even for out-of-the-money options).

(h) Valuation of deposits is based, at least in part, on institution-specific data regarding retention rates of existing deposit accounts and the rates offered by the institution on deposits. Preferably, the institution would base these valuations on sound econometric research into such data.

Examiners may determine an institution should use more sophisticated measurement techniques for individual financial instruments or categories of instruments where they believe it is warranted (e.g., because of the volume and price sensitivity of a group of financial instruments; because of concern that the institution's results may materially misstate the level of risk; because of the combination of a low Post-shock NPV Ratio and high Sensitivity Measure; etc.). In any case, the institution should be familiar with the details of the assumptions, term structure, and logic used in performing the measurements. Measures obtained from financial screens or vendors may, therefore, not always be adequate.

In addition to the prescribed parallel-shock interest rate scenarios described above, OTS recommends that institutions evaluate the effects of other stressful market conditions (e.g., non-parallel movements in the term structure, basis changes, changes in volatility), as well as the effects of breakdowns in key assumptions (e.g., prepayment and core deposit attrition rates).

3. *Integration of Risk Measurement and Operations.* As part of their assessment of the quality of an institution's risk management practices, examiners will consider the extent to which the institution's risk measurement process is integrated with management decision-making. Examiners will evaluate whether, in making significant operational decisions (e.g., changes in portfolio structure, investments, business planning, derivatives activities, funding decisions, pricing decisions, etc.), the institution considers their effect on the level of interest rate risk. Institutions may do this by using an earnings sensitivity approach, an NPV sensitivity approach, or any other reasonable approach. The institution has discretion over all aspects of such analysis. The analysis, however, should not be merely pro forma in nature, but rather should be an active factor in the institution's decision-making process. If evidence of such integration is not apparent, examiner criticism or an adverse rating may result.

Part III: Investment Securities and Financial Derivatives

A. Analysis and Stress Testing

Management should exercise diligence in assessing the risks and returns (including expected total return) associated with investment securities and financial derivatives. As a matter of sound practice, prior to taking an investment position or initiating a derivatives transaction, an institution should:

(a) Ensure that the proposed transaction is legally permissible for a savings institution;

(b) Review the terms and conditions of the security or financial derivative;

(c) Ensure that the proposed transaction is allowable under the institution's investment or derivatives policies;

(d) Ensure that the proposed transaction is consistent with the institution's portfolio objectives and liquidity needs;

(e) Exercise diligence in assessing the market value, liquidity, and credit risk of the security or financial derivative;

(f) Conduct a pre-purchase portfolio sensitivity analysis for any significant transaction involving securities or financial derivatives (as described below in Significant Transactions);

(g) Conduct a pre-purchase price sensitivity analysis of any complex security[5] or financial derivative[6] prior to taking a position (as described below in Complex Securities and Financial Derivatives).

1. *Significant Transactions.* A "significant transaction" is any transaction (including one involving instruments other than complex securities) that might reasonably be expected to increase an institution's Sensitivity Measure by more than 25 basis points. Prior to undertaking any significant transaction, management should conduct an analysis of the incremental effect of the proposed transaction on the interest rate risk profile of the institution. The analysis should show the expected change in the institution's net portfolio value (with and without the proposed transaction) that would result from an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. In general, an institution should conduct its own analysis. It may, however, rely on analysis conducted by an independent third-party (i.e., someone other than the seller or counterparty) provided management understands the analysis and its key assumptions.

Institutions with less than $1 billion in assets that do not have the internal modeling capability to conduct such an incremental analysis may use the most recent quarterly NPV estimates for their institution provided by OTS to estimate the incremental effect of a proposed

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[5] For purposes of this Thrift Bulletin, the term "complex security" includes any [illegible] mortgage obligation ("CMO"), real estate mortgage investment conduit ("REMIC"), callab [illegible] pass-through security, stripped-mortgage-backed security, structured note, and any security not meeting the definition of an "exempt security." An "exempt security" includes non-callable, "plain vanilla" instruments of the following types: (1) mortgage-pass-through securities, (2) fixed-rate securities, and (3) floating-rate securities.

[6] The following financial derivatives are exempt from the pre-purchase analysis called for above: commitments to originate, purchase, or sell mortgages. To perform the pre-purchase analysis for derivatives whose initial value is zero (e.g. [illegible] swaps), the institution should calculate the change in value as a percentage of the notional principal amount.

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transaction on the sensitivity of its net portfolio value.[7]

2. *Complex Securities and Financial Derivatives.* Prior to taking a position in any complex security or financial derivative, an institution should conduct a price sensitivity analysis (i.e., pre-purchase analysis) of the instrument. At a minimum, the analysis should show the expected change in the value of the instrument that would result from an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Where appropriate, the analysis should encompass a wider range of scenarios (e.g., non-parallel changes in the yield curve, changes in interest rate volatility, changes in credit spreads, and in the case of mortgage-related securities, changes in prepayment speeds). In general, an institution should conduct its own in-house pre-acquisition analysis. An institution may, however, rely on an analysis conducted by an independent third-party (i.e., someone other than the seller or counterparty) provided management understands the analysis and its key assumptions.

Investments in complex securities and the use of financial derivatives by institutions that do not have adequate risk measurement, monitoring, and control systems may be viewed as an unsafe and unsound practice.

3. *Risk Reduction.* In general, the use of financial derivatives or complex securities with high price sensitivity[8] should be limited to transactions and strategies that lower an institution's interest rate risk as measured by the sensitivity of net portfolio value to changes in interest rates. An institution that uses financial derivatives or invests in such securities for a purpose other than that of reducing portfolio risk should do so in accordance with safe and sound practices and should:

(a) Obtain written authorization from its board of directors to use such instruments for a purpose other than to reduce risk; and

(b) Ensure that, after the proposed transaction(s), the institution's Post-shock NPV Ratio would not be less than 4 percent.

The use of financial derivatives or complex securities with high price sensitivity for purposes other than to reduce risk by institutions that do not meet the conditions set forth above may be viewed as an unsafe and unsound practice.

B. Record-Keeping

Institutions must maintain accurate and complete records of all securities and derivatives transactions in accordance with 12 CFR 562.1. Institutions should retain any analyses (including pre-and post-purchase analyses) relating to investments and derivatives transactions and make such analyses available to examiners upon request.

In addition, for each type of financial derivative instrument authorized by the board of directors, the institution should maintain records containing:

(a) The names, duties, responsibilities, and limits of authority (including position limits) of employees authorized to engage in transactions involving the instrument;

(b) A list of approved counterparties with which transactions may be conducted;

(c) A list showing the credit risk limit for each approved counterparty; and

(d) A contract register containing key information on all outstanding contracts and positions.

The contract registers should specify the type of contract, the price of each open contract, the dollar amount, the trade and maturity dates, the date and manner in which contracts were offset, and the total outstanding positions.

Where deferred gains or losses on derivatives from hedging activities have been recorded consistent with generally accepted accounting principles (GAAP), the institution should maintain appropriate supporting documentation.[9]

C. Supervisory Assessment of Investment and Derivatives Activities

Examiners will assess the overall quality and effectiveness of the institution's risk management process governing investment and derivatives activities. In making such assessments, examiners will take into account compliance with the guidelines set forth above and the quality of the institution's risk management process. The quality of the institution's risk management process will be evaluated in the context of Appendix B, Sound Practices for Market Risk Management.

Part IV: Guidelines for the "Sensitivity to Market Risk" Component Rating

Consistent with the interagency Uniform Financial Institutions Rating System, or CAMELS rating system, of which an excerpt is attached as Appendix C, the "Sensitivity to Market Risk" component rating (i.e., the "S" rating) is based on examiners" conclusions about two dimensions: (1) an institution's level of market risk and (2) the quality of its practices for managing market risk. This section discusses the guidelines that examiners will use in assessing the two dimensions and combining those assessments into a component rating. Because few thrift institutions have significant exposure to foreign exchange risk or commodity or equity price risks, interest rate risk will generally be the only form of market risk to be assessed under this component rating.

A. Assessing the Level of Interest Rate Risk

Examiners will base their conclusions about an institution's level of interest rate risk—the first dimension for determining the "S" component rating—primarily on the interest rate sensitivity of the institution's net portfolio value. The two specific measures of risk that will receive examiners' primary attention are the Interest Rate Sensitivity Measure and the Post-shock NPV Ratio (see Glossary for definitions).

OTS uses risk measures based on NPV for several reasons. First, the NPV measures are more readily comparable across institutions than internally generated measures of earnings sensitivity. Second, NPV focuses on a longer-term analytical horizon than institutions' internally generated earnings sensitivity measures. (The interest rate sensitivity of earnings is typically measured over a short-term horizon such as a year, while NPV is based on all future cash flows anticipated from an institution's existing assets, liabilities, and off-balance sheet contracts.) Third, the NPV-based measures take better account of the embedded options present in the typical thrift institution's portfolio.

1. *Interest Rate Sensitivity Measure.* In assessing the level of interest rate risk, a high (i.e., risky) Interest Rate Sensitivity Measure, by itself, may not give cause for supervisory concern when the institution has a strong capital position. Because an institution's risk of failure is inextricably linked to capital and, hence, to its ability to absorb

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[7] Institutions that are exempt from filing Schedule CMR and that choose not to file voluntarily, should ensure that no transaction—whether involving complex securities, financial derivatives, or any other financial instruments—causes the institution to fall out of compliance with its board of directors" interest rate risk limits.

[8] For purposes of this Bulletin, "complex securities with high price sensitivity" include those whose price would be expected to decline by more than 10 percent under an adverse parallel change in interest rates of 200 basis points.

[9] In June 1998, the FASB issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." Under SFAS No. 133, all "derivative instruments," as defined therein, including those used for hedging purposes, would be accounted for at fair value. Accordingly, under that Standard, deferred gains and losses on "derivative instruments" from hedging activities will no longer be reported.

adverse economic shocks, an institution with a high level of economic capital (i.e., NPV) may be able safely to support a high Sensitivity Measure.

2. *Post-Shock NPV Ratio.* The Post-shock NPV Ratio is a more comprehensive gauge of risk than the Sensitivity Measure because it incorporates estimates of the current economic value of an institution's portfolio, in addition to the reported capital level and interest rate risk sensitivity. There are three potential causes of a low (i.e., risky) Post-shock NPV Ratio: (i) low reported capital; (ii) significant unrecognized depreciation in the value of the portfolio; or (iii) high interest rate sensitivity. Although the first two of these, low reported capital and significant unrecognized depreciation in portfolio value, may cause supervisory concern (and receive attention under the portions of the examination devoted to evaluating Capital Adequacy, Asset Quality, or Earnings), they do not necessarily represent an "interest rate risk problem." Only when an institution's low Post-shock Ratio is, in whole or in part, caused by high interest rate sensitivity is an interest rate risk problem suggested. That condition is reflected in the guidelines discussed below.

3. *Guidelines for Determining the Level of Interest Rate Risk.* In describing the five levels of the "S" component rating, the interagency uniform ratings system established several broad, descriptive levels of risk: "minimal," "moderate," "significant," "high," and "imminent threat." The following interest rate risk levels are ordinarily indicated for OTS-regulated institutions, based on the combination of each institution's Post-shock NPV Ratio and Interest Rate Sensitivity Measure. (These guidelines are summarized in Table 1 below.) These risk levels are for guidance, they are not mandatory; examiners utilize them as starting points in their ratings assessments but have broad discretion to exercise judgment (see Part IV.D, Examiner Judgment).

An institution with a Post-shock NPV Ratio below 4% and an Interest Rate Sensitivity Measure of:

(a) More than 200 basis points will ordinarily be characterized as having "high" risk. Such an institution will typically receive a 4 or 5 rating for the "S" component.[10]

(b) 100 to 200 basis points will ordinarily be characterized as having "significant" risk. Such an institution will typically receive a 3 rating for the "S" component.

(c) 0 to 100 basis points will ordinarily be characterized as having "moderate" risk. Such an institution will typically receive a rating of 2 for the "S" component. If the institution's sensitivity is extremely low, a rating of 1 may be supportable unless the institution is likely to incur larger losses under rate shocks other than the parallel shocks depicted in the OTS NPV Model.

An institution with a Post-shock NPV Ratio between 4% and 6% and an Interest Rate Sensitivity Measure of:

(a) More than 400 basis points will ordinarily be characterized as having "high" risk. Such an institution will typically receive a 4 or 5 rating for the "S" component.

(b) 200 to 400 basis points will ordinarily be characterized as having "significant" risk. Such an institution will typically receive a 3 rating for the "S" component.

(c) 100 to 200 basis points will ordinarily be characterized as having "moderate" risk. Such an institution will typically receive a 2 rating for the "S" component.

(d) 0 to 100 basis points will ordinarily be characterized as having "minimal" risk. Such an institution will typically receive a rating of 1 for the "S" component.

An institution with a Post-shock NPV Ratio between 6% and 10% and an Interest Rate Sensitivity Measure of:

(a) More than 400 basis points will ordinarily be characterized as having "significant" risk. Such an institution will typically receive a 3 rating for the "S" component.

(b) 200 to 400 basis points will ordinarily be characterized as having "moderate" risk. Such an institution will typically receive a 2 rating for the "S" component.

(c) Less than 200 basis points will ordinarily be characterized as having "minimal" risk. Such an institution will typically receive a rating of 1 for the "S" component.

An institution with a Post-shock NPV Ratio of more than 10% and an Interest Rate Sensitivity Measure of:

(a) More than 400 basis points will ordinarily be characterized as having "moderate" risk. Such an institution will typically receive a 2 rating for the "S" component.

(b) Less than 400 basis points will ordinarily be characterized as having "minimal" risk. Such an institution will typically receive a rating of 1 for the "S" component.

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[10] According to the interagency uniform ratings system (61 Fed. Reg. 67029 [1996]), the level of market risk at a 4-rated institution is "high," while that at a 5-rated institution is so high as to pose "an imminent threat to its viability." Under the Prompt Corrective Action regulation, 12 CFR Part 565, supervisory action is tied to regulatory capital. An institution's viability is, therefore, directly dependent on regulatory capital, not on economic capital. Because regulatory capital can remain positive for an extended period of time after economic capital has become zero or negative, the NPV measures are not by themselves indicators of near-term viability. For an institution's level of interest rate risk to constitute an imminent threat to viability, the institution will typically have a high level of interest rate risk and will have other serious financial problems that place it in imminent danger of closure.

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Table 1
Summary of Guidelines for the "Level of Interest Rate Risk"

Post-Shock NPV Ratio	Interest Rate Sensitivity Measure			
	0 - 100 b.p.	100-200 b.p.	200-400 b.p.	Over 400 b.p.
Over 10%	Minimal Risk (1)	Minimal Risk (1)	Minimal Risk (1)	Moderate Risk (2)
6% to 10%	Minimal Risk (1)	Minimal Risk (1)	Moderate Risk (2)	Significant Risk (3)
4% to 6%	Minimal Risk (1)	Moderate Risk (2)	Significant Risk (3)	High Risk (4)
Below 4%	Moderate Risk (2)	Significant Risk (3)	High Risk (4)	High Risk (4)

In Table 1 the numbers in parentheses represent the "S" component ratings that examiners would typically use as starting points in their analysis, assuming there are no deficiencies in the institution's risk management practices. Examiners may assign a different rating based on their interpretation of the facts and circumstances at each institution.

4. *Internal* vs. *OTS Risk Measures.* In applying the guidelines described above, examiners will encounter three general types of situations regarding the availability of risk measures.

First, if the institution does not have internal NPV measures, but does file Schedule CMR, examiners will use the NPV measures produced by OTS. In such instances, examiners must be aware of the importance of accurate reporting by the institution on Schedule CMR, particularly of items for which the institution provides its own market value estimates in the various interest rate scenarios, such as for mortgage derivative securities. They must also be aware of circumstances in which the OTS measures may overstate or understate the sensitivity of an institution's financial instruments.

Second, if the institution does produce its own NPV measures, examiners will have to decide whether to use the institution's or OTS's risk measures.

(a) If the institution's own measures and those produced by OTS are broadly consistent and result in the same risk category (e.g., "minimal risk," "moderate risk," etc.), the choice between using the institution's measures or the OTS estimates probably does not matter, though examiners should attempt to ascertain the reasons for any major discrepancies between the two sets of results.

(b) If the institution's NPV measures place it in a different risk category than the OTS measures do, examiners (in consultation with their Regional Capital Markets group or the Washington Risk Management Division) should determine which financial instruments are the source of that discrepancy. If the institution's valuations for those instruments are judged more reliable than OTS's, the institution's results will be used to replace the OTS results for those financial instruments in calculating NPV in the various interest rate scenarios.

(c) If examiners have reason to doubt both the institution's own measures and those produced by OTS, they may modify (in consultation with their Regional Capital Markets group or the Washington Risk Management Division) either or both measures to arrive at NPV measures that the examiners consider reasonable.

In deciding whether to rely on an institution's internal NPV measures, examiners will ensure that the institution's measures are produced in a manner that is broadly consistent with the OTS measures. (The major methodological points to consider are described in Part II.B, Systems for Measuring Interest Rate Risk.)

The third situation examiners will encounter is one in which the institution calculates no internal NPV measures and does not report on Schedule CMR. Because no NPV results will be available in such cases, the guidelines are not directly applicable. In addition to reviewing the institution's balance sheet structure in such cases, examiners will review whatever interest rate risk measurement and management tools the institution uses to comply with § 563.176. Depending on their findings regarding the institution's general level of risk and its risk management practices, examiners might reconsider the appropriateness of the institution's continued exemption from filing Schedule CMR.

B. Assessing the Quality of Risk Management

In drawing conclusions about the quality of an institution's risk management practices—the second dimension of the "S" component rating—examiners will assess all significant facets of the institution's risk management process. To aid in that assessment, examiners will refer to Appendix B of this Bulletin which provides a set of Sound Practices for Market Risk Management. These sound practices suggest the sorts of management practices institutions of varying levels of sophistication may utilize. As (i) the size of the institution increases, (ii) the complexity of its assets, liabilities, or off-balance sheet contracts increases, or (iii) the overall level of interest rate risk at the institution increases, its risk management process should exhibit more of the elements included in the Sound Practices and should display a greater degree of formality and rigor. Because there is no formula for determining the adequacy of such systems, examiners will make that determination on a case-by-case basis. Examiners will take the following eight factors, among others, into consideration in assessing the quality of an institution's risk management practices.

1. *Oversight by Board and Senior Management.* Examiners will assess the quality of oversight provided by the institution's board and senior management. That assessment may have many facets, as described in Appendix B, Sound Practices for Market Risk Management.

2. *Prudence of Limits.* Examiners will assess the prudence of the institution's board-approved interest rate risk limits.

Ordinarily, a set of IRR limits will raise examiner concerns if the limits permit the institution to have a Post-shock NPV Ratio and Interest Rate Sensitivity Measure that would ordinarily warrant an "S" component rating of 3 or worse. (For examples of how examiners will make that determination, see Appendix A, Evaluating Prudence of Interest Rate Risk Limits.) Depending on the level of concern, such limits may result in examiner criticism or an adverse "S" component rating.

3. *Adherence to Limits.* Examiners will assess the degree to which the institution adheres to its interest rate risk limits. Frequent exceptions to the board's limits may indicate weak interest rate risk management practices. Similarly, recurrent changes to the institution's limits to accommodate exceptions to the limits may reflect ineffective board oversight.

4. *Quality of System for Measuring NPV Sensitivity.* Examiners will consider whether the quality of the institution's risk measurement and monitoring system is commensurate with the institution's size, the complexity of its financial instruments, and its level of interest rate risk. Examiners will generally expect the quality of an institution's system for measuring the interest rate sensitivity of NPV to be consistent with the descriptions in Part II.B, Systems for Measuring Interest Rate Risk.

5. *Quality of System for Measuring Earnings Sensitivity.* OTS places considerable reliance on NPV analysis to assess an institution's interest rate risk. Other types of measures may, however, be considered in evaluating an institution's risk management practices. In particular, utilization of a well-supported earnings sensitivity analysis may be viewed as a favorable factor in determining an institution's component rating. In fact, all institutions are encouraged to measure the interest rate sensitivity of projected earnings. Despite inherent limitations,[11] such analyses can provide useful information to an institution's management.

Methodologies used in measuring earnings sensitivity vary considerably among different institutions. To assist examiners in reviewing the earnings modeling process, institutions should have clear descriptions of the methodologies and assumptions used in their models. Of particular importance are the type of rate scenarios used (e.g., instantaneous or gradual, consistent with forward yield curve) and assumptions regarding new business (i.e., type of assets, dollar amounts, and interest rates). In addition, formulas for projecting interest rate changes on existing business (e.g., ARMs, transaction deposits) should be clearly described and any major differences from analogous formulas used in the OTS NPV Model should be explained and supported.

6. *Integration of Risk Management with Decision-Making.* Examiners will consider the extent to which the results of an institution's risk measurement system are used by management in making operational decisions (e.g., changes in portfolio structure, investments, derivatives activities, business planning, funding decisions, pricing decisions). This is of particular significance if the institution's Post-shock NPV Ratio is relatively low, and thus provides less of an economic buffer against loss.

Examiners will evaluate whether management considers the effect of significant operational decisions on the institution's level of interest rate risk. The form of analysis used for measuring that effect (earnings sensitivity, NPV sensitivity, or any other reasonable approach) and all details of the measurement are up to the institution. That analysis should be an active factor in management's decision-making and not be generated solely to avoid examiner criticism. In the absence of such a decision-making process, examiner criticism or an adverse rating may be appropriate.

7. *Investments and Derivatives.* Examiners will consider the adequacy of the institution's risk management policies and procedures regarding investment and derivatives activities. See Part III of this Bulletin, Investment Securities and Financial Derivatives, for a detailed discussion.

8. *Size Complexity, and Risk Profile.* Under the interagency uniform ratings descriptions, an institution's risk management practices are evaluated relative to the institution's "size, complexity, and risk profile." Thus, a small institution with a simple portfolio and a consistently low level of risk may receive an "S" rating of 1 even if its risk management practices are fairly rudimentary. A large institution with these same characteristics would be expected to have more rigorous risk management practices, but would not be held to the same risk management standards as a similarly sized institution with either a higher level of risk or a portfolio containing complex securities or financial derivatives. An institution making a conscious business decision to maintain a low risk profile by investing in low risk products or maintaining a high level of capital may not require elaborate and costly risk management systems.

C. Combining Assessments of the Level of Risk and Risk Management Practices

Guidelines examiners will use in assessing an institution's level of risk and the quality of its risk management practices have been described in the two previous sections. This section provides guidelines for combining those two assessments into an "S" component rating for the institution.

The interagency uniform ratings descriptions specify the criteria for the "S" component ratings in terms of the level of risk and the quality of risk management practices (see Appendix C). For example:

> A rating of 1 indicates that market risk sensitivity is well controlled and that there is minimal potential that the earnings performance or capital position will be adversely affected. * * * [*emphasis added*][12]

Thus, if market risk is less than "well controlled" (*i.e.*, "adequately controlled," "in need of improvement," or "unacceptable"), the institution does not qualify for a component rating of 1. Likewise, if the level of market risk is more than "minimal" (*i.e.*, "moderate," "significant," or "high"), the institution similarly does not qualify for a rating of 1.

Applying the same logic to the descriptions of the 2, 3, 4, and 5 levels of the "S" component rating results in the ratings guidelines shown in Table 2. That table summarizes how various combinations of examiner assessments about an institution's "level of interest rate risk" and "quality of risk management practices" translate into a suggested rating.[13]

Two important caveats must be noted about this table. First, the two dimensions are not totally independent of one another, because the quality of risk management practices is evaluated relative to an institution's level of risk (among other things). Thus, for example, an institution's risk management practices are more likely to be assessed as "well controlled" if the institution has minimal risk than if it has a higher level of risk. Second, as described further in the next section, the ratings shown in Table 2 provide a starting point, but examiners have broad discretion to exercise judgment and deviate from them.

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[11] The effectiveness of an earnings sensitivity model to identify interest rate risk depends on the composition of an institution's portfolio. In particular, management should recognize that such models generally do not fully take account of longer-term risk factors.

[12] 61 Fed. Reg. 67029 (1996).

[13] Some of the combinations of risk management quality and level of risk shown in the table will rarely, if ever, be encountered (e.g., *an institution with "unacceptable" risk management practices, but a "minimal" level of risk). For the sake of completeness, however, all cells of the matrix are shown.*

Table 2
"S" Component-Rating Guidelines in Matrix Form

Quality of Risk Management Practices*	Level of Interest Rate Risk			
	Minimal Risk	Moderate Risk	Significant Risk	High Risk**
Well Controlled	S=1	S=2	S=3	S=4 or 5
Adequately Controlled	S=2	S=2	S=3	S=4 or 5
Needs Improvement	S=3	S=3	S=3	S=4 or 5
Unacceptable	S=4	S=4	S=4	S=4 or 5

* The Quality of Risk Management Practices is evaluated relative to an institution's size, complexity, and level of interest rate risk.

** To receive a component rating of 5, an institution's level of interest rate risk must be an "imminent threat to its viability." Such an institution will typically have a high level of interest rate risk *and* will have other serious financial problems that place it in imminent danger of closure.

D. Examiner Judgment

Blind adherence to the guidelines is undesirable. Examiners have a responsibility to exercise judgment in assigning ratings based on the facts they encounter at each institution. This section provides a non-exhaustive list of factors examiners might consider in applying the "S" rating guidelines to a particular institution.

1. *Judgment in Assessing the Level of Risk.* In assessing the level of interest rate risk, the likelihood that examiners will deviate from the guidelines in Table 1 is heightened in cases where the Post-shock NPV Ratio and the Interest Rate Sensitivity Measure are both near cell boundaries. For example, there is no material difference between an institution whose Post-shock Ratio and Sensitivity Measure, are, respectively, 4.01% and 199 b.p. and one where they are 3.99% and 201 b.p., yet the guidelines in Table 1 suggest a 2 rating for the former and a 4 for the latter. Clearly, the row and column boundaries of the cells in the table must be interpreted as transition zones or "gray areas," rather than as precise cut-off points, between suggested ratings. As such, examiners will more commonly deviate from the stated guidelines in the vicinity of cell borders than in their interior. Open-ended cells are another instance where examiners will more commonly deviate from the guidelines. For example, in assessing an institution whose Sensitivity Measure is well beyond 400 b.p., an examiner might very well determine that its level of risk is higher than the guidelines in the rightmost column of Table 1. In applying the guidelines in Table 1, many considerations may cause an examiner to reach a different conclusion than suggested by the guidelines. Such considerations include the following:

(a) The trend in the institution's risk measures during recent quarters.

(b) The trend in the institution's risk measures compared with those of the rest of the industry in recent quarters. (Comparison with the results for the industry as a whole often provides a useful backdrop for evaluating an institution's results, particularly during a period of volatile interest rates.)

(c) The examiner's level of comfort with the overall accuracy of the available risk measures as applied to the particular products of the institution.

(d) The existence of items with particularly volatile or uncertain interest rate sensitivity for which the examiner wants to allow an added margin for possible error.

(e) The effect of any restructuring that may have occurred since the most recently available risk measures.

(f) Other available evidence that causes the examiner to favor a higher or lower risk assessment than that suggested by the guidelines.

2. *Judgment in Assessing the Quality of Risk Management Practices.* Conclusions about the quality of risk management practices should be based, in part, on the institution's level of risk, with less risky institutions requiring less rigorous risk management practices. Considerations listed in the Judgment in Assessing the Level of Risk, above, may therefore cause the examiner to modify his or her assessment of the institution's risk management practices. In addition, if changes have occurred in the institution's level of risk since the last evaluation, the examiner may wish to reassess the quality of the institution's risk management practices in light of these changes.

Part V: Supervisory Action

If supervisory action to address interest rate risk is needed, examiners will discuss the problem with management and obtain their commitment to correct the problem as quickly as practicable.

If deemed necessary, examiners will request a written plan from the board and management to reduce interest rate sensitivity, increase capital, or both. The plan should include specific risk measure targets. If the initial plan is inadequate, examiners will require amendment and re-submission. Examiners will document the corrective strategy and results and review progress at case reviewing meetings.

For institutions with composite ratings of 4 or 5, the presumption of formal enforcement action generally requires a supervisory agreement, cease and desist order, prompt corrective action directive, or other formal supervisory action. If an institution's interest rate risk increases between examinations, examiners will consider whether a downgrade of the "S" component rating or the composite rating is warranted. Examiners will obtain quarterly progress reports (more frequently if the situation is severe). Where appropriate, examiners may require the institution to develop the capacity to conduct its own modeling.

Appendix A: Evaluating Prudence of Interest Rate Risk Limits

The basic principle examiners will use in evaluating the prudence of an institution's risk limits is whether they permit NPV to drop to a level where the Post-shock NPV Ratio and Sensitivity Measure would suggest an "S" component rating of 3 or worse under the guidelines for the Level of Risk (reproduced here as Table 1).

Table 1
Summary of Guidelines for the "Level of Interest Rate Risk"

Post-Shock NPV Ratio	Interest Rate Sensitivity Measure			
	0 - 100 b.p.	100-200 b.p.	200-400 b.p.	Over 400 b.p.
Over 10%	Minimal Risk (1)	Minimal Risk (1)	Minimal Risk (1)	Moderate Risk (2)
6% to 10%	Minimal Risk (1)	Minimal Risk (1)	Moderate Risk (2)	Significant Risk (3)
4% to 6%	Minimal Risk (1)	Moderate Risk (2)	Significant Risk (3)	High Risk (4)
Below 4%	Moderate Risk (2)	Significant Risk (3)	High Risk (4)	High Risk (4)

Examples of Evaluating the Prudence of Interest Rate Risk Limits

The following examples illustrate how OTS examiners will evaluate an institution's interest rate risk limits. In each example, the interest rate risk limits approved by the institution's board of directors are shown in column [b]. These specify a minimum NPV Ratio for each of the interest rate scenarios shown in column [a]. The NPV Ratios currently estimated for the institution for each rate scenario are shown in column [c].

Example Institution A

Institution A has a detailed set of interest rate risk limits by which the board of directors specifies a minimum NPV Ratio for each of the seven rate shock scenarios described in Part II.A.1 of this bulletin.

INSTITUTION A—LIMITS AND CURRENT NPV RATIOS

Rate shock (in basis points) [a]	Board limits (minimum NPV ratios) [b]	Institution's current NPV ratios) [c]
+300	6.00%	10.00%
+200	7.00	11.50
+100	8.00	12.50
0	9.00	13.00
−100	10.00	13.25
−200	11.00	13.50
−300	12.00	13.75

To assess the prudence of Institution A's interest rate risk limits, examiners will evaluate the risk measures permitted under those limits relative to the guidelines for the Level of Risk in Table 1. The Post-shock NPV Ratio permitted by the institution's board limits is 7.00% (from the +200 b.p. scenario in column [b], above). The Sensitivity Measure permitted by the limits is not known; it depends on the actual level of the base case NPV Ratio, which will probably be higher than the limit for the base case scenario. Examiners will, therefore, use the institution's current Sensitivity Measure (based on OTS's results or those of the institution) in performing their evaluation. Institution A's current Sensitivity Measure is 150 basis points (i.e., [13.00%−11.50%], the NPV Ratios in the 0 b.p. and +200 b.p. scenarios in column [c], above).

Referring to Table 1, the Post-shock NPV Ratio allowed by the institution's limits falls into the "6% to 10%" row and its current Sensitivity Measure falls into the "100 to 200 b.p." column. The rating suggested by Table 1 is, therefore, a 1, and Institution A's risk limits would, thus, probably be considered prudent.[14]

Example Institution B

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[14] This example assumes there are no significant deficiencies in the institution's risk management practices.

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INSTITUTION B—LIMITS AND CURRENT NPV RATIOS

Rate shock (in basis points) [a]	Board limits (minimum NPV ratios [b]	Institution's current NPV ratios) [c]
+300	6.00%	6.00%
+200	7.00	8.50
+100	8.00	11.00
0	9.00	13.00
−100	10.00	14.00
−200	11.00	14.50
−300	12.00	15.00

Institution B has identical interest rate risk limits as Institution A, but is considerably more interest rate sensitive than Institution A at the present time. Institution B's Sensitivity Measure is 450 b.p. (i.e., [13.00%–8.50%]). For purposes of applying the guidelines in Table 1 to the limits, the Post-shock NPV Ratio of 7.00% permitted by the institution's board limits falls into the "6% to 10%" row. Its current Sensitivity Measure, however, falls into the "Over 400 b.p." column of Table 1. The rating suggested by the guidelines is therefore a 3, and Institution B's risk limits would probably not be considered sufficiently prudent. Even though its limits are identical to those of Institution A, its much higher current Sensitivity Measure requires the support of a higher Post-shock NPV Ratio than the minimum permitted by the board limits.

Example Institution C

INSTITUTION C—LIMITS AND CURRENT NPV RATIOS

Rate shock (in basis points) [a]	Board limits (minimum NPV ratios) [b]	Institution's current NPV ratios [c]
+300	6.00%	6.00%
+200	6.00	8.50
+100	6.00	11.00
0	6.00	13.00
−100	6.00	14.00
−200	6.00	14.50
−300	6.00	15.00

Institution C has the same current NPV Ratios as Institution B. Its board of directors has established the institution's interest rate risk limits as a single minimum NPV Ratio of 6% that applies to all seven rate shock scenarios In assessing the prudence of those limits, therefore, the Post-shock NPV Ratio permitted by the limits is 6.00%. The current Sensitivity Measure, like that of Institution B, is 450 b.p.

In applying the Table 1 guidelines to the limits, Institution C's Post-shock NPV Ratio is in either the "4% to 6%" or the "6% to 10%" row and its Sensitivity Measure in the "Over 400 b.p." column of Table 1. The rating suggested by the table is, therefore, a 3 or a 4, and so Institution C's risk limits would also probably not be considered sufficiently prudent.

Example Institution D

INSTITUTION D—LIMITS AND CURRENT NPV RATIOS

Rate shock (in basis points) [a]	Board limits (minimum NPV ratios) [b]	Institution's current NPV ratios [c]
+300	3.50%	2.50%
+200	3.50	3.25
+100	3.50	3.75
0	3.50	4.00
−100	3.50	4.25
−200	3.50	4.50
−300	3.50	4.75

Institution D has quite a low base case level of economic capital, and its board limits recognize that fact by permitting low NPV Ratios. Furthermore, the institution's level of interest rate risk currently exceeds the board limits (i.e., the current NPV Ratios in the +200 and +300 scenarios are below the board's 3.50% minimum). While examiners would be very likely to express concern about that aspect of the institution's risk management process, the limits themselves might still be viewed as prudent.

To determine whether the institution's limits are prudent, examiners will use the Post-shock NPV Ratio of 3.50% permitted by the limits and the institution's current Sensitivity Measure of 75 basis points (i.e., [4.00%–3.25%]). In applying Table 1, the Post-shock NPV Ratio permitted by the limits falls into the "Below 4%" row and the current Sensitivity Measure falls into the "0 to 100 b.p." column. The rating suggested by Table 1 is therefore a 2, and assuming that Institution A's Sensitivity Measure has been consistently low, its risk limits would probably be considered prudent. Because of the critical importance of the Sensitivity Measure in this determination, examiners might well arrive at a different conclusion if they lack assurance that the institution has the ability to maintain that measure at its current, low level. Thus, if the Sensitivity Measure has been volatile in the past or if examiners have concerns about the quality of the institution's risk management practices, they might well conclude that the risk limits are not sufficiently prudent.

Appendix B: Sound Practices for Market Risk Management

This section describes the key elements for effective management of market risk exposures. These key elements encompass sound practices for both interest rate risk management and the management of investment and derivatives activities. The degree of formality and rigor with which an institution implements these elements in its own risk management system should be consistent with the institution's size, the complexity of its financial instruments, its tolerance for risk, and the level of market risk at which it actually operates.

A. Board and Senior Management Oversight

Effective oversight is an integral part of an effective risk management program. The board and senior management should understand their oversight responsibilities regarding interest rate risk management and the management of investment and derivatives activities conducted by their institution.

Board of Directors. The board of directors should approve broad strategies and major policies relating to market risk management and ensure that management takes the steps necessary to monitor and control market risk. The board of directors should be informed regularly of the institution's risk exposures.

The board of directors has ultimate responsibility for understanding the nature and level of risk taken by the institution. Board oversight need not involve the entire board, but may be carried out by an appropriate subcommittee of the board. The board, or an appropriate subcommittee of board members, should:

- Approve broad objectives and strategies and major policies governing interest rate risk management and investment and derivatives activities.
- Provide clear guidance to management regarding the board's tolerance for risk.
- Ensure that senior management takes steps to measure, monitor, and control risk.
- Review periodically information that is sufficient in timeliness and detail to allow it to understand and assess the institution's interest rate risk and risks related to investment and derivatives activities.
- Assess periodically compliance with board-approved policies, procedures, and risk limits.
- Review policies, procedures and risk limits at least annually.

Although board members are not required to have detailed technical knowledge, they should ensure that management has the expertise needed to understand the risks incurred by the institution and that the institution has personnel with the expertise needed to manage interest rate risk and conduct investment and derivative activities in a safe and sound manner.

Senior Management. Senior management should ensure that the institution's operations are effectively managed, that appropriate risk management policies and procedures are established and maintained, and that resources are available to conduct the institution's activities in a safe and sound manner.

Senior management is responsible for the daily oversight and management of the institution's activities, including the implementation of adequate risk management polices and procedures. To carry out its responsibilities, senior management should:

- Ensure that effective risk management systems are in place and properly maintained. An institution's risk management systems should include (1) systems for measuring risk, valuing positions, and measuring performance, (2) appropriate risk limits, (3) a comprehensive reporting and review process, and (4) effective internal controls.
- Establish and maintain clear lines of authority and responsibility for managing interest rate risk and for conducting investment and derivatives activities.
- Ensure that the institution's operations and activities are conducted by competent staff with technical knowledge and experience consistent with the nature and scope of their activities.
- Provide the board of directors with periodic reports and briefings on the institution's market-risk related activities and risk exposures.
- Review periodically the institution's risk management systems, including related policies, procedures, and risk limits.

Lines of Responsibility and Authority for Managing Market Risk. Institutions should identify the individuals and/or committees responsible for risk management and should ensure there is adequate separation of duties in key elements of the risk management process to avoid potential conflicts of interest. Institutions should have a risk management function (or unit) with clearly defined duties that is sufficiently independent from position-taking functions.

Institutions should identify the individuals and/or committees responsible for conducting risk management. Senior management should define lines of authority and responsibility for developing strategies, implementing tactics, and conducting the risk measurement and reporting functions.

The risk management unit should report directly to both senior management and the board of directors, and should be separate from, and independent of, business lines. The function may be part of, or may draw its staff from, more general operations (e.g., the audit, compliance, or Treasury units). Large institutions should, however, have a separate risk management unit, particularly if the Treasury unit is also a profit center. Smaller institutions with limited resources and personnel should provide additional oversight by outside directors in order to compensate for the lack of separation of duties.

Management should ensure that sufficient safeguards exist to minimize the potential that individuals initiating risk-taking positions may inappropriately influence key control functions of the risk management process such as the development and enforcement of policies and procedures, the reporting of risks to senior management, and the conduct of back-office functions.

B. Adequate Policies and Procedures

Institutions should have clearly defined risk management policies and procedures. The board of directors has ultimate responsibility for the adequacy of those policies and procedures; senior management and the institution's risk management function have immediate responsibility for their design and implementation. Policies and procedures should be reviewed periodically and revised as needed.

Interest Rate Risk. Institutions should have written policies and procedures for limiting and controlling interest rate risk. Such policies and procedures should be consistent with the institution's strategies, financial condition, risk-management systems, and tolerance for risk. An institution's policies and procedures (or documentation issued pursuant to such policies) should:

- Address interest rate risk at the appropriate level(s) of consolidation. (Although the board will generally be most concerned with the consolidated entity, it should be aware that accounting and legal restrictions may not permit gains and losses occurring in different subsidiaries to be netted.)
- Delineate lines of responsibility and identify individuals or committees responsible for (1) developing interest rate risk management strategies and tactics, (2) making interest rate risk management decisions, and (3) conducting oversight.
- Identify authorized types of financial instruments and hedging strategies.
- Describe a clear set of procedures for controlling the institution's aggregate interest rate risk exposure.
- Define quantitative limits on the acceptable level of interest rate risk for the institution.
- Define procedures and conditions necessary for exceptions to policies, limits, and authorizations.

Investment and Derivatives Activities. Institutions should have written policies and procedures governing investment and derivatives activities. Such policies and procedures should be consistent with the institution's strategies, financial condition, risk-management systems, and tolerance for risk. An institution's policies and procedures (or documentation issued pursuant to such policies) should:

- Identify the staff authorized to conduct investment and derivatives activities, their lines of authority, and their responsibilities.
- Identify the types of authorized investment securities and derivative instruments.
- Specify the type and scope of pre-purchase analysis that should be conducted for various types or classes of investment securities and derivative instruments.
- Define, where appropriate, position limits and other constraints on each type of authorized investment and derivative instrument, including constraints on the purpose(s) for which such instruments may be used.
- Identify dealers, brokers, and counterparties that the board or a committee designated by the board (e.g., a credit policy committee) has authorized the institution to conduct business with and identify credit exposure limits for each authorized entity.
- Ensure that contracts are legally enforceable and documented correctly.
- Establish a code of ethics and standards of professional conduct applicable to personnel involved in investment and derivatives activities.
- Define procedures and approvals necessary for exceptions to policies, limits, and authorizations.

Policies and procedures governing investment and derivatives activities may be embedded in other policies, such as the institution's interest rate risk policies, and need not be stand-alone documents.

C. Risk Measurement, Monitoring, and Control Functions

Interest Rate Risk Measurement. Institutions should have interest rate risk measurement systems that capture all material sources of interest rate risk. Measurement systems should utilize accepted financial concepts and risk measurement techniques and should incorporate sound assumptions and parameters. Management should understand the assumptions underlying their systems. Ideally, institutions should have interest rate risk measurement systems that assess the effects of interest rate changes on both earnings and economic value.

An institution's interest rate risk measurement system should address all material sources of interest rate risk including repricing, yield curve, basis and option risk exposures. In many cases, the interest rate sensitivity of an institution's mortgage portfolio will dominate its aggregate risk profile. While all of an institution's holdings should receive appropriate treatment, instruments whose interest rate sensitivity may significantly affect the institution's overall results should receive special attention, as should instruments whose embedded options may have a significant effect on the results.

The usefulness of any interest rate risk measurement system depends on the validity of the underlying assumptions and accuracy of the methodologies. In designing interest rate risk measurement systems, institutions should ensure that the degree of detail about the nature of their interest-sensitive positions is commensurate with the complexity and risk inherent in those positions.

Management should assess the significance of the potential loss of precision in determining the extent of aggregation and simplification used in its measurement approach.

Institutions should ensure that all material positions and cash flows, including off-balance-sheet positions, are incorporated into the measurement system. Where applicable, these data should include information on the coupon rates or cash flows of associated instruments and contracts. Any adjustments to underlying data should be documented, and the nature and reasons for the adjustments should be understood. In particular, any adjustments to expected cash flows for expected prepayments or early redemptions should be documented.

Key assumptions used to measure interest rate risk exposure should be re-evaluated at least annually. Assumptions used in assessing the interest rate sensitivity of complex instruments should be documented and reviewed periodically.

Management should pay special attention to those positions with uncertain maturities, such as savings and time deposits, which provide depositors with the option to make withdrawals at any time. In addition, institutions often choose not to change the rates paid on these deposits when market rates change. These factors complicate the measurement of interest rate risk, since the value of the positions and the timing of their cash flows can change when interest rates vary. Mortgages and mortgage-related instruments also warrant special attention due to the uncertainty about the timing of cash flows introduced by the borrowers' ability to prepay.

IRR Limits. Institutions should establish and enforce risk limits that maintain exposures within prudent levels. Management should ensure that the institution's interest rate risk exposure is maintained within self-imposed limits. A system of interest rate risk limits should set prudent boundaries for the level of interest rate risk for the institution and, where appropriate, should also provide the capability to set limits for individual portfolios, activities, or business units.

Limit systems should also ensure that positions exceeding limits or predetermined levels receive prompt management attention.

Senior management should be notified immediately of any breaches of limits. There should be a clear policy as to how senior management will be informed and what action should be taken. Management should specify whether the limits are absolute in the sense that they should never be exceeded or whether, under specific circumstances, breaches of limits can be tolerated for a short period of time.

Limits should be consistent with the institution's approach to measuring interest rate risk.

Interest rate risk limits should be tied to specific scenarios for movements in market interest rates and should include "high stress" interest rate scenarios.

Limits may also be based on measures derived from the underlying statistical distribution of interest rates, using "earnings-at-risk" or "value-at-risk" techniques.

Stress Testing. Institutions should measure their risk exposure under a number of different scenarios and consider the results when establishing and reviewing their policies and limits for interest rate risk.

Institutions should use interest rate scenarios that are sufficiently varied to encompass different stressful conditions.

Stress tests should include "worst case" scenarios in addition to more probable scenarios. Possible stress scenarios might include abrupt changes in the general level of interest rates, changes in the relationships among key market rates (i.e., basis risk), changes in the slope and the shape of the yield curve (i.e., yield curve risk), changes in the liquidity of key financial markets or changes in the volatility of market rates. In conducting stress tests, special consideration should be given to instruments or positions that may be difficult to liquidate or offset in stressful situations. Management and the board of directors should periodically review both the design and the results of such stress tests and ensure that appropriate contingency plans are in place.

Market Risk Monitoring and Reporting. Institutions should have accurate, informative, and timely management information systems, both to inform management and to support compliance with board policy. Reports for monitoring and controlling market risk exposures should be provided on a timely basis to the board of directors and senior management.

The board of directors and senior management should review market risk reports (i.e., interest rate risk reports and reports on investment and derivatives activities) on a regular basis (at least quarterly). While the types of reports prepared for the board and various levels of management will vary, they should include:

- Summaries of the institution's aggregate interest rate risk and other market risk exposures including results of stress tests;
- Reports on the institution's compliance with risk management policies, procedures, and limits;
- Reports comparing the institution's level of interest rate risk with other savings associations using industry data provided by OTS;
- A summary of any major differences between the results of the OTS Net Portfolio Value Model and the institution's own results; and
- Summaries of internal and external reviews of the institution's risk management framework, including reviews of policies, procedures, risk measurement and control systems, and risk exposures.

D. Internal Controls

Institutions should have an adequate system of internal controls over their interest rate risk management process. A fundamental component of the internal control system involves regular independent reviews and evaluations of the effectiveness of the system.

Internal controls should be an integral part of an institution's risk management system. The controls should promote effective and efficient operations, reliable financial and regulatory reporting, and compliance with relevant laws, regulations, and institutional policies. An effective system of internal control for interest rate risk should include:

- effective policies, procedures, and risk limits;
- an adequate process for measuring and evaluating risk;
- adequate risk monitoring and reporting systems;
- a strong control environment; and
- continual review of adherence to established policies and procedures.

Institutions are encouraged to have their risk measurement systems reviewed by knowledgeable outside parties. Reviews of risk measurement systems should include assessments of the assumptions, parameter values, and methodologies used. Such a review should evaluate the system's accuracy and recommend solutions to any identified weaknesses. The results of the review, along with any recommendations for improvement, should be reported to senior management and the board, and acted upon in a timely manner.

Institutions should review their system of internal controls at least annually. Reviews should be performed by individuals independent of the function being reviewed. Results should be reported to the board. The following factors should be considered in reviewing an institution's internal controls:

- Are risk exposures maintained at prudent levels?
- Are the risk measures employed appropriate to the nature of the portfolio?
- Are board and senior management actively involved in the risk management process?
- Are policies, controls, and procedures well documented?
- Are policies and procedures followed?
- Are the assumptions of the risk measurement system well documented?
- Are data accurately processed?
- Is the risk management staff adequate?
- Have risk limits been changed since the last review?
- Have there been any significant changes to the institution's system of internal controls since the last review?
- Are internal controls adequate?

E. Analysis and Stress Testing of Investments and Financial Derivatives

Management should undertake a thorough analysis of the various risks associated with investment securities and derivative instruments prior to making an investment or taking a significant position in financial derivatives and periodically thereafter. Major initiatives involving investments and derivatives transactions should be approved in advance by the board of directors or a committee of the board.

As a matter of sound practice, prior to taking an investment position or initiating a derivatives transaction, an institution should:

- Ensure that the proposed investment or derivative transaction is legally permissible for a savings institution.
- Review the terms and conditions of the investment instrument or derivative contract.
- Ensure that the proposed transaction is allowable under the institution's investment or derivatives policies.
- Ensure that the proposed transaction is consistent with the

institution's portfolio objectives and liquidity needs.

- Exercise diligence in assessing the market value, liquidity, and credit risk of any investment security or derivative instrument.
- Conduct a price sensitivity analysis of the security or financial derivative prior to taking a position.
- Conduct an analysis of the incremental effect of any proposed transaction on the overall interest rate sensitivity of the institution.

Prior to taking a position in any complex securities or financial derivatives, it is important to have an understanding of how the future direction of interest rates and other changes in market conditions could affect the instrument's cash flows and market value. In particular, management should understand:

- the structure of the instrument;
- the best-case and worst-case interest rates scenarios for the instrument;
- how the existence of any embedded options or adjustment formulas might affect the instrument's performance under different interest rate scenarios;
- the conditions, if any, under which the instrument's cash flows might be zero or negative;
- the extent to which price quotes for the instrument are available;
- the instrument's universe of potential buyers; and
- the potential loss on the instrument (i.e., the potential discount from its fair value) if sold prior to maturity.

F. Evaluation of New Products, Activities, and Financial Instruments

Involvement in new products, activities, and financial instruments (assets, liabilities, or off-balance sheet contracts) can entail significant risk, sometimes from unexpected sources. Senior management should evaluate the risks inherent in new products, activities, and instruments and ensure that they are subject to adequate review procedures and controls.

Products, activities, and financial instruments that are new to the organization should be carefully reviewed before use or implementation. The board, or an appropriate committee, should approve major new initiatives involving new products, activities, and financial instruments.

Prior to authorizing a new initiative, the review committee should be provided with:

- a description of the relevant product, activity, or instrument;
- an analysis of the appropriateness of the proposed initiative in relation to the institution's overall financial condition and capital levels; and
- a description of the procedures to be used to measure, monitor, and control the risks of the proposed product, activity, or instrument.

Management should ensure that adequate risk management procedures are in place in advance of undertaking any significant new initiatives.

Appendix C: Excerpt From Interagency Uniform Financial Institutions Rating System[15]

Sensitivity to Market Risk

The sensitivity to market risk component reflects the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or economic capital. When evaluating this component, consideration should be given to: management's ability to identify, measure, monitor, and control market risk; the institution's size; the nature and complexity of its activities; and the adequacy of its capital and earnings in relation to its level of market risk exposure.

For many institutions, the primary source of market risk arises from non-trading positions and their sensitivity to changes in interest rates. In some larger institutions, foreign operations can be a significant source of market risk. For some institutions, trading activities are a major source of market risk.

Market risk is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The sensitivity of the financial institution's earnings or the economic value of its capital to adverse changes in interest rates, foreign exchange rates, commodity prices, or equity prices.
- The ability of management to identify, measure, monitor, and control exposure to market risk given the institution's size, complexity, and risk profile.
- The nature and complexity of interest rate risk exposure arising from non-trading positions.
- Where appropriate, the nature and complexity of market risk exposure arising from trading and foreign operations.

Ratings

1. A rating of 1 indicates that market risk sensitivity is well controlled and that there is minimal potential that the earnings performance or capital position will be adversely affected. Risk management practices are strong for the size, sophistication, and market risk accepted by the institution. The level of earnings and capital provide substantial support for the degree of market risk taken by the institution.

2. A rating of 2 indicates that market risk sensitivity is adequately controlled and that there is only moderate potential that the earnings performance or capital position will be adversely affected. Risk management practices are satisfactory for the size, sophistication, and market risk accepted by the institution. The level of earnings and capital provide adequate support for the degree of market risk taken by the institution.

3. A rating of 3 indicates that control of market risk sensitivity needs improvement or that there is significant potential that the earnings performance or capital position will be adversely affected. Risk management practices need to be improved given the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital may not adequately support the degree of market risk taken by the institution.

4. A rating of 4 indicates that control of market risk sensitivity is unacceptable or that there is high potential that the earnings performance or capital position will be adversely affected. Risk management practices are deficient for the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital provide inadequate support for the degree of market risk taken by the institution.

5. A rating of 5 indicates that control of market risk sensitivity is unacceptable or that the level of market risk taken by the institution is an imminent threat to its viability. Risk management practices are wholly inadequate for the size, sophistication, and level of market risk accepted by the institution. [Emphasis added.]

Appendix D: Glossary

Alternate Interest Rate Scenarios: Scenarios that depict hypothetical shocks to, or movements in, the current term structure of interest rates. As currently utilized in the OTS NPV Model, there are eight alternate interest rate scenarios, depicting shocks in which the term structure has been changed by the same amount at all maturities. The changes currently depicted in the alternate scenarios range from—400 basis points to +400 basis points. (Institutions need only provide board limits for scenarios ranging from −300 to +300 basis points.)

Base Case: A term sometimes used for the prevailing term structure of interest rates (i.e., the current interest rate scenario). Also known as the "pre-shock" or "no shock" scenario, one not subjected to a change in interest rates. This is in contrast to, say, the plus or minus 100 basis point rate shock scenarios.

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[15] 61 Fed. Reg. 67029 (1996).

CAMELS Rating System: A uniform ratings system, applied to all banks, thrifts, and credit unions, which provides an indication of an institution's overall condition.. The six factors of the CAMELS rating system represent Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk. Quantitative and qualitative factors are used to establish a rating, ranging from 1 to 5 for each CAMELS component rating. A rating of 1 represents the best rating and least degree of concern, while a 5 rating represents the worst rating and greatest degree of concern. The six CAMELS component ratings are used in developing the overall Composite Rating for an institution.

Complex Securities: The term "complex security" includes any collateralized mortgage obligation ("CMO"), real estate mortgage investment conduit ("REMIC"), callable mortgage pass-through security, stripped-mortgage-backed-security, structured note, and any security not meeting the definition of an "exempt security." An "exempt security" includes non-callable, "plain vanilla" instruments of the following types: (1) mortgage-pass-through securities, (2) fixed-rate securities, and (3) floating-rate securities.

Composite Rating: A rating that summarizes an institution's overall condition under the CAMELS rating system. This overall rating is expressed through a numerical scale of 1 through 5, with 1 representing the best rating and least degree of concern, and 5 representing the worst rating and highest degree of concern.

Financial Derivative: Any financial contract whose value depends on the value of one or more underlying assets, indices, or reference rates. The most common types of financial derivatives are futures, forward commitments, options, and swaps. A mortgage derivative security, such as a collateralized mortgage obligation or a real estate mortgage investment conduit, is not a financial derivative under this definition.

Interest Rate Risk: The vulnerability of an institution's financial condition to movements in interest rates. Changes in interest rates affect an institution's earnings and economic value.

Interest Rate Risk Exposure Report: A quarterly report, sent by OTS to all institutions that file Schedule CMR, presenting the results of the OTS NPV Model for each institution.

Interest Rate Sensitivity Measure: The magnitude of the decline in an institution's NPV Ratio that occurs as a result of an adverse rate shock of 200 basis points. The measure equals the difference between an institution's Pre-shock NPV Ratio and its Post-shock NPV Ratio and is expressed in basis points. In general, institutions that have significant imbalances between the interest rate sensitivity (i.e., duration) of their assets and liabilities tend to have high Interest Rate Sensitivity Measures.

MVPE: The abbreviation for Market Value of Portfolio Equity, a term previously used for Net Portfolio Value. This term is no longer used by OTS because some of the factors used to determine NPV may not be market based.

NPV: The abbreviation for Net Portfolio Value which equals the present value of expected net cash flows from existing assets minus the present value of expected net cash flows from existing liabilities plus the present value of net expected cash flows from existing off-balance sheet contracts.

Post-shock NPV Ratio: Along with the Sensitivity Measure, one of the two primary measures of interest rate risk used by OTS. The ratio is determined by dividing an institution's NPV by the present value of its assets, where both the numerator and denominator are measured after a 200 basis point increase or decrease in market interest rates, whichever produces the smaller ratio. A higher Post-shock Ratio indicates a lower level of interest rate risk. Also sometimes referred to as the "Exposure Measure."

Pre-shock NPV Ratio: Ratio determined by dividing an institution's NPV by the present value of its assets, where both the numerator and denominator are measured in the base case. The ratio is a measure of an institution's economic capitalization. It is also referred to as the "Base Case NPV Ratio."

Prompt Corrective Action: A system of enforcement actions, established under the Federal Deposit Insurance Corporation Improvement Act of 1991, that regulators are required to take against insured institutions whose capital falls below certain critical thresholds.

"S" Component Rating: see "Sensitivity to Market Risk Component Rating."

Schedule CMR: A section of the Thrift Financial Report that is used by OTS to collect financial data for the OTS NPV Model.

Sensitivity Measure: see "Interest Rate Sensitivity Measure."

Sensitivity to Market Risk" Component Rating: The component rating in the CAMELS rating system designed to express the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or economic capital. The rating is based on two components: an institution's level of market risk and the quality of its practices for managing market risk. The "S" component rating.

Shocked Rate Scenarios: see "Alternate Interest Rate Scenarios."

Structured Notes: Structured notes include fixed-income securities with embedded options or derivative-like features where the bond's coupon, average life, or redemption value is dependent on a reference rate, an index, or formula. The term "structured notes" includes but is not limited to: dual-indexed floaters, de-leveraged floaters, inverse floaters, leveraged inverse floaters, ratchet floaters, range floaters, leveraged cap floaters, stepped cap/floor floaters, capped callable floaters, stepped spread floaters, multi-step bonds, indexed amortization notes, etc. Standard, non-leveraged, floating rate securities (i.e., those whose interest rate is not based on a multiple of the index) are not considered structured notes for purposes of this Thrift Bulletin.

Uniform Financial Institutions Rating System: see "CAMELS Rating System" and "Composite Rating."

Value-at-risk: A measure of market risk. An estimate of the maximum potential loss in economic value over a given period of time for a given probability level.

Dated: November 20, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–31672 Filed 11–30–98; 8:45 am]

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201 et al.

Prescription Drug Product Labeling; Medication Guide Requirements; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 208, 314, 601, and 610

[Docket No. 93N–0371]

RIN 0910–AA37

Prescription Drug Product Labeling; Medication Guide Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing requirements for the distribution of patient labeling for selected prescription human drug and biological products used primarily on an outpatient basis. The agency is requiring the distribution of patient labeling, called Medication Guides, for certain products that pose a serious and significant public health concern requiring distribution of FDA-approved patient medication information. The intent of this action is to improve public health by providing information necessary for patients to use their medications safely and effectively. FDA believes that this program will result in direct improvements in the safe and effective use of prescription medications.

DATES: This regulation is effective June 1, 1999. Written comments on the information collection requirements should be submitted by February 1, 1999.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Nancy M. Ostrove, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828, (Ostrove@CDER.FDA.GOV).
Toni M. Stifano, Center for Biologics Evaluations and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3028, (Stifano@A1.CBER.FDA.GOV).

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 24, 1995 (60 FR 44182), FDA published a proposed rule entitled, "Prescription Drug Product Labeling; Medication Guide Requirements," under which the agency would encourage development and distribution of written patient medication information by the private sector. This information was intended to supplement oral counseling from health care professionals. The agency proposed distribution goals and performance standards for this information. The agency proposed to survey the marketplace in the years 2000 and 2006 to determine how much patient medication information is being distributed and whether it is useful. The 1995 proposal sought comment on two approaches FDA could take if the private sector's voluntary program failed to reach the predetermined goals.

The proposal also included provisions that would permit the agency to require FDA-approved written patient information (Medication Guides) for distribution with prescription drug and biological products that pose a "serious and significant public health concern requiring immediate distribution of FDA-approved patient medication information." (For the purposes of this document, the shorter term "serious and significant concern" will be used to refer to those drug products that FDA determines require Medication Guides for safe and effective use by the public.) The agency indicated that it would use this authority only on limited occasions.

In the proposal, FDA stated its position that patient information about the risks and benefits of prescription drug and biological products is necessary for patients to use these products safely and effectively. The overall patient medication information program was proposed to provide patients with the information needed to improve their use of prescription drug and biological products. Furthermore, FDA demonstrated in the preamble to the proposed rule that the program could result in substantial health care cost savings by reducing the harm caused by inappropriate drug use and enhancing the benefits of drugs by facilitating their proper use.

FDA originally provided 90 days for public comment, and, in response to requests, extended the comment period for an additional 30 days until December 22, 1995 in the **Federal Register** of November 24, 1995 (60 FR 58025). In the **Federal Register** of January 30, 1996 (61 FR 2971), the agency announced a public workshop to be held on February 14 and 15, 1996, to discuss issues related to defining the useful information that would be provided in the voluntary program. The agency also sought written comments on issues raised at the workshop. Comments were accepted until March 6, 1996.

As the agency was reviewing these and other comments on the proposed rule, Congress enacted legislation regarding patient labeling. This legislation, section 601 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, for the fiscal year ending September 30, 1997 (Pub. L. 104–180) (the Appropriations Act), established a voluntary private-sector process under which national organizations representing health care providers, consumers, pharmaceutical companies, and other interested parties were to collaborate in the development of a long-range plan to achieve the goals of FDA's proposed rule concerning patient labeling as previously described. The legislation adopted the distribution and information quality goals of the proposed rule. The law further required that the plan developed by these organizations be submitted to the Secretary of Health and Human Services (the Secretary) for acceptance, rejection, or modification before implementation. The collaborative process established by this legislation has been completed and the long-range private-sector plan has been accepted by the Secretary.

While section 601 of the Appropriations Act limits the authority of the Secretary to implement FDA's proposed rule regarding written information voluntarily provided to consumers, there is specific legislative history that makes it clear that section 601 does not preclude FDA from using its existing authority to implement a mandatory program for the small number of products that pose a "serious and significant concern" and require distribution of patient information. That legislative history states that section 601:

> [i]s not to be construed as prohibiting the FDA from using its existing authority or regulatory authority to require as part of the manufacturers' approved product labeling the dispensing of written information inserts to consumers on a case-by-case basis with select prescription drugs to meet certain patient safety requirements.

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Bill, 1997, S. Rept. 104–317, 104th Cong., 2d sess., p. 132, July 11, 1996.

In light of this legislation, the agency is deleting the provisions of the proposed rule that dealt with the private sector voluntary program, and is limiting this final rule to the mandatory program covering products of "serious and significant concern." Because the voluntary program is not part of this final rule, the agency will not summarize and respond to comments relating only to those provisions. Instead, this document will focus on the comments concerning the program for products of "serious and significant concern."

The final rule incorporates most of the provisions of the proposed rule regarding the mandatory program for products of "serious and significant concern" and provides additional clarification regarding how the agency would identify products that require a Medication Guide. Additional changes have been made that reflect the narrowed focus of the final rule. Highlights of the final rule are summarized, followed by a summary and discussion of the comments.

II. Highlights of the Final Rule

The final rule establishes a patient medication information program under which Medication Guides will be required for a small number of products that FDA determines pose a serious and significant public health concern requiring distribution of FDA-approved patient information necessary for the product's safe and effective use. FDA anticipates that an average, no more than 5 to 10 products per year would require such information.

The major provisions of the medication information program for products of "serious and significant concern" and the changes from the proposed rule follow.

A. General Provisions (Part 208, Subpart A)

1. Scope and Purpose

A number of changes have been made to the provisions in part 208 (21 CFR part 208) to reflect the narrowed focus of this final regulation in response to section 601 of the Appropriations Act, and to clarify its purpose and scope. Section 208.1(a) has been changed to indicate that the final regulation does not cover voluntarily distributed patient information for most prescription drugs, but rather covers products of "serious and significant concern." The phrase "that FDA determines pose a serious and significant public health concern requiring distribution of FDA-approved patient information" was added to § 208.1(a) to accomplish this change.

Section 208.1(a) of the 1995 proposed rule stated that the requirements applied to products "administered primarily on an outpatient basis without direct supervision by a health professional." FDA has changed the term "administered" in this context to the term "used," because "administered" is likely to be misinterpreted as involving administration by another individual. In addition, the agency has determined that Medication Guides may, on rare occasions, be required for products of "serious and significant concern" that are used on an inpatient basis or under the supervision of a health professional. This change has been made by moving the word "primarily" to immediately follow the word "applies" in the second sentence of § 208.1(a). In light of this change, the last sentence of proposed § 208.1(a) has been deleted, because it is no longer needed.

Under the proposed rule, the patient information program applied to all new prescriptions, but only upon request by the patient for refill prescriptions. Because of the narrowed focus of this final rule and because the agency believes that the patient information that will be provided in Medication Guides is important to the safe and effective use of a product, it is necessary to require the distribution of a Medication Guide with every prescription for that product. Accordingly, § 208.1(a) has been changed so that patient information required under this part must be provided for all prescriptions of the drug, whether they are new prescriptions or refills and regardless of whether the information is requested by the patient.

Section 208.1(b) as proposed has been deleted because the final regulation no longer covers voluntarily distributed patient information. This change was made because of the enactment of section 601 of the Appropriations Act, which created a process under which national organizations representing consumers, health professionals, pharmaceutical companies, and others developed a plan for the voluntary distribution of patient information. This legislation specifically prohibits the implementation of the proposed rule if a plan acceptable to the Secretary is developed and submitted within the statutory time period. The accompanying legislative history makes it clear, however, that the agency was not precluded from requiring FDA-approved patient leaflets for drugs of serious and significant concern under its existing authority. New § 208.1(b) describes the purpose of patient labeling required under the final regulation.

The information will be required if the agency determines that it is necessary to patients' safe and effective use of the drug product. The agency added this provision to clarify the regulations when it will require Medication Guides and to reflect the agency's intention to make the decision to require a Medication Guide carefully and on a case-by-case basis. This approach to Medication Guides is consistent with the legislative history of the Appropriations Act discussed earlier in this preamble. The new language in § 208.1(b) also helps differentiate required Medication Guides from the voluntary private sector program.

Section 208.1(c) as proposed has been deleted. Its primary purpose was to provide a standard against which voluntarily distributed patient information would be evaluated. However, the voluntary program is no longer part of this regulation. The agency believes that the substance of this provision is valuable, however, and has therefore changed § 208.20, Content and format of a Medication Guide, to include all of the elements of proposed § 208.1(c). These elements are also closely related to the criteria adopted during the collaborative private-sector process.

New § 208.1(c) of the final rule describes when FDA may require a Medication Guide. Patient labeling will be required if the agency determines that one or more of the following circumstances exists:

(1) The drug product is one for which patient labeling could help prevent serious adverse effects.

(2) The drug product is one that has serious risk(s) (relative to benefits) of which patients should be made aware because information concerning the risk(s) could affect patients' decision to use, or to continue to use, the product.

(3) The drug product is important to health and patient adherence to directions for use is crucial to the drug's effectiveness. FDA believes that these circumstances will apply to a very small group of products. These circumstances have been clarified to address comments that they were overly broad.

Proposed § 208.1(d) has been deleted as unnecessary because the final regulation applies only to "serious and significant" products.

2. Definitions

Section 208.3 contains definitions of important terms used in part 208. Several changes have been made in this section to help clarify the Medication Guide program. Numerous comments conveyed confusion about what constitutes a "Medication Guide," for example, whether the term refers to voluntary private sector patient information or mandated FDA-approved patient information. Therefore, in the final rule new § 208.3(h) defines "Medication Guide" to mean FDA-approved patient labeling conforming to

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the specifications set forth in part 208 and other applicable regulations. This term now applies only to patient information required for products of "serious and significant concern."

The agency on its own initiative added new § 208.3(e) to include a definition of the term "drug product." The purpose of adding this new definition is to make it clear that the term, as it is used in this final regulation, applies to the finished dosage form of both drug and biological products. Because of the addition of this definition, the subsequent provisions in § 208.3 have been renumbered.

In preparing the final rule, the agency revised the definition of the "manufacturer" of a drug product to be consistent with the definition of the "manufacturer" of a biological product. The definition of a "manufacturer" in the proposed rule inadvertently referred only to the person who actually produced the drug product, while the definition for biologicals included both the actual producer of the product as well as the person who is an applicant for a license where the applicant is responsible for complying with the product and establishment standards. This latter meaning of the term corresponds most closely to the definition of an "applicant" as that term is used in the new drug regulations in part 314 (21 CFR part 314). Therefore, FDA has included the definition of "applicant" in § 314.3(b) in the definition of a drug product manufacturer in § 208.3(g). It is important for two reasons that both meanings of "manufacturer" be included in the definition of the term for purposes of this final rule. First, FDA intends that each person potentially or actually in the chain of distribution of a product be subject to the distribution requirements in § 208.24 and for that reason both the producer of the product and the person responsible for the product application must be included. Second, for purposes of identifying the person who is responsible for the content and format requirements in § 208.20 and the requirement of obtaining FDA approval of the Medication Guide in § 208.24(a), the agency wishes to clarify that it is the person who is responsible for the product application.

The agency has also added a definition of the term "packer" in new § 208.3(i). Packers are subject to the provisions of this final rule and a definition was needed to distinguish a packer from a manufacturer or distributor.

Section 208.3(k) of this final regulation provides a definition of the terms "serious risk" and "serious adverse effect" that states that these terms mean an adverse drug experience, or the risk of such an experience, as that term is defined elsewhere in the regulations governing drug and biological products. The purpose of adding this definition is to further narrow the scope of this regulation in response to many comments complaining of the breadth of the agency's proposed criteria for identifying products of "serious and significant concern." (See previous discussion of § 208.1 (b) and (c).)

B. General Requirements for a Medication Guide (Part 208, Subpart B)

1. Content and Format of a Medication Guide

Section 208.20 now contains the requirements for both the content and format of Medication Guides. This section sets forth the specific categories of information about a product that a Medication Guide shall contain, as well as statements that shall appear on a Medication Guide. The agency has generally retained from the proposal the text and order of the headings under which the information shall appear and has also now grouped the information under the appropriate heading. This section also includes specifications for minimum letter height or type size, legibility, and presentation considerations. The combined provision is more concise and the reorganization makes the requirements clearer. The agency notes that the content and format criteria in the final rule are virtually the same as those adopted in the private sector plan discussed earlier.

The order specified in § 208.20(b) starts with a presentation of the most important information patients should know about the product to use it safely and effectively, i.e., why the product poses a serious and significant public health concern requiring distribution of FDA-approved written patient information. This section is being included in place of the summary section originally proposed by FDA. The agency made this change because it believes that it is redundant to include in such a short document a summary section containing information elaborated in other sections.

This section is followed by sections addressing the product's indications for use, contraindications, directions for use, precautions, and possible side effects. The final rule does not specify where in this order other information (e.g., storage instructions and specific instructions for using products that are not orally administered (e.g., injectables, patches)) may be placed. As reflected in § 208.20(b)(9), the rule permits the insertion of additional headings or subheadings as appropriate for specific Medication Guides.

Other changes have been made in § 208.20 of the final rule. As mentioned above, the agency believes that the criteria for determining useful information that were proposed in § 208.1(c) are important and has retained them in the final rule. All of the criteria that Medication Guides must meet, however, are now contained in a single section of this final rule (§ 208.20(a)).

The agency on its own has added language to § 208.20(a)(2) to reinforce the fact that a Medication Guide, while based on the approved labeling, should be understandable to laypersons and therefore need not use the identical language in the approved labeling.

Other small changes have been made in § 208.20 as well. Section 208.20(a)(7) and (b)(1) now require that a Medication Guide contain the established or proper name of the drug in order to recognize the terminology used for biologicals. (See 21 CFR 600.3(k)). The introductory sentence of § 208.20(b) has been changed to make it clear that only the headings that have relevance to the drug product should be included in a Medication Guide. Other changes have been made throughout § 208.20(b) to emphasize that only specific, important information about the drug product should be included in a Medication Guide. These changes are being made so that the effectiveness of the patient labeling is not reduced by its being too long or including irrelevant information.

FDA has added the following language to § 208.20(b)(3) relating to the product's indications: "In appropriate circumstances, this section may also explain the nature of the disease or condition the drug product is intended to treat, as well as the benefit(s) of treating the condition." This addition is designed to allow, when relevant, a fuller discussion that could include the benefits of treatment.

Finally, FDA has made two changes to § 208.20(b)(8). First, § 208.20(b)(8)(ii) has been changed to make it clear that a Medication Guide must contain a statement that a drug product should not be used for a condition other than that for which it is prescribed. This change is made to avoid any confusion with the statement that drugs may sometimes be prescribed for uses not described in the Medication Guide. Second, § 208.20(b)(8)(iii) has been changed to make it clear that the name and address of the dispenser may be included in a Medication Guide. The name and address of the manufacturer, distributor, or packer of a drug product that is not also a biological product or of the manufacturer or distributor of a drug product that is also a biological product is required. This change was made to correct a drafting error in proposed § 208.20(b)(8)(iii) that would have allowed the dispenser's name alone to appear on a Medication Guide.

2. Distributing and Dispensing a Medication Guide

Section 208.24 sets forth the requirements for distributing and dispensing Medication Guides. The agency has made several changes to this section to make clear the responsibilities of each person distributing a drug product subject to this part. The agency has added new § 208.24(a) that explicitly requires the manufacturer to obtain FDA approval of the Medication Guide before it can be distributed. Although this requirement had been stated indirectly in the proposed rule regarding products of "serious and significant concern," the agency believed it should be stated clearly in the final rule. Because the majority of Medication Guides will be required at the time of approval, it is appropriate for FDA to approve the text of both patient labeling and professional labeling at the same time.

Section 208.24(b) states the manufacturer's basic responsibility for ensuring that Medication Guides are available for distribution to patients. Under § 208.24(b), a manufacturer shall provide to distributors, packers, or authorized dispensers to which it ships the drug product, either Medication Guides in sufficient numbers, or the means to produce Medication Guides in sufficient numbers, to permit the authorized dispenser to provide a Medication Guide to each patient who receives a prescription for the drug product. The agency generally expects that the "means to produce" shall include a computer file of the Medication Guide for use with a computerized patient medication information program. Section 208.24(c) states the responsibility of the distributor or packer that receives Medication Guides, or the means to produce Medication Guides, to provide them to each authorized dispenser to whom it ships a container of drug product.

FDA has changed § 208.24 in several places to make it clear that packers are covered by this final regulation. It appears that packers had been inadvertently omitted from the proposal. The change is intended to make it clear that, in situations where a Medication Guide is distributed with the product, each person in the distribution chain has the responsibility of ensuring that the Medication Guide remains with the product so that it can reach the authorized dispenser.

FDA has also deleted the phrase "finished dosage form" from several places in § 208.24 of this rule. This phrase is no longer needed because the agency has added a definition of "drug product" in § 208.3(e) that clarifies that the term refers to products in finished dosage form.

Section 208.24 has been changed in several places to reflect the fact that Medication Guides must be dispensed with every prescription for a drug product subject to this part, and not just with new prescriptions or if requested by a patient for a refill prescription. This change is needed because it will be necessary for patients to have the information in a Medication Guide in order to use a product of "serious and significant concern" safely and effectively. It is therefore important for patients to receive this information each time they obtain the drug product.

Some comments noted that dispensers may not know if Medication Guides are provided with the product, affixed on the container, or contained within the package. Therefore, in the final rule, a new § 208.24(d) has been created that states that the label of each container of drug product (which now, because of the added definition of drug product, includes both large volume containers of finished dosage form and unit-of-use containers) shall instruct the authorized dispenser to provide a Medication Guide to each patient to whom the drug product is dispensed, and shall state how the Medication Guide is provided. This new section also requires that these statements be made in a prominent and conspicuous manner. The agency on its own initiative has amended both § 208.24(d) and the regulations governing labeling of biological products to make clear how manufacturers can comply with the requirements of § 208.24(d) if a container label is too small for the required statement. (See § 610.60(a)(7).)

Section 208.24(c) of the proposed rule required the manufacturer and distributor to provide a Medication Guide with each unit-of-use container intended to be dispensed to a patient. FDA has omitted this paragraph from the final rule. This provision is not necessary because the responsibility to provide Medication Guides to the authorized dispenser is clear from the other changes to § 208.24. Further, FDA wishes to provide manufacturers, distributors, and packers flexibility in the ways that they can meet that responsibility. If a manufacturer chooses to provide Medication Guides electronically for a product in a unit-of-use container, they may now do so because of this change.

Proposed § 208.24(d) stated that the requirements of part 208 could be met by the manufacturer, distributor, or any other person acting on behalf of the manufacturer or distributor. This section further provided that a manufacturer or distributor could satisfy the requirements of part 208 with a Medication Guide printed by a distributor or authorized dispenser. This provision was intended to enable manufacturers and distributors to make use of third-party information systems that could simplify the process of dispensing patient information leaflets to patients. The proposal envisioned that third parties would most likely both create and distribute Medication Guides to authorized dispensers under the voluntary private-sector program. Proposed § 208.24(d) has been deleted from this final rule. The agency believes that it is no longer necessary because the final rule applies only to Medication Guides for products of "serious and significant concern" that will be approved by the agency and will be part of these products' approved labeling.

Section 208.24(f) was modified in response to several comments. A change has been made to make it clear that wholesalers, as well as authorized dispensers, are not subject to section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) that requires registration of producers of drugs and listing of drugs in commercial distribution if they change the container, wrapper, or labeling of any drug product, as long as the change is due solely to an act performed under part 208.

3. Exemptions and Deferrals

Section 208.26 provides the circumstances under which there may be exemptions from, or deferrals of, content and format requirements for Medication Guides, and exemption from the distribution of Medication Guides to patients under certain circumstances.

Proposed § 208.26(b) provided, in part, that a licensed practitioner or an authorized dispenser could determine that it is not in the best interests of a patient to receive a Medication Guide. FDA has changed this provision to allow only the licensed practitioner who prescribes a drug product to direct that a Medication Guide be withheld from a patient.

Section 208.26(b) has also been modified to address concerns about possible perceived interference by FDA in the judgments of health care professionals with respect to withholding a Medication Guide from a patient. The final rule does not contain the proposed sentence that would have required authorized dispensers to provide Medication Guides for a particular product under all circumstances. Consequently, only the patient, and not FDA, can overrule the licensed practitioner's decision to withhold a Medication Guide from that patient.

Section 208.26(c) as proposed provided that a Medication Guide was not required to be dispensed in an emergency, or where the manufacturer, distributor, or authorized dispenser did not have a Medication Guide available and could document a good faith effort to provide one. Section 208.26(d) as proposed set forth a small business exemption for certain authorized dispensers. However, this exemption only applied to the broad comprehensive program of distribution of patient information. It did not apply to Medication Guides for products of "serious and significant" concern.

The agency has deleted both proposed § 208.26(c) and (d) from this final rule. FDA does not believe that such exemptions are appropriate for Medication Guides that are required for a very small number of products of "serious and significant concern" and that provide information necessary to the safe and effective use of the product.

III. Comments on the Proposed Rule

FDA received approximately 100 comments in response to the 1995 proposed rule and the request for comments associated with the February 1996 public workshop. The comments came from individual consumers and consumer organizations, academics, individual pharmacists, physicians, and other health care professionals, health professional associations, trade associations, and prescription drug and biological product manufacturers, attorneys, and others. A number of comments submitted examples of patient information leaflets currently being distributed. Several comments misunderstood the proposed rule and commented as though FDA was seeking to immediately establish a mandatory Medication Guide program to provide patient labeling for all prescription drug and biological products.

A. Patient Information—Legal Authority

1. Some comments stated that the proposal regulates the professional practice of pharmacy, which is the purview of the State boards of pharmacy. The comments stated that FDA cannot extend its statutory authority to regulate product labeling to require that pharmacists distribute information about prescription medications that they dispense. One comment added that this initiative would set a precedent for FDA to impose other regulations on individual health care professionals.

Both the proposal and the final rule seek to assure that patients receive information necessary to the safe and effective use of prescription drug products. Federal courts have affirmed FDA's authority to require the dispensing of patient labeling for prescription drugs, and that such requirement does not interfere with the practice of medicine (*Pharmaceutical Mfr. Ass'n (PMA)* v. *FDA*, 484 F. Supp. 1179 (D. Del. 1980), *aff'd per curiam*, 634 F. 2d 106 (3d Cir. 1980)).

In *PMA* v. *FDA*, the court stated that "[t]he fact that the practice of medicine is an area traditionally regulated by the states does not invalidate those provisions of the act which may at times impinge on some aspect of a doctor's practice" (*Id.* at 1188). The court reasoned that the regulation at issue, which required pharmacists and dispensing physicians to distribute patient labeling with prescription drugs containing estrogens, did not forbid a physician from prescribing a prescription drug product, nor did it limit the physician's exercise of professional judgement (*Id.*). Moreover, the court stated that the regulation not only did not limit the information that a physician may provide to his or her patients, but rather it fostered open discussions between physicians and patients (*Id.*). Similarly, this final rule does not inhibit a prescriber or pharmacist from exercising his or her professional judgement, nor does it limit the information that can be given to the patient. The prescriber or pharmacist may add to the information and discuss any aspect of the product with the patient, thereby promoting better communication between health care professionals and their patients.

FDA also does not agree that it lacks statutory authority over written information about prescription drug products that is dispensed by pharmacists. The agency's authority for this final rule was set forth in the proposed rule (60 FR 44182 at 44210). In short, under section 502(a) of the act (21 U.S.C. 352), a drug product is misbranded if its labeling is false or misleading in any particular. Further, under section 505 (d) and (e) of the act (21 U.S.C. 355 (d) and (e)), FDA must refuse to approve an application and may withdraw the approval of an application if the labeling for the drug is false or misleading in any particular.

Section 201(n) of the act (21 U.S.C. 321) describes the concept of "misleading" and specifically provides that in determining whether the labeling of a drug is misleading, there shall be taken into account not only representations or suggestions made in the labeling, but also the extent to which the labeling:

> [f]ails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the [drug] * * * under the conditions of use prescribed in the labeling * * * or under such conditions of use as are customary or usual.

These provisions, along with section 701(a) of the act (21 U.S.C. 371), authorize FDA to issue regulations designed to ensure that patients using prescription drug products receive information that is material with respect to the consequences which may result from the use of these products under labeled conditions. The proposed rule also described the agency's authority for requiring Medication Guides for generic drugs and biological products.

The act authorizes FDA to regulate the marketing of drug products so that they are safe and effective for their intended uses and are properly labeled. As previously stated, FDA has determined that written patient labeling containing information on warnings, precautions, contraindications, side effects, directions for use, and other information is necessary for the safe and effective use of prescription drug products of "serious and significant concern."

2. Several comments contended that FDA lacks the legal authority to request (or require) patient labeling for prescription drug products. One comment cited section 503(b)(2) of the act (21 U.S.C. 353), which expressly exempts prescription medications from the requirement for "adequate directions for use."

FDA does not agree with these comments. As previously discussed in response to comment number 1 of this document, the agency's authority to require patient labeling for prescription drugs has been upheld by the courts (*PMA* v. *FDA*, 484 F. Supp. 1179 (D. Del. 1980), *aff'd per curiam*, 634 F. 2d 106 (3d Cir. 1980)).

Section 503(b)(2) of the act exempts dispensed prescription drugs from the "adequate directions for use" requirements under section 502(f) of the act, but does not prohibit FDA from imposing a requirement under section 502(a) that pharmacists dispense labeling directed to the patient that is intended to promote the safe and effective use of these products. In fact, section 503(b)(2) of the act specifically makes labeling dispensed by pharmacists subject to section 502(a) of the act. Section 503(b)(2) of the act was intended to clarify certain statutory requirements of the 1938 act related to the dispensing of prescription drug products. Section 503(b)(2) of the act was not directed toward limiting the Government's authority to require that pharmacists dispense labeling specifically directed to patients. This interpretation of the act was upheld in *PMA* v. *FDA* at 1185–1186.

3. One comment contended that FDA is proposing to create a new subcategory of prescription drugs—those that pose a "serious and significant public health concern"—and that it lacks statutory authority to do so. The comment contended that the act does not grant FDA the authority to instruct manufacturers after approval of what the contents of their labeling must be.

FDA does not agree that it is creating a new subcategory of prescription drugs. The final rule will merely require that those prescription drugs deemed to pose a serious and significant public health concern be dispensed with patient information to ensure they are used safely and effectively.

Under section 502(a) of the act, a product is misbranded if its labeling is false or misleading in any particular. Section 201(n) of the act provides that labeling may be misleading if it fails to reveal facts that are material with respect to the consequences which may result from the use of the product under customary or usual conditions of use. In addition, under section 505(e) of the act, FDA may withdraw the approval of an application if, on the basis of new information, the labeling for the drug is false or misleading in any particular and was not corrected by the applicant within a reasonable time after written notice from the agency.

Accordingly, manufacturers have a continuing obligation to assure that their drugs' labeling is not false or misleading. Thus, if FDA determines that information about the use of a product should be included in the labeling to prevent the product from being misbranded, it is irrelevant whether FDA makes that determination before or after approval. Oftentimes, after an approved product gains widespread use in the general population, adverse events or other consequences regarding the use of the product are discovered. If the agency were not permitted to revise required labeling based on the product's market experience, its ability to protect the public health would be seriously undermined.

4. One comment noted that FDA has authority to determine that the product as labeled is unsafe or ineffective based on information before the agency, and if it so determines, it may withdraw approval, under section 505(e) of the act. In the case of this rule, the comment stated that FDA has not articulated what procedures it expects to follow to make the determination under section 505(e) of the act.

If such a case arises, FDA will use the procedures set forth in the act and the Public Health Service Act, and their implementing regulations.

5. Several comments stated that FDA has the authority to establish a mandatory patient labeling program only after notice and comment rulemaking on a drug-by-drug basis, and that one regulation requiring patient labeling for all products denies manufacturers due process.

It is well settled that the act authorizes FDA to require patient labeling for prescription drugs (*PMA* v. *FDA*, 484 F. Supp. 1179 (D. Del. 1980), *aff'd per curiam*, 634 F. 2d 106 (3d Cir. 1980); "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Bill, 1997," S. Rept. 104–317, 104th Cong., 2d sess., p. 132, July 11, 1996). FDA does not believe that the Medication Guide rulemaking raises any due process issues. First, FDA provided notice and opportunity for public comment on the proposed program. Second, unlike the proposal, the final rule only applies to prescription products that pose a serious and significant public health concern requiring distribution of necessary patient information. In terms of the specific information required in Medication Guides, sponsors will have an opportunity to discuss the specific content with the agency, to request an exemption or deferral of certain Medication Guide requirements (see § 208.26(a)), and to appeal an agency decision if the sponsor disagrees. (See 21 CFR part 10, Administrative Practices and Procedures.) Third, the agency has set forth the circumstances in which it will determine which products pose a serious and significant public health concern requiring distribution of written patient information (see § 208.1(c)). This decision may be challenged as well.

Although FDA used notice and comment rulemaking to require patient package inserts for certain prescription drug products in the 1960's and 1970's, this proved to be overly cumbersome and impractical. The agency notes that in the 1980's and 1990's, the vast majority of patient package inserts were instituted on a voluntary basis by the sponsor or incorporated as part of the approved product labeling at the time of initial approval of the product. FDA did not engage in notice and comment rulemaking for any of these patient package inserts.

Furthermore, the agency notes that individual notice and comment rulemaking is not required for changes to the labeling of FDA-regulated products. FDA has the statutory authority to regulate prescription product labeling, while holders of new drug applications (NDA's), abbreviated new drug applications (ANDA's), and product license applications (PLA's) have the continuing obligation to ensure that their products' labeling does not cause the product to be misbranded.

Moreover, general patient medication information requirements need not be based on a drug-by-drug identification of specific hazards. Rather, general requirements are amply justified by the data presented in the 1995 proposed rule demonstrating that there is substantial noncompliance by patients with drug therapy, that providing patients with information about drugs increases the degree to which they use them properly, and that existing drug-dispensing mechanisms are not adequately providing the information to patients.

6. Some comments contended that the provision of patient labeling would adversely affect the legal liability of manufacturers, physicians, pharmacists, and other prescribers or dispensers of prescription drug products by abrogating the "learned intermediary doctrine." Some comments urged that FDA provide for Federal preemption of State regulation with respect to civil tort liability claims and other labeling requirements. The comments claimed that without preemption, FDA regulation would encourage "failure to warn" claims and challenges to the adequacy of the patient labeling, especially compared to professional labeling.

Tort liability can not be a major consideration for FDA which must be guided by the basic principles and requirements of the act in its regulatory activities. Nevertheless, FDA does not believe that this rule would adversely affect civil tort liability for several reasons. First, tort liability depends on a number of factors surrounding the manufacture, distribution, sale, and use of a product, and the nature of the injury, and not just on the information provided or not provided to patients. Second, the agency believes that providing patients with written information about the proper use of prescription drug products of "serious and significant concern" could reduce potential liability by improving patient compliance and patient monitoring of serious adverse events, thus decreasing drug-induced injuries and hospitalizations. Written information could also represent a clear opportunity for patients to be made aware that certain risks accompany drug therapies, and that not all serious adverse events are caused by deficiencies in the drug product or actions of the health professional. Third, the written patient medication information provided does not alter the duty, or set the standard of care for manufacturers, physicians, pharmacists, and other dispensers. Fourth, no evidence has been presented that patient labeling currently required by FDA regulation has caused a noticeable change in tort rules affecting civil liability. The courts have not recognized an exception to the "learned intermediary" defense in situations where FDA has required patient labeling, and the courts seem increasingly reluctant to recognize new exceptions to this defense.

FDA believes that the information required under these regulations is necessary for patients to safely and effectively use prescription drug products that have been determined to be of "serious and significant concern." In most cases, the information required by FDA will be such that States will have little reason to impose additional labeling requirements. Additionally, Federal preemption could unduly interfere with the goals and objectives of existing State programs imposed under the Omnibus Budget Reconciliation Act (OBRA) of 1990, which requires that pharmacists offer to counsel Medicaid patients about their prescription drugs. Many States have extended this requirement to all patients who receive prescription drugs, and some States have required that patients receive written medication information. This final rule is intended to complement these State efforts, not replace or hinder them.

FDA does not believe that the evolution of state tort law will cause the development of standards that would be at odds with the agency's regulations. FDA's regulations establish the minimal standards necessary, but were not intended to preclude the states from imposing additional labeling requirements. States may authorize additional labeling but they cannot reduce, alter, or eliminate FDA-required labeling.

To reduce liability concerns brought about by the perception that medication information must be tailored to each individual patient, the final rule has been changed to eliminate references to individual patients. FDA believes that Medication Guides for products of "serious and significant concern" should provide important and specific risk and benefit information that is applicable generally to the largest number of patients. Health care professionals bear the primary responsibility for informing individuals about patient-specific benefits, risks, and directions for using prescription medication.

7. Some comments stated that manufacturers should be responsible only for providing medical and scientific information about their products to health care professionals. Several comments stated that the health care provider is in the best position to supply personalized information because the manufacturer's advertising, medical, or legal departments cannot possibly craft patient-specific information.

As previously indicated, FDA agrees that health care providers who directly communicate with patients are in the best position to educate patients by personalizing oral and written information. However, FDA does not agree that manufacturers should not be responsible for informing patients about their products when circumstances make this important. Thus, manufacturers have been required to provide patients with information about certain products, such as oral contraceptives. Likewise, the final regulations will require that manufacturers develop and disseminate patient information only for selected medications that the agency has determined cannot be used safely and effectively without patient information.

8. Some comments stated that Executive Order 12866 permits FDA to issue only such regulations as are "necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public." Noting FDA's assertion that numerous sources of prescription medication information suitable for distribution to patients have been developed, the comments concluded that the regulation would violate Executive Order 12866.

FDA believes that the final rule is in compliance with Executive Order 12866. To date, the private sector has not succeeded in providing prescription medication information to a large portion of Americans. Section 601 of the Appropriations Act will provide the private sector with sufficient time to meet the legislation's goal of distributing high quality information to a large number of consumers. These goals permit significant variability in the content of patient information. This final regulation applies only to a small number of products that are of "serious and significant concern." Therefore, these regulations are consistent with section 1(b)(8) of Executive Order 12866, which states that "Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt" (58 FR 51735, October 4, 1993). The final rule requires the development of Medication Guides only for those few medications where the need for patient information is critical to proper use of the drugs. In those cases, a voluntary system will not suffice because it would not satisfy the "compelling public need" for good patient guidance.

9. One comment insisted that the entire proposed rule and preamble is too vague and as such cannot be commented on in a meaningful manner.

The agency has reviewed both the proposed rule and public comments and has concluded that the proposed rule is sufficiently clear. Moreover, no other comment stated that the proposed rule was either vague or ambiguous. Despite this consensus, FDA has made changes in the final rule to make the program clearer, in particular more specifically defining the circumstances under which a Medication Guide will be required for a drug product.

B. Medication Guide

10. Several comments argued that providing written information is not an effective intervention, citing a number of studies indicating no significant changes in compliance with medication instructions. Other comments stated that FDA makes a number of "unsubstantiated" assumptions regarding the impact of written material on improved interaction with health care professionals, on decreased unnecessary physician visits, and on improved quality of health care. Some comments argued that FDA erroneously assumes that a direct relationship exists between providing patient information and improved health outcomes.

FDA believes that the research consistently concludes that written information can improve patient knowledge, and that improved patient knowledge about how and when to take medication, and what to expect from taking the medication, contributes to better medication-taking behavior, including regimen adherence. The agency's conclusions are based upon published literature cited in the August 24, 1995, proposal (60 FR 44182 at 44233 through 44235). For example, estimates of hospital admissions caused by preventable adverse drug reactions (ADR's) and noncompliance were based upon a thorough literature review. To achieve the most accurate estimate, FDA relied upon a meta-analysis of this literature and upon additional studies that directly examined the cause of hospitalizations (Ref. 1). Estimates of the number of preventable ADR's, as distinguished from nonpreventable ADR's, were based upon an analysis made by the study's authors.

FDA agrees that health care problems are multifaceted, requiring a number of interventions. FDA maintains, however, that patients' knowledge about their treatments (which is consistently improved by written information) can and will contribute to such improvement. The experience FDA has had with written information (evaluated by Rand and oral contraceptive studies) (Refs. 2 and 3), with voluntarily supplied information (cited in the proposal in 60 FR 44182 at 44187), and the experiences in other nations with patient package inserts (Ref. 4) demonstrate that patient information does generally contribute to improvements in the parameters measured. Although it is true that FDA's analysis makes certain assumptions, the agency believes that they are valid. For example, patients who discuss the utilization of medications in a more informed manner have better quality interactions with a health care professional.

11. Several comments stated that a "one size fits all" mentality will not work because different patients have different needs in acquiring and understanding medication information. In contrast, one comment pointed to research indicating that many groups share preferences for quality information. For example, older and younger adults share preferences regarding how medication information should be organized (which was in a manner similar to the suggested Medication Guide format), and better remember instructions if they are presented in the preferred grouping and order.

The final rule specifies both content and format requirements to ensure that every affected patient receives certain basic information, the content of which is tailored to the individual drug. The modest format requirements are based on the best available research and contain such common sense provisions as a minimum type size generally readable even by older individuals with reduced visual abilities. The content provisions are more extensive and contain every category of information that might be needed for any drug requiring patient labeling. FDA notes, however, that it does not expect each Medication Guide to contain information in all of the categories specified in § 208.20 because not every category will be relevant to every drug. Rather, the agency expects that a Medication Guide will contain only that information that is necessary for the safe and effective use of the particular drug. In recognizing the need for a certain amount of flexibility in the design and content of Medication Guides, the final rule provides in § 208.26(a) that FDA will consider changes to any Medication Guide requirement, except those contained in § 208.20(a)(2) and (a)(6), on the basis that the requirement is inapplicable, unnecessary, or contrary to patients' best interests. FDA has determined that it would never exempt a Medication Guide from the requirements that it be scientifically accurate and based on the product's approved professional labeling, or that it contain the legend identifying it as a Medication Guide. The agency anticipates exempting Medication Guides from specific content requirements that are shown to be inapplicable, unnecessary, or contrary to patients' best interests. The agency believes that this approach provides sufficient standardization to ensure uniform quality of Medication Guides, while also providing the flexibility to allow each Medication Guide to be tailored to the specific product and its population.

FDA agrees with the comment concerning the value of instructions presented in a preferred grouping and order. Accordingly, the final rule continues to require the order of presentation of certain specific headings. This was discussed more fully in section II of this document.

12. Some comments stated that medication information could, through suggestion, cause patients to develop the side effects listed, while other comments disagreed with this view. Some comments cited studies (Ref. 5) indicating that patient leaflets would increase patients' anxiety, causing them either not to initiate therapy or to discontinue it. One comment asserted that previous government-mandated patient leaflets have overemphasized risks, leading to decreased compliance.

The effect of receiving written information on patients' propensity to report side effects has been evaluated in several studies (Refs. 6 and 7), most of which have not found an increase in suggestion-induced side effects. For example, in a study by Morris and Kanouse (Ref. 8), patients taking thiazide medication were asked to report any health problems they experienced. The patients who were given a leaflet mentioning side effects were no more likely to report "health problems" following the initiation of the regimen than those who did not receive a leaflet. However, those who received the leaflet were more likely to say that the health problem was caused by the medication. The authors concluded that the leaflet did not cause suggestion-induced side effects, but did increase the attribution of reactions to the action of the medication. It is unclear how many of these side effects attributions were warranted by the action of the ingested medication or some other factor. However, the authors noted that if leaflets help patients understand the causes of their reactions, patients can better decide how to respond to these reactions.

Although there have been anecdotal reports of increases in anxiety and deterrence in taking medications, FDA is not aware of any studies that document such an effect and therefore disagrees with the comments on this point. An FDA-sponsored study reported by the RAND corporation in 1981 measured the broad-scale impact of a variety of patient leaflets (Ref. 2). The postulated negative effects did not occur. Few patients demonstrated increased anxiety, there was no significant decrease in reported compliance, and few (3 of 2,000) patients returned their medication.

FDA does not agree that patient leaflets already in use have overemphasized risks. These patient leaflets, such as those for oral contraceptives, have been written for medications that pose significant risks to patients. It is essential that the healthy young women who use oral contraceptives be informed that the products can increase the risks of sudden life-threatening outcomes, especially when the risks can be avoided or reduced by the patient (e.g., by not smoking). The agency strives for a balanced description of the benefits and risks of taking the medication in the patient leaflets it approves. To reinforce that balance, the agency has changed § 208.20(b)(3) to allow discussion of the benefits of treatment.

13. Some comments stated that patient information would detrimentally affect patients' relationships with health care providers. These comments

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variously suggested that patient information would reduce incentives for health care providers to communicate with patients, or would inappropriately increase the number or length of patients' contacts with health care providers because the information could confuse or alarm patients. Other comments stated that FDA did not properly emphasize the importance of the physician in the patient encounter, arguing that physicians should decide if and when the patients should receive a Medication Guide.

FDA agrees that health care providers should be the primary source of information about medications for their patients. The purpose of written information is to reinforce and supplement, not to interfere with, the doctor-patient relationship. This final rule is intended to help ensure that patients receive accurate and easy-to-understand information necessary for the safe and effective use of their medications, and to provide pharmacists, physicians, nurses, and other counselors with information that can supplement oral counseling. As discussed in the proposal (60 FR 44182 at 44188 through 44189), virtually all studies indicate that a combination of written and oral information works better than either of these interventions alone to increase patients' knowledge about their medications.

FDA does not believe that written information will be detrimental to patients' relationships with their health care providers. Rather, written information should improve this relationship by improving patients' ability to communicate about their medications. Improved education should also increase patients' ability to take care of themselves and to make more knowledgeable inquiries of health professionals. Research indicates that for most patients the information in the patient leaflet for oral contraceptives did not change the length of patients' visits. It did, however, influence the content of the interaction, focusing more of the interaction on the medication (Ref. 3).

FDA's 1992 and 1994 surveys of people initiating prescription medication treatment (Refs. 9, 10, and 11) indicated that the increased use of written patient information did not decrease the amount of orally supplied information.

14. One comment pointed out that labeling changes occur frequently during the life cycle of a product. Thus, distribution of revised Medication Guides resulting from these changes will need to be carefully controlled to ensure that the most up-to-date information is available for dissemination to the patient.

Section 208.20(b)(8)(iv) of the final rule requires that the date of the most recent revision be printed on the Medication Guide so that patients who receive multiple materials can identify the most recent information. FDA does not contemplate that changes in professional labeling would necessarily require changes in patient information. However, if changes in the professional labeling are significant enough to affect a product's Medication Guide, the manufacturer would be required to make related changes at the same time.

15. Some comments stated that the final rule should not require approval of all written information prior to its use. Instead, they urge that the rule should simply specify topics to be included and require clarity, but that FDA audit, as opposed to preapprove, such information. Similarly, one comment suggested that prior approval should not be required for "minor changes," such as the company name or address.

The final rule requires that FDA approve a Medication Guide prior to distribution to ensure that it is consistent with the package insert and is adequate to help ensure safe and effective product use. Because Medication Guides will be required only for drug products of "serious and significant concern," FDA believes that prior approval of the information necessary to the safe and effective use of the product is especially important. The agency will allow only very minor changes to be made without prior approval and has accordingly revised § 314.70(b)(3)(ii) (21 CFR 314.70(b)(3)(iii)) and § 601.12(f) (21 CFR 601.12(f)) to indicate that. The agency has added the change to § 601.12(f), which was not included in the proposal, to make the requirements for drug and biological products the same.

16. One comment suggested that FDA be held to a 30-day approval time on NDA supplements for patient labeling, and that if 30 days pass without comment by FDA, the patient labeling should be automatically approved.

As discussed previously in this document, Medication Guides would most often be required at the time of product approval. Thus, most Medication Guides would be covered under the timeframes designated under the Prescription Drug User Fee Act (PDUFA) (21 U.S.C. 379).

However, for the rare situations in which Medication Guides are required subsequent to product approval, PDUFA timeframes are not relevant unless new clinical information is submitted in support of the labeling changes. Under these circumstances, FDA will endeavor to approve these changes as quickly as possible.

17. Some comments urged that the regulations require patient labeling to be standardized in format and content, much like food labeling requirements, and be harmonized with international requirements.

Consistent with the views of many consumer groups, FDA agrees that a standard format would be extremely helpful in aiding readers to quickly find information of particular interest. However, the agency was persuaded by the written comments and presentations at the February 1996 public workshop that flexibility should be afforded in the design of Medication Guides. Different medications and patient populations may require somewhat different presentations to ensure that information is effectively communicated.

FDA has determined that the best approach is to retain the standardized format but be flexible enough to allow changes when they are needed to more effectively communicate with a special population or to permit innovation. The final rule specifies the order of topics, the text of the headings to be used, and the location of required contents within the headings. FDA will consider changes to the format and content if the requirements are inapplicable, unnecessary, or contrary to patients' best interests. In reviewing requests for changes, the agency will be interested in receiving any data regarding more effective design or methods of communication.

FDA believes that Medication Guides are different from the numerical listings of food labels because of the wider variety of issues and more complex meanings covered in a patient leaflet. The greater difficulty of communicating medication information justifies departure from the standard format.

Regulations in Europe standardize the formats of patient leaflets within but not across countries. Therefore, the extent to which U.S. standards for Medication Guide formats would be consistent with evolving format standards being developed through the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) is unclear at this time.

18. One comment suggested that § 208.1(a) be revised to read that "[t]his part does not apply to prescription drug products administered in an institutional setting (such as hospitals, nursing homes, *doctors' and dentists' offices*, or other health care facilities *such as clinics*), or in emergency

situations." [Emphasis in original comment.]

FDA does not agree with this comment. Section 208.1(a) states that part 208 applies primarily to medications used on an outpatient basis without direct supervision by a health professional. In addition to the wording change in § 208.1(a) of the final rule that reflects the regulation's focus on providing Medication Guides for all prescriptions for drug products of "serious and significant concern," the agency made the small change of moving the word "primarily" in the second sentence of § 208.1(a) to immediately follow the word "applies." This was done to make it clear that Medication Guides will usually be required for products used on an outpatient basis without the direct assistance of a health care provider.

The agency believes that on rare occasions it may be necessary to require a Medication Guide for a product that is used in a physician's office or other health care facility, and this change reflects the agency's desire for the flexibility to accomplish this. The agency notes that prescribers would not be exempt from providing mandatory Medication Guides if they dispense a product to patients for outpatient use.

19. One comment disagreed with FDA's reasoning as to why the Medication Guide proposal relates to prescription products that are used "primarily on an outpatient basis without direct supervision by a health care professional." The comment asserted that this reasoning is incorrect in that these outpatients are, indeed, under the direct supervision of a physician or pharmacist.

The comment misunderstands FDA's use of the phrase "direct supervision." The agency uses the phrase to describe situations in which a health professional is administering the medication on site, whether it is at a physician's office or at a health facility.

20. One comment stated that FDA should clearly define how it identified, developed, and tested the seven components of "useful" information.

To identify and develop the seven components, FDA relied on several studies it conducted involving various aspects of patient information (Refs. 2, 12, 13, and 14), as well as other published studies (Ref. 15). Additionally, FDA relied on a number of clear writing manuals (Refs. 16, 17, 18, and 19) and legibility guidelines used by the nonprescription drug industry (Ref. 20). FDA also relied on its extensive experience gained over the past two decades developing and approving patient labeling, as well as preliminary advice obtained from the pharmaceutical industry, pharmacy and medical professional organizations, and consumer groups. All of this information and guidance was combined to create the list of seven components. This list was published in the 1995 proposed rule to obtain public comment. Furthermore, the agency held a public workshop in February 1996 to obtain additional comment on the seven components. The agency maintained a public docket for comment until March 6, 1996, to accept comments specific to these seven components (Ref. 9). Based on information and comments received during the workshop and comment period, the agency made certain changes to the components.

FDA proposed these criteria for identifying and evaluating the quality of the information included in leaflets voluntarily distributed to patients. While the voluntary private-sector program for which the seven components were originally developed is outside the scope of this final rule, the agency believes that these criteria are important and has therefore retained them as requirements for Medication Guides. The broad acceptance of these components has been affirmed by Congress by their inclusion in the Medication Guide language contained in the 1997 Appropriations Act and their use in the voluntary private-sector program.

21. The 1995 proposed rule defined the criterion of scientific accuracy to mean consistency with FDA-approved product labeling, and proposed requiring that Medication Guides include the verbatim statement "Medicines are sometimes prescribed for purposes other than those listed in a Medication Guide." Many comments stated that patients could become confused and experience problems if a product was prescribed for an off-label use or regimen that was not described in their medication information sheet.

The agency does not believe that a change in response to these comments is warranted. The comments did not explain why patients would become confused or elaborate on the problems that might ensue. Moreover, the agency believes that the statement to be included in Medication Guides is sufficiently clear and will be helpful to patients. If patients have questions about the product's use, this may stimulate profitable discussion with an appropriate health care professional.

22. Several comments stated that FDA's criteria for determining whether a product would be designated as being of "serious and significant concern" and hence that it would be accompanied by a Medication Guide are so broad as to include all pharmaceutical products, providing little or no guidance to manufacturers. Some comments stated that FDA's purpose in requiring 10 drugs or drug classes each year was to eventually require Medication Guides for all prescription drugs.

FDA agrees that the proposed criteria for determining whether products or classes of products must be accompanied by Medication Guides can be more narrowly defined. Although the agency asked for comments on the appropriateness of the criteria, there were no suggestions made for improving them. Therefore, FDA has made several changes of its own in the final rule to clarify the purpose of Medication Guides and to describe more clearly the circumstances in which medications will be determined to be of "serious and significant concern" requiring Medication Guides.

The agency has rewritten § 208.1(b) describing the informational goals of Medication Guides. This section states that the agency must determine that information is "necessary" to patients' safe and effective use of the product. This is a high standard that will be met in only a small number of cases.

To conclude that the information is necessary, the agency must find that one or more of the three circumstances in § 208.1(c) exists. The four cases discussed in the preamble to the proposed rule have been condensed to three circumstances in order to avoid redundancy and to further clarify the circumstances in which FDA will require a Medication Guide. The three circumstances are: (1) The drug product is one for which patient labeling could help prevent serious adverse effects; (2) The drug product is one that has serious risk(s) (relative to benefits) of which patients should be made aware because information concerning the risk(s) could affect patients' decisions to use, or to continue to use, the product; or (3) The drug product is important to health and patient adherence to directions for use is crucial to the drug's effectiveness. These circumstances describe those situations in which patients *must* have information to use their medications safely and effectively.

FDA does not expect that these circumstances will be regularly presented and thereby determine that Medication Guides are required for many or most medications. Rather, the agency intends to require patient labeling only if it is needed for the safe use of the product or critical to the effective use of the drug, and expects that this will be infrequent. In reviewing its past recommendations that

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manufacturers prepare patient labeling for particular products, FDA has determined that it initially overestimated the number of products or product classes per year that would be required to have a Medication Guide. FDA now estimates that on average no more than 5 to 10 products per year would be determined to be of "serious and significant concern" and would thus require Medication Guides.

The following examples will illustrate in more detail each of the three circumstances in which a Medication Guide will be required:

(1) Where patient labeling could prevent serious adverse effects:

These are cases in which there is a known "risk control strategy" (e.g., recognition of the early warning signs of lactic acidosis, a potentially fatal side effect, during metformin treatment so that the drug can be stopped and a physician contacted immediately) or where easily taken preventive measures can prevent harm, such as using sun block to avoid serious photosensitivity reactions with photofrin, or avoiding a concomitant therapy that can lead to a dangerous accumulation of the drug.

(2) Where there are serious risks (relative to benefits) of which patients should be made aware because the information could affect patients' decisions to use, or continue to use, the drug:

This is a case where the risk of a drug is relatively great, greater than a patient would anticipate given the relatively benign condition being treated (e.g., isotretinoin is used to treat acne, not usually considered a seriously morbid condition, but the drug can cause severe birth defects in an exposed fetus), where understanding the adverse effects is critical to a choice among alternative treatments with different safety and effectiveness profiles (e.g., choice of barrier contraception versus oral, injectable, or implantable birth control), or where there is an important relation of duration of use to risk (e.g., increased risk of endometrial cancer with chronic administration of oral estrogens, or increased risk of habituation with prolonged use of benzodiazepine hypnotics).

(3) Where the drug product is important to health and patient adherence to directions for use is crucial to the drug's effectiveness:

This is a case where nonadherence could compromise patients' health by interfering with effectiveness; e.g., labeling could remind people that taking alendronate sodium at least one-half hour before the first food, beverage, or medication of the day with plain water only (other beverages, food, and some medications are likely to reduce the absorption of alendronate), is essential to the drug's effectiveness in treating osteoporosis.

Medication Guides would not be required for general admonitions, such as, "Remember to take your antihypertensive medication daily." Rather, Medication Guides would be used to communicate messages specific to the serious risks associated with certain medications.

FDA wishes to note its expectation that the vast majority of Medication Guides will be required when a product is first approved. Consistent with past procedures when recommending that certain products should include FDA-approved patient labeling, FDA intends to notify sponsors by letter, during the product's review process, that a Medication Guide is required for the product.

In general, FDA does not anticipate determining that currently marketed products are of "serious and significant concern," unless there is a compelling public health need. At this time, the only currently marketed products for which FDA intends to require Medication Guides are products in classes for which FDA has requested that manufacturers supply patient labeling, but where some manufacturers have failed to provide this information (e.g., benzodiazepine hypnotics and nonsedating antihistamines with boxed warnings). FDA believes that patients receiving similar medications, with similar risks, should receive similar approved patient labeling for all products in the specific pharmacologic class. A Medication Guide will also be required when new information becomes available raising a serious safety or efficacy concern about an FDA-approved drug.

Over the years, FDA has approved a number of patient information leaflets. Some of these leaflets concerning a class of drugs (e.g., oral contraceptives, estrogen replacement products) have been required under notice and comment rulemaking. In addition, some manufacturers have supplied, and FDA has approved, patient information leaflets for several other drug products (e.g., isotretinoin, metformin, alendronate sodium, and epoetin alpha).

Manufacturers whose approved labeling already includes patient-directed labeling must continue to distribute such labeling. FDA believes that this information provides a valuable service to patients that should not be disrupted. In time, FDA intends to review all existing patient labeling to determine whether it is subject to this part. If existing patient labeling is found to meet the circumstances in § 208.1(c), FDA will notify sponsors directly of such determinations and will allow them sufficient time to conform such labeling to the requirements of this final rule.

23. One comment argued that because prescription drug wholesalers have no contact with patients they satisfy the definition of "distributors" under proposed § 208.3. Consequently, the comment suggests that FDA more clearly define the roles of dispensers and distributors.

FDA agrees that drug wholesalers should not be considered dispensers under proposed § 208.3(a), but rather as distributors under § 208.3(d). FDA acknowledges that in several places in the proposal, the term "distributor" was used when, in fact, the term "dispenser" should have been used. These inconsistencies have been corrected in the final rule.

24. A number of comments addressed the relatively large number of Spanish-speaking individuals in the United States and the need for Spanish (and other language) Medication Guides. One comment suggested that existing computer data bases could be adapted easily to translate patient information into foreign languages commonly spoken in the United States. One comment claimed that proposed § 208.20(a), mandating that Medication Guides be in English, is inconsistent with FDA's request for comments on how best to provide information to populations who do not speak English. One comment stated that FDA should permit verbatim translations of Medication Guides without requiring a submission for approval.

FDA encourages, but the final rule does not require, the dispensing of patient information in foreign languages, in low literacy formats, or in braille for visually impaired consumers. Given the development of technology, translations and Medication Guides in other formats may become easier to distribute. However, FDA believes that most of these populations still could benefit from English language leaflets because, for example, a relative or friend could translate the information.

Section 208.20(a)(1) does not prohibit, in addition to English language leaflets, either the distribution of faithful translations, such as materials in other languages or braille, or materials in simplified texts, or using icons or symbols. FDA continues to believe that a multifaceted communications system would help ensure that all consumers receive meaningful patient information.

FDA believes that due to sometimes subtle differences among languages, including syntax and connotation, translation requires judgment and expertise. While the distribution of translations is encouraged, translations would not satisfy § 208.20(a)(1). Moreover, FDA frequently disagrees with sponsors about the appropriate translation of labeling language. The final rule does not require that translations receive FDA approval, but § 208.20(a)(1) requires, that when they are used, they be distributed along with English language texts.

25. Several comments suggested that § 208.20(b)(1) be modified to permit the established name to be used as the most prominent product name and permit the trade name(s) to be listed secondarily.

Application of § 208.20(a)(7) and (b)(1) of the final rule would permit the established name of the product to be more prominent than the brand or trade name. Implementing section 502(e)(1)(B) of the act, § 208.20(a)(7) of the final rule requires that the established name be printed in type at least one-half the height of that used for any proprietary name. Consequently, the established name can be as large as desired, provided that it is no less than one-half the height of the brand or trade name.

26. Several comments suggested that § 208.20(b)(5)(iv) be modified to include what the patient should do if several doses of the drug are missed or if the patient discontinues the regimen.

No change is necessary to § 208.20(b)(5)(iv) in response to these comments. The provision gives manufacturers the ability to include information on missed doses of a medication of "serious and significant concern." The agency has modified this provision to include the phrase "where there are data to support the advice." This change was made to emphasize that any advice of this type must be based on appropriate data or information.

27. Several comments claimed that the required content of a Medication Guide emphasizes the presentation of risks without similar stress on benefits. Some pointed out, for example, that one of the prototype Medication Guides in the proposal includes information that overemphasizes the risks associated with the medication.

FDA has long maintained that patients need to receive a fair balance of risk and benefit information. FDA does not object to the presentation of product benefit information if it is supported by scientific evidence and is consistent with approved professional labeling. In fact, the agency has added a new sentence to § 208.20(b)(3) to make it clear that, when appropriate, a discussion of benefits of treatment can be included in a Medication Guide. On the other hand, because some medications have potentially serious effects, FDA believes that it is vitally important for patients to receive a truthful description of products' risks.

While FDA believes that benefit information is often understood, the agency is open to learning more about how to communicate risk and benefit information so that patients receive a fair and balanced picture of their medications, without undue emphasis on either risks or benefits.

28. Several comments urged that FDA avoid class labeling, i.e., providing the same information for various products within a class of drugs. Medication Guides, they argued, should be product-specific, rather than class-specific, to address issues unique to particular products.

FDA has accepted both product-specific and class labeling approaches in its past approval of patient labeling and believes that class labeling can be appropriate for products in narrowly-defined pharmacologic classes. FDA will review drug product labeling when the agency believes that information can be safely applied to the specific covered product.

29. Several comments suggested that the currently available "imprint system," or other descriptors of color, shape, markings, etc., be incorporated in the patient information to facilitate patients' coordinating their medication with the proper patient information. Other comments noted that these descriptors would be excessive.

FDA encourages systems that ensure that the patient is able to identify the individual products dispensed. However, a single system may be difficult to implement. For example, in large pharmacies, dispensers may be unaware when generic suppliers with a different imprint are switched, necessitating a corresponding change in the patient information. Because of the excessive burden that would be imposed, FDA will not require that imprints or other descriptors be included in patient information.

30. One comment asked that the medicine's expiration date be stamped on the patient information. Another comment suggested that patient information sheets include the pharmacist's or provider's telephone number so that patients will know where to call to get their follow up questions answered.

The medicine's expiration date applies only to products stored in the manufacturer's container. Once the product is removed from the pharmacy's storage conditions, the original expiration date may no longer be valid. Further, many state pharmacy laws require that an expiration date appear on the medication vial dispensed to the patient. Generally, this date is 1 year from the time of dispensing. FDA will not require that patient information include the medicine's expiration date because it is not possible for the dispenser to know the medication's true expiration date.

FDA encourages pharmacists or providers to include their telephone number in the information they give to patients. Many State Boards of Pharmacy rules require that the label on the medication container include the pharmacy's name, address, and telephone number.

31. A number of comments suggested the use of pictograms or icons in addition to text, especially for patients with limited reading skills.

FDA believes that, while pictograms may be helpful in explaining concepts, and icons helpful in providing graphically pleasing and memorable text, it is not clear that these devices are able to communicate concepts adequately regarding the use of prescription medications without the addition of the textual material. Accordingly, FDA will not require the incorporation of icons or pictograms in Medication Guides. However, the agency believes that icons or pictograms, when used in addition to text, are useful and may permit their incorporation on a case-by-case basis if requested by the manufacturer.

32. The proposal solicited comments on page limits (60 FR 44182 at 44208). One comment noted that it may be difficult to explain technical information in consumer language if the page length is limited, especially because page size and length will vary with the computer equipment used by the dispenser. Another comment argued that the rule should not specify page dimensions because the amount and type of information will vary from product to product.

FDA agrees that a required page limit could put unnecessary constraints on the communication of important information. However, it is important to note that FDA expects that Medication Guides will include only the information necessary for the safe and effective use of the product and other information required to provide needed context. Medication Guides should not exhaustively detail all information known about the product. FDA is concerned that, if unrestrained, lengthy information could result in unnecessary or even dangerous barriers to the effective communication of important concepts. Therefore, the agency will establish a two-page limit as a goal for the communication of the essential information to be included in Medication Guides. Graphic representations, charts or other material supportive of, or in addition to, the essential information should be placed in an "appendix" located at the end of the leaflet. The agency will consider overall length and the inclusion of supportive material in its evaluation of the understandability and legibility of the Medication Guide.

33. Several comments suggested that § 208.20(a)(4) (§ 208.22(a) of the proposed rule) be modified to require at least 12 point type size, rather than 10 point, as proposed.

FDA acknowledges that many prescription drug users are elderly and may have difficulty discerning words written in small type sizes. Ten point minimum type is larger than that used in many commonly read materials, e.g., newspapers. FDA notes that legibility is determined by a number of factors other than type size. The 10 point minimum was based on the need to balance legibility concerns and patients' reluctance to read longer materials.

34. A number of comments made suggestions for: (1) Optimal presentation of information for patients (e.g., bulleting, outlines, contrast, typeface, leading); (2) the inclusion of specific types of information (e.g., potential treatment outcomes, managing side effects); and (3) providing greater flexibility in the presentation and language used in patient information.

FDA appreciates the comments and suggestions and believes that the final rule provides an appropriate amount of flexibility. The final rule contains a minimum type size in § 208.20(a)(4) and also requires in § 208.20(a)(5) that the information be legible and clearly presented, and, where appropriate, use boxes, bolding, and other highlighting techniques to emphasize portions of the text. In addition, § 208.20(b) of the final rule contains general content requirements for Medication Guides which the agency has said should be tailored to include only those categories of information relevant to the drug product and the need for the Medication Guide. Furthermore, § 208.26(a) provides that changes from the format (and content) requirements will be considered when the requirements are inapplicable, unnecessary, or contrary to patients' best interests. These provisions will provide sufficient flexibility in the design of Medication Guides.

35. One comment recommended that the final rule require that patient information accompany all medication samples distributed by health care providers.

Under the final rule, Medication Guides are to be dispensed with all prescriptions of drug products that the agency determines are of "serious and significant concern." Prescription drug samples are dispensed under an oral or written prescription of a licensed practitioner. Accordingly, a Medication Guide must be provided with samples of prescription drug products that FDA determines are of "serious and significant concern."

36. Some comments questioned manufacturer compliance under a variety of conditions, such as when changes are made to the Medication Guide, especially for products that are not in unit-of-use packaging. Others questioned whether the agency would request a recall of Medication Guides if important changes are needed. The comments also questioned how the manufacturer could be held accountable or be allowed to confirm the accuracy of the information if third parties are able to make changes to the Medication Guide. Some comments also asked about what criteria must be met for personalized Medication Guides.

In general, FDA intends that changes in Medication Guides be incorporated into the next printing of labeling. If clinically significant information necessitates a change in a Medication Guide, FDA will ask that manufacturers expedite the next printing to incorporate the change as rapidly as is reasonably possible. In addition, FDA could request that manufacturers notify health care professionals, such as by sending "Dear Health Professional" letters, and rapidly distribute replacement patient information. FDA would also expect manufacturers to use or adapt whatever systems are already in place for making changes to the professional labeling to make changes to Medication Guides.

In response to the comment on personalized information, written medication information may be customized by individual health care practitioners for individual patients by including, for example, the prescription number, the name, address, and/or telephone number of the authorized dispenser and/or licensed practitioner, the specific dosage regimen prescribed, or by including other patient-specific information on leaflets. This information may precede or follow the required information in the Medication Guide, but in no case should the information be more prominent than, or obscure, any required information. FDA believes that such personalization falls within the practice of medicine and pharmacy. However, this final rule pertains only to Medication Guides for drug products of "serious and significant concern," and the information in them must be approved by the agency before they can be distributed. Thus, third parties cannot make substantive changes to a Medication Guide, except in the limited context of personalizing it. Finally, under § 314.70(b)(3) and § 601.12(f), FDA will permit manufacturers to make only very minor changes to Medication Guides without submission of a labeling supplement.

37. One comment stated that the distribution of Medication Guides by drug manufacturers to pharmacies, directly or through drug wholesalers, is not feasible because pharmacies use a variety of operating system platforms and proprietary software. The comment claimed that disks provided by manufacturers or wholesalers may not be compatible with existing systems because, for example, information may be formatted inconsistently with the printing specifications. The comment argued, therefore, that the rule would require that suppliers individualize disks for dispensers, and that such a requirement is overly burdensome.

FDA agrees with the comment that pharmacies use a variety of computer systems. The final rule, in § 208.24(b), however, permits manufacturers and distributors to provide either hard copies of patient information or the "means" for disseminating information. FDA believes that providing manufacturers and distributors with this degree of flexibility will encourage them to develop readily adaptable systems for distributing required Medication Guides. FDA believes that some manufacturers will choose to package certain products in unit-of-use or bulk containers with hard copies of the Medication Guides affixed to the product container. Other manufacturers will work with information system vendors to incorporate Medication Guides into existing pharmacy software systems.

The agency wishes to emphasize that it is ultimately the responsibility of manufacturers to ensure that authorized dispensers receive sufficient numbers of Medication Guides that can, in turn, be dispensed to patients with selected products that pose a "serious and significant" public health concern. This requirement would not be fulfilled, for example, by a manufacturer providing a pharmacy with Medication Guides in a form that the pharmacy could not use. In cases where unit-of-use packaging or printed copies of Medication Guides attached to bulk packages are not used, the agency feels that market forces will contribute to manufacturers working with the various third-party information providers to ensure that their computerized systems can provide printouts of Medication Guides.

38. One comment argued that the rule would require that manufacturers "provide the dispensers with the means to ensure distribution" of Medication Guides to each patient without adequately defining "the means." The comment asked whether manufacturers would be required to pay dispensers, provide computer equipment, or develop some other mechanism to ensure that dispensers could distribute Medication Guides. The comment also asked whether manufacturers would be liable for pharmacists' failure to distribute, or distributing the wrong Medication Guide, and whether drug manufacturers have a duty to educate pharmacists about the information contained in the leaflet. Other comments noted that pharmacists currently rely on patient information data bases developed by others, and argued that it would be excessively burdensome to require that pharmacists maintain hard copies of every manufacturer's Medication Guide.

Section 208.24 of the final rule requires that manufacturers provide distributors and authorized dispensers with the means to distribute Medication Guides to patients. To allow for flexibility, FDA did not specify the means, but instead provided examples of effective means, such as providing authorized dispensers with patient information software. As suggested by some comments, FDA believes that most manufacturers will contract with third parties or large pharmacy chains who would develop acceptable dispensing mechanisms that pharmacists could easily incorporate into their practice. The final rule does not specify additional requirements because the agency wants to encourage private-sector innovation.

Section 208.24(e) requires that authorized dispensers provide Medication Guides to patients. A manufacturer has fulfilled its obligation under the final rule by providing those who dispense its products with Medication Guides in sufficient numbers or the means to produce Medication Guides.

39. Several comments objected to the requirement in proposed § 208.24(c) that patient information be distributed with each unit-of-use package, for both new prescriptions and refills, arguing that manufacturers should be allowed the same options of either providing sufficient paper copies with each shipment, or providing the dispenser with the means to supply Medication Guides without the use of paper, regardless of how the product is packaged.

FDA has accepted the comment's suggestion that the agency exercise greater flexibility in the distribution of patient information for unit-of-use packaged medications. This was not an easy decision and may be reconsidered if alternatives do not succeed in regularly providing patients with the needed information. A unit-of-use package with enclosed patient information guarantees that patients receive the information. No alternative system does so. Although unit-of-use packaging is not the usual packaging in the United States, it is the standard in Europe and thus familiar to any sponsors with international experience.

Proposed § 208.24(c), which would have required the distribution of Medication Guides with each unit-of-use package intended for distribution to patients, has been deleted. This deletion will permit manufacturers the same options for distributing Medication Guides for unit-of-use and bulk dispensed medications. However, to ensure that authorized dispensers know which unit-of-use packaged products contain Medication Guides (so dispensers will know whether or not to dispense a separate Medication Guide), the term "large volume" as a modifier of the term "container" has been deleted every place it appeared in § 208.24. In addition, the agency has made changes to § 208.24(d) to require that the label of each container of drug product for which a Medication Guide is required instruct the authorized dispenser to provide a Medication Guide and tell the dispenser how the Medication Guide is provided. Because this information is so important, the agency has also added the requirement that these statements appear on the label in a prominent and conspicuous manner.

40. One comment noted that proposed § 208.24(f) specifically exempts authorized dispensers who print Medication Guides from the establishment registration and drug listing requirements of section 510 of the act. The comment contended that this exemption should also apply to prescription drug wholesalers who have never been required to register and list their products with FDA.

Section 510 of the act requires any person (including prescription drug wholesalers), unless exempt by statute (section 510(g)) or by regulation (21 CFR 207.10), who, among other things, changes the container, wrapper, or labeling of any drug product in furtherance of its distribution to register with the agency, as well as to list the product with the agency. FDA does not believe that section 510 of the act would apply to wholesalers who serve merely to pass on Medication Guides from manufacturers to authorized dispensers. On the other hand, if drug wholesalers make changes to the content of a Medication Guide, just as if they had made changes to the content of the professional labeling, they would be required to register and list their products with FDA.

41. One comment suggested that proposed § 208.26(b), which permitted physicians and pharmacists to withhold a Medication Guide from a patient, be amended to permit the withholding of Medication Guides only if the information "would harm the patient or interfere with the course of treatment." The comment also suggested that the rule require that the prescriber note the reason for withholding the Medication Guide in the patient's record, and that only physicians, not pharmacists, should determine whether Medication Guides should be withheld.

The agency agrees with this comment in part. Section 208.26(b) has been changed to permit only the licensed practitioner who prescribes a drug to direct that a Medication Guide be withheld if it is not in the patient's best interest because of significant concerns about the effect of the information on the patient. Authorized dispensers who are not licensed practitioners may not withhold a Medication Guide. If the patient requests information about a prescription drug subject to this final rule, however, § 208.26(b) requires that the dispenser provide one, regardless of the licensed practitioner's concern. Licensed practitioners may include, depending on the jurisdiction, pharmacists, nurses, physician assistants, and other health professionals, as well as physicians. Any of these practitioners who have prescribing authority may direct that a Medication Guide be withheld. FDA does not believe that practitioners should be required to document the reason for directing that a Medication Guide be withheld when such decision is deemed to be in a patient's best interest.

FDA believes that it is appropriate to limit this authority because Medication Guides required under this final rule will contain information of crucial importance for the safe and effective use of the product. The agency expects that licensed practitioners will direct that Medication Guides be withheld relatively rarely, and that the decision will be based on special individual circumstances or characteristics of their patients.

42. Several comments stated that the proposed regulations substitute the agency's judgment for that of the health care professional regarding the information individual patients need. Some comments argued that practitioners should decide if and when a patient should receive a Medication Guide, or relevant part(s) thereof. The comments maintain that the rule interferes with the practice of medicine by requiring that Medication Guides be distributed to all patients, even when a health care professional has determined that an individual patient should not receive such information.

The final rule is limited to requiring Medication Guides for products FDA determines present health care concerns so significant that patients must have written information about the products. Medication Guides under this rule will contain information necessary to patients' safe and effective use of the products. FDA does not believe that providing such information interferes with the practice of medicine. The final rule does not limit the information that health care providers may impart to patients concerning prescribed medications. If physicians disagree with specific aspects of the patient labeling supplied by the manufacturer, they are free to discuss the matter fully with patients, noting their concerns and views. FDA believes the final rule encourages patients to engage in this kind of open discussion with their health care provider. Also, as noted above, the final rule permits a licensed practitioner to instruct that a Medication Guide be withheld from an individual patient if the practitioner believes that it would not be in the patient's best interest to receive the information. Only the patient can overrule this instruction by specifically requesting the Medication Guide.

43. One comment suggested that the final rule exempt only those medications administered under emergency conditions. Another comment suggested that while the distribution of Medication Guides in emergency situations would be impractical, a good faith effort should be made by health care professionals to assure that the patient receives a copy as soon as practicable. In the case of hospitals, one comment advocated that Medication Guides be given to patients upon discharge, if not before. Others argued that Medication Guides should be given to institutionalized patients or their designees, including those in hospitals, long-term care facilities, and prisons. Still others stated that Medication Guides should be made available in physicians' offices.

FDA has determined that routinely distributing Medication Guides to institutionalized patients is unnecessary because medications dispensed in such facilities are usually administered directly by health care professionals who are readily available to answer patients' questions about their medications. FDA encourages health care institutions to make copies of Medication Guides available to patients who request them, and to maintain compilations of Medication Guides at convenient locations so that interested patients have access to them. However, where the agency determines that the circumstances or characteristics of a particular drug make it necessary, FDA will require the distribution of a Medication Guide to institutionalized patients.

FDA believes that distribution requirements should be sufficiently flexible to permit licensed practitioners to instruct that a Medication Guide be withheld when the information is deemed inappropriate for an individual patient. However, FDA emphasizes that Medication Guides cannot be withheld from patients who request them.

C. Economic/Environmental Issues

44. Several comments stated that FDA's estimated cost for developing patient information was flawed. One comment stated that a particular drug manufacturer took 16 person-months of effort (eight professionals, full-time for 2 months) to develop the patient information for Proscar® and that FDA should rely on this estimate for the effort needed to produce a new Medication Guide.

FDA agrees that drug manufacturers' recent experiences provide the best source of information for estimating the average cost of developing a new Medication Guide. Indeed, FDA used this sort of information in its Regulatory Impact Assessment, which relied on the July 1993 issue of *Pharmaceutical Executive* (Ref. 21), in which Merck Pharmaceuticals' manager of information services states that "[d]evelopment of the PPI was a 6-month process, including initial drafting, research to ensure that potential users of Proscar® understood the important information about the medicine contained in the PPI, and revision and refinement based on the results of our research." The article further explains that Merck elected to conduct readability and comprehensibility studies during the development phase.

FDA would not require manufacturers to conduct this level of evaluation prior to issuing a new Medication Guide. Medication Guides are designed to draw upon readily available professional labeling. Even patient labeling drafted at the time of initial drug approval would be based upon the professional labeling, often, FDA assumes, utilizing the same staff that developed the professional label. FDA believes that minimal additional staff, such as a medical writer skilled in writing for laypersons, would be needed; therefore, most of the staff who would work on Medication Guides would be extremely familiar with the medication and its professional labeling. FDA considers 6 months to be an upper bound estimate for developing an original Medication Guide because Merck conducted testing beyond that required to develop the patient information for Proscar®.

45. Several industry comments claimed that FDA underestimated, perhaps by as much as 30 percent, the annual compensation for nonproduction staff.

FDA believes that the estimated $70,000 salary used in its analysis is a fair estimation and may even overstate the average salary. According to the Bureau of Labor Statistics Monthly Report of Earnings, nonproduction workers in the Pharmaceutical Preparations Industry (SIC 2834) earned an average of $49,579 in 1992. The U.S. Bureau of Economic Analysis (BEA), National Income and Product Reports, reported that the ratio of total compensation to wages within this industry is 1.249, resulting in total average 1992 compensation for a nonproduction employee in the pharmaceutical industry of $61,924. The BEA also reported that the average increase in compensation between 1992 and 1994 was 6.3 percent. Thus, the average total compensation for a nonproduction employee in the pharmaceutical industry in 1994 was $65,825. FDA has used $70,000 as a reasonable estimate of this compensation.

46. Several comments stated that FDA should prepare and publish an environmental impact statement (EIS) regarding the effects of the proposed rule, given the agency estimate that the average pharmacy will use 28,600 pages of computer paper and 23 dot matrix printer ribbons annually, and that the agency assumes a total of 71,386 pharmacy outlets use 2,041,688,200 pages of computer paper and discarded 1,641,901 printer ribbons annually.

FDA does not agree that it should develop either an environmental assessment (EA) or an EIS for this rule. This comment relied on environmental impact figures that were based on the effects of a voluntary program of disseminating written patient information concerning all prescription drugs from the proposed rule. The final rule has a much narrower focus because it applies only to a small number of products of "serious and significant concern" and therefore is not dependant on the outcomes achieved by a voluntary program. Thus, these figures are not accurate for this program. Further, 21 CFR 25.24(a)(11) provides a categorical exclusion from the preparation of an EA for actions that establish by regulation labeling requirements for marketing articles if there is no increase in the existing levels of use or change in the intended uses of the product or its substitutes. The requirement for mandatory Medication Guides for medications of "serious and significant concern" will not produce such change because about as many products (on average no more than 5 to 10 per year) will be affected as are currently affected by agency requests that their manufacturers voluntarily produce patient labeling for the products to ensure safe and effective use.

47. One comment noted that the proposal's analysis under the Paperwork Reduction Act demonstrates the large amount of paperwork to implement this program but does not count the cost to produce this paperwork.

FDA did include such costs in its economic evaluation. The Paperwork Reduction Act requires FDA to estimate the costs, in terms of hours, of reporting and recordkeeping resulting from Government regulations. This estimate was included in the proposal in a table included in section XIV (60 FR 44182 at 44233). The analysis of impacts in the proposal (60 FR 44182 at 44210 through 44213) presented monetary costs of implementing a comprehensive mandatory program, if it were to be instituted. This estimate included a variety of recordkeeping functions, e.g., cost of printing and dispensing Medication Guides and development costs incurred by manufacturers. Further, given the narrowed focus of the final rule, the costs of the paperwork burden, as well as other costs, will be low because only a small number of Medication Guides will be required. However, in recalculating these costs for consistency with the final rule, FDA included manufacturers' resources needed to produce and obtain approval for Medication Guide revisions.

IV. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612) and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity).

Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency has reviewed this final rule and has determined that the rule is consistent with the principles set forth in the Executive Order and in these two statutes. Further, the agency finds that the rule will not have a significant effect on a substantial number of small entities, and that it imposes no unfunded mandates to State, local or tribal governments. Indeed, as explained below, the expected annual incremental costs of this rule will not require expenditures significantly above what would be likely to occur in the absence of regulation.

The final rule articulates the agency's decision to require mandatory Medication Guides for those prescription drug products identified as posing a "serious and significant concern." Only when information is critical to patients' safety will a manufacturer be required to distribute this information. In its absence, patients would be more likely to fail to adhere to therapeutically critical directions or to recognize signs and symptoms of both preventable and unpreventable adverse reactions. Such improper use of prescription medications can increase morbidity and mortality by contributing to additional or prolonged illness. As current estimates of the annual direct medical costs related to the improper use of prescribed medications exceed $20 billion, even small reductions in the incidence of such events would yield significant savings.

Currently, patient labeling for most high risk products is developed voluntarily by manufacturers on a case-by-case basis. No formal mechanism exists, however, to ensure that all exposed patients receive concise, understandable information, or that the information they do receive is best for consumer protection.

As described previously, FDA currently works with industry on a product-by-product basis to develop patient information sheets for the small number of products that pose the most serious public health risks. The agency does not expect this rule to significantly increase the frequency of this practice, nor will any additional information typically be required because the determining criteria will not change. Nevertheless, the voluntary nature of the current process may result in occasional disagreements between the agency and manufacturers of drug products with "serious and significant concerns." These disagreements and negotiations would delay or preclude patients receiving necessary information. On average, therefore, based on past practice, FDA estimates that, each year, no more than 5 to 10 products with "serious and significant concerns" would develop patient information sheets. Only one of these products, however, would not have developed these sheets voluntarily. Thus only one additional product with a "serious and significant concern" may have to develop a Medication Guide as a result of this rule. In FDA's view, the nature and magnitude of the adverse outcomes that may result from the misuse of even this one additional product of "serious and significant concern" warrants the implementation of a limited, clearly articulated regulation.

The existence of regulations that mandate the inclusion of critical patient information in a standardized format will ensure that all patients who use drug products with "serious and significant concerns" receive adequate information on their medication. For example, the identification of certain products with "Medication Guide" information will increase patients' ability to recognize products of "serious and significant concern" that require their thorough and careful monitoring. Further, the communication of critical information concerning serious risks and directions for use will improve consumers' ability to identify and to learn essential prescription drug information. In addition, while approximately 70 percent of all patients

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have reported receiving patient information, this rule will ensure that all affected patients receive these Medication Guides.

Second, by identifying the criteria, format, contents, and other requirements of patient information, manufacturers will be aware of the need for Medication Guides for products under development. Thus, this rule will increase the sponsors' ability to work in conjunction with FDA to develop this information as part of the traditional review package, facilitating FDA's timely review of the information and helping to assure that drug approvals are not delayed. In the absence of this rule, the ad hoc practice of developing patient information would continue in its currently less efficient and more burdensome form.

Because FDA and industry currently work to assure the development and distribution of this patient information, and because these activities would continue even in the absence of this rule, the rule will impose minimal incremental costs on the industry. Almost every year, several firms are asked by FDA to develop patient information leaflets, and there is no reason to believe that this total number would change substantially. Consequently, as noted above, the agency estimates that one additional product each year will be required to develop information as a direct result of this rule. FDA has estimated a cost of under $12,000 (or 2-resource months) to develop a patient information sheet for a new drug product. Thus, this incremental compliance cost to manufacturers would be about $12,000 per year.

Similarly, the distribution of information for the affected products will continue in the same manner. About half of these products (such as oral contraceptives) may be distributed in unit-of-use packaging that contains patient information sheets. These information sheets may cost manufacturers about an additional 2 cents per package for printing and paper. Alternatively, patient information for those products designated as posing a "serious and significant concern," but not marketed in unit-of-use packaging, are distributed through a variety of information channels, including individual leaflets that circulate with the products, or automated systems that print individual leaflets from larger data bases. Most retail pharmacies, regardless of size, already distribute this information to consumers. FDA anticipates that these activities will continue, as the rule does not dictate any particular distribution approach, but places the ultimate responsibility for ensuring the content and availability of patient information with the manufacturer of the drug product. Moreover, the issuance of this rule will encourage third-party electronic information vendors to incorporate this mandatory patient information into their systems.

According to FDA estimates, approximately 70 percent of all pharmacies supply patient information with prescriptions. The remaining 30 percent will be required to provide medication guides for all drug products with "serious and significant concerns." No more than 5 to 10 such products are expected each year. FDA estimates that each affected drug product may account for 100,000 annual prescriptions, each Medication Guide will consist of one printed page, 50 percent of the affected products are manufactured in unit-of-use packages, and 5 seconds of pharmacist time is necessary to dispense each guide. Based on these assumptions, within 10 years, the total cost for all pharmacies to include Medication Guides for the 50 to 100 identified drugs equals $434,000 to $868,000 (about 9 cents per prescription dispensed). The incremental cost of providing these Medication Guides (accounting for the 70 percent current compliance) would be about 30 percent of this amount, or $130,000 to $260,000 per year.

In sum, the actions described in this regulation will formalize the agency's current policy and impose few incremental costs on the affected industry sectors. Public health will be enhanced by ensuring the wider availability of consistent and understandable patient information for products of "serious and significant concern."

With respect to the Regulatory Flexibility Act, even if a few additional products would require patient information sheets, the costs described above would not impose a significant effect on any entity. Thus, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the collection of information are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Prescription Drug Product Labeling; Medication Guide Requirements

Description: This final rule imposes reporting requirements on manufacturers of drug products that pose a serious and significant public health concern. These manufacturers will be required to develop Medication Guides for such products and submit them to FDA for approval.

FDA estimates that on average no more than 5 to 10 products annually would fall under the "serious and significant concern" classification and thus require mandatory Medication Guides. FDA believes that four of these products (estimating conservatively) would be newly approved. One already-marketed product would require a Medication Guide, with two "supplementary" Medication Guides needed for products in the same narrow therapeutic class, and one Medication Guide needed for a generic product in this class. FDA's regulatory impact analysis estimated that applicants would need approximately 2 months of full-time effort (320 hours) to develop for submission to FDA a "model" Medication Guide that would be consistent with the requirements in § 208.20. (A "model" Medication Guide is for a medication in a class that has no previous Medication Guide.) "Supplementary" Medication Guides would require approximately half that time (160 hours), and generic Medication Guides would require 1/20th of the time (16 hours). FDA also estimates that one "serious and significant" Medication Guide sponsor annually may wish to request an exemption or deferral from specific Medication Guide requirements and that this would take approximately 4 hours.

In addition, FDA estimates that two existing Medication Guides annually might require minor changes under § 314.70(b)(3)(ii) or § 601.12(f), necessitating 3 days (24 hours) of full-time effort.

Under § 208.24(e), authorized dispensers are required to provide a Medication Guide directly to the patient (or the patient's agent) upon dispensing a product for which a Medication Guide is required. Thus, the final rule imposes a third-party reporting burden on authorized dispensers, who, for the most part, will be pharmacists. FDA estimates that, over the next 3 years, assuming that 5 Medication Guides are required annually, an average of 10 Medication Guides annually would be available for prescribing and dispensing. Assuming a base of approximately 100,000 prescriptions dispensed for each of these products annually, and subtracting from this base the approximately 50 percent of products with Medication Guides that are dispensed in unit-of-use packages, results in a total of 500,000 prescriptions annually for products that pose a "serious and significant public health concern." Based on data collected in 1996, the agency estimates that at least 70 percent of patients are already receiving some kind of patient medication information voluntarily provided by pharmacists when they dispense prescriptions. Therefore, this final rule would represent an incremental burden, in terms of third party reporting, for only 30 percent, or about 150,000, of these prescriptions. Given 60,574 pharmacies, including chains, independents, and food/drug combinations, this represents an average of 2.5 prescriptions per store, per year. Because FDA estimates that, on average, it would take a pharmacist approximately 5 seconds (.0014 hour) to provide a Medication Guide to a patient, the overall annual third party reporting burden for this final rule is approximately 212 hours.

No estimate for recordkeeping burden is necessary because the recordkeeping provision in the proposed rule (proposed § 208.26(c)) has been eliminated and this final rule contains no other recordkeeping provisions.

Description of Respondents: Businesses or other for-profit organizations.

Although the August 24, 1995, proposed rule (60 FR 44182) provided a 90-day comment period under the Paperwork Reduction Act of 1980, and this final rule incorporates the comments received, as required by 44 U.S.C. section 3507(d), FDA is providing an additional opportunity for public comment under the Paperwork Reduction Act of 1995, which applies to this final rule and became effective after the expiration of the comment period. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Individuals and organizations may submit comments on the information collection provisions of this final rule by February 1, 1999. Comments should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
208.20	8	1	8	242	1,936
314.70(b)(3)(ii) or 601.12(f)	2	1	2	24	48
208.24(e)	60,574	2.5	150,000	.0014	212
208.26(a)	1	1	1	4	4
Total					2,200

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

VII. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Mullen, P. D., and L. W. Green, "Measuring Patient Drug Information Transfer: An Assessment of the Literature," Pharmaceutical Manufacturers Association, Washington, DC, 1983.

2. Kanouse, D. E. et al., "Informing Patients About Drugs: Summary Report on Alternative Designs for Prescription Drug Leaflets," Rand Corp., Santa Monica, CA, 1981.

3. Morris, L. A., M. Mazis, and E. Gordon, "A Survey of the Effects of Oral Contraceptive Patient Information, *Journal of the American Medical Association, 238(23),* 2504–2508, 1977.

4. Gibbs, S., W. E. Waters, and C. F. George, "The Benefits of Prescription Information Leaflets (2)," *British Journal of Clinical Pharmacology,* 28:345–351, 1989.

5. Guarino, R., "PPI: The Proper Prescription?" *Food Drug and Cosmetic Law Journal,* 34:116, 1979.

6. Howland, S., M. G. Baker, and T. Poe, "Does Patient Education Cause Side Effects? A Controlled Trial," *The Journal of Family Practice,* 31:62–64, 1990.

7. Lamb, G. C., S. S. Green, and J. Heron, "Can Physicians Warn Patients of Potential Side Effects Without Fear of Causing Those Side Effects?" *Archives of Internal Medicine,* 154:2753–2756, 1994.

8. Morris, L. A., and D. E. Kanouse, "Informing Patients About Drug Side Effects," *Journal of Behavioral Medicine,* 5:363–373, 1982.

9. Docket No. 93N–0371.

10. Morris, L. A. et al., "Patient Receipt of Prescription Drug Information," National Technical Information Service, No. PB84–100031, 1984, Springfield, VA.

11. Morris, L. A. et al., "A National Survey of Prescription Drug Information Provided to Patients," National Technical Information Service, No. PB86–186947/XAB, 1986, Springfield, VA.

12. Morris, L. A., A. M. Myers, and D. G. Thilman, "Application of the Readability Concept to Patient-oriented Drug Information," *American Journal of Hospital Pharmacy,* 37:1504–1509, 1980.

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14. Morris, L. A., M. Hastak, and M. Mazis, "Consumer Comprehension of Environmental Advertising and Labeling Claims," *Journal of Consumer Affairs*, 29: 328–350, 1995.

15. Morris, L. A., and D. Kanouse, "Consumer Reactions to Differing Amounts of Written Drug Information," *Drug Intelligence and Clinical Pharmacy*, 14:531–536, 1980.

16. Backinger, C. L., and P. A. Kingsley, "Write It Right: Recommendations for Developing User Instructions for Medical Devices Used in Home Health Care," Department of Health and Human Services, Publication No. FDA 93–4258, 1993.

17. Doak, C. C., L. G. Doak, and J. H. Root, "Teaching Patients with Low Literacy Skills," Philadelphia, J. B. Lippincott Co., 1985.

18. Felker, D. B. et al., "Guidelines for Document Designers," Washington, DC, American Institutes for Research, 1981.

19. Mettger, W., and J. Mara, "Clear and Simple: Developing Print Materials for Low-Literacy Readers," Bethesda, MD, National Cancer Institute, 1992.

20. Nonprescription Drug Manufacturers Association, "Label Readability Guidelines," Washington, DC.

21. Koberstein, W., "Reach the People: The Progress of Direct-to-Consumer Communications," *Pharmaceutical Executive*, 7: 36–58, July 1993.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 208

Drugs, Patient labeling, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended to read as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.57 is amended by revising paragraph (f)(2) to read as follows:

§ 201.57 Specific requirements on content and format of labeling for human prescription drugs.

* * * * *

(f) * * *

(2) Information for patients: This subsection of the labeling shall contain information to be given to patients for safe and effective use of the drug, e.g., precautions concerning driving or the concomitant use of other substances that may have harmful additive effects. Any printed patient information or Medication Guide required under this chapter to be distributed to the patient shall be referred to under the "Precautions" section of the labeling and the full text of such patient information or Medication Guide shall be reprinted at the end of the labeling. The print size requirements for the Medication Guide set forth in § 208.20 of this chapter, however, do not apply to the Medication Guide that is reprinted in the professional labeling.

* * * * *

3. Part 208 is added to read as follows:

PART 208—MEDICATION GUIDES FOR PRESCRIPTION DRUG PRODUCTS

Subpart A—General Provisions

Sec.
208.1 Scope and purpose.
208.3 Definitions.

Subpart B—General Requirements for a Medication Guide

208.20 Content and format of a Medication Guide.
208.24 Distributing and dispensing a Medication Guide.
208.26 Exemptions and deferrals.

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360, 371, 374; 42 U.S.C. 262.

Subpart A—General Provisions

§ 208.1 Scope and purpose.

(a) This part sets forth requirements for patient labeling for human prescription drug products, including biological products, that the Food and Drug Administration (FDA) determines pose a serious and significant public health concern requiring distribution of FDA-approved patient information. It applies primarily to human prescription drug products used on an outpatient basis without direct supervision by a health professional. This part shall apply to new prescriptions and refill prescriptions.

(b) The purpose of patient labeling for human prescription drug products required under this part is to provide information when the FDA determines in writing that it is necessary to patients' safe and effective use of drug products.

(c) Patient labeling will be required if the FDA determines that one or more of the following circumstances exists:

(1) The drug product is one for which patient labeling could help prevent serious adverse effects.

(2) The drug product is one that has serious risk(s) (relative to benefits) of which patients should be made aware because information concerning the risk(s) could affect patients' decision to use, or to continue to use, the product.

(3) The drug product is important to health and patient adherence to directions for use is crucial to the drug's effectiveness.

§ 208.3 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Authorized dispenser* means an individual licensed, registered, or otherwise permitted by the jurisdiction in which the individual practices to provide drug products on prescription in the course of professional practice.

(b) *Dispense to patients* means the act of delivering a prescription drug product to a patient or an agent of the patient either:

(1) By a licensed practitioner or an agent of a licensed practitioner, either directly or indirectly, for self-administration by the patient, or the patient's agent, or outside the licensed practitioner's direct supervision; or

(2) By an authorized dispenser or an agent of an authorized dispenser under a lawful prescription of a licensed practitioner.

(c) *Distribute* means the act of delivering, other than by dispensing, a drug product to any person.

(d) *Distributor* means a person who distributes a drug product.

(e) *Drug product* means a finished dosage form, e.g., tablet, capsule, or solution, that contains an active drug ingredient, generally, but not necessarily, in association with inactive ingredients. For purposes of this part, drug product also means biological product within the meaning of section 351(a) of the Public Health Service Act.

(f) *Licensed practitioner* means an individual licensed, registered, or otherwise permitted by the jurisdiction in which the individual practices to prescribe drug products in the course of professional practice.

(g) *Manufacturer* means for a drug product that is not also a biological product, both the manufacturer as described in § 201.1 and the applicant as described in § 314.3(b) of this chapter, and for a drug product that is also a biological product, the manufacturer as described in § 600.3(t) of this chapter.

(h) *Medication Guide* means FDA-approved patient labeling conforming to the specifications set forth in this part and other applicable regulations.

(i) *Packer* means a person who packages a drug product.

(j) *Patient* means any individual, with respect to whom a drug product is intended to be, or has been, used.

(k) *Serious risk or serious adverse effect* means an adverse drug experience, or the risk of such an experience, as that term is defined in §§ 310.305, 312.32, 314.80, and 600.80 of this chapter.

Subpart B—General Requirements for a Medication Guide

§ 208.20 Content and format of a Medication Guide.

(a) A Medication Guide shall meet all of the following conditions:

(1) The Medication Guide shall be written in English, in nontechnical, understandable language, and shall not be promotional in tone or content.

(2) The Medication Guide shall be scientifically accurate and shall be based on, and shall not conflict with, the approved professional labeling for the drug product under § 201.57 of this chapter, but the language of the Medication Guide need not be identical to the sections of approved labeling to which it corresponds.

(3) The Medication Guide shall be specific and comprehensive.

(4) The letter height or type size shall be no smaller than 10 points (1 point = 0.0138 inches) for all sections of the Medication Guide, except the manufacturer's name and address and the revision date.

(5) The Medication Guide shall be legible and clearly presented. Where appropriate, the Medication Guide shall also use boxes, bold or underlined print, or other highlighting techniques to emphasize specific portions of the text.

(6) The words "Medication Guide" shall appear prominently at the top of the first page of a Medication Guide. The verbatim statement "This Medication Guide has been approved by the U.S. Food and Drug Administration" shall appear at the bottom of a Medication Guide.

(7) The brand and established or proper name of the drug product shall appear immediately below the words "Medication Guide." The established or proper name shall be no less than one-half the height of the brand name.

(b) A Medication Guide shall contain those of the following headings relevant to the drug product and to the need for the Medication Guide in the specified order. Each heading shall contain the specific information as follows:

(1) The brand name (e.g., the trademark or proprietary name), if any, and established or proper name. Those products not having an established or proper name shall be designated by their active ingredients. The Medication Guide shall include the phonetic spelling of either the brand name or the established name, whichever is used throughout the Medication Guide.

(2) The heading, "What is the most important information I should know about (name of drug)?" followed by a statement describing the particular serious and significant public health concern that has created the need for the Medication Guide. The statement should describe specifically what the patient should do or consider because of that concern, such as, weighing particular risks against the benefits of the drug, avoiding particular behaviors (e.g., activities, drugs), observing certain events (e.g., symptoms, signs) that could prevent or mitigate a serious adverse effect, or engaging in particular behaviors (e.g., adhering to the dosing regimen).

(3) The heading, "What is (name of drug)?" followed by a section that identifies a drug product's indications for use. The Medication Guide may not identify an indication unless the indication is identified in the indications and usage section of the professional labeling for the product required under § 201.57 of this chapter. In appropriate circumstances, this section may also explain the nature of the disease or condition the drug product is intended to treat, as well as the benefit(s) of treating the condition.

(4) The heading, "Who should not take (name of drug)?" followed by information on circumstances under which the drug product should not be used for its labeled indication (its contraindications). The Medication Guide shall contain directions regarding what to do if any of the contraindications apply to a patient, such as contacting the licensed practitioner or discontinuing use of the drug product.

(5) The heading, "How should I take (name of drug)?" followed by information on the proper use of the drug product, such as:

(i) A statement stressing the importance of adhering to the dosing instructions, if this is particularly important;

(ii) A statement describing any special instructions on how to administer the drug product, if they are important to the drug's safety or effectiveness;

(iii) A statement of what patients should do in case of overdose of the drug product; and

(iv) A statement of what patients should do if they miss taking a scheduled dose(s) of the drug product, where there are data to support the advice, and where the wrong behavior could cause harm or lack of effect.

(6) The heading "What should I avoid while taking (name of drug)?" followed by a statement or statements of specific, important precautions patients should take to ensure proper use of the drug, including:

(i) A statement that identifies activities (such as driving or sunbathing), and drugs, foods, or other substances (such as tobacco or alcohol) that patients should avoid when using the medication;

(ii) A statement of the risks to mothers and fetuses from the use of the drug during pregnancy, if specific, important risks are known;

(iii) A statement of the risks of the drug product to nursing infants, if specific, important risks are known;

(iv) A statement about pediatric risks, if the drug product has specific hazards associated with its use in pediatric patients;

(v) A statement about geriatric risks, if the drug product has specific hazards associated with its use in geriatric patients; and

(vi) A statement of special precautions, if any, that apply to the safe and effective use of the drug product in other identifiable patient populations.

(7) The heading, "What are the possible or reasonably likely side effects of (name of drug)?" followed by:

(i) A statement of the adverse reactions reasonably likely to be caused by the drug product that are serious or occur frequently.

(ii) A statement of the risk, if there is one, of patients' developing dependence on the drug product.

(8) General information about the safe and effective use of prescription drug products, including:

(i) The verbatim statement that "Medicines are sometimes prescribed for purposes other than those listed in a Medication Guide" followed by a statement that patients should ask

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health professionals about any concerns, and a reference to the availability of professional labeling;

(ii) A statement that the drug product should not be used for a condition other than that for which it is prescribed, or given to other persons;

(iii) The name and place of business of the manufacturer, packer, or distributor of a drug product that is not also a biological product, or the name and place of business of the manufacturer or distributor of a drug product that is also a biological product, and in any case the name and place of business of the dispenser of the product may also be included; and

(iv) The date, identified as such, of the most recent revision of the Medication Guide placed immediately after the last section.

(9) Additional headings and subheadings may be interspersed throughout the Medication Guide, if appropriate.

§ 208.24 Distributing and dispensing a Medication Guide.

(a) The manufacturer of a drug product for which a Medication Guide is required under this part shall obtain FDA approval of the Medication Guide before the Medication Guide may be distributed.

(b) Each manufacturer who ships a container of drug product for which a Medication Guide is required under this part is responsible for ensuring that Medication Guides are available for distribution to patients by either:

(1) Providing Medication Guides in sufficient numbers to distributors, packers, or authorized dispensers to permit the authorized dispenser to provide a Medication Guide to each patient receiving a prescription for the drug product; or

(2) Providing the means to produce Medication Guides in sufficient numbers to distributors, packers, or authorized dispensers to permit the authorized dispenser to provide a Medication Guide to each patient receiving a prescription for the drug product.

(c) Each distributor or packer that receives Medication Guides, or the means to produce Medication Guides, from a manufacturer under paragraph (b) of this section shall provide those Medication Guides, or the means to produce Medication Guides, to each authorized dispenser to whom it ships a container of drug product.

(d) The label of each container or package, where the container label is too small, of drug product for which a Medication Guide is required under this part shall instruct the authorized dispenser to provide a Medication Guide to each patient to whom the drug product is dispensed, and shall state how the Medication Guide is provided. These statements shall appear on the label in a prominent and conspicuous manner.

(e) Each authorized dispenser of a prescription drug product for which a Medication Guide is required under this part shall, when the product is dispensed to a patient (or to a patient's agent), provide a Medication Guide directly to each patient (or to the patient's agent) unless an exemption applies under § 208.26.

(f) An authorized dispenser or wholesaler is not subject to section 510 of the Federal Food, Drug, and Cosmetic Act, which requires the registration of producers of drugs and the listing of drugs in commercial distribution, solely because of an act performed by the authorized dispenser or wholesaler under this part.

§ 208.26 Exemptions and deferrals.

(a) FDA on its own initiative, or in response to a written request from an applicant, may exempt or defer any Medication Guide content or format requirement, except those requirements in § 208.20 (a)(2) and (a)(6), on the basis that the requirement is inapplicable, unnecessary, or contrary to patients' best interests. Requests from applicants should be submitted to the director of the FDA division responsible for reviewing the marketing application for the drug product, or for a biological product, to the application division in the office with product responsibility.

(b) If the licensed practitioner who prescribes a drug product subject to this part determines that it is not in a particular patient's best interest to receive a Medication Guide because of significant concerns about the effect of a Medication Guide, the licensed practitioner may direct that the Medication Guide not be provided to the particular patient. However, the authorized dispenser of a prescription drug product subject to this part shall provide a Medication Guide to any patient who requests information when the drug product is dispensed regardless of any such direction by the licensed practitioner.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

4. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371, 374, 379e.

5. Section 314.50 is amended by revising the first and third sentences of the introductory text, paragraph (c)(2)(i), the first sentence of paragraph (d)(5)(vi)(*b*), paragraph (e)(2)(ii), and the fourth sentence in paragraph (l)(1) to read as follows:

§ 314.50 Content and format of an application.

Applications and supplements to approved applications are required to be submitted in the form and contain the information, as appropriate for the particular submission, required under this section. * * * An application for a new chemical entity will generally contain an application form, an index, a summary, five or six technical sections, case report tabulations of patient data, case report forms, drug samples, and labeling, including, if applicable, any Medication Guide required under part 208 of this chapter. * * *

* * * * *

(c) * * *

(2) * * *

(i) The proposed text of the labeling, including, if applicable, any Medication Guide required under part 208 of this chapter, for the drug, with annotations to the information in the summary and technical sections of the application that support the inclusion of each statement in the labeling, and, if the application is for a prescription drug, statements describing the reasons for omitting a section or subsection of the labeling format in § 201.57 of this chapter.

* * * * *

(d) * * *

(5) * * *

(vi) * * *

(*b*) The applicant shall, under section 505(i) of the act, update periodically its pending application with new safety information learned about the drug that may reasonably affect the statement of contraindications, warnings, precautions, and adverse reactions in the draft labeling and, if applicable, any Medication Guide required under part 208 of this chapter. * * *

* * * * *

(e) * * *

(2) * * *

(ii) Copies of the label and all labeling for the drug product (including, if applicable, any Medication Guide required under part 208 of this chapter) for the drug product (4 copies of draft labeling or 12 copies of final printed labeling).

* * * * *

(l) * * *

(1) * * * Information relating to samples and labeling (including, if

applicable, any Medication Guide required under part 208 of this chapter), described in paragraph (e) of this section, is required to be submitted in hard copy. * * *

* * * * *

6. Section 314.70 is amended by revising paragraph (b)(3) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

* * * * *

(b) * * *

(3) *Labeling.* (i) Any change in labeling, except one described in paragraphs (c)(2) or (d) of this section.

(ii) If applicable, any change to a Medication Guide required under part 208 of this chapter, except for changes in the information specified in § 208.20(b)(8)(iii) and (b)(8)(iv).

* * * * *

7. Section 314.94 is amended by revising paragraph (a)(8) to read as follows:

§ 314.94 Content and format of an abbreviated application.

* * * * *

(a) * * *

(8) *Labeling*—(i) *Listed drug labeling.* A copy of the currently approved labeling (including, if applicable, any Medication Guide required under part 208 of this chapter) for the listed drug referred to in the abbreviated new drug application, if the abbreviated new drug application relies on a reference listed drug.

(ii) *Copies of proposed labeling.* Copies of the label and all labeling for the drug product including, if applicable, any Medication Guide required under part 208 of this chapter (4 copies of draft labeling or 12 copies of final printed labeling).

(iii) *Statement on proposed labeling.* A statement that the applicant's proposed labeling including, if applicable, any Medication Guide required under part 208 of this chapter is the same as the labeling of the reference listed drug except for differences annotated and explained under paragraph (a)(8)(iv) of this section.

(iv) *Comparison of approved and proposed labeling.* A side-by-side comparison of the applicant's proposed labeling including, if applicable, any Medication Guide required under part 208 of this chapter with the approved labeling for the reference listed drug with all differences annotated and explained. Labeling (including the container label, package insert, and, if applicable, Medication Guide) proposed for the drug product must be the same as the labeling approved for the reference listed drug, except for changes required because of differences approved under a petition filed under § 314.93 or because the drug product and the reference listed drug are produced or distributed by different manufacturers. Such differences between the applicant's proposed labeling and labeling approved for the reference listed drug may include differences in expiration date, formulation, bioavailability, or pharmacokinetics, labeling revisions made to comply with current FDA labeling guidelines or other guidance, or omission of an indication or other aspect of labeling protected by patent or accorded exclusivity under section 505(j)(4)(D) of the act.

* * * * *

PART 601—LICENSING

8. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; 15 U.S.C. 1451–1561.

9. Section 601.2 is amended by revising the first sentence in the introductory text of paragraph (a) and paragraph (c)(1)(viii) to read as follows:

§ 601.2 Applications for establishment and product licenses; procedures for filing.

(a) To obtain a license for any establishment or product, the manufacturer shall make application to the Director, Center for Biologics Evaluation and Research, on forms prescribed for such purposes, and in the case of an application for a product license, shall submit data derived from nonclinical laboratory and clinical studies which demonstrate that the manufactured product meets prescribed standards of safety, purity, and potency; with respect to each nonclinical laboratory study, either a statement that the study was conducted in compliance with the requirements set forth in part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the noncompliance; statements regarding each clinical investigation involving human subjects contained in the application, that it either was conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter or was not subject to such requirements in accordance with § 56.104 or § 56.105 of this chapter, and was conducted in compliance with requirements for informed consent set forth in part 50 of this chapter; a full description of manufacturing methods; data establishing stability of the product through the dating period; sample(s) representative of the product to be sold, bartered, or exchanged or offered, sent, carried, or brought for sale, barter, or exchange; summaries of results of tests performed on the lot(s) represented by the submitted sample(s); and specimens of the labels, enclosures, containers, and, if applicable, any Medication Guide required under part 208 of this chapter proposed to be used for the product. * * *

* * * * *

(c)(1) * * *

(viii) Specimens of the labels, enclosures, containers, and, if applicable, any Medication Guide required under part 208 of this chapter proposed to be used for the product.

* * * * *

10. Section 601.12 is amended by revising the second sentence of paragraph (f)(1), and paragraph (f)(3)(i) to read as follows:

§ 601.12 Changes to an approved application.

* * * * *

(f) * * *

(1) * * * Except as described in paragraphs (f)(2) and (f)(3) of this section, an applicant shall submit a supplement describing a proposed change in the package insert, package label, container label, or, if applicable, a Medication Guide required under part 208 of this chapter, and include the information necessary to support the proposed change. * * *

* * * * *

(3) * * *

(i) An applicant shall submit any final printed package insert, package label, container label, or Medication Guide required under part 208 of this chapter incorporating the following changes in an annual report submitted to FDA each year as provided in paragraph (d)(1) of this section:

(A) Editorial or similar minor changes;

(B) A change in the information on how the product is supplied that does not involve a change in the dosage strength or dosage form; and

(C) A change in the information specified in § 208.20(b)(8)(iii) and (b)(8)(iv) of this chapter for a Medication Guide.

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

11. The authority citation for 21 CFR part 610 continues to read as follows:

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Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

12. Section 610.60 is amended by adding paragraph (a)(7) to read as follows:

§ 610.60 Container label.

(a) * * *

(7) If a Medication Guide is required under part 208 of this chapter, the statement required under § 208.24(d) of this chapter instructing the authorized dispenser to provide a Medication Guide to each patient to whom the drug is dispensed and stating how the Medication Guide is provided, except where the container label is too small, the required statement may be placed on the package label.

* * * * *

Dated: April 21, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–31627 Filed 11–25–98; 11:08 am]

BILLING CODE 4160–01–P

federal register

Tuesday
December 1, 1998

Part VI

Department of Education

List of Approved "Ability-to-Benefit" Tests and Passing Scores; Notice

DEPARTMENT OF EDUCATION

List of Approved "Ability-to-Benefit" Tests and Passing Scores

AGENCY: The Department of Education.

ACTION: Notice: Correction.

SUMMARY: This document corrects the passing scores for the Test of Adult Basic Education (TABE)—Forms 5 and 6, Level A for both the Survey and Complete Battery Versions; and Test of Adult Basic Education (TABE)—Forms 7 and 8, Level A, for both Survey and Complete Battery Versions. Only the paper and pencil formats for these tests were approved. These tests and their incorrect passing scores were included in the Update Notice of the List of Approved "Ability-to-Benefit" Tests and Passing Scores that was published in the **Federal Register** on October 27, 1998 (63 FR 57540).

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3045, Washington, DC 20202–5451. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On October 27, 1998, the Secretary published a notice that provided a list of "ability-to-benefit" tests and passing scores that the Secretary has approved under section 484(d)) of the Higher Education Act of 1965, as amended (HEA), and the regulations that the Secretary promulgated to implement that section in 34 CFR Part 668, Subpart J. The notice also included approved passing scores for the approved tests. These passing scores for the listed TABE tests were incorrect. This notice corrects those scores. Users are referred to the test publisher's technical manual for computing these scores.

If an institution used the scores for the TABE tests listed in the October 27, 1998 notice for an ability-to-benefit determination under section 484(d) of the HEA, and received a notice from the test publisher or an assessment center that a student achieved at least a passing score on that test, the institution may rely on that notice. The student does not have to retake that test.

However, if the institution was notified by the test publisher or an assessment center between October 27, 1998 and December 1, 1998, that the student failed to qualify for the ATB program, the institution may have the student's TABE test rescored by the test publisher or the assessment center with the composite scores listed in this notice.

For the convenience of institutions participating in the title IV, HEA programs and other parties, the following is a listing of the nine approved ATB tests and their passing scores.

List of Approved "Ability-to-Benefit" Tests and Passing Scores

1. *American College Testing (ACT): (English and Math) Passing Scores:* The approved passing scores on this test are as follows: English (14) and Math (15).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. James Maxey, Telephone: (319) 337–1100, Fax: (319) 337–1790.

2. *ASSET Program: Basic Skills Tests (Reading, Writing, and Numerical)—Forms B2 and C2.*

Passing Scores: The approved passing scores on this test are as follows: Reading (34), Writing (34), and Numerical (33).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

3. *Career Programs Assessment (CPAT) Basic Skills Subtests Language Usage, Reading and Numerical)—Forms A, B, and C.*

Passing Scores: The approved passing scores on this test are as follows: Language Usage (43), Reading (44), and Numerical (42).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

4. *COMPASS Subtests: Prealgebra/Numerical Skills Placement, Reading Placement, and Writing Placement.*

Passing Scores: The approved passing scores on this test are as follows: Prealgebra/Numerical (21), Reading (60), and Writing (31).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

5. *Computerized Placement Tests (CPTs)/Accuplacer (Reading Comprehension, Sentence Skills, and Arithmetic).*

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (52), Sentence Skills (60), and Arithmetic (36).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Loretta M. Church, Telephone: (212) 713–8000, Fax: (212) 713–8063.

6. *Descriptive Tests: Descriptive Tests of Language Skills (DTLS) (Reading Comprehension, Sentence Structure and Conventions of Written English)—Forms M–K–3KDT and M–K–3LDT; and Descriptive Tests of Mathematical Skills (DTMS) (Arithmetic)—Forms M–K–3KDT and M–K–3LDT.*

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (108), Sentence Structure (9), Conventions of Written English (309), and Arithmetic (506).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Loretta M. Church, Telephone: (212) 713–8000, Fax: (212) 713–8063.

7. Test of Adult Basic Education (TABE): (Reading Total, Total Mathematics, Total Language)—Forms 5 and 6, Level A, Complete Battery and Survey Versions.

Passing Scores: The approved passing scores on this test are as follows: Reading Total (768), Total Mathematics (783), Total Language (714).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill, 20 Ryan Ranch Road, Monterey, California 93940–5703, Contact: Ms. Tina Gwaltney, Telephone: (831) 393–7749, Fax: (831) 393–7142.

8. Test of Adult Basic Education (TABE): (Reading, Total Mathematics,

Language)—Forms 7 and 8, Level A, Complete Battery and Survey Versions.

Passing Scores: The approved passing scores on this test are as follows: Reading (559), Total Mathematics (562), Language (545).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill, 20 Ryan Ranch Road, Monterey, California 93940–5703, Contact: Ms. Tina Gwaltney, Telephone: (831) 393–7749, Fax: (831) 393–7142.

9. *Wonderlic Basic Skills Test (WBST)—Verbal Forms VS–1 & VS–2, Quantitative Forms QS–1 & QS–2.*

Passing scores: The approved passing scores on this test are as follows: Verbal (200) and Quantitative (210).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: Wonderlic Personnel Test, Inc., 1509 N. Milwaukee Ave., Libertyville, IL 60048–1380, Contact: Mr. Victor S. Artese, Telephone: (800) 323–374, Fax: (847) 680–9492.

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Note: The official version of this document is the document published in the **Federal Register**.

Dated: November 24, 1998.

Diane E. Rogers,

Acting Chief Operating Officer, Student Financial Assistance Programs.

[FR Doc. 98–31999 Filed 11–30–98; 8:45 am]

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CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 1, 1998

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

- Perishable Agricultural Commodities Act; implementation:
  - Retailers, grocery wholesalers, and other licensees; license renewal periods; published 11-19-98

COMMERCE DEPARTMENT

Patent and Trademark Office

- Patent cases:
  - Patent Cooperation Treaty application procedures; revisions; published 12-1-98

CONSUMER PRODUCT SAFETY COMMISSION

- Poison prevention packaging:
  - Sucraid; exemption; published 12-1-98

FEDERAL COMMUNICATIONS COMMISSION

- Radio stations; table of assignments:
  - Iowa; published 10-28-98

FEDERAL RESERVE SYSTEM

- Depository institutions; reserve requirements (Regulation D):
  - Low reserve tranche adjustment; published 11-30-98

GENERAL SERVICES ADMINISTRATION

- Federal property management:
  - Utilization and disposal—
    - Excess personal property reporting requirements; published 7-27-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Animal drugs, feeds, and related products:
  - New drug applications—
    - Melengestrol acetate and lasalocid; published 12-1-98
- Food additives:
  - White Mineral Oil, USP; published 12-1-98
- Food for human consumption:
  - Natamycin (Pimaricin); published 12-1-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

- Permanent program and abandoned mine land reclamation plan submissions:
  - Illinois; published 11-16-98

JUSTICE DEPARTMENT

Immigration and Naturalization Service

- Nonimmigrant classes:
  - Nonimmigrant workers (H-1B category); petitioning requirements—
    - Fee schedule and filing requirements; published 11-30-98

LABOR DEPARTMENT

- Privacy Act; implementation; published 10-22-98

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

- Copyright office and procedure:
  - Supplementary registration applications; corrections and amplifications
    - Correction; published 12-1-98

PENSION BENEFIT GUARANTY CORPORATION

- Single-employer plans:
  - Allocation of assets—
    - Interest assumptions for valuing benefits; published 11-13-98

POSTAL SERVICE

- Practice and procedure:
  - Rules of procedure before judicial officer; address, titles and references, and technical and grammatical changes; published 12-1-98

TRANSPORTATION DEPARTMENT

- Workplace drug and alcohol testing programs:
  - Opiate threshold levels; changes; published 11-25-98

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Agricultural Marketing Service

- Cherries (tart) grown in—
  - Michigan; comments due by 12-1-98; published 11-17-98
  - Michigan et al.; comments due by 12-3-98; published 11-18-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

- Plant-related quarantine, foreign:
  - Orchids in growing media; importation; comments due by 12-2-98; published 10-29-98

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

- Fees:
  - Official inspection and weighing services; comments due by 12-1-98; published 10-2-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

- Electric loans:
  - Year 2000 compliant electric systems; comments due by 11-30-98; published 9-29-98

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National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - West Coast States and Western Pacific fisheries—
    - Northern anchovy; comments due by 11-30-98; published 10-30-98

COMMERCE DEPARTMENT

Patent and Trademark Office

- Patent cases:
  - Patent business goals; implementation; comments due by 12-4-98; published 10-5-98

DEFENSE DEPARTMENT

- Freedom of Information; implementation
  - National Security Agency/Central Security Service; comments due by 11-30-98; published 9-30-98

EDUCATION DEPARTMENT

- Special education and rehabilitative services:
  - State vocational rehabilitation services program; comments due by 11-30-98; published 10-14-98

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

- Consumer products; energy conservation program:
  - Fluorescent lamp ballasts; energy conservation standards; comments due by 11-30-98; published 10-30-98

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

- Natural gas companies (Natural Gas Act):
  - Facilities construction and operation, etc.; filing of applications; comments due by 12-1-98; published 10-16-98

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- Air pollutants, hazardous; national emission standards:
  - Petroleum refineries—
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- Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Connecticut; comments due by 12-2-98; published 11-2-98
- Clean Air Act:
  - Interstate ozone transport reduction—
    - Section 126 petitions, findings of significant contribution and rulemaking; comments due by 11-30-98; published 10-21-98
  - Interstate ozone transport reduction; Section 126 petitions and Federal implementation plans; comments due by 11-30-98; published 9-30-98
  - Regional transport of ozone, Eastern States; Federal implementation plans; comments due by 11-30-98; published 10-21-98
- Hazardous waste program authorizations:
  - Michigan; comments due by 11-30-98; published 10-29-98
- Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
  - Pyridaben; comments due by 12-4-98; published 10-5-98
- Superfund program:
  - National oil and hazardous substances contingency plan—
    - National priorities list update; comments due

by 11-30-98; published 9-29-98

- Toxic substances:
  - Lead-based paint; identification of dangerous levels of lead; comments due by 11-30-98; published 10-1-98
- Water pollution control:
  - Underground injection control program—
    - Class V wells; requirements for motor vehicle waste and industrial waste disposal wells and cesspools in ground water-based source protection areas; comments due by 11-30-98; published 9-29-98

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  - Interstate services of local exchange carriers; authorized unitary rate of return; comments due by 12-3-98; published 10-20-98
- Radio services, special:
  - Amateur services—
    - Novice class and technician plus operator licenses phaseout, etc.; comments due by 12-1-98; published 9-14-98
- Radio stations; table of assignments:
  - Nevada; comments due by 11-30-98; published 10-19-98
  - Texas; comments due by 11-30-98; published 10-19-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

- Food additives:
  - Adjuvants, production aids, and sanitizers—
    - 2,9-dichloro-5,12-dihydroquinone[2,3-b]acridine-7,14-dione (C.I. Pigment Red 202); comments due by 12-3-98; published 11-3-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

- Medicaid:
  - Managed care programs; comments due by 11-30-98; published 9-29-98

HEALTH AND HUMAN SERVICES DEPARTMENT

- Health care programs; fraud and abuse:
  - Health Insurance Portability and Accountability Act—
    - Data collection program; final adverse actions reporting; comments due by 11-30-98; published 10-30-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

- Health care programs; fraud and abuse:
  - Health Insurance Portability and Accountability Act—
    - Data collection program; final adverse actions reporting; comments due by 11-30-98; published 10-30-98

JUSTICE DEPARTMENT

Immigration and Naturalization Service

- Immigration:
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- Federal prisoners; paroling and releasing, etc.:
  - District of Columbia Code; incorporation into Parole Commission regulations; comments due by 12-1-98; published 7-21-98
  - District of Columbia Code; prisoners serving sentences; comments due by 12-1-98; published 10-26-98

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  - Member business loans and appraisals; comments due by 11-30-98; published 9-29-98

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  - 30-day hold in loading spent fuel after preoperational testing of independent spent fuel or monitored retrievable storage installations; reporting requirement eliminated; comments due by 11-30-98; published 9-14-98
- Rulemaking petitions:
  - American National Standards Institute; comments due by 11-30-98; published 9-15-98

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- Shipping and navigation:
  - Marine accidents; investigations, control, responsibility; comments due by 11-30-98; published 10-22-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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  - Major repair data development (SFAR No. 36); comments due by 12-2-98; published 11-2-98
- Airworthiness directives:
  - Boeing; comments due by 11-30-98; published 9-30-98
  - Mooney Aircraft Corp.; comments due by 12-4-98; published 10-9-98
  - Pratt & Whitney; comments due by 11-30-98; published 8-31-98
  - Twin Commander Aircraft Corp.; comments due by 12-2-98; published 10-9-98
- Airworthiness standards:
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- Class E airspace; comments due by 11-30-98; published 10-16-98

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Federal Highway Administration

- Transportation Equity Act for 21st Century; implementation:
  - Open container laws; comments due by 12-4-98; published 10-6-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

- Anthropomorphic test devices:
  - Occupant crash protection—
    - Hybrid III test dummies; fifth percentile female adult dummy design and performance specifications; comments due by 12-2-98; published 9-3-98
- Motor vehicle safety standards:
  - Occupant crash protection—
    - Occupant protection incentive grants criteria; comments due by 11-30-98; published 10-1-98
- Transportation Equity Act for 21st Century; implementation:
  - Open container laws; comments due by 12-4-98; published 10-6-98

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

- Hazardous materials:
  - Infectious substances and genetically modified micro-organisms standards; requirements and exceptions clarification and public meeting; comments due by 12-1-98; published 9-2-98

TRANSPORTATION DEPARTMENT

Transportation Statistics Bureau

- ICC Termination Act; implementation:
  - Motor carriers of property; reporting requirements; comments due by 12-3-98; published 11-3-98

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Customs Service

- Drawback:
  - False drawback claims; penalties; comments due by 11-30-98; published 9-29-98

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- Income taxes:
  - Taxpayer Relief Act—
    - Qualified retirement plan benefits; section 411(d)(6) protected benefits; comments due by 12-3-98; published 9-4-98
    - Roth IRAs; comments due by 12-2-98; published 9-3-98
- Procedure and administration:
  - Tax refund offset program; revisions; comments due by 11-30-98; published 8-31-98

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress is in Part II of this issue of the **Federal Register**.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1998

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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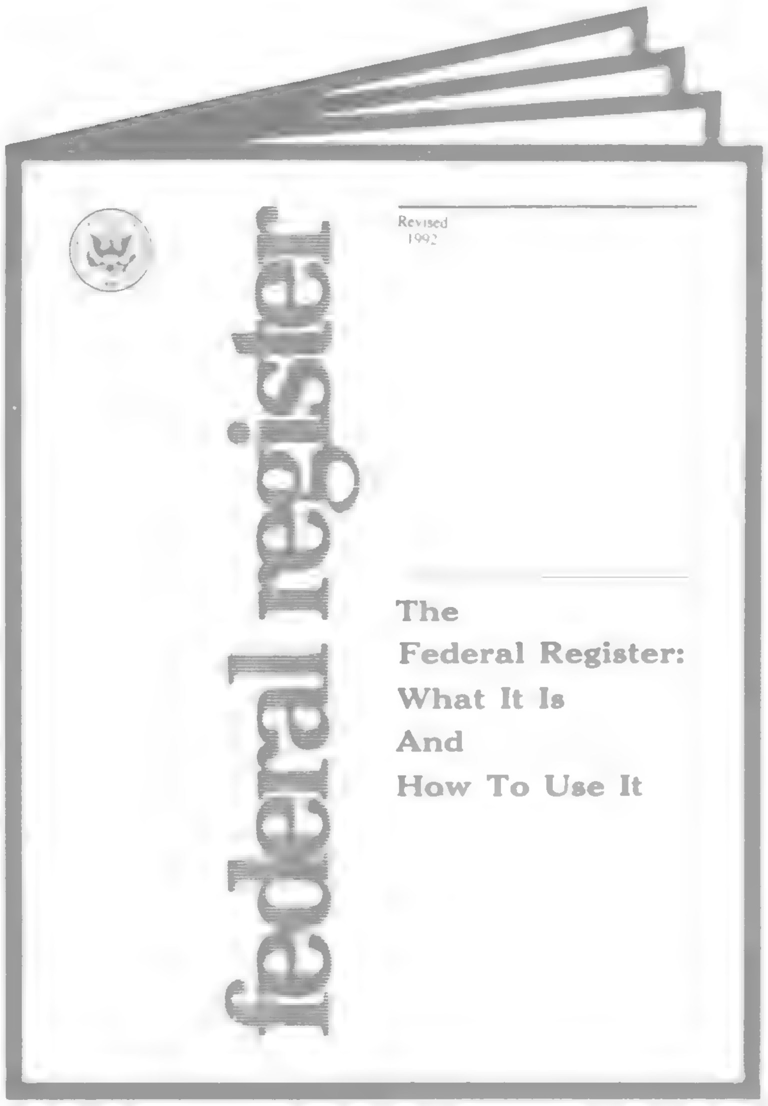
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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2424

Negotiability Proceedings

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Chair and Members of the Authority component (the Authority) of the Federal Labor Relations Authority (the FLRA) revise the regulations concerning negotiability proceedings. The revisions are designed to expedite these proceedings and facilitate dispute resolution.

EFFECTIVE DATE: April 1, 1999.

ADDRESSES: Written comments received are available for public inspection during normal business hours at the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW., Washington, D.C. 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, at the address listed above or by telephone #(202) 482–6540.

SUPPLEMENTARY INFORMATION:

Background

In an effort to improve its decision-making processes, the Chair and Members of the Authority established an internal task force to study and evaluate the policies and procedures in effect concerning negotiability proceedings under 5 U.S.C. 7117. To this end, the Authority published a **Federal Register** notice (63 FR 19413) (April 20, 1998) inviting the public to submit written comments on several subjects relevant to negotiability proceedings, and to participate in a focus group held in May 1998 to discuss these matters.

Subsequently, the Authority proposed revisions to part 2424 of the Authority's regulations concerning negotiability proceedings. The proposed rule was published in the **Federal Register** and public comment was solicited on the proposed changes (63 FR 48130) (September 9, 1998). The Authority invited comment on the proposed rule in two ways: by convening meetings in October 1998 in Chicago, IL, Oakland, CA, and Washington, DC, and by offering the public an opportunity to submit written comments. Formal written comments were submitted by seven agencies, six exclusive representatives, and two individuals. In addition, over 80 individuals, representing many agencies and exclusive representatives, participated in meetings to discuss the proposed regulations. All comments, whether expressed orally in a meeting or submitted in writing, have been considered prior to publishing the final rule, and most comments are specifically addressed in the section-by-section analysis below. Revisions to the proposed rule have been made, for the most part, in response to suggestions and comments received.

Significant Changes

The final rule, like the proposed rule, involves important changes in the processing of negotiability appeals. The final rule incorporates significant changes from the proposed rule, based on consideration of comments received. The most significant change is that the Authority determined not to include in the final rule requirements that: (1) An exclusive representative file with the Authority a notice of intent to institute a negotiability appeal; and (2) parties participate in a conference with a representative of the FLRA prior to the filing of a petition for review by the exclusive representative concerning a proposal for bargaining. These proposed requirements would have applied only to bargaining proposals; they were not proposed to apply to disputes involving provisions that had been disapproved by agency heads under 5 U.S.C. 7114(c). The proposed notice of appeal and prefiling conference requirements were intended to provide an opportunity to explore resolution of the dispute, and narrow and clarify issues remaining to be resolved on appeal.

Many of the commenters to the proposed rule objected to the proposed notice of appeal and prefiling conference requirements. The reasons for these objections included comments that the notice of appeal and prefiling conference would lead to unnecessary delay in resolution of the negotiability appeal, and comments that the Authority did not have a sufficient interest in a prefiling dispute to warrant these regulatory requirements. Commenters generally agreed, however, that a conference that included representatives of the parties and the FLRA would be useful during the processing of a negotiability appeal.

In response to these comments, the final rule does not include the notice of appeal and prefiling conference requirements. Instead, the final rule provides for a "post-petition conference" to be held in cases involving a proposal or provision after the exclusive representative has filed its petition for review but before the agency files its statement of position. The purpose of the post-petition conference, which may be held in person or telephonically, is to ensure that the parties have a common understanding of the meaning and impact of the proposal or provision at issue; to determine whether there are factual disputes concerning the proposal or provision; and to discuss other relevant matters, including whether the parties wish to explore alternative dispute resolution.

The final rule also differs from the proposed rule by eliminating the provision that would have precluded parties from raising new arguments after the close of the filing conferences. The final rule requires that the agency raise and support in its statement of position all of its arguments that a proposal or provision is outside the duty to bargain or contrary to law, respectively. The exclusive representative, in its response, is required to raise and support any arguments opposing arguments made in the agency's statement of position. The agency is then provided with a right to file a submission not previously proposed: a reply to arguments raised for the first time in the exclusive representative's response. This submission is limited to replying to new arguments in the exclusive representative's response.

In other respects, the final rule retains significant aspects of the proposed rule. In particular, it establishes procedures designed to facilitate the resolution in one proceeding of all issues raised in connection with a petition for review, including those issues previously processed exclusively under unfair labor practice or grievance procedures. Among other things, with one exception, the final rule retains the portion of the proposed rule that results in dismissal without prejudice of a petition for review where an unfair labor practice charge or grievance is pending over issues directly related to the petition.

The proposed rule has also been modified in many other respects, primarily in response to specific comments. All of the changes from the proposed rule are described in the following sectional analysis of the final rule.

Sectional Analyses

Sectional analyses of the amendments and revisions to part 2424, Negotiability Proceedings, are as follows:

Part 2424—Negotiability Proceedings

Subpart A—Applicability of This Part and Definitions

Section 2424.1

Commenters recommended that the Authority change the effective date of the rule to allow parties sufficient time to train employees and develop procedures to protect their respective interests under the revised rule. To address these concerns, the final rule establishes an April 1, 1999 effective date.

Section 2424.2

Numerous commenters responded favorably to the addition of a definition section to this part. Several changes have been made to particular definitions, in response to suggestions offered by commenters.

Changes have been made in subsection (a) and (c) to clarify and distinguish the two types of disagreements over the duty to bargain, which the proposed rule identified as "bargaining disputes" and "negotiability disputes." Several commenters suggested that the term "bargaining dispute" was confusing in that it commonly is used to apply to a broader range of disputes than contemplated by the definition of the term in the proposed regulations, and other commenters suggested alternative terms. To address these concerns, the term "bargaining dispute" has been changed to "bargaining obligation dispute" in the final rule. The term "negotiability dispute" has been retained in the final rule. In order to avoid confusion over the disputes to which these terms apply, examples have been provided in both subsection (a) and subsection (c).

Several comments indicated that the concept of "provision" in subsection (f) appeared to be broader than its proposed definition and, in particular, should be defined to include a contract term imposed by the Federal Service Impasses Panel pursuant to 5 U.S.C. 7119 and disapproved by an agency head pursuant to 5 U.S.C. 7114(c). The final rule is modified to reflect that a provision encompasses any matter disapproved on agency head review.

With respect to the definition of "service" in subsection (g), the final rule remains unchanged from the proposed rule and requires that the exclusive representative serve its filings on both the agency's principal bargaining representative and the head of the agency. In this regard, the final rule does not incorporate the recommendation of one commenter that the requirement for the exclusive representative to serve copies of its filings be limited to service on the agency head, as required in 5 U.S.C. 7117(c)(2)(B). The Authority views service on both the agency's principal bargaining representative and the agency head as important to ensure that appropriate agency officials receive prompt notice of the exclusive representative's filing of the petition for review, as well as subsequent filings. Ensuring that appropriate agency officials receive prompt notice of the filing of a petition for review is particularly important in view of the requirement in § 2424.23 of the final regulations that appropriate agency officials be available and prepared to participate in a post-petition conference within a short time after the filing of the petition. Thus, although the final rule imposes a burden on exclusive representatives, this burden is outweighed, in the Authority's view, by the benefits resulting from the service requirement.

The final rule in subsection (h) modifies the definition of "severance" from that in the proposed rule to make clear that the purpose of severance is to determine whether a severed portion of a proposal or provision is within the duty to bargain, or contrary to law, in the event that some portions of the proposal or provision are found to be outside the duty to bargain or contrary to law. In effect, severing portions of a proposal or provision results in the creation of separate proposals or provisions. Thus, severed portions must have independent meaning, and any dispute over severed portions must be argued separately. Resolving bargaining obligation and negotiability disputes regarding portions of a proposal or provision lengthens the time necessary to issue decisions and orders, and requires expenditures of additional resources—separate arguments and responses—by both parties. Accordingly, exclusive representatives should request severance only in situations where they wish to bargain over portions of a proposal, or have only portions of a provision included in a collective bargaining agreement in the event that some portions are found to be outside the duty to bargain or contrary to law.

One commenter suggested that the definition of "written allegation concerning the duty to bargain" in subsection (i) be changed to "written allegation" or "written allegation concerning the legality of a proposal or provision" to eliminate any confusion associated with the term "bargain," which is also used in the unfair labor practice context. Although the final rule does not adopt this suggestion, the definition of "petition for review" makes clear that appeals under part 2424 must involve a negotiability dispute: if only a bargaining obligation dispute is involved, then the appeal cannot be resolved under part 2424.

As discussed in further detail in the commentary to Subpart B, the definition of "notice of intent to appeal" in the proposed rule has been eliminated from the final rule.

Finally, one commenter recommended that the final rule define the term "conditions of employment." The final rule does not adopt this recommendation because the definition of this term is set forth in 5 U.S.C. 7103 (a)(14), and its inclusion in the regulations would be duplicative.

Sections 2424.3–2424.9

These sections are reserved.

Subpart B—Alternative Dispute Resolution; Requesting and Providing Allegations Concerning the Duty To Bargain

As noted in the introductory discussion, the Authority received many comments objecting to the proposed prefiling requirement and, in particular, prefiling conferences. Commenters did not, however, object to the optional use of such procedures. Several commenters suggested that mandatory prefiling conferences would result in unnecessary delay and would involve the Authority too early in the negotiability process. Commenters also suggested that efforts directed at alternative dispute resolution would be better handled through programs and/or agencies specifically designed for that purpose, such as the FLRA's Collaboration and Alternative Dispute Resolution Program (CADR) or the Federal Mediation and Conciliation Service. Other commenters questioned the legality of the proposed prefiling conditions as well as the proposal to preclude parties from later raising arguments that had not been raised during the prefiling conference. In response to these comments, the final rule eliminates all proposed prefiling conditions, including the notice of intent to appeal and the mandatory prefiling conferences. As discussed in the commentary to § 2424.10, however, parties are encouraged to explore opportunities for resolution of disputes that arise under part 2424.

Section 2424.10

Parties uniformly supported the retention of the CADR Program for voluntary dispute resolution. The final rule encourages parties to utilize the CADR process in an effort to reach a collaborative resolution of issues that arise under part 2424. In response to suggestions, the final rule includes point of contact information for the CADR office.

Section 2424.11

The final rule on requesting and providing written allegations concerning the duty to bargain has been modified to reflect the elimination of proposed prefiling conditions governing petitions for review. The rule retains the current procedure for requesting and providing allegations concerning the duty to bargain. In response to a commenter, the rule has been clarified to state that a union may file a petition for review where an agency does not respond to a written request for the agency's written allegation concerning the duty to bargain. The regulation has also been clarified to state that, if an agency provides the union an unrequested written allegation concerning the duty to bargain, then the union may choose either to file a petition for review or to wait and later request another written allegation from the agency. A union is required to file a petition for review, on penalty of losing its right to appeal the agency's allegation, only where the agency's written allegation is in response to a written request by the union.

Section 2424.12–2424.19

These sections are reserved.

Subpart C—Filing and Responding to a Petition for Review; Conferences

Section 2424.20

As noted in the earlier commentary concerning Subpart B, the prefiling conditions have been eliminated. The final rule has been modified to reflect this change.

One commenter suggested that agencies should be provided a right to file petitions. This suggestion was not adopted because 5 U.S.C. 7117(c), which mandates the negotiability procedure, provides for appeals by exclusive representatives only. In the event an agency believes that a union has refused to bargain over a mandatory subject of bargaining, it may file an unfair labor practice charge. *See American Federation of Government Employees* v. *Federal Labor Relations Authority*, 778 F.2d 850, 853 n.4 (D.C Cir. 1985).

Section 2424.21

One commenter, noting that the proposed rule was silent on this matter, suggested that the final rule specify that an agency head disapproval of a provision under 5 U.S.C. 7114(c) triggers the time limit for filing a petition for review. The final rule incorporates this suggestion.

Section 2424.22

Several commenters asserted that the filing requirements were unnecessarily legalistic and burdensome. Commenters recommended that the final rule be revised to make clear the specific information the exclusive representative is required to provide in its petition for review. In response to these concerns, subsection (a), stating the purpose of the petition for review, has been added, and subsection (b) of the final rule, which specifies the information that must be included in a petition for review, has been amplified. Also in response to one comment, the final rule makes clear that an exclusive representative is required to provide the meaning of a proposal or provision in the petition for review. The final rule does not adopt the suggestion of one commenter to delete the requirement that a table of contents and table of authorities be included when a petition exceeds 25 double-spaced pages in length. These tables, which will be required only for lengthy submissions, will assist both the parties and the Authority in reviewing complex petitions.

One commenter questioned whether the proposed regulations intended to delete the procedure in § 2424.4(c) of the current regulations, which provides that filing an "incomplete petition for review will result in the exclusive representative being asked to provide the missing or incomplete information." The commenter is correct in that a parallel section was not included in the proposed regulations, and is not included in the final regulations. The Authority does not intend by this to alter its current practice insofar as both parties are now, and will in the future continue to be, given an opportunity to correct minor or technical deficiencies in a filing. Such minor or technical deficiencies include failing to provide the correct number of copies of documents, or failing to include a statement of service. The consequences of failure to comply with an order requiring such correction are set forth in § 2424.32(d). However, the fact that the Authority will provide opportunities for parties to correct minor, technical deficiencies in filing does not mean that parties may reasonably rely on the Authority to provide them an opportunity to correct other deficiencies, such as failure to raise and support, or failure to respond to, an argument. Consistent with § 2424.32(c), these latter failures will, where appropriate, be deemed waivers or concessions.

In response to comments that certain matters, including exclusive representatives' requests for severance, and exclusive representatives' assertions that proposals or provisions constitute procedures and/or appropriate arrangements under 5 U.S.C. 7106(b) (2) and (3), respectively, would be better addressed at a later stage in the proceeding, the final rule has been changed. In particular, subsection (c) of the final rule does not require that an exclusive representative raise and address any request for severance in its petition for review. Moreover, the responsibility of the exclusive representative to raise any arguments concerning procedures and appropriate arrangements under 5 U.S.C. 7106 (b)(2) and (b)(3) has been moved to the exclusive representative's response to the agency's statement of position set forth in § 2424.25 of the final rule. However, an exclusive representative may choose to raise these matters in its petition for review. As discussed in the commentary to § 2424.24, if an exclusive representative raises such matters in its petition for review, then the agency is required to respond to the matters in its statement of position because failure to do so may be deemed a waiver or concession.

The final rule also modifies the requirement that the exclusive representative provide copies of authorities on which it relies. In

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response to comments that this requirement would be burdensome, the rule limits the documents that must be provided to those not "easily" available to the Authority. This is intended to clarify that copies of such authorities as provisions in the United States Code, Government-wide regulations, and published precedent need not be provided. However, as agency regulations and such matters as sections in collective bargaining agreements are not easily available, copies of these must be provided. If a filing party is in doubt as to whether an authority it relies on is easily available to the Authority, the party is encouraged to seek guidance from the Case Control Office, whose address and telephone number appear in 5 CFR 2429.24.

Section 2424.23

As noted previously, the proposed rule required a prefiling conference in cases involving proposals for bargaining and a postfiling conference in cases involving provisions disapproved by an agency head under 5 U.S.C. 7114(c). Although commenters generally disfavored mandatory prefiling conferences, commenters generally favored postfiling conferences. The final rule provides in subsection (a) that a representative of the FLRA will, where appropriate, schedule and conduct a conference following the filing of a petition for review involving proposals and provisions. Although a post-petition conference is not required in all cases, it is expected that one will be held in most cases. In response to a suggestion that a time frame be provided for completion of the conference, the final rule provides that all reasonable efforts will be made to schedule and conduct the post-petition conference within 10 days of receipt of the petition for review.

One commenter objected that post-petition conferences should not include mandatory mediation or settlement discussions. Subsection (b) of the final rule has been modified to eliminate any suggestion that the post-petition conference is intended to mediate the dispute or require settlement. Nevertheless, it is envisioned that parties will be asked whether they would like to pursue alternative dispute resolution options, including CADR services. Subsection (b) reflects that the purpose of the conference is to assist the parties in discussing, clarifying and resolving the issues in the negotiability appeal. These issues include the meaning of a proposal or provision, whether there are factual disputes, and other matters. Where appropriate, modification of the wording of a proposal or provision to conform to the intended or agreed-upon meaning of the proposal or provision will be encouraged.

Several commenters objected to an automatic extension of the time limits under §§ 2424.24 and 2424.25. In response to these objections, subsection (b) is modified to reflect that the subject of extension of the time limits under §§ 2424.24 and 2424.25—specifically whether such extension is requested—will be discussed during the post-petition conference, and that the FLRA representative conducting the conference is authorized to grant a requested extension when it would effectuate the purposes of the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 *et seq.* A request for an extension of time also may be filed pursuant to § 2429.23 of this subchapter.

Several commenters asserted that parties would be more likely to discuss, clarify and resolve their disputes if no record were made of the conference. Other commenters recommended that, if a record of the conference were prepared, then the Authority should make clear that parties are not limited to arguments and assertions made during the conference. The final rule retains the record of the conference, providing in subsection (c) that a written statement of the conference, including whether the parties agree on the meaning of the proposal or provision and other appropriate matters, will be prepared at, or following the conclusion of, the conference and will be provided to the parties by the FLRA representative. However, commenters' assertions that parties should not be prevented from raising and supporting new arguments after the conclusion of the conference are addressed by the modification to § 2424.32(c) of the final rule, which clarifies that an agency is not limited to the arguments it raises in a conference. As described in the commentary to § 2424.32(c), the final rule clarifies that an agency is precluded from raising a new argument only after the filing of its statement of position, and that an exclusive representative is so precluded only after the filing of its response to the statement of position. In this regard, the purpose of the requirement in § 2424.23 that the parties' representatives must be prepared and authorized to discuss, clarify, and resolve bargaining obligation and negotiability disputes is to facilitate discussion and understanding and, thereby to expedite resolution of a petition for review, not to "lock" the parties into particular arguments or prevent the parties from raising new arguments in their subsequent filings. The Authority intends, by this provision, to encourage the parties to engage in a frank and open discussion of issues raised by the petition for review.

Section 2424.24

The purpose of the statement of position has been added as subsection (a) of this section. Several commenters questioned whether the time limit for filing an agency's statement of position could be extended. As explained in the commentary to § 2424.23, an extension of time will be granted by the FLRA representative at the post-petition conference if it is requested and where the extension would effectuate the purposes of the Statute. An extension also may be requested under § 2429.23 of this subchapter. The final rule makes clear in subsection (b) that, unless an extension has been granted, the statement of position must be filed within 30 days after the date the head of the agency is served with a copy of the petition for review. Because the 30-day time limit for filing a statement of position is established by 5 U.S.C. 7117(c)(3), it cannot be shortened. Accordingly, the final rule does not adopt the suggestion of one commenter that the time limit for filing a statement of position be limited to 15 days. However, because it does not establish the Authority's jurisdiction over the petition for review, the 30-day time limit for filing a statement of position, as well as the time limit set forth in 5 U.S.C. 7117(c)(4) for filing the exclusive representative's response, may be extended upon request and when it would effectuate the purposes of the Statute.

Agencies uniformly objected, as previously noted, to the proposed rule precluding any arguments in the statement of position that were not raised in the conference prior to filing its statement of position. The final rule, in § 2424.32(c), is modified to reflect that an agency is not limited to arguments made in the post-petition conference; an agency is precluded from raising new arguments only after the filing of its statement of position.

Comments to the proposed rule viewed it as overly burdensome and unnecessary to require the agency to provide a copy of all the laws, rules, regulations, and other authorities cited. As set forth previously in connection with § 2424.22, the final rule is changed to require the agency to provide only those authorities that are not "easily available." Also as set forth previously, examples of such materials include, but are not limited to, agency rules or regulations and provisions of a collective bargaining agreement. As with § 2424.22, and for reasons stated in the commentary to that section, the final rule retains the requirement of a table of contents and a table of authorities when a statement of position exceeds 25 double-spaced pages in length.

One commenter noted that, with respect to severance, it would be unduly burdensome to anticipate how severance might affect proposals or provisions in general when the exclusive representative has not stated its position on severance. Responding to this concern, the final regulation clarifies in subsection (d) that an agency is required to respond to a severance request in its statement of position only when the exclusive representative has requested severance in its petition for review.

The Authority emphasizes that the agency is not limited in its statement of position to responding to matters raised in the exclusive representative's petition for review. However, under § 2424.32(c)(2), a failure to respond to an argument raised in the exclusive representative's petition for review may, where appropriate, be deemed a concession. Accordingly, the agency is required to respond to arguments made in the exclusive representative's petition for review, including arguments—such as severance and asserted exceptions to management's rights—that the exclusive representative is not required to include in a statement of position. Moreover, under § 2424.32(c)(1) of these regulations, the agency may not raise new arguments, in this or any other proceeding, after the filing of the statement of position. Therefore, the agency must raise and support in its statement of position all of its bargaining obligation and negotiability claims, whether or not those claims are responsive to requests and arguments made in the exclusive representative's petition for review.

Section 2424.25

As with §§ 2424.22 and 2424.24, a subsection—(a)—stating the purpose of the exclusive representative's response has been added. Several commenters suggested that the time limits for filing a response could not be extended. As noted earlier in connection with §§ 2424.23 and 2424.24, time limits may be extended when requested and when such extension will effectuate the purposes of the Statute. Thus, the final rule makes clear in subsection (b) that an exclusive representative's response must be filed within 15 days of service of the agency's statement of position, unless an extension of time has been granted.

Subsection (c) of the final rule has been modified, based on comments noted in the commentary to § 2424.22. The modification clarifies that, if the exclusive representative believes that a proposal or provision is within the obligation to bargain or is not contrary to law, respectively, because it comes within an exception to management rights under section 7106(a), then the exclusive representative is required to assert and support this claim either in its petition for review or in its response to the agency's statement of position. Exceptions to management rights, set forth in 5 U.S.C. 7106(b), include that a proposal or provision is bargainable at an agency's election, that the proposal or provision constitutes a procedure, and/or that it constitutes an appropriate arrangement. If the exclusive representative does not assert in its petition for review that an exception to management rights applies, then the exclusive representative must do so in its response to the agency's statement of position.

In general, the exclusive representative's response is limited to matters raised in the agency's statement of position. The only exception is a request for severance, which subsection (d) clarifies may be asserted for the first time in a response.

As with §§ 2424.22 and 2424.24 of the final rule, the requirement that the exclusive representative provide a copy of all laws, rules, regulations and authorities cited has been modified to include only those authorities not easily available to the Authority.

The Authority emphasizes that, under § 2424.32(c)(2), a failure to respond to an argument raised in the agency's statement of position may, where appropriate, be deemed a concession. Moreover, under § 2424.32(c)(1) of these regulations, the exclusive representative may not raise new arguments, in this or any other proceeding, after the filing of the response. Therefore, the exclusive representative must raise and support in its response all of its arguments in support of finding the proposal or provision within the duty to bargain or not contrary to law, respectively. With the exception of severance, the exclusive representative's response is limited to arguments raised in the agency's statement of position.

Section 2424.26

A new section permitting a reply by the agency has been added to the final rule. As outlined in the commentary to §§ 2424.22 and 2424.25, the exclusive representative is not required in the initial stage of the negotiability proceeding to anticipate agency arguments. In particular, an exclusive representative's arguments concerning exceptions to management rights and severance may be asserted for the first time in the exclusive representative's response to the agency's statement of position. In order that the agency has an opportunity to address arguments raised for the first time in the exclusive representative's response, this section of the final rule establishes that the agency may file a reply to such arguments. The agency reply constitutes a new filing that will, in some cases, extend the time necessary to resolve a petition for review. However, the Authority anticipates that permitting the filing of a reply will not delay decisions but, rather, will expedite them by providing a more complete record of the parties' arguments and authorities.

Subsection (a) of the final rule states the purpose of the agency's reply. Subsection (b) provides that an agency must file any reply within 15 days after it has been served with a copy of the exclusive representative's response. Subsection (c) of the final rule outlines the information to be included in the agency's reply and specifically limits the agency's reply to those matters raised in the exclusive representative's response to the agency's statement of position. Subsection (d) addresses the agency's responsibility to explain with particularity why the exclusive representative's request for severance, if any, is not appropriate. Service requirements are outlined in subsection (e) of the final rule.

The Authority emphasizes that an agency's reply is limited to arguments raised for the first time in the exclusive representative's response. Thus, as set forth earlier in the commentary to § 2424.24, the agency should respond fully in its statement of position to all arguments raised in the exclusive representative's petition for review, and should not defer such responses to its reply. A failure to respond to arguments raised in the exclusive representative's response may be deemed a concession under § 2424.32 of these regulations.

Section 2424.27

Noting that the Authority seldom accepts additional submissions, one commenter suggested that the regulations should reflect this practice. In particular, the commenter recommended that the Authority adopt an "extraordinary circumstances" standard concerning the filing of additional submissions. The final rule incorporates this suggestion and adopts the suggested standard. The final rule

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also adopts the recommendation that any additional submission must be filed no later than 5 days after receipt of the Authority's order granting the request. The final rule does not adopt the suggestion that the time for filing an opposition to an additional submission be limited to 5 days after receipt of the additional submission and, instead, provides that an opposition be filed no later than 15 days after receipt of the additional submission. The additional time is provided in recognition of the fact that the responding party may have no advance notice that the submission will be filed and, as such, a 5-day response period is not sufficient.

Sections 2424.28–2424.29

These sections are reserved.

Subpart D—Processing a Petition for Review

Section 2424.30

Several commenters addressed the proposed rule establishing a new process for resolving petitions for review that concern both negotiability and bargaining obligation disputes. Those in favor of the proposed changes asserted that a unified process would be more efficient than the present system. Those opposed to the changes contended that the negotiability process does not lend itself to addressing bargaining obligation disputes and that the existing system does not need modification.

The Authority has determined that, with certain changes, the proposed rule should be made final. In this regard, the Authority's experience has been that the piecemeal resolution of bargaining obligation and negotiability claims is both inefficient and ineffective. The changes adopted in this rule will reduce duplicative administrative decision making and increase the likelihood that disputes will be resolved more timely.

With respect to the specific changes proposed, some commenters asserted that, where both a negotiability appeal and unfair labor practice charge have been filed, the exclusive representative should retain the right to select the procedure that would go forward. This suggestion was rejected, on the ground that unfair labor practice proceedings are, in these situations, better suited to resolving the entire dispute.

In this regard, with the sole exception of compelling need claims, which is discussed below, all bargaining obligation and negotiability claims may be adjudicated in an unfair labor practice proceeding. Further, unless excluded from the scope of the parties' grievance procedure by agreement, alleged unfair labor practices may be resolved under such negotiated procedures. Thus, with one exception, dismissing petitions for review where unfair labor practice charges have been filed does not jeopardize a party's ability to obtain adjudication of all claims. In addition, as clarified in § 2424.40(a), and with the exception of orders to bargain, remedies available in unfair labor practice proceedings under 5 U.S.C. 7118(a)(7) are not be available in Authority decisions and orders issued under this part. Accordingly, in situations where an exclusive representative has filed an unfair labor practice charge, requiring adjudication in a negotiability proceeding would deprive a prevailing exclusive representative of such remedies.

The one exception to the principle that all bargaining obligation and negotiability claims may be adjudicated in an unfair labor practice or grievance proceeding concerns petitions for review where the agency makes a negotiability claim that a proposal or provision conflicts with an agency regulation for which there is a compelling need under 5 U.S.C. 7117(b). Such compelling need claims must be resolved under the procedures of part 2424. *See Department of the Army, Aberdeen Proving Ground v. Federal Labor Relations Authority*, 485 U.S. 489 (1988) (compelling need determinations may not be adjudicated in an unfair labor practice proceeding). Moreover, an agency cannot be found to have committed an unfair labor practice by refusing to bargain over a proposal over which it has made a compelling need claim unless the Authority has made a prior compelling need determination in a proceeding under part 2424. *See Department of the Army, Soldier Support Center, Fort Benjamin Harrison, Office of the Director of Finance and Accounting, Indianapolis, Indiana, et al.*, 41 FLRA 926, 933 n.1 (1991). Thus, unless an agency's compelling need claim regarding a proposal or provision has previously been resolved by the Authority, there is no basis on which to dismiss the petition for review, or the portion of it relating to such proposal or provision, to permit resolution of all issues in an unfair labor practice or grievance proceeding.

In view of the foregoing comments and considerations, subsection (a) of the final rule is modified to clarify that there is an exception—a proposal or provision over which a compelling need negotiability claim is raised—to the requirement to dismiss a petition for review without prejudice in the event an unfair labor practice charge or grievance has been filed over issues directly related to the petition for review. Petitions for review, or portions of them, concerning proposals or provisions subject to compelling need claims will be processed under part 2424.

In addition, the rule is modified to provide that, within 30 days following *administrative* resolution of the unfair labor practice charge or grievance, an exclusive representative may refile the petition for review and the Authority will determine whether resolution of the petition is required. The reference in subsection (a) to administrative resolution is intended to exclude any time necessary for judicial review. That is, an exclusive representative may not await the outcome of judicial review in the unfair labor practice or grievance arbitration proceeding before refiling the petition for review. With regard to an arbitration award, for purposes of refiling a petition for review, the Authority will apply 5 U.S.C. 7122(b) and find an award final and binding in the event no timely exceptions to the award are filed with the Authority; if exceptions are timely filed, then the award is final and binding for purposes of refiling a petition for review when the Authority resolves the exceptions.

In determining whether resolution of the petition is required, the Authority will take into consideration such matters as whether, consistent with the resolution of the unfair labor practice charge or grievance, an Authority decision and order finding a proposal within the duty to bargain and directing bargaining could be enforced.

The final rule clarifies in subsection (b) how the Authority will process a petition for review where the exclusive representative has not pursued a bargaining obligation dispute in any other proceeding. As with the proposed rule, subsection (b) distinguishes between two categories of cases: (1) Cases where no bargaining obligation dispute exists; and (2) cases where both a negotiability dispute and a bargaining obligation dispute exist. With respect to the first category, the final rule remains unchanged from the proposed rule, providing that where there is no bargaining obligation dispute, the Authority will resolve the petition under the procedures of this part. With respect to the second category, subsection (b)(2) of the final rule provides that, where both a negotiability dispute and a bargaining obligation dispute exist, the Authority will inform the exclusive representative of any opportunity to file an unfair labor practice charge or grievance. If the exclusive representative pursues either of these options, then the petition for review will be processed in accordance with subsection (a). If the exclusive representative does not pursue either of these options, then subsection (b)(2) of the final rule provides that the Authority will resolve all aspects necessary for disposition of the petition unless, in its discretion, the Authority determines that doing so is not appropriate.

Subsection (b)(2) provides two examples of situations to illustrate where it is not appropriate to resolve all aspects of the petition for review under part 2424. The first is where resolution of the bargaining obligation dispute would unduly delay resolution of the negotiability dispute. A specific example of this is a petition for review involving a negotiability dispute that is clearly controlled by existing precedent such that a decision resolving only the negotiability dispute could be issued expeditiously, but numerous bargaining obligation dispute issues also are present. In such a case, the Authority may conclude that prompt resolution of the negotiability dispute only is preferable to delaying issuance of a decision and order so as to resolve bargaining obligation dispute issues at the same time. The second, related situation set forth in subsection (b) is where the procedures in another, available forum are better suited to resolving the bargaining obligation dispute. An example of this is a petition for review involving a bargaining obligation dispute raising issues of first impression. In such a case, the Authority may conclude that unfair labor practice procedures, which permit participation of the General Counsel and, thereby, facilitate consideration of the General Counsel's views on the issues of first impression, are better suited to resolution of the bargaining obligation dispute than are the procedures in this part.

In circumstances where a proposal is within the duty to bargain, then any bargaining order under § 2424.40 would be expressly conditioned on resolution of the unresolved bargaining obligation dispute in a manner requiring bargaining. On the other hand, if the proposal is outside the duty to bargain or the provision is contrary to law, resolution of the bargaining obligation dispute would be unnecessary.

The Authority emphasizes that resolution of a petition for review involving bargaining obligation and negotiability disputes will not result in adjudication of whether an unfair labor practice has occurred. Such determination may be sought only pursuant to 5 U.S.C. 7116 and 7118. Accordingly, although an Authority's decision and order under part 2424 may include determination of underlying legal issues that could also be determined in unfair labor practice proceedings—such as whether a proposed matter is covered by a collective bargaining agreement or whether the effect of a change in conditions of employment is de minimis—that determination will not be accompanied by a finding that an agency acted unlawfully by, for example, implementing a change in conditions of employment without bargaining. Such a finding can only be made in an unfair labor practice proceeding, or in a grievance proceeding determining whether an unfair labor practice occurred. In addition, as resolution of petitions for review under this part will not result in unfair labor practice adjudications, decisions and orders issued under this part will not, with the exception of orders to bargain, include remedies available under 5 U.S.C. 7118(a)(7) in unfair labor practice proceedings. Thus, if exclusive representatives desire such remedies, they should file an unfair labor practice charge or a grievance.

Section 2424.31

Clarification was sought as to when and how the Authority would undertake fact finding as set forth in § 2424.34 of the proposed rules. Comments also recommended that the Authority clarify the circumstances under which it would hold a hearing pursuant to § 2424.38 of the proposed rules. Based upon these comments, §§ 2424.34 and 2424.38 of the proposed rules have been consolidated and moved to this section.

Subsection (a) of the final rule clarifies the actions that the Authority may take when necessary to resolve disputed issues of material fact or when such actions would otherwise aid in decision making. These actions include those set forth in the proposed rule, including a hearing under 5 U.S.C. 7117(b) and (c). The reference in the proposed rule to "fact finding" has been deleted as unnecessary in view of the inclusion in subsection (d) of "other appropriate action."

One commenter suggested that fact finding be limited to unfair labor practice proceedings. This suggestion was rejected as inconsistent with the determination that bargaining obligation disputes could be resolved in the negotiability process.

Section 2424.32

This section of the final rule combines requirements set forth in §§ 2424.35 and 2424.37 of the proposed rule. The requirements have been combined to reduce repetition and clarify the parties' obligations.

Subsections (a) and (b) of the final rule retain the requirement in § 2424.37 (a) and (b) of the proposed rule specifying the parties' burdens. In particular, subsection (a) provides that the exclusive representative is responsible for raising and supporting arguments that, among other things, a proposal or provision is within the duty to bargain or not contrary to law, and subsection (b) provides that the agency has the burden of supporting arguments to the contrary.

Subsection (c) retains and modifies requirements set forth in §§ 2424.35 and 2424.37 of the proposed rules. In particular, subsection (c) specifies the consequences of a party's failure to raise, support, and/or respond to arguments and assertions. With respect to failure to raise and support arguments, subsection (c) states that such failure will, where appropriate, be deemed a waiver of such arguments. It also states that, absent good cause: (1) an agency may not raise in proceedings under part 2424 or any other proceeding arguments that could have been but were not raised in its statement of position or made responsively in its reply to the exclusive representative's response; and (2) an exclusive representative may not raise in proceedings under part 2424 or any other proceeding arguments that could have been but were not raised in the petition for review or responsively in the response to the agency's statement of position. With respect to failure to respond to arguments, subsection (c) states that such failure will, where appropriate, be deemed a concession to such arguments or assertions.

Numerous comments were received objecting to the proposed requirement that, in connection with petitions for review concerning proposals, parties raise all arguments and issues at the prefiling conference or be precluded from raising such arguments and issues at a later stage in the negotiability appeal process. As stated previously, that requirement has been eliminated. However, the final rule precludes agencies and exclusive representatives from raising new arguments after the filing of the statement of position and response, respectively.

Several commenters asserted that any regulation that deemed arguments not raised by an agency to be waived would be inconsistent with the decision of the United States Court of Appeals for the District of Columbia Circuit in *Department of Transportation* v. *FLRA*, 145 F.3d 1425 (D.C. Cir. 1998) (*FAA*).

The Authority has concluded that the final rule is not inconsistent with the decision in *FAA*. In this regard, *FAA* did not address an agency's failure to raise an argument. In fact, the court concluded that, in *FAA*, the agency had "squarely presented an argument to the [Authority]." *Id.* at 1428. In addition, the court in *FAA* applied the Authority's existing negotiability regulations, which do not directly address filing requirements, burdens, waivers, and concessions. However, even under the existing regulations, the court in *FAA* stated that an agency has a burden to "direct the Authority's attention, with as much specificity as possible, to the statutes and regulations relevant to an agency's duty to bargain * * *'" *Id.* at 1428 (quoting *National Federation of Federal Employees, Local 1167* v. *FLRA*, 681 F.2d 886, 891 (D.C. Cir. 1982)).

One commenter suggested that a regulation that deems an agency's failure to raise an objection a "waiver" would violate Rule 55(e) of the Federal Rules of Civil Procedure, which provides that there cannot be a "judgment by default entered against the United States * * * unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." However, the principle underlying this rule does not apply to the rule at issue, as is explained in the authority relied on by the commenter. Specifically, in the decision cited by the commenter, the United States Court of Appeals for the 9th Circuit stated that "rule 55(e) was directed at defaults in the narrow sense of the government's failure to answer or otherwise move against a complaint, and was not intended to preclude the imposition, at a later stage in the proceeding, of sanctions or other court action which prevent the government from presenting further evidence or otherwise augmenting the record." *Giampaoli* v. *Califano*, 628 F.2d 1190 (9th Cir. 1980).

One commenter suggested that a failure to rebut an assertion should result in the finding of an adverse inference rather than a waiver or concession. An adverse inference is an evidentiary presumption that takes place when a party fails "to call a particular witness, or to take the stand as a witness in a civil case, or voluntarily to produce documents or other objects in his or her possession as evidence," when it "would be natural under the circumstances" for the party to do so. 2 John William Strong et al., *McCormick on Evidence* § 264, at 184 (4th ed. 1992); *see also Internal Revenue Service, Philadelphia Service Center*, 54 FLRA 674, 682 (1998). In negotiability disputes, the more comparable analogue for failing to rebut an assertion raised in a pleading is that set forth in Rule 12 of the Federal Rules of Civil Procedure. *See* 2 James Wm. Moore, *Moore's Federal Practice* § 12.20 (3d ed. 1998) (*Moore's*) ("Rule 12(b) requires a party to assert in the response to any pleading requiring a response, every legal or factual defense to the claims made."). Thus, the final rule uses the more appropriate term of art for a failure to rebut arguments, which is "waiver" or "concession." *See Moore's* § 12.22 ("Rule 12(h)(1) waives certain defenses omitted from a motion * * *.").

The revised negotiability procedures are intended to resolve, in most cases, all issues with respect to an agency's obligation to bargain over specific proposals or provisions. Accordingly, the Authority does not anticipate additional administrative proceedings before the Authority arising from the circumstances that occasioned the negotiability appeal. In any subsequent proceedings which might occur, the parties will not be permitted to relitigate the obligation to bargain over the proposals or provisions that were the subject of the negotiability appeal. In this regard, applying the well established principle of *res judicata*, a party will be barred from litigating not only those issues actually addressed by the Authority, but also any issues that could have been raised by the party in the negotiability proceeding. *See Department of Health and Human Services, Social Security Administration*, 41 FLRA 755, 772 (1991) (discussing the principles of *res judicata*). Further, where judicial review or enforcement of the Authority's order is sought, section 7123(c) of the Statute bars the parties from raising issues not presented to the Authority.

Subsection (d) addresses a party's failure to participate in a post-petition conference under § 2424.23, procedures directed under § 2424.31, and a failure to respond to Authority orders. The subsection clarifies that, in addition to actions set forth in subsection (c), a failure to participate in a conference or to respond to an Authority order, such as an order directing correction of minor, technical deficiencies in a filing, may result in dismissal of a petition for review, with or without prejudice to the exclusive representative, or granting of the petition for review, with or without conditions. As noted previously in the commentary to § 2424.22, the Authority intends to continue its current practice of permitting a party to correct such minor, technical deficiencies as failing to provide the correct number of copies or failure to attach a certificate of service to a filing. However, a party should not rely on this practice to provide an opportunity for it to correct failures to raise, support, and respond to arguments. Where appropriate, these latter failures will be deemed waivers or concessions, and opportunities to correct the failures will not be provided.

Section 2424.33–2424.39

These sections are reserved.

Subpart E—Decision and Order

Section 2424.40

One commenter objected that the Authority should not issue any order concerning negotiability where there are unresolved bargaining obligation disputes. The Authority's current practice is to issue orders in negotiability cases where there are such unresolved issues, and the final rule will continue this practice in some cases. However, as distinct from current practice, if a bargaining order is issued and there is an unresolved bargaining obligation dispute, then the order will be conditioned on resolution of the bargaining obligation dispute in a manner requiring bargaining.

Another commenter requested that the Authority modify the regulations to require parties to implement portions of agreements that are not disputed. The Authority declines to do so on the ground that the partial implementation of contract terms in this situation is better addressed by the parties in ground rules or during the course of negotiations.

Consistent with the commentary to § 2424.30, subsection (a) is modified from the proposed rule to clarify that, with the exception of an order to bargain, the Authority's decision and order under part 2424 will not include remedies that could be obtained in an unfair labor practice proceeding under 5 U.S.C. 7118(a)(7). In other respects, the final rule is the same as the proposed rule.

Section 2424.41

One commenter noted that the use of the phrase "specified period" in the proposed rule may mislead parties into believing that the Authority would seek enforcement of an order before the 60-day period provided for in 5 U.S.C. 7123(a) had expired. In response to this concern, the final rule eliminates the phrase. However, the final rule is modified to make clear that the exclusive representative must bring to the attention of the appropriate Regional Director a failure to comply with an Authority order within a "reasonable time" following expiration of the 60-day period. Failure to do so within a reasonable time may, if the matter is referred by the Regional Director to the Authority, result in the Authority determining not to seek enforcement of the order.

Sections 2424.42–2424.49

These sections are reserved.

Subpart F—Criteria for Determining Compelling Need for Agency Rules and Regulations

Section 2424.50

With one change to correct grammar, the final rule as promulgated is the same as the proposed rule.

Sections 2424.51–2424.59

These sections are reserved.

Other Regulatory Requirements

One commenter made several suggestions for modification of general regulatory requirements that were not responsive to particular sections in the proposed rules. In particular, the commenter requested that the Authority: (1) lengthen the time period for requesting reconsideration of a decision and order under part 2424; (2) modify the "extraordinary circumstance" requirement for obtaining reconsideration and grant reconsideration when the Authority's decision raises issues that could not have been anticipated by the parties before the decision, such as when the Authority decision creates a new legal standard; (3) promulgate a regulation requiring the Authority to seek the views of the parties whenever a case is remanded to the Authority on judicial review; and (4) modify existing regulations to permit the Office of Personnel Management (OPM) or any other Federal agency that administers laws having Federal Government-wide implications to intervene, obtain *amicus* status, or submit an advisory opinion in any case involving interpretation of such law.

With regard to the time period for requesting reconsideration, 5 C.F.R. 2429.17 provides that reconsideration of an Authority decision and order must be sought within 10 days after service of the decision and order. Although this time period is short, it encourages prompt consideration of any decision and order and permits, as necessary, correction of errors in the decision and order as quickly as possible. In addition, it applies to all Authority decisions and orders, not only those issued under part 2424. For these reasons, the Authority declines to extend the time period.

As for the "extraordinary circumstances" required for reconsideration under § 2429.17 of this subchapter, the existing standard, which requires case-by-case application, does not preclude a party from arguing that reconsideration should be granted because an Authority decision raises issues that could not have been anticipated. Moreover, extraordinary circumstances under § 2429.17 of this subchapter have been expressly interpreted to include situations where a change in the law affects dispositive issues. *See U.S. Department of the Air Force, 375th Combat Support Group, Scott Air Force Base, Illinois,* 50 FLRA 84 (1995). Thus, modification of the existing regulation is not necessary.

The Authority also finds it unnecessary to promulgate a regulation requiring it to seek the parties' views whenever a case is remanded to the Authority following judicial review. In some cases, for example, the remand is solely for the purpose of the Authority taking a particular action, such as dismissing a petition for review. *See National Treasury Employees Union and Nuclear Regulatory Commission,* 39 FLRA 182 (1991) (dismissing petition for review as moot on remand with instructions from the U.S. Court of Appeals for the Fourth Circuit). In such cases, requiring the Authority to obtain party views would unnecessarily lengthen the time necessary to resolve the dispute. Nevertheless, parties are not precluded from seeking permission from the Authority in any case to file an additional submission under § 2424.27.

Similarly, neither OPM nor any other Federal agency is precluded in any way from seeking to participate in any pending case as *amicus curiae* under § 2424.9 of this subchapter. In addition, the Authority requests advisory opinions as it deems appropriate under § 2429.15 of this subchapter. *See, e.g., American Federation of Government Employees, Local 2986 and U.S. Department of Defense, National Guard Bureau, The Adjutant General, State of Oregon,* 51 FLRA 1549 (1996) (Authority requested OPM views on interpretation of certain statutory and regulatory provisions and provided parties opportunity to respond to OPM's views); *National Association of Agriculture Employees and U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine,* 51 FLRA 843 (1996) (same). As it is not apparent that, or how, these existing regulations are not sufficient to permit OPM and others to participate in Authority proceedings, the Authority declines to modify them or to create a separate regulatory requirement for intervention.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Authority has determined that these regulations, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies to federal employees, federal agencies, and labor organizations representing federal employees.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2424

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons set forth in the preamble, the Federal Labor Relations Authority revises 5 CFR Part 2424 to read as follows:

PART 2424—NEGOTIABILITY PROCEEDINGS

Subpart A—Applicability of This Part and Definitions

Sec.
2424.1 Applicability of this part.
2424.2 Definitions.
2424.3–2424.9 [Reserved]

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Subpart B—Alternative Dispute Resolution; Requesting and Providing Allegations Concerning the Duty to Bargain

2424.10 Collaboration and Alternative Dispute Resolution Program.
2424.11 Requesting and providing allegations concerning the duty to bargain.
2424.12–2424.19 [Reserved]

Subpart C—Filing and Responding to a Petition for Review; Conferences

2424.20 Who may file a petition for review.
2424.21 Time limits for filing a petition for review.
2424.22 Exclusive representative's petition for review; purpose; content; severance; service.
2424.23 Post-petition conferences; conduct and record.
2424.24 Agency's statement of position; purpose; time limits; content; severance; service.
2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.
2424.26 Agency's reply; purpose; time limits; content; service.
2424.27 Additional submissions to the Authority.
2424.28–2424.29 [Reserved]

Subpart D—Processing a Petition for Review

2424.30 Procedure through which the petition for review will be resolved.
2424.31 Resolution of disputed issues of material fact; hearings.
2424.32 Parties' responsibilities; failure to raise, support, and/or respond to arguments; failure to participate in conferences and/or respond to Authority orders.
2424.33–2424.39 [Reserved]

Subpart E—Decision and Order

2424.40 Authority decision and order.
2424.41 Compliance.
2424.42–2424.49 [Reserved]

Subpart F—Criteria for Determining Compelling Need for Agency Rules and Regulations

2424.50 Illustrative Criteria.
2424.51–2424.59 [Reserved]

Authority: 5 U.S.C. 7134.

Subpart A—Applicability of This Part and Definitions

§ 2424.1 Applicability of this part.

This part is applicable to all petitions for review filed after April 1, 1999.

§ 2424.2 Definitions.

In this part, the following definitions apply:

(a) *Bargaining obligation dispute* means a disagreement between an exclusive representative and an agency concerning whether, in the specific circumstances involved in a particular case, the parties are obligated to bargain over a proposal that otherwise may be negotiable. Examples of bargaining obligation disputes include disagreements between an exclusive representative and an agency concerning agency claims that:

(1) A proposal concerns a matter that is covered by a collective bargaining agreement; and

(2) Bargaining is not required over a change in bargaining unit employees' conditions of employment because the effect of the change is *de minimis*.

(b) *Collaboration and Alternative Dispute Resolution Program* refers to the Federal Labor Relations Authority's program that assists parties in reaching agreements to resolve disputes.

(c) *Negotiability dispute* means a disagreement between an exclusive representative and an agency concerning the legality of a proposal or provision. A negotiability dispute exists when an exclusive representative disagrees with an agency contention that (without regard to any bargaining obligation dispute) a proposal is outside the duty to bargain, including disagreement with an agency contention that a proposal is bargainable only at its election. A negotiability dispute also exists when an exclusive representative disagrees with an agency head's disapproval of a provision as contrary to law. A negotiability dispute may exist where there is no bargaining obligation dispute. Examples of negotiability disputes include disagreements between an exclusive representative and an agency concerning whether a proposal or provision:

(1) Affects a management right under 5 U.S.C. 7106(a);

(2) Constitutes a procedure or appropriate arrangement, within the meaning of 5 U.S.C. 7106(b)(2) and (3), respectively; and

(3) Is consistent with a Government-wide regulation.

(d) *Petition for review* means an appeal filed with the Authority by an exclusive representative requesting resolution of a negotiability dispute. An appeal that concerns only a bargaining obligation dispute may not be resolved under this part.

(e) *Proposal* means any matter offered for bargaining that has not been agreed to by the parties. If a petition for review concerns more than one proposal, then the term includes each proposal concerned.

(f) *Provision* means any matter that has been disapproved by the agency head on review pursuant to 5 U.S.C. 7114(c). If a petition for review concerns more than one provision, then the term includes each provision concerned.

(g) *Service* means the delivery of copies of documents filed with the Authority to the other party's principal bargaining representative and, in the case of an exclusive representative, also to the head of the agency. Compliance with part 2429 of this subchapter is required.

(h) *Severance* means the division of a proposal or provision into separate parts having independent meaning, for the purpose of determining whether any of the separate parts is within the duty to bargain or is contrary to law. In effect, severance results in the creation of separate proposals or provisions. Severance applies when some parts of the proposal or provision are determined to be outside the duty to bargain or contrary to law.

(i) *Written allegation concerning the duty to bargain means* an agency allegation that the duty to bargain in good faith does not extend to a proposal.

§ 2424.3 –2424.9 [Reserved]

Subpart B—Alternative Dispute Resolution; Requesting and Providing Allegations Concerning the Duty To Bargain

§ 2424.10 Collaboration and Alternative Dispute Resolution Program.

Where an exclusive representative and an agency are unable to resolve disputes that arise under this part, they may request assistance from the Collaboration and Alternative Dispute Resolution Program (CADR). Upon request, and as agreed upon by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. Parties seeking information or assistance under this part may call or write the CADR Office at (202) 482–6503, 607 14th Street, NW., Washington, D.C. 20424–001. A brief summary of CADR activities is available on the Internet at www.flra.gov.

§ 2424.11 Requesting and providing written allegations concerning the duty to bargain.

(a) *General.* An exclusive representative may file a petition for review after receiving a written allegation concerning the duty to bargain from the agency. An exclusive representative also may file a petition for review if it requests that the agency provide it with a written allegation concerning the duty to bargain and the agency does not respond to the request within ten (10) days.

(b) *Agency allegation in response to request.* The agency's allegation in response to the exclusive representative's request must be in writing and must be served in accord with § 2424.2(g).

(c) *Unrequested agency allegation.* If an agency provides an exclusive representative with an unrequested written allegation concerning the duty to bargain, then the exclusive representative may either file a petition for review under this part, or continue to bargain and subsequently request in writing a written allegation concerning the duty to bargain, if necessary.

§§ 2424.12–2424.19 [Reserved]

Subpart C—Filing and Responding to a Petition for Review; Conferences

§ 2424.20 Who may file a petition for review.

A petition for review may be filed by an exclusive representative that is a party to the negotiations.

§ 2424.21 Time limits for filing a petition for review.

(a) A petition for review must be filed within fifteen (15) days after the date of service of either:

(1) An agency's written allegation that the exclusive representative's proposal is not within the duty to bargain, or

(2) An agency head's disapproval of a provision.

(b) If the agency has not served a written allegation on the exclusive representative within ten (10) days after the agency's principal bargaining representative has received a written request for such allegation, as provided in § 2424.11(a), then the petition may be filed at any time.

§ 2424.22 Exclusive representative's petition for review; purpose; content; severance; service.

(a) *Purpose.* The purpose of a petition for review is to initiate a negotiability proceeding and provide the agency with notice that the exclusive representative requests a decision from the Authority that a proposal or provision is within the duty to bargain or not contrary to law, respectively. As more fully explained in paragraph (b) of this section, the exclusive representative is required in the petition for review to, among other things, inform the Authority of the exact wording and meaning of the proposal or provision as well as how it is intended to operate, explain technical or unusual terms, and provide copies of materials that support the exclusive representative's position.

(b) *Content.* A petition for review must be filed on a form provided by the Authority for that purpose, or in a substantially similar format. It must be dated and include the following:

(1) The exact wording and explanation of the meaning of the proposal or provision, including an explanation of special terms or phrases, technical language, or other words that are not in common usage, as well as how the proposal or provision is intended to work;

(2) Specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on by the exclusive representative in its argument or referenced in the proposal or provision, and a copy of any such material that is not easily available to the Authority;

(3) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review;

(4) Any request for a hearing before the Authority and the reasons supporting such request; and

(5) A table of contents and a table of legal authorities cited, if the petition exceeds 25 double-spaced pages in length.

(c) *Severance.* The exclusive representative may, but is not required to, include in the petition for review a statement as to whether it requests severance of a proposal or provision. If severance is requested in the petition for review, then the exclusive representative must support its request with an explanation of how each severed portion of the proposal or provision may stand alone, and how such severed portion would operate. The explanation and argument in support of the severed portion(s) must meet the same requirements for information set forth in paragraph (b) of this section.

(d) *Service.* The petition for review, including all attachments, must be served in accord with § 2424.2(g).

§ 2424.23 Post-petition conferences; conduct and record.

(a) *Timing of post-petition conference.* On receipt of a petition for review involving a proposal or a provision, a representative of the FLRA will, where appropriate, schedule a post-petition conference to be conducted by telephone or in person. All reasonable efforts will be made to schedule and conduct the conference within ten (10) days after receipt of the petition for review.

(b) *Conduct of conference.* The post-petition conference will be conducted with representatives of the exclusive representative and the agency, who must be prepared and authorized to discuss, clarify and resolve matters including the following:

(1) The meaning of the proposal or provision in dispute;

(2) Any disputed factual issue(s);

(3) Negotiability dispute objections and bargaining obligation claims regarding the proposal or provision;

(4) Whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, in a grievance under the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter; and

(5) Whether an extension of the time limits for filing the agency's statement of position and any subsequent filings is requested. The FLRA representative may, on determining that it will effectuate the purposes of the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 *et seq.*, and this part, extend such time limits.

(c) *Record of the conference.* At the post-petition conference, or after it has been completed, the representative of the FLRA will prepare and serve on the parties a written statement that includes whether the parties agree on the meaning of the disputed proposal or provision, the resolution of any disputed factual issues, and any other appropriate matters.

§ 2424.24 Agency's statement of position; purpose; time limits; content; severance; service.

(a) *Purpose.* The purpose of an agency statement of position is to inform the Authority and the exclusive representative why a proposal or provision is not within the duty to bargain or contrary to law, respectively. As more fully explained in paragraph (c) of this section, the agency is required in the statement of position to, among other things, set forth its understanding of the proposal or provision, state any disagreement with the facts, arguments, or meaning of the proposal or provision set forth in the exclusive representative's petition for review, and supply all arguments and authorities in support of its position.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, the agency must file its statement of position within thirty (30) days after the date the head of the agency receives a copy of the petition for review.

(c) *Content.* The agency's statement of position must be on a form provided by the Authority for that purpose, or in a substantially similar format. It must be dated and must:

(1) Withdraw either:

(i) The allegation that the duty to bargain in good faith does not extend to the exclusive representative's proposal, or

(ii) The disapproval of the provision under 5 U.S.C. 7114(c); or

(2) Set forth in full the agency's position on any matters relevant to the petition that it wishes the Authority to consider in reaching its decision, including a statement of the arguments and authorities supporting any bargaining obligation or negotiability claims, any disagreement with claims made by the exclusive representative in the petition for review, specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on by the agency, and a copy of any such material that is not easily available to the Authority. The statement of position must also include the following:

(i) If different from the exclusive representative's position, an explanation of the meaning the agency attributes to the proposal or provision and the reasons for disagreeing with the exclusive representative's explanation of meaning;

(ii) If different from the exclusive representative's position, an explanation of how the proposal or provision would work, and the reasons for disagreeing with the exclusive representative's explanation;

(3) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review;

(4) Any request for a hearing before the Authority and the reasons supporting such request; and

(5) A table of contents and a table of legal authorities cited, if the statement of position exceeds 25 double-spaced pages in length.

(d) *Severance.* If the exclusive representative has requested severance in the petition for review, and if the agency opposes the exclusive representative's request for severance, then the agency must explain with specificity why severance is not appropriate.

(e) *Service.* A copy of the agency's statement of position, including all attachments, must be served in accord with § 2424.2(g).

§ 2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.

(a) *Purpose.* The purpose of the exclusive representative's response is to inform the Authority and the agency why, despite the agency's arguments in its statement of position, the proposal or provision is within the duty to bargain or not contrary to law, respectively, and whether the union disagrees with any facts or arguments in the agency's statement of position. As more fully explained in paragraph (c) of this section, the exclusive representative is required in its response to, among other things, state why the proposal or provision does not conflict with any law, or why it falls within an exception to management rights, including permissive subjects under 5 U.S.C. 7106(b)(1), and procedures and appropriate arrangements under section 7106(b) (2) and (3). Another purpose of the response is to permit the exclusive representative to request the Authority to sever portions of the proposal or provision and to explain why and how it can be done.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the exclusive representative receives a copy of an agency's statement of position, the exclusive representative must file a response.

(c) *Content.* The response must be on a form provided by the Authority for that purpose, or in a substantially similar format. With the exception of a request for severance pursuant to paragraph (d) of this section, the exclusive representative's response is specifically limited to the matters raised in the agency's statement of position. The response must be dated and must include the following:

(1) Any disagreement with the agency's bargaining obligation or negotiability claims. The exclusive representative must state the arguments and authorities supporting its opposition to any agency argument, and must include specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on by the exclusive representative, and provide a copy of any such material that is not easily available to the Authority. The exclusive representative is not required to repeat arguments made in the petition for review. If not included in the petition for review, the exclusive representative must state the arguments and authorities supporting any assertion that the proposal or provision does not affect a management right under 5 U.S.C. 7106(a), and any assertion that an exception to management rights applies, including:

(i) Whether and why the proposal or provision concerns a matter negotiable at the election of the agency under 5 U.S.C. 7106(b)(1);

(ii) Whether and why the proposal or provision constitutes a negotiable procedure as set forth in 5 U.S.C. 7106(b)(2);

(iii) Whether and why the proposal or provision constitutes an appropriate arrangement as set forth in 5 U.S.C. 7106(b)(3); and

(iv) Whether and why the proposal or provision enforces an "applicable law," within the meaning of 5 U.S.C. 7106(a)(2).

(2) Any allegation that agency rules or regulations relied on in the agency's statement of position violate applicable law, rule, regulation or appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations.

(3) A table of contents and a table of legal authorities cited if the response to an agency statement of position exceeds 25 double-spaced pages in length.

(d) *Severance.* If not requested in the petition for review, or if the exclusive representative wishes to modify the request in the petition for review, the exclusive representative may request severance in its response. The exclusive representative must support its request with an explanation of how the severed portion(s) of the proposal or provision may stand alone, and how such severed portion(s) would operate. The exclusive representative also must respond to any agency arguments regarding severance made in the agency's statement of position. The explanation and argument in support of the severed portion(s) must meet the same requirements for specific information set forth in paragraph (c) of this section.

(e) *Service.* A copy of the response of the exclusive representative, including all attachments, must be served in accord with § 2424.2(g).

§ 2424.26 Agency's reply; purpose; time limits; content; service.

(a) *Purpose.* The purpose of the agency's reply is to inform the Authority and the exclusive representative whether and why it disagrees with any facts or arguments made for the first time in the exclusive representative's response. As more fully explained in paragraph (c) of this section, the Agency is required in the reply to, among other things, provide the reasons why the proposal or provision does not fit within any exceptions to management rights that were asserted by the exclusive representative in its response, and to explain why severance of the proposal or provision is not appropriate.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the agency receives a copy of the exclusive representative's response to the agency's statement of position, the agency may file a reply.

(c) *Content.* The reply must be on a form provided by the Authority for that purpose, or in a substantially similar format. The agency's reply is specifically limited to the matters raised for the first time in the exclusive representative's response. The agency's reply must state the arguments and authorities supporting its reply, cite with specificity any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on, and provide a copy of any material that is not easily available to the Authority. The agency is not required to repeat arguments made in its statement of position. The agency's reply must be dated and must include the following:

(1) Any disagreement with the exclusive representative's assertion that an exception to management rights applies, including:

(i) Whether and why the proposal or provision concerns a matter included in section 7106(b)(1) of the Federal Service Labor-Management Relations Statute;

(ii) Whether and why the proposal or provision does not constitute a negotiable procedure as set forth in section 7106(b)(2) of the Federal Service Labor-Management Relations Statute;

(iii) Whether and why the proposal or provision does not constitute an appropriate arrangement as set forth in section 7106(b)(3) of the Federal Service Labor-Management Relations Statute;

(iv) Whether and why the proposal or provision does not enforce an "applicable law," within the meaning of section 7106(a)(2) of the Federal Service Labor-Management Relations Statute;

(2) Any arguments in reply to an exclusive representative's allegation in its response that agency rules or regulations relied on in the agency's statement of position violate applicable law, rule, regulation or appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations; and

(3) A table of contents and a table of legal authorities cited, if the agency's reply to an exclusive representative's response exceeds 25 double-spaced pages in length.

(d) *Severance.* If the exclusive representative requests severance for the first time in its response, or if the request for severance in an exclusive representative's response differs from the request in its petition for review, and if the agency opposes the exclusive representative's request for severance, then the agency must explain with specificity why severance is not appropriate.

(e) *Service.* A copy of the agency's reply, including all attachments, must be served in accord with § 2424.2(g).

§ 2424.27 Additional submissions to the Authority.

The Authority will not consider any submission filed by any party other than those authorized under this part, provided however that the Authority may, in its discretion, grant permission to file an additional submission based on a written request showing extraordinary circumstances by any party. The additional submission must be filed either with the written request or no later than five (5) days after receipt of the Authority's order granting the request. Any opposition to the additional submission must be filed within fifteen (15) days after the date of the receipt of the additional submission. All documents filed under this section must be served in accord with § 2424.2(g).

§ 2424.28–2424.29 [Reserved]

Subpart D—Processing a Petition for Review

§ 2424.30 Procedure through which the petition for review will be resolved.

(a) *Exclusive representative has filed related unfair labor practice charge or grievance alleging an unfair labor practice.* Except for proposals or provisions that are the subject of an agency's compelling need claim under 5 U.S.C. 7117(a)(2), where an exclusive representative files an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance alleging an unfair labor practice under the parties' negotiated grievance procedure, and the charge or grievance concerns issues directly related to the petition for review filed pursuant to this part, the Authority will dismiss the petition for review. The dismissal will be without prejudice to the right of the exclusive representative to refile the petition for review after the unfair labor practice charge or grievance has been resolved administratively, including resolution pursuant to an arbitration award that has become final and binding. No later than thirty (30) days after the date on which the unfair labor practice charge or grievance is resolved administratively, the exclusive representative may refile the petition for review, and the Authority will determine whether resolution of the petition is still required.

(b) *Exclusive representative has not filed related unfair labor practice charge or grievance alleging an unfair labor practice.* Where an exclusive representative files only a petition for review under this part, the petition will be processed as follows:

(1) *No bargaining obligation dispute exists.* Where there is no bargaining obligation dispute, the Authority will resolve the petition for review under the procedures of this part.

(2) *A bargaining obligation dispute exists.* Where a bargaining obligation dispute exists in addition to the negotiability dispute, the Authority will inform the exclusive representative of any opportunity to file an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance under the parties' negotiated grievance procedure and, where the exclusive representative pursues either of these courses, proceed in accord with paragraph (a) of this section. If the exclusive representative does not file an unfair labor practice charge or grievance, the Authority will proceed to resolve all disputes necessary for disposition of the petition unless, in its discretion, the Authority determines that resolving all disputes is not appropriate because, for example, resolution of the bargaining obligation dispute under this part would unduly delay resolution of the negotiability dispute, or the procedures in another, available administrative forum are better suited to resolve the bargaining obligation dispute.

§ 2424.31 Resolution of disputed issues of material fact; hearings.

When necessary to resolve disputed issues of material fact in a negotiability or bargaining obligation dispute, or when it would otherwise aid in decision making, the Authority, or its designated representative, may, as appropriate:

(a) Direct the parties to provide specific documentary evidence;

(b) Direct the parties to provide answers to specific factual questions;

(c) Refer the matter to a hearing pursuant to 5 U.S.C. 7117(b)(3) and/or (c)(5); or

(d) Take any other appropriate action.

§ 2424.32 Parties' responsibilities; failure to raise, support, and/or respond to arguments; failure to participate in conferences and/or respond to Authority orders.

(a) *Responsibilities of the exclusive representative.* The exclusive representative has the burden of raising and supporting arguments that the proposal or provision is within the duty to bargain, within the duty to bargain at the agency's election, or not contrary to law, respectively, and, where applicable, why severance is appropriate.

(b) *Responsibilities of the agency.* The agency has the burden of raising and supporting arguments that the proposal or provision is outside the duty to bargain or contrary to law, respectively, and, where applicable, why severance is not appropriate.

(c) *Failure to raise, support, and respond to arguments.* (1) Failure to raise and support an argument will, where appropriate, be deemed a waiver of such argument. Absent good cause:

(i) Arguments that could have been but were not raised by an exclusive representative in the petition for review, or made in its response to the agency's statement of position, may not be made in this or any other proceeding; and

(ii) Arguments that could have been but were not raised by an agency in the statement of position, or made in its reply to the exclusive representative's response, may not be raised in this or any other proceeding.

(2) Failure to respond to an argument or assertion raised by the other party will, where appropriate, be deemed a concession to such argument or assertion.

(d) *Failure to participate in conferences; failure to respond to Authority orders.* Where a party fails to participate in a post-petition conference pursuant to § 2424.23, a direction or proceeding under § 2424.31, or otherwise fails to provide timely or responsive information pursuant to an Authority order, including an Authority procedural order directing the correction of technical deficiencies in filing, the Authority may, in addition to those actions set forth in paragraph (c) of this section, take any other action that, in the Authority's discretion, is deemed appropriate, including dismissal of the petition for review, with or without prejudice to the exclusive representative's refiling of the petition for review, and granting the petition for review and directing bargaining and/or rescission of an agency head disapproval under 5 U.S.C. 7114(c), with or without conditions.

§ 2424.33—2424.39 [Reserved]

Subpart E—Decision and Order

§ 2424.40 Authority decision and order.

(a) *Issuance.* Subject to the requirements of this part, the Authority will expedite proceedings under this part to the extent practicable and will issue to the exclusive representative and to the agency a written decision, explaining the specific reasons for the decision, at the earliest practicable date. The decision will include an order, as provided in paragraphs (b) and (c) of this section, but, with the exception of an order to bargain, such order will not include remedies that could be obtained in an unfair labor practice proceeding under 5 U.S.C. 7118(a)(7).

(b) *Cases involving proposals.* If the Authority finds that the duty to bargain extends to the proposal, or any severable part of the proposal, then the Authority will order the agency to bargain on request concerning the proposal. If the Authority finds that the duty to bargain does not extend to the proposal, then the Authority will dismiss the petition for review. If the Authority finds that the proposal is bargainable only at the election of the agency, then the Authority will so state. If the Authority resolves a negotiability dispute by finding that a proposal is within the duty to bargain, but there are unresolved bargaining obligation dispute claims, then the Authority will order the agency to bargain on request in the event its bargaining obligation claims are resolved in a manner that requires bargaining.

(c) *Cases involving provisions.* If the Authority finds that a provision, or any severable part thereof, is not contrary to law, rule or regulation, or is bargainable at the election of the agency, the Authority will direct the agency to rescind its disapproval of such provision in whole or in part as appropriate. If the Authority finds that a provision is contrary to law, rule, or regulation, the Authority will dismiss the petition for review as to that provision.

§ 2424.41 Compliance.

The exclusive representative may report to the appropriate Regional Director an agency's failure to comply with an order, issued in accordance with § 2424.40, that the agency must upon request (or as otherwise agreed to by the parties) bargain concerning the proposal or that the agency must rescind its disapproval of a provision. The exclusive representative must report such failure within a reasonable period of time following expiration of the 60-day period under 5 U.S.C. 7123(a), which begins on the date of issuance of the Authority order. If, on referral from the Regional Director, the Authority finds such a failure to comply with its order, the Authority will take whatever action it deems necessary to secure compliance with its order, including enforcement under 5 U.S.C. 7123(b).

§§ 2424.42—2424.49 [Reserved]

Subpart F—Criteria for Determining Compelling Need for Agency Rules and Regulations

§ 2424.50 Illustrative criteria.

A compelling need exists for an agency rule or regulation concerning any condition of employment when the agency demonstrates that the rule or regulation meets one or more of the following illustrative criteria:

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner that is consistent with the requirements of an effective and efficient government.

(b) The rule or regulation is necessary to ensure the maintenance of basic merit principles.

(c) The rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.

§§ 2424.51—2424.59 [Reserved]

Dated: November 25, 1998.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 98–31970 Filed 12–1–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–41–AD; Amendment 39–10921; AD 98–24–35]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–350B, B1, B2, BA, C, D, D1, and AS 355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS–350B, B1, B2, BA, C, D, D1, and AS 355E, F, F1, F2, and N helicopters. This action requires measuring the tail rotor pitch change control rod (control rod) outboard spherical bearing for radial and axial play. If the play exceeds 0.008-inch, replacing the control rod with an airworthy control rod is required. This amendment is prompted by one accident and one incident. Investigations revealed a broken control rod on the helicopter involved in the accident and a severely worn control rod on the helicopter involved in the incident. This condition, if not corrected, could result in separation of the outboard spherical bearing ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and loss of control of the helicopter.

DATES: Effective December 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–41–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment was prompted by an accident, which occurred in November 1996, and an incident, which occurred in August 1997, involving Model AS–350B2 helicopters offshore over the Gulf of Mexico. The DGAC, although notified by the FAA of both the accident and incident, has not issued an AD on this subject. There were two other unconfirmed incidents cited by the National Transportation Safety Board (based on manufacturer's reports) involving the same control rod, part number (P/N) 350A33–2145–01.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design certified for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS–350B, B1, B2, BA, C, D, D1, and AS 355E, F, F1, F2, and N helicopters of the same type design registered in the United States, this AD is being issued to prevent separation of the outboard spherical bearing ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and loss of control of the helicopter. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, measuring the control rod outboard spherical bearing radial and axial play is required within 50 hours time-in-service, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Cost Impact

The FAA estimates that 507 helicopters will be affected by this AD, that it will take approximately 1 work hour, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,376 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,235,052 to perform the measurement and to replace both control rods on each helicopter in the fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–41–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

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Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–24–35 Eurocopter France: Amendment 39–10921. Docket No. 98–SW–41–AD.

Applicability: Eurocopter France Model AS–350B, B1, B2, BA, C, D, D1, and AS 355E, F, F1, F2, and N helicopters, with tail rotor pitch change control rod (control rod), part number (P/N) 350A33–2145–01, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 50 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously, and thereafter at intervals not to exceed 50 hours TIS.

To prevent separation of the outboard spherical bearing ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and loss of control of the helicopter, accomplish the following:

(a) Using a dial indicator, measure the axial and radial play of the outboard spherical bearing on the control rod. If the play exceeds 0.008-inch, replace the control rod with an airworthy control rod.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 17, 1998.

Issued in Fort Worth, Texas, on November 19, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31858 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–111–AD; Amendment 39–10923; AD 98–24–14]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 340A and 414A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–24–14, which was sent previously to all known U.S. owners and operators of certain Cessna Aircraft Company (Cessna) Models 340A and 414A airplanes that could be equipped with any WYE tube, part number (P/N) 9910299–25 or P/N 9910299–26, in the engine exhaust system. This AD requires removing from service any P/N 9910299–25 or P/N 9910299–26 engine exhaust system WYE tube. The AD resulted from reports of five instances where the engine exhaust components in the WYE tube were manufactured without welds on critical parts that are installed adjacent to the firewall. The actions specified by this AD are intended to detect and correct exhaust leaks caused by nonwelded exhaust system components, which could result in aluminum fuel lines bursting with consequent fuel spillage, an airplane fire, and/or an explosion.

DATES: Effective December 21, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98–24–14, issued November 13, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–111–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On November 13, 1998, the FAA issued priority letter AD 98–24–14, which applies to certain Cessna Models 340A and 414A airplanes that are equipped with any WYE tube, part number (P/N) 9910299–25 or P/N 9910299–26, in the engine exhaust system. This AD requires removing from service any P/N 9910299–25 or P/N 9910299–26 engine exhaust system WYE tube.

These P/N 9910299–25 or P/N 9910299–26 WYE tubes may be replaced with any of the following:

- —P/N 9910299–8 (for the P/N 9910299–25) or P/N 9910299–9 (for the P/N 9910299–26) WYE tubes; or
- —any other FAA-approved engine exhaust system WYE tube that is not P/N 9910299–25 or P/N 9910299–26.

The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether any WYE tube, P/N 9910299–25 or P/N 9910299–26, has been installed in the engine exhaust system between May 8, 1998, and December 21, 1998. If one of these WYE tubes is not installed, the AD does not apply and the owner/operator must make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

The FAA's Determination

Since an unsafe condition has been identified that is likely to exist or develop in certain Cessna Models 340A and 414A airplanes of the same type design that are equipped with any WYE tube, P/N 9910299–25 or P/N 9910299–26, in the engine exhaust system, the FAA issued AD 98–24–14 by priority letter in order to detect and correct exhaust leaks caused by nonwelded exhaust system components. This condition could result in aluminum fuel lines bursting with consequent fuel spillage, an airplane fire, and/or an explosion.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on November 13, 1998, to all known U.S. operators of certain Cessna Models 340A and 414A airplanes that could be equipped with any WYE tube, P/N 9910299–25 or P/N 9910299–26, in the engine exhaust system. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–111–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–14 Cessna Aircraft Company: Amendment 39–10923; Docket No. 98–CE–111–AD.

Applicability: The following airplane models and serial numbers, certificated in any category, that are equipped with any WYE tube, part number (P/N) 9910299–25 or P/N 9910299–26, in the engine exhaust system:

Model	Serial numbers
340A	215 through 1817.
414A	1 through 1212.

Note 1: This AD allows the aircraft owner or pilot to check the maintenance records to determine whether any WYE tube, P/N 9910299–25 or P/N 9910299–26, has been installed in the engine exhaust system between May 8, 1998, and December 21, 1998 (the effective date of this AD). See paragraph (c) of this AD for authorization.

Note 2: Cessna is considering issuing service information pertaining to this subject. This AD takes precedence over any existing or future service information on this subject.

Note 3: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct exhaust leaks caused by nonwelded exhaust system components, which could result in aluminum fuel lines bursting with consequent fuel spillage, an airplane fire, and/or an explosion, accomplish the following:

(a) Prior to further flight after the effective date of this AD, remove from service any P/N 9910299–25 or P/N 9910299–26 engine exhaust system WYE tube.

These P/N 9910299–25 or P/N 9910299–26 WYE tubes may be replaced with any of the following in accordance with the instructions in the applicable maintenance manual or other applicable FAA-approved document:

(1) P/N 9910299–8 (for the P/N 9910299–25) or P/N 9910299–9 (for the P/N 9910299–26) WYE tubes; or (2) Any other FAA-approved engine exhaust system WYE tube that is not P/N 9910299–25 or P/N 9910299–26.

(b) As of the effective date of this AD, no person shall install, on any affected airplane,

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any P/N 9910299–25 or P/N 9910299–26 engine exhaust system WYE tube.

(c) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether any WYE tube, P/N 9910299–25 or P/N 9910299–26, has been installed in the engine exhaust system between May 8, 1998, and December 21, 1998 (the effective date of this AD). If one of these WYE tubes is not installed, the AD does not apply and the owner/operator must make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Wichita ACO.

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment becomes effective on December 21, 1998, except those persons to whom it was made immediately effective by priority letter AD 98–24–14, issued November 13, 1998, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on November 24, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32045 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–334–AD; Amendment 39–10929; AD 98–24–51]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes Equipped with Certain Collins LRA–900 Radio Altimeters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) T98–24–51 that was sent previously to all known U.S. owners and operators of certain McDonnell Douglas Model MD–11 series airplanes by individual telegrams. This AD requires a revision to the Airplane Flight Manual to prohibit autopilot coupled autoland operations in certain conditions; or, for certain airplanes, replacement of certain Collins LRA–900 radio altimeters with Collins LRA–700 radio altimeters. This action is prompted by a report that a fault in certain Collins LRA-900 radio altimeters could result in an incorrect and unbounded output of radio altitude to other airplane systems. The actions specified by this AD are intended to prevent an undetected anomalous radio altitude signal that is passed along to the flare control law of the flight control computer, which could cause the airplane to flare too high or too low during landing, and consequently result in a hard landing.

DATES: Effective December 7, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–24–51, issued November 19, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–334–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5347; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On November 19, 1998, the FAA issued telegraphic AD T98–24–51, which is applicable to certain McDonnell Douglas Model MD–11 series airplanes equipped with certain Collins LRA–900 radio altimeters. That action was prompted by a report from Rockwell Collins that a fault in certain Collins LRA–900 radio altimeters has been identified, which could result in an incorrect and unbounded output of radio altitude to other airplane systems.

The fail-operational autoland installation on McDonnell Douglas Model MD–11 series airplanes utilizes a dual-dual architecture that relies on the self-monitoring capability of the Collins LRA–900 radio altimeters. Any undetected anomalous radio altitude signal that is passed along to the flare control law of the flight control computer (FCC) could cause the initiation of the flare mode at an altitude that is either too high or too low for safe landing during autoland operations.

This fault does not affect airplanes equipped with either an autoland system architecture that utilizes triplex radio altimeter sensors or a dual fail-passive autoland architecture. The triplex radio altimeter sensors are able to "vote out" the undetected radio altimeter anomaly. The dual fail-passive autoland architecture compares both radio altimeters and passively disconnects when the signals do not match (i.e., radio altimeter miscompare).

In light of these findings, the FAA has determined that the reported anomaly is limited to airplanes with fail-operational autoland systems with a dual-dual fail-operational radio altimeter architecture.

An undetected anomalous radio altitude signal that is passed along to the flare control law of the FCC, if not corrected, could cause the airplane to flare too high or too low during landing, and consequently result in a hard landing.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T98–24–51 to require a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit autopilot coupled autoland operations in certain conditions; or, for certain airplanes, replacement of certain Collins LRA–900 radio altimeters with Collins LRA–700 radio altimeters.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on November 19, 1998, to all known U.S. owners and operators of certain McDonnell Douglas Model MD–11 series airplanes equipped with certain Collins LRA–900 radio altimeters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–334–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–51 McDonnell Douglas: Amendment 39–10929. Docket 98–NM–334–AD.

Applicability: Model MD–11 series airplanes, equipped with certain Collins LRA–900 radio altimeters, having part number 822–0334–002, 822–0334–020, or 822–0334–220; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To detect and correct an undetected anomalous radio altitude signal that is passed along to the flare control law of the flight control computer, which could cause the airplane to flare too high or too low during landing, and consequently result in a hard landing, accomplish the following:

(a) Within 24 hours after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD:

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual to include the following statement:

"Autopilot coupled autoland operations below 100 feet above ground level (AGL) are prohibited."

(2) For airplanes on which the LRA–700 radio altimeter installation has been approved in accordance with Type Certificate or Supplemental Type Certificate procedures: Replace both Collins LRA–900 radio altimeters having part number 822–0334–002, 822–0334–020, or 822–0334–220, with Collins LRA–700 radio altimeters having part number 622–4542–221.

(b) As of the effective date of this AD, no person shall install on any airplane a Collins LRA–900 radio altimeter, having part number 822–0334–002, 822–0334–020, or 822–0334–220.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on December 7, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–24–51, issued on November 19, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on November 25, 1998

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32100 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–12]

Revocation of Class D and Class E Airspace, Crows Landing, CA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revokes the Class D and Class E airspace areas below 1200 feet above ground level (AGL) associated with Crows Landing, CA and changes the name from Crows Landing NALF to NASA Crows

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Landing in the legal description of the remaining controlled airspace as published in the direct final rule. The correction amends the latitude of the Class E airspace area (E5) from 1200 feet and above, which was published incorrectly in the direct final rule; request for comments. The correct latitude is 37°38′00″.

DATES: The direct final rule published in 63 FR 45394 is effective at 0901 UTC, December 3, 1998. This correction is effective on December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Specialist, AWP–520.10, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone: (310) 725–6613.

SUPPLEMENTARY INFORMATION: On August 26, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments which revoked the Class D and Class E airspace areas below 1200 feet AGL associated with Crows Landing Airport, CA. (FR Document 98–22749, 63 FR 45394, Airspace Docket No. 98–AWP–12). An error was subsequently discovered in the publication of the docket. The latitude of the Class E5 airspace area was incorrectly stated in the direct final rule; request for comments. This error was typographical only and the FAA did not intend to revise the dimensions of the existing Class E5 airspace area. After review of all available information related to the subject present above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, therefore this document confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–22749 published in the **Federal Register** on August 26, 1998, 63 FR 45394, make the following correction to the airspace description;

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 NASA Crows Landing, CA [Revised]

NASA Crows Landing CA
(Lat. 37°24′29″N, long. 121°06′34″W)

That airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 37°38′00″N, on the east by the west edge of V–109, on the southwest by the northeast edge of V–107 and on the west by long. 121°31′04″W.

Issued in Los Angeles, California on November 19, 1998.

Leonard A. Mobley,

Acting Manger, Air Traffic Division, Western Pacific Region.

[FR Doc. 98–32132 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–42]

Amendment to Class E Airspace; Wellington, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Wellington, KS.

DATES: The direct final rule published at 63 FR 51808 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51808). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 17, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32137 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–38]

Amendment to Class E Airspace; Trenton, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Trenton, MO.

DATES: The direct final rule published at 63 FR 51807 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51807). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 17, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32136 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–36]

Amendment to Class E Airspace; Wichita Mid-Continent Airport, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Wichita, KS.

DATES: The direct final rule published at 63 FR 51814 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51814). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 6, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32135 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29403; Amdt. No. 1903]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows.

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25083 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between the SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 27, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLSRNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV/SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
11/10/98	AL	DOTHAN	DOTHAN	8/7974	ILS RWY 32, AMDT 7D...
11/12/98	TN	SHELBYVILLE	BOMAR FIELD-SHELBYVILLE MUNI	8/8022	VOR/DME RNAV RWY 18, AMDT 3...
11/12/98	TN	SHELBYVILLE	BOMAR FIELD-SHELBYVILLE MUNI	8/8023	VOR/DME RWY 18, AMDT 4...
11/12/98	TN	SHELBYVILLE	BOMAR FIELD-SHELBYVILLE MUNI	8/8024	VOR RWY 18, AMDT 5...
11/12/98	TN	SHELBYVILLE	BOMAR FIELD-SHELBYVILLE MUNI	8/8025	VOR RWY 36, AMDT 15...
11/13/98	MN	ST. PAUL	LAKE ELMO	8/8036	NDB OR GPS RWY 3, AMDT 3A...
11/16/98	PA	PITTSBURGH	PITTSBURGH INTL	8/8065	VOR/DME OR GPS RWY 14, AMDT 1...
11/16/98	SC	PELION	PELION CORPORATE	8/8064	VOR OR GPS–A, AMDT 2...
11/17/98	NC	ASHEVILLE	ASHEVILLE REGIONAL	8/8101	NDB OR GPS RWY 16, AMDT 15...
11/17/98	NC	ASHEVILLE	ASHEVILLE REGIONAL	8/8103	NDB OR GPS RWY 34, AMDT 18...
11/17/98	NC	ASHEVILLE	ASHEVILLE REGIONAL	8/8104	ILS RWY 34, AMDT 23A...
11/17/98	NC	ASHEVILLE	ASHEVILLE REGIONAL	8/8105	ILS RWY 16, AMDT 3...
11/18/98	MI	TRAVERSE CITY	CHERRY CAPITAL	8/8120	ILS RWY 28, AMDT 12A...
11/18/98	NC	ASHEVILLE	ASHEVILLE REGIONAL	8/8121	RADAR–1, AMDT 5...
11/19/98	UT	SALT LAKE CITY	SALT LAKE CITY INTL	8/8140	ILS RWY 35, AMDT 1...
11/20/98	FL	CRESTVIEW	BOB SIKES	8/8161	VOR OR GPS–A, AMDT 11...
11/20/98	SC	ORANGEBURG	ORANGEBURG MUNI	8/8159	VOR RWY 5, AMDT 4A...
11/20/98	SC	ORANGEBURG	ORANGEBURG MUNI	8/8160	NDB OR GPS RWY 5, ORIG–A...
11/20/98	SC	ROCK HILL	ROCK HILL/YORK COUNTY/BRYANT FIELD.	8/8172	GPS RWY 2, ORIG–A...
11/20/98	SC	ROCK HILL	ROCK HILL/YORK COUNTY/BRYANT FIELD.	8/8173	VOR OR GPS–A, AMDT 9A...
11/20/98	SC	ROCK HILL	ROCK HILL/YORK COUNTY/BRYANT FIELD.	8/8174	GPS RWY 20, ORIG–A...
11/20/98	SC	ROCK HILL	ROCK HILL/YORK COUNTY/BRYANT FIELD.	8/8176	NDB RWY 2, ORIG–B
11/20/98	WI	RHINELANDER	RHINELANDER–ONIEDA COUNTY	8/8178	ILS RWY 9, AMDT 6A...
11/23/98	MN	WINONA	WINONA MUNI–MAX CONRAD FIELD	8/8209	GPS RWY 29, AMDT 1...
11/23/98	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON.	8/8201	ILS RWY 14L, AMDT 11...

FDC date	State	City	Airport	FDC No.	SIAP
11/23/98	TX	HOUSTON	BEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON.	8/8204	VOR/DME RWY 14L, AMDT 15B...
11/23/98	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON.	8/8207	GPS RWY 14L, ORIG–A...
11/23/98	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON.	8/8211	VOR/DME OR GPS RWY 32R, AMDT 13B...
11/23/98	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON.	8/8212	ILS RWY 32R, AMDT 10...

[FR Doc. 98–32131 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29402; Amdt. No. 1902]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace system, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

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Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on November 27, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

AUTHORITY: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPS; § 97.33 RNAV SIAPS; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective 31 December, 1998*

Carlsbad CA, McClellan-Palomar, ILS RWY 24, Amdt 8
Fairfield, IA, Fairfield Muni, VOR/DME RNAV RWY 36, Amdt 1C, CANCELLED
Kansas City, MO, Kansas City Intl, LOC BC RWY 27, Amdt 12, CANCELLED
New York, NY, LaGuardia, VOR/DME OR GPS–H, Amdt 2
Rock Hill, SC, Rock Hill/York County/BryantField, LOC RWY 2, Orig-B, CANCELLED
Rock Hill, SC, Rock Hill/York County/BryantField, ILS RWY 2, Orig

* * * *Effective 28 January, 1999*

Brewton, AL, Brewton Muni, GPS RWY 6, Orig
Chino, CA, Chino, ILS RWY 26R, Amdt 5
Fortuna, CA, Rohnerville, VOR RWY 11, Amdt 3
Fortuna, CA, Rohnerville, GPS RWY 11, Orig
Fortuna, CA, Rohnerville, GPS RWY 29, Orig
Tracy, CA, Tracy Muni, VOR OR GPS–A, Amdt 5
Tracy, CA, Tracy Muni, NDB RWY 25, Orig
Tracy, CA, Tracy Muni, NDB RWY 12, Orig
Tracy, CA, Tracy Muni, GPS RWY 25, Orig
Tracy, CA, Tracy Muni, GPS RWY 30, Orig
Craig, CO, Craig-Moffat, GPS RWY 7, Orig
Craig, CO, Craig-Moffat, GPS RWY 25, Orig
Titusville, FL, Space Coast Regional, GPS RWY 9, Orig
Valparaiso, IN, Porter County Muni, NDB RWY 27, Amdt 6
Valparaiso, IN, Porter County Muni, VOR/DME RNAV RWY 9, Amdt 3
Valparaiso, IN, Porter County Muni, GPS RWY 9, Orig
Valparaiso, IN, Porter County Muni, GPS RWY 27, Orig
Baltimore, MD, Martin State, NDB OR GPS RWY 15, Amdt 8
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom Fld, VOR/DME OR GPS RWY 16, Orig, CANCELLED
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom Fld, VOR OR GPS RWY 34, Amdt 10
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom Fld, NDB RWY 34, Amdt 7
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom Fld, ILS RWY 34, Amdt 1
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom Fld, GPS RWY 16, Orig
Granite Falls, MN, Granite Falls Muni, VOR/DME RWY 34, Orig
Granite Falls, MN, Granite Falls Muni, GPS RWY 34, Orig
Longville, MN, Longville Muni, NDB RWY 31, OriG
Moorhead, MN, Moorhead Muni, VOR–A, Orig
Orr, MN, Orr Regional, NDB RWY 13, Amdt 8
Orr, MN, Orr Regional, GPS RWY 13, Orig
Owatonna, MN, Owatonna Muni, VOR OR GPS RWY 12, Amdt 10
Owatonna, MN, Owatonna Muni, VOR/DME RWY 30, Amdt 4
Two Harbors, MN, Richard B. Helgeson, NDB RWY 24, Amdt 1
Two Harbors, MN, Richard B. Helgeson, GPS RWY 24, Orig
Ft. Leonard Wood, MO, VOR OR GPS RWY 14, Orig, CANCELLED
Ft. Leonard Wood, MO, VOR OR GPS RWY 32, Orig, CANCELLED
Ft. Leonard Wood, MO, LOC, RWY 14, Amdt 1, CANCELLED
Ft. Leonard Wood, MO, NDB RWY 32, Orig, CANCELLED
Teterboro, NJ, Teterboro, FMS/ILS RWY 6, Orig
Teterboro, NJ, Teterboro, ILS, RWY 6, Amdt 29
Teterboro, NJ, Teterboro, COPTER ILS RWY 6, Amdt 1
Dunkirk, NY, Chautauqua County/Dunkirk, VOR RWY 6, Amdt 2
Dunkirk, NY, Chautauqua County/Dunkirk, VOR RWY 24, Amdt 7
Dunkirk, NY, Chautauqua County/Dunkirk, GPS RWY 6, Orig
Dunkirk, NY, Chautauqua County/Dunkirk, GPS RWY 24, Orig
Dunkirk, NY, Chautauqua County/Dunkirk, GPS RWY 33, Orig
Manteo, NC, Dare County Regional, NDB RWY 5, Amdt 5
Manteo, NC, Dare County Regional, NDB RWY 17, Amdt 5
Manteo, NC, Dare County Regional, GPS RWY 5, Orig
Manteo, NC, Dare County Regional, GPS RWY 17, Orig
Manteo, NC, Dare County Regional, GPS RWY 23, Orig
Rutherfordton, NC, Rutherford Co-Marchman Field, LOC RWY 1, Amdt 1
Rutherfordton, NC, Rutherford Co-Marchman Field, NDB RWY 1, Amdt 5
Rutherfordton, NC, Rutherford Co-Marchman Field, GPS RWY 1, Amdt 1
Aberdeen, SD, Aberdeen Regional, VOR/DME OR GPS RWY 13, Amdt 12
Aberdeen, SD, Aberdeen Regional, VOR OR GPS RWY 31, Amdt 20
Aberdeen, SD, Aberdeen Regional, LOC/DME BC RWY 13, Amdt 10
Aberdeen, SD, Aberdeen Regional, NDB RWY 31, Amdt 10
Aberdeen, SD, Aberdeen Regional, ILS RWY 31, Amdt 13
Aberdeen, SD, Aberdeen Regional, GPS RWY 35, Orig
Nashville, TN, Nashville International, VOR/DME OR GPS RWY 13, Amdt 13
Baytown, TX, Baytown, NDB RWY 14, Orig-A, CANCELLED
Baytown, TX, Baytown, NDB RWY 32, Orig-A, CANCELLED

[FR Doc. 98–32130 Filed 12–1–98; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for refrigerators, refrigerator-freezers, and freezers. The Commission also announces that the ranges of comparability for central air conditioners and heat pumps, which were published on September 16, 1996 (61 FR 48620), will remain in effect until further notice. Finally, the Commission is amending the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for

Central Air Conditioners) to Part 305 that contain cost calculation formulas. These amendments change the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity that was published on December 8, 1997 (62 FR 64574), by the Department of Energy ("DOE").

EFFECTIVE DATE: March 2, 1999.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule ("Rule") was issued by the Commission in 1979 (44 FR 66466 (Nov. 19, 1979)) in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters (this category includes storage-type water heaters, instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps). The Rule also covers pool heaters (59 FR 49556 (Sept. 28, 1994)), and contains requirements that pertain to fluorescent lamp ballasts (54 FR 28031 (July 5, 1989)), certain plumbing products (58 FR 54955 (Oct. 25, 1993)), and certain lighting products (59 FR 25176 (May 13, 1994)).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually (by specified dates for each product type[2]) the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under Section 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

New Ranges of Comparability for Refrigerators, Refrigerator-Freezers, and Freezers

The Commission has analyzed annual submissions of data for refrigerators, refrigerator-freezers, and freezers. The submissions have resulted in new ranges of comparability figures for these products. In compiling these ranges of comparability, the Commission did not include the estimated annual energy consumption of models with energy consumption in excess of DOE's current energy conservation standards for this category, which became effective on January 1, 1993 (16 CFR 430.32(a) (1995)). After that date, became illegal to distribute in commerce products that exceed those standards. Because the standards have been in place for almost six years, the number of legally produced, but nonconforming, products still in the marketplace is likely to be small. Therefore, it is not appropriate to include those products in the ranges. The new ranges will supersede the current ranges for refrigerators, refrigerator-freezers, and freezers, which were published on November 13, 1995 (60 FR 56945).

Changes Applicable to Disclosures for Central Air Conditioners and Heat Pumps

The 1995 data submission for central air conditioners and heat pumps has been completed, and the Commission has determined that the upper and lower limits of the ranges of comparability for these products, which were published on September 16, 1996 (61 FR 48620), have not changed by more than 15%. Therefore, the Commission is announcing that those ranges will remain in effect until further notice.

The Commission is amending in this Notice, however, the cost calculation formulas appearing in the Appendices (H and I) to Part 305 that contain, for central air conditioners and heat pumps, heating and cooling performance costs and the ranges of comparability. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. This amendment changes the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity—8.42 cents per kilo watt-hour—that was published on December 8, 1997, by DOE (62 FR 64574) and by the Commissioner on December 29, 1997 (62 FR 67560).

Amendments

In consideration of the foregoing, the Commission amends Appendices A1 through A8, B1 through B3, H, and I of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and catalog sales of refrigerators, refrigerator-freezers, and freezers and the following amendments to the cost calculation formulas that manufacturers of central air conditioners and heat pumps must include on fact sheets and in directories, beginning March 2, 1999.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix A1 to Part 305 is revised to read as follows:

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[1] 42 U.S.C. 6294. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for refrigerators, refrigerator-freezers, and freezers are due August 1. Reports for central air conditioners and heat pumps are due July 1.

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APPENDIX A1 TO PART 305—REFRIGERATORS WITH AUTOMATIC DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5	327	327
2.5 to 4.4	301	398
4.5 to 6.4	370	434
6.5 to 8.4	419	419
8.5 to 10.4	419	467
10.5 to 12.4	391	454
12.5 to 14.4	(*)	(*)
14.5 to 16.4	588	588
16.5 and over	438	568

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

3. Appendix A2 to Part 305 is revised to read as follows:

APPENDIX A2 TO PART 305—REFRIGERATORS AND REFRIGERATOR-FREEZERS WITH MANUAL DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5	256	307
2.5 to 4.4	301	358
4.5 to 6.4	268	377
6.5 to 8.4	378	405
8.5 to 10.4	343	430
10.5 to 12.4	435	435
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	438	438
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

4. Appendix A3 to Part 305 is revised to read as follows:

APPENDIX A3 TO PART 305—REFRIGERATOR-FREEZERS WITH PARTIAL AUTOMATIC DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption 9kWh/yr.)	
	Low	High
Less than 10.5	376	510
10.5 to 12.4	454	530
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

5. Appendix A4 to Part 305 is revised to read as follows:

APPENDIX A4 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	427	525
10.5 to 12.4	449	568
12.5 to 14.4	496	624
14.5 to 16.4	437	666
16.5 to 18.4	518	697
18.5 to 20.4	526	741
20.5 to 22.4	559	767
22.5 to 24.4	598	800
24.5 to 26.4	609	825
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

6. Appendix A5 to Part 305 is revised to read as follows:

APPENDIX A5 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	452	525
10.5 to 12.4	480	480
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	710	783
20.5 to 22.4	685	825
22.5 to 24.4	720	848
24.5 to 26.4	776	875
26.5 to 28.4	(*)	(*)
28.5 and over	911	950

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

7. Appendix A6 to Part 305 is revised to read as follows:

APPENDIX A6 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH BOTTOM-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	463	463
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	666	666
16.5 to 18.4	706	709
18.5 to 20.4	593	757
20.5 to 22.4	524	789
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

8. Appendix A7 to Part 305 is revised to read as follows:

Appendix A7 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer With Through-the-Door Ice Service

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	840	840
22.5 to 24.4	(*)	(*)
24.5 to 26.4	905	905
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

9. Appendix A8 to Part 305 is revised to read as follows:

Appendix A8 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer With Through-the-Door Ice Service

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	734	934
20.5 to 22.4	714	967
22.5 to 24.4	685	1000
24.5 to 26.4	760	1042
26.5 to 28.4	735	1080
28.5 and over	765	1144

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

10. Appendix B1 to Part 305 is revised to read as follows:

Appendix B1 to Part 305—Upright Freezers With Manual Defrost

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	250	349
5.5 to 7.4	(*)	(*)
7.5 to 9.4	373	416
9.5 to 11.4	448	456
11.5 to 13.4	468	474
13.5 to 15.4	509	534
15.5 to 17.4	562	565
17.5 to 19.4	(*)	(*)
19.5 to 21.4	615	627
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	685	685

(*) No date submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

11. Appendix B2 To Part 305 is revised to read as follows:

Appendix B2 to Part 305—Upright Freezers With Automatic Defrost

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/hr.)	
	Low	High
Less than 5.5	504	516
5.5 to 7.4	(*)	(*)
7.5 to 9.4	(*)	(*)
9.5 to 11.4	(*)	(*)
11.5 to 13.4	(*)	(*)
13.5 to 15.4	728	774
15.5 to 17.4	784	821
17.5 to 19.4	876	878
19.5 to 21.4	800	896
21.5 to 23.4	(*)	(*)
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	687	687

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

12. Appendix B3 to Part 305 is revised to read as follows:

Appendix B3 to Part 305—Chest Freezers and All Other Freezers

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh.yr.)	
	Low	High
Less than 5.5	212	260
5.5 to 7.4	291	293
7.5 to 9.4	322	322
9.5 to 11.4	347	349
11.5 to 13.4	391	399
13.5 to 15.4	434	441
15.5 to 17.4	(*)	(*)
17.5 to 19.4	493	493
19.5 to 21.4	529	529
21.5 to 23.4	552	588
23.5 to 15.4	620	629
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

*No data submitted for units meeting Federal Energy Conservation Standards effective January 1, 1993.

Appendix H—[Amended]

13. In section 2 of Appendix H or Part 305, the text and formulas are amended by removing the figure "8.31¢" wherever it appears and by adding, in its place, the figure "8.42¢". In addition, the text and formulas are amended by removing the figure "12.47¢" wherever it appears and by adding, in its place, the figure "112.64¢".

Appendix I—[Amended]

14. In section 2 of Appendix I of Part 305, the text and formulas are amended by removing the figure "8.31¢" wherever it appears and by adding, in its place, the figure "8.42¢". In addition, the text and formulas are amended by removing the figure "12.47¢" wherever it appears and by adding, in its place, the figure "12.64¢".

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–32079 Filed 12–1–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Butorphanol Tartrate

AGENCY: Food and Drug Administration, HHS.

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ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Intervet, Inc. The ANADA provides for use of butorphanol tartrate injection for horses for the relief of pain associated with colic and postpartum pain in adult horses and yearlings.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Intervet, Inc., 405 State St., P.O. Box 318, Millsboro, DE 19966–0318, filed ANADA 200–239 that provides for veterinary prescription use of Dolorex® (butorphanol tartrate) injection intravenously for horses for the relief of pain associated with colic and postpartum pain in adult horses and yearlings.

ANADA 200–239 is approved as a generic copy of Fort Dodge Animal Health's NADA 135–780 for Torbugesic® for horses. The ANADA is approved as of September 28, 1998, and the regulations are amended in 21 CFR 522.246(b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of the application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.246 is amended by revising paragraph (b) to read as follows:

§ 522.246 Butorphanol tartrate injection.

* * * * *

(b) *Sponsors.* Approval to firms identified in § 510.600(c) of this chapter for use as indicated:

(1) See No. 057926 for use as in paragraph (c)(2) of this section.

(2) See No. 000856 for use as in paragraphs (c)(1), (c)(2), and (c)(3) of this section.

* * * * *

Dated: November 5, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–32022 Filed 12–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Chlortetracycline and Salinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two abbreviated new animal drug applications (ANADA's) filed by Alpharma Inc. The ANADA's provide for using approved chlortetracycline and salinomycin Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis and as an aid in the reduction of mortality due to *E. coli* infections.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA's 200–261 and 200–262 that provide for combining approved ChlorMax™ (50, 65, or 70 grams per pound (g/lb) chlortetracycline) and Sacox® or Bio–Cox® (30 or 60 g/lb salinomycin sodium) Type A medicated articles to make Type C medicated broiler feeds containing chlortetracycline 500 grams per ton (g/t) and salinomycin 40 to 60 g/t. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatment.

Alpharma Inc.'s ANADA 200–261 is approved as a generic copy of Roche Vitamins, Inc.'s NADA 140–859. Alpharma Inc.'s ANADA 200–262 is approved as a generic copy of Hoechst Roussel's ANADA 200–095. Alpharma Inc.'s ANADA's 200–261 and 200–262 are approved as of September 21, 1998, and 21 CFR 558.550(a)(3) is amended to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.550 is amended by revising paragraph (a)(3) to read as follows:

§ 558.550 Salinomycin.

(a) * * *

(3) To 046573 for use as in paragraphs (d)(1)(xv) and (d)(1)(xvi) of this section.

* * * * *

Dated: November 12, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–32141 Filed 12–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8790]

RIN 1545–AU38

Definition of Reasonable Basis

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the accuracy-related penalty. These amendments are necessary to define reasonable basis and to make conforming changes to existing regulations. These regulations affect any taxpayer that files a tax return.

DATES: Effective date. These regulations are effective December 2, 1998.

Applicability date. For dates of applicability, see §§ 1.6662–2(d) and 1.6664–1(b)(2).

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman, 202–622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1995, the IRS issued final regulations [TD 8617 (60 FR 45661)], relating to the accuracy-related penalty under chapter 1 of the Internal Revenue Code. Those regulations provided guidance concerning the reasonable basis standard for purposes of (1) the negligence penalty under section 6662(b)(1), and (2) the disclosure exception to the penalties for disregarding rules or regulations under section 6662(b)(1) and the substantial understatement of income tax under section 6662(b)(2). In the preamble to the final regulations, the IRS and Treasury Department requested comments and suggestions on providing further guidance on the reasonable basis standard. On November 12, 1996, proposed regulations [IA–42–95 (1996–49 I.R.B. 21) (see § 601.601(d)(2)(ii)(*b*) of this chapter)] defining reasonable basis and making conforming changes to the final regulations relating to the accuracy-related penalty were published in the **Federal Register** (61 FR 58020).

Written comments responding to the notice of proposed rulemaking were received. A public hearing was held on February 25, 1997. After consideration of all the comments, the proposed regulations under section 6662 relating to the definition of reasonable basis for purposes of the accuracy-related penalty are adopted as revised by this Treasury decision.

In addition, on August 5, 1997, the Taxpayer Relief Act (TRA) of 1997, Pub. L. 105–34 (111 Stat. 788), was enacted. The Act added a restriction regarding whether or not a corporation has a reasonable basis for its tax treatment of an item for purposes of reducing the amount of the substantial understatement penalty. This restriction has been incorporated into the final regulations.

Explanation of Provisions and Summary of Comments

These final regulations provide that a return position will have a reasonable basis for purposes of the accuracy-related penalties if it is reasonably based on one or more certain authorities. Also, if the return position does not satisfy the reasonable basis standard, a reasonable cause and good faith exception may still apply.

One commentator suggested that the substantial authority standard in § 1.6662–4(d)(3)(ii) of existing regulations and the reasonable basis standard in § 1.6662–3(b)(3) of the proposed regulations be expanded to include as authority a well-reasoned construction of the applicable regulatory provisions in addition to the statutory provisions. The substantial authority standard in § 1.6662–4(d)(3)(ii) has not been expanded to reflect this comment. However, the definition of reasonable basis in § 1.6662–3(b)(3) has been clarified to include an explicit cross-reference to the nature of the analysis discussion in § 1.6662–4(d)(3)(ii) of the substantial authority regulations.

Several commentators suggested that the final regulations explain where the reasonable basis standard ranks in the hierarchy of return position standards. This suggestion was not adopted. The final regulations do not rank the standards formally because such a comparison would change the focus of the reasonable basis regulations from the taxpayer's obligation to determine his or her tax liability in accordance with the internal revenue laws to the probability of the return position prevailing in litigation.

Several commentators supported the exclusion of a numerical qualification of the reasonable basis standard in the proposed regulations because they believed that such a qualification would encourage arbitrary and mechanical application of the standards and create bad precedent outside the scope of the reasonable basis standard. The final regulations do not include a numerical qualification.

One commentator requested that the final regulations refer specifically to Rev. Rul. 59–60 (1959–1 C.B. 237) (see § 601.601(d)(2)(ii)(*b*) of this chapter), which provides guidance regarding the valuation of stock of closely held corporations for estate and gift tax purposes. The final regulations do not adopt this suggestion. It is not necessary to include a reference to a specific revenue ruling because § 1.6662–4(d)(3)(iii) of the existing regulations already lists revenue rulings as an acceptable type of authority.

One commentator requested that the final regulations clarify the effect of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (107 Stat. 312), and the reasonable cause and good faith exception under section 6664 on a taxpayer's access to prepayment litigation in Tax Court. The final regulations do not adopt this suggestion. It is not necessary to clarify that a taxpayer has access to prepayment litigation in Tax Court because under section 6665 the Tax Court has jurisdiction to redetermine additions to tax in the same manner as the underlying tax.

Pursuant to the Taxpayer Relief Act of 1997, Pub. L. 105–34 (111 Stat. 788), § 1.6662–4(e)(3) has been added to the final regulations. That section provides that for purposes of reducing the amount of the substantial understatement penalty by making an adequate disclosure, a corporation will not be treated as having a reasonable basis for its tax treatment of an item attributable to a multi-party financing transaction entered into after August 5, 1997, if the treatment does not clearly reflect the income of the corporation.

The Chief Counsel for Advocacy of the Small Business Administration requested that the preamble to the regulations explain why the IRS has concluded that this regulation is not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Chief Counsel for Advocacy submits that the regulations tighten the definition of reasonable basis and, thus, impose a de facto recordkeeping requirement because they may require small businesses to keep and maintain records (such as the documents referred to in § 1.6662–4(d)(3)(iii)) to support tax reporting decisions.

After carefully considering these comments, the IRS and Treasury have concluded that this regulation is not subject to the Regulatory Flexibility Act, 5 U.S.C. § 603 (1994). That section requires a regulatory flexibility analysis for an interpretative rule involving the internal revenue laws only to the extent the interpretative rule imposes a collection of information requirement on small entities. A collection of information requirement is defined in 5 U.S.C. § 601(7) (1994) to mean the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either (i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States, or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States that are to be used for general statistical purposes.

Furthermore, the phrase, recordkeeping requirement, is defined in 5 U.S.C. 601(8) (1994) as a requirement imposed by an agency on persons to maintain specified records. Ever since this term was first used in the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the IRS and Treasury have consistently interpreted the phrase as applying only when Treasury regulations directly require persons to maintain specified records. We believe this interpretation is consistent with the explicit statutory language as well as Congressional intent to apply the law only to situations in which government agencies require persons to maintain particular records.

Thus, we believe the final regulations do not impose a recordkeeping requirement or other collection of information requirement, as defined in 5 U.S.C. 601(7), (8) (1994). The regulations do not impose on taxpayers additional requirements to either report information to the IRS or to keep specified records. Because the regulations do not contain a reporting requirement or other collection of information requirement, the provisions of the Regulatory Flexibility Act do not apply.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business. The Chief Counsel for Advocacy submitted comments on these regulations, which are discussed above.

Drafting Information: The principal author of these regulations is Beverly A. Baughman, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6662–0 is amended by:

1. Adding the entry for § 1.6662–2(d)(4).
2. Removing the entries for § 1.6662–3(b)(3)(i) and (ii).
3. Adding the entry for § 1.6662–4(e)(3).
4. Revising the entry for § 1.6662–7(d).
5. Removing the entries for § 1.6662–7(d)(1) and (2).

The revision and additions read as follows:

§ 1.6662–0 Table of contents.

* * * * *

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * *

(4) Special rule for reasonable basis.

* * * * *

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(e) * * *

(3) Restriction for corporations.

* * * * *

§ 1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

* * * * *

(d) Reasonable basis.

Par 3. Section 1.6662–2 is amended by:

1. Revising the second sentence in paragraph (d)(1).
2. Revising the first sentence in paragraph (d)(2).
3. Adding paragraph (d)(4).

The addition and revisions read as follows:

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * * (1) * * * Except as provided in the preceding sentence and in paragraphs (d)(2), (3), and (4) of this section, §§ 1.6662–1 through 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989, but before January 1, 1994. * * *

(2) *Returns due after December 31, 1993.* Except as provided in paragraphs (d)(3) and (4) of this section and the last sentence of this paragraph (d)(2), the provisions of §§ 1.6662–1 through 1.6662–4 and § 1.6662–7 (as revised to reflect the changes made to the accuracy-related penalty by the Omnibus Budget Reconciliation Act of 1993) and of § 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1993. * * *

* * * * *

(4) *Special rules for reasonable basis.* Section 1.6662–3(b)(3) applies to returns filed on or after December 2, 1998.

Par. 4. Section § 1.6662–3 is amended by:

1. Revising the third sentence in paragraph (b)(1) introductory text.
2. Revising paragraph (b)(3).

The revisions read as follows:

§ 1.6662–3 Negligence or disregard of rules or regulations.

* * * * *

(b)* * * (1) * * * A return position that has a reasonable basis as defined in paragraph (b)(3) of this section is not attributable to negligence. * * *

* * * * *

(3) *Reasonable basis.* Reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. If a return position is reasonably based on one or more of the authorities set forth in § 1.6662–4(d)(3)(iii) (taking into account the relevance and persuasiveness of the authorities, and subsequent developments), the return position will generally satisfy the reasonable basis standard even though it may not satisfy the substantial authority standard as defined in § 1.6662–4(d)(2). (See § 1.6662–4(d)(3)(ii) for rules with

respect to relevance, persuasiveness, subsequent developments, and use of a well-reasoned construction of an applicable statutory provision for purposes of the substantial understatement penalty.) In addition, the reasonable cause and good faith exception in § 1.6664–4 may provide relief from the penalty for negligence or disregard of rules or regulations, even if a return position does not satisfy the reasonable basis standard.

* * * * *

Par. 5. Section 1.6662–4 is amended by:

1. Revising the second sentence in paragraph (d)(2).

2. Adding paragraph (e)(3).

The addition and revision reads as follows:

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(d) * * *

(2) * * * The substantial authority standard is less stringent than the more likely than not standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard as defined in § 1.6662–3(b)(3). * * *

* * * * *

(e) * * *

(3) *Restriction for corporations.* For purposes of paragraph (e)(2)(i) of this section, a corporation will not be treated as having a reasonable basis for its tax treatment of an item attributable to a multi-party financing transaction entered into after August 5, 1997, if the treatment does not clearly reflect the income of the corporation.

* * * * *

Par. 6. In § 1.6662–7, paragraph (d) is revised to read as follows:

§ 1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

* * * * *

(d) *Reasonable basis.* For purposes of §§ 1.6662–3(c) and 1.6662–4(e) and (f) (relating to methods of making adequate disclosure), the provisions of § 1.6662–3(b)(3) apply in determining whether a return position has a reasonable basis.

Par. 7. Section 1.6664–0 is amended by:

1. Revising the entry for § 1.6664–4(c)(2).

2. Removing the entries for §§ 1.6664–4(c)(1)(iii), (c)(2)(i), and (c)(2)(ii).

3. Adding the entry for § 1.6664–4(g)(3).

The revision and addition reads as follows:

§ 1.6664–0 Table of contents.

* * * * *

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(c) * * *

(2) Advice defined.

* * * * *

(g) * * *

(3) Special rules.

* * * * *

Par. 8. In § 1.6664–4, paragraph (g) is revised to read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(g) *Valuation misstatements of charitable deduction property*—(1) *In general.* There may be reasonable cause and good faith with respect to a portion of an underpayment that is attributable to a substantial (or gross) valuation misstatement of charitable deduction property (as defined in paragraph (g)(2) of this section) only if—

(i) The claimed value of the property was based on a qualified appraisal (as defined in paragraph (g)(2) of this section) by a qualified appraiser (as defined in paragraph (g)(2) of this section); and

(ii) In addition to obtaining a qualified appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

(2) *Definitions.* For purposes of this paragraph (g):

Charitable deduction property means any property (other than money or publicly traded securities, as defined in § 1.170A–13(c)(7)(xi)) contributed by the taxpayer in a contribution for which a deduction was claimed under section 170.

Qualified appraisal means a qualified appraisal as defined in § 1.170A–13(c)(3).

Qualified appraiser means a qualified appraiser as defined in § 1.170A–13(c)(5).

(3) *Special rules.* The rules of this paragraph (g) apply regardless of whether § 1.170A–13 permits a taxpayer to claim a charitable contribution deduction for the property without obtaining a qualified appraisal. The rules of this paragraph (g) apply in addition to the generally applicable rules concerning reasonable cause and good faith.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: November 17, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98–31985 Filed 12–1–98; 8:45 am]

BILLING CODE 4830–01–u

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300746; FRL–6038–4]

RIN 2070–AB78

Metolachlor; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide metolachlor and its metabolites in or on spinach at 0.3 parts per million (ppm) for an additional 18-month period, to May 15, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on spinach. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective December 2, 1998. Objections and requests for hearings must be received by EPA, on or before February 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300746], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300746], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk

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may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of November 29, 1996 (61 FR 60617–60622) (FRL–5574–7), which announced that on its own initiative under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of metolachlor and its metabolites in or on spinach at 0.3 ppm, with an expiration date of November 15, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of metolachlor on spinach for this year growing season due to the loss of the product Antor 4E (diethatyl ethyl), an herbicide used on spinach. Antor is no longer manufactured, and the remaining stocks of Antor have been exhausted since 1993.

Spinach growers produce spinach on highly drained organic muck soils. Presently there is no pre-emergence herbicide registered to control annual grasses and certain broadleaf weeds in spinach. Without a pre-emergence herbicide, it is doubtful that germinating spinach seed will be able to compete with weeds for space, light, nutrients, and water, thus making it economically unfeasible to produce and process spinach. Alternative control practices consisting of field selection and hand hoeing will not solve weed control problems that exist in spinach due to the loss of Antor. Applicants claim that without the use of metolachlor growers will suffer significant economic losses. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of metolachlor on spinach for control of broadleaf weeds.

EPA assessed the potential risks presented by residues of metolachlor in or on spinach. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of November 29, 1996. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18-month period. Although this tolerance will expire and is revoked on May 15, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on spinach after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP– 300746]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 15, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.368 [Amended]

2. Section 180.368, by amending paragraph (b), by revising the date for the commodity "spinach" from "11/15/98" to read "5/15/00."

[FR Doc. 98–32002 Filed 12-01-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300758; FRL–6045–3]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on field corn forage at 0.1 parts per million (ppm), field corn stover (fodder) at 0.2 ppm, and field corn grain at 0.05 ppm. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on field corn. This regulation establishes maximum permissible levels for residues of imidacloprid in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on May 1, 2000.

DATES: This regulation is effective December 2, 1998. Objections and requests for hearings must be received by EPA on or before February 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300758], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300758], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300758]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for the combined residues of the insecticide imidacloprid, in or on field corn forage at 0.1 ppm, field corn stover (fodder) at 0.2 ppm, and field corn grain at 0.05 ppm. These tolerances will expire and are revoked on May 1, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Imidacloprid on Field Corn and FFDCA Tolerances

The states of Illinois and Iowa requested the use of imidacloprid on field corn to control the flea beetle because the flea beetle has been shown to be a vector of a bacteria that causes Stewart's Wilt in corn. Stewart's wilt can cause serious yield loss when infection occurs early in the growing season. Also, many countries require seed fields to be inspected for Stewart's wilt infected plants, and will not allow seed from these fields to be sent to their country. The United States is a major producter of seed corn for the world. EPA has authorized under FIFRA section 18 the use of imidacloprid on field corn for control of corn flea beetles (a vector of Stewart's wilt) in Illinois and Iowa. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of imidacloprid in or on field corn. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on May 1, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on field corn after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on field corn or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any States other than Illinois and Iowa to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for imidacloprid, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent on field corn forage at 0.1 ppm, field corn stover (fodder) at 0.2 ppm, and field corn grain at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imidacloprid are discussed below.

1. *Acute toxicity.* Acute Reference dose (RfD): 0.42 milligrams per kilogram of bodyweight per day (mg/kg bwt/day). The endpoint selected for assessment of acute dietary risk is 42 mg/kg bwt/day (Lowest Observed Effect Level (LOEL)) from an acute neurotoxicity study in rats. A NOAEL was not established in this study. The uncertainty factors (UF) are 10X for inter-, 10X for intra-species variations, and 3X for FQPA.

2. *Short- and intermediate-term toxicity.* Dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. A short-term aggregate risk assessment (oral exposure) is required for hand-to-mouth residential exposure. The Agency utilized the acute toxicological endpoint for this risk assessment. The acute dietary endpoint is based upon dose-related decreases in motor activity in female rats from an acute neurotoxicity study.

3. *Chronic toxicity.* EPA has established the RfD for imidacloprid at 0.057 milligrams/kilogram/day (mg/kg/day). This RfD is based on decreased body weight gains in female rats and increased number of thyroid lesions in male rats from a combined chronic toxicity/carcinogenicity study at 16.9 mg/kg bwt/day LOEL. The No Observed Adverse Effect Level (NOAEL) in this study was established at 5.7 mg/kg bwt/day. An uncertainty factor of 100 is required for all population subgroups (10X for inter-species variation and 10X for intra-species variation). For chronic dietary risk assessment, the Agency determined that the FQPA safety factor could be reduced to 3X and should be applied to all population subgroups.

4. *Carcinogenicity.* Imidacloprid has been classified by the Agency as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances, some time-limited, are currently established (40 CFR 180.472) for the combined residues of the insecticide imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on a variety of raw agricultural and animal commodities at levels ranging from 0.02 ppm in eggs to 15 ppm in raisins, waste. Risk assessments were conducted by EPA to assess dietary exposures and risks from imidacloprid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Application of the 3X safety factor to the Acute RfD results in an acceptable acute dietary exposure (food plus water) of 33.3% or less of the Acute RfD for all population subgroups

This acute dietary (food) risk assessment used the Theoretical Maximum Residue Contribution (TMRC) which assumes tolerance level residues and 100% crop-treated. The Novigen DEEM (Dietary Exposure Evaluation Model) system was used for this acute dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing

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Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. Resulting exposure values (at the 99th percentile) and percentage of the Acute RfD utilized are shown in the following Table 1.

TABLE 1.—ACUTE DIETARY (FOOD ONLY) EXPOSURE ANALYSIS BY DEEM FOR IMIDACLOPRID

Population Subgroup	Exposure @ 99th Percentile (mg/kg bwt/day)	Percent Acute RfD[1]
U.S. Population (48 states)	0.051	12
All infants (< 1 yr)	0.067	16
Nursing infants (< 1 yr)	0.096	23
Non-nursing infants (< 1 yr)	0.059	14
Children (1–6 yrs)	0.086	20
Children (7–12 yr)	0.058	14

[1] Percentage reference dose (% Acute RfD) = Exposure/Acute RfD X 100%

The subgroups listed above are: (1) the U.S. population (48 states) and (2) those for infants and children. There are no other subgroups for which the percentage of the Acute RfD occupied is greater than that occupied by the subgroup U.S. Population (48 states).

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis from food sources was conducted using the reference dose (chronic RfD) of 0.057 mg/kg bwt/day. This RfD (RfD = NOAEL/UF) is based on the NOAEL of 5.7 mg/kg bwt/day in male rats from the chronic toxicity/carcinogenicity study in rats, and an uncertainty factor (UF) of 100. The FQPA Safety Factor for enhanced sensitivity of infants and children was reduced to 3X. For this risk assessment, the FQPA factor applies to all population subgroups. Application of the 3X safety factor to the chronic RfD results in an acceptable chronic dietary exposure (food plus water) of 33.3% or less of the chronic RfD for all population subgroups.

In conducting this chronic dietary (food only) risk assessment, EPA used: (1) tolerance level residues for field corn and all other commodities with published, pending, permanent or time-limited, imidacloprid tolerances; and, (2) percent crop-treated (%CT) information for some of these crops. Thus, this risk assessment should be viewed as partially refined. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure. The Novigen DEEM (Dietary Exposure Evaluation Model) system was used for this chronic dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure.

The existing imidacloprid tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in a TMRC that is equivalent to the percentages of the Chronic RfD in the following Table 2:

TABLE 2.—CHRONIC EXPOSURE ANALYSIS BY THE DEEM SYSTEM FOR IMIDACLOPRID

Population Subgroup	[illegible]	Percent Reference Dose[1] (%Chronic RfD)
U.S. Population (48 States)	0.0032	5.6
All Infants (<1 year old)	0.0039	6.9
Nursing Infants (<1 year old)	0.0014	2.4
Non-Nursing Infants (<1 year old)	0.0050	8.7
Children (1–6 years old)	0.0074	13
Children (7–12 years old)	0.0046	8.2
U.S. Population (Autumn Season)	0.0032	5.7
Northeast Region	0.0032	5.7
Western Region	0.0033	5.7
Non-hispanic (Other Than Black or White)	0.0036	6.2

[1] Percentage reference dose (% Chronic RfD) = Exposure/Chronic RfD X 100%

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and (3) the other subgroups for which the percentage of the Chronic RfD occupied is greater than that occupied by the subgroup U.S. Population (48 states).

2. *From drinking water.* There is no established Maximum Contaminant Level for residues of imidacloprid in drinking water. No health advisory levels for imidacloprid in drinking water have been established.

Imidacloprid is persistent, water soluble, and fairly mobile. Thus, residues of imidacloprid may be transported to both surface and ground waters. As a condition of registration, the Agency is requiring the submission of the results of two prospective ground water monitoring studies. Results from these studies are not yet available. EPA used estimates for the concentration of imidacloprid in surface and ground waters.

The Agency used PRZM1 (Pesticide Root Zone Model - simulates the transport of a pesticide off the agricultural field) and EXAMS (EXposure Analysis Modeling System - simulates fate and transport of a pesticide in surface water) models to estimate concentrations of imidacloprid residues in surface water.

The Agency used the SCI-GROW (Screening Concentration In GROund Water) model to estimate the concentration of imidacloprid residues in ground water. SCI-GROW is a prototype model for estimating "worst case" ground water concentrations of pesticides. SCI-GROW is biased in that studies where the pesticide is not detected in ground water are not included in the data set. Thus, it is not expected that SCI-GROW estimates would be exceeded.

i. *Acute exposure and risk.* Estimated concentrations of imidacloprid in surface and ground water for acute exposure analysis are 4.1 and 1.1 grams per liter (parts per million) (µg/L parts per billion (ppb)), respectively. These estimated concentrations of imidacloprid in surface and ground water are based upon an application rate of 0.5 lbs active ingredient per acre per year (ai/A/year).

For purposes of risk assessment, the estimated maximum concentration for imidacloprid in surface and ground waters (which is 4.1 µg/L) should be used for comparison to the back-calculated human health drinking water levels of concern (DWLOCs) for the acute endpoint. These DWLOCs for various population categories are summarized in the following Table 3.

TABLE 3.—DRINKING WATER LEVELS OF CONCERN FOR ACUTE EXPOSURE TO IMIDACLOPRID[1]

Population Category[2]	Acute RfD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure[3] (mg/kg/day)	DWLOC4, 5, 6 (µg/L)
U.S. Population (48 states) (male) ...	0.42	0.051	0.089	3100
U.S. Population (48 states) Females	0.42	0.051	0.089	2700
Nursing Infants (<1 year old)	0.42	0.096	0.044	440

[1] Values are expressed to two significant figures.

[2] Within each of these categories, the subgroup with the highest food exposure was selected.

[3] Maximum Water Exposure (Chronic or Acute) (mg/kg/day) = Chronic or Acute RfD (mg/kg/day)/3 (to account for FQPA factor of 3X) - Food Exposure (mg/kg/day).

[4] DWLOC(µg/L) = Max. water exposure (mg/kg/day) x body wt (kg)/(10^{-3} mg/µg) * water consumed daily (L/day).

[5] EPA Default body weights are: General U.S. Population, 70 kg; Males (13+ years old), 70 kg; Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.

[6] EPA Default daily drinking rates are 2 L/day for adults and 1 L/day for children.

ii. *Short-term risk.* For purposes of risk assessment, the estimated maximum concentration for imidacloprid in surface and ground waters (which is 4.1 µg/L, see above) should be used for comparison to the back-calculated human health drinking water levels of concern (DWLOCs) for the short-term endpoint.

EPA has calculated a DWLOC for short-term exposure to imidacloprid in drinking water for the population subgroup Children, 1 to 6 years old. This DWLOC is for short-term exposure to imidacloprid from home garden and turf uses. A DWLOC for short-term exposure from imidacloprid pet uses was not determined as the exposure level from the home garden and turf uses is higher than that of the pet uses. Thus, the DWLOC for the imidacloprid pet uses will be higher than that of the home garden and turf uses. The DWLOC for short-term exposure to imidacloprid is summarized in the following Table 4.

TABLE 4.—DRINKING WATER LEVELS OF CONCERN FOR SHORT-TERM EXPOSURE TO IMIDACLOPRID[1]

Population Subgroup	Total Exposure[2] (mg/kg bwt/day)	Max. Exposure from Water[3] (mg/kg bwt/*day)	Body-weight (kg)	Daily Water Consumption (Liters)	DWLOC[4] 5, 6 (µg/L)
Children (1–6 years)	0.080	0.060	10	1	600

[1] Values are expressed to two significant figures.

[2] Total Exposure = sum of exposures from chronic food plus home turf and garden uses.

[3] Maximum Water Exposure (Short-term) (mg/kg/day) = Acute RfD (mg/kg/day)/3 (to account for FQPA factor of 3X) - Total Exposure (mg/kg/day).

[4] DWLOC(µg/L) = Max. water exposure (mg/kg/day) x body wt (kg)/(10^{-3} mg/µg) * water consumed daily (L/day).

[5] EPA Default body weight is: All Infants/Children, 10 kg.

[6] EPA Default daily drinking rate is 1 L/day for children.

The DWLOC for short-term exposure to imidacloprid was calculated relative to the Acute RfD which was utilized for estimating risk for short-term oral exposure to imidacloprid. To calculate the DWLOC for short-term exposure relative to an acute toxicity endpoint, the sum of chronic dietary food exposure (from DEEM) plus the oral exposure from imidacloprid home garden and turf uses was subtracted from one-third the Acute RfD to obtain the acceptable short-term exposure to imidacloprid in drinking water. The value of one-third the Acute RfD was utilized to account for the FQPA Safety Factor of 3X. DWLOCs were then calculated using default body weights and drinking water consumption figures.

iii. *Chronic exposure and risk.* Estimated concentrations of imidacloprid in surface and ground water for chronic exposure analysis are 0.1 and 1.1 µg/L (ppb), respectively. These estimated concentrations of imidacloprid in surface and ground water are based upon an application rate of 0.5 lbs ai/A/year.

For purposes of chronic risk assessment, the estimated maximum concentration for imidacloprid in surface and ground waters (which is 1.1 µg/L) should be used for comparison to the back-calculated human health drinking water levels of concern (DWLOCs) for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in the following Table 5.

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TABLE 5.—DRINKING WATER LEVELS OF CONCERN FOR CHRONIC EXPOSURE TO IMIDACLOPRID[1]

Population Category[2]	Chronic RfD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure[3] (mg/kg/day)	DWLOC[4, 5, 6] (μg/L)
U.S. Population (48 states) (male)	0.057	0.0032	0.0158	550
Females U.S. Population (48 states) ...	0.057	0.0032	0.0158	470
Children (1–6)	0.057	0.0074	0.0116	120
Non-hispanic other than black or white	0.057	0.0036	0.0154	540

[1] Values are expressed to two significant figures.

[2] Within each of these categories, the subgroup with the highest food exposure was selected.

[3] Maximum Water Exposure (Chronic or Acute) (mg/kg/day) = Chronic or Acute RfD (mg/kg/day)/3 (to account for FQPA factor of 3X) - Food Exposure (mg/kg/day).

[4] DWLOC(μg/L) = Max. water exposure (mg/kg/day) x body wt (kg)/(10^{-3} mg/μg) * water consumed daily (L/day).

[5] EPA Default body weights are: General U.S. Population, 70 kg; Males (13+ years old), 70 kg; Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.

[6] EPA Default daily drinking rates are 2 L/day for adults and 1 L/day for children.

[7] Total Exposure for Short-term Exposure = sum of exposures from chronic food plus home turf and garden uses.

iv. *Conclusions concerning residues in drinking water (all time periods).* The estimated concentrations of imidacloprid in surface and ground water are less than the Agency's levels of concern for imidacloprid in drinking water as a contribution to acute, short-term and chronic aggregate exposure. Therefore, taking into account the present uses and uses proposed in this section 18, EPA concludes with reasonable certainty that residues of imidacloprid in drinking water (when considered along with other sources of acute, short-term and chronic exposure for which EPA has reliable data) would not result in an unacceptable estimate of acute, short-term and chronic aggregate human health risk at this time.

EPA bases this determination on a comparison of estimated concentrations of imidacloprid in surface water to back-calculated "levels of concern" for imidacloprid in drinking water. These levels of concern in drinking water were determined after EPA has considered all other non-occupational human exposures for which it has reliable data, including all current uses, and uses considered in these actions. The estimate of imidacloprid in surface water is derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of imidacloprid in drinking water as a part of the acute, short-term and chronic aggregate risk assessment process.

3. *From non-dietary exposure.* Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, lawns, et al.), tobacco, golf courses, walkways, recreational areas, household or domestic dwellings (indoor/outdoor), and cats/dogs.

i. *Acute exposure and risk.* Occupational/residential exposure risk assessments (namely, short-term dermal, intermediate-term dermal, long-term dermal, and inhalation) are not required because of the demonstrated absence of dermal and inhalation toxicity.

ii. *Chronic exposure and risk.* Occupational/residential exposure risk assessments (namely, short-term dermal, intermediate-term dermal, long-term dermal, and inhalation) are not required because of the demonstrated absence of dermal and inhalation toxicity.

iii. *Short- and intermediate-term exposure and risk.* Oral exposure due to the registered residential uses of imidacloprid may result. Thus, a residential short-term risk assessment via the oral route is required. See Unit III(D)(4) of this preamble for a full discussion of this exposure and risk.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the acute exposure to imidacloprid from food will utilize 12% of the Acute RfD for the most highly exposed population subgroup (U.S. population - all seasons). All other population subgroups which include adults have acute risk estimates (food only) below that of the population subgroup U.S. Population - all seasons. For imidacloprid, it was determined that an acceptable acute dietary exposure (food plus water) of 33.3% or less of the Acute RfD is needed to protect the safety of all population subgroups. The estimated exposures at the 99th percentile for all population subgroups that include adults utilize less than 33.3% of the Acute RfD.

Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 33.3% of the Acute RfD for adults. Under current Agency guidelines, the registered non-dietary uses of imidacloprid do not constitute an acute exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result to adults from acute aggregate exposure to imidacloprid residues.

2. *Chronic risk.* Using the partially refined exposure assumptions described in Unit III(B)(1)(ii) of this preamble, and taking into account the completeness and reliability of the toxicity data, the Agency has estimated the chronic exposure to imidacloprid from food will utilize 6.2% of the chronic RfD for the most highly exposed adult population subgroup, non-hispanic (other than black or white). All other population subgroups which include adults have chronic (non-cancer) risk estimates (food only) below that of the population subgroup non-hispanic (other than black or white). For imidacloprid, it was determined that an acceptable acute dietary exposure (food plus water) of 33.3% or less of the chronic RfD is needed to protect the safety of all population subgroups. The estimated exposures for all adult population subgroups utilize less than 33.3% of the chronic RfD.

Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 33.3% of the Chronic RfD. Under current Agency guidelines, the registered non-dietary uses of imidacloprid do not constitute a chronic exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result to adults from chronic aggregate exposure to imidacloprid residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Dermal and inhalation short- and intermediate term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposure are not expected for adult population subgroups. A discussion of short and intermediate term oral exposure and risk for children 1–6 years old can be found in Unit III.D.4 of this preamble.

4. *Aggregate cancer risk for U.S. population.* Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., Cesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus =7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOEL was 10 mg/kg bwt/day (LDT) based on decreased body weight gain; a NOAEL was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day and the LOEL was 100 mg/kg bwt/day based on increased wavy ribs.

In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24 or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOEL was 72 mg/kg bwt/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities.

iii. *Reproductive toxicity study.* In a two-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, the Agency determined that the review be revised to indicate the parental/systemic/reproductive NOAEL and LOEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

iv. *Pre- and post-natal sensitivity.* The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study data did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs.

v. *Conclusion.* There is a need for a developmental neurotoxicity study for assessment of potential alterations of functional development. However, the Agency has determined that this data gap does not preclude the establishment/continuance of tolerances. The 10X safety factor to account for enhanced sensitivity of infants and children (as required by FQPA) was reduced to 3X and the factor applies to all population subgroups.

2. *Acute risk.* Using the conservative TMRC exposure assumptions described

in Unit III.B.1.i of this preamble, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the acute exposure to imidacloprid from food will utilize 23% of the Acute RfD for the most highly exposed population subgroup that includes children (Nursing infants, <1 year). All other population subgroups which include children have acute risk estimates (food only) below that of the population subgroup Nursing Infants (<1 year). For imidacloprid, it was determined that an acceptable acute dietary exposure (food plus water) of 33.3% or less of the Acute RfD is needed to protect the safety of all population subgroups. The estimated exposures for all population subgroups at the 99th percentile utilize less than 33.3% of the Acute RfD.

Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 33.3% of the Acute RfD. Under current EPA guidelines, the registered non-dietary uses of imidacloprid do not constitute an acute exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result to children from acute aggregate exposure to imidacloprid residues.

3. *Chronic risk.* Using the partially refined exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the chronic exposure to imidacloprid from food will utilize 13% of the Chronic RfD for the most highly exposed population subgroup that includes children (Children, 1–6 years old). All other population subgroups which include children have chronic risk estimates (food only) below that of the population subgroup Children, 1–6 years old). For imidacloprid, it was determined that an acceptable acute dietary exposure (food plus water) of 33.3% or less of the Chronic RfD for all population subgroups is needed to protect the safety of all population subgroups. The estimated exposures for all population subgroups which include children utilize less than 33.3% of the Acute RfD. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 33.3% of the Chronic RfD. Under current EPA guidelines, the registered non-dietary uses of imidacloprid do not constitute a chronic exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result to children from chronic aggregate exposure to imidacloprid residues.

4. *Short- or intermediate-term risk.* Dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. However, a short term residential oral risk assessment is required. In addition to its food uses, imidacloprid is registered for use on turf, home gardens and pets. EPA has identified potential short-term oral exposures to children for these uses. These exposures include the following scenarios:

- Incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer.
- Ingestion of pesticide-treated turfgrass.
- Incidental ingestion of soil from treated gardens.
- Incidental ingestion of pesticide residues on pets from hand-to-mouth transfer.

According to current EPA policy, these exposures are considered to be short-term oral exposures. Incidental ingestion of pesticide residues on pets from hand-to mouth transfer may occur during the same period as the exposures from the turf and home garden uses. However, children's exposures from pet and turf uses are not expected to both occur at the high-end level. Therefore, these exposures were considered in separate estimates of risk.

A short-term oral endpoint was not identified for imidacloprid. According to current EPA policy, if an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (Acute RfD = 0.42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk. Short-term aggregate exposure is defined by EPA to be average food and water exposure (chronic exposure) plus residential exposure. The short-term risk estimates for the population subgroup Children, 1 to 6 years old, is summarized below in Tables 6 and 7. This population subgroup was chosen because it has the highest chronic food exposure and because toddlers have the highest exposure from the residential uses.

TABLE 6.—SHORT-TERM AGGREGATE EXPOSURE AND RISK (INCLUDES TURF AND GARDEN USES OF IMIDACLOPRID)

Population Subgroup	Chronic Food Exposure (mg/kg bwt/day)	Residential Exposure[1] (mg/kg bwt/day)	Total Exposure[2] (mg/kg bwt/day)	Percent Acute RfD[3]
Children (1 to 6 years old)	0.0074	0.072	0.079	19%

[1] Residential Exposure = total of imidacloprid exposure from incidental ingestion of residues on lawns from hand-to-mouth transfer plus ingestion of pesticide-treated grass plus ingestion of soil from treated gardens.

[2] Total Exposure = Chronic Food Exposure plus Residential Exposure.

[3] Percent Acute RfD = Total Exposure (mg/kg bwt/day) x 100% Acute RfD (0.42 mg/kg bwt/day)

TABLE 7.—SHORT-TERM AGGREGATE EXPOSURE AND RISK (INCLUDES THE PET USE OF IMIDACLOPRID)

Population Subgroup	Chronic Food Exposure (mg/kg bwt/day)	Residential Exposure[1] (mg/kg bwt/day)	Total Exposure[2] (mg/kg bwt/day)	Percent Acute RfD[3]
Children (1 to 6 years old)	0.0074	0.058	0.065	16%

[1] Residential Exposure = total of imidacloprid exposure from incidental ingestion of residues on pets from hand-to-mouth transfer.
[2] Total Exposure = Chronic Food Exposure plus Residential Exposure.
[3] Percent Acute RfD = Total Exposure (mg/kg bwt/day) x 100% Acute RfD (0.42 mg/kg bwt/day)

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imidacloprid residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

Data concerning the metabolism of imidacloprid in apples, potatoes, tomatoes, eggplant, cottonseed, field corn, ruminants and poultry have previously been submitted. The nature of imidacloprid residues in plants and animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

A study on field corn RAC's has been submitted. This study has not been reviewed in detail. Residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, are not expected to exceed 0.1 ppm in field corn forage, 0.2 ppm in field corn stover (fodder) and 0.05 ppm in field corn grain. Since this section 18 proposed use is a seed treatment, a tolerance for aspirated grain fractions is not required.

A study on field corn processing has been submitted. In this study, field corn grown from imidacloprid-treated (3.5-7 oz ai/A, 7X) seed were harvested at maturity and processed by wet and dry milling. All processed fractions contained residues of imidacloprid and its metabolites at levels less than the limit of quantification (<0.05ppm). Residues of imidacloprid and its metabolites did not concentrate into the field corn processed products. The Agency concludes tolerances for imidacloprid and its metabolites are not required for field corn processed commodities.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum Residue Limits (MRL) for imidacloprid on field corn. Thus, harmonization is not an issue for this section 18.

E. Rotational Crop Restrictions

Data concerning the metabolism of imidacloprid in rotational crops were previously submitted. In conjunction with this study, EPA has concluded that a rotation interval of 12 months is appropriate for all crops except those with imidacloprid tolerances which may be rotated at anytime. In conjunction with PP 6F4765, tolerances for inadvertent residues in/on the crop groups Cereal Grains, Forage, Fodder and Straw of Cereal Grains, Legume Vegetables and the Foliage of Legume Vegetables; and the crops sweet corn, soybeans and safflower have been proposed in conjunction with a 30-day plantback interval for these crops.

EPA has recently recommended in favor of the granting of these tolerances and the 30–day plant back interval. EPA concludes the following rotation restriction is adequate for this section 18: Any crops, except those having imidacloprid tolerances, sweet corn, soybeans and safflower and the crops of the crop groups Cereal Grains and Legume Vegetables, may be planted back one year following imidacloprid applications. The crops sweet corn, soybeans, and safflower, and the crops of the crop groups Cereal Grains and Legume Vegetables may be rotated 30–days after the last imidacloprid treatment. Other crops having imidacloprid tolerances/uses may be rotated at anytime.

V. Conclusion

Therefore, the tolerance is established for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in field corn forage at 0.1 ppm, field corn stover (fodder) at 0.2 ppm, and field corn grain at 0.05 ppm ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300758] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 16, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472, the table to paragraph (b) by adding alphabetically entries for field corn forage, field corn stover (fodder), and field corn grain, to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

* * *

Commodity	Parts per million	Expiration/ Revocation Date
* * *	*	*
Field corn forage	0.1	5/1/00
Field corn stover (fodder)	0.2	5/1/00
Field corn grain	0.05	5/1/00
* * *	*	*

* * * * *

[FR Doc. 98–31686 Filed 12–1–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300700A; FRL–6040–4]

RIN 2070–AB78

Triasulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing a technical amendment to a tolerance regulation for triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl)urea] that published in the **Federal Register** on August 18, 1998.

DATES: This regulation is effective December 2, 1998. Objections and requests for hearings must be received by EPA on or before February 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300700A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300700A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP300700A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5697; e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the August 18, 1998 issue of the **Federal Register** EPA issued a regulation establishing tolerances for residues of triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl)urea] in or on cattle, kidney; goat, kidney; grass, forage; grass, hay; horse, kidney; and sheep, kidney. Novartis Crop Protection, Inc., requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). At the time of the petition, (63FR 29401, May 29, 1998) Novartis Crop Protection, Inc., also requested that tolerances be established for residues of this herbicide in or on hog kidney. Inadvertently, hog kidney was left out of the August 18, 1998 final rule that amended 40 CFR 180.459. This document corrects the August 18, 1998 regulation by adding tolerances for residues in or on hog kidney.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300700A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ADDRESSES at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order

13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 15, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.459 is amended by adding alphabetically an entry for "Hog, kidney" to the table in paragraph (a) to read as follows:

§ 180.459 Triasulfuron; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Hog, kidney	0.5
* * * * *	

[FR Doc. 98–31685 Filed 12–1–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300745; FRL–6036–3]

RIN 2070–AB78

Tebuconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of tebuconazole in or on hops. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on hops. This regulation establishes a maximum permissible level for residues of tebuconazole in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 2,000.

DATES: This regulation is effective December 2, 1998. Objections and requests for hearings must be received by EPA on or before February 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300745], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300745], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300745]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara A. Madden, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463, e-mail: madden.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide tebuconazole in or on hops at 4.0 part per million (ppm). This tolerance will expire and is revoked on December 31, 2,000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new

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safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associatedwith the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for tebuconazole on hops and FFDCA Tolerances

The States of Idaho, Oregon, and Washington availed themselves of the authority to declare a crisis exemption to use tebuconazole for control of Powdery mildew (*Sphaerotheca macularis*) on hops. Powdery mildew is a serious hop disease in many hop growing areas in the world. The elimination of commercial hop production in New York during the early part of this century is largely blamed on this disease. Since this disease has not been observed in the Pacific Northwest until very recently, no effective fungicides are registered for use on hops to control it. Sulfur is the only pesticide available, but does not provide effective control. The pathogen is airborne and spreads quickly, primarily during the months of July and August, which are critical to hop production. EPA has authorized under FIFRA section 18 the use of tebuconazole on hops for control of Powdery mildew (*Sphaerotheca macularis*) in Idaho, Oregon, and Washington. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebuconazole in or on hops. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2,000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on hops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether tebuconazole meets EPA's registration requirements for use on hops or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of tebuconazole by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Idaho, Oregon, and Washington to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tebuconazole, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of tebuconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of tebuconazole on hops at 4.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebuconazole are discussed below.

1. *Acute toxicity*. The acute reference dose (acute RfD) of 0.1 milligrams/kilogram/day (mg/kg/day) for tebuconazole was established based on a developmental toxicity study in mice with a No-Observed-Adverse-Effect-Level (NOAEL) of 10 mg/kg/day for developmental toxicity. At the Lowest-Observed-Adverse-Effect-Level (LOAEL) of 30 mg/kg/day, an increased incidence of runts (fetuses weighing less than 1.3 gram) were observed. An uncertainty

factor of 100 (10X for inter-species extrapolation and 10X for intra-species variability) was applied to the NOAEL of 10 mg/kg/day to calculate the acute RfD of 0.1 mg/kg/day. EPA has determined that the 10X factor to account for enhanced susceptibility of infants and children (as required by FQPA) should be retained. This determination is based on the results of the developmental toxicity study in mice used to establish the acute RfD, other developmental toxicity studies in mice, rats and rabbits and the structural relationship of tebuconazole to several other triazole pesticides which also have been shown to induce developmental toxicity in rats and/or rabbits. For acute dietary exposure, EPA determined that the 10X safety factor is applicable to the subpopulations females (13+ years old), as well as infants and children because the effects seen were developmental and are presumed to occur following "acute" exposures. For subpopulations other than females (13+ years old), infants and children, a toxicological endpoint was not identified. Application of the 10X safety factor for enhanced susceptibility of infants and children to the acute RfD of 0.1 mg/kg/day results in an acceptable acute dietary exposure (food plus water) of 10% or less of the acute RfD.

2. *Short- and intermediate-term toxicity.* Toxicological endpoints for short- or intermediate-term dermal toxicity were not identified. Adverse systemic effects were not observed in dermal developmental toxicity studies in mice or rats at the limit dose of 1,000 mg/kg/day or in a 21–day dermal toxicity study in rabbits at the limit dose of 1,000 mg/kg/day. Therefore, risk assessments for short- or intermediate-term dermal exposure were not conducted.

A NOAEL of 0.0106 mg/liter/day (equivalent to 2.9 mg/kg/day) was identified as the toxicological endpoint for short- and intermediate-term (and chronic) inhalation toxicity based on a 21–day inhalation toxicity study in rats. At the LOAEL of 0.1558 mg/liter/day, piloerection and increased liver *O*-demethylase and *N*-demethylase activity were observed in both males and females. EPA determined that the 10X safety factor to account for enhanced susceptibility of infants and children (as required by FQPA) is not applicable for inhalation toxicity for the currently registered residential exposures to tebuconazole. A Margin of Exposure (MOE) of 100 or more for short- or intermediate-term non-dietary risk is acceptable for all subpopulations.

3. *Chronic toxicity.* EPA has established a chronic RfD for tebuconazole at 0.03 mg/kg/day. This RfD is based on a 1–year chronic feeding study in dogs in which the NOAEL was 100 ppm (2.96 mg/kg/day in males and 2.94 mg/kg/day in females) and the LOAEL was 150 ppm (4.39 mg/kg/day in males and 4.45 mg/kg/day in females), based on histopathological changes in the adrenal gland (hypertrophy of the zona fasciculata and fatty changes in the zona glomerulosa in both sexes and lipid hyperplasia in the cortex in males). An uncertainty factor of 100 was used to account for inter-species extrapolation and intra-species variability. EPA determined that the 10X factor for enhanced susceptibility of infants and children (as required by FQPA) is not applicable for chronic dietary exposure. A chronic dietary exposure (food plus water) of 100% or less of the Chronic RfD is acceptable for all subpopulations.

4. *Carcinogenicity.* Tebuconazole is classified as a Group C (possible human) carcinogen. This decision was primarily based on results in a 91–week carcinogenicity study in mice in which the following effects were observed:

i. A statistically significant increase in the incidence of hepatocellular adenomas, carcinomas and combined adenomas/carcinomas in male mice at the highest dose tested (279 mg/kg/day).

ii. A statistically significant increase in the incidence of hepatocellular carcinomas and combined adenomas/carcinomas in female mice at the highest dose tested (366 mg/kg/day). In addition, tebuconazole is structurally related to several other triazole pesticides that produce similar liver tumors in mice. For the purpose of carcinogenic risk assessment, the RfD methodology is used to estimate human risk.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.474) for the residues of tebuconazole, in or on a variety of raw agricultural commodities. Tolerances have been established for milk and meat byproducts in connection with use of tebuconazole under a previous section 18. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebuconazole as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. An acute dietary endpoint of concern was identified for subpopulations females (13+ years old), as well as infants and children. For acute dietary exposure, EPA determined that the 10X safety factor for enhanced susceptibility of infants and children (as required by FQPA) is applicable to all of these subpopulations. Application of the 10X safety factor for enhanced susceptibility of infants and children to the acute RfD of 0.1 mg/kg/day results in an acceptable acute dietary exposure (food plus water) of 10% or less of the acute RfD.

An acute dietary (food only) probablistic risk analysis submitted in conjunction with another action was used to estimate acute dietary risk. The following assumptions were utilized in the Monte Carlo analysis: (a) Percent crop treated data were used for all commodities; (b) maximum residue levels from crop field trials for single serving commodities such as bananas and peaches were utilized; (c) average residue levels from crop field trials were used for blended commodities such as fruit juices, grains and oils; (d) anticipated residue levels for ruminant commodities were calculated using a livestock diet constructed using anticipated residue levels for livestock feed items. This analysis should be considered highly refined. This analysis was run with 2,000 iterations. The results of the Monte Carlo analysis indicate that the percent of acute RfD for all children and infants subgroups as well as females 13+ years old are all below 10% of the RfD: nursing infants (< 1 year old), 7%; non-nursing infants (< 1 year old), 7%; children (1 to 6 years old) 9%, children (7 to 12 years old) 3%; all infants (< 1 year old), 7%; females (13 years plus old), 3%.

ii. *Chronic exposure and risk.* The Agency conducted a chronic dietary exposure analysis and risk assessment. The analysis evaluated individual food consumption as reported by respondents in the USDA 1977–78 Nationwide Food Consumption Survey (NFCS) and accumulates exposure to the chemical for each commodity. In conducting the chronic dietary risk assessment, the Agency made very conservative assumptions (100% of hops, pistachios and wheat and all other commodities having tebuconazole tolerances will contain residues and those residues will be at tolerance level) which results in an overestimation of human dietary exposure. Thus, in making a safety determination for these tolerances, the Agency is taking into account this conservative exposure assessment.

The existing tebuconazole tolerances (published, pending, and including the necessary section 18 tolerance(s)) result

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in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to percentages of the RfD below 100% for all subgroups (i.e., U.S. population, 11% and non-nursing infants (< 1 year old), the most highly exposed subgroup, 37%).

2. *From drinking water.* Based on present data in the Agency files, tebuconazole is persistent and relatively immobile. There are no established Maximum Contaminant Level or health advisory levels for residues of tebuconazole in drinking water. Monitoring data for residues of tebuconazole in surface and ground water are not available. Tebuconazole is not included in the Pesticides in Ground Water Database (USEPA, 1992), and it was not an analyte in the National Pesticide Survey (USEPA, 1990).

EPA estimated exposure for tebuconazole for both surface and ground water based on available modeling. Environmental concentrations for surface water were estimated using modeling from GENEEC (Generic Estimated Environmental Concentration). For surface water, the maximum concentrations were used for acute risk calculations, the annual means (1–10 years old) for chronic risk calculations. Current Agency policy allows that a factor of 3 be applied to GENEEC model values when determining whether or not a level of concern has been exceeded. If the GENEEC model value is ≧ 3 times the drinking water level of concern (DWLOC), the pesticide is considered to have passed the screen. Acute and chronic ground water concentrations were estimated using the SCI-GROW (Screening Concentration in Ground Water) model. For the purposes of the screening level assessment, the maximum and average annual concentrations in ground water are not believed to vary significantly. DWLOCs will be compared directly to values.

i. *Acute exposure and risk.* DWLOCs were calculated for acute exposures to tebuconazole in surface and ground water for females 13+ years old and children (1–6 years old). Relative to an acute toxicity endpoint, the acute dietary food exposure (from the probablistic analysis) was subtracted from the ratio of the acute NOAEL to the appropriate percentage acute RfD to obtain the acceptable acute exposure to tebuconazole in drinking water. DWLOCs were then calculated from this acceptable exposure using default body weights (60 kg for females and 10 kg for children) and drinking water consumption figures (2 liters for females and 1 liter for children). Based on these calculations EPA's DWLOC for acute dietary risk is 14 parts per billion (ppb) for children (1–6 years old) and 200 ppb for females 13+ years old.

Maximum concentrations of tebuconazole in surface and ground water are estimated to be 14 ppb and 0.3 ppb, respectively. The maximum estimated concentrations of tebuconazole in surface and ground water are less than EPA's levels of concern for acute exposure in drinking water for the females 13+ and children.

ii. *Chronic exposure and risk.* EPA has calculated DWLOCs for chronic exposures to tebuconazole in surface and ground water. To calculate the DWLOC for chronic exposures relative to a chronic toxicity endpoint, the chronic dietary food exposure was subtracted from the chronic RfD (0.03 mg/kg/day) to obtain the acceptable chronic exposure to tebuconazole in drinking water. DWLOCs were then calculated from this exposure using default body weights (70 kg for U.S. population, 60 kg for females and 10 kg for children) and drinking water consumption figures (2 liters U.S. population and females and 1 liter children). Based on these calculations EPA's DWLOCs for chronic risk are 950 ppb for the U.S. population, 780 ppb for females and 190 ppb for non-nursing infants (< 1 year old).

Estimated annual average concentrations of tebuconazole in surface water and ground water are 10 ppb and 0.3 ppb, respectively. The estimated annual average concentrations of tebuconazole in surface and ground water are less than EPA's levels of concern for chronic exposure in drinking water.

3. *From non-dietary exposure.* No short- or intermediate-term dermal toxicological endpoints were identified. Tebuconazole's registered residential uses are for the formulation of wood-based composite products, wood products for in-ground contact, plastics, exterior paints, glues and adhesives. Currently, the only residential end-use products on the market are for exterior treated wood use. Exposure via incidental ingestion (by children) and inhalation are not a concern for these products which are used outdoors. No paints or other end-use products containing tebuconazole are available for interior use. Accordingly, residential exposure is not expected at this time.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebuconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebuconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebuconazole has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* A toxicological endpoint was identified for acute dietary risk assessments for subpopulations females (13+ years old), infants and children. The 10X safety factor for enhanced susceptibility of infants and children as required by FQPA is applicable for all of these subgroups. Therefore, 10% or less of the acute RfD of 0.1 mg/kg/day results in an acceptable acute dietary exposure (food plus water).

An acute dietary (food only) probabilistic risk analysis resulted in 3% of the acute RfD utilized for females (13+ years old). The maximum estimated concentrations of tebuconazole in surface and ground water are less than EPA's levels of concern for acute exposure in drinking water for the females 13+. Currently the only residential end-use products on the market are for exterior treated wood use. Exposure via incidental ingestion (by children) and inhalation are not a concern for these products which are used outdoors. No paints or other end-use products containing tebuconazole are available for interior use. Accordingly residential exposure is not expected with these uses. Therefore, EPA concludes with reasonable certainty that residues of tebuconazole do not contribute significantly to the aggregate acute risk at the present time.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to tebuconazole from food will utilize 11% of the RfD for the U.S. population. The major identifiable

subgroup with the highest aggregate exposure from food is Non-Nursing Infants (< 1 year old), discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. As stated above, residential exposure to tebuconazole is not expected for the currently registered uses. Despite the potential for exposure to tebuconazole in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Therefore, EPA concludes with reasonable certainty that residues of tebuconazole do not contribute significantly to the aggregate chronic risk at the present time.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. No short- or intermediate-term dermal toxicological endpoints were identified. Also, no residential exposure is expected from the current residential uses. Thus, no risk assessments were conducted for residential exposure. Therefore, EPA concludes with reasonable certainty that tebuconazole does not contribute significantly to the aggregate short- and intermediate-term risk at the present time.

4. *Aggregate cancer risk for U.S. population.* Tebuconazole is classified as a Group C (possible human) carcinogen. Since, for the purpose of carcinogenic risk assessment the RfD methodology was used, the discussion for Chronic risk (11% of RfD utilized) in Unit III.D.2 above applies to cancer risk as well. Therefore, EPA concludes with reasonable certainty that tebuconazole does not contribute significantly to the aggregate cancer risk at the present time.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebuconazole residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebuconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In two associated oral developmental toxicity studies in mice, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 20 mg/kg/day, based on decreased hematocrit and effects in the liver. The developmental toxicity NOAEL was 10 mg/kg/day and the LOAEL was 30 mg/kg/day, based on increased numbers of runts (fetuses weighing less than 1.3 grams). In addition, at 100 mg/kg/day, frank malformations in the skull, brain and spinal column and a reduced rate of ossification in the cranium were observed. In a dermal developmental toxicity study in mice, no toxicologically significant maternal toxicity or developmental toxicity was observed at the limit dose of 1,000 mg/kg/day.

In an oral developmental toxicity study in rats, the maternal NOAEL was 30 mg/kg/day and the LOAEL was 60 mg/kg/day, based on increased liver weight. The developmental toxicity NOAEL was 30 mg/kg/day and the LOAEL was 60 mg/kg/day, based on delayed ossification of several bones and increased numbers of fetuses with supernumerary ribs. In addition, at 120 mg/kg/day, increased resorptions, decreased fetal body weights and frank malformations in two fetuses (missing tail, agnatha, microtomia and anophthalmia) were observed. In a dermal developmental toxicity study in rats, no toxicologically significant maternal toxicity or developmental toxicity was observed at the limit dose of 1,000 mg/kg/day.

In an oral developmental toxicity study in rabbits, the maternal NOAEL was 30 mg/kg/day and the LOAEL was 100 mg/kg/day, based on decreased body weight gain and decreased food consumption during the dosing period. The de velopmental toxicity NOAEL was 30 mg/kg/day and the LOAEL was 100 mg/kg/day, based on increased postimplantation loss, increased frank malformations, hydrocephalus and delayed ossification of bones. In another oral developmental toxicity study in rabbits, the maternal NOAEL was < 10 mg/kg/day and the LOAEL was 10 mg/kg/day, based on increased incidences of single cell necrosis (minimal severity) in liver cells. The maternal NOAEL from this study was not used to determine the acute RfD because single cell necrosis was not considered to result from a single exposure. The developmental toxicity NOAEL was 30 mg/kg/day and the LOAEL was 100 mg/kg/day, based on increased postimplantation loss, decreased fetal body weights, increased percentage of fetuses with abnormalities (including runts, hemidiaphragm, limb abnormalities and neural tube defects characterized as meningocoele and spina bifida) and delayed ossification of bones.

iii. *Reproductive toxicity study.* In a 2–generation reproduction study in rats, the parental (systemic) toxicity NOAEL was 15 mg/kg/day and the LOAEL was 50 mg/kg/day, based on loss of hair, decreased body weights, decreased food consumption, increased severity of spleen hemosiderosis and decreased liver and kidney weights. For offspring toxicity, the NOAEL was 15 mg/kg/day and the LOAEL was 50 mg/kg/day, based on decreased pup body weights from birth through weeks 3–4 in all litter groups.

iv. *Pre- and post-natal sensitivity.* The above studies meet the standard toxicology data requirements, as required for a food-use chemical, in 40 CFR part 158. However, after evaluation of the findings in these studies, particularly with respect to effects on the fetal nervous system, together with a consideration of neurotoxic effects observed in several other developmental toxicity studies on structurally related triazole pesticides, the Agency requested a postnatal developmental neurotoxicity study in rats (Guideline 83–6) be conducted. The EPA notes effects on the nervous system of fetuses in studies on tebuconazole occurred only at doses of 100 mg/kg/day or higher--i.e. at doses at least tenfold higher than the developmental toxicity NOAEL (10 mg/kg/day) to be used for the assessment of acute dietary risk.

On the basis of comparative NOAELs and LOAELs, it was determined there was no indication of increased susceptibility of the offspring of mice, rats or rabbits resulting from prenatal and/or postnatal exposure to tebuconazole. However, the maternal effects observed in the developmental toxicity studies at the LOAEL were of minimal concern and did not increase substantially in severity at higher doses, whereas the developmental effects at the LOAEL were pronounced and at higher doses were quite severe (including frank malformations) in mice (at 100 mg/kg/day), rats (at 120 mg/kg/day) and rabbits (at 100 mg/kg/day). Based on a consideration of all the above findings, the Agency retained the 10X factor for enhanced susceptibility to infants and children. The 10X factor is applicable to acute dietary exposures for the subpopulations females (13+ years old), infants and children. The 10x factor for enhanced sensitivity of infants and children is not applicable to chronic exposure analysis.

v. *Conclusion*. There is a complete toxicity data base for tebuconazole and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk*. An acute dietary (food only) probablistic risk analysis resulted in the following percentages for the acute RfD: nursing infants (< 1 year old), 7%; non-nursing infants (< 1 year old), 7%; children (1 to 6 years old) 9%, children (7 to 12 years old) 3%; and all infants (< 1 year old), 7%. The maximum estimated concentrations of tebuconazole in surface and ground water are less than EPA's levels of concern for acute exposure in drinking water for children. Currently the only residential end-use products on the market are for exterior treated wood use. Exposure via incidental ingestion (by children) and inhalation are not a concern for these products which are used outdoors. No paints or other end-use products containing tebuconazole are available for interior use. Accordingly residential exposure is not expected with these uses. Therefore, EPA concludes with reasonable certainty that residues of tebuconazole do not contribute significantly to the aggregate acute risk at the present.

3. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to tebuconazole from food will utilize up to 37% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. As stated above, residential exposure to tebuconazole is not expected for the currently registered uses. Despite the potential for exposure to tebuconazole in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Therefore, EPA concludes with reasonable certainty that residues of tebuconazole do not contribute significantly to the aggregate chronic risk at the present time.

4. *Short- or intermediate-term risk*. As stated above, residential exposure to tebuconazole is not expected for the currently registered uses.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebuconazole residues.

IV. Other Considerations

A. Metabolism In Plants

The metabolism of tebuconazole in or on grapes, wheat, and peanuts have been reviewed. The nature of the residue in wheat is adequately understood. For the purposes of this section 18, the nature of the residue in hops is considered to be adequately understood (by translation from grapes, wheat and peanuts). The residue of concern in plants is tebuconazole *per se*.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method entitled "Gas Chromatographic Method [GLC/TSD] for Determination of Residues of Tebuconazole in Crops, Processed Products, Soil and Water" (PP #9F3724) is adequate to enforce time-limited tolerances for residues of tebuconazole in or on hops. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

Residues of tebuconazole *per se* are not expected to exceed 4.0 ppm in or on dried hops cones as a result of this section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits for residues of tebuconazole in or on dried hops cones. International harmonization is thus not an issue for this time-limited tolerance.

E. Rotational Crop Restrictions

A plantback interval of 120 days after last application for crops not listed on the label is required. However, rotation restrictions are not applicable to hops as these crops are not normally rotated.

V. Conclusion

Therefore, the tolerance is established for residues of tebuconazole in hops at 4.0 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300745] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

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report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 6, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.474, in the table to paragraph (b)(1) by adding an entry for "Hops" to read as follows:

§ 180.474 Tebuconazole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Hops	4.0	12/31/00

* * * * *

[FR Doc. 98–31684 Filed 12–1–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300755; FRL–6041–3]

RIN 2070–AB78

Primisulfuron-Methyl; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide primisulfuron-methyl and its metabolites in or on bluegrass hay at 0.1 part per million (ppm) for an additional 18–month period, to April 30, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on bluegrass grown for seed. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective December 2, 1998. Objections and requests for hearings must be received by EPA, on or before February 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300755], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees) and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300755], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300755]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9356; e-mail: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 17, 1997 (62 FR 66014) (FRL–5753–6), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of primisulfuron-methyl and its metabolites in or on bluegrass hay at 0.1 ppm, with an expiration date of October 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food or feed that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or a period for public comment.

EPA received a request to extend the use of primisulfuron-methyl on bluegrass grown for seed for this year's growing season due to the situation remaining an emergency. Several factors, including increased no-till practices for soil conservation, reduced open burning, and climatic conditions, have contributed to the proliferation of grassy weeds to unacceptable levels in Kentucky bluegrass fields in Idaho and Washington. Presence of these grassy weed seeds in the end product makes the grass seed unmarketable in many areas, and without control of these weeds, growers were expected to suffer significant economic losses. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of primisulfuron-methyl on bluegrass grown for seed for control of grassy weeds in bluegrass grown for seed.

EPA assessed the potential risks presented by residues of primisulfuron-methyl in or on bluegrass hay. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 17, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section FFDCA 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18–month period. Although this tolerance will expire and is revoked on April 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on bluegrass hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP Docket for this rule. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300755] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since this extension of an existing time-limited tolerance that was established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels, or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not

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issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 30, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.452 [Amended]

2. In § 180.452, paragraph (b), in the table, amend the entry "Bluegrass hay" by removing the expiration date "10/31/98" and adding in its place "4/30/00".

[FR Doc. 98–31681 Filed 12–1–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300743A; FRL–6043–6]

RIN 2070–AB78

Imidacloprid; Extension of Tolerance for Emergency Exemptions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule correction.

SUMMARY: EPA published in the **Federal Register** of October 7, 1998, extension of time-limited tolerances for the residues of imidacloprid and its metabolites in or on certain commodities. The amendatory language was incorrect, and this document corrects that language.

DATES: This regulation became effective October 7, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA published in the **Federal Register** of October 7, 1998, on page 53826 (FRL–6037–2), in FR Doc. 98–26903, extension of time-limited tolerances for the residues of imidacloprid and its metabolites in or on the citrus fruits crop group at 1.0 part per million (ppm), dried citrus pulp at 5.0 ppm, beet roots at 0.3 ppm, turnip roots at 0.3 ppm, and turnip tops 3.5 ppm, with an expiration date of November 29, 1998 for beets and turnips, and December 31, 1998 for citrus, extended to June 30, 2000. The amendatory language was incorrect, and this document corrects that language.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to a previously issued **Federal Register** notice. Any assessments necessary for the original final rule being corrected through this action are discussed in that final rule and are not affected by today's action. In fact, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments*, (63 FR 27655, May 19, 1998), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority*

Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is a technical correction to the **Federal Register** and is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[CORRECTED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.472 [Amended]

In § 180.472, in the issue of October 7, 1998, on page 53829, in FR Doc. 98–26903, the amendatory language item number 2, for § 180.472, is corrected to read as follows:

2. In § 180.472, in the table to paragraph (a), in the third column, for the commodities "beet roots," "beet tops," "turnip roots," and "turnip tops" the date "11/29/98" is revised to read "6/30/00", and in the table to paragraph (b), in the third column, for the commodities "citrus fruits crop group" and "dried citrus pulp" the date "12/31/98" is revised to read "6/30/00".

[FR Doc. 98–31965 Filed 12–1–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300747; FRL–6038–5]

RIN 2070–AB78

Cymoxanil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of cymoxanil (2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide) in or on dried hops. This action is in connection with a crisis exemption declared under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on dried hops. This regulation establishes a maximum permissible level for residues of cymoxanil in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on April 15, 2000.

DATES: This regulation is effective December 2, 1998. Objections and requests for hearings must be received by EPA on or before February 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300747], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300747], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300747]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide cymoxanil (2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide), in or on dried hops at 1 part per million (ppm). This tolerance will expire and is revoked on April 15, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (November 13, 1996, 61 FR 58135)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Cymoxanil on Hops and FFDCA Tolerances

On July 16, 1998, the Idaho Department of Agriculture availed itself of the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of cymoxanil on hops for control of downy mildew.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of cymoxanil in or on dried hops. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on April 15, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dried hops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether cymoxanil meets EPA's registration requirements for use on hops or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of cymoxanil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for cymoxanil, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (November 26, 1997, 62 FR 62961)(FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of cymoxanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide on dried hops at 1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cymoxanil are discussed below.

1. *Acute toxicity*. For females 13+, the developmental no observed adverse effect level (NOAEL) = 4 mg/kg/day based on an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs at 8 milligrams/kilogram/day (mg/kg/day). EPA has determined that the 10x factor to account for enhanced sensitivity of infants and children should be reduced to 3x. For acute dietary risk assessment, a margin of exposure (MOE) of 300 is required for protection of females 13+ from acute dietary exposure to cymoxanil. A dose and endpoint were not selected for the general U.S. population and infants and children because there were no effects observed in oral toxicological studies including maternal toxicity in the developmental toxicity studies in rats and rabbits that could be attributable to a single exposure (dose).

2. *Chronic toxicity*. EPA has established the Reference dose (RfD) for cymoxanil at 0.013 mg/kg/day. This RfD is based on a NOAEL of 4.08 mg/kg/day and an uncertainty factor of 300. NOAEL established from a combined chronic toxicity/carcinogenicity study in rats, based on decreases in body weight and body weight gain, reduced food efficiency and histopathological lesions in the eyes and testes of males at 30.3 mg/kg/day lowest observed effect level (LOEL). EPA has determined that the 10x factor to account for enhanced sensitivity of infants and children should be reduced to 3x.

3. *Carcinogenicity*. Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to asses the carcinogenic potential, cymoxanil was classified as a "not likely" human carcinogen.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.503) for the residues of 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide, in or on potatoes. In addition, a time-limited tolerance in or tomatoes has also been established. Risk assessments were conducted by EPA to assess dietary exposures and risks from cymoxanil as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute exposure analysis for female (13+) subgroup was performed using tolerance level residues and 100 percent crop treated and resulted in an acceptable MOE of 300.

ii. *Chronic exposure and risk.* EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of cymoxanil is less than 5% for all population subgroups. EPA does not consider the chronic dietary risk to exceed the level of concern.

2. *From drinking water.* EPA has calculated drinking water levels of concern for acute exposure to cymoxanil in drinking water for females (13+ years old) to be 280 parts per billion (ppb). For chronic (non-cancer), the drinking water levels of concern are 440 and 120 ppb for U.S. population, children (1-6 years old), respectively. EPA has determined that cymoxanil and its degradates should not pose a threat to ground water. The estimated maximum concentration of cymoxanil in surface water is 4.13 ppb.

i. *Acute exposure and risk.* The maximum estimated concentrations of cymoxanil in surface water are less than EPA's levels of concern for cymoxanil in drinking water as a contribution to acute aggregate exposure. Taking into account the present uses and this proposed use, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water would not result in unacceptable levels of aggregate human health risk at this time.

ii. *Chronic exposure and risk.* The maximum estimated concentrations of cymoxanil in surface water are less than EPA's levels of concern for cymoxanil in drinking water as a contribution to chronic aggregate exposure. Taking into account the present uses and this proposed use, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water would not result in unacceptable levels of aggregate human health risk at this time.

3. *From non-dietary exposure.* Cymoxanil is not currently registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether cymoxanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cymoxanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cymoxanil has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (November 26, 1997, 62 FR 62961).

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* From the acute dietary (food only) risk assessment, a high-end exposure estimate was calculated for the subgroup, females 13+ years. The maximum estimated concentrations of cymoxanil in surface and ground water are less than EPA's levels of concern for cymoxanil in drinking water as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate acute human health risk at the present time.

2. *Chronic risk.* Using the Dietary Exposure Evaluation Model, EPA has concluded that aggregate exposure to cymoxanil from food will utilize 2% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old) "discussed below." EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The estimated average concentrations of cymoxanil in surface and ground water are less than EPA's levels of concern for cymoxanil in drinking water as a contribution to chronic aggregate exposure. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

3. *Aggregate cancer risk for U.S. population.* A cancer risk assessment is not needed since cymoxanil was classified as a "not likely" human carcinogen.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cymoxanil residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cymoxanil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. This is the case. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

EPA determined that for cymoxanil, the 10x factor for the enhanced sensitivity of infants and children will be reduced to 3x for the following reasons:

a. There was no sensitivity to perinatal animals following pre- and/or postnatal exposure with cymoxanil. In one prenatal developmental toxicity study in rabbits, where sensitivity was suggested by observations of developmental toxicity at a dose which was not maternally toxic, the lower developmental NOEL was attributed to inadequacies in study design and conduct.

b. There were no data gaps for the assessment of potential effects on offspring following in utero and/or postnatal exposure to cymoxanil via the standard screening studies required by 40 CFR Part 158. However, following a weight-of-the-evidence review of the database, which suggested that neuropathological lesions could result from long-term exposure to cymoxanil, a developmental neurotoxicity study in rats was recommended.

ii. *Developmental toxicity studies.* The NOAEL was 4 mg/kg/day and the LOEL was 8 mg/kg/day based on an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs; at 32 mg/kg/day, cleft palate was also observed.

iii. *Reproductive toxicity study.* For parental systemic toxicity, the NOAEL was 100 ppm (6.5 mg/kg/day for males, 7.9 mg/kg/day for females) and LOEL was 500 ppm based on reduced premating body weight, body weight gain, and food consumption for P males; and decreased gestation and lactation body weight for F1 females. For offspring systemic toxicity, the NOAEL was 100 ppm (6.5 mg/kg/day for males, 7.9 mg/kg/day for females) and the LOEL was 500 ppm (32.1 mg/kg/day for males, 40.6 mg/kg/day for females) based on decreased F1 pup viability on postnatal days 0-4 and on a significant reduction in F2b pup weight.

iv. *Pre- and post-natal sensitivity.* The developmental toxicity and multigeneration reproduction study data demonstrated no indication of increased susceptibility of rats or rabbits to in utero and/or postnatal exposure to cymoxanil. Overall, in the developmental toxicity studies in rats and rabbits, and in the 2-generation reproductive toxicity study with cymoxanil in rats, offspring toxicity was observed only at treatment levels which were toxic to parental adults.

v. *Conclusion.* There were no data gaps for the assessment of potential effects on offspring following in utero and/or postnatal exposure to cymoxanil via the standard screening studies required by 40 CFR Part 158. However, following a weight-of-the-evidence review of the database, which suggested that neuropathological lesions could result from long-term exposure to cymoxanil, a developmental neurotoxicity study in rats is required. There is a complete toxicity database for cymoxanil and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* The large acute dietary MOEs calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre-natal development of infants.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to cymoxanil from food will range from 1% for nursing infants less than one year old, up to 5% for children (1-6 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cymoxanil in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cymoxanil residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in tomatoes and potatoes is adequately understood. For purposes of this action, EPA was willing to translate these data to hops. The residues of concern in hops are cymoxanil per se, as specified in 40 CFR 180.503.

B. Analytical Enforcement Methodology

An adequate enforcement method (DuPont Method AMR 2358-92, unpublished) is available to enforce the proposed tolerance on hops. Quantitation is by GLC using a nitrogen/phosphorus detector.

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

Residues of cymoxanil are not expected to exceed 1.0 ppm in/on hops, dried. Secondary residues are not expected in animal commodities as no feed items are associated with this section 18 use.

D. International Residue Limits

There are no Codex, Canadian or Mexican residue limits established for cymoxanil on hops. Therefore, no compatibility problems exist for the proposed tolerance on hops.

E. Rotational Crop Restrictions

Residues in rotational crops are not expected as hops fields are not rotated.

V. Conclusion

Therefore, the tolerance is established for residues of 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide in dried hops at 1 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket controlnumber [OPP–300747] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use ofspecial characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ADDRESSES at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on

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matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 15, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.503 is amended, by alphabetically adding to the table in paragraph (b), the commodity to read as follows:

§ 180.503 Cymoxanil; tolerance for residues.

(a) * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Hops, dried	1	4/15/00

[FR Doc. 98–32003 Filed 12–1–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–8287–08; I.D. 042597B]

RIN 0648–AI84

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notice of availability of take reduction plan.

SUMMARY: Pursuant to the Marine Mammal Protection Act (MMPA), NMFS issues a final rule to implement a harbor porpoise take reduction plan (HPTRP) in the Gulf of Maine and Mid-Atlantic waters. The HPTRP is contained in the HPTRP/ Environmental Assessment/ Final Regulatory Flexibility Analysis (HPTRP/EA/FRFA), available upon request (see addresses below). In the Gulf of Maine, these final regulations put into place a series of time and area closures where pingers are required: in the Mid-Coast Closure Area (September 15 through May 31), the Massachusetts Bay and Cape Cod South Closure Areas (December 1 through February 28/29 and April 1 through May 31) and establish a new closure area, the Offshore Closure Area, where pingers are required November 1 through May 31. A complete closure has been added in the Cashes Ledge Closure Area, February 1–28/29. These regulations require any fishermen using pingers in the closed areas where pingers are allowed, to receive training and be certified in pinger use. A certificate must be carried onboard the vessel. In the Mid-Atlantic, this plan closes New Jersey waters from January 1 through April 30 to large and small mesh gear unless gear meets the specified gear modifications. This plan closes southern Mid-Atlantic waters from February 1 through April 30 to large and small mesh gear unless gear meets the specified gear modifications. This plan closes New Jersey waters from April 1–April 20 and southern Mid-Atlantic waters from February 15–March 15 for large mesh gear. The region known as the New Jersey Mudhole is closed to small and large mesh gear from February 15–March 15. All small and large mesh gear in the Mid-Atlantic must be tagged by January 1, 2000.

DATES: Effective January 1, 1999, except for § 229.33 (a)(2) which becomes effective December 2, 1998, § 229.33(a)(5) which becomes effective December 8, 1998, and § 229.33(a)(3) and (a)(4) which become effective December 16, 1998.

ADDRESSES: Copies of the draft plan prepared by the Gulf of Maine Take Reduction Team (GOMTRT), the final report from the Mid-Atlantic Take Reduction Team (MATRT) and the HPTRP/EA/FRFA may be obtained from Donna Wieting, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Donna Wieting, NMFS, 301–713–2322, or Laurie Allen, NMFS, Northeast Region, 978–281–9291.

SUPPLEMENTARY INFORMATION: This final rule implements a take reduction plan (TRP) for the Gulf of Maine (GOM) stock of harbor porpoise, a strategic marine mammal stock that interacts with the Northeast (NE) multispecies gillnet fishery and with the Mid-Atlantic coastal gillnet fishery. A strategic stock is a stock: (1) for which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level (the maximum number of animals, not including natural mortalities, that may be annually removed from a marine mammal stock without compromising the ability of that stock to reach or maintain its optimum population level); (2) that is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) that is listed as a threatened or endangered species under the ESA. NMFS proposed listing the GOM harbor porpoise as threatened under the ESA (58 FR 3108, January 7, 1993), but no final action has been taken on that proposal.

The NE multispecies sink gillnet fishery is a Category I fishery, and the Mid-Atlantic coastal gillnet fishery is a Category II fishery, as classified under Section 118 of the MMPA. A Category I fishery is a fishery that has frequent incidental mortality and serious injury of marine mammals. A Category II fishery is a fishery that has occasional serious injuries and mortalities of marine mammals.

Section 118 of the MMPA requires NMFS to develop and implement a TRP to assist in the recovery or to prevent the depletion of each strategic stock that interacts with a Category I or II fishery. The immediate goal of a TRP is to reduce, within 6 months of its implementation, the level of mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to less than the PBR levels established for such stocks. The long-term goal of a TRP is to reduce the level of mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to a level approaching a zero mortality rate (ZMRG).

Stock Assessment and Incidental Takes by Fishery

The PBR level for GOM harbor porpoise throughout their range is 483 animals (62 FR 3005, January 21, 1997). The estimated total annual average mortality from the NE and Mid-Atlantic gillnet fisheries is 2,040. This estimate is based on a 5-year (1990–1995) average mortality estimate of 1,833 (Waring *et al.*, 1997) for the GOM and based on preliminary analysis of 1995 and 1996 data from the Mid-Atlantic of 207 animals (Palka, unpublished data).

Take Reduction Teams (TRTs)

NMFS convened the GOMTRT in February 1996. The goal of the GOMTRT was to develop a consensus draft TRP to reduce the incidental take of harbor porpoise in sink gillnets in the GOM to the PBR level for that stock within 6 months of the TRP's implementation. The GOMTRT focused only on bycatch off New England's coast (Maine to Rhode Island). The GOMTRT was convened with the understanding that a separate take reduction team (TRT) would address harbor porpoise bycatch in the Mid-Atlantic.

While the individual Teams did not specifically address whether measures are necessary to reach the ZMRG at this time, the TRT process will address the ZMRG after the initial measures have been monitored. NMFS and the TRT can then determine whether further reductions, if any, may be necessary to reach the long-term goal.

The GOMTRT included representatives of the NE multispecies sink gillnet fishery, NMFS, state marine resource managers, the New England Fishery Management Council (NEFMC), environmental organizations, and academic and scientific organizations. The GOMTRT met five times between February and July 1996 and submitted a consensus draft TRP (draft GOMTRP) to NMFS in August 1996.

Soon after NMFS received the draft GOMTRP, the NEFMC enacted Framework Adjustment 19 (61 FR 55774, October 29, 1996) to the NE Multispecies Fishery Management Plan (FMP). Based on this action, NMFS modified the draft GOMTRP to be consistent with Framework Adjustment 19. NMFS published an initial proposed rule to implement a TRP for harbor porpoise in the GOM (62 FR 43302, August 13, 1997). The proposed rule to implement the GOMTRP was available for a 60-day public comment period.

NMFS reconvened the GOMTRT in December 1997 to evaluate new bycatch data that suggested that the GOMTRP would not achieve PBR for harbor porpoise in the GOM. NMFS reopened the public comment period on the GOMTRP proposed rule for one month during the deliberations of the GOMTRT.

At the December 1997 meeting, the GOMTRT agreed on a number of additional measures for bycatch reduction that were presented to NMFS in the form of a report on January 14, 1998 (RESOLVE, 1998). In their recommendations, the GOMTRT took into account the significant changes in groundfish conservation measures proposed under Framework 25 of the NE Multispecies FMP which partially overlapped existing marine mammal closures (Framework 25 was under consideration by the NEFMC during the GOMTRT meeting in December 1997 and was not implemented until May, 1998). Framework 25 allowed continued use of pingers in the Mid-coast area from March 25 through April 25 and closed the Jeffreys Ledge portion of the Mid-Coast area year-round.

The GOMTRT recommended the following measures to achieve PBR: (1) maintain the existing Northeast Closure from August 15 through September 13; (2) close Cape Cod South from March 1 through March 31; (3) close Massachusetts Bay from March 1 through March 31; (4) close the Mid-Coast area from March 24 through April 26; (5) require pingers from September 15 through March 24 and April 26 through May 31 in the Mid-Coast area; (6) require pingers from September through May in the Cape Cod South area; (7) require pingers the months of February and April in the Massachusetts Bay area; and (8) require pingers September 1 through May 31 in the Offshore area.

In February 1997, NMFS convened the MATRT to address the incidental bycatch of harbor porpoise in Mid-Atlantic gillnet fisheries (from New York through North Carolina). The MATRT included representatives of the Mid-Atlantic coastal gillnet fisheries, NMFS, state marine resource managers, the Mid-Atlantic Fishery Management Council (MAFMC), the NEFMC, the Atlantic States Marine Fisheries Commission (ASMFC), environmental organizations, and academic and scientific organizations. The MATRT submitted a report to NMFS on August 25, 1997, which included both consensus and non-consensus recommendations.

The MATRT recommended management measures specific to the two predominant coastal gillnet fisheries, i.e., the monkfish and dogfish fisheries. It recommended that the timeframe for effectiveness be from January through April off New Jersey and from February through April off the southern Mid-Atlantic (Delaware, Maryland, Virginia and North Carolina). The management measures that the team suggested focused on those gear characteristics that demonstrated the most potential for bycatch reduction. For the monkfish fishery, these measures included reduced floatline length, larger twine size, tie downs, and a limit of 80 nets. For the dogfish fishery, the measures included reduced floatline length, larger twine size, and a 45-net limit. Additionally, the MATRT recommended time/area closures for the monkfish fishery in New Jersey waters (February 15–March 15) and in the southern Mid-Atlantic (20 day block between February and April, chosen by the fishermen) but no time/area closures for the dogfish fishery.

Both the GOMTRT and the MATRT recommended certain non-regulatory measures. The non-regulatory aspects of the HPTRP are discussed in the HPTRP/EA/FRFA. The following summarizes NMFS efforts to address the concerns raised by the GOMTRT and MATRT:

(1) As part of the HPTRP, NMFS is developing a research plan to assess long-term ecosystem impacts from widespread use of pingers.

(2) As part of a monitoring strategy for the HPTRP, NMFS is working with the ASMFC on the Atlantic Coastal Cooperative Statistics Program to provide managers with more timely bycatch and fisheries information on the Atlantic Coast.

(3) NMFS is investigating options for providing support to fishermen for pinger technology.

(4) NMFS began pinger training and certification for all fishermen who wish

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to use pingers in the closed areas in September 1998.

(5) NMFS has expanded its capabilities to do analytical research by hiring additional staff for its Northeast Fisheries Science Center (NEFSC). Additional resources will be considered during normal funding and staffing allocation discussions in light of other agency responsibilities.

(6) NMFS has expanded its capabilities to observe the Mid-Atlantic fisheries by exploring alternative platforms to obtain a better characterization of coastal fisheries that were not accessible to the traditional Sea Sampling Observer Program.

(7) The HPTRP provides for voluntary skipper education workshops in the Mid-Atlantic.

(8) Although NMFS has expanded its capabilities with respect to observing the Mid-Atlantic fisheries, NMFS will continue to increase observer coverage at levels consistent with a valid sampling scheme because of limited resources. Additionally, NMFS is expanding observation from alternative platforms and is increasing responsiveness to observed strandings.

To provide the necessary coordination between the Teams and consistency across the regions, NMFS, at the recommendation of the GOMTRT, included several members of the GOMTRT on the MATRT. NMFS will strive to ensure that data on bycatch and effort in both areas will be shared with both teams. A specific discussion of these recommendations and NMFS'' response are contained in the HPTRP/EA/FRFA.

Proposed Rule/HPTRP

NMFS combined the GOMTRP and MATRT report into one proposed HPTRP and proposed rule which was published on September 11, 1998 (63 FR 48670). The proposed HPTRP was based in large part on recommendations by the GOMTRT and the MATRT and was divided into a GOM component and a Mid-Atlantic component. NMFS is considering whether or not the two Teams should continue to meet separately or whether some or all of the meetings should be combined.

Final Rule/HPTRP

Gulf of Maine Component

Table 1 sets forth the HPTRP management measures for the Gulf of Maine in the final rule (see Figure 1).

TABLE 1.—GULF OF MAINE TIME/AREA CLOSURES TO GILLNET FISHING AND PERIODS DURING WHICH PINGER USE ARE REQUIRED UNDER THE FINAL RULE/HPTRP

Northeast Area:	
August 15–September 13	Closed.
Mid-Coast Area:	
September 15–May 31	Closed, gillnet with pingers allowed.
Massachusetts Bay Area:	
December 1–February 28/29	Closed, gillnet with pingers allowed.
March 1–31	Closed.
April 1–May 31	Closed, gillnet with pingers allowed.
Cape Cod South Area:	
December 1—February 28/29	Closed, gillnet with pingers allowed.
March 1–31	Closed.
April 1–May 31	Closed, gillnet with pingers allowed.
Offshore Area:	
November 1–May 31	Closed, gillnet with pingers allowed.
Cashes Ledge Area:	
February 1–28/29	Closed.

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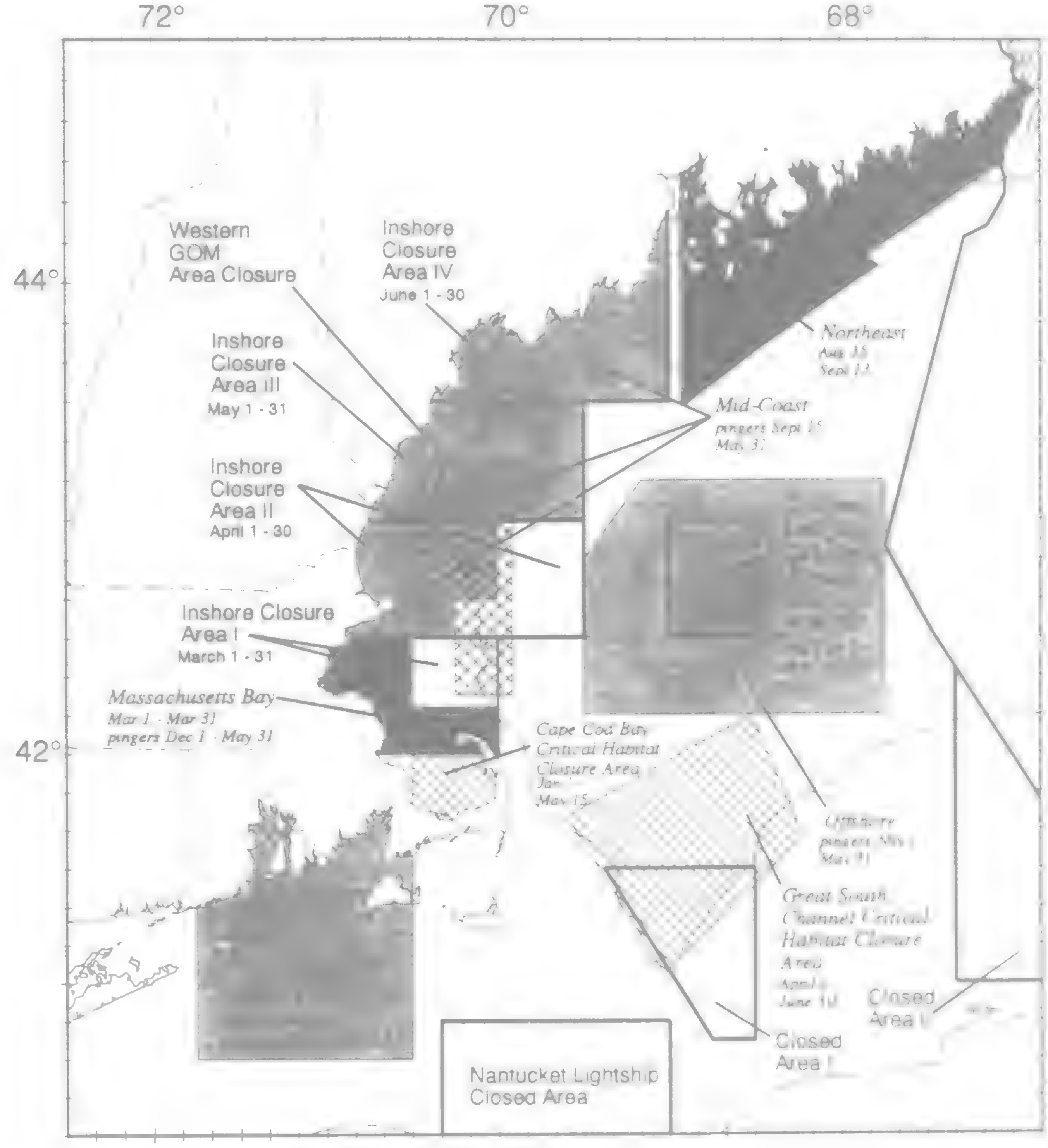
72°
70°
68°
44°
42°
Western GOM Area Closure
Inshore Closure Area IV
June 1 - 30
Inshore Closure Area III
May 1 - 31
Inshore Closure Area II
April 1 - 30
Inshore Closure Area I
March 1 - 31
Massachusetts Bay
Mar 1 - Mar 31
pingers Dec 1 - May 31
Northeast
Aug 15
Sept 13
Mid-Coast
pingers Sept 15
May 31
Cape Cod Bay Critical Habitat Closure Area
Jan
May 15
Offshore
pingers Nov 1
May 31
Great South Channel Critical Habitat Closure Area
April 1
June 30
Closed Area I
Closed Area I
Nantucket Lightship Closed Area

Figure 1. Chart of closures under the Gulf of Maine component of the Harbor Porpoise Take Reduction Plan and closures under the Northeast Multispecies Fishery Management Plan (FMP). Areas on the chart delineated by bold, linear outline with labels in regular type correspond to NE Multispecies FMP; labels in italic type identify shaded areas of harbor porpoise measures.

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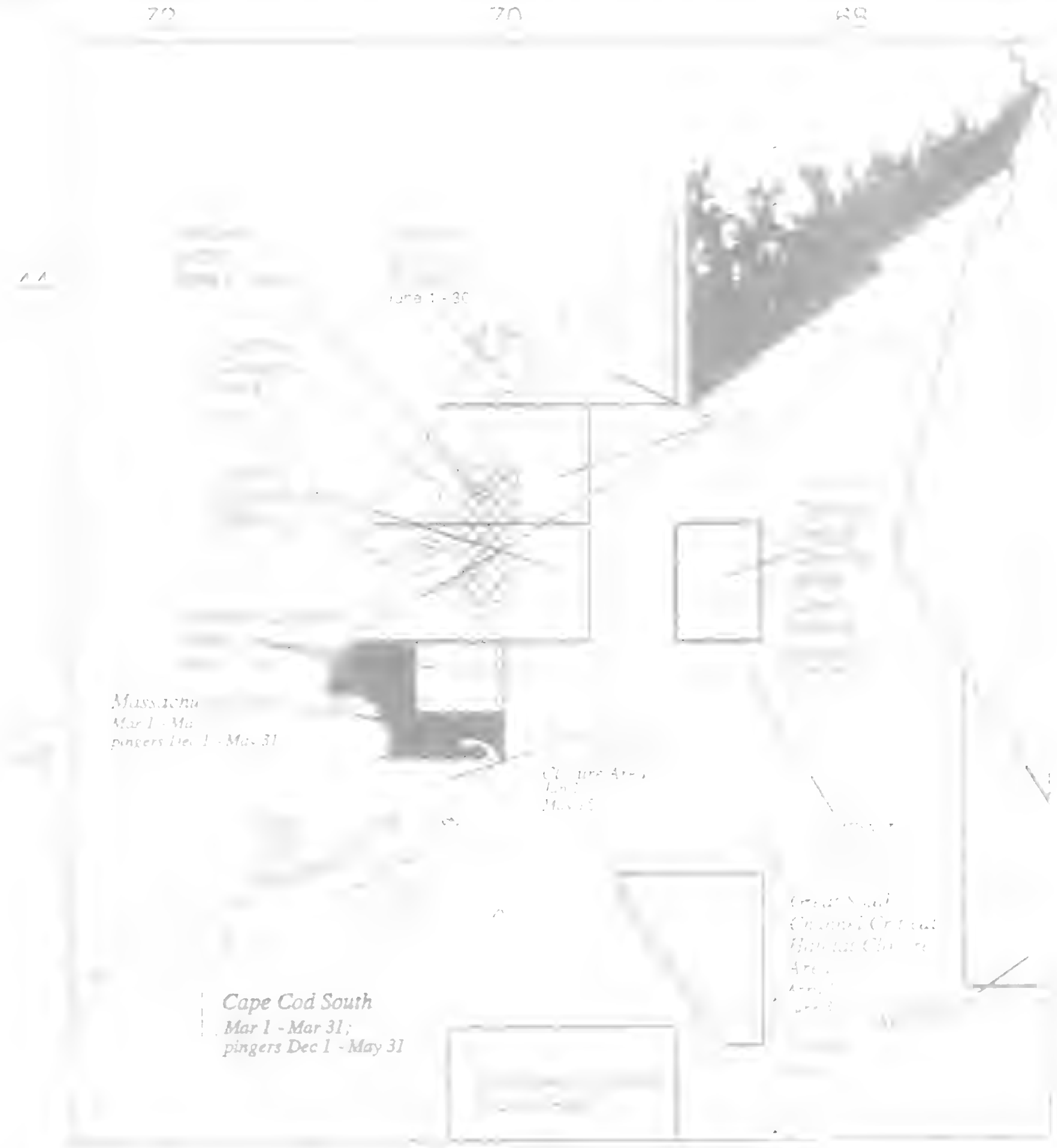
72
70
68
44
June 1 - 30
Massachusetts
Mar 1 - Ma
pingers Dec 1 - May 31
Closure Area
Great South
Channel Critical
Habitat Closure
Area
Cape Cod South
Mar 1 - Mar 31;
pingers Dec 1 - May 31

Figure [illegible] Chart of closures under the Gulf of Maine component of the Harbor Porpoise Take Reduction Plan and [illegible] under the Northeast Multispecies Fishery Management Plan (FMP). Areas on the chart [illegible] in regular type correspond to NE Multispecies FMP; areas in italic type [illegible] Harbor Porpoise measures.

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The HPTRP regulations maintain the comprehensive approach of the proposed rule.

The proposed HPTRP would have closed the Northeast Area to sink gillnet fishing from August 15 through September 13 of each year. The final rule makes no changes to this measure.

The proposed HPTRP did not include a complete closure in the Mid-Coast Area but required pingers from September 15 through May 31. The final rule represents no changes from the proposed rule.

The proposed HPTRP provided that Massachusetts Bay remain closed in March, the time of year during which most known takes in the region were recorded, and proposed that pingers be required during February, April, and May to reduce the take of harbor porpoise in other spring months. Based on public comments and to address data which showed observed takes in the winter months in Massachusetts Bay, pinger requirements are extended to include the months of December and January in this final rule.

In the South Cape area, the proposed HPTRP would have required pingers from September 15 through February, and then again in April to account for uncertainty in estimated bycatch in this area throughout the year. Based on public comments and on the lack of observed takes in the fall months, this final rule changes the beginning of the time period for pinger requirements from September 15 to December 1. To account for observed takes that have occurred later in the spring, the HPTRP has extended the pinger requirement to include May 1 through 31. These changes are expected to ease the burden (both in economic terms and in terms of the additional effort expended to use pingers) on the South Cape fishermen by allowing for more fishing time without pingers. This change is not expected to affect projected bycatch reduction from the South Cape area because, based on current observer data, the plan will achieve the same or greater bycatch reduction in May, when takes have been observed, than in the fall months.

The proposed HPTRP provided for closing the Cashes Ledge section of the Offshore area in February and would have required pingers from September 15 through May in the broader Offshore area. The final HPTRP does not change the Cashes Ledge closure in February but modifies the time of pinger use to begin November 1, rather than September 15, based on lack of observed takes between September 15 through October 31. These changes ease the burden (both in economic terms and in terms of the additional effort expended to use pingers) on New Hampshire and Maine fishermen during the times of no observed bycatch. This change should not affect overall plan effectiveness because, based on current observer data, little bycatch reduction is expected in September and October in the Offshore area.

Mid-Atlantic Component

Tables 2 and 3 set forth the HPTRP management measures for the large mesh (includes gillnet with mesh size of greater than 7 inches (17.78cm) to 18 inches (45.72cm)) and small mesh (includes gillnet with mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78cm)) gillnet fisheries in the Mid-Atlantic (see Figure 2).

TABLE 2.—MANAGEMENT MEASURES FOR THE LARGE MESH GILLNET FISHERY (INCLUDES GILLNET WITH MESH SIZE GREATER THAN 7 INCHES (17.78CM) TO 18 INCHES (45.72CM)) IN THE MID-ATLANTIC UNDER THE FINAL RULE/HPTRP

Floatline Length:	
New Jersey Mudhole	Less than or equal to 3,900 ft (1188.7 m).
New Jersey Waters (excluding the Mudhole)	Less than or equal to 4,800 ft (1463.0 m).
Southern Mid-Atlantic waters	Less than or equal to 3,900 feet (1188.7 m).
Twine Size	
All Mid-Atlantic Waters	Greater than or equal to .90 mm (.035 inches).
Tie Downs	
All Mid-Atlantic Waters	Required.
Net Cap	
All Mid-Atlantic Waters	80 nets.
Net Size	A net must be no longer than 300 feet (91.4m) long.
Net Tagging	Requires all nets to be tagged by January 01, 2000.
Time/Area Closures:	
New Jersey waters to 72°30′ W. longitude (including the Mudhole)	Closed from April 1–April 20.
New Jersey Mudhole	Closed from February 15—March 15.
Southern Mid-Atlantic waters (MD, DE, VA, NC) to 72°30′ W. longitude	Closed from February 15–March 15.

TABLE 3.—MANAGEMENT MEASURES FOR THE SMALL MESH GILLNET FISHERY (INCLUDES GILLNET WITH MESH SIZE OF GREATER THAN 5 INCHES (12.7 CM) TO LESS THAN 7 INCHES (17.78CM)) IN THE MID-ATLANTIC UNDER THE FINAL RULE/HPTRP

Floatline Length:	
New Jersey waters	Less than or equal to 3,000 feet (914.4 m).
Southern Mid-Atlantic waters	Less than or equal to 2,118 feet (645.6 m).
Twine Size:	
All Mid-Atlantic waters	Greater than or equal to .81 mm (.031 inches).
Net Cap:	
All Mid-Atlantic waters	45 nets.
Net Size	A net must be no longer than 300 feet (91.4m) long.
Net Tagging	Requires all nets to be tagged by January 1, 2000.
Time/Area Closures:	
New Jersey Mudhole	Closed from February 15–March 15.

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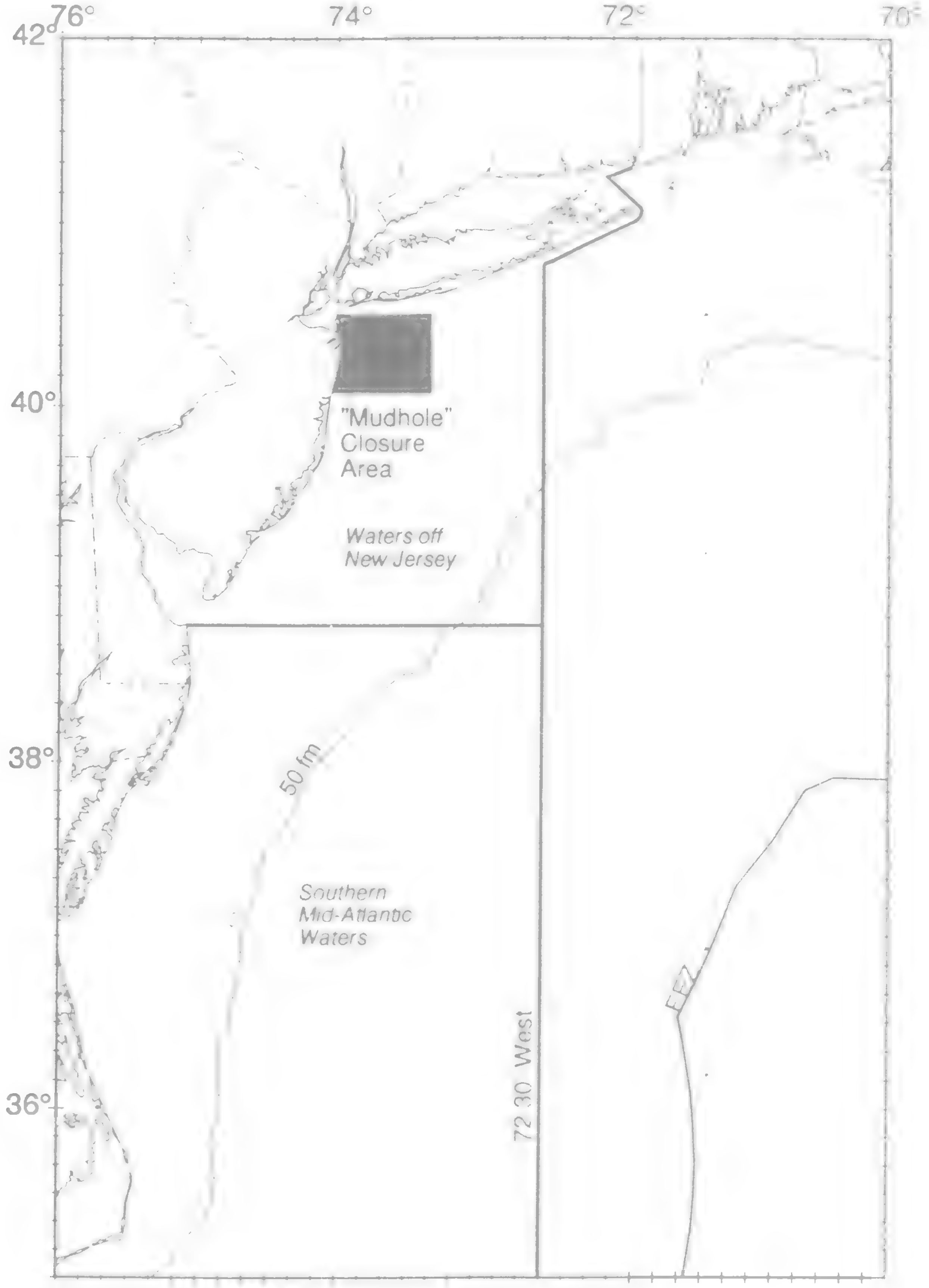
76°
74°
72°
70°
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40°
38°
36°
"Mudhole"
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Figure 2. Mid-Atlantic component

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The Mid-Atlantic component of the HPTRP is generally consistent with the proposed HPTRP, except as discussed below. The gear modifications in the final HPTRP remain the same as in the proposed HPTRP. The effective period remains the same as described in the proposed HPTRP: January 1 through April 30 for New Jersey waters, and February 1 through April 30 for southern Mid-Atlantic waters. Additionally, stratification by fishery based on mesh size remains the same as in the proposed HPTRP.

The most significant change from the proposed HPTRP is the application of the management measures within the small mesh fishery. In the proposed plan, the small mesh fishery was defined as all those fisheries employing mesh size of less than 7 inches (17.78 cm). Stranding data and related bycatch information suggest that certain small mesh fisheries could be a source of harbor porpoise bycatch. This information, along with the assumptions inherent in the bycatch analyses, led NMFS to propose that these fisheries be subject to some of the regulatory measures in the proposed HPTRP.

Based upon further review and as the result of public comment, NMFS has decided to exclude fisheries with mesh size 5 inches (12.7 cm) and less from the HPTRP regulations at this time. The reasons for this are that the number of observed takes in these mesh sizes currently available in the data is limited. However, given the concerns associated with the possible bycatch from these fisheries discussed above, NMFS will reevaluate the observer and stranding data, particularly from alternative platforms, for these fisheries in the spring, 1999 and address the issue of mesh sizes 5 inches (12.7 cm) or less at that time.

Given the models and assumptions used in the subfishery bycatch analysis and the predicted effect of using the recommended gear characteristics based on small and large mesh gillnet categories, excluding the mesh sizes of 5 inches (12.7 cm) and less at this time does not change the expected 79 percent or greater reduction in harbor porpoise bycatch in the Mid-Atlantic.

In addition to the 30-day public comment period and publication of the proposed rule in the **Federal Register**, NMFS issued a press release announcing the availability of the proposed rule and summarizing the major issues in the proposed rule. The final rule will govern fishing by the NE Multispecies and Mid-Atlantic gillnet fisheries in the GOM and Mid-Atlantic. NMFS expects that implementation of this rule will reduce within 6 months of its implementation the bycatch of harbor porpoise to below their PBR level.

Response to Comments

Comments on the Take Reduction Team Process and General Comments

Comment 1: One commenter stated that each country and each region should be treated equally and be separately responsible for specified shares of PBR and bycatch reduction. This commenter noted that combining the two plans raises the issue of how NMFS will allocate PBR between the two jurisdictions in the future. Since the Mid-Atlantic accounts for only 10 percent of the mortality, this is unfair to them. Three commenters recommended keeping PBR only on a jurisdictional basis. One commenter recommended reconvening both the GOMTRT and MATRT to address the allocation issue.

Response: NMFS disagrees that there is an allocation problem. Each region is treated separately for respective shares of PBR. This issue was discussed in detail during the Mid-Atlantic TRT meetings. Combining the two plans into one final rule does not change the basis for the reductions accepted by the separate TRTs. Specifically, each region agreed to reduce its respective bycatch by 79 percent of the estimated level of bycatch for that region. For example, if the Mid-Atlantic region takes only an estimated 200 animals, they need to achieve a 79 percent reduction which translates to a reduction of 158 animals. If the GOM has an estimated take level of 1800 animals, they also need to achieve a 79 percent reduction, but this translates to a reduction of 1422 animals. These are equal reductions based on the respective levels of bycatch; i.e., one region is not compensating for the other. This strategy is both equitable and fair and was accepted by the GOMTRT and MATRT.

Comment 2: One commenter noted that the **Federal Register** publication notice for the proposed rule (63 FR 48671) indicated that Canadian sink gillnet takes are approximately 100 animals, and the HPTRP will achieve the necessary PBR reduction including the Canadian takes. The commenter asked how NMFS will incorporate fluctuations in Canadian interaction levels in the HPTRP. The commenter also asked how a higher level of lethal Canadian interactions would affect the annual HPTRP review and why an approximate count is acceptable for Canadian take whereas the total PBR estimate is a firm point estimate. Another commenter recommended that NMFS strongly encourage efforts to request the Department of Fisheries and Oceans (DFO), Canada, to consider the HPTRP.

Response: Under the MMPA, takes throughout the range of the species are considered in developing management measures in the TRPs. Since the HPTRT is expected to meet semi-annually the first year, and annually thereafter, changes in information on Canadian takes, as available, can be evaluated by the TRT at the same time U.S. bycatch information is discussed and recommendations made on all these issues at the same time. NMFS has detailed data on both bycatch in U.S. fisheries and Canadian fisheries. This allows for a more accurate estimate of total bycatch in U.S. and Canada fisheries. For Canadian takes, the U.S. receives information from the Canadian Government on bycatch in its fisheries. NMFS has already met with representatives of the Canadian government to discuss the HPTRP in U.S. waters and encourage the Canadians to participate in reducing the overall fishing mortality on this stock. As a result, Canada developed its Harbor Porpoise Conservation Plan and has implemented an observer program which has documented a continuous reduction in bycatch in their Bay of Fundy gillnet fisheries.

Comment 3: Five commenters asked how NMFS will incorporate the anticipated harbor porpoise conservation benefits when the FMPs for monkfish and spiny dogfish are published and the American shad intercept gillnet fishery is phased out. Another commenter noted that upcoming management plans on both dog sharks and monkfish have not been considered by NMFS in constructing the HPTRP. This commenter stated that the most obvious problem with the HPTRP is the lack of information on the restrictions proposed by the FMPs for monkfish and spiny dogfish and their anticipated conservation benefits to harbor porpoise. Another commenter criticized NMFS for not considering the protection that will be afforded under a number of FMPs, including Atlantic Sturgeon, Monkfish, Dogfish, Bluefish Amendment 1, Amendment 1 to Shad and River Herring.

Response: NMFS generally discussed the impacts of the proposed FMPs for monkfish and dogfish in the proposed HPTRP. NMFS did not analyze the proposed FMP management measures in detail because, during the development of the proposed HPTRP, these plans were not yet final. Given that FMPs may change significantly prior to a final vote by the responsible Fishery Management

Council (FMC), NMFS felt it unwise and impractical to guess at the final FMC recommendations. However, concurrent with the development of the HPTRP proposed rule, the Monkfish FMP was voted on and a final FMP package with a preferred alternative was submitted to NMFS on October 27, 1998, by the NEFMC and the MAFMC. The preferred alternative, now under consideration by the NEFMC and the MAFMC, will provide no benefits to harbor porpoise conservation in the near future because the regulations do not become effective until May 1, 1999. Since the HPTRP must show a reduction in bycatch within 6 months of implementation and the majority of harbor porpoise bycatch occurs during the months of January through April, the HPTRP must go into effect in early January 1999 to reduce impacts to harbor porpoise in the spring 1999 fishery.

If the Monkfish FMP goes into effect, the expected harbor porpoise conservation benefits appear to be the result of overall effort reduction through Days-At-Sea and Total Allowable Catch restrictions. However, any conservation benefits may be negated as a result of the relatively high gill net limits set by the FMP. According to the MATRT, the average number of nets employed by Mid-Atlantic fishermen is 80 nets. The Monkfish FMP, if approved, would allow fishermen to use up to 160 nets.

The biggest differences between the Monkfish FMP and the HPTRP are in the mandatory time outs. The 20-day block during April, May, and June required under the Monkfish FMP would have little additional reduction in harbor porpoise bycatch. If the fishermen take their 20-day block (under the Monkfish FMP) in early April in New Jersey, there could be a conservation benefit—but it would mirror only what is currently required in the HPTRP and would not result in any additional benefits. If the 20 days are taken in May or June in New Jersey or April through June in the southern Mid-Atlantic, there will be little if no benefit to harbor porpoise because harbor porpoise are not usually taken in those areas at those times.

Regarding the other upcoming FMP, the Dogfish FMP is still under development; therefore it is unclear what the Councils' preferred alternative is regarding that plan. NMFS believes it is premature to analyze the possible impacts of the Dogfish FMP without a preferred alternative. The other plans are still either in the development phase or will not go into effect until after the spring 1999 fishery, thereby not providing any clear benefits to harbor porpoise in the required 6-month time frame.

As stated in the proposed rule, the HPTRP measures are expected to be reevaluated on a yearly basis. NMFS will consider any new regulations that may affect harbor porpoise or the implementation of this plan and evaluate whether management measures need to be changed at that time.

Comment 4: One commenter recommended that the HPTRT be convened semiannually to see if the HPTRP is meeting objectives.

Response: NMFS intends to reconvene the teams semiannually the first year of plan implementation in order to track the plan's progress toward the 6-month MMPA goal. Whether or not reconvening the TRTs semi-annually after that first year is necessary would depend on the circumstances.

Comment 5: One commenter recommended that NMFS coordinate HPTRP development with annual FMP adjustments that will occur for the Multispecies, Monkfish, and possibly Dogfish FMPs. FMP evaluation will begin in November, and recommendations will be provided to the Council every December. Any changes to plans will be submitted by the Council to NMFS by February 1 each year, with implementation on May 1.

Response: NMFS agrees that close coordination with the Fishery Management Councils on annual changes that will affect fisheries is a good idea. During the first year of plan implementation, the TRT will meet in the summer of 1999 to discuss the plan's progress and recommend any changes to the plan based on the spring fishery's results. In finalizing recommendations, NMFS would have the opportunity to coordinate with the Councils in the fall at the same time the Councils are considering adjustments for fishery management purposes.

Comment 6: One commenter recommended that NMFS should review Framework 25 to see whether there are ancillary benefits to harbor porpoise that have not been included in the proposed rule. If Framework 25 results in more positive benefits than projected, NMFS should consider reducing the 8½-month pinger requirement in the Mid-Coast area.

Response: Framework 25 was evaluated using the available data to determine ancillary benefits to harbor porpoise reduction. The benefits of Framework 25 were included in the analysis to determine how much additional reduction was needed from the HPTRP measures (see the EA for detailed information). When bycatch information is reviewed for spring of 1999, further information will be available to evaluate the impacts of implementation of Framework 25 during 1997 and 1998.

The HPTRP has an overall strategy for the entire GOM that is expected to reach MMPA goals for this fishery. Individual areas cannot be viewed in a vacuum. The Mid-Coast area has made progress in reducing bycatch by using pingers. Therefore, contrary to supporting a reduction in pinger use, this fact supports the continued use of pingers so that bycatch continues to remain under control. This plan will not work if bycatch reduction achieved in one area is replaced with bycatch increases in another area because mitigation measures have been removed.

Comment 7: One comment supported the need for the proposed regulations and noted that the proposed regulations can work well with the FMPs developed by NEFMC and MAFMC.

Response: NMFS agrees.

Comment 8: One commenter stated that the process was inappropriately delayed and, consequently, requested an additional public comment period.

Response: NMFS agrees that the process experienced delays for many reasons. Significant public comment was received throughout the TRT process, including an additional meeting in December 1997 for the GOM. Addressing the harbor porpoise bycatch issue has been an ongoing process since the early 1990s, and most of the measures in the TRT draft plan from 1996 had already been put into place through framework actions implemented under the NE Multispecies FMP. While the proposed rule published in September 1998 goes beyond these measures, NMFS determined that 30 days was sufficient for additional comments, given the long history of public involvement.

Comment 9: Several commenters felt that because small mesh fishermen in the Mid-Atlantic were not adequately involved in the TRT process, any regulations affecting this segment of the fishery should be open to public hearings.

Response: NMFS disagrees that the small mesh fishermen did not have the opportunity to be represented in the MATRT. The MATRT included a number of industry representatives and state fishery management agencies. In addition, the MATRT meetings were open to the public. However, many fishermen typically using this type of gear in nearshore fisheries in the Mid-Atlantic, while present at the start of the MATRT process, did not participate

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once the MATRT agreed to address only the monkfish and dogfish subfisheries.

Comment 10: One commenter complemented the Press Guide which explained the proposed regulations but noted that the northern and eastern boundaries of the Mudhole were in error.

Response: The actual chart provided in the Press Guide was correct. However, NMFS agrees that the accompanying text contained errors in the northern and eastern boundaries. NMFS will review the Press Guide and revise it based on final regulations.

Comment 11: One commenter requested that the analysis from the GOM pinger experiment be given to the MAFMC. The commenter stated that a consensus recommendation could be developed with the new results from the GOM experiment.

Response: NMFS will provide the MAFMC with the results of the 1997 pinger experiment, which can also be discussed at the next meeting of the MATRT.

Comment 12: One commenter stated that combining the Mid-Atlantic and GOM TRTs is not a good idea. The fisheries are not the same, and this approach would only weaken the position fishermen hold on the TRTs.

Response: NMFS agrees that the fisheries are different; that is why distinct strategies were maintained for each region even though both geographic areas were included in one set of regulations. The regulations would not have been different had they gone through two separate rulemaking processes. NMFS is considering whether or not the two teams should continue to meet separately or whether some or all of the meetings should be combined.

Comment 13: One commenter notes that the statement "the HPTRP is based in large part on recommendations in the draft GOMTRP and the MATRT report" is not accurate. NMFS has expanded the terms of the regulation so significantly that NMFS has jeopardized any future TRT discussions because participants cannot be assured that their time, deliberations, and consensus will be honored and accepted by NMFS.

Response: NMFS disagrees that the terms of the regulation have been expanded significantly from the two TRT recommendations. The GOM plan retained the strategy of discrete closures surrounded by larger areas of pinger use as recommended by the TRT at its December 1997 meeting. The strategy of gear modifications based on gear types that reflected locally prevailing practices in the Mid-Atlantic were retained. In both cases, some changes were made in the final regulations based on new information and comments received during the public comment period. The TRT deliberations are integral to the process and provided valuable insight into how these issues between stakeholders might be resolved. Individual team member contributions are invaluable, and the teams are to be fully commended for persevering through a difficult process. Changes made to those recommendations reflect actions considered necessary to meet agency obligations under the law, to reflect concerns of all constituents, and to be certain that regulations are enforceable. This process is relatively new and both TRT participants and NMFS have learned ways the process can be improved. NMFS agrees that continued efforts at communication between NMFS and the teams throughout the process is necessary for the process to maintain its integrity.

Comment 14: One commenter questioned whether the proposed rule discusses the new information that has warranted the changes that NMFS has made from the 1997 proposed rule. The commenter stated that no conclusive information was presented at the December 16—17 meeting resulting in any consensus or recommendation from that meeting to warrant those changes.

Response: Recommendations did come out of the December 16—17, 1997, meeting, and they are reflected in the GOMTRT's report of January 14, 1998. NMFS agreed with many of the GOMTRT's recommendations, and the proposed rule (September 11, 1998) incorporated most of the Team's recommendations. NMFS agrees that this was not a consensus report. The August 1997 proposed GOMTRP provided for a variety of measures, including requirements for fishery closures and closures with pingers aimed at harbor porpoise protection that were ultimately implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 1996 bycatch data revealed that these measures were ineffective at reducing overall bycatch, and, based on this new information, NMFS concluded that the changes to the original proposed GOMTRP were warranted. These data and historical management measures are discussed in detail in the EA.

Comment 15: One commenter stated that there is confusion because some areas are closed for both groundfish conservation and harbor porpoise protection. In some areas that are closed for harbor porpoise protection only, fishing with gillnets is permitted with approved pingers. This distinction between areas closed for harbor porpoise conservation and areas closed for groundfish conservation should be clearly articulated as a matter of general policy in the final rule. This would obviate the need to initiate a framework adjustment each time a groundfish conservation closure was shifted or lifted if it occurred in an area also closed for harbor porpoise protection.

Response: Since the harbor porpoise regulations are promulgated under the MMPA, the regulations will remain in effect regardless of shifts in groundfish closures under the Magnuson-Stevens Act. However, the effects of changes in groundfish closures on the effectiveness of the HPTRP would need to be reviewed and changes made to the plan, if appropriate, to retain its effectiveness.

Comment 16: One commenter recommended including a definition of baitnets in the rule.

Response: A description of baitnets is provided in the regulations for the NE Multispecies FMP (50 CFR § 648.81 (f)(2)(ii)) as "a single pelagic gillnet, not longer than 300 feet (91.44 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm), provided that the net is attached to the boat and fished in the upper two thirds of the water column, the net is marked, there is no retention of regulated species, and there is no other gear onboard capable of catching NE multispecies." The HPTRP regulations include an exception for single pelagic gillnets or baitnets.

Comment 17: One commenter noted that the capture of harbor porpoise in mid-water trawl fisheries has not been adequately addressed within the proposed rule. The commenter stated that the mid-water trawl fishery for Atlantic herring represents the biggest increase in fishing effort and is classified as a Category II fishery. The efforts of reducing bycatch through gillnet regulations could be negated if no regulatory action is implemented for the mid-water trawl fishery for Atlantic herring.

Response: NMFS agrees that the mid-water trawl fishery for Atlantic herring has the potential to take small cetaceans. In the proposed List of Fisheries for 1999, the GOM and Mid-Atlantic herring mid-water trawl fishery are proposed as Category II, based on comparisons with other gear types known to take several species of small cetaceans and the fact that herring are an important prey item for several stocks of marine mammals. However, NMFS currently has no observed takes of harbor porpoise in this fishery, and consequently it is not included in the final HPTRP. Monitoring will continue through the Sea Sampling Observer

Program at a level consistent with the valid sampling scheme currently used by the program.

Comment 18: One commenter expressed reservations about NMFS' intent to implement the five stated non-regulatory measures recommended by the GOMTRT at its December 1997 meeting. The study to evaluate habituation and displacement has been concluded, and the results should be published. A census of the gillnet fleet should be readily available through existing reporting requirements. The commenter also felt that there has been sufficient time for NMFS to investigate options for providing support to fishermen for pinger technology. The commenter questioned why these issues are not addressed with the proposed rule. The commenter noted that NMFS will need to have a pinger training course available at all times so as not to prevent potential fishermen access into the gillnet fishery.

Response: One study to evaluate habituation and displacement took place during the summer of 1998, but a final report was not available at the time of the proposed rule. Results of this study will be published as soon as possible. The implications of this study for the HPTRP will be discussed at the next meeting of the TRTs in 1999.

A census of the gillnet fleet using existing reporting measures is expected to occur in the near future. When the census is complete, the results will be reported.

NMFS has investigated the potential for support for fishermen to purchase pingers but no viable options are available at this time.

The certification program for fishermen using pingers is expected to be available as needed.

Comment 19: One commenter suggested that NMFS track harbor porpoise by radar to alert fishermen and thereby give fishermen the opportunity to move nets. Another commenter suggested daily tracking of harbor porpoise to regulate fishing that day.

Response: Given current technologies, it would not be feasible for harbor porpoise to be tracked by radar. Radar tracking poses significant difficulties with small cetaceans, both technically and practically. Additionally, because of the nature of the gillnet fishery, it would be impractical for fishermen to retrieve their nets when harbor porpoise are in the area without significantly reducing their catch. Daily regulations of fishing would be nearly impossible to administer and impractical for fishermen to comply with.

Comment 20: One commenter suggested making the gillnets smaller.

Response: If the comment refers to the actual size of the deployed nets, this approach is part of the reasoning behind the reduced floatline lengths in the Mid-Atlantic component of the HPTRP.

Comment 21: One commenter suggested that fishermen should not be allowed to fish in the same area where harbor porpoise eat.

Response: Although the NE multispecies and Mid-Atlantic fisheries are not necessarily targeting harbor porpoise prey, they do use many of the same feeding areas as harbor porpoise. Since restricting fishing away from areas of harbor porpoise feeding would severely restrict fishing opportunity and because it is unclear exactly where and if harbor porpoise feed on a regular basis, the intent of the pinger requirements is to allow fishermen to be in the same general area as harbor porpoise while minimizing interactions.

Comment 22: One commenter suggested closing certain areas to fishermen, particularly during harbor porpoise mating seasons. Another commenter suggested generally implementing special fishing times.

Response: The intention of the HPTRP is to close certain areas to fishing during times of high bycatch, i.e., when chances of interaction between harbor porpoise and gillnet fisheries are high. However, because all areas cannot be closed if a viable fishery is to exist, fishing during times and areas adjacent to closures can only be allowed if pingers are used.

Comment 23: One commenter recommended that no fishing be allowed when harbor porpoise are in Maine.

Response: The HPTRP closed the NE area, in Maine, from August 15 to September 13, the time period when harbor porpoise are most common in Maine waters.

Comment 24: One commenter recommended that the MMPA and ESA be strengthened.

Response: NMFS will reevaluate the effectiveness of the HPTRP management measures and the effectiveness of the MMPA to achieve harbor porpoise conservation in 1999. NMFS will not reevaluate the ESA with regard to TRPs because NMFS regards the MMPA measures sufficient for conservation of harbor porpoise.

Comment 25: One commenter suggested that NMFS list harbor porpoise as threatened.

Response: In 1993, NMFS proposed listing the harbor porpoise as threatened under the ESA in response to a petition by Sierra Club Legal Defense Fund on behalf of 13 other organizations. NMFS' research findings at that time indicated that the rate of bycatch of harbor porpoise in gillnet fisheries might reduce the population to the point where it would become threatened and that the regulatory measures in place to reduce this bycatch were inadequate. NMFS has not yet issued a final listing determination. New data, new regulations, and this rule to implement the HPTRP provide substantial new information for consideration by NMFS and the public. The proposed rule to list the GOM harbor porpoise as threatened under the ESA was reopened for public comment on October 22, 1998. The public comment period closed on November 23, 1998. NMFS plans to make a listing determination in the near future based on the new information and public comment on the proposed rule.

Comments on Data and Research

Comment 26: One commenter recommended that the PBR formula be re-assessed during the next re-authorization of the MMPA because the default safety parameters in the model are inaccurate and contrary to the available science, which indicates that harbor porpoise have an extremely short life span, early maturation, and a very high, successful reproductive rate, compared to other odontocete species.

Response: NMFS is unaware of new scientific information that could be used to re-assess the default parameters. Any new, valid scientific information would be welcome, evaluated, and incorporated, as appropriate, into these assessments. However, in the absence of other information, the default model parameters used in the PBR formula represent the best available scientific information on this topic. The life history of harbor porpoise, among other related issues, was discussed in length at a meeting in 1996, the results of which are published by Wade and Angliss, 1997, in "Guidelines for assessing marine mammal stocks: report of the GAMMS workshop April 3–5, 1996, Seattle Washington." A peer-reviewed scientific article that describes some of the work that went into defining the parameters is summarized by Wade, 1998, in "Calculating limits to the allowable human-caused mortality of cetaceans and pinnipeds."

Comment 27: One commenter noted that the PBR level based on population dynamics continues to be ultraconservative and asked if NMFS considered a peer-review debate on choosing to use this conservative reproductive estimate. Many scientists feel that this may be too conservative.

Response: NMFS has used peer reviewed information to choose the population dynamic parameters in the evaluation of the PBR calculation. See comment number 26 for references to the peer-reviewed work in this area.

Comment 28: One commenter expressed concern about methods used to estimate harbor porpoise bycatch because calculations are based on takes per haul as the unit of effort and not the number of takes per net. This commenter also expressed concern about weighout landings as the multiplier and recommended a review of this process for an alternative with more precision. Another commenter stated that NMFS is unwilling and unable to correct and adjust estimates of fleet size and methods of extrapolation used to determine effort and that NMFS has never had reliable fleet size information to measure effort. A third commenter stated that NMFS' bycatch calculations, based on what the gillnet fishery catches, are incorrect. This commenter noted that, despite continuous requests to adjust this approach to a more practical and realistic method, NMFS continues to do it the wrong way. This commenter recommended that units of fishing effort are more appropriate means of calculating and estimating harbor porpoise bycatch.

Response: The current method used to estimate harbor porpoise bycatch does not rely on fleet size. Therefore, obtaining the most up-to-date estimates of fleet size would not change the bycatch estimate.

Choosing the most appropriate unit of effort for the bycatch estimate is a two-step process, and both steps must be accurate and reliable before another unit of effort can be used. Step one is choosing the best unit of effort using the Sea Sampling data, and step two is calculating that unit of effort for the entire fishery.

By definition, the most appropriate theoretical unit of "effort" needed in any bycatch estimate is a unit of "effort" that is expected to relate directly to the number of harbor porpoise that are caught and to increase proportionally as the number of harbor porpoise takes increase. Therefore, even on a theoretical basis, that unit of "effort" does not have to be a unit that is typically thought of as fishing effort, such as days fished or number of boats. Other possible acceptable units of "effort" could be hours nets are soaked multiplied by the number of nets, or pounds of fish species "X" caught in the net. Again, for the areas and times when there are both harbor porpoise and fishing, what is needed is a unit such that as the level of that unit increases so does the number of caught harbor porpoise.

After that unit is chosen, it is essential that NMFS estimate the total amount of that unit for the entire fishery. So, for example, if hours of net soak time represented the best unit of "effort" then it would be necessary to calculate the total number of hours soaked by all nets used by the entire fishery, by the time and areas that are appropriate. Data in the fisher trip logbooks could be used to calculate this information. However, even in 1997, many of the data fields in the logbooks were left blank. Until the logbooks are completely and accurately filled out all of the time, it is impossible to use net soak time to calculate the total level of "effort."

NMFS is willing to investigate other possible units of "effort" but, until the total amount of a unit for the whole fishery is available and accurate, it is not possible to use any other unit of "effort" except that already being used—tons of fish landed from the dealers.

Comment 29: Two commenters asked how there could be insufficient data to determine population trends for this species, but enough information to determine a specific PBR point estimate.

Response: By definition, PBR requires one abundance estimate and the level of confidence associated with that estimate. This information is available, so PBR can be calculated. However, determining population trends require several abundance estimates within a long time series. At present we have three abundance estimates taken during 5 years (1991, 1992, and 1995). Three abundance estimates with Coefficient of Variation's in the 20 percent range during such a short time period are not sufficient to accurately determine if there is a trend. However, another abundance survey is scheduled for the summer of 1999. The NEFSC is intending to use the four abundance estimates (1991, 1992, 1995, and 1999) taken from the resulting 9 years (1991–1999) to investigate whether a trend can be determined and the level of accuracy of that conclusion.

Comment 30: One commenter noted that the proposed rule stated that the Assistant Administrator will review, on an annual basis, the effort and bycatch data to see if the HPTRP is achieving the PBR goal. The commenter then drew the conclusion that, if the HPTRP is effective, the number of harbor porpoise should increase each year. NMFS indicated in that same rule that sufficient data are not currently available to determine trends in harbor porpoise stock size. The commenter then asked that the harbor porpoise stock size be assessed to see if it does increase with TRP efforts.

Response: Harbor porpoise stock size will continue to be assessed by conducting sighting surveys every few years. There is a survey scheduled for the summer of 1999. The frequency of future surveys will be determined by considering the level of accuracy of each individual estimate and the need to get accurate abundance estimates of all marine mammals found in U.S. waters. At the present time, it has been suggested that conducting surveys every 4 years would be adequate.

The HPTRP will be assessed by monitoring the level of by-catch. This monitoring program will be on a quarterly basis, at least for the next few years.

Comment 31: One commenter requested that NMFS undertake research on pingers to evaluate displacement and habituation of harbor porpoise, and long-term effects of pinger use on the ecosystem.

Response: Research has started on this topic and will be continuing. Specifically, during the summer of 1998, research was conducted that investigated the small-scale distribution and relative abundance of harbor porpoise near and around pingers and herring weirs. This project will provide information on displacement and short-term habituation (on a monthly scale). Another project will be conducted during January to May 1999 and will investigate displacement, short-term habituation, and short-term effects on the ecosystem. This project will involve monitoring the spatial distribution and relative abundance of harbor porpoise, other marine mammals, herring, and other fish in areas and times with and without pingers.

Comment 32: One commenter stated that the plan appears to contain a number of discrepancies between some numbers in the tables and text of the EA that call into question the rigor of the underlying assumptions of reductions in mortality; for example, mortality reductions calculated based on use of pingers in areas or times where pinger use is not required.

Response: NMFS has thoroughly reviewed the calculations in the draft EA with respect to the final rule and has updated the EA. Some of the confusion is a result of the complexity of the data and of the difficulties in its presentation, rather than actual errors. The shaded area in Table 4 of the draft EA represents areas where reductions *can* be made, not necessarily those made by the HPTRP. Discrepancies between the text and the charts have been re-evaluated and corrections made as appropriate in the final EA. NMFS disagrees that the discrepancies call into question the rigor of the underlying assumptions of reductions in mortality. The discrepancies were relative to 1994 and 1995 data that were not available in the 1996 data format, and consequently the estimates of reduction were less accurate. The impact of Framework 25 could not be incorporated. Because of the nature of available data, calculations of plan effectiveness on years prior to 1996 were not as accurate. These data are provided at the request of many GOMTRT members for comparison purposes, but the 1996 data, with the analysis of Framework 25, are primarily what are used to support the conclusion this plan will reach its goal.

Comment 33: One commenter challenges the information that establishes the PBR of 483 animals although specifics were not given.

Response: The value of the PBR for the Gulf of Maine/Bay of Fundy harbor porpoise has been accepted by the Atlantic Scientific Review Group. This is a group of non-government scientists that were formed under the MMPA and whose purpose is to review, correct, and monitor the data going into the assessments of all the marine mammals (see also response to comment 26).

Comment 34: The commenter stated that their understanding was that the bycatch information reflected in the proposed rule was based on a "5 year (1990–1995) average mortality estimate" and then questioned how NMFS can justify the expansion of regulatory conditions without current information, i.e., later than 1995.

Response: Information used to evaluate the proposed regulation was the most recent available at the time, through 1996 verified and complete, and initial estimates for spring of 1997. Therefore, data more recent than 1995 were used. Secondly, the impact of the proposed regulations were evaluated with respect to the most recent fishery management measures, including Framework 25 to the NE Multispecies FMP. The average referenced in the preamble was solely to illustrate the trend over the years of available data; it was not used to justify any regulatory components of the plan, the most recent complete data was used (1996). The years 1994 and 1995 were also provided for comparison.

Comment 35: One commenter suggested that it is time to think about opening up some of the closure areas with pinger use now, not expanding them. The commenter stated that effort and migration does not necessarily equal entanglement due to absence or presence of feed fish and that this was accepted by the NEFMC in deciding the appropriate closure for Massachusetts Bay.

Response: Clearly the Massachusetts Bay Closure was not effective because bycatch occurred just outside the closure time/areas. Fishing effort and the presence of harbor porpoise does increase the probability of entanglement. NMFS agrees that there is inter-annual variability in porpoise distribution often based on prey distribution; however, that justifies, not contradicts, the strategy for expanded pinger times and areas.

Comment 36: One commenter recommended expanding the observer program to ensure accurate bycatch estimates under the new management regime.

Response: When applying observer coverage under the new management regime, NMFS attempts to insure the best possible, unbiased, and accurate harbor porpoise bycatch estimate, given available resources and recognizing the need for accurate information on other marine mammal stocks. This is just one component of an overall fishery observer program.

Comment 37: One commenter recommended that NMFS provide the GOMTRT with a detailed description of its planned scientific research and request its comments on those studies.

Response: NMFS will provide descriptions of planned research to the GOMTRT and consider comments as appropriate.

Comment 38: For the Mid-Atlantic, three commenters felt that despite substantial fishery-dependent observer data for other gillnet fisheries which indicate little or no harbor porpoise interaction and the recommendation by the MATRT which focused only on monkfish and dogfish fisheries, NMFS has unfairly expanded the HPTRP to include all fishing with gillnets in inshore and offshore waters of the Mid-Atlantic. One commenter felt that the small mesh gillnet fishery should have a minimum mesh size limit of 5 inches.

Response: NMFS agrees that during the deliberations of the MATRT, the Team focused its recommendations on subfisheries rather than all Mid-Atlantic gillnet fisheries, as defined in the List of Fisheries. The MATRT was warned, however, that analysis of bycatch data by subfisheries under the constraints of limited sample sizes required highly speculative assumptions. Due to this factor as well as enforcement concerns and the lack of FMPs for those fisheries, NMFS expanded the definition of Mid-Atlantic fisheries covered by the HPTRP to large and small mesh fisheries.

However, NMFS has excluded mesh sizes of 5 inches (12.7 cm) and less from the small mesh regulations at this time. The reasons for this is the limited number of observed takes in these mesh sizes currently available in the data and because the fishermen typically using this gear in the nearshore Mid-Atlantic fishery, while present at the start of the TRT process, did not participate once the TRT agreed to address only the monkfish and dogfish subfisheries. This does not mean the evidence of potential interactions in this sector of the gillnet fishery will be ignored. Although the number of observed takes in mesh sizes of 5 inches (12.7 cm) or less is small, takes have been documented that were not "dogfish-targeted" trips. There were 3 takes in the menhaden fishery in 1997 in New Jersey and there was a take in the southern Mid-Atlantic shad fishery in 1996. Therefore it is likely that takes do occur in small mesh fisheries. Given this concern, NMFS will reevaluate the observer data (particularly through the expanded observer program and alternative platforms) and stranding data for these fisheries in the spring, 1999, and reconsider if management measures to reduce bycatch are needed.

Comment 39: One commenter stated that NMFS made assumptions about bycatch in the Mid-Atlantic that are erroneous. The EA specifies that it was assumed that no mortality occurred in fisheries other than those for monkfish and dogfish, which is incorrect. The EA also assumed that no porpoise can ever be caught in waters off Virginia and Delaware, which is unlikely based on co-occurrence of animals and gillnet fisheries in those areas.

Response: NMFS agrees that harbor porpoise mortalities occur in fisheries other than monkfish and dogfish. The assumptions alluded to are just some of a number of assumptions that were made in order to provide the models that could evaluate specific gear parameters for bycatch reduction potential for the MATRT meetings. The regulations themselves address small and large mesh gillnet fisheries with specified parameters and do not exclude Virginia and Delaware.

Comment 40: One commenter recommended that NMFS reexamine the validity and accuracy of its bycatch estimates in the Mid-Atlantic in light of unlikely assumptions, incomplete observer coverage in the past and available information on bycatch levels for 1997. The commenter recommended that if bycatch estimates are determined to be higher than those assumed in the proposed measures, the proposed time/area closures should be expanded to account for additional bycatch.

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Response: The final regulations cover nearly the entire time and areas where the 1997 takes occurred. The rule includes times and areas where the observer coverage in the past was low. Observer coverage will be provided in the Mid-Atlantic at appropriate levels to evaluate whether or not the plan is meeting its goals. After HPTRP implementation, bycatch estimates will be reviewed; if they are higher than expected, NMFS and the TRTs will need to discuss what further measures might be necessary.

Comments on Pingers: Specifications, Options, Implementation Issues

Comment 41: One commenter stated that pingers are not the only option in the Gulf of Maine. In the Mid-Atlantic, it has been proven that the use of heavier gauge monofilament prevents mammal takes in gillnets. Many fishermen in southern New England are already using heavier gauge twine. Those fishermen should have the same option as the Mid-Atlantic fishermen and NMFS should review the data and present them to the TRT.

Response: Data reviewed by the MATRT on harbor porpoise takes in gillnet sets using heavier gauge monofilament appear to show a difference in the level of harbor porpoise takes when compared to finer twine sizes in sets for monkfish and dogfish. Most of the observed sets evaluated in these data were from NJ south. Data has not been analyzed for these gear options in the Gulf of Maine and they were not considered as a bycatch reduction option by the GOMTRT. In addition, because of the level of data available, and the assumptions necessary to model these variables, NMFS does not want to expand this mitigation measure to a much larger geographic area. In addition, NMFS has developed these regional strategies based on TRT recommendations. The majority of the New England fishery is diverse and no correlations in the data for gear parameters were apparent to TRT members; consequently they chose to use a tested take reduction strategy, i.e., pingers. As with many fishery management measures, lines are drawn to identify where measures change. While it is true that fisheries adjacent to but divided by such a management line may show more similarity than with fisheries within their appropriate sector, the line chosen represents the point where an overall change in the fishery occurs.

Discussion in the MATRT with respect to pingers as a management option was rejected for some of the same reasons that gear modifications were not applied in the GOM. While pingers have shown success in experimentation, they have not been evaluated ("proven") under widespread use. In addition, pingers are not passive and other environmental effects are yet to be evaluated. Harbor porpoise may also behave differently while in the southern portion of their range. With regard to experimentation with pingers, the character of the fishery is much different in the Mid-Atlantic, being more spread out than in the Gulf of Maine. Therefore, an experiment in the Mid-Atlantic would have to be of such magnitude that the cost and years of effort do not seem justified when other options (gear modifications) that have not been tested are available. Therefore, the precautionary approach justifies limiting these two strategies geographically until further data are available. In the future, based on the results of implementation of the HPTRP, NMFS will consider, in conjunction with the advice of the TRT, whether other strategies are viable for either the GOM or the Mid-Atlantic. NMFS will analyze available data from the southern New England area and provide that information for review at the next meeting of the TRT.

Comment 42: One commenter recommended that NMFS should require that vessels carry four spare pingers in the event that there is a pinger malfunction. NMFS' own observer data does not support that fishermen are diligently maintaining their pingers, but instead indicates that in actual use, pinger effectiveness levels are significantly less than those in controlled experiments.

Response: NMFS disagrees and maintains its position that both manufacturers and fishermen will be aware of the importance of technically correct and properly maintained pingers. This is one of the primary objectives of the pinger certification training and outreach program, which began in September 1998 and will continue, as needed, after implementation of the final rule. Under the HPTRP certification is mandatory, as was recommended by the GOMTRT, for the very reason of removing some of the uncertainty surrounding the results of the experimental fisheries. Since this type of outreach was not in place for the experimental fisheries, the results of future commercial use of pingers are expected to be more positive. In addition, the results of the Pacific TRP are now available, which show high effectiveness of pingers under commercial conditions; that plan also incorporated a strategy of mandatory skipper education workshops which is partially credited for the success.

Comment 43: One commenter objected to rigid specifications for pingers as proposed in the rule, because it limits future pinger development. The concerns about the frequency of 10 kHz are about limited availability from a single manufacturer and that the specified frequency is within seal hearing range and acts as a "dinner bell" for seals in the area of the gillnets. Concern was also expressed that the specified decibel range (132 dB) limits development of a stronger pinger that may require less pingers on the net which would decrease costs to fishermen.

Response: NMFS recognizes that the current specifications may limit somewhat technological development on pingers. However, the pinger specifications need to remain limited during the first year of plan implementation. The only pinger for which there is currently sufficient scientific documentation regarding effectiveness in the GOM for harbor porpoise is the one specified in this rule. The best approach at this time is to implement this plan with tested technology and then entertain ideas on improving that technology or investigating different options after the plan meets its initial goal.

Comment 44: One commenter recommended that NMFS evaluate the pinger (PDM[PICE]) which has been tested in Europe and possibly incorporate its specifications. Another commenter stated that although the European pinger may be technically superior to the Dukane unit its sonic profile is very different from that of the Dukane pinger and, as such, would not be approved under the specifications in the proposed rule. This commenter urged NMFS to approve the use of pingers with the sonic output specifications of the European unit. In addition, NMFS should undertake focused experiments to develop a range of approved sonic profiles.

Response: While NMFS agrees that eventually pinger specifications may need to be revised based on new technology, new pinger specifications are not incorporated into this final rule (see response to previous comment 43).

Comment 45: One commenter recommended that NMFS examine all experience to date in use of pingers by fishermen, adopt a more conservative approach to reflect uncertainties and reality, and after the first year of the HPTRP reexamine the assumed rate of effectiveness based on observed bycatch rates. Another commenter stated that bycatch and bycatch reductions should be projected using a realistic estimate of pinger effectiveness by time and area, relying on NMFS data rather than an optimistic region-wide estimate of 80 percent effectiveness. These two commenters, in general, felt that pingers are projected to be more efficient in reducing bycatch than data can support.

Response: NMFS has examined all experience to date in the use of pingers by fishermen in the GOM. The results of the two scientific experiments conducted in the fall of 1994 and in spring of 1997 were between 80 percent to 100 percent effectiveness. NMFS data indicate that for experimental fisheries in some times and areas, pinger efficiency was greater than 80 percent while in other times and areas the efficiency was less than 80 percent. The EA details the specifics on each of the experiments and experimental fisheries. The spring 1997 experiment was conducted based on GOMTRT recommendations, primarily because of the discrepancy in the results of various experimental fisheries, in order to remove the uncertainty over the technology's effectiveness. The TRT recommended in both the draft GOMTRP (August 1996) and at the subsequent GOMTRT meeting in December, 1997, that in order to avoid any reduction in effectiveness during commercial fishing conditions, training of fishermen should be mandatory. Certification of fishermen is occurring and is expected to remove problems with improper use and maintenance that may have caused disparate results in the experimental fisheries. The data currently support the choice of an average region-wide 80 percent efficiency, based on controlled experimental results, but allowing for some discrepancy in levels of effectiveness under actual fishing conditions.

Comment 46: One commenter recommended that because bycatch estimates will go up if a more conservative pinger effectiveness estimate is used, and because NMFS has not fully accounted for effort displacement outside of time/area management zones, NMFS should adopt a blanket provision that requires all gillnets in New England be equipped with pingers except at those times when, and in those areas where, harbor porpoise are highly unlikely to occur (e.g., Massachusetts Bay or Cape Cod South from June 1 to Sept 15).

Response: NMFS agrees that inter-annual variability in both fishing effort and harbor porpoise distribution has been a problem for bycatch reduction strategies. However, NMFS has chosen its strategy (discrete areas of pinger use) with respect to pinger requirements for several reasons. Pingers have not been used in widespread application and a number of questions remain such as overall environmental effects and habituation and displacement of harbor porpoise or other species. The times and area are currently large enough to demonstrate, based on available data, that the plan will reach its goal without the additional burden on the fishery that such a blanket provision would entail. Should monitoring reveal that bycatch indeed shifts to areas outside the closures and should research provide answers to address these remaining questions, complete implementation of pingers in the fishery would be considered along with other options.

Comments on the Gulf of Maine Component—Proposed Schedule of Closures and Pinger Use

Comment 47: One commenter stated that in general, closures are insufficient in time and space.

Response: Detailed responses to comments on time/area closures are provided in later comment responses. The EA analyzes the current plan based on available data. NMFS has determined that the plan will reach MMPA goals.

Comment 48: One commenter stated that Framework 25 will provide greater harbor porpoise conservation than considered by NMFS. This includes the 12-month closure and the rolling closures.

Response: NMFS did evaluate the additional bycatch reduction that would be achieved by Framework 25 (see Table 4 in the final EA and text of the final EA) and concluded that Framework 25 measures amounted to about a 46 percent reduction in bycatch before accounting for bycatch reduction from MMPA harbor porpoise measures. This reduction was considered together with the HPTRP expected reductions to estimate the overall bycatch reduction based on data for 1996.

Comment 49: One commenter stated that NMFS has failed to analyze the benefits of a number of measures under Amendment 7. For example, NMFS failed to consider the benefits to harbor porpoise of the net restrictions under Amendment 7 and the limits on directed catches of cod which further reduce the number of nets deployed by the gillnet sector. The cod catch limit was further reduced in Framework 25 which has resulted in reduced number of nets deployed. Also the Days-At-Sea restrictions have taken a lot of effort out of the fishery. These and other fishery management measures have resulted in substantial reductions in gillnet fishing effort which translate into lower probability of harbor porpoise interactions.

Response: NMFS now has 1997 data available which indicate that these measures have had no effect on the total bycatch of harbor porpoise in the GOM, although the distribution of takes geographically has shown interannual variability.

Comment 50: One commenter stated that there is no consistency within the regulation or the explained rationale to support the differences in regulations among areas. For example, the Mid-Coast is closed for seven plus months except for pinger use and the Northeast is only closed for 28 days. They are geographically adjacent. The commenter also questioned why there is only a four month regulatory condition in the Massachusetts Bay area and stated that NMFS does not account for the seasonal variability in the areas occupied by transiting harbor porpoise and fails to recognize the value of dynamic management.

Response: The regulations were developed based on GOMTRT recommendations and existing data. The areas are not managed the same because harbor porpoise bycatch varies between areas. Therefore, different measures are appropriate for different areas and the GOMTRT agreed with this approach. The Massachusetts Bay closure is longer than four months; it has been extended in the final regulation to include the months of December and January. This change is discussed in detail under comment number 60. As discussed during the GOMTRT deliberations, the strategy of small discrete complete closures surrounded by longer time/area closures where pingers are required was developed to account for the inter-annual variability in distribution of harbor porpoise and changes in fishing effort.

Comment 51: One commenter noted with approval that take reduction goals for the Northeast and Mid-Coast areas are already being met by measures currently in place and that no further restrictions are being proposed.

Response: Bycatch reduction has occurred within discrete closure areas, but the data show that bycatch overall has remained the same, most likely due to shifted fishing effort and inter-annual variability in harbor porpoise distribution. Therefore, these areas need to continue to achieve the same amount of bycatch reduction and the bycatch that has shifted elsewhere must be dealt with through other bycatch reduction measures as provided in the regulations.

Comments on the Gulf of Maine Component—Area-Specific Measures

Comment 52: One commenter supported maintaining the closure of the Northeast area for August 15 through September 15, citing its effectiveness.

Response: NMFS agrees and the Northeast Closure will remain in effect.

Comment 53: Two commenters requested that the plan maintain the spring (March 25 through April 25) NEFMC harbor porpoise closure in the Mid-Coast area. In addition, the commenter recommended amending the HPTRP to include a time and area closure specifically to protect harbor porpoise in the Mid-Coast during May and June because the rolling closure would not be effective during those months for reducing harbor porpoise bycatch. Another commenter recommended a complete closure during March and April.

Response: The Mid-Coast area has historically had high fishing effort and high harbor porpoise bycatch. This area was one of the first areas affected by efforts of the NEFMC to reduce harbor porpoise bycatch as a result of the NE Multispecies FMP. However, the limited one-month closure March 25 through April 25 was ineffective at reducing bycatch overall because it simply shifted fishing effort to other months and areas outside the closure where bycatch increased. Fishermen from this area are to be commended on efforts to develop mitigation measures for harbor porpoise bycatch and have been instrumental in development and experimentation with pingers as a management option. In fact, bycatch overall in the Mid-Coast area has decreased since 1994. Pingers have shown a very high effectiveness rate in the Mid-Coast in scientific experiments in both spring (1997) and fall (1994), although experimental fisheries in spring have shown mixed success. Harbor porpoise distribution and abundance as well as fishing effort show inter-annual variability. However, because Framework 25 provides for periods of complete closures in portions of the Mid-Coast area in the months of April, May and June and with the addition of the extensive pinger requirements under the HPTRP, a complete closure of the entire area during March and April is not considered necessary. The overall HPTRP strategy for the GOM is a series of short, discrete, complete closures in combination with much larger time/area closures where pinger use would be allowed to account for the changes in harbor porpoise and fishing effort that may shift bycatch elsewhere. The strategy for the Mid-Coast, including requirements for pingers under the MMPA, and closures under the Magnuson-Stevens Act are expected to achieve adequate results without additional closures.

Comment 54: Many commenters recommended adopting Framework 25 closures as harbor porpoise closures under MMPA. One commenter specifically suggested that it was inappropriate to rely on NEFMC groundfish closures to provide harbor porpoise protection. If the NEFMC makes any shifts or lifts closures the resulting harbor porpoise bycatch reduction is lost. Consequently, these same closures should be adopted under the MMPA regulations.

Response: NMFS recognizes its responsibility to protect harbor porpoise, but disagrees that these efforts need to be restricted to MMPA regulations if measures in effect under other statutes will help to achieve that goal. The NEFMC has as a stated objective in the NE multispecies FMP under Magnuson-Stevens Act that it must reduce the bycatch of harbor porpoise in this fishery and as such are also mandated to achieve bycatch reduction in this fishery. Adding additional closures in the Mid-Coast area on top of the Framework 25 Multispecies closures would create an undue burden on one segment of the fishery when the bycatch reduction for the plan overall meets MMPA objectives without such an action.

Comment 55: One commenter recommended closure of the entire Mid-Coast area (including Inshore areas II, III, IV under Framework 25) from March 25 through May 31. This commenter suggested that fishermen will just move from Area III to Area II, for example, and there would consequently be no net bycatch reduction.

Response: As noted above, the overall HPTRP strategy for the GOM is a series of short, discrete, complete closures in combination with much larger time/area closures where pinger use would be allowed. This is specifically to compensate for the inter-annual variability of both harbor porpoise and fishing effort that may shift bycatch elsewhere. Simply closing the entire Mid-Coast area from March 25 through May 31 would have the same inherent problems as the closures that have been in place under the Magnuson-Stevens Act for several years. Fishing effort would likely concentrate in January through March 24 or move just outside the Mid-Coast boundaries or into the Offshore area. NMFS disagrees that no net bycatch reduction will result from the proposed strategy because pingers are required in all of the months not covered by closure under Framework 25 surrounding the Area II, III, and IV closure months. Pingers were accepted by the GOMTRT as a viable bycatch reduction management alternative to time/area closures.

Closing the entire Mid-coast area would have an economic impact to the gillnet fleet would be $170,000 dollars in foregone revenue and it would impact 26 vessels. This is in addition to those costs already estimated for the Mid-Coast area. Given the extensive pinger requirement and a series of closures of Inshore Areas I through IV in Framework 25, a March 25 through May 31 closure is unwarranted.

Comment 56: Many commenters recommended extending the Mid-Coast Closure Area to include closure of Areas II and III for the months of April and May.

Response: See response to comment 53. This closure would cost the fleet $116 thousand dollars in foregone revenue and would affect 23 vessels. The overall plan is expected to reach MMPA goals without additional complete closures that exact such a cost to the fleet. NMFS has concluded that such a closure is currently unjustified.

Comment 57: One commenter recommended that the Mid-Coast be closed from September 15 through March 25 except for vessels using pingers.

Response: The Mid-Coast is closed in the final rule to vessels except those fishing with pingers from September 15 through May 31.

Comment 58: One commenter noted that the GOMTRT agreed there was a need to extend the boundary of Mid-Coast to the south to include a portion of Massachusetts Bay in the Mid-Coast closure area because of displacement.

Response: NMFS agrees that the GOMTRT discussed the need for dealing with the displaced fishing effort during the Mid-Coast closure period, March 25 through April 25, which in past years appears to have partially shifted into northern Massachusetts Bay. The final HPTRP extended the closure period in Massachusetts Bay when pingers are required to include the months of December through May. The HPTRP is based on a overall bycatch reduction scenario that is intended to spread the bycatch reduction effort throughout the fishery where bycatch occurs. This means that a bycatch reduction measure is in place (although not a complete closure) during the time period effort shifts might occur. Additionally Framework 25 closes the area from March 1 through March 31, the period previously closed for harbor porpoise protection under the Magnuson-Stevens Act. Allowing the use of pingers in the Mid-Coast, instead of prohibiting them from the area, allows fishermen to fish, making it less attractive and/or necessary to travel to the southern border to escape the closure. Therefore, the need to address bycatch in the northern portion of Massachusetts Bay is covered as part of the overall HPTRP strategy.

Comment 59: One commenter noted that the current proposal was beyond GOMTRT consensus and reasonable justification for pinger use in the Mid-Coast area. Instead, the commenter recommended pingers be required March 25 through April 25, October 1 through December 31, and that no complete closures be included.

Response: NMFS agrees that these measures are beyond the GOMTRT's recommended consensus plan as submitted in August, 1996. However, these measures were based, in part, on the recommendations of GOMTRT members at an additional meeting that was held in 1997. Since the GOMTRT's proposed plan was very similar to the closures in effect under the Magnuson-Stevens Act, both NMFS and many GOMTRT members concluded that the plan as originally proposed would not bring bycatch to below PBR as required by the MMPA. Therefore, more expansive measures were required. Because the Mid-Coast area has historically had high bycatch, a short closure both geographically and temporally that allowed pingers would provide limited bycatch reduction. Particularly, since pinger use has been more widespread in the Mid-Coast, NMFS agrees that bycatch has decreased. This further supports the requirement for continued closure with pingers in such a high bycatch area.

Comment 60: One commenter suggested that the months of December and January be added to the time period when pingers are required in Massachusetts Bay.

Response: NMFS agrees that adding the months of December and January to the Massachusetts Bay closure would provide additional bycatch reduction. Both the first proposed rule (August 13, 1997) and the December 16–17, 1997 GOMTRT meeting recommended that Massachusetts Bay be closed from February through May. Since the HPTRP relies on each of its components working together collectively to reach MMPA goals, it is possible to shift some of the time/area measures where data are less consistent and still meet the overall objectives. NMFS therefore decided to add the months of December and January to Massachusetts Bay which creates little additional burden on the fishermen who already have to purchase pingers.

Comment 61: One commenter agreed with the March closure and recommended that pingers be expanded to October through January in addition to the proposed time period of February through May. Table 4 in the draft EA shows that the bycatch reduction appears to be calculated based on the use of pingers in Massachusetts Bay in the Fall, yet the plan does not stipulate their use during those months.

Response: The shaded areas in Table 4 of the draft EA represent areas where pingers could be applied because they are areas that do not represent complete closures under the Magnuson-Stevens Act; they were selectively included in the calculations.

Bycatch has been high in the fall in Massachusetts Bay in previous years, but in more recent years (1996, 1997) bycatch has decreased significantly during that period. This final rule has extended the Massachusetts Bay pinger closure two months earlier than recommended by the GOMTRT and the proposed rule to include both January and December; this will gain further bycatch reduction in this area and will deflect some of the observed shifts in effort out of the Mid-Coast into the northern portion of Massachusetts Bay. Adding the months of December and January was recommended by another commenter. Since bycatch in the most recent years in October and November has decreased, which may be a result of decreased Days-At-Sea available to fishermen from fishery management measures, or to pinger use in the Mid-Coast which prevented some shifting of effort south into Massachusetts Bay, extending the requirement further into the fall is unwarranted at this time given the measures in the overall HPTRP.

Comment 62: One commenter recommended closing the area south of Cape Cod during May except to pingers, noting that bycatch was high in 1994 in this area and that it was recommended by the GOMTRT in December, 1997. This commenter also supported the March 1 through 31 closure and the September 15 through February and February through April pinger requirement.

Response: NMFS agrees with extending the spring pinger requirement into May. The recommended closure in the proposed rule addressed concern by the GOMTRT that observer coverage has been low in the Cape Cod South area. However, since zero takes have been observed in the September though November time period and additional bycatch reduction is expected in May, this will more than offset the fall period. Therefore in the final rule NMFS has changed the closure period in Cape Cod South to December through May.

Comment 63: One commenter requested that by June, 1999, NMFS analyze use of larger twine and other gear characteristics as a mechanism for reducing bycatch in the Cape Cod South area. Based on current information, this commenter recommended that pingers be required for December 1 through the end of February, instead of September 15 through April 30.

Response: NMFS agrees that gear characteristics should be analyzed for the Cape Cod South area and will provide that information when the GOMTRT meets in mid-1999. NMFS agrees that the start of the fall pinger requirement should be December 1, but disagrees that it should not be extended past February.

Comment 64: Many commenters recommended that the closure of Cape Cod South be expanded to include at least two weeks at the end of February and two weeks at the beginning of April, based on historically high bycatch during these periods. One commenter noted that under the current plan, fishing will be allowed without use of pingers during May, a month of high mortality in 1994. This block appears to be shaded in Table 4 of the draft EA, yet pingers are not stipulated in this area during May. This one commenter further recommended that fishing should only be permitted in May with use of pingers.

Response: See response to comment 61 with respect to shading in Table 4 of the draft EA. NMFS agrees that pingers should be used in May in Cape Cod South. NMFS also agrees that bycatch has historically been high between February and April. However, the one-month closure in March, surrounded by a closure where pingers are required (December through May) is consistent with the basic strategy of the overall plan, a complete closure surrounded by a much larger time when pingers are required. Additionally, such a closure would cost the fleet $53 thousand dollars in foregone revenue and affect 23 vessels. For all of these reasons a larger complete closure is not justified at this time.

Comment 65: One commenter recommended requiring pinger use in the entire Offshore area during the month of February instead of complete closure in February in Cashes Ledge and required pinger use for the rest of the Offshore area from September 15 through December 31. This would

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eliminate the February gear closure of Cashes Ledge.

Response: NMFS disagrees with allowing pingers during February in Cashes Ledge and with shortening the pinger use period to the fall only. Bycatch has been observed in both November and in February and is estimated at 45 and 258 animals respectively (1996). Therefore, to make management of this area consistent with the other areas in the HPTRP, a one-month closure surrounded by a period of pinger use during times when bycatch is expected is the most appropriate response. This means retaining the closure in February in Cashes Ledge and extending pinger use in the Offshore area November through March. Even though NMFS agrees that pingers are effective, they are not 100 percent effective. This is the reason why the strategy for the overall HPTRP remains a combination of complete closure and pinger use.

Comment 66: One commenter recommends that additional observer coverage was needed in the Offshore area to see if a closure in the month of November should be added to allow for additional bycatch reduction.

Response: See response to comment number 65. Observer coverage of this area will continue.

Comment 67: One commenter noted that there was never a recommendation for a closure in the Offshore area during the December 1997 meeting, nor did it recommend an expanded area of pinger use of the magnitude proposed. The commenter asked NMFS to justify the Offshore closure area and expanded pinger use.

Response: NMFS agrees that the GOMTRT did not recommend a complete closure in this area. However, NMFS disagrees with the second claim; the GOMTRT members present at the December 16–17, 1997 meeting did recommend expanding areas where pingers are required. Specifically, their recommendation was for NMFS to look at the bycatch data and consider closing statistical areas "515, 522 and maybe 521" and require pingers in that area. The Offshore Closure Area defined in the regulations is only part of area 515 and the very northernmost section of areas 521 and 522 and encompasses the area where takes have been observed.

Comment 68: One commenter stated that the current Offshore recommendation is excessive since it is based on short time frame of data and observer coverage. The commenter recommended that Cashes Ledge be closed for the month of February unless vessels have pingers but that the expanded Offshore area should be suspended until more information is gathered.

Response: NMFS agrees that data is limited in the Offshore area, but limiting the closure to a small area for short duration has all the inherent problems that have already proven this strategy to be ineffective. In addition, there have been observed takes in other months including November in 1996 and January and May in 1997. Therefore, the proposed strategy is similar to the strategy employed in the other areas of observed bycatch in the GOM, a one month closure followed by a more extensive closure with pingers allowed. However, consistent with other minor changes to the time/area closures in the proposed rule in the fall already discussed (Cape Cod South, Massachusetts Bay), the start of the closure in the Offshore area has been delayed to November 1 in the final rule.

Comment 69: One commenter noted that the proposed closure of Cashes Ledge would affect four Maine offshore gillnet vessels that often make a few sets in this area on their way to George's Bank. However the commenter was more concerned with vessels from ports in the Mid-Coast area which do fish this area regularly. The commenter noted that the Mid-Coast area had already met or exceeded its take reduction goals. This commenter recommended that rather than closing the Cashes Ledge area in February, NMFS should leave it open to vessels with pingers and that additional reductions should come from areas which have not yet achieved the results that the Mid-Coast has, like Massachusetts Bay and South Cape Cod.

Response: NMFS agrees with the characterization of fishing in the Offshore area, but disagrees that bycatch does not need to be reduced in the Offshore area. The Mid-Coast area never had take reduction goals separate from an overall HPTRP, with the exception of goals stated in the NE Multispecies FMP, goals which have not yet been met. As stated earlier, Mid-Coast fishermen are to be commended for the innovative and expansive efforts they have undertaken to make pingers a viable bycatch reduction alternative to complete closures during some times and areas. However, the reason that the NEFMC measures have not been effective at reducing bycatch overall is that bycatch shifted out of the closed areas into new areas. Increases have been seen in several areas including Massachusetts Bay, Cape Cod South and the Offshore area. Achieving the MMPA goal will not be easy, but most certainly, the overall level of bycatch in the GOM must be reduced. It would be counter productive to allow reduction in one area to be replaced with bycatch occurring elsewhere, i.e. if you reduce the amount of harbor porpoise take in the Mid-Coast by 100, but then increase it by 100 in the Offshore area, you have a net gain of no bycatch reduction. Therefore, all areas where bycatch has historically occurred in the GOM must be part of this HPTRP. NMFS agrees that further reductions are necessary in areas other than the Offshore area; the plan does contain measures beyond the status quo to reduce observed bycatch in the Cape Cod South area and the Massachusetts Bay area.

Comment 70: One commenter stated that the importance of and difficulties in enforcement have been overlooked based on comments by NMFS and the Coast Guard. Specifically, neither enforcement body can determine whether pingers are operational. The U.S. Coast Guard has also stated that anything short of complete closures are difficult to enforce. The commenter concluded that effective mortality reduction is most likely to be achieved by closures, not by use of pingers.

Response: NMFS agrees that currently neither NMFS or the U.S. Coast Guard can determine whether or not pingers are working on deployed fishing gear. A hydrophone has been developed that can be used as an enforcement tool to determine whether or not pingers are working. The hydrophone can be towed to evaluate set gear. This will be made available to U.S. Coast Guard and NMFS Enforcement personnel. NMFS also agrees that anything short of complete closures is difficult to enforce, but not impossible.

NMFS disagrees that the closures are more likely to achieve effective mortality reduction. In fact, the closures that have been in effect under the Magnuson-Stevens Act have been ineffective primarily because of the inter-annual variability in harbor porpoise distribution and fishing effort shifts. In order for closures to be effective and to avoid these phenomena, closures would have to be so large that the impact on the fishery would be very disruptive. Such widespread closures are evaluated as an alternative in the EA, which should be consulted for the specific information. Pingers have been demonstrated to be effective, and NMFS has concluded that they are a better alternative for achieving effective mortality reduction while allowing the fishery to continue.

Comments on the Overall Mid-Atlantic Strategy

Comment 71: One commenter asked how the new expanded closures affect the harbor porpoise bycatch estimate given that the MATRT proposal was expected to achieve a 79 percent reduction in harbor porpoise bycatch?

Response: If all assumptions of the statistical models are correct, the additional closures would likely achieve between 88 percent—99 percent reduction in takes over the entire area for all months. However, it is unlikely that all the assumptions used in the data analysis will be proven 100 percent accurate; therefore, the additional measures will help to ensure that the 79 percent reduction in harbor porpoise take is achieved. The reason the assumptions are unlikely to be 100 percent accurate appear to be borne out in the 1997 data. In that year harbor porpoise were taken in the menhaden fishery, countering the assumption that the only subfisheries that catch harbor porpoise are the monkfish and dogfish subfisheries (Palka, 1997).

Comment 72: One commenter stated that the changes from fishery-specific strategies to specific gear type strategies appear largely consistent with the MATRT proposal.

Response: NMFS agrees.

Comment 73: One commenter requested that the gillnet cap of 80 nets and tagging requirements of 2 tags per net be changed to a 160-net-cap and a 1 tag per net requirement to be consistent with the proposed Monkfish FMP requirements.

Response: NMFS disagrees with changing the 80-net-cap limit, as proposed in the HPTRP, to a net cap of 160 nets to be consistent with the proposed Monkfish FMP. The 160 net cap set by the Monkfish FMP is too high to achieve the goal of maintaining current fishing effort in the Mid-Atlantic that has historically been associated with locally prevailing practices. NMFS has followed the recommendation of the MATRT to support locally prevailing fishing practices and an 80 net cap limit reflects those practices. The average large mesh fisherman in the Mid-Atlantic employs 80 nets, therefore this average was agreed to be an appropriate limit to cap effort. By allowing 160 nets, the positive benefits expected from the HPTRP measures could be negated. Anyone wishing to fish in the Mid-Atlantic during these time periods can only have a total of 80 nets on board, hauled, or deployed. NMFS agrees with the recommendation to change the net tag requirement to one tag per net, beginning January 1, 2000, to be consistent with the net tag requirement under the Monkfish FMP. This change should not affect NMFS' ability to enforce the HPTRP measures.

Comment 74: Several commenters felt that the requirement for a twine size greater than or equal to .81 mm is unfair and uncalled for in those fisheries targeting bluefish, croaker, weakfish (i.e., some of the very small mesh fisheries) which have not been observed to take harbor porpoise. They felt that the MATRT, including NMFS, agreed that there was not enough data to support any restrictions to the small mesh fishery.

Response: NMFS did not restrict fisheries with mesh sizes 4 inches (10.2 cm) and smaller with regard to twine size regulations in the proposed HPTRP.

Based on further review and public comment, mesh sizes of 5 inches (12.7 cm) and smaller are not required to comply with the small mesh regulations at this time.

Comment 75: Two commenters questioned how the proposed rule applies to all fishing with gillnets in inshore and offshore waters of the Mid-Atlantic despite the fact that North Carolina gillnet fisheries targeting bluefish, croaker, and weakfish, have little or no interactions with harbor porpoise.

Response: NMFS agrees there were no documented observed takes with very small mesh gear in North Carolina. However, there were takes in North Carolina waters. Harbor porpoise stranding data, discussed by the MATRT but not considered part of the MATRT process for management measures, suggests that very small mesh fisheries, and fisheries in nearshore as well as offshore waters, may indeed take harbor porpoise. However, NMFS is exempting the gear that is less than 5 inches (12.7 cm) mesh size from the regulatory measures at this time. The definition of the small mesh gear that must comply with the management measures has been changed. Only mesh sizes of greater than 5 inches (12.7 cm) to less than 7 inches (17.78 cm) must comply with the small mesh management measures.

Comment 76: One commenter felt that the small mesh fishery in North Carolina should be classified as a Category III fishery. If not designated as Category III, then they felt that the restrictions on small mesh should only apply north of the North Carolina/Virginia border and not include North Carolina waters. If small mesh restrictions were to be implemented for North Carolina waters, those restrictions should absolutely not apply south of Cape Hatteras.

Response: Until NMFS gets additional information, the small mesh fishery is still categorized as part of the Mid-Atlantic coastal gillnet fishery. As discussed in the Final List of Fisheries for 1998 (63 FR 5748), the information currently available on the composition and distribution of the Mid-Atlantic coastal gillnet fishery and on its incidental take levels is insufficient to identify distinct subcomponents of this fishery. NMFS has allocated funding in 1998 to expand its observer coverage of this fishery and to obtain a better characterization of the individual subcomponents that comprise it.

Regarding the geographic application of the small mesh measures to North Carolina waters, the final rule will continue to apply to all waters off North Carolina, including waters south of Cape Hatteras to the South Carolina border. The geographic application of the HPTRP is consistent with the MATRT report (RESOLVE, 1997). Additionally, although there were takes in North Carolina waters with large mesh gear but no documented observed takes with small mesh gear, this does not preclude the likelihood that takes may occur in North Carolina waters in small mesh gear (see response to comment 38).

Comment 77: One commenter felt that the statement on page 48678 of the proposed rule distorts the consensus agreement of the MATRT because there was never an assumption that the only subfisheries that could potentially ever catch harbor porpoise are dogfish and monkfish.

Response: NMFS did not intend to distort the consensus agreement of the MATRT. The assumption that harbor porpoise are only caught in dogfish and monkfish fisheries was discussed at the MATRT meetings and is outlined in the paper by Palka (handout at the August 4–6 meeting of the MATRT, Page 8) and used in the statistical analysis presented at the MATRT. Because of the nature of the assumptions in that analysis, discussed in detail in the EA/HPTRP, NMFS felt additional regulatory measures were appropriate.

Comment 78: Several commenters were concerned that NMFS had not considered the difficulty for small mesh fishermen in ordering and rigging the new gear. Mesh sizes used to target weakfish and croaker are normally not stocked by local net shops in .81 twine size. The time to order, receive and hang webbing would be as long as six months. Fishermen need 180 days advanced public notice or fishermen would lose out on whole season. So .81 mm should only apply to gill nets greater than 5 inches (12.7 cm) and less than 7 inches (17.78 cm) stretched mesh.

Response: In the final rule, NMFS changed the requirements for the small mesh fisheries so that the requirements apply only to mesh sizes of greater than

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5 inches (12.7 cm) to less than 7 inches (17.78 cm). Fisheries which use greater than 5 inches (12.7 cm) to less than 7 inch (17.78 cm) mesh sizes should be able to buy the gear and re-rig in the allotted time. Southern Mid-Atlantic fishermen would have more time to buy and re-rig because measures do not go into effect in the southern Mid-Atlantic until February 1, 1999.

Comments on the Mid-Atlantic Area and Gear Specific Measures

Comment 79: One commenter asked why NMFS expanded the closure in the Mudhole from February 15 through March 15, as recommended by the MATRT, to an additional closure from April 1 through April 20.

Response: The HPTRP calls for closures in the Mudhole from February 15 through March 15 for small mesh and large mesh gear, and April 1 through April 20 for large mesh gear. This differs from the MATRT report, which only recommended closures in the Mudhole from February 15 through March 15 for monkfish (large mesh). NMFS added a closure to New Jersey for large mesh gear in April. Given the considerable assumptions inherent in the subfishery bycatch analysis, NMFS determined that additional regulatory measures would be prudent to realistically achieve the bycatch reduction goals of the HPTRP. For New Jersey, January and April are the months of highest bycatch. Since a closure in January would be very costly for the fishermen, as discussed by the MATRT, NMFS chose to limit fishing opportunity in April instead of January. A closure in April would still afford significant harbor porpoise conservation benefits, still be consistent with the proposed Monkfish FMP regulations and not cause undue impact on fishermen. The Mudhole is part of New Jersey waters.

Comment 80: One commenter asked that NMFS explain the reason for expansions of the original 20-day monkfish closure for the southern Mid-Atlantic, as proposed by the MATRT, to a one month closure for large mesh fishery.

Response: The MATRT recommended a 20-day floating closure in the southern Mid-Atlantic, sometime between February and April, for the monkfish (i.e., large mesh) fishery. The exact 20 days would be chosen by the individual fishermen. This proposal was changed by NMFS in two ways: (1) The proposal for a floating closure was rejected in favor of a fixed closure and (2) the 20-day closure was expanded by 10 days to a full one month closure.

NMFS changed the floating closure because an FMP and associated permit system will not be in place for the spring 1999 fishery, thereby making it extremely difficult to enforce and administer a call-in system for this fishery. Therefore, a set period for the closure was favored.

The 20-day closure recommended by the MATRT was expanded to 30 days as a way to more strongly address the harbor porpoise bycatch in the southern Mid-Atlantic during this time period by avoiding a 10-day window of possible fishing effort displacement.

Comment 81: One commenter proposed that NMFS move the southern border of the area defined as the Mudhole to 39°50′ N. Latitude, instead of 40°05′ N. Latitude, to include documented take of harbor porpoise.

Response: NMFS disagrees that any changes are needed in the Mudhole definition at this time. The definition of the Mudhole is based on topographic features that support concentrations of target fish species at certain times of the year. Since the majority of takes that occur just south of the Mudhole occur in April in the large mesh fishery, this area has been included in the closure from April 1 through 20 for large mesh gear only. During February, another time of high bycatch inside the Mudhole for both large and small mesh gear, the Mudhole will be closed to both small and large mesh gear. There is little bycatch of harbor porpoise outside the boundaries of the Mudhole, in the rest of New Jersey, during February and March. It is possible that effort could shift outside the Mudhole boundaries during this time period, but gear modifications will be in effect for all areas in New Jersey outside of the Mudhole. This means that a bycatch reduction measure, although it is not a complete closure, is in place for the area outside the Mudhole closure. This is consistent with the overall HPTRP strategy.

Comment 82: One commenter questioned the conclusion that the entire state of North Carolina should have a time/area closure. The commenter noted that 250 observer trips on North Carolina boats between 1993 and 1997 using small mesh gear with no reports of harbor porpoise takes and 95 trips with North Carolina Division of Marine Fisheries on striped bass, and 30 more in 1991 on weakfish and no harbor porpoise takes. The commenter objected to the changes in closures for North Carolina for the following reasons: there is no documented bycatch of harbor porpoise in small mesh, the take of 5 harbor porpoise in monkfish and dogfish does not equal high harbor porpoise bycatch, the proposed closure is 50 percent longer than what was recommended by MATRT, the monkfish fishery will no longer exist off North Carolina, and no observer data for areas south of Ocracoke, North Carolina. The commenter then concluded that for all those reasons, time/area closures should not apply to waters south of the North Carolina/Virginia border. The definition of southern Mid-Atlantic includes the North Carolina/South Carolina border, but the commenter recommended that under no circumstances should south of Cape Hatteras be closed to small mesh gillnets. Several commenters noted that observer data does not justify extending small mesh restrictions to the North Carolina/South Carolina border.

Response: The time/area closure applies to the large mesh fishery for one month in the southern Mid-Atlantic. Between 1995 and 1996 there were 89 takes in North Carolina in the large mesh fishery, warranting the need for a closure during times of high bycatch. The small mesh fishery is closed for one month in the New Jersey Mudhole, but not in the southern Mid-Atlantic.

Although 5 observed takes does not appear to equal a high harbor porpoise bycatch, when estimated for the entire fishery it does appear to be a significant number of takes, resulting in an estimated take of 132 for the North Carolina fishery in 1996.

The proposed large mesh closure is 10 days longer than what was recommended by the MATRT as explained in response to comment number 80.

Although monkfish may not be able to be legally fished off North Carolina in the future, the mesh size (i.e, greater than 7 inch (17.78 cm) mesh) may be used to fish for other species. As mentioned previously, it is the type of gear and not the target species that is of concern to harbor porpoise bycatch reduction.

There are observer data south of Ocracoke, in fact, observer data span the entire North Carolina coast. NMFS agrees that observer data through 1996 shows that there are no observed takes from January through April south of Cape Hatteras. However, this is the boundary that was agreed to by the MATRT and is documented in the MATRT report. Additionally, even though stranding data were not used in developing the plan, stranding data do indicate that there is a gillnet fishery interaction problem south of Cape Hatteras. Primarily because it was a MATRT recommendation, NMFS is retaining the boundary of the plan at the North Carolina/South Carolina boundary.

Comment 83: One commenter supported a 30-day closure from mid-

February through mid-March rather than allowing individual fishermen to determine the 30-day block.

Response: The final rule implements the 30-day closure from mid-February to mid-March.

Comment 84: One commenter noted that the MATRT was generally supportive of a pinger study in the Mid-Atlantic. If pingers are effective in New England, they should also be effective in the Mid-Atlantic. The commenter questioned why NMFS is only proposing time/area closures and gear modifications and not supporting a pinger study in the Mid-Atlantic. Several commenters stated that the industry has indicated support for experimental pinger studies, and questioned why NMFS suggests only time/area closures to achieve goals and recommended that Mid-Atlantic fishermen should be given the option of choosing between gear modifications and time/area closures and participating in experimental fisheries using pingers. Two commenters stated that no consensus was reached in the MATRT because of the unjustified objections of one scientist/advocate and a small number of conservation members.

Response: See response to comment 41 for a discussion of why pingers were not chosen as an alternative in the Mid-Atlantic. NMFS agrees that the industry indicated support for a pinger study in the Mid-Atlantic but disagrees that objections were of lesser magnitude or lesser justification. Both points of view were strongly supported by respective advocates.

Comment 85: One comment supported the determination not to use pingers in the Mid-Atlantic.

Response: This component of the plan differs from the GOM component because rather than using a series of time and areas closed to fishing and times and areas where acoustic deterrents are required, the Mid-Atlantic portion requires a suite of gear modifications. The distinction in management measures between the two regions is appropriate in this case for a number of reasons. The regions differ markedly in stages of development with regard to harbor porpoise conservation. Whereas the GOMTRT and similar groups have been meeting and proposing various bycatch reduction measures for the GOM for many years, the MATRT has only met in the last two years. The GOMTRT proposed a number of measures initially which did not include mandated pinger use prior to the current recommendation. Based on new information, those measures were determined to be unsuccessful in achieving the PBR level. With regard to the use of pingers as an appropriate management measure in the GOM, no data exist to support other options, except for total closure to sink gillnet fishing. In the Mid-Atlantic, data indicated other options in the form of gear modifications might be successful in reducing bycatch without some of the uncertainties surrounding widespread pinger use.

For the Mid-Atlantic area, the HPTRP would institute the first set of management measures to reduce harbor porpoise bycatch in that region. Since a number of options are available which may be successful, NMFS would implement non-acoustic measures before proposing pinger testing. Additionally, the MATRT did not fully support a pinger experiment in the Mid-Atlantic area at this time. The gear modifications and time/area closures recommended by the MATRT and included in this final rule are expected to be sufficient.

Comment 86: One commenter questioned the justification for the prohibition of tie downs in the small mesh gillnet fisheries for the sole purpose of avoiding the potential for effort shifts (i.e., into the monkfish fishery). The commenter stated that this is inconsistent with NMFS' stated intent to avoid subfishery-specific regulations, it is a regional council issue, and it is non-substantive since inshore gillnet fishermen do not tie down their nets because that would decrease harvest efficiency. Another commenter argued that given the monkfish and dogfish proposed management measures under the FMPs, it is highly unlikely that individual fishermen will try to circumvent the monkfish regulations and land monkfish through tieing down their nets.

Response: It is difficult to speculate what fishermen will do. While it is true that this overall plan is meant to avoid the sub-fishery specific regulations and while the potential for effort shifts is speculative, removing this uncertainty is important to this HPTRP being able to reach its goals. It is unclear why the prohibition would be a problem to fishermen since the commenter states that inshore fishermen do not tie-down their nets for any other reason.

Comment 87: One commenter noted that the proposed rule responded to their comment addressing concern over the boundary line between the GOM and Mid-Atlantic, but they were still not satisfied with where the line was drawn. The recommendation is to use the boundary between the New England and Mid-Atlantic FMCs as specified in the Magnuson-Stevens Act, with the exception of the GOM closed area south of Cape Cod that is slightly west of the two Councils. Further the commenter recommended that vessels employing small mesh less than 5 inches (12.7 cm) should not be subject to twine size modification requirements and noted that all small mesh less than 7 inches (17.78 cm) will still have to comply with the closure in the New Jersey Mudhole from February 15 through March 15 and other requirements.

Response: NMFS maintains the position as stated in the proposed rule, that the line used to separate the two plans indicates the area where the characteristics of the fisheries on either side of that line diverge; it is a line already familiar to fishermen because it is used for fishery management purposes, and is overall a more appropriate boundary than a purely administrative boundary.

NMFS has changed the requirements for the small mesh fishery. Mesh sizes of 5 inches (12.7 cm) and less will not have to comply with the management measures at this time.

Comment 88: One commenter stated that NMFS should commit to providing observer coverage to small mesh fishery because data are lacking.

Response: NMFS has already provided observer coverage during 1998 to the Mid-Atlantic small mesh fishery and plans to continue such coverage in the future.

Comments on Enforcement

Comment 89: One commenter stated that enforcement of fishing in closed areas or fishing without pingers must be enforced.

Response: NMFS agrees and is currently investigating information concerning noncompliance.

Comment 90: Two commenters suggested that NMFS can address the difficulty in inspecting pingers by requiring that working pingers be on all nets at all times, except for the summer months when porpoise are not interacting with the fishery. This may also facilitate dockside inspection and remove some of the enforcement concerns.

Response: NMFS is addressing the difficulty in inspecting pingers by developing an enforcement hydrophone. NMFS is not proposing deployment of pingers on every gillnet in the Gulf of Maine during the time harbor porpoise are interacting with the fishery for several reasons. First, the overall environmental effects of widespread pinger use cannot be predicted with current information and research is just beginning at this point. Habituation and displacement of harbor porpoise and questions of pingers attracting seals are still being evaluated. Second, the plan appears to be able to reach its bycatch reduction goal by a more limited approach. Requiring pingers on every net would increase the economic burden to fishermen, when a more limited version that will achieve plan goals is available.

Comment 91: One commenter recommended that NMFS expand the HPTRP and the EA to provide a thorough description of the steps that could be taken to ensure that pingers are properly deployed and maintained.

Response: The HPTRP requires fishermen to attend a certification program in order to fish with pingers in areas that otherwise are closed by the HPTRP. In addition, outreach and education will be ongoing during plan implementation and will include information on proper deployment and maintenance of pingers.

Comment 92: One commenter recommended that NMFS provide regulatory guidance as to how NMFS intends to certify and enforce proposed pinger parameters.

Response: The regulations include specifications for pingers that are required to be used in the NE multispecies gillnet fishery. All pingers used in this fishery must meet those specifications. Pinger manufacturers would need to provide documentation to consumers that their pingers meet the specifications of these regulations. NMFS is not requiring that these manufacturers have their pingers certified by an independent company to ensure that they meet the specifications. NMFS will be periodically monitoring whether the pingers used by the fishery meet the specifications.

Because the harbor porpoise bycatch rate will be carefully monitored, NMFS expects that both manufacturers and fishermen will be aware of the importance of technically correct and properly maintained pingers. If bycatch goals are not achieved because of improper pinger use or non-effective acoustics, more restrictive measures to reduce bycatch may be warranted. Additionally, a specific research program begins with rule implementation that will monitor pingers during normal use to ensure that the acoustics of pingers do not change with time, and that they maintain the acoustical characteristics specified by the manufacturer.

Comment 93: Two commenters felt that rather than focusing on subfisheries according to the MATRT recommendations, NMFS has extended the regulations to all gillnet activity because of enforcement concerns. One commenter suggested that the basis for NMFS differing with the MATRT's "solution" was that NMFS does not have enough manpower to enforce the regulations. Those fisheries without interaction should not be penalized for NMFS' lack of enforcement staff.

Response: Enforcement of regulations is a valid concern but the enforcement issues with regard to the HPTRP are not just a matter of adequate staff. A regulation must be legally as well as administratively enforceable. For example, a call-in system, which was recommended by the MATRT, is very difficult to enforce because there is no defined monkfish fishery or dogfish fishery at this time, so no one is legally defined as a monkfisherman or a dogfisherman. To do so under this rule, being promulgated under the MMPA, would go well beyond the scope of this plan. NMFS did not contemplate instituting a permit system of the dogfish and monkfish fisheries pending the development of permit systems under the Magnuson-Stevens Act system. Without a permit system, a fisherman can say they are targeting any number of species and still use the same gear that will take harbor porpoise. NMFS' intent in this HPTRP is to avoid the opportunity to take harbor porpoise because of the gear employed.

Classification

The Assistant Administrator, NMFS, determined that the TRP is necessary for the conservation of harbor porpoise and is consistent with the MMPA and other laws.

This rule has been determined to be significant for purposes of E.O. 12866.

NMFS prepared an FRFA that describes the impact of this rule on small entities. The need for, and objectives of this rule and a summary of the significant issues are described elsewhere in this preamble. Comments on the economic aspects of the proposed rule (comments 55, 56, 64) and NMFS' responses to those comments stated in the preamble to the final rule are incorporated in the FRFA. The GOM sink gillnet and Mid-Atlantic coastal gillnet fisheries are directly affected by the action and are composed primarily of small business entities.

In formulating this action, NMFS considered a number of alternatives: Alternative 1, the proposed action or Preferred Alternative; Alternative 2, no action; Alternative 3, wide-spread use of pingers; and Alternative 4, wide-spread time and area closures. In addition, a number of alternatives suggested in the comments were also considered. These alternatives were discussed in comments 19, 20, 21, 22, 23 and 41 above.

Alternative 1, a combination of area closures, pinger requirements, and gear modifications, is the preferred alternative because it will achieve the goals of the MMPA while minimizing the overall economic impact to the affected fisheries.

Under Alternative 1, it is estimated that 95 vessels (35 percent of total, 54 percent of impacted) would see their total costs increase more than 5 percent. The cost increase is due to purchasing new gear or pingers, and the cost of gear marking requirements. Vessels could avoid these cost increases by not fishing during the time periods when they would have to modify their gear or by using pingers. However, they would then lose some percentage of their yearly profit. The total economic losses of the Preferred Alternative to the GOM and the Mid-Atlantic regions are estimated to be between $609 thousand dollars and $4.5 million dollars, depending on the number of vessels that can shift their effort to open areas and the number that use pingers.

The costs associated with this rule are not related to reporting requirements. To the extent that the rule would allow fishery participants to select whether to acquire a new gear type or to avoid the time/area closures, performance requirements can be substituted for design requirements at the participant's discretion. Since most of the affected entities are small entities, providing an exemption for small entities would not enable the agency to meet the conservation and management goals of the MMPA.

Currently, the NE Multispecies sink gillnet fishery is subject to regulations under the NE Multispecies FMP. Recent groundfish conservation measures for the Gulf of Maine were proposed under Framework Adjustment 25 to the NE Multispecies FMP. The predominant Mid-Atlantic gillnet fisheries are not subject to regulations under an FMP at this time. The final rule is designed to complement Framework 25 and other fishery management regulations. The recommendations of the GOMTRT were modified by NMFS to take into consideration the combined effect of Framework 25 and the HPTRP on Gulf of Maine fishermen.

Under Alternative 2, there would be no additional costs to the fleet either through gear modifications and purchase of pingers or through losses in surplus due to time and area closures. Therefore, based on costs which the fleet would incur, this alternative is the least costly when compared with the Preferred Alternative or non-preferred alternatives. However, there is a much larger cost in terms of foregone harbor porpoise protection. Based on the contingent valuation study conducted by the University of Maryland (Strand, *et al.*, 1994), households in Massachusetts were willing to pay between $176 and $364 to eliminate human induced mortality of 1,000 harbor porpoise. Using the lower figure of $176 multiplied by the number of Massachusetts households, and amortizing the total using a 7 percent rate yielded a yearly value of roughly $28 million. This means that decreasing mortality by 1,000 animals would increase consumer surplus by $28 million. Therefore, when compared against the other alternatives, the status quo is far inferior because it does not achieve the same level of consumer surplus due to a higher level of harbor porpoise mortality.

Alternative 3 would require all vessels fishing between September and May in the Gulf of Maine and between January and April in the Mid-Atlantic to use pingers. Each vessel owner would decide whether to purchase pingers based on his or her own set of circumstances. Each pinger was estimated to cost $50 dollars based on information obtained from NMFS Sea Sampling personnel. It is assumed that there would be one pinger required per net, and one on each buoy line. Using the average number of nets and strings fished in each region, a weighted average $3,437 dollars per vessel was estimated for the cost of pingers which translates into a total fleet cost of $608 thousand dollars.

The cost of pingers was estimated to be $608 thousand dollars if all vessels purchase pingers. However, some vessels may be unable to afford pingers. This would increase the total losses because vessels that were unable to afford pingers would have to stay tied up at the dock and, therefore, lose revenue. It is assumed that losses in producer surplus are linearly related to the percent of vessels that purchase pingers. For example, if 50 percent of the vessels use pingers, then the losses in producer surplus and crew rents will be reduced by 50 percent. Total pinger costs are also estimated based on the percent of vessels which purchase pingers. Losses calculated using these assumptions are estimated to be between zero and $7.4 million dollars.

In reality, vessels can either purchase pingers and continue to fish and shift their effort to other areas, or elect not to purchase pingers and stay tied up at the dock. Because the time and areas where pingers are required are quite extensive, it is unlikely that vessels will be able to switch areas and continue fishing without pingers. Without a more formal model, it is not possible to predict the number of vessels which will adopt either strategy.

This alternative is not preferred because it is unclear whether it could achieve the bycatch reduction goals, particularly in the Mid-Atlantic, because pingers have not been proven to be effective in this area. In addition, there are a number of scientific concerns regarding the impacts of widespread pinger use on harbor porpoise and other marine organisms. This alternative is not preferred given that more data is needed on the ecosystem effects of widespread pinger and given that other methods are available in the Mid-Atlantic to reduce harbor porpoise bycatch.

Alternative 4 would result in a total loss in producer surplus and crew rents for both regions of $7.4 million dollars. Overall, 177 vessels would be impacted for a per vessel loss of roughly $42 thousand dollars. As described in the FRFA, the cost to the fishery in terms of economic impacts would vary by area closure. Refer to the FRFA for a discussion of the impacts of this alternative based on the closure variations.

Vessels could shift their operations to other areas and make up for any revenue loss. This puts bounds on the losses of between zero, if revenue was totally replaced in other areas, and $7.4 million dollars. For this alternative, it will be more difficult for vessels to shift to other times and areas because the areas are all closed at the same time. There is the opportunity for vessels from New England to move to the Mid-Atlantic in the fall or to the NE closure area. Some may do so, but it is likely that most would not be able to switch. Gillnet vessels have traditionally fished in certain times and areas depending on many factors, including the vessels homeport. Because these times and areas are so extensive, it is unlikely that many vessels will be able to shift their operations and replace lost revenue.

Because the times and areas designated for closure are so extensive, it is likely that this alternative would reduce harbor porpoise mortality to close to zero. The trade-off for this reduction would be a much higher cost to the fishing fleet and possibly a higher likelihood of business failure; therefore this alternative is not preferred. However, it is not possible to evaluate the trade-off between reduced harbor porpoise mortality and increased costs. Based on the contingent valuation study discussed earlier (Strand *et al.*, 1994), harbor porpoise are highly valued by consumers.

The potential losses of the Preferred Alternative discussed above depend on assumptions about how individual vessels will react to the regulations. In most cases, these assumptions were very conservative in order to estimate the maximum possible losses. Non-Preferred Alternative 4 has the potential to cost more than either the Preferred Alternative, Non-Preferred Alternative 2 and Non-Preferred Alternative 3. This is because the area closures are large, and last for multiple months. The losses for Alternative 4 are expected to be $7.4 million dollars, and it is unlikely that vessels would be able to fish elsewhere to offset their losses. Allowing the use of pingers in the Preferred Alternative will lower the cost to the fleet, even with the price of pingers included. The provisions in the plan which allows the use of pingers in the New England region lowers the losses in the Preferred Alternative for New England vessels to $0.49 million dollars if all vessels elected to use pingers. The actual losses which will occur depend on which strategy vessels adopt to continue operating in the face of these regulations. Clearly, allowing pingers to be used will lower the cost to the fleet because it gives vessels added flexibility.

Non-Preferred Alternative 2 is lower in cost than any of the alternatives in terms of losses the fleet will incur. However, the losses in consumer surplus because of high harbor porpoise mortality are likely to be far greater than the losses in producer surplus and crew rents. If the contingent valuation study conducted by the University of Maryland is accurate, then the value of losses from harbor porpoise mortality would be far greater than any of the other options.

Non-Preferred Alternative 3 is the least costly alternative if all vessels impacted by the plan chose to fish with pingers. To the extent that some vessels would not be able to afford pingers, the costs will increase. Implicit in the analysis of this alternative was the assumption that the mortality reduction was the same as the Preferred Alternative. This assumption may not be true because pingers have not been formally tested in some of the times and areas where they would be allowed under this alternative. If mortality was higher, gains in consumer surplus would not be as high as under the Preferred Alternative, which means this alternative would have lower benefits than the Preferred Alternative.

In response to public comments, NMFS shortened the time periods when pingers would be required in certain areas, and reduced the number of net

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tags required in the Mid-Atlantic region. This lowered the estimated costs by approximately $613,000 from the proposed rule which was submitted.

In summary, Alternative 1 will allow NMFS to achieve MMPA goals, reduction of harbor porpoise bycatch to acceptable levels, while minimizing the overall impact to affected fisheries, compared to the other available alternatives. Alternative 1 accomplishes this by placing carefully considered time-area closures in place, and allowing the use of bycatch reduction devices instead of total closures. This allows fishermen to continue to generate revenue. Further, Alternative 1 is less costly than other alternatives that would require pingers in the Gulf of Maine the entire time harbor porpoise are present there. A copy of this analysis is available from NMFS (see ADDRESSES).

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648–0357.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays the OMB control number.

The final rule requires nets in the Mid-Atlantic region to be marked in order to identify the vessel and enforce net cap provisions. It is estimated that each tag will take 1 minute to attach to the net, and each net requires one net tag. The total number of nets which will need to be tagged is estimated by assuming that combination gillnet vessels are, on average, fishing 60 nets, and all other vessels are, on average, fishing 30 nets. This gives a weighted average of 49 nets per vessel. Using these figures, the total burden hours is estimated to be 49 minutes per vessel.

The 76 vessel owner/operators will have to order net tags, estimated at 2 minutes per request. Depending on whether net tags are lost or damaged, vessels are expected to only have to comply once over three years. The annual average over the 3 years would be 25.3 vessels affected.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

An informal consultation under the ESA was concluded for the HPTRP on November 12, 1998. As a result of the informal consultation, the Assistant Administrator determined that these actions are not likely to adversely affect endangered or threatened species or their critical habitat.

The 30-day delayed effectiveness requirement under the Administrative Procedure Act has been shortened in part. The requirements in 50 CFR 229.33(a)(2), the Mid-Coast Closure Area, become effective immediately upon publication; the requirements in 50 CFR 229.33(a)(5), the Offshore Closure Area, become effective December 8, 1998; and 50 CFR 229.33 (a)(3), (a)(4), the Massachusetts Bay and Cape Cod South Closure Areas become effective December 16, 1998. For all other components of the HPTRP, the requirements become effective January 1, 1999. The shortened time periods are necessary to reduce take of harbor porpoise at the beginning of the high-take season. The areas identified have different effective dates based on the need to have take reduction measures in place for harbor porpoise and on the ability of fishermen in that area to acquire additional pingers. Specifically, the current closure in the Mid-Coast area under the Magnuson-Stevens Act allows fishermen to fish with pingers in the closed area from November 1 through December 31. In addition, experimental fisheries have occurred in this area from September 15 through October 31 and again also during the March 25 through April 25 Magnuson-Stevens Act harbor porpoise closure. Therefore, most of the Mid-Coast fleet that intends to fish in December already has gear outfitted with pingers. A limited number of fishermen in both the Cape Cod South and Massachusetts Bay areas already have pingers from limited experimental fisheries that occurred in those areas. This means that fishermen that will need to purchase pingers in December are those fishing in the Cape Cod South, Offshore, and Massachusetts Bay Closure areas. NMFS has inquired and believes that enough pingers will be available to supply fishermen that choose to fish at that time. These areas will have a week to two weeks, depending on the area, to purchase the pingers and deploy them on the nets. Providing a delayed effectiveness period for requiring pingers in the Offshore Closure area a week later than the Mid-Coast area is justified because bycatch is known to be consistently high in the Mid-Coast area at the time this rule will be effective. Shortening the delay of effectiveness period for requiring pingers in the Offshore Closure area to a week less than other areas is justified because less than 10 fishermen are known to use the Offshore Closure area year round, and moreover, it is an area of high bycatch. Accordingly, the Assistant Administrator finds that there is good cause to shorten the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) regarding pinger requirements.

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List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: November 25, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, definitions for "Large mesh gillnet", "Mesh size", "Mudhole", "Small mesh gillnet", "Southern Mid-Atlantic waters", "Stowed", "Tie-down", and "Waters off New Jersey" are added, in alphabetical order, to read as follows:

§ 229.2 Definitions.

* * * * *

Large mesh gillnet means a gillnet constructed with a mesh size of 7 inches (17.78 cm) to 18 inches (45.72 cm).

* * * * *

Mesh size means the distance between inside knot to inside knot. Mesh size is measured as described in § 648.80(f)(1) of this title.

* * * * *

Mudhole means waters off New Jersey bounded as follows: From the point 40°30′ N. latitude where it intersects with the shoreline of New Jersey east to its intersection with 73°20′ W. longitude, then south to its intersection with 40°05′ N. latitude, then west to its intersection with the shoreline of New Jersey.

* * * * *

Small mesh gillnet means a gillnet constructed with a mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78 cm).

* * * * *

Southern Mid-Atlantic waters means all state and Federal waters off the States of Delaware, Maryland, Virginia, and North Carolina, bounded on the north by a line extending eastward from the northern shoreline of Delaware at 38°47′ N. latitude (the latitude that corresponds with Cape Henlopen, DE), east to its intersection with 72°30′ W. longitude, south to the 33°51′ N. latitude (the latitude that corresponds with the North Carolina/South Carolina border), and then west to its intersection with the shoreline of the North Carolina/South Carolina border.

* * * * *

Stowed means nets that are unavailable for use and that are stored in accordance with the regulations found in § 648.81(e) of this title.

* * * * *

Tie-down refers to twine used between the floatline and the lead line as a way to create a pocket or bag of netting to trap fish alive.

* * * * *

Waters off New Jersey means all state and Federal waters off New Jersey, bounded on the north by a line extending eastward from the southern shoreline of Long Island, NY at 40°40′ N. latitude, on the south by a line extending eastward from the northern shoreline of Delaware at 38°47′ N. latitude (the latitude that corresponds with Cape Henlopen, DE), and on the east by the 72°30′ W. longitude. This area includes the Mudhole.

* * * * *

3. In § 229.3, paragraphs (k) through (p) are added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, from the areas and for the times specified in § 229.33 (a)(1) through (a)(6), except with the use of pingers as provided in § 229.33 (d)(1) through (d)(4). This prohibition does not apply to the use of a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(l) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any gillnet gear from the areas and for the times as specified in § 229.34 (b)(1) (ii) or (iii) or (b)(2)(ii).

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in § 229.34 (c)(1) through (c)(4) unless the gear complies with the specified gear restrictions set forth in those provisions.

(n) Beginning on January 1, 1999, it is prohibited to fish with, set, or haul back sink gillnets or gillnet gear, or leave such gear in closed areas where pingers are required, as specified under § 229.33 (c)(1) through (c)(4), unless a person on board the vessel during fishing operations possesses a valid pinger certification training certificate issued by NMFS.

(o) Beginning on January 1, 2000, it is prohibited to fish with, set, haul back, or possess any large mesh or small mesh gillnet gear in Mid-Atlantic waters in the areas and during the times specified under § 229.34(d), unless the gear is properly tagged in compliance with that provision and unless a net tag certificate is on board the vessel. It is prohibited to refuse to produce a net tag certificate or net tags upon the request of an authorized officer.

(p) *Net tag requirement.* Beginning on January 1, 2000, all gillnets fished, hauled, possessed, or deployed during the times and areas specified below must have one tag per net, with one tag secured to every other bridle of every net and with one tag secured to every other bridle of every net within a string of nets. This applies to small mesh and large mesh gillnet gear in New Jersey waters from January 1 through April 30 or in southern Mid-Atlantic waters from February 1 through April 30. The owner or operator of fishing vessels must indicate to NMFS the number of gillnet tags that they are requesting up to the maximum number of nets allowed in those paragraphs and must include a check for the cost of the tags. Vessel owners and operators will be given notice with instructions informing them of the costs associated with this tagging requirement and directions for obtaining tags. Tag numbers will be unique for each vessel and recorded on a certificate. The vessel operator must produce the certificate and all net tags upon request by an authorized officer.

4. In subpart C, new §§ 229.33 and 229.34 are added to read as follows:

§ 229.33 Harbor Porpoise Take Reduction Plan Implementing Regulations—Gulf of Maine.

(a) *Restrictions*—(1) *Northeast Closure Area.* From August 15 through September 13 of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, from Northeast Closure Area. This prohibition does not apply to a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title). The Northeast Closure Area is the area bounded by straight lines connecting the following points in the order stated:

NORTHEAST CLOSURE AREA

Point	N. Lat.	W. Long.
NE1	(1)	68°55.0′
NE2	43°29.6′	68°55.0′
NE3	44°04.4′	67°48.7′
NE4	44°06.9′	67°52.8′
NE5	44°31.2′	67°02.7′
NE6	(1)	67°02.7′

[1] Maine shoreline.

(2) *Mid-coast Closure Area.* From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies. This prohibition does not apply to a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title). The Mid-

Coast Closure Area is the area bounded by straight lines connecting the following points in the order stated:

MID-COAST CLOSURE AREA

Point	N. Lat.	W. Long.
MC1	42°30′	(1)
MC2	42°30′	70°15′
MC3	42°40′	70°15′
MC4	42°40′	70°00′
MC5	43°00′	70°00′
MC6	42°00′	69°30′
MC7	43°30′	69°30′
MC8	43°00′	69°00′
MC9	(2)	69°00′

[1] Massachusetts shoreline.
[2] Maine shoreline.

(3) *Massachusetts Bay Closure Area.* From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Closure Area, except with the use of pingers as provided in paragraph (d)(2) of this section. This prohibition does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). The Massachusetts Bay Closure Area is the area bounded by straight lines connecting the following points in the order stated:

MASSACHUSETTS BAY CLOSURE AREA

Point	N. Lat.	W. Long.
MB1	42°30′	(1)
MB2	42°30′	70°30′
MB3	42°12′	70°30′
MB4	42°12′	70°00′
MB5	(2)	70°00′
MB6	42°00′	(2)
MC7	42°00′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline.

(4) *Cape Cod South Closure Area.* From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from Cape Cod South Closure Area, except with the use of pingers as provided in paragraph (d)(3) of this section. This prohibition does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). The Cape Cod South Closure Area is the area bounded by straight lines connecting the following points in the order stated:

CAPE COD SOUTH CLOSURE AREA

Point	N. Lat.	W. Long.
CCS1	(1)	71°45′
CCS2	40°40′	71°45′
CCS3	40°40′	70°30′
CCS4	(2)	70°30′

[1] Rhode Island shoreline.
[2] Massachusetts shoreline.

(5) *Offshore Closure Area.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from Offshore Closure Area, except for the use of pingers as provided in § 229.33(d)(4). This prohibition does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). The Offshore Closure Area is the area bounded by straight lines connecting the following points in the order stated:

OFFSHORE CLOSURE AREA

Point	N. Lat.	W. Long.
OFS1	42°50′	69°30′
OFS2	43°10′	69°10′
OFS3	43°10′	67°40′
OFS4	42°10′	67°40′
OFS5	42°10′	69°30′

(6) *Cashes Ledge Closure Area.* For the month of February of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This prohibition does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). The Cashes Ledge Closure Area is the area bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CL1	42°30′	69°00′
CL2	42°30′	68°30′
CL3	43°00′	68°30′
CL4	43°00′	69°00′
CL5	42°30′	69°00′

(b) Pingers—(1) *Pinger specifications.* For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (±2 kHz) sound at 132 dB (±4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (±15 milliseconds), and repeating every 4 seconds (±.2 seconds).

(2) *Pinger attachment.* An operating and functional pinger must be attached at the end of each string of the gillnets and at the bridle of every net within a string of nets.

(c) *Pinger training and certification.* Beginning on January 1, 1999, the operator of a vessel may not fish with, set or haul back sink gillnets or gillnet gear, or allow such gear to be in closed areas where pingers are required as specified under paragraph (b) of this section, unless the operator has satisfactorily completed the pinger certification training program and possesses on board the vessel a valid pinger training certificate issued by NMFS. Notice will be given announcing the times and locations of pinger certification training programs.

(d) *Use of pingers in closed areas*—(1) Vessels, subject to the restrictions and regulations specified in paragraph (a)(2) of this section, may fish in the Mid-coast Closure Area from September 15 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(2) Vessels, subject to the restrictions and regulations specified in paragraph (a)(3) of this section, may fish in the Massachusetts Bay Closure Area from December 1 through the last day of February and from April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(3) Vessels, subject to the restrictions and regulations specified in paragraph (a)(4) of this section, may fish in the Cape Cod South Closure Area from December 1 through the last day of February and from April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(4) Vessels, subject to the restrictions and regulations specified in paragraph (a)(5) of this section, may fish in the Offshore Closure Area from November 1 through May 31 of each fishing year, with the exception of the Cashes Ledge Closure Area. From February 1 through the end of February, the area within the Offshore Closure Area defined as "Cashes Ledge" is closed to all fishing with sink gillnets. Vessels subject to the restrictions and regulation specified in paragraph (a)(5) of this section may fish in the Offshore Closure Area outside the Cashes Ledge Area from February 1 through the end of February provided that pingers are used in accordance with the requirements of paragraphs (b) (1) and (2) of this section.

(e) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the **Federal Register** if:

(1) After plan implementation, NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch to the PBR level with the current plan.

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

§ 229.34 Harbor Porpoise Take Reduction Plan—Mid-Atlantic.

(a)(1) *Regulated waters.* The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 72°30′ W. longitude and on the south by the North Carolina/South Carolina border (33°51′ N. latitude), except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* All waters landward of the first bridge over any embayment, harbor, or inlet will be exempted. The regulations in this section do not apply to waters landward of the following lines:

New York

40° 45.70′ N 72° 45.15′ W TO 40° 45.72′ N 72° 45.30′ W (Moriches Bay Inlet)
40° 37.32′ N 73° 18.40′ W TO 40° 38.00′ N 73° 18.56′ W (Fire Island Inlet)
40° 34.40′ N 73° 34.55′ W TO 40° 35.08′ N 73° 35.22′ W (Jones Inlet)

New Jersey

39° 45.90′ N 74° 05.90′ W TO 39° 45.15′ N 74° 06.20′ W (Barnegat Inlet)
39° 30.70′ N 74° 16.70′ W TO 39° 26.30′ N 74° 19.75′ W (Beach Haven to Brigantine Inlet)
38° 56.20′ N 74° 51.70′ W TO 38° 56.20′ N 74° 51.90′ W (Cape May Inlet)
39° 16.70′ N 75° 14.60′ W TO 39° 11.25′ N 75° 23.90′ W (Delaware Bay)

Maryland/Virginia

38° 19.48′ N 75° 05.10′ W TO 38° 19.35′ N 75° 05.25′ W (Ocean City Inlet)
37° 52.′ N 75° 24.30′ W TO 37° 11.90′ N 75° 48.30′ W (Chincoteague to Ship Shoal Inlet)
37° 11.10′ N 75° 49.30′ W TO 37° 10.65′ N 75° 49.60′ W (Little Inlet)
37° 07.00′ N 75° 53.75′ W TO 37° 05.30′ N 75° 56.′ W (Smith Island Inlet)

North Carolina

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Closures*—(1) *New Jersey waters.* From April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the waters off New Jersey.

(2) *Mudhole.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh or small mesh gillnet gear from the waters off New Jersey known as the Mudhole.

(3) *Southern Mid-Atlantic waters.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the southern Mid-Atlantic waters.

(c) Gear requirements and limitations—(1) *Waters off New Jersey—large mesh gear requirements and limitations.* From January 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear in waters off New Jersey, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in waters off New Jersey with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline length.* The floatline is no longer than 4,800 ft (1,463.0 m), and, if the gear is used in the Mudhole, the floatline is no longer than 3,900 ft (1,188.7 m).

(ii) *Twine size.* The twine is at least 0.04 inches (0.090 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m, or 50 fathoms), in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(v) *Tie-down system.* The gillnet is equipped with tie-downs spaced not more than 15 ft (4.6 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(2) *Waters off New Jersey—small mesh gillnet gear requirements and limitations.* From January 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any small mesh gillnet gear in waters off New Jersey, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in waters off New Jersey with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline length.* The floatline is less than 3,000 ft (914.4 m).

(ii) *Twine size.* The twine is at least 0.031 inches (0.081 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(v) *Tie-down system.* Tie-downs are prohibited.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(3) *Southern Mid-Atlantic waters—large mesh gear requirements and limitations.* From February 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear in Southern Mid-Atlantic waters, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in Southern Mid-Atlantic waters with large mesh sink gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline length.* The floatline is no longer than 3,900 ft (1,188.7 m).

(ii) *Twine size.* The twine is at least 0.04 inches (0.090 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(v) *Tie-down system.* The gillnet is equipped with tie-downs spaced not more than 15 ft (4.6 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(4) *Southern Mid-Atlantic waters—small mesh gillnet gear requirements and limitations.* From February 1 through April 30 of each year, no person may fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any small mesh gillnet gear in waters off New Jersey, unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in Southern Mid-Atlantic waters with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline length.* The floatline is no longer than 2118 ft (645.6 m).

(ii) *Twine size.* The twine is at least 0.03 inches (0.080 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(v) *Tie-down system.* Tie-downs are prohibited.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with one tag per net, with one tag secured to each bridle of every net within a string of nets.

(d) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the **Federal Register** if:

(1) After plan implementation, NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch to the PBR level with the current plan.

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

[FR Doc. 98–31957 Filed 11–25–98; 4:21 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 111698C]

Atlantic Swordfish Fishery; Quota Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of quota adjustment.

SUMMARY: NMFS adjusts the 1998 North Atlantic swordfish fishery quota to carryover the unharvested portion of the 1997 quota.

DATES: Effective December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, 301–713–2347.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish. Regulations at 50 CFR part 630 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

NMFS recently revised quota adjustment procedures for the Atlantic swordfish fishery in a final rule published on September 29, 1998 (63 FR 51856). These revised procedures allow for carryover of unharvested quota from one fishing year to the next, provided such carryover is consistent with the applicable recommendation of ICCAT. Current ICCAT recommendations provide for carryover from 1997 to 1998 of unharvested swordfish quota from the North Atlantic stock but not the South Atlantic stock. Therefore, this quota adjustment pertains to the 1998 quota for the North Atlantic swordfish stock only.

For both semiannual periods of the 1997 fishing year, NMFS closed the longline/harpoon directed fishery for North Atlantic swordfish based on projections of when the quota for each semiannual period would be caught. The closures were effective October 12, 1997, for the first semiannual period and March 31, 1998, for the second. When NMFS tallied actual catches for both periods, NMFS determined that the entire 1997 longline/harpoon quota of 2121.2 metric tons dressed weight was not harvested, leaving 224.6 metric tons available for carryover. Additionally, the entire 1997 directed fishery quota of 42.8 mt allocated to driftnet gear remained unharvested due to a year long emergency closure of that fishery issued under authority of the Magnuson-Stevens Act (62 FR 30775, June 5, 1997) and the Endangered Species Act (62 FR 63467, December 1, 1997). Finally, out of the 1997 incidental catch quota of 300 mt, a total of 232.1 mt of swordfish were taken incidentally in fisheries targeting other species (e.g., yellowfin tuna, bigeye tuna, squid) including longline landings after the directed fishery closures. This leaves 335.3 mt (224.6 + 42.8 + 67.9) available for carryover to the 1998 fishing year.

Regulations on adjustment procedures require that any underharvest from the prior fishing year be apportioned equally between the two semiannual fishing periods and be allocated so that the new directed fishery gear quotas represent the same proportion of the adjusted quota as they did before the quota adjustment. Given that the first 1998 semiannual period will end on November 30, 1998, that the driftnet fishery remains closed for the remainder of the 1998 fishing year, and that NMFS has published a proposed rule to prohibit further use of driftnet gear in the North Atlantic swordfish fishery (63 FR 55998, October 20, 1998), NMFS has decided to allocate the entire amount of the 1997 underharvest (335.3 mt) to the 1998 second semiannual directed fishery for longline and harpoon gear.

In addition to the 1997 carryover adjustment, NMFS also makes inseason adjustments to the 1998 North Atlantic swordfish allocations. According to the regulations, if NMFS determines it is necessary to close a directed fishery, any estimated underharvest of that directed fishery quota will be used to adjust the annual incidental catch quota. In 1998, a closure based on catch projections (63 FR 41205, August 3, 1998) resulted in an underharvest of the 1998 North Atlantic swordfish driftnet quota (14.6 mt remaining). NMFS did not reopen this fishery due to protected species bycatch concerns. Therefore, NMFS allocates the unharvested 14.6 mt of the 1998 driftnet quota to the 1998 North Atlantic swordfish incidental catch category.

The quotas for the 1998 North Atlantic swordfish fishery were previously established (62 FR 55357, October 24, 1997) to provide 1028.5 mt for each semiannual period in the directed (longline/harpoon) fishery, 41.6

mt for the driftnet fishery, and 300 mt reserved for incidental catch. Given the regulatory requirements on carryover and inseason reallocation, NMFS adjusts the 1998 second semiannual directed North Atlantic swordfish quota to 1363.8 mt (1028.5 + 335.3) and adjusts the 1998 incidental catch quota to 314.6 mt (300.0 + 14.6).

Classification

This action is taken under 50 CFR 630.24(e) and (f) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: November 25, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32017 Filed 11–27–98; 1:13 pm]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 63, No. 231
Wednesday, December 2, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

RIN 3150—AG06

Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material To Provide Requested Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes amending its regulations to add an explicit requirement that general licensees who possess certain measuring, gauging, or controlling devices that contain byproduct material provide the NRC with information concerning these devices. The NRC intends to use this provision to request information concerning devices that present a comparatively higher risk of exposure to the public or property damage. The proposed rule is intended to help ensure that devices containing byproduct material are maintained and transferred properly and are not inadvertently discarded.

DATES: Submit comments by February 16, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received and the regulatory analysis, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6264, or e-mail at CRM@nrc.gov; or Jayne McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415–6219, or e-mail at JMM2@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the Atomic Energy Commission (AEC) amended its regulations to provide a general license for the use of byproduct material contained in certain measuring, gauging, or controlling devices (10 CFR 30.21(c)). Under current regulations (10 CFR 31.5), certain persons may receive and use a device containing byproduct material under this general license if the device has been manufactured and distributed according to the specifications contained in a specific license issued by the NRC or by an Agreement State. A specific license authorizing distribution of generally licensed devices is issued if a regulatory authority determines that the safety features of the device and the instructions for safe operation of that device are adequate and meet regulatory requirements. The general licensee must comply with requirements for labeling, instructions for use, and proper storage or disposition of the device. For some devices, the general licensee must also comply with leak testing requirements. The general licensee is also subject to the terms and conditions in 10 CFR 31.2 concerning general license requirements, transfer of byproduct material, reporting and recordkeeping, and inspection. The general licensee must comply with the safety instructions contained in or referenced on the label of the device and must have the testing or servicing of the device performed by an individual who is authorized to manufacture, install, or service these devices.

A generally licensed device usually consists of radioactive material, contained in a sealed source, within a shielded device. The device is designed with inherent radiation safety features so that it can be used by persons with no radiation training or experience. Thus, the general license is meant to simplify the licensing process so that a case-by-case determination of the adequacy of the radiation training or experience of each user is not necessary.

There are about 45,000 general licensees under 10 CFR 31.5 who possess about 600,000 devices that contain byproduct material. In the past, the NRC has not contacted general licensees on a regular basis because of the relatively small radiation exposure risk posed by these devices and the very large number of general licensees.

However, there have been a number of occurrences where generally licensed devices containing radioactive material have not been properly handled or properly disposed of. In some cases, this has resulted in radiation exposure to the public and contamination of property. For example, when a source is accidentally melted in a steel mill, considerable contamination of the mill, the steel product, and the wastes from the process, the slag and the baghouse dust, can result.

Because of these incidents, the NRC conducted a 3-year sampling (1984 through 1986) of general licensees to assess the effectiveness of the general license program and to determine whether there was an accounting problem with generally licensed device users and, if so, what action could be taken. The sampling revealed several areas of concern regarding the use of radioactive material under the general license provisions of 10 CFR 31.5. The NRC concluded that—(1) Many general licensees are not aware of the appropriate regulations, and (2) Generally licensed devices are inadequately handled and accounted for.

Approximately 15 percent of all general licensees sampled could not account for all of their generally licensed devices. The NRC concluded that these problems could be remedied by more frequent and timely contact between the general licensee and the NRC.

On December 27, 1991 (56 FR 67011), the NRC published a notice of proposed rulemaking concerning the accountability of generally licensed devices. The proposed rule contained a number of provisions, including a requirement for general licensees under 10 CFR 31.5 to provide information to the NRC upon request, through which a device registry could be developed. The proposed rule also included requirements in 10 CFR 32.51a and 32.52 for the specific licensees who manufacture or initially transfer generally licensed devices. Although the public comments received were reviewed and a final rule developed, a final rule was not issued because the resources to implement the proposed rule properly were not available.

The NRC has continued to consider the issues related to the loss of control of generally licensed, as well as specifically licensed, sources of radioactivity. In July 1995, the NRC, with assistance from the Organization of Agreement States, formed a working group to evaluate these issues. The working group consisted of both NRC and Agreement State personnel and encouraged the involvement of all persons having a stake in the process and its final recommendations. All working group meetings were open to the public. A final report was completed in July 1996 and published in October 1996 as NUREG–1551, "Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices."

In considering these recommendations, the NRC has decided, among other things, to initiate an annual registration program of devices generally licensed under 10 CFR 31.5 that would be similar to the program originally proposed in the December 27, 1991, proposed rule. However, the NRC has decided to do so only for those devices that present a higher risk (compared to other generally licensed devices) of potential exposure to the public and property loss if control of the device is lost. Initially, the NRC will use the criteria developed by the working group to determine which devices should be registered.

This proposed rule presents the proposed addition of an explicit requirement to provide information in response to requests made by the NRC for a second round of comment. While the proposed rule would apply to all 10 CFR 31.5 general licensees, the NRC plans to contact only those general licensees identified by the working group for the purpose of the registration program.

The NRC is withdrawing the December 27, 1991, proposed rule. The NRC plans to review the other provisions contained in the December 27, 1991, proposed rule and the recommendations of the working group and develop additional requirements in a separate rulemaking.

Discussion

The Atomic Energy Act of 1954 (AEA), as amended, authorizes the NRC to request appropriate information from its licensees concerning licensed activities. However, the Commission has not included such an explicit provision in the regulations governing 10 CFR 31.5 general licensees. Although 10 CFR 2.204, 30.34(e), and 30.61(a) require information from licensees by order or demand, these provisions are not considered appropriate for the initiation of a routine registration program. In a previous rulemaking, the Commission (then AEC) had proposed the inclusion of a registration requirement for generally licensed devices before receipt of devices (February 5, 1974; 39 FR 4583). In response to comment on that proposal, the Commission decided not to institute a registration requirement as part of the final rulemaking on that action (December 16, 1974; 39 FR 43531). Given this history, establishing a device registration program without a rulemaking process is also considered inappropriate.

This proposed rule would add an explicit requirement to 10 CFR 31.5 that would require general licensees to respond to written requests from the NRC for information concerning products that they have received for use under a general license in a timely way.

The proposed rule would require a response to requests within 30 days or such other time as specified in the request. For routine requests for information, 30 days should be adequate in most instances, and an extension can be obtained for good cause. If more complicated requests are made or circumstances recognized that may require a longer time, the Commission may provide a longer response time. In the unusual circumstance of a significant safety concern, the Commission could demand information in a shorter time. The NRC is specifically soliciting comments on this time period. Also, a phone number will be provided in the request for information in case additional guidance is necessary.

The NRC intends to use this provision primarily to institute an annual registration program for devices using certain quantities of specific radionuclides. The registration program is primarily intended to ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. The registration process would allow NRC to account for devices that have been distributed for use under the general license. The NRC believes that if general licensees are aware of their responsibilities they would comply with the requirements for proper handling and disposal of generally licensed devices. This would help reduce the potential for incidents that could result in unnecessary radiation exposure to the public as well as contamination of property.

The general licensees covered by the registration program would be asked to account for the devices in their possession and to verify, as well as certify, information concerning:

1. The identification of devices, such as the manufacturer, model and serial numbers;
2. The persons responsible for compliance with the regulations;
3. The disposition of the devices; and
4. The location of the devices.

While the proposed rule would apply to all 10 CFR 31.5 general licensees (about 45,000), the NRC would only contact, for purposes of registration, approximately 6000 general licensees, possessing about 24,000 devices. This estimate is based on the criteria recommended by the working group for determining which sources should have increased oversight. Requests for information would be sent to general licensees who are expected, based on current NRC records, to possess devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, or 37 MBq (1 mCi) of any transuranic (at this time, the only generally licensed devices meeting this criterion contain americium-241). The majority of the devices meeting these criteria are used in commercial and industrial applications measuring thickness, density, or chemical composition in petrochemical and steel manufacturing industries. The requests will include the information contained in NRC records concerning the possession of these devices. The licensees will be asked to verify, correct, and add to that information. The NRC records are based on information provided to NRC by distributors under 10 CFR 32.52(a) and from general licensees as required by 10 CFR

31.5(c)(8) or (9). If a general licensee no longer possesses devices meeting the criteria, it would be expected to provide information about the disposition of the devices previously possessed. Errors in current NRC records concerning these general licensees could be the result of: (1) errors made in the quarterly reports of manufacturers or initial distributors, (2) general licensees not reporting transfers, or (3) errors made by NRC or its contractors in recording transfer information.

In addition to the 6000 general licensees identified for registration, the NRC may occasionally request information from other general licensees on a case-by-case basis as necessary or appropriate. For example, this might involve investigating the extent that other users have experienced a problem that has been identified with the design of a particular device model. However, significant modifications to the registration program to include a larger class of licensees would be done through rulemaking.

Although the proposed amendment would impose some additional costs on licensees, the NRC has estimated these costs to be minimal. This cost is the estimated administrative cost expended by general licensees to verify the information requested by the NRC regarding licensed devices. The NRC believes that the proposed rule's intended effect of increased compliance by general licensees with regulatory requirements and resulting NRC and public confidence in the general license program potentially afforded by these new requirements outweigh this nominal administrative cost.

The NRC is currently considering additional rulemaking concerning the control and accountability of devices generally licensed under 10 CFR 31.5. The recommendations made in NUREG–1551 will be considered at that time. That anticipated rule would address fees for registration, additional labeling requirements for 10 CFR 32.51 licensees, and compatibility of Agreement State regulations in this area. Public comments on this current proposed rule should only address the requirements proposed in this action. Comments concerning possible future rulemaking and the possible imposition of fees will not be addressed in any rule resulting from this proposed action.

Public Comments on the Original Proposed Rule

The NRC reviewed the comments received on the December 27, 1991, proposed rule. There were 26 comment letters received from a variety of sources including private and publicly held corporations, private citizens, citizens groups, the Armed Forces, and State governments. These comments have been considered to the extent applicable to this more limited proposed rule and will be considered in the development of a subsequent rulemaking concerning the accountability of devices generally licensed under 10 CFR 31.5. A detailed analysis of the comments received on the December 27, 1991, proposed rule will not be presented in either action as many of the specific comments pertain to specific provisions that have been withdrawn, much time has passed since these comments were made, and additional opportunity for comment is being provided.

Comments received on the December 27, 1991, proposed rule demonstrated that there was considerable opposition to the rule as proposed, some of it specifically concerning a registration requirement. Most of this opposition was related to the breadth of the proposal which would have made the registration program applicable to all of the 10 CFR 31.5 general licensees, accounting for as many as 600,000 devices. Some respondents questioned whether this was justified or cost effective. Some thought the impacts were underestimated, particularly for general licensees possessing many devices, and that the provision would have serious impacts on certain industries. Registration was specifically opposed for devices used by the airline industry, self-luminous signs, static eliminators, and some other devices which present relatively low risks.

The NRC found the working group process valuable in identifying criteria for categorizing devices that are more likely to present a significant risk by exposure of the public or through contamination of property. Therefore, the registration of devices under this proposed rulemaking would be limited to those devices meeting the criteria recommended by the working group. For the most part, general licensees using devices meeting these criteria have a limited number of devices that would require registration. The NRC is exploring approaches to minimize the administrative effort for both general licensees and the NRC in implementing this requirement.

This proposal includes a provision to request an extension to the time interval to provide a complete response to requests for information, if the general licensee is having difficulty in meeting the time limit. This provision was included in response to comments on the December 27, 1991, proposed rule. Although this difficulty is much less likely to arise within the limited population of general licensees covered by the current proposal, the Commission believes that the additional flexibility is desirable.

Interim Enforcement Policy

As had been planned at the time of the 1991 proposed rule, the Commission intends to establish an interim enforcement policy for violations of 10 CFR 31.5 that licensees discover and report during the initial cycle of the registration program. This policy will supplement the normal NRC Enforcement Policy in NUREG–1600, Rev. 1. It will be issued in the near future and will remain in effect through one complete cycle of the registration program.

Under the current NRC Enforcement Policy, significant violations, such as those involving lost sources, may result in escalated enforcement action including civil penalties. The interim policy would provide that enforcement action normally would not be taken for violations identified by a licensee and reported to the NRC if appropriate corrective action is taken. For the period that the interim policy is in effect, it would also apply to general licensees not subject to the registration requirement if they identify and report violations and take appropriate corrective action. This change from the current NRC Enforcement Policy is intended to remove any disincentive to identify deficiencies that might be caused by a concern over potential enforcement action. This action would encourage general licensees to search their facilities to ensure sources are located, to determine if applicable requirements have been met, and to develop appropriate corrective action when deficiencies are found. A Notice of Violation (NOV) without a civil penalty still may be issued if the NRC staff believes that taking this action is justified by the safety significance of the violation or the need to record and document the general licensee's corrective action in the formal manner required in a response to an NOV.

In addition, escalated enforcement action still will be considered for violations involving failure to provide the information requested, failure to take appropriate corrective action, or for willful violations including the submittal of false information. Sanctions in those situations may include significant civil penalties as well as orders to limit or revoke the authority to possess radioactive sources under a general license.

The Commission also intends to increase the civil penalty amounts specified in its current Enforcement

Policy in NUREG–1600, Rev. 1, for violations involving lost or improperly disposed sources or devices. This is to ensure that such civil penalties are significantly higher than the costs avoided by the failure to properly dispose of the source or device.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997 (62 FR 46517), this proposed rule is classified as Compatibility Category D. Category D means the provisions are not required for purposes of compatibility; however, if adopted by the State, the provisions should not create any conflicts, duplications, or gaps in the regulation of AEA material. Ultimately an enhanced oversight program is expected to include provisions that will require a higher degree of compatibility. This will be considered in a subsequent rulemaking to add more explicit requirements for the registration program and additional provisions concerning accountability of generally licensed devices.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in the categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150–0016), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by (insert date 30 days after publication in the **Federal Register**). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The comments received on the earlier draft regulatory analysis have been considered to the extent that they apply to this more limited action. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained by calling Jayne McCausland, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC, 20555–0001; telephone (301) 415–6219; or e-mail at JMM2@nrc.gov.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would require general licensees who have received specific devices to respond to requests for information from NRC. The proposed rule would apply to the approximately 45,000 persons using products under an NRC general license, many of whom may be classified as small entities. However, the NRC intends to request registration information from only approximately 6000 of these general licensees about the identification of the devices, accountability for the devices, the persons responsible for compliance with the regulations, and the disposition of the devices. The NRC believes that the economic impact of the proposed requirements on any general licensee would be a negligible increase in administrative burden. The proposed rule is intended to ensure that general licensees understand and comply with regulatory responsibilities regarding the generally licensed radioactive devices in their possession.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, a backfit analysis is not required because these amendments would not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 31.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

1. The authority citation for Part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

2. Section 31.5 is amended by adding paragraph (c)(11) to read as follows:

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10 CFR 31.5 Certain measuring, gauging, or controlling devices.[2]

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(c) * * *

(11) Shall respond to written requests from the Nuclear Regulatory Commission to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and provide written justification as to why it cannot comply.

* * * * *

Dated at Rockville, Maryland, this 19th day of November, 1998.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Acting Executive Director for Operations.

[FR Doc. 98–32113 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AC42

Comprehensive Quality Assurance in Medical Use and a Standard of Care

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing an advance notice of proposed rulemaking (ANPRM) that requested public comments on questions related to comprehensive quality assurance and a standard of care in medical uses of byproduct material. The Commission has decided to withdraw this ANPRM because of the effective implementation of the "Quality Management Program and Misadministrations" rule and the NRC's current efforts in revising the existing regulation for medical uses of byproduct material into a more risk-informed and performance-based regulation.

ADDRESSES: The Commission paper, the staff requirement memoranda (SRM), and associated documents are available for public inspection, and copying for a fee, at the NRC Public Document Room located at 2120 L Street NW. (Lower Level), Washington, DC 20012–7082, telephone: (202) 512–2249.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail jmm2@nrc.gov.

SUPPLEMENTARY INFORMATION:

On October 2, 1987, the Commission published two notices in the **Federal Register** regarding medical use of byproduct material. The first notice was the proposed rulemaking entitled "Basic Quality Assurance in Radiation Therapy" (52 FR 36942), that proposed a requirement for medical use licensees to implement some specific basic quality assurance practices to reduce the number of therapy misadministrations involving byproduct material. The second notice was an ANPRM entitled "Comprehensive Quality Assurance in Medical Use and a Standard of Care" (52 FR 36949), that requested public comments on the extent to which a comprehensive quality assurance program requirement was needed. The NRC believed that this two-pronged approach to the misadministrations problem would provide the best balance between assuring public health and safety and avoiding inadvertent interference in the delivery of quality medical care.

On July 25, 1991 (56 FR 34104), the NRC published a final rule entitled "Quality Management Program and Misadministrations" (the QM Rule) which was based on the above-mentioned 1987 proposed rule. During the implementation of the final rule, the NRC decided to assess the effectiveness of the rule and, based on the results of the assessment, to determine the need for a rulemaking on comprehensive quality management.

Subsequently, a Commission SRM on SECY–97–115 dated June 30, 1997, approved subsuming several Part 35 rulemakings into one major revision to 10 CFR Part 35 rulemaking activity. The proposed rulemaking entitled "Medical Use of Byproduct Material," was published in the **Federal Register** (RIN 3150–AF74) (August 13, 1998; 63 FR 43516). The NRC is in the process of developing the final rule governing medical use of byproduct material into a more risk-informed and performance-based regulation. This overall revision includes a consideration as to whether or not the regulation on the quality management program should be revised to become more risk-informed and performance-based. For this reason, the Commission is withdrawing the ANPRM.

Dated at Rockville, Maryland, this 24th day of November, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–32108 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF04

Steam Generator Tube Integrity for Operating Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing an advance notice of proposed rulemaking (ANPRM) that was published to request public comment on the Commission's regulations pertaining to steam generator (SG) tube integrity. The proposed rule would have implemented a more flexible regulatory framework for steam generator surveillance and maintenance activities that would maintain adequate assurance of tube integrity while allowing a degradation-specific management approach. Because the NRC has concluded that the regulatory objectives set forth for this effort can be achieved by equally effective regulatory alternatives, the ANPR is being withdrawn.

ADDRESSES: The Commission paper, the staff requirement memoranda (SRM), and associated documents are available for public inspection, and copying for a fee, at the NRC Public Document Room located at 2120 L Street NW. (Lower Level), Washington, DC 20012–7082, telephone: (202) 512–2249.

FOR FURTHER INFORMATION CONTACT: Tim Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1462, e-mail tar@nrc.gov.

SUPPLEMENTARY INFORMATION:

On September 19, 1994 (59 FR 47817), the Commission published an ANPRM that requested comments, advice, and recommendations from interested parties on the proposed steam generator rule. In response to the ANPRM, two public comments were received. The primary comment was a coordinated industry response submitted by the Nuclear Energy Institute (NEI). The remaining comment, submitted by Virginia Power, endorsed the NEI comment. Subsequently, the NRC staff developed a draft rule and draft regulatory guide intended to implement a performance-based regulatory structure that provides for the development and implementation of appropriate measures to ensure the consistency and quality of inspection methods, repair criteria, and tube condition assessment, while giving appropriate consideration to risk. As part of the rulemaking process, the NRC staff estimated the risk associated with SG tube degradation and used the results to provide the insights required for performing a regulatory analysis of the proposed rulemaking approach.

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[2] Persons possessing byproduct material in devices under a general license in 10 CFR 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of 10 CFR 31.5 in effect on January 14, 1975.

In COMSECY–97–013, dated May 23, 1997, the NRC staff provided a risk assessment summary and major conclusions from a regulatory analysis. Based on these results, the NRC staff reassessed whether a rulemaking is the appropriate regulatory vehicle for addressing the problems associated with SG tube integrity. It should be recognized that the NRC staff found that the current regulations governing SG tube integrity provide an adequate basis to ensure public health and safety due to SG operation. However, the NRC staff concluded that further guidance is needed for the industry to continue to effectively meet these regulations. Issues involving a plant's technical specifications (TS) are amenable to a generic letter approach. Given these considerations, the NRC staff informed the Commission that it planned to pursue the following approach in lieu of a new steam generator rulemaking: (1) Complete development of a SG tube integrity regulatory guide which describes an acceptable performance-based program for ensuring adequate tube inspection, monitoring, and assessment; (2) request licensees, through a generic letter, to propose performance-based technical specification changes to address the issues regarding inspection, monitoring, and assessment of SG tube condition to ensure that SG tube integrity is maintained consistent with the plant licensing basis; (3) provide licensees with an option to change current SG tube repair criteria and implement a degradation-specific management approach, if it can be demonstrated that risk will be maintained at an acceptable level. An application-specific regulatory guide would provide guidance on acceptable approaches for proposing changes to SG tube integrity criteria and assessing changes in risk associated with relaxation of tube integrity criteria. Licensees would not be able to implement alternate repair criteria until an appropriate risk assessment is submitted and found acceptable by the NRC staff; and (4) as part of the IPE follow-up program, the NRC staff will evaluate pressurized water reactors (PWRs) that appear to have a high potential for core damage sequences that can challenge SG tubes. Any additional requirements would be imposed consistent with the backfit requirements of § 50.109.

The SRM on COMSECY–97–013, dated June 30, 1997, approved the revised approach. The SRM also directed the NRC staff to seek industry input, as appropriate, in developing the technical basis for the proposed TS changes to ensure that the proposed changes are consistent with current steam generator tube degradation modes. In support of this commitment, the NRC staff developed a proposed generic letter that: (1) informs PWR licensees that plant TSs for maintaining SG tube integrity do not alone provide the needed assurance that SG tube integrity is being adequately monitored and maintained in accordance with NRC regulations and plant licensing bases; (2) advises licensees that they may request license amendments to their plant TSs to implement the model TSs attached to the generic letter for maintaining SG tube integrity, or justify alternate approaches for ensuring that SG tube integrity; and (3) requires that licensees submit to the NRC written responses that describe their ongoing or planned activities to monitor and maintain SG tube integrity. By letter dated December 16, 1997, the NRC staff was informed that the industry, through the NEI Nuclear Strategic Issues Advisory Committee, had voted to adopt NEI 97–06. The chief objective of the industry initiative is for PWR licensees to evaluate their existing SG programs and, where necessary, to revise or strengthen program attributes to meet the intent of the NEI 97–06 guidelines. The NEI 97–06 guidelines are intended to improve both the quality and the consistency of SG programs throughout the industry. Consistent with Direction Setting Issue (DSI) 13, the NRC staff's preferred approach is to endorse an industry initiative that addresses all NRC staff and stakeholder concerns, rather than issue a generic letter. As a result, the NRC staff has temporarily deferred issuing the proposed generic letter for public comment while it works with industry to resolve issues associated with NEI 97–06, with the objective of endorsing NEI 97–06 in a regulatory guide.

Whether the NRC staff ultimately endorses the NEI 97–06 guidance or continues with its efforts to issue a generic letter addressing SG tube integrity, the NRC has concluded that equally effective regulatory alternatives to rulemaking are available to address the issue of SG tube integrity. Therefore, the proposed rule is not required and is being withdrawn.

Dated at Rockville, Maryland, this 24th day of November, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–32107 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF33

Reporting Reliability and Availability Information for Risk-Significant Systems and Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking that solicited comments on proposed amendments to its regulations that would have required licensees for commercial nuclear power reactors to report to the NRC, plant-specific summary reliability and availability data for certain risk-significant systems and equipment. The proposed rule would have also required licensees to maintain onsite, and to make available for NRC inspection, records and documentation that provide the basis for the summary data reported to the NRC. The systems and equipment for which data would be provided are a subset of the systems and equipment within the scope of the NRC's maintenance rule. The Commission has decided to accept industry's proposed alternative to the rule to voluntarily provide reliability and availability information for risk-significant systems and equipment and, therefore, withdraws this rulemaking.

ADDRESSES: The Commission paper, the staff requirement memoranda (SRM), and associated documents are available for public inspection, and copying for a fee, at the NRC Public Document Room located at 2120 L Street NW. (Lower Level), Washington, DC 20012–7082, telephone: (202) 512–2249.

FOR FURTHER INFORMATION CONTACT: Dennis Allison, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6835, e-mail dpa@nrc.gov.

SUPPLEMENTARY INFORMATION:

On February 12, 1996 (61 FR 5318), the NRC published in the **Federal Register** proposed amendments to 10 CFR Part 50 that would have required operating reactor licensees to report reliability and availability information for certain risk-significant systems and equipment. The reporting requirements would have applied to the event-mitigating systems and equipment that have or could have a significant effect on risk in terms of avoiding core damage accidents or preserving containment integrity. The data that would have been reported would have included: the number of demands and the number of failures to start associated with those demands, along with additional descriptive information; the number of hours of operation following each successful start including whether or not the run was terminated by equipment failure, along with additional descriptive information; the number of hours equipment is unavailable, along with additional descriptive information; for each period equipment is unavailable due to component failure, descriptive information on that failure; and the number of hours when two or more trains from the same or different systems were concurrently unavailable, along with additional descriptive information.

The public comment period closed on June 11, 1996. The NRC received 31 comment letters. One comment letter supported the rule, stating that the public and industry could expect significant benefits. Most of the remaining comments opposed the rule, stating that the proposed reporting requirements costs were underestimated, benefits were overestimated, the rule would be overly burdensome, the rule would be premature, and that the rule is not justified.

The Commission SRM dated June 28, 1995, issued in response to SECY–95–129, and the SRM on SECY–95–215 dated October 24, 1995, directed the NRC staff to continue to work with industry on voluntary submittal of reliability data under a program that will meet the needs of all parties. On October 1, 1996, the Institute of Nuclear Power Operations (INPO) provided the NRC with a sample of data available from its Safety System Performance Indicator (SSPI) system, as part of a voluntary nuclear industry data sharing initiative. A revised Memorandum of Agreement (MOA) between INPO and the NRC was signed on December 24, 1996, providing NRC with access to SSPI data. In addition, on March 21, 1997, the Nuclear Energy Institute (NEI) provided the NRC with a description of a new INPO data collection system, Equipment Performance and Information Exchange (EPIX). Based upon a review of data available in SSPI and EPIX, as well as the information available from Licensee Event Reports and Monthly Operating Reports, the Commission has determined that under the voluntary approach, the NRC can estimate risk parameters and construct a reliability database that reflects the parameters needed for effective use in risk-informed applications. Thus, the intended benefits of the proposed rule would be realized and the main advantages of the voluntary approach (i.e., the lower cost, schedule, and industry support) outweigh any disadvantages. The NRC will continue to work with industry representatives to improve thecontent of the voluntary data. Because of industry's voluntary alternative approach to the rule, the Commission is withdrawing this proposed rulemaking.

Dated at Rockville, Maryland, this 24th day of November, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–32106 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

RIN 3150–AC03

Elimination of Inconsistencies Between NRC Regulations and EPA High-Level Waste Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking that would have eliminated several inconsistencies with the generic Environmental Protection Agency (EPA) standards to be developed for the disposal of High-Level Waste (HLW) in deep geologic repositories. Because the NRC is developing site-specific disposal regulations for Yucca Mountain, Nevada, consistent with the Energy Policy Act of 1992 (EnPA), the proposed rule is being withdrawn.

ADDRESSES: The Commission paper, the staff requirement memoranda (SRM), and associated documents are available for public inspection, and copying for a fee, at the NRC Public Document Room located at 2120 L Street NW. (Lower Level), Washington, DC 20012–7082, telephone: (202) 512–2249.

FOR FURTHER INFORMATION CONTACT: Tim McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6681, e-mail tjm3@nrc.gov.

SUPPLEMENTARY INFORMATION:

On June 19, 1986 (51 FR 22288), the NRC published a notice of proposed rulemaking in the **Federal Register** that would have eliminated several inconsistencies with the EPA standards to be developed for the disposal of HLW in deep geologic repositories. The Nuclear Waste Policy Act of 1982 (NWPA) directs NRC to issue criteria for the licensing of HLW geologic repositories. Section 121(c) of this Act states that the criteria for the licensing of HLW geologic repositories must be consistent with these standards. The proposed rule was necessary to eliminate several inconsistencies with the EPA standards, thus fulfilling the statutory requirement. However, since then, Congress passed the EnPA, which requires EPA to issue radiation standards for the proposed geologic repository at Yucca Mountain, based on and consistent with the findings and recommendations of the National Academy of Sciences (NAS). Under EnPA, NRC is also required to develop site-specific disposal regulations that would apply solely to the proposed geologic repository at Yucca Mountain. NAS published its findings and recommendations in 1995.

The NRC staff has considered and is implementing a strategy for developing site-specific disposal regulations that would apply solely to the proposed geologic repository at Yucca Mountain, and is deferring the updating of 10 CFR Part 60 generic requirements to a later date. These site-specific regulations will be issued consistent with EnPA, which also requires the Environmental Protection Agency to issue radiation standards for a geologic repository at Yucca Mountain, based on and consistent with the 1995 findings and recommendations of the NAS.

The NRC staff's strategy for developing the site-specific disposal regulations for Yucca Mountain can be found in a Commission paper, designated SECY–97–300, dated December 24, 1997. This strategy was approved by the SRM dated March 6, 1998. Because the NRC is developing site-specific disposal regulations for Yucca Mountain, Nevada, the proposed rulemaking is being withdrawn.

Dated at Rockville, Maryland, this 24th day of November, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–32109 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM–97–500]

RIN:1904–AA75

Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of comment period.

SUMMARY: On October 30, 1998, the Department of Energy published a notice providing limited reopening of the record of its rulemaking to revise energy conservation standards for fluorescent lamp ballasts under the Energy Policy and Conservation Act (63 FR 58330). The notice announced that November 30, 1998, would be the closing date for receiving public comments regarding the Department's consideration of consumers who choose electronic ballast T–8 systems over electronic ballast T–12 systems and consumers who choose electronic ballasts over cathode cutout ballasts. On November 20, 1998, the National Electrical Manufacturers Association requested that the comment period be extended until December 15, 1998, to allow additional time for data collection and to avoid having the closing date immediately follow the Thanksgiving holiday. The Department agrees to extend the comment period closing date until December 15, 1998.

DATES: Comments must be received on or before December 15, 1998.

ADDRESSES: Written comments are welcome. Please submit 10 copies (no faxes) to: Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Fluorescent Lamp Ballasts, Docket No. EE–RM–97–500, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9127, or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507.

Issued in Washington, DC, on November 25, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–32120 Filed 12–1–98; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1027]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is proposing to amend Regulation CC to allow banks that consummate a merger on or after July 1, 1998, and before June 1, 1999, greater time to implement software changes related to the merger.

DATES: Comments must be received by January 4, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1027, may be mailed to Ms. Jennifer Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500, pursuant to § 261.12 of the Board's Rules Regarding Availability of Information, between 9:00 a.m. and 5:00 p.m., except as provided in § 261.14 of those same Rules. (12 CFR 261.12 and 261.14)

FOR FURTHER INFORMATION CONTACT: Jean Anderson, Staff Attorney, Legal Division (202/452–3707). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board is proposing to amend Regulation CC to allow banks that consummate merger transactions on or after July 1, 1998, and before June 1, 1999, greater time to implement software changes related to the merger. The Board recognizes that banks are currently dedicating their automation resources to renovating and testing software and replacing noncompliant systems to address Year 2000 and leap year computer problems. Because a large amount of banks' automation resources may be dedicated to these efforts, banks may be challenged to make and test other programming changes, including those that may be required to comply with Regulation CC's merger transition provisions, thus potentially jeopardizing the success of their Year 2000 efforts and/or their system integration efforts due to the merger. Therefore, the Board is proposing to allow banks that consummate a merger on or after July 1, 1998, and before June 1, 1999, to be treated as separate banks until June 1, 2000. Beginning in June 1999, the normal one-year transition period will resume.

The Board requests comment on the need for this amendment and whether the proposed liberalization of the regulation's merger transition provisions is adequate to avoid contention for programming and testing resources necessary to manage banks' Year 2000 readiness efforts that otherwise would be created by these requirements.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. The initial regulatory flexibility analysis (5 U.S.C. 603(b)) requires an agency to describe the reasons why the proposed rule is being considered and a statement of the objectives of, and legal basis for, the proposed rule. The "Supplementary Information" above, contains this information. The proposed rule requires no additional reporting or recordkeeping requirements and does not overlap with other federal rules.

The initial regulatory flexibility analysis also requires a description of,

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and where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all insured banks, as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813) as well as banks that are eligible to apply to become an insured bank under section 5 of that act (12 U.S.C. 1815). As of June 30, 1998, there were 10,712 insured banks. The proposed amendments are intended to provide relief to banks involved in mergers, including small institutions, by reducing required changes to their automation environment during the period surrounding the century rollover, and should not have a negative economic effect on small institutions.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend Regulation CC, 12 CFR part 229 as set forth below:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.19, paragraph (g) is redesignated as paragraph (g)(1), a heading is added for newly designated paragraph (g)(1), and a new paragraph (g)(2) would be added to read as follows:

§ 229.19 Miscellaneous.

* * * * *

(g) *Effect of merger transaction.* (1) *In general.* * * *

(2) *Merger transactions on or after July 1, 1998, and before June 1, 1999.* If banks have consummated a merger transaction on or after July 1, 1998, and before June 1, 1999, the merged banks may be considered separate banks until June 1, 2000.

3. In § 229.40 the existing text is redesignated as paragraph (a), a heading is added for newly designated paragraph (a), and a new paragraph (b) would be added to read as follows:

§ 229.40 Effect of merger transaction.

(a) *In general.* * * *

(b) *Merger transactions on or after July 1, 1998, and before June 1, 1999.* If banks have consummated a merger transaction on or after July 1, 1998, and before June 1, 1999, the merged banks may be considered separate banks until June 1, 2000.

By order of the Board of Governors of the Federal Reserve System, November 25, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32051 Filed 12–1–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, and dimensional restoration of the fan blade leading edge. In addition, that AD requires installation of improved design fan blades as terminating action for the inspections. This action would reduce the lubrication interval, and require removal of rotors that experience repeat lockups within 225 cycles in service. This proposal is prompted by reports of 7 fan blade failures since publication of the current AD. The actions specified by the proposed AD are intended to prevent fan blade failure, which can result in damage to the aircraft.

DATES: Comments must be received by February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–02, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from fan blade failure, which can result in damage to the aircraft. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–02." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–02, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On November 7, 1996, the Federal Aviation Administration (FAA) issued airworthiness directive AD 96–23–15, Amendment 39–9821 (61 FR 63706, December 2, 1996), applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, to require periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, and dimensional restoration of the fan blade leading edge. In addition, that AD requires installation of improved design fan blades as terminating action for the inspections. That action was prompted by the introduction into service of improved design fan blades. That condition, if not corrected, could result in fan blade failure, which can result in damage to the aircraft.

Since the issuance of that AD, the FAA has received reports of 7 additional fan blade failures on engines that had been inspected in accordance with the current AD. The fan blades are failing as a result of high cycle fatigue. Contributing factors are foreign object damage (FOD), leading edge erosion, manufacturing discrepancies, and locked fan shrouds. These fan blade failures indicate that the currently mandated fleet management plan is insufficient.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6241, Revision 2, dated June 29, 1998, that reduces the lubrication interval, and requires removal of rotors that experience repeat lockups within 225 cycles in service (CIS).

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–23–15 to reduce the lubrication interval, and require removal of rotors that experience repeat lockups within 225 cycles in service.

There are approximately 2,650 engines of the affected design in the worldwide fleet. The FAA estimates that 960 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take no additional work hours to perform these inspections except at a shorter lubrication interval. Rework costs for the fan blades are $275 per blade, of which approximately $140 per blade is attributable to this AD action. With the manufacturer's rebate of $50 per blade, the total cost to industry of reworking these blades is $2,750 per engine. The manufacturer estimates that it will take 19 work hours per engine to remove and reinstall the blades. Using labor costs of $60 per hour, the labor costs to remove and reinstall the blades are $1,140 per engine. Hence, the increased costs generated by this proposed AD on U.S. operators is estimated to be $3,890 per engine, or $3,734,400 to retrofit the remaining 960 engines.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9821 (61 FR 63706, December 2, 1998) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 96–ANE–02. Supersedes AD 96–23–15, Amendment 39–9821.

Applicability: Pratt & Whitney (PW) Models JT8D–209, –217, –217A, –217C, and –219 turbofan engines that have not incorporated PW Service Bulletin (SB) No. 6193, dated October 31, 1994, or with fan blade, Part Numbers (P/N's) 798821, 798821–001, 808121, 808121–001, 809221, 811821, 851121, 851121–001, 5000021–02, 5000021–022, and 5000021–032 installed. These engines are installed on but not limited to McDonnell Douglas MD–80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan blade failure, which can result in damage to the aircraft, accomplish the following:

(a) Inspect fan blades and shrouds, unlock fan blade shrouds, lubricate fan blade shrouds, restore leading edge dimensions, and modify or install improved design fan blades in accordance with the schedule and procedures described in Parts 1, 2, and 3 of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. A6241, Revision 2, dated June 29, 1998.

(b) Modification of fan blades to the improved design configuration or installation of improved design fan blades in accordance with Part 3 of the Accomplishment Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998, constitutes terminating action to the inspections and maintenance actions described in paragraph (a) of this AD.

(c) For the purpose of this AD, the accomplishment effective date to be used for determination of compliance intervals, as required by Section 2 of PW ASB No. A6241, Revision 2, dated June 29, 1998, is defined as the effective date of this AD.

(d) For the purpose of this AD, "repair" as specified in Part 3, Paragraph A.(1)(b) of the Accomplishment Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998 is defined as the refurbishment of fan blades in accordance with Part 3, Paragraph C of the Accomplishment Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998.

(e) Alternative methods of compliance that have been approved for AD 95–12–19 are applicable for this AD and additional approval is not required.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to

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a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 24, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–32048 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–49]

Proposed Amendment to Class D and Class E Airspace; St. Joseph, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Rosecrans Memorial Airport, St. Joseph, MO. A review of the Class E airspace for Rosecrans Memorial Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria of FAA Order 7400.2D. A revision to the Airport Reference Point (ARP) coordinates is included in this document. The intended effect of this rule is to revise the ARP coordinates, comply with the criteria of FAA Order 7400.2D, and provide additional controlled Class E airspace for aircraft operating under instrument Flight Rules (IFR). The area will be depicted on aeronautical charts to provide a reference for pilots operating under Visual Flight Rules (VFR).

DATES: Comments must be received on or before January 5, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–49, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ACE–49." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which described the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to provide additional controlled airspace for Instrument Flight Rules (IFR) at Rosecrans Memorial Airport, St. Joseph, MO. A review of the Class E airspace for Rosecrans Memorial Airport, St. Joseph, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The Class D and Class E surface areas are amended to indicate the new ARP coordinates. The amendment of Rosecrans Memorial Airport will meet the criteria of FAA Order 7400.2D, revise the ARP coordinates, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The areas will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class D airspace areas are published in paragraph 5000; Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004; and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

ACE MO D St. Joseph, MO [Revised]

Rosecrans Memorial Airport, MO
(Lat. 39°46′19″ N., long. 94°54′35″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.2-mile radius of the Rosecrans Memorial Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area

* * * * *

ACE MO E4 St. Joseph, MO [Revised]

Rosecrans Memorial Airport, MO
(Lat. 39°46′19″ N., long. 94°54′35″ W.)
St. Joseph VORTAC
(Lat. 39°57′38″ N. long. 94°55′31″ W.)
TARIO LOM
(Lat. 39°40′33″ N., long. 94°54′25″ W.)
St. Joseph ILS
(Lat. 39°47′16″ N., long. 94°54′25″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the St. Joseph ILS localizer south course extending from the 4.2-mile radius of Rosecrans Memorial Airport to the TARIO LOM and within 1.8 miles each side of the St. Joseph VORTAC 175° radial extending from the 4.2-mile radius of the airport to 5.8 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE MO E5 St. Joseph, MO [Revised]

Rosecrans Memorial Airport, MO
(Lat. 39°46′19″ N., long. 94°54′35″ W.)
St. Joseph VORTAC
(Lat. 39°57′38″ N., long. 94°55′31″ W.)
TARIO LOM
(Lat. 39°40′33″ N., long. 94°54′25″ W.)
St. Joseph ILS
(Lat. 39°47′16″ N., long. 94°54′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Rosecrans Memorial Airport and within 2.0 miles each side of the 175° radial of the St. Joseph VORTAC extending from the 6.8-mile radius to the VORTAC and within 4 miles east and 6 miles west of the St. Joseph ILS localizer south course, extending from the 6.8-mile radius to 10.5 miles south of the TARIO LOM.

* * * * *

Issued in Kansas City, MO, on November 3, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32134 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105170–97]

RIN 1545–AV14

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the computation of the credit under section 41(c) and the definition of *qualified research* under section 41(d). The proposed regulations reflect changes to section 41 made by the Tax Reform Act of 1986, the Revenue Reconciliation Act of 1989, the Small Business Job Protection Act of 1996, and the Taxpayer Relief Act of 1997. The proposed regulations also provide certain technical amendments to the regulations.

DATES: Written comments must be received no later than March 2, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105170–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105170–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax—regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lisa J. Shuman or Leslie H. Finlow at (202)622–3120 (not a toll-free number); concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, La Nita Van Dyke at (202)622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by March 2, 1999. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.41–4(a) and 1.41–8(b). The information is required by the IRS to ensure that taxpayers have engaged in qualified research and to ensure the proper computation of the credit for increasing research activities under section 41. Section 1.41–4(a) defines a process of experimentation, as required for credit eligibility, to include the recording of the results of the experiments. This requirement imposes no additional recordkeeping burden, because taxpayers engaging in a bona fide process of experimentation already record the results in any event (see discussion under Explanation of Provisions, 3. *Documentation,* in this preamble). The information required by § 1.41–8 will be used to determine if the taxpayer has elected or revoked the election to use the alternative incremental credit allowed under section 41(c)(4). The collection of information is mandatory. The likely respondents are businesses or other for-profit institutions and organizations. Responses to this collection of information are required to elect to use and to revoke the election to use the alternative incremental credit computation allowed under section 41(c)(4).

The reporting burden contained in § 1.41–8(b)(2) (relating to the election of the alternative incremental credit) is reflected in the burden of Form 6765.

Estimated total annual reporting burden under § 1.41–8(b)(3) (relating to the revocation of the election to use the alternative incremental credit): 250 hours.

Estimated average annual burden hours per respondent: 50 hours.

Estimated number of respondents: 5.

Estimated frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The research credit provisions originally appeared in section 44F of the Internal Revenue Code of 1954 (the 1954 Code), as added to the 1954 Code by section 221 of the Economic Recovery Tax Act of 1981. Section 471(c) of the Tax Reform Act of 1984 redesignated section 44F as section 30. Section 231 of the Tax Reform Act of 1986 (the 1986 Act) redesignated section 30 as section 41 and substantially modified the research credit provisions. The amendments made to section 41 by the 1986 Act primarily relate to the definition of *qualified research* in section 41(d) and the computation of *basic research* payments under section 41(e). The Revenue Reconciliation Act of 1989 (the 1989 Act), the Revenue Reconciliation Act of 1993 (the 1993 Act), the Small Business Job Protection Act of 1996 (the 1996 Act), and the Taxpayer Relief Act of 1997 (the 1997 Act) also amended the research credit provisions. These amendments primarily relate to the trade or business requirement in section 41(b) and the computation of the credit under sections 41(c) and 41(f).

On May 17, 1989, the IRS published in the **Federal Register** (54 FR 21203) final regulations under section 41. The 1989 final regulations generally do not reflect the amendments to section 41 made by the 1986 Act, the 1989 Act, the 1993 Act, the 1996 Act, and the 1997 Act. The amendments proposed by this document contain rules relating primarily to the amendments to section 41(d) made by the 1986 Act. The amendments proposed by this document also contain some rules relating to amendments to section 41 made by the 1989 Act, the 1996 Act, and the 1997 Act.

On January 2, 1997, the IRS published in the **Federal Register** (62 FR 81) proposed regulations (the 1997 proposed regulations) under section 41 describing when computer software that is developed by (or for the benefit of) a taxpayer primarily for the taxpayer's internal use can qualify for the credit for increasing research activities. The 1997 proposed regulations reflect a change to section 41 made by the 1986 Act. The proposed regulations set forth in this notice of proposed rulemaking complement but otherwise do not affect the 1997 proposed regulations.

The Tax and Trade Relief Extension Act of 1998 extended the research credit from June 30, 1998 through June 30, 1999. In the Conference Report, H.R. Rep. No. 105–825, at 1547–49 (1998), the conferees address the scope of the term *qualified research,* comment on an aspect of the process of experimentation requirement, and note a lack of clarity in the interpretation of the distinction between internal-use software and other software. These proposed regulations reflect the views expressed by the conferees, as well as prior legislative history, regarding the term *qualified research* and the process of experimentation. The IRS and Treasury request comments on the distinction between internal-use software and other software.

Explanation of Provisions

1. Qualified Research

Congress enacted the research credit to encourage business firms to perform the research necessary to increase the innovative qualities and efficiency of the U.S. economy. H.R. Rep. No. 99–426, at 177 (1985); S. Rep. No. 99–313, at 694 (1986). In extending the research credit in the 1986 Act, Congress expressed concern that, in practice, taxpayers had applied the existing definition of *qualified research* too broadly and some taxpayers had claimed the credit for virtually any expense relating to product development. H.R. Rep. No. 99–426, at 178; S. Rep. No. 99–313, at 694–95. Many taxpayers claiming the credit were not in industries that involved high technology or its application in developing technologically new and improved products or methods of production. H.R. Rep. No. 99–426, at 178; S. Rep. No. 99–313, at 695.

To address these concerns, Congress narrowed the scope of the research credit by providing in the Internal Revenue Code (Code) an express definition of the term *qualified research.* In determining eligibility for the research credit, section 41(d) requires that qualified research activities satisfy a multi-part test. First, the taxpayer's expenditures must be eligible to be treated as expenses under section 174. See § 1.174–2(a)(1) (defining *research and experimental expenditures*).

Second, the expenditures must relate to research undertaken for the purpose of discovering information that is both technological in nature and the application of which is intended to be useful in developing a new or improved business component of the taxpayer. The proposed regulations provide that research is undertaken for the purpose of discovering information that is technological in nature only if the research activities are undertaken to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the particular field of technology or science and the process of experimentation utilized fundamentally relies on principles of physical or biological sciences, engineering, or computer science. Consistent with the requirement that the research activities be undertaken to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the particular field of technology or science, the credit may be available where the technological advance sought by the taxpayer is evolutionary, and, in certain circumstances, where the taxpayer is not the first to achieve the same advance. Moreover, the credit is available regardless of whether the taxpayer succeeds or fails in achieving the desired advance.

Third, section 41(d) requires that substantially all of the activities of the research constitute elements of a *process of experimentation* that relates to a new or improved function, performance, reliability or quality. As noted in the previous paragraph, the process of experimentation utilized must fundamentally rely on principles of physical or biological sciences, engineering, or computer science.

In developing a process of experimentation rule applicable to all scientific disciplines, IRS personnel met with personnel from the National Science Foundation and the National Institute of Standards and Technology. The proposed regulation explains that a process of experimentation is a process involving the evaluation of more than one alternative designed to achieve a result where the means of achieving that result are uncertain at the outset. This requires that the taxpayer (i) develop one or more hypotheses designed to achieve the intended result; (ii) design a scientific experiment (that, where appropriate to the particular field of research, is intended to be replicable with an established experimental control) to test and analyze those hypotheses (through, for example, modeling, simulation, or a systematic trial and error methodology); (iii) conduct the experiment and record the results; and (iv) refine or discard the hypotheses as part of a sequential design process to develop or improve the business component.

The proposed regulation does not require that the results of the experiments be recorded in any specific manner. The results of the experiments should be recorded in a manner that is appropriate for the particular field of science in which the experiment is conducted and for the type of experimentation involved. In some fields, for example, experiments are recorded in lab books. When developing computer software, by contrast, the experiments might be recorded in comment lines contained in the source code.

In the 1986 Act, Congress also specified that expenditures incurred in certain research, research-related, or non-research activities are not eligible for the credit. The excluded activities are: post-production activities, adaptation, duplication, surveys and studies, research outside the United States, research in the social sciences, funded research, and research related to certain internal-use computer software.

Section 1.41–4 of this proposed regulation contains rules that clarify the definition of the term qualified research and other terms used in section 41(d). The proposed regulation also provides rules relating to activities for which the research credit is not allowed.

2. Application of Tests

In the legislative history to the 1986 Act, Congress stated that if the requirements of section 41(d) are not met for an entire product, the term *business component* means the most significant set of elements of that product for which all the requirements of section 41(d) are met. The legislative history provides that this "shrinking back" is to continue until either a subset of elements of the product that satisfies the requirements is reached, or the most basic element of the product is reached and such element fails to satisfy the test.

Consistent with the legislative history, § 1.41–4(b) of the proposed regulation explains that the "shrinking-back" concept is the method for applying the tests in section 41(d) to a business component.

3. Documentation

Taxpayers must (a) record the results of their scientific experiments (in a manner that is appropriate for the particular field of science in which the experiment is conducted and for the type of experiment involved) and (b) comply with the recordkeeping requirements of section 6001 and the regulations thereunder. The requirement that taxpayers record the results of their scientific experiments is not intended to cause taxpayers to create records that otherwise would not be created. Rather, the recording of results is inherent in a process of experimentation to discover information that is technological in nature. Limiting the availability of the credit to taxpayers who record the results of their scientific experiments is not intended to change taxpayer behavior, but to identify taxpayers who engage in a bona fide process of experimentation and thus may be eligible for the credit.

4. Election of the Alternative Incremental Credit

The notice of proposed rulemaking provides rules for electing the alternative incremental credit, which may be elected under section 41(c)(4). Section 1.41–8 of the proposed regulation provides that the election is made on Form 6765, "Credit for Increasing Research Activities," and that the completed form must be attached to the taxpayer's timely filed original return (including extensions) for the taxable year to which the election applies.

Proposed Effective Date

In general, the regulations are proposed to be effective for expenditures paid or incurred on or after the date final regulations are published in the **Federal Register**. The regulations addressing the base amount are proposed to be effective for taxable years beginning on or after the date final regulations are published in the **Federal Register**. The regulations providing for the election and revocation of the alternative incremental credit are proposed to be effective for taxable years ending on or after the date final regulations are published in the **Federal Register**. No inference should be drawn from the proposed effective date concerning the application of section 41 to expenditures paid or incurred or the computation of the base amount before the proposed effective date.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. This certification is based on the information that follows. The economic impact of the collection of information contained in these regulations on any small entity would result from the entity being required: to (1) Record the results of experiments related to its qualified research activities, (2) elect on Form 6765 to use the alternative incremental credit if the

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entity desires to use that method, and (3) obtain permission to revoke the alternative incremental credit election, if so desired. Because taxpayers record results in conducting their research activities in any event (see discussion under Explanation of Provisions, 3. *Documentation*, in this preamble), the economic impact of the recordkeeping requirement in the regulation would not be significant. The economic impact of electing the alternative incremental credit on Form 6765 also would not be significant because the election is made on the same form and is based on the same information that is used to claim the research credit. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely (in the manner described in the ADDRESSES portion of this preamble) to the IRS. Submissions might include comments on the definition of gross receipts, comments regarding the exclusion for post-production activities, comments on whether and how the definition of a process of experimentation should be refined to ensure that it is appropriate for all scientific fields, and comments on the interaction of the discovery requirement and the duplication exclusion and the effect of such interaction on specific industries. Also, submissions might include comments on clarifying the distinction between internal-use software (i.e., software described in section 41(d)(4)(E)) and other software. All comments will be available for public inspection and copying.

A public hearing will be scheduled in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The IRS recognizes that persons outside the Washington, DC area also may wish to testify at the public hearing through teleconferencing. Requests to include teleconferencing sites must be received by January 16, 1999. If the IRS receives sufficient indications of interest to warrant teleconferencing to a particular city, and if the IRS has teleconferencing facilities available in that city on the date the public hearing is to be scheduled, the IRS will try to accommodate the requests.

The IRS will publish the time and date of the public hearing and the locations of any teleconferencing sites in an announcement in the **Federal Register**. The announcement will include the date by which persons that wish to present oral comments at the hearing must submit requests to speak, outlines of the topics to be discussed, and the time to be devoted to each topic.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal authors of these proposed regulations are Lisa J. Shuman and Leslie H. Finlow of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows.

(**Note**: These proposed amendments complement the proposed amendments published at 62 FR 83, January 2, 1997.)

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Revise the undesignated centerheading immediately before § 1.30–1 to read as follows:

Credits Allowable Under Section 30 through 44B

Par. 3. Remove the undesignated centerheading immediately before § 1.41–0.

Par. 4. Section 1.41–0 is revised to read as follows:

§ 1.41–0 Table of contents.

This section lists the paragraphs contained in §§ 1.41–0 through 1.41–8.

§ 1.41–0 Table of contents.

§ 1.41–1 Credit for increasing research activities.

(a) Basic principles.
(b) Amount of credit.
(c) Introduction to regulations under section 41.

§ 1.41–2 Qualified research expenses.

(a) Trade or business requirements.
(1) In general.
(2) New business.
(3) Research performed for others.
(i) Taxpayer not entitled to results.
(ii) Taxpayer entitled to results.
(4) Partnerships.
(i) In general.
(ii) Special rule for certain partnerships and joint ventures.
(b) Supplies and personal property used in the conduct of qualified research.
(1) In general.
(2) Certain utility charges.
(i) In general.
(ii) Extraordinary expenditures.
(3) Right to use personal property.
(4) Use of personal property in taxable years beginning after December 31, 1985.
(c) Qualified services.
(1) Engaging in qualified research.
(2) Direct supervision.
(3) Direct support.
(d) Wages paid for qualified services.
(1) In general.
(2) "Substantially all."
(e) Contract research expenses.
(1) In general.
(2) Performance of qualified research.
(3) "On behalf of."
(4) Prepaid amounts.
(5) Examples.

§ 1.41–3 Base amount for taxable years beginning on or after the date final regulations are published in the **Federal Register**.

(a) and (b) [Reserved]
(c) Definition of gross receipts.
(1) In general.
(2) Amounts excluded.
(3) Foreign corporations.
(d) Consistency requirement.
(1) In general.
(2) Illustrations.

§ 1.41–4 Qualified research for expenditures paid or incurred on or after the date final regulations are published in the **Federal Register**.

(a) Qualified research.
(1) General rule.
(2) Requirements of section 41(d)(1).
(3) Discovering information.
(4) Technological in nature.
(5) Process of experimentation.
(6) Substantially all requirement.
(7) Use of computers and information technology.
(8) Illustrations.
(b) Application of requirements for qualified research.
(1) In general.
(2) Shrinking-back rule.
(3) Illustration.
(c) Excluded activities.
(1) In general.
(2) Research after commercial production.
(i) In general.
(ii) Certain additional activities related to the business component.
(iii) Activities related to production process or technique.
(3) Adaptation of existing business components.
(4) Duplication of existing business component.
(5) Surveys, studies, research relating to management functions, etc.

(6) Internal-use computer software.
(7) Activities outside the United States.
(i) In general.
(ii) Apportionment of in-house research expenses.
(iii) Apportionment of contract research expenses.
(8) Research in the social sciences, etc.
(9) Research funded by any grant, contract, or otherwise.
(10) Illustrations.
(d) Documentation.

§ 1.41–5 Basic research for taxable years beginning after December 31, 1986. [Reserved]

§ 1.41–6 Aggregation of expenditures.

(a) Controlled group of corporations; trades or businesses under common control.
(1) In general.
(2) Definition of trade or business.
(3) Determination of common control.
(4) Examples.
(b) Minimum base period research expenses.
(c) Tax accounting periods used.
(1) In general.
(2) Special rule where timing of research is manipulated.
(d) Membership during taxable year in more than one group.
(e) Intra-group transactions.
(1) In general.
(2) In-house research expenses.
(3) Contract research expenses.
(4) Lease payments.
(5) Payment for supplies.

§ 1.41–7 Special rules.

(a) Allocations.
(1) Corporation making an election under subchapter S.
(i) Pass-through for taxable years beginning after December 31, 1982, in the case of an S corporation.
(ii) Pass-through, for taxable years beginning before January 1, 1983, in the case of a subchapter S corporation.
(2) Pass-through in the case of an estate or trust.
(3) Pass-through in the case of a partnership.
(i) In general.
(ii) Certain expenditures by joint ventures.
(4) Year in which taken into account.
(5) Credit allowed subject to limitation.
(b) Adjustments for certain acquisitions and dispositions—Meaning of terms.
(c) Special rule for pass-through of credit.
(d) Carryback and carryover of unused credits.

§ 1.41–8 Special rules for taxable years ending on or after the date final regulations are published in the **Federal Register**.

(a) Alternative incremental credit.
(b) Election.
(1) In general.
(2) Time and manner.
(3) Revocation.

Par. 5. Section 1.41–1 is revised to read as follows:

§ 1.41–1 Credit for increasing research activities.

(a) *Basic principles.* Section 41 provides a credit for increasing research activities. The credit is intended to encourage business firms to perform the technological research necessary to increase the innovative qualities and efficiency of the U.S. economy. The credit provides an incentive for business firms to increase their expenditures for research to obtain new knowledge through a scientific process of experimentation. Consequently, the credit is not to be applied too broadly or in a manner such that virtually any expense relating to the development of a product is eligible for the credit, even if some portion of the expense of developing the product does qualify for the credit. Similarly, the credit is not available for an expenditure merely because the expenditure may be treated as an expense under section 174. On the other hand, the credit may be available even though the technological advance sought by the taxpayer is evolutionary, and, in certain circumstances, even if another taxpayer has previously achieved the same advance. Moreover, the credit is available regardless of whether the taxpayer succeeds or fails in achieving the desired advance. The credit is limited to eligible expenditures paid or incurred for qualified research, as defined in section 41(d) and § 1.41–4.

(b) *Amount of credit.* The amount of a taxpayer's credit is determined under section 41(a). For taxable years beginning after June 30, 1996, and at the election of the taxpayer, the portion of the credit determined under section 41(a)(1) may be calculated using the alternative incremental credit set forth in section 41(c)(4).

(c) *Introduction to regulations under section 41.* (1) Sections 1.41–2 through 1.41–8 and 1.41–3A through 1.41–5A address only certain provisions of section 41. The following table identifies the provisions of section 41 that are addressed, and lists each provision with the section of the regulations in which it is covered.

Section of the regulation	Section of the Internal Revenue Code
§ 1.41–2	41(b)
§ 1.41–3	41(c)
§ 1.41–4	41(d)
§ 1.41–5	41(e)
§ 1.41–6	41(f)
§ 1.41–7	41(f) 41(g)
§ 1.41–8	41(c)
§ 1.41–3A	41(c) (taxable years beginning before January 1, 1990)
§ 1.41–4A	41(d) (taxable years beginning before January 1, 1986)
§ 1.41–5A	41(e) (taxable years beginning before January 1, 1987)

(2) Section 1.41–3A also addresses the special rule in section 221(d)(2) of the Economic Recovery Tax Act of 1981 relating to taxable years overlapping the effective dates of section 41. Section 41 was formerly designated sections 30 and 44F. Sections 1.41–0 through 1.41–8 and 1.41–0A through 1.41–5A refer to these sections as section 41 for conformity purposes. Whether section 41, former section 30, or former section 44F applies to a particular expenditure depends upon when the expenditure was paid or incurred.

§ 1.41–2 [Amended]

Par. 6. Section 1.41–2 is amended as follows:

1. The last sentence of paragraph (a)(3)(i) is amended by removing the language "§ 1.41–5(d)(2)" and adding "§ 1.41–4A(d)(2)" in its place.

2. The last sentence of paragraph (a)(3)(ii) is amended by removing the language "§ 1.41–5(d)(3)" and adding "§ 1.41–4A(d)(3)" in its place.

3. The last sentence of paragraph (a)(4)(ii)(F) is amended by removing the language "§ 1.41–9(a)(3)(ii)" and adding "§ 1.41-7(a)(3)(ii)" in its place.

4. Paragraph (e)(1)(i) is amended by removing the language "§ 1.41–5" and adding "§ 1.41–4 or 1.41–4A, whichever is applicable" in its place.

Par. 7. An undesignated centerheading is added immediately following § 1.44B–1 to read as follows:

Research Credit—For Taxable Years Beginning Before January 1, 1990

§ 1.41–3 [Redesignated as § 1.41–3A]

Par. 8. Section 1.41–3 is redesignated as § 1.41–3A and added under the new undesignated centerheading "Research Credit—For Taxable Years Beginning Before January 1, 1990."

Par. 9. New § 1.41–3 is added to read as follows:

§ 1.41–3 Base amount for taxable years beginning on or after the date final regulations are published in the Federal Register.

(a) and (b) [Reserved]

(c) *Definition of gross receipts*—(1) *In general.* For purposes of section 41, gross receipts means the total amount, as determined under the taxpayer's method of accounting, derived by the taxpayer from all its activities and from all sources (e.g., revenues derived from the sale of inventory before reduction for cost of goods sold).

(2) *Amounts excluded.* For purposes of this paragraph (c), gross receipts do not include amounts representing—

(i) Returns or allowances;

(ii) Receipts from the sale or exchange of capital assets, as defined in section 1221;

(iii) Repayments of loans or similar instruments (e.g., a repayment of the principal amount of a loan held by a commercial lender);

(iv) Receipts from a sale or exchange not in the ordinary course of business, such as the sale of an entire trade or business or the sale of property used in a trade or business as defined under section 1221(2); and

(v) Amounts received with respect to sales tax or other similar state and local taxes if, under the applicable state or local law, the tax is legally imposed on the purchaser of the good or service, and the taxpayer merely collects and remits the tax to the taxing authority.

(3) *Foreign corporations.* For purposes of section 41, in the case of a foreign corporation, gross receipts include only gross receipts that are effectively connected with the conduct of a trade or business within the United States. See section 864(c) and applicable regulations thereunder for the definition of *effectively connected income.*

(d) *Consistency requirement*—(1) *In general.* In computing the credit for increasing research activities for taxable years beginning after December 31, 1989, qualified research expenses and gross receipts taken into account in computing a taxpayer's fixed-base percentage and a taxpayer's base amount must be determined on a basis consistent with the definition of qualified research expenses and gross receipts for the credit year, without regard to the law in effect for the taxable years taken into account in computing the fixed-base percentage or the base amount. This consistency requirement applies even if the period for filing a claim for credit or refund has expired for any taxable year taken into account in computing the fixed-base percentage or the base amount.

(2) *Illustrations.* The following examples illustrate the application of the consistency rule of paragraph (d)(1) of this section:

Example 1. (i) X, an accrual method taxpayer using the calendar year as its taxable year, incurs qualified research expenses in 1990. X wants to compute its research credit under section 41 for the tax year ending December 31, 1990. As part of the computation, X must determine its fixed-base percentage, which depends in part on X's qualified research expenses incurred during the fixed-base period, the taxable years beginning after December 31, 1983, and before January 1, 1989.

(ii) During the fixed-base period, X reported the following amounts as qualified research expenses on its Form 6765:

1984	$100x
1985	120x
1986	150x
1987	180x
1988	170x
Total	$720x

(iii) For the taxable years ending December 31, 1984, and December 31, 1985, X based the amounts reported as qualified research expenses on the definition of qualified research in effect for those taxable years. The definition of qualified research changed for taxable years beginning after December 31, 1985. If X used the definition of qualified research applicable to its taxable year ending December 31, 1990, the credit year, its qualified research expenses for the taxable years ending December 31, 1984, and December 31, 1985, would be reduced to $80x and $100x, respectively. Under the consistency rule in section 41(c)(5) and paragraph (d)(1) of this section, to compute the research credit for the tax year ending December 31, 1990, X must reduce its qualified research expenses for 1984 and 1985 to reflect the change in the definition of qualified research for taxable years beginning after December 31, 1985. Thus, X's total qualified research expenses for the fixed-base period (1984–1988) to be used in computing the fixed-base percentage is $80 + 100 + 150 + 180 + 170 = $680x.

Example 2. The facts are the same as in *Example 1,* except that, in computing its qualified research expenses for the taxable year ending December 31, 1999, X claimed that a certain type of expenditure incurred in 1999 was a qualified research expense. X's claim reflected a change in X's position, because X had not previously claimed that similar expenditures were qualified research expenses. The consistency rule requires X to adjust its qualified research expenses in computing the fixed-base percentage to include any similar expenditures not treated as qualified research expenses during the fixed-base period, regardless of whether the period for filing a claim for credit or refund has expired for any year taken into account in computing the fixed-base percentage.

Par. 10. Section 1.41–4 is revised to read as follows:

§ 1.41–4 Qualified research for expenditures paid or incurred on or after the date final regulations are published in the Federal Register.

(a) *Qualified research*—(1) *General rule.* Research activities related to the development or improvement of a business component constitute qualified research only if the research activities meet all of the requirements of section 41(d)(1) and this section, and are not otherwise excluded under section 41(d)(3)(B) or (4), or this section.

(2) *Requirements of section 41(d)(1).* Research constitutes qualified research only if it is research—

(i) With respect to which expenditures may be treated as expenses under section 174, see § 1.174–2;

(ii) That is undertaken for the purpose of discovering information that is technological in nature, and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

(iii) Substantially all of the activities of which constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability or quality.

(3) *Discovering information.* For purposes of section 41(d) and this section, the term *discovering information* means obtaining knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in a particular field of technology or science.

(4) *Technological in nature.* For purposes of section 41(d) and this section, information is technological in nature if the process of experimentation used to discover such information fundamentally relies on principles of physical or biological sciences, engineering, or computer science.

(5) *Process of experimentation.* For purposes of section 41(d) and this section, a process of experimentation is a process to evaluate more than one alternative designed to achieve a result where the means of achieving that result are uncertain at the outset. A process of experimentation in the physical or biological sciences, engineering, or computer science requires that the taxpayer—

(i) Develop one or more hypotheses designed to achieve the intended result;

(ii) Design a scientific experiment (that, where appropriate to the particular field of research, is intended to be replicable with an established experimental control) to test and analyze those hypotheses (through, for example, modeling, simulation, or a systematic trial and error methodology);

(iii) Conduct the experiment and record the results; and

(iv) Refine or discard the hypotheses as part of a sequential design process to develop or improve the business component.

(6) *Substantially all requirement.* The substantially all requirement of section 41(d)(1)(C) and paragraph (a)(2)(iii) of this section is satisfied only if 80 percent or more of the research activities, measured on a cost or other

consistently applied reasonable basis, constitute elements of a process of experimentation for a purpose described in section 41(d)(3). The substantially all requirement is applied separately to each business component.

(7) *Use of computers and information technology.* The employment of computers or information technology, or the reliance on principles of computer science or information technology to store, collect, manipulate, translate, disseminate, produce, distribute, or process data or information, and similar uses of computers and information technology does not itself establish that qualified research has been undertaken.

(8) *Illustrations.* The following examples illustrate the application of paragraph (a) of this section:

Example 1. (i) *Facts.* X undertakes to develop for sale a tool that would improve its suite of application development products. The desired tool would handle connectivity problems for software application developers by providing data access via a layer of software that is more effective than existing software at finding data in various locations and forms within a network, translating it if need be, and then delivering the result to whatever application or user requested it. The means of developing such versatile database access middleware are not in the common knowledge of skilled professionals in the relevant technological fields. In order to determine whether it can successfully develop the desired tool, X develops, tests, and discards or refines various algorithms and protocols.

(ii) *Conclusion.* X's activities to develop the technology to build the new software development tool may be qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section. In developing the technology, X undertook to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields.

Example 2. (i) *Facts.* X acquired a new software environment, including a new operating system and a new database management system with related tools. X undertook a project to redeploy its data processing systems to the new software environment. X anticipated that, relative to the old system, the new system would significantly increase the time-sharing capabilities of its computer system. The project activities included redesign of databases and user interfaces, and translation of code from one programming language to another. In migrating to the new software environment, X relied on techniques and approaches that were within the common knowledge of skilled professionals in the relevant technological fields.

(ii) *Conclusion.* X's activities to redeploy its data processing systems to the new software environment are not qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section. X did not undertake to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields.

Example 3. (i) *Facts.* X operates a computer system that does not recognize dates beginning in the year 2000. In order to ensure that its computer system will not malfunction in the year 2000, X incurs substantial costs having its employees manually search its computer programs to find all date fields used in the programs and replace all of the date fields with year 2000 compliant date fields.

(ii) *Conclusion.* Because the activities of X's employees were not undertaken to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields and do not involve a process of experimentation, the activities are not qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section.

Example 4. (i) *Facts.* X is engaged in the business of developing and manufacturing widgets. X wants to manufacture an improved widget made out of a material that X has not previously used. Although X is uncertain how to use the material to manufacture an improved widget, the viability and means of using the material to manufacture such widgets are within the common knowledge of skilled professionals in the relevant technological fields.

(ii) *Conclusion.* Even though X's expenditures for the activities to resolve the uncertainty in manufacturing the improved widget may be treated as expenses for research activities under section 174 and § 1.174–2, X's activities to resolve the uncertainty in manufacturing the improved widget are not qualified research within the meaning of section 41(d) and paragraph (a) of this section. Although X's activities were intended to eliminate uncertainty, the activities were not undertaken to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields.

Example 5. (i) *Facts.* X desires to build a bridge that can sustain greater traffic flow without deterioration than can existing bridges. The technology used to build such a bridge is not in the common knowledge of skilled professionals in the relevant technological fields. X eventually abandons the project after attempts to develop the technology prove unsuccessful.

(ii) *Conclusion.* X's activities to develop the technology to build the bridge may be qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section, regardless of the fact that X did not actually succeed in developing that technology. In seeking to develop the technology, X undertook to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields.

Example 6. (i) *Facts.* The facts are the same as in *Example 5,* except that Y successfully builds a bridge that can sustain the greater traffic flow. Thereafter, Z seeks to build a bridge that can also sustain such greater traffic flow. The technology used by Y to build its bridge is a closely guarded secret that is not known to Z and remains beyond the common knowledge of skilled professionals in the relevant technological fields.

(ii) *Conclusion.* Z's activities to develop the technology to build the bridge may be qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section, even if it so happens that the technology used by Z to build its bridge is similar or identical to the technology used by Y. In developing the technology, Z undertook to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields.

Example 7. (i) *Facts.* X and other manufacturing companies have previously designed and manufactured a particular kind of machine using Material S. Material T is less expensive than Material S. X wishes to design a new machine that appears and functions exactly the same as its existing machines, but that is made of Material T instead of Material S. The technology necessary to achieve this objective is not within the common knowledge of skilled professionals in the relevant technological fields.

(ii) *Conclusion.* X's activities to design the new machine using Material T may be qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section. In seeking to design the machine, X undertook to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields.

Example 8. (i) *Facts.* X, a tire manufacturer, seeks to build a tire that will not deteriorate as rapidly under certain conditions of high speed and temperature as do existing tires. The design of such a tire is not within the common knowledge of skilled professionals in the relevant technological fields. X commences laboratory research on January 1. On April 1, X determines in the laboratory that a certain combination of materials and additives can withstand higher rotational speeds and temperatures than the combination of materials and additives used in existing tires. On the basis of this determination, X undertakes further research activities to determine how to design a tire using those materials and additives, and to determine whether such a tire functions outside the laboratory as intended under various actual road conditions. By September 1, but not prior to September 1, X's research has progressed to the point where, applying X's knowledge to date, both the viability and means of producing the desired tire would be within the common knowledge of skilled professionals in the relevant technological fields. However, X continues to engage in certain research activities related to the tire after September 1, and until the first tire rolls off the assembly line on December 1.

(ii) *Conclusion.* Some or all of X's research activities until September 1 may be qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section. In seeking to design the tire, X undertook to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields. The activities conducted after September 1 are not qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section, because those activities were not undertaken to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant technological fields.

(b) *Application of requirements for qualified research—(1) In general.* The requirements for qualified research in section 41(d)(1) and paragraph (a) of this section, must be applied separately to each business component, as defined in section 41(d)(2)(B). In cases involving development of both a product and a manufacturing or other commercial production process for the product, research activities relating to development of the process are not qualified research unless the requirements of section 41(d) and this section are met for the research activities relating to the process without taking into account the research activities relating to development of the product. Similarly, research activities relating to development of the product are not qualified research unless the requirements of section 41(d) and this section are met for the research activities relating to the product without taking into account the research activities relating to development of the manufacturing or other commercial production process.

(2) *Shrinking-back rule.* The requirements of section 41(d) and paragraph (a) of this section are to be applied first at the level of the discrete business component to be held for sale, lease or license, or used by the taxpayer in a trade or business of the taxpayer. If all aspects of the requirements are not met at the first level, the requirements are to be applied at the next most significant subset of elements of the business component. The shrinking-back of the applicable business component continues until a subset of elements of the business component satisfies the requirements of section 41(d) and paragraph (a) of this section (treating that subset of elements as a business component) or the most basic element fails to satisfy the requirements.

(3) *Illustration.* The following example illustrates the application of this paragraph (b):

Example. X, a motorcycle engine builder, develops a new carburetor for use in a motorcycle engine. X also modifies an existing engine design for use with the new carburetor. Under the shrinking-back rule, the requirements of section 41(d)(1) and paragraph (a) of this section are applied first to the engine. If the modifications to the engine when viewed as a whole, including the development of the new carburetor, do not satisfy the requirements of section 41(d)(1) and paragraph (a) of this section, those requirements are applied to the next most significant subset of elements of the business component. For purposes of this example, it is assumed that the new carburetor is the next most significant subset of elements of the business component. The research activities in developing the new carburetor may constitute qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section.

(c) *Excluded activities*—(1) *In general.* Qualified research does not include any activity described in sections 41(d)(3)(B) and (4), this paragraph (c), and paragraph (e) of this section.

(2) *Research after commercial production*—(i) *In general.* Activities conducted after the beginning of commercial production of a business component are not qualified research. Activities are conducted after the beginning of commercial production of a business component if such activities are conducted after the component is developed to the point where it is ready for commercial sale or use, or meets the basic functional and economic requirements of the taxpayer for the component's sale or use.

(ii) *Certain additional activities related to the business component.* The following activities are deemed to occur after the beginning of commercial production of a business component—

(A) Preproduction planning for a finished business component;

(B) Tooling-up for production;

(C) Trial production runs;

(D) Trouble shooting involving detecting faults in production equipment or processes;

(E) Accumulating data relating to production processes; and

(F) Debugging or correcting flaws in a business component.

(iii) *Activities related to production process or technique.* In cases involving development of both a product and a manufacturing or other commercial production process for the product, the exclusion described in section 41(d)(4)(A) and paragraphs (c)(2)(i) and (ii) of this section applies separately for the activities relating to the development of the product and the activities relating to the development of the process. For example, even after a product meets the taxpayer's basic functional and economic requirements, activities relating to the development of the manufacturing process still may constitute qualified research, provided that the development of the process itself separately satisfies the requirements of section 41(d) and this section, and the activities are conducted before the process meets the taxpayer's basic functional and economic requirements or is ready for commercial use.

(3) *Adaptation of existing business components.* Activities relating to adapting an existing business component to a particular customer's requirement or need are not qualified research. This exclusion does not apply merely because a business component is intended for a specific customer.

(4) *Duplication of existing business component.* Activities relating to reproducing an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information about the business component are not qualified research. This exclusion does not apply merely because the taxpayer inspects an existing business component in the course of developing its own business component.

(5) *Surveys, studies, research relating to management functions, etc.* Qualified research does not include activities relating to—

(i) Efficiency surveys;

(ii) Management functions (except for the direct supervision of qualified research as defined in § 1.41–2(c)(2)) or techniques, including such items as preparation of financial data and analysis, development of employee training programs and management organization plans, and management-based changes in production processes (such as rearranging work stations on an assembly line);

(iii) Market research, testing, or development (including advertising or promotions);

(iv) Routine data collections; or

(v) Routine or ordinary testing or inspections for quality control.

(6) *Internal-use computer software.* [Reserved][1]

(7) *Activities outside the United States*—(i) *In general.* Research conducted outside the United States, as defined in section 7701(a)(9), does not constitute qualified research.

(ii) *Apportionment of in-house research expenses.* In-house research expenses paid or incurred for qualified services performed both in the United States and outside the United States must be apportioned between the services performed in the United States and the services performed outside the United States. Only those in-house research expenses apportioned to the services performed within the United States are eligible to be treated as qualified research expenses, unless the in-house research expenses are wages and the 80 percent rule of § 1.41–2(d)(2) applies.

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[1] Section 1.41–4(e), proposed on January 2, 1997 (62 FR 83), including any revisions to that proposed rule will be incorporated as this paragraph (c)(6) in the final rule.

(iii) *Apportionment of contract research expenses.* If contract research is performed partly in the United States and partly outside the United States, only 65 percent (or 75 percent in the case of amounts paid to qualified research consortia) of the portion of the contract amount that is attributable to the research activity performed in the United States may qualify as a contract research expense (even if 80 percent or more of the contract amount is for research performed in the United States).

(8) *Research in the social sciences, etc.* Qualified research does not include research in the social sciences (including economics, business management, and behavioral sciences), arts, or humanities.

(9) *Research funded by any grant, contract, or otherwise.* Qualified research does not include any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity). To determine the extent to which research is so funded, § 1.41–4A(d) applies.

(10) *Illustrations.* The following examples illustrate provisions contained in paragraphs (c)(1) through (9) of this section. No inference should be drawn from these examples concerning the application of section 41(d)(1) and paragraph (a) of this section to these facts:

Example 1. (i) *Facts.* X, a pharmaceutical company, performs additional clinical tests on one of its products after that product has been approved for a specific therapeutic use by the FDA and is ready for commercial production and sale. The clinical tests study the drug's long-term morbidity and mortality profile, and are undertaken to develop information to use in the marketing materials for the drug.

(ii) *Conclusion.* Because the additional tests are performed after the drug is ready for commercial sale, X's activities in connection with the tests are excluded from the definition of qualified research under section 41(d)(4)(A) and paragraph (c)(2) of this section.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that, while studying the long-term morbidity and mortality profile of the drug product, X discovers that the product may be useful in treating a different medical condition. X begins new clinical studies to establish the compound's new potential therapeutic use.

(ii) *Conclusion.* Because the new clinical studies are performed to establish a new therapeutic use of the drug product, the additional clinical studies performed to establish the new therapeutic use are not excluded from the definition of qualified research under section 41(d)(4)(A) and paragraph (c)(2) of this section.

Example 3. (i) *Facts.* X, a domestic corporation that manufactures paper, develops and markets a new type of paper containing a different chemical composition than the paper generally available for commercial sale. Prior to manufacturing the paper, X conducts preproduction planning for the finished paper product, tools up for production, conducts trial production runs, engages in trouble shooting involving detecting problems in production equipment, accumulates production process data, and debugs the product.

(ii) *Conclusion.* X's activities of preproduction planning, tooling up for production, trial production runs, trouble shooting, accumulation of production process data, and product debugging do not constitute qualified research with respect to development of the paper product because the activities are deemed to occur after the beginning of commercial production of the product. Whether any activities engaged in by X to develop a process for manufacturing the paper constitute qualified research depends on whether the development of the process itself separately satisfies the requirements of section 41(d) and this section, and whether the process meets the taxpayer's basic functional and economic requirements or is ready for commercial use.

Example 4. (i) *Facts.* X, a computer software development firm, owns all substantial rights in a general ledger accounting software core program that X markets and licenses to customers. After entering into a contractual agreement with a customer, X incurs expenditures in modifying the core software program to adapt the program to the customer's requirement or need.

(ii) *Conclusion.* Because X's activities represent activities to modify an existing software program to adapt the program to a particular customer's requirement, X's activities are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section.

Example 5. (i) *Facts.* An existing gasoline additive is manufactured by Y using three ingredients, A, B, and C. X seeks to develop and manufacture its own gasoline additive that appears and functions in a manner similar to Y's additive. To develop its own additive, X first inspects the composition of Y's additive, and uses knowledge gained from the inspection to reproduce A and B in the laboratory. Any differences between ingredients A and B that are used in Y's additive and those reproduced by X are insignificant and are not material to the viability, effectiveness, or cost of A and B. X desires to use with A and B an ingredient that has a materially lower cost than ingredient C. Accordingly, X engages in a process of experimentation to discover potential alternative formulations of the additive (i.e., the development and use of various ingredients other than C to use with A and B).

(ii) *Conclusion.* X's activities in analyzing and reproducing ingredients A and B involve duplication of existing business components and are excluded from qualified research under section 41(d)(4)(C) and paragraph (c)(4) of this section. X's experimentation activities to discover potential alternative formulations of the additive do not involve duplication of an existing business component and are not excluded from qualified research under section 41(d)(4)(C) and paragraph (c)(4) of this section.

Example 6. (i) *Facts.* X, an appliance manufacturer, rearranges employee work stations in its manufacturing assembly line and develops a new employee training program to train employees for the rearranged work stations.

(ii) *Conclusion.* X's activities associated with rearranging the work stations and developing a new employee training program represent activities related to management functions or techniques and are excluded from qualified research under section 41(d)(4)(D) and paragraph (c)(5) of this section.

Example 7. (i) *Facts.* X, an insurance company, develops a new life insurance product. In the course of developing the product, X engages in research with respect to the effect of pricing and tax consequences on demand for the product, the expected volatility of interest rates, and the expected mortality rates (based on published data and prior insurance claims).

(ii) *Conclusion.* X's activities related to the new product represent research in the social sciences, and are thus excluded from qualified research under section 41(d)(4)(G) and paragraph (c)(7) of this section.

(d) *Documentation.* See section 6001 and the regulations thereunder for the recordkeeping requirements that must be satisfied.

§ 1.41–5 [Redesignated as § 1.41–4A, and Amended]

Par. 11. Section 1.41–5 is redesignated as § 1.41–4A, and the last sentence of paragraph (d)(1) is amended by removing the language "§ 1.41–8(e)" and adding "§ 1.41–6(e)" in its place.

§ 1.41–6 [Redesignated as § 1.41–5 and Amended]

Par. 12. Section 1.41–6 is redesignated as § 1.41–5 and the section heading is amended by removing the language "December 31, 1985" and adding "December 31, 1986" in its place.

§ 1.41–7 [Redesignated as § 1.41–5A, and Amended]

Par. 13. Section 1.41–7 is redesignated as § 1.41–5A, and amended as follows:

1. The section heading is amended by removing the language "January 1, 1986" and adding "January 1, 1987" in its place.
2. Paragraph (e)(2) is amended by removing the language "§ 1.41–5(c)" and adding "1.41–4A(c)" in its place.

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§ 1.41–8 [Redesignated as § 1.41–6, and Amended]

Par. 14. Section 1.41–8 is redesignated as § 1.41–6, and the last sentence of paragraph (c) is amended by removing the language "§ 1.41–3, except that § 1.41–3(c)(2)" and adding "§ 1.41–3A, except that § 1.41–3A(c)(2)" in its place.

§ 1.41–9 [Redesignated as § 1.41–7]

Par. 15. Section 1.41–9 is redesignated as § 1.41–7.

Par. 16. New § 1.41–8 is added to read as follows:

§ 1.41–8 Special rules for taxable years ending on or after the date final regulations are published in the Federal Register.

(a) *Alternative incremental credit.* At the election of the taxpayer, the credit determined under section 41(a)(1) equals the amount determined under section 41(c)(4).

(b) *Election*—(1) *In general.* A taxpayer may elect to apply the provisions of the alternative incremental credit in section 41(c)(4) for any taxable year of the taxpayer beginning after June 30, 1996. If a taxpayer makes an election under section 41(c)(4), the election applies to the taxable year for which made and all subsequent taxable years.

(2) *Time and manner of election.* An election under section 41(c)(4) is made by completing the portion of Form 6765, "Credit for Increasing Research Activities," relating to the election of the alternative incremental credit, and attaching the completed form to the taxpayer's timely filed original return (including extensions) for the taxable year to which the election applies.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer must attach the Commissioner's consent to revoke an election under section 41(c)(4) to the taxpayer's timely filed original return (including extensions) for the taxable year of the revocation.

Par. 17. Section 1.41–0A is added under the new undesignated centerheading "Research Credit—For Taxable Years Beginning Before January 1, 1990" to read as follows:

§ 1.41–0A Table of contents.

This section lists the paragraphs contained in §§ 1.41–0A, 1.41–3A, 1.41–4A and 1.41–5A.

§ 1.41–0A Table of contents.

§ 1.41–3A Base period research expenses.

(a) Number of years in base period.

(b) New taxpayers.

(c) Definition of base period research expenses.

(d) Special rules for short taxable years.

(1) Short determination year.

(2) Short base period year.

(3) Years overlapping the effective dates of section 41 (section 44F).

(i) Determination years.

(ii) Base period years.

(4) Number of months in a short taxable year.

(e) Examples.

§ 1.41–4A Qualified research for taxable years beginning before January 1, 1986.

(a) General rule.

(b) Activities outside the United States.

(1) In-house research.

(2) Contract research.

(c) Social sciences or humanities.

(d) Research funded by any grant, contract, or otherwise.

(1) In general.

(2) Research in which taxpayer retains no rights.

(3) Research in which the taxpayer retains substantial rights.

(i) In general.

(ii) Pro rata allocation.

(iii) Project-by-project determination.

(4) Independent research and development under the Federal Acquisition Regulations System and similar provisions.

(5) Funding determinable only in subsequent taxable year.

(6) Examples.

§ 1.41–5A Basic research for taxable years beginning before January 1, 1987.

(a) In general.

(b) Trade or business requirement.

(c) Prepaid amounts.

(1) In general.

(2) Transfers of property.

(d) Written research agreement.

(1) In general.

(2) Agreement between a corporation and a qualified organization after June 30, 1983.

(i) In general.

(ii) Transfers of property.

(3) Agreement between a qualified fund and a qualified educational organization after June 30, 1983.

(e) Exclusions.

(1) Research conducted outside the United States.

(2) Research in the social sciences or humanities.

(f) Procedure for making an election to be treated as a qualified fund.

§ 1.218–0 [Removed]

Par. 18. Section 1.218–0 is removed.

§ 1.482–7 [Amended]

Par. 19. In § 1.482–7, the sixth sentence of paragraph (h)(1) is amended by removing the language "§ 1.41–8(e)" and adding "§ 1.41–6(e)" in its place.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–31528 Filed 12–01–98; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 545 and 571

[Docket No. 98–21]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission intends to make corrections and changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. At the same time, the Commission is restructuring all of its rules and regulations. (See Tables herein.) This proposed rule would modify part 502 (Rules of Practice and Procedure) and part 571 (to be redesignated as part 545) (Interpretations and Statements of Policy).

DATES: Submit comments on or before January 4, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., N.W., Room 1046, Washington, D.C., 20573–0001.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., N.W., Room 1046, Washington, D.C. 20573–0001 (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

The Ocean Shipping Reform Act of 1998 ("OSRA"), Pub. L. 105–258, 112 Stat. 1902, which made numerous changes to the Shipping Act of 1984 ("1984 Act"), Pub. L. 98–237, 98 Stat. 67 (46 U.S.C. app. secs. 1701 through 1720), was enacted on October 14, 1998, and becomes effective on May 1, 1999. Among other things, OSRA authorizes the Commission to prescribe implementing rules and regulations. Accordingly, the Federal Maritime Commission (hereinafter referred to as the Commission) must conform all of its rules and regulations to this new statute.

In addition to changes required by OSRA, other changes will be made to improve various rules and to bring them in line with current practices, guidelines and organization. This approach will provide the Commission and the industry with the opportunity to review the Commission's rules and regulations related to ocean shipping. This review process should ultimately result in a more useful realignment of Chapter IV of Title 46 of the CFR.

The Commission takes this opportunity to inform the public of its intended general reorganization of parts 500–588. As realigned, the Commission's rules will be contained in three Subchapters. Subchapter A will continue to set forth general and administrative provisions. Subchapter B will contain all of the Commission's basic regulations concerning operations in the U.S. foreign commerce. Subchapter C will be set aside to cover matters involving the restrictive maritime practices of foreign governments and controlled carriers. Subchapter D will be removed. All rule changes will become effective May 1, 1999. An outline of the foregoing is set forth in the following tables:

FEDERAL MARITIME COMMISSION—46 CFR, CHAPTER IV.—REDESIGNATION AND DISTRIBUTION TABLE

Old part or section (§)	New part or section (§)
500	508.
501	501.
502	502.
§ 502.92 (Special Dockets)	§ 502.271.
503	503.
504	504.
505	505.
506	506.
507	507.
510	515.
§ 510.25 & § 514.1(c)(1)(iii) (Anti-rebate Certification).	To be removed.
514	520, 525, & 565.
§ 514.7 & § 514.17 (Service Contracts).	530.
540	540.
571	545.
572	535.
§ 572.301 (Agreement Exemptions).	§ 502.67 (All exemptions).
582	To be removed.
583	515.
585	550.
586	551.
587	560.
588	555.

FEDERAL MARITIME COMMISSION—46 CFR, CHAPTER IV.—DERIVATION TABLE

New part	Old part
(Subchapter A—General and Administrative Provisions)	
501	501.
502	502.
503	503.
504	504.
505	505.
506	506.
507	507.
508	500.
(Subchapter B—Regulations Affecting Ocean Shipping in Foreign Commerce)	
515	510, 583.
520	514.
525	514.
530	514.
535	572.
540	540.
545	571.
(Subchapter C—Regulations and Actions to Address Restrictive Foreign Maritime Practices)	
550	585.
551	586.
555	588.
560	587.
565	(Controlled Carriers—New).

In addition to providing notice of the Commission's intent to reorganize its rules, this notice of proposed rulemaking proposes various amendments to Parts 502 and 571. Changes to other parts of the Commissions' rules will be the subject of future notices of proposed rulemaking.

The OSRA, among other things, modified section 8(e) of the 1984 Act by adding authority for the Commission, upon application, to grant refund and waiver of tariff charges for errors in quoting a tariff, and eliminating tariff filing at the Commission, instead requiring common carriers to publish tariffs and make them electronically available. The OSRA also modified the standards for exemption from requirements of the 1984 Act, and changed its provisions prohibiting the refusal to negotiate with a shipper's association. In addition, the Commission's Rules of Practice and Procedure, located currently at 46 CFR 502, contain references to statutes no longer within the purview of the Commission, certain provisions are in need of modernization and clarification, and the Commission desires to change certain other provisions. The Commission now proposes to make the following modifications to Parts 502 and 571 to reflect statutory changes, and to clarify, reorganize, modernize, and improve its rules of practice and procedure. The proposed modifications will be addressed seriatim.

The authority citation would be modified to drop references to the Shipping Act, 1916 ("1916 Act"), responsibility for which has been transferred to the Surface Transportation Board ("STB") within the Department of Transportation, and to list OSRA, Public Law 105–258, as an authority for Part 502. Similarly, § 502.1 would be modified to drop references to the 1916 Act and the Intercoastal Shipping Act, 1933 ("1933 Act"), responsibility for which also has been transferred to the STB.

To improve structure, current § 502.11(a) would be moved and become new § 502.2(e), thus leaving § 502.11 to deal only with ex parte communications. Also, the heading of § 502.21(c) would be changed to better reflect its subject matter, i.e., special appearance.

Section 502.23 would be restructured for simplification purposes, and modernized to replace references to telephone calls and telegrams with references to facsimile and e-mail. Exhibit No. 1 to subpart B of Part 502 would similarly be modified. Also, proposed § 502.23(d) would accommodate requests by attorneys to withdraw from representing a client. Some recent proceedings have involved issues concerning attempts by counsel to withdraw from representation. Current § 502.23 provides for substitution of counsel, but is silent with respect to withdrawal of counsel.

Section 502.24 would be modified to delete reference to field offices, since the Commission no longer has any field offices.

Section 502.26 would be modified to incorporate the standards of conduct set forth in the American Bar Association's Model Rules of Professional Conduct as the standards to govern conduct of attorneys practicing before the Commission.

Changes are proposed to § 502.42 to reflect the fact that the Director, Bureau of Enforcement, is not necessarily a party to proceedings involving petitions, small claim proceedings, and special docket proceedings.

For clarification purposes, § 502.51 would be modified to reflect that rulemaking proceedings may be initiated on the Commission's own motion, as well as by petition. Also, a new paragraph would be added to § 502.62 to point out the requirement in § 502.201(b) that discovery be commenced with the filing of a complaint.

Section 502.63 would be modified for clarification by revising the section heading, as well as deleting references to the 1916 Act. Section 502.64 would be revised to explicitly require answers to be verified, in conformity with Exhibit 1 to Subpart E.

A new rule, § 502.67, would set forth the exemption procedures under the OSRA, which amended the exemption standard by eliminating inquiries as to whether a proposed exemption would "substantially impair effective regulation" or would "be unjustly discriminatory." The new standard looks only at whether the proposed exemption would "result in substantial reduction in competition" or would "be detrimental to commerce." If not, then the Commission may determine to grant the exemption. New § 502.67 is substantially similar to old § 572.301, but applies to all exemption applications, rather than solely to agreement exemption applications.

References to the 1916 Act would be deleted from § 502.75 and Exhibit 1 to Subpart E.

The Commission's special docket rules, currently at § 502.92, and Exhibit 1 to Subpart F would be moved to Subpart Q, and modified to reflect changes in the new OSRA.

Sections 502.102, 502.104, 502.105 and 502.112 are being revised for simplification purposes, while § 502.111 is modernized to reflect the use of modern technology, including facsimile transmission of documents.

Proposed changes to § 502.113 would provide a procedure for service of a complaint by complainants when the Commission's Secretary has been unable to obtain service by mail. The presiding officer would also have discretion to dismiss any complaint when service has not been obtained within thirty days after filing the complaint. There have been occasions where the Secretary could not obtain service by mail, and the proposed change would codify the current practice of allowing complainants the option of effecting service in lieu of service by the Secretary.

Section 502.114 would be simplified and modernized by allowing for facsimile service upon agreement between parties, and would also revise a citation to conform with changes made by the OSRA. Correspondingly, § 502.116 would allow for service by facsimile.

A modification to § 502.118 would add notices of appearance to the types of filings requiring submission of an original and four copies, thus codifying existing practice. Section 502.119 would be restructured for simplification.

The provision regarding attendance and mileage fees in § 502.133 would be revised to apply also to witnesses summoned to a deposition, thus bringing the provision into conformity with Rule 45 of the Federal Rules of Civil Procedure. In § 502.143, a citation error would be corrected, while § 502.144 would be modernized to reflect the possibility of notice by facsimile or e-mail and to clarify that filing of motions for postponement of a hearing would be governed by § 502.104.

Section 502.146 would be updated to add service of complaints filed under shortened procedure, § 502.182, and referral of claims under Subpart T as events that trigger commencement of the functions of the Administrative Law Judges. Similarly, Subpart T would be added as to functions under § 502.147. A reference to the 1933 Act is also removed from § 502.147.

In Subpart L, modifications would be made to § 502.201 for clarification and to delete reference to the 1916 Act.

A fifty page limitation on the size of briefs would be imposed for briefs filed under § 502.221, as well as for briefs on exceptions and appeals under § 502.227. This limitation tracks the Federal Rules of Appellate Procedure. The presiding officer or the Commission, as the case may be, would have the discretion to allow parties to exceed these limits.

Sections 502.223 and 502.225 would be amended to prescribe separate content requirements for decisions by the Administrative Law Judges and decisions by the Commission. Initial or recommended decisions by the Administrative Law Judges would include numbered statements of findings and conclusions, and would be limited to issues necessary to resolution of material issues. The content requirements for final decisions by the Commission would remain unchanged.

A new § 502.227(a)(4) would be added to make clear that initial decisions and dismissals by an administrative law judge that have become final are not appealable to a court by a party unless that party has filed exceptions or an appeal with the Commission as provided in § 502.227. The Supreme Court in *Darby* v. *Cisneros*, 509 U.S. 137 (1993), determined that the judicially created doctrine of exhaustion of administrative remedies is restricted by Section 10(c) of the Administrative Procedure Act, 5 U.S.C. 701 et. seq. Under this ruling, a court may hear an appeal of an initial decision even without the plaintiff having first exhausted administrative remedies by filing exceptions, unless the agency has, by rule, required that such an appeal be filed with the agency before a court appeal may be filed. The proposed change would provide such a requirement.

The Commission's rule on interest, § 502.253 would be modified to delete reference to the 1916 Act and the 1933 Act. The rule for obtaining attorney's fees, § 502.254 would be modified to enable the awarding of attorney's fees in small claim proceedings. Currently, § 502.254 excepts small claims proceedings under Subpart S from the award of attorney's fees, but the language of section 11(g) of the 1984 Act requires award of attorney's fees in all cases where reparations are awarded.

Subpart Q would be revised to eliminate the current listing of schedules and forms, as it is duplicative. The Commission's special docket rule would be moved from § 502.92 to Subpart Q, and modified to reflect new provisions in the OSRA allowing refund or waiver of tariff charges for errors in quoting charges. The Commission proposes to expedite its special docket procedures by providing that decisions by deciding officials will become final within ten days, unless exceptions are filed or the Commission determines to review such decision. Currently, decisions are not final for thirty days, and parties may file exceptions within twenty-two days of the decision. Since the filing of exceptions to or review by the Commission of special docket decisions are rare, current procedures inordinately delay the finality of a decision. Also, the revised application form, Exhibit No. 1 to Subpart Q, would require submission of the date a shipment was received. This is important since the date a shipment is received is the date for determining the applicable tariff charges. The application form would also require proof in the form of an affidavit and other available evidence if the application is based on a misquote. Finally, minor changes would also be made to § 502.271 and Exhibit No. 1 to Subpart Q to, among other things, simplify directions, substitute "tariff materials" for outdated referrals to "tariff pages," replace tariff "filing" references with tariff "publishing", and eliminate provisions concerning the 1916 Act.

Regarding small claim proceedings under Subpart S, §§ 502.301 and 502.302 would be revised to delete provisions relating to the 1916 Act and the 1933 Act, while § 502.305 would be revised so that the Commission's rules on awards of interest and attorney's fees apply to small claims proceedings. Moreover, references to the 1916 and 1933 Acts would be removed from the information provisions of Exhibit No. 1 to Subpart S. Similarly, references to the 1916 and 1933 Acts would be removed from § 502.401.

In Subpart V, § 502.501 would be updated to reflect 1996 amendments to the Equal Access to Justice Act.

In Subpart W, references to the 1916 Act and the 1933 Act would be deleted from §§ 502.601 and 502.602. Section 502.604 would be modified to provide for delivery by means other than registered or certified mail of a Notice and Demand Letter affording an opportunity for compromise of a civil penalty. Section 502.605 would be revised to remove provisions for a promissory note as a means of effecting payment of penalties.

The Ocean Shipping Reform Act deleted § 10(b)(13) of the 1984 Act, which had prohibited common carriers from refusing to negotiate with a shippers' association and replaced it with a new section 10(b)(10) to prohibit the unreasonable refusal to deal or negotiate. In Part 571, § 571.1 was based in part upon the now deleted § 10(b)(13). The Commission therefore proposes to redesignate Part 571 as Part 545, and to amend new § 545.1 to delete reference to former § 10(b)(13) and to refer to new § 10(b)(10).

The proposed rule contains no additional information collection or record keeping requirements and need not be submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities. The amendments will either have no affect on small entities, or in the case where the amendments are likely to impact small entities, the economic impact will be de minimis.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Parts 545 and 571

Antitrust, Maritime carriers.

For the reasons stated in the preamble, the Federal Maritime Commission proposes to amend 46 CFR parts 502, 545 and 571 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; Pub. L. 105–258; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

2. Amend § 502.1 as follows:

a. Revise the first sentence of § 502.1 to read as set forth below;

b. Move "[Rule 1.]" to the end of the section.

§ 502.1 Scope of rules in this part.

The rules in this part govern procedure before the Federal Maritime Commission, hereinafter referred to as the "Commission," under the Merchant Marine Act, 1920, Merchant Marine Act, 1936, Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, Administrative Procedure Act, and related acts, except that subpart R of this part does not apply to proceedings subject to sections 7 and 8 of the Administrative Procedure Act, which are to be governed only by subparts A to Q inclusive, of this part. * * *

3. Amend § 502.2 to read as follows:

a. In the text of paragraph (c) revise "§ 502.11(b)" to read "§ 502.11."

b. In paragraph (d) remove "[Rule 2.]"

c. Add paragraph (e) to read as follows:

§ 502.2 Filing of documents; hours; mailing address.

* * * * *

(e) Any pleading, document, writing or other paper submitted for filing which is rejected because it does not conform to the rules in this part shall be returned to the sender. [Rule 2.]

4. Amend § 502.11 as follows:

a. Revise section heading to read as set forth below;

b. Remove paragraph (a).

c. Redesignate paragraphs (b)(1) through (b)(7) as paragraphs (a) through (g).

§ 502.11 Ex parte communications.

* * * * *

§ 502.12 [Amended]

5. In § 502.12, add "[Rule 12.]" to the end of the text.

6. In § 502.21, revise the paragraph heading in paragraph (c) to read as follows:

§ 502.21 Appearance.

* * * * *

(c) *Special appearance.* * * *

7. Revise § 502.23 to read as follows:

§ 502.23 Notice of appearance; substitution and withdrawal of representative.

(a) Upon filing of a complaint instituting proceedings or filing of an answer to an order or complaint, the party filing shall notify the Commission of the name(s) and address(es) of the person or persons who will represent them in the pending proceeding. Each person who appears at a hearing shall deliver a written notice of appearance to the reporter, stating for whom the appearance is made. Such notice shall indicate whether the representative wishes to be notified of decisions by telephone, facsimile transmission, or electronic mail. All appearances shall be noted in the record. Petitions for leave to intervene shall indicate the name(s) and address(es) of the person or persons who will represent the intervenor in the pending proceeding if the petition is granted.

(b) A Notice of Appearance should follow the form set forth in Exhibit No. 1 to this subpart.

(c) If an attorney or other representative of record is superseded, there shall be filed a stipulation of substitution signed both by the attorney(s) or representative(s) and by the party, or a written notice from the party to the Commission.

(d) If an attorney wishes to withdraw from representing a party, such attorney shall file an appropriate motion seeking permission to withdraw and provide appropriate reasons for making the motion. Such motion will be decided in consideration of the factors and standards set forth in Rule 1.16 of the American Bar Association's Model Rules of Professional Conduct and by the courts.

8. Revise § 502.24(b) to read as follows:

§ 502.24 Practice before the Commission defined.

* * * * *

(b) The term "Commission" as used in this subpart includes any bureau, division, office, branch, section, or unit of the Federal Maritime Commission and any officer or employee of such bureau, division, office, branch, section, or unit. [Rule 24.]

9. Revise § 502.26, to read as follows:

§ 502.26 Attorneys at law.

Attorneys at law who are admitted to practice before the Federal courts or before the courts of any State or Territory of the United States may practice before the Commission. An attorney must represent in writing, filed with the Secretary, that he is admitted to practice and in good standing. An attorney practicing before the Commission is expected to conform to the standards of conduct set forth in the American Bar Association's Model Rules of Professional Conduct in addition to the specific requirements of this chapter. [Rule 26.]

§ 502.27 [Amended]

10. In § 502.27(a)(1) correct "§ 503.43(h)" to read "§ 503.43(g)."

11. Revise Exhibit No. 1 to Subpart B as follows:

Exhibit No. 1 to Subpart B

Federal Maritime Commission

Notice of Appearance

Docket No. ________

Please enter my appearance in this proceeding as counsel for

____

I request to be informed of service of the administrative law judge's initial or recommended decision and of the Commission's decision in this proceeding by:

[ ] telephone (In the event that I am not available when you call, appropriate advice left with my office will suffice.)
[ ] facsimile transmission
[ ] electronic mail

____
[Name]
____
[Address]
____
[Telephone No.]
____
[Fax No.]
____
[E-mail address]
____
[Signature]

12. Revise § 502.42 to read as follows:

§ 502.42 Bureau of Enforcement.

The Director, Bureau of Enforcement, shall be a party to all proceedings governed by the rules in this part except that in complaint proceedings under § 502.62, the Director may become a party only upon leave to intervene granted pursuant to § 502.72, in rulemaking proceedings and in proceedings considering petitions the Director may become a party by designation if the Commission determines that the circumstances of the proceeding warrant such participation, and the Director will not ordinarily be a party to small claims proceedings under § 502.304 and special docket proceedings under § 502.271. The Director or the Director's representative shall be served with copies of all papers, pleadings, and documents in every proceeding in which the Bureau of Enforcement is a party. The Bureau of Enforcement shall actively participate in any proceeding to which the Director is a party, to the extent required in the public interest, subject to the separation of functions required by section 5(c) of the Administrative Procedure Act. (See § 502.224). [Rule 42.]

13. Revise § 502.51 to read as follows:

§ 502.51 Initiation of procedure to issue, amend, or repeal a rule.

(a) *By petition.* Any interested party may file with the Commission a petition for the issuance, amendment, or repeal of a rule designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the Commission. The petition shall set forth the interest of petitioner and the nature of the relief desired, shall include any facts, views, arguments, and data deemed relevant by petitioner, and shall be verified. If such petition is for the amendment or repeal of a rule, it shall be accompanied by proof of service on all persons, if any, specifically named in such rule, and shall conform in other aspects to Subpart H of this part. Petitions shall be accompanied by remittance of a $177 filing fee. Replies to such petition shall conform to the requirements of § 502.74.

(b) *By the Commission.* The Commission on its own initiative may initiate the issuance, amendment, or repeal of a rule through notice of proposed rulemaking or advanced notice of proposed rulemaking. [Rule 51.]

§ 502.56 [Amended]

14. In § 502.56, add "[Rule 56.]" at the end of the text.

§ 502.61 [Amended]

15. In § 502.61, add "[Rule 61.]" to the end of paragraph (d).

16. In § 502.62, redesignate paragraph (g) as paragraph (h), revise redesignated paragraph (h) and add new paragraph (g) to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(g) Complainants desiring to use the discovery provisions of subpart L must commence discovery at the time the complaint is filed, pursuant to § 502.201(b).

(h) For special types of cases, see § 502.271 in subpart Q (Refund or waiver of freight charges); subpart K (Shortened Procedure); and subpart S (Small Claims). [Rule 62.]

17. In § 502.63, remove paragraph (a), redesignate paragraphs (b) through (e) as paragraphs (a) through (d), and revise the section heading to read as follows:

§ 502.63 Statute of limitations for reparations.

* * * * *

18. Amend § 502.64 as follows:
a. Add a sentence to the end of paragraph (a) to read as set forth below;
b. Add "[Rule 64.]" to the end of paragraph (d).

§ 502.64 Answer to complaint; countercomplaint.

(a) * * * An answer to the complaint must be verified.

* * * * *

19. Add § 502.67 to read as follows:

§ 502.67 Exemption procedures—General.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Shipping Act of 1984 or any specified activity of persons subject to the Shipping Act of 1984 from any requirement of the Shipping Act of 1984 if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption.

(b) *Application for exemption.* Any person may petition the Commission for an exemption or revocation of an exemption of any class of agreements or an individual agreement or any specified activity pursuant to section 16 of the Shipping Act of 1984. A petition for exemption shall state the particular requirement of the Shipping Act of 1984 for which exemption is sought. The petition shall also include a statement of the reasons why an exemption should be granted or revoked, shall provide information relevant to any finding required by the Shipping Act of 1984 and shall comply with § 502.69. Where a petition for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(c) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(d) **Federal Register** notice. Notice of any proposed exemption or revocation of exemption, whether upon petition or upon the Commission's own motion, shall be published in the **Federal Register**. The notice shall include when applicable:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements or specified activity for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the petition and any accompanying information are available for inspection in the

Commission's offices in Washington, D.C.; and

(5) The final date for filing comments regarding the proposal. [Rule 67.]

§ 502.71 [Amended]

20. In § 502.71, add "[Rule 71.]" to the end of the text.

21. In § 502.75, revise paragraph (a) to read as follows:

§ 502.75 Proceedings involving assessment agreements.

(a) In complaint proceedings involving assessment agreements filed under section 5(e) of the Shipping Act of 1984, the Notice of Filing of Complaint and Assignment will specify a date before which the initial decision will be issued, which date will not be more than eight months from the date the complaint was filed.

* * * * *

22. In Exhibit 1 to Subpart E, remove the third paragraph after the heading "Information to Assist in Filing Formal Complaint," beginning with the text "Under the Shipping Act, 1916 . . . ."

§ 502.91 [Amended]

23. In § 502.91, add "[Rule 91.]" to the end of paragraph (d).

Subpart F [Amended]

24. In Subpart F, remove and reserve § 502.92, and remove Exhibit 1.

§ 502.94 [Amended]

25. In § 502.94, add "[Rule 94.]" to the end of paragraph (c).

26. Revise § 502.102 to read as follows:

§ 502.102 Enlargement of time to file documents.

(a) Motions for enlargement of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, shall set forth the reasons for the motion and be submitted at least five (5) days before the scheduled date for filing. Except for good cause shown, failure to meet this time requirement may result in summary rejection of the request.

(b) Such motions will be granted only under exceptional circumstances duly demonstrated in the request, and shall conform to the requirements of subpart H of this part, except as to service if they show that the parties have received actual notice of the motion; and in relation to briefs, exceptions, and replies to exceptions, such motions shall conform to the further provisions of §§ 502.222 and 502.227.

(c) Upon motion made after the expiration of the scheduled date, the filing may be permitted where reasonable grounds are found for the failure to file.

(d) Replies to such motions for enlargement of time shall conform to the requirements of § 502.74. [Rule 102.]

27. Add two sentences before the last sentence of § 502.104 to read as follows:

§ 502.104 Postponement of hearing.

* * * Such motions must be received, whether orally or in writing, at least five (5) days before the scheduled date for hearing. Except for good cause shown, failure to meet this requirement may result in summary rejection of the request. * * *

28. Revise § 502.105 to read as follows:

§ 502.105 Waiver of rules governing enlargements of time and postponements of hearings.

The Commission, the presiding officer, or the Chief Administrative Law Judge may waive the requirements of §§ 502.102 and 502.104 as to replies and may rule ex parte on such requests. [Rule 105.]

29. In subpart H, revise § 502.111 to read as follows:

§ 502.111 Form and appearance of documents filed with Commission.

(a) All papers to be filed under the rules in this part must be clear and legible, dated, show the docket description and title of the proceeding, and include the title, if any, and address of the signer. An original signed in ink must be provided. Text shall appear on only one side of the paper and must be double spaced except that quotations must be single spaced and indented. The paper must be strong and durable, not more than 8½ inches wide and 12 inches long, with a left hand margin of 1½ inches. Documents shall be printed in clear type, never smaller than 12 point.

(b) Filings by facsimile for purposes of meeting a deadline will not be accepted unless authorized by the presiding officer or the Secretary.

(c) Facsimile transmissions of signature pages on filings will be tentatively accepted for the purpose of meeting filing deadlines pending receipt of the original signature page within seven working days. [Rule 111.]

30. Amend § 502.112 as follows:

a. Revise the section heading to read as set forth below;

b. Add "[Rule 112.]" to the end of paragraph (c)(2).

§ 502.112 Verification of documents.

* * * * *

31. Revise § 502.113 to read as follows:

§ 502.113 Service by the Commission.

(a) Complaints filed pursuant to § 502.62, (including any accompanying discovery requests initiated pursuant to § 502.201(b)), amendments to complaints (unless otherwise authorized by the presiding officer pursuant to § 502.70(b)), and complainant's memoranda filed in shortened procedure cases will be served by the Secretary of the Commission.

(b) Alternatively, should the Secretary be unable to obtain service by mail, proper service of a complaint may be effected by complainant, in which case an affidavit setting forth the method, time and place of service must be filed with the Secretary within five days following service.

(c) In addition to and accompanying the original of every document filed with the Commission for service by the Commission, there shall be a sufficient number of copies for use of the Commission (see § 502.118) and for service on each party to the proceeding.

(d) The presiding officer may dismiss a complaint that has not been served within thirty (30) days after the complaint was filed. [Rule 113.]

32. In § 502.114, revise the section heading and paragraph (a) to read as follows:

§ 502.114 Service by parties of pleadings and other documents.

(a) Except as otherwise specifically provided by the rules in this part, all pleadings, documents, and papers of every kind (except requests for subpoenas, documents served by the Commission under § 502.113, and documents submitted at a hearing or prehearing conference) in proceedings before the Commission under the rules in this part shall, when tendered to the Commission or the presiding officer for filing, show that service has been made upon all parties to the proceeding and upon any other persons required by the rules in this part to be served. Such service shall be made by delivering one copy to each party: by hand delivering in person; by mail, properly addressed with postage prepaid; by courier; or by facsimile transmission if agreed by both parties prior to service.

* * * * *

§ 502.114 [Amended]

33. Amend § 502.114(b) as follows:

a. Revise "(Rule 53)" to read "(Rule 52)."

b. Revise "(Part 585)" to read "(Part 550)."

c. Revise "13(b)(5) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5) (part 587)" to read "13(b)(6) of the Shipping Act of 1984 (part 560)."

34. Revise § 502.116 to read as follows:

§ 502.116 Date of service.

The date of service of documents served by the Commission shall be the date shown in the service stamp theron. The date of service of documents served by parties shall be the date when matter served is deposited in the United States mail, delivered to a courier, delivered in person, or transmitted by facsimile, as the case may be. In computing the time from such dates, the provisions of § 502.101 shall apply. [Rule 116.]

35. In § 502.118, revise paragraph (b)(2) to read as follows:

§ 502.118 Copies of documents for use of the Commission.

* * * * *

(b) * * *

(2) An original and four copies shall be filed with the Secretary of prehearing statements required by § 502.95, stipulations under § 502.162, notices of appearance required by § 502.23, and all other motions, petitions, or other written communications seeking a ruling from the presiding administrative law judge.

* * * * *

36. In § 502.119, revise paragraphs (a) and (b) to read as follows:

§ 502.119 Documents containing confidential materials.

* * * * *

(a) Filings shall be accompanied by a transmittal letter which identifies the filing as "confidential" and describes the nature and extent of the authority for requesting confidential treatment. The confidential copies shall consist of the complete filing and shall include a cover page marked "Confidential-Restricted," with the confidential materials clearly marked on each page.

(b) Whenever a confidential filing is submitted, there must also be submitted an original and one copy of a public version of the filing. Such public version shall exclude confidential materials, and shall indicate on the cover page and on each affected page "confidential materials excluded."

* * * * *

37. Revise § 502.133 to read as follows:

§ 502.133 Attendance and mileage fees.

Witnesses summoned by subpena to a hearing or deposition are entitled to the same fees and mileage that are paid to witnesses in courts of the United States. Fees and mileage shall be paid, upon request, by the party at whose instance the witness appears. [Rule 133.]

§ 502.143 [Amended]

38. In the text of § 502.143 revise "§ 502.133, " to read "§ 502.113."

39. In § 502.144:

a. Redesignate the current text as paragraph (a).

b. Revise the section heading as set forth below;

c. Revise the last sentence of redesignated paragraph (a) to read as set forth below;

d. Add new paragraph (b) to read as set forth below.

§ 502.144 Notice of time and place of hearing; postponement of hearing

(a) * * * Notice may be served by mail, facsimile transmission, or electronic mail.

(b) Motions for postponement of any hearing date shall be filed in accordance with § 502.104. [Rule 144.]

40. In § 502.146, revise paragraph (a) and paragraph (c) to read as follows:

§ 502.146 Commencement of functions of Office of Administrative Law Judges.

* * * * *

(a) Upon the service by the Commission of a complaint filed pursuant to § 502.62, or § 502.182, or upon referral under subpart T of this part; or

(b) * * *

(c) Upon forwarding for assignment by the Office of the Secretary of a special docket application pursuant to § 502.271; or

* * * * *

41. In the first sentence of paragraph (a) of § 502.147 remove the phrase "except with regard to that portion of any order involving the Commission's suspension authority set forth in section 3, Intercoastal Shipping Act, 1933."

42. In § 502.147, revise paragraph (b) to read as follows:

§ 502.147 Functions and powers.

* * * * *

(b) All of the functions delegated in subparts A to Q and subpart T of this part, inclusive, to the Chief Judge, presiding officer, or administrative law judge include the functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter, pursuant to the provisions of section 105 of Reorganization Plan No. 7 of 1961. [Rule 147.]

43. Amend § 502.201 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Revise the paragraph heading in paragraph (d) to read as set forth below;

c. Revise the paragraph heading in paragraph (f) to read as follows:

§ 502.201 General provisions governing discovery.

(a) Applicability. The procedures described in this subpart are available in all adjudicatory proceedings under the Shipping Act of 1984. Unless otherwise ordered by the presiding officer, the copy requirements of § 502.118(b)(3)(i) shall be observed.

* * * * *

(d) Duty of the parties to meet or confer. * * *

* * * * *

(f) Conferences by order of the presiding officer. * * *

* * * * *

44. In § 502.221, revise paragraph (f) to read as follows:

§ 502.221 Briefs; requests for findings.

* * * * *

(f) All briefs filed pursuant to this section shall ordinarily be limited to fifty (50) pages in length, exclusive of pages containing the table of contents, table of authorities, and certificate of service, unless the presiding officer allows the parties to exceed this limit for good cause shown and upon application filed not later than five (5) days before the time fixed for filing of such a brief or reply. [Rule 221.]

45. Revise § 502.223 to read as follows:

§ 502.223 Decisions—Administrative law judges.

To the administrative law judges is delegated the authority to make and serve initial or recommended decisions. All initial and recommended decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. Where appropriate, the statement of findings and conclusions should be numbered. Initial decisions should address only those issues necessary to a resolution of the material issues presented on the record. A copy of each decision when issued shall be served on the parties to the proceeding. In proceedings involving overcharge claims, the presiding officer may, where appropriate, require that the carrier publish notice in its tariff of the substance of the decision. This provision shall also apply to decisions issued pursuant to subpart T of this part. [Rule 223.]

46. Revise § 502.225 to read as follows:

§ 502.225 Decisions—Commission.

All final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. A copy of each decision when issued shall be served on the parties to the proceeding. This provision shall also apply to decisions issued pursuant to subpart T of this part. [Rule 225.]

47. Amend § 502.227 as follows:

a. Revise the section heading to read as set forth below;

b. Redesignate paragraphs (a)(4) through (6) as paragraphs (a)(5) through (7);

c. Add a new paragraph (a)(4) to read as set forth below;

d. Remove "[Rule 227]" from paragraph (d);

e. Add new paragraph (e) to read as follows:

§ 502.227 Exceptions to decisions or orders of dismissal of administrative law judge; replies thereto; review of decisions or orders of dismissal by Commission; and judicial review.

(a) * * *

(4) A decision or order of dismissal by an administrative law judge shall only be considered final for purposes of judicial review if the party has first sought review by the Commission pursuant to this section.

* * * * *

(e) All briefs and replies filed pursuant to this section shall ordinarily be limited to fifty (50) pages in length, exclusive of pages containing the table of contents, table of authorities, and certificate of service, unless the Commission allows the parties to exceed this limit for good cause shown and upon application filed not later than five (5) days before the time fixed for filing of such a brief or reply. [Rule 227.]

48. Revise § 502.253 to read as follows:

§ 502.253 Interest in reparation proceedings.

Except as to applications for refund or waiver of freight charges under § 502.271 and claims which are settled by agreement of the parties, and absent fraud or misconduct of a party, interest granted on awards of reparation in complaint proceedings instituted under the Shipping Act of 1984 will accrue from the date of injury to the date specified in the Commission order awarding reparation. Compounding will be daily from the date of injury to the date specified in the Commission order awarding reparation. Normally, the date specified within which payment must be made will be fifteen (15) days subsequent to the date of service of the Commission order. Interest shall be computed on the basis of the average monthly secondary market rate on six-month U.S. Treasury bills commencing with the rate for the month that the injury occurred and concluding with the latest available monthly U.S. Treasury bill rate at the date of the Commission order awarding reparation. The monthly secondary market rates on six-month U.S. Treasury bills for the reparation period will be summed up and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period. [Rule 253.]

49. Amend § 502.254 as follows:

a. Revise the first sentence of paragraph (a) to read as set forth below;

b. Revise paragraph (c)(1)(i) to read as set forth below:

§ 502.254 Attorney's fees in reparation proceedings.

(a) *Scope.* The Commission shall, upon petition, award the complainant reasonable attorney's fees directly related to obtaining a reparations award in any complaint proceeding under section 11 of the Shipping Act of 1984. * * *

(c) * * * (1) * * *

(i) With the presiding officer where the presiding officer's decision awarding reparations became administratively final pursuant to § 502.227(a)(3) and § 502.304(g); or

* * * * *

50. Revise Subpart Q to read as follows:

Subpart Q—Refund or Waiver of Freight Charges

502.271 Special docket application for permission to refund or waive freight charges.

(a)(1) A common carrier or a shipper may file a special docket application seeking permission for a common carrier or conference to refund or waive collection of a portion of freight charges if there is:

(i) An error in the tariff;

(ii) An error in failing to publish a new tariff; or

(iii) An error in quoting a tariff.

(2) Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(b) Such application must be filed within one hundred eighty (180) days from the date of sailing of the vessel from the port at which the cargo was loaded. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

(c) Prior to submission of the application for a refund for an error in a tariff or a failure to publish a new tariff, the carrier or conference must publish a new tariff which sets forth the rate on which refund or waiver would be based.

(d) Such application must be in accordance with Exhibit 1 to this Subpart and must also comply with the following requirements:

(1) Applications must be submitted to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573–0001.

(2) Applications must be submitted in an original and one (1) copy.

(3) Applications must be sworn to before a notary public or otherwise verified in accordance with § 502.112.

(4) When a rate published in a conference tariff is involved, the carrier or shipper must serve a copy of the application on the conference and so certify in accordance with § 502.117 to that service in the application. A shipper must also make a similar service and certification with respect to the common carrier.

(5) Applications must be accompanied by remittance of an $86 filing fee.

(e) Any application which does not furnish the information required by this subpart may be returned to the applicant by the Secretary without prejudice to resubmission within the 180-day limitation period.

(f)(1) The Secretary in his discretion shall assign all applications to either a Special Dockets Officer or the Office of Administrative Law Judges. Authority to issue decisions under this subpart is delegated to the assigned Special Dockets Officer or Administrative Law Judge.

(2) Applicants will be notified as to the assignment of a deciding official, and the assignment of a special docket number. Formal proceedings as described in other rules of this part need not be conducted. The deciding official may, in his or her discretion, require the submission of additional information.

(g) The deciding official shall issue a decision which, pursuant to § 501.21 of this chapter, shall become final ten (10) days after service of such decision, unless the Commission in its discretion chooses to review such decision within that time, or the applicant chooses to file exceptions to such decision within that time. [Rule 271.]

Exhibit No. 1 to Subpart Q

Application for Refund or Waiver of Freight Charges Due to Tariff or Quoting Error

Federal Maritime Commission Special Docket No. __________ [leave blank].

Amount of Freight Charges to be refunded or waived:

Application of [Name of carrier or shipper] for the benefit of [Name of person who paid or is responsible for payment of freight charges].

1. Shipment(s). Here fully describe:

(a) Commodity [according to tariff description].

(b) Number of shipments.

(c) Weight or measurement, container size, and number of containers of individual shipment, as well as all shipments.

(d)(1) Date(s) of receipt of shipment(s) by the carrier;

(2) Date(s) of sailing(s) [furnish supporting evidence].

(e) Shipper and place of origin.

(f) Consignee, place of destination and routing of shipment(s).

(g) Name of carrier and date shown on bill of lading [furnish legible copies of bill(s) of lading].

(h) Names of participating ocean carrier(s).

(i) Name(s) of vessel(s) involved in carriage.

(j) Amount of freight charges actually collected [furnish legible copies of rated bill(s) of lading or freight bill(s), as appropriate] broken down (i) per shipment, (ii) in the aggregate, (iii) by whom paid, (iv) who is responsible for payment if different, and (v) date(s) of collection.

(k) Rate and tariff commodity description applicable at time of shipment [furnish legible copies of tariff materials].

(l) Rate and commodity description sought to be applied [furnish legible copies of applicable tariff materials].

(m)(1) Amount of applicable freight charges, per shipment and in the aggregate;

(2) Amount of freight charges at rate sought to be applied, per shipment and in the aggregate.

(n) Amount of freight charges sought to be (refunded) (waived), per shipment and in the aggregate.

2. Furnish docket numbers of other special docket applications or decided or pending formal proceedings involving the same rate situations.

3. Fully explain the basis for the application, i.e., the error, failure to publish, or misquote, showing why the application should be granted. Furnish affidavits, if appropriate, and legible copies of all supporting documents. If the error is due to failure to publish a tariff, specify the date when the carrier and/or conference intended or agreed to publish a new tariff. If the application is based on a misquote, the application must include the affidavit of the person who made the misquote describing the circumstances surrounding such misquote along with any other supporting documentary evidence available.

4. Furnish any information or evidence as to whether granting the application may result in discrimination among shippers, ports or carriers. List any shipments of other shippers of the same commodity which (i) moved via the carrier(s) or conference involved in this application during the period of time beginning on the date the intended rate would have become effective and ending on the day before the effective date of the conforming tariff; (ii) moved on the same voyage(s) of the vessel(s) carrying the shipment(s) described in No. 1, above; or (iii), in the case of a misquote, moved between the date of receipt of shipment(s) described in No. 1 above, and the date(s) of sailing(s).

[Here set forth Name of Applicant, Signature of Authorized Person, Typed or Printed Name of Person, Title of Person and Date]

State of , County of . ss:

I, ________________, on oath declare that I am ________________ of the above-named applicant, that I have read this application and know its contents, and that they are true.

Subscribed and sworn to before me, a notary public in and for the State of ________________, County of ________________ this _____ day of

____

(Seal)

____

Notary Public
My Commission expires

____

Certificate of Service [if Applicable]

I hereby certify that I have this day served the foregoing document upon the [insert the conference name if a conference tariff is involved; of the name of the carrier if the applicant is a shipper] by delivering a copy [insert means by which copy delivered].

Dated in [insert city, county, state] this _____ day of______________.
[signature]

For:

Certificate of Mailing

I certify that the date shown below is the date of mailing [or date of delivery to courier] of the original and one (1) copy of this application to the Secretary, Federal Maritime Commission, Washington, D.C., 20573.

Dated at ______________, this _____ day of __________.
Signature].

For.

§ 502.301 [Amended]

51. In § 502.301, remove paragraph (b) and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

§ 502.302 [Amended]

52. In § 502.302, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

53. Revise § 502.305 to read as follows:

§ 502.305 Applicability of other rules of this part.

Except §§ 502.253 and 502.254 or as otherwise specifically provided in this subpart, the rules in subparts A through Q, inclusive, do not apply to situations covered by this subpart. [Rule 305.]

Subpart S—[Amended]

54. In Exhibit 1 to Subpart S, in the section entitled *Information to Assist in Filing Informal Complaints*, remove the third paragraph beginning with the text "Under the Shipping Act, 1916. . . ."

55. Revise § 502.321 to read as follows:

§ 502.321 Applicability of other rules of this part.

Except as specifically provided in this part, rules in Subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart. [Rule 321.]

§ 502.401 [Amended]

56. Amend § 502.401 as follows:

a. Amend paragraph (b) by removing "Shipping Act, 1916, 46 U.S.C. app. 801 et seq.;" and removing "the Intercoastal Shipping Act 1933, 46 U.S.C. app. 843 et seq."

b. Remove paragraph (d), and redesignate paragraph (e) as paragraph (d).

57. Amend § 502.501 as follows:

a. Add new paragraph (d)(2)(vi) to read as set forth below;

b. Add new paragraph (e)(3) to read as set forth below;

c. Revise the first sentence of paragraph (f)(2) to read as set forth below;

d. Add "[Rule 501.]" to the end of paragraph (g).

§ 502.501 General provisions.

* * * * *

(d) * * *

(2) * * *

(vi) For purposes of paragraph (e)(3) of this section, a small entity as defined in 5 U.S.C. 601.

* * * * *

(e) *Standards for awards.* (1) * * *

(2) * * *

(3) In an adversary adjudication arising from a Commission action to enforce a party's compliance with a statutory or regulatory requirement, if the demand by the Commission is substantially in excess of the decision of the presiding officer and is unreasonable under the facts and circumstances of the case, the presiding officer shall award to the party fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.

* * * * *

(f) *Allowable fees and expenses.* (1) * * *

(2) No award for the fee of an attorney or agent under this subpart may exceed $125 per hour. * * *

* * * * *

§ 502.502 [Amended]

58. In § 502.502, add "[Rule 502.]" to the end of paragraph (d)(3).

§ 502.503 [Amended]

59. In § 502.503, add "[Rule 503.]" to the end of paragraph (j)(2).

60. Revise § 502.601 to read as follows:

§ 502.601 Purpose and scope.

The purpose of this subpart is to implement the statutory provisions of section 19 of the Merchant Marine Act, 1920, section 13 of the Shipping Act of 1984, and sections 2(c) and 3(c) of Public Law 89–777 by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Merchant Marine Act, 1920, the Shipping Act of 1984, Public Law 89–777, and/or any order, rule, or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes. [Rule 601.]

61. Amend § 502.602 as follows:

a. Revise paragraph (h) to read as set forth below;

b. Add "[Rule 602.]" to the end of paragraph (i).

§ 502.602 Definitions.

* * * * *

(h) *"Violation"* includes any violation of sections 19(6)(d), 19(7)(d) and 19(11) of the Merchant Marine Act, 1920; any provision of the Shipping Act of 1984; sections 2 and 3 of Public Law 89–777; and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under the Merchant Marine Act, 1920, the Shipping Act of 1984, or Public Law 89–777.

* * * * *

§ 502.603 [Amended]

62. In § 502.603, add "[Rule 603.]" to the end of paragraph (c).

63. Amend § 502.604 as follows:

a. Revise the first sentence of paragraph (b) to read as set forth below;

b. Add "[Rule 604.]" to the end of paragraph (g).

§ 502.604 Compromise of penalties: Relation to assessment proceedings.

* * * * *

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except when otherwise authorized by the Commission, or where circumstances render it unnecessary, send a Notice and Demand Letter ("NDL") to the respondent, by registered or certified mail, or by other means reasonably calculated to give notice. * * *

* * * * *

64. Amend § 502.605 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Add "[Rule 605.]" to the end of paragraph (c).

§ 502.605 Payment of penalty; Method; default.

(a) *Method.* Payment of penalties by the respondent is to be made by bank cashier's check or other instrument acceptable to the Commission.

* * * * *

PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

1. Redesignate part 571 as part 545.

2. The authority citation for redesignated part 545 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

3. In redesignated § 545.1, revise paragraph (a) to read as follows:

§ 545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and conferences to enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(10) of the 1984 Act prohibits carriers from unreasonably refusing to deal or negotiate. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31856 Filed 12–1–98; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1312

[STB Ex Parte No. 580]

Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or with a Water Carrier in the Noncontiguous Domestic Trade

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (Board or STB) proposes to modify its tariff filing regulations to eliminate the option of filing tariffs with the Board electronically through the Federal Maritime Commission (FMC) Automated Tariff Filing and Information System (ATFI), which is being phased out effective May 1, 1999. The Board will, however, entertain special tariff authority requests by individual carriers seeking to file their tariffs electronically.

DATES: Comments are due January 4, 1999.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 580 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 565–1578. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), transferred from the FMC to the Board the responsibility for regulating port-to-port water carriage in the noncontiguous domestic trade. In connection with the

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transfer of jurisdiction, the Board entered into an interagency agreement with the FMC and modified its requirements to allow carriers to continue to utilize the FMC's ATFI system to file their tariffs with the Board. This action permitted the transfer of jurisdiction to occur without requiring the carriers to make any new tariff filings, and comported with Congress' suggestion that the Board continue the FMC's practice of allowing carriers to file their tariffs electronically.[1] The recently-enacted Ocean Shipping Reform Act of 1998, Pub. L. No. 105–258, 112 Stat. 1902 (1998) (OSRA) will, however, eliminate the requirement that ocean carriers file their tariffs with the FMC effective May 1, 1999, and in these circumstances, the FMC will not be accepting new ATFI tariff filings on or after that date.

While ATFI has served well as an electronic filing option for STB tariffs, its feasibility has always been predicated upon the basic system being operated and maintained by the FMC to support its own tariff filing requirements. STB tariff filings constitute less than 5% of total ATFI tariff filings, and absent the 95-plus percent of the filings accounted for by the FMC's requirements, it will not be economically feasible to operate and maintain the ATFI system or any similar system solely for STB tariffs.

Under the interagency agreement between the FMC and the Board, the Board pays an annual fee to FMC to cover the Board's portion of ATFI contract costs and certain in-house services provided by FMC, and FMC remits to the Board the filing and access fees attributable to STB tariffs. However, the Board's share of ATFI costs and fees is minuscule in terms of total system cost and fees. While the drastic reduction in tariff filings would undoubtedly reduce certain variable costs, the fixed costs of ATFI, spread over solely STB tariffs, would require the imposition of prohibitive tariff filing and access fees in order for the Board to recover any reasonable portion of its out-of-pocket costs.[2] In these circumstances, it is clear that ATFI would not be viable solely for STB tariff filings. Similarly, it would not be feasible for the Board to undertake an effort to design, develop and implement a new electronic tariff filing system geared solely to STB requirements, given the limited scope of the Board's remaining tariff filing requirements and the extensive staff and monetary resources that would be required.

Although the Board's regulations will no longer routinely provide for electronic tariff filings if the proposed revisions are adopted, we will not rule out, and indeed will encourage, electronic tariff filing proposals from interested carriers. ATFI filings were initially accepted pursuant to special tariff authority granted by the Board,[3] and we are amenable to special tariff authority requests for individual electronic tariff filing proposals submitted by carriers. By way of illustration in this regard, we would point out that our predecessor organization, the Interstate Commerce Commission (ICC), issued a decision several years ago granting a rail carrier's request to file certain tariffs on computer diskettes.[4] Parties proposing alternative tariff filing systems must, of course, explain how the proposed systems will fulfill all of the various needs for tariff information.[5]

Request for Comments

We invite comments on the proposed regulations. We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 6.1, or formatted so that it can be readily converted into WordPerfect 6.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

The Board preliminarily concludes that these rules, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed regulations will eliminate the existing option to file tariffs electronically through the FMC's ATFI system, but many carriers already opt to file printed tariffs, and any cost differences for alternative tariff filing methodologies that carriers may propose are unlikely to be significant.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1312

Motor carriers, Noncontiguous domestic trade, Tariffs, Water carriers.

Decided: November 24, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, the Board proposes to amend part 1312 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NONCONTIGUOUS DOMESTIC TRADE

1. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 721(a), 13702(a), 13702(b) and 13702(d).

§ 1312.1 [Amended]

2. In § 1312.1(c), the definition of "ATFI" is removed.

3. Section 1312.6 is amended by revising paragraph (c) to read as follows:

§ 1312.6 Advance notice required.

* * * * *

(c) Receipt of tariffs by the Board. The Board will receive tariff filings between the hours of 8:30 A.M. and 5:00 P.M. Eastern time, on workdays. Tariff filings delivered to the Board on other than a workday, or after 5:00 P.M. on a workday, will be considered as received the next workday.

* * * * *

4. Section 1312.17 is removed.

[FR Doc. 98–32104 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–61–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 111998A]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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[1] H.R. Rep. No. 422, 104th Cong., 1st Sess. 206 (1995).

[2] We are aware that the FMC's Notice of Inquiry concerning the implementation of OSRA (63 FR 37088) raised the possibility of continuing to operate some portion of ATFI to provide for the electronic filing of service contracts. An electronic filing system geared to the requirements of service contracts, however, would not fulfill the requirements for an electronic tariff filing system

[3] STB Special Tariff Authority No. 4, served October 1, 1996.

[4] Special Tariff Authority No. 93–12, ICC served July 25, 1994.

[5] Our staff is available to consult informally with carriers in this regard.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on a Draft Sustainable Fisheries Act (SFA) Amendment and on a draft regulatory amendment regarding gag and black grouper in Federal waters of the Gulf of Mexico. Some of the hearings in the Gulf region will be joint hearings to receive comments on both draft amendments.

DATES: Written comments on the Draft SFA Amendment and the draft regulatory amendment will be accepted by the Council through January 4, 1999. The public hearings will be held in December 1998. See **SUPPLEMENTARY INFORMATION** for specific dates, times, and locations of the public hearings.

ADDRESSES: Written comments should be sent to, and copies of the Draft SFA Amendment and draft regulatory amendment are available from, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; Telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: In 1996, Congress passed the SFA, which contained new requirements for the management of marine fisheries in Federal waters. To meet these new requirements, the Council developed the Draft SFA Amendment that would amend all fishery management plans (FMPs) prepared by the Council. The Draft SFA Amendment includes alternative management measures for: (1) Reporting bycatch; (2) minimizing bycatch or bycatch mortality; (3) specifying higher standards for overfishing criteria that will restore fishery stocks to maximum sustainable yield (MSY); and (4) establishing rebuilding periods for overfished stocks, such as red snapper, king mackerel, and red drum. The Draft SFA Amendment also identifies communities economically dependent on fishing so that the impacts of fishery management measures on these communities can be assessed.

The section on reporting bycatch discusses five alternatives related to the submission of data by fishermen and vessel observers. The Council recommends that NMFS collect bycatch information by the most appropriate methods, but use mandatory observers only when the Council recommends such an approach.

In the section on measures to minimize bycatch or bycatch mortality, the Council recommends that stone crab traps used in Federal waters be constructed according to Florida law.

In the section on overfishing criteria and stock rebuilding periods for finfish, the Council recommends that MSY, optimum yield (OY), and the overfishing thresholds be set at higher levels than in the existing FMPs. For red snapper, the Council recommends setting MSY and the overfishing threshold at 26–percent spawning potential ratio (SPR), and OY at 36–percent SPR. For red drum, all the coastal migratory species (including mackerels), and all reef fish species (except red snapper, gag, Nassau grouper, and jewfish), the Council recommends setting MSY, OY, and overfishing thresholds at 30–percent SPR. For Nassau grouper and jewfish, the Council recommends setting MSY, OY, and the overfishing threshold at 50–percent SPR. The Council has not selected a proposal for gag. The effect of specifying overfishing criteria at higher levels for the finfish stocks is that additional stocks may be classified as overfished if NMFS approves the final SFA amendment in 1999.

The Council proposes to modify the rebuilding periods for two overfished stocks. It proposes that red snapper be rebuilt by 2033, and king mackerel by 2009. No rebuilding periods are proposed for red drum, Nassau grouper, or jewfish because there was insufficient information to compute the rebuilding periods.

Also, the Draft SFA Amendment does not contain proposed overfished thresholds in terms of biomass (weight) for any of the finfish stocks because there was insufficient information to compute these parameters. The Draft SFA Amendment includes alternatives for overfished thresholds that are expressed in terms of SPR.

In the section on overfishing criteria and stock rebuilding periods for the crustacean fisheries, the Council has proposed setting MSY, OY, and the overfishing thresholds for penaeid shrimp at or above the parent stock numbers (as indexed from current virtual population analysis (VPA) procedures) for the three penaeid species of shrimp in the Gulf of Mexico: (1) Brown shrimp (125 million individuals, age 7+ months during the November through February period); (2) white shrimp (330 million individuals, age 7+ months during the May through August period); and (3) pink shrimp (100 million individuals, age 5+ months during the July through June year). For royal red shrimp, the Council proposes setting MSY, OY, and the overfishing threshold at 650,000 lb (294,840 kg).

For spiny lobster, the Council proposes to set MSY and the overfishing threshold at 20–percent transitional SPR or spawning stock biomass per recruit, but OY would be set at 30–percent SPR. For stone crab, the Council recommends setting MSY, OY, and the overfishing threshold at the harvest level that results from a realized egg production per recruit at or above 70 percent of potential production. This harvest capacity is currently estimated to be between 3.0 and 3.5 million lb (between 1.36 and 1.58 million kg) of claws (minimum 70 mm propodus length). Overfished thresholds are specified as one-half of MSY or slightly higher for the crustacean stocks, none of which is overfished.

Ten public hearings will be held to obtain public comments on the Draft SFA Amendment (see Public Hearing Times and Locations). The public comment period for the Draft SFA Amendment ends on January 4, 1999.

The Council will also hold public hearings on possible regulatory changes to the management of gag and black grouper in Federal waters of the Gulf of Mexico. Issues addressed in the draft regulatory amendment for gag and black grouper include the following: (1) Specification of a total allowable catch (TAC) for gag; (2) discussion of the allocation of the gag TAC between recreational and commercial sectors; (3) a minimum size limit increase for gag and black grouper from 20 to 24 inches (50.8 to 60.9 cm) total length; (4) a 2–fish recreational bag limit for gag as part of the existing 5–fish aggregate grouper bag limit; (5) a zero bag limit for gag for the captain and crew of recreational for-hire vessels; (6) a commercial trip limit for gag; (7) a closed season during peak gag spawning times; and (8) area closures at gag spawning aggregation locations.

The Council currently has no preferred alternatives. However, in its "1998 Report to Congress on the Status of Fisheries of the United States," NMFS identified gag in the Gulf of Mexico as a stock that, while not currently overfished, is approaching an overfished condition. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Council is required to take action to prevent overfishing from occurring for stocks identified by NMFS as approaching an overfished condition. The Council will decide which measures to recommend to achieve that goal at its January 11 to 14, 1999, meeting to be held in Biloxi, MS. Comments on the draft regulatory amendment for gag and black grouper must be received by January 4, 1999.

Public Hearing Times and Addresses

Public hearings will be held from 7:00 p.m. to 10:00 p.m. at all of the following locations, except Panama City, FL, Orange Beach, AL, and Larose, LA; where the hearings on the draft regulatory amendment for gag and black grouper will be from 3:00 p.m. to 5:00 p.m., and the hearings on the Draft SFA Amendment will be from 7:00 p.m. to 10:00 p.m.

Monday, December 7, 1998—Pier House, One Duval Street, Key West, FL—Draft gag and black grouper regulatory amendment;

Monday, December 7, 1998—Holiday Inn-Fort Brown, 1900 E. Elizabeth Street, Brownsville, TX—Draft SFA Amendment;

Tuesday, December 8, 1998—Steinhatchee Elementary School, 1st Avenue South, Steinhatchee, FL—Draft gag and black grouper regulatory amendment;

Tuesday, December 8, 1998—Pier House, One Duval Street, Key West, FL—Draft SFA Amendment;

Tuesday, December 8, 1998—Port Aransas Civic Center Auditorium, 710 West Avenue A, Port Aransas, TX—Draft SFA Amendment;

Wednesday, December 9, 1998—City Hall Auditorium, 3001 Municipal Drive, Madeira Beach, FL—Draft gag and black grouper regulatory amendment;

Wednesday, December 9, 1998—Texas A&M Auditorium, 200 Seawolf Parkway, Galveston, TX—Draft SFA Amendment;

Thursday, December 10, 1998—Courtyard Marriott, 4455 Metro Parkway, Fort Myers, FL—Draft gag and black grouper regulatory amendment;

Thursday, December 10, 1998—New Orleans Airport Hilton & Conference Center, 901 Airline Highway, Kenner, LA—Draft SFA Amendment;

Thursday, December 10, 1998—Ramada Airport Inn & Conference Center, 5303 West Kennedy Boulevard, Tampa, FL—Draft SFA Amendment;

Monday, December 14, 1998—National Marine Fisheries Service Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL—both the Draft SFA Amendment and the draft gag and black grouper regulatory amendment;

Tuesday, December 15, 1998—Orange Beach Community Center, 27235 Canal Road, Orange Beach, AL—both the Draft SFA Amendment and the draft gag and black grouper regulatory amendment;

Wednesday, December 16, 1998—J. L. Scott Marine Education Center & Aquarium, 115 East Beach Boulevard, US Highway 90, Biloxi, MS—Draft SFA Amendment; and

Thursday, December 17, 1998—Larose Regional Park, 2001 East 5th Street, Larose, LA—both the Draft SFA Amendment and the draft gag and black grouper regulatory amendment.

Copies of the Draft SFA Amendment and the draft regulatory amendment on gag and black grouper may be obtained by calling the Council at 813–228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by December 7, 1998.

Dated: November 24, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32038 Filed 12–1–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 112598B]

RIN 0648–AJ44

Fisheries of the Northeastern United States; Northeast Multispecies and Monkfish Fisheries; Monkfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan; request for comments.

SUMMARY: NMFS announces that the New England and Mid-Atlantic Fishery Management Councils (Councils) have submitted the Monkfish Fishery Management Plan (FMP) for Secretarial review and are requesting comments from the public.

DATES: Comments must be received on or before February 1, 1999.

ADDRESSES: Comments on the Monkfish FMP should be sent to Jon C. Rittgers, Acting Regional Administrator, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Monkfish FMP."

Copies of the Monkfish FMP, its regulatory impact review, initial regulatory flexibility analysis, the final environmental impact statement, and the supporting documents are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: The FMP proposes an overfishing definition and a 10-year rebuilding schedule to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and implementation of the following measures: Target total allowable catch levels for each of two management areas; limited access; effort limits through days-at-sea allocations; trip limits and incidental harvest allowances; minimum size and mesh limits; gear restrictions; spawning season closures; a framework adjustment process; permitting and reporting requirements, and other measures for administration and enforcement.

A proposed rule that would implement the Monkfish FMP may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on the Monkfish FMP to be considered in the approval/disapproval decision on the FMP. All comments received by February 1, 1999, whether specifically directed to the FMP or the proposed rule, will be considered in the approval/disapproval decision on the Monkfish FMP. Comments received after that date will not be considered in the approval/disapproval decision on the Monkfish FMP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 27, 1998.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32129 Filed 12-1-98; 8:45 am]

BILLING CODE 3510–22–F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection procedure. This information is contained in a petition which may be filed with the Department of Agriculture (USDA) requesting emergency relief from increased, injurious imports of certain perishable products entering the United States duty-free from beneficiary countries under the Andean Trade Preference Act.

DATES: Comments on this notice must be received on or before February 1, 1999 to be assured consideration.

ADDRESSES: Mail or deliver comments to Stephen C. Hammond, Director, Import Policies and Programs Division, Foreign Agricultural Service, Stop 1021, 1400 Independence Ave., S.W., Washington, D.C. 20250–1021, (202) 720–2916.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Stop 1021, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1021, (202) 720–1330.

SUPPLEMENTARY INFORMATION:

Title: Emergency Relief from Duty-Free Imports of Perishable Products from Andean Countries.

OMB Number: 0551–0033.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension for a currently approved information collection.

Abstract: The Andean Trade Preference Act (Pub. L. 102–182, 105 Stat. 1236 (19 U.S.C. 3201 *et. seq.*) (the "Act"), authorizes the President to proclaim duty-free treatment for imports from Bolivia, Colombia, Ecuador, and Peru, except for certain specifically excluded products. Section 204(e) of the Act provides, in part, that if a petition is filed with the United States International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974, as amended (19 U.S.C. 2251), regarding a perishable product and alleging injury from imports from beneficiary countries, then a petition may also be filed with Secretary of Agriculture requesting that emergency relief be granted by the President. Under 7 CFR 1540.43, an entity seeking emergency relief may submit a request to the administrator, FAS, providing appropriate information and data to permit the Secretary of Agriculture to make a determination whether to recommend to the President to take emergency action. The request should contain a description of the imported perishable product concerned and the country of origin; data showing that increased imports of such perishable product are the substantial cause of serious injury, or the threat of serious injury, to the domestic industry producing a perishable product like or directly competitive with the imported product; and provide a statement indicating why emergency action would be warranted. The information collected would be used by FAS to prepare an assessment that would assist the Secretary in making his determination.

Estimate of Burden: Public reporting burden for this collection of information is estimated at $1,106.

Respondents: Non-profit institutions, businesses, or farms.

Estimated Number of Respondents: 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 46 hours. Copies of the information collection can be obtained from Kimberly Chisley, the Agency Collection Coordinator, at (202) 720–2568.

REQUESTS FOR COMMENTS: The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

Signed at Washington, DC, on November 27, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–32128 Filed 12–1–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 15, 1998. The list of newspapers will remain in effect until June 1, 1999 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Donald W. Murphy, Regional Appeals Manager, Intermountain Region, 324

25th Street, Ogden, UT 84401, Phone (801) 625-5274.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures, 36 CFR Parts 215 and 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in additions to those who have requested notice in criting and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In additions, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows.

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:
The Idaho Statesman, Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah:
Salt Lake Tribune, Salt Lake City, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Salt Lake Tribune, Salt Lake City, Utah

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
The Idaho Stateman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisor decisions:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montipelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Westside District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Beaver, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah

Humboldt-Toiyabe National Forests

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
Spring Mountains National Recreation Area Ecosystem (SMNRAE):
Spring Mountain National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
Ferron district Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho

Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon and Challis National, Forests

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Range decisions:
The Challis Messenger, Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisaded District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah, and
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah

Dated: November 25, 1998.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 98–32053 Filed 12–1–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–98]

Foreign-Trade Zone 171—Liberty County, Texas; Application for Expansion; Extension of Public Comment Period

The comment period for the above case, submitted by the Liberty County Economic Development Corporation, requesting authority to expand its zone in Liberty County, Texas (63 FR 52241, 9/30/98), is extended to January 29, 1998, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 (three) copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 25, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–32119 Filed 12–1–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year (''Sunset'') Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders, findings, and/or suspended investigations listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders and/or suspended investigations.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders, findings, or suspended investigations:

DOC Case No.	ITC Case No.	Country	Product
C–301–401	C-None	Colombia	Textiles & Textile Products.
C–549–401	C-None	Thailand	Certain Textile Mill Products.
C–351–005	C–184	Brazil	Frozen Concentrated Orange Juice.

DOC Case No.	ITC Case No.	Country	Product
A–351–605	A–326	Brazil	Frozen Concentrated Orange Juice.
A–588–401	A–189	Japan	Calcium Hypochlorite.
C–351–029	C4–20	Brazil	Castor Oil.
A–570–825	A–653	China, PR	Sebacic Acid.
A–122–401	A–196	Canada	Raspberries.
C–122–404	C–224	Canada	Live Swine.
C–351–406	C–223	Brazil	Tillage Tools.
A–357–405	A–208	Argentina	Barbed Wire.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import—admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: November 20, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–31984 Filed 12–1–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–602]

Certain Fresh Cut Flowers from Ecuador: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Davina Hashmi, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4794 or (202) 482–5760, respectively.

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[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are references to the provisions codified at 19 CFR part 351 (1998).

Extension of Time Limits for Preliminary Results

The Department has received a request to conduct an administrative review of the antidumping duty order on certain fresh cut flowers from Ecuador. On April 24, 1998, the Department initiated this administrative review covering the period March 1, 1997 through February 28, 1998.

Owing to certain issues surrounding this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (see Memorandum from Richard Moreland to Robert LaRussa, Re: Extension of Time Limit for Administrative Review of Fresh Cut Flowers from Ecuador, November 24, 1998). Therefore, in accordance with that section, the Department is extending the time limits for the issuance of the preliminary results of review to March 30, 1999. The Department intends to issue the final results of review 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 24, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32117 Filed 12–1–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–337–804]

Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351, (1998).

Scope of Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered by this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47, 2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On November 25, 1998, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that a U.S. industry is materially injured by reason of imports of certain preserved mushrooms from Chile, pursuant to section 735(b)(1)(A) of the Act. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price and constructed export price of the merchandise for all relevant entries of certain preserved mushrooms from Chile. These antidumping duties will be assessed on all unliquidated entries of certain preserved mushrooms from Chile entered, or withdrawn from warehouse, for consumption on or after August 5, 1998, the date on which the Department published its preliminary determination notice in the **Federal Register** (63 FR 41786).

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the cash deposits listed below for the subject merchandise. The All Others rate applies to all exporters of subject merchandise not specifically listed below.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Nature's Farm Products (Chile) S.A.	148.51
All Others	148.51

This notice constitutes the antidumping duty order with respect to certain preserved mushrooms from Chile, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: November 19, 1998

Holly Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32118 Filed 12–1–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112398B]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on October 6, 1998, to Mariner Energy, Inc. of Houston, TX, Forest Oil Corp of Denver, CO., and Pennzoil Exploration and Production, Lafayette, LA; on October 28, 1998, to Vastar Resources, Inc. Houston, Texas; and on November 19, 1998, to CNG Producing Co, New Orleans, LA.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or David Bernhart, Southeast Region (727) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: November 25, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–32036 Filed 12–1–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112398A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on April 28, 1998, to the Samedan Oil Corp; on May 18, 1998, to Tatham Offshore; on June 5, 1998, to EEX Corp, Newfield Exploration Co, and Mitchell Energy; on July 28, 1998, to The Louisiana Land and Exploration Co. all from Houston, Texas, and on Aug 18, 1998, to Forcenergy of Miami, FL.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or David Bernhart, Southeast Region (727) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: November 25, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–32037 Filed 12–1–98; 8:45 am]

BILLING CODE 3510–22–F

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 9, 1998. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10 a.m. at the same location and will include a Corps of Engineers presentation on section 22 proposals as well as discussions of correspondence concerning upper Basin reservoir releases and proposals for interim reorganization and formation of a Watershed Council.

In addition to the subjects summarized below which are scheduled for public hearing at the business meeting, the Commission will also address the following: Minutes of the October 7, 1998 business meeting; announcements; report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; consideration of resolutions concerning interim DRBC reorganization, establishment of a Water Management Advisory Committee, contract with the Northeast/Midwest Institute, interstate river basin commissions' role in Clean Water Action Plan and public dialogue.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1999, in the aggregate amount of $4,106,600 and a capital budget reflecting revenues of $2,508,748 and expenditures of $2,331,242. Copies of the current expense and capital budgets are available from the Commission on request by contacting Richard C. Gore at (609) 883–9500 ext. 201.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Summit Hill Water Authority D–84–3 CP RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 13.8 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1, 2, 3 and 4. Commission approval on December 14, 1988 was limited to 10 years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 13.8 mg/30 days. The project is located in Summit Hill Borough, Carbon County, Pennsylvania.

2. *New Jersey-American Water Company D–90–108 CP Revised.* An application to revise an existing docket by the addition of Aquifer Storage and Recovery (ASR) Well No. 66 to recharge treated drinking water from the applicant's distribution system into the Middle PRM Aquifer during periods of low water demand. The stored high-quality water will be withdrawn and discharged to the distribution system during periods of high demand with no net withdrawal from the aquifer. The proposed ASR project will not increase monthly or annual allocation of ground water. The project is located in Cherry Hill Township, Camden County, New Jersey.

3. *West Goshen Sewer Authority D–98–20 CP.* A project to upgrade and expand the applicant's existing 4.5 million gallons per day (mgd) sewage treatment plant (STP) to 6.0 mgd to continue serving portions of East Goshen and West Goshen Townships, Chester County, Pennsylvania. The STP is located off South Concord Road in West Goshen Township and will continue to discharge to Chester Creek (locally known as Goose Creek).

4. *Womelsdorf-Robesonia Joint Authority D–98–23 CP.* An application for approval of a ground water withdrawal project to supply up to 8.1 mg/30 days of water to the applicant's distribution system from new Well No. 9, and to retain the existing withdrawal limit from all wells at 23 mg/30 days. The project is located in Millcreek Township, Lebanon County, Pennsylvania.

A Proposal to Adopt the 1999 Water Resources Program. A proposal that the 1998 Water Resources Program and the activities, programs, initiatives, concerns, projections and proposals identified and set forth therein be extended and adopted as the 1999 Water Resources Program and that a staff report of progress during 1998 in completing elements of the program and policies in the 1998 Water Resources program be made a part thereof, in accordance with the requirements of Section 13.2 of the Delaware River Basin Compact.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: November 23, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–32122 Filed 12–1–98; 8:45 am]

BILLING CODE 6360–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6196–4]

State and Tribal Environmental Justice Grants Program Request for Applications Guidance FY 1999; Purpose of Notice

The purpose of this notice is to solicit applications from eligible candidates under the State and Tribal Environmental Justice (STEJ) Grants Program, sponsored by the U.S. Environmental Protection Agency, Office of Environmental Justice.

For FY 1998, EPA awarded five STEJ grants totaling $500,000 to (4) states and (1) tribe. A list of the recipients and their project descriptions are provided in Appendix F.

For FY 1999, EPA expects to once again award a total of $500,000 to states and tribes to demonstrate how to effectively address environmental justice issues and comply with Title VI of the 1964 Civil Rights Act. A maximum of $100,000 will be awarded to each recipient, contingent upon the availability of funds. A total of five grants are expected to be awarded. The standard project and budget periods are for one year. The grantee can request that the project and budget periods be extended up to three years, with the total budget of $100,000 provided during the first year. This guidance outlines the purpose, authorities, eligibility, and general procedures for application and award of the FY 1999 STEJ Grants.

The application must be postmarked no later than Friday, February 26, 1999.

Grants Program Overview

The State and Tribal Environmental Justice (STEJ) Grants Program was created to provide financial assistance to state and tribal environmental departments that are working to address environmental justice issues. With the increased interest in Title VI of the Civil Rights Act of 1964, EPA is seeking, through this assistance program, to support individual state's and tribe's efforts to effectively comply with Title VI in their environmental programs and/

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or establish an environmental justice program.

A. Program Goals

The STEJ Grants Program is intended to assist states and tribes in ultimately achieving the following environmental justice goals and objectives:

- Enhance the state or tribal government's effectiveness in complying with Title VI of the Civil Rights Act of 1964.
- Reduce or prevent disproportionately high and adverse human health or environmental effects on low-income communities and/or minority communities.
- Integrate environmental justice goals into a state's or tribe's policies, programs, and activities.
- Provide financial and technical resources to develop an enabling infrastructure at the state/local community level and tribal/tribal community level.
- Set up model programs to address enforcement and compliance issues in affected environmental justice (EJ) communities.
- Integrate measurable EJ goals within the annual Performance Partnership Agreements (PPAs) and Memorandums of Understandings (MOUs) between a state and EPA, or integrate measurable EJ goals within the Tribal Environmental Agreements (TEAs).
- Improve public participation in the decision-making processes (e.g. permitting processes, development of regulations and policies)

B. Background on Environmental Justice

EPA considers Environmental Justice to be the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, or income with respect to the development, implementation, enforcement and compliance of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies.

On February 11, 1994, President Clinton issued Executive Order (EO) 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (Appendix A). Environmental Justice focuses attention on the need to ensure environmental protection for all, and to empower those most often disenfranchised from the decision-making process, the low-income and/or minority communities.

C. Background on Title VI

Title VI states:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Presidential memorandum accompanying EO 12898 directs Federal agencies to ensure compliance with the nondiscrimination requirements of Title VI for all Federally-funded programs and activities that affect human health or the environment.

Title VI itself prohibits intentional discrimination. The Supreme Court has ruled, however, that Title VI authorizes Federal agencies, including EPA, to adopt implementing regulations that prohibit discriminatory effects. Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative. (See Appendix B for additional information on Title VI).

Eligible Applicants and Activities

D. Who May Submit An Application?

Any state or tribal agency that manages, or is eligible to manage, an EPA program, which has an expressed interest in working with community-based grassroots organizations and other environmental justice stakeholders to address environmental justice concerns in communities. EPA requests that only one application be submitted from each state or tribe interested in receiving assistance. The project can be a partnership involving more than one state department, or if from a tribe, more than one tribal department. The project may also involve a consortium of state or tribal governments. The degree of support provided by top government officials from either the state or tribe will be an important factor in the selection process.

E. May an Individual or Organization Apply?

No. Only a state or federally-recognized tribal government may apply. However, the applying states or tribes should work with community-based grassroots organizations when developing their proposals. Preference may be given to the states or tribes who involve community-based grassroots organizations in the development of their proposals.

F. What Types of Projects are Eligible for Funding?

Funds are to be used for activities authorized by the appropriate statutory provisions listed in paragraph G below, to accomplish one or both of the following:

1. The development or enhancement of a program to work directly with communities to improve the state's or tribe's compliance with Title VI of the Civil Rights Act of 1964 in the development and implementation of environmental programs.

Example 1: Create a review team to analyze the state's or tribe's future conduct or action to help ensure its environmental programs have no discriminatory environmental or human health effects based on race, color, or national origin.

Example 2: Demonstrate how to establish an appropriate enforcement program for disproportionately affected communities; and create meaningful community participation opportunities throughout enforcement & compliance activities [e.g. from the time of initial Notice of Violations to final agency enforcement decisions.]

2. The development of a model state or tribal environmental justice executive order, strategic plan, and/or conduct studies, analyses, and training in the development of a state or tribal environmental justice program.

Preferences

Preference may be given to the states or tribes which have not received a STEJ grant in the past and which include the following in their application:

(1) A description of how environmental justice/community-based grassroots organizations were involved in the development of the proposal, and

(2) Identification of the matching or cost sharing funds to be provided by the state or tribe for the project.

G. What are the Statutory Authorities for the Grants?

The State and Tribal Environmental Justice Grants are for multimedia environmental justice activities. For this reason, each project must include activities which are authorized by two or more of the following environmental statutes.

a. Clean Water Act, Section 104(b)(3): conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

b. Safe Drinking Water Act, Sections 1442(c)(3): develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. Solid Waste Disposal Act, Section 8001(a): conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste management and hazardous waste management.

d. Clean Air Act, Section 103(b)(3): conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

e. Toxic Substances Control Act, Section 10(a): conduct research, development, and monitoring activities on toxic substances.

f. Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(A): conduct research on pesticides.

g. Comprehensive Environmental Response, Compensation, and Liability Act, Section 311(c): conduct research related to the detection, assessment, and evaluation of the effects on, and risks to, human health from hazardous substances.

h. Marine Protection, Research, and Sanctuaries Act, Section 203: conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

H. What Regulations Apply to these Grants?

The STEJ Grants will be governed by 40 CFR Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments, and OMB Circular A–87. Note, in particular, that there are restrictions on the used of grant funds for lobbying and that grant funds may not be used for intervention in federal regulatory or adjudicatory proceedings.

Funding

I. Are Matching Funds Required?

Matching funds are not required, but are encouraged. EPA may give preference to those states or tribes which provide matching funds, since this would demonstrate a greater commitment.

Application Requirements

J. What is Required for Applications?

In order to be considered for funding under this program, proposals must have the following:

1. Application for Federal Assistance (SF 424) the official form required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, and one additional copy, signed by a person duly authorized.

2. Federal Standard Form (SF 424A) and budget detail, which reflects the total budget for the entire duration of the project. Budget figures/projections should support your work plan/narrative. The EPA portion of these grants will not exceed $100,000, therefore your budget should reflect this upper limit on federal funds.

3. Signed "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" form, and "Certification Regarding Lobbying" form, which can be found in Appendix C.

4. Narrative/work plan of the proposal. A narrative/work plan describes the applicant's proposed project. The pages of the work plan must be letter size 8 ½" x 11"), with normal type size (12 cpi), and at least 1" margins. The narrative/work plan should be no more than five pages.

The narrative/work plan must describe:

a. whether one or both of the Eligible Projects, as defined in Section F, are being proposed,

b. how the proposed project will meet the Program goals, as described in Section A,

c. how the project addresses issues related to at least two of the environmental statutes listed in Section G, and

d. discuss how the project will be evaluated, what will be the measures of success, and describe how the project/program will be sustained.

5. A letter of commitment from the department head or government head (e.g., governor, president, chairperson, chief).

6. State and Tribal applicants should establish working relationships with local community-based organizations in developing their proposals.(*) A list of the organizations who participated in the development of the grant proposal, along with contact names and numbers, is required.(*) Many community-based organizations across the nation have already begun implementing environmental justice programs at the local level, which states and tribes may want to use as examples to help build their environmental justice programs. By asking those who are most impacted by environmental injustices to participate in building the state's or tribe's environmental justice program, the states and tribes will be more likely to obtain broad support for the concept and the partnership it reflects.

K. When and Where Must Applications Be Submitted?

The applicant must submit one signed original application with the required attachments and one additional copy to the primary contact of the appropriate EPA regional office (see page 8 and Appendix D). The application must be postmarked no later than Friday, February 26, 1999.

Process for Awarding Grants

Proposals are to be developed by states or tribes (EPA encourages the involvement of community-based/grassroots organizations) and submitted to their respective EPA Regional Offices. The initial review will be conducted by each Region through a Regional panel, which will select the top proposals for submission to EPA Headquarters, for final review and selection. The grants will be processed for award and managed by the Regions. The plan is to fund the five best State and/or Tribal Environmental Justice project proposals.

Note: Among the proposals receiving the highest rating, EPA may take into account the geographic location and diversity of the proposed projects when making final selections.

STEJ Grant Program Schedule

Dec.11—February 26: States and Tribes Develop Proposals and Submit to EPA Regions.

March 1—April 9: EPA Regions Review Proposals and Provide Recommendations to Headquarters.

April 12—May 14: OEJ Headquarters Convenes Review Panel and Receives Recommendations.

May 17—June 4: Headquarters Completes Selections and Submits Final Selections to EPA Regional Offices.

June 7—Aug. 9: EPA Regional Grants Management Offices Process Applications and Award Grants.

September 1: National and Regional Announcements of Awards.

Reporting

State and Tribal agencies that are awarded the State and Tribal Environmental Justice (STEJ) grants will be required to submit semi-annual reports, in accordance with 40 CFR 31.40 and 31.41, to the appropriate Regional Environmental Justice

Coordinator and Project Officer. Reports will include, but not be limited to, information on:

- Funds expended.
- Tasks accomplished.
- Issues/problems encountered and method of resolution.
- Results achieved.

A final summary report is required by 40 CFR section 31.40(b) at the end of the project period. This final report should include a discussion on the continuation and institutionalization of the state's and/or tribe's efforts to comply with Title VI and/or provide for environmental justice.

* * * If you have any questions regarding the interpretation of this guidance, please call your regional contact listed below, or Daniel Gogal, STEJ Grants Manager, Office of Environmental Justice, at (202) 564–2576 or 1–800–962–6215. * * *

EPA Regional STEJ Contact Names and Addresses

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Primary Contact: Ronnie Harrington (617) 918–1703, USEPA Region 1, One Congress Street, Suite 1100 (SAA), Boston, MA 02114.

Secondary Contact: Pat O'Leary (617) 918–1978.

Region II: New Jersey, New York, Puerto Rico, U.S. Virgin Islands.

Primary Contact: Melva Hayden (212) 637–5027, USEPA Region II, 290 Broadway, 26th Floor, New York, NY 10007.

Secondary Contact: Doug Roberts (212) 637–3408.

Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Primary Contact: Reginald Harris (215) 814–2988, USEPA Region III (3DA00), 841 Chestnut Building, Philadelphia, PA 19107.

Secondary Contact: Mary Zielinski (215) 814–5415.

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Primary Contact: Gloria Love (404) 562–9672, USEPA Region IV, 61 Forsyth Street, Atlanta, GA 30303.

Secondary Contact: Connie Raines (404) 562–9671.

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Primary Contact: Ethel Crisp (312) 353–1442, USEPA Region V, 77 West Jackson Boulevard (DM–7J), Chicago, IL 60604–3507.

Secondary Contact: Karla Johnson (312) 886–5993.

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Primary Contact: Shirley Augurson (214)665–7401, USEPA Region VI (6E–N), 1445 Ross Avenue, 12th Floor, Dallas, TX 75202–2733.

Secondary Contact: Teresa Cooke (214) 665–8145.

Region VII: Iowa, Kansas, Missouri, Nebraska.

Primary Contact: Althea Moses (913) 551–7649 or 1–800–223–0425, USEPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.

Secondary Contact: Kim Olson (913) 551–7539.

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Primary Contact: Marcella Devargas (303) 312–6161, USEPA Region VIII (8ENF–EJ), 999 18th Street, Suite 500, Denver, CO 80202–2466.

Secondary Contact: Elisabeth Evans (303) 312–6053.

Region IX: Arizona, California, Hawaii, Nevada, American Samoa, Guam.

Primary Contact: Katy Wilcoxen (415) 744–1117, USEPA Region IX (CMD–6), 75 Hawthorne Street, San Francisco, CA 94105.

Secondary Contact: Willard Chin (415) 744–1204.

Region X: Alaska, Idaho, Oregon, Washington.

Primary Contact: Susan Morales (206) 553–8580, USEPA Region X (OI–085), 1200 Sixth Avenue, Seattle, WA 98101.

Secondary Contact: Joyce Kelly (206) 553–4029.

Note: To obtain copies of the appendices referenced in this document, please contact the individuals identified above for a complete application.

Dated: November 24, 1998.

Robert J. Knox,

Associate Director, Office of Environmental Justice.

[FR Doc. 98–32072 Filed 12–1–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30464; FRL–6046–6]

American Cyanamid Company; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by January 4, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30464] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Product Manager (PM-10), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–6502, e-mail: sibold.ann@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 241-GAA. Applicant: American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543–0400.

Product Name: AC 303,630 Technical. Technical. Active ingredient: 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1-pyrrole-3-carbonitrile at 93 percent. Proposed classification/Use: For technical manufacturing.

2. File Symbol: 241-GAI. Applicant: American Cyanamid Company.Product Name: Alert. Insecticide/Miticide. Active ingredient: 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile at 21.44 percent. Proposed classification/Use: Restricted. For use on cotton.

3. File Symbol: 241-GAT. Applicant: American Cyanamid Company. Product Name: Pirate. Insecticide/Miticide. Active ingredient: 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-1*H*-pyrrole-3-carbonitrile at 30.83 percent. Proposed classification/Use: Restricted. For use on cotton.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30464] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30464]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: November 13, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–31682 Filed 12-1-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–847; FRL–6043–2]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–847, must be received on or before January 4, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne I. Miller (PM 13)	Rm. 237, CM #2, 703–305–6224, e-mail: Miller.joanne@epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA 22202
Cynthia Giles-Parker (PM 22).	Rm. 247, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–847 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES".

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Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number PF–847 and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 13, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below petitioner summaries of the pesticide petitions are printed as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. BASF Corporation

PP 7F4870

EPA has received a pesticide petition (PP 7F4870) from BASF Corporation, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of quinclorac (3,7-dichloro-8-quinolone carboxylic acid), in or on the raw agricultural commodity wheat and sorghum raw agricultural and food/feed commodities: 0.5 parts per million (ppm) in or on wheat grain, 0.1 ppm in or on wheat straw, 1.0 ppm in or on wheat forage, 0.5 ppm in or on wheat hay, 1.0 ppm in or on wheat bran, 1.5 ppm in or on wheat germ, 0.75 ppm in or on wheat shorts, 0.5 ppm in or on sorghum grain, 0.2 ppm in or on sorghum forage and 0.05 ppm in or on sorghum fodder. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant and animal metabolism.* The metabolism of quinclorac in plants and animals is well understood. Based on a nature of the residue study in wheat and supported by similar studies in rice and sorghum, the residue of concern from quinclorac use in non-oily grains consists only of the parent compound.

2. *Analytical method.* An adequate analytical method for enforcement of the tolerances exists. The analytical method used for quantitative determinations was designed to measure quinclorac residues present as the parent compound.

3. *Magnitude of residues* —(i) *Raw agricultural commodities.* Crop field trials were conducted in wheat and sorghum and treatments were made at the maximum proposed label rate. The maximum amount of quinclorac residue found in wheat and sorghum raw agricultural commodities are: wheat forage 0.88 ppm, wheat hay 032 ppm, wheat grain 0.25 ppm, wheat straw 0.08 ppm, sorghum forage 0.15 ppm, sorghum grain 0.26 ppm, sorghum fodder 0.05 ppm.

(ii) *Processed fractions.* Processing studies were conducted for both wheat and sorghum to determine whether quinclorac residues concentrate during the commercial processing of these commodities. In sorghum, no concentration of residues was found in the production of flour and starch. In wheat, no concentration was found in the production of middlings and flour. Quinclorac residues concentrated 2-fold in the production of bran, 3-fold in the production of germ, and only slightly, 1.3-fold, in shorts. No additional data were needed in support of residues in meat, milk, poultry, and eggs. Maximum residue levels in wheat and sorghum raw agricultural commodities and process fractions were well below levels of current rice tolerances (5 ppm for grain, 12 ppm for straw, and 15 ppm for bran) which originally dictated the animal feeding study dosing levels and subsequent setting of animal product tolerances.

B. Toxicological Profile

1. *Acute toxicity.* Based on available acute toxicity data quinclorac does not pose any acute toxicity risks. Several acute toxicology studies place technical-grade quinclorac in Toxicity Category III for acute oral, acute dermal, acute inhalation toxicity, and for eye irritation. Technical 3,7-dichloro-8-quinoline carboxylic acid is in category IV for primary dermal irritation and is a skin sensitizer. The currently registered end use formulations of quinclorac (50% wettable powder and 75% dry flowable formulations) have tested negative for skin sensitization.

2. *Chronic feeding — Nonrodent.* A 1-year feeding study in dogs fed 0, 34, 142, and 513 (males) and 0, 35, 140, and 469 (females) milligrams/kilogram/day (mg/kg/day) resulted in a No Observed Adverse Effect Level (NOAEL) of 140 mg/kg/day based on reduced body weight gains, adverse effect on food efficiency, hematological and clinical chemistry values, increased liver and kidney weights, and microscopic findings in liver and kidneys at 513 mg/kg/day (males) and 469 mg/kg/day (females), the highest dosages tested (HDT).

3. *Chronic feeding/oncogenicity - Rats.* A chronic feeding/carcinogenicity study in rats fed dosages of 1, 56, 186, 385, and 487 mg/kg/day (males) and 0, 60, 235, 478, and 757 mg/kg/day (females) resulted in a NOAEL of 478 mg/kg/day (females) and 385 mg/kg/day (males) based on slight decreases in weight for females at 757 mg/kg/day (HDT) and an equivocal (uncertain) increase in acinar cell hyperplasia of the pancreas in males at 487 mg/kg/day (HDT). There were no carcinogenic effects noted for female rats under the conditions of the study up to 757 mg/kg/day (HDT).

4. *Oncogenicity - Mice.* A carcinogenic study in mice fed dosages of 0, 37.5, 150, 600, and 1,200 mg/kg/day resulted in no carcinogenic effects observed under the conditions of the study up to and including 1,200 mg/kg/day (HDT) and a systemic NOAEL of 37.5 mg/kg/day based on a reduction of body weight at 150 mg/kg/day.

5. *Teratology - Rats.* A developmental study in rats fed dosages of 0, 24.4, 146, and 438 mg/kg/day (HDT) resulted in developmental toxicity NOAEL of 438 mg/kg/day and a maternal toxicity NOAEL of 146 mg/kg/day based on reduced food consumption, increased water intake, and mortality at 438 mg/kg/day (HDT). Under the conditions of this study, quinclorac did not produce any sign of embryo/fetal toxicity and

did not alter fetal morphological development.

6. *Teratology - Rabbits.* A developmental study in rabbits fed dosages of 0, 70, 200, and 600 mg/kg/day resulted in a developmental toxicity NOAEL of 200 mg/kg/day based on an increase in resorptions and postimplantation loss; a decrease in the number of live fetuses and decreased fetal body weights at the 600 mg/kg/day dose level (HDT). At all other treatment levels no embryo/fetal toxicity was observed. The maternal toxicity NOAEL is 70 mg/kg/day based on decreased body weight gain and food consumption at 200 mg/kg/day; and increased water consumption, increased mortality, and discoloration of the kidney at 600 mg/kg/day.

7. *Two-generation reproduction - Rats.* A 2-generation reproduction study with rats fed dosages of 0, 50, 200, and 600 mg/kg/day resulted in a reproductive NOAEL of 200 mg/kg/day based on reduced pup viability and pup weight, and delay in development (pinna unfolding and eye opening) at 600 mg/kg/day with a maternal NOAEL of 200 mg/kg/day based on reduced body weights at 600 mg/kg/day. At treatment levels of 50 and 200 mg/kg/day no substance related finding were noted either in the parent animals or the offspring.

8. *Mutagenicity.* All *Salmonella* Assays testing the appropriate technical 3,7-dichloro-8-quinoline carboxylic acid were negative. The 3,7-dichloro-8-quinoline carboxylic acid was negative in the *in vivo* cytogenetics (Chinese hamster) at dose levels ranging from 2,000 to 8,000 mg/kg and did not induce unscheduled DNA synthesis in the UDS assay at levels ranging from 101 to 1,520 -ug/ml.

9. *Metabolism - Rat.* A metabolism study with rats receiving dosages of 15, 100, 600 and 1,200 mg/kg/day resulted in more than 90% of the administered radioactivity eliminated in the urine within 5 days (most within 24 hours) and 0.7 – 3.7% in the feces. Radioactivity was mainly associated with the unchanged parent compound. The glucuronic acid conjugate of quinclorac was a minor (2 – 5%) metabolite in urine.

10. *Reference dose.* The established Reference Dose (RfD) for quinclorac is based on the 2-year feeding study in mice with a threshold NOAEL of 37.5 mg/kg/day. Using an uncertainty factor of 100, the RfD has been calculated to be 0.38 mg/kg/day.

11. *Cancer classification and risk assessment.* The cancer classification of quinclorac has been reviewed by the FIFRA Scientific Advisory Panel (SAP). The Panel recommended that the compound be classified as a Group D carcinogen (not classifiable as to human carcinogenicity). The EPA Health Effects Peer Review Committee (PRC) evaluated the carcinogenic potential of quinclorac and the conclusions of the SAP and has classified quinclorac as a Group D carcinogen. Since quinclorac is not classified as a carcinogen, a cancer risk assessment was not necessary for approval of the currently established tolerances. Therefore, a cancer risk assessment for the proposed tolerances on wheat and sorghum is also not necessary.

12. In addition to the data described above, BASF is submitting a 21 day dermal study in the rat to supplement the quinclorac toxicology database. Results indicate that the NOAEL for quinclorac in this study is greater than 1,000 mg/kg body weight.

C. Aggregate Exposure / Cumulative Effects

1. *Chronic dietary exposure.* BASF has estimated aggregate dietary exposure based on the Theoretical Maximum Residue Contribution (TMRC) calculation. The TMRC is a "worst case" estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that residues are at the tolerances level. Since the proposed label prohibits use in many wheat and sorghum producing states, the TMRC calculation results in a significant overestimate of human dietary exposure.

The quinclorac TMRC for the overall U.S. population from the currently established rice and animal tolerances is 0.001485 mg/kg bwt/day which represents 0.39% of the RfD. A preliminary estimate of dietary exposure to residues of quinclorac from the proposed tolerances in wheat and sorghum increases the TMRC by 0.000836 mg/kg bwt/day and accounts for approximately 0.22% of the RfD for the overall U.S. population.

2. *Acute dietary exposure.* BASF has reviewed the toxicity database for quinclorac and has concluded that there is no acute dietary concern since there is no indication of any significant toxicity from a one day or single event oral exposure. The LD_{50} for technical quinclorac has been determined to be 3,060 mg/kg for males and 2,190 mg/kg for females.

3. *Drinking water exposure.* Other potential sources of exposure for the general population to residues of quinclorac are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, BASF does not anticipate exposure to residues of quinclorac in drinking water. There is no established Maximum Concentration Level (MCL) for residues of quinclorac in drinking water under the Safe Drinking Water Act (SDWA).

4. *Non-occupational exposure.* Quinclorac is not currently labeled for any nonagricultural use. An application for use of quinclorac on turfgrass is currently pending. The proposed turf registration restricts use of the product to certified commercial applicators and those under their direct supervision. Use of the product by typical uncertified homeowners will be prohibited. Therefore, potential for non-occupational exposure to the general population is significantly reduced compared to general use turf products. BASF is a member of the industry wide Outdoor Residential Exposure Task Force. The Task Force is currently generating data to assess exposure resulting from the use of turf products.

D. Cumulative Effects

BASF has considered the potential for cumulative effects of quinclorac and other substances that have a common mechanism of toxicity. BASF is not aware of any other EPA registered active ingredient that is structurally similar to quinclorac or has a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, BASF has estimated that aggregate exposure to quinclorac will utilize approximately 0.22% of the RfD for the U.S. population. BASF concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to residues of quinclorac, including anticipated dietary exposure and non-occupational exposures.

2. *Infants and children.* No signs of teratogenicity were observed in either the rat or rabbit Developmental studies. The NOAEL values from the Developmental studies are significantly higher than the NOAEL from the 2-year feeding study in mice (threshold NOAEL of 37.5 mg/kg/day) used to establish the RfD.

In the Reproductive Toxicity study, Quinclorac elicited signs of embryotoxicity only at dose levels where clear maternal toxicity was observed. Fertility and reproduction parameters were not affected even at the highest treatment levels (1,155 mg/kg/

day). The NOAEL values from the Reproduction study are significantly higher than the NOAEL from the 2-year feeding study in mice (threshold NOAEL of 37.5 mg/kg/day) used to establish the RfD.

Based on the demonstrated lack of significant developmental or reproductive toxicity, BASF believes that the RfD used to assess safety to the general population is adequate to assess safety to children. The EPA evaluation of the established rice and animal tolerances concluded that for the subgroup exposed to the highest dietary risk, nonnursing infants less than 1 year old, the TMRC is 0.010065 mg/kg bwt/day or 2.65 % of the RfD. The addition of the wheat and sorghum tolerances increases the TMRC for this subgroup to approximately 0.100726 mg/kg bwt/day or 2.82 % of the RfD. BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of quinclorac, including all anticipated dietary exposure and all other non-occupational exposures.

F. Endocrine Effects

No specific tests have been conducted with quinclorac to determine whether the chemical may have an endocrine like effect in humans. However, there were no significant findings in other relevant tests (developmental and reproductive toxicity tests) which would suggest that quinclorac produces endocrine like effects.

G. International Tolerances

A maximum residue level has not been established under the Codex Alimentarius Commission for quinclorac in wheat and sorghum. (Joanne I. Miller)

2. Novartis Crop Protection, Inc.

PP 2F4107

EPA has received a pesticide petition (PP 2F4107) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 28479-8300. proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Difenconazole, [(2*S*,4*R*)/(2*R*,4*S*)]/[2*R*,4*R*/2*S*,4*S*)] 1–(2–4–(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan2yl-methyl)-1*H*-1,2,4-triazole in or on the raw agricultural commodity wheat grain, forage, and straw at 0.1 parts per million (ppm); cattle, eggs, goats, hogs, horses, poultry and sheep 0.05; and milk at 0.01 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue is adequately understood in plants and animals. The metabolism of difenoconazole has been studied in wheat, tomatoes, potatoes, and grapes. The metabolic pathway was the same in these four separate and distinct crops.

2. *Analytical method*. Novartis has submitted a practical analytical method for detecting and measuring levels of difenoconazole in or on food with the limit of quantitation that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA will provide information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from the Field Operations Division, Office of Pesticide Programs.

3. *Magnitude of residues*. Data has been provided from fourteen spring and winter wheat residue trials conducted in major wheat growing states. Application rates were 24 grams a.i. and 48 grams a.i./100 kg seed (10.9 and 21.8 grams a.i./ 100 lb seed, respectively). A processing study was also conducted in which two foliar applications were made in addition to the seed treatment, in an attempt to generate grain samples containing measurable residues. Bran, middlings, shorts and germ, and patent flour were tested for residues.

No residues of difenoconazole (<0.1 ppm) were detected in wheat grain or in any of the processed milled fractions, even when the higher seed treatment rate was coupled with two foliar treatments. The use of difenoconazole as a seed treatment will not result in detectable residues in grain or processed commodities. Similarly, no residues of difenoconazole (0.05 ppm) were detected on wheat forage or straw.

No food additive tolerances are necessary for grain commodities. Tolerances in meat, milk, poultry or eggs were established for enforcement purposes.

B. Toxicological Profile

The following mammalian toxicity studies were conducted and submitted in support of tolerances for difenoconazole.

1. *Acute toxicity*. Difenoconazole has a low order of acute toxicity. The oral rat LD_{50} is 1,453 mg/kg. The rabbit acute dermal LD_{50} is > 2,010 mg/kg and the rat inhalation LC_{50} is > 3.285 mg/L. It is not a skin sensitizer in guinea pig and shows slight eye and dermal irritation in the rabbit.

2. *Genotoxicty*. There was no evidence of the induction of point mutations in an Ames test.

There was no evidence of mutagenic effects in a mouse lymphoma test.

There was no evidence of mutagenic effects in a nucleus anomaly test with Chinese hamsters.

There was no evidence of induction of DNA damage in a rat hepatocyte DNA repair test.

There was no evidence of induction of DNA damage in a human fibroblast DNA repair test.

3. *Reproductive and developmental toxicity*. An oral teratology study in rats had a maternal NOAEL of 16 mg/kg/day based on excess salivation and decreased body weight gain and food consumption. The developmental NOAEL of 85 mg/kg/day was based on effects seen secondary to maternal toxicity including slightly reduced fetal body weight and minor changes in skeletal ossification.

An oral teratology study in rabbits had maternal NOAEL of 25 mg/kg/day based on decreased body weight gain, death, and abortion. The developmental NOAEL of 25 mg/kg/day was based on effects seen secondary to maternal toxicity including slight increase in post-implantation loss and resorptions, and decreased fetal weight.

A 2-generation reproduction study in rats had a parental and reproductive NOAEL of 25 ppm based on significantly reduced female body weight gain, and reductions in male pup weights at 21 days.

4. *Subchronic toxicity*. A 13-week rat feeding study identified liver as a target organ and had a NOAEL of 20 ppm.

A 13-week mouse feeding study identified liver as a target organ and had a NOAEL of 20 ppm.

A 26-week dog feeding study identified liver and eye as target organs and had a NOAEL of 100 ppm.

A 21-day dermal study in rabbits had a NOAEL of 10 mg/mg/day based on decreased body weight gain at 100 and 1,000 mg/kg/day.

5. *Chronic toxicity*. A 24-month feeding study in rats had a NOAEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. There was no evidence of an oncogenic response.

An 18-month mouse feeding study had an overall NOAEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. There was an increase in liver tumors only at dose levels that exceeded the maximum tolerated dose (MTD). The oncogenic NOAEL was 300 ppm.

A 12-month feeding study in dogs had a NOAEL of 100 ppm based on decreased food consumption and increased alkaline phosphatase levels at 500 ppm.

6. *Carcinogenicity.* A 24-month feeding study in rats had a NOAEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. There was no evidence of an oncogenic response.

An 18-month mouse feeding study had an overall NOAEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. There was an increase in liver tumors only at dose levels that exceeded the maximum tolerated dose (MTD). The oncogenic NOAEL was 300 ppm.

7. *Animal metabolism.* The metabolism of difenoconazole is well understood. Studies with 14C-difenoconazole in the rat, goat, and hen demonstrate that the majority of the administered dose (76 to > 98%) is eliminated via the excreta as parent and metabolites. Very low concentrations of radioactivity, accounting for <1 to 4% of the applied dose, remain in tissues. The liver and kidney typically show the highest radioactivity, but in the rat, the highest concentration in any tissue was found in the fat.

Concentrations in goat milk reached a plateau on Day 6 of the study at 0.043 ppm for the triazole label and 0.007 ppm for the phenyl label when goats were fed approximately 5 ppm for 10 days. Similarly, very little radioactivity was deposited in eggs; radioactivity reached a plateau of 0.248 to 0.299 ppm in yolks after 7 to 8 days, and 0.007 to 0.153 ppm in whites after 5 days, in hens fed at a rate equivalent to 5 ppm in the diet for 14 consecutive days. CGA–205375, an alcohol resulting from the deskelitalization of the dioxolane ring of difenoconazole, is a major metabolite found in animal tissues, excreta, milk, and eggs. The presence of CGA–71019, containing only the triazole ring, and CGA–189138, containing only the phenyl ring, indicates that bridge cleavage can occur in animals as well as plants. The metabolite patterns in the excreta of hens, goats, and rats were similar.

8. *Metabolite toxicology.* The residue of concern for tolerance setting purposes is the parent compound. Metabolites of difenoconazole are considered to be of equal or lesser toxicity than the parent.

9. *Endocrine disruption.* Developmental toxicity studies in rats and rabbits and a two-generation reproduction study in rats gave no specific indication that difenoconazole may have effects on the endocrine system with regard to development or reproduction. Furthermore, histologic investigations were conducted on endocrine organs (thyroid, adrenal, and pituitary, as well as endocrine sex organs) from long-term studies in dogs, rats, and mice. There was no indication that the endocrine system was targeted by difenoconazole, even when animals were treated with maximally tolerated doses over the majority of their lifetime.

Difenoconazole has not been found in raw agricultural commodities at the limit of quantification. Based on the available toxicity information and the lack of detected residues, it is concluded that difenoconazole has no potential to interfere with the endocrine system, and there is no risk of endocrine disruption in humans.

C. Aggregate Exposure

1. *Dietary exposure — Food.* When the potential dietary exposure to difenoconazole from established and pending tolerances is calculated, the theoretical maximum residue concentration (TMRC) of 0.000473 mg/kg/day utilizes 4.73% of the RfD for the overall U.S. population. For the most exposed population subgroups, children and non-nursing infants, the TMRC is 0.001252 mg/kg/day, utilizing 12.52% of the RfD followed by children (1–6 years) exposed to 11.24% of the RfD.

Novartis has conducted another exposure analysis using additional crops and similar conservative assumptions. In this analysis, oats, barley, cotton and bananas (pending import tolerance) were included in addition to wheat. Tolerances or proposed tolerances were 0.1 ppm each for wheat, oats, and barley, and 0.2 ppm for bananas. Tolerances were 0.01 ppm for milk and 0.05 ppm for all other commodities: beef, goat, horse, rabbit, sheep, pork, turkey, eggs, chicken, and other poultry. Very conservative assumptions were used to estimate residues (i.e. 100% of all wheat, oats, barley and imported bananas used for human consumption or forage was treated and all RACs contained tolerance level residues). These estimates result in a extreme overestimate of human dietary exposure. Calculated TMRC values from these assumptions utilize 4.73% of the RfD for the U.S. population and 12.52% of the RfD for non-nursing infants.

2. *Drinking water.* Other potential sources of exposure of the general population to residues of pesticides are drinking water and non-occupational sources. Difenoconazole is currently used as a seed treatment and residues are, therefore, incorporated into the soil. The likelihood of contamination of surface water from run-off is essentially negligible. In addition, parent and aged leaching, soil adsorption/desorption, and radiolabeled pipe studies indicated that difenoconazole has a low potential to leach in the soil and it would not be expected to reach aquatic environments. For these reasons, and because of the low use rate, exposures to residues in ground water are not anticipated.

3. *Non-dietary exposure.* Non-occupational exposure for difenoconazole has not been estimated since the current registration is limited to seed treatment. Therefore, the potential for non-occupational exposure to the general population is insignificant.

Novartis has considered the potential for cumulative effects of difenoconazole and other substances of common mechanism of toxicity. Novartis has concluded that consideration of a common mechanism of toxicity in aggregate exposure assessment is not appropriate at this time. Novartis has no information to indicate that the toxic effects (generalized liver toxicity) seen at high doses of difenoconazole would be cumulative with those of any other compound. Thus, Novartis is considering only the potential risk of difenoconazole from dietary exposure in its aggregate and cumulative exposure assessment.

D. Safety Determination

1. *U.S. population.* Non-occupational exposure for difenoconazole has not been estimated since the current registration is limited to seed treatment. Therefore, the potential for non-occupational exposure to the general population is insignificant.

Novartis has considered the potential for cumulative effects of difenoconazole and other substances of common mechanism of toxicity. Novartis has concluded that consideration of a common mechanism of toxicity in aggregate exposure assessment is not appropriate at this time. Novartis has no information to indicate that the toxic effects (generalized liver toxicity) seen at high doses of difenoconazole would be cumulative with those of any other compound. Thus, Novartis is considering only the potential risk of difenoconazole from dietary exposure in its aggregate and cumulative exposure assessment.

If more realistic assumptions were used to estimate anticipated residues and appropriate market share, this percentage would be considerably lower, and would be significantly lower than 100%, even for the highest exposed population subgroup. EPA generally has no concern for exposures below 100%

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of the RfD. Therefore, Novartis concludes that there is reasonable certainty that no harm will result from daily aggregate exposure to residues of difenoconazole over a lifetime.

2. *Infants and children.* Developmental toxicity and two-generation toxicity studies were evaluated to determine if there is a special concern for the safety of infants and children from exposure to residues of difenoconazole. There was no evidence of embryo toxicity or teratogenicity, and no effects on reproductive parameters, including number of live births, birth weights, and post-natal development, at dose levels that did not cause significant maternal toxicity. In addition, there were no effects in young post-weaning animals that were not seen in adult animals in the 2-generation reproduction study. Therefore, Novartis concludes that it is inappropriate to assume that infants and children are more sensitive than the general population to effects from exposure to residues of difenoconazole.

E. International Tolerances

There are no Codex maximum levels established for residues of difenoconazole. (Cynthia Giles-Parker)

FR Doc. 98–31683 Filed 12-1-98; 8:45 am

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66260; FRL 6035–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 1, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 25 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000070–00055	Kill-Ko Bean Beetle Dust 1% Rotenone	Rotenone
		Cube Resins other than rotenone
000070–00133	Kill Ko Thro Pac Rat Killer	2-(Diphenylacetyl)-1,3-indandione
000070–00170	Kill Ko Rat Killer	2-(Diphenylacetyl)-1,3-indandione
000070–00292	Rigo 3–In–1 Vegetable Dust	Manganese ethylenebis(dithiocarbamate)
		Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
		Rotenone
		Cube Resins other than rotenone
000491–00265	Bug Blitz	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
000655–00688	Prentox Cube Flea & Tick Dip	Rotenone
		Cube Resins other than rotenone
000769–00309	Fish-Tox-5 (5% Rotenone)	Rotenone
		Cube Resins other than rotenone
000769–00653	Kills Rats with Para Blox Weather Proof Paraffinized Rat	2-(Diphenylacetyl)-1,3-indandione
000769–00656	SMCP Zinc Phosphide	Zinc phosphide (Zn3P2)
000769–00659	SMCP Singe-Kil	Cacodylic acid
000769–00741	Zinc Phosphide (Rumetan) 90%	Zinc phosphide (Zn3P2)
000769–00743	AFC Zinc Phosphide 80 (Rumetan)	Zinc phosphide (Zn3P2)
000769–00756	Zinc Phosphide Rodenticide for Controlling Orchard Mice	Zinc phosphide (Zn3P2)
000769–00832	Miller V–75 A Dust	Rotenone

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Cube Resins other than rotenone
000769–00842	Pratt DX Insect Spray	Pine oil
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Rotenone
		Cube Resins other than rotenone
000769–00854	Tomato & Vegetable Dust or Spray	Basic copper sulfate (Declare copper equivalent)
		Rotenone
		Cube Resins other than rotenone
000769–00855	Pratt 1% Rotenone Dust or Spray	Rotenone
		Cube Resins other than rotenone
000769–00889	Agrisect Rotenone Dust 1%	Rotenone
		Cube Resins other than rotenone
000769–00904	Science 1% Rotenone	Rotenone
		Cube Resins other than rotenone
003342–00004	Tiger Brand 1.0% Rotenone Dust	Rotenone
		Cube Resins other than rotenone
005887–00148	Black Leaf Tomato & Vegetable Insect Killer	Pyrethrins
		Rotenone
		Cube Resins other than rotenone
005887–00149	Rose & Flower Insect Killer	Pyrethrins
		Rotenone
		Cube Resins other than rotenone
007969–00053	Ronilan Fungicide 50W	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
028293–00198	Unicorn Rotenone Fire Ant Killer	Rotenone
		Cube Resins other than rotenone
042373–00005	Waterbed Conditioner	Poly(oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride)

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
000491	Selig Chemical Industries, 840 Selig Dr., SW., Atlanta, GA 30378.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
000769	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
003342	Cape Fear Chemicals Inc., Box 695, Elizabeth Town, NC 28337.
005887	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
042373	Blue Magic Products, Box 4175, Stockton, CA 95204.

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III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 1, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; (FRL 3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 29, 1998.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–31808 Filed 12–1–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34153; FRL 6044–4]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 1, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 11 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 1, 1999 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. *Note: Registration number(s) preceded by ** indicate a 30–day comment period.*

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
001001–00011	Spotrete-F	Thiram	Animal repellency (deer, rabbit & rodent)
004816–00708	123 M.A.G.	*N*-Octyl bicyclo heptene dicarboxi mide; Pyrethrins; Piperonyl butoxide	Use on dogs
009779–00256	Riverside 2,4-D LV6	Acetic acid	Drainage ditchbanks
011685–00019	Rhomene MCPA Amine Herbicide	MCPA, dimethylamine salt	Use on rice in California
011685–00020	Weedar Sodium MCPA	MCPA, sodium salt	Use on rice in California
**040083–00001	Lindane Technical	Lindane	Use on treatment of stored timber and lumber; use on dogs
**041014–00009	Marlate 400 Flowable Concentrate	Methoxychlor	Livestock dipping uses

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
**041014–00011	Marlate 300 Methoxy chlor Concentrate	Methoxychlor	Livestock dipping uses
062719–00062	MCPA Amine	MCPA, dimethylamine salt	Use on rice in California
**066951–00001	Lindane Technical Crystals	Lindane	Wood treatment and pet care uses
**066951–00002	Lindane Technical Powder	Lindane	Wood treatment and pet care uses

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
001001	Cleary Chemical Corp., 178 Ridge Road, Dayton, NJ 08810.
004816	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
009779	Terra International, Inc., 600 Fourth Street, P.O. Box 6000, Sioux City, IA 51102.
011685	Nufarm Americas, Inc., 1009–D West, St. Maartens Drive, St. Joseph, MO 64506.
040083	INQUINOSA International, S.A., c/o McKenna & Cuneo, L.L.P., 1900 K street, N.W., Washington, DC 20006.
041014	Kincaid Enterprises Inc., P.O. Box 549, Nitro, WV 25143.
062719	Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
066951	Kanoria Chemicals & Industries Ltd., c/o Jellinek, Schwartz & Connolly, Inc., 1525 Wilson Boulevard, Suite 600, Arlington, VA 22209.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 17, 1998.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 98–31807 Filed 12–1–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 23, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 1, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0214 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0669.

Title: Section 76.946, Advertising of rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 11,365.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 5,683.

Total Annual Costs: None.

Needs and Uses: Section 76.946 states that cable operators that advertise rates for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a "fee plus" rate that indicates the core rate plus the range of possible additions, depending on the particular location of the subscriber. The Commission has set forth this disclosure requirement to ensure consumer awareness of all costs and fees associated with basic service and cable programming service tier rates.

OMB Approval Number: 3060–0674.

Title: Section 76.931, Notification of Basic Tier Availability, and Section 76.932, Notification of Proposed Rate Increase.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 11,365.

Estimated Time Per Response: 0.5 to 2.0 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 25,572 hours.

Total Annual Costs: None.

Needs and Uses: Section 76.931 states that a cable operator shall provide written notification to subscribers of the availability of basic tier service by November 30, 1993, or three billing cycles from September 1, 1993, and to new subscribers at the time of installation. This notification is to include the following information: (a) That basic tier service is available; (b) The cost per month for basic tier service; and (c) A list of all services included in the basic service tier. Section 76.932 states that a cable operator shall provide written notice to subscribers of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. These notice requirements ensure that subscribers are made aware of the price and availability of basic cable service and ensure that subscribers are given due notice of rate increases with basic cable service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32057 Filed 12–1–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 207–011640.

Title: The Amazon Express Joint Service Agreement.

Parties:

Associated Transport Line, L.L.C. ("ATL")

Consorcio Naviero Peruano S.A. ("CNP")

Amazon Express ("the Joint Service")

Synopsis: Under the proposed Agreement, ATL and CNP would operate a joint service to be known as Amazon Express in the trade between United States Atlantic and Gulf ports, and inland points via such ports, and ports on the Amazon River in Brazil, Colombia, Ecuador, and Peru, and inland points via such ports.

Agreement No.: 232–011641.

Title: The COSCON/YMUK Vessel Sharing Agreement.

Parties:

COSCO Container Lines Company ("COSCON")

Yang Ming (UK) Ltd. ("YMUK").

Synopsis: The proposed Agreement would permit the parties to charter space to one another and to coordinate their vessel services in the trade between United States Atlantic and Gulf ports, and inland U.S. points via such ports, and ports in Asia and on the Mediterranean, and inland points via such ports. YMUK would also be permitted to charter space aboard its vessels and to subcharter its allocated space aboard COSCON's vessels to Yang Ming Transport Corporation.

Agreement No.: 224–201063.

Title: Alabama-Stevedores of Alabama Terminal Agreement.

Parties:

Alabama State Docks Department

Stevedores (of Alabama) Inc.

Synopsis: The agreement is a permit which provides for cargo and freight handling services; it specifically excludes stevedoring services. The agreement runs through December 31, 2002.

Agreement No.: 224–201064.

Title: Alabama-Strachan Terminal Agreement.

Parties:

Alabama State Docks Department

Strachan Shipping Company d/b/a Alabama Stevedoring and Terminal Operators

Synopsis: The agreement is a permit which provides for cargo and freight handling services; it specifically excludes stevedoring services. The agreement runs through December 31, 2002.

Dated: November 25, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32027 Filed 12–1–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–24]

Go/Dan Industries, Inc. and Atlantic Customs Brokers, Inc. v. Eastern Mediterranean Shipping Corp. dba Atlantic Ocean Lines, ANIL (aka "ANDY") K. Sharma, Individually, and Atlantic Ocean Line Corp.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Go/Dan Industries, Inc. and Atlantic Customs Brokers, Inc. ("Complainants") against Eastern Mediterranean Shipping Corp. dba Atlantic Ocean Lines, Anil (aka "Andy") K. Sharma, individually, and Atlantic Ocean Line Corp. ("Respondents") was served November 27, 1998. Complainants allege that Respondents violated section 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. secs. 1709(d)(1), by failing to pay the freight charges to the underlying carrier, resulting in the shipper and its agent having to pay freight charges twice, by failing to provide information about the shipment and causing delay, detention and demurrage charges, and by failing to properly deliver cargo.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 29, 1999, and the final decision of the Commission shall be issued by March 28, 2000.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32139 Filed 12–1–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–23]

NPR, Inc. v. Board of Commissioners of the Port of New Orleans; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by NPR, Inc. ("Complainant") against Board of Commissioners of the Port of New Orleans ("Respondent") was served November 27, 1998. Complainants allege that Respondents violated section 10(b)(11), (b)(12) and (d)(1) of the Shipping Act of 1984, 46 U.S.C. app. secs. 1709(b)(11), (b)(12) and (d)(1), by forcing Complainant to make a multi-million dollar early termination payment for ceasing direct ocean common carrier service to the Port of New Orleans, while demanding no such early termination payment from other tenants seeking early termination of lease agreements.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 29, 1999, and the final decision of the Commission shall be issued by March 28, 2000.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32140 Filed 12–1–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–22]

Trek Bicycle Corporation v. Classic Cargo International, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Trek Bicycle Corporation ("Complainant") against Classic Cargo International, Inc. ("Respondent") was served November 25, 1998. Complainant alleges that Respondent violated sections 10(a)(1), (b)(16)(A) and (d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), (b)(16)(A) and (d)(1), by falsely representing transit time and by offering, soliciting, and routing complainant's property without consent of the shipper or consignee, thereby requiring replacement property to be air freighted.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 26, 1999, and the final decision of the Commission shall be issued by March 27, 2000.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32026 Filed 12–1–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice regarding charges for certain disclosures.

SUMMARY: The Federal Trade Commission announces that the current ceiling on allowable charges under section 612(a) of the Fair Credit Reporting Act (FCRA) will remain unchanged for 1999. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional charges rounded to the nearest fifty cents. The Consumer Price Index increased only 1.49 percent between September 1997, the Date the FCRA amendments took effect, and September 1998. This increase is too small to trigger an increase in the $8.00 figure given the requirement that the figure be rounded to the nearest $0.50. The figure therefore remains at $8.00.

EFFECTIVE DATE: January 1, 1999.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: The Fair Credit Reporting Act, originally enacted in 1970,[1] was extensively amended in 1996. Most of the amendments to the law, including the one discussed in this notice, went into effect on September 30, 1997. Section 612(a)(1)(A) states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(a)(2) goes on to state that the Federal Trade Commission ("the Commission") shall increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index (CPI), with fractional changes rounded to the nearest fifty cents.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of section 612(a) to be the baseline for the effective ceiling on reasonable charges dating from the time the amended FCRA took effect, i.e., September 30, 1997. In November of each year, the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of each subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

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[1] 15 U.S.C. 1681–1681u; Title VI of the Consumer Credit Protection Act.

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Between September 1997 and September 1998, the Consumer Price Index for all urban consumers and all items increased by 1.49 percent—from an index value of 161.2 in September 1997 to a value of 163.6 in September 1998. An increase of 1.49 percent in the $8.00 base figure would lead to a new figure of $8.12. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the increase is too small to result in any change in the allowable charge.

The Commission therefore determines that there will be no modification from the base of $8.00 for 1999.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–32077 Filed 12–1–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Premerger Notification: Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of postponement of the effective date of Formal Interpretation 15.

SUMMARY: On October 13, 1998, the Premerger Notification Office ("PNO") of the Federal Trade Commission ("FTC"), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("DOJ"), published a notice of the adoption of a Formal Interpretation of the Hart-Scott-Rodino Act, which requires certain persons planning certain mergers, consolidations, or other acquisitions to report information about the proposed transactions to the FTC and DOJ. 63 FR 54713 (October 13, 1998). The Interpretation concerns the reportability of certain transactions involving a Limited Liability Company ("LLC"). Under the Interpretation, the formation of an LLC would be reportable if it would unite two or more pre-existing businesses under common control.

This Formal Interpretation was to have become effective on December 14, 1998, after a thirty day comment period. The PNO has postponed the effective date of this Formal Interpretation until February 1, 1999, in order to review and analyze the comments received.

FOR FURTHER INFORMATION CONTACT: Joseph G. Krauss, Assistant Director for the Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2713. Thomas F. Hancock, Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2946.

Donald S. Clark,

Secretary.

[FR Doc. 98–32078 Filed 12–1–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Notice of Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting on December 21.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a meeting on Monday, December 21, 1998 from *1:00 to 4:00 PM* in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office building, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss the exposure drafts on *Recognition of Contingent Liabilities Arising From Litigation*, and *Deletion of Paragraph 65.2—Material Revenue-Related Transactions Disclosures.*

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2)(1988); 41 CFR 101–6.1015 (1990).

Dated: November 25, 1998.

Wendy M. Comes,

Executive Director.

[FR Doc. 98–32020 Filed 12–1–98; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

The National Nursing Home Survey (NNHS)—(0920–0353)—Revision—The National Center for Health Statistics—Section 306 of the Public Health Service Act states that the National Center for Health Statistics "shall collect statistics on health resources * * * [and] utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions." The data system responsible for collecting this data is the National Health Care Survey (NHCS). The National Nursing Home Survey (NNHS) is part of the Long-term Care Component of the NHCS. The NNHS was conducted in 1973–74, 1977, 1985, 1995, and 1997. NNHS data describe this major segment of the long-term care system and are used extensively for health care research, health planning and public policy. The survey provides detailed information on utilization pattern that is needed in order to make accurate assessments of the effects of health care reform on the elderly. The NNHS also provides detailed information to assess the need for and costs associated with such care. The use of long-term care services will become an increasingly important issue as the population continues to age. Data from earlier NNHS collections have been used by the National Immunization Program at CDC, Office of the U.S. Attorney General, the Bureau of Health Professionals, the National Institute of Dental and Craniofacial Research at NIH, the Agency for Health Care Policy and Research, the American Health Care Association, Johnson and Johnson Pharmaceutical, the Rand Corporation and by several newspapers and journals. NNHS data cover: baseline data on the characteristics of nursing homes in relation to their residents and staff, Medicare and Medicaid certification, costs to residents, sources of payment, residents' functional status and diagnoses. Data collection is planned for the period July–November, 1999. Survey design is in process now. Sample selection and preparation of layout forms will precede the data collection by several months. The total costs to respondents is estimated at $60,000.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Facility Questionnaire	1,500	1	0.333	500
Current Resident Sampling List	1,500	1	0.333	500
Current Resident Questionnaire	1,500	6	0.17	1,530
Discharged Resident Sampling List	1,500	1	0.333	500
Discharged Resident Questionnaire	1,500	6	0.17	1,530
Total				4,560

2. The Development and Implementation of a Theory-Based Health Communications Intervention to Decrease Silica Dust Exposure Among Masonry Workers—New

The National Institute for Occupational Safety and Health—Construction is the most frequently recorded industry on death certificates with mention of silicosis. Overexposure to crystalline silica is well documented in the construction industry, especially in brick laying and masonry. According to 1993 BLS data, there are 136,139 (at 24,362 establishments) masonry and brick laying workers in the U.S. and according to a recent study, approximately 17,400 masonry and plastering workers are exposed to at least five times the NIOSH recommended exposure limit (REL for crystalline silica) and of these workers, an estimated 80 percent of them are exposed to at least 10 times the NIOSH REL.

To effectively prevent silicosis, not only must control measures be improved, but workers must be persuaded to protect themselves and employers must be motivated to provide workers with proper engineering controls and training. Previous research has too often focused on the behaviors and attitudes of workers and not on employers. Since employers have a tremendous influence on the health of workers and since their motivations may differ from workers', it is important to focus on them as well. Well-designed and theory-driven communication interventions have the capacity to promote protective health behaviors. To develop messages that will have the greatest success at motivating workers to protect themselves and employers to protect their workers from silicosis, information on workers' and employers' beliefs, attitudes, and behaviors regarding silicosis must be determined. A recently completed pilot-study indicated a need to motivate employers to provide appropriate engineering controls and respiratory protection and a need to persuade workers to protect themselves.

The goal of this project is to develop a health communication intervention program targeting both masonry contractors and workers that will increase the use of engineering controls (specifically, wet-sawing) and respiratory protection. The aforementioned pilot study will serve as a foundation upon which the intervention will be developed. The effectiveness of the intervention will be evaluated using a pre-post test questionnaire.

The study results will provide a basis for intervention programs that masonry contractors can use to educate their workers regarding risk of exposure to silica dust on masonry work sites. The methodology could be applied to other construction procedures such as jack hammering, sand blasting, and similar dust producing procedures to produce similar intervention programs. Eventually we would hope, silica exposures among construction workers would decrease significantly. The total cost to respondents is $0.00.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Workers	200	2	0.33	132
Contractors	20	2	0.33	13.2
Total				145.2

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Dated: November 25, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–32056 Filed 12–1–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0363]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Animal Drugs for Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by January 4, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drugs for Investigational Use (21 CFR Part 511) (OMB Control Number 0910–0117)

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is responsible for the approval of new animal drugs for investigational use. Section 512(j) of the act (21 U.S.C. 360b(j)) requires that a sponsor submit to FDA "Notice of Claimed Investigational Exemption" (INAD), prior to shipment of the new animal drug for clinical tests in animals. The regulations implementing statutory requirements for INAD approval have been codified under part 511 (21 CFR part 511). The INAD application must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any nonclinical laboratory studies with good laboratory practices, and (4) name and address of each clinical investigator and the approximate number of animals to be treated or the amount of new animal drugs to be shipped. Part 511 also requires that records be established and maintained to document the distribution and use of the investigational drug to ensure that its use is safe, that distribution is controlled to prevent potential abuse, and that edible products of treated animals will not be distributed for food without proper authorization from FDA. The agency utilizes these required records under its "Bio-Research Monitoring Program" to monitor the validity of the studies and to ensure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are sponsored primarily by drug industry firms, academic institutions, and the Government. Investigators may include individuals from these entities as well as research firms and members of the medical profession. Respondents to this collection of information are both sponsors and investigators.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
511.1(b)(4)	190	6	1,147	8	9,176
511.1(b)(5)	190	1.5	287	140	40,180
511.1(b)(6)	190	.005	1	250	250
511.1(b)(8)(ii)	190	.005	1	20	20
511.1(b)(9)	190	.16	30	8	240
Total Burden Hours					49,866

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
511.1(a)(3)	190	7.5	1,434	9	12,906
511.1(b)(3)	190	10	1,912	1	1,912
511.1(b)(7)(ii)	190	2	956	3.5	3,346
511.1(b)(8)(i)	190	4	956	3.5	3,346
Total Burden Hours					21,510

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated time required for reporting requirements, record preparation, and maintenance for this collection of information is based on agency communication with industry. Additional information needed to make a final calculation of the total burden hours (i.e., the number of respondents, the number of recordkeepers, the number of INAD applications received, etc.) is derived from agency records.

Dated: November 24, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32021 Filed 12–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0867]

Legal and Policy Interpretation of the Jurisdiction Under the Federal Food, Drug, and Cosmetic Act of the Food and Drug Administration and the Environmental Protection Agency Over the Use of Certain Antimicrobial Substances; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of policy interpretation; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice issued jointly by FDA and the Environmental Protection Agency (EPA) that appeared in the **Federal Register** of October 9, 1998 (63 FR 54532). The document set forth legal and policy interpretations of the Federal Food, Drug, and Cosmetic Act (FFDCA) as they relate to the jurisdiction of EPA and FDA over antimicrobial substances used in or on food, including food-contact articles; discussed interpretations of certain terms in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the implementing regulations relevant to the authority of the two agencies; provided a description of how EPA and FDA propose to clarify the post-Food Quality Protection Act (FQPA) regulatory authority over certain antimicrobial substances; and discussed how EPA and FDA plan to handle the review of petitions for antimicrobial substances that will remain under EPA's jurisdiction, and for those that EPA proposes to return to FDA's regulatory authority through EPA rulemaking. The document was published with an incorrect address for FDA's Dockets Management Branch. This document corrects that error. EPA's addresses remain the same.

EFFECTIVE DATE: October 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

In FR Doc. 98–27261, appearing on page 54532 in the **Federal Register** of Friday, October 9, 1998, the following correction is made:

On page 54532, in the first column, under the **ADDRESSES** caption, in the first and second lines from the bottom "Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857." is corrected to read "5630 Fishers Lane, rm. 1061, Rockville, MD 20852."

Dated: November 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32025 Filed 12–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1034]

Solvay S.A.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Solvay S.A., has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of naphthalene sulfonic acid-formaldehyde condensate, sodium salt as an emulsifier in vinylidene chloride copolymer or homopolymer coatings applied to polypropylene polymer films and polyethylene phthalate polymer films intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4634) has been filed by Solvay S.A., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3400 *Emulsifiers and/or surface active agents* (21 CFR 178.3400) to provide for the expanded safe use of naphthalene sulfonic acid-formaldehyde condensate, sodium salt as an emulsifier in vinylidene chloride copolymer or homopolymer coatings applied to polypropylene polymer films and polyethylene phthalate polymer films intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 16, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–32023 Filed 12–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1036]

Vale Chemical Co., Inc., et al.; Proposal to Withdraw Approval of 13 New Drug Applications and 1 Abbreviated New Drug Application; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on the agency's proposal to withdraw approval of 13 new drug applications (NDA's) and 1 abbreviated new drug application (ANDA). The basis for the proposal is that the sponsors have repeatedly failed to file required annual reports for these applications.

DATES: Written requests for a hearing are due by January 4, 1999: data and information in support of the hearing request are due by February 1, 1999.

ADDRESSES: Requests for a hearing, supporting data, and other comments should be identified with Docket No. 98N–1036 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81). The holders of the applications listed in the following table have failed to submit the required

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annual reports and have not responded to the agency's request by certified mail for submission of the reports.

Application No.	Drug	Applicant
NDA 7–112	Nisaval (pyrilamine maleate) 25 milligram (mg) Tablets.	Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18102.
NDA 11–863	Flavihist Cough Syrup	Boyle & Co., 6330 Chalet Dr., Los Angeles, CA 90022.
NDA 50–042	Potassium Penicillin G Diagnostic Sensitivity Powder, 20,000 units.	Pfizer Inc., 235 East 42d St., New York, NY 10017–5755.
NDA 50–067	Compocillin-VK Chewable Wafers	Abbott Laboratories, 100 Abbott Park Rd., Abbott Park, IL 60064.
NDA 50–088	Unipen Injection	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
NDA 50–121	Compocillin-VK Tablets	Abbott Laboratories
NDA 50–122	Compocillin-V Chewable Wafers	Do
NDA 50–129	Pen-Vee Suspension and Drops	Wyeth-Ayerst Laboratories.
NDA 50–189	Omnipen Tablets	Do.
NDA 50–197	Unipen Injection	Do.
NDA 50–305	Unipen Capsules	Do
NDA 50–319	Omnipen Chewable Tablets	Do
NDA 50–413	Geopen Diagnostic Susceptibility Powder	Pfizer Inc.
ANDA 87–387	Aminophylline Injection USP,25 mg/milliliter	Pharma-Serve, Inc., 218–20 98th Ave., Queens Village, NY 11429.

Therefore, notice is given to the holders of the applications listed in the table and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) withdrawing approval of the applications and all amendments and supplements thereto on the ground that the applicants have failed to submit reports required under § 314.81.

In accordance with section 505 of the act and part 314 (21 CFR part 314), the applicants are hereby provided an opportunity for a hearing to show why the applications listed previously should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products covered by these applications.

An applicant who decides to seek a hearing shall file: (1) On or before January 4, 1999, a written notice of participation and request for a hearing, and (2) on or before February 1, 1999, the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation, and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of an applicant to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the applications and the drug products may not thereafter lawfully be marketed, and FDA will begin appropriate regulatory action to remove the products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 314.81. If the submission is not complete or if a request for a hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: November 12, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–32069 Filed 12–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 18, 1998, 10:15 a.m. to 5:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Michael G. Bazaral, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 140, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12624. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on general issues related to the classification of tracheal gas insufflation (TGI) devices used to provide part or all of the breathing gas for treatment of respiratory failure or respiratory insufficiency. The use of the TGI catheter, tube or lumen only for supply of fresh gas distinguishes TGI from common tracheal tubes and tracheostomy tubes, in which the gas flow alternates between inhalation and exhalation. The draft versions of five questions FDA will ask the committee to address are listed as follows:

1. For the evaluation of effectiveness of specific TGI systems as an adjunct to ventilation of adults, is reduction of minute ventilation (or PCO_2) without appreciable increase in end-expiratory lung volume or pressure a sufficient endpoint? Is this the correct endpoint?
2. For ventilation of adults, is there now sufficient understanding of TGI to be reasonably sure that TGI, with adequate monitoring and other understood safety provisions, will not have worse outcomes? Or does TGI raise concerns that will require that FDA review data on patient outcomes?
3. Are there special considerations about the data FDA should review for TGI submissions in relation to ventilation of children, infants, newborns, or premature infants?
4. What are the minimum system functions that include all the functions needed to provide TGI for clinical use as an adjunct to or replacement for conventional ventilation?
5. What specific safety provisions are important? Is distal pressure monitoring essential?

Procedure: On December 18, 1998, from 12:15 p.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present information or views, orally or in writing, on issues pending before the committee. Written submissions must be made to the contact person by December 11, 1998. Oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1 p.m., and between approximately 4 p.m. and 4:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 11, 1998, and submit a brief statement of the general nature of the arguments they wish to present, the names and addresses of the proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 18, 1998, from 10:15 a.m. to 12:15 p.m., the meeting will be closed to permit FDA to present trade secret and/or confidential commercial information (5 U.S.C. 522b(c)(4)) regarding pending issues and applications.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 24, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–32024 Filed 12–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–259]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of the EverCare Demonstration; *Form No.:* HCFA–R–259; Use: This survey will capture information on the quality of capitated Medicare coverage to nursing home residents, such as the description of the person, information regarding enrollment/disenrollment, quality of life, satisfaction including issues of access to services, advance medical directives, general health, and functional status. This information will be used to support analyses of enrollment decisions, access to services and providers, and outcomes for both the enrollee and family members. The underlying premise of the EverCare demonstration is that closer attention to primary care needs of high-risk patients through the use of nurse practitioners and/or physicians assistants can reduce the use of hospitals (and emergency rooms). *Frequency:* On occassion; *Affected Public:* Individuals or Households; *Number of Respondents:* 3,150; *Total Annual Responses:* 3,150; *Total Annual Hours:* 1,962.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 16, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–32124 Filed 12–1–98; 8:45 am]

BILLING CODE 4120–03–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: (Form #HCFA–21, 21B, 21P, 21.11A, 21E, 64, 64.21, 64.21U, 64.21P, 64.21UP, 64EC, 64.21E, 64.9P, 64.10P, 64.11A, 64.9d)]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program.

Form Nos.: HCFA–64, 64.21, 64.21U, 64.21P, 64.21UP, 64EC, 64.21E, 64.9, 64.10, 64.10P, 64.11a, 64.9d.

Use: These new forms are revisions of the currently approved collection report Form HCFA–64. These forms will be used by State Medicaid agencies to report their actual CHIP-related Medicaid expenditures and the numbers of CHIP-related children, and other children being served in the Medicaid program, to the Health Care Financing Administration (HCFA). The forms will be used by the HCFA to ensure that the appropriate level of Federal payments for the State's CHIP-related Medicaid program expenditures are made in accordance with the CHIP and related Medicaid provisions of the BBA of 1997, and to track, monitor, and evaluate the numbers of CHIP-related children and other individuals being served by the Medicaid program.

For a short description of the CHIP-related Medicaid reporting forms, see below:

- HCFA–64 Summary Sheet

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Summary Sheet. The form HCFA–64 summary sheet is a one-page summary sheet summarizing the total expenditures reported for the quarter. The remaining forms provide additional detail and support the entries made on the summary sheet.

- HCFA–64.9

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Expenditures in this Quarter. The form HCFA–64.9 is comprised of two pages that are used for detailing, by category, current quarter program expenditures by type of service (e.g., clinical services, dental services). The total figures from the form HCFA–64.9 are transferred to the form HCFA–64 Summary Sheet, Line 6, columns (a) and (b). A separate copy of the form HCFA–64.9 must also be submitted for each waiver granted to the State agency for which expenditures have been incurred. The total waiver figures are already incorporated in the expenditures reported on the "base" (one form) form HCFA–64.9.

- HCFA–64.9p

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Prior Period Adjustment. The form HCFA–64.9p supports claims or adjustments for prior period (years) which are transferred to the form HCFA–64 summary sheet and noted on Lines 7, 8, 10.A., and 10.B., columns (a) and (b). It contains the same service categories as the form HCFA–64.9. This two-page form details the program expenditures, by category, arraying the expenditures by fiscal year. A separate form HCFA–64.9p is prepared to support each fiscal year and each line entry (Lines 7, 8, 10.A., and 10.B.) on the summary sheet. If the prior period adjustment includes waiver-related expenditures, a separate form HCFA–64.9p must be filed for each waiver including HCBS waivers.

- HCFA–64.9d

Allocation of Disproportionate Share Hospital Payment Adjustments to Applicable FFYs. The form HCFA–64.9d has been created to track payments of DSH by Federal Fiscal Year. This one page form details, by Inpatient Hospital Services and Mental Health Facility Services, details the allotment and DSH payments by Federal Fiscal Years. This is authorized under § 1923(f) of the Act.

- HCFA–64.10

Expenditures for State and Local Administration for the Medical Assistance Program, Expenditures in this Quarter. The form HCFA–64.10 supports administrative expenditures reported on the summary sheet. This one page form details, by category, the current quarter expenditures for administering the Medicaid program. The total figures from the "base" form HCFA–64.10 summary sheet. The State agency must also file a separate form HCFA–64.10 or each of its waivers granted to the State agency for which expenditures have been incurred. The waiver expenditures reported on a supporting form HCFA–64.10 are already included with the overall expenditures reported on the "base" form HCFA–64.10.

- HCFA–64.10p

Expenditures for State and Local Administration for the Medical Assistance Program, Prior Period Adjustments. The form HCFA–64.10p is similar to the form HCFA–64.10 except that it addresses adjustments to prior period expenditures. The totals from the form HCFA–64.10p are transferred to the form HCFA–64 summary sheet, Lines 7, or 8 or 10.A., or 10.B., columns (c) and (d). A separate form HCFA–64.10p must be completed for each line item entry, by fiscal year, on the summary sheet.

- HCFA–64.11

Summary Total of Receipts from form HCFA–64.11A. The form HCFA–64.11 has been created to summarize the information reported on the various HCFA–64.11a forms. This is authorized under § 1903(w) of the Act.

- HCFA–64.11A

Actual Receipts by Plan Name. The form HCFA–64.11a has been created to report the actual receipts by plan names form provider-related donation and health care related taxes, fees and assessments. This is authorized under § 1903(w) of the Act.

- There are no forms numbered 64.1 through 64.8 because of form development and redevelopment over the years. There are also no forms detailing items 9.B. through 9.E. of the summary sheet because there is no need for further breakdown of these figures for reimbursement calculations.

HCFA–64.21

Quarterly Medical Assistance Expenditure By Children's Health Insurance Program Expenditure Categories. States will use this form to report current quarter expenditures for children who are determined presumptively eligible under section 1920A of the Act.

HCFA–64.21U

Quarterly Medical Assistance Expenditure Categories by Children's Health Insurance Program Expenditure Categories. States will use this form to report current quarter expenditures described under section 1905(u)(2) and 1905(u)(3) of the Act.

HCFA–64.21P

Quarterly Medical Assistance Expenditures By Children's Health Insurance Program expenditure categories. States will use this form to report prior period expenditures for children who are determined presumptively eligible under section 1920A of the Act.

HCFA–64.21UP

Quarterly Medical Assistance Expenditures by Children's Health Insurance Program Expenditure Categories, Prior Period Expenditures. States will use this form to report prior period expenditures described under section 1905(u)(2) and (3) of the Act.

HCFA–64.21E

Number of Children Served Related to Children's Health Insurance Program. States use this form to report the numbers of CHIP-related children, by service delivery system, that are served in the States' Medicaid programs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of CHIP-related children, by service delivery system, that are served in the States' Medicaid programs related to CHIP based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

HCFA–64EC

Number of Children Served Related to Children's Health Insurance Program. States use this form to report the numbers of children (other than CHIP-related children), by service delivery system, that are served in the States' Medicaid programs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of children (other than CHIP-related children), by service delivery system, that are served in the Medicaid program based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

Frequency: Quarterly;

Affected Public: State and Federal government;

Number of Respondents: 56;

Total Annual Responses: 224;

Total Annual Hours: 16,464.

(2) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Children's Health Insurance Program (CHIP) Budget and Expenditure System State Reporting Forms.

Form Nos.: HCFA–21, 21B, 21P, 21.11A, 21E, 21L;

Use: These forms will be used by State CHIP agencies to report CHIP program budget projections and actual CHIP program benefits and administrative expenditures, and the numbers of children being served in the CHIP program, to the Health Care Financing Administration (HCFA). The information provided by these new forms will be used by HCFA to prepare the grant awards to States for the CHIP, to ensure that the appropriate level of Federal payments for State expenditures under the CHIP are made in accordance with the CHIP-related BBA legislative provisions of 1997, and to track, monitor, and evaluate the numbers of children being served by the CHIP.

For a short description of the CHIP reporting forms, see below:

- Form HCFA–21 Summary Sheet

Quarterly Children's Health Insurance Program Statement of Expenditures for Title XXI Summary Sheet. This form summarizes the total expenditures in the State's CHIP reported by the State for the reporting quarter.

- Form HCFA–21

Children's Health Expenditures by Type of Service for the Title XXI Program, Expenditures in this Quarter. States use this form to report CHIP current quarter expenditures in accordance with services categories authorized under title XXI.

- Form HCFA–21B

Children's Health Insurance Program Budget Report for the Title XXI Program State Expenditure Plan. States use this form to report their budget projections each quarter for their Title XXI CHIPs for the current and budget Federal fiscal years and broken out by quarter.

- Form HCFA–21P

Children's Health Expenditures by Type of Service for the Title XXI Program, Prior Period Adjustments. States use this form to report CHIP prior period adjustment expenditures claimed in the submission quarter in accordance with services categories authorized under title XXI.

- Form HCFA–21.11A

Provider-Related Donations and Health Care Related Taxes, Fees, and Assessments Received Under Section 1903(w) for Title XXI. States use this form to report CHIP-related State receipts of provider related donations, and health care related taxes, fees, and assessments.

- Form HCFA–21E

Children's Health Insurance Program, Number of Children Served. States use this form to report the numbers of children, by service delivery system, that are served in the States' CHIPs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of children, by service delivery system, that are served in the CHIP based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

Frequency: Quarterly;

Affected Public: State and Federal government;

Number of Respondents: 56;

Total Annual Responses: 448;

Total Annual Hours: 7,840.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 16, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–32125 Filed 12–1–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2008–FN]

RIN 0938–AI90

Medicare Program; Recognition of the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. for Ambulatory Surgical Centers Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice announces the approval of the American Association for the Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) as an accreditation organization acknowledged by the Medicare program. We have found that AAAASF's standards for ambulatory surgical centers (ASCs) meet or exceed those established by the Medicare program. ASCs accredited by AAAASF will receive deemed status under the Medicare program.

EFFECTIVE DATE: This final notice is effective December 2, 1998, through December 2, 2004.

FOR FURTHER INFORMATION CONTACT: Joan Berry, (410) 786–7233.

SUPPLEMENTARY INFORMATION:

I. Background

A. Determining Compliance of Ambulatory Surgical Centers—Surveys and Deeming

In order to participate in the Medicare program, ambulatory surgical centers (ASCs) must meet conditions for coverage specified in regulations that implement Title XVIII of the Social Security Act (the Act). ASCs enter into a Medicare participation agreement but generally only after they are certified by a State survey agency as complying with the ASC conditions for coverage set forth in the Act and regulations. ASCs are subject to routine surveys by State agencies to determine whether they continue to meet these requirements; an ASC that does not meet these requirements is considered out of compliance and risks having its participation in the Medicare program terminated.

Section 1865 of the Act includes a provision that permits ASCs to be exempt from routine surveys by the State survey agencies to determine compliance with the Medicare conditions of coverage. Specifically, section 1865(b) of the Act provides that if we find that accreditation of a provider entity by a national accrediting body demonstrates that all Medicare conditions or requirements are met or exceeded, we would (for certain providers, including ASCs) "deem" these entities as meeting the applicable Medicare conditions. In order to enter the Medicare program under this deeming authority, the entities must meet the regulatory requirements at 42 CFR 489.13 ("Effective date of agreement or approval"). Under our regulations at § 416.40 ("Condition for coverage—Compliance with State licensure law"), an ASC must still meet the State's licensure requirements. However, certification by Medicare is still required to receive payment regardless of whether the certification is by us or the accrediting body.

In making our finding as to whether the standards of an accreditation body demonstrate comparability with all Medicare conditions or requirements, we consider factors such as the body's accreditation requirements, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for use in enforcement activities, its monitoring procedures for provider entities found to be out of compliance with the conditions or requirements, and its ability to provide us with necessary data for validation.

As suppliers, ASCs are included by definition of provider entity in section 1865(b)(4) of the Act. Thus, if we were to recognize an ASC accreditation organization's program as demonstrating that all the Medicare ASC conditions of coverage are met, the ASCs accredited under the approved Medicare program would be considered or "deemed" to meet the same conditions for which the accreditation standards have been recognized. The American Association for the Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) is the third accreditation organization that we have approved for ASCs. The other two accreditation organizations are the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and the Accreditation Association for Ambulatory Health Care (AAAHC).

It has been brought to our attention that some ASCs are under the mistaken impression that once deemed authority is granted by HCFA to an accreditation organization, then ASCs must be accredited by such a body to receive Medicare certification. Accreditation by an accreditation organization is voluntary and not required by HCFA for Medicare certification.

B. Deeming Authority Process

On November 23, 1993, we published a final rule (58 FR 61816) that set forth the procedure that we would use to review and approve national accreditation organizations that wish to be recognized as providing reasonable assurance that Medicare conditions of coverage are met (§ 488.4, "Application and reapplication procedures for accreditation organizations"). A national accreditation organization (Accreditation organization) applying for approval of deeming authority must furnish to us information and materials listed in our regulations at § 488.4. Our regulations at § 488.8 ("Federal review of accreditation organizations") detail the Federal review and approval process of applications for deeming authority. On April 26, 1996, however, new legislation entitled "Making Appropriations for Fiscal Year 1996 to Make a Further Down Payment Toward a Balanced Budget and for Other Purposes (Pub. L. 104–134)" was enacted.

Section 516 of Public Law 104–134 amended section 1865 of the Act in a number of ways. The legislation removed the requirements that accreditation organizations provide reasonable assurance that entities accredited by them would meet Medicare conditions coverage or requirements. In revised section 1865(b)(1) of the Act, organizations are now required to demonstrate that their accredited entities would meet or exceed all of the applicable Medicare conditions. Section 1865(b)(4) includes suppliers (for example, ASCs) under the provider entities that we may consider for deemed status. We are required to publish a proposed notice in the **Federal Register** 60 days after the receipt of a written request for deemed status by a national accreditation body. After review of the national accreditation body's application, the statute requires that we publish a notice of our approval or disapproval within 210 days after we receive a complete package of information and the organization's deeming application.

We received an application from AAAASF on November 18, 1997 and in accordance with the statute, this final notice should have been published by June 16, 1998. However, HCFA was waiting for AAAASF to submit required materials on a quality improvement project for their training program before approving its deeming authority. AAAASF chose to delay the publication date, rather than be denied deemed status and have to reapply for deemed authority. Regulations at § 488.8(c) specify that the deeming authority for AAAASF will take effect 90 days from the publication of this final notice. Thus, AAAASF cannot award deemed accreditation to a supplier and request HCFA certification before the end of that 90-day period.

C. Ambulatory Surgical Center Conditions for Coverage and Requirements

The regulations specifying the Medicare conditions for coverage for ASCs are located in part 416. These conditions implement section 1832(a)(2)(F)(i) of the Act, which provides for Medicare Part B coverage of facility services furnished in connection with surgical procedures specified by us under section 1833(i)(1) of the Act.

II. Provisions of the Proposed Notice

The proposed notice announced the application of AAAASF for deemed status for its accreditation program only to the extent that it accredits ASCs.

Under section 1865(b)(2) of the Act and our regulations at § 488.8 ("Federal review of accreditation organizations"), our review and evaluation of this national accreditation organization was conducted in accordance with, but was not necessarily limited to, the following factors:

- The equivalency of an accreditation organization's requirements for an entity to be certified compared to our requirements for certification.
- The organization's survey process to determine the following:
    - The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
    - The comparability of the organization's process to that of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
    - The organization's procedures for monitoring providers or suppliers found to be out of compliance with program requirements. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(2).
    - The ability of the organization to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
    - The ability of the organization to provide us with electronic data in ASCII comparable code and reports necessary for effective validation and assessment of the organization's survey process.
    - The adequacy of staff and other resources.
    - The organization's ability to provide adequate funding for performing required surveys.
    - The organization's policies with respect to whether surveys are announced or unannounced.
- The accreditation organization's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey that we may require (including corrective action plans).

We met with representatives of AAAASF to evaluate its accreditation standards and survey process to determine if the organization demonstrated that its accredited facilities met Medicare conditions. We did a standard by standard comparison of the applicable conditions or requirements to determine which of them met or exceeded Medicare requirements. The representatives responded to our concerns by proposing to change the organization standards for its member ASCs needing Medicare certification. We subsequently received revised survey guidelines and amended standards for their member ASCs requesting Medicare certification.

A. Differences Between the American Association for the Accreditation of Ambulatory Surgery Facilities, Inc. and Medicare Conditions and Survey Requirements

We compared the standards contained in the AAAASF's 1994 Standards Manual for accreditation of ambulatory surgery facilities and its survey process in the 1994 Inspectors Manual to the Medicare ASC conditions and survey procedures. In 18 areas the AAAASF has made the following revisions:

- *Exclusivity Requirement*—AAAASF has included a statement on ASC surgical exclusivity as an integral part of its application package.
- *Unannounced Surveys*—AAAASF has added language to the on-site inspection information to include a declaration that all surveys will be unannounced. In order to accommodate the need to assure that key staff are on hand for surveys without notification of the facility, AAAASF has agreed to request that the facility send staffing schedules on a regular basis once their application is complete.
- *Frequency of Surveys*—AAAASF resurveys an ASC every 3 years. Our original requirement was to survey ASCs every year. In practice, our resurveys have been averaging almost 3 years. Both the JCAHO and AAAHC have 3-year resurvey cycles. Therefore, we accept AAAASF's 3-year resurvey cycle.
- *State and Local Laws*—AAAASF has agreed to assure that out-of-state inspectors receive adequate information on certification, licensure, and scope of practice requirements of that State.
- *Reasonable Assurance*—AAAASF has agreed to modify its process to build in a review of the past history of facilities that already have Medicare certification through the State.
- *Fraud and Abuse*—AAAASF has agreed to require that its inspectors report any suspected instances of fraud and abuse to the appropriate HCFA Regional Office.
- *Hearing Schedules and Appeals*—AAAASF has specified the dates and locations for its Accreditation Committee hearings over the next 4 years.
- *Hospitalization*—AAAASF has inserted the word "local" to indicate those hospitals eligible to receive immediate transfers for patients requiring emergency medical care beyond the capabilities of the ASC.
- *Anesthetic Risk and Evaluation*—AAAASF has added language to indicate that a physician must examine each patient immediately before surgery to evaluate the risk of anesthesia and the procedure to be performed.
- *Recovery Room and Waiting Area*—AAAASF has specified that an ASC must have a separate recovery room and waiting area.
- *Emergency Personnel*—AAAASF has added the requirement that personnel trained in the use of emergency equipment and cardiopulmonary resuscitation must be available whenever a patient is in the facility.
- *Other Practitioners*—AAAASF has added the requirement that if certified operating room technicians are employed that their certification or licensure must be current. Furthermore, if uncertified or unlicensed operating room technicians are used, it must be permissible under State law and the technician must be personally trained by the employing surgeon.
- *Organization and staffing*—AAAASF has added the requirement that a registered nurse must be available for emergency treatment whenever a patient is in the facility.
- *Oral Orders*—AAAASF has added a standard that requires that oral orders for drugs and biologicals must be followed by a written order and signed by the prescribing physician.
- *Laboratory and Radiologic Services*—AAAASF has added the requirement that radiologic services be obtained from a Medicare-approved facility and that ASC laboratories must meet requirements of part 493.

Furthermore, if the ASC does not provide its own laboratory services, it must have procedures for obtaining routine and emergency laboratory services from a certified laboratory in accordance with part 493. Any referral laboratory must be certified in the appropriate specialties and subspecialties of service to perform the referred tests in accordance with the requirements of part 493.

- *Life Safety Code: Surgical Procedures*—AAAASF agreed to require facilities to meet State and local requirements, or the National Fire Prevention Association (NFPA) Standards for Health Care Facilities (NFPA 99), and Life Safety Code (NFPA 101) Chapters 12 and 13 (and appropriate references), whichever is more stringent. Language was added to specify that their regular inspections for installation and maintenance of surgical equipment will be at least annually. In conformity with the NFPA requirements, AAAASF has made standby generator as the mandatory source of emergency power and reduced the time for such generators to reach full power from 30 to 10 seconds.
- *Life Safety Code: Environment*—AAAASF has specified that fire drills must be held once a month for each shift and has made smoke detectors mandatory for all office-based ASCs.
- *Life Safety Code: Standards Addendum*—AAAASF has specified that facilities must be inspected at least annually by the local or State fire control agency if this service is available. If not, AAAASF agrees to contract with a State agency or qualified subcontractor to perform the inspections.
- *Inspector Training Program*—AAAASF has submitted a revised training program that provides for consistent, national training of all inspectors in their processes and integrates instruction in the Medicare requirements based on either the trainer's participation in Medicare training or using Medicare survey experts as instructors.

We have agreed to accept language that requires compliance with the 1985 edition of the Life Safety Code with an encouragement by AAAASF that facilities comply with the 1997 Code. These standards will apply to all facilities regardless of size.

B. Analysis and Responses to Public Comments and Provisions of the Final Notice

We received no comments on our proposed notice. The provisions of the proposed notice are being made final in this notice.

III. Paperwork Reduction Act

The public reporting and record keeping burden reflected in this notice is referenced in the currently approved regulation entitled "Granting and Withdrawal of Deeming Authority to National Accreditation Organizations (58 FR 61816)." The paperwork burden referenced in the above mentioned regulation is currently approved by the Office of Management and Budget (OMB), under OMB approval number 0938–0690, with an expiration date of 8/31/99.

IV. Regulatory Impact Statement

In fiscal year 1995, there were 2,105 certified ASCs participating in the Medicare/Medicaid programs. We conducted 211 initial surveys, 288 recertification surveys (both at a cost of $714,069), and 24 complaint surveys. In fiscal year 1996, there were 2,219 certified ASCs. This was an increase of 114 facilities. We conducted 180 initial surveys, 115 recertification surveys (both at a cost of $848,125), and one complaint survey. In fiscal year 1997, there were 2,433 certified ASCs. This was an increase of 214 facilities. We conducted 236 initial surveys, 252 recertification surveys (both at a cost of $1,403,000), and seven complaint surveys. As the data above indicate, the number of ASCs and the cost for conducting ASC surveys by State Agencies are increasing.

As indicated above, there was a 16 percent increase in ASCs within 3 years (fiscal years 1995 through 1997). The fiscal year 1998 appropriation for ASC survey activities to HCFA was decreased as the priority of both initial surveys and resurveys remained in the bottom 10 percent of surveys performed, but without any adjustment for inflation. This does not allow sufficient resources for some regions to meet the survey demand. In an effort to guarantee the continued health, safety, and services of beneficiaries in facilities already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we are approving deeming for ASCs accredited by AAAASF as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost effective manner.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 19, 1998.

Nancy-Ann DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–32102 Filed 12–1–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The History of Medicine Panel.

Date: December 4, 1998.

Time: 8:30 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gilbert Meier, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ethics/Genome Study Section.

Date: December 7–8, 1998.

Time: 9:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Cheryl M. Corsaro, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435–1045.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 7, 1998.

Time: 10:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L. Jelsema, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 7, 1998.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This noitce is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 7, 1998.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 7, 1998.

Time: 4:00 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Garrett V. Keefer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 7, 1998.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 8, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Gertrude K. McFarland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 8, 1998.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol A. Campbell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7848, Bethesda, MD 20892, (301) 435–1257.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 8, 1998.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 8, 1998.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Houston Baker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–1175, houstonb@drg.NIH.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 8, 1998.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 9, 1998.

Time: 8:30 am to 5:00 pm.

Agenda To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joe Marwah, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 9–10, 1998.

Time: 9:00 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

Contact Person: John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 9, 1998.

Time: 1:00 pm to 2:00 pm.

Agenda To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1998.
Time: 1:00 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David Monsees, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7816, Bethesda, MD 20892, (301) 435–0684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1998.
Time: 1:30 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1998.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1998.
Time: 2:00 pm to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1998.
Time: 2:00 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anthony C. Chung, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 9, 1998.
Time: 12:30 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32063 Filed 12–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Science Education Partnership Award.
Date: February 2, 1999.
Time: 8:00 am to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: John D. Harding, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0820.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32058 Filed 12–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Research Resources Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council, Executive Subcommittee.

Date: January 28, 1999.

Open: 7:30 AM to 8:45 AM.

Agenda: To discuss policy issues.

Place: National Institutes of Health, Conference Room 3B13, Building 31, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Name of Committee: National Advisory Research Resources Council.

Date: January 28–29, 1999.

Open: January 28, 1999, 9:00 AM to Recess.

Agenda: To discuss policy issues.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Closed: January 29, 1999, 8:30 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Open: January 29, 1999, 10:00 AM to Adjournment.

Agenda: Report of Center Director and other issues related to Council business.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32059 Filed 12–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group Comparative Medicine Review Committee.

Date: February 17–18, 1999.

Open: February 17, 1999, 8:00 a.m. to 9:30 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Closed: February 17, 1999, 9:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Raymond O'Neill, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive MSC 7905, Room 6018, Bethesda, MD 20892–7965, 301–435–0820.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32060 Filed 12–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: February 10–11, 1999.

Open: February 10, 1999, 8:00 a.m. to 9:00 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: February 10, 1999, 9:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: D.G. Patel, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, Bethesda, MD 20892, (301) 435–0822.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32061 Filed 12–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

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notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group General Clinical Research Centers Review Committee.

Date: February 9–11, 1999.

Open: February 9, 1999, 8:00 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Bethesda Ramada, Embassy III Room, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: February 9, 1999, 9:30 AM to ADJOURNMENT.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, Embassy III Room, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Charles G. Hollingsworth, DPH, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda MD 20892–7966, 301–435–0818.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.371, Biomedical Technology, 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32062 Filed 12–1–98; 8:45 am]

BILLING 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Revised Sonoran Pronghorn Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of Final Revised Sonoran Pronghorn (*Antilocapra americana sonoriensis*) Recovery Plan which the Service listed as an endangered species on March 11, 1967 (32 FR 4001). This animal's population is estimated to be less than 300 in the United States and less than 500 in the State of Sonora, Mexico. Distribution is limited primarily to Sonoran desert habitats. Factors that limit population growth are not well understood. However, loss of habitat due to drying of extended reaches of the Gila and Sonoyta Rivers, competition from domestic livestock, and human encroachment are believed to be limiting factors. Illegal hunting and predation on fawns may also be limiting factors. Although the Service considers this document to be in its final form, the Service is interested in comments from interested parties. The Service will consider all comments and may decide to amend this document at a later date based upon input received and upon the results and proceedings of a Sonoran Pronghorn Workshop to be held tentatively during the last week of January 1999.

DATES: The Service will be open to written advice and comment on the Final Revised Recovery Plan through January 29, 1999. Additionally, in cooperation with the U.S. Marine Corps, the Service will co-sponsor a Sonoran Pronghorn Workshop tentatively during the last week in January 1999. Parties interested in attending the Sonoran Pronghorn Workshop tentatively scheduled for the last week of January 1999, should contact Mr. Ron Pearce, Range Management Director, United States Marine Corps Air Station, Yuma, Arizona, at (520) 341–3401.

ADDRESSES: Address requests for copies of the document, comments on the Final Recovery Plan, or requests for more information to Laura Thompson-Olais, Ecologist, Cabeza Prieta National Wildlife Refuge, 1611 North Second Avenue, Ajo, Arizona 85321.

SUPPLEMENTARY INFORMATION: Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for down-listing or de-listing them, and initial estimates of times and costs to implement the needed recovery measures.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act 16 U.S.C. 1533(f).

The Endangered Species Act of 1973 (Act), as amended, (16 U.S.C. 1531 et seq.) Requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved plans. The Service may also decide to amend the Plan if necessary.

A recovery plan for Sonoran pronghorn was approved in 1982. Subsequent to the development of the original recovery plan, a large group of Sonoran proghorn were documented drinking free-standing water during the summer which verified their use of water. This and additional new information learned about the biology and ecology of the animal have necessitated revision of the original recovery plan.

The availability of the draft revised Sonoran pronghorn recovery plan for review and comment was announced in the **Federal Register** on September 7, 1994. The revised plan, however, was never completed and further changes to the plan have been made since then. This notice gives the public another opportunity for review and comment before the final revised plan is approved.

Recovery will focus on enhancing present populations, addressing expansion of presently used habitat, protecting present range and establishing a new separate herd of self-sustaining animals to guard against catastrophes decimating the core population.

Dated: November 23, 1998.

Renne Lohoefener,

Acting Regional Director.

[FR Doc. 98–32052 Filed 12–1–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–58–24–1A; HAG99–0037]

Emergency Closure of Bureau of Land Management Administered Roads—Jackson County, Oregon

AGENCY: Bureau of Land Management, Medford District Office, Ashland Resource Area.

SUMMARY: Notice is hereby given that certain BLM roads in Jackson County, Oregon are hereby closed to all motorized vehicles including off-road vehicles (but excluding tracked snow vehicles) from October 23, 1998 until notice is rescinded. The closure is made under the authority of 43 CFR 9268.3(d)(1)(ii) and 8364.1(a).

The roads and the conditions of this emergency road closure are identified as follows: Roads 41–2E–3, 41–2E–9, 41–2E–10.0, 41–2E–10.1 and connecting spur roads are hereby seasonally closed. These roads are located in Sections 2, 3, 10, 11, and 12 of T.41 S., R. 2 E., and Sections 5, 6, and 7 of T. 41 S., R. 3 E., Willamette Meridian, Jackson County, Oregon. In addition, the road located next to Scotch Creek in Section 1, T. 41 S., R. 2 E. (W. M.) is hereby permanently closed under this order.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

The roads temporarily closed to motorized use under this order will be posted with signs at barricaded locations.

The purpose of this emergency temporary closure is to prevent excessive erosion, and to protect recent BLM investments in road maintenance work.

This closure is effective from October 23, 1998 until this notice is rescinded.

FOR FURTHER INFORMATION CONTACT: Joe Hoppe, Realty Specialist, at (541) 770–2200.

Dated: November 20, 1998.

Wayne M. Kuhn,

Acting District Manager.

[FR Doc. 98–32123 Filed 12–1–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–99–1150–00; 8011]

Arizona: Intent to Amend the Yuma District Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management proposes to change the boundaries of the Gran Desierto Dunes Area of Critical Environmental Concern (ACEC).

The Gran Desierto Dunes ACEC is proposed to be expanded north and west to the northern and western boundaries of the Barry M. Goldwater Air Force Range, and east along the International Boundary between the United States and Mexico. The area includes public lands on the Barry M. Goldwater Air Force Range in Townships 9, 10, 11, 12, and 13 South, Ranges. 19, 20, 21, and 22 West, Gila and Salt River Meridian, Yuma County, Arizona.

FOR FURTHER INFORMATION CONTACT: Susanna Henry, Bureau of Land Management, 2555 E. Gila Ridge Road, Yuma, AZ 85365; telephone number: 520–317–3211.

SUPPLEMENTARY INFORMATION: The 25,500-acre Gran Desierto Dunes ACEC was designated in 1990 as part of the Lower Gila South Resource Management Plan (Goldwater Amendment). The Goldwater Amendment also established the 84,500-acre Yuma Desert and Sand Dunes Habitat Management Area (HMA) adjacent to the ACEC. The Goldwater Amendment was later incorporated as part of the Yuma District RMP. The proposed amendment would expand the boundaries of the Gran Desierto Dunes ACEC to absorb the Yuma Desert and Sand Dunes HMA, modify and expand management prescriptions throughout the ACEC, designate a utility corridor between Interstate 8 and the International Boundary, and establish a mitigation and compensation policy within flat-tailed horned lizard habitat on public lands in Arizona.

In 1997, the Flat-tailed Horned Lizard Rangewide Management Strategy (Strategy) and Conservation Agreement was signed by BLM. The purpose of the Strategy is to conserve viable populations of flat-tailed horned lizards. The Strategy outlines Management Areas building on protection supported by existing ACESs in both Arizona and California. The proposed amendment to the Yuma District RMP will be accomplished as a joint document with the Bureau of Land Management, California Desert District as an amendment to the California Desert Conservation Area (CDCA) Plan.

The proposed amendment to the Yuma District and CDCA Plans is being analyzed as part of the proposed action in an environmental assessment. It is anticipated that the Draft EA will be printed and made available to the public for comment in January 1999.

Dated: November 23, 1998.

Maureen A. Merrell,

Assistant Field Manager, Business and Fiscal Services/Acting Field Manager.

[FR Doc. 98–32126 Filed 12–1–98; 8:45 am]

BILLING CODE 4210–32–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–223 (Review)]

Agricultural Tillage Tools From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the countervailing duty order on agricultural tillage tools from Brazil.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on agricultural tillage tools from Brazil would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is January 20, 1999. Comments on the adequacy of responses may be filed with the Commission by February 12, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera

Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1985, the Department of Commerce issued a countervailing duty order on imports of agricultural tillage tools from Brazil (50 F.R. 42743). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Brazil.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. For purposes of this notice, the Domestic Like Product is discs. In its original determination, the Commission defined two Domestic Like Products (discs and "other tillage tools"); however, the Commission made an affirmative finding only with respect to discs.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. For purposes of this notice, the Domestic Industry is producers of discs. In its original determination, the Commission defined two Domestic Industries; however, the Commission made an affirmative finding only with respect to producers of discs.

(5) The *Order Date* is the date that the countervailing duty order under review became effective. In this review, the Order Date is October 22, 1985.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 12, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name,

telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1984.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32089 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–208 (Review)]

Barbed Wire and Barbless Wire Strand From Argentina

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on barbed wire and barbless wire strand from Argentina.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on barbed wire and barbless wire strand from Argentina would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is January 20, 1999. Comments on the adequacy of responses may be filed with the Commission by February 12, 1999

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

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E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Steet SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1985, the Department of Commerce issued an antidumping duty order on imports of barbed wire and barbless wire strand from Argentina (50 F.R. 46808). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Argentina.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as barbed and barbless wire strand.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of barbed wire and barbless wire strand.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is November 13, 1985.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submission

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(I)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 12, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and current operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1984.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in short tons and value data in thousands of U.S. dollars). if you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including andidumping or countervailing duties). if you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) *(Optional)* A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32090 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–189 (Review)]

Calcium Hypochlorite From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on calcium hypochlorite from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on calcium hypochlorite from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline

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for responses is January 20, 1999. Comments on the adequacy of responses may be filed with the Commission by February 12, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1985, the Department of Commerce issued an antidumping duty order on imports of calcium hypochlorite from Japan (50 F.R. 15470). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as calcium hypochlorite.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of calcium hypochlorite.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is April 18, 1985.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 12, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the

Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1984.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32084 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Castor Oil Products From Brazil and Sebacic Acid From China

[Investigation No. 104–TAA–20 (Review) and (Investigation No. 731–TA–653 (Review))

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on castor oil products from Brazil and the antidumping duty order on sebacic acid from China.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on castor oil

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products from Brazil and/or the antidumping duty order on sebacic acid from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is January 20, 1999. Comments on the adequacy of responses may be filed with the Commission by February 12, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1976, the Department of the Treasury issued a countervailing duty order under section 303 of the Act on imports of castor oil products from Brazil (42 FR 8634). In January 1984, pursuant to section 104 of the Trade Agreements Act of 1979, the Commission determined that industries in the United States would be materially injured by reason of imports of the subject castor oil products (hydrogenated castor oil (HCO) and 12-hydroxystearic acid (HSA)) from Brazil if the countervailing duty order were to be revoked. On July 14, 1994, in an unrelated investigation, the Department of Commerce issued an antidumping duty order on imports of sebacic acid from China (59 FR 35909). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil and China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations concerning castor oil products from Brazil, the Commission defined two separate Domestic Like Products: HCO and HSA. In its original determination concerning sebacic acid from China, the Commission defined the Domestic Like Product as sebacic acid.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the products. In its original determinations concerning castor oil products from Brazil, the Commission defined two separate Domestic Industries, one producing HCO and one producing HSA. In its original determination concerning sebacic acid from China, the Commission defined the Domestic Industry as producers of sebacic acid.

(5) The Order Dates are the dates that the countervailing and antidumping duty orders under review became effective. In the review concerning castor oil products from Brazil, the Order Date is March 16, 1976, and in the review concerning sebacic aid from China, the Order Date is July 14, 1994.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 12, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its original determinations, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) For certain castor oil products, a list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Brazil that currently export or have exported Subject Merchandise to the United States or other countries since 1975. For sebacic acid, a list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in China that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s'') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s'') production; and

(b) the quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any,

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that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32086 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Television Receivers From Japan (Inv. No. AA1921–66 (Review)); Color Television Receivers From Korea (Inv. No. 731–TA–134 (Review)); Color Television Receivers From Taiwan (Inv. No. 731–TA–135 (Review)); Small Electric Motors From Japan (Inv. No. 731-TA-7 (Review)); High-Power Microwave Amplifiers From Japan (Inv. No. 731–TA–48 (Review)); and Barium Carbonate From Germany (Inv. No. 731-TA-31 (Review))

AGENCY: International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in October 1998 to determine whether revocation of the existing antidumping duty orders/suspension agreement would be likely to lead to continuation or recurrence of dumping and material injury to a domestic industry. On November 23, 1998, the Department of Commerce published notice that it was revoking the orders because no domestic interested party responded to its notice of initiation by the applicable deadline (63 FR 64677, November 23, 1998). Accordingly, pursuant to § 207.69 of the Commission's rules of practice and procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32093 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA–224 (Review)]

Live Swine From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the countervailing duty order on live swine from Canada.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on live swine from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is January 20, 1999. Comments on the adequacy of responses may be filed with the Commission by February 12, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3[illegible]93) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1985, the Department of Commerce issued a countervailing duty order on imports of live swine from Canada (50 FR 32880). Commerce subsequently partially revoked the order, effective April 1, 1991, with respect to slaughter sows and boars and weanlings. (61 FR 45402, August 29, 1996). The Commission is conducting a review to determine whether revocation of the portion of the order that remains effective would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Canada.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination when the corresponding Subject Merchandise was defined to be live swine, the Commission made an affirmative determination with respect to one Domestic Like Product, live swine. A Domestic Like Product that corresponds to the current (reduced) scope of the Subject Merchandise would consist of live swine excluding slaughter sows and boars and weanlings.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as hog growers, corresponding to the live swine Domestic Like Product. Consequently, for purposes of this notice the Domestic Industry is hog growers. A Domestic Industry that corresponds to a more narrow Domestic Like Product would consist of growers of hogs other than slaughter sows and boars and weanlings.

(5) The *Order Date* is the date that the countervailing duty order under review became effective. In this review, the Order Date is August 15, 1985.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 12, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

Where an item below seeks information with respect to the Domestic Like Product, information should be provided for each of the two alternative definitions of the Domestic Like Product described above: Namely, (1) live swine and (2) live swine excluding slaughter sows and boars and weanlings. Where an item below seeks information with respect to the Domestic Industry, information should be provided for each of the two alternative definitions of the Domestic Industry described above: Namely, (1) hog growers and (2) growers of hogs other than slaughter sows and boars and weanlings. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which

your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1984.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of head and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of head and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of head and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (*OPTIONAL*) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32088 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–184 (Review) and 731–TA–326 (Review)]

Frozen Concentrated Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the suspended countervailing duty investigation and antidumping duty order on frozen concentrated orange juice from Brazil.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether termination of the suspended investigation and/or revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is January 20, 1999. Comments on the adequacy of responses may be filed with the Commission by February 12, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm.*

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).*

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department of Commerce suspended a countervailing duty investigation on imports of frozen concentrated orange juice from Brazil (48 F.R. 8839). On May 5, 1987, the Department of Commerce issued an antidumping duty order on imports of frozen concentrated orange juice from Brazil (52 F.R. 16426). The Commission subsequently affirmed its determination in the antidumping investigation in response to a December 30, 1988, remand order of the United States Court of International Trade. The Commission is conducting reviews to determine whether termination of the suspended investigation and/or revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is Brazil.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination concerning the suspended countervailing duty investigation and in the subsequent review of that determination, the Commission defined the *Domestic Like Product* as frozen concentrated orange juice. In its remand determination concerning the antidumping duty investigation, three members of the Commission defined the *Domestic Like Product* as frozen concentrated orange juice for manufacturing, a highly concentrated form of frozen concentrated orange juice. One member of the Commission found a broader *Domestic Like Product* consisting of frozen concentrated orange juice (encompassing frozen concentrated orange juice for manufacturing, frozen concentrated orange juice for retail, and single strength orange juice). One other like product combination was also found.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination concerning the suspended countervailing duty investigation and in the subsequent review of that determination, the Commission defined the *Domestic Industry* as growers of "round oranges" and processors of frozen concentrated orange juice. In its remand determination concerning the antidumping duty investigation, three members of the Commission defined the *Domestic Industry* as growers of round oranges and extractors of orange juice that produce frozen concentrated orange juice for manufacturing; specifically excluded from the *Domestic Industry* were reconstitutors. One member of the Commission defined the *Domestic Industry* as growers and processors, including reconstituting operations of integrated producers. One other domestic industry definition was also used.

(5) The *Order Dates* are the dates that the countervailing duty investigation was suspended and the antidumping duty order under review became effective. In these reviews, the *Order Date* for the suspended countervailing duty investigation is March 2, 1983, and the *Order Date* for the antidumping duty investigation is May 5, 1987.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The

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deadline for filing such comments is February 12, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Resonse to This Notice of Institution

Please provide the requested information for each of the products defined by Commerce as *Subject Merchandise*, and provide separate information for each of the two specific definitions of like product, as defined by the Commission in its original determinations: (1) Frozen concentrated orange juice for manufacturing and (2) frozen concentrated orange juice. Information should also be provided separately for the two domestic industries corresponding to each of the like product definitions. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended countervailing duty investigation and revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since 1982.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of gallons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of gallons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of gallons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of

production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32085 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–776 (Final)]

Certain Preserved Mushrooms from Chile

Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Chile of certain preserved mushrooms, provided for in subheadings 0711.90.40 and 2003.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 6, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by the Coalition for Fair Preserved Mushroom Trade and its members: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH.[2] The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain preserved mushrooms from Chile were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 19, 1998 (63 FR 44470). The hearing was held in Washington, DC, on October 15, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 25, 1998. The views of the Commission are contained in USITC Publication 3144 (November 1998), entitled Certain Preserved Mushrooms from Chile: Investigation No. 731–TA–776 (Final).

Issued: November 27, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32092 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–196 (Review)]

Red Raspberries From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on red raspberries from Canada.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on red raspberries from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is January 20, 1999. Comments on the adequacy of responses may be filed with the Commission by February 12, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1985, the Department of Commerce issued an antidumping duty order on imports of red raspberries from Canada (50 FR 26019). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] On March 9, 1998, the Commission received notice that Southwood Farms, Hockessin, DE, had joined the petitioning coalition.

scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Canada.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as red raspberries packed in bulk containers, excluding all other types of berries, fresh-market red raspberries, and retail/institutional packed berries.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as growers and packers of red raspberries packed in bulk. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 24, 1985.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service list

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 12, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided In Response To This Notice o f Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1984.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s'') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-32087 Filed 12-1-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-781-786 (Final)]

Stainless Steel Round Wire From Canada, India, Japan, the Republic of Korea, Spain, and Taiwan

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA-781-786 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Canada, India, Japan, the Republic of Korea (Korea), Spain, and Taiwan of stainless steel round wire.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

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[1] For purposes of these investigations, Commerce has defined the subject stainless steel round wire (SSRW) as "any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied." (See Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire from Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire from Korea; 63 FR 64043, Nov. 18, 1998.)

These products, if imported are currently covered by statistical reporting numbers 7223.00.1015, 7223.00.1030, 7223.00 1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

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the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of stainless steel round wire from Canada, India, Japan, Spain, and Taiwan are being sold in the United States at less than fair value (LTFV)[2] within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on March 27, 1998, by ACS Industries, Inc., Woonsocket, RI; Al Tech Specialty Steel Corp., Dunkirk, NY; Branford Wire & Manufacturing Co., Mountain Home, NC; Carpenter Technology Corp., Reading, PA; Handy & Harman Specialty Wire Group, Cockeysville, MD; Industrial Alloys, Inc., Pomona, CA; Loos & Co., Inc., Pomfret, CT; Sandvik Steel Co., Clarks Summit, PA; Sumiden Wire Products Corp., Dickson, TN; and Techalloy Co., Inc., Mahwah, NJ

Participation in the Investigations and Public Service List.

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 25, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on April 6, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 31, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 2, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is April 1, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 13, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 13, 1999. On May 3, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 5, 1999, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: November 24, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32094 Filed 12–1–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–C (Review) and (Investigation No. 701–TA–D (Review)]

Textiles and Textile Products From Colombia and Certain Textile Mill Products from Thailand

AGENCY: United States International Trade Commission.

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[2] Commerce has made a preliminary determination of sales at not LTFV with respect to the subject imports from Korea. Pending Commerce's final determination of sales at LTFV, the final phase of the Commission's antidumping investigation with respect to Korea is also being scheduled, for purposes of efficiency.

ACTION: Institution of five-year reviews concerning the suspended countervailing duty investigations on textiles and textile products from Colombia and certain textile mill products from Thailand.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether termination of the suspended investigations on textiles and textile products from Colombia and certain textile mill products from Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is January 20, 1999. Comments on the adequacy of responses may be filed with the Commission by February 12, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Department of Commerce suspended countervailing duty investigations on imports of textiles and textile products from Colombia and certain textile mill products from Thailand (50 FR 9832 and 9863). The Commission is conducting reviews to determine whether termination of the suspended investigations would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Colombia and Thailand.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. There were no Commission determinations concerning textiles and textile products from Colombia and certain textile mill products from Thailand. Therefore, for purposes of this notice, you should consider the Domestic Like Product to be co-extensive with the Subject Merchandise described in Commerce's scope of the five-year reviews.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. For purposes of this notice, you should consider the Domestic Industry to be producers of the Domestic Like Product.

(5) The Order Date is the date that the investigations were suspended. In these reviews, the Order Date is March 12, 1985.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 12, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the

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Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution

Please provide the requested information separately for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigations on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1984.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s'') production; and (b) the value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 1997 (report value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) the value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise

produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

AUTHORITY: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-32083 Filed 12-1-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-412]

Certain Video Graphics Display Controllers and Products Containing Same; Notice of Commission Determination Not To Review Initial Determination Granting Motion To Amend Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination granting the complainant's motion to amend the complaint and notice of investigation by adding allegations of infringement of additional patent claims.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3107.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

The Commission instituted the above-captioned investigation on July 27, 1998, based on a complaint by Cirrus Logic, Inc. ("Cirrus") alleging that ATI Technologies Inc. ("ATI") violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.1337, by importing, selling for importation, or selling in the United States after importation certain video graphics display controllers that infringe claims 37 and 43 of Cirrus' U.S. Letters Patent 5,598,525 ("the 525 patent"). On October 14, 1998, Cirrus filed a motion pursuant to Commission rule 210.14(b), 19 CFR 210.14(b), to amend the complaint and notice of investigation to add allegations of infringement of claims 1-10, 12-21, and 23-24 of its "525 patent.

On October 29, 1998, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") (Order No. 14) granting Cirrus" motion to amend the complaint and notice of investigation. The ALJ found that good cause existed for the amendment, and that such amendment would not prejudice the public interest or the rights of the parties. None of the parties petitioned to review the ALJ's ID.

The Commission determined not to review, and thereby to adopt, the ALJ's initial determination. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: November 25, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-32095 Filed 12-1-98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Amendment Pursuant to CERCLA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 5, 1998, a proposed First Amendment to Consent Decree in *United States* v. *Beazer East, Inc.*, (S.D. TX.) (Civil No. H-90-2406), was lodged with the U.S. District Court for the Southern District of Texas, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. The proposed First Amendment to Consent Decree provides for a change in the remedy selected by the U.S. Environmental Protection Agency, ("EPA") for the South Calvacade Site (the "Site"). On March 14, 1991, the Court entered the original Consent Decree in this case under which Beazer East, Inc. ("Beazer") agreed to reimburse response costs incurred by EPA in connection with the Site, located in northeast Houston, Texas, and to implement the final plan for remedial action selected by EPA, embodied in the Record of Decision ("ROD"). The original ROD called for excavation and "washing" of contaminated soils. In June 1997, EPA amended the ROD as it pertains to the soil portion of the remedy, and selected instead a reinforced concrete cap to be constructed over contaminated soils at the Site. The groundwater portion of the remedy, which calls for activated carbon adsorption, remains unchanged. The proposed First Amendment to Consent Decree incorporates by reference EPA's Amended ROD.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed First Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Beazer East, Inc.*, D.J. ref. 90-11-2-535.

The proposed First Amendment to Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, 515 Rusk Street, 5th Floor, Houston, Texas 77002 and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. A copy of the proposed First Amendment to Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $20.75 ($0.25 per page for reproduction costs) payable to: Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 98-32031 Filed 12-1-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Resource Conservation and Recovery Act of 1976 (RCRA) as Amended, 42 U.S.C. § 6928

Under 28 CFR 50.7, notice is hereby given that notice and comment period for the proposed Consent Decree lodged on October 16, 1998 with the United States District Court for the District of Idaho in *United States* v. *FMC Corporation, Inc.*, Civil Action No. 98–0406–I–BLW, is being extended through December 18, 1998. The original notice of this proposed settlement was published in the **Federal Register** on November 2, 1998, Vol. 63, No. 211, Pg. 58769. Informational meetings about the settlement and the Consent Decree will be conducted by the Department of Justice and the Environmental Protection Agency in Pocatello at Cavanaugh's Quality Inn, 1555 Pocatello Creek Rd., from 4:00 to 8:00 p.m., on November 30, 1998, and on the Shoshone-Bannock Fort Hall Reservation, Housing Authority Conference Room, 161 Wardance Circle, from 4:00 to 8:00 p.m. on December 1, 1998.

Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States*. v. *FMC Corporation*, D.J. Ref. 90–7–1–889.

The Consent Decree may be examined at the Office of the United States Attorney, 877 W. Main Street, Suite 201, Boise, Idaho 83702, at U.S. EPA Region 10, 1200 Sixth Avenue, ORC–158, Seattle, Washington 98101, the Idaho State University Library, Government Documents Department, 850 South 9th Avenue, Pocatello, Idaho 83209, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $12.50 (25 cents per page reproduction cost), with attachments a check in the amount of $20.75, payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32033 Filed 12–1–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Two Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that two proposed consent decrees in *United States, et al.* v. *Montrose Chemical Corporation of California, et al.*, No. CV 90–3122–AAH (C.D. Cal), were lodged on November 16, 1998 with the United States District Court for the Central District of California. The consent decrees resolve claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against defendant CBS Corporation (formerly Westinghouse Electric Corporation) and against Potlatch Corporation and Simpson Paper Company, for natural resource damages associated with contamination of sediments on the Palos Verdes shelf in the vicinity of Los Angeles, California, and for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the Montrose Chemical National Priorities List Site in Torrance, CA, and at the aforementioned Palos Verdes shelf.

One proposed consent decree provides that CBS will pay $9.5 million to resolve its liability to the United States and State of California for natural resource damages and response costs as described above. The second proposed consent decree provides that Potlatch and Simpson will pay $12 million to resolve their liability to the United States and State of California for natural resource damages and response costs as described above. Both proposed consent decrees include a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* v. *Montrose Chemical Corporation of California, et al.*, No. CV 90–3122–AAH (C.D. Cal), DOJ Ref. #90–11–3–159 and DOJ Ref. #90–11–3–511.

The proposed consent decrees may be examined at the office of the United States Attorney, Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of either proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting copies please refer to the referenced case and enclose a check in the amount of $67.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32030 Filed 12–1–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Judgment Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Judgment in *Reichelt* v. *United States Army Corps of Engineers*, No. 2:93 CV 332 AR (N.D. Ind.), was lodged with the United States District Court for the Northern District of Indiana, Hammond Division, on October 30, 1998. The proposed Consent Judgment concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) & 1344, resulting from the unauthorized filling and ditching of approximately 7 acres of wetlands, with impacts to all wetlands on the entire 18-acre tract, in the Town of Schererville, Lake County, Indiana.

The proposed Consent Judgment would provide for the payment of a $61,360.00 civil penalty within thirty (30) days of entry of judgment; full restoration of the site; and forfeiture of the entire 18-acre tract to the State of Indiana, Department of Natural Resources, within thirty (30) days of completion of the restoration. The required restoration is to consist of, among other things, removal, transport, and disposal of the fill known as "black beauty" in accordance with all applicable federal, state, and local requirements, and regrading, replanting, monitoring, and maintenance of the restored wetlands.

The United States Department of Justice will receive written comments relating to the proposed Consent Judgment for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to David A. Carson, Environment & Natural Resources Division, U.S. Department of Justice, Suite 945—North Tower, 999 18th Street, Denver, Colorado 80202, and should refer to *Reichelt* v. *United States Army Corps of Engineers*, No. 2:93 CV 332 AR (N.D. Ind.), DJ #90–5–1–6–560.

The proposed Consent Judgment may be examined at the Clerk's Office, United States District Court for the Northern District of Indiana, Hammond Division, 507 State Street, Hammond, Indiana 46320.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 98–32029 Filed 12–1–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act

Notice is hereby given that on November 17, 1998, a proposed Material Modification of Consent Decree and Final Order Between United States of America; State of Missouri; Syntex Corporation; Syntex (U.S.A.) Inc.; Syntex Laboratories, Inc.; and Syntex Agribusiness, Inc. To Address LeMar Drive and McDonnell Park Sites (the Material Modification) was lodged with the United States District Court for the Eastern District of Missouri in *United States* v. *Russell Martin Bliss, et al.* (the *Missouri Dioxin Litigation*), Civil Action No. 84–200C–1 (Consolidated).

The Material Modification amends the Consent Decree, entered by the Court on December 31, 1990, between the United States, the State of Missouri and the Syntex defendants under, *inter alia*, Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource, Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, pursuant to which 28 eastern Missouri dioxin-contaminated sites were remediated and the wastes incinerated at the twenty-eighth site, Times Beach, Missouri. After the satisfactory completion of the work pursuant to that settlement, the incinerator was removed and Times Beach was rededicated as Route 66 State Park. The Material Modification resolves similar potential claims in connection with two subsequently-discovered dioxin sites in St. Louis County, Missouri, the LeMar Drive Site in Ellisville, Missouri and the McDonnell Park Site near St. Ann, Missouri. Pursuant to the proposed settlement, EPA will excavate dioxin-contaminated materials and restore the Sites and the Syntex defendants will contract to incinerate the dioxin-contaminated materials at a commercial facility operated by Safety-Kleen Services, Inc. in Coffeyville, Kansas, which is permitted to incinerate dioxin, and properly dispose of the ash.

For thirty (30) days following this publication, the Department of Justice will receive comments relating to the proposed Material Modification. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Russell Martin Bliss, et al.* (the *Missouri Dioxin Litigation*), Civil Action No. 84–200C–1 (Consolidated), DOJ No. 90–11–2–41H. Also, pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d), opportunity for a public meeting on the proposed settlement in the affected area shall be afforded if requested.

The proposed Material Modification may be examined at the Office of the United States Attorney, Eastern District of Missouri, United States Court and Custom House, 1114 Market Street—Room 401, St. Louis, Missouri 63101. The Material Modification may also be examined at, or a copy obtained in person or by mail from, the United States Department of Justice Consent Decree Library, 1120 G Street, NW—3d Floor, Washington, DC 20005.

In requesting a copy, please enclose a check in the amount of $31.00 (25 cents per page reproduction cost).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32032 Filed 12–1–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Agency Information Collection Activities: Proposed Collection; Comment Request; Applicant Background Questionnaire

AGENCY: Office of the Assistant Secretary for Administration and Management (OASAM), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Department of Labor is soliciting comments concerning the proposed revision of the "Applicant Background Questionnaire".

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 1, 1999.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

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technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Anderson Glasgow, U.S. Department of Labor, Human Resource Services Center, 200 Constitution Ave. N.W. Room C–5516, Washington, D.C. 20210; Phone: (202) 219–6555 ext. 115; Written comments limited to 10 pages or fewer may also be transmitted by facsimile to: (202) 219–5820; Internet: glasgow-william@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its obligation to provide equal employment opportunities, is charged with ensuring that qualified individuals in groups that are underrepresented in various occupations, are included in applicant pools for the Department's positions. See 5 U.S.C. 7201(c); 29 U.S.c. 791; 29 U.S.C. 2000e–16; 5 C.F.R. 720.204; 29 C.F.R. 1614.101(a). to achieve this goal, DOL employment offices have conducted targeted outreach to a variety of sources, including educational institutions, professional organizations, newspapers and magazines. DOL has also participated in career fairs and conferences that reach high concentrations of Hispanics, African Americans, Native Americans, Asians, and persons with disabilities.

Without the data provided by this collection, DOL does not have the ability to evaluate the effectiveness of any of these targeted recruiting strategies because collection of racial and national origin information only occurs at the point of hiring. DOL needs to collect data on the pools of applicants which result from the various targeted recruitment strategies listed above. After the certification and selection process has been completed, it is necessary to cross-reference the data collected with the outcome of the qualifications review in order to evaluate the quality of applicants from various recruitment sources. With the information from this collection, DOL can adjust and redirect its targeted recruitment to achieve the best result. DOL will also be able to respond to requests for information received from the Office of Personnel management (OPM) in the course of OPM's evaluation and oversight activities.

II. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the Applicant Background Questionnaire and revision of the Questionnaire form. Extension is necessary to coninue to evaluate the effectiveness of agency recruitment programs in attracting applicants from underrepresented sectors of the population. The revision consists of adding a question concerning whether the respondent has a targeted disabilities, and deleting the request for the respondent to provide his or her Social Security Number.

Type of Review: Revision of a currently approved collection.

Agency: U.S. Department of Labor.

Title: Applicant Background Questionnaire.

OMB Number: 1225-0072.

Affected Public: Applicants for positions recruited in the Department of Labor.

Total Respondents: 3000 per year (estimate).

Frequency: one time per respondent.

Total Responses: 3000 per year (estimate).

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 250 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Date: November 25, 1998.

Tali R. Stepp,

Director of Human Resources.

[FR Doc. 98–32075 Filed 12–1–98; 8:45 am]

BILLING CODE 6510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Secretary of Labor's Authority and Assignment of Responsibilies Under Certain Sections of the National Defense Authorization Act for Fiscal Years 1993 and 1998 to the Assistance Secretary for Employment and Training

On November 12th, 1998, the Secretary of Labor issued a memorandum to the Assistant Secretary for Employment and Training delegating all authority and assigning all responsibilities of the Secretary of Labor under the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, § 3161, 42 U.S.C. 7274h, and the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105-85, § 3153(e), 111 Stat. 1629, 2043 (1997) to the Assistant Secretary for Employment and Training. A copy of that memorandum is annexed hereto as and Appendix.

FOR FURTHER INFORMATION CONTACT: Douglas Holl, U.S. Department of Labor, Employment and Training Administration, at (202) 219-5577, ext. 115.

Signed in Washington, DC this 12th day of November, 1998.

Alexis M. Herman,

Secretary of Labor.

U.S. Department of Labor

Secretary of Labor, Washington, D.C.

November 12, 1998.

Memorandum for: Raymond Bramucci, Assistant Secretary for Employment and Training

From: Alexis M. Herman

Subject: Specific Delegation of Authority to the Assistant Secretary for Employment and Training

Effective immediately, the Assistant Secretary for Employment and Training is hereby delegated all authority and assigned all responsibilities of the Secretary of Labor under the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, § 3161, 42 U.S.C. 7274h, and the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105-85, § 3153 (e), 111 Stat. 1629, 2043 (1997). This authority and responsibility may be redelegated.

[FR Doc. 98–32074 Filed 12–1–98; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 17, 1998, from 10:00 a.m. to 11:30 a.m.

ADDRESSES: United States Capitol Building, Room H–130.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Archives I Renovation

Update—Legislative Information Systems
Electronic Access—House Journals, Biographical Directory of Congress
Update—Center for Legislative Archives
Other current issues and new business

The meeting is open to the public.

Dated: November 25, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–32068 Filed 12–1–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Proposed Information Collection Requests

AGENCY: National Science Foundation.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Reports Clearance Officer invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 30, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before January 30, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: National Science Foundation, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or should be electronically mailed to the Internet address splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton, 703–306–1125, x 2017. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Reports Clearance Officer publishes this notice containing proposed information collection requests at the beginning of the Foundation's review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. NSF invites public comment at the address specified above. Copies of the requests are available from Suzanne Plimpton at the address specified above.

Type of Review: New.

Title: Survey of 1996 and 1997 Research and Development Funding and Performance by Nonprofit Organizations; OMB Control Number 3145–0170.

Abstract: OMB clearance for the NSF Survey of Research and Development Funding and Performance by Nonprofit Organizations (NPOs) expired June 30, 1998. The proposed information clearance request is for an extension of the time period for the survey that is now in the field. The survey collects information on the science and engineering (S&E) research and development (R&D) activities of nonprofit organizations in 1996 and 1997. A prior study with similar objectives was conducted in 1973. The purposes of the study are to: (1) develop estimates of the amounts of R&D funding provided by NPOs and the types of organizations supported; (2) develop estimates of the amount of R&D performed by NPOs; and (3) develop estimates of R&D researchers' employment in NPOs.

Expected Respondents: Respondents are nonprofit organizations (NPOs) that funded and/or performed science and engineering research and development in 1996. It will be a mail survey with telephone follow-up as necessary.

NSF is proposing the time extension of one form (Form 1400, the screening survey); the change in format of one form (Form 1402, the Funders survey form); and the reduction in the number of questions in one form (Form 1401, the Performers survey form).

As the table below shows, 2,432 respondents will be asked to complete the qualifying screening survey Form 1400. If they are eligible to participate in the survey, they will also receive either a Form 1401 Performer survey or a Form 1402 Funder survey. Some NPOs have already responded to the Form 1400 (screener) and the 705 eligible organizations will be sent either a Form 1401 or 1402.

Since the answers on the Form 1400 (screener) will determine whether newly contacted organizations will receive the Performer or Funder survey form, we are estimating the number that will be eligible based on the percentage of NPOs that reported themselves eligible in the March 31, 1998 screener mailing. The estimate for the Funders Form 1402 is 245 organizations; the estimate for the Performers Form 1401 is 815 organizations. These figures include both the NPOs that we estimate will be eligible in the next screener mailing and the NPOs that responded after June 30, 1998 to the March 31, 1998 screener (606 Performers 99 Funders).

Additional Information: NSF is requesting emergency clearance for the Survey of Research and Development Funding and Performance by Nonprofit Organizations due to unanticipated poor response to the mailings in March 1998 and June 1998. The universe of possible R&D funders and performers is much larger than we first anticipated. Our initial screening mail-out went to 8,771 organizations; 316 additional funders were selected in the sample but accidentally left off the mailing list. Many of the 5,548 NPOs that we have successfully contacted have either not been involved in R&D or have not met the minimum $250,000 requirement. We used more time than expected locating and contacting small organizations, which often are transient or short-lived. Our plan to use the Employer Identification Number as a unique key to nonprofit organizations was flawed. Many NPOs had more than one EIN and we were unable to determine by EIN codes whether research institutes were independent and in-scope, or part of universities and out-of-scope. We also experienced technical problems. Performers complained about the length of time needed to complete the survey so we have scaled it down substantially. Slowness of the Website also discouraged some would-be respondents.

Need for data. Failure to continue and complete this survey will result in the U.S. Government continuing to use 1973 data in estimating the nonprofit sector's R&D and the national totals of R&D funding and performance. A complete accurate description of R&D funding and performance is necessary for policymakers for planning, reporting, and tax purposes. Considerable work in drawing the sample has already been completed and $546,000 has been spent. The most efficient and cost effective way for the U.S. Government to obtain the needed data is to complete this survey. Therefore, we are asking that emergency clearance be granted by December 30, 1998 so that we can mail out the survey forms, complete the survey and publish the report in a timely manner.

Burden on the Public. The Foundation estimates that a total annual reporting and recordkeeping burden of 3,441 hours will result from the collection of information. The calculation is:

2,432 NPOs (1,030 Funders+1,402 Performers)×1 screening survey Form 1400× 12.5 minutes=506 hours

815 Performers×1 revised Form 1401×3 hours=2,445 hours

245 Funders×1 reformatted Form 1402×2 hours=490 hours

Total=3,441 hours

Frequency: One-time survey; second form only to eligible Not-for-profit institutions.

Affected Public: Not-for-profit institutions.

Dated: November 25, 1998.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 98–32028 Filed 12–1–98; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–648]

Umetco Minerals Corp.

AGENCY: Nuclear Regulatory Commission

ACTION: Notice of Receipt of License Amendment Application; Notice of Opportunity for Hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has been asked to amend NRC Source Material License SUA–648 to authorize the licensee, Umetco Minerals Corporation (Umetco) to reclaim the A–9 Repository, located in Natrona County, Wyoming, according to the 1987 Reclamation Plan, as amended by the submittal dated October 27, 1998. This license currently authorizes Umetco to receive, acquire, possess, and transfer uranium at the Umetco East Gas Hills site, which is located approximately 50 miles (80 kilometers) southeast of the town of Riverton, Wyoming.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7-J9, Washington, DC 20555. Telephone (301) 415–6606.

SUPPLEMENTARY INFORMATION:

Background

The Umetco Mineral Corporation (Umetco) site is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Materials License SUA–648 to possess byproduct material in the form of uranium waste tailings, as well as other radioactive wastes generated by past milling operations. The mill has been dismantled and the A–9 Repository contains uranium mills tailings and mill debris. This former mine pit currently has an interim soil cover. The previously approved 1987 reclamation plan for the A–9 Repository calls for the final cover to be composited of 1 foot of clay, 1 foot of filter material, and 7.5 feet of overburden soil, with the top of the cover seeded. Umetco submitted a design enhancement for the A–9 Repository by letter dated October 27, 1998. The changes to the 1987 design are: (1) Replace the vegetated cover surface with rip rap to improve the erosion protection aspects of the cover; (2) reclamation of the adjacent North and South Evaporation Ponds by placing their clay liners into the A–9 Repository; and (3) reclamation of the C–18 Mine Pit with backfill. The design also includes the final site grading plan.

Notice of Opportunity for Hearing

The NRC hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Umetco Mineral Corporation, PO 1029, Grand Junction, CO 81502;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 24th day of November 1998.

For the Nuclear Regulatory Commission,

Joseph J. Holonich,

Chief Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32111 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its March 21, 1996, application for proposed amendments to Facility Operating License Nos. DPR–32 and DPR–37 for the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia.

The proposed changes would have clarified the requirements for testing charcoal adsorbent in the Auxiliary Ventilation and Control Room Air Filtration Systems.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 10, 1996 (61 FR 15999). However, by letter dated November 23, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 21, 1996, and the licensee's letter dated November 23, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at The Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 25th day of November 1998.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32116 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Co. (Kewaunee Nuclear Power Plant); Exemption

I

The Wisconsin Public Service Company (WPSC, the licensee) is the holder of Facility Operating License No. DPR–43, which authorizes operation of the Kewaunee Nuclear Power Plant. The operating license states, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The Kewaunee Nuclear Power Plant is a pressurized-water reactor facility located at the licensee's site in Kewaunee County, Wisconsin.

II

By letter dated August 6, 1998, WPSC submitted an exemption request to certain requirements in Title 10 of the Code of Federal Regulations, Part 50, Appendix G, "Fracture Toughness Requirements," which invokes ASME, Section XI, Appendix G pressure-temperature limits for reactor pressure vessels (RPVs).

III

The NRC has established requirements in 10 CFR part 50 to protect the integrity of the reactor coolant system pressure boundary. 10 CFR 50.60(a) and 10 CFR part 50, appendix G.IV.2. require (via reference to 10 CFR 50.55a) that pressure-temperature (P–T) limits be established for RPVs during normal operation and vessel hydrostatic testing based on the methodology provided in the 1989 Edition of ASME Section XI, Appendix G. Pursuant to 10 CFR 50.60(b), alternatives to the requirements of 10 CFR part 50, appendix G.IV.2 may be used when an exemption is granted by the Commission. The underlying purpose of 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, is to establish fracture toughness requirements for the reactor coolant system pressure boundary to provide adequate margins of safety during normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

The NRC staff examined WPSC's rationale to support the exemption request and concluded that the use of Code Case N–588 would also meet the underlying intent of the regulations. The licensee's request for the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) was found to be appropriate. Application of the regulation is not necessary to achieve the underlying purpose of the rule because, as stated in the staff Safety Evaluation, dated November 25, 1998, adequate margins of safety on the structural integrity of the reactor coolant pressure boundary are maintained with the application of Code Case N–588. Therefore, the NRC staff has concluded that an exemption to the requirements of 10 CFR 50.60 and 10 CFR part 50, appendix G.IV.2 should be granted to allow WPSC to apply the methodology in ASME Code Case N–588 for the purpose of developing P–T limits for the KNPP RPV.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60(a) and 10 CFR part 50, appendix G.IV.2 to allow WPSC to apply the methods in ASME Code Case N–588 for the evaluation of KNPP pressure-temperature limits.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (63 FR 65265).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of November 1998.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32112 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

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NUCLEAR REGULATORY COMMISSION

[Licenses 37–0826–1 and 37–0826–2—Dockets 30–21230 and 30–30666]

ALARON Corp. Northeast Regional Service Facility—Wampum, Pennsylvania: Renewal of Material Licenses; Finding of No Significant Impact and Notice of Opportunity for a Hearing (NUREG/CR–5549)

The U.S. Nuclear Regulatory Commission is considering the renewal of Material Licenses 37–20826–01 and 37–20826–02 for the continued operation of ALARON Corporation, Northeast Regional Service Facility (NRSF), located in Wampum, Pennsylvania.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of ALARON's Material Licenses 37–20826–01 and 37–20826–02 for at least 10 years. With these renewals, the ALARON facility will continue to conduct ongoing operations involving treatment, decontamination, compaction and repackaging services for generators of radioactively contaminated materials. The proposed action would permit ALARON to possess, manage, and treat, under two NRC Material Licenses, 37–20826–01 and 37–20826–02, limited quantities of byproduct or source materials and sealed sources with atomic numbers less than 97, special nuclear materials in the form of fixed or removable contamination, and depleted uranium.

The Need for the Proposed Action

The action is to determine if the licenses should be renewed or denied. ALARON provides treatment, decontamination, compaction and repackaging services for generators of radioactively contaminated materials. Because these services reduce the quantities or volumes of materials that require disposal as waste, generators choose to have their radioactive waste materials treated at the NRSF to reduce the costs of disposal. Denial of the license renewals for ALARON is an alternative available to NRC, but without the services provided by ALARON, contaminated materials would have to be processed at other facilities providing these services or the amount of low level waste (LLW) disposed of at commercial burial sites would have to increase. While terminating the licenses would eliminate the small impacts of facility operation, eliminating or replacing facility capabilities could lead to environmental impacts elsewhere.

Environmental Impacts of the Proposed Action

Because of the limited scope of activities at the NRSF, this environmental assessment (EA) focuses on impacts to air quality, ecological resources, and human health resulting from normal operations and potential accidents. The proposed action would not (1) cause appreciable changes in employment at the site, (2) affect previously undisturbed areas, (3) generate liquid discharges (except storm water runoff) from the facility, (4) expand the developed area of the site, or (5) require major operations outside existing buildings or the surrounding industrial area. For these reasons, no significant impacts on socioeconomic, historic or archaeological resources, water quality, terrestrial ecology, or noise levels would result from the proposed action.

Air Quality Impacts

The NRSF is located in Lawrence County, which is in attainment of National Ambient Air Quality Standards (NAAQS) for all pollutants except ozone. NAAQS exist for sulfur dioxide (SO_2), nitrogen dioxide (NO_2), carbon monoxide (CO), ozone (O_3), lead, and two sizes of respirable particulate matter: particles less than 10 μm in diameter (designated PM–10) and particles less than 2.5 μm in diameter (designated PM–2.5). The NAAQS are expressed as pollutant concentrations that are not to be exceeded in the ambient air—that is, in the outdoor air to which the general public has access. The U.S. Environmental Protection Agency (EPA) has established emissions levels for conformity analysis below which contributions to air pollution are not considered significant, and for which no further regulatory analysis is required. The proposed action would not be expected to increase emissions to the ambient air from process facilities. Air emitted from process facilities is filtered and recycled through the buildings. The licensee anticipates no changes in operations that would affect air-pollutant emissions.

Ozone is formed from complex chemical reactions involving oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) in the presence of sunlight. Ozone pollution is a cumulative impact of many emissions of NO_X and hydrocarbons and all internal combustion engines emit NO_X and VOCs. Because vehicle movements associated with facility operations emit these pollutants, facility operations contribute to the regional ozone problem. Analysis shows that even under very conservative assumptions, NO_X and VOCs emissions associated with NRSF operations are only a small fraction of the limits below which contributions to air pollution are not considered significant. Because vehicle movements associated with operations contribute much less than the quantities EPA considers worthy of analysis for conformity with air quality plans, the facility makes no significant contribution to the region's ozone pollution problem.

Radioactive Emissions

NRSF does not have liquid discharge paths where licensed (radioactive) material may be released to the environment. There are no floor drains in areas where radioactive material containers are opened. Operations involving radioactive liquids are conducted in areas with spill curbs capable of containing the liquid volume of the largest container holding liquids in the area. Because all areas that might have decontamination chemicals are co-located with radioactive materials, there are no liquid sources for impacts to humans from either hazardous chemicals or radioactive materials.

Airborne contaminants are drawn through HEPA filters, and filtered air is discharged back into the buildings. The exhaust of all HEPA filters is monitored continuously. No atmospheric emissions containing radioactive contaminants are expected to be released.

Accident Evaluation

The EA evaluated one accident as the bounding accident: the potential quantities of licensed and nonradiological materials that might be released to the atmosphere in the unlikely event of a major fire at the NRSF facility. The regulatory analysis documented in NUREG–1140 (McGuire 1988), which assessed the accident potential for doses exceeding EPA protective action guides, was used to evaluate potential impacts. The limiting possession quantities of radionuclides specified in 10 CFR 30.72, are derived from the analyses and conclusions in NUREG–1140. Because they are derived from the analyses in NUREG–1140, these possession limits ensure that accidental releases will not exceed the EPA protective action guide 1-rem exposure to downwind individuals. The quantities of radiological materials ALARON is allowed to possess are limited by license conditions that reference Schedule C in 10 CFR 30.72.

The historical quantities of radionuclides at the NRSF have been far below the limiting quantities.

ALARON's operations with licensed material involve use of fluoroboric acid (HBF_4). In the event of an accident, the primary off-site chemical hazard would be from the gaseous boron trifluoride (BF_3) and hydrogen fluoride (HF) that could result from decomposition of the HBF_4. The evaluation of the potential impacts of this nonradiological material was based on a release to the atmosphere using the same accidental fire scenario as for the radiological materials. The results were compared to the EPA's guidance for chemical hazards under its "Risk Management Plan Rule." Because the total inventory of fluoroboric acid at NRSF is less than EPA's recommended threshold amounts, there is no potential for adverse off-site human health impacts in the event of accidents involving this acid at NRSF.

Conclusion

The NRC staff concludes that the environmental impacts associated with the proposed license renewal for continued operation of ALARON Corporation's Wampum, Pennsylvania, Northeast Regional Service Facility are expected to be insignificant.

Finding of No Significant Impact

The Commission has prepared an EA related to the renewal of Material Licenses 37–20826–01 and 37–20826–02. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The EA is being made available as NUREG/CR–5549. Copies of NUREG/CR–5549 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, PO Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (ALARON Corporation, RD#2, Box 2140A, Wampum, PA 16157); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR part 2, subpart L, "Information Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the request must address in detail, are:

1. The interest of the requestor in the proceeding;
2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 17th day of November, 1998.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Material Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32114 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corp., Wisconsin Power and Light Co., Madison Gas and Electric Co., Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Operating License DPR–43, issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee), for the Kewaunee Nuclear Power Plant located in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the reactor core power distribution peaking factor limits and reactor coolant system operating parameters related to the minimum departure from nucleate boiling ratio safety limit. These proposed changes are the result of analyses performed in support of use of new type fuel assemblies. The new fuel assemblies would be operated within these new thermal-hydraulic and power distribution limits with potential fuel assembly burnups to 59 GWD/MTU and maximum rod average burnup limited to 60 GWD/MTU. Another change included in the proposed amendment is the removal, from the current licensing basis, of the fuel pool turbine missile hazards analysis.

The proposed action is in accordance with the licensee's application for amendment dated April 15, 1998, as supplemented by letters dated July 27 and August 13, 1998, by two different letters dated September 28, 1998, and by a letter dated November 24, 1998.

The Need for the Proposed Action

The proposed action is needed in order for the licensee to have the flexibility to use fuel with increased burnup and to revise the plant safety analyses. The changes in operating parameters and limits will allow longer operating cycles and result in fewer fuel assemblies being needed.

Environmental Impacts of the Proposed Action

The staff has completed its evaluation of the proposed action and made the following findings: (1) The mechanical design of the fuel has been evaluated and found acceptable for use within the analyzed limits, (2) although the extended burnup to 60 GWD/MTU may slightly change the mix of radionuclides that might be released in the event of an accident, analyses of radiological consequences of accidents confirm that there is no significant increase in the probability or consequences of accidents, (3) no significant changes would be made in the amounts or types of any radiological effluents that may be released offsite, (4) there is no significant increase in the allowable individual or cumulative occupational radiation exposure, and (5) the probability of high trajectory turbine missiles impacting the spent fuel pool target area has been found to be so insignificant that the event need not be further considered as a design basis event.

On February 29, 1988 (53 FR 6041), the staff published "Extended Burnup Fuel Use in Commercial LWR's; Environmental Assessment and Finding of No Significant Impact." This generic environmental assessment of extended fuel burnup in light water reactors found that "no significant adverse effects will be generated by increasing the present batch-average burnup level of 33 GWD/MTU to 50 GWD/MTU or above as long as the maximum rod average burnup level of any fuel rod is no greater than 60 GWD/MTU." In addition, the environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. That assesement was published in connection with an Environmental Assessment related to the Shearon Harris Nuclear Plant, Unit 1, which was published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322). In these assessments, collectively, the staff concluded that the environmental impacts summarized in Table S–3 of 10 CFR 51.51 and in Table S–4 of 10 CFR 51.52 for a burnup level of 33 GWD/MTU are conservative and bound the corresponding impacts for burnup levels up to 60 GWD/MTU. These findings are applicable to the proposed action at Kewaunee which will limit burnup to 60 GWD/MTU.

With regard to potential non-environmental impacts, the proposed action involves components located entirely within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. The proposed action does not involve any of the historic sites located in the vicinity of Kewaunee as identified in Section II.C of the Kewaunee Final Environmental Statement. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement which was issued December 20, 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on November 19, 1998, the staff consulted with Sarah Jenkins, an official of the Public Service Commission of the State of Wisconsin, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the staff has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated April 15, 1998, as supplemented by letters dated July 27, August 13, September 28, and November 24, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, D.C., and at the local public document room located at the University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311–7001.

Dated at Rockville, Maryland, this 25th day of November 1998.

For the Nuclear Regulatory Commission.

William O. Long, Sr.

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32115 Filed 12–1–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 6, 1998, through November 19, 1998. The last biweekly notice was published on November 18, 1998 (63 FR 64106).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 4, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Duke Energy Corporation (DEC), et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 11, 1998.

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Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to correct Surveillance Requirements (SRs) 3.6.11.6 and 3.6.11.7 and the associated Bases. These SRs currently are incorrect and do not reflect the Containment Pressure Control System (CPCS) as designed. Therefore, the proposed amendments would only revise the SRs; no change to the CPCS design is involved.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no significant effect on accident probabilities or consequences.

The CPCS is not an accident initiating system; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The design of the CPCS is not being modified by this proposed amendment. The amendment merely aligns [TS] surveillance requirements with the existing design and function of the system. Therefore, there will be no impact on any accident consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators, since the CPCS is an accident mitigating system.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The CPCS is already capable of performing as designed. No safety margins will be impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 15, 1998.

Description of amendment request: The proposed amendments would revise the pressure-temperature limits in the Technical Specifications for Units 1, 2, and 3. The proposed amendments would revise the heatup, cooldown, and inservice test limitations for the reactor coolant system of each unit to a maximum of 26 effective full-power years. The proposed amendments would also revise the Technical Specification for low temperature overpressure protection to reflect the revised pressure-temperature limits of the reactor vessels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated?

NO.

Each accident analysis addressed in the Oconee UFSAR [Updated Final Safety Analysis Report] has been examined with respect to the changes to the Reactor Pressure Vessel (RPV) pressure-temperature limit curves and related Low Temperature Overpressure settings. The probability of any design basis accident (DBA) is not affected by this change, nor are the consequences of a DBA affected by this change. The revised pressure-temperature limits, which were developed based on NRC approved methodology or ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] Case N–514 as described in the Technical Justification, are not considered to be an initiator or contributor to any accident analysis addressed in the Oconee UFSAR. The added requirement to deactivate one pressurizer heater bank during low temperature operation does not significantly change the probability or consequence of any accident previously analyzed. No existing Technical Specification requirements are being deleted with this revision.

B. Create the possibility of a new or different kind of accident from the accident previously evaluated?

NO.

This license amendment revises Oconee RPV pressure-temperature limits. The revised pressure-temperature limits were developed based on NRC approved methodology or ASME Code Case N–514 as described in the Technical Justification. Operation of Oconee in accordance with these proposed new Technial Specifications will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different accident from any accident previously evaluated.

C. Involve a significant reduction in a margin of safety?

NO.

This license amendment revises Oconee RPV pressure-temperature limits. The revised pressure-temperature limits were developed based on NRC approved methodology or ASME Code Case N–514 as described in the Technical Justification. The purpose of this license amendment is to assure that sufficient operating margin to safety is maintained in the operation of the Oconee reactor pressure vessels by establishing new, more limiting pressure-temperature limit curves and adding the requirement to deactivate one pressurizer heater bank. No plant safety limits, set points, or design parameters are adversely affected. The fuel, fuel cladding, and Reactor Coolant System are not impacted. Therefore, there will be no significant reduction in any margin of safety.

Duke [Duke Energy Corporation] has concluded based on this information that there are no significant hazards considerations involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow. Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: November 11, 1998.

Description of amendment request: The proposed amendment would modify License Condition 2.C(9) to allow, on a one time only basis, an extension to the steam generator inspection interval of technical specification surveillance 4.4.5.3.b. This would allow the steam generator inspection interval to coincide with the 13th refueling outage or the end of 500 effective full power days, whichever occurs sooner.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is temporary and allows a one time extension of specific surveillance requirements for Cycle 13 to allow surveillance testing to coincide with the 13th (1R13) refueling outage. The proposed surveillance interval extension will not cause a significant reduction in system reliability nor affect the ability of a system to perform its design function. Current monitoring of plant conditions and the surveillance monitoring required during normal plant operation will be performed as usual to assure conformance with technical specification operability requirements.

The technical specification steam generator tube inspection is intended to prevent the Steam Generator Tube Rupture analyzed in [Updated Final Safety Analysis Report] UFSAR Section 14.2.4 by maintenance of the integrity of the primary to secondary coolant boundary represented by steam generator tubes. The process by which this integrity is maintained is inspection of steam generator tubes at prescribed intervals, and the removal of defective tubes from service. Inspection intervals are based on preventing corrosion growth from exceeding tube structural limits, thereby preventing tube failure. The 1997 steam generator inspection characterized existing steam generator tube degradation, and degraded tubes were removed from service at that time. Degradation growth rates were evaluated for the next operating interval and it was determined that the steam generator tube structural integrity is maintained. Degradation of steam generator tubes was prevented during the extended outage by a carefully controlled, corrosion prevention program.

The proposed change does not affect the UFSAR and is consistent with changes granted for other plants. The surveillance extension does not involve a change to plant equipment and does not affect the performance of plant equipment used to mitigate an accident. This change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extending the surveillance interval for the performance of specific inspections will not create the possibility of any new or different kind of accidents. No change is required to any system configurations, plant equipment or analyses.

Steam generator tube inspections determine tube integrity and provide reasonable assurance that a tube rupture or primary to secondary leak will not occur. Accidents involving steam generator tube rupture are analyzed in UFSAR Section 14.2.4, "Steam Generator Tube Rupture." The only type of accident that can be postulated from extending the steam generator inspection interval would be a tube leak or rupture which are analyzed in the UFSAR. No new failure modes are created by the surveillance extension. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Surveillance interval extensions will not impact any plant safety analyses since the assumptions used will remain unchanged. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since only the surveillance interval is being extended. Based on engineering judgement, extending the surveillance interval for the performance of these specific inspections does not involve a significant reduction in the margin of safety derived from the required surveillances.

The margin of safety depends upon maintenance of specific operating parameters within design limits. In the case of steam generators, that margin is maintained through assurance of tube integrity as the primary to secondary boundary. Assurance of tube integrity is provided through periodic in-service inspection of tubes and removal of defective tubes from service. Additional margin is provided through protection from possible consequences of steam generator tube failure by mitigation systems. Radiation monitors provide a detection capability of primary to secondary leakage to enable a prompt response. Maintenance of the steam generator water chemistry in accordance with [Electric Power Research Institute] EPRI guidelines provides additional margin of safety. Therefore, the plant will be maintained within the analyzed limits and the proposed extension will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for Licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 30, 1998.

Description of amendment request: The proposed change modifies the Engineered Safety Features Actuation System (ESFAS) portion of the Arkansas Nuclear One, Unit-2 (ANO–2) Plant Protection System (PPS). This modification is designed to defeat the backup power supply for the auctioneered power sources for channel A and D Reactor Protective System (RPS) and ESFAS bistables, and to provide selective logic for Emergency Feedwater Actuation Signals and Main Steam Isolation Signals. This will ensure that ESFAS will have the redundancy and independence sufficient to assure that (1) no single failure results in loss of the protection function with a channel in indefinite bypass, and (2) removal from service of any component or channel does not result in loss of the required minimum redundancy required by the ANO–2 Technical Specifications (TSs). The proposed modification to the ANO–2 PPS has been determined to involve an Unreviewed Safety Question in accordance with 10 CFR 50.59(a)(2).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The ANO–2 Plant Protection System (PPS) includes the electrical and mechanical devices and circuitry (from sensors to actuation device input terminals) involved in generating signals associated with the two protective functions, Engineered Safety Feature Actuation System (ESFAS) and Reactor Protective System (RPS). The RPS is that portion of the PPS which generates signals that actuate a reactor trip. The ESFAS is that portion of the PPS which generates signals that actuate Engineered Safety Features (ESF) to mitigate the consequences of an accident.

The ANO–2 Safety Analysis Report (SAR) section 15.1.31 "Loss Of One DC System" analyzes failure of a DC bus (FODCB) as initiator and its causes. The causes for the FODCB are DC leg to leg fault in the bus or in the power distribution circuit from the battery. Since the proposed change has no impact on the accident initiator, the frequency of occurrence is not changed. In order for the FODCB as a single failure with an accident to de-energize two [Vital Instrument Buses ([VIBs])], the FODCB would have to occur prior to the safety bus energization by offsite bus fast transfer or prior to safety bus energization by the emergency diesel generator (EDG). The potential for de-energization of one pair of VIBs is, therefore, limited to time from initiation of the accident to time for safety bus response to the secondary plant and Reactor Protective System trips.

The effects of the FODCB are being revised to assume a secondary plant trip that results in de-energization of one power division. The existing analysis conclusions remain unchanged. The accident analysis is being revised to include de-energization of a pair of vital AC instrument channels. De-energization of two vital AC sources has not been previously documented as a design bases event.

Auctioneered bistable power supplies for Plant Protection System (PPS) channels A and D are being modified to a single power source for each of these two channels. Single channel trips will result for all PPS functions in channels A or D for loss of its single channel bistable power source. The PPS channels B and C auctioneered power supplies remain unchanged to maintain Recirculation Actuation Signal (RAS) response to a FODCB.

Regarding PPS measurement channels with increasing signal setpoints, de-energization of a single power supply either results in failure of a measurement channel (B or C) to a non-tripped state or in failure of a measurement channel (A or D) to a tripped state. Neither single channel failure scenario impacts accident initiation or mitigation. For PPS measurement channels with decreasing signal setpoints the single channel de-energization events result in failure of a single affected measurement channel to a tripped state. The PPS two out of three logic design with a channel bypassed ensures operability with a single channel failure. Neither condition impacts accident frequency or consequences.

With the exception of Recirculation Actuation Signal (RAS) and Emergency Feedwater Actuation Signal (EFAS), a FODCB results in an automatic ESFAS initiation for those functions with decreasing signal setpoints. For other ESFAS functions with a decreasing signal, channels A and C or channels B and D fail to the tripped state. For those functions with an increasing signal setpoint (including EFAS), a FODCB results in a single channel failing not tripped, one channel tripping, and two channels remaining functional. System level functions remain operable with either a one out of two logic (no channels bypassed) or a one out of one logic (with a channel bypassed).

Interposing relay actuation logic has changed from single trip path to selective trip path logic. This change insures emergency feedwater (EFW) discharge valves will receive an automatic open or close demand based on steam generator level and pressure demands.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

In response to de-energization of a pair of Vital Instrument Buses (VIBs), those ESFAS functions with increasing signal setpoints, as a minimum, remain functional with one out of one logic. One channel trips, one channel does not trip, and two channels remain functional. One of the functional channels may be bypassed without impact on operability. The trip response of those ESFAS functions with decreasing signal to trip setpoints remains unchanged.

EFAS coincidence logic to close the EFW discharge valves requires three out of four channels to be in a non-tripped state. With a FODCB one channel is tripped, one channel is not tripped, and two channels are functional. The close logic becomes two out of two with a FODCB.

By defeating the auctioneered bistable power sources for PPS channel A and D bistables, PPS measurement channel A or D will fail to its tripped state. This change ensures no more than one channel (B or C) fails to a non-tripped state for the FODCB.

With selective logic EFAS pump discharge valves will receive control signals to initiate emergency feedwater and to terminate emergency feedwater flow by open and close demands generated independent of the 120 Volt channel pair de-energization.

The existing ANO–2 Failure Modes and Effects Analysis does not document failure of a pair of vital instrument AC channels. Neither the 120 Volts AC nor the 125 Volt DC system single failure analysis assumes failure of two channels of 120 Volts AC. Even though the failure of either pair of VIBs caused by a FODCB is not a result of the proposed change, the SAR change will address the potential for de-energization of a pair of instrument buses. The ANO–2 SAR will be updated to reflect the documentation and modification of the PPS design to ensure safe plant response.

Even though the plant response to FODCB is being modified, the proposed ANO–2 PPS design resolution does not create the possibility of a new or different kind of accident from any previously evaluated in the SAR. The PPS will have the redundancy and independence sufficient to assure that (1) no single failure results in loss of the protection function, and (2) removal from service of any component or channel does not result in loss of the required minimum redundancy required by the TS. PPS will also meet the single failure criterion of IEEE 279–1971 to the extent that any single failure within the system does not prevent proper protective action at the system level and no single failure will defeat more than one of the four protective channels associated with any one trip function.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

Technical Specification Bases 3/4.3.1 & 3/4.3.2 assure sufficient PPS redundancy is maintained to permit a channel to be bypassed. Under the current design, a FODCB will result in reduction of margin by decreasing the number of functional channels to less than two. However, with the proposed modification removal from service of any component or channel for indefinite bypass will not result in loss of the minimum redundancy required by the TS. This activity will restore the margin by ensuring ESFAS required functions remain capable of automatic actuation with a FODCB.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that even though the proposed PPS design description results in an accident or malfunction of a different type, the requested change does *not* involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power and Light Company, et al., Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: October 29, 1998.

Description of amendment request: The proposed amendment would revise the terminology used in the St. Lucie Plant Technical Specifications (TS) relative to the implementation and automatic removal of certain reactor protection system trip bypasses to ensure that the meaning of explicit terms used in the TS are consistent with the intent of the stated requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature, and do not change the function or the setpoints of the RPS trip bypass features. The revisions simply make corrections to the Notation of TS Tables 2.2–1 and 3.3–1 to ensure that the meaning of explicit terms used in the Notes is consistent with the intent of the stated requirements based on the St. Lucie plant design. The proposed technical specification changes do not involve accident initiators, do not change the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, and do not alter any conditions assumed in the plant accident analyses. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments are administrative in nature and will not change the physical plant or the modes of plant operation defined in the facility operating licenses. The changes do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendments are administrative in nature and do not change the function or the setpoints of the RPS trip bypass features. The revisions simply make corrections to the Notation of TS Tables 2.2–1 and 3.3–1 to ensure that the meaning of explicit terms used in the Notes is consistent with the intent of the stated requirements based on the St. Lucie plant design. The proposed changes do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. This notice is intended to replace an exigent notice of consideration of issuance of amendment for St. Lucie Unit 1, previously published as exigent TS amendments for both St. Lucie Units 1 and 2 in the **Federal Register** (63 FR 59809). The amendment request for St. Lucie Unit 2 will continue to be considered as an exigent amendment as noticed in the **Federal Register** (63 FR 59809).

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

GPU Nuclear, Inc, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: November 10, 1998.

Description of amendment request: The proposed Technical Specification (TS) change would remove the restriction on the sale or lease of property within the exclusion area and replace the restriction with a requirement to retain complete authority to determine and maintain sufficient control of all activities including the authority to exclude or remove personnel and property within the minimum exclusion distance. A TS Bases page for the proposed change is included. Also included are clarifications and administrative changes which (1) clarify TS definition 1.38 to become "Site Boundry" from the current term "Exclusion Area" to be consistent with 10 CFR 20.1003 definition for Site Boundry and the 10 CFR 100.3 definition of Exclusion Area, (2) convert the one occurrence of the use of TS definition from Exclusion Area to Site Boundry in TS 6.8.4(a)(9), and (3) revise and update the Table of Contents for Section I Definitions.'

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would operation of the facility in accordance with the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is administrative in nature and does not affect the purpose, function, performance, operability or testing of and does not make any physical or procedural changes to plant systems, structures or components. Also, all existing technical specification limiting conditions for operation and surveillance requirements are retained.

[Technical Specification Change Request] TSCR 264 does not change the size or location of the exclusion area. Since the exclusion area size and location are not being changed and no physical or procedural changes are being made to the plant, radiological consequences in the exclusion area are not affected by this TSCR.

This change addresses the existing technical specification restriction on the sale or lease of property within the "exclusion area" by ensuring that the licensee will retain at all times the complete authority to determine and maintain sufficient control of all activities through ownership, easement, contract and/or other legal instruments on property within the minimum exclusion distance including the authority to exclude or remove personnel and property within the minimum exclusion distance.

Therefore, since no physical or procedural changes are being made to existing plant systems, structures or components and since the proposed change requires the licensee to retain complete authority and sufficient control of all activities in the exclusion area, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would operation of the facility in accordance with the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The p[ro]posed change is administrative in nature and does not affect the purpose, function, performance, operability or testing of and does not make any physical or procedural changes to plant systems, structures or components. Also, all existing technical specification limiting conditions for operation and surveillance requirements are retained.

This change addresses the existing technical specification restriction on the sale or lease of property within the "exclusion area" by ensuring that the licensee will retain at all times the complete authority to determine and maintain sufficient control of all activities through ownership, easement, contract and/or other legal instruments on property within the minimum exclusion distance including the authority to exclude or remove personnel and property within the minimum exclusion distance.

Therefore, since no physical or procedural changes are being made to existing plant systems, structures or components and since the proposed change requires the licensee to retain complete authority and sufficient control of all activities in the exclusion area, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would operation of the facility in accordance with the proposed change involve a significant reduction in a margin of safefy?

The p[ro]posed change is administrative in nature and does not affect the purpose, function, performance, operability or testing of and does not make any physical or procedural changes to plant systems, structures or components. Also, all existing technical specification limiting conditions for operation and surveillance requirements are retained.

This change addresses the existing technical specification restriction on the sale or lease of property within the "exclusion area" by ensuring that the licensee will retain at all times the complete authority to determine and maintain sufficient control of all activities through ownership, easement, contract and/or other legal instruments on property within the minimum exclusion distance including the authority to exclude or remove personnel and property within the minimum exclusion distance.

Therefore, since no physical or procedural changes are being made to existing plant systems, structures or components and since the proposed change requires the licensee to retain complete authority and sufficient control of all activities in the exclusion area, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of amendment request: October 16, 1998.

Description of amendment request: The proposed amendment would make the following revisions to Technical Specifications (TSs) 3/4.7.1.1: (1) Ensure that four service water (SW) pumps are operating with the divisional cross connect valves open during Operational Condition 1, 2 and 3 (current TS requires two SW pumps associated with one loop to be operating); (2) Increase the number of division 1 and 2 heaters required to be operable from 7 per division per intake to 14 per division per intake; (3) The actions necessary for having less than the required equipment is being revised to reflect the new limits for SW equipment; and (4) SW supply header discharge water temperature is being increased from 81 to 82 °F. TS 3.7.1.2, Table 3.3.9–1, and Table 4.3.9.1–1 are revised to add "when handling irradiated fuel in the secondary containment" to the applicability section. Table 3.3.9–1 is being revised to decrease the temperature at which the Intake Deicing Heaters are required to be in service from 39 to 38 degrees F. TS 3.7.1.2 proposed change is to specify that the necessary portions of the SW system needed to support equipment required to be operable shall be operable; the Action Section proposed revision reflects this change. TS 4.7.1.2.1 surveillance requirement proposed change is to increase the flow rate of SW pumps from 6500 GPM to 9000 GPM and to change the SW pumps pressure from 80 psi discharge pressure to 70 psi differential pressure; TS 4.7.1.2.2 is being revised to decrease the intake tunnel water temperature from 39 to 38 degrees F. The surveillance for the Intake Deicing Heaters is being changed to reflect the increase in the number of heaters required. The title of "Plant Service Water System" is being changed to "Service Water System."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The SW System is a once-through system which supplies water from Lake Ontario to various essential and non-essential components, as required, during normal plant operation and shutdown conditions. The System is designed with suitable redundancy to provide a reliable source of cooling water for the removal of heat from essential plant components, including the RHR [residual heat removal] heat exchangers, the EDGs [emergency diesel generators], and room coolers for ECCS [emergency core cooling system] equipment, which are required for safe reactor shutdown following a LOCA.
>
> LCO 3.7.1.1 and LCO 3.7.1.2 each currently requires two independent SW System loops to be operable, with one of the loops in operation. The current LCOs do not provide adequate guidance regarding the minimum number of operating pumps. NMPC [Niagara Mohawk Power Corporation] proposes to revise LCO 3.7.1.1 and its associated Actions and SRs to provide assurance that four SW pumps are operable and are operating within acceptable system parameters, with the divisional cross-connect valves open, during Operational Conditions 1, 2, and 3 to meet the limiting LOCA analysis assumptions.
>
> TS Section 3/4.7.1 currently specifies a maximum SW supply header discharge water temperature of 81 degrees F and a limiting temperature for Intake Deicing Heater ystem operability (intake water) temperature of 39 degrees F. In addition, TS Table 3.3.9–1, Action 144, requires the Intake Deicing Heater System heaters to be placed in service when the Lake Ontario water temperature reaches 39 degrees F. NMPC proposes to revise Action 144 of TS Table 3.3.9–1 and TS LCO 3.7.1.1, including its associated Actions and SRs [surveillance requirements], to increase the supply header discharge water temperature to its analytical limit of 82 degrees F and reduce the limiting temperature for the Intake Deicing Heater System Action and operability requirements to 38 degrees F.
>
> Appropriate changes to LCO 3.7.1.2 and its associated Actions and SRs are also proposed in order to assure consistency with the SW System analyses assumptions during shutdown conditions. The current LCO Actions do not account for the varying flows and heat loads that may be required for various plant shutdown conditions. The revision to the Applicability for LCO 3.7.1.2 and TS Tables 3.3.9–1 and 4.3.9.1–1 will assure that the SW System is operable during periods when irradiated fuel is being handled in the secondary containment and essential loads cooled by the SW System are required to be operable (e.g., EDG). A footnote has been added to define Operational Condition * and is consistent with similar footnotes in the TSs. The proposed changes will assure that the necessary ortions of the SW System and the necessary Divisions of the Intake Deicing Heater System heaters are operable that are supporting equipment required to be operable.
>
> It is further proposed to change the system title identified in the Index and in TS Section 3/4.7.1, including the LCOs and SRs, from "Plant Service Water System" to "Service Water System" to be consistent with the NMP2 [Nine Mile Unit 2] UFSAR [Updated Final Safety Analysis Report].
>
> The changes do not involve any physical alteration of the plant, and the SW System will remain capable of providing sufficient cooling flow for the essential cooling loads during plant operation and also during plant shutdown. The changes will have no impact on the design or function of the SW System and its components, thus assuring that the characteristics and functional performance are maintained consistent with the event precursors and the conditions and assumptions of the current design basis accident and transient analyses. The changes to the LCO AOTs [allowed outage times] are either consistent with or are more conservative than the current AOTs. Based on the above, adequate assurance is provided that the probability of event initiation will remain as previously analyzed. Maintaining four pumps operating within acceptable system parameters, with the divisional cross connect valves open, during Operational Conditions 1, 2, and 3 provides assurance that the essential functions supported by the SW System are maintained. Particularly, adequate SW flow assures that the primary and secondary containments can perform their intended functions of limiting the release of radioactive materials to the environment following a LOCA. The small (1 degree F) change in the SW supply header discharge water (UHS) temperature and Intake Deicing Heater System actuation temperature maintain the current design basis for the UHS and SW Systems such that there will be no impact on the LOCA analyses assumptions or conclusions. The proposed changes to the SW System TSs do not adversely affect the capability of plant systems, structures, and components to respond to any accident in Operational Conditions 4, 5, and *. As a result, there will be no degradation of the primary or secondary containment or any other fission product barriers which could increase the radiological consequences of an accident. In addition, other essential accident mitigation equipment supported by the SW System will not be adversely impacted. It is, therefore,

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concluded that operation of NMP2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes do not result in any hardware changes or physical alteration of the plant which could introduce new equipment failure modes, and there will be no impact on the design or function of the SW System or its components. The primary and secondary containment post-LOCA responses remain within previously assessed limits of temperature and pressure. Furthermore, adequate cooling flow is assured during plant operation and also during shutdown conditions such that essential systems and components remain within their applicable design limits. It is, therefore, concluded that no requirements are eliminated or new requirements imposed which could affect equipment or plant operation such that new credible accidents are introduced. Accordingly, operation of NMP2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The changes provide assurance that the SW System will remain capable of providing sufficient cooling flow for the essential cooling loads during plant operation and also during plant shutdown such that essential systems and components remain within their applicable design limits. The changes will have no impact on the design or function of the SW System and its components, thus assuring that the characteristics and functional performance are maintained consistent with the conditions and assumptions of the current design basis accident and transient analyses. Maintaining four pumps operating within acceptable system parameters, with the divisional cross connect valves open, during Operational Conditions 1, 2, and 3 provides assurance that post-LOCA radioactive releases are maintained within 10 CFR 100 limits. The small (1 degree F) change in the SW supply header discharge water (UHS) temperature and the limiting temperature for the Intake Deicing Heater System Action and operability requirements maintains the current design basis for the UHS and SW Systems such that there will be no impact on the LOCA analyses assumptions or conclusions.

These changes will not result in a reduction in margin to the System analytical limits. Furthermore, maintaining the intake bar surface temperature at least 1 degree F above freezing provides an adequate margin to prevent the adherence of ice, and provides assurance that sufficient flow area is always heated such that the SW System will remain capable of providing adequate cooling flow in the event of a LOCA. Similarly, maintaining the required SW System flow and temperature during Operational Conditions 4, 5, and * will assure that the associated equipment is operable such that radioactive releases are maintained within 10 CFR 100 limits. It is, therefore, concluded that the changes do not eliminate any requirements, impose any new requirements, or alter any physical parameters which significantly reduce the margin to an acceptance limit or adversely affect the margins associated with the fission product barriers as established by the design basis accident and transient analyses. Accordingly, operation of NMP2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

Northeast Nuclear Energy Company (NNECO) et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 28, 1998.

Description of amendment request: The proposed amendment would change Technical Specifications 3.3.2.1, "Instrumentation—Engineered Safety Features Actuation System"; 3.4.6.2, "Reactor Coolant System—Reactor Coolant System Leakage"; 3.4.8, "Reactor Coolant System—Specific Activity"; 3.6.2.1, "Containment Systems—Depressurization and Cooling Systems Containment Spray and Cooling Systems"; 3.6.5.1, "Containment Systems—Secondary Containment Enclosure Building Filtration System"; 3.7.6.1, "Plant Systems—Control Room Emergency Ventilation System"; and 3.9.15, "Refueling Operations—Storage Pool Area Ventilation System—Fuel Storage." Information would also be added to the Bases of the associated Technical Specifications to address the proposed changes.

The proposed amendment would also revise the Operating License DPR–65 by incorporating a change to the Millstone Unit No. 2 Final Safety Analysis Report (FSAR). The change to the FSAR is associated with the revised main steamline break analyses, new determination of the radiological consequences of a main steamline break, and a revised determination of the radiological consequences of the design basis loss-of-coolant accidents (LOCAs).

The proposed changes to the main steamline break analysis, as described in the FSAR, are based on the revised Siemens Power Corporation steamline break methodology. The report describing the revised methodology was submitted by Siemens Power Corporation to the NRC for approval in a letter dated June 30, 1998. The revised methodology was used to perform the Millstone Unit No. 2 plant-specific analysis for post-scram main steamline break. This plant-specific analysis was submitted by NNECO in a letter dated August 12, 1998, which proposed to change the list of documents in the Technical Specifications that describe the analytical methods used to determine the core operating limits. The proposed changes contained in this letter assume approval of the previously submitted revised Siemens Power Corporation steamline break methodology, and the changes to the list of documents in the Millstone Unit No. 2 Technical Specifications that describe the analytical methods used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> In accordance with 10CFR50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:
>
> 1. Involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> *Analyses Changes*
>
> The main steam line break analyses and the determinations of the radiological consequences of the main steam line break and loss of coolant accident have been revised. A brief summary of the significant changes to the main steam line break analyses and the radiological consequences of the main steam line break and loss of coolant accident is presented below.
>
> 1. The limited fuel failure following a main steam line break outside containment results in an increase in the calculated radiological consequences both off-site and in the control room. To limit the consequences of a main steam line break outside containment, the

Technical Specification allowed steam generator tube leakage will be reduced to 0.035 gpm [gallons per minute] per steam generator.

2. Credit will now be taken for iodine removal from the containment atmosphere by the Containment Spray System (CSS). The use of the CSS for iodine removal has not been previously approved by the NRC.

3. The proposed increase to the allowable control room in-leakage will provide additional operational flexibility to address expected minor system degradation over time. The increase in the allowable control room in-leakage will result in an increase in the calculated dose to the Control Room Operators.

4. The addition of the dose consequences from containment sump backleakage to the Refueling Water Storage Tank (RWST) has been included in the off-site and control room loss of coolant accident (LOCA) analyses increases the consequences of previously evaluated accidents.

The containment sump backleakage into the RWST results in sump water entering the RWST when the RWST is at its minimum level. The RWST will become a radioactive source and contribute a shine dose to the surrounding areas. The increase in dose rates onsite will not prevent operators from remaining in the control room or from accessing equipment needed to mitigate the accident.

All piping and valves associated with RWST backleakage are located in a harsh radiation area. Backflow from the sump might increase dose rates in the area where these components are located. Additional dose contributions, where they occur, do not adversely impact the environmental qualification of the vital equipment located there. All vital equipment would continue to perform its safety function.

5. Credit will be taken in the main steam line break analyses for the recently installed cavitating venturis in the Auxiliary Feedwater System. However, this will not change the amount of fuel failure. Therefore, credit for this equipment will not impact the radiological consequences of a main steam line break.

6. Credit will be taken for the Reactor Coolant System (RCS) low flow reactor trip for the pre-scram inside containment main steam line break analysis. This equipment will be qualified for the expected containment environment following a main steam line break inside containment and will be added to the Environmental Qualification Master List.

7. Millstone Unit No. 1 design basis accidents, loss of coolant and main steam line break, will no longer be evaluated for impact on Millstone Unit No. 2 control room habitability. This credits the decision to decommission Millstone Unit No. 1. [Footnote—B.D. Kenyon letter to the NRC, "Millstone Nuclear Power Station, Unit No. 1 Certification of Permanent Cessation of Power Operations and that Fuel Has Been Permanently Removed from the Reactor," dated July 21, 1998.]

The revised main steam line break analyses and the revised determinations of the radiological consequences of the main steam line break and design basis LOCA analyses take credit for equipment not previously assumed in the analyses, and for plant or equipment operating restrictions not currently contained in the Technical Specifications. The changes to the analyses will not adversely affect the probability of an accident previously evaluated, but the revised analyses results do indicate that the consequences of an accident previously evaluated will increase. Specifically, the following changes cause an increase in the consequences of an accident previously evaluated.

1. The increase in allowable control room in-leakage from 100 SCFM [standard cubic feet per minute] to 130 SCFM when the Control Room Emergency Ventilation System is operating in the recirculation/filtration mode.

The dose to the Control Room Operators from a Millstone Unit No. 2 LOCA increased from 9.25 to 25.8 rem to the thyroid and from 0.205 to 2.29 rem to the skin. The dose to the whole body decreased. (Both low wind speed and high wind speed release conditions were analyzed. The low wind speed condition bounds the high wind speed condition.) The dose to the Control Room Operators from a Millstone Unit No. 3 LOCA increased from 2.67 to 14 rem to the skin and from 0.209 to 1.484 rem to the whole body. The dose to the thyroid decreased. The doses to the Control Room Operators from either a Millstone Unit No. 2 or Unit No. 3 LOCA remain below the GDC [General Design Criterion] 19 criteria of 30 rem thyroid, 5 rem whole body and 30 rem to the skin.

The new calculated doses to the Millstone Unit No. 2 Control Room Operators from a main steam line break outside containment are 29 rem thyroid, 0.03 rem whole body and 0.5 rem skin. The doses to the Millstone Unit No. 2 Control Room Operators are below the GDC 19 criteria of 30 rem thyroid, 5 rem whole body, and 30 rem to the skin. (Note: The dose to the Control Room Operators from a main steam line break was not previously evaluated because fuel failure was not predicted to occur.)

2. The limited fuel failure that is predicted in the revised main steam line break analyses.

Previously, the radiological consequences of a main steam line break were not determined and were not presented in the FSAR because fuel failure was not predicted to occur. Because of the predicted limited fuel failure for the main steam line break outside of containment, the radiological consequences were analyzed. The results to the Exclusion Area Boundary (EAB) are 4.8 rem thyroid and 0.06 rem whole body. The results to the Low Population Zone (LPZ) are 2.3 rem thyroid and 0.02 rem whole body. To meet the dose acceptance criteria to the Millstone Unit No. 2 Control Room Operators, the maximum allowable Technical Specification primary to secondary leak rate is being reduced to 0.035 gpm per steam generator. The results to the Millstone Unit No. 2 Control Room Operators are 29 rem thyroid, 0.03 rem whole body and 0.5 rem skin. The main steam line break outside containment is the limiting accident for the Millstone Unit No. 2 Control Room Operators. However, the dose consequences of a main steam line break are less than the 10CFR100 limits off-site of 300 rem thyroid and 25 rem whole body, and the doses to the Millstone Unit No. 2 Control Room Operators are below the GDC 19 criteria of 30 rem thyroid, 5 rem whole body, and 30 rem to the skin.

3. Taking credit for the low RCS flow reactor trip for the pre-scram inside containment main steam line break analysis.

Previous analyses did not credit the low RCS flow reactor trip in a harsh environment. This credits the low flow trip in a manner not previously reviewed by the NRC for Millstone Unit No. 2. Without credit for this reactor trip, the predicted fuel failure for steam line breaks inside containment would be higher.

4. Taking credit for the removal of radioactive iodine from the containment atmosphere by containment spray.

Previous analyses did not rely on the spray function to reduce iodine concentration in the post-accident atmosphere inside containment. This adds a mitigation function to the CSS that has not been previously reviewed by the NRC for Millstone Unit No. 2. Without credit for the removal of iodine, the predicted dose consequences following a LOCA would be higher.

5. The addition of sump backleakage to the RWST during a LOCA.

The resultant dose contribution to the LPZ from RWST backleakage is 1.487 rem thyroid and 0.11 rem whole body. The total dose to the LPZ from a design basis LOCA is 21.86 rem thyroid and 0.941 rem whole body. The dose is well below the 10CFR100 limits of 300 rem thyroid and 25 rem whole body. The dose to the EAB was not affected because leakage into the RWST does not start until 25.45 hours post-LOCA and the EAB is a 2-hour dose.

The resultant dose contribution to the Millstone Unit No. 2 Control Room Operators from RWST backleakage is 3.75 rem thyroid, 0.017 rem whole body and 0.296 to the skin. The total dose to the Millstone Unit No. 2 Control Room Operators from the LOCA is 25.8 rem thyroid, 0.718 rem whole body and 2.29 rem to the skin. These doses are below the GDC 19 limits of 30 rem thyroid and skin, and 5 rem whole body.

The analyses results meet the guidance contained in SRP [Standard Review Plan] 15.1.5, SRP 15.6.5, and the limits of 10CFR100 and GDC 19. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification Changes

Technical Specification Non-Technical Changes

The minor editorial and non-technical changes to correct spelling (Technical Specification 3.3.2.1), modify the title of a table column (Technical Specification 3.4.8), clarify the type of measurement performed (Technical Specification 3.4.8), and establish consistent terminology (Technical Specification 3.7.6.1) will not result in any technical changes to the Millstone Unit No. 2 Technical Specifications. The proposed changes will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.4.6.2

The reduction in the maximum allowable value of primary to secondary leakage per steam generator is consistent with the new radiological assessment of the potential control room operator exposure following a main steam line break outside of containment. The wording change to SR [Surveillance Requirement] 4.4.6.2.1 will clarify that the water inventory balance is used to verify compliance with the identified and unidentified leakage limits. Pressure boundary leakage would first show up as unidentified leakage during performance of SR 4.4.6.2.1. Further investigation, (plant walkdown) would be necessary to classify the unidentified leakage as pressure boundary leakage. This is consistent with established plant practices to detect pressure boundary leakage.

The addition of the new SR 4.4.6.2.2 will address the primary to secondary leakage limit. The new SR will include an exception to Technical Specification 4.0.4 that will allow the determination of primary to secondary leakage to be deferred until after Mode 4 is entered. Even though verification of compliance with the primary to secondary limit will not be done prior to entering Mode 4, the limit is still expected to be met.

The proposed changes will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.4.8

The addition of the words "of gross specific activity" to the Limiting Condition for Operation (LCO), Action Statements, and SR will clarify what the E-Bar limit applies to. This is consistent with the Technical Specification Definition (1.20) for E-Bar.

The addition of a footnote (*) to state the power history requirements for the determination of E-Bar will ensure that the necessary plant conditions are established prior to performing the analysis. This will not affect the E-Bar LCO limit or the requirement to perform the analysis. The proposed change is consistent with NUREG—0212 and NUREG—1432.

The footnote will also specify that the provisions of Specification 4.0.4 are not applicable. This will allow entry into Mode 1, without determining the value of E-Bar, assuming that the power history requirements will not be met until after Mode 1 is entered. This will normally only apply following an extended shutdown.

The Isotopic Analysis for Iodine (including I–131, I–133, and I–135) sample requirement will be expanded to include the LCO requirement for 100/E-Bar. This is consistent with the requirements of Action Statement d. This change will expand the sampling requirement for iodine. Minor wording changes will also be made to be consistent with the proposed changes to the LCO wording.

The proposed changes will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.6.2.1

The revised radiological assessment calculation for the design basis accident credits iodine removal from the containment atmosphere by the CSS. This will require a reduction in the allowed outage time (AOT) of one containment spray train from seven days to seventy two hours. This AOT is consistent with NUREG–0212 and NUREG–1432. This will help ensure that plant equipment assumed in the safety analyses will be available. This is a more restrictive change which will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.6.5.1

The value for the pressure drop across the combined HEPA (high-efficiency particulate air) filters and charcoal adsorber banks specified in SR 4.6.5.1.d.1 will be changed from a generic value (less than or equal to) 6 inches water gauge) to a plant specific value (less than or equal to) 2.6 inches water gauge). This is a more restrictive change which will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.7.6.1

The value for the pressure drop across the combined HEPA filters and charcoal adsorber banks specified in SR 4.7.6.1.e.1 will be changed from a generic value (less than or equal to) 6 inches water gauge) to a plant specific value (less than or equal to) 3.4 inches water gauge). This is a more restrictive change which will have no adverse effect on plant operation.

SR 4.7.6.1.e.2 will be expanded to clarify that the test of the capability of the Control Room Emergency Ventilation Trains to switch to the recirculation mode is performed with the trains initially operating in the normal mode and the smoke purge mode of operation. This will not affect the requirement that the trains be capable of switching to the recirculation mode.

The value of allowable control room air in-leakage specified in SR 4.7.6.1.e.3 will be increased from 100 SCFM to 130 SCFM. This is consistent with the recently revised control room radiological analysis for the design basis accidents.

The proposed increase will provide additional operational flexibility to address expected minor system degradation over time. This increase is supported by the new analysis.

The proposed changes will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.9.15

The value for the pressure drop across the combined HEPA filters and charcoal adsorber banks specified in SR 4.9.15.d.1 will be changed from a generic value (less than or equal to) 6 inches water gauge) to a plant specific value (less than or equal to) 2.6 inches water gauge). This is a more restrictive change which will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes have no adverse effect on how any of the associated systems or components function to prevent or mitigate the consequences of design basis accidents. Also, the proposed changes have no adverse effect on any design basis accident previously evaluated since the changes are consistent with the revised analyses, and the appropriate acceptance criteria are met for the revised analyses. Therefore, the license amendment request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes.

Also, the response of the plant and the operators following these accidents is unaffected by the change. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Analyses Changes

The acceptance criteria for a main steam line break in the SRP 15.1.5 does not exclude the prediction of fuel failure. Instead, the SRP requires that "Any fuel damage calculated to occur must be of sufficiently limited extent that the core will remain in place and intact with no loss of core cooling." The limited fuel failure that is now predicted in the revised main steam line break analyses meets this acceptance criterion. In addition, the RCS low flow reactor trip that is now being credited to function in a harsh environment to limit fuel failure is already required to be operable by Technical Specifications.

The revised dose consequences for the design basis accidents assumes a control room in-leakage of 130 SCFM. In addition, iodine removal by the CSS, which is already required to be operable by Technical Specifications, is assumed. The acceptance criteria for the dose consequences of the design basis accidents to the EAB, LPZ and the control room personnel is met in the revised analyses. Therefore, the revisions to the dose consequence analyses for the design basis accidents do not involve a significant reduction in the margin of safety.

> Technical Specification Changes
>
> The proposed changes will correct spelling and terminology errors, reduce the maximum allowable primary to secondary leakage, add a new surveillance requirement, modify surveillance requirements for RCS specific activity, reduce the allowed outage time for a containment spray train, reduce the allowed pressure drop across the control room and enclosure building HEPA [high-efficiency particulate air] filters, and increase the control room maximum allowed in-leakage. These changes will have no adverse effect on equipment important to safety. The equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction of the margin of safety as defined in the Bases for the Technical Specifications affected by these proposed changes.
>
> The only adverse impact of the proposed changes is that the dose consequences following an accident may increase. However, the revised analyses show that the acceptance criteria for the accident analyses are met. Therefore, based on the responses above, the proposed changes are deemed safe.
>
> The NRC has provided guidance concerning the application of standards in 10CFR50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are considered not likely to involve an SHC. The minor editorial and non-technical changes proposed herein to correct reference, spelling, and terminology errors are enveloped by example (i), a purely administrative change to Technical Specifications. The changes proposed herein to add a new surveillance requirement to verify primary to secondary leakage and to reduce the allowable pressure drop across various ventilation filters are enveloped by example (ii), a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. All of the other changes proposed herein are not enveloped by any specific example.
>
> As described above, this License Amendment Request does not impact the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: October 22, 1998.

Description of amendment request: The licensee is proposing to change Technical Specifications 3.3.2.1, "Instrumentation—Engineered Safety Feature Actuation System Instrumentation"; 3.4.9.3, "Reactor Coolant System [RCS]—Overpressure Protection Systems"; and 3.5.3, "Emergency Core Cooling Systems—ECCS Subsystems—Tavg < 300 [degrees] F." The proposed changes will allow Millstone Unit No. 2 to prevent an automatic start of any high-pressure safety injection (HPSI) pump when the shutdown cooling system (SDCS) is in operation (Mode 4 and below). An inadvertent start of an HPSI pump could result in overpressurization of the SDCS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> In accordance with 10CFR50.92, Northeast Nuclear Energy Company (NNECO) has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:
>
> 1. Involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The proposed changes to Technical Specifications 3.3.2.1 and 3.5.3 will no longer require the HPSI pump, required to be operable in Mode 4, to start automatically on a Safety Injection Actuation Signal (SIAS). (The automatic SIASs on low pressurizer pressure and high containment pressure are not required to be operable in Mode 4. However, the manual safety injection pushbuttons are required in Mode 4). This will allow the operable HPSI pump control switch to be placed in the pull-to-lock position without affecting the operability of that pump. All HPSI pumps will be prevented from automatically starting when the plant is in Mode 4, and the Shutdown Cooling System (SDCS) is aligned to the RCS to prevent an inadvertent start of a[n] HPSI pump which could overpressurize the SDCS. These changes will not reduce the requirement for at least one HPSI pump to be operable in Mode 4. The changes will require an additional operator action to remove the operable HPSI pump breaker control switch from the pull-to-lock position, in addition to initiating safety injection by use of the manual pushbuttons, if Safety Injection System actuation is needed in Mode 4. The requirement to manually initiate a[n] HPSI pump, in addition to manually initiating a[n] SIAS, does not involve complicated equipment manipulations nor require extensive time for performing the required operator actions. The HPSI pump control switches are located in the Control Room on the same panels as the manual SIAS pushbuttons. The additional step required to start a[n] HPSI pump will not add any appreciable time for initiating HPSI flow while in Mode 4. In addition, considering the lower probability of a significant loss of coolant accident in Mode 4, and the slower plant response to a loss of coolant accident in Mode 4, the time required for the additional operator action will have no significant effect on the consequences of the accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.
>
> The proposed change to Technical Specification 3.4.9.3, Surveillance Requirement (SR) 4.4.9.3.3, will allow the use of the new pull-to-lock feature of the HPSI pump control switches to satisfy low temperature overpressure protection mass input requirements. This will not affect either the LTOP [low-temperature overpressure protection] HPSI pump mass input restrictions or the level of control to ensure the HPSI pumps are not capable of injecting into the RCS. The proposed changes will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.
>
> The proposed minor editorial and non-technical changes to add amendment numbers to Page 3/4 3–12 and to revise the wording of SRs 4.4.9.3.2 and 4.4.9.3.3 will not result in any technical changes to the Millstone Unit No. 2 Technical Specifications. The proposed changes will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.
>
> The proposed changes to the Bases reflect the proposed changes to the applicable Technical Specifications. The proposed changes will have no adverse effect on plant operation. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.
>
> 2. Create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> The proposed changes will allow the use of the HPSI pump breaker control switch

pull-to-lock feature. Operation of the HPSI pump in Mode 4 will change since the operator will have to start the HPSI pump, in addition to manually initiating safety injection. However, HPSI pump operation is not an accident initiator. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes will no longer require the HPSI pump, required to be operable in Mode 4, to start automatically on a[n] SIAS, will allow the use of the new pull-to-lock feature of the HPSI pump control switches to satisfy low temperature overpressure protection mass input requirements, and will make minor editorial and non-technical changes. These changes will have no adverse effect on equipment important to safety. The equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in the margin of safety as defined in the Bases for the Technical Specifications affected by these proposed changes.

The only adverse impact of the proposed changes is that an additional operator action will be necessary to initiate HPSI flow in Mode 4, if needed. However, considering the lower probability of a significant loss of coolant accident in Mode 4, and the slower plant response to a loss of coolant accident in Mode 4, the time required for the additional operator action will have no significant effect on the consequences of the accident. Therefore, based on the responses above, the proposed changes are deemed safe.

The NRC has provided guidance concerning the application of standards in 10CFR50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are considered not likely to involve an SHC. The minor editorial and non-technical changes proposed herein to add page amendment numbers and clarify wording are enveloped by example (i), a purely administrative change to Technical Specifications. All of the other changes proposed herein are not enveloped by any specific example.

As described above, this License Amendment Request does not impact the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 30, 1998.

Description of amendment request: Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications (TS) Surveillance Requirements 4.8.4.3.b.1, 4.8.4.3.b.2, and 4.8.4.3.b.3 list the Overvoltage (OV), Undervoltage (UV), and Underfrequency (UF) values for the protective instrumentation for the RPS electric power monitoring channels. The proposed changes correct a discrepancy between the General Electric Nuclear Engineering (GENE) Design Specification for Power Supply Monitoring Relays and the existing TS Allowable Values (AVs). The changes will revise the OV, US, and UF values from 132VAC, 109VAC, and 57Hz to 127.6VAC, 110.7VAC, and 57.05Hz respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Tech Spec changes to section 4.8.4.3.b for the Overvoltage (OV), Undervoltage (UV), and Underfrequency (UF) relays are more conservative than the existing TS values. This change provides more protection for the associated RPS components, thus decreasing the probability of a failure in RPS. The associated Non-Conformance Report and calculation provide assurance that the OV/UV/UF settings are acceptable since the calculated values assure that the RPS components will operate within their ratings. There are no physical changes to the associated protective relays by the TS change; thus, original design basis redundancy and separation is maintained. There is no change in the interface of the RPS and its power supplies.

The safety function of the RPS is to initiate a reactor scram in order to protect the primary fission products barrier, the reactor fuel. The proposed TS Change to impose more conservative Allowable Values for the OV, UV, and UF relays will provide additional assurance that the RPS will operate within equipment voltage and frequency ratings, and will not be damaged by power system anomalies. This change will not affect the scram function of RPS; thus, the consequences of any design basis events will not be affected.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS Allowable Values changes will not result in any physical changes to the RPS Electric Power Monitoring System. Existing setpoints will not be changed, only the TS Allowable Values are being modified to be more conservative.

The system redundancy and independence are not changed, and no new failure modes are introduced.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Currently, there are no TS bases for the existing RPS Electric Power Monitoring System OV, UV, and UF allowable values. Specific analytical limits for system voltage and frequency are not defined in the Safety Analysis Report, nor discussed in any design basis Allowed Outage Time or accident evaluation.

Investigation into the licensing basis has identified nominal values of +/ −10% of 120 VAC and −5% of 60 HZ for the Allowable Values. These values are included in NUREG 0123, from which LGS's TSs were developed. NUREG 0123 also provides no bases for these values.

The proposed changes in the TS Allowable Values is based on a revision to the calculation for RPS Breaker Panel—RPS / UPS [uninterruptible power supply] System Bus Relay Settings. This revision determines the new allowable values based on the design ratings of RPS components, and factors in instrument inaccuracies and margin. These changes will also provide bases for the associated TS section. The proposed changes bring TSs into agreement with plant design specifications.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: Robert A. Capra.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 22, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.8.2.1.b.3 to increase the minimum battery electrolyte temperature limit from 60°F to 72°F. This change resolves a discrepancy in the electrolyte temperature assumed in the Class 1-E battery sizing calculations versus the limit specified in the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The Class-1E batteries will continue to function as designed. The Class-1E battery system is designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. The proposed TS surveillance testing and monitoring requirements will continue to ensure that the Class-1E batteries are capable of performing their required safety functions. In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the manner i[n] which the Class-1E battery system is operated is not affected by these proposed changes. The proposed changes merely establish TS surveillance acceptance criteria that more appropriately reflect the actual plant design. Therefore, the proposed TS changes would not result in an increase of the consequences of an accident previously evaluated.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of plant systems, structures or components. The design and operation of the Class-1E battery system is not changed from that currently described in the [Updated Final Safety Analysis Report] UFSAR, only the allocation of battery capacity design margin is affected by the increased TS minimum battery electrolyte temperature limit. The Class-1E battery system will continue to function as designed to mitigate the consequences of an accident. Implementing new TS surveillance acceptance criteria that more appropriately reflect the actual plant design does not permit plant operation in a configuration that would create a different type of malfunction to the Class-1E batteries than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in the UFSAR regarding the safety related functions of the Class-1E batteries or their support systems.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change involves the implementation of new TS surveillance acceptance criteria that more appropriately reflect the actual plant design. The new TS minimum battery electrolyte temperature limit enables the Class-1E battery capacity margin to be allocated in a manner which conforms to Hope Creek's current licensing basis. The ability of the Class-1E batteries to independently supply their required loads for four hours without support from battery chargers is not affected by these proposed changes. The safety-related Class-1E support systems will ensure that the proposed TS minimum electrolyte temperature limit is met.

Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: October 15, 1998, as supplemented by letter dated November 11, 1998.

Description of amendment request: The proposed amendments would change the Vogtle Electric Generating Plant, Unit 1 and Unit 2 Facility Operating Licenses to delete or modify certain license conditions, which have become obsolete or inappropriate. In addition, the Technical Specifications would be reconstituted to reflect revised word processing. No change in technical requirements would be involved; however, the font would be changed to Arial 11 point; page numbers would be revised to a limiting condition for operation specific numbering scheme; and intentional blank pages would be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes either remove or modify provisions in the VEGP [Vogtle Electric Generating Plant] Unit 1 and [Unit] 2 Operating Licenses that have been completed or are otherwise obsolete. Each proposed change is summarized below:

Certain Surveillance Requirements (SRs) that were either added or modified at the time of Improved Technical Specifications (ITS) implementation were listed in the Operating Licenses with a schedule for performance. With the exception of Unit 2 SR 3.8.1.20, all SRs are deleted from the Operating Licenses, because they have since been performed according to schedule, and will henceforth be performed in accordance with the Technical Specifications.

A condition concerning changes to the Unit 1 initial test program is deleted due to the completion of the program.

A condition related to FEMA [Federal Emergency Management Agency] procedures and the emergency plan is deleted from the Unit 1 license due to the obsolescence of the condition.

Conditions requiring the submission of Unit 1 reports concerning the steam generator tube rupture analysis, the reactor vessel level instrumentation system, the safety parameter display system, the detailed control room design review, and the zinc coating of the diesel fuel storage tanks are deleted due to completion of the required activities.

A condition requiring modification of the Unit 1 ventilation exhaust of the alternate radwaste facility is deleted due to completion of the required activity.

An exemption related to the seismic adequacy of the Unit 1 spent fuel racks is deleted because the required actions are completed and the exemption has been determined to be no longer in effect.

A condition in both the Unit 1 and Unit 2 licenses containing reporting requirements for other license conditions is revised due to ambiguities between the requirements in the license condition and those published in NRC regulations.

A schedular exemption for the Unit 2 decommissioning funding report is deleted

> because the report was submitted as required and the exemption is no longer in effect.
>
> The Technical Specifications and associated Bases have been converted from WordPerfect® for DOS version 5.1 to Microsoft® Word 97. There were no changes to technical requirements. The only visible changes to the document are as follows: (1) the font was changed to Arial 11 point; [(2)] page numbers were revised to an LCO [limiting condition for operation] specific numbering scheme; and [(3)] intentionally blank pages were deleted.
>
> The proposed changes discussed above are strictly administrative/editorial and do not affect the operation or function of any plant system, component, or structure. Therefore, the proposed changes do not increase the probability of occurrence or the consequences of a previously evaluated accident.
>
> 2. The proposed changes do not create the possibility of a new and different type of accident from any previously evaluated.
>
> The proposed administrative/editorial changes do not alter the operation of any plant system or equipment and do not introduce a new mode of operation. Each requirement contained in the license conditions proposed for deletion has either been completed or is obsolete. Since these parts of the license are no longer applicable, deletion of these items does not provide the potential for an accident to be created. The conversion of the Technical Specifications from one word processing format to another did not involve any changes to technical requirements. Thus, the proposed changes cannot create a new accident initiating mechanism, and do not create the possibility of a new and different type of accident from any previously evaluated.
>
> 3. The proposed changes do not involve a significant reduction in the margin of safety.
>
> The license conditions proposed for deletion are obsolete and each requirement has been completed. The conversion of the Technical Specifications from one word processing format to another did not involve any changes to technical requirements. Since the proposed changes are strictly administrative/editorial and do not involve any physical or procedural changes to the plant, the margin of safety, as defined in the bases for any Technical Specification is not affected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Project Director: Herbert N. Berkow.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 16, 1996 (TS 98–06).

Brief description of amendments: The proposed amendments would change the Sequoyah Nuclear Plant Technical Specifications (TSs) by revising the emergency diesel generator (EDG) surveillance requirements (SRs) to add a note that allows the SR to be performed in Modes 1, 2, 3 or 4, if the associated components are already out-of-service for testing or maintenance and to remove the SR that verifies certain lockout features prevent EDG starting.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> TVA has concluded that operation of SQN Units 1 and 2, in accordance with the proposed change to the TSs, does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).
>
> A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> The probability of occurrence or the consequences for an accident or malfunction of equipment is not increased by this request. The proposal does not alter the way any structure, system or component functions, does not modify the manner in which the plant is operated, and does not alter equipment out-of-service time. This request does not degrade the ability of the D/G [emergency diesel generator] or equipment downstream of the load sequencers to perform their intended function. Deleting the surveillance of a nonsafety-related equipment protection function from TS likewise does not change the probability or consequences of analyzed accident scenarios. Dose consequences remain unchanged by this request.
>
> B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> A possibility for an accident or malfunction of a different type than any evaluated previously in SQN's FSAR [Final Safety Analysis Report] is not created; nor is the possibility for an accident or malfunction of a different type. The proposal does not alter the way any structure, system or component functions and does not modify the manner in which the plant is operated.
>
> C. The proposed amendment does not involve a significant reduction in a margin of safety.
>
> The margin of safety has not been reduced since the test methodologies are not being changed and LCO [Limiting Condition for Operation] allowed outage times are not being changed. Deleting the surveillance of a nonsafety-related equipment protection function from TS likewise does not reduce the margin of safety. The results of accident analysis remain unchanged by this request.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: October 27, 1998.

Description of amendment request: The proposed amendment would modify the existing Minimum Critical Power Ratio (MCPR) Safety Limit contained in Technical Specification 2.1.1.2. The change would apply additional conservatism by modifying the MCPR Safety Limit values, as calculated by General Electric, by maintaining the limit of 1.09 for two recirculation loop operation and by increasing the limit from 1.10 to 1.11 for single loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

> 1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> There is no change to any plant equipment. Per USAR Section 4.2.1, the fuel system design bases are provided in General Electric Standard Application for Reactor Fuel (GESTAR II). The Minimum Critical Power Ratio (MCPR) Safety Limit protects the fuel in accordance with the design basis. The MCPR Safety Limit calculations limit the bundle power to ensure the critical power ratio remains unchanged. Therefore, there is not an increase in the probability of transition boiling. The basis of the MCPR Safety Limit calculation remains the same.

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ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. Therefore, there is no increase in the probability of the occurrence of a previously analyzed accident.

The fundamental sequences of accidents and transients have not been altered. The MCPR Operating Limits are selected such that potentially limiting plant transients and accidents prevent the MCPR from decreasing below the MCPR Safety Limit anytime during the transient. Therefore, there is no impact on any of the limiting USAR Appendix 15B transients. The radiological consequences are the same as previously stated in the USAR, and as approved in the NRC Safety Evaluation for GESTAR II. Therefore, the consequences of an accident do not increase over previous evaluations in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit values are designed to ensure that fuel damage from transition boiling does not occur in at least 99.9% of the fuel rods in the core as a result of the limiting postulated accident. The values are calculated in accordance with GESTAR II and the fuel vendor's interim implementing procedures, which incorporate cycle-specific parameters.

The GESTAR II analysis has been accepted by the NRC as comprehensive for ensuring that fuel designs will perform within acceptable bounds. The MCPR Safety Limit ensures that the fuel is protected in accordance with the design basis. The function, location, operation, and handling of the fuel remain unchanged. In addition, the initiating sequence of events has not changed. Therefore, no new or different kind of accident is created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The MCPR Safety Limit values do not alter the design or function of any plant system, including the fuel. The new MCPR Safety Limit values were calculated using NRC-approved methods described in GESTAR II and the fuel vendor's interim implementing procedures, which incorporate cycle-specific parameters. The MCPR Safety Limit values are consistent with GESTAR II, the NRC Safety Evaluation of GESTAR II, the NRC Safety Evaluation Report for the Perry Nuclear Power Plant and its Supplements for USAR Sections 4.4.1 and 15.0.3.3.1, and the Technical Specification Bases (Section 2.1.1.2) for the MCPR Safety Limit. This change incorporates a cycle-specific MCPR Safety Limit, as opposed to relying on the generic limit. Therefore, the implementation of the proposed change to the MCPR Safety Limit does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Stuart A. Richards.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: October 27, 1998 (supersedes the April 12, 1996, amendment request). This notice supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that was published on May 8, 1996 (61 FR 20858).

Description of amendment request: The proposed amendment application would change the technical specifications (TS) for the reactor coolant system and associated Bases to allow the installation of electrosleeves in the Callaway steam generators for two fuel cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The electrosleeve configuration has been designed and analyzed in accordance with the requirements of the ASME [American Society of Mechanical Engineers] Code. The applied stresses and fatigue usage for the sleeve are bounded by the limits established in the ASME Code. ASME Code minimum material property values are used for the structural and plugging limit analysis. Mechanical testing has shown that the structural strength of nickel electrosleeves under normal, upset and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (3 times normal operating pressure differential) burst margin recommended by RG [Regulatory Guide] 1.121. Leakage testing for ⅝″, ⅞″, 11⁄16″ and ¾″ tube sleeves has demonstrated that no unacceptable levels of primary to secondary leakage are expected during any plant condition.

The sleeve nominal wall thickness (used for developing the depth-based plugging limit for the sleeve) is determined using the guidance of Regulatory Guide 1.121 and the pressure stress equation of Section III of the ASME Code. The limiting requirement of Regulatory Guide 1.121, which applies to part throughwall degradation, is that the minimum acceptable wall must maintain a factor of safety of three against tube failure under normal operating (design) conditions. A bounding set of design and transient loading input conditions was used for the minimum wall thickness evaluation in the generic evaluation. Evaluation of the minimum acceptable wall thickness for normal, upset and postulated accident condition loading per the ASME Code indicates these conditions are bounded by the design condition requirement minimum wall thickness.

A bounding tube wall degradation growth rate per cycle and a NDE [Non-Destructive Examination] uncertainty has been assumed for determining the sleeve TS plugging limit. The sleeve wall degradation extent is determined by NDE. The degradation which would require plugging sleeved tubes is developed using the guidance of RG 1.121 and is defined in BAW–10219P, to be 20% throughwall for any service induced degradation.

The consequences of failure of the sleeve are bounded by the current steam generator tube rupture analysis included in the Callaway FSAR [Final Safety Analysis Report]. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis (depending on the break location), and therefore, would result in lower total primary fluid mass release to the secondary system.

A risk assessment for installation of Electrosleeves at Callaway Plant was performed for a two-cycle operating period. The results of this evaluation determined that sufficient margins against postulated tube rupture during bounding accident conditions exist for all types of degradation of the Electrosleeve material. The calculated probability of burst for a hypothetical population of 10,000 axial flaws, 100% throughwall of the parent tube and 0.40″ long, is 4.4×10–11 at the end of the second operating cycle. The probability of burst for postulated circumferential flaws and pits is determined to be essentially zero.

The proposed change does not adversely impact any other previously evaluated design basis accident or the results of LOCA [Loss of Coolant Accident] and non-LOCA accident analyses for the current technical specification minimum reactor coolant system flow rate. The results of the analyses and testing demonstrate that the electrosleeve is an acceptable means of maintaining tube integrity. Furthermore, per Regulatory Guide 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present NDE techniques. These measures demonstrate that installation of sleeves spanning degraded areas of the tube will restore the tube to a condition consistent with its original design basis.

Conformance of the electrosleeve design with the applicable sections of the ASME Code and results of the leakage and mechanical tests, support the conclusion that installation of electrosleeves will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Electrosleeving does not represent a potential to adversely affect any plant component. Stress and fatigue analysis of the repair has shown that the ASME Code and Regulatory Guide 1.121 criteria are not exceeded. Implementation of electrosleeving maintains overall tube bundle structural and leakage integrity at a level consistent to that of the originally supplied tubing during all plant conditions. Leak and mechanical testing of electrosleeves support the conclusions of the calculations that each sleeve retains both structural and leakage integrity during all conditions. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis.

Implementation of sleeving will reduce the potential for primary to secondary leakage during a postulated steam line break while not significantly impacting available primary coolant flow area in the event of a LOCA. By effectively isolating degraded areas of the tube through repair, the potential for steam line break leakage is reduced. These degraded intersections now are returned to a condition consistent with the Design Basis. While the installation of a sleeve reduces primary coolant flow, the reduction is far below that caused by plugging. Therefore, far greater primary coolant flow area is maintained through sleeving versus plugging.

3. The proposed change does not involve a significant reduction in a margin of safety.

The electrosleeve repair of degraded steam generator tubes has been shown by analysis to restore the integrity of the tube bundle consistent with its original design basis condition, i.e., tube/sleeve operational and faulted condition stresses are bounded by the ASME Code requirements and the repaired tubes are leaktight. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Code used in steam generator design. The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83. The portion of the tube bridged by the sleeve is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary. The areas of the sleeved tube assembly which require inspection are defined in BAW–10219P.

In addition, since the installed sleeve represents a portion of the pressure boundary, a baseline inspection of these areas is required prior to operation with sleeves installed. The effect of sleeving on the design transients and accident analyses has been reviewed based on the installation of sleeves up to the level of steam generator tube plugging coincident with the minimum reactor flow rate and the Callaway Safety Analysis.

Provisional requirements cited in other NRC Safety Evaluation Reports addressing the implementation of sleeving have required the reduction of the individual steam generator normal operation primary to secondary leakage limit from 500 to 150 gpd [gallons per day]. Consistent with these evaluations, Union Electric will reduce the per steam generator leak rate of 500 gpd in TS 3.4.6.2.c to 150 gpd. The establishment of this leakage limit at 150 gpd provides additional safety margin. [The staff notes that this leakage limit has been incorporated into the Callaway Technical Specifications via license amendment #119 dated October 1, 1996.]

Finally, Union Electric will reduce the tube plugging limit from 48% through wall to 40% through wall to be consistent with NUREG–1431. The establishment of the plugging limit at 40% through wall provides additional safety margin. [The staff notes that this plugging limit has been incorporated into the Callaway Technical Specifications via license amendment #119 dated October 1, 1996.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 3, 1998.

Description of amendment request: The licensee proposes to make administrative changes to the Technical Specifications to correct errors, add consistency within the Technical Specifications, and make nomenclature changes to support and enhance usability of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because:

The proposed changes are purely administrative in nature and have no effect on plant hardware, plant design, safety limit setting, or plant system operation and therefore do not modify or add any initiating parameters that would significantly increase the probability or consequences of an accident previously evaluated.

No new modes of operation are introduced by the proposed changes such that adverse consequences would result. Accordingly, the consequences of previously analyzed accidents are not affected by this proposed license amendment.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because:

These changes do not affect the operation of any systems or components, nor do they involve any potential initiating events that would create any new or different kind of accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for the Vermont Yankee Nuclear Power Station.

3. Involve a significant reduction in a margin of safety, because:

These proposed changes do not affect any equipment involved in potential initiating events or safety limits. Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

Administrative changes, as such, do not constitute any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Project Director: Cecil O. Thomas.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 10, 1998.

Description of amendment request: The proposed changes to North Anna Power Station (NAPS), Units 1 and 2, Technical Specification (TS) 3.4.4 will clarify the operability requirements for the pressurizer heaters and eliminate a potential verbatim compliance issue associated with the pressurizer heaters and emergency power supply. The verbatim compliance issue was created when the Emergency Diesel Generator allowed outage time was changed from 72 hours to 14 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed changes for the North Anna Units 1 and 2 and determined that a significant hazards consideration is not involved. The proposed changes will revise the LCO [limiting condition for operation] 3.4.4 to require that the pressurizer have two groups of pressurizer heaters operable with a capacity of greater than or equal to 125 kW and capable of being powered from its associated emergency bus. The Action Statement will also be revised to focus on heater operability. The following is provided to support this conclusion.
>
> (a) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> The pressurizer heaters are not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not increased. The pressurizer heaters remain operable as assumed in the accident analysis to mitigate the consequences of any accident. Therefore, the proposed changes to clarify the operability requirements do not significantly increase the probability of occurrence or the consequences of any previously analyzed accident.
>
> (b) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?
>
> The proposed Technical Specifications changes do not involve any physical alteration of the plant or changes in methods governing normal plant operation. Operation of and the design of the pressurizer heaters and the associated power supplies are not changed by the proposed changes. The proposed changes do not impose any new or eliminate any existing requirements. Therefore, it is concluded that no new or different kind of accident or malfunction from any previously evaluated has been created.
>
> (c) Does the change involve a significant reduction in a margin of safety?
>
> The proposed Technical Specifications changes will not reduce the margin of safety since the change has no effect on any safety analyses assumptions. The pressurizer heaters remain operable as assumed in the safety analysis to mitigate the consequences of any accident previously analyzed. The proposed changes only clarify the operability requirements for the pressurizer heaters and associated emergency power supplies. Therefore, the proposed changes do not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, et al., Docket Nos. 50–335, and 50–389, St. Lucie Plant, Unit Nos. 1, and 2, St. Lucie County, Florida

Date of amendment request: October 29, 1998.

Description of amendment request: Technical Specification changes (TS) relating to the implementation and automatic removal of certain reactor protection system trip bypasses to ensure that the meaning of explicit terms used in the TSs are consistent with the intent of the stated requirements.

Date of publication of individual notice in the **Federal Register**: November 5, 1998 (63 FR 59809).

Expiration date of individual notice: November 19, 1998.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: July 20, 1998.

Brief description of amendment: The amendment implements a modification that constitutes an unreviewed safety question as described in 10 CFR 50.59. The modification involves replacing the service water heat exchangers with new plate and frame heat exchangers having an increased thermal performance capability. The planned modification is similar to the one completed on Unit 1. In addition, by a separate letter dated July 20, 1998, the licensee submitted a request to obtain approval for a temporary one time cooling lineup needed to support emergency diesel generator operability for the installation of the Unit 2 service water heat exchanger replacement, which is currently being reviewed by the NRC staff. Therefore, since the implementation of the proposed service water heat exchanger modification is dependent on the staff's issuance of the one time Technical Specification (TS) change regarding installation of the modification, this modification should not be implemented prior to the issuance of the one-time TS change for installing the modification.

Date of issuance: November 5, 1998.

Effective date: This license amendment is effective as of the date of its issuance to be implemented after the staff's issuance of the one-time TS change regarding the installation of the service water heat exchanger modification.

Amendment No.: 203.

Facility Operating License No. DPR–69: Amendment revised the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43201).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: June 26, 1998.

Brief description of amendment: The amendment modifies various Technical Specification pages to correct typographical errors, remove inadvertent replication of information, and updates various Bases sections.

Date of issuance: November 10, 1998.

Effective date: November 10, 1998.

Amendment No: 178.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50933).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: March 6, 1998, as supplemented September 11, 1998. The September 11, 1998, supplemental letter contained clarifying information only, and did not change the no significant hazards consideration determination.

Brief description of amendment: The amendment revises Technical Specification 3.9.2 relating to the use of Post-Accident Monitoring Source Range neutron flux detectors as a compensatory measure in the event that one of the two required BF3 neutron flux detectors becomes inoperable during Mode 6 operations (refueling).

Date of issuance: November 12, 1998.

Effective date: November 12, 1998.

Amendment No: 180.

Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: June 3, 1998 (63 FR 30262).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: September 17, 1998, as supplemented October 15, 1998.

Brief description of amendments: The amendments revised the Updated Final Safety Analysis Report to perform a Keowee Emergency Power Engineered Safeguards Functional Test during the 1998 Unit 3 refueling outage at Oconee.

Date of Issuance: November 12, 1998.

Effective date: As of the date of issuance to be implemented during the 1998 Unit 3 refueling outage.

Amendment Nos.: Unit 1—233; Unit 2—233; Unit 3—232.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: September 30, 1998 (63 FR 52304).

The October 15, 1998, letter provided clarifying information that did not change the scope of the September 17, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 12, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

GPU Nuclear, Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Dauphin County, Pennsylvania

Date of application for amendment: December 2, 1996.

Brief description of amendment: This amendment would revise audit frequency requirements and relocate them from the Technical Specifications to the Quality Assurance Plan.

Date of issuance: November 12, 1998.

Effective date: This amendment is effective immediately to be implemented written 60 days.

Amendment No.: 52.

Facility Operating License No. DPR–73: The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: July 30, 1997 (62 FR 40850).

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: May 11, 1998, as supplemented by letter dated October 9, 1998.

Brief description of amendments: The amendments modify the technical specifications (TS) for San Onofre Nuclear Generating Station Unit Nos. 2 and 3 to implement 10 CFR Part 50 Appendix J, Option B for performance-based reactor containment leakage testing.

Date of issuance: November 6, 1998.

Effective date: November 6, 1998, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2 –144; Unit 3 –135.

Facility Operating License No. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

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Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48265).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 6, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 6, 1998.

Brief description of amendments: Relocates the description of the reactor coolant system design features in Technical Specification 5.4 to the Updated Final Safety Analysis Report, which already contains the information.

Date of issuance: November 18, 1998.

Effective date: November 18, 1998, to be implemented within 30 days.

Amendment Nos.: Unit 1—Amendment No. 98; Unit 2—Amendment No. 85.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48266).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: July 6, 1998 , as supplemented on October 28, 1998.

Brief description of amendments: Relocate the Technical Specification 3/4.3.3.3 requirements for Seismic Instrumentation to the Technical Requirements Manual.

Date of issuance: November 18, 1998.

Effective date: November 18, 1998, to be implemented within 30 days.

Amendment Nos.: Unit 1—Amendment No. 99; Unit 2—Amendment No. 86.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48267).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: July 6, 1998, as supplemented on October 28, 1998.

Brief description of amendments: Relocates the Technical Specification 3/4.7.13 requirements for the Area Temperature Monitoring System to the Technical Requirements Manual.

Date of issuance: November 18, 1998.

Effective date: November 18, 1998, to be implemented within 30 days.

Amendment Nos.: Unit 1—Amendment No. 100; Unit 2—Amendment No. 87.

Facility Operating License Nos. NPF–76 and NPF–80: The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48267). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: February 13, 1998 (TS 97–07).

Brief description of amendments: The amendments incorporate new main steam isolation valve (MSIV) requirements that are consistent with NUREG–1431, the Westinghouse Standard Technical Specifications (TS), including testing requirements for the MSIVs that ensure the valves close on an automatic actuation signal.

Date of issuance: November 17, 1998.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 236 and 226.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: April 22, 1998 (63 FR 19980).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 26, 1998 (TS 98–02).

Brief description of amendments: The amendments change the Technical Specifications and their Bases to lower the specific activity limit for the primary coolant system from 1.0 microcurie/gram dose equivalent iodine-131 to 0.35 microcurie/gram, as provided for in NRC Generic Letter 95–05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking." This change allows a proportional increase in main steam line break induced primary-to-secondary leakage when implementing the alternate steam generator tube repair criteria, which the NRC has already approved for Sequoyah Nuclear Plant, Units 1 and 2.

Date of issuance: November 17, 1998.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 237 and 227.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: July 15, 1998 (63 FR 38205).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, (WBN) Rhea County, Tennessee

Date of application for amendment: August 5, 1998 (TS 98–008).

Brief description of amendment: This amendment is in response to your application dated August 5, 1998. The amendment revises the WBN Technical Specifications (TS) and associated TS Bases to allow up to 4 hours to make the residual heat removal suction relief valve available as a cold overpressure mitigation system relief path.

Date of issuance: November 10, 1998.

Effective date: November 10, 1998.

Amendment No.: 14.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50940).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: July 10, 1996 (TXX–96405), as supplemented by letters dated October 1, 1996 (TXX–96475), and July 1, 1998 (TXX–98159).

Brief description of amendments: The amendment would take credit for the addition of train oriented Fan Coil Units for each UPS and Distribution Room and would provide redundancy to the existing Air Conditioning (A/C) Units (TS 3/4.7.11 and its associated bases).

Date of Issuance: Date of issuance: November 18, 1998.

Effective date: November 18, 1998, to be implemented within 30 days.

Amendment Nos.: Unit 1—Amendment No. 61; Unit 2—Amendment No. 47.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 12, 1997 (62 FR 6579).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 7, 1998.

Brief description of amendment: This amendment revises Technical Specification 5.4, "Fuel Storage," to increase the allowable mass of uranium-235 (U^{235}) per axial centimeter for fuel storage. The requested change will allow the use of new Siemens Power Corporation heavy fuel assembly designs.

Date of Issuance: November 12, 1998.

Effective date: November 12, 1998.

Amendment No.: 141.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 17, 1998 (63 FR 33111).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Dated at Rockville, Maryland, this 24th day of November 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 98–31931 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Management of the Presidio

AGENCY: The Presidio Trust.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on the Interim Compendium compiled pursuant to final interim regulations concerning management of the area under the administrative jurisdiction of the Presidio Trust. The final interim regulations were adopted by the Presidio Trust as 36 CFR parts 1001, 1002, 1004, and 1005 and published in the **Federal Register** on June 30, 1998 (63 FR 35694).

DATES: Comments on the Interim Compendium must be received by January 29, 1999.

ADDRESSES: Written comments on the Interim Compendium must be sent to Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION:

Background

The Presidio Trust's final interim regulations at 36 CFR parts 1001, 1002, 1004, and 1005 provide that the Board of Directors of the Presidio Trust "shall compile in writing all the designations, closures, permit requirements and other restrictions imposed under discretionary authority." 36 CFR 1001.7(b). The Board has compiled these in an Interim Compendium. This Interim Compendium was approved by the Board on June 30, 1998 and is currently in effect.

Although public notice and comment on this Interim Compendium is not required by the Trust's regulations or other applicable authority, the Trust's Board has decided to make the Interim Compendium available for public comment for a period of 60 days. Following the public comment period, the Trust will consider any comments received and make any appropriate changes to the Interim Compendium. Because the Trust is currently engaged in a rulemaking concerning management of the Presidio and various administrative matters, the Trust may make other changes to the Interim Compendium both during this comment period and following its close.

How to Obtain Copies

During this comment period, a copy of the Interim Compendium is available for public inspection and copying during normal office hours (9:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and Federal holidays) at the offices of the Presidio Trust, 34 Graham Street, The Presidio, San Francisco, CA 94129. Prior to the close of the comment period, upon receipt of a written request and advance payment by check or money order to the Presidio Trust in the amount of $2.40 for photocopying charges, the Trust will mail a copy of the Interim Compendium to any interested member of the public.

Dated: November 23, 1998.

Karen A. Cook,

General Counsel.

[FR Doc. 98–31909 Filed 12–1–98; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23572; 813–186]

KECALP Inc., et al.; Notice of Application

November 24, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(b) and 17(b) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act to amend a prior order and under sections 6(b) and 17(b) to permit certain transaction otherwise prohibited by section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicant request an order to exempt certain limited partnerships registered under the Act as closed-end management investment companies form certain provisions of the Act and permit the partnerships to engage in certain joint transactions. Each partnership is an "employees' securities company" as defined in section 2(a)(13) of the Act. The requested order amends several previous orders (collectively, the "KECALP Order").[1] In addition, applicant request relief to permit two partnerships to transfer interests in certain investments to an affiliated entity in exchange for limited partnership interests in that entity.

APPLICANTS: KECALP Inc. ("General Partner"); Merrill Lynch KECALP L.P. 1986 ("1986 Partnership"), Merrill Lynch KECALP L.P. 1987 ("1987 Partnership"), Merrill Lynch KECALP L.P. 1989 ("1989 Partnership"), Merrill Lynch KECALP L.P. 1991 ("1991 Partnership"), Merrill Lynch KECALP L.P. 1994 ("1994 Partnership"), Merrill Lynch KECALP L.P. 1997 ("1997 Partnership"), and Merrill Lynch KECALP L.P. 1999 ("1999 Partnership") (collectively, together with other partnerships that may be organized by the General Partner in the future, the "Partnerships"); and Merrill Lynch Global Emerging Markets Partners, L.P. ("Global Investment Fund").

FILING DATES: The application was filed on April 14, 1998, and amended on September 15, 1998. Applicants have agreed to file and amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 16, 1998, and should be accompanied by proof of service on applicants in the form of a affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing tot he Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, NY 10080–6123.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Staff Attorney, at (202) 942–0578, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Each Partnership is a Delaware limited partnership registered under the Act as a non-diversified, closed-end management investment company. Each Partnership is an "employees' securities company" with in the meaning of section 2(a)(13) of the Act and operates according to the terms of the KECALP Order. Limited partnership interests in the Partnerships were offered to certain employees of Merrill Lynch & Co., Inc. ("ML & Co.") and its subsidiaries and to non-employee directors of ML & Co. The 1997 Partnership also offered limited partnership interests to ML & Co. in connection with certain deferred compensation arrangements. Applicants state that the Partnerships enable directors and certain officers and other employees to pool their investment resources and to receive the benefit of certain investment opportunities that come to the attention of ML & Co. or its subsidiaries. Applicants assert that the Partnerships are primarily for the benefit of the employee/director limited partners and are a significant way for ML & Co. and its subsidiaries to attract and retain qualified personnel.

2. Applicants expect that the General Partner will organize additional partnerships in the future (such partnerships, together with the 1999 Partnership, "Future Partnerships").[2] Interests in Future Partnerships will be offered to employees of ML& Co. and its subsidiaries who earn, or whose annualized salary is, at least $100,000 for the calendar year preceding the offering. No employee meting this requirement will be permitted to invest more than 15% of the employee's cash compensation form ML & Co. and its subsidiaries in any partnership unless such employee is an "accredited investor," as defined in rule 501(a) of Regulation D under the Securities Act of 1933 ("1933 Act"). Future Partnerships also may offer limited partnership interests to persons on retainer with ML & Co. or its subsidiaries if the persons qualify as "accredited investors" Other than the requirement that they be "accredited investors," persons on retainer will participate in Future Partnerships on the same terms as employees of ML & Co. In addition, ML & Co. and its affiliates may acquire limited partnership interests in Future Partnerships to mirror the election by select employees of ML & Co. and its subsidiaries to participate in compensation or investment programs where the return is linked to the performance of a Partnership. To make such an investment, ML & Co. or its affiliate must (i) determine that the eligibility requirements for employee participation in the compensation or investment program are at least equal to the standards for direct investment by employees of ML & Co. in the Partnership and (ii) agree to vote its interests in Partnership in identical proportions to other limited partners. Persons eligible to invest in the

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[1] Merrill Lynch KECALP Ventures Limited Partnership 1982, et al., Investment Company Act Rel. Nos. 12290 (Mar. 11, 1982) (notice) and 12363 (Apr. 8, 1982) (order); Merrill Lynch KECALP Growth Investments Limited Partnership 1983, et al., Investment Company Act Rel. Nos. 18082 (Apr. 8, 1991) (notice) and 18137 (May 7, 1991) (order); Merrill Lynch KECALP Growth Investments L.P. 1983, et al., Investment Company Act Rel. Nos. 20280 (May 5, 1994) (notice) and 20328 (June 1, 1994) (order); Merrill Lynch KECALP L.P. 1994, et al., Investment Company Act Rel. Nos. 21124 (June 8, 1995) (notice) and 21187 (Jul. 5, 1995) (order); and Merrill Lynch KECALP L.P. 1997, et al., Investment Company Act Rel. Nos. 22647 (Apr. 30, 1997) (notice) and 22689 (May 28, 1997) (order).

[2] Any entity that currently intends to rely on the requested order is named as an applicant. Any other existing or future entity that relies on the requested order will comply with the terms and conditions of the application.

Partnerships are referred to as "Limited Partners." Interests in the Partnerships are non-transferable except with the express consent of the General Partner and, in any event, are not transferable to persons who are not Limited Partners, except that interests may be transferred to members of a Limited Partner's immediate family or, by operation of law, to certain other parties under special circumstances.

3. The General Partner is an indirect, wholly-owned subsidiary of ML & Co. that is registered as an investment adviser under the Investment Advisers Act of 1940. The General Partner is responsible for the management of the Partnerships and has the authority to make all decisions regarding the acquisition, management, and disposition of the partnerships' investments. The board of directors of the General Partner ("Board") will continue to have overall responsibility for a Partnerships' investments.

4. Under the partnership agreements of the Partnerships, the General Partner pays operating expenses in connection with the Partnerships and is entitled to receive annual reimbursements from the Partnerships of up to 1.5% of the Limited Partners' capital contributions. In addition, the General Partner is responsible for any commissions chargeable to the Partnerships with respect to portfolio transactions. Future partnership may pay operating expenses directly and reimburse the General partner for personnel, overhead and other administrative expenses. Amounts paid by the Future Partnership for operating expenses and reimbursements to the General Partner will be subject to an annual aggregate limit of 1.5% of Limited Partners' capital commitments. Appropriate disclosure regarding payments and reimbursements will be set forth in a Future Partnership's offering documents. To the extent provided in their organizational documents, Future Partnerships also may be responsible for payment of commissions and other fees and expenses relating to the acquisition, monitoring and disposition of portfolio investments.

5. The Global Investment Fund is a Delaware limited partnership formed to achieve capital appreciation principally through privately negotiated equity and equity-linked investments in companies operating primarily in emerging markets. ML Global Capital L.L.C., an affiliate of ML & Co., is the general partner of the Global Investment Fund, and ML Global Partners, Inc., a subsidiary of ML & Co., performs the management services. The Global Investment Fund is exempt from regulation under the Act in reliance on section 3(c)(7) of the Act. The Global Investment Fund seeks relief so that the 1994 Partnership and 1997 Partnership may transfer interests in certain investments to the Global Investment Fund in exchange for limited partnership interests in the Global Investment Fund.

6. Under the KECALP Order, ML & Co. or a subsidiary may acquire an investment approved by the General Partner for acquisition by the Partnership and hold the investment ("Warehoused Investment") until the closing of the Partnership's offering to Limited Partners. Upon completion of its offering, the Partnership would purchase each Warehoused Investment from ML & Co. or the subsidiary at the lesser of each Warehoused Investment's (a) fair value on the date of purchase by the Partnership or (b) purchase cost paid by ML & Co. and its subsidiaries. Applicants assert that the Warehoused Investment procedure facilitates the Partnerships' investment process. The requested order would permit the Partnerships to acquire Warehoused Investments from ML & Co. and its subsidiaries subject to modified conditions that would afford the Partnerships greater flexibility.

7. Under the KECALP Order, the Partnerships also may engage in certain joint transactions and investments with affiliates of the Partnerships. Applicants seek relief to permit certain joint transactions, including transactions involving restructurings and recapitalizations, (collectively, "Merrill Lynch Investments") in which the Partnerships are participants with ML & Co. and other affiliated persons of the Partnerships ("Affiliated Co-Investors") subject to the conditions detailed below.

Applicants' Legal Analysis

A. Warehoused Investments

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of that company. ML & Co. and each of its direct and indirect wholly-owned subsidiaries, including the General Partner, are affiliated persons under section 2(a)(3)(C) of the Act. The General Partner is an affiliated person of the Partnerships under section 2(a)(3)(D) of the Act. As a result of these affiliations, sales of securities or other property on a principal basis by the General Partner or an affiliate to the Partnership may be prohibited under section 17(a).

2. Section 6(b) of the Act provides that the Commission shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 17(b) of the Act permits the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act.

3. Applicants request relief from section 17(a) pursuant to sections 6(b) and 17(b) of the Act to permit the Partnerships to acquire Warehoused Investments from ML & Co. and direct and indirect wholly-owned subsidiaries of ML & Co. (including the General Partner) subject to conditions modified from the KECALP Order. Under the requested order, (i) the warehouse period during which ML & Co. or a subsidiary may hold a Warehoused Investment would be increased from 12 to 18 months; (ii) the purchase price paid by a Partnership for the Warehoused Investments would be calculated on an aggregate basis, rather than for each Warehoused Investment individually; and (iii) the approval of a Warehoused Investment by the Board for acquisition by a Partnership would be made either prior to or within 30 days of the acquisition of the Warehoused Investment by ML & Co. or its subsidiary.[3]

4. Applicants state that with the proposed changes, the transactions involving Warehoused Investments will continue to meet the standards of sections 6(b) and 17(b). Applicants assert that the revised conditions would allow for a valuation method for Warehoused Investments that is more fair to the public shareholders of ML & Co. and that will not cause a Partnership to pay more than the aggregate fair value of Warehoused Investments acquired on its behalf. In addition, applicants state that the change in the timing of the Board approval will provide the Partnerships with increased investment flexibility by allowing for circumstances where a Partnership has been presented with the opportunity to invest in a transaction, but the Board of Directors of the General Partner has not been able to make all of the required findings prior

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[3] Under the KECALP Order, the Board approved the acquisition of a Warehoused Investment prior to its purchase by ML & Co. or a subsidiary and approved the acquisition a second time after the closing of the Partnership's offering to the Limited Partners.

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to the purchase by ML & Co. or its subsidiaries.

B. Transaction with the Global Investment Fund

1. Applicants request relief pursuant to sections 6(b) and 17(b) of the Act from section 17(a) of the Act to permit the 1994 Partnership and 1997 Partnership to transfer their interests in certain investments to the Global Investment Fund in exchange for limited partnership interests in the Global Investment Fund. The 1994 Partnership and the 1997 Partnership are invested in certain portfolio companies in which the Global Investment Fund also is invested. Applicants state that the exchange will have no economic effect on the Partnerships because it would be structured so that each Partnership would only change the vehicle through which the Partnerships hold these investments, and the Partnerships' interests in the Global Investment Fund would correspond only to the transferred investments. The transfer of the Partnerships' investments to the Global Investment Fund would not be deemed by the Partnerships to be an event requiring any change in the valuation of the Partnerships' interests in the investments. The Partnerships will not pay any fees to ML & Co. or its affiliates in connection with the transfer. Upon disposition of an investment by the Global Investment Fund, each Partnership would receive the portion of any net proceeds corresponding to its indirect interest in the investments.

C. Joint Investments by the Partnerships and their Affiliates

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the Commission. Rule 17d–1 provides that in passing on applications for such orders, the Commission will consider whether the participation by the investment company is consistent with the provisions, policies, and purpose of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of the other participants.

2. Applicants seek relief pursuant to section 6(b) and rule 17d–1 to permit Merrill Lynch Investments in which the Partnerships are participants with Affiliated Co-Investors. Applicants assert that the proposed conditions that would govern these transactions would assure that the Partnerships participate on a basis no less advantageous than that of Affiliated Co-Investors. Applicants also assert that the community of interest between the Partnerships and ML & Co. would further assure that the transactions would be in the best interests of the Partnerships.

D. Certain Compensation to ML & Co. or Affiliates

1. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) pursuant to section 6(b) to permit ML & Co. or an affiliated person, acting as an agent or broker, to receive placement fees, financial advisory fees or other compensation in connection with the purchase and sale of securities by a Partnership, provided that the fees or other compensation can be deemed "usual and customary." Applicants state that fees or other compensation will be deemed "usual and customary" only if: (i) the Partnership is purchasing or selling securities alongside other unaffiliated third parties who are also similarly purchasing or selling securities; (ii) the fees or other compensation that are being charged to the Partnership are also being charged to the unaffiliated third parties; and (iii) the amount of securities being purchased or sold by a Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties. Applicants assert that compliance with section 17(e) could prevent a Partnership from participating in a transaction in which ML & Co. or an affiliate does not, for other business reasons, wish a Partnership to be treated in a more favorable manner than unaffiliated parties also participating in the transaction.

2. Applicants also request an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with rule 17e–1 without the necessity of having a majority of the directors of the General Partner who are not "interested persons" take the actions and make the approvals specified in the rule. Because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17e–1 without the requested relief. Applicants state that each Partnership will have a majority of the directors of the General Partner take the actions and make the approvals required in the rule. Each Partnership will otherwise comply with the requirements of rule 17e–1.

F. Custody of Partnership's Assets

1. Section 17(f) of the Act prescribes certain requirements as to the custody of assets of registered investment companies. The KECALP Order permits certain subsidiaries of ML & Co. to act as custodians of the Partnerships' assets without a written contract required by section 17(f). Rule 17f–1(b)(4) under the Act requires that securities held by a custodian that is a member of a national securities exchange be verified periodically by independent public accountants. Applicants request relief from this requirement pursuant to section 6(b) with respect to the Partnerships' assets held by an ML & Co. subsidiary pursuant to the rule. Applicants state that the Partnerships' assets so held are subject to an annual independent audit and that in light of the community of interest between ML & Co. and the Partnerships, compliance with this requirement in the rule would be unduly burdensome.

F. Periodic Reporting

1. Section 30(h) of the Act requires that every officer, director, and member of an advisory board of a closed-end investment company be subject to the same duties and liabilities as those imposed upon similar classes of persons under section 16 of the Securities Exchange Act of 1934. As a result, the General Partner of each Partnership and certain other persons are required to file Forms 3, 4, and 5 with respect to their ownership of interests in a Partnership. Applicants request an exemption pursuant to section 6(b) from the requirements of section 30(h) to the extent necessary to exempt the General Partner, directors and officers of the General Partner, and any other persons who may be deemed members of an advisory board of a Partnership from filing these forms. Applicants assert that the requirement is not necessary for the protection of investors because there is no trading market for the Partnerships' interests and transfers of these interests are severely restricted.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

Condition Relating to Warehoused Investments

1. (a) In order for an investment to quality as a Warehoused Investment to be purchased pursuant to the requested relief, (i)(A) the Board must approve such investment for the subsequent Partnership in the manner described in sub-paragraph (b) of condition 1 prior to the time the investment is acquired by

the General Partner or an affiliate thereof and (B) such investment must be acquired by ML & Co. (which term, in these conditions, includes its subsidiaries) with the intention of acquiring the Warehoused Investment for the subsequent Partnership and selling it to such Partnership after the completion of its initial offering or (ii)(A) the Board must approve such investment in the manner described in sub-paragraph (b) of condition 1 within 30 days after the date of the acquisition by ML & Co. and (B) ML & Co. must thereafter hold such investment with the intention of selling it to a Partnership after the completion of the initial offering of the Partnership. The General Partner will maintain at the Partnerships' office written records stating ML & Co.'s intention in acquiring such security, and stating the factors considered by the Board in approving the investment.

(b) Prior to the acquisition of a Warehoused Investment by a Partnership, (i) the Board must make the following fundings: (A) The terms of the Warehoused Investment, including the consideration to be paid, are reasonable and fair and do not involve overreaching of the Partnership or its Limited Partners on the part of any person concerned; (B) the proposed transaction is consistent with the policy of the Partnership as indicated in its filings under the 1933 Act and its reports to Limited Partners; and (C) participation by the Partnership in the proposed transaction is in the best interest of the Limited Partners of the Partnership; and (ii) with respect to any Warehoused Investment that is part of a co-investment with an affiliate, the Board must approve the investment in accordance with the terms of any orders issued by the Commission that are applicable to such co-investment, including the required findings by the Board. The General Partner will maintain at the Partnerships' office written records of the factors considered in any decision regarding a Warehoused Investment.

(c) The purchase price to be paid by a Partnership for Warehoused Investments acquired for the Partnership prior to the closing of its initial offering shall be the lower of (i) the aggregate cost to ML & Co. of purchasing the Warehoused Investments, plus carrying costs as described below in sub-paragraph (d) or (ii) the aggregate fair value of the Warehoused Investments at the time of purchase by the Partnership (as determined by the Board). The General Partner will maintain at the Partnerships' office written records of the factors considered in any determination regarding the value of a Warehoused Investment.

(d) Carrying costs shall be calculated from the date ML & Co. acquired the Warehoused Investment to the date of the acquisition of the proposed investment by the Partnership from ML & Co. and shall consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. (or any successor), during the period for which carrying costs are permitted to be paid until the Partnership acquires the securities or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a daily basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

(e) A Partnership may only acquire a Warehoused Investment from ML & Co. during the lesser of (i) 18 months from the time ML & Co. purchases the Warehoused Investment or (ii) 30 days from the date of closing of the Partnership's initial offering.

Conditions Relating to Joint Transactions

2. (a) To the extent that a Partnership has funds available for investment, the Board will review, among other investments, co-investments with Affiliated Co-investors that may be brought to the attention of the General Partner. The Board will make a determination as to whether each particular investment meets applicable investment criteria and is consistent with the existing composition of the Partnership's portfolio in terms of diversification of investments.

(b) The General Partner will commit to a co-investment with an Affiliated Co-investor only if the Board, by a majority vote at a properly called and held meeting prior to making the investment, concludes, after consideration of all information deemed relevant, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Limited Partners of the Partnership and do not involve overreaching of the Partnership or Limited Partners on the part of any person concerned;

(ii) The transaction is consistent with the interests of the Limited Partners of the Partnership and is consistent with the Partnership's investment objectives and policies as recited in filings made by the Partnership under the 1933 Act, its registration statement, and reports to its Limited Partners; and

(iii) The investment by an Affiliated Co-investor in such transaction would not disadvantage the Partnership in the making of its investment, maintaining its investment position, or disposing of the investment.

3. The General Partner will not invest the funds of any Partnership in any investments in which ML & Co. or an affiliate has or proposes to acquire the same class of securities of the same issuer, when the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and ML & Co. or an affiliate are participants, unless ML & Co. or any such affiliate agrees that, prior to disposing of all or part of its investment, it will (i) give the General Partner sufficient, but not less than one day, notice of its intention to dispose of such investment and (ii) refrain from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with ML & Co. or such affiliate; provided, however, that the requirements specified in clauses (i) and (ii) will not be deemed to limit or prevent the disposition of an investment by an affiliate to its direct or indirect subsidiary, to any company (a "Parent") of which the affiliate is a direct or indirect wholly-owned subsidiary or to a direct or indirect wholly-owned subsidiary of its Parent. For purposes of this condition 3, the term "affiliate" of ML & Co. refers to direct and indirect wholly-owned subsidiaries of ML & Co. and to other entities with respect to which ML & Co. or any such subsidiary is authorized to cause such entity to provide the opportunity for a Partnership to participate in the sale of an investment as contemplated by this condition 3.

4. The Board will review quarterly all information concerning co-investment transactions by the Partnerships with Affiliated Co-investors to determine whether all such investments made during the preceding quarter complied with conditions 2 and 3.

5. At least annually, the General Partner will provide to the Partnerships' Limited Partners a written list of co-investment transactions by the Partnerships with Affiliated Co-investors.

6. In any case where co-investments are made with an Affiliated Co-investor, any individual involved in the management of both the Partnerships and the Affiliated Co-investor will not participate in the Partnerships' determination of whether to effect any co-investment transaction.

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7. In connection with proposed transactions otherwise prohibited by section 17(d) of the Act and rule 17d–1 under the Act, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such person, promoter, or principal underwriter.

8. Each Partnership and the General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of such Partnership required by the terms of the applicable partnership agreement, to be sent to the Limited Partners, and agree that all such records will be subject to examination by the Commission and its staff. Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

9. The General Partner will send Partnership financial statements to each Limited Partner who had an interest in a Partnership at any time during the fiscal year then ended. The statements will be audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of such fiscal year end. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the General Partner shall send a report to each person who was a Limited Partner at any time during the fiscal year then ended setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his or her federal and state income tax returns, and a report of the investment activities of the Partnership during such year.

Conditions Relating to Certain Other Affiliated Transactions

10. If a Partnership is presented with the opportunity to invest in a transaction where the General Partner has not been able to consider the determinations set forth in sub-paragraph (b) of condition 2, the Partnership may subsequently acquire the investment from ML & Co. or an affiliate to the extent the investment determination of the Board takes place as soon as practicable but no more than 30 days after the date of the acquisition by ML & Co. or its affiliate and payment by the Partnership is made within five business days after approval by the Board. The purchase price paid by a Partnership for any such investment shall be the lower of (i) the fair value of the investment on the date it is acquired by the Partnership (as determined in good faith by the Board) or (ii) the cost of ML & Co. or its affiliate of purchasing the investment.

11. (a) Sales or tenders by the Partnership to an issuer that is an affiliated person of the Partnership may be made only (i) pursuant to a uniform offer by the issuer to purchase its securities on a pro rata basis made to all holders of the class of securities held by the Partnership (provided that the offer need not be made to employees of the issuer) or (ii) pursuant to an offer made to fewer than all holders of the class of securities held by the Partnership, provided that the Partnership will not participate in such transaction unless a securityholder that is an institutional investor with total assets of at least $100 million and is not an affiliated person of the Partnership or ML & Co. participates in such sale or tender on the same terms as the Partnership.

(b) Prior to entering into any transaction specified in paragraph (a) above, the Board must determine, that such action is in the best interests of the particular Partnership and does not involve overreaching of the Partnership on the part of any person. The General Partner shall record in each Partnership's records the basis for such decision. Transactions entered into pursuant to this paragraph must be effected on the same terms applicable to any affiliate participating in the transaction.

12. The Board will adopt procedures pursuant to which it will monitor potential conflicts of interest between the Partnerships and ML & Co. and its affiliates, including other partnerships that may invest in leveraged buyout investments for which Merrill Lynch MBP Inc. ("MBP"), an indirect wholly-owned subsidiary of ML & Co., acts as general partner, in connection with the Partnerships' investments. Such procedures will provide that the officers of the General Partner will annually prepare and present to the Board written information regarding all potential investments made available to the Partnership during the prior year, including Merrill Lynch Investments. The Board's findings regarding potential conflicts of interest, the specific factors considered, and any further actions to be taken based on or in order to implement the directors' findings will be recorded in each Partnership's records.

13. No person will serve as a member of the Board if such person also is a member of the board of directors of MBP.

14. Each of the 1994 Partnership and the 1997 Partnership may transfer its interests in investments it has acquired to the Global Investment Fund in exchange for interests in such fund, provided that prior to such a transfer the General Partner determines that (i) such transfer has no economic effect on the Partnership and (ii) such transfer is consistent with the best interests of such Partnership.

Other Conditions

15. In order for ML & Co. or an affiliate to acquire limited partnership interests in a Partnership in connection with a compensation or investment program offered to select employees of ML & Co. or its subsidiaries, ML & Co. or such affiliate must (i) determine that the eligibility requirements for participation in such compensation program or investment program are at least equal to the standards for direct investment by employees of ML & Co. in the Partnership and (ii) agree to vote its interests in a Partnership in identical proportions as other Limited Partners in respect of any matter submitted for a vote of Limited Partners.

16. Any Partnership created in the future will not be offered to employees of ML & Co. and its subsidiaries who earned, or whose annualized salary was, less than $100,000 with respect to the calendar year preceding the offering of such Partnership. No employee meeting the requirement in the preceding sentence will be permitted to invest more than 15% of his cash compensation from ML & Co. and its subsidiaries in any Partnership unless such employee is an "accredited investor," as defined in rule 501(a) under the 1933 Act.

17. The General Partner will maintain the records required by section 57(f)(3) of the Act and will comply with the provisions of section 57(h) of the Act as if each Partnership were a business development company. All records referred to or required under this order will be available for inspection by the Limited Partners of each Partnership and the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32043 Filed 12–1–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23573; 812–11006]

Technology Funding Venture Capital Fund VI, LLC, et al.; Notice of Application

November 25, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 57(i) of the Investment Company Act of 1940 (the "Act"), and under rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a business development company ("BDC") to co-invest with certain affiliates in portfolio companies. The order would supersede several prior orders.[1]

APPLICANTS: Technology Funding Venture Capital Fund VI, LLC (the "Company"), Technology Funding Medical Partners I, L.P. ("TFMP I"), Technology Funding Venture Partners V, An Aggressive Growth Fund, L.P. ("TFP V"), Technology Funding Venture Partners IV, An Aggressive Growth Fund, L.P. ("TFP IV"), Technology Funding Partners III, L.P. ("TFP III"); Technology Funding Inc. ("TFI") and Technology Funding Ltd. ("TFL") (TFI and TFL together are the "Investment Managers"). Applicants also request that the relief apply to any BDCs currently or in the future advised by the Investment Managers or by entities controlling, controlled by, or under common control with the Investment Managers ("Future Funds").[2]

FILING DATES: The application was filed on February 13, 1998, and amended on October 13, 1998 and on November 23, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 17, 1998 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, 2000 Alameda de las Pulgas, San Mateo, CA 94403.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Company, TFMP I, TFP V, TFP IV, and TFP III (collectively, the "Funds") is organized as either a limited liability company or a limited partnership and has elected to be regulated as a BDC under the Act. TFI and TFL are both registered as investment advisers under the Investment Advisers Act of 1940, and serve as investment advisers to the Funds. TFI and TFL also serve as managing general partners ("Managing General Partners") of the Funds. TFI is a wholly-owned subsidiary of TFL. Each Fund's investment objectives are long-term capital appreciation from venture capital investment in emerging growth companies, and preservation of investor capital through risk management and active involvement with such companies.

2. Each Fund is governed by a board of directors or general partners ("Directors" or "General Partners"). At least a majority of the Directors or General Partners of each Fund are natural persons who are not interested persons of the Fund within the meaning of section 2(a)(19) of the Act ("Independent Directors" and "Independent General Partners"). No Independent Director or Independent General Partner of a Fund will serve as an Independent Director or Independent General Partner of any other Fund at the same time.

3. Applicants request relief to permit the Funds and any Future Funds (collectively, the "Co-Investing Funds") to co-invest in portfolio companies. Applicants state that the Co-Investing Funds will have substantially similar investment objectives.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in a joint transaction with the BDC in contravention of such rules as the SEC may prescribe. Section 57(i) of the act provides, in part, that, until the SEC prescribes rules under section 57(a)(4), the SEC's rules under section 17(d) of the Act applicable to closed-end investment companies shall be deemed to apply to transactions subject to section 57(d). Because the SEC has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

2. Rule 17d–1 under the Act generally prohibits affiliated persons of a registered investment company from entering into a joint transaction with the company unless the SEC has issued an order permitting the transaction. In passing upon applications under rule 17d–1, the SEC will consider whether the participation by the BDC in such joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that, because the Co-Investing Funds may be deemed to be under the common control of the Investment Managers, the Co-Investing Funds may be prohibited by section 57(a)(4) of the Act and rule 17d–1 from participating in the proposed co-investments without exemptive relief.

4. Applicants state that each Co-Investing Fund will participate in the proposed transactions on the same terms as any other Co-Investing Fund. Applicants further state that the proposed conditions would assure, among other things, oversight of the proposed transactions by each Co-Investing Fund's Independent General Partners of Independent Directors.

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[1] *Technology Funding Partners III, L.P., et al.*, Investment Company Act Release Nos. 17523 (June 6, 1990) (notice) and 17571 (July 5, 1990) (order); *Technology Funding Partners III, L.P., et al.*, Investment Company Act Release Nos. 17581 (July 11, 1990) (notice) and 17654 (Aug. 7, 1990) (order); *Technology Funding Partners III, L.P., et al.*, Investment Company Act Release Nos. 17600 (July 18, 1990) (notice) and 17685 (Aug. 17, 1990) (order); and *Technology Funding Medical Partners I, L.P., et al.*, Investment Company Act Release Nos. 19615 (Aug. 6, 1993) (notice) and 19672 (Sept. 1, 1993).

[2] All existing BDCs that currently intend to rely on the order have been named as applicants, and any other existing or future entities that subsequently rely on the order will comply with the terms and conditions in the application.

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Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The Co-Investing Funds will not have common Independent General Partners or Independent Directors. The Directors or General Partners of each Co-Investing Fund will approve co-investment transactions in advance. The Directors or General Partners of each Co-Investing Fund will be provided with periodic information, compiled by the Investment Mangers, listing all venture capital investments made by the other Co-Investing Funds.

2(a) Before a co-investment transaction will be effected, the Investment Managers will make an initial determination on behalf of each Co-Investing Fund regarding investment suitability. Following this determination, a written investment presentation respecting the proposed co-investment transaction will be made to the Directors or General Partners of each Co-Investing Fund, except that such information need not be distributed to the Directors or General Partners of any Co-Investing Fund that, at that time, does not have funds available for investment. Such information will include the name of each Co-Investing Fund that proposes to make the investment and the amount of each proposed investment. The Investment Managers will maintain at each Co-Investing Fund's office a copy of the written records detailing the factors considered in any such preliminary determination.

2(b) The information regarding the Investment Manager's preliminary determinations will be reviewed by the Independent Directors or Independent General Partners of each Co-Investing Fund. The Directors or General Partners of each Co-Investing Fund, including a majority of the Independent Directors or Independent General Partners, will make an independent decision as to whether and how much to participate in an investment based on what is appropriate under the circumstances. If a majority of Independent Directors or Independent General Partners of any Co-Investing Fund determine that the amount proposed to be invested by the Co-Investing Fund is not sufficient to obtain an investment position they consider appropriate under the circumstances, that Co-Investing Fund will not participate in the joint investment. Similarly, a Co-Investing Fund will not participate in a co-investment transaction if a majority of its Independent Directors or Independent General Partners determine that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances. A Co-Investing Fund will only make a joint investment with another Co-Investing Fund if a majority of the Independent Directors or Independent General Partners of that Co-Investing Fund conclude, after consideration of all information deemed relevant that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the investors in the Co-Investing Fund (the "Investors") and do not involve overreaching of the Co-Investing Fund on the part of any person concerned;

(ii) The transaction is consistent with the interests of the Investors of the Co-Investing Fund and is consistent with the Co-Investing Fund's investment objectives and policies as recited in filings made by the Co-Investing Fund under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934 and its reports to Investors; and

(iii) The investment by one or more of the other Co-Investing Funds would not disadvantage the Co-Investing Fund in the making of such investment, maintaining its investment position or disposing of such investment, and that participation by the Co-Investing Funds would not be on a basis different from or less advantageous than that of another Co-Investing Fund.

2(c) The Independent Directors or Independent General Partners will, for purposes of reviewing each such recommendation of the Investment Managers, request such additional information from the Investment Managers as they deem necessary to the exercise of their reasonable business judgment, and they will also employ such experts, including lawyers and accounts, as they deem appropriate to the reasonable exercise of this oversight function.

3. The Directors or General Partners of each Co-Investing Fund, including a majority of the Independent Directors or Independent General Partners, will make their own decision and have the right to decide not to share a particular investment with another Co-Investing Fund. There will be no consideration paid to the Investment Manager (or affiliated persons of the Investment Managers) directly or indirectly, including without limitation any type of brokerage commission, in connection with a co-investment transaction. The Investment Managers will continue, however, to receive their compensation and expense reimbursement arrangements with respect to each Co-Investing Fund and will participate indirectly in a co-investment transaction only through their existing interests as an Investor in each Co-Investing Fund.

4. Each Co-Investing Fund will be entitled to consider purchasing a portion of each co-investment transaction equal to the ratio of that Co-Investing Fund's net assets to the total net assets of all Co-Investing Funds that have determined to participate in the co-investment transaction, provided that each Co-Investing Fund can determine not to take its full allocation where a majority of the Independent Directors or Independent General Partners and a majority of the Directors or General Partners of the Co-Investing Fund determine that to do so would not be in the best interests of the Co-Investing Fund. When the aggregate amount sought by the Co-Investing Funds exceeds the amount of the co-investment opportunity, the amount invested by each Co-Investing Fund shall be based on the ratio of the net assets of each Co-Investing Fund to the aggregate net assets of all Co-Investing Funds seeking to make an investment. "Follow-on" investments, including the exercise of warrants or other rights to purchase securities of the issuer, will be treated in the same manner as the initial co-investment transaction.

5. All co-investment transactions will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, at the same unit consideration, on the same terms and conditions, and the approvals will be made in the same period. If one Co-Investing Fund elects to sell, exchange or otherwise dispose of an interest in a security that is also held by another Co-Investing Fund, notice will be given to each other Co-Investing Fund at the earliest practical time and each other Co-Investing Fund will be given the opportunity to participate in such disposition at the same time for the same unit consideration and in amounts proportional to its respective holdings of such securities. The Investment Managers will formulate a recommendation as to participation by such Co-Investing Fund in such a disposition, and provide the recommendation to the Independent Directors or Independent General Partners of such Co-Investing Fund. Each Co-Investing Fund will participate in such disposition if a majority of its Independent Directors or Independent General Partners determine that such action is fair and reasonable to the Co-Investing Fund, is in the best interests of the Co-Investing Fund and does not involve overreaching of the Co-Investing Fund or its Investors by any person

concerned. Each Co-Investing Fund will bear its own expenses associated with the disposition of a portfolio security. The Independent Directors or Independent General Partners of each Co-Investing Fund will record in their records the Investment Managers' recommendation and their decision as to whether to participate in such disposition, as well as the basis for their decision that such action is fair and reasonable to, and is in the best interest of, the Co-Investing Fund.

6. A decision by a Co-Investing Fund (i) not to participate in a co-investment transaction, (ii) to take less or more than its full allocation, or (iii) not to sell, exchange, or otherwise dispose of a co-investing Funds electing to participate shall include a finding that such decision is fair and reasonable to the Co-Investing Fund and not the result of overreaching of the Co-Investing Fund or its Investors by any person concerned. The Independent Directors or Independent General Partners of a Co-Investing Fund will be provided quarterly for review all information concerning co-investment transactions made by the Co-Investing Funds, including co-investment transactions in which a Co-Investing Fund has declined to participate, so that they may determine whether all co-investment transactions made during the preceding quarter, including those co-investment transactions that were declined, complied with the conditions set forth above. In addition, the Independent Directors or Independent General Partners of a Co-Investing Fund will consider at least annually the continuing appropriateness of the standards established for co-investment transactions by a Co-Investing Fund, including whether use of the standards continues to be in the best interests of the Co-Investing Fund and its Investors and does not involve overreaching of the Co-Investing Fund or its Investors on the part of any party concerned.

7. The Independent Directors or Independent General Partners of each Co-Investing Fund will maintain the records required by section 57(f)(3) of the Act, and will comply with section 57(h) of the Act, and each Co-Investing Fund will otherwise maintain all records required by the Act. All records referred to or required under these conditions will be available for inspection by the SEC, and will be preserved permanently, the first two years in an easily-accessible place.

8. No Director of affiliated person of any Director or General Partner (other than a BDC sponsored and managed by the Investment Managers) will participate in a transaction with a Co-Investing Fund unless a separate exemptive order with respect to such transaction has been obtained. For this purpose, the term "participate" shall not include either the Investment Managers' existing General Partner interests in, or their normal compensation and expense reimbursement arrangements with, each Co-Investing Fund.

9. No co-investment transactions will be made pursuant to the requested order respecting portfolio companies in which any applicant or affiliated person of any applicant has previously acquired an interest, provided that this prohibition shall not be applicable to any previously acquired interest, provided that this prohibition shall not apply to any previous investment specifically permitted by an order of the SEC.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32042 Filed 12–1–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40705; File No. SR–EMCC–98–08]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation Order Approving a Proposed Rule Change Relating to the Offering of Shares of Common Stock

November 24, 1998.

On August 17, 1998, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–EMCC–98–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 21, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Pursuant to the rule change EMCC has reclassified 2,000 shares of previously authorized EMCC common stock as Class A common stock ("Class A stock") and has created a second class of common stock. In addition, the rule change amends EMCC's shareholder agreement to reflect the changes to the common stock.

On March 2, 1998, the Commission authorized EMCC to issue 2,000 shares of common stock ("original stock").[3] On July 31, 1998, EMCC filed an amendment to its certificate of incorporation to reclassify the original stock as Class A stock and to authorized the issuance of non-voting Class B stock. The creation and offering of the Class B stock is intended to permit EMCC to raise additional capital which EMCC will use in part to fund the development of EMCC projects.

Under the rule change, EMCC will offer the shares of Class B stock to the same entities that were offered the opportunity to purchase the original stock.[4] The purchase price of the Class B stock is $1,000 per share with a minimum purchase requirement of $25,000. EMCC is offering the Class B shares to prospective buyers through an offering letter.[5]

The Class B stock is non-voting and is subject to repurchase upon the determination of EMCC's Board. However, EMCC has no obligation to repurchase Class B shares owned by a member that terminates its EMCC membership prior to the repurchase of all Class B shares. All purchasers of Class A and Class B stock will be required to enter into an amended version of EMCC's shareholders agreement. No dividends will be paid on either the Class A or Class B stock and shareholders may sell or transfer their shares only in compliance with EMCC's amended shareholder agreement.

EMCC's amended shareholder agreement replaces the shareholder agreement written for the original offering.[6] The changes to the shareholder agreement reflect (i) the creation and offering of the Class B stock, (ii) the conditions under which EMCC may repurchase the Class B stock, and (iii) the fact that EMTA has not yet been issued any shares of EMCC stock. In addition, the amended shareholder agreement permits EMCC to issue EMTA 300 Class A shares prior to, concurrent with, or after the closing of

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40433 (September 11, 1998), 63 FR 50271.

[3] Securities Exchange Act Release No. 39694 (March 2, 1998), 63 FR 10251 [File No. SR–EMCC–98–01].

[4] The original stock was offered to the entities that contributed to the development fund for the organization and initial operation of EMCC.

[5] Each prospective purchaser of the original stock was provided with a copy of EMCC's Form CA–1 (excluding the confidential documents). EMCC will provide the prospective purchasers of the Class B stock with updates to the Form CA–1 as appropriate.

[6] The signatories of the amended shareholder agreement are the National Securities Clearing Corporation ("NSCC"), the International Securities Markets Association ("ISMA"), and the Emerging Markets Traders Association ("EMTA").

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the issuance of Class A stock to all other persons. A further modification reflects that the issuance of the original stock did not occur prior to the previously established deadline of June 30, 1998, and provides that the issuance and sale of Class A stock must be completed by December 31, 1998. Each purchaser of Class A or Class B shares will be obligated to enter into the amended shareholder agreement.

After the Class A stock has been issued, EMCC will amend its articles of incorporation to permit the following actions to be taken upon a two-thirds vote of the shareholders instead of the current requirement of unanimity: (i) any amendment or change to EMCC's certificate of incorporation; (ii) any adoption, amendment or repeal by the shareholders of by-laws of the corporation; (iii) any repurchase of any securities issued by the corporation; and (iv) any issuance of any securities by the corporation.

II. Discussion

Section 17A(b)(3)(A) of the Act[7] requires that a clearing agency be so organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the rule change is consistent with EMCC's obligations under Section 17A(b)(3)(A) because the additional capital raised by the issuance of the stock should enable EMCC to increase the efficiency of its clearance and settlement of securities transactions. In addition, the amendments to EMCC's articles of incorporation make more efficient EMCC's ability to take corporate actions that may be necessary to facilitate the clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act[8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–98–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98–32041 Filed 12–1–98; 8:45 am]

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[7] 15 U.S.C. 78q–1(b)(3)(A).

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40706; File No. SR–NASD–98–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Filing Fees Under the Corporate Financing Rule

November 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Section 6 of Schedule A to the NASD By-laws and NASD Conduct Rule 2710, to delete the provisions mandating that Corporate Financing filing fees be paid in the form of a check or money order. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1–Section 5 No Change

Section 6—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) No change.
(b) No change.
[(c) Filing fees shall be paid only in the form of check or money order payable to the National Association of Securities Dealers, Inc.]

[(d)](*c*) The provisions of Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Section, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with this Section.

Section 7–Section 15 No change

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions No change
(b) Filing Requirements.
(1)–(9) No change.
(1) Filing Fees.
(A) No change.
(B) No change.
[(C) Filing fees shall be paid only in the form of a check or money order payable to the National Association of Securities Dealers, Inc.]

[(D)](*C*) The provisions of SEC Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Rule, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with subparagraph (a)[,] *or* (B) [or (C)] above.

(11)–(13) renumbered (10)–(12). (c) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Conduct Rule 2710 (the "Corporate Financing Rule") requires that members file most proposed public offerings with the Corporate Financing Department ("Department") of NASD Regulation. The Corporate Financing Department reviews these filings in order to determine whether the underwriting terms and arranagements are fair and reasonable pursuant to standards set forth in Rules 2710, 2720, and 2810 prior to the commencement of the offering. Section 6 of Schedule A to the NASD By-Laws ("Schedule A") and Paragraph (b)(10) of Conduct Rule 2710 include identical provisions that impose a fee on each filing, in the amount of $500 plus .01% of the value of securities, with a maximum filing fee limit of $30,500 (the "Corporate Financing filing fee").

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 6(c) of Schedule A and Paragraph (b)(10)(C) of Conduct Rule 2710 currently require that all Corporate Financing filing fees be paid by check or money order. Such a specific provision was originally adopted in order to prevent the payment of filing fees in cash. Since that time, new methodologies have arisen that facilitate the transfer of money. In order to ensure that NASD Regulation has the necessary flexibility to implement newer forms of payment, NASD Regulation proposes to eliminate Section 6(c) of Schedule A and Paragraph (b)(10)(C) of Conduct Rule 2710. Further a conforming change is made to Paragraph (b)(10)(D) of Conduct Rule 2710 to delete the reference to Paragraph (C) of the same section.

Based on this proposal, members may continue to submit Corporate Financing filing fees in the form of a check or money order to the Corporate Financing Department at the same time that the related documents are filed. Cash payment will still not be accepted in accordance with the standard business practice of the Association. The Association will, however, also implement payment of the Corporate Financing filing fee by wire transfer, and intends to inform filers and members generally of this option. In the case where such a wire transfer is used, the payment of the fee on a timely basis will be considered to "accompany" the filing of the original offering documents or amended offering documents to which it relates, as required by Sections 6(a) and (b) of Schedule A and by Paragraphs(b)(10)(A) and (B) of Conduct Rule 2710.

2. Purpose

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[3] of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fee, and other charges among members. The Association believes that the proposed rule change provides for the equitable allocation of the fees paid by members in connection with the submission of proposed public offerings with the Corporate Financing Department for review.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[4] of the Act and subparagraph (e) of Rule 19b–4[5] thereunder in that it is concerned solely with the administration of a self-regulatory organization.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file No. SR–NASD–98–87 and should be submitted by December 23, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32039 Filed 12–1–98; 8:45 am]

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[3] 15 U.S.C. 78*o*–3.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(e)(1).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40716; File No. SR–NASD–98–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's Workstation II Service for Those Subscribers Who Are Not Members of the NASD

November 25, 1998.

I. Introduction

On August 20, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the fees that the NASD charges non-NASD members receiving Nasdaq Workstation II ("NWII") service. Nasdaq amended the filing on September 10, 1998.[3]

The Commission published notice of the proposed rule change, in the **Federal Register** on October 14, 1998.[4] The Commission received no comments specifically directed toward this proposal.[5] Nasdaq filed a second amendment on November 17, 1998.[6] For the reasons discussed below, the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 10, 1998 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 40521 (October 5, 1998), 63 FR 55167 (October 14, 1998)

[5] As discussed below, the Commission received comments that were directed toward a parallel proposal, File No. SR–NASD–98–62, which proposed to modify the fees Nasdaq charges NASD members receiving NWII service.

[6] *See* Letter from Robert Aber, Nasdaq, to Richard Strasser, Division, Commission, dated November 17, 1998 ("Amendment No. 2"). Amendment No. 2 deleted language, appearing in the **Federal Register** notice, stating that if non-NASD member subscribers received EWN II technology prior to approval of this proposed rule change, then after approval Nasdaq would bill the non-member subscribers in an amount equal to the differential under the EWN I and the EWN II fee structures.

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Commission is approving the proposed rule change as amended.

II. Description of the Proposal

The NASD filed this proposed rule change in conjunction with a parallel proposal to modify the fees charged NASD members, File No. SR–NASD–98–62.[7] The fee schedule set forth in that proposal became effective upon filing in accordance with Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4.

This proposed rule change would increase the monthly fees for NWII service as follows: the monthly Service Charge would increase from $100 per "server" to $1500 per "service delivery platform" ("SDP"); the monthly Display Charge would increase from $500 to $525 per presentation device ("PD"); and the monthly "Additional Circuit/SDP Charge" (formerly the "Additional Circuit Charge") would increase from $1150 to $2700. This proposed rule change also clarifies that the fee schedule applies to subscribers who access NWII service through an application programming interface ("API"). Finally, the proposal eliminates the Digital Interface Service fee schedule because Nasdaq no longer provides that service.

Nasdaq proposed this fee change in conjunction with the construction of EWN II, a new network for delivering NWII service. Nasdaq is in the process of converting existing subscribers to the EWN II network. During this process, some NWII subscribers will continue to utilize the existing EWN I network and pay the fees for that service, until they are upgraded to EWN II.

To access NWII service, each subscriber location has at least one SDP, or server, that resides on the network and connects to Nasdaq by a dedicated circuit. Under the EWN II network, each dedicated circuit ("T1 circuit") will be capable of supporting up to six SDPs. Each SDP can support up to eight PDs, or Nasdaq Workstation IIs, although a firm may elect to have fewer than eight PDs on a single SDP. A subscriber may also obtain NWII service through an API, which allows a firm to obtain NWII Service using the firm's own hardware (*e.g.*, personal computer) and software systems.

Under the new fee structure, a firm with one SDP ($1500) and eight PDs (8 × $525 = $4200) would be charged a monthly fee of $5700 (compared to $4100 under the existing schedule). A firm with one SDP ($1500) and two PDs (2 × $525 = $1050) would be charged a monthly fee of $2550 (compared to $1100 under the existing schedule). If a subscriber chooses to access NWII through an API, the subscriber would be assessed the service charge for each SDP, the display charge for each of the subscriber's linkages (*e.g.*, NWII substitute, quote-update facility), as well as the additional circuit charge. The Additional Circuit/SDP charge will apply if a subscriber obtains additional SDPs and/or T1 circuits without first maximizing the capacity on its SDPs and T1 circuits.

Nasdaq justifies the proposed fee structure on the grounds that it is derived from the fee structure in the contract that Nasdaq and MCI Communications Corporation ("MCI") entered into in 1997, under which MCI would build and maintain the new network. Nasdaq represents that the proposed fee structure subsidizes its subscribers, in that the proposed Service Charge does not pass on all of the SDP/server costs that Nasdaq incurs under the contract. Nasdaq also represents that the proposed fee schedule's Display Charge in part helps the NASD recoup its subsidy of the SDP/server costs and other expenses associated with the development and the maintenance of NWII.

Although the Commission received no comment letters specifically addressing this filing, Nasdaq's proposal to change the fee schedule applicable to NASD members generated three comment letters.[9] The three letters criticized the proposed fee schedule applicable to NASD members on a number of issues, including: that it disproportionately affects smaller subscribers, that it is unfair to market makers, that it does not adequately place the EWN II network's costs upon the network's beneficiaries, and that Nasdaq has not adequately justified various components of the fee structure and related fees. One letter requested that the Commission review the bidding process and the costs associated with the contract for the new network, to determine a fair cost.[10]

III. Discussion

The Commission finds that the proposed fee schedule for non-NASD members is consistent with the requirements of Section 15A(b)(5) of the Act.[11] Section 15A(b)(5) specifies that the rules of a registered securities association shall provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.[12]

This proposed rule change provides that NASD members and non-NASD members who subscribe to NWII service will pay the same rates, suggesting that the burden of the new fees was allocated fairly. Moreover, by basing the SDP rates on the costs that Nasdaq pays under the contract to implement the EWN II network, but reducing the impact on smaller users by not passing on all of the SDP costs that Nasdaq incurs, the Commission believes that Nasdaq has sought to minimize the adverse impact of those increased fees on non-NASD members, suggesting that the fees are reasonable under the circumstances.

The Commission is not persuaded by the commenters' criticism (in the parallel rule filing regarding the fees Nasdaq charges NASD members) that the costs were not allocated fairly or that the costs are not justified. None of the commenters disputes the issue that Nasdaq's technical modernization efforts are intended to improve Nasdaq's capacity and to enhance services provided to NASD members and non-members alike. Nor do the commenters dispute Nasdaq's contention that the increased Service Charge is intended to offset the costs associated with the technology modernization efforts. Finally, the commenters do not dispute Nasdaq's representation that Nasdaq has chosen not to pass on the entire cost of each SDP slot to members and non-members. Therefore, the Commission finds that the proposal is consistent with the Act.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 merely clarifies that Nasdaq will not attempt to impose the monthly fee changes on non-NASD member subscribers who receive EWN II technology prior to this Order.

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[7] Securities Exchange Act Release No. 40434 (September 11, 1998), 63 FR 49937 (September 18, 1998).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] *See* Letter from Douglas Ralston, President, Sherman Ralston, Inc., to Jonathan Katz, Secretary, Commission, dated October 8, 1998; Letter from David Rich, Associate Compliance Director, Jefferies & Company, Inc., to Jonathan Katz, dated October 9, 1998; Letter from Marge Ferguson, President, Wall Street Telecommunications Association, to Jonathan Katz, dated November 4, 1998 (not specifically identifying a file number, but focusing its comments on Nasdaq Level III service, which is available only to NASD members) ("WSTA letter").

[10] *See WSTA letter.*

[11] 15 U.S.C. 78o–3(b)(5).

[12] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–63 and should be submitted by ?????.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–98–63, including Amendment No. 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32096 Filed 12–1–98; 8:45 am]

BILLING CODE 8010–01–M

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[13] *See* 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40707; File No. SR–PHLX–98–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 783, Report of Financial Arrangements and Floor Procedure Advice F–11, Splitting Orders

November 24, 1998.

I. Introduction

On April 27, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder a proposed rule change to amend its financial arrangements rule, Rule 783, and Options Floor Procedure Advice F–11[3] regarding the Splitting of Orders. On October 2, 1998, the PHLX submitted Amendment No. 1 to the proposed rule change.[4] On October 20, 1998, the proposal, as amended, was published for comment in the **Federal Register.**[5] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend its financial arrangements rule Rule 783, to require that members, member organizations, foreign currency options participants, participant organizations and general partners or voting stockholders thereof report to the Exchange financial arrangements for amounts greater than $5,000. Currently, PHLX Rule 783 requires that members and member organizations report to the Exchange the obtaining and making of a loan over $2500, including loans to non-members. The proposed definition of financial arrangements includes any consideration over $5000 that constitutes a loan, gift, salary or bonus; the direct financing of a member of or participant organization (except clearing arrangements)[6], any direct equity investment or profit sharing arrangement; and the guarantee of a trading account (except a clearing arrangement). Currently, paragraph (b) of PHLX Rule 783 provides exceptions for certain member-to-member loans. Proposed exceptions to the rule are outlined in proposed paragraph (c) of PHLX Rule 783. The amended rule would not apply to stock loan arrangements[7] or transactions between members affiliated with the same member organization or participants affiliated with the same participant organization or transactions in publicly traded securities of a member organization. All parties involved in the financial arrangement are required to notify the Exchange of eligible financial arrangements without ten (10) business days of the effective date of such arrangements. In the event of termination of the financial arrangement, the parties involved must similarly notify the Exchange of the termination.

In addition, the Exchange proposes to amend Options Floor Procedure Advice F–11 regarding the Splitting of Orders by adding that dually and financially affiliated Registered Option Traders ("ROTs") will be treated as one interest for the purpose of splitting an order in the trading crowd. Currently, Advice F–11 requires ROTs of the same firm when bidding or offering at the same price and for the same option to be treated as one interest for the purpose of splitting an order in the trading crowd. The proposal would extend the Advice to dually and financially affiliated ROTs further ensuring fairness in the order splitting process. Advice F–11 defines "dually affiliated" as those ROTs required to report pursuant to Exchange Rule 793,[8] and "financially affiliated" as those ROTs required to report pursuant to Exchange Rule 783. The Exchange also proposes to increase the fine schedule for failing to report dual or financial affiliations from $100.00 to $500.00 for the first offense; $250.00 to $1,000.00 for the second offense; and from $500.00 to a sanction discretionary with the Business Conduct Committee for the third offense and thereafter. The

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The PHLX's minor rule violation enforcement and reporting plan ("minor rule plan"), codified in PHLX Rule 970, contains floor procedure advises with accompanying fine schedules. Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 18d-1(c)(1) under the Act requires prompt filing with the Commission of any final disciplinary action. However, minor rule violation not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[4] Letter from Nandita Yagnik, Esquire, PHLX, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, SEC dated Sept. 30, 1998. In Amendment No. 1, the PHLX added a requirement that members, member organizations, participants and participant organizations disclose loans and financial arrangements with non-members.

[5] Securities Exchange Act Release No. 40541 (Oct. 9, 1998), 63 FR 56056 (Oct. 20, 1998).

[6] Under the proposal, clearing arrangements are defined as those arrangements in which a company acts as an intermediary in making payments, deliveries or both in connection with transactions in securities, or who provides facilities for comparison of data respecting the terms of settlement of securities.

[7] Under the proposal, a stock loan arrangement shall mean an agreement for the lending and borrowing of securities and shall include a securities contract or other agreement, including related terms, for the transfer of securities against the transfer of funds, securities, or other collateral, with simultaneous agreement by the transferee to transfer to the transferor against the transfer of funds, securities, or other collateral upon notice, at a date certain, upon demand, the same or substituted securities.

[8] PHLX Rule 793 requires persons who are general or limited partners, or an officer, director, stockholder or associated person of more than one member or participant organization or who are affiliated in any manner with a non-member, or non-participant organization which is engaged in the securities business, to disclose this affiliation in writing and to have such affiliation approved in writing by the member or participant organization.

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Exchange also proposes a corresponding change to its minor rule plan.

III. Discussion

The Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it promotes just and equitable principles of trade and protects investors and the public interest by revising the Exchange's financial arrangement rule and strengthening the order splitting provision of Advice F–11.[10] The Commission believes the increased dollar limit updates the Exchange's financial arrangement rule to take into account inflation without significantly reducing the protections of the rule. The Commission also believes that extending Advice F–11 to dually and financially affiliated ROTs should enhance competition in options traded on the PHLX by preventing one firm from garnering all of the executions in a particular option by splitting orders in the trading crowd among members who are either dually or financially affiliated.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–98–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32040 Filed 12–1–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3134, Amdt. 1]

Commonwealth of Puerto Rico

In accordance with a notice received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 31, 1998.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 24, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: November 24, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–32080 Filed 12–1–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service; Performance Review Board Members

ACTION: Roster of Members of this Agency's Senior Executive Service.

SUMMARY: Section 4314(c) (4) of Title 5, U.S.C. requires Federal agencies publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following is the FY 1998 Performance Review Board roster:

1. Jadine Nielsen, Chief of Staff;
2. Elizabeth Montoya, Associate Deputy Administrator for Management and Administration;
3. Betsy Myers, Associate Deputy Administrator for Entrepreneurial Development;
4. John Gray, Associate Deputy Administrator for Capital Access;
5. Carolyn J. Smith, Assistant Administrator for Human Resources;
6. Lawrence Barrett, Chief Information Officer;
7. Dave Kohler, Associate General Counsel for General Law;
8. Thomas Dumaresq, Assistant Administrator for Administration;
9. Erline Patrick, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance;
10. Calvin Jenkins, Deputy to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development;
11. Jeanne Sclater, Deputy to the Associate Deputy Administrator for Capital Access;
12. Herbert Mitchell, Deputy Associate Administrator for Disaster Assistance;
13. Francisco Marrero, District Director (Newark);
14. Darryl Hairston, District Director (Washington);
15. Mark Quinn, District Director (San Francisco).

Dated: November 25, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–32081 Filed 12–1–98; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Union County, Mississippi, Multipurpose Reservoir/Other Water Supply Alternatives

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) on a multipurpose reservoir in Union County, Mississippi, located in northeast Mississippi. The primary purpose of the reservoir is to provide an adequate and reliable water supply for the Union County area. This EIS will also consider other alternative means of meeting the area's water supply needs. Alternatives to be considered will include one or a combination of the following: construction of a surface impoundment on a tributary of the Little Tallahatchie River; installation of one or more water pipelines from existing public water supplies; development of new groundwater sources; and the no action alternative. With this notice, TVA invites comments on the scope of this EIS.

DATES: Comments on the scope of the EIS must be received on or before January 8, 1999. TVA will conduct a public meeting in New Albany, Mississippi to discuss the project and obtain comments on the scope of the EIS. The location and time of this meeting are described below in the Scoping Process section.

ADDRESSES: Comments should be sent to Charles P. Nicholson, National Environmental Policy Act Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499. Comments may also be e-mailed to cpnicholson@tva.gov.

FOR FURTHER INFORMATION CONTACT: Daniel H. Ferry, Tennessee Valley Authority, WT 10D–K, Knoxville, Tennessee 37902–1499, e-mail: dhferry@tva.gov; or Gary D. Hickman, Tennessee Valley Authority, ABL 1A–N, Norris, Tennessee 37828, e-mail: gdhickman@tva.gov.

SUPPLEMENTARY INFORMATION: TVA has been asked by Union County, Mississippi, and the City of New Albany to assist in the evaluation of a proposed reservoir and other means of supplying the area's water supply needs. In addition, TVA has been asked to relocate one of its electrical transmission lines that lies within the proposed reservoir pool if the County and City decide to pursue that alternative.

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[9] 15 U.S.C. 78f(b)(5).

[10] In reviewing this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

Water needs in Union County, Mississippi, are currently supplied by wells operated by municipal water systems, rural water associations, and institutional and industrial users. The average daily water use from the public water systems in 1996 was 2.365 million gallons per day (MGD) and the peak daily use was 4.040 MGD. Two-thirds of the county water needs are supplied by wells in the Eutaw-McShan aquifer, and most of these wells are near the City of New Albany. Pumping from these wells has lowered groundwater levels. New wells drilled in this area have generally been unproductive.

In order to meet projected future water supply needs, Union County and the City of New Albany combined efforts to develop an alternate water supply and have proposed constructing a multipurpose reservoir on a tributary of the Little Tallahatchie River. In order to obtain public input on this proposal and to fully evaluate a range of alternatives, TVA has decided to prepare an EIS.

Alternatives

Alternatives presently under consideration include: (1) No action; (2) construction of a multipurpose reservoir on a tributary to the Little Tallahatchie River; (3) construction of one or more pipelines from an existing water supply system with sufficient capacity to meet the needs of Union County; and (4) construction of new groundwater sources by tapping into additional aquifers. Reasonable alternative actions available to TVA are to relocate the transmission line, and the no action alternative. Some of the water supply alternatives would also involve actions by other federal agencies. TVA has identified two alternative routes for its tramsnission line if it is relocated. TVA invites the public to comment on these alternatives or to suggest other possible alternatives.

Proposed Issues To Be Addressed

The EIS will evaluate the water supply needs of Union County through the year 2050, and potential effects of alternative means of meeting the water supply needs. Potentially important issues for discussion in the EIS include:

1. Effects on stream discharge, water quality, and availability;
2. Impacts on terrestrial and aquatic ecology, including endangered and threatened species;
3. Impacts on floodplains, wetlands, recreation, and existing land uses; and
4. Socioeconomic, historic, archaeological, and cultural effects associated with the alternative actions.

This list is not intended to be all inclusive, nor is it intended to be a predetermination of impacts. As scoping and preparation of the EIS proceed, other issues may be revealed which will necessitate further analyses.

Scoping Process

Scoping, which is integral to the EIS process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided. TVA's procedures implementing the National Environmental Policy Act require that the scoping process commence after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in an EIS will be determined, in part, from written comments submitted by mail, and comments presented orally or in writing at a public scoping meeting. The preliminary identification of reasonable alternatives and environmental issues provided in this notice is not meant to be exhaustive or final. TVA considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant study and new matters may be identified for potential evaluation.

The scoping process will include both interagency and public scoping. The agencies expected to participate in interagency scoping include the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and various State of Mississippi agencies including the Department of Environmental Quality, Department of Wildlife, Fisheries, and Parks, the Department of Economic and Community Development, State Historic Preservation Office of the Department of Archives and History, and other federal, state and local agencies as appropriate. TVA anticipates that some of these agencies, because of their jurisdiction and/or expertise, will be cooperators in the development of the EIS.

The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice and/or attend the public scoping meeting. TVA will conduct a public meeting on the scope of the EIS in New Albany, Mississippi on Thursday, December 10, 1998. The meeting will be held at the Union County Courthouse, which is located at 116 East Bankhead. Registration for the meeting will be from 5:30 to 6:30 p.m. with the meeting beginning at 6:30 p.m. The meeting will begin with brief presentations by representatives of the Union County Development Association, the City of New Albany, and TVA explaining the proposed project and the EIS process. Following this presentation, attendees will be given the opportunity to express issues and concerns that should be considered in the EIS.

Upon consideration of the scoping comments, TVA will develop alternatives and identify important environmental issues to be addressed in the EIS. Following analysis of the water supply needs and of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. A notice of availability of the draft EIS will be published in the **Federal Register** and area newspapers. TVA expects to have this draft EIS completed in early 2000.

Dated: November 24, 1998.

Kathryn J. Jackson,

Executive Vice President, Resource Group.

[FR Doc. 98–32055 Filed 12–1–98; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee (ISAC–14) will hold an open meeting on December 7, 1998 from 9:15 a.m. to 3:15 p.m.

DATES: The meeting is scheduled for December 7, 1998, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–4792 or Bill Daley Jr., Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a open meeting on

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December 7, 1998 from 9:15 a.m. to 3:15 p.m. Agenda topics to be addressed will be:

1. An update by the Assistant Secretary for Trade Development on Trade Development's involvement in the recent APEC Ministerial and JCCT meeting.
2. Advice from the ISAC on small and medium-size enterprise (SME) export issues such as how the government can encourage more SMEs to export, export to multiple markets, use intermediaries (if appropriate), use electronic commerce to increase exports, etc.
3. A focus on electronic commerce including an overview of how electronic commerce can help SMEs export; a discussion of issues such as privacy, security, etc.; electronic commerce with respect to APEC/FTAA/WTO; a discussion of the Y2K issue; a demonstration of AID's Global Technology Network.
4. A briefing on ITA funding.
5. Committee Business.

Pete Felts,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 98–32049 Filed 12–1–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on the information collection's described below was published on September 16, 1998 [63 FR 49631].

DATES: Comments on this notice must be received on or before January 4, 1999.

FOR FURTHER INFORMATION CONTACT: For copies of these documents, contact Barbara Davis, Office of Information Management, 202–267–2326.

SUPPLEMENTARY INFORMATION:

U. S. Coast Guard

Title: Safety Approval of Cargo Containers.

OMB Control Number: 2115–0094.

Type of Request: Extension of a currently approved collection.

Forms: N/A.

Affected Public: Container owners; container manufacturers; organizations to which the Coast Guard delegates its approval authority.

Abstract: The information collection requires owners and manufacturers of cargo containers to submit information and keep records to make it possible for the Coast Guard or its appointed agents to conduct the approval process. The reporting requirements are necessary to provide the Coast Guard the information it needs to approve new equipment and designs. The recordkeeping requirements are necessary to assist the Coast Guard in its inspections of containers following approval.

Need: This collection of information addresses the reporting and recordkeeping requirements for containers in 49 CFR Parts 450–453. These rules are necessary because the U.S. is signatory to the International Convention for Safe Containers (CSC). These rules prescribe only the minimum requirements of the CSC.

Burden Estimate: The estimated burden is 71,505 hours annually.

Addresses: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN: USCG Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

Comments are invited on: whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on November 20, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–32065 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 20, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4764
Date Filed: November 16, 1998
Parties: Members of the International Air Transport Association
Subject:
PAC/Reso/402 dated October 28, 1998 r–1
Passenger Agency Resolution 850e
CAC/Reso/192 dated November 3, 1998 r–2
Cargo Agency Resolution 851e
Minutes:
PAC/Meet/155 dated October 28, 1998
CAC/Meet/131 dated November 3, 1998
Intended effective date: January 1, 1999.

Docket Number: OST–98–4780
Date Filed: November 18, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 Telex Mail Vote 973
South Atlantic-Europe/Mideast Reso 010y
Telex Mail Vote Amendments #1, #2, #3
Intended effective date: December 1, 1998.

Docket Number: OST–98–4781
Date Filed: November 18, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC123 0059 dated November 13, 1998
North Atlantic Passenger Resos r1–18

Minutes—PTC123 0057 dated November 3, 1998
Table—PTC123 Fares 0030 dated November 13, 1998
Intended effective date: March 1, 1999.

Docket Number: OST–98–4782
Date Filed: November 18, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC123 0060 dated November 13, 1998
Mid Atlantic Resos r1–6
PTC123 0061 dated November 13, 1998
South Atlantic Resos r7–19
TABLES:
PTC123 Fares 0031 dated November 13, 1998
PTC123 Fares 0032 dated November 13, 1998
(Minutes, contained in PTC123 0057, are filed this date with the U.S.-related portion of the PTC123 agreement).
Intended effective date : March 1, 1999.

Docket Number: OST–98–4783
Date Filed: November 18, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR-SWP 0025 dated November 13, 1998
Europe-Southeast Pacific Expedited Resos r1–002i r2–071kk r3–071rr
Intended effective date: January 1, 1999.

Dorothy W. Walker,
Federal Register Liaision.
[FR Doc. 98–32066 Filed 12–1–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 20, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4531.
Date Filed: November 18, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 16, 1998.

Application of Cherokee Air, Ltd. pursuant to 49 U.S.C. 41301 and Subpart Q, requests an amendment of its Foreign Air Carrier Permit authorizing it to engage in on-demand charter foreign air transportation between the Commonwealth of the Bahamas ("Bahamas") and the United States, for more than ten (10) flights per month, subject to the new limitation of operating only passenger aircraft with less than sixty (60) seats.

Docket Number: OST–98–4789.
Date Filed: November 18, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 16, 1998.
Description: Application of MK Flugfelagid ehf pursuant to 49 U.S.C. 41302 and Subpart Q, applies for a Foreign Air Carrier Permit authorizing it to engage in scheduled foreign air transportation of property and mail between a point or points in Iceland and a point or points in the United States, via intermediate points, and beyond. MK also requests authority to conduct Fifth Freedom cargo charter flights between the United States and points in third countries, to the extent permitted under 14 C.F.R Part 212.

Docket Number: OST–98–4793.
Date Filed: November 19, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 17, 1998.
Description: Application of Florida West International Airways, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q, request issuance of a new Certificate of Public Convenience and Necessity, or an amendment to its existing international certificate, authorizing FWIA to engage in scheduled foreign air transportation of property and mail between any point or points in the United States and any point in the countries listed in Appendix A to this application. FWIA also requests authority to integrate this certificate authority with all services FWIA is otherwise authorized to conduct pursuant to its exemption and certificate authority consistent with applicable agreements between the U.S. and foreign countries.

Docket Number: OST–98–4798.
Date Filed: November 20, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 18, 1998.

Application of Air Atlanta-Icelandic pursuant to 49 U.S.C. 41302 and Subpart Q, applies for renewal of its Foreign Air Carrier Permit authorizing it to engage in charter foreign air transportation of persons, property and mail between any point or points in Iceland and any points in the United States. Air Atlanta's Foreign Air Carrier Permit also authorizes it to engage in other charter trips in foreign air transportation, subject to the Department's regulations.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 98–32067 Filed 12–1–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program, Revision and Request for Review, Key West International Airport, Key West, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised current and future noise exposure maps submitted by Monroe County, Florida, for Key West International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Key West International Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before May 8, 1999.

EFFECTIVE DATE: The effective date of the FAA's determination on the revised noise exposure maps and of the start of its review of the associated noise compatibility program is November 9, 1998. The public comment period ends January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Comments on the proposed noise compatibility program should also be submitted to the above office.

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SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised noise exposure maps submitted for Key West International Airport are in compliance with applicable requirements of part 150, effective November 9, 1998. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 8, 1999. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Monroe County, Florida, submitted to the FAA on October 26, 1998, revised noise exposure maps, descriptions and other documentation which were produced during the Key West International Airport FAR part 150 noise study conducted between October 1, 1996, and October 25, 1998, was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the revised noise exposure maps and related descriptions submitted by Monroe County, Florida. The specific maps under consideration are "1998 Noise Exposure Map" and "2003 Noise Exposure Map" in the noise compatibility program submission. The FAA has determined that these maps for Key West International Airport are in compliance with applicable requirements. This determination is effective on November 9, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Key West International Airport, also effective on November 9, 1998. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the revised program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 8, 1999.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed revised program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the revised noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024; and

Division Director of Community Services, Public Services Building, 5100 College Road West, Wing 4, Room 405, Key West, Florida 33040.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida, November 9, 1998.

W. Dean Stringer,

Manager, Orlando Airport District Office.

[FR Doc. 98–32133 Filed 12–1–98; 8.45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–04–C–00–BGM) To Impose and Use a Passenger Facility Charge (PFC) at Binghamton Regional Airport in Binghamton New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Binghamton Regional Airport in Binghamton New York, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Phil Brito, Manager, New York Airports District Office, 600 Old Country Road, Garden city, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Carl G Olsen, Commissioner of Aviation for the Broome County Department of Aviation, at the following address: Broome County Department of Aviation, Binghamton Regional Airport/Edwin A. Link Field, Box 16, Johnson City, New York 13790.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broome County Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530 (Telephone 516–227–3800). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Binghamton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 23, 1998, the FAA determined that the application to impose and use a PFC submitted by the Broome County Department of Aviation was substantially complete within the requirements of section 158.25 of Part 168. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 1999.

The following is a brief overview of the application.

Application number: 99–04–C–00–BGM.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2002.

Proposed charge expiration date: August 1, 2005.

Total estimated PFC revenue: $1,394,724.

Brief description of proposed projects:

Impose Only Projects
- Maintenance Building, Construction

Impose and Use Projects
- Apron Expansion (West Ramp)
- Maintenance Building, Design
- PFC Administrative Costs-Reimbursement

Use Only Projects
- Terminal Building Rehabilitation

Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamacia, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Offices of the Broome County Department of Aviation.

Issued in Jamaica, New York, on November 23, 1998.

Thomas Felix,

Manager, Planning & Programming Branch, AEA–610 Eastern Region.

[FR Doc. 98–32064 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–98–4816]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled "Requirements for Establishing U.S. Citizenship (46 CFR 355)."

DATES: Comments should be submitted on or before February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Doris Lansberry, Office of the Chief Counsel, Maritime Administration, 400 Seventh Street, SW., Room 7232, Washington, DC 20590; telephone number 202–366–5712 or fax 202–366–7485. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Requirements for Establishing U.S. Citizenship (46 CFR 355).

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0012.

Form Number: Special Format.

Expiration Date of Approval: Three years from the date of approval

Summary of Collection of Information: In accordance with 46 CFR 355, shipowners, charterers, equity owners, ship managers, etc. seeking benefits provided by statute are required to provide, on an annual basis, an Affidavit of U.S. Citizenship to the Maritime Administration for analysis.

Need and Use of the Information: The Affidavits of U.S. Citizenship filed with the Maritime Administration will be used to determine shipowners, equity owners, ship managers, etc. compliance with the statutory requirements.

Description of Respondents: Shipowners, charterers, equity owners, ship managers.

Annual Responses: 300 responses.

Annual Burden: 1,500 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., ET., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

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By Order of the Maritime Administrator.

Dated: November 27, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–32121 Filed 12–1–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 24, 1998

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 4, 1999 to be assured of consideration.

Finacial Management Service (FMS)

OMB Number: 1510–0061.

Form Number: None.

Type of Review: Extension.

Title: Cash Management Improvement Act (CMIA) Annual Report and Direct Cost Claims.

Description: States and territories must report interest owed to and from the Federal Government for major Federal Assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State and Federal interest claims, to assess State and Federal cash management practices and to exchange amounts of interest owed.

Respondents: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 56.

Estimated Burden Hours Per Respondent/Recordkeeper: 500 hours.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 28,000 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860. Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 98–32034 Filed 12–1–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 24, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 4, 1999 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0092.

Form Number: None.

Type of Review: Extension.

Title: Libyan Sanctions Regulations.

Description: Submissions will provide the United States Government with information to be used in enforcing sanctions against the Government of Libya, including prohibitions on travel and financial dealings.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (initial registration of eligibility).

Estimated Total Reporting Burden: 5 hours.

OMB Number: 1505–0106.

Form Number: None.

Type of Review: Extension.

Title: Reporting on Transactions Engaged in by Oil Affiliates.

Description: This collection implements controls on trade and financial transactions involving Iran and the Government of Iran. It provides the United States Government with information to be used in evaluating activities of affiliates of U.S. persons.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Respondent: 6 hours, 42 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 201 hours.

OMB Number: 1505–0167.

Form Number: TD F 90–22.52.

Type of Review: Extension.

Title: Cuban Remittance Affidavit.

Descritpion: Pursuant to the Trading with the Enemy Act, 50 U.S.C. App. 1–44, the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. 6021–91, and the Cuban Assets Control Regulations, 31 C.F.R. Part 515, U.S. persons are prohibited from sending more than $1,000 as a one-time immigration remittance or family remittances of more than $300 per quarter to Cuba. To assure compliance with these statutes and the Regulations, remittance service providers have historically been instructed to require remitters to sign affidavits that authorized ceilings have not been exceeded. Audit experience indicates that the affidavits, which must be retained for five years by service providers, are often haphazardly drafted and executed. To assure uniform and consistent compliance, this form is being standardized and will be distributed in both print and electronic copy to all remittance forwarders. The affidavit requirement is not new, merely the standardized form.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeeping: 1,000,000.

Estimated Burden Hours Per Respondent/Respondent: 45 to 75 seconds.

Frequency of Response: Other (every time a remittance is sent).

Estimated Total Reporting/Recordkeeping Burden: 66,667 hours.

OMB Number: 1505–0168.

Form Number: None.

Type of Review: Extension.

Title: Travel Service Provider and Carrier Service Provider Submission.

Description: Pursuant to the Trading with Enemy Act, 50 U.S.C. App. 1–44, the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. 6021–91, and the Cuban Assets Control Regulations, 31 C.F.R. Part 515, the Treasury Department can issue specific licenses to Travel Service Providers (TSPs) and Carrier Service Providers (CSPs) for them to arrange authorized travel for U.S. persons to and from Cuba. To assure compliance with these statutes and Regulations. TSPs and CSPs have historically been required to collect information on the travelers and the travel for their clients. Specifically, the traveler's full name, mother's maiden name, address, date of birth, passport number (including country of issue), category of travel (licensed, family, official government, official international organization, or journalist fully employed by a new reporting organization), and dates of departure and return must be provided. The Treasury Department's Office of Foreign Assets Control (OFAC) examines this information in performing audits. In accordance with new Regulations, issued May 13, 1998, CSPs must file this information (collected from TSPs) electronically with OFAC between 48 and 72 hours before the flight's departure. Detailed guidance will be provided by OFAC to the CSPs before June 15, 1998, when this new requirements took effect.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 54,600.

Estimated Burden Hours Per Respondent/Recordkeeper: 5 to 10 minutes.

Frequency of Response: Other (prior to each traveler's departure to Cuba).

Estimated Total Reporting/Recordkeeping Burden: 4,550 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–32035 Filed 12–1–98; 8:45 am]

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federal register

Wednesday
December 2, 1998

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 312, 314 and 601

Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 312, 314, and 601

[Docket No. 97N–0165]

RIN 0910–AB20

Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing new regulations requiring pediatric studies of certain new and marketed drug and biological products. Most drugs and biologics have not been adequately tested in the pediatric subpopulation. As a result, product labeling frequently fails to provide directions for safe and effective use in pediatric patients. This rule will partially address the lack of pediatric use information by requiring that manufacturers of certain products provide sufficient data and information to support directions for pediatric use for the claimed indications.

DATES: *Effective date*. The regulation is effective April 1, 1999.

Compliance dates. Manufacturers must submit any required assessments of pediatric safety and effectiveness 20 months after the effective date of the rule, unless the assessments are waived or deferred by FDA.

FOR FURTHER INFORMATION CONTACT: Khyati N. Roberts, Center for Drug Evaluation and Research (HFD–103), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779, or Karen D. Weiss, Center for Biologics Evaluation and Research (HFM–570), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5093.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of August 15, 1997 (62 FR 43900) (hereinafter referred to as the proposal), FDA proposed to require that manufacturers of certain new and marketed drugs and biologics conduct studies to provide adequate labeling for the use of these products in children. As described in the proposal, children are subject to many of the same diseases as adults, and are, by necessity, often treated with the same drugs and biological products as adults. However, many drugs and biological products marketed in the United States that are or could be used in children are inadequately labeled for use in pediatric patients or for use in specific pediatric subgroups (Refs. 1 and 2). Indeed, many of the drugs and biological products that are widely used in pediatric patients carry disclaimers stating that safety and effectiveness in pediatric patients have not been established (Refs. 2 and 3). Safety and effectiveness information for some pediatric age groups is particularly difficult to find. For example, there is almost no information on use in patients under 2 years of age for most drug classes (Ref. 1).

As described in more detail in the proposal, the absence of pediatric labeling information poses significant risks for children. Inadequate dosing information exposes pediatric patients to the risk of adverse reactions that could be avoided with an appropriate pediatric dose. The lack of pediatric safety information in product labeling exposes pediatric patients to the risk of age-specific adverse reactions unexpected from adult experience. The proposal cited reports of injuries and deaths in children resulting from use of drugs that had not been adequately tested in the pediatric population. The absence of pediatric testing and labeling may also expose pediatric patients to ineffective treatment through underdosing, or may deny pediatric patients therapeutic advances because physicians choose to prescribe existing, less effective medications in the face of insufficient pediatric information about a new medication. Failure to develop a pediatric formulation of a drug or biological product, where younger pediatric populations cannot take the adult formulation, may also deny pediatric patients access to important new therapies, or may require pediatric patients to take the drug in extemporaneous formulations that may be poorly or inconsistently bioavailable.

The proposed rule described previous steps taken by FDA in recent years to address the problem of inadequate pediatric testing and inadequate pediatric use information in drug and biological product labeling. FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research have implemented a "Pediatric Plan" designed to focus attention on, and encourage voluntary development of, pediatric data both during the drug development process and after marketing. In addition, in the **Federal Register** of December 13, 1994 (59 FR 64240) (hereinafter referred to as the 1994 rule), FDA issued a regulation requiring manufacturers of marketed drugs to survey existing data and determine whether those data were sufficient to support additional pediatric use information in the drug's labeling. Under the 1994 rule, if a manufacturer determines that existing data permit modification of the label's pediatric use information, the manufacturer must submit a supplemental new drug application (NDA) to FDA seeking approval of the labeling change.

Although the preamble to the 1994 rule recognizes FDA's authority to require drug and biological product manufacturers to conduct pediatric studies on a case-by-case basis, the rule does not impose a general requirement that manufacturers carry out studies when existing information is not sufficient to support pediatric use information. Instead, if there is insufficient information to support a pediatric indication or pediatric use statement, the rule requires the manufacturer to include in the product's labeling the statement: "Safety and effectiveness in pediatric patients have not been established."

The response to the 1994 rule has not substantially addressed the lack of adequate pediatric use information for marketed drugs and biological products. Pediatric labeling supplements were submitted for approximately 430 drugs and biologics, a small fraction of the thousands of prescription drug and biological products on the market. Of the supplements submitted, approximately 75 percent did not significantly improve pediatric use information. Over half of the total supplements submitted simply requested the addition of the statement "Safety and effectiveness in pediatric patients have not been established." Others requested minor wording changes or submitted unorganized, unanalyzed collections of possibly relevant data. Approximately 15 percent (approximately 65) of the supplements provided adequate pediatric information for all relevant pediatric age groups, and another 8 percent (approximately 35) provided adequate pediatric information for some but not all relevant age groups.

The absence of adequate pediatric use information remains a problem for new drugs and biologics as well as for marketed products. The proposal presented data from 1988 through the 1990's showing that the percentage of new products entering the marketplace with adequate pediatric safety and effectiveness information has not increased in the last decade.

For example, FDA compared the number of new molecular entities (NME's) approved in 1991 and 1996 with potential usefulness in pediatric patients and looked at the adequacy of pediatric labeling for those drugs. Fifty-six percent (9/17) of the NME's approved in 1991 with potential usefulness in pediatric patients had some pediatric labeling at the time of approval. In 1996, only 37 percent (15/40) of the NME's with potential usefulness in pediatric patients had some pediatric labeling at the time of approval. For both 1991 and 1996, those drugs counted as having pediatric labeling may not have been studied in all age groups in which the drug was potentially useful. The manufacturers of an additional 7 of the 1991 drugs and 17 of the 1996 drugs promised to conduct pediatric studies after approval. Since publication of the proposal, figures for 1997 NME's have become available. In 1997, 39 NME's were approved. Twenty-seven had potential usefulness in pediatric patients, and 33 percent of these (9/27) had some pediatric labeling at the time of approval. Postapproval studies were requested or promised for an additional six. It is uncertain how many of the commitments made for postapproval studies of the 1996 and 1997 drugs will result in pediatric labeling. Of the seven NME's approved in 1991 for which sponsors made commitments to conduct postapproval pediatric studies, pediatric labeling has been added to only one. This figure reflects both studies that resulted in positive labeling, i.e., safety and dosing information, and studies that resulted in warnings against pediatric use. It does not reflect studies that failed to provide any useful information about pediatric use or studies that were completed but the sponsor failed to seek a change in its pediatric use labeling.

These data indicate that voluntary efforts have, thus far, not substantially increased the number of products entering the marketplace with adequate pediatric labeling. FDA has therefore concluded that additional steps are necessary to ensure the safety and effectiveness of drug and biological products for pediatric patients. This rule requires the manufacturers of new and marketed drugs and biological products to evaluate the safety and effectiveness of the products in pediatric patients, if the product is likely to be used in a substantial number of pediatric patients or would provide a meaningful therapeutic benefit to pediatric patients over existing treatments.

In addition to issuing this rule, FDA has initiated other actions that it hopes will encourage the development of adequate pediatric use information. FDA has issued a draft guidance document entitled "General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products" (November 30, 1998). FDA also plans to develop additional guidance on how to develop effectiveness, safety, and dosing information to support pediatric labeling. The agency also supported a provision in the reauthorized Prescription Drug User Fee Act (PDUFA) eliminating user fees for pediatric supplements to encourage the submission of these supplements.

Finally, FDA has issued a guidance document entitled "Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products," describing the kinds of studies that can support effectiveness in supplemental or original applications. In that document, FDA provides guidance to manufacturers on the circumstances in which FDA may approve an initial or supplemental claim in which substantiation of the results of an adequate and well-controlled trial is provided by information other than a second adequate and well-controlled trial precisely replicating the first trial, or the circumstances in which studies without the extensive documentation ordinarily required could be utilized. This guidance will often be relevant to the data needed to support claims in a pediatric population.

Since the issuance of the proposal, Congress has enacted a bill that has an impact on pediatric studies of certain drugs. The Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) contains provisions that establish economic incentives for conducting pediatric studies on drugs for which exclusivity or patent protection is available under the Drug Price Competition and Patent Term Restoration Act (Pub. L. 98–417) and the Orphan Drug Act (Pub. L. 97–414). These provisions extend by 6 months any existing exclusivity or patent protection on a drug for which FDA has requested pediatric studies and the manufacturer has conducted such studies in accordance with the requirements of FDAMA. FDAMA also specifically recognizes FDA's intention to require pediatric studies by regulation and extends by 6 months any existing exclusivity or patent protection on a drug whose manufacturer submits pediatric studies in compliance with this rule, if the studies meet the completeness, timeliness, and other requirements of section 505A. Under FDAMA, a manufacturer who submits pediatric studies required under this rule may receive a 6-month extension of exclusivity or patent protection granted to the manufacturer for that drug.

Although FDA expects the exclusivity offered by FDAMA to provide a substantial incentive for sponsors to conduct some pediatric studies, the agency nonetheless believes that this final rule is necessary to significantly increase the number of drug and biological products that have adequate labeling. Certain limitations on the scope and effect of the exclusivity offered by FDAMA are likely to leave significant gaps in pediatric labeling. For example, because FDAMA exclusivity applies only to products that have exclusivity or patent protection under the Drug Price Competition and Patent Term Restoration Act and the Orphan Drug Act, it provides no incentive to conduct studies on certain categories of products, including most antibiotics, biologics, and off-patent products.

In addition, the voluntary nature of the incentive provided by FDAMA is likely to leave many drugs, age groups, and indications unstudied. Given limited resources to conduct pediatric studies, it is probable that manufacturers will elect to conduct pediatric studies preferentially on those drugs for which the incentives are most valuable, i.e., on drugs with the largest sales. This may leave unstudied drugs that are greatly needed to treat pediatric patients, but that have smaller markets. For similar reasons, manufacturers are less likely to seek FDAMA exclusivity by conducting studies on drugs that require studies in neonates, infants, or young children. The youngest pediatric populations are more difficult to study and may require pediatric formulations, making pediatric studies of these groups more expensive, thereby reducing the value of the incentives provided by FDAMA. Thus, where there is a great medical need for data on drugs with relatively small markets or for studies on neonates, infants, or young children, it may be necessary to require the collection of such data, rather than rely on incentives.

Finally, manufacturers are eligible for FDAMA exclusivity when they submit a study to FDA that is consistent with FDA's written request for such a study. The study results are not required to provide useful information on pediatric use (e.g., the results may be inconclusive), and the sponsor is not required to obtain approval of a supplement adding the information gained in the study to the drug's label. Thus, FDAMA provides no guarantee that the studies conducted under the statute will result in improved pediatric labeling.

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For these reasons, FDA believes that there remains an important need for this rule. FDA has concluded, however, that with respect to already marketed drugs eligible for exclusivity under FDAMA, the publication of the list required by section 505A(b) and the availability of pediatric exclusivity may diminish the need to exercise the agency's authority to require studies. Under the rule, FDA has discretion whether to require studies of marketed drugs (see § 201.23 (21 CFR 201.23)). FDA believes that, in exercising its discretion under § 201.23, it is appropriate to determine whether manufacturers will undertake the needed studies voluntarily. FDA will therefore allow an adequate opportunity for manufacturers voluntarily to submit studies for drugs listed by FDA as having a high priority. If, following such an opportunity, there remain marketed drugs for which studies are needed and the compelling circumstances described in the rule are met, the agency will consider exercising its authority to require studies. With respect to marketed drugs and biologics that are not eligible for exclusivity under FDAMA, FDA intends to exercise its authority to require studies as of the effective date of the rule in the circumstances described in the regulation. FDA emphasizes that the appearance of a drug or biologic on the list published under section 505A(b) carries no implication that FDA will require studies on that drug or biologic under this rule. FDA intends to reserve its authority to require studies of marketed drugs and biologics to situations in which the compelling circumstances described in the regulation are present.

FDA intends to issue further regulations and guidance implementing the pediatric exclusivity provisions of FDAMA, which will, among other things, provide guidance on the interaction of this rule and FDAMA exclusivity.

II. Highlights of the Final Rule

This final rule is designed to ensure that new drugs and biological products contain adequate pediatric labeling for the approved indications at the time of, or soon after, approval. The final rule establishes a presumption that all new drugs and biologics will be studied in pediatric patients, but allows manufacturers to obtain a waiver of the requirement if the product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients and is not likely to be used in a substantial number of pediatric patients. The rule also authorizes FDA to require pediatric studies of those marketed drugs and biological products that: (1) Are used in a substantial number of pediatric patients for the claimed indications, and where the absence of adequate labeling could pose significant risks; or (2) would provide a meaningful therapeutic benefit over existing treatments for pediatric patients, and the absence of adequate labeling could pose significant risks to pediatric patients.

A. Scope of Rule

The proposed rule would have required an application for a drug classified as a "new chemical entity" or a new (never-before-approved) biological product to contain safety and effectiveness information on relevant pediatric age groups for the claimed indications. Based upon comments observing that changes in already marketed chemical entities, such as new indications or dosage forms, can have as much or more therapeutic significance for pediatric patients than the original product, the final rule expands the scope of the rule to include new active ingredients, new indications, new dosage forms, new dosing regimens, and new routes of administration for which an applicant seeks approval. The final rule does not, however, require the submission of pediatric data for a drug for an indication or indications for which orphan designation has been granted under section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bb).

B. Types of Studies Needed

As described in the 1994 final rule, gathering adequate data to establish pediatric safety and effectiveness may not require controlled clinical trials in pediatric patients. Where the course of the disease and the product's effects are similar in adults and pediatric patients, FDA may conclude that pediatric safety and effectiveness can be supported by effectiveness data in adults together with additional data, such as dosing, pharmacokinetic, and safety data in pediatric patients. The rule also does not necessarily require separate studies in pediatric patients. In appropriate cases, adequate data may be gathered by including pediatric patients as well as adults in the original studies conducted on the product.

The specific pediatric information needed in each case will depend on the nature of the application, what is already known about the product in pediatric populations, and the underlying disease or condition being treated. The final rule requires an assessment of safety and effectiveness in pediatric patients only for the indications claimed by the manufacturer. It does not require a manufacturer to study its product for unapproved or unclaimed indications, even if the product is widely used in pediatric patients for those indications. In the proposed rule, the pediatric study requirement for drugs was contained in § 314.50(g) (21 CFR 314.50(g)). In the final rule, the requirement is located in new § 314.55, because § 314.50 does not contain other specific study requirements. The location of the requirement for biological products (§ 601.27 (21 CFR 601.27)) remains unchanged in the final rule.

C. Age Groups

The final rule requires pediatric studies in each age group in which the drug or biological product will provide a meaningful therapeutic benefit or will be used in a substantial number of pediatric patients for the indications claimed by the manufacturer. The relevant age groups will, however, be defined flexibly, depending on the pharmacology of the drug or biological product, rather than following the fixed age categories defined in the 1994 rule and identified in the preamble to the proposed rule. For drugs and biological products that offer a meaningful therapeutic benefit, the rule requires manufacturers to develop pediatric formulations, if needed, for those age groups in which studies are required. Manufacturers may, however, avoid this requirement if they demonstrate that reasonable attempts to develop a pediatric formulation have failed.

D. Not-Yet-Approved Products

1. Deferral of Studies Until After Approval

The final rule permits the submission of pediatric information to be deferred until after approval if there is an adequate justification for deferral, e.g., because pediatric studies should not begin until some safety and/or effectiveness information on adults has been collected, or awaiting the completion of pediatric studies would delay the availability of a product to adults. When trials should begin in particular cases, and whether deferral will be necessary, will depend upon the seriousness of the disease for which the drug or biological product is indicated, the need for the product, the amount of safety and effectiveness data available, and what types of pediatric studies are needed.

In general, FDA expects that studies of drugs or biological products for diseases that are life threatening in pediatric patients and that lack adequate therapy could begin earlier than studies of drugs that are less urgently needed, ordinarily as early as the availability of preliminary safety data in adults (frequently referred to as phase 1 data), even if data from well-controlled studies are not yet available. For less critical drugs and biologics, pediatric studies could ordinarily begin when additional safety and/or effectiveness data from the initial well-controlled trials in adults (frequently referred to as phase 2 data) became available. Of course, studies of products for exclusively pediatric diseases ordinarily need not await the development of adult data. The timing of individual pediatric studies will, however, necessarily depend on the specific information available about the product in question. For example, a study of a noncritical drug in adolescents might begin after the initial safety studies in adults, if all the parties involved agreed that initiation was appropriate in light of the results of the adult and animal safety studies.

In other cases, studies should not begin in pediatric patients until significantly more adult data are collected. For example, FDA does not believe that early study or use in pediatric patients is appropriate for some so-called "me-too" drugs that are expected to be widely used but are members of a drug class that already contains an adequate number of approved products with pediatric labeling. Such drugs may not have been shown to provide any benefit over other products in the same class, and may introduce new risks that are not apparent until the drug has been in wide use after marketing. Studies of such drugs will therefore usually be deferred until the safety profiles of the drugs are well established through marketing experience. To encourage use of properly labeled drugs in pediatric patients, FDA may require the pediatric use section of the approved labeling of such a me-too drug to contain a statement recommending preferential use of other drugs that are adequately labeled for pediatric use.

2. Waiver of the Study Requirement

The pediatric study requirement applies to all applications for new active ingredients, new indications, new dosage forms, new dosing regimens, and new routes of administration, unless FDA waives the requirement. Under criteria established in the rule, FDA may waive the study requirement for some or all pediatric age groups. The burden is on the sponsor to justify a waiver. A waiver will be granted if the waiver request demonstrates that the product meets both of the following conditions: (1) The product does not represent a meaningful therapeutic benefit for pediatric patients over existing treatments, and (2) the product is not likely to be used in a substantial number of pediatric patients. There was some confusion in the comments on the proposed rule over these waiver criteria. FDA emphasizes that the study requirement applies to a product that offers a meaningful therapeutic benefit even if it is not used in a substantial number of pediatric patients, and vice versa.

In response to comments, FDA has refined its definitions of "meaningful therapeutic benefit" and "substantial number of pediatric patients." To define meaningful therapeutic benefit for both drugs and biologics covered by this rule, FDA has relied, in part, on CDER's current administrative definition of a "Priority" drug, applied to pediatric populations. The administrative definition of "Priority" products for biologics relies on different criteria (Ref. 2). Use of CDER's Priority drug definition to help define "meaningful therapeutic benefit" is not intended to affect the administrative definition of a Priority biologic. The Priority classification for drugs is determined based on CDER's estimate, at the time of NDA submission, of a drug's therapeutic, preventive, or diagnostic value. A Priority drug is defined as one that, if approved, would be a significant improvement in the treatment, diagnosis, or prevention of a disease, compared to marketed products approved for that use. In establishing meaningful therapeutic benefit for pediatric use, the comparison will be to other products adequately labeled for use in the relevant pediatric population. If there are no such products, a new product would usually be considered to have a meaningful therapeutic benefit. Improvement over existing products labeled for pediatric use can be demonstrated by, for example: (1) Evidence of increased effectiveness in treatment, prevention, or diagnosis of disease; (2) elimination or substantial reduction of a treatment-limiting drug reaction; (3) documented enhancement of patient compliance; or (4) evidence of safety and effectiveness in a new subpopulation. Evidence of improvement over existing therapies need not in all cases come from head-to-head trials.

To help ensure that pediatric patients have a sufficient range of treatments available, a product will also be considered to provide a meaningful therapeutic benefit if it is in a class of products or for an indication for which there is a need for additional therapeutic options, notwithstanding the fact that it might not be a priority drug. In contrast to the range of therapies for a given indication often available to adults, there are relatively few instances in which therapeutic alternatives are studied and labeled for pediatric patients. For some diseases, however, it is therapeutically important to have a range of available treatment options, e.g., because there are frequent treatment failures. The Priority definition would cover the first product labeled for pediatric use, but might not cover the second or third product for a given indication or in a given class, if the subsequent product did not offer an advantage over existing therapies. The specific number of products needed will depend upon such factors as the severity of the disease being treated and the adverse reaction profile of existing therapies. FDA will seek further guidance on applying this criterion from a panel of pediatric experts.

Thus, new products will meet the definition of a meaningful therapeutic benefit if: (1) They provide a significant improvement over existing adequately labeled therapies; or (2) if they are indicated for diseases or conditions, or are in product classes, in which there are currently few products labeled for pediatric use and more therapeutic options are needed. FDA expects that over time, as the number of products adequately labeled for pediatric patients grows, the number of new products meeting the second criterion will diminish. FDA emphasizes that the addition of the second criterion for defining meaningful therapeutic benefit under this final rule is not intended to alter the definition of a Priority drug, and that products meeting the second criterion will not thereby be eligible for Priority status. FDA also notes that the rule's definition of meaningful therapeutic benefit is intended to apply only in the pediatric study context.

FDA has also revised the proposed definition of "a substantial number of pediatric patients." Many comments argued that the number chosen by FDA in the proposal (100,000 prescriptions per year or 100,000 pediatric patients with the disease) was arbitrary. Physician mention data from the IMS National Disease and Therapeutic Index (Ref. 38), which tracks the use of drugs by measuring the number of times physicians mention drugs during outpatient visits, shows that pediatric use of drugs is generally grouped in two distinct ranges. Physician mentions of drugs for pediatric use generally fall either below 15,000 per year or above 100,000 per year. Few drugs fall within the two ranges. Thus, selecting a cut-off for "substantial number of pediatric patients" in the middle of the two ranges will provide a reasonable discrimination between products that are widely used and those that are less commonly used, and the specific number chosen will not arbitrarily include or exclude a significant number of drugs. FDA has therefore chosen 50,000 as the cut-off for a substantial number of pediatric patients. Because the number of pediatric patients with the disease or condition is easier to determine than the number of prescriptions per year, a substantial number of pediatric patients will be defined as 50,000 pediatric patients with the disease or condition for which the drug or biological product is indicated. Although physician mentions per year does not correspond exactly to the number of patients with the disease or condition, they provide a rough approximation and the IMS data show that the number of products included or excluded is relatively insensitive to changes in the cut-off chosen. As proposed, a partial waiver for a particular pediatric age group would be available under this method if 15,000 patients in that age group were affected by the disease or condition. This definition of "a substantial number of pediatric patients" has not been codified, however, and FDA may modify it, after consulting with a panel of pediatric experts. Any modification will be issued in a guidance document with an opportunity for comment.

FDA will also waive the pediatric study requirement where: (1) The applicant shows that the required studies on the product are impossible or highly impractical because, for example, the population is too small or geographically dispersed; (2) the product is likely to be unsafe or ineffective in pediatric patients; or (3) reasonable efforts to develop a pediatric formulation (if one is needed) have failed.

To reduce the burden on manufacturers in applying for waivers and deferrals, FDA intends to issue a guidance document providing a format for a request for waiver or deferral.

E. Marketed Products

The final rule is also intended to improve pediatric use information for already marketed drugs and biological products. The rule codifies FDA's authority, discussed in the 1994 rule, to require, in the compelling circumstances described in the regulation, that manufacturers of already marketed drugs and biological products conduct studies to support pediatric-use labeling for the claimed indications. The criteria for requiring studies of marketed products have been revised slightly in response to comments.

F. Early Discussions and Pre- and Postmarket Reports

The final rule contains provisions designed to encourage discussions of the need for pediatric studies early in the drug development process, as well as pre- and postmarketing reporting requirements designed to assist FDA in determining whether pediatric studies are needed for particular products and whether required studies are being carried out with due diligence.

G. Pediatric Committee

Many comments on the proposed rule urged FDA to form a committee of outside experts to assist in various aspects of the implementation of the rule. FDA has concluded that such a panel could provide useful advice and experience. FDA will convene a panel of pediatric experts, including at least one industry representative, and seek its advice on a range of issues related to implementation of the rule, including: (1) The agency's implementation of all aspects of the final rule, including its waiver and deferral decisions; (2) which marketed drugs and biological products meet the criteria for requiring studies; (3) when additional therapeutic options are needed for a given disease or condition occurring in pediatric patients; (4) ethical issues raised by clinical trials in pediatric patients; (5) the design of trials and analysis of data for specific products or classes of products; and (6) issues related to the progress of individual studies.

H. Remedies for Violation of the Rule

For violations of this rule, FDA would ordinarily expect to file an enforcement action for an injunction, asking a Federal court to find that the product is misbranded under section 502 of the act (21 U.S.C. 352) or is an unapproved new drug under section 505(a) of the act (21 U.S.C. 355) or an unlicensed biologic under section 351 of the Public Health Service Act, and to require the company to submit an assessment of pediatric safety and effectiveness for the product. Violation of the injunction would result in a contempt proceeding or such other penalties as the court ordered, e.g., fines. FDA does not intend, except possibly in rare circumstances, to disapprove or withdraw approval of a drug or biological product whose manufacturer violates requirements imposed under this rule.

III. Comments on the Proposed Rule

FDA received 54 written comments on the proposed rule from pediatricians, professional societies, parents, members of the pharmaceutical industry, organizations devoted to specific diseases, and patient groups. A significant majority of the comments, primarily those from pediatricians, professional societies, parents, organizations devoted to specific diseases, and patient groups, supported regulations requiring that drugs and biologics be studied in children. Many of these comments described the problems faced by the pediatric community and parents resulting from inadequate pediatric labeling and the absence of pediatric formulations, and argued that a pediatric study requirement was long overdue. Some comments, primarily those from the pharmaceutical industry, opposed a pediatric study requirement, arguing that existing voluntary measures and incentives were sufficient to ensure adequate pediatric labeling. Finally, a number of comments addressed FDA's legal authority to require pediatric testing of drugs and biologics.

FDA also held a day-long public hearing on October 27, 1997, in Washington, DC, at which recognized experts in the field, members of the pharmaceutical industry, and other interested parties were given an opportunity to discuss the issues raised by the proposed rule. There were three panels, each of which comprised representatives from industry, the pediatric community, organizations devoted to specific diseases, patient groups, and a bioethicist. The panels considered the following three issues: (1) When pediatric studies are needed, (2) what types of studies are needed, and (3) special challenges in testing pediatric patients. Those who spoke were nearly unanimous in their support for some kind of regulation requiring pediatric studies of some drugs and biologics. There was, however, a wide range of views on which drugs and biologics should be the subject of required studies and on how the requirement should be implemented.

Many written and oral comments raised specific issues for consideration by the agency. These comments are addressed below.

A. Purpose of Rule

1. FDA received many comments arguing that this rule is needed to ensure adequate medical care for children. Many comments from pediatricians stated that they regularly must prescribe to young children drugs

that are not labeled for children under 6 or even 12, and for which pediatric dosage forms do not exist. One comment stated that, without adequate testing and labeling, physicians must estimate appropriate pediatric doses, and that even at "appropriate" doses, it is not known whether use in children is as safe as use in adults. One comment argued that the absence of pediatric labeling puts children at greater risk for adverse drug reactions (ADR's) and therapeutic failures than adults. According to another comment, most common and severe ADR's in pediatric patients would be eliminated by adequate testing, and that perhaps 2 percent of all pediatric hospitalizations are due to ADR's. One comment concluded that the failure to conduct pediatric studies results in a different standard of care for children and adults in this country.

A comment from a pharmaceutical trade association argued, however, that most of the toxicity problems identified by FDA as caused by inadequate pediatric labeling were from the 1950's and that these "dated" examples are not relevant to current practice. As an example, the comment cited chloramphenicol, a drug referred to by FDA in the proposed rule because, when it was used in the 1950's in neonates without adequate testing, it was responsible for many infant deaths (Ref. 4). According to the comment, it is now known that chloramphenicol can be used in neonates if the dose is correct. The comment also stated that practicing physicians have access to adequate dosing information from case reports in the medical literature.

FDA agrees that the absence of adequate pediatric labeling puts pediatric patients at risk for adverse drug reactions and ineffective dosing. FDA believes that the reference to new dosing information that permits use of chloramphenicol in infants illustrates the need for this final rule. Had adequate safety and dosing information been available earlier, many babies' lives could have been saved. Instead, adequately supported dosing information was not available until after the drug had been used in a large number of babies, with tragic consequences. FDA also disagrees with the comment that the remaining reports cited in the proposal of unexpected toxicity in pediatric patients from inadequately tested drugs are "dated." Contrary to the assertion in the comment, a majority of these reports are from the 1980's and 1990's (Refs. 5 through 14).

FDA also does not believe that case reports scattered through the medical literature are an adequate substitute for organized and complete pediatric labeling information. To the extent that published experience is informative and credible, it should be used to improve labeling. The comments received from pediatricians reflect their view that there is often no adequately supported dosing and safety information for the drugs they use routinely in their patients. Even where case reports are available, they describe a limited number of pediatric patients and cannot provide sufficient information to establish the safety profile of a drug in pediatric patients.

2. Some comments argued that pediatric studies are needed because differences between children and adults can make extrapolation from adult data treacherous. One comment pointed out that research on antiarrhythmics in pediatric patients has revealed many surprises in dosing and side effects. For example, drugs that bind to milk may cause safety or effectiveness problems in pediatric patients not detected in adults.

FDA agrees that pediatric dosing cannot necessarily be extrapolated from adult dosing information using an equivalence based either on weight milligram/kilogram (mg/kg) or body surface area (mg/m ^{2}). There are potentially significant differences in pharmacokinetics, or unique drug-food interactions, that may alter a drug's blood levels in pediatric patients. Moreover, there can be pharmacodynamic differences between adults and pediatric patients.

3. Several comments argued that voluntary measures have not resulted in a significant increase in pediatric labeling, and that new products continue to enter the market without adequate, or any, pediatric labeling. Pediatricians, professional societies, parents, organizations devoted to specific diseases, and patient groups provided many examples of diseases and drug classes for which pediatric labeling was long-delayed, inadequate, or nonexistent. Acquired immune deficiency syndrome (AIDS) drugs were frequently cited as an example of the industry's failure to obtain adequate pediatric labeling at or near the time of approval. One comment pointed to protease inhibitors, which are theoretically most effective in newborns but have not been tested or approved for use in this group. Even for older children, the comment observed that it has taken over a year after adult approval to obtain pediatric labeling for these life-saving drugs. Another comment stated that the absence of drugs for human immunodeficiency virus (HIV) infection that are appropriately labeled and formulated for pediatric patients causes parents to give children inappropriate doses, sometimes giving up part of their own dose if the child's physician will not prescribe it.

Other comments pointed out that epilepsy is considered a pediatric disease but claimed that many new epilepsy drugs are approved without information for use in pediatric patients. These comments urged that anti-epileptic drugs be added to the list of drug classes with inadequate labeling. A comment from a specialist in pulmonary medicine stated that although asthma is a common disease in pediatric patients, adult formulations are often released first, leaving pediatric patients without effective treatments. Other comments observed that not one of the standard immunosuppressive medications used in pediatric patients has been tested in pediatric patients. One comment contended that poor information about the pharmacokinetics of these drugs in pediatric patients has led to inadequate dosing to achieve effectiveness and possibly unnecessary toxicity.

The American Psychiatric Association commented that significant psychiatric diseases are increasingly diagnosed in pediatric patients, who may be treated with drugs despite the lack of pediatric labeling. According to this comment, most psychoactive medications are underutilized in pediatric patients due to the lack of pediatric labeling and to fear of overdosing. In the case of anti-hyperactivity drugs, however, the comment states that as many children are overtreated as undertreated, especially among pre-school age children. A comment from the National Institute of Mental Health (NIMH) stated that the rule was much needed to provide essential data on the safety and effectiveness of psychiatric medications in pediatric patients. This comment attached seven NIMH reviews of the existing data on psychotropic medications for pediatric patients, identifying many critical knowledge gaps that remain to be addressed by pediatric research.

One comment stated that pediatric nephrologists frequently prescribe drugs to pediatric patients for life-threatening conditions, including antihypertensive medications, diuretics, lipid-lowering agents, and immunosuppressive agents, even for pediatric patients less than 2 years of age, without benefit of formal studies. This comment further stated that drug therapy for chronic conditions like kidney failure is currently based only on experience gained from drug usage in children after approval for the indication in adults, and that

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discovering "inadequate dosing or severe side effects by empiric use of these drugs is not desirable or safe." Another comment provided the results of a survey of 4,898 pediatric patients with end-stage renal disease on the medications they receive. Ninety-seven percent received prednisone or prednisolone, 91 percent received cyclosporine, and 84 percent received azathioprine. According to the comment, none of these drugs was studied in pediatric patients and no information on the pharmacokinetics of these drugs in pediatric patients is available.

In contrast, several comments from the pharmaceutical industry argued that voluntary measures, the 1994 rule, and the incentives provided by FDAMA are adequate to assure adequate pediatric labeling and that FDA has not given these steps sufficient time to work. Several comments argued that to obtain pediatric studies, FDA should use encouragement and early discussion with sponsors, together with incentives, rather than imposing new requirements. These comments contended that sponsors should make "phase 4 commitments" (commitments to conduct pediatric studies after approval) and FDA should track these commitments. According to one comment, these methods have not been systematically used by FDA. According to another comment, FDA did not describe its present experience in getting manufacturers to conduct pediatric studies. Other comments argued that FDA has not allowed the 1994 rule sufficient time to produce results and that the agency should wait until it has reviewed and acted upon all supplements submitted under that rule before imposing new requirements. One comment contended that if the 1994 rule was successful in producing pediatric labeling for marketed drugs, the new rule should apply only to new drugs. One comment argued that incentives, including exclusivity, waiver of user fees, tax credits, and expedited reviews of pediatric supplements, and liability protection for research physicians, Institutional Review Boards (IRB's), universities, pharmaceutical firms, and parents, are the best means of obtaining pediatric labeling. A few comments argued that excessive litigation will follow imposition of this rule.

Two comments argued that the 53 NME's approved in 1996 demonstrate that pediatric labeling efforts by the industry are adequate, and that new requirements are not needed. Although the figures used in the 2 comments do not agree exactly, these comments stated that 20 or 21 of the 53 have potential for pediatric use. According to these comments, of these, 4 have approved pediatric labeling, 14 have planned or ongoing studies, 1 is switching to over-the-counter (OTC) use, and 1 or 2 have no immediate plans for pediatric labeling activities. One comment contended that, between 1990 and 1997, a 28 percent increase occurred in the number of new drugs in development for pediatric uses, but provided no data to support this claim.

FDA believes that the current state of pediatric labeling for drugs and biologics in the United States, as amply illustrated by comments from the pediatric community, is unsatisfactory. The agency's failure to obtain a significant increase in labeling for either new or marketed drugs or biologics through other measures implemented over the last several years demonstrates the need for a requirement that sponsors conduct pediatric studies of drugs and biologics that represent a meaningful therapeutic benefit to pediatric patients or that will be widely used in pediatric patients. As described in section I of this document, the response to the 1994 rule has not produced a significant improvement in pediatric labeling for marketed drugs. FDA received labeling supplements only for a small fraction of the drugs and biologics on the market. Of those supplements it did receive, over half of the submissions merely sought to add a statement to the product's labeling that "safety and effectiveness in pediatric patients have not been demonstrated," and less than a quarter provided adequate pediatric information for some or all relevant age groups.

The agency's experience in attempting to obtain pediatric labeling for new drugs entering the marketplace through voluntary measures has also been disappointing. As described in the proposal, the percentage of NME's with adequate pediatric labeling has not increased since 1991, when the agency began systematic efforts to obtain better pediatric labeling. Although the number of requests by the agency and commitments by sponsors to conduct phase 4 (postapproval) pediatric studies may have increased, these requests and commitments have so far infrequently resulted in pediatric labeling. Table 1 of this document displays the results of commitments or requests to conduct pediatric studies postapproval between 1991 and 1996. FDA notes that the table does not reflect any labeling supplements under review. There are a total of six pediatric labeling supplements currently under review for NME's approved between 1991 and 1996. These supplements may or may not add significant new labeling information; but, in any case, would not substantially increase the number of successfully conducted postapproval studies.

TABLE 1.—PEDIATRIC LABELING

Status of pediatric labeling	1991	1992	1993	1994	1995	1996	Totals
NME's approved	30	25	25	22	28	53	183
Pediatric studies not needed	14	11	11	7	14	13	70
Label includes some pediatric use information or pediatric studies complete at time of approval	9	4	[1]5	[1]6	5	15	44
Postapproval pediatric studies promised or requested	7	10	[2]10	[2,3]10	[2]10	17	64
Pediatric labeling added after approval	1	0	2	4	2	2	11

[1] In one case, pediatric use information provided for one of two approved indications

[2] In one case, pediatric data requested for second of two approved indications.

[3] In one case, pediatric data requested for additional age groups.

As Table 1 of this document reflects, FDA's figures disagree with those of the comments for the number of 1996 NME's with potential for pediatric use, the number with some pediatric labeling at the time of approval and the number for which commitments or requests for postapproval studies have been made. The comments did not identify specific drugs, so it is not possible to determine why the two sets of figures conflict. Nevertheless, the historical experience reflected in the table suggests that most of the postapproval pediatric studies for which commitments were made for the

1996 NME's will not result in pediatric labeling. Of the 17 commitments to conduct pediatric studies in 1996, there have thus far been only 2 additions of pediatric labeling. Although some additional studies supporting labeling changes may be submitted in the future, the experience reflected in Table 1 of this document suggests that this will not be a large number. For example, the 27 promised or requested studies for the 1991 through 1993 cohorts have resulted in just 3 additions of pediatric labeling 5 to 7 years after approval. Thus, FDA does not agree that the experience with 1996 NME's demonstrates the adequacy of current efforts to obtain pediatric labeling.

None of the comments claiming that the rule will result in excessive litigation provided any evidence suggesting a relationship between pediatric testing and increased litigation or liability. As shown in the number of NME's with pediatric labeling at the time of approval, a significant minority of drug and biologic manufacturers already conducts pediatric testing. FDA is aware of no evidence that excessive litigation has been associated with this testing.

With respect to the argument that the incentives provided by FDAMA will be sufficient to ensure adequate pediatric labeling, FDA believes that a mixture of incentives and requirements is most likely to result in real improvements in pediatric labeling. FDA is hopeful, e.g., that the FDAMA incentives will make more resources available for pediatric studies. As described earlier, FDA does not believe, however, that incentives alone will result in pediatric studies on some of the drugs and biologics where the need is greatest. The incentives provided by FDAMA are available only for drugs already covered by the exclusivity or patent protection provided by sections 505 and 526 of the act. Thus, the FDAMA incentives are not available for many already marketed drugs, or for many antibiotics or biologics. In addition, limited resources available to conduct pediatric studies and fiduciary obligations to shareholders may cause manufacturers to conduct pediatric studies preferentially on those drugs where the incentives are most valuable, rather than on those drugs or biological products where studies are most needed.

4. Two comments argued that the rule is inconsistent with a 1977 FDA document entitled "General Considerations for the Clinical Evaluation of Drugs in Infants and Children," which recommended, among other things, that "reasonable evidence of efficacy generally * * * be known before infants and children are exposed to [a drug]."

As described in more detail in section III.D of this document under "Deferral," FDA expects that for drugs and biologics other than those for life-threatening diseases without adequate treatment, clinical trials in pediatric patients will ordinarily begin no earlier than when initial data from well-controlled trials in adults (frequently referred to as phase 2 data) become available to ensure that reasonable preliminary evidence of safety and/or effectiveness is available before pediatric patients are exposed to the drug or biological product. How much evidence of safety or effectiveness is "reasonable evidence" that should be available before pediatric trials may begin will be determined on a case-by-case basis. Thus, FDA believes that this rule is substantially consistent with the 1977 document.

FDA notes that the 1977 document was based upon a report prepared for FDA under a contract with the American Academy of Pediatrics (AAP). The AAP is currently developing proposed revisions to this document concerning the types of data needed to support pediatric labeling. The 1977 document, which falls under the general category of guidance documents, does not bind FDA or the public, but represents the agency's current thinking on a particular issue. Alternative approaches may be used if the alternative satisfies the requirements of the applicable statute and regulations (62 FR 8961, February 27, 1997) (Good Guidance Practices document). Until such time as an updated guidance on the clinical evaluation of drugs in infants and children is published, sponsors are encouraged to confer with the agency before initiating pediatric studies.

5. Several comments challenged FDA's use of the 1994 IMS National Disease and Therapeutic Index (NDTI) data on the 10 drugs used most frequently in pediatric patients without adequate labeling, arguing that the data incorrectly imply that physicians have no labeling information, when in fact prescribing information is now, or will be, available for most of the 10 drugs listed.

These comments misunderstand the purpose for which FDA cited the 1994 data. Those data provided a snapshot of the labeling information available to physicians for 10 widely used drugs at a given point in time. Even if additional information had been added to the labels of these drugs in the 4 years since the survey was conducted, there was none available during a year in which the drugs, together, were prescribed to pediatric patients over 5 million times. FDA notes, moreover, that, contrary to the suggestion in the comments, adequate labeling has been added for only 1 of the 10 drugs for the age group described in the proposal.

6. Two comments disputed the estimated number of times their products were prescribed to pediatric patients. One manufacturer argued that the total units sold of Auralgan were less than the listed number of prescriptions. Another manufacturer disputed the estimates of Ritalin usage. This manufacturer also complained that it was not contacted by FDA about use of Ritalin despite the statement in the proposal that FDA had contacted the manufacturers of the top 10 drugs used without adequate labeling in pediatric patients.

Limitations on the data used to estimate number of prescriptions may have resulted in the discrepancy noted by the manufacturers of Auralgan or Ritalin. The number of prescriptions is estimated from data provided by IMS America, Ltd. IMS NDTI surveys a sample of physicians (more than 2,940 physicians representing 27 specialities) to determine the number of times that, during patient contacts, physicians mentioned specific drugs for particular age groups. Physician mentions may not correlate exactly with actual usage. In addition, the NDTI numbers taken from the sample of physicians are extrapolated to the nation as a whole, using a given formula. With respect to the claim that FDA has not contacted the manufacturer of Ritalin, FDA notes that it has scheduled meetings with the manufacturer to discuss use of the drug in children, which have been canceled at the manufacturer's request.

7. One comment challenged FDA's use of quinolones as an example of a class of drug that does not need to be studied in pediatric patients. The comment claimed quinolones do need to be studied in pediatric patients because of their important use in cystic fibrosis patients.

FDA agrees that fluoroquinolones may provide important therapeutic benefits to patients with cystic fibrosis. At present, all approved fluoroquinolones are labeled with the following statement: "Safety and effectiveness in children and adolescents less than 18 years of age have not been established." In addition, the label includes a statement advising that the fluoroquinolones cause arthropathy in juvenile animals. Historically, the agency has recognized a potential therapeutic role for the fluoroquinolones in children with cystic fibrosis and hematology/oncology disorders. Indeed, FDA recently approved ciprofloxacin labeling containing a discussion of cystic fibrosis experience in the pediatric use subsection. These actions show that the agency recognizes that there may be a need to study fluoroquinolones in some pediatric patients.

8. One comment from a pharmaceutical company argued that serious ethical, legal, medical, and technical difficulties often prevent conducting pediatric studies. The comment cited difficulties in enrolling pediatric patients in sufficient numbers, unwillingness of parents to enroll children, and the absence of pediatric patients with the disease near convenient and qualified study centers. According to the comment, studies have been successfully conducted in pediatric patients in the past where there was a medical need for the drug in pediatric patients, but this rule will require pediatric studies of drugs intended for adults that may or may not be administered to pediatric patients. The comment also contended that the rule will necessitate a massive infusion of resources for industry, FDA, and medical speciality organizations, and that the agency should start with a small list of diseases with similar pathophysiology in adults and children, and a small list of drug classes known to have similar metabolism, and plan a graduated approach.

Contrary to the suggestion in the comment, this rule is designed to require studies only in those settings in which there is a significant medical need or where usage among pediatric patients is likely to be substantial. FDA acknowledges the difficulties encountered in some cases, but agrees that where there is a need for studies these difficulties have been overcome and that pediatric studies have been successfully conducted in many situations. FDA believes that the number of such studies already conducted each year, for example of antibiotics, vaccines, and roughly 25 percent of NME's, support the view that such studies are not medically, ethically, or technically impossible. FDA also emphasizes that this rule will not require studies in settings where ethical or medical concerns militate against studies. As with all studies regulated by FDA, no pediatric study may go forward without the approval of an IRB, which is responsible for ensuring that the study is ethical and adequately protects the safety of the subjects. In addition, the deferral provisions of the rule are specifically designed to ensure that no pediatric study begins until there are sufficient safety and effectiveness data to conclude that the study is ethically and medically appropriate.

B. Scope

The proposal would have covered only original applications for those drugs classified as "new chemical entities," including antibiotics, and new biological products that had never been approved for any indication. A "new chemical entity," defined in 21 CFR 314.108(a), is a drug that contains no previously approved active moiety. Under the proposal, chemical modifications that did not change the active moiety, such as the formation of a different salt or ester of the moiety, would not have required further study. New indications or dosage forms of a previously approved moiety also would not have required further studies. FDA sought comment on whether the requirement should apply more broadly, e.g., to applications for minor chemical variations of approved products, new indications, new dosage forms or new routes of administration.

9. A majority of those who commented on the scope of the rule recommended that the final rule cover all new drugs and biologics, including new dosage forms and indications, because modifications in existing drugs may be as therapeutically significant to pediatric patients as the original drug or biologic. These comments included pediatricians, medical societies, one pharmaceutical company, and one disease-specific organization. Several comments, including two companies, an IRB, the AAP, a disease-specific organization, and a professional society recommended including new indications and dosage forms on a case-by-case basis, generally if their inclusion were recommended by an expert panel. Several comments supported the narrow scope of the proposal, including a pharmaceutical trade association, a professional society, and several companies. The pharmaceutical trade association suggested that the rule might also apply to new formulations uniquely suited to pediatric patients.

FDA has reconsidered the scope of the rule in light of the comments and has concluded that, in some cases, the need for pediatric studies is as great for modifications of existing products and new claims as for the original products. A new indication or dosage form for a previously approved drug, e.g., could be far more relevant to pediatric patients than the originally approved product. From a public health standpoint, FDA cannot justify the distinction in the proposal between new chemical entities and never-before approved biologics, on one hand, and significant modifications of those products, on the other hand. Therefore, FDA has revised proposed §§ 314.55 (proposed 314.50(g)) and 601.27(a) to cover applications for new active ingredients, new indications, new dosage forms, new dosing regimens, and new routes of administration. The final rule exempts from its coverage any drug for an indication or indications for which orphan designation has been granted under the Orphan Drug Act (21 U.S.C. 360bb). FDA believes this exemption is appropriate because the purpose of the Orphan Drug Act is to encourage the development of drugs for patient populations that are so small as to make the manufacture and sale of the drug unprofitable if not for the incentives offered by the Orphan Drug Act. Imposition of a pediatric study requirement on an orphan drug could conflict with the balance struck by the Orphan Drug Act, by further raising the cost of marketing the drug. This exemption does not apply after marketing under § 201.23 of this final rule.

FDA's decision to expand the scope of the rule does not mean, however, that pediatric studies would always be needed for a new product entering the marketplace, or for a new claim. The waiver criteria will apply equally to modifications of existing drugs and biological products. Thus, FDA will require studies only of those new drugs and biologics that offer a meaningful therapeutic benefit to pediatric patients or that are expected to be used in a substantial number of pediatric patients. In many cases, moreover, new dosage forms might need relatively little pediatric data, such as pharmacokinetic data alone.

10. One comment sought clarification of the applicability of the rule to generic drugs. The comment argued that the collection of pediatric data was unwarranted where a generic manufacturer was copying a drug with an adult dose, and that FDA should require a pediatric bioequivalence study only where the innovator submits a supplement for a new dose or regimen in the pediatric population. Another comment from a generic drug trade association argued that bioequivalence studies in children should never be required to support approval of a generic drug.

This rule does not impose any requirements on studies submitted in support of applications for generic copies of approved drugs that meet the requirements of section 505(j) of the act. FDA also does not currently require bioequivalence studies to be conducted in children for generic drugs. FDA notes that petitions submitted under section 505(j)(2)(C) for a change in active ingredient, dosage form, or route of administration may be denied if "investigations must be conducted to show the safety and effectiveness of" the change. Thus, if a petition is submitted for a change that would require a pediatric study under this rule, the petition may be denied.

C. Required Studies

FDA proposed to amend its regulations related to the content of NDA and biologic license applications (BLA's) to include required information on pediatric studies for certain applications. Under the proposal, an application for a new chemical entity or never before approved biologic would have been required to contain data adequate to assess the safety and effectiveness of the product for all pediatric age groups for the claimed indications, unless FDA granted a deferral or full or partial waiver of the requirement. As described in section III.B of this document under "Scope", FDA has revised § 314.55(a) (proposed § 314.50(g)(1)) and § 601.27(a)) to cover applications for new active ingredients, new indications, new dosage forms, new dosing regimens, and new routes of administration. Under the final rule, all covered applications will be required to contain data adequate to assess the safety and effectiveness of the product, unless FDA has granted a waiver or deferral of the requirement (see "Waiver" and "Deferred Submission" in section III.D and E of this document).

Assessments required under this section for a product that represents a meaningful therapeutic benefit over existing treatments must be carried out using appropriate formulations for the age group(s) for which the assessment is required, unless reasonable efforts to produce a pediatric formulation had failed (see "Waiver" in section III.E of this document). Comments on issues related to formulation are addressed under "Pediatric Formulations" in section III.I of this document.

The proposal did not mandate particular types of studies. The proposal recommended that the sponsor consult with FDA on the types of data that would be considered adequate to assess pediatric safety and effectiveness in particular cases.

FDA received several comments on the design and conduct of clinical trials in pediatric patients.

11. One comment asked for clarification of what is meant by "adequate evidence" to demonstrate safety and effectiveness. The comment argued that FDA should not require two adequate and well-controlled trials for pediatric studies, and that the amount of evidence required should depend on the ability of the data to be extrapolated from adult to pediatric patients, the seriousness of the illness to be treated, the ability to assess meaningful measures of efficacy in pediatric patients, and the feasibility of conducting adequate trials in relatively uncommon pediatric disease states. Another comment claimed that the ability to extrapolate from adult efficacy data is limited and argued that well-controlled trials in pediatric patients should be the norm. This comment also stated that safety cannot be extrapolated from adult data and recommended studying 300 pediatric patients for an adequate period to identify frequent ADR's. Other comments questioned the appropriateness of extrapolating from adult effectiveness data in a variety of settings. One comment argued that in the area of blood products, in addition to extrapolating from pharmacokinetic data, it may be appropriate to extrapolate from adult data using relative blood volume replacement. Several comments urged reliance on a variety of other sources of data, including published studies and reports, and actual use information. One comment urged FDA to rely on advanced scientific and statistical methods that optimize safety, convenience, and informativeness, while minimizing unnecessary or uninformative clinical trials.

FDA agrees that "adequate evidence" of safety and effectiveness for pediatric patients does not necessarily require two adequate and well-controlled trials. One of two central purposes of the 1994 rule was to make it clear that pediatric effectiveness may, in appropriate circumstances, be based on adequate and well-controlled studies in adults with supporting data in pediatric patients that permit extrapolation from the adult data. FDA agrees, however, that extrapolation from adult effectiveness data would not always be appropriate and that it may not be appropriate to extrapolate pediatric safety from adult safety data. FDA has specifically noted, in the FDA guidance document entitled "Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products," that if further controlled trial data were needed in a population subset, it would usually be sufficient to conduct a single additional controlled trial. FDA also agrees that useful information can come from data other than adequate and well-controlled trials, and encourages the submission of valid and reliable data from a variety of sources. The type and amount of data required in any particular case will depend upon many factors, including those cited in the comments.

12. One comment urged FDA, in the final rule, to encourage sponsors to use Computer-Assisted Trial Design (CATD), allowing them to reduce number of actual trials in pediatric patients.

FDA encourages the use of any validated scientific method for designing, conducting, or analyzing clinical trials.

13. One comment questioned whether there will be a sufficient pool of pediatric subjects to complete trials, in light of the increase in the number of trials occasioned by the rule.

FDA believes that with appropriate organization, the pool of pediatric patients available for studies should be adequate. The Pediatric Pharmacology Research Units (PPRU's), a network of groups instituted to conduct pediatric research, some of which are located outside of major population centers, have an established record of recruiting pediatric patients and completing valid studies. Even where the number of pediatric patients affected by a disease is small, valid studies have sometimes been successfully conducted. It should also be reemphasized that many of the studies contemplated under the rule are pharmacokinetic studies, dose-response studies with short-term endpoints (pharmacodynamic studies) and safety studies that are likely to impose relatively little burden on individual patients. Where, however, patient recruitment is so difficult as to make the study impossible or highly impractical, the rule permits a waiver of the study requirement (§§ 314.55(c) and 601.27(c)).

14. One comment urged that the final rule include a broader research requirement, and sought to have drug interactions and drug metabolism taken into consideration. Another comment sought to have the final rule codify minimal requirements for studies, such as toxic overdose and pharmacokinetic data. One comment urged FDA not to codify specific requirements for clinical trials, but to establish these requirements in consultation with an expert pediatric committee.

FDA declines to codify specific requirements for pediatric studies. Flexibility is necessary to assure that required studies are appropriate for each product. FDA will, however, consult with a pediatric committee on specific pediatric study issues.

15. One comment from a professional pharmacy organization urged that all protocols for pediatric studies be reviewed by pediatric experts, including a pharmacist knowledgeable about pharmacodynamic factors in each age group.

FDA reviews protocols for pediatric studies submitted in investigational new drug applications (IND's), and its reviewers include experts in pediatrics and pharmacology.

D. Deferred Submission

The proposal recognized that there would be circumstances in which it would be appropriate to permit the submission of pediatric data after approval. Two such circumstances were described in the preamble to the proposal: (1) Where adult safety or effectiveness data need to be collected before the product could be appropriately studied in pediatric patients, and (2) where the product was ready for approval in adults before studies in pediatric patients were completed. Although not included in the text of the proposal, these examples have been added to the final rule. Under the proposal, FDA would have the authority to defer the submission of some or all of the required pediatric data until after approval of the product for adult use, on its own initiative or at the request of the applicant. Under the proposed provisions, if the applicant requested deferral, the request would be required to contain an adequate justification for delaying pediatric studies. If FDA concluded that there were adequate justification for deferring the submission of pediatric use studies, the agency could approve the product for use in adults subject to a requirement that the applicant submit the required pediatric studies within a specified time after approval. It is important to appreciate that deferred submission of pediatric data refers to the date on which the data are submitted, not when the studies are initiated. Thus, deferred studies will generally be initiated before approval, unless it is concluded that the full adult data base or marketing experience are needed before pediatric studies may appropriately begin.

FDA stated in the proposal that it would consult with the sponsor in determining a deadline for the deferred submission, but tentatively concluded that it would require the submission not more than 2 years after the date of the initial approval. To ensure that deferral would not unnecessarily delay the submission of pediatric use information, FDA proposed that a request for deferred submission include a description of the planned or ongoing pediatric studies, and evidence that the studies were being, or would be, conducted: (1) With due diligence, and (2) at the earliest possible time. FDA sought comment on the circumstances in which FDA should permit deferral, and on the factors that should be considered in determining whether a given product was one that should be studied in adults before pediatric patients. FDA received many comments on the deferral provisions in the proposal.

16. A few comments stated that the deferral provisions are an appropriate means of assuring that pediatric patients are not studied before adequate safety data have been gathered. A number of comments from the pharmaceutical industry asserted, however, that the proposal would require concurrent testing in adults and pediatric patients despite medical and ethical reasons for delaying testing pediatric testing. For example, a comment from a pharmaceutical trade association claimed that the rule:

> * * * would require testing of new medical compounds in children before safety in adults has been studied adequately, before effectiveness in adults has been established, and in young children and neonates without adequate information about the effects of the drug in older pediatric patients.

These industry comments appear to have misunderstood the explicit deferral provisions of the rule and perceived them as rare exceptions to a usual requirement that adults and children be studied at the same time. Nothing in the rule requires concurrent testing in adults and pediatric patients, nor testing in infants and neonates before testing in older children. As stated previously and in the proposal, the deferral provisions were specifically included to, among other things, ensure that pediatric studies could be delayed when necessary to assure that appropriate safety and/or effectiveness data were available to support pediatric testing.

17. Most of the comments on deferral focused on whether the need for safety and/or effectiveness data in adults before initiating pediatric studies should be a basis for deferral. Comments from disease-specific organizations, medical societies, including the AAP, and pediatricians argued that deferrals should be granted rarely if at all on this basis. One comment argued that delaying availability of life-saving drugs to children cannot be rationalized scientifically, legally, or ethically, and contended that deferral should not be permitted for serious and life-threatening diseases where there is no substantial difference between the disease or the anticipated effect of the drug in children or adults. Another comment argued that deferral should be used sparingly in all age groups, including infants and neonates, and that its use should be evaluated in the context of the seriousness of the condition to be treated, the therapeutic advance the drug represents, and the likelihood that the drug will be given to children as soon as it is approved. According to this comment, the risks of research in pediatric patients may be outweighed by the risks that the drug will be given to them without data.

One comment argued that pediatric studies of important drugs should be conducted in parallel to adult studies, especially in children under 12. Several comments from the pediatric community, however, supported the development of some adult safety and/or effectiveness data before initiation of pediatric studies. One comment from an organization devoted to pediatric AIDS stated that while the general assumption should be that pediatric studies will be submitted at the same time as adult studies, it may be appropriate to have some testing in adults before children. The AAP stated that it is appropriate to begin studies in pediatric patients after phase 1 and phase 2 studies in adults have defined routes of clearance and metabolic pathways. Thus, the comment urged that pediatric studies be conducted during phases 2 and 3, not 4. A comment from a nephrology organization argued that drugs for organ-specific diseases should be studied in phase 3, as soon as phase 1 and 2 trials have shown safety in adults. This and another comment stated that deferring studies until after approval compromises clinical trial enrollment, citing the experience with recombinant erythropoietin. According to these comments, erythropoietin was not studied in pediatric patients until after its approval for adults, and enrollment was so difficult that pediatric studies were not completed for 5 years.

Several comments from the pediatric community also cited limited circumstances in which they believed deferral to be appropriate. A medical society argued that data should be collected after adult studies only for drugs with narrow therapeutic indices, unusual accumulation in the body, where the drug study requires extensive blood sampling, or where the study design places young patients at risk for limited information gain.

Many comments from the pharmaceutical industry argued, in contrast, that deferral should be the rule, rather than the exception. Most of these comments contended that it was unethical to begin studying drugs in pediatric patients, other than those that are intended primarily for pediatric patients, until the drugs are shown to be reasonably safe and effective in adult patients. All argued that pediatric studies must not be initiated until substantial data in adults are available, but cited different initiation points, e.g., after phase 2, after safety and effectiveness is established in adults and an approvable letter is received, after approval, after 1 year of marketing.

Although many of these industry comments argued that pediatric studies should be conducted exclusively as phase 4 (postapproval) commitments, a significant number of industry comments acknowledged that pediatric studies could begin before approval, generally after phase 2, and that there were circumstances in which deferral was not appropriate. One comment argued that because early pediatric studies often require pediatric formulations and because up to 50 percent of drugs are abandoned before phase 3, it is wasteful to require companies to manufacture a pediatric formulation and begin studies before the end of phase 2. Another comment argued that no pediatric studies should begin before the decision to proceed to phase 3, except where: (1) The disease affects only pediatric patients; (2) the disease mainly affects pediatric patients, or the natural history or severity of the disease is different in pediatric patients and adults; or (3) the disease affects both pediatric patients and adults and lacks adequate treatment options. One comment urged that the final rule state that "in most cases, pediatric testing should not begin with any drug or biological product until certain adult safety and/or effectiveness information has been collected." According to this comment, there could be exceptions where no other therapy was available and there was a potential for the drug to be lifesaving. A pharmaceutical trade association argued for a presumption that pediatric studies not begin until the end of phase 2 or 3, but listed circumstances in which deferral should not occur: (1) Where the disease is life threatening and there is no alternative therapy, (2) where the drug is intended for a pediatric indication, (3) where the drug presents no major safety issues, (4) where the drug class is well studied in pediatric patients, or (5) where a large amount of "off-label" use in pediatric patients is anticipated.

In general, FDA expects that some data on adults will be available before pediatric studies begin, but that less data will usually be required to initiate studies of drugs and biologics for life-threatening diseases without adequate treatment than for less serious diseases. Pediatric studies of drugs and biologics for life-threatening diseases may in some cases be appropriately begun as early as the initial safety data in adults become available, because the urgency of the need for such products may justify early trials despite the relative lack of safety and effectiveness information. In such cases, deferral of submission of pediatric studies until after approval will be unnecessary, unless drug development is unusually rapid and the product is ready for approval in adults before completion of the pediatric studies.

Pediatric studies on products for less serious diseases should generally not begin until more adult data have been collected, ordinarily no earlier than the availability of data from the initial well-controlled studies in adults. As noted earlier in this document, there may occasionally be exceptions to this principle where all parties agree that earlier initiation is appropriate. Whether deferral of submission of the data until after approval will be necessary for such products will depend upon when pediatric studies can scientifically and ethically begin in each case and how difficult the studies are to complete.

In some cases, FDA expects that scientific and ethical considerations will dictate that studies not begin until after approval of the drug or biological product. For example, pediatric studies of "me-too" drugs that do not offer a meaningful therapeutic benefit and that are members of a drug class that already contains an adequate number of approved products with pediatric labeling may be deferred until well after approval. In cases where a drug has not been shown to have any benefit over other adequately labeled drugs in the class, the therapeutic need is likely to be low and the risks of exposing pediatric patients to the new product may not be justified until its safety profile is well established in adults through marketing experience. Because the basis for the deferral in such cases will be concern that the drug presents risks to pediatric patients that will not be known until there is widespread marketing experience, without offsetting benefit, FDA may require, in appropriate cases, that such drugs carry labeling statements recommending preferential use in pediatric patients of products that are already adequately labeled. Such a statement might read:

> The safety and effectiveness of this product have not been established in children. There are alternative therapies that have been shown to be safe and effective for use in children with [indicated condition]. Ordinarily, products already labeled for use in children should be used in preference to [name of this product].

FDA labeling regulations at 21 CFR 201.57 express the agency's authority to ensure that drugs are safe for use under the conditions prescribed, recommended, or suggested in their labeling, and to require labeling identifying safety considerations that limit the use of drugs to certain situations. Some drugs with no demonstrated advantage over available therapy can nonetheless be expected to have wide use in pediatric patients. Pediatric studies of such drugs should be initiated relatively early, even if they are not completed at the time of approval.

18. A comment from a pharmaceutical company listed several circumstances in which it argued FDA should permit deferral: (1) The pediatric population is so small that enrollment and completion of trials cannot be accomplished in parallel with adult trials, (2) the natural course of the disease is different in adults and children, (3) analytic tools and clinical methodologies cannot be easily adapted to the pediatric population, (4) the drug has complex pharmacokinetic properties in adults making it hard to extrapolate a pediatric dosage range, (5) the scope and nature of nonclinical studies support only adult clinical studies, (6) two or more attempts to develop a pediatric formulation have failed, or (7) unique drug-drug or drug-food interactions in children confound drug development. Another comment added to this list: (1) Where fewer than 200,000 pediatric patients are affected by the disease being treated, and (2) drugs with a low therapeutic index.

FDA agrees that some of these circumstances could make completion of studies prior to approval in adults difficult, but does not agree that they would make studies impossible or impractical in all cases. The need for deferral must be considered case-by-case. A small pediatric population, e.g., might make completion of controlled trials very slow, but might not prevent obtaining pharmacokinetic data. Simply citing a pediatric population under 200,000 will not be sufficient to justify deferral; a small fraction of this number participating in trials may be sufficient to support timely pediatric studies, depending on the nature of the studies. As an example, over 70 percent of the estimated 6,000 pediatric patients with cancer each year are enrolled in clinical trials (Ref. 15). There does not seem to be any reason to conclude that deferral is warranted solely because the natural course of the disease is different in adults and children. FDA also disagrees that deferral is necessarily warranted where analytic tools and clinical methodologies cannot be easily adapted to pediatric patients. Deferral may be necessary in some cases where the infants and toddlers are unable to provide subjective outcome data, but it may also be possible to utilize alternative endpoints or to extrapolate effectiveness data from older pediatric age groups, obtaining pharmacokinetic data from the younger age groups to determine an appropriate dose. Drugs with a low therapeutic index that do not fulfill an urgent need should, in general, be studied in pediatric patients later in drug development.

With respect to complex pharmacokinetic properties that prevent extrapolation of adult data to pediatric patients, low-therapeutic index drugs, and unique drug-drug or drug-food interactions in pediatric patients, FDA believes that the need for pediatric studies before approval is even greater where these conditions are present; moreover, none of them represents a significant impediment to studies. Recognizing that drugs and biologics approved for adults are regularly prescribed to pediatric patients despite the absence of adequate dosing and safety data, information positively suggesting that dosing and safety cannot be extrapolated from adult data increases the importance of conducting pediatric studies before the product is widely used in pediatric patients. The absence of supporting nonclinical studies (e.g., studies in young animals) should not usually be a basis for deferral. These studies, if needed, are readily conducted. Moreover, a full adult data base provides pertinent safety information that might make further preclinical data unnecessary. Difficulties in developing an adequate pediatric formulation may, in some cases, justify deferral of studies in young pediatric patients. In other cases, however, it may be appropriate to study a less-than-optimal formulation, e.g., an injection, if one is available, in pediatric patients while awaiting the development of a more desirable pediatric formulation.

19. One comment argued that it was "unacceptable" to defer pediatric studies to avoid delaying approval for adult use. Instead, the comment urged FDA to provide a "limited approval" for adult use until pediatric data are available and impose a monetary penalty for failure to comply. Another comment argued that permitting deferral to avoid delay in adult marketing could be applied to most applications, creating a de facto situation in which pediatric data were understood to be not required until 2 years after approval. One comment stated that while pediatric dosing schedules are essential, pediatric studies should not delay approval of drugs for a major population, adults.

FDA continues to believe that deferral is appropriate where awaiting the completion of pediatric studies would delay the availability of a safe and effective drug or biological product for adults. Granting a deferral does not automatically mean, however, that pediatric studies need not be submitted for 2 years or that initiating them should be long delayed. The proposal suggested 2 years as the maximum period for a deferral. Where pediatric studies are supposed to be nearing completion at the time a product is ready for approval in adults, FDA expects that the period of deferral would be significantly shorter than 2 years. Where some useful pediatric information, e.g., safety information, is available at the time of approval, even if some required studies are not complete, FDA may require that the pediatric use section of the product's labeling include that information, to the extent consistent with 21 CFR 201.57(f)(9). FDA also notes that it has no authority to impose a monetary penalty for failure to submit a required study of a drug or biological product. FDA must ask a court to impose such a penalty in a contempt proceeding.

20. Several comments argued that pediatric trials should be conducted sequentially, beginning with the oldest pediatric age group, and ending with the youngest. One comment stated that IRB's would question testing a drug in younger children before older children. The AAP argued that there is little defense for studying pediatric patients sequentially from oldest to youngest, and that such a policy will result in approvals without data in neonates. This comment argued that the timing of studies should give consideration to safety, but without consideration of sequence. Another comment argued that FDA should not routinely require that drugs for serious and life-threatening diseases be studied sequentially. In HIV, according to this comment, drug testing should be "as simultaneous as possible" because safety and dosing may be initiated in each age group in a dose escalating manner regardless of the results in previously tested groups.

FDA agrees that age-dependent sequential studies are not necessarily appropriate. Particularly were there is urgent need for a product, there may be good reason to study older and younger children at the same time.

21. A few comments objected to FDA's tentative decision to require the submission of studies ordinarily no later than 2 years after the initial approval. One comment stated that deferral of up to 2 years was excessive, citing the "critical" need to ensure timely performance of pediatric studies in populations where the drug is likely to be used. Another comment stated that 2 years may be adequate for collecting pharmacokinetic data, but not necessarily for collecting safety data. According to this comment, the size of the clinical data base will be the principal determinant of when data should be submitted. A comment from the American Red Cross stated that the extensive IRB review of studies of blood products involving pediatric patients, and the difficulty in enrolling such patients, makes the 2-year deferral deadline unrealistic for this category of product.

FDA agrees with the comments that the 2-year deadline suggested by the proposal may not be appropriate, and that the length of the deferral should be decided on a case-by-case basis. The timing of the deferred submission will depend upon such factors as the need for the drug or biologic in pediatric patients, when sufficient safety data become available to initiate pediatric trials, the nature and extent of pediatric data required to support pediatric labeling, and substantiated difficulties encountered in enrolling patients and in developing pediatric formulations. FDA may also extend the date for submission of studies at the time of approval, e.g., where other drugs in the class have been approved during the pendency of the NDA and the new drug is no longer needed as a therapeutic option.

E. Waivers

FDA does not intend to require pediatric assessments unless the product represents a meaningful therapeutic benefit over existing treatments or is expected to be used in a substantial number of pediatric patients. FDA also does not intend to require pediatric assessments in other situations where the study or studies necessary to carry out the assessment are impossible or highly impractical or would pose undue risks to pediatric patients. Thus, FDA proposed to add § 314.50(g)(3) (now § 314.55(c)) and § 601.27(c) to authorize FDA to grant a waiver of the pediatric study requirement on its own initiative or at the request of the applicant unless the product represented a meaningful therapeutic benefit over existing treatments, or was likely to be used in a substantial number of pediatric patients. These provisions also require FDA to grant a waiver if necessary studies were impossible or highly impractical, because, e.g., the number of pediatric patients was very small or patients were geographically dispersed, or there was evidence strongly suggesting that the product would be ineffective or unsafe in some or all pediatric populations. If a waiver were granted because there was evidence that the product would be ineffective or unsafe in pediatric patients, this information would be included in the product's labeling.

An applicant could request a full waiver of all pediatric studies if one or more of the grounds for waiver applied to the pediatric population as a whole. A partial waiver permitting the applicant to avoid studies in particular pediatric age groups could be requested if one or more of the grounds for waiver applied to one or more pediatric age groups. In addition to the other grounds for waiver, the proposal would authorize FDA to grant a partial waiver for those age groups for which a pediatric formulation was required (see "Pediatric Formulations" in section III.I of this document), if reasonable attempts to produce a pediatric formulation had failed.

The proposal would require the applicant to include in the request for a waiver an adequate justification for not providing pediatric use information for one or more pediatric populations.

FDA would grant the waiver request if the agency found that there was a reasonable basis on which to conclude that any of the grounds for a waiver had been met. If a waiver were granted on the ground that it was not possible to develop a pediatric formulation, the waiver would cover only those pediatric age groups requiring a pediatric formulation.

The agency also proposed two possible methods of determining a "substantial number of patients." The first method would focus on the number of times the drug or biologic was expected to be used in pediatric patients, annually. Under this method, FDA tentatively concluded that 100,000 or more prescriptions or uses per year in all pediatric age groups would be considered a substantial number.

The second proposed method for establishing whether there was a substantial number of pediatric patients would focus on the number of pediatric patients affected by the disease or condition for which the product is intended. Under this method, FDA tentatively concluded that 100,000 pediatric patients affected by the disease or condition for which a product was indicated would be considered a "substantial number" of pediatric patients. FDA sought comment on the waiver criteria and on these methods of calculating a substantial number of pediatric patients. FDA also sought comment on whether cost to the manufacturer should justify a waiver.

FDA received many comments on the waiver provisions of the proposal, and has made certain changes in response to the comments, as described below.

22. As proposed, new drugs and biologics are presumptively required to be studied in pediatric patients, unless a waiver is granted. The presumption in the proposal was supported by comments from pediatricians, a pharmacy organization, disease specific organizations, and medical societies, including the AAP. Several industry comments argued, however, that new drugs and biologics should presumptively not be covered by the rule, unless they were specifically identified by FDA as needing to be studied. One of these comments stated that companies should not have to waste the effort of applying for waiver for drugs of no potential benefit to pediatric patients, which the comment estimated as a majority of those developed.

FDA continues to believe that it is appropriate to presume that drugs and biologics should be studied in pediatric patients, and that this presumption should be overcome only if there are clear grounds for concluding that such studies are unnecessary. Pediatric patients are a significant subpopulation, affected by many of the same diseases as adults, and are foreseeable users of new drugs and biologics. The agency has stated, in the context of pediatric studies and other subpopulations, that an application for marketing approval should contain data on a reasonable sample of the patients likely to be given a drug or biological product once it is marketed (59 FR 64240 at 64243; 58 FR 39406 at 39409, July 22, 1993). FDA does not believe that the cost of drafting a waiver request will be great, particularly where the basis for the waiver is that the product has no potential use in pediatric patients. To assist sponsors in preparing such waivers, FDA has included in this document a partial list of diseases that are unlikely to occur in pediatric patients and for which waiver requests need include only reference to this document.

23. FDA received many comments on the proposed criteria for waiving pediatric studies. A few comments supported the proposed criteria. Many comments from pediatricians, medical societies, and disease-specific organizations argued that the proposed grounds for waiver were too broad. Several of these stated that the rule should apply to drugs for all conditions that affect pediatric patients unless there is a special reason not to do so. One comment argued that waivers should be available only for drugs known to be extremely toxic in pediatric patients or to have no anticipated use in pediatric patients.

Other comments from the pharmaceutical industry argued that the waiver provisions were too narrow. One comment from a generic trade association urged that pediatric studies be required only when there is a significant public health concern with respect to the safety of a drug product in pediatric patients or to the availability of adequate pharmacological intervention for pediatric patients for the indication. Another comment stated that the criteria in the proposal "do not begin to address the complexities associated with moving forward on a clinical development plan" and argued that additional criteria should include: (1) The lack of correlative safety evidence, (2) liability concerns, and (3) prohibitive cost (but the sponsor, not FDA, should be allowed to determine the importance of cost).

FDA believes that the criteria for waiver in the final rule strike a careful balance. On the one hand, requiring studies for all new products would have potentially severe resource implications for manufacturers and the agency. On the other hand, obtaining studies only where the studies impose no burden on the sponsor would continue to expose millions of pediatric patients to unnecessary risks and ineffective treatment. Requiring pediatric studies only of those drugs or biologics that offer a meaningful therapeutic benefit or that are expected to be used in a substantial number of pediatric patients focuses limited resources on those products that are most critically needed for the care of pediatric patients.

24. Several comments addressed the definition of "meaningful therapeutic benefit." Some comments from the pharmaceutical industry stated that "meaningful therapeutic benefit" should be defined as it is used in 21 CFR 314.500. (That regulation applies to drugs "that provide meaningful therapeutic benefit to patients over existing treatments (e.g., ability to treat patients unresponsive to, or intolerant of, available therapy, or improved patient response over available therapy).") One of these comments

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suggested that analogous cases in the pediatric context would be: (1) Where the drug treats a pediatric disease for which no other treatments exist; (2) where the drug treats patients who are unresponsive to or intolerant of other drugs; or (3) where the drug produces a superior response over other treatments. One industry comment argued that the agency should consult with the sponsor, and the pediatric investigators involved to assess whether the drug will provide a "meaningful therapeutic benefit." According to the comment, the assessment should include the likely use of the product in a specific pediatric population, the likely benefit without increased risk to patients versus existing treatments, a "definitive need" for a new therapy in very serious or life-threatening illnesses, and the cost and feasibility of developing the necessary formulations and of conducting studies. Another comment from a disease-specific organization argued that "meaningful therapeutic benefit" should be a relative term, depending on the severity of the illness, the potential risk posed by the drug, and the availability of alternative treatments. One comment from a medical society devoted to the treatment of psychiatric disorders contended that "meaningful therapeutic benefit" should mean that the product enables a child to function better, and participate in age-appropriate activities, such as playing and going to school, without undue pain and suffering from the disease or disorder. Another comment argued that "meaningful therapeutic benefit" should mean better response or ability to treat nonresponsive patients. Another comment maintained that the presumption should be that a product represents a meaningful therapeutic benefit in pediatric patients if it is expected to provide a meaningful therapeutic benefit in adults.

Several comments from the pharmaceutical industry contended that it is not possible to define meaningful therapeutic benefit before approval or that FDA should not be responsible for defining it. A pharmaceutical trade association argued that meaningful therapeutic benefit is the decision of the sponsor, not FDA, and that it is not possible to determine meaningful therapeutic benefit until a drug has been used for some period of time. Another comment maintained that FDA must first have adult data to reach the conclusion that a drug offers a meaningful therapeutic benefit. The same comment also argued that a rigorous determination of meaningful therapeutic benefit would require randomized, controlled trials in pediatric patients.

FDA disagrees that it is impossible or beyond FDA's expertise to reach a conclusion before approval about whether a product has the potential to offer a meaningful therapeutic benefit. FDA routinely estimates the therapeutic benefit of new drugs and biologics at the time applications are first submitted, in order to determine whether to assign "Priority" (expedited) status to the review of the application. In assigning Priority status to new drug applications, CDER determines whether the product, if approved, "would be a significant improvement compared to" marketed (or approved, if such is required) products, including nondrug products or therapies. "Improvement can be demonstrated by, for example: (1) Evidence of increased effectiveness in treatment, prevention, or diagnosis of disease; (2) elimination or substantial reduction of a treatment-limiting drug reaction; (3) documented enhancement of patient compliance; or (4) evidence of safety and effectiveness in a new subpopulation" (Ref. 16). These criteria are similar to many of the criteria suggested in the comments. FDA notes that demonstration of an advantage over existing products may come from evidence other than head-to-head comparisons of the new product and existing products. For example, in some cases a new product could be shown to lack an adverse effect associated with an existing product, or to have an effect on a different outcome or on a different stage of disease than an existing product, without a direct comparison of the two products.

FDA has concluded that in determining whether a product offers a meaningful therapeutic benefit, it will use the Priority definition, with some modifications. First, in determining whether a product is expected to be an improvement over other products, the comparison will be made only to other products that are already adequately labeled for use in the relevant pediatric population. Second, it is often therapeutically necessary to have two or more therapeutic options available, because some patients will be unresponsive to a given therapy. Because the Priority definition would not cover more than the first or second product for a given indication or in a given class (unless the product offered an advantage over others for the indication or in the class), a drug or biologic will also be considered to provide a meaningful therapeutic benefit if it is in a class of drugs and for an indication for which there is a need for additional therapeutic options. The specific number of products needed will depend upon such factors as the severity of the disease being treated, and the adverse reaction profile of existing therapies. FDA has added this definition of meaningful therapeutic benefit to §§ 314.55(c)(5) and 601.27(c)(5). This rule's definition of meaningful therapeutic benefit is intended to apply only in the pediatric study context and is not intended to alter the definition of a Priority drug.

25. Several comments addressed the definition of "a substantial number of pediatric patients." A few comments argued that it would be difficult to estimate product use until after marketing. Several comments argued that FDA should not base waivers on the number of patients or prescriptions. Many other comments claimed that the proposed numerical cut-offs are arbitrary. These comments maintained that waivers should be decided on a case-by-case basis. Several comments urged that FDA consult with an expert panel in deciding whether pediatric use was substantial.

Comments from the pediatric community contended that the numerical cut-offs in the proposal were too high, and would preclude studies of many serious diseases affecting fewer than 100,000 pediatric patients. One comment, for example, voiced concern that pediatric patients with less common seizure types may not benefit from the regulations because the use is not sufficiently widespread. Another comment argued that numerical cut-offs should not apply to drugs for serious and life-threatening diseases, unless the number of pediatric patients was so low as to make clinical study impossible. Another comment suggested that studies be required not only for uses greater than 100,000 prescriptions, but for "drugs used chronically for a defined, though smaller group of pediatric patients, usually for organ-specific diseases, such as kidney failure or hypertension."

Comments from the pharmaceutical industry argued that the numerical cut-offs proposed by FDA were too low. Some of these comments argued that 100,000 prescriptions per year translates to fewer than 100,000 patients, and that the resulting population could be so small that it would be difficult to study. Several of these comments urged that cut-off for substantial use be 200,000 patients with the disease, the threshold established by the Orphan Drug Act for identifying rare diseases.

FDA has decided to revise its proposed method of defining a substantial number of patients, in light of the comments. Physician mention data from the IMS National Disease and Therapeutic Index (Ref. 38), which tracks the use of drugs by measuring the number of times physicians mention drugs during outpatient visits, shows that pediatric use of drugs is generally grouped in two distinct ranges. Physician mentions of drugs for pediatric use generally fall either below 15,000 per year or above 100,000 per year. Few drugs fall within the two ranges. Thus, selecting a cut-off for "substantial number of pediatric patients" in the middle of the two ranges will provide a reasonable discrimination between products that are widely used and those that are less commonly used, and the specific number chosen will not arbitrarily include or exclude a significant number of drugs. FDA has therefore chosen 50,000 as the cut-off for a substantial number of pediatric patients. Because the number of pediatric patients with the disease is easier to determine than the number of prescriptions per year, a substantial number of pediatric patients will be defined as 50,000 pediatric patients with the disease for which the drug or biological product is indicated. Although physician mentions per year does not correspond exactly to the number of patients with the disease, they provide a rough approximation and the IMS data show that the number of products included or excluded is relatively insensitive to changes in the cut-off chosen. As proposed, a partial waiver for a particular pediatric age group would be available under this method if 15,000 patients in that age group were affected by the disease or condition. This definition of "a substantial number of pediatric patients" has not been codified, however, and FDA may modify it, after consulting with the pediatric panel discussed in section III.M of this document ("Pediatric Committee"). Any modification will be issued as a guidance document.

In response to those comments that voiced concern that this definition would exclude a number of serious diseases, FDA emphasizes that the definition of "meaningful therapeutic benefit" assures that drugs and biologics will be covered by the rule if they are medically needed as therapeutic options because there are insufficient products adequately labeled for pediatric patients for that indication or in that drug class. Until there are enough adequately labeled products available, many new drugs and biologics for serious and life-threatening diseases will be considered to offer a meaningful therapeutic benefit and thus will be required to be studied, even if the products are not also used in a substantial number of pediatric patients. This will be particularly true during the first few years after implementation of this rule when few drugs and biologics will yet be adequately labeled for use in pediatric patients, and a larger proportion of new entrants into the marketplace will be considered to be medically necessary therapeutic options.

In response to the comments arguing that FDA's proposed numerical cut-off is too low and will result in too many pediatric studies, FDA expects to defer until after approval many of the studies of products that will be used in a substantial number of pediatric patients but that do not offer a meaningful therapeutic benefit. As described previously in response to comments on the deferral provisions, studies of new drugs and biologics that do not offer a meaningful therapeutic benefit and are members of a class that is already adequately labeled for pediatric patients are likely to be deferred until well after approval of the product for adults.

26. A few comments addressed the provisions that would permit waiver if pediatric trials were impossible or impractical. One comment argued that the provision authorizing waiver if the proposed population was "too small or geographically dispersed" was too broad. This comment urged that tests should be waived only if "significant efforts to recruit patients fail." The comment also argued that the unsupported suggestion that tests are "impractical" should not be accepted, and that evidence of due diligence should be required. Another comment argued that waivers should never be granted because the population is too small or dispersed. According to this comment, many safety and pharmacokinetic studies are already performed in dispersed populations, and the comment maintained that no experimental drug should be administered to a child with a serious or life-threatening disease without requiring that some safety data and pharmacokinetics data be obtained. Another comment observed that although only 600 renal transplants are performed each year in pediatric patients, pediatric academic centers have been creative in forming collaborative efforts to study these small groups. One comment from an organization devoted to children with HIV stated that the "impossible or highly impractical" standard must be narrowly interpreted, and that a manufacturer should show that all reasonable efforts to recruit patients have failed. According to this comment HIV/AIDS drugs should be a benchmark of when a waiver should not be granted: Any group as big or bigger than the pediatric AIDS population should be considered big enough to study.

Another comment argued that because of special difficulties encountered in recruiting pediatric patients into studies of blood products, such as parental fear of disease transmission, the inability to obtain a sufficient number of test subjects should be added to the criteria for waiver or to the definition of "highly impractical."

FDA agrees with those comments urging that this ground for waiver be interpreted narrowly and that unsupported assertions be rejected as a basis for waiver. Although the number of patients necessary to permit a study must be decided on a case-by-case basis, FDA agrees that there are methods available to conduct adequate studies in very small populations. Moreover, where only safety or pharmacokinetic studies are required to support pediatric labeling, the size of the population or geographic dispersion would only rarely be a sufficient basis to consider trials impossible or highly impractical. Because of the speed and efficiency of modern communications tools, geographic dispersion will justify a waiver only in extraordinary circumstances and will generally have to be coupled with very small population size. FDA is not persuaded that inability to recruit patients because of parental fears associated with administration of the drug is an adequate basis to conclude that studies are impractical where there is also evidence that similar products are regularly prescribed to pediatric patients outside of clinical trials.

27. Several comments responded to the request for comment on whether cost should justify a waiver. Comments from the pediatric community argued that cost to the manufacturer should never or rarely justify a waiver. Two of these comments stated that the cost of failure to study is always higher than the cost of research. Another comment stated that cost may be a factor, but FDA must be careful not to allow studies to be waived automatically because they "cost too much." Two comments from a pharmaceutical company and a pharmaceutical trade association argued that FDA should not have responsibility for assessing the costs of a study.

In light of the comments, FDA has concluded that it does not have an appropriate basis to evaluate and weigh cost in granting or declining to grant a waiver. Therefore, cost will not ordinarily be a factor in determining whether a waiver should be granted.

28. One comment claimed that the proposal lacks adequate regulatory procedures for timely processing of waiver requests and will result in a new layer of bureaucracy.

As described previously in response to comments on the deferral provisions, preliminary decisions on whether to grant waivers will be provided to the sponsor at the end of phase 1 for drugs and biologics for life-threatening diseases and at the end of phase 2 for other products. FDA does not agree that processing of waiver requests will result in a new layer of bureaucracy. The decisions will be made by the division responsible for reviewing the NDA or BLA. FDA intends to ensure that the process is timely and fair. To reduce the burden on manufacturers in applying for waivers and deferrals, FDA intends to issue a guidance document providing a format for a request for waiver or deferral.

29. One comment asked that the rule clarify that the onus is on the manufacturer to justify waivers. Another comment argued that the proposed standard for granting a waiver ("reasonable basis") places an inadequate burden of proof on manufacturers. According to this comment, manufacturers should be required to present "persuasive proof," and FDA should have to find that the grounds for waiver have "in fact" been met.

FDA agrees that the burden is on the manufacturer to justify waivers, but believes that the rule already adequately imposes that burden. The rule requires both a certification from the manufacturer that the grounds for waiver have been met and an adequate justification for the waiver request. FDA believes that it would be inappropriate to require "proof" that the grounds for waiver have "in fact" been met because each ground requires a degree of speculation about the safety and effectiveness of, or the ability to test, a product, in a population in which it has not yet been tested.

30. Many comments from pediatricians, disease-specific organizations, a pharmacists' organization, a medical society, several companies, a pharmaceutical trade association, and the AAP urged that the decision to require pediatric studies be reviewed by a panel of outside pediatric experts. Some of the comments recommended that the panel include industry representatives. The comments were divided on whether the panel would review only waiver requests or would be responsible for identifying, in the first instance, those drugs that need study. Some of these comments believed that the rule should include no criteria for granting waivers and that the decision should be made on a case-by-case basis in consultation with the expert panel.

As described later in this document, FDA intends to convene a panel of pediatric experts, which will include one or more industry representatives, to assist the agency in implementing this rule. FDA will bring before that panel some issues related to waivers. FDA does not believe, however, that it is reasonable to bring every product undergoing clinical studies before the panel for a decision on whether pediatric studies are required. Because many dozens of drugs and biologics reach the end of phase 1 and phase 2 each year, and the panel could not realistically meet more than once every few months, insisting that each product be brought before the panel would introduce substantial delay into the development and review of drugs and biologics. Moreover, many waiver decisions will be straightforward and noncontroversial.

FDA does, however, agree that it would be beneficial to have the advice of pediatric experts on its administration of the waiver provisions of the rule. FDA will therefore ask the panel, at least on an annual basis for the first several years, to review the agency's waiver decisions and provide advice on whether it believes that the criteria used in making those decisions were appropriate. FDA will use the advice it receives to modify future waiver decisions. FDA also expects to consult with individual members of the panel on difficult waiver decisions in their fields of expertise.

31. One comment suggested that FDA identify diseases that are not likely to occur in pediatric patients, such as prostate cancer, and classes of drugs not likely to be used in pediatric patients, and grant blanket waivers. Another comment listed the following product classes as having no applicability to pediatric patients: Alcohol abuse agents, Alzheimer's agents, Amyotrophic lateral sclerosis agents, antifibrosis therapy, antiparkinsonian agents, fertility agents, gout preparations, multiple sclerosis drugs, oral hypoglycemics, osteoporosis agents, oxytocics, tremor preparations, uterine relaxants, and vasodilators (including cerebral vasodilators).

FDA agrees that there are some disease and drug classes that have extremely limited applicability to pediatric patients and that waiver is appropriate for these. The decision to grant a waiver in such cases would be based on a conclusion that a disease does not have sufficient significance in the pediatric population (either because of frequency or severity) to constitute a meaningful therapeutic benefit for pediatric patients or to be used in a substantial number of pediatric patients. FDA emphasizes that this decision would not be intended to prevent or impede studies of these diseases or drug classes in the pediatric population, should a sponsor wish to conduct them.

The agency has identified the diseases following for which waivers will be likely to be granted. Some of the diseases listed in the comment are included in FDA's list. Others, such as osteoporosis, gout, multiple sclerosis, and tremors can develop in children, and are not included in FDA's list. Waiver decisions on products for the listed diseases are expected to be straightforward and noncontroversial. FDA may add to or revise this list in the future by issuing guidance documents. An applicant who wishes to obtain a waiver because the product is indicated for a disease on the list may refer in the waiver request to this **Federal Register** notice, or to any guidance document modifying this notice. FDA's list follows:

1. Alzheimer's disease.
2. Age-related macular degeneration.
3. Prostate cancer.
4. Breast cancer.
5. Non-germ cell ovarian cancer.
6. Renal cell cancer.
7. Hairy cell Leukemia.
8. Uterine cancer.
9. Lung cancer.
10. Squamous cell cancers of the oropharynx.
11. Pancreatic cancer.
12. Colorectal cancer.
13. Basal cell and squamous cell cancer.
14. Endometrial cancer.
15. Osteoarthritis.
16. Parkinson's disease.
17. Amyotrophic lateral sclerosis.
18. Arteriosclerosis.
19. Infertility.
20. Symptoms of the menopause.

F. Pediatric Use Section of Application

FDA proposed to add § 314.50(d)(7), under which applicants would be required to include in their applications a section summarizing and analyzing the data supporting pediatric use information for the indications being sought. FDA received no comments on this provision. The new pediatric use section will be required to contain only brief summaries of the studies together with a reference to the full description of each provided elsewhere in the application.

G. Planning and Tracking Pediatric Studies

1. Sections 312.23(a)(3)(v), 312.47 (b)(1)(i), (b)(1)(iv) and (b)(2), and 312.82—Early Discussion of Plans for Pediatric Studies

In the proposal, FDA identified several critical points in the drug development process, before submission of an NDA or BLA, during which the sponsor and FDA should focus on the sponsor's plans to assess pediatric safety and effectiveness. These time points include: Any pre-IND meeting or "end-of-phase 1" meeting for a drug designated under subpart E of part 312 (21 CFR part 312), the IND submission, the IND annual report, any "end-of-phase 2" meeting, the presentation of the IND to an FDA drug advisory committee, and any pre-NDA or pre-BLA meeting. Of these, the pre-IND meeting, the "end-of-phase 1" meeting, the IND submission, the IND annual report, the "end-of-phase 2" meeting, and the pre-NDA/pre-BLA meeting are codified in part 312, FDA's regulations governing IND's.

In a separate rulemaking, FDA has already amended the IND annual report requirement to include discussion of pediatric patients entered in trials (63 FR 6854, February 11, 1998). In the proposal, FDA proposed to amend §§ 312.23(a)(3)(v), 312.47 (b)(1)(i) and (b)(2), and 312.82 (a) and (b) to specify that these meetings and reports should include discussion of the assessment of pediatric safety and effectiveness. To assist manufacturers in planning for studies that may be required under this proposal, FDA also proposed to inform manufacturers, at the "end-of-phase 2" meeting, of the agency's best judgment, at that time, of whether pediatric studies would be required for the product and when any such studies should be submitted. The proposal also stated that, in addition to the discussions of pediatric testing codified in the proposal, FDA would assist manufacturers by providing early consultations on chemistry and formulation issues raised by requirements under this rule.

Because, as described previously, studies of drugs and biologics for life-threatening diseases may begin as early as the end of phase 1, FDA will, at the end-of-phase 1 meeting, provide the sponsor of such a product the agency's best judgment, at that time, whether pediatric studies will be waived or deferred. Section 312.82(b) has been revised to include this requirement. Because studies of other products may begin as early as the end of phase 2, FDA will, at the end-of-phase 2 meeting, provide the agency's best judgment, at that time, whether waiver or deferral is appropriate. Although a formal request for deferral or waiver is not required until submission of the NDA or BLA, FDA has revised § 312.47(b)(1)(iv) to state that a manufacturer who plans to seek a waiver or deferral should provide information related to the waiver or deferral in the advance submission required before the end-of-phase 1 or end-of-phase 2 meeting, as appropriate.

As described earlier, a pediatric study required under this rule may be eligible for exclusivity under FDAMA, if such study "meets the completeness, timeliness, and other requirements of [section 505A]." (See 21 U.S.C. 355A(i).) Among other requirements, a pediatric study must, to be eligible for exclusivity, be responsive to a written request for the study from FDA. To obtain a written request, a manufacturer may submit a proposed written request to FDA that contains the information described in a guidance document issued by FDA entitled, "Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act." A manufacturer who has been told in the end-of-phase 1 or end-of-phase 2 meeting that it is FDA's best judgment at that time that it does not intend to waive the study requirement may submit a proposed written request at any time thereafter. FDA will issue a written request for a study required under this rule promptly after an adequate proposed written request is submitted.

FDA also sought comment on the types of evidence that FDA should examine to ensure that deferred pediatric studies are carried out in a timely fashion. In response to comments, FDA has revised §§ 312.47 (b)(1)(iv) and (b)(2) to require submission of information about planned and ongoing pediatric studies.

32. One comment supported the proposed provisions and the need for early consultation with sponsors, stating that discussions should take place as early as possible in drug development. The comment urged that proposed § 312.47(b)(1) be revised to acknowledge the possibility that studies could already be underway.

FDA agrees with this comment and has revised § 312.47(b)(1) as suggested in the comment.

33. Several comments provided suggestions on how to assure that deferred studies are carried out expeditiously. One comment urged that the criteria to ensure deferred studies are carried out in a timely fashion be modeled on the AIDS Clinical Trials Group (ACTG) system of National Institute of Allergy and Infectious Diseases (NIAID). Another comment recommended that evidence demonstrating that the required studies were underway be submitted to FDA within 6 months of approval. This comment suggested that the evidence should include: (1) A finalized protocol, (2) evidence of sufficient entry of patients to address the objective of the protocol, and (3) a time line for data analysis and submission to FDA. Another comment argued that the burden should be on manufacturers to provide evidence that studies are being conducted with due diligence through submission of protocols, progress reports and certifications by researchers. To hold manufacturers accountable, this comment suggested that nonproprietary information related to deferrals be made available to the public, including deferral requests, FDA action, postmarketing status reports, and the time line for deferred studies. One comment argued that FDA's current procedures are adequate to track the timeliness of pediatric studies. A pharmaceutical trade association argued that FDA should institute an adequate tracking system and meet periodically with the sponsor to discuss the progress of the studies, but that no new rules are needed.

FDA agrees that an adequate system for ensuring that studies, both deferred and nondeferred, are carried out in a timely manner requires the submission of plans and progress reports from the sponsor at defined intervals. As described previously, FDA will provide sponsors with a preliminary decision on whether pediatric studies will be required and their timing at the end-of-phase 1 meeting, for drugs and biologics for life-threatening diseases, and at the end-of-phase 2 meeting, for other products. FDA has revised § 312.47(b)(1)(iv) to state that sponsors should submit, in the advance submission for the end-of-Phase 2 meeting, a proposed time line for protocol finalization, enrollment, completion, data analysis, and submission of pediatric studies, or, in the alternative, information to support a planned request for waiver or deferral. For drugs and biologics for life-threatening diseases, the submission should be made in advance of the end-of-Phase 1 meeting. FDA has also revised § 312.47(b)(2)(iii) to state that sponsors should submit, in the submission in advance of the pre-NDA or pre-BLA meeting, information on the status of needed and ongoing pediatric studies. The proposed language of § 312.47 has been slightly modified to

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seek information on "needed" and ongoing studies rather than "planned" and ongoing studies. This change has been made because not every sponsor elects to have an end-of-phase 1 or end-of-phase 2 meeting. In those cases, the need for a pediatric study may be discussed for the first time at the pre-NDA or pre-BLA meeting. FDA has also revised the title of § 312.47(b)(2) from "'Pre-NDA' meetings" to "'Pre-NDA' and 'pre-BLA' meetings." This is merely a clarification, because part 312 is expressly applicable to products subject to the licensing provisions of the Public Health Service Act, as well to products subject to section 505 of the act and 21 CFR 312.2(a).

2. Sections 314.81(b)(2) and 601.37—Postmarketing Reports

To permit FDA to monitor the conduct of postapproval studies to ensure that they are carried out with due diligence, FDA proposed to amend § 314.81(b)(2) of the postmarketing report requirements to require applicants to include in their annual reports: (1) A summary briefly stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated; (2) where possible, an estimate of patient exposure to the drug product, with special reference to the pediatric population; (3) an analysis of available safety and efficacy data in the pediatric population and changes proposed in the label based on this information; (4) an assessment of data needed to ensure appropriate labeling for the pediatric population; and (5) whether the sponsor has been required to conduct postmarket pediatric studies and, if so, a report on the status of those studies. (Additional postmarketing reporting requirements are described under "Remedies" in section III.L of this document.) Although the proposal was intended to cover both drugs and biological products, the proposal inadvertently omitted a postmarketing reports requirement specifically applicable to biological products. In the final rule, FDA has corrected this oversight and included an identical postmarketing reports requirement in § 601.37.

FDA notes that FDAMA includes a provision requiring reports of postmarketing studies in a form prescribed by the Secretary of Health and Human Services (the Secretary) in regulations. (Section 506 of the act (21 U.S.C. 356B).) At such time as regulations implementing this provision are issued, FDA may modify or withdraw §§ 314.81(b)(2) and 601.37 for consistency with the implementing regulations.

34. Three comments from the pharmaceutical industry agreed that it was appropriate to require postmarketing reports on the progress of postapproval pediatric studies. One comment argued, however, that collection of this information along with an adequate system to track pediatric studies could preclude the need to finalize the rule. Another comment argued that the required analyses of pediatric data "may lead to exposure of a larger number of children to an unapproved product." This comment also contended that estimates of patient exposure are difficult to obtain and unreliable.

FDA disagrees that postmarket reports and a tracking system are an adequate means of assuring that drugs and biologics are appropriately labeled for pediatric use. As shown above, even postmarket commitments to conduct pediatric studies have infrequently resulted in pediatric labeling submissions. FDA also disagrees that the analyses required under § 314.81(b)(2) require exposure of any new patients. The analyses referred to in the provision are of already collected data. Finally, the rule requires estimates of patient exposure "where possible." If there are no data on which to make such estimates, the estimates are not required. FDA notes, however, that there are commercial data bases designed to estimate use of marketed drugs.

35. One comment argued that FDA should require postmarket surveillance of approved drugs that do not have pediatric labeling, to generate helpful comparative information and provide additional information useful for analysis of adverse event profiles.

The provisions of the final rule require manufacturers of approved drugs without pediatric labeling to conduct postmarket surveillance on their products and provide an analysis of available safety and efficacy data in the pediatric population.

H. Studies in Different Pediatric Age Groups

Because the pharmacokinetics and pharmacodynamics of a drug or biological product may be different in different pediatric age groups or stages of development, FDA proposed to require an assessment of safety and effectiveness in each pediatric age group for which a waiver was not granted. The following age categories for the pediatric population were distinguished in the proposal: (1) Neonates (birth to 1 month); (2) infants (1 month to 2 years); (3) children (2 years to 12 years), and (4) adolescents (12 years to 16 years). The proposal stated that the need for studies in more than one age group would depend on whether the drug or biological product was likely to be used or offered meaningful therapeutic benefit in each age group (see "Waivers" section III.E of this document), the metabolism and elimination of the drug, and whether safety and effectiveness in one age group could be extrapolated to other age groups. The proposal further stated that it would not ordinarily be necessary to establish effectiveness in each age group, but there would generally need to be pharmacokinetic data in each group to allow dosing adjustments. The proposal recognized that studies in neonates and young infants present special problems, and sought comment on whether it is appropriate to require the assessment of safety and effectiveness in this age group.

36. Several comments addressed the requirement that all relevant age groups be studied. Some comments opposed studies in more than one age group. One comment contended that requiring safety data in each pediatric group may place an unnecessary burden on the sponsor, and that FDA should require safety data only in one group, presumably that with the highest potential use. Another comment claimed that requiring studies in all four age groups would almost never be justified. In most cases, according to this comment, it should be possible to study a single subgroup and extrapolate. Other comments argued that studies in more than one age group could be necessary depending on the pharmacokinetics of the drug, the disease, and expected use of the drug. Most of these comments stated that the type and extent of studies in different age groups must be decided on a case-by-case basis. Several comments contended that drugs should be studied in each age group in which they are expected to be used. One comment stated that studies in toddlers are especially needed. A comment from an organization devoted to pediatric AIDS argued that all age groups should be studied unless the manufacturer provides compelling evidence that it would be impossible or virtually impossible to study that group.

FDA continues to believe that studies in more than one age group may be necessary, depending on expected therapeutic benefit and use in each age group, and on whether data from one age group can be extrapolated to other age groups.

37. Many comments argued that the pediatric subgroups identified in the proposal were arbitrary and that FDA should be flexible in determining which age ranges or stages of development need to be studied. A comment from a pharmaceutical trade association contended that rigid age divisions for required studies were inappropriate, and that the method by which the compound is cleared from the body must be considered in light of what is known about physical development. The AAP stated that the groups identified in the proposal provide acceptable guidelines, but should not be adhered to rigidly. One comment argued that the definition of pediatric patients should include all subgroups of growth and development from 0 to 21 years.

FDA agrees that the age ranges identified in the proposal may be inappropriate in some instances and that it will be reasonable in some cases to define subgroups for study using other methods, such as stage of development. FDA has deleted the references in the rule to specific age ranges.

38. Several comments addressed inclusion of neonates in studies. One comment maintained that because neonates are a special challenge, they should not ordinarily be included in studies under this rule. Another comment described the difficulties in conducting studies in infants and neonates and recommended that before studies in this group there be an assessment of "the expected extent of use and potential benefit in this patient population" and an evaluation of safety data in adults and older pediatric patients. One comment contended that there are not many instances in which the benefit will outweigh the risk of exposing neonates and young infants to drugs. This and another comment also argued that it is not always possible to extrapolate from data in older pediatric patients. A pharmaceutical trade association maintained that validated end-points and ability to assess these by age should determine which age groups to include, and that it may not be possible to study certain end-points in very young pediatric patients. One comment argued that early research on neonates raises special ethical issues. Citing the 1977 FDA guideline, this comment asserted that testing in neonates should occur only when substantial evidence of benefit or superiority over accepted agents has been demonstrated in older pediatric patients and adults.

Other comments argued that neonates should not be excluded from studies. According to one comment, study designs will be appropriate and necessary ethical issues will be addressed if neonatologists are included in the review of studies. Another comment stated that neonates represent the greatest disparity in drug disposition compared to adults, and that, on a scientific and ethical basis, they must therefore be included in drug studies. The AAP stated that premature infants, newborns, and infants are more difficult to study, but that the difficulties do not outweigh the importance of studying them. According to this comment, inadequate study of neonates has led to frequent and severe toxicity. This comment agreed that it is inappropriate to extrapolate from older pediatric patients to the youngest age group.

FDA agrees that the benefits and risks to premature infants, neonates, and infants must be carefully weighed before these pediatric patients are included in pediatric studies. Although the agency believes that studies in these groups may be frequently waived or deferred until adequate safety data have been collected, there will be cases in which the drug or biologic is important and expected to be used in these groups. In such cases, it will be appropriate to require studies in these groups. To exclude them from study would be to subject the most vulnerable patients to the risks of the drugs in clinical use without adequate information about safety or dosing. FDA agrees that studies in neonates and young infants raise special ethical issues, but once these issues are addressed in each case, the studies should proceed.

I. Pediatric Formulations

As described in the proposal, testing of a product in pediatric patients could require the development of a pediatric formulation. Many young children are unable to swallow pills and may require a liquid, chewable or injectable form of the product. A standardized pediatric formulation also ensures bioavailability and consistency of dosing, compared to alternatives such as mixing ground-up tablets with food, and permits meaningful testing of safety and effectiveness. FDA proposed in §§ 201.23, 314.50(g)(1) (now 314.55(a)) and 601.27(a) to require a manufacturer to produce a pediatric formulation, if one were necessary, only in those cases where a new drug or new biological product provided a meaningful therapeutic benefit over existing treatments, and where the study requirement had not been waived in the age group requiring the pediatric formulation. The proposal recognized that the difficulty and cost of producing a pediatric formulation may vary greatly depending upon such factors as solubility of the compound and taste. FDA proposed to waive the requirement for pediatric studies (see "Waivers" in section III.E of this document) in age groups requiring a pediatric formulation, if the manufacturer provided evidence that reasonable attempts to produce a pediatric formulation had failed.

FDA sought comment on whether it is appropriate to require a manufacturer to develop a pediatric formulation, on whether the cost of developing a pediatric formulation should ever justify a waiver of the pediatric study requirement, and on how to define "reasonable attempts" to develop a pediatric formulation.

39. Many comments from the pediatric community argued that it is appropriate to require manufacturers to produce pediatric formulations. Several comments from pediatricians and parents described the difficulties and uncertainties in attempting to administer adult formulations to pediatric patients, and argued that pediatric formulations are essential to assure bioavailability, accurate dosing, and patient compliance, and to avoid wasting medications. The AAP argued that FDA should require development of an appropriate formulation for each age group for which the drug will be used, taking into account ease of administration and ability to dose accurately.

Comments from the pharmaceutical industry described technical problems in producing pediatric formulations, including stability, taste and palatability, and claimed that FDA underestimated these difficulties. Some of these comments maintained that requiring development of pediatric formulations during the investigational phase will necessitate diversion of resources, increase the cost of the adult formulation, and create a disincentive to produce drugs with pediatric uses. One comment argued that it would be wasteful to require development of a pediatric formulation before some evidence of effectiveness has been collected and dose selection has been achieved, because before that time the drug could be abandoned because of lack of safety or effectiveness. A pharmaceutical trade association opposed a pediatric formulation requirement, arguing that the government has no right to tell manufacturers what products to market. This comment stated that only if FDA successfully demonstrated that "all attempts to develop a voluntary solution have failed" might the industry consider other options. One comment stated that

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a single drug could require more than one pediatric formulation for different pediatric age group, such as a chewable tablet, a nonalcohol containing liquid, and sprinkles. Counting failed attempts, this comment claimed that producing a pediatric formulations may cost millions of dollars.

FDA believes that for drugs and biologics that offer a meaningful therapeutic benefit to pediatric patients, it is essential to provide pediatric formulations that ensure bioavailability and accurate dosing. FDA disagrees that it is inappropriate for the government to require manufacturers to produce pediatric formulations. As many comments demonstrated, adult formulations of these drugs are frequently used in pediatric patients because there is no other choice. Drug manufacturers profit from these uses, but do not take responsibility for them. Where a product is commonly being used in a subpopulation for an indication recommended by the manufacturer, it is appropriate to require the manufacturer to take steps to ensure that the use is safe and effective.

FDA agrees that producing a pediatric formulation can be difficult or, rarely, impossible and has attempted to account for this problem by permitting waiver of the pediatric study requirement where reasonable attempts to produce a pediatric formulation have failed. FDA notes that the pharmaceutical industry did not respond to FDA's request to help define what should constitute such "reasonable attempts."

To permit pediatric studies that may begin, for products for life-threatening diseases, at the end of phase 1, or, for other products, at the end of phase 2, it may be necessary to begin development of a pediatric formulation before initiation of clinical trials. FDA does not agree that it is wasteful to begin development of a pediatric formulation at this stage. This rule is premised on the view that for drugs and biologics that will have important use in pediatric patients, it is the responsibility of the manufacturer to ensure that use is safe and effective. Although some such products may ultimately prove to be unsafe or ineffective, work on pediatric formulations of such products is not necessarily more wasteful than work on adult formulations. FDA does not agree that manufacturers will be required to develop several pediatric formulations for different age groups. Even for a drug that was to be used in all pediatric age groups, a liquid formulation, e.g., might be usable in all age groups.

FDA has no basis to conclude that producing pediatric formulations will increase the cost of adult formulations or create disincentives for producing drugs and biologics with pediatric uses. No evidence was submitted to support either of these assertions.

40. Several comments discussed how to define "reasonable attempts" to produce a pediatric formulation. The AAP argued that difficulty in producing a pediatric formulation should be a basis for waiver only if the sponsor provides data showing that formulation experts encountered insurmountable problems of solubility, stability, compatibility, or palatability using accepted methods, and that cost be given only limited consideration. The AAP urged that such an assertion be corroborated by a panel of pediatric experts and FDA as well as formulation experts. Another comment agreed that formulations appropriate for younger age groups should be developed unless the manufacturer shows it would be virtually impossible. This comment argued that if a manufacturer wants to show that the cost is prohibitive, it should provide information allowing the financial and other costs of development to be seen in terms of the entire drug development process. Another comment argued that waivers should not be based on whether reasonable efforts to develop a pediatric formulation have failed because this ground for a waiver would permit small companies to avoid producing pediatric formulations on cost grounds. This comment urged that waivers be allowed only if a pediatric formulation cannot be produced for scientific or technological reasons. One comment argued that even if producing a pediatric formulation is impossible, the manufacturer should be required to study the adult formulation in pediatric patients, because it will be used in pediatric patients.

One industry comment urged that the decision to require a pediatric formulation be made on a case-by-case basis. Another comment argued that pediatric formulations should be required only if a panel of pediatric experts concludes that there is a genuine pediatric need and substantial benefit.

FDA agrees that the burden should be on the manufacturer to provide evidence that experts in formulation chemistry had encountered unusually difficult technological problems in the development of a pediatric formulation. In determining whether those problems were sufficiently severe to warrant a waiver of pediatric studies, FDA will consider the potential importance of the product for pediatric patients. The more important the product, the more efforts should be made to develop a pediatric formulation. FDA will also, at its discretion, take to the Advisory Committee for Pharmaceutical Sciences questions about whether "reasonable attempts" have been made to produce pediatric formulations in particular cases. Although FDA believes that it is appropriate to consider the cost to the manufacturer in determining whether attempts to produce a pediatric formulation have been reasonable, the agency received no helpful guidance on how to assess whether the costs of producing a pediatric formulation were unreasonable. In addition to any informative cost information provided by the manufacturer, FDA will take into account whether a product is still under patent or exclusivity protection. FDA will assume that manufacturers can incur greater costs for products that have significant patent life or exclusivity remaining.

41. One comment contended that FDA chemistry requirements have increased over the last 10 years. Another comment urged that FDA be more flexible in its review of formulations, e.g., by permitting generally recognized as safe (GRAS) substances in pediatric formulations.

FDA recently held a conference on pediatric formulations at which the agency sought input from industry on identifying the regulatory issues that affect the development of pediatric formulations for both new and approved marketed drugs. At this meeting, FDA also requested proposals for solutions to facilitate the development and approval of pediatric formulations. FDA is committed to removing unnecessary burdens on the review and approval of pediatric formulations.

42. Two comments urged manufacturers to provide formulas in product labeling for extemporaneous pediatric formulations made by pharmacists. These comments stated that the current practice among hospital pharmacies is to use unvalidated formulas, resulting in a lack of consistency from one hospital to another, no stability testing, and, in some cases, reluctance to produce pediatric formulations at all because of the lack of guidance. One comment stated that information on extemporaneous formulations should be provided only where: (1) A commercial formulation is not possible or (2) the drug has extremely limited use in pediatric patients.

FDA is concerned that the availability of this approach may undermine efforts to produce standardized pediatric formulations. There are, however, one or two examples in which approved labeling carries directions for producing extemporaneous pediatric formulations. FDA will consider, on a case-by-case basis whether such an approach is appropriate, e.g., where it has not been possible to develop a stable commercial formulation.

J. Marketed Drug and Biological Products

FDA proposed in § 201.23 to codify its authority to require, in certain circumstances, a manufacturer of a marketed drug or biological product to submit an application containing data evaluating the safety and effectiveness of the product in pediatric populations. FDA proposed to impose such a requirement only where the agency made one of two findings: (1) That the product was widely used in pediatric populations and the absence of adequate labeling could pose significant risks to pediatric patients; or (2) the product was indicated for a very significant or life-threatening illness, but additional dosing or safety information was needed to permit its safe and effective use in pediatric patients.

Before requiring a study under this section, FDA proposed to consult with the manufacturer on the type of studies needed and on the length of time necessary to complete them, and would notify the manufacturer, by letter, of the agency's tentative conclusion that such a study was needed and provide the manufacturer an opportunity to provide a written response and to have a meeting with the agency. At the agency's discretion, such a meeting could be an advisory committee meeting. If, after reviewing any written response and conducting any requested meeting, FDA determined that additional pediatric use information was necessary, FDA proposed to issue an order requiring the manufacturer to submit a supplemental application containing pediatric safety and effectiveness data within a specified time. The proposal referred to the order in one place as a letter. FDA has clarified the final rule by stating that the manufacturer will receive "an order, in the form of a letter." A few other minor clarifying revisions have also been made in this section.

FDA sought comment on whether it should codify its authority to require the manufacturers of marketed drugs and biologics to conduct pediatric studies, and, if so, on the circumstances in which the agency should exercise that authority.

43. Many comments from the pediatric community agreed that FDA should codify its authority to require pediatric studies on marketed drugs. Several comments from the pharmaceutical industry argued that FDA lacked authority to require studies of marketed drugs and that the 1994 rule sufficiently addressed pediatric labeling for marketed drugs. Some comments argued that adding pediatric labeling for indications applicable to pediatric patients should be at the sponsor's discretion. Others claimed that incentives are better than requirements. One comment contended that the proposed requirement forces manufacturers "to take on unwanted liabilities in order to maintain an asset which was created and earned under a different set of rules." Other comments maintained that companies should not be required to conduct new studies, and that pediatric labeling should be based on existing data, such as marketing experience and dosing regimens generally accepted by experts. A comment from a pharmaceutical trade association argued that studies should not be required but that FDA should work with industry and others to "develop creative ways to obtain the needed labeling information" for marketed drugs.

FDA believes that it has ample authority to require pediatric studies of marketed drugs and biologics, as described in the preamble to the 1994 rule (59 FR 64240 at 64243) and in "Legal Authority" section IV of this document. FDA has also concluded, as described previously, that the response to the 1994 rule and other voluntary measures have not produced a significant improvement in pediatric labeling for many marketed drugs and biologics. In addition, as one pharmaceutical company conceded, manufacturers are unlikely to initiate clinical research on marketed drugs whose patents have expired, or are about to expire. FDA has therefore concluded that where pediatric information is critical to patient care, it is necessary to require that pediatric studies be carried out. FDA notes that new requirements are sometimes imposed on already marketed consumer products when such requirements are necessary to protect the public health. FDA emphasizes, however, that it will require studies of marketed products only in the compelling circumstances described in the regulation.

44. FDA received many comments on the grounds for requiring studies of marketed products. Comments from medical societies, pediatricians, and disease-specific organizations argued that the proposed grounds were too narrow. One comment stated that pediatric studies should be required of any marketed drug that is likely to be used in pediatric patients. Several comments argued that the phrase "very significant illness" was ill-defined. One comment stated that it was "so open-ended and subjective as to be impossible for use as a regulatory standard." Another comment suggested that any definition of "very significant illness" would be arbitrary and overbroad. Several comments urged that the same criteria that are applied to not-yet-approved drugs be applied to marketed drugs. One of these comments argued that even if the criteria remain as proposed, "widely used" and "significant risk" should be defined in terms of the severity of the illness. According to this comment, if the consequences of no treatment are serious, the absence of labeling should be more readily found to present a significant risk. One industry comment maintained that the requirement should apply to marketed drugs only where there is a "compelling need" for pediatric data. One comment argued that the requirement should apply to all marketed drugs unless an expert panel concluded that studies were not required, while other comments urged that FDA utilize an expert panel to affirmatively identify and prioritize marketed drugs that should be studied in pediatric patients. Some of these comments suggested that there be no criteria and that the panel should determine which drugs should be studied on a case-by-case basis. One comment suggested that the list should be prioritized using the number of pediatric prescriptions.

FDA believes that criteria are necessary to assure consistency and fairness in deciding which marketed drugs and biologics are studied. FDA has reviewed the grounds for requiring pediatric studies of marketed drugs and biologics and has revised them in light of the comments. FDA has concluded that the phrase "very significant illness" is not sufficiently defined and agrees that it would be less confusing to use the same concepts that are used in defining which new products will be subject to the pediatric study requirement. FDA has therefore replaced the concept of "very significant illness" and replaced it with "meaningful therapeutic benefit." However, to ensure that this authority is reserved for cases in which there is a compelling need for studies, FDA has added the requirement (already present in the first criterion) that FDA also find that the absence of adequate labeling could pose significant risks for pediatric patients. The second criterion will now read:

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> * * * there is reason to believe that the drug product would represent a meaningful therapeutic benefit over existing treatments for pediatric patients for one or more of the claimed indications, and the absence of adequate labeling could pose significant risks to pediatric patients.

FDA has also revised the first criterion to conform more closely to the criteria for requiring studies in not-yet-approved drugs and biologics, replacing "widely used" with "used in a substantial number of pediatric patients." FDA will use the same definition of "substantial number" for both marketed and not-yet-approved drugs and biologics. The first criterion will, however, continue to include the requirement that "the absence of adequate labeling could pose significant risks to patients." FDA believes that the pediatric study requirement may impose greater burdens on the manufacturers of marketed drugs and biologics than the manufacturers of not-yet-approved products, and that it is appropriate to require such studies only in the compelling circumstances described in the regulation. In determining which marketed products "could pose significant risks to patients," FDA will consider such factors as the severity of the illness and the consequences of inadequate treatment, the number of pediatric prescriptions, and any available information on adverse events associated with use of the product.

FDA emphasizes that it intends to exercise its authority under § 201.23 only in compelling circumstances. FDA has estimated that it will require studies of approximately two marketed drugs per year.

FDA agrees that an expert panel can provide useful experience and guidance in developing a prioritized list of marketed drugs and biologics that meet the criteria for required studies. FDA intends to seek advice on developing such a list from a pediatric panel, as described in section III.M of this document ("Pediatric Committee").

FDA also notes that FDAMA requires the agency to publish a list of marketed drugs for which "additional pediatric information may produce health benefits in the pediatric population." FDA published this list within 180 days of the enactment of FDAMA, as required by that statute. Although the products on the list designated as high priority may be appropriate candidates for required studies under this rule, the list of high priority products is not necessarily exhaustive. Other products that might be subject to a requirement under this rule might not appear on the list. FDA also emphasizes that there is no implication that the agency will require studies of any particular product on the list. As noted in the Introduction to this preamble, before imposing any requirements under § 201.23, FDA intends to allow manufacturers eligible for FDAMA incentives an adequate opportunity to voluntarily conduct studies of marketed drugs in response to those incentives. If, following such an opportunity, there remain marketed drugs for which studies are needed and the compelling circumstances described in the rule are met, the agency will consider exercising its authority to require studies.

45. One comment claimed that the proposal requires studies only from manufacturers of innovator drugs (sponsors of the original application for the drug), while the major market share for many of these drugs is now held by generic manufacturers. This comment argued that a waiver should be granted if ANDA holders fail to share the costs of required studies. Another comment argued that the pediatric study requirement should apply only to the sponsor of the original application.

Where the agency requires pediatric studies on a multi-source marketed drug, each manufacturer of that drug, whether innovator or generic, will be responsible for satisfying the study requirement. To avoid duplication of research, FDA will encourage all the manufacturers to jointly fund an appropriate study. If, however, a joint study is not agreed to, each manufacturer will be responsible for submitting adequate studies.

K. Ethical Issues

In the proposal, FDA noted that because pediatric patients represent a vulnerable population, special protections are needed to protect their rights and to shield them from undue risk. To address ethical concerns in research on pediatric patients, both the AAP (Ref. 17) and the Department of Health and Human Services (DHHS), 45 CFR part 46, subpart D, have developed guidelines for the ethical conduct of clinical studies in pediatric patients. FDA advised in the proposal that sponsors should adhere to these guidelines for pediatric studies conducted under this rule. The agency also sought comment on ethical issues raised by the proposal.

46. A few comments addressed appropriate ethical guidelines for pediatric studies. Several comments said that existing ethical guidelines provide an adequate framework for pediatric studies. A comment from the AAP stated that ethical conduct should be guided by the DHHS and AAP guidelines, and that IRB approval that explicitly ensures protection of vulnerable subjects should be obtained. This comment also stated that the AAP guidelines provide a means to ensure ethical conduct of studies without impeding pediatric research. One comment said that DHHS ethics regulations may not provide sufficient protection for pediatric patients and suggested incorporating AAP guidelines for ethical conduct of pediatric studies into FDA's human subjects protections regulations. Another comment contended that pediatric studies should strictly adhere to regulations currently in effect for studies of human subjects who are unable to give consent, and urged FDA to further define requirements for investigation in vulnerable populations.

FDA believes that adherence to the DHHS and AAP guidelines will provide sufficient protection to pediatric patients from the risks of research. FDA will, however, seek advice from a panel of pediatric experts on whether additional protections are necessary.

47. Several comments addressed the ethics of requiring pediatric studies as described in the proposal. Two comments asserted that children are overmedicated and that administering drugs to children is unacceptable and "ungodly." Comments from the pharmaceutical industry claimed that the rule as drafted would result in unethical testing of pediatric patients. One comment maintained that the regulations do not adequately protect pediatric patients from the risks of research because they impose a "general rule that a deferral of testing in pediatrics will only be granted in narrow and limited circumstances."

In contrast, comments from the pediatric community maintained that far more serious ethical concerns are raised by using untested drugs in pediatric patients than by conducting pediatric research. A comment from the AAP stated that there is no greater ethical dilemma than whether to give a drug with insufficient safety and effectiveness data to a child, or to withhold treatment and let the disease progress unabated.

Some comments suggested specific points in drug development at which pediatric testing becomes ethical. One comment argued that testing in pediatric patients before efficacy is demonstrated in adults may unnecessarily expose pediatric patients to a product's risks before its benefits are established. Another comment contended that it is unethical to begin studying drugs in pediatric patients that are not intended primarily for pediatric patients until the drug is adequately characterized in adult patients, including choice of appropriate adult dose and establishment of reasonable evidence of safety and efficacy with an acceptable therapeutic margin. A pharmaceutical trade association argued that it is unethical to begin trials in pediatric patients until enough adult safety and effectiveness data have been gathered to conclude that the drug "is likely to be approved for use in adults."

FDA believes that some of the comments from the pharmaceutical industry misstate the application of the rule. As described fully previously, deferral of pediatric studies is specifically permitted in those cases where data should be collected in adults before exposing pediatric patients to the agent. There is no suggestion in either the proposed or final rule that deferral will be granted only in "narrow and limited circumstances." FDA believes that, as drafted, the deferral provisions of the rule permit ethical pediatric testing that does not expose pediatric patients to inappropriate risks.

48. A few comments urged that placebo-controlled trials in pediatric patients be used rarely if at all. The AAP stated that placebo controls should not be used where that design would impose a substantial increase in risk to the child or would impede the ability to perform useful clinical trials. This comment urged that alternatives to placebo controls be used wherever possible and that where placebo controls are used, the study design should incorporate safeguards to avoid undue risk.

The question of appropriate control group arises only when there is a need for controlled trials to establish efficacy in the pediatric population. FDA agrees that alternatives to placebo-controlled trials should be used wherever they can provide sufficient information to establish effectiveness. FDA often accepts data from active control studies for certain therapeutic classes, such as anti-infectives and oncologic drugs. (See 21 CFR 314.126.) In some cases, new treatments can also be studied against a placebo together with a background of existing therapy, i.e., studied in "add-on" trials.

49. One comment argued that parents should not be given money or equivalent compensation for participation in drug studies. This comment suggested that any compensation could be put in the child's IRA.

The IRB overseeing a research study, rather than FDA, is responsible for determining whether compensation offered to the subjects of the study is ethically appropriate.

L. Remedies

If a manufacturer failed, in the time allowed, to submit adequate studies to evaluate pediatric safety and effectiveness required under proposed § 201.23(c) or § 314.55 (proposed § 314.50(g)), FDA proposed to consider the product misbranded under section 502 of the act or an unapproved new drug under section 505(a) of the act (see "Legal Authority," in section IV of this document). Although proposed § 201.23 expressly covered both drugs and biologics, FDA inadvertently omitted in that section a reference to actions against biologics that have not obtained a license under section 351 of the Public Health Service Act. Such a reference has been added in the final rule. When a product is misbranded or an unapproved new drug, sections 302, 303, and 304 of the act (21 U.S.C. 332, 333, 334) authorize injunction, prosecution or seizure. FDA may also seek an injunction or bring a prosecution under the Public Health Service Act. In the proposal, FDA advised that it would bring an enforcement action for injunctive relief for failure to submit a required assessment of pediatric safety or effectiveness. Violation of the injunction would result in a contempt proceeding or such other penalties as the court ordered, e.g., fines. As noted in the proposal, FDA does not intend to deny or withdraw approval of a product for failure to conduct pediatric studies, except possibly in rare circumstances, because removal of a product from the marketplace could deprive other patients of the benefits of a useful medical product. Such circumstances might arise where the predominant use of the product was in pediatric patients rather than adults, and there were life-threatening risks associated with use of the product in pediatric patients when used without proper dosing and safety information in the labeling.

To assist FDA in determining whether pediatric assessments are needed or are being carried out with due diligence, FDA proposed to amend § 314.81(b)(2) (21 CFR 314.81(b)(2)) (annual postmarketing reports) to require that annual reports filed by the manufacturer contain information on labeling changes that have been initiated in response to new pediatric data, analysis of clinical data that have been gathered on pediatric use, assessment of data needed to ensure appropriate labeling for the pediatric population, and information on the status of ongoing pediatric studies. FDA also proposed to require that, where possible, the annual report contain an estimate of patient exposure to the drug product, with special reference to the pediatric population.

50. Several comments agreed with the agency that withdrawal or denial of approval is infeasible and supported the use of injunctive remedies. One comment argued that if FDA provides no incentives, disincentives to avoid pediatric trials must be strong, and that withdrawal and denial of approval must therefore be used as a remedy.

FDA continues to believe that refusal to approve or removal from the market is generally an unsatisfactory remedy from a public health perspective because it denies adequately studied populations access to safe and effective medicines.

51. Several comments supported the imposition of monetary fines. One comment urged that fines be imposed in the amount of a percentage of the profits to ensure that large and small companies had an equal disincentive. Several comments argued that fines should be used by FDA to fund pediatric studies carried out by government or private agencies. One comment contended that monetary penalties, such as fines or shortening of exclusivity, are the only practical remedy because industry and government are economically driven, but that injunctions are too costly.

Although FDA continues to believe that court-imposed fines are an appropriate remedy for failure to submit pediatric assessments, the agency has no authority itself to impose fines for violation of this rule, to set the amount of such fines, or to take the fines and direct them to specific activities.

52. Two comments opposed treating violative products as "misbranded" because this could limit access to the drugs or could delay availability of the products for adult use. According to one comment, FDA should consider a misbranding charge only if the sponsor failed to meet a phase 4 commitment. Another comment argued that injunction or prosecution are appropriate only as a final response, and that other, unspecified means are more efficient to elicit compliance. This comment also argued that seizure would serve only to deprive patients of safe and effective drugs.

The comments arguing that a misbranding charge could limit access or delay approval provided no basis for concluding that these results would occur, and FDA is aware of none. FDA agrees that injunction and prosecution are appropriate remedies only after the sponsor has been given an adequate opportunity to meet its obligations under the rule. FDA emphasizes, however, that providing adequate pediatric labeling cannot be long-delayed without putting the health of pediatric patients at risk and that the agency will not accept unwarranted delays in submitting required studies. FDA also notes that it does not intend ordinarily to use seizure as a remedy for failure to conduct required studies.

53. Some comments offered additional or alternative remedies for failure to conduct required studies. One comment urged that failure to provide information to support pediatric labeling result in highly visible warnings on prescription and OTC labels that the drug has not been approved by FDA for pediatric use. Two comments argued that the label should disclose the status of pediatric studies, whether waivers or deferrals had been requested or granted, and the timetable for full compliance. Another comment contended that incentives are more effective than penalties, and that FDA discussions with sponsors during drug development will achieve the results sought in the proposal.

FDA agrees that publicity can sometimes be a useful tool for encouraging compliance. FDA does not believe, however, that it is feasible to include in labeling detailed information on the status of pediatric trials, because that information could change frequently. As described in section III.M of this document, FDA will, in appropriate cases, bring issues related to the progress of pediatric studies before a panel of pediatric experts, and may utilize other forms of publicity to provide the public with information about the status of required pediatric studies. FDA notes, e.g., that FDAMA contains provisions concerning disclosure of information on the status of postmarketing studies. FDA may also consider the use of prominent warnings about the absence of data on pediatric use, if necessary in particular cases.

M. Pediatric Committee

A large number of comments recommended that FDA form a panel of pediatric experts to provide advice on a range of topics related to implementation of this rule. Two comments recommended that an expert panel give advice on all facets of the rule. Several comments suggested more specific roles for the panel. For example, the AAP recommended that the panel provide advice on waiver requests, which marketed drugs require study, whether a drug is "widely used," whether to accept a manufacturer's failure to develop a pediatric formulation, relevant age groups for study, the appropriateness of deferral, and appropriate timetables for completion of deferred studies. A disease-specific organization urged that a pediatric committee assist in establishing "pediatric guidelines and practice," including a list of drugs for which studies would be required, protocol design, formulations, and age ranges. Two industry comments recommended that the panel review which drugs require testing and labeling, at what phase of drug development pediatric patients should be exposed, when waivers should be granted, what methods should be used to evaluate safety and effectiveness, the economic burdens on industry, and liability issues. Several comments, including comments from a pharmaceutical trade association, a disease-specific organization, a medical society, and pediatricians, recommended that the panel give advice on which drugs should be studied in pediatric patients. One comment suggested that FDA appoint a pediatric pharmacology expert to each of the existing drug advisory committees, except possibly the Fertility and Maternal Health Advisory Committee.

FDA has concluded that a panel of pediatric experts could provide useful advice and experience on several aspects of the implementation of the rule. FDA will therefore convene a panel of pediatric experts, including at least one industry representative, and seek its advice on a range of issues. Such a panel may be composed of pediatric experts appointed to each of FDA's existing drug advisory committees. As described in section III.E of this document under "Waivers," FDA does not believe that it would be practical to ask such a committee to review every waiver or deferral request. However, the agency will ask the panel to provide annual oversight of the agency's implementation of the final rule, including the agency's record of granting or refusing waivers and deferrals. FDA will also seek the advice of the panel in identifying specific marketed drugs and biological products that should be studied in pediatric patients, and the age groups in which they should be studied. FDA will also ask for advice on assessing when additional therapeutic options are needed in treating specific diseases and conditions occurring in pediatric patients. As described previously, FDA will seek the panel's advice on ethical issues raised by clinical trials in pediatric patients, and whether additional rules should be implemented in this area. Where a manufacturer is not carrying out required studies according to the agreed upon timetable, FDA may seek the advice of the panel on whether the manufacturer is acting with due diligence. In addition, FDA may bring before the panel other issues that arise in the implementation of the rule, including the design of trials and analysis of data for specific products and classes of products.

N. Other Comments

54. Several comments suggested various forms of oversight for the implementation of the rule. One comment suggested that FDA establish a plan to prospectively evaluate these regulations, including their effect on the cost of drug development and on the time to new drug approval, and the number and success of pediatric studies actually performed. Another comment urged FDA to appoint a "Children's Studies Ombudsman." One comment asked that the rule include an appeals mechanism to resolve disputes between sponsors and agency reviewers.

As described previously, FDA intends to convene a panel of pediatric experts, including at least one representative of the pharmaceutical industry, to, among other things, review the agency's implementation of the rule. FDA notes that it already has procedures for resolution of disputes between sponsors and FDA reviewing divisions, 21 CFR 312.48 and 314.103, and that these procedures will be available for disputes that arise under this rule.

55. Several comments contended that the rule is inconsistent with requirements in Canada, Europe, and Japan for pediatric studies. These comments argued that the rule was at odds with harmonization efforts and urged FDA to harmonize its requirements with those of other countries. One comment recommended that the United States, the European Union (EU), and Japan adopt pediatric drug development as a topic for global discussion and harmonization.

Although FDA is not required to harmonize its labeling regulations and enforcement with those of our International Conference on Harmonization (ICH) partners, harmonization is a goal that the agency strives to achieve. FDA intends to work through the ICH process to harmonize methods for conducting pediatric studies.

56. A few comments sought additional incentives for pediatric studies. One industry comment suggested that FDA should provide: (1) Priority reviews for applications containing pediatric data or ongoing studies; (2) waiver of user fees for pediatric effectiveness supplements; and (3) application of the subpart E

regulations (21 CFR part 312, subpart E) to pediatric development of new drugs and biological products, to address the issues associated with small sample size and therapeutic need.

Since the publication of the proposal, two significant new incentives have become available for pediatric research. First, as described elsewhere in this document, FDAMA provides 6 months of exclusive marketing to certain applicants who conduct pediatric studies. Second, as a result of changes made during the reauthorization of the PDUFA, user fees are no longer required for supplements that are solely for the purpose of adding a new indication for use in pediatric populations.

IV. Legal Authority

In the proposal, FDA cited as authority for the requirements in the rule sections 502(a), 502(f), 505(d)(7) of the act, and § 201.5 (21 CFR 201.5), which require adequate directions for use and prohibit false or misleading labeling; section 201(n) of the act, which defines as misleading labeling that fails to reveal material facts related to consequences of the customary or usual use of a drug; sections 201(p), 301(a) and (d) (21 U.S.C. 331(a) and (d)), and 505(a) of the act, which subject a drug to enforcement action if it is not recognized as safe and effective or approved for the conditions prescribed, recommended, or suggested in the labeling; section 502(j) of the act, which prohibits drugs that are dangerous to health when used in the manner suggested in their labeling; sections 505(i) and 505(k) of the act, which authorize FDA to impose conditions on the investigation of new drugs, including conditions related to the ethics of an investigation, and to require postmarketing reports; section 701(a) of the act, which authorizes FDA to issue regulations for the efficient enforcement of the act; and section 351 of the Public Health Service Act, which formerly required biological products to meet standards designed to insure their "continued safety, purity, and potency." FDA notes that section 351 was amended by FDAMA, and now requires biological products to be "safe, pure, and potent."

FDA has authority under section 302 of the act and under the Public Health Service Act to seek an injunction requiring studies of certain marketed drugs on the grounds that the absence of pediatric safety and effectiveness information in the labeling renders the product misbranded or an unapproved new drug. The act also authorizes seizures of misbranded or unapproved drugs under section 304 of the act. Misbranding drugs and introducing unapproved new drugs into interstate commerce are prohibited acts under sections 301(a), (d), and (k) of the act. The statutory definition of "drug" is set out at section 201(g) of the act.

57. Several comments agreed that FDA has authority to require pediatric testing of drugs and biological products. One comment argued that the act already gives FDA the authority to require that all drugs be tested in pediatric patients, and that the rule, which permits waivers and deferred testing in some cases, weakens the agency's existing statutory authority. One comment contended a provision of FDAMA granting exclusivity to "any pediatric study [that] is required pursuant to regulations promulgated by the Secretary [and that meets certain other requirements]" shows that Congress agrees that FDA has authority to require pediatric studies. This comment also argued that, to the extent that FDA's position on its authority to require pediatric studies has changed, the change in position is justified because the proposal articulates a reasoned basis for the change.

FDA agrees that it has the authority to require pediatric testing of drugs and biologics. For the reasons cited in the preamble to the proposed and final rules, FDA has concluded that the requirements in the rule appropriately balance the need for adequate pediatric labeling and the limitations on resources available for pediatric testing and agency review. FDA also agrees that the reference in FDAMA, which was enacted after the proposal was issued, to pediatric studies required by FDA, demonstrate that Congress is aware of FDA's position that it has the authority to issue this rule and agrees that the agency has such authority. Finally, FDA agrees that it has articulated a reasoned basis for its position that the agency has authority to require pediatric studies, but notes that FDA previously stated its position that it has the authority to require pediatric studies in 1994 (59 FR 64240 at 64243).

58. Several comments argued that FDA lacks authority to require pediatric studies of drugs. A few comments cited remarks by former Commissioner David Kessler during a 1992 speech. In that speech, David Kessler stated his opinion that FDA does not have "the authority to require manufacturers to seek approval for indications which they have not studied." Other comments argued that FDA has no authority to require the study of any indications or populations other than those proposed by the manufacturer. One comment challenged FDA's reliance on section 201(n) of the act for not-yet-approved drugs, claiming that the agency cannot know what will be the "customary or usual uses" of an unmarketed drug. A few comments argued that the agency's legal theory would authorize the agency to require studies of all off-label indications.

FDA disagrees that any of these arguments show that FDA lacks authority to issue this rule. Under FDA's longstanding policy, statements made in speeches, even by Commissioners, are informal expressions of opinion and do not constitute a formal agency position on a matter. As such they are not binding on the agency. (See, e.g., 21 CFR 10.85(k).)

FDA also disagrees that it has no authority to require a drug or biologic to be studied in a population that is expected to use the product for the claimed indication, or that this is a new position. The agency has repeatedly stated that an application for marketing approval should contain data on a reasonable sample of the patients likely to be given the product once it is marketed (59 FR 64240 at 64243; 58 FR 39406 at 39409). The agency has also previously asserted its authority to require studies in pediatric patients and in other subpopulations for both not-yet-approved products and marketed products. In the preamble to the 1994 rule, FDA made the following statement:

> If FDA concludes that a particular drug is widely used, represents a safety hazard, or is therapeutically important in the pediatric populations, and the drug sponsor has not submitted any pediatric use information, then the agency may require that the sponsor develop and/or submit pediatric use information.
>
> If FDA has made a specific request for the submission of pediatric use information because of expected or identified pediatric use, and the sponsor fails to provide such information, the agency may consider the product to be a misbranded drug under section 502 of the act, or a falsely labeled biological product under section 351 of the PHS Act, as an unapproved new drug or unlicensed biological product. (See 21 U.S.C. 355 and 42 U.S.C. 262.)

(59 FR 64240 at 64248; see also 58 FR 39406 at 39409)

The act and implementing regulations require drugs to be adequately labeled for their intended uses. See sections 502(f) of the act and § 201.5. "Intended uses" encompass more than the uses explicitly included in the manufacturer's proposed labeling. *Id.*, 21 CFR 201.128. In determining the intended uses of a drug for which it must be adequately labeled, FDA may consider both the uses for which it is expressly labeled and those for which the drug is commonly used, § 201.5.

FDA may also consider the actual uses of the drug of which the manufacturer has, or should have, notice, even if those uses are not promoted by the manufacturer, 21 CFR 201.128. Section 201(n) of the act defines labeling as misleading if it fails to include material facts about the consequences of "use of the [drug] * * * under such conditions of use as are customary or usual." Sections 201(p) and 505(d) of the act authorize FDA to require evidence establishing the safety and effectiveness of uses "suggested" by the manufacturer's labeling as well as those expressly recommended in the labeling. Thus, the agency has authority to require a manufacturer to establish the safety and effectiveness of, and adequately label its product for, use of the product in a subpopulation for which the product is not labeled if that use is common or suggested in the labeling.

As described in the proposal, there is extensive evidence that drugs and biologics indicated for diseases that affect both adults and pediatric patients are routinely used in pediatric patients despite the absence of pediatric labeling, and even in the face of disclaimers stating that safety and effectiveness have not been established in pediatric patients. FDA may therefore consider pediatric use to be "customary or usual" or "commonly used" where the drug is indicated for a disease or condition that affects both adults and children, and the drug is not contraindicated in pediatric patients. FDA may also consider pediatric use to be "suggested" in a drug's labeling even where such use is not expressly recommended or is even disclaimed. The medical community generally expects that drugs and biological products will behave similarly in demographic subgroups, including age and gender subgroups, even though there may be variations among the subgroups, based on, e.g., differences in pharmacokinetics. Thus, where a drug or biological product is indicated for a disease suffered equally by men, women, and children, and is not contraindicated in women or pediatric patients, the product will be widely prescribed for all three subgroups even if it were studied only in, or labeled only for, men.

FDA disagrees that it can know nothing, in advance of marketing, about whether a drug or biological product will be used in pediatric patients. The evidence cited in the proposal and confirmed by comments from the pediatric community is overwhelming that products indicated for diseases that affect both adults and children are and will be commonly used in pediatric patients. Indeed, pediatricians often have no choice but to use these products in pediatric patients. A drug product that provides a meaningful therapeutic benefit either because it represents a significant improvement in therapy or because it is a necessary therapeutic option can be expected to be routinely used in the treatment of pediatric patients. Under the rule, the decision that a product will provide a meaningful therapeutic benefit or will be used in a substantial number of pediatric patients is made on a case-by-case basis, depending upon such factors as the number of pediatric patients affected by the disease for which the product is indicated, the availability and adequacy of other therapeutic options to treat pediatric patients for the disease, and whether similar products, e.g., products in the same drug class, have been widely used in pediatric patients.

Finally, FDA emphasizes that this rule applies only where a product is expected to have clinically significant use in pediatric populations for the indications already claimed by the manufacturer. The record before the agency documents widespread evidence of actual use of products in the pediatric population for indications labeled for adults. This record supports FDA's conclusion that it has authority to require pediatric studies of drugs and biologics that have or are expected to have clinically significant use among pediatric patients for the claimed indications. The agency has not examined evidence concerning the use of approved products for diseases or conditions not in the label, and the rule does not apply in those situations.

59. Two comments addressed the agency's reliance on section 701(a) of the act. One comment argued that 701(a) of the act, in combination with the substantive statutory provisions cited by FDA, authorizes this rule because the agency has demonstrated that the rule is reasonably related to the purposes of the act. Another comment argued that 701(a) of the act does not authorize the agency to enforce requirements beyond those imposed by the act.

Section 701(a) of the act gives the Secretary authority to issue regulations for the efficient enforcement of the act. Consonant with the Supreme Court's determination that the language of the act should not be read restrictively, but in a manner consistent with the act's purpose of protecting the public health, a regulation issued under section 701(a) of the act will be sustained so long as it is reasonably related to the purposes of the act. *United States* v. *Nova Scotia Food Products Corp.*, 568 F.2d 240, 246 (2nd Cir. 1977). FDA believes that it has demonstrated that this regulation is reasonably related to the purposes of the act.

V. Implementation Plan

FDA proposed that the rule would become effective 90 days after the date of its publication in the **Federal Register**. For new drug and biologic product applications submitted before the effective date of the final rule, the agency proposed a compliance date of 21 months after the effective date of the final rule (for a total of 2 years after issuance of the final rule). For new drug and biologic product applications submitted on or after the effective date of the final rule, the agency proposed a compliance date of 15 months after the effective date of the final rule (for a total of 18 months after issuance of the final rule). FDA has revised the final rule to become effective 120 days after publication in the **Federal Register**, to allow additional time for comment on the revised information collection requirements. FDA has also revised the compliance dates. All applications will have a compliance date of 20 months after the effective date of the rule (for a total of 2 years after publication of the final rule).

60. Two industry comments argued that the proposed effective dates were too short. One of these suggested that 15 and 21 months were too short to develop a pediatric program and formulation, conduct trials, analyze data, and submit an application. Two comments asked that FDA clarify what "compliance" means. According to one of these comments, 15 months would be adequate for initiation of discussions with a sponsor about plans, but inadequate for completion of studies. This comment also argued that it is not in children's interest to rush through pediatric studies to meet an arbitrary deadline. Another comment offered the example of Ritonavir, a drug to treat HIV infection, for which pediatric studies reportedly took 21 months even after development of a pediatric formulation. According to the comment, it took 15 months to agree on a protocol, 3 months to recruit patients, and 3 months to the first interim analysis of data. One disease-specific organization argued that the effective dates were too long. This comment proposed 12 months from the effective date of final rule, which could be extended by 6 months if genuine difficulties occurred. This comment also urged that compliance with the early discussion requirements be immediate. One comment argued that pending applications should be granted a full

waiver and treated as marketed products.

"Compliance," as referred to in the proposal, means the submission of an assessment of pediatric safety and effectiveness under § 314.55(a) (proposed § 314.50(g)(1) or 601.27(a)), unless a waiver or deferral for all relevant age groups has been granted. FDA has reconsidered the compliance dates and has concluded that applications submitted on or after the effective date of the final rule should be given 20 months from the effective date of the final rule to achieve compliance. Although FDA does not believe that development of, and agreement on, a protocol should take 15 months, protocol development, recruitment, enrollment, and data analysis may together take up to 2 years. There is no reasonable basis on which to distinguish between an application submitted 1 day before the effective date of the final rule, and one submitted a day later.

All other provisions of the rule will become effective on the effective date of the rule. One hundred twenty days from the date of publication in the **Federal Register** is sufficient time to meet these new requirements.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

With respect to the following collection of information, FDA invited comment on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

OMB filed a Notice of Action, not approving the proposed collection of information. OMB requested that, as part of the final rule, FDA address all comments received on the information collection requirements contained in the rule, particularly with respect to the reporting burden imposed by the rule. FDA received one comment concerning the proposed burden estimates of this rulemaking under the PRA. The comment contended that FDA underestimated the time required to comply with the annual reporting requirements of the proposed rulemaking.

The agency received several comments that questioned the accuracy of FDA's estimate of the burden of the proposed collection of information as being too low and requested changes. For example, one comment requested changes in the burden estimate for manufacturers requesting deferrals of submission of pediatric data as well as the estimate for manufacturers to submit pediatric information in their annual report. In addition, the estimate for manufacturers to submit in their annual reports the analysis of available safety and efficacy data conducted or obtained in the pediatric population as well as proposed labeling was questioned. Based on these comments the agency increased the proposed burden estimates. These issues are discussed in more detail in the preamble to the final rule.

Concerning § 314.50(d)(7), the comment stated that in order to comply with this requirement, "one company" estimated that, for one pediatric reporting project, medical staff had spent at least 118 hours, rather than the 8 hours that FDA had estimated, reviewing the medical literature and summarizing the findings. FDA does not believe that this comparison is fully appropriate because § 314.50(d)(7) does not require an applicant to review the medical literature, or other studies, *de novo*. It simply requires an applicant to provide a brief summary of data that have already been fully reported and analyzed elsewhere in the same application. However, because the data to be summarized may be more extensive than originally estimated, FDA has, in response to the comment, increased its estimate of the reporting burden for this requirement from 8 hours to 50 hours.

Concerning § 314.55(a), the comment contended that FDA's estimate of 10 companies submitting NDA's annually for NME's is too low. The comment implied that, based on data for 1996, 50 companies would be a more realistic estimate. The comment also contended that FDA's estimate of 16 hours for a manufacturer to prepare the report of the data supporting the safety and effectiveness of the drug for the indication for the pediatric population is too low. In response to this comment, FDA has revised its burden estimate from 16 to 48 hours. FDA has also made a corresponding change in the estimate for § 601.27(a). FDA has revised the estimate of the number of companies affected from 10 to 51 to reflect the broader scope of the rule.

Concerning § 314.55(b), the comment stated that FDA's estimate of 9 manufacturers requesting deferrals of the submission of pediatric study data and the estimate that this would take 8 hours to complete are too low. In response to this comment, FDA has revised its burden estimate from 8 hours to 24 hours. FDA has also made a corresponding change in the estimate for § 601.27(b). FDA has revised the estimate of the number of companies affected from 8 to 51 to respond to the comment and to reflect the broader scope of the rule.

Concerning § 314.81(b)(2)(i), the comment contended that FDA's estimate of 1.5 hours for manufacturers to submit pediatric information in their annual reports is too low. In response to this comment, FDA has revised its burden estimate from 1.5 hours to 8 hours and has made a corresponding change in its estimate for § 601.27(c).

Concerning § 314.81(b)(2)(vi)(*c*), the comment contended that FDA's estimate of 1.5 hours for manufacturers to submit in their annual reports the analysis of available safety and efficacy data conducted or obtained in the pediatric population as well as proposed labeling changes is too low. The comment stated that even an estimate of 15 hours would be too low. Although the comment did not provide an estimate of the hours required to satisfy § 314.81(b)(2)(i) and (b)(2)(vi)(*c*), FDA has increased its estimates to 8 and 24 hours, respectively.

Based upon these comments, FDA has decided to increase the agency's proposed burden estimates. These revisions are reflected in the Table 2 of this document. In addition, the burden estimates for §§ 314.55(a), (b), and (c), and 601.27(a), (b), and (c), have increased because of the new requirements in the final rule to include, in addition to applications for new chemical entities and never-before-approved biologics, applications for new active ingredients, new indications, new dosage forms, new dosing regimens, and new routes of administration. These estimates are based upon FDA's analysis of all marketing applications and efficacy

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supplements approved over the 5-year period of 1993 to 1997 and those that would likely have needed additional pediatric data had this rule been in effect by 1993 (see "Analysis of Impacts," in section VIII of this document). In addition, burden estimates have been added in Table 2 of this document for the new requirements in the final rule concerning submissions for end-of-phase 1 and end-of-phase 2 meetings under § 312.47(b)(1)(iv) and submissions for pre-NDA meetings under § 312.47(b)(2). These estimates are based on FDA's records of the number of these meetings held during 1997. Finally, burden estimates have been added for new postmarket report requirements added for biological products under § 601.37 (a), (b), and (c), corresponding to § 314.81 (b)(2)(i), (b)(2)(vi)(*c*), and (b)(2)(vii). These estimates are based upon FDA's records of the number of licensed biological products.

Title: Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients.

Description: This final rule includes the following reporting requirements: (1) Reports on planned pediatric studies in IND's (§ 312.23(a)(10)(iii)); (2) Reports for end-of-phase 1 and end-of-phase 2 meetings (§ 312.47(b)(1)(iv)) and reports for pre-NDA meetings (§ 312.47(b)(2)); (3) Summaries of data on pediatric safety and effectiveness in NDA's (§ 314.50(d)(7)); (4) Reports assessing the safety and effectiveness of certain drugs and biological products for pediatric use in NDA's and BLA's or in supplemental applications (§§ 314.55(a) and 601.27(a)); (5) Requests seeking deferral of required pediatric studies (§§ 314.55(b) and 601.27(b)); (6) Requests seeking waiver of required pediatric studies (§§ 314.55(c) and 601.27(c)); (7) Postmarketing reports of analyses of data on pediatric safety and effectiveness (§§ 314.81(b)(2)(vi)(*c*) and 601.37(a)(1)); (8) Postmarketing reports on patient exposure to certain marketed drug products (§§ 314.81(b)(2)(i) and 601.37(a)(2)); (9) Postmarketing reports on labeling changes initiated in response to new pediatric data (§§ 314.81(b)(2)(vi)(*c*) and 601.37(a)(3)); and (10) Postmarketing reports on the status of required postapproval studies in pediatric patients (§§ 314.81(b)(2)(vii) and 601.37). The purpose of these reporting requirements is to address the lack of adequate pediatric labeling of drugs and biological products by requiring the submission of evidence on pediatric safety and effectiveness for products with clinically significant use in children.

Description of Respondents: Sponsors and manufacturers of drugs and biological products.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
201.23	2	1	2	48	96
312.47(b)(1)(iv)	27	1.2	32	16	512
312.47(b)(2)	36	1.3	46	16	736
314.50(d)(7)	213	1	213	50	10,650
314.55(a)	51	1	51	48	2,448
314.55(b)	51	1	51	24	1,224
314.55(c)	176	1	176	8	1,408
314.81(b)(2)(i)	625	1	625	8	5,000
314.81(b)(2)(vi)(*c*)	625	1	625	24	15,000
314.81(b)(2)(vii)	625	1	625	1.5	937.5
601.27(a)	2	1	3	48	144
601.27(b)	2	1	3	24	72
601.27(c)	3	1	4	8	32
601.37(a)	69	1	69	8	552
601.37(b)	69	1	69	24	1,656
601.37(c)	69	1	69	1.5	103.5
Total					40,571

[1] There are no capital or operating and maintenance costs associated with this collection of information.

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

A. Introduction and Summary

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities. The Unfunded Mandates Reform Act (Pub. L. 104–4) (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The agency has reviewed this final rule and has determined that the rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and in these two statutes. This rule is an economically significant regulatory action, because of its substantial benefits. It is also a significant regulatory action as defined by the Executive Order due to the novel policy issues it raises. With respect to the Regulatory Flexibility Act, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Since the rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $100 million or more in any one year, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act.

FDA is requiring that a limited class of important new drugs and biologicals that are likely to be used in pediatric patients contain sufficient data and information to support directions for this use. As the approved labeling for many of these new products lacks adequate pediatric information, their use in children greatly increases the risk of inappropriate dosing, unexpected adverse effects, and suboptimal therapeutic outcomes. This rule is designed to ensure that new drugs, including biological drugs, that are therapeutically important and/or likely to be used in a substantial number of children contain adequate pediatric labeling at the time of, or soon after, approval.

The agency estimated the costs to industry of the required new pediatric studies by first determining what the annual costs would have been in 1993 to 1997, had the rule become effective in 1993. The methodology included: (1) Constructing a data base of all 583 NDA's and efficacy supplements approved by the agency over that 5-year period for drugs and biologicals likely to produce health benefits in the pediatric population, (2) determining which of those applications would have been required to conduct additional pediatric studies, (3) calculating how many unapproved and already marketed drugs and biologicals would have needed additional pediatric studies, and (4) estimating the size and cost of the additional studies. The analysis indicated that, on average, this regulation would have required an estimated 378 additional pediatric studies on about 82 drugs and biologicals per year. These studies would have involved a total of 10,860 pediatric patients, 7,408 in efficacy studies, and 3,452 in PK studies. In addition, an estimated 33 of the 82 drugs and biologicals needing new pediatric data each year may have needed new pediatric dosage forms. FDA judges that the additional studies would have cost about $45 million and the new dosage formulations about $33 million annually, for a total annual cost of almost $80 million. The agency found, however, that roughly 42 percent of the costs of the studies would have been spent voluntarily had the extended pediatric exclusivity provisions of the recent FDAMA statute been in place. Adjusting for this effect lowers the agency's final cost estimate for this rule to about $46.7 million per year.

FDA could not develop a quantifiable estimate of the benefits of this regulation, although numerous anecdotal examples illustrate the current health problem. To consider some of the potential benefits, the agency examined hospitalization rates for five serious illness (asthma, HIV/AIDS, cancer, pneumonia, and kidney infections) and found significantly higher rates for children than for middle-aged adults. Although FDA can not estimate the extent to which these differentials reflect the relative lack of pharmaceutical safety and efficacy information for pediatric compared to adult use, the agency calculated that a 25 percent reduction in these differentials would lead to direct medical cost savings of $228 million per year. FDA also estimates that about two-thirds of the approved applications needing pediatric studies will be addressed by the incentives established by FDAMA. If the estimated medical cost savings were adjusted by a similar ratio, the analysis suggests that a 25 percent reduction in the pediatric/adult hospitalization rate differentials would yield annual savings of $76 million for these five illnesses.

B. Number of Affected Products and Required Studies

In the preamble to its proposal, FDA explained that neither the precise number of drugs that would require additional pediatric studies nor the cost of these studies could be predicted with certainty. To develop plausible estimates of the number of new drugs and biologicals that would be affected, the agency had examined the pediatric labeling status at time of approval for each NME and important biological approved from 1991 to 1995, and used these estimates to project the number of drugs that would have required additional pediatric data had the proposal been in place over that period.

Several industry comments declared that FDA's analysis of the proposal substantially underestimated the economic impact by understating both the number and size of the studies that would be required. Only two of the comments, however, included alternative estimates. One suggested that each new drug could require the testing of 300 or more pediatric patients for safety data alone. The other comment estimated that, "each new drug studied would probably require a minimum of six clinical trials (two each in Phases I, II, and III), for one indication and one formulation." This comment explained that Phase I trials would include 20 patients, Phase II trials 50 patients, and Phase III trials 100 patients. Assuming two trials for each phase, the comment projected that 34,000 pediatric patients would need to be studied each year (170 patients x 2 trials x 100 drugs).

FDA agrees that some applications will require data from a substantial number of pediatric patients. The agency believes, however, that most studies will not include large numbers of pediatric patients. For example, FDA does not necessarily require two pediatric studies for each trial phase. Moreover, FDA's 1994 final rule (59 FR 64240) explains that extrapolations from adult effectiveness data based on PK studies and other safety data can be sufficient to provide the necessary pediatric dosing information for those drugs and biologicals that work by similar mechanisms in adults and children. The agency expects that the majority of the studies will rely, to some extent, on such extrapolations.

On the other hand, the proposal primarily addressed drugs and biologicals that contained no previously approved active moiety. The final rule requires pediatric data for new active ingredients, new indications, new dosage forms, new dosing regimens, and new routes of administration that represent a meaningful clinical benefit over existing treatments for children, or that are likely to be widely used in children. The rule also requires pediatric studies for marketed drugs and biologicals that are already widely used among children for the claimed indications, if the absence of adequate labeling could pose significant risks; or if the drug would provide a meaningful clinical benefit over existing treatments for pediatric patients, but additional dosing or safety information is needed to permit their safe and effective use in children.

To develop a revised estimate of the number of drugs and biologicals that would require additional pediatric data, FDA constructed a data base of all 583 applications and efficacy supplements approved over the 5-year period from 1993 to 1997 for drugs and biologicals for which pediatric labeling would be likely to provide a significant health benefit. The selected drugs and biologicals included all those for which the active moiety was listed in the priority section in the **Federal Register** of May 20, 1998 (63 FR 27733), document entitled "List of Drugs For Which Additional Pediatric Information May Produce Health Benefits in the Pediatric Population" ("List"). Mandated by FDAMA, this publication includes the agency's priority list of drugs and biologicals that would likely provide a significant benefit to the pediatric population. The selection criteria used to prepare this priority list were almost identical to those set forth in this final rule, i.e.,

- The drug product, if approved for use in the pediatric population, would be a significant improvement compared to marketed products labeled for use in the treatment, diagnosis, or prevention of a disease in the relevant pediatric population (i.e., a pediatric priority drug); or,
- The drug is widely used in the pediatric population, as measured by at least 50,000 prescription mentions per year; or,
- The drug is in a class or for an indication for which additional therapeutic options for the pediatric population are needed.

FDA then identified each of the 583 applications that would likely have needed additional pediatric studies had this rule been in effect. The number and type of studies needed were projected based on specific decision rules derived from agency experience in reviewing drug applications and developed strictly for the purpose of estimating the regulatory costs of this rule. Although in practice, these rules would have been subject to numerous exceptions, in the aggregate, FDA believes that they provide plausible estimates of the total number and type of pediatric studies that would have been required. The decision rules were as follows:

1. All New Chemical Entities (NCE's) and biologicals were assumed to need both an efficacy study and a PK study for each age group identified in the priority section of the "List" as needing pediatric information, although FDA believes that this assumption overstates the true number of efficacy studies that will be needed.

2. For the following categories of applications, both an efficacy and a PK study were assumed for each designated age group. Again, FDA believes that this assumption may overstate the true number of efficacy studies that will be needed:

Neurological drugs;
Oncology drugs;
Nausea agents;
Pulmonary agents;
NSAIDs—arthritis/pain;
AIDS/HIV agents;
Asthma drugs;
Anesthesia drugs;
Hormones;
Dermatological agents;
Acne agents

3. A PK study alone was assumed sufficient for each relevant age group for the following types of non-NCE applications:

Allergies;
Infectious diseases;
Cardiovascular diseases;
Imaging agents;
Hematology agents;
GI disorders;
Urologic drugs

4. If pediatric labeling was already adequate as the result of an approved application, additional applications for new dosage forms were assumed to be exempt.

5. If a second applicant sought approval for the same indication of the same drug as a previous applicant that had already satisfied the pediatric labeling requirements, the second applicant was considered exempt from the pediatric labeling requirement.

6. Because the regulation imposes requirements only on new NDA's or efficacy supplements that specifically address an indication needing pediatric data, no pediatric requirements were assumed for an NDA supplement submitted for a new indication not identified as needing pediatric data.

7. Orphan drugs were excluded from additional research requirements.

The results of this analysis (see Table 3 of this document) show that about 44 percent, or an estimated 255, of the total 583 drug and biological applications for the products on the priority section of the "List" drugs approved over the 5-year period would have required additional pediatric studies, had the rule been in effect starting in 1993. Assuming separate studies for each pediatric age group specified in the "List," indicates that an estimated 459 efficacy studies and 713 PK studies would have been required for these applications.

These estimates understate the required research effort, however, because they omit pediatric studies for drugs that fail to gain approval. It is difficult to judge how much additional pediatric research would be directed towards nonapprovable products. The agency notes, however, that because only about 63.5 percent of all NME's that enter phase III trials are eventually approved (Ref. 18), the number of drugs entering phase III trials is about 58 percent greater than the number of actual approvals (100/63.5 = 1.58). Moreover, there are two additional complications. First, under the rule, FDA expects to defer for several years the conduct of pediatric studies of "me-too" drugs that do not offer a meaningful therapeutic benefit and that are members of a drug class that already contains an adequate number of approved products with pediatric labeling. No additional pediatric studies would be expected for this group of never approved drugs. On the other hand, applications for "lifesaving" drugs may need to begin pediatric trials by the start of Phase II. On the assumption that these two factors would roughly offset, FDA has retained the 58 percent figure as a reasonable adjustment factor to account for the number of studies conducted for drugs that fail to gain approval. Finally, each year, the agency expects to identify about two "already marketed" drugs that require additional pediatric efficacy data.

As shown in Table 4 of this document, adjusting for the "never approved" and the "already marketed" applications implies that, had this rule become effective in 1993, about 1,892 new pediatric studies would have been required over the 1993 to 1997 period. About 740 of the studies would have been efficacy studies and 1,151 PK studies. Thus, on average, each year, the rule would have required about 378 new pediatric studies for about 82 NDA's and or NDA supplements—148 efficacy studies and 230 PK studies.

TABLE 3.—APPROVED NEW DRUG APPLICATIONS AND THEIR SUPPLEMENTS FROM 1993 TO 1997

Approval year	Applications for "List" Drugs	Applications needing pediatric studies	Efficacy studies required	PK studies required	Total studies required	New dosage forms
1993	77	43	63	122	185	12
1994	76	42	74	118	192	17
1995	107	38	69	107	176	13
1996	177	74	147	213	360	29
1997	146	58	106	153	259	19
Total	583	255	459	713	1,172	90
Average	117	51	92	143	234	18

TABLE 4.—ALL NEW DRUG APPLICATIONS AND THEIR SUPPLEMENTS FROM 1993 TO 1997[1]

Approval year	Applications for "List" Drugs[2]	Applications needing pediatric studies	Efficacy studies required	PK studies required	Total studies required	New dosage forms
1993	124	69	102	197	299	22
1994	123	68	119	190	310	32
1995	173	61	111	173	284	24
1996	286	119	237	344	581	54
1997	236	94	171	247	418	35
Total	942	411	740	1,151	1,892	167
Average	188	82	148	230	378	33

[1] Includes estimates for "unapproved" and "already marketed" drugs.
[2] Adjusted for "unapproved" and "already marketed" drugs.

C. Number of Pediatric Patients

The number of pediatric patients needed varies with the particular type of drug studied. However, based on agency experience, FDA estimates that, for each pediatric age group studied, typical pediatric PK studies may involve about 15 patients and typical efficacy studies about 50 patients. For example, if 2 of the 4 age groups lack PK studies, FDA assumed that a total of 30 subjects would be needed for the studies. If 3 of the 4 age groups lack efficacy studies, a total of 150 subjects were assumed to be needed in all 3 age groups. These assumptions indicate that, had this rule become effective in 1993, each year, about 82 NDA's would have required additional pediatric studies; 7,408 pediatric patients in efficacy studies and 3,452 pediatric patients in PK studies, for an annual total of about 10,860 pediatric patients.

D. Costs of Compliance

1. Cost of Pediatric Studies

FDA's analysis of the proposal assumed that new studies would cost pharmaceutical firms from $5,000 to $9,000 per pediatric patient. Only one comment, that of a large U.S. pharmaceutical company, submitted actual estimates of the cost of conducting pediatric trials. This comment stated that a PK or bioavailability/bioeqivalency study of 20 patients would cost at least $100,000, a Phase II trial of 50 patients would cost a minimum of $150,000, and a Phase III trial of 100 patients would cost $200,000. For its revised analysis, therefore, FDA assumes that a PK study of 15 patients will cost $100,000 per affected age group and that an efficacy study of 50 patients will cost $150,000 per affected age group. Although a few trials may need to be larger and, thus more expensive; others will require substantially fewer pediatric patients. Thus, FDA believes these figures reasonably project the average added costs.

As FDA estimates that the regulation would have required pharmaceutical companies to annually conduct an estimated 378 additional pediatric studies for 82 NDA's, 148 efficacy studies, and 230 PK studies; the above unit cost estimates imply total industry costs of $45 million annually. Although the industry comment that included the cost data projected clinical trial costs totaling over $100 million per year, this estimate assumed the need for 34,000 additional pediatric patients. FDA found that had this rule been in place over the 1993 to 1997 period, it would have required additional data from about 10,860 patients per year.

2. Cost of New Formulations

In its earlier analysis of the proposal, FDA calculated that about 30 percent of all NME's were available only in tablets or hard capsules at the time of approval. Acknowledging the potential difficulties of developing new formulations for certain drugs, FDA estimated that the overall costs could average $1 million for each new formulation developed. Several comments questioned the agency's estimates. Based on an informal survey of its members, a major industry trade association reported that the development of a pediatric formulation could take from 5 months to 4 years and cost from $500,000 to $3.5 million. It also objected to the agency's estimate of the number of drugs that would require reformulation. The association, however, apparently misunderstood FDA's methodology. The agency had found that 10 of 14 drugs per year would not need reformulation because a potentially adequate dosage form (liquid, an injectable, a solution, a dermatological, etc.) was already available. The association believed that FDA has assumed that only tablets and/or capsules were available for the ten drugs. None of these comments,

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however, offered an alternative methodology for projecting the aggregate value of these costs.

To develop reasonable estimates of the number of new dosage forms that would be needed, FDA again reviewed all of the 255 approved drug applications that would likely have required new pediatric studies during the 1993 to 1997 period, had this rule been in place. The agency generally assumed that those drugs identified as having a meaningful clinical pediatric benefit for the youngest three age groups, but available only in tablets or hard capsules at the time of approval, would have needed to develop an alternative dosage form. The agency also assumed that a new pediatric formulation would not be counted if a more appropriate pediatric dosage form was subsequently approved for the same drug. FDA is aware that these estimates can not be considered precise. For example, not all liquids are adequate for pediatric populations. On the other hand, new formulations may not be needed if a drug is used primarily for children between the ages of 8 and 12 years. Nevertheless, as shown in Table 3 of this document, the results of this methodology show that about 35 percent of the approved applications needing studies, or about 18 per year, would have needed new dosage forms. Table 4 of this document raises this estimate by 83 percent, or to 33 per year, to account for the number of new dosage forms developed for drugs not subsequently approved. While FDA cannot confidently predict a typical initiation time for this effort, the 83 percent adjustment calculation assumes that work on about 25 percent of all new formulations would be initiated at the start of Phase 2 trials and 75 percent by the start of Phase 3 trials. (The probability of approval was assumed to be .635 for a drug entering phase 3 trials and .31 for a drug entering phase 2 trials (Ref. 18).)

The development of some pediatric formulations will be difficult, the development of others relatively straightforward and achieved without substantial problem. The rule requires only that sponsors take all reasonable steps to develop needed new formulations. Thus, while acknowledging that the cost for particularly difficult formulations may be higher, FDA has retained its average cost estimate of $1 million to develop each new dosage form and projects this total industry cost at nearly $33 million per year.

3. Cost of Added Paperwork Requirements

The rule also requires additional industry effort for new or expanded paperwork reporting. Section VI of this document describes these reporting tasks, discusses the industry comment that questioned the agency's estimate of the paperwork burden for the proposal, and presents the agencies revised estimate for this final rule. As shown in that section, FDA projects an annual burden of about 40,000 hours per year. On the assumption that 25 percent of these hours will be for upper management staff, 50 percent for middle management staff, and 25 percent for administrative and clerical support, at respective labor costs of $52, $34, and $17 per hour, FDA estimates these total paperwork costs at about $1.4 million per year.

4. Total Costs

Table 5 of this document summarizes the agency's estimates of costs for efficacy studies, PK studies, new dosage forms, and paperwork. Because the expense of pediatric trials and dosage form development will be spread over 2 or 3 years for any given drug, the total costs to industry in any given year are unlikely to vary as much as shown in Table 5. Most importantly, however, the average $80.1 million annual cost figure reflects only what the rule would have cost had the rule been in effect from 1993 to 1997. The incentives generated by the additional 6-month marketing exclusivity offered by FDAMA will reduce the future costs of the regulation.

TABLE 5.—ESTIMATED INDUSTRY COSTS—COMPLIANCE WITH PEDIATRIC LABELING

[in millions]

Year	Efficacy studies	PK studies	New dosage form developed	Paperwork	Total
1993	$15.3	19.7	22.3	1.4	58.6
1994	17.9	19.0	31.6	1.4	69.9
1995	16.7	17.3	24.1	1.4	59.5
1996	35.6	34.4	53.9	1.4	125.2
1997	25.7	24.7	35.3	1.4	87.0
Average Per Year	$22.2	$23.0	$33.4	$1.4	$80.0

FDA cannot develop precise adjustments for the forthcoming effects of FDAMA, due to the complexity of the economic forecasting that would be needed. Nevertheless, the agency developed rough projections of the potential impact of this statute by comparing the estimated present value of the 6-month exclusivity gain with the estimated cost of the new pediatric studies, for each of the 85 drugs with applications approved in 1993 and 1994 that would have needed new pediatric labeling. (More recent years were not used, because the revenues of newer drugs are far below their peak values.) Where the estimated exclusivity gain exceeded the cost of all required studies, including the development of new dosage forms, FDA concluded that the studies for that drug would have been initiated voluntarily and their cost attributable to FDAMA rather than to this regulation.

The methodology assumed that a 6-month gain of marketing exclusivity would be worth about 25 percent of a drug's annual sales revenue during the year the exclusivity is needed, less 60 percent for production, administrative, and marketing costs (Ref. 19). Costs of conducting the required studies for each of the 85 drugs were based on the cost estimates described previously ($150,000 for each efficacy study, $100,000 for each PK study, and $1 million for each new dosage form. The present value of the additional revenues (at a 7 percent discount rate) were calculated from 1997 sales data published by IMS America (Ref. 20). Because 1997 sales revenues probably underestimate the sales revenues that will be realized at the time that the added exclusivity is used, this methodology likely underestimates the effects of FDAMA, hence overestimating the costs of the rule. In general, however, this analysis was insensitive to the precise assumptions used. For example, using an 11 percent rather than 7 percent discount rate raises the cost totals by only $1.2 million per year.

The analysis found that the necessary studies would have been conducted voluntarily for 56 out of the 85 affected applications (66 percent). Adjusting estimates of only the approved applications by this percentage (FDAMA was not assumed to affect studies for applications not obtaining approval), FDA projects that the annual costs attributable to this rule will be approximately $46.7 million, or about 42 percent below the non-FDAMA adjusted figure of $80 million.

Further, although the agency has not yet evaluated the full economic impact of the FDAMA legislation, it believes that the present value of the net revenues expected from the 6 months of added exclusivity granted under the new FDAMA legislation will greatly exceed the additional costs imposed by this regulation. One industry publication (MedAdNews, June 1998, p. 10) for example, reports that products currently valued at $41 billion in annual sales will come off patent between 1998 and 2008, or an average of $11 billion per year. Alternatively, FDA estimates that the annual revenues for NCE's coming off patent may average between $200 and $300 million each. If 25 NCE's lose exclusivity each year, these annual revenues would range from $5 billion to $7.5 billion. If only 60 percent of these NCE's become eligible for extended exclusivity, the methodology described above implies that industry net incomes will increase from $300 to $450 million per year. Thus, FDAMA and this rule, taken together, will provide critical pediatric information without diverting current resources from pharmaceutical innovation.

E. Benefits

The rule addresses two major problems associated with the lack of adequate information on the effects of drugs on pediatric patients: (1) Adverse drug reactions in children due to inadvertent drug overdoses or other drug administration problems that could be avoided with better information on appropriate pediatric use; and (2) under use of safe and effective drugs for children due to the prescribing of an inadequate dosage or regimen, a less effective drug, or no drug at all because of uncertainty over the drug's effect on children or the unavailability of a pediatric formulation. By developing improved information on whether, and in what dosage, a drug is safe and effective for use in children, FDA believes that the regulation will result in fewer adverse drug reactions and fewer instances of less-than-optimal treatment of pediatric patients.

Despite numerous reports of children endangered by the absence of adequate drug labeling, FDA has found no systematic studies in the literature that evaluate the overall magnitude of the harm that results from the incomplete labeling of drugs for use in children. In the preamble to the proposal, the agency specifically requested, "information on any available studies or data related to the incidence and costs of either undertreatment or avoidable ADE's in pediatric age groups due to the lack of information on the effects of pharmaceuticals." The comments received cited case after case of children who have died or suffered because of the inadequate testing of drugs in children, but the information was largely anecdotal and related to particular instances of drug misuse or underuse.

For example, physicians who care for HIV-infected patients expressed frustration at their inability to treat children with drugs known to be effective in adults. Pulmonary specialists described the dearth of information on risks versus benefits of new antimicrobials for pediatric patients, citing the example of ciprofloxacin, a quinolone that may be valuable in treating cystic fibrosis, although the safety and effectiveness of the drug in children has not been established. Comments received from asthma specialists reaffirmed the difficulties of administering medications, treating drug side effects, or withholding treatment for children with asthma, due to the lack of research on drug safety and effectiveness.

In both written comments and in commentary at the public hearing in October 1997, concerns were raised about the costs of not implementing a requirement for pediatric labeling. Avoidable adverse outcomes, cited in relation to pediatric dosage problems, included opportunistic infections from too much immunosuppression, and loss of grafts in pediatric renal transplant patients with too little immunosuppression. Comments also cited added health care, including increased hospitalizations, required as a result of less effective treatment for pediatric patients. One comment estimated the cost of delayed access in terms of infant deaths, attributing an additional 2,000 unnecessary infant deaths over a 2-year period to the delay in access to AZT for HIV-exposed infants. Another suggested using the Vaccine Injury Compensation program figure of $250,000 per child as the value of an avoided death resulting from an ADR. Other comments confirmed that many adverse outcomes develop quickly and would be detected in early clinical studies (e.g., "gray syndrome" in babies treated with chloramphenicol).

While clearly demonstrating the critical need for improved pediatric information, these comments do not suggest a practical methodology for quantifying the aggregate benefits of this rule. FDA, also, has been unable to develop a precise assessment of the probable regulatory benefits. The agency's approach to estimating regulatory benefits therefore is framed in terms of the following two questions: (1) Are data available to assess current differences in the *safety* of drug therapy for adults versus children with the same condition? and (2) Are data available to assess current differences in the *effectiveness* of drug therapy for adults versus children with the same condition?

FDA first attempted to assess the *safety* of drug therapy by looking for differences in the frequency and severity of ADR's for adults versus children treated for the same condition. The available clinical and health survey data, however, did not provide a reliable estimate of the contribution of ADR's to pediatric as compared to adult rates of mortality and morbidity. ADR-related data are limited by the lack of a general requirement and a ready mechanism for the comprehensive reporting of incidents directly attributable to ADR's (Ref. 21). Moreover, most available studies have not addressed ADR rates and associated death rates by age group within a treated condition (Refs. 22, 23, and 24). For example, one study of pediatric patients shows an ADR-related admission rate in the range of only 2.0 to 3.2 percent, well below the average for adult and pediatric studies combined. Pediatric cancer patients, however, experienced a 22 percent ADR-admission rate (Ref. 25), suggesting that pediatric risks may be significantly greater within condition-defined subpopulations. In addition, potential concerns about negative public attention (Ref. 26) or liability inhibit reporting of ADR's. Finally, for many seriously ill patients, it is very difficult to attribute a specific medical outcome to a particular medication, as opposed to some other complication in the patient's condition, or misadventure in the patient's care. The agency found therefore that it could not rely on available ADR studies to derive an assessment of the potential benefits of this rule.

Data to assess the *effectiveness* of drug therapy would indicate differences in clinical outcomes, or in other health care utilization concomitant with drug therapy. If drug therapies for children were less effective than that for adults with the same condition, one might see longer recovery times, or lower recovery rates, together with increased health services use, assuming a similar prognosis and course of illness. A limitation to this approach is that the prognosis and course of illness may not be the same in children and adults with the same serious health condition, even if the same drugs were included in best-practice treatment. Moreover, differential patterns of health care utilization may reflect variations in physician practice patterns, insurance benefits, or patient and family behavior and preferences, rather than measures of drug effectiveness. Notwithstanding such limitations, comparisons of health care resource use for one therapeutic approach compared to another are commonly used in evaluations of therapy effectiveness in the field of pharmacoeconomics. In this instance, FDA finds that health care utilization data may provide at least an indirect indication of potential benefits. Hospitalization rates, in particular, are the most extensively studied measure of morbidity related to adverse drug reactions and of quality of care for a number of chronic (e.g., asthma) and acute conditions (e.g., pneumonia) (Refs. 27 and 28). While hospitalizations due to adverse drug reactions or drug therapy undertreatment are not always recognized, these admissions are routinely classified with a primary diagnosis of the underlying disease. FDA therefore has relied on diagnosis-related hospitalization rates to develop an order-of-magnitude assessment of the potential benefits of this rule.

For this assessment, the agency compared rates of hospitalization of pediatric patients to rates of hospitalization of adult patients for several important disease conditions. Next, the agency examined the potential direct and indirect cost savings that would be realized by diminishing any age-related disparities. The pediatric population was defined to be all persons under the age of 15 and the comparison group to be those adults between the ages of 15 and 44. (The exclusion of older adult patients minimizes the confounding effect of the age-related increased morbidity and mortality.) Comparisons were limited to asthma, HIV/AIDS, cancer, pneumonia, and kidney infection, as these conditions are life threatening, occur in both adults and children, and comparable data are available for adult and pediatric patients. Moreover, reports received in the FDA Spontaneous Reporting System (SRS) in 1993 indicated that the therapeutic areas for which the highest number of ADR's were reported for patients under age 15, relative to the number reported for patients 15 to 44, included those for anti-infectives, pulmonary drugs and oncology drugs.

Direct costs were based on the estimated number of cases, hospitalization rates, and length of stay for each of the selected conditions. The number of cases reported were based on national health survey (Ref. 29) and public surveillance data (Refs. 30, 31, and 32). In 1994, the total number of cases for these 5 conditions, in patients under age 15, was approximately 6.65 million. The total number of cases for patients ages 15 to 44 was approximately 8.3 million. The number of hospitalizations per year for which the selected condition was the primary diagnosis was obtained from the National Hospital Discharge Survey (Ref. 33). As shown in Table 6 of this document, the pediatric hospitalization rate exceeded the adult rate for all five conditions.

TABLE 6.—HOSPITALIZATION RATES PER PATIENT PER YEAR

Primary diagnosis	Rate under age 15	Rate for ages 15–44
Asthma	.045	024
HIV/AIDS	.533	.233
Cancer	4.247	3.903
Pneumonia	.147	.129
Kidney Infection	.191	073

The average length of hospital stay (ALOS) for patients with the selected condition as the primary diagnosis (based on ICD–9 code) was obtained from recent hospital survey data (Ref. 34), the average cost per day of inpatient hospital care for each of the selected conditions was based on hospital charge data reported in the survey (Ref. 35), and the cost of physician services associated with each episode of hospitalization was based on physician charge data (Ref. 36). Each episode of care was assumed to include physician charges for emergency room service, daily inpatient visits, and a postdischarge office visit. For cancer hospitalizations, daily inpatient visits and a followup office visit were included. The calculation of indirect costs assumed 8 hours of parental time away from work for each episode of hospitalization and income and productivity losses based on average employee compensation, as reported in the 1997 U.S. Statistical Abstract. A detailed description of all assumptions, calculations, and data sources is included in the full agency report (Ref. 37).

The assumed hypothesis is that a substantial fraction of the difference between pediatric and adult hospitalization rates for like disease conditions are attributable to the greater range of drug therapies and better information on drug dosages for adults. FDA cannot estimate the precise magnitude of the relevant fraction. Nevertheless, if the differentials between pediatric and adult hospitalization rates were reduced by 25 percent, the resulting direct cost savings would be $228 million, with indirect cost savings of $5.3 million per year. If the differentials were reduced by as much as 50 percent, the direct cost savings would be $456 million per year, with indirect savings of $10.6 million. Even if the differentials were as low as 10 percent, the resulting reductions in hospitalization would lead to direct cost savings of $91.2 million, with indirect savings of $2.1 million per year.

The timing of the benefit after the rule's implementation is uncertain. The previous values represent the potential benefit over time as the safety and effectiveness of drugs are more extensively tested, new and already marketed drugs become labeled for use in children, and new formulations and dosage forms are developed to facilitate therapy for children. The figures may overestimate the impact for the selected conditions over the next few years, but may underestimate the potential benefits for these patients in the longer term if there is an increasing prevalence of asthma, cancer, and respiratory and other infectious diseases in the pediatric population. Thus, the lower reduction estimate may be more realistic in the near-term, with the higher reduction estimates offering a better indication of longer-term benefit.

As discussed previously, FDA believes that the new FDAMA statute will cause some of these pediatric studies to be conducted voluntarily. In its assessment of costs, the agency found that about two-thirds of the applications for approved drugs needing pediatric studies may be undertaken voluntarily due to the incentives established by FDAMA. Adjusting the previous medical cost savings by a similar ratio suggests that if all of the new pediatric studies achieved a 25 percent reduction in the pediatric/adult hospitalization differentials, the additional studies prompted by this rule would yield annual savings of $76 million for just those five diseases. This estimate may represent a lower bound on the benefits to pediatric patients, however, because a number of other disease conditions are also common to children and adults, including such life-threatening conditions as hypertensive disease and renal disease. These pediatric populations also would experience significant benefits from increased safety and access to drug treatments currently available only to adult patients. Moreover, the analysis omits any quantification of benefits for reduced pain and suffering and reduced pediatric mortality. Thus, the full benefits of the rule could easily exceed $100 million per year. Therefore, in accordance with the SBREFA, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (the Administrator) has determined that this rule is likely to result in an annual effect on the economy of $100 million or more and thus is a major rule for the purpose of congressional review.

F. Small Entities

The rule will impose a burden on relatively few small entities, because new drug development is typically an activity completed by large multinational firms. Only one industry comment questioned the agency's determination that the rule would not have a significant effect on a substantial number of small entities. That comment indicated that about 1,500 small entities are conducting diagnostic and therapeutic R&D in the United States and that "[c]ontributions to new drug approvals by the 'biotech' and 'small pharma' sector are increasing year by year, and the pace of change will—almost certainly—continue."

FDA agrees that small firms contribute substantially to the early development of many new drugs and biologicals. Nevertheless, because of the considerable resources needed for clinical testing and marketing, the agency finds that very few of these small firms retain ownership and control through the large-scale clinical testing and approval stages. Moreover, many of the products that are sponsored by small companies are eligible for orphan designation and therefore exempted from this rule. To approximate the number of small firms that might be significantly affected, FDA determined the sponsor company size for all of the approved applications that may have required additional pediatric studies had this rule been in place over the years from 1993 to 1997. The agency found that, on average, based on the Small Business Administration's definition of a small firm, only three approved applications per year were submitted by small companies. Multiplying by the previously described 1.58 factor to account for unapproved applications increases this estimate of the number of small entities that may have been significantly affected by this rule to just five small firms per year. Because the agency has certified that the rule will not impose a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act does not require the agency to prepare a Regulatory Flexibility Analysis. Moreover, the agency further points out that the required new studies will comprise a very small part of the total cost of developing new drugs or biologics, which is generally estimated in the hundreds of millions of dollars for each new drug.

G. Regulatory Alternatives

The agency carefully examined two major alternatives to the final rule. The first alternative considered was the initial proposal, which covered only NCE's. The estimated cost of this alternative, excluding the FDAMA adjustment, would be about $40 million, or roughly 50 percent of the cost of the final rule. The agency rejected this alternative because of the predominant view of the medical community that additional pediatric data were needed for all of the drugs and biologicals that may be therapeutically significantly in pediatric populations, not just for the new chemical entities.

The other major alternative considered was to delay implementation of the rule until the effects of the new FDAMA statute were reviewed. FDA fully expects the FDAMA exclusivity provisions to provide a substantial incentive to conduct large numbers of pediatric studies. Nevertheless, the agency finds that relying on these incentives, alone, would leave numerous gaps in many important areas of pediatric labeling. For example, as described earlier in this preamble, voluntary research may overlook studies for many important drugs, especially where such studies require the development of new pediatric dosage forms. Thus, notwithstanding FDAMA incentives, FDA has determined that this regulation is necessary to protect the pediatric population and that further delay is not warranted.

IX. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Pina, L.M., Drugs Widely Used off Label in Pediatrics, Report of the Pediatric Use Survey Working Group of the Pediatric Subcommittee, in News Along the Pike, January 1997.

2. Food and Drug Administration, Guidance for Industry: Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements, May 1998.

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List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 201, 312, 314, and 601 are amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.23 is added to subpart A to read as follows:

§ 201.23 Required pediatric studies.

(a) A manufacturer of a marketed drug product, including a biological drug product, that is used in a substantial number of pediatric patients, or that provides a meaningful therapeutic benefit over existing treatments for pediatric patients, as defined in §§ 314.55(c)(5) and 601.27(c)(5) of this chapter, but whose label does not provide adequate information to support its safe and effective use in pediatric populations for the approved indications may be required to submit an application containing data adequate to assess whether the drug product is safe and effective in pediatric populations. The application may be required to contain adequate evidence to support dosage and administration in some or all pediatric subpopulations, including neonates, infants, children, and adolescents, depending upon the known or appropriate use of the drug product in such subpopulations. The applicant may also be required to develop a pediatric formulation for a drug product that represents a meaningful therapeutic benefit over existing therapies for pediatric populations for whom a pediatric formulation is necessary, unless the manufacturer demonstrates that reasonable attempts to produce a pediatric formulation have failed.

(b) The Food and Drug Administration (FDA) may by order, in the form of a letter, after notifying the manufacturer of its intent to require an assessment of pediatric safety and effectiveness of a pediatric formulation, and after offering an opportunity for a written response and a meeting, which may include an advisory committee meeting, require a manufacturer to submit an application containing the information or request for approval of a pediatric formulation described in paragraph (a) of this section within a time specified in the order, if FDA finds that:

(1) The drug product is used in a substantial number of pediatric patients for the labeled indications and the absence of adequate labeling could pose significant risks to pediatric patients; or

(2) There is reason to believe that the drug product would represent a meaningful therapeutic benefit over

existing treatments for pediatric patients for one or more of the claimed indications, and the absence of adequate labeling could pose significant risks to pediatric patients.

(c)(1) An applicant may request a full waiver of the requirements of paragraph (a) of this section if the applicant certifies that:

(i) Necessary studies are impossible or highly impractical because, e.g., the number of such patients is so small or geographically dispersed, or

(ii) There is evidence strongly suggesting that the product would be ineffective or unsafe in all pediatric age groups.

(2) An applicant may request a partial waiver of the requirements of paragraph (a) of this section with respect to a specified pediatric age group, if the applicant certifies that:

(i) The product:

(A) Does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients in that age group, *and*

(B) Is not likely to be used in a substantial number of patients in that age group, *and*

(C) The absence of adequate labeling could not pose significant risks to pediatric patients; *or*

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of patients in that age group is so small or geographically dispersed, or

(iii) There is evidence strongly suggesting that the product would be ineffective or unsafe in that age group, or

(iv) The applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

(3) FDA shall grant a full or partial waiver, as appropriate, if the agency finds that there is a reasonable basis on which to conclude that one or more of the grounds for waiver specified in paragraphs (c)(2) or (c)(3) of this section have been met. If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver will cover only those pediatric age groups requiring that formulation. If a waiver is granted because there is evidence that the product would be ineffective or unsafe in pediatric populations, this information will be included in the product's labeling.

(d) If a manufacturer fails to submit a supplemental application containing the information or request for approval of a pediatric formulation described in paragraph (a) of this section within the time specified by FDA, the drug product may be considered misbranded or an unapproved new drug or unlicensed biologic.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

3. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371; 42 U.S.C. 262.

4. Section 312.23 is amended by redesignating paragraph (a)(10)(iii) as paragraph (a)(10)(iv) and adding new paragraph (a)(10)(iii) to read as follows:

§ 312.23 IND content and format.

(a) * * *

(10) * * *

(iii) *Pediatric studies.* Plans for assessing pediatric safety and effectiveness.

* * * * *

5. Section 312.47 is amended by revising paragraph (b)(1)(i) and the first sentence of paragraph (b)(1)(iv), by removing the fifth sentence of paragraph (b)(1)(v) and adding two sentences in its place, by revising the heading of paragraph (b)(2) and the second and last sentences of the introductory text of paragraph (b)(2), and by redesignating paragraph (b)(2)(iii) as paragraph (b)(2)(iv) and by adding new paragraph (b)(2)(iii) to read as follows:

§ 312.47 Meetings.

* * * * *

(b) * * *

(1) *End-of-Phase 2 meetings*—(i) *Purpose.* The purpose of an end-of-phase 2 meeting is to determine the safety of proceeding to Phase 3, to evaluate the Phase 3 plan and protocols and the adequacy of current studies and plans to assess pediatric safety and effectiveness, and to identify any additional information necessary to support a marketing application for the uses under investigation.

* * * * *

(iv) *Advance information.* At least 1 month in advance of an end-of-Phase 2 meeting, the sponsor should submit background information on the sponsor's plan for Phase 3, including summaries of the Phase 1 and 2 investigations, the specific protocols for Phase 3 clinical studies, plans for any additional nonclinical studies, plans for pediatric studies, including a time line for protocol finalization, enrollment, completion, and data analysis, or information to support any planned request for waiver or deferral of pediatric studies, and, if available, tentative labeling for the drug. * * *

(v) *Conduct of meeting.* * * * The adequacy of the technical information to support Phase 3 studies and/or a marketing application may also be discussed. FDA will also provide its best judgment, at that time, of the pediatric studies that will be required for the drug product and whether their submission will be deferred until after approval. * * *

(2) *"Pre-NDA" and "pre-BLA" meetings.* * * * The primary purpose of this kind of exchange is to uncover any major unresolved problems, to identify those studies that the sponsor is relying on as adequate and well-controlled to establish the drug's effectiveness, to identify the status of ongoing or needed studies adequate to assess pediatric safety and effectiveness, to acquaint FDA reviewers with the general information to be submitted in the marketing application (including technical information), to discuss appropriate methods for statistical analysis of the data, and to discuss the best approach to the presentation and formatting of data in the marketing application. * * * To permit FDA to provide the sponsor with the most useful advice on preparing a marketing application, the sponsor should submit to FDA's reviewing division at least 1 month in advance of the meeting the following information:

* * * * *

(iii) Information on the status of needed or ongoing pediatric studies.

* * * * *

6. Section 312.82 is amended by revising the last sentence of paragraph (a) and by removing the second sentence of paragraph (b) and adding two sentences in its place to read as follows:

§ 312.82 Early consultation.

* * * * *

(a) *Pre-investigational new drug (IND) meetings.* * * * The meeting may also provide an opportunity for discussing the scope and design of phase 1 testing, plans for studying the drug product in pediatric populations, and the best approach for presentation and formatting of data in the IND.

(b) *End-of-phase 1 meetings.* * * * The primary purpose of this meeting is to review and reach agreement on the design of phase 2 controlled clinical trials, with the goal that such testing will be adequate to provide sufficient data on the drug's safety and effectiveness to support a decision on its approvability for marketing, and to discuss the need for, as well as the design and timing of, studies of the drug in pediatric patients. For drugs for life-threatening diseases, FDA will provide its best judgment, at that time, whether pediatric studies will be required and whether their submission will be deferred until after approval. * * *

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PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

7. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371, 374, 379e.

8. Section 314.50 is amended by adding paragraph (d)(7) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(d) * * *

(7) *Pediatric use section.* A section describing the investigation of the drug for use in pediatric populations, including an integrated summary of the information (the clinical pharmacology studies, controlled clinical studies, or uncontrolled clinical studies, or other data or information) that is relevant to the safety and effectiveness and benefits and risks of the drug in pediatric populations for the claimed indications, a reference to the full descriptions of such studies provided under paragraphs (d)(3) and (d)(5) of this section, and information required to be submitted under § 314.55.

* * * * *

9. Section 314.55 is added to subpart B to read as follows:

§ 314.55 Pediatric use information.

(a) *Required assessment.* Except as provided in paragraphs (b), (c), and (d) of this section, each application for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration shall contain data that are adequate to assess the safety and effectiveness of the drug product for the claimed indications in all relevant pediatric subpopulations, and to support dosing and administration for each pediatric subpopulation for which the drug is safe and effective. Where the course of the disease and the effects of the drug are sufficiently similar in adults and pediatric patients, FDA may conclude that pediatric effectiveness can be extrapolated from adequate and well-controlled studies in adults usually supplemented with other information obtained in pediatric patients, such as pharmacokinetic studies. Studies may not be needed in each pediatric age group, if data from one age group can be extrapolated to another. Assessments of safety and effectiveness required under this section for a drug product that represents a meaningful therapeutic benefit over existing treatments for pediatric patients must be carried out using appropriate formulations for each age group(s) for which the assessment is required.

(b) *Deferred submission.* (1) FDA may, on its own initiative or at the request of an applicant, defer submission of some or all assessments of safety and effectiveness described in paragraph (a) of this section until after approval of the drug product for use in adults. Deferral may be granted if, among other reasons, the drug is ready for approval in adults before studies in pediatric patients are complete, or pediatric studies should be delayed until additional safety or effectiveness data have been collected. If an applicant requests deferred submission, the request must provide a certification from the applicant of the grounds for delaying pediatric studies, a description of the planned or ongoing studies, and evidence that the studies are being or will be conducted with due diligence and at the earliest possible time.

(2) If FDA determines that there is an adequate justification for temporarily delaying the submission of assessments of pediatric safety and effectiveness, the drug product may be approved for use in adults subject to the requirement that the applicant submit the required assessments within a specified time.

(c) *Waivers*—(1) *General.* FDA may grant a full or partial waiver of the requirements of paragraph (a) of this section on its own initiative or at the request of an applicant. A request for a waiver must provide an adequate justification.

(2) *Full waiver.* An applicant may request a waiver of the requirements of paragraph (a) of this section if the applicant certifies that:

(i) The drug product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients and is not likely to be used in a substantial number of pediatric patients;

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of such patients is so small or geographically dispersed; or

(iii) There is evidence strongly suggesting that the drug product would be ineffective or unsafe in all pediatric age groups.

(3) *Partial waiver.* An applicant may request a waiver of the requirements of paragraph (a) of this section with respect to a specified pediatric age group, if the applicant certifies that:

(i) The drug product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients in that age group, and is not likely to be used in a substantial number of patients in that age group;

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of patients in that age group is so small or geographically dispersed;

(iii) There is evidence strongly suggesting that the drug product would be ineffective or unsafe in that age group; or

(iv) The applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

(4) *FDA action on waiver.* FDA shall grant a full or partial waiver, as appropriate, if the agency finds that there is a reasonable basis on which to conclude that one or more of the grounds for waiver specified in paragraphs (c)(2) or (c)(3) of this section have been met. If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver will cover only those pediatric age groups requiring that formulation. If a waiver is granted because there is evidence that the product would be ineffective or unsafe in pediatric populations, this information will be included in the product's labeling.

(5) *Definition of "meaningful therapeutic benefit".* For purposes of this section and § 201.23 of this chapter, a drug will be considered to offer a meaningful therapeutic benefit over existing therapies if FDA estimates that:

(i) If approved, the drug would represent a significant improvement in the treatment, diagnosis, or prevention of a disease, compared to marketed products adequately labeled for that use in the relevant pediatric population. Examples of how improvement might be demonstrated include, for example, evidence of increased effectiveness in treatment, prevention, or diagnosis of disease, elimination or substantial reduction of a treatment-limiting drug reaction, documented enhancement of compliance, or evidence of safety and effectiveness in a new subpopulation; or

(ii) The drug is in a class of drugs or for an indication for which there is a need for additional therapeutic options.

(d) *Exemption for orphan drugs.* This section does not apply to any drug for an indication or indications for which orphan designation has been granted under part 316, subpart C, of this chapter.

10. Section 314.81 is amended by revising paragraph (b)(2)(i) and (b)(2)(vii), and by adding paragraph (b)(2)(vi)(*c*) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(2) * * *

(i) *Summary.* A brief summary of significant new information from the previous year that might affect the safety, effectiveness, or labeling of the drug product. The report is also required to contain a brief description of actions the applicant has taken or intends to take as a result of this new information, for example, submit a labeling supplement, add a warning to the labeling, or initiate a new study. The summary shall briefly state whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Where possible, an estimate of patient exposure to the drug product, with special reference to the pediatric population (neonates, infants, children, and adolescents) shall be provided, including dosage form.

* * * * *

(vi) * * *

(c) Analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. An assessment of data needed to ensure appropriate labeling for the pediatric population shall be included.

(vii) *Status reports.* A statement on the current status of any postmarketing studies performed by, or on behalf of, the applicant. The statement shall include whether postmarketing clinical studies in pediatric populations were required or agreed to, and if so, the status of these studies, e.g., to be initiated, ongoing (with projected completion date), completed (including date), completed and results submitted to the NDA (including date). To facilitate communications between FDA and the applicant, the report may, at the applicant's discretion, also contain a list of any open regulatory business with FDA concerning the drug product subject to the application.

* * * * *

PART 601—LICENSING

11. The authority citation for 21 CFR part 601 is revised to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c-360f, 360h-360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263.

12. Section 601.27 is added to subpart C to read as follows:

§ 601.27 Pediatric studies.

(a) *Required assessment.* Except as provided in paragraphs (b), (c), and (d) of this section, each application for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration shall contain data that are adequate to assess the safety and effectiveness of the product for the claimed indications in all relevant pediatric subpopulations, and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. Where the course of the disease and the effects of the product are similar in adults and pediatric patients, FDA may conclude that pediatric effectiveness can be extrapolated from adequate and well-controlled effectiveness studies in adults, usually supplemented with other information in pediatric patients, such as pharmacokinetic studies. In addition, studies may not be needed in each pediatric age group, if data from one age group can be extrapolated to another. Assessments required under this section for a product that represents a meaningful therapeutic benefit over existing treatments must be carried out using appropriate formulations for the age group(s) for which the assessment is required.

(b) *Deferred submission.* (1) FDA may, on its own initiative or at the request of an applicant, defer submission of some or all assessments of safety and effectiveness described in paragraph (a) of this section until after licensing of the product for use in adults. Deferral may be granted if, among other reasons, the product is ready for approval in adults before studies in pediatric patients are complete, pediatric studies should be delayed until additional safety or effectiveness data have been collected. If an applicant requests deferred submission, the request must provide an adequate justification for delaying pediatric studies, a description of the planned or ongoing studies, and evidence that the studies are being or will be conducted with due diligence and at the earliest possible time.

(2) If FDA determines that there is an adequate justification for temporarily delaying the submission of assessments of pediatric safety and effectiveness, the product may be licensed for use in adults subject to the requirement that the applicant submit the required assessments within a specified time.

(c) *Waivers*—(1) *General.* FDA may grant a full or partial waiver of the requirements of paragraph (a) of this section on its own initiative or at the request of an applicant. A request for a waiver must provide an adequate justification.

(2) *Full waiver.* An applicant may request a waiver of the requirements of paragraph (a) of this section if the applicant certifies that:

(i) The product does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients and is not likely to be used in a substantial number of pediatric patients;

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of such patients is so small or geographically dispersed; or

(iii) There is evidence strongly suggesting that the product would be ineffective or unsafe in all pediatric age groups.

(3) *Partial waiver.* An applicant may request a waiver of the requirements of paragraph (a) of this section with respect to a specified pediatric age group, if the applicant certifies that:

(i) The product does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients in that age group, and is not likely to be used in a substantial number of patients in that age group;

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of patients in that age group is so small or geographically dispersed;

(iii) There is evidence strongly suggesting that the product would be ineffective or unsafe in that age group; or

(iv) The applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

(4) *FDA action on waiver.* FDA shall grant a full or partial waiver, as appropriate, if the agency finds that there is a reasonable basis on which to conclude that one or more of the grounds for waiver specified in paragraphs (c)(2) or (c)(3) of this section have been met. If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver will cover only those pediatric age groups requiring that formulation. If a waiver is granted because there is evidence that the product would be ineffective or unsafe in pediatric populations, this information will be included in the product's labeling.

(5) *Definition of "meaningful therapeutic benefit".* For purposes of this section, a product will be considered to offer a meaningful therapeutic benefit over existing therapies if FDA estimates that:

(i) If approved, the product would represent a significant improvement in the treatment, diagnosis, or prevention of a disease, compared to marketed products adequately labeled for that use in the relevant pediatric population. Examples of how improvement might be demonstrated include, e.g., evidence of increased effectiveness in treatment, prevention, or diagnosis of disease;

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elimination or substantial reduction of a treatment-limiting drug reaction; documented enhancement of compliance; or evidence of safety and effectiveness in a new subpopulation; or

(ii) The product is in a class of products or for an indication for which there is a need for additional therapeutic options.

(d) *Exemption for orphan drugs.* This section does not apply to any product for an indication or indications for which orphan designation has been granted under part 316, subpart C, of this chapter.

13. Section 601.37 is added to subpart D to read as follows:

§ 601.37 Annual reports of postmarketing pediatric studies.

Sponsors of licensed biological products shall submit the following information each year within 60 days of the anniversary date of approval of the license, to the Director, Center for Biologics Evaluation and Research:

(a) *Summary.* A brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Where possible, an estimate of patient exposure to the drug product, with special reference to the pediatric population (neonates, infants, children, and adolescents) shall be provided, including dosage form.

(b) *Clinical data.* Analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. An assessment of data needed to ensure appropriate labeling for the pediatric population shall be included.

(c) *Status reports.* A statement on the current status of any postmarketing studies in the pediatric population performed by, or on behalf of, the applicant. The statement shall include whether postmarketing clinical studies in pediatric populations were required or agreed to, and if so, the status of these studies, e.g., to be initiated, ongoing (with projected completion date), completed (including date), completed and results submitted to the BLA (including date).

Dated: November 24, 1998.

Michael A. Friedman,

Acting Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–31902 Filed 11–27–98; 8:45 am]

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Part III

General Services Administration

41 CFR Part 300–3 et al.

Federal Travel Regulation; General and Temporary Duty (TDY) Travel Allowances; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 301–11, and 301–12

[FTR Amendment 75—1998 Edition]

RIN 3090–AG86

Federal Travel Regulation; General and Temporary Duty (TDY) Travel Allowances

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. This final rule increases/decreases the maximum lodging amounts in certain existing per diem localities, adds new per diem localities, deletes a number of previously designated per diem localities, removes taxes from lodging rates, allows lodging taxes to be reimbursed as a miscellaneous expense, establishes more than one per diem rate within some counties, lists many previously combined locations separately with different per diem rates, adds additional seasons (up to four) where appropriate, adds one additional meal tier, and allows laundry, cleaning and pressing of clothing expenses (previously included as an incidental expense) as a miscellaneous expense.

EFFECTIVE DATE: This final rule is effective January 1, 1999, and applies to official travel performed on or after January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, telephone (202) 501–0483.

SUPPLEMENTARY INFORMATION:

A. Background

There are significant changes in this final rule, regarding payment of expenses in connection with official travel.

What are the significant changes?

The significant changes are that this rule:

(a) Extracts taxes from lodging rates;

(b) Allows payment of actual costs for lodging taxes as a miscellaneous expense;

(c) Adds additional seasons (up to four) where appropriate;

(d) Provides for more than one per diem rate within a county, where needed;

(e) Separates previously combined locations to provide for separate per diem rates (e.g., Alexandria and Arlington, Virginia, are now listed separately from the District of Columbia);

(f) Provides one new meal and incidental expense (M&IE) tier;

(g) Increases/decreases maximum lodging amounts in certain existing localities;

(h) Removes laundry, cleaning and pressing of clothing from incidental expenses and includes them as reimbursable miscellaneous expenses. The rule requires a minimum of 4 consecutive nights lodging to qualify for miscellaneous laundry expenses reimbursement;

(i) Adds new per diem localities; and

(j) Deletes a number of previously designated per diem localities.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Reform Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–3, 301–11, and 301–12

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR parts 300–3, 301–11, 301–12 and Appendix A to chapter 301 are amended to read as follows:

PART 300–3—GLOSSARY OF TERMS

1. The authority citation for part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

1a. Section 300–3.1 is amended by revising the term "Per diem allowance" and removing the term "Subsistence expenses", to read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Per diem allowance—The per diem allowance (also referred to as subsistence allowance) is a daily payment instead of reimbursement for actual expenses for lodging (excluding taxes), meals, and related incidental expenses. The per diem allowance is separate from transportation expenses and other miscellaneous expenses. The per diem allowance covers all charges, including any service charges where applicable for:

(a) *Lodging.* Includes expenses, except lodging taxes, for overnight sleeping facilities, baths, personal use of the room during daytime, telephone access fee, and service charges for fans, air conditioners, heaters and fires furnished in the room when such charges are not included in the room rate. Lodging does not include accommodations on airplanes, trains, buses, or ships. Such cost is included in the transportation cost and is not considered a lodging expense.

(b) *Meals.* Expenses for breakfast, lunch, dinner and related tips and taxes (specifically excluded are alcoholic beverage and entertainment expenses, and any expenses incurred for other persons).

(c) *Incidental expenses.* (1) Fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries.

(2) Transportation between places of lodging or business and places where meals are taken, if suitable meals cannot be obtained at the TDY site; and

(3) Mailing cost associated with filing travel vouchers and payment of Government-sponsored charge card billings.

* * * * *

PART 301–11—PER DIEM EXPENSES

2. The authority citation for part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

2a. In § 301–11.18 the table is revised to read as follows:

§ 301–11.18 What M&IE rate will I receive if a meal(s) is furnished at nominal or no cost by the Government or is included in the registration fee?

* * * * *

M&IE	$30	$34	$38	$42	$46
Breakfast	6	7	8	9	9
Lunch	6	7	8	9	11
Dinner	16	18	20	22	24
Incidentals	2	2	2	2	2

3. Section 301–11.27 is revised to read as follows:

§ 301–11.27 Are taxes included in the lodging portion of the Government per diem rate?

No. Lodging taxes paid by you are reimbursable as a miscellaneous travel expense limited to the taxes on reimbursable lodging costs. For example, if your agency authorizes you a maximum lodging rate of $50 per night, and you elect to stay at a hotel that costs $100 per night, you can only claim the amount of taxes on $50, which is the maximum authorized lodging amount.

4. Section 301–11.30 is revised to read as follows:

§ 301–11.30 What is my option if the Government lodging rate exceeds my lodging reimbursement?

You may request reimbursement on an actual expense basis, not to exceed 300 percent of the maximum per diem allowance.

Approval of actual expenses is usually in advance of travel and at the discretion of your agency. (See § 301–11.302.)

5. Section 301–11.31 is added to read as follows:

§ 301–11.31 Are laundry, cleaning and pressing of clothing expenses reimbursable?

Yes. The expenses incurred for laundry, cleaning and pressing of clothing at a TDY location are reimbursable as a miscellaneous travel expense. However, you must incur a minimum of 4 consecutive nights lodging on official travel to qualify for this reimbursement.

PART 301–12—MISCELLANEOUS EXPENSES

6. The authority citation for part 301–12 continues to read as follows:

Authority: 5 U.S.C. 5707.

6a. Section 301–12.1 is revised to read as follows:

§ 301–12.1 What miscellaneous expenses are reimbursable?

When the following items have been authorized or approved by your agency, they will be reimbursed as a miscellaneous expense. Taxes for reimbursable lodging are deemed approved when lodging is authorized. Examples of such expenses include, but are not limited to the following:

General expenses	Fees to obtain money	Special expenses of foreign travel
Baggage expenses as described in § 301–12.2..	Fees for travelers checks	Commissions on conversion of foreign currency.
Services of guides, interpreters, and drivers. ...	Fees for money orders	Passport and/or visa fees.
Use of computers, printers, faxing machines, and scanners..	Fees for certified checks	Costs of photographs for passports and visas.
Services of typists, data processors, or stenographers..	Transaction fees for use of automated teller machines (ATMs)-Government contractor-issued charge card.	Foreign country exit fees.
Storage of property used on official business.		Costs of birth, health, and identity certificates.
Hire of conference center room or hotel room for official business..		Charges for inoculations that cannot be obtained through a Federal dispensary.
Official telephone calls/service (see note)..		
Faxes, telegrams, cablegrams, or radiograms..		
Lodging taxes as prescribed in § 301–11.27..		
Laundry, cleaning and pressing of clothing expenses as prescribed in § 301–11.31..		

Note to § 301–12.1: You should use Government provided services for all official communications. When they are not available, commercial services may be used. Reimbursement may be authorized or approved by your agency.

7. Appendix A to chapter 301 is revised to read as follows:

Appendix A To Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

The maximum rates listed below are prescribed under part 301–11 of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses excluding taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–11 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated.

It is the policy of the Government, as reflected in the Hotel Motel Fire Safety Act of 1990 (Pub. L. No. 101–391, September 25, 1990 as amended by Pub. L. No. 105–85, November 18, 1997), referred to as "the Act" in this paragraph, to save lives and protect property by promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. In furtherance of the Act's goals, employees are encouraged to stay in a facility which is fire-safe, i.e., an approved accommodation, when commercial lodging is required. Lodgings that meet the Government requirements are listed on the U.S. Fire Administration's Internet site at *http://www.usfa.fema.gov/hotel/index.htm.*

Note: Major changes in the coverage of per diem rates effective in this amendment are:

- Lodging rates do not include any taxes. They are now room rates only. Actual costs paid for lodging taxes may be reimbursed to the traveler as a miscellaneous expense (see 301–11).
- Additional seasons (up to four) have been added where appropriate.
- There may be more than one rate within a county now. Please read the tables carefully.

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- Many previously combined locations are now shown separately with different rates (e.g., Alexandria, Arlington, Montgomery County, Prince Georges County, Fairfax County, and Loudoun County, are now listed separately from Washington, DC).
- There is one new M&IE tier: $46.

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Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a) +	M&IE rate (b)	= Maximum per diem rate 4 (c)
CONUS, Standard rate (Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302-2, 302-4, and 302-5 of this subtitle.)		$50	$30	$80
ALABAMA				
Birmingham	Jefferson	59	38	97
Gulf Shores	Baldwin			
(May 1-September 30)		116	34	150
(October 1-April 30)		50	34	84
Huntsville	Madison	58	38	96
Mobile	Mobile	50	34	84
Montgomery	Montgomery	51	38	89
ARIZONA				
Casa Grande	Pinal			
(January 1-April 30)		80	34	114
(May 1-December 31)		50	34	84
Chinle	Apache			
(April 1-October 31)		80	34	114
(November 1-March 31)		59	34	93
Flagstaff	All points in Coconino County not covered under Grand Canyon per diem area			
(April 1-October 31)		67	34	101
(November 1-March 31)		50	34	84
Grand Canyon	All points in the Grand Canyon National Park and Kaibab National Forest within Coconino County	94	42	136
Kayenta	Navajo			
(June 1-September 30)		92	30	122
(October 1-May 31)		50	30	80
Phoenix	Maricopa (except			

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Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
(January 1-April 30)	Scottsdale)	106	38	144
(May 1-August 31)		62	38	100
(September 1-December 31)		86	38	124
Prescott	Yavapai	50	38	88
Scottsdale	City limits of Scottsdale (see Maricopa County)			
(January 1-April 30)		107	42	149
(May 1-August 31)		56	42	98
(September 1-December 31)		79	42	121
Tucson	Pima County; Davis-Monthan AFB			
(January 1-May 31)		79	38	117
(June 1-December 31)		58	38	96
Yuma	Yuma	52	34	86
ARKANSAS				
Little Rock	Pulaski	55	34	89
CALIFORNIA				
Barstow	San Bernardino	58	34	92
Bridgeport	Mono (except Mammoth Lakes)			
(April 1-October 31)		66	42	108
(November 1-March 31		53	42	95
Clearlake	Lake			
(April 1-September 30)		59	38	97
(October 1-March 31)		50	38	88
Contra Costa County	Contra Costa County	69	42	111
Death Valley	Inyo	85	46	131
Eureka	Humboldt			
(May 1-September 30)		59	38	97
(October 1-April 30)		50	38	88
Fresno	Fresno	53	38	91
Gualala	City limits of Gualala (see Mendicino County)	114	38	152
Kern County	Kern County	59	38	97
Los Angeles	Los Angeles; Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake	95	46	141
Madera	Madera (except	50	34	84

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a) +	M&IE rate (b)	= Maximum per diem rate 4 (c)
	Oakhurst)			
Mammoth Lakes	City limits of Mammoth Lake (see Mono County)			
(November 1-April 30)		85	46	131
(May 1-October 31)		62	46	108
Marin County	Marin County	82	42	124
Merced	Merced	58	38	96
Modesto	Stanislaus	58	34	92
Monterey	Monterey			
(June 1-October 31)		94	42	136
(November 1-May 31)		71	42	113
Napa	Napa			
(April 1-October 31)		98	42	140
(November 1-March 31)		75	42	117
Oakhurst	City limits of Oakhurst (except Madera)	76	38	114
Oakland	Alameda	93	38	131
Ontario	San Bernardino	55	38	93
Orange County	Orange County	75	46	121
Palm Springs	Riverside			
(January 1-May 31)		73	42	115
(June 1-August 31)		50	42	92
(September 1-December 31)		55	42	97
Palo Alto	City limits of Palo Alto (see Santa Clara County)	115	42	157
Point Arena	Mendicino (except Gualala)	100	38	138
Redding	Shasta	52	38	90
Redwood City	City limits of Redwood City (see San Mateo County)	94	42	136
Sacramento	Sacramento	79	42	121
San Diego	San Diego	89	46	135
San Francisco	San Francisco	129	46	175
San Jose	Santa Clara (except Palo Alto)	99	46	145
San Luis Obispo	San Luis Obispo	54	38	92
San Mateo	San Mateo (except Redwood	74	42	116

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Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
	City)			
Santa Barbara	Santa Barbara			
(June 1-September 30)		110	38	148
(October 1-May 31)		92	38	130
Santa Cruz	Santa Cruz			
(June 1-September 30)		75	42	117
(October 1-May 31)		55	42	97
Santa Rosa	Sonoma	67	42	109
Stockton	San Joaquin	50	38	88
Sunnyvale	City limits of Sunnyvale (see Santa Clara County)	116	42	158
Tahoe City	Placer	86	42	128
Ventura County	Ventura County	99	38	137
Victorville	City limits of Victorville	60	34	94
Visalia	Tulare	58	38	96
West Sacramento	Yolo	64	30	94
Yosemite Nat'l Park	Mariposa			
(April 1-October 31)		189	46	235
(November 1-March 31)		79	46	125
COLORADO				
Adams County	Adams County	60	38	98
Arapahoe County	Arapahoe County	83	38	121
Aspen	Pitkin			
(January 1-March 31)		163	46	209
(April 1-May 31)		68	46	114
(June 1-December 31)		140	46	186
Boulder	Boulder			
(May 1-October 31)		74	42	116
(November 1-April 30)		64	42	106
Colorado Springs	El Paso			
(May 1-October 31)		73	38	111
(November 1-April 30)		58	38	96
Cortez	Montezuma			
(June 1-September 30)		64	34	98
(October 1-May 31)		50	34	84
Denver	Denver	80	42	122
Durango	La Plata			
(June 1-October 31)		84	38	122
(November 1-May 31)		54	38	92
Fort Collins	Larimer (except			

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room fate only-no taxes) (a) +	M&IE rate (b)	= Maximum per diem rate 4 (c)
(May 1-September 30) (October 1-April 30)	Loveland)	53 50	34 34	87 84
Glenwood Springs	Garfield	50	38	88
Gunnison (June 1-September 30) (October 1-May 31)	Gunnison	 69 50	 34 34	 103 84
Jefferson County	Jefferson County	61	34	95
Loveland (April 1-September 30) (October 1-March 31)	City limits of Loveland (see Larimer County)	 65 55	 30 30	 95 85
Montrose (June 1-September 30) (October 1-May 31)	Montrose	 59 50	 34 34	 93 84
Pueblo (June 1-September 30) (October 1-May 31)	Pueblo	 75 67	 34 34	 109 101
Silverstone/Keystone (January 1-April 30) (May 1-December 31)	Summit	 81 62	 38 38	 119 100
Steamboat Springs (December 1-March 31) (April 1-November 30)	Routt	 59 50	 38 38	 97 88
Telluride (November 1-March 31) (April 1-October 31)	San Miguel	 117 75	 46 46	 163 121
Trinidad (June 1-October 31) (November 1-May 31)	Las Animas	 62 50	 30 30	 92 80
Vail (November 1-March 31) (April 1-May 31) (June 1-October 31)	Eagle	 183 104 106	 46 46 46	 229 150 152
CONNECTICUT				
Bridgeport	City limits of Bridgeport (see Fairfield County)	85	34	119
Danbury	Fairfield (except Bridgeport)	77	38	115
Groton	New London (except New London)	65	30	95

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Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount **(room rate only-no taxes)** (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
Hartford	Hartford	85	42	127
Lakeville	Litchfield (except Salisbury)	85	38	123
Middlesex County	Middlesex County	50	34	84
New Haven	New Haven	70	38	108
New London	City limits of New London (see New London County)	93	34	127
Putnam/Danielson	Windham	56	30	86
Salisbury	City limits of Salisbury (see Litchfield County)	95	46	141
Vernon	Tolland	56	34	90
DELAWARE				
Dover	Kent	64	34	98
Lewes (June 1-August 31) (September 1-May 31)	Sussex	 73 50	 42 42	 115 134
Wilmington	New Castle	93	34	127
DISTRICT OF COLUMBIA Washington, DC	District of Columbia	115	46	161
FLORIDA				
Altamonte Springs	Seminole	71	38	109
Boca Raton (January 1-April 30) (May 1-December 31)	City limits of Boca Raton (see Palm Beach County)	 105 69	 38 38	 143 107
Bradenton (January 1-May 31) (June 1-December 31)	Manatee	 52 50	 34 34	 86 84
Cocoa Beach	Brevard	77	34	111
Daytona Beach (February 1-August 31) (September 1-January 31)	Volusia	 64 54	 38 38	 102 92
Delray Beach (November 1-March 31) (April 1-October 31)	City limits of Delray Beach (see Palm Beach County)	 239 67	 42 42	 281 109

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
Fort Lauderdale	Broward			
(December 1-April 30)		99	42	141
(May 1-November 30)		63	42	105
Fort Myers	Lee			
(January 1-April 30)		89	42	131
(May 1-December 31)		50	42	92
Fort Walton Beach	Okaloosa			
(May 1-August 31)		61	38	99
(September 1-April 30)		68	38	106
Gainesville	Alachua	61	34	95
Gulf Breeze	Santa Rosa	61	38	99
Jacksonville	Duval County; Naval Station Mayport	63	34	97
Jupiter	City limits of Jupiter (see Palm Beach County)			
(January 1- April 30)		126	34	160
(May 1-December 31)		59	34	93
Key West	Monroe			
(December 1-April 30)		143	46	189
(May 1-November 30)		95	46	141
Kissimmee	Osceola			
(February 1-April 30)		65	34	99
(May 1-January 31)		50	34	84
Lakeland	Polk			
(January 1-April 30)		55	34	89
(May 1-December 31)		50	34	84
Miami	Dade			
(January 1-April 30)		75	42	117
(May 1-December 31)		71	42	113
Naples	Collier			
(December 1-April 30)		94	38	132
(May 1-November 30)		53	38	91
Orlando	Orange	75	42	117
Palm Beach	City limits of Palm Beach (see Palm Beach County)			
(January 1-April 30)		116	46	162
(May 1-December 31)		79	46	125
Palm Beach Gardens	Bay	69	38	107
Palm Beach Shores	Palm Beach (except Jupiter, Palm Beach, Delray Beach, West Palm Beach,			
(May 1-December 31)		85	38	123
(January 1-April 30)		52	38	90

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Per diem locality:

Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
	Boca Raton, and Singer Island)			
Panama City (May 1-August 31) (September 1-April 30)	Bay	60 50	38 38	98 88
Pensacola	Escambia	52	34	86
Punta Gorda (January 1-April 30) (May 1-December 31)	Charlotte	65 50	38 38	103 88
St. Augustine (February 1-August 31) (September 1-January 31)	St. Johns	58 50	38 38	96 88
St. Petersburg (January 1-April 30) (May 1-December 31)	Hillsborough	59 50	38 38	97 88
Sarasota (January 1-May 31) (June 1-December 31)	Sarasota	94 53	38 38	132 91
Singer Island (January 1-April 30) (May 1-December 31)	City limits of Singer Island (see Palm Beach County)	121 67	38 38	159 105
Stuart (January 1-April 30) (May 1-December 31)	Martin	62 55	38 38	100 93
Tallahassee	Leon	52	34	86
Tampa (January 1-April 30) (May 1-December 31)	Pinellas	103 81	38 38	141 119
Vero Beach (February 1-April 30) (May 1-January 31)	Indian River	72 50	38 38	110 88
West Palm Beach (January 1-April 30) (May 1-December 31)	City limits of West Palm Beach (see Palm Beach County)	81 55	38 38	119 93
GEORGIA				
Albany	Dougherty	57	34	91
Athens	Clarke	51	34	85
Atlanta	Fulton	90	38	132
Augusta	Richmond	55	38	93
Cobb County	Cobb County	56	34	90
Columbus	Muscogee	56	34	90

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a) +	M&IE rate (b) =	Maximum per diem rate 4 (c)
Conyers	Rockdale	65	34	99
DeKalb County	DeKalb County	59	34	93
Gwinnett County	Gwinnett County	84	30	80
Macon	Bibb	51	34	85
Savannah	Chatham	63	38	101
Warner Robins	Houston	50	34	84
IDAHO				
Boise	Ada	55	38	93
Coeur d'Alene	Kootenai			
(June 1-September 30)		56	34	90
(October 1-May 31)		50	34	84
Ketchum	Blaine (except Sun Valley)	58	42	100
McCall	Valley	59	38	97
Stanley	Custer	50	38	97
Sun Valley	City limits of Sun Valley (see Blaine County)			
(June 1-September 30)		164	42	206
(April 1-May 31)		124	42	166
(October 1-March 31)		89	42	131
ILLINOIS				
Champaign/Urbana	Champaign	50	34	84
Chicago	Cook	104	46	150
DeCatur	Macon	50	34	84
Du Page County	Du Page County	89	38	127
Lake County	Lake County	108	42	150
Peoria	Peoria	50	38	92
Rock Island	Rock Island	59	30	89
Rockford	Winnebago	55	34	85
Springfield	Sangamon	51	38	89
INDIANA				
Bloomington/Crane	Monroe and Martin	50	34	84
Carmel	Hamilton	65	38	103
Fort Wayne	Allen	52	34	86
Indianapolis	Marion County; Fort Benjamin Harrison	70	42	112
Michigan City	La Porte	50	34	84
Muncie	Delware	50	34	84
Nashville	Brown			

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Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
(June 1-October 31) (November 1-May 31)		75 50	38 38	113 88
South Bend	St. Joseph	58	34	103
Valparaiso/Burlington Beach	Porter	69	34	103
IOWA				
Cedar Rapids	Linn	52	34	86
Davenport/Bettendorf	Scott	55	34	89
Des Moines	Polk	67	34	101
KANSAS				
Kansas City	Johnson and Wyandotte (see also Kansas City, MO)	51	30	81
Overland Park	Kenton	78	38	116
Wichita	Sedgwick	58	38	96
KENTUCKY				
Covington	Kenton	80	38	118
Florence	Boone	60	34	94
Lexington	Fayette	55	34	89
Louisville	Jefferson	60	38	98
LOUISIANA				
Baton Rouge	East Baton Rouge Parish	59	38	97
Bossier City	Bossier Parish	54	34	88
Gonzales	Ascension Parish	55	34	88
Lake Charles	Calcasieu Parish	77	34	111
New Orleans	City limits of New Orleans	88	42	130
Opelouses	St. Landry	55	30	85
Slidell	St. Tammany	55	34	89
St. Francisville	West Feliciana	50	38	88
MAINE				
Bangor	Penobscot	56	30	86
Bar Harbor (July 1-August 31) (September 1-June 30)	Hancock	139 119	38 38	177 157
Bath	Sagadahoc			

Per diem locality:

Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a) +	M&IE rate (b)	= Maximum per diem rate 4 (c)
(June 1-September 30)		57	34	91
(October 1-May 31)		50	34	84
Kennebunk	York			
(July 1-August 31)		96	38	134
(September 1-June 30)		65	38	103
Kittery	Portsmouth Naval Shipyard (see also Portsmouth, NH)			
(May 1-October 31)		70	34	104
(November 1-April 30)		50	34	84
Portland	Cumberland			
(July 1-October 31)		82	38	120
(November 1-June 30)		58	38	96
Rockport	Knox			
(July 1-August 31)		90	42	132
(September 1-June 30)		55	42	97
Wiscasset	Lincoln	59	38	97
MARYLAND				
Annapolis	Anne Arundel	90	42	132
Baltimore	Baltimore	110	42	152
Columbia	Howard	89	42	131
Easton	Talbot	69	34	103
Frederick	Frederick	53	38	91
Grasonville	Queen Annes	56	38	94
Hagerstown	Washington	56	34	90
Harford County	Harford County	55	38	93
Lexington Park/Leonardtown/Lusby	St. Mary's	59	34	93
Montgomery County	Montgomery County	115	38	153
Ocean City	Worcester			
(April 1-August 31)		129	46	175
(September 1-March 31)		52	46	98
Prince Georges County	Prince Georges County	109	38	147
Salisbury	Wicomico	55	34	89
St. Michaels	City limits of St. Michaels	100	42	142
MASSACHUSETTS				
Andover	Essex	83	38	121
Boston	Suffolk	105	46	151
Cambridge	City limits of Cambridge (see	105	46	151

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Per diem locality:

Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
	Middlesex County)			
Falmouth	City limits of Falmouth	105	38	143
Greenfield	Franklin			
(May 1-October 31)		55	30	85
(November 1-April 30)		50	30	80
Hyannis	Barnstable			
(July 1-September 30)		94	38	132
(October 1-June 30)		72	38	110
Lowell	Middlesex (except Cambridge)	89	34	123
Martha's Vineyard	Dukes			
(June 1-September 30)		159	46	205
(October 1-May 31)		92	46	138
Nantucket	Nantucket			
(June 1-September 30)		90	46	136
(October 1-May 31)		85	46	131
New Bedford	City limits of New Bedford (see Bristol County)	65	34	99
Northampton	Hampshire	68	34	102
Pittsfield	Berkshire	56	38	94
Plymouth	Plymouth			
(June 1-October 31)		87	34	121
(November 1-May 31)		56	34	90
Quincy	Norfolk	74	38	112
Springfield	Hampden	61	34	95
Taunton	Bristol (except New Bedford)	58	30	88
Worcester	Worcester	79	34	113
MICHIGAN				
Ann Arbor	Washtenaw	70	38	108
Auburn Hills	Bay	59	38	97
Charlevoix	Charlevoix			
(July 1-September 30)		125	38	163
(October 1-June 30)		56	38	94
Detroit	Wayne	77	46	123
East Lansing	City limits of East Lansing (see Ingham	72	38	110

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) + (a)	M&IE rate (b)	= Maximum per diem rate 4 (c)
	County)			
Flint	Genesee	50	34	84
Frankfort	Benzie			
(June 1-September 30)		95	34	129
(October 1-May 31)		63	34	97
Gaylord	Otsego	55	38	93
Grand Rapids	Kent	59	34	93
Grayling	Crawford			
(April 1-November 30)		59	34	93
(December 1-March 31)		50	34	84
Holland	Ottawa			
(May 1-September 30)		72	34	106
(October 1-April 30)		64	34	98
Lansing	Ingham (except East Lansing)	56	34	90
Leland	Leelanau			
(June 1-August 31)		75	34	109
(September 1-May 31)		60	34	94
Mackinac Island	Mackinac	140	46	186
Manistee	Manistee			
(June 1-September 30)		62	30	92
(October 1-May 31)		50	30	80
Midland	Midland	59	34	93
Mount Pleasant	Isabella	71	34	105
Petoskey	Emmet	65	38	103
Pontiac	City limits of Pontiac (see Oakland County)	93	34	127
Sault Ste Marie	Chippewa	65	34	99
South Haven	Van Buren	50	34	84
Traverse City	Grand Traverse			
(June 1-September 30)		97	42	139
(October 1-May 31)		60	42	102
Troy	Oakland (except Pontiac)	84	38	122
Warren	Macomb	62	34	96
MINNESOTA				
Anoka County	Anoka County	50	34	84
Dakota County	Dakota County	52	34	86
Duluth	St. Louis	58	42	100
Minneapolis	Hennepin and Ramsey Counties;	85	46	131

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Per diem locality: Key city[1]	County and/or other defined location[2,3]	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate[4] (c)
	Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount			
Rochester	Olmsted	69	34	103
St. Paul County	St. Paul County	64	38	102
MISSISSIPPI				
Bay St. Louis	Hancock	68	38	106
Biloxi	City limits of Biloxi (see Harrison County)	72	38	110
Gulfport (May 1-August 31) (September 1-April 30)	Harrison (except Biloxi)	 60 53	 34 34	 94 87
Jackson	Hinds	59	34	93
Pascagoula	Jackson	50	34	84
Ridgeland	Madison	51	38	89
Robinsonville	Tunica	55	34	89
Vicksburg	Warren	50	34	84
MISSOURI				
Branson (June 1-September 30) (October 1-May 31)	Taney	 60 50	 34 34	 94 84
Cape Girardeau	Cape Girardeau	51	34	85
Clay County	Clay	82	30	112
Hannibal (June 1-September 30) (October 1-May 31)	Marion	 54 50	 30 30	 84 80
Jefferson City	Cole	52	34	86
Kansas City	Jackson and Platte (see also Kansas City, KS)	85	42	127
Lake Ozark	Miller	50	34	84
Osage Beach (June 1-Sepember 30) (October 1-May 31)	Camden	 64 50	 34 34	 98 84

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
Platte County	Platte County	65	34	99
St. Charles County	St. Charles County	51	34	85
St. Louis	St. Louis	66	46	112
MONTANA				
Polson/Kalispell	Lake			
(May 1-September 30)		54	34	88
(October 1-April 30)		50	34	84
West Yellowstone Park	Gallatin			
(May 1-October 31)		64	34	98
(November 1-April 30)		60	34	94
NEBRASKA				
Lincoln	Lancaster	50	34	84
Omaha	Douglas	55	38	93
NEVADA				
Elko	All points in Elko County excluding Wendover	52	30	82
Incline Village	All points in the Northern Lake Tahoe area within Washoe County			
(June 1-September 30)		94	38	132
(October 1-May 31)		74	38	112
Las Vegas	Clark County; Nellis AFB	55	38	93
Reno	All points in Washoe County not covered under Incline Village per diem locality	50	38	88
Stateline	Douglas (see also South Lake Tahoe, CA)	108	42	150
Winnemucca	Humboldt	54	34	88
NEW HAMPSHIRE				
Concord	Merrimack	57	34	91
Conway	Carroll			
(June 1-October 31)		90	38	128

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Per diem locality:

Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
(November 1-May 31)		50	38	88
Durham	Strafford			
(May 1-October 31)		71	30	101
(November 1-April 30)		63	30	93
Hanover	Grafton			
(June 1-October 31)		96	42	138
(November 1-May 31)		59	42	101
Laconia	Belknap			
(June 1-October 31)		65	34	99
(November 1-May 31)		55	34	89
Manchester	Hillsborough	78	34	112
Portsmouth/Newington	Rockingham County; Pease AFB (see also Kittery, ME)			
(June 1-October 31)		75	42	117
(November 1-May 31)		59	42	101
Sullivan County	Sullivan County	50	34	84
NEW JERSEY				
Atlantic City	Atlantic			
(July 1-August 31)		98	42	140
(September 1-November 30)		76	42	118
(December 1-April 30)		65	42	107
(May 1-June 30)		79	42	121
Bergen County	Bergen County	94	38	132
Cape May	Cape May (except Ocean City)			
(June 1-September 30)		132	42	174
(October 1-May 31)		80	42	122
Cherry Hill/Camden/Moorestown	Camden/ Burlington	74	42	116
Eatontown	Monmouth County; Fort Monmouth	84	38	122
Edison	Middlesex (except Piscataway)	61	34	108
Flemington	Hunterdon	74	34	108
Freehold	City limits of Freehold			
(May 1-September 30)		95	34	129
(October 1-April 30)		75	34	109
Hudson County	Hudson County	99	38	137
Millville	Cumberland	51	38	89
Newark	Essex	94	42	136
Ocean City	City limits of Cape May County			
(June 1-August 31)		215	38	253

Per diem locality:

Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a) +	M&IE rate (b) =	Maximum per diem rate 4 (c)
(September 1-May 31)	(see Cape May County)	80	38	118
Parisippany/Dover	Morris County; Picatinny Arsenal	80	38	118
Passaic County	Passaic County	95	38	133
Piscataway	City limits of Piscataway	129	38	167
Princeton	City limits of Princeton (see Mercer County)	107	42	149
Trenton	Mercer (except Princeton)	84	38	122
Union County	Union County	125	38	163
NEW MEXICO				
Albuquerque	Bernalillo	60	38	98
Cloudcroft	Otero	74	30	104
Los Alamos	Los Alamos	71	34	105
Santa Fe	Santa Fe			
(May 1-October 31)		85	46	131
(November 1-April 30)		78	46	124
Taos	Taos	63	34	97
NEW YORK				
Albany	Albany	68	42	110
Batavia	Genesee	57	34	91
Binghamton	Broome	50	38	88
The Bronx	The Bronx	159	46	209
Brooklyn	Brooklyn	159	46	209
Buffalo	Erie	78	42	120
Corning	Steuben	54	38	92
Elmira	Chemung	50	34	84
Glens Falls	Warren			
(June 1-October 31)		74	34	108
(November 1-May 31)		50	34	84
Ithaca	Tompkins	50	34	86
Kingston	Ulster	51	38	89
Lake Placid	Essex			
(June 1-October 31)		80	38	118
(November 1-May 31)		59	38	97
Manhattan	Manhattan	195	46	241
Nassau County	Nassau County	70	38	108

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
Niagara Falls	Niagara			
(June 1-October 31)		65	34	99
(November 1-May 31)		55	34	89
Nyack/Palisades	Rockland	62	38	100
Owego	Tioga	63	30	93
Plattsburgh	Clinton	50	34	84
Poughkeepsie	Dutchess	74	38	112
Queens Borough	Queens	159	46	205
Rochester	Monroe	55	42	97
Saratoga Springs	Saratoga			
(August 1-August 31)		147	38	185
(September 1-March 31)		50	38	88
(April 1-July 31)		71	38	109
Schenectady	Schenectady	55	34	89
Staten Island Borough	Richmond	94	42	136
Suffolk	Suffolk	68	38	106
Tarrytown	Westchester (except White Plains)	114	42	156
Utica	Oneida	51	34	85
Waterloo/Romulus	Seneca	89	34	123
Watkins Glen	Schuyler			
(May 1-October 31)		60	34	94
(November 1-April 30)		50	34	84
West Point	Orange	121	34	155
White Plains	City limits of White Plains (see Westchester County)	165	42	207
NORTH CAROLINA				
Asheville	Buncombe			
(June 1-October 31)		56	34	90
(November 1-May 31)		50	34	84
Chapel Hill	Orange	69	38	107
Charlotte	Mecklenburg	69	38	107
Durham	Durham	69	42	111
Fayetteville	Cumberland	55	34	89
Greensboro	Guilford	60	38	98
Kill Devil	Dare			
(May 1-August 31)		125	38	163
(September 1-October 31)		68	38	106
(November 1-February 28)		50	38	88

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
(March 1-April 30)		72	38	110
New Bern	Craven	71	34	105
Raleigh	Wake	74	38	112
Research Triangle Park	City limits of Research Triangle Park	85	38	123
Wilmington	New Hanover			
(March 1-September 30)		60	34	94
(October 1-February 29)		53	34	87
Winston-Salem	Forsyth	64	38	102
NORTH DAKOTA (See footnote 5)				
OHIO				
Akron	Summit	56	38	94
Bellevue	City limits of Bellevue			
(June 1-August 31)		55	30	85
(September 1-May 31)		50	30	80
Cambridge	Guernsey			
(April 1-October 31)		60	34	94
(November 1-March 30)		50	34	84
Canton	Stark	55	34	89
Cincinnati	Hamilton	69	46	115
Cleveland	Cuyahoga	85	42	127
Columbus	Franklin	70	38	108
Dayton	Montgomery, Wright-Patterson AFB	54	38	92
Elyria	Lorain			
(May 1-September 30)		67	34	101
(October 1-April 30)		50	34	84
Fairborn	Greene	66	34	100
Geneva/Hamilton	Ashtabula	58	34	92
Lancaster	Fairfield	60	34	94
Port Clinton/Oakharbor	Ottawa			
(June 1-August 31)		80	34	114
(September 1-May 31)		50	34	84
Portsmouth	Scioto	50	34	84
Sandusky	Erie			
(May 1-September 30)		83	38	121
(October 1-April 30)		53	38	91
Springfield	Clark	50	34	121
Toledo	Lucas	50	38	88

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
Warren County	Warren County	59	30	89
OKLAHOMA				
Oklahoma City	Oklahoma	59	38	97
Tulsa	Osage, Tulsa and Washington	50	38	88
OREGON				
Ashland	Jackson	59	42	101
Beaverton	Washington	69	38	107
Bend	Deschutes	59	38	97
Clackamas	Clackamas	59	34	93
Coos Bay	Coos	51	34	85
Crater Lake	City limits of Crater Lake	74	38	112
Eugene	Lane (except Florence)	64	38	102
Florence	City limits of Florence (see Lane County)	87	34	121
Gold Beach	Curry			
(June 1-September 30)		65	34	99
(October 1-May 31)		50	34	84
Klamath Falls	Klamath	54	30	84
Lincoln City/Newport	Lincoln			
(July 1-September 30)		80	34	114
(October 1-June 30)		69	34	103
Portland	Multnomah	72	38	110
Salem	Marion	53	34	87
Seaside	Clatsop			
(May 1-September 30)		85	34	119
(October 1-April 30)		60	34	94
PENNSYLVANIA				
Allentown	Lehigh	59	38	97
Easton	Northampton	59	34	93
Erie	Erie			
(May 1-September 30)		65	30	95
(October 1-April 30)		50	30	80
Chester/Radnor	Delaware	69	34	103
Gettysburg	Adams			
(May 1-October 31)		82	34	116
(November 1-April 30)		53	34	87

Per diem locality:

Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a/ +	M&IE rate (b)	= Maximum per diem rate 4 (c)
Harrisburg	Dauphin (except Hershey)	56	42	98
Hershey (May 1-October 31) (November 1-April 30)	City limits of Hershey	 125 53	 42 42	 167 95
King Prussia/Ft. Washington	Montgomery County, except Bala Cynwyd (see also Philadelphia, PA)	84	42	126
Lancaster	Lancaster	65	38	103
Malvern/Downingtn/Valley Forge	Chester	100	38	138
Mechanicsburg	Cumberland	 79 65	 34 34	 113 99
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County	113	46	159
Pittsburgh	Allegheny	79	46	125
Reading	Berks	57	38	95
Scranton	Lackawanna	60	30	90
Warminster	Bucks County; Naval Air Development Center	75	42	117
Wayne	City limits of Wayne	95	42	137
RHODE ISLAND				
Block Island	Washington	94	42	136
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	69	38	107
Newport (June 1-September 30) (October 1-May 31)	Newport	 111 77	 42 42	 153 119
North Kingston (June 1-Septemer 30) (October 1-May 31)	Washington	 60 50	 30 30	 90 80

Per diem locality:

Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
Providence	Providence	79	42	121
SOUTH CAROLINA				
Charleston	Charleston	64	42	106
Columbia	Richland	50	38	88
Greenville	Greenville	62	38	100
Hilton Head	Beaufort			
(March 1-August 31)		110	42	152
(September 1-February 29)		63	42	105
Myrtle Beach	Horry County;			
(June 1-September 30)	Myrtle Beach AFB	114	42	156
(October 1-May 31)		50	42	92
Spartanburg	Spartanburg	50	34	84
SOUTH DAKOTA				
Custer	Custer			
(June 1-August 31)		69	34	103
(September 1-May 31)		50	34	84
Hot Springs	Fall River			
(June 1-August 31)		85	30	115
(September 1-May 31)		50	30	80
Rapid City	Pennington			
(June 1-August 31)		72	34	106
(September 1-May 31)		50	34	84
TENNESSEE				
Chattanooga	Hamilton	50	34	84
Gatlinburg	Sevier	70	38	108
Knoxville	Knoxville County	50	38	88
Memphis	Shelby	79	38	117
Nashville	Davidson	72	42	114
Townsend	Blount	70	34	104
TEXAS				
Arlington	Tarrant	76	34	110
Austin	Travis	80	38	118
Brownsville	Cameron	50	34	84
College Station	Brazos	55	34	89
Corpus Christi	Nueces and San Patricio	56	38	94
Dallas	Dallas	89	46	135
Eagle Pass	Maverick	54	30	84
El Paso	El Paso	78	38	116

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
Fort Davis	Jeff Davis	65	30	95
Fort Worth	City limits of Fort Worth	69	38	107
Galveston	Galveston			
(May 1-August 31)		56	42	98
(September 1-April 30)		50	42	92
Houston	Harris County; L.B. Johnson Space Center and Ellington AFB	72	42	114
Killeen	Bell	52	30	82
Laredo	Webb	50	34	84
Lubbock	Lubbock	53	34	87
McAllen	Hidalgo	80	34	114
Odessa/Plano	Collin	55	34	89
San Antonio	Bexar	91	42	133
South Padre Island	Cameron			
(March 1-August 31)		58	38	96
(September 1-April 30)		50	38	88
Tyler	Smith	51	34	85
Victoria	Victoria	53	30	83
UTAH				
Bullfrog	Garfield			
(April 1-October 31)		104	30	142
(November 1-March 31)		73	38	111
Cedar City	Iron			
(June 1-August 31)		71	34	105
(September 1-May 31)		59	34	93
Davis County	Davis County	63	34	97
Moab	Grand	70	34	104
Ogden	Weber	54	34	88
Park City	Summit			
(December 1-March 31)		155	46	201
(April 1-November 30)		84	46	130
Provo	Utah	57	38	95
Salt Lake City	Salt Lake and Dugway Proving Ground and Tooele Army Depot	76	42	118
VERMONT				

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Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate 4 (c)
Burlington/St. Albans	Chittenden and Franklin	82	38	120
Manchester	Bennington	95	42	137
Middlebury	Addison			
(May 1-October 31)		93	38	131
(November 1-April 30)		90	38	128
Rutland	Rutland			
(December 1-March 31)		64	34	98
(April 1-November 30)		50	34	84
White River Junction	Windsor			
(July 1-October 31)		74	34	108
(November 1-June 30)		60	34	94
VIRGINIA				
Alexandria*		126	42	168
Arlington	Arlington	115	42	157
Blacksburg	Montgomery	54	34	88
Charlottesville*		52	42	94
Chesterfield County	Chesterfield County	63	38	101
Loudoun County	Loudoun	75	38	113
Lynchburg*		62	38	100
Manassas	Prince William County (except Woodbridge)	62	34	96
Fairfax County	Fairfax County (includes the cities of Falls Church and Fairfax)	118	42	160
Richmond*	Henrico, also Defense Supply Center	76	38	114
Roanoke*		50	34	84
Shenandoah County	Shenandoah County	50	34	84
Virginia Beach*	Virginia Beach (also Norfolk, Portsmouth and Chesapeake)*			
(June 1-August 31)		97	38	135
(September 1-May 31)		54	38	92
Wallops Island	Accomack			
(June 1-September 30)		77	34	111
(October 1-May 31)		54	34	88
Williamsburg*	Williamsburg			

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a) +	M&IE rate (b)	= Maximum per diem rate 4 (c)
(June 1-October 31)	(also Hampton, Newport News, York County, Naval Weapons Station, Yorktown)*	91	38	129
(November 1-May 31)		59	38	97
Wintergreen	Nelson			
(June 1-October 31)		110	46	156
(November 1-May 31)		95	46	141
Woodbridge	City limits of Woodbridge	67	38	105
*Denotes independent cities.				
WASHINGTON				
Anacortes	Skagit	74	38	112
Bellingham	Whatcom	50	34	84
Bremerton	Kitsap	61	34	95
Everett	Snohomish (except Lynnwood)	59	38	97
Friday Harbor	San Juan			
(June1-September 30)		82	42	124
(October 1-May 31)		59	42	101
Island County	Island County	84	34	118
Lynnwood	City limits of Lynnwood (see Snohomish County)	79	34	113
Ocean Shores	Grays Harbor			
(April 1-September 30)		82	38	120
(October 1-March 31)		72	38	110
Olympia/Tumwater	Thurston	58	38	96
Port Angeles	Clallam			
(June 1-September 30)		65	38	103
(October 1-May 31)		54	38	92
Port Townsend	Jefferson	65	34	99
Seattle	King	104	46	150
Sequim	Clallam			
(May 1-September 30)		59	34	93
(October 1-April 30)		50	34	84
Spokane	Spokane	61	38	99
Tacoma	Pierce	54	38	92
Vancouver	Clark	55	38	93

Per diem locality: Key city 1	County and/or other defined location 2,3	Maximum lodging amount (room rate only-no taxes) (a) +	M&IE rate (b) =	Maximum per diem rate 4 (c)
WEST VIRGINIA				
Berkeley Springs	Morgan	69	34	103
Charleston	Kanawha	77	38	115
Harpers Ferry	Jefferson	50	34	84
Morgantown	Monongalia	64	34	98
Parkersburg	Wood	52	34	86
Wheeling	Ohio	55	34	89
WISCONSIN				
Brookfield	Waukesha	66	38	104
Eau Claire	Eau Claire	52	34	86
Green Bay	Brown	54	34	88
Kenosha	Kenosha	52	30	82
La Crosse	La Crosse	52	30	82
Lake Geneva	Walworth	86	38	124
Madison	Dane	59	38	97
Milwaukee	Milwaukee	72	42	114
Minocqua/Rhinelander	Oneida	52	38	90
Oshkosh	Winnebago	56	34	90
Sturgeon Bay	Door			
(July 1-August 31)		73	34	107
(September 1-June 30)		50	34	84
Wisconsin Dells	Columbia			
(June 1-September 30)		71	38	109
(October 1-May 31)		50	38	88
WYOMING				
Cody	Park			
(June 1-September 30)		79	30	109
(October 1-May 31)		50	30	80
Jackson	Teton			
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/1/ Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

/2/ Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties (unless otherwise listed separately)."

/3/ When a military installation or Government-related facility (whether or not specifically named) is located partially within more than one city or county boundary, the applicable per diem rate for the entire installation or facility is the higher of the two rates which apply to the cities and/or counties, even though part(s) of such activities may be located outside the defined per diem locality.

/4/ Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be reviewed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Office of Governmentwide Policy, Attn: Travel and Transportation Management Policy Division (MTT), Washington, DC 20405. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the location. Agencies should submit their requests to GSA no later than May 1 in order for a city to be included in the annual review.

/5/ The standard CONUS rate of $80 ($50 for lodging and $30 for M&IE) applies to all per diem localities in the State of North Dakota.

NOTE: Recognizing that all locations are not incorporated cities, the term "city limits" has been used as a general phrase to denote the commonly recognized local boundaries of the location cited.

Dated: November 27, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–32091 Filed 12–1–98; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 63, No. 232
Thursday, December 3, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 335

RIN 3206–AI51

Excepted Service; Promotion and Internal Placement

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the staffing provisions of S. 1021, The Veterans Employment Opportunities Act of 1998. This Act allows preference eligibles or veterans who have been honorably discharged from the armed forces after 3 or more years of active service to compete for vacant positions under merit promotion procedures when an agency is accepting applications from individuals outside its own workforce.

DATES: Effective Date: December 3, 1998. Comments: Comments are due January 4, 1999.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415–9000.

FOR FURTHER INFORMATION CONTACT: Karen Jacobs or Sylvia Cole on (202) 606–0830, TDD (202) 606–0023, or FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION: On October 31, 1998, the President signed into law S. 1021, The Veterans Employment Opportunities Act of 1998. Public Law 105–339, which will be codified in section 3304 of title 5, United States Code, allows preference eligibles or veterans who have been honorably discharged from the armed forces after 3 or more years of active service to compete for vacant positions under merit promotion procedures, if the hiring agency is accepting applications from individuals outside its own workforce. The law also requires OPM to create a special appointing authority to permit the appointment of these individuals if they are selected. Because the law did not specifically place these individuals in the competitive service, we are creating a Schedule B, excepted appointing authority under 5 CFR part 213 to permit their placement in agencies. A Schedule B appointing authority, under which positions are subject to basic qualification standards established by OPM, is appropriate in view of the language of the public law. Therefore, agencies should use Schedule B, section 213.3202 (n) and cite Legal Authority Code "YKB/Sch B 213.3202(n)" when making appointments. The new law does not provide for noncompetitive conversion into the competitive service.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in effective date is being waived because the staffing provisions of this law became effective upon enactment, *October 31, 1998.*

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 213 and 335

Government employees, Reporting and record keeping requirements.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 213 and 335 of title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 et. seq.; and Pub. L. *105–339.*

2. In § 213.3202, paragraph (n) is added to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. *105–339*), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service.

PART 335—PROMOTION AND INTERNAL PLACEMENT

3. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Pub. L. *105–339.*

4. Section 335.106 is added to subpart A to read as follows:

§ 335.106 Special selection procedures for certain veterans under merit promotion.

Preference eligibles or veterans who have been separated under honorable conditions from the armed forces after 3 or more years of continuous active service may compete for vacancies under merit promotion when an agency accepts applications from individuals outside its own workforce.

[FR Doc. 98–32082 Filed 12–2–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB69

Common Crop Insurance Regulations; Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Policy; Basic Provisions for the purpose of: Clarifying certain provisions; adding definitions and provisions to allow enterprise and whole farm units; allowing the use of a written agreement to insure acreage that has not been planted and harvested in one of the three previous crop years; removing the requirement that a minimum amount of prevented planting acreage be contiguous before a prevented planting payment can be made; and removing the requirement that the Palmer Drought Severity Index be used to determine eligibility for a prevented planting payment in certain circumstances. The intended effect of this action is to create a policy that best meets the needs of the insured.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that of all the changes in the final rule, eliminating the contiguous acreage requirement to determine eligible prevented planting acreage will have the most impact. The impact is greatest in certain regions of the Northern Plains, but the effect on overall crop insurance payments is expected to be small. Additional indemnities resulting from this change are estimated to average $500,000 per year. Premium rate adjustments have been made to cover the additional indemnities. Additional costs to the Government will be about $250,000 for premium subsidies, $110,000 in administrative subsidies, and $38,000 in underwriting losses. Other provisions of the rule serve to clarify provisions or make changes that may cause slight changes in expected indemnities and premiums. Removal of the use of the Palmer Drought Severity Index is not expected to significantly impact indemnities over those that were expected to be covered. Previous premium rates reflected this risk. Other than removal of the contiguous land requirement indicated above, little impact is foreseen.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Wednesday, September 30, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 52194–52198 to amend the Common Crop Insurance Policy; Basic Provisions (Basic Provisions) (7 CFR part 457) effective for the 1999 and succeeding crop years for all crops with contract change dates after the effective date of the final rule, and for the 2000 or 2001 and succeeding crop years for all crops with contract change dates prior to the effective date of the final rule.

The public was afforded 15 days following filing of the proposed rule at the **Federal Register** to submit written comments and opinions. A total of 59 comments were received from an insurance service organization, reinsured companies, crop insurance agents, and a national commodity group. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization stated that sufficient time was not allowed to deal with the proposed rule. It stated that a fifteen day comment period is simply inadequate to deal with the magnitude of concerns and is an inadequate amount of time to sufficiently consider the implications and to solicit and compile comments from member companies.

Response: To meet the needs of producers and for ease in administering the policy, it was important the provisions be revised and effective for 1999 spring crops. This requires the rule to be made effective prior to the contract change dates for the specific crops. In order to accomplish this, the comment period could not be longer than 15 days. Most of the changes in the proposed rule arose from requests from producers and insurance companies. All individual members and other interested parties had an opportunity to comment.

Comment: A reinsured company and an insurance service organization made the following comments regarding enterprise and whole farm units: (1) Definitions should be consistent among policies such as Crop Revenue Coverage (CRC), Revenue Assurance (RA), the Basic Provisions, (2) The phrase "and at least 50 insurable acres" should be deleted from the definitions of enterprise unit and whole farm unit. The commenter stated that as long as at least two basic units were involved, the number of acres should be irrelevant. (3) Clarify whether the enterprise unit discount is based on the number of acres or the number of sections in the enterprise unit. (4) A producer who farms in four different sections, owning the land in one section but cash-renting the land in the other three sections would qualify for one basic unit and not for enterprise units under the proposed definition. However, if the other three sections were share-rented, the producer would qualify for at least two separate basic units and, therefore, for an enterprise unit. This does not seem equitable. (5) Whether the sentence referring to at least two basic units and at least 50 insurable acres mean cropland (plantable) acreage that may be counted for more than one crop or is it crop specific, meaning a small operation may qualify for an enterprise unit on a crop one year but not the next because of crop rotation or other factors, and whether it includes acreage that was prevented from being planted. (6) The provision that requires producers to report acreage and production at the basic unit level defeats the purpose of unit consolidation offered by enterprise and whole farm units and should be eliminated. (7) Allow an insured to report acreage and production on an optional unit basis if the producer chooses (currently allowed under CRC). This would allow flexibility in succeeding years to insure optional units. (8) Failure to report information at the enterprise or whole farm unit level, if those levels are chosen, should not result in premiums and indemnities being based on basic units. It would be more logical to treat basic units that were not reported as such as enterprise and whole farm units rather than as basic units. This reversion to basic units is logical when the insured wanted further division into optional units but did not certify accordingly. The commenter questioned why enterprise and whole farm units would revert to basic units when the required information, on a basic unit basis is not provided. This could result in more units and a higher possibility of a loss, although at a higher premium. Section 34(a)(5) may not be necessary if enterprise or whole farm units do not revert to basic units if acceptable production reports are not provided.

The insurance service organization stated that adding to the definition of "enterprise unit," the requirement of separate legal descriptions and at least two optional units, may cause need for some clarification. The insurance service organization also asked whether the following can qualify for enterprise units: (A) Multiple legal descriptions as well as multiple basic units when two or more basic units (by share arrangement in the same section) are not divided into optional units; (B) Multiple optional units as a substitute for multiple basic units when one basic unit is divided into two or more optional units by legal description; and (C) When a basic unit is divided into two optional units, such as irrigated and non-irrigated practices within one section, rather than by legal description.

The reinsured company stated that section 34(a)(1) provides that an election of enterprise or whole farm units must be made before the earliest sales closing date for the insured crops. The company stated this language would be appropriate for whole farm units (multiple crops for a whole farm unit); however, language should also be added to specify the sales closing date for the crop for enterprise units (single crop). The insurance service organization stated if the enterprise unit definition is changed to match the CRC wheat definition, section 34(a) would need to be revised accordingly.

Response: With respect to the first set of comments: (1) Consistency among crop insurance policies is desirable. However, FCIC is required to offer its programs at an actuarially sound rate. Private insurance products need only be offered at an actuarially appropriate rate. Therefore, consistency may not always be achieved. (2) FCIC has deleted the 50 acre requirement from both the enterprise and whole farm units. (3) For enterprise units, the discount will be based on the number of sections, not the number of acres. (4) FCIC has revised the definition of "enterprise unit" to allow acreage to qualify for an enterprise unit if the acreage would qualify for either two or more basic units of the same crop located in separate sections, section equivalents, or farm serial numbers or two or more optional units of the same crop located in separate sections, section equivalents, or farm serial numbers. Therefore, both scenarios discussed in the comment would qualify for an enterprise unit. (5) As stated above, the definition of "enterprise unit" has been revised to require two or more basic or optional units of the same crop. (6) and (7) Producers will still be required to report acreage on a basic or optional unit to ensure eligibility for an enterprise unit, although when determining premiums or indemnities, all the acreage within the enterprise unit will be used. FCIC has eliminated the requirement that producers report production on a basic or optional unit basis. Production must be reported for the enterprise unit. However, a provision has also been added to specify that any required production records must be maintained separately by basic or optional units if the producer wishes to change the unit structure in subsequent crop years. (8) FCIC has eliminated the provisions that specified that if the producer fails to report information at the enterprise or whole farm level, premiums and indemnities will be based on the basic units. Instead, if the producer fails to provide any required production reports for the enterprise unit, the producer will be assigned a yield in accordance with section 3(c)(1) of the Basic Provisions. It is only if the acreage never qualified for enterprise units will the acreage be divided in basic units.

With respect to the second set of comments: (A) When there are basic units in multiple sections, the acreage will qualify for an enterprise unit. (B) When there are multiple optional units in multiple sections, the acreage will qualify for enterprise units. (C) When there are multiple optional units in the

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same section, the acreage will not qualify as an enterprise unit.

Comment: A reinsured company suggested the wording in section 2(e) should clarify that administrative fees that are not paid also make a person ineligible to participate in crop insurance programs.

An insurance service organization asked if sections 2(e)(1)–(10) would remain after revising section 2(e) introductory text. The insurance service organization also stated that the phrase "you may be determined to be ineligible" suggests that a company may choose to not make that determination even though payment is past due. They recommended saying "You will be determined to be ineligible."

Response: FCIC has added a provision in section 2(e) to include administrative fees as "any amount due" for clarity. This provision was not intended to permit insurance companies to allow insureds to remain eligible even though they may be indebted. FCIC has revised the provision to change the word "may" to "will." Sections 2(e)(1)–(10) were inadvertently deleted in the proposed rule and will remain in the policy.

Comment: A reinsured company stated that the provision in section 9(a)(1)(iii) that allows a written agreement to provide insurance coverage for acreage that has not been planted and harvested within one of the 3 previous crop years must recognize that this is most likely to occur at acreage reporting time. The written agreement process must be very streamlined and flexible.

Response: The written agreement provisions allow written agreements to be requested after the sales closing date if the producer was not aware, or should not have been aware of the condition that required the existence of a written agreement before the sales closing date, or if it is submitted in accordance with written agreement regulations. Written agreements will be prepared and submitted in accordance with the provisions in the Basic Provisions, written agreement regulations and FCIC approved procedures. Therefore, no change has been made.

Comment: An insurance service organization suggested that, if perennial crops are limited to trees, vines or bushes, this should be stated in the definitions instead of in section 9(a)(1)(i)(D).

Response: Perennial crops, under its common usage includes any plant that regrows each crop year without replanting and would encompass more than just tree, vine, and bush crops. However, section 9(a)(1)(i)(D) is intended to only include tree, vine and bush crops. Therefore, no change has been made.

Comment: A reinsured company stated the language in section 15(d) of the proposed rule that requires a crop to be destroyed or put to another use prior to payment of an indemnity is unnecessary and should not be implemented. Such language indicates lack of confidence in appraisal methods and will require two contacts to resolve a claim (one contact to appraise and another contact to confirm destruction or other use).

An insurance service organization stated that we should have more confidence in appraisals than section 15(d) of the proposed rule indicates. The commenter stated that if harvest is general in the area, it may not be prudent to require destruction. The producer may want to maintain the damaged crop as a cover crop on highly erodible land. The commenter asked who would be responsible to determine the crop had been destroyed or the acreage put to another use before the indemnity is paid. If this is intended to make insureds aware of their responsibility in this matter and is treated as one of the facts insureds certify to as part of the loss adjustment process, it may be useful.

A reinsured company stated that section 15(d) of the proposed rule appears to put in writing that use of a certification form for this purpose will continue to be acceptable. However, if this section means that such acreage must be physically inspected prior to an indemnity payment, the company definitely opposed it.

Response: FCIC has redesignated proposed section 15(d) as 15(e) to recognize the new section 15(d) that was added in the interim rule that was published in the **Federal Register** on July 30, 1998. Actual production is always more accurate than appraisals. FCIC has revised newly designated section 15(e) to specify that appraised production will be used if the acreage is not harvested. If the acreage is harvested, the insured must report the harvested production, which will be used to determine the indemnity, unless otherwise specified in the policy.

Comment: A national commodity group stated that a producer should be allowed to plant a noninsured "ghost crop" on the same acreage without losing a prevented planting payment for a crop that was prevented from being planted due to an insured cause.

Response: Prevented planting "substitute crop" coverage was provided for producers with coverage greater than catastrophic risk protection beginning with the 1995 crop year. During the three crop years this provision was effective, FCIC received numerous complaints from agents, reinsured companies, commodity groups, and producers, that the provision was subject to abuse, and that it was difficult to establish "intent" as required under those provisions.

If a producer is prevented from planting the "intended" crop, it is the producer's choice to leave the acreage idle, plant a cover crop, or plant another crop for harvest. Only one crop normally is produced per acre, per crop year. Instead, FCIC has discovered that producers were receiving windfalls by receiving a benefit from the crop they were prevented from planting and the benefit associated with producing another crop on the acreage. This was never an intended effect of prevented planting. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization stated that the entire prevented planting concept should be reconsidered. The reinsured company stated that the prevented planting provisions are overly complex and not workable. The company recommended that the entire prevented planting process would be more understandable and easier to administer if a set dollar amount per acre was established (the amount could vary by geographic area) that would be paid for acres that remained unplanted due to insurable causes after a set date (which would also vary by geographic area), rather than making prevented planting payments on a crop-specific basis.

The insurance service organization stated that the proposed changes provide only minor remedial relief to the prevented planting portions of the policy that continue to be complicated and burdensome. These areas of the policy are major concerns of the industry that elevate both loss and administrative costs, and subject providers to excessive scrutiny by RMA's Risk Compliance Division. The insurance service organization stated that it was unable to adequately address the prevented planting provisions within the time constraints allowed. It stated that the rule does not remedy larger problems of the current concept and that they will work with FCIC to improve the prevented planting provisions.

Response: The recommended changes, which are materially beyond the scope of the proposed rule, cannot be accomplished without benefit of public comment. FCIC considered similar ideas from the insurance industry in the past and found the recommendation lacked detail, would create additional administrative burden, and may not be in the best interest of the insureds. FCIC is willing to review any detailed proposal for improving prevented planting for possible use in future crop years. Therefore, no change has been made.

Comment: A reinsured company suggested expanding the definition of "field" to be more consistent with the Farm Service Agency (FSA) definition. That definition incorporates references to "crop lines being acceptable to delineate a field, if past farming practices indicate the crop lines are not subject to change."

Response: A more permanent boundary, such as those required by the insurance policy, rather than the more liberal definition of FSA, is simpler to administer and best serves the purpose of field designation for the prevented planting provisions. The suggested revision would increase the administrative burden on the reinsured companies, which the current definition avoids. Therefore, no change has been made.

Comment: A reinsured company recommended that the definition of "Palmer Drought Severity Index" be expanded to state that the classification is determined on a weekly basis. Also, the rule must clarify how this index is to be administered when the sales closing date or final planting date occur between two weekly indexes. The company suggested that FCIC do additional research because it believes that neither the Palmer Drought Severity Index, which is a long term index, nor the Crop Moisture Index, which is a short term index, adequately define drought for all planting situations. The company stated that some combination of the two indexes or other alternatives might be useful.

Response: FCIC has received numerous complaints that although drought was a major problem, the Palmer Drought Severity Index did not reach the required "severe or extreme" category because it did not accurately reflect actual drought conditions at the time of planting. FCIC has reviewed the Crop Moisture Index and does not believe that it would be a viable alternative. Therefore, FCIC has deleted the definition of the Palmer Drought Severity Index and its reference in section 17(d).

Instead of the Palmer Drought Severity Index, FCIC has added language in section 17(d) to clarify when drought will be considered as an insurable cause of loss for prevented planting.

Comment: Reinsured companies and an insurance service organization commented on the definition of "prevented planting." A reinsured company stated that the phrase "general in the surrounding area and that prevents other producers from planting acreage with similar characteristics" is very vague and is subject to many interpretations. This company was concerned whether oversight organizations would rely on a company's interpretation or question the determinations made by the company.

The insurance service organization questioned the intent of the revised definition. It asked that if insureds are prevented from planting until the final planting date due to an insurable cause and are not required to plant in the late planting period (even if possible) to qualify for a prevented planting payment, whether it matters if there is an insurable cause of loss within the late planting period. The commenter also stated that a crop planted in the late planting period is covered with a late planting guarantee and if no crop is planted in the late planting period, it is covered with a prevented planting guarantee because planting was prevented before the final planting date. The language, "if you elect to plant the insured crop during the late planting period, failure to plant the insured crop within the late planting period . . ." is not necessary since an insured would not need a cause of loss in the late planting period.

Another reinsured company suggested that, for crops with a late planting period, insureds be allowed to report prevented planting acreage up to ten days after the final planting date, to encourage producers to plant during that period.

Response: The proposed language "general in the surrounding area and that prevents other producers from planting acreage with similar characteristics" is intended to require the comparison of acreage, which is a major factor in determining whether acreage is prevented from being planted, and allow a producer legitimately prevented from planting due to an insurable cause to qualify for prevented planting coverage without requiring that over 50 percent of the producers in the surrounding area also be prevented. Reasonableness will be the standard used by oversight organizations examining the conduct of the reinsured companies.

The intent of the language regarding the late planting period is to allow producers to collect a prevented planting payment if they were prevented from planting by the final planting date. The previous definition made it unclear whether producers were required to be prevented from planting by the end of the late planting period to be eligible for a prevented planting payment. FCIC has amended the definition of prevented planting in section 1 for clarification.

The reduction in the guarantee already provides a sufficient incentive for producers to plant early in the late planting period. Requiring the producer to declare that he has been prevented from planting before the end of the late planting period may subject the producer to sanctions if the producer later plants the crop. All reporting must occur after the late planting period to give producers a chance to plant the crop. Therefore, no change has been made.

Comment: A reinsured company suggested that section 17(a)(3) should be revised to specify that prevented planting coverage is not available if the insured planted any crop (not just the "insured crop") during or after the late planting period, except an approved cover crop planted for haying or grazing.

Response: Section 17(a)(3) is intended to clarify that prevented planting provisions do not apply to any acreage when the insured crop is prevented from being planted and that same insured crop is planted during or after the late planting period. FCIC has revised section 17(a)(3) to specify that such acreage is covered under the late planting provisions. Provisions in section 17(f)(5) exclude prevented planting coverage for any acreage on which another crop is planted for harvest. FCIC does not see any reason to repeat this provision.

Comment: A reinsured company and an insurance service organization stated that section 17(d) provides that if a late planting period is applicable, that period will also be considered when determining if drought or failure of the irrigation water supply is an insurable cause of loss for the purposes of prevented planting. They questioned why the late planting period would matter if the date for determining prevented planting under the proposal is the final planting date.

The insurance service organization asked if the phrase "if a late planting period is applicable" means if the insured planted or attempted to plant the insured crop during the late planting period, or only if a late planting period is available for the crop in question. If the latter, they recommended that FCIC consider revising the phrase to state, "* * * or within the late planting period (for crops with a late planting period)" and place a comma before the word "either" and delete the comma that now follows the word. The insurance service organization also asked if the Palmer Drought Severity Index is still used. If so, will the acreage qualify for prevented planting as long as the index classifies the acreage as "extreme" or "severe" within the late planting period, even though it did not reach one of those categories by the final planting date?

Response: As stated above, FCIC has eliminated all references to the Palmer Drought Severity Index and substituted another standard. Section 17(d) is revised to clarify that drought will be considered an insurable cause of loss for non-irrigated acreage if the drought exists through the planting period to the final planting date, or within the late planting period if the producer elects to try to plant the crop.

Comment: An insurance service organization stated that both column headings in section 17(e)(1) refer to the four most recent crop years, and asked if this means "APH crop years" or "policy crop years." If the former, this could mean having to verify backward an unlimited number of years due to crop rotation, etc. They also questioned the wording of the last phrase in both columns, "* * * (have/have not) received a prevented planting insurance guarantee," asking if a prevented planting guarantee is considered the same as a prevented planting indemnity for this purpose. If so, they suggested referring to it as an indemnity. The commenter also stated that the headings are so lengthy that it might be at least as clear to change this back from table format to the standard outline format of the rest of the policy.

Response: Reference to the "four most recent crop years" means the crop year as defined in the Basic Provisions, not APH crop years. However, the heading also specifies "any crop". Therefore, reinsured companies only have to verify the total acreage planted in each of the previous four crop years. Reference to prevented planting insurance guarantee in section 17(e)(1) is not the same as a prevented planting payment. The term prevented planting insurance guarantee is necessary to recognize acreage that received a prevented planting guarantee prior to 1998, when payment began on an acre by acre basis, where an indemnity may not have been paid under previous prevented planting rules. While the column headings may be somewhat lengthy, FCIC believes the chart format is the easiest format to present this information. Therefore, no change has been made.

Comment: A reinsured company, an insurance service organization, and crop insurance agents commented about removing the requirement that a minimum number of prevented planting acres be contiguous from section 17(f)(1). The reinsured company strongly objected to removing the contiguous requirement, stating that the potential negative effects on loss ratios and delivery costs (loss adjustment expenses) are too great. The commenter stated that it does not support the action because they have no knowledge of proposed rate increases and because the Standard Reinsurance Agreement, that governs company risk sharing and administrative expense reimbursement is already in place for 1999. The company stated that this would greatly increase loss adjustment expenses and workload, as potholes and small acreages must be determined and accumulated, resulting in an increased number of payable prevented planting claims and increased indemnities. The company stated that these prospects were not contemplated in the Standard Reinsurance Agreement. The company further stated that, while FCIC may project additional indemnities of $500,000 per year, they are not comfortable that this figure is correct. They also stated that the increased loss adjustment expenses are not identified in the Cost-Benefit Analysis, but they will be greatly increased. The company was concerned that, while the Cost-Benefit Analysis suggests higher premium rates, they have no detail concerning these rates, and they doubt that they will provide enough increased premium or administrative expense subsidy to cover the increased indemnities or loss adjustment expenses.

The reinsured company challenged the statement in the Regulatory Flexibility Act section in the preamble of the proposed rule which states that, "the amount of work required of the insurance companies delivering and servicing these policies will not increase from the amount of work currently required." The company stated that this is an untrue statement given the loss adjustment process that will be required to determine prevented planting acreage that would not have been required if the "contiguous" requirement remained.

The reinsured company also stated that language contained in section 17(f)(1) requiring knowledge of the crops planted by field in the four most recent crop years is not workable. In many cases, the provider will have no way of determining this information.

The crop insurance agents supported FCIC's proposal to remove the contiguous acreage requirement from section 17(f)(1), stating that this change is needed to fairly treat producers who might have a high percentage of their land prevented from being planted but do not have a contiguous block of prevented planting acres that is of sufficient size.

The insurance service organization stated that section 17(f)(1) requires that, in order for unplanted acreage to be considered prevented planting acreage for a different crop than the crop planted in the field, the insured must have produced both crops in the same field in the same crop year within any of the four most recent crop years. They stated that four years is not enough. The commenter also suggested rewording the beginning of the second sentence to, "Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop unless * * *" or similar wording. This avoids the problems of saying acreage that was prevented from being planted "will be presumed to have been planted * * *"

Response: FCIC proposed to remove the "contiguous" acreage requirement due to the numerous complaints received since the requirement was implemented. This change was intended to recognize that potholes and other small portions of fields are wet in most years, although planting occasionally may be possible. However, this provision has prevented some producers having a substantial number of acres that could not be planted from qualifying for prevented planting coverage because a single block of prevented planting acreage was not large enough.

FCIC acknowledges that removing the "contiguous" acreage requirement may result in an increased number of claims qualifying for prevented planting payments. However, the reinsured company's complaint that loss adjustment expenses and workload would greatly increase by removal of this provision is not accurate. Prevented planting acreage must be determined to assure the "contiguous" requirement is met. Therefore, the loss adjustment expenses and workload are incurred in any case. Further, FCIC has simply restored a part of the prevented planting coverage that was in effect prior to the 1998 crop year. Therefore, FCIC has ample evidence upon which to base the amount of premium increase and estimate any additional losses. Although the recommended change to remove the contiguous requirement is being made after the date the SRA became effective for 1999, this change is done within the time required for making contract changes and will result in an increase in premium that should offset any additional costs. Therefore, no change has been made.

The previous four crop years is an appropriate amount of time to determine if a producer has a history of planting two crops in a field, and is consistent with the four year time period used to determine the maximum acreage eligible for prevented planting coverage. It is the producer's burden to provide evidence of past planting practices. If the producer cannot meet this burden, the acreage will be considered as intended to be planted to the crop planted in the field. Therefore, no change has been made.

FCIC has revised section 17(f)(1) to specify that "Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop unless * * *" and has added references to crop, crop type, and practice for clarification.

Comment: A reinsured company stated that the 20 acre or 20 percent acreage requirement to qualify for a prevented planting payment is too high. The company suggested these parameters be changed to a 5 acre or 5 percent deductible amount and that only acreage in excess of this amount be paid for prevented planting. The commenter stated that this threshold would be consistent with NASS figures for acreage historically left unplanted.

Response: Prevented planting regulations since the 1994 crop year have had the 20 acre or 20 percent requirement. FCIC did not receive adverse comments until the word "contiguous" was added beginning with the 1998 crop year. Removing the word contiguous, while still retaining the 20 acre or 20 percent requirement, best achieves the goal of not paying prevented planting claims when only a small number of acres are prevented from being planted. FCIC believes that once the minimum acreage threshold has been met, all prevented planting acreage should be indemnified. Therefore, no change has been made.

Comment: A reinsured company commented regarding the language contained in section 17(f)(5), which states if one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used, recommending that only one crop should be considered for prevented planting purposes and that no prevented planting payment should be made for a second crop.

Response: Crop insurance, including prevented planting coverage, is intended to compensate producers for their actual losses. Therefore, producers who traditionally plant one crop per year can receive a prevented planting payment for failure to plant that crop. However, if producers have the expectation of producing two crops for a single year, compensating them for their actual losses requires the payment of a prevented planting payment if the producer is unable to plant one of the crops. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization commented on section 17(f)(12), stating that this section contains several references to the "four most recent years." The company recommended that this should be revised to "four most recent crop years" to be consistent throughout section 17.

The insurance service organization asked whether the phrase "receive a prevented planting insurance guarantee" means that as long as such crop type was reported as prevented planting on the acreage report within the four most recent crop years, it does not matter whether any prevented planting payment was made on such acreage. If so, they stated that language conflicts with section 17(e)(1)(i)(A), which states that the maximum prevented planting acreage will not include reported prevented planting acreage planted to a substitute crop other than an approved cover crop.

Response: FCIC has revised section 17(f)(12) to refer to "four most recent crop years." The phrase "receive a prevented planting insurance guarantee" was added because there are some years where the producer is prevented from planting a crop, whether indemnified or not. Now the provision states that no prevented planting payment will be made for any crop that the producer has not planted, or has not received a prevented planting guarantee for in at least one of the last four years. This language does not conflict with the provisions contained in section 17(e)(1)(i)(A). Provisions in section 17(e)(1)(i)(A) specify the method to determine the maximum acreage eligible for prevented planting coverage of each crop. Section 17(f)(12) determines the crop acreage eligible for prevented planting.

Comment: A reinsured company stated that FCIC must assure that the language in section 17(g), along with the provisions contained in 17 (e) and (f), sufficiently limits the high-risk land eligible for prevented planting in relation to the total acres (planted or not) for the crop.

Response: The provisions contained in sections 17 (e), (f), and (g) limit the number of high risk acres eligible for prevented planting under a catastrophic risk policy to the maximum number of high-risk acres insured under the catastrophic risk policy in any one of the four most recent crop years. Therefore, no change has been made.

Comment: Reinsured companies and an insurance service organization commented on the provisions in section 17(h). They stated that the provisions are too complex and difficult to administer. The reinsured companies stated that the provision requires knowledge of the crop planted on the acreage previously and that this conflicts with the other prevented planting provisions which are just based on a number of acres eligible and are not tied to a specific crop on specific acreage.

The companies and the insurance service organization point out the administrative burden associated with making such determinations and the problems that arise when there was no crop planted the previous year or if the eligible acres for the crop that was planted to that acreage have already been exhausted because the crop was planted on other acreage. An insurance service organization also asked the consequences if the previous crop planted on the acreage was not an insurable crop, is a perennial, was not insured, or the acreage was just coming out of CRP. It also asked whether the crop that the producer was prevented from planting has to be insurable and whether the crop will be eligible for prevented planting the following year.

As a solution, one company suggested providing coverage on a non-crop specific basis. Another company suggested that the provision be deleted and all eligible prevented planting acreage be determined in accordance with section 17(e). A company also stated that it would be simplest to state the crop acres on which the extra prevented planting acres should be applied. It suggested that, as an alternative, to determine the eligible prevented planting acres remaining for all crops and to prorate the extra prevented planting acres to these crops in proportion to the number of acres remaining. This would be consistent with the rest of the prevented planting provisions by using the eligible acres established over the four previous crop years and taking into account the remaining eligible acres for prevented planting from the insurable crops on the policy.

Response: FCIC acknowledges the problems associated with the requirement that the eligible prevented planting acreage will be based on the crop planted the previous year on the

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acreage. Instead, FCIC has revised the provision to base the guarantee, etc., on the crops insured for the current year for which the producer has remaining eligible prevented planting acreage. The company need only look at the application or acreage report to see the crops listed. Most producers who have insured a crop in the farming operation do not cancel their policy when they elect not to plant the crop during the crop year. As a result, the crop remains insured and the eligible base acreage for the crop may be used to determine the guarantee for those acres where the producer intended to plant a crop without an adequate base. FCIC has also added a provision that if there are several crops with eligible base acres that may be used to establish the guarantee, etc., the crops that would have provided the prevented planting coverage most like the intended crop will be used first. This is intended to ensure that the producer receives fair compensation.

Comment: A reinsured company recommended that FCIC develop a means, such as a flowchart to effectively "map" the major options available in the implementation of the prevented planting provisions. This information could be presented at a spring update training session prior to the 1999 spring crop year to assure uniform understanding by all.

Response: FCIC agrees that a flow chart may be helpful to map the prevented planting provisions and will work with insurance providers or their service organization to develop such a chart.

Comment: A reinsured company stated it applauds the provision in section 24(e) that provides that amounts owed to the company may be collected through administrative set off from payments the policyholder receives from U.S. Government agencies and is anticipating procedures for its implementation.

An insurance service organization asked whether the producer will be removed from the Ineligible Tracking System once the amount owed is offset by another government payment.

Response: Unfortunately, FCIC only has the authority to use administrative offset from payments received from other agencies, against any portion of the debt that has been paid by FCIC. There is no authority to offset that portion paid by the company. Section 24(e) just puts the producer on notice that debts may be subject to such offset. The producers name will only be removed from the Ineligible Tracking System once all amounts due have been paid.

Additionally, FCIC received the following comments regarding provisions that FCIC did not propose to change. These changes cannot be made without first proposing the recommended changes and allowing the public to comment. FCIC will consider these recommendations when additional changes to the regulations are proposed.

Comment: A reinsured company recommended the "Agreement to Insure" section of the policy be amended to clarify the priority order for crop specific endorsements or options such as malting barley. The company stated that during recent discussions on malting barley it was mentioned that the Malting Barley Endorsement takes precedence over the Special Provisions and the order of priority is currently not clear.

Comment: A reinsured company, a national commodity group, and an insurance service organization expressed concern regarding the ability of a producer to collect multiple indemnities for the same acreage after the first, and possibly additional crops have failed. The reinsured company recommended adding provisions to limit payment of indemnities to one per acre per crop year, with the exception of legitimate fall and spring crops. A national commodity group stated that the second crop should be considered a "ghost crop" if the farm does not have a history of double-cropping.

An insurance service organization has presented a policy prototype that includes continued coverage as the producer tries to get a crop established.

Comment: A reinsured company recommended adding wording to section 7(b) to authorize deducting unpaid premium from replant claims.

Comment: A reinsured company recommended adding language in section 20 to require arbitration proceedings to begin within 12 months.

Comment: A national commodity group stated that producers who plant corn in areas that historically have been subject to aflatoxin should not be allowed to insure that corn when they have the option of planting grain sorghum, which is resistant to aflatoxin.

In addition to the changes described above and minor editorial and format changes, FCIC has made the following changes:

1. The definition of "crop year" in section 1 is revised to specify that it is the period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested. This change clarifies that any year in which the crop is prevented from being planted will not affect the crop year designation.

2. Section 6(f) is revised to clarify that when a producer fails to report a unit and the insurer denies liability for the unreported units, the insured's share of any production from the unreported unit will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit; however, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

3. Section 28 is revised to clarify that when a transfer of right to an indemnity is in effect, that both the transferor and the transferee are jointly and severally liable for the payment of both the premium and administrative fees.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule provides prevented planting coverage for crops under the Basic Provisions, as applicable. This rule must be effective prior to the November 30, 1998, contract change dates of the crops for which these revised prevented planting provisions are effective. Therefore, public interest requires the agency to act immediately to make these provisions available for as many crops as possible for the 1999 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

§ 457.2 [Amended]

2. Section 457.2(e) is amended to remove the words "paragraph 21" and insert the words "paragraph 24" in their place.

§ 457.8 [Amended]

3. Section § 457.8 is amended as follows:

A. Section 1 of the Basic Provisions is amended by adding definitions for "enterprise unit" and "whole farm unit," removing the definition of "palmer drought severity index," and by revising the definitions of "crop year" and "prevented planting" to read as follows:

1. Definitions.

* * * * *

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested.

* * * * *

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. An enterprise unit must consist of:

(1) Two or more basic units of the same insured crop that are located in two or more separate sections, section equivalents, or FSA farm serial numbers; or

(2) Two or more optional units of the same insured crop established by separate sections, section equivalents, or FSA farm serial numbers.

* * * * *

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

* * * * *

Whole farm unit. All insurable acreage of the insured crops in the county in which you have a share on the date coverage begins for each crop for the crop year.

* * * * *

B. Section 2(e) introductory text, of the Basic Provisions is revised to read as follows:

2. Life of Policy, Cancellation, and Termination.

* * * * *

(e) If any amount due, including administrative fees or premium, is not paid or an acceptable arrangement for payment is not made on or before the termination date for the crop on which the amount is due, you will be determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with 7 CFR part 400, subpart U.

* * * * *

C. Sections 6(a)(1) and (2), 6(e) and 6(f) of the Basic Provisions are revised to read as follows:

6. Report of Acreage.

(a) * * *

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

* * * * *

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 6(g).

* * * * *

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

D. Sections 9(a)(1)(i)(D) and 9(a)(1)(iii) of the Basic Provisions are revised to read as follows:

9. Insurable Acreage.

(a) * * *

(1) * * *

(i) * * *

(D) Because a perennial tree, vine, or bush crop was grown on the acreage;

* * * * *

(iii) The Crop Provisions or a written agreement specifically allow insurance for such acreage;

* * * * *

E. Section 15 of the Basic Provisions is amended to add a new subsection (e) to read as follows:

(e) Appraised production will be used to calculate your claim if you will not be harvesting the acreage. To determine your indemnity based on appraised production, you must agree to notify us if you harvest the crop and advise us of the production. If the acreage will be harvested, harvested production will be used to determine any indemnity due, unless otherwise specified in the policy.

F. Section 16(b)(2) of the Basic Provisions is amended to add the word "and" immediately following the semicolon.

G. Section 16(b)(3) of the Basic Provisions is removed and section 16(b)(4) is redesignated as section 16(b)(3).

H. Section 16(c) of the Basic Provisions is revised to read as follows:

16. Late Planting.

* * * * *

(c) The premium amount for insurable acreage specified in this section will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

I. Section 16(d) of the Basic Provisions is added to read as follows:

16. Late Planting.

* * * * *

(d) Any acreage on which an insured cause of loss is a material factor in preventing completion of planting, as specified in the definition of "planted acreage" (*e.g.*, seed is broadcast on the soil surface but cannot be incorporated) will be considered as acreage planted after the final planting date and the production guarantee will be calculated in accordance with section 16(b)(1).

J. Revise section 17(a) of the Basic Provisions to delete the word "and" at the end of section 17(a)(1)(ii), add "; and" at the end of section 17(a)(2), and add a new section 17(a)(3) to read as follows:

17. Prevented Planting.

(a) * * *

(3) You did not plant the insured crop during or after the late planting period. If such acreage was planted to the insured crop during or after the late planting period, it is covered under the late planting provisions.

* * * * *

K. Revise sections 17(d) introductory text and 17(d)(1) of the Basic Provisions to read as follows:

17. Prevented Planting.

* * * * *

(d) Drought or failure of the irrigation water supply will be considered to be an insurable cause of loss for the purposes of prevented planting only if on the final planting date (or within the late planting period if you elect to try to plant the crop):

(1) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity due to a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

* * * * *

L. The middle column heading in the table in section 17(e)(1) of the Basic Provisions is revised to read as follows:

"Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee".

* * * * *

M. The last column heading in the table in section 17(e)(1) of the Basic Provisions is revised to read as follows:

"Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee".

* * * * *

N. Sections 17(f)(1), (f)(11), and (f)(12) of the Basic Provisions are revised to read as follows:

17. Prevented Planting.

* * * * *

(f) * * *

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field unless the acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any of the 4 most recent crop years;

* * * * *

(11) Based on an irrigated practice production guarantee or amount of insurance unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice production guarantee will be limited to the number of acres allowed for that practice under sections 17(e) and (f); or

(12) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years. Types for which separate price elections, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the four most recent crop years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 17(e)(1)(i)(B). We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 17(e) and (f).

* * * * *

O. Section 17(f)(5) of the Basic Provisions is revised to add the following text to the end of the paragraph between the word "acreage" and the semicolon: "(If one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used)"

* * * * *

P. Section 17(g) of the Basic Provisions is redesignated as 17(i) and new sections 17(g) and (h) are added to read as follows:

17. Prevented Planting.

* * * * *

(g) If you purchased a limited or additional coverage policy for a crop, and you executed a High Risk Land Exclusion Option that separately insures acreage which has been designated as "high-risk" land by FCIC under a Catastrophic Risk Protection Endorsement for that crop, the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in sections 17(e) and (f).

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 17(e)(1), your prevented planting production guarantee or amount of insurance, premium, and prevented planting payment will be based on the crops insured for the current crop year, for which you have remaining eligible prevented planting acreage. The crops used for this purpose will be those that result in a prevented planting payment most similar to the prevented planting payment that would have been made for the crop that was prevented from being planted.

(1) For example, assume you were prevented from planting 200 acres of corn and have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment, 90 acres of grain sorghum eligibility that would result in a $30 per acre payment, and 100 acres of soybean eligibility that would result in a $25 per acre payment. Your prevented planting coverage for the 200 acres would be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and 10 acres of soybeans ($25 per acre).

(2) Prevented planting coverage will be allowed as specified in this section (17(h)) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop on which payment is being based.

Q. Amend newly designated section 17(i)(2) of the Basic Provisions by changing the section reference therein from "17(g)(1)" to "17(i)(1)."

R. Amend newly designated section 17(i)(3) of the Basic Provisions by changing the section reference therein from "17(g)(2)" to "17(i)(2)."

S. Revise section 24(e) to read as follows:

* * * * *

For reinsured policies

24. Amounts Due Us.

* * * * *

(e) Amounts owed to us by you may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

* * * * *

T. Section 28 of the Basic Provisions is revised to read as follows:

28. Transfer of Coverage and Right to Indemnity.

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

U. Section 34 of the Basic Provisions is amended by redesignating sections 34(a) through 34(d) as sections 34(b) through 34(e) respectively, and adding a new section 34(a) to read as follows:

* * * * *

34. Unit Division.

(a) You may elect an enterprise unit or a whole farm unit if the Special Provisions allow such unit structure, subject to the following:

(1) You must make such election on or before the earliest sales closing date for the insured crops and report such unit structure to us in writing. Your unit selection will remain in effect from year to year unless you notify us in writing by the earliest sales closing date for the crop year for which you wish to change this election. These units may not be further divided except as specified herein;

(2) For enterprise units:

(i) You must report the acreage for each optional or basic unit on your acreage report that comprises the enterprise unit;

(ii) These basic units or optional units that comprise the enterprise unit must each have insurable acreage of the same crop in the crop year insured;

(iii) You must comply with all reporting requirements for the enterprise unit (You must maintain any required production records on a basic or optional unit basis if you wish to change your unit structure for any subsequent crop year);

(iv) The qualifying basic units or optional units may not be combined into an enterprise unit on any basis other than as described herein;

(v) If you do not comply with the reporting provisions for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 3(c)(1); and

(vi) If you do not qualify for an enterprise unit when the acreage is reported, we will assign the basic unit structure.

(3) For a whole farm unit:

(i) You must report on your acreage report the acreage for each optional or basic unit for each crop produced in the county that comprises the whole farm unit; and

(ii) Although you may insure all of your crops under a whole farm unit, you will be required to pay separate applicable administrative fees for each crop included in the whole farm unit.

* * * * *

Signed in Washington, D.C., on November 30, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–32156 Filed 11–30–98; 2:18 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB62

Common Crop Insurance Regulations; Cotton and ELS Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Cotton Crop Insurance Provisions and the Extra Long Staple (ELS) Cotton Crop Insurance Provisions for the 1999 and succeeding crop years to provide a prevented planting coverage level of 50 percent of the insured's production guarantee for timely planted acreage. The intended effect of this action is to create a policy that better meets the needs of the insured.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, U.S. Department of Agriculture, 9435 Holmes Street, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this final rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons from the address listed above. In summary, for prevented planting coverage, Government outlays for producer premium subsidies are estimated at about $9.9 million; administrative subsidies are estimated at about $3.5 million; and underwriting costs are estimated at about $1.2 million. If only the portion of the prevented planting costs attributable to increasing the payment rate from 45 to 50 percent are included, the total increase in Government outlays is expected to be about $0.2 million. The analysis indicates that rate increases for prevented planting coverage vary from region to region, depending on locally expected indemnities, from 0.3 percent to 0.9 percent. On average, at the 50 percent payment rate, about 0.76 percentage point will be added to cotton and ELS cotton premium rates to account for the basic prevented planting coverage. Preliminary analysis suggests that the increase in the payment rate will add about 0.1 percent to total premiums to cover expected losses.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies will not increase because the information must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Wednesday, September 30, 1998, FCIC published a proposed rule in the **Federal Register** at FR 52198–52200 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.104 and 7 CFR 457.105 effective for the 1999 and succeeding crop years.

Following filing of the proposed rule at the **Federal Register**, the public was afforded 15 days to submit written comments, data, and opinions. A total of 10 written comments were received from an insurance service organization, two cotton producer associations, and three reinsured companies. The comments received and FCIC's responses are as follows:

Comment: Two producer associations concurred with the proposal to provide a replant payment for cotton and ELS cotton damaged by excess moisture, hail, or blowing sand or soil but only if no additional premium is added for the coverage. One producer association recommended that replanting coverage be provided as an option at the choice of the producer. Two reinsured companies stated that adding replant payments will substantially increase loss adjustment expenses, which was not contemplated in the 1999 Standard Reinsurance Agreement. One reinsured company recommended that data regarding premium rates and workload requirements be published before changes are made. Another reinsured company stated that support could not be provided without knowledge of rate increases. This commenter also indicated that multiple causes of loss often occur, and, therefore, it would be nearly impossible to identify damage by cause and limit replant payments to excess moisture, hail, or blowing sand or soil.

Response: Additional premium must be charged to provide replanting coverage because this increases the risk of loss and is not included in the premium rate. Loss adjustment workload for reinsured companies may increase due to this provision. However, costs would be recouped through the additional administrative subsidies as a result of higher premium. The proposed rule limited the causes of loss on which replanting payments would be provided in an effort to limit loss exposure and subsequent impact on premium rates. Based on the negative comments, FCIC has elected not adopt the proposal, and no replanting payment will be provided for the 1999 crop year.

Comment: A producer association stated that the 25 percent deductible in price that must be met before cotton is eligible for quality adjustment is too high to be useful. The commenter recommended that quality adjustment be based on physical standards, and FCIC establish a base quality as is done with grains with a trigger of not greater than 5 percent adopted. The commenter stated that the quality adjustment procedure should not be changed unless the proposal is modified substantially. The commenter also recommended that FCIC adopt a procedure that does not penalize a producer's APH yield as a result of quality adjustment. A reinsured company stated that without knowing specific plans for rate increases, the proposal could not be endorsed.

Response: FCIC must apply a premium rate increase if the quality adjustment deductible is lowered. Calculating the quality adjustment factor using any reduction in value due to damage will increase indemnities, and FCIC has determined that if it adopted the trigger suggested, a premium rate increase of approximately 5 percent would be required to compensate for the potential increase in losses. FCIC concurs with the recommendation that the quality adjustment for cotton and ELS cotton be based on physical standards; however, this requires a detailed study to evaluate the appropriate cotton classification factors for quality adjustment, the deductible to apply, and to measure the effect on premium rates. FCIC cannot adopt the recommendation that cotton producer's APH yields should not reflect production to count after quality adjustment. For all crops that permit a quality adjustment, a producer's yield is reduced due to quality adjustment for indemnity purposes, and the yield reduction is retained in the producer's production history. Cotton should not be an exception. If the crop insurance program is to be actuarially sound, the producer's production history must reflect all indemnities paid, including losses due to quality adjustments. Based on the negative comments, FCIC has elected not to adopt the proposed change to quality adjustment, and the quality adjustment determination will remain the same as that available for the 1998 crop year. However, FCIC will work with the industry to explore alternatives to the current quality adjustment determination.

Comment: A cotton producer association stated that an analysis comparing preplanting costs shows that cotton should have a prevented planting percentage comparable to corn. The commenter stated that deducting preplanting costs from the prevented planting payment for each commodity shows that cotton producers fare considerably worse than either corn or soybean growers, even if cotton producers receive the proposed 50 percent coverage level, and the inequity is believed greater when premiums are deducted. The commenter stated that this analysis indicates that the soybean prevented planting percentage should be less than cotton and corn and questioned why soybeans were not included in the Economic Research Service (ERS) study. The commenter also expressed opposition to the provision that prohibits planting a substitute crop on prevented planting acreage. The commenter stated that elimination of the substitute crop provision penalizes Southern producers who have more numerous cropping alternatives than producers in the Midwest. The commenter recommended that FCIC raise the cotton prevented planting coverage level to 60 percent and allow a non-insurable ghost crop to be planted on the prevented planting acreage. If these recommendations cannot be implemented with no additional cost to the producer, the commenter asked that prevented planting coverage become an option for cotton producers, and any premium reduction due to the reduced coverage be credited.

Response: FCIC has found that the evidence does not support an increase in the cotton prevented planting percentage to 60 percent. Prevented planting coverage levels should be based on estimated preplanting costs for a crop, and not on equivalency to the coverage level for other crops. An increase to the 50 percent rate of payment for prevented planting of cotton is consistent with the basis on which prevented planting payment rates have been established for other crops. An adjustment will be made in premium rates for cotton to reflect this higher value. However, this increase will be proportional to the increase in coverage, *i.e.*, the cost for the prevented planting component of the premium rates will increase by approximately 11 percent, or 0.1 percentage point. This higher rate of payment should not affect the frequency with which prevented planting would occur. The commenter raised an issue of including crop insurance premium costs in the preplanting expenses that are analyzed to determine the rates of payment for prevented planting. Premium is based on the risk associated with the crop, not the cost associated with planting the crop. Prevented planting is only intended to cover costs associated with planting. This issue is interrelated with the issue of the overall level of cotton premium costs relative to other crops, an issue that also was raised by commenters (see below). FCIC has committed to work with interested parties in a detailed review of premium rates for cotton. FCIC did not request ERS to ignore soybeans in the study of prevented planting payment rates. The reason soybeans were not included cannot be determined. History has shown that prevented planting cannot be provided as an option. This would be inconsistent with the prevented planting requirement mandated by the Federal Crop Insurance Act. FCIC removed the substitute crop provision because it discovered that producers could receive benefits for the crop year that exceeded their income received for the crop year if the crop produced the approved yield. This is not the intent of crop insurance. Therefore, for 1998 and subsequent crop years, the substitute crop provision was removed from all prevented planting provisions.

Comment: Two producer associations expressed concern that cotton premiums substantially exceed other major commodities relative to risk exposure and the level of coverage provided. One commenter stated that prior to the Federal Crop Insurance Reform Act of 1994, most cotton producers chose not to participate in the crop insurance program. Therefore, the actuarial tables prior to 1995 reflect a very unrepresentative pool of cotton insurance participants. The commenter stated that the rating models used by FCIC should reflect the much larger pool of cotton insurance participants since 1995, which would result in significantly lower premiums for cotton producers. One commenter opposed implementation of the proposed rule if the changes result in any increase in premium costs for cotton producers and suggested that each of the proposed changes be made optional coverage. A reinsured company expressed concern that the proposed changes are not beneficial enough to warrant any additional premium.

Response: FCIC recognizes that many cotton producers believe premium rates for cotton to be inequitably high for that crop. FCIC traditionally has based premium rates on its experience in each county. However, improvements to crop varieties, such as resistance to disease and insects, changes to cropping patterns due to "freedom to farm," and other changes may be rendering some experience to be unreliable as a predictor of potential future losses. The Federal Crop Insurance Act directs FCIC to charge premiums that are adequate to pay expected losses and build a reasonable reserve. FCIC is reviewing its experience for cotton to determine if it does in fact provide a basis to meet the tests set forth in the law. If it does not, adjustments will be made as appropriate. As stated above, FCIC has eliminated many of the proposed provisions that would have raised premium rates. However, FCIC has retained the 50 percent coverage because it concluded the benefits outweigh the insignificant increase in premium.

In addition to the changes described above, FCIC has amended the following ELS Cotton Crop Provisions:

1. Sections 10 (d) and (f)—Changed the ELS cotton price quotations for prices "A" and "B" and the price used to adjust AUP cotton harvested or appraised from acreage originally planted to ELS cotton from the Weekly Cotton Market Review to the Daily Spot Cotton Quotation. This publication more accurately reflects the value of the ELS cotton.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule must be effective prior to the November 30, 1998, contract change date to be effective for the 1999 crop year. Therefore, public interest requires that FCIC act immediately to make these provisions available.

List of Subjects in 7 CFR part 457

Crop insurance, Cotton.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. § 457.104, section 11 of the crop provisions is revised to read as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

11. Prevented Planting

* * * * *

(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

3. § 457.105, section 10 of the crop provisions is revised to read as follows:

§ 457.105 ELS Cotton Crop Insurance Provisions.

* * * * *

10. Settlement of Claim

* * * * *

(d) Mature ELS cotton production may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for ELS cotton of like quality (price quotation "A") for the applicable growth area is less than 75 percent of price quotation "B." Price quotation "B" is defined as the price quotation for the applicable growth area for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations "A" and "B" will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producers account summary obtained from the gin. If eligible for quality adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation "A" by 75 percent of price quotation "B."

* * * * *

(f) Any AUP cotton harvested or appraised from the acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound of the AUP cotton by the price quotation for the ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The prices used for the AUP and ELS cotton will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin. If either price quotation is unavailable for the dates stated above, the price quotations for the nearest prior date for which price quotations for both the AUP and ELS cotton are available will be used. If prices are not yet available for the insured crop year, the previous season's average prices will be used.

* * * * *

4. In § 457.105 section 12 is revised to read as follows:

12. Prevented Planting

* * * * *

(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, DC, on November 30, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–32155 Filed 11–30–98; 2:17pm]

BILLING CODE 3410–08–p

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV98–948–2 FIR]

Irish Potatoes Grown in Colorado; Exemption From Area No. 2 Handling Regulation for Potatoes Shipped for Experimentation and the Manufacture or Conversion Into Specified Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which exempts shipments of potatoes handled for experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements prescribed under the handling regulations of the Colorado Potato Marketing Order for Area No. 2 (San Luis Valley). This rule was unanimously recommended by the Colorado Potato Administrative Committee for Area No. 2 (Committee), the agency responsible for local administration of the marketing order. This rule continues in effect exemptions designed to expand markets for potatoes and to increase fresh utilization. These changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to exempt shipments of potatoes handled for the purposes of experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements prescribed under the order's handling regulations for Area No. 2 (San Luis Valley).

Section 948.22 authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period. Section 948.23 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under § 948.22 or to facilitate the handling of potatoes for special purposes. Section 948.24 requires adequate safeguards to be prescribed to ensure that potatoes handled pursuant to § 948.23 enter authorized trade channels. Safeguard procedures for special purpose shipments are specified in §§ 948.120 through 948.125.

At its meeting on June 18, 1998, the Committee unanimously recommended that handlers of potatoes shipped for experimentation and for the manufacture or conversion into specified products be exempted from the grade, size, maturity, and inspection requirements prescribed under the order's handling regulations for Area No. 2 in § 948.386. The Committee recommended that experimentation and manufacture or conversion into specified products be added under § 948.386(d)(2) as special purpose shipments.

As required for all special purpose shipments, handlers desiring to handle potatoes for such purposes would apply for and obtain Certificates of Privilege and furnish the Committee such information as the Committee may require to track such shipments and to verify proper disposition.

Several producers and handlers within the production area are attempting to develop new fresh uses for potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship experimental varieties, or traditional varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers are, for example, attempting to develop new special products such as fresh cut potatoes shipped in vacuum sealed bags. The Committee strongly encourages innovation that could result in the development of new varieties, markets, or opportunities for fresh potatoes that would be good for the Colorado potato industry. Some of the new varieties have irregular shapes or are small in size, and that prevents them from being shipped except under the minimum quantity exemption of 1,000 pounds specified in paragraph (f) of § 948.386. This has prevented handlers from shipping larger quantities. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes have "similar" varietal characteristics.

For the purpose of this action, the term "manufacture or conversion into specified products" means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing. Formerly, potatoes for manufacture or conversion into products had to be inspected and certified as meeting specified quality requirements prior to preparation for market. This action continues to exempt shipments handled for experimentation or the manufacture or conversion into products from these requirements, thus, relieving handlers of this regulatory burden.

These changes to the Area No. 2 handling regulation are expected to encourage new product development and could lead to market expansion which would benefit producers, handlers, buyers, and consumers of Colorado potatoes.

The special purpose shipments authorized by this action are fresh use markets so it is appropriate that the handlers taking advantage of the exemptions be assessed to defray the costs the Committee incurs in administering the program, tracking such shipments, in determining whether applicable requirements have been met, and in determining whether the potatoes ended up in the proper trade channel. This rule is designed to expand markets for potatoes and to increase fresh utilization. These changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly of disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Colorado Area No. 2 potatoes who are subject to regulation under the marketing order and approximately 285 producers of Colorado potatoes in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

This rule continues to exempt shipments of potatoes handled for experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements that are prescribed under the order's handling regulations for Area No. 2 in § 948.386.

At its meeting on June 18, 1998, the Committee unanimously recommended that potatoes shipped for the purposes of experimentation and for the manufacture or conversion into specified products be considered special purpose shipments and be exempt from the grade, size, maturity, and inspection requirements prescribed in § 948.386. The Committee recommended that experimentation and manufacture or conversion into specified products be added under § 948.386(d)(2) as special purpose shipments. As is required for all special purpose shipments, handlers desiring to handle potatoes for such purposes would apply for and obtain Certificates of Privilege and furnish the Committee such information as the Committee may require to track such shipments, determine whether applicable requirements have been met, and whether proper disposition has occurred.

Several producers and handlers within the production area are attempting to develop new fresh uses for potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship experimental varieties, or traditional varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers are, for example, attempting to develop new special products such as fresh cut potatoes shipped in vacuum sealed bags. The Committee strongly encourages innovation that could result in the development of new varieties, markets, or opportunities for fresh potatoes that would be good for the Colorado potato industry. Some of the new varieties have characteristics, such as small size or misshape, that prevent them from being shipped fresh except under the minimum quantity exemption of 1,000 pounds in paragraph (f) of § 948.386. This has placed a burden on handlers desiring to ship larger quantities of such potatoes. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes have "similar" varietal characteristics.

For purpose of this action, the term "manufacture or conversion into specified products" means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing.

These changes to the handling regulation are expected to encourage new product development and could lead to market expansion which would benefit producers, handlers, buyers, and consumers of Colorado potatoes.

The special purpose outlets authorized by this action are fresh use markets so it is appropriate that handlers taking advantage of the exemptions be assessed to defray the costs the Committee incurs in administering the program, tracking such shipments, determining whether applicable requirements have been met, and whether the potatoes end up in proper trade channels. Currently, the assessment rate is $0.0015 per hundredweight of potatoes handled. This rule is designed to expand markets for potatoes and to increase fresh utilization. The changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

There is no available information detailing how many potatoes this relaxation will allow to be marketed. However, the Committee expects the quantities to be small.

No viable alternatives to this action were identified that would ensure innovations in marketing and product development. Furthermore, the goals expressed by the committee could not be solved absent this action.

The Committee estimates that three or four handlers may apply for and obtain Certificates of Privilege for the handling of potatoes for experimentation or for the manufacture or conversion into specified products. It is estimated that the time taken by the handlers who apply will total less than ten hours and this time is currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To date, three handlers have obtained Certificates of Privilege for these purposes.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the June 18, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which 5 are handlers and 7 are producers, the majority of whom are small entities.

An interim final rule concerning this action was published in the **Federal Register** on August 11, 1998 (63 FR 42686. Copies of the rule were mailed by the Committee's staff to all Committee members and Area No. 2 potato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 13, 1998. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 42686, August 11, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 63 FR 42686 on August 11, 1998 is adopted as a final rule without change.

Dated: November 27, 1998

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–32209 Filed 12–2–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 205

RIN 0580–AA63

Clear Title—Protection for Purchasers of Farm Products

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations relating to the establishment and management of statewide central filing systems as they pertain specifically to the filing of "effective financing statements" for "farm products", as defined in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631), to allow a continuation of an effective financing statement to be filed without the signature of the debtor provided State law authorizes such a filing. This rule responds to comments received when the regulations were previously amended by a final rule published on April 1, 1997 (62 FR 15363) that brought the regulations into conformity with statutory amendments found in Sections 662 and 663 of the Federal Agriculture Improvement and Reform Act of 1996.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald E. Grinnell, Director, Economic/Statistical Support, Grain Inspection, Packers and Stockyards Administration, (202) 720–7455. Kimberly D. Hart, Esquire, Trade Practices Division, Office of the General Counsel, (202) 720–8160.

SUPPLEMENTARY INFORMATION:

Background

Section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631) (the Act) provides that certain persons may be subject to a security interest in a farm product created by the seller under certain circumstances in which a lender files an "effective financing statement" with the "system operator" in a State that has a certified central filing system as defined by the Act. The Act requires the Secretary of Agriculture to prescribe regulations "to aid States in the implementation and management of a central filing system." Final regulations were published on August 18, 1986 (51 FR 29450).

The Secretary's authority and responsibility under the Act is limited to certification of the State central filing systems and to prescribing regulations to aid in the implementation and management of certified central filing systems. The Act does not give the Secretary the authority or responsibility for such matters as direct notification by secured parties, sales of and payment for products, procedures for payment or procedures for personal liability protection. Those matters are governed by State law.

Prior to the 1996 amendment of the Act, lenders could not file effective financing statements or amendments to those statements electronically with State certified central filing systems because such statements were required to bear the signature of the debtor, which could not be transmitted electronically. Commercial lenders also expressed concern and confusion due to the vagueness of the provisions for effective financing and continuation statements contained in the Act and the inconsistency between the Act and the Uniform Commercial Code.

Section 662 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) (hereinafter the "FAIR Act") amended the Act to allow lenders to file "effective financing statements" by electronic transmission without the necessity of obtaining the signature of the debtor provided State law authorizes such a filing.

The Department published interim and final rules in the **Federal Register** to implement the FAIR Act amendments (61 FR 54727 and 62 FR 15363, respectively). The rule allows electronic filing of amendments to effective financing statements without the signature of the debtor. Comments received in response to the rule encouraged the Department to further amend the regulations to allow the filing of paper continuation statements without the signature of the debtor as well. Section 205.209(d) of the regulations (9 CFR 205.209(d)) currently provides that continuation statements are to be treated in the same manner as amendments to effective financing statements. Therefore, the rule implementing the 1996 FAIR Act amendments allows continuation statements to be filed electronically, without the signature of the debtor as well. However, because the purpose of that rule was to bring the regulations into conformity with the 1996 amendment (which addressed electronic filings), the final rule did not address the commentors' request to eliminate the signature requirement for paper continuation statements.

The Department published a proposed rule in the **Federal Register** on June 8, 1998 (63 FR 31130), which would remove the requirement from the regulations that a filing of a continuation to an effective financing statement bear the signature of the debtor. Section 1324 of the Food Security Act of 1985 does not require that continuation statements be signed. This rule will make it easier for lenders to file continuation statements because lenders would no longer be required to obtain the signature of the debtor. This rule will also simplify the filing of lien notices by bringing the regulations for central filing systems into conformity with Article 9 of the Uniform Commercial Code, which covers non-farm products.

Comments Received

Only one comment was received in response to the proposed rule. The commenter, an association purporting to represent more than 200 farm credit institutions throughout the United States, fully supported the proposed rule because the change would make it easier—and therefore less costly—for lenders to file continuation statements. The commenter also stated that it would simplify filing of lien notices by bringing the regulations for central filing systems into conformity with the Uniform Commercial Code.

After review of the proposed rule and the comment received, we have determined that the proposed rule as published at 63 FR 31330 will be adopted as the final rule.

Compliance With Regulatory Requirements

As set forth in the proposed rule published at 63 FR 31130, this rulemaking was reviewed under and is issued in conformance with Executive Order 12866, Civil Justice Reform (Executive Order 12778), and Regulatory Flexibility Act and Information Collection requirements. The information collection and recordkeeping requirements for 9 CFR Part 205 have been previously approved by the Office of Management and Budget under control number 0580–0016.

List of Subjects in 9 CFR Part 205

Agriculture, Central filing system.

For reasons set out in the preamble, the Grain Inspection, Packers and Stockyards Administration is amending 9 CFR Part 205 as set forth below.

PART 205—CLEAR TITLE—PROTECTION FOR PURCHASERS OF FARM PRODUCTS

1. The authority citation for Part 205 is revised to read as follows:

Authority: 7 U.S.C. 1631 and 7 CFR 2.22, 2.81.

2. Section 205.209 is amended by revising paragraph (d) to read as follows:

§ 205.209 Amendment or continuation of EFS.

* * * * *

(d) An effective financing statement remains effective for a period of 5 years from the date of filing and may be continued in increments of 5-year periods beyond the initial 5-year filing period by refiling an effective financing statement or by filing a continuation statement within 6 months before expiration of the effective financing statement. A continuation statement may be filed electronically or as a paper document, and need not contain the signature of the debtor.

Dated: November 24, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–32127 Filed 12–2–98; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 51

RIN 3150–AG09

Streamlined Hearing Process for NRC Approval of License Transfers

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to provide specific uniform procedures and rules of practice for handling requests for hearings associated with license transfer applications involving material and reactor licenses as well as licenses issued under the regulations governing the independent storage of spent nuclear fuel and high-level radioactive waste. Conforming amendments are also made to certain other parts of the Commission's regulations. These new provisions provide for public participation and opportunity for an informal hearing on matters relating to license transfers, specify procedures for filing and docketing applications for license transfers, and assign appropriate authorities for issuance of administrative amendments to reflect approved license transfers. This rulemaking also adds a categorical exclusion that permits processing of transfer applications without preparation of Environmental Assessments.

EFFECTIVE DATE: December 3, 1998.

FOR FURTHER INFORMATION CONTACT: James A. Fitzgerald, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–1607, e-mail *JAF@nrc.gov*, or Leo Slaggie, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–1605 (TDD), e-mail *ELS@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 11, 1998 (63 FR 48644), the NRC published in the **Federal Register** a proposed rule that would amend NRC's regulations by adding to 10 CFR Part 2, the NRC's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, a subpart M, which would establish uniform informal procedures for handling requests for hearings associated with license transfer applications. This initiative is part of a broad effort to improve the effectiveness of the agency's programs and processes.

A number of categories of NRC licensees, but in particular the electric power industry, have undergone and will continue to undergo significant transformations as a result of changes to the economic and regulatory environment in which they operate. Electric utilities in particular are now operating in an environment which is increasingly characterized by restructuring and organizational change. In recent years, the Commission has seen a significant increase in the number of requests for transfers of NRC licenses. The number of requests related to reactor licenses has increased from a historical average of 2–3 per year to more than 20 requests in fiscal year 1997. With the restructuring that the energy industry is undergoing, the Commission expects this high rate of requests for approval of license transfers to continue. Because of the need for expeditious decisionmaking from all agencies, including the Commission, for these kinds of transactions, timely and effective resolution of requests for transfers on the part of the Commission is essential.

In general, license transfers do not involve any technical changes to plant operations. Rather, they involve changes in ownership or partial ownership of facilities at a corporate level. Section 184 of the Atomic Energy Act of 1954, as amended (AEA), specifies, however, that:

> [N]o license granted hereunder * * * shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through

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> transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing. (42 U.S.C. 2234; 10 CFR 30.34 (b), 40.46, 50.80, 72.50)

Transfers falling within the foregoing provision include indirect transfers which might entail, for example, the establishment of a holding company over an existing licensee, as well as direct transfers, such as transfer of an ownership interest held by a non-operating, minority owner, and the complete transfer of the ownership and operating authority of a single or majority owner. Although other requirements of the Commission's licensing provisions may also be addressed to the extent relevant to the particular transfer action, typical NRC staff review of such applications consists largely of assuring that the ultimately licensed entity has the capability to meet financial qualification and decommissioning funding aspects of NRC regulations. These financial capabilities are important over the long term, but have no direct or immediate impact on the requirements for day-to-day operations at a licensed facility. The same is generally true of applications involving the transfer of materials licenses.

Notwithstanding the nature of the issues relevant to a decision on whether to consent to a license transfer, past Commission practice has generally involved the use of formal hearing procedures under the provisions of 10 CFR Part 2, Subpart G, for license transfers other than those for materials licenses, which have used the informal hearing procedures provided by 10 CFR Part 2, Subpart L. However, license transfers do not, as a general proposition, involve the type of technical issues with immediate impact on the actual operation of the facilities that might benefit from review by a multi-member, multi-disciplined Atomic Safety and Licensing Board historically used by the Commission in hearings on initial licensing or license amendments that substantially affect the technical operations. It is a matter suitable for reasonable discussion whether such complex hearing procedures provide the best means of reaching decisions on such technical issues, but, be they the best or not, they clearly are not required and are not the most efficient means for resolving the issues encountered in license transfers. Accordingly, the Commission has determined that requests for hearings on applications for license transfers should be handled by a separate Subpart of 10 CFR Part 2. This new Subpart M establishes an efficient and appropriate informal process for handling hearing requests associated with transfer applications commensurate with the nature of the issues involved and the rights of all parties.

The basic requirement for an opportunity for a hearing on a license transfer is found in Section 189.a of the Atomic Energy Act of 1954, as amended (AEA), which provides that:

> [I]n any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, * * * the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. (42 U.S.C. 2239(1).)

The Commission believes that AEA sections 184 and 189 give the Commission the flexibility to fashion procedures which provide for a fair process to consider any issues raised concerning license transfers while still proceeding in an expedited manner. In 1983, a reviewing court held that Section 189.a of the Atomic Energy Act did not require that a hearing on a materials license amendment be conducted "on the record." *City of West Chicago* v. *U.S. Nuclear Regulatory Commission*, 701 F.2d 632, 641–45 (7th Cir. 1983). There, the court declined to read Section 189.a as requiring formal trial-type hearings, in the absence of clear Congressional "intent to trigger the formal on-the-record hearing provisions of the APA." *Id.* at 641. The Commission has also taken the position in court that Section 189.a does not require formal hearings in reactor licensing proceedings. *En Banc* Brief for Respondents dated August 30, 1991 (filed in the U.S. Court of Appeals for the District of Columbia Circuit, No. 89–1381, *Nuclear Information and Resource Service* v. *NRC*, at pp. 32–38). However, the court did not find it necessary to decide the question. *Nuclear Information Resource Services* v. *NRC*, 969 F.2d 1169, 1180 (D.C. Cir. 1992).

To promote uniformity, the hearing procedures established in the final rule apply to all license transfers which require prior NRC approval. The Commission has added to the final rule, as appropriate, additional language to make explicit that the new procedures apply to transfers of licenses issued under 10 CFR Part 72 for independent storage of spent nuclear fuel and high level radioactive waste. The procedures are designed to provide for public participation in the event of requests for a hearing under these provisions, while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases.

II. Comments and Commission Responses

The Commission received sixteen letters of comment from interested persons. Commenters included private corporations who hold or plan to acquire NRC licenses for nuclear facilities, the Nuclear Energy Institute, private counsel representing electric utilities and nuclear plant operating companies, a licensed nuclear power plant operator employed at a nuclear power station, the president of Local 369 of the Utility Workers Union of America representing workers at a nuclear power station, a citizens group, and an individual member of the public. Twelve of the Commenters expressed strong support for the proposed rule and provided specific comments and suggestions on particular provisions. Two Commenters, the individual member of the public and the citizens group, indicated strong but general opposition to the proposed Subpart M hearing process.

A review of the comments, not necessarily in the order received, and the Commission's responses follows:

Comments from individuals:

Comment 1. Mr. Marvin Lewis, a member of the public, opposed the adoption of informal procedures for hearings on license transfer applications. Mr. Lewis's brief comment expressed concern that under the proposed procedures there will be no record upon which findings of fact and conclusions of law may rest and that "general findings" will suffice to support a license transfer.

Commission response. The Commission believes the commenter has not fully understood the proposal. While the procedures do not allow discovery as such, there will be an extensive record consisting of the hearing transcript, exhibits, and all papers filed or issued in connection with the hearing. See § 2.1317. The Presiding Officer will certify the completed hearing record to the Commission, which will then issue its decision on the issues raised in the hearing or request additional testimony and/or documentary evidence if it finds that additional evidentiary presentations are needed for a decision on the merits. See § 2.1320. The Commission does not understand Mr. Lewis's reference to "general findings" in the context of this rulemaking. Before approving a license transfer the Commission must find that the transfer is in accordance with the provisions of the Atomic Energy Act (42 U.S.C. 2234). This finding will necessarily address the specifics of the transfer in question. Nothing in the rule alters the nature of the findings needed to support approval of a license transfer.

Comment 2. The Ohio Citizens for Responsible Energy ("OCRE") generally opposed the proposed rule. OCRE characterizes the Subpart M informal procedures as "a pro forma exercise" that in OCRE's view will not be adequate to deal with the complex inquiry that could arise in a license transfer proceeding. OCRE also objects to shortened filing times and to the requirement that common interests be represented by a single party. OCRE sees such provisions as "attempts to make life difficult for intervenors."

Commission response. For the reasons given in the notice of proposed rulemaking, the Commission believes that the Subpart M procedures will be both efficient and effective in dealing with the issues that license transfer application proceedings typically involve. They are not "pro forma" but in fact provide ample opportunity for the parties to raise appropriate issues and build a sound evidentiary record for decision. At the same time, the Commission recognizes that issues might arise that could require additional procedures. Therefore the rule explicitly provides that the Commission may use additional procedures or even convene a formal hearing "on specific and substantial disputes of fact necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing." See § 2.1322(d). The rule thus provides sufficient flexibility to cope with extraordinary or unusual cases. For typical cases, however, a "streamlined hearing process" providing faster decision-making without loss of quality is a desirable objective. The shortened filing times and other provisions to which OCRE objects are steps which make this streamlining possible. They are not selective attempts to burden intervenors. The Commission believes that all parties to a license transfer application proceeding will benefit from the use of the Subpart M procedures.

Comment 3. Mr. David Leonardi, a licensed reactor operator, submitted a two-part comment "directed more to what is missing in the proposed rule rather than to what it contains." First, Mr. Leonardi questioned the Commission's statement in the notice of proposed rulemaking that license transfers in general "do not involve . . . significant changes in personnel of consequence to the continued reasonable assurance of public health and safety." Mr. Leonardi called this "a dangerous assumption" and expressed his view that "significant losses of critical personnel must be anticipated and factored into the transfer decision." He suggested that the proposed rule "must require the applicant to submit a critical staff retention plan."

Second, with regard to the placement in the Public Document Room of documents pertaining to each license transfer application, § 2.1303, Mr. Leonardi commented that he finds the Public Document Room difficult to use. He indicated his preference for "a separate section on the NRC web site for each proposed license transfer where all relevant documents and correspondence may be accessed."

Commission response. Mr. Leonardi is correct that if a significant loss and replacement of critical plant personnel can be anticipated as the result of a particular license transfer this might well be a reason not to approve the transfer or to condition the transfer on the maintenance of adequate technical qualifications. However, the Commission does not regard this observation as a reason for modifying this proposed rule, which deals with hearing procedures rather than with the substantive findings that must be made to support approval of a license transfer application. The commenter does not assert that the Subpart M procedures cannot deal adequately with the issue of technical qualifications of the applicant for license transfer, and the Commission perceives no potential inadequacy in this regard. The Commission continues to believe that personnel retention issues and technical qualifications of the applicant do not involve the type of technical questions bearing on the actual operation of a facility that may benefit from different hearing procedures. As for the commenter's suggestion that the rule should incorporate a requirement for a critical staff retention plan to be submitted by the applicant for the license transfer, the Commission finds that Subpart M, which deals primarily with hearing procedures, is not an appropriate place for such a substantive requirement. If, in a particular license transfer case, a need is identified for submission of a critical staff retention plan in order to address the applicant's technical qualifications, this matter can readily be addressed in the hearing process and can ultimately result in a condition on license transfer approval.

Turning to the matter of availability of license transfer application documents on the NRC web site, the Commission notes that the NRC is in the process of developing a new and comprehensive Agencywide Documents Access and Management System ("ADAMS"). Documents filed in a license transfer case after ADAMS becomes operational, probably in the second half of 1999, will be placed in the ADAMS public library. The public will be able to find relevant documents by using general search criteria such as docket numbers, case names, and subject topics. The details of how ADAMS will operate have yet to be fully worked out, but the Commission believes that this system will prove responsive to the commenter's concern. In the meantime, the Commission notes that the NRC Public Document Room licensing files have worked quite well in the past and been readily available to members of the public who wish to obtain extensive information on pending licensing actions.

Comment 4. A comment by the president of Local 369, Utility Workers Union of America, representing 197 workers at a nuclear power station, acknowledged the need to streamline the hearing process but identified what the commenter perceived as potential problems with the proposed Subpart M procedures. In particular, the commenter was concerned about the Commission's expectation that the procedures will result in the issuance of a final Commission decision on a license transfer application within about six to eight months of notice of receipt of the application. The commenter said that "a process that proceeds too rapidly could compromise the Union's and the NRC's ability to obtain critical information about the license transferee." The Commission of course agrees that what the commenter calls "a rush to approval" could fail to obtain adequate information about the transferee's experience and ability to manage the plant safely. The Commission notes, however, that the expectation of completing license transfer proceedings in six to eight months applies to "routine cases." (63 FR 48646, col. 2.) Subpart M itself does not specify or limit the substantive questions which must be addressed in license transfer proceedings. If difficult issues arise in unusual cases, they will be dealt with as sound decisionmaking requires, even if this requires a greater time commitment than routine cases. The Commission's aim in adopting the Subpart M procedures is to provide an efficient and effective hearing process and a structure for compiling a decision record in a timely manner, not a hurried one.

The commenter also expressed concern that the Union not be denied the opportunity to participate in license transfer hearings. The new Subpart M does not alter the Commission's usual requirement for standing to intervene in a proceeding that a person show an interest which may be affected by the outcome of the proceeding. By showing an interest (within the "zone of interests" of the relevant statutes) which may be affected by the Commission's action on an application for license transfer, any person or organization may participate as of right. See § 2.1306(a). Under current agency case law, the Commission may also allow discretionary intervention to a person who does not meet standing requirements, where there is reason to believe the person's participation will make a valuable contribution to the proceeding and where a consideration of the other criteria on discretionary intervention shows that such intervention is warranted.

Comments by or on behalf of members of the nuclear energy industry:

Comment 5. The Nuclear Energy Institute ("NEI"), an organization representing utilities licensed to operate commercial nuclear power plants in the United States, nuclear materials licensees, and other organizations and individuals involved in the nuclear industry, submitted a comment on behalf of its members. NEI supports as a "very positive development" the use of informal rather than formal trial-type procedures for consideration of license transfer applications. NEI suggests the goals of the rule can be furthered by the following proposed clarification: "Where the proposed change only involves a transfer of ownership of all or a portion of the facility, both NRC staff review and the Subpart M proceeding should be limited solely to the capability of the transferee to meet financial qualifications and decommissioning funding requirements." Several comments by individual members of the nuclear energy industry or their representatives endorsed the comments of NEI.

Commission response. The Commission does not accept NEI's proposed clarification. The Commission observed in the Notice of Proposed Rulemaking that "*typical* staff review consists largely of assuring that the ultimately licensed entity has the capability to meet financial qualification and decommissioning funding aspects of NRC regulations," (63 FR 48644, col. 3. (emphasis added)). But financial qualification and decommissioning funding are not the sole issues that may bear on a license transfer approval, even when the transfer will change only the ownership of all or part of a facility and will not directly affect management or operation. Section 103d of the Atomic Energy Act, 42 U.S.C. 2133, for example, places certain restrictions on foreign ownership, control, or domination of certain licenses. Consideration of the question whether a proposed license transfer is consistent with this provision of the Act would require a broader scope for the proceeding than the limited one NEI recommends. Generally, the Commission believes it is desirable to focus its Subpart M rulemaking solely on procedures rather than attempting in this rulemaking to describe and enumerate the substantive issues that license transfers may involve.

Comment 6. The Southern California Edison Company ("SCE") stated its strong support for the proposed rule. SCE supported the comments submitted by the Nuclear Energy Institute, which the Commission has already addressed in the response to Comment 5, *supra*. SCE also offered suggestions for "minor enhancements" to the proposed rule, which the Commission addresses in its response to this comment.

Commission response. Change (1) suggested by SCE is that the rule should give the Presiding Officer, in addition to the power to "strike or reject duplicative or irrelevant presentations," § 2.1320(a)(9), the responsibility and power to strike or reject unreliable or immaterial presentations. As the commenter points out, this change would make Subpart M similar in this regard to 10 CFR Part 2, Subpart L, Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, which gives the presiding officer the power to strike portions of a presentation that are "cumulative, irrelevant, immaterial, or unreliable." (10 CFR 2.1233(e)). The Commission agrees that unreliable and immaterial presentations detract from the value of the record and should be subject to exclusion in the sound discretion of the Presiding Officer. Therefore the Commission accepts this suggestion and has revised § 2.1320(a)(9) accordingly in the final rule.

Change (2) suggested by SCE deals with responses to papers served by mail. SCE notes that proposed § 2.1314(c) provides for three additional days to respond to papers served pursuant to § 2.1307 by regular mail. SCE suggests that three additional days for mail service should be allowed for all responses to service of a paper, not just those made pursuant to § 2.1307. The Commission accepts this suggestion and has revised § 2.1314(c) accordingly in the final rule.

Change (3) suggested by SCE is that proposed § 2.1331(b) be clarified to make plain that the Commission may consider other information on the docket when it decides matters that were not designated as issues for the hearing. The Commission agrees and has adopted the language proposed by SCE for § 2.1331(b) in the final rule: "The decision on issues designated for hearing pursuant to § 2.1308(d)(1) will be based on the record developed at the hearing."

Comment 7. Florida Power & Light Company ("FPL") submitted a comment endorsing the comments of the Nuclear Energy Institute, which the Commission has already addressed in the context of its response to comment 5, *supra*. FPL concurred with the Commission's findings in support of the proposed Subpart M and offered the following additional suggestions:

(1) FPL suggested that the Commission should extend the informal hearing process to all NRC adjudicatory proceedings.

Commission response. Although the suggestion goes well beyond the scope of the proposed rule, the Commission notes elsewhere in this notice that it has argued in court that section 189a of the Atomic Energy Act does not require formal hearings, and the Commission has directed the staff to seek legislation that supports greater use of informal procedures. The Commission has also asked the staff to advise the Commission on ways to enhance the Commission's ability to use informal procedures in any proceeding in which formal procedures are currently used.

(2) FPL supported close Commission oversight of the Presiding Officer but believed that the Commissioners should not personally be involved, as the proposed Subpart M envisions, in developing the evidentiary record in license transfer application proceedings.

Commission response. Under the proposed rule the Commission "will ordinarily be the Presiding Officer at a hearing," but the Commission "may provide * * * that one or more Commissioners, or any other person permitted by law, may preside." See § 2.1319. The Commission believes this language provides sufficient flexibility to deal with the commenter's concerns, should the Commission perceive that its direct involvement in Subpart M hearings is in some cases unduly burdensome or impractical for the Commission.

(3) FPL stated its belief that allowing all parties to make oral presentations in every license transfer proceeding "could defeat the underlying purpose of the proposed rule: to streamline license transfer proceedings." Comments by several other members of the nuclear

energy industry or their representatives questioned the proposed rule's provision that hearings shall be oral unless all parties agree to a hearing on written submissions. These Commenters recognized the Commission's intention to avoid delays caused by a need to consider a party's request that a hearing be oral; that is, the Commission intends to avoid needless nonsubstantive "litigation" over the form (oral or written) of the litigation on the merits—but noted that there are alternative ways to avoid these delays. Two Commenters suggested that the Commission could provide that hearings will be on written submissions unless any party requests an oral hearing.

Commission response. Under the proposed Subpart M oral hearings are the "default choice" in that it provides for oral presentations unless all parties agree to a written hearing. Under the proposed scheme if the parties take no action the hearing will be oral, and only unanimous action of the parties in favor of a written hearing will cause oral procedures to be supplanted. The Commenters' suggested alternative that the hearing be written unless a party requests an oral hearing would turn this around and make a written hearing the default choice. The Commission prefers to retain the approach taken in the proposed rule. The Commission believes that oral presentations with the structure established by Subpart M may allow for the compilation of a better record because the Presiding Officer can more readily ask follow-up or clarifying questions. A strictly written hearing is likely to prove more cumbersome in this regard. Furthermore, members of the public attending oral proceedings will be able to follow the hearing more readily than by combing through extensive written materials in the Public Document Room as they would be required to do in a written hearing context. Accordingly, the Commission does not accept the commenter's proposed alternative.

(4) FPL noted its support of Commission action to ensure timely completion of license transfer proceedings but recommended "that the final rule specifically require automatic Commission review in the event that any of the schedular "milestones" are exceeded by a Presiding Officer."

Commission response. Although the Commission intends to monitor these proceedings carefully and will be fully prepared to step in to address schedular problems when necessary, the Commission is not prepared to require by regulation, and bind itself to, a review of every instance in which a Presiding Officer exercises discretion to enlarge the time provided in the rule for filings or other actions. In view of the Commission's recent Policy Statement on Conduct of Adjudicatory Proceedings, 48 NRC 18 (1998), (63 FR 41872; August 5, 1998), the Commission is confident that persons serving as Presiding Officers will be highly sensitive to the need for expeditious completion of adjudicatory proceedings, consistent with considerations of fairness and the production of an adequate record, and will countenance delays only for compelling reasons. The Commission of course retains discretion to take such action in individual proceedings as it deems necessary to assure timeliness and adherence to all other Commission requirements that govern the hearing process.

Comment 8. Texas Utilities Electric Company ("TU Electric") expressed support for the proposed rule. TU Electric also offered many of the suggestions put forward in the comments already described. In addition, TU Electric expressed concern that the reference in proposed § 2.1330(b) to 10 CFR 2.790, which is in Subpart G, might convey an implication that other Subpart G procedures also apply in Subpart M proceedings.

Commission response. To allay the commenter's concern, the Commission has modified § 2.1330(b) in the final rule by replacing the language "under 10 CFR 2.790" with the language "in accordance with law and policy as reflected in 10 CFR 2.790 . . ." The intent of this modification is to remove any possible implication that Subpart G is intended to apply to license transfer actions.

Comment 9. AmerGen Energy Company, LLC ("AmerGen") commented that it favored the proposed rule and urged its prompt adoption. AmerGen also suggested that the Commission should apply the proposed Subpart M procedures, at the request of an applicant, in any license transfer application proceedings that may be undertaken before the final Subpart M becomes effective. In AmerGen's opinion, the NRC has authority under the Atomic Energy Act and the Administrative Procedure Act to use the Subpart M procedures on a case-by-case basis, prior to finalization of the rule, so long as the Commission provides fair notice to the potential parties.

Commission response. For reasons discussed elsewhere in this notice, the Commission is making this rule effective upon publication, pursuant to the provisions of the Administrative Procedure Act for immediate effectiveness. 5 U.S.C. 553(d)(1) and 553(d)(3). Any applications received but not yet noticed as of the effective date of this rule will be subject to Subpart M procedures. In the case of license transfer applications, if any, that have been noticed and for which proceedings are pending as of the date of this notice of final rulemaking, affected applicants or parties to such proceedings who wish to avail themselves of the new procedures may file motions with the Presiding Officer in those proceedings, requesting that Subpart M procedures be applied as appropriate to the remainder of the pending proceeding.

Comment 10. Morgan, Lewis, & Bockius, a private law firm commenting on behalf of Alliant Utilities—IES Utilities and STP Nuclear Operating Company, endorsed the comments of NEI (*see* Comment 5, *supra*) in support of the rule. The commenter also made several suggestions for changes.

Commission response. The changes suggested by this commenter are similar to suggestions made in other comments described and responded to in the preceding discussion.

Comment 11. Shaw, Pittman, Potts & Trowbridge ("Shaw Pittman"), a private law firm commenting on behalf of itself and several utilities, strongly supported the proposed rule. Shaw Pittman believed, however, that several aspects of the rule require "clarification and refinement." These aspects, together with the Commission's response, are as follows:

(1) Shaw Pittman expressed concern "that the rule does not identify the circumstances that would permit the NRC Staff to delay the approval or denial of a license transfer request pending any requested hearing." The commenter noted that proposed § 2.1316(a) says that during the pendency of a hearing under Subpart M "the staff is expected to promptly issue approval or denial of license transfer requests." The commenter believed that the final rule or its statement of consideration "should describe the circumstances or the factors that the NRC Staff are to consider in deciding whether to postpone approval or denial of a transfer pending a requested hearing."

Commission response. The Commission does not accept this suggestion. As noted previously (*see* response to Comment 5), the scope and focus of the Subpart M rulemaking are on procedures for the conduct of hearings, rather than the substantive questions involved in approval of license transfer applications. The Commission is confident that the present language of § 2.1316(a) adequately conveys to the NRC staff that staff action on license transfer requests should not be delayed except for sound reasons. The Commission relies on the staff, subject to Commission oversight, to exercise good judgment in this regard. As the rule indicates, the Commission believes that staff approval or denial can usually be issued promptly, but it would be unwise for the Commission at this point to attempt to anticipate all the circumstances that might warrant delay in the staff's review or action on the application.

(2) Shaw Pittman commented that the Commission "should clarify the evidentiary value of written position statements and oral presentations allowed under the present rule." The commenter would have the rule specify that the Commission cannot base a decision on "written position statements and oral presentations, in and of themselves." The commenter would require parties to document and support their positions by written testimony with supporting affidavits.

Commission response. The Commission does not believe that extensive clarification is necessary. Setting out evidentiary requirements in more detail could be at variance with the Commission's intention to move away from time-consuming formality in its hearing processes. In making a decision based on the record produced in a Subpart M proceeding, the Commission will of course take proper account of the evidentiary value of the record material. Written statements of position and oral arguments will be treated as such statements and arguments are treated in the NRC's formal adjudications under Subpart G and informal proceedings under Subpart L, *i.e.* as arguments and positions of the parties but not as facts. Factual assertions unsupported by affidavits, expert testimony, or other appropriate evidentiary submissions are less likely to carry weight than assertions with proper evidentiary support.

(3) Shaw Pittman urged the Commission to revise the proposed rule expressly to allow parties to submit proposed questions to the Presiding Officer within seven days of the filing of rebuttal testimony. The commenter noted that under the proposed rule, rebuttal testimony and proposed questions for the Presiding officer to ask witnesses in the Presiding Officer's examination are to be filed at the same time. *See* § 2.1321(b) and § 2.1322(a)(2). Thus, there is no explicit provision for proposing questions directed to the rebuttal testimony itself, although the Presiding Officer has the discretion to provide for such questions. The commenter believed that the timeframe of the rule would reasonably allow for this additional filing without extending the date for commencement of the oral hearing beyond 65 days after the date of the Commission's notice granting a hearing.

Commission response. The Commission finds the commenter's point well-taken and has placed language in the final rule to authorize proposed questions directed to rebuttal testimony to be filed within seven days of the filing of the rebuttal testimony.

(4) Shaw Pittman finds confusing the language of proposed 10 CFR 2.1323(a) that "[a]ll direct testimony in an oral hearing shall be filed no later than 15 days before the hearing.* * *" The commenter believes this language "could arguably be read to allow the filing of direct testimony subsequent to the 30 day deadline provided for by proposed 10 CFR 2.1322(a)(1)."

Commission response. The Commission does not see any reason for confusion. To be timely the filings in question must be made within 30 days after the date of the Commission's notice granting a hearing [§ 2.1322(a)] but in any event no later than 15 days before the hearing [§ 2.1323(a)]. There is no potential contradiction between the two provisions. Rather than being an unnecessary provision, as the commenter asserts, § 2.1323(a) assures that parties will receive filings in adequate time to prepare for the oral hearing.

(5) Shaw-Pittman asked that the Commission clarify in its promulgation of the final rule the extent to which license transfer applications filed before the effective date of the rule will be subject to the new Subpart M procedures. The commenter favored making the new rule immediately effective and applying the Subpart M procedures to pending applications.

Commission response. See the Commission's response to Comment 9.

Comment 12. GPU Nuclear stated its strong support for the rule and recommended that the new procedures be applied as soon as possible.

Commission response. See the Commission's response to Comment 9.

Comment 13. Duke Energy Company ("Duke"), represented by Winston & Strawn, supported the proposed rule but expressed concern about the elimination of cross-examination by parties under Subpart M. Duke stated that "the final rule should retain provisions allowing the parties to present recommended questions to the presiding officer." Duke commented that the final rule "should define with greater precision the types of issues appropriate for review * * *" and suggested limiting the proceedings to issues associated with financial qualifications and decommissioning funding. Duke also commented that the final rule should explicitly grant parties to a contested license transfer hearing the right to appeal an adverse decision by the Commission. Duke suggested that the informal, legislative-style hearing process should be extended to other NRC adjudicatory proceedings.

Commission response. The proposed Subpart M rule provides for parties to submit proposed questions to the Presiding Officer. This will allow the parties to suggest what they believe to be appropriate questions for the witnesses but will allow the Presiding Officer better control of the examination of witnesses. This provision should effectively eliminate the need for objections and interruptions during witness examination. For these reasons the Commission has retained the proposed procedure in the final rule. The Commission rejects the commenter's suggestion that the rule should define and limit the issues appropriate for review, for reasons already discussed in previous responses to similar comments. The Commission also sees no point in addressing statutory appeal rights in the final rule. A party's right to judicial review of an adverse decision is set out in Section 189b. of the Atomic Energy Act in conjunction with Chapter 158 of title 28, United States Code, and the Administrative Procedure Act. Extension of the proposed procedures for license transfer applications to other types of NRC proceedings is beyond the scope of this rulemaking, but, as noted in more detail in response to an earlier comment, the Commission is taking steps to expand the use of similar procedures in other proceedings.

Comment 14. PECO Nuclear noted its view that the proposed rule is "a positive step." The commenter suggested several minor changes in words and punctuation needed to clarify the text of the rule.

Commission response. The Commission has incorporated in the final rule the commenter's suggested minor changes, which do not affect the substance of the rule.

Comment 15. Wisconsin Electric Power Company supported the Commission's proposed rule and suggested certain "clarifications and refinements."

Commission response. The commenter's suggestions do not differ in substance from suggestions made by other commenters that the Commission has responded to above.

Other Comments.

Members of the NRC staff in Office of Nuclear Materials Safety and Safeguards submitted a comment asking that it be made clear that the proposed Subpart M applies to license transfers under 10 CFR Part 72 and that applications for transfers under Part 72 be noticed in the **Federal Register** pursuant to § 2.1301(b).

Commission response. The proposed rules were intended to apply to all license transfer applications, including those filed under Part 72. To make this clear, the Commission has included explicit references to Part 72 in this statement of consideration for the final rule. The Commission has also modified § 2.1301(b) to list transfer applications under Part 72 as one of the class of applications that will be noticed in the **Federal Register**.

III. Description of Final Rule

The procedures adopted in this rulemaking cover any direct or indirect license transfer for which NRC approval is required pursuant to the regulatory provisions under which the license was issued. NRC regulations and the Atomic Energy Act require approval of any transfer of control of a license. See AEA, Sec. 184, 42 U.S.C. 2234. This includes those transfers that require license amendments and those that do not. It should be recognized that not all license transfers will require license amendments. For example, the total acquisition of a licensee, without a change in the name of the licensee, (e.g., through the creation of a holding company which acquires the existing licensee but which, beyond ownership of the licensee, does not otherwise affect activities for which a license is required), would require NRC approval, but would not necessarily require any changes in the NRC license for the facilities owned by the licensee.

These procedures do not expand or change the circumstances under which NRC approval of a transfer is necessary nor do they change the circumstances under which a license amendment would be required to reflect an approved transfer. Amendments to licenses are required only to the extent that ownership or operating authority of a licensee, as reflected in the license itself, is changed by a transfer. A discussion of the process for issuing amendments associated with an approved transfer, when necessary, is provided below.

The procedures, similar to those used by the Commission in cases involving export licensing hearings under 10 CFR Part 110, provide for an informal type hearing for license transfers. These procedures provide opportunities for meaningful public participation while minimizing areas where a formal adjudicatory process could introduce delays without any commensurate benefit to the substance of the Commission's decisionmaking.

The Commission will either elect to develop an evidentiary record and render a final decision itself, or will appoint a Presiding Officer who will be responsible for collecting evidence and developing a record for submission to the Commission. For such proceedings, the Commission may appoint a Presiding Officer from the Atomic Safety and Licensing Board Panel (ASLBP), although the proposed regulations do not restrict the sources from which the Commission may select.

It should be noted that the regulations do not require the NRC staff to participate in the proceedings as a formal party unless the Commission directs the use of Subpart G procedures or otherwise directs the staff to participate as a party. The Commission expects, nevertheless, that, in most cases, the NRC staff will participate to the extent that it will offer into evidence staff's Safety Evaluation Report that supports its conclusions on whether to initially grant or deny the requested license transfer and provide one or more appropriate sponsoring witnesses. Greater NRC staff involvement may be directed by the Commission on its own initiative or at the staff's choosing, as circumstances warrant.

One aspect of the rule designed to improve efficiency is the decision to require oral hearings on all transfers where a hearing is to be held under Subpart M, with very limited exceptions. It has been the Commission's experience in Subpart L proceedings that intervenors are particularly interested in having the opportunity to make oral presentations or arguments for inclusion in the record. Even though such requests are rarely granted,[1] intervenors can and do introduce the issue of whether to have oral presentations in individual proceedings. Rather than have the issue of oral presentations become a point of contention in individual proceedings (which could introduce unnecessary delays in completing the record) the rule resolves this concern by ensuring that all parties have the opportunity to present oral testimony. The question of whether cross examination of witnesses should be allowed has also led to arguments in Subpart L proceedings.[2] The Commission has addressed this area of potential dispute by providing in Subpart M for questioning of witnesses only by the Presiding Officer. Although only the Presiding Officer may question witnesses, the rule specifically provides parties the opportunity to present recommended questions to the Presiding Officer.

Another aspect of the rule intended to improve the efficiency of the adjudicatory process is that, while it does not provide for any separate discovery, it does require that a Hearing Docket containing all relevant documents and correspondence be established and be made available at the Commission's Public Document Room. This approach is in keeping with establishment of a case file as described in the Commission's recent Statement of Policy on Conduct of Adjudicatory Proceedings, CLI–98–12 (63 FR 41872; August 5, 1998).

Finally, to improve the efficiency of the adjudicatory process the rule imposes schedular milestones for the filing of testimony and responses and for the commencement of oral hearings. Subject to the Presiding Officer's scheduling adjustments in particular proceedings, the procedures require initial testimony, statements of position on the issues, and responsive testimony to be filed within 50 days of the Commission's decision to grant a request for a hearing. The hearing will commence in just over two months from the Commission's decision to hold a hearing. Assuming that the NRC staff is able to complete its technical review and take initial action on the transfer application within three to four months of its notice of receipt of the application, these procedures are expected to result in the issuance of a final Commission decision on the license transfer within about six to eight months of the notice of receipt of the application in routine cases. Complex cases requiring more extensive review or the use of different hearing procedures may take more time.

Administrative License Amendments Associated With License Transfers

As discussed above, not all license transfers require license amendments. Only when the license specifically has references to entities or persons that no longer are accurate following the approved transfer will a situation exist that requires amendments to the license. Such amendments are essentially administrative in nature. That is, in determining whether to approve such amendments, the only issue is whether the license amendment accurately reflects the approved transfer. Substantive issues regarding requests for a hearing on the appropriateness of the transfer itself may only be considered using the procedures in this rule. The Commission has previously noted that issuance of such an administrative amendment, following the review and approval of the transfer itself, "presents no safety questions and clearly involves no significant hazards considerations." *Long Island Lighting Company, supra,* 35 NRC at 77, n.6.

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[1] Curators of the University of Missouri, CLI–95–1, 41 NRC 71 120 (1995).

Safety Evaluation Reports (SERs) prepared in connection with previous license transfers confirm that such transfers do not, as a general matter, have significant impacts on the public health and safety. Accordingly, the new regulations provide that conforming amendments to the license may be issued by the NRC staff at any time after the staff has reviewed and approved the proposed transfer, notwithstanding the pendency of any hearing under the proposed Subpart M. As is done currently, NRC staff approval of a transfer application will take the form of an order. Such order will also identify any license amendment issued.

The Commission, through this rulemaking, is making a generic finding that, for purposes of 10 CFR 50.58(b)(5), 50.91 and 50.92, and 72.46 and 72.50, administrative amendments which do no more than reflect an approved transfer and do not directly affect actual operating methods and actual operation of the facility do not involve a "significant hazards consideration" or a "genuine issue consideration," respectively, and do not require that a hearing opportunity be provided prior to issuance. It must be emphasized that any post-effectiveness hearing on such administrative amendments will be limited to the question of whether the amendment accurately reflects the approved transfer. The Commission does note, however, that it retains the authority, as a matter of discretion, to direct completion of hearings prior to issuance of the transfer approval and any required amendments in individual cases and to direct the use of other hearing procedures, if the Commission believes it is in the interest of public health and safety to do so.

Environmental Issues

The NRC staff has completed many Environmental Assessments related to license transfers. These assessments have uniformly demonstrated that there are no significant environmental effects from license transfers. Indeed, as the Commission has noted previously, amendments effectuating an approved transfer present no safety questions and involve no significant hazards considerations.[3] Accordingly, the Commission has determined that a new categorical exclusion should be added to 10 CFR Part 51 which will obviate the need for the NRC staff to continue to conduct individual Environmental Assessments in each transfer case.

Limitation to License Transfers

The Commission wishes to emphasize that the proposed rules address only license transfers and associated administrative amendments to reflect transfers. Requests for license amendments that involve changes in actual operations or requirements directly involving health and safety-related activities will continue to be subject to the amendment processes currently in use in Parts 50 and 72, including the requirement for individualized findings under 10 CFR 50.58, 50.91 and 50.92 that address the necessity for pre-effectiveness hearings.

Basis for Immediate Effectiveness

The Commission has determined that this rule should become immediately effective upon publication. The Administrative Procedure Act relieves the agency of the requirement that publication of a substantive rule be made not less than thirty days before its effective date in the case of "a substantive rule which...relieves a restriction" or "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(1) and 553(d)(3). The purpose of the thirty-day waiting period "is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp.* v *F.C.C.,* 78 F. 3d 620 (D.C. Cir. 1996). The rule deals primarily with procedures that will be used in future hearings on applications for license transfers. The rule adds no burden to the conduct of activities regulated by the NRC. Thus there is no need for NRC licensees or anyone else "to adjust their behavior" to achieve compliance with the rule. Moreover, comments by persons most likely to be affected by the rule (potential applicants) appear to favor the rule and its prompt implementation. The Commission therefore finds there is good cause to make this rule immediately effective. Alternatively, the Commission notes that the rule in effect "relieves a restriction" in that the hearing process established by Subpart M should be less burdensome for parties to license transfer proceedings than the procedures which the Commission has previously by practice applied. Thus the Commission's decision to dispense with the thirty day waiting period is also supported by 5 U.S.C. 553(d)(1) .

Finding of No Significant Environmental Impact and Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule falls within the categorical exclusion appearing at 10 CFR 51.22 (c)(1) for which neither an Environmental Assessment nor an Environmental Impact Statement is required.

Further, under its procedures for implementing NEPA, the Commission may exclude from preparation of an environmental impact statement, or an environmental assessment, a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in NRC proceedings. In this rulemaking, the Commission finds that the approval of a direct or indirect license transfer, as well as any required administrative license amendments to reflect the approved transfer, comprises a category of actions which do not individually or cumulatively have a significant effect on the human environment. Actions in this category are similar in that, under the AEA and Commission regulations, transfers of licenses (and associated administrative amendments to licenses) will not in and of themselves permit the licensee to operate the facility in any manner different from that which has previously been permitted under the existing license. Thus, the transfer will usually not raise issues of environmental impact that differ from those considered in initial licensing of a facility. In addition, the denial of a transfer would also have in and of itself no impact on the environment, since the licensee would still be authorized to operate the facility in accordance with the existing license.

Environment assessments that have been conducted regarding numerous license transfers under existing regulations have not demonstrated the existence of a major federal action significantly affecting the environment. Further, the final rule does not apply to any request for an amendment that would directly affect the actual operation of a facility. Amendments that directly affect the actual operation of a facility would be subject to consideration pursuant to the existing license amendment processes, including the requirements in 10 CFR Part 2,

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[3] Long Island Lighting Company, supra, 35 NRC at 77, n. 6.

Subpart G or L as appropriate and applicable environmental review requirements of 10 CFR Part 51.

Paperwork Reduction Act Statement

The final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et. seq.). Existing requirements for 10 CFR Part 51 were approved by the Office of Management and Budget, approval number 3150–0021.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

To determine whether the amendments to 10 CFR Part 2 contained in this final rule were appropriate, the Commission considered the following options:

1. The No-Action Alternative

This alternative was not deemed acceptable for the following reasons. First, this option would leave reactor transfers subject to past practice which generally involved hearings using multi-member, multi-disciplined licensing boards, even though such transfers do not involve the type of complex technical questions for which multi-member boards of diverse background may provide a useful technical pool of experience.

Second, the formal adjudicatory hearing process would needlessly add formality and resource burdens to the development of a record for reaching a decision on applications for transfer approval without any commensurate benefit to the public health and safety or the common defense and security.

Third, the current process for materials licensees under 10 CFR Part 2, Subpart L, while not utilizing the multi-member licensing boards, does not necessarily result in uniform treatment of all license transfer requests, and provides at least the potential for more formal hearings. Even if the requests for more formal procedures are not granted in typical materials cases, the process of receiving motions for more formal procedures, allowing responses from all parties to those requests, and the need for parties' responses to those requests, and the need for the Presiding Officer to consider and rule on such requests introduces issues and litigation on matters not involving the merits of the particular application and thus introduces the potential for delays in materials license transfer proceedings, without clear benefit to the public health and safety or the common defense and security.

2. Use 10 CFR Part 2, Subpart G for All License Transfers

While assuring uniformity for all license transfer requests, this option would not result in an expeditious process that would avoid the use of multi-member licensing boards, which is unnecessary given the nature of typical transfer applications. It would also result in added formality and resources being devoted to materials license transfers on the part of all parties to the hearing, without any resulting benefit to public health and safety.

3. Use of 10 CFR Part 2, Subpart L for All License Transfers

This option was considered as viable to achieve uniformity and to avoid the need for multi-member licensing boards for conducting requested hearings. Subpart L provides for paper hearings unless oral presentations are ordered by the Presiding Officer. Further, Subpart L allows the Presiding Officer the option of recommending to the Commission that more formal procedures be used. Even though such requests are rarely granted, as a practical matter there are delays in the proceeding while parties petition the Presiding Officer and/or the Commission to have oral hearings and to use additional procedures, such as cross-examination and formal discovery. Such discretion in structuring individual hearings is appropriate where the breadth of potential actions and licensees (covering essentially all amendments for a wide variety of materials licensees) is governed by a single hearing process. This flexibility, however, inevitably leads to delays as each party to the hearings proposes and presents arguments to the Presiding Officer concerning how the hearing should be structured.

4. Use of a New Subpart M for all License Transfers

In the case of license transfer applications the Commission is concerned with only one type of approval, so the Commission has the ability to resolve through rulemaking many of these procedural points concerning the conduct of the hearing. The resolution of these issues will allow the parties in license transfer proceedings to move expeditiously to examination of the substantive issues in the proceeding. The Subpart M process, similar to a legislative-type hearing, will also result in the record promptly reaching the Commission, where a final agency determination can be made. The rule dictates that oral hearings be held on each application for which a hearing request is granted unless the parties unanimously agree to forgo the oral hearing. This will remove the potential for a delay while parties petition the Presiding Officer for an oral hearing. Further, the rule provides that the Presiding Officer will conduct all questioning of witnesses, and there are no provisions for formal discovery, although docket files with relevant materials will be publicly available. The rule resolves several areas of frequent dispute in subpart L proceedings and was seen, therefore, as being more appropriate for license transfer proceedings where a timely decision is important to the public interest. These efficiencies can be achieved without any negative effect on substantive decisionmaking or the rights of all parties to present relevant witnesses, written testimony, and oral arguments, which should result in a high quality record on substantive issues for use by the Commission in reaching a decision on contested issues.

5. Conclusion.

Based on the foregoing considerations, the Commission has decided to adopt Subpart M and the attendant conforming amendments to provide the procedures for actions on license transfer applications. This constitutes the NRC's regulatory analysis.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not change any requirements for submittal of license transfer requests to NRC, rather, the procedures designate how NRC will handle requests for hearings on applications for license transfers. Most requested hearings on license transfer applications involve reactor licensees which are large organizations which do not fall within the definition of a small business found in section 3 of the Small Business Action, 15 U.S.C. 632, or within the Small Business Standards set forth in 13 CFR Part 121 or in the size standards adopted by the NRC (10 CFR 2.810). Based on the historically low number of requests for hearings involving materials licensees, it is not expected that this rule will have any significant economic impact on a substantial number of small businesses.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 and 72.62, does not apply to this proposed rule and a backfit analysis is not required, because these amendments do not involve any provisions that would impose backfits as defined in either 10 CFR 50.109 or 72.62. The rule does not constitute a backfit under either of these sections because it does not propose a change to or additions to requirements for existing structures, systems, components, procedures, organizations or designs associated with the construction or operation of a facility under Part 50 or 72.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR Parts 2 and 51:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134 2135); sec. 114(f); Pub. L. 97–425, 96 Stat 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Section 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.101, paragraph (a)(1) is revised to read as follows:

§ 2.101 Filing of application.

(a)(1) An application for a license, a license transfer, or an amendment to a license shall be filed with the Director of the Office of Nuclear Reactor Regulation or Director of the Office of Nuclear Material Safety and Safeguards, as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the NRC staff prior to the filing of an application.

* * * * *

3. In § 2.1103, after the final sentence the following sentence is added to read as follows:

§ 2.1103 Scope.

* * * This subpart shall not apply to proceedings on applications for transfer of a license issued under Part 72 of this chapter. Subpart M of this part applies to license transfer proceedings.

4. In § 2.1201, paragraph (a)(1) is revised to read as follows:

§ 2.1201 Scope of subpart.

(a) * * *

(1) The grant, renewal or licensee-initiated amendment of a materials license subject to parts 30, 32 through 35, 39, 40, or 70 of this chapter, with the exception of a license amendment related to an application to transfer a license; or

* * * * *

5. In § 2.1205, paragraphs (a) and (b) are revised to read as follows:

§ 2.1205 Request for a hearing: petition for leave to intervene.

(a) Any person whose interest may be affected by a proceeding for the grant, renewal, or licensee-initiated amendment of a license subject to this subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, or a license renewal who is issued a notice of proposed denial or a notice of denial and who desires a hearing shall file the request for the hearing within the time specified in § 2.103 in all cases. An applicant may include in the request for hearing a request that the presiding officer recommend to the Commission that procedures other than those authorized under this subpart be used in the proceeding, provided that the applicant identifies the special factual circumstances or issues which support the use of other procedures.

* * * * *

6. In Part 2, a new Subpart M is added to read as follows:

Subpart M—Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications.

Sec.
2.1300 Scope of subpart M.
2.1301 Public notice of receipt of a license transfer application.
2.1302 Notice of withdrawal of an application.
2.1303 Availability of documents in the Public Document Room.
2.1304 Hearing procedures.
2.1305 Written comments.
2.1306 Hearing request or intervention petition.
2.1307 Answers and replies.
2.1308 Commission action on a hearing request or intervention petition.
2.1309 Notice of oral hearing.
2.1310 Notice of hearing consisting of written comments.
2.1311 Conditions in a notice or order.
2.1312 Authority of the Secretary.
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2.1315 Generic determination regarding license amendments to reflect transfers.
2.1316 Authority and role of NRC staff.
2.1317 Hearing docket.
2.1318 Acceptance of hearing documents.
2.1319 Presiding Officer.
2.1320 Responsibility and power of the Presiding Officer in an oral hearing.

2.1321 Participation and schedule for submissions in a hearing consisting of written comments.
2.1322 Participation and schedule for submissions in an oral hearing.
2.1323 Presentation of testimony in an oral hearing.
2.1324 Appearance in an oral hearing.
2.1325 Motions and requests.
2.1326 Burden of proof.
2.1327 Application for a stay of the effectiveness of NRC staff action on license transfer.
2.1328 Default.
2.1329 Waiver of a rule or regulation.
2.1330 Reporter and transcript for an oral hearing.
2.1331 Commission action.

Subpart M—Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications.

§ 2.1300 Scope of subpart M.

This subpart governs requests for, and procedures for conducting, hearings on any application for the direct or indirect transfer of control of an NRC license which transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. This subpart is to provide the only mechanism for requesting hearings on license transfer requests, unless contrary case specific orders are issued by the Commission.

§ 2.1301 Public notice of receipt of a license transfer application.

(a) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application in the NRC Public Document Room.

(b) The Commission will also publish in the **Federal Register** a notice of receipt of an application for approval of a license transfer involving 10 CFR part 50 and part 52 licenses, major fuel cycle facility licenses issued under part 70, or part 72 licenses. This notice constitutes the notice required by § 2.105 with respect to all matters related to the application requiring NRC approval.

(c) Periodic lists of applications received may be obtained upon request addressed to the Public Document Room, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

§ 2.1302 Notice of withdrawal of an application.

The Commission will notice the withdrawal of an application by publishing the notice of withdrawal in the same manner as the notice of receipt of the application was published under § 2.1301.

§ 2.1303 Availability of documents in the Public Document Room.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each application for a license transfer requiring Commission approval will be placed in the Public Document Room when available:

(a) The license transfer application and any associated requests;

(b) Commission correspondence with the applicant or licensee related to the application;

(c) **Federal Register** notices;

(d) The NRC staff Safety Evaluation Report (SER).

(e) Any NRC staff order which acts on the license transfer application; and

(f) If a hearing is held, the hearing record and decision.

§ 2.1304 Hearing procedures.

The procedures in this subpart will constitute the exclusive basis for hearings on license transfer applications for all NRC specific licenses.

§ 2.1305 Written comments.

(a) As an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding license transfer applications. The Commission will consider and, if appropriate, respond to these comments, but these comments do not otherwise constitute part of the decisional record.

(b) These comments should be submitted within 30 days after public notice of receipt of the application and addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

(c) The Commission will provide the applicant with a copy of the comments. Any response the applicant chooses to make to the comments must be submitted within 10 days of service of the comments on the applicant. Such responses do not constitute part of the decisional record.

§ 2.1306 Hearing request or intervention petition.

(a) Any person whose interest may be affected by the Commission's action on the application may request a hearing or petition for leave to intervene on a license application for approval of a direct or indirect transfer of a specific license.

(b) Hearing requests and intervention petitions must—

(1) State the name, address, and telephone number of the requestor or petitioner;

(2) Set forth the issues sought to be raised and

(i) Demonstrate that such issues are within the scope of the proceeding on the license transfer application,

(ii) Demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer,

(iii) Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issues and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issues, and

(iv) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact;

(3) Specify both the facts pertaining to the petitioner's interest and how the interest may be affected, with particular reference to the factors in § 2.1308(a);

(4) Be served on both the applicant and the NRC Office of the Secretary by any of the methods for service specified in § 2.1313.

(c) Hearing requests and intervention petitions will be considered timely only if filed not later than:

(1) 20 days after notice of receipt is published in the **Federal Register**, for those applications published in the **Federal Register**;

(2) 45 days after notice of receipt is placed in the Public Document Room for all other applications; or

(3) Such other time as may be provided by the Commission.

§ 2.1307 Answers and replies.

(a) Unless otherwise specified by the Commission, an answer to a hearing request or intervention petition may be filed within 10 days after the request or petition has been served.

(b) Unless otherwise specified by the Commission, a reply to an answer may be filed within 5 days after service of that answer.

(c) Answers and replies should address the factors in § 2.1308.

§ 2.1308 Commission action on a hearing request or intervention petition.

(a) In considering a hearing request or intervention petition on an application for a transfer of an NRC license, the Commission will consider:

(1) The nature of the Petitioner's alleged interest;

(2) Whether that interest will be affected by an approval or denial of the application for transfer;

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(3) The possible effect of an order granting the request for license transfer on that interest, including whether the relief requested is within the Commission's authority, and, if so, whether granting the relief requested would redress the alleged injury; and

(4) Whether the issues sought to be litigated are—

(i) Within the scope of the proceeding;

(ii) Relevant to the findings the Commission must make to act on the application for license transfer;

(iii) Appropriate for litigation in the proceeding; and

(iv) Adequately supported by the statements, allegations, and documentation required by § 2.1306(b)(2) (iii) and (iv).

(b) Untimely hearing requests or intervention petitions may be denied unless good cause for failure to file on time is established. In reviewing untimely requests or petitions, the Commission will also consider:

(1) The availability of other means by which the requestor's or petitioner's interest will be protected or represented by other participants in a hearing; and

(2) The extent to which the issues will be broadened or final action on the application delayed.

(c) The Commission will deny a request or petition to the extent it pertains solely to matters outside its jurisdiction.

(d)(1) After consideration of the factors covered by paragraphs (a) through (c) of this section, the Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

(2) Hearings under this subpart will be oral hearings, unless, within 15 days of the service of the notice or order granting a hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written comments. No motion to hold a hearing consisting of written comments will be entertained absent unanimous consent of all parties.

(3) A denial of a request for hearing and a denial of any petition to intervene will set forth the reasons for the denial.

§ 2.1309 Notice of oral hearing.

(a) A notice of oral hearing will—

(1) State the time, place, and issues to be considered;

(2) Provide names and addresses of participants,

(3) Specify the time limit for participants and others to indicate whether they wish to present views;

(4) Specify the schedule for the filing of written testimony, statements of position, proposed questions for the Presiding Officer to consider, and rebuttal testimony consistent with the schedule provisions of § 2.1321.

(5) Specify that the oral hearing shall commence within 15 days of the date for submittal of rebuttal testimony unless otherwise ordered;

(6) State any other instructions the Commission deems appropriate;

(7) If so determined by the NRC staff or otherwise directed by the Commission, direct that the staff participate as a party with respect to some or all issues.

(b) If the Commission is not the Presiding Officer, the notice of oral hearing will also state:

(1) When the jurisdiction of the Presiding Officer commences and terminates;

(2) The powers of the Presiding Officer;

(3) Instructions to the Presiding Officer to certify promptly the completed hearing record to the Commission without a recommended or preliminary decision.

§ 2.1310 Notice of hearing consisting of written comments.

A notice of hearing consisting of written comments will:

(a) State the issues to be considered;

(b) Provide the names and addresses of participants;

(c) Specify the schedule for the filing of written testimony, statements of position, proposed questions for the Presiding Officer to consider for submission to the other parties, and rebuttal testimony, consistent with the schedule provisions of § 2.1321.

(d) State any other instructions the Commission deems appropriate.

§ 2.1311 Conditions in a notice or order.

(a) A notice or order granting a hearing or permitting intervention shall—

(1) Restrict irrelevant or duplicative testimony; and

(2) Require common interests to be represented by a single participant.

(b) If a participant's interests do not extend to all the issues in the hearing, the notice or order may limit her/his participation accordingly.

§ 2.1312 Authority of the Secretary.

The Secretary or the Assistant Secretary may rule on procedural matters relating to proceedings conducted by the Commission itself under this subpart to the same extent they can do so under § 2.772 for proceedings under subpart G.

§ 2.1313 Filing and service.

(a) Hearing requests, intervention petitions, answers, replies and accompanying documents must be served as described in paragraph (b) of this section by delivery, facsimile transmission, e-mail or other means that will ensure receipt by close of business on the due date for filing. Any participant filing hearing requests, intervention petitions, replies and accompanying documents should include information on mail and delivery addresses, e-mail addresses, and facsimile numbers in their initial filings which may be used by the Commission, Presiding Officer and other parties for serving documents on the participant.

(b) All filings must be served upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and participants if any. If service to the Secretary is by delivery or by mail the filings should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. E-mail filings may be sent to the Secretary at the following e-mail address: *SECY@NRC.GOV*. Facsimile transmission filings may be filed with the Secretary using the following number: 301–415–1101.

(c) Service is completed by:

(1) Delivering the paper to the person; or leaving it in her or his office with someone in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the recipient has no office or it is closed, leaving it at her or his usual place of residence with some occupant of suitable age and discretion;

(2) Depositing it in the United States mail, properly stamped and addressed; or

(3) Any other manner authorized by law, when service cannot be made as provided in paragraphs (c)(1) or (2) of this section.

(4) For facsimile transmission, sending copies to the facsimile machine of the person being served;

(5) For e-mail, sending the filing in electronic form attached to an e-mail message directed to the person being served.

(d) Proof of service, stating the name and address of the person served and the manner and date of service, shall be shown, and may be made by—

(1) Written acknowledgment of the person served or an authorized representative; or

(2) The certificate or affidavit of the person making the service.

(e) The Commission may make special provisions for service when circumstances warrant.

§ 2.1314 Computation of time.

(a) In computing time, the first day of a designated time period is not included and the last day is included. If the last day is a Saturday, Sunday or legal holiday at the place where the required action is to be accomplished, the time period will end on the next day which is not a Saturday, Sunday or legal holiday.

(b) In time periods of 7 days or less, Saturdays, Sundays and holidays are not counted.

(c) Whenever an action is required within a prescribed period following service of a paper, 3 days shall be added to the prescribed period if service is by regular mail.

§ 2.1315 Generic determination regarding license amendments to reflect transfers.

(a) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action, involves respectively, "no significant hazards consideration" or "no generic issue as to whether the health and safety of the public will be significantly affected."

(b) Where administrative license amendments are necessary to reflect an approved transfer, such amendments will be included in the order that approves the transfer. Any challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.

§ 2.1316 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its Safety Evaluation Report (SER), the staff is expected to promptly issue approval or denial of license transfer requests. Notice of such action shall be promptly transmitted to the Presiding Officer and parties to the proceeding.

(b) Except as otherwise directed in accordance with § 2.1309(a)(7), the NRC staff is not required to be a party to proceedings under this subpart but will offer into evidence its SER associated with the transfer application and provide one or more sponsoring witnesses.

(c) If the NRC staff desires to participate as a party, the staff shall notify the Presiding Officer and the parties and shall thereupon be deemed to be a party with all the rights and responsibilities of a party.

§ 2.1317 Hearing docket.

For each hearing, the Secretary will maintain a docket which will include the hearing transcript, exhibits and all papers filed or issued in connection with the hearing. This file will be made available to all parties in accordance with the provisions of § 2.1303 and will constitute the only discovery in proceedings under this subpart.

§ 2.1318 Acceptance of hearing documents.

(a) Each document filed or issued must be clearly legible and bear the docket number, license application number, and hearing title.

(b) Each document shall be filed in one original and signed by the participant or its authorized representative, with the address and date of signature indicated. The signature is a representation that the document is submitted with full authority, the person signing knows its contents and that, to the best of their knowledge, the statements made in it are true.

(c) A document not meeting the requirements of this section may be returned with an explanation for nonacceptance and, if so, will not be docketed.

§ 2.1319 Presiding Officer.

(a) The Commission will ordinarily be the Presiding Officer at a hearing under this part. However, the Commission may provide in a hearing notice that one or more Commissioners, or any other person permitted by law, will preside.

(b) A participant may submit a written motion for the disqualification of any person presiding. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. If the Presiding Officer does not grant the motion or the person does not disqualify himself and the Presiding Officer or such other person is not the Commission or a Commissioner, the Commission will decide the matter.

(c) If any person presiding deems himself or herself disqualified, he or she shall withdraw by notice on the record after notifying the Commission.

(d) If a Presiding Officer becomes unavailable, the Commission will designate a replacement.

(e) Any motion concerning the designation of a replacement Presiding Officer shall be made within 5 days after the designation.

(f) Unless otherwise ordered by the Commission, the jurisdiction of a Presiding Officer other than the Commission commences as designated in the hearing notice and terminates upon certification of the hearing record to the Commission, or when the Presiding Officer is disqualified.

§ 2.1320 Responsibility and power of the Presiding Officer in an oral hearing.

(a) The Presiding Officer in any oral hearing shall conduct a fair hearing, develop a record that will contribute to informed decisionmaking, and, within the framework of the Commission's orders, have the power necessary to achieve these ends, including the power to:

(1) Take action to avoid unnecessary delay and maintain order;

(2) Dispose of procedural requests;

(3) Question participants and witnesses, and entertain suggestions as to questions which may be asked of participants and witnesses.

(4) Order consolidation of participants;

(5) Establish the order of presentation;

(6) Hold conferences before or during the hearing;

(7) Establish time limits;

(8) Limit the number of witnesses; and

(9) Strike or reject duplicative, unreliable, immaterial, or irrelevant presentations.

(b) Where the Commission itself does not preside:

(1) The Presiding Officer may certify questions or refer rulings to the Commission for decision;

(2) Any hearing order may be modified by the Commission; and

(3) The Presiding Officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented.

§ 2.1321 Participation and schedule for submission in a hearing consisting of written comments.

Unless otherwise limited by this subpart or by the Commission, participants in a hearing consisting of written comments may submit:

(a) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials shall be filed within 30 days of the date of the Commission's Notice granting a hearing pursuant to § 2.1308(d)(1), unless the Commission or Presiding Officer directs otherwise.

(b) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants, and proposed written questions for the Presiding Officer to consider for

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submittal to persons sponsoring testimony submitted under paragraph (a) of this section. These materials shall to filed within 20 days of the filing of the materials submitted under paragraph (a) of this section, unless the Commission or Presiding Officer directs otherwise. Proposed written questions directed to rebuttal testimony for the Presiding Officer to consider for submittal to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(c) Written concluding statements of position on the issues. These materials shall be filed within 20 days of the filing of the materials submitted under paragraph (b) of this section, unless the Commission or the Presiding Officer directs otherwise.

§ 2.1322 Participation and schedule for submissions in an oral hearing.

(a) Unless otherwise limited by this subpart or by the Commission, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials shall be filed within 30 days of the date of the Commission's notice granting a hearing pursuant to § 2.1308(d)(1), unless the Commission or Presiding Officer directs otherwise.

(2)(i) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants;

(ii) Proposed questions for the Presiding Officer to consider for propounding to persons sponsoring testimony.

(3) These materials must be filed within 20 days of the filing of the materials submitted under paragraph (a)(1) of this section, unless the Commission or Presiding Officer directs otherwise.

(4) Proposed questions directed to rebuttal testimony for the Presiding Officer to consider for propounding to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(b) The oral hearing should commence within 65 days of the date of the Commission's notice granting a hearing unless the Commission or Presiding Officer directs otherwise. Ordinarily, questioning in the oral hearing will be conducted by the Presiding Officer, using either the Presiding Officer's questions or questions submitted by the participants or a combination of both.

(c) Written post-hearing statements of position on the issues addressed in the oral hearing may be submitted within 20 days of the close of the oral hearing.

(d) The Commission, on its own motion, or in response to a request from a Presiding Officer other than the Commission, may use additional procedures, such as direct and cross-examination, or may convene a formal hearing under subpart G of this part on specific and substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing. The staff will be a party in any such formal hearing. Neither the Commission nor the Presiding Officer will entertain motions from the parties that request such special procedures or formal hearings.

§ 2.1323 Presentation of testimony in an oral hearing.

(a) All direct testimony in an oral hearing shall be filed no later than 15 days before the hearing or as otherwise ordered or allowed pursuant to the provisions of § 2.1322.

(b) Written testimony will be received into evidence in exhibit form.

(c) Participants may designate and present their own witnesses to the Presiding Officer.

(d) Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations for that purpose.

(e) Participants and witnesses will be questioned orally or in writing and only by the Presiding Officer. Questions may be addressed to individuals or to panels of participants or witnesses.

(f) The Presiding Officer may accept written testimony from a person unable to appear at the hearing, and may request him or her to respond to questions.

(g) No subpoenas will be granted at the request of participants for attendance and testimony of participants or witnesses or the production of evidence.

§ 2.1324 Appearance in an oral hearing.

(a) A participant may appear in a hearing on her or his own behalf or be represented by an authorized representative.

(b) A person appearing shall file a written notice stating her or his name, address and telephone number, and if an authorized representative, the basis of her or his eligibility and the name and address of the participant on whose behalf she or he appears.

(c) A person may be excluded from a hearing for disorderly, dilatory or contemptuous conduct, provided he or she is informed of the grounds and given an opportunity to respond.

§ 2.1325 Motions and requests.

(a) Motions and requests shall be addressed to the Presiding Officer, and, if written, also filed with the Secretary and served on other participants.

(b) Other participants may respond to the motion or request. Responses to written motions or requests shall be filed within 5 days after service unless the Commission or Presiding Officer directs otherwise.

(c) The Presiding Officer may entertain motions for extension of time and changes in schedule in accordance with paragraphs (a) and (b) of this section.

(d) When the Commission does not preside, in response to a motion or request, the Presiding Officer may refer a ruling or certify a question to the Commission for decision and notify the participants.

(e) Unless otherwise ordered by the Commission, a motion or request, or the certification of a question or referral of a ruling, shall not stay or extend any aspect of the hearing.

§ 2.1326 Burden of proof.

The applicant or the proponent of an order has the burden of proof.

§ 2.1327 Application for a stay of the effectiveness of NRC staff action on license transfer.

(a) Any application for a stay of the effectiveness of the NRC staff's order on the license transfer application shall be filed with the Commission within 5 days of the issuance of the notice of staff action pursuant to § 2.1316(a).

(b) An application for a stay must be no longer than 10 pages, exclusive of affidavits, and must contain:

(1) A concise summary of the action which is requested to be stayed; and

(2) A concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.

(c) Within 10 days after service of an application for a stay under this section, any participant may file an answer supporting or opposing the granting of a stay. Answers must be no longer than 10 pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section, as appropriate. No further replies to answers will be entertained.

(d) In determining whether to grant or deny an application for a stay, the Commission will consider:

(1) Whether the requestor will be irreparably injured unless a stay is granted;

(2) Whether the requestor has made a strong showing that it is likely to prevail on the merits;

(3) Whether the granting of a stay would harm other participants; and

(4) Where the public interest lies.

§ 2.1328 Default.

When a participant fails to act within a specified time, the Presiding Officer may consider that participant in default, issue an appropriate ruling and proceed without further notice to the defaulting participant.

§ 2.1329 Waiver of a rule or regulation.

(a) A participant may petition that a Commission rule or regulation be waived with respect to the license transfer application under consideration.

(b) The sole ground for a waiver shall be that, because of special circumstances concerning the subject of the hearing, application of a rule or regulation would not serve the purposes for which it was adopted.

(c) Waiver petitions shall specify why application of the rule or regulation would not serve the purposes for which it was adopted and shall be supported by affidavits to the extent applicable.

(d) Other participants may, within 10 days, file a response to a waiver petition.

(e) When the Commission does not preside, the Presiding Officer will certify the waiver petition to the Commission, which, in response, will grant or deny the waiver or direct any further proceedings.

§ 2.1330 Reporter and transcript for an oral hearing.

(a) A reporter designated by the Commission will record an oral hearing and prepare the official hearing transcript.

(b) Except for any portions that must be protected from disclosure in accordance with law and policy as reflected in 10 CFR 2.790, transcripts will be placed in the Public Document Room, and copies may be purchased from the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(c) Corrections of the official transcript may be made only as specified by the Secretary.

§ 2.1331 Commission action.

(a) Upon completion of a hearing, the Commission will issue a written opinion including its decision on the license transfer application and the reasons for the decision.

(b) The decision on issues designated for hearing pursuant to § 2.1308 will be based on the record developed at hearing.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

7. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Section 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 10141). Section 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134).

8. In § 51.22, a new paragraph (c)(21) is added to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(21) Approvals of direct or indirect transfers of any license issued by NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license.

* * * * *

Dated at Rockville, Maryland, this 27th day of November 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–32211 Filed 12–2–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–23–AD; Amendment 39–10915; AD 98–24–28]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company 250–B and 250–C Series Turboshaft and Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Allison Engine Company 250–B and 250–C series turboshaft and turboprop engines, that requires replacing existing beryllium copper main fuel control (MFC) bellows assemblies with Inconel 718 stainless steel welded MFC bellows assemblies. This amendment is prompted by reports of leaking MFC bellows assemblies resulting in an uncommanded minimum fuel flow condition, loss of engine fuel flow control and subsequent forced landing. The actions specified by this AD are intended to prevent MFC bellows assembly leakage, which can result in an uncommanded minimum fuel flow condition and subsequent loss of engine fuel flow control.

DATES: Effective January 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2350 E. Devon Avenue, Room 323, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Allison Engine Company 250–B and 250–C series turboshaft engines was published in the **Federal Register** on June 8, 1998 (63 FR 31138). That action proposed to require replacing the existing beryllium copper main fuel control (MFC) bellows assemblies at the next repair or overhaul of the MFC bellows assembly, or, since corrosion was a factor, by the calendar end-dates specified, whichever occurs first. Since that issuance of that proposal, the FAA has discovered that the turboprop aircraft were inadvertently omitted from the

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applicability section, which has been corrected is this final rule.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. This final rule references only one Allison Commercial Engine Bulletin (CEB) CEB–A–282, Revision 2, dated April 15, 1998, that also serves as the seven other CEBs listed in paragraph (b) of the proposed rule. It serves as the cover document for the AlliedSignal Aerospace Equipment Systems service bulletin GT–242, revision 2, dated April 15, 1998, the manufacturer of the MFC. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 2,500 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take no additional work hours per engine to accomplish the proposed actions at regularly scheduled overhaul, and required parts would cost approximately $1,495 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,737,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–28 Allison Engine Company: Amendment 39–10915. Docket 98–ANE–23–AD.

Applicability: Allison Engine Company 250–B15, 250–B17, 250–B17F, series turboprop engines and 250–C18, 250–C20, 250–C20R, 250–C28, 250–C30 series turboshaft engines, installed on but not limited to AeroSpace Technologies of Australia Pty Ltd Models N22B, N22S, and N24A; Beech Aircraft Corporation Model 35; Cessna Aircraft Company Model 210; Maule Aerospace Technology Corp. Models MX–7–420 and MXT–7–420; Partenavia Construzioni Aeronauticas S.p.A. Models AP68TP 300 and AP68TP 600; Pilatus Britten-Norman Models BN–2T and BN–2T–4R; SIAI Marchetti S.r.l. Models SF600 and SF600A airplanes; AGUSTA Models A109, A109A, A109AII, A109C; Bell Helicopter Textron Models 47, 206, 206A, 206B, 206L, 206L–1, 206L–4, 230; Enstrom Helicopter Models TH–28 and 480; Eurocopter Canada Model BO 105 LS A–3; Eurocopter Deutschland Models BO–105A, BO–105C, BO–105S and BO–105LS A–1; Eurocopter France Models AS355E, AS355F, AS355F1 and AS355F2; Hiller Model FH–1100; McDonnell Douglas Helicopter Company Models 369D, 369E, 369F, 369H, 369HM, 369HS, 369HE, 369FF, 500N; Rogerson Hiller Corp. Model UH–12E, Schweizer Model 269D; and Sikorsky Model S–76A rotorcraft; and Lockheed Martin Tactical Defense System Model GZ–22 airship.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent main fuel control (MFC) bellows assembly leakage, which can result in an uncommanded minimum fuel flow condition and subsequent loss of engine fuel flow control, accomplish the following:

(a) Replace existing beryllium copper MFC bellows assemblies, part numbers (P/Ns) 2523722, 2539647, 2540539, 2540767, and 2542526, with Inconel 718 stainless steel welded MFC bellows assemblies, P/N 2543598, in accordance with Allison Commercial Engine Bulletin (CEB) CEB–A–282/AlliedSignal Aerospace Equipment Systems Service Bulletin (SB) GT–242, Revision 2, dated April 15, 1998, at the earlier of the following:

(1) The next time after the effective date of this AD the MFC is being repaired or overhauled; or

(2) The following populations of MFCs, as applicable

(i) All MFCs listed by P/Ns in Tables 1 and 2 of the CEB/SB by March 31, 1999; or

(ii) All MFCs listed by P/Ns in Table 3 of the CEB/SB by August 31, 1999.

(iii) All MFCs listed by P/Ns in Tables 4 and 5 of the CEB/SB by October 31, 1999.

Note 2: Allison CEB–A–282, Revision 2, dated April 15, 1998, also serves as CEB–A–1329 for the 250–C20 series engines, CEB–A–73–2053 for the 250–C28 series engines, CEB–A–73–3068 for the 250–C30 series engines, CEB–A–73–4029 for the 250–C20R series engines, Turboprop (TP) CEB–A–158 for the 250–B15G series engines, TP CEB–A–1286 for the 250–B17 series engines, and TP CEB–A–73–2014 for the 250–B17F series engines.

(b) Perform the replacement of MFC bellows assemblies required by paragraph (a) of this AD in accordance with the accomplishment instructions paragraph of Allison CEB–A–282/AlliedSignal Aerospace Equipment Systems Service Bulletin (SB) SB GT–242 Revision 2, dated April 15, 1998.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following Allison Engine Company CEB/AlliedSignal Aerospace Equipment Systems SB GT–242, Revision 2, dated April 15, 1998:

Document No.	Pages	Revision	Date
CEB–A–282	1–28 ...	2	April 15, 1998
Total Pages: 28.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 7, 1999.

Issued in Burlington, Massachusetts, on November 18, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–31702 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–59–AD; Amendment 39–10920; AD 98–24–34]

RIN 2120–AA64

Airworthiness Directives; Hamilton Standard 54H60 Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hamilton Standard 54H60 series propellers. This action requires affected propeller blades to be removed from service and shipped to designated repair facilities for inspection for insufficient cold rolling of the beveled radius of the blade flange. Affected blades are identified by serial number. This amendment is prompted by reports of propeller blades that cracked due to incomplete cold rolling in the beveled radius area of the blade flange. The actions specified in this AD are intended to prevent propeller blade cracks due to incomplete cold rolling during manufacture, which can result in propeller blade separation and damage to the aircraft.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–59–AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Hamilton Standard, Publications Distribution Group, One Hamilton Rd., Windsor Locks, CT 06096–1010 ; telephone (860) 654–6876, fax (860) 654–6906. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of 16 propeller blades with insufficient cold rolling in the beveled radius of the blade flange area. Two of these blades were found with cracks and two others experienced a blade fracture and separation. Incomplete cold rolling in the beveled radius area of the blade flange may have occurred during manufacture of the affected Hamilton Standard Models 54H60–77, –91, –117, –123, and –125 propellers. The FAA issued airworthiness directive AD 97–13–07 (62 FR 34619, June 27, 1997) to correct the unsafe condition in the most critical population. This AD expands the population to include 13,372 additional propeller blades that require removal for inspection, and, if necessary, repair. This condition, if not corrected, could result in propeller blade cracks due to incomplete cold rolling during manufacture, which can result in propeller blade separation and damage to the aircraft.

The FAA has reviewed and approved the technical contents of Hamilton Standard Alert Service Bulletin (ASB) No. 54H60–61–A134, Revision 1, dated June 24, 1998, and ASB No. 54H60–61–A135, dated June 24, 1998, that identify affected propeller blades by serial number (S/N), and list the designated repair facilities for shipment of blades following removal from service for inspection and repair.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design, this AD is being issued to prevent propeller blade cracking. This AD requires, for affected propeller blades identified by S/N, removal from service and shipment to designated repair facilities for inspection for incomplete cold rolling during manufacture, and, repair, if necessary. The propeller blades identified in ASB No. 54H60–61–A135, dated June 24, 1998 are to be inspected within 100 hours time in service (TIS) while the propeller blades identified in ASB No. 54H60–61–A134, Revision 1, dated June 24, 1998, are to be inspected within 4,500 hours time since overhaul or for blades that have never been overhauled, 4,500 hours time since new. In addition all propeller blades must be inspected or repaired, if necessary, prior to September 30, 2002. This calendar end-date was determined by engineering study and evaluations. The actions are required to be accomplished in accordance with the ASBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–59–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–34 Hamilton Standard: Amendment 39–10920. Docket 98–ANE–59–AD.

Applicability: Hamilton Standard Models 54H60–77, –91, –117, –123, and –125 propellers, with propeller blades identified by serial number (S/N) in Hamilton Standard Alert Service Bulletin (ASB) No. 54H60–61–A134, Revision 1, dated June 24, 1998, and ASB No. 54H60–61–A135, dated June 24, 1998. These propellers are installed on but not limited to Lockheed L100, L188, L200, L288, L382, C130, P-3, and General Dynamics (Convair) CV580 and Guppy aircraft.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade cracks due to incomplete cold rolling during manufacture, which can result in propeller blade separation and damage to the aircraft, accomplish the following:

(a) Within 100 hours time in service (TIS) after the effective date of this AD, or prior to September 30, 2002, whichever occurs first, remove from service affected propeller blades identified by S/N in Hamilton Standard ASB No. 54H60–61–A135, dated June 24, 1998, and ship to designated repair facilities listed in that ASB for inspection, and, if necessary, repair.

(b) For affected propeller blades identified by S/N in ASB No. 54H60–61–A134, Revision 1, dated June 24, 1998, remove from service and ship to designated repair facilities listed in that ASB for inspection, and, if necessary, repair, after the effective date of this AD, in accordance with paragraphs (b)(1) and (b)(2) of this AD, or prior to September 30, 2002, whichever occurs first.

(1) Remove from service within 100 hours TIS propellers that have greater than 4,400 hours time since overhaul (TSO), or for propellers that have never been overhauled remove from service propellers that have greater than 4,400 hours time since new (TSN).

(2) For propellers with less than 4,400 hours (TSO) remove from service prior to accumulating 4,500 hours TSO, or for propellers with less than 4,400 hours TSN that have never been overhauled remove from service prior to accumulating 4,500 hours TSN.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following Hamilton Standard ASBs:

Document No.	Pages	Revision	Date
54H60–61–A134.	1–5	1	June 24, 1998
54H60–61–A134.	1–5	1	June 24, 1998
Total pages: 5.			
54H60–61–A135.	1–10	Original	June 24, 1998
Total pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, Publications Distribution Group, One Hamilton Rd., Windsor Locks, CT 06096–1010; telephone (860) 654–6876, fax (860) 654–6906. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 18, 1998.

Issued in Burlington, Massachusetts, on October 20, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–31701 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–21–AD; Amendment 39–10919; AD 98–24–33]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes, that requires a one-time visual inspection to detect fatigue cracking of the lower left nose of certain longerons and the attaching frames; repair, if necessary; and installation of a preventive modification. This amendment is prompted by several reports of fatigue cracking of certain longerons and the attaching frames. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane.

DATES: Effective January 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L; FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes was published in the **Federal Register** on March 24, 1998 (63 FR 14047). That action proposed to require a one-time visual inspection to detect fatigue cracking of the lower left nose of certain longerons and the attaching frames; repair, if necessary; and installation of a preventive modification.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request To Provide Option for Other Inspection Techniques

One commenter requests that the FAA revise the proposal to provide the option of using a dye check or a non-destructive testing (NDT) inspection method instead of (or in conjunction with) the required visual inspection. The FAA does not concur with this request. An inspection procedure was established several years ago to address inspections of the affected longerons. The FAA finds that introducing a new inspection procedure at this point would not be feasible. However, the FAA would consider a request for approval of a different inspection technique, in accordance with the provision of paragraph (d) of this AD, provided that adequate justification accompanies the request.

Requests To Extend Compliance Time

One commenter states that the proposed grace period of 6,000 flight cycles is logistically impractical due to the heavy access required in the electrical/electric (E/E) equipment compartment to accomplish the inspection/modification. The commenter suggests that the compliance time for the modification be revised to coincide with the next scheduled inspection interval per Corrosion Task No. 45–53301 in the DC9/MD80 Corrosion Prevention and Control Document MDC–K4606, which is required by AD 92–22–08, amendment 39–8394 (57 FR 57895, December 8, 1992).

Another commenter also requests that, for airplanes that have accumulated 40,000 or more total landings, the FAA require an external eddy current inspection within 6,000 landings, and repetitive inspections every 2,500 landings until the terminating modification is accomplished. The commenter proposes that if a cracked longeron is found, only a repair per the SRM should be required prior to further flight—not the modification. The commenter suggests that the modification should be required at the next scheduled "D" check, but no later than 12,000 landings.

The commenter indicates that it inspects the subject longerons at an interval of approximately 11,000 landings. Based on this inspection experience and the damage tolerance characteristics (i.e., crack detectability, crack growth rate, and residual strength) of the fuselage skin and longerons, the commenter states that the proposed grace period of 6,000 landings for airplanes that have accumulated 40,000 or more total landings is too restrictive and not justified. The commenter believes that an equivalent level of safety can be maintained with a repetitive inspection that is based on damage tolerance principles, while minimizing the operational impact to operators.

Another commenter requests that, if no cracking is detected, the FAA allow the option of continuing repetitive inspections in lieu of accomplishing the modification prior to further flight, as specified in the proposal.

The FAA concurs partially. The FAA does not consider that repetitive inspections are warranted in this case since continual access to repetitively inspect the affected longerons is difficult. However, the FAA agrees that the proposed grace period can be extended. The FAA considers that an extension of that grace period to 12,000 landings will provide time for operators of large fleets to access, inspect, and modify. The FAA finds that such an extension of the grace period will not compromise the safety of the affected fleet. Paragraph (a)(2) of this AD has been revised accordingly.

Additionally, for airplanes that have been inspected prior to the effective date of this AD in accordance with Corrosion Task No. 45–53301 of DC9/MD80 Corrosion Prevention and Control Document MDC–K4606, the FAA has added a new paragraph (a)(1) to this final rule to require that the actions be accomplished at the next scheduled repetitive corrosion task inspection.

Requests To Revise Cost Impact Information

One commenter does not object to the proposed rule, but requests that the cost impact information be revised to agree with the estimates presented in the referenced service bulletin (33.3 and 41.8 work hours) to provide industry with a more consistent cost estimate. Another commenter indicates that, based on the access requirements and actual work hours expended for similar actions, the proposed actions would take approximately 80 work hours per airplane with an elapsed time of 40 hours. The commenter believes that it is important to reflect accurate cost impact figures in the final rule since it will have a significant economic impact on operators.

The FAA does not concur. The number of work hours necessary to accomplish the required actions, specified as 25 in the cost impact information, was provided to the FAA by the manufacturer based on the best data available to date. No change to the cost impact information has been made.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,000 Model DC–9, Model DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, of the affected design in the worldwide fleet. The FAA estimates that 1,200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane (excluding work hours necessary to gain access and close up) to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,800,000, or $1,500 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–33 McDonnell Douglas: Amendment 39–10919. Docket 97–NM–21–AD.

Applicability: Model DC–9–10, –20, –30, –40, –50 and C–9 (military) series airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 53–256, Revision 1, dated November 29, 1994; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes and MD–88 airplanes, as listed in McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of longerons 22 through 26 and the attaching frames, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane; accomplish the following:

(a) Perform a visual inspection to detect cracking of the left lower nose of longerons 22 through 26 (inclusive) and the respective attaching frames at station frames Y=160.000 and Y=200.000; in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993, or Revision 1, dated November 29, 1994 [for Models DC–9, –10, –20, –30, –40, –50, and C–9 (military) series airplanes]; or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994 (for Model DC–9–81, –82, –83, and –87 series airplanes, and MD–88 airplanes); as applicable. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have been inspected prior to the effective date of this AD in accordance with Corrosion Prevention and Control Program Document MDC–K4606, Corrosion Task No. 45–53301: Perform the inspection at the next scheduled repetitive corrosion task inspection.

(2) For airplanes other than those identified in paragraph (a)(1) of this AD: Perform the inspection prior to the accumulation of 40,000 total landings, or within 12,000 landings after the effective date of this AD, whichever occurs later:

(b) If no cracking is detected: Prior to further flight, install clips and doublers under the longeron flanges and shim the longerons in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993, or Revision 1, dated November 29, 1994 [for Models DC–9, –10, –20, –30, –40, –50, and C–9 (military) series airplanes]; or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994 (for Model DC–9–81, –82, –83, and –87 series airplanes, and MD–88 airplanes); as applicable.

(c) If any cracking is detected: Prior to further flight, repair the cracks and install clips and doublers under the longeron flanges and shim the longerons in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993, or Revision 1, dated November 29, 1994 (for Models DC–9, –10, –20, –30, –40, –50, and C–9 (military) series airplanes); or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994 (for Model DC–9–81, –82, –83, and –87 series airplanes, and MD–88 airplanes); as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 53–256, dated August 12, 1993; McDonnell Douglas DC–9 Service Bulletin 53–256, Revision 1, dated November 29, 1994; or McDonnell Douglas MD–80 Service Bulletin 53–265, dated June 13, 1994; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Captiol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 7, 1999.

Issued in Renton, Washington, on November 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31698 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–72–AD; Amendment 39–10926; AD 98–22–11]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal, Inc. Model T5317A–1 Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–22–11 that was sent previously to all known U.S. owners and operators of AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engines by individual letters. This AD requires, prior to further flight, a pressure test to determine if both fuel pumps in the regulator, Part Number (PN) 1–170–240–93, are producing fuel pressure, and, if necessary, replacement of the fuel regulator with serviceable part. In addition, this AD requires repetitive engine fuel pump pressure tests. This amendment is prompted by a report of an accident involving an AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engine installed on a Kaman Aerospace model K–1200 rotorcraft engaged in logging operations. The actions specified by this AD are intended to prevent loss of fuel flow from the engine fuel regulator due to failure of both primary and secondary fuel pump drive shaft splines. This condition, if not corrected, could result in engine failure and forced autorotation landing.

DATES: Effective December 18, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–22–11, issued on October 30, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 98–ANE–72–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from AlliedSignal, Inc., 111 South 34th Street, P.O. Box 52181, Phoenix, Arizona 85072–2181; telephone (602) 231–3838; fax (602) 231–3800. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5262, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On October 30, 1998, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 98–22–11, applicable to AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engines, which requires, prior to further flight, a pressure test to determine if both fuel pumps in the regulator, PN 1–170–240–93, are producing fuel pressure, and if necessary, replacement of the fuel regulator with a serviceable part. In addition, this AD requires repetitive engine fuel pump pressure tests at intervals not to exceed 50 hours Time In Service (TIS). That action was prompted by an accident involving an AlliedSignal Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engine installed on a Kaman Aerospace model K–1200 rotorcraft engaged in logging operations. This condition, if not corrected, could result in engine failure and forced autorotation landing.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5317A–1–A0106, Revision 1, dated October 23, 1998, that describes procedures for a pressure test to determine if both fuel pumps in the regulator, PN 1–170–240–93, are producing fuel pressure, and, if necessary, replacement of the fuel regulator with serviceable part.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 98–22–11 to prevent engine failure and forced autorotation landing. The AD requires, prior to further flight, a pressure test to determine if both fuel pumps in the regulator are producing fuel pressure, and if necessary, replacement of the fuel regulator with serviceable parts. In addition, this AD requires repetitive engine fuel pump pressure tests at intervals not to exceed 50 hours time-in-service (TIS). The actions are required to be accomplished in accordance with the ASB described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 30, 1998, to all known U.S. owners and operators of AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–72–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–22–11 AlliedSignal, Inc.: Amendment 39–10926. Docket 98–ANE–72–AD.

Applicability: AlliedSignal, Inc. (formerly Textron Lycoming) model T5317A–1 turboshaft engines. These engines are installed on, but not limited to, Kaman Aerospace model K–1200 rotorcraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure and forced autorotation landing, accomplish the following:

(a) Prior to further flight, perform pressure tests to determine if both fuel pumps in the regulator, PN 1–170–240–93, are producing the specified fuel pressure in accordance with the accomplishment instructions paragraph of AlliedSignal Inc. Alert Service Bulletin (ASB) No. T5317A–1–A0106, Revision 1, dated October 23, 1998, Section 3, paragraphs A through F.

(b) If the observed pressures on the pressure gauges during the test do not read a minimum of 110 psig and within 50 plus or minus 2 psig of each other, replace the fuel regulator, PN 1–170–240–93, and repeat the requirements of paragraph (a) of this AD.

(c) Thereafter, perform pressure tests using the procedures of paragraph (a) of this AD at intervals not to exceed 50 hours Time In Service (TIS) since last pressure test.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) The fuel pressure tests shall be done in accordance with the following AlliedSignal, Inc. alert service bulletin:

Document No.	Pages	Revision	Date
T5317A–1–A0106	1–6	1	October 23, 1998.
Total pages: 6.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal, Inc., 111 South 34th Street, P.O. Box 52181, Phoenix, Arizona 85072–2181; telephone (602) 231–3838; fax (602) 231–3800. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective December 18, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–22–11, issued October 23, 1998, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on November 25, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–32047 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–62–AD; Amendment 39–10922; AD 98–25–01]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. AT–300, AT–400, and AT–500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 96–23–19, which currently requires installing a new flap actuator overtravel stop and a roll pin through the overtravel stop and jack screw on certain Air Tractor, Inc. (Air Tractor) Models AT–300, AT–400, and AT–500 series airplanes. This AD requires replacing the existing flap actuator overtravel stop with a new one of improved design. This AD is the result of reports of the jack screw breaking through the roll pin hole on three of the affected airplanes that were already in compliance with AD 96–23–19. The actions specified by this AD are intended to prevent interference between the flap pushrod and the aileron pushrod caused by the flap actuator overtravel nut disengaging, which could result in loss of aileron control.

DATES: Effective January 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 19, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Air Tractor, Inc., P. O. Box 485, Olney, Texas 76374. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bob May, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor AT–300, AT–400, and AT–500 series airplanes was published in the **Federal Register** on July 21, 1998 (63 FR 39053). The NPRM proposed to supersede AD 96–23–19, Amendment 39–9823 (61 FR 58985, November 11, 1996), which currently requires installing a new flap actuator overtravel stop and a roll pin through the overtravel stop and jack screw on the affected airplanes.

The proposed AD would require replacing the existing flap actuator overtravel stop with a new one of improved design, part number (P/N) 70975–1. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Snow Engineering Co. Service Letter #165, dated May 15, 1998.

The NPRM was the result of reports of the jack screw breaking through the roll pin hole on three of the affected airplanes that were already in compliance with AD 96–23–19.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 1,250 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the replacement, and that the average labor rate is approximately $60 an hour. The manufacturer will supply parts at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $150,000, or $120 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy

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of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing airworthiness directive (AD) 96–23–19, Amendment 39–9823 (61 FR 58985, November 11, 1996), and by adding a new AD to read as follows:

98–25–01 Air Tractor, Inc.: Amendment 39–10922; Docket No. 98–CE–62–AD; Supersedes AD 96–23–19, Amendment 39–9823.

Applicability: The following model and serial numbered airplanes, certificated in any category, that do not have a part number (P/N) 70975–1 flap actuator overtravel stop installed in accordance with the *REWORK INSTRUCTIONS* section of Snow Engineering Co. Service Letter #165, dated May 15, 1998:

Models AT–300, AT–301, AT–302, AT–400, AT–400A, AT-401, AT–401A, AT–401B, AT–402, AT–402A, and AT–402B airplanes, serial numbers 300–0001 through 401B–1063; and

Models AT–501, AT–502, AT–502A, AT–502B, and AT-503A airplanes, serial numbers 502–0001 through 502B-0500.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent interference between the flap pushrod and the aileron pushrod caused by the flap actuator overtravel nut disengaging, which could result in loss of aileron control, accomplish the following:

(a) Replace the existing flap actuator overtravel stop with a new one of improved design, P/N 70975–1. Accomplish this replacement in accordance with the *REWORK INSTRUCTIONS* section of Snow Engineering Co. Service Letter #165, dated May 15, 1998.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

(2) Alternative methods of compliance approved in accordance with AD 96–23–19 are not considered approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) The replacement required by this AD shall be done in accordance with Snow Engineering Co. Service Letter #165, dated May 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Tractor Inc., P.O. Box 485, Olney, Texas 76374. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment supersedes AD 96–23–19, Amendment 39–9823.

(f) This amendment becomes effective on January 19, 1999.

Issued in Kansas City, Missouri, on November 24, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32046 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–109–AD; Amendment 39–10925; AD 98–25–03]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model 172R airplanes that are not equipped with an autopilot. This AD requires inspecting the right wing for an incorrectly routed, frayed, or damaged aileron control cable, and re-routing any incorrectly routed cable or replacing any frayed or damaged cable. The AD also requires reporting any incorrectly routed, frayed, or damaged cable to the Federal Aviation Administration (FAA). This AD is the result of a report of an incorrectly routed aileron control cable in the right wing of an airplane of the same type design to those affected by this AD. The cable was routed over the aileron auto pilot actuator pulley and the cable was rubbing on the cable guard. The actions specified by this AD are intended to prevent loss of aileron control caused by a damaged or frayed aileron control cable, which could result in loss of directional control of the airplane.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–109–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550; facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation

Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–109–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joel M. Ligon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone: (316) 946–4138; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report of an incorrectly routed aileron control cable in the right wing of a Cessna Model 172R airplane. The cable was routed over the aileron auto pilot actuator pulley and the cable was rubbing on the cable guard.

The FAA initially covered this issue with AD 98–13–41, Amendment 39–10634 (63 FR 34800, June 26, 1998). This AD requires, among other things, inspecting the right wing of certain Cessna Model 172R airplanes for an incorrectly routed, frayed, or damaged aileron control cable, and re-routing any incorrectly routed cable or replacing any frayed or damaged cable. Accomplishment of the inspection required by AD 98–13–41 is required in accordance with Cessna Service Bulletin SB98–27–05, dated June 1, 1998.

AD 98–13–41 also requires reporting any incorrectly routed, frayed, or damaged cable to the FAA.

The following serial numbers of the Cessna Model 172R airplanes were inadvertently left out of the Applicability of AD 98–13–41: 17280437; 17280439; 17280454; 17280456; and 17280459.

Cessna has revised Service Bulletin SB98–27–05 to include these serial numbers. Cessna Service Bulletin SB98–27–05 incorporates the following pages:

Pages	Revision Level	Date
1, 2, 9 and 10	Revision 1	August 17, 1998
3 through 8 ...	Original Issue	June 1, 1998

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

The inspections and possible correction and/or replacement of the right wing aileron control cable required by AD 98–13–41 should also apply to the 5 Model 172R airplanes previously referenced; and

AD action should be taken to prevent loss of aileron control caused by a damaged or frayed aileron control cable, which could result in loss of directional control of the airplane.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in these 5 Cessna Model 172R airplanes that are the same type design to those included in AD 98–13–41, the FAA is issuing an AD. This AD requires inspecting the right wing for an incorrectly routed, frayed, or damaged aileron control cable, and re-routing any incorrectly routed cable or replacing any frayed or damaged cable. The AD also requires reporting any incorrectly routed, frayed, or damaged cable to the FAA. Accomplishment of the inspection is required in accordance with the previously referenced service information. Accomplishment of the correction or replacement is required in accordance with the applicable maintenance manual.

Determination of the Effective Date of the AD

Since a situation exists (possible loss of airplane directional control) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–109–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

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PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–25–03 Cessna Aircraft Company: Amendment 39–10925; Docket No. 98–CE–109–AD.

Applicability: Model 172R airplanes, serial numbers 17280437, 17280439, 17280454, 17280456, and 17280459; certificated in any category, that were not factory equipped with an autopilot.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of aileron control caused by a damaged or frayed aileron control cable, which could result in loss of directional control of the airplane, accomplish the following:

(a) Inspect the right wing for an incorrectly routed, frayed, or damaged aileron control cable, in accordance with the Accomplishment Instructions in Cessna Service Bulletin SB98–27–05, which incorporates the following pages:

Pages	Revision Level	Date
1, 2, 9 and 10	Revision 1	August 17, 1998
3 through 8 ...	Original Issue	June 1, 1998

(b) Prior to further flight, re-route any incorrectly routed cable and replace any frayed or damaged cable, in accordance with the applicable maintenance manual.

(c) If an incorrectly routed, damaged, or frayed cable is found during the inspection required by paragraph (a) of this AD, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, submit a report of inspection findings to the Manager, Wichita Manufacturing Inspection Office, 1801 Airport Road, Room 101, Mid-Continent Airport, Wichita, Kansas, 67209; telephone: (316) 946–4175; facsimile: (316) 946–4452. The report must include the condition found, date of inspection, and the serial number of the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) *For airplanes on which the inspection is accomplished after the effective date of this AD:* Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) *For airplanes on which the inspection has been accomplished prior to the effective date of this AD:* Submit the report within 10 days after the effective date of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The inspection required by this AD shall be done in accordance with Cessna Service Bulletin SB98–27–05, which incorporates the following pages:

Pages	Revision Level	Date
1, 2, 9 and 10	Revision 1	August 17, 1998
3 through 8 ...	Original Issue	June 1, 1998

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on December 18, 1998.

Issued in Kansas City, Missouri, on November 24, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32044 Filed 12–2–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–107–AD; Amendment 39–10924; AD 98–25–02]

RIN 2120–AA64

Airworthiness Directives; BFGoodrich Avionics Systems, Inc. SKYWATCH SKY497 Installations with a Top-Mounted Antenna

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all BFGoodrich Avionics Systems, Inc. (BFGoodrich) SKYWATCH SKY497 installations with a top-mounted antenna that are installed on aircraft. This AD requires incorporating information into the airplane flight manual (AFM) that specifies verifying the correct antenna configuration each time an aircraft equipped with a SKY497 installation with a top-mounted antenna is powered-up. The AD also requires removing from service any of these SKY497 installations with an incorrect antenna configuration. This AD results from numerous reports of internal component failure of the above-referenced installations, which changed the antenna configuration (from TOP to BOTTOM mount). The actions specified by this AD are intended to prevent the display of target indicators on the wrong side of the aircraft caused by an internal component failure in the SKY497 installations with a top-mounted antenna, which could result in the pilot making an incorrect initial maneuver based on the displayed information while trying to visually acquire the aircraft.

DATES: Effective December 22, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–107–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from BFGoodrich Avionics Systems, Inc., 5353 52nd Street, Southeast, P.O. Box 873, Grand Rapids, Michigan 49588–0873; telephone: (800) 453–0288;

facsimile: (616) 285–4224. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–107–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Brenda Ocker, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7126; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

BFGoodrich has communicated to the FAA 11 reports of internal component failure of BFGoodrich SKYWATCH SKY497 installations with a top-mounted antenna. When this failure occurs, the antenna configuration changes from the TOP to BOTTOM mount; e.g., the actual target at the 9 o'clock position relative to the aircraft shows on the SKY497 installation in the 3 o'clock position.

This condition, if not corrected in a timely manner, could result in the display of target indicators on the wrong side of the aircraft. The SkyWatch system is an advisory system and the pilot should not maneuver based on the displayed information alone. However, the pilot may make an incorrect initial maneuver based on the displayed information while trying to visually acquire the aircraft.

Relevant Service Information

BFGoodrich has issued Alert Service Bulletin SB #78A, dated October 21, 1998, which specifies procedures for verifying that the SKY497 antenna configuration is in the top mount position every time an affected aircraft is powered-up.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent the display of target indicators on the wrong side of the aircraft caused by the current design of the SKY497 installations with a top-mounted antenna. This could result in the pilot making incorrect aircraft maneuvers based on the displayed information.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other aircraft equipped with SKY497 installations with a top-mounted antenna, the FAA is taking AD action. This AD requires incorporating information into the airplane flight manual (AFM) that specifies verifying the correct antenna configuration each time an aircraft equipped with a SKY497 installation with a top-mounted antenna is powered-up. The AD also requires removing from service any of these SKY 497 installations with an incorrect antenna configuration.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–107–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–25–02 BFGoodrich Avionics Systems, Inc.: Amendment 39–10924, Docket No. 98-CE–107-AD.

Applicability: SKYWATCH SKY497 installations with a top-mounted antenna that are installed on, but not limited to, the following aircraft, all serial numbers, certificated in any category:

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Manufacturer	Aircraft models and/or series
Raytheon	Beech 90, 100, 200, and 300 Series.
Cessna	172, 182, 206, 208, 210, 300, 400, and 500 Series.
Piper	PA–23, PA–31–360, PA–31T, PA–32, PA–34, PA–42, and PA–46.
Hawker	HS–700 and HS–800.
Mitsubishi	MU–2 Series.
Dassault	F10.
Mooney	M20 Series.
Bombardier	DHC–6 Series.
West- wind	1124.
Bell	407.
Eurocopter	AS365.
Socata	TBM700.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the display of target indicators on the wrong side of the aircraft caused by an internal component failure in the SKY497 installations with a top-mounted antenna, which could result in the pilot making an incorrect initial maneuver based on the displayed information while trying to visually acquire the aircraft, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, place the information in the Appendix to this AD into the Limitations Section of the airplane flight manual (AFM).

(1) This information specifies verifying the correct antenna configuration each time an aircraft equipped with a SKY497 installation with a top-mounted antenna is powered-up.

(2) This information is a duplication of the information presented in BFGoodrich Alert Service Bulletin #78A, dated October 21, 1998.

(b) If an incorrect antenna configuration is found during any of the power-up procedures specified in the AFM information required by this AD, prior to further flight, remove the SKY497 installation from service.

(c) Inserting the information into the Limitations Section of the AFM as required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 FR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 East Devon Avenue, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(f) The service information referenced in this AD may be obtained from BFGoodrich Avionics Systems, Inc. 5353 52nd Street, Southeast, P.O. Box 873, Grand Rapids, Michigan 49588–0873. This document or other information related to this AD may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment becomes effective on December 22, 1998.

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APPENDIX TO AD 98-25-02;
AMENDMENT 39-10924; DOCKET NO. 98-CE-107-AD.

POWER-UP PROCEDURES FOR SKYWATCH SKY497 INSTALLATIONS WITH A TOP-MOUNTED ANTENNA

The following power-up procedure must be accomplished each time the system is powered-up:

1. If a WX-1000 is installed with the SKYWATCH, ensure that the STORMSCOPE/CWS switch is in the CWS position.
2. At the SKYWATCH display, access the service menu by holding the left two buttons depressed and switch the system on. Hold the buttons until the Service Menu is displayed. The Service Menu is shown in figure 1.

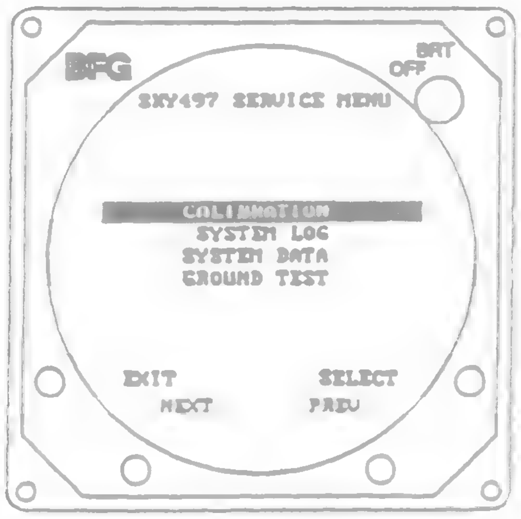

BFG
BRT
OFF
SKY497 SERVICE MENU
CALIBRATION
SYSTEM LOG
SYSTEM DATA
GROUND TEST
EXIT
NEXT
SELECT
PREV

Figure 1.

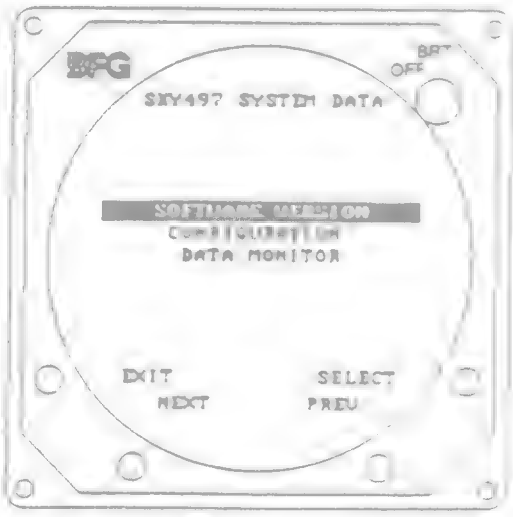
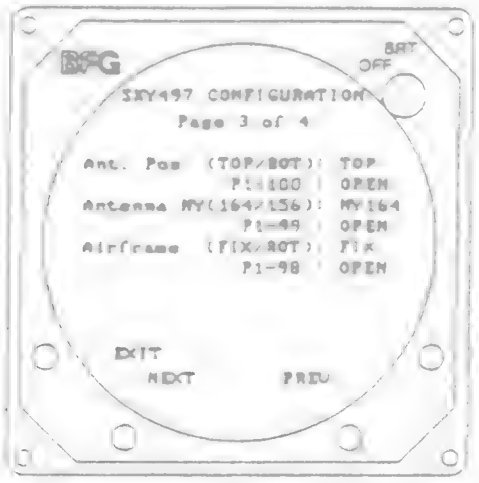

BFG
BRT
OFF
SKY497 SYSTEM DATA
SOFTWARE VERSION
CONFIGURATION
DATA MONITOR
EXIT
NEXT
SELECT
PREV

Figure 2.

3. Highlight SYSTEM DATA (press NEXT button two times) and then press SELECT. The SYSTEM DATA screen, as shown in figure 2 will be displayed.
4. Highlight CONFIGURATION by pressing the NEXT button and then press SELECT. The configuration display consists of 4 pages. Advance to Page 3 of 4-(see figure 3) by pressing the NEXT button two times.
5. Verify that the antenna position is configured for TOP mount (i.e., as shown in figure 3).

APPENDIX TO AD 98-25-02; AMENDMENT 39-10924; DOCKET NO. 98-CE-107-AD.

POWER-UP PROCEDURES FOR SKYWATCH SKY497 INSTALLATIONS WITH A TOP-MOUNTED ANTENNA (Continued)


BFG
BAT OFF
EXIT
NEXT
PREV

```
SKY497 CONFIGURATION
Page 3 of 4

Ant. Pos  (TOP/BOT): TOP
             P1-100 : OPEN
Antenna NY(164/156): NY164
              P1-99 : OPEN
Airframe  (FIX/ROT): FIX
              P1-98 : OPEN
```

Figure 3.

6. If the antenna configuration is correct, press EXIT until the start-up screen (see figure 4) is displayed.

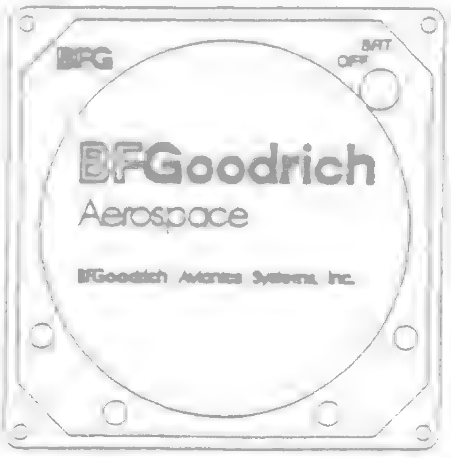

BFG
BAT OFF
BFGoodrich
Aerospace
BFGoodrich Avionics Systems, Inc.

Figure 4.

7. If a WX-1000 is installed, position the STORMSCOPE/CWS switch to the STORMSCOPE position and exit the STORMSCOPE service menu by pressing the EXIT button.
8. If the antenna configuration is not correct (i.e., configured for BOTtom mount), turn SKYWATCH off and return the unit for service.

Issued in Kansas City, Missouri, on November 24, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32101 Filed 12–2–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–258–AD; Amendment 39–10927; AD 98–25–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, that requires repetitive inspections to detect debris in the areas behind the aft lavatory toilet shroud, behind the aft lavatory modules, and below the cabin floor aft of the aft cargo compartment bulkhead; and removal of debris. This amendment also requires modification of the lavatory toilet shroud assemblies and modification of the lavatory entry door louvers, which terminates the repetitive inspections. This amendment is prompted by reports of paper debris collecting below the cabin floor. The actions specified by this AD are intended to prevent paper debris from collecting below the cabin floor, which could result in a potential fire hazard or possible loss of elevator control system redundancy.

DATES: Effective January 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert H. Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes was published in the **Federal Register** on May 20, 1998 (63 FR 27692). That action proposed to require repetitive inspections to detect debris in the areas behind the aft lavatory toilet shroud, behind the aft lavatory modules, and below the cabin floor aft of the aft cargo compartment bulkhead; and removal of debris. That action also proposed to require modification of the lavatory toilet shroud assemblies and modification of the lavatory entry door louvers, which would terminate the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Withdraw the Proposed Rule

One commenter [The Boeing Company, Douglas Products Division (DPD)] "takes serious issue" with a statement that appears in the Summary section of the preamble of the proposed rule. That statement specifies that the proposed rule is prompted by reports of paper debris collecting on the hot pneumatic ducts below the cabin floor. The commenter indicates that it has never seen or reported paper on the pneumatic duct, nor has the commenter received such reports from others. In addition, the commenter states that a lit cigarette has always been suggested as the potential fire hazard not paper debris on the ducts.

The FAA infers from the commenter's remarks that it requests the proposed AD be withdrawn. The FAA does not concur. The FAA acknowledges that it has not received reports of paper debris collecting on the hot pneumatic ducts. Since paper debris collecting below the cabin floor poses a potential fire hazard and could result in possible loss of elevator control system redundancy, the FAA must issue this final rule to correct that unsafe condition.

However, the FAA has received reports of paper debris collecting below the cabin floor, and has revised the Summary section and the unsafe condition of this final rule to clarify this information.

Request To Remove Reporting Requirement

One commenter has no objection to the proposed inspection and modifications specified in the proposal. However, the commenter requests that the proposed rule provide relief from the reporting requirement specified in McDonnell Douglas Alert Service Bulletin MD90–25A017, which is referenced in the proposed rule as the appropriate source of service information. The commenter suggests either exempting operators from the reporting requirement, or only requiring operators to report initial inspection results to McDonnell Douglas. The commenter states that reporting both positive and negative findings of initial and repetitive inspections, as specified in the alert service bulletin, seems to be more of an industry evaluation to determine the viability of the AD, rather than an AD-mandated issue.

The FAA concurs with the commenter's request. The FAA points out that the proposed rule does not specify a requirement for reporting inspection findings to the manufacturer. The alert service bulletin referenced by the commenter is cited in the AD to provide procedures for accomplishment of the required inspection. However, to eliminate any confusion concerning a reporting requirement, this final rule has been revised to cite specific paragraphs of the alert service bulletin that are required to be accomplished. Additionally, the issuance date of Revision R01 of the alert service bulletin has been changed from October 15, 1997, to October 16, 1997, in this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 55 Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $5,700, or $300 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the required modification of the toilet shroud assemblies, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $1,140, or $60 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required modification of the lavatory entry door louvers, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $1,140, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–04 McDonnell Douglas: Amendment 39–10927. Docket 97–NM–258–AD.

Applicability: Model MD–90–30 series airplanes; as listed in paragraph 1.A.1. of McDonnell Douglas Alert Service Bulletin MD90–25A017, Revision R01, dated October 16, 1997, McDonnell Douglas Service Bulletin MD90–25–022, Revision R01, dated October 15, 1997, and McDonnell Douglas Service Bulletin MD90–25A023, Revision R01, dated October 15, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a potential fire hazard or the possible loss of elevator control system redundancy due to paper debris collecting below the cabin floor, accomplish the following:

(a) Within 450 flight hours or 3 months after the effective date of this AD, whichever occurs later, perform an inspection to detect paper and lint debris in the areas behind the aft lavatory toilet shroud, behind the aft lavatory modules, and below the cabin floor aft of the aft cargo compartment bulkhead, in accordance with paragraphs 3.A.1 through 3.A.15 inclusive of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD90–25A017, Revision R01, dated October 16, 1997. If any debris is found, prior to further flight, remove it in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 450 flight hours.

(b) Within 12 months after the effective date of this AD, modify the lavatory toilet shroud assemblies in accordance with paragraph 3. ("Accomplishment Instructions") of McDonnell Douglas Service Bulletin MD90–25–022, Revision R01, dated October 15, 1997.

(c) Within 12 months after the effective date of this AD, modify the lavatory entry door louvers in accordance with paragraph 3. ("Accomplishment Instructions") of McDonnell Douglas Service Bulletin MD90–25–023, Revision R01, dated October 15, 1997.

(d) Modification of the toilet shroud assemblies and the lavatory entry door louvers in accordance with paragraphs (b) and (c) of this AD constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–25A017, Revision R01, dated October 16, 1997; McDonnell Douglas Service Bulletin MD90–25–022, Revision R01, dated October 15, 1997; and McDonnell Douglas Service Bulletin MD90–25–023, Revision R01, dated October 15, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the

Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 7, 1999.

Issued in Renton, Washington, on November 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32098 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–264–AD; Amendment 39–10928; AD 98–25–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–111, –112, and –131 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A321–111, –112, and –131 series airplanes. This action requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A321–111, –112, and –131 series airplanes. The DGAC advises that, during full-scale testing of a Model A320 test article, fatigue cracking was detected between 64,120 and 82,607 total simulated flight cycles. Investigation revealed that the fatigue cracks originated at the attachment holes of the forward pintle fittings and the actuating cylinder anchorage fittings. Such fatigue cracking on the inner rear spar of the wings, if not detected and corrected, could result in reduced structural integrity of the airplane.

Similar Airplane Models

The inner rear spar construction of the wings of Model A321 series airplanes is similar in design to that of Model A320 series airplanes. Therefore, Model A321 series airplanes may be subject to the same unsafe condition revealed on the Model A320 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1101, dated July 24, 1997, which describes procedures for repetitive ultrasonic inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar.

Airbus also has issued Service Bulletin A320–57–1100, including Appendix 1, both dated July 28, 1997. This service bulletin describes procedures for visual and eddy current inspections to detect cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; follow-on corrective actions, if necessary; and rework of the attachment holes, which eliminates the need for the repetitive ultrasonic inspections described in Airbus Service Bulletin A320–57–1101.

Accomplishment of the actions specified in Airbus Service Bulletin A320–57–1101 or A320–57–1100 is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletin A320–57–1101 as mandatory and issued French airworthiness directive 98–212–116(B), dated June 3, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in Airbus Service Bulletin A320–57–1101 described previously, except as discussed below. This AD also provides for optional terminating action for the repetitive inspections required by this AD.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections required by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections

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to detect cracking before it represents a hazard to the airplane.

Differences Between Rule and Service Bulletin

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of cracking conditions in the area surrounding certain attachment holes of the forward pintle fittings of the MLG, this AD requires the repair of the fatigue cracking to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that will be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC is acceptable for compliance with this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD would be $1,200 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 520 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $17,540 per airplane. Based on these figures, the cost impact of the optional terminating action would be $48,740 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–264–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–05 Airbus Industrie: Amendment 39–10928. Docket 98–NM–264–AD.

Applicability: Model A321–111, –112, and –131 series airplanes; except those on which Airbus Modification 24977 has been accomplished during production, or on which the action described in Airbus Service Bulletin A320–57–1100, dated July 28, 1997 (Airbus Modification 26010) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 120 days after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar, in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997.

(1) If no cracking is detected, prior to further flight, repair the sealant in the inspected areas and repeat the ultrasonic inspections thereafter at intervals not to exceed 7,700 flight cycles.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(b) Accomplishment of visual and eddy current inspections to detect cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; follow-on corrective actions, as applicable; and rework of the attachment holes; in accordance with Airbus Service Bulletin A320–57–1100, dated July 28, 1997, constitutes terminating action for the repetitive inspection requirements of this AD. If any cracking is detected during accomplishment of any inspection described in the service bulletin, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraphs (a)(2) and (b) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–212–116(B), dated June 3, 1998.

(f) This amendment becomes effective on December 18, 1998.

Issued in Renton, Washington, on November 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32099 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–44]

Remove Class D Airspace; Fort Leavenworth, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; extension of comment period.

SUMMARY: This notice announces an extension of the comment period on a Direct final rule; request for comments which proposed to remove the Class D airspace at Fort Leavenworth, KS. This action is being taken due to a delay in distribution of the Direct final rule; request for comments document.

DATES: Comments must be received on or before December 10, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–44, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 98–ACE–44, published on October 28, 1998 (63 FR 57585) proposed to remove the Class D airspace at Fort Leavenworth, KS. This action will extend the comment period closing date on that airspace docket from November 17, 1998, to December 10, 1998, to allow for a 44-day comment period instead of the existing 20 day comment period.

List of Subjects in 14 CFR Part 71

Airspsace, Incorporation by reference, Navigation (air).

Extension of Comment Period

The comment period closing date on Airspace Docket No. 98–ACE–44 is hereby extended to December 10, 1998.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Kansas City, MO, on November 17, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32138 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No. PA–4082a; FRL–6194–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_x RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO_x) reasonably available control technology (RACT) for five major sources located in Pennsylvania. EPA is approving these source-specific plan approvals, operating and compliance permits that establish the above-mentioned RACT requirements in accordance with the Clean Air Act.

DATES: This direct final rule is effective on February 1, 1999 without further notice, unless EPA receives adverse written comment by January 4, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kathleen Henry, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

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Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Linda Miller (215) 814–2068, at the EPA Region III office or via e-mail at miller.linda@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 1995, November 15, 1995, March 21, 1996, and September 13, 1996, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). The SIP revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO_x) reasonably available control technology (RACT) for five major sources located in Pennsylvania. Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this document, and not identified below, will be addressed in a separate rulemaking action. Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_x sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements for five sources in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals, operating and compliance permits can be found in the docket and accompanying technical support document (TSD) and will not be reiterated in this document. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for five major sources. Several of the plan approvals, compliance and operating permits contain conditions irrelevant to the determination of VOC or NO_x RACT. Consequently, these provisions are not being included in this approval for source-specific VOC or NO_x RACT.

RACT Determinations

The following table identifies the individual plan approvals, operating and compliance permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available upon further request from the EPA Region III office listed in the **ADDRESSES** section of this document.

PENNSYLVANIA—VOC AND NO_x Ract Determinations for Individual Sources

Source	County	Plan Approval (PA #) Operating Permit (OP #) Compliance Permit (CP #)	Source type	"Major source" pollutant
Columbia Gas Transmission Corportation-Artemas Compressor Station.	Bedford	PA 05–2006	Natural Gas Transmission	NO_x.
Columbia Gas Transmission Corportation-Donegal Compressor Station.	Washington	PA 63–000–631	Natural Gas Transmission	NO_x and VOC.
Columbia Gas Transmission Corportation-Gettysburg Compressor Station.	Adam	OP 01–2003	Natural Gas Transmission	NO_x.
Columbia Gas Transmission Corportation-Eagle Compresor Station.	Chester	OP 15–631	Natural Gas Transmission	NO_x and VOC.
Columbia Gas Transmission Corportation-Downingtown Compressor Station.	Chester	CP 15–0020	Natural Gas Transmission	NO_x.

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule should adverse comments be filed. This rule will be effective February 1, 1999 without further notice unless the Agency receives adverse comments by January 4, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 1, 1999 and no further action will be taken on the proposed rule. If adverse comments are received that do not pertain to all paragraphs subject to this rule, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

II. Final Action

EPA is approving two plan approvals, two operating permits and one compliance permit for NO_x and/or VOC RACT for five individual sources.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* versus *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

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H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve VOC and NO_X RACT determinations for a number of individual sources in Pennsylvania as a revision to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 13, 1998.

William Wisnewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(137) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(137) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_X RACT, submitted on May 31, 1995, November 15, 1995, March 21, 1996 and September 13, 1996 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Four letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations in the form of plan approvals, operating or compliance permits on the following dates: May 31, 1995, November 15, 1995, September 13, 1996 and March 21, 1996.

(B) Plan approvals (PA), Operating permits (OP), Compliance Permits (CP):

(*1*) Columbia Gas Transmission Corporation—Artemas Compressor Station, Bedford County, PA O5–2006, effective April 19, 1995; except for the plan approval expiration date and item (or portions thereof) Nos. 4 and 13 relating to non-RACT provisions.

(*2*) Columbia Gas Transmission Corporation—Donegal Compressor Station, Washington County, PA 63–000–631, effective July 10, 1995; except for the plan approval expiration date and item (or portions thereof) Nos. 9 and 20 relating to non-RACT provisions.

(*3*) Columbia Gas Transmission Corporation—Gettysburg Compressor Station, Adam County, OP 01–2003, effective April 21, 1995; except for the operating permit expiration date and item (or portions thereof) No. 13 relating to non-RACT provisions.

(*4*) Columbia Gas Transmission Corporation—Eagle Compressor Station, Chester County, OP 15–022, effective February 1, 1996; except for the operating permit expiration date and item (or portions thereof) Nos. 9 and 10 relating to non-RACT provisions.

(*5*) Columbia Gas Transmission Corporation—Downingtown Compressor Station, Chester County, CP–15–0020, effective September 15, 1995; except for the compliance permit expiration date and item (or portions thereof) Nos. 2 and 6 relating to non-RACT provisions.

(ii) Additional Material—Remainder of the Commonwealth of Pennsylvania's May 31, 1995, November 15, 1995, March 21, 1996 and September 13, 1996 VOC and NO_X RACT SIP submittals.

[FR Doc. 98–32006 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 162–0109; FRL–6194–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on August 11, 1998. The revised rule controls VOC emissions from sources coating metal parts and products in the Santa Barbara County Air Pollution Control District. EPA's final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because this revision, while strengthening the SIP, also does not meet fully the CAA provisions regarding plan submissions and requirements for nonattainment areas. Because of this limited disapproval, EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on January 4, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814; and,

Santa Barbara County Air Pollution Control District 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 330—Surface Coating of Metal Parts and Products. This rule was submitted by the California Air Resource Board to EPA on October 13, 1995.

II. Background

On August 11, 1998 in 63 FR 42784, EPA proposed granting limited approval and limited disapproval and including within the California SIP Santa Barbara County Air Pollution Control District's (SBCAPCD) Rule 330—Surface Coating of Metal Parts and Products. SBCAPCD revised and adopted Rule 330 on April 21, 1995. The California Air Resource Board submitted Rule 330 to EPA on October 13, 1995. This rule was submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for Rule 330 and nonattainment areas is provided in the proposed rule cited above.

EPA evaluated Rule 330 for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule. EPA is finalizing the limited approval of Rule 330 to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. Rule 330 contains the following deficiencies:

—the rule allows the use of up to 200 gallons per year of non-compliant coating exceeding USEPA's 55 gallon per year limit; and,

—the rule does not require a metal parts and products coating operation to record its daily use of non-compliant coatings.

A detailed discussion of Rule 330's deficiencies can be found in the Technical Support Document for Rule 330 (7/98), which is available from the U.S. EPA, Region 9 office.

III. Response to Public Comments

A 30-day public comment period was provided in 63 FR 42784. EPA received no comment letters on this August 11, 1998 proposal for a limited approval and limited disapproval.

IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of SBCAPCD, Rule 330—Surface Coating of Metal Parts and Products. The limited approval of this rule is finalized under section 110(k)(3) given EPA's authority, pursuant to section 301(a), to adopt regulations necessary to further air quality by strengthening the SIP. EPA's approval is limited in the sense that although Rule 330 strengthens the SIP, it does not meet the section 182(a)(2)(A) CAA requirement because of the rule's deficiencies discussed in the proposed rule. Thus, to strengthen the SIP, EPA is granting limited approval of Rule 330 under sections 110(k)(3) and 301(a) of the CAA. This action approves the Rule 330 into the SIP as a federally enforceable rule.

At the same time, EPA is finalizing a limited disapproval of Rule 330 because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA; and, as such, the rule does not fully meet the requirements of Part D of the Act. As stated in the proposed rule, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that Rule 330 has been adopted by the SBCAPCD and is in effect within the SBCAPCD. EPA's limited disapproval action will not prevent the SBCAPCD, State of California, or EPA from enforcing this rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that

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significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or, to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 18, 1998.

Laura Yoshii,

Acting Regional Administrator, Region 9.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (225)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(225) * * *

(i) * * *

(F) * * *

(*1*) Rule 330, adopted on April 21, 1995.

* * * * *

[FR Doc. 98–32004 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

30 CFR Part 602; 43 CFR Part 3195

[WO–130–1820–00–24

RIN 1004–AD24

Helium Contracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is finalizing the interim rule that was published in the **Federal Register** on July 28, 1998 (63 FR 40175). This action implements the requirements of the Helium Privatization Act of 1996 by establishing procedures for the helium program, defining the obligations of the Federal helium suppliers and users, and removing the Bureau of Mines regulations governing helium distribution contracts. The effect of this action is to adopt the interim rule as a final rule without change.

DATES: This rule is effective on December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Shirlean Beshir, Regulatory Affairs Group (WO–630), Bureau of Land Management, Mail Stop 401LS, 1849 "C" Street, NW, Washington, DC 20240; telephone (202) 452–5033 (Commercial or FTS) and Timothy R. Spisak, (806) 324–2656 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion of the Final Rule and Response to Comments

III. Procedural Matters

I. Background

These regulations are issued by BLM to implement the requirements of the Helium Privatization Act of 1996, Public Law 104–273 (the Act). BLM adds these regulations as a new Part 3195 to BLM's oil and gas regulations. This action implements the requirements of the Act by:

- Establishing procedures for the helium program;
- Defining the obligations of Federal helium suppliers and users; and
- Removing the Bureau of Mines regulations at 30 CFR 602 governing helium distribution contracts.

On July 28, 1998, BLM published an interim rule in the **Federal Register** (63 FR 40175). The written comment period on the interim rule closed August 27, 1998. BLM received public comments from one private industry supplier, which we considered in finalizing the rule.

II. Discussion of Final Rule and Response to Comments

A. Legal Basis for the Final Rule

The Act requires that:

- BLM discontinue producing, marketing, and selling refined helium.
- Persons who supply a major helium requirement to Federal agencies contract with BLM to purchase an equivalent amount of crude helium from BLM.
- BLM use a legislatively mandated formula for determining the minimum price for crude helium.

Accordingly, this action implements the requirements of the Act by establishing procedures for the helium program, defining the obligations of the Federal helium suppliers and users, and removing the Bureau of Mines regulations governing helium distribution contracts (5 U.S.C. 301).

B. General and Specific Comments

The private industry supplier raised the following concerns:

- The interim rule does not address pre-existing contracts executed under Bureau of Mines regulations;
- Whether the pre-existing contracts should be terminated or rebid under the new regulations;
- Whether the pre-existing contracts should be allowed to run their course; and
- How should BLM handle the situation where a distributor, who is not an approved Federal helium supplier, is supplying helium to Federal agencies.

Any pre-existing contracts (pre-existing contracts) between former helium distributors and the BLM that were in place were cancelled effective April 1, 1998. Thus, those distributors lost the ability to act as an authorized Federal helium supplier on April 1, 1998. Therefore, if any such distributors wish to continue to sell a major helium requirement to Federal agencies to complete contractual obligations entered into prior to April 1, 1998, or to enter into new contracts to sell major helium requirements to Federal agencies, they must execute an In-Kind Crude Helium Sales Contract with BLM to allow them to do so. Further, as the disposition of pre-existing contracts was covered in the interim rule, no change to the rule is necessary. Accordingly, the interim rule adding 43 CFR Part 3195 and removing 30 CFR Part 602 which was published in the **Federal Register** (63 FR 40175) on July 28, 1998, is hereby adopted as a final rule without change.

III. Procedural Matters

Executive Order 12866

This final rule is not a significant rule and was not subject to review by the Office of Management and Budget under Executive Order 12866. This final rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. The final rule merely provides the BLM a means to document and bill sales of refined helium to Federal agencies and their contractors. The total maximum dollar value of the crude helium sales is estimated at about $15 million annually. The crude helium sales required by the Act replace the BLM refined helium sales being discontinued by the same Act. The final rule adds a small administrative cost to track crude and refined helium sales. This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule merely fulfills the requirements of the Act, and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule outlines the reporting requirements of Federal helium users and suppliers. In addition, this rule raises refined helium sales thresholds from those contained in the prior regulations. The prior provisions would have required more small refined helium distributors to participate in refined helium sales reporting and subsequent crude helium purchases.

Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule is not a major rule because total annual helium sales under the Act are not likely to exceed $15 million, well below the $100 million statutory threshold. Furthermore, any increases in cost will be borne by the Federal Government and in any event are mandated by the Act. Any effect on competition is the result of the Act. The final rule merely provides BLM a means to document and bill sales of refined helium to Federal agencies and their contractors. The crude helium sales required by the Act replace the BLM refined helium sales being discontinued by the same Act. This rule adds a small administrative cost to track crude and refined helium sales.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The final rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The final rule merely provides the BLM a means to document and bill sales of crude helium to Federal helium suppliers based on their sales of refined helium to Federal agencies and their contractors. The total maximum dollar value of the crude helium sales is estimated at about $15 million annually. The crude helium sales required by the Act would replace the BLM refined helium sales being discontinued by the same Act. This rule adds a small administrative cost to track crude and refined helium sales.

Executive Order 12630

In accordance with Executive Order 12630, the final rule does not have significant takings implications. A takings implication assessment is not required. Since the final rule defines the obligations arising under future contracts, there will be no private property rights impaired as a result.

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Executive Order 12612

In accordance with Executive Order 12612, the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule does not impose any obligations on any other Government nor preempt any regulatory authority of any State.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The information required by these regulations is the same as the information required by the In-Kind Crude Helium Sales Contracts. The information collections contained in the In-Kind Crude Helium Sales Contracts have been approved by OMB under Approval No. 1004–0179 which expires May 31, 2001. The In-Kind Crude Helium Sales Contracts require Federal helium suppliers and Federal agencies to which the Federal helium suppliers sell the helium to provide specific information to BLM.

National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. However, BLM has prepared an Environmental Assessment (EA) in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously.

Author. The principal author of this final rule is Shirlean Beshir, Regulatory Affairs Group, Room 401LS, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240; Telephone: (202) 452–5033 (Commercial or FTS).

List of Subjects

30 CFR Part 602

Government contracts, helium, reporting and recordkeeping requirements.

43 CFR Part 3195

Government contracts, mineral royalties, oil and gas exploration, public lands-mineral resources, reporting and recordkeeping requirements, and surety bonds.

Dated: November 23, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, under the authority of 5 U.S.C. 301 and for the reasons stated above, BLM adopts without change as a final rule the interim rule that removed 30 CFR Chapter VI, Part 602; and added 43 CFR Chapter II, Part 3195, which was published at 63 FR 40175, on July 28, 1998.

[FR Doc. 98–31850 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4807]

RIN 2127–AF51

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Containers

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule deletes the material and manufacturing process requirements in the standard on compressed natural gas fuel container integrity. The agency believes that this amendment will facilitate technological innovation, without adversely affecting safety.

DATES: This final rule is effective January 4, 1999. Petitions for Reconsideration must be received by January 19, 1999.

ADDRESSES: Petitions should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Charles Hott, NPS–12, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (Telephone 202–366–0247) (FAX 202–366–4329).

For legal issues: Ms. Nicole H. Fradette, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Telephone 202–366–2992) (FAX 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 304, Compressed natural gas fuel container integrity, serves to reduce the risk of deaths and injuries occurring from fires resulting from fuel leakage during and after motor vehicle crashes. The Standard was patterned after the American National Standards Institute's (ANSI's) voluntary industry standard known as ANSI/NGV2 and developed by the Natural Gas Vehicle Coalition (NGVC). Standard No. 304 specifies detailed material and manufacturing process requirements for different types of CNG containers, including those made with aluminum alloys. The Standard also specifies burst, bonfire, and pressure cycling tests for the purpose of ensuring the durability, initial strength, and venting of CNG containers.

- The burst test evaluates a container's initial strength and resistance to degradation over time by specifying, for each type of container, a unique safety factor for determining the internal hydrostatic pressure that the container must withstand during the burst test. This requirement helps to ensure that a container's design and selected material are sufficiently strong over the life of the container.
- The bonfire test evaluates a container's pressure relief characteristics when pressure builds up in a container, primarily due to an increase in temperature.
- Finally, the pressure cycling test evaluates a container's durability by requiring a container to withstand without leakage, 18,000 cycles of pressurization and depressurization. This requirement helps to ensure that a CNG container is capable of sustaining the cycling loads imposed on the container during refueling over its entire service life.

In addition, the Standard specifies labeling requirements for CNG fuel containers.

Standard No. 304 specifies certain material and manufacturing characteristics for aluminum containers using alloy 6010 and alloy 6061, based on the specifications set forth in ANSI/NGV2. The material characteristics specify the percentage of various elements, including magnesium, silicon, copper, and manganese. On November 24, 1995, NHTSA issued a final rule amending the labeling and the bonfire test requirements in Standard No. 304, Compressed Natural Gas fuel container integrity. In the final rule, the agency decided to defer consideration of two rulemaking petitions to add additional aluminum alloys to Standard No. 304, until the new version of the ANSI/NGV industry standard was issued. Northwest Aluminum Association requested that the standard be amended to add 6069 aluminum alloy, and Luxfer requested the addition of 7032 aluminum alloy. In explaining its decision to defer consideration of the petitions, the agency noted that the new ANSI/NGV2 industry standard may not specify CNG fuel container material and may be more performance-oriented than the current version, thereby allowing manufacturers more flexibility to improve container design with respect to cost and performance. The agency also noted that adopting some of the new provisions of the revised voluntary industry standard may eliminate the need to amend the standard to allow the use of two new aluminum alloys in CNG containers.

II. Summary of NPRM

In a May 30, 1997 notice of proposed rulemaking (NPRM), NHTSA proposed amending Standard No. 304 to eliminate the Standard's detailed material and manufacturing process requirements. The agency explained it had tentatively determined that CNG fuel container manufacturers should be allowed to use materials other than those materials currently listed in the standard. NHTSA explained that such an amendment would provide manufacturers with the flexibility to design lighter weight, higher capacity fuel containers using the latest innovations, without having to petition the agency to amend the standard each time a new material or manufacturing process is developed.

The agency also noted that the proposal to remove the material and manufacturing requirements was consistent with the proposed revision to ANSI/NGV, which removed many of the design restrictions that were in the 1992 version of NGV2 on which Standard No. 304 was initially modeled. In October 1996, the ANSI committee working on the revised standard completed its revisions and sent the revised document to its members for review. The proposed revision of ANSI/NGV2 removed many of the detailed material and manufacturing restrictions, but retained the impurity limits for certain materials. NHTSA explained that it understood that although the industry had not reached a consensus with respect to certain environment testing procedures, the industry had tentatively agreed to eliminate the material and manufacturing requirements.

NHTSA also stated it believed that eliminating the material and manufacturing process requirements would have no detrimental affect on safety. The agency explained that Standard No. 304's performance requirements, including those requirements that evaluate initial strength and resistance to degradation over time, would still apply to CNG containers. Thus, CNG container manufacturers would have to comply with the standard's pressure cycling, burst, and bonfire tests. NHTSA further explained that such containers would be subject to recall if they failed for any reason, including the degradation of material.

NHTSA proposed deleting the following sections from the standard:

- Section S5.2 *Material designations*. This section specifies the material requirements for the various types of CNG fuel containers.
- Section S5.3 *Manufacturing processes for composite containers*. This section specifies the manufacturing process for each type of composite CNG fuel container.
- Section S5.4 *Wall thickness* and Section S5.5 *Composite Reinforcement for Type 2, Type 3, and Type 4 containers*. These sections contain the design criteria for specifying the wall thicknesses and stresses for each type of CNG fuel container. These sections also specify procedures for designing CNG fuel container walls along with the theoretical formula for calculating maximum wall stress.
- Section S5.6 *Thermal Treatment*, and S5.7 *Yield Strength*. These sections contain detailed manufacturing process requirements for chrome-moly and carbon-boron steels, including specifying the temper temperatures for each steel.

In June 1998, ANSI published the new ANSI/NGV2 industry standard. The new standard is similar to the proposed standard in that much of the design restrictive language has been removed. ANSI/NGV2 now specifies that the material composition for steels should be known and defined by at least the contents of certain elements such as carbon, manganese, aluminum and the other alloying elements that are added to enhance the material properties. For aluminum, ANSI/NGV2 simply states that it should be in line with the Aluminum Association's practice and the 6xxx series with yield strengths above 250 MPa should not be used. It also specifies impurity limits for steels and aluminums.

III. Summary of Comments

Eight comments were submitted in response to the NPRM from the following companies/organizations: Chrysler Corporation (Chrysler), General Motors (GM), Gas Technology Canada (GTC), the Natural Gas Vehicle Coalition (NGVC), Lincoln Composites (Lincoln), Pressed Steel Tank Co. (PST), Structural Composites Industries (SCI), and New York City Transit (NY Transit).

Chrysler, GM, and GTC supported the proposed rule. Chrysler and GM stated that deleting the material and manufacturing process requirements would facilitate technological innovation without reducing safety. GTC stated that CNG containers sold in Canada that are manufactured from at least four material types that are not offered for sale in the United States have performed well in service. GTC cautioned, however, that additional performance tests might be needed to prevent in-service failures. Chrysler also commented that S7.2.2 of Standard No. 304 refers to S5.5.1, which is proposed for deletion, and suggested that S7.2.2 be revised accordingly.

NGVC and Lincoln also supported NHTSA's efforts to facilitate technological innovation, but were concerned that deletion of the material performance requirements without including the additional tests from the draft revision of ANSI/NGV2 industry standard, could lead to a serious safety problem. The latest draft standard, while deleting many of the specific material design requirements, includes the following three enhanced material performance test requirements:

1. Sulfide stress cracking resistance of high strength steels using the methods of NACE Standard TM0177–90;
2. Sustained load cracking for aluminum alloys in accordance with Annex D of ISO/DIS 7866; and
3. Intercrystalline corrosion and stress corrosion tests for aluminum alloys in accordance with Annex A of ISO/DIS 7866.

NGVC stated that these tests are needed to ensure the integrity of the materials that were previously excluded by the standard while Lincoln argued that these requirements were needed to reduce the risk of in-service leakage or rupture and inadequate shear strength of resins over the life of the CNG container. NGVC argued that NHTSA should retain Standard No. 304's current requirements until the industry's revision of ANSI/NGV2 is complete. Lincoln argued that NHTSA should simply amend Standard No. 304 to include the materials requested by Northwest Aluminum Association and Luxfer, aluminum alloys 6069 and 7032 respectively, rather than delete the material and manufacturing requirements.

PST supported removing the thermal treatment, wall thickness, and manufacturing process requirements from the standard, but argued that the standard should continue to limit materials to specific alloys and reinforcing fibers. PST argued that most

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CNG container failures occurred because the CNG manufacturer used materials with insufficient toughness, damage tolerance, long term stability and environmental resistance. PST argued that a single safety factor cannot protect against such material deficiencies. PST further claimed that high-strength aluminum alloys were originally excluded from Standard No. 304 because of their susceptibility to sustained load cracking (SLC) and stress corrosion cracking (SCC). PST noted that the draft ISO/DIS 7866 standard, which is included in the proposed revision to NGV2, includes material tests intended to exclude SLC and SCC susceptible materials. PST argued that NHTSA should evaluate the SLC, SCC and accelerated stress rupture tests, and amend the standard to include these tests, as well as a resistance to impact requirement. Finally, PST asserted that the agency must address the potential failure modes of organic reinforcing fibers, stainless steels, copper alloys and other materials, if the agency is going to permit the use of these materials. PST stated that the time and the cost involved with developing adequate performance tests for all of these materials was high and any resulting economic benefits questionable.

SCI opposed the proposed rule and argued that Standard No. 304's current performance tests are insufficient to prevent time related failures resulting from corrosion, stress rupture, viscoelastic yielding, and aging. SCI stated that the small sample size and short time period involved with testing made it too difficult and complex to test for such time related failures. SCI also argued that the history of CNG fuel containers demonstrated that the standard's current test requirements were insufficient to prevent catastrophic failures, such as battery fluid field failures occurring from in-service abuse or impact damage from roadway debris.

While New York City Transit stated that it did not oppose the proposed changes, it did express concern that Standard No. 304 is insufficient to prevent CNG container failures. NYCT's concern is based on the fact that nearly six percent of one model of CNG fuel containers produced by a particular manufacturer has experienced failures after only a few years in service. NYCT stated that 31 of its CNG transit buses were equipped with these containers and that it was unable to retrofit the containers because the manufacturer is out of business.

IV. Agency Decision

The agency is deleting the material and manufacturing process requirements from Standard No. 304 and amending S7.2.1 and S7.2.2 of the standard to eliminate any reference to those requirements. NHTSA believes that the deletion of these requirements will facilitate technological innovation without having an adverse affect on safety.

For the following reasons, the agency is not replacing the deleted requirements with other requirements, as suggested by some commenters. First, the agency has concluded that Standard No. 304's current testing requirements—pressure cycling, burst, and bonfire—are sufficient to ensure an appropriate level of safety for CNG fuel containers. The tests indirectly ensure that the containers are manufactured using appropriate materials and wall thicknesses. The agency believes, therefore, that the Standard's design and material requirement are unnecessary and restrict the ability of manufacturers to use the latest technology in manufacturing CNG fuel containers.

Second, NHTSA has no evidence indicating the existence of a safety problem that would be addressed by including additional tests, such as those contained in the proposed NGV2 revision, in the Standard.[1] NHTSA knows of six CNG fuel container ruptures that have occurred since 1993. According to a safety bulletin published by the Gas Research Institute in October 1996, all six ruptures could have been prevented if appropriate precautions had been taken. Mishandling, misuse, and improper placement and maintenance of the CNG fuel containers caused the failures. In four of the cases, the CNG fuel container did not have a shield surrounding it to protect it from impact damage. A vehicle design change would address this problem. In the other two cases, the CNG fuel containers ruptured after prolonged exposure to acidic fluids. In those two cases, the shielding surrounding the CNG fuel containers lacked adequate drainage. Consequently, acidic fluids accumulated in the area beneath the containers and damaged the CNG fuel containers. NHTSA believes that the proper placement and shielding of the CNG fuel containers along with a periodic inspection of the container, as directed by the CNG fuel containers label, could have prevented these failures. None of the additional testing provisions in the new ANSI/NGV2 industry standard would have prevented these cylinder failures. The agency, therefore, does not believe that inclusion of the additional tests is necessary.

Finally, NHTSA agrees with the comments of SCI that testing for such time related failures as corrosion, stress rupture, viscoelastic yielding, and aging may be impracticable due to the small sample size and short time period involved with testing. Thus, even if there were a safety problem that could not be addressed by the standard's current testing requirements, NHTSA believes it would be inappropriate to require these particular tests given the current uncertainty concerning their effectiveness.

The agency does not believe that manufacturers will fail to exercise care in selecting appropriate materials to manufacture CNG containers. NHTSA does, however, stress that any CNG fuel containers that might be found in the future to have an unanticipated safety related failure would be subject to recall. NHTSA, therefore, will continue to monitor the performance of CNG fuel containers closely and should a safety problem arise, NHTSA will take the appropriate regulatory or enforcement action.

While NHTSA understands NYCT's concern that one particular model of CNG containers leaked an excessive amount of gas after only a few years in service, NHTSA notes that a defective manufacturing process, unique to the particular manufacturer, rather than a defective design, was the cause of these failures. No other CNG containers experienced such failures.[2] Neither the Standard as currently drafted nor as revised by this notice would have prevented the failure of this particular model of CNG fuel container.

V. Effective Date

The statute under which the agency conducts its vehicle safety rulemaking requires that each order (i.e., final rule) take effect no sooner than 180 days from the date the order is issued unless good cause is shown that an earlier effective date is in the public interest. In the NPRM, NHTSA tentatively concluded that there was good cause not to provide the 180 day lead time since the proposed amendment would delete certain requirements and have no mandatory effect on manufacturers.

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[1] The agency notes that while several of the commenters stated that NHTSA should amend Standard No. 304 to require additional tests to prevent in-service failures of CNG containers, none provided evidence indicating the existence of a safety problem with in-service failures that was not addressed by the Standard's current tests and would be addressed by the inclusion of additional tests.

[2] The agency notes that the manufacturer of these six containers went out of business and that other transit fleets who had purchased the faulty containers retrofitted their buses with new CNG containers.

NHTSA, therefore, proposed a 30 day effective date and sought comment on whether that date was appropriate or whether more lead time was necessary. No comments were submitted opposing the proposed effective date. NHTSA has, therefore, determined that there is good cause for an effective date 30 days after publication of the final rule.

VI. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was reviewed under E.O. 12866. NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This final rule allows manufacturers to use materials other than those materials currently listed in Standard No. 304. This rulemaking action will provide manufacturers with the flexibility to design lighter weight, higher capacity fuel containers. The performance requirements in Standard No. 304 are met by CNG fuel container manufacturers, who produce and test containers in accordance with ANSI/NGV2. A full regulatory evaluation is not required because the rule will not significantly affect costs or benefits.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I hereby certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule primarily affects manufacturers of CNG containers. The Small Business Administration's size standards (13 CFR Part 121) are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3714 "Motor Vehicle Parts and Accessories" has a small business size standard of 750 employees or fewer.

The agency believes that this final rule will not have a significant economic impact on a substantial number of small businesses because the manufacturers of CNG containers currently manufacture according to the ANSI/NGV2 industry standard, and this rulemaking is consistent with those requirements. NHTSA has stated that this final rule deletes certain requirements and does not require any CNG container design changes. The changes will not affect the cost of new CNG containers.

Paperwork Reduction Act

NHTSA has analyzed this rule under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and determined that it will not impose any information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

National Environmental Policy Act

Finally, the agency has considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Annual expenditures from this final rule will not exceed the $100 million threshold.

Executive Order 12612 (Federalism)

The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule has no retroactive effect. NHTSA is not aware of any state law that would be preempted by this rule. This rule does not repeal any existing Federal law or regulation. It modifies existing law only to the extent that it deletes the material and manufacturing process requirements in Standard No. 304, Compressed natural gas fuel container integrity. This rule does not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, the agency is amending part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50

2. Section 571.304 is amended by removing S5.2 through S5.7.3 and by revising S7.2, S7.2.1, and S7.2.2 to read as follows:

§ 571.304 Standard No. 304; Compressed natural gas fuel container integrity.

* * * * *

S7.2 *Hydrostatic burst test.*

S7.2.1 Each Type 1 CNG fuel container shall not leak when subjected to burst pressure and tested in accordance with S8.2. Burst pressure shall not be less than 2.25 times the service pressure for non-welded containers and shall not be less than 3.5 times the service pressure for welded containers.

S7.2.2 Each Type 2, Type 3, or Type 4 CNG fuel container shall not leak when subjected to burst pressure and tested in accordance with S8.2. Burst pressure shall not be less than the value specified in Table 1 times the service pressure, as follows:

TABLE 1.—STRESS RATIOS

Material	Type 2	Type 3	Type 4
E–Glass	2.65	3.5	3.5
S–Glass	2.65	3.5	3.5
Aramid	2.25	3.0	3.0
Carbon	2.25	2.25	2.25

Issued on: November 23, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–31773 Filed 12–2–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427117–8292–05; I.D. 112398G]

RIN 0648–AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS notifies fishermen that it has renewed the authorization for shrimp trawlers to use limited tow times as an alternative to the otherwise required use of Turtle Excluder Devices (TEDs) in the inshore waters of Mississippi. Its previous authorization expired on November 23, 1998. NMFS also has extended the same authorization in Alabama inshore waters which otherwise would expire December 1, 1998 (63 FR 62959, November 10, 1998). The intent of this action is to provide adequate protection for threatened and endangered sea turtles when debris conditions may make TED-use impracticable.

DATES: The renewal and the extention are both effective from November 30, 1998 through December 30, 1998. Comments on this notification are requested and must be received by December 30, 1998.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 727–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that inhabit U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species, as a result of shrimp trawling activities, has been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS approved TED installed in each net rigged for fishing, year-round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 227.72(e)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may authorize "compliance with tow time restrictions as an alternative to the TED requirement, if [he] determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable." The provisions of 50 CFR 227.72(e)(3)(i) specify the maximum tow times that may be used when authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31, and no more than 75 minutes from November 1 through March 31. NMFS has selected these tow time limits to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 27, Hurricane Georges hit the Mississippi and Alabama coasts. The hurricane remained nearly stationary over the coastal area and south Alabama for about 2 days and deposited as much as 36 inches (91 cm) of rain on some areas. The combination of heavy rains and hurricane storm surge produced severe flooding in south Mississippi, Alabama, and Louisiana rivers. This flooding deposited large amounts of debris in the inshore waters of those states.

After the hurricane, NMFS was notified by the Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources (Alabama Director), the Director of the Mississippi Department of Marine Resources (Mississippi Director), and the Secretary of the Louisiana Department of Wildlife and Fisheries that the debris conditions created great difficulty for shrimpers in inshore waters by fouling the trawl nets and clogging the TEDs. As a result of the special environmental conditions that may have made trawling with TED-equipped nets impracticable, the Assistant Administrator issued emergency notifications to authorize the use of restricted tow times as an alternative to the use of TEDs in the inshore waters of the three affected states. In Alabama inshore waters, the authorization was effective from October 7, 1998, through November 5, 1998 (63 FR 5505, October 14, 1998), and was then extended through November 30 (63 FR 62959, November 10, 1998) after the Alabama Director informed NMFS that the debris conditions in Mississippi Sound had been worsening as debris had been flushed out of Mobile Bay and into Mississippi Sound. In Mississippi inshore waters and Louisiana inshore waters northeast of the Mississippi River, the use of limited tow times as an alternative to TEDs was authorized from October 23 through November 22, 1998 (63 FR 57620, October 28, 1998).

NMFS has received letters from the Mississippi Director and the Alabama Director, dated November 17 and November 19, 1998, respectively, stating that excessive debris conditions continue to exist. The letter from the Alabama Director requested the extension of the authorization to use limited tow times as an alternative to the use of TEDs in Alabama inshore waters and the letter from the Mississippi Director requested the renewal of the authorization to use limited tow times as an alternative to the use of TEDs in Mississippi inshore waters. The letter from the Alabama Director stated that many nearshore areas remain untrawlable despite shrimpers' efforts so far to remove the debris.

Special Environmental Conditions

The Assistant Administrator finds that special environmental conditions following Hurricane Georges have persisted in Alabama and Mississippi inshore waters and may make trawling with TED-equipped nets impracticable. Therefore, the Assistant Administrator, by this notice, renews the authorization to use restricted tow times as an alternative to the use of TEDs in the inshore waters of Mississippi and extends the authorization to use restricted tow times as an alternative to the use of TEDs in the inshore waters of Alabama. The states of Mississippi and Alabama are continuing to monitor the situation and are cooperating with NMFS in determining the ongoing extent of the debris problem in their inshore waters. Moreover, both states' enforcement officers have assisted with the enforcement of the restricted tow times. In his November 19 letter, the Alabama Director reported that compliance with the tow times has been excellent, according to the enforcement officers, and the attitude and cooperation of the fishermen have been very good. He stated that Alabama enforcement officers will continue to monitor the area for the duration of this exemption extension. In Mississippi, the Department of Wildlife, Fisheries, and Parks, Marine Enforcement Division reported to the Mississippi Director that compliance with the tow time limits has also been excellent. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the enforcement effort undertaken by the states and the compliance among the fishermen are important factors enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in Mississippi and Alabama inshore waters who are authorized under this notification to use restricted tow times to continue to use TEDs if possible. NMFS' studies have shown that the problem of clogging by seagrass, algae, or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts provide several operational recommendations that may allow some fishermen to continue using TEDs without resorting to restricted tow times. Hard TEDs that are made of either solid rod or hollow pipe in a bottom-opening configuration and that incorporate a bent angle at the escape opening are recommended. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Finally, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly; the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris.

All of the preceding recommendations represent legal configurations of TEDs for shrimpers in the inshore areas of Alabama (not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation area). This notice extends, through December 30, 1998, the authorization to use restricted tow times as an alternative to the otherwise required use of TEDs in the inshore waters of Alabama and renews the same authorization in Mississippi inshore waters, effective from November 30, 1998 through December 30, 1998. This notice does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this notification applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 227.72(e)(2) who are operating in inshore waters of Mississippi or Alabama, in areas which the states have opened to shrimping. "Inshore waters," as defined at 50 CFR 217.12, means the marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80. Instead of the required use of TEDs, shrimp trawlers, through December 30, 1998, may opt to comply with the sea turtle conservation regulations by using restricted tow times. If they do so, their tow times must not exceed 75 minutes, measured from the time trawl doors enter the water until they are retrieved from the water.

Additional Conditions

NMFS expects that shrimp trawlers operating in Mississippi and Alabama inshore waters without TEDs, in accordance with this authorization, will retrieve debris that is caught in their nets and return it to shore for disposal or to other locations defined by the Mississippi or Alabama Director, rather than simply disposing the debris at sea. Proper disposal of debris should help the restoration of the shrimping grounds in the wake of the hurricane. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution From Ships) may apply to disposal at sea.

Alternative to Required Use of TEDs; Termination

The Assistant Administrator, at any time, may modify this authorization through publication of a notice in the **Federal Register**, if the Assistant Administrator determines that the alternative authorized is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles onboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. If necessary, the Assistant Administrator could modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times. The Assistant Administrator may also terminate this authorization at any time for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. This authorization will expire automatically December 31, 1998, unless it is extended through another notice published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because doing so would prevent the agency from providing relief within the necessary timeframe. The Assistant Administrator finds that an unusually large amount of debris exists in the aftermath of Hurricane Georges, creating a special

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environmental conditions that may make trawling with TED-equipped nets impracticable and that the use of limited tow times for the described area and time instead of TEDs would adequately protect threatened and endangered sea turtles. Notice and comment are contrary to the public interest in this instance.

Because this action relieves a restriction it is not subject to a delay in effective date under 5 U.S.C. 553(d)(1).

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553 or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The Assistant Administrator prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this (57 FR 57348, December 4, 1992). Copies of the EA are available (see **ADDRESSES**).

Dated: November 27, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32189 Filed 11–30–98; 3:45 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 113098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole Fishery by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 Pacific halibut bycatch allowance specified for the trawl yellowfin sole fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 30, until 1200 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The prohibited species bycatch mortality allowance of halibut for the BSAI trawl yellowfin sole fishery, which is defined at § 679.21(e)(3)(iv)(B)(*1*), was established by the Final 1998 Harvest Specifications of Groundfish (63 FR 12689, March 16, 1998) as 930 mt.

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 halibut bycatch allowance specified for the trawl yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the 1998 Pacific halibut bycatch allowance of halibut specified for the trawl yellowfin sole fishery. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the apportionment. Further delay would only result in the 1998 Pacific halibut bycatch allowance of halibut being exceeded and disrupt the FMP's objective of limiting trawl Pacific halibut mortality. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 30, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32190 Filed 11–30–98; 3:32 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 232
Thursday, December 3, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209–AA22

Proposed Amendments to the Office of Government Ethics Freedom of Information Act Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule amendments.

SUMMARY: The Office of Government Ethics is proposing to amend its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. The proposed revisions include the new response time for FOIA requests, procedures for requesting expedited processing, additional categories of documents available in OGE's FOIA reading room facility, the availability of certain public information on OGE's Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, OGE's proposed amendments would increase the general FOIA search fees somewhat. Finally, OGE is proposing some other updating revisions and corrections. This rulemaking only deals with such matters at OGE; it is not an executive branchwide regulation.

DATES: Comments from the public and the agencies are invited and are due by February 1, 1999.

ADDRESSES: William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following reference—Proposed Amendments to the OGE FOIA Regulation).

SUPPLEMENTARY INFORMATION: In this rulemaking, the Office of Government Ethics is proposing to amend its regulation at 5 CFR part 2604 under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These proposed amendments do not concern separate subpart G of part 2604, which sets forth certain duplication and mailing fees this Agency can charge under the Ethics in Government Act of 1978 (the Ethics Act), 5 U.S.C. appendix, for large requests for copies of Standard Form 278 Executive Branch Personnel Public Financial Disclosure Reports that are on file at OGE.

The primary focus of these proposed amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law No. 104–231. Thus, in a proposed newly redesignated paragraph (a)(1) of § 2604.305, OGE would codify in its FOIA regulations the new statutorily prescribed general 20 working day response time for responding to FOIA requests. The Office of Government Ethics has already been administratively adhering to the new time period (though many requests are still answered in less time), along with the various other requirements of the Electronic FOIA Amendments. The prior statutory response time was 10 working days.

In addition, OGE proposes to add a new paragraph (a)(2) to § 2604.305 to codify the provision for response to requests for expedited processing within 10 calendar days. Pursuant to the Electronic FOIA Amendments, a person can request expedited processing of his or her FOIA request based upon a showing of "compelling need," which the requester must certify in writing to be true and complete to the best of his or her knowledge and belief. Compelling need is defined in the amended FOIA as circumstances in which a failure to obtain records requested on an expedited basis could reasonably be expected to present an imminent threat to the life or physical safety of an individual or, for a person primarily engaged in disseminating information, an urgency to inform the public about actual or alleged Federal Government activity. The Office of Government Ethics is then to respond to expedited processing requests within 10 calendar days, as it has been doing as a matter of administrative practice. These provisions would be codified in new proposed paragraph (e) of § 2604.301 of OGE's FOIA regulation.

The Office of Government Ethics has decided not to propose multitrack processing of its FOIA requests. The Electronic FOIA Amendments provide that an agency can provide by regulation for multiple "tracks" in responding to FOIA requests, depending on the amount of time and work entailed in responding to differing kinds of requests. Since OGE only receives a limited number of FOIA requests each year (currently running at the rate of about 35–45) and is able to respond to them on a timely basis, this Agency does not need to provide for separate processing tracks for more complicated versus simpler FOIA requests. Moreover, in that regard, OGE does not have a FOIA backlog.

The Electronic FOIA Amendments require that deleted portions of copies of documents released in part be identified and that a volume estimation of materials withheld in whole be given, unless exempt information would thereby be revealed. The Office of Government Ethics would codify this requirement in proposed new paragraph (b)(3) of § 2604.303 of its FOIA regulation. In a separate, unrelated proposed revision to § 2604.303, paragraph (a) would be revised to provide expressly that OGE could alternatively consult with another Government agency at which responsive records originated and then decide whether to grant or deny the request, in lieu of the usual course of referring the FOIA request to the originating agency for its direct response to the requester.

The general requirement to honor a form or format request, unless the record requested is not readily reproducible in the requested form or format, would be set forth in paragraph (c) of § 2604.302, as proposed to be revised. The definitions of the terms "records" and "search" in § 2604.103 are proposed to be amended to more explicitly include electronic records and automated searches (along with paper records and manual searches).

The Office of Government Ethics would also clarify in revised subpart B and § 2604.201 headings and text that, as a small agency with a limited FOIA practice, it has a FOIA public reading room *facility,* rather that a "room" per se. Thus, upon request, OGE makes available information required to be made available under FOIA paragraph (a)(2) and certain other publicly available information in its reception or conference room areas. Such materials created by OGE since October 1, 1996 (and in certain cases before then, if feasible), are also available via computer telecommunications on OGE's Internet Web site at the following address: http://www.usoge.gov. The Web site is referenced in new proposed paragraph (a)(2) of § 2604.201 of the OGE FOIA regulation. The Electronic FOIA Amendments also added a new category of such publicly available materials, copies of records created by OGE which are requested and released to individual FOIA requesters which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index thereof. In accordance with Department of Justice guidance, any such materials must be the subject of at least three FOIA requests. The Office of Government Ethics would add reference to such documents at proposed new paragraph (b)(4) of § 2604.201 of its FOIA regulation. Further, OGE would add a new paragraph (d) to § 2604.201 regarding permissible deletions from records covered in this section in order to prevent a clearly unwarranted invasion of personal privacy.

In § 2604.501(b)(1)(i), OGE is proposing to raise the hourly rate for manual searches for responsive records by a homogeneous class of OGE personnel by 10% to reflect increased salaries and overhead since the OGE FOIA regulations were issued in February 1995. The new proposed rates would be $11.00 an hour (versus $10.00 currently) for such searches by clerical staff and $22.00 an hour (versus $20.00) for such searches by professional staff. The charge for individual staff searches would remain unchanged at the particular salary rate (basic pay plus 16%) of the individual employee making the search.

Finally, OGE is proposing to make a couple of updating changes and corrections to its FOIA regulation, including adding its current telephone and FAX numbers.

Matters of Regulatory Procedure

Executive Order 12866

In issuing these proposed amendments to its Freedom of Information Act regulation, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Office of Government Ethics Director, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities because it would only affect Freedom of Information Act matters at OGE.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these proposed amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of Information, Government employees.

Approved: October 5, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend 5 CFR part 2604 as follows:

PART 2604—[AMENDED]

1. The authority citation for part 2604 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 2604.103 [Amended]

2. In § 2604.103, the text of the definition of the term "Records" is amended by adding, in the second parenthetical, between the words "as" and "punchcards" the words "electronic documents, electronic mail,", and the text of the definition of the term "Search" is amended by adding between the words "material" and "that" the words "manually or by automated means".

3. The heading of subpart B is revised to read as follows:

Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public

4. Section 2604.201 is amended by:

a. Revising the heading;

b. Redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2);

c. Adding the word "facility" after the word "room" at each place it appears in newly redesignated paragraph (a)(1), including the heading thereof, and in paragraphs (b) and (c);

d. Removing the telephone number "(202) 523–5757" and the FAX number "(202) 523–6325" in the second sentence of newly redesignated paragraph (a)(1) and adding in their place the new telephone number "202–208–8000" and FAX number "202–208–8037", respectively;

e. Removing the word "and" at the end of paragraph (b)(3);

f. Redesignating paragraph (b)(4) as paragraph (b)(5); and

g. Adding new paragraphs (b)(4) and (d).

The revision and additions read as follows:

§ 2604.201 Public reading room facility and Web site.

(a) * * *

(2) *Web site.* The records listed in paragraph (b) of this section, which are created on or after November 1, 1996, or which OGE is otherwise able to make electronically available (if feasible), along with the OGE FOIA and Public Records Guide and OGE's annual FOIA reports, are also available via OGE's Web site (Internet address: http://www.usoge.gov).

(b) * * *

(4) Copies of records created by OGE that have been released to any person under subpart C of this part which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index of such records; and

* * * * *

(d) OGE may delete from the copies of materials made available under this section any identifying details necessary to prevent a clearly unwarranted invasion of personal privacy. Any such deletions will be explained in writing and the extent of such deletions will be indicated on the portion of the records that are made available or published, unless the indication would harm an interest protected by the FOIA exemption pursuant to which the deletions are made. If technically feasible, the extent of any such deletions will be indicated at the place in the records where they are made.

5. Section 2604.301 is amended by removing the telephone number "(202) 523–5757" in the first sentence of

paragraph (a) and adding in its place the following text (with the new telephone and FAX numbers) "202–208–8000, or FAX, 202–208–8037", and by adding a new paragraph (e) to read as follows:

§ 2604.301 Requests for records.

* * * * *

(e) *Seeking expedited processing.* (1) A requester may seek expedited processing of a FOIA request if a compelling need for the requested records can be shown.

(2) "Compelling need" means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(3) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

6. Section 2604.302 is amended by revising the heading and first sentence of paragraph (b) and revising paragraph (c) to read as follows:

§ 2604.302 Response to requests.

* * * * *

(b) *Referral to, or consultation with, another agency.* When a requester seeks access to records that originated in another Government agency, OGE will normally refer the request to the other agency for response; alternatively, OGE may consult with the other agency in the course of deciding itself whether to grant or deny a request for access to such records. * * *

* * * * *

(c) *Honoring form or format requests.* In making any record available to a requester, OGE will provide the record in the form or format requested, if the record already exists or is readily reproducible by OGE in that form or format. If a form or format request cannot be honored, OGE will so inform the requester and provide a copy of a nonexempt record in its existing form or format or another convenient form or format which is readily reproducible. OGE will not, however, generally develop a completely new record (as opposed to providing a copy of an existing record in a readily reproducible new form or format, as requested) of information in order to satisfy a request.

* * * * *

7. Section 2604.303 is amended by removing the word "and" following paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4), and adding a new paragraph (b)(3) to read as follows:

§ 2604.303 Form and content of responses.

* * * * *

(b) * * *

(3) When only a portion of a document is being withheld, the amount of information deleted and the FOIA exemption(s) justifying the deletion will generally be indicated on the copy of the released portion of the document. If technically feasible, such indications will appear at the place in the copy of the document where any deletion is made. If a document is withheld in its entirety, an estimate of the volume of the withheld material will generally be given. However, neither an indication of the amount of information deleted nor an estimation of the volume of material withheld will be included in a response if doing so would harm an interest protected by any of the FOIA exemptions pursuant to which the deletion or withholding is made; and

* * * * *

8. Section 2604.305 is amended by redesignating paragraph (a) as paragraph (a)(1), by removing the number "10" in newly redesignated paragraph (a)(1) and adding in its place the number "20", and by adding a new paragraph (a)(2) to read as follows:

§ 2604.305 Time limits.

(a) * * *

(2) *Request for expedited processing.* When a request for expedited processing under § 2604.301(e) is received, the General Counsel will respond within ten calendar days from the date of receipt of the request, stating whether or not the request for expedited processing has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

* * * * *

§ 2604.402 [Amended]

9. Section 2604.402 is amended by removing the initial lower case "e" in the word "exemption" in the first sentence of paragraph (b) and adding in its place an upper case "E".

§ 2604.501 [Amended]

10. Section 2604.501 is amended by removing the dollar amounts "$10.00" and "$20.00" from the second sentence of paragraph (b)(1)(i) and adding in their place the dollar amounts "$11.00" and "$22.00", respectively, and by removing the citation to "§ 2604.104(q)" in the first sentence of paragraph (b)(3) and adding in its place the citation "§ 2604.103".

11. Subpart F is revised to read as follows:

Subpart F—Annual OGE FOIA Report

§ 2604.601 Electronic posting and submission of annual OGE FOIA report.

On or before February 1 of each year, OGE shall electronically post on its Web site and submit to the Office of Information and Privacy at the United States Department of Justice a report of its activities relating to the Freedom of Information Act (FOIA) during the preceding fiscal year.

§ 2604.602 Contents of annual OGE FOIA report.

(a) The Office of Government Ethics will include in its annual FOIA report the following information for the preceding fiscal year:

(1) The number of FOIA requests for records pending before OGE as of the end of the fiscal year;

(2) The median number of calendar days that such requests had been pending before OGE as of that date;

(3) The number of FOIA requests for records received by OGE;

(4) The number of FOIA requests that OGE processed;

(5) The median number of calendar days taken by OGE to process different types of requests;

(6) The number of determinations made by OGE not to comply with FOIA requests in full or in part;

(7) The reasons for each such determination;

(8) A complete list of all statutes upon which OGE relies to authorize withholding of information under FOIA Exemption 3, 5 U.S.C. 552(b)(3);

(9) A description of whether a court has upheld the decision of the agency to withhold information under each such statute;

(10) A concise description of the scope of any information withheld under each such statute;

(11) The number of appeals made by persons under 5 U.S.C. 552(a)(6);

(12) The result of such appeals;

(13) The reason for the action upon each appeal that results in a denial of information;

(14) The total amount of fees collected by OGE for processing requests; and

(15) The number of full-time staff of OGE devoted to processing requests for records under the FOIA; and

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(16) The total amount expended by OGE for processing such requests.

(b) In addition, OGE will include in the report such additional information about its FOIA activities as is appropriate and useful in accordance with Justice Department guidance and as otherwise determined by OGE.

[FR Doc. 98–32193 Filed 12–2–98; 8:45 am]

BILLING CODE 6345–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities; Public Workshop Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of public workshop meeting.

SUMMARY: The Commission has requested the staff to develop and assess options on incorporating risk insights in the Code of Federal Regulations 10 CFR 50.59. This regulation permits licensees to implement certain changes that do not require prior NRC approval. On or about December 19, 1998, the staff will place in the public document room (PDR) a draft report that identifies options for incorporating risk insights into the existing § 50.59 process. At the same time that the document is placed in the PDR, the staff will issue a notice to hold a public workshop on January 19, 1999, at the NRC auditorium, in Rockville, Maryland. That notice will also solicit comments on this program.

WORKSHOP MEETING INFORMATION: A 1-day workshop will be held to review the subject document, address comments and answer questions. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Jack Guttmann, US Nuclear Regulatory Commission, MS T10E50, phone (301) 415–7732, e-mail jxg@nrc.gov.

DATES: January 19, 1999.

AGENDA: To be published in January, 1999.

REGISTRATION: No registration fee is required for this workshop. Interested parties who plan to attend the meeting should preregister in order to ensure adequate space. Persons interested in attending the workshop should notify Jack Guttmann, at US Nuclear Regulatory Commission, MS T10E50, Washington, D.C., 20555, or by phone (301) 415–7732, or by e-mail jxg@nrc.gov.

Dated at Rockville, Maryland, this 20th day of November, 1998.

For the Nuclear Regulatory Commission.

Mary Drouin

Acting Branch Chief, Probabilistic Risk Analysis Branch Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 98–31933 Filed 12–1–98; 8:45 am]

BILLING CODE 7590–01–p

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 284, 375, 380, 381, and 385

[Docket No. RM98–9–000]

Revision of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act; Notice of Extension of Time

November 24, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Extension of Time.

SUMMARY: The Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking that proposes to update its regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act (63 FR 55682 October 16, 1998). The date for filing comments is being extended at the request of various interested parties.

DATES: Comments are extended to and including December 22, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426, (202) 208–0400.

[Docket No. RM98–9–000]

On November 24, 1998, the Interstate Natural Gas Association of America, the American Gas Association, the Process Gas Consumers Group and American Iron and Steel Institute (hereafter "Petitioners") filed a joint motion for an extension of time for the filing of comments in response to the Commission's Notice of Proposed Rulemaking issued September 30, 1998, in the above-docketed proceeding.

In its motion, Petitioners state that due to the shear number of ongoing rulemaking proceedings at the Commission and the onset of the Thanksgiving holiday season, additional time is needed within which to prepare and file comments. The motion also states that an extension of time will not unduly delay Commission action on the matters related to this proceeding. Petitioners motion further states that they are authorized to represent that the American Petroleum Association of America and the Natural Gas Supply Association have been contacted and they do not oppose the request for additional time.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including December 22, 1998.

David P. Boergers,

Secretary.

[FR Doc. 98–32159 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM–039–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to or additions of rules pertaining to the definitions of "material damage" and "occupied residential dwelling and associated structures," adjustment of bond amounts for subsidence damage, subsidence control buffer zones, and impoundments meeting the class B or C criteria for dams in Technical Release-60 published by the U.S. Natural Resources Conservation Service (NRCS). The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 4, 1999. If requested, a public hearing on the proposed amendment will be held on December 28, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., on December 18, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Willis L. Gainer at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Chief, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMERE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated November 13, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–804) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(w), (x), and (aa). The provisions of Title 19, Chapter 8, Part 2, of the New Mexico Administrative Code (19 NMAC 8.2) that New Mexico proposes to revise or add are: 19 NMAC 8.2 107.M. (1), 107.O.(2), 909.E. (5), 2017.D through 2017.G, 2071.A through 2071.D, and 2072.

Specifically, New Mexico proposes to revise:

19 NMAC 8.2 107.M.(1) and 107.O.(2), the definitions of "material damage" and "occupied residential dwelling and associated structures," by adding a reference in each definition to its rules at 2069 through 2072, concerning subsidence control;

19 NMAC 909.E.(5), concerning ponds, impoundments, banks, dams, and embankments, by adding the requirement that if the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of 30 CFR 77.216(a), each plan required under 909.B, C, and E shall include a stability analysis of the structure;

19 NMAC 2017.D by adding the requirement that impoundments that meet the Class B or C criteria for dams in TR–60 be certified by a qualified registered professional engineer;

19 NMAC 2017.F.(2)(i), (ii), and (iii), by adding the requirement that the minimum design precipitation event for a spillway be, respectively, the: (1) 100-year 6-hour event for an impoundment meeting the Class B or C criteria for dams in TR–60, (2) 25-year 6-hour event for temporary impoundments not meeting the Class B or C criteria for dams in TR–60, and (3) 50-year 6-hour event for permanent impoundments not meeting the Class B or C criteria for dams in TR–60;

19 NMAC 2017.G(4) and (5), respectively, by correcting a typographical error and by adding the requirement that impoundments meeting the Class B or C criteria for dams in TR–60 be examined in accordance with 30 CFR 77.216–3;

19 NMAC 2071, concerning subsidence buffer zones, by adding at 2071.A through 2071.D, the requirements, that: (1) Unless otherwise approved, underground mining shall not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more, (2) underground mining activities beneath any aquifer that serves as a significant source of water supply to a public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata, (3) unless, otherwise approved, underground mining activities shall not be conducted beneath or in close proximity to any public buildings, and (4) underground mining shall be suspended under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments or permanent streams, if imminent danger is found to inhabitants of urbanized areas, cities, towns, or communities; and

19 NMAC 2072 by adding the requirement that when subsidence related contamination, diminution, or interruption to a water supply protected under 2069(a) through (d) occurs, the Director of the New Mexico program must require the permittee to obtain additional performance bond in the amount of the estimated costs of the repairs or of the estimated cost to replace the protected water supply.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., on December 18, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.11, 732.15, and 732.17(h)(1), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 98–32188 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM–037–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions and additional explanatory information pertaining to previously proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for New Mexico's proposed rules pertain to permit application contents for operations exclusively under reclamation and the timing of backfilling and grading. The amendment is intended to revise the New Mexico program to incorporate the additional flexibility afforded by the revised Federal regulations, as amended, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t. December 18, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Willis L. Gainer at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Mining and Minerals Division, New Mexico Energy & Minerals Department 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated March 11, 1996, New Mexico submitted a proposed amendment (administrative record No. NM–773) to its program pursuant to

SMCRA (30 U.S.C. 1201 *et seq.*). OSM announced receipt of the proposed amendment in the March 26, 1996, **Federal Register** (61 FR 13117; administrative record No. NM–802), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no none requested a public hearing or meeting, none was held. The public comment period ended on April 25, 1996.

During its review of the amendment, OSM identified concerns relating to the provisions of Coal Surface Mining Commission (CSMC) Rules 80–1–5–23(a) and 80–1–15–11 through 80–1–15–27, minimum requirements for permit applications concerning coal mining operations exclusively under reclamation, and CSMC Rule 80–1–20–101(a)(1) and (3), timing of backfilling and grading. OSM notified New Mexico of the concerns by letter dated May 15, 1996 (administrative record No. NM–885).

Please note that by letter dated January 6, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–795) to recodify the New Mexico Surface Coal Mining Regulations. New Mexico recodified its rules from Coal Surface Mining Code Rule 80–1 (CSMC Rule 80–1), sections 1 through 15 and sections 19 through 34, to Title 19 (Natural Resources and Wildlife), Chapter 8, (Coal Mining), Part 2 (Cold Surface Mining) of the New Mexico Administrative Code (19 NMAC 8.2), Subparts 1 through 34. No substantive changes to the text of the rules were proposed. OSM approved the recodification of New Mexico's rules on June 8, 1998 (63 FR 31112, administrative record No. NM–805). For purposes of clarity, OSM will hereinafter give both the recodified and the old citations of New Mexico's proposed revisions that are the subject of this document.

New Mexico responded in a letter dated November 9, 1998, by submitting a revised amendment and additional explanatory information (administrative record No. NM–803). New Mexico proposes to further revise its program by (1) withdrawing it's proposed revision of 19 NMAC 8.2 505.A (old CSMC Rule 80–1–5–23(a)) and withdrawing in its entirety the proposed addition of Subpart 15 (old CSMC Rules 80–1–15–11 through 80–1–15–27), concerning minimum requirements for permit applications pertaining to coal mining operations exclusively under reclamation, and (2) revising and submitting additional explanatory information for 19 NNMAC 8.2 2054.A (old CSMC Rules 80–1–20–101(a)), concerning the timing of backfilling and grading.

Specifically, New Mexico proposes to:

(1) Withdraw it's proposed revision at 19 NMAC 8.2 505.A (old CSMC Rule 80–1–5–23(a)) and withdraw in its entirety the proposed addition of Subpart 15 (old CSMC Rules 80–1–15–11 through 80–1–15–27), concerning minimum requirements for permit applications pertaining to coal mining operations exclusively under reclamation;

(2) Submit additional explanatory information for 19 NMAC 8.2 2054.A (old CSMC Rules 80–1–20–101(a)), pertaining to timing of backfilling and grading; and

(3) Further amended proposed 19 NMAC 8.2 2054.A by (a) revising 2054.A(2), pertaining to open pit mining, to allow for an annual backfilling and grading schedule based on either time or distance; (b) revising 2054.A(4), pertaining to surface areas disturbed incidental to underground mining activities, to require backfilling and grading in accordance with an annual time schedule; and (c) adding 2054.A(5), pertaining to any final pit at the completion of mining activities, to require that rough backfilling and grading occur in accordance with a time schedule approved by the Director of the New Mexico program.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Alburquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a sepcific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovermental relations, Surface mining, Underground mining.

Dated: November 24, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center

[FR Doc. 98–32187 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No. PA4082b; FRL–6194–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NOX RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing volatile organic compound (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) for five major sources located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all paragraphs subject to this rulemaking action, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

DATES: Written comments must be received by January 4, 1999.

ADDRESSES: Written comments on this action should be addressed to Kathleen Henry, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, at the EPA Region III office or via e-mail at miller.linda@epamail. epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: For additional information pertaining VOC and NOx RACT determinations for individual sources located in Pennsylvania, see the Direct Final rule located in the Rules and Regulations section of this **Federal Register**.

Dated: November 13, 1998.

William Wisnewski,

Acting Regional Administrator, Region III.

[FR Doc. 98–32006 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3130, and 3160

[AA–610–08–4111–2410]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Bureau of Land Management (BLM) is reopening the public comment period under a proposed rule published in the **Federal Register** on January 13, 1998, (63 FR 1936), concerning lessee responsibility for oil and gas drainage. BLM is reopening the comment period for 60 days in order to consult with Indian Tribes, pursuant to Executive Order 13084, on the issue of whether the proposed rule should apply to Tribal and individual Indian oil and gas leases. BLM seeks further public comments solely on the issue of the appropriateness of applying the proposed rule to Indian oil and gas leases.

DATES: Comments must be received on or before February 1, 1999. BLM will not necessarily consider comments received after this time in developing the final rule or include them in the administrative record.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Bureau of Land Management, Administrative Record, 1849 "C" Street, NW, Room 401LS, Washington, DC 20240. You may also comment via the Internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: AC54" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Eastern Time, Monday through Friday, except holidays. BLM will also post all comments on its home page (www.blm.gov) at the end of the comment period. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name, home street address, Internet address, or personal telephone number from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Finally, you may hand-deliver comments to BLM at 1620 L Street, NW, Room 401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 "C" Street, NW, Washington, DC 20240; telephone (202) 452–0340 (Commercial or FTS). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 13, 1998, (63 FR 1936), BLM published the drainage proposed rule in the **Federal Register**. The comment period was extended for 60 days in a notice published on February 24, 1998, (63 FR 9171). BLM is reopening the comment period for 60 days in order to consult with Indian Tribes, pursuant to Executive Order 13084, on the issue of whether the proposed rule should apply to Tribal and individual Indian oil and gas leases. Comments were solicited on this question in the original Notice of Proposed Rulemaking, but only one comment was received.

BLM seeks further public comments solely on the issue of the appropriateness of applying the proposed rule to Indian oil and gas leases. Specifically, BLM seeks comment on the issue of whether the proposed amendments to 43 CFR 3100.5 through 3100.80 should apply to both Federal and Indian leases. Should BLM determine to make those amendments applicable to Indian leases as well as Federal leases, the proposed amendments would be made in Part 3160 and replace 3162.2(a) and (b).

BLM is not considering applying to Indian oil and gas leases the proposed revisions to 43 CFR Subpart 3106 governing the obligations of Federal oil and gas assignors and assignees. Instead, Indian oil and gas leases are governed by the obligations in 25 CFR 211.53 and 212.53.

The proposed rule would clarify the responsibilities of oil and gas lessees for protecting Federal and Indian oil and gas resources from drainage by operations on nearby lands that would result in lower royalties to the Federal Government and Indian mineral owners. It would specify when the obligations of the lessee or operating rights owner to protect against drainage begin and end and what steps should be taken to determine if drainage is occurring.

Dated: November 23, 1998.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 98–31846 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–84–p

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AF30

Endangered and Threatened Wildlife and Plants; Proposed Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*) (Preble's) was listed as a threatened species under the Endangered Species Act (Act) of 1973 (16 U.S.C. sections 1531 to 1544) on May 13, 1998. At the time the Preble's was listed, a special rule for the conservation of Preble's was not promulgated and therefore virtually all of the restrictions of the Act became applicable to the species. This proposed rule would establish special standards for the conservation of the Preble's over the next 18 months, long enough to devise a more comprehensive and lasting approach for preserving the species.

DATES: Your comments on the proposed rule must be received by February 1, 1999 to receive consideration by the Service.

ADDRESSES: You should send your comments concerning this proposal to LeRoy Carlson, Field Supervisor, Colorado Field Office, Ecological Services, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0207. Comments and materials received are available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, Field Supervisor, Colorado Field Office (see **ADDRESSES** section), telephone 303/275–2370.

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a subspecies of the meadow jumping mouse (*Zapus hudsonius*) is known to occur only in portions of Colorado and Wyoming. The final rule listing Preble's as a threatened species under the Endangered Species Act was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 4(d) of the Act (16 U.S.C. section 1533) provides that whenever a species is listed as a threatened species, the Secretary of the Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species. This is done in either of two ways.

First, the Fish and Wildlife Service (Service) has issued regulations that generally apply to threatened wildlife virtually all the prohibitions that section 9 of the Act (16 U.S.C. section 1538) establishes with respect to endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" any listed wildlife species; i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or to attempt to engage in any such conduct [16 U.S.C. section 1532 (19)].

The Service's regulations for threatened wildlife, however, also provide that a "special rule" under section 4(d) of the Act can be tailored for a particular threatened species. In that case, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule is to contain the prohibitions (and exemptions) necessary and appropriate to conserve that species.

At the time Preble's was listed, we did not promulgate a special section 4(d) rule and, therefore, the section 9 prohibitions, including the take prohibitions, became applicable to the species. We are now proposing to issue this special rule for the Preble's to replace those general prohibitions with special measures tailored to the conservation of this species.

We anticipate that this proposed rule will prohibit actions that threaten the Preble's, to the extent necessary to provide for the conservation of the Preble's. It also provides flexibility to private landowners for ongoing activities that will not jeopardize the species. We also believe that this rule would garner the support of State and local governments, private landowners, and other interested parties for a lasting, cooperative approach for the long-term conservation of the species.

This proposed rule is best understood in the context of other regulations and actions, already in place or in development, to provide for conservation of the Preble's.

First, it is important to understand that an activity now prohibited under the general regulations or that would be prohibited under this special rule may still be allowed under section 10 of the Act. That section provides for a person to obtain from us in appropriate

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circumstances a permit allowing the "incidental" taking of Preble's. One of the purposes of this proposed rule is to enable us to make, in advance, general decisions that certain types of activities are consistent with the conservation of Preble's, without requiring people to seek individual Section 10 permits authorizing those activities. Additional activities that would result in the take of Preble's still could be permitted by us under section 10 of the Act.

Currently, the State of Colorado, the Service, and various local governmental entities are working together to develop one or more plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of one or more habitat conservation plans and applications to the Service for incidental take permits under section 10 of the Act. These habitat conservation plans will provide the foundation upon which to build a lasting, effective, and efficient recovery program for the Preble's.

Under this planning process, we have held three rounds of public meetings in each of the five geographic subareas that comprise the known range of the Preble's in Colorado. Key riparian areas important to Preble's that require protection have been identified, threats to the Preble's have been ranked in importance, and preliminary strategies to minimize or mitigate adverse impacts to the Preble's have been discussed by stakeholders. Nine Colorado counties and five Colorado cities have passed resolutions supporting this planning process and have indicated that they will consider using their regulations, incentives, and ordinances to protect the Preble's. We are also working with local governments in Wyoming on similar conservation planning efforts.

Both this long-term cooperative approach and this short-term special rule are consistent with the spirit and intent of the November 29, 1995, Memorandum of Agreement between the Secretary of the Interior and the Governor of Colorado. This agreement commits the Service and the State to use the flexibility in State and Federal laws and regulations and promotes participation of a broad spectrum of partners to achieve long-term conservation and development solutions. By involving and taking advantage of the land use planning and other authorities and resources of State and local governments, we believe that we can more effectively provide for the long-term conservation of the Preble's than relying just on our own authorities and resources. One of the purposes of this special rule is to begin allowing for that cooperation among us, the States, and local governments.

The second important component of the context for this special rule is that Federal agencies are required under section 7 of the Act to consult with us to ensure that their actions are not likely to jeopardize the Preble's. For consultations that involve the use of Federal land, we expect that those lands will be managed to contribute to the conservation of the species to the maximum extent possible, lessening the burden on others. Other types of consultations involve actions similar to those that are considered under the section 10 process. For example, many of the activities likely to affect the Preble's will be undertaken wholly or partly in riparian areas, and will be subject to permitting requirements of the Clean Water Act, such as § 404 dredge-and-fill permits to be issued by the Army Corps of Engineers. We expect to apply the same type of approach reflected in this proposed rule, when appropriate, to those consultations.

Third, a variety of Federal, State, and local programs are available to help conserve the Preble's through the acquisition and preservation of its habitat. These include the Service's Partners for Fish and Wildlife Program, the Natural Resource Conservation Service's wetland/riparian habitat protection programs, grant programs administered by Great Outdoors Colorado, city and county open space programs, and activities of local land trusts. In particular, our Partners for Fish and Wildlife Program has proven to be an especially effective approach for wildlife conservation on agricultural lands by providing funding for restoration of wetland and riparian habitats. We intend to dedicate additional funds to our Partners for Fish and Wildlife Program for the conservation of the Preble's on private lands.

Provisions of the Rule

Term of the Rule

We are proposing the conditions contained in this rule to be enforced for a period of 18 months. It is expected that during this time period, comprehensive habitat conservation plans for the Preble's will be developed.

Take Prohibitions

We are proposing that virtually all of the prohibitions under section 9 of the Act that apply to endangered species continue to apply to the Preble's, to the same extent as they apply to other threatened species under our general regulations, except that certain activities would be exempted. This would make it illegal for any person subject to the jurisdiction of the United States to take any Preble's; i.e., to harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect them or to attempt any of these actions. It would also make it illegal to import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any Preble's, or to possess, sell, deliver, carry, transport, or ship any Preble's that have been taken illegally.

Exempted Activities

We are proposing to include in this rule the following exemptions, provided that the activities resulting in such take are conducted in accordance with the requirements identified in this special rule.

1. Activities Outside of Mouse Protection Areas and Potential Mouse Protection Areas

In this rule, we are proposing to exempt all incidental take outside of specified Mouse Protection Areas and Potential Mouse Protection Areas (which are further explained below). As with many other listed species, the Service maintains records of known occurrence of the Preble's, as well as information on high potential habitat areas throughout its range. Mouse Protection Areas are areas where mice have been documented since 1992 and reported to the Service. Potential Mouse Protection Areas are areas that have a high potential to support the Preble's based on habitat conditions. Together these areas include more than 1,000 linear miles of streams and constitute the known locations and potential Preble's habitat in Colorado and Wyoming.

We believe that these areas include sufficient habitat to achieve recovery of the Preble's and that incidental take outside of these areas will be unlikely and would not compromise Preble's conservation efforts. These areas may be amended or adjusted based on new information.

2. Rangewide Exemptions

We are proposing to exempt four types of existing activities from the take prohibitions anywhere within the Preble's range (including within Mouse Protection Areas and Potential Mouse Protection Areas).

a. *Rodent control within 10 feet of or inside any structure.* The Preble's is generally not found in association with structures such as barns, houses, and other buildings. We believe that any Preble's mortality associated with trapping near these structures would be insignificant and that this exemption will promote public support for Preble's conservation efforts.

b. *Ongoing agricultural activities.* This exemption provides for a continuation of existing agricultural practices but does not allow an increase of impacts to, or further encroachment upon, Preble's habitat. For example, it does not allow for an increase in grazing intensity in Preble's habitat or mowing closer to a stream supporting the Preble's. Situations where Preble's populations coexist with ongoing agriculture may provide valuable insight into habitat conditions required by the Preble's and the specific types of grazing and farming practices that are compatible with the Preble's.

We believe that the exemption for agricultural practices will provide a positive incentive for agricultural interests to engage in voluntary conservation activities and will remove much of the existing reluctance by private landowners to allow Preble's surveys to be conducted on their lands. These surveys may lead to a more complete understanding of the status and distribution of the species. With this knowledge, our ability to develop an effective long-term recovery program will be enhanced.

c. *Maintenance and replacement of existing landscaping and related structures and improvements, with no increase in impervious surfaces.* Some existing landscaping activities, such as lawn mowing and gardening associated with residential or commercial development, golf courses, and parks have disrupted Preble's habitat in certain areas. However, allowing these activities to continue in ways that do not lead to any increases in impervious surfaces within Mouse Protection Areas and Potential Mouse Protection Areas is not expected to adversely affect Preble's conservation and recovery efforts.

d. *Existing uses of water associated with the exercise of perfected water rights under State law, and interstate compacts and decrees.* The cumulative effect of the development and exercise of water rights has impacted riparian communities and the Preble's in some areas. However, the exercise of certain water rights and water development may have beneficial effects in riparian communities and to the Preble's. Persons with perfected water rights are encouraged to engage in conservation planning efforts to provide voluntarily the flows that may be determined to be important to protect Preble's habitat. Take associated with new water development would be prohibited.

The Service considered a possible rangewide exemption pertaining to periodic maintenance of existing water supply ditches. Periodic maintenance of ditches includes activities such as burning or clearing vegetation that may impact Preble's habitat. We have concluded, however, that because some water supply ditches may, in fact, provide suitable habitat and dispersal routes for the Preble's, take relating to periodic maintenance of these ditches should be prohibited. We intend to assess the value of water supply ditches to the conservation and recovery of the Preble's, both in specific areas where use of these ditches by Preble's has been documented, and in areas that may contain suitable habitat to determine if these areas should be classified as Mouse Protection Areas or Potential Mouse Protection Areas. The conclusions from this assessment will be used in conservation and recovery planning for the Preble's. Coordination with the Service is required when activities are planned in areas potentially significant for the Preble's.

3. New Development in Mouse Protection Areas and Potential Mouse Protection Areas

Under this proposed rule, States, counties, and/or municipalities which manage land use at the local level may, at their option and upon concurrence by the Service, adopt and enforce necessary protective standards for the Preble's, as follows:

1. State or local authorities will identify to us their legal authorities to protect Preble's habitat. They will also commit to use those authorities to enforce the Preble's protection standards described below;
2. We will review these authorities and provide concurrence that the authorities are adequate to protect Preble's habitat; and
3. Upon receiving our concurrence, State/local authorities may approve development or actions that are consistent with the mouse protection standards and mitigation guidelines described below.

The Service will closely monitor implementation of this rule by State and local governments and provide assistance as required. We will meet quarterly with each governmental entity which has received written concurrence from us recognizing its present authority and ability to protect the Preble's.

Projects or actions within the jurisdiction of local governmental entities that elect not to enforce these standards would be subject to all the prohibitions on take in this proposed rule, unless the activity is otherwise exempt in this proposed rule. However, if you are undertaking an action that may take the Preble's, including significantly modifying its habitat within an area where the local government has chosen not to use the provisions in this rule, we will work directly with you to develop a habitat conservation plan and an incidental take permit under section 10. If there is Federal approval or funding involved, we will review the action under section 7 of the Act (16 U.S.C. section 1536).

In cases where an individual habitat conservation plan is required for a specific property, the applicant will be responsible for the costs of developing and implementing the habitat conservation plan. Habitat conservation plans will be consistent with provisions of this rule, including the mouse protection standards and associated mitigation guidelines. However, it may be necessary and desirable to modify these standards and guidelines to address site specific conditions of a project.

Mouse Protection Standards

We have developed standards for the Preble's to ensure adequate protection of important habitats known as Mouse Protection Areas and Potential Mouse Protection Areas. For the purposes of this rule, a Mouse Protection Area is the reach of any stream that is located within 1 linear mile upstream and 1 linear mile downstream of any known location of the Preble's that has been reported to the Service since 1992. Major Preble's surveying efforts began in this year and surveys since 1992 represent the known occupied habitat of the Preble's. In instances where two designated Mouse Protection Areas on the same stream are separated by one linear mile or less, one continuous Mouse Protection Area will be established. Biological research shows that there is a high likelihood that these areas will be used by the Preble's on a year-round basis or as a movement corridor.

A Mouse Protection Area (MPA) also extends 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any contiguous wetlands, whichever is further. The basis for the 300-foot standard is that mice have been documented to regularly move up to 150 feet from streams and wetlands. The remaining 150-foot zone serves as a buffer zone to avoid disturbance of Preble's habitat associated with human activities. We believe that this zone will encompass the normal home range of the Preble's and will provide an adequate buffer from adjoining development.

The Service recognizes that it may be desirable to modify the boundaries of a Mouse Protection Area to reflect the actual extent of Preble's habitat along a stream or a wetland. The Service may make these changes when biologically justified. In addition, local entities that have agreed to enforce the mouse protection standards may also propose changes to a Mouse Protection Area based on new biological information. We would need to approve any changes.

There are many areas within the historic range of the Preble's that contain suitable Preble's habitat that have not been surveyed, or if previously surveyed, in which no mice have been captured. These areas, known as Potential Mouse Protection Areas, have high potential of supporting a Preble's population based on the presence of suitable riparian habitat such as willow or shrub vegetation, and/or the proximity to known locations of the Preble's or other suitable habitat. These areas require careful scrutiny because the Preble's may actually live in these locations and they may be important for the recovery and eventual delisting of the Preble's.

The Service evaluated the potential for new impacts to Mouse Protection Areas from trails, road and utility line crossings, and other development, and determined that Preble's persists along some streams despite the presence of trails, road crossings, limited residential and commercial development, and other habitat disruption. Based on this, we have concluded that new projects or actions will be allowed to modify a cumulative total of up to four percent of the habitat within a Mouse Protection Area under the following conditions:

1. A State or local government has received Service approval and is willing to adopt and enforce protection standards for the Preble's;
2. All habitat losses will be fully compensated through mitigation; and
3. The action will not impede movement of mice up or down riparian corridors.

A Mouse Protection Area 2 miles long and 600 feet wide encompasses about 145 acres of habitat. This rule would allow less than 6 acres of that habitat in a Mouse Protection Area to be modified without further advance review by us. We believe that exempting this amount of habitat loss, in conjunction with the mitigation, is biologically sound and consistent with the conservation of the Preble's. We are soliciting comment on this point and will conduct a Section 7 consultation.

Existing roads, structures, and other impervious surfaces would not be considered Preble's habitat for the purposes of computing the four percent.

Each jurisdiction that elects to implement the mouse protection standards must ensure that the four percent habitat modification limit is not exceeded. Where a Mouse Protection Area crosses jurisdictional boundaries, each jurisdiction would be allowed to modify up to four percent of the habitat in the portion of the Mouse Protection Area that occurs in their jurisdiction.

Some projects outside (i.e., upstream) of a Mouse Protection Area may adversely impact a Mouse Protection Area or Potential Mouse Protection Area. This may occur when stream flows are altered (for example by an increase in stormwater runoff) or when there is an increase in sedimentation. Projects outside of a Mouse Protection Area or Potential Mouse Protection Area which do not appreciably alter stream flows or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area would be exempted from section 9 incidental take prohibitions. New projects which do result in a significant modification of stream flow or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area would be subject to the section 9 incidental take prohibitions of the Act, unless the activity is otherwise exempt in this proposed rule.

State and local authorities have the option to implement Preble's protection standards for Mouse Protection Areas, or for both Mouse Protection Areas and Potential Mouse Protection Areas. Where the respective governmental entity elects to accept responsibility for enforcing Preble's protection standards for Potential Mouse Protection Areas, these areas will be treated the same as Mouse Protection Areas until and unless a Service-approved Preble's survey of the area occurs. Where the governmental entity does not elect to accept responsibility for enforcing Preble's protection standards for Potential Mouse Protection Areas, the Service nonetheless strongly encourages the performance of surveys in accordance with Service protocol before habitat modification occurs to avoid potential liability for an action that does result in a prohibited take of a Preble's.

If a Preble's is trapped during a survey in any Potential Mouse Protection Area, it will be reclassified as a Mouse Protection Area and treated accordingly. If a new survey is conducted and no Preble's are trapped, the area surveyed will no longer be considered a potential mouse protection area. Projects may commence if they do not appreciably alter stream flows or sedimentation or otherwise impact a Mouse Protection Area or Potential Mouse Protection Area. The project proponent must receive Service concurrence with the results of the survey.

The Service recognizes that the Preble's protection standards may be adjusted based on new information. We will work cooperatively with local governmental entities to apply these standards in a reasonable manner.

Mitigation Guidelines

Mouse Protection Areas encompass both the specific habitats that the Preble's is known to frequent, and adjacent habitats that have both direct value to the Preble's and provide an essential buffer from adjacent development and human activity. Armstrong et al. (1997, p. 77) described typical Preble's meadow jumping mouse habitat as "well-developed plains riparian vegetation with relatively undisturbed grassland and a water source in close proximity." Also noted is a preference for "dense herbaceous vegetation consisting of a variety of grasses, forbs and thick shrubs." Moving outward from streams and riparian corridors there generally exists a transition from habitat regularly used by the Preble's to habitat of value largely as a buffer. The goal of all mitigation is to offset impacts to the diverse habitat types required by the Preble's, including essential buffer areas. Mitigation must be accomplished in a manner that does not adversely impact important biological resources, other federally-threatened or endangered species, proposed species, or candidate species. This includes *Spiranthes diluvialis* (the Ute ladies'-tresses orchid) and *Gaura neomexicana* ssp. *coloradensis* (the Colorado butterflyplant).

Identification of practicable alternatives to a proposed project or action which avoids or minimizes impacts to Preble's habitat is a first step in assessing proposed project impacts. Avoidance and minimization of impacts is preferable to compensatory mitigation. Compensatory mitigation is required to offset unavoidable impacts that remain after all appropriate and practicable avoidance and minimization measures are applied. The goal of compensatory mitigation is to assure that no net loss of habitat value to the Preble's occurs. Thus, while up to four percent of land within any one Mouse Protection Area may be impacted within the tenure of this rule, overall loss of habitat value to the Preble's is not anticipated.

Compensatory mitigation may include restoration, enhancement, or creation of habitat. Restoration entails returning the functions of a disturbed, degraded, or totally altered site to its original status before it was damaged by a permitted project or action. For example, installation of an underground pipeline through Preble's habitat may entail removal of vegetation and soil disruption. Regrading and planting of appropriate vegetation could restore habitat value of the area for the Preble's. In general, restoration yields the greatest amount of benefit with the least amount of risk and is the preferable form of mitigation. Restoration will generally require a mitigation ratio of 1.5 to 1 (i.e., 1.5 acre restored for every 1 acre lost).

We have evaluated restoration and other mitigation techniques. This includes review of the habitat types likely to be mitigated, the potential for failure to meet compensatory mitigation goals, and the temporary loss of habitat that occurs until the full value of mitigation conducted concurrently with impacts is achieved. Ratios that are cited are based on this evaluation and are intended to assure that, at minimum, Preble's habitat values are maintained over the long term.

Enhancement is the process of improving one or more functions of existing habitat to meet certain goals. For example, altering grazing practices to allow recovery of riparian vegetation could yield substantial benefit to the Preble's. In some cases, supplemental planting of preferred plant species may be appropriate. While this type of mitigation is usually successful, its actual value to the Preble's may be difficult to assess. Depending on the techniques used, enhancement may require a mitigation ratio of 1.5 to 1, or up to 3 to 1.

Creation entails converting unsuitable habitat types to Preble's habitat. For example, a dry upland could be graded down or subirrigated to provide hydrology that would support establishment of preferred Preble's habitat. This form of mitigation may have a higher chance of failure and should be used only when restoration opportunities are absent. Creation of habitat will generally require a mitigation ratio of 3 to 1.

A component of mitigation through restoration, enhancement, or creation is the preservation in perpetuity of these habitat areas. However, for the purposes of this rule, preservation of habitat alone will generally not be credited as compensatory mitigation. Preservation may be effectively used in cases where Preble's habitat would certainly be lost without such measures. We will evaluate the acceptability of preservation as compensatory mitigation on a case by case basis.

In general, acceptable compensatory mitigation will entail in-kind mitigation (the restoration, creation, or enhancement of similar habitat to that being impacted) within the same protection area where impacts occur. Loss of habitat within a Mouse Protection Area will be mitigated by restoring, enhancing, or creating similar habitat nearby. Proposed exceptions, such as mitigating losses to buffer areas by restoring Preble's habitat (out-of-kind mitigation), will be reviewed and approved by the Service as we deem appropriate.

Local governmental entities will assure development of mitigation that is consistent with these mitigation guidelines and that sufficient funds are available to accomplish the proposed mitigation. Review of the proposed mitigation activities will be a significant aspect of quarterly meetings held with local governmental entities. We anticipate that within the State of Colorado the development of mitigation plans consistent with these guidelines will be accomplished by project proponents in coordination with the local governmental entity and the Colorado Division of Wildlife, with technical assistance provided by the Service.

Preble's Surveys

Potential Preble's habitat on private lands has not been thoroughly surveyed. Surveys for the Preble's on private lands will occur only with landowner permission. The conditions contained in this rule should remove some of the existing barriers to conducting Preble's surveys on these lands. Surveys of the Potential Mouse Protection Areas conducted on private lands will provide a conservation benefit to the species. This is particularly true if the survey results are used for developing management plans or habitat conservation plans for the Preble's and prioritizing conservation areas for the mouse.

Summary of Conservation Benefits

The proposed prohibitions and exemptions in this rule provide both for short-term conservation of the Preble's and an avenue for the development of meaningful long-term conservation efforts for the Preble's by State and local governments, agricultural interests, developers, and the general public.

Certain provisions of the rule define protection areas and provide for a significant role by State and local governments as partners in implementing the Act. This is designed to guide development activities during the interim period while comprehensive conservation plans are being developed. These comprehensive plans will provide a basis for habitat conservation plans for the Preble's. By employing existing local development review and land use controls, these provisions greatly increase participation by stakeholders and the level of review that proposed development activities receive. Standards set forth in the proposed rule limit impacts to Mouse Protection Areas and require mitigation that will prevent loss of Preble's habitat value. This level of local development review far surpasses that which we can directly provide. Projects or actions within the jurisdiction of local governmental entities that elect not to enforce these standards are subject to all the prohibitions of section 9 of the Act, unless the activity is otherwise exempt in this proposed rule.

Future Section 7 Consultations

This special rule does not change the obligation of Federal agencies to consult with the Service concerning actions they authorize, fund, or carry out which may affect listed species, including the Preble's. This rule is intended to supplement and not replace the Section 7 form of incidental take authorization. Therefore, Federal actions requiring incidental take authorization will receive that authorization through Section 7 and not this special rule. Only habitat loss authorized through this special rule will be counted against the four percent maximum. Habitat impacts authorized through Section 7 (or Section 10) will not be counted as part of the four percent authorized by this rule and will instead be tracked separately. All Section 7 consultations initiated after promulgation of this special rule will assume, as part of the environmental baseline against which projects are measured, that the maximum potential impact under this rule will occur (i.e., that there will be disruption of four percent of the habitat within each Mouse Protection Area, with appropriate mitigation).

Before the publication of a final rule for the Preble's, we must carry out an internal or intra-service consultation on the action of adopting this rule. A biological opinion will be prepared by the Service analyzing the proposed rule and any adverse, as well as beneficial effects, for the Preble's. This biological opinion will also discuss and analyze the effects of the implementation of this rule on listed species other than the Preble's.

The Service anticipates that the ongoing planning process in both Colorado and Wyoming will lead to habitat conservation plans and section 10 permits that will be the subject of future section 7 intra-service consultations.

Comments Solicited

The Service invites comments on the proposed rule. In particular, we are seeking comments on:

1. The desirability and practicality of establishing partnerships with local governmental entities to use their land use planning and regulatory powers to enforce the Mouse Protection Standards for Mouse Protection Areas, or for both Mouse Protection Areas and Potential Mouse Protection Areas;
2. The adequacy of the proposed mitigation guidelines including any options that may be available for mitigating impacts of development activities on Preble's habitat;
3. The adequacy of the Mouse Protection Standards and/or information that would lead to the development of more appropriate standards;
4. The types of agricultural practices, including grazing practices, that are compatible with maintenance of Preble's habitat within riparian zones; and
5. Any additional information on the locations and boundaries of designated Mouse Protection Areas and Potential Mouse Protection Areas.

To facilitate public comment, the Service will conduct public meetings in various locations in Colorado and Wyoming to explain the rule in more detail and address questions.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of Interior, Room 7229, 1849 C Street NW, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

Literature Cited

Armstrong, D.M., M.E. Bakeman, A. Deans, C.A. Meaney, and T.R. Ryan. 1997. Report on habitat findings of the Preble's meadow jumping mouse. Boulder (CO); Report to the U.S. Fish and Wildlife Service and Colorado Division of Wildlife. 91 pp.

Required Determinations

The Service invites comments on the anticipated direct and indirect costs and benefits or cost savings associated with the special rule for the Preble's. In particular, the Service is interested in obtaining information on any significant economic impacts of the proposed rule on small public and private entities. Once we have reviewed the available information, we will determine whether we need to prepare an initial regulatory flexibility analysis for the special rule. We will make any such analysis or determination available for public review. Then, we will revise, as appropriate, and incorporate the information in the final rule preamble and in the record of compliance (ROC) certifying that the special rule complies with the various applicable statutory, Executive Order, and Departmental Manual requirements. Under the criteria in Executive Order 12866, the special rule does not need to be reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The Service has examined this proposed rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirements associated with the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) other than those already approved for Federal Fish and Wildlife license permits with OMB approval 1018-0094, which has an expiration date of February 28, 2001. For more information concerning these permits, see 50 CFR 17.32.

National Environmental Policy Act

The Service will review this proposed rule under the requirements of the National Environmental Policy Act before finalization.

Section 7 Consultation

The Service will review this proposed rule under the requirements of section 7 of the Act before finalization.

Government-to-Government Relationship With Tribes

This proposed rule does not directly affect Tribal resources.

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service proposes to amend 50 CFR part 17, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.40 by adding a new paragraph (k) to read as follows:

17.40 Special rules-mammals.

* * * * *

(k) Preble's meadow jumping mouse (*Zapus hudsonius preblei*). (1) All of the prohibitions of 50 CFR 17.31 (a) and (b) and exemptions of 50 CFR 17.32 are applicable to the Preble's except where identified below. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any federally-listed wildlife species. Prohibitions for threatened wildlife under section 17.31 include take (harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally.

(2) This rule is effective until (18 months from the effective date of the final rule).

(3) We will likely adjust Mouse Protection Areas and Potential Mouse Protection Areas based on new information as provided in paragraph (k)(12) of this section. We will maintain updated geographic locations of these areas. Direct inquiries concerning whether specific lands fall within a Mouse Protection Area or Potential Mouse Protection Area to the Service offices listed in paragraph (k)(12)(ii) of this section and/or to a participating local governmental entity. Priority areas for conservation of the Preble's are:

(i) Mouse Protection Areas, the reach of any stream that is located within 1 linear mile upstream and 1 linear mile downstream of any known location of Preble's that has been reported to the Service since 1992. In instances where two Mouse Protection Areas on the same stream are separated by 1 linear mile or less, one continuous Mouse Protection Area will be established. A Mouse Protection Area extends 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any wetland contiguous with the stream, whichever is further.

(ii) Potential Mouse Protection Areas, the reach of a stream that the Service has determined contains suitable habitat conditions for the Preble's. Potential Mouse Protection Areas extend 300 feet on each side of the stream measured from the centerline, or 300 feet from the exterior boundary of any wetland contiguous with the stream, whichever is further.

(4) Except as provided in paragraph (k)(8) of this section, the take prohibitions of § 17.31 will not apply to incidental take outside of a Mouse Protection Area or Potential Mouse Protection Area. Any actions that significantly modify Preble's habitat within a Mouse Protection Area or Potential Mouse Protection Area must comply with § 17.31, except as otherwise exempted in this proposed rule. In addition, we require permits for trapping surveys to determine the presence or absence of the Preble's in Mouse Protection Areas or Potential Mouse Protection Areas, for education purposes, scientific purposes, the enhancement or propagation for survival of the Preble's, zoological exhibition, and other conservation purposes in accordance with 50 CFR 17.32 and under a section 6 (16 U.S.C. section 1535) cooperation agreement with a State, if applicable.

(5) The following activities, which may result in incidental take of the Preble's, are exempted by this rule from the § 17.31 take prohibitions, within the entire range of the Preble's:

(i) Rodent control within 10 feet of or inside any structure ("rodent control" includes control of mice and rats by trapping, capturing, or otherwise physically capturing or killing rodents, or poisoning by any substance registered with the Environmental Protection Agency as required by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136) and applied consistent with its labeling. "Structure" means any manmade or other artificially constructed object which includes but is not limited to any building, stable, grain silo, corral, barn, shed, water or sewage treatment equipment or facility, enclosed parking structure, shelter, gazebo, bandshell, or restroom complex;

(ii) Ongoing agricultural activities including grazing, plowing, seeding, cultivating, minor drainage, burning, mowing and harvesting, as long as these activities are currently conducted and do not increase impacts to or further encroach upon Preble's habitat;

(iii) Maintenance and replacement of existing landscaping and related structures and improvements, with no increase in impervious surfaces; and

(iv) Existing uses of water associated with the exercise of perfected water rights under State law and interstate compacts and decrees. (A "perfected water right" is a right that has been put to beneficial use and has been permitted, decreed, or adjudicated under State law.)

(6) Actions within a Mouse Protection Area which may result in up to four percent cumulative modification of Preble's habitat within the Mouse Protection Area will be exempted from the § 17.31 take prohibitions provided that:

(i) The governmental entity (State, county, or municipality) where the action is to take place has elected to enforce the Preble's protection standards listed in paragraph (k)(7) of this section;

(ii) The governmental entity has provided the Service with written assurances that they have the legal authority and ability to enforce the standards (This means a written affirmation of the present authority and ability of the local governmental entity to implement and enforce its existing local regulations, incentives, and programs to enforce the Preble's protection standards in paragraph (k)(7) of this section. Existing regulations may include, but need not be limited to: floodplain regulations, subdivision regulations, zoning regulations, site planning requirements, standards for identifying and protecting ecologically sensitive lands, wildlife habitat protection regulations, drainage design standards, road and bridge construction standards, and grading standards. This may also mean an agreement of any State agency or instrumentality to implement its existing regulations and programs, and to exercise its legal authorities in furtherance of the purpose of this rule and the protection and recovery of the Preble's);

(iii) The Service has concurred in writing with the written assurances from the State or local entity; and

(iv) The governmental entity has reviewed and approved the action consistent with the Mouse Protection Standards in paragraph (k)(7) of this section.

(7) State, local, or municipal entities which elect to adopt the procedures in paragraph (k)(6) of this section and have received concurrence from the Service can approve new actions that significantly modify a cumulative total of four percent or less of each Mouse Protection Area. The applicant must ensure that the Preble's can move freely up or down the stream corridor. The applicant must also fully restore or replace the Preble's habitat values with restoration activities to be completed in a timely manner. Any replacement or restoration of habitat outside a Mouse Protection Area requires the concurrence of the Service.

(8) New actions proposed to take place outside of a Mouse Protection Area or Potential Mouse Protection Area which will significantly modify stream flows or sedimentation, or otherwise significantly modify the Preble's habitat inside a Mouse Protection Area or Potential Mouse Protection Area, will be subject to the § 17.31 take prohibitions unless otherwise exempted in this proposed rule.

(9) Local governmental entities may elect to accept responsibility for protecting a Potential Mouse Protection Area within its jurisdiction or may accept responsibility for protecting all or part of a Potential Mouse Protection Area in response to a request by a project proponent/landowner. The local governmental entity can only accept this responsibility under paragraph (k)(6) of this section. In these cases, the local governmental entity will treat the Potential Mouse Protection Area as a Mouse Protection Area under paragraph (k)(7) of this section.

(10) If a local governmental entity has not assumed responsibility for protection of any Potential Mouse Protection Area, the take prohibitions of § 17.31 apply to any actions, unless the activity is otherwise exempt in this proposed rule, that would result in a direct or indirect taking of the Preble's. However, a project proponent will be exempt from the take provisions of § 17.31 if:

(i) A presence/absence survey for the Preble's has been conducted in accordance with current Service survey guidelines;

(ii) The survey report concludes that the Preble's is not present on the site to be impacted and the Service concurs with the survey report's conclusion. (If a presence/absence survey documents the existence of the Preble's, the area surveyed will be designated as a Mouse Protection Area and will be treated accordingly by the provisions of this rule).

(11) Each government entity which has received written concurrence from the Service concerning its present authority and ability to protect the Preble's under paragraph (k)(6) of this section will meet quarterly with the Service to evaluate implementation of this special rule. At least 2 weeks before the meetings, public notice of the meetings will be provided. As more site-specific information about Mouse Protection Areas and Potential Mouse Protection Areas becomes available, governmental entities authorized under the provisions of paragraph (k)(6) of this section must provide all new information to the Service so that necessary changes can be made with respect to the delineation of Mouse Protection Areas and Potential Mouse Protection Areas. If we determine that the governmental entity is not adequately enforcing the Preble's habitat protection standards contained in this special rule, we will provide written notice describing the deficiencies to that governmental entity with suggested corrective action. If corrective actions are not implemented, we may then withdraw our concurrence with the governmental entity's program. If we withdraw our concurrence, all of the § 17.31 take prohibitions will apply to lands within the jurisdiction of that governmental entity unless the activity is otherwise exempted in this rule.

(12)(i) Geographic locations of Mouse Protection Areas and Potential Mouse Protection Areas based on the best scientific information that is currently available are maintained by the Service at addresses provided below. Lists of these areas have also been provided to State and county offices and to selected municipalities within the Preble's range. We recognize that more site-specific information about each of the stream reaches may result in changes to delineated Mouse Protection Areas and Potential Mouse Protection Areas. The most current refinements to Mouse Protection Areas and Potential Mouse Protection Areas are available from the Service offices listed below and from counties, and selected municipalities. Lists of these areas are also available on our home page on the internet (www.r6.fws.gov/preble). Inquiries concerning whether or not specific lands fall within protection areas should be directed to the Service offices listed below or to a participating local governmental entity.

(ii) These geographic locations can be viewed at the U.S. Fish and Wildlife Service, Colorado Field Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0207, telephone (303) 275–2370 or at the U.S. Fish and Wildlife Service, Wyoming Field Office, 4000 Morrie Avenue, Cheyenne, Wyoming 82001, telephone (307) 722–2374.

Dated: November 25, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–32145 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 232
Thursday, December 3, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

UNITED STATES COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 11, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of November 13, 1998 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Michigan
IV. Future Agenda Items.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,
General Counsel.

[FR Doc. 98–32331 Filed 12–1–98; 2:14 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary determination of antidumping duty investigation.

SUMMARY: On November 4, 1998, the Department of Commerce ("the Department") published the preliminary determination of its antidumping duty investigation of stainless steel plate in coils ("SSPC") from Taiwan. This investigation covers two respondents, Yieh United Steel Corporation ("YUSCO") and Ta Chen Stainless Steel Pipe, Ltd. ("Ta Chen").

YUSCO submitted a ministerial error allegation on November 6, 1998 with respect to the preliminary determination published on November 4, 1998. On November 10, 1998, petitioners (Armco, Inc.; J&L Specialty Steel, Inc.; Lukens, Inc.; North American Stainless; the United Steelworkers of America, AFL–CIO/CLC; the Butler Armco Independent Union; and Zanesville Armco Independent Organization, Inc.) submitted ministerial error allegations with respect to the middleman dumping portion of the preliminary determination. Based on the correction of certain ministerial errors made in the preliminary determination, we are amending our preliminary determination. (*See* 19 CFR 351.224(e).)

EFFECTIVE DATE: December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Joanna Gabryszewski, Rebecca Trainor, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0780, (202) 482–0666 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 351.

Significant Ministerial Errors

We are amending the preliminary determination of sales at less than fair value for SSPC from Taiwan to reflect the correction of significant ministerial errors made in the margin calculations regarding both YUSCO and Ta Chen in that determination, pursuant to 19 CFR 224(g)(1) and (2). A significant ministerial error is defined as a correction which, singly or in combination with other errors, (1) would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Scope of the Investigation

For purposes of these investigations, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1997 through December 31, 1997.

Background

On November 4, 1998, the Department published in the **Federal Register** its notice of preliminary determination of the antidumping duty investigation of SSPC from Taiwan (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan* (63 FR 59524 (November 4, 1998)). We preliminarily calculated a dumping margin of 67.68 percent based on YUSCO's sales. In addition, after initiating a middleman dumping investigation, we preliminarily determined that Ta Chen had not engaged in middleman dumping. (See *Memorandum to the File: Analysis for the Preliminary Determination of SSPC from Taiwan: Middleman Dumping Investigation: Ta Chen* (October 27, 1998).)

YUSCO

On November 6, 1998, YUSCO submitted timely written allegations that the Department made a ministerial error which resulted in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted average margin calculated in the preliminary determination. YUSCO alleged that the Department erred by failing to convert U.S. movement expenses reported in New Taiwan Dollars (NTD) into U.S. dollars.

We agree with YUSCO that we inadvertently failed to convert U.S. movement expenses, reported by YUSCO in NTD, into U.S. dollars. Because the ministerial error is significant, as defined in 19 CFR 351.224(g), we are amending our preliminary determination. YUSCO's amended rate is *de minimis*. We have set YUSCO's cash deposit rate at zero. (*See* "Suspension of Liquidation" section, below.)

Ta Chen

On August 11, 1998, petitioners alleged that Ta Chen Stainless Steel Pipe, Ltd. and/or its affiliated U.S. importer, Ta Chen International (collectively Ta Chen), were reselling subject merchandise in the United States at prices less than Ta Chen's cost of acquisition and related selling and movement expenses. In our preliminary determination, we preliminarily found that Ta Chen had not engaged in middleman dumping because the portion of below-acquisition-cost sales was not substantial. (63 FR at 59526)(November 4, 1998).)

On November 10, 1998, petitioners alleged that the Department's computer program, upon which it based its preliminary determination that Ta Chen was not engaging in middleman dumping during the POI, contained a number of clerical errors. On November 17, 1998, Ta Chen filed a response to the petitioners' comments. In accordance with section 351.224(c)(3) of the Department's regulations, we do not consider replies to ministerial error comments submitted in connection with a preliminary determination. Therefore, we have returned Ta Chen's rebuttal comments and have not considered them for this amended preliminary determination. (See 19 CFR 351.224(c).)

First, petitioners claim that the Department omitted the following U.S. selling expenses from the analysis: bank fees incurred in Taiwan and the United States; imputed credit expenses; and certain indirect selling expenses. Petitioners argue that these expenses should be deducted from Ta Chen's U.S. price in accordance with *Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value*, 51 FR 5572, 5573 (February 14, 1986) (*Fuel Ethanol*). Because these were actual costs incurred, we intended to deduct these costs. Thus, we agree that we committed a ministerial error in not deducting bank fees and indirect selling expenses from U.S. price. We have deducted these expenses for this amended preliminary determination. There was no ministerial error in not deducting imputed credit, however, because only *actual* selling expenses should be deducted in the middleman dumping analysis. See *Mitsui & Co., Ltd. v. the United States*, Slip Op. 97–49 (April 22, 1997) (*Mitsui Remand Determination*). We stated that:

> "[imputed credit expenses and inventory carrying costs] represent opportunity costs, not actual expenses to the company. In analyzing whether prices are above or below the cost of production, it is the Department's practice to base its calculation on actual costs rather than imputed expenses." (*Mitsui Remand Determination* at 10.)

Second, petitioners argue that the Department inadvertently based the middleman dumping analysis on only a portion of Ta Chen's resales by deleting from the database any resale where the quantity was reported on a theoretical basis, *i.e.*, for sheet. Petitioners claim that all reported resales are of subject merchandise regardless of whether it was resold as a coil or as sheet, because the product imported was stainless steel sheet in coil, *i.e.*, subject merchandise. Petitioners argue that, since Ta Chen provided the data for these sales, converting them from theoretical to actual, it is not necessary to eliminate any sales from the database.

We agree with petitioners in part. YUSCO reported its sales on an actual gauge basis, while Ta Chen reported its sales on a nominal (theoretical) gauge basis. Ta Chen included a variable in its database that provided the actual gauge of the merchandise it purchased from its supplier, YUSCO. Ta Chen reported some sales of merchandise for which no corresponding YUSCO sale was reported, because the actual gauge was less than 4.75 mm. In the preliminary determination, we intended to remove only these sales. In doing so, we inadvertently identified these sales by weight rather than by gauge—that is, we removed from the database sales that Ta Chen made on a nominal weight basis. For this amended preliminary determination, we identified these sales by gauge, and have only removed those sales that have an actual gauge of less than 4.75 mm.[1]

Third, petitioners claim that the Department made a ministerial error by converting Ta Chen's acquisition price to U.S. dollars based on the date of Ta Chen's sale to the first unaffiliated U.S. customer, instead of the date of YUSCO's invoice to Ta Chen. We disagree that this was a ministerial error. In accordance with our longstanding practice, we intentionally based currency conversions on the date of sale. *See* 19 CFR 351.415(a) (Currency Conversion).

Fourth, petitioners claim that the Department incorrectly calculated the percentage of Ta Chen's U.S. sales that are below the acquisition cost, because we miscalculated the total U.S. sales value and the total value of sales below acquisition cost.

We agree with petitioners, and have corrected this ministerial error. In our preliminary calculations, we intended to calculate total below-acquisition-cost value and total U.S. sales value by multiplying per unit prices by their corresponding quantities, and then summing these values. Instead, for both calculations, we first summed per unit values and their corresponding quantities, and then we multiplied the total value by the total quantity. After making the appropriate correction, we divided the total value of below-acquisition-cost sales by the total value of all sales, as we did in the *Preliminary Determination,* to arrive at the ratio of the below-acquisition-cost-sales value to the value of all sales to the United States. *See* the *Analysis Memorandum for the Amended Preliminary Determination* (*Amended Preliminary Memo*) on file in room B–099 of the Commerce Department.

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[1] We note that we requested that YUSCO report all sales of merchandise that nominally fit the gauge included in the scope of the investigation, *i.e.*, with gauge greater than or equal to 4.75 mm. However, YUSCO had reported sales only on an actual basis as of the time of the preliminary determination, *i.e.*, it reported sales of merchandise with an *actual* gauge of greater than or equal to 4.75 mm. We intended to include in our preliminary analysis only Ta Chen's resales corresponding to merchandise reported by YUSCO. By letter to YUSCO of November 6, 1998, we have reiterated our request for data based on the nominal gauge.

As a result of the correction of these ministerial errors, we have determined that Ta Chen sold subject merchandise at a loss because Ta Chen's prices were, after the deduction of all costs incurred in selling the merchandise in the United States, lower than its costs of acquisition from YUSCO, an unaffiliated producer during the POI. *See Amended Preliminary Memo.*

In accordance with the methodology we used in *Mitsui Remand Determination,* we determined whether a substantial portion of Ta Chen's U.S. sales were below acquisition costs by comparing the total value of stainless steel plate sold below acquisition cost to the total value of all stainless steel plate sales made by Ta Chen during the POI. We first identified sales below acquisition cost by comparing Ta Chen's resale price for stainless steel plate sold during the POI to its acquisition cost for this merchandise. We used YUSCO's invoice price to Ta Chen as the acquisition cost. We based the U.S. resale prices on Ta Chen's sales to unaffiliated customers in the United States. From that starting price we deducted discounts, movement expenses (freight, insurance, U.S. duties, and brokerage and handling fees), and the actual selling expenses incurred by Ta Chen (commissions, warehousing charges, bank charges, and indirect selling expenses), where applicable. We then compared that price, after deductions, to the acquisition cost.

Based on these amended findings, we preliminarily determine that Ta Chen made a substantial portion of its sales below acquisition cost, because 34.7 percent of Ta Chen's resales to the United States were at prices below its acquisition cost. As a result of this finding, we have examined whether Ta Chen's U.S. prices were substantially below its acquisition costs from YUSCO to determine whether Ta Chen engaged in middleman dumping during the POI.

As we stated in the *Preliminary Determination,* Congress has left to the Department the discretion to devise a methodology which would accurately capture middleman dumping. *See* S. Rep. No. 249, 96th Cong., 1st Sess. at 94 (1979). We have considered the methodology used in *Fuel Ethanol,* and have concluded that, given the facts before us for this amended preliminary determination, the methodology described below is the appropriate one for purposes of this amended preliminary determination. To determine the magnitude of the losses incurred by Ta Chen in selling YUSCO's subject merchandise to the United States during the POI, we divided the amount of losses by the total sales value of all sales. By "amount of losses" we mean the sum of the cost less the adjusted sales price of each below-acquisition-cost sale, multiplied by the respective quantity of each sale. By "total sales value" we mean the sum of the sales price of each sale (whether or not below acquisition cost) multiplied by its respective quantity. Based upon this calculation, we have determined that Ta Chen's losses on U.S. sales of subject merchandise during the POI are 3.00 percent, which we deem to be substantial. Therefore, we preliminarily find that Ta Chen engaged in middleman dumping during the POI.

Where a producer sells through an unaffiliated trading company and has knowledge of the ultimate destination of its merchandise, we normally focus only on the producer's sales to determine the margin of dumping. However, as we stated in our *Preliminary Determination,* very infrequently, a producer may sell to an unaffiliated trading company which, in turn, sells the producer's merchandise at prices below the trading company's acquisition costs, thereby engaging in middleman dumping. Where we find middleman dumping in an investigation, as here, we must calculate a cash deposit rate that reflects that middleman dumping. Additionally, any dumping which occurs from the producer to the trading company must be included in the margin calculation to capture the full amount of the dumping. Therefore, we have assigned a cash deposit rate of 3.08 percent to sales produced by YUSCO and sold to the United States through Ta Chen. This reflects YUSCO's margin on U.S. sales to Ta Chen as well as Ta Chen's losses on sales to the United States.

Amended Preliminary Determination

As a result of our corrections of ministerial errors, we have determined the following amended weighted-average dumping margins apply.

Manufacturer/exporter	Margin percentage
YUSCO/Ta Chen	3.08
All Others	3.08

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

This amended preliminary determination and notice are in accordance with section 703(d)(2) of the Act (19 CFR 351.224).

Dated: November 27, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–32212 Filed 12–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Photonics Components International L.L.C.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of a prospective license to Photonics Components International L.L.C. to the Government owned invention described in U.S. Patent 4,763,272 entitled "AUTOMATED AND COMPUTER CONTROLLED PRECISION METHOD OF FUSED ELONGATED OPTICAL FIBER COUPLER FABRICATION", U.S. Patent 5,121,453 entitled "POLARIZATION INDEPENDENT NARROW CHANNEL WAVELENGTH DIVISION MULTIPLEXING FIBER COUPLER AND METHOD FOR PRODUCING SAME", and U.S. Patent 5,652,819 entitled "METHOD FOR TUNING FIBER OPTIC COUPLERS AND MULTIPLEXERS."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 1, 1999.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: November 24, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–32201 Filed 12–2–98; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 1, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 30, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Reporting Requirements for the Education Flexibility Partnership Demonstration Program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 12.

Burden Hours: 20.

Abstract: Section 311(e)(6) of the Goals 2000: Educate America Act requires states participating in the Education Flexibility Partnership Demonstration Program to annually report to the Secretary on the monitoring of waivers it grants through this program.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Postsecondary Student Aid Study: 2000 (NPSAS: 2000).

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,650.

Burden Hours: 1,100.

Abstract: The NPSAS is a comprehensive study that examines how students and their families pay for postsecondary education. It includes nationally representative samples of undergraduates, graduates, and first-professional students; students attending public and private less-than-2-year institutions, community colleges, 4-year colleges, and major universities. Students who receive financial aid as well as those who do not receive financial aid participate in NPSAS. Comprehensive student interviews and administrative records, with exceptional detail concerning student financial aid, are available for academic years 1986–87, 1989–90, 1992–93, and 1995–96.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Education. Longitudinal Study: 1988–2000.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 457.

Burden Hours: 214.

Abstract: The National Education Longitudinal Study: 1988–2000 (NELS: 88/2000) is designed to provide data about critical transitions experienced by students as they progress through high school and into postsecondary institutions or the work force. NELS:88/2000, the fourth follow-up to this longitudinal data collection initiated with the 8th grade class of 1988, will provide important information about young adults' experiences after high school, including postsecondary education and training, labor force participation, and family formation.

[FR Doc. 98–32191 Filed 12–2–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM99–1–22–000 and TM99–1–22–001]

CNG Transmission Corporation; Notice of Technical Conference

November 27, 1998.

In the Commission's order issued on October 29, 1998, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, December 9, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 98–32171 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–000]

CNG Transmission Corporation; Notice Granting Late Intervention

November 27, 1998.

Motions to intervene in the above-captioned proceeding were due on October 13, 1998. Virginia Electric and Power Company and Doswell Limited Partnership filed a motion to intervene out of time on October 14, 1998. No party filed an answer in opposition to the motion.

The petitioner appears to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioner to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. §§ 717–717(W). Participation of the late intervenor shall be limited to matters set out in its motion to intervene. The admission of the late intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

David P. Boergers,

Secretary.

[FR Doc. 98–32172 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–405–002]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

November 27, 1998.

Take notice that on November 23, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective November 2, 1998.

CIG states that the purpose of this filing is to cause CIG to be in full compliance with the order that issued October 30, 1998 in Docket No. RP98–405–000 and Order No. 587–H. CIG is also proposing certain minor changes to better conform its Order No. 587–H changes to those required for Young Gas Storage Company, Ltd., and Wyoming Interstate Company, Ltd., CIG is operator of these companies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32167 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–157–000]

Destin Pipeline Company, L.L.C.; Notice of Petition for Waiver of Tariff Provisions

November 27, 1998.

Take notice that on November 24, 1998, Destin Pipeline Company, L.L.C. (Destin), tendered for filing a petition for a limited waiver of its FERC Gas Tariff, Original Volume No. 1, in accordance with Section 161.3(b) of the Commission's Regulations, 18 CFR 161.3(b). Destin requests a limited waiver of its tariff to the extent necessary to make an adjustment to its shippers' transportation accounts for the month of October, 1998, as more particularly described in Destin's November 24, 1998 filing.

Destin's system operations experienced interruptions during the month of October, 1998, due to weather events, start-up equipment problems, and the shut-down of the temporary liquids handling facilities at the Pascagoula Processing Plant which straddles Destin's system. As a result of these interruptions, Destin was unable to flow gas for eight days in the month of October, including six of the last eight days of the month. This caused or significantly contributed to its shippers' accruing imbalance quantities in their transportation accounts, which they had no opportunity to correct at month-end.

Destin requests authority to waive its Tariff to the extent necessary to make an adjustment to its shippers' transportation accounts for the month of October, 1998, to eliminate utilization of the cashout tiers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 4, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32170 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 27, 1998.

Take notice that on November 23, 1998, Eastern Shore Natural Gas Company (ESNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with a proposed effective date of November 1, 1998.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32173 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–79–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 27, 1998.

Take notice that on November 16, 1998, El Paso Natural Gas Company, (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP99–79–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon, by conveyance to PNM Gas Services, a Division of Public Service Company of New Mexico, a portion of Line No. 213 or T or C Line, all as more fully set forth in the request for authorization on file with the Commission and open to public inspection.

El Paso proposes to convey approximately 12.5 miles of the T or C Line and to retain approximately 0.19 miles of T or C Line with the T or C Meter Station in order to continue deliveries of natural gas to PNM Gas Services. PNM Gas Services concludes that the integration of this segment would permit PNM Gas Services to resolve certain existing operational problems in the affected service area. Specifically, integration of the segment as part of PNM Gas Services' distribution system would permit PNM Gas Services to receive its volumes of gas directly off the California pipelines. Thus, PNM Gas Services would be better able to regulate pressure on its entire distribution system.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–32161 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2385–002–NY]

Finch, Pruyn & Company, Inc.; Notice of Site Visit to Project Area

November 27, 1998.

Take notice that Commission staff will hold a site visit with Finch, Pruyn & Company (FPC), the licensee for the Glens Falls Hydroelectric Project, FERC No. 2385. The project is located on the Hudson River near the city of Glens Falls, New York. The site visit will be held on Wednesday, December 9, 1998, from 10:30 a.m. to 3:00 p.m.

The purpose of the visit is to enable staff participating in the preparation of the Environmental Assessment of the proposed relicensing of the Glens Falls project to view the project facilities and project area. All interested individuals, organizations, and agencies are invited to attend the site visit.

Participants will meet at 10:30 a.m. in the parking lot at the Finch, Pruyn & Company headquarters in Glens Falls, at 1 Glen Road. Participants should provide their own transportation and lunches for the site visit.

If you have any questions concerning this matter, please contact John McEachern at (202) 219–3056 or David Manny of Finch, Pruyn & Company, Inc., at (518) 793–2541.

David P. Boergers,

Secretary.

[FR Doc. 98–32165 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–34–000]

Florida Gas Transmission Company; Notice of Proposed Change in FERC Gas Tariff

November 27, 1998.

Take notice that on November 24, 1998, Florida Gas Transmission Company (FGT), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1999:

Thirtieth Revised Sheet No. 8A
Twenty-First Revised Sheet No. 8A.01
Twenty-Second Revised Sheet No. 8A.02
Twenty-Sixth Revised Sheet No. 8B
Nineteenth Revised Sheet No. 8B.01

FGT states that it is filing the referenced tariff sheets pursuant to the January 21, 1998, Stipulation and Agreement concerning GRI Funding (GRI Settlement) as approved by the Commission Order issued April 29, 1998 in Docket No. RP97–199–003. The funding mechanism includes the approved GRI demand charges of 23 cents per MMBtu per month (.76¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors exceeding 50%, 14.2 cents per MMBtu per month (.47¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors of 50¢ or less and a volumetric charge of 0.75 cents per MMBtu to be applicable to all non-discounted interruptible rates and to the usage portion of two-part rates. In addition, the 1999 funding mechanism includes a volumetric charge of 1.80 cents per MMBtu to be applicable to all one-part small customer rates. This funding mechanism provides for a decrease in GRI charges as compared to the currently effective 1998 GRI charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32174 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–75–001]

MIGC, Inc.; Notice of Tariff Filing

November 27, 1998.

Take notice that on November 24, 1998, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 52A, Substitute Original Sheet No. 56A, Original Sheet No. 56C, and Substitute Fourth Revised Sheet No. 65, with a proposed effective date of November 2, 1998.

MIGC states that the purpose of the filing is to comply with Order No. 587–H issued in Docket no. RM96–1–008.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32169 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–159–006]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 27, 1998.

Take notice that on November 20, 1998, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon), 1301 McKinney, Suite 700, Houston, Texas 77010 filed a copy of its proposed FERC Gas Tariff, First Revised Volume No. 1 (Original Sheet Nos. 1–320), proposed to become effective December 20, 1998, pursuant to the letter order issued in Docket Nos. CP96–159–000 *et al.* and CP97–172–000.

Mississippi Canyon submits the proposed tariff to reflect the new name of the pipeline as authorized in the October 28, 1998, letter other which authorized a corporate name change for Mississippi Canyon to replace Shell Gas Pipeline Company as the corporate entity. The letter order required Mississippi Canyon to file a revised Volume No. 1, with the new corporate name. It is stated that Mississippi Canyon has also filed the tariff electronically.

It is stated that the tariff sheets submitted substitute Mississippi Canyon for Shell on the tariff sheet headings and in the text of the tariff. It is explained that Mississippi Canyon has also proposed other minor changes, such as updating telephone numbers and addresses, changing upper and lower case letters, clarification of the signing party and associated title on Agreement forms, correcting Sheet Nos. 299 and 315 as approved in Docket No. RP98–47–000; deleting the Index of Customers; and incorporating changes pending in Docket Nos. RP99–5–001 and RP99–145–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 98–32160 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–80–000]

Natural Gas Pipeline Company of America; Notice of Application

November 27, 1998.

Take notice that on November 17, 1998, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP99–80–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, by sale to Stingray Pipeline Company (Stingray), a dual 6-inch platform measuring facility located in Vermilion Block 214A, offshore Louisiana (VR 214A), all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural states the facilities were originally constructed to allow Natural to measure system supply gas that it had purchased in VR 214A, which gas Stingray received for Natural's account and transported and redelivered to Natural onshore at Holly Beach in Cameron Parish, Louisiana. Natural states that its gas purchase and transportation agreements related to these facilities have been terminated and that currently the facilities are used to measure gas that Stingray receives and transports onshore for the accounts of Stingray's shippers. Natural further states that said facilities no longer hold sufficient value to natural to warrant the expenditures required to maintain them and as a result, Natural intends to sell said facilities to Stingray.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–32162 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–86–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

November 27, 1998.

Take notice that on November 23, 1998, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84145–0360, filed a prior notice request with the Commission in Docket No. CP99–86–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for service to Amoco Energy Group-North America (Amoco) in Summit County, Utah, under Questar's blanket certification issued in Docket No. CP82–491–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request that is open to the public for inspection.

Questar proposes to construct and operate a new delivery point to serve Amoco's nonjurisdictional Anschutz Ranch East Gas Processing Plant. Questar proposes to install a 4-inch diameter hot tap to connect its 8-inch diameter Jurisdictional Lateral No. 49 to Amoco's buried 8-inch diameter Plant lateral at the point of intersection. Quester states that it would deliver on an interruptible basis up to 12,000 dekatherm equivalent of natural gas per day under its FERC Gas Tariff Rate Schedule T–2. Questar declares that the proposed service would have minimal impact on Questar's existing customers' peak day and annual deliveries; that Questar's FERC Gas Tariff does not prohibit the addition of new delivery points on its system; and that the proposed facility would serve the public interest by providing a new delivery point at the request of Questar's customer. Questar also states that Amoco would reimburse Questar approximately $16,500 for the construction cost of the proposed Amoco Anschutz Ranch delivery point.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–32164 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–83–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

November 27, 1998.

Take notice that on November 19, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP99–83–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct a delivery point in Stoddard County, Missouri, to provide natural gas deliveries to Associated Electric Cooperative, Inc. (AECI), for its Essex Power Plant under construction, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, pursuant to Section 7 of the Natural Gas

Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct, install, own, operate and maintain a 10-inch tap valve, a 10-inch check valve and related piping (Tap) on Texas Eastern's existing 24-inch Line No. 1, at approximate Mile Post 414.07 in Stoddard County, Missouri. In addition, Texas Eastern states it will install, own, operate and maintain an 8-inch orifice and 6-inch turbine meter runs, with associated piping and valves (Meter Station), approximately 3,200 feet of 10-month pipeline which will extend from the Meter Station to the proposed Essex Power Plant (Connecting Pipe), and electronic gas measurement equipment (EGM). Texas Eastern states that AECI will reimburse Texas Eastern 100% of the costs and expenses incurred to install the Tap, Meter Station, Connecting Pipe and EGM, which are estimated to be approximately $1,650,000.

Texas Eastern states that it will deliver up to 58 MMcf/day of natural gas to AECI at the proposed delivery point, and that the transportation service will be rendered pursuant to Texas Eastern's Rate Schedule IT–1 included in its FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that its existing tariff does not prohibit the addition of this facility. Texas Eastern also states that the installation of the delivery point will have not effect on its peak day or annual deliveries, and that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–32163 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–408–001 and RP98–412–001]

Wyoming Interstate Company, Ltd.; Notice of Tariff Compliance Filing

November 27, 1998.

Take notice that on November 23, 1998, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2, the Tariff sheets listed in Appendix A to the filing, to be effective November 2, 1998.

WIC states that the purpose of this filing is to cause WIC to be in full compliance with the order that issued October 30, 1998 in Docket Nos. RP98–408–000 and RP98–412–000, and Order No. 587–H.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32168 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–403–001]

Young Gas Storage Company, Ltd.; Notice of Tariff Compliance Filing

November 27, 1998.

Take notice that on November 23, 1998, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective November 2, 1998.

Young states that the purpose of this filing is to cause Young to be in full compliance with the order that issued October 30, 1998 in Docket No. RP98–403–000 and Order No. 587–H. Colorado Interstate Gas Company (CIG) is operator of Young and Wyoming Interstate Company, Ltd. (WIC). Young is also proposing certain minor changes to better conform its Order No. 587–H changes to those resulting from Order No. 587–H for CIG and WIC.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32166 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–23–000, et al.]

CMS Generation Michigan Power L.L.C., et al. Electric Rate and Corporate Regulation Filings

November 25, 1998.

Take notice that the following filings have been made with the Commission:

1. CMS Generation Michigan Power L.L.C.

[Docket No. EG99–23–000]

Take notice that on November 18, 1998, CMS Generation Michigan Power L.L.C., 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Michigan Power L.L.C., is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Michigan Power L.L.C., is constructing a simple cycle combustion turbine, natural gas-fired peaking facility located in Gaylord, Michigan with a net electrical generating capacity of approximately 148 MW.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CMS Generation Michigan Power L.L.C.

[Docket No. EG99–24–000]

Take notice that on November 18, 1998, CMS Generation Michigan Power L.L.C., 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Michigan Power L.L.C., is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Michigan Power L.L.C. is constructing a simple cycle combustion turbine, natural gas-fired peaking facility located in Comstock, Michigan with a net electrical generating capacity of approximately 68 MW.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. CMS Generation Operating Company

[Docket No. EG99–25–000]

Take notice that on November 18, 1998, CMS Generation Operating Company, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Operating Company is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Operating Company will operate, under an operations and maintenance agreement with the owner, a facility under construction located in Comstock, Michigan with a net electrical generating capacity of approximately 68 MW.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. CMS Generation Operating Company

[Docket No. EG99–26–000]

Take notice that on November 18, 1998, CMS Generation Operating Company, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CMS Generation Operating Company is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Generation Operating Company will operate, under an operations and maintenance agreement with the owner, a facility under construction located in Gaylord, Michigan with a net electrical generating capacity of approximately 148 MW.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Koch Power Louisiana, L.L.C.

[Docket No. EG99–27–000]

Take notice that on November 18, 1998, Koch Power Louisiana, L.L.C. (KPL), 20 Greenway Plaza, Houston, Texas 77046, filed with the Federal Energy Regulatory Commission an application for a determination that KPL is an exempt wholesale generator pursuant to Part 365 of the Commission's Regulations.

KPL states that it owns and operates certain eligible facilities consisting of eight 25-megawatt gas-fired simple cycle combustion turbines, with a total project capacity of approximately 200 megawatts (along with certain appurtenant interconnecting transmission facilities), located in Sterlington, Louisiana.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Vastar Power Marketing, Inc.

[Docket No. EL99–11–000]

Take notice that on November 20, 1998, Vastar Power Marketing, Inc. (Vastar Power), tendered for filing pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207, a Petition for Waiver of Requirement to File Quarterly Transaction Reports And Annual Reports Under Reporting Requirement 582. Vastar Power seeks such a waiver because, due to the Commission approved transfer of Vastar Power's wholesale power contracts to a joint venture, Vastar Power has not engaged in any power purchases or sales since the first quarter of 1998 and it has suspended indefinitely its involvement in the power marketing business for the foreseeable future.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Energy Canal, L.L.C., Southern Energy Kendall, L.L.C. and Southern Energy New England, L.L.C.

[Docket Nos. ER98–4115–001, ER98–4116–001 and ER98–4118–001]

Take notice that on November 20, 1998, Southern Energy Canal, L.L.C., Southern Energy Kendall, L.L.C., and Southern Energy New England, L.L.C., (collectively the Southern Parties) tendered for filing revised codes of conduct in compliance with the order issued by the Federal Energy Regulatory Commission on November 12, 1998, in the above-captioned dockets. Cambridge Electric Light Co., et al., 85 FERC ¶ 61,217 (1998).

Copies of this filing were served on all parties designated on the official service list.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.

[Docket Nos. ER98–2279–000 and ER98–3689–000]

Take notice that on November 20, 1998, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively, the ComEd), tendered for filing an Interim Report on Non-Firm Redispatch.

The ComEd states that a copy of the filing has been served on all parties in this proceeding.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. South Carolina Electric & Gas Company

[Docket No. ER99–651–000]

Take notice that on November 20, 1998, South Carolina Electric & Gas Company (SCE&G), tendered for filing service agreements establishing Illinois Power Company (IPC), Northeast Utilities Service Company (NUSC), PS Energy Group, Inc. (PSEG), and Potomac Electric Power Company (PEPCO) as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Illinois Power Company (IPC), Northeast Utilities Service Company (NUSC), PS Energy Group, Inc. (PSEG), Potomac Electric Power (PEPC), and the South Carolina Public Service Commission.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Company

[Docket No. ER99–652–000]

Take notice that on November 20, 1998, Washington Water Power Company, tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Mutual Netting Agreement and Certificate of Concurrence allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with Idaho Power Company.

WWP requests waiver of the prior notice requirement and requests an effective date of November 1, 1998.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER99–653–000]

Take notice that on November 20, 1998, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Statoil Energy Trading, Inc. (2 agreements, dated November 9, 1998, for Non-Firm and Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Company

[Docket No. ER99–654–000]

Take notice that on November 20, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Engage Energy US, L.P., under its Market-Based Rate Tariff.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy System

[Docket No. ER99–655–000]

Take notice that on November 20, 1998, FirstEnergy System tendered for filing Service Agreements to provide Non-Firm Point-to-Point Transmission Service for: Sempra Energy Trading Corporation, FirstEnergy Trading and Power Marketing, Incorporated and Potomac Electric Power Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000].

The proposed effective dates under the Service Agreements are October 30, 1998 and November 1, 1998, respectively.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. FirstEnergy System

[Docket No. ER99–656–000]

Take notice that on November 20, 1998, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Sempra Energy Trading Corporation, FirstEnergy Trading and Power Marketing, and Potomac Electric Power Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective dates under the Service Agreements is October 30, 1998 and November 1, 1998, respectively, for the above mentioned Service Agreements in this filing.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PJM Interconnection, L.L.C.

[Docket No. ER99–657–000]

Take notice that on November 20, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing three signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17, listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including each of the parties for which a signature page is being tendered with this filing, and each of the state regulatory commissions within the PJM Control Area.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Alliant Services Company

[Docket No. ER99–658–000]

Take notice that on November 20, 1998, Alliant Services Company tendered for filing an executed Service Agreement for short-term firm point-to-point transmission service, establishing Constellation Power Source, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Services Company transmission tariff.

Alliant Services Company requests an effective date of October 23, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment Date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Valley Electric Association, Inc.

[Docket No. ES99–11–000]

Take notice that on November 17, 1998, Valley Electric Association, Inc. (Valley), tendered for filing an application seeking authorization under Section 204(a) of the Federal Power Act to issue debt (I) in the amount of up to $42.8 million, in the form of a series of loans from the National Rural Utilities Cooperative Finance Corporation (CFC), and (ii) in the amount of $15 million under an existing line of credit with CFC. Proceeds of the loans and line of credit will be used for construction and improvement of electrical facilities, refinancing, and other lawful corporate purposes. Valley also seeks a waiver of the Commission's competitive placement requirements.

Comment Date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission,

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888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32154 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–650–000, et al.]

New Century Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 24, 1998.

Take notice that the following filings have been made with the Commission:

1. New Century Services, Inc.

[Docket No. ER99–650–000]

Take notice that on November 19, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Cargill-Alliant, LLC.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Electric Company; New York State Electric & Gas Corporation, et al.

[Docket Nos. EC98–64–000 and ER98–4600–000]

Take notice that on November 19, 1998, Pennsylvania Electric Company, New York State Electric & Gas Corporation, NGE Generation, Inc., Mission Energy Westside, Inc., and EME Homer City Generation, L.P. tendered for filing a supplement to their application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the sale of the Homer City Electric Generating Station. The supplement addresses ministerial/clerical changes only.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER98–1384–001]

Take notice that on November 20, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing a compliance report.

Copies of this filing were served upon all parties to this proceeding and the Pennsylvania Public Utility Commission.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER99–196–000]

Take notice that on November 19, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its October 14, 1998, filing which includes amendments to Schedule 11 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

PJM requests an effective date of October 15, 1998, for the amendments and requests the Commission to act on the filing by December 31, 1998.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER99–593–000]

Take notice that on November 19, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing an amendment to the filing of a Service Agreement with Constellation Power Source under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Constellation Power Source.

NUSCO requests that the amendment and Service Agreement become effective October 30, 1998.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company, et al.

[Docket No. ER99–639–000]

Take notice that on November 19, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and FirstEnergy Trading & Power Marketing Inc. (FirstEnergy), dated November 11, 1998. This Service Agreement specifies that FirstEnergy has agreed to the rates, terms and conditions of GPU Energy's Capacity, Energy and Capacity Credit Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Second Revised Volume No. 1. The Sales Tariff allows GPU Energy and FirstEnergy to enter into separately scheduled transactions under which GPU Energy will make available for sale, capacity, energy and capacity credits.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 11, 1998, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Jersey Central Power & Light Company, et al.

[Docket No. ER99–640–000]

Take notice that on November 19, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Delmarva Power & Light Company (DPL), dated November 11, 1998. This Service Agreement specifies that DPL has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, First Revised Volume No. 5. The Sales Tariff allows GPU Energy and DPL to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 11, 1998, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. New Century Services, Inc.

[Docket No. ER99–641–000]

Take notice that on November 19, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Cargill-Alliant, LLC.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. GPU Generation Corporation

[Docket No. ER99–642–000]

Take notice that on November 19, 1998, GPU Generation Corporation tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed rate schedule change to amend to the Operating Agreements for the Keystone and Conemaugh electric generating stations (1) to change the voting requirements to resolve disputes between the Owners and the Station Operator and (2) to change the due date for notification of termination of the Operating Agreements.

Copies of the filing have been furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Baltimore Gas and Electric Company

[Docket No. ER99–643–000]

Take notice that on November 19, 1998, Baltimore Gas and Electric Company (BGE), filed a Service Agreement with Rainbow Energy Marketing Corporation, October 19, 1998 under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to Rainbow Energy Marketing Corporation under the provisions of the Tariff.

BGE requests an effective date of November 1, 1998, for the Service Agreement.

BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER99–644–000]

Take notice that on November 19, 1998, PP&L, Inc. (PP&L), filed with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement between PP&L and Connecticut Municipal Electric Energy Cooperative under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5.

PP&L requests an effective date of November 1, 1998, for the Power Purchase and Sale Agreement.

PP&L states that a copy of this filing has been provided to the Connecticut Municipal Electric Energy Cooperative and to the Pennsylvania Public Utility Commission.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER99–645–000]

Take notice that on November 19, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Southwestern Public Service Company (Southwestern).

Cinergy and Southwestern are requesting an effective date of November 15, 1998.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER99–646–000]

Take notice that on November 19, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Southwestern Public Service Company (Southwestern).

Cinergy and Southwestern are requesting an effective date of November 15, 1998.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER99–647–000]

Take notice that on November 19, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing several changes to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., the PJM Open Access Transmission Tariff, and the Reliability Assurance Agreement. The changes (1) revise attendance requirements for Members Committee quorums, (2) clarify working capital financing, (3) eliminate penalties in the PJM spot markets, (4) add a new alternative to PJM's implementation of NERC TLR procedures, (5) add procedures to opt-out of spot market backup, and (6) make other minor revisions.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER99–648–000]

Take notice that on November 19, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Merchant Energy Group of the Americas, Inc. (MEGA), as Transmission Customer.

A copy of the filing was served upon MEGA.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER99–649–000]

Take notice that on November 19, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Electric Clearinghouse, Inc. (ECI), as Transmission Customer.

A copy of the filing was served upon ECI.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

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of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32153 Filed 12–2–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6196–5]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Certification of Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Agency certification of equipment.

SUMMARY: EPA received an application dated March 6, 1998 from Johnson Matthey, Incorporated (JM), for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1401—85.1415. The kit is identified as the Cam Converter Technology (CCT™) Upgrade Kit and applies to Detroit Diesel Corporation's (DDC) 6V92TA model engines of model years 1985 through 1993 with power ratings of 253 and 277 horsepower and having electronically-controlled fuel injection (DDEC). Applicable engines include those certified to meet federal and California emissions standards.

On May 14, 1998, EPA published a notice in the **Federal Register** (63 FR 26795) that the notification had been received and made the notification available for public review and comment for a period of 45 days. EPA has completed its review and the Director of the Vehicle Programs and Compliance Division has determined that it meets the requirements for certification, conditioned on the terms discussed below in section IV. The effective date of certification is discussed below under **DATES**.

The certified equipment complies with the particulate matter (PM) standard of 0.10 gram per brake horsepower-hour (g/bhp-hr).

In addition, two methods of marketing the CCT kit, discussed below as supply options, are approved by EPA.

Certification of the CCT kit, as it applies to all applicable engines of model years 1985 through 1990 and all applicable engines of model years 1991 through 1993 that are not equipped with ECM programs #259 through #264 for kit operation on diesel fuel #1, is conditioned upon JM complying with the terms discussed below in section IV. Certification is unconditional for 1991 through 1993 model year engines that are equipped with ECM programs #259, #260, #261, #262, #263, or #264 and operate on diesel fuel #1 after kit installation.

The certification of this equipment does not trigger any new requirements for transit operators. However, EPA certification makes the CCT kit available as an option to those operators that are required to use equipment certified to the 0.10 g/bhp-hr standard.

ADDRESSES: The JM application, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, Category XXI–A, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: Today's **Federal Register** notice announces the Agency's decision to certify the CCT equipment, as described below.

The effective date of certification was established in a letter dated October 21, 1998, from the Director of the Vehicle Programs and Compliance Division to Johnson Matthey. (A copy of the letter is in the public docket, which is located at the address noted above.)

This certified equipment may be used immediately by urban bus operators, subject to the condition in Section IV.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564–9297.

SUPPLEMENTARY INFORMATION:

I. Background and Equipment Identification

In a notification of intent to certify signed March 6, 1998, Johnson Matthey, with principal place of business at 434 Devon Park Drive, Wayne, Pennsylvania 19087–1889, applied for certification of equipment under the urban bus program. The notification and equipment are further clarified in letters provided subsequently from JM to EPA, and are available from the public docket at the address above.

JM states that the equipment, referred to as the Cam Converter Technology (CCT™) upgrade kit, consists of patented engine cam shafts, a CEM II™ catalytic exhaust muffler, specified engine rebuild parts, and a set of instructions. The instructions specify fuel injector height, 0.015 offset key size, and electronic control module (ECM) software program. The kit composition and supply options are described below in this section.

JM provides emissions data from testing two baseline engines, one certification engine, and one test engine in an uncertified configuration. The results of the engine testing are summarized below in Table 1. The emissions data were developed using engine dynamometer testing conducted in accordance with the Federal Test Procedure (FTP) for heavy-duty diesel engines (40 CFR Part 86), and conducted using test engines rated at 277 horsepower.

One of the baseline engines was rebuilt to a 1988 model year configuration and the other rebuilt to a 1991 configuration. Certification testing, using both diesel fuel #1 and #2, was performed on an engine rebuilt with the appropriate CCT Upgrade Kits. The parts used to rebuild the engines are provided in the March 6, 1998 notification and letters dated September 28 and October 7, 1998. Documents can be found in the public docket at the address listed above.

The data of Table 1 indicate that, when an engine is rebuilt with the CCT™ kit having the 0.015 offset key, PM emissions are less than 0.10 g/bhp-hr, and emissions of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), and smoke opacity are less than or equal to the federal and California standards applicable to the 1993 model year. The certification test data were provided to EPA in the March 6, 1998 notification and in a letter from JM dated September 28, 1998. One certification test was conducted using diesel fuel #1, and all of the other tests were conducted using diesel fuel #2.

The "uncertified kit" of Table 1, using an 0.010 offset key, does not comply with the 5.0 g/bhp-hr NO_X standard and is not the certified configuration of today's **Federal Register** notice. That "uncertified kit" consisted of all of the parts of the CCT kit except for use of an 0.010 offset key. The data is provided as support data demonstrating compliance with the 0.10 g/bhp-hr PM standard.

EPA believes that CCT-equipped engines using the 0.015 offset key will meet the 0.10 g/bhp-hr PM standard because installation of the kit upon engine rebuild results in the replacement of all emissions-related parts with a specific set of parts. JM has provided testing which demonstrates compliance of this set of parts with the 0.10 g/bhp-hr PM standard. The fuel consumption impact of the CCT kit is discussed in section II below.

TABLE 1.—SUMMARY OF JOHNSON MATTHEY TESTING

Gaseous and particulate test:	1991 HDDE standards	Transient emission engine test (g/bhp-hr) of 6V92TA DDEC II				
		1988 baseline [1]	1991 baseline [2]	CCT kit [3]	CCT kit [4]	Uncertified kit [5]
HC	1.3	0.4	0.46	0.2	0.3	0.2
CO	15.5	1.2	1.2	0.6	0.77	0.8
NO_x	5.0	8.4	4.9	5.0	4.19	5.8
PM	0.25	0.15	0.19	0.091	0.090	0.097
BSFC [5]		0.459	0.483	0.489	0.497	0.483
Smoke test:	Standards percent	Percent opacity				
ACCEL	20	2.9	2.7	2.3	4.0	2.3
LUG	15	0.8	1.2	1.2	2.1	0.3
PEAK	50	4.3	3.7	3.7	5.6	4.7

[1] Engine id number 6VF160626 using 2D fuel.
[2] Engine id number 6VF186640 using 2D fuel.
[3] Engine id number 6VF186640 using 2D fuel and 0.015 offset key.
[4] Engine id number 6VF186640 using 1D fuel and 0.015 offset key.
[5] Engine id number 6VF160626 using 2D fuel and 0.010 offset key (not certified).
[6] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

The CCT kit is applicable to all Detroit Diesel Corporation (DDC) 6V92TA DDEC two-stroke/cycle urban bus engines from model years 1985 through 1993 with power ratings of 253 and 277 horsepower (hp), including those certified to federal and California standards.

The CCT kit is intended to be installed at the time of a standard engine rebuild using standard DDC rebuild practices, except where amended by JM. The contents of the CCT kit, shown in Table 2, will vary depending upon the supply option and the particular engine to be rebuilt. If the first supply option is selected by the installer, then Johnson Matthey will provide all of the following parts: CEM II catalytic muffler, patented engine camshafts, CCT cylinder kits, 0.015 offset key, fuel injectors, 40T blower gear, turbo charger, blower assembly, blower bypass valve, and if necessary, ECM program. In addition, the kit for 1985 through 1987 DDEC 1 engines, regardless of supply option, will include the DDEC I to DDEC II conversion parts listed in the letter dated September 28, 1998 from JM to EPA. If the second supply option is selected by the installer, then JM will provide only the "unique" parts (including, if necessary, the ECM program) for the particular engine to be rebuilt. The balance of the CCT kit parts, that is, the "non-unique" parts, must be acquired by the installer through other channels. The non-unique parts are parts that would be replaced during the standard rebuild of particular engines, and must be the particular DDC components specified in the CCT kit.

TABLE 2.—CCT KIT PARTS [1] PROVIDED UNDER SUPPLY OPTION 2

Part provided in kit?	1985–87 DDEC 1	1988–90 DDEC II	1991–93 DDEC II	
	Diesel 1 & 2	Diesel 1 & 2	Diesel 1	Diesel 2
CEM II	Yes	Yes	Yes	Yes
Patented Cams	Yes	Yes	Yes	Yes
CCT Cylinder kits	Yes	Yes	Yes	Yes
0.015 Offset Key	Yes	Yes	Yes	Yes
Fuel Injectors	Yes	Yes	No	No
ECM Program	Yes	Yes	[3] No	Yes
40T Blower Gear	Yes	No	No	No
Turbo Charger	Yes	No	No	No
Blower Assembly	Yes	No	No	No
Blower Bypass Valve	Yes	No	No	No
DDEC 1 to DDEC 2	[2] Yes	not applicable		

[1] The balance of the CCT kit parts must be acquired by the installer and must be the DDC components specified in the CCT kit.
[2] The kit for 1985 through 1987 DDEC I engines, regardless of supply option, will include the DDEC I to DDEC II conversion parts.
[3] 1991–93 engines having ECM program 259 through 264 for CCT kit operation on diesel fuel #1 do not require a new ECM program.

The CEM II is a direct, bolt-on replacement for the original equipment muffler, and is designed to fit the specific bus/engine combination. The 0.015 offset key replaces the standard Woodruff key between the pulse wheel and camshaft, and functions to offset the electronic pulse wheel to retard fuel injection timing. The list of specific engine parts is provided in the notification of intent to certify dated March 6, 1998.

All CCT kits will include a CEM II catalytic muffler, patented engine camshafts, CCT cylinder kits, and 0.015 offset key, regardless of supply option. For 1985 through 1987 model year engines, all of the parts of Table 2 are unique parts and therefore, required to be provided in the certified CCT kit. For 1988 to 1990 model year engines, the CCT kit includes fuel injectors and an upgrade of the ECM program. For the 1991–1993 model year engines, the fuel injectors, turbocharger, blower assembly, blower bypass valve, and 40 teeth blower drive gear are non-unique, standard rebuild components and therefore, not required to be in the certified CCT kit. To complete a rebuild using supply option 2, an operator must acquire on its own, the other required (specified) standard engine rebuild parts. The parts not provided with the kit are required to be the DDC-supplied parts specified with the kit instructions, because DDC components were used for JM's certification testing. JM is required to provide a 100,000 mile defect warranty and 150,000 mile emissions performance warranty for the components supplied to the transit operator in each kit.

All 1985 through 1990 model year engines will require a change of ECM program. A change of ECM program is required for any 1991–1993 model year engine that is not equipped with ECM program 259 through 264 for kit operation on diesel fuel #1. When a change in ECM program is necessary, it will be included in the purchase price of the kit. In summary, if a transit operator has an engine that does not have the CCT-identified ECM program for its particular parameters (hp, rotation, fuel type, peak torque), then it must change the existing ECM program to the appropriate CCT-identified program. The ECM programs, often referred to by DDC as certification word codes (CWC), are listed in letters from JM dated August 19 and September 28, 1998, from Johnson Matthey to EPA.

The CCT kit is certified to a PM emission level of 0.10 g/bhp-hr for all 1985 through 1993 DDC 6V92TA DDEC I and II urban bus engines using either diesel fuel #1 or #2 (including engines originally certified, or rebuilt, to meet California emissions standards). Table 3 lists the applicable engine models and certification levels associated with the certification announced in today's **Federal Register**.

TABLE 3.—CERTIFICATION LEVELS

Applicable models [1]	Engine code	Certified PM Level
1985–1993 Detroit Diesel 6V92TA DDEC I and II rated at 253 or 277 hp.	ALL (including those certified or rebuilt to meet California or 50-state emissions standards).	0.10 g/bhp-hr

[1] Conditional certification applies to most engines. See discussion in sections I and IV

II. Summary and Analysis of Comments

Comments were received from three parties in response to the **Federal Register** notice of May 14, 1998 (63 FR 26795): Detroit Diesel Corporation (DDC), Engelhard Corporation (Engelhard), and Chicago Transit Authority (CTA). DDC is the original manufacturer of the engines to which the CCT kit applies, and also supplies equipment certified to meet the 0.10 g/bhp-hr PM standard under the urban bus program for these engines. Engelhard has certified several kits under the Urban Bus Rebuild Program, including the ETX–2002™ Emissions Rebuild Kit applicable to 1988 through 1998 model year 6V92TA DDEC II engines. Certification of the ETX kit triggers the requirement on affected operators to use equipment certified to the 0.10 g/bhp-hr standard when 1988–1993 DDC DDEC II engines are rebuilt or replaced after March 22, 1999. (This is discussed further below in section V.) CTA is a transit operator of an urban bus fleet in an area to which the Urban Bus Rebuild Requirements apply.

DDC states that it is concerned with the equipment which is proposed to be certified because it not only involves the addition of an after-treatment device, but it modifies many of the critical internal engine components and creates combinations of internal components for which DDC has no experience. Engelhard states that it has significant concerns with the ability of the CCT to meet the 0.10 g/bhp-hr standard, and that the kit should not be certified until JM has provided sufficient data and valid responses to all questions and concerns. As discussed below in this section relative to prominent comments, EPA believes that JM has satisfied the requirements necessary for certification of the CCT kit for applicable DDEC engines.

Comments and issues generally fell into the following categories: (a) Equipment identification and specification; (b) engine rating; (c) emissions and testing; (d) durability and in-service concerns; (e) installation and maintenance instructions; (f) catalyst checking procedure; (g) components of the kit; and, (h) life cycle cost. These are discussed below. Copies of the complete comments and other documentation are available in the public docket, which is located at the address stated above.

a. Equipment Identification and Specification

DDC comments that it is their understanding that the purpose of the offset key is to advance fuel injection timing at all operating conditions compared to the standard DDC timing. However, based on the description in the JM installation guide, DDC believes that the timing offset will be in the retard direction. In response, JM states that the procedure as written will accomplish the intent to retard the injection timing.

DDC also notes several other clarifications relating to the JM. DDC notes that JM application erroneously states that the original coach engine cylinder liner had a 0.95 inch inlet port. Actually, the 0.95 inch liner was used only for the 1985 through 1989 model years. DDC also notes that DDC does not supply the special engine camshafts or 0.015 offset key as stated in the application.

In response, JM revises its statements to clarify these points consistent with DDC statements. Additionally, JM states that the positioning of the offset key is to retard, not advance, the fuel injection timing.

Engelhard comments that the JM certification engine was installed with DDC's ECM program number 483, which is a program that DDC developed for certain engines originally equipped with exhaust traps and subsequently converted to catalytic converter/mufflers under an agreement with EPA in 1994. Engelhard notes that some of the programs specified by JM for the CCT kit are not the same type of program as the one used for certification. All of the programs in the CCT kit parts list for use with diesel fuel #2 are "trap replacement" programs, but the programs for diesel fuel #1 are "standard" ECM programs. (EPA notes that the "standard" programs to which Engelhard refers are DDC programs with which the 1991 through 1993 model year 6V92TA urban bus engine families were certified under EPA's new engine certification program.) Engelhard states that additional information and data are need to justify the request for certification using ECM programs for diesel fuel #1. Engelhard states that the CCT kit, without additional information, should not be certified for diesel fuel #1. Also, since the certification engines used an ECM program for trap replacement, all versions of the CCT kit must use that type of program to meet 0.10 g/bhp-hr.

In its letter dated September 28, JM presents emissions data from testing the CCT kit using diesel fuel #1 with an ECM program that DDC developed for use with 1991 through 1993 6V92TA DDEC II coach engines operating on diesel fuel #1. That data acceptably demonstrates compliance with the 0.10 g/bhp-hr PM standard. The data is listed in summary Table 1.

b. Engine Rating

DDC comments that the CCT kit appears to be incompletely specified, because JM did not specify ECM programs that are compatible with the original DDC 253 horsepower (hp) "low-torque" rating. DDC said that this could be a significant problem for some bus installations where the increase torque would exceed drive-line or cooling system capabilities.

In its letter to EPA dated August 19, 1998, JM noted that the original certification package was for the high-torque only, stated that its intent is to offer CCT kits for both high and low torque ratings, and provided an updated list of ECM programs for the kit which provides for both low and high torque versions of the 253 hp rating. EPA is certifying these because the certification test data provided by JM is determined, at least on torque rating, to be a worse-case test engine.

c. Emissions and Testing

DDC comments that the certification testing presented by JM does not represent worst case PM emissions because the test engine was not set to the worst-case idle speed. DDC states that the effects of turbocharger lag become more significant and FTP particulate emissions increase as idle speed is reduced, and that certification testing should be conducted with the minimum idle speed setting in order to demonstrate "worst case" PM emissions. The JM application shows that the certification testing was conducted with the engine idle speed set to 700 rpm, even though DDC originally certified and routinely supplied 6V92TA DDEC engines with a minimum idle speed of 600 rpm. DDC states that certification should be limited to engines with idle speed settings of 700 rpm and above unless JM provides FTP data demonstrating compliance with the 0.10 g/bhp-hr standard when tested with idle speed settings below 700 rpm.

In its letter dated September 2, 1998, responding to concerns about the idle speed, JM states that use of the 700 rpm idle setting for its certification testing was an oversight. When the ECM program was downloaded into the ECM module, the idle setting was not reset to 600 rpm, but rather it remained at 700 rpm. JM conducted additional testing, discussed further below, to determine whether the idle speed would affect the PM level.

The idle speed specified in DDC's application for new engine certification for the 1991 through 1993 model year 6V92TA DDEC II engines is listed as 600 rpm (minimum). Additionally, EPA notes that idle speed on DDEC engines can be programmed in the field with a DDEC basic code reader. No data has been provided to show how significant idle speed is with respect to particulate emissions, what fraction of new engines were supplied with the 600 rpm idle, or how prevalent the 600 rpm idle is in-service. It is not clear that there will not be a significant PM difference resulting from idle settings of 600 and 700 rpm, and EPA believes that the JM test condition with idle speed set to 700 rpm is reasonably close to 600 rpm. The idle speed of 700 rpm also complies with the DDC specification. In its September 2 letter, JM presents data from additional transient testing that it conducted to determine whether the PM level would be affected by the 600 versus 700 rpm idle setting. While there are concerns with details of this testing, it indicates minimal to no emissions impact resulting from a change from 600 to 700 idle rpm. For the above reasons, EPA is not limiting certification to idle settings of 700 rpm and above, and is not requiring JM to retest at a lower idle rpm.

Engelhard comments that the JM baseline engine, showing a PM level of 0.19 g/bhp-hr, is unrepresentative of the typical performance for a 1991 6V92TA DDEC engine, and provides emissions from one DDC test and several Engelhard tests with PM results between 0.22 and 0.28 g/bhp-hr. Engelhard questions whether the components utilized in the certification test engine provided superior emissions performance compared to typical parts. The low baseline emissions raises concerns about the CCT kit's ability to meet the 0.10 g/bhp-hr standard when used with typical engine parts. Engelhard states that JM needs to provide a complete explanation of the rebuild process, and submit test data on a baseline engine that has normal PM emissions.

In response, JM states that no exceptional steps were taken in rebuilding this baseline engine. No exceptional steps were taken in rebuilding the engine—it was rebuilt using standard DDC engine parts in accordance with recommended DDC rebuild procedures. Some of the parts used in the certification test engine were also used in the baseline test engine because the parts are common to both the CCT kit and typical 1992 DDEC engine. Further, JM notes that there can be tremendous variations in emissions from engine to engine. As JM states in its letter to EPA dated September 28, 1998, after the certification test the test engine had the cylinder kits, camshafts, ECM program and offset key changed to the baseline configuration for the baseline test. The baseline test engine shared fuel injectors, turbocharger, blower and bypass valve, and cylinder heads, with the certification test engine.

EPA has not determined that the JM baseline PM emission level is atypically low. Other data developed for use in certifying equipment under the urban bus program has shown PM emissions from DDEC II engines that compare with the JM baseline. The 6V92TA DDEC II engine tested at Southwest Research Institute (SwRI) for the National Biodiesel Board on August 24, 1994 (test BL–2D) showed baseline engine PM emissions of 0.20 g/bhp-hr. The 6V92TA DDEC II engine tested at SwRI for Engine Control Systems on October 25, 1995 (test E1025) showed baseline emissions of 0.18 g/bhp-hr. EPA also notes that the DDC data, cited by Engelhard having PM emissions of 0.218 g/bhp-hr (provided by DDC for certification of DDC's 25 percent DDEC II upgrade kit) was conducted using diesel #2 fuel having sulfur content between 0.08 and 0.12 weight percent. On the other hand, testing for the urban bus program is required pursuant to 85.1406 to use diesel fuel having a maximum of 0.05 weight percent sulfur. While we have not quantified the effect of sulfur reduction in diesel fuel on PM emissions from 6V92TA DDEC engines, in the final rule reducing the sulfur level of diesel fuel (55 FR 34121; August 21, 1990), EPA notes that reductions in fuel sulfur result in small reductions in engine-out particulate. Additionally, as shown in Table 1 above, the baseline 1988 model year 6V92TA DDEC II engine tested at SwRI for Johnson Matthey on March 5, 1997 showed PM emissions of 0.15 g/bhp-hr.

In addition, in its letter to EPA dated September 28, 1998 JM provides emission data in support of its demonstration that the CCT kit will comply with the 0.10 g/bhp-hr standard, albeit not the 5.0 g/bhp-hr NO_X standard. This data indicates compliance with the 0.10 g/bhp-hr PM standard on an engine equipped with offset key 0.010 inch (not the specification for the offset key of the certified CCT kit of today's **Federal Register** notice) and emitting 5.8 g/bhp-hr NO_X.

The JM baseline data is lower than that produced by Engelhard. However, EPA does not conclude, from the available data, that the JM baseline is atypically low or unrepresentative. If it is atypically low, then it is not clear whether it is the result of test-to-test variability, and/or engine-to-engine variability. The available baseline test data are limited in number. If the JM baseline test is low, then the level might be attributable to the cylinder liners that were changed before the test conducted on the JM 1991 model year baseline engine. EPA is not denying certification because of the PM level of the JM baseline engine.

EPA notes that the JM baseline testing was conducted after the certification testing and, while the data is low compared with the Engelhard baseline tests, there is no regulatory requirement to provide baseline data to demonstrate compliance with the 0.10 g/bhp-hr standard when life cycle cost information is not provided. The availability of the baseline data conducted for JM and others, may benefit bus operators that are interested in the fuel consumption impact of the certified equipment. EPA appreciates that JM conducted and provided the baseline data, when it may not have been required in accordance with the regulations.

Engelhard notes that the CCT kit operates on the principle of camshaft induced EGR and injection timing advance, that EPA is currently investigating electronically controlled engines for increased "off-cycle" NO_X emissions, and asks whether the JM camshafts and injection timing advance will irritate this situation. In response, JM states that the CCT kit uses mechanical means to reduce NO_X and PM along with specific ECM programming, and the PM level is then further reduced by the CEM II catalytic muffler. JM points out that the offset key retards the injection timing for reducing NO_X emissions and, if there is an effect, it will be to reduce off-cycle NO_X emissions. EPA believes that, generally speaking, injection retard would tend to decrease NO_X emissions.

Engelhard comments that the converter muffler for the CCT kit had a reading of over 4 inches of mercury during a smoke test, and asks whether that level is typical for a JM converter muffler.

JM states that the CEM and CEM II catalytic exhaust mufflers are designed to function with the DDC specified back-pressure limits during normal transit operation. The exhaust back-pressure reading that Engelhard refers to during the smoke test is a function of the test itself, and has no relation to the back-pressure observed during normal transit bus operation.

EPA notes that the smoke test should be conducted in accordance with 40 CFR Part 86 Subpart I. Section 86.884–8(c) of that subpart states: "The smoke exhaust system shall present an exhaust back-pressure within ± 0.2 inch Hg of the upper limit at maximum rated horsepower, as established by the engine manufacturer in his sales and service literature for vehicle application." EPA believes that the test data presented by JM for certification of the CCT kit was collected under a worst case test condition for smoke generation.

d. Durability and In-service Concerns

DDC comments that there is insufficient information in the JM notification to assess performance and durability impacts. DDC notes that the CCT kit includes proprietary camshafts that reduce engine airflow and cylinder scavenging, 15:1 compression ratio piston domes instead of the 17:1 domes used by DDC, and an offset key that modifies the injection timing compared with the DDC design. DDC has no experience with the kit's combination of components and that it represents a substantial departure from DDC's original design which could have significant effects on engine performance and durability. DDC refers to the possibility of reduced engine airflow and cylinder scavenging, raised cylinder temperatures, degraded cylinder component life, difficult cold starting, and increased cold smoke and noise emissions. DDC believes that EPA should consider performance and durability before certifying equipment.

Engelhard also comments that JM has specified a piston dome that provides 15:1 compression ratio, and asks whether JM has conducted testing to verify that a 2-point reduction in compression ratio will not cause starting and operational problems in cold weather.

In response, JM notes that it has had a CCT kit in trial on a 6V92 DDEC bus in New York state since June 1997 with no problems, including no cold weather starting problems. Also, JM points out that the same type of system (proprietary cams, specified engine parts, and CEM catalytic muffler) has already been certified by EPA for 6V92 MUI engines, and a significant number of the kits have been installed, are running well, and have operated during this past winter in cold weather with no cold start problems. Based on this record, JM states that performance and durability are not issues.

EPA notes that the urban bus retrofit/rebuild regulations do not require a durability demonstration as a condition of certification. Rather, equipment certifiers, including Engelhard, are required pursuant to 40 CFR Section 85.1409 to provide a 100,000 mile equipment defect warranty and a 150,000 mile emissions performance warranty. The available information does not indicate a performance or durability concern with the equipment certified in today's notice.

CTA comments that durability problems are a big concern to it, and states that this issue must be addressed prior to certification, because of "excessive" failures of certified catalytic converters on retrofit/rebuilt engines. This is especially important when internal engine components are replaced. CTA states that there are no requirements for durability, and notes EPA's authority to decertify equipment that fail to meet program requirements. However, CTA states that this does not address the concerns of transit operators that have spent substantial amounts of money on kits, and would not get reimbursed for the cost of "decertified" kits.

CTA also has a couple comments about warranties. First, the warranty does not cover the labor and consequential damage due to use of a kit. CTA believes that warranty repair is not part of normal maintenance and should not be the responsibility of the transit operator. Second, CTA has had "negative" experience with warranty on certified catalytic converters—failures are being replaced with brand new units that are warranted only for the balance of the warranty period for the original unit.

EPA notes that, while the program does not require a demonstration of durability, JM has provided information on its in-service experience with the CCT kit. As discussed in a previous paragraph, JM has had a DDEC CCT kit in trial on a bus in New York State and a significant number of MUI CCT kits have been installed. JM states that performance and durability are not issues.

Additionally, CTA is incorrect in presuming that the program has no durability requirements. The program regulations at 40 CFR 85.1409 require that certifiers provide both an emissions defect warranty for 100,000 miles, and an emissions performance warranty for 150,000 miles. Under the performance warranty, certifiers are responsible for the in-use performance of their equipment for 150,000 miles. (Additional discussion on the emissions performance warranty can be found in the preamble to the final rule of April 21, 1993 at 58 FR 21359.) Under the defect warranty, certifiers are responsible for replacing defective parts of a certified kit, free of charge. CTA has not identified any problematic catalytic converters or any situations in which warranty claims were denied by an equipment certifier.

EPA appreciates that transit operators are concerned with the durability of retrofit/rebuild equipment. When internal engines components are supplied as part of a certified kit, those parts are covered by the defect warranty for 100,000 miles.

As noted previously, the urban bus rebuild regulations do not require an in-service durability demonstration as a condition of certification. Rather, the regulations require equipment certifiers, including Johnson Matthey, to warranty their equipment. EPA believes that equipment suppliers will evaluate the durability of their equipment in order to minimize their liability resulting from the emissions defect and performance warranties. The available information does not indicate a performance or durability concern with the equipment certified in today's notice, and therefore, does not provide sufficient basis to deny certification on these grounds. EPA will continue to monitor problems with this, and other certified equipment, and encourages transit operators to provide specific detailed information regarding excessive in-service problems with certified equipment.

CTA is correct that the defect warranty does not cover labor and consequential damage to use of a kit. As noted in the preamble to the final rule (April 21, 1993; 58 FR 21381), transit operators are responsible for proper installation and maintenance of certified equipment, and are responsible for the emissions performance of equipment operated beyond the 150,000 miles emissions warranty period. Additionally, as CTA has noted, the program warranty does not require coverage of "secondary" or "consequential" damage due to use of certified equipment.

With regard to CTA's concern with an extended warranty for equipment replaced under warranty, the program requires that coverage extend for the warranty period of the initially-purchased equipment. There is no program requirement that a warranty period be extended beyond the period of the initially-purchased kit, even when an original unit is replaced with a brand-new one under the warranty. In other words, only one warranty period accompanies each kit purchase, regardless of how many times parts may be replaced under that warranty.

JM responds that it takes its warranty obligations very seriously, and is their practice to work with any transit that has a warranty claim, to identify and correct any problems with Johnson Matthey-supplied equipment.

CTA notes that they have no way to determine whether a catalyst is continuing to function as designed and, in some cases involving warranty, CTA suspects the catalyst has lost ability to reduce emissions due to the physical deterioration of the catalyst.

EPA currently knows of no method that is readily available to transit operators for accurately testing PM performance of a catalyst in the field. However, to the extent a catalyst is mechanically clogging, use of the defect warranty may be an appropriate remedy.

e. Installation and Maintenance Instructions

Engelhard notes that JM requires that a DDEC data reader be used to determine the current ECM program, and asks several questions: (1) Do transits have the data reader; (2) how much will it cost; (3) is JM required to provide the ECM re-programming; (4) how will JM verify that the correct program is used; (5) is the cost of the re-programming included with the CCT kit price; and, (6) why does JM specify "non-trap" (that is, "standard") ECM programs for use with diesel fuel #1 when a "trap-replacement" program was used for certification?

JM responds that if a transit operator does not have a data reader, then JM authorized distributors have the capability to read the ECM program number. The proper ECM program will be downloaded by authorized DDC distributors. The proper ECM number will be confirmed by submittal of the warranty card for the CCT kit.

EPA notes that JM will include ECM reprogramming, if it is necessary, with the purchase price of the kit. As Engelhard notes, JM specifies the particular ECM programs to be used with diesel fuel #1. The specified programs are consistent with what JM tested to demonstrate compliance with the 0.10 g/bhp-hr standard when diesel fuel #1 is used.

Additionally, EPA has authority to conduct audits of transit operators to determine compliance with the Urban Bus Rebuild Requirements. During such audits, EPA has authority to review actual bus engines, documentation, and records to determine whether certified kits have been properly installed in bus engines. EPA may check ECMs to verify whether or not the correct ECM program is installed.

Engelhard comments that the JM application lists the kit as applicable to DDEC 1 engines. Engelhard understands that the DDEC I version differs significantly from the DDEC II and will require significant changes to the ECM and sensors for upgrading to a DDEC II configuration. JM must provide full explanation of the changes required to upgrade this engine, plus life cycle cost information.

EPA notes that life cycle cost information is required only when equipment is certified as a trigger of a particular emissions standard. Because JM does not intend to trigger the 0.10 g/bhp-hr standard, life cycle cost information is not required. A list of parts required for conversion of DDEC I engines to DDEC II is provided by JM in its letter to EPA dated September 28.

Engelhard provided multiple comments concerning JM's Installation Guidelines: First, Engelhard states several questions relating to identification marks that JM places on parts of the CCT kit. Engelhard asks where the marks on the parts are located, whether the marks will wear off, whether the warranty will be voided if the marks wear off, and, how JM will verify that parts have the mark.

In response, JM states that their identification mark is a non-intrusive, harmless mark that is placed on a non-critical surface. The intent of marking the parts is to ensure compliance with use of all the correct parts and to minimize warranty issues regarding use of the parts. Piston rings are marked with an indelible paint, while other parts are etched. The marks do not come off during normal operation. EPA notes that the program regulations are silent with regard to marking parts of a kit, but that the bus operator is responsible for the correct installation of certified kits.

Second, Engelhard comments that the JM Installation Guide states that piston gauge J–2539–A cannot be used with the CCT kit, and asks which gauge should be used.

In response, JM states that neither DDC nor Kent Moore supply a gauge to identify the 15:1 compression-ratio pistons of the CCT kit. The statement in the Installation Guide is intended as a caution to installers against use of piston gauge J–2539–A with the 15:1 pistons, because that gauge is limited to identifying 17:1 or 19:1 pistons. If for any reason the engine is being rebuilt, the 15:1 mark on the piston crown would be covered with soot, and use of the piston gauge J–2539–A would be misleading.

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Finally, Engelhard questions why the Installation guide requires that an installer "thoroughly inspect the camshaft for any contamination in the passage through the cam". JM needs to provide guidance for this procedure and an estimation of how long it will take.

JM responds that, while it does not expect any contamination to be present, issues with handling or storage could result in contamination. The inspection will take a few minutes and, if cleaning is necessary, it can be done in a few minutes with standard cleaners.

f. Catalyst Checking Procedure

DDC opposes the procedure recommended by JM for determining whether the catalyst unit requires cleaning.

JM's instructions involve operating the engine at full load, wide open throttle or at full stall, and measuring the exhaust pressure at the pressure tap located on the manifold immediately after the engine. In the CEM II clean-out procedure it is noted that a pressure measurement gage should be installed "in the pressure tap located on the inlet side of the CEM II".

DDC, however, contends that back-pressure should be measured just downstream of the turbocharger outlet. DDC states that its back-pressure limits apply at all engine operating conditions and should be checked at the maximum exhaust flow condition (rated engine speed and full load). DDC states that neither of JM's alternative test conditions (full load, wide open throttle or, full stall) are adequate. "Full load, wide open throttle" is an ambiguous condition, and "full stall" is inadequate because it does not produce a maximum exhaust flow condition. An exhaust system which just meets DDC's specified back pressure limit at WOT, no load (which can be how the JM procedure is conducted) will likely exceed the DDC limit over a large portion of the engine speed/load operating map and thus would be in violation of DDC's guidelines. Excessive back pressure results in fuel economy and power losses, and raises cylinder temperatures and increases soot build-up in the lubricating oil. These effects can reduce engine life.

JM states that it stands by its CEM II back-pressure procedure, and notes that it is the same procedure that DDC recommends using in its own 0.10 DDEC kit.

EPA is not requiring JM to revise the screening procedure, for several reasons. First, and in general, the program regulations do not require any specific check procedures for any components of certified kits. Second, EPA notes that the maximum exhaust back pressure specification for several engine calibrations (codes) of the 6V92TA DDEC II engines is 4.0 inches of mercury (as specified in DDC's application for certification of 1991 and 1992 6V92TA DDEC engines under EPA's new engine certification program), and that the back pressure specification for the JM procedure is 3.0 inches of mercury. Third, the JM procedure is intended as a "screen" to determine whether a catalyst muffler needs cleaning, not to measure exhaust back pressure for comparison with DDC's maximum specifications. For additional discussion of the issue, refer to page 12177 of the **Federal Register** notice describing certification of Engelhard's ETX kit for 6V92TA MUI engines (62 FR 12166; March 14, 1997.

Any future information provided by interested parties regarding the impacts of certified equipment on exhaust back pressure would be taken under consideration. EPA appreciates that there may room for improvement in maintenance procedures of equipment certified under this program. Such concerns, in general, can also occur with procedures relating to new engines. EPA encourages all equipment certifiers to issue revised check procedures when appropriate. If JM determines that another check is appropriate, or if EPA becomes aware that back pressure is exceeding manufacturer limits on in-use buses, then JM should revise such procedures. Pursuant to 40 CFR Section 85.1413, EPA has authority to decertify equipment that does not comply with the requirements of the regulations.

g. Components of the Kit

CTA notes that the CCT kit replaces all "emissions-related" parts, many of which are standard DDC parts, and asks whether these parts are required to be purchased through JM, or whether the standard parts can be purchased elsewhere.

As described above, JM requested to supply the CCT kit to installers under different supply options. EPA approves two options of supply, in order to provide as much flexibility to transit operators as possible while assuring emissions reductions. At JM's option, either option can be made available, because this certification does not trigger program requirements. For the first supply option, transit operators purchase the entire CCT kit from JM or its distributors. For the second option, transit operators purchase all of the unique parts of the kit from JM, and acquire the non-unique DDC engine parts specified by JM through sources of its own choosing. Both supply options must provide all parts which are unique to a standard rebuild for the particular engine to be rebuilt. Parts which would typically be acquired by an installer for a standard rebuild of a particular model year engine are not required to be part of the CCT kit under supply option 2. The specified parts must be acquired by the transit operator.

Aftermarket parts are not permitted for the specified parts of the CCT kit under the certification described today. Because the certification testing was conducted on an engine equipped with DDC components, EPA has no assurance that an engine equipped with other parts can achieve the 0.10 g/bhp-hr PM standard. JM is required to provide the applicable 100,000 mile emissions defect warranty and the 150,000 mile emissions performance warranty for all parts of the kit which it supplies to the transit operator.

The CCT kit includes a list of the specific engine rebuild parts that are required to be used upon engine rebuild with the CCT kit. EPA notes that in accordance with 85.1404, operators are required to maintain records of all parts used in rebuilds. Using incorrect components with the CCT kit at the time of kit installation can be considered as failure to install a certified kit under the urban bus rebuild requirements, and subject the operator to the significant penalties provided by the regulation.

h. Life Cycle Cost

Engelhard comments that JM has not provided a life cycle cost analysis to justify their certification. EPA notes that life cycle cost information is not required for certification of equipment which would not trigger a standard.

Chicago Transit Authority (CTA) understands that certification of the CCT kit will not trigger program requirements, but comments that life cycle costs are very important. CTA asks what the kit will cost.

JM responds that it currently is not able to provide a list price for the DDEC CCT kit, but will provide CTA with a list price as soon as possible.

CTA asks whether data is available on the emissions, fuel economy, and exhaust back-pressure for the 253 Hp rating. Back-pressure, fuel economy, and oil life appear to be affected by some catalytic converter installations which can affect engine life and operating costs.

In response, JM states that its certification, based on testing the highest power rating (277 Hp) on diesel fuel #2, covers 253 Hp engines and both diesel fuels #1 and #2. EPA notes that JM provided data from testing using diesel fuel #1, but has not provided any data on the 253 Hp rating.

Engelhard comments that JM does not include information on the fuel economy impact of installing the CCT kit, and that this type of information is essential for a transit operator to make a complete evaluation of the kit. In analysis that Engelhard performs, it notes that the CCT kit uses 0.489 pounds of fuel per brake-horsepower-hour (lb/bhp-hr), compared to 0.483 lb/bhp-hr for a 1991 model year baseline engine tested by JM. This is a 1.2 percent fuel economy penalty for 1991–1993 DDEC engines. Furthermore, JM's baseline data for a 1988 federal engine shows a fuel consumption of 0.459 lb/bhp-hr, which translates into a 6.5 percent fuel penalty if the CCT kit is installed on a 1988 to 1990 engine. Engelhard also asks about the fuel consumption impact of the CCT kit on DDEC 1 engines.

In response, JM states that it has not applied as a trigger technology for the 0.10 g/bhp-hr standard. JM notes that it has placed in the public docket, baseline data for 1991–1993 and 1988–1990 model year engines.

In general, EPA agrees that the impact of a kit on fuel consumption would be of interest to transit operators. However, fuel consumption data is not required for equipment which would not trigger a standard. The availability of the baseline data conducted for JM and others, as discussed in a section above, may benefit bus operators that are interested in the fuel consumption impact of the certified equipment. EPA appreciates that JM conducted and provided the baseline data.

III. California Engines

The NO_X emission standard for new engine certification applicable to 1988 through 1990 model year engines sold in the State of California is 6.0 g/bhp-hr. For 1991 through 1993, the standard is 5.0 g/bhp-hr. The emissions testing presented by Johnson Matthey demonstrate a NO_X emissions level that complies with the 5.0 g/bhp-hr standard. Therefore, today's description of the CCT kit for DDEC II engines applies to engines certified to meet California emissions standards, subject to the conditions discussed below.

The equipment certified today may require additional review by the California Air Resources Board (CARB) before use in the State of California. EPA recognizes that special situations may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the federal urban bus program apply to several metropolitan areas in California, EPA understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Parties interested in additional information should contact the Aftermarket Part Section of CARB, at (626) 575–6848.

IV. Certification and Conditional Certification

EPA has reviewed this notification, along with comments received from interested parties, and finds the equipment described in this notification of intent to certify:

(1) Complies with a particulate matter emissions standard of 0.10 g/bhp-hr, without causing the applicable engine families to exceed other applicable emission requirements, subject to the conditions discussed below;

(2) Will not cause an unreasonable risk to the public health, welfare or safety;

(3) Will not result in any additional range of parameter adjustability; and

(4) Meets other requirements necessary for certification under the Urban Bus Rebuild Requirements (40 CFR Sections 85.1401 through 85.1415).

With the following conditions, EPA hereby certifies this equipment for use in the Urban Bus Retrofit/Rebuild Program. As noted above, the equipment being certified today includes for some engines, an upgraded control program for the electronic control module. EPA has recently become concerned that many electronically controlled engines may have been equipped by the original manufacturers with strategies designed to decrease fuel consumption during certain driving modes not substantially included in the federal test procedure, with the effect of substantially increasing NO_X during these modes. Such electronic control strategies have the potential to be "defeat devices" as defined at 40 CFR 86.094–22, and thus may violate 40 CFR 85.1406 and 85.1408 if included in an urban bus retrofit application. Most of the upgraded control programs used for the CCT kit must therefore be reviewed for such violations. As a result, certification of the CCT kit, as it applies to the following engines is conditioned upon Johnson Matthey demonstrating by January 1, 1999 that any replacement engine control module (ECM) or ECM program used in conjunction with the certified kit will not adversely impact the emissions of NO_X in comparison to the ECM or ECM program that is being replaced under conditions which may reasonably be expected to be encountered in normal vehicle operation and use unless such conditions are substantially included in the Federal emission test procedure. Certification is conditional as it applies to all applicable engines of model years 1985 through 1990, and all applicable engines of model years 1991 through 1993 that are not equipped with ECM programs #259 through #264 for kit operation on diesel fuel #1.

The equipment, the CCT™ Upgrade Kit, may be used immediately by transit operators in compliance with requirements of this program, subject to the above condition. Unconditional certification is provided for the CCT kit as it is applied to 1991 through 1993 model year engines that are equipped with ECM programs #259, 260, 261, 262, 263, or 264, for operation on diesel fuel #1 after kit installation.

V. Transit Operator Responsibilities

In a **Federal Register** notice dated September 21, 1998 (63 FR 50225), EPA announced certification of a retrofit/rebuild kit supplied by the Engelhard Corporation (the ETX™ kit for DDEC engines). That certification triggers the 0.10 g/bhp-hr PM standard for 1988 through 1993 model year DDC 6V92TA DDEC model engines, which means that urban bus operators using compliance program 1 must use equipment certified to the 0.10 g/bhp-hr standard when rebuilding or replacing these engines after March 21, 1999.

Today's **Federal Register** notice announces certification of the Johnson Matthey CCT Upgrade kit, when properly applied, as meeting the 0.10 g/bhp-hr particulate matter standard of the Urban Bus Rebuild Program. Affected urban bus operators who choose to comply with compliance program 1 are required to use this, or other equipment that is certified to meet the 0.10 g/bhp-hr particulate matter standard for 1988 through 1993 model year DDC 6V92TA DDEC model engines which are rebuilt or replaced on or after March 22, 1999, subject to the condition of Section IV.

Urban bus operators who choose to comply with compliance program 2 may use the CCT equipment, and those that use this equipment may claim the certification level from Table 3 when calculating their Fleet Level Attained (FLA), subject to the condition of Section IV. Under program 2, an operator must use sufficient certified equipment so that its actual fleet emission level complies with the target level for its fleet.

Urban bus operators must be aware of their responsibility for maintenance of records pursuant to 40 CFR Sections 85.1403 through 85.1404. The CCT kit may not include, depending upon the supply option selected and the particular applicable engine, certain emissions-related parts that are required to complete the CCT kit. As stated in the program regulations (40 CFR 85.1401 through 85.1415), operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the Urban Bus Rebuild Requirements beginning on January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines. Urban bus operators must be able to demonstrate that all parts used in the rebuilding of engines are in compliance with program requirements. In other words, urban bus operators must be able to demonstrate that all required components of the kit described in today's **Federal Register** notice are installed on applicable engines.

Dated: November 24, 1998.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 98–32071 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6197–2]

Common Sense Initiative Council, (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Council Meeting: open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the CSI Council will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be on a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below.

Common Sense Initiative Council Meeting—December 17, 1998

The final meeting of the CSI Council will be held on December 17, 1998, at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone numbers are 1–800–862–7666, or 703–486–1111.

The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. EST. The agenda will include updates on the Sector-based Approach to Environmental Protection Action Plan, Stakeholder Involvement Action Plan, Data Quality Action Plan, and Data Gaps Strategy. The Council will also consider three recommendations from the Computers and Electronics Sector Subcommittee regarding Support for Constructive Engagement; Worker Health; and Zero Discharge. An independent contractor will present a preliminary review of CSI lessons learned.

For further information concerning this Common Sense Initiative Council meeting, contact Kathleen Bailey, Designated Federal Officer, on (202) 260–7417, or E-mail: bailey.kathleen@epa.gov.

Inspection of Subcommittee Documents

Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 3802M of EPA Headquarters, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http://www.epa.gov/commonsense.

Dated: November 24, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–32203 Filed 12–2–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98–295]

Preemption of State or Local Statutes; Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has released a Public Notice which suggests various procedural guidelines for filing petitions for Commission action pursuant to section 253 of the Communications Act. Section 253 requires the Commission, subject to enumerated exceptions, to preempt the enforcement of any state or local statute, regulation, or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. These suggested guidelines are designed to assist petitioners and commenters in preparing their submissions to the agency.

FOR FURTHER INFORMATION CONTACT: Jordan Goldstein, Common Carrier Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

OMB Control Number: 3060–0859.

Expiration Date: 5/31/99.

Title: Suggested Guidelines for Petitions for Ruling under Section 253 of the Communications Act.

Respondents: Business or other for-profit; federal government; and state, local or tribal government.

Public reporting burden for the collection of information is estimated as follows:

Information collection	No. of respondents (approx.)	Annual hour burden per response	Total annual burden
Filing of petitions for preemption	20	125	2,500
Submission of written comments on petitions	60	63	3,780

Total Annual Burden: 6,280.

Frequency of Response: On occasion.

Estimated Costs per Respondent: $0.

Needs and Uses: The Commission released a Public Notice (FCC 98–295) which suggests various procedural guidelines relating to the Commission's processing of petitions for preemption pursuant to section 253 of the Communications Act of 1934, as amended. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

Synopsis of Public Notice

This Public Notice suggests procedural guidelines for filing petitions for Commission action pursuant to section 253 of the Communications Act of 1934, as amended 47 U.S.C. 253 (Act). These suggested guidelines are designed to assist petitioners and commenters in preparing their submissions to the agency. Other than the mechanical filing requirements described below in Section D, however, these guidelines are not intended to limit the content or form of information that petitioners or commenters submit.

A. Background

Section 253 requires the Commission, subject to enumerated exceptions, to preempt the enforcement of any state or local statute, regulation, or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. To date, the Commission has received over 25 petitions seeking preemption under section 253.

These petitions involve not only competition issues but also the relationships among the federal, state and local levels of government. In order to ensure that, on the one hand, competition is not unduly delayed by requirements that retard vigorous market entry, while, on the other hand, the vital role of state and local authorities in advancing the interests of their citizens is acknowledged, the Commission must undertake full and expeditious examination of the issues raised in each petition.

Section 253 petitions necessarily involve state or local statutes, regulations, ordinances, or other legal requirements that likely are unfamiliar to the Commission. In order to render a timely and informed decision, petitioners and commenters should submit relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision. Factual assertions should be supported by credible evidence, including affidavits, and, where appropriate, studies or other descriptions of the economic effects of the legal requirement that is the subject of the petition.

In preparing their submissions, parties should address as appropriate all parts of section 253. In particular, parties should first describe whether the challenged requirement falls within the proscription of section 253(a); if it does, parties should describe whether the requirement nevertheless is permissible under other sections of the statute, specifically sections 253(b) and (c). Lastly, parties should submit information on whether and how the Commission could tailor a decision to preempt the enforcement of an offending legal requirement only "to the extent necessary to correct such violation or inconsistency" as required by section 253(d).

B. Content of Petitions and Replies

The Commission realizes that it cannot anticipate every type of section 253 preemption request that may be filed. However, we identify below specific issues that we suggest petitioners should include when addressing whether a legal requirement violates the statute. While not all questions will be relevant to all petitions, the Commission suggests that section 253 petitions incorporate answers to the following questions, as applicable, in order to establish a complete factual record relating to section 253(a):

(1) What is the statute, regulation, ordinance, or legal requirement that is being challenged? Please provide a copy. Identify and describe any other pending court or state regulatory actions relating to the enforceability of the challenged statute, regulation, or legal requirement.

(2) What specific telecommunications service or services is the petitioner prohibited or effectively prohibited from providing?

(a) What other specific entities, if any, are prohibited or effectively prohibited from providing the service?

(b) What group or groups of actual or potential customers are being denied access to the service or services?

(3) What are the factual circumstances that cause the petitioner to be denied the ability to offer the relevant telecommunications service or services?

(a) Does the statute, regulation, ordinance, or legal requirement categorically ban provision of a telecommunications service?

(b) Does the statute, regulation, ordinance, or legal requirement have the effect of prohibiting the ability of an entity to provide a telecommunications service? Petitioner should describe with particularity how the challenged statute, regulation, ordinance, or legal requirement has such an effect. For example, if the petitioner alleges that a statute, regulation, ordinance, or legal requirement has the effect of prohibiting the petitioner's ability to provide a telecommunications service because the challenged statute, regulation, ordinance, or legal requirement raises petitioner's costs, the petition should explain: (1) how the statute, regulation, ordinance, or other legal requirement prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service, (2) whether the statute does so in a discriminatory manner; (3) whether price levels in the market preclude recovery of any such additional costs; and (4) any other factors that demonstrate that the challenged statute, regulation, ordinance, or legal requirement has the alleged effect.

(4) Have other governmental entities adopted similar requirements? If so, are there conflicting requirements imposed on service providers (either in law or practice)? Are there cumulative adverse effects of requirements flowing from multiple local regulatory regimes? If so, the petitioner should describe with particularity how the cumulative adverse effects prohibit the ability of an entity to provide a telecommunications service.

(5) Assuming the Commission determines that modification of the challenged statute, regulation, ordinance, or legal requirement is required, what is the least intrusive action necessary to correct the alleged violation of section 253?

Responding parties, in addition to addressing issues raised in the petition, may also rely on section 253 (b) or (c), which identify certain State and local government actions as permissible even though they may be the basis for the alleged violation of section 253(a). In order to help the Commission determine whether preemption of the challenged statute, regulation, ordinance, or legal requirement is within the scope of Commission jurisdiction, parties commenting on the applicability of sections 253 (b) or (c), and especially parties seeking to invoke these sections, should include answers to the following questions in their filings:

(1) If the requirement is imposed by a local government entity, what is the source of its authority (*e.g.*, state constitution, statute, delegation of state power)?

(2) Is the challenged statute, regulation, ordinance, or legal requirement:

(a) necessary to preserve and advance universal service consistent with section 254 of the Act and does it do so in a competitively neutral and nondiscriminatory manner;

(b) necessary to protect the public safety and welfare and does it do so in a competitively neutral and nondiscriminatory manner;

(c) necessary to ensure the continued quality of telecommunications services and does it do so in a competitively neutral and nondiscriminatory manner; and

(d) necessary to safeguard the rights of consumers and does it do so in a competitively neutral and nondiscriminatory manner? Please explain.

(3) Does the challenged statute, regulation, ordinance, or legal requirement pertain to the management of, or compensation for access to, rights-of-way? If so, please explain the nature of any relationship to rights-of-way management or compensation. If compensation is involved, is it fair and reasonable and required on a competitively neutral and nondiscriminatory basis?

Parties asserting that a statute, regulation, ordinance, or legal requirement is necessary to achieve the objective at issue should describe and support this claim with particularity, including, but not limited to, a description of the objective sought to be achieved and of the inadequacies of less competitively restrictive means of achieving the objective.

Parties asserting that a statute, regulation, ordinance, or legal requirement is not necessary to achieve the objective at issue should describe and support this claim with particularity, including, but not limited to, a description of less competitively restrictive means of achieving the objective.

Parties asserting that a statute, regulation, ordinance, or legal requirement is discriminatory or not competitively neutral should describe and support such claim with particularity.

Because section 253(d) requires notice and an opportunity for public comment before Commission action under section 253, commenters wishing to challenge additional provisions, even though related to those identified in the petition, should initiate their own petitions to address those provisions they believe appropriate.

C. Time Frame for Proceedings

Once a petition has been filed (often styled as a request for declaratory ruling), the relevant Bureau will issue a public notice establishing the specific due dates for the various filings set forth below. We anticipate the affected government entity and interested third parties generally will have approximately 30 days to respond to the petition. If the matter presented in the petition is of an urgent nature, the Bureau may, where it determines good cause exists, require less than 30 days for responses. To file comments (or any other filing set forth below) in a section 253 proceeding, commenters should follow the applicable procedures outlined below.

All participants in the proceeding—the petitioner, interested third parties, the relevant State or local government entity—may file a reply to any comment made by any other participant. Such replies generally will be due approximately 15 days after comments are due. The specific due date for replies will be set forth in the Initial Public Notice; the time period for replies may be less than 15 days if the relevant Bureau has determined that expedited review is appropriate. Reply comments may not raise new arguments that are not directly responsive to arguments other participants have raised, nor may the replies be repetitive of arguments made by that party in the petition or initial comments.

D. Filing Requirements For Petitions, Responses and Comments

Petitioners should file an original and not less than six copies of each section 253 request. The name of the petitioner, the date the petition is filed, and the State and city (if applicable) to which it relates should appear in the upper right hand corner of each page of the petition. We encourage petitioners to also submit requests on a 3.5 inch computer diskette formatted in WordPerfect 5.1. All filings submitted on diskette will be posted on the internet for public inspection at http://www.fcc.gov.

If the petitioner wants each Commissioner to receive a copy of the section 253 request, the petitioner should file an original plus eleven copies. The original, all copies, and any diskette should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. The petitions will be available for public inspection during regular business hours in the reference room of the bureau to which the petition has been assigned, Washington, DC 20554. The applicant should also submit a copy of the request simultaneously to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036. In addition, the petitioner should simultaneously provide a copy of the petition to each state or local government entity to which the petition applies and reference such service in the petition. If the petition involves a local statute, regulation, ordinance, or legal requirement, the petitioner should also serve the appropriate state entity and reflect this service in the petition. Thereafter, each party, including the petitioner and each respondent state or local government entity, should serve all other parties with a copy of its pleadings and any filing made pursuant to the Commissions *ex parte* rules.

E. Ex Parte Rules

Because of the broad policy issues involved, and because these proceedings are generally declaratory ruling proceedings, section 253 petition proceedings initially will be considered "permit-but-disclose" proceedings. Accordingly, *ex parte* presentations will be permitted (unless the Commission designates a particular proceeding "restricted"), provided they are disclosed in conformance with Commission *ex parte* rules. In addition, parties should notify all parties of any *ex parte* communications.

The Commission expects to be kept informed, through *ex parte* presentations, of any discussions between the petitioner and the relevant state or local entity regarding resolution of the issues raised in the petition.

Notwithstanding the above, the Commission may, by subsequent public notice, prohibit all communication with Commission personnel regarding the petition during a defined period preceding the anticipated release date of the Commission's order regarding the petition.

FCC Notice to Individuals Required by the Paperwork Reduction Act

Pursuant to section 253 of the Communications Act of 1934, the Commission, subject to enumerated exceptions, must preempt the enforcement of any state or local statute, regulation, or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Parties may file petitions seeking preemption under section 253. The Commission must provide an opportunity for public comment. All of the information collected would be used to determine whether the state or local government has imposed a legal requirement that violates section 253 of the Act. Obligation to respond to this collection of information is not mandatory.

The public reporting for this collection of information is estimated to average 78.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection, please write to the Federal Communications Commission, AMD–PERM, Paperwork

Reduction Project (3060–0859), Washington, DC 20554. We will also accept your comments on the burden estimate via the Internet if you send them to jboley@FCC.gov. Please do not send petitions to this address.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0859. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. Section 3507.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32158 Filed 12–2–98; 8:45 am]

BILLING CODE 6712–01–p

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, December 8, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 10, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Officers.

Notice of Proposed Rulemaking on Treatment of Limited Liability Companies under the Federal Election Campaign Act.

Revised Notice of Proposed Rulemaking for Public Financing of Presidential Primary and General Election Campaigns.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–32278 Filed 12–1–98; 12:16 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 65792.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m, December 2, 1998.

CHANGE IN THE MEETING: Addition to the CLOSED portion of the meeting, Item 2—Consideration of the Failure of Sea-Land Service, Inc. to Comply with Subpenas Issued in Fact Finding Investigation No. 23.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32343 Filed 12–1–98; 3:06 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 17, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Harvey Wilson Family (to be known as The Piedmont Family Limited Partnership), Eatonton, Georgia; to acquire voting shares of Peoples Bankshares, Inc., Eatonton, Georgia, and thereby indirectly acquire voting shares of Peoples Bank, Eatonton, Georgia

Board of Governors of the Federal Reserve System, November 27, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32150 Filed 12–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Osceola Bancorporation, Inc., Osceola, Wisconsin; to acquire 100 percent of the voting shares of Chisago Bancorporation, Inc., Chisago City, Minnesota, and thereby indirectly acquire Chisago State Bank, Chisago City, Minnesota.

Board of Governors of the Federal Reserve System, November 27, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32151 Filed 12–2–98; 8:45 am]

BILLING CODE 6210–01–F

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Synergy Bancshares, Inc., Houma, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Synergy Bank, Houma, Louisiana (in organization).

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Bancorp of Rantoul, Inc., Rantoul, Illinois; to merge with Rossville Bancorp, Inc., Rossville, Illinois, and thereby indirectly acquire The First National Bank of Rossville, Rossville, Illinois.

Board of Governors of the Federal Reserve System, November 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32195 Filed 12–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 29, 1998.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 29, 1998.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the economy has been growing at a moderate rate, paced by brisk, albeit slowing, increases in spending by businesses and households, while expansion in overall economic activity has continued to be restrained by developments abroad. Nonfarm payroll employment grew somewhat more slowly over July and August, mostly reflecting job losses in the manufacturing sector; the civilian unemployment rate was unchanged at 4.5 percent in August. Industrial production has changed little on balance over recent months. Total retail sales over July and August were held down by a sharp contraction in spending for motor vehicles. Residential sales and construction have remained quite strong in recent months. Available indicators point to continued growth in business capital spending, but at a more moderate pace than in the first half of the year. Business inventory accumulation slowed further in July. The nominal deficit on U.S. trade in goods and services narrowed slightly in July from its second-quarter average. Trends in wages and prices have remained stable in recent months.

Most interest rates have fallen appreciably since the meeting on August 18, though yields on the bonds of lower-rated firms have increased and the number of large banks have tightened terms and standards for making business loans. Broadly similar developments have occurred in major foreign markets. Share prices in U.S. and global equity markets have remained volatile and major indexes have declined considerably further on balance over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar declined substantially over the intermeeting period in relation to other major currencies; it was up slightly in terms of an index of the currencies of the developing countries of Latin America and Asia that are important trading partners of the United States.

Growth of M2 and M3 strengthened considerably in August and appeared to have picked up further in September, partly reflecting shifts of funds by households out of investments in equities and lower-rated corporate debt. For the year through September, both aggregates rose at rates well above the Committee's ranges for the year. Expansion of total domestic nonfinancial debt has moderated somewhat in recent months after a pickup earlier in the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at its meeting on June 30-July 1 the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1997 to the fourth quarter of 1998. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1999, the Committee agreed on a tentative basis to set the same ranges for growth of the monetary aggregates and debt, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks conditions in reserve markets consistent with decreasing the federal funds rate to an average of around 5-1/4 percent. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, a slightly higher federal funds rate might or a somewhat lower federal funds rate would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with some moderation in the growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, November 24, 1998.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 98–32152 Filed 12-2-98; 8:45 am]

BILLING CODE 6210–01–F

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[1] Copies of the Minutes of the Federal Open Market Committee meeting of September 29, 1998, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: State Treatment and Needs Assessment Program Studies (OMB No. 0930–0186—Revision)

SAMHSA's Center for Substance Abuse Treatment (CSAT), as part of its State Treatment and Needs Assessment Program (STNAP), awards contracts to States to conduct studies for the purpose of determining the need and demand for substance abuse treatment within each State. In order to receive funds from the Substance Abuse Prevention and Treatment Block Grant, States must submit in their annual block grant applications an assessment of service needs Statewide, at the sub-state level, and for specified population groups (as required by Section 1929 of the Public Health Service Act). Most States plan to conduct an adult telephone household survey to collect information on needed treatment for substance abuse/dependence. In addition, many States plan to conduct a variety of more focused studies which will collect data on treatment need in special populations, including adolescents, pregnant women, American Indians, arrestees and other criminal justice populations.

This submission reflects changes to the previously approved annual burden for survey activities in two States previously funded (changes to their previously approved survey plans) and in the nine States receiving new contracts in FY 1998 that are engaging in primary data collection. The burden will be as presented below:

	Total No. of respondents	No. of responses/ respondent	Hours/ response	Annualized burden hours
Previous submission	75,521	1	0.54	41,093
Decrease: (Adolescent Survey not being done)	-3,000	1	0.55	−1,650
New Activities:				
Household Telephone Surveys	5,567	1	0.55	3,062
Criminal justice populations	1,590	1	.87	1,377
Medicaid recipients	1,556	1	0.55	856
Other population groups	1,733	1	.53	919
Treatment providers	360	1	.81	291
Treatment clients	600	2.7	0.45	729
Total	83,927			46,677

Send comments to Nancy Pearce, SAMHSA, Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 27, 1998

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–32194 Filed 12–2–98; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

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SPECIAL NOTE: Our office moved to a different building on May 18, 1998. Please use the above address for all regular mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)
Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)
Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400
Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745
Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)
American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA, 20151, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023
Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199 (formerly: Methodist Medical Center Toxicology Laboratory)
LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900 / 800–833–3984 (formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118 901–795–1515/800–223–6339 (formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 /

972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The following laboratory has voluntarily withdrawn from the National Laboratory Certification Program as of October 30, 1998:

Presbyterian Laboratory Services, 5040 Airport Center Parkway, Charlotte, NC 28208, 800–473–6640 / 704–943–3437

- The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–32206 Filed 12–2–98; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–5700–10; IDI–32153]

Notice of Realty Action; Classification and Conveyance of Lands for Recreation and Public Purposes, Ada County, Idaho

SUMMARY: The following described public land in Ada County, Idaho, has been examined and found suitable, and is hereby classified for recreation and public purposes, and for conveyance to the City of Boise City under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Boise Meridian, Ada County, Idaho

T. 3 N., R. 3 E., section 32: Lot 3;
Containing 45.33 acres

DATES: On or before January 14, 1999, interested parties may submit comments to the Bruneau Area Manager at the address below regarding the proposed classification or conveyance of the lands.

FOR FURTHER INFORMATION CONTACT: John Sullivan, National Conservation Area Manager, at (208) 384–3338. Information relating to this application, including the environmental assessment, is available for review at the Bureau of Land Management, Lower Snake River District Office, 3948 Development Avenue, Boise, Idaho 83705.

SUPPLEMENTARY INFORMATION: The City of Boise City has filed application to obtain the above-described public lands under the R&PP Act for the purpose of including them within the Oregon Trail Historic Reserve. The lands will be developed and managed for educational, interpretive, and recreational purposes, as described in the City's Oregon Trail Resource Management Plan. Publication of this notice in the **Federal Register** segregates the above described public lands from operation of the public land laws and the mining laws, except for mineral leasing and conveyance under the R&PP Act. The segregative effect will automatically expire upon issuance of a deed to the City of Boise City or 18 months from the date of this notice, whichever occurs first.

Classification Comment

Interested parties may submit comments regarding whether the lands being classified are physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the conveyance decision,or any other factor not directly related to the suitability of the land for the stated purpose. Adverse comments will be reviewed by the District Manager. In the absence of any Adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**. The conveyance of the lands will not occur until after the classification becomes effective, and will be subject to the following terms, covenants, conditions, and reservations:

Excepting and Reserving to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals together with the right to mine and remove the same under applicable laws and regulations.

Subject to:

3. An easement for telephone and telegraph purposes granted to the American Telephone and Telegraph Company, recorded October 1, 1941, in Book 17, Page 473, as Instrument No. 207728, Official Records of Ada County, Idaho.

4. An assignment of easement for telephone and telegraph purposes in favor of Mountain States Telephone and Telegraph Company, recorded April 29, 1974, as Instrument No. 883372, Official Records of Ada County, Idaho.

5. An easement to Idaho Power Company for transmission line No. 912 and a future transmission line, as described in Gift Deed recorded February 16, 1995, as Instrument No. 95010554, Official Records of Ada County, Idaho.

6. Reservations, easements, and restrictions for powerlines and right-of-way easements as reserved in Gift Deed recorded February 16, 1995, as Instrument No. 95010554, Official Records of Ada County, Idaho.

7. A right-of-way for railroad purposes granted to the Idaho Central Railroad on February 17, 1888, under the authority of the Act of March 3, 1875 (43 U.S.C. 934–939; 18 Stat. 482); Right-of-Way No. IDI–1074.

Dated: November 20, 1998.

Signe Sather-Blair,

Bruneau Area Manager.

[FR Doc. 98–32200 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Revision of Form MMS–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

ACTION: Notice of public workshop and extension of comment period.

SUMMARY: This notice announces a public workshop that the MMS will conduct to acquire information pertinent to revision of Form–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act. The purpose of the workshop is to discuss the plain language revisions to the form. This workshop is being held in conjunction with the MMS sponsored Information Transfer Meeting. We are also giving notice that we are extending the comment period on the Notice of Revision of Form–2005, which was published in the **Federal Register** on November 9. 1998 (63 FR 60380). The comment period is extended to January 8, 1999.

DATES: MMS will conduct the workshop from 1 to 3:30 p.m. on Thursday, December 10.

ADDRESSES: MMS will hold the workshop at the Airport Hilton in Kenner, Louisiana.

FOR FURTHER INFORMATION CONTACT: Terry Holman, 202–208–3822 or e-mail to Terry.Holman@mms.gov. Comments may be sent to Terry Holman, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: MMS has determined that Form MMS–2005, the lease document, needs revision due to changes in regulations since it was last reviewed in 1986. MMS has revised the form to reflect plain English and has rewritten it for clarity and organization. To reduce the need for future revisions to the document due to changes in regulations, MMS refers the Lessee to applicable laws, and rules and regulations of the Department. Much of the wording of existing Form MMS 2005 that specifically cites, incorporates by reference, or restates statutory and regulatory requirements is therefore deleted from the proposed revision.

Dated: November 25, 1998.

Cynthia Quartermain,

Director, Minerals Management Service.

[FR Doc 98–32175 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

[DES 98–54]

Groundwater Replenishment System, Orange County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft program environmental impact report/tier 1 environmental impact statement.

SUMMARY: Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) of 1969 (as amended), the Orange County Water District and the Orange County Sanitation District and the Bureau of Reclamation (Reclamation) as lead agencies have prepared a joint draft program environmental impact report/tier 1 environmental impact statement (Program EIR/Tier 1 EIS) for a Groundwater Replenishment System in Orange County, California.

DATES: A 60-day public review period begins with the publication of this notice. Public hearings are anticipated to be held during January 1999 in Orange County, California.

ADDRESSES: Written comments on the Program EIR/Tier 1 EIS should be addressed to either Ms. Tama Snow, Senior Engineer, Orange County Water District, P.O. Box 8300, Fountain Valley, California 92728–8300, telephone: 714–378–3213; or Mr. Del Kidd, Environmental Protection Specialist, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470, telephone: 714–293–8698. If requesting copies of the document, contact Tama Snow, telephone: 714–378–3213.

SUPPLEMENTARY INFORMATION: The Orange County Water District (OCWD) and the County Sanitation District of Orange County (CSDOC) propose to develop and advance water treatment plant, pipeline and related facilities within the Cities of Fountain Valley, Santa Ana, Orange, Garden Grove, and Anaheim. The Groundwater Replenishment System (Project) would further process water from the County Sanitation Districts of Orange County. The water from CSDOC, which is typically discharged into the ocean, would be treated through a sophisticated, advanced water treatment process that would include microfiltration, reverse osmosis and disinfection. The microfiltration process uses a series of microscopically fine filters to remove fine particles, nitrogen, salts, and organic matter that might be in the water. The water from this advanced treatment process would be of better quality than the current water that is in-filtered into the groundwater basin from the Santa Ana River and would surpass (be cleaner and better than) the drinking water standards set by the U.S. Environmental Protection Agency, the California Department of Health Services and other health and regulatory agencies.

The water from this process would be piped to injection wells to create a barrier against saltwater intrusion and to a spreading basin for infiltration into the groundwater basin. The Project would provide a new, reliable water supply to meet increased demands for potable water within the OCWD service area and continue to protect the existing groundwater from further contamination from seawater intrusion. The Project water would also be used to supplement the existing Green Acres Project, which uses recycled water for landscape irrigation and industrial applications. The Project would help reduce the dependency on the uncertain water supplies currently received from northern California and the Colorado River.

Extensive evaluations have been conducted over the past seven years to define and determine the water supply alternatives to meet the future needs of Orange County Water District's customers. The Project was identified to be one of the most reliable and cost effective project alternatives for providing a new local water supply to Orange County. The Project would be implemented in three phases. Phase I would be implemented by the year 2003 and would supply 50,000 acre-feet per year (afy) (one afy is sufficient water to supply two families of four for an entire year). Phases II and III would supply an additional 25,000 afy by the years 2010 and 2020 respectively, or sooner if required.

Dated: November 20, 1998.

John A. Johnson,

Deputy Director, Resource Management Office.

[FR Doc. 98–32204 Filed 12–2–98; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

SES Performance Review Board

AGENCY: Agency for International Development, IDCA.

ACTION: Notice of Membership Roster for the Agency's Senior Executive Service (SES) Performance Review Board (PRB).

SUMMARY: This notice lists approved SES executives and public members who will comprise a standing roster for service from 1998 to the year 2000 on the Agency's SES Performance Review Board.

The Agency will use this roster to select members for the Board each year. The standing roster is as follows:

Kathryn Cunningham
Corbett Flannery
David Hales
Richard Nygard
Elmer Owens
Duff Gillespie
Peter Kimm
Robert Lester
Elizabeth Maguire
Singleton McAllister
James Sullivan
Roxann Van Dusen

To serve as public members:

Lenora Alexander
Leon Hollins
Paul Logan
Maxine Leftwich
Judith Neill
Jay Schulman

FOR FURTHER INFORMATION CONTACT: Melissa McCoy (202) 712–1781.

Dated: November 24, 1998.

Sherrie Hailstroks,

Executive Secretary, Performance Review Board.

[FR Doc. 98–32196 Filed 12–2–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1999 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the availability of Universal Hiring Program (UHP) grants to pay up to 75 percent of the total salary and benefits for new officers over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. Funding may not be applied to officers hired pre-award without written authorization from the COPS Office. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

DATES: Application deadlines for UHP and COPS in Schools are December 4, 1998, and February 5, April 2, June 4 and July 16, 1999. If your agency previously was awarded a FAST, AHEAD, or UHP grant, you may request additional officers at any time.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at (202) 307–1480 or 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770. The UHP application and information on the COPS Office also are available on the Internet via the COPS web site at: http://www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The Universal Hiring Program (UHP) enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through Federal grants for up to three years. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

Grants will be made for up to 75 percent of the total salary and benefits for each new officer over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. Funding may not be applied to officers hired pre-award without written authorization from the COPS Office.

Waivers of the non-Federal matching requirement may be requested under UHP, but will be granted only upon a showing of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that eligible agencies otherwise would have devoted to future officer hiring. In other words, any hiring under UHP must be in addition to, and not in lieu of, officers that otherwise would have been hired. All grant recipients must develop a written plan to retain their COPS-funded officer positions after Federal funding has ender. This plan must be submitted to the COPS Office with your application.

In hiring additional officers under the UHP, agencies may not reduce the scope of their customary screening and training procedures, and must include community policing principles in their training curricula.

An award under the COPS Universal Hiring Program will not affect the consideration of any agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: November 20, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–32197 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1999 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces a new grant program, COPS in Schools, designed to combat school violence by helping local law enforcement agencies hire community policing officers to work in schools. This program provides an incentive for law enforcement agencies to build working relationships with schools and to use community policing efforts to combat school violence. The COPS in Schools program will help reduce the local match requirement for local law enforcement agencies seeking to hire additional new officers to be used in or around schools.

DATES: Use the Universal Hiring Program application to apply for COPS in Schools grants. The application deadlines are December 4, 1998, February 5, April 2, June 4 and July 16, 1999. If your agency already was awarded a FAST, AHEAD or UHP grant, you may request additional officers at any time. Note on your application if you are requesting officers that will be assigned to primary or secondary schools.

ADDRESSES: To obtain a copy of an application or for more information, please call the U.S. Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480, or visit the COPS web site at http://www.usdoj.gov/cops/.

Departments that have a pending application under the Universal Hiring Program that are interested in applying that request to the COPS in Schools initiative should contact their grant advisor at 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770 or your grant advisor.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The COPS in Schools program is specifically designed to combat school violence.

Many communities are discovering that trained, sworn Law enforcement officers assigned to schools make a difference. The presence of these officers provide schools with on-site security and a direct link to local law enforcement agencies.

Community policing officers typically perform a variety of functions within the school including, teaching crime prevention and substance-abuse classes, monitoring troubled students, and building respect for law enforcement among students. School Resource Officers combine the functions of law enforcement and education.

To help hire community policing officers to work in schools, the COPS Office is offering up to $60 million to local law enforcement agencies. The COPS in Schools initiative provides an incentive for law enforcement agencies to build working relationships with schools to use community policing efforts to combat school violence.

The COPS in Schools initiative reduces the local match requirement for law enforcement agencies seeking to hire additional officers in and around schools.

Grants will be awarded to provide for a designated portion of the salary and benefits of each new officer over three years. The maximum is $125,000 per officer; any remainder is paid with state or local funds. Funding begins when new officers are hired or on the award date (whichever is later). Funds are distributed over the course of the grant.

COPS grants must not replace funds that eligible agencies otherwise would have devoted to hire officers in the future. In other words, any hiring under the COPS in Schools program must be in addition to, not in lieu of, officers that otherwise would have been hired. Grant recipients must develop a written plan to retain their COPS-funded officer positions after Federal funding ends. This plan must be submitted with the application.

To be eligible to receive funding under this grant program, applicants must be eligible to receive funding under the current guidelines established for the Universal Hiring Program (UHP). UHP guidelines are available from the U.S. Department of Justice Response Center. Applicants must also provide assurance that the officers employed under this program will be assigned to work in primary or secondary schools and must enter into a partnership agreement with either a specific school official or with an official with general educational oversight authority in that jurisdiction.

In addition to these general program requirements, agencies seeking funding under this program will be asked to provide supporting documentation in the following areas: problem identification and justification, community policing strategies to be used by the officers, quality and level of commitment to the effort, and the link to community policing.

An award under the COPS in Schools grant program will not affect the eligibility of an agency to receive awards under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: November 20, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–32198 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1999 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing

Services ("COPS") announces the Visiting Fellowship Program (VFP) designed to support training, technical assistance, research, program development and policy analysis to contribute to the use and enhancement of community policing to address crime and related problems in communities across the country.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships, and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide.

Visiting fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

DATES: The application deadline is March 1, 1999. Application kits will be available mid-December.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at (202) 307–1480 or 1–800–421–6770. Application kits will be available mid-December and will also be posted on the COPS Office web site at http://www.usdoj.gov/cops.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770, or the COPS web site at: http://www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Overview

The United States Department of Justice, Office of Community Oriented Policing Services (COPS) has been charged with the implementation of the Public Safety Partnerships and Community Policing Act of 1994 (42 U.S.C. 3796dd). Under this law, the COPS Office provides grants, cooperative agreements, and technical assistance to increase police presence, improve police and community partnerships designed to address crime and disorder, and enhance public safety. The VFP, which complements the COPS Office's efforts to add 100,000 officers to our nation's streets and support innovative community policing, is one of a wide variety of policing programs supported under this law.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. Fellows will work to broaden their knowledge of a training area that is directly related to community policing. The experience is intended to encourage the further development, enhancement, or renewed exploration of a particular training expertise that supports community policing. Fellows will deliver this expertise innovatively as well as provide technical assistance to others. Under Community Policing Training and Technical Assistance Fellowships, Fellows may pursue initiatives designed to: (1) improve police-citizen cooperation and communication; (2) enhance police relationships within the criminal justice system, as well as at all levels of local government; (3) increase police and citizens' ability to innovatively solve community problems; (4) facilitate the restructuring of agencies to allow the fullest use of departmental and community resources; (5) promote the effective flow and use of information both within and outside of an agency; and/or (6) improve law enforcement responsiveness to members of the community.

PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide. The experience is intended to encourage the further development, enhancement, or renewed exploration of program, policy, and evaluation issues that support community policing. This work will be shared with policy makers and practitioners through a variety of forums. Under PPSE Fellowships, Fellows may pursue a wide variety of initiatives. Topic areas of particular interest to the PPSE Division include, but are not limited to, the following goals: (1) improve the ability of policing agencies and community organizations to collect different types of information that will aid in collaborative problem solving efforts; (2) enhance current knowledge of how policing agencies evolve while implementing community policing; (3) enhance current knowledge about how various policing agencies utilize information technology to support crime reduction and community policing efforts; and/or (4) enhance current knowledge of or improve the ability of policing agencies to implement community policing and problem solving in other ways.

Visiting Fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

Grants or cooperative agreements under the VFP may support salary, fringe benefits, travel essential to the project, and miscellaneous supplies or equipment in support of the project. Reasonable costs for research assistants or support staff will also be considered. Reasonable relocation expenses and the cost of temporary housing also may be permitted in cases of relocation from a Fellow's permanent address.

Under the VFP, the COPS Office may award grants or enter into cooperative agreements with individuals, public agencies, colleges or universities, nonprofit organizations, and profit-making organizations willing to waive their fees.

Receiving a grant or cooperative agreement under the VFP will not affect the eligibility of an agency to receive awards under other COPS programs.

The selection process is expected to be highly competitive.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

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Dated: November 25, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–32213 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *ARCO,* Civil Action No. 89–039–BU–PGH (D. Mont.) and *Montana* v. *ARCO,* Civil Action No. 83–317–HLN–PGH (D. Mont.), was lodged on November 16, 1998 with the United States District Court for the District of Montana. The United States filed its action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred and to be incurred in cleaning up three Superfund Sites in southwestern Montana. The State of Montana filed its action pursuant to CERCLA and State law to recover natural resource damages arising from the injury or destruction of natural resources within the same area. The Confederated Salish and Kootenai Tribes of the Flathead Reservation intervened in *Montana* v. *ARCO,* asserting claims for the recovery of natural resource damages as well.

The Consent Decree provides for the following: (1) ARCO's payment of $80 million toward the ongoing remediation of one operable unit ("the SST OU"), which represents 100% of the total projected costs of that work, with provisions for the payment of cost overruns by ARCO, the State of Montana, and EPA; (2) ARCO's payment of $3.9 million towards the United States' $14.7 million in past costs related to the SST OU; (3) ARCO's payment of $1.8 million civil penalty for its failure or refusal to comply with the Administrative Order requiring it to perform the remedy at the SST OU; (4) payment of $2 million to the Superfund to settle ARCO's counterclaims against the United States related to the SST OU; (5) ARCO's commitment to a schedule to settle the rest of the United States' cost recovery claims for the three Sites, together with an "earnest money" deposit of $15 million towards past cost if settlement is not reached on the remainder of the case; (6) ARCO's payment of $1.7 million in cash and ARCO's creation of 400 acres of replacement wetlands in settlement of the U.S. Fish and Wildlife Service's claims for natural resource damages (work valued at approximately $3.2 million); (7) the creation of an additional 1,200 acres of wetlands by the State of Montana and the Confederated Salish and Kootenai Tribes of the Flathead Reservation to further compensate the U.S. Fish and Wildlife Service; (8) commitments by the State and the Tribes to perform restoration work related to the creation of bull trout habitat within the Clark Fork River Basin; and (9) ARCO's payment of $18.3 million to the Tribes in compensation for their natural resource damages claims. This settlement is contingent upon entry of a State Consent Decree that was lodged on June 19, 1998 and settles the claims of the State of Montana for natural resource damages at certain locations within the Basin. The State Consent Decree provides for the recovery of $118 million in cash and $2 million in land. Together, therefore, the two settlements result in recovery of at least $100.9 million in response costs and $143.2 million in natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *ARCO,* DOJ Ref. #90–11–2–430.

The proposed consent decree may be examined at the office of the United States Attorney, Western Federal Savings and Loan Building, 2929 3rd Avenue, North, Suite 400, Billings, Montana 59101, the Montana Field Office, Environmental Protection Agency, Federal Building, 301 South Park, Drawer 10096, Helena, MT 59626–0096, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $31.00 for the consent decree and $47.50 for the attachments (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32149 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a consent decree in *United States* v. *Brickeys Stone, L.L.C.,* Civil Action No. 498–CV–01939 (FRB) (E.D. Mo.), was lodged with the United States District Court for the Eastern District of Missouri on November 20, 1998.

The proposed consent decree would resolve the United States' allegations in the above-referenced enforcement action that Defendant violated Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by unlawfully placing a 6,800 square foot barge into the Mississippi River and placing approximately 1,500 cubic yards of fill material into and along the banks of that same river.

The proposed consent decree would require Defendant to pay a $150,000 civil penalty and to either: (1) restore the site; or (2) apply for a permit to allow the fill to remain in place and (a) if such permit is granted, comply with the terms and conditions set forth therein; or (b) if such permit is denied, comply with the restoration requirements of the decree. The decree would also require Defendant to host two public workshops on compliance with the Clean Water Act and Rivers and Harbors Act.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Wendy L. Blake, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20226–3986, and should refer to *United States* v. *Brickeys Stone, L.L.C.,* DJ Reference No. 90–5–1–1–05173.

The proposed consent decree may be examined at either the Clerk's Office of the United States District Court for the Eastern District of Missouri, 1114 Market Street, Room 260, St. Louis, Missouri, or the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. Requests for a copy of the consent decree may be mailed to the Consent Decree Library at the above address and must include a check in the amount of $2.75.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 98-32214 Filed 12-2-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARMTENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 C.F.R. 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Caterpillar, Inc.*, Civil Action No. 98-2544 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59330-59331. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States* v. *Caterpillar, Inc.*, Civil Action No. 98-2544 (HHK), D.J. Ref. 90-5-2-1-2255, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98-32217 Filed 12-2-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Cummins Engine Co.* Civil Action No. 98-2546 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg., 59331. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, should refer to *United States* v. *Cummins Engine Co.*, Civil Action No. 98-2546 (HHK), D.J. Ref. 90-5-2-1-2136A, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98-32216 Filed 12-2-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Detroit Diesel Corporation*, Civil Action No. 98-2548 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59331-59332. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, should refer to *United States* v. *Detroit Diesel Corporation*, Civil Action No. 98-2548 (HHK), D.J. Ref. 90-5-2-1-2253, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98-32219 Filed 12-2-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulated Dismissal Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed joint stipulation of dismissal in *United States* v. *Exxon Company, U.S.A.*, Civil Action No. H-98-0392, was lodged on November 17, 1998, with the United States District Court for the Southern District of Texas. Exxon Company, U.S.A. operates a petroleum refinery at Baytown, Texas. On February 13, 1998, the United States commenced a civil action praying for civil penalties and injunctive relief for violations of the Clean Air Act. The injunctive relief prayed for was the testing of seven flares for compliance with the Act. Exxon has performed the injunctive relief and will pay a civil penalty in the amount of $250,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed joint stipulation of dismissal. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Exxon Company, U.S.A.*, DOJ Ref. #90-5-1-1-2164.

The proposed stipulated dismissal may be examined at the Office of the United States Attorney, 910 Travis Street, #1500, Houston, Texas 77208 and at the office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, 202-347-2072. A copy of the proposed joint stipulation of dismissal may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd floor, Washington, DC 20005. In requesting a copy, please refer to the reference case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98-32215 Filed 12-2-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR § 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Mack Trucks, Inc.*, Civil Action No. 98-1495 (HHK), and *United States* v. *Renault Vehicules Industriels*, Civil Action No. 98-2543 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59332-59333. Comments should be addressed

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to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States* v. *Mack Trucks, Inc.*, Civil Action No. 98–1495 (HHK), D.J. Ref. 90–5–2–1–2251 and *United States* v. *Renault Vehicules Industriels*, Civil Action No. 98–2543 (HHK), D.J. Ref. 90–5–2–1–2251/1, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32220 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Navistar International Corp.*, Civil Action No. 98–2545 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59333–59334. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States* v. *Navistar International Corp.*, Civil Action No. 98–2545 (HHK), D.J. Ref. 90–5–2–1–2252, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32221 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States* v. *Volvo Truck Corporation*, Civil Action No. 98–2547 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59334. Comments shall be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, shall refer to *United States* v. *Volvo Truck Corporation*, Civil Action No. 98–2457 (HHK), D.J. Ref. 90–5–2–1–2256, and shall be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32218 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States of America v. Chancellor Media Corp. and Kunz & Co.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Chancellor Media Corporation and Kunz & Company*, Case No. 1:98CV0273. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act. 15 U.S.C. 16(b)–(h).

The United States filed a civil antitrust Complaint on November 12, 1998, alleging that the proposed acquisition of Kunz & Company ("Kunz") by Chancellor Media Corporation ("Chancellor") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Chancellor and Kunz compete head-to-head to sell outdoor advertising in four counties: (1) Kern County, California; (2) Kings County, California; (3) Inyo County, California; and (4) Mojave County, Arizona (collectively "the Four Counties"). Outdoor advertising companies sell advertising space, such as on billboards, to local and national customers. The outdoor advertising business in the Four Counties is highly concentrated. Chancellor and Kunz have a combined share of revenue ranging from about 60 percent to a virtual monopoly in the Four Counties. Unless the acquisition is blocked, competition would be substantially lessened in the Four Counties, and advertisers would pay higher prices.

The prayer for relief seeks: (a) an adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of his action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Chancellor to complete its acquisition of Kunz, yet preserves competition in the Four Counties where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed settlement requires Chancellor to divest all of the outdoor advertising assets of:

(1) Kunz in Kern County and Inyo County, California; and in Mojave County, Arizona; and

(2) Chancellor in Kings County, California.

Unless the plaintiff grants a time extension, Chancellor must divest these outdoor advertising assets within four (4) months after the filing of the Complaint in this action. Finally, in the event that the Court does not, for any reason, enter the Final Judgment within that four-month period, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If Chancellor does not divest the advertising assets in the specified counties within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Chancellor shall take all steps necessary to maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configurations. Further, the proposed Final Judgment requires Chancellor to give the United States prior notice regarding certain future outdoor advertising acquisitions or agreements pertaining to the sale of outdoor advertising in the Four Counties.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: 202–307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Chancellor Media Corporation and Kunz & Company, Defendants.

[Civil Action No. 982763]

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

4. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and order.

5. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

6. In the event (a) the plaintiff withdraws its consent (as provided in paragraph 2 above), or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

7. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: November 12, 1998.

For Plaintiff United States of America:

Barry L. Creech,

D.C. Bar No.—421070, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307–0001.

For Defendant Kunz & Company:

Riccarda Heising,

Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, NE, 16th Floor, Atlanta, GA 30303, (404) 572–6730.

For Defendant Chancellor Media Corporation:

Steven H. Schulman,

Bruce J. Prager,

Latham & Watkins, 1001 Pennsylvania Ave., NW; Suite 1300, Washington, DC 20004, (202) 637–2184.

So Ordered:

United States District Judge

Certificate of Service

I, Barry L. Creech, hereby certify that, on November 12, 1998, I caused the foregoing document to be served on defendants Kunz & Company and Chancellor Media Corporation by having a copy mailed, first-class, postage prepaid, to:

Steven H. Schulman, Bruce J. Prager, Latham & Watkins, 1001 Pennsylvania Ave., NW, Suite 1300, Washington, DC 20004, Counsel for Chancellor Media Corporation

Riccarda Heising, Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, NE, 16th Floor, Atlanta, GA 30603, Counsel for Kunz & Company

Barry L. Creech,

D.C. Bar No.—421070

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on November 12, 1998, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of the outdoor advertising assets in the four counties identified below to ensure that competition is substantially preserved;

And whereas, plaintiff requires Chancellor and Kunz to make the divestitures for the purpose of maintaining the current level of competition in the sale of outdoor advertising;

And whereas, Chancellor and Kunz have represented to the plaintiff that the divestitures ordered herein can and will be made and that Chancellor and Kunz will not later raise claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the defendants hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *DOJ* means the Antitrust Division of the United States Department of Justice.

B. *Chancellor* means defendant Chancellor Media Corporation, a Delaware corporation with its headquarters in Dallas, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to Martin & MacFarlane, Inc. ("Martin"), a California corporation with its headquarters in Dallas, Texas.

C. *Kunz* means defendant Kunz & Company, a California corporation with its headquarters in Larkspur, California, and its successors, assigns, subsidiaries, divisions groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. *Defendants* means Chancellor and Kunz.

E. *Advertising Assets* means the outdoor advertising display faces owned by:

(1) Kunz in each of these three counties: Kern County, California; Inyo County, California; and Mojave County, Arizona; and

(2) Chancellor in Kings County, California (collectively "the Four Counties").

This includes all tangible and intangible assets relating to these display faces, including all real property (owned or leased); all licenses, permits and authorizations issued by any governmental organization relating to the operation of the bulletins; and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of outdoor advertising on display faces.

F. *Acquirer* (or "Acquirers") means the entity or entities to whom Chancellor and Kunz divest the Advertising Assets pursuant to this Final Judgment.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. The defendants shall require, as a condition of the sale or other disposition of all or substantially all of their outdoor advertising business in any of the Four Counties, that the acquirer or acquirers agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Chancellor and Kunz are hereby ordered and directed in accordance with the terms of this Final Judgment, within four (4) months after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Advertising Assets to an Acquirer (or Acquirers) acceptable to DOJ in its sole discretion.

B. Chancellor and Kunz shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. DOJ, in its sole discretion, may extend the time period for any divestiture for two (2) additional thirty (30) day periods of time, not to exceed sixty (60 calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, Chancellor and Kunz promptly shall make known, by usual and customary means, the availability of the Advertising Assets described in this Final Judgment. Chancellor and Kunz shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Chancellor and Kunz shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information regarding the Advertising Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Chancellor and Kunz shall make available such information to DOJ at the same time that such information is made available to any other person.

D. Chancellor and Kunz shall permit prospective Acquirers of the Advertising Assets to have reasonable access to personnel and to make such inspection of the physical facilities of the Advertising Assets and any and all financial, operational, or other documents and information customarily provided as part of due diligence process.

E. The defendants shall not take any action that will impede in any way the divestiture of the Advertising Assets.

F. Divestiture of the Advertising Assets may be made to one or more Acquires, *so long as:*

(1) There is only one Acquirer for any particular county's assets in King and Inyo Counties, California and Mojave County, Arizona;

(2) There are no more than two Acquirers for the assets in Kern County California; and

(3) In each instance it is demonstrated to the sole satisfaction of DOJ that the Advertising Assets will remain viable and the divestiture of such Advertising Assets will remedy the competitive harm alleged in the Complaint.

The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be:

(1) Made to an Acquirer or Acquirers who it is demonstrated to DOJ's sole satisfaction has or have the intent and capability (including the necessary managerial, operational, and financial capability) of competing effectively in the sale of outdoor advertising; and

(2) Accomplished so as to satisfy DOJ, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and Chancellor or Kunz give Chancellor or Kunz the ability unreasonably to raise the Acquirer's (or Acquirers') costs, to lower the Acquirer's (or Acquirers') efficiency, or otherwise to interfere with the ability of the Acquirer (or Acquirers) to compete effectively.

V. Appointment of Trustee

A. In the event that chancellor and Kunz have not divested the Advertising Assets within the time specified in Section IV(A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DOJ in its sole discretion to effect the divestiture of the Advertising Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Advertising Assets. The trustee shall have the power and authority to accomplish the divestitures at the best price than obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and X of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Chancellor any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures of the Advertising Assets at the earliest possible time to an Acquirer or Acquirers acceptable to DOJ in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Chancellor and Kunz shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Chancellor and Kunz must be conveyed in writing to the plaintiff and trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Chancellor, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Chancellor or Kunz, as appropriate, and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Chancellor and Kunz shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary consents and regulatory approvals. The trustee, and any consultants, accountants, attorneys and other persons retained by the trustee, shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Chancellor and Kunz shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Chancellor and Kunz shall permit prospective Acquirers of the Advertising Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered pursuant to this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DOJ.

VI. Notice

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants, without providing advance notification to DOJ, shall not directly or indirectly acquire any assets of or any interest, including any financial security, loan, equity or management interest, in any outdoor advertising business:

(1) In Kern County, California that constitutes the greater of (a) four display faces or (b) $250,000 in assets over a twelve-month period (beginning when this Final Judgment is entered and continuing for the term of the Final Judgment); for the purposes of this limitation, acquisitions during each twelve-month period shall be aggregated;

(2) In Inyo County, California; Kings County, California; or Mojave County, Arizona that constitutes the greater of (a) four display faces or (b) $250,000 in assets in any one of these counties during a five-year period; for the purposes of this limitation, there shall be two consecutive five-year periods. Acquisitions during each of these five-year periods shall be aggregated, with the first period ending five years after the Final Judgment is ended, and the second period beginning immediately upon the expiration of the first-five year period.

Such notification shall be provided to the DOJ in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only about outdoor advertising operations in the Four Counties. Notification shall be provided at least thirty (30) days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of DOJ make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed, and any ambiguity or uncertainly regarding the filing of notice under this Section shall be resolved in favor of filing notice.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment, Chancellor and Kunz or the trustee, whichever is then responsible for effecting the divestitures, shall notify DOJ of the proposed divestitures. If the trustee is responsible, it shall similarly notify Chancellor and Kunz. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DOJ of notice, DOJ may request from Chancellor or Kunz, the proposed Acquirer (or Acquirers), or any other third party Acquirer (or Acquirers) additional information concerning the proposed divestitures and the proposed Acquirer (or Acquirers). Chancellor and Kunz and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after DOJ has been provided the additional information requested from Chancellor and Kunz, the proposed Acquirer (or Acquirers), and any third party, whichever is later, DOJ shall provide written notice to Chancellor and Kunz and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If DOJ provides written notice to Chancellor and Kunz and the trustee that DOJ does not object, then the divestitures may be consummated, subject only to Chancellor and Kunz's limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that DOJ does not object to the proposed Acquirer (or Acquirers) or upon objection by DOJ, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Chancellor and Kunz under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Chancellor and Kunz shall deliver to DOJ and affidavit as to the fact and manner of compliance with this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Chancellor and Kunz have taken to solicit a buyer for the Advertising Assets and to provide required information to prospective Acquirers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Chancellor and Kunz shall deliver to DOJ an affidavit that describes in detail all actions they have taken and all steps they have implemented on an on-going basis to preserve the Advertising Assets pursuant to Section IX of this Final Judgment. The affidavit also shall describe, nut not be limited to, the efforts of Chancellor and Kunz to maintain and operate the Advertising Assets as active competitors, maintain the management, staffing, sales, and marketing of the Advertising Assets, and maintain the Advertising Assets in operable condition at current capacity configurations. Chancellor and Kunz shall deliver to DOJ an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Chancellor and Kunz shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, Chancellor and Kunz shall take all steps necessary to maintain and operate the Advertising Assets as active competitors; maintain the management, staffing, sales and marketing of the Advertising Assets; and maintain the Adverting Assets in operable condition at current capacity configurations. Defendants shall take no action that would jeopardize the divestitures described in this Final Judgment. Kunz agrees to abide by the above requirements only to the extent that its contractual rights and obligations pertaining to the Advertising Assets to be divested permit it to.

X. Financing

The defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer (or Acquirers) made pursuant to Section IV or V of this Final Judgment.

XI. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, shall be permitted:

(1) Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the defendants' principal offices, the defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Sections VII or XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of this United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to the plaintiff, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the plaintiff to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry; however, all of Kunz's obligations under the terms of this Decree cease once Kunz irrevocably conveys the Advertising Assets (owned by Kunz) to be divested to Chancellor.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated ________________________

____

United States District Judge

[Civil Action No. 1:98CV02763 (Judge Kollar-Kotelly)]

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on November 12, 1998, alleging that a proposed acquisition of Kunz & Company ("Kunz") by Chancellor media Corporation ("Chancellor") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Chancellor and Kunz compete head-to-head to sell outdoor advertising in four counties: (1) Kern County, California; (2) Kings County, California; (3) Inyo County, California; and (4) Mojave County, Arizona (collectively "the Four Counties"). Outdoor advertising companies sell advertising space, such as on billboards, to local and national customers. The outdoor advertising business in the four Counties is highly concentrated. Chancellor and Kunz have a combined share of revenue ranging from about 60 percent to a virtual monopoly in the Four Counties. Unless the acquisition is blocked, competition would be substantially lessened in the Four Counties, and advertisers would pay higher prices.

The prayer for relief seeks: (a) an adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Chancellor to complete its acquisition of Kunz, yet preserves competition in the Four Counties where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders Chancellor to divest all of the outdoor advertising assets of:

(1) Kunz in Kern county and Inyo County, California; and in Mojave County, Arizona; and

(2) Chancellor in Kings County, California

Unless the plaintiff grants a time extension, Chancellor must divest these outdoor advertising assets within four (4) months after the filing of the Complaint in this action. Finally, in the event that the Court does not, for any reason, enter the Final Judgment within that four-month period, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If Chancellor does not divest the advertising assets in the specified counties within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Chancellor shall take all steps necessary to maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configurations. Further, the proposed Final Judgment requires Chancellor to give the United States prior notice regarding certain future outdoor advertising acquisitions or agreements pertaining to the sale of outdoor advertising in the Four Counties.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Chancellor, a large nationwide operator of media businesses, including outdoor advertising, is a Delaware corporation headquartered in Dallas, Texas. Chancellor conducts some outdoor advertising business through its subsidiary, Martin MacFarlane, Inc. ("Martin"), a California corporation also headquartered in Dallas, Texas. Martin sells outdoor advertising in many states throughout the United States, including in each of the Four Counties. In 1997 Chancellor's total revenues from outdoor advertising were approximately $78 million.

Kunz is a California corporation headquartered in Larkspur, California. Kunz sells outdoor advertising in Arizona and California, including in each of the Four Counties. In 1997, its revenues from outdoor advertising were approximately $6.9 million.

B. Description of the Events Giving Rise to the Alleged Violations

On September 30, 1998, Chancellor entered into an Asset Purchase Agreement with Kunz. Chancellor agreed to purchase certain assets of Kunz used or useful in the outdoor advertising business of Kunz in the United States. The transaction is valued at approximately $39.5 million.

Chancellor and Kunz compete for the business of advertisers seeking to obtain outdoor advertising space in the Four Counties. The proposed acquisition of Kunz by Chancellor would eliminate that competition in violation of Section 7 of the Clayton Act

C. Anticompetitive Consequences of the Proposed Transaction

The Complaint alleges that the sale of outdoor advertising in the Four Counties constitutes a relevant product market and a line of commerce, and that each county constitutes a relevant geographic market and section of the country for antitrust purposes. Advertisers select outdoor advertising based upon a number of factors including, *inter alia,* the size of the target audience (individuals most likely to purchase the advertiser's products or services), the traffic patterns of the audience, and other audience characteristics. Many advertisers seek to reach a large percentage of their target audience by selecting outdoor advertising on highways and roads where vehicle traffic is high, so that the advertising will be frequently viewed by the target audience, or where the vehicle traffic is close to the advertiser's location. If outdoor advertising spaces owned by different firms would efficiently reach that target audience, advertisers benefit from the competition among outdoor advertising providers to offer better prices or services. Many local and/or national advertisers purchase outdoor advertising because outdoor advertising space is less expensive and more cost-efficient than other media at reaching the advertiser's target audience with the type of advertising message that the advertiser prefers to deliver.

Outdoor advertising has prices and characteristics that are distinct from other advertising media. An advertiser's evaluation of the importance of these characteristics depends on the type of advertising message the advertiser wishes to convey and the price the advertiser is willing to pay to deliver that message. Many advertisers who use outdoor advertising also advertise in other media, including radio, television, newspapers and magazines, but use outdoor advertising when they want a large number of exposures to consumers at a low cost per exposure. Because each exposure is brief, outdoor advertising is most suitable for highly visual, limited information advertising.

For many advertising customers, outdoor advertising's particular combination of characteristics makes it an advertising medium for which there are no close substitutes. Such customers who want or need to use outdoor advertising would not switch to another advertising medium if outdoor advertising prices increased by a small but significant amount. Although some local and national advertisers may switch some of their advertising to other media, rather than absorb a price increase in outdoor advertising space, the existence of such advertisers would not prevent outdoor advertising companies in the Four Counties from profitably raising their prices a small but significant amount. At a minimum, outdoor advertising companies could profitably raise prices to those advertisers who view outdoor advertising as a necessary advertising medium for them, or as a necessary advertising complement to other media. Outdoor advertising companies negotiate prices individually with advertisers. During individual price negotiations between advertisers and outdoor advertising companies, advertisers provide the outdoor advertising companies with information about their advertising needs, including their target audience and the desired exposure. Outdoor advertising companies thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive outdoor advertising companies that can meet a particular advertiser's specific target needs. Because of this ability to price discriminate among customers, outdoor advertising companies may charge higher prices to advertisers that view outdoor advertising as particularly effective for their needs, while maintaining lower prices for other advertisers.

The Complaint alleges that Chancellor's proposed acquisition of Kunz would lessen competition substantially in the sale of outdoor advertising in each of the Four Counties. The proposed transaction would create further market concentration in already highly concentrated markets, and Chancellor would control a substantial share of the outdoor advertising revenues in these markets. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, post acquisition:

a. In Kern County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 83 percent. The approximate post-merger HHI would be 7046, representing an increase of about 1820.

b. In Kings County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 58 percent. The approximate post-merger HHI would be 4205, representing an increase of about 714.

c. In Inyo County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 96 percent. The approximate post-merger HHI would be 9232, representing an increase of about 4030.

d. In Mojave County, Arizona, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 62 percent. The approximate post-merger HHI would be 4340, representing an increase of about 770.

In each of the Four Counties, Chancellor and Kunz compete head-to-head and, for many local and/or national advertisers buying space, they are close substitutes for each other. During individual price negotiations, advertisers that desire to reach a certain audience can help ensure competitive prices by "playing off" Kunz against Chancellor. Chancellor's acquisition of Kunz will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Chancellor's outdoor advertising. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give Chancellor the ability to raise prices and reduce the quality of its service to some of its advertisers in each of the Four Counties.

New entry into the advertising market in response to a small but significant price increase by the merged parties in any of these markets is unlikely to be timely and sufficient to render the price increase unprofitable.

For all of these reasons, plaintiff concludes that the proposed transaction would lessen competition substantially in the sale of outdoor advertising in the Four Counties, eliminate actual and potential competition between Chancellor and Kunz, and result in increased prices and/or reduced quality of services for outdoor advertisers in each of the Four Counties, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve existing competition in the sale of outdoor advertising space in the Four Counties. It requires the divestiture of either all Kunz or all Chancellor advertising assets in each of the Four Counties; thus maintaining the level of competition that existed premerger, and ensuring that the affected markets will suffer no reduction in competition as a result of the merger. Advertisers will continue to have alternatives to the merged firm in purchasing outdoor advertising. Finally, the ownership structure is maintained in that the number of competitors who may compete for advertisers' business will remain unchanged.

Unless plaintiff grants an extension of time, the divestitures must be completed within four (4) months after the filing of the Complaint in this matter or within five (5) business days after notice of entry of this Final Judgment by the Court, whichever is later. Until the divestitures take place, Chancellor must maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales, and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configuration.

The divestitures must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures shall include all the assets of the outdoor advertising business being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial outdoors/advertising businesses. In addition, the purchaser or purchasers must intend in good faith to continue the operations of the outdoor advertising businesses as were in effect in the period immediately prior to the filing of the Complaint, unless any significant change in the operations planned by a purchaser is accepted by the plaintiff in its sole discretion. This provision is intended to ensure that the outdoor advertising businesses to be divested remain competitive with Chancellor's other outdoor advertising businesses in the Four Counties.

If Chancellor fails to divest these outdoor advertising assets within the time periods specified in the Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Chancellor will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the advertising assets, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. After appointment, the trustee will file monthly reports with the plaintiff, defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment contains provisions to ensure that these outdoor advertising assets will be preserved, so that the advertising assets remain viable competitors after divestiture.

The proposed Final Judgment requires Chancellor to provide at least thirty (30) days notice to the Department of Justice before acquiring more than a *de minimis* interest in any assets of, or any interest in, another outdoor advertising company in the Four Counties. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino ("HSR") premerger notification statute. Moreover, Chancellor may not agree to sell outdoor advertising space for any other outdoor advertising company in the Four Counties without providing plaintiff with notice. Thus, the provision in the proposed Final Judgment ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Four Counties.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of Chancellor's proposed transaction with Kunz in the Four Counties. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in the Four Counties.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Propose Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of a least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. Plaintiff is satisfied, however, that the divestiture and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of outdoor advertising space in the Four Counties. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequency of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.) *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"[3]

The relief obtained in this case is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: November 17, 1998.

Respectfully submitted,

Barry L. Creech,

D.C. Bar No.—421070, Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW.; Suite 4000, Washington, DC 20530, (202) 307–0001.

Exhibit A Definition of HHI and Calculations for Market

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Barry L. Creech, hereby certify that, on November 16, 1998, I caused the foregoing documents to be served on defendants Kunz & Company and Chancellor Media Corporation by having a copy mailed, first-class, postage prepaid, to:

Steven H. Schulman, Bruce J. Prager, Latham & Watkins, 1001 Pennsylvania Ave., NW., Suite 1300, Washington, DC 20004, Counsel for Chancellor Media Corporation

Riccarda Heising, Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, NE., 16th Floor, Atlanta, GA 30603, Counsel for Kunz & Company

Barry L. Creech,

D.C. Bar No.—421070.

[FR Doc. 98–32148 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–11–M

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[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N 6535, 6538.

[2] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp 1127, 1143 (C.D. Cal. 1978); *Gillette* 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'") (citations omitted).

[3] United States v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd* 605 F. Supp. 619, 622 (W.D. Ky. 1985)

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: election form to participate in an employment eligibility confirmation pilot program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45262, allowing for a 60-day public comment period. The INS on this proposed information collection received no comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved information collection which has expired.

(2) *Title of the Form/Collection:* Election Form to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–876. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information gathered from employers will assist the INS in allocating resources and priorities in conducting the three pilot programs mandated by Public Law 104–208. The company information is needed to contact employers so INS and SSA can send appropriate documents for participation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32176 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Haitian Deferred Enforced Departure (DED) Supplement to Form I–765.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45264, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved information collection which has expired.

(2) *Title of the Form/Collection:* Haitian Deferred Enforced Departure (DED) Supplement to Form I–765.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765D. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data collected on this form is used by the INS to determine eligibility for the requested benefit, pursuant to the requirements of the Presidential Order. The data enables Center Adjudications Officers at four remote sites to adjudicate the underlying benefit applications without the need of requiring individual interviews in local INS offices in most cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 40,000 responses at 1 hour per response.

(6) *An estimate of the total public (in hours) associated with the collection:* 40,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32177 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Passenger List, Crew List.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 11, 1998 at 63 FR 42877, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proposer performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Passenger List, Crew List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–418. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is prescribed by the Attorney General for the INS for use by masters, owners or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to response:* 95,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 95,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32178 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Document Verification Request and Document Verification Request Supplement.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45263, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days of public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection which has expired.

(2) *Title of the Form/Collection:* Document Verification Request and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms G–845 and G–845 Supplement. SAVE Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is an integral part of the Systematic Alien Verification for Entitlement (SAVE) Program. It provides direct access to the automated Alien Status Verification Index (ASVI) system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 responses at 5 minutes (.083) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 41,500 annual burden hours.

If your have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directive and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32179 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Petition for Amerasian, Widow(er), or Special Immigrant.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45262, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection which has expired.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–360. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to determine eligibility or to classify an alien as an Amerasian, widow or widower, battered or abused spouse or child and special immigrant, including religious worker, juvenile court dependent and armed forces member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,397 responses at (two) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,794 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and /or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32180 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Fax Request Form from Benefit Agency to INS for Confirmation of Status of I–130 & Fax Request Form from Benefit Agency to EOIR for Confirmation of Status.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 26, 1998 at 63 FR 45516, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Fax Request Form from Benefit Agency to INS for Confirmation of Status of I–130 and Fax Request Form from Benefit Agency to EOIR for Confirmation of Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. The data collected on these fax request sheets will be used by the INS and EOIR to determine eligibility for immigration benefits. The fax request sheets permit the INS and EOIR to share information with state and federal benefit granting agencies, making determinations relating to battered aliens for whom an I–130 petition has been filed, or who have made a prima facie case for status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,00 responses at 20 minutes (.333) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,996 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Ricard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536, Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United State Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32181 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Petition to Remove Conditions on Residence.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 25, 1998 at 63 FR 45263, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection which has expired.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–751. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Persons granted conditional residence through marriage to a United States citizen or permanent resident use this form to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 128,889 responses at 80 minutes (1.33) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 171,422 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Services, U.S., Department of Justices, Room 5307, 425 I Street, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32182 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Emergency Extension of Existing Collection; Telephone Verification System (TVS) Phase II Pilot Non-Citizen Employees Employment Status Report.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995 to provide for the required period of public review and comment and the subsequent 30-day time period for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 29, 1999.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until February 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overviiew of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Telephone Verification System (TVS), Phase II Pilot Non-Citizen Employees Employment Status Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. SAVE Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information will be used by the INS to determine the number of non-citizen employees who are authorized for employment in the United States as a result of the Telephone Verification System Phase II Pilot Project. The users of the Telephone Verification System are various employers throughout the Untied States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent of the response:* 276,000 queries at approximately 7 minute per response; and 1,000 employers responding to MOU at approximately 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,516 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or information, please contact Richard A Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Services, U.S. Department of Justice, Room 5307, 425 I Street, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justices Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32183 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Immigrant Petition for Alien Workers.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 11, 1998 at 63 FR 42877, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–140. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to petition to classify a person under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Immigration and Nationality Act. The data collected on this form will be used by the INS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 186,000 responses at 1 (one) Hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 186,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice

Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32184 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 28, 1998 at 63 FR 40316, allowing for a 60-day public comment period. One comment was received and addressed by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–192. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information furnished on Form I–192 will be used by the Immigration and Naturalization Service to determine if the applicant is eligible to enter the U.S. temporarily under the provisions of section 212(d)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32185 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs, Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Reinstatement, without change, of a previously approved collection for which approval has expired).

Denial of Federal Benefits for Drug Offenders

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until February 1, 1999.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ellen Wesley, 202–616–3558, Office of Budget and Management Services, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Denial of Federal Benefits for Drug Offenders.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 3500/2, Office of Justice Programs, Bureau of Justice Assistance, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Courts. *Other:* none.

The Denial of Federal Benefits Drug Offenders, P.L. 100–690, contains collection of information requirements to ensure that convicted offenders do not receive Federal benefits that have been denied by court action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete this form. A respondent will take an estimate of 5 minutes to complete each form.

(6) An estimate of the total public burden (in hours) associated with the collection: It is estimated that the total public burden associated with this collection is 41 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 27, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–32186 Filed 12–2–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 226/Tuesday, November 24, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, December 1, 1998.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required amending the agenda to delete the following item:

7093: Brief of Accident-BK-117-B2 helicopter crash, N909CP, New York City, April 15, 1997; and Safety Recommendation to the Federal Aviation Administration about Blind Rivets.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: December 1, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc 98–32305 Filed 12–1–98; 2:09 pm]

BILLING CODE 7533–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Availability for Work: Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day for which the claimant is not available for work. Under Railroad Retirement Board (RRB) regulation 20 CFR 327.5, "available for work" is defined as being willing and ready for work. This section further provides that a person is "willing" to work if that person is willing to accept and perform for hire such work as is reasonably appropriate to his or her employment circumstances. The section also provides that a claimant is "ready" for work if he or she; (1) is in a position to receive notice of work and is willing to accept and perform such work, and (2) is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

Under RRB regulation 20 CFR 327.15, a claimant may be requested at any time to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work. In order to determine whether a claimant is: (a) available for work, and (b) willing to work, the RRB utilizes Forms UI–38 and UI–38s to obtain information from the claimant and Form ID–8k from his union representative. One response is completed by each respondent. No changes are proposed to any of the three forms.

Estimate of Annual Respondent Burden: The estimated annual respondent burden is as follows:

Form No.	Annual responses	Time (Min)	Burden (Hrs)
UI–38s:			
In person ...	250	6	25
By mail	500	10	83
UI–38	3,750	11.5	719
Id–8k	3,100	5	258
Total	7,600	....	1,085

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–32199 Filed 12–2–98; 8:45 am]

BILLING CODE 7905–01–M

Department of State

[Public Notice #2934]

Overseas Security Advisory Council; Renewal

The Department of State has renewed the Charter of the Overseas Security Advisory Council. This advisory council will continue to interact on overseas security matters of mutual interest between the U.S. Government and the American private sector. The Council's initiatives and security publications provide a unique contribution to protecting American private sector interests abroad. The Under Secretary for Management has determined that the Council is necessary and in the public interest.

The Council consists of representatives from four (4) U.S. Government agencies and twenty-one (21) American private sector companies and organizations. The Council will follow the procedures prescribed by the Federal Advisory Committee Act (FACA) (Public Law 92–463). Meetings will be open to the public unless a determination is made in accordance with Section 10(d) of the FACA, 5 U.S.C. 552b (c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting.

For more information contact Nick Proctor, Executive Director, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, *phone*: 202–663–0533.

Dated: October 13, 1998.

Peter E. Bergin,

Director of the Diplomatic Security Service.

[FR Doc. 98–32146 Filed 12–2–98; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program Revision and Request for Review, Key West International Airport, Key West, Fl.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised current and future noise exposure maps submitted by Monroe County, Florida, for Key West International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Key West International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before May 8, 1999.

EFFECTIVE DATE: The effective date of the FAA's determination on the revised noise exposure maps and of the start of its review of the associated noise compatibility program is November 9, 1998. The public comment period ends January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised noise exposure maps submitted for Key West International Airport are in compliance with applicable requirements of Part 150, effective November 9, 1998. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 8, 1999. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Monroe County, Florida, submitted to the FAA on October 26, 1998, revised noise exposure maps, descriptions and other documentation which were produced during the Key West International Airport FAR Part 150 noise study conducted between October 1, 1996, and October 25, 1998, was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the revised noise exposure maps and related descriptions submitted by Monroe County, Florida. the specific maps under consideration are "1998 Noise Exposure Map" and "2003 Noise Exposure Map" in the noise compatibility program submission. The FAA has determined that these maps for Key West International Airport are in compliance with applicable requirements. This determination is effective on November 9, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours

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onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Key West International Airport, also effective on November 9, 1998. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the revised program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 8, 1999.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed revised program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the revised noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

Division Director of Community Services, Public Services Building, 5100 College Road West, Wing 4, Room 405, Key West, Florida 33040.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida November 9, 1998.

W. Dean Stringer,

Manager, Orlando Airport District Office.

[FR Doc. 98–32192 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Friday, December 18, 1998, 10:00 to 4:00 pm. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, in conference room 6200–04 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, introduction of new Director, continued discussion of TEA–21 and its impact on BTS, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to December 15. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Issued in Washington, DC, on November 30, 1998.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 98–32210 Filed 12–2–98; 8:45 am]

BILLING CODE 4910–62–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition Determinations

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the object to be included in the exhibit "A Treasure of Books: The Library of Duke August of Brumswick-Wolfenbuttel, here" imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit object at The Groiler Club, New York, New York, from on or about December 8, 1998, to on or about February 6, 1999, is in the national interest. Public Notice of the these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jacqueline H. Caldwell, Assistant General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: November 27, 1998.

R. Wallace Stuart,

Deputy General Counsel.

[FR Doc. 98–32157 Filed 12–2–98; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
December 3, 1998

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3100 et al.
Onshore Oil and Gas Leasing and Operations; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170 and 3180

[WO–310–1310–00–2I–IP]

RIN 1004–AC94

Onshore Oil and Gas Leasing and Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing to revise its Federal oil and gas leasing and operations regulations. This rule uses performance standards in certain instances in lieu of the current prescriptive requirements. These proposed regulations cite industry standards and incorporate them by reference rather than repeat those standards in the rule itself. Also, BLM's onshore orders and national notices to lessees would be incorporated into these regulations to eliminate overlap with existing regulations. This rule would increase certain minimum bond amounts and would revise and replace BLM's current unitization regulations with a more flexible unit agreement process. Finally, this proposed rule would eliminate redundancies, clarify procedures and regulatory requirements, and streamline processes.

DATES: *Comments:* Commenters must submit comments by April 5, 1999. BLM will consider comments received or postmarked on or before this date in the preparation of the final rule.

ADDRESSES: Comments: If you wish to comment, you may hand-deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C., or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS 1849 C Street, NW, Washington, D.C. 20240. Commenters may transmit comments electronically via the Internet to: WoComment@wo.blm.gov and please include in your comments the regulation identifier number AC94 and your name and return address. If you do not receive confirmation from the system that we have received your Internet message, contact us directly.

FOR FURTHER INFORMATION CONTACT: Ian Senio at (202) 452–5049 or John Duletsky at (202) 452–0337 or write to Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW, 401LS, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

You may view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at this address during regular business hours (8:00 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. BLM will also post all comments on its Internet home page (www.blm.gov) at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Oil and gas produced from lands managed by BLM accounted for about 5.7 percent of domestic oil production and about 10.7 percent of domestic gas production in 1996. BLM has jurisdiction and responsibility over virtually all aspects of leasing, exploration, development, and production of oil and gas from onshore Federal oil and gas and approves and supervises most operations on Indian lands. BLM administers 52,457 Federal and Indian leases, of which nearly 23,524 are in a producing or producible status. As of December 31, 1996, there were 70,569 producing or producible wells under BLM's jurisdiction, and 2,347 new wells were drilling during the year. In 1996, more than $6.1 billion of oil and gas and associated products were sold from Federal and Indian oil and gas leases, which generated $665 million in royalties.

Mining Law

The Federal Government did not have an oil and gas leasing system before 1920. However, Federal oil and gas reserves could be developed under the Mining Law of 1872 (17 Stat. 91, 30 U.S.C. 22 *et seq.*) after the applicant located a placer mining claim. If the mining claim was validated by the location of a valuable discovery, the locator essentially was entitled to fee title to the lands covered by the claim. Congress soon realized that the Mining Law was not well suited for oil and gas development since it resulted in over drilling and waste of the resources. Congress passed the Mineral Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. 181 *et seq.*) (MLA) and on February 25, 1920, the President signed it into law. The MLA still remains the primary authority under which the Federal Government leases the majority of Federal onshore oil and gas.

Mineral Leasing Act

There have been several amendments to the MLA that affected the Federal oil and gas leasing system, but it stayed substantially the same until the enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203, 101 Stat. 1330–256) (Reform Act). Before the Reform Act, Federal lands within known geologic structures (KGS) of producing oil and gas fields were leased competitively to the highest qualified bidder. Lands not within a KGS were leased "over the counter" basically on a first-come and first-serve basis to qualified entities.

In 1960, BLM implemented a simultaneous leasing system in order to address concerns over the potential for fraud in the noncompetitive leasing system. Under that system, all applications for available public lands that were received within the time specified in the notice were considered as received simultaneously. Applications then were drawn randomly to determine the winner. Only a fraction of Federal lands fell into the KGS category and most of the Federal oil and gas leases that BLM issued were issued noncompetitively through the lottery. The leasing system operated for many years before Congress and the public became concerned that BLM's leasing system was not functioning properly. The primary concern was that the Federal Government was not receiving fair market value for oil and gas resources. There was also concern that it was becoming increasingly difficult for BLM to make KGS determinations, that the leasing system was subject to fraud and abuse, and that the Bureau was not taking enough care in protecting the environment affected by development of Federal oil and gas leases.

The Reform Act

Congress passed the Reform Act on December 22, 1987, to address concerns over the existing leasing system. The principal change made by the Reform Act was to require that BLM offer competitively all lands eligible and available for Federal oil and gas leasing before leasing noncompetitively. KGS designations were eliminated, environmental provisions were added, and BLM was required to have Forest Service consent before leasing oil and gas on Forest Service lands. The Reform Act also required BLM to post a notice of the lands it proposed to include in a lease sale. It also required BLM to post a notice of proposed drilling operations to allow the public and environmental groups an opportunity to comment before BLM made a final determination. Congress dealt with fraud and abuse by making it unlawful to be involved with any plan to defeat the purposes of the Reform Act or its implementing regulations. The Reform Act also provided for severe penalties for violating these fraud provisions.

BLM has been leasing Federal oil and gas under the implementing regulations of the MLA and the Reform Act, with only technical and clarifying amendments, since the Reform Act regulations were published in the **Federal Register** on June 17, 1988 (53 FR 9214, 1988).

FOGRMA

The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) (30 U.S.C. 1701 *et seq.*) made a few changes to the leasing and operations aspects of BLM's oil and gas program. FOGRMA focuses mainly on royalty and rental collection but also includes provisions related to on-the-ground operations. BLM published the implementing regulations for the operations aspects of FOGRMA on September 21, 1984 (49 FR 37356), and for the leasing aspects on July 30, 1984 (49 FR 30446). The operational regulations implementing FOGRMA prescribe standards for lessees and operators to follow when conducting operations on Federal and Indian oil and gas leases. The regulations also clarified BLM's responsibilities for inspecting operations. BLM's leasing regulations that implement FOGRMA deal mostly with royalty and rental collections and with lease reinstatement provisions for leases that terminated by operation of law.

III. Discussion of Proposed Rule

This proposed rule puts the regulations in a more logical sequence, streamlines some processes, and reduces duplication. It incorporates most of the existing oil and gas regulations and all of the existing onshore orders and national notices to lessees to make one complete document for lessees and operators to reference. Some sections of the proposed rule contain new language to correct problems, improve procedures, or clarify existing requirements. This proposal does not include regulations that deal with oil and gas drainage (see 63 FR 1936, January 13, 1998, for the proposed rule), Combined Hydrocarbon Leasing (3140), and the Oil and Gas Leasing: National Petroleum Reserve—Alaska (3130).

These regulations are written in plain language to more effectively communicate BLM regulatory requirements. Plain language uses a series of questions and answers in place of the traditional short heading and regulatory requirements. The question and answer together constitute the regulatory requirement. The proposed regulation is also organizationally different from the current regulation and presents sections in a more logical order that closely tracks leasing and operations procedures as they might occur chronologically.

Performance Standards

This proposed rule uses performance standards where possible in lieu of the current prescriptive requirements or design standards. We believe that performance standards offer operators and BLM increased flexibility to deal with unique geologic, ecological, and engineering circumstances, while at the same time protecting the environment and other Federal and Indian interests. Under the current regulations and onshore orders, operators are required to meet certain very specific and often rigid requirements set out in the regulations and orders. This inflexible "laundry list" approach may not always work in the most efficient or even most desirable manner. BLM currently issues variances to the regulations to deal with unique geologic, ecological, and engineering situations. This is an administrative burden that BLM cannot afford under current and foreseen declining budgets. It is time consuming and expensive for operators as well.

Under current regulations, BLM ensures that an operator complies with all of the requirements of a given regulation or Order. With performance standards, our focus is no longer on a list of requirements but on the outcome or goal stated in the regulation. This goal-oriented approach better protects the public interest since operators will be held to a stated standard rather than just having to comply with a checklist. This type of regulation is also beneficial to operators because it gives them flexibility to meet the goal stated in the regulation. Finally, these performance regulations will remove some of the administrative burdens and expense caused by having to issue numerous variances to the current regulations.

We used performance standards in situations where there was little or no risk to the health of the land or public health or safety. We were careful to design a meaningful standard that protects the environment, public health and safety and preserves BLM's ability to account for Federal and Indian production. Use of performance standards was limited to specific areas that deal with oil and gas exploration and production. Please comment specifically on the performance standards proposed and whether or not there are other sections of these proposed regulations where performance standards would be appropriate.

Incorporating Industry Standards by Reference

BLM's current onshore orders contain very detailed minimum standards to regulate oil and gas drilling and production operations. In the process of incorporating the onshore orders into this proposed rule, we replaced the many detailed minimum standards with references to American Petroleum Institute (API) and American Gas Association (AGA) standards and practices. BLM and industry recognize API and AGA standards as acceptable operating practices for Federal lands. You can purchase API and AGA publications cited in this proposed rule directly from API and AGA. They will also be available for review at all of BLM's field offices with oil and gas responsibilities. We cite specific, dated editions of API and AGA standards. Any future amendments or updates to the cited standards will not be incorporated into BLM's regulations until BLM undertakes a rulemaking to update the reference.

Changes From Existing Regulations

We propose to modify the leasing regulations by—

1. Eliminating the formal nomination process. Current regulations give BLM's Director the discretion to post a Competitive Nomination List and require the public to formally nominate lands from that list for future competitive sales. The Director has never exercised this discretion and does not plan to do so in the near future;

2. Eliminating presale offers. The intent of the Reform Act was to emphasize competition for Federal oil and gas resources. Presale offers were created by regulation and are not required by the Reform Act. Eliminating presale offers would more closely follow the intent of the Reform Act. This change would result in a more streamlined leasing process because it would remove the one-year waiting period that currently exists for filing offers on lands previously leased. Current regulations prohibit filing offers for one year from the date of expiration, termination, or cancellation of former leases;

3. Requiring that parcel integrity be maintained during the 2-year post sale window. Under this proposal, you would be able to combine more than one parcel from more than one sale notice in a lease offer. Under the existing system, an offer must include a legal land description. This proposal would simplify the filing of 2-year noncompetitive lease offers since you would be able to use the parcel number in the notice of competitive lease sale rather than listing the complete land description. It would also expedite leasing because lease stipulation revisions would not be necessary for split parcels. Post sale offers could not exceed 2,560 acres;

4. Eliminating the existing requirement that an offer for public domain minerals be for at least 640 acres. The proposal would also allow you to file an offer on lands outside of the current six square mile limit if you provide BLM a valid reason for exceeding the six square mile limit. Eliminating the 640-acre rule and amending the six square mile rule would simplify the leasing process, provide more flexibility in filing offers and provide consistency in the competitive and noncompetitive leasing processes;

5. Reducing the number of copies of an offer that you must file from three to two. This would reduce your administrative burden and still allow BLM to process your application efficiently;

6. Limiting competitive and noncompetitive leases to 2,560 acres for the lower 48 states and 5,760 acres for Alaska. Limiting lease acreage would provide consistency between competitive and noncompetitive leases and should simplify the leasing system. Under current regulations, noncompetitive leases may be for 10,240-acres, while competitive leases are limited to 2,560 acres;

7. Considering the balance of bonus bids timely paid if the payment is "postmarked" (or its equivalent for non-U.S. mail transmittals) on or before the due date. The balance of the bonus bids is due within 10 business days after the day of the sale. Current regulations require this balance to be "submitted." We have interpreted this to mean that BLM must receive the payment on or before that date. Currently, we do not accept payments we receive after the tenth business day and BLM will not issue leases if payments for those leases are not made timely. This proposal would benefit those parties that exercise diligence in submitting the balance of their bonus bids;

8. Eliminating unit bonds. Unit bonds are unnecessary since unit operations may be covered under statewide and nationwide bonds. If existing statewide or nationwide bonds are inadequate, BLM would request an increase in those bond amounts rather than require a separate unit bond;

9. Adding a new bond for wells that are inactive for more than one year. After a well is inactive for one year, operators would be required to either increase the bond in place by $2.00 per foot of depth per well, or pay a nonrefundable $100 yearly fee; and

10. Increasing the dollar amount for the different types of bonds that we currently require. Individual bonds would be increased from $10,000 to $20,000 and the amount for statewide bonds would be increased from $25,000 to $75,000. Nationwide bonds would remain at $150,000. BLM has not increased bond amounts since 1960 and the increase takes into account inflation and the fact that current bonding levels do not cover the costs associated with plugging, reclamation, and royalties.

This bond increase would not be immediate. It would be phased in as follows:

a. Parties filing new Applications for Permit to Drill and Changes of Operator subsequent to the effective date of the final rule would be required to meet the increased amounts.

b. Existing bonds with no new activity would remain at their current bond amount for two years at which time the principal must increase the bond amount. During this 2-year period, BLM could request bond increases for other reasons.

This proposal would also add a provision to allow you to apply for a reduction in the bond amount under certain circumstances;

11. Changing BLM's current policy of terminating the period of liability of bonds. BLM would cancel bonds after determining that you have met lease obligations, including proper plugging and abandonment of wells and surface reclamation. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 allows the Minerals Management Service (MMS) seven years to complete royalty audits. Since bonds cover royalty obligations, cancellation would be subject to concurrence from MMS that there are no outstanding royalty obligations;

12. Eliminating the need for holders of overriding royalties, production payments or similar interests, to file notice of those interests with BLM. Current regulations require you to file these documents with BLM. BLM does not currently verify these outstanding royalty interests and frequently the official lease file does not contain all outstanding transfers. Therefore, it is not an accurate record for determining outstanding interests. Eliminating the need to file these documents would save the $25 filing fee currently required for each affected lease. If a lessee requested a royalty reduction because the lease cannot be successfully operated, BLM would then require the lessee to report the amount of outstanding overriding royalties. This is not a new requirement;

13. Eliminating the semiannual reporting of lease interests you hold under option. BLM would still request a statement of acreage you hold under option when we conduct audits of acreage holdings. This would reduce your administrative burden and still allow BLM to monitor acreage holdings;

14. Allowing a Class I reinstatement when you pay a nominal deficiency late. Current regulations state that if a rental payment is nominally deficient, the lease will not terminate if the deficiency is paid to the MMS within the specified time. The proposed change would provide flexibility in qualifying for a Class I reinstatement. Under existing regulations, such a lessee is required to

petition for a Class II reinstatement at a higher rental and royalty rate. This does not seem equitable since rental deficiencies could simply be a result of an acreage miscalculation. This rulemaking also clarifies rental payment requirements for fractional acreage amounts; and

15. Providing an increase in the percentage and dollar amount for nominal deficiencies of rental payments. Current regulations provide that a lease will not terminate if the rental deficiency is 5 percent or $100, whichever is less. We are proposing to change that amount to 10 percent or $200, whichever is less. This is consistent with the deficiency percentage and amount allowed when filing a noncompetitive offer.

We propose to modify the drilling, production, and enforcement regulations by—

1. Referencing published industry standards and practices instead of listing minimum standards;

2. Simplifying the procedure to calculate average daily oil production for leases with sliding and step-scale royalty rates;

3. Eliminating the provision to charge the full value of gas vented or flared that would have begun one year after BLM ordered you to capture the gas;

4. Exempting Federal oil wells that produce less than 10 Mcf per day from the obligation to obtain prior BLM approval to vent or flare;

5. Allowing bypasses around oil and gas meters under certain circumstances if sealing requirements are followed;

6. Not requiring site facility diagrams for single oil or condensate tank facilities that service a single well. This is in addition to the current facility diagram exemption for facilities processing dry gas;

7. Exempting gas wells producing 100 Mcf of gas per day or less from requirements for inspection frequency of the meter tube, determination of flowing gas temperature, calibration frequency, and tracking of static pens. These exemptions are in addition to the measurement exemptions that currently exist for low volume wells with respect to beta ratio range and differential pen tracking;

8. Requiring semiannual proving of positive displacement metering (e.g., Lease Automatic Custody Transfer) systems measuring 10,000 barrels of oil per month or less;

9. Assessing operators up to $250 per day for each day a violation remains uncorrected after a specified abatement period. This proposal would also remove the categories of "major" and "minor" violations of existing regulations. BLM believes this approach will simplify the enforcement process and make it more consistent, while still providing reasonable monetary incentive for operators to comply. BLM would prescribe shorter abatement periods for more serious violations;

10. Changing the system of immediate assessments for serious violations from a $500 per day per violation assessment to a substantially increased one-time amount per violation assessment. This change would simplify the enforcement process and would be more of a deterrent for offenders;

11. Expanding the list of serious violations subject to immediate assessments to include surface disturbance without approval, habitual violation, and commingling of production without approval. These violations would be added because of the potential harm to the environment, production accountability, or public health and safety;

12. Simplifying the language for BLM's civil penalty regulations to more closely follow the provisions of the Federal Oil and Gas Royalty Management Act;

13. Revising BLM's existing oil and gas unitization regulations with a more flexible unit agreement format. The primary change to the unitization process would be an emphasis on up-front negotiation among the various interest owners and BLM. The agreement format would be flexible as long as it addressed the unit area, initial unit obligations and continuing development obligations, productivity criteria, and participating area size; and

14. Requiring a fair market value user fee for geophysical exploration on BLM lands. The user fee would not, however, be charged for geophysical exploration under a Federal oil and gas lease.

Section-by-Section Discussion

In many instances, this proposed rule does not change the policy or procedure of the current regulations and consists only of a translation from current regulatory language into plainer language. The section-by-section analysis for the proposed leasing regulations mostly describes significant changes from current BLM regulatory policy or procedure. Certain sections also describe areas where we have clarified existing procedures or policies. The section-by-section analysis for the operating regulations is more detailed because the proposed changes to the operating regulations are more complex than the proposed leasing changes. The operating regulations' discussion also provides tables that cross reference the proposed sections with existing requirements. The discussion of the proposed regulatory text is generally a discussion of changes from current policy or procedure.

The regulations would provide the operational requirements for the exploration, development and production of oil or gas on *both* Federal and Indian lands. These regulations also apply to the leasing of Federal lands for oil or gas. However, they do not apply to the leasing of Indian lands. Also, we propose that the operating regulations would apply to oil and gas leases on lands the Federal government may acquire in the future, to the extent that they are not inconsistent with the rights granted in the original lease. The authority under which we would regulate such leases is the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

Part 3100—Onshore Oil and Gas Leasing and Operations: General

Subparts 3101—General, 3102—Recordkeeping, 3103—Reports, Submissions, and Notifications, and 3104—Environment and Safety

Definitions Section 3101.5 would consolidate and incorporate the definitions included in the current 3000.0–5, 3100.0–5, 3150.0–5, 3160.0–5, 3180.0–5, 3190.0–5 for easier reference and to eliminate redundancy. The definitions section would also include terms found in current onshore orders. Some of the definitions that appear in existing sections would be moved to a general definitions section proposed under the Definitions rulemaking published on November 19, 1996 (61 FR 58843).

One particularly important definition is the term "interest," which is used frequently in the rule. It is proposed that the term means only record title interest or operating rights interest (also known as working interest). Other interests such as overriding royalty interests would not be included in this definition.

Section 3101.8 would contain a chart which references those sections of these regulations where we cite and incorporate industry standards.

Subparts 3101 through 3104 would lay out general requirements and explanations of the proposed 3100 regulations. These general requirements would include—

1. Principles that underlie the regulation of Federal oil and gas leasing and operations.

2. The need for operators, lessees, and sublessees to comply with the lease terms, stipulations, conditions of approval, notices to lessees, and written or oral orders.

3. An explanation of the process for waiver, exception, and modification of stipulations and variances to the requirements imposed by these regulations.

4. A description of the surface use rights under a lease and your reporting and recordkeeping requirements.

Subpart 3101 would include a chart referencing other regulations that affect leasing or operations on Federal land and Subpart 3102 would include a list of the types of records BLM requires an operator or lessee to keep. Subpart 3103 would identify reports, submissions, and notifications BLM requires and the forms which must be used. It would also include a cross reference to the pertinent section of the regulation to which the record pertains.

Sections 3101.11 through 3101.13 would clarify the liability of various interest owners when there are many parties with an interest in a single lease. This section would state that each record title holder, each operating rights owner, the operator and the bonded parties are each fully responsible for the performance of all lease obligations (in the case of an operating rights owner just for the area or depth subject to its rights), unless provided otherwise in a particular regulation. The rule makes express what is the case under standard contract law: When two or more parties promise the same performance to the same promisee, each is bound for the whole performance thereof. Restatement of the Law of Contracts, Second § 289(1). Furthermore, when an oil and gas lessee assigns an undivided interest in his lease to another, each of them is jointly and severally liable for the performance of lease covenants. See *Hafeman* v. *Gem Oil Co.,* 80 N.W. 139, 163 (Nebr. 1956). BLM bonding policy since 1988 has allowed a single interest holder in a lease to provide a bond on behalf of all lessees and record title holders, reflecting BLM's understanding that by covering one such interest holder the surety has agreed to indemnify BLM for full performance of the lease obligations, up to the amount of the bond. BLM has never been authorized to agree to assume any portion of the cost of reclamation or other lessee duties, just because one interest holder is insolvent or cannot be found. The Bureau Oil and Gas National Performance Review Report dated April 27, 1995, recommended that BLM amend its regulations to make this "joint and several" liability more explicit. This regulation would be superseded where a statute or regulation concerning a particular category of obligations limits the liability of a co-lessee to its proportionate interest in the lease, such as the Royalty Fairness and Simplification Act provides with respect to payment obligations.

Section 3101.18 would explain that lessors are responsible for drainage and would cross reference a proposed rule on oil and gas drainage that was published in the **Federal Register** on January 13, 1998 (63 FR 1936). This final rule would incorporate the drainage rule and cross reference it in this section.

Subpart 3104—Environment and Safety

Subpart 3104 would contain an explanation of what an operator must do to protect the environment when conducting operations. This subpart is not meant to describe in detail all of the environmental protection aspects of leasing. It is only an overview of the issues that are involved. The details of environmental protection are considered in several other sections of these regulations and in lease terms and conditions as well as orders and notices BLM may issue.

Subpart 3105—Lessee Qualifications

Subpart 3105 would contain requirements for lessee qualifications including when persons who are not United States citizens or who are minors may hold lease interests. This subpart would also include the maximum acreage limitations for public domain and acquired minerals that may be held by an entity which also applies to options for leases. How BLM computes chargeable acreage would be explained as well as what you must do if you exceed the acreage limitations. However, this subpart would eliminate the existing requirement that option agreements be filed with BLM. Acreage held under option remains chargeable. BLM would request outstanding option agreements for acreage audit purposes.

Subpart 3106—Fees, Rentals, and Royalties

Subpart 3106 would contain general information regarding fees, rentals, royalties and minimum royalties, acceptable forms of payment, and where to submit payments. The proposal includes charts identifying the types of payments, rental, royalty and minimum royalty rates for competitive, noncompetitive, renewal, exchange and right-of-way leases, and leases issued in lieu of unpatented oil placer mining claims. The subpart would also include provisions on waivers, suspensions, and reductions of rental and royalty.

Royalty Rates on Oil Sliding and Step-Scale Leases

Proposed regulations on determining oil royalty rates for sliding and step-scale leases are in sections 3106.50 through 3106.54. These sections would establish a new procedure to calculate average daily production. Sliding and step-scale leases have royalty rates that increase as the average daily production increases.

Proposed regulation	Existing regulation
3106.50	3162.7–4
3106.51	
3106.52	
3106.53	
3106.54	

Sections 3106.50 through Section 3106.54 would describe a new procedure for calculating average daily oil production for the purpose of determining the correct royalty rate for a sliding-scale or step-scale lease.

The existing procedure to determine average daily production involves a complex system of identifying "countable" wells based on the number of days a well was produced, whether a well was initially or previously produced, and whether a well was shut-in for conservation purposes. Generally, the average daily production is determined by dividing the gross oil production for the month by the number of countable wells multiplied by the number of days in the month, regardless of how many days the wells actually produced. However, some leases require the gross production to be divided by actual days produced to arrive at the average production rate. You then use the resulting average daily production per well to find the corresponding royalty rate from the royalty provisions of the lease. For these types of leases, the royalty rate increases on a scale from 12½ percent to 25 percent as the average daily production per well increases.

The complex nature of the well count procedure has caused many errors by both industry and BLM in calculating or verifying the average daily production per well. The propensity for errors in the well count procedure in turn results in incorrect royalty payments, which require detailed, time consuming, and expensive audits to correct. Errors are not readily identified by either BLM or MMS because all of the information needed to verify the average production rate or royalty is not found on the monthly report of operations, Form MMS–3160.

These regulations would simplify the procedure to determine the average daily oil production. Under this proposal, gross production from a lease or agreement would be divided by the total number of days "eligible" wells are produced or used for production. Any paying well that produces oil is an eligible well, as is any injection well used to recover oil. Wells shut-in for any reason would not have a bearing on the average daily production rate. All of the information necessary to make the computation of average daily production is found on Form MMS–3160. The proposed procedure should not substantially impact royalty payments. The proposed procedure would be implemented as of the effective date of the final rule.

Stripper Oil Property Royalty Reduction

Proposed regulations on determining royalty reductions for stripper oil properties would explain the procedures on how to determine if you have a stripper oil property and, if so, how to apply to receive a royalty reduction. They would also set the reduced royalty rates for eligible production rates, provide for further royalty reductions as production declines, and allow BLM to terminate the stripper oil property royalty reduction program with proper notice.

Proposed regulation	Existing regulation
3106.60	3103.4–2(a)(1).
3106.61	3103.4–2(a)(2) through (4).
3106.62	3103.4–2(b)(2).
3106.63	3103.4–2(b)(3)(i)(B).
3106.64	3103.4–2(b)(3)(ii).
3106.65	3103.4–2(a)(1), (b)(2), (b)(3)(i) and (b)(3)(ii).
3106.66	3103.4–2(b)(3)(ii).
3106.67	3103.4–2(b)(3)(ii), (iii)(B), and (v), and 3103.4–2(b)(3)(ii), (b)(6), and (b)(7).
3106.68	3103.4–2(b)(3)(ii).
3106.69	3103.4–2(b)(3)(ii), (iii)(B), and (iii)(C).
3106.70	3103.4–2(b)(3)(iii)(A) and (B).
3106.71	
3106.72	3103.4–2(b)(3)(iii)(C) and (b)(8).
3106.73	3103.4–2(b)(3)(vi).
3106.74	

The requirements of this proposal are similar to those in existing regulations. One minor change would be in section 3106.63. That section would clarify what oil you must use when calculating your average daily production rate. It establishes what liquid hydrocarbons are considered "oil", and therefore eligible for royalty reduction, and what is considered "condensate", which is not eligible.

Subpart 3107—Lease, Surety, and Personal Bonds

Subpart 3107 would contain general bonding information regarding who must post a bond, bond amounts, the types of acceptable bonds, and procedures for bond increases, collections, and cancellations. This subpart would generally contain existing regulatory requirements with the following exceptions.

Section 3107.14 would increase amounts for bonds. Individual bonds would increase from $10,000 to $20,000. The amount for a statewide bond would increase from $25,000 to $75,000. The nationwide bond amount would remain at $150,000. BLM believes the increases are justified because the costs to plug a well, restore the surface, remove related facilities, reclaim roads, rights-of-ways, etc., in many cases far exceeds the present bond amounts. In addition, BLM has not increased minimum bond amounts since 1960. Applying an inflation factor to the individual and statewide bond amounts since 1960, would increase them to $50,000 and $135,000 respectively. For these reasons, BLM has concluded that the increase in bond amounts for individual and statewide bonds is reasonable and justified. In BLM's experience, entities that hold nationwide bonds do not pose an unacceptable risk. Therefore, we are not proposing to increase nationwide bonding.

Section 3107.50 would allow you to apply to BLM for a decrease in your bond amount. Your application must include your justification for a decrease in the bond amount. BLM would approve a decrease in your bond amount if we determine that the potential liabilities on your lease are less than the existing bond amount. Please specifically comment on the standards BLM should use to determine whether we will approve a decrease in the bond amount.

Section 3107.52 would require additional bonding for inactive wells. A significant source of orphan wells is temporarily abandoned wells. In 1995, there were more than 6,500 temporarily abandoned wells on BLM-managed lands. This is a major source of potential future liability. The $2.00 per foot or $100 per well fees would complement the proposed increase in individual and statewide bonds and partially cover the potential liability.

Section 3107.70 would change BLM's current policy of terminating only the period of liability of bonds. Under this proposal, BLM would cancel bonds after determining that you met lease obligations, including proper plugging and abandonment of wells, and surface reclamation. The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 allows MMS seven years to complete royalty audits. Since bonds cover royalty obligations, cancellation would be subject to concurrence from MMS that there are no outstanding royalty obligations.

Current section 3104.4, Unit Operator's bond, provides that a unit operator's bond may be filed in lieu of an individual, statewide or nationwide bond. This proposal would eliminate any provision for an operator of a unit to file a unit bond. This is an unnecessary requirement since BLM allows unit operations to be covered under statewide and nationwide bonds. If existing statewide or nationwide bonds are inadequate, BLM would request an increase in those bond amounts rather than require a separate unit bond.

Subpart 3108 would contain bonding information for geophysical exploration operations. This includes the types of bonds, amount of bond, bond increases, terminations, and action to be taken for nonperformance.

Part 3110—Oil and Gas Geophysical Exploration

Subparts 3110, 3112, and 3113 would contain the requirements for conducting geophysical exploration operations on Federal lands.

Proposed regulation	Existing regulation
3110.10 and 3110.11	3150.0–1.
3110.12	3150.1.
3110.13	New section.
3112.10–12 and 3112.20–3112.21.	3151.1 and 3151.2.
3113.10	3152.1.
3113.11–3113.12 and 3113.20–3113.22.	3152.3–3152.5.
3113.30–3113.31	3152.6.
3113.40	3152.7.
3113.50	3153.1.

Subpart 3110—Onshore Oil and Gas Geophysical Exploration General Provisions

This subpart would contain requirements similar to existing regulations with one exception. Section 3110.13 would require you to pay a fair market value fee (FMV) for the use of the public lands for each Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA) requires that "the United States receive the fair market value of the use of the public land and

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its resources unless otherwise provided for by statute." In addition, a May 1992 audit report by the U.S. Department of the Interior, Office of Inspector General (OIG), recommended that BLM establish and implement procedures to charge FMV for geophysical exploration. In order to comply with the requirements of FLPMA and the OIG recommendation, we propose to adopt a FMV for geophysical exploration. The FMV would be based on the size of the area physically affected by each individual geophysical exploration project. You would not be required to pay the FMV for a geophysical exploration project, or a portion of a project, that is conducted under a Federal oil and gas lease.

Subpart 3112—Geophysical Exploration Outside of Alaska

Sections 3112.10 through 3112.12 and 3112.20 and 3112.21 would describe the procedures you must follow to obtain authorization for geophysical exploration operations outside of Alaska. It would also implement a new provision that establishes when you must submit a notice of intent (NOI) to BLM. Under this proposal, you would submit an NOI ahead of your anticipated starting date. This time period should allow BLM time to process your NOI before the day you plan to start your geophysical exploration project. This section would describe the actions BLM would take after we receive your application. It would include a provision for a BLM field inspection to review the geophysical exploration operations proposal, would describe how and when to notify BLM that you completed operations, and explain how BLM will act on your notice.

A new requirement would be added to make sure BLM receives information to accurately determine the extent of the area affected by your geophysical exploration project and whether you are conducting any part of the project under a Federal oil and gas lease. BLM needs this information to calculate FMV. BLM would not authorize your NOI until you paid the required FMV.

Subpart 3113—Geophysical Exploration in Alaska

This subpart would contain the existing regulatory requirements with the following exceptions.

Section 3113.10 would describe what you must include in your application for an oil and gas geophysical exploration permit. This proposal replaces the detailed, who, what, and where type of information in current section 3152.1, with a general standard for permit application requirements. This standard would provide more flexibility to deal with on-site conditions and individual geophysical exploration plans that may dictate different filing requirements.

This proposal would add a new requirement for determining FMV. This requirement would ensure BLM receives information to accurately determine the extent of the area affected by your geophysical exploration project and whether any part of the project is being conducted under a Federal oil and gas lease. BLM would not approve your permit until you paid the required FMV.

Section 3113.40 would describe what you must submit to BLM after you complete geophysical exploration operations, when you need to submit a completion report, and what action BLM takes after we receive a completion report. These sections would not include the detailed what and where type of information that is in current section 3152.7. Rather, section 3113.40 would replace the list of required information with a standard for completion reports. A standard is appropriate in this case because the information BLM needs in a completion report depends on the application filed, the terms of the permit BLM issued, and the results of your on-site activities. BLM proposes this standard because the specific requirements in a completion report are often worked out between the applicant and BLM before we issue a permit. This information may also be included in the terms of the permit.

Part 3120—Oil and Gas Leasing

Subpart 3120—Leasing

Subpart 3120 would contain requirements for competitive and noncompetitive leasing and would describe lands that are available for leasing. It would contain charts outlining the terms of different types of leases, and how to describe lands in a letter of nomination. This subpart also would include procedures for renewal and exchange leases and right-of-way leasing and would generally contain existing regulatory requirements with the following exceptions.

This proposal would eliminate presale noncompetitive lease offers. The intent of the Reform Act was to emphasize competition for Federal oil and gas resources. Presale offers were created by regulation and are not required by the Reform Act. Eliminating presale offers would expedite leasing because it would remove the existing one-year waiting period that prohibits the filing of offers for one year from the date of expiration, termination, or cancellation of a former lease. This would result in a streamlined leasing process, reduce confusion regarding which lands are available for leasing, result in a cost savings for unnecessary filing fees accompanying offers identifying unavailable lands, and encourage competitive leasing.

This proposal would also eliminate the formal nomination procedures in existing section 3120.3. This section gives BLM's Director the discretion to post a Competitive Nomination List and requires the public to formally nominate lands from that list for future competitive sale. The Director has never exercised his discretion to implement these regulations and does not plan to do so in the near future. We therefore believe it would be appropriate to eliminate the requirements of this section.

Section 3122.21 would allow BLM to accept a late payment of bonus bid balances if you provide evidence showing the late payment was postmarked by the U.S. Postal Service, or dated as received by a courier or other delivery service, on or before the tenth business day following the day of the sale. Currently, BLM will not accept payments of bonus bid balances after the tenth business day after the sale.

Sections 3123.30 and 3123.31 would limit the acreage in noncompetitive lease offers to 2,560 acres in the lower 48 States and 5,760 acres in Alaska. Under current regulations, the 10,240-acre limitation for noncompetitive parcels exceeds the 2,560-acre limitation for competitive parcels. As a result, BLM must reconfigure parcels in order to offer the lands for competitive leasing. Limiting the acreage will provide consistency between competitive and noncompetitive leases and will simplify the leasing system.

Those sections would also require you to describe the lands in two-year noncompetitive lease offers by the parcel number indicated in the Notice(s) of Competitive Oil and Gas Lease Sale. Under the proposed rule, you would be able to combine more than one parcel from more than one sale notice in a lease offer. If you combined more than one parcel into an offer, the lands would be required to be within six square miles, unless you show BLM that a larger area is necessary. BLM will consider larger areas if we determine that is in the interest of conservation of resources. The current regulations require that lands be within six square miles. Allowing you to come in with a larger area would give you added flexibility to deal with geologic conditions.

These proposed changes would simplify the filing of two-year noncompetitive lease offers since you would not be required to use legal land descriptions in your offer, but only the parcel number. It would also expedite leasing because lease stipulation revisions would not be necessary for split parcels. The current regulations require that noncompetitive offers for public domain minerals must be a minimum of 640 acres unless the lands are isolated, i.e., there are no contiguous lands. This regulation has resulted in confusion, the loss of filing fees, loss of priority of offers, and is not required by statute. This proposal would eliminate the 640-acre filing requirement.

Section 3123.40 would reduce the number of copies of noncompetitive lease offers you must file. Two copies of a noncompetitive lease offer would be required rather than the current three copies.

Sections 3124.40 through 3124.42 would clarify current provisions that 20-year leases issued under Section 14 of the Act are in effect so long as oil or gas is produced in paying quantities.

Section 3124.44 would require you to file applications for renewal at least 90 calendar days before the lease expiration date. Existing regulations require filing at least 90 calendar days, but not more than six months, from the expiration of the lease term.

Subpart 3129—Record Title, Operating Rights, and Estate Transfers, Name Changes, and Mergers

Subpart 3129 would cover requirements for transfers of record title and operating rights interests in leases. This subpart would generally contain existing regulatory requirements with the following exceptions.

Section 3129.11 would implement a change in policy and procedure. This proposal would eliminate the requirements of current section 3106.4–2 (Transfers of other interests, including royalty interests and production payments) that requires you to file overriding royalty assignments, net profit and production payments with BLM. BLM does not check the accuracy of these transfers and does not verify outstanding royalty interests. BLM only places these documents in the lease file for record purposes. Frequently, the official lease file at BLM does not contain all outstanding transfers and is therefore not an accurate record for determining the outstanding interests. Eliminating the filing of these documents would save you the $25 filing fee currently required for such transfers. Under these proposed regulations, if you requested a royalty reduction under section 3106.40, BLM would still require you to document the amount of outstanding overriding royalties.

Sections 3129.20 and 3129.21 would define mass transfers and would describe a change from current procedure. BLM would no longer require three originally-signed copies of mass transfers with one photocopy for each of the additional leases the transfer affects. This procedure was adopted under the 1988 regulations and is confusing to some. Under this proposed rule, you would be required to file three originals of the record title assignment and operating rights transfer forms for each affected lease. BLM would not accept photocopies of the signed documents for each additional lease the transfer affects.

Part 3130—Oil and Gas Agreements

Subpart 3130—Reservoir Management

This subpart would contain requirements for well spacing, communitization agreements, subsurface storage agreements, development contracts, compensatory royalty agreements and unit agreements. Also, the unitization subpart would change current policy and procedure and is discussed in greater detail in that subpart discussion. This proposal contains additional types of agreements that are not covered in existing regulations. These agreements would be added to identify all types of agreements acceptable under current BLM policy.

Proposed regulation	Existing regulation
3130.10	3162.3–1(a) and (b).
3130.11	3162.3–1(a).
3130.12	3162.5–2(b).
3130.13	3162.2(b).
3132.10	3161.2.
3132.11	New section.
3132.12	3105.2–2. 3105.5–4 and 3107.
3132.13 and 3132.14	New sections.
3133.10	3105.2–2
3133.11	3105.2–3(a).
3133.12	3105.2–3(b).
3133.13 through 3133.15	3105.2–3(c).
3133.16 through 3133.18	New sections
3134.10	3105.5–2.
3134.11	3105.5–3
3134.12	3105.5–2
3135.10	New section
3135.11	3105.3 and internal BLM guidance (WO IM Number 95–146 and The Oil and Gas Development Contract Task Force Report, March 1988) on the application and use of development contracts.
3135.12	3105.3–2
3135.13	3105.3.
3135.14 through 3135.19	New sections
3136.10	New section
3136.11	3100.2–1

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Well Spacing

Subpart 3130 would contain requirements substantially similar to those in existing regulations.

Subpart 3132—Oil and Gas Agreements: General

Subpart 3132 would contain requirements substantially similar to existing requirements with the following exceptions.

Section 3132.10 would set out the types of agreements which require BLM approval. The language in this section consolidates general provisions that are stated in many places throughout Federal mineral leasing laws and BLM's existing regulations.

Section 3132.12 would state the benefits you receive for fulfilling the requirements of an approved oil and gas agreement. This is a new section. However, it contains no new requirements or policy issues.

Section 3132.13 would describe when you would be required to obtain rights-of-stway for roads, facilities, or other surface uses for Federal lands excluded from an agreement by contraction or termination. This is a new section. However, it contains no new requirements or policy issues.

Section 3132.14 would state that you may include State, Indian, or private mineral interests with Federal interests in a Federal agreement. This is a new section. However, it contains no new requirements or policy issues.

Subpart 3133—Communitization Agreements

Communitization agreements are currently covered in subpart 3105. This proposal would cover the application process and how BLM would set the terms and conditions of the agreement. The subpart would contain current regulatory requirements and implements existing policy with the following exceptions.

Section 3133.11 would detail what you must submit to BLM in your application. This section would eliminate the existing requirement that the communitization agreement be signed by or on behalf of all necessary parties. Instead, this section would require you to certify, as applicant, that all necessary parties have committed their interests to the agreement. This change was made as a result of a recommendation of BLM's Onshore Oil and Gas Performance Review to streamline the communitization process. Please specifically comment on alternative ways to submit the required information.

Section 3133.13 would require BLM to notify the operator when we make a decision on your request to communitize. It also would require the operator to notify all necessary parties of BLM's decision within 30 calendar days. This new section would clarify current administrative processes.

Subpart 3134—Subsurface Storage Agreements

This subpart contains current regulatory requirements and implements existing policy. It does contain more detail than existing regulations on subsurface storage agreements. However, it does not implement new policy or procedure.

Subpart 3135—Development Contracts

This subpart contains current regulatory requirements and implements existing policy. It does contain more detail than existing regulations on development contracts. However, it does not implement new policy or procedure.

Subpart 3136—Drainage Agreements

This subpart contains current regulatory requirements and implements existing policy. It does contain more detail than existing regulations on drainage agreements however, it does not implement new policy or procedure. One section in this subpart would cross reference another proposed rule. Proposed section 3136.10 cross references regulatory requirements in a proposed rule on oil and gas drainage that was published in the **Federal Register** on January 13, 1998 (63 FR 1936). This final rule would incorporate the drainage rule and cross reference it in this section.

Subpart 3137— Unit Agreements

BLM developed this subpart of the proposal to respond to industry concerns identified by the Bureau Oil and Gas Performance Review and reinventing government initiatives. The public commented that the existing unitization process was inflexible and that was a limitation on increased development. Secretary Babbitt issued Secretarial Order 3199 on April 4, 1996, directing BLM to "reengineer Federal oil and gas unitization into a more efficient and flexible process." On September 39, 1998, the Secretary renewed the order until the unit regulations go into effect or September 30, 1999, whichever occurs first. BLM drafted these regulations to focus the unitization process more on what is to be accomplished rather than on how regulated entities would achieve their objectives. BLM identified the following as limitations on the effectiveness of the current unitization process—

1. The process is unnecessarily complicated and is a barrier to innovative and creative exploration and development;
2. Paying well determinations based solely on economics cause delays;
3. Allocation of unitized production is often delayed because paying well determinations cannot be made in a timely manner. This necessitates extensive corrections to production and royalty reporting;
4. The unit designation process adds unnecessary complexity to the application process; and
5. The existing model unit form (see 43 CFR 3186) contains many terms unnecessary to the Secretary's decision whether to approve a unit agreement or not.

These proposed regulations attempt to eliminate or minimize these barriers, while still meeting the intent of the Mineral Leasing Act of 1920.

These regulations would increase the flexibility of the unitization process by allowing operators and BLM to negotiate exploration and development terms before entering into a unit agreement. The focus of this new process would be to protect the public interest rather than to rely on the existing model unit agreement. This regulation would not change the terms and conditions of existing unit agreements or the way BLM administers existing agreements.

Proposed regulation	Existing regulation
3137.10 and 3137.11	3186.1.
3137.12	New section.
3137.13	3181.2 and 3186.1.
3137.14	3181.3 and 3186.1.
3137.15	3181.3.
3137.16	3186.1, sec. 20.
3137.17 and 3137.18	New sections.
3137.20	3186.1.

Proposed regulation	Existing regulation
3137.21 and 3137.22	New sections
3137.30	3186.1. sec. 3
3137.31 through 3137.34	New sections
3137.40	3181.2
3137.50 through 3137.52	3186.1. sec. 9
3137.53	New section
3137.54	3186.1. sections 9 and 20
3137.55 through 3137.59	New sections
3137.61 through 3137.66	3186.1. sec. 11
3137.67	3181.4 and 3181.5
3137.68	3101.3–1
3137.69	3186.1. sec. 11
3137.70 through 3137.73	3186.1. sec. 11
3137.74	New section
3137.80 and 3137.81	3186.1. sec. 8
3137.82	3186.1. sec. 5 and 3186.3
3137.83	3186.1. sec. 4
3137.84	3181.5 and 3186.1. sec. 17
3137.90	3186.1. sec. 25
3137.91	3186.1. sec. 9
3137.100	3186.1, sec. 20(b) and 20(d).
3137.101	3183.4(b).
3137.102	New section.
3137.110	3186.1. sec 14
3137.111	3181.5 and 3186.1, sec 17(b).
3137 112 through 3137.114	3186.1. sec 14
3137.120 and 3137.130	New sections

The primary change to the unitization process would be an emphasis on up-front negotiation among the various interest owners and BLM. Operators would be able to use any agreement format in their unit agreement as long as it addressed the following four basic issues: (1) Unit area; (2) Initial and continuing development obligations; (3) Productivity criteria and participating areas; and (4) BLM's ability to set or modify the quantity, rate and location of development and production.

The unit operator and BLM would base the negotiation of unit agreement terms on many factors. These factors may include the history of the area, the environment, economics, the number and depth of wells previously drilled in the area, the size of the area and the cost of the proposed operations.

Under these proposed regulations, BLM would accept only a limited number of additional unit agreement terms beyond the mandatory terms. If the unit agreement does not specifically address modifications, they would not be permitted unless all of the original parties or their successors to the agreement agree. The unit agreement would be considered to include all producing intervals unless the unit agreement specifies producing interval(s).

Another change from current procedure involves the creation and size of initial participating areas and additions to existing participating areas. The amount of land to be included in any participating area revision would be specified in the unit agreement whereas currently it is not. Under existing procedure, participating areas include only specific producing intervals. An addition to an existing participating area occurs when a new well that meets the productivity criteria defined in the unit agreement is drilled outside of that participating area.

The current obligation to drill an exploratory well and subsequent wells under a plan of operations would be replaced with initial and continuing development obligations. Under this proposal, you and BLM would negotiate the initial and continuing development obligations and would include those terms in the unit agreement. These terms would define the number and frequency of wells you plan to drill or operations that would establish new unitized production. Under this proposal, the unit would automatically contract to the existing participating area(s) when you do not meet a continuing development obligation. Existing regulations allow five years for drilling and development of the unitized area before automatic elimination would occur for lands not in a participating area. This proposal would eliminate the 5-year initial drilling and development period of current regulations. BLM believes this new requirement would increase the potential for oil and gas development by encouraging operators to follow a continuous development program or risk contraction of the unit area to the participating area(s).

Paying well determinations would be replaced with well productivity criteria. This would allow the unit operator to negotiate criteria that are not tied strictly to well economics. Currently, production must cover the drilling and operating costs attributed to that well. Under this proposal, costs for that well would be considered as part of unit costs and not be required to be covered by production from that well alone. Productivity criteria must be adequate to indicate a well has established future production potential to pay for the cost of drilling, completing and operating.

Another change to the current system concerns development requirements. After unitization, operators would know the effect of development on participating areas and royalty distribution immediately, without having to wait extended periods for BLM approvals. This is because the criteria for deciding whether wells qualify to be included in a participating area would be clearly spelled out in the agreement.

Under existing regulations, operators are limited to a set time to develop the entire unit. Under the proposed regulations, the unit would not contract as long as development continued at the rate set out in the agreement. Once you meet the initial development obligations, all leases committed to a unit would continue to receive the benefits of unitization as long as the unit is productive.

Under this proposal, BLM could grant suspensions and extensions of time to

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carry out the initial and continuing development obligations. In those instances, the unit operator would be required to prove to BLM that the obligations cannot be carried out due to circumstances beyond the control of the operator, despite the exercise of due care and diligence. Existing regulations contain similar provisions.

This subpart for the most part discusses new procedures and policy or new regulatory requirements. Where a given section is substantially similar to existing policy, procedure or regulatory requirement, it is not discussed.

Application

Section 3137.10 would describe the types of unit agreements the subpart covers. Up to now, BLM's regulations have not distinguished between exploratory and enhanced recovery unit agreements. Since enhanced recovery operations differ from exploratory operations, their unit obligations should differ.

Sections 3137.11 and 3137.12 would require you to negotiate with BLM on the terms of exploratory and enhanced recovery unit agreements before you apply and explains that BLM will accept any unit agreement format. Currently, BLM's regulations require that you use the unit agreement form in section 3186.1.

Section 3137.13 would explain what you must include in your unitization application.

Section 3137.14 would describe what the unit operator must certify in the unitization application. This is a new requirement. Currently, BLM requires the operator to submit signatures of all parties committed to the unit. The certification would replace the signatures which will reduce paperwork for you and BLM.

Section 3137.15 would make it clear that you are not required to file with BLM evidence that all leases have actually committed to the unit. However, BLM will require you to keep copies of the invitations to join the unit, including written reasons why parties did not join the unit.

Section 3137.16 would change existing policy and procedure. Under existing regulations, BLM approves a unit agreement effective the date of approval. If the unit does not meet the public interest requirement, the unit is void ab initio. Under the proposal, BLM would provisionally approve units and final approval would be given once you meet the public interest requirement, retroactive to the date of the provisional approval. One effect of this change would be that when a lease that is partly in and partly out of a unit area is segregated into two leases, the provisional approval would not give the lease that is outside of the unit any benefits of unitization, including an extension, until final unit approval. Final unit approval would be given when the unit meets the public interest requirement by meeting the initial unit obligations.

Section 3137.17 would require BLM to notify the unit operator in writing when we approve the agreement. This section would also require the unit operator to notify all parties to the agreement after it receives BLM notice.

Section 3137.18 would explain that BLM will reject a unit agreement application if it does not meet the requirements of this subpart.

Mandatory Topics

Section 3137.20 would define the mandatory terms of exploratory and enhanced recovery unit agreements. Existing unit agreements contain terms that deal with the relationship between the parties committed to the unit agreement and not BLM. This proposal would also reduce the number of permissible unit agreement terms to only those that deal with the relationship between BLM and the parties committed to the unit.

Section 3137.21 would describe only mandatory terms in enhanced recovery unit agreements and exploratory unit agreements. The area you want to include in an enhanced recovery unit agreement must be fully developed at the time you make the proposal. This section also explains that "fully developed" means that you have drilled to reasonably delineate the boundaries of the reservoir. Therefore, you would not be required to include terms for initial unit obligation, participating areas, productivity criteria and unit contraction. Instead, you would be required to define enhancement obligations in an enhanced recovery unit agreement.

Section 3137.22 would prohibit terms in unit agreements other than those contained in the listed sections of the proposal. Parties to the unit could set out other terms under private agreements.

Optional Provisions

Section 3137.30 would explain that you may include optional provisions in the agreement for limiting the agreement to certain producing intervals, authorizing multiple unit operators, and providing means for unit agreement modifications. If those provisions are not included in the agreement, the agreement applies to all intervals, contemplates a single unit operator and requires unanimous consent for modification. BLM would approve those optional provisions if you demonstrate that they promote additional development or enhance production potential. These optional provisions are not in existing regulations. However, BLM does allow for these optional provisions if operators apply and circumstances warrant that they be included. BLM would add these provisions to the regulations to clarify existing policy and procedure.

Sections 3137.31, 3137.32 and 3137.33 would set out the requirements for having multiple unit operators, the circumstances under which you may modify the terms of the unit agreement and what you must submit to BLM if you modify a unit area, or change the commitment status of a lease.

Section 3137.34 would make it clear that other agreements do not affect the terms and conditions of a Federal unit agreement.

Size and Shape

Section 3137.40 would require that the unit area consist of tracts that are contiguous at least at one point. It would explain that areas of noncommitted tracts totally within the exterior boundary of the unit are allowed and that BLM may limit the size and shape of the unit area. BLM currently has policies and procedures to deal with the size and shape of units that are similar to this section.

Development

Section 3137.50 would define initial unit obligations for exploratory unit agreements. Existing regulations require you to drill at least one well to explore for unitized substances for your initial unit obligation. As a matter of policy, one well will hold up to about 30,000 acres, depending on geology, economics and other factors. This proposal would require that you negotiate with BLM and define the number of wells necessary to determine the existence of oil and gas in the area of the unit. This proposal would also require that the unit agreement define the primary target for each well and the time between drilling those wells. This would also be subject to negotiation. Existing regulations only require you to define the primary target for the initial well and the time between drilling the well depends on whether it is a producing well or not. BLM believes that negotiation of the provisions for development would allow operators flexibility and ensures that the resources will be diligently developed.

Section 3137.51 would define what you must do to meet initial unit obligations and fulfill the public interest requirement for an exploratory unit agreement. Before the time set out in the agreement, you must drill at least one well that establishes unit production, drill a test well to the primary target, or convince BLM that drilling the initial well(s) or future wells is unwarranted or impracticable.

Section 3137.52 would define the enhancement obligations for enhanced recovery unit agreements. The unit agreement would define that amount, type and timing of enhanced recovery operations.

Section 3137.53 would define what you must do to meet enhancement obligations and fulfill the public interest requirement for enhanced recovery unit agreements. You would be required to fulfill the provisions of section 3137.52, or prove to BLM either that enhanced recovery operations have actually increased reservoir performance or that further enhancement operations are unwarranted, impracticable or uneconomical.

Section 3137.54 would state that if you do not meet initial unit obligations or enhancement obligations, BLM's approval of the agreement is invalid and BLM will not extend the term of any lease in the unit.

Section 3137.55 would define continuing development obligations. This section would require that your program of exploration or development exceed the pace of non-unitized operations in the area near the unit. The exploration program must also represent an investment commensurate with the size of the unit agreement. BLM believes that these standards for a continuing development obligation would ensure that the resources will be diligently developed.

Section 3137.56 would describe how to define continuing development obligations in the unit agreement. Continuing development obligations occur after you complete initial development obligations, but do not include work you performed prior to unitization. This differs from existing policy in that this new provision would be negotiated up front and defined in the agreement. Currently, continuing development obligations are not defined at the outset, but are laid out after an initial discovery, in a plan of development.

Section 3137.57 would explain that continuing development may occur within or outside a participating area. Currently, starting five years after a participating area is established, you are required to drill outside established participating areas to continue the unit. This proposal would provide flexibility for operators and still encourage additional exploratory drilling by allowing them to negotiate for additional drilling within established participating areas.

Section 3137.58 would require a unit to contract if you do not meet a continuing development obligation. Under existing regulations, if you have not drilled outside of a participating area after five years from the date the first participating area was established, the unit contracts to existing participating areas.

Section 3137.59 would require you to submit certain information to BLM after you meet continuing development obligations. You would be required to submit documentation that supports your certification. If you establish production in a well that does not meet the productivity criteria, you would be required to operate, produce, and report the well on a lease basis. This section is substantially similar to existing requirements. BLM does not currently require a certification, however, the information required would be substantially similar to the information in the current application to establish or expand a participating area.

Productivity Criteria and Participating Area

Section 3137.60 would require that productivity criteria be defined in the unit agreement. This section would require that the productivity criteria indicate future production potential sufficient to pay for the costs of drilling, completing and operating the well on a unit basis. This section would also require that the productivity criteria warrant continued production of the individual well itself and that the well must be ready to produce unitized substances. This section would explain that BLM will enlarge participating areas when you drill a well that meets the productivity criteria outside of an existing participating area. Paying well determinations would be replaced with well productivity criteria. This would allow the unit operator to negotiate criteria that are not tied strictly to well economics. Currently, production must cover the drilling and operating costs attributed to that well. Under this proposal, costs for that well would be considered as part of unit costs and not be required to be covered by the production from that well alone. Productivity criteria must be adequate to indicate a well has established future production potential to pay for the cost of drilling, completing and operating.

Section 3137.61 would describe the function or purpose of participating areas. The unit agreement allocates production to committed leases within the participating areas in proportion to the leased surface acreage relative to the total acreage of the participating area. This is similar to existing policy and procedure.

Section 3137.62 would explain that the first well you drill after unitization that meets the productivity criteria establishes a participating area. Existing regulations use the term "production in paying quantities" as the sole acceptable productivity criteria. This section would further explain that when you establish the first participating area, lands which contain previously existing wells that meet the productivity criteria will either be added to the initial participating area or become a new participating area.

Section 3137.64 would require you to submit to BLM certification that you established unitized production, a map of the participating area, and a schedule that establishes the allocation to each interest owner in the participating area. This section is substantially similar to existing requirements. BLM does not currently require a certification. However, the information used to make that certification would be substantially similar to the information in the current application to establish or expand a participating area.

Section 3137.65 would require the size of participating area additions to be approximately the same size as the initial participating area for that interval. Currently, BLM does not require them to be the same size. Requiring the participating area additions to be the same or similar in size would simplify expansion of unit participating areas.

Unit Operations

The sections covered under the heading "Unit Operations" are substantially similar to existing regulatory requirements.

Suspensions and Extensions of Development

The sections covered under the heading "Suspensions and Extensions of Development" are substantially similar to existing regulatory requirements.

Unit Termination

The sections covered under the heading "Unit Termination" are substantially similar to existing regulatory requirements.

Royalties

The sections covered under the heading "Royalties" are substantially similar to existing regulatory requirements.

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Leases and Contracts Conformed and Extended

The sections covered under the heading "Leases and Contracts Conformed and Extended" are substantially similar to existing regulatory requirements.

Change in Ownership

The section covered under the heading "Change in Ownership" is substantially similar to existing regulatory requirements.

Part 3140—Oil and Gas Lease Administration

Subpart 3140—Extensions

Subpart 3140 would contain provisions for drilling extensions, continuation of leases by production, unit production and segregations, elimination of leases from unit and communitization agreements, leases segregated by assignments, and compensatory royalty and lease payments for subsurface storage of oil or gas. This subpart would not change requirements of existing regulations, with the exception of segregations as they relate to provisional unit approval described earlier in the discussion of proposed section 3137.16.

Subpart 3141—Suspensions

Subpart 3141 would contain requirements for obtaining suspensions of operations, suspensions of production or suspensions of operations and production. Filing requirements for approval of a suspension of operations or production would be outlined. This subpart would describe the effects of a suspension on the terms of a lease and also requirements for the suspension or waiver of lease rights during pending legal proceedings. This subpart would not change requirements of existing regulations.

Subpart 3142—Lease Terminations and Reinstatements

Subpart 3142 would contain requirements for obtaining Class I and Class II reinstatements for leases that terminate for nonpayment or late payment of rental. This subpart would also include Class III provisions for converting unpatented oil placer mining claims to noncompetitive oil and gas leases. This subpart proposes two changes from existing requirements. One change allows a Class I reinstatement for the late payment of a nominal deficiency (see section 3142.20). The other change increases the nominal deficiency amount from 5 percent or $100, to the lesser of 10 percent or $200, which provides consistency with the nominal deficiency amount allowed for noncompetitive offers (see section 3142.11).

Subpart 3143—Relinquishments

Subpart 3143 would generally contain existing regulatory requirements and clarifications of existing requirements pertaining to relinquishments.

Subpart 3144—Cancellations

Subpart 3144 would contain provisions for cancellations and would not change existing regulatory requirements. It would also contain existing regulatory requirements regarding bona fide purchasers.

Part 3145—Oil and Gas Drilling

Subpart 3145—Drilling and Additional Well Operations

This subpart would incorporate the requirements from existing and proposed regulations dealing with drilling and additional well operations. The Onshore Orders referenced in this preamble that relate to the conduct of operations and appear in the charts and proposed operations regulations that follow are: Onshore Order Number 1, which was published on October 21, 1983, (48 FR 48916); Proposed Onshore Order Number 1, which was published on July 23, 1992, (57 FR 32756); Onshore Order Number 2, which was published on October 18, 1988, (53 FR 46798) (Revised on December 9, 1988, (53 FR 49661), September 27, 1989 (54 FR 39528), and January 27, 1992, (57 FR 3023)); Onshore Order Number 3, which was published on February 24, 1989, (54 FR 8056) (Revised on September 27, 1989, (54 FR 39528)); Onshore Order Number 4, which was published on February 24, 1989, (54 FR 8086); Proposed Onshore Order Number 4, which was published on March 9, 1994, (59 FR 11019); Onshore Order Number 5, which was published on February 24, 1989, (54 FR 8100) (Revised on September 27, 1989, (54 FR 39527)); Proposed Onshore Order Number 5, which was published on January 6, 1994, (59 FR 718); Onshore Order Number 6, which was published on November 23, 1990, (55 FR 48958) (Revised on January 17, 1992, (57 FR 2039 and 2136) and on February 12, 1992, (57 FR 5211)); Onshore Order Number 7, which was published on September 8, 1993, (58 FR 47354) (Revised on November 2, 1993, (58 FR 58505)); and Proposed Onshore Order Number 8, which was published on May 6, 1991, (56 FR 20568). This proposal also references Notice to Lessees (NTL) Number 3A, which was published on January 10, 1979, (44 FR 2204) and NTL Number 4A which was published on December 27, 1979 (44 FR 76600). The following is a crosswalk for this subpart.

Proposed regulation	Existing regulation	Onshore order
	Application for Permit to Drill or Reenter (APD)	
3145.5	3162.1 and 3162.3–3	
3145.10	3162.3–1(c), (d) and (g)	Order Number 1, III.D.; Order Number 2, parts of I., II., III.G. and D.5.; and Proposed Order Number 1, II.B., III.B., III.C., III.E. and IV.
3145.11	3162.3–1(h), 3164.3(b) and (c)	Order Number 1, III.G.4.; and Proposed Order Number 1, III.C.2.
3145.12 and 3145.13	3162.3–1(d)(1)–(4), (e) and (f)	Order Number 1, III.C., III.G.; and Proposed Order Number 1., III.A., III.C., and III.F.3.
3145.14		Order Number 1, VII.A.; and Proposed Order Number 1, parts of section IV.
3145.15		Order Number 1, VII.B.; and Proposed Order Number 1, V.
3145.16	3162.3–1(e) and (f)	Order Number 1, Introduction and III.G.4.
3145.17 and 3145.18		Order Number 1, III.B.1.; and Proposed Order Number 1, III.D.
3145.19	3162.3–1(g) and (h)	Order Number 1, III.B. and III.C.; and Proposed Order Number 1, III.E., III.F.
3145.20		Proposed Order Number 1, III.E.
3145.21		Proposed Order Number 1, I.D
3145.22	3162.4–2	Order Number 1, VIII

Proposed regulation	Existing regulation	Onshore order
Technical Drilling Standards		
3145.30	3162.5–2(a)	Order Number 2, III.A.
3145.31	3162.5–2(a)	Order Number 2, III.E.
3145.32	3162.5–2(a) 3162.5–3	Order Number 2, III.B., III.C. and III.E.; and Order Number 6, III.C.4.c.
3145.33	3162.5–2(c)	Order Number 2, III.B.
3145.34		Order Number 2, III.D.
Drilling Operations in a Hydrogen Sulfide Environment		
3145.40	3162.5–3	Order Number 2, III.C.6.b; and Order Number 6, III.A., III.B., and IIIC
3145.41	3162.5–1(d)	Order Number 6, I.C., III.A., III.B., and IIIC.
3145.42	3162.5–3	Order Number 6, II.S.
3145.43	3162.5–3	Order Number 6, III.C.1.c.
3145.44	3162.5–3	Order Number 6, III.C.3.a., C.3.b.
Additional Well Operations		
3145.50	3162.3–2(a) and 3162.3–3	Order Number 1, parts of IV.A., IV.B., and IV.C.; Proposed Order Number 1, part of VI.; Order Number 7, III.E.1.f., and III.F.; and Proposed Order Number 8, parts of III.A. through III.D.
3145.51	3162.3–2(a) and 3162.3–3	Order Number 1, IV.A, IV.B., and V.; Proposed Order Number 1, VI, Order Number 7, III.A.; and Proposed Order Number 8, parts of III.A. through III.D.
3145.52	3162.3–2(b) and (c) and 3162.3–3	Order Number 1, IV.A. and C.; and Proposed Order Number 1, parts of VI.
3145.53	3162.3–2(a)	Order Number 1, IV.B.; Proposed Order Number 1, VI.; and Order Number 7, III.A.
3145.54	3162.3–2	Order Number 1, IV.A. and IV.B.; and Proposed Order Number 1, VI.; Proposed Order Number 8, parts of A., B. and C.
3145.55	3162.5–1(b)	Proposed Order Number 1, VII.A.; and Proposed Order Number 8, parts of III.A.

Application for Permit to Drill or Reenter

Regulations for Application for Permit to Drill or Reenter (APD) would include filing, processing, and surface and drilling operating requirements. Generally, the sections discussed in this subpart contain changes from existing policy or procedure.

Section 3145.5 would make it clear that you must conduct all operations on Federal and Indian leases, including those that do not require BLM approval, according to the surface use and drilling standards of this subpart. BLM currently applies similar standards to workovers and additional well operations via conditions of approval. This regulation would clarify that existing policy.

Section 3145.10 would require you to submit an Application for Permit to Drill or Reenter (Form 3160–3) to BLM for review and approval before you disturb the surface or begin any drilling operations for a new well or reentry of an abandoned well. Under this section, you would be required to have a BLM-approved APD before you start any construction activity or any operation to develop a Federal or Indian lease, including activity on private surface necessary to operations on a Federal or Indian lease. This would include the need to obtain BLM approval for horizontal or directional wells that develop any portion of a Federal or Indian lease, even if the well site is located on State or private surface.

The Reform Act requires that BLM post a public notice of Federal well proposals for 30 calendar days before we are authorized to approve it. Therefore, you should submit your well proposals to BLM at least 31 calendar days before you plan to begin drilling operations to give BLM enough time to post it. This time period would allow BLM time to process your APD before the day you plan to start drilling your well. This period also matches the filing requirement that you should follow if you are requesting a suspension of operations or production in connection with drilling a new well or reentering an abandoned well (section 3141.12 of these proposed regulations).

The Forest Service (FS) approves surface use plans on National Forest System lands (NFS). Surface use plan submittal time frames on NFS lands are longer because the FS must comply with the Reform Act and timeframes established by Section 322 of the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1993 (P.L. 102–381, 106 Stat. 1419, 16 U.S.C. 1612 note.). The FS needs time for the public notice period mandated by the Reform Act, a public comment period for review of environmental assessments completed for well proposals, and an appeal period. The minimum time the FS requires to process surface use plans is 120 calendar days.

Section 3145.11 would state the authority and general involvement of the FS and other Federal or State agencies in processing APD's you propose on a Federal or Indian lease where the surface is not managed by BLM or a private landowner. This section addresses BLM's limited responsibility for managing oil and gas operations on lands managed by the FS. The Reform Act limited BLM's responsibility on NFS lands to development or operational proposals involving subsurface activity, related impacts, and any appeals regarding the same. Surface use plans on NFS lands require only FS approval, and all appeals related to the surface use plan are appeals of the FS decision. Unlike existing regulations, the proposal would not require you to submit a surface use plan of operations with your APD, if the proposed drilling location is on NFS lands. Agency responsibilities under this rule and the Reform Act are determined on the basis of subsurface

(BLM) and surface (FS) authority for oil and gas operations on NFS lands.

BLM also shares responsibility for approving surface use plans on National Wildlife Refuge lands in Alaska. If your proposal involved these types of lands, the U.S. Fish and Wildlife Service would be responsible for approving surface use plans for APD's on land it manages.

Sections 3145.12 and 3145.13 would describe what information you must submit to BLM for a complete APD and what requirements you must comply with during operations. This section would require you to submit a drilling and surface use plan and also would establish standards for conducting Federal and Indian lease operations. This section would not require the prescriptive 8-point drilling plan and 13-point surface use plan of operations required by Order Number 1. Instead, it would require your plan to describe how your proposal will affect, protect, or mitigate impacts to surface and subsurface resources. This section would identify the resource concerns that BLM expects you to address in your plan and operations. This is in contrast to the approach of Order Number 1, which places more emphasis on specific information that you must submit to BLM.

The term useable water would be used in these sections and other places in section 3145.32. We defined this term as water containing less than 10,000 parts per million (ppm) of total dissolved solids. This definition is consistent with the regulations of the Environmental Protection Agency (EPA) at 40 CFR 144.3 and 146.3, for an underground source of drinking water. This is also consistent with the existing definition in Onshore Oil and Gas Order Number 2. This section would require you to submit Form 3160–3 for each new well that you propose to drill, or abandoned well you propose to reenter.

Section 3145.14 would provide for additional APD submission requirements when your well has a proposed surface location on privately-owned surface. It also would discuss conditions under which BLM may approve an APD if you are unable to reach agreement with the surface owner for access or occupancy. BLM's responsibilities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), Endangered Species Act (16 U.S.C. 1531), and the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), are essentially the same for Federal or Indian surface and split-estate lands. BLM will seek full cooperation of the private surface owner. However, the surface owner may not veto Federal statutory requirements. Consequently, surface use agreements with private landowners must satisfy the private surface owner and meet BLM's requirements for environmental protection and mitigation. This proposed rule would also apply to horizontal or directional wells that are located on State or private surface, if the well ultimately develops Federal or Indian leases.

Section 3145.15 would provide for additional APD requirements when your proposed well is located on an Indian oil and gas lease or on surface held in trust for an Indian tribe or an individual Indian. It also describes circumstances where a surface-use agreement is not necessary.

Section 3145.16 would allow you to submit either a single APD package for each well or a field-wide APD package for several wells in a field or area of geologic or environmental similarity. You would be able to develop a field-wide plan for the drilling plan, the surface use plan, or both. If you developed a field-wide plan, it would allow you to reference already approved material when you propose future well sites. This would reduce the amount of paperwork that you would be required to submit for each APD. If your drilling or surface use plan were nearly identical to a previously approved field-wide plan, you would be required to submit information to BLM only on the items that deviate from your approved field-wide plan.

Sections 3145.17 and 3145.18 would allow you to submit a Notice of Staking (NOS) to notify BLM that you have selected a drilling location. You would submit a NOS before an APD to provide BLM the basic information on the type and location of the well you propose to drill. You would submit a NOS only if you actually intended to file an APD at a later date. Section 3145.18 would list the basic information required in a NOS application and surveying requirements that you must complete before BLM conducts a predrill inspection under a NOS.

Section 3145.19 would describe general actions BLM will take to process your APD. Order Number 1 and current regulations at sections 3162.3–1(h) and 3162.5–1 require BLM to complete processing of applications in specified timeframes. Order Number 1 also includes specific timeframes for BLM to conduct predrill inspections and to notify operators that additional information is needed. The only processing time frames included in this subpart are the 30-day public notice period required by the Reform Act and the 120-day period for surface use plan proposals on NFS lands. The other processing time frames of current regulations are not statutory and would be eliminated by this proposal. BLM will continue to process complete applications in a timely manner.

Section 3145.20 would allow up to two extensions of 12 months for APD's. Existing regulations do not address extensions of APD's. However, current practice in many BLM offices is to grant APD extensions when justified.

Section 3145.23 would require you, within 30 calendar days after a well becomes inactive, to put the well into production or service, submit to BLM plans to conduct well work to restore production or service, submit plans to plug and abandon the well or comply with the requirements of section 3107.53. These would be new requirements. BLM has found that inactive wells often become orphan wells that BLM would eventually have to plug and abandon. This section would require operators to take action to put inactive wells back into service, plug and abandon them or provide additional bonding or pay into a fund to help mitigate costs of orphan wells. BLM believes that this is necessary to encourage operators to fulfill their lease obligations as they pertain to inactive wells.

Technical Drilling Standards

Technical drilling standards are BLM's requirements for designing and drilling wells on Federal and Indian leases. Areas covered by these sections would include well control, air drilling, well design and construction, well integrity testing, and drill stem testing.

Section 3145.30 would list the general well control requirements that you must comply with when you design and drill a well. This section would contain performance standards that would replace certain prescriptive requirements of Order Number 2. This section would also incorporate by reference the applicable American Petroleum Institute's (API) publication on well control systems. Many of the existing requirements in BLM's regulations on well control mirror the requirements in the cited API publication. This section also contains specific well control provisions that BLM believes are essential to protect surface and downhole resources and public health and safety.

Section 3145.31 would require you to follow the standards contained in the referenced API document when drilling with gas, air or mist. As noted above, many requirements in BLM's existing orders contain requirements similar to the cited API publication.

Section 3145.32 would state the performance standards for designing and drilling your well. As with the well control section, this section would require certain specific measures that BLM believes critical to resource protection and public health and safety. You must address all of the applicable requirements of this section in your APD and conduct your drilling operations accordingly. These performance standards would replace the prescriptive requirements of Order Number 2.

Section 3145.33 would require you to pressure-test all casing strings below the conductor pipe before you set the next string of casing. You also must perform a mud weight equivalency test for all exploratory wells and any part of a well approved to use a 5000 pounds per square inch blowout prevention equipment system (BOP). The proposed requirement differs from the existing Order Number 2 requirements in that it does not specify minimum test pressures or standards for a successful test. Under this proposal, testing would be performed in any manner that demonstrates that the casing or formation can withstand the maximum pressure it is likely to be subject to throughout its useful life. BLM would determine the adequacy of your testing program before approving your APD.

Drilling Operations in a Hydrogen Sulfide (H_2S) Environment

Section 3145.44 would require you to train all personnel working at the wellsite about H_2S drilling and contingency procedures according to standards contained in the referenced API publication. This section would require that training be completed at least three business days before drilling into, or before reaching a depth of 500 feet above, known or probable H_2S zones. The training frequency contained in the referenced API publication would replace the existing Order 6 requirement to have weekly H_2S and well control drills. The API standard would allow you and BLM to agree upon a training frequency commensurate with the H_2S potential. This section also states who must have appropriate personal protective breathing devices at your wellsite and requires such equipment to comply with the standards contained in the referenced API document.

Additional Well Operations

Regulations for additional well operations would address general filing, processing and operating requirements for well operation activities that generally occur after you drill a well, including reclamation requirements. More specific information is included for some of these activities in separate subparts of this proposed rule (e.g., subpart 3155 for disposal of produced water and subpart 3159 for temporary and permanent abandonment).

Section 3145.50 would include filing requirements and a reference to the form (Sundry Notice, Form 3160–5) that you must use when applying for additional well operations that require BLM approval. The filing requirements and operating standards would parallel requirements in this subpart for drilling a new well or reentering an abandoned well.

Section 3145.51 would list additional well operations that BLM must approve before you begin them. These operations would require BLM approval, although there would be some exceptions described in other sections of this proposed rule. For example, section 3155.12 describes cases when an approval for disposal of produced water is not necessary. This section also includes standards to determine when other additional well operations, which are not specifically listed in this section, would require BLM approval. Some of these activities may be fully addressed in your approved APD. If this is the case, a Sundry Notice and a separate approval would not be necessary, unless you plan to change proposals that were part of your approved APD.

Existing regulations allow BLM to grant oral approval for plugging and abandonment of newly drilled dry holes, drilling failures and in emergency situations. This proposal would allow BLM to grant oral approvals for additional well operations that require BLM written approval. We propose this change because many of these operations are repetitive in terms of technical design, equipment use, the time it takes to complete the operation, and surface use.

Section 3145.52 would identify when additional well operations would not require BLM approval. See the definition of "routine well maintenance" in section 3101.5 of this proposal to accurately apply these standards. This section would also contain a requirement that you notify BLM within 48-hours of actions taken to correct or contain an emergency.

Section 3145.54 would require you to submit reports, well logs, test data, and other information that may be required by a condition of approval within 30 calendar days after you complete additional well operations. A well completion report would also be necessary within 30 calendar days if a well completion occurs in a new formation.

This section would require you to submit a subsequent report on Sundry Notice, Form 3160–5, within 30 calendar days after you complete additional well operations, if you alter the existing wellbore configuration. A subsequent report would also be required if BLM requested it.

Section 3145.55 would include reclamation standards that you must follow during drilling and lease operations. Current regulations require you to submit a plan that explains how you will reclaim the disturbed area. This section would set out performance standards for recontouring, seedbed preparation and revegetation. The details of these standards would be laid out in your APD or Sundry Notice for additional lease operations and approved by BLM.

Part 3150—Oil and Gas Measurement and Operations

Subpart 3151—Production Storage and Measurement—General and Production Operations With Hydrogen Sulfide

This subpart would contain regulations on the production, storage, and measurement activities that require BLM approval. This subpart would contain requirements substantially similar to existing requirements with some exceptions.

Proposed regulation	Existing regulation	Existing order or NTL
3151.10	3162.3–2	Order Number 4 section III.E. and F.;
	3162.7–2	Order Number 5 section III.D.; and
	3162.7–3	Notice to Lessees (NTL)–4A.
3151.11	3162.7–2	Order Number 4 section III.E. and F.;
	3162.7–2	Order Number 5 section III.D., NTL–4A; and
	3162.7–3	BLM Manuals and Instructional Memorandums.
3151.12	3162.7–1(a) and (b).	Order Number 7 section III.A.3
3151.13	3162.7–1(e).	

Proposed regulation	Existing regulation	Existing order or NTL
3151.14	3162.7–1(d)	Order Number 4 section II.O.3. and section III.B.;
3151.15		NTL–4A sections I and II; and BLM Instructional Memoranda.
3151.16		NTL–4A section III

Production, Storage, and Measurement—General

Section 3151.16 would list instances where you would be able to vent or flare gas royalty-free without prior BLM approval. Under this proposal you would be able to vent or flare 10,000 cubic feet or less of associated gas per well, provided the gas is produced as part of normal oil production operations and is vented or flared in a safe manner according to applicable laws, regulations and accepted industry practice. This would be a new regulatory requirement that implements existing policy.

Production Operations With Hydrogen Sulfide

Proposed regulations on production operations with H_2S would require you to test your wells and facilities to identify the potential for H_2S and take the necessary steps to protect public health and safety and the environment.

Proposed regulation	Existing regulation	Existing orders
3151.20	3162.5–1(a) and 3162.5–3	Onshore Order Number 6 section III.A.2.b. and c.
3151.21		Order Number 6 section III.A.2.a., III.D.1.c., and III.D.2.
3151.22		Order Number 6 section III.D.2.b. through g.
3151.23		Order Number 6 section III.D.3.a through j.
3151.24		Order Number 6 section III.D.1.c.

Section 3151.22 lists the public protection requirements that would apply to storage tanks that meet the criteria in proposed section 3151.21. Many types of signs and fences satisfy the requirements to warn of danger and restrict access. The proposed section leaves out much of the existing regulatory detail regarding the visual appearance of danger signs and the type of fencing required. The proposed rule would allow BLM the flexibility to accept practices appropriate for a particular area as long as they could achieve the stated performance standard of alerting the public of the potential H_2S hazard and restricting access to production facilities.

Section 3151.23 lists the public protection requirements that would apply to completed wells and production facilities when the H_2S concentration in the gas stream is 100 ppm or more. As with proposed section 3151.22, a standard for signs and fences is proposed that would eliminate the regulatory detail that presently exists in Order Number 6. The section would require that your facility be designed and constructed in accordance with the referenced API publication and would require you to calculate the 100 and 500 ppm radii of exposure. You would also be required to implement the contingency planning procedures of the referenced API publication when the identified standards are exceeded.

Section 3151.24 would require you to take specific actions to reduce ambient air concentrations of H_2S and sulphur dioxide if the specified thresholds for sustained ambient air concentrations are exceeded.

Subpart 3152—Site Security

This subpart would contain regulations on site security to provide for production accountability through sealing requirements, site security plans, facility diagrams, well and facility identification, recordkeeping and theft reporting.

Proposed regulation	Existing regulation	Existing orders
3152.10	3161.1(b)	Onshore Order Number 3 section I.B., I.C.
3152.20	3162.7–5(a) and (b) (1), (2), (4), and (5).	Order Number 3 section III.A.1 and 2.
3152.21		Order Number 3 section III.A.1.b and g; and Order Number 3 section III.A.2.a.
3152.30	3162.7–5(b) (2) and (3)	Order Number 3 section III.B. and D.
3152.40	3163	Order Number 3 section IV.
3152.50	3162.7–5	Order Number 3 section III.F. and H.
3152.51	3162.7–5(d)	Order Number 3 section III.I.
3152.52		
3152.60	3162.6.	
3152.70	3162.7–1(c) (1) through (4)	Order Number 4 section III.E.
3152.80	3162.7–5(b)(8)	Order Number 3 section III.E.

Site Security—General

Section 3152.10 would set site security standards for Federal and Indian oil and gas lease facilities and those facilities that store allocable production.

Storage and Sales Facilities—Seals

Section 3152.20 would contain a performance standard for when a particular valve is subject to seal requirements. The performance standard would describe the characteristics of valves you must seal. This differs from Order Number 3, which lists specific valves that are either subject to, or exempt from, sealing requirements. This standard should give operators the flexibility to take into account local conditions or practices that may affect the need to seal a valve. This section would eliminate the list in Order Number 3 section

III.A.1.c through f and section III.A.2.a., of specific valves that need to either be sealed, or are exempt from, seal requirements.

This section also establishes the standard for how to seal valves and how to seal sealable measurement system components. This part of the section does not change existing requirements.

Section 3152.21 would describe when you must seal the valves that meet the standards in section 3152.20.

Oil and Gas Meters

Section 3152.30 would state BLM's site security requirements for oil or gas metering systems. This section describes the characteristics of components of a Lease Automatic Custody Transfer (LACT) unit you must seal. This differs from the Order Number 3 approach of listing the specific components subject to sealing. This proposal would also require BLM approval for any bypass. We recognize that meters may be used in an operation for check purposes and not for determining royalty volumes.

Federal Seals

Section 3152.40 addresses how and when BLM would seal a valve that is in violation of these regulations. The proposed rule would not change BLM's current procedure on Federal seals.

Plans and Facility Diagrams

Section 3152.50 would state what you must include in your site security plan and would require you to follow your plan for Federal facilities. As with existing Order Number 3, you would not be required to send in your site security plan unless BLM requests it.

Sections 3152.51 and 3152.52 would address what you must include in your site facility diagram and for which facilities you must prepare a diagram. This section would except the requirement for a site facility diagram where a single tank is used for collecting small volumes of oil and condensate produced from a single well. In these circumstances, the design of the facility is so simple that a diagram is unnecessary. Also, the volumes these wells produce are low and the risk for significant royalty loss is minimal. The time frame for submitting the site facility diagram is covered in the general recordkeeping section 3103.10 of this proposed rule and is not repeated here.

Well and Facility Identification

Section 3152.60 would require you to identify wells and facilities with signs that show basic information. This is a change from existing requirements in that it would eliminate the detailed requirements of existing regulations and replace them with a standard. The standard for well and facility identification would require the sign to identify the wells and facilities so that anyone visiting the site will know the "who" (operator), "what" (lease or agreement number), and "where" (legal description) of the site.

Transporter Documentation

The section on transporter documentation contains requirements similar to existing requirements.

Theft

Section 3152.80 would address when and how you must report incidents of oil or condensate theft from your lease. BLM and the person reporting the theft would determine the level of detail needed to document the incident. Existing regulations require you to use a form to report a theft. This section would not.

Subpart 3153—Oil Measurement

This subpart on oil measurement would identify the types of measurement systems and procedures that must be used to accurately measure the quantity and quality of oil you produce.

Proposed regulation	Existing regulation	Existing order
3153.10	3162.7–2.	
3153.20		Order Number 4 section III.C.
3153.30		Order Number 4 section III.D.1 and 2.
3153.31		
3153.32		Order Number 4 section III.D.3.c.; and Proposed Order Number 4 section III.D.4.
3153.33		Order Number 4 section III.D.3.a(1) and (2); and Proposed Order Number 4 section III.D.3.a.(2).
3153.34		Order Number 4 section III.D.3.b.
3153.35		Order Number 4 section III.D.3.c(4) and section III.D.4 Proposed Order Number 4 section III.D.4.
3153.36		
3153.37		Order Number 4 section III.D.5.
3153.38		Order Number 4 section III.D.4.
3153.40		Order Number 3 section III.C.1.a and b.

Oil Measurement—General

Section 3153.10 would establish how you must measure oil produced from or allocated to a Federal or Indian lease. The proposed section requires oil to be measured by tank gauging, positive displacement metering system, or a method that you can demonstrate to BLM is equivalent in accuracy and accountability to tank gauging or a positive displacement metering system.

Tank Gauging

Section 3153.20 would contain a table that lists activities which affect volume and quality determinations if you use tank gauging to measure oil. For each of the listed activities, the table also lists the API standards and practices that you must follow to ensure proper oil measurement. API standards are equivalent to the minimum standards that presently exist in Order Number 4 for tank gauging.

Lease Automatic Custody Transfer (LACT)

Sections 3153.30 and 3153.31 would specify how you must install, operate, and maintain a LACT system to measure oil. The section identifies the API specifications and standards that would become the regulatory requirements for LACT systems. It also lists specific components that you must use in a LACT system, even though components are considered optional in the referenced API documents. You would not be required to retrofit LACT systems installed before the effective date of the rule to meet the requirements of the listed API references. Section 3153.31 would require that oil gravity, sediment, and water be determined in the same manner as you would for tank gauging. Incorporating the API publications by reference should be equivalent to the minimum standards that presently exist in Order Number 4 for LACT systems.

Sections 3153.32 through 3153.38 would specify: (1) how and when you must determine the composite meter factor for a LACT meter; (2) requirements for meter provers used to determine meter factors; (3) the acceptable tolerance for composite meter factors; (4) corrective action in the event of an out-of-range meter factor; (5) reporting requirements for LACT systems; and (6) how you must correct volumes if your meter factor changes between provings. These sections incorporate by reference the appropriate API references for proving a LACT. Accuracy and repeatability standards for prover meters, the meter proving process, and the LACT's meter factor are not specified in the referenced API documents. However, BLM believes these are important to volume accuracy. Therefore, the repeatability tolerances of existing Order Number 4 (five consecutive proving runs within 0.05 percent) and the tolerance for deviation of the composite meter factor (±0.0025 between provings) would continue to be required. The range for initial and repaired meter factors (0.9950 to 1.0050) presently in Order Number 4 has been deleted in the proposed rule. There is no evidence to support repair or replacement of a meter that does not fall within 0.9950 and 1.0050 upon installation as long as the repeatability and meter factor deviation requirements are met.

Section 3153.40 states how you would document the sale of oil from your production facility. To be consistent with API publications, the proposed section uses the term "measurement ticket" as a new standard term to refer to "run ticket" and "receipt and delivery ticket" which are terms customarily used in the oil industry to mean the same thing. This proposed section would apply to documentation of sale or removal of oil regardless of the measurement system you use.

Subpart 3154—Gas Measurement

The subpart on gas measurement would establish the performance standards for measurement systems used to measure and report Federal and Indian gas. This subpart would also include requirements on installation, operation, and maintenance requirements for orifice metering systems. Other areas covered in this subpart would include metering systems other than orifice meters, reportable volume corrections, and gas quality measurements.

Subpart 3154 would incorporate by reference certain API standards relating to gas measurement. These standards are recognized by both BLM and industry as sound operating practices and BLM believes the cited API standards are appropriate. However, BLM is specifically seeking comment on the applicability of such industry standards as they relate to the measurement, sampling, quality determination, and frequency of meter calibration for gas produced from or allocated to Federal and Indian lands. Please also comment on the point of measurement for reporting such production for royalty purposes.

Proposed regulation	Existing regulation	Existing order
3154.10	3162.7–3	
3154.20	—	Order Number 5 section III.C.1–3, and 6–11.
3154.21	—	Order Number 5 section III.C.21.
3154.30	—	Order Number 5 section III.C.5.
3154.31	—	Proposed Order Number 5, section III.D.11.
3154.32	—	Order Number 5, section III.C.12–16.
3154.33	—	Order Number 5, section III.C.17.
3154.40	—	Order Number 5, sections III.B. and III.C.1 and 6; and Proposed Order Number 5, section III.C.1, 2, and 6.
3154.50	—	Order Number 5, section III.D.
3154.60	—	Order Number 5, section III.C.19 and 20; and Proposed Order Number 5, section III.D.8.
3154.70	—	Order Number 5, section III.E.4.

Gas Measurement—General

Section 3154.10 would establish the standards that would apply to all measurement systems that are used to measure gas from Federal and Indian lands. Any measurement system meeting these standards could be installed and used without prior BLM approval. Currently, you are required to obtain BLM approval before using anything other than an orifice meter system. BLM believes that measurement systems that meet the standards of this section would accurately measure gas to ensure proper royalty payments. Measurement systems not meeting these standards must either be approved by BLM before they are used or be modified to meet the performance standards. This section also states the base temperature and pressure at which you must report gas volumes to MMS and references MMS reporting regulations for Federal and Indian gas. Finally, the section would list the acceptable methods to determine the volume of gas you use for beneficial purposes.

Orifice Meters—Primary Element

Section 3154.20 would identify the API standard that you must follow to install, operate, and maintain an orifice meter. This section would also supplement the API standard with additional requirements that BLM believes are essential to ensure your orifice meter measures accurately. The additional requirement that sets a 6-year meter tube inspection frequency is new and is based on recommended industry practice found in API Manual of Petroleum Measurement Standards, Chapter 20.1, "Allocation Measurement." This section would exclude the additional standards for meters measuring less than 100 Mcf since the cost of compliance for meters measuring lower volumes would likely exceed the value of any additional Federal or Indian royalty that might result. This section would also allow orifice meters installed before the effective date of the final rule to comply with an earlier API standard. This "grandfathering" of older orifice metering systems would apply for as long as the existing system is in operation or until the system is completely replaced, whichever comes first.

Section 3154.21 would require you to make volume determinations through your orifice meter using the flow equations found in the referenced API document. BLM currently requires you to use the same equations to measure gas volumes. However, we do not currently reference the API document containing those equations.

Orifice Meters—Secondary Element

Section 3154.30 would set the required tracking range for static and differential pressures on your chart recorder. This section would modify the existing requirement of Order Number 5, Section III.C.4, by increasing the allowable range for differential pressures from the upper 66.7 percent (i.e., 2/3rds) of the chart to the upper 80 percent. (In regards to inverted charts, where the zero position is at the outer limits of the chart, the accuracy of the differential element depends on the physical distance of the pen from "zero," regardless of the type of chart you use.) BLM concluded that expanding the tracking range would not significantly decrease overall meter accuracy because the required range would still be well above the minimum differential pressure range of a given meter. This change would better accommodate wells with declining production.

This section would apply only to meters measuring more than 100 Mcf of gas per day and would exempt meters where operating conditions such as erratic flow patterns preclude tracking in the required range. The latter exemption is not presently in Order Number 5 and was added as result of BLM's experience with variance requests for meters servicing wells with erratic flow patterns.

Section 3154.31 would establish additional requirements if your secondary element uses an electronic flow computer (EFC). EFC's are not addressed in existing Order Number 5 or other BLM regulations. However, this section implements current policy. EFC requirements would be no more stringent than those for chart recorders. The current static pressure, differential pressure, and temperature would have to be displayed on a continuous basis, and the EFC would be required to have a back-up power source capable of retaining collected data for a minimum of 35 calendar days. To meet the requirement to continuously display parameters, EFC's may have either a scrolling display or a toggle switch that allows the display to be activated.

Section 3154.32 would require you to calibrate your orifice meter by following the recommended API practices for on-site calibrations. Because it is not addressed in the referenced API standard, this section would retain the requirement of Order Number 5, section III.C.15, to test the linearity of differential and static pens at 100 percent of the element's range. This section would also require you to document calibrations of your meter.

Section 3154.33 would establish how frequently you must calibrate the secondary element of your orifice meter. Quarterly calibrations would be required only for orifice meters that measure more than an average of 100 Mcf or less per day on a monthly basis.

Orifice Meters—Low Volume Exemptions

Section 3154.40 requires orifice meters that measure an average of 100 Mcf or less per day on a monthly basis to comply with all the requirements of this subpart except for the listed items. We believe the cost for you to comply with these standards for low volume production could exceed the value of the gain in measured gas from the incremental increase in accuracy.

Some of the alternatives listed in this section are carryovers from Order Number 5. New alternatives include—

(1) Waiving the six-year inspection requirement for the meter tube. We believe that a six-year frequency of meter tube inspections for low volume meters is not needed to ensure accurate gas measurement;

(2) Allowing the use of a temperature that reasonably represents the average flowing temperature of the gas stream to calculate volumes. As long as you use a temperature that reasonably represents flowing gas temperature, you would no longer be required to submit a variance to BLM for approval to use something other than a continuous temperature recorder or an indicating thermometer, as you currently do under existing Order Number 5;

(3) Calibrating your meter at least annually rather than quarterly. BLM would pay particular attention to implementation of this exemption to ensure that less frequent calibration of low volume meters does not have an adverse impact on Federal and Indian royalty income; and

(4) Inspecting your orifice plate at least annually rather than semiannually. As with annual calibrations, BLM would monitor the impact of this requirement on measurement accuracy and royalty income.

Other Metering Systems

Section 3154.50 would deal with other metering systems and is substantially similar to existing regulatory requirements.

Volume Corrections

Section 3154.60 would deal with volume corrections and is substantially similar to existing regulatory requirements. However, the proposed rule would drop the existing requirement from Order Number 5 that volumes are to be corrected only if the volume error is more than 2 percent. This gives BLM and MMS the flexibility to require volume corrections when it is in the public interest.

Gas Quality Measurements

Section 3154.70 would require you to determine the quality of the gas you produce at least annually, or more frequently, if BLM requires it. This section would also identify—

(1) Where you must collect your sample;

(2) The industry standard you must follow to collect and handle samples; and

(3) How you must determine the specific gravity and heating value of the gas sample.

This section would cite API standards for collecting and handling natural gas samples and would specify where samples are to be collected. Existing regulations do not address this issue. Implementing this section would ensure that sample collections are uniform in determining the quality and liquid content of the gas.

Subpart 3155—Produced Water Disposal

This subpart would require you to obtain BLM approval before you dispose of produced water. These sections would also require certain construction and operating practices to ensure proper disposal of produced water from Federal and Indian lands.

Proposed regulation	Existing regulation	Onshore order
3155.10	3162.5–1(b) 3162.5–3	Order Number 7, III.A., III.B.2.
3155.11 and 3155.12		Order Number 7, I.C. and requirement 1 of III.F.
3155.13		Order Number 7, III.A., III.B.1., III.B.2., III.C. and III.G.
3155.14		Order Number 7, III.B.1, III.B.2, III.C., III.B.1.a., III.B.1.b., III.B.2a, and III.B.2.b.

Proposed regulation	Existing regulation	Onshore order
3155.15 and 3155.16		Order Number 7, II.D.1., III.D.2, III.E. and requirements 4 through 9 of III.F.
3155.17		Order Number 7, requirement 11 of III.F.
3155.18		Order Number 7, III.G.1.F.
3155.19		Order Number 7, Part III.A.

Section 3155.10 would describe the reasons you must have BLM approval to dispose of produced water from a Federal or Indian well, or from a communitized or unitized private or State well for disposal into a Federal disposal facility within the same communitized or unitized area.

Sections 3155.11 and 3155.12 would describe when you need BLM approval to dispose of produced water. This proposal would add two instances to those in existing regulations that would not require BLM approval for disposal of produced water. Under this proposal, BLM would not require approval for the disposal of produced water if simultaneous injection or disposal of produced water into the same formation occurs in a producing well. This section would also eliminate the need for BLM approval for disposal of produced water if it is injected into an approved disposal well on the same Federal or Indian lease.

Section 3155.13 would describe the type of water disposal BLM allows. This section includes the requirements from III.A., Order Number 7, that lists how you must dispose of produced water from Federal and Indian leases. This section would include additional examples of disposal methods not in Order Number 7. We included these examples to show other methods available to dispose of produced water that could ultimately provide water for beneficial uses.

Section 3155.14 would describe the forms or permits you must submit to construct and operate disposal facilities, and to obtain approval for disposing of produced water. It also cites those regulations you must follow that dictate the type of information that you must submit with these forms. This section would list the BLM forms required under different surface ownership, lease status, and disposal methods.

This section would require you to submit a Sundry Notice, Form 3160–5, or other acceptable filing instrument (letter) for water disposal, unless you are drilling a Federal or Indian injection or disposal well on-lease as part of your produced water disposal plan.

In addition to BLM approval, you must have an Underground Injection Control (UIC) permit issued by the EPA, State, or Indian Tribe, according to 40 CFR parts 144 and 146, before drilling an injection well or converting an existing well to an injection well. The EPA, State or Indian Tribe also require permitting for National Pollution Discharge Elimination System permit (NPDES) facilities and the State or Indian Tribe may require permitting for constructing and operating an earthen pit. This section would provide the option to either submit a copy of these permits from other agencies to BLM, or include a reference to the location and permit name or number to BLM.

The proposed rule would also allow you to submit to BLM the same information you use to obtain a UIC permit, earthen pit or NPDES permit, if you are planning to construct or convert a Federal or Indian facility into a water disposal facility.

This section includes the conditions that would require a BLM right-of-way (R/W) or similar permit from other agencies, individuals, or Indian tribes for constructing or operating disposal facilities, roads, and pipelines. It also provides a reference to BLM's R/W regulations.

This section would require that your Sundry Notice for disposal of produced water include plans for construction of roads or pipelines on-lease if they are part of your overall disposal plan.

Sections 3155.15 and 3155.16 would describe the requirements you must follow to dispose of produced water into lined and unlined pits. These sections would incorporate the requirements of parts III.D.1. and 2., III.E., and requirements 4 through 9 of III.F. of Order Number 7. These sections would replace the extensive list of requirements found in Order Number 7 with performance standards. The performance standards would provide the flexibility to deal with different ecological and geographical conditions, changing technology, specific proposals, and local knowledge about specific design measures that are best suited to local conditions.

Order Number 7 requires you to submit a water quality analysis that tests specific parameters and also provides exceptions from this requirement. The proposed rule would allow the same water quality submittal exceptions found in Order Number 7, but the specific requirements would be changed. This proposal would require that you provide the information on the "quality of the produced water" with your application for disposal of produced water into a pit. BLM has determined that flexibility is needed to require testing when necessary, but only for parameters that are unknown and needed to process an application for the disposal of produced water.

This section would eliminate the detailed construction and design provisions in Order Number 7. The detailed provisions in Order Number 7 would be replaced with standards that would allow you to design and obtain permits for facilities without time consuming variance requests.

Section 3155.17 would require you to submit to BLM an amended proposal to dispose of produced water if the quantity or quality of produced water changes.

Section 3155.18 would describe what you must submit to BLM to surface discharge produced water under a NPDES. This section would incorporate the requirements of Order Number 7, III.G.1.F, with the following change: This section would require you to submit information you use to obtain an NPDES permit, if BLM requested it. This provision would streamline the permitting process in situations where existing applications for other agency permits already include information required by this section (water quality analysis, description of site facilities or surface use plans).

Section 3155.19 would explain that BLM would terminate your water disposal permit if the EPA, State, or Indian tribe cancels or suspends your disposal facility permit. This would require you to propose another disposal method to BLM.

Subpart 3156—Spills and Accidents

This subpart would require you to report spills and accidents to BLM. The term, "Spills and Accidents" would be used instead of the currently used term, "Undesirable Events."

BLM determines if hydrocarbons are avoidably or unavoidably lost even though oil and gas lessees must report this information to MMS (30 CFR, part 216, subpart B). Existing NTL–3A and this proposal do not require you to file reports with BLM of spills or discharges in nonsensitive areas involving less than 10 barrels of liquid or 50 Mcf of gas. BLM is able to monitor spills involving less than 10 barrels of oil by tracking MMS required reports. We still would require that you report spills on all volumes of more than 10 barrels of liquid or more than 50 Mcf of gas lost. These larger losses are cases that could involve avoidably lost hydrocarbons and BLM will continue to make avoidable and unavoidable determinations to ensure production accountability.

Proposed regulation	Existing regulation	Onshore order or notice to lessees
3156.10	3162.5–1(c)	
3156.11		NTL–3A section I; and Order Number 7, III.H.
3156.12		NTL–3A section II., Section III.; and Order Number 7, III.H.
3156.13		NTL–3A section II., section IV.; and Order Number 7, III.A.3
3156.14		NTL–3A section II.

Section 3156.10 would describe the actions you must take after an accident or spill that involves Federal or Indian oil or gas. These actions include corrective measures to mitigate the spill or accident, reporting to BLM the spill or accident, and BLM's approval and monitoring of your reclamation and remediation plans.

Section 3156.11 would describe the type of spills and accidents that you must report to BLM within 24 hours of an event. In addition, this section would implement several changes to the current requirements.

The proposal would require you to report the release of hazardous substances. Reporting this information to BLM would not relieve you of any other reporting required by any State or other Federal regulations.

This proposal would eliminate the existing exception to 24 hour reporting of spills of 100 barrels of liquids or more if they are contained within the firewall. This quantity of oil or water in a confined area could migrate deeper than a spill in an unconfined area and affect shallow groundwater. In addition, a confined spill would more likely attract birds and wildlife. BLM believes it is necessary to report these types of spills within 24 hours to minimize contamination and threats to wildlife.

Existing NTL–3A states that these types of spills or accidents should be reported immediately and also states that reports must be furnished, "as soon as practical, but within a maximum of 24 hours." This section would require reports within 24 hours of the event. This proposal would change the deadline for reporting major and life threatening injuries. Existing NTL–3A requires reporting for these types of injuries within 15 days of the event. BLM believes that a major or life threatening injury is important information and should be reported within 24 hours.

Section 3156.12 would describe the type of spills and accidents that you are not required to report within 24 hours of an event and when you would be required to submit initial written reports.

This section would not include an existing requirement to submit two copies of a written report within 15 days following all spills and accidents. Instead, this section would require a written report within 10 business days after a spill or accident occurs for specific events listed, and all events that require you to notify BLM within 24 hours.

Section 3156.13 would describe what you must include in written and oral reports. These standards would contain more guidelines than NTL–3A and would require information that is directly related to the purpose of requiring reports of spills and accidents. This would help BLM determine if loss of oil or gas is avoidable or unavoidable, if sites need to be inspected, if an approval is needed for spill remediation or reclamation, and if corrective orders or contingency plans are needed to address future events.

Section 3156.14 would describe when you must submit more than one written report of a spill or accident to BLM. Under existing regulations intermediate reports are required when BLM requests them. This proposal would require intermediate reports to allow BLM to more effectively monitor spill clean up.

Subpart 3159—Well Abandonment

This subpart would incorporate requirements from existing regulations and some proposals from proposed regulations. Proposed and existing regulations on well abandonment require you to submit a plan to BLM for approval before a well is temporarily abandoned for more than 30 calendar days and before a well is permanently abandoned. This subpart also explains how to obtain BLM approval for abandonment and sets the performance standards that you must meet when you plug a well. This subpart generally contains existing requirements with a few exceptions.

Proposed section	Existing regulation	Existing orders
3159.10	3162.3–4(c)	Proposed Order Number 8 section III.C.1. and 2.
3159.11		
3159.20	3162.3–4(a)	
3159.21	3162.3–4(a)	Order Number 2 section III.G.
3159.22		Proposed Order Number 8 section III.D and Order Number 2 section III.G.
3159.23		Proposed Order Number 8 section III.D and Order Number 2 section III.G.
3159.24	3162.3–4(b)	
3159.25	3162.3–4	Proposed Order Number 8 section III.D.3.b.
3159.26	3161.2	Proposed Order Number 8 section III.D.1.

Temporary Abandonment

Section 3159.11 would set out the basic performance goals for temporary abandonment operations. This section would implement existing policy that you temporarily abandon a well so that it does not prevent proper permanent abandonment, the well bore is secured

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to prevent fluid migration and the wellhead is secure at the surface.

Permanent Abandonment

Section 3159.20 would identify when you must permanently plug and abandon a well. This section also allows you to delay the permanent abandonment of your well if BLM approves it. Each approved delay may be for up to 12 months. BLM is concerned with the liability associated with temporarily abandoned wells, and therefore this proposal would impose additional bonding as a condition of approval (see sections 3107.54 and 3107.55).

Section 3159.21 would describe how to obtain BLM approval to permanently abandon a well. It would require you to submit a "Notice of Intent to Abandon" along with information on abandonment and reclamation procedures. This section would allow BLM to issue oral approvals for permanent abandonment for newly drilled dry holes, drilling failures, and in emergency situations, provided you submit a written application within five business days of BLM's oral approval. This section also explains that the FS has the authority to approve plans to reclaim the surface on lands it manages.

Section 3159.22 would set standards and incorporate by reference the minimum standards from the API's Bulletin E3 for well abandonment practices. Permanent abandonment is the final opportunity to ensure proper protection of surface and down hole resources. As such, this section would not institute a performance-based approach and it would retain the details of existing abandonment regulations.

Section 3159.26 would require you to submit a "Subsequent Report of Abandonment" (SRA) on Form 3160–5, within 30 calendar days after you complete permanent well plugging operations, including any changes that BLM approved orally. This section would also allow you to eliminate the additional notification if the SRA contains the estimated timetable for completing recontouring and reclamation procedures. If you chose not to submit the timetable for recontouring and reclamation, a "Final Abandonment Notice" (FAN), Form 3160–5, would be required to notify BLM that the site is ready for final inspection. BLM would approve the SRA or FAN after it determines that you have complied with all conditions of your abandonment and that vegetation has been established to the satisfaction of BLM or the surface management agency.

Part 3160—Oil and Gas Inspection and Enforcement

Subpart 3161—Inspections

This subpart would explain the general purposes of BLM's inspection of lease operations. The proposal would require you to allow authorized inspectors to conduct inspections of your operations. These regulations would implement provisions of FOGRMA that allow inspection of motor vehicles that transport Federal and Indian oil. This subpart contains existing regulatory requirements.

Proposed section	Existing regulations
3161.10	3161.2
3161.11	3162.1(b) and (c).
3161.12	3162.7–1(c)(3) and (4).

Subpart 3162—Enforcement

This subpart would explain the enforcement actions BLM will take after we discover a violation. Enforcement actions include notifying you of violations in writing and providing a reasonable time to correct violations. Also, if necessary to gain compliance, BLM may order you to shut down your operations. This subpart contains existing regulatory requirements.

Proposed section	Existing regulation
3162.10	3163.1(a).
3162.11	3165.3(a).
3162.12	3163.1(a)(3).

Subpart 3163—Assessments

Under this subpart, BLM would charge you a monetary assessment if you fail to correct a violation within the time set out in BLM's notice. This subpart would also include provisions for immediate assessments for certain serious violations. Under this proposal BLM would also be able to enter your lease to correct violations at your expense and would charge you for actual loss or damage due to your noncompliance. This subpart would contain existing regulatory requirements with some exceptions.

Proposed section	Existing regulation
3163.10	3163.1(a)(1) and (2).
3163.11	3163.1(b)(1), (2), and (3).
3163.12	3163.1(e).
3163.13	3163.1(a)(4).
3163.14	3163.1(a)(6).

Section 3163.10 would allow BLM to assess a monetary assessment up to $250 per day for each day a violation continues beyond the abatement period. This section states that you will also be liable for civil penalties under proposed subpart 3164.

This section would eliminate existing regulatory provisions which classify violations into "major" and "minor" categories and the corresponding assessment amounts of $500 per day for major violations and a one-time $250 for minor violations. This section would also eliminate existing provisions which cap assessments for major violations at $1,000 per day per lease and minor violations at $500 per lease per inspection. There would be no caps on either the amount of assessments per day per lease or the total assessment amount that could accumulate per violation.

Section 3163.11 would contain a table that lists serious violations and a corresponding assessment amount BLM would charge you immediately when the violation is discovered. The table was compiled from the specific violations listed in existing 43 CFR 3163.1(b) (1) through (3) and adds new violations subject to immediate assessments for—

1. Conducting surface disturbance without an approved BLM permit for a Federal or Indian well, regardless of surface ownership. This would deter operators from building access roads and locations or disturbing the surface without BLM approval. This section would also add an assessment for surface disturbance on surface managed by another Federal agency or on State or privately owned surface;
2. Repeat Offenders. The "repeat offender" violation would be added in response to problem operators who, after BLM notifies them of a violation, continue to repeat that violation. This section is aimed at repeat offenders who correct a violation within the time BLM gives them to correct it, thus avoiding an assessment. However, the operator often repeats the violation and corrects it only when they are notified again by BLM of a new violation. Operators engaging in this activity often repeat a violation many times. This pattern of compliance results in excessive and unnecessary administrative cost to BLM. The proposed assessment of $500 would be to deter those repeat violators who comply just enough to avoid assessment. The repeat offender assessment would be triggered when BLM cites you for the same type of violation four times on the same lease within a 12-month period;
3. Commingling production without BLM approval from different formations, leases, communitized areas,

units, or unit participating areas. This violation would be added because commingling without approval is a serious impediment to BLM's ability to ensure production accountability; and

4. Failure to notify BLM of H_2S concentrations as required by these proposed regulations. This violation would be added because of the serious health and safety risks hydrogen sulfide poses to both the general public and BLM inspection personnel.

In addition to expanding the list of violations that will earn an immediate assessment, BLM proposes to charge an increased, one-time assessment for any violation on the list. This would simplify the approach in current regulations which applies an assessment amount per violation per day up to a maximum amount per incident. The size of the proposed one-time assessment is set at an amount BLM believes is necessary to emphasize the seriousness of the listed violations. BLM may charge up to the proposed amounts to deal with specific circumstances.

Section 3163.12 would allow BLM to reduce or waive an assessment that you receive. You must provide your reasons in writing why BLM should reduce or waive the assessment within 30 calendar days after you receive your notice of assessment.

Section 3163.13 would authorize BLM to occupy your lease to perform necessary work to correct a violation, at your risk and expense, whenever you fail to perform the work BLM directed you to perform. If BLM performs the work to correct a violation, you would be charged for the actual cost to perform the work plus an additional 25 percent for administrative costs. This is not a change from current requirements.

Section 3163.14 would allow BLM to charge you for any loss or damage to Federal resources that result from your noncompliance. This is not a change from current requirements.

Subpart 3164—Civil Penalties

Under this subpart, you would be subject to civil penalties for violations of any statute, regulation, order, notice to lessee, lease, or permit relating to your obligations under this part. This subpart would describe the amounts of civil penalties, when you become liable for civil penalties, and notices you will receive from BLM. There are provisions for BLM to charge you immediate civil penalties for certain serious violations. BLM would also initiate cancellation of your lease if the noncompliance continues.

Proposed section	Existing regulation
3164.10	3163.2(a) and (b).
3164.11	
3164.12	3163.2 (a) and (b).
3164.13	3163.2(d) through (f).
3164.14	3163.1(a)(5) and 3163.2(k).
3164.15	3163.2(h).
3164.16	3165.3(c) and 3165.4(b)(2).
3164.17	3165(e)(2)
3164.18	3165.4(b)(1).
3164.19	3165.4(f).
3164.20	3163.4 and 3163.5(a) and (b).
3164.21	
3164.22	3163.2(a). (b), and (i).
3164.30	3163.3.

Section 3164.10 would explain that BLM may assess civil penalties under FOGRMA, as provided in existing regulations.

Section 3164.11 would describe when BLM will assess civil penalties and would explain the requirements for service of Notices of Incidents of Noncompliance (INC). These requirements are similar to existing regulations.

Section 3164.12 would explain the actions you must take after receiving an INC for civil penalties. If you receive an INC for civil penalties, you must correct the violation within 20 calendar days or you are liable for a penalty of up to $500 per day per violation for each day the violation continues beyond the date you received the INC.

If you did not correct the violation within 40 calendar days of the initial INC, you would be liable for up to $5,000 per violation for each day the violation continues beyond the date you received the INC.

This section would also explain that you would be able to request a hearing on the record on the INC if you did not correct the violation within 20 calendar days of your receiving the INC. Of course, you are risking an assessment of penalties if you do not correct the violations. If you did correct the violation within 20 calendar days of receiving the INC to avoid a penalty assessment, you would not have the option of requesting a "hearing on the record." However, you would be able to appeal the INC under the appeals provisions of this part if you thought BLM issued the INC erroneously.

Section 3164.13 would explain that BLM would issue INC's for serious violations. This section lists several serious violations that are set out in FOGRMA and lists their corresponding penalty amounts (see 30 U.S.C. 1719). Existing regulations cap the maximum total penalty amount per violation. However, this proposal would not dictate, nor does FOGRMA impose, a cap on the total civil penalty amount.

Section 3164.14 would explain the action BLM would take if you do not correct a violation listed in section 3164.13. The actions BLM could take would include lease cancellation for the violations listed in sections (b) through (f) of section 3164.13. These requirements are similar to existing regulations.

Section 3164.15 would explain that you may request BLM to waive or reduce civil penalties within 30 calendar days after you receive notice of the proposed civil penalty. These requirements are similar to existing regulations.

Section 3164.16 would explain that you may request a hearing on the record for serious violations within 20 calendar days of receiving the INC. Existing regulations are similar to this provision.

Section 3164.17 would explain that penalties accrue each day until you correct the violation. Under this proposal, BLM may suspend the requirement that you correct the violations pending completion of the hearings provided for in this subpart. Existing procedure and regulations are similar to this proposal.

Section 3164.18 would explain that you may appeal a decision of the Administrative Law Judge to the Interior Board of Land Appeals. This is the same as existing regulations.

Section 3164.19 would explain that you may appeal a final order to the U.S. District Court with jurisdiction over the lands where the violation took place. This is the same as existing regulations.

Payment of Assessments and Civil Penalties

Section 3164.20 would require you to pay assessments within 30 calendar days after BLM gives you written notice and civil penalties within 30 calendar days after either a final BLM decision or a final order of a court or other legal body. This section would also provide for any civil penalties you pay to be deducted from any monies the United States owes you.

Section 3164.21 would state that BLM would charge you interest on assessment amounts that you have not paid or underpaid.

Section 3164.22 would allow BLM to deduct any assessments you have paid from any civil penalties you are required to pay under this subpart. Assessments and penalties charged to you under this part would be in addition to any assessment or penalty you are charged for your noncompliance under other provisions of law.

Section 3164.30 would inform you that you may be liable for both civil and criminal penalties for violating these regulations. This is not a change from existing regulations.

IV. Procedural Matters

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, BLM has determined that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866. BLM has determined that the rule does not meet any of the criteria for a significant regulatory action, as discussed below and in the Economic Analysis.

a. The proposed rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. An economic analysis has been completed and is attached (see Economic Analysis).

b. This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the oil and gas program with other agencies' actions. These relationships are all encompassed in agreements and memorandums of understanding that will not change with this proposed rule.

c. This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. However, this rule proposes to add a fair market value user fee (FMV) for the use of the public lands for geophysical exploration for each Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA) requires that "the United States receive the FMV for the use of the public land and its resources unless otherwise provided for by statute." In addition, a May 1992 audit report by the U.S. Department of the Interior, Office of Inspector General (OIG), recommended that BLM establish and implement procedures to charge FMV for geophysical exploration. In order to comply with the requirements of FLPMA and the OIG recommendation, we propose to adopt a FMV for geophysical exploration. The FMV would be based on the size of the area physically affected by each individual geophysical exploration project. You would not be required to pay the FMV for a geophysical exploration project, or a portion of a project, that is conducted under a Federal oil and gas lease. BLM will determine the amount of the user fee in a future action.

d. This rule will not raise novel legal or policy issues. Some of the proposed rules may be controversial (bonding increases, agreement rules, immediate assessments, and automatic assessments for repeated noncompliance), but they are not novel. Some have been tried in the past and others have been used by some States.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

For the purposes of this section a "small entity" is considered to be an individual, limited partnership, or small company, considered to be at "arm's length" from the control of any parent companies, with fewer than 500 employees or less than $5 million in revenue. Mid-sized and large corporations and partnerships under their direct control have access to lines of credit and internal corporate cash flows that are not available to the "small entity." Many of the operators we work with in the oil and gas program would be considered small entities.

The only proposed change that may have the potential to affect a significant number of small entities is the increased bonding requirements. As discussed in the Economic Analysis, the costs would be negligible. The two basic changes in bonding are increases in minimum State and lease bonds, and specific fees and bond increases for shut-in and temporarily abandoned wells. Lease and well specific bonding increases are already authorized by the existing regulations. The proposed rule better enables BLM and the operator to predict what these costs will be when the operator is planning future actions. The additional bond requirements would provide an incentive to these operators to acquire the additional resources or sell their wells to other operators that can meet the obligations before BLM notifies the operator that his bond requirements have increased. Operators consider reductions of uncertainty to be a major benefit. Another benefit for many small entities is that operators with low liabilities could qualify for a bond reduction.

While the increased minimum State and lease bonding may affect a large number of small entities, at an average of $43 per well per year, the impact on each entity will be small (see Economic Analysis). For example, for a stripper oil well producing only five barrels per day at a profit of $2 per barrel, the additional bonding cost would be covered by the profit from three weeks of production. Thus, there would not be a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more, as demonstrated in the Economic Analysis.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The increase in bonding requirements will be offset by a reduction in orphan wells, thereby reducing the costs to the public of reclaiming those wells. The amount of the proposed FMV user fee for geophysical exploration is not known at this time. The amount will be determined in a separate action and the estimated economic impact will be discussed at that time. BLM plans to determine the FMV fee before the final rule is published and the economic impacts will be discussed in the final rule.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The shift to performance standards in the operating regulations should increase innovation and productivity and thereby increase the ability of the domestic oil and gas industry to compete in the global marketplace.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This proposed rule does not change the relationship of between BLM's oil and gas program and small governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act (see Economic Analysis).

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The proposed rule would not take away or restrict an operator's right to develop an oil and gas lease in accordance with the lease terms.

Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required. The proposed rule does not change the role or responsibilities among Federal, State, and local governmental entities. The rule does not relate to the structure and role of States and will not have direct, substantive, or significant effects on States.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM drafted this rule in "Plain-English" to provide clear standards and to ensure that the rule is clearly written. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the rule drafting process for the same reasons.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA), and has made a tentative finding that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). BLM anticipates making a Finding of No Significant Impact for the final rule in accordance with BLM's procedures under NEPA. BLM has placed the EA on file in BLM Administrative Record at the address specified previously (see **ADDRESSES**). BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts prior to promulgation of the final rule.

The proposed action would have no major impact on the human environment, either positive or negative. The revised regulations may provide some environmental benefits.

The proposed action would cause some impacts on the environment, although most of the requirements in the proposed action would cause no changes to the environment. Most of the proposed changes would not differ substantially from the existing regulations, such as the portions which are being written in plain English, or the plan to remove unnecessary procedural requirements and actions which need approval from BLM. For example, the proposal would exempt operators of Federal oil wells that produce less than 10 Mcf/day from having to obtain approval to vent or flare gas. This provision includes a performance standard that would in effect negate this exemption if the gas is economic to capture or if it cannot be vented or flared safely and according to applicable laws and regulations. The environmental impact of this provision is identical to the no action alternative because BLM almost always approves venting or flaring applications for these small gas volumes and the only reason an application would not be approved under the existing regulations would be if BLM determines that the gas is economic to capture. BLM would retain the authority to issue an order to capture gas under the provisions of the proposed action.

Under current regulations, an operator that follows all of the terms of a given regulation, theoretically, could be in compliance regardless of whether their operations meet the overriding objectives of BLM's management of the oil and gas program. By contrast, with performance standards the focus would shift from describing specific actions that dictate how operations must be conducted, to the regulation's desired outcome or goal. This goal-oriented approach would better protect the public interest and the environment because operators would be held to a sensible, stated regulatory standard. This type of regulation would also provide oil and gas operators the flexibility they seek to determine how a stated objective could be achieved, depending on specific proposals, local conditions, the operating environment and changing technology.

The substantive changes contained in this rule do not directly pertain to environmental protection measures or BLM's responsibility to comply with existing environmental laws and regulation. However, they are more likely to enhance BLM's role as a steward of the public lands than undermine it. In addition, the proposed action would only include performance standards if they would not jeopardize BLM's ability to fulfill its responsibility to protect public health and safety and the environment. Therefore, BLM's use of performance standards, to the extent that they depart from the existing system, would not have an impact on the environment.

Changing many of the minimum standards contained in the onshore orders to references to the API standards would have no impact on the environment. Incorporating industry standards by reference does not represent a profound change, because the onshore orders currently paraphrase many of these same standards. Incorporating the standards by reference directly into the regulations simplifies how the standards are organized. Since the same standards would be used, this should not result in any impacts to the environment.

BLM's proposal to limit competitive and noncompetitive lease acreage to 2,560 acres outside Alaska and 5,760 acres in Alaska should not impact the environment. This measure would lower the acreage limit for noncompetitive leases to make it consistent with competitive leasing. The remainder of changes to the leasing regulations, with the exception of the changes to bond provisions, affect only administrative activities and would not impact the environment.

Other substantive changes would more likely result in a positive benefit to the environment, although the extent of any benefits is presently too speculative to assess. For example, raising the bonds required would not only increase an operator's incentive to prevent adverse environmental impacts, but would also provide BLM a source of funds to clean up or correct any negative impacts caused by oil and gas operations. This would reduce the BLM's and the public's exposure to future liabilities associated with plugging wells and reclaiming well sites. Raising the dollar amounts and expanding the number of types of penalties for noncompliance and removing assessment and civil penalty caps would offer additional incentives for operators to meet all environmental standards.

These and the impacts discussed in the economic analysis are the only foreseeable impacts of the proposed action. BLM recognizes that slight changes to complex regulatory schemes can have unintended downstream effects. However, whether such "ripples" would themselves lead to environmental impacts is something that cannot be meaningfully assessed at this time. Furthermore, because the program consists of leasing Federal land and permitting resource development of

Federal and Indian oil and gas, the individual actions taken under this program are themselves subject to further NEPA analysis. When actions are proposed under the oil and gas leasing and operations program, BLM will prepare all required NEPA documents.

Because the proposed action would not substantially change BLM's overall management objectives or environmental compliance requirements, the proposed rule would have no impact, or will only marginally benefit, the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H–1790–1): air quality, areas of critical environmental concern, cultural resources, Native American religion concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and scenic rivers, environmental justice and wilderness.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have identified potential effects on Indian trust resources and they are not yet addressed in this rule. BLM has consulted with the Bureau of Indian Affairs in the process of this rulemaking and plans to consult with affected tribes prior to final rulemaking. Furthermore, BLM will consider tribal views in the final rulemaking. Accordingly:

a. We have not yet consulted with the affected tribe(s).

b. We have not yet treated and consulted with tribes on a government-to-government basis. However, we plan to before final rulemaking and the consultations will be open and candid so that the affected tribe(s) could fully evaluate the potential impact of the rule on trust resources.

c. We will fully consider tribal views in the final rulemaking.

d. We have consulted with the appropriate bureaus and offices of the Department about the potential effects of this rule on Indian tribes. We have consulted with the Bureau of Indian Affairs and the Division of Indian Affairs, Office of the Solicitor.

Economic Analysis

These regulations would increase the amount of lease and statewide performance bonds. Presently, operations are covered by lease, statewide, or nationwide bonds with some collective bonds on units. The increased bond requirements will take effect in two years. The rule clarifies BLM's authority to increase the required bonding level for existing bonds where an operator has been delinquent in meeting his obligations to the government or where the potential costs of plugging and reclaiming the site exceed the bonds covering those operations. Increasing the penalties for noncompliance is also proposed. Both of these proposals will have minimal effects on the economy or the costs of producing oil and gas on Federal lands. The primary impact will be to avoid potential problems by:

- Increasing the probability that operators have sufficient financial capability to meet their lease obligations (i.e., if the operator can meet the higher bonding requirement, then he is more likely to have the financial means to meet his other operational requirements),
- Provide a greater incentive to the operator to properly reclaim his lease so that he can recover his bond collateral, and
- Increase the funds available to the land owner/manager if the operator defaults on his obligations.

Small operators with only a few shallow wells, where the reclamation cost is much less than the standard bond coverage, would be able to apply for a reduction in the required bond coverage. The operator must demonstrate that the costs would be less than the bond coverage in order to receive approval for a reduction in the bond requirement. The impact of this change would be to help small operators by relieving them of unnecessary bond requirements.

The purchase of manuals describing the industry standards referenced in the regulations is another cost to operators and lessees, but it is not expected to be a significant cost.

There would be no discernible economic impact on prospective and existing operations due to compliance with the standards found in this proposed rulemaking. In most cases, the cost of complying with the standards would be indistinguishable from those in the existing regulations. The use of performance standards and published industry standards in many places in these proposed rules may even reduce the cost of compliance in some cases. Overall, however, these benefits will be local in nature and be almost indistinguishable from the existing regulations.

The benefits attributable to these rules are not predictable in the usual strict benefit-cost analysis sense. Discernible changes in the ease of using and understanding the proposed regulations, as well as the elimination of duplication and confusion, will certainly benefit lessees, operators and the BLM. The reduction in the length and number of the existing regulations will also have some benefit. How much of a benefit these changes will actually have is not quantifiable.

The overall effect of the proposed rule will not create an adverse effect upon the ability of the oil and gas industry to compete in the world marketplace, nor will the proposal adversely affect investment or employment factors locally.

Discussion of Potential Impacts

Referencing Published Industry Standards

The most obvious impact associated with this change would be the cost of acquiring the publications that the rule would incorporate by reference. This cost would be borne by both industry and BLM. The total cost to acquire all 26 API publications referenced in the proposed rule would be less than $1,500. A typical operator on a Federal lease would not need to acquire all 26 referenced publications, but only those publications that they do not already have and that directly apply to the particular activities that it conducts. We anticipate that many smaller producers would not purchase any referenced publications at all and depend on other sources to inform them of required industry standards. All BLM field offices with oil and gas responsibilities will have copies of the API publications available for review. For evaluation purposes, we will assume the average operator will spend $300 on referenced publications.

BLM's Automated Inspection Records System (AIRS) data base lists 6,610 operators on Federal leases/agreements. This total overstates the actual number of operators due to differences in how one operator's name may be entered in the database (i.e., XYZ, Inc. and XYZ, Incorporated are counted as two different operators). Alternately, larger producers operating across multiple BLM inspection offices may acquire multiple sets of the API publications. For simplicity sake, the operator total from AIRS will be used without adjustment, making the projected cost to industry to acquire referenced documents to be $1,983,000 (i.e., 6610 operators @ $300/operator).

We will also assume that the 38 BLM offices (combined total of field and state offices) with responsibilities for oil and gas operations would need to acquire a complete set of the publications referenced in the proposed rule. Many BLM offices already have a majority of the API publications as in-house reference documents. Again, for simplicity's sake we will assume the entire suite of publications would be acquired by each of the 38 BLM offices for a projected cost to the Federal Government of approximately $57,000.

BLM believes that the initial cost to industry in acquiring the API publications would be offset by the long term intangible benefits associated with incorporating API standards and practices into regulation. These intangible benefits are the value of consistency, clarity, and flexibility derived from citing widely accepted industry standards rather than the present approach of regulations that are intended to interpret those same standards. In general, adoption of industry standards results in efficiency gains by operators performing activities consistently. This same simplification will likely result in lower supply costs in the long term. Consequently, BLM believes that referencing published industry standards in regulation will have a net positive impact on industry. There are also benefits to BLM from greater compliance by industry. More consistency and compliance by industry reduces the costs of inspection and enforcement. These reduced costs would help offset the costs that BLM would incur by acquiring API publications since greater compliance by operators equates to less administrative cost to BLM.

Reduce Paperwork for Communitization Agreements

Industry contacts estimate the cost to prepare and submit a proposal to communitize Federal minerals costs an average of $1,000 per application. BLM estimates that it expends about 20 hours to process each application at a cost of $460. In fiscal year (FY) 95, BLM received 166 applications to communitize with a projected cost to industry of $166,000 and a projected cost to BLM of $92,000. The proposed rule would reduce the amount of paperwork that industry has to submit to BLM in order to communitize Federal mineral interests. Less paperwork would reduce the administrative costs both for industry and for BLM.

Simplify Procedure to Determine Average Daily Production per Well for Variable Royalty Rate Leases

For variable royalty rate leases, the average daily production per well determines what royalty rate to apply to production. Preliminary calculations using the proposed method to determine average daily production per well show it to be royalty "neutral", that is, it should not result in any more or any less royalty being paid to the United States. Hence, the only impact associated with the proposed change would be in administrative costs associated with using the proposed method versus the existing method. Although we do not have any specific estimates of how many work-hours are expended to determine the average daily production per well under either method, the proposed method, without question, would involve less time than the existing method. Less time translates to less labor costs. Reduced labor cost is a positive impact. In addition, simpler procedures are less likely to result in different interpretations. Thus, the time and effort involved in resolving disputes over interpretation of the regulations will be reduced. Both industry and BLM would benefit from the savings in labor costs.

Regulatory Exemptions for Meters Measuring 100 Mcfgpd or Less

Under the proposed rule, operators of metering facilities that are measuring 100 thousand cubic feet of gas per day (Mcfgpd) or less would not be required to:

- Perform an inspection of the meter tube every six years;
- Install a continuous temperature recorder to record flowing gas temperature;
- Calibrate the meter on a quarterly basis;
- Have the meter's static pen track within specific areas of a gas chart; or
- Maintain an overall meter uncertainty within ±3 percent if the meter uses an electronic flow computer.

The exemptions should have a positive impact on industry by reducing the capital and operating expenses of low volume metering facilities. A reduction in operating expenses would proportionately raise the economic limit of low volume gas wells and allow for increased recovery of in-place reserves. These exemptions would also have a positive impact on the Federal Government by increasing the ultimate amount of royalty it would receive. Positive impacts specific to BLM would be a reduction in the number of variances that it would have to process and a reduction in its costs to inspect for and enforce these standards.

Require an Annual Determination for Specific Gravity

Existing regulations call for the heating value (i.e. BTU content) of marketed gas to be determined annually, but do not specify a frequency for specific gravity determination. The proposed rule would require operators to determine specific gravity of gas at least on an annual basis. BLM assumes that most laboratories also determine the specific gravity of gas when calculating the BTU content of a gas sample. Accordingly, requiring an annual specific gravity determination for leases and agreements producing gas would not cause any increase in operating cost for producers. In that values for BTU content and specific gravity are important in determining the volume of gas produced and its quality for royalty purposes, the proposed change would have a positive impact on production accountability.

Eliminating Major/Minor Classification of Violations and Simplifying Assessment Structure

Existing regulations classify violations into two categories: major violations, which, if left uncorrected, could cause immediate, substantial, and adverse impacts to public health and safety, production accountability, or the environment; and minor violations, those violations which do not rise to the level of a major violation. For major violations, operators were liable for an assessment of up to $500 per day if left uncorrected within a time frame specified by BLM. For minor violations, operators were liable for a one-time $250 assessment for violations left uncorrected. The proposed rule would eliminate the major and minor classification for violations and impose a $250 per day assessment for uncorrected violations.

This proposed change should have no impact on industry as a whole. Over the last four fiscal years, BLM had issued an average of 2,735 citations for major violations per year and 13,752 citations for minor violations per year. We estimate that less than 7 percent of the major violations and less than 1 percent of the minor violations have resulted in an assessment being issued to operators. The small number of violations that ever get to the assessment stage suggest that changing the fee structure of assessments will have a negligible impact on industry.

The potential for an assessment encourages compliance. We do not believe that changing the fee structure for assessments will reduce the compliance rate that is observed under the existing regulations, especially with elimination of the cap on assessments and civil penalties. If anything, we believe that the proposed rule's increased assessment for those violations that are presently classified as minor violations might actually reduce the number of these kinds of violations. For this reason, the proposed rule assessment structure is likely to have a positive impact on the public. That is, fewer violations means a reduction in the potential for environmental problems.

The proposed changes to the assessment structure would have a positive impact on the Federal Government. Eliminating the classification of violations would eliminate the subjectiveness that exists with the existing system in determining whether a violation is major or minor. The proposed single daily assessment amount would be easier to administer. A simpler, more consistent approach to violation classification and assessment structure translates to reduced administrative costs to the Government.

Remove all Caps for Assessments and Civil Penalties

Per day assessments and civil penalties are currently limited to some maximum amount, limiting the incentive to the operator to correct the violation quickly. It is expected that exceeding the current caps will happen rarely, but elimination of the cap should encourage faster correction of violations. Thus, there is negligible impact on industry with some positive impact on the public and the government.

Increased, One-time Assessment for Serious Violations

Under existing regulations, certain serious violations (i.e., drilling without approval, causing surface disturbance without approval, and failure to install a blowout preventer) earned an operator an immediate assessment of $500 per day up to a set maximum amount. In addition to the aforementioned violations, plugging a well without approval resulted in a one time $500 assessment. The proposed rule eliminates the amount per day assessment structure for serious violations and replaces it with increased, one-time amounts.

Due to the limited number of immediate assessments issued by the BLM in any given year, we project the impact to industry of this proposed change would be negligible. Since we believe the increased assessments would represent an even greater deterrent to serious violations, the proposed change would have a positive impact on the public. Fewer serious violations would mean less potential harm to public health and safety and the environment. Again, a simplified assessment structure would reduce the Government's administrative costs, a positive impact.

Expand List of Violations That Receive an Immediate Assessment

For the reasons mentioned in the previous section, the proposal to expand the list of serious violations that would receive an immediate assessment should have a negligible impact to industry, a positive impact on the public, and a positive impact on the Federal Government.

Streamlined Process to set up Unit Agreements

Industry contacts estimate the cost to prepare and submit a proposal for a Federal exploratory unit agreement costs an average of $20,000 per application. BLM estimates that it expends about 40 hours to process each application at a cost of $1280. In FY 95, BLM received 52 applications to unitize with a projected cost to industry of $1,040,000 and a projected cost to BLM of $42,000. The proposed rule would reduce the amount of paperwork that industry has to submit to BLM in order to unitize Federal mineral interests. Less paperwork would reduce the administrative costs both for industry and for BLM. However, the existing standardized terms would be replaced with the requirement to negotiate terms with BLM. Initially, there will be a learning curve for both BLM and operators, and the time to prepare and approve units will be longer and more expensive. However, we believe that the added expense of negotiations will be offset by the flexibility of the process whereby operators would negotiate key development terms. We also believe that over time, negotiations will be less lengthy as BLM and operators become familiar with the process.

The proposed rule stipulates that production allocations for enhanced recovery units or exploratory units with existing production will be determined at the time the agreement is made, rather than after substantial drilling is completed. While the allocations may not be as precise as under the current regulation, the predictability will enable the operators to make better economic decisions regarding the development of the unit. Some other benefits of the new process are:

- It will expedite paying well determinations since they will no longer be based on economics;
- The agreement will establish the size of initial participating areas and additions to existing participating areas. This would benefit operators by establishing participating area size without elaborate subsurface projections; and
- Paying well determinations would be replaced with productivity criteria. This would allow the operator to negotiate criteria that are not tied strictly to well economics. The use of well productivity criteria would allow the costs for that well to be considered as part of unit costs and not be required to be covered by production from that well alone.

Increased Bonding/Bond Reduction for Low Liability Operations

The proposed rule increases minimum individual lease bonds from $10,000 to $20,000 and statewide bonds from $25,000 to $75,000. Nationwide bonds are unchanged. The rule also clarifies BLM's authority to increase bonds on existing wells and leases for a variety of reasons, most having to do with unsatisfied or insufficiently bonded liabilities. BLM already has the authority to increase lease bond requirements in specific situations, but the amount has been left to BLM to determine on a case-by-case basis. With the proposed rule, both BLM and the operator can better anticipate what the additional cost will be. For instance, increasing the bond is one of the options for inactive wells (wells with no activity for 12 consecutive months). Within 30 days of a well becoming inactive, the operator must do one of the following:

- Submit additional bonding of $2.00 per foot of total or plugged-back total depth for each well;
- Pay a non-refundable annual fee of $100 per inactive well (this is only an option for the first six years a well is inactive);
- Put the well in production or service;
- Submit plans to conduct well work to restore production or service; or
- Submit plans to plug and abandon the well and perform reclamation.

Increased bonds or fees are necessary due to the significant unfunded liability that has fallen and continues to fall on the public in general and BLM and other land management agencies in particular. This liability is in the form of orphan oil and gas wells. Unplugged or inadequately plugged wells and unreclaimed sites on Federal lands with no responsible person or company found are left to the government to clean up. Even if a bond is available for the well, it is frequently insufficient to cover the costs of plugging and reclamation. Furthermore, one bond may represent many wells. The Bureau Performance Review of the Oil and Gas Program included a review of bonding and unfunded liability. The March 1995 report concluded that the public was assuming too much of the risk from orphan wells. The existing regulations provided the authority to increase bonds, but did not provide guidelines on how much to increase the bond requirements. Furthermore, the operator may appeal the amount of the bond increase, adding to the costs for both BLM and the operator. The proposed rule reduces the number of situations where the operator may appeal bond increases. The bond increases in the proposed rule are based on the recommendations from that review. The goal is not to make the bonds high enough to cover all potential costs. While most wells can be plugged and abandoned for between $10,000 and $20,000, an individual lease bond may cover many wells. However, we expect that the higher bonding will provide an incentive to industry to be more diligent in reclamation. The increase in the minimum State and lease bond requirements is less than the rate of inflation since the current amounts were set in 1960. However, the increase may still be an unjustified burden for small operators with only a few shallow wells. The cost of plugging these wells and reclaiming the land may be less than the $20,000 lease minimum, or even less than the current $10,000 lease minimum. The option for the operator to apply for a reduction in the bonding requirement helps to reduce the impact of increasing the bonding requirement on small operators and may even reduce the requirement on some leases below the current $10,000 requirement. This will allow for the bonding requirement increase to only be applied to leases on which the potential liabilities correspond to the higher bond amounts. The following discusses bonding costs in more detail.

What does a bond cost industry? Bond premiums may be as low as 1 percent per year, but often require some collateral such as certificates of deposit (CD's) or other security in addition to the fee. Large, low risk companies may just pay a low premium with no additional security. Requirements will be higher for higher risk companies. Operators may post CD's or other security with the government in lieu of a surety bond (approximately half of all operators on Federal lands use this option). While this costs more than the premium on a surety bond, it is less expensive than pledging security and paying a bond premium. Essentially, the cost of pledging this security is the cost of capital (as the resources could be used for other investment) minus the interest the operator receives on the security. Using the assumption that this cost difference is 3 percent and that it is applied to all existing bonds, the increased cost to industry is shown in the following table. For this estimate we assume that about 500 leases would qualify for a reduced bond and that the average required bond for them would be the current $10,000 requirement.

Type of bonds	Number of Bonds[1]	Increased amt.	Increased cost[2]
Individual	3171 −500 =2671	$10,000	$951,300 −150,000 =801,300
Statewide	2348	50,000	3,516,000
Nationwide	807	0	0
Collective	139	0	0
Total	6465		$4,317,300

[1] From Bonding Review Report, 3/95, based on AIRS data, 10/94.

[2] Number of bonds × increased bond amt. × 0.03.

This averages to about $43 for each well on Federal lands. A stripper oil well averaging 10 barrels of oil per day and selling oil at $15 per barrel would gross $54,750 per year and pay royalty of $6,850. The marginal cost of production may be about $2 per barrel, or about $7,300 per year. An additional $43 per year is not significant. Thus, the increased bond requirements do not impose a significant new cost on industry.

This rule defines specific costs for inactive wells, which represent the greatest risk for becoming orphan wells, by increasing the bonding by $2.00 per foot of depth for inactive wells or charging $100 annually per inactive well (only an option for the first six years). While this fee is equivalent to the 1 percent fee on the $10,000 additional bonding required for a 5000-foot well, the operator would not have to pledge additional collateral that may be required to obtain the bond. By basing the increased bond requirement on the depth, it better reflects the plugging costs for the well. This targeted increased bonding may be more significant than the across the board increase. For example, the Bonding Review estimated there were about 300 known orphan wells, 6,500 temporarily abandoned wells, and 11,000 shut-in wells on Federal lands. Assuming that 3,000 wells are classified as inactive wells and their average depth is 5,000 feet, the increased bonding would total $900,000 (3,000 wells × 5,000′ × $2 × 3%) or about $300 per inactive well per year. The change allows operators to better plan their operations, as it may affect the decision regarding plugging and abandoning a well versus shutting it in or temporary abandonment. Under this proposal, operators can hold inactive wells for six years with a $100 annual fee before having to obtain the higher bonding or taking one of the other required actions. This amount was calculated to be roughly equivalent to the cost to operators of the proposed increase in the bond due to having an inactive well.

The increased bonding represents a relatively small cost of doing business. It will be incorporated as a cost that may have some impact on decision making in field operations. The increased bond requirements for inactive wells may force some marginal wells that would be inactive under the current requirements to be plugged and abandoned more rapidly under the proposed requirements if the bond increases are higher than what would be charged under the existing regulations. However the opposite could be true, and the advantage of the proposed rule is the certainty of the costs. While these wells could potentially produce and provide additional revenue, the amount is insignificant and less than the potential cost to the government if they become orphan wells.

Having the bonding reduction option greatly mitigates the impacts of the bonding increases on small operators.

The net impact to industry is negligible. The minor increased cost is more than offset by the gains to the public by reducing the risk of creating new orphan wells. The costs to government are also reduced by having better compliance by industry. This also represents a net gain for the environment. Overall, increased bonding represents a net positive.

Geophysical Exploration Fair Market Value Charges

The proposed rule provides for assessing a FMV charge for the use of public lands for geophysical exploration. This would only be applied to the portion of exploration on federally-owned surface estate that is not already leased for oil and gas. The amount of this FMV assessment will be determined in a separate action. Thus, the estimated economic impact will be published with that proposed action.

Paperwork Reduction Act

BLM has submitted an information collection clearance package to OMB for its approval of the information requirements contained in these proposed regulations under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The information collections listed below for proposed changes in the regulations have not been approved by OMB.

Proposed changes in the regulations would increase the information burden by an estimated 9,441.25 hours. For new information collection, all of which are nonform items, BLM expects the public reporting burden to be as follows:

Information Collections in This Rule That Have Not Yet Been Approved

BLM does not yet have information collection approvals from OMB for the following items. However, these are not new information collections, but are new requests for information collections for OMB information collection approval. Existing regulations require these information collections.

Leasing

Section 3121.12—The respondent must advise BLM by letter of its nominations for competitive leasing in the BLM State Office with jurisdiction over the lands involved and provide a legal description of the nominated lands.

We estimate it will be 15 minutes to prepare a nomination list of tracts. The information is necessary to list tracts nominated by operators or the general public for a lease sale. We estimate that there will be 1,400 filings a year, for a total information collection burden of 350 hours.

Section 3124.32—For an application for lease consolidation, the respondent must identify the affected leases and justify why consolidation promotes conservation of resources that cannot be achieved through unitization or communitization.

BLM requires this information to ensure compliance with the Mineral Leasing Act, to ensure conservation of resources, and to protect the public interest. Leases are combined only when unitization or communitization are not possible or when unitization or communitization will not promote conservation of resources.

We estimate it will take approximately two hours to comply with the required information. The estimate includes time for gathering and compiling data that shows unit requirements, such as drilling and production, are met, and providing certification. We estimate 10 responses, for a total of 20 hours.

Section 3125.11—A lessee wishing to exchange its existing 20-year oil and gas lease for a new lease for the same lands must file an application for lease exchange in the BLM State Office with jurisdiction over the lands.

An exchange converts the renewal lease for the benefit of the lessee and the administrative convenience of BLM.

We estimate it will take approximately 15 minutes to comply with the application information. The estimate includes time for providing lease term information about the original lease. We estimate 25 responses, for a total of 6¼ hours.

Operations

Sections 3103.10(aa) and 3153.37—An operator must provide to BLM a lease automatic custody transfer (LACT) meter proving report.

The information is necessary for BLM to identify the LACT that was proved and where and when it was proved. The proving report contains the LACT unit identification number, its location and information regarding the results of the meter proving, including any adjustments and new meter factors.

We estimate it will take approximately 10 minutes to comply with the notices and report information required. The estimate includes time for compiling the various data requirements. We estimate 200 notices and reports per year, for a total of 33⅓ hours.

Sections 3103.10(bb) and 3154.33—An operator is required to provide to BLM gas charts/meter proving reports.

The gas chart measures gas over a specified period of time that a gas well produces. These are original charts that must be submitted to BLM to allow BLM to perform independent volume calculations or integrations. Charts identify the well, lease, operator, and other information regarding the measurement system. The gas meter proving reports are the results of calibrating the recording component of the gas measurement system. These reports identify the operator, facility number, well number, specifics of the measurement system, and the results of calibrating the meter, including any adjustments that were made.

We estimate it will take approximately 15 minutes to comply with the information requirement, and one thousand reports a year, for a total of 250 hours.

Section 3103.10(dd)—The operator is required to provide to BLM notice of meter proving or calibration and must provide information regarding what meters will be calibrated, their lease and well numbers, and when the calibrations will occur.

These records and notifications are necessary to ensure proper measurement. BLM uses the information to conduct audits to determine correct volumes and to determine volume corrections when the calibration of meters indicate inaccurate measurement. The required tables, charts, and meter proving reports are generally information that a prudent operator would already require for its records in order to verify correct volumes, accurate measurement, etc. Typically, an operator needs only to reproduce such information. We estimate 5,000 such notifications per year, at five minutes each, for a total of 416⅔ hours.

Reports, Submissions and Notifications

Section 3103—The operator is required to provide oral notification that they are commencing the activities listed below. Oral notifications generally only require the operator to identify the lease and well and the anticipated starting or completion time of the operation.

The following sections reference activities that require the operator to orally notify BLM:

Section 3103.10(l)—Construction start-up.

Section 3103.10(j)—Spud notice.

Section 3103.10(m)—Running surface casing and BOP test.

Section 3103.10(o)—Reserve pit closure.

Section 3103.10(x)—Report of theft or production mishandling.

Section 3103.10(z)—Notice of LACT meter proving.

Section 3103.10(ee)—Leak detection system.

Section 3103.10(ff)—Produced water pit completion.

Section 3103.10(gg)—Report of spill or accident.

Section 3103.10(ii)—Well abandonment.

Sections 3103.10(ll) and 3145.43—Concentrations of 100 ppm or more of H_2S.

The notifications are necessary to ensure proper monitoring and inspection by BLM of lease operations.

We estimate approximately 6,000 notifications per year, at five minutes for each notification, for a total of 500 hours.

Subpart 3136—Drainage Agreements

Section 3136.10—Respondents are required to submit any drainage agreements. The agreement includes land identification, lease ownerships, mineral ownerships, and royalty allocation.

This information is necessary to ensure that Federal royalties are collected and that Federal minerals are protected from drainage by non-Federal wells.

BLM estimates there will be five agreements per year and that each one will take 10 hours to prepare and submit. The total information collection will be 50 hours.

Subpart 3137—Unit Agreements

Section 3137.13—The respondent must submit an application for unitization and include the unit agreement, a map of the unit area showing the committed leases and other tracts, a list of committed leases with legal description and other tracts, record title, working interest, acreage, an allocation schedule, if appropriate, certification of invitation to join the unit, economic, geologic, engineering and other data, depending on the type of unit.

We estimate it will take approximately 40 hours to comply with the information requirement for the application for unitization. The estimate includes time for gathering, preparing, completing, and maintaining the specified information, but not the time required to obtain, analyze, and interpret the information normally expended as part of an exploration program without unitization. We estimate that there will be 60 unit applications made within a given year, for a total increase in the information collection burden of 2,400 hours.

Section 3137.64—To establish a participating area or to expand an existing participating area, the respondent must submit certification to BLM that unitized production has been established, and as appropriate, a map showing the participating area and total acreage, and a schedule showing the production allocation for each tract participating in production.

We estimate it will take approximately 12 hours to compile and submit the request for establishing or expanding a participating area. We estimate that there will be an average of 45 participating area applications a year for a total increase in the information collection burden of 540 hours.

Subpart 3145—Drilling

Section 3145.18—This section would require operators to apply for a Notice of Staking (NOS), which includes the information sufficient to identify lands that may be potentially affected by a planned oil or gas well. The information includes legal description, operator name, well number, surface ownership, and lease number. A map must also be included that identifies topographic features. The map would assist BLM in identifying potential problems at the proposed well location.

This information collection provides operators an opportunity to work with BLM to find the best suitable drilling site, develop site specific mitigation, and to avoid unnecessary expense when preparing drilling plans.

Although this information burden is highly variable, we estimate there will be 1,500 NOS applications a year that take 15 minutes each, for a total burden of 375 hours.

Section 3145.51(a)(3)—Reclamation of contaminated lands requires operators to provide to BLM information regarding method of remediation, location of facility or onsite remediation, soil test results, volumes of contaminated soils, and rehabilitation schedule, and request BLM approval.

This information is necessary to ensure that contaminated soils are properly remediated, to minimize environmental impacts and protect the public.

We estimate this information will take approximately five hours to compile and that there will be 100 occurrences per year. The total information burden would be 500 hours.

Subpart 3151—Production, Storage and Measurement

Section 3151.10(c)—Applications for off-lease measurement must include justification for the off-lease measurement and information on the type and location of the off-lease measurement facility, all wells that will produce into that facility, plans for preventing losses in transporting production from the lease to the facility, and certification that any losses will be the responsibility of the operator.

This information is necessary for BLM to ensure that proper measurement occurs, that Federal interests are adequately protected, that Federal rights-of-ways are obtained, and to properly identify and locate the facilities for production accountability inspections.

We estimate 300 applications per year at one hour each, for a total increase in the information burden of 300 hours.

Section 3151.10(d)—In a request for approval of commingling, the operator must identify the affected leases, wells, producing intervals, proposed production allocations, and the quantity and quality of oil or gases that are to be combined.

This information is necessary for BLM to determine if the proposal adversely affects production accountability.

We estimate each request takes 30 minutes and that there will be 500 commingling requests per year, for a total of 250 hours.

Subpart 3164—Civil Penalties

Section 3164.15—To request a waiver or reduction of civil penalties, the operator must submit, in writing, to the appropriate BLM State office, justification for the waiver or reduction. The information is necessary so that BLM may determine whether a waiver or reduction of the civil penalty should be granted.

We estimate that the preparation of each request takes 30 minutes and that there would be 100 requests per year, for a total increase in the information collection burden of 50 hours.

New Information Collections

The following are new information collections that require OMB approval. These information collections are not in existing regulations.

Subpart 3107—Lease, Surety and Personal Bonds

Section 3107.53—Respondents are required to provide to BLM information that justifies BLM decreasing their bond amount.

This information is to allow BLM to determine if the lease obligations associated with a given lease are less than the bond amount.

We estimate 100 responses per year that take 1 hour per response, for a total of 100 hours.

Sections 3107.56 and 3145.23—The operator is required to submit information regarding each inactive well under Federal jurisdiction. The information includes operator identification, lease and well number, location, and total and plugged-back well depths. Other information that may be needed to exempt operators from the increased bonding requirements includes plans for reworking and returning the well to production; evidence that the well is capable of producing but that it is awaiting pipeline connection, or it is uneconomic at this time to connect to a pipeline; or that the well will be plugged and abandoned. If additional bonding is needed, proof of additional bonding will be necessary, such as riders and bond numbers.

This information is necessary to ensure that adequate bond coverage exists.

We estimate 6,600 operators will provide information for 13,000 wells per year, at 30 minutes per respondent, for a total of 3,300 hours.

Send comments regarding this information collection, including suggestions for reducing the burden, to: Office of Management and Budget, Interior Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, D.C. 20503, and Information Collection Clearance Officer, Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

We specifically request your comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (2) the accuracy of BLM's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will analyze any comments sent in response to the notices and include them in preparing the final rulemaking.

Approved Information Collections in This Rule

BLM currently has information collection approvals from OMB as follows:

OMB 1004–0162

Form 3150–4, Application to Conduct Oil and Gas Geophysical Exploration Operations, and Form 3150–5, Notice of Completion of Oil and Gas Exploration Operations, are approved under OMB 1004–0162, Oil and Gas Geophysical Exploration Operations. This information collection expires August 31, 1999. BLM uses Form 3150–4 to determine who is conducting specific geophysical operations on public lands and that appropriate measures are taken to protect the environment under NEPA. BLM uses Form 3150–5 to determine when oil and gas explorations operations are complete and to determine that mitigating measures have been performed to protect the environment as required under NEPA. Collectively, the information serves to maintain an accurate account of operations being conducted on public lands and who is to be held accountable if there is damage to the lands.

OMB 1004–0034

Form 3000–3, Assignment of Record Title Interest in a Lease for Oil and Gas and Geothermal Resources, and Form 3000–3a Transfer of Operating Rights (Sublease), are approved under OMB 1004–0034, Oil and Gas Lease Transfers by Assignment or Operating Rights (Sublease). The collection expires September 30, 1998. BLM uses the two forms, respectively, to transfer all or part of a record title interest, or operating rights, or overriding royalty or similar interest in an oil and gas or geothermal lease to another party under the terms of the mineral leasing laws. They identify ownership of the interest being transferred and the qualifications of the transferee to take interest.

OMB 1004–0074

Form 3000–2, Competitive Oil and Gas or Geothermal Resources Bid is approved under OMB 1004–0074, Oil and Gas and Geothermal Resources Leasing, which expires May 31, 2000. BLM uses the form to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal resources lease on public domain and acquired lands. The information collection expires May 31, 2000.

OMB 1004–0145

BLM requires various items of information to determine eligibility of an applicant to lease, explore for, and produce oil and gas on Federal lands. These are non-form information items and are grouped and approved under OMB 1004–0145, Oil and Gas Exploration and Leasing. The collection expires July 31, 1999. BLM needs this information to process oil and gas leases, to ensure compliance with terms and conditions of various statutes, and to determine whether an entity is qualified to hold a lease. Information items that do not require a form are:

Option Acreage Chargeability. Requires a notice of option holdings that is required under the Mineral Leasing Act of 1920 (30 U.S.C. 184(d)(2)). BLM uses this information to determine acreage chargeability. The applicant must submit to BLM copies of notices of options when we request it.

Excess Acreage. The application must include a petition with justification requesting additional time to divest excess acreage.

Lease Holdings. Requires statements showing date, acreage, and the State in which each oil and gas lease is located. BLM does not routinely request this information. However, when BLM requests it, BLM uses it to determine that the lessee is in compliance with the law with respect to acreage limitations (30 U.S.C. 184(d)(2)).

Joinder Evidence Required. A statement is required as to whether or not a prospective oil and gas lessee has joined in a unit agreement if the lease is for lands within an approved unit.

Waiver, Suspension or Reduction of Rental, Royalty, or Minimum Royalty. Application or petition for such benefit is required. The information is required by law and BLM uses it to determine that development cannot be promoted or that the lease cannot be successfully operated if the rental or royalty were not waived, suspended or reduced.

Communitization Agreements. Requires copy of agreement in order to obtain permission to join in oil and gas development with other lands. The information collection has been approved by OMB under 1004–0134. BLM requires this information to confirm that the lease, or portion thereof, cannot be independently developed.

Operating, Drilling or Development Contracts. Requires statement showing interest held by the contractor and a copy of the contract. Copies of contracts are required to obtain approval to permit operators to enter into contracts with a number of lessees sufficient to justify operations on a large scale.

Subsurface Storage of Oil and Gas. Requires application to obtain BLM authorization to store oil and gas underground on Federal lands. BLM requires the information to determine if the subsurface storage avoids waste and promotes conservation of the natural resources.

Heirs and Devisees. In case of the death of an offeror of a tract for a Federal lease, applicant, lessee or transferee, the regulations require a statement that heirs and devisees are qualified to hold a lease interest in accordance with the law.

Change of Name. Requires that a change of name of the lessee be reported to the proper BLM office. The notice of name change must include a list of serial numbers of the leases affected. This information is necessary for acreage chargeability purposes.

Corporate Merger. Requires notification by lessee of corporate merger along with a list of leases affected, which BLM uses to determine acreage accountability.

Renewal Leases. Requires application for renewal, but no specific form. This information requirement may be submitted on the multipurpose lease form 3100–11, which has been designated "certification only" by OMB.

Relinquishments. Requires written relinquishment by lessee of a lease or subdivision thereof, but no specific form is required.

Petition for Reinstatement. Requires petitions of reinstatement showing that failure to pay rental, or timely file required instruments, was inadvertent, justifiable, or not due to the lack of reasonable diligence on the part of the lessee. This information is required by law and BLM uses it to determine whether the petitioner is eligible for Class I, II, or III lease reinstatement.

Leasing Under Rights-of-Way. Requires application, but no specific form, for lease of lands under certain types of rights-of-way. Form 3100–11 may be used. The information is required by 30 U.S.C. 301, which authorizes the leasing of oil and gas deposits under railroads and other certain types of rights-of-way, to the owner of the right-of-way, or the entering of a compensatory royalty agreement.

Application for Oil and Gas Exploration Permit in Alaska. The information is required for any person wishing to conduct oil and gas geophysical exploration operations in Alaska as required by the Alaska National Interest Lands Conservation Act, Section 1008. BLM requires this information to determine if the applicant complies with the terms and conditions of the law.

Collection and Submission of Data for an Exploration Permit. BLM requires this information to determine what actions and operations are intended by a exploration permittee in Alaska or on DOD lands, and that the permittee complies with the terms and conditions of the exploration permit.

Completion of Operations. Requires a completion report containing a description of the work, dates exploration was conducted, maps showing the exploration area, and a statement that the operator has complied with all terms and conditions of the permit, or outlines the corrective measures that the operator will take to rehabilitate the lands. BLM needs the information to determine that the operations are complete in order to release your bond.

OMB 1004–0134

Various data on oil and gas operations required to be submitted by the operator or operating rights owner are approved under OMB 1004–0134, Non-form Items. The collection expires November 30, 2000. The information provides data so that proposed operations may be approved; it enables BLM to monitor compliance; and it is used to grant approval to begin or alter operations or to allow operations to continue. The specific information items in this collection cover the following activities:

Drilling Plan. The drilling plan provides technical data and information about the proposed drilling, completing, and associated surface access for a well. BLM needs this information to assure that operations are technically feasible and are conducted in a manner that protects water resources and other environmental values under NEPA, and protects health and safety.

Well Markers. The marker identifies the surface location and provides detailed well information. BLM requires this information to locate wells drilled on Federal or Indian lands.

Directional Drilling. The operator must submit this information to identify whether or not there is potential for adverse impacts on adjoining leases. If drainage or lease boundary crossing is likely, the operator is required to perform a directional survey to chart the direction of the deviation and the bottom hole location. The operator must submit information about the direction of the deviation and the subsurface location of the hole.

Drilling Tests, Logs, and Surveys. Operators routinely perform tests, logs, and surveys during the normal course of business so a copy of the company record suffices. The data consists of lithologic and quantitative logs to indicate type of mineral encountered; drill stem tests to indicate type of hydrocarbon; and possible exposure to gases such as hydrogen sulfide.

Plug and Abandon for Water Injection. Various leasing statutes require the prevention of waste and various laws require the protection of water resources and prevention of undue harm to the surface and subsurface environment. The abandonment plan delineates measures to protect water; measures to prevent escape of toxic gases (hydrogen sulfide); proof of the complete extraction of the oil or gas; any proposed secondary use of the well (water injection); possible requests to waive the requirement for well markers; and mitigation of surface disturbance. The provision for oral approval to remove a drill rig with subsequent written confirmation allows faster action and a reduction in the operator's rental expense.

Conversion to a Water Source Well. This information is required to allow BLM to approve the use of a nonproducing well as a water source well for either the operator or the operating rights owner.

Additional Gas Flaring. The regulations require the operator to conduct operations in such a manner as to prevent avoidable loss of oil and gas. The operator is liable for royalty payments for such losses. If the operator requests additional gas flaring, BLM may require a gas flaring evaluation report from the operator to justify any additional gas flaring requests.

Report of Spills, Discharges, or Other Undesirable Events. The operator must report to BLM all spills or leakages of oil, gas, produced water, toxic liquids, waste materials, etc. The operator's prompt notification enables BLM to protect public health and safety and the environment.

Disposal of Produced Water. BLM monitors the process by which the operator disposes of produced water. BLM needs the information to ensure adequate protection of public health and safety and compliance with environmental laws. The operator must describe the nature and manner in which the produced water will be disposed. The data provides the technical aspects of pit design to allow for sufficient water containment, thereby preventing unnecessary releases of produced water.

Contingency Plan. When BLM requires it, the operator must submit a contingency plan that describes procedures to be implemented to protect life, property, and the environment.

BLM may require either a copy of the Spill Prevention Control and Countermeasure Plan, which is submitted to the Environmental Protection Agency under 40 CFR 112, or another acceptable contingency plan. Plans are generally required for proposed operations in sensitive areas such as hydrogen sulfide high risk areas of Michigan, parts of Florida, Mississippi, and Wyoming, or when the nature of the proposal leads BLM to a determination that public health and safety requires such prior planning. The content of a contingency plan would depend on the nature of the potential hazard and the proximity to potentially affected population or resources.

Schematic/Facility Diagrams. The operator is responsible for documenting how the lease is developed. Most documentation is routinely prepared for company use and is therefore readily available. Within an established time of completing or modifying a facility, the operator submits schematic diagrams that depict facility functions and how oil and gas flows through the operation.

Facility diagrams are filed within 60 days after new measurement facilities are installed or existing facilities are modified or following the inclusion of the facility into a federally supervised unit or communitization agreement. The diagrams are needed to verify and account for all oil and gas produced.

Approval and Reporting of Oil in Pits. Having oil in pits is an unusual operational circumstance, except in emergency situations, and requires BLM's prior approval. Although uncommon, such production operation is reasonable under certain circumstances, and approval is on a case-by-case basis after proper justification.

Preparation of Run Tickets. The operator is required to furnish run ticket information to BLM and the Minerals Management Service, when requested, to account for the volume of production, and for royalty purposes.

Records on Seals. The operator must maintain a record of seal numbers used and document on which valves or connections they were used as well as when they were installed and removed. The seal records are needed for detection of possible theft of oil as well as the proper isolation of a tank prior to and following a sale.

Application for Suspension. In its applications for suspension of operations and/or production the operator must include a full statement of the circumstances that render the relief necessary. Leases and the laws under which they are issued require operations and production and provide authority to suspend this requirement.

Site Security. Site security plans are required to be filed for all facilities. At the operator's option, a single plan may be completed to include all of that operator's leases within a single BLM District. Any security elements in excess of the minimum requirements that the operator wishes to implement, but wants to be held confidential, should not be filed with the BLM but must be available for inspection by BLM personnel on request. The notification can be modified from time to time as additional facilities are brought under the purview of any specific plan.

OMB 1004–0135

Form 3160–5, Sundry Notices and Reports on Wells, is approved under OMB 1004–0135. The collection expires November 30, 2000. The information an operator provides on the Sundry Notices form may be a notice of intent, a subsequent report, or a final abandonment notice and pertains to modifying operations conducted under the terms and provisions of a lease for Federal or restricted Indian lands. The data enables BLM oversight and approval prior to any modifications to existing wells.

OMB 1004–0136

Form 3160–3 Application for Permit to Drill or Reenter, is approved under OMB 1004–0136, Application for Permit to Drill, which expires November 30, 2000. The operator is required to prepare certain items such as drilling plans, diagrams, maps, and contingency and other plans, which are generally submitted with Form 3160–3. The information provides documentation that drilling and associated activities, when and if authorized, are technically and environmentally feasible and ensure proper conservation of resources. The information also provides a basis for evaluating a proposed well's feasibility and, in turn, determining whether the application should be disapproved or approved and, if approved, whether any special conditions of approval should be made part of the permit.

OMB 1004–0137

Form 3160–4, Well Completion or Recompletion Report and Log is approved under OMB 1004–0137, which expires November 30, 2000. BLM uses the information required on Form 3160–4 for technical evaluation of operations performed on a well. The form documents that the operator carried out operations in accordance with the terms and provisions of the lease and in a technically and environmentally safe manner. Failure to collect and submit the requested information would mean that BLM would lack the necessary information to monitor compliance with authorized well activity and operations that were performed on wells.

Authors

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List of Subjects

43 CFR Part 3100

Administrative practice and procedures, Classified information, Freedom of Information Act, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3110

Alaska, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3120

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3130

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3140

Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3150

Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3170

Government contracts, Hydrocarbons, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, for the reasons stated in the preamble, amend Title 43, Subtitle B, Chapter II, Subchapter C, Parts 3100, 3110, 3120, 3130, 3140, 3150, 3160, and 3180 as follows:

Dated: July 23, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

1. Revise part 3100—Oil and Gas Leasing to read as follows:

PART 3100—ONSHORE OIL AND GAS LEASING AND OPERATIONS: GENERAL

Subpart 3101—General Information

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Reports, Submissions, and Notifications

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Geophysical Exploration Bonds

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Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189, 306 and 359; 43 U.S.C. 1201, 1732(b), 1733, 1734 and 1740; and Pub. L 105–85.

Subpart 3101—General Information

General

§ 3101.5 What terms do I need to know to understand BLM's oil and gas regulations?

You need to know the following terms to understand parts 3100 through 3190—

Abandonment means operations you conduct to permanently plug a well.

Access, with respect to production, means the ability to enter into any——

(1) Tank or pipe system through a valve, valves, or combination of valves,

or tankage that would permit the removal of oil or gas; or

(2) Component in a measuring system that could affect the quality or quantity of the product being measured, without documentation.

Acquired lands means lands that the United States obtained by deed through purchase or gift, or through condemnation proceedings, including lands previously disposed of under the public land laws, excluding Indian lands.

Act means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

Aliquot part means a subdivision of a section under the rectangular survey system arrived at by dividing a section into halves and quarters (e.g., ½ section, ¼ section, ¼ ¼ section) down to 40 acres, unless the acreage is a lot that may be more or less than 40 acres.

Allocated production means the proportionate share of production that is credited to a Federal or Indian lease under an approved agreement to which the lease is committed.

Association means any entity other than a corporation that is permitted under State law to hold property in its name.

Available lands means those lands not excluded from leasing by a statutory or regulatory prohibition and which the Secretary has discretion to lease.

Avoidably lost means—

(1) Produced gas you vent or flare without BLM's prior, written approval, unless otherwise allowed under parts 3100 through 3190; and

(2) Produced oil or gas lost when BLM determines that the loss occurred as a result of your—

(i) Negligence;

(ii) Failure to take all reasonable measures to prevent or to control the loss; or

(iii) Failure to comply fully with the applicable laws, lease terms, and regulations, appropriate provisions of a previously approved operating plan, or the provisions of prior written BLM orders.

Beneficial purposes means oil or gas that you produce but do not sell from your lease, communitized tract, or unitized participating area and that you use on or for the benefit of that same lease, same communitized tract, or same unitized participating area for operating or producing purposes. Examples include—

(1) Fuel you use to lift oil or gas;

(2) Fuel you use to heat oil or gas to place it in a marketable condition;

(3) Fuel you use to compress gas to place it in a marketable condition;

(4) Fuel you use to fire steam generators for the enhanced recovery of oil; or

(5) Gas you use to actuate automatic valves at wells or facilities.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

Bioremediation means a treatment technology that uses a natural process in which microorganisms, primarily bacteria and fungi, chemically alter and break down organic molecules into other substances, primarily carbon dioxide and water.

BLM means any employee of the Bureau of Land Management authorized to perform the duties described in parts 3100 through 3190.

Blowout prevention equipment system (BOP) means the kill line, choke manifold, closing unit, diverter, blowout preventer, and auxiliary equipment required to operate the blowout preventer under varying rig and well conditions.

Bona fide purchaser means a person who acquired an interest in a Federal lease—

(1) In good faith;

(2) For valuable consideration; and

(3) Without notice of violation of Departmental regulations.

Bond means an agreement in writing in which a surety, or an obligor for a personal bond, guarantees performance or compliance with the lease terms.

Bond rider means any document that amends and becomes a part of an existing bond.

Bonus bid means money a successful bidder pays to the United States for a competitive oil and gas lease.

Bypass means any piping arrangement that allows oil or gas to continue on the sales or allocation lines without passing through the meter. Equipment that allows you to change the orifice plate without bleeding the pressure off the gas meter run is not a bypass.

Cancellation of a lease means revocation or nullification of a lease.

Casual use means activities that involve practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. Casual use includes activities that do not involve using heavy equipment or explosives and that do not involve vehicular movement except over established roads and trails. For subparts 3110 through 3113, gravity or magnetic surveys, the placement of recording equipment devices, and activities that do not involve vehicle operations that would cause significant compaction or rutting are generally considered casual use.

Commingle means combining production from different formations, leases, communitized areas, or unit participating areas prior to sale.

Committed lease means a Federal, Indian, State or private lease where all owners of record title and all working interest owners have agreed in writing that they will abide by the terms and conditions of an agreement.

Committed in part means a lease of which only a part of the lands have been committed to an agreement.

Communitization agreement means an agreement to jointly operate a lease with one or more other leased or unleased tracts to share the benefits of production within a single spacing unit.

Completion operations means work you conduct to prepare your well for production of oil or gas or service.

Condensate means those natural gas liquids recovered in production equipment or pipelines that remain in a liquid state at atmospheric pressure and temperature, and consist primarily of pentanes and heavier hydrocarbons.

Condition of approval (COA) means a site-specific requirement BLM attaches to approved Applications for Permits to Drill or Renter (APD) or Sundry Notices and Reports (SN).

Director means the Director of the Bureau of Land Management.

Dispersion technique means a mathematical representation of the physical and chemical transportation, dilution, and transformation of H_2S gas emitted into the atmosphere.

Drainage means the migration of hydrocarbons, inert gases or associated resources from Federal or Indian lands caused by production from wells on adjacent lands.

Eligible lands means those lands available for leasing when all statutory requirements and reviews have been met.

Enhanced recovery unit means a unit created to produce oil and gas from an area that is unrecoverable by primary recovery methods.

Escape rate means the maximum volume used as the escape rate in determining the radius of exposure specified as follows:

(1) For a production facility, it is the maximum daily rate, or the best estimate of that rate, of gas you produce through that facility;

(2) For gas wells, it is the current daily absolute open-flow rate against atmospheric pressure;

(3) For oil wells, you must calculate it by multiplying the producing gas-oil ratio by the maximum daily production rate; and

(4) For a well you are drilling in a developed area, you may determine the escape rate by using offset wells completed in the interval(s) in question.

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Essential personnel means those on-site personnel directly associated with the operation being conducted and necessary to maintain control of the well.

Exception means a case-by-case waiver of a lease stipulation, condition of approval, order, or lease term, that continues to apply to all other sites within the leasehold, or area covered by the original order, stipulation or condition of approval.

Exploratory unit means two or more leases operated under an agreement for the purpose of exploring for or developing the oil and gas resources of an area.

Federal lands means all lands and interests in lands owned by the United States that are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate, excluding Indian lands.

Federal lease means an onshore oil and gas lease issued under the mineral leasing laws. It does not include Indian oil and gas leases.

Gas means any fluid, excluding helium, either combustible or noncombustible, that is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions. This includes any fluid within coal resources.

Gas well means a well for which the energy equivalent of the gas it produces, including the entrained liquid hydrocarbons, exceeds the energy equivalent of the oil it produces.

Geophysical exploration means activity relating to the search for oil or gas that results in surface disturbance or disturbance to resources or land uses. It includes, but is not limited to, geophysical operations, construction of roads and trails and cross-country transit of vehicles over the lands. It does not include core drilling for subsurface geologic information or drilling for oil or gas. However, this definition includes drilling operations necessary for placing explosive charges.

H_2S public protection plan means a written plan that provides for the safety of the potentially affected public with regard to H_2S and sulphur dioxide (SO_2).

Hazardous material: (1) Means any—

(i) Substance, pollutant, or contaminant listed as hazardous under 42 U.S.C. 9601;

(ii) Hazardous waste defined under 42 U.S.C. 9601;

(iii) Extremely hazardous substances defined under 40 CFR part 355; or

(iv) Nuclear or byproduct material defined under 42 U.S.C. 2011;

(2) Does not include any petroleum products that are not otherwise specifically listed or designated as a hazardous substance under 42 U.S.C. 9601 (14). The term does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas useable for fuel (or mixture of natural gas and synthetic gas).

Hazardous substance: (1) Means any—

(i) Substance designated under 33 U.S.C. 1321(b)(2)(A);

(ii) Element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602;

(iii) Hazardous waste having characteristics identified under or listed under 42 U.S.C. 6921 (but not including any waste the regulation of which under the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*, has been suspended by Act of Congress);

(iv) Toxic pollutant listed under 33 U.S.C. 1317(a);

(v) Hazardous air pollutant listed under 42 U.S.C. 7412; or

(vi) Immediately hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action under 15 U.S.C. 2606;

(2) Does not include any petroleum products that are not otherwise specifically listed or designated as a hazardous substance under this definition. The term does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas useable for fuel (or mixture of natural gas and synthetic gas).

Held by production means a lease term is extended so long as oil or gas is produced or capable of being produced in paying quantities from the lease or agreement area to which the lease is committed.

Indian lands means any lands or possessory interest in lands owned or held by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, the title to which is held in trust by the United States or, as a matter of Federal law, is subject to a restriction against alienation.

Indian lease means an oil and gas lease on Indian lands issued under the regulations in Title 25 of the CFR and approved by the Secretary, or an agreement entered into under the Indian Mineral Development Act of 1982 (25 U.S.C. 2102) and the regulations in 25 CFR part 225.

Injection well means a well used to dispose of produced water or used for primary or enhanced recovery operations of oil or gas.

Interest means ownership in a lease or future interest lease of all or a portion of the record title or operating rights.

Isolating means using one or any combination of cement, cast iron bridge plugs, or retainers, to protect, separate, or segregate usable water and mineral resources.

Lease means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, or extraction and removal of oil and gas.

Lease site means any lands on which exploration for, or extraction and removal of, oil or gas is authorized under the lease.

Lessee means any person holding record title or operating rights in a lease issued or approved by the United States.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

Maximum ultimate economic recovery means the recovery of oil and gas from leased lands that a prudent operator could be expected to make from that field or reservoir—

(1) Given existing knowledge of reservoir and other pertinent facts; and

(2) Utilizing common industry practices for primary, secondary or tertiary recovery operations.

Meter calibration means the operation by which you compare meter readings with an accepted standard and when necessary, adjust the meter so that its readings conform to that standard.

Meter uncertainty means the overall inaccuracy of a flow meter caused by the inherent errors of the flow measurement equipment.

Minimum royalty means the minimum amount of annual royalty due under the lease or under parts 3100 through 3190 after production is established.

Mishandling means unmeasured or unaccounted-for removal of production from a facility other than through theft.

Modification means a temporary or permanent change to the provisions of a lease stipulation, condition of approval, order, or lease term. It may include an exception from or alteration to a stipulation, condition of approval, order, or lease term. The modified stipulation, condition of approval, order, or lease term may apply to all or part of the leasehold or area covered by the original order or condition of approval.

National Forest System Lands (NFS) means all National Forest lands reserved or withdrawn from the public domain of the United States, or acquired through purchase, exchange, donation, or other means. It also includes the National Grasslands and land utilization projects administered by the U.S. Department of Agriculture, Forest Service, under Title III of the Bankhead-Jones Tenant Act (7 U.S.C. 1010 *et seq.*), and other lands, waters, or interests administered by the Forest Service as part of the system under 16 U.S.C. 1609.

National Pollutant Discharge Elimination System (NPDES) means a program administered by the Environmental Protection Agency, primacy State, or Indian tribe, that requires permits for the discharge of pollutants from any point source into navigable water of the United States.

Off-lease measurement means conducting measurements at a tank battery or measurement facility off the lease.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all vein-type solid hydrocarbons).

Oil well means a well for which the energy equivalent of the oil it produces exceeds the energy equivalent of the gas it produces, including the entrained liquid hydrocarbons.

Operating rights (working interest) means any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operating rights owner means a person who holds operating rights in a lease issued by the United States. A lessee may also be an operating rights owner in a lease if it did not transfer all of its operating rights in a lease.

Operator means any person or entity (whether a lessee or operating rights owner or an agent thereof) who has stated in writing to BLM that it is responsible under the terms and conditions of the lease for the operations conducted on the lease or portions of the lease. An operator need not be an operating rights owner.

Participating area means the lands that contain at least one well that meets the productivity criteria established in an exploratory unit agreement. A participating area may be particular to separate producing intervals or areas.

Paying well means—

(1) On a lease basis, a well with sufficient production capacity to recover the cost of day-to-day operating expenses with a profit, no matter how small; or

(2) On a unit basis, a well with sufficient production capacity to return a reasonable profit over the cost of drilling, equipping, completing and operating that well.

Person means any individual, firm, corporation, association, partnership, trust, consortium, or joint venture.

Primary element means the equipment necessary to produce a measurable and predictable pressure drop in the gas stream. For orifice installations this includes the orifice plate, orifice plate flanges or plate holder, the meter tube or "run", thermometer well and sampling taps, and straightening vanes.

Produced water means water produced in conjunction with oil and gas production.

Producing interval means the geologic strata from which you extract hydrocarbons. It does not have to be a recognized United States Geological Survey formation. BLM may consider multiple producing intervals from a formation as one producing interval.

Production facility means any header, piping, treating, or separating equipment, water disposal pit, processing plant, measurement facility, or combination of those things and includes the approved measurement point for any lease, communitization agreement, or participating area.

Production phase means that period of time or mode of operating during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase.

Prospectively valuable deposit of minerals means any deposit of minerals, other than fluid hydrocarbons, BLM determines to have characteristics of quantity and quality that make it technologically feasible to develop and, therefore, that warrant its protection from undue damage by oil and gas operations.

Public domain lands means lands, including mineral estates, that—

(1) Never left United States ownership;

(2) The United States obtained in exchange for public domain lands;

(3) Have reverted to the ownership of the United States through the operation of the public land laws; or

(4) That Congress specifically identified as part of the public domain.

Public lands means lands or minerals that the United States may lease for oil and gas.

Reclamation means returning disturbed land and water to their former uses or other productive uses in a stable state that maintains healthy ecological conditions.

Recompletion means reentering your well to restore productivity of the original completion.

Record title means legal ownership of an oil and gas lease recorded in BLM's records.

Record title owner means the person(s) to whom BLM issued a lease or the person(s) to whom BLM approved the transfer of record title in a lease.

Routine well maintenance means work you conduct on a well without altering its configuration. It includes replacing or repairing malfunctioning equipment, clean out, or evaluation. This work includes, but is not limited to—

(1) Cutting paraffin and hot oil treatment;

(2) Changing rods and tubing;

(3) Bailing sand;

(4) Pressure surveys;

(5) Swabbing;

(6) Scale or corrosion treatment;

(7) Caliper and gauge surveys;

(8) Removing or replacing subsurface pumps, packers, or screening pipe;

(9) Running well logs;

(10) Fishing objects from the wellbore that must be recovered before work can proceed; and

(11) Minor casing repairs.

Sales phase means that period of time or mode of operation during which you remove crude oil or condensate from storage facilities for sale, transportation or other purposes.

Seal means a uniquely numbered device that completely secures either a valve or those components of a measuring system that affect the quality or quantity of the liquid being measured.

Secondary element means the equipment necessary to convert the pressure drop created by the primary element into a flowrate and a flow volume. More specifically—

(1) For chart recorders, this includes the meter manifold, pressure lines, differential pressure unit, static pressure element, temperature element, and chart recorder; or

(2) For electric flow computers (EFC), this includes the meter manifold, pressure lines, differential pressure, static pressure, and temperature transducers and flow computer.

Secretary means the Secretary of the Interior or the authorized representative of that office.

Shut-in with respect to wells, means any well capable of producing in paying quantities or capable of service use, but not currently producing or not being used.

Spacing means regulating the number and location of wells in a field or area.

Stipulation means additional specific terms and conditions in the lease that change the manner in which you may conduct operations or that may otherwise modify the standard lease terms.

Surface management agency means any agency, other than BLM, with jurisdiction over the surface overlying Federal or Indian owned minerals.

Suspension means temporary relief of a lessee's obligation to perform specific functions stipulated in Federal oil and gas lease terms, laws, and regulations.

Tagging the plug means running in the hole with a string of tubing or drill pipe and placing sufficient weight on the plug to ensure its integrity.

Temporarily abandoned with respect to wells, means a well not in use.

Toxic constituents means substances in produced water in toxic concentration specified by Federal or State regulations that have harmful effects on plant or animal life. These substances include, but are not limited to, arsenic (As), barium (Ba), cadmium (Cd), hexavalent chromium (bCr), total chromium (tQr), lead (Pb), mercury (Hg), zinc (Zn), selenium (Se), benzene, toluene, ethyl benzene, and xylenes, as defined in 40 CFR part 261.

Transfer means any conveyance of an interest in a lease by assignment, sublease or otherwise. The definition includes the terms assignment and sublease.

Unavoidably lost with respect to production, means—

(1) Gas vapors that are vented from storage tanks or other low-pressure production vessels, unless BLM determines that you must retain or recover those vapors;

(2) Oil or gas lost because of line failures, equipment malfunctions, blowouts, fires, or otherwise, when BLM determines that the loss did not result from your negligence or failure to take all reasonable measures to prevent or control the loss;

(3) Gas you vent or flare during emergencies, short-term well tests, short-term production tests, or otherwise with BLM's prior written approval; and

(4) Oil which you may dispose without incurring a royalty obligation when BLM has first determined it to be waste oil and to have no economic value.

Underground injection control (UIC) program means a program the Environmental Protection Agency, primacy State, or Indian Tribe administers under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), to ensure that subsurface injection does not endanger underground sources of drinking water.

Unit agreement means a BLM-approved agreement to cooperatively explore, develop, operate and share production of all or part of an oil or gas pool, field or like area, including at least one Federal lease, without regard to lease boundaries and ownership.

Unit area means all committed leases, other committed tracts and unleased Federal lands included in a BLM-approved unit. The unit area excludes any uncommitted tracts within the external boundaries of the unit.

Unit operator means the person who has stated in writing to BLM that the interest owners of the committed leases have designated it as operator for the unit area.

Unitized substances means all oil and gas production that meets productivity criteria or all oil and gas production from established participating areas.

Usable water means water that contains less than 10,000 parts per million (ppm) of total dissolved solids.

Variance means a BLM-approved alternative that meets the intent of, and allows you to comply with, a provision or standard of parts 3100 through 3190.

Waiver means a BLM-granted permanent exemption from a lease stipulation, condition of approval, order, lease term for the entire leasehold, or area covered by the original order or condition of approval.

Waste means your act or failure to act that is not sanctioned by BLM as necessary for proper development and production and that results in—

(1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations;

(2) Avoidable surface loss of oil or gas; or (3) An avoidable change in the quality or quantity of produced oil or gas which may result in a reduced value of such production.

Waste oil means oil or condensate that BLM determines has no economic value because it is of such poor quality that it cannot be treated and placed in a marketable condition with existing or modified lease facilities or portable equipment and cannot be profitably sold to a reclaimer.

Workover means operations you conduct to maintain, restore, or increase production or serviceability of a well in its present completion interval.

Zones known to contain hydrogen sulfide (H_2S) means a geological formation in a field where prior drilling, logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that contain 100 ppm or more of H_2S in the gas stream; and Zones reasonably expected to contain H_2S means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is potential for 100 ppm or more of H_2S in the gas stream.

§ 3101.8 Reference material.

(a) *Matter incorporated by reference.* There are industry publications in part 3100 that are incorporated by reference. These publications are not specifically set out in the regulatory text but only referenced. The referenced material is part of the regulations in parts 3100 through 3190 and you must comply with it. BLM considers cited American Petroleum Institute (API) recommended practices to be mandatory. Material is incorporated as it exists in the specific document cited and BLM will publish a notice of any change in the material in the **Federal Register.** This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) *Accessibility of materials.* You may purchase copies of the referenced materials from the American Petroleum Institute, Order Desk, 1220 L Street, N.W., Washington, D.C., 20005. Certain out-of-print or withdrawn API publications may be purchased from Global Engineering Documents, 15 Inverness Way East, P.O. Box 1154, Englewood, Colorado, 80150–1154. You may inspect copies at the Bureau of Land Management, Regulatory Affairs Group, Room 401, 1620 L Street, N.W. Washington, D.C. 20036 or at the Office of the Federal Register, 800 North Capitol St., N.W., Suite 700, Washington, D.C.

(c) *Table of material incorporated by reference.* The following table sets out publications that are incorporated by reference. The first column sets out the name of the publication and where you may purchase it. The second column lists the section(s) of these regulations in which the publication is referenced. The second column is for information only and may not be all inclusive.

Name of material (vendor)	43 CFR section where the material is incorporated
(1) API RP 55, "Recommended Practices for Conducting Oil and Gas Producing and Gas Processing Plant Operations involving Hydrogen Sulfide", Second Edition, February 15, 1995 (API Documents).	3151.23 (b) and (d).
(2) API RP 12R1, "Recommended Practice for Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service", Fifth Edition, August 1997 (API Documents).	3153.20(a).
(3) API Manual of Petroleum Measurement Standards (MPMS), Chapter 3.1A, "Standard Practice for the Manual Gauging of Petroleum and Petroleum Products", First Edition, December 1994 or API MPMS Chapter 3.1 B, "Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging", First Edition, April 1992 (Reaffirmed January 1997). (API Documents).	3153.20(e).
(4) API MPMS, Chapter 2.2A, "Measurement and Calibration of Upright Cylindrical Tanks by the Manual Tank Strapping Method", First Edition, February 1995 (API Documents).	3153.20(b).
(5) API MPMS, Chapter 2.2B, "Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method", First Edition, March 1989 (Reaffirmed May 1996) (API Documents).	3153.20(b).
(6) API MPMS, Chapter 18.1, "Measurement Procedures for Crude Oil Gathering from Small Tanks by Truck", Second Edition, April 1997 (API Documents).	3153.20(c).
(7) API MPMS, Chapter 8.1, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products", Third Edition, October 1995, (ASTM D4057), or Chapter 8.2, "Sampling of Liquid Petroleum and Petroleum Products", Second Edition, October 1995 (ANSI/ASTM D4177) (API Documents).	3153.20(d).
(8) API MPMS, Chapter 9.1, "Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products", (ANSI/ASTM D1298), June 1981 (Reaffirmed October 1992) (API Documents).	3153.20(f) and 3153.31.
(9) API MPMS, Chapter 7.1, "Static Temperature Determination Using Mercury-In-Glass Tank Thermometers", First Edition, February 1991. (Reaffirmed November 1996) (API Documents).	3153.20(g).
(10) API MPMS, Chapter 10.4, "Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure)", Second Edition, May 1988 (ASTM D96–88) (Reaffirmed May 1998) (API Documents).	3153.20(h) and 3153.31.
(11) API Specification 11N, "Specification for Lease Automatic Custody Transfer (LACT) Equipment", Fourth Edition, November 1, 1994 (API Documents).	3153.30(b)(1).
(12) API MPMS, Chapter 6.1, "Lease Automatic Custody Transfer (LACT) Systems", Second Edition, May 1991 (Reaffirmed July 1996) (API Documents).	3153.30 (a), (b)(2) and 3153.32(a).
(13) API MPMS, Chapter 12.2, "Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters", First Edition, September 1981 (Reaffirmed May 1996) (API Documents).	3153.32(d)(1) and 3153.37(b)(1).
(14) API MPMS, Chapter 11.1, Volume I, "Table 5A—Generalized Crude Oils and JP–4, Correction of Observed API Gravity to API Gravity at 60 °F." "Table 6A—Generalized Crude Oils and JP–4, Correction of Volume to 60 °F Against API Gravity at 60 °F." (ANSI/ASTM D 1250–80), (IP 200) (API Standard 2540) August 1980 (Reaffirmed October 1993) (API Documents or ASTM Documents).	3153.32(d)(2).
(15) API MPMS, Chapter 11.2.1, "Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range", First Edition, August 1984 (Reaffirmed May 1996) (API Documents).	3153.32(d)(3).
(16) API MPMS, Chapter 14.3, "Orifice Metering of Natural Gas and Other related Hydrocarbon Fluids", Second Edition, September 1985 (ANSI/API 2530) (Global Documents).	3154.20(a)(1).
(17) API MPMS, Chapter 14.3, Part 2, "Specification and Installation Requirements", Third Edition, February 1991, Reaffirmed May 1996 (ANSI/API 2530, Part 2, 1991) (API Documents).	3154.20(a)(2) and 3154.40(a)(1).
(18) API MPMS, Chapter 14.3, Part 3, "Natural Gas Applications", Third Edition, August 1992 (API Documents).	3154.21.
(19) API MPMS, Chapter 20.1, "Allocation Measurement", First Edition, September 1993 (API Documents).	3154.32 (a) and (b).
(20) API MPMS Chapter 14.1 "Collecting and Handling of Natural Gas Samples for Custody Transfer, Fourth Edition, August 1993" (API Documents).	3154.70(c).
(21) API Bulletin E3, "Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document", First Edition, January 1993 (Section 2) (API Documents).	3159.22(a).
(22) API RP 49, "Recommended Practices For Safe Drilling of Wells Containing Hydrogen Sulfide", Second Edition, April 15, 1987 (Global Documents).	3145.41(a), 3145.44 (a) and (d).
(23) API RP 53, "Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells", Third Edition, March 1997 (API Documents).	3145.30(c) and 3145.33(a)(2).
(24) API RP 54, "Recommended Practice for Occupational Safety for Oil and Gas Well Drilling and Servicing Operations," Second Edition, May 1, 1992 (API Documents).	3145.31 and 3145.34(a).

§ 3101.10 What do the regulations in parts 3100 through 3190 cover?

(a) These regulations apply to the leasing of Federal lands for oil and gas. These regulations also provide the operational requirements associated with the exploration, development and production of oil or gas on both Federal and Indian lands.

(b) The regulations relating to site security, measurement, reports of operation activities, and assessments or penalties for noncompliance with the requirements apply to your wells or facilities on State or privately-owned mineral lands committed to an agreement approved by the Department of Interior, such as a unit or communitization agreement, in which Federal lands or Indian lands share in production.

(c) Notwithstanding the regulations in title 25 of the CFR concerning oil and gas operations on Indian leaseholds, the regulations in this part govern with respect to your conduct of oil and gas

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operations, acts of noncompliance, and BLM's jurisdiction and authority.

(d) These regulations do not apply to Osage Indian lands.

§ 3101.11 Who must comply with the lease terms, regulations, orders and Notices to Lessees (NTL's) BLM issues?

Interest owners and operators must comply with the lease terms, regulations and BLM's orders and NTL's. Their agents, contractors or subcontractors must also comply. The interest owner and operator are responsible if they do not comply.

§ 3101.12 As a record title owner, what are my obligations?

(a) You are responsible for all performance on the lease, including paying any rent and royalty due. If there is more than one record title or operating rights owner, each of you is jointly and severally liable for nonmonetary lease obligations, including the obligation to protect the lease from drainage and to pay compensatory royalty that may be owed. You also are jointly and severally liable for plugging and abandonment obligations that accrue while you hold your record title interest. This means that if you own a 50 percent record title interest in the lease, BLM may hold you responsible for 100 percent of the lease obligations if your joint owner(s) defaults. However, for monetary obligations, such as paying rent and royalty, your obligation is proportionate to your interest. Therefore, if you own 25 percent of the record title interest, you are liable for only 25 percent of the rental and royalty on production.

(b) You are ultimately responsible for compliance with the lease terms and conditions regardless of who conducts actual lease operations.

§ 3101.13 As an operating rights owner, what are my rights and obligations?

(a) You have the right to enter the leased lands to conduct drilling and related operations including producing oil or gas, according to the lease terms.

(b) You have the right to authorize another party to conduct operations on the lease.

(c) You are jointly and severally liable with the other record title or operating rights holders in the lease for all nonmonetary lease obligations pertaining to that portion of the lease subject to your operating rights, and proportionately liable for monetary obligations with other operating rights holders for that portion of the lease subject to your operating rights.

§ 3101.14 Does BLM warrant title to the oil and gas deposits when it issues a lease or approves subsequent lease actions or lease operations?

If BLM issues a Federal oil and gas lease or approves your application under parts 3100 through 3190, the United States—

(a) Does not make any warranty of title, either express or implied, to the oil and gas deposits;

(b) Is under no obligation to you to either discover or dispose of any other person's claims to the oil and gas deposits or assume any obligation to defend the oil and gas lease against any claims; and

(c) Does not warrant or certify that you hold legal or equitable title to your leases which would entitle you to conduct drilling operations.

§ 3101.15 Must I give BLM information and documentation about my lease?

You must give BLM any information or documentation that BLM requests to properly administer your lease or to determine your compliance with applicable laws and regulations. This information may include, but is not limited to, information about your lease operations or production.

§ 3101.16 What requirements must I follow in addition to the regulations in parts 3100 through 3190?

BLM may—

(a) Include lease stipulations to minimize the impacts or interference that oil and gas operations may cause to other resource values, land uses or users. BLM will provide notice of the stipulations on oil and gas lease parcels before any of the lands are offered for lease. You agree to the stipulations attached to the parcel offered for lease when you bid on a competitive lease parcel or file a noncompetitive lease offer. Stipulations become a part of the terms of your lease and replace any inconsistent provisions of the standard lease form at the time of lease issuance. You must comply with the stipulations for all actions you take on the lease. Some examples of common stipulation types include—

(1) Limitations on when you may conduct operations;

(2) No surface occupancy;

(3) Other surface use restrictions; and

(4) Requirements to join an approved agreement.

(b) Impose conditions of approval on the granting of required permits or authorizations that are reasonable and necessary for the protection of resources and other uses of the land and which are consistent with lease rights;

(c) Issue NTL's to provide information or explanation as to how the regulations in this part apply to your lease operations, or to provide alternative methods to meet the requirements of these regulations;

(d) Issue written or oral orders to you for specific lease operations. BLM will confirm an oral order in writing;

(e) Require tests and surveys to—

(1) Determine the presence, quantity, and quality of oil, gas, other minerals, or the presence or quality of water;

(2) Determine the amount and/or direction of deviation of any well from the vertical;

(3) Determine the relevant characteristics of the oil and gas reservoirs penetrated; and

(4) Demonstrate the mechanical integrity of the downhole equipment; and

(f) Require you to provide other information required for proper administration of your lease.

§ 3101.17 May BLM establish development and production requirements for my lease?

(a) BLM may direct you to drill and produce wells that will reasonably and timely develop your lease in accordance with good economic practices.

(b) After you receive written notice from BLM, you must drill and produce all wells BLM determines necessary to diligently develop your lease.

§ 3101.18 Will I be responsible for compensating the United States or Indian lessor if my lease is being drained of oil and gas by wells on adjacent tracts?

You are responsible for protecting the United States or Indian lessor from losses of royalty due to drainage if it would be economic to drill a protective well, as further provided in § [to be specified in the final rule].

§ 3101.19 May I obtain relief from the requirements of the regulations in parts 3100 through 3190 or other requirements BLM developed?

(a) BLM may grant you a variance to these regulations if your proposal meets or exceeds the objectives of the regulations involved. BLM may not waive statutory requirements.

(b) BLM may waive, except or modify stipulations, conditions of approval, orders, or terms of the lease if you submit a written request and if—

(1) BLM determines the reason for the stipulation, condition of approval, order, or term of the lease is no longer valid; or

(2) You propose an alternative that meets or exceeds the intent of the stipulation, condition of approval, order, or term of the lease.

(c) If BLM determines that a waiver, exception or modification to a lease stipulation is an issue of major public concern, BLM will post the change for at least 30 days to allow public review. BLM will post the change in the BLM office with jurisdiction over the land in the lease and make it available for posting in the local surface management agency office before approval.

(d) BLM will not waive, modify or grant exceptions to stipulations to a lease covering lands managed by another Federal agency without that agency's concurrence.

(e) BLM will not process requests for exceptions to lease stipulations, conditions of approval or orders that concern surface use on National Forest System (NFS) lands. You must submit requests for these exceptions to the Forest Service (FS).

§ 3101.20 When will BLM consider a document filed?

BLM considers any document required by law, regulation or decision to be timely filed —

(a) When the BLM office where it must be filed receives it on or before the date it is due during regular business hours; or

(b) If the BLM office is officially closed on the due date, the next day the office is open to the public. BLM State Offices and the lands they administer are identified in 43 CFR 1821.2.

§ 3101.21 Are there other requirements that affect oil and gas operations on Federal or Indian lands?

You will find most of the requirements that affect oil and gas leasing (for Federal lands) and operations (for Federal and Indian lands) in this part. However, some BLM requirements are covered under other sections of title 43 of the CFR. The following table lists some, but not all, of the other regulations that may apply to your lease—

Rights-of-way across BLM managed surface	43 CFR part 2800
Production and royalty reporting requirements, and late payments—Minerals Management Service (MMS).	30 CFR parts 200 through 243.
Indian oil and gas leasing—Bureau of Indian Affairs	25 CFR parts 211, 212, 213, 225 and 227.
Proprietary or confidential information and Freedom of Information Act requests	43 CFR part 2.
BLM land use planning	43 CFR part 1600.
Surface use plans—FS	36 CFR part 228.
Special Use Authorizations—FS. (in lieu of Rights of Way)	36 CFR parts 212 and 251.
Release of hazardous substances—Environmental Protection Agency (EPA)	40 CFR part 302.
Underground Injection Control permits—EPA	40 CFR parts 144 and 146.
Spill Prevention Control and Countermeasure plan—EPA	40 CFR part 112.
Worker safety—Occupational Safety and Health Administration	29 CFR part 1910.
Late payments—MMS	30 CFR part 202.
Procedures for Tribes to request payment under cooperative agreements	43 CFR part 12, subparts A and C.
Disposal of reserved minerals under the Act of July 17, 1914 and Stockraising Homestead Act	43 CFR parts 3813 and 3814.
National Environmental Policy Act	40 CFR part 1500.
Appeal BLM decisions	43 CFR parts 4 and 1840.
Appeal FS decisions	36 CFR parts 215, 217 and 251.

§ 3101.22 May I appeal BLM's decisions under parts 3100 through 3190?

Any person adversely affected by a BLM decision under parts 3100 through 3190 may appeal the decision under 43 CFR parts 4 and 1840.

Subpart 3102—Recordkeeping

Recordkeeping

§ 3102.10 What records must I keep?

(a) You must keep accurate and complete records on all lease operations, such as, drilling, testing, producing, redrilling, deepening, repairing, plugging back, and abandoning wells, and other matters pertaining to well operations. For facilities and equipment, also keep required schematic diagrams. You must keep any records related to production accountability BLM may require.

(b) You must submit or make available complete and accurate records to BLM when we request you to do so. Whenever you submit data, information or notification to BLM, you are certifying that it is accurate.

§ 3102.11 How long must I keep records?

(a) If you are a record title owner, an operating rights owner, or a designee for a Federal lease, you must keep accurate and complete records that pertain to all Federal lease operations, for seven years from the date you generated the record unless the time is extended under 30 CFR 212.50.

(b) If you are the lessee, operator, revenue payor, or other person under 30 U.S.C. 1713(a) for Indian leases, you must keep all records that pertain to Indian lands for six years from the date you generated them, or such longer period authorized under the Federal Oil and Gas Royalty Management Act of 1982, as amended (FOGRMA) (30 U.S.C. 1701 *et seq.*).

Subpart 3103—Reports, Submissions, and Notifications

Reports, Submissions and Notifications

§ 3103.10 What reports and notifications must I submit to BLM?

The following table includes the most common records you must keep, reports you must submit, notifications you must provide BLM, and when you must submit them. The local BLM office may adjust notification and submittal times. When a specific form is required, BLM may approve alternative methods of data submission. The records that do not require a specific BLM form, but that you still must submit, are marked "None." You also may be required to submit other records, reports and notifications not listed in the following table, but that are required by the regulations in this part.

Record	When to submit	On form	See
(a) Bond	Within 30 calendar days of filing an Applications for Permits to Drill (APD). Until an accepted bond is in place, your APD cannot be approved.	3000–4	§§ 3107.12, 3107.40 and 3107.56.

Record	When to submit	On form	See
(b) Bond or rider to State or nationwide bond.	Within five business days of filing a Notice of Intent (NOI) or Permit Application to Conduct Geophysical Exploration Operations. Your NOI cannot be approved without an accepted bond or rider to an existing accepted bond.	3000–4a 3104–8a	§§ 3108.10 and 3108.13.
(c) Terms and conditions for conducting geophysical exploration operations.	Return it to the BLM office having jurisdiction over the land in the application prior to starting operations.	3150–4a	§ 3112.11.
(d) Geophysical exploration completion report.	Within 30 calendar days after you complete geophysical operations, including reclamation activities.	3150–5	§§ 3112.20 and 3113.40.
(e) Competitive lease bid	On the day of the sale for each parcel that you were the winning bidder.	3000–2	§ 3122.15.
(f) Offer to lease	Within a reasonable time from the date of execution by the offeror or official representative.	3100–11	§ 3123.20.
(g) Assignment of record title interest.	Within 90 calendar days of execution by the assignor. Filing it later can lead to unnecessary delays while BLM requests additional information.	3000–3	§ 3129.30
(h) Transfer of operating rights interest (sublease).	Within 90 calendar days of execution by the transferor. Filing it later can lead to unnecessary delays while BLM requests additional information.	3000–3a	§ 3129.30.
(i) Construction start-up notice	At least 48 hours before you start construction	Orally	Subpart 3145.
(j) Spud notice	At least 24 hours before spudding	Orally	Subpart 3145.
(k) Electric and other logs run on your well.	Within 30 calendar days after you run logs	None	§§ 3145.22 and 3145.54.
(l) Completion or Recompletion report.	Within 30 calendar days after you complete or recomplete your well.	3160–4	§§ 3145.22 and 3145.54.
(m) Running surface casing and BOP test notice.	At least 12 hours before you run surface casing and before conducting BOP tests.	Orally	§§ 3145.30 and 3145.33.
(n) Drill Stem Tests or other tests	Within 30 calendar days after you conduct tests	None	§ 3145.22.
(o) Removal of drilling fluids before reserve pit closure notice.	At least 24 hours before you remove fluids from the reserve pit.	Orally	Subpart 3145.
(p) Action to correct or contain an emergency.	Within 48 hours after the emergency occurs	None	§ 3145.52.
(q) Subsequent report of additional well operations.	Within 30 calendar days after you alter an existing well bore. Within 30 calendar days after you complete approved actions when BLM requests a report.	3160–5	§ 3145.54.
(r) Production start-up notice	Not later than five business days after you begin production, or resume production after shutting in your well for 90 calendar days or more.	3160–5	§ 3151.12.
(s) H_2S concentrations at production facilities.	Within five calendar days whenever tests reveal a concentration of 20 ppm, or greater (unless previously reported). Within five business days whenever the H_2S concentration changes by 5 percent or more from a previously reported test.	3160–5	§ 3151.20.
(t) H_2S Public Protection Plan	Within 60 calendar days after the criteria of § 3151.23(d) apply.	None	§ 3151.23.
(u) Site security plans	Within five business days after BLM requests a plan	None	§ 3152.50.
(v) Seal numbers, where the seals were used, date and reason for installation and removal.	Within five business days after BLM requests a report	None	§ 3152.50.
(w) Site facility diagrams	Within 60 calendar days after you complete construction, first produce, or include a well on committed non-Federal lands in a Federally supervised unit or communitization agreement, whichever happens first.	None	§ 3152.51.
(x) Reports of theft or mishandling production.	Within 24 hours after you discover the theft or mishandling.	Orally	§ 3152.80.
(y) Tank or strapping tables	Within five business days after BLM requests a copy	None	§ 3153.20.
(z) Notice of LACT Meter Proving	At least five business days before proving sales or allocation meters.	Orally	§ 3153.32.
(aa) LACT meter proving report	Within 10 business days after you prove the LACT meter	None	§ 3153.37.
(bb) Run tickets, gas charts	Within five business days after BLM requests a copy	None	§§ 3153.40 and 3154.30.
(cc) Records on installation, maintenance, repair, inspection, and testing of metering systems.	Within five business days after BLM requests a copy	None	Subparts 3153 and 3154.
(dd) Notice of gas meter proving or calibration schedule.	At least 10 business days before you conduct the proving or first scheduled calibration.	None	§ 3154.32.
(ee) Leak detection system notice	At least two business days before you install a produced water pit liner.	Orally	§ 3155.15.
(ff) Produced water pit completion notice.	At least two business days before you use a produced water pit.	Orally	§§ 3155.15 and 3155.16.
(gg) Spill or accident reports	Within 24 hours after the accident or spill	Orally	§ 3156.11.
(hh) Spill or accident reports	In writing within 10 business days after the spill or accident occurs.	None	§ 3156.12.
(ii) Well abandonment notice.	At least 24 hours before you start approved plugging operations. BLM may grant oral approval if you request it.	Orally	§ 3159.21.

Record	When to submit	On form	See
(jj) Encountering concentrations of 100 ppm or more of H_2S not anticipated.	Within 24 hours of the occurrence	3000–3 Orally	§ 3129.30. § 3145.43.

Form Description:

Form 3000–4 is an Oil and Gas or Geothermal Lease Bond.

Form 3000–4a is an Oil and Gas or Geothermal Exploration Bond.

Form 3104–8a is a State or Nationwide Oil and Gas Lease Bond Rider.

Form 3150–4a is a Terms and Conditions for Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations.

Form 3150–5 is a Notice of Completion of Oil and Gas Exploration Operations.

Form 3000–2 is a Competitive Oil and Gas or Geothermal Resources Lease Bid.

Form 3100–11 is an Offer to Lease and Lease for Oil and Gas.

Form 3000–3 is an Assignment of Record Title Interest in a Lease for Oil and Gas or Geothermal Resources.

Form 3000–3a is a Transfer of Operating Rights (sublease) in a Lease for Oil and Gas or Geothermal Resources.

Form 3160–4 is a Well Completion or Recompletion Report and Log.

Form 3160–5 is a Sundry Notices and Reports on Wells.

§ 3103.11 If I am the record title or operating rights interest owner, what must be filed with BLM to authorize someone else to conduct operations on my lease?

(a) The person you authorize to conduct operations on your lease must notify BLM in writing that it is the new operator. The new operator must identify, by number, the bond that will cover its operations.

(b) The operator may provide bond coverage on its own behalf or the operator may be covered by the lessee's bond.

Subpart 3104—Environment and Safety

Environment and Safety

§ 3104.10 How may I use the surface and subsurface of my lease to develop oil and gas?

(a) For a Federal lease, you have the right to use as much of your lease site as you reasonably need to explore, drill, mine, extract, remove and dispose of the leased resources. However, your lease may include stipulations that restrict your use of the surface or other lease areas.

(b) BLM may restrict your use of a lease with conditions of approval (COA) after lease issuance. These restrictions may include COA's pertaining to—

(1) Environmental quality and resources;

(2) Threatened and endangered species;

(3) Cultural or historic resources; and

(4) Private or other rights where the surface is either not owned by the United States or not managed by BLM.

(c) For Indian leases, see Title 25 of the CFR for rights to surface use.

(d) When the surface is privately owned or held in trust for an Indian Tribe or allottee, or managed by an agency other than BLM, you must make access arrangements with the private surface owner, agency other than BLM, or BIA and Indian mineral owner before you enter the lands to survey, stake or conduct inventories.

§ 3104.11 May BLM take measures to minimize adverse impacts to resource values, land uses or users not addressed in the lease stipulations and not required by statutes or regulations?

BLM may develop conditions of approval, consistent with your lease rights, to reduce adverse impacts to other resource values, land uses or users or to avoid unnecessary and undue degradation. These measures may include, but are not limited to—

(a) Modifying the location or design of proposed operations;

(b) Restricting the time that surface disturbance is allowed; and

(c) Specifying interim and final reclamation measures.

§ 3104.12 What measures may BLM take that are always consistent with my lease rights?

Measures that BLM may require consistent with your lease rights include, but are not limited to—

(a) Relocating proposed operations up to 660 feet, unless this would place operations off of the lease;

(b) Prohibiting new surface disturbing operations for a period up to 60 calendar days in each lease year; and

(c) Specifying reclamation measures to prevent unnecessary and undue degradation of public lands or resources.

§ 3104.13 May anyone other than BLM impose lease stipulations?

(a) When Federal oil and gas lie beneath surface that a Federal agency other than BLM manages, BLM will contact that agency to determine whether the surface management agency will impose stipulations on the lease.

(b) BLM will lease the following Federal lands only if the surface management agency agrees to leasing. BLM will include in the issued lease any stipulations the surface management agency has required as a condition of its consent to leasing—

(1) Acquired lands;

(2) Public domain lands, if the statute requires surface management agency consent or a decision that it has no objection to leasing;

(3) Lands managed by the Department of Defense; and

(4) National Forest System lands.

(c) BLM will only lease public domain lands withdrawn for the use of another Department of the Interior agency after consulting with the surface management agency. BLM may adopt recommended stipulations or decide not to lease the parcel.

(d) Where the United States has conveyed control of the surface of lands to any State, local or tribal government or agency, or educational or religious organization and reserved the oil and gas rights, BLM will give the entity holding the surface rights an opportunity to suggest stipulations necessary to protect existing surface improvements or uses. BLM may adopt or modify recommended stipulations, add stipulations, or decide not to lease the parcel.

(e) When a surface management agency has agreed that BLM may lease lands under its jurisdiction, BLM retains the right to make the final determination whether to offer the lands for lease.

§ 3104.14 What must I do to protect the environment and ensure safety when I conduct operations to develop Federal and Indian lands, or geophysical operations on Federal lands?

You must—

(a) Plan and conduct your operations and develop contingency plans that —

(1) Protect the environment;

(2) Avoid contaminating lands and waters on and adjacent to your lease; and

(3) Ensure safe field operations;

(b) Conduct your operations with care and diligence and in a safe manner to—

(1) Avoid unreasonable damage to surface or subsurface resources and surface improvements; and

(2) Protect public health and safety;

(c) Maintain your equipment and facilities to—

(1) Provide adequate protection for public health and safety and the protection of property; and

(2) Avoid accidents and spills;

(d) Report, control and clean up spills and accidents; and

(e) Properly plug and abandon your wells and reclaim all lands and waters that you disturb or contaminate.

Subpart 3105—Lessee Qualifications

Lessee Qualifications

§ 3105.10 Who may hold a lease?

You may acquire and hold a lease or lease interests if you are—

(a) A citizen of the United States;

(b) An association (including a partnership or trust) of United States citizens;

(c) A corporation organized under the laws of the United States or of any State or Territory of the United States; or

(d) A municipality.

§ 3105.11 If I am not a United States citizen, may I acquire or hold an interest in a lease?

If you are not a United States citizen you may—

(a) Not hold an interest in a lease directly or as a member of an association;

(b) If your country does not deny similar or like privileges to United States citizens because of nationality hold —

(1) Stock in a corporation which holds a lease interest;

(2) Stock in a corporation which holds an interest in an association which holds a lease interest; or

(3) An interest in an association or stock in another corporation, which in turn holds stock in a corporation which holds a lease interest.

§ 3105.12 If I am not qualified to hold a lease, may I hold one anyway if I acquire it by descent, will, judgment or decree?

If you are not qualified to hold a lease for any reason, you may acquire or hold lease interests by descent, will, judgment or decree for no longer than two years from the time you acquire it. If you hold this interest for more than the two-year period allowed, it is subject to cancellation.

§ 3105.13 Under what circumstances may minors acquire or hold interest in a Federal oil and gas lease?

(a) Minors may not directly hold or acquire leases. Whether you are a minor is determined by the laws of the State where the leased lands are located.

(b) Leases may be acquired and held by legal guardians or trustees of minors. Legal guardians or trustees must be citizens of the United States and not in violation of any statute or regulation cited in § 3105.14.

§ 3105.14 Under what conditions will I be prohibited from acquiring a lease or interest in a lease?

You are prohibited from acquiring lease interests if you are in violation of—

(a) 43 CFR 3472.1–2(e)(1)(i), except for an assignment or transfer under subpart 3129;

(b) Section 41 of the Act, or have been subjected to criminal penalties or to a civil order prohibiting participation in exploration, leasing or development of Federal oil and gas;

(c) Section 17(g) of the Act (30 U.S.C. 226(g)), after notice and an opportunity to comply with such requirements or standards was given and you did not comply. This means that you must not be a person, association or corporation, or any subsidiary, affiliate or person controlled by or under common control with such person, association, or corporation, during any period in which you or any subsidiary, affiliate or person controlled by, or under common control with you, failed or refused to comply in any material respect with reclamation requirements or other standards established under Section 17 of the Act (30 U.S.C. 226); and

(d) Federal acreage limitation requirements (see § 3105.20).

§ 3105.15 What must I file with BLM to establish that I meet the qualifications to hold a lease?

When you sign and submit to BLM an application, lease offer, competitive bid, assignment or transfer form, you certify that you are in compliance with the provisions of this subpart.

§ 3105.16 May BLM require me to submit additional information to determine if I meet the qualification requirements to acquire or hold an interest in a lease?

BLM may require additional information from anyone seeking to acquire or currently holding a Federal lease interest.

Acreage Limitation

§ 3105.20 What is the acreage limitation for holding, owning or controlling oil and gas lease interests on public domain lands?

(a) Except for Alaska, you may not hold, own or control more than 246,080 acres of Federal oil and gas leases or operating rights, or 200,000 acres in options, in any one State at any one time.

(b) In Alaska, you may not hold, own or control more than 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district in options, leases or operating rights.

§ 3105.21 What is the boundary between the two leasing districts in Alaska?

The boundary between the two leasing districts in Alaska begins at the northeast corner of the Tetlin National Wildlife Refuge as established on December 2, 1980 (16 U.S.C. 3101), at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63° 9′ 38″ north latitude, 142° 20′ 52″ west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth.

§ 3105.22 What is the acreage limitation for holding, owning or controlling oil and gas lease interests on acquired lands?

The acreage limitations for holding, owning or controlling leases of acquired lands is the same as for public domain lands (see § 3105.20). Acquired lands acreage holdings are charged separately from public domain lands acreage holdings.

§ 3105.23 What is an option agreement?

An option agreement is a contractual arrangement between two or more persons that grants a right to acquire record title or operating rights interest in a lease(s) at some future date or occurrence.

§ 3105.24 Must I file my option agreement with BLM?

You are not required to automatically file option agreements. However, BLM may require you to furnish this information for acreage audit purposes.

§ 3105.25 What effect do options have on lease acreage holding limitations?

(a) You may not hold more than 200,000 acres under option in any one State or in each of the two leasing districts in Alaska.

(b) If you hold an option, BLM charges the acreage to you against the limits in §§ 3105.20 and 3105.22.

§ 3105.26 How will BLM charge acreage holdings on lands where the United States owns a fractional interest in the mineral resource?

If your lease includes lands where the United States owns only a fractional interest in the mineral resources of the lands, BLM will charge you only with the net mineral acres owned by the United States.

§ 3105.27 What lease interests are not chargeable against acreage limitations?

BLM does not include the following acreage or interests against acreage chargeability—

(a) Lease acreage held in leases issued under the Act of May 21, 1930;

(b) Acreage in a future interest lease until the mineral interest vests in the United States;

(c) Lease acreage committed to any BLM-approved cooperative or unit plan;

(d) Leases subject to an operating, drilling or development contract BLM approved; and

(e) Overriding royalty interests, net profits or production payments.

§ 3105.28 What if I exceed the acreage limitation?

(a) If the acreage you hold exceeds the statutory limit as a result of —

(1) The termination or contraction of a unit or cooperative plan or due to the elimination of a lease from an operating, drilling or development contract, you must reduce your holdings to the prescribed limitation within 90 calendar days from the date you first held excess acreage and provide BLM proof of the reduction; or

(2) A merger or the purchase of the controlling interest in a corporation, you must reduce your holdings to the prescribed limitation within 180 calendar days from the date you first held excess acreage and provide BLM proof of the reduction. If you require additional time to complete the divestiture of the excess acreage, you may petition the BLM office with jurisdiction over the subject leases for additional time.

(b) If BLM finds that you hold chargeable acreage in violation of the provisions of the regulations in this part and you do not voluntarily reduce your acreage holdings to the amount of acreage allowed, BLM may seek a court order to cancel or require you to forfeit lease(s) or interests in inverse order of acquisition, until sufficient acreage has been eliminated to comply with the acreage limitation. This means that the last leases you acquired will be the first leases BLM will ask the court to cancel or require you to forfeit.

§ 3105.29 How does BLM compute chargeable acreage?

(a) BLM will aggregate all record title, operating rights and lease options you hold, own or control to determine whether you exceed the acreage limitations. If you —

(1) Own 100 percent of the record title, operating rights or options in a lease, you are charged for all of the acreage in the lease;

(2) Own an undivided interest in the record title, operating rights or options in a lease, you are charged for your proportionate part of the lease acreage;

(3) Own or control more than 10 percent of the stock of a corporation, or of the instruments of ownership or control of an association, that holds the record title, operating rights or options in a lease, you are accountable for your proportionate part of the lease acreage held by the corporation or association. If you are a corporation, you are not charged for the acreage owned by your stockholders; or

(4) Are part of a group that is not an association, and that holds, owns or controls record title, operating rights or options in a lease, you are charged proportionately.

(b) Any group of persons who holds, owns or controls a lease or leases in common may not exceed the acreage that the law allows persons to hold.

§ 3105.30 May BLM require me to provide information with respect to my acreage holdings?

BLM may require you to file a statement indicating the lease interests you hold as of a specified date by serial number, date of issuance and number of acres for each lease in any State.

Subpart 3106—Fees, Rentals and Royalties

Fees and Rentals

§ 3106.10 What form of payment will BLM accept?

BLM will accept payments by—

(a) Personal, cashier and certified checks;

(b) Money orders;

(c) Electronic funds transfers; or

(d) Credit cards when BLM authorizes it.

§ 3106.11 Who should I pay?

Your payment must be made payable to the Department of the Interior, Bureau of Land Management (BLM) or to the Minerals Management Service (MMS), as appropriate.

§ 3106.12 Where should I submit my payments?

Submit your payments according to the following chart—

Type of payment	Submit to
(a) Filing fees for offers, transfers, first year rentals and bonus bids.	The BLM State Office with jurisdiction over the lands in your lease.
(b) Second year and subsequent rentals.	MMS.
(c)(1) Royalties and minimum royalties;. (2) Compensatory royalty assessments on leases; (3) Payments due on drainage agreements; and (4) Subsurface storage agreement payments.	MMS.

§ 3106.13 What are the rental rates for Federal leases?

The rental rates for Federal leases are as follows—

Types of leases	Rental rate per acre or fraction of an acre
(a) Offers filed and leases issued after December 22, 1987	$1.50 for the first five years and $2 for the sixth and succeeding years.
(b) Leases issued from offers filed before December 22, 1987, except those leases identified in paragraphs (c) through (h) of this table.	Rental as stated in the lease or in regulations in effect at the time the offer was filed.
(c) Leases issued under the simultaneous leasing regulations, 43 CFR part 3100, subpart 3112 (contained in the 43 CFR, parts 1000 to 3199, edition revised as of October 1, 1981 and amended at 47 FR 2864 (January 20, 1982)), on or after February 19, 1982.	$1 for the first five years and $2 for the sixth and succeeding years.
(d) Exchange (30 U.S.C. 226(i)) and Renewal Leases issued under Sections 13 and 14 of the original Mineral Leasing Act of 1920.	$2.
(e) Leases issued under the 1930 Right-of-Way Leasing Act (30 U.S.C. 301–306)	$1.50 for the first five years and $2 the sixth and succeeding years.

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Types of leases	Rental rate per acre or fraction of an acre
(f) Terminated leases originally issued noncompetitively and reinstated under subpart 3142 (Class II reinstatement regulations) beginning with the termination date.	$5. Each succeeding reinstatement will increase the rental by $5 per acre or fraction of an acre.
(g) Terminated leases originally issued under subpart 3142 (Class III reinstatement provisions for conversion of unpatented oil placer claims) beginning with the termination date.	$5. Each succeeding reinstatement under subpart 3142 (Class II) will increase the rental by $5 per acre or fraction of an acre.
(h) Terminated leases originally issued competitively and reinstated under § 3142.8 (Class II reinstatement regulations) beginning with the termination date.	$10. Each succeeding reinstatement will increase the rental by $10 per acre or fraction of an acre.

§ 3106.14 How does BLM calculate the rental due on my lease?

Rental is calculated on a per acre or fraction of an acre basis. For example, if your lease contains 640.32 acres and the rental is $2 per acre, you should round the acreage up to 641.00 and multiply by $2. Your annual rental would be $1,282.00.

§ 3106.15 If BLM assessed my nonproducing lease compensatory royalty, must I also pay rental?

You must pay rental in addition to any compensatory royalty.

§ 3106.16 What if I do not submit enough rental with my lease offer?

BLM determines the rental you filed as the total amount of money you submitted minus the required filing fee. BLM will accept your lease offer, without loss of priority, if your rental payment is deficient by not more than the lesser of—

(a) Ten percent of the total rental due; or

(b) $200.

§ 3106.17 When must I pay the balance of a rental deficiency on my lease offer?

You must pay the balance to BLM within 30 calendar days from the date you receive BLM's notice of rental deficiency.

§ 3106.18 What if I do not pay the balance of the rental due within the time allowed?

BLM will—

(a) Reject your lease offer; or

(b) Cancel your lease if it has been issued.

§ 3106.19 What if I base my deficient rental payment on an incorrect acreage advertised in the Notice of Competitive Lease Sale?

You must pay the additional rental within the time stated in BLM's deficiency notice, without loss of priority to your offer.

§ 3106.20 If the United States owns less than 100 percent of the mineral rights in my lease, must I pay rental on the gross acreage or on the net acreage?

You must pay rental on the entire lease, even if the United States owns less than 100 percent of the mineral rights in your lease.

§ 3106.21 When should I pay the second and succeeding rental payments after BLM issues my lease?

The MMS must receive your second and succeeding rental payments on or before the anniversary date of lease issuance each year.

§ 3106.22 Must I pay a full year's rental if less than a full year is left in my lease term?

If less than a full year remains in your lease term, you must pay a full year's rental.

§ 3106.23 What if MMS receives my rental payment after the date it is due?

(a) If your rental payment is late, your lease automatically terminates by operation of law. BLM will send you a termination notice.

(b) Refer to subpart 3142 for more information on terminations and reinstatements.

§ 3106.24 What if the MMS office is closed on the date that my rental payment is due?

If the MMS office is closed on the date your rental payment is due, payment it receives on the next day the office is open to the public is considered timely.

§ 3106.25 What if I incorrectly mail my second or succeeding rental payment to BLM instead of MMS?

BLM will return the rental payment to you if you incorrectly mailed your second or succeeding advance rental payment to BLM instead of MMS. If MMS does not receive your payment timely, see § 3106.23.

§ 3106.26 What will BLM do if I mail a payment due to BLM to the wrong BLM office?

If you mail any payment due to BLM to the wrong BLM office, BLM will return the payment to you. It is your responsibility to timely make your payment to the BLM office with jurisdiction over the lease(s) or lands for which you are making payment.

Royalties

§ 3106.30 What royalty must I pay after I establish production?

You must pay royalty according to the following chart—

Type of lease	Royalty rate
(a) Leases issued after December 22, 1987, including: (1) Competitive; (2) Noncompetitive: (3) Exchange; (4) Renewal; and (5) Leases issued in lieu of unpatented oil placer mining claims under subpart 3142.	12½ percent.
(b) Railroad Right-of-Way	At a minimum 12½ percent, subject to competitive bidding.
(c) Leases issued after December 22, 1987, resulting from offers or bids filed on or before December 22, 1987.	The rates identified in the lease terms or in regulations in effect on December 22, 1987
(d) Leases issued on or before December 22, 1987	The rates identified in the lease terms or in regulations in effect at the time of lease issuance.
(e) Reinstated Noncompetitive Leases.	16⅔ percent plus an additional 2 percent for each succeeding reinstatement.
(f) Reinstated Competitive leases	Not less than 4 percent above the existing royalty rate, plus an additional 2 percent for each succeeding reinstatement.

Type of lease	Royalty rate
(g) Deposits determined by BLM to be a new deposit and discovered on leases after May 27, 1941 (30 U.S.C. 226(c)), by a well drilled on a lease or committed to a unit agreement or proposed for unitization at the time of discovery.	12½ percent.
(h) Lands not believed to be within the productive limits of any producing oil and gas deposit found by the Secretary to exist on August 8, 1946, under the Act of that date (30 U.S.C. 226(c)).	12½ percent.

§ 3106.31 What is minimum royalty?

Minimum royalty is the minimum amount of money you must pay following the date you establish production in paying quantities. You must pay the minimum royalty or the royalty due for the actual production, whichever is greater.

§ 3106.32 When must I pay the minimum royalty due on my lease?

You must pay minimum royalty at the end of each lease year after you discover oil or gas in paying quantities.

§ 3106.33 What minimum royalty must I pay on Federal leases?

You must pay minimum royalty according to the following chart—

Type of lease	Minimum royalty
(a) Leases issued on or after August 8, 1946 (excluding leases issued from offers filed after December 22, 1987).	$1 per acre or fraction of an acre in lieu of rental.
(b) Leases issued before August 8, 1946, if the lessee files an election under Section 15 of the Act of August 8, 1946.	$1 per acre or fraction of an acre in lieu of rental.
(c) Leases issued from offers filed after December 22, 1987	Not less than the amount of rental required for the lease.
(d) Reinstated lease	The minimum royalty indicated in paragraphs (a), (b), or (c), depending on when the lease was issued.

§ 3106.34 How does BLM determine royalty and minimum royalty if the United States owns less than a 100 percent mineral interest?

The royalty and minimum royalty is based on net acreage. Net acreage is determined as follows: Net acreage = number of acres in the lease x the percent of U.S. mineral interest.

§ 3106.35 How do I pay royalty and rental if my lease is committed to a unit agreement?

(a) If your lease is committed to a unit agreement, you must pay royalty on any production from or attributable to your lease based on the royalty terms of your lease.

(b) You must pay rental for leased lands outside the participating area, unless there is a non-unit well subject to royalty or minimum royalty.

Waiver/Suspension/Reduction of Rental/Royalty/Minimum Royalty

§ 3106.40 Will BLM waive, suspend, or reduce the rental, royalty, or minimum royalty if I cannot successfully operate my lease?

You may ask BLM to waive, suspend, or reduce your rental, royalty, or minimum royalty requirements if it is necessary to promote development. Your application must describe the relief you are requesting and include—

(a) The lease serial number;

(b) The names of the operating rights owners for each lease;

(c) The names of the operators for each lease;

(d) A description of the relief you are requesting;

(e) The number, location, and status of each well drilled;

(f) A statement that shows the aggregate amount of oil or gas subject to royalty for each month covering a period of at least six months immediately before the date you filed the application;

(g) The number of wells counted as producing each month and the average production per well per day;

(h) A detailed statement of expenses and costs of operating the entire lease;

(i) The income from the sale of any production;

(j) All facts tending to show whether the wells can be successfully operated under the lease royalty or rental; and

(k) The percentage of production dedicated to paying outstanding overriding royalty and payments out of production or similar interests. To receive a royalty reduction, you must reduce royalties or similar payments from your lease to an aggregate not greater than one-half the royalties due the United States.

Royalty on Oil: Sliding-Scale and Step-Scale Leases

§ 3106.50 How do I determine my royalty rate on oil I produce from a lease with a sliding-scale or step-scale royalty rate?

(a) Calculate your average daily oil production per well for your Federal lease, communitization or unit agreement, or unit participating area during the production month in accordance with §§ 3106.51 through 3106.54. The production rate you calculate for an agreement or participating area must be used for the Federal lease(s) to which you allocate production.

(b) Refer to the lease royalty schedule attached to your lease to find the oil royalty rate that corresponds to the average daily oil production you calculated. This royalty rate becomes the royalty rate you must pay on oil you produced from or that was allocated to your lease for the month.

§ 3106.51 How do I calculate average daily oil production per well for my sliding-scale or step-scale lease?

Calculate the average daily oil production per well by dividing the gross oil production from all wells you produce on your lease, communitization or unit agreement in a calendar month by the total well-days for eligible wells on your lease, communitization or unit agreement as reported on Form MMS–3160.

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§ 3106.52 What wells do I include in the calculation of average daily oil production in determining the royalty rate?

(a) To calculate average daily oil production, the wells must be—

(1) Paying oil wells;

(2) Injection wells that you use to recover oil; or

(3) Paying gas wells that produce oil.

(b) All wells you use must be—

(1) Integral to production during the month; and

(2) Operated and produced as a result of routine business on your property for that month.

§ 3106.53 What is a well-day?

A well-day is any day or part of a day you use a well to produce oil or for injection purposes to recover oil.

§ 3106.54 What royalty rate must I pay on oil I carry in inventory when I sell it?

When you sell oil that was placed in inventory, you must use the royalty rate that was determined for the month in which the oil was produced. You must use a first-in-first-out approach to determine what royalty rate you apply to oil you sell from inventory.

Stripper Oil Property Royalty Reduction

§ 3106.60 What is a stripper oil property?

(a) A stripper oil property is any Federal lease or agreement that produces an average of less than 15 barrels of oil per eligible well, per well-day, for the qualifying period, determined in accordance with §§ 3106.61 through 3106.64.

(b) To determine if you have a stripper oil property, you must consider only wells that you operate on the property. If there are other operators producing wells on the same lease or agreement as you, they must make a separate stripper oil property determination based on the wells they operate.

§ 3106.61 What is an eligible well?

(a) An eligible well is—

(1) A producing oil well;

(2) An injection well that injects a fluid, including gas, for secondary or enhanced oil recovery, including reservoir pressure maintenance operations; or

(3) A gas well that produces oil and less than an average of 60 Mcf of gas per day during the qualifying period under § 3106.62.

(b) All eligible wells must be operated and produced as a result of routine business for that period and for your property. You must not manipulate production to obtain a royalty reduction.

§ 3106.62 What is the qualifying period?

(a) The initial qualifying period was from August 1, 1990 through July 31, 1991.

(b) The current qualifying period is the first consecutive 12-month period in which your property qualifies as a stripper oil property.

(c) If all wells on your property were shut-in for 12 consecutive months or longer, the qualifying period is the 12-month production period immediately before the shut-in.

§ 3106.63 What is considered oil for determining whether or not I have a stripper oil property?

(a) For purposes of determining if you have a stripper oil property you must include only—

(1) Hydrocarbon liquids you produce with an API gravity of 45° or lower, regardless of the color of the liquid; and

(2) Hydrocarbon liquids you produce with an API gravity more than 45° but less than 50° which are not light, neutral, or straw colored in appearance, unless BLM determines the liquids to be produced from an oil reservoir.

(b) All other hydrocarbon liquids you produce that do not meet the characteristics described in paragraph (a) of this section are condensate and must not be used to determine average daily oil production.

§ 3106.64 How do I calculate the average daily production rate for my property?

(a) Divide the total oil you produced from eligible wells for the 12-month qualifying period as reported on Form MMS–3160 or MMS–4054 by the total number of well days determined under § 3106.53 for those eligible wells for the same 12-month period;

(b) Round the result down to the nearest whole number (e.g., 6.7 becomes 6);

(c) If the production rate you calculate is less than 15 barrels per day, the 12-month period you used for the calculation in paragraph (a) of this section is a qualifying period and your Federal lease is eligible for a reduced royalty rate; and

(d) If your stripper oil property is in a Federal agreement, the average daily production rate you determine for the agreement is then used to determine the stripper royalty rate for the Federal lease(s) to which you allocate oil production.

§ 3106.65 What will be my royalty rate if my property qualifies as a stripper oil property?

(a) A reduced royalty rate will not relieve you of your obligation to meet the minimum royalty requirements of your lease.

(b) Once you have determined your average daily production rate for your property, use this table to determine your royalty rate—

Average barrels per day	Reduced royalty rate (percent)
0	0.5
1	1.3
2	2.1
3	2.9
4	3.7
5	4.5
6	5.3
7	6.1
8	6.9
9	7.7
10	8.5
11	9.3
12	10.1
13	10.9
14	11.7

§ 3106.66 How do I apply for a stripper royalty rate?

To apply for a stripper royalty rate—

(a) Submit Form MMS–4377 to MMS for verification.

(b) When you submit Form MMS–4377 to MMS, you certify that you—

(1) Did not manipulate your production rate for the qualifying and later 12-month periods to obtain the royalty rate reduction; and

(2) Calculated the royalty rate using the instructions and procedures in the regulations in this part.

§ 3106.67 When may I start using the stripper royalty rate for my lease and how long will it be in effect?

(a) You may begin using the reduced royalty rate for your lease on the first day of the month after MMS receives your Form MMS–4377.

(b) The reduced royalty rate that you calculate for your initial qualifying period will be the maximum rate for your lease as long as the stripper oil property program is in effect.

§ 3106.68 Does the stripper royalty rate apply to condensate, gas or gas plant products?

The stripper royalty rate applies only to oil produced on your property.

§ 3106.69 How do I determine my royalty rate if my production varies?

(a) Your stripper royalty rate may vary as your production varies, but it will never go above your initial qualifying rate for the life of the stripper oil property program.

(b) At the end of each 12-month period, you must calculate a new daily production rate using the methods prescribed in § 3106.64 and the oil production and well days from eligible wells for the claim year you have just completed to determine if your property is eligible for a royalty rate lower than your initial qualifying rate.

§ 3106.70 How do I apply for a lower royalty rate?

(a) To apply for a lower stripper royalty rate, before the end of each claim year, submit Form MMS–4377 to notify MMS of your lower royalty rate. Use §§ 3106.61 through 3106.65 to determine your new royalty rate based on the production data from the last claim year.

(b) Your lower royalty rate will be effective for one year starting with production on the first day of the month after the month in which MMS receives your notice.

(c) If you do not submit a completed Form MMS–4377 to MMS within 60 calendar days after the end of the last claim year, the royalty rate for your property will revert back to the initial qualifying period royalty rate.

(d) Even if you determine that your royalty rate for the next claim year did not change from the previous claim year, you must notify MMS using Form MMS–4377 that your royalty rate is unchanged; otherwise your royalty rate will revert back to the initial qualifying period rate.

§ 3106.71 What happens to my royalty rate if I commit my lease to a Federal agreement after I qualify for a reduced royalty on a lease basis?

If your lease qualified for a reduced stripper royalty rate, and after qualifying you commit your lease to an agreement—

(a) The royalty rate for production from or allocable to your lease under the agreement will not exceed the stripper royalty rate from your qualifying period as long as at least one of the wells on which the lease rate was calculated moves to the agreement;

(b) You must submit Form MMS–4377 under this section to continue to receive the reduced stripper royalty rate for your lease committed to the agreement; and (c) For periods beginning after the date you commit your lease to the agreement, unless the agreement qualifies as a stripper oil property under §§ 3106.60 through 3106.71, you will not be allowed to calculate a reduced royalty rate for production from or allocable to your lease under the agreement. However, as provided in paragraph (a) of this section, the royalty rate for your lease will not exceed the stripper royalty rate from your qualifying period. Any further reduction in the royalty rate for your lease under the agreement will be due to the agreement qualifying for a lower rate at the agreement level.

§ 3106.72 What if I make an error when I calculate the stripper royalty rate for my lease?

If you make an error calculating your stripper royalty rate, MMS will calculate the correct rate for your lease and inform you of the change. Any additional royalties due are payable immediately. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102.

§ 3106.73 What happens if I manipulate production to get a stripper royalty rate?

(a) If BLM determines that you manipulated production to obtain a stripper royalty rate, BLM will terminate your royalty rate reduction retroactively to its effective date. You may also be subject to civil or criminal penalties.

(b) You must pay the difference in royalty between the manipulated rate and the unmanipulated rate as well as any interest and underpayment charges.

§ 3106.74 How long will the stripper oil property program be in effect?

(a) BLM may terminate your reduced royalty rate if—

(1) The posted price for West Texas Intermediate crude (WTI), adjusted for inflation by BLM and MMS, remains on average above $28 per barrel for six consecutive months; or

(2) The Secretary determines that royalty reductions under this program should terminate.

(b) BLM must give you six months notice of the termination of the program by publishing a notice in the **Federal Register**.

Heavy Oil Property Royalty Reduction

§ 3106.80 What is a heavy oil property?

A heavy oil property is any Federal lease or agreement that produces crude oil with a weighted average gravity of less than 20 degrees as measured on the American Petroleum Institute (API) scale.

§ 3106.81 What wells can I include when I calculate a weighted average gravity?

You can include a well that you operate if—

(a) The energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including entrained liquefiable hydrocarbons); or

(b) It produces oil and less than 60 Mcf of gas per day.

§ 3106.82 How do I calculate a weighted average gravity for a property?

(a) Calculate the weighted average gravity for a property by averaging (adjusted to rate of production) the API gravities reported on your Purchaser's Statement (sales receipts).

(b) Use Purchaser's Statements for the last three calendar months before you intend to notify BLM that you want a royalty rate reduction, during each of which you had at least one sale. For example, if you make a request for a royalty reduction in October 1996 and your property—

(1) Had oil sales every month, you must use Purchaser's Statements for July, August, and September 1996;

(2) Had oil sales only once every six months in the months of March and September, you must use Purchaser's Statements for September 1995, and March and September 1996; or (3) Had multiple sales each month, you must use Purchaser's Statements for every sale during July, August, and September 1996.

(c) You must use the following equation to calculate the weighted average gravity for your property:

$$\frac{(V_1 \times G_1)+(V_2 \times G_2)+(V_n \times G_n)}{V_1+V_2+V_n} = \text{Weighted Average API gravity for a property}$$

Where:

V_1 = Average Production (bbls) of Well #1 over the last three calendar months of sales

V_2 = Average Production (bbls) of Well #2 over the last three calendar months of sales

V_n = Average Production (bbls) of each additional well (V_3, V_4, etc.) over the last three calendar months of sales

G_1 = Average Gravity (degrees) of oil produced from Well #1 over the last three calendar months of sales

G_2 = Average Gravity (degrees) of oil produced from Well #2 over the last three calendar months of sales

G_n = Average Gravity (degrees) of each additional well (G_3, G_4, etc.) over the last three calendar months of sales

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§ 3106.83 What will be my royalty rate if my property qualifies as a heavy oil property?

Use your weighted average gravity for your property, rounded down to the nearest whole degree (e.g., 11.7° API becomes 11° API) and use the following table to determine your royalty rate—

Weighted average gravity (degrees API)	Royalty Rate (percent)
6	0.5
7	1.4
8	2.2
9	3.1
10	3.9
11	4.8
12	5.6
13	6.5
14	7.4
15	8.2
16	9.1
17	9.9
18	10.8
19	11.6
20	12.5

§ 3106.84 How do I apply to make a heavy oil reduced royalty rate effective on my Federal lease?

You must notify BLM in writing that you want a heavy oil royalty rate reduction and provide—

(a) The BLM case number of the Federal lease for which you want a reduced rate;

(b) The BLM case number of any communitization or unit agreement that allocates production to the lease;

(c) Names of all operators on the lease;

(d) The reduced royalty rate that you have determined for your lease; and

(e) Copies of the Purchaser's Statements that document your calculations of weighted average gravity.

§ 3106.85 When will the initial heavy oil reduced royalty rate be in effect on my Federal lease?

The heavy oil reduced royalty rate will be in effect on the first day of the second month after you notify BLM as required in § 3106.84.

§ 3106.86 How long will the initial heavy oil reduced royalty rate be in effect on my Federal lease?

(a) The reduced royalty rate will apply to all oil you produce from your lease for the next 12 months after the reduced rate becomes effective.

(b) The reduced royalty rate will also apply for two months following the end of the initial 12-month period while you determine what your royalty rate will be for the next period under § 3106.87.

§ 3106.87 How do I determine my royalty rate after the initial reduced royalty rate period expires?

(a) Within two months after the end of the initial 12-month period, you must—

(1) Calculate the weighted average oil gravity for your property for that initial 12-month period just concluded, using the formula in § 3106.82;

(2) Determine your royalty rate from the table in § 3106.83; and

(3) Notify BLM in writing, providing the information required in § 3106.84.

(b) If you do not notify BLM as required in paragraph (a) of this section within two months after the end of any 12-month period for which you received a reduced royalty rate, the royalty rate will return to the rate in the terms of your Federal lease.

§ 3106.88 When will subsequent royalty rate reductions become effective on my Federal lease?

Any heavy oil royalty rate reductions after the initial 12-month period will become effective for oil you produce in the third month after the prior 12-month royalty reduction period ends. For example: On September 30, 1997, at the end of a 12-month royalty reduction period, you determine the weighted average API oil gravity for your property for that period just ended. You then determine your new heavy oil royalty rate by using the table in this section and notify BLM within two months. The new royalty rate would be effective December 1, 1997 through January 31, 1999. Between December 1, 1998 and January 31, 1999, you would calculate the next royalty rate based on production from December 1, 1997 through November 30, 1998, that would be effective February 1, 1999 through March 31, 2000.

§ 3106.89 What provisions apply when I begin paying royalty at a reduced rate?

(a) The reduced royalty rate applies only to oil that is produced from or which is allocated to your Federal lease.

(b) You may not intentionally manipulate the API gravity to obtain a reduced royalty rate.

(c) You continue to be subject to the minimum royalty provisions of your lease.

(d) You may be eligible for both a stripper royalty rate reduction and a heavy oil royalty rate reduction. If you are eligible for both the stripper royalty rate reduction and the heavy oil royalty rate reduction, use the lower of the two royalty rates.

§ 3106.90 What happens if I make a mistake when I calculate the reduced heavy oil royalty rate for my lease?

If you made an error calculating the heavy oil royalty rate, BLM will determine the correct rate for your lease and notify you in writing of the change. You must adjust your royalty reports and payments to MMS accordingly.

§ 3106.91 What happens if I manipulate production from my heavy oil property in order to get a reduced royalty rate?

(a) If BLM determines that you manipulated production to obtain a heavy oil royalty rate reduction, BLM will terminate your royalty rate reduction retroactively to its effective date. You may also be subject to civil or criminal penalties.

(b) You must pay the difference in royalty between the manipulated rate and the unmanipulated rate as well as any interest and underpayment charges.

§ 3106.92 How long will the heavy oil property royalty reduction program be in effect?

(a) BLM may suspend or terminate your heavy oil property royalty reductions if—

(1) The average oil price has remained above $24 per barrel over a period of six consecutive months (based on the WTI Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year); or

(2) After September 10, 1999, the Secretary determines that the heavy oil royalty reductions are not reducing the loss of otherwise recoverable reserves, the Secretary may terminate heavy oil royalty reductions granted under the program.

(b) BLM must give you six months notice of the termination of the program by publishing a notice in the **Federal Register**.

Subpart 3107—Lease, Surety and Personal Bonds

General Information

§ 3107.10 Who may file an oil and gas lease bond?

Either the record title owner, operating rights owner or operator may file a bond. The bond must guarantee the compliance of all record title owners, operating rights owners and operators for the lease.

§ 3107.11 Who must a bond cover?

The bond must cover all record title owners (lessees), operating rights owners and operators and anyone who conducts operations on your lease, unless any one of those persons provides its own bond.

§ 3107.12 When must I file a bond?

BLM must have a bond, under this subpart, before it will approve—

(a) An Application for Permit to Drill;

(b) Surface disturbing activities; or

(c) A transfer of record title or operating rights on a lease which has outstanding obligations, including reclamation.

§ 3107.13 What must my bond cover?

Your bond must guarantee performance and compliance with the lease terms and cover all liabilities arising from or related to drilling operations on a Federal lease including the following obligations—

(a) Complete and timely plugging of well(s);

(b) Reclamation of the lease area;

(c) Restoration of any lands or surface waters adversely affected by lease development;

(d) Payments owed to the United States Government such as royalties, rentals, civil penalties, fines and assessments;

(e) Compensatory royalties assessed to compensate for drainage; and

(f) Other requirements related to operations and compliance with all lease terms and conditions, regulations, orders and notices to lessees.

§ 3107.14 What are the dollar amounts for bonds?

(a) Bonds covering a single lease must be $20,000;

(b) Bonds covering all of your leases in one State must be $75,000;

(c) Bonds covering all of your leases in all States must be $150,000; and

(d) BLM may adjust the bond amounts in paragraphs (a) through (c) under § 3107.50.

§ 3107.15 What kinds of bonds will BLM accept?

BLM will accept—

(a) Surety bonds, provided that the surety company is approved by the Department of Treasury (See Department of the Treasury Circular No. 570); and

(b) Personal bonds, which are pledges of cashier's checks, certified checks, certificates of deposit, irrevocable letters of credit, or negotiable Treasury securities.

§ 3107.16 Will BLM accept cash for personal bonds?

BLM will not accept cash for personal bonds.

§ 3107.17 Is there a special bond form I must use?

You must use a current bond form (Form 3000–4 or 3000–4a) approved by BLM's Director.

§ 3107.18 Is there any other documentation that I must file with a surety bond?

You must include a power of attorney or other proof of an agent's authority to sign on behalf of the surety. BLM will accept copies of powers of attorney.

§ 3107.19 Where must I file my bond?

(a) File a signed original of the bond instrument in the BLM State Office with jurisdiction over your lease or operations. BLM will not accept copies.

(b) File your nationwide bond in any BLM State Office.

§ 3107.20 How do I modify the terms and conditions of my bond?

(a) Modify the terms and conditions of your bond or adjust the bond amount by filing a rider with BLM. No special form is required;

(b) If your bond is a surety bond, any rider must also be signed by your surety's agent and filed with a power of attorney for that agent; and

(c) You must file bond riders for BLM approval in the BLM State Office where your bond is located.

Certificates of Deposit, Letters of Credit and Negotiable Treasury Securities

§ 3107.30 What may I use to back my personal bond?

BLM accepts negotiable treasury securities, certificates of deposit and irrevocable letters of credit issued by Federally-insured financial institutions authorized to do business in the United States to back a personal bond.

§ 3107.31 Are there special terms that must be included in a certificate of deposit to use it to back my bond?

If you use a certificate of deposit to back your bond, it must indicate on its face that Secretarial approval is required prior to redemption by any party.

§ 3107.32 Are there special terms that must be included in an irrevocable letter of credit to use it to back my bond?

Your irrevocable letter of credit (LOC) used to back a bond must include a clause that grants the Secretary authority to demand immediate payment if you default or fail to replace the LOC within 30 calendar days from its expiration date. The LOC must be—

(a) Payable to the Department of the Interior, BLM;

(b) Irrevocable during its term and have an initial expiration date of not less than one year following the date BLM receives it; and

(c) Automatically renewable for a period of not less than one year, unless the issuing financial institution provides BLM with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed.

§ 3107.33 What special requirements are there for negotiable treasury securities?

(a) Negotiable treasury securities used to back a bond must—

(1) Have a market value equal to the bond amount; and

(2) Be accompanied by a statement granting full authority to the Secretary to sell such securities in case of a default of the terms of the lease.

(b) You must monitor their value and provide additional security if their market value falls below the required bond amount.

Bonding and Lease Transfers or Operations

§ 3107.40 What are BLM's bonding requirements when a lease interest is transferred to another party?

(a) If the existing operator is providing the bond and there will be no change in operator, BLM will not require the transferee of a lease interest to file a bond. BLM may require a statement confirming there will be no change in operator.

(b) If lease interests are transferred and there will be a change in operator, the new operator must provide a bond or furnish evidence that the new lessee will cover the operator with a bond.

Bond Adjustments

§ 3107.50 May BLM adjust my bond amount?

(a) BLM may increase your bond amount.

(b) BLM may decrease your bond amount if it determines that your obligations under your bond are less than the existing bond amount.

§ 3107.51 What factors will BLM use to determine whether my bond will be adjusted?

Factors BLM uses to determine your bond amount include, but are not limited to, your—

(a) Record of previous violations;

(b) Uncollected royalties; and

(c) Plugging and reclamation costs.

§ 3107.52 When will BLM increase my bond amount?

BLM will increase your bond amount if—

(a) You file an Application for Permit to Drill and within the five previous years BLM has made a claim against your bond because you failed to properly plug a well or completely reclaim any areas of surface associated with lease operations;

(b) You have a well classified as inactive under § 3107.55; or

(c) It determines an increase is necessary to satisfy your obligations under the bond.

§ 3107.53 When will BLM decrease my bond amount?

BLM will decrease your bond amount if—

(a) You apply to BLM and request a decrease in bond amount; and

(b) BLM approves your application.

§ 3107.54 To what amount may BLM adjust my bond?

BLM may adjust your bond to an amount that does not exceed the total of—

(a) Estimated costs to have BLM plug and reclaim all wells and areas of surface use associated with lease operations;

(b) Uncollected royalties due; and

(c) Outstanding monies due from previous violations.

§ 3107.55 What is an inactive well?

For the purposes of §§ 3107.52 and 3107.56 only, an inactive well is any well that for the last 12 months has not—

(a) Produced oil or gas;

(b) Been actively used as a service or water source well; or

(c) Been actively drilled or reworked.

§ 3107.56 What additional security must I provide for an inactive well?

Within 30 calendar days after your well becomes inactive you must—

(a) Submit to BLM additional bonding, either as a rider to your existing BLM bond or as a separate bond, in an amount equal to $2.00 per foot of total depth or plugged-back total depth of your inactive well. Each inactive well you maintain is subject to a bond increase unless you demonstrate to BLM that your existing bond exceeds the maximum bond amount under § 3107.51;

(b) Submit to BLM a $100 nonrefundable payment for each inactive well. You must submit the $100 payment for each 12-consecutive month period that your well remains inactive. This option is available to you only for the first six years your well is inactive. After six years of inactive status, you must file the additional bonding set out in paragraph (a) of this section, in lieu of this payment; or

(c) Comply with the requirements of § 3145.23.

Bond Collection After you Default

§ 3107.60 Under what circumstances will BLM demand performance or payment under my bond?

BLM will demand performance or payment under your bond for noncompliance with the lease terms, governing regulations or BLM orders including—

(a) Well plugging and abandonment;

(b) Reclamation of the lease area;

(c) Royalty payments and related interest or penalties that have accrued;

(d) Assessed royalties to compensate for drainage; or

(e) Payment of penalties or assessments for violations.

§ 3107.61 As the principal on the bond, may BLM require me to restore the face amount of my bond or require me to replace my bond after BLM makes demand against it?

After the bond is reduced by the amount required to remedy noncompliance, you must either—

(a) Post a new bond of equal value to the original bond within 60 calendar days after BLM notified you that the bond is deficient; or

(b) Restore the existing bond(s) to the amount previously held within 60 calendar days after BLM notifies you that the bond is deficient.

§ 3107.62 What if I do not restore the face amount or file a new bond within 60 calendar days after BLM notifies me?

If you do not restore the face amount of the bond on file, or file a new bond after BLM notifies you that your bond is deficient—

(a) BLM will require you to shut down operations; or

(b) Your leases covered by the bond are subject to cancellation under subpart 3144.

Bond Cancellation

§ 3107.70 After I fulfill all of the lease terms and conditions, will BLM cancel my bond?

BLM will cancel your bond after you have—

(a) Fulfilled all of the lease terms and conditions;

(b) Completed all plugging and reclamation requirements of subpart 3159 for the wells covered by your bond; and

(c) Paid all outstanding rents, royalties, interest, assessments, or penalties due to noncompliance.

§ 3107.71 Will BLM cancel my bond if I transferred all of my lease interests or operations to another bonded party?

BLM will cancel your bond following approval of the transfer of your lease interests or a change of operator if that party provides a bond that assumes all of your existing liabilities.

§ 3107.72 When will BLM release the collateral backing my personal bond?

BLM will release the collateral backing your personal bond when we cancel it.

Subpart 3108—Geophysical Exploration Bond Requirements

Geophysical Exploration Bonds

§ 3108.10 Must I file a bond before starting an exploration project?

You must file a bond with the BLM State office with jurisdiction over the lands before each planned exploration project.

§ 3108.11 What are the dollar amounts for geophysical bonds?

Bonds covering—

(a) A single exploration operation must be $5,000.

(b) Your exploration operations in one State must be $25,000;

(c) Your exploration operations in all States must be $50,000; and

(d) BLM may adjust the bond amounts under § 3108.14.

§ 3108.12 Is there a special bond form I must use?

You must use a current bond form approved by BLM's Director for either a surety bond or a personal bond.

§ 3108.13 May I use an oil and gas lease bond to cover exploration operations?

(a) If you hold an individual, statewide or nationwide oil and gas lease bond, you may conduct exploration on leases in which you hold an interest without further bonding.

(b) If you hold a statewide or nationwide bond and intend to conduct exploration on lands that you do not have under lease, you must obtain a rider, subject to BLM approval, to include such oil and gas exploration operations under the bond.

§ 3108.14 Will BLM increase my bond amount?

BLM may increase your bond amount if it determines that additional coverage is necessary to protect the lands or resources.

§ 3108.15 When will BLM cancel my geophysical bond?

If you request it, BLM will cancel your bond after you—

(a) Satisfy the terms and conditions of your notice(s) of intent or permit(s) to conduct geophysical exploration operations; and

(b) Complete any additional reclamation BLM or the surface management agency requires after you file a notice of completion.

§ 3108.16 What will happen if I do not complete additional reclamation that BLM requests?

If you do not complete reclamation, BLM will—

(a) Demand performance or payment under your bond to cover the costs of reclamation; and

(b) Initiate judicial action to compel performance or to recover the costs of reclamation.

2. Revise part 3110—Noncompetitive Leases to read as follows:

PART 3110—OIL AND GAS GEOPHYSICAL EXPLORATION

Subpart 3110—Onshore Oil and Gas Geophysical Exploration

General Provisions

Sec.
3110.10 When must I have BLM authorization to conduct geophysical exploration operations?
3110.11 When would the requirements of this subpart not apply to my activities?
3110.12 When may BLM suspend or cancel my right to conduct geophysical exploration?
3110.13 What is the fee to use BLM lands to conduct geophysical exploration operations?

Subpart 3112—Geophysical Exploration Outside of Alaska

Notice of Intent

3112.10 What must I file to conduct oil and gas geophysical exploration operations?
3112.11 When must I file my NOI and what action will BLM take?
3112.12 May BLM require that I participate in a field review as a part of the filing process?

Notice of Completion

3112.20 When must I file a notice of completion of operations?
3112.21 What action will BLM take on my notice of completion?

Subpart 3113—Geophysical Exploration in Alaska (Outside the Arctic National Wildlife Refuge)

Exploration Permit Application

3113.10 How do I apply for an oil and gas geophysical exploration permit?
3113.11 What action will BLM take on my permit application?
3113.12 What terms and conditions will BLM include in my permit?

Exploration Permit

3113.20 When is my exploration permit effective and what is its duration?
3113.21 May I relinquish my exploration permit?
3113.22 When can my exploration permit be modified?

Data and Inforamtion Obligations

3113.30 Must I collect and submit all data which I obtain while performing exploration operations under the permit?
3113.31 When may BLM disclose such data?

Completion Report

3113.40 What does BLM require after I complete operations under my exploration permit?
3113.50 What if my exploration operation is on unleased lands managed by the Department of Defense (DOD)?

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189 and 359; 42 U.S.C. 6508; and 43 U.S.C. 1201, 1732(b), 1733, 1734 and 1740.

Subpart 3110—Onshore Oil and Gas Geophysical Exploration

General Provisions

§ 3110.10 When must I have BLM authorization to conduct geophysical exploration operations?

(a) You must obtain BLM authorization before you conduct geophysical exploration—

(1) On public lands, if BLM manages the surface;

(2) On unleased public lands managed by another agency, if that agency and BLM agree for BLM to process your application to conduct geophysical exploration operations according to the regulations in this part; and

(3) Under the rights granted by any Federal oil and gas lease, unless the Forest Service manages the surface.

(b) If you conduct geophysical exploration outside of the rights granted by a Federal oil and gas lease on lands where BLM does not manage the surface, you may need authorization from the surface management agency or surface owner.

§ 3110.11 When would the requirements of this subpart not apply to my activities?

The requirements of this subpart do not apply to—

(a) Casual use activities. Gravity or magnetic surveys, the placement of recording equipment, and activities that do not involve vehicle operations that would cause significant compaction or rutting are generally considered casual use; and

(b) Operations you conduct on private surface overlying Federal minerals, unless you conduct operations under the rights granted by a Federal oil and gas lease.

§ 3110.12 When may BLM suspend or cancel my right to conduct geophysical exploration?

(a) If BLM determines that you have violated any of the terms or conditions of your subpart 3112 Notice of Intent to conduct oil and gas geophysical operations or of your exploration permit in Alaska under subpart 3113, BLM may suspend or cancel your right to conduct exploration. BLM will provide notice to you before it suspends or cancels your right to conduct exploration.

(b) BLM may order an immediate temporary suspension of your geophysical activities until a hearing or final administrative finding, if it determines that a suspension is necessary to protect public health and safety or the environment.

§ 3110.13 What is the fee to use BLM lands to conduct geophysical exploration operations?

BLM will—

(a) Determine the fair market value fee (FMV) for your use of public lands for each notice of intent or exploration permit, if BLM manages the surface;

(b) Base the FMV on the size of the area physically affected; and

(c) Not charge a FMV for portions of your geophysical exploration operation you are conducting on your Federal lease or on behalf of the Federal lessee.

Subpart 3112—Geophysical Exploration Outside of Alaska

Notice of Intent

§ 3112.10 What must I file to conduct oil and gas geophysical exploration operations?

Before you conduct oil and gas geophysical exploration, you must submit a Notice of Intent (NOI) to Conduct Oil and Gas Geophysical Exploration Operations, Form 3150–4, and provide BLM information to determine a FMV according to § 3110.13.

§ 3112.11 When must I file my NOI and what action will BLM take?

(a) You must file a NOI at least 14 business days before you plan to start operations and BLM will review and process it according to—

(1) BLM land use planning decisions for geophysical exploration in the area where you plan to conduct operations; or

(2) Your lease terms, if you conduct geophysical exploration under the rights granted by your lease and the lease was issued before the effective date of the applicable land use plan.

(b) BLM will give you a copy of the Terms and Conditions for Notice of Intent to Conduct Geophysical Exploration, Form 3150–4a, and other conditions which you must sign and follow to—

(1) Protect the public lands from unnecessary and undue degradation; and

(2) Assure compliance with applicable laws for the protection of the environment;

(c) BLM will notify you—

(1) If it cannot process your NOI and why; or

(2) Why processing will be delayed and when you can expect BLM to complete processing.

(d) BLM will not authorize your NOI until you pay the required FMV.

§ 3112.12 May BLM require that I participate in a field review as a part of the filing process?

BLM may require you to participate in a field review of your proposal to conduct geophysical operations. The purpose of this review is to complete development of the terms and conditions of your NOI.

Notice of Completion

§ 3112.20 When must I file a notice of completion of operations?

You must submit a Notice of Completion of Oil and Gas Exploration Operations, Form 3150–5, to BLM 30 calendar days after completing operations, including reclamation activities.

§ 3112.21 What action will BLM take on my notice of completion?

After you file Form 3150–5, BLM will notify you whether your reclamation is satisfactory or whether you must perform additional reclamation, specifying the nature and extent of further actions you must take.

Subpart 3113—Geophysical Exploration in Alaska (Outside the Arctic National Wildlife Refuge)

Exploration Permit Application

§ 3113.10 How do I apply for an oil and gas geophysical exploration permit?

If you plan to conduct oil and gas geophysical exploration operations in Alaska, you must—

(a) Complete an application for an oil and gas geophysical exploration permit that fully describes and illustrates your plans for conducting exploration operations;

(b) Provide evidence that you have bond coverage according to the requirements of subpart 3108; and

(c) Provide BLM information to determine a FMV according to § 3110.13. BLM will not approve your permit until you pay the required FMV.

§ 3113.11 What action will BLM take on my permit application?

(a) BLM will—

(1) Review your application and approve or disapprove it; or

(2) Notify you if processing will be delayed, why it will be delayed, and when BLM will complete processing.

(b) BLM will only authorize exploration for lands subject to section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148), after it determines that you can conduct exploration activities in a manner consistent with BLM's management of the affected area.

§ 3113.12 What terms and conditions will BLM include in my permit?

BLM will include—

(a) Terms and conditions necessary to protect mineral and nonmineral resources;

(b) Terms to insure that your operations are consistent with BLM's management of the affected area, if your proposal occurs on lands subject to section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148); and

(c) Reasonable conditions, restrictions and prohibitions, if you plan to conduct geophysical operations within the National Petroleum Reserve in Alaska, to—

(1) Mitigate adverse effects upon the surface resources of the reserve; and

(2) Satisfy the requirement of section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504).

Exploration Permit

§ 3113.20 When is my exploration permit effective and what is its duration?

(a) An exploration permit is valid for one year after the effective date specified by BLM; and

(b) BLM may renew your exploration permit for an additional year if you submit a written request.

§ 3113.21 May I relinquish my exploration permit?

You may relinquish all or part of your exploration permit by filing a request for relinquishment with BLM. BLM will approve the relinquishment, provided you and your surety comply with the terms and conditions of your exploration permit and the regulations in this part.

§ 3113.22 Can my exploration permit be modified?

(a) BLM may approve your proposal to modify your exploration permit; and

(b) BLM may, after consulting with you, require you to modify your exploration permit.

Data and Information Obligations

§ 3113.30 Must I collect and submit all data which I obtain while performing exploration operations under the permit?

You must collect and submit to BLM all data which you obtain while conducting exploration operations.

§ 3113.31 When may BLM disclose such data?

BLM will manage this data according to the Freedom of Information Act and 43 CFR part 2.

Completion Report

§ 3113.40 What does BLM require after I complete operations under my exploration permit?

Within 30 calendar days after completing all operations under the permit you must submit a completion report that describes and illustrates the work that you performed and any reclamation activity completed or planned. BLM will review the completion report and notify you of any additional measures which you must perform to correct damage to the lands and resources.

§ 3113.50 What if my exploration operation is on unleased lands managed by the Department of Defense (DOD)?

If the DOD refers your geophysical exploration permit application to BLM for issuance—

(a) BLM will follow the provisions of subpart 3113 to process your permit; and

(b) DOD must consent to BLM issuance of your permit and may impose terms and conditions on your permit.

3. Revise part 3120—Competitive Leases to read as follows:

PART 3120—OIL AND GAS LEASING

Subpart 3120—Leasing (General)

Leasing: General

Sec.
3120.10 What public lands may BLM lease for oil and gas under this subpart?
3120.11 What units of the National Park System are subject to oil and gas leasing?
3120.12 May BLM lease minerals under the jurisdiction of an agency outside of the Department of the Interior?

National Wildlife Refuge System Lands

3120.20 What are National Wildlife Refuge System lands?
3120.21 May BLM lease lands that are within the National Wildlife Refuge System?

Coordination Lands

3120.30 What are coordination lands?
3120.31 May BLM lease coordination lands?
3120.32 May BLM lease lands within a wildlife refuge in Alaska?

3120.33 May BLM lease lands within Recreation and Public Purposes leases or patents?
3120.34 May a lease contain both acquired and public domain minerals?

Oil and Gas Lease Administration

3120.40 For Federal lands, what types of leases does BLM issue or administer?
3120.41 For each type of lease, what is the primary lease term, maximum lease size, administrative filing fee, and advance annual rental rate?

Subpart 3121—Competitive Leasing

Notice of Competitive Lease Sale

3121.10 How does BLM provide notice of what lands are available for competitive oil and gas leasing?
3121.11 What information will BLM include in the Notice of Competitive Lease Sale?
3121.12 How does BLM decide which lands to include in a Notice of Competitive Lease Sale?
3121.13 What types of lands may I include in my letter of nomination?

Legal Descriptions

3121.20 How should I describe the lands in my letter of nomination?
3121.21 What other rules must I follow when I submit my nomination letter?

Future Interest Leasing

3121.30 May I submit a nomination letter for mineral interests that will vest in the United States in the future and how will BLM offer them?

Subpart 3122—Competitive Lease Sale

General

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3122.17 What must I pay per parcel at the sale if I am the winning bidder?
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Balance of Bonus Bid

3122.20 When is the balance of my bonus bid due?
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Rejection of Bid

3122.30 Under what circumstances will BLM reject my bid?
3122.31 Are parcels for which BLM rejected bids available for noncompetitive leasing during the two years after the sale?

Parcels That Receive No Bid at Oral Auction

3122.40 If a parcel receives no bid at the competitive lease sale, is it available for noncompetitive leasing?

Subpart 3123—Noncompetitive Leasing

Parcels Available for Noncompetitive Lease Offers

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Priority of Noncompetitive Lease Offers

3123.20 What if more than one noncompetitive offer is filed for the same parcel?
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Exchange Leases

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Subpart 3126—Railroad Right-of-Way Leases

Railroad Right-of-Way Leases

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3129.10 What is a transfer?
3129.11 When must I file a transfer with BLM?
3129.12 Who may receive a transfer of lease interests?
3129.13 What must I include in my transfer application?
3129.14 When is my transfer effective?
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3129.16 May I file a record title transfer limited to a specific depth, formation, zone or defined deposit or fluid mineral?
3129.17 May I file my operating rights transfer to a specific depth?
3129.18 How do transfers of interest affect future transfers?
3129.19 When will BLM segregate a lease as a result of a transfer?
3129.20 What is a mass transfer?
3129.21 May I file a mass transfer?
3129.22 Does BLM's approval of a transfer certify that title is clear?

Forms, Fees and Filing Requirements

3129.30 What forms must I use to transfer lease interests, how many copies must I file, what is the filing fee per lease or document, and where must I file them?
3129.31 Are filing fees refundable?
3129.32 How do I describe the lands on Form 3000–3 for my record title transfer?
3129.33 May I transfer less than a legal subdivision?
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3129.35 What must I submit to BLM to transfer the rights or interests of a decedent to its heir, devisee or estate?
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3129.50 When will BLM require a new bond for a transfer?
3129.51 If I transfer my lease, when do my obligations under the lease end?
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3129.60 When will BLM deny or disapprove a transfer to me?
3129.61 Must I file assignments of rights to production with BLM?
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3129.63 Must I file transfers of overriding royalty interest, net profit or production payments with BLM?

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189, 306 and 359; 43 U.S.C. 1733, 1734 and 1740; and 10 U.S.C.A. 7439.

Subpart 3120—Leasing (General)

Leasing: General

§ 3120.10 What public lands may BLM lease for oil and gas under this subpart?

This subpart applies to public domain and acquired minerals subject to leasing under the Mineral Leasing Act, as amended (30 U.S.C. 181 *et seq.*) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*). This subpart does not apply to leasing minerals in—

(a) National Parks and the following units of the National Park System except as provided at § 3120.11;

(b) National monuments;

(c) Incorporated cities, towns and villages;

(d) National Petroleum Reserve-Alaska and Naval petroleum and oil shale reserves, except Naval Oil Shale Reserves 1 and 3;

(e) Lands recommended for wilderness allocation by the surface management agency;

(f) Lands within BLM wilderness study areas;

(g) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(h) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless the lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress;

(i) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983;

(j) Lands north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve-Alaska;

(k) Arctic National Wildlife Refuge in Alaska;

(l) Any other lands withdrawn from leasing;

(m) Tidelands or submerged coastal lands within the continental shelf adjacent or littoral to lands within the jurisdiction of the United States; and

(n) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except oil, gas, and other minerals subject to leasing under the Act.

§ 3120.11 What units of the National Park System are subject to oil and gas leasing?

(a) The Secretary may allow oil and gas leasing in units of the National Park System listed in paragraph (b) of this section if leasing those lands would not have significant adverse effects on the administration of the area and if lease operations can be conducted in a manner that will preserve the scenic, scientific and historic features contributing to public enjoyment of the area;

(b) BLM may lease oil and gas in—

(1) Lake Mead National Recreation Area as portrayed on the map identified as "boundary map" 8360–80013B, revised February 1986;

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area as portrayed on the map identified as "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," numbered BOR–WST 1004, dated July 1963. BLM may lease lands within the recreation area under the jurisdiction of the Secretary of Agriculture under the Mineral Leasing Act of 1920, as amended, or the Acquired Lands Mineral Leasing Act of 1947, if disposition would not have significant adverse effects on the purpose of the Central Valley Project or the administration of the recreation area;

(3) Glen Canyon National Recreation Areas as portrayed on the map identified as "boundary map, Glen Canyon National Recreation Area," numbered GLC–91,006, dated August 1972; and

(4) Any other units of the National Park Service where Congress authorizes leasing;

(c) BLM may not lease oil and gas in the—

(1) Lake Mead National Recreation Area—

(i) All waters of Lakes Mead and Mohave and all lands within 300 feet of those lakes measured horizontally from the shoreline at maximum surface elevation; and

(ii) All lands within the unit of supervision of the Bureau of Reclamation around Hoover and Davis Dams and all lands outside of resource utilization zones as designated by the Superintendent on the map (602–2291B., dated October 1987) of Lake Mead National Recreation Area which is available for inspection in the Office of the Superintendent;

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—

(i) All waters of the Whiskeytown Lake and all lands within 1 mile of that lake measured from the shoreline at maximum surface elevation;

(ii) All lands classified as high density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611–20,004B, dated April 1979, entitled "Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area." This map is available for public inspection in the Office of the Superintendent; and

(iii) All lands within section 34 of Township 33 North, Range 7 West, Mt. Diablo Meridian; or

(3) Glen Canyon National Recreation Area—Those units closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and resource utilization zone as shown on the map numbered 80,022A, dated March 1980, entitled "Mineral Management Plan—Glen Canyon National Recreation Area." This map is available for public

inspection in the Office of the Superintendent and the offices of the State Directors, Bureau of Land Management, Arizona and Utah.

§ 3120.12 May BLM lease minerals under the jurisdiction of an agency outside of the Department of the Interior?

If minerals are under the jurisdiction of an agency outside the Department of the Interior, BLM may lease—

(a) Acquired lands only after BLM receives consent from the surface management agency;

(b) Public domain lands only after BLM has consulted with the surface management agency; and

(c) National Forest System lands and lands withdrawn for use by the Department of Defense, whether acquired or public domain, only with the written consent of the surface management agency.

National Wildlife Refuge System Lands

§ 3120.20 What are National Wildlife Refuge System lands?

National Wildlife Refuge System lands are those lands under the jurisdiction of the United States Fish and Wildlife Service included within a withdrawal of public domain and acquired lands for the protection of all species of wildlife within a particular area.

§ 3120.21 May BLM lease lands that are within the National Wildlife Refuge System?

BLM may lease National Wildlife Refuge System lands only—

(a) If it is necessary to protect those lands from drainage; or

(b) Where there are valid existing rights.

Coordination Lands

§ 3120.30 What are coordination lands?

Coordination lands are those lands withdrawn or acquired by the United States and made available to the States by—

(a) Cooperative agreements entered into between the Fish and Wildlife Service and the game commissions of the various States, in accordance with the Act of March 10, 1934 (48 Stat. 401), as amended by the Act of August 14, 1946 (60 Stat. 1080); or

(b) Long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the Fish and Wildlife Service as the custodial agency of the United States.

§ 3120.31 May BLM lease coordination lands?

BLM may lease coordination lands (not closed to oil and gas leasing) only after it has—

(a) Consulted with the applicable State Game Commission and the Fish and Wildlife Service; and

(b) Obtained any lease stipulations necessary to protect the lands proposed for lease.

§ 3120.32 May BLM lease lands within a wildlife refuge in Alaska?

Lands within a wildlife refuge in Alaska, except the Arctic National Wildlife Refuge, are open to oil and gas leasing after the Fish and Wildlife Service has completed a favorable compatibility determination.

§ 3120.33 May BLM lease lands within Recreation and Public Purposes leases or patents?

Recreation and Public Purposes Act leases and patents authorized under 43 U.S.C. 869 *et seq.* are subject to oil and gas leasing under the regulations in this part, subject to any conditions or stipulations that the Secretary considers appropriate.

§ 3120.34 May a lease contain both acquired and public domain minerals?

A lease may not contain both public domain and acquired minerals.

Oil and Gas Lease Administration

§ 3120.40 For Federal lands, what types of leases does BLM issue or administer?

BLM issues or administers the following types of leases—

(a) Competitive;
(b) Noncompetitive;
(c) Future Interest (Competitive/Noncompetitive);
(d) Right-of-Way;
(e) Renewal;
(f) Exchange;
(g) Combined Hydrocarbon; and
(h) Private.

§ 3120.41 For each type of lease, what is the primary lease term, maximum lease size, administrative filing fee, and advance annual rental rate?

The following chart describes the terms for each type of lease BLM issues—

Type of lease	Primary lease term	Maximum lease size	Administrative filing fee	Rental rate per acre or fraction of an acre
(a) Competitive	10 years	2,560 acres for lower 48 States and 5,760 acres in Alaska.	$75	$1.50 for the first five years; $2.00 the sixth and succeeding years.
(b) Noncompetitive	10 years	2,560 acres for lower 48 States and 5,760 acres in Alaska.	75	See Competitive.
(c) Future Interest	10 years	2,560 acres for lower 48 States and 5,760 acres in Alaska.	75	See Competitive.
(d) Right-of-Way Leasing	20 years	N/A	75	See Competitive.
(e) Renewal Leases	20 years	N/A	75	$2.
(f) Exchange Leases	5 years	N/A	75	$2.
(g) Combined Hydrocarbon Leases	10 years	5,120 acres	75	$2.
(h) Private Leases	Subject to private lease terms.	N/A	None	Subject to private lease terms.

Subpart 3121—Competitive Leasing

Notice of Competitive Lease Sale

§ 3121.10 How does BLM provide notice of what lands are available for competitive oil and gas leasing?

BLM will—

(a) Post a Notice of Competitive Lease Sale in the public room of the BLM State Office with jurisdiction over the lands available for lease for a minimum of 45 calendar days before the sale date; and

(b) Make the notice available for posting at the offices of all appropriate surface management agencies with jurisdiction over any of the parcels included in the sale notice for at least 45 calendar days before the sale date.

§ 3121.11 What information will BLM include in the Notice of Competitive Lease Sale?

In the Notice of Competitive Lease Sale, BLM will include—

(a) The time, date, and place of the sale;

(b) A description of the lands available for sale;

(c) Stipulations or lease conditions that apply to each sale parcel; and

(d) Any special requirements that apply to a parcel such as communitization or unit agreement joinder requirements, or any plugging, bonding, or surface reclamation requirements for existing wells.

§ 3121.12 How does BLM decide which lands to include in a Notice of Competitive Lease Sale?

BLM includes lands in a Notice of Competitive Lease Sale as a result of a—

(a) Letter of nomination from the public;

(b) BLM recommendation; or

(c) Request from a surface management agency.

§ 3121.13 What types of lands may I include in my letter of nomination?

You may include the following types of lands in your letter of nomination for competitive leasing—

(a) Lands available for leasing under § 3120.10, including—

(1) Lands in oil and gas leases that have terminated, expired, been canceled or relinquished;

(2) Interests forfeited to the United States;

(3) Lands that have never been leased;

(b) Lands which are otherwise unavailable for leasing but are subject to drainage (protective leasing); and

(c) Lands in gas storage agreements that also meet the requirements of paragraph (a) or (b) of this section.

Legal Descriptions

§ 3121.20 How should I describe the lands in my letter of nomination?

If—	Then you must describe the lands—
(a) The public lands have been surveyed under the public land rectangular survey system or the acquired lands lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States.	By township, range, meridian, section and legal subdivision.
(b) The public lands have *not* been surveyed under the public land rectangular survey system or the acquired lands do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States.	By metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances connected to an official corner of the public land surveys, or furnish a copy of the deed or other conveyance document by which the United States acquired title to the lands
(c) The acquired lands do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute less than the entire tract acquired by the United States.	By metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the lands requested coincides with the boundary in the deed or other conveyance document, you don't have to redescribe the boundary if a copy of the deed or other conveyance document is attached to your nomination. Any portion of the lands nominated that does not coincide with the boundary in the deed or other conveyance document must be tied by courses and distances between successive angle points into the description in the deed or other conveyance document.
(d) The acquired lands lie outside an area of the public land surveys and constitute the entire tract acquired by the United States.	Either as shown in the deed or other conveyance document by which the United States acquired title to the lands, or attach a copy of the document to your nomination.
(e) The acquired lands lie outside an area of the public land surveys and constitute less than the entire tract acquired by the United States.	By metes and bounds, giving courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the lands requested coincides with the boundary in the deed or other conveyance document, you don't have to redescribe the boundary if a copy of the deed or other conveyance document is attached to your nomination. Any portion of the lands nominated that does not coincide with the boundary in the deed or other conveyance document must be tied by courses and distances between successive angle points into the description in the deed or other conveyance document.
(f) The acquired lands do not conform to the rectangular survey system of public land surveys.	By filing three copies of a map upon which the location of the lands are clearly marked with respect to the administrative unit or project of which they are a part.
(g) The acquired lands have been assigned an acquisition or tract number by the acquiring agency.	By the acquisition or tract number together with the identity of the State and county where the lands are located.
(h) The public lands have a protracted survey that has been approved and the effective date published in the FEDERAL REGISTER.	By legal subdivision, section, township, range and meridian. However, the smallest legal subdivision for which you may apply is a full section for the lower 48 states and four full contiguous sections for Alaska.
(i) The lands are accreted	By metes and bounds giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions apply

§ 3121.21 What other rules must I follow when I submit my nomination letter?

(a) You must not combine public domain and acquired minerals in the same parcel nominated.

(b) Each parcel nominated must not exceed 2,560 acres for the lower 48 states or 5,760 acres for Alaska.

(c) The lands within each parcel nominated must be within a six square mile area, unless you show BLM that a larger area is necessary.

Future Interest Leasing

§ 3121.30 May I submit a nomination letter for mineral interests that will vest in the United States in the future and how will BLM offer them?

(a) You may submit a nomination letter for future mineral interests; and

(b) BLM will offer eligible future mineral interests at a competitive lease sale.

Subpart 3122—Competitive Lease Sale

General

§ 3122.10 How often must each BLM State Office hold competitive lease sales?

Each BLM State Office must hold competitive lease sales at least quarterly if lands are eligible and available for competitive leasing.

§ 3122.11 How are competitive oil and gas lease sales conducted?

(a) Competitive lease sales are conducted by oral bidding.

(b) If you make the highest bid at the sale, you are committed to execute the lease under § 3122.15 and to pay the amounts required under §§ 3122.17 and 3122.20.

(c) If you are the highest bidder and you fail to complete the requirements to obtain your lease under this subpart, BLM considers your bid rejected.

§ 3122.12 Is there a minimum per-acre amount that I must bid on a parcel?

The minimum acceptable bid is $2.00 per acre or fraction of an acre, calculated on the gross acreage in the parcel.

§ 3122.13 If the United States owns a fractional interest (less than 100 percent of the mineral interest in a parcel) is the minimum bid per acre prorated?

The minimum acceptable bid will not be prorated for any lands in which the United States owns a fractional interest. Your bid per acre must be calculated on the gross acreage in the parcel.

§ 3122.14 How does BLM determine the winning bid?

The winning bid is the highest oral bid on a parcel that equals or exceeds the minimum acceptable bid.

§ 3122.15 What documents must I submit on the day of the sale if I am the winning bidder of a parcel?

(a) On the day of the sale, you must submit a signed BLM-approved lease bid form for each parcel on which BLM determines you are the winning bidder.

(b) Your signature on a BLM-approved lease bid form binds you to the lease agreement and constitutes acceptance of the lease terms and conditions.

§ 3122.16 May I withdraw my bid?

You may not withdraw your bid.

§ 3122.17 What must I pay per parcel at the sale if I am the winning bidder?

(a) If you are the winning bidder of a parcel, on the day of the sale you must pay—

(1) A nonrefundable $75 administrative fee;

(2) The first year's advance annual rental of $1.50 per acre or fraction of an acre calculated on the gross acreage in the parcel; and

(3) The minimum bonus bid of $2.00 per acre or fraction of an acre calculated on the gross acreage in the parcel.

(b) The BLM State Office with jurisdiction over the parcels in the sale notice must receive your payment by the close of official business hours on the day of the sale, or other time specified in the Notice of Competitive Lease Sale, or BLM considers your bid rejected.

§ 3122.18 If I am the winning bidder for a future interest lease, what payments must I make on the day of the sale?

If you are the winning bidder on a future interest lease, you do not have to pay the first year's advance rental until the mineral interest vests in the United States. Other payments are due in accordance with § 3122.17.

Balance of Bonus Bid

§ 3122.20 When is the balance of my bonus bid due?

You must submit the balance of your bonus bid within 10 business days after the date of the sale.

§ 3122.21 What happens if BLM does not receive the balance of my bonus bid within 10 business days following the date of the sale?

If BLM does not receive your bonus bid within 10 business days following the date of the sale, you forfeit all monies paid on the day of the sale and you lose all rights to the lease, unless the envelope containing your payment is postmarked by the United States Postal Service, or is dated as received at a courier or other delivery service, on or before the tenth business day.

Rejection of Bid

§ 3122.30 Under what circumstances will BLM reject my bid?

BLM will reject your bid if—

(a) You do not submit the balance of bonus bid within 10 business days from the date of the sale as provided in § 3122.21;

(b) You do not comply with the requirements of this part, such as furnishing BLM with evidence required under subpart 3130 that you will commit your lease to the unit;

(c) BLM determines you are not qualified to hold Federal mineral leases; or

(d) Your payment is returned to BLM by your bank for insufficient funds.

§ 3122.31 Are parcels for which BLM rejected bids available for noncompetitive leasing during the two years after the sale?

Parcels for which BLM rejected bids are not available for noncompetitive leasing. BLM will offer the parcels at a future competitive sale.

Parcels That Receive No Bid at Oral Auction

§ 3122.40 If a parcel receives no bid at the competitive lease sale, is it available for noncompetitive leasing?

(a) Except as provided in paragraph (b) of this section, a parcel for which BLM receives no bid at the competitive lease sale is available for noncompetitive leasing.

(b) BLM may withdraw the following parcels from noncompetitive leasing and lease those parcels through a process BLM considers appropriate—

(1) Land reported as excess under the Federal Property and Administrative Services Act of 1949. BLM leases these General Services Administration surplus lands only through the competitive process.

(2) An interest in an existing lease that has been canceled or forfeited. The specific lease interest in the parcel will be available for lease beginning the first day after the sale to the first qualified applicant that submits a bonus bid of $75.

(3) An area closed to leasing that is subject to drainage (protective leasing). BLM leases these lands only through the competitive process.

(c) Notwithstanding the provisions of subpart 3123, BLM may reject any noncompetitive lease offer under paragraph (b) of this section that is not as favorable to the United States as any other offer BLM receives for a parcel. Also, for parcels subject to paragraph (b)(2), the noncompetitive offer may not be less than required under § 3122.12.

Subpart 3123—Noncompetitive Leasing

Parcels Available for Noncompetitive Lease Offers

§ 3123.10 What parcels are available for noncompetitive lease offers?

The only parcels available for noncompetitive lease offers are parcels that received no bid at the competitive sale.

§ 3123.11 When do parcels that received no bid at the competitive sale become available for noncompetitive leasing?

Parcels offered for bid that received no bid at the competitive lease sale are available for noncompetitive leasing on the first business day after the sale. These parcels are available for noncompetitive bid for a period of two years, unless they are withdrawn.

Priority of Noncompetitive Lease Offers

§ 3123.20 What if more than one noncompetitive offer is filed for the same parcel?

(a) If more than one noncompetitive offer is filed for the same parcel on the day after the sale, BLM considers the offers simultaneously filed and holds a public drawing to determine priority.

(b) If BLM receives more than one noncompetitive offer for the same parcel after the first day, your noncompetitive offer will receive priority according to the date and time you filed it in the BLM State Office with jurisdiction over the parcel for which you applied.

(c) If you properly filed your noncompetitive offer the day after the sale, but BLM erroneously excluded the offer from the drawing for priority, BLM will hold a new public drawing to include your offer.

§ 3123.21 If my noncompetitive offer requires a correction, under what circumstances does it retain priority?

(a) Your noncompetitive offer must be complete when you file it or BLM will reject it. However, BLM will accept your noncompetitive offer and allow it to retain its priority under § 3123.20 if—

(1) You filed your noncompetitive offer on an obsolete form;

(2) You submitted only one copy of your noncompetitive offer form;

(3) You failed to sign or date your noncompetitive offer form;

(4) Your bank erroneously returned your remittance for the first year's advance rental, required under § 3123.41, for insufficient funds;

(5) You submitted copies of the offer which were not exact reproductions, except where BLM cannot determine which parcels you included;

(6) Someone other than yourself signed your offer and, in response to BLM's request, you timely provide BLM a description of your relationship to the person who signed the offer;

(7) Your rental payment, under § 3123.40, is deficient by not more than 10 percent or $200, whichever is less, and you make your payment to correct the deficiency to BLM within 30 calendar days from your receipt of the notification of deficiency; or

(8) Your offer contains public domain and acquired mineral parcels. Your offer retains priority for the type of lands you have indicated in the upper portion of the offer form. Your offer for the other lands will be rejected.

(b) You must correct the errors in paragraphs (a)(1) through (a)(6) of this section within 10 business days after BLM's notice.

Description of Lands in Noncompetitive Lease Offer

§ 3123.30 How do I describe the lands in my offer I file the day after the competitive lease sale?

Your noncompetitive lease offer must describe the lands by the parcel number indicated in the Notice of Competitive Lease Sale.

§ 3123.31 How do I describe the lands in my noncompetitive offer for public domain or acquired minerals that I file within the two years after the sale?

(a) Your noncompetitive lease offer must describe the lands by the parcel number indicated in the Notice of Competitive Lease Sale.

(b) You may combine more than one parcel from more than one sale notice on an offer, but your lease offer must—

(1) Include entire parcels;

(2) Be within a six square mile area, unless you show BLM that a larger area is necessary; and

(3) Not exceed 2,560 acres for the lower 48 states and 5,760 acres for Alaska.

Requirements of a Noncompetitive Lease Offer

§ 3123.40 How do I file a noncompetitive offer?

To file a noncompetitive lease offer—

(a) File it in duplicate (an original and one copy) on a form approved by the Director. BLM will accept a reproduction of the form if it includes no additions, omissions, other changes, or advertising;

(b) File a form that is typewritten or printed plainly in ink, signed in ink and dated by you or your authorized agent;

(c) Include a nonrefundable $75 filing fee; and

(d) Except for noncompetitive future interest lease offers, include the first year's advance rental at $1.50 per acre or fraction of an acre.

§ 3123.41 If I file a noncompetitive future interest offer, when must I pay the first year's advance rental?

You must pay the first year's advance rental when the mineral interest vests in the United States.

§ 3123.42 What happens to my noncompetitive offer if an earlier offeror is entitled to a lease, either as a result of priority of the offer, or a pending lease reinstatement?

BLM will not reject your noncompetitive offer until we take final action on the earlier offer or pending reinstatement.

§ 3123.43 May I amend my noncompetitive lease offer before BLM issues the lease?

You may not amend your noncompetitive lease offer. However, you should notify BLM of any insignificant errors in your offer that BLM should correct before it issues your lease.

§ 3123.44 May I withdraw my noncompetitive lease offer?

You may not withdraw your noncompetitive offer in whole or in part until 60 calendar days have elapsed from the date the offer was filed in the BLM State Office with jurisdiction over the lands. BLM will refund only your first year's advance rental. You may not withdraw your offer under any circumstance after BLM issues the lease.

Subpart 3124—Lease Administration and Renewals

Dating of Leases

§ 3124.10 What is the effective date of my lease?

(a) Your lease is effective the first day of the month following the date BLM signs it. BLM will issue the lease effective the first day of the month in which it is signed if you request it in writing.

(b) BLM will issue your future interest lease effective the date the mineral interest vests in the United States.

(c) If the United States owns both a present fractional interest and a future fractional interest of the minerals in the same parcel, BLM will issue your lease to cover both the present fractional interest and future fractional interest. The effective date and primary term of your present fractional interest lease is unaffected by the vesting of the future fractional interest in the United States.

(d) Your renewal lease is effective the first day of the month following the month the original lease expired.

(e) The effective date of your consolidated lease is that of the oldest lease in the consolidation.

Leases Within Unit Agreements

§ 3124.20 What if the lands I am leasing are within an existing unit agreement?

If the lands you are leasing are within an existing unit agreement, before BLM issues your lease, you must file—

(a) Evidence that you will commit your lease to the unit; or

(b) Your reasons for not joining the unit. If BLM accepts the reasons, you will be permitted to operate independently. If BLM rejects the reasons, you must commit the lease to the unit, or BLM will reject your lease offer.

§ 3124.21 What effect does the commitment to a unit have on my lease offer or lease?

(a) If your lease offer contains lands partly within and partly outside the unit boundary, BLM will issue separate leases, one for the lands within the unit boundary and one for the lands outside the unit boundary.

(b) BLM will segregate the lease and issue a new lease for the lands outside the unit, which is effective on the effective date of unitization. See § 3137.16, which explains when a unit is effective.

Lease Consolidation

§ 3124.30 May I consolidate leases?

(a) BLM may approve your request to consolidate your leases if they are producing, have the same lease terms and rental and royalty rates, and record title owners of all the lands are the same. You may only consolidate leases, with BLM's approval, that have at least one point as a common boundary and that were issued under the same statutory authority.

(b) The effective date of the consolidated leases is the earliest effective date of the several leases that were consolidated.

§ 3124.31 What information must I include in my application for lease consolidation?

As record title owner(s), your application for lease consolidation must show, in addition to the requirements in § 3124.30—

(a) That the lease consolidation promotes conservation of the oil or gas resource that cannot be achieved through either unitization or communitization;

(b) The location of the leases you plan to consolidate;

(c) That the leases you plan to consolidate are in a producing status;

(d) What nonproducing acreage within the leases you plan to consolidate and that which you will relinquish;

(e) How record title to the leases you plan to consolidate is held; and

(f) That the proposed consolidated lease would not exceed the maximum lease size under § 3120.41.

§ 3124.32 How many copies of my application must I file and where must I file it?

You must file an original and a duplicate of your application for lease consolidation in the BLM State Office with jurisdiction over the lands in your application. Consolidation is not effective until the date BLM approves the application.

Lease Renewals

§ 3124.40 For how many years will BLM renew my lease?

If you have a lease issued under Section 14 of the Mineral Leasing Act (MLA) (30 U.S.C. 223), it will continue in effect for so long as you produce oil or gas in paying quantities or your lease is committed to a producing communitization agreement. If your lease was committed to a unit after August 8, 1946, then only the portion of your lease in the unit is extended by commitment to the unit. If any portion of your lease was committed to the unit before that date, your entire lease is extended by commitment.

§ 3124.41 For how many years will BLM renew my lease if it was not issued under Section 14 of the Mineral Leasing Act?

(a) If you have a lease that BLM originally issued with an initial 20 year lease term under any section of the MLA other than section 14, BLM will automatically renew it for successive 10 year periods.

(b) All other leases BLM issues are not subject to renewal. However, the original lease term may be extended under the provisions of subpart 3140.

§ 3124.42 If my lease is committed to a unit agreement may I file a renewal lease application?

If your 20-year lease is—

(a) Committed to a unit agreement, BLM will not renew it, except as provided in paragraph (b). Your lease continues in force until it expires, the unit terminates, or your lease is eliminated from the unit, whichever occurs last.

(b) In a 10-year renewal term, and is committed to and then eliminated from a unit before the renewal term expires, BLM will renew it.

§ 3124.43 Who may file a renewal lease application?

The lessees of record or the operating rights owners may file a lease renewal application.

§ 3124.44 How must I file my renewal lease application?

You must file your renewal lease application—

(a) In the BLM State Office with jurisdiction over the lands;

(b) At least 90 calendar days before your lease expires; and

(c) With a nonrefundable $75 filing fee.

Subpart 3125—Exchange Leases

Exchange Leases

§ 3125.10 May I exchange my existing oil and gas lease for a new lease?

If the existing lease is a renewal of a twenty-year lease, the lessee of record, with the concurrence of the operating rights owner, may exchange it for a new lease for the same lands with a primary term of five years. See §§ 3106.30 and 3120.41 for the royalty and rental rates that apply to your exchange lease.

§ 3125.11 How must I file an exchange lease application?

The lessee of record or operating rights owner must—

(a) File the exchange lease application in duplicate in the BLM State Office with jurisdiction over the lands in the application; and

(b) Include a nonrefundable $75 filing fee.

Subpart 3126—Railroad Right-of-Way Leases

Railroad Right-of-Way Leases

§ 3126.10 To which rights of way does this subpart apply?

(a) This subpart applies to—

(1) Railroad rights-of-way and easements issued under the Act of March 3, 1875 (43 U.S.C. 934 *et seq.*) and earlier right-of-way statutes; or

(2) Rights-of-way and easements issued under the Act of March 3, 1891 (43 U.S.C. 946 *et seq.*).

(b) Oil and gas leases for other rights-of-ways are leased under subparts 3121 and 3122.

§ 3126.11 Who may lease the oil or gas deposits underlying a railroad right-of-way?

(a) You may file an application to lease the oil and gas underlying a right-of-way subject to this subpart if you—

(1) Own the right-of-way; or

(2) Acquired the right to apply for a lease from the owner of the right-of-way.

(b) If you are an owner or lessee of the oil or gas rights adjoining the right-of-way (see § 3126.15(b)), you may enter into an agreement with the United States under which you agree to compensate the United States for any drainage of the oil or gas underlying the right-of-way.

§ 3126.12 How must I file a lease application under this subpart?

(a) No approved form is required for a right-of-way lease, but you must—

(1) File an application to lease in duplicate in the BLM State Office with jurisdiction over the lands; and

(2) Include a nonrefundable $75 filing fee.

(b) If you are not the owner of the right-of-way, but acquired the right to file for a lease from the owner, you must submit a copy of the document granting you that right.

§ 3126.13 What information must my application include?

In your application, you must—

(a) Show that you have the right to lease the oil and gas under the right-of-way;

(b) Describe the development of oil or gas on adjacent or nearby lands, the location and depth of the well, and the production and probability of drainage of the deposits in the right-of-way;

(c) Describe each legal subdivision through which the right-of-way extends in the area you propose to lease. You are not required to describe the lands by metes and bounds;

(d) Furnish a plat or map of the area showing the location and acreage of the right-of-way in the area you propose to lease;

(e) Provide the names and addresses of all mineral owners or lessees of oil and gas interests in the lands adjoining the right-of-way in the area you propose to lease; and

(f) Include the amount of compensation (not less than 12½ percent of the value of production) you are willing to pay.

§ 3126.14 Who must BLM notify that I filed an application to lease the oil and gas under the right-of-way?

BLM must—

(a) Notify the owner or lessee of the oil and gas interests in lands adjoining the area you propose to lease; and

(b) Tell the persons notified how long they have to submit a bid for the amount of compensation they are willing to pay the Federal Government for extracting the oil and gas underlying the right-of-way through wells on its adjoining lands, under § 3126.15.

§ 3126.15 Who may submit a bid for compensation?

If you are the owner or lessee of oil and gas interests adjoining the right-of-way, you may submit a proposal to enter into an agreement with the United States under which you agree to compensate the United States for draining of oil or gas underlying the right-of-way.

§ 3126.16 What must I include in my bid for compensation?

(a) Provide the same information required for a lease application in § 3126.13(b), (c), (d) and (e). Also provide the amount of compensation you are offering to pay the United States, including at least 12½ percent in the amount or value of production; and

(b) File the bid for compensation in the BLM office with jurisdiction over the right-of-way.

§ 3126.17 Who must BLM notify that I have filed an application for compensation?

(a) BLM will notify the holder of the right-of-way that a bid for compensation has been filed. BLM also will require the holder to either provide notice to any person who acquired the owner's right to lease the oil and gas underlying the right-of-way, or tell BLM who that person is, so BLM may provide notice.

(b) BLM will also notify all other owners or lessees of oil and gas interest in lands adjoining the right-of-way in the area subject to your bid.

(c) BLM will tell the persons notified how long they have to submit a lease application or a bid for compensation under this subpart.

§ 3126.18 May BLM request offers to lease or for compensation?

BLM may request offers to lease or offer compensation for oil and gas underlying a right-of-way subject to this subpart. BLM will provide notice under §§ 3126.14 and 3126.17(a).

§ 3126.19 Who will receive the rights to the oil and gas underlying the right-of-way?

BLM will evaluate all lease applications and compensation agreements it receives. BLM will issue a lease or enter into a compensation agreement with the person whose offer is most advantageous to the United States.

§ 3126.20 What is the term of my lease or agreement?

The term of your lease or agreement is 20 years.

Subpart 3129—Record Title, Operating Rights and Estate Transfers, Name Changes and Mergers

General

§ 3129.10 What is a transfer?

A transfer is a conveyance of either record title or operating rights in a lease.

§ 3129.11 When must I file a transfer with BLM?

You must file a transfer with BLM when—

(a) You convey a lease interest;

(b) An interest holder dies;

(c) There is a corporate merger or name change; or

(d) A court orders a transfer.

§ 3129.12 Who may receive a transfer of lease interests?

You may receive a transfer of lease interests only if you are qualified to hold a lease under subpart 3105.

§ 3129.13 What must I include in my transfer application?

Your transfer application must be complete. See § 3129.30 for the form you need.

§ 3129.14 When is my transfer effective?

BLM approves transfers effective the first day of the month following the date—

(a) BLM determines your transfer had no defects; or

(b) BLM determines you cured all defects in the transfer. Common examples of defects are—

(1) No signature;

(2) No original signatures;

(3) No date(s);

(4) Insufficient number of copies;

(5) Incorrect legal descriptions;

(6) Legal descriptions of less than a legal subdivision;

(7) Incorrect description of the lease interest(s);

(8) The transferor has no interest in the lease or the incorrect interest is shown on the transfer because an intervening transfer has not been filed;

(9) The transfer conveys only oil or only gas; and

(10) The transfer of record title attempts to convey only specific formations.

§ 3129.15 May I withdraw my transfer?

You may withdraw your transfer if BLM has not approved it. Your request to withdraw the transfer must be in writing and signed by both the transferor and transferee.

§ 3129.16 May I file a record title transfer limited to a specific depth, formation, zone or defined deposit or fluid mineral?

Unless your lease was issued limited horizontally, you may not file a record title transfer limited to a specific depth, formation, zone or defined deposit or limited to only oil or only gas.

§ 3129.17 May I file my operating rights transfer to a specific depth?

You may convey operating rights limited to a specific depth. For example, you may convey a 100 percent operating rights interest from the surface to 2,000 feet and retain the interest in the depths below 2,000 feet.

§ 3129.18 How do transfers of interest affect future transfers?

When BLM issues you a lease, you receive both the record title and operating rights interest in the lease. As the lessee, you may transfer the operating rights without assigning record title interest in the lease. If you transfer only operating rights interests in the lease, the record title and operating rights are split. After those rights are split, the respective owners of such rights must file transfers of operating rights separately from transfers of record title.

§ 3129.19 When will BLM segregate a lease as a result of a transfer?

(a) If you transfer 100 percent record title interest in a described portion of the lands in the lease, BLM will segregate the lease into two separate leases (see § 3140.70).

(b) If you transfer 100 percent operating rights interest in a described portion of the lands in the lease, BLM will not segregate the lease.

§ 3129.20 What is a mass transfer?

A mass transfer occurs when a transferor transfers interests of any type in multiple Federal leases to the same transferee.

§ 3129.21 May I file a mass transfer?

You may file a mass transfer. However, you must file three signed originals of the record title or operating rights transfer forms for each affected lease. Each lease is a separate transfer. BLM will not accept copies of these signed documents.

§ 3129.22 Does BLM's approval of a transfer certify that title is clear?

BLM's approval of a transfer does not warrant or certify that parties to a transfer hold legal or equitable title to a lease.

Forms, Fees and Filing Requirements

§ 3129.30 What forms must I use to transfer lease interests, how many copies must I file, what is the filing fee per lease or document, and where must I file them?

To transfer an interest, you must file in each BLM State Office with jurisdiction over the lands involved (except as provided in § 3129.37) according to the following chart—

Type of transfer	Form required	Form number	Number of copies required	Filing fee
(a) Record Title	Yes	3000–3	Three	$25 per interest transferred.
(b) Operating Rights	Yes	3000–3a	Three	$25 per interest transferred.
(c) Estate	No	N/A	One (Include a list of all leases affected)	None.
(d) Mergers	No	N/A	One (Include a list of all leases affected)	None.
(e) Name Changes	No	N/A	One (Include a list of all leases affected)	None.

§ 3129.31 Are filing fees refundable?

Filing fees are not refundable. However BLM will refund filing fees that exceed the amount required by the regulations in parts 3100 through 3190.

§ 3129.32 How do I describe the lands on Form 3000–3 for my record title transfer?

If you are transferring—

(a) All of the lands in a lease, you do not need to include a legal land description; or

(b) A portion of the lands in a lease, you must describe those lands in the same manner as described in the lease document.

§ 3129.33 May I transfer less than a legal subdivision?

You may transfer less than a legal subdivision if those lands were originally described that way in the lease.

§ 3129.34 May I file a record title transfer containing less than 640 acres?

BLM will approve a record title transfer of less than 640 acres outside Alaska or 2,560 acres within Alaska only if—

(a) The transfer constitutes the entire lease; or

(b) You demonstrate that the transfer will further the development of oil or gas. Your signature on the transfer form certifies that the transfer will further the development of oil or gas. However, BLM may request additional information before approving the transfer.

§ 3129.35 What must I submit to BLM to transfer the rights or interests of a decedent to its heir, devisee or estate?

(a) To transfer the rights or interests of a decedent to its heir, devisee or estate, you must submit—

(1) If probate of the estate has been completed—

(i) A copy of the will or decree of distribution; and

(ii) A statement as to citizenship and acreage holdings in Federal oil and gas leases signed by each heir;

(2) If probate of the estate has not been completed, a statement signed by each heir as to citizenship and acreage holdings in Federal oil and gas leases and evidence—

(i) Of the authority of the executor or administrator to act on behalf of the estate; or

(ii) That the heirs or devisees are the only heirs or devisees of the deceased;

(3) If there is no will, and State law does not require probate proceedings, a statement signed by —

(i) The heirs that they are the only heirs of the deceased; and

(ii) Each heir as to citizenship and acreage holdings in Federal oil and gas leases.

(b) You must file a bond rider or a replacement bond under subpart 3107 for any bonds the decedent previously furnished.

§ 3129.36 What must I submit to BLM for a merger or name change?

For a merger or name change, you must file—

(a) Evidence that the State has acted on your request for a name change or merger;

(b) A list of all of the Federal lease serial numbers affected by the merger or name change; and

(c) Any bond rider or a replacement bond required under subpart 3107.

§ 3129.37 Where must I file documentation of estate, merger and name changes?

(a) If you maintain a bond, you must file documentation of estate, merger and name changes in the BLM State Office(s) that accepted your bond(s); or

(b) If you don't maintain a bond, you must file documentation of estate, merger and name changes in the BLM State Office with jurisdiction over any of the affected leases.

§ 3129.38 As the transferee, what should I file to show I am qualified to hold Federal lease interests?

By signing the Certification and Request for Approval, on Forms 3000–3 or 3000–3a, you certify that you meet the qualification requirements of subpart 3105.

§ 3129.39 When must I file transfers with BLM?

(a) You must file record title and operating rights transfers within 90 calendar days from the date the transferor signs the document. If you file a transfer more than 90 calendar days after the transferor signed the document, BLM will require the transferor to certify that it still intends to transfer its interest.

(b) There is no timeframe for filing estate, merger and name change documents.

§ 3129.40 May I transfer an interest before BLM issues the lease?

You may file a transfer before a lease is issued, but BLM will not approve your transfer until we issue the lease.

Bonding, Obligations and Liabilities

§ 3129.50 When will BLM require a new bond for a transfer?

If the person that provided the existing bond no longer has responsibility for performance on the lease, the transferee or other person with an interest in the lease, or the operator, must provide a new bond before BLM will approve the transfer.

§ 3129.51 If I transfer my lease, when do my obligations under the lease end?

You are responsible for the performance of all obligations under the lease until the date BLM approves an assignment of your record title or transfer of your operating rights. You will continue to be responsible for obligations that accrued prior to the approval date, whether or not they were identified at the time of the assignment or transfer, including the payment of compensatory royalties for drainage. As the assignor or transferor, you remain responsible for plugging wells you drilled and abandoning facilities installed or used prior to the effective date of the assignment or transfer.

§ 3129.52 If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?

If you acquire a Federal lease interest by assignment or transfer, you agree to comply with the terms of the original lease during your lease tenure, notwithstanding any terms of your assignment or sublease. Also, you must plug and abandon all unplugged wells, reclaim the lease site, and remedy all environmental problems in existence and knowable to a purchaser exercising reasonable diligence at the time you receive the assignment or transfer. You are also liable for any obligations you agreed to assume from the transferor as part of the transfer agreement. You must also maintain an adequate bond to ensure performance of these responsibilities.

Denial/Disapproval

§ 3129.60 When will BLM deny or disapprove a transfer to me?

(a) BLM will deny a transfer to you if you—

(1) Do not furnish a bond if one is required;

(2) Are not qualified to hold Federal lease interests;

(3) Are in violation of the reclamation requirements or other standards established under Section 17(g) of the Mineral Leasing Act, as amended; or

(4) Do not correct a defect in your transfer document.

(b) BLM will return your transfer unapproved if—

(1) The lease is no longer in effect (i.e., the lease has terminated, expired, been canceled or relinquished);

(2) The transfer is a duplicate of one which has already been filed; or

(3) The interest has previously been conveyed.

§ 3129.61 Must I file assignments of rights to production with BLM?

BLM will not accept assignments of rights to production that do not transfer record title or operating rights interests.

§ 3129.62 May I file a lien against a lease for monies owed me?

BLM will not accept liens against Federal leases. If you attempt to file a lien with BLM, we will return it and retain any filing fee you submitted.

§ 3129.63 Must I file transfers of overriding royalty interest, net profit or production payments with BLM?

BLM will not accept transfers of overriding royalty interest, net profit, or production payments. If you file any of these transfers with BLM, we will return them and retain any filing fee you submitted.

PART 3180—[REMOVED]

4. Remove part 3180.

5. Revise the authority citation for part 3130 as follows:

PART 3130—[AMENDED]

Authority: 42 U.S.C. 6508 and 43 U.S.C. 1732(b).

PART 3130—[REDESIGNATED AS PART 3180]

6. Redesignate part 3130—Oil and Gas Leasing: National Petroleum Reserve, Alaska as part 3180.

7. Add new part 3130 to read as follows:

Part 3130—Oil and Gas Agreements

Subpart 3130—Reservoir Management

Well Spacing

Sec.

3130.10 Who establishes well spacing for Federal and Indian minerals?
3130.11 Must I follow a spacing program when I drill a well on Federal or Indian lands?
3130.12 What setback applies to a well I drill on a Federal or Indian lease or agreement?
3130.13 Must I follow State producing restrictions?

Subpart 3132—Oil and Gas Agreements: General

General

3132.10 What agreements require BLM approval?
3132.11 What is BLM's role in agreements on Indian lands?
3132.12 What benefits will I or my lease receive when I enter into an approved agreement?
3132.13 Must I obtain rights-of-ways for roads, facilities, or other surface uses, for Federal lands excluded from an agreement by contraction or termination?
3132.14 May I include non-Federal oil and gas interests in an agreement?

Subpart 3133—Communitization Agreements

Communitization Agreements

3133.10 When will BLM approve my request to communitize oil and gas leases?
3133.11 How do I apply for a communitization agreements (CA)?
3133.12 When is a CA effective and what is its term?
3133.13 When does a CA meet the public interest requirement?
3133.14 When does a CA terminate?
3133.15 What is the effect of a CA on my lease term?
3133.16 Will BLM allow more than one operator for a CA?
3133.17 What are the requirements to change the CA operator?
3133.18 Who will BLM notify about requirements for the CA?

Subpart 3134—Subsurface Storage Agreements

Subsurface Storage Agreements

3134.10 Will BLM allow subsurface storage agreements covering Federally-owned lands?
3134.11 How do I apply for a subsurface storage agreement?
3134.12 What must I pay for storage?

Subpart 3135—Development Contracts

Development Contracts

3135.10 What is a development contract?
3135.11 When will BLM approve a development contract?
3135.12 What lands may I include in a development contract?
3135.13 How do I apply for a development contract?
3135.14 How many Federal lessees must enter into a development contract?
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Authority: 30 U.S.C. 189 and 226.

Subpart 3130—Reservoir Management

Well Spacing

§ 3130.10 Who establishes well spacing for Federal and Indian minerals?

BLM establishes well spacing to protect Federal or Indian mineral interests, promote orderly development, conserve oil and gas, and assure that each Federal or Indian tract and its lessees have the opportunity to participate in reservoir development. State spacing orders do not necessarily apply to Federal or Indian minerals. However—

(a) For Federal minerals, after independent review and evaluation, BLM will either—

(1) Concur with spacing set by an appropriate State authority, if the proposed spacing protects Federal interests; or

(2) Issue its own spacing order for the Federal minerals;

(b) For Indian minerals, BLM must approve spacing, except for Osage leases. In the case of Oklahoma Indian leases subject to district court approval, spacing orders of the Oklahoma Corporation Commission apply when approved by the Secretary.

§ 3130.11 Must I follow a spacing program when I drill a well on Federal or Indian lands?

(a) You must locate your well to conform with well spacing established under § 3130.10.

(b) BLM may waive spacing requirements on Federal and Indian lands.

§ 3130.12 What setback applies to a well I drill on a Federal or Indian lease or agreement?

(a) If your lease is not in an agreement, you must locate your wells so that the bottom hole location is not closer than 200 feet from the boundary of the lease, or if subject to spacing, then 200 feet from the spacing unit boundary.

(b) If your lease is in an agreement, you must locate your well so that the bottom hole location is not closer than 200 feet from an agreement boundary.

(c) BLM may approve a different location requirement in your Application for Permit to Drill or Reenter.

§ 3130.13 Must I follow State producing restrictions?

State producing restrictions do not apply to Federal or Indian minerals. However, on Federal or Indian lands, after independent review and evaluation, BLM may decide to apply production restrictions set by an appropriate State authority if the proposed restrictions protect or conserve Federal or Indian interests.

Subpart 3132—Oil and Gas Agreements: General

General

§ 3132.10 What agreements require BLM approval?

These agreements require BLM approval if they include one or more Federal leases—

(a) A communitization agreement when you want to join tracts within a single drilling or spacing unit. (See subpart 3133.)

(b) A subsurface storage agreement if you want to use a formation to store gas or oil for later production and sale. (See subpart 3134.)

(c) A development contract with an agreed rate or amount of exploration and development for areas that you may not otherwise explore or to provide for large scale development. (See subpart 3135.)

(d) A drainage compensation agreement where wells on adjacent lands are draining leased or unleased minerals. (See subpart 3136.)

(e) An exploratory unit agreement, so that drilling and production may proceed in an entire area or structure in the most efficient and economical manner. (See subpart 3137.)

(f) An enhanced recovery unit agreement, to produce hydrocarbons that cannot be recovered by primary methods. (See subpart 3137.)

§ 3132.11 What is BLM's role in agreements on Indian lands?

The Bureau of Indian Affairs (BIA) approves agreements that include Indian minerals but not Federal minerals. See 25 CFR 211.28 and 212.28. BLM approval is not required. In agreements covering both Federal and Indian minerals, BLM approves the agreement following BIA approval of the commitment of the Indian mineral interests. BLM regulates operations under the terms of agreements that include Indian minerals.

§ 3132.12 What benefits will I or my lease receive when I enter into an approved agreement?

The benefits of your agreement include those items in the following list that are checked in the table in this section for your specific type of agreement—

(a) The acreage committed to agreements is exempt from statewide statutory acreage limitations;

(b) Development or production on one tract within the agreement is considered full performance of obligations to develop and produce on each individual tract committed to the agreement;

(c) Production in paying quantities from any part of the lands committed to an agreement will extend all leases committed to the agreement. Production is not required to extend Federal leases in subsurface storage agreements;

(d) During the term of an agreement, and while Federal leases remain committed to the agreement, you do not need to obtain rights-of-way for roads, facilities, or other surface uses, on those Federal leases committed to the agreement;

(e) You may choose a drilling location without regard to certain lease restrictions, such as lease boundaries within the unit or spacing offsets, unless BLM has adopted State spacing restrictions for that area;

(f) You may consolidate operations and reporting requirements;

(g) You have no obligation to protect your lease from drainage resulting from production on committed tracts; or

(h) When Federal lease(s) are eliminated from the agreement, you are eligible for lease extensions. (See subpart 3140.)

Type of agreement	a	b	c	d	e	f	g	h
Communitization Agreements		✓	✓	✓		✓	✓	✓
Subsurface Storage Agreements		✓	✓	✓	✓	✓		
Development Contracts	✓							
Drainage Compensation Agreements			✓					✓
Exploratory and Enhanced Recovery Unit Agreements	✓	✓	✓	✓	✓	✓	✓	✓

§ 3132.13 Must I obtain rights-of-ways for roads, facilities, or other surface uses, for Federal lands excluded from an agreement by contraction or termination?

You must obtain a right-of-way for those roads and facilities located on Federal surface located outside the agreement boundaries after contraction or termination of the agreement.

§ 3132.14 May I include non-Federal oil and gas interests in an agreement?

You may include Indian, State or private minerals in an agreement with Federal minerals.

Subpart 3133—Communitization Agreements

Communitization Agreements

§ 3133.10 When will BLM approve my request to communitize oil and gas leases?

BLM will approve your request for a communitization agreement (CA) if—

(a) Your Federal lease or a portion of your Federal lease cannot be independently developed and operated within a single well spacing unit that includes other leased or unleased tracts; and

(b) You demonstrate that communitization is in the public interest under § 3133.13.

§ 3133.11 How do I apply for a CA?

You must—

(a) Submit a request to communitize to BLM and in it—

(1) Describe the separate tracts comprising the drilling or spacing unit and formation(s) you intend to commit to the CA;

(2) Identify the well(s) you drilled or plan to drill within the communitized area;

(3) Certify that all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) have committed or consented to the commitment of their interest in writing;

(4) Name who will be responsible for operations under the CA;

(5) Specify the date you propose to make the CA effective; and

(6) Include a schedule allocating production for each committed tract on a surface acreage basis.

(b) If BLM requests it, submit—

(1) A copy of any operating agreements between working interest owners; or

(2) Evidence of commitment required in paragraph (a)(3) of this section.

§ 3133.12 When is a CA effective and what is its term?

(a) BLM must approve a CA. Its effective date is the date BLM specifies in the approval which will be the earlier of—

(1) The completion date of a well drilled to a communitized formation;

(2) The effective date of a State pooling order involving lands you are communitizing; or

(3) A date specified by all parties to the agreement.

(b) All CA approvals under paragraph (a) of this section are provisional and become final only after you meet the public interest requirement under § 3133.13.

(c) The term of a CA is two years from the effective date. The term of the CA extends as long as there is a paying well within the communitized area, or you meet the requirements under § 3140.10.

§ 3133.13 When does a CA meet the public interest requirement?

A CA meets the public interest requirement when you—

(a) Test a communitized formation; or

(b) BLM agrees that further drilling of a well you began under paragraph (a) of this section is unwarranted or impracticable.

§ 3133.14 When does a CA terminate?

(a) A CA automatically terminates at the end of its fixed term unless you qualify for extension under § 3133.12(c).

(b) During the two-year term of the CA, you may apply for a termination. The CA terminates when BLM approves your request.

§ 3133.15 What is the effect of a CA on my lease term?

(a) If there is production from a well on the CA on the date your lease would have expired, your lease term extends until the CA terminates.

(b) Drilling on the CA over the expiration date of your lease will extend your lease term. (See § 3140.10.)

(c) If the CA terminates and you met the public interest requirement under § 3133.13, your lease continues until the later of—

(1) The expiration date of your lease; or

(2) Two years after the date the CA terminates.

(d) If you fail to meet the public interest requirement, the CA is invalid from the beginning and any Federal lease that was a part of the agreement is ineligible for any benefits of communitization. Therefore, if the expiration date of your lease has passed, your lease is terminated.

§ 3133.16 Will BLM allow more than one operator for a CA?

BLM will allow more than one operator for a CA if an application defines—

(a) Responsibilities of respective persons, including obtaining approvals, reporting, paying royalties and conducting operations;

(b) Which CA operator(s) is obligated to provide bond coverage; and

(c) The consequences if one or more CA operator defaults.

§ 3133.17 What are the requirements to change the CA operator?

(a) BLM will accept a new CA operator when the new operator—

(1) Furnishes BLM with evidence of bonding;

(2) States in writing to BLM that it accepts its CA obligations; and

(3) Certifies that all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) have consented to the change in CA operator.

(b) The effective date of the change is the date BLM accepts the new CA operator.

§ 3133.18 Who will BLM notify about requirements for the CA?

BLM will notify the person you named as responsible for operations, and will communicate directly with this party for any requirements related to the CA.

Subpart 3134—Subsurface Storage Agreements

Subsurface Storage Agreements

§ 3134.10 Will BLM allow subsurface storage agreements covering Federally-owned lands?

BLM will allow you to use either leased or unleased Federally-owned lands for the subsurface storage of oil and gas, whether or not the oil or gas you intend to store is produced from Federally-owned lands, if you demonstrate that storage is necessary to—

(a) Avoid waste; or

(b) Promote conservation of natural resources.

§ 3134.11 How do I apply for a subsurface storage agreement?

(a) You must submit an application to BLM for a subsurface storage agreement that includes—

(1) The reason for forming a subsurface storage agreement;

(2) A description of the area you plan to include in the subsurface storage agreement;

(3) A description of the formation you plan to use for storage;

(4) Proposed storage fees or rentals. The fees or rentals must be based on the appraised value of the subsurface storage, injection and withdrawal volumes, and rental income or other income generated by the operator for letting or subletting the storage facilities;

(5) The payment of royalty for native oil or gas (oil or gas that exists in the formation before injection and that is produced when the stored oil or gas is withdrawn);

(6) A description of how often and under what circumstances you and BLM intend to renegotiate fees and payments;

(7) The proposed effective date and term of the subsurface storage agreement;

(8) Certification that all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) have committed or consented to the commitment of their interest in writing;

(9) An ownership schedule showing lease or land status;

(10) A schedule showing the participation factor for all parties to the subsurface storage agreement; and

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(11) Supporting data (geologic maps showing the storage formation, reservoir data, etc.) demonstrating the capability of the reservoir for storage.

(b) BLM will negotiate the terms of a subsurface storage agreement with you for the subsurface storage of oil and gas.

(c) BLM may request additional documentation.

§ 3134.12 What must I pay for storage?

You must pay any combination of storage fees, rentals or royalties to which you and BLM agree. The royalty you pay on production of native oil and gas from leased lands will be the royalty required by the underlying lease(s).

Subpart 3135—Development Contracts

Development Contracts

§ 3135.10 What is a development contract?

A development contract is an agreement among two or more persons, at least one of whom must be a Federal lessee. Under the contract, the parties agree to jointly explore and develop a large area when the cost of discovery, development, production and transportation would not justify the development of the resources on a lease or unit basis. BLM may not approve a development contract if it is more appropriate to unitize.

§ 3135.11 When will BLM approve a development contract?

(a) BLM will approve a development contract on Federal lands for exploration in areas that are less likely than other areas to be explored due to geologic or other factors, or to provide for large scale development. These contracts must—

(1) Promote conservation of natural resources;

(2) Serve Federal interests; or

(3) Be for the public convenience or necessity.

(b) In return for a commitment from the operator to explore and develop these leases at an agreed rate or cost, BLM will exempt this acreage from chargeability.

§ 3135.12 What lands may I include in a development contract?

Development contracts must be of sufficient size to justify the costs of exploration, development, production, or transportation of oil or gas. Boundaries of one development contract may overlap the boundaries of another development contract. Producing fields are excluded from development contracts, unless you are—

(a) Testing a new technology that can be applied to discover resources which are otherwise hidden; or

(b) Conducting operations based on a new geologic model which is untested within or below all other production.

§ 3135.13 How do I apply for a development contract?

Submit to BLM an application for a development contract and in it include—

(a) A map showing the total area subject to the contract;

(b) A list of all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) for all areas and leases in the contract;

(c) Your plan for exploration with timetables and the financial investment you will dedicate to that exploration. BLM will accept carryover provisions allowing the expenditures made in excess of the contract commitment for any year to be applied against the contract in any succeeding year or years;

(d) The effective date and term of the contract; and

(e) Penalty provisions for failure to adhere to the contract.

§ 3135.14 How many Federal lessees must enter into a development contract?

At least one Federal lessee must enter into the contract and provisions must be made to address performance obligations should any party default or withdraw from the contract.

§ 3135.15 May BLM be a party to the development contract?

BLM approves the development contract but may not be a party to it.

§ 3135.16 May existing development contracts be renegotiated?

Existing development contracts may be renegotiated if conditions warrant a change.

§ 3135.17 What must I do to satisfy my obligations under a development contract?

You must—

(a) Commit promised financial resources toward the exploration and development of an area;

(b) Explore the area in your exploration plan; and

(c) Provide BLM annually with information obtained from exploration and development during the preceding contract year.

§ 3135.18 What information in my proposal will be held confidentially?

A development contract proposal is public information as of the date you submit your application. However, your work and dollar commitments are considered financial information and BLM will hold them confidentially to the extent authorized by the Freedom of Information Act, as implemented by 43 CFR part 2.

§ 3135.19 When does a development contract terminate?

(a) A development contract terminates—

(1) Under the terms of the agreement; or

(2) At the end of any contract year, if the parties have not fulfilled their contract commitments, through work performed in that year together with carryover credits from prior years;

(b) Termination of a development contract triggers the provisions of § 3105.28(a)(1), which requires you to reduce your acreage holdings to the prescribed limitations within 90 calendar days after termination of the development contract.

Subpart 3136—Drainage Compensation Agreements

Drainage Compensation Agreements

§ 3136.10 What is a drainage compensation agreement?

A drainage compensation agreement is an agreement between BLM and any other person to pay BLM for oil and gas drained. If the—

(a) Federal oil or gas is drained from a Federal lease, the—

(1) Holders of record title or operating rights must be parties to the agreement;

(2) Lease term is extended for the period during which payments are received plus one year; and

(3) Payment to the United States cannot be less than what the lessee would owe as compensatory royalty under § [to be specified in the final rule].

(b) Oil and gas is drained from an unleased Federal tract—

(1) BLM and the person causing the drainage are the only parties to the agreement; and

(2) The payment to the United States for drainage will be negotiated between the parties; or

(c) BLM orders you to pay compensatory royalty under your lease terms, and you pay in accordance with that order, or if BLM makes any other determination that you owe compensatory royalty under your lease, your payment constitutes a drainage compensation agreement for the purposes of paragraph (a) of this section.

§ 3136.11 How are the terms of a drainage compensation agreement determined?

(a) BLM will negotiate the agreement with the other parties. The terms must include—

(1) A statement that identifies the well that is causing drainage;

(2) A map and legal description of the lands to be included; and

(3) The terms for compensation the United States will receive for the drainage.

(b) If the oil and gas is drained from a Federal lease, all record title owners and operating rights owners must consent to the agreement.

Subpart 3137—Unit Agreements

Application

§ 3137.10 What agreements does this subpart cover?

This subpart covers exploratory and enhanced recovery unit agreements.

(a) An exploratory unit agreement is a BLM-approved agreement—

(1) Among interest owners of Federal leases and owners of non-Federal mineral interests;

(2) That provides for orderly and cooperative development of all or part of an oil or gas pool, field or like area;

(3) That allocates production from wells in participating areas to all tracts in the participating area without regard to well location; and

(4) That provides Federal lessees with the benefits listed in § 3132.12.

(b) An enhanced recovery unit is a BLM approved agreement that—

(1) Has the same characteristics as paragraphs (a)(1), (a)(3) and (a)(4) of this section; and

(2) Provides for the introduction of an artificial drive or displacement mechanism into a reservoir underlying several tracts to produce hydrocarbons that cannot be recovered by primary methods.

§ 3137.11 How are the terms of an exploratory unit agreement determined?

BLM will negotiate with you on all terms of the proposed unit agreement before you submit an application. BLM will accept any unit agreement format as long as it protects the public interest and conforms with all applicable laws and regulations. BLM will determine whether the agreement protects the public interest and includes only terms permitted by this subpart.

§ 3137.12 How are the terms of an enhanced recovery unit agreement determined?

BLM will participate in the negotiation of terms in the proposed unit agreement before you submit an application. BLM will accept any unit agreement format as long as it protects the public interest and conforms with all applicable laws and regulations. Including BLM as part of the group you form to negotiate the participation and allocation formulae will expedite the approval process.

§ 3137.13 What must I include in a unitization application?

(a) Submit three copies of the unitization application and in it include—

(1) The proposed unit agreement;

(2) A map showing the unit area and committed leases and other tracts;

(3) A list of committed leases and other tracts;

(4) An allocation schedule for—

(i) A proposed exploratory unit that has existing production; or

(ii) A proposed enhanced recovery unit that identifies the basis for the allocation.

(b) You must also include a description of the lands you plan to include in the unit agreement. When you describe the lands, follow the principles of § 3121.20.

(c) Do not submit any other material with the application unless BLM requests it.

§ 3137.14 As the unit operator, what must I certify in my unitization application?

In the unitization application, as the unit operator you must certify—

(a) That you invited all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) for the area described in the application to join the unit;

(b) That there are sufficient leases or other tracts committed to the unit agreement for reasonable control of the unit area;

(c) The commitment status of all leases and other tracts within the area proposed for unitization; and

(d) That you accept unit obligations under § 3137.81.

§ 3137.15 As the unit operator, must I provide BLM with evidence of commitment status in my unitization application?

Do not submit documentation of commitment status with your unitization application. However, you or your designated agent must maintain documentation of results of invitations to join the unit. You must make the documentation available to BLM when we request it. The Bureau of Indian Affairs may require documentation of commitment status of Indian lands.

§ 3137.16 When is a unit agreement effective?

(a) BLM will provisionally approve exploratory and enhanced recovery unit agreements effective the date your application is complete.

(b) Final BLM approval is effective retroactive to the date of provisional approval, after you have fulfilled the public interest requirements in § 3137.51 or § 3137.53, as appropriate. If you do not meet the requirements of these sections, your unit agreement is not approved.

§ 3137.17 How will the parties to the unit know if BLM provisionally approves the unit agreement?

BLM will notify the unit operator in writing when we approve or disapprove the proposed unit agreement. The unit operator must notify all parties to the unit agreement.

§ 3137.18 Why would BLM reject a unitization application?

BLM will reject a unitization application that does not meet all of the requirements of this subpart.

Mandatory Provisions

§ 3137.20 What must an exploratory unit agreement include?

(a) An exploratory unit agreement must define the—

(1) Unit area;

(2) Initial and continuing development obligations; and

(3) Productivity criteria and participating areas.

(b) The exploratory unit agreement must include—

(1) A provision which grants BLM the ability to set or modify the quantity, rate and location of development and production; and

(2) Modifications to any or all terms and conditions of the proposed unit agreement to which the parties agreed during negotiations with BLM.

§ 3137.21 What must an enhanced recovery unit agreement include?

(a) The area in an enhanced recovery unit agreement must be fully developed at the time you propose the unit agreement. Fully developed means that the proposed unit area has been adequately drilled to reasonably delineate the boundaries of the reservoir(s). Therefore, an enhanced recovery unit agreement should not include terms related to initial and continuing development obligations and productivity criteria and participating area size. An enhanced recovery unit agreement must define—

(1) The unit area;

(2) Enhancement obligations;

(3) A formula allocating production throughout the entire unit area that may consider factors other than surface acreage; and

(4) The producing intervals covered.

(b) The enhanced recovery unit must include—

(1) A provision which grants BLM the ability to set or modify the quantity, rate and location of development and production; and

(2) Modifications to any or all terms and conditions of the proposed unit

agreement to which the parties agreed during negotiations with BLM.

§ 3137.22 Will BLM accept or approve other terms?

A unit agreement may include only terms identified in § 3137.20, § 3137.21 or § 3137.30. BLM will not approve an agreement including any other terms or provisions. Provisions not included in this subpart may be set out under separate agreements by the affected parties.

Optional Provisions

§ 3137.30 Are there any optional provisions that I may include in a unit agreement?

(a) Except as provided in paragraphs (b) and (c) of this section, the agreement covers all producing intervals, requires unanimous consent for modification, and allows for only one operator at a time.

(b) Your agreement may include provisions for multiple unit operators, limiting coverage to certain producing intervals, and authorizing modifications not requiring approval of all of the original parties to the unit agreement. BLM will approve these optional topics if they promote additional development or enhance production potential.

(c) You must specify the producing interval(s) covered by an enhanced recovery unit.

§ 3137.31 What are the requirements for multiple unit operators?

BLM permits multiple unit operators for exploratory units only if the unit agreement defines—

(a) The conditions under which additional unit operators are acceptable;

(b) The responsibilities of each operator, including obtaining approvals, reporting, paying royalties and conducting operations;

(c) The bonds covering the operations of each operator;

(d) The consequences if one or more unit operators default; and

(e) Which unit operator is responsible for unit obligations not specifically assigned in the unit agreement.

§ 3137.32 How can parties modify their unit agreement?

(a) The parties may modify their unit agreement if—

(1) All of the original parties to the unit agreement (or their successors) agree to the modification; or

(2) They meet the requirements of the modification provision in the unit agreement which specifies who is authorized to modify the unit agreement. That provision must identify which parties, and what percentage of each class of parties, must consent to each type of modification.

(b) The operator must certify that the necessary parties have agreed to the change.

(c) BLM must approve any proposed modifications to the unit agreement. BLM's approval is effective retroactive to the date your application for modification was complete. However, BLM may approve a different effective date if you request it and provide acceptable justification.

§ 3137.33 What must I submit to BLM if I propose to modify a unit area or change the commitment status of a lease?

If you propose to modify the unit area or change the commitment status of any lease under § 3137.32, you must submit to BLM a revised—

(a) Map showing the unit area and committed leases;

(b) List of committed leases; and

(c) Allocation schedule, including any change in the basis for allocation.

§ 3137.34 What effect do other BLM oil and gas agreements have on the unit agreement?

(a) No other BLM oil and gas agreement modifies any of the inconsistent terms and conditions of the unit agreement or relieves the unit operator of any right or obligation established under the unit agreement.

(b) In case of any inconsistency or conflict between the unit agreement and any other agreement, the unit agreement governs.

Size and Shape

§ 3137.40 What are the size and configuration requirements for a unit area?

(a) The unit area must consist of tracts that are contiguous at least at one point.

(b) Areas of noncommitted tracts totally within the exterior boundary of the unit (windows) are allowed.

(c) BLM may limit the size and shape of the unit considering the type, amount, rate, and location of the proposed development.

Development

§ 3137.50 What initial unit obligations must I define in an exploratory unit agreement?

In an exploratory unit agreement you must define—

(a) The number of wells necessary to determine the existence of oil and gas resources in the area of the proposed unit;

(b) A primary target(s) for each well to a depth necessary to penetrate anticipated producing intervals; and

(c) The time between the drilling of necessary wells to interpret drilling results and comply with lease restrictions.

§ 3137.51 What must I do to meet initial unit obligations and fulfill the public interest requirement in an exploratory unit?

On or before the time specified in your exploratory unit agreement, you must—

(a) Diligently drill the required well(s) to the primary target(s); or

(b) Have commenced drilling to a target and BLM agrees that further drilling of the well(s) you began under paragraph (a) of this section, or future well(s), is unwarranted or impracticable.

§ 3137.52 What enhancement obligations must I define in an enhanced recovery unit agreement?

Your enhanced recovery unit agreement must define as enhancement obligations—

(a) The amount and type of enhanced recovery operations; and

(b) The timeframe for completing the operations in paragraph (a) of this section.

§ 3137.53 What must I do to meet enhancement obligations and fulfill the public interest requirement in an enhanced recovery unit?

On or before the time specified in your enhanced recovery unit agreement to meet the enhancement obligations and fulfill the public interest requirement, you must—

(a) Diligently complete the work you defined as your enhancement obligation in § 3137.52; or

(b) Demonstrate to BLM's satisfaction that—

(1) Enhanced recovery operations have increased reservoir performance; or

(2) Further enhanced recovery operations are unwarranted, impracticable or uneconomical.

§ 3137.54 What happens if I do not meet initial unit obligations in an exploratory unit or enhancement obligations in an enhanced recovery unit?

If you do not meet the requirements of § 3137.51 or § 3137.53, the unit agreement is invalid from the beginning, will not receive final approval, and any Federal lease that was a part of the unit agreement is ineligible for any benefits from unitization described in § 3132.12. Therefore, for example, if the expiration date of your lease has passed, your lease is terminated.

§ 3137.55 What are continuing development obligations?

Continuing development obligations for an exploratory unit are a program of development or operations you must conduct—

(a) That exceeds the rate of development and operation that would have occurred in the area without unitization; and

(b) Which represents an investment commensurate with the size of the area of the unit agreement.

§ 3137.56 How must I define continuing development obligations in the unit agreement?

(a) Once you meet initial unit obligations prescribed in this subpart, you must perform additional development or operations (see § 3137.80) in the amount and frequency specified in your unit agreement. BLM will not consider work you did before unitization as meeting continuing development obligations.

(b) You must define in the agreement the time between when you start your first development or operations to the start of the next development or operation. You must define the same time-frames for subsequent development or operations.

§ 3137.57 Must I perform additional development outside established participating areas to fulfill continuing development obligations?

Your additional development may be either inside or outside of a participating area to fulfill your continuing development obligations, depending on the terms of the unit agreement.

§ 3137.58 What happens if I do not meet a continuing development obligation?

(a) The unit contracts when you do not meet a continuing development obligation. Only established participating areas, whether they are still productive or not, remain in the unit. BLM will eliminate all portions of the unit outside participating areas at the time of contraction. Contraction is effective the first day of the month in which the unit agreement required the operations to begin.

(b) BLM may suspend or extend a development obligation under §§ 3137.90 and 3137.91. BLM may also modify your development obligations under § 3137.32.

§ 3137.59 What must I submit to BLM after I meet a continuing development obligation?

Within 60 calendar days after you meet a continuing development obligation, you must certify to BLM that you met the obligation. BLM may require you to supply documentation supporting your certification. If you establish production in a well that does not meet the productivity criteria set out in the unit agreement, you must also certify to BLM that you will operate, produce and report the well on a lease basis, rather than as part of the unit.

Productivity Criteria and Participating Area

§ 3137.60 What are productivity criteria?

(a) Productivity criteria are characteristics of a well in an exploratory unit that warrant including a defined area surrounding the well in a participating area. The unit agreement must define these criteria for each separate producing interval. You must be able to determine whether you met the criteria when the well has been drilled and well testing completed.

(b) To meet the productivity criteria the well must—

(1) Indicate future production potential sufficient to pay for the costs of drilling, completing and operating the well on a unit basis; and

(2) Be physically ready to produce unitized substances.

§ 3137.61 What is a participating area and what is its function?

(a) A participating area is the area which shares in the production of unitized substances. Allocation to each committed lease or tract within the participating area is in the same proportion as that lease's surface acreage within the participating area.

(b) The approximate size and shape of all participating areas and revisions must be defined in the unit agreement.

§ 3137.62 What establishes a participating area?

The first well you drill after unitization that meets the productivity criteria establishes an initial participating area. When you establish that initial participating area, lands which contain previously existing wells that meet the productivity criteria will, in accordance with § 3137.63,—

(a) Be added to that initial participating area as a revision; or

(b) Become a separate participating area.

§ 3137.63 What happens to the participating area when new wells are drilled that meet the productivity criteria?

If a new well is—

(a) Inside a participating area boundary and completed in the same producing interval, the participating area will remain the same;

(b) Outside a participating area boundary and completed in the same producing interval as the well in an existing participating area, the participating area expands to include the new area; or

(c) In a different producing interval, inside or outside a participating area, a new participating area is established for the well. Participating areas for different producing intervals can overlap each other.

§ 3137.64 What must I submit to BLM when I establish a participating area or add to an existing participating area?

(a) When you establish a participating area under § 3137.62 or add to an existing participating area under § 3137.63, within 60 calendar days after you establish unitized production, you must submit to BLM—

(1) Certification that you established unitized production;

(2) A map showing the participating area and total acreage;

(3) A schedule showing the production allocation for each tract participating in production; and

(4) Any other information BLM may require.

(b) BLM will review your submission and determine if you have met the unit agreement terms for establishing a participating area.

§ 3137.65 Must additions to an existing participating area be the same size as the initial participating area?

Additions to an existing participating area involving the same producing interval must be approximately the same size as the initial participating area for that producing interval.

§ 3137.66 Must participating areas for different producing intervals be the same size?

Participating areas (both initial and additions) for different producing intervals may be different sizes (see § 3137.61) and may overlay or underlie other participating areas.

§ 3137.67 How do I allocate participating area production when there are unleased Federal lands in the participating area?

(a) For royalty purposes only, you must allocate production to unleased Federal lands in the participating area as if the acreage were committed to the participating area under § 3137.61. You must pay royalty in accordance with § 3137.111.

(b) For purposes other than royalty, apply § 3137.61, excluding unleased Federal lands.

§ 3137.68 What if unleased Federal lands are leased after the effective date of the unit agreement?

You must admit Federal tracts leased after the effective date of the unit agreement into the agreement on the date the lease is effective.

§ 3137.69 What happens when a well outside any participating area does not meet the productivity criteria?

If a well outside any of the established participating areas does not meet the productivity criteria, all operations on that well are non-unit operations. No participating area is expanded and you must notify BLM that non-unit operations have occurred. You must conduct non-unit operations under the terms of the underlying lease, CA, or drainage compensation agreement.

§ 3137.70 How does allocation of production occur from wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the production is allocated on a lease, communitization or drainage compensation agreement basis. Production from the well is not considered unitized substances and you must pay and report the royalties from any such well as specified in the underlying lease, CA or drainage compensation agreement.

(b) If a well was drilled after the unit was formed and the well is completed within an existing participating area, the production is added to and becomes a part of that participating area production. This paragraph applies whether or not the well meets the productivity criteria.

(c) If a well that does not meet the productivity criteria is outside a participating area, the production is allocated the same as under paragraph (a).

§ 3137.71 Who must operate wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the operator of the well at the time the unit was formed continues as operator. The unit operator is not required to operate the wells, but it may do so.

(b) As unit operator, you must operate wells drilled after unit formation that do not meet the established productivity criteria, until you change operators for that well.

§ 3137.72 May a well BLM previously determined to be a non-unit well establish or revise a participating area?

If you, as the unit operator, complete sufficient work so that a well BLM previously determined to be a non-unit well now meets the productivity criteria and you demonstrate this to BLM, you must then revise or establish a new participating area. When this occurs, you must notify BLM (see § 3137.64).

§ 3137.73 What is the effective date of an initial participating area or revision to an existing participating area?

The effective date of a participating area or its revision is the first day of the month in which a well is completed that causes the participating area to be formed or revised, but no earlier than the effective date of the unit.

§ 3137.74 How long does a participating area remain in effect?

(a) Until the unit contracts under § 3137.58, all participating areas remain in effect.

(b) After unit contraction, a participating area remains in effect until BLM notifies you that there is insufficient production to meet operating costs of the participating area. However, your participating area will not terminate if, after you receive notice, you demonstrate to BLM that—

(1) Operations to restore production or establish new production are—

(i) In progress within 60 calendar days of BLM notification;

(ii) Being diligently carried out to completion; and

(iii) Successful in restoring or establishing production sufficient to meet operating costs; or

(2) One or more wells within the participating area are capable of producing in quantities sufficient to meet operating costs.

Unit Operations

§ 3137.80 What is unit development or operations?

Any of the following are unit development or operations—

(a) Drilling additional wells that test the primary target or enhance production;

(b) Drilling additional wells that establish production of unitized substances;

(c) Well recompletions or operations that establish new unitized production or enhance existing production;

(d) Drilling existing wells to a deeper target; or

(e) Drilling, completing or recompleting wells that contribute to the productivity of the unit.

§ 3137.81 As unit operator, what are my obligations?

(a) As a unit operator, you must comply with the terms and conditions of the unit agreement, Federal laws and regulations, applicable lease terms and stipulations not expressly waived by BLM, and BLM orders.

(b) Once a unit is formed, you are responsible for all wells drilled on lands committed to the unit unless—

(1) BLM approves multiple unit operators under § 3137.31 and another unit operator drills that well; or

(2) A well does not meet the productivity criteria and is not operated as a unit well (see § 3137.71).

§ 3137.82 What must I file with BLM to change the unit operator?

To change unit operators, the new unit operator must file—

(a) Statements that—

(1) It accepts unit obligations; and

(2) The percentage of interest owners required by the agreement consented to a change of unit operator; and

(b) Evidence of acceptable bonding under subpart 3107.

§ 3137.83 When does my liability as unit operator end?

You are responsible for all duties and obligations of the unit agreement until BLM approves a new unit operator. The change of the unit operator does not release you from any liability for noncompliance with obligations that accrued before the effective date of the change.

§ 3137.84 As a unit operator, what must I do to prevent or compensate for drainage?

(a) You must take measures to prevent, or compensate for, drainage of oil and gas from unitized land by wells—

(1) On tracts not committed to the unit; or

(2) Not operated as unit wells.

(b) Acceptable measures to prevent, or compensate for, drainage include, but are not limited to, drilling a protective well, entering into a CA, or paying drainage compensation.

Suspensions and Extensions of Development

§ 3137.90 As the unit operator, what happens if I cannot meet unit requirements for reasons outside of my control?

BLM will suspend development obligations under the unit agreement if you are prevented from complying with unit requirements, despite the exercise of due care and diligence. BLM may approve suspensions of drilling operations for all unitized lands or specific lands within the unit.

§ 3137.91 Will BLM grant an extension of time to meet the initial or continuing development obligations?

Under limited circumstances, such as inclement weather, rig unavailability, or litigation, BLM may grant reasonable extensions of time to meet the development obligations of your unit agreement. This extension does not toll the running of any individual lease term. See subpart 3141 for Federal lease suspensions.

Unit Termination

§ 3137.100 Under what circumstances will BLM approve a voluntary unit termination?

BLM may approve the voluntary termination of the unit at any time—

(a) Before the unit operator discovers production sufficient to establish a participating area; and

(b) The unit operator certifies that at least 75 percent of the operating rights owners in the unit agreement, on a surface acreage basis, agree to the termination.

§ 3137.101 What if I do not meet a continuing development obligation before any participating area has been established in the unit?

If you do not meet a continuing development obligation before any participating area is established, the unit terminates automatically. Termination is effective the day after you failed to meet a continuing development obligation.

§ 3137.102 After participating areas are established, when does the unit terminate?

After participating areas are established, the unit terminates when the last participating area of the unit terminates.

Royalties

§ 3137.110 How is unit production from an exploratory unit agreement allocated?

Allocate production within participating areas of an exploratory unit agreement in proportion to each tract's share of the surface acreage within the participating area.

§ 3137.111 What is the royalty rate for unleased Federal lands in a participating area?

Whenever a participating area or enhanced recovery unit includes unleased Federal lands, you must pay a royalty to the United States based on a royalty rate not less than the highest royalty rate for any Federal lease committed to the unit. Payment accrues from the later of the dates—

(a) Committed leases in the participating area or enhanced recovery receive a production allocation; or

(b) The Federal lands become unleased.

§ 3137.112 What is average daily production for a Federal lease committed to a unit where the royalty rate depends on average daily production?

For a Federal lease on which the royalty rate depends on the average daily production per well (for example, sliding-scale or step-scale leases), the unit operator must determine average production according to subpart 3106, as though the participating area, or in the case of an enhanced recovery unit, the entire unit area, were a single Federal lease.

§ 3137.113 May the United States take an in-kind royalty share of unit production?

(a) For a Federal lease committed to a unit agreement, the United States may take its royalty in-kind at its election.

(b) The operator of the well from which the royalty is taken in-kind must store and make deliveries of such production according to applicable laws, lease terms and regulations.

Leases and Contracts Conformed and Extended

§ 3137.120 As the unit operator, must I develop and operate on every tract in the unit to comply with the development obligations of the underlying leases, contracts or agreements (other than unit agreements)?

When BLM approves a unit agreement, the terms, conditions and provisions of all committed Federal leases, subleases and other contracts are amended to the extent necessary to conform to the provisions of the unit agreement until the lease no longer is committed to the unit. In all other respects they remain in full force and effect. If you fully perform initial unit and continuing development obligations, you have fully performed the development obligations of the committed leases.

Change in Ownership

§ 3137.130 As a transferee of an interest in a unitized Federal lease, am I subject to the terms and conditions of the unit agreement?

Any interest in a Federal lease committed to a unit agreement that you acquire by transfer is subject to the terms and conditions of the unit agreement.

PART 3140—[AMENDED]

8. Revise the authority citation for part 3140 to read as follows:

Authority: 30 U.S.C. 189, 351–359 and 43 U.S.C. 1732(b).

PART 3140—[REDESIGNATED as 3170]

9. Redesignate part 3140—Combined Hydrocarbon Leasing as part 3170.

10. Add new part 3140 to read as follows:

PART 3140—OIL AND GAS LEASE ADMINISTRATION

Subpart 3140—Extensions

Lease Extensions and Drilling Extensions

Sec.

3140.10 Will BLM extend my lease if I drill before the lease expires?

3140.11 What are actual drilling operations?

Continuation by Production

3140.20 Does my lease continue in effect if I establish production before the primary term expires?

3140.21 If my lease is in its extended term and I stop producing, will it terminate?

3140.22 If my lease is in its extended term and capable of production, and is shut-in, will it terminate?

Unit or Communitization Agreement Production

3140.30 Does my lease continue beyond its primary term if it is committed to a CA or unit agreement under which production in paying quantities has been established?

Unit Segregations

3140.40 What is the status of my lease if only part of it is committed to a unit agreement?

3140.41 What is the effective date of the segregation?

3140.42 If my lease is segregated into two leases, is my segregated lease extended?

Elimination from Agreements

3140.50 Will BLM extend my lease if it is eliminated from an agreement?

Leases Segregated by Assignment

3140.60 What is the term of my lease if it is segregated into two or more leases by a partial transfer?

Payment of Compensatory Royalty

3140.70 Will BLM extend my lease if I am paying compensatory royalty on the lease?

Leases Used for Surface Storage of Oil or Gas

3140.80 Will BLM extend my lease if I am using it to store oil or gas?

Subpart 3141—Suspensions

Suspensions of Operations For Production

3141.10 Under what circumstances will BLM suspend operations or suspend production on my lease under 30 U.S.C. 226(i)?

3141.11 Under what circumstances will BLM approve my request under 30 U.S.C. 209 for a suspension of operations and production for my lease?

3141.12 How do I apply for a suspension?

3141.13 When is a suspension effective?

3141.14 When is my next rental or minimum royalty payment due after the effective date of my suspension of operations and production?

3141.15 When will my suspension terminate?

3141.16 What happens when my suspension terminates?

Suspension or Waiver of Lease Rights

3141.20 When may a suspension of my lease rights occur?
3141.21 How do I request a suspension of lease rights?
3141.22 How will suspension under this subpart affect my lease?
3141.23 When will my lease suspension end?

Subpart 3142—Terminations and Reinstatements

Lease Terminations and Reinstatements

3142.10 What happens if the Minerals Management Service (MMS) does not receive my advance annual rental payment on or before the anniversary date of my lease?
3142.11 Will my lease terminate if my rental payment is deficient?

Class I Reinstatements

3142.20 Under what circumstances will BLM reinstate my lease without an increase in royalties and rentals (Class I)?
3142.21 What must I do before BLM will reinstate my lease under Class I?

Class II Reinstatements

3142.30 Under what circumstances will BLM reinstate my lease with an increase in royalty rate and rentals (Class II)?
3142.31 What must happen before BLM will reinstate my lease under Class II?
3142.32 How much are the rentals or royalties under a Class II reinstatement?
3142.33 Are there circumstances under which BLM will not consider my petition for reinstatement?
3142.34 Will BLM extend the term of my lease if I do not have a reasonable opportunity to begin or continue operations following a reinstatement?

Class III Conversions from Unpatented Mining Claims

3142.40 Under what circumstances will BLM convert my unpatented oil placer mining claim to an oil and gas lease?
3142.41 What must I include with my Class III petition for issuance of a noncompetitive oil and gas lease?

Subpart 3143—Relinquishments

Relinquishments

3143.10 May I relinquish all or part of my lease?
3143.11 Where do I file a lease relinquishment?
3143.12 Is there a filing fee or official form I must use?
3143.13 Does a relinquishment entitle me to a return of any rental payment on a pro rata monthly basis?
3143.14 Who must sign the relinquishment application?
3143.15 If I own only part of the record title (a co-lessee), may I relinquish only my interest?
3143.16 If I own all or part of the operating rights in a lease, but no record title, may I relinquish my operating rights to BLM?
3143.17 When is a relinquishment effective?
3143.18 What are my obligations after I file the relinquishment?

Subpart 3144—Cancellations

Cancellations

3144.10 Under what circumstances will BLM cancel my lease?
3144.11 May BLM cancel my lease if it issued it improperly?
3144.12 If I own or control an interest in a lease in violation of the provisions of the Act, what will BLM do?

Bona Fide Purchasers

3144.20 Will BLM cancel my lease if I am a bona fide purchaser and I purchased it from someone who acquired it in violation of the Act?
3144.21 What is a bona fide purchaser?

Authority: 16 U.S.C. 3150(b) and 668dd; 30 U.S.C. 189, 306 and 359; 43 U.S.C. 1733, 1734 and 1740; and 10 U.S.C.A. 7439.

Subpart 3140—Extensions

Lease Extensions and Drilling Extensions

§ 3140.10 Will BLM extend my lease if I drill before the lease expires?

(a) BLM will extend the primary term of your lease for two years if you are diligently conducting actual drilling operations described in § 3140.11 on the last day of the primary lease term and continue thereafter to a depth sufficient to penetrate at least one formation recognized in the area as potentially able to produce oil or gas. To meet this obligation if you are reentering a well, you must either drill it to a depth sufficient to penetrate at least one new and deeper formation recognized in the area as potentially able to produce, or use horizontal drilling to test any formation that is recognized as having a potential for oil and gas production.

(b) If BLM determines that you were unable to conduct actual drilling operations on the last day of your primary lease term, due to severe weather or other justifiable cause, your lease is extended under paragraph (a) of this section if you promptly resume and diligently continue your drilling operations to completion when the reason for the drilling cessation no longer exists.

(c) This section applies to leases committed to a unit or communitization agreement if you conduct actual drilling operations in the agreement area.

§ 3140.11 What are actual drilling operations?

Actual drilling operations are operations you conduct that are similar to those that anyone looking for oil or gas could be expected to conduct in that particular area, given the existing knowledge of geologic and other facts pertinent to drilling for oil and gas. The term includes the testing, completing, or equipping of the drill hole (casing, tubing, packers, pumps, etc.) so that it is capable of producing hydrocarbons.

Continuation by Production

§ 3140.20 Does my lease continue in effect if I establish production before the primary term expires?

If you establish production in paying quantities before the end of the primary lease term, your lease continues in effect for as long as you produce oil or gas in paying quantities.

§ 3140.21 If my lease is in its extended term and I stop producing, will it terminate?

Except as provided in § 3140.22, if your lease is in its extended term, it terminates when you stop producing unless, within 60 calendar days after you stop production, you restart production or you conduct reworking or commence drilling operations with reasonable diligence and restore the lease to production.

§ 3140.22 If my lease is in its extended term and capable of production, and is shut-in, will it terminate?

If your lease is in its extended term and is capable of production, but it is shut-in, your lease will not automatically terminate when you stop producing. However, if BLM notifies you in writing by registered or certified mail that you must resume production, you have 60 calendar days from receipt of the notification to resume production or your lease will terminate.

Unit or Communitization Agreement Production

§ 3140.30 Does my lease continue beyond its primary term if it is committed to a CA or unit agreement under which production in paying quantities has been established?

(a) If your lease is committed to a CA or unit agreement, your lease continues beyond its primary term by production established within the agreement area if—

(1) The CA or unit agreement contains a general provision for allocation of oil or gas; and

(2) You established production in paying quantities under the agreement before your lease expired.

(b) This section also applies to 20-year leases.

Unit Segregations

§ 3140.40 What is the status of my lease if only part of it is committed to a unit agreement?

BLM will segregate any lease committed to a unit agreement if part of the lands in the lease are outside the area covered by the agreement. BLM will segregate your lease into two leases, one covering lands committed to the agreement and the other covering lands outside the unit area.

§ 3140.41 What is the effective date of the segregation?

The effective date of lease segregation is the effective date of the unit agreement to which part of the lease is committed.

§ 3140.42 If my lease is segregated into two leases, is my segregated lease extended?

If your lease is segregated under § 3140.40, BLM will grant a two-year lease term extension for the lands outside the unit, if the original lease is due to expire less than two years from the effective date of segregation. The two-year extension begins with the effective date of segregation.

Elimination From Agreements

§ 3140.50 Will BLM extend my lease if it is eliminated from an agreement?

If your lease is eliminated from a unit agreement or CA, and if the term remaining in your lease is less than two years, BLM will grant a two-year lease term extension from the effective date of—

(a) Termination of an agreement to which your lease was committed; or

(b) Elimination of your lease from a unit agreement when it contracts.

Leases Segregated by Assignment

§ 3140.60 What is the term of my lease if it is segregated into two or more leases by a partial transfer?

(a) If a lease in its primary term is segregated into two or more leases as a result of a partial transfer of record title, the term of the original lease and the newly-designated leases is the term of the original lease, except as provided in paragraph (b) of this section.

(b) If BLM determines after segregation that oil and gas is discovered in paying quantities on either the original lease or the newly-designated leases, the term of the leases in paragraph (a) of this section cannot be less than two years after the date of BLM's determination.

(c) If a lease issued—

(1) After September 2, 1960, in its extended term under § 3140.20 is segregated into two or more leases as a result of a partial transfer of record title, the original lease and any newly-designated leases not held by production on the date of transfer are extended for two years after that date; or

(2) On or before September 2, 1960, is in its extended term for any reason, paragraph (c)(1) of this section applies.

(d) If BLM extends your lease and you establish production, your lease will continue so long as it is capable of production in paying quantities.

Payment of Compensatory Royalty

§ 3140.70 Will BLM extend my lease if I am paying compensatory royalty on the lease?

BLM will extend your lease for the period that BLM receives compensatory royalty under § 3136.10. Your lease also will be extended for one year from the date BLM determines you are no longer required to pay compensatory royalty.

Leases Used for Subsurface Storage of Oil or Gas

§ 3140.80 Will BLM extend my lease if I am using it to store oil or gas?

BLM will extend your lease during the period of storage under an approved subsurface oil or gas storage agreement. You must continue to pay rental for your lease during the extended period.

Subpart 3141—Suspensions

Suspensions of Operations or Production

§ 3141.10 Under what circumstances will BLM suspend operations or suspend production on my lease under 30 U.S.C. 226(i)?

(a) BLM will suspend operations or suspend production for your lease under 30 U.S.C. 226(i) if, despite the exercise of due care and diligence, you are prevented from operating or producing your lease due to circumstances beyond your control. BLM either may direct a suspension under this section or approve your request for a suspension.

(b) If BLM issues a suspension under paragraph (a) of this section, the suspension stops the running of your lease term and thereby extends it by the length of time the suspension is in effect. However, while the suspension is in effect, you are not relieved of your obligation to pay rent, royalty, or minimum royalty.

§ 3141.11 Under what circumstances will BLM approve my request under 30 U.S.C. 209 for a suspension of operations and production for my lease?

BLM will suspend operations and production for your lease under 30 U.S.C. 209, if BLM determines that it is in the interest of conservation. BLM either may direct a suspension under this section or approve your request for a suspension. If BLM suspends operations and production under this section, the suspension—

(a) Stops the running of your lease term and thereby extends it by the length of time the suspension is in effect;

(b) Relieves you of your obligation to pay rent or minimum royalty during the suspension; and

(c) Does not allow you to operate on, produce from, or have any other beneficial use of your lease during the suspension.

§ 3141.12 How do I apply for a suspension?

(a) To apply for a suspension, you must submit to BLM an application that—

(1) States what type of suspension you are applying for (whether you are applying for a suspension under § 3141.10 or § 3141.11); and

(2) Identifies the circumstances that prevent you from operating or producing your lease that are beyond your reasonable control or that justify a suspension in the interest of conservation.

(b) Your suspension application must be signed by—

(1) All operating rights owners; or

(2) The operator on behalf of the operating rights owners of the leases committed to an approved agreement.

(c) You must submit your application to BLM before your lease expires.

(d) Your application must be for your entire lease.

(e) If your suspension application relates to your ability to timely drill a new well or reenter an existing well, BLM will approve your application only if you submitted an Application for Permit to Drill or Reenter or Notice of Staking at least 31 calendar days before the lease expires.

§ 3141.13 When is a suspension effective?

A suspension is effective—

(a) The date BLM specifies in a directed suspension; or

(b) The first day of the month in which you file an application for suspension, unless BLM specifies a different date on the approval document.

§ 3141.14 When is my next rental or minimum royalty payment due after the effective date of my suspension of operations and production?

After BLM approves your suspension of operations and production under § 3141.11, the date your next rental or minimum royalty payment is due is

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extended by the length of the suspension.

§ 3141.15 When will my suspension terminate?

Your suspension under § 3141.10 or § 3141.11 terminates the earlier of —

(a) The first day of the month in which you begin to produce on your lease in the case of a suspension of production;

(b) The first day of the month in which actual operations begin in the case of a suspension of operations; or

(c) A date BLM specifies.

§ 3141.16 What happens when my suspension terminates?

(a) Your lease term is extended by the length of time the suspension was in effect.

(b) Your obligation to pay rental, royalty or minimum royalty resumes the first day the termination of the suspension is effective.

Suspension or Waiver of Lease Rights

§ 3141.20 When may a suspension of my lease rights occur?

BLM may suspend your lease during a legal proceeding to cancel your lease or to require forfeiture or divestiture of your interests as a result of a violation of any of the provisions of the regulations in this title or the lease terms. This suspension may occur when BLM directs it or when you request it.

§ 3141.21 How do I request a suspension of lease rights?

(a) When you request a suspension of lease rights, you must file in the BLM State Office with jurisdiction over the lands, a waiver of your rights to—

(1) Drill under the lease; and

(2) Transfer your lease interests.

(b) All interest owners for a lease must sign the waiver request.

§ 3141.22 How will suspension under this subpart affect my lease?

A suspension under this subpart—

(a) Stops the running of your lease term. If your lease is not canceled, your lease term is extended by the length of the suspension;

(b) Suspends your obligation to pay rental or minimum royalties beginning the date the suspension is effective. The date your next rental or minimum royalty payment is due is extended by the length of the suspension;

(c) Prevents you from conducting any operations on the lease; and

(d) Prevents you from transferring your interest.

§ 3141.23 When will my lease suspension end?

The suspension of your lease under this subpart ends the first day of the month following—

(a) The final decision in the legal proceeding described in § 3141.20; or

(b) When BLM revokes your suspension.

Subpart 3142—Terminations and Reinstatements

Lease Terminations and Reinstatements

§ 3142.10 What happens if the Minerals Management Service (MMS) does not receive my advance annual rental payment on or before the anniversary date of my lease?

If MMS does not receive your rental payment on or before the anniversary date of your lease, your lease automatically terminates by operation of law unless the lease is committed to a producing unit agreement.

§ 3142.11 Will my lease terminate if my rental payment is deficient?

(a) Your lease will terminate if your rental payment to MMS is deficient unless—

(1) You paid your rental on or before its anniversary date, but the amount you paid is deficient by not more than 10 percent or $200, whichever is less;

(2) Your deficient payment was due to an incorrect billing statement; or

(3) Your deficient payment was due to a decision from BLM that contained an incorrect acreage or payment figure.

(b) You must submit the full balance due to MMS within 15 business days from the date you receive notice to correct the deficiency. If you do not correct the deficiency within the time allowed, your lease automatically terminates as of the anniversary date of the lease.

Class I Reinstatements

§ 3142.20 Under what circumstances will BLM reinstate my lease without an increase in royalties and rentals (Class I)?

(a) If MMS receives your rental payment after the due date, but the envelope MMS receives containing your payment is postmarked by the United States Postal Service, or is dated as received at a courier or other delivery service on or before the lease anniversary date, you may request BLM to reinstate your lease under the Class I reinstatement provisions.

(b) If your rental is not paid by the lease anniversary date, but is paid within 20 calendar days of the anniversary date, BLM may decide to reinstate your lease. You must provide BLM with documentation showing the late payment was justified or not due to a lack of reasonable diligence. Reasons include, but are not limited to —

(1) An Act of God or natural disaster;

(2) A documented illness, hospitalization, or death which caused the delay in payment; or

(3) A statement from your bank that nonpayment was due to bank error.

§ 3142.21 What must I do before BLM will reinstate my lease under Class I?

To request a lease reinstatement from BLM, submit to BLM a petition for reinstatement and a $25 filing fee. When petitioning under § 3142.20, you must provide BLM with documentation supporting your request for reinstatement.

Class II Reinstatements

§ 3142.30 Under what circumstances will BLM reinstate my lease with an increase in royalty rate and rentals (Class II)?

(a) BLM will grant a Class II reinstatement with an increased rental and royalty rate if you did not pay your rental within 20 calendar days of the anniversary date and your failure to pay was—

(1) Justifiable or not due to lack of reasonable diligence; or

(2) Due to inadvertence.

(b) Under paragraph (a) of this section, you must pay your rental within 60 calendar days from receipt of BLM's Termination Notice issued under § 3106.23, or if BLM does not send you a Termination Notice, you must pay within 15 months from the date of lease termination.

§ 3142.31 What must happen before BLM will reinstate my lease under Class II?

(a) You must submit to BLM by the dates required for payment under § 3142.30(b)—

(1) A petition for reinstatement along with a $500 nonrefundable administrative fee;

(2) Payment of back rentals and royalties and BLM's cost of publishing the proposed reinstatement in the **Federal Register** under § 3142.30(a); and

(3) An agreement to the new lease terms signed by all record title owners.

(b) BLM will publish in the **Federal Register** a notice that we propose to reinstate your lease under § 3142.30 at least 30 calendar days before we reinstate it.

§ 3142.32 How much are the rentals or royalties under a Class II reinstatement?

(a) After your first Class II reinstatement, rental for a noncompetitive lease is $5 per acre or fraction of an acre and for a competitive lease it is $10 per acre or fraction of an acre.

(b) For each subsequent reinstatement, BLM will increase rentals by an additional $5 per acre or fraction of an acre for noncompetitive leases and an additional $10 an acre or fraction of an acre for competitive leases.

(c) BLM will increase the royalty rate to 16⅔ percent on noncompetitive leases for the first reinstatement and two additional percentage points for each succeeding reinstatement.

(d) BLM will increase your royalty rate no less than four percentage points above the rate in the terms of competitive leases (i.e., not less than 16½ percent), and will add two percentage points for each succeeding reinstatement.

(e) The royalty rates required for reinstated leases under this section do not affect your right to a royalty rate reduction under subpart 3106.

§ 3142.33 Are there circumstances under which BLM will not consider my petition for reinstatement?

BLM will not consider your petition for reinstatement if—

(a) You do not file your petition timely under § 3142.30;

(b) BLM issues a valid lease to another person before you file a petition for reinstatement; or

(c) The oil and gas interests in the lands have been disposed of or are not available for leasing.

§ 3142.34 Will BLM extend the term of my lease if I do not have a reasonable opportunity to begin or continue operations following a reinstatement?

If BLM finds that the time remaining in your lease term after reinstatement will not give you a reasonable opportunity to begin or continue operations, BLM may extend the term. The extension will not exceed the greater of—

(a) The period equal to the unexpired portion of the lease, or any extension, remaining at the date of termination; or

(b) Two years beyond the date BLM reinstated the lease, if BLM granted the reinstatement after the lease expired.

Class III Conversions from Unpatented Mining Claims

§ 3142.40 Under what circumstances will BLM convert my unpatented oil placer mining claim to an oil and gas lease?

BLM will convert your unpatented oil placer mining claim to an oil and gas lease for the lands covered by the claim if—

(a) Your placer mining claim is currently producing or is capable of producing oil or gas;

(b) BLM determined that your placer mining claim was conclusively abandoned for failure to timely file the required instruments to record your claim as required by section 314 of the Federal Land Policy and Management Act (43 U.S.C. 1744, as amended and supplemented);

(c) You file a Class III conversion petition within 120 calendar days of receiving BLM's, or a court of competent jurisdiction's, final notification that the oil placer mining claim has been determined to be abandoned;

(d) You show to BLM's satisfaction that failure to timely file the required instruments was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner of the claim; and

(e) There is not a valid oil and gas lease affecting any of the covered lands.

§ 3142.41 What must I include with my Class III petition for issuance of a noncompetitive oil and gas lease?

Your petition for issuance of a noncompetitive oil and gas lease to replace your unpatented oil placer mining claim must include—

(a) A nonrefundable administrative fee of $500;

(b) The location notices of all unpatented oil placer mining claims and, if the petitioner is not the owner(s) of unpatented mining claims, a copy of a power of attorney on behalf of the owner(s);

(c) The required annual rental of $5 per acre or royalty of 12½ percent, or both, including any back rental or royalty, or both, accruing from the statutory date of abandonment of your claim; and

(d) A statement agreeing to reimburse BLM for the full costs incurred for publishing the notice of the proposed conversion of the oil placer mining claim to a noncompetitive oil and gas lease in the **Federal Register**.

Subpart 3143—Relinquishments

Relinquishments

§ 3143.10 May I relinquish all or part of my lease?

You may relinquish all of your lease or any legal subdivision of your lease. Identify the lands you do not want to retain by legal land description as in § 3121.20.

§ 3143.11 Where do I file a lease relinquishment?

You must file a lease relinquishment in the BLM State Office with jurisdiction over the lands in your lease.

§ 3143.12 Is there a filing fee or official form I must use?

There is no filing fee or official form for a relinquishment.

§ 3143.13 Does a relinquishment entitle me to a return of any rental payment on a pro rata monthly basis?

If you file your relinquishment—

(a) Before the next anniversary date of your lease, the Minerals Management Service (MMS) will refund any rental you paid for the next lease year; or

(b) After the anniversary date, MMS will not refund any rental for the current year.

§ 3143.14 Who must sign the relinquishment application?

All record title owners must sign the relinquishment. BLM requires original signatures.

§ 3143.15 If I own only part of the record title (a co-lessee), may I relinquish only my interest?

BLM will not approve relinquishment of part of the record title interest.

§ 3143.16 If I own all or part of the operating rights in a lease, but no record title, may I relinquish my operating rights to BLM?

You may not relinquish operating rights interests to BLM.

§ 3143.17 When is a relinquishment effective?

(a) If there are no defects in your relinquishment request, it is effective the date you file it at the BLM office with jurisdiction over the lands in your lease.

(b) If there are defects in your relinquishment request, it will be effective on the date you correct the defects.

§ 3143.18 What are my obligations after I file the relinquishment?

You must fulfill all obligations which accrued before you filed the relinquishment, other than an obligation to drill, including the obligations to—

(a) Pay all accrued rentals and royalties;

(b) Permanently plug and abandon all wells on the relinquished lands, unless BLM approves otherwise; and

(c) Complete reclamation of the relinquished lands and any other areas adversely affected by lease operations in a timely manner.

Subpart 3144—Cancellations

Cancellations

§ 3144.10 Under what circumstances will BLM cancel my lease?

BLM will cancel your lease if you do not comply with applicable law, regulations, or lease terms. If your lease is—

(a) Not producing, or does not contain a well capable of production in paying

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quantities, or is not committed to an approved unit agreement or communitization agreement that contains a well capable of production in paying quantities, BLM will notify you in writing of the default or violation and give you 30 calendar days to comply. If you do not comply within the 30 calendar days, your lease is subject to cancellation under 30 U.S.C. 188(b); or

(b) Producing, or contains a well capable of producing oil or gas in paying quantities, or is committed to an approved unit agreement or communitization agreement that contains a well capable of production in paying quantities, BLM will initiate cancellation through judicial proceedings under 30 U.S.C. 188(a).

§ 3144.11 May BLM cancel my lease if it issued it improperly?

BLM may administratively cancel your lease if we issued it improperly.

§ 3144.12 If I own or control an interest in a lease in violation of the provisions of the Act, what will BLM do?

If you own or control any lease interests in violation of the Act, BLM may initiate judicial proceedings under 30 U.S.C. 184 to—

(a) Cancel or forfeit your lease interest; or

(b) Compel you to dispose of your lease interest.

Bona Fide Purchasers

§ 3144.20 What is a bona fide purchaser?

(a) A bona fide purchaser is a person who acquires a lease interest in good faith, for valuable consideration, and without notice that a violation of the regulations in parts 3100 through 3190 existed. To receive protection from cancellation, you must have paid the valuable consideration before you had notice of the violation.

(b) You do not qualify as a bona fide purchaser if you reasonably could have determined from BLM records that your seller held its lease interest in violation of the Act.

§ 3144.21 Will BLM cancel my lease if I am a bona fide purchaser and I purchased it from someone who acquired it in violation of the Act?

BLM will not cancel your lease interest if you are a bona fide purchaser who bought it from someone who held the lease interest in violation of the Act.

11. Add new part 3145—Oil and Gas Drilling to read as follows:

PART 3145—OIL AND GAS DRILLING

Subpart 3145—Drilling and Additional Well Operations

Application for Permit to Drill or Reenter

Sec.
3145.5 To what operations do the standards of this subpart apply?
3145.10 What approval must I obtain from BLM to begin developing Federal or Indian leases or to drill through Federal or Indian mineral interests?
3145.11 What other approvals do I need for drilling or additional well operations that occur on lands managed by an agency other than BLM?
3145.12 What must I submit to BLM in my Application for Permit to Drill or Reenter (APD)?
3145.13 What requirements must I comply with during operations?
3145.14 What additional requirements apply to a well I propose to drill on privately-owned surface?
3145.15 What additional requirements apply to a well I propose to drill on a Federal oil and gas lease if the surface is held in trust for an Indian tribe or an individual Indian?
3145.16 May I file a single plan for more than one well?
3145.17 Must I submit an APD to BLM to start the APD process and the 30-day public posting period?
3145.18 What is a Notice of Staking (NOS) and what must I do under the NOS process?
3145.19 What actions will BLM take after receiving my APD or NOS?
3145.20 When will my approved APD expire and may I extend the term of an approved APD?
3145.21 Must my APD describe all of my proposed operations connected to the well I intend to drill?
3145.22 What must I submit after I drill a well or suspend drilling operations?
3145.23 What must I do when my well is an inactive well?

Technical Drilling Standards

3145.30 What are the design and operational requirements for well control?
3145.31 What additional requirements apply when I drill using gas, air, or mist?
3145.32 How must I design and drill my well?
3145.33 What integrity tests and corrective measures must I perform on my well?
3145.34 When may I conduct drill stem testing?

Drilling Operations in a Hydrogen Sulfide (H_2S) Environment

3145.40 When must I follow BLM hydrogen sulfide (H_2S) requirements?
3145.41 What additional requirements apply when I drill in an H_2S environment?
3145.42 How do I calculate the radius of exposure?
3145.43 What if I encounter H_2S in concentrations of 100 ppm or more in the gas stream that was not anticipated at the time BLM approved my APD?
3145.44 What training and equipment must I provide personnel at the wellsite for H_2S operations?

Additional Well Operations

3145.50 What requirements must I satisfy for additional well operations?
3145.51 What additional well operations require BLM approval?
3145.52 What additional well operations do not require BLM approval?
3145.53 What happens when BLM receives my application for additional well operations?
3145.54 What reports must I submit after I complete additional well operations?
3145.55 What must I do to reclaim surface disturbance that results from operations on my well or lease?

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359 and 1751; and 43 U.S.C. 1732(b), 1733 and 1740.

Subpart 3145—Drilling and Additional Well Operations

Application for Permit To Drill or Reenter

§ 3145.5 To what operations do the standards of this subpart apply?

You must conduct all operations on Federal and Indian leases, including those that do not require BLM approval, according to the surface use and drilling standards of this subpart.

§ 3145.10 What approval must I obtain from BLM to begin developing Federal or Indian leases or to drill through Federal or Indian mineral interests?

(a) For each new well you drill or abandoned well you reenter to develop Federal or Indian minerals, before you disturb the surface or begin drilling operations, BLM must approve your Application for Permit to Drill or Reenter (APD). For additional well operations that an APD does not cover, you must receive BLM approval under § 3145.53.

(b) You must file your APD in the BLM field office with jurisdiction over the lands. Forest Service (FS) requirements must be satisfied before BLM will approve your application for National Forest System lands.

§ 3145.11 What other approvals do I need for drilling or additional well operations that occur on lands managed by an agency other than BLM?

(a) On National Forest System (NFS) lands—

(1) The FS must approve surface use operations on lands it administers before BLM will approve your APD. You must obtain information on processing and requirements for your surface use

proposals on NFS lands from the FS (see 36 CFR part 228, subpart E). Submit surface use plans directly to the FS, along with an informational copy to BLM. On NFS lands, the FS will schedule and conduct predrill and other site inspections.

(2) The surface use plan is not part of the APD or application for additional well operations. The FS will make a decision on your surface use plans. The FS will determine when an approved surface use plan for NFS lands expires or whether it may be extended. BLM will make a decision on your APD and the portions of additional well operations that affect down-hole concerns.

(b) If the proposed well or additional well operations are on lands managed by an agency other than the FS, include a surface use plan with your APD or your application for other well operations. BLM will approve your surface use plan after we coordinate our review of your proposal with the surface management agency.

(c) You must obtain approval from the U.S. Fish and Wildlife Service (FWS) for surface use on land the FWS manages in Alaska. The FWS must approve the surface use plan before BLM makes a decision on your APD.

§ 3145.12 What must I submit to BLM in my APD?

In your APD, you must describe the procedures, equipment, and materials you will use in the proposed operations in sufficient detail to permit a complete review of the surface and subsurface effects associated with the proposed project, including—

(a) Form 3160–3, APD, for each new well you drill or abandoned well you reenter;

(b) Topographic maps and well plats that show the surveyed and staked areas of proposed construction activity, access routes, and areas of surface use. Well plats must be certified by a registered surveyor;

(c) A surface use plan, or on FS lands, an informational copy of the surface use plan you submitted to the FS, that completely describes the—

(1) Road and drill pad and production facility (if known);

(2) Construction methods and interim and final reclamation measures; and

(3) How you will contain and dispose of all waste material;

(d) A drilling plan that completely describes—

(1) Pressure control systems (including casing weights and grades and cement types and additives) and circulation mediums (including additives);

(2) Pertinent geologic data including usable water zones, hydrocarbon bearing zones, anticipated maximum pressures, and other potential hazards; and

(3) Testing and evaluation programs; and

(e) The bond coverage for your proposed activity.

§ 3145.13 What requirements must I comply with during operations?

During operations you must comply with lease terms, stipulations, and applicable Federal, State and local laws and regulations. Your APD (or your surface use plan for NFS lands) must show how you will—

(a) Provide adequate safeguards for surface and subsurface resources and uses, including impacts to adjacent lands and waters;

(b) Properly reclaim disturbed lands to a stable, revegetated state similar to adjacent undisturbed land;

(c) Complete recontouring and seedbed preparation in time to plant approved seed mixtures by the next available period for establishing vegetation;

(d) Protect and prevent waste of valuable hydrocarbons and other minerals;

(e) Protect riparian areas, flood plains and wetlands;

(f) Prevent degradation of surface waters and subsurface usable waters;

(g) Protect public health and safety, threatened, endangered, and sensitive species and their habitats, and cultural and historic resources, according to existing laws and regulations;

(h) Minimize the generation of wastes; and

(i) Properly contain, handle and dispose of solid and fluid wastes and hazardous materials.

§ 3145.14 What additional requirements apply to a well I propose to drill on privately-owned surface?

(a) If you propose to drill on privately-owned surface, you must certify that the surface owner agrees to your use of the surface as proposed in your APD and provide a copy of the surface owners agreement if BLM requests it; or

(b) If you are unable to reach an agreement with a private surface owner, BLM will make a final determination on surface use, considering the views of the surface owner. BLM will only approve the permit if—

(1) You demonstrate that you made a good faith effort to reach an agreement with the surface owner;

(2) Your bond is adequate to pay for required reclamation and damage to surface improvements, crops and other surface uses; and

(3) You certify that there are no legal obstacles to conducting operations without surface owner consent, including, but not limited to, restraining orders or pending lawsuits.

§ 3145.15 What additional requirements apply to a well I propose to drill on a Federal oil and gas lease if the surface is held in trust for an Indian tribe or an individual Indian?

If the wellsite or access road is proposed on split-estate lands where the surface is held in trust for an Indian tribe or an individual Indian and the mineral estate is Federal, you must obtain a surface use agreement with the tribe or an individual Indian surface owner(s). However—

(a) A surface use agreement is not necessary for allotted lands in Alaska under the Native Allotment Act of May 17, 1906, as amended (34 Stat. 197);

(b) You do not need a surface use agreement if your lease predates the transfer to Indian ownership or the land transfer document or legislation affords the United States access rights to exercise its mineral rights; or

(c) Except as provided in paragraph (b) of this section, if you are unable to reach an agreement with the surface owner(s), BLM will not approve your APD.

§ 3145.16 May I file a single plan for more than one well?

Your drilling plan or surface use plan may cover an individual well or multiple wells within areas of geological and environmental similarity. If you combine plans for multiple wells, you must submit Form 3160–3 to BLM for each well you propose to drill.

§ 3145.17 Must I submit an APD to BLM to start the APD process and the 30-day public posting period?

To start the APD process and the 30-day public posting period, you may file either an APD or a NOS under § 3145.18.

§ 3145.18 What is a Notice of Staking (NOS) and what must I do under the NOS process?

(a) A Notice of Staking (NOS) is a way you and BLM select an acceptable drilling location before you submit an APD. Under the NOS process, you must submit to BLM—

(1) Your, or your designated contact's, name, address, and telephone number;

(2) A topographical or other acceptable map showing location, access road, and lease boundaries;

(3) The name of the surface management agency, Indian or private surface owner;

(4) The well name and number, lease number, and legal description of the well location; and

(5) The well type, estimated well depth, and formation objectives.

(b) You must stake your well location and flag the access route before the predrill inspection required in § 3145.19(a)(4).

(c) You must submit an APD within 90 calendar days after the date of the predrill inspection.

§ 3145.19 What actions will BLM take after receiving my APD or NOS?

(a) BLM will—

(1) For Federal leases, post the NOS or APD for public inspection for 30 calendar days;

(2) Provide a copy of the NOS or APD to the appropriate Federal or State surface management agency, if other than BLM;

(3) Notify you whether—

(i) BLM will process your NOS or APD or whether BLM needs additional information to process your application; or

(ii) Whether you must contact another surface management agency; and

(4) Schedule and conduct an on-site predrill inspection. The purpose of the predrill inspection is to resolve on-site resource concerns that may affect size, location, or design of the pad, access road or facility. If necessary, BLM will recommend additional measures that you must address in your APD.

(b) BLM will return your NOS or your incomplete APD if you do not submit a complete APD within 90 calendar days of either the date of predrill inspection or the date you receive BLM's notice under paragraph (a)(3) of this section, whichever occurs last.

(c) Following receipt of a complete APD, and the posting period for Federal lands, BLM will either—

(1) Approve the APD as submitted or with appropriate modifications or conditions;

(2) Reject the APD and advise you in writing of the reasons; or

(3) Advise you in writing of the reasons why BLM will delay the decision and when you can expect a final decision.

§ 3145.20 When will my approved APD expire and may I extend the term of an approved APD?

(a) Your approved APD is valid for one year from the date of BLM's approval, or your lease expiration date, whichever is sooner.

(b) BLM may extend a drilling permit for up to two additional 12 month periods, if you request an extension before each approval expires, but not beyond the termination of the lease.

§ 3145.21 Must my APD describe all of my proposed operations connected to the well I intend to drill?

(a) You must include with your APD plans for access roads and other drilling, completion and production related activities, if known, that are on the same lease as your well proposal; and

(b) You must obtain a right-of-way (R/W) authorization for the use of BLM lands located off of your lease according to part 2800 of this chapter. You have the option of using the APD package to furnish the information BLM requires to process an R/W instead of filing a separate R/W plan of development. If you choose this option, the APD will serve as an R/W application, even though BLM will issue two separate approval documents (APD and R/W grant).

(c) If your proposal involves off-lease activities on surface managed by an agency other than BLM, or on private or Indian surface, you must include this information with your APD and contact the appropriate agency and/or surface owner for additional surface use authorization.

(d) If you do not include plans for production activities, including pipelines, storage facilities and measurement sites, with your APD, you must submit plans before construction and installation of these facilities, according to §§ 3145.50 through 3145.55.

§ 3145.22 What must I submit after I drill a well or suspend drilling operations?

Within 30 calendar days after you drill a well or suspend drilling operations, you must submit to BLM—

(a) Reports, well logs, and test data;

(b) A Well Completion Report, Form 3160–4; and

(c) Other information BLM requires.

§ 3145.23 What must I do when my well is an inactive well?

Within 30 calendar days after your well becomes inactive (see § 3107.52), you must—

(a) Put the well into production or service;

(b) Submit to BLM plans to conduct well-work to restore production or service;

(c) Submit plans to plug and abandon the well and reclaim areas disturbed or contaminated by your well operations; or

(d) Comply with the requirements of § 3107.56.

Technical Drilling Standards

§ 3145.30 What are the design and operational requirements for well control?

You must—

(a) Design your blowout prevention equipment system (BOP) to control known or anticipated pressures, taking into account the geologic conditions, accepted engineering practices, and the surface environment;

(b) Use a BOP with a working pressure that exceeds the maximum anticipated surface pressure, assuming a pressure gradient of 0.22 psi/foot for a wildcat well or the appropriate pressure gradient for known geologic environments;

(c) Configure and maintain your BOP according to the guidelines in the "American Petroleum Institute (API) Recommended Practice 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells", Third Edition, March 1997 (RP 53);

(d) Use a BOP that can completely close the wellbore;

(e) Install and pressure test the BOP before you drill the surface casing shoe (unless BLM specifies otherwise) and before you perform other post-drilling well operations that require control of known or anticipated pressures;

(f) Unless BLM approves otherwise, pressure test the BOP to the recommended high pressure test standards in Section 17 of API RP 53, except you must not—

(1) Test the annular preventer in excess of 50 percent of its working pressure; or

(2) Expose the casing to pressures exceeding 70 percent of its minimum internal yield;

(g) Functionally test the pipe rams daily and the blind rams each time you pull the drill string to change the drill bit, but not more than once per day;

(h) Document all tests in the driller's log;

(i) Ensure that the wellbore is closed when it is unattended; and

(j) Take immediate steps to restore control of your well, when necessary.

§ 3145.31 What additional requirements apply when I drill using gas, air, or mist?

You must follow the standards for gas, air, or mist drilling operations contained in Section 17 of "American Petroleum Institute (API) Recommended Practice 54, Recommended Practices for Occupational Safety for Oil and Gas Well Drilling and Servicing Operations", Second Edition, May 1, 1992 (RP 54).

§ 3145.32 How must I design and drill my well?

Design and drill your well so that—

(a) The collapse, burst, and tensile strengths of the casing(s) are sufficient to withstand anticipated pressures;

(b) The surface casing is cemented along its entire length with centralizers located on at least the bottom three joints;

(c) The casing(s) is set in a competent formation(s) that will withstand anticipated pressure and is cemented so that all useable water and other minerals are protected;

(d) Cement placement procedures minimize contamination and maximize cement bonding;

(e) Cement is uniformly distributed around the casing(s) to ensure an adequate casing-to-formation bond;

(f) Cement curing time is adequate to ensure a minimum compressive strength of 500 psi or to maintain well bore integrity;

(g) The tubular steel properties are appropriate for the type of conditions (e.g., hydrogen sulfide, corrosives, temperature) in which it is used;

(h) Any geologic formations of concern are adequately isolated to prevent fluid or gas migration;

(i) The drilling circulation system is monitored and ensures well control; and

(j) Liners overlap at least 100 feet.

§ 3145.33 What integrity tests and corrective measures must I perform on my well?

(a) During drilling operations you must—

(1) Conduct a pressure test of all casing strings, including liner overlaps, below the conductor pipe before you set the next string of casing;

(2) Perform a mud weight equivalency test of each casing shoe before you drill 20 feet of new hole on all exploratory wells and on part of any well approved for a 5K BOP (as defined in Section 6, API RP 53) system or greater; and

(3) Correct pressure loss problems before you continue drilling operations, unless drilling ahead is necessary for well control.

(b) You must test all repairs and alterations of your wellbore to demonstrate mechanical integrity.

§ 3145.34 When may I conduct drill stem testing?

(a) You may initiate and conduct drill stem testing (DST) without BLM's prior approval only during daylight hours. You must follow the recommended practices of Section 14, API RP 54.

(b) If you start the DST during daylight hours, you may continue testing at night if—

(1) The rate of flow is stabilized; and

(2) You provide safe, adequate lighting.

(c) You may release packers, but must not begin tripping before daylight, unless you have BLM's approval.

(d) You may conduct closed chamber DST's day or night.

Drilling Operations in a Hydrogen Sulfide (H_2S) Environment

§ 3145.40 When must I follow BLM hydrogen sulfide (H_2S) requirements?

You must follow BLM H2S requirements when you drill, complete, test, or rework in zones known, or reasonably expected, to contain H_2S in concentrations of 100 parts per million (ppm) or more in the gas stream.

§ 3145.41 What additional requirements apply when I drill in an H_2S environment?

When you drill in an H_2S environment—

(a) Your plans and operations must follow the standards contained in API "Recommended Practice 49, Recommended Practices for Safe Drilling of Wells Containing Hydrogen Sulfide", Second Edition, April 15, 1987 (RP 49);

(b) You must submit an H_2S plan as part of your APD that shows how you will—

(1) Provide for safety of personnel that are essential to maintain control of the well;

(2) Conduct general rig operations and drill stem testing;

(3) Handle special rig problems in an H_2S environment; and

(4) Alert and protect the public if a potentially hazardous volume of H_2S is released from your operation when—

(i) The 500 parts per million (ppm) radius of exposure is greater than 50 feet and includes any part of a road or highway principally maintained for public use;

(ii) The 100 ppm radius of exposure is greater than 50 feet and includes any occupied residence, school, church, park, school bus stop, place of business, or other area where the public could reasonably be expected to frequent; or

(iii) The 100 ppm radius of exposure is equal to or greater than 3,000 feet where facilities or roads are principally maintained for public use.

(c) You may submit a single plan for multiple wells within a single field.

§ 3145.42 How do I calculate the radius of exposure?

(a) You must use one of the following methods to calculate the radius of exposure, as appropriate—

(1) If the H_2S concentration in the gas stream is less than 10 percent, calculate—

(i) The 100 ppm radius of exposure using the formula—

$X=[(1.589)(H_2S\ \text{concentration})(Q)]^{(0.6258)}$; or

(ii) The 500 ppm radius of exposure using the formula—

$X=[(0.4546)(H_2S\ \text{concentration})(Q)]^{(0.6258)}$

Where—

X=radius of exposure in feet.

H_2S Concentration = decimal equivalent of the mole or volume fractions of H_2S in the gaseous mixture.

Q=maximum volume of gas determined to be available for escape in cubic feet per day (at standard condition of 14.73 pounds per square inch absolute (psia) and 60° Fahrenheit).

(2) If the H_2S concentration in the gas stream is 10 percent or greater, you must calculate the 100 ppm or the 500 ppm radius of exposure using a dispersion technique that takes into account atmospheric stability, complex terrain, wind speed and direction, and other dispersion features. You may use one of the computer models outlined in the Environmental Protection Agency's "Guidelines on Air Quality Models (Revised) (EPA–450/2–78–027R)", July 1986; or

(3) Another method if BLM approved it.

(b) You must assume a radius of at least 3,000 feet for a well you are drilling in an area where you have insufficient data to calculate a radius of exposure, but where you could reasonably expect H_2S to be present in concentrations of 100 ppm or more.

(c) Use a field-wide radius of exposure or calculate the radius of exposure for each component part of the drilling, completion, workover, and production system where multiple H_2S sources (i.e., wells, treatment equipment, flowlines, etc.) are present.

§ 3145.43 What if I encounter H_2S in concentrations of 100 ppm or more in the gas stream that was not anticipated at the time BLM approved my APD?

(a) If you encounter H_2S in concentrations of 100 ppm or more in the gas stream that was not anticipated at the time BLM approved your APD, you must immediately ensure control of the well, suspend drilling ahead (unless you need it for well control), and obtain materials and safety equipment so that your operations comply with the regulations in this part; and

(b) You must notify BLM within 24 hours of encountering H_2S in concentrations of 100 ppm and describe the steps you took, or are taking, to control the situation.

§ 3145.44 What training and equipment must I provide personnel at the wellsite for H_2S operations?

(a) You must train all personnel working at the wellsite with the general training requirements outlined in Section 2 of API RP 49.

(b) For drilling operations, you must complete the initial training session either—

(1) Three business days before drilling into known or probable H_2S zones; or

(2) Before reaching a depth 500 feet above known or probable H_2S zones.

(c) On a drilling, completion, or workover site, all personnel (including service company personnel) essential to maintain or regain control of the well, and visitors, must have, or have access to, escape or pressure-demand type breathing apparatus. You must not allow anyone onto the location without the proper equipment.

(d) Your respiratory protection equipment program must follow the standards of Section 3 of API RP 49.

Additional Well Operations

§ 3145.50 What requirements must I satisfy for additional well operations?

For additional well operations that require BLM approval under § 3145.51, you must submit Sundry Notice, Form 3160–5, or other filing instrument acceptable to BLM, that describes the proposed surface use and downhole procedures. You must include details similar to those required when filing an APD (e.g., maps, construction methods, pressure control systems, and when BLM does not manage the surface, resource protection measures, standards for occupancy of the surface, and reclamation measures).

§ 3145.51 What additional well operations require BLM approval?

(a) You must request and receive BLM approval, before you—

(1) Plug, plug back, squeeze, deepen, complete in a different zone, temporarily abandon a well, convert a well to injection, dispose of produced water or commingle production;

(2) Conduct downhole operations that affect valuable hydrocarbons and other mineral deposits, oil and gas resource recovery, production accountability, subsurface usable waters, or public health and safety;

(3) Use bioremediation methods or other measures to reclaim lands contaminated by spills and accidents;

(4) Disturb the surface off the existing access road, wellpad, or approved facility sites, or disturb areas previously reclaimed; or

(5) Construct new pits or enlarge existing pits except for those constructed for routine well maintenance on the existing well pad or approved facility sites, or on sites that are not reclaimed.

(b) BLM may give oral approval whenever the regulations in this part require you to obtain BLM approval before starting operations. BLM may require you to file a written request on Sundry Notices and Reports on Wells (SN), Form 3160–5, within five business days of the oral approval.

§ 3145.52 What additional well operations do not require BLM approval?

You do not need BLM approval to—

(a) Perform only surface disturbing activities on NFS lands;

(b) Perform operations that are included in a plan BLM previously approved;

(c) Return fluids from the well bore to a closed system for transport and disposal according to existing laws and regulations;

(d) Take actions to correct or contain an emergency situation. However, you must notify BLM no later than 48 hours after the occurrence; or

(e) Perform activities that will not disturb the surface off the existing access road, wellpad, facility sites or disturb areas previously reclaimed, when you perform—

(1) Routine well maintenance;

(2) Any modification to surface production equipment not covered under § 3151.10; or

(3) Downhole operations that will not affect valuable hydrocarbons and other mineral deposits, oil and gas resource recovery, subsurface usable waters, or public health and safety.

§ 3145.53 What happens when BLM receives my application for additional well operations?

(a) When BLM receives your application for additional well operations, SN, Form 3160–5, BLM will—

(1) Schedule and conduct a site inspection, if needed to evaluate your proposal; and

(2) Notify you whether—

(i) BLM will process your application, or whether BLM needs additional information to process your application; or

(ii) Whether you must contact another surface management agency;

(b) After we receive a complete application, BLM will —

(1) Approve the application as submitted or with appropriate modifications or conditions;

(2) Reject the application and advise you of the reasons why; or

(3) Advise you of the reasons why BLM will delay the decision and when you can expect a final BLM decision.

§ 3145.54 What reports must I submit after I complete additional well operations?

Within 30 calendar days after you complete additional well operations, you must submit to BLM—

(a) A Well Completion Report, Form 3160–4, if you complete your well in a new formation;

(b) Reports, well logs, and test data;

(c) A SN, Form 3160–5, if—

(1) You alter the existing wellbore configuration; or

(2) BLM requests it; and

(d) Other information BLM requires.

§ 3145.55 What must I do to reclaim surface disturbance that results from operations on my well or lease?

To reclaim surface disturbance that results from operations on your well or lease, you must—

(a) Complete recontouring and seedbed preparation in time to plant approved seed mixtures by the next available period for establishing vegetation;

(b) Reclaim all of the excess pad, facility, and road areas, pipeline or utility corridors, pits, contaminated areas, and areas disturbed during emergencies, to a stable, revegetated state similar to adjacent undisturbed land; and

(c) Comply with any reclamation conditions of your approved permit or lease.

11. Revise part 3150—Onshore Oil and Gas Geophysical Exploration to read as follows:

PART 3150—OIL AND GAS MEASUREMENT AND OPERATIONS

Subpart 3151—Production, Storage and Measurement

Production, Storage and Measurement—General

Sec.

3151.10 What Federal and Indian oil or gas production activities require BLM approval?

3151.11 How do I get BLM approval for production activities involving Federal and Indian oil or gas?

3151.12 What are the standards for lease production operations?

3151.13 How must I handle Federal royalty-in-kind oil?

3151.14 On what oil and gas must I pay royalty?

3151.15 On what oil and gas am I not required to pay royalty?

3151.16 When may I vent or flare Federal or Indian gas without BLM approval without paying royalty?

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3151.20 What precautions must I take if there is any possibility for H_2S at my production facility or storage tank?

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Subpart 3152—Site Security

General

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3152.20 What oil and condensate measurement system components must I seal for site security?
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3152.60 How must I identify wells and production facilities?

Transporter Documentation

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3152.80 What if I discover theft or mishandling of oil, condensate or gas produced from my wells?

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General

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Measurement Tickets

3153.40 How must I document the sale or removal of oil from my production facility?

Subpart 3154—Gas Measurement

Gas Measurement

3154.10 How do I measure and report gas production from Federal and Indian lands?

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Other Metering Systems

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3154.60 How do I correct volumes if my meter did not measure accurately?

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3154.70 How do I determine the quality of my gas stream?

Subpart 3155—Produced Water Disposal

Produced Water Disposal

3155.10 Why must I obtain approval from BLM to dispose of water produced from my lease?
3155.11 When do I need BLM approval to dispose of produced water?
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3155.13 What type of water disposal will BLM allow?
3155.14 What BLM forms and Environmental Protection Agency, State or Indian Tribe permits must I submit to BLM if I plan to dispose of produced water?
3155.15 What additional requirements must I follow for water disposal into pits?
3155.16 When may I use an unlined pit for produced water disposal?
3155.17 If the quantity and quality of my produced water changes, do I need a new approval from BLM to continue using an unlined pit?
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Spills and Accidents

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3159.11 How do I temporarily abandon a well?

Permanent Abandonment

3159.20 When must I permanently plug and abandon my well?
3159.21 How do I obtain BLM approval to permanently plug and abandon my well?
3159.22 How must I permanently plug and abandon a well?
3159.23 When must I test plug placement?
3159.24 What must I do if the surface owner or surface management agency requests that I convert a well I plan to plug and abandon into a water well?
3159.25 What if my approved plans for well abandonment change after I receive BLM approval?
3159.26 What must I submit to BLM after I permanently abandon my well and complete reclamation measures?

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359 and 1751; and 43 U.S.C. 1732(b), 1733 and 1740.

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Subpart 3151—Production, Storage and Measurement

Production, Storage and Measurement—General

§ 3151.10 What Federal and Indian oil or gas production activities require BLM approval?

Before you begin production activities involving Federal or Indian oil or gas, you must have BLM approval to —

(a) Measure gas by a method other than that authorized under subpart 3154;

(b) Measure oil by a method other than tank gauging or positive displacement metering system, or by a method that you can demonstrate to BLM is equivalent in accuracy and accountability to either of those two systems;

(c) Measure oil and gas at a location off your lease;

(d) Commingle production; or

(e) Vent or flare gas, unless § 3151.16 applies.

§ 3151.11 How do I get BLM approval for production activities involving Federal and Indian oil or gas?

The following table lists application requirements for those production activities for Federal or Indian oil or gas that require BLM approval. For each of the listed activities, request approval from the BLM using Sundry Notice, Form 3160–5, and provide the documentation indicated—

Activity	Documentation—
(a) Measure gas by a method other than that authorized in subpart 3154.	Show that your method of measuring will not adversely affect royalty income or production accountability.
(b) Measure oil by a method other than tank gauging or positive displacement metering system.	Show that your method of measuring will not adversely affect royalty income or production accountability.
(c) Measure oil and gas at a location off your lease.	Identify where you want to measure production; and Why you must measure off-lease; and Show that your proposed location will not adversely affect surface resources, royalty income or production accountability.
(d) Commingle Federal or Indian oil or gas	Indicate the volume, quality, and source of the products you want to commingle; and Show how you will allocate production back to the source; and Show that commingling will not adversely affect royalty income or production accountability.
(e) Vent or flare gas in situations other than those described in § 3151.16.	Identify the volume, composition and source of the gas you want to vent or flare; and Show why it is not economical for you to market the gas at the time of application or use it on lease.

§ 3151.12 What are the standards for lease production operations?

(a) You must conduct production operations in accordance with accepted industry practices to—

(1) Put all oil, other hydrocarbons, gas and sulphur that you produce into a marketable condition, if economically feasible;

(2) Prevent any oil going to a pit or open tank except in an emergency. If oil goes to a pit, you must remove it within 48 hours, unless BLM directs otherwise;

(3) Prevent avoidable loss of oil and gas; and

(4) Protect the mineral resource, other natural resources and environmental quality.

(b) You must report to BLM not later than the fifth business day after a well first begins production or resumes production after being shut-in for 90 calendar days or more under § 3103.10(r). For purposes of this paragraph, production begins or resumes—

(1) For an oil well, on the date on which you first sell or ship liquid hydrocarbons from a temporary storage facility, such as test tanks, or the date on which you first produce liquid hydrocarbons into a permanent storage facility, whichever occurs first; or

(2) For a gas well, on the date on which you first measure gas through a sales metering facility or the date on which you first sell or ship associated liquid hydrocarbons from a temporary storage facility, whichever occurs first. For purposes of this paragraph, a gas well is shut-in only if it is incapable of production.

§ 3151.13 How must I handle Federal royalty-in-kind oil?

If the lessor elects to take its royalty in-kind, you must store the amount of oil equal to the royalty volume from or allocated to your Federal lease at a location agreed to by you and BLM for up to 30 calendar days at no cost to the lessor.

§ 3151.14 On what oil and gas must I pay royalty?

You must pay royalty on—

(a) Oil and gas produced from or allocated to your lease that you sell or remove from your lease;

(b) Gas you vent or flare without BLM approval, or that exceeds an amount exempted under § 3151.16; or

(c) Oil and gas which is avoidably lost.

§ 3151.15 On what oil and gas am I not required to pay royalty?

You are not required to pay royalty on—

(a) Oil and gas used for beneficial purposes;

(b) Waste oil;

(c) Gas you vent or flare with BLM approval or as provided in § 3151.16; or

(d) Oil and gas which is unavoidably lost.

§ 3151.16 When may I vent or flare Federal or Indian gas without BLM approval without paying royalty?

(a) You are not required to have BLM approval or pay royalty when you vent or flare gas during—

(1) Emergency situations (e.g., equipment failures or relief of abnormal system pressures) that do not exceed 24 hours per incident or 144 hours total for a lease during any calendar month;

(2) Initial production tests, provided you do not test for more than 30 calendar days or produce more than 50,000 Mcf of gas;

(3) Unloading or clean up of your well, up to 24 hours per event;

(4) Drill stem testing up to 24 hours or special well evaluation tests up to 72 hours;

(5) Routine preventive maintenance of production equipment, up to 24 hours per month; or

(6) Routine well maintenance operations.

(b) BLM may approve requests for longer periods for any of the situations listed in paragraph (a) of this section.

(c) You are not required to obtain approval to vent or flare gas from Federal oil wells which produce less than 10 Mcf of gas per day as part of normal oil production, unless it is economic to capture that gas. You must flare or vent gas in a safe manner according to applicable laws, regulations, and accepted industry practice.

Production Operations With Hydrogen Sulfide (H_2S)

§ 3151.20 What precautions must I take if there is any possibility for Hydrogen Sulfide (H_2S) at my production facility or storage tank?

If there is any possibility for H_2S at your production facility or storage tank, you must—

(a) Test each production facility and tank for H_2S concentration in the gas stream, tank vapors, and sustained ambient air when you install a new facility or modify your production or operation method;

(b) Notify BLM within five calendar days whenever concentrations of 20 parts per million (ppm) or greater are encountered. You do not need to notify BLM if your modification(s) to your production or operation method changes the previously reported H_2S concentration by 5 percent or less; and

(c) Design and maintain your facility to keep the sustained ambient concentration below 10 ppm H_2S or 2 ppm sulphur dioxide (SO_2) within a 50-foot radius and at any occupied residence, school, church, park, playground, school bus stop, place of business, or other area that the public could reasonably be expected to frequent.

§ 3151.21 When must I take additional precautions?

You must take the additional precautions described in §§ 3151.22, 3151.23, and 3151.24 at your well or production facility when—

(a) Your storage tank(s) operates at or near atmospheric pressure and contains produced fluids which accumulate vapor resulting in an H_2S concentration greater than 500 ppm in the tank;

(b) You have an H_2S concentration of 100 ppm or more in the gas stream; or

(c) The sustained ambient H_2S concentration is more than 10 ppm at 50 feet from the production facility or storage tank(s), as measured at ground level under calm (1 mph) conditions.

§ 3151.22 What precautions must I take if my storage tank has a vapor accumulation with an H_2S concentration greater than 500 ppm?

If your storage tank has a vapor accumulation with an H_2S concentration greater than 500 ppm you must—

(a) Restrict entry to all stairs or ladders leading to the top of storage tank;

(b) Post danger signs on or within 50 feet of each storage tank to alert the public of the potential H_2S hazard;

(c) Install at least one permanent wind direction indicator so someone at, or approaching, the storage tank(s) can easily determine wind direction; and

(d) Install a fence and gate(s), and lock all gates when you are not at the site, to restrict public access if storage tanks are located—

(1) Within ¼ mile of, or inside, a city or incorporated limits of a town;

(2) Within ¼ mile of an occupied residence, school, church, park, playground, school bus stop, place of business; or

(3) Where the public could reasonably be expected to frequent.

§ 3151.23 What precautions must I take if my production facility has an H_2S concentration of 100 ppm or more in the gas stream?

If your production facility has an H_2S concentration of 100 ppm or more in the gas stream, you must—

(a) Take all the precautions required by § 3151.22 for storage tanks. If your tank is next to your facility, you do not need to duplicate precautions;

(b) Design and construct your facility in conformance with American Petroleum Institute (API) RP 55, "Recommended Practices for Conducting Oil and Gas Producing and Gas Processing Plant Operations Involving Hydrogen Sulfide", Second Edition, February 15, 1995 (API RP 55, 1995);

(c) Calculate your 100 and 500 ppm radii of exposures using the formulae or methods listed in § 3145.42;

(d) Develop, implement, and update at least annually, a public protection plan that details how you will alert and protect the potentially affected public in the event of a potentially hazardous release of H_2S and SO_2. The plan must follow the contingency planning procedures of the API RP 55 1995, if—

(1) The 500 ppm radius of exposure is greater than 50 feet and includes any part of a road or highway principally maintained for public use;

(2) The 100 ppm radius of exposure is greater than 50 feet and includes any occupied residence, school, church, park, school bus stop, place of business, or other area which the public could reasonably be expected to frequent; or

(3) The 100 ppm radius of exposure is equal to or greater than 3,000 feet where facilities or roads are principally maintained for public use.

(e) Post danger signs at locations where well flowlines and lease gathering lines that carry H_2S gas cross public or lease roads. You are not required to install fencing or wind direction indicators around your flowlines;

(f) Install on all wells, except for those you produce by artificial lift, a secondary means of immediate well control that allows you to reenter under pressure for permanent well control operations; and

(g) For wells you produce by artificial lift, and where the 100 ppm radius of exposure for H_2S includes any occupied residence, place of business, school, other inhabited structure or any area that the public may reasonably be expected to frequent, install automatic shut-in controls that are set to activate in the event of a potentially hazardous release of H_2S.

§ 3151.24 What precautions must I take when the sustained ambient concentration of H_2S exceeds acceptable limits?

If the sustained ambient concentration exceeds the limit specified in § 3151.20(c), you must collect or reduce vapors from the system. All vapor you collect must be—

(a) Sold;

(b) Used on the lease;

(c) Reinjected; or

(d) Flared, if terrain and conditions permit and will not result in SO_2 concentrations that exceed 2 ppm within a 50-foot radius.

Subpart 3152—Site Security

General

§ 3152.10 What are BLM's site security requirements for production facilities?

You must configure and secure all production facilities where Federal and Indian production or allocable production is produced or stored to ensure production accountability for that oil and gas.

Storage and Sales Facilities—Seals

§ 3152.20 What oil and condensate measurement system components must I seal for site security?

(a) You must seal each valve, combination of valves and measurement system component(s) that, if altered, could substantially and adversely affect royalty income or production accountability. You must use a uniquely numbered seal to detect unauthorized or undocumented access to oil or condensate;

(b) For each valve requiring a seal, you must place the seal so that it would be destroyed if the position of the valve changes; and

(c) For each component in a measuring system requiring a seal, you must place the seal so that it would be destroyed if a component is accessed.

§ 3152.21 When must I seal a valve?

(a) During the production phase, you must seal closed all valves that provide access to oil or condensate production; and

(b) Before taking the top gauge for sale, you must seal closed all valves that would allow unmeasured production to enter or leave the sales tank.

Oil and Gas Meters

§ 3152.30 How must I secure metering systems?

(a) During normal operation of your Lease Automatic Custody Transfer system (LACT), you must seal all components that could affect the volume or quality determination of the oil passing through the LACT;

(b) You must seal LACT components by following the requirements of § 3152.20; and

(c) You must not have bypasses around meters that could permit any person to remove oil or gas from the lease or facility without measuring it, unless BLM approved a bypass.

Federal Seals

§ 3152.40 What will BLM do if I do not seal a valve or component of a measurement system where BLM requires a seal?

If BLM discovers a missing seal, BLM will require you to place a seal or BLM will place a Federal seal on the valve or component to secure production if you are not at the site when BLM makes the discovery.

Plans and Facility Diagrams

§ 3152.50 What is a site security plan?

(a) A site security plan is a document that details how you will secure your production facilities. Your site security plan must specify which leases and production facilities are covered by your plan and describe how you will—

(1) Implement a self-inspection program to periodically monitor production volumes, and production and measurement equipment;

(2) Seal appropriate valves at storage and production facilities;

(3) Prepare and maintain records of sales;

(4) Prepare and maintain records of seals;

(5) Identify and report potential theft or mishandling of production; and

(6) Update your plan when you change or add production facilities.

(b) You must maintain all of your production facilities to comply with your site security plan.

(c) You must provide BLM a copy of the plan when we request it.

§ 3152.51 What is a site facility diagram?

A site facility diagram is a schematic of your production facility that—

(a) Accurately reflects the conditions at the site;

(b) Commencing with the header (if applicable), clearly identifies the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas, and water;

(c) Indicates which valves you must seal and the position of the valve during the production and sales phases;

(d) Identifies where your production facility is located and the lease it serves; and

(e) States where you keep the site security plan that applies to your production facility.

§ 3152.52 For what production facilities must I prepare a site facility diagram?

(a) You must prepare and submit to BLM a site facility diagram for all production facilities you use to handle or to store oil or condensate produced from, or allocable to, Federal or Indian lands.

(b) You do not need a site facility diagram for—

(1) A dry gas production facility where you do not produce or store oil or condensate; or

(2) A production facility where a single tank is used for collecting 15 barrels a day or less of oil or condensate produced from a single well.

Well and Facility Identification

§ 3152.60 How must I identify wells and production facilities?

(a) For every unplugged well on a Federal or Indian lease or within an agreement BLM approved, you must place a legible sign in a noticeable place, that identifies the well name or number, ownership, legal description of the location, and lease name or number;

(b) On every production facility you use to store Federal or Indian production, you must place a legible sign in a noticeable place that identifies the facility name or number, ownership, legal description of the location, and lease name or number. You also must place a unique number on each storage tank; and

(c) If you have one tank battery servicing one well at a common location, you may use one sign for both, if it includes the information required for both wells and production facilities.

Transporter Documentation

§ 3152.70 What information must I have when transporting oil and gas production that is produced from or allocated to my lease?

(a) If you transport oil from your lease by motor vehicle or pipeline, the driver or transporter must have a measurement ticket, trip log or other documentation showing—

(1) The quantity and quality of oil transported;

(2) The property and production facility identification number from which the oil came; and

(3) The intended first purchaser of the oil.

(b) If you transport gas by pipeline, it must be reported according to the requirements in subpart 3154.

Theft

§ 3152.80 What if I discover theft or mishandling of oil, condensate or gas produced from my wells?

If you discover theft or mishandling of oil, condensate or gas produced from your wells—

(a) You must provide BLM a written or oral report of the incident no later than the next business day after you discover the apparent theft or mishandling; and

(b) If you report the incident orally, you must follow up the oral notice with a written report to BLM describing the details of the incident within 10 business days.

Subpart 3153—Oil Measurement

General

§ 3153.10 How must I measure Federal and Indian oil?

You must measure Federal and Indian oil by tank gauging, a positive displacement metering system such as a lease automatic custody transfer system (LACT), or a method that you can demonstrate to BLM to be equivalent in accuracy and accountability to tank gauging or a LACT.

Tank Gauging

§ 3153.20 How do I determine the quantity and quality of oil that I sell by tank gauging?

The following table lists the American Petroleum Institute (API) standards and practices that you must follow to achieve accurate oil measurement by tank gauging—

When you—	You must follow the standards and practices of—
(a) Set and equip storage tanks	API RP 12R1, "Recommended Practice for Setting, Maintenance, Inspection, Operation and Repair of Tanks in Production Service", Fifth Edition, October 1, 1997.
(b) Calibrate a storage tank	API MPMS Chapter 2.2A, "Measurement and Calibration of Upright Cylindrical tanks by the Manual Tank Strapping Method", First Edition, dated February 1995; or API MPMS Chapter 2.2B, "Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method", First Edition, March 1989 (Reaffirmed May 1996).
(c) Transfer custody of oil	API MPMS Chapter 18.1, "Measurement Procedures for Crude Oil Gathered from Small Tanks by Truck", Second Edition, April 1997.
(d) Sample oil from a tank	API MPMS Chapter 8.1, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products", Third Edition, October 1995 (ASTM D4057) or Chapter 8.2, "Sampling of Liquid Petroleum and Petroleum Products", Second Edition, October 1995 (ANSI/ASTM D4177).
(e) Gauge a tank	API MPMS Chapter 3.1A, "Standard Practice for the Manual Gauging of Petroleum and Petroleum Products", First Edition, December 1994 or API MPMS Chapter 3.1 B, "Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging", First Edition, April 1992 (Reaffirmed January 1997).
(f) Determine oil gravity	API MPMS Chapter 9.1, "Hydrometer Test Method for Density, Relative Density (Specific Gravity) or API Gravity of Crude Petroleum and Liquid Petroleum Products" (ANSI/ASTM D 1298), June 1981 (Reaffirmed October 1992) (API MPMS Chapter 9.1 1992).
(g) Determine oil temperature	API MPMS Chapter 7.1, "Static Temperature Determination Using Mercury-in-Glass Tank Thermometers", First Edition, February 1991 (Reaffirmed November 1996).
(h) Determine sediment and water in oil	API MPMS Chapter 10.4, "Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure)" Second Edition, May 1988 (ASTM D96–88) (Reaffirmed December 1993) (API MPMS Chapter 10.4 1993).

Lease Automatic Custody Transfer

§ 3153.30 How must I install and operate my LACT unit?

(a) Your LACT unit must be installed with all of the non-optional primary components shown in Figure 1 of API MPMS Chapter 6.1, "Lease Automatic Custody Transfer (LACT) Systems", Second Edition, May 1991 (Reaffirmed July 1996) (API MPMS Chapter 6.1, July 1996) and include the following optional equipment—

(1) A positive displacement meter;

(2) An air/gas eliminator; and

(3) An automatic temperature/gravity compensator (ATC or ATG) or electronic temperature averaging device.

(b) For all LACT units installed after [effective date of the final rule], you must design, install, operate, and maintain your LACT system to meet the specifications and requirements of—

(1) API Specification 11N, "Specification for Lease Automatic Custody Transfer (LACT) Equipment", Fourth Edition, November 1, 1994; and

(2) API MPMS Chapter 6.1, July 1996.

(c) If you installed your LACT system before [effective date of the final rule] according to earlier versions of API references, you are not required to retrofit to meet the API standards of this section.

§ 3153.31 How do I determine oil gravity and sediment and water content of oil measured through my LACT?

You must determine oil gravity and sediment and water for the sample obtained from the LACT sample container by following API MPMS Chapter 9.1, 1992 (oil gravity) and API MPMS Chapter 10.4, 1993 (sediment and water).

§ 3153.32 How do I determine the composite meter factor for my LACT meter?

(a) Prove your LACT meter with a pipe or tank prover, master meter, or other API recognized meter prover so that you—

(1) Follow the applicable proving procedures of API MPMS Chapter 6.1, July 1996; and

(2) Make at least six proving runs when proving your meter, with five consecutive proving runs within a span of 0.0005 (0.05 percent) and compute the average of the five consecutive runs.

(b) If you cannot achieve five consecutive runs within 0.05 percent during proving, you must—

(1) Use five consecutive runs that most accurately reflect operation of your meter;

(2) Determine a malfunction meter factor using the procedures in paragraph (d) of this section; and

(3) Immediately remove the meter from service and have it repaired.

(c) If your LACT system is equipped with an electronic temperature averaging device, check its accuracy during the meter proving at operating conditions with a mercury thermometer and adjust it if a discrepancy in excess of 0.5° F is observed.

(d) Calculate the composite meter factor using the procedures and correction factors from—

(1) API MPMS Chapter 12.2, "Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters", First Edition, September 1981 (Reaffirmed May 1996);

(2) API MPMS Chapter 11.1, Volume I, "Table 5A-Generalized Crude Oils and JP–4, Correction of Observed API Gravity to API Gravity at 60°F" and "Table 6A—Generalized Crude Oils and JP–4, Correction of Volume to 60°F Against API Gravity at 60°F" (ANSI/ASTM D 1250–80) (IP 200) (API Standard 2540), August 1980 (Reaffirmed October 1993); and

(3) API MPMS Chapter 11.2.1, "Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range", First Edition, August 1984 (Reaffirmed November 1995).

§ 3153.33 What requirements apply to the meter prover I use to determine the LACT composite meter factor?

You must ensure that the meter prover you use to determine the LACT composite meter factor has a certificate of calibration available for review on site that shows—

(a) It was calibrated according to API standards within the last—

(1) 90 calendar days for master meters;

(2) 36 months for portable tank and pipe provers; or

(3) 60 months for stationary tank and pipe provers.

(b) The certified volume, as determined by the water draw method, if the meter prover is a pipe or tank prover; or

(c) It is a master meter and has an operating factor within 0.9900 to 1.0100 and had five consecutive prover runs within 0.0002.

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§ 3153.34 When must I determine the composite meter factor for my LACT meter?

You must determine the composite meter factor for your LACT meter—

(a) Immediately after you install or repair it;

(b) Monthly, if more than 100,000 barrels of oil per month are measured through the LACT;

(c) Quarterly, if between 10,000 and 100,000 barrels of oil per month are measured through the LACT; or

(d) Semiannually, if less than 10,000 barrels of oil per month are measured through the LACT.

§ 3153.35 What tolerance does BLM require for the LACT composite meter factor?

Your composite meter factor must not change more than ±0.0025 between provings.

§ 3153.36 What if the LACT composite meter factor changes more than ±0.0025 between provings?

If the LACT composite meter factor changes more than ±0.0025 between provings, you must repair or replace the meter unless you can justify to BLM that the composite meter factor change will not affect accurate oil measurement.

§ 3153.37 What notices and reports must I provide to BLM about operation of my LACT system?

(a) You must notify BLM, orally or in writing, within five business days—

(1) Prior to proving your LACT meter; and

(2) After you discover failure or malfunction of a LACT system component that adversely affects accurate oil measurement.

(b) Within 10 business days after a required proving, you must submit to BLM a completed meter proving report that contains—

(1) The information shown in one of the model forms of API MPMS Chapter 12.2, 1996; and

(2) Information for BLM to identify the lease(s) and facility your LACT meter services.

§ 3153.38 How do I correct volumes if my composite meter factor changes between LACT provings?

(a) If your composite meter factor changes between LACT provings, you must—

(1) Calculate an arithmetic average of the new and previous composite meter factors and apply it to the volume metered between provings; and

(2) Report volume corrections as required by MMS on the Monthly Report of Operations, Form MMS–3160.

(b) If you conduct monthly LACT proving, you must make the required volume correction and report on Form MMS–3160 for that month.

Measurement Tickets

§ 3153.40 How must I document the sale or removal of oil from my production facility?

(a) Before oil is removed from your production facility, you must complete a uniquely numbered measurement ticket with the following information—

(1) Information to identify the seller and facility from which you are selling;

(2) Start and stop totalizer readings (for LACT units) or opening and closing gauge readings, oil temperatures, quality test results, and the total volume of the oil sold (for tank gauging);

(3) Names and signatures of the gauger and the operator's representative (for tank gauging); and

(4) Numbers of seals removed and installed.

(b) Maintain measurement tickets and provide them to BLM when requested.

Subpart 3154—Gas Measurement

Gas Measurement

§ 3154.10 How do I measure and report gas production from Federal and Indian lands?

(a) To measure and report gas production from Federal and Indian lands, you must use a measurement system that—

(1) Has an established industry standard (i.e., American Petroleum Institute (API), American Gas Association (AGA), American Society of Testing and Materials (ASTM), American National Standard Institute (ANSI)) for the accuracy, installation, operation, and maintenance of the meter;

(2) Is designed, installed, operated, and maintained to—

(i) Follow the manufacturer's specifications and the applicable industry standard;

(ii) Achieve an overall uncertainty of ±3 percent of reading, or better, over the normal operating range of the meter; and

(iii) Provide either a continuous mechanical recording or an electronic record of the measured parameters at a sampling interval of one hour or less;

(3) Displays all measured parameters in a location accessible to BLM during normal working hours; and

(4) Is capable of being calibrated or proved using equipment traceable to national standards.

(b) You must report the volume of gas that you produce to the Minerals Management Service (MMS) on Form MMS–3160 under the regulations in 30 CFR part 210. For reporting purposes, you must use a base pressure of 14.73 psia and a base temperature of 60° F; and

(c) You may estimate the amount of gas used for beneficial purposes using—

(1) The equipment manufacturer's specification for consumption;

(2) The allocation based on the gas/oil ratio; or

(3) Other methods acceptable to BLM.

Orifice Meter—Primary Element

§ 3154.20 How must I install, operate, and maintain an orifice meter?

(a) Your orifice meter must meet the specification and installation requirements of—

(1) API Manual of Petroleum Measurement Standards (MPMS) Chapter 14.3, "Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids", Second Edition, September 1985 (ANSI/API 2530), if it was installed before [effective date of final rule]; and

(2) API MPMS Chapter 14.3, Part 2, "Specification and Installation Requirements", Third Edition, February 1991 (ANSI/API 2530, Part 2, 1991) if it was installed after [effective date of final rule].

(b) If your orifice meter measures more than 100 Mcf of gas per actual producing day on a monthly basis you must—

(1) Remove and inspect, and replace, if necessary, the orifice plate at least once every six months; and

(2) Use a continuous temperature recorder to measure the flowing gas temperature.

(c) If your orifice meter measures less than 100 Mcf of gas per actual producing day on a monthly basis, some requirements in this subpart may be different (see § 3154.40).

§ 3154.21 How must I determine the volume of gas that passes through my orifice meter?

You must calculate gas volumes that pass through your orifice meter using the flow equations specified in API MPMS Chapter 14.3, Part 3, "Natural Gas Applications", Third Edition, August 1992.

Orifice Meter—Secondary Element

§ 3154.30 How must I record the differential and static pressures on a chart recorder?

If your meter measures more than an average of 100 Mcf per actual producing day, on a monthly basis, you must—

(a) Maintain the differential pressure in the upper 80 percent of the chart, measured from zero, for the majority of the flowing periods, unless well conditions (e.g., erratic flow patterns) will not permit you to do so; and

(b) Maintain the static pressure in the upper two thirds of the physical distance on the chart, measured from zero, for the majority of the flowing periods.

§ 3154.31 What additional requirements must I follow when using electronic flow computers (EFC)?

Your EFC must—

(a) Display the instantaneous values of the static pressure, differential pressure, and temperature; and

(b) Have a back up power device to allow the EFC to retain collected data for a minimum of 35 calendar days.

§ 3154.32 How must I calibrate the secondary element of an orifice meter?

(a) Follow the recommended practices for on-site calibrations of orifice meters in Section 1.14 of the API MPMS, Chapter 20.1, "Allocation Measurement", First Edition, September 1993 (API MPMS Chapter 20.1, 1993);

(b) In addition to the recommended test points in Section 1.14 of API MPMS Chapter 20.1, 1993, test the differential and static elements at 100 percent of the element range; and

(c) Document the calibration/inspection with a complete report of station and meter data, test procedures, test results, corrective actions, involved persons, dates, and signatures.

§ 3154.33 When must I calibrate the secondary element?

(a) You must calibrate the secondary element when—

(1) You install it;

(2) After you make any repairs to it; and

(3) Quarterly, if your meter measures more than an average of 100 Mcf per actual producing day, on a monthly basis.

(b) Submit a copy of the calibration report to BLM within five business days after we request it.

Orifice Meters—Low Volume Exemptions

§ 3154.40 What measurement standards apply if I use an orifice meter and measure an average of 100 Mcf of gas, or less, per producing day on a monthly basis?

If you use an orifice meter and measure an average of 100 Mcf of gas, or less, per producing day on a monthly basis—

(a) You are not required to maintain your beta ratio within the range specified in ANSI/API 2530, Part 2, 1991;

(b) You are not required to measure flowing gas temperature with a continuous temperature recorder. Instead, you must use a temperature that reasonably represents the average flowing temperature of the gas stream in your volume calculations;

(c) You may record the differential pressure on any portion of the chart range if you use a chart recorder;

(d) You may record the static pressure on any portion of the chart range for the majority of the flowing periods if you use a chart recorder;

(e) You are not required to inspect your meter tube more than once every six years; and

(f) You are not required to calibrate your meter and inspect your orifice plate more than annually unless BLM requires more frequent calibration or inspection.

Other Metering Systems

§ 3154.50 What standards must I follow if I measure gas by a metering system other than an orifice meter?

If you measure gas by a metering system other than an orifice meter, you must—

(a) Meet the requirements of § 3154.10;

(b) Use a system that either directly measures the temperature of the gas stream or compensates for temperature; and

(c) Calibrate or prove your system semiannually or at such times as BLM otherwise requires.

Volume Corrections

§ 3154.60 How do I correct volumes if my meter did not measure accurately?

(a) If a meter calibration or proving shows that a volume error occurred, you must correct the volume back to when the error occurred, if known. If you do not know when the error occurred, correct the volume for the last half of the time period that elapsed since the last calibration or proving;

(b) If your measuring equipment is out of service or malfunctions so that you do not know the quantity of gas delivered, you must estimate the volume by the most accurate method available; and

(c) You must report volume corrections under this section as required by MMS on Form MMS–3160.

Gas Quality Measurements

§ 3154.70 How do I determine the quality of my gas stream?

(a) Conduct a test to determine the specific gravity and the heating value of the gas stream at least annually, or as otherwise required by BLM. Testing procedures and results must be provided to BLM upon request.

(b) Collect a gas sample at the measurement point on the lease or at another location BLM approved.

(c) Follow the sample collection and handling procedures in API MPMS Chapter 14.1, "Collecting and Handling of Natural Gas Samples for Custody Transfer", Fourth Edition, August 1993.

(d) Determine the specific gravity of your sample by—

(1) Continuous recording gravitometer; or

(2) Compositional analysis through at least the normal hexane (C^6H^{14}) component of a spot or cumulative gas sample.

(e) Determine the heating value of your sample by—

(1) A recording calorimeter; or

(2) Compositional analysis through at least the normal C^6H^{14} component of a spot or cumulative gas sample.

Subpart 3155—Produced Water Disposal

Produced Water Disposal

§ 3155.10 Why must I obtain approval from BLM to dispose of water produced from my lease?

You must obtain BLM's approval to dispose of water produced from your lease to ensure that—

(a) Disposal of produced water does not adversely affect Federal or Indian lands and resources, or public health and safety;

(b) Removal of produced water from a Federal or Indian oil and gas lease does not adversely affect Federal or Indian lands and resources, or public health and safety; and

(c) Facilities used for the disposal of produced water are authorized and operating in compliance with the terms of their permits.

§ 3155.11 When do I need BLM approval to dispose of produced water?

Except for the conditions described in § 3155.12, you must obtain BLM's approval before you—

(a) Dispose of produced water from a Federal or Indian well on a Federal or Indian lease;

(b) Remove produced water from a Federal or Indian well for disposal—

(1) Off of the lease it is produced from, regardless of the physical location of the disposal facility; or

(2) On State or privately owned land within the same communitized or unitized area; or

(c) Remove produced water from a communitized or unitized private or State well, if disposal occurs on Federal or Indian land within the same communitized or unitized area.

§ 3155.12 When may I dispose of produced water without BLM approval?

BLM approval is not required to dispose of produced water if you—

(a) Inject it into the same formation from which it is produced as part of an enhanced recovery project approved by BLM or Bureau of Indian Affairs;

(b) Inject it into an approved disposal well on the same Federal or Indian lease; or

(c) Inject it or dispose of it in the same well bore and formation from which it is produced.

§ 3155.13 What type of water disposal will BLM allow?

BLM will allow water disposal by methods including, but not limited to—

(a) Injection into the subsurface;

(b) Discharge into lined or unlined pits;

(c) Surface discharge under a National Pollution Discharge Elimination System (NPDES) permit;

(d) Discharge to commercial pits or open top tanks designed for containing produced water; or

(e) Disposal to facilities designed to reuse or treat produced water.

§ 3155.14 What BLM forms and Environmental Protection Agency, State or Indian Tribe permits must I submit to BLM if I plan to dispose of produced water?

(a) When BLM approval for produced water disposal is necessary under § 3155.11, you must submit a Sundry Notice and Report on Wells (SN), Form 3160–5, or other filing instrument acceptable to BLM, that describes your disposal method and location of disposal facilities.

(b) If you intend to dispose of produced water within the same Federal or Indian lease or communitized or unitized area, in conjunction with construction of disposal facilities on a Federal or Indian lease, your SN must include your construction plans following the additional well operation requirements of subpart 3145, if you intend to—

(1) Convert an existing well to an injection well;

(2) Construct an earthen pit or an NPDES facility; or

(3) Construct roads or pipelines.

(c) If you intend to dispose of produced water within the same Federal or Indian lease or communitized or unitized area, in conjunction with drilling a new well or reentering an abandoned well on a Federal or Indian lease, you must submit an Application for Permit to Drill or Reenter (APD), Form 3160–3, following the requirements of subpart 3145.

(d) You must obtain a right-of-way (R/W) authorization for the use of BLM lands according to part 2800 of this chapter if you—

(1) Drill, convert, construct or operate disposal facilities, or construct roads and pipelines off of your lease but on BLM managed surface; or

(2) Operate disposal facilities on your lease where you dispose of produced water from operations off of your lease.

(e) You may attach to your APD, SN or R/W application the information that you prepare to obtain an Underground Injection Control Permit (UIC), earthen pit disposal, or NPDES permit(s) in its original form. BLM will accept this information toward fulfilling the requirements of subpart 3145 and this subpart.

(f) Include with your SN, APD or R/W either—

(1) Copies of UIC, earthen pit, or NPDES permits you have received for the disposal facilities you intend to use; or

(2) The location of these existing or proposed disposal facilities and their permit name/number.

(g) You may use the APD or SN package to furnish the information BLM requires to process a R/W instead of filing a R/W plan of development. If you choose this option, the APD or SN will serve as a R/W application even though BLM will issue two separate approval documents (APD or SN and R/W grant).

(h) If your proposal involves off-lease activities on surface BLM does not manage, you must contact the appropriate surface management agency or surface owner for surface use permits.

(i) Follow the requirements of subpart 3145 for drilling and additional well operations if you drill or convert a well under a BLM R/W grant.

§ 3155.15 What additional requirements must I follow for water disposal into pits?

(a) For produced water disposal into lined and unlined pits, you must submit to BLM information on the—

(1) Daily quantity of water you plan to dispose of;

(2) Quality of the produced water, unless specifically waived by BLM for lined pits. If the volume of produced water disposed of does not exceed more than an average of five barrels of produced water per day, based on the amount of produced water expected per month, you are not required to submit a water quality analysis unless BLM requests it;

(3) Source of your produced water; and

(4) How you intend to handle emergencies, if BLM requests it.

(b) Your use of a lined pit must follow the standards in this paragraph and your application must show how you will—

(1) Ensure adequate storage capacity considering climatic factors that affect fluid levels;

(2) Ensure stability of the pit and its levees;

(3) Include periodic and proper disposal of precipitated solids;

(4) Use an impermeable liner that will withstand the effects of weather, contained liquids and solids, and other characteristics of your site;

(5) Provide safe containment of produced water, and associated liquids and solids, to prevent pit leakage and contamination of soils, surface waters, groundwater and intermittent drainage;

(6) Prevent discharges of liquid hydrocarbons to the pit;

(7) Prevent access by livestock and wildlife, unless otherwise approved by BLM, the surface management agency, Indian, or private surface owner;

(8) Deter entry by birds, if liquid hydrocarbons discharge to the pit or if water contained in the pit could injure birds; and

(9) Include a leak detection system that adequately detects leakage, and plans to monitor it.

(c) Your use of unlined pits must follow all of the objectives for lined pits except for paragraphs (b)(3), (b)(4), and (b)(9) of this section, and your application must show how you will meet these conditions.

§ 3155.16 When may I use an unlined pit for produced water disposal?

You may use an unlined pit for produced water disposal, if you can meet the requirements of § 3155.15(c), and you can demonstrate to BLM in your application that your produced water—

(a) Is of equal or better quality than existing surface and subsurface water sources, and State or Federal water quality standards, including standards for toxic constituents;

(b) Will primarily be used for beneficial purposes, such as irrigation, livestock, or wildlife, and meets minimum water quality standards for such uses;

(c) Will not exceed an average of five barrels of produced water per day based on the amount of produced water expected per month; or

(d) Will not degrade the quality of surface or subsurface waters, and soils in the area.

§ 3155.17 If the quantity and quality of my produced water changes, do I need a new approval from BLM to continue using an unlined pit?

You must submit an amended proposal for BLM's approval if your produced water does not satisfy the standard used to obtain the original approval to use an unlined pit.

§ 3155.18 What must I submit to BLM for surface discharge that requires NPDES permit?

For surface discharge that requires a NPDES permit you must submit to BLM—

(a) A SN, Form 3160–5, including a description of site facilities;

(b) A current water quality analysis;

(c) Your plans for surface use from the origin of the produced water to the point of discharge;

(d) A copy of the NPDES permit or the location of the existing or proposed NPDES facility and its permit name or number; and

(e) Information that supported obtaining the NPDES permit, if BLM requests it.

§ 3155.19 What if the EPA, State, or Indian Tribe cancels or suspends the permit for a disposal facility I am using?

If the EPA, State, or Indian Tribe cancels or suspends the permit for a disposal facility you are using, BLM will terminate your water disposal permit immediately and you must submit a new proposal to BLM.

Subpart 3156—Spills and Accidents

Spills and Accidents

§ 3156.10 What action must I take after an accident or spill that involves Federal or Indian production?

After an accident or spill that involves Federal or Indian production—

(a) Take immediate corrective actions to control the spill or accident; and

(b) Report spills and accidents to BLM that could affect the public health and safety or adversely affect lease or off-lease resources to—

(1) Allow BLM to determine if—

(i) Your loss of oil or gas is subject to royalty collection;

(ii) Corrective orders are needed; or

(iii) A contingency plan is needed to address potential future events.

(2) Provide BLM the opportunity to approve your reclamation and remediation plans and monitor the results of these operations.

§ 3156.11 How soon after a spill or accident must I report it to BLM?

You must notify BLM within 24 hours of—

(a) Oil and saltwater spills that individually or in combination result in the discharge of 100 or more barrels of liquid during a single event;

(b) Equipment failures or other accidents that release 500 Mcf or more of gas;

(c) Any fire that consumes volumes in the ranges described in paragraphs (a) or (b) of this section;

(d) Any spill, venting, or fire, regardless of the volume involved, which occurs in or near a sensitive area, such as parks, recreation sites, threatened and endangered species habitat, riparian areas, water bodies, or urban or suburban areas;

(e) Each accident that involves a major, life-threatening, or fatal injury;

(f) Every time loss of well control occurs; or

(g) Releases of hazardous substances of a quantity that is reportable under Environmental Protection Agency regulations at 40 CFR part 302.

§ 3156.12 When must I submit a written report on spills and accidents to BLM?

You must submit a written report to BLM within 10 business days, or such longer period BLM may approve, for events listed in § 3156.11 and for—

(a) Spills that individually or collectively involve between 10 and 100 barrels of liquid during a single event;

(b) Releases that involve between 50 and 500 Mcf of gas; and

(c) Fires that consume volumes in the ranges described in paragraphs (a) and (b) of this section.

§ 3156.13 What must I include in my report of a spill or accident?

(a) In addition to a description of the facility involved, the applicable lease name or number and your official contact for the event, your report to BLM of a spill or accident must include—

(1) When and where the spill or accident occurred;

(2) Whether sensitive areas are affected;

(3) The direct and indirect causes of the event;

(4) An estimate of volumes of material discharged and lost;

(5) A description of any injuries, damage, or contamination;

(6) What you or response teams are doing to control and clean up the spill or accident, including using emergency pits;

(7) Your plans for reclaiming or remediating areas affected by the spill or accident; and

(8) Your plans to prevent a repeat of the incident.

(b) If BLM requests it, you must also submit a—

(1) Copy of the Spill Prevention Control and Countermeasure Plan required by the Environmental Protection Agency according to the regulations at 40 CFR part 112, or a contingency plan that completely describes your plans to prevent and control future occurrences; and

(2) Reclamation or remediation plan that follows the requirements for additional well operations in subpart 3145.

§ 3156.14 When must I submit follow-up written reports to BLM about a spill or accident?

You must submit follow-up written reports of a spill or accident if—

(a) You do not document clean up in the first report you submit;

(b) BLM requests additional reports to monitor ongoing efforts to control or investigate a spill or an accident; or

(c) BLM requests additional reports to document progress and completion of reclamation or remediation.

Subpart 3159—Well Abandonment

Temporary Abandonment

§ 3159.10 How do I obtain BLM approval to temporarily abandon all or a portion of a Federal or Indian well?

You must—

(a) Receive BLM approval before you temporarily abandon all or a portion of a well for more than 30 calendar days;

(b) Submit an application for temporary abandonment of a well to BLM on Sundry Notices and Reports on Wells (SN) Form 3160–5. In it you must—

(1) Explain the reasons for temporarily abandoning, rather than permanently abandoning, utilizing, or producing your well or zone; and

(2) Describe your plans for securing the wellbore and describe any additional surface disturbance or partial reclamation not previously approved in your Application for Permit to Drill or Deepen (APD); and

(c) If your well is located on Forest System lands, follow the requirements of § 3145.11(a).

§ 3159.11 How do I temporarily abandon a well?

You must design and perform your temporary abandonment using acceptable industry practices so that—

(a) It does not prevent proper permanent abandonment;

(b) The well bore or zone(s) is secured to prevent fluid migration within or out of the well bore; and

(c) The wellhead is secured at the surface, as appropriate.

Permanent Abandonment

§ 3159.20 When must I permanently plug and abandon my well?

(a) You must promptly plug and abandon each well you operate in which oil or gas is no longer capable of being produced in paying quantities, unless BLM approves your well for some other use or delays your permanent abandonment.

(b) You must have BLM approval before you begin plugging operations on your well.

(c) BLM may approve temporary abandonment and delay the permanent abandonment of your well for up to 12 months.

(d) BLM may approve additional delays, up to 12 months for each delay approved, if BLM determines that additional delays are in the interest of conservation.

(e) BLM will require you to post additional bond in accordance with §§ 3107.55 and 3107.56, as a condition of delaying permanent abandonment of your well.

§ 3159.21 How do I obtain BLM approval to permanently plug and abandon my well?

(a) You must submit to BLM a Notice of Intent to Abandon (NIA) on a SN, that describes the—

(1) Current downhole condition of your well, if you have not already provided it to BLM;

(2) Type, size, and placement of plugs you proposed for use in your well to isolate zones of concern and protect surface and subsurface useable waters;

(3) Casing you will recover from your well;

(4) Cement slurry design, including necessary additives for specific downhole conditions; and

(5) Methods you will use to maintain well control of your well when you anticipate high pressure or hydrogen sulfide.

(b) Unless BLM previously approved the following activities in your APD, your NIA must also describe—

(1) How you will handle and dispose of pit and other wastes;

(2) When and how you will remove structures, equipment, and other materials;

(3) When you will schedule dirtwork and seeding; and

(4) How you will address any special aspect of reclamation, such as recontouring and requirements of surface management agencies or private surface owners.

(c) If the well you propose to plug and abandon is located on National Forest System lands, you must comply with applicable Forest Service requirements; and

(d) BLM may orally approve a request to begin plugging dry holes or drilling failures in emergency situations. You must submit an NIA to BLM within five business days to confirm the oral approval.

§ 3159.22 How must I permanently plug and abandon a well?

To permanently plug and abandon a well, you must—

(a) Design and perform your plugging operations according to the standards in Section 2 of American Petroleum Institute's (API) Bulletin E3, "Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document", First Edition, January 1993, to—

(1) Protect or isolate all formations containing useable quality water;

(2) Prevent fluid and gas migration within and out of the well bore; and

(3) Protect all prospectively valuable deposits of oil, gas, geothermal resources, or other minerals;

(b) Use a minimum of 10 percent excess cement per 1000 feet of depth for each plug placed in the well;

(c) Use a minimum of 25 sacks of cement for any plug placed through tubing, except for the surface plug;

(d) Fill each of the intervals between plugs with a fluid of sufficient density to prevent formation fluid from entering the wellbore and to prevent plug movement;

(e) Test for placement of critical plugs;

(f) Reclaim the disturbed surface in a timely manner according to your approved reclamation plan and comply with §§ 3145.11, 3145.13, 3145.14, 3145.15, and 3145.55; and

(g) Permanently inscribe the operator name, lease identification, well name/number and legal location on the permanent well marker (for wells cut off below ground level only the lease identification and well name/number must be inscribed on the cover plate). The well marker should be of size and design so as not to be visually intrusive and must be securely attached to the well.

§ 3159.23 When must I test plug placement?

You must perform a plug placement test by tagging the plug with the working pipe string or other method BLM approved when—

(a) The cement plug(s) is the only isolating medium for a usable water zone or a prospectively valuable mineral deposit and the fluid level will not remain static; or

(b) Plug integrity is questionable.

§ 3159.24 What must I do if the surface owner or surface management agency requests that I convert a well I plan to plug and abandon into a water well?

If the surface owner or surface management agency requests that you convert a well you plan to plug and abandon into a water well—

(a) The surface owner or surface managing agency must notify BLM in writing that it will assume responsibility for the portion of the well bore used for the water well;

(b) You must not begin any action to convert to a water well until BLM approves your NIA application; and

(c) You may perform the additional work needed to complete the conversion to a water well by an agreement between you and the surface owner or surface managing agency, but at a minimum you must—

(1) Plug your well from total depth to the base of the usable water zone; and

(2) Complete reclamation of the disturbed area as approved.

§ 3159.25 What if my approved plans for well abandonment change after I receive BLM approval?

You must request approval, either orally or by SN, before performing any changes from your approved plan. If BLM gives you oral approval, you must document the changes on the Subsequent Report of Abandonment (SRA), SN Form 3160–5, as required in § 3159.26(a).

§ 3159.26 What must I submit to BLM after I permanently abandon my well and complete reclamation measures?

After you permanently abandon your well and complete reclamation measures, you must—

(a) Submit the SRA to BLM within 30 calendar days after you complete well plugging operations. The SRA must document in detail the plugging process, including any changes BLM approved orally;

(b) Document the estimated timetable for completing recontouring and reclamation procedures on the SRA; or

(c) Submit a separate Final Abandonment Notice (FAN) on a SN when you complete all reclamation and the site is ready for final inspection.

12. Revise part 3160—Onshore Oil and Gas Operations to read as follows:

PART 3160—OIL AND GAS INSPECTION AND ENFORCEMENT

Subpart 3161—Inspections

Inspections

Sec.
3161.10 Will BLM inspect my operations on Federal and Indian leases?
3161.11 Who may inspect my lease operations?
3161.12 Can BLM inspect motor vehicles that transport oil produced from or allocated to my Federal or Indian lease?

Subpart 3162—Enforcement

Enforcement

3162.10 What action will BLM take if I do not comply with applicable laws, the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order?
3162.11 How will BLM notify me of violations and enforcement actions?
3162.12 May BLM shut down my operations for any violation?

Subpart 3163—Assessments

Assessments

3163.10 Will BLM assess me if I do not correct a violation?
3163.11 What violations will subject me to an immediate assessment?
3163.12 May BLM reduce assessments?
3163.13 Under what circumstances will BLM enter my lease to correct violations?
3163.14 May BLM charge me for any loss or damage that results from my noncompliance?

Subpart 3164—Civil Penalties

Civil Penalties

3164.10 What civil penalties may BLM assess?
3164.11 Will BLM notify me if I do not comply with any statute, regulation, order, Notice to Lessee, lease, or permit relating to my obligations under this part?
3164.12 What must I do after I receive an Incident of Noncompliance notice (INC)?
3164.13 Are there any violations for which I will be subject to an immediate penalty?
3164.14 What action will BLM take if I do not correct the violations listed in § 3164.13?
3164.15 May BLM reduce the amount of proposed civil penalties?
3164.16 May I request a hearing on the record if I am served with an INC for a serious violation?
3164.17 If I request a hearing on the record, do penalties accrue?
3164.18 If I requested a hearing on the record under § 3164.12(a)(3) or § 3164.16, may I appeal that decision?
3164.19 If I requested a hearing under § 3164.12 or § 3164.16, may I appeal a final order to a U.S. District Court?

Payment of Assessments and Civil Penalties

3164.20 When must I pay assessments and civil penalties under the regulations in this subpart?
3164.21 What if I do not pay, or I underpay, an assessment or civil penalty?
3164.22 Will BLM require me to pay both assessments and civil penalties?
3164.30 If I violate the regulations in this part, am I liable for both civil and criminal penalties?

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733 and 1740.

Subpart 3161—Inspections

Inspections

§ 3161.10 Will BLM inspect my operations on Federal and Indian leases?

BLM will inspect your lease to ensure your operations comply with—

(a) Applicable laws and regulations;

(b) Terms of the lease;

(c) Terms and conditions of permits and other approvals;

(d) Notices to Lessees; and (e) Written orders or other BLM instructions.

§ 3161.11 Who may inspect my lease operations?

(a) You must allow authorized, properly identified representatives of the Secretary and BLM access to your lease sites, secured facilities, and records, without advance notice, to conduct inspections and investigations.

(b) For the purpose of making any inspection or investigation, authorized, properly identified representatives of the Secretary and BLM may have access to any site where you store oil and gas that was produced from or allocated to Federal or Indian leases.

§ 3161.12 Can BLM inspect motor vehicles that transport oil produced from or allocated to my Federal or Indian lease?

(a) On any lease site on Federal or Indian lands, an authorized, properly identified representative of the Secretary or BLM may stop and inspect any motor vehicle (see 30 U.S.C. 1718), which he or she has probable cause to believe is carrying oil either produced from or allocable to a Federal or Indian lease, to determine whether the driver has the documentation required by § 3152.70.

(b) Off your lease site, an authorized, properly identified representative of the Secretary or BLM, accompanied by a law enforcement officer, or a law enforcement officer alone, may stop and inspect any motor vehicle (see 30 U.S.C. 1718), which he or she has probable cause to believe is carrying oil either produced from or allocable to a Federal or Indian lease, to determine whether the driver has the documentation required by § 3152.70.

Subpart 3162—Enforcement

Enforcement

§ 3162.10 What action will BLM take if I do not comply with applicable laws, the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order?

(a) If you failed to comply with applicable laws, the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order, BLM will—

(1) Notify you of the violation unless immediate action is warranted under § 3162.12

(2) Give you a reasonable period to correct the violation. The period BLM allows you to comply will depend on the seriousness of the violation; and

(3) Take other enforcement actions as described in this part to ensure you correct the violation.

(b) If you discover and report a violation to BLM, we will confirm your report in writing and establish a reasonable period to correct it.

(c) BLM will extend the compliance period if you provide acceptable justification for an extension before the end of the compliance period.

§ 3162.11 How will BLM notify me of violations and enforcement actions?

(a) BLM will notify you of any requirements or enforcement actions—

(1) Verbally, followed in writing; or

(2) In writing, delivered by registered mail or by personal service.

(b) You are served with notice on the date you receive written notice from BLM, or within seven business days after BLM mails it to your last known address in BLM records, whichever is earlier.

§ 3162.12 May BLM shut down my operations for any violation?

(a) BLM may require you to shut down your operations if—

(1) You are not in compliance with any requirements of § 3163.11 (a) through (e); or

(2) Continued operations could have an immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income.

(b) BLM may require you to shut down your operations only after giving you written notice under § 3162.11, except in emergencies, in which case BLM may require you to shut down your operations immediately without notice.

(c) You must not resume operations without BLM approval.

Subpart 3163—Assessments

Assessments

§ 3163.10 Will BLM assess me if I do not correct a violation?

Except as provided in § 3163.11, if you do not correct a violation within the time BLM gives you to correct it under § 3162.10—

(a) BLM will assess you up to $250 per day for each day each violation continues, beginning on the first day after the end of the compliance period and ending when the violation(s) is corrected; and

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(b) You may be liable for proposed civil penalties under subpart 3164.

§ 3163.11 What violations will subject me to an immediate assessment?

BLM will immediately charge you the indicated assessment upon discovery of each of the following violations, regardless of when the violation actually occurred and whether you subsequently correct the violation—

If you—	The assessment amount is—
(a) Fail to install blowout preventer or equivalent well control equipment, as required by the approved drilling or operating plan.	$5,000.
(b) Begin drilling operations without approval	10,000.
(c) Disturb the surface, regardless of surface ownership, without approval to conduct operations for Federal or Indian wells.	5,000.
(d) Begin plugging and abandonment operations without approval	2,500.
(e) Commingle production from different formations, leases, communitized areas, units, and/or unit participating areas without BLM approval.	500.
(f) Have been cited for the same type of violation four times on the same lease within a 12 month period.	500 for the fifth and each subsequent violation within 12 months.
(g) Destroy or remove a Federal seal without approval	500.
(h) Fail to notify BLM of H_2S concentrations as required by § 3151.20.	500.

§ 3163.12 May BLM reduce assessments?

BLM may waive or reduce assessments authorized under this subpart. You must submit to BLM written justification why your assessment should be reduced within 30 calendar days after you receive notice of the assessment.

§ 3163.13 Under what circumstances will BLM enter my lease to correct violations?

(a) When necessary for compliance, BLM may occupy your lease and perform, or have performed, operations that you were directed in writing to perform, at your risk and expense.

(b) BLM will charge you for the actual cost of performing the work, plus an additional 25 percent for administrative costs.

§ 3163.14 May BLM charge me for any loss or damage that results from my noncompliance?

BLM will charge you the value of any actual loss or damage that results from your noncompliance.

Subpart 3164—Civil Penalties

Civil Penalties

§ 3164.10 What civil penalties may BLM assess?

BLM may assess civil penalties under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1719). These civil penalties are in addition to any assessment you may be liable for under subpart 3163.

§ 3164.11 Will BLM notify me if I do not comply with any statute, regulation, order, Notice to Lessee, lease term, or permit relating to my obligations under this part?

(a) If you do not comply with any statute, regulation, order, Notice to Lessee, lease term, or permit relating to your obligations under this part, BLM may issue a Notice of Incident of Noncompliance, Form 3160–9 (INC).

(b) BLM must serve the INC by personal service by an authorized BLM representative or by registered mail. Service by registered mail occurs when received or seven business days after the date it is mailed, whichever is earlier.

(c) The notice will set out the—

(1) Violation and the remedial action required;

(2) Amount of the penalty applicable for each day the violation continues; and

(3) Length of time for which the penalty will be assessed.

§ 3164.12 What must I do after I receive an Notice of Incident of Noncompliance (INC)?

(a) When BLM issues you an INC under this subpart—

(1) You must correct the violation within 20 calendar days (or such longer time as the notice specifies) from the date that the notice is served, or you are liable for a penalty of up to $500 per violation for each day the violation continues, dating from the date you were served notice;

(2) You must correct the violation within 40 calendar days (or such longer time as the notice specifies) from the date that the notice is served, or you are liable for a penalty of up to $5,000 per violation for each day the violation continues, dating from the date you were served notice; or

(3) If you do not correct the violation within 20 calendar days (or such longer time as the notice specifies) from the date that the notice is served, you may, by that date, request a hearing on the record by filing a written request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(b) If you correct the violation within 20 calendar days (or such longer time as the notice specifies) from the date that the notice is served, BLM will not assess penalties under this subpart and you are not entitled to a hearing on the record provided for in paragraph (a)(3) of this section. You may appeal the INC or other disputed BLM decision or order under § 3101.22.

§ 3164.13 Are there any violations for which I will be subject to an immediate penalty?

BLM may issue you an INC for a serious violation. You will receive notice in the same manner as § 3164.11. Penalties for serious violations begin to accrue on the date the violation occurred according to the following table—

Violation	Civil penalty amount
(a) Any person transporting oil from your lease who does not permit BLM to review the documentation required under § 3152.70.	Up to $500 per violation per day.
(b) You or your representative fails or refuses to allow lawful entry or inspection	Up to $10,000 per violation per day.
(c) You knowingly or willfully fail to notify BLM before the fifth business day after your well begins production or resumes production after being off production for more than 90 calendar days	Up to $10,000 per violation per day.

Violation	Civil penalty amount
(d) You or your representative knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information.	Up to $25,000 per violation per day.
(e) You or your representative knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from or allocable to any Federal or Indian lease site, without having the authority to do so.	Up to $25,000 per violation per day.
(f) You or your representative purchases, accepts, sells, transports or conveys to another, any oil or gas, having reason to know that the oil or gas was stolen or unlawfully removed or diverted from any Federal or Indian lease site or a lease site with oil or gas allocable to a Federal or Indian lease.	Up to $25,000 per violation per day.

§ 3164.14 What action will BLM take if I do not correct the violations listed in § 3164.13?

(a) For transporters that do not produce the documentation required under § 3152.70,—

(1) BLM will issue an INC under § 3164.11;

(2) BLM will order Federal and Indian oil and gas producers in the area to prohibit the transporter from removing crude oil or other liquid hydrocarbons from all Federal or Indian leases or from any facility which receives or stores production allocable to a Federal or Indian lease; and

(3) BLM's order will remain in effect until the transporter complies and pays the assessed civil penalty.

(b) For violations listed in § 3164.13 (b) through (f), BLM may begin procedures to cancel your lease under either subpart 3144, or in the case of Indian lands, recommend to BIA that it initiate lease cancellation procedures.

§ 3164.15 May BLM reduce the amount of proposed civil penalties?

BLM may waive or reduce civil penalties under the regulations in this subpart. You must justify in writing why your proposed civil penalty should be reduced and submit your justification to BLM within 30 calendar days after you receive notice of the proposed civil penalty.

§ 3164.16 May I request a hearing on the record if I am served with an INC for a serious violation?

If you are served with an INC for a serious violation under § 3164.13, you have 20 calendar days from the date of service to file a written request for a hearing on the record with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

§ 3164.17 If I request a hearing on the record, do penalties accrue?

If you request a hearing on the record under § 3164.12(a)(3) or § 3164.16, penalties will accrue each day until you correct the violations in the INC. BLM may suspend the requirement to correct the violations pending completion of the hearings provided for in this subpart.

§ 3164.18 If I requested a hearing on the record under § 3164.12(a)(3) or § 3164.16, may I appeal that decision?

If you request a hearing on the record under § 3164.12(a)(3) or § 3164.16, the hearing will be conducted by an Administrative Law Judge (ALJ) (Departmental), Office of Hearings and Appeals. After the hearing, the ALJ will issue a decision in accordance with the evidence presented and applicable law. Any party to a case adversely affected by a decision of the ALJ may appeal that decision to the Interior Board of Land Appeals under part 4 or part 1840 of this title.

§ 3164.19 If I requested a hearing under § 3164.12 or § 3164.16, may I appeal a final order to a U.S. District Court?

If you timely requested a hearing under § 3164.12 or § 3164.16, and are aggrieved by a final order, you may seek review of the order in the U.S. District Court for the judicial district in which the violation allegedly took place. Review by the District Court will be only on the administrative record and not *de novo*. Such action will be barred unless filed within 90 calendar days after the final order.

Payment of Assessments and Civil Penalties

§ 3164.20 When must I pay assessments and civil penalties under the regulations in this subpart?

(a) You must pay—

(1) Assessments within 30 calendar days of receipt of a Bill for Collection, Form 1371–22. If sent by certified mail, BLM will consider you to have received the Bill for Collection on the date you received it, or within seven business days after BLM mailed it, whichever comes first; and

(2) Civil penalties within 30 calendar days of the final order BLM issues or in the case of an appeal of a BLM decision to the District Court, as specified in the final order of the Court.

(b) Civil penalties you owe under these regulations may be deducted from any monies that the United States may owe you.

§ 3164.21 What if I do not pay, or I underpay, an assessment or civil penalty?

(a) For assessments, BLM will charge you interest on the balance due at the current interest rate stated by the Department of Treasury as the "Treasury Current Value of Funds Rate." Interest will be calculated from the date your assessment is due through the date payment is received.

(b) For civil penalties, the Court may impose sanctions for nonpayment or underpayment.

§ 3164.22 Will BLM require me to pay both assessments and civil penalties?

(a) BLM may require you to pay both assessments and civil penalties. However, BLM will deduct any assessment amount you paid from the amount of civil penalties you owe.

(b) Any civil penalties you are assessed under this subpart are in addition to any penalties or assessments you are charged for your acts of noncompliance under provisions of other laws.

§ 3164.30 If I violate the regulations in this part, am I liable for both civil and criminal penalties?

You may be liable for both civil and criminal penalties under 30 U.S.C. 1720 for violating these regulations.

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Part III

Department of Energy

10 CFR Part 850
Chronic Beryllium Disease Prevention Program; Proposed Rule

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DEPARTMENT OF ENERGY

10 CFR Part 850

[Docket No. EH–RM–98–BRYLM]

RIN 1901–AA75

Chronic Beryllium Disease Prevention Program

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE or the Department) is proposing regulations to establish a chronic beryllium disease prevention program (CBDPP) to reduce the number of workers currently exposed to beryllium in the course of their employment with DOE or its contractors, minimize the levels of and potential for exposure to beryllium, and establish medical surveillance requirements to ensure early detection and treatment of disease. The proposed rule would be applicable to DOE Federal and contractor employees and subcontractors during the performance of beryllium work at DOE facilities. This action would codify the interim program requirements currently prescribed in DOE directives and protect the health and safety of workers.

DATES: The comment period for this proposed rule will end on March 9, 1999. Public hearings will be held on: February 3, 1999, in Oak Ridge, TN, from 9:00 a.m. to 1:00 p.m. and 6:00 p.m. to 9:00 p.m.; February 9, 1999, in Golden, CO (Denver), from 9:00 a.m. to 1:00 p.m. and 6:00 p.m. to 9:00 p.m.; and February 11, 1999, in Washington, DC, from 9:00 a.m. to 1:00 p.m.

Requests to speak at any of the hearings should be phoned in to Andi Kasarsky, 202–586–3012, by February 1, 1999, for the Oak Ridge, TN, hearing; February 5, 1999, for the Golden, CO, hearing; and February 10, 1999, for the Washington, DC, hearing. Each presentation is limited to 10 minutes.

ADDRESSES: Written comments (ten copies) should be addressed to: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH–51, Docket Number EH–RM–98–BRYLM, 1000 Independence Avenue, SW, Washington, D.C. 20585. Where possible, commenters should identify the specific section to which they are responding.

Copies of the public hearing transcripts, written comments received, technical reference materials referred to in this notice, and any other docket material may be reviewed and copied at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The docket file material for this rulemaking will be filed under "EH–RM–98–BRYLM." In addition, related prerulemaking docket material is filed under "BERYLLIUM STANDARD." This material may also be reviewed and copied at the DOE Freedom of Information Reading Room at the address noted previously. The technical material from the BERYLLIUM STANDARD docket file may also be reviewed at the DOE Rocky Flats Freedom of Information Reading Room and the DOE Oak Ridge Public Reading Room.

The public hearings for this rulemaking will be held at the following addresses:

Oak Ridge, TN: The American Museum of Science and Energy, 300 South Tulane Avenue, Auditorium, Oak Ridge, TN 37830

Golden, CO (Denver): National Renewable Energy Laboratory, Visitor Center, Auditorium, 15013 Denver West Parkway, Golden, CO 80401 (I–70, Exit 263, right at top of exit ramp if coming from Denver, left at stop sign, building on right)

Washington, DC: U.S. Department of Energy, Room 1E–245 (first floor, E corridor), 1000 Independence Avenue, SW, Washington, DC 20585

For more information concerning public participation in this rulemaking proceeding, see Section VIII of this notice (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH–51, 1000 Independence Avenue SW, Washington, DC 20585, 301–903–5684 or Edward LeDuc, U.S. Department of Energy, Office of General Counsel for Environment, 1000 Independence Avenue SW, Washington DC 20585, 202–586–6947.

For information concerning the public hearings, requests to speak at the hearings, submittal of written comments, or to obtain copies of materials referenced in this notice, contact: Andi Kasarsky, 202–586–3012.

SUPPLEMENTARY INFORMATION:

I. Overview
II. Legal Authority and Relationship to Other Regulatory Programs
III. Chemical Identification and Use
IV. Health Effects
  A. Introduction
  B. Chronic Beryllium Disease
  C. Beryllium Exposures at DOE Operations
  D. Epidemiology
  E. Value of Early Detection
V. Request for Information
VI. Section-by-Section Analysis
  A. Subpart A—General Provisions
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VII. Procedural Requirements
  A. Review Under Executive Order 12866
  B. Review Under the Regulatory Flexibility Act
  C. Review Under the Paperwork Reduction Act
  D. Review Under the National Environmental Policy Act
  E. Review Under Executive Order 12612
  F. Review Under Executive Order 12988
  G. Review Under the Unfunded Mandates Reform Act of 1995
VIII. Public Comment Procedures
  A. Written Comments
  B. Public Hearings
Appendix—References

I. Overview

The Department of Energy (DOE) has a long history of beryllium use because of the element's broad application to many nuclear operations and processes. Beryllium metal and ceramics are used in nuclear weapons, as nuclear reactor moderators or reflectors, and as nuclear reactor fuel element cladding. At DOE, beryllium operations have historically included foundry (melting and molding), grinding, and machine tooling of parts.

Inhalation of beryllium dust or particles causes chronic beryllium disease (CBD) and beryllium sensitization. CBD is a chronic, often debilitating, and sometimes fatal lung condition. Beryllium sensitization is a condition in which a person's immune system becomes highly responsive (allergic) to the presence of beryllium in the body. There has long been scientific consensus that exposure to airborne beryllium is the only cause of CBD.

As of June 1998, 110 workers have been diagnosed with CBD, and another 232 workers have become sensitized to beryllium from among the 8,951 current and former DOE Federal and contractor workers who were screened for the disease. DOE anticipates an increase in the number of workers who may be exposed to beryllium as the Department moves forward with deactivating and decommissioning former nuclear weapons production facilities.

The current worker protection permissible exposure limit (PEL) of 2 $\mu g/m^3$, measured as an 8-hour, time-weighted average (TWA), was adopted by the Occupational Safety and Health Administration (OSHA) as codified in 29 CFR 1910.1000 Tables Z–1, Z–2 and Z–3 in 1971 by reference to existing national consensus standards. This limit of $2\ \mu g/m^3$ was set by DOE and its predecessor agencies, the Energy Research and Development Administration (ERDA) and the Atomic Energy Commission (AEC), for application at their facilities in 1949. Between the 1970s and 1984, there was a significant reduction in the incidence rate of the disease. This, coupled with the long latency period for the disease, led to the assumption that CBD was occurring only among workers who had been exposed to high levels of beryllium decades earlier (e.g., in the 1940's). However, DOE medical surveillance programs are discovering cases of CBD among workers who were first exposed after 1970, when DOE facilities were expected to maintain worker exposure to beryllium at levels below the OSHA PEL.

The number of confirmed cases of CBD, data suggesting the occurrence of CBD among workers with low-level exposures, and the expected future increase in the number of workers potentially exposed to beryllium all indicate a need for more aggressive workplace controls to minimize worker exposure to beryllium in the DOE complex. Accordingly, DOE has developed this notice of proposed rulemaking (NOPR) to establish a performance-based approach to protecting DOE Federal and contractor employees from the adverse health effects resulting from occupational exposure to beryllium and preventing cases of CBD resulting from DOE operations. DOE proposes to accomplish this goal through the implementation of a comprehensive chronic beryllium disease prevention program (CBDPP), which is designed to reduce the number of workers exposed, minimize the levels of beryllium exposure and the potential for beryllium exposure, and establish medical surveillance protocols to ensure early detection of disease. Because the occupational health community, including OSHA and the American Conference of Governmental Industrial Hygienists (ACGIH), does not at this time have sufficient exposure and health effects data to establish a new 8-hour TWA exposure limit for beryllium exposure, DOE is instead including in the proposed regulation a short-term exposure limit (STEL) of $10\ \mu g/m^3$ for small-scale, short-duration operations, an 8-hour TWA action level of $0.5\ \mu g/m^3$ for triggering certain precautions and control measures, and an exposure reduction and minimization requirement that will encourage contractors to reduce potential exposures to the action level or below. This combined approach should provide a reasonably safe and achievable added layer of protection to beryllium workers in view of data, which suggest that CBD or beryllium sensitization has occurred at exposures of $2\ \mu g/m^3$ or less, and in view of the related scientific uncertainty with respect to the adequacy of the existing PEL. In addition to these immediate efforts, DOE intends to adopt a revised OSHA PEL for beryllium if OSHA rulemaking efforts for beryllium conclude that a new PEL for beryllium is appropriate. DOE acknowledges that Great Britain, which also employs a $2\ \mu g/m^3$ 8-hour TWA PEL, has experienced a minimal number of CBD cases among its exposed work force. The Department recognizes that the difference between DOE's and Great Britain's experiences with the occurrence of CBD may be indicative of the use of more stringent work practice controls at Great Britain's facilities. DOE believes, however, that the fortified approach set forth in the proposed regulation will work towards eradicating CBD within the Department.

DOE contractors are already required, under DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees, to have general worker protection programs. DOE Order 440.1A contains a set of minimum general requirements that establish the framework for the worker protection program. The proposed rule would enhance and supplement these existing programs with hazard-specific provisions to manage and control beryllium exposure hazards.

This proposed CBDPP rulemaking initiative has been preceded by 2 years of information-gathering and data analysis by the Department. In 1996, the Department surveyed its contractors to characterize the extent of beryllium usage, the types of tasks involving beryllium usage, the controls in place for each task, the estimated number of workers exposed during each task, and the estimated exposure levels associated with each task.

In summary, this survey found that between 1994 and 1996, 10 of the 15 DOE sites surveyed performed 64 different operations or processes that could expose workers to beryllium. The surveyed DOE sites estimated that between 518 and 530 workers in 58 different job categories were potentially exposed to beryllium in the performance of these 64 operations or processes. Where available, reported 8-hour TWA exposure data (personal breathing zone monitoring results) for these workers ranged from nondetectable to $25\ \mu g/m^3$. Most of these exposure levels were reported to be below the $2\ \mu g/m^3$ 8-hour TWA PEL. To control worker exposures in the affected processes or operations, the surveyed sites reported the use of various engineering and administrative controls, including ventilation hoods, glove boxes, wet machining methods, high-efficiency particulate air (HEPA) vacuums, regulated areas, action levels and administrative warning levels, and personal protective equipment. Copies of this survey are available for review and copying at the DOE headquarters, Rocky Flats, and Oak Ridge Public Reading Rooms (see the **ADDRESSES** section of this NOPR for addresses and details) as part of the prerulemaking docket filed under BERYLLIUM STANDARD.

To supplement the data obtained from the 1996 survey, the Department published a **Federal Register** notice on December 30, 1996, requesting scientific data, information, and views relevant to a DOE beryllium health standard (61 FR 68725). The survey and **Federal Register** notice were followed by two Beryllium Public Forums, held in Albuquerque, New Mexico, and Oak Ridge, Tennessee, in January 1997. Responses to the **Federal Register** notice and the proceedings of the public forums are also available in the "BERYLLIUM STANDARD" docket file.

Acting on the information compiled from these various sources, and in view of the time needed to promulgate a rule, former Secretary of Energy Peña directed the Office of Environment, Safety and Health to publish a new DOE policy to protect the workforce while the Department moved forward with its rulemaking process. DOE Notice 440.1, Interim Chronic Beryllium Disease Prevention Program, was signed by former Secretary Peña and issued on July 15, 1997. The Department decided to issue the interim Notice to direct immediate action for the protection of workers while the rulemaking efforts continued. This interim Notice established a CBDPP that enhanced and supplemented worker protection programs already required by DOE Order 440.1A with hazard-specific provisions that are designed to manage and control beryllium exposure hazards in the DOE workplace.

Because of the complexity and significance of issues regarding the development of a DOE health standard for beryllium, former Secretary Peña also established the Beryllium Rule Advisory Committee (BRAC) in June 1997 to advise the Department on issues pertinent to the proposed rulemaking activity. The BRAC, which consisted of a diverse set of stakeholders and

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recognized experts from DOE, other Federal agencies, industry, labor, medicine, and academia, generated a set of recommendations for consideration in the development of a CBDPP rule.[1]

DOE used the BRAC recommendations and the lessons learned in the implementation of DOE Notice 440.1 to develop this NOPR. Consistent with the Department's worker protection philosophy and the BRAC recommendations, the objectives of this proposed rule are to: (1) Minimize the number of workers exposed to beryllium; (2) minimize the levels of beryllium exposure and the potential for beryllium exposure; (3) establish medical surveillance protocols to ensure early detection of CBD; and (4) assist affected workers who are dealing with beryllium health effects. In addition, the Department intends to collect and analyze as appropriate the resulting exposure and health data as part of its ongoing beryllium-related research efforts to ensure the protection of workers' health. DOE will consider the desirability of amendments to its regulations as additional information and feedback are collected.

This proposed rule is not being promulgated as a nuclear safety requirement as defined in 10 CFR part 820, Procedural Rules for Nuclear Activities. Any radiological implications of the two radioisotopic forms of beryllium would be addressed under the provisions of 10 CFR part 835, Occupational Radiation Protection.

II. Legal Authority and Relationship to Other Regulatory Programs

The Department of Energy has broad authority as provided by the Atomic Energy Act, 42 U.S.C. 2201(i)(3) and (p) to develop generally applicable policies covering all aspects of defense nuclear facilities, including protection of the health of workers. Under the Atomic Energy Act, DOE may impose requirements on its contractors either by regulation, or by administrative directive (orders and notices) that are made binding through incorporation into DOE contracts.

DOE contractors currently are required by DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees, to have general worker protection programs. Additionally, on July 15, 1997, former Secretary Peña issued DOE Notice 440.1, Interim Chronic Beryllium Disease Prevention Program, to supplement the general worker protection programs with provisions specifically aimed at the hazards of beryllium in the DOE work place. Implementation of the interim Notice depended upon negotiation with DOE contractors to include compliance with Notice 440.1 as a term of their contracts, or their agreement voluntarily to comply.

As discussed in the Overview section of this preamble, former Secretary Pēna established a Beryllium Rule Advisory Committee in June of 1997 to assist DOE to develop a rule to establish permanent Chronic Beryllium Disease Prevention Program provisions that would apply to all covered DOE contractors and employees. The Department's decision to use rulemaking to establish a CBDPP requirement is based on the need for consistency in the implementation of particular CBDPP requirements and a desire to give all potentially affected persons and institutions a meaningful opportunity to provide information and views on the proposed program. Without a DOE rule, DOE contractors would be obligated to bargain about such provisions with the organizations representing the contractors' employees for purposes of collective bargaining. That approach would likely produce inconsistent outcomes in areas such as worker exposure monitoring and medical surveillance. DOE believes a rule or regulation would result in more uniform implementation across the DOE complex and, thus, improve worker protection and the quality of information generated regarding the health effects of exposure to beryllium.

DOE recognizes that it may be necessary in the future to amend its CBDPP regulations if other Federal agencies promulgate rules governing worker exposure to beryllium. Although DOE facilities currently are exempt from regulation by the Occupational Safety and Health Administration (OSHA), DOE routinely adopts OSHA health standards, as a matter of policy. DOE is aware that OSHA plans to initiate a rulemaking to examine, and possibly revise, their current health standard for beryllium. Additionally, DOE is working with the Congress on plans to eventually transfer responsibility for regulating health and safety at DOE facilities to another Federal agency (probably OSHA). In light of the uncertain timing of future actions by OSHA or another external regulator, and the present and potential risk to workers at DOE facilities from beryllium exposure, DOE has decided to proceed with this rulemaking now. However, considering OSHA's decision to examine the health standard for beryllium, DOE proposes (in proposed section 850.22, Exposure Limits) to express the permissible exposure limit (PEL) as 2 ug/m^3 calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone, or any more stringent limit that OSHA may promulgate pursuant to section 4(b)(1) of the OSH Act. This language would permit DOE to continue its policy of requiring compliance with OSHA health standards without conducting notice and comment rulemaking to amend these regulations.

III. Chemical Identification and Use

Beryllium (atomic number 4) is a silver-gray metal with a density of 1.85 g/cm^3 and a high stiffness. Beryllium is found in the earth's surface in about 45 minerals. Bertrandite ($Be_4Si_2O_7[OH]_2$) is the major source of beryllium; other important beryllium-containing materials include beryl ($3BeO.Al_2O_36.SiO_2$), chrysoberyl ($BeAl_2O_4$), and phenacite ($BeSiO_4$). The alloying property of beryllium confers on metals specific properties of resistance to corrosion, vibration, and shock; beryllium can also improve alloy hardness and ductility. For example, the addition of only 2 percent or less beryllium to copper forms an alloy with high strength and hardness. Few other copper alloys are capable of this type of strengthening.

Because of their strength, formability, thermal and electrical conductivities, magnetic transparency, and corrosion resistance, beryllium alloys (especially beryllium-copper) are used extensively in industries such as automotive, electronics, aerospace, and defense. In electronics, for example, beryllia ceramics provide good electrical insulators with superior thermal conductivity to remove heat. Beryllium's low neutron absorption, high neutron scattering characteristics, and ability to multiply neutrons have led to its use in experimental nuclear reactors and nuclear weapons.

IV. Health Effects

A. Introduction

Chronic beryllium disease (CBD) is a disease of the lungs. CBD is caused by the body's reaction to inhaled beryllium dust or fumes. The time in which an individual may develop CBD may vary from several months to many years after exposure to beryllium. The body's reaction to beryllium is often called "sensitization." Sensitization means that beryllium specific lymphocyte proliferation testing has demonstrated that an individual is able to mount a cell mediated immune response to beryllium. Data suggest that even brief or small exposures can lead to CBD. Beryllium is also classified as a human carcinogen (cancer-causing agent) by the International Agency for Research on Cancer (IARC) and by the American Conference of Governmental Industrial Hygienists (ACGIH).

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[1] BRAC recommendations were made by individual members and groups of members, not by majority vote. They were generated by the facilitated process used during the meetings and were not adopted by the committee as consensus opinions. For convenience of reference these recommendations are referred to as the "BRAC recommendations."

Symptoms of CBD include one or more of the following: cough, difficulty breathing, fever, night sweats, fatigue, weight loss, or appetite loss. On physical examination, a doctor may find signs of CBD, such as changes in lung sounds, fever, and weight loss. A radiograph (X-ray) of the lungs may show many small scars. There may also be an abnormal breathing test, pulmonary function tests, and a blood test, the beryllium-induced lymphocyte proliferation test (Be-LPT). Examination of lung tissue under the microscope may show granulomas, which are signs of damage due to the body's reaction to beryllium. CBD may be confused with other lung diseases, especially sarcoidosis.

Patients with CBD can be treated with medication and, in more serious cases, with oxygen. Patients who are sensitized to beryllium do not need medical treatment, but they must be checked regularly for signs or symptoms of CBD. CBD cannot be cured. Severe CBD may be very disabling.

B. Chronic Beryllium Disease

Chronic beryllium disease is a granulomatous disease affecting primarily the lungs, although systemic involvement may also occur. Exposure occurs via inhalation of beryllium metal or insoluble beryllium salts. Beryllium is a hapten (a substance that provokes an immune response only when combined with another substance, generally a protein) that binds to peptides on mucosal surfaces. In susceptible individuals the beryllium-peptide complex initiates an immune response, which may progress ultimately to granuloma formation in the pulmonary interstitium. Data have suggested that CBD occurs at relatively low exposure levels and, in some cases, after relatively brief durations of exposure. The typical latency period is 5 to 10 years, but it varies from several months to 30 years or more.

Frequently reported symptoms include dyspnea on exertion, cough, chest pain and, less frequently, arthralgias, fatigue, and weight loss. Physical examination may be normal or it may reveal rales, cyanosis, digital clubbing, or lymphadenopathy. In advanced cases, there may be manifestations of right-sided heart failure, including cor pulmonale.

The peripheral blood beryllium-induced lymphocyte proliferation test (Be-LPT) is used to detect *in vitro* the immunologic response of human lymphocytes to beryllium. A positive Be-LPT indicates sensitization to beryllium-containing antigens. A diagnostic evaluation by means of bronchoscopy with bronchoalveolar lavage (BAL) and transbronchial biopsy is indicated. The presence of granulomata in the lung in a patient with a positive lung Be-LPT is diagnostic of CBD. In the absence of granulomata or other clinical evidence of CBD, individuals with positive Be-LPTs are classified as sensitized to beryllium.

The rate of progression from sensitization to disease is unknown. Once sensitization has occurred, it is medically prudent to prevent additional exposure to beryllium. However, this measure has not been shown to prevent or delay the progression of sensitization to CBD.

The clinical course of CBD is highly variable. Some individuals deteriorate rapidly; most experience long, gradual deteriorations. Treatment consists of oral corticosteroid therapy. Individuals with impaired respiratory gas exchange may require continuous oxygen administration.

Individuals sensitized to beryllium are asymptomatic and not disabled. Individuals with CBD have clinical illness varying from mild to severe. In severe cases, the affected individuals may be permanently and totally disabled. Mortality directly attributable to CBD and its complications is estimated to be 30 percent (ref.1).[2] The mortality estimate of 30% is based upon historical data reflecting both the higher levels of exposure that occurred in the workplace prior to regulation of workplace exposure in the late 1940s and a tracking of the medical history of subjects of CBD over several decades. DOE's more recent experience suggests a lower mortality rate of 3% for CBD cases.

C. Beryllium Exposures at DOE Operations

Personal monitoring of occupational exposures to beryllium was not widely adopted at DOE sites until the 1980s. Prior to the 1980s many sites relied on area monitoring to assess occupational exposures to beryllium. However, these have been shown to significantly underestimate actual exposure levels. Since 1984, personal sampling data have provided more precise information on occupational exposure to beryllium at DOE sites.

Available personal sampling data provides a clear indication of the low levels of beryllium exposure which can be achieved in both fabrication and machining operations and decommissioning and decontamination projects when effective control strategies are implemented. Most beryllium fabrication and machining operations at DOE to date have been at the Rocky Flats facility and at the Y–12 plant in Oak Ridge. Over time, engineering improvements and advanced control strategies have significantly reduced occupational beryllium exposure levels in these operations.

Since 1980, and continuing through 1996, about 1600 personal samples have been collected at the Oak Ridge Y–12 Plant (Table 1). These samples were taken at several different Y–12 operations with a bias toward sampling those jobs where exposure potential was greatest or where previous monitoring results were high. Despite this bias, over two thirds of sample results were below the limit of detection of 0.1 μg/m^3 (usually reported as "none detected").

TABLE 1.—OAK RIDGE Y–12 PLANT PERSONAL SAMPLING

	1980–1989	1990–1996
Number of samples	148	1448.
Arithmetic Mean	0.9 μg/m^3	0.3 μg/m^3.
Percent of samples less than 2 μg/m^3.	94%	98%.

These data are from beryllium operations that are associated with cases of chronic beryllium disease. The facilities where these operations take place have not been remodeled since the 1970s. Increased monitoring in the 1990s led to investigations of exceedences over the existing exposure limit and resulted in changes to work practices that contributed to the high readings. This focus on levels exceeding the limit also led to a significant reduction in average exposure levels.

Personal sampling data from the Rocky Flats Building 444 Beryllium Machine Shop (Table 2) collected in 1984–85 and after extensive remodeling to the ventilation system in 1986 illustrate the impact and effectiveness of engineering modifications to control exposure.

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[2] A listing of references is included at the end of the preamble to this Notice of Proposed Rulemaking.

TABLE 2.—ROCKY FLATS BUILDING 444 BERYLLIUM MACHINE SHOP PERSONAL SAMPLING DATA

	1984–1985	1986
Number of Samples	99	279.
Arithmetic Mean	1.19 µg/m³.	0.035 µg/m³.
Percent of samples less than 2 µg/m³.	84%	99.6%.

The samples collected in 1984 were the first personal samples collected in this shop following the discovery of a case of CBD that year. Controls in that machine shop had previously been judged to be adequate based on area monitoring. In addition to the extensive remodeling of the ventilation system in the shop to minimize leakage from hoods, operations performed outside of hoods were eliminated to the extent possible. The decision to implement improved engineering controls in this shop reduced average exposure levels by a factor greater than 30 to levels approaching 1% of the limits established by the existing PEL.

A final example, taken from personal sampling data collected during decontamination of Rocky Flats buildings 865 and 867 in 1995–1996, further demonstrates the low levels of beryllium exposure which can be achieved through effective control planning (See Table 3). Each worker was sampled during each work shift during this time period.

TABLE 3.—DECONTAMINATION OF ROCKY FLATS BUILDINGS 865 AND 867 PERSONAL SAMPLING, 1995–1996

Number of Samples	7673.
Arithmetic Mean	0.03 µg/m³.
Percent of samples less than 2 µg/m³	99.8%.

As can be seen from the foregoing examples, Rocky Flats machining and D&D operations achieved an exceptional level of exposure control.

While the application of controls eliminates predictable sources of exposure, there still can be large day-to-day variations in exposure. The exposures that remain are likely to reflect accidents, equipment failures, or poor work planning. Meeting exposure minimization goals will require planning to limit the potential for such occurrences and monitoring to detect those that do occur so they can be investigated and prevented from reoccurring.

The personal monitoring results at Rocky Flats and Y–12 indicate that most exposures are very low with a few exceptions. These exceptions account for much of the total exposure that workers receive.

D. Epidemiology

The first evidence of the existence of chronic beryllium disease (CBD) was reported in a 1946 paper by Hardy and Tabershaw (ref. 2). The paper described "delayed chemical pneumonitis" among fluorescent lamp workers exposed to beryllium compounds. The differential diagnosis included tuberculosis and sarcoidosis, an immune disease of unknown etiology.

There were also reports of CBD in individuals without known occupational exposure to beryllium. Under the direction of Dr. Thomas Mancuso, 16 cases of CBD were diagnosed (by X-ray examination) among 20,000 residents living near a beryllium production facility in Lorain, Ohio (ref. 3). Likewise, a 1949 report described 11 patients with CBD who lived near a beryllium extraction plant (ref. 4). Ten of these 11 lived within ¾ of a mile of the plant, and exposure from plant discharges into the air was the suggested cause for their CBD. Measurements of air concentrations of beryllium at various distances from the plant provided the basis for the Environmental Protection Agency's (EPA's) community permissible exposure limit (24-hour ambient air limit of 0.01 microgram of beryllium per cubic meter of air [µg/m³]).

In addition, CBD has been reported among family members of beryllium workers who were presumably exposed to contaminated work clothing during the 1940's and 1950's (refs. 5, 6). The virtual disappearance of CBD as a result of air pollution or household exposures has been attributed to more stringent control of air emissions and improved work practices, such as mandatory work clothing exchange. This reduction in disease incidence is also attributed to improvements in diagnostic testing (ref. 7). However, as recently as 1989, a woman previously diagnosed with sarcoidosis was diagnosed with CBD. She had no occupational exposure, but her husband was a beryllium production worker. This is the first new case of non-occupational CBD reported in 30 years.

Sterner and Eisenbud suggested that CBD was a highly selective immunologic response. Their conclusion was based on epidemiologic evidence that (1) severe cases have occurred at low exposure; (2) the level of beryllium contained in tissue did not correlate with the extent of the disease; (3) there was a correlation between disease and low atmospheric concentration, but not high concentrations; (4) the onset of symptoms could occur years after the termination of exposure; and (5) pulmonary lesions were not easily reproduced in animals (ref. 6).

A registry of production plant CBD cases was started at Columbia University in 1947. A second registry of phosphor-lamp CBD cases was started around the same time. In 1952, a Beryllium Case Registry was established at the Massachusetts Institute of Technology (MIT) where files from the other beryllium registries were consolidated. The consolidated Beryllium Case Registry was moved to Massachusetts General Hospital in the 1960's and ultimately relocated to the National Institute for Occupational Safety and Health (NIOSH) in 1978. At that time, the Beryllium Case Registry contained 622 cases of CBD, 224 cases of acute beryllium disease, and 44 acute cases that developed into CBD. Twenty-three cases were attributed to household exposures and 42 to air pollution (ref. 5). The Beryllium Case Registry, which is now inactive, was criticized as deficient in acquiring data on cases, identifying populations at risk (denominator data), maintaining follow up of questionable cases, and obtaining exposure data (ref. 8).

According to criteria utilized by the Beryllium Case Registry, the diagnosis of CBD included at least four of the following six criteria with one of the first two conditions required: (1) the establishment of beryllium exposure based on occupational history or results of air samples, (2) the presence of beryllium in lung tissue or thoracic lymph tissue or in the urine, (3) evidence of lower respiratory tract disease and a clinical course consistent with beryllium disease, (4) pathological changes consistent with beryllium disease on examination of lung tissue or thoracic lymph nodes, (5) radiologic evidence of interstitial lung disease, and (6) decreased pulmonary function tests (ref. 9).

The beryllium-induced lymphocyte proliferation test (Be-LPT) in blood and bronchoalveolar lavage (BAL) fluid has allowed early identification of the disease and is one of the criteria required for diagnosis (refs. 10–12). Beryllium has been found to act as a specific antigen, causing proliferation and accumulation of beryllium-specific helper T lymphocytes (CD4) in the lung (ref. 13). Current data suggest that the peripheral blood Be-LPT is a specific and sensitive method for testing beryllium sensitivity (ref. 10). The presence of granulomatous tissue in the lung along with a positive BAL Be-LPT is considered definitive evidence for diagnosis of CBD (ref. 11). Probable CBD is also diagnosed based on signs and symptoms of CBD and a positive blood Be-LPT when bronchoscopy is not indicated or is refused.

An article published by Cullen et al. in 1987 reported on cases of CBD among precious-metal refinery workers (ref. 14). In 1993, researchers at the National Jewish Medical and Research Center (NJMRC) published two reports on epidemiologic studies that were designed to determine the incidence of CBD among beryllium workers and the value of the Be-LPT in detecting CBD (refs. 15, 16). One study was conducted at DOE's Rocky Flats Environmental Technology Site (Rocky Flats). The three epidemiologic studies showed that CBD incidence among exposed workers was the same as had been reported among workers exposed in the 1940's, when the disease was first recognized. These were the first studies of exposed workers since the adoption of the current Occupational Safety and Health Administration (OSHA) 8-hour, time-weighted average (TWA) permissible exposure limit (PEL) of 2 μg/m³. The exposure limit was originally derived by analogy to other toxic metals (ref. 17). A decline in the number of reports of CBD led to the assumption that the 2 μg/m³ limit had been effective in preventing CBD (ref. 5). It is now clear that these standards have not eliminated the incidence of disease.

In 1991, following the NJMRC study, the DOE Office of Environment, Safety and Health initiated a beryllium worker health surveillance program at Rocky Flats to provide medical screening to current and former beryllium workers who had not participated in the earlier NJMRC study. In addition, the Office of Environment, Safety and Health initiated a study at the Oak Ridge Y–12 Plant (Y–12) in 1991 to learn if the NJMRC findings on CBD incidence and the effectiveness of the Be-LPT could be replicated. Results to date confirm NJMRC findings that CBD incidence rates are high and that the Be-LPT is an effective screening test for CBD as shown in Table 4.

TABLE 4.—RESULTS OF MEDICAL SCREENING OF BERYLLIUM-EXPOSED WORKERS AT 3 DOE SITES THROUGH DECEMBER 1997

	Rocky Flats	Y–12	Mound
Individuals Examined	6257	1949	632
Abnormal Be-LPT, Number (percent)	221 (3.5)	77 (4)	[1]1
Completed Diagnostic Exams	186	33	0
CBD[2] Number (percent)	79[3] (1.3)	25[4] (1.3)	0

[1] The one Mound employee who was found to be consistently positive declined to go on for diagnostic testing. Four others had one positive blood test result and were awaiting retesting.

[2] Includes 44 cases confirmed through biopsy and testing of lavage cells and 35 presumptive cases in which the pulmonologist diagnosed CBD but biopsy and/or lavage could not be completed.

[3] Includes 56 cases found through the surveillance program since 1991, 17 through the 1987–1991 NJMRC study, and 6 between 1984 and 1987 for a total of 79 CBD cases. Six of the 79 cases had consistently normal Be-LPT results and were identified through lung disease symptoms or abnormal chest X-rays.

[4] Includes 17 cases found in the surveillance program since 1993, 2 found in 1991 among beryllium workers who had been diagnosed with other lung diseases, and 6 cases found by the site clinic in 1993 among 146 currently exposed beryllium workers provided the Be-LPT.

In 1996, three studies reported on exposure to beryllium associated with CBD and immunologic sensitization to beryllium (refs. 18–20). Two of the studies reported on cases of CBD at Rocky Flats (refs. 18, 19). The third reported on an epidemiology study of a private sector beryllia ceramics fabrication plant that began operating in 1981 (ref. 20). Both Rocky Flats and the ceramics plant were extensively monitored for compliance with the current OSHA 8-hour TWA exposure standard of 2 μg/m³. The authors concluded that exposures among the highest exposed groups in the plants were, on average, below the 2 μg/m³ limit. At both plants, cases of CBD and sensitization to beryllium were found among administrative and other personnel, whose average exposures were lower, as well as among the more highly exposed workers.

Stange and colleagues reported on the findings of a health surveillance program at Rocky Flats that used the Be-LPT to screen for CBD (ref. 18). Of 97 individuals who tested positive on the Be-LPT, 28 were found to have CBD. The article included an analysis of the work histories of these 97 current and former workers. A qualitative exposure estimate based on the work histories of individuals who developed CBD concluded that exposures varied by more than an order of magnitude. Extensive air monitoring data were available for one of the highest exposed groups, machinists.

Barnard and colleagues completed an extensive analysis of the monitoring data associated with machining operations at Rocky Flats (ref. 19). Prior to 1984, air monitoring was accomplished with fixed area monitors located near the machine tools that were thought to be the primary sources of emissions into the work rooms. In 1984, personal sampling was initiated, which was more representative of individual exposure. The article reported a high degree of uncertainty in exposure assessments prior to 1984 due to the lack of correlation between area monitoring and personal monitoring. The authors concluded that machinists, as a group, shared similar exposure potential, that average exposures were less than but near the 2 μg/m³ limit, and that excursions above the limit were common.

Kreiss and colleagues studied CBD occurring in a beryllium oxide ceramics manufacturing plant (ref. 20). They found that machinists had the highest incidence rate of beryllium sensitization and the highest exposure potential. The area monitoring conducted in this plant was aimed at estimating exposures associated with job titles and was found to correlate with personal sampling. The authors concluded that "the existing data suggests that the machining exposures resulting in the 14.3 odds ratio for beryllium sensitization were largely within those permitted by current regulations." This article confirmed the findings of a study of CBD in the neighborhood of a beryllium extraction plant, which showed a correlation between ambient beryllium levels and incidence of CBD (ref. 4). Further analyses of CBD incidence at Rocky Flats, as yet unpublished, showed a similar higher risk for machinists compared to that for other workers (See Table 5).

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TABLE 5.—INCIDENCE RATES OF CBD AT ROCKY FLATS

Job category [1]	Number tested	CBD cases	Incidence rate (percent)
Beryllium Machinist	223	21	9.4
Administrative	1,903	23	1.2
Professional	1,396	15	1.1
All Employees Tested	6,254	64	1.0

[1] Many employees held more than one job title.

Cases of CBD have occurred in machinists who worked in the Y–12 beryllia ceramic machine shop, where levels have been quite low. Only a small percentage of samples have detected beryllium. Applying a nonparametric tolerance limit test to 1980 and 1990 personal sampling results from this shop shows, with 95 percent confidence, that 90 percent of exposures were lower than the detection limit (0.1 μg/m³ in the 1980–1990 timeframe). Only one of several hundred personal samples was over the 2 μg/m³ limit. Continuous area air monitors have operated in the shop throughout its existence. One area sample indicated levels above 2 μg/m³ when a machine tool was operated with a disconnected exhaust duct. No other area measurement above 2 μg/m³ were recorded, and the median measurement was at the level of detection.

Several authors have highlighted the uncertainty that exists in the exposure assessments (refs. 19–21). The chemical composition of the beryllium materials used and the particle size distribution of the aerosol created by the work operation affect the bioavailability of beryllium, and neither is accounted for by current personal sampling and analytical methods. It is not known what percentage of the beryllium that is being measured in air is capable of reaching the regions of the lung where the health effect occurs. In addition, area monitoring used in the past does not correlate with the personal monitoring that is thought to be more representative of exposure (refs. 19, 21).

Epidemiologic investigations to date have failed to show whether the time course of exposure (dose rate) is biologically significant. High day-to-day variation in exposure level and excursions above the 2 μg/m³ limit have occurred in all groups studied. Excursions make up a significant contribution to individuals' total doses, confounding attempts to understand if dose rate is an important risk factor. Beryllium oxide and metal in the lung dissolve slowly over a period of months and years (ref. 22), producing the beryllium ion that elicits an immune response (ref. 23). The persistent presence of the beryllium ion in the lung makes CBD a chronic disease (ref. 24). Either intermittent or chronic exposure to less soluble forms of beryllium can create and maintain a lung burden that will not clear for many years, if at all (ref. 25).

Certain individuals are more susceptible to CBD than others. It has long been suspected that genetic predisposition plays an important role in determining who will develop CBD. Recent advances in genetics and immunology have made it possible for researchers to investigate the basis for CBD and to identify a genetic component (ref. 26).

Differences in individual susceptibility have made it difficult to understand the relationship between exposure and CBD. Early epidemiologic studies detected similar disease rates among high- and low-exposure occupational groups (Table 6). The NJMRC researchers detected differences in disease rates among the workers they studied (Table 7). The DOE surveillance findings supported this conclusion (See Table 5). NJMRC researchers have found cases of CBD among those who had been exposed for periods as short as 1 month and those who had unrecognized or seemingly trivial exposure. However, they also found evidence that disease incidence increased with increasing exposure and concluded that exposure to beryllium should be minimized.

TABLE 6.—CHRONIC BERYLLIUM DISEASE RATES

Exposed during the 1940's	Estimated exposed	Cases	Estimated incidence per 100 exposed	Estimated level of exposure μg/m³
Residents Living Within 0.25 Mile of a Beryllium Extraction Plant [1]	500	5	1.0	1
Fluorescent Lamp Manufacturing [1]				
Massachusetts	15,000	175	1.16	100
Ohio	8,000	32	0.4	100
Machine Shop [1]	225	11	4.9	500
Beryllium-Copper Foundry [1]	1,000	13	1.3	500
Beryllium Extraction [1]				
Lorain, Ohio	1,700	22	1.3	1000
Painesville, Ohio	200	0	0.0	1000
Reading, Pennsylvania	4,000	51	1.3	1000
Exposed from the 1970's to the 1980's	**Study participants**	**Cases**	**Incidence per 100 exposed**	**Estimated level of exposure μg/m³**
Beryllia Ceramics Plant [2]	505	9	1.8	NA
The DOE Rocky Flats Plant [3]	895	15	1.7	1

Exposed from the 1970's to the 1980's	Study participants	Cases	Incidence per 100 exposed	Estimated level of exposure µg/m³
Second Beryllia Ceramics Plant[4]	709	8	1.1	0.5

[1] Eisenbud and Lisson, "Epidemiologic Aspects of Beryllium-Induced Non Malignant Lung Disease: A 30-Year Update," JOM, Vol. 25, pp 196–202, 1983.

[2] Kathleen Kreiss et al., "Beryllium Disease Screening in the Ceramics Industry," JOM, Vol. 35, pp 267–274, 1993.

[3] Kathleen Kreiss et al., "Epidemiology of Beryllium Sensitization and Disease in Nuclear Workers," Am. Rev. Res. Dis., Vol. 148, pp 985–991, 1993.

[4] Kathleen Kreiss et al., "Machining Risk of Beryllium Disease and Sensitization with Median Exposures Below 2 µg/m³," Am. J. Ind. Med., Vol. 30, pp 16–25, 1996.

TABLE 7.—BERYLLIUM SENSITIZATION AND DISEASE RATES AT ROCKY FLATS

Beryllium process title	Workers sensitized	Workers doing process	Sensitization rate (percent)
Cleaning Tools, Machines	7	255	2.7
Machining	6	189	3.2
Inspection	2	138	1.4
Metallurgical Sample Preparation	3	115	2.6
Sawing	5	06	4.7
Trepanning	3	77	3.9
Band Sawing	4	67	6.0
Decanning, Shearing	2	65	3.1
Precision Grinding	2	31	6.5
All participants	**Number**	**Participants**	**Rate (percent)**
Sensitized	18	895	2.0
Confirmed CBD Cases	15	895	1.7

From Kathleen Kreiss et al. "Epidemiology of Beryllium Sensitization and Disease in Nuclear Workers," Am. Rev. Res. Dis., Vol. 148, pp 985–991, 1993.

A recent publication by Eisenbud in January 1998, (ref. 27), consolidated the previous epidemiologic studies that have questioned the relevance of the current PEL after evaluating the effect of the level of exposure on disease. In this article, Eisenbud concludes that it "appears" the current 2 µg/m³ standard is not protective enough. Rather than recommend an alternative exposure limit, however, Eisenbud points to the need for the development of an animal model to aid in better understanding the etiology of CBD and suggests that innovative measures may be needed to control the disease.

In summary, evidence suggests higher incidence of CBD among workers with higher exposures (e.g., machinists), but, at lower exposure levels, other factors may operate to confound a clear dose-response relationship. These factors include: (1) The effect of peak exposures (such that most of the exposure results from short-term episodes); (2) inadequacy of area monitoring in reflecting actual exposure; (3) chemical composition, etc., that may affect bioavailability; (4) inadequate monitoring of beryllium composition/species associated with exposures; and (5) the effect of genetic predisposition. As a result, the existing literature does not point to a clear set of measures that will reduce incidence.

E. Value of Early Detection

Researchers at the National Jewish Medical and Research Center (NJMRC) compared the lung functions of patients with chronic beryllium disease (CBD) who had been identified through abnormal chest X-rays or clinical symptoms to those of patients whose CBD had been identified through positive beryllium-induced lymphocyte proliferation tests (Be-LPTs) (ref. 28). Twelve of 21 Be-LPT-identified patients had lung abnormalities, including reduced exercise tolerance. Fourteen of 15 patients identified through chest X-rays or clinical symptoms had abnormal lung function, and their abnormalities were more severe. The authors concluded that the Be-LPT was useful because it permitted detection of affected individuals earlier in the disease process.

Early identification also allows removal of patients with CBD from jobs with beryllium exposure. There is no direct evidence that removal from exposure improves the prognosis of patients with CBD, because follow up studies have not been done. However, beryllium does clear from the lung over time, and a reduced level of antigen in the lung should reduce the severity of the inflammation and the amount of lung damage.

The 79 cases of CBD diagnosed among Rocky Flats workers showed a range of severity similar to that reported elsewhere. Thirty-nine individuals had symptoms that required treatment ranging from inhaled bronchodilators to corticosteroids to oxygen. Two individuals died of CBD. Seventy-three of the 79 cases were identified among individuals who had abnormal Be-LPT results but normal chest X-rays or pulmonary function screening test results.

V. Request for Information

The Department is considering more stringent requirements in various areas of the proposed NOPR. It is especially interested in comments that are supported by evidence and rationale whenever possible, regarding the following areas.

Industrial hygiene competencies: Proposed sections 850.21(b) and 850.24(a) would require that hazards assessments and exposure monitoring, respectively be conducted by "individuals with sufficient knowledge in industrial hygiene." The Department is considering using more prescriptive definitions for the qualifications an individual must possess to perform the required hazard assessments and exposure monitoring. One possible alternative approach would be to use OSHA's "competent person" definition. OSHA defines a competent person as:

> * * * one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Another possible approach would be to require that hazards assessments and exposure monitoring be performed by a "certified industrial hygienist" as defined by the American Board of Industrial Hygiene. DOE requests that interested parties submit comments regarding the use of such prescriptive definitions and/or suggestions for alternative approaches.

Permissible exposure limit: To address the uncertainties associated with the existing PEL and the limitations of the existing scientific data, DOE requests that interested parties submit any compelling, scientific evidence that would assist the Department in establishing a new permissible exposure limit that would be more protective of worker health.

Percent exceedance: The Department is considering alternatives to the action level as a basis for judging and interpreting exposure monitoring results. Descriptions of three methods used to interpret exposure level data are contained in the American Industrial Hygiene Association, A Strategy for Occupational Exposure Assessment (ref. 29). Of the three methods described, the percent exceedance approach appears as the best alternative for achieving the policy goal of encouraging periodic monitoring to understand the distribution of exposures and for investigating the causes of high exposures to prevent their reoccurrence. We are considering proposing that monitoring demonstrate 95% confidence that fewer than 5 percent of the 8-hour or 15 minute TWA PEL levels exceed the exposure limit. The advantage of this method is that periodic monitoring is needed to characterize the distribution of exposure before compliance can be demonstrated, usually through an upper tolerance limit test. In addition this method rewards day-to-day management of exposure levels through investigation of the causes of an exceedance and the implementation of corrective actions that will prevent it from reoccurring. A weakness of this method is that it can underestimate the degree of risk in a workplace where day-to-day, or between worker variation, is very large. This weakness can be minimized by assuring that long term mean levels are not high compared to the PEL. DOE requests that interested parties provide information on: the feasibility and implication of a percent exceedance approach to defining an acceptable workplace; the percent exceedance that would still provide the level of protection intended by the 8-hour or 15 minute TWA PEL; and whether mean testing should be specified as well. Commentors should provide the rationale and associated costs for approaches supported in their submittals, as well as input on implementation strategies or issues.

Exposure monitoring: Given the uncertainty regarding the adequacy of the PELs and whether any level of beryllium exposure should be considered safe, DOE is considering establishing a requirement for daily exposure monitoring of all beryllium workers to document and characterize more completely a worker's exposure to beryllium, and to better evaluate the adequacy of existing exposure levels or determine appropriate levels for alternative exposure limits. At the very low exposure levels that the Department is attempting to achieve, work practices that would ordinarily be judged as presenting trivial potential sources of exposure may be significant. The goal of an exposure monitoring program should be routine sampling aimed at characterizing the distribution of exposures due to typical work. Monitoring results help identify both the cause of exposure above limits and measures that can prevent recurrence. DOE requests that interested parties provide information on the feasibility and implications of this more restrictive monitoring requirement. Commentors should also provide the rationale for the approaches supported in their submittals.

Respiratory protection: DOE is considering requiring the use of respiratory protection at the action level instead of the PEL due to uncertainty about the protective value of the PEL. DOE requests that interested parties submit comments regarding the impact of such a change.

Protective clothing and equipment: DOE is requesting information regarding the presence of soluble beryllium compounds within the DOE complex and the appropriateness of the exclusion of such compounds from the definition of beryllium in the proposed rule. In addition, DOE requests comments with appropriate supporting rationale regarding the need for the protective clothing provisions of proposed section 850.29(a)(2) given that soluble beryllium compounds apparently are not present within the DOE complex.

Surface contamination level: DOE requests that interested parties submit comments regarding the validity of the proposed 3 μg/100 cm² surface contamination level. If an alternate level is suggested, the Department requests that the rationale and associated cost implications for choosing the alternate surface contamination level also be provided.

Release level: DOE is aware of the need to set an acceptably free-release surface contamination level for beryllium for unrestricted equipment release and transfer to uncontrolled areas and the public. DOE requests that interested parties submit comments regarding the setting of a beryllium free-release public contamination level. If a level is suggested, the Department requests that the rationale and associated cost implications for choosing the associated surface contamination level also be provided.

Medical surveillance: DOE seeks comments on whether all workers with any potential exposure to beryllium, regardless of the level of exposure, should be provided the option to participate in a medical surveillance program to identify workers who may become sensitized to beryllium at exposures less than the action level or STEL.

Anonymous testing: The Department realizes that some workers may elect not to participate in the medical surveillance program because they may believe that a diagnosis of CBD or beryllium sensitization could have a negative impact on future employment opportunities or on their health insurance. To address this concern and to encourage greater worker participation in the medical surveillance program, DOE is considering including a provision in the proposed rule that would allow for anonymous testing for CBD. Such a provision could include assigning an identification number (not traceable to the worker's name) to the worker's blood sample. The tested worker could use the identification number to call into the testing laboratory after a specified amount of time to retrieve the test results.

DOE recognizes that such a system may encourage greater participation in the medical surveillance program, but it also has several drawbacks including the inability to correlate collected exposure data to health outcomes, and problems associated with the need for followup testing to confirm positive results. DOE request that interested parties comment on appropriate methods for, and the feasibility and utility of provisions for anonymous testing for CBD.

Outreach program: DOE is considering a requirement that contractors develop and implement an outreach education program for family members of beryllium workers. The outreach awareness program would address the hazards of exposure to beryllium and the purpose and content of the CBDPP. The objective of this requirement would be to increase awareness among the families of beryllium workers about the hazards associated with beryllium exposure and the actions being taken within the Department to address these hazards. DOE requests that interested parties comment on the feasibility, utility, and implications of such an outreach program.

VI. Section-by-Section Analysis

Overview of the Proposed Rule

The proposed rule would strengthen the Department's worker protection program established in DOE Order 440.1A, Worker Protection Management for DOE Federal and Contractor Employees (5483.1B, 5480.4, 5480.8A, and 5480.10 for operations not covered contractually under 440.1A), by supplementing the general worker protection program requirements of the order with hazard-specific provisions that are designed to manage and control beryllium exposure hazards in the DOE workplace. These hazard-specific provisions are derived largely from DOE Notice 440.1, "Interim Chronic Beryllium Disease Prevention Program."

DOE Notice 440.1 was developed by the DOE Beryllium Rule Development Team and Executive Committee, both of which consisted of representatives of each of the affected DOE headquarters and field offices. The technical basis for the notice was based in part on public input provided to the DOE Office of Environment, Safety and Health (EH) by 43 commentors and organizations in response to a December 30, 1996, **Federal Register** notice requesting scientific data, information, and views relevant to a DOE beryllium standard (61 FR 68725). Much of this information was presented and discussed at public forums held in Albuquerque, NM, and Oak Ridge, TN, in January 1997. Records of these public forums, as well as copies of all related public input and the minutes and recommendations of the BRAC meetings, are available at the DOE Freedom of Information Reading Room in the prerulemaking docket file entitled "BERYLLIUM STANDARD." See the preceding **ADDRESSES** section for details on how to review or obtain copies of this material.

Consistent with DOE Notice 440.1 the proposed rule establishes a CBDPP that is designed to prevent the occurrence of chronic beryllium disease (CBD) among DOE Federal and contractor workers. The CBDPP will accomplish this disease-prevention mission through provisions that (1) reduce the number of current DOE Federal and contractor workers who are exposed to beryllium by clearly identifying and limiting worker access to areas and operations that contain or utilize beryllium; (2) minimize the potential for, and levels of, worker exposure to beryllium by implementing engineering and work practice controls that prevent the release of beryllium particles into the workplace atmosphere and/or capture and contain airborne beryllium particles before worker inhalation; (3) establish medical surveillance to monitor the health of exposed workers and ensure early detection and treatment of disease; and (4) continually monitor the effectiveness of the program in preventing CBD and implement program enhancements as appropriate.

The provisions of the proposed rule are presented in three main subparts: A, B, and C. Subpart A of the proposed rule describes the purpose and applicability of the rule, defines terms that are critical to the rule's application and implementation, and establishes DOE and contractor responsibilities for executing the rule. Subpart B establishes administrative requirements to develop and maintain a CBDPP and to perform all beryllium-related activities according to the CBDPP. Subpart C establishes requirements that focus on protecting workers from the harmful health effects associated with exposure to airborne levels of beryllium. Some of the provisions of Subpart C would apply only when it is determined that the airborne concentrations of beryllium in a specific workplace or operation rise above a specified limit. Table 5 summarizes these provisions and indicates the levels of beryllium at which the provisions would be enacted. Subparts A, B, and C of the proposed rule are discussed in detail in the following sections.

TABLE 5.—LEVELS AT WHICH THE PROVISIONS OF THE CBDPP WOULD BE ENACTED

Provision	Worker exposure or potential exposure levels (8-hour TWA)		
	> 0	≥ Action level or > STEL	> PEL (8-hr TWA or STEL)
Baseline Beryllium Inventory (850.20)	X		
Hazard Assessment (850.21)	X		
Initial Exposure Monitoring (850.24)	X		
Periodic Exposure Monitoring (850.24)		X	
Exposure Reduction and Minimization (850.25)		X[2]	X[3]
Regulated Areas (850.26)		X	
Change Rooms (850.27)		X	
Respiratory Protection (850.28)			[illegible]
Protective Clothing and Equipment (850.29)		[illegible]	
Housekeeping (850.30)	X[4]		
Medical Surveillance (850.33)		[illegible]	
Training (850.36)	X[5]		
Counseling (850.36)		X[6]	
Warning Signs (850.37)		X	
Waste Disposal (850.31)	Applies to beryllium waste and beryllium-contaminated waste.		
Beryllium Emergencies (850.32)	Applies to beryllium operations.		

TABLE 5.—LEVELS AT WHICH THE PROVISIONS OF THE CBDPP WOULD BE ENACTED—Continued

Provision	Worker exposure or potential exposure levels (8-hour TWA)		
	> 0	≥ Action level or > STEL	> PEL (8-hr TWA or STEL)
Warning Labels (850.37)	Applies to beryllium and beryllium waste and beryllium-contaminated material and waste.		

[1] If exposure levels are below the action level or STEL, contractors must establish exposure reduction and minimization goals to further reduce worker exposures where practicable.

[2] Contractors must investigate opportunities for and, if feasible, implement controls for reducing exposures to below the action level or STEL.

[3] Contractors must reduce exposures to or below the PEL or STEL.

[4] Housekeeping efforts must maintain removable surface contamination at or below 3 μg/100 cm²

[5] Hazard communication training is required for all workers who could be potentially exposed.

[6] Counseling is required for beryllium workers diagnosed with CBD or beryllium sensitization.

A. Subpart A—General Provisions

Proposed section 850.1 emphasizes that the proposed CBDPP would enhance, supplement, and be integrated into existing worker protection program requirements for DOE Federal and contractor employees. The Department has structured the proposed rule this way for two main reasons: (1) To take advantage of existing and effective comprehensive worker protection programs that have been implemented at DOE facilities, and (2) to minimize the burden on DOE contractors by clarifying that contractors need not establish redundant worker protection programs to comply with the proposed rule.

Proposed section 850.2(a)(1) specifies that the proposed rule would apply to DOE Federal employees with responsibilities for operations or activities involving exposure or the potential for exposure to beryllium at DOE-owned or -leased facilities. The Department recognizes that its federal workers are not usually directly involved in production tasks or other activities in which they would be exposed to airborne beryllium. However, in performing management and oversight duties, DOE federal workers often must enter facilities where beryllium is handled. Federal workers are protected under the health and safety provisions of 29 CFR Part 1960, "Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters," as well as Executive Order (EO) 12196, "Occupational Safety and Health Programs for Federal Employees." The Department's intent in proposed section 850.2(a)(1) is to supplement these general worker protection requirements with specific beryllium-related requirements in the limited instances where DOE federal workers may have the potential for beryllium exposure.

Proposed section 850.2(a)(2) specifies that the proposed rule would also apply to DOE contractors with operations or activities involving exposure or the potential for exposure to beryllium. As clarified in the definition of DOE contractor (proposed section 850.3), the Department's intent is that the DOE contractors covered under this proposed rule would include any entity under contract to perform DOE activities at DOE-owned or -leased facilities, including contractors awarded contracts, integrating contractors, and subcontractors. This section further clarifies that the requirements of the CBDPP would apply only to contractors and subcontractors who work in areas or on DOE activities that involve the potential for worker exposure to beryllium. The Department's intent with this clarification is to focus DOE and contractor resources and efforts on areas and activities that present a real potential for worker exposure to beryllium and thus realize the most benefit from implementing the proposed CBDPP. DOE emphasizes this intent throughout the proposed rule by requiring that DOE contractors tailor their approach to implementing the CBDPP.

The Department's intent with the applicability provisions of proposed section 850.2(a)(1) and (a)(2) is that the proposed rule would apply only to exposures and potential exposures to beryllium that occur in connection with facility operations. This recognizes the fact that beryllium occurs naturally in soils and that the focus of the CBDPP should not be on naturally occurring beryllium but rather on the occupational exposures resulting from DOE operations.

Proposed section 850.2(b)(1) would exempt "beryllium articles" from the requirements of the proposed rule (see the discussion of the definition of "beryllium article" under proposed section 850.3). The Department recognizes that some beryllium-containing manufactured items may not pose beryllium hazards where they have been formed to specific shapes or designs and their subsequent uses or handling will not result in the release of beryllium. This exemption for beryllium articles is consistent with the approach taken by OSHA when defining hazardous materials subject to the Hazard Communication standard at 29 CFR 1910.1200.

Proposed section 850.2(b)(2) would establish that the rule does not apply to the DOE laboratory operations involving beryllium that are subject to the requirements of OSHA's Occupational Exposure to Hazardous Chemicals in Laboratories standard, 29 CFR 1910.1450, commonly called OSHA's laboratory standard. In establishing its laboratory standard, OSHA clarified its intent that 29 CFR 1910.1450 supersede all other OSHA regulations for bench-top laboratory-scale activities, noting that the provisions of the standard were more relevant and suitable to the unique characteristics of laboratory activities. The Department agrees with OSHA's approach and believes that the provisions of OSHA's laboratory standard are adequate to protect workers from beryllium exposures in facilities that fall within the scope of the standard.

Proposed section 850.3 would apply traditional industrial hygiene terminology to define key terms used throughout the proposed rule. In relying on such terminology and by using terms consistent with OSHA interpretations, DOE intends to signal the Department's increased emphasis on industrial hygiene compliance through the use of accepted occupational safety and health requirements and procedures. The following discussion defines and explains each of the definitions in the proposed rule.

Accepted applicant is any person who has accepted an offer of employment in beryllium work at a DOE facility but who has not yet begun performing beryllium work. DOE intends for DOE contractors to provide such individuals with baseline medical evaluations before allowing them to begin employment as beryllium workers to ensure that they can safely perform work in areas that may present the potential for exposure to beryllium.

Action level means the level of airborne concentration of beryllium established pursuant to Subpart C, which, if exceeded, would require the implementation of certain provisions of the proposed rule. Using an action level to trigger certain provisions of the proposed rule is consistent with the approach applied in many of OSHA's substance-specific standards. This approach ensures that appropriate workplace precautions are taken and that training and medical surveillance are provided in cases in which worker exposures to beryllium could approach the permissible exposure limit. Additional discussion on the application of the action level in this proposed rule is provided in the discussion on proposed section 850.23, Action Level, and in the discussions of the individual provisions of the proposed rule that would be triggered by exceeding the proposed action level.

Authorized person means any person required by work duties to be in regulated areas. Authorized individuals are intended to be trained and experienced in the hazards of beryllium and in the means of protecting themselves and those around them against such hazards. Training requirements for all individuals working with beryllium are specified in proposed section 850.36 of the proposed rule. The concept of authorized persons is consistent with OSHA standards and with contractor practice in many facilities and is intended to ensure that the number of potentially exposed individuals is reduced to the lowest possible number and that workers who are granted access to regulated areas have the knowledge they need to protect themselves and other workers.

Beryllium means elemental beryllium and any insoluble beryllium compound or alloy containing 0.1 percent beryllium or greater that may be released as an airborne particulate. The Department has chosen this definition of beryllium because it clearly reflects that the focus of the proposed rule is on exposure to airborne levels of beryllium. DOE notes in this definition that OSHA uses the criterion for a carcinogenic mixture as one that contains a carcinogenic component at a concentration of 0.1 percent (or 1,000 parts per million [ppm]) or greater, by weight or volume.

Beryllium article means a manufactured item that is formed to a specific shape or design during manufacture and that has end-use functions that depend in whole or in part on the item's shape or design during use and that does not release beryllium or otherwise result in exposure to airborne concentrations of beryllium under normal-use conditions. The Department has included this definition of "beryllium article" to distinguish between forms of beryllium that could result in exposure and manufactured items containing beryllium that do not release beryllium or otherwise result in exposure to airborne concentrations of beryllium. This definition is consistent with the rationale employed by OSHA in formulating its definition of "article" in the Hazard Communication standard (29 CFR 1910.1200). The key concept is that an article does not have the potential to result in hazardous exposures; this definition of "article" also considers the item's intended use. For example, an item ceases to be an "article" when it is subjected to machining, cutting, or drilling. Similarly, if an item is manufactured for the purpose of being machined later, it is not considered an article.

Beryllium emergency means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations, that unexpectedly releases a significant amount of beryllium. This definition is particularly important when determining appropriate emergency response procedures that fall within the scope of OSHA's Hazardous Waste Operations and Emergency Response standard, 29 CFR 1910.120. This definition is based on OSHA's interpretation of the term as applied in 29 CFR 1910.120 and is intended to refer to any untoward event, such as a major spill of powdered beryllium or an unexpected, massive upset that releases a significant amount of airborne beryllium into the workplace atmosphere. The use of the term "beryllium emergency" in this proposed rule applies to proposed section 850.32, Emergencies, which requires DOE contractors to develop emergency procedures and training to address emergency scenarios. Such procedures and training must focus on emergency events that can reasonably be foreseen by an employer, such as a spill or a rupture of a pipe or a container.

Beryllium-induced lymphocyte proliferation test (Be-LPT) means an *in vitro* measure of the beryllium antigen-specific, cell-mediated immune response. This test measures the extent to which lymphocytes, a class of white blood cells, respond to the presence of beryllium by replicating in the laboratory. The Be-LPT is used by medical personnel to identify workers who have become sensitized to beryllium through their occupational exposure.

Beryllium worker means a current worker who is exposed or potentially exposed to airborne concentrations of beryllium at or above the action level or above the STEL or who is currently receiving medical removal protection benefits. This individual is a DOE Federal or contractor worker, a worker of a subcontractor to a DOE contractor, or a visitor who performs work for or with DOE or uses DOE facilities. This definition, through the phrase "current worker who is exposed or potentially exposed to airborne concentrations of beryllium," clarifies the Department's intent that the proposed rule would apply only to current workers who are part of the at-risk population. The definition further clarifies that current workers who have been removed from beryllium exposure as part of the medical removal plan would continue to be considered as beryllium workers under the proposed rule. Former DOE workers who were potentially exposed to beryllium do not fall within this definition or the proposed rule. These workers will be addressed under a separate DOE initiative that is under development.

Breathing zone is the hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches. This definition applies specifically to proposed section 850.24, Exposure Monitoring, which would require DOE contractors to determine worker exposures to beryllium by monitoring for the presence of contaminants in the worker's personal breathing zone. This definition is consistent with sound and accepted industrial hygiene practice and ensures that samples collected for personal exposure monitoring represent the air inhaled by workers while performing their duties in affected work areas.

DOE means the Department of Energy or Department.

DOE beryllium activity means an activity performed for, or by, DOE that can expose workers to airborne concentrations of beryllium. Activities within the scope of this definition include design, construction, operation, maintenance, and decommissioning. The definition further explains that, to the extent appropriate, a "DOE activity" may involve one DOE facility or operation, a combination of facilities and operations, or possibly an entire site. This definition is broad enough to include such activities as repair work performed by support-service subcontractors who visit the site infrequently.

DOE contractor means any entity under contract (or its subcontractors) with DOE with responsibility for performing DOE activities at DOE-owned or -leased facilities. This does not apply to contractors or subcontractors who solely provide "commercial items" as defined under the Federal Acquisition Regulations (FAR). As explained in proposed section 850.10, subcontractors included in this definition who would be covered under the proposed rule would not necessarily be expected to produce their own written CBDPPs. However, these subcontractors should be included in the CBDPP that encompasses all beryllium-related activities at the site. See the discussion in proposed section 850.10 for further details on how the requirements of the proposed CBDPP would be extended to a subcontractor.

DOE facility means any facility owned or leased by DOE.

High-efficiency particulate air (HEPA) filter means a high-efficiency filter capable of trapping and retaining at least 99.97 percent of 0.3-micrometer monodisperse particles. Such filters are commonly used in heating and ventilating systems, respiratory protection equipment, local exhaust ventilation, and so on, to remove toxic or hazardous particulates like beryllium.

Immune response refers to the series of cellular events by which the immune system reacts to challenge a specific antigen. Types of immune responses include acquired immunity and sensitization. The body's immune response to beryllium is indicated by the results of the Be-LPT.

Medical removal protection benefits are employment rights established in proposed section 850.34 for beryllium workers who voluntarily accept temporary or permanent medical removal from regulated areas following medical evaluations that confirm beryllium sensitization or CBD. These provisions would ensure that contractors make reasonable efforts to find and offer alternate employment to beryllium workers who have suffered negative health effects due to exposure to beryllium. The definition of medical removal protection benefits and the requirements in proposed section 850.34 would ensure that such workers would suffer no reductions in wage rate, seniority, or other benefits for 2 years after medical removal. The 2-year period would allow the contractor to make a reasonable effort through job retraining and out-placement programs operated by many sites to locate alternate work placement for beryllium workers, either internally or with different employers.

Regulated area means an area established and managed by the contractor to demarcate locations where the airborne concentration of beryllium exceeds, or can reasonably be expected to exceed, the action level (see the preceding definition of "action level"). Employees working in regulated areas must be authorized to do so by the contractor and trained and equipped with protective clothing and equipment. The purpose of such areas is to limit beryllium exposure to as few employees as possible. This is a standard definition used throughout DOE, particularly with regard to radiation protection, and is consistent with OSHA's expanded health standards that address toxic particulates.

Short-term exposure limit (STEL) means the level of airborne concentration established pursuant to Subpart C (calculated as a 15-minute TWA, measured in the worker's breathing zone by personal monitoring), which should not be exceeded for any 15-minute period at any time during the workday. Additional discussion on the application of the STEL in this proposed rule is provided in the discussion on proposed section, 850.22, Exposure Limits.

Site occupational medicine director (SOMD) means the physician responsible for the overall direction and operation of the site occupational medicine program. DOE's intent with this definition is to ensure that each site's occupational medicine program would be administered by a qualified medical professional.

Surface contamination means the presence of beryllium on exposed work surfaces, which may cause skin irritation upon contact or which may present an airborne hazard when reentrained into the workplace air. This definition of "surface contamination" is also important in addressing the maintenance, decontamination, and cleaning of facilities and equipment for recycling or for release for other uses. The Department recognizes that airborne respirable beryllium particles differ from surface contamination, which is not respirable until it is disturbed. Therefore, the rule provides separate definitions of "beryllium" and "surface contamination."

Worker means a person who performs work for or on behalf of DOE, including a DOE employee, an independent contractor, a DOE contractor employee, or any other person who performs work at a DOE facility. As clarified in the definition of DOE contractor, a contractor employee can be an employee of a covered subcontractor.

Worker exposure means the airborne concentration of beryllium in the breathing zone of the worker when the worker is not using respiratory protective equipment. This definition is consistent with accepted industrial hygiene practice and with OSHA's definition of the term "employee exposure" as applied in the OSHA expanded health standards.

Proposed section 850.3(b) references the standard definitions contained in the Atomic Energy Act and related rules under 10 CFR part 850 for other terms used throughout this proposed rule.

Proposed section 850.4 would establish enforcement provisions for the proposed rule. Like other Departmental regulations that apply to DOE contractors, this provision would allow DOE to employ contractual mechanisms, such as contract termination or fee reduction, when contractors fail to comply with the provisions of this proposed rule. These mechanisms help the Department ensure that beryllium workers receive an appropriate level of protection while performing Departmental activities that involve exposure or the potential for exposure to beryllium.

Proposed section 850.5 would provide the appropriate steps that the Department may take to enforce compliance with this proposed rule. The grievance-arbitration processes of collective bargaining agreements covering accepted applicants and beryllium workers employed by Department contractors would generally apply to disputes relating to implementation of this part. Therefore, proposed section 850.5 would provide that disputes arising under this part brought by beryllium workers and accepted applicants (or by labor organizations acting on their behalf) that are covered by grievance-arbitration processes should be resolved through such processes. This approach to dispute resolution would minimize the possibility of bypassing collective bargaining representatives or existing contractual grievance-arbitration processes and minimize the possibility of conflicting outcomes that would exist with multiple avenues for enforcing compliance with the rule.

However, where the individuals bringing such disputes are not covered by collective bargaining agreements or where such collectively bargained processes are not applicable, the proposed rule would provide that disputes brought by individuals may be resolved by the Department's Office of Hearings and Appeals (OHA). OHA is an established and impartial body that has experience in dealing with whistleblower, security, and other disputes brought by individual workers. The procedures in 10 CFR part 1003, Subpart C, shall apply to resolution of disputes by OHA.

B. Subpart B—Administrative Requirements

Subpart B of the proposed rule would establish general and administrative requirements to develop, implement, and maintain a CBDPP and to perform all beryllium-related activities according to the CBDPP.

As owner or lessor of DOE-owned or -leased facilities, the Department has both a responsibility for overseeing the health and safety activities of its contractors and a partnership interest in achieving excellence in worker protection activities. Accordingly, *proposed section 850.10*(a)(1) would require DOE contractors who are responsible for DOE beryllium activities to prepare CBDPPs for their operations and submit the CBDPPs to the appropriate DOE Field Organization for approval. This section would establish a 90–day time frame from the effective date of the rule for contractor submission of the CBDPP to the appropriate DOE Field Organization. The Department is well aware of the burden of documentation that can be generated by new programs. However, most DOE contractors have already developed CBDPPs in response to the requirements of DOE Notice 440.1. The Department expects that the additional efforts that would be required to refine the existing CBDPPs to meet the requirements of the proposed rule would be minimal. The Department considers 90-days sufficient time for DOE contractors to examine their safety and health programs and make any changes necessitated by the rule.

Proposed section 850.10(a)(2) would require that a single written CBDPP be submitted to encompass all beryllium-related activities at a site. Because the Department recognizes that one site may encompass multiple contractors and numerous work activities, however, this proposed section clarifies that the CBDPP for a given site may include specific sections for individual contractors, work tasks, and so on. DOE believes that this allowance for a segmented CBDPP structure would minimize the burden associated with the CBDPP update and approval requirements because it allows contractors to update and submit for approval only the affected sections of the CBDPP. When multiple contractors are involved, the DOE contractor designated by the DOE Field Organization shall take the lead in compiling the overall CBDPP document and coordinating the input from various subcontractors or work activities. This section further clarifies that in such cases where multiple contractors are involved, the designated contractor would have to review and approve the CBDPPs of other contractors engaged at the site before a consolidated CBDPP would be submitted to the head of the cognizant DOE Field Organization for final review and approval.

Proposed section 850.10(b) would require heads of DOE Field Organizations to review and approve CBDPPs. DOE believes that DOE review and approval are necessary to ensure that each contractor's CBDPP is consistent with best industry practices for industrial hygiene, the Department's exposure reduction and minimization philosophy, and the objectives of the CBDPP. Through these proposed sections, DOE hopes to establish clear lines of authority for review and approval of contractors' CBDPPs.

Proposed section 850.10(b)(1) would establish a 90-day period for DOE to review and either approve or reject the CBDPP. During its review, DOE could direct the contractor to modify the CBDPP, or it could modify the CBDPP itself. If DOE takes no action within 90 days, the initial CBDPP would be considered approved. The Department would establish this 90-day time frame to facilitate timely implementation of program elements by contractors and to ensure that DOE Field Organizations respond to contractors' submissions.

Proposed section 850.10(b)(2) would require that the written CBDPPs be furnished upon request to the DOE Assistant Secretary for Environment, Safety and Health or his or her designee; DOE program offices; affected workers; and designated worker representatives. This proposed requirement would be in addition to the provisions of this section that would require contractors to submit the CBDPP, or portions (e.g., the medical surveillance section) of it, to cognizant DOE offices. The Department's intent with this requirement is to facilitate implementation and enforcement of the proposed rule. In addition, this proposed section would ensure that workers and their representatives could access information that is related to the protection of their health during the performance of DOE activities.

Proposed section 850.10(c) would establish that updates to the written CBDPP be required under two circumstances: (1) Whenever a significant change or addition is made to the program and (2) whenever a contractor or subcontractor changes. DOE feels that such updates would be warranted to ensure that the CBDPP accurately reflects workplace conditions and appropriately addresses specific beryllium workplace exposure hazards.

This proposed section would also require that DOE contractors review their written CBDPPs at least annually and revise these programs as necessary to reflect any significant changes. Only sections of the CBDPP that require changes would have to be resubmitted to the head of the DOE Field Organization for approval. The Department considers the annual review cycle to be appropriate and necessary to ensure that CBDPPs remain up-to-date and accurately reflect workplace conditions and required control procedures.

Proposed section 850.10(d) was added to ensure that the CBDPP would be developed and implemented consistent with the requirements imposed by the National Labor Relations Act (NLRA) on employers in this context, and not to create obligations in excess of those that would be found in such circumstances under the NLRA.

Proposed section 850.11(a) specifies that the CBDPP would be expected to address all existing and anticipated operational tasks that fall within its scope. In addition, the section would require all DOE contractors to develop and implement a CBDPP that is integrated into the Department's existing worker protection program. This proposed requirement would reflect the Department's desire to develop and implement one comprehensive, consistent, and integrated worker protection program that addresses all DOE workplace hazards. By including this provision, DOE notes the importance of controlling beryllium hazards within the framework of the worker protection program established under DOE Order 440.1A (or, where applicable, under predecessor orders like DOE Orders 5483.1A, 5480.4, 5480.8A, and 5480.10) and related DOE health and safety initiatives. The existing industrial hygiene and occupational medicine programs, which were established in the comprehensive worker protection program and related initiatives, provide the basis needed to protect DOE federal and contractor workers from health hazards like beryllium exposure. DOE believes that establishing a beryllium exposure control program outside the framework of this accepted program would create redundant and inconsistent requirements that would unnecessarily burden the regulated community and create an inefficient program.

Unlike the DOE orders listed above, the regulatory requirements of this proposed rule would by operation of law apply to DOE contracts. Accordingly, the application and enforcement of this proposed rule would not be subject to the Work Smart Standards Program or other related processes. DOE believes that this mandatory application of the proposed CBDPP requirements to all DOE beryllium activities is appropriate given the hazardous nature of beryllium-related work.

Proposed section 850.11(b) would require that contractors tailor the scope and content of their CBDPPs to the specific hazards associated with the DOE beryllium activities being performed. In addition, proposed section 850.11(b)(1) would require that these programs have to include formal plans outlining how DOE contractors would ensure that occupational exposures to beryllium are maintained at or below the PELs (8-hour TWA PEL of 2 μg/m^3 and 15-minute STEL of 10 μg/m^3).

Proposed section 850.11(b)(2) further specifies that a contractor's CBDPP must, at a minimum, address each requirement in Subpart C of the rule. Consistent with the performance-based nature of the proposed rule, DOE's intent with this requirement is that DOE contractors include in their CBDPPs those provisions necessary to protect workers from exposure to beryllium during the performance of DOE beryllium activities at the contractors' respective sites. Proposed section 850.11(b)(3) would clarify that the CBDPP provisions must focus on: (i) Minimizing the number of current workers exposed and potentially exposed to beryllium; (ii) minimizing the number of opportunities for workers to be exposed to beryllium; and (iii) setting challenging exposure reduction and minimization goals to facilitate the minimization of worker exposures. DOE believes that the establishment of exposure reduction and minimization goals is essential to the success of the CBDPP. With this catalyst to achieving further exposure reductions, DOE contractors would be encouraged to seek opportunities to provide enhanced worker protection, thereby assisting DOE in moving toward the ultimate goal of preventing CBD within the DOE complex.

DOE is sensitive to concerns that exist within the DOE community regarding the need to approach the Department's exposure reduction and minimization objectives in a responsible and realistic manner. Accordingly, proposed section 850.11(b)(3)(iii) would establish a performance-based requirement that would allow contractors to establish their own exposure reduction and minimization goals tailored to their unique workplace needs and conditions. DOE's intention with this proposed requirement is that DOE contractors would establish reasonable but challenging goals based on sound industrial hygiene principles and the specific circumstances for each affected workplace and location. DOE believes that relevant circumstances must be considered in establishing these goals. Those circumstances would include the current level of worker exposures, the number of workers exposed, the existing controls that are in place, the technical feasibility and exposure reduction potential of possible additional controls, and the cost and operational impact of the controls.

Proposed sections 850.12 (a) and (b) would require that DOE contractors manage and control beryllium exposures in all DOE beryllium activities in accordance with the approved CBDPP. This section would clarify that DOE and contractor personnel must follow applicable requirements of the rule and any resulting programs, plans, schedules, or processes, as well as requirements in other applicable Federal statutes and regulations.

Proposed section 850.12(c) would clarify the Department's position that tasks involving potential beryllium exposure that would not be covered under the CBDPP could not be initiated until the CBDPP has been updated to include them and has been approved by the appropriate DOE Field Organization. DOE provides an exception of this requirement for urgent and unexpected situations. In such cases, the task could proceed with the approval of the DOE Field Organization prior to revision and approval of the CBDPP.

Proposed section 850.12(d) would require that, depending on the circumstances of the work, other actions may be necessary to protect workers and that such actions are not to be limited by the provisions of the proposed rule. The Department recognizes that those individuals responsible for implementing CBDPP activities are accountable for using their professional judgment in protecting the health and safety of workers. Nothing in the proposed rule should be viewed as relieving these individuals of their professional responsibility to take whatever actions are warranted to protect the health and safety of the workforce.

Proposed section 850.13(a) would mandate that DOE activities involving beryllium comply with their respective CBDPP that has been approved by the cognizant DOE Field Organization, as appropriate. Through this provision, DOE recognizes that even the best CBDPP will not adequately protect workers if it is not followed at the site. Proposed section 850.13(b) further proposes that once the final rule takes effect, DOE contractors would have 2 years to fully implement all aspects of the program (written plans, schedules, and other measures). The Department intends to reduce the resource impacts on contractors by permitting them to phase in costly controls over the 2-year period. However, the Department would expect portions of the program to be implemented as soon as practical during the 2-year period.

Proposed section 850.13(c) would specify that the DOE contractor in charge of the activity involving a potential for beryllium exposure would be responsible for complying with the rule. When no contractor is responsible for the activity and Federal employees perform the activity, this section would require DOE to be responsible for compliance.

Subpart C—Specific Program Requirements

Subpart C of the proposed rule would establish performance-based requirements for the CBDPP. These proposed requirements focus on preventing CBD by reducing the number of workers who could be exposed to beryllium, minimizing the potential level of beryllium in the workplace atmosphere, and continually monitoring worker health to ensure that workplace controls are sufficiently protective. The Department's intent is that implementation of the rule will increase understanding of the development and course of chronic beryllium disease. Throughout the Department's pre-rulemaking activities, including the public forums in Albuquerque, NM, and Oak Ridge, TN, and the BRAC meetings, many interested parties advised DOE to adopt various hazard-specific programs to address DOE beryllium hazards. For instance, several public forum participants suggested that DOE control beryllium hazards through an "as low as reasonably achievable (ALARA)" approach, similar to that the Department applies to control radiation hazards. These participants believed the ALARA approach was warranted due to the continued occurrence of CBD among the DOE workforce and questions regarding whether any level of beryllium exposure should be considered safe. Other public forum participants argued that OSHA's expanded health standard for asbestos would provide a better model because it applies accepted industrial hygiene practices to remediation activities similar to the remediation activities that may be encountered in DOE cleanup operations that involve beryllium. DOE acknowledges that both the ALARA approach and the OSHA Asbestos standard (as well as other OSHA expanded health standards) include provisions that could be applied effectively in controlling beryllium hazards in the DOE workplace. Accordingly, DOE combined the relevant components of the Asbestos standard (and other OSHA expanded health standards) and the ALARA approach in DOE Notice 440.1 and continues this approach in the proposed rule.

Proposed section 850.20(a) would require that DOE contractors develop a baseline beryllium inventory to identify beryllium in DOE facilities and operations and to identify workers who are or may be potentially exposed to beryllium. Such baseline inventories would accomplish several functions that are critical to the success of the CBDPP, including: (1) The identification of locations and operations that should be physically isolated from other areas to prevent the spread of contamination, (2) the identification of areas in which worker access should be restricted to minimize the number of workers who could be exposed, (3) the identification of beryllium contamination in facilities scheduled for decontamination and decommissioning (D&D) operations to ensure the implementation of appropriate D&D control procedures, (4) the identification of beryllium contamination in facilities that are still used to determine the need for appropriate cleanup measures, and (5) the determination of which workers should be covered under the CBDPP.

Proposed sections 850.20(b)(1) through (4) would supplement the generic inventory requirement originally established in DOE Order 440.1A by requiring DOE contractors to conduct records reviews, employee interviews, and, if necessary, appropriate sampling procedures to determine and document the presence and locations of beryllium on DOE sites. These supplemental requirements are necessary because of the nature of past beryllium operations within the DOE complex, which were often conducted in open, uncontrolled work areas.

Because the results of records reviews and employee interviews alone may not suffice to confirm the presence of beryllium contamination in a specific location, proposed section 850.20(b)(4) would require that DOE contractors conduct sampling procedures to assess beryllium workplace hazards. DOE contractors should design such sampling protocols according to the specific workplace conditions and the suspected types and locations of beryllium contamination. Sampling techniques could include collecting area and wipe samples and/or collecting personal breathing zone samples.

Proposed section 850.20(c) would require contractors to ensure that the baseline beryllium inventory activities required under proposed section 850.20 are conducted by individuals with sufficient knowledge in industrial hygiene. The Department believes that this provision would be required to ensure that the inventory is accurate and complete and that the CBDPP provides protection to all affected workers. Because the identification of the possible presence of beryllium in a workplace does not, in and of itself, suffice to determine whether a hazard exists or whether various control measures must be employed, *proposed section 850.21* would require DOE contractors to conduct a beryllium hazard assessment to characterize workplace beryllium exposure hazards. This requirement would allow each site to determine the appropriate risk-based approach for assessing beryllium-related hazards in its worksites where the baseline beryllium inventory has established that beryllium is present.

The flexibility of proposed section 850.21 is particularly important because operations, conditions, and the potential for exposure may vary greatly from operation to operation and facility to facility. For instance, the hazard assessment required for a facility that houses current beryllium machining operations may be much more in-depth than that required for an inactive storage facility that stored a used beryllium lathe temporarily. In both cases, proposed section 850.21(a) would require a review of existing worksite conditions, exposure data, medical surveillance trends, and exposure potential of planned activities. In the beryllium machining operations example, however, this review would require an in-depth analysis of machining and other interrelated operations involving the performance of multiple tasks by multiple employees, each with varying exposure potentials. In this case, extensive medical surveillance and personal exposure monitoring data may already exist and may provide a sufficient basis for hazard assessment efforts. If the existing data do not suffice, however, the collection and analysis of additional personal breathing zone monitoring data for each task, operation, and work area may be necessary to accurately characterize potential beryllium exposure hazards.

For the inactive storage area, a review of existing wipe sampling data, collected according to proposed section 850.20(b)(4), may suffice to ascertain that no beryllium exposure hazard exists in the facility. However, if wipe sampling data from the facility indicate that beryllium contamination exists in the storage facility, a more in-depth analysis could be required to determine the extent of contamination, the potential for the contamination to become airborne, and the need for facility cleanup and/or related exposure control measures.

Proposed section 850.21(b) would require contractors to ensure that hazard assessments are conducted by individuals with sufficient knowledge in industrial hygiene. The Department believes that the establishment of such minimum personnel qualifications would be necessary to ensure the appropriate implementation of the provisions of the proposed rule and to ensure that the CBDPP provides protection to all affected workers.

Proposed section 850.22(a) would retain the OSHA 8-hour, TWA PEL for beryllium (2 ($\mu g/m^3$), as measured in the worker's breathing zone, or would adopt a lower 8-hour TWA PEL if such a PEL were established by OSHA through the rulemaking process. DOE is aware of viewpoints both for and against a lower DOE 8-hr TWA PEL for beryllium. Arguments in favor of lowering the PEL include the growing number of confirmed CBD cases (110 as of June 1998 among the 8,951 current and former DOE federal and contractor workers who have undergone medical screening) and the apparent low-level, incidental beryllium exposures received by some of the afflicted workers. Arguments against lowering the PEL include a lack of compelling scientific evidence that the current exposure limit is not protective.

There is scientific evidence (presented in the Health Effects discussion of this NOPR, Section IV) that suggests that the current exposure limit does not sufficiently protect worker health. However, existing scientific data does not currently

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provide an adequate basis for determining an appropriate new DOE exposure limit. For this reason, DOE proposes to retain the existing OSHA 8-hr TWA PEL at this time and include in this proposed rule other provisions that are designed to minimize worker exposure in DOE facilities and to encourage continual monitoring of worker health to ensure an adequate level of protection. Chief among these provisions are the action level in proposed section 850.23, the exposure reduction and minimization requirements of proposed section 850.25, and the medical surveillance provisions of proposed section 850.33. Each is discussed below.

OSHA has placed beryllium on its regulatory agenda but has indicated that it will take several years for a new OSHA standard on beryllium to be promulgated. Through proposed section 850.22(a), DOE has clarified its intent to adopt the new OSHA permissible exposure limit upon promulgation.

Proposed section 850.22(b) would adopt the short-term exposure limit (STEL) established by the American Conference of Governmental Industrial Hygienists (ACGIH) of 10 μg/m³, averaged over a 15-minute sampling period. According to the ACGIH Threshold Limit Value (TLV) and Biological Exposure Indices booklet, a worker's 15-minute TWA exposure must not exceed the STEL at any time during the workday even if the worker's full shift exposure is within the 8-hour TWA PEL. Exposures above the PEL-TWA must not be longer than 15 minutes and must not occur more than four times per day. The ACHIH TLV and Biological Exposure Indices booklet further indicates that if such exposures occur more than once a day, there must be at least 60 minutes between successive exposures in this range.

The ACGIH recently established this 10 μg/m³ STEL for beryllium based on studies suggesting that acute beryllium disease did not appear in a group of workers exposed below 15 μg/m³, and that CBD and lung cancer appear to be associated with exposure regimes in which short, high exposures occur. As noted in the ACGIH supporting rationale for the STEL, the 10 μg/m³ STEL is in accord with the ACGIH's standard practice of recommending a generic excursion limit of 5 times the 8-hour TWA threshold limit value (TLV) The ACGIH 8-hr TWA TLV for beryllium is equal to OSHA's 8-hour TWA PEL of 2 μg/m³.

DOE recognizes that the ACGIH 15-minute STEL is more protective than the OSHA acceptable maximum peak exposure for beryllium of 25 μg/m³ for a duration of 30 minutes. DOE also notes that the adoption of the ACGIH STEL in this proposed rule is consistent with current DOE policy and with minimum standards already in effect throughout the Department. As specified in DOE Order 440.1A and its predecessor Orders, DOE contractors must comply with both the OSHA standards and with the ACGIH TLVs. These Orders further clarify that where a conflict exists between the OSHA and ACGIH exposure limits, the more protective standard shall apply.

DOE is aware of the continued occurrence of CBD among its workforce and intends to take every reasonable measure to minimize worker exposure to beryllium and to prevent the occurrence of CBD. One such measure is in *proposed section 850.23*, which would establish an 8-hour TWA action level of 0.5 μg/m³, measured in the worker's breathing zone. Consistent with the worker protection practices employed in many of the OSHA expanded health standards, the action level would be used to trigger certain mandatory elements of the CBDPP: periodic exposure monitoring (proposed section 850.24(c)), regulated areas (proposed section 850.26), change rooms (proposed section 850.27), protective clothing and equipment (proposed section 850.29), and medical surveillance (proposed section 850.33).

In selecting the action level for the proposed rule, DOE considered: (1) OSHA's practice of establishing action levels; (2) the results of a 1996 survey of DOE facilities (presented in the draft DOE Beryllium Information Survey Report contained in the prerulemaking docket), which reported potential beryllium exposures and related control practices throughout the DOE complex; and (3) questions regarding the adequacy of the 8-hour TWA PEL. OSHA, in its expanded health standards, typically establishes action levels for hazardous and toxic substances at one-half the 8-hour TWA PEL. Applying this approach to beryllium would result in an 8-hour TWA action level of 1.0 μg/m³. According to the results of the 1996 DOE survey, however, two DOE facilities (Pantex and Rocky Flats) had already employed an action level of 0.5 μg/m³. One facility (Lawrence Livermore National Laboratory) reported the use of an "administrative warning range" of 0.2 to 2.0 μg/m³, which triggered a requirement for an investigation, and six DOE facilities employed an action level of 1.0 μg/m³. Consistent with the Department's decision to implement aggressive exposure minimization efforts DOE proposes adopting the lower of the existing action levels currently used within the DOE complex in proposed section 850.23 rather than following typical OSHA practice. DOE believes that the successful implementation of this action level at two DOE facilities, and the implementation of an even lower "administrative warning range" at a third facility, provide sufficient evidence of the feasibility of implementing the 0.5 μg/m³ action level across the DOE complex. DOE does not intend for this action level to discourage efforts to reduce exposures below 0.5 μg/m³ in a regulated area. In fact, proposed section 850.25 would require contractors to establish and implement appropriate exposure reduction and minimization goals to further reduce worker exposures to beryllium.

Proposed section 850.24 would establish CBDPP worker exposure monitoring requirements. Monitoring of breathing zone air space in areas where workers are potentially exposed is a well-recognized and widely accepted risk-management tool that is used to protect workers from exposure to airborne toxic substances. The proposed provisions in this section, which are also required under DOE Order 440.1A, are necessary to characterize worker exposures to a specific toxic substance and, based on these exposures, to determine the need for appropriate engineering or work-practice controls. In addition to this traditional compliance role, DOE proposes to expand the CBDPP's exposure monitoring element to provide continual feedback on the effectiveness of the program in preventing the occurrence of CBD. Such exposure monitoring results would help the Department to resolve uncertainties regarding the adequacy of the existing beryllium PEL and to refine the requirements of this rule as needed to protect worker health.

Proposed section 850.24(a) would require that exposure monitoring be conducted by individuals with sufficient knowledge in industrial hygiene. The Department believes that the establishment of such minimum personnel qualifications is necessary to ensure the appropriate implementation of the provisions of the proposed rule and ensure that the CBDPP provides protection to all affected workers.

Proposed section 850.24(b) would require that DOE contractors perform initial exposure monitoring for all workers who work in areas that may have airborne concentrations of beryllium as determined through the baseline beryllium inventory and hazard assessment. Such initial exposure information is necessary to identify workers who must be enrolled in the medical surveillance program, determine the need for engineering and work practice controls, select appropriate personal protective clothing and respiratory protective equipment where needed, and identify the need to establish regulated areas. Because the proposed PELs include an 8-hour TWA PEL and a 15-minute STEL, proposed section 850.24(b)(1) would require that worker exposure be measured by personal breathing zone samples that represent each worker's (i) full-shift exposure (for 8-hour TWA exposure measurements) or (ii) 15-minute exposure at operations where exposures may be above the STEL.

DOE recognizes that many DOE contractors may have performed the required initial monitoring as part of their efforts to implement DOE Notice 440.1. DOE does not intend for DOE contractors to repeat these efforts. Accordingly, proposed section 850.24(b)(2) would allow contractors to use initial monitoring data collected within 12 months before the effective date of this rule to satisfy the rule's initial monitoring requirements.

Proposed section 850.24(c) would require DOE contractors to conduct periodic exposure monitoring to detect any workers who have been exposed to beryllium at or above the action level or above the STEL. DOE believes that such periodic monitoring is necessary to ensure the continued protection of worker health. This requirement would provide contractors the flexibility to determine the monitoring frequency that is needed to characterize worker exposures accurately. DOE believes that such flexibility is warranted due to the wide range of beryllium-related operations within the DOE complex. The Department recognizes that DOE contractors are best positioned to evaluate the potential variability of worker exposures in their operations and to tailor their periodic monitoring approaches as appropriate, based on existing exposure levels and the potential for these exposure levels to change. However, because slight process or procedural changes may go unnoticed over time and because equipment maintenance, aging, or deterioration can affect performance, DOE proposes in proposed section 850.24(c) a minimum exposure monitoring frequency requirement of 3 months (quarterly) for workers who are exposed to airborne concentrations of beryllium at or above the action level or above the STEL. DOE recognizes that the proposed minimum quarterly monitoring of workers exposed at or above the action level or above the STEL is more stringent than most OSHA expanded health standards. However, the Department feels this minimum monitoring frequency is necessary due to the uncertainties regarding the adequacy of the current PEL.

To supplement this periodic monitoring requirement, proposed section 850.24(d) would also require that DOE contractors perform additional exposure monitoring when beryllium-related operations or procedures change. In the case of procedural or operational changes, this additional monitoring is needed to quantify how changes affect worker exposure to airborne beryllium, to ensure the continued effectiveness of existing engineering and work-practice controls, and to identify the need for additional control measures to minimize worker exposure to beryllium.

To obtain accurate exposure monitoring results, proposed section 850.24(e) would require that DOE contractors use monitoring and analytical methods that have an accuracy, at a confidence level of 95 percent, of not less than plus or minus 25 percent for airborne concentrations of beryllium at exposure levels between the 8-hour TWA action level and the PEL. Proposed section 850.24(f) would further ensure the quality of monitoring results by requiring that all laboratory analyses of air sampling data be performed in a laboratory accredited for metals by the American Industrial Hygiene Association. These proposed accuracy and quality requirements would be consistent with similar requirements that appear in many of OSHA's expanded health standards for toxic substances. DOE believes that the quality and accuracy of exposure monitoring data are crucial to protecting workers from airborne toxic substances because monitoring results trigger the implementation of several critical elements of the worker protection program. Accordingly, effective implementation of the CBDPP and ultimately the health of affected beryllium workers would rest on the quality and accuracy of the collected exposure monitoring data.

Proposed section 850.24(g)(1) would establish requirements to notify affected workers of monitoring results. This section would require DOE contractors to make this notification in writing within 10 working days of receipt of the monitoring results. This section would also provide DOE contractors with two alternative methods of worker notification: (1) Provide written notification to each affected worker, or (2) post monitoring results in a location or locations readily accessible to affected workers. When the posting option is selected, DOE contractors would have to post the results in such a way as to protect the privacy of the affected workers.

Proposed section 850.24(g)(2) also contains a provision for cases in which monitoring results indicate that worker exposure levels exceed the action level or STEL. In such cases, the DOE contractor would be required to notify the SOMD of the results within 10 working days of receipt of the results. DOE believes that the SOMD must be informed of such exposures in order to refine, as appropriate, the medical surveillance protocol for affected workers to ensure effective monitoring and early detection of beryllium-related health effects.

Proposed section 850.25 would establish the exposure reduction and minimization provisions of the CBDPP that reflect the Department's goal of achieving aggressive reduction and minimization of worker exposures to airborne beryllium. DOE believes this is a prudent approach to worker protection in light of questions regarding the adequacy of the existing PEL and the relationship between beryllium worker exposure and disease.

Proposed section 850.25(a) would establish the baseline requirement that DOE contractors ensure that no worker is exposed to airborne beryllium at levels above the exposure limits established in proposed section 850.22. The section would further clarify that DOE contractors must apply the hierarchy of industrial hygiene controls as established in DOE Order 440.1A to achieve this minimum exposure control requirement. This hierarchy dictates that DOE contractors must implement feasible engineering controls, followed by administrative controls, in their efforts to reduce exposure levels. If these engineering and administrative controls do not reduce beryllium levels to the exposure limits, DOE contractors must supplement these controls with personal protective clothing and equipment as appropriate to reduce exposure levels to within the exposure limits.

Proposed section 850.25(b) would clarify the requirement to establish exposure reduction and minimization goals by requiring that DOE contractors include in their CBDPP, the rationale to support their exposure reduction and minimization goals. This section further requires that the CBDPP include a plan for meeting these goals as well as performance measures to be used to assess the contractor's status in achieving the goals. DOE considers this level of formality essential to the

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establishment and implementation of meaningful goals, and to the use of these goals in achieving the exposure reduction and minimization objectives of the CBDPP. In addition, DOE believes that appropriate documentation of the supporting rationale for these goals is necessary to address concerns among the DOE community regarding overzealous DOE enforcement of the exposure reduction and minimization requirements of this proposed rule and to avoid second-guessing of contractor CBDPP efforts.

Proposed sections 850.25(b)(1) and (2) would establish the Department's minimum expectations for the implementation of exposure reduction and minimization efforts. DOE does not intend for these minimum requirements to stifle contractor innovation but intends for them to serve as a starting point in efforts to implement an effective exposure reduction and minimization program. Specifically, proposed section 850.25(b)(1) would require DOE contractors to include in their CBDPP strategies for the use of the action level to trigger actions to reduce or minimize worker exposures and the potential for exposures. Proposed section 850.25(b)(2) would clarify that CBDPP strategies shall also include use of the conventional hierarchy of industrial hygiene controls as a means of achieving exposure reduction and minimization goals. The intent of these provisions is to encourage contractors to (1) investigate opportunities for exposure reductions when worker exposures reach or could reach the action level (or at lower levels of exposure if appropriate) and (2) implement control measures that are feasible and consistent with sound industrial hygiene principles, the objectives of the CBDPP, and the contractor's own internal exposure reduction and minimization goals.

Proposed section 850.26 would establish the regulated area provisions of the CBDPP. These regulated areas, managed by the contractors, would help minimize the number of workers exposed to airborne beryllium by preventing or minimizing the spread of beryllium to clean work areas. Because most if not all DOE contractors that would be affected by this proposed rule have already implemented varying provisions to control access to areas and operations with a potential for worker exposures to beryllium (as reported in the draft 1996 DOE Beryllium Information Survey Report), DOE believes that the majority of the provisions of this proposed section would pose minimal additional burden on DOE contractors.

Proposed section 850.26(a) would require that DOE contractors establish regulated areas where airborne concentrations of beryllium are in excess of the action level or STEL. DOE selected the action level in lieu of the 8-hour PEL as the trigger for this proposed requirement in keeping with the Department's aggressive beryllium exposure reduction and minimization philosophy. The STEL is included as a trigger for this requirement to address workplace areas where full-shift exposure levels may be below the action level but operations or activities result in exposures above the STEL.

Proposed section 850.26(b) of the proposed section would require that DOE contractors adequately identify regulated areas so that workers are aware of the presence and boundaries of such areas. This requirement would allow contractors the flexibility to determine the most appropriate means of identifying each regulated area based on specific worksite conditions.

Proposed section 850.26(c) would require that DOE contractors limit access to regulated areas to authorized persons only. The contractor would determine which workers should have the authority to enter the work area and how the entry of unauthorized individuals will be prevented. DOE's intention is that only individuals who are essential to the performance of work in the regulated area would be granted entry authority. DOE contractors would have to evaluate the affected operation and determine which personnel (including managers, supervisors, and workers) are necessary for the performance of the work and thus must have entry authority. Methods for preventing unauthorized persons from entering a regulated area may range from, at a minimum, posting a sign indicating that only authorized persons may enter (as would be required by proposed section 850.37) to the use of locked access doors and other security measures on the basis of worksite conditions. DOE believes that contractors are best equipped to determine whether any access control methods are needed in addition to those already specified in proposed section 850.37.

Proposed section 850.26(d) would require that DOE contractors keep a record of all persons who enter regulated areas. The record must include the name of the person who entered, the date of entry, the time in and time out, and the work performed. The function of these records within the framework of the CBDPP is clarified in proposed section 850.38, Recordkeeping. Specifically, DOE believes that these records are necessary to monitor the effectiveness of each contractor's regulated area efforts and to provide valuable information regarding each worker's history of potential exposures. This historical information would assist the contractor's occupational medicine staff in establishing appropriate medical surveillance protocols and would aid in the Department's efforts to establish links between working conditions and potential health outcomes.

Proposed section 850.27 would establish change room provisions for workers in regulated areas. These hygiene provisions are common in OSHA's expanded health standards, specifically in those standards designed to protect workers from exposures to hazardous particulates. Proposed section 850.27(a)(1) would require that change rooms used to remove beryllium-contaminated clothing and protective equipment be maintained under negative pressure or, located in a manner or area that prevents dispersion of beryllium contamination into clean areas. Proposed 850.27(a)(2) would require that separate facilities be provided for workers to change into and store personal clothing and clean protective clothing and equipment. DOE believes that such provisions are necessary to prevent cross-contamination between work and personal clothing and the subsequent spread of beryllium into clean areas of the facility and into workers' private automobiles and homes. These provisions would also address the need to prevent contamination of clean protective clothing and equipment, ensuring that protective clothing and equipment actually protect workers rather than contribute to their exposures.

Consistent with the goal of preventing the spread of contamination into adjacent work areas and into affected workers' homes, proposed section 850.27(b) would require that DOE contractors provide hand-washing and shower facilities for workers assigned to regulated areas. DOE recognizes that the installation of such facilities may take time in some cases. Accordingly, proposed section 850.13(b) would allow contractors 2 years to achieve full compliance with the requirements of the rule.

Proposed section 850.28 would establish the respiratory protection provisions of the CBDPP. Specifically, proposed section 850.28(a) would require that DOE contractors comply with the OSHA Respiratory Protection standard (29 CFR 1910.134). Proposed section 850.28(b) would require that

DOE contractors provide appropriate respiratory protective equipment for all workers exposed to airborne concentrations of beryllium above the PELs established in proposed section 850.22 and ensure that the workers use protective equipment. Proposed section 850.28(c) would require that DOE contractors select and use only National Institute for Occupational Safety and Health (NIOSH)-approved or DOE-accepted respiratory protective equipment as required by DOE Order 440.1A.

None of the provisions of this proposed section are new. For instance, DOE contractors have historically been subject to the OSHA standards, including 29 CFR 1910.134, through the provisions of DOE Order 440.1A and its predecessor orders, which incorporate the OSHA standards. DOE Order 440.1A require DOE contractors to provide, and DOE workers to use, appropriate respiratory protective equipment necessary to protect workers from exposures to hazardous substances, including airborne beryllium, at levels above established OSHA PELs. In addition, the provisions of 29 CFR 1910.134 include a requirement that employers select only NIOSH-approved respirators. In recognition of the unique nature of certain DOE operations, DOE Order 440.1A expanded this NIOSH-approval restriction to allow for the use of DOE-accepted respiratory protection when NIOSH-approved respiratory protection did not exist for a specific DOE task.

Proposed section 850.29 would establish the protective clothing and equipment provisions of the CBDPP. Proposed section 850.29(a) would require that DOE contractors provide workers who are potentially exposed to beryllium at or above the action level or above the STEL with protective clothing and equipment and ensure that the protective clothing and equipment are maintained and used as appropriate. Proposed section 850.29(a)(1) would clarify that appropriate protective clothing for work in areas where beryllium contamination is present includes full-body protective clothing and footwear (work shoes or booties). This section further stipulates that workers must exchange their personal clothing for this protective clothing before beginning work in regulated areas. As would be required under proposed section 850.27(a), this change from personal clothes into protective work clothing must occur in a change room that protects the worker's personal clothes and clean protective clothing from beryllium contamination. DOE believes that the use of full-body protective clothing in lieu of personal clothes in regulated areas is necessary to prevent the spread of beryllium contamination into adjacent work areas and to preclude the possible transport of beryllium into affected workers' private property.

Because direct contact with beryllium can cause contact dermatitis and possibly conjunctivitis, proposed section 850.29(a)(2) would require that DOE contractors provide workers with additional protective gear where skin or eye contact with powdered or liquid forms of beryllium is possible. This additional protective gear could include face shields, goggles, gloves, and gauntlets, depending on the nature of the operation and the related skin and eye exposure hazards involved. DOE recognizes that the potential for the development of contact dermatitis or conjunctivitis is mainly associated with contact with soluble forms of beryllium compounds. Nevertheless, DOE believes that the provisions of proposed section 850.29(a)(2) represent prudent industrial hygiene measures for work with all forms of beryllium, particularly in light of the fact that both soluble and insoluble forms of beryllium have been shown to cause chronic ulcerations if introduced into or below the skin via cuts or abrasions.

As clarified in the definition of beryllium in proposed section 850.3, soluble beryllium compounds would not be covered by the proposed rule. DOE omitted soluble beryllium compounds from the definition of beryllium based on information provided by the DOE field offices indicating that soluble beryllium compounds were not used within the DOE complex.

The Department's objective is to prevent the spread of beryllium contamination, thereby reducing the number of workers exposed and the opportunities for potential exposures. In keeping with this objective, proposed sections 850.29(b) through (e) would establish provisions to control the handling, maintenance, cleaning, and disposal of beryllium-contaminated protective clothing and equipment. Specifically, proposed section 850.29(b) would require DOE contractors to ensure that workers do not take contaminated clothing or equipment from the change room or worksite unless specifically authorized to do so for the purposes of cleaning, maintenance, or disposal. Where workers are authorized to remove contaminated clothing and equipment from the change-room or worksite, proposed sections 850.29(b)(1) and (b)(2) stipulate that such materials must be placed in sealed impermeable containers that bear warning labels to clearly identify the contents and appropriate handling precautions. Such warning labels would help ensure appropriate subsequent handling of beryllium-contaminated materials and in preventing inadvertent exposures that could result if laundry, maintenance, or disposal personnel are not aware of the presence of beryllium contamination.

Proposed section 850.29(c) would require that DOE contractors clean, launder, repair, and replace protective clothing and equipment as needed to ensure its continued effectiveness in protecting workers. This section would allow contractors some flexibility in determining the required frequency for laundering protective clothing based on specific work conditions and the potential for contamination. Because DOE believes that certain minimal laundering frequencies must be maintained to ensure that the protective clothing does not contribute to worker exposures, the proposed paragraph stipulates a minimal laundering frequency of at least once a week.

To reduce and minimize the potential for exposures to beryllium during laundering operations, proposed section 850.29(d) would require that DOE contractors launder contaminated clothing using methods that would prevent the release of airborne beryllium in excess of the action level or STEL. DOE would provide DOE contractors the flexibility to determine the most appropriate means to launder contaminated clothes based on their own specific worksite conditions. DOE has, however, included in this section one specific requirement designed to prevent the dispersion of beryllium particles into the workplace atmosphere: proposed section 850.29(e) would prohibit the use of blowing, shaking, or any other means of cleaning that could disperse beryllium particles into the air. This is a well-recognized and accepted industrial hygiene control employed to minimize exposures to airborne particulates.

Proposed section 850.30 would establish the housekeeping provisions of the CBDPP. Good housekeeping practices are necessary in areas where beryllium is used or handled to prevent the accumulation of beryllium-containing dusts on surfaces throughout the workplace. Such accumulations, if not controlled, may lead to reentrainment of beryllium particles into the atmosphere. This potential for beryllium accumulations to become reentrained into the atmosphere increases potential beryllium exposure hazards in locations where beryllium dusts were originally generated and introduces the potential for such exposures in other work areas. In addition, the uninhibited accumulation of beryllium-containing dust on equipment in the workplace increases the potential for worker exposure to beryllium during the performance of equipment maintenance, handling, and disposal tasks. Accordingly, the housekeeping program focuses on the prevention of accumulation of beryllium-containing dust in the workplace. Because the performance of housekeeping tasks can, in and of itself, lead to worker exposures to beryllium-contaminated dust, the provisions of this housekeeping section also focus on preventing the reentrainment of dust during the performance of housekeeping activities.

Proposed section 850.30(a) would require that DOE contractors conduct routine surface sampling to ensure the effectiveness of housekeeping efforts. Surface sampling has become an accepted method for providing qualitative information on chemical contamination of work surfaces. Unfortunately, surface sampling procedures have not reached the stage of development that would allow an industrial hygienist to predict a personal exposure or a potential airborne concentration of reentrained contaminants. Such sampling, however, can identify the presence of beryllium contamination and thus can provide an indication of the effectiveness of housekeeping efforts. Accordingly, this proposed requirement is intended only as a housekeeping performance measure and should not be interpreted as a proposed mechanism for measuring, predicting, or controlling airborne concentrations of beryllium. In addition, this proposed requirement would only apply to removable or loose surface contamination which could become reentrained into the workplace atmosphere.

Affected sites throughout the Department have already established beryllium surface contamination levels to ensure the effectiveness of their housekeeping procedures. According to representatives from these sites, existing surface contamination limits employed throughout the DOE complex range from 1 to 5 μg/100 cm², with the majority of the sites using approximately 3 μg/100 cm² (e.g., Pantex, Lawrence Berkeley National Laboratory, Y–12, Rocky Flats). Accordingly, DOE has adopted the 3 μg/100 cm² level in the proposed rule.

The use of diverse sampling methods (differences include type of sample media, type of solvent (if any) on the sample media, area sampled, etc.) may easily lead to the reporting of inconsistent or incorrect results. To reduce the variability in reported surface contamination across the DOE complex, DOE recommends the use of a single sampling method: NIOSH method 9100 (NIOSH Manual of Analytical Methods (NMAM), 4th Edition, August 15, 1994, Lead in Surface Wipe Samples). This method may have to be modified for surfaces smaller than 100 cm² using a procedure such as that described in Appendix D of 10 CFR part 835.

Proposed sections 850.30(b) and (c) would establish provisions for the use of housekeeping methods that will prevent or minimize the reentrainment of beryllium particulates into the workplace atmosphere. Specifically, proposed section 850.30(b) would require the use of wet methods or vacuuming for the cleaning of beryllium-contaminated floors and other surfaces, and prohibit the use of compressed-air or dry methods for such activities. Proposed 850.30(c) would require the use of HEPA filters in all vacuuming operations for contaminated or potentially contaminated surfaces and would further require filter replacement as needed to maintain the capture efficiency of the vacuum. The use of wet methods for reducing or minimizing the dispersal of dust during general housekeeping tasks such as sweeping is a common industrial hygiene practice, as is the use of HEPA filters, which prevent the spread of dust by effectively collecting the dust as it is vacuumed or brought into a hood.

As discussed in earlier sections of this analysis, the movement of contaminated or potentially contaminated equipment from a regulated area to a nonregulated area may result in the spread of beryllium contamination. To prevent this potential spread of contamination in the performance of housekeeping activities that would be required under this rule, proposed section 850.30(d) would require that cleaning equipment used in areas where surfaces are contaminated or potentially contaminated with beryllium be labeled, controlled, and not used in other clean areas of the facility. These procedures are similar to those required under OSHA's Asbestos standard for any equipment used during cleanup or removal of asbestos from buildings.

Proposed section 850.31 would establish the waste disposal provisions of the CBDPP. Like many of the regulated area, protective clothing and equipment, and housekeeping provisions of the proposed rule, the waste disposal provisions of this section focus on minimizing the spread of beryllium contamination throughout the facility. As mentioned throughout this NOPR, such contamination control measures are necessary to achieve the Department's objectives of reducing the number of workers exposed to beryllium and minimizing the opportunities for beryllium exposures.

DOE believes that the most effective way to control the spread of contamination resulting from waste disposal activities is to first prevent or minimize the generation of beryllium waste. Accordingly, proposed section 850.31(a) would require that DOE contractors control the generation and disposal of beryllium waste through good housekeeping practices, the performance of appropriate hazard analyses for operations with the potential to generate waste, and the application of waste minimization principles. Good housekeeping practices aid in this effort by continually removing beryllium dust accumulations from work surfaces, thereby reducing the potential for, and significance of, contamination of workplace equipment. The performance of hazard analyses on operations with the potential to generate wastes can help DOE contractors identify potential sources of wastes and evaluate possible controls that could be implemented to prevent or reduce waste generation. Other waste minimization practices, such as minimizing the equipment and material that is exposed to beryllium contamination, will also assist in reducing the amount of material that must be disposed of as beryllium or beryllium-contaminated waste, thus reducing the potential beryllium exposure hazards associated with waste disposal activities.

Proposed section 850.31(b) would require that DOE contractors dispose of all waste, scrap, debris, bags, containers, small equipment, and clothing contaminated with beryllium in sealed impermeable bags or other closed impermeable containers that are labeled in accordance with section 850.37. DOE believes these waste disposal provisions are necessary to prevent the reentrainment of beryllium contamination into the workplace atmosphere. Warning labels are necessary to ensure that workers are aware that containers or bags contain beryllium contamination so that they can take appropriate precautions.

Proposed section 850.32 would establish the beryllium-related emergency provisions of the CBDPP. Such provisions are particularly important in light of suggestions made by several participants in the public forums that a single, high-level beryllium exposure may have been the cause of CBD occurring among several workers thought to have no exposure or only incidental, low-level exposures to beryllium.

Proposed section 850.32(a) would require that DOE contractors develop and implement procedures to address potential beryllium emergency situations for each facility engaged in beryllium operations. The Department's intent is for DOE contractors to evaluate their respective beryllium-related operations to determine possible emergency scenarios. Then, based on these facility- and operation-specific scenarios, the contractors would fashion procedures to specifically address the types of emergencies that could be encountered at the facility. DOE believes that this tailored approach would provide workers the best opportunity to be prepared in the event of an emergency, enabling them to respond in an appropriate and safe manner and to remedy site conditions with minimal potential for additional exposures to themselves or other personnel in the facility.

Proposed section 850.32(a)(1) would require that DOE contractors establish procedures to alert workers in the event of a beryllium emergency. By ensuring that workers are continually aware of how they are expected to respond in the event of an emergency and by ensuring that they receive prompt notification or warning when an emergency situation has developed, DOE contractors would enable workers to quickly implement the actions needed for protection while bringing an emergency situation under control.

Proposed section 850.32(a)(2) would require DOE contractors to ensure that workers engaged in the cleanup of emergency spills of beryllium, or in handling other emergency situations involving beryllium contamination, are provided with and wear protective clothing and equipment as specified in this proposed rule. DOE believes that such protective equipment is necessary to adequately protect workers from exposures to beryllium. DOE feels that this protection is even more critical when responding to uncontrolled situations where airborne levels of beryllium may not be adequately characterized and may exceed the PEL.

Because even the best emergency response procedures will be ineffective if personnel required to implement the procedures are not aware of them, DOE has included in proposed section 850.32(b) a requirement that contractors train affected workers on required emergency procedures.

Proposed section 850.33 would establish the medical surveillance provisions of the CBDPP. Proposed sections 850.33(a) and (b) propose that DOE contractors and Field Organizations designate a SOMD to be responsible for administering the respective contractor and federal medical surveillance programs required by this rule. Proposed section 850.33(c) would also require that the written medical surveillance program that is required for inclusion in the CBDPP be submitted and reviewed by the DOE Office of Environment, Safety and Health and approved by the head of the cognizant DOE Field Organization. DOE review and approval authority is necessary to ensure that contractor medical surveillance requirements are consistent with the intent of the CBDPP and that these programs are applied uniformly across the DOE complex.

Proposed section 850.33(d) would require DOE contractors to establish and implement a medical surveillance program for all beryllium workers exposed at or above the action level or above the STEL. Under this program, DOE would offer medical evaluations to affected beryllium workers. Once an employee is enrolled in the program, he or she would remain enrolled for the duration of employment at that site. The program would have two purposes: (1) Ensure the prompt identification and proper treatment of workers who become sensitized to beryllium or develop CBD, and (2) evaluate and ensure the effectiveness of the CBDPP in preventing CBD by determining the incidence of CBD in the workforce and by identifying risk factors associated with the development of CBD and beryllium sensitization.

Proposed section 850.33(e) would require that DOE contractors provide the SOMD with the information needed to administer the medical surveillance program. This information would include, but may not be limited to, the baseline beryllium inventory, hazard assessment, and exposure monitoring data, as well as information regarding the identity and nature of activities or operations on the site that are covered under the CBDPP, the related duties of beryllium workers, and the types of personal protective equipment employed in the performance of these duties.

Proposed section 850.33(f) would require the SOMD to establish and maintain a list of beryllium workers in the medical surveillance program based on records and other information regarding the identity of beryllium workers. Current employees who are at risk for CBD because of past beryllium operations would not be included on this list or covered under this proposed rule. Rather, they would be identified and offered medical surveillance under a separate, directly funded program.

The Department views medical surveillance as a primary tool for determining the extent of CBD risk in an employee population. The list developed under section 850.33(f)(1) would establish the population of beryllium workers who may be eligible for medical surveillance. The Department's expectation is that SOMDs will use inclusive criteria for identifying beryllium workers to be covered under medical surveillance. In addition, proposed section 850.33(f)(2) clarifies DOE's intention that SOMDs refine the list of beryllium workers based on subsequent analyses of medical surveillance results required under proposed section 850.33(k). For example, the results of Be-LPTs would be used to determine risk factors that appear to be associated with CBD. Based on the apparent risk factors, the SOMD would adjust the surveillance program to better identify workers at risk of developing CBD.

Proposed section 850.33(g) would require the SOMD to provide the examining physician with (1) a copy of this rule, (2) a description of the workers' relevant duties as they pertain to beryllium exposure, (3) records of the workers' beryllium exposure, (4) a description of personal protective and respiratory protective equipment in current or anticipated use, and (5) any relevant information from previous medical examinations of the workers that is not otherwise available to the examining physician. The Department believes that this information is necessary to ensure that the physician can make informed decisions regarding the required content of the medical evaluation and the subsequent development of recommendations related to each beryllium worker's work.

Proposed section 850.33(h)(1) would clarify that DOE contractors must provide required medical examinations and procedures to beryllium workers and accepted applicants at no cost to the workers and accepted applicants at a time and place convenient to them. In addition to minimizing the financial burden on affected workers, DOE believes that this provision will encourage DOE contractors to minimize the levels of beryllium exposures in the workplace and the number of workers exposed or potentially exposed to beryllium. DOE also believes that this provision will help ensure that workers obtain proper medical evaluations.

Proposed section 850.33(h)(2) would specify that DOE contractors must provide baseline medical evaluations to beryllium workers who qualify for medical surveillance. DOE believes that such baseline medical evaluations are necessary to ensure that beryllium workers can safely perform assigned duties in areas that may present the potential for exposure to beryllium. In addition, DOE believes that the proper evaluation and documentation of each worker's health status is essential for determining whether future health problems may be related to occupational exposure to beryllium.

Proposed section 850.33(h)(3) would supplement the baseline medical evaluation requirement of proposed section 850.33(h)(2) by requiring that DOE contractors offer annual medical evaluations to beryllium workers who qualify for medical surveillance. Such annual evaluations shall be offered as long as the beryllium workers work in areas where beryllium is present at levels at or above the action level or above the STEL. DOE believes that such periodic medical evaluations would be critical to ensuring the early identification and treatment of beryllium sensitization and CBD. This proposed section further clarifies that in cases where beryllium workers no longer work in areas where beryllium is present at levels at or above the action level or above the STEL, the requirement for annual medical evaluations may be reduced to once every 3 years. DOE believes that this continued surveillance is warranted due to the extended latency period associated with the development of CBD.

Both proposed sections 850.33(h)(2) and (h)(3) would also establish the minimum required content of the baseline and periodic medical evaluations, respectively. Among these minimum requirements for both types of evaluations is the need to conduct a Be-LPT. The Be-LPT is the only available laboratory test for determining individual immune response to beryllium *in vitro*. Its use in a surveillance program would permit detection of beryllium-related health effects at a preclinical stage. A positive Be-LPT would indicate the need for further evaluation to determine the presence of CBD. The use of the Be-LPT as an evaluation tool would not only allow the earliest opportunity for diagnosis and treatment of CBD, but would also assist in identifying unhealthy working conditions or operations and deficiencies in the CBDPP.

In addition to the Be-LPT, some medical experts recommend that a chest radiograph (X-ray) and spirometry be obtained prior to exposure to beryllium to establish a baseline for possible comparison with future test results. Spirometry involves measuring the amount of air entering and leaving the lungs. Accordingly, proposed section 850.33(h)(2) would further specify that baseline evaluations also include a chest radiograph (X-ray) and spirometry. However, because neither chest radiography nor spirometry has proven to be any more predictive in identifying the presence of CBD than symptom questionnaires, these additional tests would not be mandated as a part of the periodic evaluation required under proposed section 850.33(h)(3). Instead, the need for these tests would be left to the discretion of the examining physician. DOE believes that the examining physician is in the best position to determine the need for such additional tests based on the unique circumstances associated with each worker's exposure scenarios and health status.

Proposed section 850.33(h) would not establish a requirement for termination evaluations. DOE believes termination evaluations for beryllium workers who are reassigned to non-beryllium work would not be needed because periodic evaluations will continue for as long as the worker is employed by the DOE contractor. Termination evaluations for beryllium workers who resign or retire from employment with DOE contractors would also not be necessary because the Department intends to establish a separate, directly funded program that offers medical examinations to former employees at risk for developing CBD. DOE recognizes that many sites already have an internal requirement to provide termination medical evaluations to workers upon their separation from employment. Nothing in this proposed rule would preclude the SOMD from continuing this practice.

Proposed section 850.33(h)(4) would require that DOE contractors ensure that all medical evaluations and procedures be performed by or under the supervision of a licensed physician who is familiar with the health effects of beryllium. Conducting a medical surveillance program for beryllium workers requires specialized medical knowledge and crucial clinical decision-making. DOE believes that a licensed physician with specialized knowledge of the health effects of beryllium is the most appropriate medical professional to provide medical evaluations. A physician is also needed to answer health-related questions and to discuss and interpret abnormal clinical findings with the affected worker.

Proposed section 850.33(i) would establish requirements for referrals for additional diagnostic evaluation. Specifically, beryllium workers who have two or more positive Be-LPTs or other signs and symptoms of CBD, would be referred by the examining physician for diagnostic evaluation. Such an evaluation would be performed by a pulmonary medicine, occupational medicine, or other clinic with the specialized equipment and examination protocols required to definitively differentiate between CBD and other lung disease. DOE believes that this proposed referrals provision is warranted due to the unusual nature of CBD and the fact that not all physicians are familiar with the evaluation of beryllium-exposed patients.

Proposed section 850.33(j) would establish requirements for physicians' written reports and recommendations. Proposed section 850.33(j)(1) would ensure that employees and accepted applicants are informed of the results of their medical evaluations and tests within 15 days of completion of the evaluations. In addition, proposed section 850.33(j)(2) would specify that within this same 15 day time period, the DOE contractor obtain a copy of a limited version of the physician's report. This limited version must include any recommendations for restricting the employee from working with beryllium, or for wearing protective equipment.

Proposed section 850.33(k) would establish the requirement for a routine and systematic analysis of medical, job, and exposure data. The purpose of this requirement is to establish a program that would follow the public health model for disease surveillance programs. Information would be collected and analyzed so that the prevalence of disease could be accurately described and conclusions could be reached on causes or risk factors for the disease. This data analysis would provide an effective performance measurement mechanism for use in correction and improvement of the CBDPP. Proposed section 850.33(k)(1) would require that the results of these analyses be used by the SOMD to determine which workers should be offered medical surveillance and the need for additional exposure controls. In addition, proposed section 850.33(k)(2) would require that the SOMD provide copies of the data analyses to the contractor for performance feedback information.

Proposed section 850.34 would establish medical removal requirements. Specifically, this section would require that upon recommendation of the SOMD, DOE contractors shall give workers with two positive Be-LPTs or a diagnosis of CBD the option of: (1) placement in another position without occupational exposure to beryllium, or (2) continued employment in the current position with actual or potential exposure to beryllium.

Proposed section 850.34(a) would require that, with the written consent of the worker, DOE contractors remove a beryllium worker from exposure to beryllium or postpone an accepted applicant's start of active duty as a beryllium worker if the SOMD recommends such actions due to confirmed CBD, two or more positive Be-LPTs results, or while other signs or symptoms are being evaluated for their relation to CBD. Proposed section 850.34(a)(1) would further require that DOE contractors provide the affected beryllium worker a follow-up medical examination to determine whether the worker may be returned to his or her beryllium work or whether the worker should be permanently removed from working in beryllium areas.

Proposed section 850.34(a)(2) would provide affected beryllium workers and accepted applicants with the option to decline the medical removal or restriction by signing an informed consent waiver. DOE notes that prudent medical practice suggests that workers with two or more positive Be-LPTs or diagnosis of CBD should avoid additional exposure to beryllium however, since no medical evidence exists to suggest that removal from exposure will alter the course of disease, DOE believes that it is ultimately the affected worker's decision whether to remain in a job with potential or actual beryllium exposure.

For beryllium workers or accepted applicants who choose to accept restriction from continued work with beryllium, proposed section 850.34(a)(3) would require DOE contractors to make reasonable efforts to find and offer alternative employment. This section clarifies that the contractor is not required to displace an existing worker in order to create a vacancy, nor is the contractor required to promote the affected worker or accepted applicant or pay for job placement training costs in excess of $6,000.00. The contractor is also not required to provide training that takes longer than 6 months to complete.

Proposed section 850.34(b) would establish the requirement for medical removal protection benefits for beryllium workers who choose to accept a physician's recommendation to be removed from working with beryllium. Specifically, proposed section 850.34(b) would establish a requirement to protect an employee's base pay, benefits, and seniority should that worker accept restriction from working with beryllium. The Department's intent with this provision is that DOE contractors would offer sensitized employees and employees with CBD placement in a job that does not involve exposure to beryllium and that provides base pay and benefits comparable to their current job. Under this provision, if no such job exists within the contractor's organization, DOE contractors may offer the affected workers out-placement assistance to find suitable alternative employment.

Proposed section 850.34(b) would further clarify that DOE contractors would be required to protect the pay and benefits of affected workers for a two-year period. DOE believes that the establishment of a two-year period of protected pay and benefits is fair and would provide sufficient incentive for DOE contractors to put forth the level of job placement effort necessary to find suitable alternative employment that would be acceptable to the affected worker.

One of the main goals of the medical surveillance program is to minimize the disability associated with CBD. The Department believes that the establishment of the medical removal protection benefits of proposed section 850.34(b) is critical to achieving this goal for two reasons: (1) removal from exposure and effective job-placement efforts coupled with early diagnosis and treatment would allow affected workers to continue as productive members of the workforce, and (2) providing beryllium workers with a reasonable level of assurance that a finding of sensitization or diagnosis of CBD would not lead to the loss of their employment would further encourage worker participation in the medical surveillance program.

Proposed section 850.35 would establish the medical consent provisions of the proposed rule. Because DOE intends worker participation in medical surveillance to be voluntary, the provisions of this section would be necessary to ensure that beryllium workers receive the information they need to make an informed decision regarding their participation in the program.

Proposed section 850.35(a) would require that DOE contractors provide beryllium workers with information on the benefits and risks of the medical tests and examinations offered as part of medical surveillance. This information must be provided at least one week prior to any examinations or tests. In addition to providing this information, the Department also believes that DOE contractors should take reasonable efforts to ensure that workers understand the material. Accordingly, proposed section 850.35(a) would further clarify that workers shall have the opportunity to ask questions and have their questions answered prior to the performance of a medical evaluation.

Proposed section 850.35(b) would also require that DOE contractors provide beryllium workers and accepted applicants with a summary of the medical surveillance program, information explaining the purpose of the data, the type of data needed to be collected, how the data will be maintained, and the confidentiality of medical records will be protected. This information must also be provided at least one week prior to any examinations or tests.

Proposed section 850.35(c) would require DOE contractors to use the informed consent form approved by the Assistant Secretary for Environment, Safety and Health (EH–1) to obtain the signed consent of a beryllium worker prior to performance of a medical examination. The signature of the beryllium worker is intended to document that he or she consented to being tested. The signature of the examining physician is intended to document the commitments made to the beryllium worker. An example of the consent form can be found in Appendix A to Part 850.

Proposed section 850.35(d) would ensure that a beryllium worker or accepted applicant who develops a beryllium-related health effect, such as beryllium sensitization or CBD, would be given the information by the contractor that he or she needs to make an informed decision whether to accept medical removal. As clarified in this section, this information would include, at a minimum, information on opportunities for alternative placement with the contractor, out-placement benefits if no suitable positions exist within the contractor's organization, and any available long-term medical and disability insurance benefits for which the worker may qualify. The goal of this provision is to provide the worker with detailed information on the risks and benefits of accepting or rejecting medical removal to assist the worker in making the best possible decision.

Proposed section 850.35(e) would clarify that the SOMD must first provide the affected worker or accepted applicant the opportunity to ask questions and have their questions answered prior to obtaining the workers agreement to medical removal or before

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having the worker sign a medical removal waiver.

Proposed section 850.36 would establish requirements for training and counseling regarding worker exposure to beryllium and the potential health effects associated with such exposure. DOE believes that such worker training is necessary because the appropriate implementation of the required workplace procedures of the CBDPP would ultimately rest upon the front-line workers who will actually be performing work on, with, or near beryllium or beryllium-contaminated materials. If these workers are not aware of the required procedures or if they do not fully appreciate the significance of these procedures, they cannot be expected to implement the procedures. For this reason, DOE believes that the ultimate success of the proposed CBDPP and the realization of the Department's goal to prevent future occurrences of CBD within the DOE complex depend to a great extent on the training and knowledge of the beryllium workers.

Proposed section 850.36(a) would require contractors to develop and implement a worker training program for all workers who are exposed or potentially exposed to airborne concentrations of beryllium and ensure their participation in the program. DOE recognizes that OSHA's Hazard Communication standard (29 CFR 1910.1200) already requires that DOE contractors provide their workers with similar training regarding the risks associated with all hazardous materials in the workplace. DOE does not intend that contractors would implement two separate and redundant training and information programs to comply with this proposed rule and the Hazard Communication standard. Accordingly, proposed section 850.36(a)(1) would require that DOE contractors' CBDPP training and information programs comply with the Hazard Communication standard as well as address the contents of the CBDPP. Through this provision, DOE intends for its contractors to integrate their CBDPP training and information efforts into their existing Hazard Communication training program, thus minimizing the burden on contractors and providing for a consistent approach to worker training and the communication of workplace hazards.

Proposed section 850.36(a)(2) would require that training be provided to workers prior to initial assignment and at least annually thereafter to ensure that workers are appropriately prepared to recognize the hazards and risks of working with beryllium. The initial training requirement of the paragraph is important to ensure that workers have the information they need to protect themselves before they are actually subject to exposure or potential exposure hazards. Annual training is necessary to reinforce initial training, especially with regard to the protective actions workers must take at their current jobs to reduce their potential for exposure to beryllium. DOE would establish this frequency as a minimum requirement, noting that changes in workplace operations, controls, or procedures, or the availability of new or updated information regarding the health risk associated with exposures to beryllium, may warrant the need for more frequent training.

In addition, proposed section 850.36(a)(3) would require that the training include information regarding beryllium health risk, exposure reduction, safe handling of beryllium and medical surveillance. This proposed section does not limit the contractor from providing training in additional areas.

All training must be conducted in a manner easy to understand so that workers can effectively translate CBDPP training into safe work practices. Training material should be appropriate in content and vocabulary to the education level, literacy, and language background of affected workers. Such targeted training would ensure that all workers, regardless of cultural or educational background, would have the requisite knowledge necessary to reduce and minimize their exposure to beryllium.

To provide additional support to affected workers, proposed section 850.36(b) would establish the requirement for the development and implementation of a worker counseling program that would assist beryllium-sensitized workers and workers diagnosed with CBD. The purpose of the counseling program would be to help communicate to workers the information that they will need to make important health- and work-related decisions and to facilitate the performance of required administrative activities, such as filing workers' compensation claims. Proposed section 850.36(b) would require the communication of information regarding the availability of: the medical surveillance program; medical treatment options; work practices aimed at limiting worker exposure to beryllium; the risk of continued exposure after sensitization; medical benefits; workers' compensation claims; and medical, psychological, and career counseling for workers with CBD or with positive results on Be-LPTs.

Proposed section 850.37 would require DOE contractors to post warning signs and labels to ensure that the presence of and dangers associated with beryllium and beryllium-contaminated materials or areas are communicated to workers.

Proposed section 850.37(a) would require the posting of warning signs at all entranceway locations where regulated areas have been established. This proposed section further requires that these signs bear the following warning:

DANGER
BERYLLIUM CAN CAUSE LUNG
DAMAGE
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

The purpose of these signs would be to minimize the number of persons in a regulated area by warning workers prior to entry. The signs would also alert workers to the fact that they must have the appropriate authorization from their supervisor to enter the regulated area. This is especially important when regulated areas are established on a temporary basis, such as during cleanup operations. In such cases, workers who typically work in or travel through the area may not be aware of the new potential for exposures to beryllium and thus may not be appropriately equipped for or aware of the need to protect themselves from potential exposures. Warning signs would also serve as a constant reminder to those who work in regulated areas that the potential for exposure to beryllium exists in the area and that appropriate controls must be used.

Proposed sections 850.37(b)(1) and (2) would require that DOE contractors label all containers of beryllium, beryllium compounds, or beryllium-contaminated clothing, equipment, waste, scrap, or debris in accordance with OSHA's Hazard Communication standard (29 CFR 1910.1200). Ensuring that the content and format of the warning labels are consistent with those of OSHA's Hazard Communication standard would provide DOE and its contractors with a consistent and comprehensive approach to alerting workers to beryllium's potential to cause serious disease. The use of such warning labels would also ensure that all those who come in contact with labeled containers are aware of the containers' contents and of the need to implement special handling precautions. Because the effectiveness of the warning labels in achieving these objectives is greatly dependent upon the visibility, accuracy, and understandability of the content of the labels, proposed section 850.37(a)(2) would further specify that labels bear the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR SHAKING
CANCER AND LUNG DISEASE HAZARD

Proposed section 850.38 would address requirements for the establishment and maintenance of accurate records to demonstrate effective implementation of the program. Proposed section 850.38(a) would require the collection and maintenance of all beryllium inventory information, hazard assessments, exposure measurements, controls, and medical surveillance data. The Department feels that accurate and retrievable records are essential to the assessment of the adequacy of worker protection programs. Proposed section 850.38(b) would require that records required by this part be maintained in an electronic, easily retrievable format that can be easily transmitted to DOE headquarters when requested. This supplemental requirement would be necessary to facilitate timely, efficient, and cost-effective transfer and analysis of exposure monitoring and medical surveillance data.

Although the Department does not at this time mandate any specific methods or types of records system in the proposed rule, DOE contractors are already required to keep records of beryllium inventory information (29 CFR 1910.1200, Hazard Communication) and hazard assessment, exposure measurement, and medical surveillance data (29 CFR 1910.1020, Access to Employee Exposure and Medical Records). DOE contractors would be encouraged to take advantage of existing recordkeeping systems to minimize the implementation burden.

Proposed section 850.38(c) would also require that DOE and contractors create links between data sets on working conditions and health outcomes to serve as a basis for understanding the beryllium health risk. This linkage of data will assist DOE and contractors in identifying unsafe work practices and defining the exposure-response relationship.

The establishment and maintenance of useful, linked, and easily retrievable records would directly support and be an integral part of successful performance feedback, as described in proposed section 850.40. Combining data facilitates analyses that might be impossible to perform in smaller populations. Combined analyses can identify associations between CBD prevalence and risk factors that might otherwise be missed, and can lead to the development of conclusions based on the predictive value of medical tests used earlier in the analysis process.

Proposed section 850.38(d) specifically states that medical information generated by the CBDPP may only be maintained as a part of the site beryllium workers' medical records. This section further states that the medical information must be maintained separately from other personnel records and in conformity with the Americans with Disabilities Act, the Privacy Act and other applicable laws.

Proposed section 850.39(a) would require that DOE contractors develop and maintain a separate electronic beryllium registry that includes all beryllium workers. This beryllium registry would serve as a repository for collecting and maintaining information on workers who are exposed to long term, low and moderate levels of beryllium. The results of beryllium sensitization testing and/or CBD status of exposed workers will be added to the registry as that information becomes available. As information accrues over time, the disease status of workers as it relates to past beryllium exposure would be determined. The goals of the registry would be to provide early guidance as to the effectiveness of exposure control mechanisms and intervention programs and assess the burden of health effects related to beryllium exposure. The beryllium registry would also facilitate the conduct of epidemiologic studies to better understand the development of the disease and better identify those at risk.

Section 850.39(b) would specify the required content of the registry and establish that the registry and subsequent updates be forwarded electronically on a semi-annual basis to the Office of Environment, Safety and Health, Office of Epidemiologic Surveillance. For most sites, the electronic transfer of data would be similar to that used for the existing Epidemiologic Surveillance program. The Office of Epidemiologic Surveillance would be responsible for the administration and policy decisions related to the beryllium registry. This office would also provide technical support to the SOMD as required.

The SOMD would provide demographic data, exposure data, and medical screening results. Personal identifying information would be required to link exposure data to an individual and to eliminate duplicate reports for each worker. This information would be collected pursuant to and contained within DOE Record System 88 "Epidemiologic and Other Studies, Surveys, and Surveillance."

Proposed section 850.39(c) would require that information contained in the beryllium registry be disclosed only in a manner consistent with applicable legal requirements, such as the Privacy Act. Use of records under this act is governed by specific routine uses.

DOE believes that the existence of a Department-wide registry of beryllium workers and CBD and sensitization cases would facilitate future research on improved diagnostic tests and treatments for the disease.

Proposed section 850.40 would establish the performance feedback provisions of the CBDPP. Performance feedback mechanisms are essential to ensure that the effectiveness of the CBDPP is evaluated on a continual basis and that the necessary changes are made to ensure the protection of worker health. This section would mandate the use and analysis of the data collected through the reporting requirements in proposed section 850.38 to maintain and improve each element of the CBDPP.

Proposed section 850.40(a) would require that DOE contractors conduct periodic analysis and assessment of monitoring results, hazards identified, medical surveillance results, attainment of exposure reduction and minimization goals, and occurrence reporting data. The Department believes that the analysis of these data would be important to the continuous improvement of the program. In addition, this information would provide insights to better understand and manage program implementation through the use of performance measures developed on a site-by-site basis.

To ensure that all workers have the necessary information to safely perform their assigned tasks, proposed section 850.40(b) would require that results of performance assessments conducted in accordance with this part be provided to line managers, planners, worker protection staff, workers, medical staff, and others. This requirement would improve communication among employees, managers, and others to more effectively evaluate and monitor program implementation and effectiveness.

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VII. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). The assessment of the potential costs and benefits of the rule required by section 6(a)(3) of the Executive Order has been made a part of the rulemaking file and is available for public review as provided in the **ADDRESSES** section of the NOPR.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

DOE obtained information for 15 potentially affected sites to determine if the proposed rule, if promulgated, would have a significant economic impact on small entities. This information indicates that no small businesses currently would be affected by the proposed rule. A more detailed account of this information appears in the Economic Analysis prepared under the requirements of Executive Order 12866. Furthermore, DOE expects that any potential economic impact of this rule on small businesses would be minimal because businesses at DOE sites perform work under contracts to DOE or the prime contractor at the site. Increased funding may be available under this contractual arrangement to offset much of the impact that the rule would impose. In addition, many of the requirements of this part would apply to prime contractors and not subcontractors. Currently none of the prime contractors at affected DOE sites are small businesses.

For the foregoing reasons, DOE certifies that today's proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. DOE invites public comment and information on this certification.

C. Review Under the Paperwork Reduction Act

The proposed collections of information in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number assigned by OMB.

This section describes the collections of information in the proposed rule and provides estimates of the annual burden on respondents. The burden estimates include the total time, effort, and financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for DOE. DOE invites public comment on: (1) Whether the proposed collections are necessary for the performance of DOE's functions, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW. Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the contact person at the address given in the **ADDRESSES** section of this notice. Requests for a copy of the Department's Paperwork Reduction Act Submission to OMB should be directed to the contact person.

Title: Reporting and recordkeeping requirements for the Chronic Beryllium Disease Prevention Program.

Abstract: The proposed rule would require DOE contractors at sites where beryllium is present to: develop and submit an initial CBDPP to DOE for approval (§ 850.10); periodically revise the CBDPP (§ 850.10); conduct a baseline inventory of beryllium at the site (§ 850.20); notify workers of exposure monitoring results (§ 850.24); develop and maintain a registry of beryllium workers (§ 850.39); require workers to sign a consent form for beryllium work and medical surveillance (§ 850.35); establish and maintain records related to the beryllium inventory and hazard assessment, exposure monitoring, workplace controls and medical surveillance (§ 850.38); and establish a performance feedback process for continually evaluating and improving the CBDPP (§ 850.40). DOE has determined that these collections of information are necessary for implementation of an effective CBDPP.

The burden of compliance with the collections of information in this rule will depend upon the nature of each requirement and the number and type of respondents. DOE estimates that DOE contractors at 15 facilities would be required to develop and submit CBDPPs to DOE for approval and, thereafter, implement the CBDPPs including the collections of information. Approximately 1,057 workers at the 15 facilities may be exposed to beryllium and, therefore, may be subject to certain of the information collection requirements.

DOE estimates the total startup costs at $348,781. Initial CBDPPs were required from all of the affected facilities by DOE Notice 440.1. DOE estimates that 2,549 professional hours and 637 clerical hours were required to prepare and submit the initial CBDPPs, at a total cost of $112,220. DOE estimates that the baseline inventory of beryllium will require 5,026 professional hours and 2,417 clerical hours, for a total cost of $234,631. Development of the beryllium registry is expected to cost $1,930, which represents 168 hours of clerical time.

DOE estimates the total recurring, annual paperwork burden at $318,860. This includes 3,498 professional hours ($142,047) and 15,375 clerical hours ($176,812). Recordkeeping would impose the largest recurring monetary cost (an estimated 10,993 clerical hours). Other recurring paperwork burdens are attributable to submitting performance feedback reports, worker notification of exposure monitoring, obtaining signed medical consent forms from workers, maintenance of the beryllium registry, revising the CBDPP plan on an annual basis, obtaining written reports from physicians regarding the results of medical exams, and performing analyses of medical data.

DOE estimates the total annualized cost of paperwork burdens for the Chronic Beryllium Disease Prevention Program would be $368,518.

D. Review Under the National Environmental Policy Act

DOE is reviewing the promulgation of 10 CFR part 850 under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations for implementing NEPA, and DOE's NEPA implementing procedures (10 CFR part 1021). DOE has prepared a draft Environmental Assessment (EA) (DOE/EA 1249) to support a decision on whether to issue a finding of no significant impact or to prepare an environmental impact statement for this proposed rule. Requests for copies of the draft EA and any comments on the EA should be submitted to the address indicated in the **ADDRESSES** section of this NOPR. Copies of the draft EA may also be downloaded from the "Chronic Beryllium Disease Prevention Program" home page on the Internet. The address is *http://tis.eh.doe.gov/be/* DOE will consider any comments on the draft EA and the proposed rule before completing the NEPA process.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, any other policy actions be reviewed for any substantial, direct effects on states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial, direct effects, then the Executive Order requires a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This proposed rule, if promulgated as a final rule, would apply only to DOE facilities. It would not have a substantial direct effect on the institutional interests or traditional functions of the states.

F. Review Under Executive Order 12988

Section 3 of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. Executive agencies are required by section 3(a) to adhere to the following general requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. It also requires a federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," requires an agency to develop a plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The proposed rule published today does not contain any federal mandate. Thus, these requirements do not apply.

VIII. Public Comment Procedures

A. Written Comments

Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule. To help the Department review the submitted comments, commentors are requested to reference the paragraph(s) (e.g., 850.3(a)) to which they refer where possible.

Ten copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "Beryllium Rule, Docket No. EH–RM–98–BRYLM." Should anyone wishing to provide written comments be unable to provide ten copies, alternative arrangements can be made in advance with the Department.

All submitted comments will be available for public inspection as part of the administrative record on file for this rulemaking, which is in the DOE Freedom of Information Office Reading Room at the address indicated in the **ADDRESSES** section of this NOPR.

Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The Department will make its own determination as to the confidentiality of the information and treat it accordingly.

B. Public Hearings

Public hearings will be held at the times, dates, and places indicated in the **DATES** and **ADDRESSES** sections of this NOPR. Any person who is interested in making an oral presentation should, by 4:30 p.m. on the date specified, make a phone request to the number in the **DATES** section of this NOPR. The person should provide a daytime phone number where he or she may be reached. Persons requesting an opportunity to speak will be notified as to the approximate time they will be speaking. Each presentation is limited to 10 minutes. Persons making oral presentations should bring ten copies of their statements to the hearing and submit them at the registration desk.

DOE reserves the right to select the persons who will speak. In the event that requests exceed the time allowed, DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the hearing. A DOE official will be designated to preside at each hearing, which will not be judicial or evidentiary. Only those conducting the hearing may ask questions. Any further procedural rules needed to conduct the hearing properly will be announced by the DOE presiding official.

A transcript of each hearing will be made available to the public. DOE will retain the record of the full hearing, including the transcript, and make it available for inspection in the DOE Freedom of Information Office, at the address provided in the **ADDRESSES** section of this NOPR. Transcripts may be purchased from the court reporter.

If DOE must cancel the hearings, it will make every effort to give advance notice.

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List of Subjects in 10 CFR Part 850

Hazardous waste, Occupational safety and health, Reporting and recordkeeping requirements, Safety.

Issued in Washington, DC on October 30 1998.

Bill Richardson,

Secretary of Energy.

For the reasons set forth in the preamble, Title 10, Chapter III of the Code of Federal Regulations is proposed to be amended by adding Part 850 to read as set forth below.

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

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Appendix A to Part 850—Chronic Beryllium Disease Prevention Program Informed Consent Form

Appendix B to Part 850—Questions and Answers Concerning the Beryllium-Induced Lymphocyte Proliferation Test (Be-LPT), Medical Records, and the DOE Beryllium Registry

Authority: 42 U.S.C. 2201.

Subpart A—General Provisions

§ 850.1 Scope.

This part establishes a chronic beryllium disease prevention program (CBDPP) that supplements and is integrated into existing worker protection programs that are established for Department of Energy (DOE) employees and DOE contractor employees.

§ 850.2 Applicability.

(a) This part applies to:

(1) DOE offices responsible for DOE beryllium activities and DOE employees exposed or potentially exposed to beryllium at DOE-owned or -leased facilities; and

(2) DOE contractors and contractor employees with operations or activities involving exposure or the potential for

exposure of employees to beryllium at DOE-owned or -leased facilities.

(b) This part does not apply to:

(1) Beryllium articles; and

(2) DOE laboratory operations involving beryllium that are subject to the requirements of 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories.

§ 850.3 Definitions.

(a) As used in this part:

Accepted applicant means a person who has accepted an offer of employment in beryllium work at a DOE facility but who has not begun performing beryllium work.

Action level means the level of airborne concentration of beryllium established pursuant to § 850.23 of this part that, if exceeded, requires the implementation of worker protection provisions specified in that section.

Authorized person means any person required by work duties to be in a regulated area.

Beryllium means elemental beryllium and any insoluble beryllium compound or alloy containing 0.1 percent beryllium or greater that may be released as an airborne particulate.

Beryllium article means a manufactured item that is formed to a specific shape or design during manufacture that has end-use functions that depend in whole or in part on its shape or design during end use and that does not release beryllium or otherwise result in exposure to airborne concentrations of beryllium under normal conditions of use.

Beryllium emergency means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations that results in an unexpected and significant release of beryllium at a DOE facility.

Beryllium-induced lymphocyte proliferation test (Be-LPT) is an in vitro measure of the beryllium antigen-specific, cell-mediated immune response.

Beryllium worker means a current worker who is exposed or potentially exposed to airborne concentrations of beryllium at or above the action level or above the STEL or who is currently receiving medical removal protection benefits.

Breathing zone is defined as a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches.

DOE means the U.S. Department of Energy.

DOE beryllium activity means an activity taken for, or by, DOE that can expose workers to beryllium, including but not limited to design, construction, operation, or decommissioning. The activity may involve one DOE facility or operation or a combination of facilities and operations.

DOE contractor means any entity under contract (or its subcontractor) with DOE with responsibility to perform beryllium activities at DOE facilities.

DOE facility means any facility operated by or for DOE.

High-efficiency particulate air (HEPA) filter means a filter capable of trapping and retaining at least 99.97 percent of 0.3 micrometer monodispersed particles.

Immune response refers to the series of cellular events by which the immune system reacts to challenge by an antigen.

Medical removal protection benefits are employment rights established by § 850.34 of this part for beryllium workers who are removed temporarily from work in regulated areas or who voluntarily accept permanent medical removal from regulated areas following tests that confirm beryllium sensitivity or CBD.

Regulated area means an area or physical location demarcated by the contractor in which the airborne concentration of beryllium exceeds, or can reasonably be expected to exceed, the action level or the STEL.

Short term exposure limit (STEL) means the short term exposure limit established pursuant to § 850.22(b) of this part.

Site occupational medicine director (SOMD) means the physician responsible for the overall direction and operation of the site occupational medicine program.

Surface contamination is the presence of beryllium on work surfaces, which may cause skin irritation by direct contact with damaged skin or which may present an airborne hazard when reentrained into the workplace air.

Worker means a person who performs work for or on behalf of DOE, including a DOE employee, an independent contractor, a DOE contractor employee, or any other person who performs work at a DOE facility.

Worker exposure means the exposure to airborne beryllium that would occur if the worker were not using respiratory protective equipment.

Terms used in this part that are undefined but that are defined in the Atomic Energy Act shall have the same meaning as under the Atomic Energy Act.

§ 850.4 Enforcement.

DOE may take appropriate steps under its contracts with DOE contractors to ensure compliance with this part, including contract termination or reduction in fee.

§ 850.5 Dispute resolution.

Disputes arising under this part that are brought by beryllium workers and accepted applicants shall be resolved through applicable grievance-arbitration processes or, where such processes are not available, through referral to the Department's Office of Hearings and Appeals. The procedures in 10 CFR part 1003, subpart G, shall apply to resolution of disputes by the Office of Hearing and Appeals.

Subpart B—Administrative Requirements

§ 850.10 Development and approval of the CBDPP.

(a) Preparation and Submission of Initial CBDPP to DOE. (1) DOE contractors responsible for DOE beryllium activities at DOE facilities shall ensure that a CBDPP is prepared for their respective facility and submitted to the appropriate DOE Field Organization before beginning beryllium activities, but no later than [90 days after the effective date of the final rule] of this part.

(2) Where there are separate sections addressing the activities of particular contractors at the facility, the DOE contractor designated by the DOE Field Organization shall review and approve those sections so that a single consolidated CBDPP for the facility is submitted to the DOE Field Organization for review and approval.

(b) DOE Review and Approval. Heads of DOE Field Organizations shall review and approve the CBDPPs.

(1) The initial CBDPP and any updates shall be considered approved 90 days after submission if not approved or rejected by DOE earlier.

(2) DOE contractors shall furnish a copy of the approved CBDPP, upon request, to the DOE Assistant Secretary for Environment, Safety and Health or designee, DOE program offices, and affected workers or their designated representatives.

(c) Update. DOE contractors shall submit an update of the CBDPP to the appropriate DOE Field Organization for review and approval whenever a significant change or significant addition to the CBDPP is made or a change in contractor or subcontractor occurs. CBDPPs shall be reviewed at least annually and updated as necessary.

(d) Labor Organizations. If a DOE contractor employs beryllium workers who are represented for collective bargaining agreements by labor

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organizations, the contractor must give those organizations timely notice of the development and implementation of the CBDPP and any updates thereto and must, upon timely request, bargain concerning implementation of this part, consistent with the National Labor Relations Act.

§ 850.11 General CBDPP requirements.

(a) The CBDPP shall specify the existing and planned operational tasks that are within the scope of the CBDPP The CBDPP shall augment and be integrated, to the extent feasible, into the existing worker protection programs that cover activities at the facility.

(b) The detail, scope, and content of the CBDPP for DOE beryllium activities shall be commensurate with the hazard of the activities performed, but in all cases the CBDPP shall:

(1) Include formal plans and measures for maintaining exposures to beryllium at or below the permissible exposure levels (PELs);

(2) Satisfy each requirement in subpart C of this part;

(3) Contain provisions for:

(i) Minimizing the number of current workers exposed and potentially exposed to beryllium;

(ii) Minimizing the number of opportunities for workers to be exposed to beryllium; and

(iii) Setting specific exposure reduction and minimization goals that are appropriate for the DOE activities covered by the CBDPP to further reduce exposure below the exposure limits prescribed in section 850.22.

§ 850.12 Implementation.

(a) DOE contractors shall manage and control beryllium exposures in all DOE beryllium activities consistent with the approved CBDPP.

(b) No DOE worker or DOE contractor worker shall take or cause any action inconsistent with the requirements of:

(1) This part,

(2) An approved CBDPP or any other program, plan, schedule, or other process established by this part,

(3) Any other Federal statute or regulation concerning the exposure of workers to beryllium at DOE facilities.

(c) No task involving potential beryllium exposure that is outside the scope of the existing CBDPP shall be initiated until an update of the CBDPP is approved by the DOE Field Organization, except in the event of an unexpected situation and, then, only upon approval of the DOE Field Organization.

(d) Nothing in this part shall be construed as precluding a DOE contractor from taking any additional protective action that it determines to be necessary to protect the health and safety of workers.

§ 850.13 Compliance.

(a) DOE contractors shall conduct activities in compliance with their respective CBDPP, as approved by the DOE Field Organization.

(b) DOE contractors shall achieve compliance with all elements of their respective CBDPP no later than [2 years from the effective date of the final rule].

(c) With respect to a particular DOE beryllium activity, the person in charge of the activity shall be responsible for complying with this part. If no contractor is responsible for a DOE beryllium activity, DOE shall ensure implementation of and compliance with this part.

Subpart C—Specific Program Requirements

§ 850.20 Baseline beryllium inventory.

(a) DOE contractors shall develop a baseline inventory of beryllium operations and other locations of potential beryllium contamination, and identify the workers exposed or potentially exposed to beryllium at those locations.

(b) In conducting the baseline inventory, DOE contractors shall:

(1) Review employee records;

(2) Interview employees;

(3) Document the presence and locations of beryllium at the facility; and

(4) Conduct sampling to identify the presence of beryllium.

(c) DOE contractors shall ensure that the individuals assigned to this task have sufficient industrial hygiene knowledge to perform such activities properly.

§ 850.21 Hazard assessment.

(a) If the baseline inventory establishes the presence of beryllium, DOE contractors shall conduct a beryllium hazard assessment that includes an analysis of existing conditions, exposure data, medical surveillance trends, and the exposure potential of planned activities.

(b) DOE contractors shall ensure that the individuals assigned to this task have sufficient industrial hygiene knowledge to perform such activities properly.

§ 850.22 Exposure limits.

(a) Eight-Hour Time-Weighted Average (TWA) Permissible Exposure Limit (PEL). DOE contractors shall not expose any worker to an airborne concentration of beryllium over 2 μg/m³, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring, or a more stringent TWA PEL that may be promulgated by the Occupational Safety and Health Administration as a health standard.

(b) Short-Term Exposure Limit (STEL). DOE contractors shall not expose any worker to an airborne concentration of beryllium over 10 μg/m³, averaged over a sampling period of 15 minutes, as measured in the worker's breathing zone by personal monitoring. Exposures above the PEL-TWA up to the STEL must not be longer than 15 minutes and must not occur more than four times in a day. If such exposures occur more than once a day, there must be at least 60 minutes between successive exposures in this range.

§ 850.23 Action level.

(a) DOE contractors shall include in their CBDPP an action level that, if met or exceeded, shall require the implementation of §§ 850.24(c) (periodic monitoring), 850.26 (regulated areas), 850.27 (change rooms), 850.29 (protective clothing and equipment), and 850.33 (medical surveillance).

(b) The provision enumerated in paragraph (a) of this section shall also be implemented if the STEL is exceeded.

(c) The action level established under paragraph (a) of this section shall not exceed 0.5 μg/m³, calculated as an 8-hour TWA exposure, as measured in the worker's breathing zone by personal monitoring.

§ 850.24 Exposure monitoring.

(a) General. DOE contractors shall ensure that the individuals assigned to the monitoring tasks of this section have sufficient industrial hygiene knowledge to perform such activities properly.

(b) Initial Monitoring. DOE contractors shall perform initial monitoring for all workers in areas that may have airborne concentrations of beryllium, as shown by the baseline inventory and hazard assessment.

(1) DOE contractors shall determine each worker's exposure by conducting personal breathing zone sampling:

(i) To determine the 8-hour TWA exposure level.

(ii) To determine if exposure is above the STEL.

(2) Exposure monitoring results obtained within the 12 months preceding the effective date of this part may be used to satisfy this requirement if the measurements were made as provided in paragraph (b)(1) of this section.

(c) Periodic Exposure Monitoring. DOE contractors shall conduct periodic monitoring of all workers who work in areas where airborne concentrations of beryllium are at or above the action level or above the STEL. The monitoring shall be conducted in a manner and at a frequency necessary to represent worker exposures as specified in their respective CBDPP, but in no case shall sampling be conducted at intervals greater than every 3 months (quarterly).

(d) Additional Exposure Monitoring. DOE contractors shall perform additional monitoring if operations or procedures change.

(e) Accuracy of Monitoring. DOE contractors shall use a monitoring method that has an accuracy (to a confidence level of 95 percent) of not less than plus or minus 25 percent or better for airborne concentrations of beryllium at the action level.

(f) Analysis. DOE contractors shall have all samples collected to satisfy the monitoring requirements of this part analyzed in a laboratory accredited for metals by the American Industrial Hygiene Association.

(g) Notification of Monitoring Results. (1) DOE contractors shall, within 10 working days after receipt of any monitoring results, notify the affected workers, and any labor organizations representing such workers, of monitoring results in writing. This notification shall be made personally to the affected workers or representatives, or in a posted form in location(s) that are readily accessible to affected workers, but in a manner that does not identify individual workers.

(2) If the monitoring results indicate that worker exposure is at or above the action level or STEL, DOE contractors shall also notify the SOMD of these results within 10 working days after receipt.

§ 850.25 Exposure reduction and minimization.

(a) DOE contractors shall ensure that no worker is exposed above the exposure limits prescribed in § 850.22, using the conventional hierarchy of industrial hygiene controls (i.e., engineering and administrative controls, and personal protective equipment).

(b) DOE contractors shall include in the CBDPP the rationale for reduction and minimization goals, strategies for achieving those goals, and the specific measures that will be used to assess the attainment of those goals. Strategies for achieving the exposure reduction and minimization goals shall include, but are not limited to:

(1) Using the action level to initiate actions to reduce or minimize worker exposure, and the potential for exposure, to beryllium; and

(2) Implementing work and contamination control strategies to reduce exposure to CBDPP goal levels using the conventional hierarchy of industrial hygiene controls.

§ 850.26 Regulated areas.

(a) If airborne concentrations of beryllium in areas in DOE facilities are at or above the action level or above the STEL, DOE contractors shall establish regulated areas for those particular areas.

(b) Regulated areas shall be demarcated from the rest of the workplace in a manner that adequately alerts workers to the boundaries of such areas.

(c) DOE contractors shall limit access to regulated areas to authorized persons.

(d) DOE contractors shall keep records of all individuals who enter regulated areas. These records shall include the name, date, time in and time out, and work activity.

§ 850.27 Change rooms.

(a) DOE contractors shall provide change rooms for workers who work in regulated areas.

(1) The change rooms that are used to remove beryllium-contaminated clothing and protective equipment shall be maintained under negative pressure or located so as to minimize dispersion of beryllium into clean areas; and

(2) Separate facilities shall be provided for workers to change into, and store, personal clothing, and clean protective clothing and equipment.

(b) DOE contractors shall provide handwashing and shower facilities for workers who work in regulated areas.

§ 850.28 Respiratory protection.

(a) DOE contractors shall comply with the respiratory protection requirements of 29 CFR 1910.134, Respiratory Protection.

(b) DOE contractors shall provide respirators to, and ensure that they are used by, all workers who are exposed to an airborne concentration of beryllium at or above the PEL.

(c) DOE contractors shall select for use by beryllium workers respirators approved by the National Institute for Occupational Safety and Health (NIOSH) or those DOE has accepted for use for DOE employees.

§ 850.29 Protective clothing and equipment.

(a) Where exposure monitoring has established airborne concentrations of beryllium at or above the action level or above the STEL, DOE contractors shall provide protective clothing and equipment to their beryllium workers and ensure its appropriate use and maintenance.

(1) DOE contractors shall ensure that beryllium workers exchange their personal clothing for full-body protective clothing and footwear before they begin work in regulated areas.

(2) DOE contractors shall provide beryllium workers with, and ensure the use of, additional protective equipment, such as face shields, goggles, gloves, and gauntlets, where skin or eye contact is possible from powdered or liquid forms of beryllium.

(b) DOE contractors shall ensure that no worker takes beryllium-contaminated protective clothing and equipment from the site, except for workers authorized to launder, clean, maintain, or dispose of the clothing and equipment.

(1) DOE contractors shall ensure that contaminated protective clothing and equipment, when removed for laundering, cleaning, maintenance, or disposal, is stored in sealed, impermeable containers or other closed, impermeable containers that are designed to prevent the dispersion of beryllium dust.

(2) DOE contractors shall ensure that the bags or containers of contaminated protective clothing and equipment that are to be removed from the change room areas or the site for laundering, cleaning, maintenance, or disposal shall bear labels according to section 850.37 of this part.

(c) DOE contractors shall ensure that protective clothing and equipment is cleaned, laundered, repaired, or replaced as needed to maintain effectiveness.

(d) DOE contractors shall inform any individual who launders or cleans beryllium-contaminated protective clothing or equipment that exposure to beryllium is potentially harmful, and that clothing and equipment should be laundered or cleaned in a manner prescribed by the contractor to prevent the release of airborne beryllium at or above the action level or above the STEL.

(e) DOE contractors shall prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other means that may disperse beryllium into the air.

§ 850.30 Housekeeping.

(a) Where beryllium is present at DOE facilities, DOE contractors shall conduct routine surface sampling to determine housekeeping conditions. Surfaces contaminated with beryllium dusts and waste shall not exceed a removable surface contamination level of 3 μg/100 cm^2.

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(b) Where beryllium is present at DOE facilities, DOE contractors shall clean beryllium-contaminated floors and surfaces using a wet method or vacuuming. Compressed-air or dry methods shall not be used for such cleaning.

(c) DOE contractors shall equip the portable or mobile vacuum units that are used to clean beryllium-contaminated areas with HEPA filters, and change filters as often as necessary to maintain their capture efficiency.

(d) DOE contractors shall ensure that the cleaning equipment that is used to clean beryllium-contaminated surfaces is labeled, controlled, and used in no other areas.

§ 850.31 Waste disposal.

(a) DOE contractors shall control the generation and disposal of waste that contains beryllium through good housekeeping, hazard analysis, and the application of waste minimization principles.

(b) Beryllium-contaminated waste, containers, small equipment, and clothing shall be disposed of in sealed, impermeable bags or containers. The bags and containers that are used to dispose of beryllium-contaminated waste or articles shall be labeled according to § 850.37.

§ 850.32 Beryllium emergencies.

(a) DOE contractors shall develop and implement procedures for handling beryllium emergencies at DOE facilities engaged in beryllium operations.

(1) DOE contractors shall establish procedures to alert and protect workers in the event of an emergency.

(2) DOE contractors shall ensure that workers who are engaged in cleanup related to a beryllium emergency are provided with, and wear, protective equipment and clothing.

(b) DOE contractors shall provide beryllium emergency procedure training to workers who are assigned to handle beryllium emergencies.

§ 850.33 Medical surveillance.

(a) General. DOE contractors shall designate a SOMD who shall be responsible for administering a medical surveillance program for contractor beryllium workers.

(b) Heads of DOE Field Organizations shall designate a SOMD who shall be responsible for administering a medical surveillance program for federal employees who are beryllium workers.

(c) The written medical surveillance program shall be reviewed by the Office of Environment, Safety and Health and approved by Heads of DOE Field Organizations.

(d) DOE contractors shall establish and implement a medical surveillance program under the direction of the SOMD for all beryllium workers exposed at or above the action level or above the STEL.

(e) DOE contractors shall provide the SOMD with the information needed to operate and administer the medical surveillance program, including the baseline inventory, hazard assessment and exposure monitoring data, identity and nature of activities or operations on the site that are covered under the CBDPP, related duties of beryllium workers, and type of personal protective equipment used.

(f) The SOMD shall establish and maintain a list of beryllium workers that is based on records and other information regarding the identity of beryllium workers.

(1) The list shall establish the population of beryllium workers who may be eligible for protective measures under this part.

(2) The list shall be adjusted on the basis of periodic evaluations of beryllium workers performed under paragraph (h)(3) of this section.

(g) Information provided to the examining physician. The SOMD shall provide the following information to the examining physician:

(1) A copy of this rule;

(2) A description of the beryllium worker's duties as they pertain to beryllium exposure;

(3) Records of the beryllium worker's beryllium exposure;

(4) A description of the personal protective and respiratory protective equipment in past, present, or anticipated use; and

(5) Relevant information from the beryllium worker's previous medical examinations that is not otherwise available to the examining physician.

(h) Medical evaluations. (1) DOE contractors shall provide medical examinations and procedures to beryllium workers and accepted applicants at no cost and at a time and place that is reasonable and convenient to them.

(2) DOE contractors shall offer a baseline medical evaluation to beryllium workers who qualify for medical surveillance. This evaluation shall include:

(i) A medical and work history;

(ii) A physical examination with special emphasis on the respiratory system;

(iii) A chest radiograph (posterior-anterior, 14 × 17 inches) interpreted by a National Institute for Occupational Safety and Health (NIOSH) B-reader or a board-certified radiologist (unless a baseline chest radiograph is already on file);

(iv) Spirometry;

(v) A Be-LPT; and

(vi) Any other tests deemed appropriate by the examining physician for evaluating beryllium-related health effects.

(3) Periodic evaluations. DOE contractors shall offer beryllium workers who qualify for medical surveillance under this section annual medical evaluations for as long as the beryllium worker performs beryllium work at a DOE site. DOE contractors shall offer beryllium workers who have been reassigned to non beryllium DOE work an evaluation every three years. Such periodic evaluations shall include:

(i) A respiratory symptoms questionnaire;

(ii) A physical examination;

(iii) A Be-LPT; and

(iv) Any other medical evaluations deemed appropriate by the examining physician for evaluating beryllium-related health effects.

(4) The SOMD shall ensure that all medical evaluations and procedures that are required by this section are performed by, or under the supervision of, a licensed physician who is familiar with the health effects of beryllium.

(i) Referrals. Beryllium workers who have two or more positive Be-LPTs, or other signs and symptoms of CBD, shall be referred by the examining physician for further diagnostic evaluation.

(j) Physician's written report and recommendation. (1) DOE contractors shall ensure that each beryllium worker or accepted applicant receives, within 15 calendar days after the completion of a medical evaluation performed under this section, a physician's written report containing the results of all medical tests or procedures, an explanation of any abnormal findings, and any recommendations that the worker be referred for additional testing for evidence of CBD.

(2) DOE contractors shall, within 15 calendar days after the completion of a medical evaluation performed under this section, obtain a copy of the physician's written report, that is limited to the following information: any recommendations that the beryllium worker's exposure to beryllium be precluded or that the accepted applicant's start of beryllium work be postponed, either temporarily or permanently, and any recommendation on the use of respiratory or other protective equipment.

(k) Data analysis. The SOMD shall routinely and systematically analyze medical, job, and exposure data with the aim of identifying individuals or groups of individuals potentially at risk for CBD and working conditions that are unduly contributing to that risk.

(1) Results of these analyses shall be used by the SOMD in determining which workers should be offered medical surveillance, and the need for additional exposure controls.

(2) The SOMD shall provide copies of the data analyses to the DOE contractor for the performance feedback required in section 850.40.

§ 850.34 Medical removal.

(a) Medical removal plan. With the express written consent of the beryllium worker or accepted applicant, as indicated on the consent form, DOE contractors shall remove a beryllium worker from exposure to beryllium, or postpone an accepted applicant's start of beryllium work, if the SOMD recommends that the beryllium worker or accepted applicant do so due to two or more positive Be-LPT results, confirmation of CBD, or the detection of other signs or symptoms that require evaluation for their relationship to CBD.

(1) DOE contractors shall offer a beryllium worker removed from beryllium work a follow-up medical examination that the examining physician shall use to decide whether the beryllium worker may return to beryllium work.

(2) Beryllium workers and accepted applicants with two or more positive Be-LPTs or confirmed CBD shall have the option at any time after testing, diagnosis, or the appearance of CBD-related symptoms to decline the medical removal or restriction and, after signing an informed consent waiver, resume working in a beryllium area.

(3) DOE contractors shall make reasonable efforts to offer alternative employment to beryllium workers and accepted applicants who test positive on two or more Be-LPTs, or who are confirmed with CBD. The reasonable efforts to offer alternative employment required under this section shall not require the contractor: to displace any other worker in order to create a vacancy for the beryllium worker or accepted applicant; to promote the beryllium worker or accepted applicant; or to provide the beryllium worker or accepted applicant with training that costs in excess of $6,000.00, or requires longer than 6 months to complete.

(b) Medical removal protection benefits. DOE contractors shall provide beryllium workers who are removed from beryllium work and placed in other jobs with the contractor employing them, protection against a reduction in base pay, seniority, or other benefits for a total period of two years after removal.

§ 850.35 Medical consent.

(a) DOE contractors shall provide beryllium workers and accepted applicants with information on the benefits and risks of the medical tests and examinations available to them at least one week prior to any such examination or test. The examining physician shall provide beryllium workers and accepted applicants an opportunity to have their questions answered and shall obtain their signed consent before performing medical evaluations.

(b) DOE contractors shall also provide beryllium workers and accepted applicants with a summary of the medical surveillance program, the type of data that will be collected, how the data will be collected and maintained, the purpose for which the data will be used, and how confidential data will be protected. This information shall be provided at least one week prior to the first medical examination or test, or at any time requested by the beryllium worker or accepted applicant.

(c) DOE contractors shall use the form approved by the Assistant Secretary for Environment, Safety and Health to obtain the signed consent of a beryllium worker before performing a medical examination.

(d) DOE contractors shall provide beryllium workers or accepted applicants information that will facilitate informed decisions on whether to accept medical removal offered by the SOMD. This information shall include information on opportunities for alternative placement within their organization, available out-placement benefits, and long-term medical and disability insurance benefits for which they may qualify.

(e) The SOMD shall provide a beryllium worker or an accepted applicant with an opportunity to have his or her questions answered before obtaining the worker's agreement to medical removal or a signed waiver of an offer of medical removal protection.

§ 850.36 Training and counseling.

(a) DOE contractors shall develop and implement a beryllium training program for workers who may be exposed to beryllium, and ensure their participation.

(1) The information and training provided shall be in accordance with 29 CFR 1910.1200, Hazard Communication.

(2) Training shall be provided before or at the time of initial assignment and at least annually thereafter.

(3) Training shall include, but not be limited to, beryllium health risk, exposure reduction, safe handling of beryllium, and medical surveillance.

(b) DOE contractors shall develop and implement a beryllium worker counseling program to assist workers who are diagnosed by the SOMD to be sensitized to beryllium or to have CBD. This program shall include communicating with beryllium workers concerning the availability of: the medical surveillance program; medical treatment options; medical, psychological, and career counseling for workers with positive Be-LPT results or confirmed CBD; medical benefits; worker compensation claims; work practice procedures limiting worker exposure to beryllium; and the risk of continued exposure after sensitization.

§ 850.37 Warning signs and labels.

(a) Warning signs. DOE contractors shall post warning signs at all entranceways to regulated areas with the following information:

DANGER
BERYLLIUM CAN CAUSE LUNG DAMAGE
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

(b) Warning labels. (1) DOE contractors shall affix warning labels to all containers of beryllium, beryllium compounds, or beryllium-contaminated clothing, equipment, waste, scrap, or debris.

(2) Labels shall be in accordance with 29 CFR 1910.1200, Hazard Communication, and shall contain the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR SHAKING
CANCER AND LUNG DISEASE HAZARD

§ 850.38 Recordkeeping and use of information.

(a) DOE contractors shall establish and maintain accurate records of all beryllium inventory information, hazard assessments, exposure measurements, controls, and medical surveillance.

(b) DOE contractors shall maintain all records required by this part in an electronic, easily retrievable form for transmittal to DOE Headquarters on request.

(c) DOE contractors shall link data sets on working conditions and health outcomes to serve as a basis for understanding the beryllium health risk.

(d) Medical information generated by the CBDPP shall be maintained by the contractor as part of the beryllium worker's site medical records. Such medical information shall be maintained separately from other personnel records. This information must be kept confidential and used or disclosed by the contractor only in conformance with any applicable requirements imposed by the Americans with Disabilities Act, the Privacy Act of 1974, and any other requirements under applicable law.

§ 850.39 Beryllium registry.

(a) DOE contractors shall establish and maintain a separate electronic beryllium registry that includes the name, social security number (SSN), date of birth, gender, site, job history, medical screening test results, and results of referrals for specialized medical evaluation. This data shall be submitted for all beryllium workers employed by them and all accepted applicants, subject to the requirements of § 850.38.

(b) DOE contractors shall transmit the beryllium registry information electronically to the Office of Environment, Safety and Health, Office of Epidemiologic Surveillance, semi-annually.

(c) Information in the beryllium registry maintained by DOE under paragraph (a) of this section may be disclosed only in a manner consistent with the Privacy Act of 1974 and any other applicable legal requirements.

§ 850.40 Performance feedback.

(a) DOE contractors shall conduct periodic analyses and assessments of monitoring efforts, hazards, medical surveillance, exposure reduction and minimization, and occurrence reporting data.

(b) To ensure that information is available to maintain and improve all elements of the CBDPP continuously, results of periodic analyses and assessments shall be given to the line managers, planners, worker protection staff, workers, medical staff, and labor organizations representing beryllium workers who request such information.

Appendix A to Part 850—Chronic Beryllium Disease Prevention Program Informed Consent Form

I have carefully read and understand the attached information about the Be-LPT and other medical tests. I have had the opportunity to ask any questions that I may have had concerning these tests.

I understand that I am free to withdraw at any time from all or any part of the medical surveillance program. I understand that if the results of any test suggest a health problem, the examining physician will discuss the matter with me, whether or not the result is related to my work with beryllium.

I understand that the results of my tests and examinations may be published in reports or presented at meetings, but that I will not be identified.

I understand that the results of my medical tests for beryllium will be included in the Beryllium Registry maintained by DOE. The confidentiality of identified information maintained by DOE is protected under the Privacy Act of 1974. Personal identifiers will not be published in any reports generated from the DOE Beryllium Registry. All medical information relative to the tests performed on me retained by my employer will be maintained in segregated medical files separate from my personnel files, treated as confidential medical records, and used or disclosed only as provided by the Americans with Disability Act, the Privacy Act of 1974, or as required by a court order or DOE directive.

I consent to having the following medical evaluations:

☐ Physical examination concentrating on my lungs and breathing
☐ Chest X-ray
☐ Spirometry (a breathing test)
☐ Blood test called the beryllium-induced lymphocyte proliferation test or Be-LPT
☐ Other test(s). Specify:________

I understand that, if the results of one or more of these tests indicate that I have a health problem that is related to beryllium, additional examinations will be recommended. If additional tests indicate I do have a beryllium sensitization or CBD, I may be advised to stop working with beryllium. Every effort will be made to offer me a job of equivalent grade and base pay for which I am qualified. I also may continue working in the job with beryllium exposure if I so choose. I understand that continuing to work with beryllium may increase the chance that I will develop chronic beryllium disease (CBD).

☐ I decline to participate in any part of the medical surveillance program at this time. If I change my mind, I may participate in the program by contacting my supervisor.

Name of Participant:
SSN:
Signature of Participant:
Date:

I have explained and discussed any questions that the above employee expressed concerning the Be-LPT, physical examination, and other medical testing as well as the implications of those tests.

Name of Examining Physician:
Signature of Examining Physician:
Date:

Appendix B to Part 850—Questions and Answers Concerning the Beryllium-Induced Lymphocyte Proliferation Test (Be-LPT), Medical Records, and the DOE Beryllium Registry

What is the Be-LPT blood test?

In the Be-LPTs, disease-fighting blood cells that are normally found in the body, called lymphocytes, are examined in the laboratory and separated from your blood. Beryllium and other test agents are then added to small groups of these lymphocytes. If these lymphocytes react to beryllium in a specific way, the test results are "positive." If they do not react with beryllium, the test is "negative."

Experts believe that the Be-LPT shows positive results in individuals who have become sensitive or allergic to beryllium. It is unclear what this sensitivity means. Studies have shown it to be an early sign of chronic beryllium disease (CBD) in many individuals. In others, sensitivity might simply mean that the person was exposed to beryllium and that his or her body has reacted. It might mean that an individual is more likely than others to get CBD. You are being offered the Be-LPT because doctors believe it is useful in detecting cases of CBD early or cases that might otherwise be missed or diagnosed as another type of lung problem. Once CBD is identified, doctors can determine the treatment that is needed to minimize the lung damage CBD causes.

As in any other medical test, the Be-LPT sometimes fails or provides unclear results. The laboratory calls these results "uninterpretable." Even when the test appears successful, it may appear positive when it is not. This is called a "false positive" result. It is also possible that the test will show "negative" results when a person is actually "sensitized" to beryllium. This is a "false negative" result. If you have a "uninterpretable" blood Be-LPT result, you will be asked to provide another blood sample so the test can be repeated. If you have "positive" results, you will be offered further medical tests to confirm or rule out CBD. Remember, you may refuse further tests at this point or at any point during your medical evaluations.

It is important for you to know that if the physical examination or the results from other tests you are receiving suggest that you have CBD, you may be offered further medical tests. These medical tests may be offered even if your Be-LPT is "negative."

Some individuals with confirmed "positive" Be-LPTs but no other signs of CBD have developed the disease. The likelihood of this happening will only be known after large groups of potentially exposed individuals have had their blood tested, have had further medical tests, and are studied for many years.

What will happen if I decide to have the Be-LPT blood test?

A small amount of your blood will be drawn from a vein in your arm and sent to a laboratory. There is little physical risk in drawing blood. Slight pain and bruising may occur in a few individuals. Rarely, the needle puncture will become infected. Other routine medical evaluation tests may be offered when you have the Be-LPTs including a physical examination, a chest X-ray, and breathing tests that help find signs of CBD, if they exist.

Other diseases may resemble CBD. Different medical tests can help a physician decide if a person has CBD or another disease. If the examining physician suspects that you have CBD, he or she will recommend additional medical tests to help confirm a diagnosis. Separate information regarding these additional medical tests will be given to you if they are recommended. Your consent will be requested when the extra tests are given. You can always refuse additional tests, if you so choose. All tests will be paid for by your employer.

When will I receive the results of my Be-LPT blood test?

It could take 2 to 4 weeks for you to receive a letter informing you of your test results. The test itself usually takes 8 days to perform. The testing laboratory reports results to the physician who examined you and he or she will notify you.

Could a positive Be-LPT blood test affect my job assignment?

Yes, but only if you elect to accept a change in your job assignment. If you have a positive Be-LPT or have been diagnosed with CBD, it may be advisable for you to stop working with beryllium. If you are working with beryllium at this time, every effort will be made to offer you another job that you are qualified to perform with your employer. This job will be of comparable responsibilities, base pay and benefits, and will not expose you to beryllium. If a comparable position cannot be found with your employer, you will be offered the choice of continuing to work for your employer with beryllium or assistance for a period of 2 years in finding employment with another employer, but in that case there can be no promise of continued base pay and benefits. If you become physically unable to continue working, you may be eligible for workers' compensation and other benefits.

Will I lose any pay or any other benefits by having the examination during normally scheduled working hours?

No. Your examination will be scheduled during normal work hours. You will not be required to take leave to have the examination, nor will you lose pay or any other benefits.

What will happen to the records of the medical examination results?

The results of your tests and examinations will be available to the physicians and nurses in this clinic, and possibly to scientists conducting health studies. The test results will be entered in your medical records, which will be kept in specially secured files under the supervision of physicians and nurses in the clinic, separate from other personnel records. Your test results will be medically confidential data and will not be released to anyone other than those listed in the following, unless you provide written permission. The following groups will have direct access to this information:

1. Clinic staff members
2. Medical specialists who will provide or arrange for additional medical treatment or tests, if necessary.
3. U.S. Department of Energy Beryllium Registry staff.
4. The Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health officials may require direct access to records that identify you by name for health studies.

If information about you is used in reports or a published health study, your identity will be disguised. You will not be identified in any published report or presentation. The results of your Be-LPT and other screening tests will be made available to you and, upon your request, to your physician. The information also will become part of your medical record, which the clinic keeps.

What is the DOE beryllium registry?

Your health and the health of all workers is a major concern to the Department. There is a need to learn more about chronic beryllium disease and what causes some individuals to react more strongly than others. A DOE beryllium registry has been established to collect and maintain information on workers who are exposed to long term, low and moderate levels of beryllium. This registry is a tool which will be used in health studies to better understand the nature of the disease. With it we can measure the burden of health effects related to beryllium exposure. The registry will also be used to evaluate the effectiveness of exposure control programs.

In addition to information about your beryllium related exposures, the results of beryllium sensitization testing and/or CBD status collected by your employer will be added to the registry. Your employer must treat this information as confidential medical information and can only use or disclose of this information in conformance with the Privacy Act of 1974, the Americans with Disabilities Act, or any other applicable law. Personal identifying information (such as your name and social security number) is required to link exposure data to the results of the medical testing and to eliminate duplicate reports for each worker. At no time will your name or other personal identifying information be published in any report. The confidentiality of identified information in DOE records is protected under the Privacy Act of 1974.

What laws protect me if I consent to participating in the screening program?

State medical and nursing licensing boards enforce codes of ethics that require doctors and nurses to keep medical information confidential. The Privacy Act prevents unauthorized access to your DOE records without your permission. The information in records kept by your employer must be handled in accordance with the Americans with Disabilities Act and the Privacy Act of 1974. The consent form you sign also provides additional protection.

Can my privacy and the confidentiality of my medical records be guaranteed?

No. Access to or release of records could be required under court order, or DOE directive, but it is unlikely. If you apply for another job or for insurance, you may be requested to release the records to a future employer or an insurance company. If, for medical reasons, it is recommended that you transfer to an area where you will not contact beryllium, and you elect to do so, the personnel department and your supervisor will be notified. They will not be told the specific results of your tests but, because of the restrictions, they may assume that your Be-LPT results were positive.

Do I have to have the Be-LPT done?

No. Your participation in the medical surveillance program is strictly voluntary. You may refuse any of the tests offered to you including the Be-LPT. If you change your mind, you are free to participate in the program at any time. Talking with your family, your doctor, or other people you trust may help you decide. The physicians in the clinic that provide the tests can also help answer any questions that you might have.

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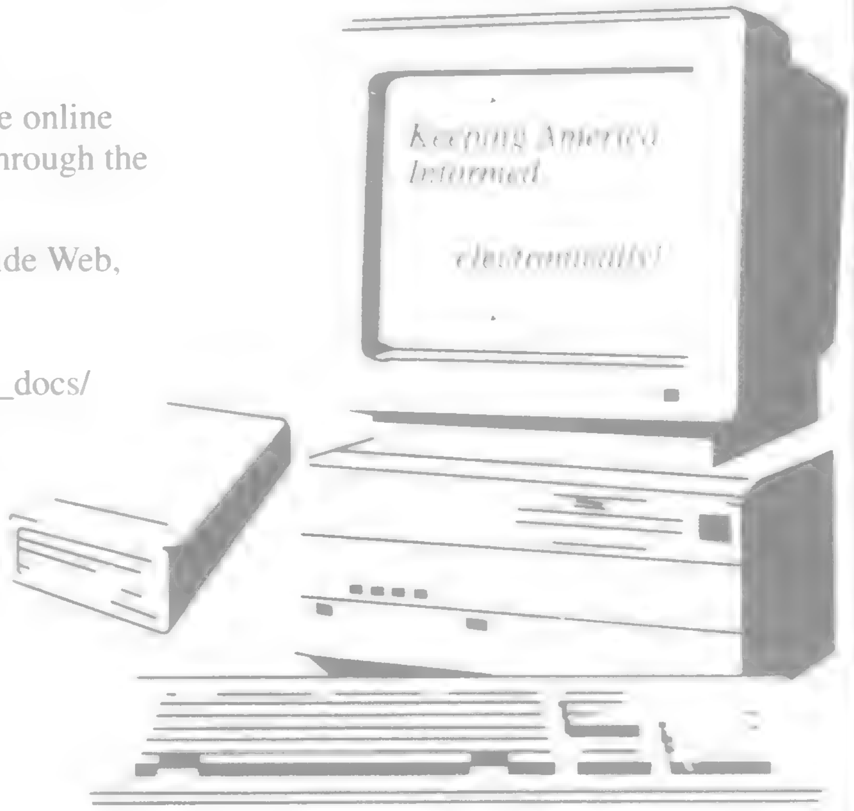

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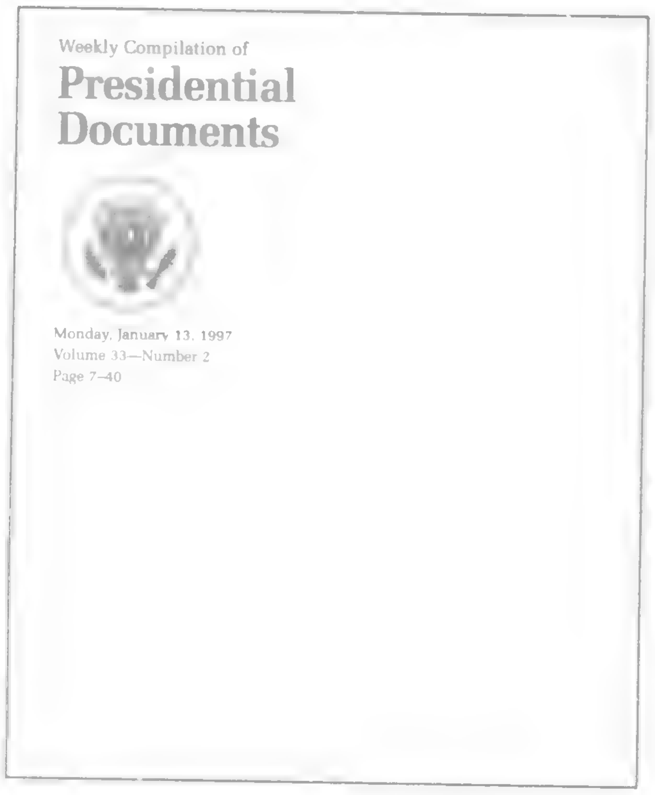

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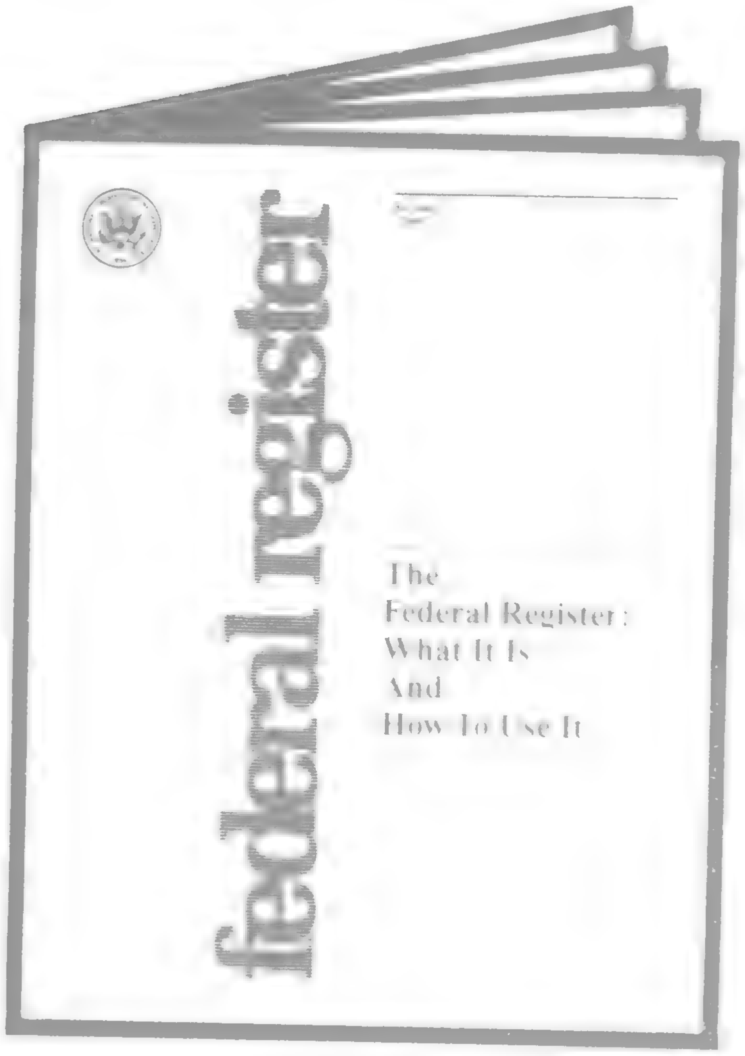

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Title 3—

The President

Proclamation 7153 of December 1, 1998

World AIDS Day, 1998

By the President of the United States of America

A Proclamation

On World AIDS Day, we are heartened by the knowledge that our unprecedented investments in AIDS research have resulted in new treatments that are prolonging the lives of many people living with the disease. Thousands of scientists, health care professionals, and patients themselves have joined together to advance our understanding of HIV and AIDS and improve treatment options. Because of the heroic efforts of these people, fewer and fewer Americans are losing their lives to AIDS, and for that we are immensely thankful.

But the AIDS epidemic is far from over. Within racial and ethnic minority communities, HIV and AIDS are a severe and ongoing crisis. While the number of deaths in our country attributed to AIDS has declined for 2 consecutive years, AIDS remains the leading killer of African American men aged 25–44 and the second leading killer of African American women in the same age group. African Americans, who comprise only 13 percent of the U.S. population, accounted for 43 percent of new AIDS cases in 1997 and 36 percent of all AIDS cases. Hispanic Americans represent just 10 percent of our population, but they account for more than 20 percent of new AIDS cases; and AIDS is also becoming a critical concern to Native American and Asian American communities. Young people of every racial and ethnic community are also disproportionately impacted by AIDS, both in the number of new AIDS cases and in the number of new HIV infections. In fact, the Centers for Disease Control and Prevention estimate that approximately half of all new HIV infections in the United States occur in people under age 25 and that one-quarter occur in people under age 22.

Across the world, the situation is even more grim. As with other epidemics before it, AIDS hits hardest in areas where knowledge about the disease is scarce and poverty is high. Of the nearly 6 million people newly infected with HIV each year, more than 90 percent live in the poorest nations of the world.Entire communities are threatened by this epidemic, and the growing number of children who will lose parents to AIDS will have a devastating impact on these societies. By the year 2010, there may be as many as 40 million children who will have been orphaned by AIDS, and developing nations will have to struggle to deal with the overwhelming needs of a generation of young people left without parents.

This year's World AIDS Day theme, "Be A Force For Change," is a reminder that each of us has a role to play in bringing the AIDS epidemic to an end. Our response must be comprehensive and ongoing. It must also be a collaborative one, bringing together governments and communities in a shared effort to expand prevention efforts, raise awareness among young people of the risks of HIV infection and how to avoid it, increase access to lifesaving therapies, and ensure that those who are living with HIV and AIDS receive the care and services they need.

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Developing a vaccine for HIV is perhaps our best hope of eradicating this terrible disease and stemming the tide of pain and desolation it has wrought. The global community has joined together in making the development of an HIV vaccine a top international priority. Within the next decade, we hope to have the means to stop this deadly virus, but until we reach that day we must remain strong in our crusade to prevent the spread of HIV and AIDS and to care for those living with the disease. In this way we can best honor the memory of the many loved ones we have lost to AIDS.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 1998, as World AIDS Day. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to defeating HIV and AIDS. I encourage every American to participate in appropriate commemorative programs and ceremonies in workplaces, houses of worship, and other community centers and to reach out to protect and educate our children and to help and comfort all people who are living with HIV and AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 98-32461
Filed 12-4-98; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 63, No. 233
Friday, December 4, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department in order to delegate to the Chief Economist and the Director of the Office of Risk Assessment and Cost-Benefit Analysis the authority to enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences as authorized in 7 U.S.C. 3318.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Betty L. Ollila, Deputy Assistant General Counsel, General Law Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, D.C. 20250, telephone 202–720–5824.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required and good cause is found that this rule may be made effective upon publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 605), and thus is exempt from the provisions of that Act. Finally, this action is not a rule as defined in 5 U.S.C. 804, and thus does not require review by Congress.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2. Section 2.29 is amended by adding a new paragraph (a)(2)(iii) to read as follows:

§ 2.29 Chief Economist.

(a) * * *

(2) * * *

(iii) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

* * * * *

Subpart L—Delegations of Authority by the Chief Economist

3. Section 2.71 is amended by adding a new paragraph (a)(3) to read as follows:

§ 2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.

(a) * * *

(3) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

* * * * *

For Subpart D.

Dated: November 30, 1998.

Dan Glickman,

Secretary of Agriculture.

For Subpart L.

Dated: October 13, 1998.

Keith Collins,

Chief Economist.

[FR Doc. 98–32281 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–172–AD; Amendment 39–10544; AD 98–11–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 98–11–19 that was published in the **Federal Register** on May 28, 1998 (63 FR 29096). The typographical error in the applicability statement of the AD resulted in a reference to an engine model that does not exist. This AD is applicable to certain Airbus Model A310 and A300–600 series airplanes. This AD requires a visual inspection to detect cracks in the aft mount beam assembly of the engine; and replacement of any cracked beam with a new beam or beam assembly; and a fluorescent penetrant inspection to detect cracks in the aft mount beam assembly of the engine, and various follow-on actions.

DATES: Effective July 2, 1998.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 98–11–19, amendment 39–10544, applicable to certain Airbus Model A310 and A300–600 series airplanes, was published in the **Federal Register** on May 28, 1998 (63 FR 29096). That AD requires a visual inspection to detect cracks in the aft mount beam assembly of the engine, and replacement of any cracked beam with a new beam or beam assembly. That AD also requires a fluorescent penetrant inspection to detect cracks in the aft mount beam assembly of the engine, and various follow-on actions.

As published, that AD contained a typographical error in the applicability statement: the applicability statement indicated that the AD is applicable to

Model A310 and A300–600 series airplanes, equipped with Pratt & Whitney engines of various models, including Model PW4151. The designation should be Model PW4152. The engine model designated PW4151 in the applicability statement of the published AD does not exist.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains July 2, 1998.

§ 39.13 [Corrected]

On page 29097, in the second column, the applicability statement of AD 98–11–19 is corrected to read as follows:

* * * * *

"Applicability: Model A310 and A300–600 series airplanes, equipped with Pratt & Whitney Model JT9D–7R4D1, JT9D–7R4E1, JT9D–7R4H1, PW4152, PW4156A, or PW4158 engines; certificated in any category."

* * * * *

Issued in Renton, Washington, on November 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32097 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–12]

Establishment of Class D and E Airspace, Amendment to Class D and E Airspace; Montgomery, AL

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Final rule.

SUMMARY: This amendment modifies Class D and E surface areas airspace for Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishes Class D and E surface areas airspace for Maxwell AFB, AL. Presently, Maxwell AFB is contained within the Montgomery, AL, Class D and E airspace areas. As a result of this action, the Montgomery, AL, Class D and E airspace to the surface will be reduced concurrent with the establishment of the Class D and E airspace areas for Maxwell AFB.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 9, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D and E surface areas airspace at Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishing Class D and E surface areas airspace for Maxwell AFB, AL, (63 FR 54403). This action provides adequate Class D and E surface areas airspace for IFR operations at Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishes Class D and E surface areas airspace at Maxwell AFB, AL. Maxwell AFB currently is included in the Montgomery, AL, Class D and E airspace areas. Class D designations and Class E airspace areas designated as surface areas for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D and E airspace at Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishes Class D and E airspace at Maxwell AFB, AL. Class D and E airspace to the surface is required to accommodate current Standard Instrument Approach Procedures (SIAP's) and contain Instrument Flight Rules (IFR) operations at Maxwell AFB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO AL D Maxwell AFB, AL [New]

Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N, long. 86°23′38″W)
Montgomery VORTAC
(Lat. 32°13′20″N, long. 86°19′11″W)

That airspace extending upward from the surface to and including 2,200 feet MSL within a 5-mile radius of Maxwell AFB, excluding that airspace south of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and southwest of a line along the Montgomery VORTAC 320° radial. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO AL D Montgomery, AL [Revised]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N, long. 86°23′38″W)
Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery VORTAC
(Lat. 32°13′20″N, long. 86°19′11″W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5-mile radius of Montgomery Regional Airport—Dannelly Field, excluding that airspace north of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and northeast of a line along the Montgomery VORTAC 320° radial. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas

* * * * *

ASO AL E2 Maxwell AFB, AL [New]

Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N, long. 86°23′38″W)
Montgomery VORTAC
(Lat. 32°13′20″N, long. 86°19′11″W)

Within a 5-mile radius of Maxwell AFB, excluding that airspace south of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and southwest of a line along the Montgomery VORTAC 320° radial. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO AL E2 Montgomery, AL [Revised]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N, long. 86°23′38″W)
Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery VORTAC
(Lat. 32°13′20″N, long. 86°19′11″W)

Within a 5-mile radius of Montgomery Regional Airport—Dannelly Field, excluding that airspace north of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and northeast of a line along the Montgomery VORTAC 320° radial. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 19, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–32247 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–37]

Amendment to Class D Airspace and Class E Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action removes Class D airspace and Class E airspace extensions at Griffiss Airfield, Rome, NY. The airport has been closed and all instrument procedures for the airport have been cancelled. The need for Class D and the Class E airspace extensions no longer exists for Instrument Flight Rules (IFR) operations at the airport. This action will result in the airspace reverting to Class G airspace.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Class D airspace and associated Class E airspace extensions at Griffiss Airfield, Rome, NY, was published in the **Federal Register** (63 FR 52996).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class D airspace and the Class E airspace extensions at Rome, NY. The required criteria for Class D airspace and the Class E airspace extensions at Griffiss Airfield no longer exists since the instrument approach procedures to the Griffiss Airfield have been cancelled. These areas will be removed from the appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Exective Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AEA NY D Rome, NY [Removed]

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AEA NY E–4 Rome, NY [Removed]

* * * * *

Issued in Jamaica, New York on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–32243 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–38]

Establishment of Class E Airspace; Fishers Island, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Fishers Island, NY. The amendment of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) to Elizabeth Field, Fishers Island, NY, requires the establishment of controlled airspace extending upward from 700 feet Above Ground Level (AGL) to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations to Elizabeth Field at Fishers Island, NY.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 20, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Fishers Island, NY, was published in the **Federal Register** (63 FR 55972). The VOR or GPS–A SIAP has been amended for Elizabeth Field. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace at Fishers Island, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR or GPS–A SIAP to Elizabeth Field.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Fishers Island, NY [New]

Elizabeth Field, NY

(Lat. 41°15′05″ N., long. 72°01′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Elizabeth Field, excluding the portion that coincides with the Montauk, NY, Westerly, RI, and Groton, CT, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–32244 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–36]

Amendment to Class E Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Griffiss Airfield, Rome, NY. The airport has been closed and all instrument procedures for the airport have been cancelled. The need for Class E airspace no longer exists for Instrument Flight Rules (IFR) operations at the airport. This action will result in the airspace reverting to Class G airspace.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a proposal to amend Part 71 of the Federal Aviation

Regulations (14 CFR Part 71) to remove the Class E airspace extending upward from 700 feet above the surface at Griffiss Airfield, Rome, NY, was published in the **Federal Register** (63 FR 52999).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class E airspace at Rome, NY. The need for controlled airspace extending from 700 feet AGL at the Griffiss Airfield no longer exists. This area will be removed from the appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Rome, NY [Removed]

* * * * *

Issued in Jamaica, New York on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–32242 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–068–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to and additions of rules concerning definitions, petitions to initiate rulemaking, license applications, operation plans, reclamation plans, subsidence control, lands eligible for remining, permit applications, small operator assistance program, performance bond release, hydrologic balance, coal mine waste, backfilling and grading, revegetation, soil removal and stockpiling, inspections, and hearings. Alabama intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@balgw.mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions concerning the Alabama program at 30 CFR 901.15 and 901.16.

II. Submission of the Proposed Amendment

By letter dated August 4, 1998 (Administrative Record No. AL–0584), Alabama submitted an amendment to its program under SMCRA. Alabama submitted the amendment in response to a May 20, 1996, letter (Administrative Record No. AL–0555) and a June 17, 1997, letter (Administrative Record No. AL–0568) that we sent to Alabama in accordance with 30 CFR 732.17(c) and at its own initiative.

We announced receipt of the amendment in the August 25, 1998, **Federal Register** (63 FR 45192). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on September 24, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified regulation reference errors at 880–X–2A–.06, definitions of material damage and occupied residential dwellings and structures related thereto, and at 880–X–8I–.10, subsidence control plans. We notified Alabama of these concerns by telephone on October 1, 1998, and by letter dated October 15, 1998 (Administrative Record No. AL–0587).

During our telephone conversation on October 1, 1998, Alabama indicated that it would not be able to address the regulation reference errors during the current State rulemaking. Therefore, we are proceeding with this final rule **Federal Register** document.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Revisions to Alabama's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State regulation	Federal counterpart regulation
Definition of drinking, domestic or residential water supply.	880–X–2A–.06	30 CFR 701.5.
Definition of lands eligible for remining	880–X–2A–.06	30 CFR 701.5.
Definition of non-commercial building	880–X–2A–.06	30 CFR 701.5.
Definition of previously mined area	880–X–2A–.06	30 CFR 701.5.
Definition of program administrator	880–X–2A–.06	30 CFR 795.3.
Definition of qualified laboratory	880–X–2A–.06	30 CFR 795.3.
Definition of replacement of water supply.	880–X–2A–.06	30 CFR 701.5.
Definition of unanticipated event or condition.	880–X–2A–.06	30 CFR 701.5.
Surface Mining; Operations Plan: Permit Map(s).	880–X–8F–.08 (1)(e), (1)(l) and (1)(o)	30 CFR 779.24(e), 779.25 (a)(8) and (a)(9).
Surface Mining; Reclamation Plan: General Requirements.	880–X–8F–.09(2)(d)	30 CFR 780.18(b)(4).
Surface Mining; Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments.	880–X–8F–.11 (1), (1)(b), (1)(c), (2), (3)(c) and (6).	30 CFR 780.25 (a), (a)(2), (a)(3), (b), (c)(3) and (f).
Surface Mining; Additional Cross Sections, Maps, and Plans.	880–X–8F–.20	30 CFR 779.25(a) (1) through (4), (6) and (10).
Underground Mining; Description of Geology and Hydrology and Determination of the Probable Hydrologic Consequence (PHC).	880–X–8H–.06(1)(e)3.(iv)	30 CFR 784.14(e)(3)(iv).
Underground Mining; Operations Plan: Permit Map(s).	880–X–8I–.07 (1)(e), (1)(l) and (1)(o)	30 CFR 783.24(e), 783.25 (a)(8) and (a)(9).
Underground Mining; Subsidence Control Plan.	880–X–8I–.10 (1), (2), (2)(b) and (2)(g)	30 CFR 784.20 (a), (b), (b)(2) and (b)(7).
Underground Mining; Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments.	880–X–8I–.12 (1), (1)(b), (1)(c), (2), (3)(c) and (6).	30 CFR 784.16 (a), (a)(2), (a)(3), (b), (c)(3) and (f).
Underground Mining; Additional Cross Sections, Maps, and Plans.	880–X–8I–.20	30 CFR 783.25.
Lands Eligible for Remining	880–X–8J–.13	30 CFR 785.25.
Review of Permit Applications	880–X–8K–.10 (2)(d) and (3)(m)	30 CFR 773.15 (b)(4) and (c)(13).
Small Operator Assistance Program; Eligibility for Assistance.	880–X–8N–.07(c)	30 CFR 795.6(a)(2).
Small Operator Assistance Program; Data Requirements.	880–X–8N–.10	30 CFR 795.9.
Small Operator Assistance Program; Applicant Liability.	880–X–8N–.13 (1), (1)(c), (1)(e), (1)(f) and (2).	30 CFR 795.12 (a), (a)(1), (a)(2), (a)(3) and (b).
Procedures for Seeking Release of Performance Bond.	880–X–9D–.02(1)(c)	30 CFR 800.40(a)(3).
Surface Mining; Hydrologic Balance: Siltation Structures.	880–X–10C–.17 (1)(c) and (3)(b)	30 CFR 701.5 and 816.46(c)(2).
Surface Mining; Impoundments	880–X–10C–.20 (1)(a), (1)(d), (1)(e), (1)(f)1., (1)(i)2.(i), (1)(i)2.(iii), (1)(l), (3)(b)1. and (3)(b)2.	30 CFR 816.49 (a)(1), (a)(4), (a)(5), (a)(6)(i), (a)(9)(ii)(a), (a)(9)(ii)(c), (a)(12), (c)(2)(i) and (c)(2)(ii).
Surface Mining; Coal Mine Waste: General Requirements.	880–X–10C–.38(1)	30 CFR 816.81(a).
Surface Mining; Backfilling and Grading: Thin Overburden.	880–X–10C–.54	30 CFR 816.104.
Surface Mining; Backfilling and Grading: Thick Overburden.	880–X–10C–.55	30 CFR 816.105.
Surface Mining; Revegetation: Standards for Success.	880–X–10C–.62(3)	30 CFR 816.116(c) (1) and (2).
Underground Mining; Hydrologic–Balance Protection.	880–X–10D–.12 (9)	30 CFR 817.41(j).
Underground Mining; Hydrologic Balance: Siltation Structures.	880–X–10D–.17 (1)(c) and (3)(b)	30 CFR 701.5 and 817.46(c)(2).

Topic	State regulation	Federal counterpart regulation
Underground Mining; Impoundments	880–X–10D–.20 (1)(a), (1)(d), (1)(e), (1)(f)1., (1)(i)2.(i), (1)(i)2.(iii), (1)(l), (3)(b)1. and (3)(b)2.	30 CFR 817.49 (a)(1), (a)(4), (a)(5), (a)(6)(i), (a)(9)(ii)(a), (a)(9)(ii)(c), (a)(12), (c)(2)(i) and (c)(2)(ii).
Underground Mining; Coal Mine Waste: General Requirements.	880–X–10D–.34(1)	30 CFR 817.81(a).
Underground Mining; Revegetation: Standards for Success.	880–X–10D–.56(3)	30 CFR 817.116(c) (1) and (2).
Underground Mining; Subsidence Control.	880–X–10D–.58	30 CFR 817.121.
Prime Farmland; Applicability	880–X–10G–.03(2)	30 CFR 823.11(b).
Prime Farmland; Soil Removal and Stockpiling.	880–X–10G–.04(3)(b)	30 CFR 823.12(c)(2).
Inspections	880–X–11B–.02 (8)(d) and (9)	30 CFR 840.11 (g)(4) and (h).
Request for Hearing	880–X–11D–.11(1)	30 CFR 845.19(a).

Because the above revisions have the same meaning as the corresponding Federal regulations, we find that these regulations are no less effective than the Federal regulations.

2. 880–X–2A–.06 Definition of Material Damage

Alabama added a definition of material damage at 880–X–2A–.06. The definition found at 880–X–2A–.06 is the same as the Federal definition at 30 CFR 701.5. However, Alabama's definition refers to the term "material damage" as used in 880–X–8I–.20 and 880–X–10D–.58; and Alabama's regulation at 880–X–8I–.20 does not use this term. The definition should refer to 880–X–8I–.10 and 880–X–10D–.58, since these are the regulations that use the term "material damage." Alabama's regulations at 880–X–8I–.10 and 880–X–10D–.58 are also the counterparts to the Federal references of 30 CFR 784.20 and 30 CFR 817.121. As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Because the term "material damage" does not appear in 880–X–8I–.20, we find that this incorrect reference will have no effect on Alabama's program. Therefore, since Alabama's definition language is the same as the Federal definition language, we are approving the definition for use with Alabama's regulations at 880–X–8I–.10 and 880–X–10D–.58.

3. 880–X–2A–.06 Definition of Occupied Residential Dwelling and Structures Related Thereto

Alabama added a definition of occupied residential dwelling and structures related thereto at 880–X–2A–.06. Alabama's definition is the same as the Federal definition found at 30 CFR 701.5. However, Alabama's definition refers to the term "occupied residential dwelling and structures related thereto" as used at 880–X–8I–.20 and 880–X–10D–.58; and Alabama's regulation at 880–X–8I–.20 does not use this term. The definition should refer to 880–X–8I–.10 and 880–X–10D–.58, since these are the regulations that use the term "occupied residential dwelling and structures related thereto." Alabama's regulations at 880–X–8I–.10 and 880–X–10D–.58 are also the counterparts to the Federal references of 30 CFR 784.20 and 30 CFR 817.121. As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Because the term "occupied residential dwelling and structures related thereto" does not appear in 880–X–8I–.20, we find that this incorrect reference will have no effect on Alabama's program. Therefore, since Alabama's definition language is the same as the Federal definition language, we are approving the definition for use with Alabama's regulations at 880–X–8I–.10 and 880–X–10D–.58.

4. 880–X–2A–.06, 880–X–10C–.17(1)(a), and 880–X–10D–.17(1)(a) Definition of Siltation Structure

Alabama defines a siltation structure as a "sedimentation pond, a series of sedimentation ponds, or other treatment facility." Alabama removed this definition from its sections on surface coal mining and underground coal mining siltation structures at 880–X–10C–.17(1)(a) and 880–X–10D–.17(1)(a), and moved it to its definition section at 880–X–2A–.06.

Removing the definition of siltation structure from 880–X–10C–.17(1)(a) and 880–X–10D–.17(1)(a) and adding it to 880–X–2A–.06 is consistent with the changes made to the Federal regulations. We moved the counterpart Federal definition of siltation structure from the sections on surface coal mining and underground coal mining siltation structures at 30 CFR 816.46(a)(1) and 817.46(a)(1) and added it to the definition section at 30 CFR 701.5 on October 20, 1994 (59 FR 53022). Therefore, we find that the relocation of the definition of siltation structure will not make Alabama's regulations less effective than the Federal regulations.

5. 880–X–2A–.08 Petitions To Initiate Rulemaking

This section allows citizens to submit to Alabama's State regulatory authority a petition for the issuance, amendment, or repeal of any regulation. If the regulatory authority determines that the petition has a reasonable basis, it must publish a notice in a newspaper of general circulation once a week for two consecutive weeks, asking for public comment on the proposed change. Within 60 days of the receipt of the petition to initiate rulemaking, the regulatory authority must either deny the petition in writing on the merits or initiate rulemaking proceedings.

We find that Alabama's revised provisions are consistent with the intent of the counterpart Federal regulation provisions at 30 CFR 700.12 concerning petitions to initiate rulemaking. The Federal provisions allow any person to petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any regulation under SMCRA. If the Director of OSM determines that the petition has a reasonable basis, a notice is published in the **Federal Register** asking for public comment on the proposed change. Within 90 days of the receipt of the petition, the Director of OSM must issue a written decision either granting or denying the petition. Therefore, Alabama's regulation is no less effective than the Federal regulation, and we are approving it.

6. 880–X–8I–.10(2)(h) Subsidence Control Plan

This section requires that a subsidence control plan include a description of the measures the permittee will take in accordance with 880–X–10D–.12(10) and 880–X–10D–.58(3) to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures. Alabama's requirement in this section is the same as the Federal requirements at 30 CFR 784.20(b)(8). However, the referenced regulation at 880–X–10D–.12(10) does not exist. Alabama's regulation should instead reference 880–X–10D–.12(9) and 880–X–10D–.58(3), which are counterparts to the Federal reference to 30 CFR 817.41(j) and 817.121(c). As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Therefore, we are approving 880–X–8I–.10(2)(h) with the understanding that Alabama will interpret the reference to 880–X–10–.12(10) as 880–X–10–.12(9) until such time that Alabama can correct the reference.

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0585). We did not receive any comments.

Environmental Protection Agency (EPA)

Provisions found at 30 CFR 732.17(h)(11)(ii) require us to get the written consent of the EPA for those provisions of the program amendment that relate to air or water quality standards published under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not request the EPA's consent.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AL–0585). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Provisions found at 30 CFR 732.17(h)(4) require us to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 14, 1998, we requested comments on Alabama's amendment from the SHPO and ACHP (Administrative Record No. AL–0585), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment, with additional requirements, as submitted by Alabama on August 4, 1998. We approve the rules that Alabama proposed with the provision that they be fully placed in force in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 901, which codify decisions concerning the Alabama program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Alabama to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change to an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that are not approved by OSM. In the oversight of the Alabama program, we will recognize only the statutes, rules and other materials approved by the Secretary or by us, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Alabama of only such provisions.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
August 4, 1998	December 4, 1998	880–X–2A–.06; .08; 880–X–6A–.06(d)3.; 880–X–8F–.08(1)(e), (l) and (o); .09(2)(d); .11(1)(1)(b) and (c), (2), (3)(c), (6); .20; 880–X–8H–.06(1)(e)3.(iv); 880–X–8I–.07(1)(e),(l) and (o) .10(1), (2), (2) (b), (g) and (h); .12(1), (1) (b) and (c), (2), (3)(c), (6); .20; 880–X–8J–.13 880–X–8K–.10(2)(d), (3)(m); 880–X–8N–.07(c); .10; .13(1), (1) (c), (e) and (f), (2);880X–9D–.02(1)(c);880–X–10C–.17(1) (a) and (c), (3)(b); .20(1)(a), (d), (e), (f)1., (i)2.(i) and (iii), (l), (3)(b)1. and 2.; .38(1); .54; .55; .62(3); 880–X–10D–.12(9); .17(1) (a) and (c), (3)(b); .20(1) (a), (d), (e), (f)1., (i)2. (i) and (iii), (l), (3)(b)1.and .2; .34(1); .56(3); .58; 880–X–10G–.03(2); .04(3)(b); 880–X–11B–.02 (8)(d), (9); 880–X–11D–.11(1).

[FR Doc. 98–32350 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–243–FOR, #76]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to its rules pertaining to permitting requirements, bond release, and performance standards to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Manager, Pittsburgh Oversight and Inspection Office, Appalachian Regional Coordinating Center, OSM, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34668). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated December 30, 1997 (Administrative Record No. OH–2174–05), Ohio submitted a proposed amendment to its program in accordance with SMCRA and 30 CFR 732.17(c). Ohio proposes to revise the Ohio Administrative Code (OAC) at sections:

1501.13–4–05—Permit Application Requirements
1501.13–4–12—Special Categories of Mining
1501.13–4–14—Underground Permit Application Requirements
1501.13–7–05—Release of Performance Bond
1601.13–9–04—Performance Standards

We announced receipt of the proposed amendment in the January 23, 1998, **Federal Register** (63 FR 3507), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 23, 1998.

During our review of the amendment, we identified concerns with Ohio's rules at OAC 1501 at subsections 13–4–12, 13–4–05, 13–4–14, and 13–9–04. We notified Ohio of our concerns via electronic mail on May 5, 1998 (Administrative Record No. OH–2174–11). By letter dated June 2, 1998 (Administrative Record No. OH–2174–12), Ohio submitted revisions at OAC 1501 at subsections:

13–4–05 (H)(1)(c), (H)(2)(c), (H)(6)
13–4–14 (H)(1)(c), (H)(2)(c), (H)(6)
13–9–04 (H)(1)(c)(ii), (H)(1)(d)

to reference the criteria in Natural Resources Conservation Service's Technical Release No. 60 (TR 60), "Earth Dams and Reservoirs," relating to the provisions of 1513.13(E) (1) and (2).

During a conference call on July 16, 1998 (Administrative Record No. OH–2174–13), we informed Ohio that one issue remained at OAC 1501:13–4–12. On September 4, 1998, Ohio telefaxed us revisions to subsection 13–4–12(F) (Administrative Record No. OH–2174–16).

Based on these revisions, we reopened the public comment period in the October 6, 1998, **Federal Register** (63 FR 53618). The comment period closed on October 21, 1998.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

A. Revisions to Ohio's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table below contain language that is the same or similar to the corresponding sections of the Federal regulations. Any differences between the proposed State regulations and the Federal regulations are nonsubstantive.

Topic	State regulation (OAC)	Federal counterpart (30 CFR)
Permit Application Requirements	1501:13–4–05(H)(1)(a)	780.25(a)
Permit Application Requirements	1501.13–4–05(H)(1)(b)	780.25(a)(2)
Permit Application Requirements	1501:13–4–05(H)(1)(c)	780.25(a)(3)
Permit Application Requirements	1501:13–4–05(H)(2)(c)	780.25(c)(3)
Permit Application Requirements	1501:13–4–05(H)(3)(a)	780.25(c)
Permit Application Requirements	1501:13–4–05(H)(3)(c)	780.25(c)(2)
Permit Application Requirements	1501:13–4–05(H)(6)	780.25(f)
Permit Application Requirements	1501:13–4–12(E)	785.16(a)
Requirements for Special Categories Underground Mining	1501:13–4(H)(1)(a)	784.16(a)
Permit Application Underground Mining	150:13–4–14(H)(1)(b)	784.16(a)(2)
Permit Application Underground Mining	1501:13–4–14(H)(1)(c)	784.16(a)(3)
Permit Application Requirements Underground Mining	1501:13–4–14(H)(2)(c)	784.16(c)(3)
Permit Application Requirements Underground Mining	1501:13–4–14(H)(3)(a)	784.16(c)
Permit Application Requirements Underground Mining	1501:13–4–14(H)(3)(c)	784.16(c)(2)
Permit Application Requirements Underground Mining	1501:13–4–14(H)(6)	784.16(f)
Permit Application Requirements Bond Release	1501:13–7–05(A)(2)(a)(iv)	800.40(a)(3)
Protection of Hydrologic System	1501:13–9–04(H)(1)(a)	816/817.49(a)(1)
Protection of Hydrologic System	1501:13–9–04(H)(1)(c)(i)	816/817.49(a)(4)(i)
Protection of Hydrologic System	1501:13–9–04(H)(1)(c)(ii)	816/817.49(a)(4)(ii)
Protection of Hydrologic System	1501:13–9–04(H)(1)(d)	816/817.49(a)(5)
Protection of Hydrologic System	1501:13–9–04(H)(1)(e)(i)	816/817.49(a)(6)(i)
Protection of Hydrologic System	1501:13–9–04(H)(1)(h)(iii)	816/817.49(a)(ii)(A)
Protection of Hydrologic System	1501:13–9–04(H)(1)(k)	816/817.49(a)(12)

B. Regulations That Ohio Removed From the Ohio Administrative Code (OAC)

Ohio proposed to remove OAC 1501:13–9–04(G)(3)(b)—Sedimentation Ponds. We are approving the deletion because Ohio addresses these requirements at OAC 1501:13–9–04(H)(1)(h). We find that this change does not make the Ohio program less effective than the Federal regulations.

C. Revisions to Ohio's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

Ohio proposed to add section OAC 1501:13–4–12(F)(4)(e) to prohibit a decrease in the aggregate total prime farmland acreage from that which existed prior to mining. Any constructed permanent water bodies must be located within the post-reclamation non-prime farmland portions of the permit area. If the prime farmland acreage is to be restored in a location other than the premining location, Ohio must approve the relocation. The permittee must obtain the consent of all affected landowners. We approve the provisions of this section because they are no less effective than 30 CFR 785.17(e)(5).

Ohio proposed to revise OAC 1501:13–7–05(A)(2)(c)(ii) to require that the request for the approval of reclamation phase III includes yield data for those acres reclaimed as pasture or grazing land, if appropriate. While the Federal regulations at 30 CFR 800.40 do not include this specific requirement, we are approving the revision as it is not inconsistent with the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held. Two public comments were received. One commenter requested a copy of the specific language being proposed at OAC 1501:13–4–12(E). He also suggested that OAC 1501:13–9–4(H) include a notification of MSHA provision. We note that the Federal regulations at 30 816/817.49(a)(9) do not have this requirement. The second commenter questioned the 15-day comment period. She thought 30 days was required. We note that the shorter comment period appeared in the second **Federal Register** notice which re-opened the comment period. 30 CFR 732.17(h)(3) provides for a 15-day comment period under certain circumstances. The commenter also submitted a list of questions which generally addressed the effects of the proposed amendment on the landowner, industry, and the community at large. We note that amendments are reviewed based on consistency with the Federal regulations and accordance with the provisions of SMCRA. As discussed in Section V above, Ohio's proposed amendment is approved because it meets those standards.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The Department of Labor, Mine Safety and Health Administration, and the Department of the Army, Army Corps of Engineers, both concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment. EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, we approve the proposed amendment as submitted by Ohio on December 30, 1997 and revised on June 2, 1998 and

September 4, 1998. We approve the rules that Ohio proposed with the provision that they be fully placed in force in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 935 which codifies decisions concerning the Ohio program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Ohio to bring its program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 526DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1998.

Allen D. Klein,

Assistant Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
December 30, 1997	December 4, 1998	OAC 1501:13–4–05, 1501:13–4–12, 1501:13–4–14, 1501: 13–7–05, 1501:13–9–04.

[FR Doc. 98–32349 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–039–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** (63 FR 63608) on November 16, 1998. The final rule removed a required amendment imposed by the Director of the Office of Surface Mining Reclamation and Enforcement (OSM) resulting from OSM's review of a previous amendment to the Utah Code. The November 16, 1998, final rule removed the last required amendment placed on Utah at 30 CFR 944.16, but inadvertently omitted removing the introductory text of § 944.16. This correction rectifies that error by removing and reserving all of § 944.16.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: John A. Trelease, (202) 208–2783.

Correction of Publication

In final rule FR Doc. 98–30547, on page 63 FR 63611 in the **Federal Register** issue of November 16, 1998, make the following correction:

In the first column, § 944.16 should read, "Section 944.16 is removed and reserved."

Dated: December 1, 1998.

Richard G. Bryson,

Acting Assistant Director.

[FR Doc. 98–32348 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6192–8]

RIN 2060–AC28

National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Today's action suspends the National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations (EO NESHAP) requirements for chamber exhaust and aeration room vents. The suspension allows affected sources subject to the EO NESHAP to defer compliance with the NESHAP requirements for chamber exhaust and aeration room vents for one year until December 6, 1999. This suspension does not affect the requirement for sources subject to the EO NESHAP to comply with provisions for sterilizer vents by December 6, 1998. This action does not change the level of the standards or the intent of the NESHAP promulgated in 1994.

DATES: This action is effective December 4, 1998.

Comments may be submitted until January 4, 1999.

ADDRESSES: Comments may be submitted to the Docket address which follows. Docket No. A–88–03, category VIII Amendments, containing information considered by the EPA in developing this rule, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the original EO NESHAP.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate EPA regional or Office of Enforcement and Compliance Assurance (OECA) representative:

Region I: Susan Lancey, Air Programs Enforcement Office Chief, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203–2211, PH: (617) 565–3587 Fax: (617) 565-4940

Region II: Umesh Dholakia, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, PH: (212) 637–4023, Fax: (212) 637–3901

Region III: Dianne Walker, U.S. EPA, Region III (3AT12), 841 Chestnut Building, Philadelphia, PA 19107, PH: (215) 566–3297, Fax number (215) 566–2114

Region IV: Lee Page, U.S. EPA, Region IV (AR–4), 100 Alabama Street, SW, Atlanta, GA 30303–3104, PH: (404) 562–9131, Fax: (404) 562–9095

Region V: Bruce Vainer (AE–17J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, PH: (312) 886–6793, Fax: (312) 353–8289

Region VI: Robert Todd (6PD-R), U.S. EPA, Region VI (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733, PH: (214) 665–2156, Fax: (214) 665–7263

Region VII: Richard Tripp, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, PH: (913) 551–7566 Fax: (913) 551–7065

Region VIII: Victoria Parker-Christensen, U.S. EPA, Region VIII (8P2–A), 999 18th Street, Suite 500, Denver, CO 80202–2405, PH: (303) 312–6441, Fax: (303) 312–6064

Region IX: Mae Wang, U.S. EPA, Region IX (Air–4), 75 Hawthorne Street, San Francisco, CA 94105, PH: (415) 744–1200 Fax: (415) 744–1076

Region X: Andrea Wullenweber, Office of Air Quality (OAQ–107), U.S. EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101–9797, PH: (206) 553–8760 Fax: (206) 553–0110

OECA: Charlie Garlow, U.S. EPA, OECA (2242A), 401 M Street, SW, Washington, DC 20460, PH: (202) 564–1088, Fax: (202) 564–0068.

For information concerning the analyses performed in developing this interim final rule, contact Mr. David Markwordt, Policy, Planning and Standards Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, PH: (919) 541–0837 Fax: (919) 541–0942. For information concerning the accident investigations, contact Mr. Craig Matthiessen, Chemical Emergency Preparedness and Prevention Office (5101), Office of Solid Waste and Emergency Response, U.S. EPA, 401 M Street, SW, Washington, DC 20460, PH: (202) 260–9781 Fax: (202) 260 0927.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic version of this rule is available for downloading from the EPA Technology Transfer Network (TTN) at "http://www.epa.gov/ttn/oarpg/ramain.html." For assistance in downloading files, call the TTN Help line at (919) 541–5384.

Regulated Entities

Regulated categories and entities include:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description/SIC code
Industrial	Medical suppliers/3841, 3842. Pharmaceuticals/2834, 5122, 2831, 2833. Spice manufactures/2099 5149, 2034, 2035, 2046. Contract Sterilizers/7399, 7218, 8091.
Federal Government	Not Affected.
State/Local/Tribal Gov	Not Affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this interim final rule. If you have questions regarding the applicability of the NESHAP addressed in this interim final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION** section.

The information presented in this preamble is organized as follows:

I. Background and Summary of Action
II. Summary of and Rationale for Suspension of Chamber Exhaust and Aeration Room Vent Requirements
III. Administrative Requirements
  A. Paperwork Reduction Act
  B. Executive Order 12866—Regulatory Planning and Review
  C. Unfunded Mandates Reform Act
  D. Regulatory Flexibility Act
  E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
  F. National Technology Transfer and Advancement Act
  G. Executive Order 12875—Enhancing the Intergovernmental Partnerships
  H. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments
  I. Submission to Congress and the Comptroller General
  J. Petitions for Judicial Review

I. Background and Summary of Action

On December 6, 1994 (59 FR 62585), the EPA promulgated the EO NESHAP which regulates emissions of ethylene oxide from new and existing commercial sterilization and fumigation operations using one ton or more of EO per year. The regulated category and entities affected by today's action are the sources described in 40 CFR 63.360. That provision includes commercial operations using ethylene oxide as a sterilant and fumigant in the production of medical equipment and supplies, and in miscellaneous sterilization and fumigation operations at both major and area sources. Note that this description is not intended to be exhaustive but, rather, to provide a guide for readers interested in this compliance extension. To determine whether your facility is affected by today's action, you should carefully examine the applicability criteria in 40 CFR 63.360 and the explanation provided in this document. If you have questions about the applicability of today's action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

In July 1997, the Agency learned of reports of explosions at ethylene oxide sterilization and fumigation facilities. EPA subsequently suspended the EO NESHAP for one year until December 6, 1998 to provide time to determine the appropriate action necessary to mitigate the cause of the explosions. 62 FR 64736

II. Summary of and Rationale for Suspension of Chamber Exhaust and Aeration Room Vent Requirements

As noted above, in July 1997, the Agency learned of reports of explosions at ethylene oxide facilities. Several of these explosions occurred at facilities subject to the EO NESHAP. The Agency immediately began conducting a preliminary investigation to determine if the emission control equipment mandated by 40 CFR part 63, Subpart O was in any way associated with the cause of the problems at these facilities. The Agency, on December 9, 1997, wishing to adopt a cautious approach in order to assure public and worker safety, published in the **Federal Register** an interim final rule suspending 40 CFR Part 63, Subpart O. 62 FR 64736. Since publication of the December 9, 1997 rule, both EPA and industry have continued to investigate the cause of the accidents.

In a June 2, 1998 letter to the Agency, the Ethylene Oxide Sterilization Association (EOSA) recommended, "additional time to consider safe and economical control, installation, operation and maintenance alternatives applicable to aeration and chamber exhaust (backvent) emissions . . . "(see Docket No. A–88–03, Item No. VIII–D–2). The Health Industries Manufacturers Association (HIMA) reviewed the recommendation. EOSA and HIMA membership represent most of the ethylene oxide sterilization and fumigation industry. EOSA "concluded that the oxidizer systems had not been properly integrated with traditional EtO sterilization process operations, that is, installation, operation and maintenance issues had not been sufficiently addressed by sterilizer operators." EOSA also concluded that "improperly overfeeding the oxidizer system from the chamber backvent was the primary safety concern."

The Agency also conducted an independent investigation of the accidents and reviewed reports prepared by EPA Regional Offices and by EOSA member sterilization companies and, based on that investigation and review, concurred with the industry conclusion and recommendation quoted above (see Docket No. A–88–03, Item No. VIII–B–1). The Agency agrees that, in the cases where explosions occurred, the catalytic oxidizer units were overfed with ethylene oxide in concentrations above the safe operations limit due to abnormal activation of the chamber exhaust (backvent). Normally, EO rich effluent drawn (vented) from the sterilizer chamber at low flow is metered or mechanically restricted and diluted with air to prevent high concentrations of EO from entering the emissions control unit. The much greater backvent or chamber exhaust flow, often in combination with aeration room exhaust, generally is not restricted or diluted before entering the emissions control unit. Aeration room concentrations typically are well below the lower flammability limit for EO and the backvent is supposed to be activated only when an extremely low concentration of EO is present in the chamber during loading/unloading of products. Although all units functioned as intended, the abnormal activation of the backvent at high EO concentrations in the sterilization chamber led to the explosions. The Agency also concludes main vent emissions routed through the vacuum pump played no role in the explosions.

The Agency also concludes that any emissions control technology necessary to comply with this rule needs to be properly integrated into the sterilization system and operations, and must reflect the full range of normal and abnormal conditions that may occur. Investigations and safety reviews, conducted independently by EPA and EOSA members, confirmed that, as currently designed and operated, there still is a possibility that backvents could be activated while high EO concentrations are present in the sterilization chamber. Consequently, sterilization chamber operators will need to further evaluate the integration of the emission control technology with sterilizer operation to ensure prevention of future explosions. Total system safety issues can be addressed by conducting a comprehensive process hazard analysis (PHA) for each sterilizer process and developing and instituting safeguards that address these hazards. Additional time is required to complete these analyses and install safeguards.

In this matter, the Agency wishes to err, if at all, on the side of safety. Accordingly, the Agency is today suspending the EO NESHAP emission limitation requirements in 40 CFR Part 63, Subpart O, for chamber exhaust and aeration room vents, as those emission points are defined at 40 CFR 63.361, for one year, until December 6, 1999, pursuant to EPA's general rulemaking authority under CAA Section 301(a), 42 U.S.C. 7601(a). Sources must comply with the EO NESHAP emission limitation requirements in 40 CFR part 63, Subpart O, for sterilization chamber vents, as those emission points are defined at 40 CFR 63.361 by December 6, 1998 because EPA has determined that they do not pose a safety concern.

CAA Section 301(a) grants the Administrator of the EPA the authority "to prescribe such regulations as are necessary to carry out his functions under this Act." Given the unique circumstances and uncertainty surrounding the EO NESHAP, as described in this document, EPA believes that it is necessary to further suspend this rule's requirements for chamber exhaust and aeration room vent for the safety of the public and workers in and around EO facilities. As EOSA's and EPA's investigations have shown, the control requirements of the EO NESHAP for chamber exhaust and aeration room vents continue to pose potential problems for which solutions are being developed. These solutions include the redesign of control systems to prevent the overfeeding of EO in concentrations above safe operating limits. The EOSA is also exploring an alternative control strategy for back draft vent emissions. This control approach does not require an abatement device thus completely eliminating the possibility of overfeeding (see Docket No. A–88–03, Items No.VIII–D–2 & 6).

The further extension provided in this document allows time for those solutions to be perfected and finalized. This action is consistent with the objectives of the Clean Air Act as stated in Section 101(b), 42 U.S.C. 7401(b). "The purposes of this sub chapter are . . . to promote the public health and welfare and the productive capacity of its population. . . ."

The original EO NESHAP and today's action are promulgated pursuant to CAA Section 307(d), 42 U.S.C. 7607(d), which requires that any rule subject to that section be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, Section 307(d)(1) exempts from those requirements any rule for which the Agency finds under the Administrative Procedure Act, 5 U.S.C. 553(b), that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest.

EPA believes the circumstances presented here provide good cause to take this action without prior notice-and-comment. EPA finds that providing prior notice-and-comment would be impracticable and contrary to the public interest based on the potential ongoing danger to public and worker safety posed by the recent incidents at ethylene oxide facilities. There is simply not enough time to provide notice-and-comment procedures before the current compliance date of December 6, 1998 arrives, and until the compliance date is extended, sources are faced with having to install control equipment in time to meet the current compliance date. Only by omitting notice-and-comment from this action can EPA provide sources affected by the EO NESHAP with timely legal relief from the current compliance date, while EPA investigates the situation. Consequently, this action is being promulgated without prior notice-and-comment as provided for in CAA Section 307(b)(1) and is effective December 4, 1998 as provided for in CAA Section 112(d)(10).

Nonetheless, EPA is providing 30 days for submission of public comments. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

In suspending the EO NESHAP requirements for chamber exhaust and aeration room vents, the Administrator wishes to remind the public and the regulated community that the role of the EPA has been and continues to be protection of public health and the environment in a way that is consistent with safety concerns.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the EO NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0283) may be obtained from Ms. Sandy Farmer, Information Policy Branch (2136); U.S. EPA; 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740.

Today's action has no impact on the information collection burden estimates made previously. Today's action merely suspends the EO NESHAP requirements for chamber exhaust and aeration room vents for one year. This change does not impose new requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by OMB on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, it reduces the burden on certain sources by temporarily suspending the EO NESHAP requirements for chamber exhaust and aeration vents. Consequently, under Executive Order 12866, this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objects of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, this rule provides additional time to comply with some requirements of the EO NESHAP. Because the rule is not expected to result in the expenditure by State, local, and tribal governments or the private sector of $100 million or more in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. For the reasons stated above, the requirements of the UMRA do not apply to this section.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (or RFA), Public Law 96–354, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary if the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA believes that there will be little or no adverse impact on any small entities as a result of the promulgation of this rule because, rather than imposing additional requirements, this rule provides additional time to comply with parts of the EO NESHAP. Because the impacts are anticipated to be insignificant or beneficial, pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, an RFA is not required.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) OMB determines is "economically significant" as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This interim final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires federal agencies to evaluate existing technical standards when developing new regulations. To comply with the NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that the use of VCS in this interim final rule is impractical. The suspension of the EO NESHAP requirements for chamber exhaust and aeration room vents is merely a procedural action that does not require sources to take substantive steps that lend themselves to VCS.

G. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Rather, the rule temporarily suspends certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule imposes no enforceable duties on these entities. Rather, the rule temporarily suspends certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 4, 1998.

J. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act (Act), judicial review of this final action is available only by filing a petition for review in the U.S. Court of

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Appeals for the District of Columbia Circuit within 60 days of today's publication of this interim final rule. Under Section 307(b)(2) of the Act, the actions taken in today's document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Ethylene oxide sterilization, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 18, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—[Amended]

2. Section 63.360 is amended by revising paragraphs (g)(1), (g)(2), and (g)(3) and adding paragraphs (g)(4), (g)(5), and (g)(6) to read as follows:

§ 63.360 Applicability.

* * * * *

(g) * * *

(1) All sterilization chamber vents subject to the emissions standards in § 63.362 with an initial startup date before December 6, 1998, no later than December 6, 1998.

(2) All sterilization chamber vents subject to the emissions standards in § 63.362 with an initial startup date on or after December 6, 1998, immediately upon initial startup of the source.

(3) All sterilization chamber vents at sources using less than 1 ton of ethylene oxide that increase their ethylene oxide usage after December 6, 1998 such that the sterilization chamber vent becomes subject to the emissions standards in § 63.362(c), immediately upon becoming subject to the emission standards.

(4) All aeration room and chamber exhaust vents subject to the emissions standards in § 63.362 with an initial startup date before December 6, 1999, no later than December 6, 1999.

(5) All aeration room and chamber exhaust vents subject to the emissions standards in § 63.362 with an initial startup on or after December 6, 1999, immediately upon initial startup of the source.

(6) All aeration room and chamber exhaust vents at sources using less than 10 tons of ethylene oxide that increase their ethylene oxide usage after December 6, 1999 such that the aeration room and chamber exhaust vents become subject to the emissions standards in § 63.362(d) and § 63.362(e), immediately upon becoming subject to the emission standards.

[FR Doc. 98–31396 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300757; FRL–6044–5]

RIN 2070–AB78

Thiabendazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide thiabendazole and its metabolites in or on lentils at 0.1 part per million (ppm) for an additional 18–month period, to April 30, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lentils. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective December 4, 1998. Objections and requests for hearings must be received by EPA, on or before February 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300757], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300757], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300757]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail:Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 267, CM 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9356; e-mail:beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of February 25, 1998 (63 FR 9435) (FRL–5767–6), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of thiabendazole and its metabolites in or on lentils at 0.1 ppm, with an expiration date of October 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of thiabendazole on lentils for this year's growing season due to the situation remaining an emergency. The Applicants (Idaho, Washington, and

North Dakota) state that the ascochyta blight fungus has only occurred in the United States in recent years, and presently available fungicides do not adequately control its spread in lentils, to prevent significant economic loss. Additionally, a recently-discovered sexually-reproducing strain is of even greater concern, as this sexual stage releases spores, capable of traveling long distances on the wind. This disease was initially of isolated occurrence in the U.S. until the last several years. The sexual strain has potential to lead to significant widespread infection of lentils, and without the requested use of thiabendazole to control this disease, significant economic losses are expected. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of thiabendazole on lentils for control of ascochyta blight in lentils.

EPA assessed the potential risks presented by residues of thiabendazole in or on lentils. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of February 25, 1998 (63 FR 9435). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18–month period. Although this tolerance will expire and is revoked on April 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lentils after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 2, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300757] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). IN addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from*

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: November 10, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.242 [Amended]

2. In § 180.242, by amending the entry for "Lentils" in the table under paragraph (b) by revising the date "10/31/98" to read "4/30/00".

[FR Doc. 98–31966 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300761; FRL–6046–9]

RIN 2070–AB78

Myclobutanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide myclobutanil and its metabolites in or on cucurbits at 0.3 part per million (ppm) for an additional 18-month period, to May 30, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cucurbits. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective December 4, 1998. Objections and requests for hearings must be received by EPA, on or before February 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300761], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees) and forwarded to: EPA Headquarters Accounting Operations Branch, OPP

(Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300761], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300761]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9358; e-mail: Deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of January 9, 1997 (62 FR 1284) (FRL–5579–7), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of myclobutanil and its metabolites in or on cucurbits at 0.3 ppm, with an expiration date that was extended until November 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of myclobutanil on cucurbits for this year growing season due to the continued development of powdery mildew on cucurbit vegetables in several states, and the presumed development of resistance in previously registered products. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of myclobutanil on cucurbits for control of powdery mildew in cucurbits.

EPA assessed the potential risks presented by residues of myclobutanil in or on cucurbits. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of January 9, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18-month period. Although this tolerance will expire and is revoked on May 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbits after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 2, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rule. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300761] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division

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(7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since this extension of an existing time-limited tolerance that was established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels, or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: November 18, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.443 [Amended]

2. In § 180.443, paragraph (b), in the table, amend the entry "Curcubit vegetables" by removing the expiration date "11/30/98" and adding in its place "5/30/00".

[FR Doc. 98–31964 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–300749; FRL–6039–5]

40 CFR Part 180

RIN 2070–AB78

Any Edible Food Commodity Used As A Pesticide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of any edible food commodity (except for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat) used as a pesticide, when applied in accordance with good agricultural practices, in or on all food commodities. Any edible food commodity used as a pesticide under this exemption must not be "adulterated food" as defined in the Federal Food, Drug, and Cosmetic Act (FFDCA) section 402 (21 U.S.C. 342). The exemption from the requirement of a tolerance is being established by the Agency on its own initiative, under the FFDCA as Amended by Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation becomes effective December 4, 1998. Written objections and requests for hearings must be received by February 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300749], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300749], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300749]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Freshteh Toghrol, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th Floor, Crystal Mall 2, 1921 Jefferson David Highway, Arlington, VA; (703) 308–7014, e-mail: toghrol.freshteh@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 10, 1998 (62 FR 38513) (FRL–6016–1), EPA proposed, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(d) to amend 40 CFR 180.1164 by establishing an exemption from the requirement of a tolerance for residues of any edible food commodities (except for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat) in or on all food commodities, when applied in accordance with good agricultural practice. The term edible food commodity means a food that is widely consumed for its nutrient properties. The term only applies to food in the form it is sold or distributed to the public for consumption. This language has been added to the rule text for the sake of clarity. EPA has excluded peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat from this exemption because these foods or food groups have been identified as common allergens. Normally, a person allergic to one of these foods would be able to avoid the food because the food is recognizable. When a food is used as a pesticide, however, the presence of its residues on another food commodity, if that occurred, could not be readily identified. Therefore, EPA has excluded these common allergens from this exemption.

There were no comments received (exept for one positive comment from Nurfam Americas, Inc.) in response to the proposed rule. Nurfam Americas, Inc. has supported the proposed tolerance exemption for "its overall practicality, efficiency and reasonable presumption of safety. However, the proposed exceptions from the exemption for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea and wheat are overly conservative and call into question several currently exempt products." Nurfam Americas, Inc. has listed several commodities that are exempted when used as inert ingredients under 40 CFR 180.1001(c), (d), and (e) and has shown concern that this proposed rule may affect the exemptions from tolerances already in effect for these inert ingredients. This rule is for food used as active ingredients only and will not affect the tolerance exemption for food used as inert ingredients, which already are established under 40 CFR 180.1001(c), (d), and (e). The commenter suggested including the excepted foods based on a restriction that the food was applied prior to crop emergence or when edible portions of crops are not present. An exemption for these foods may be appropriate under such restrictions if it could be shown that no residues would be present. However, examination of that issue is beyond the scope of the present rulemaking.

Based on the reasons set forth in the preamble to the proposed rule, EPA establishes an exemption from tolerance for residues of any edible food commodities as provided below in 40 CFR 180.1164(d) below.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(e) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

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Any person may, by February 2, 1999, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ADDRESSES section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i) or a request for a fee waiver. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300749] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 2, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. Section 180.1164 is amended by adding a new paragraph (d) to read as follows:

§ 180.1164 Food and food by-products; exemption from the requirement of a tolerance.

* * * * *

(d) Any edible food commodity (except for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat) used as a pesticide is exempted from the requirement of a tolerance when used in accordance with good agricultural practice in or on all food commodities. This exemption shall not apply to any edible food commodity that is adulterated under section 342 of Title 21 of the United States Code. The term edible food commodity means a food that is widely consumed for its nutrient properties. The term only applies to food in the form it is sold or distributed to the public for consumption.

[FR Doc. 98–32073 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under

Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No. 7256).	City of Avondale	September 4, 1998, September 11, 1998, *Arizona Republic*.	The Honorable Thomas S. Morales, Jr., Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	August 19, 1998	040038
Maricopa (FEMA Docket No. 7256).	Town of Gilbert	August 11, 1998, August 18, 1998, *Gilbert Tribune*.	The Honorable Cynthia Dunham, Mayor, Town of Gilbert, 1025 South Gilbert Road, Gilbert, Arizona 85296.	July 15, 1998	040044
Maricopa (FEMA Docket No. 7256).	Unincorporated Areas.	August 11, 1998, August 18, 1998, *Arizona Republic*.	The Honorable Janice K. Brewer, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson Street, Tenth Floor, Phoenix, Arizona 82003.	July 15, 1998	040037
Maricopa (FEMA Docket No. 7256).	City of Mesa	August 20, 1998, August 27, 1998, *Arizona Republic*.	The Honorable Wayne Brown, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211.	July 20, 1998	040048
California:					
Santa Clara (FEMA Docket No. 7256).	City of Gilroy	August 7, 1998, August 14, 1998, *The Dispatch*.	The Honorable K.A. Mike Gilroy, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	July 9, 1998	060340
Santa Barbara (FEMA Docket No. 7256).	Unincorporated Areas.	August 7, 1998, August 14, 1998, *Santa Barbara News Press*.	The Honorable Gail Marshall, Chairperson, Santa Barbara County, Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	July 9, 1998	060331
Santa Clara (FEMA Docket No. 7256).	Unincorporated Areas.	August 7, 1998, August 14, 1998, *The San Jose Mercury News*.	The Honorable Blanca Alverado, Chairperson, Santa Clara County Board of Supervisors, 70 West Hedding Street, East Wing, Tenth Floor, San Jose, California 95110.	July 9, 1998	060337
Ventura (FEMA Docket No. 7256).	Unincorporated Areas.	August 12, 1998, August 19, 1998, *Ventura County Star*.	The Honorable Judy Mikels, Chairperson, Ventura County Board of Supervisors, 3855–F Alamo Street, Simi Valley, California 93063.	July 13, 1998	060413
Colorado: Rio Blanco (FEMA Docket No. 7256).	Town of Meeker	August 20, 1998, August 27, 1998, *Meeker Herald*.	The Honorable Bill Dunham Mayor, Town of Meeker, P.O. Box 38, Meeker, Colorado 81641.	August 6, 1998	080151
Hawaii: Maui County (FEMA Docket No. 7256).	Unincorporated Areas.	August 7, 1998, August 14, 1998, *Maui News*.	The Honorable Linda Lingle, Mayor, Maui County, 200 South High Street, Wailuku, Maui, Hawaii 96793.	July 13, 1998	150003
Nebraska: Sarpy (FEMA Docket No. 7256).	Unincorporated Areas.	September 16, 1998, September 23, 1998, *The Papillion Times*.	The Honorable Tim Gray, Chairman, Sarpy County, Board of Commissioners, County Courthouse, 1210 Golden Gate Drive, Suite 1118, Papillion, Nebraska 68046.	August 14, 1998	310190
New Mexico:					
Bernalillo (FEMA Docket No. 7256).	City of Albuquerque.	September 4, 1998, September 11, 1998, *Albuquerque Journal*.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	July 17, 1998	350002
Bernalillo (FEMA Docket No. 7256).	Unincorporated Areas.	September 4, 1998, September 11, 1998, *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernalillo County Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	July 17, 1998	350001
Oklahoma:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma (FEMA Docket No. 7256).	City of Oklahoman City.	August 27, 1998, September 3, 1998, *Daily Oklahoman*.	The Honorable Ronald Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	August 4, 1998	405378
Tulsa (FEMA Docket No. 7256).	City of Tulsa	September 23, 1998, September 30, 1998, *Tulsa World*.	The Honorable M. Susan Savage, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa,. Oklahoma 74103.	August 14, 1998 ..	405381
Texas:					
Tarrant (FEMA Docket No. 7256).	City of Mansfield	August 20, 1998, August 27, 1998, *Mansfield News-Mirror*.	The Honorable Harry David, Mayor, City of Mansfield, 1305 East Broad Street, Mansfield, Texas 76063.	August 4, 1998	480606
Montgomery (FEMA Docket No. 7256).	Unincorporated Areas.	August 14, 1998, August 21, 1998, *Conroe Courier*.	The Honorable Alan Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, Texas 77301.	July 14, 1998	480483
McLennan (FEMA Docket No. 7256).	City of Waco	August 4, 1998, August 11, 1998, *Waco Tribune-Herald*.	The Honorable Michael D. Morrison, Mayor, City of Waco, P.O. Box 2570, Waco, Texas 76702–2570.	July 9, 1998	480461

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 24, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–32300 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7264]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Sacramento	Unincorporated Areas.	November 23, 1998, November 30, 1998, *Sacramento Bee.*	The Honorable Illa Collin, Chairperson, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	October 23, 1998	060262
San Diego	City of San Diego	November 10, 1998, November 17, 1998, *San Diego Union-Tribune.*	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	October 19, 1998	060295
New Mexico:					
Bernalillo	City of Albuquerque.	November 11, 1998, November 18, 1998, *Albuquerque Journal.*	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	October 21, 1998	350002
Bernalillo	Unincorporated Areas.	November 11, 1998, November 18, 1998, *Albuquerque Journal.*	The Honorable Steve Gallegos, Chairman, Bernalillo County, Board of Commissioners, One Civic Plaza Northeast, 10th Floor, Albuquerque, New Mexico 87102.	October 21, 1998	350001
Bernalillo	Village of Corrales	November 11, 1998, November 18, 1998, *Albuquerque Journal.*	The Honorable Gary Kanin, Mayor, Village of Corrales, P.O. Box 707, Corrales, New Mexico 87048.	October 21, 1998	350094
Dona Ana	City of Las Cruces	November 18, 1998, November 25, 1998, *The Sun News.*	The Honorable Rubin A. Smith, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, New Mexico 88004.	October 23, 1998	355332
Bernalillo	City of Rio Rancho.	November 11, 1998, November 18, 1998, *Albuquerque Journal.*	The Honorable John Jennings, Mayor, City of Rio Rancho, 3900 Southern Boulevard, Rio Rancho, New Mexico 87124.	October 21, 1998	350146
Oklahoma	City of Shawnee	September 18, 1998, September 25, 1998, *Shawnee News-Star.*	The Honorable Chris Harden, Mayor, City of Shawnee, P.O. Box 1448, Shawnee, Oklahoma 74802–1448.	August 14, 1998	400178
Texas:					
Tarrant	City of Dal- worthington Gardens.	November 13, 1998, November 20, 1998, *Fort Worth Star-Telegram.*	The Honorable Al Taub, Mayor, City of Dalworthington Gardens, 2600 Roosevelt Drive, Dalworthington Gardens, Texas 76016.	October 19, 1998	481013
Travis	Unincorporated Areas.	November 18, 1998, November 25, 1998, *Austin American Statesman.*	The Honorable Bill Aleshire, Travis County Judge, P.O. Box 1748, Austin, Texas 78767–1748.	October 26, 1998	481026

(Catalog of Federal Domestic Assistance No. 83.100, Flood Insurance)

Dated: November 24, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–32299 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Menlo Park (City), San Mateo County (FEMA Docket No. 7246)	
Shallow Flooding:	
At the intersection of Laurel Avenue and Haight Street	*24
At the intersection of Pope Street and Woodland Avenue	*43
At the intersection of Willow and Middlefield Roads	*56
Maps are available for inspection at the City of Menlo Park Engineering Department, 701 Laurel Street, Menlo Park, California.	
LOUISIANA	
Slidell (City), St. Tammany Parish (FEMA Docket No. 7246)	
Diversion Canal (W–14 Main):	
At Daney Street	*9
Approximately 700 feet upstream of Pawns Road	*19.5
Bayou Vincent:	
Approximately 1,500 feet downstream of West Hall Avenue	*9
Approximately 1,000 feet downstream of Interstate Highway 12	*13.8
West Diversion Canal:	
At confluence with Bayou Vincent	*11.8
At confluence with Diversion Canal (W–14 Main)	*15.1
Rein Canal West:	
At confluence with Diversion Canal (W–14 Main)	*14.1
At confluence with Rein Canal East	*15.1
Rein Canal East:	
2,800 feet above confluence with French Branch	*15
Maps are available for inspection at the City of Slidell City Hall, 2056 Second Street, Slidell, Louisiana.	
St. Tammany Parish (Unincorporated Areas) (FEMA Docket No. 7246)	
West Diversion Canal:	
At confluence with Bayou Vincent	*11.8
2,600 feet upstream of Southern Railroad	*14.6
Bayou Vincent:	
Approximately 1,000 feet downstream of West Hall Road	*9
Approximately 1,000 feet downstream of Interstate Highway 12	*16.5
Rein Canal East:	
At confluence with French Branch	*14.2
160 feet upstream of Interstate Highway 10	*14.8
Diversion Canal (W–14 Main):	
At Daney Street	*9
Approximately 700 feet upstream of Pawns Boulevard	*19.8
Maps are available for inspection at 21490 Koop Road, Mandeville, Louisiana.	
OREGON	
Douglas County (Unincorporated Areas) (FEMA Docket No. 7218)	
Cow Creek (Near Riddle):	
At confluence with South Umpqua River	*656
Approximately 2,100 feet upstream of Glenbrook Road	*713
Cow Creek (Near Glendale):	
Approximately 3,400 feet downstream of confluence of McCullough Creek	*1,359
At Rueben Road	*1,396
Cow Creek:	
Approximately 300 feet upstream of White Horse Creek Road	*1,702
Approximately 1,700 feet upstream of confluence of Sugar Creek	*1,928

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the Douglas County Planning Department, Justice Building, Room 106, Douglas County Courthouse, Roseburg, Oregon.	
Douglas County (Unincorporated Areas) (FEMA Docket No. 7246)	
Newton Creek:	
Just upstream of Stephens Street	*519
Approximately 1,180 feet upstream of Parker Road	*583
South Umpqua River:	
Approximately 5,600 feet downstream of confluence of Newton Creek	*429
At confluence of Newton Creek	*433
Maps are available for inspection at the Douglas County Planning Department, Justice Building, Room 106, Douglas County Courthouse, Roseburg, Oregon.	
Roseburg (City), Douglas County (FEMA Docket No. 7246)	
South Umpqua River:	
Approximately 5,160 feet downstream of confluence with Newton Creek	*428
Approximately 170 feet downstream of confluence with Newton Creek	*437
Just downstream of Interstate Highway 5	*443
Newton Creek:	
At confluence with the South Umpqua River	*433
Just upstream of Edenbower Boulevard	*486
Just upstream of Stephens Street	*520
Maps are available for inspection at the City of Roseburg Community Development Department, 900 Southeast Douglas Avenue, Roseburg, Oregon.	

(Catalog of Federal Domestic Assistance No. 83.100, Flood Insurance)

Dated: November 24, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–32298 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54, 64 and 69

[CC Docket Nos. 97–21 and 96–45; FCC 98–206]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsiders its July 18, 1997 order to the extent that the Universal Service Worksheet (Worksheet) attached to that order required universal service contributors to report as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance. The Commission amends of its rules to permit the Administrator of the federal universal service support mechanisms to utilize Telecommunications Relay Services Fund data to verify the accuracy of revenue information provided on the Worksheet. The Commission also amends its rules to clarify that a telecommunications carrier seeking reimbursement from the Administrator may request that the amount of the discount afforded to that school or library be applied either as an offset to the carrier's universal service contribution obligation or reimbursed to the carrier from the universal service support mechanisms.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on November 17, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Summary of Second Report and Order in CC Docket No. 97–21, Third Order on Reconsideration in CC Docket No. 97–21 and Sixth Order on Reconsideration in CC Docket No. 96–45

I. Introduction

1. In this Order, we reconsider the Commission's July 18, 1997 order to the extent that the Universal Service Worksheet attached as an appendix to that order required universal service contributors to report as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance. We also adopt amendments to the Commission's Part 54 and Part 64 rules to permit the Administrator of the federal universal service support mechanisms to utilize Telecommunications Relay Services (TRS) Fund data to verify the accuracy of revenue information provided on the Universal Service Worksheet by contributors to the universal service support mechanisms. In addition, we amend §§ 54.515 of our rules to clarify that a telecommunications carrier seeking reimbursement from the Administrator for the provision of services to a school or library may request that the amount of the discount afforded to that school or library be applied either as an offset to the carrier's universal service contribution obligation or reimbursed to the carrier from the universal service support mechanisms. We find, however, that a carrier that fails to remit its monthly universal service obligation is not entitled to choose direct reimbursement under the universal service support mechanism for schools and libraries. Rather, any support amounts owed to such a carrier under the support mechanism for schools and libraries must first be applied as an offset to the carrier's contribution obligation.

II. Inside Wiring Maintenance

2. We reconsider the *NECA Order,* 62 FR 41294 (August 1, 1997), to the extent that the Worksheet attached as an appendix to that order required universal service contributors to include as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance. We are persuaded by petitioners that the provision of inside wiring maintenance does not constitute "telecommunications" or a "telecommunications service" and we therefore conclude that revenues derived from this activity should not be included as end-user telecommunications revenues on the Worksheet. As the Commission stated in the *Inside Wiring Order,* 51 FR 44479 (December 10, 1986), inside wiring is severable from underlying common carrier transmission services and includes all telephone plant located on the customer's side of the demarcation point marking the end of the telephone network.

3. We conclude that inside wiring maintenance—the maintenance of telephone plant—does not constitute telecommunications or a telecommunications service because it

does not involve the "transmission" of information. MCI, the only party asking us to include in the universal service contribution base revenues derived from the provision of inside wiring maintenance, correctly points out that internal connections make possible the transmission of information. Consistent with the rationale set forth in the *Inside Wiring Order*, however, we note that inside wiring maintenance does not itself constitute "telecommunications" as that term is statutorily defined. MCI references language in paragraph 451 of the *Universal Service Order*, 62 FR 32862 (June 17, 1997), as support for its proposition that the Commission has concluded, in the context of defining eligible services for schools and libraries, that the installation and maintenance of internal connections constitute telecommunications services. Paragraph 451 and the surrounding discussion make clear, however, that the Commission determined only that the installation and maintenance of internal connections are among the additional *non-telecommunications* services for which eligible schools and libraries may receive discounts under section 254 of the Act. Neither this paragraph, nor the surrounding discussion, support MCI's assertion that the provision of inside wire maintenance constitutes telecommunications as that term is defined by the statute.

4. This change relieving contributors of their obligation to report as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance will become effective 30 days after publication of this Order in the **Federal Register**. We note, however, that contributors are not required to file another Worksheet until March 31, 1999. Accordingly, we direct carriers to adjust the 1998 full-year data that they will report on the March 31, 1999 Worksheet to reflect this change starting from the effective date of this Order.

III. The Use of TRS Data by the Universal Service Administrator

5. We amend § 64.604(c)(4)(iii)(I) as proposed in the *NECA II Further Notice*, 62 FR 47369 (September 9, 1997), to permit the use of TRS data by the Administrator for purposes of verifying the accuracy of information reported by contributors on the Universal Service Worksheet. We conclude that authorizing the Administrator to use TRS data for this purpose may assist the Administrator in monitoring contributors' compliance with the universal service contribution requirements by revealing potential inconsistencies between revenue data reported on the TRS Fund Worksheet and revenue data reported on the Universal Service Worksheet. As noted by NECA, the use of TRS data for this purpose will provide a more efficient method of monitoring contributors' compliance with the contribution requirements than if the universal service Administrator were forced to rely on audits alone. MCI, BellSouth, and NECA support the Commission's proposal to authorize the use of TRS data for this purpose. No parties filed comments opposing the Commission's proposal. We also amend § 54.711(a) to direct the TRS administrator to provide to the Administrator TRS data so that the Administrator may verify the accuracy of information reported by contributors on the Universal Service Worksheet. As an outgrowth of our decision to authorize the Administrator to use TRS data, we also amend § 69.616 to ensure that the Administrator exercises this authority in an equitable and non-discriminatory manner. We direct the Administrator, in comparing the revenue data filed by universal service contributors with that filed by TRS Fund contributors, to undertake company-by-company comparisons for all entities filing Universal Service Worksheets and TRS Fund Worksheets.

6. We also amend § 54.711(b) as proposed in the *NECA II Further Notice* to require the Administrator to keep confidential all TRS data obtained from the Administrator of the TRS Fund, prohibit the Administrator from using TRS data for purposes other than the administration of federal universal service support mechanisms, and prohibit the disclosure of TRS data in company-specific form unless directed to do so by the Commission. We direct the Bureau to make decisions regarding disclosure of company-specific information.

7. We agree with NECA that § 54.711(b)'s prohibition on the disclosure of company-specific information does not prohibit the Administrator from releasing aggregate, non-company specific data. In order to ensure that any report or document containing aggregate, non-company-specific data does not, by virtue of the manner in which particular data are organized, inadvertently reveal company-specific information, we require the Administrator to obtain the approval of the Bureau prior to release of such a report or document to persons outside of the Commission.

8. BellSouth requests that the Commission declare all commercial mobile radio service (CMRS) subscriber and financial data reported on TRS and Universal Service Worksheets confidential data subject to Exemption 4 of the Freedom of Information Act (FOIA). BellSouth asserts that requiring each CMRS provider to request confidential treatment for such data creates unnecessary paperwork for contributors and the Commission. On March 4, 1998 and July 31, 1998, the Bureau announced revisions to the Universal Service Worksheet. The revised Worksheet provides a space for contributors to indicate that they wish to request confidential treatment of the data contained on the Worksheet. Contributors making such an election must certify that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet. If the Commission receives a request for, or proposes disclosure of, the information contained on the Worksheet, the carrier will be required to make the full showing required by our rules. We anticipate that this revision will ease significantly the paperwork burden on all contributors, not just CMRS providers. Contributors to the TRS Fund shall continue to comply with §§ 0.459 and 0.461 of the Commission's rules in order to request confidential treatment of the revenue data reported on the TRS Worksheet. We do not believe that this poses a substantial burden on TRS contributors, because the TRS Worksheet, unlike the Universal Service Worksheet, is filed only annually, rather than semi-annually.

9. The Bureau will make the initial decision regarding disclosure of company-specific information derived from the Universal Service Worksheet or from the TRS Administrator. In the event that it directs disclosure of data for which confidential treatment was requested by the contributor, the Bureau will follow the procedures specified in §§ 0.459 and 0.461 of the Commission's rules. Accordingly, the company will be given an opportunity to file an application for review by the Commission of any decision to release assertedly confidential data and, if it is denied, to seek a judicial stay before any assertedly confidential information is released. Consequently, we do not find it necessary to conclude that all CMRS subscriber and financial data reported on the Worksheets are confidential.

10. BellSouth also asserts that the release of company-specific CMRS subscriber and revenue data should be prohibited under any circumstances and maintains that the Commission should be precluded from releasing such

information. Although we recognize the competitively sensitive nature of the CMRS data in question, we decline to foreclose altogether the Commission's or the Bureau's ability to disclose or direct the disclosure of company-specific subscriber or revenue data reported for purposes of determining TRS or universal service contributions. The Commission has no present intention to disclose company-specific subscriber or revenue data and, absent substantial justification, does not anticipate disclosing or directing the disclosure of such data. In view of the possibility, however, that an occasion may arise in which the Commission or the Bureau determines that disclosure would be in the public interest (e.g., in the context of an action brought against a contributor to enforce the contribution requirements, or after a long delay so that financial information would no longer be competitively sensitive), and the safeguards provided by §§ 0.459 and 0.461 of our rules, we decline to amend our rules to preclude the disclosure of company-specific subscriber or revenue data under any circumstances.

IV. Offset Versus Reimbursement

11. In light of the inconsistency that USAC has brought to our attention between paragraph 586 of the *Universal Service Order* and § 54.515 of the Commission's rules, we conform § 54.515 to the text of paragraph 586 of the *Universal Service Order* by adopting the amendments reflected below. As amended, a telecommunications carrier applying for support under § 54.515 for services provided to an eligible school or library either may apply the amount of the discount afforded to a school or library as an offset to its universal service contribution obligation or be reimbursed for that amount from the universal service support mechanisms. We further find, however, that the statute does not provide carriers participating in the support mechanism for schools and libraries with an unconditional right to select between offset and direct reimbursement. As USAC explains in its September 16, 1998 letter, it may be costly and administratively burdensome if USAC is asked to alter on a frequent basis the method by which a carrier is reimbursed. We therefore require carriers that are owed support under the universal service support mechanism for schools and libraries to elect on an annual basis the method by which they will receive payment. Such carriers shall elect a payment method in January of each year and shall remain subject to that method for the duration of the calendar year.

12. Additionally, consistent with USAC's July 31, 1998 letter, we find that any support amount that is owed to a carrier participating in the support mechanism for schools and libraries that fails to remit its monthly universal service obligation must first be applied as an offset to that carrier's contribution obligation. Thus, a carrier participating in the support mechanism for schools and libraries that has failed to make its required contribution to universal service in a given month is entitled to receive direct reimbursement from the universal service support mechanisms only to the extent that the amount owed the carrier under the schools and libraries support mechanism exceeds the amount of the carrier's total universal service obligation. We find that this decision is reasonable because, to the extent that a carrier is in arrears on its universal service obligations, it has already effectively chosen an offset method of compensation. We are persuaded that requiring the use of an offsetting procedure as described above for a carrier that fails to make timely contributions serves the public interest by ensuring an appropriate universal service fund and minimizing the need for costly and time-consuming enforcement actions. Consistent with USAC's recommendation in its September 16, 1998 letter, carriers that are in arrears on their universal service contribution obligations will remain subject to the offsetting method for the remainder of the calendar year in which they failed to remit their monthly universal service obligation. A carrier with an outstanding balance at the end of a calendar year shall remain subject to the offsetting method for the next calendar year. A carrier that has been subject to this mandatory offsetting procedure by USAC but that disputes its contribution obligation may bring this matter to the attention of the Commission through a request for declaratory ruling.

V. Final Regulatory Flexibility Certification

13. The Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

14. In the *NECA II Further Notice*, the Commission certified, pursuant to § 605(b) of the RFA, that the proposed rule amendments attached thereto, which would permit the Administrator to use TRS data to verify the accuracy of data provided on the Universal Service Worksheet, would not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments on this tentative conclusion. The rules adopted in this order permit the Administrator to use TRS data to verify the accuracy of data provided by universal service contributors on the Worksheet. This Order therefore permits the transfer of already collected data. This exchange of information will enable the Administrator to verify the accuracy of universal service data, thus ensuring the sufficiency of the universal service support mechanisms. We conclude that the rules adopted in this order regarding the use of TRS data will not have a significant economic impact on small entities.

15. We find that our amendment to § 54.515, which clarifies that telecommunications carriers seeking reimbursement for the provision of services to a school or library may request either that the reimbursement amount be applied as an offset to the carrier's universal service contribution obligation or that it receive direct reimbursement from the universal service support mechanisms, will not have a significant economic impact on small entities. This amendment will provide telecommunications carriers providing services to schools and libraries with flexibility in structuring the manner in which they will be reimbursed. Additionally, we do not believe that small entities will experience a significant economic impact due to our determination that any support amount owed to a carrier that fails to remit its monthly universal service obligation should first be applied as an offset against that carrier's contribution obligation. We find that, to the extent that a carrier is in arrears on its universal service obligations, it has already effectively chosen an offset method of compensation. We also find that requiring carriers to select a reimbursement method on an annual basis, or be subject to mandatory offset for the remainder of the year during which they failed to pay their universal

service contribution obligation, will not have a significant economic impact on small entities. Rather, we find that allowing carriers to elect annually the method by which they will be reimbursed provides carriers with a reasonable degree of flexibility in structuring their operations. Furthermore, we find that requiring nonpaying carriers to accept the offsetting procedure for the remainder of the calendar year in which they failed to pay their universal service contributions is reasonable in light of the need to establish a reliable payment history on the part of such carriers and to maintain the certainty and sufficiency of the universal service support mechanisms.

16. We also conclude that our determination in this Order to eliminate the requirement that contributors report as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance will not have a significant economic impact on small entities. In fact, this determination will lessen contributors' reporting requirements and may lessen the contribution amount of some contributors.

VI. Ordering Clauses

17. Accordingly, it is ordered that, pursuant to the authority contained in § 1–4, 201–205, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 405 and § 553 of the Administrative Procedure Act, 5 U.S.C. 553, the adoption of this Second Report and Order, Third Order on Reconsideration, and Sixth Order on Reconsideration is effective January 4, 1999.

18. It is further ordered that the amendments to parts 54, 64, and 69 of the Commission's rules are effective January 4, 1999.

List of Subjects

47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 64

Communications common carriers.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

Parts 54, 64, and 69 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.515 is amended by revising paragraphs (a) and (b) and removing paragraphs (c) and (d).

§ 54.515 Distributing support.

(a) A telecommunications carrier providing services eligible for support under this subpart to eligible schools and libraries may, at the election of the carrier, treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation for the year in which the costs for providing eligible services were incurred or receive a direct reimbursement from the Administrator for that amount. Carriers shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a carrier that fails to remit its monthly universal service contribution obligation, however, shall first be applied as an offset to that carrier's contribution obligation. Such a carrier shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit their monthly universal service obligation. A carrier that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(b) If a telecommunications carrier elects to treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation and the total amount of support owed to the carrier exceeds its universal service obligation, calculated on an annual basis, the carrier shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a carrier shall be submitted to that carrier no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the carrier's universal service obligation was applied.

3. Section 54.711 is amended by revising paragraphs (a) and (b) to read as follows:

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Universal Service Worksheet. The Universal Service Worksheet sets forth information that the contributor must submit to the Administrator on a semi-annual basis. The Commission shall announce by Public Notice published in the **Federal Register** and on its website the manner of payment and dates by which payments must be made. An officer of the contributor must certify to the truth and accuracy of the Universal Service Worksheet, and the Commission or the Administrator may verify any information contained in the Universal Service Worksheet at the discretion of the Commission. The administrator of the Telecommunications Relay Service Fund shall provide data reported on the Telecommunications Relay Service Worksheet to the Administrator so that the Administrator may verify information contained in the Universal Service Worksheet. Inaccurate or untruthful information contained in the Universal Service Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

(b) The Commission shall have access to all data reported to the Administrator, Rural Health Care Corporation, and Schools and Libraries Corporation. Contributors may make requests for Commission nondisclosure of company-specific information by so indicating on the Universal Service Worksheet. The Commission shall make all decisions regarding nondisclosure of company-specific information. The Administrator, Rural Health Care Corporation, and Schools and Libraries Corporation shall keep confidential all data obtained from contributors, including all data obtained from the administrator of the Telecommunications Relay Service Fund, shall not use such data except for purposes of administering the universal service support programs, and shall not disclose such data in company-specific form unless directed to do so by the Commission.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

4. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, and 403 unless otherwise noted.

5. Section 64.604 is amended by revising paragraph (c)(4)(iii)(I) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, enabling the universal service Administrator to verify revenue information provided by contributors to those mechanisms, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and shall have the authority to audit TRS providers.

* * * * *

PART 69—ACCESS CHARGES

6. Section 69.616 is amended by adding paragraph (e) as follows:

§ 69.616 Independent subsidiary functions.

* * * * *

(e) Pursuant to its responsibility for billing and collecting contributions, the independent subsidiary shall compare periodically information collected by the Administrator of the TRS Fund from TRS Fund Worksheets with information submitted by contributors on Universal Service Worksheets in order to verify the accuracy of information submitted on Universal Service Worksheets. When performing a comparison of contributor information as provided by this subsection, the independent subsidiary must undertake company-by-company comparisons for all entities filing Universal Service and TRS Fund Worksheets.

[FR Doc. 98–32303 Filed 12–3–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 233
Friday, December 4, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 97–110–3]

RIN 0579–AA92

Importation of Grapefruit, Lemons, and Oranges From Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; change in date and location of public hearing.

SUMMARY: We are advising the public that we have changed the date and location of the public hearing that we will hold to give interested persons an opportunity for the oral presentation of data, views, and arguments regarding our proposed rule regarding the importation of grapefruit, lemons, and oranges from Argentina.

DATES: Consideration will be given only to comments on Docket No. 97–110–1 that are received on or before February 11, 1999. We will also consider comments made at a public hearing that will be held in Thousand Oaks, CA, on February 8, 1999, from 9 a.m. to 5 p.m.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–110–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public hearing will be held at the Thousand Oaks Civic Arts Plaza, Fred Kavli Theatre, 2100 Thousand Oaks Boulevard, Thousand Oaks, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; e-mail: Ronald.C.Campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1998, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (63 FR 43117–43125, Docket No. 97–110–1) to amend the citrus fruit regulations by recognizing a citrus-growing area within Argentina as being free from citrus canker. In that document, we also proposed to amend the fruits and vegetables regulations to allow the importation of grapefruit, lemons, and oranges from the citrus canker-free area of Argentina under conditions designed to prevent the introduction into the United States of two other diseases of citrus, sweet orange scab and citrus black spot, and other plant pests. These proposed changes would allow grapefruit, lemons, and oranges to be imported into the United States from Argentina subject to certain conditions.

On October 16, 1998, we published in the **Federal Register** (63 FR 55559, Docket No. 97–110–2) a notice advising the public that we were extending the comment period for the proposed rule by 120 days and that we had scheduled a public hearing to give interested persons the opportunity for the oral presentation of data, views, and arguments regarding the proposed rule.

In our October 16, 1998, notice, we announced that the public hearing would be held on December 17, 1998, at the Scherr Forum in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA. However, we have been asked to reschedule the public hearing to a later date to give interested persons more time to review the proposed rule and its supporting information prior to the hearing. We have also been informed that the number of attendees at the public hearing may exceed the capacity of the Scherr Forum Theatre.

Therefore, the public hearing that had been scheduled for December 17, 1998, at the Scherr Forum in the Thousand Oaks Civic Arts Plaza, Thousand Oaks. CA, has been canceled. The public hearing is now scheduled for February 8, 1999, at the Fred Kavli Theatre in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA.

The purpose of this hearing is to give interested persons an opportunity for the oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to the comments at the hearing, except to clarify or explain provisions of the proposed rule.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. Persons who wish to speak at a public hearing will be asked to provide their name and organization. We ask that anyone who reads a statement or submits a written statement provide two copies to the presiding officer at the hearing.

The public hearing will begin at 9 a.m. and is scheduled to end at 5 p.m., local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

Done in Washington, DC, this 25th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32228 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. 98–063–1]

Noxious Weeds; Update of Weed Lists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to amend the noxious weeds regulations by

adding *Solanum tampicense* Dunal (wetland nightshade) and *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic weeds and removing *Ipomoea triloba* Linnaeus from the list of terrestrial weeds. We are also proposing to update the taxonomic names of two other weeds currently listed and make one editorial change to the regulations. These actions appear to be necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States, to remove unnecessary restrictions, and to make the regulations easier to understand.

DATES: Consideration will be given only to comments received on or before February 2, 1999. We will also consider comments made at a public hearing to be held on January 6, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–063–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–063–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public hearing will be held at the USDA Center at Riverside, room 3B01, 4700 River Road, Riverdale, MD. Picture identification is required. Parking is available next to the building for a $2.00 fee (have quarters or $1 bills). The nearest Metro Station is the College Park station on the Green Line, and is within walking distance.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States, but do not affect the movement of listed noxious weeds that are moved solely intrastate.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS's) regulations implementing the provisions of Title III of FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weeds whose seeds have no tolerances applicable to their introduction into the United States.

In this document we are proposing to amend the noxious weed regulations by adding two weeds to the list of aquatic weeds in § 360.200(a), removing another weed from the list of terrestrial weeds in § 360.200(c), and updating the taxonomy of two other currently listed weeds. Also, since the FSA regulations in § 361.6(a) support the noxious weed regulations by prohibiting or restricting the importation of the seeds of noxious weeds listed in § 360.200, we are proposing to amend the noxious weed seed list in § 361.6(a) accordingly.

Addition of *Solanum tampicense*

The FNWA defines a noxious weed as "any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health."

Solanum tampicense Dunal (wetland nightshade) is currently found in five counties in southwestern Florida. Representatives of the Florida Division of Plant Industry and the Florida Department of Environmental Protection participated with APHIS in the New Pest Advisory Group meeting for this species, and concluded that the species meets the FNWA's definition of a noxious weed.

S. tampicense will grow as a perennial only in areas free of frost. Therefore, Florida, and other areas that are generally free from frost, are at risk for the establishment of the *S. tampicense*. The establishment of *S. tampicense* in Florida could have both economic and ecological consequences. Its prickly growth could inhibit access by livestock to wetlands areas, a potentially serious dry-season problem. It also has the potential to invade natural ecosystems and alter current plant and animal habitats.

Listing this weed would help avert further introductions and help prevent the artificial spread of the weed into noninfested areas of the United States. Therefore, we are proposing to add *S. tampicense* to the list of aquatic weeds in § 360.200(a) and to the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

Addition of *Caulerpa taxifolia* (Mediterranean clone)

The Mediterranean clone of the green seaweed *Caulerpa taxifolia* has invaded the Mediterranean coasts of France and Italy and now covers thousands of acres of the coastal zone. This invasive, aquarium-bred clone appears to have been introduced into the Mediterranean Sea from the Monaco Aquarium in 1984. It covered approximately 1 square yard in 1984, spread to over 2 acres by 1989, and now covers over 10,000 acres, extending from the shore to depths of over 250 feet. *C. taxifolia* (Mediterranean clone) grows on both rocky and sandy bottoms, from protected bays to exposed capes, and attains great densities, forming monocultural stands whose impact has been compared to unrolling a carpet across the bottom of the sea. In the regions where it is established, *C. taxifolia* (Mediterranean clone) has caused ecological devastation by overgrowing and eliminating native seaweeds, sea grasses, and invertebrates (such as corals, sea fans, and sponges) and has caused economic damage by harming tourism and recreational diving and creating a costly impediment to commercial fishing. No effective eradication strategies have been identified for *C. taxifolia* (Mediterranean clone).

France, Spain, and Australia have already banned the possession, transport, and sale of *C. taxifolia* (Mediterranean clone), but it continues to be available for importation and sale in the United States for use in public and private aquariums. We believe that *C. taxifolia* (Mediterranean clone), if released into the environment, presents a risk of becoming established in the United States, thus threatening coastal waters and coral reefs from North Carolina to Florida, the Gulf of Mexico, southern California, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.

Listing *C. taxifolia* (Mediterranean clone) as a Federal noxious weed would help prevent its introduction and spread into the natural environment of the United States. Therefore, we are proposing to add *C. taxifolia* (Mediterranean clone) to the list of aquatic weeds in § 360.200(a) and to the list in § 361.6(a)(1).

Removal of *Ipomoea triloba*

The regulations also list *Ipomoea triloba* Linnaeus (little bell, aiea morning glory) as a terrestrial noxious weed. The FNWA's definition of "noxious weed" requires, in part, that such weeds be "of foreign origin." *I. triloba*, however, according to an authority on the family Convolvulaceae, is a species native to Florida, and therefore is not within the scope of the FNWA. We concur with that expert's determination and are, therefore, proposing to remove *I. triloba* from the list of terrestrial weeds in § 360.200(c) and from the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

Miscellaneous

We are also proposing to update the taxonomy of *Rottboellia exaltata* Linnaeus S. and *Borreria alata* (Aublet) de Candolle in the terrestrial noxious weed list in § 360.200(c) and the noxious weed seeds list in § 361.6(a)(1). The revised taxonomical names are *Rottboellia cochinchinensis* (Lour.) W. Clayton and *Spermacoce alata* (Aublet) de Candolle, respectively. We are proposing this action because the revised taxonomic names are the names currently recognized by the scientific community and the USDA Germplasm Resources Information Network.

The noxious weeds listed in § 360.200(a) fall under the heading "Aquatic weeds." It has come to our attention that some weeds on that list could be more appropriately described as "wetland weeds." We agree with that suggestion and are, therefore, proposing to rename the heading of that list "Aquatic and wetland weeds" so that it more accurately represents the list's contents.

Public Hearing

APHIS will host a public hearing to provide interested persons a full opportunity to present their views regarding this proposal. The hearing will be held on January 6, 1999, at the USDA Center at Riverside, room 3BO1, 4700 River Road, Riverdale, MD.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in, listing their names and organizations.

The public hearing will begin at 10:00 a.m. local time and is scheduled to end at 12:00 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rules may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at a hearing, except to clarify or explain provisions of the proposed rules.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, set forth below, regarding the impact of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, we are inviting comments concerning potential economic impacts. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

Addition of *S. tampicense and C. taxifolia* (Mediterranean clone)

This proposed rule would add *Solanum tampicense* (wetland nightshade) to the list of Federal noxious weeds. *S. tampicense* will grow as a perennial only in areas free of frost, and is therefore a threat to southern Florida and areas of the country with a climate similar to that of southern Florida. *S. tampicense* is currently established in five counties in southwestern Florida and could potentially have economic consequences for livestock producers in those areas. Its prickly growth may inhibit access by livestock to wetland areas, a potentially serious dry-season problem.

The majority of cattle operations in the counties harboring existing populations of *S. tampicense* are small entities. The extent to which they would be adversely affected by the continued spread of *S. tampicense* is not known. Preventing further introductions and curtailing spread would have a positive economic impact on livestock producers not yet affected.

The unchecked spread of *S. tampicense* may also have a negative impact on natural ecosystems. Although the extent to which *S. tampicense* could displace other natural species is not known, due to the proximity of Everglades National Park to the currently affected areas, the weed could potentially have harmful effects on natural vegetation and wildlife. In responding to the potential harm caused by *S. tampicense* to natural ecosystems, one or more small organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to spread. Although the size and magnitude of such potential costs are not known, it is clear that the proposed rule, if adopted, would help to ensure that the costs would be minimal or nonexistent.

This proposed rule would also add *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic noxious weeds. We believe that some importers may currently be importing *C. taxifolia* (Mediterranean clone) into the United States for use in public and private aquariums, but data on the amount of *C. taxifolia* (Mediterranean clone) if any, currently being imported into the United States is unavailable.

The unchecked spread of *C. taxifolia* (Mediterranean clone) into the United States can, however, be expected to have a negative impact on natural ecosystems, given its significant negative effects on the regions in the Mediterranean where it is already established. In responding to the potential harm caused by *C. taxifolia* (Mediterranean clone) to natural ecosystems, one or more organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to be introduced into the environment. Although the size and magnitude of such potential costs are not known, it is clear that the proposed rule, if adopted, would help to prevent the need for such expenditures.

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We therefore believe that adding *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds would help preclude potential economic and ecological consequences that could result from their spread.

Removal of *Ipomoea triloba*

We are proposing to remove *Ipomoea triloba* (little bell, aiea morning glory) from the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to continue to regulate *I. triloba* as such. The delisting of *I. triloba* could have a slightly positive economic impact on importers of agricultural and vegetable seed, whose shipments would no longer be delayed or refused at the port of entry due to contamination with *I. triloba*.

Alternatives Considered

The only significant alternative to this proposed rule would be to make no changes in the regulations, i.e., to not add *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds and to retain *I. triloba* on that list. We have rejected the alternative of not listing *S. tampicense* and *C. taxifolia* (Mediterranean clone) as Federal noxious weeds because of the potential economic and ecological consequences that we believe would result from their spread. We have also rejected the alternative of retaining *I. triloba* on the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to continue to regulate *I. triloba* as such.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are proposing to amend 7 CFR parts 360 and 361 as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 would continue to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

§ 360.200 [Amended]

2. Section § 360.200 would be amended as follows:

a. In paragraph (a), the paragraph heading would be revised to read "Aquatic and wetland weeds."

b. In paragraph (a), the list of noxious weeds would be amended by adding, in alphabetical order, entries for "*Caulerpa taxifolia* (Mediterranean clone)" and "*Solanum tampicense* Dunal (wetland nightshade)".

c. In paragraph (c), the list of noxious weeds would be amended by removing the entries for "*Borreria alata* (Aublet) de Candolle", "*Ipomoea triloba* Linnaeus (little bell, aiea morning glory)", and "*Rottboellia exaltata* Linnaeus f. (itchgrass, raoulgrass)", and by adding, in alphabetical order, entries for "*Rottboellia cochinchinensis* (Lour.) W. Clayton" and "*Spermacoce alata* (Aublet) de Candolle".

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

3. The authority citation for part 361 would continue to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

§ 361.6 [Amended]

4. In § 361.6, paragraph (a)(1), the list of noxious weeds would be amended as follows:

a. The entries for "*Borreria alata* (Aublet) de Candolle" and "*Ipomoea triloba* L." would be removed.

b. The entry for "*Rottboellia cochinchinensis* Clayon (=*R. exaltata* (L.)L. f.)" would be amended by removing the words "Clayon (=*R. exaltata* (L.)L. f.)" and adding the words "W. Clayton" in their place.

c. New entries for "*Caulerpa taxifolia* (Mediterranean clone)", "*Solanum tampicense* Dunal (wetland nightshade)", and "*Spermacoce alata* (Aublet) de Candolle" would be added in alphabetical order.

Done in Washington, DC, this 25th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32229 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–44]

Proposed Modification of the Legal Description of Class D Airspace and Class E Airspace; Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the legal description of the Class D airspace and Class E airspace at Binghamton Regional/Edwin A. Link field Airport (BGM), Binghamton, NY. The air traffic control tower at BGM has reduced their operating hours. Therefore, the Class D airspace and Class E airspace area designated as an extension to a Class D surface area will be effective only during specific dates and times. This action proposes to designate the airspace as part time and does not propose to change the actual dimensions of the airspace. Adoption of this proposal would result in the affected areas reverting to Class E airspace for the airspace extending upward from 700 feet above the surface during the specified hours of reduced operation.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–44, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AEA–44." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise to the legal description of the BGM Class D and Class E airspace areas at Binghamton, NY. The required criteria for full time Class D airspace is no longer being met. The control tower for BGM has reduced the hours of operation. Therefore, the need for the airspace is reduced accordingly. The reduction of hours of use for Class D airspace will also cause the reduction of hours of use of the Class E airspace extensions to the Class D airspace. The affected airspace will revert to Class E airspace for that portion extending upward from 700 feet above the surface. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for airspace designated as an extension to Class D surface area are published in Paragraph 6004, of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 5000 Class D airspace

* * * * *

AEA NY D Binghamton, NY [Revised]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″N., Long. 75°58′47″W.)

That airspace extending upward from the surface to and including 4,1000 feet MSL within a 4.1-mile radius of the Binghamton Regional/Edwin A. Link Field Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AEA NY E–4 Binghamton, NY [Revised]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″N., Long. 75°58′47″W.)
Binghamton VORTAC
(Lat. 42°09′27″N., Long. 76°08′11″W.)
SMITE OM
(Lat. 42°06′17″N., Long. 75°53′28″W.)

That airspace extending upward from the surface within 1.8 miles each side of the Binghamton VORTAC 067° radial extending from the 4.1-mile radius of the Binghamton Regional/Edwin A. Link Field Airport to the VORTAC and within 1.8 miles each side of the Binghamton Reginal/Edwin A. Link Field Airport, ILS Localizer SE course extending from the 4.1-mile radius of the airport to 1.8 miles SE of the SMITE OM. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–32245 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–43]

Proposed Amendment to Class E Airspace; Laurel, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Laurel, DE. The development of new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Laurel Airport, DE, has made this proposal necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–43, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AEA–43." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Laurel, DE. A GPA–A SIAP has been developed for the Laurel Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA DE E5 Laurel, DE [Revised]

Laurel Airport, DE
(Lat. 38°32′28″N., long. 75°35′34″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Laurel Airport, excluding the portion that coincides with the Salisbury, MD, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc 98–32246 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–14]

Proposed Amendment to Class E Airspace; Lawrence, KS; Perryville, MO; Warrensburg, MO; Burlington, IA; Des Moines, IA; Fort Madison, IA; and Dubuque, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed amending the Class E airspace designations at Lawrence, KS; Perryville, MO; Warrensburg, MO; Burlington, IA; Des Moines, IA; Fort Madison, IA; and Dubuque, IA. The NPRM is being withdrawn due to an error in Docket No. 98–ACE–14 (63 FR 14388), published March 25, 1998.

DATES: This withdrawal is made on December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Proposed rule

On March 25, 1998, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend the Class E airspace designations at Lawrence, KS; Perryville, MO; Warrensburg, MO; Burlington, IA; Des Moines, IA; Fort Madison, IA; and Dubuque, IA (63 FR 14388). The Class E airspace, 700 feet and above, was enlarged to comply with the criteria specified in FAA Order 7400.2D. The Airport Reference Points (ARP) for Perryville, MO, and Des Moines, IA, were amended. The Instrument Landing System (ILS) and coordinates were added to the airspace designation for Des Moines, IA. Due to an error in Docket No. 98–ACE–14, a determination has been made to withdraw the NPRM.

Conclusion

In consideration of the aforementioned error, action is being taken to withdraw the NPRM.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of the Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 98–ACE–14, as published in the **Federal Register** on March 25, 1998 (63 FR 14388), is hereby withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Kansas City, MO, on October 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32241 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–15]

Proposed Amendment to Class E Airspace; Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed amending the Class E airspace designations at Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE; and Grand Island, NE. The NPRM is being withdrawn due to an error in Docket No. 98–ACE–15 (63 FR 15108), published March 30, 1998.

DATE: This withdrawal is made on December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On March 30, 1998, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend the Class E airspace designations at Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE; and Grand Island, NE (63 FR 15108). The Class E airspace, 700 feet and above, was enlarged to comply with the criteria specified in FAA Order 7400.2D. The Airport Reference Points (ARP) for Garden City Regional Airport, KS, and Columbus Municipal Airport, NE, were amended. The Instrument Landing System (ILS) and coordinates were added to the airspace designation for Grand Island, Central Nebraska Airport, NE, and Columbus Municipal Airport, NE. The name of the Garden City Municipal Airport, KS, was changed to Garden City Regional Airport, KS. Due to an error in Docket No. 98–ACE–15, a determination has been made to withdraw the NPRM.

Conclusion

In consideration of the aforementioned error, action is being taken to withdraw the NPRM.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of the Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 98–ACE–15, as published in the **Federal Register** on March 30, 1998 (63 FR 15108), is hereby withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Kansas City, MO, on October 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32240 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 20

International Postal Rates; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed changes in international postal rates.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing changes in international postal rates. As required under the Postal Reorganization Act, the proposed changes will result in international postal rates that do not apportion the costs of the service so as to impair the overall value of the service to the users, are fair and reasonable, and are not unduly or unreasonably discriminatory or preferential.

DATES: Comments on the proposed changes must be received on or before January 4, 1999.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, Costing, and Classification, International Business Unit, U.S. Postal

Service, 475 L'Enfant Plaza, SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Angus MacInnes, (202) 268–2268.

SUPPLEMENTARY INFORMATION: The proposed international rates, shown in the tables below, are needed by the Postal Service to accommodate changes in the cost of providing international mail service. In addition, the Postal Service believes that the proposed changes will result in improved international mail service.

The Postal Service is proposing to change only the rates contained in the charts below. Rates not contained in these charts, such as the letter/letter package to countries other than Canada, air AO rates to all countries other than Canada and Mexico, and surface AO rates to Canada are not being changed.

Country rate groupings have been changed for Express Mail International Service and air parcel post. These grouping changes were necessary to more closely align the cost of providing service to certain countries to the rate charged for the service.

The country groupings for Global Priority Mail flat-rate envelope (large and small envelope) and single-piece variable weight option have been simplified from 3 to 2 groups. All countries to which this service is available are combined into a single group with only Canada having a separate rate. Variable weight sticker option volume rates (International Mail Manual (IMM) 226.43), flat-rate box rates (IMM 226.44), flat-rate box volume rates (IMM 226.44) are eliminated. These services are being abolished. Sections 226.43 through 226.452, and 226.52 of the IMM will be eliminated.

The Postal Service is also proposing drop shipment discounts for publishers' periodicals tendered at the New Jersey International and Bulk Mail Center. The proposed discount is $0.25 per pound. Mail will have to be presorted and sacked by country as is currently required; however, the per sack minimum weight will be eliminated for drop shipment.

This notice does not address proposed changes in the International Priority Airmail (IPA) service program, which is the subject of a separate notice. Changes in certain international special mail service fees (see 63 FR 40180) will be implemented on January 10, 1999.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service proposes to adopt the following rates and fees and to amend the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual will be amended to incorporate the following postal rates:

Proposed International Postage Rates

(See section VII for rate groups for individual countries.)

I. Express Mail International Service

A. On Demand Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada	Mexico	Great Britain	China	Japan
0.5	$15.50	$15.50	$18.50	$15.00	$15.00
1	18.00	18.00	22.50	18.00	17.50
2	21.50	21.50	26.50	21.00	20.50
3	25.00	25.00	30.50	25.00	24.50
4	28.50	28.50	34.50	30.00	29.50
5	32.00	32.00	38.50	35.00	34.50
6	34.50	34.50	42.50	39.50	39.00
7	37.00	37.00	46.50	44.00	43.50
8	39.50	39.50	50.50	48.50	48.00
9	42.00	42.00	54.50	53.00	52.50
10	44.50	44.50	58.50	57.50	57.00
Each additional pound or fraction of a pound	$2.50	$2.50	$4.00	$4.50	$4.50

2. Rate Group Countries

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
0.5	$19.00	$21.00	$15.00	$19.00	$18.00	$20.00
1	21.50	24.50	19.00	23.00	21.00	22.50
2	25.50	28.50	23.00	27.50	24.50	26.50
3	29.50	32.50	28.00	32.00	28.00	30.50
4	34.00	37.00	33.00	36.50	31.50	35.00
5	39.00	41.50	38.00	41.00	35.00	39.50

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
6	43.50	45.50	42.50	45.00	38.00	44.00
7	48.00	49.50	47.00	49.00	41.00	48.50
8	52.50	53.50	51.50	53.00	44.00	53.00
9	57.00	57.50	56.00	57.00	47.00	57.50
10	61.50	61.50	60.50	61.00	50.00	62.00
Each additional pound or fraction of a pound	$4.50	$4.00	$4.50	$4.00	$3.00	$4.50

B. Custom Designed Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada[1]	Mexico	Great Britain	China	Japan
0.5		$23.50	$26.50	$23.00	$23.00
1		26.00	30.50	26.00	25.50
2		29.50	34.50	29.00	28.50
3		33.00	38.50	33.00	32.50
4		36.50	42.50	38.00	37.50
5		40.00	46.50	43.00	42.50
6		42.50	50.50	47.50	47.00
7		45.00	54.50	52.00	51.50
8		47.50	58.50	56.50	56.00
9		50.00	62.50	61.00	60.50
10		52.50	66.50	65.50	65.00
Each additional pound or fraction of a pound		$2.50	$4.00	$4.50	$4.50

[1] Custom designed service not available.

2. Rate Group Countries

Weight not over (lb.)	Rate Group					
	1	2	3	4	5	6
0.5	$27.00	$29.00	$23.00	$27.00	$26.00	$28.00
1	29.50	32.50	27.00	31.00	29.00	30.50
2	33.50	36.50	31.00	35.50	32.50	34.50
3	37.50	40.50	36.00	40.00	36.00	38.50
4	42.00	45.00	41.00	44.50	39.50	43.00
5	47.00	49.50	46.00	49.00	43.00	47.50
6	51.50	53.50	50.50	53.00	46.00	52.00
7	56.00	57.50	55.00	57.00	49.00	56.50
8	60.50	61.50	59.50	61.00	52.00	61.00
9	65.00	65.50	64.00	65.00	55.00	65.50
10	69.50	69.50	68.50	69.00	58.00	70.00
Each additional pound or fraction of a pound	$4.50	$4.00	$4.50	$4.00	$3.00	$4.50

II. Letters and Letter Packages

A. Canada

Weight not over		Rate
(lb.)	(oz.)	
0	0.5	$0.46
0	1	0.55
0	1.5	0.67
0	2	0.76
0	3	1.00
0	4	1.20
0	5	[illegible]
0	6	[illegible]
0	7	[illegible]
0	8	[illegible]
0	9	[illegible]
0	10	[illegible]
0	[illegible]	[illegible]
0	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
4	[illegible]	[illegible]

A 4-pound maximum applies except for registered items sent to Canada. Canada-bound registered items may weigh up to 66 pounds. For registered items weighing over 4 pounds, the rate is $1.85 for each additional pound up to the 66-pound limit.

B. Bulk Letter Service to Canada

Weight not over (oz.)	Rate
0.5	$0.43
1	0.52
1.5	0.62
2	0.71
3	0.95

III. Post/Postal Cards and Aerogrammes

A. Post/Postal Cards

Country	Rate
Canada	$0.45
Mexico	0.40
All others	0.55

B. Aerogrammes

All countries: $0.60 each.

IV. Global Priority Mail (GPM)

A. GPM—World Wide Flat-Rate Prices

	Envelope[1]	
	Small	Large
Canada	$4.00	$7.00
All other countries	$5.00	$9.00

[1] Maximum weight is 4 pounds.

B. GPM—World Wide Single-Piece Weight-Based

Weight[1] (lb.)	All other countries	Canada
	Rate	Rate
0.5	$8.00	$6.00
1.0	13.00	10.00
1.5	18.00	15.00
2.0	21.00	17.00
2.5	25.00	19.00
3.0	28.00	21.00
3.5	32.00	23.00
4.0	34.00	25.00

[1] Maximum weight is 4 pounds.

V. Other Articles (AO)

A. Regular Printed Matter and Small Packets—Surface

Weight not over		Mexico	All other countries except Canada
(lb.)	(oz.)	Rate	Rate
0	1	$0.60	$0.70
0	2	0.80	1.04
0	3	1.06	1.30
0	4	1.25	1.45
0	5	1.50	1.96
0	[illegible]	1.50	1.96
0	7	1.85	2.46
0	[illegible]	1.85	2.46
0	9	2.19	2.96
0	10	2.19	2.96
0	11	2.47	3.47
0	12	2.47	3.47
0	13	2.81	3.97
[illegible]	14	2.81	3.97
0	15	3.14	4.48
1	0	3.14	4.48
1	2	3.43	4.84
1	4	3.72	5.20
1	6	4.01	5.56
1	8	4.30	5.92
1	10	4.58	6.28
1	12	4.87	6.64
1	14	5.16	7.00
2	0	5.45	7.36
3	0	7.37	9.66
4	0	9.29	11.96
Each additional pound or fraction of a pound		$1.92	$2.30

B. Valuepost/Canada

Weight	Rate
Letter-size	
1 ounce or less.	$0.42
Over 1 ounce.	$0.39 plus $0.51 per pound or fraction of a pound
Flat-size	
5 ounces or less.	$0.71
Over 5 ounces.	$0.43 plus $1.16 per pound or fraction of a pound

C. Publishers' Periodicals—Surface

Weight Not Over		Mexico	All other countries except Canada
(lb.)	(Oz.)	Rate	Rate
0	1	0.40	0.38
0	2	0.50	0.48
0	3	0.65	0.62
0	4	0.75	0.72
0	5	0.94	0.91
0	6	0.94	0.91
0	7	1.13	1.10
0	8	1.13	1.10
0	9	1.31	1.30
0	10	1.31	1.30
0	11	1.50	1.49
0	12	1.50	1.49
0	13	1.69	1.68
0	14	1.69	1.68
0	15	1.88	1.87
1	0	1.88	1.87
1	2	2.05	2.05
1	4	2.23	2.23
1	6	2.40	2.41
1	8	2.58	2.59
1	10	2.75	2.77
1	12	2.93	2.95
1	14	3.10	3.13
2	0	3.28	3.31
2	0	4.48	4.46
4	0	5.68	5.61
5	0	6.88	6.76
6	0	8.08	7.91
7	0	9.28	9.06
8	0	10.48	10.21
9	0	11.68	11.36
10	0	12.88	12.51
11	0	14.08	13.66

Dropship Discount—$0.25 per pound for volume made up to country and tendered at the New Jersey International and Bulk Mail Center.

D. Books and Sheet Music—Surface

Weight not over	Mexico	All other countries except Canada
(lb.)	Rate	Rate
1	$1.88	$1.87
2	3.28	3.31
3	4.48	4.46
4	5.68	5.61
5	6.88	6.76
6	8.08	7.91
7	9.28	9.06
8	10.48	10.21
9	11.68	11.36
10	12.88	12.51
11	14.08	13.66

E. Air—Other Articles (Printed Matter, Matter for the Blind, and Small Packets)

1. Canada and Mexico—Air

Weight not over		Canada	Mexico
(lb.)	(oz.)	Rate	Rate
0	0.5	$0.60	$0.60
0	1	0.69	0.76
0	1.5	0.84	0.91
0	2	0.85	0.89
0	3	1.26	1.30
0	4	1.50	1.56
0	5	1.74	1.82
0	6	1.84	2.08
0	7	2.06	2.34
0	8	2.29	2.60
0	9	2.51	2.86
0	10	2.74	3.12
0	11	2.96	3.38
0	12	3.19	3.64
1	0	4.09	4.68
1	8	4.68	6.76
2	0	5.60	8.84
2	8	6.52	10.92
3	0	7.44	13.00
3	8	8.36	15.08
4	0	9.28	17.16
Each Additional ½ pound or fraction of ½ pound		$0.92	$2.08

VI. Parcel Post

(The weight limits for parcels vary by country. Parcels to Canada have a minimum weight limit of 1 pound.)

A. Surface Parcel Post

Weight not over (lb.)	Canada	Bahamas, Bermuda, Caribbean Islands, Central America, Mexico, and St. Pierre and Miquelon	All other countries
	Rate	Rate	Rate
2	$11.33	$14.65	$15.70
3	11.69	15.34	16.60
4	13.13	16.01	17.47
5	13.51	16.65	18.32
6	13.90	18.85	20.88
7	14.28	19.52	21.75
8	15.88	20.17	22.59
9	16.30	20.80	23.42
10	16.71	21.42	24.22
11	18.45	23.86	27.10
12	18.89	24.51	27.93
13	19.34	25.14	28.76
14	19.79	25.77	29.57
15	20.23	26.38	30.36
16	20.68	26.99	31.15
17	21.13	27.59	31.93

Weight not over (lb.)	Canada	Bahamas, Bermuda, Caribbean Islands, Central America, Mexico, and St. Pierre and Miquelon	All other countries
	Rate	Rate	Rate
18	21.57	28.18	32.69
19	22.02	28.77	33.45
20	22.47	29.35	34.20
21	22.91	29.93	34.94
22	23.36	30.50	35.68
23	23.81	31.07	36.41
24	24.25	31.63	37.14
25	26.03	33.42	39.09
26	26.48	33.98	39.80
27	26.92	34.53	40.51
28	27.37	35.07	41.22
29	27.82	35.62	41.92
30	28.27	36.16	42.61
31	28.71	36.70	43.31
32	29.16	37.24	44.00
33	29.61	37.77	44.68
34	30.05	38.30	45.37
35	30.50	38.83	46.05
36	30.95	39.36	46.73
37	31.39	39.89	47.40
38	31.84	40.41	48.07
39	32.29	40.93	48.75
40	32.73	41.45	49.41
41	33.18	41.97	50.08
42	33.63	42.49	50.75
43	34.07	43.01	51.41
44	34.55	43.52	52.07
Each additional pound or fraction of a pound	$0.50	$0.60	$0.70

B. Air Parcel Post

(See section VII for country rate groups.)

Weight not over (lb.)	Rate Groups						
	Canada	Mexico	A	B	C	D	E
1	$10.94	$9.98	$10.86	$11.76	$13.80	$15.11	$16.69
2	12.61	12.12	13.71	15.42	17.28	19.83	20.68
3	13.28	13.36	15.57	18.01	19.51	23.19	23.15
4	15.11	15.82	18.87	22.31	23.55	28.76	27.75
5	15.84	17.16	20.88	25.12	25.96	32.40	30.43
6	16.56	18.50	22.89	27.92	28.37	36.03	33.11
7	17.29	19.84	24.90	30.73	30.78	39.67	35.79
8	19.40	22.81	28.99	36.11	35.75	46.63	41.42
9	20.18	24.26	31.15	39.13	38.34	50.55	44.30
10	20.97	25.70	33.31	42.15	40.94	54.47	47.19
11	21.75	27.15	35.48	45.17	43.54	58.38	50.07
12	22.53	28.59	37.64	48.19	46.14	62.30	52.95
13	23.32	30.04	39.81	51.21	48.73	66.21	55.84
14	24.10	31.48	41.97	54.23	51.33	70.13	58.72
15	24.88	32.93	44.14	57.25	53.93	74.04	61.60
16	25.66	34.37	46.30	60.27	56.52	77.96	64.49
17	26.45	35.82	48.47	63.29	59.12	81.88	67.37
18	27.23	37.26	50.63	66.31	61.72	85.79	70.25
19	28.01	38.71	52.80	69.33	64.32	89.71	73.14
20	28.79	40.15	54.96	72.35	66.91	93.62	76.02

Weight not over (lb.)	Rate Groups						
	Canada	Mexico	A	B	C	D	E
21	29.58	41.60	57.13	75.37	69.51	97.54	78.90
22	30.36	43.04	59.29	78.39	72.11	101.45	81.79
23	31.14	44.49	61.46	81.41	74.70	105.37	84.67
24	31.92	45.93	63.62	84.43	77.30	109.29	87.55
25	34.04	48.71	67.12	88.76	81.23	114.53	91.61
26	34.82	50.15	69.28	91.78	83.83	118.44	94.49
27	35.60	51.60	71.45	94.80	86.42	122.36	97.38
28	36.38	53.04	73.61	97.82	89.02	126.27	100.26
29	37.17	54.49	75.78	100.84	91.62	130.19	103.14
30	37.95	55.93	77.94	103.86	94.21	134.11	106.03
31	38.73	57.38	80.11	106.88	96.81	138.02	108.91
32	39.51	58.83	82.27	109.90	99.41	141.94	111.79
33	40.30	60.27	84.44	112.92	102.00	145.85	114.68
34	41.08	61.72	86.60	115.94	104.60	149.77	117.56
35	41.86	63.16	88.77	118.96	107.20	153.68	120.44
36	42.65	64.61	90.93	121.98	109.80	157.60	123.33
37	43.43	66.05	93.10	125.00	112.39	161.52	126.21
38	44.21	67.50	95.26	128.02	114.99	165.43	129.09
39	44.99	68.94	97.43	131.04	117.59	169.35	131.98
40	45.78	70.39	99.59	134.06	120.18	173.26	134.86
41	46.56	71.83	101.76	137.08	122.78	177.18	137.74
42	47.34	73.28	103.92	140.10	125.38	181.09	140.63
43	48.12	74.72	106.09	143.12	127.98	185.01	143.51
44	48.91	76.17	108.25	146.14	130.57	188.95	146.39
Each additional pound or fraction of a pound	$0.80	$1.40	$1.50	$3.00	$2.60	$4.00	$3.00

VII. Country Table

Country	Express mail rate group	Air parcel post rate group
Afghanistan [1]		E
Albania	4[2]	D
Algeria	6[2]	D
Andorra	4	[illegible]
Angola	6	D
Anguilla		A
Antigua and Barbuda	....	A
Argentina	5	E
Armenia	4	E
Aruba	5	B
Ascension	....	
Australia	3	D
Austria	2	D
Azerbaijan	4	A
Azores	4	D
Bahamas	5	A
Bahrain	6	C
Bangladesh	1	B
Barbados	5	A
Belarus	4	C
Belgium	2	D
Belize	5	A
Benin	6	A
Bermuda	5	C
Bhutan	1[2]	D
Bolivia	5	C
Bosnia-Herzegovina	2	A
Botswana	6	D
Brazil	5	E
British Virgin Islands		A
Brunei Darussalam	1	A
Bulgaria	4	D
Burkina Faso	6	D
Burma	....	[illegible]
Burundi [1]	6	[illegible]
Cambodia	1	[illegible]

Country	Express mail rate group	Air parcel post rate group
Cameroon	6	D
Canada	Country-Specific Rate[2]	Country-Specific Rate
Cape Verde	6	D
Cayman Islands	5	A
Central African Republic	6	E
Chad	6	D
Chile	5	C
China	Country-Specific Rate	D
Colombia	5	B
Comoros		B
Congo, Dem. Rep. of the[1]	6	B
Congo, Rep. of the (Brazzaville)	6	E
Corsica	4	D
Costa Rica	5	A
Côte d'Ivoire (Ivory Coast)	6	C
Croatia	4	C
Cuba		
Cyprus	4	C
Czech Republic	4	C
Denmark	2	C
Djibouti	5	D
Dominica		A
Dominican Republic	5	A
Ecuador	5	B
Egypt	6	D
El Salvador	5	A
Equatorial Guinea	6	B
Eritrea	6	D
Estonia	4[2]	D
Ethiopia	6	B
Falkland Islands		
Faroe Islands	2	C
Fiji	1[2]	A
Finland	2	A
France (incl. Monaco)	4[2]	D
French Guiana	5[2]	E
French Polynesia	1	E
Gabon	6	D
Gambia		A
Georgia, Republic of	4	E
Germany	2[2]	A
Ghana	6	D
Gibraltar		B
Great Britain and Northern Ireland	Country-Specific Rate	D
Greece	2	A
Greenland		C
Grenada	5	A
Guadeloupe	5[1]	E
Guatemala	5	A
Guinea	6	A
Guinea-Bissau[1]	6	A
Guyana	5	A
Haiti	5	A
Honduras	5	A
Hong Kong	3	D
Hungary	2	C
Iceland	2	A
India	1	D
Indonesia	1	D
Iran		E
Iraq	6	
Ireland	4	A
Israel	6	D
Italy	2	A
Jamaica	5	A
Japan	Country-Specific Rate	D
Jordan	6	B
Kazakhstan	4	B
Kenya	6	D
Kiribati		A
Korea, Dem. People's Rep. (North)		
Korea, Republic of (South)	3	B

Country	Express mail rate group	Air parcel post rate group
Kuwait	6	D
Kyrgyzstan	4	C
Laos	1	E
Latvia	4	B
Lebanon		A
Lesotho	6	D
Liberia [1]	6	
Libya		D
Liechtenstein	2	C
Lithuania	4	D
Luxembourg	4	C
Macao	1	D
Macedonia	4	C
Madagascar	6	E
Madeira Islands	4	D
Malawi	6	D
Malaysia	1	B
Maldives	1	E
Mali	6	D
Malta	2	D
Martinique	5 [2]	E
Mauritania	6	A
Mauritius	6	B
Mexico	Country-Specific Rate	Country-Specific Rate
Moldova	4	D
Mongolia	1	D
Montserrat		A
Morocco	6	C
Mozambique	6	E
Namibia	6	D
Nauru	1 [2]	B
Nepal	1	D
Netherlands	2 [2]	B
Netherlands Antilles	5	B
New Caledonia	1	E
New Zealand	1	D
Nicaragua	5	A
Niger	6	C
Nigeria	6	D
Norway	2	D
Oman	1	B
Pakistan	1	D
Panama	5	A
Papua New Guinea	1	E
Paraguay	5	C
Peru	5	C
Philippines	1	D
Pitcairn Island		D
Poland	4	C
Portugal	4	D
Qatar	6	B
Reunion		E
Romania	4	D
Russia	4	E
Rwanda	6	D
Saint Christopher (St. Kitts) and Nevis	5	B
Saint Helena		C
Saint Lucia	5	A
Saint Pierre and Miquelon		B
Saint Vincent and the Grenadines	5	C
San Marino		A
Sao Tome and Principe		B
Saudi Arabia	6	B
Senegal	6	D
Serbia-Montenegro	4	B
Seychelles	6	C
Sierra Leone [1]	6	D
Singapore	3	D
Slovak Republic	4	B
Slovenia	2	C
Solomon Islands	1	B
Somalia [1]	6	

Country	Express mail rate group	Air parcel post rate group
South Africa	6	D
Spain	4	B
Sri Lanka	1	B
Sudan	5	B
Suriname		A
Swaziland	6	B
Sweden	2[2]	E
Switzerland	2	C
Syrian Arab Republic	6	C
Taiwan	3	D
Tajikistan	4	C
Tanzania	6	C
Thailand	3	B
Togo	6	D
Tonga		A
Trinidad and Tobago	5	A
Tristan da Cunha		A
Tunisia	1	B
Turkey	6	B
Turkmenistan	4	D
Turks and Caicos Islands		A
Tuvalu		A
Uganda	6	D
Ukraine	4	D
United Arab Emirates	6	C
Uruguay	5	C
Uzbekistan		E
Vanuatu	1[2]	A
Vatican City		A
Venezuela	5	A
Vietnam	1	B
Wallis and Futuna Islands		E
Western Samoa	1	B
Yemen	5	C
Zambia	6	D
Zimbabwe	5	B

[1] All mail service suspended.

[2] On Demand service only.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 98–31974 Filed 12–3–98; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7266]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Mohave County (Unincorporated Areas).	Wash A	Approximately 150 feet upstream of Shipp Road.	None	*2,765
			At Agua Fria Drive	None	*2,920
		Wash A–Tributary 1	At confluence of Wash A	None	*2,878
			Approximately 100 feet downstream of Agua Fria Drive.	None	*2,930
		Wash B	Approximately 130 feet upstream of Shipp Drive.	None	*2,780
			Approximately 2,700 feet upstream of Agua Fria Drive.	None	*3,011
		Wash B—Reach 1B	200 feet upstream of Shipp Drive	None	*2,775
			Approximately 150 feet downstream of State Route 68.	None	*2,798
		Wash B—Reach 1C	100 feet upstream of Shipp Drive	None	*2,781
			Approximately 700 feet downstream of State Route 68.	None	*2,805
		Wash B—Tributary 1	Approximately 1,780 feet downstream of Adobe Road.	None	*2,828
			Approximately 1,350 feet upstream of Agua Fria Road.	None	*2,890
		Wash B—Tributary 2	At confluence with Wash B	None	*2,962
			Approximately 3,200 feet upstream of Agua Fria Drive.	None	*3,024
		Divergence From Wash B	At confluence with Wash B	None	*2,822
			Approximately 1,000 feet downstream of Adobe Road.	None	*2,888
		Wash C	Approximately 200 feet upstream of Shipp Drive.	None	*2,826
			Approximately 1,250 feet upstream of Chino Drive.	None	*2,955
		Wash C—Tributary 1	At confluence with Wash C	None	*3,046
			Approximately 800 feet upstream of Agua Fria Drive.	None	*3,121
		Wash C—Tributary 2	At confluence with Wash C	None	*2,936
			Approximately 1,800 feet upstream of Chino Drive.	None	*2,981
		Wash C—Tributary 3	At confluence with Wash C—Tributary 1	None	*2,981
			Approximately 2,400 feet downstream of Bacobi Road.	None	*3,002
		Cerbat Wash	Approximately 200 feet upstream of Shipp Drive.	None	*2,762
			Approximately 300 feet downstream of Agua Fria Drive.	None	*2,895
		Cerbat Wash—Tributary 1	Approximately 140 feet downstream of Route 68.	None	*2,797
		Cerbat Wash—Tributary 2	At confluence of Cerbat Wash	None	*2,848

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 300 feet downstream of Agua Fria Drive.	None	*2,900
		Sacramento Wash	Approximately 2,600 feet downstream of Shipp Drive.	None	*2,723
			Approximately 160 feet downstream of Agua Fria Drive.	None	*2,852
		Sacramento Wash—Tributary 1A.	At confluence with Sacramento Wash	None	*2,803
			Approximately 1 mile upstream of Estrella Road.	None	*2,870
		Sacramento Wash—Tributary 1B.	At confluence with Sacramento Tributary 1A.	None	None
			Approximately 3,400 feet upstream of Chino Drive.	None	None
		Sacramento Wash—Tributary 2.	At confluence with Sacramento Wash	None	None
			Approximately 1 mile upstream of Estrella Road.	None	None
		Sacramento Wash—Tributary 3.	At confluence with Sacramento Wash	None	*2,833
			Approximately 2,700 feet downstream of Agua Fria Drive.	None	*2,861
		Sacramento Wash—Tributary 4.	At confluence with Sacramento Wash	None	*2,768
			Approximately 2,000 feet above confluence with Sacramento Wash—Tributary 4A.	None	*2,827
		Sacramento Wash—Tributary 4A.	At confluence with Sacramento Wash—Tributary 4.	None	*2,804
			Approximately 1,940 feet upstream of confluence with Sacramento Wash—Tributary 4.	None	*2,827
		Sacramento Wash—Tributary 5.	At confluence with Sacramento Wash	None	*2,748
			Approximately 6,250 feet upstream of Chino Drive.	None	*2,868
		Sacramento Wash—Tributary 5A.	At confluence with Sacramento Wash	None	*2,790
			Approximately 2,700 feet upstream of Chino Drive.	None	*2,823
		Sacramento Wash—Tributary 6.	Approximately 250 feet upstream of Shipp Drive.	None	*2,760
			Approximately 5,350 feet upstream of Chino Drive.	None	*2,886
		Sacramento Wash—Tributary 6A.	At confluence with Sacramento Wash—Tributary 6.	None	*2,788
			Approximately 2,900 feet upstream of confluence with Sacramento Wash—Tributary 6B.	None	*2,880
		Sacramento Wash—Tributary 6B.	At confluence with Sacramento Wash—Tributary 6A.	None	*2,860
			Approximately 1,760 feet upstream of confluence with Sacramento Wash—Tributary 6A.	None	*2,880
		Thirteen Mile Wash	Approximately 500 feet upstream of Shipp Drive.	None	*2,800
			Approximately 3,050 feet upstream of Agua Fria Drive.	None	*3,117
		Thirteen Mile Wash—Tributary 1.	At confluence of Thirteen Mile Wash	None	*3,030
			At Agua Fria Drive	None	*3,062
		Thirteen Mile Wash—Tributary 2.	At confluence of Thirteen Mile Wash	None	*3,013
			100 feet upstream of Agua Fria Drive	None	*3,121

Maps are available for inspection at 3015 Stockton Hill Road, Kingman, Arizona.

Send comments to Mr. Paul McIntosh, Mohave County Manager, P.O. Box 7000, Kingman, Arizona 86402–7000.

State	City/town/county	Source of flooding	Location	Existing	Modified
Arkansas	Crawford County and Incorporated Areas.	Louemma Creek	Approximately 3,500 feet downstream of North Hills Boulevard.	None	*419

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Just upstream of Rena Road	None	*487
			Approximately 200 feet upstream of Highway 59.	None	*574
		Louemma Tributary	Approximately 850 feet downstream of Highway 59.	None	*477
			Just upstream of Highway 59	None	*493
			Approximately 3,700 feet upstream of Highway 59.	None	*570
		Rena Branch	Approximately 1,050 feet downstream of Sandstone Drive.	None	*419
			Just upstream of Old Uniontown Road	None	*458
			Approximately 2,200 feet upstream of Blake Road.	None	*523

Maps are available for inspection at 1003 Broadway, Van Buren, Arkansas.

Send comments to The Honorable John Riggs, Mayor, City of Van Buren, P.O. Box 668, Van Buren, Arkansas 72956.

Maps are available for inspection at 300 Main Street, Van Buren, Arkansas.

Send comments to The Honorable Jerry H. Williams, Crawford County Judge, 300 Main Street, Van Buren, Arkansas 72956–5798.

State	City/town/county	Source of flooding	Location	Existing	Modified
	Earle (City) Crittenden County	Blackfish Bayou	Approximately 2,000 feet east of Desha Street and approximately 1,200 feet south of the Missouri Pacific Railroad.	None	*203
			Approximately 800 feet east of Route 149 and 2,000 feet north of Route 64.	None	*205
		Tyronza River	Approximately 400 feet west of Route 149 and approximately 400 feet south of the northern corporate limits.	None	*205
			Approximately 5,200 feet west of Route 149 and approximately 1,200 feet south of Route 184.	None	*205

Maps are available for inspection at the City of Earle City Hall, 1004 Second Street, Earle, Arkansas.

Send comments to The Honorable Sherman Smith, Mayor, City of Earle, P.O. Box 213, Earle, Arkansas 72331.

State	City/town/county	Source of flooding	Location	Existing	Modified
	Crittenden County (Unincorporated Areas).	Tyronza River	Approximately 3,000 feet west of Route 149 and approximately 4,250 feet north of the City of Earle corporate limits.	None	*205
			Approximately 750 feet north of Route 64 and approximately 8,250 feet south of Route 184.	None	*205
		Blackfish Bayou	Approximately 1,000 feet east of Route 149 and approximately 4,000 feet south of Barham Road.	None	*203
			Approximately 1,000 feet south of U.S. Route 64 and 7,600 feet east of Desha Street.	None	*203
			Approximately 7,000 feet east of Route 149 and 7,000 feet south of U.S. Route 64.	None	*203
			Approximately 1,600 feet east of Route 149 and approximately 1,600 feet north of U.S. Route 64.	None	*205

Maps are available for inspection at the Crittenden County Courthouse, 100 Court Square, Marion, Arkansas.

Send comments to The Honorable Brian Williams, Crittenden County Judge, 100 Court Square, Marion, Arkansas 72364.

State	City/town/county	Source of flooding	Location	Existing	Modified
California	East Palo Alto (City) San Mateo County.	San Francisco Bay	Approximately 150 feet downstream of Tulane Avenue.	*7	*8
			Approximately 1,000 feet downstream of Cami.	*7	*8
		San Francisquito Creek Overflow.	Just downstream of Alberni Street	None	*11
			Approximately 600 feet upstream of Green Street.	None	*26

Maps are available for inspection at the City of East Palo Alto City Hall Annex, 2200 University Avenue, East Palo Alto, California.

Send comments to The Honorable R.B. Jones, Mayor, City of East Palo Alto, 2415 University Avenue, Second Floor, East Palo Alto, California 94303.

State	City/town/county	Source of flooding	Location	Existing	Modified
Nebraska	Lindsay (Village) Platte County.	Shell Creek	Approximately 7,100 feet downstream of Elk Street.	None	*1,647

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<table>
<tr><th rowspan="2">State</th><th rowspan="2">City/town/ county</th><th rowspan="2">Source of flooding</th><th rowspan="2">Location</th><th colspan="2">#Depth in feet above ground. *Elevation in feet. (NGVD)</th></tr>
<tr><th>Existing</th><th>Modified</th></tr>
<tr><td></td><td></td><td></td><td>Approximately 6,400 feet upstream of U.S. Route 91.</td><td>None</td><td>*1,668</td></tr>
<tr><td colspan="6">Maps are available for inspection at the Village of Lindsay City Hall, 115 Pine Street, Lindsay, Nebraska.
Send comments to The Honorable Kenneth Kurtenbach, Mayor, Village of Lindsay, P.O. Box 116, Lindsay, Nebraska 68644.</td></tr>
<tr><td>Washington</td><td>Brewster (City) Okanogan County.</td><td>Swamp Creek</td><td>Just upstream of Bridge Street</td><td>*797</td><td>*786</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 2,550 feet above mouth, at the corporate limits.</td><td>None</td><td>*915</td></tr>
<tr><td colspan="6">Maps are available for inspection at the City of Brewster Clerk/Treasurer's Office, 105 South Third Street, Brewster, Washington
Send comments to The Honorable Bonnie House, Mayor, City of Brewster, P.O. Box 340, Brewster, Washington 98819.</td></tr>
<tr><td></td><td>North Bonneville (City) Skamania County.</td><td>Hamilton Creek</td><td>Just upstream of confluence with the Columbia River.</td><td>None</td><td>*36.0</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 100 feet upstream of Evergreen Drive.</td><td>None</td><td>*47.0</td></tr>
<tr><td></td><td></td><td>Columbia River</td><td>Approximately 1.6 miles upstream of confluence of Hamilton Creek.</td><td>None</td><td>*37.6</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 2 miles upstream of confluence with Hamilton Creek.</td><td>None</td><td>*38.9</td></tr>
<tr><td></td><td></td><td>Greenleaf Creek</td><td>Just upstream of confluence with Hamilton Creek.</td><td>None</td><td>*47.0</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 550 feet upstream of Moffet Hot Springs Road.</td><td>None</td><td>*58.0</td></tr>
<tr><td colspan="6">Maps are available for inspection at the City of North Bonneville Clerk/Treasurer's Office, Cascade Drive, North Bonneville, Washington.
Send comments to The Honorable John Kirk, Mayor, City of North Bonneville, P.O. Box 7, North Bonneville, Washington 98639.</td></tr>
<tr><td></td><td>Washtucna (Town) Adams County.</td><td>Washtucna Coulee</td><td>Just upstream of confluence with Staley Coulee.</td><td>None</td><td>*1,024</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 850 feet upstream of confluence with Staley Coulee:</td><td>None</td><td>*1,024.5</td></tr>
<tr><td></td><td></td><td>Staley Coulee</td><td>Approximately 2,700 feet downstream of Cooper Street.</td><td>None</td><td>*1,015.5</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 400 feet upstream of Main Street.</td><td>None</td><td>*1,033.0</td></tr>
<tr><td colspan="6">Maps are available for inspection at the Town of Washtucna Clerk/Treasurer's Office, Southeast 165 Main Street, Washtucna, Washington
Send comments to The Honorable Syd Sullivan, Mayor, Town of Washtucna, P.O. Box 713, Washtucna, Washington 99371</td></tr>
</table>

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 24, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–32297 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 551, 555, 560, 565, 585, 586, 587, and 588

[Docket No. 98–25]

Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revise and redesignate its regulations relating to section 19 of the Merchant Marine Act, 1920, section 13(b)(5) of the Shipping Act of 1984, and the Foreign Shipping Practices Act of 1988, and add new regulations relating to section 9 of the Shipping Act of 1984, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

DATES: Submit comments on or before January 4, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street N.W., Room 1046, Washington, D.C. 20573–0001.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street N.W., Washington, D.C. 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998, Public Law 105–258, 112 Stat. 1902 ("OSRA"), amends the Shipping Act of 1984 ("1984 Act"), the Merchant Marine Act, 1920 ("1920 Act"), and the Foreign Shipping Practices Act of 1988 ("FSPA") in several areas. The Commission's rules at former 46 CFR parts 585, 586, 587, and 588 effectuate the statutory obligations mandated by the 1984 Act, the 1920 Act, and the FSPA. The Commission now proposes to update, redesignate, and clarify these rules to reflect the changes made by OSRA. In addition, the Commission proposes a new regulation, 46 CFR part 565, which would implement changes made by OSRA to section 9 of the 1984 Act and would gather previously scattered regulations affecting controlled carriers into a more readily accessible codification.

Clarification and Amendment of Former 46 CFR Part 585

The proposed rule would amend the Commission's regulations covering the provisions of section 19 of the 1920 Act, to incorporate the changes made by OSRA. The entire part is redesignated as part 550.

Changes to redesignated § 550.102 and § 550.301 reflect OSRA's clarification that "pricing practices" are among the practices that could give rise to a condition unfavorable to shipping. The changes to the authority citation and to redesignated § 550.103(a) reflect the addition of OSRA as an amendment to the 1920 Act. The changes to redesignated §§ 550.103(b), 550.201, 550.202(b), and 550.301(d) reflect OSRA's use of the new term "ocean transportation intermediary" in place of the old terms "ocean freight forwarder" and "non-vessel-operating common carrier".

The amendments instituted by OSRA include the addition of the suspension of service contracts to the list of available remedies in redesignated §§ 550.505(a), 550.601(c), and 550.602. The Commission's proposed rule reflects this change.

Redesignation of Former 46 CFR Part 586 and Removal of § 586.3

The proposed rule would redesignate former 46 CFR part 586 as part 551, Actions To Adjust or Meet Conditions Unfavorable to Shipping in the U.S. Foreign Trade. Former 46 CFR 586.3, *Conditions unfavorable to shipping in the United States/Ecuador trade,* is no longer an ongoing proceeding and is therefore removed.

Clarification and Amendment of Former 46 CFR Part 587

The proposed rule would amend the Commission's regulations covering the 1984 Act's provisions providing relief for U.S.-flag vessels unduly impaired from accessing the ocean trade between foreign ports. *See* section 13(b)(5) of the 1984 Act, 46 U.S.C. app. § 1712(b)(5) (renumbered by OSRA as section 13(b)(6)). The entire part is redesignated as part 560.

Changes to redesignated §§ 560.1(a) (1) and (2) and 560.5(a) are changes to reflect renumbering of the Act. Section 560.2(c) refers to "fighting ships," a term which has been deleted from the definitions section of the Act and elsewhere. The removal of this term effects that deletion. The changes to redesignated § 560.7(b)(3)(i) reflect OSRA's addition of the suspension of service contracts as a section 11a(e)(1)(B) remedy.

Clarification and Amendment of Former 46 CFR Part 588

The proposed rule would amend the Commission's regulations covering the FSPA's provisions authorizing Commission action to address adverse conditions affecting U.S.-flag carriers that do not exist for foreign carriers in the United States. The entire part is redesignated as part 555.

The change to redesignated § 555.1 makes reference to OSRA as an amendment to the FSPA. Changes to redesignated § 555.2 (a) and (d), and § 555.4 reflect OSRA's use of the new term "ocean transportation intermediary" in place of the old terms "ocean freight forwarder" and "non-vessel-operating common carrier". The change to redesignated § 555.2(c) corrects an error of word choice and corresponds to the language employed in the FSPA.

The change to redesignated § 555.4(c) improves the clarity of the provision. The changes to redesignated § 555.8 reflect OSRA's addition of the suspension of service contracts as a remedy.

New 46 CFR Part 565

The proposed new rule would implement OSRA's revision of section 9 of the 1984 Act, and would provide procedures for reviewing controlled carrier rates, charges, classifications, rules and regulations. The proposed rule improves the clarity of regulations governing controlled carriers, and gathers into a single part regulations which were previously scattered among the tariff and service contract regulations in former 46 CFR Part 514.

In addition to the 1984 Act's prohibitions against "maintaining" rates or charges below a level that is just and reasonable, OSRA adds the prohibition against "charging or assessing" such rates. Similarly, OSRA adds the prohibition on "enforcing" unjust or unreasonable rates, charges, classifications, rules or regulations in addition to "establishing and maintaining" them.

The change of tariff filing to tariff publication under OSRA is also reflected in section 9(a) of the 1984 Act as it applies to controlled carriers. Hence, in place of "filing," the Commission is authorized to prohibit the "publication or use" of any rates, charges, classifications, rules or regulations that a controlled carrier has failed to show are just and reasonable.

In a further reflection of the new tariff system, OSRA changes the authority of the Commission from "disapproving" the "filing" to "prohibiting and suspending" the "publication and use" of unjust and unreasonable rates, charges, classifications, rules or regulations. Likewise, the Commission is directed by OSRA to take into account whether the rates or charges which have been "published or assessed" are below a compensatory level.

OSRA imposes a new time limit on the Commission's decision on whether or not a rate, charge, classification, rule or regulation is unjust or unreasonable. The Commission must decide such matters within 120 days of the receipt of information. This is reflected in proposed 46 CFR 565.8.

Finally, a significant change was made by OSRA to the regulation of controlled carriers in the exceptions found in section 9(f) of the 1984 Act. Three of the five exceptions were removed by OSRA; the provisions of section 9 now apply to all controlled carriers except those that are: (1) of a state whose vessels are entitled by a treaty of the United States to receive national treatment or Most Favored Nation treatment; or (2) in a trade served exclusively by controlled carriers. Proposed regulation § 565.5 reflects those changes. In addition to requiring ocean common carriers to inform the Commission of any changes to their control which might affect their controlled carrier classification, § 565.4 also requires newly commencing controlled common carrier operations to notify the Commission of the details of their ownership or control.

This document also outlines the proposed restructuring of subchapter C of chapter IV, 46 CFR, by revising the subchapter heading and adding redesignated parts 550, 555, and 560 and new part 565 to subchapter C. Current provisions of part 514 which are proposed here to be incorporated into new part 565 will be removed from part 514 in a subsequent document.

In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR parts 585, 586, 587 and 588 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

The reporting requirements contained in 46 CFR Part 565 have been submitted to the Office of Management and Budget (OMB). The Commission estimates that

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the public burden for this collection of information is estimated to be 70 annual personhours for all of the estimated 10 annual respondents. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gathering and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503 within 30 days of publication in the **Federal Register**.

The FMC would also like to solicit comments to: (a) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (b) enhance the quality, utility, and clarity of the information to be collected; and (c) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record. The OMB control number will be displayed in the final rule.

The Chairman certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed amendments will not, if promulgated, have a significant impact on a substantial number of small entities. The proposed changes affect vessel-operating common carriers, entities that are not considered to be small.

List of Subjects

46 CFR Parts 585 and 550

Administrative practice and procedure, Maritime carriers.

46 CFR Parts 586 and 551

Japan, Maritime carriers.

46 CFR Parts 587 and 560

Administrative practice and procedure, Maritime carriers.

46 CFR Parts 588 and 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR Part 565

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission proposes to amend 46 CFR parts 585, 586, 587, and 588, and to add new part 565, as set forth below:

1. Revise the title of subchapter C to read:

SUBCHAPTER C—REGULATIONS AND ACTIONS TO ADDRESS RESTRICTIVE FOREIGN MARITIME PRACTICES

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

PART 585—[REDESIGNATED AS PART 550]

1. Redesignate part 585 as part 550, and transfer newly designated part 550 to subchapter C.

2. The authority citation for redesignated part 550 is revised to read as set forth below:

Authority: 5 U.S.C. 553; sec. 19 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l), as amended by Pub. L. No. 105–258; Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

2a. Add a note to newly designated part 550 to read as follows:

Note to part 550: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 550 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated § 550.102 to read as set forth below:

§ 550.102 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in competitive methods, pricing practices or other practices which have created or could create such conditions.

4. Revise redesignated § 550.103 (a) and (b) to read as set forth below:

§ 550.103 Definitions.

* * * * *

(a) *Act* means the Merchant Marine Act, 1920, as amended by Pub. L. No. 101–595 and as amended by Pub. L. No 105–258.

(b) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States.

* * * * *

5. Revise redesignated § 550.201(a) to read as set forth below:

§ 550.201 Information orders.

* * * * *

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof), to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

* * * * *

6. Revise redesignated § 550.202(b) introductory text and (b)(3) to read as set forth below:

§ 550.202 Type of information.

* * * * *

(b) Shipper, shippers' association, or ocean transportation intermediary in the affected trade to furnish any or all of the following information:

* * * * *

(3) Amount of brokerage, ocean transportation intermediary compensation or other charges collected or paid in connection with shipments in the affected trade; and

* * * * *

7. Revise the introductory text and paragraph (d) of redesignated § 550.301 to read as set forth below:

§ 550.301 Findings.

For the purposes of this part, conditions created by foreign governmental action or competitive methods, pricing practices or other practices of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

* * * * *

(d) Restrict or burden a carrier's intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; agency services; ocean transportation intermediary services and operations; or other activities and services integral to transportation systems; or

* * * * *

8. Revise redesignated § 550.601(c) to read as set forth below:

§ 550.601 Actions to correct unfavorable conditions.

* * * * *

(c) Suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;

* * * * *

9. Revise redesignated § 550.602 to read as set forth below:

§ 550.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under § 550.505 or § 550.601 of this part, or after its right to use another tariff or service contract has been suspended under those sections, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff or service contract.

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

1. Redesignate part 586 as part 551, and transfer newly designated part 551 to subchapter C.

PART 586—[REDESIGNATED AS PART 551]

2. The authority citation for redesignated part 551 is revised to read as set forth below:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876 (5) through (12); 46 CFR part 550; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2a. Add a note to newly designated part 551 to read as follows:

Note to part 551: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 551 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Redesignated § 551.3 is removed.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

PART 587—[REDESIGNATED AS PART 560]

1. Redesignate part 587 as part 560, and transfer newly designated part 560 to subchapter C.

2. The authority citation for redesignated part 560 is revised to read as set forth below:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(6), 1714, and 1716, as amended by Pub. L. No. 105–258; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. No. 105–258.

3. Revise redesignated § 560.1(a) to read as set forth below:

§ 560.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter "U.S. flag vessel") to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel (hereinafter "U.S. flag carrier") may petition the Federal Maritime Commission for relief under the authority of section 13(b)(6)of the Shipping Act of 1984 ("the Act") (46 U.S.C. app. 1712(b)(6)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(6)may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

* * * * *

4. Revise redesignated § 560.2(c) to read as set forth below:

§ 560.2 Factors indicating conditions unduly impairing access.

* * * * *

(c) Use of predatory practices, possibly including but not limited to below market pricing designed to exclude competition, and use of closed conferences employing deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

* * * * *

5. Revise the first sentence of the introductory text of redesignated § 560.5(a) to read as set forth below:

§ 560.5 Receipt of relevant information.

(a) In making its decision on matters arising under section 13(b)(6)of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. * * *

* * * * *

6. Revise redesignated § 560.7(b)(3)(i) to read as set forth below:

§ 560.7 Decision; sanctions; effective date.

* * * * *

(b) * * *

(3)(i) Suspension, in whole or in part, of any or all tariffs or service contracts for carriage to or from United States ports for any period the Commission specifies, or until such time as unimpaired access is secured for U.S. flag carriers in the affected trade.

* * * * *

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

PART 588—[REDESIGNATED AS PART 555]

1. Redesignate part 588 as part 555, and transfer newly designated part 555 to subchapter C.

2. The authority citation for redesignated part 555 is revised to read as set forth below:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. No. 105–258.

2a. Add a note to newly designated part 555 to read as follows:

Note to part 555: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 555 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated § 555.1 to read as set forth below:

555.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, as amended by the Ocean Shipping Reform Act of 1998, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

4. Revise redesignated § 555.2(a), (c), and (d) to read as set forth below:

§ 555.2 Definitions.

* * * * *

(a) *Common carrier, marine terminal operator, ocean transportation intermediary, ocean common carrier, person, shipper, shippers association,* and *United States* have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

* * * * *

(c) *Maritime services* means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(d) *Maritime-related services* means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

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5. Revise redesignated § 555.4 (a) and (c) to read as set forth below:

§ 555.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

* * * * *

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to the filing of an amended petition.

6. Revise redesignated § 555.8(a)(2) to read as set forth below:

§ 555.8 Action against foreign carriers.

(a) * * *

(2) Suspension, in whole or in part, of any or all tariffs or service contracts, including the right of an ocean common carrier to use any or all tariffs or service contracts of conferences in United States trades of which it is a member for such period as the Commission specifies;

* * * * *

PART 565—[ADDED]

1. Add part 565 to subchapter C to read as set forth below:

PART 565—CONTROLLED CARRIERS

Sec.
565.1 Purpose and scope.
565.2 Definitions.
565.3 Classification as controlled carrier.
565.4 Notification to Commission of change in control.
565.5 Exceptions.
565.6 Level of rates and charges generally.
565.7 Effective dates.
565.8 Special permission.
565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.
565.10 Suspension procedures, period and replacement rates.
565.11 Presidential review.
565.12 Stay, postponement, discontinuance or suspension of action.

Authority: 46 U.S.C. App. 1708, as amended by Pub. L. No. 105–258.

§ 565.1 Purpose and scope.

(a) *Purpose.* The regulations of this part are intended to carry out the Commission's mandate under section 9 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, to monitor the practices of controlled carriers and ensure that they do not:

(1) Maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor

(2) Establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(b) *Scope.* The regulations contained in this part set forth the special procedures whereby controlled carriers' tariffs and service contracts become effective and are reviewed by the Commission. These regulations in no way exempt controlled carriers from other Commission regulations or statutory authority to which they may otherwise be subject as ocean common carriers. These regulations apply to all controlled carriers operating in the foreign commerce of the United States unless excepted under section 9(f) of the Shipping Act of 1984, as reflected by § 565.5.

§ 565.2 Definitions.

(a) *Controlled carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) A majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier.

(b) *Effective date* has the same meaning it has in 46 CFR part 520.

§ 565.3 Classification as controlled carrier.

(a) *Notification.* The Commission will periodically review the ocean common carriers operating in the foreign commerce of the United States and will notify any ocean common carrier of any change in its classification as a controlled carrier.

(b) *Rebuttal of classification.* (1) Any ocean common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(2) The Commission shall review the rebuttal and notify the ocean common carrier of its final decision.

§ 565.4 Notification to Commission of change in control.

Whenever the operation, control or ownership of an ocean common carrier is transferred resulting in a majority portion of the interest of that ocean common carrier being owned or controlled in any manner by a government, the ocean common carrier shall immediately send written notification of the details of the change to the Secretary of the Commission. If a carrier is newly commencing ocean common carrier operations in a United States trade, and if a majority portion of the carrier is owned or controlled by a government, or if a government may approve or disapprove the majority of directors or the chief executive or operating officer of the carrier, the carrier shall immediately send written notification to the Secretary of the details of such ownership or control.

§ 565.5 Exceptions.

All controlled carriers shall be subject to provisions of this part and section 9 of the Shipping Act of 1984 except those which meet the following exceptions:

(a) When the vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(b) When the controlled carrier operates in a trade served exclusively by controlled carriers.

§ 565.6 Level of rates and charges generally.

No controlled carrier may maintain or enforce rates or charges in its tariffs or service contracts that are below a level that is just and reasonable. No controlled carrier may establish or maintain unjust or unreasonable classifications, rules, or regulations in its tariffs or service contracts. An unjust or unreasonable classification, rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. *See* § 565.9(a)(2) (Rate standards).

§ 565.7 Effective dates.

(a) *Generally.* Except for service contracts, the rates, charges, classifications, rules or regulations of controlled carriers may not, unless the Commission has granted special permission, become effective sooner than the 30th day after the date of publication.

(b) *Open rates.* (1) *Generally.* Controlled carriers that are members of conference agreements publishing rates for commodities designated as open by the conference are subject to the 30-day controlled carrier notice requirement, except when special permission is granted by the Commission under § 565.8.

(2) *Conference publication of reduced open rates.* Notwithstanding paragraph (b)(1) of this section, a conference may, on less than 30 days' notice, publish reduced rates on behalf of controlled carrier members for open-rated commodities:

(i) At or above the minimum level set by the conference; or

(ii) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

(c) *Independent action rates of controlled carriers.* Conferences may publish on behalf of their controlled carrier members lower independent action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being published at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

§ 565.8 Special permission.

Section 8(d) of the Shipping Act of 1984 authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 565.7. Section 9(c) of the Shipping Act of 1984 authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will consider such requests for special permission by controlled carriers pursuant to its procedures set forth at 46 CFR part 520.

§ 565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.

(a)(1) *Request for justification.* Within 20 days of a request (with respect to its existing or proposed rates, charges, classifications, rules or regulations) from the Commission, each controlled carrier shall file a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(2) *Rate standards.* (i) In determining whether rates, charges, classifications, rules or regulations by a controlled carrier are just and reasonable, the Commission shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent rates, charges, classifications, rules or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual or constructive costs.

(ii) For the purposes of § 565.9(a)(2)(i), "constructive costs" means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(iii) The Commission may also take into account other appropriate factors, including, but not limited to, whether:

(A) The rates, charges, classifications, rules or regulations are the same as or similar to those published or assessed by other carriers in the same trade;

(B) The rates, charges, classifications, rules or regulations are required to assure movement of particular cargo in the trade; or

(C) The rates, charges, classifications, rules or regulations are required to maintain acceptable continuity, level or quality of common carrier service to or from affected ports.

(3) *Time for determination.* The Commission shall determine within 120 days of the receipt of information requested by the Commission under this section, whether the rates, charges, classifications, rules or regulations of a controlled carrier may be unjust and unreasonable. Whenever the Commission is of the opinion that the rates, charges, classifications, rules or regulations published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules or regulations should not be prohibited.

(b) *Suspension.* Pending a decision on whether to prohibit the rates, charges, classifications, rules or regulations of a controlled carrier, the Commission may suspend the rates, charges, classifications, rules or regulations. *See* § 565.10.

(c) *Prohibition.* The Commission shall prohibit the use of any rates, charges, classifications, rules or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules or regulations are just and reasonable. The use of rates, charges, classifications, rules or regulations published or assessed by a controlled carrier that have been suspended or prohibited by the Commission is unlawful.

(d) *Publication*. All final orders of prohibition shall be published in the **Federal Register**.

§ 565.10 Suspension procedures, period and replacement rates.

(a) (1) *Suspension prior to effective date.* Pending a determination as to their lawfulness in a prohibition proceeding as described in § 565.9, the Commission may suspend the rates, charges, classifications, rules or regulations at any time before their effective date.

(2) *Suspension after effective date.* In the case of rates, charges, classifications, rules or regulations that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules or regulations on not less than 30 days' notice to the controlled carrier.

(b) *Period of suspension.* In any case, no period of suspension may be greater than 180 days.

(c) *Implementation.* (1) Upon issuance of an order suspending a rate, charge, classification, rule or regulation in whole or in part, the Commission shall direct the controlled carrier to remove the suspended material from its tariff publication; or

(2) If the matter subject to the suspension order is not covered by paragraph (c)(1) of this section, the Commission shall set forth procedures in the order for implementing the suspension.

(3) *Publication.* All orders of suspension shall be published in the **Federal Register**.

(d) *Replacement rates.* Controlled carriers may publish in tariffs or file in service contracts rates, charges, classifications, rules or regulations in lieu of the suspended matter ("replacement rates").

(1) *Effective date.* In the case of replacement rates which are published in tariffs and which are scheduled to become effective during a suspension period, may become effective immediately upon either their publication in tariffs or upon the effective date of the suspension, whichever is later.

(2) *Rejection of replacement rates.* The Commission may reject the replacement rates, charges, classifications, rules or regulations published in tariffs or filed in service contracts to take effect during the suspension period if they are unjust and unreasonable. In determining whether to reject replacement rates, charges, classifications, rules or regulations, the Commission will consider whether they would result in total charges (i.e, rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a common carrier, other than a controlled carrier, serving the same trade.

(3) At the same time it announces replacement rates, the controlled carrier shall submit to the Secretary of the Commission, a letter identifying the specific competing common carrier's rates, charges, classification or rules resulting in total charges which are equal to or lower than its own.

§ 565.11 Presidential review.

The Commission shall transmit all orders of suspension or final orders of prohibition to the President of the United States concurrently with the submission of such orders to the **Federal Register** pursuant to § 565.9(d) or § 565.10(c)(3). The President may, within 10 days of either the receipt or effective date of the order, request in writing that the Commission stay the effect of the order for reasons of national defense or foreign policy.

§ 565.12 Stay, postponement, discontinuance or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall immediately stay the effect of any order issued under this part as requested by the President pursuant to § 565.11.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32224 Filed 12–3–98; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–196, RM–9325]

Radio Broadcasting Services; Whitewright, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Chinquapin Creek Broadcasting Company, proposing the allotment of Channel 260A to Whitewright, Texas. The channel can be allotted to Whitewright without a site restriction at coordinates 33–30–48 and 96–23–42.

DATES: Comments must be filed on or before January 11, 1999, and reply comments on or before January 26, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036–4192.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–196, adopted November 9, 1998, and released November 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32302 Filed 12–3–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE39

Migratory Bird Hunting; Temporary Conditional Approval of Tin Shot as Nontoxic for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend Section 20.21(j) and grant temporary and conditional approval of tin shot as nontoxic for the 1998–99 migratory bird hunting season while chronic toxicity/reproductive testing is being completed. Tin shot has been submitted for consideration as nontoxic by the International Tin Research Institute, Ltd. (ITRI), of Uxbridge, Middlesex, Great Britain.

DATES: Comments on the proposed rule or draft Environmental Assessment (EA) (see caption NEPA CONSIDERATION) must be received no later than January 4, 1999.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634–ARLSQ, Washington, DC 20240. Comments may also be forwarded to this same address. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved by the Service as nontoxic. Tungsten-iron and tungsten-polymer shot have been given temporary conditional approval for the 1998–99 hunting season. Compliance with the use of nontoxic shot has been increasing over the last few years. The Service believes that this level of compliance will continue to increase with the availability and approval of other nontoxic shot types. The Service is eager to consider these other materials for approval as nontoxic shot.

The revised procedures for approving nontoxic shot (50 CFR 20.134) consist of a three-tier process whereby existing information can minimize the need for full testing of a candidate shot. However, applicants still carry the burden of proving that the candidate shot is nontoxic. By developing the new approval procedure, it was the Service's intent to discontinue the practice of granting temporary conditional approval to candidate shot material. However, the application by ITRI was initiated prior to implementation of the new protocol. To date, scientific information presented in the application suggests that tin is nontoxic under conditions for the proposed shot configuration. Therefore, the Service proposes to grant temporary conditional approval for the 1998–99 hunting season. Permanent approval will not be granted until chronic toxicity/reproductive testing is successfully completed and the results are reviewed and approved by the Director.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. The shot material has a density of approximately 7.29 g/cm^3. The shot is 99.97 percent tin, with a low level of iron pickup due to the steel production equipment.

ITRI's application includes a statement of proposed use, a description of the new tin shot, a toxicological report (Thomas 1997), and results of a 30-day dosing study of the toxicity of the candidate shot in game-farm mallards (Wildlife International, Ltd. 1998). The toxicological report incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles), effects of firing on tin shot, and information on environmental fate and transport. The toxicity study is a 30-day dosing test to determine if the candidate shot poses any deleterious effects to game-farm mallards. This will meet the requirements for Tier 2, as described in 50 CFR 20.134(b)(3).

Toxicity Information

Detailed reviews of the toxicological impacts of different tin compounds have been conducted by Eisler (1989) and Cooney (1988). Both reviews indicate that elemental tin, which is the material used in this shot, is non-toxic to animals. Tin shot designed for waterfowl hunting is utilized in several European countries and no reports exist that suggest that tin shot is causing toxicity problems for wildlife in those countries.

Environmental Fate and Transport

Tin pellets will undergo slow surface oxidation to form hydrated tin oxide, which is extremely insoluble in water (Lide 1990). Therefore dissolution will be slow, and highly localized aqueous concentrations will not arise. This means that elemental tin will over time remain largely in the same inorganic form as when it is discharged. Tin pellets discharged into wetlands where sulphur ions are released during organic decomposition would become coated with tin sulphide, which is highly insoluble in water and resistant to aquatic hydrolysis (Hoiland 1995).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of tin in a terrestrial ecosystem is based on 69,000 shot per hectare (Pain 1990). The EEC for tin in soil is 19.3 g/m^3. Calculation of the EEC in an aquatic ecosystem assumes complete erosion of the shot in one cubic foot of water. The EEC in water for tin is 19.3 mg/L. Tin shot is considered insoluble and is stable in basic, neutral, and mildly acidic environments. Therefore, erosion is expected to be minimal, and adverse effects on biota are not expected to occur.

Effects on Birds

Several studies have been conducted in which pellets made of tin or tin alloys have been placed inside the digestive tract or tissues of ducks to determine if toxic effects occur. Grandy et al. (1968) and the Huntingdon Research Centre (1987) conducted 30 and 28-day, respectively, acute toxicity tests on mallard ducks and reported that all treatment ducks survived with insignificant weight loss or development of pathological lesions.

Ringelman et al. (1993) conducted a 32-day acute toxicity study which involved dosing game-farm mallards with a shot alloy of tungsten-bismuth-tin (TBT), which was 39, 44.5 and 16.5 percent by weight, respectively. No dosed birds died during the trial, and behavior was normal. Examination of tissues post-euthanization revealed no toxicity or damage related to shot exposure. Blood calcium differences between dosed and un-dosed birds were judged to be unrelated to shot exposure. This study concluded that ". . . TBT shot presents virtually no potential for acute intoxication in mallards under the conditions of this study."

Kraabel et al. (1996) surgically embedded TBT shot in the pectoralis muscles of ducks to simulate wounding by gunfire and to test for toxic effects of the shot. These authors found that TBT shot produced no toxic effects nor induced any adverse systemic effects on the health of ducks during the 8-week period.

The potential for bismuth-tin (BT) shot to produce toxicological effects in ducks during reproduction has been investigated under both acute and chronic testing conditions. Tin as a 2% component of the tested shot, did not pose a toxic risk to ducks when fed a nutritionally-imbalanced, corn-based diet. Neither has BT shot been shown to pose an adverse risk to the health of ducks, the reproduction by male and female birds, nor the survival of ducklings over the long term (Sanderson et al. 1997).

The studies cited above summarize the available published information on shot types in which tin is a component. However, these studies involve either short-term acute toxicity tests, or shot compositions in which tin is a minor component. Additional information is needed to fully assess the toxicity of tin shot.

ITRI's 30-day dosing study (Wildlife International Ltd., 1998) with the candidate shot included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 TM; whereas the control group received no shot. The 2 tin treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tin-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tin treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tin shot and monitored over a 30-day period. No levels of tin above the limit of detection were observed in any tissues collected from either tin treatment group.

Based on the results of the toxicological report and the toxicity test (Tier 1 and 2), the Service concludes that tin shot, (approximately 99.9 percent tin by weight with <1 percent residual lead), does not appear to pose a significant danger to migratory birds or other wildlife and their habitats. However, the Service is concerned that available information on the effect of tin on reproduction in birds is based on shot alloys in which tin is a small component. Therefore, effects of the candidate shot on reproduction in birds is relatively unknown.

The first condition of approval is toxicity testing. Candidate materials not approved under Tier 1 and/or 2 testing are subjected to standards of Tier 3 testing. The scope of Tier 3 includes chronic exposure under adverse environmental conditions and effects on reproduction in game-farm mallards, as outlined in 50 CFR 20.134 (b)(4)(A and B) (Tier 3), and in consultation with the Service's Office of Migratory Bird Management and the U.S. Geological Survey's Division of Biological Resources. This study includes assessment of long-term toxicity under depressed temperature conditions using a nutritionally-deficient diet, as well as a moderately long-term study that includes reproductive assessment. The tests require the applicant to demonstrate that tin shot is nontoxic to waterfowl and their offspring.

The second condition of final unconditional approval is testing for residual lead levels. Any tin shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. In the **Federal Register** of August 18, 1995 (60 FR 43314), the Service indicated that it would establish a maximum level for residual lead. The Service has determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent and has incorporated this requirement (50 CFR 20.134(b)(5)) in the December 1, 1997, final rule (62 FR 63608). ITRI documented that tin shot had no residual lead levels equal to or exceeding 1 percent.

The third condition of final unconditional approval involves enforcement. In the August 18, 1995 **Federal Register** (60 FR 43314), the Service indicated that final unconditional approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. Several noninvasive field testing devices are under development to separate tin shot from lead shot. Furthermore, tin shot can be drawn to a magnet as a simple field detection method. This requirement was incorporated into regulations at 50 CFR 20.134(b)(6) in the December 1, 1997, final rule (62 FR 63608).

This proposed rule would amend 50 CFR 20.21(j) by temporarily and conditionally approving tin shot as nontoxic for the 1998–99 migratory bird hunting season throughout the United States. It is based on the request made to the Service by ITRI on November 17, 1997, the toxicological reports, and the acute toxicity studies. Results of the toxicological report and 30-day toxicity test undertaken for ITRI indicate the apparent absence of any deleterious effects of tin shot when ingested by captive-reared mallards or to the ecosystem. The comment period for the proposed rule has been shortened to 30 days. This time frame will make it possible for tin shot, if temporarily approved, to be available for use by hunters during the 1998–99 hunting season. This will increase the number of nontoxic shot options available to hunters.

Literature Cited

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Eisler, R. 1989. Tin hazards to fish, wildlife, and invertebrates: a synoptic review. Biological Rep. 85 (1.15). Contaminant Hazard Reviews Report No. 15. Fish and Wildlife Service, U.S. Dept. Interior. Washington, DC 85 pp.

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Pain, D. J. 1990. Lead shot ingestion by waterbirds in the Carmarque, France: an investigation of levels and interspecific difference. Environ. Pollut. 66:273–285.

Ringelman, J. K., M. W. Miller, and W. F. Andelt. 1993. Effects of ingested tungsten-bismuth-tin shot on captive mallards. J. Wildl. Manage. 57:725–732.

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Sanderson, G.C., W.L. Anderson, G.L. Foley, K.L. Dunçan, L.M. Skowron, J.D. Brawn, and J.W. Seets. 1997. Toxicity of ingested bismuth alloy shot in game farm mallards: chronic health effects and effects on reproduction. Illinois Nat. History Survey Bull. 35:217–252.

Wildlife International, Ltd. 1998. Tin shot: An oral toxicity study with the mallard. Project No. 476–101. 158 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared an Environmental Assessment (EA) in October 1998. This EA is available to the public for comment at the location indicated under the ADDRESSES caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" The Service has initiated a Section 7 consultation under the ESA for this proposed rule. The result of the Service's consultation under Section 7 of the ESA will be available to the public at the location indicated under the ADDRESSES caption.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The approved shot will merely supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems, therefore, this rule would have minimal effect on such entities. The Service anticipates no dislocation or other local effects with regard to hunters and others. This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Authorship

The primary author of this proposed rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and record-keeping requirements, Transportation, Wildlife.

Accordingly, Part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising paragraph (j) introductory text, and adding paragraph (j)(5) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron ([nominally] 40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that:

* * * * *

(5) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1998–1999 hunting season only.

Dated: November 17, 1998.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–32236 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 63, No. 233
Friday, December 4, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–98–326N]

United States Standards for Grades of Canned Mushrooms

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to revise the United States Standards for Grades of Canned Mushrooms. Specifically, USDA is proposing to lower the Recommended Minimum Drained Weight Averages (RMDWA's) and lower limits for mushrooms packed in the 8 ounce, jumbo, and No. 10 can sizes. These changes would bring the standards in line with the Food and Drug Administration (FDA) minimum drained weights.

DATES: Written comments may be submitted on or before February 2, 1999.

ADDRESSES: Written comments may be submitted to Chere L. Shorter, Processed Products Branch, Fruit and Vegetable Programs, STOP 0247, P.O. Box 96456, Washington, D.C. 20090-6456; faxed to (202) 690–1087; or e-mailed to chere__l__shorter@usda.gov. All comments received will be made available for public inspection at the above address during regular business hours (8:00 to 4:30 p.m.).

The current United States Standards for Grades of Canned Mushrooms, along with the proposed changes, are available either through the above address or by accessing AMS's website on the Internet at www.ams.usda.gov/standards/vegcan.htm.

FOR FURTHER INFORMATION CONTACT: Chere L. Shorter at (202) 720–4693.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards to encourage uniformity and consistency in commercial practices . . .". The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a way that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

The U.S. Standards for Grades of Processed Products are available either by writing to the Branch Chief at the above address, by phone at (202) 720–4693, by fax at (202) 690–1087, or by accessing the AMS website on the Internet at www.ams.usda.gov/standards. The United States Standards for Grades of Canned Mushrooms do not appear in the Code of Federal Regulations.

AMS is proposing to change the United States Standards for Grades of Canned Mushrooms using the procedures it published in the August 13, 1997, **Federal Register** and that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36). The United States Standards for Grades of Canned Mushrooms will be improved by lowering the Recommended Minimum Drained Weight Averages (RMDWA's) and lower limits for all styles, in selected container sizes. The purpose of this proposed change is to improve the usability of the standards, and help to facilitate the marketing of canned mushrooms. This change will allow for a better marketing environment for the canning industry because it would align the standards with FDA minimum drained weight requirements.

In August 1990, USDA, through one of its field offices, received a letter from a food importer in New York alerting AMS to the disparity in the United States Standards for Grades of Canned Mushrooms. The company proposed that the RMDWA's in the U.S. Standards for Grades of Canned Mushrooms be lowered to 56 percent of the water capacity of the container, the FDA minimum fill requirement appearing in 21 CFR 155.201.

In consideration of this proposal, the Agricultural Marketing Service (AMS) gathered information from government and industry sources.

Drained weight, although not a factor of quality in canned mushrooms, is very important in connection with the marketing of processed fruit and vegetable products. Drained weight indicates the amount of fruit and vegetable ingredient in relation to packing media and to some extent the degree to which a product may have disintegrated during processing and handling. Most U.S. standards for canned fruits and vegetables contain a recommended drained weight. Drained weight, when applicable, is a requirement in federal specifications and other purchase specifications or contracts. The USDA reports the range of drained weights on their certificates when there is a mandatory FDA requirement, such as for canned mushrooms. Although drained weight is an FDA mandatory requirement in canned mushrooms, buyers and sellers can establish their own specification of minimum drained weights that exceed the FDA.

Presently, the U.S. standard for canned mushrooms includes a recommended minimum drained weight of 62 percent of the water capacity, or 68.0 ounces for the No. 10 can, while the FDA minimum is 61.3 ounces (56 percent) for this can size. The water capacity is determined according to the FDA method outlined in 21 CFR 130.12. The FDA established its current 56 percent minimum in rulemaking based upon a petition from the National Food Processors Association (NFPA) requesting that the drained weight required for mushrooms packed in larger cans be reduced because of the high incidence of bacterial spoilage in such containers. The FDA initiated rulemaking in a proposed rule (47 FR 26843; June 22, 1982). The NFPA attributed the problem to overfilling to meet the drained weight requirement. Therefore, the NFPA proposed to reduce the drained weight requirement for larger cans so that the ratio of mushrooms to water capacity of the container was not less than 56 percent. A final rule was published in the **Federal Register** on March 15, 1983 in 48 FR 10812 and a final rule; confirmation effective dates was published on September 14, 1983 in 48 FR 41155.

AMS believes that the RMDWA's should be changed in the U.S. Standard for Grades Canned Mushrooms to equal the requirement of 56 percent established by FDA. Specifically, the changes would affect the 8 ounce, Jumbo, and No. 10 can sizes. The new lower limit for drained weights would be reduced from 8.0 to 7.6 ounces, 16.0 to 14.4 ounces, and 68.0 to 61.3 ounces, respectively. The lower limit for drained weight for smaller can sizes would remain the same at 56 percent of the water capacity.

AMS believes the proposed change in the U.S. Standards for Grades of Canned Mushrooms would provide a more equitable marketing environment for canned mushrooms, improve quality by eliminating overfill, and align the RMDWA's and lower limits with FDA requirements. Therefore, AMS is publishing this notice with a 60 day comment period which should provide sufficient time for interested persons to comment on the revision of the standard.

Authority: 7 U.S.C. 1641–1627.

Dated: November 27, 1998.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–32208 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To be Used for Publication of Legal Notice of Appealable Decisions Under 36 CFR Part 217 and Corrections Under 36 CFR Part 215 for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the SUPPLEMENTARY INFORMATION section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on May 15, 1998, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspaper which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions:

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA

Southern Region

Regional Forester Decisions:

Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions:

Montgomery Advertiser, published daily in Montgomery, AL

District Ranger Decisions:

Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL

Conecuh Ranger District: *The Andalusia Star*, published daily (Tuesday through Saturday) in Andalusia, AL

Oakmulgee Ranger District: *The Tuscaloosa News*, published daily in Tuscaloosa, AL

Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL

Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL

Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:

El Nuevo Dia, published daily in Spanish in San Juan, PR

San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions:

The Times, published daily in Gainesville, GA

District Ranger Decisions:

Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: *The News Observer* published weekly (Wednesday) in Blue Ridge, GA

Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA

Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA

Chattooga Ranger District: *Northeast Georgian*, published twice weekly (Tuesday & Friday) in Cornelia, GA

Chieftain & Toccoa Record, published twice weekly (Tuesday & Friday) in Toccoa, GA

White County News Telegraph, published weekly (Thursday) in Cleveland, GA

The Dahlonega Nuggett, published weekly (Thursday) in Dahlonega, GA

Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA

Oconee Ranger District: *Monticello News*, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Ranger Decisions:

Ocoee-Hiwassee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN
Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Tellico-Hiwassee Ranger District: *Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN
Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Nolichucky-Unaka Ranger District: *Johnson City Press*, published daily in Johnson City, TN
Watauga Ranger District: *Johnson City Press*, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:

Lexington Herald-Leader, published daily in Lexington, KY

District Ranger Decisions:

Morehead Ranger District: *Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Stanton, KY
London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: *Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: *McCreay County Record*, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions:

The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions:

Apalachicola Ranger District: *The Liberty Journal*, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: *The Ocala Star Banner*, published daily in Ocala, FL
Osceola Ranger District: *The Lake City Reporter*, published daily (Monday–Saturday) in Lake City, FL
Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL
Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions:

The State, published daily in Columbia, SC

District Ranger Decisions:

Enoree Ranger District: *Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: *Seneca Journal and Tribune*, published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: *The Augusta Chronicle*, published daily in Augusta, GA
Wambaw Ranger District: *News and Courier*, published daily in Charleston, SC
Witherbee Ranger District: *News and Courier*, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions:

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions:

Lee Ranger District: *Shenandoah Valley Herald*, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: *The Recorder*, published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: *Roanoke Times*, published daily in Roanoke, VA
James River Ranger District: *Virginian Review*, published daily (except Sunday) in Covington, VA
Deerfield Ranger District: *Daily News Leader*, published daily in Staunton, VA
Dry River Ranger District: *Daily News Record*, published daily (except Sunday) in Harrisonburg, VA
Blacksburg Ranger District: *Roanoke Times*, published daily in Roanoke, VA
Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman*)
Glenwood Ranger District: *Roanoke Times*, published daily in Roanoke, VA
New Castle Ranger District: *Roanoke Times*, published daily in Roanoke, VA
Monroe Watchman; published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman*)
Mount Rogers National Recreation Area: *Bristol Herald Courier*, published daily in Bristol, VA
Clinch Ranger District: *Kingsport-Times News*, published daily in Kingsport, TN
Wythe Ranger District: *Southwest Virginia Enterprise*, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions:

Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions:

Caney Ranger District: *Minden Press Herald*, published daily in Minden, LA
Homer Guardian Journal, published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA
Colfax Chronicle, published weekly (Wednesday) in Colfax, LA
Calcasieu Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA
Kisatchie Ranger District: *Natchitoches Times*, published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA
Winn Ranger District: *Winn Parish Enterprise*, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions:

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions:

Bienville Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
De Soto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Holly Springs Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Homochitto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Tombigbee Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Ashe-Erambert Project: *Clarion-Ledger*, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions:

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions:

Appalachian Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC

Cheoah Ranger District: *Graham Star*, published weekly (Thursday) in Robbinsville, NC

Croatan Ranger District: *The Sun Journal*, published weekly (Sunday through Friday) in New Bern, NC

Grandfather Ranger District: *McDowell News*, published daily in Marion, NC

Highlands Ranger District: *The Highlander*, published weekly (mid May–mid Nov Tues & Fri; mid Nov–mid May Tues only) in Highlands, NC

The Cashiers Crossroads Chronicle, published weekly (Wednesday) in Cashiers, NC

The Sylva Herald, published weekly on Thursday in Sylva, NC

Pisgah Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC

Tusquitee Ranger District: *Cherokee Scout*, published weekly (Wednesday) in Murphy, NC

Uwharrie Ranger District: *Montgomery Herald*, published weekly (Wednesday) in Troy, NC

Wayah Ranger District: *The Franklin Press*, published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions:

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions:

Caddo Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Cold Springs Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Fourche Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Jessieville Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Mena Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Oden Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Poteau Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Winona Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Womble Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Choctaw Ranger District: *Tulsa World*, published daily in Tulsa, OK

Kiamichi Ranger District: *Tulsa World*, published daily in Tulsa, OK

Tiak Ranger District: *Tulsa World*, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions:

The Courier, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions:

Sylamore Ranger District: *Stone County Leader*, published weekly (Tuesday) in Mountain View, AR

Buffalo Ranger District: *Newton County Times*, published weekly in Jasper, AR

Bayou Ranger District: *The Courier*, published daily (Sunday through Friday) in Russellville, AR

Pleasant Hill Ranger District: *Johnson County Graphic*, published weekly (Wednesday) in Clarksville, AR

Boston Mountain Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR

Magazine Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR

St. Francis Ranger District: *The Daily World*, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions:

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions:

Angelina National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX

Davy Crockett National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX

Sabine National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX

Sam Houston National Forest: *The Courier*, published daily in Lufkin, TX

Sam Houston National Forest: *The Courier*, published daily in Conroe, TX

Caddo & LBJ National Grasslands: *Denton Record-Chronicle*, published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published in May 15, 1998, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Cherokee National Forest, Tennessee

District Ranger Decisions:

Change to:

Ocoee-Hiwassee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN

Daily Post-Athenian, published daily (Monday-Friday) in Athens, TN

Tellico-Hiwassee Ranger District: *Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN

Daily Post-Athenian, published daily (Monday-Friday) in Athens, TN

Nolichucky-Unaka Ranger District: *Johnson City Press*, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

District Ranger Decisions:

Delete:

Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY

National Forests in North Carolina, North Carolina

District Ranger Decisions:

Change to:

Highlands Ranger District: *The Highlander*, published weekly (mid May-mid Nov Tues & Fri; mid Nov-mid May Tues only) in Highlands, NC

The Cashiers Crossroads Chronicle, published weekly (Wednesday) in Cashiers, NC

Ozark-St. Francis National Forest: Arkansas

District Ranger Decisions:

Change to:

Buffalo Ranger District: *Newton County Times*, published weekly in Jasper, AR

Dated: November 25, 1998.

David G. Holland,

Deputy Regional Forester for Natural Resources.

[FR Doc. 98–32306 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: January 4, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 31, August 21, September 25, October 16 and 23, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 40877, 44834, 51336, 55577 and 56906) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Gloves, Patient Examining
  6515–01–364–8554
Pen, Ballpoint, Pushcap w/Refills
  7520–01–451–1065 (Black Barrel, Black Ink)
  7520–01–451–1066 (Burgundy Barrel, Blue Ink)
  7510–01–451–2269 (Refill, Black Ink)
  7510–01–451–2273 (Refill, Blue Ink)
Hood, Balaclava, Cold Weather
  8415–01–310–0606

Services

Grounds Maintenance, Naval Air Weapons Station, China Lake, California
Operation of Individual Equipment Element Store, Bolling Air Force Base, Washington, DC
Operation of Individual Equipment Element Store, Seymour-Johnson Air Force Base, North Carolina
Operation of Postal Service Center and Base Information Transfer Services, Basewide, Brooks Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Tool Box, Portable
  5140–00–651–7676
  5140–00–388–3416
  5140–00–226–9020
  5140–00–226–9021
  5140–00–329–6305
  5140–00–226–9019
  5140–00–226–9018
  5140–00–289–8911
  5140–00–289–8910

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–32340 Filed 12–3–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 981120290–8290–01]

1998 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In conformity with Title 13, United States Code, Sections 182, 224, and 225, I have determined that a 1998 Company Organization Survey is needed to update the multiestablishment companies in the Business Register. This survey, which has been conducted annually since 1974, is designed to collect information on the number of employees, payroll, geographic location, current operational status, and kind of business for establishments of multilocation companies. These data will have significant application to the needs of the public and government agencies and are not available from any other source.

FOR FURTHER INFORMATION CONTACT: Edward D. Walker, Assistant Chief for Register Activities, Economic Planning and Coordination Division, on (301) 457–2617.

SUPPLEMENTARY INFORMATION: The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic census.

The Office of Management and Budget (OMB) approved the proposed survey on October 21, 1998 under OMB Control No. 0607–0444 in accordance with the Paperwork Reduction Act, Pub. L. 104–

13. Report forms will be furnished to organizations included in the survey, and additional copies of the forms are available upon request to the Director, Bureau of the Census, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that the 1998 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: November 18, 1998.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 98–32227 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Update of the National Security Assessment of the U.S. Cartridge and Propellant Actuated Device Industry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 2, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration (BXA), Department of Commerce, Room 3876, 14th and Constitution Avenue, NW, Washington, DC 20230 (telephone no. (202) 482–4060, fax no. (202) 482–5650, e-mail address: bbotwin@bxa.doc.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

Commerce/BXA, in consultation with Naval Surface Warfare Center/Indian Head Division (NSWC/IHD) is conducting a follow-on national security assessment of the domestic cartridge and propellant actuated device industry in order to re-evaluate the health and competitiveness of the U.S. industry and its ability to support current and future defense needs. The original assessment was conducted in 1994 (approved under OMB Control No. 0694–0080), and NSWC/IHD is interested in conducting a follow-on assessment in light of recent Navy and industry actions to maintain and enhance this critical sector.

II. Method of Collection

The information will be collected using a non-recurring, mandatory survey. It will be collected in written form.

III. Data

The survey will collect information on the nature of the business performed by each firm; estimated sales and employment data; financial information; research and development expenditures and funding sources; capital expenditures and funding sources; and competitiveness issues.

OMB Number: None.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: The domestic U.S. cartridge and propellant actuated device industry.

Estimated Number of Respondents: 40.

Estimated Time Per Response: 5.0 hours.

Estimated Total Annual Burden Hours: 200 hours.

Estimated Total Annual Cost: $0 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32337 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112498B]

Marine Mammals; Scientific Research Permit (PHF# 393–1480)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Ms. Deborah A. Glockner-Ferrari, Center for Whale Studies, 39 Woodvine Court, Covington, Louisana 70433–4724, has applied in due form for a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) and several species of small odontocete cetaceans for purposes of scientific research.

DATES: Written comments must be received on or before January 4, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

The purpose of the proposed research is to continue the long-term study on humpback whales (begun in 1975) for an additional 5-year period to: (1) identify and determine the sex, relative age-class, and reproductive condition of individual whales through photo identification techniques; (2) describe and photo document social behavior; (3) record social sounds and individual whale songs; and (4) collect and export free-floating samples of sloughed skin and mucous secretions for genetic analyses. Observations may be made of the following species on an opportunistic basis, during conduct of the research on humpback whales: Pacific bottlenose dolphins (*Tursiops truncatus*), spotted dolphins (*Stenella longirostris*), Hawaiian spinner dolphins (*Stenella longirostris*), false killer whales (*Pseudorca crassidens*), and short-finned pilot whales (*Globicephala macrorhynchus*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 30, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–32336 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Transshipment Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing 1999 limits and charging transshipments to the 1999 limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Memorandum of Understanding dated February 1, 1997 between the Governments of the United States and the People's Republic of China establishes limits for textiles and textile products, produced or manufactured in China and exported during the period beginning on January 1, 1999 and extending through December 31, 1999.

A notice published in the **Federal Register** on May 7, 1998 (63 FR 25202) announced that transshipment charges would be made to the 1999 quota year for Categories 331, 341, 347/348, 351, 352, 631, 636, 641, 647, 649 and 652, pursuant to the February 1, 1997 MOU and in accordance with a letter to the Government of the People's Republic of China dated May 4, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for 1999 and to charge transshipments to the aforementioned categories for 1999.

The 1999 limits may be revised if China becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to China.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and a Memorandum of Understanding dated February 1, 1997 between the Governments of the United States and the People's Republic of China, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [1], 359–V [2], 360–363, 369–D [3], 369–H [4], 369–L [5], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [6], 659–H [7], 659–S [8], 666, 669–P [9], 670–L [10], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,474,997,500 square meters equivalent.

Category	Twelve-month limit
Sublevels in Group I	
200	738,030 kilograms.
218	11,375,249 square meters.
219	2,428,588 square meters.
226	11,027,555 square meters.
237	2,021,092 dozen.
239	3,078,460 kilograms.
300/301	2,287,697 kilograms.
313	42,178,479 square meters.
314	49,663,934 square meters.
315	133,759,386 square meters.
317/326	21,574,143 square meters of which not more than 4,127,558 square meters shall be in Category 326.
331	5,236,526 dozen pairs.
333	99,130 dozen.
334	325,800 dozen.
335	388,299 dozen.
336	173,920 dozen.
338/339	2,333,946 dozen of which not more than 1,771,721 dozen shall be in Categories 338–S/339–S[11].
340	793,325 dozen of which not more than 396,662 dozen shall be in Category 340–Z[12].
341	687,410 dozen of which not more than 412,447 dozen shall be in Category 341–Y[13].
342	269,265 dozen.
345	129,032 dozen.
347/348	2,346,533 dozen.
350	168,670 dozen.
351	563,860 dozen.
352	1,645,485 dozen.
359–C	611,569 kilograms.
359–V	890,996 kilograms.
360	7,841,685 numbers of which not more than 5,348,786 numbers shall be in Category 360–P[14].
361	4,321,525 numbers.
362	7,248,200 numbers.
363	21,618,724 numbers.
369–D	4,755,168 kilograms.
369–H	5,032,562 kilograms.
369–L	3,355,586 kilograms.
410	999,047 square meters of which not more than 800,845 square meters shall be in Category 410–A[15] and not more than 800,845 square meters shall be in Category 410–B[16].
433	20,850 dozen.
434	13,332 dozen.
435	24,487 dozen.
436	15,086 dozen.
438	26,399 dozen.
440	37,715 dozen of which not more than 21,551 dozen shall be in Category 440–M[17]
442	39,924 dozen.
443	128,982 numbers.
444	206,916 numbers.
445/446	288,045 dozen.
447	70,617 dozen.
448	22,277 dozen.
607	3,272,155 kilograms.
611	5,425,251 square meters.
613	7,676,725 square meters.
614	12,063,423 square meters.
615	25,113,855 square meters.
617	17,546,797 square meters.
631	1,313,751 dozen pairs.
633	57,906 dozen.
634	629,976 dozen.
635	664,515 dozen.
636	552,517 dozen.
638/639	2,436,841 dozen.
640	1,386,568 dozen.
641	1,313,487 dozen.
642	339,479 dozen.
643	517,491 numbers.
644/844	3,686,959 numbers.
645/646	825,078 dozen.
647	1,570,813 dozen.
648	1,122,336 dozen.
649	957,686 dozen.
650	117,506 dozen.
651	781,504 dozen of which not more than 137,589 dozen shall be in Category 651–B[18]
652	2,801,039 dozen.
659–C	413,736 kilograms.
659–H	2,868,694 kilograms.
659–S	624,909 kilograms.
666	3,583,233 kilograms of which not more than 1,287,016 kilograms shall be in Category 666–C[19].
669–P	2,039,720 kilograms.
670–L	16,233,984 kilograms.
831	567,873 dozen pair.
833	29,199 dozen.
835	123,582 dozen.
836	284,329 dozen.
840	480,737 dozen.
842	271,439 dozen.
845	2,459,489 dozen.
846	179,107 dozen.
847	1,259,660 dozen.
Group II	
330, 332, 349, 353, 354, 359–O[20] 431, 432, 439, 459, 630, 632, 653, 654 and 659–O[21], as a group.	124,802,482 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V[22], 224–O[23], 225, 227, 229, 369–O[24], 400, 414, 464, 465, 469, 600, 603, 604–O[25], 606, 618–622, 624–629, 665, 669–O[26] and 670–O[27], as a group.	258,883,627 square meters equivalent.
Sublevel in Group III	
224–V	3,653,945 square meters.
225	6,303,750 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,705,740 square meters equivalent.
Levels not in a Group	
369–S[28]	613,826 kilograms.
863–S[29]	8,661,622 numbers.
870	33,265,202 kilograms.

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[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020 6203.19.1030 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045

[4] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030

[5] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020

[9] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000

[10] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007 90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 666–C: only HTS number 6303.92.2000.

[20] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020 6211.12.1010 and 6211.12.1020 (Category 659–S).

[22] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[23] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020 5801.36.0010 and 5801.36.0020 (Category 224–V).

[24] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S)

[25] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[26] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[27] Category 670–O: only HTS numbers 4202.22.4030 4202.22.8050 and 4202.32.9550.

[28] Category 369–S: only HTS number 6307.10.2005.

[29] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the People's Republic of China.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if China becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to China.

The conversion factor for merged Categories 638/639 is 12.96 (square meters equivalent/category unit).

Pursuant to the February 1, 1997 MOU and in accordance with a letter to the Government of the People's Republic of China dated May 4, 1998, you are directed to charge the following amounts to the 1999 limits for categories listed below:

Category	Amount to be charged
331	82,122 dozen pairs.
341	80 dozen.
347/348	518 dozen.
351	62 dozen.
352	7,692 dozen.
631	30,700 dozen pairs.
636	101 dozen.
641	1,309 dozen.
647	25 dozen.
649	3,061 dozen.
652	6,372 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32355 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hong Kong and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. These limits have been increased, variously, for adjustments permitted under the flexibility provisions of the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999

CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–227, 300–326, 360–363, 369(1) [1], 369pt. [2], 400–414, 464, 469pt. [3], 600–629, 666, 669pt. [4] and 670, as a group.	248,373,685 square meters equivalent.
Sublevels in Group I	
219	43,774,441 square meters.
218/225/317/326	75,509,804 square meters of which not more than 4,158,786 square meters shall be in Category 218(1) [5] (yarn dyed fabric other than denim and jacquard).
611	6,901,630 square meters.
617	4,354,444 square meters.
Group I subgroup	
200, 226/313, 314, 315, 369(1) and 604, as a group	116,923,712 square meters equivalent.
Within Group I subgroup	
200	377,406 kilograms.
226/313	78,521,945 square meters.
314	21,176,426 square meters
315	10,469,698 square meters.
369(1) (shoptowels)	860,397 kilograms.
604	259,063 kilograms.
Group II	
237, 239pt. [6], 331–348, 350–352, 359(1) [7], 359(2) [8], 359pt. [9], 431, 433–438, 440–448, 459pt. [10], 631, 633–652, 659(1) [11], 659(2) [12], 659pt. [13], and 443/444/643/644/843/844(1), as a group.	855,820,099 square meters equivalent.
Sublevels in Group II	
237	1,265,837 dozen.
331	4,336,479 dozen pairs.
333/334	312,390 dozen.
335	347,274 dozen.
338/339 [14] (shirts and blouses other than tank tops and tops, knit).	2,951,725 dozen.
338/339(1) [15] (tank tops and knit tops).	2,217,646 dozen.
340	2,826,588 dozen.
345	475,195 dozen.
347/348	6,846,378 dozen of which not more than 6,756,378 dozen shall be in Categories 347–W/348–W [16]; and not more than 5,120,239 dozen shall be in Category 348–W.
352	7,445,492 dozen.
359(1) (coveralls, overalls and jumpsuits).	649,428 kilograms.
359(2) (vests)	1,353,543 kilograms.
433	10,663 dozen.
434	11,446 dozen.
435	77,706 dozen.
436	101,208 dozen.
438	831,206 dozen.
442	94,572 dozen.
443	63,856 numbers.
444	42,823 numbers.
445/446	1,373,874 dozen.
447/448	69,092 dozen.
631	702,558 dozen pairs.
633/634/635	1,401,229 dozen of which not more than 524,090 dozen shall be in Categories 633/634; and not more than 1,075,986 dozen shall be in Category 635.
638/639	4,955,336 dozen.
641	856,261 dozen.
644	47,651 numbers.
645/646	1,358,164 dozen.
647	584,436 dozen.
648	1,193,100 dozen of which not more than 1,178,310 dozen shall be in Category 648–W [17].
649	899,796 dozen.
650	186,074 dozen.
652	5,226,191 dozen.
659(1) (coveralls, overalls and jumpsuits).	717,789 kilograms.
659(2) (swimsuits)	297,137 kilograms.
443/444/643/644/843/844(1) (made-to-measure suits).	59,256 numbers.
Group II subgroup	
336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group.	161,892,727 square meters equivalent.
Within Group II subgroup	
336	244,484 dozen.
341	2,861,158 dozen.
342	580,865 dozen.
350	144,826 dozen.
351	1,208,423 dozen.
636	329,033 dozen.
640	1,011,349 dozen.
642	261,660 dozen.
651	356,335 dozen.
Group III	
831, 833–838, 840–844, 847–858 and 859pt. [18], as a group.	46,482,012 square meters equivalent.
Sublevels in Group III	
834	13,391 dozen.
835	116,441 dozen.
836	174,460 dozen.
840	691,677 dozen.
842	272,972 dozen.
847	371,455 dozen.
Limits not in a group	
845(1) [19] (sweaters made in Hong Kong).	1,131,105 dozen.
845(2) [20] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,707,434 dozen.
846(1) [21] (sweaters made in Hong Kong).	182,910 dozen.
846(2) [22] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	440,745 dozen.

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[1] Category 369(1): only HTS number 6307.10.2005.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[4] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[5] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

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[6] Category 239pt.: only HTS number 6209.20.5040 (diapers)

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010. 6211.32.0025 and 6211.42.0010

[8] Category 359(2): only HTS numbers 6103.19.2030. 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[14] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[15] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[16] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040;Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065. 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[17] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060

[18] Category 859pt only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[19] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[20] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[21] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[22] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively. The conversion factor for Category 239pt. is 8.79.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32354 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding dated August 19, 1998 between the Governments of the United States and the Republic of the Philippines.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of

Understanding dated August 19, 1998, between the Governments of the United States and the Republic of the Philippines, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	1,933,471 dozen.
331/631	6,261,190 dozen pairs.
333/334	302,881 dozen of which not more than 43,482 dozen shall be in Category 333.
335	197,145 dozen.
336	717,428 dozen.
338/339	2,333,411 dozen.
340/640	1,036,170 dozen.
341/641	935,013 dozen.
342/642	620,539 dozen.
345	184,795 dozen.
347/348	2,174,025 dozen.
350	163,592 dozen.
351/651	676,821 dozen.
352/652	2,658,051 dozen.
359–C/659–C [1]	919,562 kilograms.
361	2,066,437 numbers.
369–S [2]	468,409 kilograms.
431	173,058 dozen pairs.
433	3,408 dozen.
443	41,205 numbers.
445/446	28,144 dozen.
447	7,825 dozen.
611	6,201,542 square meters.
633	39,984 dozen.
634	496,097 dozen.
635	357,334 dozen
636	1,869,660 dozen.
638/639	2,397,048 dozen.
643	955,056 numbers.
645/646	809,378 dozen.
647/648	1,311,785 dozen.
649	8,168,184 dozen.
650	117,088 dozen.
659–H [3]	1,540,576 kilograms.
847	1,021,835 dozen.
Group II	
200–227, 300–326, 332, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–607, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	193,226,490 square meters equivalent.
Sublevel in Group II	
604	2,190,816 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC, administrative arrangements notified to the Textiles Monitoring Body and a Memorandum of Understanding dated August 19, 1998 between the Governments of the United States and the Republic of the Philippines.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 1, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32353 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 1999 through December 31, 1999 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. The limits for certain categories have been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit
313	2,156,440 square meters.
314	1,617,329 square meters.
315	3,892,107 square meters.
333/833	154,149 dozen.
334	372,595 dozen.
335/835	195,257 dozen.
338/339	842,685 dozen.
340	367,827 dozen.
341/840	154,149 dozen.
347/348	657,706 dozen.
350	34,818 dozen.
352	234,461 dozen.
359pt. [1]	841,005 kilograms.
360	2,173,391 numbers.
361	1,448,928 numbers.
369pt. [2]	381,423 kilograms.
410	174,734 square meters.
433/434	9,106 dozen.
435	9,525 dozen.
442	11,724 dozen.
443	85,101 numbers.
444	40,118 numbers.
447/448	23,513 dozen.
604	1,667,999 kilograms.
638/639	783,169 dozen.
640	107,712 dozen.
647	102,546 dozen.
648	77,532 dozen.
666	156,155 kilograms.

[1] Category 359pt.: all HTS numbers except 6406.99.1550.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 24, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32352 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 8, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67837, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on December 8, 1998, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [2], 369–S [3], 369–O [4], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [5], 669–T [6], 669–O [7], 670–H [8] and 670–O [9], as a group.	618,894,181 square meters equivalent.
Sublevels in Group I	
363	13,173,415 numbers.
619/620	15,134,873 square meters.
625/626/627/628/629	19,694,045 square meters.
Sublevels in Group II	
331	439,068 dozen pairs.
336	134,458 dozen.
338/339	1,002,524 dozen.
345	127,133 dozen.
347/348	1,535,616 dozen of which not more than 1,309,866 dozen shall be in Categories 347–W/348–W [10].
352/652	3,256,767 dozen.
433	14,188 dozen.
435	24,687 dozen.
442	41,761 dozen.
443	56,018 numbers.
444	86,383 numbers.
631	5,404,494 dozen pairs.
633/634/635	1,771,888 dozen of which not more than 1,035,357 dozen shall be in Categories 633/634 and not more than 923,601 dozen shall be in Category 635.
638/639	6,633,003 dozen.
642	839,380 dozen.
647/648	5,456,952 dozen of which not more than 5,193,775 dozen shall be in Categories 647–W/648–W [11].
Within Group II Subgroup	
342	228,120 dozen.
350/650	147,541 dozen.
351	371,954 dozen.
447/448	21,160 dozen.
636	398,390 dozen.
651	483,789 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[10] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[11] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32357 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Unit of Quantity Requirement for Textile and Apparel Products Produced or Manufactured in Various Countries

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs requiring visa quantities be in whole numbers only.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Brian F. Fennessy, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The United States Government has notified all countries with visa arrangements with the United States of the requirement to issue visas in whole numbers. Shipments of textile and apparel products subject to visa arrangements are charged by U.S. Customs Service using whole numbers only. Quantities stated in decimals or fractions will not be accepted. Shipment quantities not in whole units must be

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reported as a whole number on the visa, as follows:

1. Shipments of less than a single whole unit must be reported as "one" whole unit;

2. Shipment quantities over one whole unit, may be rounded up or down to a whole number. Quantities one-half of a whole unit or higher must be rounded up. Shipment quantities of less than one-half of a whole unit may be rounded down.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to require that the quantity stated on the visa be listed in whole numbers only.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, the United States Government has notified all countries with visa arrangements with the United States of the requirement to issue visas in whole numbers.

Effective on January 1, 1999, you are directed to require that shipment quantities of textile and apparel products entered for consumption or withdrawn from warehouse for consumption into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) be stated on the visa in whole numbers only. Quantities stated in decimals or fractions will not be accepted. Shipment quantities not in whole units must be reported as a whole number on the visa, as follows:

1. Shipments of less than a single whole unit must be reported as "one" whole unit;

2. Shipment quantities over one whole unit, may be rounded up or down to a whole number. Quantities one-half of a whole unit or higher must be rounded up. Shipment quantities of less than one-half of a whole unit may be rounded down.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32356 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, December 17, 1998, 9:30 a.m.

LOCATION: Room 410 B/C, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED: *Compliance Status Report:* The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 1, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–32428 Filed 12–2–98; 2:54 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, December 15, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED: *Methacrylic Acid:* The staff will brief the Commission on a proposed rule requiring child-resiseant packaging under the Poison Prevention Packaging Act for household products containing more than 5 percent methacrylic acid in a single package.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 1, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–32429 Filed 12–2–98; 2:54 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Finding of No Significant Impact (FNSI) and Final Programmatic Environmental Assessment (PEA) for the Army National Guard Pest Management Program

AGENCY: National Guard Bureau, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality (CEQ) Regulations (40 CFR Part 1500–1508); and Army Regulation 200–2, the National Guard Bureau (NGB) gives notice that an Environmental Impact Statement (EIS) is not being prepared for adoption of an Integrated Pest Management (IPM) Program.

DATES: The public review period for this FNSI and PEA ends on January 4, 1999.

ADDRESSES: Copies of the FNSI and PEA can be obtained by contacting Ms. Pamela Goodman, National Guard Bureau, Office of Public Affairs, Environmental Branch, 4501 Ford Avenue, Alexandria, VA 22301.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Goodman at 1–800–252–8959.

SUPPLEMENTARY INFORMATION: A PEA has been prepared to examine the potential environmental impacts associated with this determination. The EA for this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, the NGB has determined that the preparation and review of an EIS is not needed for this project. Based on the findings, the NGB has reached a FNSI with regard to its determination on this proposed action.

The final PEA describes and analyzes the proposed action, consisting of three action alternatives, and the no action option. The alternatives analyzed were: (1) mechanical, cultural, and biological management techniques; (2) chemical management techniques; (3) an emphasis on nonchemical techniques with limited chemical management techniques with a general reduction of toxic chemical used by 50%; and (4) no action. All alternatives could have been implemented in full compliance with applicable state and Federal laws and regulations. Alternative number 3 was selected for implementation.

The NGB provided a 30-day public comment period on the draft PEA. The draft PEA was also forwarded to the Environmental Protection Agency, the

CEQ, and several other Federal and state agencies, as well as several national environmental groups for review and comment. The final PEA was refined based upon the comments received. Analysis and response to the comments received have also been incorporated into the FNSI. The NGB has found the PEA adequate for its decision to adopt the IPM program and has issued its FNSI.

Copies of the FNSI, executive summary of the final PEA, and/or the complete PEA will be mailed to individuals who participate in the Draft PEA review process. Copies will also be sent to select Federal and state agencies. Individuals not currently on the mailing list may obtain a copy be request.

Dated: December 1, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–32320 Filed 12–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Wednesday, December 16, 1998: 6:00 p.m.–9:00 p.m., 6:30 p.m. to 7:00 p.m. (public comment session).

ADDRESSES: Holiday Inn, 1005 Paseo de Pueblo Sur, Taos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.—Call to Order by DOE
6:00 p.m.—Welcome by Chair, Roll Call, Approval of Agenda and Minutes
6:30 p.m.—Public Comments
7:00 p.m.—Break
7:15 p.m.—Board Business
9:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on December 1, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–32309 Filed 12–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC)
Date and Time: Tuesday, December 15, 1998, 9 am
Place: The Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

SUPPLEMENTARY INFORMATION:

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by Joe B. Foster, Chair of the NPC.
—Remarks by the Honorable Bill Richardson, Secretary of Energy.
—Consideration of the proposed final report of the NPC Committee on Product Supply.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**. This notice is being published less than 15 days before the date of the meeting due to the Thanksgiving holiday.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 1, 1998.

Rachel M. Samuel,

Deputy Committee Advisory Management Officer.

[FR Doc. 98–32310 Filed 12–3–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–88–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 30, 1998.

Take notice that on November 23, 1998, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP99–88–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain miscellaneous tap with appurtenances, and the service rendered under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to abandon 24 miscellaneous taps, with associated appurtenances and the related natural gas service rendered by means of such facilities. The facilities are located in New Mexico. These facilities were required by El Paso to facilitate, generally, the delivery and/or measurement and sale of natural gas from its interstate transmission pipeline system to PNM Gas Service, a division of Public Service Company of New Mexico, for resale. El Paso states that the abandonments will not result in or cause any interruption, reduction or termination of natural gas service presently rendered by El Paso to any of its customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,
Secretary.

[FR Doc. 98–32232 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–85–000]

National Fuel Gas Supply Corporation; Notice of Application

November 30, 1998.

Take notice that on November 23, 1998, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–85–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities in Venango County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel proposes to abandon approximately 5,822 feet of 6-inch steel pipeline, known as Line N–M31, located in Venango County, Pennsylvania, because of its age and deteriorated condition. National Fuel also proposes to abandon in its entirety Station T–No. 2261, a regulator station, located on Line N–M31, which was used to reduce the pressure of Line N–M31 to 60 psig. National Fuel states that the abandonment will not have an effect on its existing services because National Fuel's existing parallel Line N–M43 has sufficient capacity to maintain current delivery volumes and will provide more reliable service.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 21, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,
Secretary.

[FR Doc. 98–32231 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–28–000, et al.]

SEI Wisconsin, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 27, 1998.

Take notice that the following filings have been made with the Commission:

1. SEI Wisconsin, L.L.C.

[Docket No. EG99–28–000]

Take notice that on November 20, 1998, SEI Wisconsin, L.L.C. (SEI Wisconsin), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338–4780, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

SEI Wisconsin is a Delaware limited liability company that intends to construct, own, and operate a 340 MW generation facility located in the Town of Neenah, Wisconsin. SEI Wisconsin is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those concerning the adequacy or accuracy of the application.

2. Golden Valley Power Company

[Docket No. ER98–4334–000]

Take notice that on November 23, 1998, Golden Valley Power Company (Golden), tendered for filing an amendment to its petition filed on August 24, 1998, in the above-referenced docket in response to FERC staff request issued September 17, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER98–4401–000]

Take notice that on November 23, 1998, Western Resources, Inc., tendered for filing an amendment to its Electric Power Supply Agreement filed on August 28, 1998, in response to deficiency letter issued on November 26, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER99–324–000]

Take notice that on November 23, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment in the above-referenced proceeding. The amendment contains a revised Attachment 1, to the service specifications contained in the transmission service agreement tendered in this proceeding on October 26, 1998.

Wisconsin Electric renews its original requested effective date of sixty days after the original tender date.

Copies of the filing have been served on Wisconsin Electric Power Marketing, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER99–659–000]

Take notice that on November 23, 1998, Commonwealth Edison Company (ComEd), tendered for filing a service agreement establishing Niagara Mohawk Energy Marketing (NMEM), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of November 19, 1998, for the service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on NMEM and the Illinois Commerce Commission.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. ER99–660–000]

Take notice that on November 23, 1998, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and West Penn Power d.b.a. Allegheny Energy (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of October 28, 1998, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota), Northern States Power Company) (Wisconsin)

[Docket No. ER99–661–000]

Take notice that on November 23, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and New Century Energies.

NSP requests that the Commission accept both the agreements effective October 29, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER99–662–000]

Take notice that on November 23, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Ameren Services Company.

NSP requests that the Commission accept both the agreements effective November 12, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. PP&L, Inc.

[Docket No. ER99–663–000]

Take notice that on November 23, 1998, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated November 9, 1998, with H.Q. Energy Services (U.S.) Inc. (HQ), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds HQ as an eligible customer under the Tariff.

PP&L requests an effective date of November 23, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to HQ and to the Pennsylvania Public Utility Commission.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Western Resources, Inc.

[Docket No. ER99–664–000]

Take notice that on November 23, 1998, Western Resources, Inc., tendered for filing agreements between Western Resources and Engage Energy US, L.P. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreement is proposed to become effective October 23, 1998.

Copies of the filing were served upon Engage Energy US, L.P., and the Kansas Corporation Commission.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Pittsfield Generating Company, L.P.

[Docket No. ER99–665–000]

Take notice that on November 23, 1998, Pittsfield Generating Company, L.P., tendered for filing Power Sales Agreements associated with service under its Rate Schedule FERC No. 1 as required by the Commission in Pittsfield Generating Co., L.P., 85 FERC ¶ 61,147 (1998).

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. EME Homer City, L.P.

[Docket No. ER99–666–000]

Take notice that on November 23, 1998, EME Homer City, L.P. (EMEHC), tendered for filing an application requesting acceptance of its proposed Market-Based Rates Tariff, waiver of certain regulations and blanket approvals. The proposed tariff would authorize EMEHC to engage in the wholesale sales of electric capacity, energy, and certain ancillary services to eligible customers at market-based rates.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ER99–667–000]

Take notice that on November 23, 1998, Consumers Energy Company (Consumers), tendered for filing a fully executed Grand Traverse Interconnection Facilities Agreement between Consumers, Wolverine Power Supply Cooperative, Inc., and the Light and Power Department of Traverse City (Agreement). Consumers requested that the Agreement be allowed to become effective in accordance with its terms, on the first day of the month following its acceptance for filing. The Agreement is to replace and supersede Consumers Rate Schedule FERC No. 78, which is to terminate when the Agreement takes effect.

Copies of the filing were served by Consumers upon the other two parties to the Agreement and upon the Michigan Public Service Commission.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Electric Transmission, a Division of Duke Energy Corporation

[Docket No. ER99–668–000]

Take notice that on November 23, 1998, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing a Non-Firm Transmission Service Agreement and a Firm Transmission Service Agreement between Duke and DTE Energy Trading, Inc., dated as of October 7, 1998, and October 20, 1998, respectively.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. SEI Wisconsin, L.L.C.

[Docket No. ER99–669–000]

Take notice that on November 20, 1998, SEI Wisconsin, L.L.C. (SEI Wisconsin), tendered for filing an application requesting acceptance of its proposed Market Rate Tariff, waiver of certain regulations, and blanket approvals. The proposed tariff would authorize SEI Wisconsin to engage in wholesale sales of capacity and energy to eligible customers at market rates.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corporation

[Docket No. ER99–670–000]

Take notice that on November 23, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Great Bay Power Corporation under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on November 27, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER99–671–000]

Take notice that on November 23, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Associated Electric Cooperative, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–672–000]

Take notice that on November 23, 1998, Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-to-Point Transmission Service between LG&E/KU and Ameren Services Company.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–673–000]

Take notice that on November 23, 1998, Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-to-Point Transmission Service between LG&E/KU and Southwestern Public Service Company.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–674–000]

Take notice that on November 23, 1998, Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Service between LG&E/KU and Ameren Services Company.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Boston Edison Company

[Docket No. ER99–675–000]

Take notice that on November 23, 1998, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and Montaup Electric Company (Montaup). The Standstill Agreement extends through March 29, 1999, the time in which Montaup may institute a legal challenge to the 1996 true-up bill under Boston Edison's FERC Rate Schedule No. 69, governing sales to Montaup from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective November 28, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Alliant Services Company

[Docket No. ER99–676–000]

Take notice that on November 23, 1998, Alliant Services Company tendered for filing two executed Service Agreements for long-term firm point-to-point transmission service with Madison Gas and Electric Company.

Alliant Services Company requests an effective date of March 1, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa

Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Illinois Power Company

[Docket No. ER99–677–000]

Take notice that on November 23, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing an amendment to the existing firm transmission agreements under which Olin Brass and Winchester, Inc., is taking transmission service pursuant to our open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date for the amendment of November 1, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. ERI Enterprises, L.L.C.

[Docket No. ER99–681–000]

Take notice that on November 23, 1998, ERI Enterprises, L.L.C. (Enterprises), tendered for filing pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15, a notice canceling Enterprises' Rate Schedule FERC No. 1, effective October 22, 1998. In its notice, Enterprises states that it has no customers.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Equitable Energy, LLC

[Docket No. ER99–682–000]

Take notice that on November 23, 1998, Equitable Energy, LLC tendered for filing pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16, a notice of succession in ownership or operation. In its notice, Equitable Energy, LLC adopts, ratifies, and makes its own, Rate Schedule FERC No. 1, heretofore filed with the Federal Energy Regulatory Commission by ERI Enterprises, L.L.C., effective October 22, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. MDU Resources Group, Inc.

[Docket No. ES99–10–000]

Take notice that on November 13, 1998, MDU Resources Group, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act (Act), seeking an authorization to incur up to $75,000,000 of short-term indebtedness during the period commencing January 1, 1999 and ending December 31, 2000.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. South Carolina Gas & Electric Company

[Docket No. ES99–12–000]

Take notice that on November 20, 1998, South Carolina Gas & Electric Co. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act (Act), seeking an authorization to incur up to $250,000,000 of short-term indebtedness during the period commencing January 1, 1999 and ending December 31, 2000.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Department of Energy—Bonneville Power Corporation

[Docket No. NJ97–7–001]

Take notice that on October 23, 1998, Department of Energy—Bonneville Power Corporation (Bonneville), tendered for filing revised standards of conduct in response to the Commission's September 18, 1998 Order, (84 FERC ¶ 61,257 (1998)).

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32230 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Accepting Application for Filing and Requesting Interventions and Protests

November 30, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 696–010.

c. *Date Filed:* October 27, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* American Fork Hydroelectric Project.

f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Michael B. Burke, Project Manager, PacifiCorp, 825 NE Multnomah, Suite 1500, Portland, OR 97323, (503) 813–6656.

i. *FERC Contact:* Any questions on this notice should be addressed to Gaylord W. Hoisington, E-mail address Gaylord.Hoisington@FERC.FED.US, or telephone (202) 219–2756.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 29-foot-long, 9-inch wide, and 4.5-foot-high reinforced concrete diversion dam; (2) a 6-foot-wide, 6-foot-long intake; (3) a 6-foot-long, 6-foot-wide manually operated sluice gate; (4) a 2-foot-long, 2-foot-wide manually

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operated upstream sluice gate; (5) A 28-inch-diameter welded steel pipe flowline approximately 11,666 feet long that transitions into a 33-inch-diameter, 253-foot-long riveted steel penstock that transitions into a 20-inch-diameter, 61-foot-long riveted steel penstock; (6) an approximately 2,700-square foot brick powerhouse containing one turbine generator unit with a rated capacity of 1,050 kilowatts; and (7) other appurtenances.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: B1, E1.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–32233 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed with the Commission

November 30, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of License for the Non-Project Use of Project Lands and Waters, the Construction and Operation of a Raw Water Intake and Pumping Station Located on the Shoreline of Lay Reservoir.

b. *Project No:* 2146–083.

c. *Date Filed:* November 17, 1998.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* Talladega County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jim Crew, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291, (205) 257–4265.

i. *FERC Contact:* Jim Haimes, (202) 219–2780.

j. *Comment Date:* January 8, 1999.

k. *Description of Project:* The licensee proposes to lease 2.7 acres of land on the eastern shoreline of Lay Reservoir (Coosa River) downstream of the confluence with Cedar Creek to the Utilities Board, City of Sylacauga, Alabama for the construction and operation of a raw water intake and pumping station with the capacity to withdraw 30 million gallons per day for municipal water supply. The proposed facilities would be developed on a vacant parcel at the intersection of Cedar Creek Circle and Edwards Drive, adjacent to a residential subdivision. Project facilities would include a 48-inch-diameter, buried, intake pipe that extends approximately 1,320 feet into the reservoir. Installation of this intake line would require dredging approximately 1,900 cubic yards of river bottom silt and sand, which would be disposed of at an offsite, upland location. The intake opening would be screened to minimize the entrainment and impingement of fish.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 C.F.R. sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant. The application may be viewed on the web site at www.ferc.fed.us. Call (202) 208–2222 for assistance.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–32234 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Scoping Comments

November 30, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application: Major New License.*

b. *Project No.:* P–2722–008.

c. *Dated filed:* August 21, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Pioneer Hydroelectric Project.

f. *Location:* On the Ogden River in Weber County, Utah. The project doesn't affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Randy Landolt, Director, Hydro resources, PacifiCorp, 920 SW Sixth Avenue, Portland, Oregon 97204, (503) 464–5339.

i. *FERC Contact:* Any questions on this notice can be addressed to Carl J. Keller, E-mail address carl.keller@ferc.fed.us, or telephone (202) 219–2831.

j. Deadline for filing motions to intervene, protests, and scoping comments: 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of that document on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Brief Description of Project:* The existing project consists of: (1) The existing intake structure; (2) a 75-inch diameter, 5.5-mile-long flowline; (3) a 27-foot-high by 28-foot-diameter surge tank; (4) a 6-foot-diameter, 4,000-foot-long steel penstock; (5) a brick powerhouse with two generating units with a total installed capacity of 5.0 megawatts; (6) a 3,000-foot-long, tailrace canal; (6) an 11,000-foot-long, 66-kV transmission line; and (7) appurtenant facilities.

m. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Scoping:* The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act. In the EA, we will consider reasonable alternatives to the project as proposed by PacifiCorp, and analyze both site-specific and cumulative environmental impacts of the project, as well as, economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator (see item 1). A copy of the scoping document may also be viewed on the web.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title"PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–32235 Filed 12–3–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 16, 1998 Through November 20, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–DOE–L09813–ID Rating EC2, Advanced Mixed Waste Treatment Project, Construction and Operation, Site Selection, Idaho National Engineering and Environmental Laboratory (INEEL), Eastern Snake River Plain, ID.

Summary: EPA expressed environmental concerns that the draft EIS does not mention the cumulative impacts of present and reasonably foreseeable action caused by such pending project proposals.

ERP No. D–UAF–G11034–NM Rating LO, University of New Mexico (UNM), Construction of the Enchanted Skies Park and Observatory on Horace Mesa near Grants, Cibola County, NM.

Summary: EPA had no objection to the selection of the agency's selected plan of action.

ERP No. D–UAF–J11015–ND Rating EC2, Minuteman III Missile System Dismantlement, Intercontinental Ballistic Missile (ICBM) Launch Facilities (LFs) and Missile Alert Facilities (MAFs), Deployment Areas, Grand Forks Air Forces Base, ND.

Summary: EPA expressed environmental concerns and offered several recommendations to protect ground water during and after demolition. There may also be opportunities to create wetlands when the sewage lagoons are decommissioned.

ERP No. D–USA–K11090–AZ Rating LO1, Fort Huachuca Real Property Master Planning, Approval of Land Use and Real Estate Investment Strategies, Cochise County, AZ.

Summary: EPA expressed a lack objection to the proposed project.

ERP No. D–USN–K11089–HI Rating EO2, Pacific Missile Range Facility Enhanced Capabilities, To Accommodate Theater Ballistic Missile Defense (TBMD) Training & Testing and Theater Missile Defense (TMD) Testing, NPDES Permit, several counties, HI.

Summary: EPA expressed objections due to insufficient information and analysis of biological resource issues. The proposed action may significantly impact entire breeding populations of sea and shore birds on Johnston Atoll (East, North, Sand, and Johnston Islands), however, no impacts or mitigation have been described.

ERP No. D–USN–K11093–HI Rating EC2, Barbers Point Naval Air Station, Disposal and Reuse of Land Facilities, HI.

Summary: EPA expressed environmental concerns that contamination of an underground source of drinking water has not been sufficiently described, that the possible impacts of changes in airport use has not been sufficiently developed in the analysis, and that the DEIS does not fully develop relevant, reasonable mitigation that could help to improve reuse plans for the protection of human health and the environment.

ERP No. DR–USN–K11078–00 Rating EC2, Marianas Islands Military Training, Implementation, Continue Use of DOD-Controlled Lands, Proposed sites Tinian Military Lease Area, Guam Active Military Bases and Farallon de Medina (FDM) a Navy-Leased Island, HI.

Summary: EPA raised concerns on rating biological resources and hazardous materials. EPA requested that the final contain a full analysis of the reasonable alternative identified in the document.

Final EISs

ERP No. F–USN–K11082–CA San Diego Naval Training Center (NTC) Disposal and Reuse of Certain Real Properties, Implementation, City of San Diego, San Diego County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11084–CA Miramar Naval Air Station Realignment of E–2 Aircraft Squadrons, Three Installations are consider: Point Muga Naval Air Weapons Station, Lemoore Naval Air Station and El Centro, Ventura, Fresno, King and Imperial Counties, CA.

Summary: EPA expressed environmental concerns that the final EIS did not include a sufficient analysis of a no action alternative.

ERP No. FA–USA–A11072–00 Theater Missile Defense (TMD) Extended Test Range (ETR) Project, Eglin Gulf Test Range to Conduct (TMD) Testing or Training Activities, Santa Rosa Island and Cape San Blas, FL.

Summary: EPA had no objection to the proposed project provided that monitoring remains in effect.

Other

ERP No. LD–USN–K11091–NV Rating EC2, Fallon Naval Air Station, Renewal of the B–20 Land Withdrawal, City of Fallon, Churchill County, NV.

Summary: EPA expressed environmental concerns regarding cultural resources, public health and safety, and transportation.

Dated: December 1, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–32346 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed November 23, 1998 Through November 28, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980481, Final EIS, FTA, FL, Central Florida Light Rail Transit System Transportation Improvement to the North/South Corridor Project, Locally Preferred Alternative (LPA) and Minimum Operable Segment (MOS), Orange and Seminole Counties, FL, Due: January 04, 1999, Contact: J. Anthony Dittmeier (404) 562–3512.

EIS No. 980482, Final EIS, BLM, AZ, Hualapai Mountain Land Exchange/Plan Amendment, Implementation, Kingman and Dutch Flat, Mohave County, AZ, Due: January 04, 1999, Contact: Don McClure (520) 692–4400.

EIS No. 980483, Draft EIS, AFS, ID, WY, Targhee National Forest Open Road and Open Motorized Trail Analysis, To Implement a new Travel Plan, several counties, ID and Lincoln and Teton Counties, WY, Due: February 01, 1999, Contact: Alan Silker (208) 624–3151.

EIS No. 980484, Draft EIS, NPS, LA, New Orleans Jazz National Historical Park, General Management Plan, Implementation, City of New Orleans, Parish of Orleans, LA, Due: January 25, 1999, Contact: Gail Hazelwood (504) 589–3882.

EIS No. 980485, Draft Supplement, AFS, OR, Nicore Mining Project, Implementation, New Information on Six New Alternatives, Plan-of-Operations, Mining of Four Sites, Road Construction, Reconstruction, Hauling and Stockpiling of Ore, Rough and Ready Creek Watershed, Illinois Valley Ranger District, Siskiyou National Forest, Medford District, Due: January 29, 1999, Contact: Rochelle Desser (541) 592–2166.

EIS No. 980486, Final Supplement, AFS, NV, Griffon Mining Project, Implementation, Updated Information, Revision for Expanding Gold Mining, Plan of Operations, Humboldt-Toiyabe National Forests, Ely Ranger District, White Pine County, NV, Due: January 04, 1999, Contact: James Winfrey (702) 289–3031.

EIS No. 980487, Final EIS, FHW, WI, US 12 Highway Improvement, Sauk City to Middleton, Funding and COE Section 404 Permits Issuance, Sauk and Dane Counties, WI, Due: January 04, 1999, Contact: Richard Madrzak (608) 829–7510.

Amended Notices

EIS No. 980377, Draft EIS, FHW, UT, Legacy Parkway Project, Construction from I–215 at 2100 North in Salt Lake City to I–15 and US 89 near Farmington, Funding and COE Section 404 Permit, Salt Lake and Davis Counties, UT, Due: January 08, 1999, Contact: Tom Allen (801) 963–0182. Published FR 10–02–98—Review Period extended.

EIS No. 980421, Draft EIS, COE, OR, WA, Columbia and Lower Willamette River Federal Navigation Channel, Improvement Channel Deepening, OR and WA, Due: February 05, 1999, Contact: Steve Stevens (503) 808–4768. Published FR 10–23–98 Review Period Extended.

Dated: December 1, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–32347 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00568; FRL–6048–2]

Pesticides; Science Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's science policies related to implementing the Food Quality Protection Act (FQPA) are transparent and open to public participation, EPA is soliciting comments on three draft science policy papers—"Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance," "Assigning Values to Nondetected/Nonquantified Pesticide Residues in Human Health Dietary Exposure Assessments" and "A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments."

DATES: Written comments for each science policy paper, identified by separate docket control numbers provided in the ADDRESSES section, should be submitted by February 4, 1999.

ADDRESSES: The docket number for "Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance" is OPP–00569, for "Assigning Values to Nondetected/Nonquantified Pesticide Residues in Human Health Dietary Exposure Assessments" is OPP–00570, and for "A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments" is OPP–00571. By mail, submit written comments identified by the docket control number listed for each to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epa.gov. Follow the instructions under Unit V. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For "Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance" contact Vivian Prunier, Environmental Protection Agency (7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, 7509C, Arlington, VA, 22207, 703–308–9341, fax: 703–305–5884, e-mail: prunier.vivian@epa.gov.

For "Assigning Values to Nondetectable Pesticide Residues in Human Health Dietary Exposure Assessments" and "A Statistical Method for Incorporating Nondetectable Pesticide Residues into Human Health Dietary Exposure Assessments" contact by mail: Kathleen Martin, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460. Office location, telephone number, fax and e-mail: 1921 Jefferson Davis Highway, 7509C, Arlington, VA, 22207, 703–308–2857, fax: 703–305–5147, e-mail: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of this document, a table entitled "TRAC Science Policy Area #3: Exposure Assessment—'No Residues Detected,'" and the three science policy papers are available from the EPA Home page at the **Federal Register** — Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

B. Fax-on-Demand

For Fax-on-Demand, use a faxphone to call 202–401–0527 and select item 6024 for "Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance," item 6025 for "Assigning Values to Nondetected Pesticide Residues in Human Health Dietary Exposure Assessments" and item 6026 for "A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments."

II. Background

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10 year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met five times as a full committee from May 27 through September 16, 1998.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In addition to comments received in response to these **Federal Register** notices, EPA will consider comments received during the TRAC meetings. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP.

In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038)(FRL–6041–5), EPA is issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of three draft documents identified above, all of which relate to science policy area #3 (Exposure Assessment—Interpreting "No Residues Detected") as described in the framework notice published in the **Federal Register** of October 29, 1998 (63 FR 58038). A table entitled "TRAC Science Policy Area #3: Exposure Assessment—'No Residues Detected'" that accompanies this notice summarizes these papers and shows how they interrelate.

III. Summary of Draft Papers

A. "Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance"

EPA is considering a new policy regarding the use of the pesticide on or in or near food does not result in residues that are detected in food. Currently, EPA considers that a specific use of a pesticide chemical will result in a pesticide residue in or on a food if the pesticide is used in a manner which has a reasonable likelihood to produce residues in food. Before registering a pesticide for such use under FIFRA, EPA ordinarily requires the establishment under FFDCA of a tolerance or an exemption from the requirement to establish a tolerance (tolerance exemption). In practice, EPA has applied this science policy in such a manner that an agricultural pesticide use is deemed to result in residues in or on food unless the use is shown to result in essentially zero residues.

EPA is deliberating whether to adopt a policy that would set forth conditions under which the Agency would determine that there is no requirement to establish a tolerance for an agricultural pesticide or a pesticide otherwise used in the vicinity of food in certain circumstances where use of the pesticide does not result in detection of residues of a pesticide in a food. If EPA adopts such a policy, the Agency would regulate qualifying pesticide uses solely under FIFRA. The Agency would not perform the analyses required under section 408 of FFDCA as to such use. However, if use of a pesticide registered in accordance with such a policy were to result in detected residues, then food that bears or contains such residues would be adulterated under FFDCA and may not be sold.

Under the policy being considered, the determination could be based on either of the following criteria:

1. *Threshold of Regulation based on "essentially zero" risk*. There would be no requirement for a tolerance or tolerance exemption under FFDCA if: (i) Using a reliable and appropriately sensitive analytical method to measure residues in the commodity, there are no detected residues in the commodity under expected conditions of use when the commodity enters interstate commerce; and (ii) using reasonably protective criteria, the estimated potential dietary risk of any theoretically possible residues is so small as to not be of concern.

2. *Threshold of Regulation based on "essentially zero" exposure*. EPA will evaluate data concerning the amount of residue resulting from the use of a pesticide in foods (other than milk, meat, poultry or eggs derived from animals fed pesticide-treated feed) to determine whether there is "no reasonable expectation of finite residues" in these foods, and therefore, there would be "essentially zero" exposure. If EPA makes such a determination, no tolerance would be established under FFDCA section 408.

EPA is considering adopting the Threshold of Regulation policy because it would allow the Agency to grant new food uses or to permit the continuation of existing food uses that pose "essentially zero" dietary risk. The policy would make Agency resources available for pre-market review of safer pesticides to replace pesticides that do not meet the new safety standard of the Food Quality Protection Act on 1996 (FQPA). It also would support a reasonable transition for agriculture by retaining some pesticide uses that might otherwise be discontinued and by expanding the number of potential replacements for high risk food use pesticides.

B. "Assigning Values to Nondetected/ Nonquantified Pesticide Residues in Human Health Dietary Exposure Assessments"

When residue data are submitted in support of establishing or reassessing a tolerance for a particular food use, in some cases a portion of the measurements of the levels of pesticide residue present on food shows no detection of residues. These "nondetects" (NDs) do not necessarily mean that the pesticide is not present at any level, but simply that any amount of pesticide present was below the level that could be detected or reliably quantified using a particular analytical method.

The primary science policy issue concerning NDs is what value EPA should assign to them in calculating dietary exposure and risk from a pesticide. This science policy paper describes the value that EPA generally will assign to NDs under different circumstances when EPA conducts a dietary exposure and risk estimate for a pesticide food use. First, EPA will assign a value of zero to the proportion of the data set corresponding to the percentage of the commodities which were not treated with the pesticide. For the remainder of the data points for pesticide-treated commodities, EPA will use the following assumptions:

(1) If a valid Limit of Detection (LOD) exists, EPA will use ½ LOD as the assigned value for NDs when conducting dietary exposure and risk assessments.

(2) If an LOD is not available, but a valid Limit of Quantitation (LOQ) exists, EPA will use ½ LOQ for the NDs.

(3) If neither an LOD nor an LOQ is available, EPA will use the full Lower Limit of Method Validation (LLMV) for the NDs.

(4) If unquantified residues are found between the LOQ and LOD, EPA will use ½ LOQ for those NDs.

In adopting this science policy, EPA's goal is to avoid underestimating exposure to potentially sensitive or highly exposed groups such as infants and children while attempting to approximate actual residue levels as closely as possible. Both biological information and empirical residue measurements support EPA's belief that this science policy is consistent with these goals. Recognizing, however, that these assumptions may, in some cases, either overestimate or underestimate exposure, EPA's policy will be to perform a "sensitivity analysis" to determine the impact of different assumptions, e.g., assuming NDs = LOQ or NDs = zero, on the Agency's assessment of risk. If the Agency risk assessment changes as a result of these alternate substitutions, the sensitivity analysis will have demonstrated that the Agency risk assessment is sensitive to assumed concentrations for the NDs and may request that additional data and/or an improved analytical method be developed and submitted.

C. "A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments"

As mentioned for the previous document, the primary science policy issue concerning NDs is what value EPA should assign to them in calculating dietary exposure and risk from a pesticide. In adopting this science policy, EPA has the same goal as for its policy for assigning values to NDs. In addition, just as for that policy, available biological information and empirical residue measurements indicate that this science policy will be protective of public health, including potentially sensitive or highly exposed groups such as infants and children.

This science policy document describes a statistical method which may be used for determining the distribution of non-detectable residues below the LOD where some of the residues of the data set are undetectable. This method is fully described in EPA's *Guidance for Data Quality Assessment: Practical Methods for Data Analysis* issued in July 1996 (EPA/600/R–96/084, which has been peer reviewed by EPA program offices, regional offices and laboratories. The method, referred to as "Cohen's method," would be available in situations where the treated NDs comprise less than half the data set and the rest of the data are normally or lognormally distributed. Generally, these values would be expected to be less than ½ the LOD but greater than zero. When properly employed, such methods can provide a scientifically sound basis for more accurately estimating dietary exposure and risk than assuming that ND values represent ½ LOD. This document is intended to be used chiefly by persons conducting probabilistic human health exposure assessments for purposes of registration or reregistration of pesticides. This guidance will help assure that dietary exposure assessments accurately portray exposures and risks to the U.S. population and subpopulations of special concern such as infants and children. Such assessments will play an increasingly important role in the evaluation of risks posed by pesticides and will improve the Agency's ability to make regulatory decisions that fully protect public health and sensitive subpopulations, including infants and children.

D. Public Comments on the Science Policy Issue: "Exposure Assessment -- Interpreting No Residues Detected"

The Agency received several comments as part of the discussions with the Tolerance Reassessment Advisory Committee on issues relating to some aspects of the science policies in the three papers being made available today. In particular, a coalition of farm, food, manufacturing and pest management organizations, called the Implementation Working Group (IWG), argued that EPA's risk assessment methodology tended to overstate possible exposure to pesticide residues in food by assigning inappropriate values to samples on which no residue had been detected. The IWG recommended that: (1) One half the LOQ should be used as a "general reasonable default" for residue levels in samples which are known or believed to have been treated but which fall below the LOQ; (2) for certain use patterns (e.g., seed treatments and applications to dormant fruit and nut trees), EPA should assign a value of zero to residues falling below the LOQ; and (3) EPA should avoid taking regulatory action against a pesticide use, due to its dietary risk, when the risk is attributable in any extent to the amount of residues estimated to be present for ND values. These recommendations are addressed both in the texts of the papers and in the identification of issues for public comment in this notice.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the above three papers, EPA is particularly interested in comments on the following questions and issues.

A. "Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance"

1. Is the proposed Threshold of Regulation policy a reasonable approach for dealing with food uses which result in no detected pesticide residues?

2. Are the data and criteria that the Agency would use for determining that a use results in "essentially zero" exposure appropriate?

3. Are the data and criteria that the Agency would use for determining that a use results in "essentially zero" risk appropriate?

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4. Would this policy have any implications for international trade?

5. Should existing tolerances be revoked if the Threshold of Regulation policy is adopted and certain tolerance are determined not to be needed?

B. "Assigning Values to Nondetectable Pesticide Residues in Human Health Dietary Exposure Assessments"

1. Under what circumstances would either ½ LOD or LOQ for NDs significantly underestimate or overestimate dietary exposure? Does any available information demonstrate that this method either underestimates or overestimates dietary exposure?

2. Should EPA consider a different approach for incorporating nondetectable samples into risk assessments depending on the type of risk assessment being performed (i.e., chronic risks, acute risks, short-term risks (Section 18's))?

3. Are the methods for determining LOD and LOQ adequately defined?

4. Would this policy have any implications for international trade?

C. "A Statistical Method for Incorporating Nondetectable Pesticide Residues into Human Health Dietary Exposure Assessments"

1. Are other methods available which may be preferable to the methods described in this paper for statistically estimating the distribution or mean values of nondetectable residue samples?

2. Under what circumstances, if any, would use of Cohen's method not be considered reliable or appropriate?

V. Public Record and Electronic Submissions

A record has been established for these policy guidances under docket control numbers "OPP–00569," "OPP–00570," and "OPP–00571" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control numbers "OPP–00569," "OPP–00570," or "OPP–00571." Electronic comments on this document may be filed online at many Federal Depository Libraries.

VI. Contents of Docket

Documents that are referenced in this notice document will be inserted in the docket under the docket control numbers "OPP–00569," "OPP–00570," or "OPP–00571." In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: November 30, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–32344 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34154; FRL–6048–7]

Iprodione; Availability of the Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of and starts a 60-day public comment period of the Reregistration Eligibility Decision (RED) document for the active ingredient iprodione. The RED for this chemical is the Agency's formal regulatory assessment of the health and environmental database of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the RED decisions must be submitted by February 2, 1999.

ADDRESSES: Three copies of comments identified with the docket control number "OPP–34154" and the case number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Room 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION" of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED document should be directed to the following Chemical Review Manager:

Chemical Name	Case No	Chemical Review Manager	Telephone No.	e-mail Address
Iprodione	2335	Dennis Deziel	703–308–8173	Deziel.Dennis@epamail.epa.gov

To request a copy of any of the above listed RED document, or a specific RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, in Rm. 119, at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via EPA's website at: http://www.epa.gov/REDs.

II. Reregistration Eligibility Decision

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticidal active ingredient iprodione. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting a reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of iprodione is substantially complete.

To lessen human health risk, residential risk, worker risk, and ecological effects posed by iprodione, Rhone-Poulenc Ag Co., the current manufacturer of iprodione, has proposed to implement a series of risk mitigation measures based on the Agency's risk assessment, as discussed in the Iprodione RED. These mitigation measures include:

Proposed cancellation by Rhone-Poulenc of all residential uses of iprodione.

For iprodione use on strawberries, increase the pre-harvest interval from 0–days to up to but not after first flower. In addition, the tolerance for strawberries will be reduced to the limit of quantitation (0.05 parts per million (ppm)).

For iprodione use on all stone fruit (apricots, cherries, nectarines, plums, and prunes), increase the pre-harvest interval from 7–days to up to but not after petal fall (approximately 45 - 90-day pre-harvest interval). In addition, the tolerances for all stone fruit, including peaches, will be reduced to limit of quantitation (0.05 ppm).

For iprodione use on table grapes (fresh, cooked, canned, juice, raisin or otherwise; mitigation does not include wine and sherry grapes), reduce the application rate from 4 times per season to one application per season at early- to mid-bloom. Tolerances remain unchanged consistent with the RED (10 ppm).

Limit the maximum number of applications on non-residential turf, lawn, golf course, ornamental trees, and ornamental plants from "unlimited" to 6 per year, with the maximum annual application of up to but no more than 24 pounds (lbs.) active ingredient (a.i.).

Proposed cancellation by Rhone-Poulenc of all herbaceous ornamental seed treatment uses of iprodione.

The Agency intends to publish in the near future a 6(f) FR Notice announcing those canceled iprodione uses. The Agency has determined that all remaining uses of iprodione are eligible for reregistration subject to certain other conditions imposed in the RED.

All registrants of products containing the above listed active ingredient have been sent the Iprodione RED document and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60-day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency.

III. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number "OPP–34154" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34154). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticide.

Dated: November 30, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–32345 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44650; FRL–6047–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on Diglycidyl Ether of Bisphenol A (DGEBPA) (CAS No. 1675–54–3) and Phenol (CAS No. 108–95–2). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. What are the details of the submissions?

Test data for DGEBPA were submitted by the Society of the Plastics Industry, Inc. Epoxy Resin Systems Task Group. The reports were submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. EPA received the data on September 29, 1998. The submission includes two final reports entitled 1) "DGEBPA: Two–Year Dermal Chronic Toxicity/Oncogenicity Study in the Male B6C3F1 Mouse," and 2) "DGEBPA: Two–Year Dermal Chronic Toxicity/Oncogenicity Study in Female Fischer 344 Rats." Also submitted was an independent pathology peer review of the "DGEBPA: Two Year Dermal Chronic Toxicity/ Oncogenicity Study in Female F344 Rats." This peer review was sponsored by the Society of the Plastics Industry, Inc. Epoxy Resin Systems DGEBPA Task Force. This chemical is used primarily as the principal component in epoxy resins.

Test data for Phenol were submitted by the Phenol Regulatory Panel of the Chemical Manufacturers Association (CMA) pursuant to a TSCA section 4 enforceable testing consent agreement/ order at 40 CFR 799.5000. EPA received the data on October 15, 1998. The submission includes a final report entitled "A 13–Week Neurotoxicity Study of Phenol Administered in the Drinking Water to the Rat." This chemical is produced in substantial quantities and is used in numerous consumer products.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. How do I get additional information?

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44650). This record includes copies of the studies and peer review reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

Electronic Availability:

Internet

Electronic copies of this document are available from the EPA Home Page at the Federal Register–Environmental Documents entry for this document under "Rules and Regulations" (http://www.epa.gov/fedrgstr/).

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: November 23, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–32202 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–98–21–D (Auction No. 21); DA 98–2394]

Wireless Telecommunications Bureau Announces Revised Pre-Auction Deadlines and Provides 902–928 MHz Band Deployment and Technical Information Compiled by the National Telecommunications and Information Administration

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By public notice dated November 10, 1998, the Wireless Telecommunications Bureau ("Bureau") postponed the commencement of the Location and Monitoring Service ("LMS") auction to give potential bidders a reasonable opportunity to consider deployment and technical information compiled by the National Telecommunications and Information Administration ("NTIA") regarding government primary users occupying the 902–928 MHz band. By this public notice, the Bureau makes the information compiled by NTIA available to the public. In addition, the Bureau announces revised pre-auction deadlines for the auction of 528 multilateration LMS licenses.

DATES: Commencement of the Location and Monitoring Service auction is scheduled for February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660; Kathryn Garland, Operations at (717) 338–2801; Bob Reagle, Operations at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The following is a summary of a Public Notice released by the Wireless Telecommunications Bureau on November 25, 1998. The complete text of this Public Notice, including the deployment and technical information compiled by NTIA, is available in its entirety for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, 2025 M Street, N.W., Room 5608, Washington, D.C., 20554, and also may be retrieved from the FCC World Wide Web Auctions site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Public Notice

1. By public notice, the Wireless Telecommunications Bureau ("Bureau") postponed the commencement of the Location and Monitoring Service ("LMS") auction to give potential bidders a reasonable opportunity to consider deployment and technical information compiled by the National Telecommunications and Information Administration ("NTIA") regarding government primary users occupying the 902–928 MHz band. *See* "Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date for 528 Multilateration Location and Monitoring Service Licenses; Commencement of the Auction Postponed to February 23, 1999," *Public Notice,* DA 98–2246 (rel. November 10, 1998), 63 FR 63,730 (November 16, 1998) (*"LMS Postponement Public Notice"*).

2. Deployment and technical information compiled by NTIA is now available. In addition, the window for filing the FCC Form 175 is now open and will remain open until 5:30 p.m. ET on January 25, 1999. All previously filed electronic applications will remain intact.

The critical dates for pre-auction milestones for the LMS auction have been rescheduled. The following are rescheduled dates of pre-auction milestones:

- January 25, 1999: FCC Form 175 Due by 5:30 p.m. ET.
- February 8, 1999: Upfront Payments Due to Mellon Bank.
- February 9, 1999: Remote Bidding Software Order Deadline.
- February 19, 1999: Mock Auction.
- February 23, 1999: Auction No. 21 Commences.

Those wishing to participate in the auction must: (1) submit a short form application (FCC Form 175) by 5:30 p.m. ET on January 25, 1999; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on February 8, 1999; and (3) comply with all provisions outlined in the Bidders Information Package.

Federal Communications Commission.

Amy Zoslov,

Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 98–32280 Filed 12–3–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, December 9, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc.

Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund.

Report of the Audit Division on the Dole for President Committee, Inc. (Primary).

Report of the Audit Division on the Dole/Kemp '96 and Dole/Kemp Compliance Committee, Inc. (General).

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–32453 Filed 12–2–98; 3:54 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1259–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1259–DR), dated November 6, 1998, and related determinations.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 6, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Florida, resulting from Tropical Storm Mitch on November 4–5, 1998 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

> Monroe County for Individual Assistance and Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt.

Director.

[FR Doc. 98–32289 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1259–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1259–DR), dated November 6, 1998, and related determinations.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 6, 1998:

> Palm Beach County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–32290 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1258–DR), dated November 5, 1998 and related determinations.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 5, 1998 the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms and flooding beginning on October 30, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Kansas.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carolyn J. Coleman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Butler, Cowley, and Sedgwick Counties for Individual Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–32285 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 2 to the Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1258–DR), dated November 5, 1998 and related determinations.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 1998:

Douglas County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32286 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1258–DR), dated November 5, 1998, and related determinations.

EFFECTIVE DATE: November 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 15, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32287 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1258–DR), dated

November 5, 1998, and related determinations.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 1998:

Butler, Cowley, Neosho, Sedgwick, and Sumner Counties for Public Assistance (already designated for Individual Assistance).

Greenwood, Harper, and Saline Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers CCFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32288 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1254–DR]

Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1254–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Bourbon, Jackson, Leavenworth, Linn, and Wabaunsee Counties for Public Assistance (Leavenworth County already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32296 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1253–DR]

Missouri; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1253–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: November 12, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Cedar County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32292 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1196–DR]

New York; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–1196–DR), dated January 10, 1998 and related determinations.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne C. Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Barbara T. Russell as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–32291 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

Atascosa, Brazoria, Galveston, Liberty, Matagorda, Nueces, and San Jacinto Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32293 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

Blanco, Jefferson, Medina, and San Patricio Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32294 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: October 31, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 31, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32295 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1255–DR]

Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1255–DR), dated October 16, 1998, and related determinations.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 19, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger ,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–32284 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 a.m.—December 9, 1998.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTER(S) TO BE CONSIDERED: The Open Portion of the meeting:

1. Proposed Rules (46 CFR) Implementing the Ocean Shipping Reform Act, relating to Ocean Transportation Intermediaries, Private Tariff Systems and Service Contracts.

The Closed Portion of the Meeting:

1. Brazilian Maritime Policies Affecting U.S.-Brazil Trades.

2. Consideration of the Failure of SeaLand Service, Inc. To Comply with Subpoenas Issued in Fact Finding Investigation No. 23.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.

[FR Doc. 98–32445 Filed 12–2–98; 3:47 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, December 9, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 2, 1998.

Robert deV. Frierson,
Associate Secretary of the Board.

[FR Doc. 98–32398 Filed 12–2–98; 11:24 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST), December 14, 1998.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 9, 1998, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Date: December 1, 1998.

John J. O'Meara,
Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 98–32399 Filed 12–2–98; 11:32 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Project

Title: National Study of Child Care for Low-Income Families.

OMB No.: New.

Description: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) has intensified the need for information about child care for low-income families. Many policymakers, program operators, and others have emphasized that low-income families' access to adequate child care is essential to meet the broad goal set out in the Act—to enable families receiving public assistance to enter and remain in the workforce. PRWORA also consolidated a variety of Federal child care funds into a single block grant, the Child Care and Child Development Fund (CCDF), which gives the States broad discretion in establishing priorities for subsidy as well as levels. Faced with limited funding and a burgeoning need for child care, state policymakers are under enormous pressure to use child care funding as efficiently as possible. Their decision-making is hampered by lack of information about three important and interrelated issues: How the current set of policies and programs, for example including work requirements, child care subsidies and regulations governing child care, affects parents' employment and child care decisions; how significant shifts in welfare and other policies, as well as funding for child care, will affect the demand for and supply of child care at the community level; and the potential implications of an increased reliance of low-income families on family child care that may or may not be regulated or monitored.

A sample of key informants at the state and community levels including governor's policy staff, child care and welfare agency staff, child care licensing and monitoring staff, child care resource and referral agency staff, and advocacy group members, representatives of private organizations such as foundations or churches, will be asked about state child care and subsidy policies and how these policies are implemented at the local level. Additionally, they will be asked about the effect of these policies on the supply of child care. A sample of low-income families using non-parental child care will be asked about the types and cost of care used and the factors that influenced their choice of child care arrangements including the availability of child care subsidies. A sample of low-income parents using family child care will be asked about their experience with this care and how this care has affected their ability to work and to balance work and family life. Additionally, parents will be asked about their household characteristics on a voluntary basis. The family child care providers used by the sample of low-income parents will be asked about their views on child rearing and the role of the child care provider, the relationship with the parents served, and, on a voluntary basis, their household characteristics. A sample of preschool children using family child care will be observed in their child care setting. Focus groups with family child care providers and low-income parents will be used to investigate how child care subsidy policy has affected the supply and demand for child care in their communities.

ACF, working with Abt Associates and the National Center for Children in Poverty at Columbia University, will conduct the proposed data collection. Data will be collected at the three levels, with nested samples of counties within states and families and providers within counties. The first level is a sample of 17 states containing 25 counties that were selected to be a nationally-representative sample of counties with above average poverty rates. At the family level, data will be collected from two samples:

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- A random sample of 5,000 low-income families with working parents and at least one child under age nine for whom they use non-parental child care, that will be selected in the 25 counties (200/county). This sample will be used to investigate the spectrum of child care options available to and the choices made by low-income families in the 25 counties.
- A sample of 650 low-income parents who are receiving, or who applied for, child care subsides, and are using family child care at the start of the study will be used to examine the experiences of low-income families with this important but rarely studied mode of child care. A random sample (130 families/county) will be selected from subsidy lists and subsidy waiting lists in a subsample of five of the 25 counties.

At the provider level, data will be collected from the 650 family child care providers linked to these 650 families.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Key Informant Interviews	170	2	1.00	113
Community Key Informant Interviews	250	2	1.00	167
Parent Focus Groups	250	2	1.5	250
Provider Focus Group	250	2	1.5	250
Community Survey (Screener)	64,474	1	0.08.5	1,719
Community Survey	5,000	1		833
In-Depth Study Parent Screener	2,172	1	0.081.25	58
In-Depth Study Parent Interview	650	6		1,625
In-Depth Study Student Interview	63	3	.33	21
In-Depth Study Family Child Care Provider Screener	1,458	1	.17	88
In-Depth Study Family Care In-Depth Study Care Provider Interview	650	6	.50	650

Estimated Total Annual Burden Hours: 5,774.

In Compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted with 60 days of this publication

Dated: November 30, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–32282 Filed 12–3–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Council State Plan.

OMB No.: 0980–0162.

Description: Developmental Disabilities Councils (DD Councils) in each State is required under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*) to develop plans on a triennial basis and to review those plans at least annually. Each Council develops its plan as a basis for promoting systems change and capacity building in service systems for persons with developmental disabilities in the State. The State plan must be made available for public comment in the State and must be approved by the Governor of the State. After that it is submitted to the Department of Health and Human Services, which will use the information to ensure compliance of the State with requirements in the Act. The information in the State plan is also used as one basis for providing technical assistance, such as during site visits.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Three Year State Plan	55	1	130	7,150

Estimated Total Annual Burden Hours: 7,150.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 30, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–32283 Filed 12–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1021]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of certain styrene-acrylic copolymers as components of coatings for paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4632) has been filed by Rohm and Haas Co., 100 Independence Mall West, Philadelphia, PA 19106. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of certain styrene-acrylic copolymers as components of coatings for paper and paperboard. The copolymers contain monomer units from styrene and methyl methylacrylate and may contain monomer units from butyl methacrylate, methacrylic acid, butyl acrylate, acrylic acid, and allyl methacrylate.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 10, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–32250 Filed 12–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0425]

Medical Devices; Exemptions From Premarket Notification; Surgical Lamps

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order denying a petition requesting an exemption from the premarket notification requirements for surgical lamps. FDA is publishing this notice in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Pub. L. 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Pub. L. 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the World Wide Web on the CDRH home page at "http://www.fda.gov/cdrh" or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. Petitions

On June 17, 1998, FDA received a petition requesting an exemption from premarket notification for surgical lamps from Getinge/Castle, Inc. On September 30, 1998 (63 FR 52275), FDA published a notice announcing that it had received three petitions, including the one from Getinge/Castle, Inc., requesting exemption from premarket notification for class II devices and providing an opportunity for interested persons to submit comments on the petitions by October 30, 1998. FDA received no comments. FDA has reviewed these petitions and, for the following reasons, has determined that surgical lamps do not meet the criteria for exemption described previously and is, therefore, issuing this order denying the petition to exempt these devices from the requirements of premarket notification. The other two petitions will be addressed separately in another issue of the **Federal Register**.

FDA has determined from its medical devices reporting (MDR) database that there is a risk of over-exposure to ultraviolet (UV) light from surgical lamps and there is a risk of surgical lamps falling on surgical personnel during use. FDA has recently completed a guidance document for surgical lamps entitled "Guidance Document for Surgical Lamp 510(k)s." FDA is also aware of a draft standard from the International Electrotechnical Commission (IEC), IEC–60601–2–41, that would be applicable. FDA believes that the guidance and the draft standard would address the risks to health presented by surgical lamps. At some time in the future, FDA may adopt the guidance document and the IEC standard as special controls for surgical lamps. Without the guidance and the IEC standard as special controls, FDA believes that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of sunlamps.

Dated: November 23, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–32248 Filed 12–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0477]

Medical Devices; Reconditioners, Rebuilders of Medical Devices; Revocation of Compliance Policy Guide; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking Compliance Policy Guide (CPG) 7124.28 because application of current good manufacturing practice (CGMP) requirements to "reconditioners/rebuilders" of used medical devices does not comport with definitions in the quality system (QS) regulation or guidance in the final rule that applies CGMP requirements to "manufacturers" and "remanufacturers." Because "reconditioners/rebuilders" are specifically excluded from the definition of "manufacturer" or "remanufacturer" in the QS regulation, guidance in the CPG on the applicability of registration, listing, and other statutory and regulatory requirements to "reconditioners/rebuilders" does not represent current agency thinking. In the advance notice of proposed rulemaking (ANPRM), published in the December 23, 1997, **Federal Register**, FDA announced its intention to consider identifying the used device market, for regulatory purposes, in terms of "refurbishers," "as-is remarketers," and "servicers" whose activities do not significantly change the safety, performance, or use of a device, and to examine alternative approaches for regulating these firms. Pending the issuance of a rule or guidance setting forth FDA's current position, CPG 7124.28 is being revoked to eliminate obsolete guidance and reduce industry burdens.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), 2094 Gaither Rd., Rockville, MD 20850, 301594–4699, ext. 102.

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued CPG 7124.28, Reconditioners/Rebuilders of Medical Devices, on December 29, 1987. As revised in March 1995, it is currently found in Section 300.200 of the Compliance Policy Guides Manual. CPG 7124.28 identifies a "reconditioner/rebuilder" as a person or firm that acquires ownership of a used device and, for purposes of resale or commercial distribution, "restores" or "refurbishes" the device to the manufacturer's original or current specifications, or new specifications.

CPG 7124.28 provides that "reconditioners" or "rebuilders" must register under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) and 21 CFR 807.20(a), and they are subject to the premarket notification requirements of 21 CFR 807.81. The CPG specifies label statements that must be displayed on restored or refurbished devices in accordance with 21 CFR 801.1 and, if appropriate, 21 CFR 801.109 or 809.10. The CPG also states that "reconditioners" or "rebuilders" are subject to biennial inspection requirements under the act, if they manufacture class II or class III devices, and to the medical device reporting (MDR) requirements in 21 CFR 803. The CPG further cautions that the resale of devices restored by "reconditioners" and "rebuilders" who do not comply with requirements cited in the CPG renders the restored devices adulterated under section 501(h) of the act (21 U.S.C. 351(h)), or misbranded under sections 502(a) or (f), or 510 of the act (21 U.S.C. 352(a) or (f), or 360), as appropriate.

The guidance in CPG 7124.28 represented the agency's current thinking, until publication of the CGMP/QS final rule in the **Federal Register** of October 7, 1996 (61 FR

52602), which codified the QS at 21 CFR 820. The guidance did not create or confer any rights for or on any person and did not operate to bind FDA or the public. An alternative approach may have been used if such approach had satisfied the applicable statute, regulations, or both.

II. Basis for Revoking CPG 7124.28

A. Guidance Concerning the Applicability of CGMP Requirements

CPG 7124.28 applies CGMP requirements to "reconditioners/rebuilders" who "restore" or "refurbish" used devices. The definition that the guidance provides for these entities is now considered obsolete and the application of CGMP's in the guidance is contrary to current agency thinking, as discussed in section II.A and II.B of this document.

The July 1995 "Working Draft of the Current Good Manufacturing Practice (CGMP) Final Rule" contained definitions for the terms "refurbisher" and "servicing." It also included "refurbishers" and "servicers" within the definition of "manufacturer." This "working draft" was made available for public comment (60 FR 37856, July 15, 1996), and it was discussed extensively in written comments, in public and industry testimony, and in recommendations of FDA's GMP Advisory Committee during meetings in August and September 1995. Comments on the "working draft" claimed that using the "end-of-life" characteristic of a device to distinguish a "refurbisher's" activities from "servicing" activities was confusing, unnecessary, and raised legal and liability issues (see CGMP/QS final rule (61 FR 52609, October 7, 1996). The concerns of cost, equity, and competitive concerns were also raised regarding the regulation of "refurbishers," "servicers," and "third-party" service organizations (61 FR 52604 and 52640). Under these concerns, the terms "refurbisher," "servicer," and "servicing" were not included in the final CGMP/QS regulation, as they relate to entities outside the control of the original device manufacturer, even though FDA believes that "persons who perform such functions meet the definition of manufacturer" (61 FR 52610). FDA elected to address the application of CGMP requirements to "refurbishers" and "servicers" in a separate rulemaking (61 FR 52610 and 52611).

The agency focused, instead, on used-device processors making significant modifications to finished devices. The new term "remanufacturer" was added to the final regulation, included within the meaning of "manufacturer," and defined in 21 CFR 820.3(w) to mean "any person who processes, conditions, renovates, repackages, restores, or does any other act to a finished device that significantly changes the finished device's performance or safety specifications, or intended use." As a result of this rulemaking, the guidance in CPG 7124.28 has become obsolete because its terminology and application of CGMP requirements do not conform with the terms and applicability of the current CGMP/QS regulation. The CPG applies CGMP requirements to "reconditioners" or "rebuilders" who acquire ownership of used devices and "restore" and/or "refurbish" the devices to meet the device manufacturer's original or current specifications, or new specifications, prior to reselling or remarketing the used devices. The only term used in this guidance that is used in the current regulation is "restore." By virtue of acquiring ownership of the devices which they "restore" or "refurbish," the "reconditioners" or "rebuilders" identified in CPG 7124.28 would consist almost exclusively of entities who operate outside the control of the original device manufacturer. As noted previously, the terms "refurbisher" and "servicer," as they relate to such entities, are not found in the current regulation and their CGMP responsibilities are to be addressed by FDA in a separate rulemaking.

Thus, the guidance in CPG 7124.28 applies CGMP requirements to entities, i.e., "reconditioners/rebuilders," whose definition is obsolete and whose definition contains a term, "refurbishes," which the agency intends to consider defining in another context. Consequently, guidance in CPG 7124.28 applies CGMP's in a manner contrary to current agency thinking. For these reasons, then, and in conjunction with other used-device remarketing issues discussed in section II.B of this document. FDA is revoking rather than revising CPG 7124.28 in order to eliminate obsolete CGMP guidance, minimize confusion, and reduce attendant industry burdens.

B. Guidance Concerning the Applicability of Other Statutory and Regulatory Requirements

CPG 7124.28 applies registration, listing, premarket notification, labeling, and MDR reporting requirements to "reconditioners" or "rebuilders" of used devices. This portion of the guidance is likewise obsolete in applying statutory and regulatory requirements to a group of entities whose common definition is no longer considered relevant. Such guidance also does not represent current agency thinking, as discussed in section II.B of this document.

On the basis of industry concerns raised during CGMP rulemaking, FDA's knowledge of changes in the used-device market, and information on used-device "remarketers" and "servicers" obtained through the International Association of Medical Equipment Remarketers, FDA no longer believes that the processing, remarketing, or servicing of used devices should be characterized in terms of whether or not the processor acquires ownership of the device for purposes of resale or remarketing. FDA now believes that it may be more appropriate to identify and distinguish between the types of processing conducted on used devices on the basis of whether or not significant changes occur, or are made, in the performance or safety specifications or intended use of the finished device, as a result of the processing.

FDA has already incorporated its current thinking in the definition of "remanufacturer" that it added to the CGMP/QS regulation. The processing activities of a "remanufacturer" significantly change the safety, performance, or use of a finished device. In the ANPRM published in the December 23, 1997, **Federal Register** (62 FR 67011), FDA announced, and solicited public comment upon, its intention to further distinguish the used-device market, for regulatory purposes, in terms of processors whose activities do not significantly change the performance or safety specifications, or intended use of a finished device, in contrast to the activities of "remanufacturers." FDA preliminarily identified the activities of certain such processors, and solicited public comment and input on the tentative definitions it drafted and presented in the ANPRM, identifying the activities of "refurbishers," "as-is remarketers," and "servicers" of used devices. Public comment was also solicited concerning whether FDA should define such processors, or other types of processors identified following public comment, through rulemaking or the issuance of guidance, under the agency's "Good Guidance Practices" (GGP) policy (62 FR 8961, February 27, 1997).

FDA also announced in the December 23, 1997, ANPRM its intention to reexamine its options in regulating remarketers and servicers of used devices. FDA currently believes that it may be appropriate for the agency to apply certain regulatory controls to certain used-device processors, using alternative regulatory approaches, if their processing activities do not result in significant changes in the used device's safety or performance specifications, or intended use. Public comment and input were solicited concerning alternative regulatory approaches the agency might consider in applying regulatory controls upon the activities of "refurbishers," "as-is remarketers," and "servicers," or other types of used-device processors identified following comments. As a consequence of these agency actions, the guidance in CPG 7124.28 concerning the applicability of registration, listing, and other statutory and regulatory requirements to "reconditioners/rebuilders" of used devices is obsolete and no longer represents current agency thinking. Pending FDA's issuance of a rule or guidance setting forth the agency's current position on these matters, FDA is revoking, rather than revising CPG 7124.28 in its entirety in order to eliminate obsolete guidance, minimize confusion, and reduce attendant industry burdens.

Dated: October 23, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–32249 Filed 12–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2025–N]

RIN 0938–AJ07

Medicare Program; Recognition of NAIC Model Standards for Regulation of Medicare Supplemental Insurance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice describes changes made by the Balanced Budget Act of 1997 to section 1882 of the Social Security Act, which governs Medicare supplemental insurance. It also recognizes that the Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) on April 29, 1998, as corrected and clarified by HCFA, is considered to be the applicable NAIC Model Regulation for purposes of section 1882 of the Social Security Act. The changes made by HCFA (1) correct a drafting error in section 12.B(2) of the Model that is inconsistent with Federal law, and (2) add a clarification that copayments for hospital outpatient department services under Part B of Medicare must be covered under the "core benefits" of a Medicare supplemental insurance policy in the same manner as coinsurance for those services. Finally, this notice prints as an addendum the full text of the NAIC Model Regulation, as corrected and clarified by HCFA.

DATES: Medicare supplemental insurance policies issued in any State must conform to the requirements of section 1882(s)(3) of the Social Security Act as of July 1, 1998, and to the standards contained in the revised NAIC Model Regulation as of the date the State adopts the revised standards, which generally must be no later than April 29, 1999.

FOR FURTHER INFORMATION CONTACT: Terese Klitenic (410) 786–1565.

SUPPLEMENTARY INFORMATION:

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I. Background

A. The Medicare Program

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services for persons 65 years of age or older, disabled beneficiaries, and persons with end-stage renal disease. The Medicare program consists of two separate but complementary insurance programs, a hospital insurance program (Part A), which covers services furnished by hospitals, skilled nursing facilities, home health agencies and hospices; and a supplementary medical insurance program (Part B), which covers a wide range of medical services and supplies, including physicians' services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Part B also covers certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

While the Medicare program provides extensive hospital insurance benefits and supplementary medical insurance, it was not designed to cover the total cost of medical care for Medicare beneficiaries. Amounts payable under both Parts A and B are reduced by certain deductible and coinsurance amounts for which the beneficiary is responsible.

In 1998, the Part A inpatient hospital deductible is $764 ($768 for 1999) for each "benefit period" (the period beginning on the first day of hospitalization and extending until the beneficiary is no longer an inpatient of a hospital or skilled nursing facility for 60 consecutive days).

The Part B deductible is $100 for calendar years 1998 and 1999. Beneficiaries are also responsible for paying certain coinsurance amounts for covered items and services. For example, the coinsurance applicable to physicians' services under Part B is generally 20 percent of the Medicare-approved amount for the service. When beneficiaries receive covered services from physicians who do not accept assignment of their Medicare claims, the beneficiaries may also be required to pay amounts in excess of the Medicare approved amount ("excess charges"), up to a limit established under the Act.

There are a number of items and services that are not covered under either Part A or Part B; for example, custodial nursing home care, most dental care, eyeglasses, and most prescription drugs are not covered. Beneficiaries must pay the full cost of these items and services out-of-pocket or may purchase additional private insurance to help pay the costs.

Because Medicare does not cover the total cost of providing medical care, a substantial number of Medicare beneficiaries have some type of private health coverage. This coverage may include Medicare supplemental insurance, employer group health plans, hospital indemnity insurance, nursing home or long term care insurance, and specified disease insurance.

B. Medicare Supplemental Insurance

Medicare supplemental insurance policies, also known as "Medigap" policies, are designed to fill specific gaps in the original Medicare "fee-for-service" benefit structure. (They are not needed, and would not be usable, if Medicare benefits are obtained through an HMO or other type of managed care arrangement.) Medigap policies typically provide coverage for some or all of the deductible and coinsurance amounts applicable to Medicare-covered services, and sometimes cover items or services that are not covered by Medicare.

Section 1882 of the Act prohibits the sale of Medigap policies that do not conform to Federal statutory requirements. The statute also incorporates by reference, as part of the statutory requirements, certain minimum standards established by the National Association of Insurance Commissioners (NAIC). These minimum standards, known as the "NAIC Model Standards," are found in the "NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act," initially adopted by the NAIC on June 6, 1979. See section 1882(g)(2)(A) of the Act. In particular, the Model Standards, as revised in 1992 under the Omnibus Budget Reconciliation Act of 1990, prescribed 10 benefit packages. Under section 1882, Medigap policies generally may not be sold unless they conform to one of the 10 benefit packages, which are designated as plans "A" through "J."

Section 1882(b)(1) of the Act also provided that Medigap policies issued in a State would be deemed to meet the Federal requirements if the State's program regulating Medicare supplemental policies provided for the application of standards at least as stringent as those contained in the NAIC Model Regulation, and requirements equal to or more stringent than those set forth in section 1882 of the Act.

States must amend their regulatory programs to implement all of the new Federal statutory requirements, and applicable changes to the Model standards. However, States maintain the authority to enact provisions that are more stringent than those that are incorporated in the NAIC Model Regulation or in the statutory requirements. See section 1882(b)(1)(A) of the Act. States that have received a waiver under section 1882(p)(6) may continue to authorize the sale of policies that contain different benefits than the 10 standardized benefit packages. Massachusetts, Minnesota, and Wisconsin have received waivers; however, the three waiver States must still make the Balanced Budget Act of 1997 (BBA) conforming amendments. In particular, these States are subject to the statutory guaranteed issue requirements with respect to all Medicare beneficiaries who meet the criteria in section 1882(s)(3) for guaranteed issue. The only difference in the waiver States is that section 1882(3)(C)(iv) specifies that the statutory references to benefit packages (that is, in most cases, benefit packages designated "A", "B", "C" or "F") are deemed to be references to comparable benefit packages offered in the State with the waiver.

As provided in section 1882(p)(4)(B) of the Act, any State may continue to approve the addition of new or innovative benefits to an otherwise approved standardized plan.

Under section 1882(p)(5) of the Act, while a State must approve the core Plan "A" for sale in the State, it does not have to permit any or all of the other nine plans to be sold in the State. Therefore, the State need not permit the sale of each type of standardized plan, so long as the core plan is offered. Moreover, a State need not approve the sale of high deductible Plans "F" and "J" simply because it also permits sale of the standard deductible versions of either of these two plans.

In addition, section 1882(d) makes it unlawful in some circumstances for Medigap and certain other health insurance policies to be sold to a Medicare beneficiary if the sale results in duplicate coverage.

Section 1882(g)(1) of the Act defines Medicare supplemental policies. This definition excludes policies offered by an employer to employees or former employees and policies or plans offered by a labor organization to members or former members. HMOs, and other managed care plans that contract with Medicare under section 1876 of the Act or under a demonstration authority, as well as Medicare+Choice plans offered by organizations that contract under Part C of Medicare (see following discussion) are also excluded from the definition of a Medicare supplemental policy.

II. Legislative Changes

BBA created a new Part C of Medicare, commonly known as Medicare+Choice. This allows Medicare eligible individuals to avail themselves of a wide range of managed care options. Under the new Medicare+Choice program, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, may elect to receive benefits through either the existing Medicare fee-for-service program or a Part C Medicare+Choice plan. However, individuals choosing Medicare+Choice will not require the protections afforded under Medigap policies because their needs will be met under the Medicare+Choice program. Regulations for the new Part C Medicare+Choice program were published in a separate document on June 26, 1998 (63 FR 52610).

Section 4003(a)(1) of the BBA amended section 1882(d)(3)(A)(i) of the Act to provide that it is unlawful for a Medigap policy to be sold or issued to an individual who has elected to be enrolled in a Medicare+Choice plan when the seller has knowledge that the policy duplicates health benefits to which the individual is already entitled under Medicare+Choice or under another Medigap policy.

Section 4003(a)(3) of BBA also states that a Medicare+Choice plan is excluded from the definition of a Medicare supplemental policy.

Section 4031 of the BBA amended section 1882(s) of the Act, which governs guaranteed issue of Medigap policies. When an individual seeks to enroll in a specified Medigap policy within 63 days of the events described below, the issuer may not (1) deny or condition the issuance of a Medigap policy that is offered or available; (2) discriminate in the pricing of such a policy because of health status, claims experience, receipt of health care, or medical condition; or (3) impose a preexisting condition exclusion.

Involuntary Terminations of Coverage

For the following four classes of individuals, the specific policies subject to the guaranteed issue requirements are Medigap plans "A", "B", "C", or "F":

(a) Individuals enrolled under an employee welfare benefit plan that provides health benefits that supplement Medicare, if the plan terminates or ceases to provide all those benefits.

(b) Persons enrolled with a Medicare+Choice organization under a Medicare+Choice plan whose enrollment is discontinued under the following circumstances: (1) the organization's or plan's certification is terminated, or the organization has

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discontinued providing the plan in the area where the person resides; (2) the individual is no longer eligible to remain in the plan because of a change in circumstances, including a move outside of the entity's service area, but not including nonpayment of premiums or disruptive behavior; or (3) the individual demonstrates that the organization substantially violated a material contract provision or materially misrepresented the plan's provisions in marketing the plan to the individual.

(c) Persons enrolled with an HMO or other organization that has a risk or cost contract under section 1876 of the Act; with a health care prepayment plan under section 1833 of the Act; with a similar organization operating under a demonstration project authority; or under a Medicare SELECT policy (a type of Medigap policy in which an individual's choice of providers is restricted in return for a lower Medigap insurance premium). However, this only applies if enrollment ceases for the reasons set forth in (b) above and, in the case of a SELECT policy, there is no applicable provision under State law for continuation of the coverage.

(d) Individuals enrolled under a Medigap policy if enrollment ceases because of: (1) Bankruptcy or insolvency of the issuer or because of other involuntary termination of coverage and there is no provision under applicable State law for the continuation of the coverage; (2) the issuer of the policy substantially violated a material provision of the policy; or (3) the issue materially misrepresented the policy's provisions in marketing the policy to the individual. See section 4031(a)(3) of BBA.

Free Look at Managed Care

For the following class of individuals, the specific policies subject to the guaranteed issue requirements are the Medicare supplemental policy under which the individual was most recently enrolled if it is still available, or if this policy is not available from the previous issuer, Medigap plans "A," "B," "C," or "F." The following criteria must be met for the individual to qualify for guaranteed issue under this category: The individual (1) was covered under a Medigap policy; (2) subsequently terminated the policy and enrolled with a Medicare+Choice organization, with an HMO or other organization that has a contract under section 1876 of the Act, with a similar organization operating under a demonstration project authority, or purchased a Medicare SELECT policy; and (3) terminates enrollment in the Medicare+Choice or other organization, or the Medicare SELECT policy, described in (2) within 12 months after enrolling. However, this provision applies only if the individual had never previously been enrolled with any organization or policy mentioned in (2) above.

For the five classes of Medicare beneficiaries described above, the guaranteed issue requirements protect "individuals" whose previous coverage has been terminated. Before the enactment of the BBA, beneficiaries had only one opportunity to purchase a Medigap policy on a "guaranteed issue" basis. This opportunity was only available to beneficiaries who were age 65 or over, *and* was available during the 6-month period following the date that they were *both* age 65 or over *and* enrolled in Medicare Part B. There was no guaranteed open enrollment provision for individuals under age 65. However, in contrast to both the general open enrollment provision of section 1882(s)(2)(A) and the new guaranteed issue provision in section 1882(s)(3)(B)(vi) (discussed below), which specifically state that the protected "individual" must be at least age 65, the guaranteed issue provisions in section 1882(s)(3)(B) (i) through (v) do not contain an age restriction. Therefore, the latter provisions apply by their terms both to individuals eligible for Medicare based on age, and those whose eligibility is based on disability or ESRD. All of these individuals who meet the requirements set forth in the BBA qualify for its guaranteed issue protections with respect to policies that are offered and available to new enrollees. (In some situations policies may not be available to beneficiaries under 65. In other situations, a policy designated "B", "C," or "F" may not be available in a particular State.)

There is one additional class of beneficiaries who are entitled by the BBA amendments to a guaranteed issue Medigap policy. An individual who upon first becoming eligible for Medicare at age 65 enrolls in a Medicare+Choice plan, and later disenrolls from the plan within 12 months of the effective date of that enrollment, is entitled to guaranteed issue of *any* Medigap plan "A" through "J" under the same conditions described above (including that the individual must apply for the Medigap policy within 63 days of dropping the Medicare+Choice coverage, and may not be subject to a preexisting condition exclusion, or be subject to price discrimination based on health status).

Preexisting Condition Exclusion

Section 4031(b) of the BBA also limits the application of a preexisting condition exclusion for Medigap policies during the initial 6-month open-enrollment period for aged beneficiaries. Such an exclusion cannot be imposed on an individual who, on the date of application, had a continuous period of at least 6 months of health coverage defined as "creditable coverage" under title XXVII of the Public Health Service (PHS) Act, as added by title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). If the individual has less than 6 months coverage, the issuer must reduce the period of any preexisting condition exclusion by the aggregate of periods of "creditable coverage" applicable to the individual as of the enrollment date. The rules used to determine the reduction are based on rules used under section 2701 of the PHS Act.

The following information is provided for the convenience of the reader. A complete description of requirements under title XXVII of the PHS Act can be found at 45 CFR parts 144, 146, and 148. Under section 2701, a policy can only exclude coverage for a preexisting condition if medical advice, diagnosis, care, or treatment was recommended or received for the condition within the six months before the effective date of the Medigap policy.

HIPAA also added section 2701(c) of title XXVII of the PHS Act to define creditable coverage as coverage of the individual under any of the following: group health plan; health insurance coverage; Part A or B of Medicare; Medicaid; a medical care program of the Indian Health Service or a tribal organization; a State health benefits risk pool; a public health plan; the health care program for active military personnel; the Federal employees health benefit plan; and a health benefit plan under the Peace Corps Act. However, creditable coverage does not include policies consisting solely of coverage of excepted benefits, as described below. Creditable coverage must be continuous. This means the individual must have no breaks in coverage of greater than 63 days. If the break is greater than 63 days, a new period begins after the individual reacquires creditable coverage. See section 2701(c)(2) of the PHS Act.

An individual may demonstrate creditable coverage in several ways. First, group health plans, health insurance issuers, and certain other entities must furnish a certificate of creditable coverage after the coverage terminates. In some cases this will be when employment ends; in other cases it will be after exhaustion of "continuation coverage" under the Consolidated Omnibus Budget

Reconciliation Act of 1985 (Public Law 99–272) or under a similar State program. A certificate may also be obtained upon request by the individual. See section 2701(c) of the PHS Act. Creditable coverage can also be demonstrated if the individual attests to the existence of creditable coverage, and presents corroborating evidence (such as pay stubs with insurance deduction or explanation of benefits, or verification by a physician or former health care provider that the individual had health care coverage). The individual must cooperate in verifying the information.

Excepted benefits as defined in section 2791(c) of the PHS Act means benefits under one or more of the following: accident or disability income insurance; a supplement to liability insurance; workers' compensation insurance; liability insurance such as automobile medical payment insurance or general liability insurance; credit-only insurance; on-site medical clinics and other similar insurance coverage, under which benefits for medical care are secondary or incidental to other insurance benefits.

Other excepted benefits, if offered separately, include: Limited scope dental or vision benefits, long-term care, nursing home care, home health care, community-based care, or any combination of these. Other excepted benefits, if offered as independent, noncoordinated benefits, include specified disease or illness coverage and hospital indemnity, or other fixed indemnity insurance. Medicare supplemental insurance is also classified as an excepted benefit.

Long Term Care Insurance Policies

Section 4031(c) of the BBA also clarifies, through a technical amendment, that certain disclosure requirements apply only to long-term care insurance policies that do not coordinate with Medicare and Medicaid.

High Deductible Medigap Standard Policies

Section 4032 of the BBA adds two additional high deductible Medigap standard policies with benefit packages that are the same as Plans "F" and "J." The high deductible amount is $1,500 in 1998 and 1999. Out-of-pocket expenses, in this instance, are expenses that would ordinarily be paid by a Medigap policy. These expenses include the Medicare deductibles for Parts "A" and "B" but do not include, in Plan "J", the plan's separate prescription drug deductible of $250 or, in Plans "F" and "J," the plans" separate foreign travel emergency deductible of $250.

For subsequent years, the high deductible amount will be increased by the percentage increase in the Consumer Price Index for all urban consumers (all items; U.S. city average) for the 12-month period ending with August of the preceding year, rounded to the nearest multiple of $10. The beneficiary is responsible for payment of all expenses up to this amount.

Treatment of Hospital Outpatient Department Copayment

Section 4031(f) of the BBA also specifies that "copayment" amounts provided for under section 1833(t)(5) of the Act with respect to hospital outpatient department services shall be treated under Medigap policies "in the same manner as coinsurance with respect to such services." We have therefore clarified the Model by including a reference to coverage for copayments for hospital outpatient department services in section 8.B(5) of the Model, and in the cover page of the outline of coverage that immediately follows section 17.C(4) of the Model. For purposes of complying with Federal law, States must use this revised language.

III. Dates

The provisions added by section 4031 of the BBA have a number of different effective dates, as established in section 4031(d). There has also been confusion about the effective date of the guaranteed issue provisions related to Medicare+Choice plans.

Guaranteed Issue Provisions

Section 4031(a) of the BBA expanded the number of opportunities in which an individual can enroll in a Medigap policy on a "guaranteed issue" basis. It added section 1882(s)(3)(B), clauses (i) through (vi), to the Act to require that certain Medigap policies be offered to six categories of beneficiaries in specific circumstances. Section 4031(d)(1) of the BBA makes these provisions effective July 1, 1998.

Clause (ii) assures that individuals enrolled in Medicare+Choice plans are entitled to guaranteed issue of Medigap policies "A," "B," "C," and "F" if "there are circumstances permitting discontinuance of the individual's election of the [Medicare+Choice] plan under the first sentence of section 1851(e)(4)." This language caused confusion because of its cross-reference to the Medicare+Choice provisions in section 1851(e)(4). The latter provision is a Medicare+Choice provision, not a Medigap provision. Under the Medicare+Choice rules, starting in the year 2002, beneficiaries who elect to enroll in a Medicare+Choice plan will be subject to a "lock-in" provision. This means that they will only be able to change their Medicare+Choice election under certain circumstances. With certain exceptions, other than during an annual open enrollment period, individuals will not be able to change to other Medicare+Choice plans, or return to original, fee-for-service Medicare, except as described in section 1851(e)(4). Therefore, a beneficiary will not need a Medigap policy unless he or she is permitted to return to original Medicare. It is our understanding that the NAIC drafting note following section 12.B(2) of the Model was simply trying to explain to a "Medigap audience" why the Medigap requirement in clause (ii) cross-references a Medicare+Choice provision that will not itself be effective until 2002.

However, as a matter of Federal law, the guaranteed issue provision of clause (ii) takes effect July 1, 1998; continues in effect through and beyond 2002, and applies to any individual whose Medicare+Choice election terminates under the "circumstances" specified in subparagraphs (A) through (D) of section 1851(e)(4).

Clause (ii) of section 1882(s)(3)(B) conditions the right to a guaranteed issue Medigap policy on the "circumstances" that would (beginning in 2002) permit a beneficiary to change a Medicare+Choice election. These circumstances are contained in subparagraphs (A) through (D) of the first sentence of paragraph (e)(4). The clearest indication that this refers to the "circumstances" described in subparagraphs (A) through (D) of section 1851(e)(4), without incorporating the date that appears in the introductory clause of section 1851(e)(4), is that clause (iii) contains a virtually identical reference to "the circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of section 1851(e)(4)." Clause (iii) applies to termination of Medicare managed care contracts under section 1876 of the Act. These contracts include "risk" contracts under section 1876, which cease to exist as of December 31, 1998, because they will be replaced by Medicare+Choice contracts. Therefore, clause (iii) only makes sense if it is interpreted to refer to the "circumstances" described in subparagraphs (A) through (D) of section 1851(e)(4), without the incorporation of the 2002 date.

On October 16, 1998, the NAIC's Medicare Supplement Working Group issued a Memorandum to all NAIC members stating that it had recognized an inconsistency in the Model Regulation. The drafting note that follows subsection 12B(2), as adopted on April 29, 1998, stated that the guaranteed issue provisions do not become effective until January 1, 2002, for a person in a Medicare+Choice organization whose contract terminates. As discussed above, HCFA has determined, subsequent to the adoption of the Model Regulation by the NAIC, that this was a drafting inconsistency in the Model and that the provision became effective on July 1, 1998 along with the rest of the provisions. The NAIC has begun the process of amending the Model Regulation to eliminate the drafting error. Therefore, the Model Regulation, as set forth below, contains the corrected language as it has been proposed by the NAIC. For purposes of complying with Federal law, States must use this corrected language.

Other Provisions

Preexisting Condition Exclusions

The limit on preexisting condition exclusions added by section 4031(b) applies to policies issued on or after July 1, 1998. See section 4031(d) of the BBA.

Long-Term Care Provision

The long-term care policy disclosure provision (section 4031(c) of the BBA) is effective July 1, 1997, as if included in HIPAA. See section 4031(d)(3) of the BBA. For purposes of disclosure, policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.

Changes to Conform to Medicare+Choice

The changes made by section 4003 of the BBA became effective on August 8, 1997, the date of enactment of the BBA.

Dates Applicable to Action by the NAIC

Section 4031(e)(2) of the BBA specified that if, within 9 months of enactment of the BBA, the NAIC modified its "Model Regulation" to conform to the BBA amendments, then the revised regulation would apply for purposes of section 1882. The NAIC adopted the revised standards on April 29, 1998.

Dates Applicable to Actions by the States

Each State is required to change its statutes or regulations to conform its regulatory program to the revised standards set forth in the NAIC Model Regulation, in order for Medigap policies to continue to be sold in that State. This action generally must be taken within 1 year after the date of adoption of the revised NAIC standards, that is, by April 29, 1999. In general, a State will not be deemed out of compliance solely due to failure to make changes before that date. See section 4031(e)(1) of the BBA. The statute provides an exception for States that we identify as requiring new legislation to implement the standards but whose legislatures are not scheduled to meet in 1999 in a session at which these matters may be considered. See section 4031(e)(4)(B) of the BBA.

For States that fall within this exception, section 4031(e)(4)(B) of the BBA provides that a State will not be deemed out of compliance until the first day of the first quarter following the end of the first legislative session that begins on or after July 1, 1999. This section also provides that, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

Accordingly, the standards in the Model Regulation apply to Medicare supplemental policies issued in a State on or after April 29, 1999, or an earlier date on which a State adopts the standards, unless the State of issuance has a legislature that does not meet during that timeframe.

Separate notification letters were sent to the States by HCFA regional offices. States should notify the regional offices by letter when the State law conforms to the NAIC model.

IV. Publication of List for Standardized Benefit Packages

We are publishing the list of standardized benefit packages, including Plans "F" and "J," which will now be available in standard as well as high deductible forms. The following is a summary of the coverages available. This list of standardized Medicare supplemental benefit packages is contained in section 9.E of the revised Model Regulation adopted by the NAIC on April 29, 1998, which is reprinted at the end of this notice. Section 16 of the Model Regulation includes a chart that outlines the benefits covered in each of the 10 standardized Plans "A" through "J."

Because it is necessary to refer to more than one section of the NAIC Model Regulation to determine the content of each standardized benefit package, we are providing the following summary of the 10 packages.

Plan "A" (Core Benefit Plan) (NAIC Model Section 9.E.(1))

The Core Benefit Plan includes the following:

- Coverage for the Part A coinsurance amount for day 61 through day 90 of hospitalization in each Medicare benefit period.
- Coverage for the Part A coinsurance amount for each of Medicare's 60 non-renewable lifetime hospital inpatient reserve days used.
- After all Medicare hospital benefits are exhausted, coverage for 100 percent of the Medicare Part A eligible hospital expenses. Coverage is limited to a maximum of 365 days of additional inpatient hospital care during the policyholder's lifetime.
- Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood per calendar year.
- Coverage for the coinsurance amount for Part B services, or, in the case of hospital outpatient department services, the applicable copayment, (generally 20 percent of the approved amount) after the $100 deductible is met. (Note that Plan A provides no coverage for benefits described in paragraphs (1) through (11) of NAIC Model Section 8.C.: the Part A inpatient hospital deductible (in 1998, $764 for each Medicare benefit period; $768 in 1999); the Part B deductible ($100 each year); Part A coinsurance for post-hospital skilled nursing facility care; Part B charges in excess of Medicare-approved amounts; non-Medicare-covered prescription drugs, preventive services, at-home recovery services, or services received in a foreign country; or new or innovative benefits approved by the State insurance commissioner or by HCFA.)

Plan "B" (NAIC Model Section 9.E.(2))

- The core benefits; and
- The Part A inpatient hospital deductible.

Plan "C" (NAIC Model Section 9.E.(3))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- The Part B annual deductible; and
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000.

Plan "D" (NAIC Model Section 9.E.(4))

- The core benefits;

- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000; and
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in the NAIC Model.

Plan "E" (NAIC Model Section 9.E.(5))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000; and
- Preventive health services not covered by Medicare, subject to a $120 maximum annual benefit.

Plan "F" (NAIC Model Section 9.E.(6))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- The Part B annual deductible;
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge); and
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000.

Plan "F" High Deductible (NAIC Model Section 9.E.(7))

The high deductible plan pays the same or offers the same benefits as Plan "F" after the beneficiary has paid a calendar year deductible ($1,500 in 1998 and 1999). Benefits from the high deductible Plan "F" will not begin until out-of-pocket expenses are equal to the deductible ($1,500). Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B but does not include the plan's separate foreign travel emergency deductible.

Plan "G" (NAIC Model Section 9.E.(8))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- Eighty percent of Part B excess charges (80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge);
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000; and
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in the NAIC Model Regulation.

Plan "H" (NAIC Model Section 9.E.(9))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000; and
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $1,250 in benefits per calendar year.

Plan "I" (NAIC Model Section 9.E.(10))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge);
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000;
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in the NAIC Model Regulation; and
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $1,250 in benefits per calendar year.

Plan "J" (NAIC Model Section 9.E.(11))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- The Part B annual deductible;
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge);
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum of $50,000;
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in the NAIC Model Regulation;
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $3,000 in benefits per calendar year; and
- Preventive health services not covered by Medicare, subject to a $120 maximum annual benefit.

Plan "J"-High Deductible (NAIC Model Section 9.E.(12)

The high deductible plan pays the same or offers the same benefits as Plan "J" after a beneficiary has paid a calendar year deductible ($1,500 in 1998 and 1999). Benefits from the high deductible Plan "J" will not begin until

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out-of-pocket expenses are equal to the deductible ($1,500). Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible, or the plan's separate foreign travel emergency deductible.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, some insurance companies are considered to be small entities. Small entities are nonprofit organizations, local and municipal government entities, and entities defined by the Small Business Administration as small businesses (firms with fewer than 500 employees). Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Approximately 360 insurance companies offer Medigap policies. About half of the 360 insurance companies might be considered small entities.

All 50 States and the 360 insurance companies are affected by the revised standards described in this notice. Under these changes, insurers will now have to accept people in poorer health that the insurers could have rejected before. If there are delays before the insurance companies can raise rates to accommodate this change, or if the State does not let the insurance companies raise rates, there will be a cost to those companies. However, of the beneficiaries in poor health and meeting the criteria in the statute, we do not know how many of those who could have been rejected before will apply for Medigap insurance. As a result, we do not know the financial impact this may have on insurance companies selling Medigap insurance.

The costs of implementing the new NAIC standards will include the codifying of changes in State insurance law or regulation to comply with the changes, and the modifying of insurance policies and notifying of the insured of the additional protections included in the changes to the NAIC Model Regulation. Any costs attributable to the NAIC regulatory changes are essentially mandated by the States, the Congress, and insurance companies.

There are benefits from the revised standards for Medicare beneficiaries. The additional protections will afford them increased access to Medigap insurance while providing separate opportunities to take advantage of the new Medicare+Choice program. Additionally, Medicare beneficiaries who enroll in the Medicare+Choice program but wish to leave the program, in many instances, will have the opportunity to reenroll in a Medigap policy if they choose to return to the traditional Medicare fee-for-service program.

This notice itself does not impose any requirements or result in costs or benefits. The purpose of the notice is to merely inform the public of the revised standards.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice and the standards will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In addition, this notice and the standards have been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. We estimate that implementation of the new NAIC standards will not require the expenditure of more than $100 million by the private sector. Therefore, we are not required to prepare a cost-benefit analysis of private sector expenditures, since this notice is not a significant regulatory action within the meaning of the UMRA.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 1882 of the Social Security Act (42 U.S.C. 1395(ss)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 24, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act

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Section 1. Purpose

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner under [cite appropriate section of state law providing authority for minimum benefit standards regulations or the NAIC Medicare Supplement Insurance Minimum Standards Model Act].

Editor's Note: Wherever the term "commissioner" appears, the title of the chief insurance regulatory official of the state should be inserted.

Section 3. Applicability and Scope

A. Except as otherwise specifically provided in Sections 7, 12, 13, 16 and 21, this regulation shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 4. Definitions

For purposes of this regulation:

A. *Applicant* means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificateholder.

B. *Bankruptcy* means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. *Certificate* means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

D. *Certificate form* means the form on which the certificate is delivered or issued for delivery by the issuer.

E. *Continuous period of creditable coverage* means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

F. (1) *Creditable coverage* means, with respect to an individual, coverage of the individual provided under any of the following:

(a) A group health plan;

(b) Health insurance coverage;

(c) Part A or Part B of Title XVIII of the Social Security Act (Medicare);

(d) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928;

(e) Chapter 55 of Title 10 United States Code (CHAMPUS);

(f) A medical care program of the Indian Health Service or of a tribal organization;

(g) A State health benefits risk pool;

(h) A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(i) A public health plan as defined in federal regulation; and

(j) A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

(2) *Creditable coverage* shall not include one or more, or any combination of, the following:

(a) Coverage only for accident or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for on-site medical clinics; and

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) *Creditable coverage* shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(a) Limited scope dental or vision benefits;

(b) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(c) Such other similar, limited benefits as are specified in federal regulations.

(4) *Creditable coverage* shall not include the following benefits if offered as independent, noncoordinated benefits:

(a) Coverage only for a specified disease or illness; and

(b) Hospital indemnity or other fixed indemnity insurance.

(5) *Creditable coverage* shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(a) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(b) Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(c) Similar supplemental coverage provided to coverage under a group health plan.

Drafting Note: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) specifically addresses separate, noncoordinated benefits in the group market at PHSA § 2721(d)(2) and the individual market at § 2791(c)(3). HIPAA also references excepted benefits at PHSA §§ 2701(c)(1), 2721(d), 2763(b) and 2791(c). In addition, creditable coverage will be addressed in regulations issued by the Secretary pursuant to HIPAA.

G. *Employee welfare benefit plan* means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).

H. *Insolvency* means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

Drafting Note: If the state law definition of insolvency differs from the above definition, please insert the state law definition.

I. *Issuer* includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

J. *Medicare* means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

K. *Medicare+Choice plan* means a plan of coverage for health benefits under Medicare Part C as defined in [refer to definition of Medicare+Choice plan in Section 1859 found in Title IV, Subtitle A, Chapter 1 of P.L. 105–33], and includes:

(1) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations,

and preferred provider organization plans;

(2) Medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and

(3) Medicare+Choice private fee-for-service plans.

L. *Medicare supplement policy* means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations], other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et. seq.) or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

Drafting Note: OBRA 1990 contained an exception from this definition for policies issued pursuant to an agreement under Section 1833 (42 U.S.C. 1395l) of the federal Social Security Act. The Social Security Act Amendments of 1994 eliminated the exemption for Section 1833 plans effective December 31, 1995. These plans, commonly known as health care prepayment plans (HCPPs), arrange for certain Part B services on a pre-paid basis. The federal law continues to authorize HCPP agreements. However, since they are now included in the federal definition of a Medicare supplement policy, HCPPs are subject to the requirements of this model, unless they are exempt under Section 3B. In states authorized for the Medicare Select program, these plans may be able to comply with Medicare supplement requirements.

M. *Policy form* means the form on which the policy is delivered or issued for delivery by the issuer.

N. *Secretary* means the Secretary of the United States Department of Health and Human Services.

Section 5. Policy Definitions and Terms

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section.

A. *Accident, accidental injury,* or *accidental means* shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. *Benefit period* or *Medicare benefit period* shall not be defined more restrictively than as defined in the Medicare program.

C. *Convalescent nursing home, extended care facility,* or *skilled nursing facility* shall not be defined more restrictively than as defined in the Medicare program.

D. *Health care expenses* means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

Expenses shall not include:

(1) Home office and overhead costs;

(2) Advertising costs;

(3) Commissions and other acquisition costs;

(4) Taxes;

(5) Capital costs;

(6) Administrative costs; and

(7) Claims processing costs.

E. *Hospital* may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. *Medicare* shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89–97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. *Medicare eligible expenses* shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

H. *Physician* shall not be defined more restrictively than as defined in the Medicare program.

I. *Sickness* shall not be defined to be more restrictive than the following:

> "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

Section 6. Policy Provisions

A. Except for permitted preexisting condition clauses as described in Section 7A(1) and Section 8A(1) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare.

Section 7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to [insert effective date adopted by state]

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

Drafting Note: This section has been retained for transitional purposes. The purpose of this section is to govern all policies issued prior to the date a state makes its revisions to conform to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting

condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

Drafting Note: States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

Drafting Note: This provision was prepared so that premium changes can be made based upon the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision so as to coincide with their particular authority.

(4) A "noncancellable, "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5) (a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8B of this regulation.

Drafting Note: Group contracts in force prior to the effective date of the Omnibus Budget Reconciliation Act (OBRA) of 1990 may have existing contractual obligations to continue benefits contained in the group contract. This section is not intended to impair such obligations.

(c) If membership in a group is terminated, the issuer shall:

(i) Offer the certificateholder the conversion opportunities described in Subparagraph (b); or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

Drafting Note: Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

B. Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [$100];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Section 8. Benefit Standards for Policies or Certificates Issued or Delivered on or After [insert effective date adopted by state]

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after [insert effective date]. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

Drafting Note: States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

Drafting Note: This provision was prepared so that premium changes can be made based on the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision to conform with their particular authority.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8A(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder)

(i) Provides for continuation of the benefits contained in the group policy, or

(ii) Provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificateholder the conversion opportunity described in Section 8A(5)(c), or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

Drafting Note: Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(7) (a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Reinstitution of coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

B. Standards for Basic (Core) Benefits Common to All Benefit Plans.

Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount (or, in the case of hospital outpatient department services, the copayment amount) of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this regulation.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty Percent (80%) of the Medicare Part B Excess Charges: Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit: Coverage for the following preventive health services:

(a) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (b) and patient education to address preventive health care measures.

(b) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(1) Fecal occult blood test or digital rectal examination, or both;

(2) Mammogram;

(3) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;

(4) Pure tone (air only) hearing screening test, administered or ordered by a physician;

(5) Serum cholesterol screening (every five (5) years);

(6) Thyroid function test;

(7) Diabetes screening.

(c) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster (every ten (10) years).

(d) Any other tests or preventive measures determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations.

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of $40 per visit;

(III) $1,600 per calendar year;

(IV) Seven (7) visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in this section;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

(11) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

Drafting Note: The Omnibus Budget Reconciliation Act 1990, 42 U.S.C. § 1395ss(p)(7), does not prohibit the issuers of Medicare supplement policies, through an arrangement with a vendor for discounts from the vendor, from making available discounts from the vendor to the policyholder or certificateholder for the purchase of items or services not covered under its Medicare supplement policies (for example: discounts on hearing aids or eyeglasses).

Drafting Note: Use of new or innovative benefits may be appropriate to add coverage

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or access to such benefits as prescription drugs, at-home recovery services and preventive medical care. Any such innovative benefit, however, should offer uniquely different or significantly expanded coverage

Drafting Note: The NAIC discussed including inflation protection for prescription drugs, at-home recovery benefits, and preventive care benefits. However, because of the lack of an appropriate mechanism for indexing these benefits, NAIC has not included indexing at this point in time. However, NAIC is committed to evaluating the effectiveness of these benefits without inflation protection, and will revisit the issue. NAIC has determined that OBRA does not authorize NAIC to delegate the authority for indexing these benefits to a federal agency without an amendment to federal law.

Section 9. Standard Medicare Supplement Benefit Plans

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Section 8B of this regulation.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Section 8C(11) and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "J" listed in this subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8B and 8C and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law.

Drafting Note: It is anticipated that if a state determines that it will authorize the sale of only some of these benefit plans, the letter codes used in this regulation will be preserved. The Guide to Health Insurance for People with Medicare" published jointly by the NAIC and the Health Care Financing Administration will contain a chart comparing the ten possible combinations. In order for consumers to compare specific policy choices, it will be important that a uniform "naming" system be used. Thus, if only plans "A," "B," "D," "F" and "H" (for example) are authorized in a state, these plans should retain these alphabetical designations. However, an issuer may use, in addition to these alphabetical designations, other designations as provided in Section 9D of this regulation.

E. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as defined in Section 8B of this regulation.

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible as defined in Section 8C(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: The core benefit (as defined in Section 8B of this regulation), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in an foreign country and the at-home recovery benefit as defined in Sections 8C (1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Sections 8C (1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (3), (5) and (8) respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Sections 8C (1), (2), (4), (8) and (10) respectively.

(9) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (6) and (8) respectively.

(10) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Sections 8C (1), (2), (5), (6), (8) and (10) respectively.

(11) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Sections 8C (1), (2), (3), (5), (7), (8), (9) and (10) respectively.

(12) Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Sections 8C (1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

Drafting Note: A state may determine by statute or regulation which of the above benefit plans may be sold in that state. The core benefit plan must be made available by all issuers. Therefore, the core benefit plan must be one of the authorized benefit plans adopted by a state. In no event, however, may a state authorize the sale of more than 10 standardized Medicare supplement benefit plans (that is, 9 plus the core policy), plus the two (2) high deductible plans, at the same time.

Drafting Note: The Omnibus Budget Reconciliation Act of 1990 preempts state mandated benefits in Medicare supplement policies or certificates, except for those states which have been granted a waiver for nonstandardized plans.

Section 10. Medicare Select Policies and Certificates

A. (1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

Drafting Note: This section should be adopted by states designated by the Secretary of Health and Human Services to participate in the Medicare Select Program. Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (section 1882(t) of Title XVIII of the Social Security Act) authorized a three-year, fifteen-state program with states to be designated by the Secretary. Additional states may be authorized by future changes to federal law to apply the Medicare Select Program requirements to existing preferred provider arrangements.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) *Complaint* means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) *Grievance* means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) *Medicare Select issuer* means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) *Medicare Select policy* or *Medicare Select certificate* mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) *Network provider* means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) *Restricted network provision* means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) *Service area* means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(e) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) The formal organizational structure;

(b) The written criteria for selection, retention and removal of network providers; and

(c) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection I.

(7) Any other information requested by the commissioner.

F. (1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after thirty (30) days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) It is not reasonable to obtain services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) Other Medicare supplement policies or certificates offered by the issuer; and

(b) Other Medicare Select policies or certificates.

(2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M. (1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Section 11. Open Enrollment

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

B. (1) If an applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

Drafting Note: The Secretary has developed regulations pursuant to HIPAA regarding methods of counting creditable coverage, which govern the way the reduction is to be applied in Section 11B(2).

C. Except as provided in Subsection B and Section 23, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

Section 12. Guaranteed Issue for Eligible Persons

A. Guaranteed Issue—(1) Eligible persons are those individuals described in subsection B who apply to enroll under the policy not later than sixty-three (63) days after the date of the termination of enrollment described in subsection B, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection C that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons—An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

Drafting Note: Paragraph (1) above uses the federal legislative language from the Balanced Budget Act of 1997 (P.L. 105–33) that defines an eligible person as an individual with respect to whom an employee welfare benefit plan terminates, or ceases to provide "all" health benefits that supplement Medicare. There was protracted discussion among the drafters about the interpretation of "all" in this context: if the employer drops some supplemental benefits, but not all such benefits, from its welfare plan, should the individual be eligible for a guaranteed issue Medicare supplement product? This question may become crucial to certain individuals depending on the benefits dropped by the employer. Federal legislative history appears to indicate the intention that the word "all" be strictly construed so as to require termination or cessation of all supplemental health benefits. States, however, can provide greater protections to beneficiaries and may wish to include, as eligible persons, individuals who have lost "some or all" or "substantially all" of their supplemental health benefits, to encompass situations where a change is made in an employee welfare benefit plan that reduces the amount of supplemental health benefits available to the individual. States that consider alternative language are reminded to consider the impact of issues such as plan changes that result in adverse selection, duplicate coverage, triggering the requirement for plan administrator notice (see Section 12D) and other issues.

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply:

(i) The organization's or plan's certification (under this part) has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(ii) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(iii) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iv) The individual meets such other exceptional conditions as the Secretary may provide."

(3) (a) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 (Medicare risk or cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Section 12B(2).

Drafting Note: Section 3(a)(iv) above is not required if there is a provision in state law or regulation that provides for the continuation or conversion of Medicare Select policies or certificates.

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a) (i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy;

(b) The issuer of the policy substantially violated a material provision of the policy; or

(c) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

Drafting Note: The reference to "insolvency of the issuer" in Paragraph 4(a) above is not required if there is a provision in state law or regulation that provides for the continuation or conversion of Medicare supplement policies or certificates. The reference to "substantially violated a material provision of the policy" in Paragraph 4(b) above is expected to be amplified by the Secretary when federal regulations are issued pursuant to the Balanced Budget Act of 1997 (P.L. 105–33).

(5) (a) The individual was enrolled under a Medicare supplement policy

and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876 (Medicare risk or cost), any similar organization operating under demonstration project authority, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and

(b) The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act); or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in a Medicare+Choice plan under part C of Medicare, and disenrolls from the plan by not later than twelve (12) months after the effective date of enrollment.

Drafting Note: Federal law provides a guaranteed issue right to a Medicare supplement insurance product to individuals who enroll in Medicare Part B at age 65. States may wish to consider extending this right to other classes of individuals, such as those who postpone enrollment in Medicare Part B until after age 65 because they are working and are enrolled in a group health insurance plan.

C. Products to Which Eligible Persons are Entitled—The Medicare supplement policy to which eligible persons are entitled under:

(1) Section 12B(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

(2) Section 12B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection C(1).

(3) Section 12B(6) shall include any Medicare supplement policy offered by any issuer.

Drafting Note: Under federal law, for states that are exempted from standardization and offer benefit packages other than Plans A through J, the references to benefit packages above are deemed references to comparable benefit packages offered in that state. Those states should amend the language accordingly.

D. Notification provisions—(1) At the time of an event described in Subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 12A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

Drafting Note: States should ensure that educational and public information materials it develops related to Medicare includes a thorough description of the rights outlined in Section 12D.

Section 13. Standards for Claims Payment

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. No. 100–203) by:

(1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) Paying the participating physician or supplier directly;

(4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

Section 14. Loss Ratio Standards and Refund or Credit of Premium

A. Loss Ratio Standards—(1)(a) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(i) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or

(ii) At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies;

(b) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying Subsection A(1) of this section and Subsection C(3) of Section 15 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

Drafting Note: Subsection A(3) replicates language contained in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–508). It allows direct mail group policies sold on an individual basis to meet the minimum loss ratio required of individual business (65%) rather than that required of group business (75%). The NAIC eliminated this concept from this regulation in 1987 (I Proceedings of the NAIC, pp. 651, 673

(1988)). At that time, NAIC required direct mail group business to meet the same loss ratio requirement as other group business, regardless of whether the business was sold on an individual basis. The NAIC encourages states to apply the 75% loss ratio to all group business. Although NAIC is restricted from making revisions to its models that are not in conformance with OBRA 1990, states are free to impose more stringent requirements than OBRA.

(4) For policies issued prior to [insert effective date from Section 24 of this model, the effective date of the states regulation implementing the requirements of OBRA 1990], expected claims in relation to premiums shall meet:

(a) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) when combined with actual experience beginning with [insert effective date of this revision] to date; and

(c) The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

Drafting Note: The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) for all group policies subject to an individual loss ratio standard when issued is 65 percent. States may amend Section 13A(4) to permit or require aggregation of closed blocks of business upon approval of the Health Care Financing Administration.

B. Refund or Credit Calculation—(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to [insert effective date from Section 24 of this model, the effective date of the states regulation implementing the requirements of OBRA 1990], the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after the [insert effective date of this amendment]. The first report shall be due by May 31, [insert (effective year + 2) of this amendment].

Drafting Note: Subsection B(3) implements the requirements of Section 171 of the Social Security Act Amendments of 1994 that require a refund or credit calculation for pre-standardized Medicare supplement policies, but only for experience subsequent to the date the state amends its regulation.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of Premium Rates—An issuer of Medicare supplement policies and certificates issued before or after the effective date of [insert citation to state's regulation] in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(1)(a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings—The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of [insert citation to state's regulation] if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

Drafting Note: This section does not in any way restrict a commissioner's statutory authority, elsewhere granted, to approve or disapprove rates.

Section 15. Filing and Approval of Policies and Certificates and Premium Rates

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

C. (1) Except as provided in Paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) The inclusion of new or innovative benefits;

(b) The addition of either direct response or agent marketing methods;

(c) The addition of either guaranteed issue or underwritten coverage;

(d) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D. (1) Except as provided in Paragraph (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

E. (1) Except as provided in Paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in [insert citation to Section 13 of NAIC Medicare Supplement Insurance Model Regulation].

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Drafting Note: It has come to the attention of the NAIC that the use of attained age rating in the determination of rates in Medicare supplement policies may result in situations to which a regulatory response is desirable. States should assess their Medicare supplement marketplace to determine whether a regulatory response is needed. The following provisions may be included as a new subsection to Section 14. The first option prohibits insurers from attained age rating as a methodology for setting rates. The second option does not prohibit the use of attained age rating but requires Medicare supplement insurers who do use attained age rating as a rate setting methodology to apply the age component to its rates annually. The effective date of the regulation should provide sufficient time for insurers to re-rate approved policy forms in accordance with Section 14A and for the insurance department to approve (according to its rate filing practices and procedures), such re-ratings prior to the effective date of the regulation.

Option 1

F. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon attained age rating as a structure or methodology.

Option 2

F. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.

Section 16. Permitted Compensation Arrangements

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.

C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

Section 17. Required Disclosure Provisions

A. General Rules—(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) (a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements—(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(b) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

C. Outline of Coverage Requirements for Medicare Supplement Policies—(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and (2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

> **Notice:** Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans A–J shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The following items shall be included in the outline of coverage in the order prescribed below.

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page:
Benefit Plans _______ [insert letters of plans being offered]

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

Basic Benefits: Included in All Plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses), or, in the case of hospital outpatient department services, applicable copayments.

Blood: First three pints of blood each year.

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A	B	C	D	E	F F*	G	H	I	J J*
Basic Benefits.	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care					Preventive Care

* Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year $[1500] deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are $[1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in plan J, the plan's separate prescription drug deductible or, in Plans F and J, the plan's separate foreign travel emergency deductible.

PREMIUM INFORMATION [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

DISCLOSURES [Boldface Type]

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY [Boldface Type]

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY [Boldface Type]

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT [Boldface Type]

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE [Boldface Type]

This policy may not fully cover all of your medical costs.

[For agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[For direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult *"The Medicare Handbook"* for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 9D of this regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

PLAN A—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$0	$[764] (Part A deductible)
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0

PLAN A—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	Plan pays	You pay
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	0	Up to $[95.50] a day 3
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN A—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts.	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare approved services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment First $100 of Medicare Approved Amounts*.	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN B—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764](Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0

PLAN B—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	Plan pays	You pay
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	0	Up to $[95.50] a day
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN B—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts.*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts.*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood Test for Diagnostic Services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare approved services:			
Medically necessary skilled care services and medical supplies.	100%	0	0
Durable medical equipment			
First $100 of Medicare Approved Amounts.*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0

* Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN C—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764](Part A deductible)	$0

PLAN C—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	Plan pays	You pay
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care.	0	Balance

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN C—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts *	$0	$100 (Part B deductible)	$0
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs
Blood			
First 3 pints	0	All costs	[illegible]
Next $100 of Medicare Approved Amounts *	0	100 (Part B deductible)	[illegible]
Remainder of Medicare Approved Amounts	80%	20%	[illegible]
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	[illegible]

PARTS A & B

Services	Medicare pays	Plan pays	You pay
Home Health Care			
Medicare approved services:			
—Medically necessary skilled care services and medical supplies.	100%	0	[illegible]
—Durable medical equipment First $100 of Medicare Approved Amounts *.	0	100 (Part B deductible)	[illegible]
Remainder of Medicare Approved Amounts	80%	20%	[illegible]

OTHER BENEFITS—NOT COVERED BY MEDICARE

Services	Medicare pays	Plan pays	You pay
Foreign Travel			
Not covered by Medicare:			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	[illegible]

PLAN C—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
Remainder of Charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum.

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN D—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day $0	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN D—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0

PARTS A & B

Home Health Care			
Medicare approved services:			

PLAN D—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
At-home recovery services—not covered by Medicare:			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
—Benefit for each visit	0	Actual charges to $40 a visit.	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit).	0	Up to the number of Medicare Approved visits, not to exceed 7 each week.	
—Calendar year maximum	0	1,600	
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered by Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN E—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part deductible	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While Using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN E—MEDICARE (PART B)—MEDICAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts [1]	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts [1]	0	0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic service	100%	0	0
PARTS A & B			
Home Health Care			
Medicare approved services:			
Medically necessary skilled care services and medical supplies	100%	0	0
—Durable medical equipment First $100 of Medicare Approved Amounts [1].	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered By Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum
Preventive Medical Care Benefit—Not Covered by Medicare [2]			
Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare:			
First $120 each calendar year	0	120	0
Additional charges	0	0	All costs

[1] Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

[2] Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

PLAN F OR HIGH DEDUCTIBLE PLAN F—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	After you pay $1500 deductible,[2] plan pays	In addition to $1500 deductible,[2] you pay
Hospitalization [1]			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
Once lifetime reserve days are used:			
Additional 365 days	0	100% of Medicare eligible expenses.	0
Beyond the additional 365 days	0	0	All costs

PLAN F OR HIGH DEDUCTIBLE PLAN F—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	After you pay $1500 deductible,[2] plan pays	In addition to $1500 deductible,[2] you pay
Skilled Nursing Facility Care [1]			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance
MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR			
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare approved amounts [1]	0	100 (Part B deductible	0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	0
Part B excess charges (Above Medicare approved amounts).	0	100%	0
BLOOD			
First 3 pints	0	All costs	0
Next $100 of Medicare approved amounts [1]	0	100 (Part B deductible	0
Remainder of Medicare approved amounts	80	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare approved services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare approved amounts [2]	0	100 (Part B deductible	0
Remainder of Medicare approved Amounts	80%	20%	0
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered by Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 life-time maximum

[1] A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[2] This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [$1500] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are [$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

PLAN G—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

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* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN G—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	80%	20%
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0

PARTS A & B

Services	Medicare pays	Plan pays	You pay
Home Health Care			
Medicare approved services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
At-home recovery services—not covered by Medicare			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
—Benefit for each visit	0	Actual charges to $40 a visit.	Balance

PLAN G—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit).	0	Up to the number of Medicare-approved visits, not to exceed 7 each week.	
—Calendar year maximum	0	1,600	
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel			
Not covered by Medicare:			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of Charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum.

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN H—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:.			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN H—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs

PLAN H—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
Blood			
First 3 pints	0	All costs	[illegible]
Next $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	[illegible]	[illegible]
PARTS A & B			
Home Health Care			
Medicare Approved Services:			
—Medically necessary skilled care services and medical supplies.	100%	[illegible]	[illegible]
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel			
Not covered by Medicare—Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	[illegible]	[illegible]	250
Remainder of charges	[illegible]	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum
Basic Outpatient Prescription Drugs—Not Covered by Medicare			
First $250 each calendar year	[illegible]	0	250
Next $250 each calendar year	[illegible]	50%—$1,250 calendar year maximum benefit.	50%
Over $2,500 each calendar year	[illegible]	0	All costs

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

PLAN I—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	[illegible]
—Once lifetime reserve days are used:			
—Additional 365 days	[illegible]	100% of Medicare eligible expenses.	[illegible]
—Beyond the additional 365 days	[illegible]	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	[illegible]	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
1st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0

PLAN I—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	Plan pays	You pay
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN I—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts *	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	100%	0
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts *	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood test for diagnostic services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare Approved Services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare Approved Amounts *	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
At-Home Recovery Services—Not Covered By Medicare—Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
—Benefit for each visit	0	Actual charges to $40 a visit.	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit)	0	Up to the number of Medicare-approved visits, not to exceed 7 each week.	
—Calendar year maximum	0	1,600	
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered By Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum
Basic Outpatient Prescription Drugs—Not Covered by Medicare			
First $250 each calendar year	0	0	250
Next $250 each calendar year	0	50%—$1,250 calendar year maximum benefit.	50%

PLAN I—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
Over $2,500 each calendar year	$0	$0	All costs

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN J OR HIGH DEDUCTIBLE PLAN J—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	After you pay $1500 deductible,** plan pays	In addition to $1500 deductible,** you pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

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*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [$1500] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are [$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

PLAN J OR HIGH DEDUCTIBLE PLAN J—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	After you pay $1500 deductible,** plan pays	In addition to $1500 deductible,** you pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	100%	0
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts.*	0	$100 (Part B deductible)	0
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0

PLAN J OR HIGH DEDUCTIBLE PLAN J—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	After you pay $1500 deductible,** plan pays	In addition to $1500 deductible,** you pay
	PARTS A & B		
Home Health Care			
Medicare Approved Services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment First $100 of Medicare Approved Amounts*	0	100 (Part B deductible)	0
Remainder of Medicare Approved Amounts	80%	20%	0
At-home recovery services—not covered by Medicare—Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
—Benefit for each visit	0	Actual charges to $40 a visit.	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit).	0	Up to the number of Medicare Approved visits, not to exceed 7 each week.	
—Calendar year maximum	0	$1,600	
	OTHER BENEFITS—NOT COVERED BY MEDICARE		
Foreign Travel—Not Covered by Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum
Extended Outpatient Prescription Drugs—Not Covered by Medicare			
First $250 each calendar year	0	0	250
Next $6,000 each calendar year	0	50%—$3,000 calendar year maximum benefit.	50%
Over $6,000 each calendar year	0	0	All costs
***Preventive Medical Care Benefit—Not Covered by Medicare**			
Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare:			
First $120 each calendar year	0	120	0
Additional charges	0	0	All costs

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [$1500] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are [$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

***Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

D. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. § 1395 *et seq.*), disability income policy; or other policy identified in Section 3B of this regulation, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company.”

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 18. Requirements for Application Forms and Replacement Coverage

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

[Statements]

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) The benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.

(5) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

[Questions]

To the best of your knowledge,

(1) Do you have another Medicare supplement policy or certificate in force?

(a) If so, with which company?

(b) If so, do you intend to replace your current Medicare supplement policy with this policy [certificate]?

(2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

(a) If so, with which company?

(b) What kind of policy?

(3) Are you covered for medical assistance through the state Medicaid program:

(a) As a Specified Low-Income Medicare Beneficiary (SLMB)?

(b) As a Qualified Medicare Beneficiary (QMB)?

(c) For other Medicaid medical benefits?

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five (5) years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE [Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intend to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason (check one):

____ Additional benefits.

____ No change in benefits, but lower premiums.

____ Fewer benefits and lower premiums.

____ Other. (please specify)

____

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and

before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

(Signature of Agent, Broker or Other Representative)*

[Typed Name and Address of Issuer, Agent or Broker]

(Applicant's Signature)

(Date)

*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

Section 19. Filing Requirements for Advertising

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of Insurance of this state for review or approval by the commissioner to the extent it may be required under state law.

Drafting Note: States should examine their existing laws regarding the filing of advertisements to determine the extent to which review or approval is required.

Section 20. Standards for Marketing

A. An issuer, directly or through its producers, shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(5) Establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in [insert citation to state unfair trade practices act], the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

Drafting Note: Remember that the Unfair Trade Practice Act in your state applies to Medicare supplement insurance policies and certificates.

Section 21. Appropriateness of Recommended Purchase and Excessive Insurance

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

Section 22. Reporting of Multiple Policies

A. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

(1) Policy and certificate number, and

(2) Date of issuance.

B. The items set forth above must be grouped by individual policyholder.

Editor's Note: Appendix B contains a reporting form for compliance with this section.

Section 23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

Drafting Note: Although NAIC is restricted from making revisions to its models that do not conform to the Omnibus Budget Reconciliation Act of 1990, states are encouraged to consider deletion of the words "for similar benefits" in Subsection A and the words "for benefits similar to those contained in the original policy or certificate" in Subsection B. States should eliminate Paragraphs (1) and (2) (applicable to preexisting conditions) of the replacement notice required by Section 16E.

Section 24. Separability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 25. Effective Date

This regulation shall be effective on [insert date].

Appendix A—Medicare Supplement Refund Calculation Form for Calendar Year____

TYPE[1] ______________________________

For the State of ______________________________

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NAIC Group Code ______
Address ______
Title ______
SMSBP[2] ______
Company Name ______
NAIC Company Code ______
Person Completing Exhibit ______
Telephone Number ______

Line		(a) Earned Premium[3]	(b) Incurred Claims[4]
1.	Current Year's Experience.		
	a. Total (all policy years)		
	b. Current year's issues[5]		
	c. Net (for reporting purposes = 1a–1b		
2.	Past Years' Experience (all policy years)		
3.	Total Experience (Net Current Year + Past Year)		
4.	Refunds Last Year (Excluding Interest)		
5.	Previous Since Inception (Excluding Interest)		
6.	Refunds Since Inception (Excluding Interest)		
7.	Benchmark Ratio Since Inception (*see worksheet for Ratio 1*)		
8.	Experienced Ratio Since Inception (*Ratio 2*) Total Actual Incurred Claims (line 3, col. b) ÷ Total Earned Prem. (line 3, col a) – Refunds Since Inception (line 6).		
9	Life Years Exposed Since Inception.If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund		
10.	Tolerance Permitted (obtained from credibility table)		

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select Only.
[2] "SMSBP"=Standardized Medicare Supplement Benefit Plan—Use "P" for pre-standardized plans
[3] Includes Modal Loadings and Fees Charged.
[4] Excludes Active Life Reserves.
[5] This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".

MEDICARE SUPPLEMENT CREDIBILITY TABLE

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000–9,999	5.0%
2,500–4,999	7.5%
1,000–2,499	10.0%
500–999	15.0%
If less than 500, no credibility.	

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR ______

TYPE[1] ______
SMSBP[2] ______
For the State of ______
Company Name ______
NAIC Group Code ______
NAIC Company Code ______
Address ______
Person Completing Exhibit ______
Title ______
Telephone Number ______

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
1		2.770		0.507		0.000		0.0000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82

(a)[3] Year	(b)[4] Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o)[5] Policy Year Loss Ratio
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): ____

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2] "SMSBP" = Standardized Medicare Supplement Benefit Plan—Use "P" for pre-standardized plans

[3] Year 1 is the current calendar year—1. Year 2 is the current calendar year—2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4] For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5] These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

Reporting Form for the Calculation of Benchmark Ratio Since Inception for Individual Policies for Calendar Year_____

Type[1] ____
SMSBP[2] ____
For the State of ____
Company Name ____
NAIC Group Code NAIC ____
Company Code ____
Address ____
Person Completing Exhibit ____
Title ____
Telephone Number ____

(a)[3] Year	(b)[4] Earned premium	(c) Factor	(d) (b)×(c)	(e) Cumulative loss ratio	(f) (d)×(e)	(g) Factor	(h) (b)×(g)	(i) Cumulative loss ratio	(j) (h)×(i)	(o)[5] Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3 ..		4.175		0.493		1.194		0.659		0.65
4 ..		4.175		0.493		2.245		0.669		0.67
5 ..		4.175		0.493		3.170		0.678		0.69
6 ..		4.175		0.493		3.998		0.686		0.71
7 ..		4.175		0.493		4.754		0.695		0.73
8 ..		4.175		0.493		5.445		0.702		0.75
9 ..		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): ____

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2] "SMSBP" = Standardized Medicare Supplement Benefit Plan—Use "P" for pre-standardized plans

[3] Year 1 is the current calendar year—1. Year 2 is the current calendar year—2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4] For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5] These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

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Appendix B—Form for Reporting Medicare Supplement Policies

Company Name: ______
Address: ______
Phone Number: ______
Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and certificte #	Date of issuance

Signature

Name and Title (please type)

Date

Appendix C Disclosure Statements

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries That Duplicate Medicare

1. Section 1882 (d) of the federal Social Security Act [42 U.S.C. 1395ss] prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.

2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement policy.

4. Property/casualty and life insurance policies are not considered health insurance.

5. Disability income policies are not considered to provide benefits that duplicate Medicare.

6. Long-term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.

7. The federal law does not preempt state laws that are more stringent than the federal requirements.

8. The federal law does not preempt existing state form filing requirements.

9. Section 1882 of the federal Social Security Act was amended in Subsection (d)(3)(A) to allow for alternative disclosure statements. The disclosure statements already in Appendix C remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

[Original disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- Hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- Any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- Hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

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✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

Any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- Any expenses or services covered by the policy are also covered by Medicare; or
- It pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice care
- Other approved items & services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- The benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice

- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice

- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice care
- Other approved items & services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in all health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in all health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

Legislative History (All References Are to the Proceedings of the NAIC).

1980 Proc. II 22, 26, 588, 591, 593, 595–603 (adopted).
1981 Proc. I 47, 51, 420, 422, 424, 446–447, 470–481 (amended and reprinted).
1988 Proc. I 9, 20–21, 629–630, 652–654, 668–677 (amended and reprinted).
1988 Proc. II 5, 13, 568, 601, 604, 615–624 (amended and reprinted).
1989 Proc. I 14, 813–814, 836.4–836.26 (amended at special plenary session September 1988).
1989 Proc. I 9, 25, 703, 753–754, 757–760 (appendices amended at regular plenary session).
1990 Proc. I 6, 27–28, 477, 574–576, 580–599 (amended and reprinted).
1990 Proc. II 7, 16, 599, 656, 657 (adopted reporting form).
1992 Proc. I 12, 16–75, 1084–1085 (amended at special plenary session in July 1991).
1995 Proc. 1st Quarter 7, 12, 501, 575, 586, 592–615 (amended and most of model reprinted).
1995 Proc. 4th Quarter 11, 33, 889, 892 (amended).
1998 Proc. 1st Quarter (amended).

[FR Doc. 98–32103 Filed 12–3–98; 8:45 am]

BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health National Heart, Lung, and Blood Institute

Submission for OMB Review; Comment Request; Jackson Heart Study Participant Recruitment Survey

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information was previously published in the **Federal Register** on August 11, 1998, pages 42864–42865 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Jackson Heart Study Participant Recruitment Survey, Type of Information Collection Request: NEW. *Need and Use of Information Collection:* This survey will be used as a planning tool for the upcoming NHLBI-sponsored Jackson Heart Study. Participation and retention of African-Americans in observational epidemiologic studies has been much lower than for white populations. Experience with recruitment and retention of African-Americans in Jackson, Mississippi, is derived from the ongoing ARIC (Atherosclerosis Risk In Communities) study. Initial response was very low, with a 47 percent enrollment rate, and a 70 percent retention rate. The purpose of the proposed survey in this announcement, is to examine facilitators and barriers to long-term participation in observational studies by African-Americans. The findings will be incorporated with the input of the African-American community, into the recruitment and retention plan of the Jackson Heart Study. *Frequency of Response:* One-Time. *Affected Public:* Individuals or households. *Type of Respondents:* Adults ages 35–84. The annual reporting burden is as follows: Estimated Number of Respondents: 580; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .4069; and *Estimated Total Annual Burden Hours Requested:* 236. There are no Capital costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Short Version	120	1	.0668	8
ARIC Participants	50	1	.2839	14
ARIC Drops Outs	50	1	.2839	14
Jackson Community	300	1	.3674	110
In-Depth Interview	60	1	1.5000	90
Total	580			236

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Charles R. MacKay, NIH Project Clearance Officer, 6701 Rockledge Drive, MSC 7730, Rockville, MD 20892–7730, or call non-toll-free number (301) 435–0978 or E-mail your request, including your address to: MacKayC@odrockm1.od.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received by January 4, 1999.

Dated: November 23, 1998.

Donald P. Christoferson,

Executive Officer, National Heart, Lung, and Blood Institute.

[FR Doc. 98–32319 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Display Technique for Identifying LINE–1 Insertion Site Polymorphisms

G Swergold, F Sheen (FDA)

DHHS Reference No. E–285–97/1 filed 29 Sept 98 (claiming priority of U.S. Provisional 60/060,353 filed 29 Sept 97)

Licensing Contact: Charles Maynard, 301/496–7735 ext. 243

The invention is a novel method to detect frequent insertion site polymorphisms in the human genome. Much of the repetitive DNA of mammalian genomes consists of long interspersed sequences or elements (LINES). Typical mammalian genomes contain over 20,000 copies of one of these LINES called LINE–1. These sequences actually create new copies of themselves in new places in the genome, and contribute to the variation in DNA between individuals. The present invention is a powerful new method for the detection of LINE–1 insertion sites. This method allows the analysis of the DNA from an individual, yielding DNA fingerprint information as well as information useful for the understanding of genetic variation in a population.

Mice With A Fluorescent Marker For Interleukin-2 Gene Activation

H Gu, M Naramura, R Hu (NIAID)

DHHS Reference No. E–279–98/0

Licensing Contact: Jaconda Wagner, 301/496–7735 ext. 284

A complex scheme of events unfolds during an immune response and involves a variety of cell types and soluble factors. New tools are constantly needed to assess this scheme of events and help tease apart the roles of accessory, helper and effector cells. A mutant mouse strain has been developed, and it was generated by replacing the interleukin–2 (IL–2) gene with a cDNA encoding the green fluorescent protein (GFP) from *A. victoria.* This unique modification should allow researchers to better monitor the early stages of T cell activation because IL–2 is one of a few cytokines that naive resting T cells can produce during primary T cell antigen receptor (TCR) stimulation. An additional benefit of using IL–2 is that IL–2 production, unlike cytokines such as interferon-gamma and interleukin-four, is restricted to activated T cells. This would therefore increase the specificity of this model, and it should decrease the extensive manipulation of cells that is currently necessary and minimize invasive protocols. This invention could be used as a screening assay for substances of immune modulators by manufacturers of a variety of products. It could provide a valuable research tool for the discovery genes and their products that induce the production of IL–2. Additionally, various T cell clones derived from these mice can be used as the sensitive tool to screen even trace amounts of pathogens, such as bacteria, in food.

Inhibitors Of Formation Of Transmissible Spongiform Encephalopathy-Associated Prion Protein By Porphyrins And Phthalocyanines

W Caughey, L Raymond, M Horiuchi, B Caughey (NIAID) Serial No. 60/096,148, filed 11 Aug 98

Licensing Contact: George Keller, 301/496–7735 ext. 246

The current invention provides for certain tetrapyrroles that specifically inhibit the conversion of protease-sensitive prion protein (PrP-sen) to the abnormal protease-resistant form (PrP-res) without apparent cytotoxic effects. These compounds represent a new class of inhibitors of PrP-res formation that are a source of therapeutic agents for transmissible spongiform encephalopathies or prion diseases. For more information, see Caughey, W. et al. (1998) Inhibition of Protease-Resistant Prion Formation by Porphyrins and Phthalocyanines, *Proc. Natl. Acad. Sci. USA* 95, 12117–12122.

Use Of Constitutive Transport Elements To Control The Host Range Of Retroviral Vectors

AL Ferris, SH Hughes (NCI) Serial No. 60/094,535 filed 29 Jul 98

Licensing Contact: Richard Rodriguez, 301/496–7056 ext. 287

The major host range determinant for retroviruses and for retroviral vectors is the envelope glycoprotein. However there is a second element, the constitutive transport element, or CTE, that also plays an important role in determining host range. In order to replicate, retroviruses must transport both spliced and unspliced RNAs from the nucleus to the cytoplasm. For simple retroviruses, transport of the unspliced RNA requires an interaction between the CTE—which is small element in the viral RNA—and host factors. The CTE of avian sarcome/leukosis viruses (ASLV) does not function in mammalian cells. As a consequence ASLV, and vectors derived from ASLV, will not replicate in mammalian cells even if the host/virus system is modified so that the entry of the ASLV into mammalian cells is efficient. This invention demonstrates how this barrier to viral replication is overcome by introducing sequences from an amphotropic murine leukemia virus (MLV) into a modified ASLV vector. The resulting vector can replicate in mammalian cells if the host cell/vector system is designed to provide compatibility between the envelope of the virus and the receptor on the host cell. The resulting ASLV vector should be useful for experimental applications both in cultured cells and in animal models. In addition to being able to extend the host range of retroviruses by modifying their CTEs, it is also possible to restrict their host range. A modified MLV virus that replicates only in avian cells, not in mammalian cells has been developed. This virus can be used to develop a new generation of safer MLV-based vectors. Therefore, this invention provides the advantages of being able to restrict or extend the ability of retroviral vectors to replicate in defined hosts by manipulating their CTEs. This will be useful in the development of a new generation of retroviral vectors that are both safer and more useful than those currently available.

Cloned Genomes Of Infectious Hepatitis C Virus And Uses Thereof

M Yanagi, J Bukh, S Emerson, R Purcell (NIAID) Serial No. 09/014,416, filed 27 Jan 98

Licensing Contact: George Keller, 301/496–7735 ext. 246

The current invention provides nucleic acid sequences comprising the genomes of infectious hepatitis C viruses (HCV) of genotype 1a and 1b. It covers the use of these sequences, and polypeptides encoded by all or part of sequences, in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV. Additional information can be found in Yanagi et al., (1997) *Proc. Natl. Acad. Sci., USA* 94, 8738–8743 and Yanagi et al., (1998) *Virology* 244, 151–172.

Chemokine Variants And Methods Of Use

T Oravecz, MA Norcross (FDA) Serial No. 60/067,033 filed 01 Dec 97

Licensing Contact: Carol Salata, 301/496–7735 ext. 216

This invention relates to a nucleotide and amino acid sequence of truncated RANTES (3–68) which is different from the wild type RANTES in two amino acid positions. CD26 is a leukocyte activation marker that possesses dipeptidyl peptidase IV (DPPIV) activity but whose natural substrates and immunological functions had not been previously defined. Several chemokines, including RANTES (regulated on activation, normal T expressed and secreted) are provided, which are substrates for human CD26. RANTES (3–68) retains the ability to stimulate CCR5 receptors and to inhibit the cytopathic effects of HIV–1. The invention provides methods for identifying compounds that affect DDPIV-mediated chemokine cleavage, methods for inhibiting HIV infection and treating individuals having or at risk of having HIV infection, methods for diagnosis and/or prognosis of individuals having a chemokine-associated disorder and methods for accelerating wound healing and angiogenesis, all based on the discovery of DPPIV-mediated cleavage of chemokines.

Infectious Papillomavirus Pseudoviral Particles

DR Lowy, JT Schiller, RB Roden (NCI) DHHS Reference No. E–032–96/1; PCT/US97/12115 filed 14 Jul 97, with priority to 17 Jul 96

Licensing Contact: Robert Benson, 301/496–7056 ext. 267

This invention describes pseudoviral particles of papillomavirus capsids encapsidating DNA useful for gene therapy and as vaccines. The pseudoviral particles are made by co-expressing the papillomavirus L1, L2 and E2 genes in a cell line along with a vector comprising the useful DNA and DNA containing E2 protein binding sites (E2BS). It is the discovery of the inventors that the presence of the E2BS containing DNA results in the encapsidation of the DNA. The encapsidated DNA can be a gene to replace a defective gene, or can encode an antigen, for gene therapy or immunization respectively. Since

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papillomaviruses selectively multiply in epithelial cells, the capsids may be particularly useful for mucosal vaccines, and for delivering genes to epithelial tissues. The existence of many non-crossreacting serotypes of human papillomaviruses can be taken advantage of to eliminate the problem of immune rejection of a pseudoviral particle. The same gene or antigen encoding DNA can be incorporated in pseudoviral particles of different serotypes for multiple dosing. The inventors have demonstrated delivery of the neomycin resistance gene to mammalian cells with a BPV capsid encapsidating a vector consisting of the neomycin gene under control of a mammalian promoter and DNA containing E2 binding sites. Claimed are the pseudoviral particles, methods of making them, and methods of using them.

Method of Inhibiting The Activity of an Intracellular Constituent

MJ Mulligan-Kehoe (NCI)

U.S. Patent 5,702,892 issued 30 Dec 97; Serial No. 08/897,040 filed 18 Jul 97; Serial No. 09/096,889 filed 12 Jun 98

Licensing Contract: Marlene Shinn, 301/496–7056 ext. 285

Two combinatorial libraries of binding proteins have been engineered. The libraries were designed to genetically shuffle oligonucleotide motifs within the framework of the immunoglobulin heavy chain gene by random mutation of either the CDRI or CDRIII hypervariable regions. The Fd fragment of the heavy chain gene was then reconstructed such that it contained the randomized oligonucleotides in the hypervariable region, resulting in a collection of highly diverse sequences. The libraries of heavy chain proteins encoded by the array of mutated gene sequences potentially have all of the binding characteristics of an immunoglobulin while requiring only the heavy chain Fd protein.

The re-engineered heavy chain gene sequences were ligated into a M13-derived bacteriophage vector that permits expression of the binding proteins as fusion proteins with viral protein 8, which is expressed on the phage surface.

The claims of the patent application provide methods to screen the libraries, to identify the binding protein to a specific antigen and the gene for that specific protein, and to re-engineer the gene for intracellular expression in a eukaryotic cell. Inducible intracellular inactivation of glucose-6-phosphate dehydrogenase (G6PDH) has been demonstrated by in vivo expression of a gene construct encoding a binding protein selected from one of the libraries and specific for G6PDH. Removal of induction restored the enzyme activity.

The libraries of binding proteins, the screening methods, and the methods of inhibiting intracellular components claimed in the patent application provide powerful potential tools for cellular and molecular biology by affording the capability of binding/inactivating any protein of choice.

Amino Acid Sequencing Peptides and Methods for Their Use

DC Parmelee, S Sechi (NCI)

U.S. Patent 5,589,397 issued 31 Dec 96; Serial No. 08/739,819 filed 30 Oct 96

Licensing Contract: Manja Blazer, 301/496–7056 ext. 224

The present invention provides a novel internal standard for amino acid sequencing which consist of a peptide containing at least two different unnatural amino acid residues, such as ornithine, norvaline, norleucine and α-aminobutyric acid. The PTH-derivatives of these have retention times distinct from those of natural amino acids. This peptide can be sequenced simultaneously with an unknown peptide or protein without interfering with the analysis. Simultaneous sequencing of this standard provides information which allows for the determination of repetitive yields, lags, N-terminal blockage and discrimination between blank cycles caused by missed injection and blank cycles caused by faulty delivery of chemicals during the sequencing reactions.

Dated: November 30, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–32318 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 3, 1998.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: NIH/NINDS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32312 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: January 8, 1999.

Open: 8:00 AM to 8:15 AM.

Agenda: To discuss administrative details.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 8:15 AM to 3:10 PM.

Agenda: To review and evaluate the neurochemistry and neuroendocrinology section.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Benedict J. Latteri, Acting Deputy Director, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism, 9000 Rockville Pike, Room 1B58, Building 31—MSC 2088, Bethesda, MD 20892–2088, 301–402–1227.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32313 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–7 (J2).

Date: January 3–5, 1999.

Time: January 3, 1999, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Marriott Hotel Portland, 1401 S.W. Front Avenue, Portland, OR 97201.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–C J1(P).

Date: January 4–6, 1999.

Time: January 4, 1999, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Airport Plaza Hotel, 1981 Terminal Way, Reno, NV 89502.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32314 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Nat Inst of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–7 (J4).

Date: December 17, 1998.

Time: 3:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building 45, Room 6AS 25F, 9000 Rockville Pike, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32315 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Develop Prevention Research Dissemination.

Date: December 15, 1998.

Time: 9:00 AM to 12:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857, (301) 443–1644.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Measurement Modules for Prevention Interventions.

Date: December 15, 1998.

Time: 1:30 PM to 4:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857, (301) 443–1644.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32316 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 14, 1998.

Time: 8:30 AM to 2:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rommy L. Broadwater, PHD, Chief, Grants Review Branch, NIAMS, NIH, 45 Center Drive, Rm. 5AS25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32317 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug and Alcohol Services Information System (DASIS) (OMB No. 0930–0106)—Revision—The DASIS consists of three related data systems: the National Master Facility Inventory (NMFI), the Uniform Facility Data Set (UFDS), and the Treatment Episode Data Set (TEDS). The NMFI includes all known substance abuse treatment facilities, and those substance abuse prevention facilities identified by State agencies. The UFDS is an annual survey of all facilities listed in the NMFI. The TEDS is a compilation of client-level admission data submitted by States on clients treated in facilities that receive State funds. Together, they provide information on the location, scope and characteristics of all known drug and alcohol treatment and prevention facilities in the United States, and the characteristics of clients receiving services. This information is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals.

A request for short-term (two year) OMB approval of DASIS activities is being prepared which will cover the ongoing and annual data collection activities described above as well as one-time data collections associated with a redesign of the UFDS survey.

The request for OMB approval will include the following changes in the ongoing DASIS activities:

TEDS: Voluntary reporting of discharge data will be added to the current reporting of admission data for those States that are able to provide linked admission and discharge records. The discharge data set will include the following client-level data: Provider ID; Client ID; Co-dependent/Collateral flag; Services at discharge; Date of last contact; Date of discharge; and Reason for discharge, transfer, or discontinuance of treatment.

NMFI: The forms used by States to update information on facilities in the NMFI have been automated and will be available on the Internet through the DASIS home page. The on-line version of the update forms will include the following new items: Detoxification services (to be added to the checklist of services, FDA (Methadone) ID, EIN, Director's name and phone number, and facility FAX number.

UFDS: The UFDS survey will be shortened in 1999 so that resources can be redirected to a major revision of the questionnaire. Client counts, services provided (except for programs for special populations), and revenue data will not be asked. Sample augmentation activities, which involve searching directories and other sources for substance abuse treatment facilities not included in the NMFI, will not be conducted prior to the 1999 UFDS but will be conducted late in 1999 in preparation for the 2000 UFDS.

Possible changes to the 2000 UFDS questionnaire will be explored in 1999, including, for example, changing the reference date, revising questions on setting, treatment capacity, and revenue, and adding questions on current topics as needed. The proposed changes will be studied through small-scale focus groups and workshops with data users and substance abuse service providers, and through larger scale solicitations of comments and suggestions from States and pretests of revised forms with facilities.

Estimated annual burden for the ongoing and one-time activities is as follows:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
States:				
TEDS Admission Data	52	4	[3] 6	1,248
TEDS Discharge Data	13	4	[3] 6	312
NFR Update [1]	56	128	0.08	573
Solicitation of Comments on UFDS revisions	56	1	.5	28
State Subtotal	56			2,161
Facilities:				
UFDS Questionnaire	17,000	1	.2	3,400
Augmentation Screening	5,000	1	.08	400
Pretests of UFDS revisions [2]	300	1	.75	225
Facility Subtotal	22,000			4,025
Total	22,056			6,186

[1] States forward to SAMHSA information they receive from facilities on changes in facility name, address, status, etc. This will now be done electronically.

[2] Two pretests of 100–150 facilities each are proposed.

[3] This includes time for reformatting data received from facilities and submitting it to SAMHSA.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 27, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–32307 Filed 12–3–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–38]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 25, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–31945 Filed 12–3–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Little River Band of Ottawa Indians Share of the Judgment Funds in Docket Nos. 18–E, 58 and 364 Before the Indian Claims Commission

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the Little River Band of Ottawa Indians' share of the judgment funds awarded to

the Ottawa and Chippewa Indians of Michigan in Docket Nos. 18–E, 58 and 364 is effective as of September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: The Michigan Indian Land Claims Settlement Act of December 15, 1997, 111 Stat. 2652, and section 3(b) of the Indian Tribal Judgment Funds Act, 25 U.S.C. 1403(b), requires that a plan be prepared and submitted to Congress for the use and distribution of Little River Band of Ottawa Indians' share of the funds awarded to the Ottawa and Chippewa Indians of Michigan before the Indian Claims Commission in Docket Nos. 18–E, 58 and 364. The plan for the use and distribution of the funds was submitted to Congress on June 3, 1998, by letters dated June 2, 1998. The receipt of the letters by the House of Representatives and the Senate was recorded in the Congressional Record published on June 9 and 11, 1998, respectively. The plan became effective on September 28, 1998, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of Little River Band of Ottawa Indians Judgment Funds, Dockets 18–E, 58 and 364

Section 1. Purpose and Definitions

1.01. *Purpose.* This 80/20 Plan has been developed as a result of the Indian Claims Commission dockets numbered 18–E, 58, and 364 and the passage of Public Law 105–143, cited as the "Michigan Indian Land Claims Settlement Act", which was passed on December 15, 1997, and provides for the division of judgment funds of the Ottawa and Chippewa Indians of Michigan. Pursuant to this law, the Little River Band of Ottawa Indians must submit a plan to the Secretary of Interior. The Secretary shall review the plan and discuss any problems of the plan with the Tribe. After this review, the plan shall be submitted to Congress prior to the distribution of any of these funds to the Tribe.

The 80/20 Plan was developed by the Tribe and approved by the Tribal members to meet the minimum standards necessary for the Secretary's approval. This plan also meets all of the criteria for approval of the Secretary and Congress, including:

(a) The needs and desires of any groups or individuals who are in a minority position, but who are also entitled to receive such funds, have been fully ascertained and considered;

(b) The interests of minors and other legally incompetent persons who are entitled to receive any portion of such funds as are subsequently distributed to them are and will be protected and preserved; provided, that such funds may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and the tribal governing body of the Indian tribe involved;

(c) Any provision, including enrollment provisions, of the constitution, bylaws, rules, and procedures of such tribe which may affect the distribution or other use of such funds are in full accord with the principles of fairness and equity; and,

(d) A significant portion of such funds shall be set aside and programmed to serve common tribal needs, educational requirements, and such other purposes as the circumstances of the affected Indian tribe may justify, except not less than 20 per centum of such funds shall be so set aside and programmed unless the Secretary determines that the particular circumstances of the pertinent Indian tribe clearly warrant otherwise: provided, that in the development of such plan the Secretary shall survey past and present plans of the tribe for economic development, shall consider long range benefits which might accrue to the tribe from such plans, and shall encourage programming of funds for economic development purposes where appropriate.

Definitions

1.02. 80/20. The 80/20 Tribal Plan will be referred in this document as "Tribal plan" or "plan".

1.03. *Effective Date of the 80/20 Tribal Plan.* The effective date of the plan means the date that the plan is approved by Congress. Unless the plan is disapproved by Congress, the effective date of the plan shall be the sixtieth (60) day after formal submittal of the plan by the Secretary to the Congressional Committees (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain). In the event that the plan is disapproved by either House, the effective date shall be the date the enabling legislation for the disposition of the judgment funds is enacted into law.

1.04. *Secretary of Interior.* The "Secretary" as used in this plan means the Secretary of Interior.

1.05. *Qualified Tribal member for one time per capita payments.* For purposes of determining eligibility for receiving a per capita payment under any Tribal plan for the use and distribution of the Little River Band of Ottawa Indians' share of the Dockets 18–E, 58, and 364 Judgment Funds, "qualified Tribal member" shall mean any individual who has applied for enrollment before 12:00 a.m. (midnight), Friday, January 30, 1998, and is duly enrolled in the Little River Band of Ottawa Indians in accordance with Article III of the interim Constitution and the Tribal Ordinance No. #94–1018–01 or Tribal Ordinance No. 97–200–01.

In order for any duly enrolled Tribal member to be entitled to the one time per capita payment, the member's application for enrollment must be received at the Tribal offices before 12:00 a.m. (midnight), Friday, January 30, 1998. If an applicant who timely files his/her application is denied enrollment and fails to appeal the decision, that person will lose his/her right to the one time per capita payment if he/she reapplies and becomes a duly enrolled member at a later date. All persons eligible for the one time per capita payments must be living as of the effective date of this plan. Any person who has received a distribution from another tribe pursuant to Dockets 18–E, 58, and 364 of the Indian Claims Commission shall not be eligible to receive the one time per capita payments from the Little River Band of Ottawa Indians.

1.06. *Minor qualified tribal member for one time per capita payments.* A minor qualified Tribal member for purposes of determining eligibility must fulfill all of the "qualified tribal member" requirements in Section 1.05 and must be under the age of 18 years as of the effective date of this plan.

1.07. *Incompetent qualified Tribal member eligible for one time per capita payments.* An incompetent qualified Tribal member for purposes of determining eligibility must fulfill all of the "qualified tribal member" requirements in Section 1.05 and must: (1) be declared incompetent by a court of competent jurisdiction; and, (2) have his/her legal guardian inform the Tribal Registrar in writing of the person's legal incompetence and provide evidence that he/she is the incompetent's legal guardian prior to the effective date of the plan.

1.08. *Incarcerated qualified Tribal member eligible for one time per capita payments.* An incarcerated qualified

Tribal member for purposes of determining eligibility for the one time per capita payments must fulfill all of the requirements in Section 1.05 and must: (1) inform the Tribal Registrar in writing of his/her incarceration and provide evidence that he/she is incarcerated prior to the effective date of the plan; and, (2) must notify the Tribal Registrar and execute a Power of Attorney, prior to the effective date, if he/she wishes to elect to have his/her per capita money held in trust until he/she is released from confinement. The Tribal Council shall develop appropriate forms and procedures to implement this Section.

1.09. *Qualified Tribal Members Eligible to Vote on Judgment Funds Proposals.* Each member who is duly enrolled in the Little River Band of Ottawa Indians by January 14, 1998, and has attained the minimum age of 18 years by January 14, 1998, shall be eligible to vote in the election of the judgment funds proposals, with the exception of incompetent persons who will not be allowed to vote, nor will any person be allowed to vote on his/her behalf. An incarcerated person shall be allowed to vote.

Section 2. Disbursement of Judgment Funds Following Effective Date

2.01. The Secretary shall disburse the Tribe's share of the judgment funds not later than 30 days after the effective date in accordance with Section 105 of the Michigan Indian Land Claims Settlement Act.

2.02. Notwithstanding any other provision of law, the United States shall have no trust responsibility for the investment, supervision, administration, or expenditure of any portion of the judgment funds, including the per capita payment aspects of the plan, after such funds are disbursed to the Tribe.

2.03. Within 10 business days after receipt of the Tribe's share of the judgment funds, the Tribal Council shall arrange to have eighty (80%) percent of the judgment funds deposited in a segregated account for the purpose of implementing the per capita payment aspects of the plan described in Section 3. Within 10 business days after receipt of the Tribe's share of the judgment funds, the Tribal Council shall arrange to have the twenty (20%) percent of the judgment funds programmed for land acquisition deposited in a segregated account for the purpose of implementing the land acquisition provisions described in Sections 4 and 5 of this plan.

Section 3. One Time Per Capita Payments to all Tribal Members

3.01. As compensation to the members of the Little River Band of Ottawa Indians for the delay in distribution of the judgment fund and to advance the current personal health, safety and welfare of qualified Tribal members, eighty (80%) percent of the Little River Band of Ottawa Indians' share of the judgment fund, shall be divided into equal shares and distributed to all qualified Tribal members, including minor qualified members, adult qualified members who are legally incompetent, and incarcerated members.

3.02. *How per capita payment will be made.* In order to fairly compensate all members of the Little River Band of Ottawa Indians, the per capita payment may be made in two payments. The first payment will be based on the completion of two separate rolls, which will be completed within 30 days after the effective date of this plan. One roll will list each duly enrolled qualified member. The second roll will list each applicant who filed his/her application by 12:00 a.m. (midnight), Friday, January 30, 1998, whose application is still pending. The number of persons on these two rolls will be added together and divided into the total per capita amount, which will equal the amount of the first check that each duly enrolled member will receive. The balance remaining, if any, after all eligible applications have been processed and the appeals time has run shall be divided by the total number of qualified tribal members enrolled from the two rolls described above and distributed to such qualified tribal members in a second payment. A more detailed explanation of this process is outlined in Appendix 1.

3.03. (a) In the event that a member of the Little River Band of Ottawa Indians, who is eligible for payment under this section, should die after the effective date of this plan and prior to the one time payment distribution, that individual's one time payment shall be provided to the member's heirs at law.

(b) In the event that a minor, incompetent or incarcerated person should die while his/her money is in trust, that money shall be distributed to the member's heirs at law.

3.04. *Establishment of Trust Accounts for Minor and Incompetent Tribal Members.* In order to provide for the current and future safety and well being of qualified Tribal members under this section who are minors and fulfill the requirements of Section 1.06, have been declared incompetent by a court of competent jurisdiction and whose legal guardian has fulfilled the requirements of Section 1.07, and incarcerated individuals who have fulfilled the requirements of Section 1.08, the per capita benefit for such qualified tribal members shall be placed in a private trust account by the Tribal Council, and:

(a) The trust shall have segregated accounts for each qualified minor, incompetent, and incarcerated, members based on his/her per capita share, and

(b) The trust agreement shall specifically provide that the investment policy to be followed is that of preserving the trust corpus and of obtaining the highest interest rates current money markets can safely provide. The trust agreement must further provide that maturity dates of investments cannot exceed the period of the trust and that only the following types of investment shall be made: United States Treasury obligations; Federal agency obligations; repurchase/resell agreements; United States Treasury bills; Bankers' acceptance, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Certificates of deposit, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Commercial paper, provided it is rated prime-2 by Moody or A–2 by Standard and Poor or is obligation of a company with outstanding unsecured debt rated AA by Standard and Poor.

3.05. *Release of funds regarding legal incompetents.*

(a) Upon the petition of the legal guardian of the beneficiary, trust assets shall be distributed to the beneficiary in any amounts as the Tribal Court determines appropriate for the beneficiary's health, welfare or economic security, including his/her support, maintenance, and education.

(b) The Tribal Court may require that the petitioning guardian submit receipts of expenditures made on behalf of the beneficiary before any disbursements are made, and shall require that the petitioning guardian account to the Tribal Court or trustee for any expenditures made from distributions from the trust or trusts.

(c) The Tribal Court may, at its discretion, authorize the trustee or trustees to establish a regular monthly distribution from the trust for the beneficiary.

3.06. *Release of funds regarding minors.*

(a) All assets accumulated in the trust for the benefit of a minor qualified tribal member shall be distributed at such time as the beneficiary reaches the age

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of 18, upon application of the beneficiary, providing sufficient evidence of eligibility, approved by the Tribal Council.

(b) Prior to the time the beneficiary reaches the age of (18), and upon the petition of a parent(s), legal guardian(s) of the minor, or an emancipated minor, the Tribal Court shall make distributions from the trusts in such amounts as deemed necessary in the best interests of the minor, for the minor's support, health, education, or welfare to the parents, legal guardians, fiduciaries, emancipated minor, or to persons having the control and custody of the minor.

(c) The Tribal Court may require that the petitioning parent or legal guardian submit receipts of expenditures made on behalf of the minor before any disbursements are made, and shall require that the petitioning parent or guardian provide an accounting to the Tribal Court or trustee for any expenditures made from distributions from the trust or trusts.

3.07. *Release of funds to incarcerated person.* Upon the petition of an incarcerated person, trust assets shall be distributed to such incarcerated person during his/her incarceration in any amounts as the Tribal Court determines appropriate for such incarcerated person's health, welfare or economic security, or that of such member's family, including support, maintenance, and education.

3.08. The interest of each beneficiary shall be accounted for separately by the trustee, and a trust account statement shall be available at least semiannually to the parent or legal guardian of the beneficiary.

3.09. In order to further the policies and goals underlying the contribution of per capita benefits into trust for minors, legally incompetent persons, and incarcerated persons, it is the intent of the Tribal Council to seek a private letter ruling from the Internal Revenue Service regarding the tax treatment of income earned on the trust benefits concerning the deferred per capita payments to minors, legally incompetent persons, and incarcerated persons.

3.10. The Little River Band of Ottawa Indians shall notify the member if any part of the payments are subject to Federal income taxation at such time as the benefits are paid to the member from the trust, or distributed to the member pursuant to a deferred annual payment distribution plan consistent with any private letter ruling from the Internal Revenue Service, and make any withholding of income tax from and reporting of such payments as may be required under the Internal Revenue Code.

3.11. Except for the members for whom per capita payments are being placed in trusts, the per capita payments for any qualified tribal member shall be mailed to the last known address of the member on file with the Little River Band of Ottawa Indians' Tribal Registrar. The burden of registration with the Office of the Tribal Registrar is with the member to ensure that the Tribal Registrar has the member's correct and current address. Per capita payments returned to the Little River Band as undeliverable shall be maintained by the Little River Band and deposited into an interest-bearing escrow account. The member shall have 365 days to claim the returned payment. If the returned benefits are not claimed within that time period, the benefits shall revert back to the Little River Band of Ottawa Indians and shall be deposited in the Reservation Restoration Trust established in Section 4 of this Plan.

Section 4. Allocation for Land Acquisition

4.01. From the twenty percent (20%) of the Little River Band of Ottawa Indians' share of the judgment funds reserved for Tribal purposes, the sum of $1,500,000 shall be allocated for the acquisition of land to increase tribal land holdings or to pay the principal balance of loans owing on properties owned by the Tribal government. The Tribal Council shall use the funds allocated under this section for the acquisition of specific properties or for the purposes identified in the Tribe's Reservation Restoration Plan—Phase I (adopted February 9, 1997), and shall give priority to acquisition of lands for economic development purposes or to pay the principal balance and any accrued interest on loans owing on such properties. If funds are available by May 1, 1999, Tribal Council shall also purchase the properties described in Exhibit 2–A of Appendix C of the Ludington Pumped Storage Project Settlement Agreement—Courts and Non-FERC Agencies, a copy of which is attached and incorporated herein by reference. If the options described above have expired, the Tribal Council shall give priority to the acquisition of lands for economic development purposes and for the development of Tribal Housing and Community Facilities. Upon acquiring any land, the Tribal Council may sell or exchange such lands for equal value, or may request that the United States hold the land in trust for the Little River Band of Ottawa Indians.

Section 5. Reservation Restoration Trust Fund

5.01. The Tribal Council shall establish an irrevocable, nonexpendable trust to be known as the "Reservation Restoration Trust Fund." In order to promote the accomplishment of the goals defined in the Little River Band of Ottawa Indians' Reservation Restoration Plan, the remaining balance in the Little River Band of Ottawa Indians' share of the judgment fund following allocation of the one time per capita payments to all members and the Initial Allocation for Land Acquisition shall be placed in the "Reservation Restoration Trust Fund".

5.02. *Investment.* Monies paid into the Reservation Restoration Trust Fund pursuant to this section, as well as income from investment, shall be invested in high quality corporate, government, or government agency bonds, including commercial or financial company paper, which is rated in one of the two highest ratings by a nationally recognized rating agency; and time deposits or repurchase agreements with any bank or trust company organized under the laws of any state of the United States, or national banking association, provided that such time deposits or repurchase agreements do not exceed at any one time in the aggregate lot of the total of the capital and surplus of such bank or trust company or national banking association, and such bank or trust company or national banking association has a combined capital and surplus of at least $15,000,000.

5.03. Not later than 60 days after receipt of the funds distributed to the Little River Band of Ottawa Indians pursuant to this Act, the Tribal Council shall deposit into the Reservation Restoration Trust Fund the principal, which shall consist of:

(a) The initial portion of the judgment funds described above;

(b) Such other funds which the Tribal Council chooses to add to the Reservation Restoration Trust Fund.

5.04. The Tribal Council shall be the trustee of the Reservation Restoration Trust Fund and shall administer the Reservation Restoration Trust Fund in accordance with this section. The Tribal Council may retain or hire a professional trust manager and may pay the prevailing market rate for such services. Such payment for services shall be made from the current income accounts of the trust and charged against earnings of the current fiscal year.

5.05. Ninety percent of the earnings generated by the Reservation

Restoration Trust Fund may be used annually and shall be used exclusively for the acquisition of specific properties, or for the purposes, identified in the Tribe's Reservation Restoration Plan. There shall be an annual review of the plan to update it for purposes of identifying the priorities of properties in consultation with the Land Acquisition Committee. Upon acquiring any land, the Tribal Council may request that the United States hold the land in trust for the Little River Band of Ottawa Indians. The remaining earnings, after payment to the trust manager and the independent certified public accountant, shall be added to the principal of the Reservation Restoration Trust Fund.

5.06. The Tribal Council shall maintain the Reservation Restoration Fund on an annual basis, which includes:

(a) Maintaining ten percent (10%) of the annual earnings generated by the Reservation Restoration Trust Fund, after payments to the trust manager and independent certified public accountant in the Reservation Restoration Fund;

(b) Using any portion of the ninety percent of the earnings that was not used in one year, in any subsequent year thereafter; and,

(c) Depositing any other funds which the Tribal Council chooses to add to the Reservation Restoration Trust Fund.

5.07. The principal of the Reservation Restoration Trust Fund shall not be expended for any purpose, including but not limited to, per capita payments to members of the Little River Band of Ottawa Indians.

5.08. The Reservation Restoration Trust Fund shall be maintained as a separate account, which shall be audited at least once during each fiscal year by a certified public accountant who shall prepare a report on the results of such audit. Such report shall be a public document, and shall be available for inspection by any member of the Little River Band of Ottawa Indians.

5.09. Notwithstanding any other provision of law, the approval of the United States of any payment from the Reservation Restoration Trust Fund shall not be required and the United States shall have no trust responsibility for the investment, supervision, administration, or expenditure of funds from the Reservation Restoration Trust Fund.

Section 6. Tribal Sovereign Immunity

6.01. Nothing in this plan shall provide, or be interpreted to provide, a waiver of the sovereign immunity from suit of the Little River Band of Ottawa Indians or any of its governmental officers and/or agents.

6.02. Nothing in this plan shall create a duty of financial obligation on the part of the Little River Band of Ottawa Indians or any of its officers and/or agents to provide judgment fund distribution payments to an individual who alleges that he/she did not receive a per capita distribution check; provided, however, that the Little River Band of Ottawa Indians must show:

(a) The individual's name does not appear on any of the rolls authorized under this plan; or

(b) The individual's name: (i) appeared on one of the rolls authorized under this plan; and, (ii) a copy of the per capita check is returned by the Tribal Administration as proof of distribution to the last known address of the individual entitled to a per capita check.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Dated: November 19, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–32301 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed 3–D Seismic Survey; Seismic Exchange, Incorporated, Big Thicket National Preserve, Hardin and Jasper, Texas

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service has accepted a Plan of Operations from Seismic Exchange, Incorporated for Three Dimensional Seismic Survey within Big Thicket National Preserve, Hardin and Jasper Counties, Texas.

The Plan of Operations and corresponding Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. Both documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, TX 77701.

Dated: November 23, 1998.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 98–32239 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision for the General Management Plan for the Sitka National Historical Park, Alaska

AGENCIES: National Park Service, Interior.

ACTION: Notice of Availability of the Record of Decision for the General Management Plan for the Sitka National Historical Park, Alaska.

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the General Management Plan for the Sitka National Historical Park, Alaska.

The National Park Service will implement the proposed action (alternative 1) as described in the Draft and Abbreviated Final General Management Plan/Environmental Impact Statements as the selected alternative. This plan will achieve a high-quality, diverse visitor experience consistent with the mandate and mission of the NPS and the purpose and significance of the park. New management strategies, social science methods, and interpretive tools will be used to improve the management of visitor use, especially during the days of peak demand. For better visitor distribution, visitors will be encouraged to move beyond the visitor center and the nearby Totem Trail into less frequently visited areas, such as the fort site, the battleground, and the Russian Memorial. By funding and implementing comprehensive research and interpretive programs, the NPS will place increased emphasis on the park's cultural resources and on the purpose and significance of the park.

A Notice of Intent to prepare an environmental impact statement (EIS), published in the **Federal Register** in May 17, 1995 (60 FR 26455), formally initiated the National Park Service planning and EIS effort for the park. A draft and final plan and EIS were prepared. The final plan and abbreviated EIS describe and analyze the environmental impacts of a proposed action and three other action alternatives. A no-action alternative also was evaluated.

The Record of Decision (ROD) documents the decision of the Department of the Interior, National Park Service, regarding the Sitka National Historical Park. This ROD briefly discusses the background of the planning effort, states the decision and discusses the basis for it, describes other alternatives considered, specifics the environmentally preferable alternative, identifies measures adopted to minimize potential environmental harm, and summarizes the results of public involvement during the planning process.

ADDRESSES: Copies of the ROD are available on request from: Superintendent, Sitka National Park, 106 Metlakatla Street, P.O. Box 738, Sitka, Alaska 99835.

FOR FURTHER INFORMATION CONTACT: Superintendent, Sitka National Historical Park, 106 Metlakatla Street, P.O. Box 738, Sitka, Alaska 99835. Phone (907) 747–6281.

Dated: November 24, 1998.

Robert D. Barbee,

Regional Director, Alaska.

[FR Doc. 98–32238 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–6]

Ronald J. Riegel, D.V.M., Revocation of Registration

On January 28, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Ronald J. Riegel, D.V.M. (Respondent) [1] of Ostrander, Ohio, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AR1930254, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 824(a)(2) and (a)(4), because he was convicted of a felony related to controlled substances and because his continued registration would be inconsistent with the public interest.

By letter dated February 12, 1997, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Columbus, Ohio on August 13, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and the Government introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument. On March 27, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA registration be revoked. On April 17, 1998, the Government filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on May 28, 1998, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

Respondent is a veterinarian who has been licensed to practice in Ohio for approximately 18 years. His DEA Certificate of Registration, that is the subject of these proceedings, expired on April 30, 1997, and he did not submit an application for renewal of this registration. Before reaching the merits of this case, it must be determined whether DEA has jurisdiction to revoke this registration since it has expired with no renewal application being filed.

After the hearing in this matter, the Government filed a Motion for Appropriate Relief on September 3, 1997, arguing that the Administrative Law Judge has no jurisdiction over this matter since Respondent's registration expired before resolution of the issues raised in the Order to Show Cause. The Government further argued that since DEA has not received a renewal application for the registration, "there is no registration to either suspend or revoke under 21 U.S.C. § 824." The Government requested that Judge Randall issue a ruling allowing Respondent an opportunity to submit an application for registration which would then be considered based upon the record in these proceedings, or in the alternative if no such application is submitted, to terminate the proceedings based upon a lack of jurisdiction. Respondent did not file a response to the Government's motion.

On November 7, 1997, Judge Randall issued a Memorandum and Order regarding the jurisdictional issue. As Judge Randall noted, there is nothing in the Controlled Substances Act or its implementing regulations that specifically addresses the status of a registration that expires before the resolution of show cause proceedings where no renewal application has been filed. The Administrative Procedure Act (APA) applies to show cause proceedings, and 5 U.S.C. 558(c) provides that "[w]hen the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency." However, the APA does not specifically address what happens to a registration when no renewal application has been filed.

Pursuant to 21 CFR 1301.36(i), a registration will be automatically extended past its expiration date and continue in effect until a final decision is made regarding the registration if a renewal application is filed at least 45 days before the expiration of the registration. The regulation also provides that:

> The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

Here, no specific findings were made to extend Respondent's registration past the expiration date and therefore, 21 CFR 1301.36(i) does not apply to extend the registration in this proceeding.

As Judge Randall noted, in a prior DEA decision, the then-Administrator addressed facts somewhat similar to the ones at issue in this proceeding. See *Park and King Pharmacy*, 52 FR 13,136 (1987). In that case, the pharmacy's Certificate of Registration expired by its own terms after the Order to Show Cause was issued but before a final order had been issued. No renewal application had been submitted, and instead the pharmacy was sold while the show cause proceeding was pending final agency action. The then-Administrator disagreed with the Administrative Law Judge's finding that the pharmacy's registration terminated pursuant to 21 CFR 1301.62 (now 21 CFR 1301.52) as a result of the sale of the pharmacy, and that the show cause proceeding was moot. In addition, the then-Administrator found that:

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[1] The Order to Show Cause indicated that Respondent was an "M.D.", however Respondent identified himself as a "D.V.M." in his request for a hearing and the facsimile of Respondent's DEA Certificate of Registration, which was introduced at the hearing as a Government exhibit, also indicates that Respondent is a "D.V.M."

> The practice of the Drug Enforcement Administration, as well as its predecessor agency, since the implementation of the Controlled Substance[s] Act has been to maintain registrations on a day-to-day basis pending resolution of administrative proceedings seeking to revoke such registrations. The Respondent in this matter possessed a viable DEA registration when he received the Order to Show Cause which initiated the proceedings. That registration remained in effect, on a day-to-day basis, following its nominal expiration date on March 31, 1986. The same administrative "hold" that prevented the registration from expiring also prevented the Respondent from renewing the registration. Accordingly, the Administrator concludes that neither the nominal expiration date on the face of the Respondent's registration nor his inability to file a renewal application have any effect upon the matter pending before the Administrator. *Id.*

As Judge Randall noted, the same rationale that applied in *Park and King Pharmacy* would seem to apply in this case. "At the time the Order to Show Cause was issued, the Respondent held a viable Certificate of Registration. The order placed an 'administrative hold' on that certificate, and likewise placed it in a day-to-day category. The respondent's unilateral action of failing to file a renewal application would not change the status of the registration."

However, Judge Randall expressed concern that neither the regulations nor *Park and King Pharmacy* provide any authority for placing an "administrative hold" on a registration that expires with no renewal application being filed in the midst of a show cause proceeding. As Judge Randall noted, "[t]o the contrary, the regulations tell the registrant to file a renewal application within a specified time to preserve his registration status."

But Judge Randall concluded that in light of the decision in *Park and King Pharmacy*, she does not have the authority to terminate these proceedings, because to do so would "unilaterally change agency policy without giving this Respondent notice of such a change and an opportunity to comply." Therefore, Judge Randall denied the Government's motion, concluding that "consistent with DEA precedent, the Respondent's DEA Certificate of Registration is currently being maintained on a day-to-day basis, that this proceeding is not rendered moot by the Respondent's failure to file a renewal application, and that jurisdiction still rests with this forum to complete these show cause proceedings."

The Acting Deputy Administrator agrees with Judge Randall's decision not to terminate the proceedings and to forward this matter to the Acting Deputy Administrator. However, the Acting Deputy Administrator is troubled by the decision in *Park and King Pharmacy*. Other than the statement that it has been DEA's practice, no authority was cited in the final order for the position that an expired registration can still be revoked if no renewal application has been filed. The Acting Deputy Administrator can find nothing in the statute or regulations nor any other notice to the public that a registration is extended past its expiration date on a day-to-day basis pending final resolution where no renewal application has been submitted. To the contrary, both the APA and 21 CFR 1301.36(i) specifically state that a registration is extended on a day-to-day basis *if a timely renewal application is filed*. Consequently, it is reasonable for a registrant to assume that its registration would no longer be subject to adverse action once it expires and no application for renewal has been filed regardless of whether an Order to Show Cause has been issued or not.

Therefore, the Acting Deputy Administrator finds no authority to support the then-Administrator's conclusion in *Park and King Pharmacy* that the registration was maintained on a day-to-day basis past the expiration date even though a renewal application had not been filed. If a registrant has not submitted a timely renewal application prior to the expiration date, then the registration number expires and there is nothing to revoke. Accordingly, the Acting Deputy Administrator agrees with the Government's initial position that this matter is moot because there is no viable registration to revoke.

However, as Judge Randall noted in her November 7, 1997 Memorandum and Order, since Respondent has participated in a hearing, it would be unfair to now terminate the proceedings without resolution based upon a deviation from past agency precedent. In fact the Government did not even argue until several weeks after the hearing that Respondent did not have a viable registration. "Such a deviation mid-case, without notice and opportunity to comply with the changed procedure, specifically prejudices this Respondent." Therefore, the Acting Deputy Administrator will address the merits of this case to determine whether Respondent's registration should be revoked.

The Acting Deputy Administrator finds that in January 1995, a cooperating individual who was renting a house from Respondent provided DEA with a vial of etorphine, a Schedule II controlled substance, claiming to have obtained it from Respondent. Etorphine is a strong tranquilizer used on large animals. It is also used illegally on race horses.

On April 5, 1995, DEA and local authorities monitored and tape recorded a meeting between the cooperating individual and Respondent during which the cooperating individual paid Respondent $500 for a previously obtained vial of etorphine. At the hearing in this matter, Respondent acknowledged receiving $500 from the cooperating individual, but testified that the payment was for rent owed to him by the cooperating individual.

After the initial transaction, Respondent returned to the cooperating individual's residence that same day with a vial of etorphine that he had apparently retrieved from his residence. According to Respondent, the cooperating individual had told him the day before during a telephone conversation that the cooperating individual had stored a bottle of etorphine in Respondent's veterinary clinic and that Respondent could sell it and keep the money from the sale as a rent payment. Respondent also testified that during the initial meeting on April 5, the cooperating individual had indicated that he wanted the vial returned to him because he had located a buyer for the etorphine. Therefore, Respondent acknowledged handing a bottle of etorphine to the cooperating individual on April 5, but denied that it was from his office stock. Respondent testified that he returned the vial to the cooperating individual because he was afraid of him.

According to Respondent he had a telephone conversation with the cooperating individual sometime between April 5 and 13, 1995, during which the cooperating individual indicated that he would give Respondent $1,500 that had been obtained from the sale of the etorphine acquired on April 5. Thereafter, on April 13, 1995, during a monitored and recorded meeting, the cooperating individual gave Respondent $1,500 for the bottle of etorphine obtained on April 5.

Respondent testified that in June of 1995, the cooperating individual's dog developed a cough which did not get better with prescribed antibiotics. According to Respondent, the cooperating individual then requested some Vicodin, a Schedule III controlled substance, stating that it had worked for his sister's dog. Respondent testified that, "[f]inally, because I am so busy and everything, and just to get him off my back, I called in a prescription, but I am suspicious of him by this time." Respondent indicated that in light of his suspicions, he called in a prescription for hydrocodone, the generic for Vicodin, because he "felt [the cooperating individual] could not resell or, you know, do anything with [it]."

On July 13, 1995, the cooperating individual was observed by investigators giving Respondent $75. Respondent admitted at the hearing to accepting $75 from the cooperating individual, but testified that the money was for rent that the cooperating individual owed him.

As a result of this investigation, Respondent was charged criminally. Following a jury trial, the Court of Common Pleas of Delaware County, Ohio entered judgment on February 23, 1996, finding Respondent guilty of one count of Aggravated Trafficking, for activities involving etorphine, and one count of Trafficking in Drugs, for activities involving hydrocodone, both felony offenses in violation of Ohio state law.

On February 9, 1994, the Ohio Veterinary Medical Licensing Board (Board) issued an order suspending Respondent's license to practice veterinary medicine for six months. The Board's order was based on a finding that Respondent had permitted a "graduate animal technician to administer treatment and care to and to perform surgeries on patients while in his employ." Following the rejection of Respondent's appeal of the Board's order, the suspension was effective from September 12, 1995 to March 12, 1996. By notice dated May 16, 1996, the Board initiated another administrative action against Respondent's veterinary license, however, there is no evidence in the record regarding the resolution of that action.

Pursuant to 21 U.S.C. 824(a), "A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant—* * * (2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance. * * *"

In addition, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

It is undisputed that Respondent was convicted on February 23, 1996, in the Court of Common Pleas of Delaware County, Ohio of two felony counts relating to controlled substances. Therefore, grounds exist to revoke Respondent's DEA registration under 21 U.S.C. 824(a)(2).

Next, the Acting Deputy Administrator considers whether Respondent's continued registration would be inconsistent with the public interest. Regarding factor one, in 1994, Respondent's veterinary license was suspended for six months based upon a finding that he had allowed a graduate technician to perform surgery and care for patients in violation of Ohio law. The Board again initiated proceedings against Respondent's license in May 1996; however, there is no evidence in the record regarding the resolution of those proceedings. Therefore, based upon the record before him, the Acting Deputy Administrator finds that Respondent possesses a valid state license.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, are clearly relevant in determining the public interest. There is some dispute regarding the circumstances surrounding Respondent's providing the cooperating individual with the bottle of etorphine and the prescription for hydrocodone. But even if the Acting Deputy Administrator were to accept Respondent's version of events, there is still cause for concern regarding Respondent's continued registration.

Respondent admitted at the hearing that he gave the cooperating individual the bottle of etorphine on April 5, 1995, knowing that the cooperating individual intended on selling it. Respondent indicated that he did so out of fear. The Acting Deputy Administrator agrees with Judge Randall's conclusion that "[i]f accepted as true, the Respondent's demonstrated susceptibility to coercion puts the public at risk of controlled substance diversion." Regarding the hydrocodone prescription, Respondent stated that he issued the prescription "because I am so busy and everything, and just to get him off my back," despite his suspicion of the cooperating individual.

However as Judge Randall noted, Respondent was convicted of aggravated trafficking in etorphine and trafficking in drugs, to wit hydrocodone, and it is not proper to look behind these convictions. Therefore, the Acting Deputy Administrator concludes that there was no legitimate medical purpose for the hydrocodone prescription in violation of 21 U.S.C. 841(a)(1), 21 CFR 1306.04 and Ohio law, and Respondent distributed the etorphine in violation of 21 U.S.C. 841(A)(1) and Ohio law.

As to factor three, it is undisputed that Respondent was convicted of two felony offenses relating to controlled substances.

Regarding such other conduct as may threaten the public health and safety, the Acting Deputy Administrator is deeply troubled by Respondent's conduct if one assumes, as Respondent suggests, that he was merely returning the cooperating individual's bottle of etorphine to him on April 5, 1995. As Respondent admitted, he knew that the cooperating individual intended on selling the etorphine, yet Respondent did not notify DEA or the local authorities. Instead, he just gave this potentially lethal medication to the cooperating individual because he was afraid of him. As Judge Randall concluded, "[s]uch behavior is a direct threat to the public safety and is not the action of a responsible registrant."

The Acting Deputy Administrator concludes that the Government has presented a *prima facie* case for revocation of Respondent's DEA Certificate of Registration. Further, the Acting Deputy Administrator concurs with Judge Randall's conclusion that rather than presenting any mitigating evidence, "the Respondent continues to fail to take responsibility for his actions, to show any remorse for his controlled substance convictions, or to give any assurance that he will not participate in such activities in the future." The Acting Deputy Administrator concludes that Respondent's continued registration would be inconsistent with the public interest and therefore grounds exist to revoke his DEA registration pursuant to 21 U.S.C. 824(a)(4).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AR1930254, previously issued to Ronald J. Riegel, D.V.M., be, and it hereby is revoked. This order is effective January 4, 1999.

Dated: November 27, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–32225 Filed 12–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS 1938–98]

Filing of Applications and Petitions for Treaty Trader and Treaty Investor (E) and Alien Entrepreneur (EB–5) Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of location of filing petitions and applications.

SUMMARY: This notice announces that the Immigration and Naturalization Service (Service) is directing all petitions and applications related to classification as a treaty trader (E–1), treaty investor (E–2), or alien entrepreneur (EB–5) to be filed at the newly defined jurisdictional areas of either the Texas Service Center or the California Service Center. This action is necessary to provide more effective monitoring and control of these often complex, time-consuming adjudications.

DATES: This notice is effective December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Katharine Auchincloss-Lorr, Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

What Change is the Service Announcing Through the Publication of This Document?

Until this time, treaty trader and treaty investment applications and alien entrepreneur petitions have been processed at the four Service Centers located in California, Vermont, Texas, and Nebraska. With the publication of this notice, pursuant to 8 CFR 103.1 and 103.2, the Service is consolidating all petitions and applications relating to classification as a treaty trader (E–1), treaty investor (E–2), and alien entrepreneur (EB–5) at two Service Centers, namely those in Texas and California.

Why is the Service Changing the Location for Processing E–1 and E–2 Applications and EB–5 Petitions?

By consolidating these applications and petitions at the Texas and California Service Centers, the Service will ensure that the procedures related to the adjudication of these highly technical requests for immigration benefits are more uniform, consistent, and streamlined. Quality control and other necessary program oversight functions may be more readily undertaken as necessary. The Service can more easily ensure that the officers adjudicating these cases are appropriately trained and experienced in the relevant areas of regulatory trade, investment, financial, and economic policy and analysis, and that they have access to the additional expertise necessary in particularly complex matters.

How Will the Public Benefit From These Changes?

These petitioners and applicants will receive more comprehensive and effective adjudication of their requests for benefits. These adjudications will be performed only by trained and skilled adjudicators, familiar with these complex financial and economic requirements and the issues involved. Consolidation will enable the Service to respond more effectively to any procedural concerns and to provide prompt adjudication. .

What Petitions and Forms are Involved?

The petitions and applications involved in this change of filing location include applications for extension or change of status of nonimmigrant classification to treaty trader (E–1) and treaty investor (E–2) status which are processed on Form I–129; petitions for alien entrepreneur classification, which are filed on Form I–526, and; petitions to remove conditions at the end of the 2 year period of conditional residence, which are filed on Form I–829.

What are the Mailing Addresses for These New Filing Locations?

The current mailing addresses for these petitions and applications are as follows: for the California Service Center, 24000 Avila Road, 2nd floor (P.O. Box 10526), Laguna Niguel, California 92607–0526; for the Texas Service Center, P.O. Box 852135, Mesquite TX 75185–2135.

Is This Change in Location a Change in Service Center Jurisdiction?

The Nebraska and Vermont Service Centers will no longer have jurisdiction over E–1, E–2, and EB–5 matters. The Texas and California Service Centers will have jurisdiction over these matters.

Effective [Insert date of publication in the **Federal Register**], petitions for immigrant investor classification which have been filed pursuant to § 204.6(b) with the Service Center having jurisdiction over the area in which the new commercial enterprise is or will be principally doing business, will be filed with: (1) The Texas Service Center if the new commercial enterprise is located, or will principally be doing business, in the areas previously covered by the Vermont and Texas Service Centers; (2) the California Service Center if the new commercial enterprise is located, or will principally be doing business, in the areas previously covered by the California and Nebraska Service Centers.

The same change will occur with regard to applications for extension of stay or change of status into E–1 or E–2 classification which are filed pursuant to the instructions on Form I–129 with the Service Center with jurisdiction over the location of employment.

What Will Happen to My Application or Petition if I Already Filed It at Another Service Center?

During the first 60 days following the effective date of this Notice, the Service Centers in Vermont and Nebraska will forward in a timely fashion to the Service Centers in Texas and California, as appropriate, any of these applications and petitions which have been inadvertently filed with the Service Centers in Vermont or Nebraska. In order to facilitate this transition, applicants and petitioners will be provided a notice at the time of filing at Vermont or Nebraska advising them that their application or petition is being forwarded to the correct service center, either Texas of California, for initial processing. When applications or petitions are forwarded from the Vermont or Nebraska Service Centers, they will be receipted and filed when they arrive at the Texas or California Service Centers. After the 60-day transition period, applications and petitions related to classification as treaty trader (E–1), treaty investor (E–2), or alien entrepreneur (EB–5) filed inadvertently at the Vermont or Nebraska Service Centers will be returned with a notice that directs the petitioner or applicant to mail the petition or application directly to the Texas or California Service Center, as appropriate, for processing.

Dated: November 13, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–32237 Filed 12–3–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1201]

RIN 1121–ZB37

Announcement of the Availability of Training and Technical Assistance To Replicate a Drug Prevention Program as Identified by the Office of Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of availability of training and technical assistance.

SUMMARY: Announcement of the availability of OJJDP-funded training and technical assistance to replicate a drug prevention program.

DATES: The due date for receipt of applications is specified in the Program Announcement.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: General information about application procedures and copies of the Program Announcement (discusses the nature and purpose of the program and describes application requirements and deadlines) and the Application Kit (includes application forms and instructions that apply to all OJJDP funding opportunities) are available from OJJDP's Juvenile Justice Clearinghouse (ordering and contact information is found in the Background section). Specific questions about the Program Announcement and related requirements should be directed to the Program Manager referenced in the Program Announcement.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Fiscal Year 1998 Appropriations Act, Pub. L. 105–119, 111 Stat. 2440 (November 26, 1997).

Background

Applicants will receive training and technical assistance to replicate Life Skills Training, a drug abuse prevention program. Prospective applicants should contact the Juvenile Justice Clearinghouse (JJC) for copies of the Program Announcement and Application Kit by calling 800–638–8736. To request that a copy be mailed to you, select option 2 or 3, and ask for SL 255 for the Program Announcement and SL 254 for the Application Kit. To have the Program Announcement faxed to you, call 800–638–8736 and select option 1 to reach JJC's fax-on-demand service, then choose option 2, and enter 9046. The Program Announcement and the Application Kit are also available on the Internet at www.ncjrs.org/ojjhome.htm; see Grants and Funding or New Initiatives sections.

Dated: December 1, 1998.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–32351 Filed 12–3–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 30, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ({202} 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for, ESA, MSHA, OSHA Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Representative Fee Request.

OMB Number: 1215–0078 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Individuals or household.

Number of Respondents: 14,000.

Estimated Time Per Respondent: 20 to 90 minutes.

Total Burden Hours: 10,000.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 17,150.

Description: Individuals filing for compensation benefits with the Office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under 20 CFR 10.145 (Federal Employees' Compensation Act) and 20 CFR 702.132 (Longshore and Harbor Workers' Compensation Act). The fee must be approved by the OWCP before any demand for payment can be made by the representative.

Agency: Employment Standards Administration.

Title: The Black Lung Provider Enrollment Form.

OMB Number: 1215–0137 (extension).

Agency Number: CM–1168.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 4,000.

Estimated Time Per Respondent: Three to seven minutes.

Total Burden Hours: 300.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 1,400.

Description: ESA's Division of Coal Mine Workers' Compensation (DCMWC) is responsible for maintaining a list of authorized treating physicians and medical facilities in the area of a miner's residence and for payment of certain medical bills and services provided to the miner under the Black Lung Benefits Act. This form is sent to and completed by new providers who wish to participate in providing medical services to miners. The information provided is used by DCMWC to create a data base identifying medical providers by name, address, and billing information, and the type of medical service they will provide.

Agency: Employment Standards Administration.

Title: Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlements.

OMB Number: 1215–0151 (revision).

Frequency: Annually.

Affected Public: Individuals or household.

Number of Respondents: 50,000.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 16,666.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): $17,500.

Description: The Department of Labor is seeking approval to revise this information collection to include a question asking if the respondent has ever been convicted of a fraud related offense in connection with the application or receipt of worker's compensation benefits. It also asks whether the respondent has been incarcerated for any period during the last 15 months for any felony offense. These additional questions are necessitated by 5 U.S.C. 8148(a), which provides that an individual convicted of any violation related to fraud in the application for, or receipt of, any compensation benefit, forfeits (as of the date of such conviction) any entitlement to such benefits for any injury occurring on or before the date of conviction. Also, 5 U.S.C. 8148(b)(1) requires that no Federal compensation benefit can be paid to any individual for any period during which such individual is incarcerated for any felony offense.

Agency: Occupational Safety and Health Administration.

Title: Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (29 CFR part 1915)

OMB Number: 1218–0011 (extension).

Frequency: Varies (Daily, On Occasion).

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, local or tribal.

Number of Respondents: 82,560.

Estimated Time Per Respondent: Varies from 2 minutes to 5 minutes.

Total Burden Hours: 136,403.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The information collection requirements contained in the standard on Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (29 CFR part 1915) are necessary for the protection of employees exposed to hazardous atmospheres in shipyard employment. Hazardous atmospheres, whether toxic, flammable or oxygen deficient/enriched, are found throughout shipyard employment, in shipbuilding, ship breaking, repair and land side activities. Before employees can work in spaces that may contain hazardous atmospheres, the spaces must be inspected and often tested to determine atmospheric contents. In some situations, the testing is done by a Marine Chemist, Coast Guard Authorized Person, or certified industrial hygienist and a hot work certificate is issued and posted. To make sure the atmosphere in a space remains safe for workers, retesting is required. In the vast majority of situations, a Shipyard Competent Person (SCP) will test the space, record and maintain the results and post instructions for the workers to follow prior to or during work in the space. The SCP must also retest as necessary to maintain safe conditions.

Employees who must enter spaces that may contain hazardous atmospheres must be certified that they have received training and a record of the certification maintained by the employer.

Employers and employees are unable to recognize, flammable or oxygen deficient/enriched atmospheres in spaces without first testing to determine that hazardous conditions exist. By requiring employers, under 29 CFR 1915.7, to ensure that employees have the ability and knowledge to recognize, test for, and remove these hazards and to specifically assign certain duties to these employees, OSHA is reducing the incidence of accidents caused by hazardous atmospheres within shipyard employment, including but not limited to, vessels and vessel sections.

Agency: Occupational Safety and Health Administration.

Title: Control of Hazardous Energy Sources (Lockout/Tagout) (29 CFR 1910.147).

OMB Number: 1218–0132 (extension).

Frequency: Varies (Initially, Yearly, On Occasion).

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 462,340.

Estimated Time Per Respondent: Varies from 15 seconds to 2.5 hours.

Total Burden Hours: 818,098.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The collections of information contained in the standard on the Control of Hazardous Energy Sources (Lockout/Tagout) are needed to reduce injuries and deaths in the workplace that occur when employees are engaged in maintenance, repair, and other service related activities requiring the control of potentially hazardous energy. The employer will use the information in the procedures he or she develops to provide employees with a clear understanding of uniform and safe methods for the application and removal of energy control measures involving work on machines or equipment, thereby reducing accident probability. In addition, the information will be used by employers to enable them to pinpoint methods and operations currently in use that may require additional attention. The failure to provide and maintain access to this information will significantly impair the

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Occupational Safety and Health Administration's effort to control or reduce injuries and fatalities in the workplace that are associated with these activities and conditions.

Agency: Occupational Safety and Health Administration.

Title: Electrical Standards for Construction (29 CFR part 1926, Subpart K).

OMB Number: 1218–0130 (revision).

Frequency: Initially, On Occasion.

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 278,500.

Estimated Time Per Respondent: Varies from .02 to .17 hour.

Total Burden Hours: 53,001.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In the Electrical Standards for Construction (29 CFR part 1926, Subpart K), the written description of the Assured Equipment Grounding Conductor Program (AEGP) required by 1926.404(b)(1)(iii) allows employers, employees, and OSHA compliance officers to determine how the requirements of the standard are being met, including the method of recording tests. For example, the employer's written program might specify the use of yellow tape to color code every tool and cord set. By referring to the written program, OSHA compliance officers and other persons can easily determine if the employer is complying with the program.

The posting of warning signs enables employees to avoid accidental contact of electrical equipment used on construction sites. Contact with unguarded live electrical parts, especially at high voltage, can be hazardous to employees.

The tagging of controls, equipment and circuits its intended to prevent the inadvertent reactivation of the controls, equipment and circuits while they are being serviced.

Agency: Occupational Safety and Health Administration.

Title: Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143 (extension).

Frequency: Varies (Initially, Yearly, On Occasion).

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 0.

Estimated Time Per Respondent: Varies from .02 to .17 hour.

Total Burden Hours: 1.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The collections of information contained in the Presence Sensing Device Initiation (PSDI) standard are considered essential for ensuring the safety of employees using presence sensing devices. The requirement for affixing test rod instructions label to the presence sensing device—1910.21(h)(10)(I)—enhances the proper and essential device testing. Because operator safety depends on the PSDI safety system, conforming with the equipment testing and checking requirements is absolutely essential for worker safety.

The requirements for certification/validation 1910.217(h)(11)(I) through (vi), (13), and Appendices A and C—ensure that the design, installation, and ongoing maintenance of the safety system is objectively evaluated for conformance with all applicable requirements of the section. The section further requires notification of unplanned incidents such as component failures and accidents which could impair the continuing safety of the system. For employees, employers, OSHA compliance and consultation personnel, insurance authorities, and others involved to be able to recognize easily that the system meets OSHA standards, the press must be labeled to affirm validation/certification. Submitting copies of accident reports to the validation organization is necessary to assure that the validation organization will have knowledge of field experience in this mode of press operation and will be able to incorporate any lessons learned from the accidents into the certification/validation program provisions.

Because this rule permits a mode of operation which previously was prohibited, OSHA believes it is especially essential to verify that this method does not compromise worker safety. The certification/validation program provides a method to ensure that the press and related equipment are properly arranged and that the installation does not become degraded over time. It should be noted that although OSHA uses the term "certification" for this process, it should not be confused with the use of the word as addressed in the Office of Management and Budget (OMB) implementing regulations for the Paperwork Reduction Act, to reflect a minimal information collection method. The word "certification" in this rulemaking is based on the American National Standard ANSI Z31.1.1.–1987, and is nationally recognized as describing a broad, comprehensive, well-defined program for ensuring product or material conformance with established standards.

OSHA believes the burden for this information collection request is minimal as employers have not incurred any paperwork to comply with the standard because they have not elected to use PSDI features on their power presses. OSHA is requesting one hour approval from OMB in the event an employer may wish to use a PSDI, which will trigger the collection of information requirements.

Agency: Mine Safety and Health Administration.

Title: Refuse Piles and Impounding Structures, Recordkeeping and Reporting Requirements.

OMB Number: 1219–0015 (Extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Estimated Time Per Respondent: 128 hours.

Number of Respondents: 12,768.

Total Burden Hours: 96,688.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): $0.

Description: Requires coal mine operations submit to MSHA an annual status report and certification on impoundments and hazardous refuse piles; and to keep records of the results of weekly examinations and instrumentation monitoring impounds.

Agency: Mine Safety and Health Administration.

Title: Records of Tests and Examinations of Personnel Hoisting Equipment.

OMB Number: 1219–0034 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 360.

Estimated Time Per Respondent: 96 hours.

Total Burden Hours: 34,460.

Total Annualized Capital/startup Costs: $0.

Total Annual (operating/maintaining): $0.

Description: Coal mine operators are required to test and inspect the personnel hoisting system to ensure that the system remains safe to operate. Any deficiencies found are to be recorded, corrected and, a record made and maintained for one year.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–32255 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,498 and NAFTA–02347]

Kunkle Foundry Company, Incorporated, Andrews, Indiana; Notice of Negative Determination on Reconsideration

On August 26, 1998, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Regiser** on September 10, 1998 (63 FR 48525).

The Department initially denied TAA to workers of Kunkle Foundry because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The Department conducted a survey of major customers of the subject firm. None of the respondents indicated any imports of bronze castings. The workers at the subject firm were engaged in employment related to the production of bronze castings.

The petitioner asserted that subject firm production of bronze castings had been shifted to Mexico and imported into the U.S.

On reconsideration, the department requested that the subject firm provide additional information about the disposition of certain castings. After discussions with company officials and officials with companies with whom the castings have been out-sourced, the department has found that the out-sourced castings are being manufactured in New Jersey and Texas and not in Mexico.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Kunkle Foundry Company, Incorporated, Andrews, Indiana.

Signed at Washington, DC, this 12th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32275 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,971; Zilog, Inc., Nampa, ID
TA–W–35,059; Textron Turf Care & Specialty Products, Racine, WI
TA–W–34,883; Corning, Inc., Corning Metals Shop, Corning, NY
TA–W–34,914; Arlee Home Fashions, Houston, MO
TA–W–34,843; Smith Tool, Ponca City, OK

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,112; Reliability, Inc., Durham, NC
TA–W–34,980; Ogden Atlantic Design Co., Charlotte, NC
TA–W–34,960; The Warren Group., Secaucus, NJ
TA–W–34,950; Kidz Klothz Group, Inc., New York, NY
TA–W–35,097; Wallet Works, Horse Cave, KY
TA–W–35,096; US Technologies, Sewell, NJ
TA–W–35,119; Tri State Associated Wholesale Grocer, El Paso, TX
TA–W–35,118; Institute for Scientific Information, Cherry Hill, NJ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,915; Syntec Industries, Inc., Rome, GA
TA–W–34,998; PCC Merriman, Hingham, MA
TA–W–35,039; Reese Enterprises, Inc., Acme Metal Products, Plymouth, PA
TA–W–35,083 & A; Union Apparel, Inc., Norvelt, PA & Perfect Cutting Co., Inc., Norvelt, PA
TA–W–34,927; Siemens Westinghouse Power Corp., Winston-Salem, NC
TA–W–34,795; National Textiles L.L.C., Morganton, NC
TA–W–34,862; Rexair, Inc., Cadillac, MI
TA–W–34,784; Thorn Apple Valley, Frederick Fresh Pork Div., Detroit, MI
TA–W–35,095; McCulloch Corp., Lake Havasu City Warehouse, Lake Havasu City, AZ
TA–W–34,906; Fairchild Semiconductor, South Portland, ME
TA–W–34,847; Technaflow, Inc., Vancouver, WA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each

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determination references the impact date for all workers of such determination.

TA-W-34,920; Customer Service Dept., Fruit of The Loom, Bowling Green, KY: July 29, 1997.
TA-W-34,990; Sinary Limited, New York, NY: August 21, 1997.
TA-W-34,922; Zeneca Specialties, Mount Pleasant, TN: August 17, 1997.
TA-W-35,040 & A; The Clarks Companies, NA, Kennett Square, PA: November 27, 1998 and Manufacturing Shoe Plant, Franklin, WV: September 25, 1997.
TA-W-35,032; TRW/BDM-Petroleum Technologies, Bartlesville, OK: September 15, 1997.
TA-W-35,079; General Electric Industrial Systems, Erie, PA: August 1, 1998.
TA-W-35,093; Dash America, Okie Apparel Plant, Hugo, OK: July 28, 1997.
TA-W-35,025; Sportknit, Inc., Albertson, NC: September 17, 1997.
TA-W-34,718 & A; NACCO Materials Handling Group, Inc., Yale Materials, Flemington, NJ & Hyster Co., Danville, IL: June 18, 1997.
TA-W-34,106; Farah USA, Inc., El Paso, TX December 9, 1996.
TA-W-35,056; Halliburton Energy Service, Headquartered in Houston, TX and Operating at Various Locations in The Following States: A; AK, B; AL, C; AR, D; CA, E; FL, F; IL, G; IN, H; KS, I, LA, J; MI, K; MS, L; NM, M; ND, N; OH, O; OK, P; PA, O; TX, R; VA, S; WY: September 4, 1997.
TA-W-35,058; UCAR Corp., Clarksburg, WV: September 24, 1997.
TA-W-35,072 & A; Lone Star Steel Co., Lone Star, TX and T&N Lone Star Warehouse, Lone Star, TX: September 29, 1997.
TA-W-35,065; Cape Cod Sportswear Co., Inc., New Bedford, MA: September 24, 1997.
TA-W-35,110; M.I. Phoenix, Inc., New Bedford, MA: October 6, 1997.
TA-W-35,026; Big C Corp., Red Boiling Springs, TN: September 17, 1997.
TA-W-35,106; OPT Industries, Inc., Phillipsburg, NJ: September 28, 1997.
TA-W-35,086; North Star Steel Texas, Inc., Beaumont, TX: September 29, 1997.
TA-W-35,033; Anvil Knitwear, Inc., Whiteville, NC: September 17, 1997.
TA-W-35,027; Trico Products Corp., Buffalo, NY: September 1, 1997.
TA-W-35,122; Pafer Huichita El Paso, Inc., El Paso, TX: October 2, 1997.
TA-W-34,974; Essex Manufacturing Co., Fall River, MA: September 3, 1997.
TA-W-34,985; Bernstein & Sons Shirt Corp., Utica, MS: September 1, 1997.
TA-W-35,137; Adams USA, Inc., Monterey, TN: October 12, 1997.
TA-W-35,037; Sandy Shaw, Inc., New York, NY: September 16, 1997.
TA-W-35,142; Tri-Clover, Inc., AN Alfa Laval Co., St. Charles, MO: October 16, 1997.
TA-W-35,008; DSI Staff Connxions, Workers Employed at Thomson Consumer Electronics Rebuild Center, El Paso, TX: September 28, 1997.
TA-W-35,022; Armtex, Inc. Dye & Finishing Plant & Finished Goods Warehouse, Pilot Mountain, NC: September 11, 1997.
TA-W-34,893; Gintex LTD (Formerly MAS Cutting), Pittston, PA: August 10, 1997.
TA-W-35,024; Todd Products Corp., Brentwood, NY: September 15, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of November, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-02509; National Textiles, L.L.C., Morganton, NC
NAFTA-TAA-02663; National Fruit Products Co., Inc., Kent City Plant, Kent City, MI
NAFTA-TAA-02617; PCC Merriman, Hingham, MA
NAFTA-TAA-02627; Spalding Sports Worldwide, Chicopee, MA
NAFTA-TAA-02658; Cape Cod Sportswear Co., Inc., New Bedford, MA
NAFTA-TAA-02612; Essex Manufacturing Co., Fall River, MA
NAFTA-TAA-02685 & A; Union Apparel, Inc., Norvelt, PA and Perfect Cutting Co., Inc., Norvelt, PA
NAFTA-TAA-02672 & A; Lone Star Steel Co., Lone Star, TX and T&N Lone Star Warehouse, Lone Star, TX
NAFTA-TAA-02695; Textron Turf Care & Specialty Products, Racine, WI
NAFTA-TAA-02678; Hamlin, Inc., Subsidiary of Breed Technologies, Gwinn, MI
NAFTA-TAA-02629; Sportknit, Inc., Albertson, NC
NAFTA-TAA-02522; Thorn Apple Valley, Frederick Fresh Port Div., Detroit, MI
NAFTA-TAA-02650; Woodwork Corp of America, A Subsidiary of DBA Products Co., Merrill, WI
NAFTA-TAA-02606; Zilog, Inc., Nampa, ID
NAFTA-TAA-02651; Vulcan-Brunswick Bowling Pin Co., Antigo, WI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA-TAA-02603; Ogden Atlantic Design Co., Charlotte, NC

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-02587; Gintex, Ltd. Formerly MAS Cutting, Pittston, PA: August 10, 1997.

NAFTA–TAA–02686; Welco Lumber Co., Marysville, WA: October 20, 1997.
NAFTA–TAA–02556; Cross Creek Apparel, Carthage, NC: October 5, 1997.
NAFTA–TAA–02689; Pafer Huichita El Paso, Inc., El Paso, TX: October 21, 1997.
NAFTA–TAA–02712; Halliburton Energy Services, Casper, WY: October 29, 1997.
NAFTA–TAA–02696; Tri-Clover, Inc., An Alfa Laval Flow Co., St. Charles, MO: October 20, 1997.
NAFTA–TAA–02675; Adams USA, Inc., Monterey, TN: October 15, 1997.
NAFTA–TAA–02634; Todd Products Corp., Brentwood, NY: September 15, 1997.
NAFTA–TAA–02664; North Star Steel Texas, Inc., Beaumont, TX: October 8, 1997.
NAFTA–TAA–02677; General Electric, Industrial Systems, Erie PA: July 20, 1998.
NAFTA–TAA–02632; General Electric Co., Power Systems Engineering Drafting Operations & Power Systems Information Management Services Group, Fitchburg, MA: August 25, 1997.
NAFTA–TAA–02575; Zeneca Specialties, Mount Pleasant, TN: August 18, 1997.

I hereby certify that the aforementioned determinations were issued during the month of November, 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 20, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32266 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,607]

Berg Electronics Group, Incorporated, RF Division A/K/A Specialty Connector, Franklin, Indiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 27, 1998, applicable to workers of Berg Electronics Group, RF Division located in Franklin, Indiana. The notice was published in the **Federal Register** on August 7, 1998 (63 FR 42434).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce radio frequency (RF) connectors. The company has provided information showing that workers of Berg Electronics have had their wages reported under the unemployment insurance (UI) tax account for the former owner, Specialty Connector. Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Berg Electronics who were adversely affected by increased imports.

The amended notice applicable to TA–W–34,607 is hereby issued as follows:

> All workers of the RF Division of Berg Electronics Group, Incorporated, also known as Specialty Connector, Franklin, Indiana, who became totally or partially separated from employment on or after May 20, 1997 through July 27, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32265 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,136]

BWD Automotive of Alabama, Selma, Alabama; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 26, 1998 in response to a worker petition which was filed on behalf of workers and former workers at BWD Automotive of Alabama, located in Selma, Alabama (TA–W–35,136).

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–35,078).

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 3rd day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32262 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

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APPENDIX

[Petitions instituted on 11/9/1998]

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,175	Electronic Components (Co.)	Tucson, AZ	10/27/1998	Circuit Board Assemblies.
35,176	Household Products, Inc (Co.)	Asheboro, NC	10/22/1998	Household Consumer Products.
35,177	Elg Metals, Inc (Wkrs)	McKeesport, PA	10/26/1998	Stainless Steel Scrap.
35,178	Clar Mar, Inc (Co.)	Cherryville, NC	10/27/1998	Ladies' Sportswear.
35,179	Spartan Mills (Wkrs)	Cheshee, SC	03/03/1998	Woven Apparel Fabrics.
35,180	TYK America, Inc (Wkrs)	Irvona, PA	10/26/1998	Bricks for Steel Mills.
35,181	Nortel—Wireless Network (Wkrs)	Morrisville, NC	10/20/1998	Digital Wireless Telephone Systems.
35,182	PL Subsidiary (Co.)	Dublin, GA	10/21/1998	Denim Blue Jeans.
35,183	Lincoln Brass Works, Inc (Wkrs)	Waynesboro, TN	10/20/1998	Brass Valves for Gas Grills.
35,184	LeBlanc, Inc (Co.)	Sioux City, IA	10/19/1998	Communication Towers and Accessories.
35,185	Allegheny Ludlum Steel (USWA)	Pittsburgh, PA	10/23/1998	Silicon Steel.
35,186	Westinghouse Air Brake (Wkrs)	Foster City, CA	10/26/1998	Pipe Fittings.
35,187	Fruit of The Loom (Wkrs)	Bowling Green, KY	09/08/1998	Administrative, Management, Clerical etc.
35,188	Greif Brothers Corp (Wkrs)	Westfield, MA	10/17/1998	Paper.
35,189	Rexnord Chain (USWA)	Indianapolis, IN	10/26/1998	Chain Products.
35,190	Highlander Apparel, Inc (Wkrs)	Carthage, TN	10/25/1998	Denim and Twill Men's Shirts.
35,191	Allied Signal Laminate (Wkrs)	Pendleton, SC	10/26/1998	Copper Clad Laminate.
35,192	Rockwell Seminconductor (Co.)	Colorado Spring, CO	10/28/1998	Semiconductor Chips.
35,193	Dealers Manufacturing (Co.)	Portage, WI	10/27/1998	Re-Manufactured Automotive Parts.
35,194	Aplex Industrial (Wkrs)	Midland, TX	10/28/1998	Centrifical Pumps.
35,195	Bulk Pack, Inc (Co.)	Denison, TX	10/29/1998	Bulk Containers.
35,196	Monarch Machine Tool (Co.)	Cortland, NY	10/28/1998	Vertical Machining Centers.
35,197	Frank 1x and Sons (Co.)	Charlottesville, VA	10/23/1998	Greige Goods.
35,198	Northern Cheyenne Pine (Wkrs)	Ashland, MT	10/26/1998	Lumber.
35,199	Hercules, Inc (Co.)	Parlin, NJ	10/21/1998	Nitrocellulose.
35,200	Nabors Drilling USA (Wkrs)	Kilgore, TX	10/22/1998	Oil, Gas Drilling.
35,201	Quebecor Printing (Wkrs)	Providence, RI	10/24/1998	Print, Bindery of Books, Maps, Posters
35,202	U.S. Steel (USWA)	Braddock, PA	11/02/1998	Hot Rolled Sheet.

[FR Doc. 98-32256 Filed 12-3-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,935]

Fairchild Semiconductor, West Jordan, Utah; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 21, 1998 in response to a worker petition which was filed on August 10, 1998 on behalf of workers at Fairchild Semiconductor, West Jordan, Utah.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 16th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-32267 Filed 12-3-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,820]

General Electric Company, Power Systems Plant, Fitchburg, Massachusetts; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 30, 1998, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The determination was signed on September 17, 1998, and published in the **Federal Register** on October 9, 1998 (63 FR 54494).

Subsequent to the issuance of the determination the company provided additional information with respect to company imports and lost bids that merits the Department's reinvestigation of the initial determination.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 12th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-32260 Filed 12-3-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 2nd day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 11/02/1998]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,141	Gilbert and Bennett Mfg (Comp)	Cardey, MI	10/21/1998	Cedar Post, Rails, Cedar Mulch.
35,142	Tri-Clover, Inc (Comp)	St. Charles, MO	10/16/1998	High Purity Fittings.
35.143	Savage Zinc. Inc (Wrks)	Thorn Hill, TN	10/16/1998	Mine Zinc Concentrate.
35,144	Schlumberger Oilfield (Wrks)	Youngsville, LA	10/13/1998	Oil and Gas Exploration and Drilling.
35.145	Schlumberger Oilfield (Wrks)	Duncan, OK	10/01/1998	Oil and Gas Exploration and Drilling.
35,146	Detroit Steel Products (Wrks)	Morristown, IN	10/20/1998	Suspension Systems for Trucks.
35.147	Fashions by Gariffo (UNITE)	New York, NY	10/08/1998	Coats, Suits, Jackets.
35 148	Martin-Decker Totco (Wrks)	Williston, ND	10/20/1998	Rent Computers to Montor Rigs.
35,149	Wolverine World Wide (Comp)	Rockford, MI	10/16/1998	Tanned Pigskin for Shoes, Boots.
35,150	America Lantern (Wrks)	McKenze, TN	09/10/1998	Outdoor Residential Lighting.
35.151	Carr Lowrey Glass (GMP)	Baltimore, MD	10/18/1998	Glass Containers for Lotions, Perfumes.
35,152	Buster Brown Apparel (Comp)	Chilhowie, VA	10/19/1998	Children's Apparel.
35 153	Tiger Accessories, Inc (UNITE)	Bay Shore, NY	10/09/1998	Belts.
35,154	Len-Jeff, Inc. (UNITE)	Kulpmont, PA	10/16/1998	Ladies' Dresses.
35,155	Rocky Mount Instruments (Comp)	Rocky Mount, NC	10/15/1998	Digital Electronic Organs.
35.156	Pluma, Inc (Comp)	Martinsville, VA	10/15/1998	Knitting, Cutting Fleece and Jersey.
35.157	Tultex (Comp)	Martinsville, VA	10/09/1998	Fleece Pants, Crewneck Shirts, Shorts.
35,158	Quickie Mfg/Assembly Serv (Comp)	El Paso, TX	10/21/1998	Household Cleaning Tools.
35,159	Komatsu Silicon America (Wrks)	Hillsboro, OR	10/15/1998	Silcon Ingots and Wafers.
35,160	Golden Books Family (UAW)	Sturtevant, WI	10/06/1998	Children's Story Brooks.
35,161	Weatherford Enterra (Wrks)	Andrews, TX	10/13/1998	Oilwell Services.
35,162	Thomaston Mills, Inc (Comp)	Griffin, GA	10/05/1998	Yarn.
35,163	Ametek-March Electric (IAMAW)	Cambridge, OH	10/20/1998	Small Electric Motors.
35,164	Tickle Me (Wrks)	Long Island Cty, NY	10/21/1998	Children's Clothing.
35,165	L and D Ladies Bottom (Wrks)	Brooklyn, NY	10/13/1998	Ladies' Skirts and Pants.
35,166	Leybold Vacuum Products (Wrks)	Export, PA	10/14/1998	Dry Vacuum Pumps.
35,167	Tyrolit North America (Wrks)	Westboro, MA	10/16/1998	Grinding Wheels.
35 168	Nortel, Incorporated (Wrks)	Nashville, TN	10/21/1998	Re-Build Telephone Sets.
35.169	Jayo Neckwear (UNITE)	Bethlehem, PA	10/23/1998	Neckwear, Ties.
35.170	ELG East Coast, Inc (Wrks)	McKeesport, PA	10/23/1998	Scrap Metal Processor.
35 171	Walbro Corp (UAW)	Cass City, MI	10/23/1998	Engine Components (Carburetors).
35,172	National Oilwell (Wrks)	McAlester, OK	10/22/1998	Pump Liners.
35,173	Jockey International (Wrks)	Mt. Sterling, KY	10/20/1998	Men's and Ladies' Underwear.
35,174	Northwestern Steel (Comp)	Sterling, IL	10/20/1998	Wire Products.

[FR Doc. 98–32257 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Levi Strauss and Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1998 (62 FR 48888). The certification was subsequently amended to include subject firm workers at various facilities and offices and contract workers at facilities where the subject firm's workers had been previously certified.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at two companies; El Paso Physical Therapy Services and J and L Enterprises, performing contract services for Levi Strauss's previously certified production facilities; the Pellicano Finishing Facility, El Paso, Texas and the Amarillo Finishing Plant, Amarillo, Texas. Based on this new information, the Department is amending the certification to cover workers at El Paso Physical Therapy Services, El Paso, Texas and J and L Enterprises, Amarillo, Texas.

The intent of the Department's certification is to include all workers of

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Levi Strauss and Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–33,513 is hereby issued as follows:

> All workers of Levi Strauss and Company, including Dockers and contract workers at the following facilities, who became totally or partially separated from employment on or after May 13, 1996 through August 7, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–33,513 Goodyear Cutting Facility, El Paso, Texas

TA–W–33,513A Pellicano Finishing Facility including El Paso Physical Therapy Services, 11460 Pellicano, El Paso, Texas

TA–W–33,513F Amarillo Finishing Plant, 4724 24th St., NE including J and L Enterprises, 11601 Wade, Amarillo, Texas.

Signed at Washington, DC this 17th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32264 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,479 and TA–W–34,479A]

Nabors Drilling USA, Incorporated Williston, North Dakota and Operating at Various Locations in Montana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 26, 1998 applicable to workers of Nabors Drilling USA, Incorporated, Williston, North Dakota (TA–W–34,479). The notice was published in the **Federal Register** on July 31, 1998 (63 FR 40935).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers provide contract drilling services in the crude oil and natural gas industry. New information provided by the company shows that some workers separated from employment at Nabors Drilling USA, Incorporated, Williston, North Dakota had their wages reported under a separate unemployment insurance (UI) tax account for Nabors Drilling USA operating at various locations in the State of Montana. Based on these findings, the Department is amending the certification to include workers of Nabors Drilling USA, Incorporated operating at various locations in the State of Montana.

The intent of the Department's certification is to include all workers of Nabors Drilling USA, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–34,479 is hereby issued as follows:

> All workers of Nabors Dirlling USA, Incorporated, Williston, North Dakota (TA–W–34, 479) and operating at various locations in Montana (TA–W–34,479A), who became totally or partially separated from employment on or after April 14, 1997 through June 26, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC. this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32268 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,884]

Pioneer Finishing Duro Industries, Fall River, Massachusetts; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Pioneer Finishing, Duro Industries, Fall River, Massachusetts. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34,884; Pioneer Finishing, Duro Industries, Fall River, Massachusetts (November 18, 1998)

Signed at Washington, D.C. this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32273 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,398; TA–W–34,398C; TA–W–34,398D; TA–W–34,398E; TA–W–34,398F and TA–W–34,398G]

Semitool, Incorporated: Kalispell, Montana; Semitool—Southwest, Tempe, Arizona; Semitool—California, San Jose, California; Western Regional Office, Wilsonville, Oregon; Central Regional Office, Dallas, (Richardson), Texas; and Eastern Regional Office, Orlando, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 28, 1998, applicable to all workers of Semitool, Incorporated located in Kalispell, Montana. The notice was published in the **Federal Register** on June 22, 1998 (63 FR 33958).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at Semitool—Southwest, Tempe, Arizona; Semitool—California, San Jose, California; Western Regional Office, Wilsonville, Oregon; Central Regional Office, Dallas, (Richardson), Texas; and the Eastern Regional Office, Orlando, Florida. Workers at these locations provide administrative and customer support services for Semitool's wafer processing equipment production facilities including Kalispell, Montana.

The intent of the Department's certification is to include all workers of Semitool, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Semitool, Incorporated; Semitool—Southwest, Tempe, Arizona; Semitool—California, San Jose, California; Western Regional Office, Wilsonville, Oregon; Central Regional Office, Dallas, (Richardson), Texas; and the Eastern Regional Office, Orlando, Florida.

The amended notice applicable to TA–W–34,398 is hereby issued as follows:

> All workers of Semitool, Incorporated, Kalispell, Montana (TA–W–34,398); Semitool—Southwest, Tempe, Arizona (TA–W–34,398C); Semitool—California, San Jose, California (TA–W–34,398D); Western Regional Office, Wilsonville, Oregon (TA–W–

34,398E); Central Regional Office, Dallas, (Richardson), Texas (TA–W–34,398F); and the Eastern Regional Office, Orlando, Florida (TA–W–34,398G) who became totally or partially separated from employment on or after March 14, 1997 through May 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32269 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,907]

Sweet-Orr & Company, Dawsonville, Georgia; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Sweet-Orr & Company, Dawsonville, Georgia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34,907; Sweet-Orr & Company, Dawsonville, Georgia (November 18, 1998)

Signed at Washington, DC this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32272 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,089]

TransTexas Gas Corporation, Houston, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 28, 1998, in response to a petition filed on the same date on behalf of workers at TransTexas Gas Corporation, Houston, Texas.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32261 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Equal Employment Opportunity in Apprenticeship and Training; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of the information regarding registered apprenticeship programs under Title 29 CFR Part 30 (Equal Employment Opportunity in Apprenticeship and Training).

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 2, 1999.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Anthony Swoope, Director, Bureau of Apprenticeship and Training, 200 Constitution Ave., NW, Room 4649, Washington, DC, 20210; E-mail Internet address: aswoope@doleta.gov; Telephone number: (202) 219–5921 (this is not a toll-free number); Fax number: (202) 219–5011 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor "to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare * * *. "Section 2 of the Act authorizes the Secretary of Labor to "publish information relating to existing and proposed labor standards of apprenticeship," and to "appoint national advisory committees * * *." (29 U.S.C. 50a).

Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

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II. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the Federal Government or cognizant State government to operate their proposed programs consistent with 29 CFR Part 30. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship and Training.

OMB Number: 1205–0224.

Agency Number: ETA 9039.

Recordkeeping: Apprenticeship sponsors are required to keep accurate records on the qualifications of each applicant pertaining to determination of compliance with these regulations. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification standards have been validated. State Apprenticeship Councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for five years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are 4 years or more in duration; therefore, it is important to maintain the records for at least 5 years.

Section	Total respondents	Frequency	Total responses	Average time per response	Burden
Summary of Burden for 30 CFR Part 29					
Sec. 30.3	112	1-time	112	½ hour	56
Sec. 30.4	1,336	1-time	1,336	1 hour	1,336
Sec.30.5	3,964	1-time basis/applicant	3,964	½ hour	1,982
Sec. 30.6	50	1-time	50	5 hours	250
Sec. 30.8	41,480	1-time	41,480	1 minute	691
Sec. 30.8	30	1-time/program	20,740	5 minutes	1,728
Sec. 30.11	41,480	1-time	41,480	Hand-out	
ETA 9039	50	1-time	50	½ hour	25
Sec. 30.15	30	1-time	Completed		
Sec. 30.19	30	varies			
Total			109,212		6,068

Total Burden Cost (Capital/Start-up) = 0.

Total Burden Cost (Operation/Maintenance) = 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 30, 1998.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training.

[FR Doc. 98–32254 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Acting Director of OTAA not later than December 14, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than December 14, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Arrow—Ace Die Cutting (UPWU)	Bronx, NY	11/02/1998	NAFTA–2,715	Casings, textiles.
Courtland Manufacturing (Co.)	Appomattox, VA	11/03/1998	NAFTA–2,716	Ladies and girls apparel.
Delta Woodside Industries (Co.)	Decatur, TN	11/02/1998	NAFTA–2,717	Cut and sew fleece.
Tri State Wholesale Associated Grocers (Wkrs).	El Paso, TX	10/23/1998	NAFTA–2,718	Wholesale distributor.
Assembly Services—Quickie (Co.)	El Paso, TX	10/23/1998	NAFTA–2,719	Sewing of garments.
Clarion Mfg Corp of America (Wrks)	Walton, KY	10/30/1998	NAFTA–2,720	Car Stereos.
Champion Products (Comp)	Dunn, NC	11/06/1998	NAFTA–2,721	T-Shirts, Sweatshirts.
Dan River, Inc (Wrks)	Springdale, NC	11/06/1998	NAFTA–2,722	Woven Apparel Fabrics.
Romart, Inc ( )	Scranton, PA	11/10/1998	NAFTA–2,723	Men's Coats and Jackets.
Matel (UPWU)	Ft. Wayne, IN	11/06/1998	NAFTA–2,724	Battery ride on toys.
U.S. Steel Mining (UMWA)	Pineville, WV	11/09/1998	NAFTA–2,725	Metalurgical coal.
Avery Dennison (Wkrs)	Quakertown, PA	11/10/1998	NAFTA–2,726	Pressure sensitive material.
Kinross Delamar Mining (Co.)	Jordan Valley, OR	11/10/1998	NAFTA–2,727	Gold.
Hubbell Lighting (Co.)	Christiansburg, VA	11/12/1998	NAFTA–2,728	Lighting fixtures.
Belden Wire and Cable (Co.)	Franklin, NC	11/12/1998	NAFTA–2,729	Electrical power cords.
Fresenius Medical Care (Co.)	McAllen, TX	11/12/1998	NAFTA–2,730	Venous and arterial, bloodlines and connector.
Anvil Knitwear (Wkrs)	Mullis, SC	11/12/1998	NAFTA–2,731	Sewing of knitwear.
Siemens Energy and Automation (Wkrs).	Little Rock, AR	11/16/1998	NAFTA–2,732	Electric motors.
Saldan Bindery (Co.)	Brooklyn, NY	11/13/1998	NAFTA–2,733	Filing supplies, expanding envelopes.

[FR Doc. 98–32258 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–2666]

Becton Dickinson DIFCO Laboratories, Detroit, Michigan; Notice of Termination of Investigation

Pursuant to Section 250(a) of the Trade Act of 1974, as amended, an investigation was initiated on September 22, 1998, in response to a petition filed on behalf of workers at Becton Dickinson, DIFCO Laboratories located in Detroit, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32274 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02439]

Berg Electronics Group, Incorporated, RF Division, A/K/A Specialty Connector, Franklin, Indiana; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on July 27, 1998, applicable to workers of Berg Electronics Group, RF Division located in Franklin, Indiana. The notice was published in the **Federal Register** on August 7, 1998 (63 FR 42435).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce radio frequency (RF) connectors. The company has provided information showing that workers of Berg Electronics have had their wages reported under the unemployment insurance (UI) tax account for the former owner, Specialty Connector. Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA–02439 is hereby issued as follows:

All workers of the RF Division of Berg Electronics Group, Incorporated, also known as Specialty Connector, Franklin, Indiana who became totally or partially separated from employment on or after June 5, 1997 through July 27, 2000, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 19th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32276 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02090]

Farah USA, Incorporated, Savane International Corporation, El Paso, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 25, 1998, applicable to all workers of Farah USA, Incorporated located in El Paso, Texas. The notice was published in the **Federal Register** on March 16, 1998 (63 FR 12838).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of prototype garments. New information received from the company shows that Savane International Corporation is the parent firm of Farah USA, Incorporated located in El Paso, Texas. The company also reports that some workers separated from employment at Farah USA, Incorporated had their wages reported under a separate unemployment insurance (UI) tax account for Savane International Corporation, also located in El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Farah USA, Incorporated who were adversely affected by the shift of production to Mexico.

The amended notice applicable to NAFTA–02090 is hereby issued as follows:

All workers of Farah USA, Incorporated, Savane International Corporation, El Paso, Texas who became totally or partially separated from employment on or after December 9, 1996 through February 25, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32263 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02430]

J.L. Clark Tube Division, Downers Grove, Illinois; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 24, 1998, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for NAFTA-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice applicable to workers of the subject firm located in Astoria, Oregon, was signed on August 11, 1998 and was published in the **Federal Register** on August 28, 1998 (63 FR 46073).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The NAFTA–TAA petition filed on behalf of workers of J.L. Clark, Tube Division, Downers Grove, Illinois, producing collapsible aluminum tubes was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company or customer imports of collapsible aluminum tubes from Mexico or Canada, nor was there a shift in production from the workers' firm to Mexico or Canada.

In support of the application for reconsideration, the petitioner asserts that the subject firm was purchased by a Canadian firm, and the sale included the customer list of the subject firm. Further, the petitioner asserts that the firm which acquired the subject firm is now producing the metal tubes in Canada and providing them to the former domestic customers of the subject firm. The company which acquired J.L. Clark Tube Division was contacted and has stated that they did not purchase the customer list, only the equipment and working capital. In addition, the company which acquired J.L. Clark Tube Division has stated that neither it nor any related company manufactures collapsible aluminum tubes, such as those previously manufactured in Downers Grove, at any of their facilities outside the U.S. and imports such tubes into the U.S.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 10th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32259 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02480]

Kodak Polychrome Graphics Anitec Division, Binghamton, New York; Notice of Revised Determination on Reconsideration

On August 14, 1998, the Department issued Negative Determinations Regarding Eligibility to apply for TAA and NAFTA–TAA, applicable to workers and former workers of Kodak Polychrome Graphics, Anitec Division, Binghamton, New York. The notice was published in the **Federal Register** on September 10, 1998 (63 FR 48525).

By letter of September 25, 1998, the petitioners requested administrative reconsideration regarding the Department's denial of NAFTA–TAA for workers of the subject firm. Workers at Kodak Polychrome Graphics are engaged in employment related to the production of film. The petitioners claim that the investigation did not fully examine the impacts of imports from Mexico and insisted that the situation at the subject facility was similar to another facility closed by the parent company whose workers were certified eligible to apply for NAFTA–TAA (NAFTA–02351). After discussions with officials of the parent company, it is determined that there has been a shift of production to Mexico with resulting imports into the U.S.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that were increased imports from foreign sources including Mexico or Canada, of articles like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

> All workers of Kodak Polychrome Graphics, Anitec Division, Binghamton, New York engaged in employment related to the production of film who became totally or partially separated from employment on or after June 15, 1997 through two years from the issuance of this revised determination are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 19th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32271 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01807, 01807A, and 01807F]

Levi Strauss and Company; Goodyear Cutting Facility and El Paso Field Headquarters, 1440 Goodyear, El Paso, Texas; Pellicano Finishing Facility, Including El Paso Physical Therapy Services, 11460 Pellicano, El Paso, Texas; Amarillo Finishing Plant, 4724 24th St., NE., Including J and L Enterprises, 11601 Wade, Amarillo, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (FR 48889). The certification was subsequently amended to include subject firm workers at various facilities and offices and contract workers at facilities where the subject firm's workers had been previously certified.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at two companies; El Paso Physical Therapy Services and J and L Enterprises, performing contract services for Levi Strauss's previously certified production facilities; the Pellicano Finishing Facility, El Paso, Texas and the Amarillo Finishing Plant, Amarillo, Texas. Based on this new information, the Department is Amending the certification to cover workers at El Paso Physical Therapy Services, El Paso, Texas and J and L Enterprises, Amarillo, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports.

The amended notice applicable to NAFTA 01807 is hereby issued as follows:

> All workers of Levi Strauss and Company, including Dockers and contract workers at the following facilities, who became totally or partially separated from employment on or after May 13, 1996 through August 7, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

NAFTA 01807 Goodyear Cutting Facility, El Paso, Texas.

NAFTA 01807A Pellicano Finishing Facility, including El Paso Physical Therapy Services, 11460 Pellican, El Paso, Texas.

NAFTA 01807F Amarillo Finishing Plant, 4724 24th St., NE., including J and L Enterprises, 11601 Wade, Amarillo, Texas.

Signed at Washington, D.C. this 17th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32270 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 27a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The Prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

None

Volume IV:

None

Volume V:

None

Volume VI:

None

Volume VII:

None

General Wage Determination Publication

General Wage Determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and Related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each Volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 1st day of December 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–32277 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Reinstate, With Change, an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by February 2, 1999 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send email to splimpto@nsf.gov. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Impact of Industry-Engineering Research Center (ERC) Interaction and Effectiveness of ERC-Trained Industrially Employed Engineers.

OMB Number: 3145-0153.

Expiration Date of Approval: July 31, 1995.

Type of Request: Intent to seek approval to reinstate, with change, an information collection for three years.

Abstract: "Outcomes and Impacts of the State/Industry-University Cooperative Research Centers (S/IUCRC) Program".

Proposed Project: NSF's Directorate for Engineering established the S/IUCRC Program in 1990. The Program was build on a model established by NSF's Industry/University Cooperative Research Centers (I/UCRC) Program. NSF's Division of Engineering Education and Centers (EEC) is seeking to identify (1) the extent to which the S/IUCRC Program has achieve goals not shared with the I/UCRC program; (2) lessons learned for continuous improvement of Program performance; and (3) lessons that can inform planning of future NSF-state partnerships.

To achieve these objectives, data will be collected from representatives from organizations that have been members of the nine oldest S/IUCRCs (award cohorts 1991 and 1992) about the results in their organization of involvement with the center. Data will NOT be used to evaluate individual centers, but, rather, to study the Program as a whole. To isolate the unique effects of the distinctive features of the S/IUCRC Program, the project will also include collection of similar data from organization representatives to 20 of the I/UCRCs as well (there are over 50 I/UCRCs). The I/UCRC data will be compared with the S/IUCRC data to enable identification of results from the S/IUCRC Program that emanate from the latter Program's distinctive elements.

Use of the Information: The resulting information will be used to look at program-wide patterns of outcomes and impacts on organizations that are members of both types of centers.

Lessons learned will be used for continuous performance improvement in the presently funded S/IUCRCs. In addition, lessons about the characteristics that facilitate state-NSF partnerships will be prepared for use in future planning of state-NSF partnerships.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes hours per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 560.

Estimated Total Annual Burden on Respondents: 187 hours (560 respondents at 20 minutes per response).

Frequency of Responses: One time.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: December 1, 1998.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 98-32308 Filed 12-3-98; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Proposed rule, "Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information" (10 CFR Part 31.5).

3. *The form number if applicable:* Not Applicable.

4. *How often is the collection required:* Annually, on occasion.

5. *Who will be required or asked to report:* General licensees who possess devices using certain quantities of specific radionuclides.

6. *An estimate of the number of responses:* 6,000 annually for initial verification; 25 annually for extension request; 100 annually for miscellaneous one-time requests.

7. *An estimate of the number of additional hours needed annually to complete the requirement or request:* It will take approximately 2000 hours annually to respond to initial verification requests. The extension requests will take approximately 12½ hours annually, and the special, additional requests will take approximately 50 hours annually. The total number of additional hours needed annually to complete the requirement would be approximately 2062 hours.

8. *The average burden per response is:* General licensees—20 minutes. Extension request—30 minutes. Special requests—30 minutes.

9. *An indication of whether Section 3504(h), Pub. L. 96-511 applies:* Applicable.

10. *Abstract:* The proposed rule would add an explicit requirement to Section 31.5 that general licensees respond within 30 days to requests from the NRC, or other time specified in the request, for information concerning products that they have received for use under a general license. The NRC intends to use this provision primarily to institute a registration and accounting system for the devices containing certain quantities of specific radionuclides that present a higher risk (compared to other generally licensed devices) of exposure to the public or property if a device were lost. The proposed rule is intended to ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material and can account for their devices. Better awareness on the part of these licensees of their responsibilities would help to ensure that they comply with the requirements for proper handling and disposal of generally licensed devices and should help reduce the potential for incidents that could result in unnecessary radiation exposure to the public as well as contamination of property.

Submit, by January 4, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room 2120 L Street NW. (lower level), Washington, DC. The proposed rule is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking. Comments and questions should be directed to the OMB reviewer by January 4, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0016), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 5th day of November 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32251 Filed 12–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its March 31, 1997, application, as supplemented February 9 and June 17, 1998, for proposed amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, for the Oconee Nuclear Station, Unit Nos. 1, 2, and 3, located in Oconee County, South Carolina.

The proposed amendments would have revised the facility technical specifications pertaining to High Pressure Injection System Operability.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on April 23, 1997 (62 FR 19828). By letter dated November 4, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated March 31, 1997, as supplemented February 9 and June 17, 1998, and the licensee's letter dated November 4, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 30th day of November 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32252 Filed 12–3–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

Extension:

Form S–6, File No. 270–181, OMB Control No. 3235–0184

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Form S–6—For Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2. Unit investment trusts offering their securities to the public are required by two separate statutes to file registration statements with the Commission. They are required to register their securities under the Securities Act of 1933 ("1933 Act"), and to register as investment companies under the Investment Company Act of 1940 ("1940 Act").

Form S–6 is used for registration under the 1933 Act of the securities of any unit investment trust registered under the 1940 Act on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of two parts. Part I contains the prospectus and Part II consists of a list of exhibits and financial information and contains other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. Unit investment trusts file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses. As a result, most unit investment trusts update their registration statements on Form S–6 on an annual basis in order that their sponsors may continue to maintain a secondary market in the units.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year approximately 3,600 investment companies file a Form S–6. The Commission estimates that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected investment companies is 126,000 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information on Form S–6 is mandatory. The information provided on Form S–6 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 30, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32325 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23575; File No. 812–11182]

Great-West Life & Annuity Insurance Company, et al.

November 25, 1998.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for approval under Section 26(b) of the Investment Company Act of 1940 ("1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the American Century VP International Fund for shares of the Montgomery Variable Series: International Small-Cap Fund.

APPLICANTS: Great-West Life & Annuity Insurance Company ("GWL&A"), First Great-West Life & Annuity Insurance Company ("FGWLA"), Variable Annuity-1 Series Account of GWL&A (the "GWL&A Account"), Variable Annuity-1 Series Account of FGWLA (the "FGWLA Account") (together, with the GWL&A Account, the "Accounts") and Charles Schwab & Co., Inc. ("Schwab").

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[1] Form N–8B2 is the form used for registration statements filed by unit investment trusts under the 1940 Act. The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

FILING DATE: The application was filed on June 11, 1998, and amended and restated on September 18, 1998, and amended on November 24, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 21, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Jorden Burt Boros Cicchetti Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, D.C. 20007–0805, Attention: Tom Mira, Esq.

FOR FURTHER INFORMATION CONTACT: Martha Peterson, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 5th St., N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. GWL&A, a stock life insurance company organized under the laws of Colorado, is principally engaged in offering life insurance, annuity contracts, and accident and health insurance and is admitted to do business in the District of Columbia, Guam, Puerto Rico, and all states of the United States except New York. GWL&A is wholly owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco, Inc., an insurance holding company ultimately controlled by Power Corporation of Canada.

2. FGWLA, a stock life insurance company organized under the laws of New York and a wholly owned subsidiary of GWL&A, is principally engaged in the sale of life insurance, accident and health insurance, and annuities, and is admitted to do business in the states of New York and Iowa.

3. The GWL&A Account and the FGWLA Account are separate accounts of GWL&A and FGWLA, respectively, which act as funding vehicles for certain group and individual flexible premium variable deferred annuity contracts ("the Schwab Contracts"). Each account is a unit investment trust ("UIT") and has filed a registration statement on Form N–4 for the purpose of registering GWL&A Account and the FGWLA Account, respectively, under the 1940 Act and the Schwab Contracts as securities under the Securities Act of 1933, as amended.

4. Schwab is the principal underwriter and distributor of the Schwab Contracts. Schwab is registered with the Commission under the Securities Exchange Act of 1934, as amended, as a broker/dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Schwab Contracts are flexible premium annuity contracts which may be issued under retirement plans which qualify for federal tax benefits under Section 408 of the Internal Revenue Code (the "Code") as individual retirement accounts and under other retirement plans which do not qualify under the Code. The Schwab Contracts currently offer twenty-five investment divisions each of which invests exclusively in one of the corresponding portfolios (the "underlying portfolios") of fourteen open-end management investment companies.

6. The Schwab Contracts do not have either contingent deferred or front-end sales loads. No sales charge applies to the transfer among investment divisions offered in the Schwab Contracts. Under the Schwab Contracts there are no limits on the number of transfers a Contract owner can make. There is a $10 fee for each transfer in excess of twelve in any calendar year. The Schwab Contracts have an annual contract fee of $30. This charge is currently waived for Contracts with an annuity account value of at least $50,000, but may also be waived for Contracts under certain sponsored arrangements. These charges will not be affected by the transfer.

7. All of the Schwab Contracts expressly reserve Schwab's, FGWLA's, and GWL&A's right, both on their own behalf and on behalf of the Accounts to eliminate investment divisions, combine two or more investment divisions, or substitute one or more underlying portfolios for others in which its investment divisions are invested or for a new underlying portfolio.

8. Schwab, FGWLA, and GWL&A, on their own behalf and on behalf of the Accounts, propose to exercise their contractual right to eliminate the Montgomery Variable Series: International Small-Cap Fund (hereinafter the "Eliminated Portfolio") as a funding option under the Schwab Contracts. By way of sticker, the Schwab Contract prospectuses will disclose the proposed substitution for several months prior to the date on which the substitution will be scheduled to occur ("the Automatic Selection Date"). These stickers will be mailed to all Contract owners and will advise Schwab Contract owners of their ability to transfer Contract values allocated to the Eliminated Portfolio to the remaining investment division(s) of their choice or remain in the Eliminated Portfolio for an automatic substitution on the Automatic Selection Date. The Eliminated Portfolio has not accepted additional premium payments (i.e., new money or transfers) since June 30, 1998.

9. The proposal would result in a reduction in the number of variable investment options and corresponding portfolios available under all Schwab Contracts from twenty-five to twenty-four.

10. Montgomery Variables Series and its investment adviser, Montgomery Asset Management, LLC (collectively, "Montgomery") intend to cease offering shares of the Eliminated Portfolio, due to the small amount of assets and the corresponding absence of economies of scale. Montgomery has indicated that the small size of the Eliminated Portfolio makes the Eliminated Portfolio difficult to manage successfully and makes it difficult to comply with diversification requirements applicable to variable insurance products and to mutual funds under the Code and the 1940 Act.

11. As of the Automatic Selection Date, all Contract values allocated to the Eliminated Portfolio will be reallocated automatically to the American Century VP International Fund (the "American Century International Fund"). The substitution will take place at relative net asset value with no change in the amount of any Contract owner's contract value or in the dollar value of his or her investment in such Contract. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or FGWLA's or GWL&A's obligations under the Contract be altered in any way. In addition, Contract owners will not incur any fees or expenses in connection with the proposed

substitutions, including legal, accounting and other fees and expenses. The proposed substitutions will not cause the contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

12. The investment objective of the Eliminated Portfolio is to seek capital appreciation by investing primarily in equity securities of companies outside the United States having total market capitalization of less than $1 billion, sound fundamental values, and potential for long-term growth at a reasonable price.

13. The investment objective of the American Century International Fund is to seek capital growth by investing primarily in securities of foreign companies that meet certain fundamental and technical standards of selection and have, in the opinion of the investment manager, potential for appreciation. The American Century International Fund will invest primarily in common stocks (defined to include depository receipts for common stock and other equity equivalents) of such companies.

14. Applicants represent that the total expenses of the American Century International Fund are currently 1.50%, which is less, absent the current waiver of such fees and expenses by Montgomery, than the total operating expenses of the Eliminated Portfolio. The Eliminated Portfolio has not borne any expenses due to the fact that Montgomery has waived all fees and absorbed all expenses in light of the very small asset base of the Portfolio. Applicants represent that if the substitution is not approved, Montgomery may ultimately be forced to cease absorbing the Eliminated portfolio's operating expenses, which would mean an effective annual fee rate of 1.50%.

15. The Contract owners will receive a confirmation of the Substitution transaction. The confirmation will contain a reminder of the Contract owner's ability to effect one transfer from the American Century International Fund without incurring any charges and such transfer will not be counted as one of the twelve free transfers permitted in a calendar year so long as the transfer is made within 30 days of the effective date of the Substitution.

16. No sales load deductions or transfer charges will be assessed in connection with any transfers among the investment divisions because of the substitution. For purposes of the $10 fee charged for each transfer in excess of twelve in any calendar year the proposed substitution will not count as a transfer.

Applicant's Legal Analysis and Conditions

1. Sections 26(b) of the 1940 Act provides that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of the American Century VP International Fund for shares of the Montgomery Variable Series: International Small-Cap Fund.

3. Applicants represent that the purposes, terms, and conditions of the substitution are consistent with the protections for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent

4. Applicants maintain that the American Century VP International Fund has investment objectives and policies which are consistent with those of the Eliminated Portfolio and which are sufficiently similar so as to continue to fulfill the Contract owners' objectives and risk expectations. Applicants state that any Contract owner who does not want his or her assets allocated into the American Century International Fund would be able to transfer assets to any one of the other investment divisions, available under their Schwab Contract, without charge. Such transfers could be made prior to or after the Automatic Selection Date.

5. The Substitution will be effected at net asset value in conformity with Section 22 of the 1940 Act and Rule 22c–1 thereunder. Contract owners will not incur any fees or charges as a result of the transfer of account values from any Portfolio. There will be no increase in the Contract or separate account fees and charges after the Substitution. In addition, the Substitution is designed to avoid any adverse federal income tax impact to the Contract owners.

6. The substitution will be effected by redeeming shares of the Eliminated Portfolio on the Automatic Selection Date at net asset value and using the proceeds to purchase shares of the American Century International Fund at net asset value on the same date. Contract owners will not incur any fees or charges as a result of the transfer of account values from the Eliminated Portfolio. All contract values will remain unchanged and fully invested.

Conclusion

In light of the foregoing facts and representations, Applicants believe that the requested relief to allow the proposed substitution meets the applicable standards for an order under Section 26(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32326 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 7, 1998.

An open meeting will be held on Monday, December 7, 1998, at 10:00 a.m., in Room 6600. A closed meeting will be held on Monday, December 7, 1998, following the 10:00 a.m. open meeting. A closed meeting will be held on Tuesday, December 8, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, December 7, 1998, at 10:00 a.m., will be:

The Commission will hear oral argument in an appeal by Jacob Wonsover from an administrative law judge's initial decision. For further information, contact John Zecca at (202) 942–0950.

The subject matter of the closed meeting scheduled for Monday, December 7, 1998, following the 10:00 a.m. open meeting, will be:

Post argument discussion.

The subject matter of the closed meeting scheduled for Tuesday, December 8, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive action.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 1, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32363 Filed 12–1–98; 4:29 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40708; File No. SR–CBOE–97–58]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Capital and Margin Requirements for Joint Back Office Arrangements

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 1998, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to establish margin and net capital requirements for Joint Back Office ("JBO") participants and clearing firms. Under the provisions of Regulation T promulgated by the Board of Governors of the Federal Reserve System ("Federal Reserve Board"),[3] a clearing broker may extend good faith financing to an owner of the clearing broker who is either a broker-dealer or an exchange member. These financing relationships are referred to as "JBO arrangements."

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Background.* The Exchange filed its JBO proposal with the Commission on October 23, 1997, shortly after the New York Stock Exchange ("NYSE") submitted its own JBO filing.[4] Notice of the Exchange's proposal was issued on December 10, 1997.[5] Among other matters, the Exchange's JBO filing proposes minimum financial standards for JBO participants and for the firms which clear JBO accounts.

In its 1996 amendments to Regulation T, the Federal Reserve Board directed the securities self-regulatory organizations ("SROs") to develop appropriate standards for JBO participants and their clearing firms.[6] The Exchange anticipates that all SROs will implement uniform standards for JBO arrangements. The NYSE formed a member firm subcommittee to develop appropriate standards for JBO participants and their clearing firms. The NYSE member firm subcommittee proposed that clearing firms maintain a minimum of $25 million in tentative net capital. The Exchange urged that an alternative standard be provided for options market-maker clearing firms to accommodate the JBO activities of the clearing firms' options market-maker clients. The compromise standard of $10 million net capital was agreed upon and incorporated into the JBO filings submitted by the Exchange and the NYSE.

Although at that time not all Exchange options market-maker clearing firms needed to maintain the $10 million level of capital to cover the haircut and financing needs of their market-maker and JBO clients, it was believed their actual capital needs would grow to exceed the $10 million standard by the time the Commission approved the Exchange's JBO proposal. While the capital needs of options market-marker clearing firms have in fact grown, they do not in all instances consistently satisfy the $10 million level.[7] As a result, the Commission received a number of comment letters from Exchange member firms that expressed concern over the $10 million standard.

b. *Amendment No. 1.* In response to the concerns of its members, the Exchange seeks to amend its JBO filing

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* 12 CFR 220. Regulation T is entitled "Credit by Brokers and Dealers" and was issued by the Federal Reserve Board pursuant to the Act.

[4] The NYSE's JBO filing, SR–NYSE–97–28, was filed with the Commission on October 2, 1997, and notice of its filing was issued on December 29, 1997. *See* Securities Exchange Act Release No. 39497 (Dec. 29, 1997), 63 FR 899 (Jan. 7, 1998). The NYSE filed Amendment No. 1 to its JBO filing on May 21, 1998, and Amendment No. 2 on September 28, 1998. Notice of Amendment Nos. 1 and 2 was issued on November 25, 1998. *See* Securities Exchange Act Release No. 40709 (Nov. 25, 1998).

[5] *See* Securities Exchange Act Release No. 39416 (Dec. 10, 1997), 62 FR 66154 (Dec. 17, 1997).

[6] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[7] The Exchange has represented that all Exchange options market-maker clearing firms currently maintain net capital sufficient to meet the proposed $7 million net capital standard. However, fluctuations in a clearing firm's net capital may occur due to changes in daily net deductions for the options market-maker and JBO participant accounts carried. Many clearing firms maintain revolving subordinated loan arrangements in order to cover such potential capital swings. According to the Exchange, there is a one time charge to establish such a facility of approximately $10,000 per $1 million (1%). The cost to maintain such a facility, undrawn, approximates $10,000 per year per $1 million (1%), or $28 per day. The cost to draw down such a facility approximates $95,000 per year per $1 million of drawn funds (at 1% over an 8½% prime), or $264 per day. Drawn down revolving subordinated debt may be repaid beginning the following day, with the term of the loan not to exceed 1 year. The Exchange believes these costs do not appear to be excessively burdensome to clearing firms that carry the accounts of JBO participants.

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to reduce from $10 million to $7 million, the proposed net capital requirement for JBO clearing firms. The Exchange also proposes to allow options market-maker clearing firms, that elect to operate under this alternative standard, to be permitted to maintain net capital of less than $7 million for a period not to exceed three consecutive business days. Immediate notice to the Exchange would be required when a JBO clearing firm's net capital drops below the $7 million requirement, or its tentative net capital drops below the $25 million requirement. In addition, such a clearing firm would be subject to prohibitions against the withdrawal of equity capital and prohibitions against reduction, prepayment, and repayment of subordination agreements as specified in the commission's net capital rule.[8]

The Exchange believes the proposed "three business day" provision is consistent with other provisions of the Commission's net capital rule.[9] The provision would make allowances for fluctuations in net capital resulting from daily changes in market-maker and JBO participant related clearing firm capital charges. The Exchange believes this provision will permit clearing firms to avoid unnecessary and inadvertent violations of the margin requirement at certain times such as options expiration week when capital needs are more volatile.

If approved, the proposal would provide JBO participants and clearing firms already conducting JBO business at the time of the Commission's approval six months to implement such changes. The proposed rule change would be applied within thirty calendar days of the Commission's approval for all other Exchange members seeking to engage in such JBO businesses.

In addition, the Exchange seeks to amend its JBO proposal to specify that, should the equity in a JBO participant's account fall below $1 million and the deficiency is not eliminated within five business days, the account shall lose its JBO status. Thereupon, the clearing member carrying the account would be required to apply the standard Regulation T and Exchange Rule 12.3 *customer* margin requirements. This provision mirrors the JBO proposal presented by the NYSE.

As currently amended, both the Exchange's and the NYSe's JBO filings contain provisions which, for the purpose of net capital computation, require the member organization carrying the account of a JBO participant to deduct from net worth any amount by which the equity in a JBO participant's account is below the haircuts required by the Commission's net capital rule. However, the NYSE's requirements for JBO arrangements, which are proposed to be set forth within its margin rule (NYSE Rule 431), would permit, for certain specified securities, a lesser amount to be deduced in lieu of the Exchange Act Rule 15c3–1 haircut on such securities.[10] The proposed alternative deduction is the NYSE's maintenance margin requirement for the specified securities when held in "exempt accounts." [11] The Exchange's JBO filing does not incorporate an alternative deduction because, unlike the NYSE, the Exchange has not promulgated special maintenance margin requirements for exempt accounts, and for particular securities held in those accounts. However, Exchange member organizations that also are members of the NYSE can elect to be bound by the margin rules of the NYSE as permitted under Exchange Rule 12.11.[12] By electing to be bound by NYSE margin rules, organizations that are members of both the Exchange and the NYSE may avoid a violation of the Exchange's rules if they wish to utilize the alternative deduction proposed by the NYSE. At this time, the Exchange is not proposing rules to implement specialized maintenance margin requirements as an alternative to the haircut deduction for the organizations that are members of the Exchange only. The Exchange believes that special, lower maintenance margin requirements would not be critical to most of its member firms because the JBO accounts they carry do not have a concentration in the specified securities.

The Exchange believes the revised capital requirements for JBO clearing firms and the delayed date of effectiveness for existing JBO businesses, as proposed by Amendment No.1, are responsive to the concerns raised by its members.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[13] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange further believes its proposal is designed to ensure the reasonableness of JBO arrangements as directed by the Federal Reserve Board in its recent amendments to Regulation T.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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[8] The commission's net capital rule, "Net Capital Requirements for Brokers or Dealers," is designated as Rule 15c3–1. *See* 17 CFR 240.15c3–1(e) and 17 CFR 240.15c3–1d(b).

[9] The Commission's net capital rule requires that the ratio of options market-maker gross deductions to adjusted net capital not exceed 10:1 for a period of more than three consecutive business days. *See* 17 CFR 240.15c3–1.

[10] Under the NYSE's JBO proposal, the alternative deduction would apply to transactions in securities covered by paragraphs (e)(2)(F) and (e)(2)(G) of NYSE Rule 431. The Commission notes that the NYSE has submitted a separate rule filing, SR–NYSE–98–14 ("Related Filing"), that would revise the types of securities included in paragraphs (e)(2)(F) and (e)(2)(G) of NYSE Rule 431 to include: exempted securities, mortgage related securities, major foreign sovereign debt securities, highly rated foreign sovereign debt securities, and investment grade debt securities. The Commission has published notice of the NYSE's Related Filing but has not taken any dispositive action on the proposal. *See* Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882 (Aug. 5, 1998).

[11] The Related Filing proposes to adopt a new paragraph (a)(13) to NYSE Rule 431 that would define an "exempt account" as: a member organization; non-member broker-dealer; "designated account;" or any person having a net worth of at least $40 million. The Related Filing also proposes to revise existing paragraph (a)(3) of NYSE Rule 431 to define a "designated account" as the account of: (i) a bank; (ii) a savings association; (iii) an insurance company; (iv) an investment company; (v) a state or political subdivision thereof; or (vi) a pension or profit sharing plan.

[12] Exchange Rule 12.11 specifies that in lieu of meeting the Exchange's margin requirements, a member firm may elect to be bound by the initial and maintenance margin requirements of the NYSE. If such an election is made, the member firm is bound to comply with the NYSE's margin rules as though they were part of the Exchange's rules.

[13] 15 U.S.C. 78f(b)(5).

[14] *See* note 6 *supra*.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–58 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40717; File No. SR–MSRB–97–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Relating to Rules G–11, on Sales of New Issue Municipal Securities During the Underwriting Period, G–12, on Uniform Practice, and G–8, on Books and Records

November 27, 1998.

I. Introduction

On December 23, 1997, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules G–11, on sales of new issue municipal securities during the underwriting period, G–12, on uniform practice, and G–8, on books and records. Notice of the proposed rule change appeared in the **Federal Register** on April 21, 1998.[3] The Commission received two comment letters concerning the proposed rule change.[4]

The MSRB received one comment letter concerning the proposed rule change.[5] On August 18, 1998, the Board submitted Amendment No. 1 to Rule G–11(g)(i) of the proposed rule change on sales of new issue municipal securities during the underwriting period. Notice of Amendment No. 1 appeared in the **Federal Register** on September 29, 1998.[6] The Commission received one comment letter concerning Amendment No. 1.[7] This order approves the proposed rule change and Amendment No. 1.

II. Description of the Proposal and Amendment No. 1

The proposed rule change requires the managing underwriter of a syndicate to maintain a record of all issuer syndicate requirements; requires the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire; requires the managing underwriter to disclose to syndicate members all available designation information; requires the managing underwriter to disclose to members of the syndicate, in writing, the amount of any portion of the take-down that is directed to each member of the syndicate by the issuer; and shortens the deadline for payment of designations to 30 calendar days after the issuer delivers the securities to the syndicate.

Amendment No. 1 retains the requirement of the proposed change to Rule G–11(g)(i) to complete the allocation of securities within 24 hours of the sending of the commitment wire. It further provides that, if the bond purchase agreement ("BPA") is not yet signed or if the award has not been made at the time allocations are made, the allocations are subject to the signing of the BPA or the award of bonds. The purchaser must be informed of this fact.

Issuer syndicate requirements

Issuer requirements involving syndicate formation, order review, designation policies and bond allocations have become much more prevalent in the municipal securities market. Such requirements are significant because they help to determine which dealers, and ultimately which investors, obtain the bonds. As issuer syndicate requirements can affect the functioning of the syndicate, and at times the final costs to the issuer of the new issue, the records of such requirements should be maintained so that any problems or concerns regarding the functioning of the syndicate arising from these requirements can be identified and addressed and the information must be provided to syndicate members and others, upon request.

The proposed rule change amends Rules G–8(a)(viii) and G–11(f) to require the managing underwriter to maintain a record of all issuer syndicate requirements. If the requirements are in a published guideline, the guideline should be maintained by the dealer and supplemented by a statement of any additional requirements that arise prior to settlement. If the requirements are not in published form, the managing underwriter must create a written detailed statement of the requirements and maintain the statement in its records. The managing underwriter must provide a copy of the published guideline or underwriter prepared statement of issuer syndicate requirements to syndicate members prior to the first offer of any securities by the syndicate. Syndicate members must furnish this summary promptly to others, upon request. In addition, the managing underwriter must provide the issuer with a copy of any such statement for its review.

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 39873 (April 14, 1998), 63 FR 19775.

[4] Letters from George Brakatselos, Vice President, The Bond Market Association, to Secretary, Securities and Exchange Commission, dated May 12, 1998 ("TBMA Letter No. 1") and David B. Levy, Director & Associate General Counsel, Capital Markets Division, SalomonSmithBarnery, to Secretary, Securities and Exchange Commission, dated May 13, 1998 ("Salomon Letter").

[5] Letter from Mark Page, Deputy Director and General Counsel, Office of Management and Budget and John White, Deputy Comptroller for Public Finance, New York City Comptroller's Office, City of New York, to Terry L. Atkinson, Chairman, MSRB, dated June 5, 1998 ("HYC Letter"). The Board concurred with the NYC Letter that Rule G–11(g)(1) should not be interpreted to required that a bond purchase agreement ("BPA") be signed within 24 hours of the sending of the commitment wire. As the Board would not meet again before August 1998, it consented to an extension for Commission action until August 31, 1998. Letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Mignon McLemore Esq., Division of Market Regulation, SEC, dated June 26, 1998.

[6] Securities Exchange Act Rel. No. 40456 (September 22, 1998), 63 FR 51976 ("Amendment No. 1").

[7] Letter from Sarah M. Starkweather, Vice President and Associate General Counsel, The Bond Market Association, to Jonathan G. Katz, Secretary, SEC, dated October 19, 1998 ("TBMA Letter No. 2").

Disclosure of designation information

The proposed rule change amends Rule G–11(g) to require that the managing underwriter disclose to syndicate members all available designation information within 10 business days following the date of sale and all information with the sending of the designation checks.

Payment of designations

The proposed rule change amends Rule G–12(k) to move the deadline for payment of designations from 30 business days following delivery of the securities to the customer to 30 calendar dates after the issuer delivers the securities to the syndicate.

Disclosure of take-down

A small number of issuers are "setting aside," or holding back, at their discretion, a portion of the take-down [8] to direct to syndicate members. As this issuer "set-aside" is part of the take-down, it should be disclosed to syndicate members in the same manner as customer designations. The proposed rule change amends Rule G–11(g) to require the managing underwriter to disclose to members of the syndicate, in writing, the amount of any portion of the take-down that is directed to each member of the syndicate by the issuer. Such disclosure must be made by the later of 15 business days following the date of sale or three business days following receipt by the managing underwriter of notification of such set-asides by the issuer.

Allocation of securities

The proposed rule change amends Rule G–11(g) to require the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire. This amendment attempts to address delays in allocations of securities which may be the result of issuers and financial advisors failing to review orders and proposed allocations in a timely fashion. In case where there is a delay in allocation, investors may find it difficult to finalize their portfolio positions when their orders remain unfilled for as long as two or more days after the end of the order period. Moreover, during volatile market conditions, delays in allocations hurt the prospect for a successful underwriting.

Amendment No. 1

The proposed rule change requiring the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire implies that the BPA will be signed prior to the completion of the allocation. It is possible that allocations may be completed (and investors notified of these allocations) prior to the signing of the BPA. Amendment No. 1, therefore, revises the proposed rule change to include this exception in the rule language.

III. Summary of Comments

The Commission received two comment letters [9] concerning the proposed rule change and one comment letter [10] concerning Amendment No. 1. The Commission requested and received a response to these comments from the MSRB.[11] The MSRB received one comment letter from New York City.[12] In response to issues raised in this letter, the MSRB submitted Amendment No. 1 to the Commission.[13]

TBMA strongly opposed the proposed amendments which would require the managing underwriter to maintain and, where applicable, record all issuer requirements involving syndicate formation, order review, designation policies, and bond allocations.[14] Any requirement that would result in underwriters spending substantial amounts of time preparing documents and obtaining issuer approvals is neither productive nor practical.[15] TBMA suggested that "issuers seeking to impose their requirements on syndicates must take the initiative to enunciate such requirements, in writing, and publish them so they are available to all who are involved, or considering becoming involved, in a syndicate for that issuer." [16]

According to the Board, "managing underwriters currently take issuer direction on syndicate matters and release such information to the syndicate members." [17] Thus, the proposed amendments are essentially codifying current syndicate practices.[18] The Commission agrees with the Board that the additional requirements should not be unduly burdensome to the managing underwriter, as they are codifying existing practices. The Commission notes that dealers can address other issuer problems through contract.

TBMA also opposed the amendment to Rule G–11(g). The amendment not only established a time limit for completing the allocation of securities, it also urged issuers and their financial advisors to review orders and proposed allocations as soon as possible so as not to delay dissemination of information to investors.[19] While TBMA supports prompt completion of the allocation, it strongly opposed the amendment because, as drafted, the lead manager's compliance would be wholly dependent upon the timely performance of financial advisors and issuers.[20] TBMA noted that it generally opposes any attempts by the MSRB to modify the behavior of entities that are not directly regulated by the MSRB through the regulation of the dealer community.[21] "A municipal securities dealer should not be faced with a possible violation of MSRB rules where compliance by the dealer is dependent upon a specific action of an unregulated entity." [22] This places the dealer in the untenable position of being charged with a violation of MSRB rules through no fault of its own.[23]

The Board determined to adopt the proposed rule change as drafted, because it will assist investors by greatly facilitating the allocation process.[24] According to the MSRB, delays in allocations can adversely affect investors' portfolio positions and the underwriting.[25] By placing a time limit on the allocation of the securities, the Board believes underwriters will ensure compliance with the proposal by either including a provision in the BPA or otherwise reaching an agreement with issuers, that allocations must be completed within the 24 hour timeframe.[26] "If issuers or financial advisors wish to review orders and proposed allocations, they will have to do so within 24 hours."[27] The Commission believes that any unnecessary delay in distribution securities, once the BPA has been executed, can disadvantage syndicate members and ultimately, investors. Thus the Commission supports the shortened timeframe in which syndicate managers must complete the allocation of securities.

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[8] The *takedown* is normally the largest component of the spread, similar to a commission, which represents the income derived from the sale of securities.

[9] *See* note 4 *supra*.

[10] *See* note 7 *supra*.

[11] Letter from Ron W. Smith, Senior Legal Associate, MSRB, to Mignon McLemore, Attorney, Division of Market Regulation, SEC, dated June 10, 1998 ("MSRB Letter"). The TBMA's second letter was received after the MSRB Letter. The Commission believes the MSRB's letter sufficiently addresses both TBMA letters, because TBMA's second letter reiterates much of its submission.

[12] *See* note 5 *supra*.

[13] *See* note 6 *supra*.

[14] TBMA Letter No. 1 at 1.

[15] *Id* at 1–2.

[16] *Id* at 2.

[17] MSRB Letter at 1.

[18] [illegible]

[19] TBMA Letter No. 1 at 2.

[20] *Id.*

[21] *Id. See also* Salomon Letter at 1.

[22] *Id.*

[23] *Id. See also* Salomon Letter at 1 (stating that municipal securities dealers should neither be forced to "police" the activities of unregulated entities nor be faced with regulatory sanctions for activities that are beyond their direct control).

[24] MSRB Letter at 2.

[25] *Id.*

[26] *Id.*

In its second letter, TBMA reiterated its opposition to the proposed rule change.[28] However, TBMA did agree with the specific proposal in Amendment No. 1 which provides that allocations completed prior to execution of the BPA would be made subject to execution of that agreement.[29] As the TBMA's positions remain unchanged, the MSRB's response sufficiently addresses the issues raised in the second letter.

Salomon generally opposed the proposed rule change for reasons similar to those stated by TBMA.[30] Specifically, Salomon believed that syndicate members would be the economic beneficiaries of these changes and senior managers would bear the cost.[31] According to Salomon, the cost of doing business in municipal securities has increased while the revenue generated by the business has decreased.[32] Moreover, each time the syndicate requirements are modified, the senior managers expend significant amounts of resources to ensure their systems are in compliance.[33]

In its response, the Board stated that it was concerned that syndicate members (and ultimately customers) have information regarding issuer requirements to help frame orders.[34] Requiring the dissemination of this information to syndicate members helps ensure that managers are "following the rules" of the syndicate so that, if there are any problems regarding the economics of the deal, they can be corrected prior to settlement or when the syndicate monies are distributed.[35] The Board recognizes that syndicate managers may incur additional costs complying with these requirements, however, it believes the benefits of disclosure to syndicate members of important information on syndicate operations outweigh such costs.[36] The Commission believes that the benefits of increased disclosure (*e.g.*, investor protection, market transparency, and equal access to the municipal securities market) outweigh costs that may be incurred as a result of the proposed rule change. Thus, the Commission supports the proposed rule change.

Salomon strenuously objects to the proposal that syndicate managers disclose to syndicate members information relating to designations.[37] Salomon contends that because it and similarly-situated firms provide a full range of services to issuers and investors and they spend significant resources to maintain the infrastructure to provide those services, designations are the way they realize a return on the investment in that infrastructure.[38] Moreover, it is Salomon's view that the proposals run counter to the interest of investors.[39] According to Salomon, information concerning designations is competitive, confidential information that should be known only to the beneficiary of the designation and the syndicate manager (in its capacity as bookrunner of the underwriting) and should only be disclosable by the investor.[40]

The Board disagrees that investors would object to the disclosure of designation information.[41] The amendment does not require that the identity of the investors providing the designations be disclosed, only that the total amount of the designations for each dealer be disclosed.[42] The Board believes that all syndicate members have the right to the disclosure of all designation information.[43] The MSRB believes that the proposed rule change will help "assure syndicate members of equitable distribution of the economics of the deal pursuant to syndicate requirements."[44]

The Commission reiterates its position that it supports more disclosure in the municipal securities markets. The Commission respects investors' right to choose the firms with which to do business as well as syndicate members' rights to accept designations. The Commission believes, however, that the amount of the designation each member receives should be disclosed to prevent fraudulent and manipulative practices in the municipal securities market. According to the Board, confidentiality is preserved because only the total amount of the designations is disclosed, thus investors will "be free to designate any firm without fear of reprisal or pressure from other syndicate members." The Commission, therefore, supports this proposed rule change.

IV. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[45] Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[46] of the Act. This proposed rule change should help protect investors and the public interest through its enhanced disclosure and recordkeeping requirements which are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

The Commission believes the proposal, which requires managing underwriters to maintain and where necessary, create records of issuer requirements, is a reasonable requirement to impose on a syndicate manager of a new issue of municipal securities. A syndicate manager has the primary responsibility for conducting the affairs of the syndicate. Thus, it is appropriate to require the syndicate manager to be responsible for the recordkeeping concerning syndicate activities. The Commission recognizes that these managers could experience an increase in costs attempting to comply with these requirements. However, syndicate managers are allowed to recover expenses for administrative tasks performed for the benefit of the syndicate. Further, resolving accounting discrepancies or other syndicate disputes would be less cumbersome and time-consuming if accurate records have

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[27] *Id.*

[28] TBMA Letter No. 2 at 1–2.

[29] *Id.* at 2.

[30] Salomon Letter at 1.

[31] *Id.*

[32] *Id*

[33] *Id.*

[34] MSRB Letter at 2.

[35] *Id.*

[illegible]

[37] Salomon Letter at 2.

[illegible]

[39] *Id.*

[illegible]

[41] MSRB Letter at 2.

[42] *Id.*

[illegible]

[44] *Id.*

[45] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The proposed rule change should improve efficiency in recordkeeping and information dissemination because the syndicate manager must now maintain a record of issuer requirements. Competition in the marketplace should also benefit as designation information will be available to all members of the syndicate, thus making collusion in the municipal securities market more difficult. The proposal shortens the deadline for payment of designations which should decrease the time it takes for firms to receive revenue which should benefit capital formation. 15 U.S.C 78c(f).

[46] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

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been maintained and are readily accessible.

The Commission believes the proposal, requiring managing underwriters to disclose all available designation information, should encourage competition among dealers for other designations in subsequent underwritings. The proposal should not result in fixed pricing because only the designation amounts are being revealed. Investors will still be able to designate any firm they choose, because the investors' identities will remain confidential. Furthermore, disclosure of all designation information should prevent delays in disseminating full designation payments to members because designation information must be made available to syndicate members within ten business days following the date of sale. This requirement should, therefore, help ensure members receive the full designation credit they have earned.

The Commission also supports shortening the deadline for payment of designations from 30 business days following delivery of the securities to the customer to 30 calendar days after the issuer delivers the securities to the syndicate. The shortened deadline should prevent syndicate mangers from unnecessarily delaying payment of designations to syndicate members.

The Commission agrees that an issuer "set-aside" is part of the take-down and, therefore, should be disclosed to syndicate members in the same manner as customer designations. This proposed rule change should act as a deterrent to fraudulent activity because disclosure of take down information including each dealers' percentage must be made by the later of 15 days following the date of sale or three business days following receipt by the managing underwriter of notification of any set-asides by the issuer, Furthermore, timely disclosure of this information will allow dealers to verify the accuracy of the information and, where necessary, address any discrepancies before settlement.

The Commission supports the proposed rule change and Amendment No. 1 concerning the allocation of securities. The proposed rule change required that the managing underwriter complete the allocation of securities within 24 hours of the sending of the commitment wire. In its letter to the MSRB, NYC contended that the proposed rule change erroneously assumed that a BPA would be signed prior to the completion of the allocation.[47] the NYC letter suggested that the allocation may be completed (and investors be given notice of the allocations) prior to the signing of the BPA.[48] In response, the MSRB amended its proposal to include that any allocations made prior to the signing of the BPA in a negotiated offering or the official award of the bonds in a competitive sale must be subject to execution of a BPA or the award, as appropriate. Furthermore, investors must also be notified of this fact.[49]

In cases where the BPA is signed before the commitment wire is sent, the Commission believes 24 hours should give the senior syndicate manager enough time to complete the allocation of securities. The Commission understands that there are occasions, however, when a deal is so complex that it takes longer than 24 hours after the commitment wire is sent to complete the process (*e.g.*, production and verification of final numbers, final sizing of the bond sale) so that a BPA may be signed. The Commission, therefore, supports the amended language which recognizes this exception,[50] but protects investors by requiring full disclosure of the deal's status. Thus, investors will be aware that the deal could be subject to market fluctuations or may not even be finalized.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[51] that the proposed rule change and Amendment No. 1 (SR–MSRB–97–15), are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[52]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32324 Filed 12–3–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–40711; File No. SR–NYSE–98–34)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 104.10 By Deleting the Odd-Lot Exception

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 1998, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II,and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rule 104.10(6)(i) by eliminating paragraph (C), which provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset positions acquired by the specialist in executing odd-lot orders on the same day.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rule 104.10(6) describes the manner in which a specialist may liquidate or increase his or her position in a specialty stock. In general, the rule requires such transactions to be effected "in a reasonable and orderly manner" in relation to the overall market. The rule also requires the market in the particular stock and the adequacy of the specialist's position to meet the reasonably anticipated needs of the market. NYSE Rule 104.10(6)(i)(A) provides that a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick (destabilizing ticks), only if the transaction is reasonably necessary in relation to the specialist's overall position in the stock and if Floor Official approval is obtained. Floor Official approval provides an independent review of these destabilizing transactions for compatibility with the reasonableness test.

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[47] NYC Letter at 1.

[48] *Id.* at 2.

[49] Amendment No. 1 at 51977.

[50] In these situations, the Commission notes that senior syndicate managers should consult the MSRB's rules and interpretations concerning the sending of confirmations prior to the signing of the BPA or the date of the award. Amendment No. 1 at 51977.

[51] 15 U.S.C. 78s(b)(2).

[52] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

NYSE Rule 104.10(6)(i)(C) provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset position acquired by the specialist in executing odd-lot orders on the same day. Odd-lot orders are executed throughout the day in the odd-lot system against the specialist in that stock. Periodically, the specialist receives an automated notification of the net amount of odd lots that have been executed against his or her position. The specialist can then offset these odd-lot transactions by buying or selling for his or her own account.

The basis for the exception was that these odd-lot offsets would not have an impact on the market as a whole. However, there has been a marked increase in the volume of odd-lot transactions in the last several years[3] and, as a result, an increase in specialist offset transactions. The Exchange believes that odd-lot offsets should be treated as other liquidating transactions and be netted with round lot transactions. All destabilizing transactions would require Floor Official approval pursuant to Exchange Rules.[4] Therefore, the Exchange is proposing to delete the exception for odd-lots in paragraph (C).

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–34 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40709; File No. SR–NYSE–97–28]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Capital and Margin Requirements for Joint Back Office Arrangements

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 1998, and September 28, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") Amendment Nos. 1 and 2, respectively, to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 to the proposed rule change for interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rule 431, "Margin Requirements," to establish margin and net capital requirements for Joint Back Office ("JBO") arrangements among broker-dealers. The proposed rule change also relates to: (i) net capital computations for members carrying proprietary accounts of other broker-dealers; (ii) net capital computations for members carrying the accounts of approved specialists or market makers; and (iii) control and restricted securities.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Exchange, and at the Commission.

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[3] Odd-lot volume exceeded 1 billion shares on the NYSE in 1997, an 87% increase from 1994. Telephone conversation between Agnes Gautier, Vice President, Market Surveillance, NYSE, and Robert B. Long, Attorney, Division of Market Regulation, Commission, on October 23, 1998.

[4] *See* Letter from Agnes Gautier, Vice President, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 20, 1998.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 2, 1997, the Exchange filed its JBO proposal with the Commission. Notice of the proposal was issued on December 29, 1997.[3] The Exchange submitted Amendment No. 1 to the JBO filing on May 21, 1998, and Amendment No. 2 on September 28, 1998.

a. *The Original JBO Filing.* The Exchange's proposed rule change would amend Exchange Rule 431 to establish capital, margin, and other requirements for JBO arrangements among broker-dealers. Regulation T, issued by the Board of Governors of the Federal Reserve System ("FRB"), permits a broker-dealer to "effect or finance transactions of any of its owners if the [broker-dealer] is a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers]."[4] The Exchange's proposal would provide regulatory requirements for such JBO arrangements.

Under the Exchange's original proposal, a member organization carrying and clearing, or carrying JBO accounts would be required to: (i) provide written notification to the Exchange prior to establishing a JBO arrangement, (ii) maintain minimum tentative net capital[5] of $25 million, or maintain minimum net capital of $10 million if engaged in the primary business of clearing options market-maker accounts,[6] (iii) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers, and (iv) deduct from net capital, the "haircut" requirements pursuant to the Commission's net capital rule (Exchange Act Rule 15c3–1)[7] in excess of the equity maintained in the accounts of participating broker-dealers.

Furthermore, JBO participants would be required to be registered broker-dealers subject to Exchange Act Rule 15c3–1, and would be required to maintain an ownership interest in the JBO pursuant to Regulation T. Exclusive of their ownership interest in the JBO arrangement, JBO participants would be required to maintain a minimum liquidating equity of $1 million. If the liquidating equity fell below $1 million, the JBO participant would be required to eliminate the deficiency within five business days or would become subject to the margin requirements under other provisions of Exchange Rule 431.

b. *Amendment No. 1.* Amendment No. 1 proposes revisions that are designed to incorporate certain proposed maintenance margin requirements for non-equity securities, which are the subject of another recent Exchange filing, SR–NYSE–98–14 ("Related Filing").[8] The Exchange's proposed rule change, as originally filed, requires that the Commission's net capital rule haircuts be used when a member organization computes its capital charges for Rule 431 purposes. However, in the Related Filing, the Exchange proposes margin requirements for non-equity securities for broker-dealer proprietary accounts which are less than the Commission's net capital rule haircut requirements. The Exchange believes it is necessary to maintain consistency between the Exchange's JBO filing and the Related Filing by incorporating into the JBO filing the most recently proposed margin requirements. Therefore, Amendment No. 1 incorporates the requirements proposed in the Related Filing.

The Exchange's JBO filing specifies certain regulatory requirements for establishing and maintaining JBO arrangements. Among them is the requirement that each JBO participant maintain in its account minimum net liquidating equity of $1 million. Amendment No. 1 clarifies the margin requirements that become operative when the equity in the account of a JBO participant falls below the prescribed levels. Specifically, if the amount of equity in a JBO participant's account drops below the $1 million minimum, the participant no longer will be an eligible JBO participant unless the necessary minimum equity is reestablished in the JBO account within the required number of days (*i.e.*, 5 business days). Amendment No. 1 clarifies that JBO participants who lose their JBO eligibility would not be considered "exempted borrowers" (as defined in Regulation T) and therefore would be subject to the margin account requirements for customers set forth in Regulation T. In addition, such participants would be subject to the maintenance requirements pursuant to the other provisions of Rule 431.

Amendment No. 1 also requests that the revisions relating to Control and Restricted Securities be subject to separate consideration and review by the Commission, apart from the broader proposal relating to JBO arrangements and broker-dealer accounts, as well as the changes proposed in Amendment No. 1. The Exchange believes that bifurcating the consideration of the revisions regarding Control and Restricted Securities, on which no comments were received, would allow them to become effective more quickly than if they were considered together with all of the other modifications proposed in the JBO filing and Amendment No. 1.

c. *Amendment No. 2.* The Exchange notes that the Chicago Board Options Exchange, Incorporated ("CBOE") has also submitted a proposed rule change to establish margin and net capital requirements for JBO clearing firms and participants.[9] The CBOE's proposal, which is similar to the Exchange's JBO filing, originally proposed capital requirements of $25 million and $10 million. In response to the publication of the CBOE's JBO filing in the **Federal Register**, the Commission received several comment letters from members of the CBOE. The CBOE members contended that the proposed $10 million net capital requirement for certain JBO clearing firms, whose primary business consists of clearance of options market makers' accounts, was too high.

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[3] *See* Securities Exchange Act Release No. 39497 (Dec. 29, 1997), 63 FR 899 (Jan. 7, 1998).

[4] *See* 12 CFR 220.7(c). Regulation T is entitled "Credit By Brokers and Dealers" and was issued by the FRB pursuant to the Act.

[5] As discussed in the Exchange's Interpretation Handbook, the term "tentative net capital" generally refers to net capital before the application of "haircuts" and undue concentration charges on securities and options positions. *See* NYSE Interpretation Handbook, Section I(c)(2)(vi)(M)(04), "Tentative Net Capital."

[6] Under the proposed rule change, clearance of option market maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the ratio of gross options market maker deductions to net capital (including gross deductions for JBO participant accounts) are options market maker deductions.

[7] *See* 17 CFR 240.15c3–1, "Net Capital Requirements for Brokers or Dealers."

[8] The Commission has published notice of the Related Filing but has not taken any dispositive action on the proposal. *See* Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882 (Aug. 5, 1998).

[9] The CBOE's JBO filing, SR–CBOE–97–58, was filed with the Commission on October 27, 1997, and notice of its filing was issued on December 10, 1997. *See* Securities Exchange Act Release No. 39418 (Dec. 10, 1997), 62 FR 66154 (Dec. 17, 1997). The CBOE filed Amendment No. 1 to its JBO filing on July 27, 1998. Notice of Amendment No. 1 was issued on November 25, 1998. *See* Securities Exchange Act Release No. 40708 (Nov. 25, 1998).

As a result of discussions with other self-regulatory organizations such as the CBOE, as well as deliberations among the JBO subcommittee of the Exchange's Rule 431 Committee, the Exchange seeks to lower the proposed net capital requirement for member organizations carrying and clearing, or carrying JBO accounts from $10 million to $7 million. This modification is consistent with the revisions which the CBOE recently proposed for its JBO filing.[10] Under Amendment No. 2, the $7 million net capital requirement only would be available to member organizations whose primary business consists of the clearance of options market maker accounts. Consequently, the proposal's $25 million tentative net capital requirement would continue to apply to all other member organizations carrying and clearing, or carrying JBO accounts. The Exchange believes the revised level of $7 million will continue to require capital sufficient to satisfy safety and soundness concerns.

Amendment No. 2 also includes new provisions relating to member organizations that carry and clear, or carry JBO accounts that will require: (i) prompt written notification to the Exchange when such a member organization's tentative net capital or net capital, whichever may apply, falls below prescribed standards; and (ii) that appropriate action be taken, within three business days, to resolve any such capital deficiency. Failure to correct such deficiencies within the allotted period will preclude the JBO carrying and clearing, or carrying member organization from accepting new transactions pursuant to the JBO arrangement. The Exchange believes these requirements are consistent with provisions of the Commission's net capital rule that generally deal with net capital deficiencies.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act[11] in that it is designed to promote just and equitable principles of trade, and protect the investing public. The Exchange further believes the proposed rule change is consistent with the rules and regulations of the Board of Governors of the Federal Reserve System that are intended to prevent the excessive use of credit for the purchase or carrying of securities, in accordance with Section 7(a) of the Act.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change. The Exchange notes, however, that the CBOE received written comments regarding its companion JBO filing. Item II(A)(1)(c) above includes the Exchange's response to the issues raised in the comment letters submitted to the CBOE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–28 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32328 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40712; File No. SR–NYSE–98–30]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Customer Account Transfer Contracts

November 25, 1998.

I. Introduction

On September 28, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to customer account transfer contracts.

The proposed rule change was published for comment in the **Federal Register** on October 27, 1998.[3] One comment in support of the proposed rule change was received. This order approves the proposal.

II. Description of the Proposal

NYSE proposes to amend Exchange Rule 412, which regulates the transfer of customer accounts from one member organization to another, and the rule's stated interpretation. Transfers of customer accounts are generally effected through the Automated Account Transfer Service ("ACATS") which is administered by the National Securities

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[10] [illegible]

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78g(a).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40571 (October 19, 1998), 63 FR 57347 (File No. SR–NYSE–98–30).

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Clearing Corporation ("NSCC"). The ACATS system is currently being redesigned to allow for quicker and more efficient transfers of customer accounts. The purpose of the proposed rule change is to amend Rule 412 to reflect these upgrades.

Currently, the ACATS system and Exchange Rule 412 provide for a seven day cycle to transfer a customer account. The proposed amendments would reduce this cycle to six days by streamlining the asset review portion of the transfer period from two days to one day. It is anticipated that ACATS system changes will become operational on January 25, 1999. Therefore, the Exchange represents that the proposed rule change will become effective in accordance with the effective date of the ACATS system changes.

In addition, the Exchange proposes to amend an interpretation to Exchange Rule 412 to eliminate one of the enumerated reasons for which a member organization may reject or take exception to an account transfer request. The Proposed amendment deletes the "Account Type Mismatch" reject code, due to its limited usefulness arising from inconsistencies among member organizations in defining account types.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[4] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[6] The proposed amendment does this by reducing the time allowed for transferring customer accounts.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–98–30) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32330 Filed 12–3–98; 8:45 am]

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[4] 15 U.S.C. 78f(b)

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40710; File No. SR–PCX–97–49]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Pacific Exchange, Inc. Relating to Capital and Margin Requirements for Joint Back Office Arrangements

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 1998, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its proposed rule change regarding Joint Back Office ("JBO") arrangements to: (i) reduce the net capital requirements for certain member organizations carrying and clearing, or carrying JBO accounts from $10 million to $7 million; (ii) add notification requirements for JBO clearing firms in the event their tentative net capital or net capital fall below prescribed levels; and (iii) require member organizations carrying JBO accounts to margin such accounts in accordance with customer margin requirements if the JBO participants fail to maintain minimum liquidating equity of $1 million in their JBO accounts for more than five business days.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Background.* On December 18, 1997, the Exchange filed with the Commission a proposal establishing margin and net capital requirements for member organizations that carry and clear, or carry JBO accounts. Notice of the Exchange's proposal was issued on February 18, 1998.[3] Under the proposal, a member organization that carries and clears, or carries JBO accounts would be required to maintain minimum tentative net capital of $25 million, except that a member organization whose primary business consisted of the clearance of options market-maker accounts could carry JBO accounts provided that it maintained minimum net capital of $10 million.

The Exchange notes that its JBO rule filing is similar to the JBO rule filings submitted to the Commission by the New York Stock Exchange ("NYSE") and the Chicago Board Options Exchange ("CBOE").[4] The NYSE and CBOE recently submitted amendments to their JBO rule filings which propose to reduce the capital requirements for JBO clearing firms from $10 million to $7 million; add notification requirements for JBO clearing firms in the event their tentative net capital or net capital falls below prescribed levels; and require the application of customer margin requirements to JBO participants if such participants do not maintain sufficient equity in their JBO accounts.[5] Amendment No. 1 to the Exchange's proposal is consistent with these revisions proposed by the NYSE and CBOE.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 39680 (Feb. 18, 1998), 63 FR 9622 (Feb. 25, 1998).

[4] The NYSE's JBO filing, SR–NYSE–97–28, was filed with the Commission on October 2, 1997, and notice of its filing was issued on December 29, 1997. *See* Securities Exchange Act Release No 39497 (Dec. 29, 1997), 63 FR 899 (Jan. 7, 1998). The CBOE's JBO filing, SR–CBOE–97–58, was filed with the Commission on October 27, 1997, and notice of its filing was issued on December 10, 1997. *See* Securities Exchange Act Release No. 39418 (Dec 10, 1997), 62 FR 66154 (Dec. 17, 1997)

b. *Amendment No. 1.* The Exchange seeks to amend its JBO rule filing to allow a member organization to carry and clear, or carry JBO accounts provided that the member organization's net capital, as computed pursuant to Exchange Act Rule 15c3–1,[6] does not fall below $7 million for a period in excess of three consecutive business days. This revision modifies the Exchange's original proposal which required a carrying and clearing, or carrying member organization to maintain minimum net capital of $10 million.

The Exchange further proposes to require JBO clearing members to provide immediate telegraphic or facsimile notice to the Exchange if the clearing member determines that its tentative net capital or net capital has fallen below the prescribed levels. In addition, such clearing member will be subject to the prohibitions against withdrawal of equity capital set forth in Exchange Act Rule 15c3–1(e), and must observe the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in Exchange Act Rule 15c3–1d(b), as if such member's net capital were below the minimum standards specified by each of those sections.

Finally, the Exchange proposes to require carrying member organizations to margin JBO accounts in accordance with the customer margin requirements of Regulation T[7] when such JBO accounts lack sufficient minimum liquidating equity (*i.e.*, $1 million) for a period of more than five business days.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[8] in general, and further, the objectives of Section 6(b)(5),[9] in particular, in that it is designed to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Pubic Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–49 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32327 Filed 12–3–98; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice No. 2943]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW, Washington, D.C., December 10–11, 1998, in Conference Room 1406. Prior notification and a valid photo are mandatory for entrance into the building. One day before the meeting the public must notify Gloria Walker, Office of Historian (202–663–1124) providing their date of birth, social security number and telephone number.

The Committee regrets the short notice due to difficulty in securing a conference room but will meet in open session from 9:00 a.m. through 12:00 p.m. on the morning of Thursday, December 10, 1998. The remainder of the Committee's sessions from 1:45 p.m. on Thursday, December 10, 1998 until 5:00 p.m. on Friday, December 11, 1998 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions involving consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *pahistoff@panet.us-state.gov*).

Dated: November 30, 1998.

William Z. Slany,

Executive Secretary.

[FR Doc. 98–32390 Filed 12–2–98; 11:34 pm]

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[5] The NYSE filed Amendment No. 1 to its JBO filing on May 21, 1998, and Amendment No. 2 on September 28, 1998. Notice of Amendment Nos. 1 and 2 was issued on November 25, 1998. *See* Securities Exchange Act Release No. 40709 (Nov. 25, 1998). The CBOE filed Amendment No. 1 to its JBO filing on July 27, 1998. Notice of Amendment No. 1 was issued on November 25, 1998. *See* Securities Exchange Act Release No. 40708 (Nov. 25, 1998).

[6] The Commission's net capital rule, "Net Capital Requirements for Brokers or Dealers," is designated as Commission Rule 15c3–1. *See* 17 CFR 240.15c3–1.

[7] Regulation T is entitled "Credit by Brokers and Dealers" and was issued by the Board of Governors of the Federal Reserve System pursuant to the Act. *See* 12 CFR 220.

[8] 15 U.S.C. 78F(B).

[9] 15 U.S.C. 78F(B)(5).

[10] 17 CFR 200.30–3(a)(12).

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4819]

Vessel and Port Control Measures to Address Year 2000 (Y2K)-Related Problems

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard requests comments on possible actions and control measures to minimize the occurrence and effect of potential Year 2000 (Y2K)-related equipment and system malfunctions aboard vessels, at port facilities, and at Marine Terminals. Malfunctions and failures of date sensitive automation and computer processes can potentially halt critical domestic and international maritime operations. Possible measures to address this risk include rigorous equipment and systems testing on vessels and at facilities, Y2K assessments and certification, and closing or restricting access to U.S. ports.

DATES: Comments must reach the Docket Management Facility on or before March 4, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1998–4819), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, please contact Mr. John Hannon, Project Manager, Office of Compliance, Commandant (G–MOC–2), U.S. Coast Guard Headquarters, telephone 202–267–1464. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Documentary Services, Department of Transportation, telephone 202–366–9329. For questions on Y2K issues, contact the Coast Guard at 1–800–368–5647.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this notice by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the docket number (USCG–1998–4819) and the specific section of this notice to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will open a 90-day comment period for response to this notice. To ensure widest dissemination of this notice, the Coast Guard will publish a summary article in our Marine Safety Newsletter, and post it on our Marine Safety Regulations web site at http://www.uscg.mil/hq/g-m/regs/current.html.

The Coast Guard does not plan public meeting(s) concerning this notice. You may request a public meeting by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If we determine that the opportunity for oral presentations will be helpful, we will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Our society's dependence on automation and computer technology is increasing exponentially. The maritime industry incorporates automation and computer technology into almost every aspect of its business operations. Automation is used for many shipboard systems such as main propulsion, boilers, auxiliary systems, power generation, position fixing navigation systems, communications, radar, steering systems, cargo systems, and bilge/ballast controls. Automation is also used at facilities in cranes, on shoreside equipment, and in loading or unloading operations. Despite current regulations for equipment and systems testing, the potential technological malfunctions associated with the year 2000 (Y2K) problem could disrupt maritime operations. To counter this potential problem, the Coast Guard is considering using existing authority to implement more restrictive control measures to ensure port, vessel, facility and environmental safety.

What is the "Y2K problem"? The Y2K problem is based on the widespread computer industry practice of using 2 digits instead of 4 to represent the year in databases, software applications, and hardware microchips. Certain systems will face difficulty in the year 2000 when that year is represented as "00." Unable to differentiate "00" from the year 1900, computer programs and systems aboard ships and at port facilities could malfunction or completely shut down.

How could the Y2K problem potentially affect the maritime industry? Computer programs for engine automation systems that monitor the time between required engine maintenance are a good example of the Y2K problem. If these programs misread "00" as the year 1900 instead of 2000, they may interpret that 100 years has passed since the last engine maintenance was performed and respond by shutting down systems to avert damage to the engine. Temporary loss of main engine operation at sea on a calm day with no other ships in sight may only prove inconvenient. However, the unexpected loss of a ship's propulsion in a narrow or crowded waterway could result in a serious casualty. Facilities and marine terminals are also at risk from Y2K-related problems. Systems that use time as a function of measurement such as fire detection systems, cargo tracking software, process flow controls (oil, gas, and chemical), temperature controls and alarms are most vulnerable. For example, system sensors could cause an automatic shutdown response that could in turn trigger some other fail-safe response down stream. In such a case, a release of hazardous materials could occur when overpressure safeguards react to the sudden closure of a valve against the flow of gas or liquid.

How will the Coast Guard address potential Y2K-related problems? Existing Coast Guard regulations include requirements for commercial vessel operators to conduct periodic equipment and systems tests, as well as inspections of safety, navigation and pollution prevention equipment and systems. For example, Title 33 Code of Federal Regulations (CFR) part 164 requires certain vessels to conduct arrival and departure tests to ensure the proper operation of vital navigation equipment and systems. Title 33 CFR 156.170(c)(5) requires similar testing for facilities to ensure operating or indicating equipment properly perform their intended functions. Such tests help detect malfunctions or failures of equipment and systems regardless of the cause.

Other existing regulations give the Coast Guard broad authority to control operations in the event of hazardous circumstances. For example, 33 CFR part 160, subpart B, allows District Commanders and Captains of the Port to control vessel and waterfront facility operations to ensure safety and environmental protection.

We do not plan to address Y2K issues through new regulations. Rather, our goal is to use existing authority to respond to Y2K risks with a sufficient level of control to prevent casualties.

Y2K problems are unique and harder to detect than mechanical failures. Rigorous testing and inspections are critical elements to help detect problems. However, rigorous testing may not disclose all problems. Recent experience with Y2K testing indicates that tests conducted without manually advancing internal clocks in systems to the year 2000 are ineffective. From now until June 2000, it is critically important that vessel and facility operators conduct thorough operational tests and inspections. Officers in Charge of Marine Inspection (OCMIs) and Captains of the Port (COTPs) will ensure compliance with existing testing and inspection requirements during boardings and inspections.

OCMIs and COTPs may also take all necessary action as authorized under 33 CFR part 160, subpart B, to restrict or control the movement of vessels and operation of waterfront facilities experiencing equipment or system malfunctions or failures posing safety or environmental hazards. This reactive approach is consistent with current Coast Guard policy. However, as part of contingency planning efforts, we are considering implementing more restrictive vessel and facility operating controls during peak Y2K risk periods. For example, a COTP could require vessel movement controls such as tug escorts for certain vessels, prohibit loading and unloading operations, or close or restrict access to a port for a period of time. We are very interested in your feedback regarding what level of control we should exert over vessels and port facilities to minimize or eliminate Y2K-related casualties.

What are maritime organizations and agencies doing to address the Y2K problem? The International Maritime Organization (IMO) published two Circulars that address Y2K issues: Marine Safety Committee (MSC) Circular 804 entitled "Impact of the Year 2000 on Software Systems," and MSC circular 868 entitled "Addressing the Year 2000 Problem." These circulars are available for inspection in the docket (USCG–1998–4819) at the address under ADDRESSES or on the Internet at http://dms.dot.gov. Both circulars contain advisory information to increase awareness of the potential programming malfunctions associated with date sensitivity and the possible effects on shipboard computers, automation and system controls. The IMO circulars also invite member governments to bring the Y2K problem to the attention of the maritime community.

In keeping with IMO's initiative, we are taking active steps to increase Y2K awareness in the maritime industry. The goal is to encourage owners and operators to evaluate each ship and facility to ensure that shipboard systems and system applications function properly in the year 2000.

The Coast Guard's outreach and coordination efforts include:

1. Distributing an informational brochure on maritime-related Y2K issues during vessel boardings and facility inspections;

2. Maintaining a toll free number (1–800–368–5647) for questions on the Y2K problem;

3. Maintaining and continually updating the Marine Safety Program's Y2K web site (www.uscg.mil/hq/g-m/Y2k.htm) with current Y2K information;

4. Sponsoring and attending industry gatherings to explain our Y2K concerns and listening to industry responses; and

5. Publishing the Coast Guard's Y2K enforcement policy in a later notice in the **Federal Register**.

What can the maritime industry do to help? Industry members are encouraged to assess applicable programs and systems as soon as possible to identify and correct any potential Y2K problems. Conducting assessments now may prevent casualties and potential operational shutdowns later.

You can also help by providing any information and supporting data that would help us evaluate the magnitude of the Y2K threat and the associated risk of malfunction for individual systems, vessels, waterfront facilities, and other maritime areas. In addition, it is extremely important to share relevant Y2K information with other ports, owners, and operators.

Finally, we need your help in answering the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under *Request for Comments* above.

1. Can the equipment and systems tests required under current regulations detect Y2K-related problems? Will aggressive application and enforcement of these regulations sufficiently minimize or eliminate Y2K-related problems?

2. What specific standards or requirements should industry use for Y2K assessments? Are these standards reliable?

3. Should the Coast Guard exempt vessels and facilities that can provide evidence of correcting any Y2K problems from any Y2K-related port movement or operational controls?

4. Should the Coast Guard accept Y2K compliance certification from a third party such as a class society, insurance company, government, or technology company as proof of having corrected Y2K problems? If so, who?

5. Given the diverse characteristics of individual ports, should the local Captain of the Port or District Commander determine the level of Y2K controls to impose in the port area, if any? Will having different requirements in each port create confusion? Should the Coast Guard implement a uniform national program? Should there be national Y2K control standards supplemented with some limited local authority?

6. Who should the Coast Guard coordinate with at the local level in developing Y2K contingency measures? Local governments? Citizen groups? Industry?

7. Should the Coast Guard consider suspending all port operations for a period of time? If so, for how long?

8. If the Coast Guard does impose Y2K-related port and vessel controls, short of a port shutdown, what additional safety measures should we require? For example, we could require tug escorts, additional manning, emergency steering and anchoring teams on watch, manual backups for all critical automated systems, and crew drills.

9. Should vessels required to comply with the International Safety Management (ISM) Code include Y2K contingencies in their Safety Management System?

10. Are there any other potential Y2K-related issues that could affect maritime operations (such as potential problems with communications systems)?

Dated: November 27, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–32223 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–15–U

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 568X)]

CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, PA

On November 16, 1998, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending between milepost BAV–20.5 at 4th Street and milepost BAV–22.4 at Commerce Street in Chambersburg, a distance of 1.9 miles in Franklin County, PA. The line traverses U.S. Postal Service Zip Code 17201 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 5 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 24, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub–No. 568X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before December 24, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–32105 Filed 12–3–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the CDFI Program—Core Component and Intermediary Component; Extension of Application Deadline

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of extension of application deadline.

SUMMARY: On October 26, 1998, the Community Development Financial Institutions Fund (hereafter referred to as the "Fund") published in the **Federal Register** a notice of funds availability ("NOFA") for the Community Development Financial Institutions ("CDFI") Program Core Component (63 FR 57222) and is currently extending the application deadline for the CDFI Program Core Component from January 21, 1999 to February 4, 1999. Also, on October 26, 1998, the Fund published in the **Federal Register** a NOFA for the CDFI Program Intermediary Component (63 FR 57224) and is now extending the application deadline for the CDFI Intermediary Component from January 19, 1999 to February 2, 1999.

DATES: The application deadline for the CDFI Program Core Component is extended from January 21, 1999 to February 4, 1999. The deadline for receipt of a Core Component application is 6 p.m. EST on February 4, 1999.

The application deadline for the CDFI Program Intermediary Component is extended from January 19, 1999 to February 2, 1999. The deadline for receipt of an Intermediary Component application is 6 p.m. EST on February 2, 1999.

Applications for the respective CDFI Program Components that are received in the offices of the Fund after said dates and times will be rejected and returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Core/Intermediary Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. (202) 622–8662. (This is not a toll free number.) Applications and other information regarding the Fund and its programs may be downloaded from the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION: On October 26, 1998, in the **Federal Register**, the Fund published a NOFA for the CDFI Program Core Component (63 FR 57222) and a NOFA for the CDFI Program Intermediary Component (63 FR 57224). The CDFI Program Core Component NOFA announced the availability of up to $50 million for program awards and specified an application deadline of January 21, 1999. The CDFI Program Intermediary Component NOFA announced the availability of up to $7.5 million for program awards and specified an application deadline of January 19, 1999.

This Notice extends the application deadline for the CDFI Program Core Component from January 21, 1999 to February 4, 1999. This Notice also extends the application deadline for the CDFI Program Intermediary Component from January 19, 1999 to February 2, 1999. All applications must be received in the offices of the Fund by 6 p.m. EST on the respective application due dates.

The Fund is extending the application deadlines for the CDFI Program Core and Intermediary Components because of unforeseeable delays in the printing of application forms and packets. The Fund has determined that potential applicants need more time between attending the various outreach workshops, receiving official versions of the CDFI Program application materials, and the due dates for those materials. So that potential applicants have sufficient time to complete their CDFI Program applications, the Fund is extending the application deadlines to ensure a minimum of eight weeks application preparation time from the date of availability of the application forms and packets.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4718; 12 CFR part 1805.

Dated: November 30, 1998.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 98–32205 Filed 12–3–98; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Customs Service

Renewal of the Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated developing countries to directly enter the United States free of duty. The GSP program expired on June 30, 1998, but has been renewed, effective October 21, 1998, with retroactive effect to July 1, 1998, by a provision in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277. This document provides notice to importers that Customs will begin processing refunds on all duties paid, with interest from the date the duties were deposited, on GSP-eligible merchandise that was entered on July 1, 1998, through October 20, 1998, and that Customs will accept claims for GSP duty-free treatment for merchandise entered, or withdrawn from a warehouse, for consumption on or after October 21, 1998, through June 30, 1999, the provision's current sunset date.

DATES: Customs began the processing of refunds on duties paid—with interest as set forth in this document—on October 27, 1998.

FOR FURTHER INFORMATION CONTACT: For general operational questions:

Formal entries—John Pierce, 202–927–1249
Informal entries—William Kotlowy, 202–927–1364
Mail entries—Robert Woods, 202–927–1236
Passenger Claims—Michael Perron, 202–927–1325

For specific questions relating to ABI processing: James Halpin, Office of Information and Technology, 202–927–7128.

Questions from filers regarding ABI transmissions should be directed to their ABI client representatives. Persons with other questions regarding this notice may contact John Pierce, Trade Agreements, 202–927–1249.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974 (the 1974 Act), as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries. Pursuant to 19 U.S.C. 2465, as amended by section 981(a) of Pub. L. 105–34, 111 Stat. 902, duty-free treatment under the GSP program expired on June 30, 1998.

On October 21, 1998, the President signed into law the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277. Section 1011 of the "Tax and Trade Relief Extension Act of 1998" (within Division J of that Appropriations Act) provides for the extension of GSP duty-free treatment to eligible articles from designated beneficiary countries that are entered, or withdrawn from a warehouse, for consumption on or after October 21, 1998, through June 30, 1999. Section 1011 also provides for the refund of any duty paid with respect to entries made after June 30, 1998, through October 20, 1998, to which duty-free treatment would have applied, provided that a request for liquidation or reliquidation is filed with Customs by April 19, 1999, (*i.e.*, within 180 days after the date of enactment of the Appropriations Act) and contains sufficient information to enable Customs to locate the entry or to reconstruct the entry if it cannot be located.

Recognizing the impact that retroactive renewal and consequent numerous reliquidations will have on both importers and Customs, Customs developed a mechanism to facilitate refunds (see, **Federal Register** Notice of June 16, 1998, 63 FR 32911) that began the processing of refunds on October 27, 1998. Customs expects the processing of refunds to take from four to eight weeks for certain formal Automated Broker Interface (ABI) entries. If refunds are not received within the specified time, importers are advised to direct inquiries regarding the status of their refunds to the appropriate Customs port of entry.

Duty-Free Entries

Effective October 21, 1998, filers again will be entitled to file GSP-eligible entries without the payment of estimated duties.

Refunds With Interest

A. Formal Entries

Customs will liquidate or reliquidate all affected entries and refund any duties deposited for items qualifying for GSP. Field locations shall not issue GSP refunds except as instructed to do so by Customs Headquarters.

If an ABI entry was filed with payment of estimated duties using the Special Program Indicator (SPI) for the GSP (the letter "A") as a prefix to the tariff number, no further action by the filer is required; filings with the SPI "A" will be treated as conforming requests for refunds.

Non-ABI filers who either did or did not request a refund by using the SPI "A" must request a refund in writing from the Port Director at the port of entry by April 19, 1999. The letter may cover either single entries or all entries filed by an individual filer at a single port. To expedite refunds, Customs recommends the following information be included in each letter:

1. A statement requesting a refund, as provided by section 1011 of the "Tax and Trade Relief Extension Act of 1998;"
2. The entry numbers and line items for which refunds are requested; and
3. The amount requested to be refunded for each line item and the total amount owed for all entries.

Interest on duties deposited will be paid, pursuant to section 505 of the Tariff Act of 1930, as amended (19 U.S.C. 1505), based on the quarterly Internal Revenue Service interest rates used to calculate interest on refunds of Customs duties as follows:

July 1, 1998—July 31, 1998—7%
August 1, 1998—August 31, 1998—7%
September 1, 1998—September 30, 1998—7%
October 1, 1998—October 20, 1998—7%

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B. Informal Entries

Refunds with interest on informal entries filed via ABI on a Customs Form 7501 with the SPI "A" will be processed in accordance with the procedures discussed above.

C. Mail Entries

The addressees must request a refund of GSP duties and return it, along with a copy of the CF 3419A, to the appropriate International Mail Branch (address listed on bottom right hand corner of CF 3419A). It is essential that a copy of the CF 3419A be included as this will be the only means of identifying whether GSP products have been entered and estimated duties and fees have been paid.

D. Baggage Declarations and Non-ABI Informal Refunds

If travelers/importers wrote a statement directly on their Customs declarations (CF 6059B) or informal entries (CF 363 or CF 7501) requesting a refund, no further action by the traveler/importer will be required; the statement will be treated as a conforming request for refunds. Failing to request a refund in this manner will not preclude a traveler/importer from otherwise making a timely request in writing, as described above for non-ABI filers.

Dated: November 24, 1998.

Peter J. Baish,

Acting Assistant Commissioner, Field Operations.

[FR Doc. 98–32321 Filed 12–3–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Denial of Domestic Interested Party Petition; Petitioner's Desire to Contest Decision Concerning Tariff Classification of Textile Costumes

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of petitioner's desire to contest decision on domestic interested party petition.

SUMMARY: In July 1997 a petition was filed by a domestic manufacturer of textile costumes regarding the tariff classification of imported textile costumes. The petition was filed pursuant to section 516, Tariff Act of 1930, as amended, seeking to have all textile costumes classified as wearing apparel in chapters 61 and 62 of the Harmonized Tariff Schedule of the United States (HTSUS).

On July 22, 1998, Customs denied the Domestic Interested Party Petition and affirmed that the four textile costumes in question were classified as festive articles in subheading 9505.90.6090 (now 9505.90.6000), HTSUS, because they were found to be flimsy, nondurable, and not normal articles of wearing apparel. Pursuant to 19 CFR 175.24, Customs is now providing notice of this decision and also providing notice of the receipt of petitioner's desire to contest this decision.

DATES: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch (202–927–1009).

SUPPLEMENTARY INFORMATION:

Background

Classification of Costumes

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs taken in order. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505, HTSUS, includes articles which are for "Festive, carnival, or other entertainment." However, Note 1(e), chapter 95, HTSUS, excludes articles of "fancy dress, of textiles, of chapter 61 or 62" from chapter 95. The ENs to 9505, state, among other things, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

* * * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche-heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials, of chapter 61 or 62.

On November 15, 1994, Customs issued HQ 957318, stating that it had determined to classify as festive articles in subheading 9505.90.6090, HTSUS, costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel.

Filing of Domestic Interested Party Petition

On June 2, 1997, in response to the domestic manufacturer's request, Customs issued a decision, Headquarters Ruling (HQ) 959545, determining that four costume sets and their accessories would be classified under subheading 9505.90.6090, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Other" (effective August 1, 1997, the provision was amended and now reads as follows: 9505.90.6000, HTSUS, "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other," which provides for duty-free entry under the general column one rate of duty).

In July 1997, and in accordance with the procedures of 19 U.S.C. 1516, and 19 CFR Part 175, a domestic interested party petition was filed on behalf of an American manufacturer of textile costumes. The petitioner contends that virtually identical costumes to those manufactured by petitioner are being imported into the United States and some of these textile costumes are being erroneously classified by Customs under subheading 9505.90.6090, HTSUS, as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Other." The provision is duty free under the general column one rate. The petitioner claims that all imported textile costumes should be classified as wearing apparel in chapters 61 or 62, HTSUS, and are therefore dutiable and may be subject to quota and visa restraints. Petitioner asserts that all textile costumes are excluded from classification under subheading 9505.90.6090, HTSUS, pursuant to Note 1(e), Chapter 95.

Notice of the domestic interested party petition was published in the **Federal Register** on December 22, 1997 (62 FR 66891). The notice invited written comments on the petition from interested parties. The comment period closed on February 20, 1998, and Customs received 767 comments.

Of the comments received against Customs position, 128 followed a form letter where the individual identified herself or himself as a member of the domestic costume industry. There were 625 comments submitted by individuals on various form letters. The comments received in support of Customs position were submitted on behalf of several trade associations and various U.S. importers of Halloween costumes, non-seasonal dress-up sets, toys, gifts, housewares, or novelties.

Decision on Petition and Notice of Petitioner's Desire To Contest

In HQ 961447, dated July 22, 1998, Customs denied the Domestic Interested Party Petition and affirmed the classification determinations set forth in HQ 959545, dated June 2, 1997, in which four textile costumes were classified as festive articles in subheading 9505.90.6090 (now 9505.90.6000), HTSUS, because they were found to be flimsy, nondurable, and not normal articles of wearing apparel. HQ 961447 rejected the arguments contained in the 516 Petition that all imported costumes made of textiles should be classified under Chapters 61 and 62, HTSUS, as items of apparel.

In correspondence dated July 23, 1998, the domestic manufacturer filed written notice of the desire to contest Customs decision in HQ 961447. The notice to contest Customs decision also designated ports at which the merchandise is being imported into the United States and at which the petitioner desires to protest.

Authority

This notice is published in accordance with section 175.24, Customs Regulations (19 CFR 175.24), and 19 U.S.C. 1516.

Drafting Information

The principal author of this document was Ann Segura Minardi, Textiles Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Raymond W. Kelly,

Commissioner of Customs.

Approved: November 4, 1998.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–32322 Filed 12–3–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 1065–B and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

DATES: Written comments should be received on or before February 2, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

OMB Number: 1545–1626.

Form Number: Form 1065–B and Schedule K–1.

Abstract: Internal Revenue Code Section 6031 and Regulation section 1.6031–1 requires partnerships to file a return. Internal Revenue Code sections 771–777, enacted by the Taxpayer Relief Act of 1997, allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners. Form 1065–B is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 432,563.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 24, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–32226 Filed 12–3–98; 8:45 am]

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Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

Correction

In notice document 98–30604, beginning on page 63731, in the issue of Monday, November 16, 1998, make the following corrections:

1. On page 63733, in the first column, in footnote number 4, in the fourth line "Rule" should read "Rule.".

2. On the same page, in the second column, in the third full paragraph, in the fourth line from the bottom, "perform" should read "performed".

3. On page 63734, in the second column, in the eighth line, "of" should read "for" and "that" should read "the".

4. On the same page, in the same column, in the first full paragraph, in the third line, "because" should read "Because".

5. On the same page, in the same column, in paragraph 5., in the 13th line, "pursuant" should read "pursuing".

6. On the same page, in the same column, in paragraph 5., in the seventh line from the bottom, "decision" should read "decisions".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–52]

Establishment of Class E Airspace; Duluth St. Mary's Hospital Heliport, MN

Correction

In rule document 98–30586, appearing on page 63601, in the issue of Monday, November 16, 1998, make the following correction:

§ 71.1 [Corrected]

On page 63601, in the third column, in § 71.1, in the heading **AGL MN Duluth St. Mary's Hospital Heliport, MN [New]**, between "MN" and "**Duluth**" add "**E5**".

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SPORTATION

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federal register

Friday
December 4, 1998

Part II

Securities and Exchange Commission

17 CFR Part 200, et al.

The Regulation of Securities Offerings and of Takeovers and Security Holder Communications; Proposed Rules

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 202, 210, 228, 229, 230, 232, 239, 240 and 249

[Release No. 33–7606A; 34–40632A; IC–23519A; International Series Release No. 1167A; File No. S7–30–98]

RIN 3235–AG83

The Regulation of Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to modernize and clarify the regulatory structure for offerings under the Securities Act of 1933 while maintaining investor protection. The proposals cover five major topics: Registration system reform; communications around the time of an offering; prospectus delivery requirements; integration of private and public offerings; and periodic reporting under the Securities Exchange Act of 1934.

Under the proposals, larger seasoned issuers could offer securities at any time as long as they file a registration statement before sale. Other seasoned issuers could do the same when they make offerings to relatively sophisticated or informed investors. The Commission staff would not review these registration statements before effectiveness. Those issuers and their underwriters would designate the effective dates and have complete control over when they offer and sell in those registered offerings. Their communications to the market and to investors, while governed by antifraud and civil liability provisions, would no longer be limited based on the filing or effectiveness of their registration statements.

The proposals also would provide predictability to medium-sized seasoned issuers that register offerings. The registration statements they file to raise capital would become effective when they designate. Those registration statements would not be subject to pre-effective review by the Commission staff. Seasoned companies of any size would benefit from the proposals as well. We would allow them to incorporate Exchange Act disclosure in registration statements earlier than the current rules permit. To provide greater certainty to small and medium-sized issuers planning a registered offering, we also are proposing new communication rules. One rule would provide that communications made by or for such an issuer more than 30 days before the registration statement is filed would not be treated as offers. Other proposed rules would guide those issuers as to the types of communications that we permit within that 30-day period.

Our proposals also would give issuers of all sizes and their underwriters greater freedom to communicate with investors in writing during the offering process. The proposed exemptive rules would allow use of any document (not just the traditional prospectus) at any time during an offering by a larger seasoned issuer or an offering to sophisticated or informed investors by a smaller seasoned issuer. Those "free writing" communications would be subject to antifraud and civil liability provisions. In all other offerings, the proposed exemptions would allow an issuer and underwriter the same flexibility after the issuer has filed a registration statement. The free writing proposals would allow use of documents tailored specifically for the investors reading them. Other proposed revisions would increase investor access to analyst research reports. We would allow their distribution around the time of an offering in more cases than permitted today.

The proposals affecting prospectus delivery in registered offerings would re-focus those requirements for the benefit of investors. Delivery of a prospectus or a term sheet would be required before investors make their investment decisions rather than at the time a sale is confirmed.

The proposals addressing the integration of offerings would provide flexibility for issuers that have difficulty assessing the extent of market interest in a planned offering. Those revisions would enable an issuer to change an unregistered private offering into a registered public offering, or vice versa, after it commences the offering. Small companies that begin a registered public offering would still have the option to make an unregistered, exempt offering to qualified buyers even though they broadly solicited potential investors.

Finally, we are proposing various revisions to expedite and expand some of the disclosure required in periodic reports filed under the Exchange Act. Investors would have more timely access to company disclosure.

DATES: You should send us your comments so that they arrive at the Commission by April 5, 1999.

ADDRESSES: You should send 3 copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C., 20549. You also may submit your comments electronically to the following electronic mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–30–98; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post electronically submitted comment letters on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Anita Klein at (202) 942–2980, Julie Hoffman, Joseph Babits, Patricia Miller or Rani Doyle at (202) 942–2900, or, with respect to small business issuer aspects, John Reynolds at (202) 942–2950, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, D.C. 20549.[1]

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[1] The Commission also wishes to recognize the contributions to this release of Jennifer Bethel.

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I. Executive Summary

Through the Securities Act registration system, issuers and underwriters reach out to the public and sell securities. The registration system provides investors with the dual benefits of: full and fair disclosure (or effective remedies if there is faulty disclosure), and freely tradeable securities. Registration also benefits the markets at large by providing everyone with access to the most up-to-date information about the company making the offering. This disclosure is significant both to the market, for accuracy in pricing, and to the individual investor, for determining the suitability of the investment. Today's proposals are based on a recognition that investors will receive these benefits of registration only if the Commission continues to make the registration system flexible enough to be a viable alternative in the capital markets of today and the future.

A. Registration System Reforms

Our reforms to the registration system are designed to make registration more attractive to issuers without compromising investor protection. We believe that registration benefits all participants: issuers, by lowering their cost of capital; investors, by enhancing disclosure and providing remedies; and the marketplace, by increasing depth and liquidity.

In 1990, the Commission adopted Rule 144A which permits unregistered sales to and by qualified institutional buyers ("QIBs").[2] Since then, this institutional market, which exists virtually side-by-side with the public market, has expanded significantly. Recent data illustrates the size of this parallel market: in 1997, Rule 144A offerings comprised 17% of all offerings on a dollar basis, including 21% of all equity and 16% of all debt.[3] In some types of securities, the Rule 144A market has become predominant. In 1997, 76% of the high-yield debt, 72% of the convertible investment grade debt, and 10% of the non-convertible investment grade debt were issued for the Rule 144A market.[4]

Our proposed reforms seek to apply the issuer advantages of offering securities in the private and Rule 144A markets—timing and disclosure flexibility—to the public market. We believe that, as a result, more offerings will be registered.

We propose to create a three-tiered registration system for offerings consisting of: Form A, Form B and Form C. Form A offerings generally would be those made by smaller or unseasoned companies. Form B offerings would be those made by larger, seasoned, well-followed issuers and those made to relatively informed or sophisticated investors. Form C offerings would relate to business combinations or exchange offers. Today the Commission also is publishing a companion release regarding the regulation of takeovers, including tender offers, mergers and other extraordinary transactions. You should read that release for a detailed discussion of the regulation of business combinations and exchange offers registered on Form C.[5]

1. Contents of Prospectuses

Current requirements strictly mandate the content of an offering prospectus. Because we believe that larger seasoned issuers attract a large market following and operate in an efficient market, we are considering providing them with a larger measure of flexibility to craft disclosure about their offerings. We are asking for comment on two alternative proposals for Form B offerings. The first, while requiring all material transactional disclosure, would limit the itemized requirements for such disclosure. The second would continue to require all itemized transactional disclosure. Under both proposals, we would continue to mandate that issuers incorporate by reference the current itemized company information in their periodic reports. Thus, we would maintain the same standards for information about the company while we seek comment on the level of freedom to allow the issuer and the underwriter when crafting information about the offering itself.

Where the issuer or its representative uses disclosure to promote sales in the offering, it would have to file that disclosure, which would be subject to civil liability provisions prohibiting material misstatements and omissions. This "inclusive prospectus" approach would reflect the reality that investment decisions in these offerings would be based on more than the information contained in a single disclosure document.

By shifting some itemized disclosure requirements to materiality-based requirements, as one of our proposals would permit, we seek to discourage drafters from just routinely providing the boilerplate transactional disclosure that some have suggested the standardized disclosure items have evoked. This alternative would re-focus drafters on analyzing and including the information particular to that deal that is material to investors. More focused disclosure could result.

On the other hand, under our alternative proposal, all current transactional disclosure requirements specified in Regulation S–K that are in Form S–3 and/or Form F–3 would continue to apply. This alternative would provide investors with more certain core transactional information.

Under either proposal, issuers and third party participants such as underwriters and auditors would continue to ensure the quality of disclosure due to both market pressures and their legal responsibility to do so. We believe that analysts and the financial press, among others, also will test the accuracy of disclosure by larger, seasoned issuers.[6] By allowing issuers some more freedom to craft their transactional disclosure and communicate with investors in Form B offerings for which there is evidence of an efficient market, we also hope to reduce selective disclosure by allowing access to more information.

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[2] "Qualified institutional buyers" is defined in Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1). Even though some proportion of the Rule 144A securities are eventually registered, the investor benefits of registration are not maximized. It is not uncommon for securities sold in Rule 144A transactions to end up in the public market because they are registered for resale or exchanged for registered securities in "*Exxon Capital*" transactions (named after the Commission staff interpretive letter sanctioning the practice).

[3] Securities Data Corp's *New Issues* Database. Virtually all of that market share has moved to the Rule 144A market in the last 5 years. Rule 144A is not available for securities listed on a national securities exchange or quoted on a U.S. automated inter-dealer quotation system.

[4] Non-convertible investment grade debt is eligible for short-form registration under our current system, whereas the other two categories are not.

[5] Exchange Act Release No. 40633 (Nov. 3, 1998).

We are considering the same alternative approaches to disclosure in offerings limited to sophisticated investors and in offerings to investors with a pre-established relationship with the issuer. Historically, we have given issuers more flexibility in these types of offerings on the theory that these purchasers are able to fend for themselves.

For smaller issuers or unseasoned issuers of any size, we believe that the current strict itemization of transactional information in the prospectus remains important to the dissemination of adequate offering information. Some of those issuers would have little experience with crafting offering disclosure and the same market scrutiny is not present. We would therefore maintain all current itemized offering disclosure requirements in Form A. We would, however, allow more freedom for seasoned smaller issuers to rely on their periodic reports for disclosure about their companies in an offering. In the case of business combinations and exchange offers on Form C, we would maintain the itemized requirements for transactional disclosure.

2. Timing of Registration

Under the revised registration system, issuers would have complete flexibility in timing the registration of Form B offerings. By operation of rule, those registration statements would become effective at the issuer's discretion, either immediately upon filing or at whatever later date and time the issuer chooses. The staff would not review these registration statements before the offering or take action to make the registration statement effective. Form B registration statements would be screened by the Commission staff shortly after receipt by the Commission to determine whether the offering was eligible for registration on Form B and whether the disclosure raises any "red flags" concerning the antifraud provisions of the federal securities laws. Therefore, the only timing constraint for Form B offerings would be the statutory requirement that the registration statement must be effective before the first sale. We are not proposing to exempt issuers from that requirement because, among other reasons, filing of a final prospectus would ensure prompt disclosure to the market about the offering.

We would continue to require that issuers registering offerings on Form A file a registration statement before making their first offer. The Commission staff would continue to review all initial public offerings and selectively review repeat offerings by smaller, unseasoned issuers. We would, however, allow seasoned medium-sized issuers to control the timing of registration in their Form A offerings. We also would allow certain other Form A issuers that incorporate recent Exchange Act reports that have been fully reviewed by the Commission staff to control the timing of their offerings. Those filings, like Form B offerings, would be screened (but not reviewed) by the staff shortly after receipt.

We believe that this increased flexibility in the timing of registration will encourage issuers to register more offerings and thus extend the investor protection benefits of registration to more purchasers. Further, although offerings by these issuers that we would not review under the proposed system are currently subject to staff review, these reforms essentially mirror current practice with respect to review of what would be Form B-type filings and recently examined Form A-type filings.

3. Underwriter Guidance

In connection with the proposed registration system, we would add a new provision to the Securities Act rule concerning due diligence. That rule currently lists circumstances to consider in deciding whether a person has met the "reasonable investigation" and "reasonable ground for belief" standards that apply in defending against liability under Section 11 of the Securities Act. The new provision would cover only certain Form B offerings completed on an expedited basis and would expand upon the existing guidance in the rule to reflect current practices.

4. Small Business Issuers

For purposes of registration and reporting, we are proposing to revise the definition of "small business issuer" to increase the number of companies qualifying as small business issuers. We would raise the annual revenues ceiling from $25 to $50 million and remove the public float limitation. We propose to update the definition to reflect significant economic and market changes that have occurred in the six years since we adopted the definition. Also, our successful experience with the small business disclosure system indicates that we could classify companies with higher revenues as small business issuers while at the same time maintaining investor protection. To provide small businesses with greater flexibility in raising capital, we also propose to delay the time at which they must pay registration fees, allow earlier incorporation by reference of their Exchange Act reports and allow increases in the size of their offerings in an expedited fashion.

B. Easing Restrictions on Communications

Our proposals would loosen the strict controls that exist today on communications to investors and the market around the time of an offering. Our intent in proposing the communications reforms is to ensure that investors and the market have greater access to more timely information, which we believe is the foundation of investor protection. We are not proposing any diminution in the remedies that would be available to investors in the event of defective disclosure made by or on behalf of an issuer around the time of an offering.

1. Issuer Communications

The extent to which we would ease communications by the issuer or deal participants depends on the type of offering. For Form B offerings, we would allow oral and written communications in any format at any time regardless of whether the offering is imminent or ongoing. Of course, the antifraud provisions and civil liability provisions of the securities laws would apply to those communications and provide the necessary investor protections.

In Form A offerings on the whole, we have less reason to assume that plentiful, thoroughly scrutinized issuer information is available. A barrage of sales-related communications could affect prospective investors, especially if those communications are the only ones publicly available. The greatest need for investor protection in that case would occur before the investor has access to reliable, balanced prospectus disclosure. Thus, for these offerings, we propose to maintain the prohibition on offers prior to filing a registration statement. Once the issuer's prospectus is on file with the Commission, however, our proposals would lift existing restrictions on written communications for Form A offerings because an investor would be able to test the sales materials against the registration statement. Moreover, our proposals on prospectus delivery would ensure timely delivery, not just access, to this more balanced information.

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[6] We recognize that analysts, especially so-called "sell-side" analysts, have inherent conflicts of interest. There is a risk that impartiality may be compromised when their firms seek to participate in the issuers' distributions. We believe, nevertheless, that analysts in general, and the expanding "buy side" analysts in particular, are in a unique position to gather and analyze information about issuers. They represent an undeniably significant method of corporate disclosure and dissemination.

For the period before filing the registration statement, we propose to create greater certainty about the timing and scope of remaining restrictions on communications. We are aware that the restrictions on communications before a filing have been criticized as unclear. This is especially true due to the recent increased use of the Internet. Consequently, we are proposing a bright-line rule that would define the 30 days immediately before filing the registration statement as the period during which communications would be limited due to the upcoming offering. In addition, our proposed rules provide that, even during that 30-day limited communications period, issuers could disclose factual business information and regularly released forward-looking information. Our proposals also would permit issuers to announce limited offering information during the 30-day period without indicating whether the offering will be registered or exempt.

2. Safe Harbors for Research Reports

For Form B offerings and many Schedule B offerings by foreign governments, the proposals would allow analysts to publish research reports without any interruption due to the registered offering. For other offerings, we propose expanded safe harbors to make it easier for analysts to report about foreign government issuers and smaller, unseasoned companies. We also are proposing to expand those safe harbors to address the distribution of research reports in connection with Regulation S and Rule 144A offerings.

C. Prospectus Delivery Reforms

To provide investors with the maximum benefit from prospectus disclosure, the proposals re-focus prospectus delivery requirements on when the prospectus is needed most: before investors make an investment decision. Where we would require that offering participants deliver prospectus information earlier, we would allow them to decide whether or not to deliver a final prospectus. Where they do not deliver a final prospectus, we would require that they tell investors where they can obtain it free of charge.

In Form B offerings, we would not require that offering participants deliver a full prospectus. We would, however, require earlier delivery of a "securities term sheet" outlining the key features of the securities. Delivery of that securities term sheet would precede the investment decision—when the investor gives its oral or written commitment to purchase. We also are considering, as an alternative for Form B offerings, requiring delivery of a prospectus containing all mandated transactional information listed in Subpart 500 of Regulation S–K that would be contained in a short-form registration statement today.

In Form A offerings by unseasoned issuers (issuers that have registered their initial public offerings within the past year), underwriters and dealers participating in the offering would have to deliver a preliminary prospectus at least 7 days before the date of pricing. In all other Form A offerings, issuers, underwriters and participating dealers would have to deliver a preliminary prospectus at least 3 days before the date of pricing. These requirements would ensure that investors that are offered securities of smaller, unseasoned issuers have more time in which to assess the disclosure. Issuers and other participants in Form A offerings also would have to inform investors no later than 24 hours before pricing about any material change that has occurred since they delivered prospectuses.

D. Public and Private Offering Flexibility

Today's capital markets can change quickly. Companies, especially small businesses, may find that the desirability of making a public offering versus a private offering can change just as quickly. Current rules prevent most companies from changing their minds in a timely fashion once they have started an offering one way. Our proposals would remove most of those impediments. Under the proposed safe harbor, if an issuer started to register a public offering but then decided to abandon it, the issuer could withdraw the registration statement and either wait 30 days to sell privately or sell privately sooner and accept a higher liability standard for written disclosure provided to purchasers.

Similarly, if an issuer started a private offering but then decided to abandon it, the issuer could file a registration statement for a public offering immediately unless it had offered the securities to persons that would not have been eligible to buy in a private offering under Securities Act Section 4(2). In that event, the issuer would have to wait for 30 days after abandoning the private offering to file its registration statement.

This safe harbor would be particularly useful to small issuers. It would allow a small private company to "test the waters" for a public offering of its securities through this mechanism. Doing so would not prevent the small issuer from selling privately if it finds too few investors to make it worthwhile to become a public company. Similarly, small issuers that find more investor interest than expected could change from a private offering to a registered public offering.

E. Periodic Reporting

We are proposing several changes to Exchange Act disclosure requirements, some of which the Advisory Committee on Capital Formation and Regulatory Processes recommended. These changes would require issuers to report annual and quarterly financial results sooner, to make and update risk factors disclosure in their Exchange Act reports, to accelerate the due dates for some Form 8–K reports and to expand the events about which Form 8–K requires a report. The changes also would require persons signing Exchange Act filings to indicate that they have reviewed the disclosure and, to their knowledge, the registration statement or report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. These Exchange Act disclosure reforms would provide key investor protections in a further streamlined registration process. Additionally, if the proposed registration system is adopted, the Commission envisions shifting staff resources to the review of Exchange Act filings.

II. History of Registration Under the Securities Act

The Securities Act and the regulations thereunder have long provided the foundation for a capital-raising system of unparalleled integrity, fairness, and liquidity. The regulatory scheme seeks to ensure that investors receive full and fair disclosure with respect to securities offerings by issuers and their affiliates.

The Securities Act was adopted in response to the activities culminating in the 1929 market crash.[7] President

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[7] The Securities Act was the first of six securities statutes to be enacted during the 1933–1940 period. The other five acts include: the Securities Exchange Act of 1934, Pub. L. No. 73–291, 48 Stat. 881 (1934) (codified as amended at 15 U.S.C. §§ 78a–78kk (1994, Supplemented 1996)); the Public Utilities Holding Company Act of 1935, Pub. L. No. 74–333, 49 Stat. 803 (1935) (codified as amended at 15 U.S.C. §§ 79–79z–6 (1994, Supplemented 1996)); the Trust Indenture Act of 1939, Pub. L. No. 76–253, 53 Stat. 1149 (1939) (codified as amended at

Franklin D. Roosevelt articulated the underlying philosophy of regulating securities offerings which continues today:

> [t]here is * * * an obligation upon us to insist that every issue of new securities to be sold in interstate commerce shall be accompanied by full publicity and information, and that no essentially important element attending the issue shall be concealed from the buying public.[8]

Congress has made relatively few broad-reaching amendments to the Securities Act since its inception. In administering the statute, we strive to be responsive to changing markets and capital-raising practices. Over the years, the Commission has interpreted the statute through rules and regulations to give continuing life to the original statute.

A. Evolution of the Registration System

Modern efforts at reforming registration stem in part from a commentary on Securities Act regulation published in 1966. In his article, "Truth in Securities," Milton H. Cohen theorized that the:

> Combined disclosure requirements of these statutes would have been quite different if the 1933 and 1934 Acts * * * had been enacted in opposite order, or had been enacted as a single, integrated statute* * *.[9]

Cohen argued for a coordinated disclosure system having as its basis the continuous disclosure system of the Exchange Act with the Securities Act disclosure requirements built upon it.[10] The Commission soon thereafter instituted a study, chaired by Commissioner Francis M. Wheat, to examine disclosure to investors.[11] The Wheat Report, published in 1969, recommended expanded periodic disclosure under the Exchange Act and the coordination of the disclosure requirements of the Securities Act and the Exchange Act.[12]

The Commission followed up on the Wheat Report by adopting a short-form Securities Act registration statement. That registration statement permitted incorporation by reference of Exchange Act reports by larger issuers and in specified types of offerings.[13] This approach allowed companies to avoid reiterating in their registration statements the company disclosure contained in annual and other periodic reports.

In 1977, the Commission adopted Regulation S–K, which began the effort to establish a single set of disclosure requirements for issuers under both the Securities Act and the Exchange Act.[14] That effort was substantially completed with the adoption of the "Integrated Disclosure System" in 1982.[15] The Commission's integrated disclosure system eliminated overlapping and unnecessary disclosure required by the Securities Act and the Exchange Act.

The Commission also adopted the modern-day "shelf registration" system in connection with the integrated disclosure system.[16] That permits registration of securities offerings that are conducted on a delayed basis sometime after the effective date.[17] In 1992, the Commission extended short-form and shelf registration to smaller issuers and new offerings, including asset-backed securities offerings.[18] The Commission also permitted registration of shelf offerings without requiring that the amount of securities be allocated upon registration to specific classes of the issuer's securities. This approach permitted issuers to decide as late as the point of sale which of its securities to use.

Another significant change in the registration system occurred with the Commission's adoption in 1990 of Rule 144A.[19] Rule 144A provides a safe harbor from registration for resales of restricted securities to QIBs. By creating certainty about when registration is not required in these transactions, the Commission enhanced the attractiveness of alternatives to registration of securities.[20]

B. Review of the Capital Formation Process

Both within and outside the Commission, debate periodically has centered on the Securities Act and the best way to regulate the securities offering process. Over the years, industry participants, academics and Commission members have voiced opinions that there are strains in the regulatory framework and have called for changes. Their proposed solutions have ranged from minor rule changes to the abolition of the Commission.

There also has been recent discussion about the extent to which the regulatory system requires an overhaul in the face of the ever-changing market and offering practices.[21] Factors identified as causing strain in the current regulatory regime include:

1. Technological developments in the field of electronic communications;[22]

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15 U.S.C. §§ 77aaa–77bbbb (1994, Supplemented 1996)); the Investment Company Act of 1940, Pub. L. No. 76–768, 54 Stat. 789 (1940) (codified as amended at 15 U.S.C. §§ 80a–1–80a–64 (1994, Supplemented 1996)); and the Investment Advisors Act of 1940, Pub. L. No. 76–768, 54 Stat. 847 (1940) (codified as amended at 15 U.S.C. §§ 80b–1–80b–21 (1994, Supplemented 1996)).

[8] H.R. Rep. No. 85, 73d Cong. 1st Sess., at 1–2 (1933).

[9] Cohen, "*Truth in Securities" Revisited*, 79 Harv. L. Rev. 1340, 1341 (1966).

[10] *Id.* at 1342.

[11] *Disclosure to Investors—A Reappraisal of Administrative Policies Under the 1933 and 1934 Acts*, Report and Recommendations to the SEC from the Disclosure Policy Study (Mar. 27, 1969) [hereinafter "Wheat Report"].

[12] The securities bar also acted upon the ideas in Cohen's article. The American Law Institute commissioned several industry experts, led by Professor Louis Loss, to combine all six federal statutes into one comprehensive code, American Law Institute, Federal Securities Code (1980) (the "ALI Code"). *See also* Loss, *The American Law Institute's Federal Securities Code Project*, 25 Bus. Law. 27 (1969). Upon its completion ten years later in 1980, the Commission and many in the securities industry expressed support for the ALI Code. *See* Securities Act Release Nos. 6242 (Sept. 18, 1980) [20 S.E.C. 1483 (1980)] and 6377 (Jan. 21, 1982) [24 S.E.C. Docket 788 (1961)] (releases stating and reaffirming support for the ALI Code). *See also* Coffee, *Re-Engineering Corporate Disclosure: The Coming Debate Over Company Registration*, 52 Wash. & Lee L. Rev. 1143, 1145 (1995). The ALI Code was in turn presented to Congress. Congress, however, took no action with respect to the ALI Code.

[13] Securities Act Release No. 5117 (Dec. 23, 1970) [36 FR 777].

[14] Securities Act Release No. 5893 (Dec. 23, 1977) [42 FR 65554]. As originally adopted, Regulation S–K contained only two items: "Description of Business" and "Description of Property."

[15] Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380]. In that release, the Commission stated that "in reliance on the efficient market theory" Form S–3 would allow for maximum use of incorporation by reference [47 FR at 11382].

[16] Temporary Rule 415 was adopted in March of 1982. Securities Act Release No. 6383 (Mar. 3, 1982). In November of 1983, the Commission announced the adoption of a revised shelf registration rule. Securities Act Release No. 6499 (Nov. 17, 1983) [48 FR 52889].

[17] *See* Securities Act Release No. 6499 (Nov. 17, 1983) and Securities Act Rule 415, 17 CFR 230.415. Short-form registration is used for delayed shelt offerings.

[18] Securities Act Release No. 6964 (Oct. 22, 1992) [57 FR 32461].

[19] Securities Act Release No. 6862 (Apr. 23, 1990) [55 FR 17933].

[20] According to Securities Data Co., the deal value of Rule 144A private placements in 1997 was $254.4 billion, approximately $83 billion of which was raised by foreign issuers. Tibbitts, *Private Placement Volume Explodes as Structured Deals Rule 144A Market*, Investment Dealers' Digest, Feb. 2, 1998. The amount of non-convertible bonds issued in the Rule 144A market in the first quarter of 1998 ($30 billion) is almost equal to the entire amount (equity, preferred and debt) placed in the Rule 144A market from its inception in 1990 to the end of 1992 ($31 billion).

[21] *Compare* Merrill Lynch comment letter (Oct. 31, 1996) ("[W]e believe that what the registration process needs today is a tune up, not an overhaul.") *with* American Bar Ass'n comment letter (Dec. 11, 1996) ("[T]he time has come to recognize that the current jury-rigged system requires fundamental reforms."). These letters are available for inspection and copying in the Commission's public reference room. Refer to File No. S7–19–96.

[22] *See, e.g., Report to the Congress: The Impact of Recent Technological Advances on the Securities Markets*, (Sept. 1997). That Report, like all Commission reports issued after 1996, is available on the Commission's Internet web site (http://www.sec.gov).

2. The gradual erosion of traditional distinctions between public and private offerings;[23]
3. Novel financing instruments, methods of capital-raising and risk management initiatives;[24] and
4. Regulatory initiatives that reduce other market risks, such as the T+3 clearance and settlement system.[25]

III. Recent Reform Initiatives

The Commission has been cognizant of the call for change in the regulatory framework governing the capital formation process. For the last several years, the Commission has been actively reevaluating the current registration system. Recent Commission steps in that process have included: the March 1996 Report of the Task Force on Disclosure Simplification (the "Task Force"); the July 1996 Report of the Commission-impaneled Advisory Committee on the Capital Formation and Regulatory Processes (the "Advisory Committee"); and the Commission's Securities Act Concept Release in July 1996 (the "Concept Release").[26]

A. Task Force Report

The Commission's Task Force was organized in August 1995 to conduct a broad-based review of existing disclosure requirements to identify outdated or unnecessary requirements that clutter the regulatory framework. That review encompassed the forms and rules relating to: capital-raising transactions; periodic reporting pursuant to the Exchange Act; proxy solicitations and tender offers; and beneficial ownership reports under the Williams Act. The goal was to simplify the disclosure process, consistent with investor protection, by eliminating unnecessary requirements.[27] In its March 1996 report, the Task Force recommended that the Commission eliminate or modify a quarter of the rules and half the forms. To this end, the Commission has abolished 45 rules and 6 forms.[28]

B. The Advisory Committee on Capital Formation

The Advisory Committee was established in 1995 by the Commission and chaired by then-Commissioner Steven M.H. Wallman. The Advisory Committee's objective was to evaluate the efficiency and effectiveness of the regulatory process relating to public offerings of securities, secondary market trading, and corporate reporting. After 18 months of study, the Advisory Committee published a report in 1996 calling for reform. Its primary recommendation was that the Commission further its integrated disclosure system by implementing a "company registration" concept first envisioned by the ALI's Federal Securities Code. The report advocated refocusing the registration system on registration not of transactions, but of companies, with greater reliance on periodic disclosure than prospectus disclosure. The Advisory Committee suggested that the Commission implement the concept as a pilot program for larger companies.

C. The Commission's Concept Release

In light of diverse developments in the markets and the work of the Advisory Committee and Task Force, the Commission published the Concept Release on offering regulation in July 1996. In the Concept Release, the Commission announced that it was reexamining the application of the Securities Act and the rules thereunder to securities offerings. The Concept Release sought comment on the best methods for eliminating unnecessary obstacles to capital formation while improving the quality and timing of disclosure and, therefore, investor protection. The Commission focused its questions in the Concept Release on broad concepts underlying Securities Act regulation. They included:

- Whether investors are receiving all material information in a timely manner in the offering process;
- Whether limitations on the use of written communications other than the statutory prospectus during the offering process ought to be eased;
- Whether the speed of takedowns of securities under the Commission's shelf registration system results in procedures that do not adequately inform the market;
- Whether the role of independent gatekeepers in the offering process needs to be reconfigured to work in conjunction with issuers' quick access to capital; and
- Whether the periodic disclosure under the Exchange Act needs improvement.

The Commission also asked questions in the Concept Release about the Advisory Committee's company registration idea and suggestions about regulatory reform that had been made by others. The Commission received 55 comment letters in response to its requests.[29]

D. The National Securities Markets Improvement Act

Following the publication of the Concept Release, the National Securities Markets Improvements Act of 1996 ("NSMIA") was enacted.[30] This legislation was designed to update the securities laws to promote investment, decrease the cost of capital, and encourage competition. To this end, Congress granted the Commission for the first time general exemptive authority under the Securities Act.[31] In order to exercise our new exemptive authority, NSMIA requires us to find that such action is "necessary or appropriate in the public interest and consistent with the protection of investors."[32] That exemptive authority gives the Commission substantial additional flexibility in administering the Securities Act. Congress believed that this additional flexibility would allow the Commission to adopt more easily new approaches to registration and disclosure in order to promote efficiency, competition and capital formation.[33]

After the enactment of NSMIA, the Commission began to study possible reform of the regulatory structure for offerings even more broadly. For the past two years, the Commission staff has researched and studied the existing regulatory system and possible improvements that could be made to it. Some of our proposals rely upon our new exemptive authority.

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[23] *See, e.g.*, Keller, *Securities Act Concepts: The Private/Public Offering Dichotomy and Proposals for Reform*, Mass. Continuing Legal Educ., 15 Ann. Bus. & Sec. L. Conf. (Oct. 31, 1997).

[24] Seligman, *The Obsolescence of Wall Street: A Contextual Approach to the Evolving Structure of Federal Securities Regulation* 93 Mich. L. Rev. 649, 666–72 (1995). *See also* Securities Act Release No. 7386 (Jan. 31, 1997) [62 FR 6044].

[25] *See, e.g.*, Securities Act Release No. 7168 (May 11, 1995) [60 FR 26604].

[26] Securities Act Release No. 7314 (July 31, 1996) [61 FR 40044].

[27] The Task Force met with issuers, investor groups, underwriters, accounting firms, lawyers, and others who participate daily in the capital markets. The Task Force reported that none of the participants suggested wholesale deregulation, and virtually all emphasized the importance of the Commission's basic regulatory goals to preserve orderly markets. *See* Task Force Report at pp. 1–6.

[28] Securities Act Release No. 7300 (May 31, 1996) [61 FR 30397] and Securities Act Release No. 7431 (July 18, 1997) [62 FR 39755]. These releases are available on the Commission's Internet web site (http://www.sec.gov).

[29] Those letters and a summary of them may be read and copied at the Commission's Public Reference Room, 450 Fifth Street N.W., Washington, D.C. 20549. Refer to File No. S7–19–96.

[30] Pub. L. No. 104–290, 104th Cong., 2d. Sess. (1996).

[31] *See* Section 28 of the Securities Act, 15 U.S.C. § 77z–3.

[32] 15 U.S.C. § 77z–3.

[33] H.R. Rep. No. 104–622, 104 Cong. 2d Sess. at (1996).

IV. Scope of the Proposals

The Commission is proposing a variety of revisions to the current regulatory structure for securities offerings.[34] While many revisions address problems identified by offering participants, the overall goal of the proposed reforms is to make the registration system more workable for issuers and underwriters and more effective for investors in today's capital markets. In the last decade, the Commission has seen the results of a registration structure that has been perceived as having too much rigidity to comport with the realities of modern global markets. Sellers have used to their fullest extent available methods of offering without registration. Increasingly, they have tried to create new ways around registration strictures. They also have stretched the boundary between registered and exempt offerings in seeking to acquire the benefits of both. Where registration has taken place, too many offerings have been accomplished with a divergence between the disclosure about the transaction in the registration statement and the disclosure actually used to convince investors to buy.

A large share of the stress on the registration structure in recent years has stemmed from the issuers' and underwriters' need to raise capital on a schedule that they can control. Our proposals seek to fulfill that need through the registration system where consistent with investor protection. In addition, the speed at which offerings are accomplished today, and the limitations on communications imposed by the statute, have called into question whether investors are being informed in a timely manner. Rather than continuing the statute's "exclusive prospectus" approach to disclosure, our proposals take an "inclusive" approach to disclosure. We seek to ensure that material information is within the reach of investors when they need it most. We also seek to lessen the gap in offerings done quickly between the disclosure about the offering actually being used to sell the securities and the disclosure that is filed with the Commission in a registration statement. Overall, the revisions should create a more flexible registration system under which public offerings proceed with benefits to both buyers and sellers.

Our proposals are primarily focused on the structure of the regulation of offerings; they are not primarily focused on the contents of disclosure requirements. In the process of considering structural reform, however, the Commission has recognized that it needs to study whether the specific disclosure that is mandated both in Exchange Act periodic reports and Securities Act registration statements should be re-focused to serve the investing public better. As a result, the Commission's reform work is not done. The next step in our ongoing process will be to revisit the quantity and quality of required disclosure.

V. Proposals Altering the Securities Act Registration Process

A principal premise of the existing Securities Act registration system is that a prospectus containing mandated disclosure should be virtually the exclusive written document used to offer the securities. In the years since adoption, especially with the recent explosion of information technology, this exclusivity premise is less a reality than a theory, at least for certain offerings and issuers. We believe that it is time to recognize that a different approach would be better for those offerings.

For larger seasoned issuers, communications made around the time of a typical registered offering, whether or not part of a traditional prospectus, provide the basis for investment decisions in the offering. Those issuers are well followed by the market and the important statements that they make are quickly disseminated and considered by investors even when the issuers are not making an offering. When they are making an offering, any communication those issuers and other offering participants make is of even greater interest to the markets. For those issuers, therefore, we propose a transformation from the "exclusive" prospectus approach to the "inclusive" prospectus approach as a means of facilitating informed investment decisions. That approach would embrace as part of the registration system all information used by or on behalf of the issuer during the offering period that would be material to an investor in the offering. All investors in the offering would receive or have access to such information as well as the required material company and transactional disclosure. The proposed system would maintain investor protection by subjecting this information to the antifraud and civil liabilities provisions of the Securities Act and the Exchange Act.

For most offerings by smaller or unseasoned issuers, and in business combinations and exchange offers, we would primarily rely on the current mandated prospectus to provide written offering communication to investors, although there too we would allow them more freedom to communicate in any medium by means other than the prospectus.[35]

The proposed system would have three main registration forms: Form A for smaller issuers and larger unseasoned issuers, Form B for larger seasoned issuers and offerings to relatively well-informed or sophisticated investors, and Form C for business combinations and exchange offers. Both domestic and foreign issuers would use each of these Forms.[36] Small business issuers would continue to be permitted to use Form SB–1 and revised Form SB–2 for their offerings and would have to use new Form SB–3 for business combinations and exchange offers.

The new forms reflect our understanding of when investors need more, or less, mandated disclosure and when investors benefit from access to information from more than one source. In addition, the proposed divisions of issuers and offerings would create a system that more accurately reflects when an efficient market exists and when an issuer has a significant market following. The new system also would enhance the use of Exchange Act disclosure to satisfy Securities Act disclosure requirements.

A. Form B Offerings

1. How Form B Works

a. Registration Statement Contents

At the time of effectiveness, a Form B registration statement would consist of:

- A cover page with a calculation of registration fee table;
- A prospectus that contains:

—Offering information;

—The registrant's Exchange Act reports, via incorporation by reference;

—A foreign private issuer's Item 18 reconciliation (or Item 17, as applicable) to U.S. GAAP (if not already in an incorporated report);[37]

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[34] The proposals do not purport to affect any rules or regulations imposed by self-regulatory organizations in connection with securities offerings.

[35] *See* Section VII. of this release regarding proposed changes in the regulation of offering communications.

[36] While disclosure for foreign private issuers currently is made through a separate set of registration forms, we believe that it would be simpler to formulate a single set of forms for both foreign and domestic issuers. In doing so, foreign private issuers registering on Form A would be subject to the same disclosure requirements as they are currently. In Form B, foreign private issuers would have at least as much flexibility as domestic issuers. Through designations on the front of the registration forms, it will be possible to track the use by foreign private issuers regardless of whether they register on the same forms as domestic issuers.

[37] *See* Items 17 and 18 of Form 20–F.

  - The securities term sheet;[38]
  - Undertakings to provide investors upon their request, and free of charge, with information incorporated by reference but not delivered.
- Signatures;
- Selected exhibits:[39]
  - Any instrument that defines the rights of the security holders (incorporated by reference if previously filed);
  - Consents;[40]
  - Statement of eligibility of trustee, where applicable (Form T–1);
  - Legal opinions; and
  - A representation that underwriters concur with the issuer's designated effective date.[41]

Form B issuers would be required to deliver promptly a prospectus, free of charge, to any investor who requests it. In addition to that obligation, Form B issuers would be required to deliver a securities terms sheet.[42]

i. Company Disclosure

Investors, as always, will obtain company information from a variety of sources such as the Internet, television, newspapers and radio. They also may acquire company information from securities analysts or the company itself. While there are many possible sources of information about Form B issuers that investors can access today,[43] one reliable source is the information that issuers make public through filing their Exchange Act reports with the Commission. Investors can rely on this information because it is subject to the regulatory and antifraud provisions of the federal securities laws as well as subject to review by the staff of the Commission. This structure compels issuers to come forward with information about their businesses that they might not choose to make public otherwise.

The proposed registration system takes account of this source of information by providing that an issuer must incorporate by reference into its effective registration statement on Form B:

1. Its latest annual report[44] filed under the Exchange Act; and[45]
2. Any Exchange Act reports filed since the end of the fiscal year covered by its latest annual report.[46]

Issuers that use Forms S–3 or F–3 currently must incorporate their Exchange Act reports into those Forms. The 12-month reporting requirements under those Forms, however, do not assure that an issuer incorporates an annual report into either of those registration statements because annual reports are not due until three months (or 6 months, for foreign private issuers) after the end of a company's fiscal year. In addition to this information, issuers would be required to disclose in their Form B registration statements updated company information that describes material changes not reflected in any Exchange Act reports incorporated by reference.

ii. Transactional Disclosure

We are seeking comment on two alternatives on Form B transactional disclosure. The first would mandate the inclusion of "offering information" that includes some of the traditional items of transactional disclosure. This alternative would allow issuer discretion as to materiality and applicability of other traditional items of transactional disclosure. The second alternative would simply mandate that issuers set forth in Form B the items of transactional disclosure required today. Both alternatives would require that the registrant file any offering information disclosed by or on behalf of the issuer (including by the underwriter or participating dealer) during the offering period.[47] Under the first proposal, the registrant would file offering information as part of the prospectus in the effective registration statement.[48] "Offering information" consists of:

- The amount of securities being offered;[49]
- Material changes in the issuer's affairs since the end of the latest fiscal year that are not reflected in incorporated Exchange Act reports;
- The information required by Item 504 of Regulation S–K regarding use of proceeds;
- The information about underwriter's discounts and commissions required by Item 501(b)(3) of Regulation S–K;
- Information about the risks of the offering of the type described in Item 503 of Regulation S–K;
- Information concerning who is selling the securities of the type described in Item 507 of Regulation S–K;
- Material information about the terms of the securities offered as required by Item 202 of Regulation S–K, unless capital stock is to be registered and securities of the same class are registered pursuant to Section 12 of the Exchange Act;
- All information regarding the transaction that is material, which may include where applicable, but is not limited to:
  - Information about dilution of the type described in Item 506 of Regulation S–K;
  - Information about the determination of the offering price of the type described in Item 505 of Regulation S–K;
  - Information about the plan of distribution of the type described in Item 508 of Regulation S–K;
  - Ratio of earning to fixed charges, as described in Item 503 of Regulation S–K;
- Any offering information disclosed by or on behalf of the issuer during the offering period,[50] other than information communicated orally; and
- Offering information communicated orally that the issuer chooses to file.

This alternative could provide registrants, and those acting on their behalf, more flexibility to craft a selling document shaped by their particular offering, the market demands for information, and the requirements to provide material information to investors. We believe the greater freedom may allow issuers to cut some boilerplate disclosure and to omit non-material disclosure from the prospectus. We solicit comment, however, with regard to whether issuers would use that freedom to accomplish those objectives. At the same time, the Form's requirements should ensure investor protection by requiring issuers to disclose all material offering information in the prospectus that is part of the effective Form B. We solicit comment on this point.

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[38] *See* Section VIII.C.4.a. of this release for a discussion of this securities term sheet and delivery requirements relating to it.

[39] *See* proposed revisions to Item 601 of Regulation S–K, 17 CFR 229.601.

[40] *See infra* note 73 for a discussion of consents of auditors in delayed shelf registration statements.

[41] *See* Sections V.A.1.d. and V.B.2.a. of this release for a discussion of this underwriter concurrence.

[42] We discuss prospectus delivery obligations for Form B issuers at Section VIII.C.4.a. of this release.

[43] We also believe our proposal to free communications by Form B registrants, discussed below, would spur diverse public discourse about the merits of the issuer and its offering, all of which would be open to the public investor.

[44] We do not, however, permit incorporation by reference of annual reports on Form 40–F. *See* General Instruction I.B.7. of proposed Form B.

[45] Financial statements included in the Form must be no older than permitted in the age of financial statements requirements of Regulation S–X. *See* Rules 3–12 and 3–19 of Regulation S–X, 17 CFR 210.3–12 and 210.3–19. Foreign issuers using Form B would be required to reconcile to U.S. GAAP any financial statements either incorporated by reference into or set forth in the Form. We would require reconciliation in accordance with Item 17 or Item 18 of Form 20–F under the same standards used today.

[46] The proposed system would not permit Form B registrants to incorporate by reference any Exchange Act report filed after the end of the offering period. For delayed shelf offerings, each takedown would have its own separate offering period.

[47] We would not permit a Form B registrant to file information that had not been disclosed during the offering period. *See* Form B "Information Required in the Prospectus that is Part of the Effective Registration Statement," paragraph 1.(c), and proposed Securities Act Rule 172(e), 17 CFR 230.172(e). Information communicated orally during that period could be reduced to writing and filed as part of the registration statement if the registrant so chooses.

[48] Information communicated orally would not have to be filed and would be subject to section 12(a)(2) liability.

[49] Under Rule 457(a), 17 CFR 230.457(a), a number of securities may be registered. Under Rule 457(o), 17 CFR 230.457(o), a dollar amount may be registered. The registrant may choose between these two alternatives in a typical capital-raising offering.

[50] For purposes of this Form, "offering period" means the period beginning 15 days in advance of the first offer made by or on behalf of the issuer in connection with the offering and ending when the offering is completed.

We solicit comment on whether traditional transactional line items not included in Form B should be retained. If so, which of the items? Conversely, should we permit Form B issuers to craft their transactional disclosure based on what they believe is material information, and what the market and investors would demand, rather than based on traditional transactional line items? If so, should we limit that flexibility to a narrower class of Form B issuers, such as those with a minimum public float of $750 million or $1 billion?

The second alternative would mandate that issuers disclose in Form B all the information required by the Regulation S–K transactional disclosure items currently required in Form S–3 and/or Form F–3. In addition to the information that would be required by the first alternative, this alternative would require the registrant to provide further information in accordance with Regulation S–K.[51] Should Form B include as mandated itemized information all of the topics listed under that requirement? Should mandated itemized disclosure be a different subset of the Regulation S–K information currently required in Form S–3 and/or Form F–3?

b. Free Writing Materials

For Form B issuers, written information[52] disclosed during the "offering period" would be classified as either "offering information" or "free writing" materials.[53] The "offering period" with respect to a Form B offering would be defined as the period beginning 15 days before the first offer made by or on behalf of the issuer and ending at the time of completion of the offering. "Free writing" materials would include all written information disclosed by or on behalf of the issuer during the offering period, other than "offering information," factual business communications[54] and limited notices of proposed offerings.[55] Free writing could include, but would not be limited to, sales literature and selling documents that include forward-looking information.[56] A document that contains both offering information and "free writing" would be treated as "free writing," if the offering information was filed as part of the issuer's registration statement. If the offering information was not filed as part of the issuer's registration statement, the document, including the "free writing" portion, would be treated as offering information and would be required to be filed as part of the registration statement.

The registrant would file, at the same time it files its Form B registration statement, the free writing materials it disseminated before filing its Form B.[57] It would file free writing materials used after the filing of its Form B at the time of first use.[58] The registrant would not file free writing materials as part of the effective registration statement, nor would it have to file information in the effective registration statement as free writing materials.[59]

Given the significance of the offering period, should the Commission require the registrant to state on the front cover page of the registration statement the date of the first offer in connection with the offering being registered? Should the Commission require free writing materials to be filed at the time of their first use since investors might prefer access to them as they make their investment decisions?

c. Time of Filing

A registrant could file a registration statement on Form B at any time before the first sale of the securities.[60] Issuers wishing to file immediately before sale could do so.[61] Because issuers may wish to price Form B offerings before filing and because many offerings are currently priced after hours, we would allow registrants to file Form B registration statements with the Commission after hours via EDGAR or facsimile until 10:00 p.m.[62] Issuers would pay the filing fee under the same procedures used today by issuers filing Rule 462(b) registration statements after hours via facsimile.[63]

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[51] That additional information would be: certain portions of Item 501 of Regulation S–K (forepart of registration statement and outside front cover page of prospectus); Item 502 of Regulation S–K (inside front and outside back cover pages of prospectus); certain portions of Item 503 of Regulation S–K (prospectus summary and address and telephone number); Item 509 of Regulation S–K, where applicable (interests of named experts and counsel) and Item 510 of Regulation S–K, where applicable (disclosure of Commission position on indemnification for Securities Act liabilities).

[52] For these purposes, "written" includes all information disseminated otherwise than orally and therefore would include electronic communications and other future uses of changing communications technology.

[53] If a document includes offering information, whether or not it also contains free writing, it would be treated as an offering information document for all purposes unless that offering information is otherwise included in the registration statement.

[54] "Factual business communications" would be defined in proposed Securities Act Rule 169, 17 CFR 230.169.

[55] *See* proposed revisions to Securities Act Rule 135, 17 CFR 230.135.

[56] Section 12(a)(2) would apply to free writing materials (and to all oral statements made by or on behalf of the issuer during the offering period).

[57] *See* proposed Securities Act Rule 425(b)(2), 17 CFR 230.425(b)(2). As proposed, Rule 425 would describe the materials that would not have to be filed. They consist of:

1. Any factual business communication (as defined in proposed Rule 169) regardless of when it is made;
2. Any research report used in reliance on Rules 137, 138 or 139;
3. Any information used in connection with an offering under Form S–8;
4. Any information used in connection with an offering on Form B under a dividend or interest reinvestment plan;
5. Any information used in connection with a direct stock purchase plan; or
6. Any information filed or to be filed as part of an effective registration statement.

For purposes of proposed Rule 425, "direct stock purchase plan" refers to a registrant-sponsored plan pursuant to which the registrant offers registered common stock for cash to only its existing common stock holders ("plan participants") and in which there is no underwriter participation. The common stock registered pursuant to the plan may either be newly issued or purchased by the registrant for the account of plan participants at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined under a pricing formula specified in the plan and based on average or current market prices at the time of purchase.

[58] *See* proposed Securities Act Rule 425(b), 17 CFR 230.425(b).

[59] *See* proposed Securities Act Rule 425, 17 CFR 230.425.

[60] *See* Section VII of this release for a discussion of the restrictions on communications that are being eliminated for Form B offerings.

[61] Because Form B offerings would not have to be filed until the time of first sale, the payment of registration fees would also be delayed until the time of first sale.

[62] *See* proposed revisions to Securities Act Rules 110(d) and 402, 17 CFR 230 110(d) and 230.402. In the usual case, a registrant may file a registration statement in paper format only until 5:30 p.m. It may file on EDGAR between 5:30 p.m. and 10:00 p.m., but those registration statements are treated as if they were filed the following day. Form B registration statements filed after hours via EDGAR would be treated as filed the same day. *See* proposed revisions to Rule 13 of Regulation S–T, 17 CFR 232.13. We also have proposed revisions to Securities Act Rule 111(b), 17 CFR 230.111(b), to allow for special fee payment procedures for Form B filings made after hours.

[63] *See* Securities Act Rule 111, 17 CFR 230.111. That procedure is described in detail in Securities Act Release No. 7168 (May 11, 1995).

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d. Becoming Effective

A Form B and any amendment to a Form B would be effective by operation of rule at the issuer's discretion to give issuers maximum flexibility.[64] The issuer would simply select one of three choices on the cover page:

(1) Effective upon filing;

(2) Effective ___________ (date and time specified by the issuer); or

(3) effective as specified in a later amendment to the registration statement.[65] The Commission staff would not have to take action for the registration statement to become effective.

In most underwritten offerings under the current registration system, the Commission requires that a request for effectiveness of a registration statement be made by the underwriters in addition to the issuer.[66] Both underwriters and issuers are subject to liability under Section 11 for the disclosure in an effective registration statement. A request for effectiveness is therefore an acknowledgment by each requester that it is aware of its obligations under the Securities Act.[67]

Because the issuer would have complete control over effectiveness by controlling the filing, we would include in Form B a requirement that the issuer obtain and file as an exhibit evidence of the managing underwriters' or principal underwriters' concurrence with the issuer's designation of effectiveness.[68] The issuer would have to obtain that concurrence before it files the Form B registration statement in which it requests either immediate effectiveness or effectiveness at a specified date.

Would the requirement to file the evidence of the underwriters' concurrence as an exhibit to Form B be unnecessarily burdensome? Alternatively, should we require the issuer to represent in the registration statement that it obtained the underwriters' concurrence, but not require it to file the concurrence, and require it to retain the concurrence for 5 years? Should we require that the issuer obtain the concurrence, but not require that the concurrence be evidenced in writing? Would an oral concurrence provide the issuer and the underwriters with sufficient assurance of agreement and protection against misunderstanding?

e. Delayed Shelf Offerings and Form B

Form B would provide much the same flexibility to issuers that delayed shelf registration on Forms S–3 and F–3 has provided,[69] and those benefits would be available to approximately the same issuers.[70] Unlike current shelf registration, however, issuers using Form B would not need to file a base or core prospectus to be able to offer and sell at will. Base prospectuses today, particularly those used for unallocated delayed shelf registration statements, tend to describe in the broadest of terms the many different types of securities and offerings that might be done off the shelf. Thus, in offerings off the shelf, the key offering disclosure is usually filed in the Rule 424 prospectus supplement. Form B would allow an issuer to avoid writing transactional disclosure that covers "everything but the kitchen sink" and simply file whatever transactional disclosure it gives to investors at the time of the offering.

There are also other Form B benefits as compared to the current delayed shelf system. First, the Form B registration statement would not be subject to pre-effective staff review. Under the existing delayed shelf system, the Form S–3 or F–3 containing the core prospectus is subject to the staff's selective pre-review. Second, issuers may have less concern about market overhang effects on its stock price under Form B.[71] Under the current system, an issuer wishing to put equity securities on the shelf has to include them in the registration statement even before it intends to offer those securities. Under the proposed system, a registrant need only file a Form B registration statement before sale. The absence of a filing that signals an upcoming offering well before the time it can be completed may be welcomed by issuers, but may be of concern to secondary market participants.[72]

Another advantage for issuers in Form B as compared to existing shelf registration relates to fees. In shelf registration today, an issuer must file the base prospectus and pay the full filing fee at that time, even though it may not take down securities from the shelf until much later. An issuer using Form B other than for delayed offerings would pay upon filing but generally that would not occur until sale. There would be no need to register more than is needed for that offering at that time.

We believe that the way Form B operates would largely eliminate the incentive for a registrant to set up a delayed shelf registration statement. We recognize, however, that some issuers are accustomed to doing shelf takedowns and do so on a frequent basis. As proposed, a registrant wishing to file some preliminary information could still do so on Form B and either become effective then and file the remaining disclosure concerning the offering in a post-effective amendment or delay effectiveness of the Form B until the rest of the information is available. The issuer could designate when those post-effective amendments become effective. The current delayed shelf does not require directors and officers to sign the Rule 424(b) supplements filed for each takedown.[73] Under the proposal, registrants may use a power of attorney to avoid the inconvenience of obtaining multiple signatures upon the filing of a pre-effective or post-effective amendment. We also would provide in delayed shelf offerings that when the persons signing a Form B do not appoint a person to sign via a power of attorney, a signature on a post-effective amendment by an authorized representative of the registrant shall be deemed to constitute signature by the persons signing the original filing unless otherwise specified in the amendment.[74]

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[64] *See* proposed Securities Act Rule 462(f)(1) and (f)(2). 17 CFR 230.462(f)(1) and 230.462(f)(2).

[65] The later amendment could amount to no more than a cover page on which the registrant would check the appropriate box to designate immediate effectiveness or a specified effective date.

[66] *See* Securities Act Rule 461(a). 17 CFR 230.461(a). The Rule requires the managing underwriters, or if there are no managing underwriters, the principal underwriters, to join in the issuer's request for acceleration of a registration statement.

[67] *See* Securities Act Rule 461(a). 17 CFR 230.461(a).

[68] *See* proposed Form B "Exhibits" section and proposed revisions to Item 601 of Regulation S–K. Evidence of concurrence could be, for example, in a writing from the underwriter to the issuer or an electronic message to that effect.

[69] For convenience, we refer to Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x), offerings as delayed shelf offerings or shelf offerings in this release. Other types of Rule 415 shelf offerings, such as continuous offerings, generally are unaffected by the proposed system.

[70] Our research indicates that, of the 379 existing issuers who utilized the equity and unallocated shelf registration system between calendar year 1993 to the third quarter of 1996, only 37 would be ineligible to use new Form B under the public float/ADTV tests (the tests are described at Section V.B.2.a. of this release). Of those, 23 issuers appear to be REITs. The 37 that are eliminated would be able to use Form B for offerings to QIBs and offerings of investment grade securities, among others.

[71] For a discussion of market overhang effects, see Securities Act Release No. 6383, (Mar. 16, 1992) (adopting integrated disclosure system and unallocated shelf registration rules).

[72] *See* Section XVII of this release for a solicitation of comment regarding the effect this proposal would have on the secondary market.

[73] Under the current system, auditors do not provide consents for prospectus supplements. They consent to inclusion of the financial statements in the registration statement and also consent at the time of filing most post-effective amendments. Subsequently filed Forms 10–K that are incorporated by reference include the auditor's consent to inclusion of the financial statements to update the shelf. Under the proposed system, post-effective amendments will be more common because transactional information will be filed in that manner.

The consents of auditors are not required today with respect to the filing of prospectus supplements and certain post-effective amendments to shelf registration statements. The Commission similarly would not require an auditor's consent for post-effective amendments that amount to prospectus supplements and have no bearing on the financial statements.

Delayed shelf offerings on Form B would, however, improve upon the Form S–3/F–3 shelf registration system in two ways that would enhance investor protection. First, we would provide clearly in Form B that any transactional disclosure used in connection with a Form B offering is within the effective registration statement. With Form B, transactional information disclosed to investors before the end of the offering period would have to be filed either as part of the effective registration statement or on a post-effective amendment that becomes effective whenever the issuer wishes before the time of sales. That information would be within the scope of Section 11 under the Securities Act. That transactional disclosure would include information filed under Rule 424 as prospectus supplements to shelf registration statements today. We also would provide clearly in Form B that historical and forward-incorporated Exchange Act reports would be part of the effective registration statement. That information also would be within the scope of Section 11. We recognize that certain commentators have questioned whether Section 11 applies to Rule 424 information[75] and forward-incorporated Exchange Act reports.[76] While we believe that under existing law such Section 11 liability applies, and do not accept the views of those commentators on these issues, we recognize that an explicit statement in the proposed Form would serve to eliminate any uncertainty practitioners may believe exists.

The other change to the way delayed shelf would operate relates to the time of filing with the Commission information about the offering off the shelf. Today, that information may be filed pursuant to Rule 424 up to two business days after the earlier of pricing of the securities or first use of the prospectus supplement. Under the proposed registration system, we would require that Form B issuers file this information as part of the effective registration statement by the time of sale.[77] We believe that both investors and the market are better served by having this disclosure filed promptly. Moreover, because the transactional information that may be filed as part of the Form B registration statement includes only information about which investors have been informed before committing to purchase the securities, there is less reason to contemplate a filing after the sale takes place. In addition, the Commission is aware that some investors trading in shelf registrants' securities after a takedown and before the filing have been troubled by the absence of disclosure during that period. We have concerns that some investors are aware of the shelf takedowns while others become aware days later when notice is filed with the Commission. Although a two-business-day wait may not have been considered a material delay at the outset of modern shelf registration, it appears to be one in today's market framework. Eliminating this delay would support our goal of reducing the risks of selective disclosure.

We solicit comment on whether there is a continued need for a delayed shelf concept under Form B. Do registrants see advantages to delayed registration on Form B over and above what would be allowed on Form B without that concept? Does the delayed shelf concept needlessly complicate the system? Is there a reason to retain the two-year limitation on the amount registered? Would concerns about market overhang keep issuers from taking advantage of any extension? Should we limit the extension to 3 or 4 years? Would issuers benefit more if we remove completely any restrictions on the amount of securities that issuers could register for a delayed shelf? What if we extended the possible life of a shelf registration statement to 6, 7 or 10 years? Would issuers register securities to be offered over those periods of time?

2. Offerings Eligible for Registration on Form B

An issuer may register on Form B only offerings that fit in one of the following categories.

a. Offerings by Larger Seasoned Issuers

Given the envisioned disclosure and delivery aspects of Form B, we believe that only those issuers with a demonstrated market following should be eligible to use Form B to register primary and secondary offerings of any type to the general public. The current threshold for short-form registration (Forms S–3 and F–3) is a public float of $75 million. Based on our research, we believe that the most accurate measurement to attain the goal of choosing issuers for which there is an efficient market is a combination of public float of the issuer's common equity securities[78] and average daily trading volume ("ADTV") of the issuer's equity securities.[79] We propose that an issuer able to use Form B should *either* have:

- A public float of $75 million or more *and* an ADTV of $1 million or more;[80] *or*
- A public float of $250 million or more.[81]

Thus, if an issuer has a public float of less than $250 million then it must have an ADTV of at least $1 million in addition to a public float of $75 million.

In determining these thresholds, we considered, among other things, the level of analysts coverage that would result at different public float and ADTV thresholds. Our research indicates that companies that meet the proposed combined public float/ADTV test would have an average of 14 analysts following them.

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[74] *See* Signatures section of Form B and proposed revisions to Securities Act Rule 471, 17 CFR 230.471. *See* also Section XI.C. of this release, the discussion of the proposal to require management to certify that to management's knowledge, the filings they sign contain no material misstatement or omission.

[75] For example, the Advisory Committee expressed the belief that Section 11 may not apply and recommended that the Commission address this potential lapse in application of Securities Act protections. *See* Advisory Committee Report at p. 28.

[76] *See, e.g.*, Johnson and McLaughlin, Corporate Finance and the Federal Securities Laws 2d ed. 508–09 (1997). *But see* proposed revisions to Item 512 of Regulation S–K, 17 CFR 229.512.

[77] *See* proposed revisions to Rule 424(b)(2), 17 CFR 230.424(b)(2).

[78] Public float is the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates of the issuer. 17 CFR 228.10(a)(1). We used market capitalization information as a proxy for public float figures. Public float information is less readily available and would require a determination of the equity interests of affiliates of a company in order to derive it from market capitalization data.

[79] Our research showed that a public company's market capitalization, public float and ADTV are closely and positively associated with the number of analysts that follow firms. Combination tests of ADTV and either market capitalization or public float are more closely associated with the speed of price discovery than any of those tests alone. The proposed tests would preclude lesser followed companies from Form B registration eligibility. We use a similar combination in Regulation M. *See* Exchange Act Rules 100–105, 17 CFR 242.100–242.105

[80] Our research indicates that, just taking into account ADTV levels, 4% of the companies with an ADTV of $1 million or more would have fewer than 3 analysts covering them. Our research also indicates that, just taking into account market capitalization, 14% of the companies with market capitalizations of $75 million or more would have fewer than 3 analysts covering them.

[81] Our research indicates that 5% of the companies that have market capitalizations of $250 million or more have fewer than 3 analysts covering them. On average, companies of this size have 15 analysts covering them.

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We looked at analyst coverage not because we believe that analysts create market following or because we believe that analysts statements are wholly accurate and unbiased or because we believe that all investors would have access to or rely upon analysts reports. Instead, we looked to analyst coverage because we believe that the number of analysts that cover companies that fit a certain profile is indicative of the level of investor interest in companies within the profile. Like news organizations, analysts tend to cover companies that are of interest to their customers.[82]

For purposes of Form B, issuers would be required to measure their ADTV during the three full calendar months (or any 90 consecutive calendar days ending within 10 calendar days) immediately preceding the filing of the registration statement. They would measure their public float as of the end of their last fiscal quarter. While the alternative stand-alone public float test of $250 million may be used by both domestic and foreign issuers to qualify for Form B eligibility, we propose it primarily for the benefit of large foreign issuers whose shares trade principally on foreign markets.[83] In comparison to current Form S–3 and F–3 public float levels, 1,175 fewer companies would be eligible to register on Form B due to size.[84] Those companies, and even smaller ones, would, however, be eligible to register on Form B under other criteria discussed below, such as when offering only to QIBs or offering investment grade securities.

In addition to the public float/ADTV criteria, Form B would be available only to issuers that have a history of reporting under the Exchange Act. The reporting history would ensure that issuers have been reporting long enough so that adequate information about them is publicly available. It also gives issuers enough time to adjust to the disclosure requirements applicable to reporting companies. We propose a one-year reporting history requirement coupled with the requirement that the issuer have filed at least one annual report. Because annual reports are due months after the end of a fiscal year, simply requiring that Form B issuers have a one-year reporting history would not necessarily ensure that all issuers using the Form had prepared and filed at least one annual report.[85] We believe the annual report requirement would provide benefits to investors, due to the fact that they would have more Exchange Act information to use in evaluating the issuer and also because the issuer would have more reporting experience. In addition, an issuer would not qualify to use Form B unless it had filed all Exchange Act reports due and had filed all of its reports on a timely basis in the 12 months immediately before the filing.[86]

We request your comment on this proposal. Should the $75 million threshold used in conjunction with the ADTV threshold be higher (*e.g.*, $100 million, $150 million, $200 million or $250 million)?[87] Should the ADTV test used with the public float test be higher (*e.g.*, $1.5 million or $2 million)?[88] Should the ADTV test be lower (*e.g.*, $750,000)?[89] Should we raise the proposed stand-alone public float test of $250 million (*e.g.*, to $300 million, $350 million, $400 million or $450 million)? Should we lower the stand-alone public float test (*e.g.*, to $200 million)?[90] Should we raise the one-year and one annual report reporting requirement to two years?[91] Is there any reason why the ADTV/public float test thresholds should be consistent with the thresholds used for the actively-traded security exception in Rule 101(c)(1) of Regulation M? Instead of worldwide volume, which is used in Regulation M, would U.S. market volume, as proposed, be a better indicator of market following by U.S. investors? Unlike Regulation M and the proposals, should ADTV be calculated solely on the basis of trading conducted on the NYSE, AMEX or Nasdaq-NMS so as to exclude microcap companies?[92]

b. Offerings to QIBs

As the Commission determined in adopting Rule 144A, larger institutional investors, or QIBs as denominated in the rule, are presumed to be sophisticated securities investors.[93] Their investing experience and size purportedly puts them in a position to insist upon as much information as would be provided by registration.[94] Also, their size, which may be viewed as signifying buying and bargaining power, should allow them to demand from issuers protective covenants and restrictions. In other words, their sophistication enables them to fend for themselves.[95] Rule 144A applies both with respect to securities of reporting companies and non-reporting companies.[96]

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[82] Both issuers and investors suggest that multiple analysts are necessary to provide the public with broad, relatively unbiased information about a company. We obtained information concerning analyst coverage from Nelson Publications, publisher of Nelson's Directory of Investment Research (1996). The research that we conducted considered the number of analyst firms that follow a company rather than the number of individual analysts. In proposing thresholds, we have considered that not all analysts contained in that listing would be actively following the issuer at all times. Thus, we have chosen thresholds that provide a significant number of analysts following the issuer. Where an issuer has significant analyst following and the market operates efficiently with respect to price discovery, we believe it is fair to assume some level of investor awareness of company information. It is also fair to assume that investors would have access to multiple sources of information about a company, making short-form registration and elimination of communications restrictions appropriate.

[83] ADTV is measured for purposes of Form B on U.S. trading markets only. We believe that provides a better measure of U.S. market following than world-wide ADTV for these purposes. To avoid creating a test that would disproportionately exclude well followed foreign issuers with little or no U.S. trading market, we provide the alternative $250 million float test without an ADTV component.

[84] Of these companies, only 13 have taken advantage of unallocated shelf registration. This eligibility criteria includes 801 more issuers than were eligible to register securities on Form S–3 when the Commission lowered the public float requirements from $150 million to $75 million in 1992. *See* Securities Act Release No. 6943 (July 16, 1992) [57 FR 32461].

[85] Form S–3 currently requires simply a one-year reporting history. Form F–3 requires a one-year reporting history and also imposes a requirement that the registrant previously filed an annual report on Form 20–F.

[86] Issuers also would be required to be in compliance with our EDGAR rules. These timeliness and EDGAR requirements currently apply to offerings registered on short-form registration statements on Forms S–3 and F–3.

[87] At the $100 million market capitalization level, our research indicates that 5% of the companies have fewer than 3 analysts covering them. At $150 million, 5% have fewer than 3 analysts; at $200 million, 5% have fewer than 3 analysts; and at $250 million, 5% have fewer than 3. At the $100 million threshold, an average of 14 analysts follow the company. At $150 million, the average increases to 15, at $200 million the average increases is 15, and at $250 million the average is 16.

[88] Our research indicates that companies with an ADTV between $1 million and $2.5 million have an average of 8 analysts following them.

[89] Our research shows that 33% of companies with an ADTV of less than $1 million have no analyst following.

[90] Companies with a market capitalization of at least $200 million have an average of 14.5 analysts following them.

[91] We studied the impact of extending the reporting history by additional years and found no resulting statistically significant improvement in price discovery or analyst following.

[92] *See* Section V.A.2.g. of this release for a discussion relating to microcap companies.

[93] Securities Act Release No. 6862 (Apr. 23, 1990). Rule 144A provides a safe harbor from the registration requirements of the Securities Act for resales of restricted securities to QIBs as defined in Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1).

[94] In many instances, issuers prepare materials that are almost identical in presentation and substance to registration statements. *See, e.g.*, McGeehan, *Money Raised in Private Placement of Issues Doubles as Companies Take Advantage of SEC's Rule 144A"* Wall St. J., Jan. 2, 1998, at 38, col. 1.

[95] *See* Securities Act Release No. 6808 (Oct. 25, 1988) [53 FR 50038] Section IV.A.1. (institutional investors possess sufficient knowledge and experience in financial and business matters, and so are capable of evaluating the risks of an investment and are less in need of the protections of registration); *see also* Securities Act Release No. 6839 (July 11, 1989) [54 FR 30076], Section II.B.

If QIBs can fend for themselves in unregistered transactions involving securities of both reporting and non-reporting companies, they certainly should be able to fend for themselves at least as easily in connection with an offering by a public company registered on Form B. Moreover, when QIBs fend for themselves in Form B offerings, they will share the benefit of the disclosure they acquire with the rest of the investing public through the filing of that disclosure. To encourage registration of offerings that otherwise would be made in reliance on Rule 144A, we propose to extend Form B for registration of offerings made solely to QIBs, as defined in Rule 144A, where the QIBs are purchasing for their own accounts or for the accounts of other QIBs.[97] Those offerings could be made where the issuer has been a reporting company for at least one year, has filed at least one annual report under Section 13(a) of the Exchange Act and is current and timely in fulfilling its reporting requirements.

i. Advantages of Registered Offerings

Domestic issuers and foreign issuers that are already reporting would have the same key advantage under Form B registration that they find today in making Rule 144A offerings: they would find it just as easy to time their offerings because the issuer would control when its registration statement becomes effective and it need only file before the first sale. We believe issuers and investors would realize two significant benefits from registration of securities that otherwise would be sold only in reliance on Rule 144A:

1. Unlike Rule 144A, securities fungible with those that are listed on exchanges or quoted on NASDAQ could be offered and sold under Form B registration.
2. Unlike Rule 144A securities, the securities generally would be freely resalable because they would be covered by a registration statement. Because the securities would not be restricted, some QIBs that otherwise would be subject to limitations on the amount of restricted securities they may hold would be permitted to purchase these registered securities freely.[98]

ii. Limitations on QIB Purchases

Because the securities registered on Form B would not be restricted securities, there is some chance that investors and issuers would arrange to use the Form where the offering is not truly a QIB-only offering but instead is a distribution to the public using a QIB as a conduit.[99] We therefore would provide that certain QIBs would be ineligible to purchase under a Form B QIB-only offering. Dealers and investment advisers would be excluded from those offerings. Those purchasers do not generally purchase securities for their own investment. Dealers are in the business of selling securities. Moreover, the size threshold in Rule 144A for dealers is significantly lower than the thresholds for other QIBs. Given those factors, we believe the risk of indirect distribution by QIBs in those categories is sufficient to warrant precluding their participation. Should other QIB groups be excluded? If so, which ones?

Furthermore, issuers and QIBs that attempt to effect an indirect public distribution of securities through a QIB-only offering on Form B would violate Section 5 absent an applicable exemption. The transaction that the issuer would register under this provision of Form B would be its sale of securities to QIBs, not a sale to the public. If the securities do not come to rest with the QIBs and the QIBs are mere conduits for sales to the public, the offering would be ineligible for registration on Form B.[100] If a QIB purchases and effects a distribution, it will be acting as an underwriter as defined in Section 2(a)(11) of the Securities Act. Its transaction would not be registered and likely would not be exempt and therefore would be illegal.

iii. QIB Definition

The current general QIB test, which was established with the adoption of Rule 144A, is whether the institution, acting for its own account or for that of other QIBs, in the aggregate owns and invests on a discretionary basis at least $100 million of securities of non-affiliates.[101] The QIB threshold differs for dealers and banks, savings associations and equivalent institutions. We solicit comment on whether the thresholds for defining "qualified institutional buyer" for purposes of Form B and Rule 144A should be revised upward in light of the length of time since Rule 144A was adopted and the changes that have occurred in the markets since then.[102]

Taking into account only inflation since 1990, use of the $100 million threshold today would have been the same as if the Commission in 1990 had approved a 144A threshold of $81 million dollars.[103] Taking into account only market changes since 1990, our use of the $100 million QIB threshold today is equivalent to us adopting in 1990 a threshold of only $29.2 million.[104] Thus, taking into account market changes, the $100 million 1990 threshold would translate to approximately $240 million today. Even with some adjustments, therefore, we believe more entities would qualify as QIBs today than could have qualified at the time we adopted Rule 144A in 1990.

We solicit comment on whether one should have to own and invest on a discretionary basis at least $125, $150 or $200 million in securities of non-affiliated issuers to qualify as a QIB. We also solicit comment on whether we should increase the $10 million eligibility requirement for dealers acting for their own accounts or for the accounts of other QIBs. Should it be raised to $15, $20 or $25 million? Should we increase the net worth test for banks, savings associations and equivalent institutions? If so, should it be raised from $25 to $30, $35 or $50 million in order for them to qualify as QIBs?[105] Should a net worth test be applied to those institutions at all?

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[96] When the issuer of the securities to be resold under Rule 144A is neither a reporting company nor exempt from reporting under Exchange Act Rule 12g3–2(b), availability of the Rule is conditioned on the right of the current or prospective holder of the issuer's securities to obtain specific information from the issuer. *See* Rule 144A(d)(4), 17 CFR 230.144A(d)(4).

[97] An issuer that wishes to register an offering on Form B made solely to QIBs may offer or sell only to persons it reasonably believes are QIBs. The Division of Corporation Finance has interpreted the filing of a registration statement as a general solicitation. The filing of a Form B registration statement could, in and of itself, be viewed as a general solicitation and therefore as making offers to non-QIBs. Therefore, under the proposals, the Division would reconsider the issue regarding filing as a general solicitation for the purposes of QIB-only Form B offerings.

[98] The fact that Rule 144A, 17 CFR 230.144A, offerings are frequently conditioned on the issuer's promise to register the offering with the Commission within three to six months evidences the attraction of holding registered securities even for QIBs.

[99] This kind of indirect distribution would deprive the ultimate public purchasers of the liability protections of Securities Act registration.

[100] Securities Act Rule 401(g), 17 CFR 230.401(g), states that any registration statement or amendment is deemed to be filed on the proper form unless the Commission objects to the form before the effective date. The rule thus requires the Commission and the registrant to resolve disputes about form eligibility before effectiveness. We recently have proposed to amend Rule 401(g) to exclude from its scope all registration statements and post-effective amendments that become effective automatically upon filing. *See* Securities Act Release No. 7506 (Feb. 17, 1998) (63 FR 9648). In this release we propose to expand that exclusion to cover all registration statements in which the registrant could designate the effective date. *See* proposed revisions to Rule 401(g), 17 CFR 230.401(g). This change would eliminate the presumption existing today that an effective Securities Act registration statement is on the appropriate form and therefore aid the Commission staff in asserting that securities are offered and sold in violation of Section 5 if anyone attempts to use QIBs as conduits in connection with a QIB-only Form B offering.

[101] *See* Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1). *See also* Securities Act Release No. 6862 (Apr. 23, 1990); Securities Act Release No. 6806 (Oct. 25, 1988) [53 FR 44016].

[102] In 1997, companies raised approximately $254 billion through 144A offerings. This figure represents a 94% increase from 1996 and a 250% increase from 1995. McGeehan, *supra*, n. 94, at 38, col. 1.

[103] This figure is based on changes in the consumer price index between January 1, 1990 and January 1, 1998.

[104] This figure is based on increases in the S&P 500 between January 1, 1990 and January 1, 1998

Are upward revisions necessary to provide continued assurance that QIBs are sophisticated investors with some ability to require appropriate disclosure from the sellers? If so, should they be based on inflation only or should we revise them in accordance with market-related measures?

We also request your comment on whether we should expand the eligibility standards for Rule 144A QIB status. If so, what categories of entities should we make eligible as QIBs? For example, should we permit certain state pension funds to qualify as QIBs if they meet the current thresholds in Rule 144A?

iv. Other Reporting and Non-Reporting Issuers

In light of the sophistication of QIB purchasers, we solicit comment about whether we should extend Form B to issuers subject to the Exchange Act reporting requirements that do not satisfy a one-year and one annual report reporting history. If we were to extend Form B in that way, an issuer could choose to register not long after registering for the first time another offering under the Securities Act or a class of securities under the Exchange Act. Even in that event, however, the issuer would have filed virtually the same company information in its prior registration statement that it otherwise would file in its periodic reports. That information, like periodic reports, could be incorporated into its Form B registration statement. In the case of offerings made only to QIBs, is a year of seasoning as a reporting company going to provide significant investor protections that the QIBs themselves could not attain? Alternatively, should we increase the reporting requirement to two years for offerings to QIBs on Form B by issuers that do not meet the public float/ADTV threshold?

Non-reporting foreign issuers that currently make Rule 144A offerings would not be eligible for Form B even for QIB-only offerings. We solicit comment concerning whether the largest non-reporting foreign issuers (*e.g.*, those with a public float over $500 or $750 million) should be permitted to use Form B to register offerings to QIBs of investment grade securities. These issuers would be required to reconcile their financial statements to conform to U.S. GAAP. This alternative would allow large foreign issuers to enter the U.S. markets in a registered context rather than through Rule 144A, and would give the initial investors freely tradeable securities.[106]

By registering, those companies would become reporting issuers. We would require reconciliation of their financial statements in the Form B registration statement. Also, because these issuers would not have Exchange Act reports to incorporate by reference, we would require that they disclose in the Form B registration statement the company information set forth in Regulation S–K. Under those circumstances, would allowing foreign issuers the opportunity to register investment grade securities on an expedited basis encourage them to enter the U.S. registration and reporting system? Would they be unlikely to register even on that basis due to the reporting and disclosure requirements, or for other reasons? Should we preclude non-reporting foreign issuers from registering even investment grade QIB-only offerings on Form B absent staff review?

c. Offerings to Certain Existing Security Holders

We propose to extend Form B to smaller issuers that do not meet the Form's public float and ADTV threshold eligibility requirements for registration of offerings to certain existing shareholders. Under the proposed registration system, those issuers, which otherwise would be required to use Form A, may use Form B to register: rights offerings; offerings of securities pursuant to a dividend or interest reinvestment plan; offerings of common stock to existing common stock holders, such as under a direct stock purchase plan; offerings of securities upon exercise of either outstanding transferable options or outstanding transferable warrants; and offerings of securities upon conversion of outstanding convertible securities.

Current short-form registration statements, Forms S–3 and F–3, may be used in some, but not all, of these cases.[107] The Commission extended Forms S–3 and F–3 for registration of these kinds of offerings based on the premise that, despite the issuers' inability to meet the eligibility requirements and the possibility they may not be well known or widely followed by the market, these offerings would be directed to specific investors that previously invested in the issuer's securities and could therefore be expected to follow the issuer or to receive information from the issuer. Similarly, we propose to allow issuers that do not meet proposed Form B's public float and ADTV tests to register these and similar offerings on Form B as long as they meet the reporting requirements of the proposed Form and the transactional requirements described below.

i. Dividend or Interest Reinvestment Plans

As early as 1977, we began relaxing registration requirements for dividend or interest reinvestment plans ("DRIPs").[108] We currently allow all issuers to use short-form registration for securities offered pursuant to their DRIPs even if they do not meet the Forms' public float tests.[109] These registration statements become effective automatically upon filing without staff review.[110]

Under the proposed registration system, we seek both to maintain the relaxed regulatory approach to registration of DRIP offerings and to prevent abuses of the registration system's investor protections.[111] We therefore would extend Form B for DRIP offerings of seasoned issuers that do not otherwise meet the Form's eligibility requirements if.

1. The issuer has not discontinued or suspended dividend payments on the securities held by DRIP participants;

2. The DRIP securities registered on Form B are offered only to existing security holders that have held the issuer's securities for at least 2 months;

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[105] *See* Securities Act Rule 144A(a)(ii) and (a)(vi), 17 CFR 230.144A(a)(ii) and (a)(vi).

[106] Through 1992, foreign issuers accounted for about 30% of the 144A market. *See, e.g.*, Bostwick, *The SEC Response to Internationalization and Institutionalization: Rule 144A Merit Regulation of Investors*, 27 Law and Policy in Int'l. Bus. 423 (Winter 1996); Devere, *144A Deal Volume Surges in Dynamic Second Quarter*, 62 Investment Dealer's Digest 13 (July 22, 1996).

[107] *See* Instruction I.B.4. to Forms S–3 and F–3.

[108] *See* Securities Act Release No. 5923 (Apr. 11, 1978) [43 FR 16677].

[109] Most DRIPs are registered on Form S–3. For purposes of this discussion, we will refer to Form S–3 rather than Forms S–3 and F–3.

[110] Securities Act Release No. 6964 (Oct. 22, 1992).

[111] Some issuers have been known to register DRIP offerings on Form S–3 as a pretext for making what are basically primary offerings to the public. Some issuers otherwise ineligible to use Form S–3 have registered DRIPs on the Form to raise amounts of capital that, in the worst cases, exceed the issuer's public float at the commencement of the offering.

3. The dollar amount of the DRIP securities registered on Form B represents no more than 15% of the issuer's public float when aggregated with the dollar amount of securities previously registered by the issuer on Form B pursuant to any offering directed solely to common security holders, including a DRIP, within the 12 months before the start of, and during, the current offering; and

4. The shareholder purchases in any 12-month period no more than the smaller of 100% of the value of the issuer's securities owned by the shareholder at the start of the 12-month period, or 5% of the total offering amount, except that any shareholder may purchase up to $10,000 of securities in any 12-month period.

We would preclude issuers from using DRIPs to sell securities directly to participants at a time when the issuer has discontinued or suspended dividend payments on the DRIP securities. A purchase is not merely a dividend reinvestment when the company is not paying dividends. This is consistent with the Division's current interpretation.[112]

We also would set a limit on the amount of DRIP securities an issuer may register on Form B equal to an aggregate of 15% of the issuer's public float within the 12 months before the start of and during the offering.[113] Under this proposal, issuers could make several DRIP offerings on Form B over the course of a 12-month period as long as the total amount registered within that period did not exceed 15%.[114] While Form B would cover the offering of securities by a smaller issuer to its existing shareholders, if such an issuer uses its shareholders merely as conduits to distribute the securities to the public, the offering would not be eligible for Form B. If a shareholder purchases to effect a public distribution, it would be considered an underwriter and its sale would not be considered registered. To avoid the potential use of Form B in these conduit situations, we propose to restrict the amount of securities that may be purchased by any one shareholder and its affiliates. This provision, in addition to the 15% limitation, would protect against an unregistered distribution to the public.

Our proposal would limit the amount that an existing shareholder may purchase in any 12-month period. It could purchase the smaller of: 100% of the value of the issuer's securities it owns at the start of the 12-month period; or 5% of the total offering amount. A shareholder would have to aggregate its securities purchases and ownership with those of its affiliates. The shareholder also would have to count its purchases in all Form B offerings to existing security holders within the 12-month period. Any one shareholder and its affiliates would be able to purchase at least $10,000 of the issuer's securities in any 12-month period in Form B offerings to existing security holders, despite the percentage tests. For example, where a shareholder owned $5,000 of the issuer's securities at the start of a 12-month period, it would be able to purchase $10,000 of securities in the subsequent 12-month period in all Form B registered offerings to existing security holders.

Finally, the Commission notes that investor eligibility to participate in a DRIP is often based on ownership of a certain amount of the issuer's securities. In many cases, ownership of just one share or even a partial share worth as little as $25 qualifies a person for participation in a DRIP. The Commission is concerned that where there may be little public information about an issuer and the investor does not have a significant ownership interest in the securities of an issuer, the investor may not have access to adequate issuer information or have the inclination to follow the issuer and its business.[115] To help ensure that investors have a chance to learn about the issuer before deciding whether to participate in its DRIP, the Commission proposes to provide that small issuers may not use Form B to register their DRIPs unless the DRIP is limited to investors who have held securities of the issuer for at least two months.

Should the proposed 15% threshold be lowered to 5% or 10%, or raised to 20%? Would the shareholder purchase limitations adequately protect against unregistered distributions to the public? Should the percentage limitations be lower (*e.g.*, 75% of the securities owned at the start or 2% of the total offering) or higher (*e.g.*, 150% of the securities owned at the start or 10% of the total offering)? Should the $10,000 minimum purchase amount during any 12-month period be lower (*e.g.*, $5,000) or higher (*e.g.*, $20,000)? Should we lengthen the 12-month measurement period to two years? Should the two-month ownership period before participation be longer (*e.g.*, 3, 4, 5 or 6 months) or should it be shorter (*e.g.*, one month) or eliminated completely? Finally, would the holding period requirement make it overly burdensome for issuers to determine who is eligible to participate in the DRIP?

ii. Offerings to Existing Common Stock Holders

For the same reasons we would permit small issuers to register on Form B securities issued pursuant to DRIPs, rights offerings, or in connection with convertible securities and exercise of transferable warrants, we would permit smaller issuers to use Form B to register offerings of common stock to existing common stock holders, without regard to whether the offering was pursuant to an ongoing plan. This proposal represents an extension of our current approach to offerings to existing security holders and reflects, in part, our recognition that more and more companies offer securities to existing security holders through direct stock purchase plans ("DSPPs").

To register on Form B, these offerings would have to meet the following conditions:

1. The securities registered on Form B are offered only to existing common stock holders that have held the issuer's common stock for at least two months;

2. The dollar amount of the securities registered on Form B represents no more than 15% of the issuer's public float when aggregated with the dollar amount of securities previously registered by the issuer on Form B pursuant to any offering directed solely to common security holders, including under DRIPs, within the 12 months before the start of, and during, the current offering; and

3. The shareholder purchases in any 12-month period no more than the smaller of 100% of the value of the issuer's common stock owned by the shareholder at the start of the 12-month period, or 5% of the total offering amount, except that any shareholder may purchase up to $10,000 of common stock in any 12-month period.

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[112] *See* The Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July 1997), available on our web site (http://www.sec.gov).

[113] Based on our research of DRIP offerings made during the last year, the 15% limit should not affect the amount of securities that the vast majority of issuers register for offerings pursuant to DRIPs. We specify this threshold in the instructions to proposed Form B.

[114] The issuer would refer to its most recently filed Form 10–K to determine its public float for calculating how much it may register on Form B. This limitation also may allow issuers to avoid market overhang problems that may be associated with registering at one time a large amount of securities to be offered over a long period.

[115] Securities Act Rule 405, 17 CFR 230.405, defines the term dividend or interest reinvestment plan and states that such plans may allow participants to contribute additional cash amounts for the purchase of securities offered under the DRIP. Accordingly, once an issuer registers a DRIP, it may offer securities to participants in addition to or even in lieu of those purchased by the reinvestment of dividends or interest.

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We propose the first two conditions for the same reasons we propose them in connection with DRIPs. Just as with DRIPs, we seek to prevent small companies otherwise ineligible to use Form B from being overly-aggressive in labeling a sale to the public as a sale to existing shareholders. Therefore, we impose these conditions. The first condition requires issuers to aggregate all their offerings of common stock to existing security holders, including those under DRIPs, to determine how much common stock they may register on the Form B for offerings to existing common stock holders. We believe the condition is appropriate because it would inhibit smaller issuers from circumventing the 15% public float mechanism designed to prevent smaller issuers from using DRIPs to raise excessive amounts of capital through a short-form registration statement that they would otherwise be ineligible to use.[116] These common stock offerings raise concerns similar to offerings under DRIPs. We therefore propose to add the same kind of common stock shareholder purchase limitation as proposed for DRIP offerings registered on Form B.

The Commission believes this proposal will make it easier for smaller issuers to publicly offer securities to its existing shareholders. The proposal also may benefit investors because extending Form B for offerings pursuant to DSPPs may encourage issuers to register them.

We solicit your comment on this proposal. Should we narrow or expand the offering thresholds? Would the shareholder purchase limitations adequately protect against unregistered distributions to the public? Should the purchase limitations be the same as used in DRIP offerings or should they be lower or higher? Is two months a sufficient amount of time to ensure that investors would have time to familiarize themselves with the issuer? Is it a sufficient period of time to ensure the offering is truly one to existing shareholders and not simply an offering to the public at large? Should we have a minimum ownership requirement to ensure that investors have reason to keep informed about the company? If so, how much? Would a $1,000, $2,000, $5,000 or $10,000 threshold be appropriate? Should we apply a minimum ownership requirement to DRIPs as well? If so, should the threshold be the same as for offerings of common stock to common stock holders?

We are proposing to make Form B available for offerings to existing common stock holders of smaller issuers, in part, because we assume that those investors are following those issuers. Therefore, those investors would not need delivery of company information. Is our assumption correct that an existing common stock holder is likely to follow the issuer? Would it be more appropriate to move such offerings to Form A but permit small issuers to designate the effective date of their Form A registration statement? What additional costs, if any, would issuers incur as a result of requiring them to use Form A for these offerings, with the ability to designate their effective dates, instead of Form B?

iii. Convertible Securities, Transferable Warrants and Rights Offerings

In 1972, we adopted amendments to our short-form registration statement to provide that seasoned issuers could use Form B to register securities to be offered upon the conversion of outstanding convertible securities and upon the exercise of outstanding transferable warrants.[117] In 1978, we adopted, in the "nature of an experiment," short-form registration to register rights offerings to existing shareholders.[118] We determined not to require that issuers of rights offerings, or of the other kinds of offerings to existing shareholders, meet the newly adopted eligibility standards applied to primary offerings by large, seasoned companies.[119] When we adopted Form S–3, we explained that offerees in offerings to existing shareholders pursuant to rights offerings, exercises of convertible securities, exercises of transferable warrants and dividend or interest reinvestment plans did "not need the additional assurances of wide information dissemination provided by the test for primary offerings" because they already owned securities of the issuer and could be presumed to follow the issuer through corporate communications and Exchange Act reports.[120]

We believe that reasons that have historically supported a streamlined and relaxed approach to offerings by smaller seasoned issuers to existing shareholders would support extending the availability of proposed Form B to smaller reporting issuers that make offerings of securities pursuant to: rights offerings,[121] conversion of outstanding convertible securities and exercise of transferrable warrants.[122] Those issuers would continue to realize the benefits of short-form registration for offerings to existing shareholders that had already made a decision to invest in the issuer. At the same time, the reporting requirement of Form B would ensure the public availability of at least 12 months of public information about the issuer.

We seek your comment on this proposal. Do any of these three types of offerings present risks that should result in exclusion from Form B? Is there any reason to preclude such issuers from using Form B? Should we restrict availability of Form B to smaller issuers that have sent at least a glossy annual report to their shareholders[123] within the twelve months before making their offering to existing shareholders? Is that requirement useful in light of the fact that the warrants or convertible securities are transferable, and therefore the shareholders to whom the issuer would send that information may not be the same persons who exercise or convert? Are we correct in continuing to believe that existing investors would follow the issuer and keep informed of its business? Or, to ensure investor follow-up, should we limit Form B for offerings to existing security holders that hold a minimum amount or value of the issuer's securities (*e.g.*, $2,000)?

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[116] Many issuers offer securities to existing security holders through DSPPs to qualify those holders to participate in their DRIPs. Depending on the circumstances, the two plans could work in the same ways and provide holders with the same benefits. Accordingly, at this time, we believe it is appropriate to limit the amount of securities a small issuer can register under either offering when registering them on Form B—no matter how the offering is characterized.

[117] *See* Securities Act Release No. 5265 (June 27, 1972) [37 FR 15989].

[118] Securities Act Release No. 5879 (Nov. 2, 1977) [42 FR 58677].

[119] Securities Act Release No. 5923 (Apr. 11, 1978) [43 FR 16672]; Securities Act Release No. 5931 (May 15, 1978) [43 FR 21661].

[120] Securities Act Release No. 6331 (Aug. 6, 1981) [46 FR 41902].

[121] In situations where securities underlying rights may be acquired by new investors because, for instance, the rights are transferable, an issuer may not use short-form registration unless it meets the eligibility requirements for a primary offering on the form. *See, e.g.*, Securities Act Release No. 6943 (July 16, 1992). Our proposals would not alter this position. Accordingly, smaller issuers would be ineligible to use Form B to register securities underlying rights that may be acquired by new investors. We also would preclude smaller issuers from using Form B to register securities underlying rights that were not taken up by existing shareholders and that would be offered on a "standby" basis to new investors.

[122] Form B would not be available for the issuance of securities pursuant to a conversion of a convertible security or the exercise of a transferable warrant if the issuance of such securities could occur within one year of the company's issuance of the convertible security or transferable warrant. If the underlying security is issuable within one year of the company's issuance of the convertible security or transferable warrant, the underlying security would be part of the offering of the convertible security or transferable warrant. Consequently, the underlying securities must be registered with the convertible security or transferable warrant. In that case, unless the issuer is eligible to use Form B to register the convertible security or transferable warrant, it would not be eligible to register the underlying security on Form B. *See* The Division of Corporation Finance Manual of Publicly Available Telephone Interpretations, Section A.9. (July 1997).

[123] Throughout this release, all references to "annual report" or "Exchange Act annual report" refer to the annual report filed under Section 13(a) of the Exchange Act, generally on a Form 10–K or 20–F. All references to the "glossy annual report to security holders" or "the annual report to security holders" refer to the annual report filed under Rule 14a–3, 17 CFR 240.14a–3.

Under current requirements, an issuer may not use Form S–3 to register securities pursuant to DRIPs, upon exercise of outstanding rights or transferable warrants, or upon conversion of outstanding convertible securities unless it has sent an annual report[124] within the 12 months preceding the filing of the Form S–3 to all record holders of those outstanding or DRIP securities.[125] Foreign private issuers registering such offerings on Form F–3 are not subject to any prior information delivery requirement.[126] We have not included a prior delivery requirement in the proposed system. These issuers would be ineligible to use Form B unless they had already filed with the Commission at least one annual report.[127]

We solicit comment on whether to impose any information delivery requirement on smaller issuers that would use Form B to register securities issuable in connection with these kinds of securities offerings. Is it fair to assume that security holders would have adequate information about an issuer they already invested in if the issuer were not required to deliver annual report information to security holders? Should we require them to provide existing security holders with more information than would be required under current rules (*e.g.*, information in an annual report on Form 10–K or 20–F)?

In connection with this proposal, are there any reasons to continue to distinguish domestic issuers from foreign private issuers? Should we require foreign private issuers making these kinds of offerings to deliver information to their existing security holders? If so, should they be required to deliver the same kind of information required by Form 20–F, or should we allow them to deliver the level of information required by Rule 14a–3?

iv. Exercise of Outstanding Transferable Options

We propose to allow smaller seasoned issuers to use Form B to register offerings to existing security holders of securities issuable upon exercise of outstanding transferable options. Issuer options are like warrants in that they entitle the holder to buy or sell securities at a fixed price, during a specified period in the future. In deciding whether to buy the option, an investor speculates about the future value of the security underlying the option. An option holder then either trades the option on the basis of the premium price, exercises it or lets it lapse.

If an option holder has already made one investment decision about the underlying securities before exercising the option, we believe it is fair to presume that the holder has access to information about the issuer. (In the case of employee options, the employee may have simply received a grant of options.) To at least the same extent as existing shareholders, we believe that such investors may be expected to follow the issuer closely through corporate communications or Exchange Act reports. Therefore, we propose to extend Form B to smaller seasoned issuers for registration of securities issuable upon exercise of options.

As in the case of conversions of convertible securities and exercises of transferable warrants, if the underlying security is issuable within one year of the company's issuance of the option, the underlying security would be part of the offering of the option. Consequently, the underlying securities must be registered with the option. In that case, unless the issuer is eligible to use Form B to register the option, it would not be eligible to register the underlying security on Form B.[128]

We seek comment on this proposal. Would allowing Form B registration for option exercises by smaller companies otherwise ineligible for Form B result in indirect distributions of common stock to the public? Does their ineligibility to use Form B for this purpose if exercisable within a year avoid that possibility? Should we preclude Form B registration for exercises of options by dealers to avoid the possibility of issuers entering into options with underwriters as a means to effect a delayed distribution by issuers that would be ineligible for delayed shelf registration?

For domestic issuers that would use Form B for offerings to existing shareholders, should we, following Form S–3's current requirements, extend the Form only if within the 12 months preceding the filing on Form B the issuer sent out material company and financial information to all its existing shareholders to whom it would extend the Form B offering?[129] If so, would investors need more or less information than what Form S–3 currently calls for in order to make an informed investment decision?[130] Would 6 months be more appropriate because it would be more timely? What information, if any, should foreign companies using the Form be required to have provided? Would this registration option render Form S–8 unnecessary for exercises of employee stock options? Should we continue to require issuers to register employee stock option exercises on Form S–8 in light of the fact that employees may not have made an investment decision when acquiring the options?

d. Non-Convertible Investment Grade Securities

Today, companies that do not meet the public float requirement of Form S–3 may nevertheless register an offering of non-convertible investment grade securities on that Form. When the Commission adopted Form S–3 in 1982, we indicated that Form S–3 was appropriate for the registration of investment grade securities because investors purchase those securities on the basis of their interest rate and credit rating.[131] The Commission continues to believe that investors rely on a security's credit rating, although investors may well seek more than just rating information in order to evaluate the investment.

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[124] Form S–3 states that the material that issuers must deliver to existing security holders must include the information required by Rule 14a–3(b), 17 CFR 240.14a–3(b). The information required under that Rule is most frequently included in companies' glossy annual reports, and is less detailed than the information required in an annual report filed under cover of Form 10–K. Form S–3 also states that management-related information need only be delivered to existing security holders who may be issued common stock in connection with their exercises or conversions of securities or participation in a DRIP.

[125] *See* General Instruction I.B.4. of Form S–3.

[126] *See* General Instruction 1.B.4. of Form F–3. Foreign private issuers, however, are not permitted to use Form F–3 for these kinds of offerings if any of the securities are to be offered or sold in a standby or similar underwriting arrangement.

[127] Smaller issuers of securities under these kinds of offerings, whether domestic or foreign, would not be eligible to use Form B unless they: were seasoned (subject for at least 12 months to the reporting requirements of Section 12 or 15(d)); were timely in meeting their reporting obligations; and had filed at least one annual report under the Exchange Act. *See* General Instruction I.B. of proposed Form B.

[128] *See* The Division of Corporation Finance Manual of Publicly Available Telephone Interpretations, Section A.9. (July 1997).

[129] Prior delivery of specific information to existing shareholders is not currently required on Form F–3.

[130] *See* General Instruction I.B.4. of Form S–3, citing to Rule 14a–3(b) of the Exchange Act, 17 CFR 249.13a–3(b), and Items 401, 402 and 403 of Regulation S–K, 17 CFR 229.401–229.403.

[131] Securities Act Release No. 6383 (Mar. 3, 1982).

Given the historical precedent of using investment grade rating as an eligibility criterion for Form S–3 registration, we are proposing to allow non-convertible investment grade securities offerings to be registered on Form B by issuers that have been reporting under the Exchange Act for at least a year, have filed at least one annual report and are current and timely in filing those reports. We solicit comment, however, regarding whether we should continue to have a registration system in which Form eligibility turns solely on a credit rating, particularly in the case of Form B. A credit rating is one organization's judgment about the likelihood of default. That judgment is not a guarantee of no risk. Rather than allowing use of Form B on the sole basis of an investment grade rating for the securities being offered, should we provide for registration of those securities on Form A with its mandated transactional disclosure but allow for effectiveness of those Form A filings upon demand?

e. Market Making Transactions by Affiliated Broker-Dealers

When a broker-dealer that is an affiliate of an issuer[132] engages in market making transactions in that issuer's securities, registration under the Securities Act is required.[133] The registration requirement arises under the statute due to either of two reasons. First, in the definition of "underwriter" under the Securities Act, the term "issuer" includes any person affiliated with the issuer.[134] Because of the affiliation between the broker-dealer and the issuer, the broker-dealer itself is considered an issuer. Thus, the exemption from Securities Act registration for persons other than "issuers, underwriters and dealers" would not be available.[135]

The second reason registration is required flows from the definition of "dealer" under the Securities Act. The Securities Act exempts from registration most securities transactions by dealers.[136] "Dealer," as defined under the Securities Act, means any person that engages in transactions in "securities issued by another person."[137] If an issuer and its broker-dealer are affiliated, the broker-dealer would be considered to be an issuer. Hence, if it engages in a transaction in the issuer's securities, its transaction would not be in securities "issued by another person." Thus, the affiliated broker-dealer is not a "dealer" under the Securities Act and the dealer's exemption is not available. Absent an exemption, registration under the Securities Act is required by Section 5.

In accordance with Section 5, therefore, the broker-dealer must prepare and deliver "market making prospectuses" in market making transactions in securities of its affiliates. This prospectus discloses the affiliation between the issuer and broker-dealer, explains the use of the prospectus in offers and sales by the affiliated broker-dealer in market making activities, and provides information about the issuer.

We have recognized that prospectus delivery in market making transactions imposes a burden on affiliated broker-dealers.[138] We seek to reduce that burden while maintaining investor protection. By allowing registration of these transactions on Form B, we would preserve the benefits for investors of registration, but alleviate much of the burden.[139]

Certain other transactions are proposed to be allowed on Form B because of the nature of the purchasers, such as their financial sophistication or their pre-existing knowledge of the issuer. Because of their nature, these purchasers appear to have less need for prospectus delivery. Purchasers in market making transactions, on the other hand, may not have prior issuer knowledge or financial sophistication. Despite this difference, however, purchasers in market making transactions should not be adversely affected by registration on Form B. Buyers in this situation, like most buyers in the secondary markets, are likely to have made their investment decisions before contact with the market maker.

We propose to permit registration of ordinary market making transactions by affiliated broker-dealers on Form B only if the issuer is a reporting company under the Exchange Act.[140] That criterion would assure that information about the registrant is publicly available. We also would include two requirements to be sure that the transactions by affiliated broker-dealers are bona fide market making transactions. First, the broker-dealer must engage in the transactions only in its ordinary capacity as a market maker.[141] Second, the securities must be outstanding securities that the broker-dealer did not acquire directly from the issuer or an affiliate of the issuer or indirectly by arrangement with those parties. Market making transactions that do not meet these requirements could not be registered on Form B.

We request your views on this aspect of Form B eligibility. Should market making transactions by affiliated broker-dealers be permitted on Form B? If not, why should they be excluded? Are there reasons prospectus delivery should be retained for all market making transactions? Are the registrant requirements appropriate and adequate? Are there additional restrictions that would further ensure that only bona fide market making transactions are registered on Form B? Should the Commission consider extending Form B for this purpose to non-reporting foreign private issuers whose securities are traded in designated offshore markets and who claim the exemption from registration under Rule 12g3–2(b)? Should we more specifically define the types of market making transactions permitted? Should the Commission exempt all market making transactions from prospectus delivery requirements, or exempt certain market making transactions from the registration requirements entirely?

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[132] A broker-dealer is considered an affiliate of the issuer when the broker-dealer controls, or is controlled by, the issuer or when the broker-dealer and the issuer are under common control. *See* Rule 405 of Regulation C, 17 CFR 230.405. The determination of control is based on the facts and circumstances of the particular situation.

[133] Market-making transactions are principal transactions. A principal transaction is a transaction in which the broker-dealer purchases or sells for its own account, rather than the account of another party.

[134] Section 2(a)(11) of the Securities Act defines the term "underwriter" to mean "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, * * * or participates or has a participation in the direct or indirect underwriting of any such undertaking. * * * As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer." 15 U.S.C. § 77b(a)(11).

[135] *See* Section 4(1) of the Securities Act, 15 U.S.C. § 77d(1).

[136] *See* Section 4(3) of the Securities Act, 15 U.S.C. § 77d(3).

[137] Section 2(a)(12) of the Securities Act defines the term "dealer" to mean "any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person." 15 U.S.C. § 77b(a)(12).

[138] The Task Force recommended elimination of the affiliated broker-dealer's prospectus delivery obligation in "regular way" market making transactions in outstanding securities of a Section 12 reporting company. Task Force Report at p. 42.

[139] *See* Sections VIII.C.3. and VIII.C.4.a. of this release for a discussion of when prospectus information must be delivered in Form B offerings.

[140] The same disqualifications that would apply to other types of offerings on Form B also would apply for registration of market making transactions. *See* Section V.A.2.g. of this release.

[141] Section 3(a)(38) of the Exchange Act defines the term "market maker" to mean "any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis." 15 U.S.C § 78c(a)(38).

f. Small Business Issuers

Most small business issuers that file Exchange Act reports provide disclosure based upon Regulation S–B. These issuers would be allowed to register certain offerings on Form B. If they meet the seasoned reporting requirements of Form B, they would be able to register on Form B offerings to certain existing security holders, offerings of non-convertible investment grade securities, offerings solely to QIBs and market making transactions.

A small number of reporting small business issuers provide non-financial statement disclosure based on Form 1–A, instead of Regulation S–B.[142] The Form 1–A disclosure requirements are generally less extensive than those of Regulation S–B. These issuers are called "transitional small business issuers."[143] These companies continue to provide non-financial statement disclosure based on Form 1–A in their Exchange Act reports.

Proposed Form B would not be available for transitional small business issuers.[144] We believe that these issuers should be excluded from using the Form for several reasons. First, the disclosure in their Exchange Act reports would be less detailed than disclosure provided by other Exchange Act reporting companies. Second, these issuers are likely to have less experience in preparing disclosure documents. Third, we believe that the disclosure document should be subject to possible staff review. Consequently, automatic effectiveness should be unavailable for these offerings.

We request your comments on our treatment of small business issuers under proposed Form B. Should Form B be available for small business issuers? If not, why not? Should we expand the Form to permit offerings by transitional small business issuers? If so, what types of offerings should they be allowed to conduct under the Form?

g. Form B Disqualifications

Given the freedom and flexibility provided to issuers that would register their offerings on Form B, we do not believe that all issuers that would meet the Form's reporting and other eligibility requirements would necessarily be suited to use the Form. We believe certain events and circumstances justify disqualification of otherwise eligible offerings from registration on Form B, no matter under which category of Form B offerings it would be eligible. For those offerings, investors need the additional protections that come with registration on other forms: mandated transactional disclosure standards; stricter prospectus delivery requirements; possible staff review; and greater Commission control over effectiveness.

Under our proposal, the disqualifications generally would fall into four categories. The first category would include issuers whose offerings have been identified as potential vehicles for fraudulent and manipulative schemes that harm investors.[145] Blank check companies[146] and companies offering penny stock[147] would fall into this category. The second category would include issuers that appear more likely to face potentially significant liquidity problems, such as issuers that recently defaulted on material indebtedness. An issuer that is the subject of a "going concern" opinion from its independent auditor also would fall into this category, as would an issuer that recently was involved in a bankruptcy or insolvency proceeding.

We also believe that an issuer should be disqualified from the privilege of using Form B if it abuses the registration system or other federal securities laws. The third category of Form B ineligible issuers would therefore include those issuers that within five years before the date of filing a Form B were found to have violated provisions of the federal securities laws or that were convicted of securities fraud or business-related fraud or perjury.[148] It also would include issuers with executive officers, directors, general partners or nominees to such positions, or issuers using underwriters, that have done the same.

The issuers in these three categories have historically been viewed as unsuited to short-form registration or ineligible for certain disclosure-related relief. For instance, the Commission has repeatedly stated its belief that penny stock and blank check offerings give rise to disclosure abuses.[149] In addition, Congress determined not to extend the safe harbors for forward-looking statements to: issuers of blank check and penny stock securities offerings; issuers previously convicted of certain felonies and misdemeanors; and, issuers that are subject to a decree or order involving a violation of the securities laws.[150] Accordingly, we believe it is appropriate to preclude such issuers from registering their offerings on Form B.

The fourth category of issuers that we would disqualify from use of Form B would include issuers that fail to cooperate in good faith with the Commission's selective review system for Exchange Act reports. If the issuer has failed to resolve the Commission's staff's comments on an Exchange Act report that the issuer would be incorporating by reference into its Form B, we would not permit that issuer to use Form B.

We seek comment on these proposals. Should other categories of issuers also be precluded from using Form B? For example, is there any reason we should disqualify certain entities from using Form B, such as partnerships, limited liability companies or direct participation investment programs? On the other hand, should any of the issuers noted in the four categories be permitted to use Form B? Should any of them be permitted to use Form B, but not be permitted to designate the effective time? Should we extend the look-back periods used to disqualify issuers in any other category to coincide with the five-year look-back for issuers which have violated the law?

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[142] Form 1–A is the Form used to qualify securities under Regulation A, an exemption from registration under the Securities Act. Form 1–A contains two offering circular models, Model A and B, plus other parts. These offering circular models and Part F/S of Form 1–A provide the disclosure requirements for offering circulars used in Regulation A offerings.

[143] Transitional small business issuers are companies that either initially registered a securities offering on Form SB–1 under the Securities Act or initially registered on Form 10-KSB under the Exchange Act and provided certain Form 10-KSB disclosure based on the Form 1–A non-financial statement disclosure requirements.

[144] This approach is consistent with our approach under the proposed changes to Form SB–2 and proposed new Form SB–3. Proposed Form SB–2 and SB–3 would not permit incorporation by reference by transitional small business issuers.

[145] *See, e.g.*, Securities Act Release No. 7006 (July 2, 1993) [58 FR 37445].

[146] Securities Act Rule 419(a)(2), 17 CFR 230.419(a)(2), defines blank check company.

[147] Exchange Act Rule 3a51–1, 17 CFR 240.3a51–1, defines penny stock.

[148] *See* General Instruction I.B.6.(g) and (h) of Proposed Form B, 17 CFR 239.5.

[149] *See, e.g.*, Securities Act Release No. 7024 (Oct. 25, 1993) [58 FR 58099] (the Commission stated that Congress found blank check companies to be common vehicles for fraud and manipulation in the penny stock market, and concluded that the Commission's disclosure-based regulation and review of such offerings protects investors); Securities Act Release No. 7393 (Feb. 20, 1997) [62 FR 9276] (blank check and penny stock issuers would be ineligible to use proposed rule providing for delayed pricing because of "prior substantial abuses").

[150] Section 27A of the Securities Act, 15 U.S.C. § 77z-2, and Section 21E of the Exchange Act, 15 U.S.C. § 78u-5.

More recently the Commission has identified offering abuses associated with very small capitalization issuers.[151] We solicit comment on whether issuers more likely to be identified with microcap fraud should be disqualified from using Form B even though they do not fall into the blank check/penny stock category or the prior violations category. If we were to disqualify issuers more likely to engage in microcap offering fraud, how would we define such a category? What issuer or offering characteristics would be inclusive enough to meet our goal of preventing abuse but exclusive enough to avoid improperly stigmatizing smaller issuers that are not involved in fraud?

Would disqualification from Form B use on the basis of a "going concern" opinion from the issuer's independent auditor cause undue pressure to be placed on auditors not to issue those opinions? Should the Commission replace that disqualification with one dependent on whether the issuer had: (1) net losses or negative cash flows from operations for two or more of the past three annual fiscal periods; or (2) a deficit in net worth at the date of the most recent balance sheet?

h. Secondary Offerings

As proposed, registrants would not be able to register an offering on Form B without meeting other eligibility criterion simply because it is a secondary offering. Whether an equity offering is a primary or secondary one, the investment is in the securities of the issuer and it is the issuer's disclosure that is relevant to investors. In either offering, the issuer prepares the disclosure. The primary difference is that the issuer does not receive the proceeds in the secondary offering. Considered only from an investor's viewpoint, the same disclosure would be needed regardless of whether the issuer or an affiliate is selling the securities.

For some time, however, we have made a distinction in eligibility for short-form registration between primary and secondary offerings.[152] To register secondary offerings, issuers do not need to meet the Form S–3 or F–3 public float test. By allowing short-form registration for secondary offerings, we have inadvertently provided an incentive for issuers not to register primary sales and to distribute to the public indirectly through third parties. Some registrants have been particularly aggressive about casting what are actually primary distributions as secondary offerings by selling shareholders in order to use current short-form registration. This practice threatens the integrity of the registration process by permitting registrants to do indirectly what they would be precluded from doing directly. Given the attractions of Form B, we would expect that practice to continue if we were to allow secondary offering registration on Form B. We would avoid that abuse by not allowing registration of secondary offerings on Form B unless other offering eligibility criteria were met.

In 1981, we proposed to apply the same public float test for both primary and secondary offerings in Form S–3. Commenters were concerned that applying the additional float requirement to secondary offerings would adversely affect venture capital companies and their investors. In light of that concern, we chose to distinguish the two types of offerings in Form S–3. The proposed registration system, however, has several advantages over the existing system that could ease any concerns regarding venture capitalists. For example, under the eligibility requirements for use of Form B, a company may register its initial offering of common stock to the venture capitalists on Form B that are existing common stockholders of the company. We also would make Form B available for any offering to venture capitalists who are QIBs. Form B offerings could be completed as quickly as today's private offerings, because Form B would not be subject to staff pre-review and could be effective upon filing if the issuer chooses. Because Form B would permit companies to register their initial offerings to venture capitalists, as opposed to first completing a private placement and then registering those securities for a secondary offering, special treatment of secondary offerings for the sake of venture capitalists would no longer be needed.[153]

Registrants would register secondary offerings not eligible for Form B under the proposed system on Form A which is described in detail below. Form A, unlike Form S–1 today, would permit companies to incorporate their Exchange Act filings by reference. Consequently, it should take a company less time to prepare its registration statement on Form A as compared to Form S–1 today. Additionally, the Commission is proposing to provide some Form A companies with the ability to designate the effective dates of their registration statements.[154] Where applicable, the company's registration statement, therefore, would be effective significantly sooner than under the current system.[155]

We are proposing to treat primary and secondary offerings the same on Form B. Thus, secondary offerings by affiliates[156] would need to qualify under the same public float/ADTV, QIB-only, existing shareholders, or investment grade eligibility criteria. Affiliates stand in the shoes of the issuer and should get no different or better treatment. Because issuers and others have relied upon the historical distinction between secondary and primary offerings, however, we solicit comment regarding whether the secondary nature of offerings by non-affiliates should be added as a separate eligibility criterion on new Form B.

Similarly, we are proposing to revise Form S–8 treatment of secondary offerings.[157] Currently, affiliates and others may register on Form S–8 resales of control or restricted securities acquired pursuant to an employee benefit plan. The resale prospectus on Form S–8 must meet the requirements of Part I of Form S–3 or Form F–3. For the same reasons that we are not proposing special eligibility for secondary offerings on Form B, we propose to eliminate special eligibility for secondary (i.e., resale) offerings on Form S–8. Whether an offering is primary or secondary is of little importance to most investors. Investors tend to base their investment decision on an issuer's disclosures. Accordingly, we believe amending Form S–8 would further investor protection.

Comment is solicited with respect to elimination of S–3 level registration of secondary offerings on Form S–8. Are there compelling reasons to retain that treatment in an employee benefit context that would not apply in other secondary offerings?

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[151] *See, e.g.*, Securities Act Release No. 7505 (Feb 17, 1998) [63 FR 9632] (adopting amendments to Regulation S (17 CFR 230.901–905)); Exchange Act Release No. 39670 (Feb. 17, 1998)[63 FR 9661] (proposing amendments to Exchange Act Rule 15c2–11 (17 CFR 240.15c2–11)).

[152] *See* Securities Act Release No. 5265 (June 27 1972).

[153] Under this proposal, unlike in a registered secondary offering, venture capitalists would generally not be subject to the prospectus delivery requirements.

[154] *See* proposed revisions to Securities Act Rule 462, 17 CFR 230.462.

[155] The holding period of Rule 144(d), 17 CFR 230.144(d), also is much shorter today than it was in 1981, thus making private placements more attractive as an alternative to registration than they were in 1981. We recently proposed to narrow the definition of "affiliate." Consequently, Rule 144 would be available to most venture capitalists. Securities Act Release No. 7391 (Feb. 20, 1997) [62 FR 9246].

[156] For purposes of this discussion, we assume that the narrower definition of "affiliate" proposed by the Commission in 1997 would apply. We have not proposed that narrower definition in this release because we already have proposed it.

[157] Form S–8 would be largely unaffected by the proposed registration system. For example, no additional filing or delivery requirements would be added for Form S–8.

B. Form A Offerings

Form A would be the basic form for registration under the Securities Act.[158] It would be available for any offering for which no other Form is authorized or prescribed. Initial public offerings and smaller reporting issuers' offerings ineligible for another form would be registered on Form A. Many of the offerings that issuers would register today on Form S–1, F–1, S–2 and F–2 would be registered under the proposed system on Form A. Just as in the case of Forms B and C, both domestic and foreign filers would use Form A.[159]

1. Structure of Form A

In keeping with current Securities Act registration forms, there are two parts to Form A: information included in the prospectus (Part I) and information not included in the prospectus (Part II).

a. Part I—Information Required in the Prospectus

Part I of Form A requires the following three categories of information: (1) standard disclosure on the cover and back pages of the prospectus and registration statement; (2) transactional information; and (3) company information. All issuers registering on Form A would set forth the first two types of information directly in the prospectus. Some Form A issuers would incorporate by reference their company information, while others would set forth that information directly in the prospectus.

i. Cover Pages

All issuers using Form A must comply with Items 501, 502 and 503 of Regulation S–K relating to information on the front cover page of the registration statement, the cover pages of the prospectus and in the summary and risk factors sections, among others. This is the same requirement as in current Forms S–1, F–1, S–2 and F–2.

ii. Transactional Information

All issuers using Form A also must provide information regarding:

- Summary risk factors and ratio of earnings to fixed charges;
- Use of proceeds;
- Determination of offering price;
- Dilution;
- Selling security holders;
- Plan of distribution;
- Description of securities;
- Interests of named experts and counsel; and
- The Commission's position on indemnification for Securities Act liabilities.

Again, this is the same information that is required in current Forms S–1, F–1, S–2 and F–2.

iii. Company Information

Depending on whether the issuer is "seasoned" or not, it must present company-related disclosure either in full in the prospectus or incorporate it by reference into the prospectus that is part of the effective registration statement.

(A) "Seasoned" Form A Issuers

For purposes of Form A, "seasoned" issuers would be:

- Issuers that have been reporting under the Exchange Act for at least 24 months, if they have a public float of $75 million or more; and
- Issuers that have been reporting under the Exchange Act for at least 24 months and have filed at least two annual reports.

Issuers that are "seasoned" would be eligible to incorporate their previously filed Exchange Act reports by reference unless they meet any of the disqualifications contained in General Instruction II.B. of the Form.[160]

A Form A registrant would incorporate by reference into the prospectus and deliver, along with the prospectus, its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act and either deliver or include in the prospectus the information in Part I of Form 10–Q or 10–QSB for the most recent fiscal quarter. The registrant must deliver the information required by this option with the first prospectus it sends. It need not deliver that information with any subsequent prospectus it sends to the same person.

Issuers relying on this option would not have to reiterate company information in the prospectus, although they would have to deliver those incorporated reports with the preliminary prospectus.[161] The Form A eligibility requirements for incorporation by reference would reduce the length of time a registrant must be reporting. Under current Forms S–2 and F–2, a registrant must have a thirty-six month reporting history before it may incorporate by reference.[162] We solicit comment on whether the seasoning test for incorporation by reference on Form A should be shortened (*e.g.*, to where the issuer has been reporting under the Exchange Act for 12 months and has filed at least one annual report).

If a company incorporates by reference, investors would be required to review more than one document to obtain all the material information. We solicit comment as to whether this increases the analytical burden on investors. Additionally, does incorporation by reference of documents containing historical disclosure tend to obscure recent material information about the company? Would it be better for investors if incorporation by reference was limited to the most recent annual report with all subsequent information included in the prospectus? Today, some small issuers that are not well known to investors may include, for marketing purposes, information in their prospectuses that also is contained in the documents they have incorporated by reference. Is incorporation by reference useful for such small companies? Is incorporation by reference necessary in light of technological advances in financial printing? Does incorporation by reference reduce an issuer's cost of registration if the incorporated documents are required to be delivered to investors? If so, by how much are costs reduced?

Current Forms S–2 and F–2 give a registrant two options for complying with the disclosure requirements of the Form when incorporating by reference. If the registrant elects to deliver the prospectus together with its Exchange Act reports incorporated by reference in the registration statement, it must provide in the prospectus updating financial information and describe any material changes in its affairs not previously disclosed in an incorporated and delivered Exchange Act report. If the registrant does not elect to deliver its incorporated Exchange Act reports together with the prospectus, it must provide abbreviated company information in the prospectus itself.[163] Proposed Form A would permit only the first option of providing company information when incorporating—a registrant may incorporate company information into its prospectus and deliver its Exchange Act reports together with the prospectus.[164] Otherwise, it could not incorporate and must set forth the full company disclosure required in a Form A, just like an unseasoned Form A company.

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[158] Form A also may be used to register concurrently under Section 12(b) or 12(g) of the Exchange Act. *See* Section VI. of this release for a discussion of concurrent Exchange Act registration.

[159] U.S. registrants must provide all information required by the Items of the Form except where the Item expressly identifies the requirement as applying only to foreign registrants. Similarly, foreign registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to U.S. registrants.

[160] Section 11 would apply to all documents incorporated by reference in Form A.

[161] For a discussion of Form A prospectus delivery obligations, see Sections VIII.C.3. and VIII.C.4.b. and e. of this release.

[162] Those forms are available for smaller seasoned issuers, but are rarely used. In 1996, only 102 Forms S–2 were filed and only three Forms F–2 were filed.

Current Form S–2 permits issuers to choose to incorporate and deliver their glossy annual and quarterly reports to security holders in lieu of incorporating and delivering their Exchange Act annual and quarterly reports. Proposed Form A would require issuers to incorporate and deliver their latest Forms 10–K and 10–Q, because those reports must contain more extensive disclosure about the company.[165] We solicit comment on whether Form A seasoned issuers should be given the option to incorporate and deliver their glossy annual and quarterly reports to shareholders in lieu of their reports on Forms 10–K and 10–Q, with the additional provisions that those glossy annual and quarterly reports are incorporated by reference in their entirety (and are therefore subject to Section 11 liability under the Securities Act) and are filed with the Commission before their use in the Form A.

In certain circumstances, current Forms S–2 and F–2 permit registrants that are majority-owned subsidiaries but do not meet the Form eligibility requirements to register on those Forms instead of Form S–1 or F–1 if their parent satisfies certain requirements. This provision allows both the parent and the majority-owned subsidiary to register the offering on one form and incorporate by reference. Proposed Form A would not provide a similar option to those majority-owned subsidiaries. Given that Form A encompasses both seasoned and non-seasoned issuers and that incorporation by reference on Form A would be available after 24 months, as opposed to the current 36-month requirement, we believe there would be little reason to extend the ability to incorporate by reference to majority-owned subsidiaries any sooner.

(B) "Unseasoned" Issuers

In initial public offerings and offerings by all other issuers that are not "seasoned," we would require that the registrant provide company information in the prospectus. The content of the company information in the registration statement would remain the same as it is in current Forms S–1 and F–1. We would not permit these issuers to incorporate by reference any Exchange Act reports.

b. Part II—Information Not in the Prospectus

Just as in Forms S–1, F–1, S–2 and F–2, Part II of proposed Form A would require the following information in the registration statement but not in the prospectus that is delivered to investors: expenses of issuance and distribution, indemnification of directors and officers, recent sales of unregistered securities, exhibits and undertakings.

2. Timing of Form A Offerings

a. Seasoned Issuers

Many commenters on the Concept Release noted that issuers would benefit from greater certainty of the time schedule of staff review. For example, a fixed offering schedule would promote efficiency in marketing efforts and the management of deal flow. We believe that we can achieve greater certainty in the timing of staff review without compromising investor protection. Proposed revisions to Securities Act Rule 462[166] would provide for effectiveness of registration statements and post-effective amendments of seasoned issuers on Form A whenever they request if:

1. The registrant's public float is or exceeds $75 million; or
2. The Exchange Act annual report incorporated into the Form A recently has been reviewed fully by the Commission staff and has been amended in accordance with the staff's comments, if so requested.[167]

In addition to the reporting history requirement, issuers in all cases must be subject to the Exchange Act reporting requirements, current in filing their Exchange Act reporting requirements and timely in filing their Exchange Act reports during the last 12 months in order to be seasoned. A seasoned issuer that meets one of these criteria may choose when it wants its registration statement on Form A to be effective.[168] The front cover of the Form would include three boxes, one of which the issuer would check to designate the date and time of effectiveness of the Form. Like Form B issuers, these seasoned Form A issuers may elect that the filing become effective: immediately upon filing, at the date and time specified on the front cover, or as specified in a later amendment. Even if an issuer met either of those criteria, the proposal would preclude it from designating the effectiveness of its Form A if the issuer fits the profile of any issuer disqualified in Form A from the provisions in the Form for incorporation by reference and automatic effectiveness.[169]

The basis of the public float test is to provide medium-sized seasoned issuers with certainty about the timing of their registered offerings. We believe that issuers would be more inclined to register their offerings if they knew they could take advantage of market windows or realize a need for quick capital by relying on Form A's provisions for automatic effectiveness.

The $75 million public float criteria is the same float level required in our current short-form registration statements (Forms S–3 and F–3). Our research indicates that approximately 1175 companies that are currently eligible to use those short-form registration statements would be ineligible to use Form B, at least with respect to offerings requiring the issuer to satisfy the public float/ADTV threshold. Those 1175 companies generally would be able to avail themselves of Form A's provisions for automatic effectiveness if they had reported under the Exchange Act for at least 24 months. We propose the $75 million float requirement to ensure that the only registration statements on Form A that could become automatically effective are those filed by issuers with some market following resulting from their size and at least 24 months experience filing Exchange Act reports.

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[163] This disclosure is less comprehensive than what would be required on Form S–1 or F–1 today. It includes information regarding: the registrant's business, the registrant's common equity securities, management's discussion and analysis, changes in and disagreements with accountants on accounting and financial disclosure and market risk. Financial statements and other financial information, including selected financial data and supplementary financial information are also required to be presented in the prospectus.

[164] The disclosure required by seasoned Form A registrants includes a description of any material change in the registrant's affairs that is not already described in a filing with the Commission, incorporated by reference into Form A and delivered to investors.

[165] A small business issuer may choose to register an offering on Form A rather than on Form SB–2 and incorporate and deliver its reports on Forms 10–KSB and 10–QSB. A small business issuer that registers an offering under Form A but that does not incorporate its Exchange Act reports must provide the company disclosure called for by Form A based on either Regulation S–K or Form 20–F (if a Canadian small business issuer).

[166] 17 CFR 230.462.

[167] Form A would not permit incorporation by reference of any Exchange Act report or other filing if the staff reviewed the filing and any comments remain unresolved.

[168] While these registration statements will not be reviewed by the staff, any request for confidential treatment regarding information required to be included in the registration statement may be received by the staff. Therefore, any request for confidential treatment should be submitted a reasonable period before the registration statement's designated effective date.

[169] *See* General Instruction II.B of proposed Form A and Section V.B.1.a.4. of this release.

The basis of the recently reviewed test is that the staff will have reviewed the bulk of the issuer's disclosure. Pursuant to this test, any seasoned Form A issuer may designate effectiveness where it incorporates by reference into its Form A an annual report filed under Section 13(a) or 15(d) for its most recently completed fiscal year[170] that has been reviewed fully by the Commission staff and the issuer has responded satisfactorily to the staff's comments.[171] As discussed in greater detail below, the staff of the Division of Corporation Finance would consider requests that the staff review their Exchange Act reports.[172] Because issuers may request that the staff review their Exchange Act annual reports before registering on Form A, this mechanism would allow an issuer further flexibility in controlling the timing of its registered offering.

We solicit your comment on this proposal. Should we permit these registration statements on Form A to become effective per the issuer's discretion? Is the $75 million float too high? Should it be lowered to $60 million? Or should it be raised to $100 million or $200 million? Would the proposal to allow a Form A issuer incorporating a fully reviewed annual report provide particular flexibility in light of the proposal that the staff would review Exchange Act reports upon request to the extent it is able? Should the power to designate effectiveness when the staff has reviewed the issuer's annual report be limited to offerings of a class of securities the issuer has registered previously? Should there be any time frame within which the staff would have to review the report, for example, within three or six months before the offering? Should we exclude offerings of certain securities from that treatment? If so, what types of securities?

Because the proposed rules provide these issuers with complete control over effectiveness of their filings, we would require that the issuer obtain evidence of the managing underwriters' or principal underwriters' concurrence with its designation of effectiveness.[173] The issuer would have to file the evidence of concurrence as an exhibit to Form A.

Would a requirement to file the concurrence be unnecessarily burdensome? Alternatively, should we require the issuer to obtain the underwriters' concurrence, but not require that the concurrence be evidenced in writing? Would an oral concurrence provide the issuer and the underwriters with sufficient assurance of agreement and protection against misunderstanding? Should we require that the issuer represent in the registration statement that it obtained the concurrence, not require filing, and require that the issuer retain the written concurrence for five years?

b. Unseasoned Issuers

The timetable for effectiveness of registration statements filed by issuers making their initial public offerings or by issuers who do not meet the "seasoned" eligibility requirements of General Instruction II. of Form A would be similar to the filings on Forms S–1 and F–1 today. All registration statements would be reviewed on a similar time table as current Forms S–1 and F–1 and the registration statement would become effective pursuant to a request for acceleration after the issuer addresses staff comments.

3. Solicitation of Comments on Definition of Form A Seasoned Issuer

We use the same definition of seasoned issuer under Form A for purposes of permitting incorporation by reference of Exchange Act reports and timing of registration statement effectiveness, with one exception discussed below. We distinguish between issuers with a public float of $75 million or more and issuers with a public float of less than $75 million. Issuers with public floats of $75 million or more must have reported under the Exchange Act for 24 months or more. Issuers with smaller public floats must have reported for 24 months or more and filed at least two annual reports. For purposes of determining effectiveness (but not incorporation by reference), issuers with smaller public floats also must incorporate an Exchange Act annual report that was reviewed fully by Commission staff and amended for any staff comments. An issuer also must meet other conditions to be seasoned for purposes of incorporation by reference and timing of effectiveness.

We solicit comment regarding the reporting history of companies with a public float of $75 million or more. Is 24 months the proper reporting history to permit companies with that amount of public float to determine the timing of their effectiveness? Would a 12-month reporting history be sufficient in this regard? Similarly, is 24 months the proper reporting history to permit these companies to incorporate by reference Exchange Act periodic reports? Would a 12-month reporting history be sufficient in this regard? For each of these purposes (*i.e.*, timing of effectiveness and incorporation by reference), should we add an annual report filing requirement to the 24- or 12-month reporting periods? Finally, for each of these purposes, we have proposed that the company be timely in filing its Exchange Act reports for the most recent 12 months. Is this sufficient evidence of providing timely information to the market? Would a longer period, such as 24 months, be more appropriate?

We also solicit comment regarding the reporting history of companies with a public float of less than $75 million. Is 24 months of Exchange Act reporting and the filing of at least two annual reports the proper reporting history to permit companies with that amount of public float to determine the timing of their effectiveness? Would 12 months of Exchange Act reporting and the filing of at least one annual report be sufficient in this regard? Similarly, is 24 months of Exchange Act reporting and the filing of at least two annual reports the proper reporting history to permit these companies to incorporate by reference Exchange Act periodic reports? Would 12 months of Exchange Act reporting and the filing of at least one annual report be sufficient in this regard? For each of these purposes, should we simply require either a 24- or 12-month reporting history, without regard to how many annual reports had been filed by the registrant? Finally, for each of these purposes, we have proposed that the company be timely in filing its Exchange Act reports for the most recent 12 months. Is this sufficient evidence of providing timely information to the market? Would a longer period, such as 24 months, be more appropriate? For purposes of timing of effectiveness, should we require that the Exchange Act annual report incorporated by reference be reviewed fully by Commission staff and satisfactorily amended for any staff comments?

4. Disqualification for Seasoned Form A Companies

As noted, Form A would permit smaller, reporting issuers to incorporate by reference their Exchange Act reports and to have greater control over their effectiveness time schedule. We do not believe that all issuers that would meet proposed Form A's reporting and other eligibility requirements would necessarily be suited to incorporate by reference their company information or have expedited effectiveness. We believe certain events and circumstances justify disqualification of otherwise eligible issuers from taking advantage of those benefits on Form A. We propose to use the same factors that disqualify otherwise eligible issuers from using Form B.[174] As we do with Form B issuers, we solicit comment on whether we should lengthen the "look-back" periods we propose to use to disqualify Form A issuers from designating the effective date of their registration statements or incorporating by reference. If so, should the periods be independent of or match those in Form B?

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[170] *See* proposed revisions to Securities Act Rule 468(f)(1)(iv), 17 CFR 230.468(f)(1)(iv).

[171] Because Form A would not permit issuers to incorporate any Exchange Act report if any Commission staff comments on it are unresolved, issuers could only take advantage of this provision if the review of their annual report was completed.

[172] *See* Section XII.B. of this release.

[173] *See* proposed Form A, Item 21 and proposed revisions to Item 601 of Regulation S–K, 17 CFR 229.601.

5. Real Estate Companies

Real estate entities that formerly registered on Form S–11 would now register on Form A, unless they meet the eligibility requirements of another form. Disclosure specifically required by Form S–11 instead has been added to Regulation S–K.[175] Real estate entities that formerly provided such disclosure on Forms S–11 or S–4 would continue to be required to provide such disclosure on Forms A and C, respectively.

These proposed disclosure requirements of Regulation S–K have been drafted in plain English and would codify certain staff practices regarding disclosure by real estate entities. These practices include disclosing:

1. When finite life entities intend to sell their properties;
2. The securities rating assigned by a nationally recognized statistical rating organization ("NRSRO") to any securities in which the registrant has invested;
3. Any cross default or cross collateralization provisions in mortgages; and
4. Information about subsidiaries, such as operating partnerships.

Additionally, to provide uniformity on how registrants calculate occupancy rates, the Commission is proposing to require real estate entities to disclose occupancy rates as a percentage of rentable square footage or units.[176] Finally, the new disclosure requirements of Regulation S–K would omit disclosure currently required by Item 35 of Form S–11, as it appears no longer applicable to most real estate companies.

We also propose to amend Forms 10 and Form 10–K to codify the staff's practice of requiring real estate entities to disclose:

- Operating and financing activities;[177]
- Real estate and other investment activities;[178] and
- A description of real estate and operating data.[179]

We also are proposing in certain offerings by real estate entities to eliminate the Guide 5 recommendation that a registrant supplementally provide the Commission staff, before use, sales materials it intends to furnish to investors.[180] The Commission staff would no longer pre-review the sales materials in cases where an issuer has the power to designate the effective date of its registration statement or when the Commission staff has notified the issuer that it will not be reviewing its registration statement. The benefits provided by the ability to designate effectiveness would be significantly diminished if the issuer nevertheless had to delay its offering until the Commission staff had pre-reviewed its sales materials. Similarly, there would be little benefit to investors from Commission staff pre-review of sales materials where the staff would not also review the issuer's registration statement. Proposed Rule 425 generally would require issuers and offering participants to file sales materials used in an offering. We request comment as to whether the Guide 5 recommendation to provide the Commission staff with sales materials supplementally should be eliminated for all offerings because sales materials generally would be filed under proposed Rule 425.

C. Applicability of Civil Liability Provisions to Offerings Registered on Proposed Forms A and B

The proposals provide a liability structure that depends on the content of materials, as well as the manner and time in which materials are used. The following discussion describes this liability structure.

1. Form A Offerings

A Form A offering either may involve, or must involve, the following materials used in connection with the offer or sale of securities:

- The Form A registration statement, including the prospectus;
- If the issuer is seasoned, the Exchange Act reports that it incorporates by reference into its registration statement;
- Free-writing materials, but only after the issuer files the Form A registration statement;
- A prospectus contained in a post-effective amendment to the Form A registration statement; and
- Prospectus supplements that the issuer uses after effectiveness of the Form A registration statement for shelf offerings.

The liability that applies to each of these types of materials is as follows.

Section 11 liability would attach to the effective Form A registration statement, including the prospectus in it.[181]

A Form A registrant relying on incorporation by reference would have to incorporate into the registration statement its last annual report filed under Section 13(a), and all Exchange Act reports that it files under Section 13(a) thereafter up to the date of effectiveness. Section 11 liability would attach to all information in those incorporated reports.[182] Section 11 also would attach to any Exchange Act report filed after the effective date that the issuer incorporates by reference through filing a post-effective amendment.[183]

A Form A registrant using free writing materials after it files its registration statement would file those materials in accordance with Rule 425. Section 12(a)(2) liability would attach to all free writing materials the registrant uses, whether or not they are filed under Rule 425 as required.

A Form A registrant could make additions or revisions to the prospectus by filing a post-effective amendment to the registration statement. The prospectus in a post-effective amendment becomes the prospectus in the registration statement.[184] Accordingly, Section 11 would attach to any prospectus (and any other information) included in a post-effective amendment to Form A.

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[174] *See* General Instruction II.B. of proposed Form A, 17 CFR 239.4. For a discussion of the nature of and reasons behind the disqualifications, *see* Section V.A.2.g. of this release.

[175] *See* proposed Items 1101—1113 of Regulation S–K, 17 CFR 229.1101—229.1113.

[176] *See* proposed Item 1107 of Regulation S–K, 17 CFR 229.1107.

[177] *See* proposed Item 1105 of Regulation S–K, 17 CFR 229.1105.

[178] See proposed Item 1106 of Regulation S–K, 17 CFR 229.1106.

[179] *See* proposed Item 1107 of Regulation S–K, 17 CFR 229.1107.

[180] *See* proposed revisions to Guide 5, referenced in 17 CFR 229.801(e).

[181] Section 12(a)(2) liability also would attach to any information in the registration statement that is part of a prospectus. Section 12(a)(2) also would attach to any oral communication used to offer or sell the securities.

[182] The filed Exchange Act reports would also be subject to Section 18 liability. *See* Section XI.A.3 of this release for a discussion of Section 18 of the Exchange Act.

[183] A Form A issuer may not incorporate Exchange Act reports filed after the effective date except through a post-effective amendment. Forward incorporation is not available on Form A.

As proposed, Form A registrants would not be permitted to undertake delayed shelf offerings of securities under Rule 415. Those registrants could, however, undertake other shelf offerings, such as continuous offerings. In those offerings, the registrant could use prospectus supplements to change the prospectus in the registration statement after effectiveness. Because prospectus supplements are not set forth in post-effective amendments, it has been argued that Section 11 liability does not attach to them. It is our view that these supplements are part of that prospectus and Section 11 liability applies to the information in them.

All of the materials described above would be subject not only to the civil liability provisions of the Securities Act, but also to the antifraud provisions of the Securities Act and the Exchange Act. The proposals would have no effect on the applicability of those provisions.[185]

Rule 167 defines any communication made more than 30 days before filing in a Form A-registered offering as not being an offer to sell or offer to buy securities for purposes of Section 5(c) of the Securities Act. Because of this definition, neither Section 11 nor Section 12(a)(2) of the Securities Act would attach to these communications. However, these definitions do not affect the application of the anti-fraud provisions of the Exchange Act or the Securities Act. For example, any communication "in connection with the purchase or sale" of a security would be subject to Exchange Act Section 10(b), regardless of Rule 167. Similarly, any "offer or sale of any security" would be subject to Securities Act Section 17(a).

2. Form B Offerings

In a Form B-registered offering, the liability provisions would apply to written disclosures as follows:

- Section 11 would apply to all information in the registration statement, including:[186]
  - The term sheet,
  - Offering information used during the offering period,[187]
  - The Exchange Act reports incorporated by reference into the registration statement,
  - Material updates to the disclosure in the incorporated Exchange Act reports, and
  - All other information included in the registration statement, including exhibits;
- Section 12(a)(2) liability would always apply to "free-writing" materials that are used during the offering period, including regularly released forward-looking information;
- Section 12(a)(2) liability may apply to factual business communications during the offering period;
- Section 17(a) liability would apply to any communication that constitutes an offer of a security, regardless of whether that offer was made during the offering period; and
- Exchange Act Section 10(b) liability would apply to any communication in connection with the purchase or sale of a security, regardless of whether that communication was during the offering period.

a. Section 11

Section 11 liability would attach to all information in the Form B registration statement. Offering information that is used during the offering period must be filed as part of the registration statement. Offering information used in the period beginning 15 days before the first offer and ending with the filing of the registration statement must be filed with that registration statement. Because the offering period runs through the completion of the offering, all offering information—including pricing information—used after filing of the registration statement would have to be filed as an amendment to the Form B registration statement.

A Form B registrant must incorporate by reference into the registration statement its last annual report filed under Section 13(a), and all Exchange Act reports that it files thereafter up to the date of effectiveness of the registration statement. A Form B registrant also must incorporate by reference into the registration statement all Exchange Act reports it files between effectiveness of the Form B registration statement and the completion of the offering.

A Form B registrant must inform potential investors of material updates to its Exchange Act reports. The registrant would accomplish this through the use of offering information that is filed as part of the effective Form B registration statement.

b. Section 12(a)(2)

Section 12(a)(2) liability would always apply to free writing materials that are used during the offering period. Among other communications, regularly released forward-looking information would be included in this category of information.[188]

Free writing materials used during the offering period would have to be filed in accordance with Rule 425. Free writing materials used in the period beginning 15 days before the first offer and ending with the filing of the registration statement must be filed under Rule 425. Because the offering period runs through the completion of the offering, free writing materials used after filing of the registration statement also must be filed under Rule 425. Section 12(a)(2) liability would attach to all free writing materials the registrant uses, whether or not they are filed under Rule 425 as required.

While factual business communications are not "free writing" materials,[189] Section 12(a)(2) may still apply to those communications during the offering period if they are made to offer securities.

c. Section 17(a) and Exchange Act Section 10(b)

Section 17(a) liability would apply to any communication in the offer or sale of a security, regardless of whether that communication was made during the offering period. Exchange Act Section 10(b) liability would apply to any communication in connection with the purchase or sale of a security, regardless

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[184] *See* Securities Act Section 11(a), 15 U.S.C. § 77k(a), and Item 512(a)(2) of Regulation S–K, 17 CFR 229.512(a)(2).

[185] *See* Exchange Act Section 10(b), 15 U.S.C. § 78j(b), Exchange Act Rule 10b–5, 17 CFR 240.10b–5 and Securities Act Section 17(a), 15 U.S.C. § 77q(a).

[186] Section 12(a)(2) liability also would attach to any information in the registration statement that is part of a prospectus and to any oral communication used to offer or sell the securities.

[187] The offering period would begin 15 days before the first offer is made and end at the completion of the offering.

[188] Proposed Securities Act Rule 168, 17 CFR 230.168, would define "regularly released forward-looking information" and exempt it from the prohibition on pre-filing offers in Section 5(c). This exemption would be more significant for Form A-registered offerings, because all pre-filing offers in connection with offerings registered on Form B would be exempt from Section 5(c) under proposed Securities Act Rule 166, 17 CFR 230.166. Regularly released forward-looking information must be filed under proposed Securities Act Rule 425, 17 CFR 230.425.

[189] Proposed Securities Act Rule 169, 17 CFR 230.169, would define "factual business communications" and exempt them from the prohibition on pre-filing offers in Section 5(c). This exemption would be more significant for Form A-registered offerings, because all pre-filing offers in connection with offerings registered on Form B are exempt from Section 5(c) under proposed Securities Act Rule 166, 17 CFR 230.166. Proposed Securities Act Rule 425, 17 CFR 230.425, would state that registrants need not file "factual business communications," regardless of when they are made.

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of whether that communication was during the offering period.

Rule 167 defines any communication made more than 30 days before filing in a Form A-registered offering as not being an offer to sell or an offer to buy the securities being offered under the registration statement. Rule 167 has a similar treatment for communications made before the offering period in a Form B-registered offering. Because of this rule, neither Section 11 nor Section 12(a)(2) would attach to these communications. Rule 167 does not, however, affect the application of Section 17(a) or Exchange Act Section 10(b) to these communications.

D. Form C Offerings

1. Use of Form C

Under the proposed system, business combinations and exchange offers would be registered exclusively on proposed Form C.[190] Proposed Form C would permit all offerings that were available on Forms S–4 and F–4. One form would be available for both domestic and foreign issuers.[191] A registrant must use Form C, or SB–3 if a small business issuer, to register an offering under the Securities Act that is:

1. A business combination transaction of the type specified in Rule 145(a);

2. A merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

3. An exchange offer for securities of the issuer or another entity;

4. A public reoffering or resale of any securities acquired pursuant to this registration statement; or

5. More than one of the kinds of transactions listed in paragraphs 1. through 4. registered on one registration statement.

2. Relationship with Exchange Act Rules

Like Forms S–4 and F–4, the proposed Form C prospectus may serve as the proxy or information statement used in connection with the proposed transaction. Form C would be deemed to meet the informational and filing requirements of the proxy or information statement rules under Section 14 of the Exchange Act and Regulations 14A and 14C.

In a companion release, the Commission is also proposing changes to the Exchange Act and Williams Act regulatory scheme applicable to extraordinary transactions, including the rules under Sections 13(e), 14(a), 14(c), 14(d) and 14(e).[192] For a more complete discussion of the rationale behind the extraordinary transactions proposals, you also should read that Release.

3. Timing of Form C

As proposed, a Form C registration statement would be subject to Commission staff review and would become effective in the same manner that Forms S–4 and F–4 become effective today. Although some Form C registration statements would be filed by large seasoned issuers acquiring large seasoned companies, we have not proposed automatic effectiveness for Form C under the theory that the market is not informed at the time of filing about the pro forma effects of the transaction. We solicit comment, however, regarding whether all registration statements filed on Form C (except Rule 13e–3 and roll-up transactions) should become effective automatically upon filing or on an expedited schedule (*e.g.*, 20 days after filing). Should Form C registration statements filed by Form B-eligible companies become effective automatically upon filing, similar to the Form B registration statement? Should Form C registration statements become effective automatically or on an expedited schedule if the company to be acquired would meet the Form B public float/ADTV test? What if both the registrant and the company being acquired would meet that test? Should Form A registrants eligible to determine the timing of effectiveness of a Form A registration statement also be able to control timing of their Form C registration statements? Are there any categories of offerings on Form C that should be granted automatic or expedited effectiveness, such as exchange offers?

4. Structure of Form C

In keeping with other Securities Act registration forms, there are two parts to Form C: information included in the prospectus (Part I) and information not included in the prospectus (Part II).

a. Part I—Information Required in the Prospectus

Like current Forms S–4 and F–4, Part I is divided into four sections: information about the transaction, information about the registrant, information about the company being acquired, and voting and management information.

i. Information About the Transaction

The first section requires the disclosure of information about the proposed transaction. In addition to other information, this section requires a prospectus summary, a summary of the material features of the proposed transaction and a presentation of pro forma financial information.[193] This section is designed to elicit material information about a transaction that should be presented in a prospectus subject to Securities Act liabilities which is delivered to investors. We solicit comment on whether Form B-eligible registrants should be required to comply with the mandated disclosure requirements for transactional information as described in this section or whether these registrants should be permitted somewhat more freedom to develop their own transactional disclosure, much as they would on Form B.

ii. Information About the Registrant

The second section mandates the disclosure regarding the information required about the registrant and prescribes different levels of information required to be presented in the prospectus incorporated by reference, depending on which Securities Act form the registrant could use in making a primary offering of its securities. Current Forms S–4 and F–4 apply different levels of registrant disclosure based on the registrant's eligibility for Forms S–1, S–2, S–3, F–1, F–2 and F–3. Proposed Form C continues this approach and reflects the proposed re-tiering of the registration forms.

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[190] Small business issuers, however, would register business combinations and exchange offers on proposed Form SB–3. For an explanation of Form SB–3, *see* Section V.E.4. of this release. A small business issuer's disclosure requirements would not differ substantially from Form S–4 today. Form C would thus provide no additional benefits to small business issuers than Form SB–3 and, for tracking purposes, small business issuers would be barred from using Form C. A small business issuer may, of course, provide more information on Form SB–3 than required by the small business disclosure regime.

[191] U.S. registrants must provide all information required by the Items of the Form except where the Item expressly identifies the requirement as applying only to foreign registrants. Similarly, foreign registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to U.S. registrants.

[192] *See* Exchange Act Release No. 40633 (Nov. 3 1998).

[193] Other information required by this section include: a description of material contacts between the registrant and the company being acquired; information required for reofferings by persons deemed to be underwriters; disclosure regarding the interests of named experts and counsel; and disclosure of the Commission's position on indemnification for Securities Act liabilities.

Real estate entities would be required to provide additional information specific to that industry. That information includes disclosure regarding: risk factors; the organization; tax treatment; certain relationships and related transactions; selection, management and custody of investments; conflict of interest policy and limitations of liability.

(A) Form B Eligible Registrants

If the registrant meets the registrant eligibility requirements of General Instruction I.B. and the public float/ADTV test of Form B, it may elect to satisfy company disclosure requirements through incorporation by reference. The registrant would provide substantially the same information that a Form S–3 or F–3 eligible issuer currently provides on Forms S–4 and F–4:

1. A description of any material change in the affairs of the registrant that is not already described in a filing with the Commission which is incorporated by reference into the Form C;
2. Incorporation by reference of its latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act and any other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year; and
3. Under certain circumstances, incorporation by reference of the description of capital stock contained in an Exchange Act registration statement.[194]

(B) Seasoned Form A Registrants

If the registrant meets the eligibility requirements for incorporation by reference in Form A, it may elect to comply with the incorporation by reference option in Form C.[195] A registrant choosing this option must incorporate by reference into the prospectus and deliver with the prospectus its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act and either deliver or include in the prospectus the information in Part I of Form 10–Q or 10–QSB for the most recent fiscal quarter. The registrant must deliver the information required by this option with the first prospectus it sends. As with Form A, it need not deliver that information with any subsequent prospectus it sends to the same person.

The disclosure required from seasoned Form A registrants would also include a description of any material change in the registrant's affairs that is not already described in a filing with the Commission and incorporated by reference into Form C.

Unlike current Form S–4, Form C would not permit delivery of a company's glossy annual or glossy quarterly report to security holders in lieu of delivery of a Form 10–K or Form 10–Q report. Just as we are soliciting comment on whether to provide the option to incorporate and deliver a company's glossy annual and quarterly report in lieu of a company's Form 10–K and Form 10–Q for "seasoned" companies filing on Form A, we solicit comment on whether we should provide this option for seasoned Form A companies filing on Form C.

(C) All Other Registrants

All registrants ineligible for Form C's two incorporation by reference options would disclose in the registration statement the same information as current Forms S–4 and F–4 require of Forms S–1 and F–1 registrants. In addition, real estate entities would disclose the information required by the following proposed items of Regulation S–K: Item 1105, Operating and financing activities; Item 1106, Real estate and other investment activities; and Item 1107, Description of real estate and operating data.

iii. Information About the Company Being Acquired

Similar to current Forms S–4 and F–4, proposed Form C would require presentation of disclosure about the company being acquired in the registration statement. Presentation of disclosure could be made under the same options that would be available to the registrant. Thus, a company to be acquired would refer to the "Information About the Registrant" section to determine whether and how it could incorporate by reference.

Forms S–4 and F–4 give non-reporting companies to be acquired a choice about the amount of disclosure that they provide. They may either provide the full company information required by reporting companies[196] or provide abbreviated company information which only non-reporting companies are permitted to provide.[197] Form C proposes different disclosure requirements than on current Forms S–4 and F–4. Form C would require a non-reporting company to provide the same non-financial disclosure as a reporting company[198] but would not require the company to provide the full financial statement disclosure that a reporting company would have to provide.[199] We solicit comment on what non-financial disclosure should be required by non-reporting companies. Would the requirement to provide the same information as reporting companies be unduly burdensome on these companies? If so, what information should be required by non-reporting companies?

iv. Voting and Management Information

Form C would require issuers to present much the same information in the Form C prospectus as they would be required to present in Forms S–4 and F–4 today. If either the registrant or the company to be acquired is soliciting proxies, consents or authorizations, Form C would require information about: the meeting, the vote required for approval, revocability of proxy, dissenters' rights, persons making the solicitation, persons with substantial interest in the matter and voting securities of principal holders.

Whether or not proxies, consents or authorizations are being solicited, and in the case of exchange offers, Form C would require information concerning voting securities and the principal holders of such shares with respect to all directors and executive officers of both entities. Form C would require information about directors and executive officers of the surviving or acquiring company, certain relationships and related transactions and executive compensation. If eligible to incorporate by reference, the registrant or the company to be acquired could incorporate this information into the prospectus in lieu of presenting the information in the prospectus.

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[194] The description of capital stock must be incorporated only if capital stock is being registered and securities of the same class are registered under Section 12 of the Exchange Act, and such stock is either listed for trading or admitted to unlisted trading privileges on a national securities exchange or bid and offer quotations for such stock are reported in an automated quotations system operated by a national securities association.

[195] See Sections V.B.1.a.iii.(A) and V.B.4. of this release regarding Form A issuers eligible to incorporate by reference. Section 11 would apply to all documents incorporated by reference in Form C.

[196] *See* Item 17(a) of Form S–4 and Item 17(a) of Form F–4.

[197] *See* Item 17(b) of Form S–4 and Item 17(b) of Form F–4.

[198] Form S–4 does not require non-reporting companies to be acquired to provide the information required by Item 102 of Regulation S–K (description of property), Item 103 of Regulation S–K (legal proceedings) or Item 304(a) of Regulation S–K (changes in and disagreements with accountants on accounting and financial disclosure). Form C would require both reporting and non-reporting companies to provide this information. Similarly, Form F–4 does not require non-reporting companies to be acquired to provide the information required by Item 2 of Form 20–F (description of property), Item 3 of Form 20–F (legal proceedings), Item 6 of Form 20–F (exchange controls) and Item 7 of Form 20–F (taxation). Form C would require both reporting and non-reporting companies to provide this information.

[199] *See* Items 18(c) and 21(b) of proposed Form C, 17 CFR 239.6. For a more complete discussion of this proposal, *see* Exchange Act Release No. 40633 (Nov. 3, 1998).

b. Part II—Information Not Required in the Prospectus

Just as in Form S–4 and F–4, Part II of proposed Form C would require, in the registration statement but not in the prospectus that is delivered to shareholders, information about indemnification of directors and officers, exhibits and undertakings.

5. General Instruction G. of Form S–4

Proposed Form C would not include any instruction to parallel General Instruction G. of Form S–4 regarding the formation of bank or savings and loan holding companies. This General Instruction is part of Form S–4, but is no longer needed in the business combination form because Congress has amended the Securities Act.[200] Section 3(a)(12) exempts from registration the vast majority of those transactions eligible for General Instruction G.[201] In those limited situations in which an offering regarding the formation of a bank or saving and loan holding company falls outside of the Section 3(a)(12) exemption, the registrant may still register the transaction on any form appropriate to the registrant and transaction. In addition, Staff Accounting Bulletin 50, which permits abbreviated financial statements, would still be available in this transaction.

6. Small Business—Business Combinations

Small business issuers would not be permitted to register an offering involving a business combination on Form C. Instead, we are proposing a new form, Form SB–3, which is a small business combination form.[202] Due to the necessary different requirements of larger domestic and foreign issuers and those issuers in the small business reporting regime, the use of two forms is necessary for business combinations to provide clarity for the registrant as to the requirements of the particular offering.

In the event that a registrant filing on Form C is registering an acquisition of a company that is reporting pursuant to the small business issuer regime, the small business issuer need only provide the information in the registration statement that it would be required to provide if the offering was registered on Form SB–3.

E. Small Business Issuers

1. Small Business Issuers' System

In 1992 and 1993, we adopted special registration forms under the Securities Act for smaller issuers: Forms SB–1 and SB–2.[203] We also adopted special forms for these issuers to use in registering and reporting under the Exchange Act.[204] The disclosure requirements of those forms are less extensive than the ones that apply to larger issuers.

The small business issuer registration and reporting systems were designed to facilitate capital-raising by small businesses and reduce their costs in complying with the federal securities laws. A small business issuer generally is any issuer with less than $25 million in revenues and a public float of less than $25 million.[205]

2. Re-defining "Small Business Issuer"

Since the Commission adopted the "small business issuer" definition in 1992, economic and market changes have occurred. While annual inflation rates have remained low, the nation's economy has experienced significant growth. Revenue levels of most public companies increased substantially, and their market capitalizations rose even more dramatically. This growth in revenues and market capitalization levels has effectively reduced the percentage and number of public companies qualifying as small business issuers.[206] Many companies that would have met the definition of small business issuer in 1992 now do not qualify as small business issuers even though they remain relatively small. These companies must satisfy the more extensive disclosure requirements of Regulation S–K and S–X in preparing their registration statements and periodic reports.

We have had six years of successful experience with the small business issuer disclosure system. Our experience indicates that small business issuers have incurred less cost, time and burden in preparing disclosure documents based on the streamlined disclosure requirements. The system has improved their access to capital and increased their competitiveness against larger companies without reducing investor protection. For these reasons, we are proposing to redefine "small business issuer" by revising the criteria in the definitions.[207]

We are proposing to raise the revenues test to $50 million and eliminate the public float test. As a result, 1100 more public companies would meet that revenues test than satisfy the current $25 million revenues test today.[208] The $50 million revenues test also would reinstate the percentage of public companies that met the revenues test in 1992.[209] While the percentages remain constant, 500 more public companies would meet the $50 million revenues test than met the $25 million revenues test in 1992.

Our proposal would aid non-reporting companies with revenues between $25 and $50 million that plan to register initial public offerings under the Securities Act or propose to register a class of securities under the Exchange Act. Also, reporting companies that are small business issuers would be able to remain in the small business disclosure system until their revenues grow to $50 million.[210]

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[200] Riegle Community Development and Regulatory Improvement Act, Pub. L. No. 103–325, Title III, § 320, 108 Stat. 2225 (1994) amending § 3(a) of the Securities Act (15 U.S.C. § 77c(a)).

[201] Transactions in which the rights and interests of security holders in the holding company are not "substantially the same" as those in the bank or savings and loan association before the transaction are not exempted from registration by Section 3(a)(12) but would have satisfied General Instruction G. of Form S–4.

[202] *See* Section V.E.4. of this release for a discussion of proposed Form SB–3.

[203] Securities Act Release No. 6949 (July 30, 1992) [57 FR 36442] (adopting Form SB–2) and Securities Act Release No. 6996 (Apr. 28, 1993) [58 FR 26509] (adopting Form SB–1).

[204] These Exchange Act forms are: Form 10–SB (the form used to register a class of securities under the Exchange Act); Form 10–KSB (the annual report form); and Form 10–QSB (the quarterly report form). We also revised the requirements for annual reports to security holders and proxy and information statements of small business issuers. *See* 17 CFR 240.14a–3(b), Note to Small Business Issuers; 17 CFR 240.14c–3(a)(2), Note to Small Business Issuers; and 17 CFR 240.14a–101, Note G—Special Note for Small Business Issuers.

[205] 17 CFR 230.405. Other conditions also must be met. The issuer must be either a U.S. or Canadian issuer and must not be an investment company under the Investment Company Act of 1940. In addition, if the issuer is a majority-owned subsidiary of another company, the parent also must be a small business issuer.

[206] In 1992, we indicated that 42% of public companies had revenues of less than $25 million and 63% had market capitalizations under $25 million. Securities Act Release No. 6924 (Mar. 20, 1992) [57 FR 9768]. Today, these percentages have fallen to 31% and 24%, respectively. (This data is derived from a Compustat database for 9,698 public reporting companies as of June 24, 1998.) While about 3,600 public companies met the $25 million revenues test in 1992, only about 3,000 public companies meet that test today. Our analysis necessarily excludes private companies as information for them is not generally available.

[207] *See* proposed revisions to Securities Act Rule 405, 17 CFR 230.405; Exchange Act Rule 12b–2, 17 CFR 240.12b–2; and Item 10 of Regulation S–B, 17 CFR 228.10.

[208] Currently, almost 4,100 public companies have revenues below $50 million.

[209] Approximately 42% of public companies met the $25 million revenues test in 1992. The same percentage would meet the $50 million test today.

[210] Currently, reporting companies that are not in the small business disclosure system are able to use that system only if they meet the revenues and public float tests for two consecutive years. *See* 17 CFR 228.10(a)(2)(iv). We would alter that treatment for purposes of the transition from the $25 million thresholds to the $50 million threshold. Under our proposals, we would allow a reporting company to switch to the small business issuer disclosure system immediately in the first year after the proposals become effective if it had revenues of less

We would eliminate the public float test from the small business issuer definition. The small business system is designed to simplify and reduce the cost of raising capital for start-up, developing and small businesses. We believe that the size of a company's revenues may be a more indicative measure of whether a company needs the benefits of the small business system than a combined revenues and public float test. While the public float test for small businesses may be correlated with the size of a company's operations, it can, at times, penalize those small businesses that the market believes to have promising prospects. The elimination of the public float test also would simplify the regulatory scheme. Accordingly, we propose that a company that has less than $50 million in revenues would qualify as a small business issuer regardless of the size of its public float.

We request your comments on the proposed revised definition of small business issuer.[211] Should the proposed revenues level be higher (such as $60 or $70 million) or lower (such as $45 or $40 million)? Why? Should the public float test be retained? If retained, should it also be set at $50 million or should it be retained at $25 million or increased to $60 or 70 million? Should another measure, such as assets level or market capitalization, be used to define small business issuers? If another measure is used, what dollar level would be appropriate and why?

We are not proposing to change the time period over which revenues would be considered. Under the current definition, a non-reporting company would look at the amount of its revenues during its last fiscal year (and public float as of a date within 60 days before filing its registration statement). A reporting company would look at its revenues (and public float) as the end of its last two consecutive fiscal years. We would continue to apply this approach. Thus, a private company filing either an initial public offering under the Securities Act or registering a class of securities under the Exchange Act would look to its revenues during the its last fiscal year. A public reporting company that is in the small business disclosure system would be required to leave the system if it had revenues over $50 million in each of its last two consecutive fiscal years. A public reporting company which is not in the small business disclosure system would have to earn less than $50 million revenues in each of its last two consecutive fiscal years before it would be permitted to switch to the small business system. We solicit your comments as to whether a revenues test based on a longer time period, such as three years, or an average annual revenues test based on a three-year period, would be better.

3. Proposed Changes to Form SB–2

We propose changes to Form SB–2 to permit seasoned small business issuers to incorporate their previously filed Exchange Act reports by reference.[212] In most cases, the Exchange Act disclosure would satisfy the company disclosure requirements of Form SB–2. By delivering previously prepared documents, the small business issuer would avoid the expense, time and effort required in recreating this disclosure. Those issuers would continue to include the same information about the offering, such as use of proceeds and plan of distribution disclosure, in the prospectus.[213] We believe there is no compelling reason to preclude the small business issuer from incorporating by reference to the same extent as a Form A issuer. If we extend this option to small business issuers, they will not need to leave the less extensive small business disclosure system in order to enjoy the benefits of incorporation by reference.[214]

a. Conditions for Using Incorporation by Reference

The conditions for using incorporation by reference in Form SB–2 would be the same as those in Form A. By using the same criteria, we would treat equally all seasoned Exchange Act reporting companies that are not using Form B, regardless of their size. To use incorporation by reference, the small business issuer would have to have been subject to the Exchange Act reporting requirements for at least a twenty-four-month period and have filed all required reports on a timely basis during the twelve months just before filing the Form SB–2.[215] Likewise, the issuer also must have filed at least two Exchange Act annual reports.

Small business issuers would be subject to the same disqualifications applicable to Form A and Form B issuers relating to the issuer's financial condition, past violation of laws or status as a blank check or penny stock company.[216] In addition, a small business issuer that used the less extensive Regulation A narrative disclosure requirements in its latest annual report on Form 10–KSB would not be allowed to incorporate its Exchange Act reports by reference. We solicit comment on whether we should extend any of Form SB–2's disqualification provisions' "look-back" periods.[217]

Similarly, we are not proposing to permit transitional small business issuers registering on Form SB–1 to use incorporation by reference.[218] We believe it is important that issuers experience at least one cycle of reporting under a comprehensive (as opposed to a significantly streamlined) disclosure regime before graduating to a short-form approach.

We solicit your views regarding whether incorporation by reference should be available to small business issuers. Should their smaller size preclude them from using incorporation by reference? Should we impose additional conditions on small business issuers regardless of what form they use given their smaller size? Should we shorten the reporting history requirement (*e.g.*, to twelve months or twelve months and the filing of one annual report)? Does it take a longer period for those issuers to adjust to the reporting requirements and produce the expected Exchange Act disclosure? Should there be additional disqualifications? For example, should a Form SB–2 issuer not be able to incorporate by reference if a material retroactive restatement of its financial statements or a material disposition of assets is not reflected in its latest

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than $50 million for its last two fiscal years. That transition would be allowed even if the issuer's revenues for those years exceeded the current $25 million threshold or the issuer exceeded the current public float test in those years.

[211] *See* proposed Item 10(a)(1) of Regulation S–B, 17 CFR 228.10(a)(1).

[212] Section 11 would apply to all documents incorporated by reference in Form SB–2.

[213] The offering disclosure requirements are contained in proposed Form SB–2, Items 1–10 and 14.

[214] Form S–2 currently permits incorporation by reference for small business issuers that meet certain requirements. *See* General Instruction II.C. of Form S–2. The proposed changes to Form SB–2 would preserve this option for these issuers. While small business issuers would be eligible to use Form A, use of that Form would involve compliance with Regulation S–K rather than reliance on the small business issuer disclosure system.

[215] *See* proposed Form SB–2, General Instruction D.

[216] *See* Sections V.A.2.g., V.B.1.a.iii.(A) and V.B.4. of this release which discuss the disqualification provisions for Form A and Form B issuers. The disqualification provisions for those Forms are the same as we propose under Form SB–2.

[217] *See* General Instruction E.2. of proposed Form SB–2, 17 CFR 239.10.

[218] Form SB–1 is available for certain small business issuers that register no more than $10 million of securities during any continuous twelve-month period. Form SB–1 permits these issuers to provide the non-financial statement disclosure required under Regulation A, 17 CFR 230.251–263. These narrative disclosure requirements are less extensive than those of Regulation S–B, which governs the disclosure in Form SB–2.

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Exchange Act annual report, even if that information is set forth in the prospectus?

b. How to Incorporate by Reference

Under the proposals, a small business issuer choosing to incorporate by reference must incorporate its latest Exchange Act annual report and all Exchange Act reports filed after the end of the fiscal year covered by that form.[219] It would not be permitted to incorporate Exchange Act forms filed after the effective date of the registration statement.

The issuer must list in the prospectus that is part of the effective registration statement all of the reports that are incorporated by reference.[220] As part of the effective registration statement, all incorporated portions of these reports would be subject to Section 11. If an issuer wanted to incorporate an Exchange Act report filed after effectiveness of the Form SB–2, it would have to file a post-effective amendment to incorporate it into that prospectus.

A small business issuer would have to state in the SB–2 prospectus that it will provide to investors any report that it is incorporating by reference but not providing with the prospectus.[221] It also must identify the reports that it files with or submits to the Commission and describe how investors may obtain those reports.[222]

Small business issuers would have to update the company information in the prospectus if material changes occur after the end of the fiscal year covered by the annual report and are not reported in the Form 10–QSB delivered with the prospectus.[223] In addition, the small business issuer would have to include financial statements of businesses acquired or to be acquired or real estate operations acquired or to be acquired, and pro forma financial information, if that information is required by Regulation S–B[224] and was not in the latest annual report.[225]

Comment is requested on the manner of incorporation of Exchange Act reports. Should issuers be permitted to incorporate reports filed after effectiveness of the Form SB–2 provided that they are deemed incorporated into the prospectus that is part of the effective registration statement?

c. Delivery of Exchange Act Reports

A small business issuer would have to provide copies of its recent Exchange Act reports with the delivered prospectus when it incorporates by reference in the Form SB–2. It must deliver to investors a copy of its latest Exchange Act annual report and state in the prospectus that it is accompanied by that annual report.[226] It also would have to deliver its Form 10–QSB for its most recent fiscal quarter[227] or include that information in the prospectus. Those that choose to deliver the Form 10–QSB would have to state in the prospectus that it is accompanied by that Form.

The issuer would have to deliver the Exchange Act annual report and the Form 10–QSB with the prospectus delivered to investors under proposed Securities Act Rule 172. If the issuer delivers another prospectus to the same investor later on in the offering, it would not have to re-deliver the Exchange Act reports.[228]

Our proposals require delivery of the small business issuer's full Exchange Act annual report rather than an abbreviated glossy annual report to security holders. We believe that most small business issuers are not generally followed by the investment community and the information that they report is not widely disseminated. Because a typical annual report to security holders provides less information to investors than an annual report, we believe the latter would aid investors more.[229] For example, an annual report to security holders does not include complete information about management, executive compensation, security ownership and transactions with related parties. We would require that the issuer deliver this disclosure, which is included in the Exchange Act annual report, with the prospectus.[230]

We solicit comment on these delivery requirements. Should we expand the delivery requirements to require delivery not just of the annual report and most recent Form 10–QSB but also any other Form 10–QSB or Form 8–K filed since the end of the fiscal year covered by the annual report? Should we narrow the delivery requirements? For example, should we allow small business issuers to deliver their annual reports to security holders instead of their Exchange Act annual report disclosure?

d. Other Changes to the Forms

In addition to amending Form SB–2 to permit incorporation by reference, we are rearranging that Form in order to accommodate the new provisions. Also, we are proposing correcting and technical changes to Form SB–2.[231]

4. Form SB–3

a. Use and Timing of Form SB–3

Small business issuers would register business combinations and exchange offers on proposed Form SB–3, rather than Form C. Under the present system, small business issuers must use Form S–4 for these transactions. A General Instruction to the Form lists the Items of Form S–4 with which small business filers are not required to comply. It also lists those Items of other forms that the registrant must comply with in lieu of the Form S–4 Items. We are proposing a separate form for small business issuers to simplify and streamline their disclosure requirements when they register a business combination or exchange offer transaction.

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[219] *See* proposed Form SB–2, Items 11 and 12. A small business issuer that was in the small business disclosure system during its last fiscal year would incorporate its annual report on Form 10–KSB. A reporting company that entered the small business disclosure system after the close of its latest fiscal year would be allowed to incorporate its annual report on Form 10–K or 20–F for its latest fiscal year.

Small business issuers, like larger registrants, have the option of satisfying certain Exchange Act annual report requirements by incorporating portions of their glossy annual reports to security holders under Rule 14a–3 or 14c–3, 17 CFR 240.14a–3 or 240.14c–3, or definitive proxy or information statements filed under Regulations 14A or 14C. *See*, for example, Form 10–KSB, General Instruction E. If a registrant's Exchange Act annual report incorporates from those documents, the incorporated portions also will become part of the Form SB–2 through incorporation of the Exchange Act annual report.

[220] *See* proposed Form SB–2, Item 12(a).

[221] *See* proposed Form SB–2, Item 12(b). The issuer would have to:

(i) Disclose that the information will be provided without cost upon oral or written request; and

(ii) Name the contact person who should receive the request.

[222] *See* proposed Form SB–2, Item 12(c).

[223] *See* proposed Form SB–2, Item 11(e).

[224] 17 CFR 228.310(c)–(e). Item 310(c) requires the financial statements of certain businesses acquired or to be acquired. If those financial statements are required, pro forma financial information also must be provided under Item 310(d). Item 310(e) requires financial information about certain real estate operations acquired or to be acquired.

[225] *See* proposed Form SB–2, Item 11(d).

[226] *See* proposed Form SB–2, Item 11(a). An issuer that incorporates sections of its glossy annual report to security holders or definitive proxy or information statement into its Form 10–KSB also would have to deliver those portions together with the prospectus.

[227] *See* proposed Form SB–2, Item 11(c). If, however, the report for the most recent fiscal quarter is not due before the effective date of the Form SB–2, the issuer would deliver the quarterly report for the fiscal quarter immediately before that one. It could also elect to deliver the later Form 10–QSB even though it is not yet due to be filed under Exchange Act rules.

[228] *See* proposed revisions to Form SB–2, Note to Item 12.

[229] The annual report to security holders of small business issuers must contain the information required by Rule 14a–3(b), 17 CFR 240.14a–3(b). This includes financial statements, changes in and disagreements with accountants, management's discussion and analysis or a plan of operations, a brief description of business, basic management information and market prices for the issuer's common equity and related information. 17 CFR 240.14a–3(b) and 17 CFR 240.14c–3(b).

[230] For similar reasons, we do not propose that small business issuers deliver a quarterly report to security holders instead of the most recently filed Form 10–QSB.

[231] General Instruction A.3. would be revised because it repeats General Instruction A.2. General Instruction B.1. would be amended to remove the reference to Form SR, which was eliminated in September 1997. *See* Securities Act Release No. 7431 (July 18, 1997).

Only registrants that are small business issuers under Rule 405 would be allowed to use proposed Form SB–3. Form SB–3 would be available for the same types of transactions as proposed Form C and current Form S–4.[232] Form SB–3 may serve as the proxy or information statement used in the proposed transaction, like Form C. A Form SB–3 would be subject to Commission staff review and would become effective in the same manner as Form S–4 today.

b. Structure of Form SB–3

In keeping with other Securities Act registration forms, there are two parts to Form SB–3: information included in the prospectus (Part I) and information not included in the prospectus (Part II).

i. Part I—Information Required in the Prospectus

The Part I information of Form SB–3 would be the same as the Part I information required by Form C. It would consist of four sections: information about the transaction, information about the registrant, information about the company being acquired, and voting and management information.

(A) Information About the Transaction

The registrant would have to provide the same information about the transaction as a registrant on Form C would.

(B) Information About the Registrant

This section details the disclosure requirements that apply to the registrant. It includes three different disclosure formats, based upon the level of disclosure that the small business issuer would have to provide in a primary offering. We are proposing this approach with the larger issuers on Form C as well.

(1) Transitional Small Business Issuers

Certain small business issuers provide non-financial statement disclosure in their Exchange Act reports based on Form 1–A.[233] Those disclosure requirements are less detailed than the Regulation S–B requirements, which apply to all other small business issuers. Form S–4 now permits these registrants to provide the same non-financial statement disclosures as they would on Form 1–A, so long as the registrants provided the information required by Form 1–A in their most recent Form 10–KSB. Proposed Form SB–3 would preserve this option. This alternative would be available only if the registrant would be eligible to use Form SB–1. Form SB–3 requires the registrant to supplement the Form 1–A non-financial information with disclosure required by certain items of Regulation S–B. Also, the registrant would have to provide the financial statements called for by Item 310 of Regulation S–B.

(2) Seasoned Small Business Issuers

A registrant that would be able to incorporate by reference from its Exchange Act reports under the proposed changes to Form SB–2 also would be able to incorporate by reference its Exchange Act reports under proposed Form SB–3. Just like seasoned Form A issuers on Form C, if the registrant chooses this option, it must incorporate by reference into the prospectus, and deliver with the prospectus, its latest Exchange Act annual and quarterly reports. Like proposed Form C, Form SB–3 would not permit delivery of a company's glossy annual report to security holders or a quarterly report to security holders.

(3) All Other Small Business Issuers

Registrants that are not transitional small business issuers or seasoned small business issuers would have to provide the same registrant information they are required to by Form S–4 today. A transitional small business issuer or a seasoned small business issuer also may elect to comply with this disclosure format.

(C) Information About the Company Being Acquired

Proposed Form SB–3 would require the same information required by current Form S–4 and that would be required by proposed Form C. If the company being acquired is a small business issuer, information for that company would be provided under the same three options available to the registrant on Form SB–3. If the company being acquired is not a small business issuer, information for that company would be the same as if it were the registrant on Form C.

(D) Voting and Management Information

This section of proposed Form SB–3 would mandate disclosure the same as that required by Form S–4 and proposed Form C. If the registrant or company being acquired is eligible to incorporate by reference, this information also may be incorporated.

ii. Part II—Information Not Required in the Prospectus

Proposed Form SB–3 would require information about indemnification of directors and officers, exhibits and undertakings to be provided in Part II of the registration statement, as required by Form S–4 and proposed Form C.

C. Request for Comments

We request your comments on proposed Form SB–3. Do you believe that a separate form for small business issuers registering a business combination or exchange offer is necessary? Would it be better to include small business issuers on proposed Form C? We propose to allow a small business issuer's acquisition of a company that is not a small business issuer on Form SB–3. Is this appropriate or should those transactions be filed on Form C?

5. Small Business Issuers that Become Reporting Companies

Another way in which we would ease capital formation for small business issuers is to solve a dilemma that arises at times when they seek to register an offering for the first time. Generally, small business issuers have made exempt offerings of securities before they first register an offering. Sometimes those offerings are made under Rule 504 of Regulation D under the Securities Act.[234] Rule 504 states that an issuer subject to the reporting requirements of Section 13 or 15(d) may not rely on the Rule.

That prohibition on reliance by reporting companies has raised registration concerns for companies that issue convertible securities or warrants in compliance with Rule 504 and afterwards become reporting companies.[235] If their convertible securities or warrants remain outstanding at the time they become reporting companies, the ongoing offer and sale of the underlying securities would no longer be covered by Rule 504. Sometimes a reporting issuer can rely on another exemption with respect to the continuing offer and the sale of the underlying securities.[236] If not, the reporting issuer can face the difficult situation of having no exemption and being unable to register the offering of the underlying securities because it has offered the securities before filing a registration statement.[237]

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[232] *See* Section V.D.1. of this release for a discussion of the transactions required to be registered on Form C.

[233] Non-reporting companies use Form 1–A to qualify securities offered under Regulation A, an exemption from registration under Section 3(b) of the Securities Act.

[234] 17 CFR 230.504. That Rule provides an exemption from registration for securities offerings not exceeding $1,000,000 within a 12-month period.

[235] An issuer may become an Exchange Act reporting company in a number of ways. Usually, companies become subject to the reporting requirements either because they register an offering of securities under the Securities Act, they register a class of securities under the Exchange Act before listing or quotation, or they exceed the number of holders and assets tests in Exchange Act Section 12(g).

We are concerned that an issuer would lose the Rule 504 exemption for the underlying securities in these circumstances solely because the issuer has become a reporting company. In fact, holders of convertible securities or warrants may benefit from that transition. They may have access to more information about the issuer if it is a reporting company. Greater access to information always assists investors that have to make investment decisions.

Accordingly, we propose to revise Rule 504 to provide that the status of the issuer as a reporting company does not prevent it from relying on the Rule for the issuance of securities underlying convertible securities and warrants that it previously offered in compliance with the Rule when it was not a reporting company.[238] If the issuer becomes unable to rely on Rule 504 for any reason other than the fact that it became a reporting company, Rule 504 would not be available.

Under this proposal, a reporting company would be able to rely on Rule 504 only for the conversion or exercise of securities if they were offered pursuant to Rule 504. Thus, before the issuer became subject to the reporting requirements, the convertible securities or warrants would have to have been:

1. Immediately convertible or exercisable; or
2. Convertible or exercisable within a year.

We solicit comment on this change to Rule 504. We seek comment about whether we should permit a reporting company to rely on Rule 504 for the offer and sale of securities underlying convertible securities or warrants regardless of when they become convertible or exercisable. For example, should Rule 504 apply to the offer and sale of underlying securities if the issuer becomes a reporting company one year after issuing warrants under Rule 504 that were not exercisable for three years?

Are there reasons to limit reliance on the Rule to a certain period of time after the issuer becomes a reporting company? Should we not allow an issuer to rely on the Rule for the exercise or conversion if the issuer sold the warrants or convertible securities when it could have foreseen that it was about to become a reporting company? For example, should we extend Rule 504 to securities underlying warrants and convertible securities only if the issuer sold them more than six months (or three months) before becoming a reporting company?

6. Small Business Issuer Registration Fees

We also seek to ease the registration process for small business issuers in recognition of unique difficulties they may face due to their size. We are proposing rule revisions that would permit small business issuers filing on small business registration statement forms to delay payment of the Commission registration statement filing fee until shortly before effectiveness.[239] These issuers often face substantial liquidity problems due to their smaller size. The cost of preparing and filing a registration statement is a relatively expensive endeavor for many small business issuers. Those costs may deplete the issuer's liquid resources. By delaying fee payment, these issuers will have extra time, at least for this portion of the offering expenses, to generate funds to pay the fees. This should help ease registration for these issuers.[240]

The amount of securities that a small business issuer is able to sell in a registered offering may not be determined until well after the public offering begins and the issuer can assess investor interest. It is not uncommon that small business issuers have to scale back the amount of its offering. If the issuer were not required to pay the fee until shortly before effectiveness, it would more likely be able to pay only the fee on the amount of securities that will be sold in the offering.

Under the proposals, a small business issuer that wishes to delay fee payment would have to include a Rule 473(a) delaying amendment in its registration statement. It also would have to include an undertaking in the registration statement to pay the fee no later than the day on which it submits a request for acceleration of effectiveness of the registration statement. If a small business issuer files a pre-effective amendment stating that the registration statement shall thereafter become effective under Section 8(a) of the Securities Act (deleted the delaying amendment), it would have to pay the fee no later than the date the amendment is filed. If no fee is paid at that time, the pre-effective amendment would not be considered filed. Where a small business issuer makes an initial filing of a registration statement without the Rule 473(a) delaying amendment, it must pay the registration fee in order for the registration statement to be considered filed. If no fee is paid at that time, the registration statement would not be deemed filed.

We request your comments on this proposed rule change. Should fee payments by small business issuers be delayed until shortly before effectiveness? If not, why not? Should this alternative be available to all small business issuers or only some category of those issuers, such as non-reporting small business issuers? Should this option be allowed for registration statements filed by blank check companies, blind pool companies, or other issuers? Should this option be allowed for all issuers that file on a registration form that is not effective at the issuer's discretion, whether or not the issuer is a small business issuer?[241] Would the Commission staff be inundated with filings by persons who were not necessarily sincere about going forward with offerings? If so, should we require a good faith down payment of the filing fee?

F. MJDS Issuers

In 1991, the Commission adopted rules and forms to create a multijurisdictional disclosure system ("MJDS") with Canada. The

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[236] Under many circumstances, the Section 3(a)(9) exemption would be available for the issuance of securities pursuant to a conversion. Section 3(a)(9) does not generally apply, however, to the exercise of warrants because the exemption is for exchanges by the issuer of securities with its existing security holders and is not available where a commission or remuneration is paid or given directly or indirectly for soliciting the exchange.

[237] Offers of the underlying securities occur upon issuance of the convertible security or warrant where convertible or exercisable within one year. Also, offers of the underlying securities continue until the conversion or exercise has occurred or the conversion or exercise period has ended.

[238] See proposed revisions to Securities Act Rule 504(a), 17 CFR 230.504(a).

[239] *See* proposed revisions to Securities Act Rule 456, 17 CFR 230.456.

[240] Until recently, the Commission has had little flexibility to change the timing of registration fee payments under the Securities Act. Section 6(b)(2) of the Securities Act, 15 U.S.C. §77f(b)(2), provides that registration fees must be paid when a registration statement is filed. That section also says that a registration statement will not be deemed filed unless the fee has been paid. 15 U.S.C. §77f(c). NSMIA revised Section 4(e) of the Exchange Act, 15 U.S.C. §78d(e), to allow the Commission flexibility to specify the time that fee payments are due relative to filings with the Commission.

[241] For example, Schedule B and the following Forms would not always become effective at the issuer's discretion: A, C, F-8, F-9, F-10 and F-80.

Commission's purpose was to facilitate cross-border securities offerings and periodic reporting by eligible Canadian issuers.[242] The MJDS allows eligible Canadian issuers to satisfy registration and reporting requirements under the Securities Act and the Exchange Act by providing the Commission with disclosure documents prepared under Canadian securities law. At the time the Commission adopted the MJDS, Canada's securities administrators adopted a parallel multijurisdictional disclosure system for U.S. issuers. Together, the systems provide that issuers in the United States and Canada are principally subject to the specific disclosure requirements of only their home country when making securities offerings in the other country.

The MJDS may be used only for certain kinds of transactions,[243] and only by issuers that meet the issuer eligibility requirements related to those transactions. Issuer eligibility requirements under the MJDS vary depending on the transaction being registered. One requirement is that an issuer have a minimum public float. To register an exchange offer or business combination under the MJDS, an issuer must have a public float of (CN) $75 million (Canadian dollars).[244] To use the MJDS to register an offering of investment grade securities or to register any securities offering by a larger issuer, the issuer must have a public float of at least (US) $75 million.[245] Registration under the Exchange Act also may be accomplished under the MJDS by a Canadian issuer if it has a public float of at least (US) $75 million. The minimum float requirements were designed so that the MJDS would be used by issuers that were well-known and widely followed by the market.[246] Those issuers are the same type we would allow to use proposed Form B for any offering. We are therefore proposing to replace the public float tests under the MJDS with the same public float/ADTV thresholds proposed for Form B.[247]

A Canadian foreign private issuer that meets the other issuer eligibility criteria under the MJDS therefore would be eligible to use it if:

1. Its public float is (US) $75 million or more and the ADTV of its equity securities is $1 million or more; or

2. The issuer's public float is (US) $250 million or more.

With the combined public float/ADTV test, some issuers may find that the proposed thresholds are more difficult to satisfy than the current MJDS public float test. The proposed thresholds also would have an effect on issuers seeking to register an exchange offer or a business combination because the float would be measured in U.S. dollars instead of Canadian dollars. Because the other public float requirements under the MJDS are measured in U.S. dollars, the proposal would have less of an impact on those transactions.

Despite the possibility that the new eligibility thresholds may preclude some Canadian issuers from using the MJDS, we believe that the reasons that support the proposed thresholds for Form B issuers, as explained above, also support the proposed thresholds for MJDS issuers. Accordingly, we propose to revise the public float tests in Forms F–8, F–9, F–10, F–80, and 40–F to conform to the proposed public float/ADTV thresholds for Form B.

We solicit your comment on this proposal. Should we continue to express the proposed public float/ADTV requirements for business combinations and exchange offers in Canadian dollars rather than in U.S. dollars? Would the higher proposed thresholds allow too few Canadian companies to use the MJDS system? Should the proposed revisions apply to some but not all of the MJDS forms? If so, which ones?

The proposals in this release also would affect MJDS issuers in another way. Form B requires that the issuer previously have filed at least one annual report on Form 10–K or Form 20–F and have registered an offering of securities under the Securities Act using a form other than those, such as the MJDS Securities Act forms, that become effective automatically upon filing. As a result of these requirements, Canadian issuers who file annual reports on Form 40–F or whose previous offerings have been registered under the Securities Act on MJDS forms will not be eligible to use Form B. If we permitted a Canadian issuer to use filings under MJDS as the basis for Form B eligibility, the issuer could access our markets both initially and on a continuing basis without the Commission staff ever reviewing any of its disclosure documents. Thus, we propose to exclude MJDS forms in determining eligibility. Consequently, Canadian issuers would need to plan in advance which registration or reporting forms to use under the Securities Act and the Exchange Act, because they would not be able move back and forth between the MJDS and non-MJDS systems as easily as is currently possible. We solicit comment on this aspect of Form B. In addition, in view of the fact that Form B will provide some of the same benefits as the MJDS, in terms of ease of access to the market, should some or all of the MJDS forms be eliminated in favor of the system proposed in this release? If only some MJDS forms should be eliminated, which ones?

G. Foreign Government Issuers

Proposed Rule 462 would permit certain seasoned foreign government issuers that file registration statements on Schedule B to designate the date and time of the effectiveness of their registration statements by checking a box on the cover page of their Schedules.[248] The issuer could designate that the registration statement be effective automatically upon filing, upon any date and time it specifies, or as designated in a later amendment. Registration statements filed in reliance on the Rule would not be subject to Commission review.

Rule 462 would only be available to foreign government issuers that were registering on Schedule B an offering of at least $250 million that also was underwritten on a firm commitment basis.[249] These issuers also would be required to have a history of registering under the Securities Act. To use Rule 462, a foreign government issuer would have to have registered an offering under the Securities Act within the three most recent years.

The prior registration requirements would guarantee that some public information would be available before a foreign government issuer could rely on the Rule. It also would give the issuer an opportunity to become comfortable with the registration process and disclosure standards of the federal securities laws.

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[242] Securities Act Release No. 6902 (June 21, 1991) [56 FR 30036].

[243] Generally, the transactions permitted under the MJDS include: issuance of securities upon exercise of rights offered to existing shareholders; issuance of securities pursuant to an exchange offer or business combination requiring shareholder vote; issuance of investment grade debt or preferred securities; and securities offerings by larger issuers.

[244] Issuer exchange offers do not require a minimum public float.

[245] That float test is not applicable for offerings of non-convertible investment grade securities.

[246] When the Commission last revised the public float thresholds in the MJDS, we specifically noted that the MJDS public float test was meant to parallel the Form S–3 public float test. Securities Act Release No. 7025 (Nov. 3, 1993) [58 FR 62028].

[247] The proposed revisions would not add a public float requirement for any transaction registered under the MJDS that does not currently require one.

[248] *See* proposed Securities Act Rule 462(f)(1) and (f)(2), 17 CFR 230.462(f)(1) and 230.462(f)(2).

[249] For a delayed shelf offering, the $250 million would be measured based on what is registered at the outset, not what is offered in any single takedown.

The basis for extending automatic effectiveness to these issuers rests on the concept that offerings by seasoned, well-known issuers attract market, analyst and investor attention and recognition. We believe that most investors and analysts would have familiarity with these foreign governments due to their nature and size. The firm commitment underwritten $250 million offering criteria should ensure that their offering also attract significant market, analyst and investor attention. We believe the prior filing requirement would ensure that these issuers had some experience with registration under the Securities Act. These factors would result, we believe, in the generation and dissemination of current public information about the foreign government issuers and their offerings. In this respect, they would be similar to the classes of issuers to which we would extend Form B. We are therefore proposing that, like Form B issuers, these Schedule B issuers may designate the effectiveness of their registration statements.

We seek comment on this proposal. Should we raise the proposed effectiveness rule's offering threshold to something around $500 million or lower it to something around $150 million? Should we require that a foreign government issuer have registered an offering under the Securities Act within 5 years rather than within three years? Should we allow any filing by a foreign sovereign government issuer, other than its initial registered offering, to be effective immediately upon filing? Should other non-financial factors affect the foreign government issuer's ability to designate the effectiveness of its registration statement?

H. Exxon Capital Transactions

If the Commission decides to adopt these proposals, the staff of the Division of Corporation Finance would repeal the line of interpretive letters concerning *Exxon Capital* exchange offers.[250] These interpretive letters allow issuers to sell certain securities in a private offering and shortly thereafter register an offering of substantially identical securities in exchange for those securities privately placed. Issuers use this procedure, in part, because it allows them to avoid the delay associated with registration. Since July 1, 1998, more than one-third of all initial public offerings have been *Exxon Capital* exchanges.

Under these interpretive letters, investors that participate in the exchange may resell their new securities without complying with registration or prospectus delivery requirements of the Securities Act. Prior to these letters, privately placed securities could be registered only for resale, which provides investors with the protection of prospectus delivery requirements and subjects the sellers to the liability provisions of Sections 12(a)(2) and 17(a) of the Securities Act and, if deemed underwriters, Section 11 of the Securities Act.[251]

These proposals would create a registration system that captures the speed and flexibility associated with private offerings while retaining the benefits of registration for investors. Private placements would no longer be an issuer's main choice when needing to complete an offering quickly. Delays commonly associated with registration would no longer exist for Form B issuers and for medium size Form A issuers. Their registration statements would not be subject to prior staff review. Moreover, if such an issuer chooses, its registration statement could be effective upon filing.

The proposed registration system does not exclude the small issuer from these benefits. Small issuers that do not meet the public float requirement of Form B or the float level on Form A to allow control over effectiveness would be able to use Form B to register an offering if they sell only to QIBs. Given the nature of the purchasers contemplated in the *Exxon Capital* line of letters, allowing small issuers to register sales to QIBs on Form B would allow those issuers much of the same flexibility the *Exxon Capital* structure gives them today.

Elimination of this line of interpretive letters would eliminate the ability of these smaller issuers to rely on the *Exxon Capital* line of interpretive letters for sales to non-QIBs. This limitation seems appropriate, as it aligns with our views regarding registered offerings by these issuers to QIBs and the need for additional protections for non-QIBs in offerings by these smaller issuers. Accordingly, we concur with the belief of the Division of Corporation Finance that the *Exxon Capital* line of interpretive letters should be repealed upon adoption of reforms to the registration system. Comment is solicited with regard to whether the *Exxon Capital* line of letters should be repealed sooner or regardless of whether any reform to the registration statement is adopted.

I. The Offset of Filing Fees and Other Technical Changes to the Calculation of Filing Fees

In 1995, the Commission expanded Rule 429[252] to provide a mechanism for issuers to offset the payment of a registration statement filing fee with fees that were previously paid.[253] The amount available for use as an offset under Rule 429 equals the portion of the filing fee previously paid that is associated with any unsold securities registered on an earlier registration statement. Once a filing fee has been used as an offset, those unsold securities on the earlier registration statement are deemed deregistered. This change has proved to be beneficial to issuers.

Rule 429, however, also provides for the use of a combined prospectus for multiple offerings. At times, the combination of fee offset procedures and combined prospectus procedures in the same rule has resulted in confusion as to whether an issuer is offsetting fees or is combining prospectuses. To avoid that confusion, we propose to move the fee offset procedures into Rule 457, which currently deals with fee payment.[254]

We also propose revisions to the fee offset procedures to allow issuers to offset filing fees on more occasions. Currently, fee offset is not possible if the issuer withdraws the earlier registration statement. Under the proposals, we would allow issuers to offset a registration statement filing fee in the same manner regardless of whether it withdraws the registration statement. To assist the Commission in tracking the payment of filing fees and allow for more accurate estimates of future filing fee payments, the proposals would provide that any offset must occur within five years of the completion or termination of the initial registration statement.

We also are proposing to amend Rule 457 to codify certain staff interpretations as follows:

(i) No additional filing fee would be required to be paid for a resale offering of securities, where such securities were received and a filing fee was paid, in connection with a registered offering involving an exchange, reclassification or recapitalization;[255]

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[250] *See, e.g., Exxon Capital Holdings Corp.* (May 13, 1988); *Morgan Stanley & Co Inc.* (Mar. 27, 1991); *Mary Kay Cosmetics, Inc.* (June 5, 1991); *Shearman & Sterling* (July 2, 1993); *Brown & Wood LLP* (Feb. 5, 1997).

[251] The basic premise underlying the *Exxon Capital* line of interpretive letters is that the securities exchanged in reliance on those letters would remain in the institutional investor secondary market.

[252] 17 CFR 230.429.

[253] Securities Act Release No. 7168 (May 11 1995).

[254] *See* proposed Rule 457(p), 17 CFR 230.457(p).

[255] *See* proposed Rule 457(f)(5), 17 CFR 230.457(f)(5).

(ii) We would not require payment of a filing fee for the registration of an indeterminate amount of securities to be offered solely for market making purposes by an affiliate of the issuer;[256] and

(iii) In offerings by selling security holders, the issuer may calculate the filing fee using the total aggregate dollar amount to be offered, rather than setting forth the number of securities and information based on that just as in offerings where issuers are selling.[257]

J. Solicitation of Comments Regarding Offerings of Asset-Backed Securities Offerings

Currently, issuers (*i.e.*, trusts or other limited purpose entities) and registrants (*i.e.*, sponsors, servicers or depositors) may register an offering of investment grade asset-backed securities on Form S–3 whether or not they are subject to the Exchange Act's reporting requirements. Form S–3 does not require an issuer or registrant of investment grade asset-backed securities to have been reporting under the Exchange Act because asset-backed securities are valued primarily on the pool of assets chosen, not on an issuer or registrant's limited operations.[258] Moreover, historical Exchange Act reports filed by the issuer or registrant of asset-backed securities generally are viewed as of little assistance to investors since such reports would reflect the results of a different pool of assets than those backing the securities being offered. Investors of asset-backed securities often look to a nationally recognized statistical rating organization's (NRSRO) ratings when making their investment decisions.

As proposed, neither Form B nor Form A is designated for use in registering offerings of asset-backed securities.[259] The Commission staff is engaged in an ongoing project to consider development of disclosure and registration requirements specifically related to asset-backed securities. The Commission staff intends to develop proposals with respect to asset-backed securities offerings in connection with that project. To gather more information, we solicit comment about the treatment of these types of offerings in relation to the proposals in this release.

Overall, should treatment of asset-backed securities offerings be the same as or similar to treatment of Form A offerings or Form B offerings? Should we continue to distinguish asset-backed securities on the basis of whether or not they are investment grade securities? Should offerings of investment grade asset-backed securities be treated more like Form B offerings and other asset-backed securities offerings be treated more like Form A offerings? Should we require that one or more NRSROs have rated the securities?

Should the Commission give registrants in some asset-backed offerings greater freedom to craft disclosure about the offering without binding them to all of the itemized disclosure in Regulation S–K? If so, how should the mandated items differ from the ones mandated in Form B? Should the Commission craft a separate regulation setting forth mandated asset-backed offering disclosure items? Should communications restrictions applicable before filing a registration statement and during the registration process be more akin to those applicable to offerings on Form A, Form B or neither?

Should the Commission preserve staff review for all asset-backed offerings or are there categories of such offerings that the Commission need not review for the purpose of investor protection? Should the Commission allow the registrant to control effectiveness in any category of asset-backed offerings? Should delivery requirements with respect to asset-backed offerings resemble delivery obligations of Form A offerings, Form B offerings or neither?

VI. Concurrent Exchange Act Registration

We are proposing to permit an issuer to register concurrently both an offering under the Securities Act and a class of securities under the Exchange Act on Form A, Form B, Form C, Form SB–1, Form SB–2, Form SB–3 and Schedule B.[260] A reporting company can register a class of securities under the Exchange Act on a short-form registration statement: Form 8–A.[261] Form 8–A requires a description of the registrant's securities and the filing as exhibits of documents defining the rights of security holders.[262] Current rules require companies that are registering both an offering of securities under the Securities Act and a class of securities under the Exchange Act to file two forms: the Securities Act registration statement and the Form 8–A. Because the proposed Securities Act forms should contain all of the necessary information, we propose to eliminate the Form 8–A filing requirement when the registrant files one of those Securities Act registration statements at that time.[263]

To allow concurrent registration, those registration Forms would have boxes on the facing page for registrants to check to indicate that Exchange Act registration should be concurrent. The registrant would include the title of the class of securities to be registered and the exchange or market on which the securities are to be listed or traded. We also are proposing a new rule to permit foreign governments and their political subdivisions that register securities offerings on Schedule B to register concurrently under the Exchange Act.[264] If these issuers seek concurrent Exchange Act registration, they must include the same paragraph and table on the facing page of their Schedule B registration statements that appear on the Securities Act registration statements for which we will have adopted forms.

We request comment on these concurrent registration proposals. Are there offerings for which concurrent registration should not be available because the securities description in the Securities Act registration statement would not be adequate?[265]

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[256] *See* proposed Rule 457(q), 17 CFR 230.457(q).

[257] *See* proposed Rule 457(o), 17 CFR 230.457(o).

[258] *See* Securities Act Release 6964 (October 22, 1992) [57 FR 56248].

[259] Form S–3 has permitted the registration of investment grade asset-backed securities since 1992. *See* Securities Act Release No. 6964 (Oct. 22, 1992).

[260] The Commission's Task Force recommended concurrent registration in its Report. Task Force Report at p. 86. We first proposed concurrent registration in May 1996 as part of the Phase Two proposals to implement certain recommendations contained in the Report. Exchange Act Release No. 37263 (May 31, 1996) [61 FR 30405]. When we adopted several of the Phase Two proposals in July 1997, we indicated that we would continue to consider the matter in our efforts to streamline the registration process. Exchange Act Release No. 38850 (July 18, 1997) [62 FR 39755]. That release adopted a companion proposal which revised Rule 12d1–2, 17 CFR 240.12d1–2, to permit automatic effectiveness of the Form 8–A as of the effective time of the Securities Act registration statement relating to the same class of securities. We continue to believe that concurrent registration would be beneficial for registrants and are now reproposing it. *See* proposed Exchange Act Rule 12d1–2, 17 CFR 240.12d1–2.

[261] We also permit an issuer registering an initial public offering to use Form 8–A even though it is not a reporting company until after effectiveness of the Securities Act registration statement.

[262] The securities description must provide the information called for by either Item 202 of Regulation S–K or Regulation S–B, as applicable. 17 CFR 229.202 and 17 CFR 228 202. An issuer can incorporate by reference into Form 8–A information that is contained in other filings made with the Commission.

[263] We also propose a revision to clarify that Form 8–A is available for reporting companies only if they are current in their reporting. *See* proposed revisions to General Instruction A of Form 8–A.

[264] *See* proposed Securities Act Rule 499, 17 CFR 230.499.

[265] In the 1996 proposing release, we did not propose to allow concurrent registration for

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VII. Communications During the Offering Process

The Securities Act restricts the types of offering communications that a registrant may use during the time it is engaged in a registered public offering of its securities.[266] The level of restrictions depends on the period during which the communications occur. The Securities Act creates three distinct periods in the registered offering process. The first period occurs before a registrant files a registration statement with the Commission and is commonly called the "pre-filing period." The second period starts with the filing of the registration statement and ends with the effectiveness of that registration statement and is commonly called the "waiting period." The third period follows the effective date of the registration statement. That period is commonly called the "post-effective period."

During the pre-filing period, the Securities Act prohibits the registrant from making any interstate offers or sales of the securities.[267] During the waiting period, the registrant may make certain types of offers (but not sales). Offers made in writing, by radio or by television must conform to the information requirements of Section 10 of the Securities Act. Thus, the Securities Act prohibits the use of supplemental sales literature ("free writing") during the waiting period. Generally, issuers and underwriters make written offers during the waiting period by means of a preliminary prospectus which must be filed with the Commission. Person-to-person oral offers also are allowed during this period and, unlike widely disseminated communications such as radio or television broadcasts, do not have to satisfy the informational requirements of Section 10. During the post-effective period, the registrant may use any materials to offer the securities [268] but only if it delivers the final prospectus before or with those materials.[269] It also may sell the securities.

Congress designed these limitations so that the prospectus would be the primary means for investors to obtain information during the waiting period regarding an offering of securities. Congress' goal was to prevent high pressure sales practices and to provide investors with an opportunity to become familiar with the investment being offered.[270] In fact, the Securities Act originally prohibited both oral and written offers during the waiting period.[271] While that prohibition succeeded in limiting high pressure sales practices, it also limited the time in which investors could become familiar with the investment so as to make an unhurried decision regarding the merits of the securities.[272] That limitation ultimately was revised by Congress in 1954 in favor of permitting certain offers during the waiting period.[273]

The statutory regulation of communications during the pre-filing and waiting periods has not changed since those 1954 amendments. Our capital markets, however, have changed significantly. For example, there have been major advancements in technology and communication media since 1954. There have been many more offerings of increasingly complex and synthetic or hybrid securities. The trends towards globalization of securities markets and multinationalization of issuers and offerings have continued. Among others, these changes have increasingly created conflicts between communications mechanisms to which markets have become accustomed and the restrictions placed by the Securities Act on communications around the time of a registered offering.

The Commission continues to believe that the Securities Act goals of preventing high pressure sales practices and providing investors with the time and opportunity to familiarize themselves with investment opportunities continue to be important today. We believe, however, that the means by which to effectuate those goals can be shaped to facilitate capital formation better and to provide more information on a more timely basis to investors. We do not believe it is appropriate to unnecessarily hinder communications when allowing them would provide benefits to investors and issuers as well as reflect current practices and realities.

A. Issuer Communications Relating to a Registered Offering

1. The Pre-Filing Period

a. Form B Registrants

Today, the largest public companies are followed by numerous analysts that actively seek new information on a continual basis.[274] Unlike smaller and less mature companies, large public companies tend to have a regular dialogue with investors and market participants through the press and other media. Companies in which there is a wide interest are called upon to release *more* information about their activities more often than is expected of lesser-known companies. The markets also absorb information disclosed about these companies at a rapid rate.[275]

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securities to be offered and sold on a delayed basis under Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x), because of concerns about whether an adequate description of the securities would be contained in the Exchange Act registration statement.

[266] Those acting on behalf of the registrant (such as an underwriter) are subject to the same restrictions as the registrant.

[267] Securities Act Rule 135, 17 CFR 230.135, allows an issuer to notify the public of a proposed offering as long as the contents of the notice do not exceed the limited items specified in the rule.

[268] These materials are still subject, of course, to the antifraud and civil liability provisions of the statute.

[269] Final prospectuses must satisfy the informational requirements of Section 10(a) of the Securities Act.

[270] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 3 (1933).

[271] Section 2(a)(3) of the Securities Act originally made no distinction between offers and sales. The term sale was defined to include any: "offer to sell," "offer for sale," "attempt or offer to dispose of, or solicitation of an offer to buy." Consequently, Section 5(a) of the Securities Act prohibited at that time both interstate offers and sales of securities before a registration statement became effective. *See also* S. Report No. 1036, 83rd Cong. 2d Sess. 4 (1954).

[272] *Hearings on S. 2846 Before the Subcomm. of the Senate Comm. on Banking and Currency*, 83rd Cong., 2d Sess. 23 (1954) (statement of Ralph H. Demmler, Chairman of the Securities and Exchange Commission). The regulators soon realized the importance of providing investors with information during the waiting period. The Federal Trade Commission (which administered the Securities Act before the creation of the Commission in 1934) published its view in 1933 that it was permissible for issuers and underwriters to disseminate circulars during the waiting period if they described a security in the same manner a Section 10 prospectus would. *See* Securities Act Release No. 70 (Nov. 6, 1933) [11 FR 10948]; Securities Act Release No. 464 (Aug. 19, 1935) [11 FR 10953]. In 1946, the Commission adopted Rule 131, 17 CFR 230.131, which expressly permitted the use of a preliminary prospectus or "red herring." *See* Securities Act Release No. 3177 (Dec. 6, 1946) [11 FR 14260]. *See also* Securities Act Rules 430 and 430A, 17 CFR 230.430 and 230.430A.

[273] The 1954 amendments were intended to codify practices with regard to communications during the waiting period and finally resolve concerns that dissemination of preliminary information during the waiting period would breach the prohibition against offers. *See Hearings Before the H.R. Comm. on Interstate and Foreign Commerce*, 83rd Cong., 1st Sess. 66 (1953) (statement of Richard B. McEntire, Commissioner of the Securities and Exchange Commission). *See also* H.R. Rep. No. 1542, 83rd Cong., 2d Sess. 7 (1954).

[274] For example, companies with a $250 million or higher market capitalization have, on average, 15 research analyst firms following them.

[275] A staff study on the market's absorption of information found that the speed of price discovery is positively associated with companies' market capitalizations, public floats and ADTVs. The staff found that combination tests of ADTV and either public float or market capitalization are more closely associated with the speed of price discovery than tests of only public float, only market capitalization or only ADTV. *See* Eligibility Requirements for Firms Receiving Preferred Registration Status in the Registration and Disclosure Reform Proposal (April 30, 1997).

Technological innovations that permit instantaneous communications are a driving force behind this decade's securities market.

Given the abundance of readily accessible information about large, seasoned public companies, any communications made by them while in the process of registering an offering are less likely to have a significant impact by conditioning the market or stimulating interest in a proposed offering.[276] Accordingly, we are proposing to remove the restrictions on offering communications by those companies during the pre-filing period.[277] We are proposing an exemption to provide that offers may be made in the pre-filing period.[278]

For a large, seasoned company to rely on the proposed exemption for any offering, it must have filed all of its periodic reports under the Exchange Act for at least one year on a timely basis and have filed at least one annual report. It also must have either:

1. A public float with a market value of at least $250 million; or

2. A public float with a market value of at least $75 million and the average daily trading volume for its equity shares of at least $1 million.

These mirror the eligibility criteria for Form B registration by large well-followed issuers discussed earlier.

The proposed registration system also contemplates use of Form B for offerings by smaller issuers that do not meet Form B's public float and ADTV eligibility tests. Those offerings would be limited to: offerings solely to QIBs;[279] offerings to certain existing shareholders;[280] offerings of investment grade securities; offerings of certain investment grade asset-backed securities; and offerings in connection with market making transactions. We propose to treat these Form B issuers in the same manner as we would treat large seasoned issuers that would register their offerings on Form B. Accordingly, their ability to offer registered securities also would not be contingent on the prior filing of the registration statement for the offering.[281]

These offerings would be directed mainly to existing shareholders of the issuer, such as under a DRIP, or to investors that, because of their status, have unique access to information about the issuer, such as a QIB. Offerees that have an existing connection with, or a prior investment in, the issuer could be presumed to follow the issuer in order to monitor their investment.[282]

In the case of DRIPs, the participant already has made an investment decision about the issuer—to participate in the DRIP—thus, the investor would be likely to obtain information about the issuer both on its own and from the issuer. We believe the investors in these Form B offerings, due to their experience or nature, would be less susceptible than other investors to pre-filing hype about a new offering by the issuer.[283] Thus, the investor protection concerns that are associated with the prohibition against offers before the registration statement is filed are lessened.

Similarly, investors that are able to obtain information because they are able to influence the issuer to provide them with it, such as QIBs, may not need the protections that would flow from a prohibition of pre-filing communications. If an issuer makes statements about an upcoming offering before it files its Form B for the offering, the QIB is more likely than other investors to be in a position to insist that the issuer explain any information the issuer disseminated before filing. It also would be sophisticated enough to recognize the value of waiting until it has a prospectus before making an investment decision.

Moreover, the free communications proposal would not extend to any issuer that had not previously registered with the Commission. We also would require that the issuer be reporting in a timely manner for at least the one year before filing an offering on Form B. The reporting requirements would serve the purpose of ensuring that material information about the issuer would be publicly available. An investor could use that, and whatever other information it may gather, to gauge any communications by the issuer before the registration statement filing.

We solicit comment on the proposal to allow Form B registrants to communicate freely before filing a registration statement. Is Form B the proper standard or should the treatment be limited only to some subset of Form B offerings, such as those meeting the public float/ADTV tests? For these purposes, should a minimum average daily trading volume also be required for companies with a public float of at least $250 million? Should companies be subject to the reporting requirements for a longer period of time, such as two years?

Does the likelihood of market conditioning based on pre-filing communications depend upon the security being issued or the transaction being registered? Does the likelihood of market conditioning depend on the trading market for the securities? If so, should the issuer's trading market be an element of the test for when pre-filing communications restrictions are lifted? Should the nature of the securities offered affect whether pre-filing communications should be restricted in any manner? If offering materials are used before filing a registration statement, should certain information be required to be disclosed therein?

While Section 5 of the Securities Act prohibits both offers to sell and solicitations of offers to buy a security before a registration statement is filed, Section 2(a)(3) of the Act exempts preliminary negotiations or agreements between the issuer and any underwriter, and among underwriters. During that period, negotiation of the financing may proceed, but steps may not be taken to form a selling group. Dealers may not make offers to buy the securities and underwriters and issuers may not offer to sell them to dealers during that period. Congress created this limitation in part to limit the pressure it believed could be brought to bear on dealers to rush their orders.[284] Congress also expressed its concern that market participants would overstimulate the demand for a company's securities and then pressure that company to issue such securities.[285] Consequently, Section 5 also prevents all pre-filing marketing of public offerings by underwriters and dealers.

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[276] The Commission has long interpreted "offer to sell" broadly to encompass pre-filing publicity efforts that may not be phrased expressly in terms of an offer but condition the market or stimulate interest in the offering. *See* In the Matter of Loeb, Rhodes & Co., 38 SEC 843 (1959) and In the Matter of First Maine Corp., 38 SEC 882 (1959).

[277] Rules 101 and 102 of Regulation M, 17 CFR 242.101 and 242.102, would continue to prohibit inducements to purchase securities that are the subject of a distribution during any applicable restricted period.

[278] *See* proposed Securities Act Rule 166, 17 CFR 230.166. Prospectuses used in reliance on this Rule during the period beginning 15 days before the first offer and ending with the offering completion would be filed under proposed Rule 425, 17 CFR 230.425.

[279] *See* Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1).

[280] We propose that Form B allow registration of five kinds of offerings to existing shareholders, including: offerings of securities upon exercise of rights or conversion of convertible securities; offerings pursuant to dividend or interest reinvestment plans; offerings to existing common stock holders; and offerings of securities issuable upon exercise of transferable warrants or options. These offerings, and why we propose they be registered on Form B, are discussed in more detail in Section V.A.2.c. of this release.

[281] *See* proposed Securities Act Rule 166(a), 17 CFR 230.166(a).

[282] *See* General Instruction I.B.4. of Form S–3.

[283] Under the proposed Form B, generally, a small issuer would not be permitted to make offerings to an existing security holder unless the investor held securities of the issuer for at least a two-month period. We set this requirement to ensure that the investor would have adequate time to assess its investment and determine whether to sell, hold or buy the issuer's securities.

[284] *See* H.R. Rep. No. 85, 73rd Cong., 1st Sess. 3 (1933).

Under our proposal, before the filing of a Form B, dealers could make offers to buy, and issuers and underwriters could make offers to sell to dealers. Underwriters and dealers could market the securities before the filing of the Form B. Comment is requested on these aspects of the communications proposals. In today's markets, could issuers and underwriters unduly pressure dealers to accept an allotment of securities without the opportunity to scrutinize the registration statement? Similarly, could underwriters and dealers unduly pressure corporations to issue securities by marketing a company's securities before the issuer wished it to happen? If so, what other safeguards would protect against undue pressure?

b. Foreign Governments

We also propose to allow a seasoned foreign government issuer to communicate freely before filing a registration statement for an offering of securities that exceeds $250 million and that is underwritten on a firm commitment basis.[286] We would deem a foreign government issuer to be seasoned if one year has passed since the date of effectiveness of its initial public offering.[287] We believe that, generally, there is abundant public information, investor awareness and market following relating to seasoned foreign government issuers that make large public offerings. At and around the time of such an offering, sufficient market coverage appears virtually assured. Therefore, we propose to allow large and seasoned foreign government issuers to freely communicate during the pre-filing period.

Smaller offerings by unseasoned foreign government issuers may not attract significant market attention. Such an issuer should limit its pre-filing communications to avoid situations where the only public information available about the issuer or its offering before it files its registration statement is the information that the issuer disseminated for purposes of the offering. When the catalysts for public dissemination of information from sources like analysts or other securities experts are missing, we believe the best way for us to protect investors is to limit the communications of unseasoned foreign government issuers that make smaller offerings in the same way we would limit the communications of Form A issuers. If a foreign government issuer is registering its initial public offering or is registering an offering of securities that is less than $250 million or that is not being underwritten on a firm commitment basis, the issuer would be subject to the same 30-day limited communications period applicable to Form A registrants.[288] Smaller unseasoned foreign government issuers may rely on safe harbors to make announcements during that period, such as factual business information [289] or Rule 135 offering notices.[290]

c. All Other Registrants

Under existing regulations, not all public communications by an issuer are prohibited before and during a registered offering. The line between communications that are permissible and those that are not, however, is not always easy to perceive. Over the years, the Commission has attempted to address this issue in several releases.

In 1969, the Commission stated that, while a company is "in registration": disclosure of a material event would ordinarily not be subject to restrictions under Section 5 of the Securities Act if it is purely factual and does not include predictions or opinions.[291]

The release qualified that guidance, however, by stating that "[a]lthough the matters discussed herein reflect the policies and practices which the staff of the Commission will follow, they do not represent rules of the Commission. Accordingly, these interpretations are subject to change based on experience in their application. * * *"

Two years later, the Commission published another release on communications.[292] That release stated, in the context of companies refusing to answer legitimate inquiries, that "the practice of non-disclosure of factual information by a publicly held company on the grounds that it has securities in registration" [293] is not justified by securities laws or Commission policy. In the same release, however, the Commission indicated that neither a company in registration nor persons acting on its behalf "should instigate publicity for the purpose of facilitating the sale of securities" in the offering. The Commission also noted that:

> [t]he determination of whether an item of information or publicity could be deemed to constitute an offer—a step in the selling effort—in violation of Section 5 must be made by the issuer in the light of all the facts and circumstances surrounding each case.[294]

Given the generality of the statements made by the Commission through the years, and the difficulty of applying a "facts and circumstances" test that will be viewed by others in hindsight, cautious legal counsel today often judge it wiser to advise clients to apply significant restrictions on communications. In practice, they appear reluctant to rely on the Commission's general statement of 30 years ago allowing disclosure of material factual information during the course of a registered offering.[295] In the absence of Commission rules, the Commission's (or the staff's) statements have been viewed as providing only vague, general guidance. Securities law practitioners generally see applying that guidance as a practical problem. Many companies appear to be following the practice of shutting off communications of all types for the sake of eliminating the risk of being questioned about possible illegal offers and experiencing a delay in their offering. Those companies that wish to continue communications face the cost of seeking legal advice and review of virtually any communication during the period.[296]

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[285] *See* H.R. Rep. No. 85, 73rd Cong., 1st Sess. 2 (1933).

[286] We propose the $250 million offering threshold as a proxy for size. The firm commitment underwriting requirement would provide greater assurance that the offering would proceed in an orderly fashion. And underwriting participation in the offering signals greater market interest in the offering and the presence of other investor protections due to the underwriters' gatekeeping function. As with Form B issuers, we believe the seasoning requirement would ensure a certain level of publicly available information.

[287] *See* proposed Securities Act Rule 166(a), 17 CFR 230.166(a).

[288] Proposed Securities Act Rule 167, 17 CFR 230.167, would provide that communications before the beginning of the 30-day period would not, for registration purposes, be deemed to be either an offer to sell or an offer to buy as long as the issuer takes reasonable steps to prevent further public dissemination of the information during the 30-day limited communications period. The rule would apply equally to unseasoned foreign sovereigns and all foreign political subdivisions that must observe the 30-day limited communications period.

[289] *See* proposed Securities Act Rule 169, 17 CFR 230.169.

[290] *See* proposed revisions to Securities Act Rule 135, 17 CFR 230.135.

[291] Securities Act Release No. 5009 (Oct. 7, 1969) [34 FR 16870].

[292] Securities Act Release No. 5180 (Aug. 6, 1971) [36 FR 16506].

[293] The term "in registration" was used to mean the time starting before the filing of the registration statement and ending with the date the issuer "reaches an understanding with a broker-dealer that is to act as managing underwriter until the end of the aftermarket prospectus delivery period applicable to dealers." *Id.*

[294] *Id.*

[295] Among other results, issuers sometimes refrain from distributing routine reports to shareholders concerning the company during the quiet period. *See Quiet, Please*, Investor Relations, Dec. 1997, at 49.

[296] For example, the Commission understands that legal counsel have advised issuers that all press

This difficulty of discerning the breadth and length of the limitations on communications is why we are proposing safe harbor rules for registrants other than Form B and Schedule B issuers we discussed above. The safe harbors should help to encourage open communication. Our proposed solution is two-fold.

i. Bright-Line Communications Safe Harbor

The Commission seeks first to address uncertainty about whether communications made long before the filing of a registration statement will be viewed in hindsight as illegal offers. We believe that uncertainty has led to a chilling of issuer communications for a longer period before filing than is necessary for investor protection. The uncertainty also unnecessarily complicates the task of those planning the capital-raising process. We see little benefit to continuing it. We believe the purpose of prohibiting offers before a registration statement is filed, which we discussed above, can be fulfilled without the attendant uncertainty costs.

Accordingly, we propose a safe harbor for all communications made by or on behalf of any issuer that take place during a specified period before it files a registration statement.[297] In offerings registered on Form B, an issuer, and those acting on behalf of the issuer, may freely communicate before the offering period begins (*i.e.*, 15 days in advance of the first offer). For business combinations registered on Forms C, SB–3, F–8, F–80 or F–10 (when F–10 is used in connection with a business combination transaction), the offerors may freely communicate before the first communication related to the offering (except for communications, among the participants in the offering).[298] For all other offerings, an issuer, and those acting on the issuer's behalf, may freely communicate at any time before the 30-day period before the date of filing the registration statement. Under the safe harbor, the issuer, underwriter and participating dealer must take all reasonable steps within their control to prevent further distribution or re-publication of the communication during those periods in which free communication is not permitted. We recognize that once a person makes information public it is no longer in full control over whether others will use that information at a later point in time. For example, an issuer may issue a press release on the 40th day before filing a registration statement on Form A and a monthly magazine that is published on the 29th day before filing may see fit to make reference to it. We would not view it as outside this safe harbor if the magazine published that information on the 29th day through no efforts of, or arrangement with, the issuer. If, however, the CEO or some other representative of the issuer gave an interview on the 40th day before filing without getting assurance that the interview article would not be published during the 30-day period, that communication would be outside the safe harbor.

In addition, if an issuer places information on its Internet web site during a period in which it may freely communicate, we would view it as outside the safe harbor if it fails to remove information from its web site during the limited communications period, if the communication is not covered by one of the other proposed safe harbors discussed below (*e.g.*, for factual business information or regularly released forward-looking information). An issuer may not circumvent the bright-line communications safe harbor by arranging for a third party to disseminate information on its behalf during the limited communications period. For example, if an agent or third party acting on behalf of the issuer posts information on a web site that does not fall within a safe harbor, we would view the posting as outside the bright-line communications safe harbor.[299]

We recognize that there is a risk in creating a bright-line test. Some issuers and underwriters could decide to make all of their selling efforts before the bright-line period when a prospectus is not available. We propose to mitigate that risk through the prospectus delivery requirement (discussed below) that, regardless of when the selling efforts occur, investors will have time to review the balanced, accurate disclosure about the investment.[300] We also mitigate that risk in offerings not registered on Form B and not involving business combinations through the use of a 30-day limited communications period. The 30 days will operate as a "cooling off" period with respect to any communications made to investors. We solicit comment, however, regarding whether a longer period, such as 90 days or 60 days or 45 days, would mitigate the risk further while still providing a useful dividing line between communications likely to be undertaken as part of the sales effort and those that serve other purposes. Conversely, would a shorter period of time, such as 20 days, adequately serve that function? Are there other risks or benefits of creating a bright-line test?

Would the condition that all reasonable steps be taken within the 30 days by the issuer, underwriter or dealer to prevent further distribution or re-publication be adequate to ensure that there is a "cooling off" period? Should we build in an automatic longer prospectus delivery period before pricing when issuers or others participating in the offering fall outside a safe harbor by communicating during the 30-day period? The proposed safe harbor would cover communications of any sort. Should we provide that the safe harbor does not apply to communications discussing the offering itself? Should we require that offering materials used more than 30 days in advance of filing a registration statement be filed with the Commission in the same way as free writing materials?[301] If so, should we require filing of such information if disseminated within 40, 50 or 60 days before the issuer files its registration statement?

ii. Communications Safe Harbor

While defining the pre-filing period during which these issuers must be concerned about the nature of their communications should help lessen uncertainty, we believe further proposals would do so even more. As the Commission stated almost three decades ago, "[the] flow of normal corporate news, unrelated to a selling effort for an issue of securities, is natural, desirable and entirely consistent with the objectives of disclosure to the public which underlies

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releases, speeches to groups, product advertisements, announcements of developments, responses to inquiries by those who report to the public, changes in advertising policy, and public statements first be cleared by legal counsel during this period.

[297] *See* proposed Securities Act Rule 167, 17 CFR 230.167. The bright line safe harbor would apply only to registered offerings. Accordingly, the safe harbor would not permit issuers to avoid the prohibition on general solicitation when conducting a private offering or avoid the Section 4(2) requirement that the "transaction not involve any public offering." *See* 15 U.S.C. § 77d(2).

[298] For a discussion of other "free communication" provisions applicable to business combinations, *see* Exchange Act Release No. 40633 (Nov. 3, 1998).

[299] This position parallels advice we gave regarding third party web site postings in the context of offshore Internet offerings. *See* Securities Act Release No. 7516 (Mar. 23, 1998) [63 FR 14806], Sections III.D. and IV.D.

[300] An issuer could not use the Section 10 prospectus at a point more than 30 days before filing and then fail to file it as part of the registration statement because it is not "an offer." The registration statement would be materially deficient absent the prospectus.

[301] *See* proposed Securities Act Rule 425, 17 CFR 230.425.

the federal securities laws."[302] We are proposing therefore to exempt factual business communications from communications restrictions.[303] In addition, in offerings by reporting companies, we propose an exemption from communications restrictions for regularly released forward-looking information.[304] We solicit comment on whether we should extend the limited communications period. Should it be 45, 50, 60 or 90 days in length?

(A) Factual Business Communications

For purposes of these proposals, "factual business communications" would include:

—factual information about the issuer or some aspect of its business;
—advertisement of the issuer's products or services;
—factual business or financial developments with respect to the issuer;
—dividend notices;
—factual information required to be set forth in any Exchange Act report the issuer is required to file; and
—factual information communicated in response to unsolicited inquiries from stockholders, analysts, the press and others with a legitimate interest in the issuer's affairs.

Factual business communications would not include information about the registered offering itself or forward-looking information. Information about the offering would continue to be limited to that which is permitted to be published under Securities Act Rule 135.[305]

(B) Regularly Released Forward-Looking Information

We also propose a safe harbor for reporting companies that are accustomed to releasing forward-looking information to the markets so that those communications are not discouraged during the limited communications period 30 days before a registration statement is filed.[306] The safe harbor would exempt the dissemination of that information from the Section 5 restrictions on offers in the pre-filing period if the issuer is subject to the reporting requirements of Section 13(a) of the Exchange Act. In order to come within the safe harbor, the issuer must have customarily released this type of information in its ordinary course of business for the last two fiscal years (and any portion of a fiscal year) immediately before the communication. The time, manner and form in which the information is released must be consistent with past practice.[307] The categories of forward-looking information that would be covered by the safe harbor are:

1. Projections of the issuer's revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;
2. Statements about the issuer management's plans and objectives for future operations, including plans or objectives relating to the products or services of the issuer;
3. Statements about the issuer's future economic performance of the type contemplated by the management's discussion and analysis of financial condition and results of operation described in Item 303 of Regulation S–K or Item 9 of Form 20–F; and
4. Assumptions underlying or relating to any of the information described in paragraphs (1), (2) and (3).[308]

We recognize that projections have historically been viewed as the type of communication that would be particularly troublesome in the period before a registration statement is filed.[309] For that reason, we propose to exclude these statements from the proposed safe harbor for factual business communications. We also, however, wish to encourage, where consistent with investor protection, the voluntary disclosure of forward-looking information. Given its value to investors, analysts, investment advisers and other securities professionals, the release of forward-looking information should not be constrained in circumstances that do not require constraint. Thus, where that information is regularly released by the issuer, we would presume that it is not being released around the time of the offering solely as a method of hyping the securities. Accordingly, we propose the safe harbor.

We solicit comment on the safe harbor for this forward-looking information. Are there other categories of forward-looking information that should be added to the list of exempted communications? Should any of the categories proposed in the exemption be deleted?

(C) Notice of Proposed Offerings

As part of lifting communications restrictions, we propose to merge current Securities Act Rules 135 and 135c.[310] The resulting rule, Rule 135, would provide issuers with a communications safe harbor for limited notice of their proposed offerings or business transactions. We propose to remove the reference found in current Rule 135 that specifically states that issuers may not name the underwriters of its proposed offering in any notice published in reliance on the Rule. The proposed rule clearly pronounces that these notices may not include information beyond the subjects enumerated in the rule. Because the proposed rule does not include a provision that would allow issuers to name their underwriters, their Rule 135 notices may not name their underwriters. We solicit comment as to whether there are reasons to retain the specific prohibitions in the rule.

New Rule 135 would not require issuers to announce whether the offering would be public or private. Consequently, an issuer would not have to commit early on whether it is planning a registered or exempt offering. Thus an issuer may find more flexibility in assessing market demand through publication of the Rule 135 notice. Proposed Rule 135 also would provide specifically that an issuer may issue a statement to correct inaccurate accounts or misstatements about its offering. An issuer's correction may not, however, include more information than would be needed to remedy the inaccuracy.

2. Communications During the Waiting Period

Restrictions on communications during the waiting period differ according to the form the communication takes. During the waiting period, oral offers may be made without content restrictions other than due to liability concerns. Written offers, however, must have Section 10 contents or they cannot be used. This distinction appears to do little to enhance investor protection or facilitate the capital formation process. One can argue that it creates an incentive for issuers and underwriters to omit information or to provide it in a manner that is not readily available to investors for later reference. For instance, sellers may choose to omit matters that are not easily understood orally, or they may present that information orally anyway despite the risk that investors will have a less than perfect understanding of it. Issuers and their agents are known to deliberately provide some information during the waiting period only orally, and also limit the audience to avoid those communications being considered broadcasted. Perhaps the best example of how this current regulatory structure negatively affect investors is the "road show" structure. It is common for issuers and underwriters to conduct "road show" presentations during the waiting period for selected broker-dealers and large institutional investors. While these road shows are valuable to some investors because they provide a forum for investors' questions, their value is curtailed because of the limited audience invited to attend and the fact that issuers and underwriters do not allow participants to retain materials used during the presentation (other than the preliminary prospectus). These restrictions raise concerns regarding selective disclosure of material information. They also raise concerns about whether investors have been informed as well as they might have been absent those restrictions.[311]

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[302] Securities Act Release No. 5009 (Oct. 7, 1969).

[303] *See* proposed Securities Act Rule 169, 17 CFR 230.169.

[304] *See* proposed Securities Act Rule 168, 17 CFR 230.168.

[305] We propose to revise Rule 135, 17 CFR 230.135, to permit issuers to use it whether they plan to make a registered or private offering. *See* Section VII.A.1.c.ii.(C) of this release for a discussion of the proposed revisions to Rule 135.

[306] *See* proposed Securities Act Rule 168, 17 CFR 230.168.

[307] This information generally would have to be filed with the Commission under proposed Securities Act Rule 425, 17 CFR 230.425.

[308] These are essentially the same categories of statements that are defined as forward looking statements under Securities Act Section 27A(i)(1). In light of the offering context, we omitted the category of "statements by an underwriter or participating dealer assessing any of the itemized information."

[309] Until the 1970s, the Commission prohibited disclosure of forward-looking information. In 1979, the Commission adopted a safe harbor for release of forward-looking information. *See* Securities Act Release No. 5362 (Feb. 2, 1973) [38 FR 7220]; Securities Act Release No. 6084 (June 25, 1979) [44 FR 38810]; *see also* Wheat Report, *supra* note 11, at 94; Securities Act Release No. 5180 (Aug. 16, 1971).

[310] *See* proposed revisions to Securities Act Rule 135, 17 CFR 230.135.

We believe that the waiting period should be a time of open dialogue between the registrant and its potential investors, provided that the registrant is accountable for the accuracy and completeness of its communications. The medium in which disclosure is made should not be dictated by the regulatory structure but, rather, by the needs of investors.

Under the proposal, we would allow companies to make offers and disseminate offering information during the waiting period in any form without each communication having to meet the informational requirements of Section 10.[312] This would permit issuers to prepare presentations and disclose information in a variety of formats, available to all investors.[313] Through these changes, the Commission seeks to have sellers augment the information available to investors and thereby enhance investors' knowledge of the company and its securities.[314]

Our communications proposals logically contemplate that larger seasoned issuers, including issuers eligible to use Form B and larger, seasoned foreign government issuers, that would have no pre-filing communications restrictions would also be able to freely communicate after filing a registration statement.[315] While generally there may be very limited post-filing marketing periods for these issuers because no registration statement need be filed until the time of sale, some may choose to file earlier. Proposed Rule 165 therefore would permit those issuers to engage in post-filing free writing if they:

1. Comply with the preliminary prospectus delivery requirements in proposed Rule 172;
2. File free writing materials under proposed Rule 425; and
3. File a final prospectus meeting the requirements of Section 10(a) before the first sale.

Smaller issuers that would be likely to market the securities during the waiting period may also engage in post-filing free writing under the same proposed conditions. All free writing materials and term sheets, whether used by large or small issuers, would have to include a prominent legend advising investors to read the other disclosure documents filed with the Commission before making an investment decision. The legend also would describe how the investor could get copies of this information for free from the Commission's web site and explain which documents an investor could get for free from the issuer.[316] Although free writing material would be required to be filed, it would not be required to be delivered. We believe that the filing requirement enhances investor protection by reducing selective disclosure. For example, road show materials not generally available to individual investors today would be available to the broader market on a real-time basis after the registration statement is filed.[317] We solicit comment as to whether investors would have an increased analytical burden in collecting and evaluating various free writing materials.

In light of the free writing that would be granted by the proposed rules, we propose to revise Securities Act Rule 134 to narrow its application to investment companies. The Rule 134 safe harbor would not be needed by other issuers. The proposed Rule 134 amendments would not make substantive changes to the content of the Rule.[318] We are, however, revising the Rule to make it more understandable. For example, the legends informing investors how to obtain more complete information about a fund would be simplified and combined into one legend. The amendments also would clarify that an investment company may identify its secretary, treasurer and any vice-president, in addition to its president, in a Rule 134 advertisement.[319] Finally, to reflect changes made by NSMIA, legend text referring to state registration of securities would be deleted.[320]

We request comment regarding whether a legend substantially similar to that required to appear in Rule 482 advertisements used with a profile should be required for Rule 134 advertisements that are used with a

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[311] *See, e.g.*, Pratt, *The IPO Information Gap; Retail Investors are Always the Last to Know as Institutions Get Key Data Despite SEC Ban*, Investment Dealers' Digest, May 18, 1992, at 14. *See also* Seely, *In I.P.O.'s, the More Data the Better*, N.Y. Times, April 26, 1992, § 3, at 13, col. 2.

[312] *See* proposed Securities Act Rule 165, 17 CFR 230.165. Any prospectus disseminated in reliance on this Rule would be subject to Section 12(a)(2) of the Securities Act and would be filed under proposed Securities Act Rule 425, 17 CFR 230.425.

[313] For example, the Division of Corporation Finance has issued a line of no-action letters that permitted issuers and underwriters to conduct road show presentations over the Internet and through other electronic media. Access to these road shows presentations, however, has been restricted by the sponsor to institutional investors, investment advisers, broker-dealers, security analysts and others that customarily would attend the live presentation. *See* Staff no-action letters *Private Financial Network* (Mar. 12, 1997); *Net Roadshow, Inc.* (July 23, 1997); and *Bloomberg L.P.* (Oct. 22, 1997). We request comment on whether video road shows should be deemed free writing and therefore would be required to be filed under these proposals.

[314] The proposals also include modifications to various rules as a result of the restrictions on offering communications being lifted. Securities Act Rule 431, 17 CFR 230.431, permits an issuer that has been subject to the reporting requirements of the Exchange Act for more than 36 months to distribute a summary prospectus after it has filed the related registration statement. Our proposal to permit the use of "free writing" materials during the waiting period for all issuers would allow issuers to create and use summary prospectuses without complying with the strictures of Rule 431. Accordingly, we are proposing to eliminate Rule 431.

[315] *See* proposed Securities Act Rule 165, 17 CFR 230.165.

[316] *See* proposed revisions to Securities Act Rule 421, 17 CFR 230.421.

[317] For Form B offerings, road show materials used before the registration statement is filed would not be required to be filed until the registration statement is.

[318] We noted in our release adopting amendments to Form N–1A that we intend to re-evaluate fund advertising rules in the future. *See* Investment Company Act Release No. 23064 (Mar. 23, 1998) [68 FR 13916, 13936].

[319] *See* paragraph (a)(3)(ii) and (a)(3)(x) of the proposed amendments to Securities Act Rule 134, 17 CFR 230.134.

[320] NSMIA, Section 102(a) (exempting certain securities offerings from state regulation).

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profile.[321] Are funds likely to use Rule 134 advertisements with a profile? Should such disclosure be permissive or mandatory?

B. Filing Under EDGAR

Communications filed under Rule 425 would be filed electronically, via the EDGAR system, to the same extent that the registration statements to which the communications relate are required to be filed under EDGAR.[322] In some cases, issuers may wish to communicate with investors through multimedia prospectuses. These multimedia prospectuses may be presented in the form of videos, CD–ROMs, streamed video or audio files that can be played over the Internet. Currently, EDGAR is not able to accept multimedia prospectuses. Instead, companies using multimedia prospectuses file a transcript of the material on EDGAR.[323]

We have awarded a contract to modernize EDGAR, which will enable filers to enhance the appearance of their documents by using graphics and different fonts. The system, however, may not be able to accommodate multimedia materials. We are considering whether some of these media could be included in the new system. Some of the factors we are considering include: security; development and maintenance costs of a system that will accept these media; costs of database storage; how these materials should be disseminated to the public; whether investors would have as ready access to these materials as to the current electronic filings; how to meet the archival requirements for storage of electronic documents; wide divergence in industry standards for most multimedia formats; how to assure that filed documents continue to be readable in the future, since applications that can present these media may change or even disappear over time.

If at adoption EDGAR is unable to accept multimedia prospectuses, we would require that a transcript of the presentation be filed.[324] Additionally, we would require that the issuer file five copies of the multimedia prospectus in the form used, so that we may make it available through our public reference rooms. We solicit comment on this approach and alternative approaches to the dissemination of multimedia prospectuses. For example, rather than have the issuer file five copies of the multimedia prospectus, should we require that the issuer include an address in the transcript where the multimedia prospectus can be obtained in its original form? Should we require that a summary of the multimedia prospectus be filed through EDGAR instead of a transcript?

C. Technology Implications of the Communications Proposals

The proposed communications rules would enable issuers and market participants to take significantly greater advantage of the Internet and other electronic media to communicate and deliver information to investors.[325] Most notably, the proposals would permit all issuers, underwriters and their representatives to communicate during the waiting period with potential investors without having to conform their communications to the informational requirements of Section 10 of the Securities Act.[326] Accordingly, after filing a registration statement, any issuer or underwriter could take full advantage of innovative media technology in stylizing its free writing materials. In that period, issuers and underwriters could use the Internet and other electronic media to, among other things:

- Conduct electronic roadshows to institutional and retail investors without the use of password protection;
- Use electronic mail to answer investors questions about the company and its offering; and
- Conduct "chat room" discussions or post messages on bulletin boards about its offering with potential investors.[327]

For offerings registered by well-followed, large issuers on Form B, the issuers and underwriters could use the Internet and other media for those purposes both before and after filing a registration statement.[328] The ability to communicate before filing would allow issuers to use the Internet and other electronic media to determine investors' interest in a proposed public offering well before committing significant resources to its completion.

The 30-day bright-line test would help smaller companies that have been concerned about when in relation to an offering they should monitor or limit their Internet use. They would know they have freedom to disseminate information on it at any time except during the 30 days just before filing their registration statements.[329]

The proposed safe harbor for factual business communications made within the 30 days before filing a registration statement would provide smaller issuers with more certainty when determining what information may be posted on their Internet Web sites during those 30 days.[330]

Proposed Form B also would provide issuers with more flexibility in crafting transactional disclosure in their prospectuses. This additional flexibility also should allow issuers to take greater advantage of innovations in media technology.

The Commission also is proposing to require issuers to identify their web site addresses and provide an e-mail contact on the cover page of every registration statement under the Securities Act. This requirement would make this information more accessible to investors, as well as ease investors' electronic communications with companies.

D. Research Reports[331]

Investors acquire useful information regarding companies from sources other than Commission-mandated disclosure. One such source is analysts' research reports. As the Commission has long acknowledged and the Supreme Court recognized in *Dirks* v. *SEC*,[332] analysts fulfill an important function by keeping investors informed. They digest information from Exchange Act reports and other sources, actively pursue new company information, put all of it into context, and act as conduits in the flow of information by publishing reports explaining the effect of this information to investors.[333] They also express opinions and recommendations about investment in issuers' securities. Unlike small investors, analysts can arrange to interact with key company insiders and ask them pertinent questions. Where analysts are acting independently and objectively, investors gain from the publication of their insights.

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[321] Rule 482(a)(3)(ii), 17 CFR 230.482(a)(3)(ii), requires Rule 482 advertisements that are used with a profile under Rule 498 ("Profile") to include a conspicuous statement that indicates that information is available in the Profile about the investment company, the procedures for investing in the investment company and the availability of the investment company's prospectus.

[322] Foreign private issuers are not required to file on EDGAR.

[323] *See* Rule 304 of Regulation S–T, 17 CFR 232.304.

[324] Like today, issuers also would have to include a fair and accurate description of any graphical information presented that otherwise is not disclosed in the transcript.

[325] In October 1995, the Commission published its first interpretive release regarding the use of electronic media. At that time, the Commission noted its belief that the use of electronic media "enhances the efficiency of the securities markets by allowing for the rapid dissemination of information to investors and financial markets." Securities Act Release No. 7233 (Oct. 5, 1995) [60 FR 53458]. The procedural requirements discussed in that release regarding notice, access and evidence of delivery would continue to be applicable under the proposed system. *See also* Securities Act Release No. 7288 (May 9, 1996) [61 FR 24644]. More recently, the Commission has provided additional guidance with regard to the use of Internet web sites in the offering of securities offshore. *See* Securities Act Release No. 7516 (Mar. 23, 1998).

[326] *See* proposed Rule 165, 17 CFR 230.165.

[327] In the near future, the Commission intends to address specific technological issues that arise in the offering process. These issues exist under the current offering framework as well as the framework proposed in this release. Further guidance on these activities may be provided in that release.

[328] *See* proposed Rule 166, 17 CFR 230.166.

[329] *See* proposed Rule 167, 17 CFR 230.167.

[330] *See* proposed Rule 169, 17 CFR 230.169.

[331] For convenience, we use the terms "research reports" and "reports" in this section to cover not only formal reports published by analysts but also the broad range of analyst communications about issuers, whether or not formalized in a report. Rules 137, 138 and 139, 17 CFR 230.137, 230.138 and 230.139, refer to publication of "information, opinions or recommendations." For purposes of this release we use the term "research" generically to cover all of those.

[332] 463 U.S. 646, 658–59 (1983).

Analyst reports, however, also potentially can be misused to hype a company's securities. Because they could do so under the guise of providing objective, independent analysis, they could unduly influence investors. Often, firms that employ analysts and publish their research reports also act, or may act, as underwriters in connection with the offerings of companies that are the subject of the reports. Research by a broker or dealer about an issuer that proposes to register a public offering, or has registered an offering, may constitute an offer of those securities.[334] This is particularly true when the broker-dealer is to participate in the distribution as an underwriter or selling group member.

The Commission recognized both possible uses of analyst research reports—for hyping as well as for enhancing the free flow of information—when it adopted Rules 137, 138 and 139 under the Securities Act. Those safe harbor rules describe circumstances in which a broker-dealer may publish research in and around the time of a registered offering without concerns about violating Section 5 through making an illegal offer or using a non-conforming prospectus. In those rules, the Commission struck a balance between its concern about hyping and its concern for current information by restricting the situations in which the three safe harbors would apply.[335] Commenters on the Concept Release asked the Commission to minimize the scope of restrictions on research in order to reflect rapid advances in communications technology and globalization of the markets, among other developments.[336]

1. Proposals in Connection With Registered Offerings

When a company is making a registered offering, investors particularly seek current information about the issuer and its securities. In general, we propose to allow investors to receive as much current information as possible with respect to companies that are in registration, where consistent with investor protection. This is true especially where the largest companies are involved. The narrowness of the current rules regarding research causes some analysts' research to be barred at a point at which investors may seek current research reports the most. The result is that investors may rely on research that does not reflect material changes or current data.

In addition, the narrower rules put U.S. investors at a relative disadvantage because analyst firms may determine that current law would not allow them to give investors the current research that is distributed to investors outside the United States. While larger U.S. investors find out about research distributed offshore and arrange to receive it, the same cannot be said with assurance about smaller U.S. investors. Because of the benefits of analyst research, the proposals overall would create broader exemptions to allow publication of research in more instances around the time of an offering. This approach would allow investors to judge for themselves the value of the analysts' opinions set forth in those reports.

a. Rule 137

When a broker or dealer is not otherwise participating in a distribution of securities, and does not propose to participate in a distribution, it is guided by Rule 137.[337] That rule provides that research may be published by the broker or dealer in the regular course of its business where it is not receiving consideration of any kind from persons with an interest in the securities being registered. Rule 137 protects the broker or dealer from being considered an "underwriter" by virtue of its publication.[338] It provides a safe harbor only with respect to reporting companies.

The release proposing Rule 137 in 1969 explained that "[t]he need for such a rule is primarily evidenced in connection with actively traded securities of issuers concerning which adequate information is available to the public." [339] While the need for a safe harbor in 1969 may have been confined to reporting companies, it no longer appears to us that the need is so confined. Not all actively traded securities are issued by reporting companies, particularly in light of the market interest in securities of foreign issuers.

We propose to expand Rule 137 to cover non-reporting companies.[340] We also propose to delete the condition in Rule 137 that the broker or dealer publish the report in the regular course of its business. As expanded, Rule 137 would provide a safe harbor with respect to registrants, such as foreign government issuers, that are less likely to be reporting under the Exchange Act. The new rule also would allow a broker or dealer to commence research coverage on private companies planning to make registered offerings, even where it had never before published a research report concerning that company. Where a broker or dealer is not connected to the registrant's distribution, we perceive limited risk that it will use its research about the registrant or its securities to hype the market for the securities being distributed. While the broker or dealer may seek to cover the registrant for purposes of attracting underwriting business from the registrant in the future, that motive for coverage is universal and is not limited to the distribution period. Investors should factor in that incentive when analyzing any research report. We do not believe the risk of analysts creating reports that are positively skewed to attract future business outweighs the benefits to investors from having persons independent of the issuer and the underwriter publish their views about the investment opportunity at a time when investors would especially look for information. We solicit comment on the relative risks and benefits of this approach.

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[333] Investors benefit from being informed on an ongoing basis via analysts about particular securities and issuers. For instance, issuers' forward-looking information is disseminated indirectly through analyst reports. Analysts communicate with issuer representatives and then reflect their understanding about likely future results in the reports or updates they publish. The market's expectations of an issuer's future earnings can be gradually altered by issuers leading analysts away from incorrect predictions; less volatility in stock price would result.

[334] *See* Sections 2(a)(3) and 5 of the Securities Act, 15 U.S.C. §§ 77b(a)(3), 77e.

[335] These releases are discussed in Chiappinelli, *Gun Jumping: The Problem of Extraneous Offers of Securities*, 50 U. Pitt. L. Rev. 457, 505–07 (1989).

[336] *See, e.g.*, comment letters, in File No. S7–19–96, from the American Bar Ass'n (Dec. 11, 1996), Merrill Lynch (Oct. 31, 1996), Morgan Stanley (Dec. 9, 1996), PSA The Bond Market Ass'n (Nov. 8, 1996), Shearman & Sterling (Dec. 13, 1996) and the Securities Industry Ass'n (Nov. 13, 1996).

[337] Even if the distribution of research constitutes an offer, a dealer may rely on Section 4(3) of the Securities Act which provides an exemption from registration for dealers that are not acting as underwriters. Section 4(3) is not available, however, during certain defined periods shortly after the commencement of an initial offering of a security or the effective date of a registration statement. It is during those periods that reliance on Rule 137, 17 CFR 230.137, may matter most.

[338] Rule 137, 17 CFR 230.137, provides that a broker or dealer satisfying the rule will not be "participating" in the offering for purposes of the definition of "underwriter" in Securities Act Section 2(11).

[339] Securities Act Release No. 5010 (Oct. 7, 1969) [34 FR 18130].

[340] *See* proposed revisions to Securities Act Rule 137, 17 CFR 230.137. The proposed rule would not cover blank check companies, shell companies and companies making offerings of penny stock.

We also solicit comment regarding our proposal to remove the "regular course of business" condition in Rule 137. To avoid concerns that research preparation, absent that condition, would be an unusual activity for that broker or dealer, should it be replaced with a narrower requirement that the person who prepares the research must be employed by the broker or dealer to prepare research in the normal course of his or her duties? Would those concerns be lessened if we required that the person who prepares the research must be a registered person? Should other restrictions be imposed on who prepares the research? Should we mandate the manner in which the broker-dealer discloses the identity and affiliation of those who prepare research?

b. Rule 138

Rule 138 permits a broker or dealer participating in a distribution of one type of an issuer's securities to publish research confined to another type of the issuer's securities if it publishes or distributes the research in the ordinary course of its business. For example, a dealer distributing non-convertible debt may publish under Rule 138 research solely relating to the common stock of that issuer. A dealer distributing convertible debt could publish research limited to the issuer's non-convertible, non-participating preferred securities under Rule 138. When we proposed Rule 138 in 1969, we noted that the markets for non-convertible senior securities and common stock differ significantly. There is less opportunity to condition the market when a broker or dealer is underwriting one and reporting on the other.[341] In addition, the investment conditions with respect to common stock and senior securities are significantly different.[342]

Rule 138 is not available, however, for offerings by any type of issuer. The offering must relate to securities of an issuer that: has been reporting for 3 years (Form S–2 or F–2 issuers); has been reporting for one year and has a public float of $75 million (S–3 or F–3 issuers); or is a foreign private issuer that has a public float of $75 million and a one-year trading history on a designated offshore securities market. In addition, the research must be published by the broker or dealer in the regular course of its business.

Unlike Rule 137, which focuses on whether the broker or dealer becomes an underwriter by publishing research, the Rule 138 safe harbor relates specifically to those who are acting as underwriters. The Rule was designed to address the concern that the publication would violate Section 5. A broker or dealers' research could be viewed as an unlawful offer if it occurs before the filing of a registration statement. The publication could also be a non-conforming prospectus[343] because the contents will not have the disclosure required by Section 10 of the Securities Act. Rule 138 therefore provides that publication of research under the Rule will not be considered:

—An offer during the pre-filing period, which would violate Securities Act Section 5(c); or

—a distribution of a "prospectus" that does not conform to the requirements of Section 10, which would violate Securities Act Section 5(b)(1).[344]

Under the proposed registration system, offers may be made during the pre-filing period with respect to Form B offerings.[345] In addition, prospectuses used in connection with Form B offerings need not conform to the requirements of Section 10.[346] Thus, a broker or dealer would not need the relief that Rule 138 provides in connection with Form B offerings.[347]

Further, in registered business combinations, any communications before the first communication related to the offering, other than communications among participants, would not constitute an offer for the purposes of Section 5(c), provided that the parties take reasonable steps to prevent distribution of such communication after the announcement but before filing a registration statement. Thus, a broker or dealer would not need the relief that Rule 138 provides in connection with registered business combination transactions.

Brokers and dealers would only rely on Rule 138 to a limited extent with respect to other registered offerings. In other offerings, a proposed rule would provide that communications made more than 30 days before the registration statement is filed would not constitute offers.[348] Research materials distributed during that period would not constitute prospectuses.[349] Thus, even in the absence of the Rule 138 safe harbor, underwriters and participating dealers would have no Section 5 concerns about publishing research reports during that period. Similarly, after a registration statement is filed, offers may be made and a proposed rule would provide that prospectuses do not have to conform to Section 10 disclosure standards.[350] Thus, underwriters and participating dealers would have no Section 5 concerns about publishing research reports during that period. Thus, an underwriter or participating dealer's Section 5 concerns about research reports would be limited to the 30-day period before filing a registration statement.

We propose to expand Rule 138 to cover research reports relating to securities of virtually all companies subject to the Exchange Act reporting requirements, rather than just larger foreign and domestic issuers with a one-year reporting history and other issuers with a 3-year reporting history.[351] Where Exchange Act reports are available, investors will have another source for information against which to compare the analyst's report. The only reporting issuers' securities that we would not cover are those that have historically posed certain risks of abuse. They include: blank check companies, shell companies and companies making offerings of penny stock.

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[341] Securities Act Release No. 5010 (Oct. 7, 1969). The release noted specifically that the market for senior securities is largely institutional and that "the investment conditions with respect to common stock and the senior securities of established corporations are significantly different." See also Securities Act Release No. 6492 (Oct. 6, 1983) [48 FR 46801].

[342] *See* Securities Act Release No. 5010 (Oct. 7 1969).

[343] A "prospectus" is defined in Section 2(a)(10) of the Securities Act to include any notice, circular, advertisement, letter or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security.

[344] Rule 138, 17 CFR 230.138, exempts the research covered by its terms from constituting an "offer to sell" for purposes of Securities Act Section 5 or an "offer for sale" for purposes of Securities Act Section 2(a)(10).

[345] *See* proposed Securities Act Rule 166, 17 CFR 230.166.

[346] *See* proposed Securities Act Rule 165(a), 17 CFR 230.165(a).

[347] Rule 138, 17 CFR 230.138, currently contains an instruction that the Rule's safe harbor is available when an issuer plans to file, files or has an effective shelf registration statement that includes both non-convertible securities and equity securities. See Securities Act Release No. 7132 (Feb 1, 1995) [60 FR 6965]. Under the proposed registration system this instruction would not be needed because these shelf offerings would be Form B offerings.

[348] *See* proposed Securities Act Rule 167, 17 CFR 230.167.

[349] In order for a communication to be a "prospectus" as defined in Section 2(a)(10) of the Securities Act, the communication must either offer a security or confirm the sale of a security. Research reports do not confirm the sale of a security and proposed Rule 167, 17 CFR 230.167, would provide that they are not prohibited offers.

[350] *See* proposed Securities Act Rule 165(b), 17 CFR 230.165(b).

[351] *See* proposed revision to Securities Act Rule 138, 17 CFR 230.138.

We are not proposing that the Rule be limited to companies that have been reporting for a specific period of time. Companies generally become subject to the Exchange Act reporting requirements through registering under either the Securities Act or the Exchange Act and provide current disclosure in connection with that event. We solicit comment, however, regarding whether companies covered by Rule 138 should have to have a specified reporting history (*e.g.*, 6 months or a year).

We are not currently proposing that Rule 138 be expanded to cover non-reporting companies other than foreign private issuers that would satisfy the public float/ADTV thresholds of Form B measured on a worldwide basis and whose equity securities trade on a designated offshore securities market.[352] As the Commission explained in 1994 when it proposed to expand Rule 138 to cover certain non-reporting foreign private issuers with an offshore trading history, there is a stream of corporate information available in the marketplace about those foreign private issuers due to their nature, even though they are not filing reports with the Commission.[353] The same stream of information is not available about other non-reporting companies.

Comment is solicited with regard to the application of the proposed Rule 138 safe harbor to research reports regarding non-reporting issuers. Should we require the non-reporting foreign private issuers to have a specified trading history on a designated offshore securities market, as Rule 138 does today? If so, should that trading history be set at one year as in current Rule 138, or some shorter period (*e.g.*, 6 months)? Should we expand the safe harbor to cover cases where the issuer has issued debt in a public offering, but then terminated its status as a reporting company, if the broker or dealer is publishing research reports with respect to those debt securities? Are there reporting companies with respect to which Rule 138 should not apply?

c. Rule 139

Rule 139 permits a broker or dealer participating in a distribution of securities by a larger, seasoned issuer or a larger foreign private issuer publicly traded abroad to publish research concerning the issuer or any class of its securities, if that research is in a publication distributed with reasonable regularity in the normal course of its business. Rule 139 also provides a safe harbor in those situations for distributions by smaller seasoned issuers, if the broker or dealer complies with additional restrictions on the nature of the publication and the opinion or recommendation expressed in it.

Like Rule 138, Rule 139 was developed to create a safe harbor from Section 5 for a person acting as an underwriter for the issuer. It ensures that the research does not constitute an offer during the period before filing, or constitute a non-conforming prospectus.[354] Unlike Rule 138, this Rule covers the situation where the broker or dealer's report covers the same securities that it is selling on the issuer's behalf in the registered offering.

The greatest potential for blurring the objective analyst role and the underwriting role occurs when the analyst firm is publishing research directly about the security it is underwriting. The Commission has recognized that risk in the past by attaching more restrictions to the publication of research reports under the circumstances in Rule 139.

i. Form B and Schedule B Offerings

In the case of Form B offerings, we believe that the fact that many analysts would be covering the issuer, and that the investors would be relatively informed already, justifies allowing research to be published around the time of an offering without applying Section 5 restrictions. Thus, the proposed communications rules allow research reports to be a part of the mix of information that investors may see around the time of a Form B registered offering regardless of who publishes those reports.[355] Accordingly, the Rule 139 safe harbor would not be needed in those cases.

We would provide the same freedom for a research report published around the time of an offering by a seasoned foreign government issuer that is registering an offering of securities that exceeds $250 million and that is underwritten on a firm commitment basis.[356] Because the proposed communications rules would provide that offers may be made before filing of such a registration statement, an underwriter or participating dealer would not have to be concerned about research during that period.[357] Similarly, because prospectuses relating to offerings by those foreign government issuers would not have to satisfy the requirements of Section 10, underwriters and participating dealers would not have to be concerned about publishing research once a Schedule B registration statement is filed.[358] The same would be true in a registered business combination in the period prior to the first communication about the transaction (other than among offering participants).

ii. All Other Offerings

As discussed in connection with Rule 138, in all other offerings, underwriters and participating dealers would have no Section 5 concerns about publishing research more than 30 days before the filing of a registration statement or after a registration statement is filed.[359] Thus, an underwriter or participating dealer would rely on Rule 139 to address its Section 5 concerns about research reports only during the 30-day period before the filing of a registration statement.

In offerings by these issuers, we have some concern that, absent restrictions, research reports published before the filing of a registration statement might evolve into selling documents distributed at a time when no prospectus is available. With appropriate restrictions, we generally believe that research should be able to continue during that time period. The proposed delivery rules would ensure that investors will have time to consider the prospectus disclosure before making a final investment decision.

iii. Focused Reports

Proposed Rule 139 would continue to provide for two categories of reports, broad industry-related reports and reports more focused on the issuer and its securities.[360] The companies about which brokers may prepare those two categories of reports, however, would change. Where reporting issuers are making the offering, we would not continue to limit the focused issuer reports under the Rule to issuers that meet the Form S–3 or F–3 minimum float/investment grade and reporting history. Instead, the proposed Rule would allow those reports in offerings of any type of securities by any size issuer that has a one-year reporting history.[361]

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[352] "Designated offshore securities market" is defined in Rule 902(b) of Regulation S, 17 CFR 230.902(b).

[353] *See* Securities Act Release No. 7120 (Dec. 13, 1994) [59 FR 31038].

[354] Rule 139, 17 CFR 230.139, exempts the research from constituting an "offer to sell" for purposes of Securities Act Section 5 or an "offer for sale" for purposes of Securities Act Section 2(a)(10).

[355] *See* proposed Securities Act Rule 166, 17 CFR 230.166, and proposed Securities Act Rule 165(a), 17 CFR 230.165(a). As in the case of Rule 138, 17 CFR 230.138, brokers and dealers would not have a need to rely on Rule 139, 17 CFR 230.139, in connection with Form B offerings.

[356] By "seasoned" we mean that the foreign government issuer's offering takes place one year or more after the effective date of its initial public offering.

[357] *See* proposed Securities Act Rule 166, 17 CFR 230.166.

[358] *See* proposed Securities Act Rule 165(a), 17 CFR 230.165(a).

[359] *See* proposed Securities Act Rule 167, 17 CFR 230.167, and proposed Securities Act Rule 165(b), 17 CFR 230.165(b)

[360] *See* proposed Securities Act Rule 139, 17 CFR 230.139.

In addition, the proposed Rule would allow for focused reports relating to offerings by foreign government issuers that are registering on Schedule B for the first time as long as the issuer is registering on Schedule B an offering of more than $250 million on a firm commitment underwritten basis. We recognize that because of the nature of foreign government issuers, significant amounts of information likely would be available about them even though they may not have registered before in this country. We solicit comment regarding our extension of the focused reports safe harbor to these foreign government offerings. Should we do so only if the foreign government issuer has previously issued securities in a public offering or if the broker or dealer was reporting on the issuer regularly before the filing?

One of the conditions that currently applies to focused research reports under Rule 139 is that the reports are distributed with reasonable regularity in the normal course of business. We propose to eliminate the "reasonable regularity" part of that condition but retain a requirement that the report be distributed in the broker or dealer's ordinary course of business. Where the issuer has been reporting under the Exchange Act for more than a year, investors will have public disclosure to refer to in weighing the contents of a focused research report. The same would be true of a large, well-followed foreign issuer even if it is not reporting in the United States. The condition that the broker or dealer be distributing the report as part of its ordinary course of business (*i.e.*, it has a history of distributing similar focused reports on other issuers or securities) should allay concern about hyping as well. We solicit comment about the elimination of the reasonable regularity condition. Are there any reasons we should retain the condition? Should we instead substitute a bright-line test that indicates more clearly just how long a broker or dealer must have been reporting about the issuer or its securities and with what frequency? If so, how long and how often?

iv. Consideration to Expand Rule 139 to IPOs and Offerings by Unseasoned Issuers

We also solicit comment on whether to expand the focused reports aspect of Rule 139 to initial registered offerings and repeat offerings by large unseasoned issuers where research reports are published by brokers or dealers that have been following the issuers in the ordinary course of their business.[362] Large issuers, even those that have not been reporting for a full year, may generate significant market and analyst attention. In some cases, the same would be true in initial registered offerings.

In cases involving repeat offerings by large unseasoned reporting companies, we believe it is possible that investors may benefit if research reports concerning these large companies were available around the time of their offerings. On the other hand, we see merit in limiting dissemination of research reports about unseasoned companies. A limitation helps ensure that the market is not mislead by subjective reports that are not balanced by regulated public disclosure made over a period of time. Given the risk of use of research reports as sales materials in the case of initial registered offerings and other offerings within a year of effectiveness, we would envision a safe harbor applying only if the research reports were required to be filed with the Commission in connection with the offering.

What limitations should we consider if we were to extend the Rule 139 focused reports safe harbor to IPOs? Should we limit extension to companies initially offering more than a certain dollar amount of securities? If so, at what level should we set the minimum offering amount: $250 million; $500 million; $600 million? Should we set other conditions? If so, what kinds?

Do these same considerations apply to unseasoned reporting companies? Does the proposed Form B public float/ADTV criteria provide a good model for qualifying companies that should be able to rely on this aspect of Rule 139? Should we differentiate unseasoned reporting companies listed on a national securities exchange from ones that are not listed?

Should we condition any extension of Rule 139 to cover focused reports about these companies on the broker or dealer having a specified history of following the company (*e.g.*, two years)? Should we extend it only if the report was prepared by a broker or dealer that had issued research reports about the company before the time it announced its registered offering?

Should we require that issuers file any research report prepared in reliance on any further extension of Rule 139 as part of their registration statements or as prospectus supplements? A filing requirement would assure that all investors would have equal access to the report, in furtherance of our goals to reduce selective disclosure whenever possible. If such reports are not filed, should issuers and underwriters be required to inform investors of the reports' availability and undertake to provide the reports upon request?

v. Industry-Related Reports

We also would extend the industry-related report safe harbor. Instead of applying only to offerings of issuers that meet the Form S–3 or F–3 minimum float/investment grade and reporting history, we would extend it to all issuers, regardless of size or reporting history. Where the report is not truly focused on the issuer of the securities, which the existing conditions ensure, there appears to be little risk of a report that is distributed regularly being distributed for the purpose of hyping the security. Even if the purpose of the broker-dealer's distribution was hyping, that type of report is unlikely to have that effect, regardless of whether the issuer is reporting or not. We solicit comment, however, concerning whether the contents of such a report under the proposed safe harbor should be further limited with respect to non-reporting companies.

We also propose to alter one of the conditions of the existing industry-related report safe harbor. We would eliminate the requirement that the report not contain a more favorable recommendation than the one made in the last publication by the broker or dealer about the issuer or its securities. That condition controls the recommendation being made by the analyst, not just the format in which it is made. While we recognize the risk involved in lifting that constraint, we believe it is possible to address the hyping concern by disclosure rather than by prohibiting a broker or dealer from stating what may be a legitimate change in its opinion. Our proposed Rule would provide simply that, when a broker or dealer wishes to make a more favorable recommendation than it made in the past, it also must disclose in the report the last two opinions or recommendations it published while not participating in a distribution by the issuer.[363] Because the broker or dealer also must disclose its role in the distribution, investors will be aware of the potential conflict of interest and can judge the current recommendation accordingly.

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[361] We would continue to allow research concerning large foreign exchange-traded issuers that are not reporting if the Form B public float/ADTV threshold is satisfied.

[362] For purposes of this discussion, a large company would be one that would meet the public float/ADTV tests in Form B.

As revised, Rule 139 also would require that the broker or dealer reporting on unseasoned or non-reporting issuers have distributed such reports with "reasonable regularity." We solicit comment regarding the need to retain the reasonable regularity requirement for unseasoned or non-reporting issuers. We also solicit comment as to whether it is necessary that projections for unseasoned or non-reporting issuers have been published with reasonable regularity.

vi. Section 17(b)

Section 17(b) of the Securities Act requires disclosure of any compensation received or expected to be received, directly or indirectly, form an issuer, underwriter or dealer for the publication or communication of information that describes a security.[364] Brokers and dealers are reminded that compensation received from an issuer that could be attributed to the preparation of a research report should be prominently disclosed.

2. Proposals and Interpretation in Connection With Regulation S and Rule 144A Offerings

Where an issuer is offering securities outside the United States in reliance on Regulation S, it and those acting on its behalf are required to refrain from making "directed selling efforts" in the United States and must ensure that the transaction is an "offshore transaction." "Directed selling efforts" is defined to encompass activities that are done for the purpose of, or could reasonably be expected to have the effect of, conditioning the market in the United States for the securities being offered under the Regulation. To satisfy the offshore transaction condition, no offer may be made to a person in the United States.

A broker or dealer acting as an underwriter on behalf of an issuer in connection with a Regulation S offering may wish, around the same time, to publish or distribute in the United States its regular analysts' research reports that cover the issuer, its securities or its industry. In that event, questions arise regarding whether those actions would conflict with the prohibition against directed selling efforts or the offshore transaction condition.[365] The concern stems from the analysis that those actions could be viewed as conditioning the market, which would constitute directed selling efforts, or offering the securities in the United States, which is prohibited under the "offshore transaction" requirement.

Similarly, when a broker or dealer is selling securities in reliance on Rule 144A, it is subject to the condition that it may not make offers to persons other than those it reasonably believes are QIBs. Where it distributes research about the issuer around the time of the Rule 144A transaction, it may be viewed as making offers to persons that receive it, including those who are not QIBs.

We are concerned that these blanket restrictions have resulted in brokers and dealers withholding regularly published research that they have not prepared with a view towards promoting the offering to investors. We therefore have proposed amendments to Regulation S and Rule 144A. They provide that research may be published or distributed under new terms set forth in Rules 138 and 139 notwithstanding the Regulation S prohibition against directed selling efforts and offshore transaction requirements or the requirement that Rule 144A offers be limited to QIBs.

In Rule 139, we would add an exemption in connection with these unregistered offerings. It would be limited to issuers about whom a broker or dealer may prepare focused reports (that is, seasoned issuers, larger foreign issuers and foreign government issuers).[366] We are not proposing to create a Rule 139 exemption for reports on small or unseasoned issuers making Regulation S or Rule 144A offerings. We solicit comment, however, concerning whether the proposed Rule 139 exemption for industry-type reports in registered offerings should be extended on equivalent terms to Regulation S or Rule 144A offerings.

With one exception, we propose to apply the same conditions in the Rule 138 and 139 exemptions for Regulation S and Rule 144A transactions that we would apply in connection with registered offerings. The additional condition would be that research could be published only in a publication that the broker or dealer distributes with reasonable regularity. We believe that restriction is appropriate given that our goal in these unregistered offerings is to allow for the continuation of research that the broker or dealer has regularly published, not the commencement of research. We solicit comment with regard to whether the research safe harbors for Regulation S and Rule 144A offerings should contain additional safeguards. Conversely, should only Rule 139 contain the reasonable regularity requirement for these offerings? We also solicit comment on whether a bright-line test should replace the "reasonable regularity" requirement. If so, what publication intervals should the safe harbor substitute for the reasonable regularity requirement (*e.g.*, annual or quarterly publication)? Would a bright-line test provide sufficient flexibility to cover differing practices among brokers and dealers?

In its 1990 release adopting Regulation S, we stated that research reports of the nature described in Rule 139(b) would not be deemed to constitute directed selling efforts in offerings by reporting companies.[367] Those reports are limited to ones that are not focused solely on the issuer or its securities but are more akin to industry reports. In addition, those reports are limited in how much prominence they can give to the issuer and whether they can provide a more favorable recommendation than last issued. In the same release, we warned brokers and dealers involved in Regulation S offerings by non-reporting companies to exercise greater caution in publication of research. As a result, it generally has been viewed as not appropriate for participating brokers or dealers to publish research of the nature described in Rule 138 and Rule 139(a) while an issuer is conducting an offering under Regulation S.

The Commission believes that this interpretation currently limits the distribution of regularly published research reports by brokers and dealers. The Commission, therefore, is expressing the view today that brokers and dealers may publish and distribute research reports as described in current Rule 138 or Rule 139 without such reports being deemed to constitute directed selling efforts.

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[363] If the broker or dealer has not made recommendations on two such occasions in the past, it may so state and provide its last recommendation.

[364] In adopting Section 17(b), Congress intended to address the "evils of the 'tipster sheet' as well as articles in newspaper[s] or periodicals that purport to give an unbiased opinion but which opinions in reality [were] bought and paid for." H.R. Rep. No. 85, 73rd Cong., 1st Sess. 24 (1933).

[365] *See, e.g.*, Braverman, *U.S. Legal Considerations Affecting Global Offerings of Shares in Foreign Companies*, 17 J. of Int'l. L. & Bus. 30, 79 (1996).

[366] *See* proposed revisions to Securities Act Rules 138(b), 17 CFR 230.138(b); 139(b), 17 CFR 230.139(b); 144A(d)(1)(i), 17 CFR 230.144A(d)(1)(i)· and Rule 902 (c)(3)(viii) and (h)(4) of Regulation S. 17 CFR 230.902 (c)(3)(viii) and (h)(4).

[367] Securities Act Release No 6863 (Apr. 24, 1990) [55 FR 18306, 18311–12].

3. Research and Proxy Solicitation

We also are proposing to codify a Commission staff position [368] that the publication or distribution of research under the conditions set forth in Rules 138 and 139 is permitted in connection with a registered securities offering that is subject to the proxy rules under the Exchange Act.[369] The new rule would provide that distribution of research in accordance with Rule 138 or 139 would be an exempt solicitation for purposes of the proxy rules.[370]

Recently adopted Exchange Act Regulation M also contemplated dissemination of research by distribution participants and their affiliates during the pendency of a distribution of securities if the conditions of Exchange Act Rule 138 or 139 are met.[371] Codification of the staff's position would further harmonize the treatment of research under the Securities Act and Exchange Act rules. We solicit comment on whether the proposed revisions would change analysts' approach to publishing research reports on ongoing business combinations.

VIII. Prospectus Delivery

A. Congressional History

Congress intended that the prospectus provide investors with "the means of understanding the intricacies of the transaction. * * *" [372] From the outset of the Securities Act, therefore, Section 5 has required an issuer to send the investor a final prospectus no later than the time of sale.[373] When Congress recognized that the final prospectus would not always be available to investors at the time they make their investment decisions,[374] it amended the Securities Act in 1954 to allow for the use of the preliminary prospectus. As the House Committee on Interstate and Foreign Commerce explained:

> [h]ow the investor might have accurate information at the time it is useful to him is a problem that long has been recognized. The proposed amendment offers an approach to its solution in that it provides for the use of a processed document, or preliminary prospectus, prior to the effective date of the registration statement.[375]

While Congress permitted the use of preliminary prospectuses, it did not lift its mandate that final prospectuses be delivered. Thus, while the issuer has the option to deliver prospectus information to the investor before it makes its investment decision, the Act only requires that a final prospectus be delivered to investors prior to or with the confirmation. Because the confirmation arrives at the end of the offering process, investors' investment decisions generally have been made before the time of final prospectus delivery.

B. Commission History

In the face of Congress' decision to treat the two kinds of prospectuses in that manner, the Commission's approach to preliminary prospectus delivery has been measured. Immediately after the adoption of the 1954 amendments, the Commission adopted Securities Act Rule 460.[376] Rule 460 states that the Commission may consider whether preliminary prospectuses have been adequately distributed before accelerating the effectiveness of a registration statement.[377]

In 1969, the Commission expressed its concern that investors were not receiving the necessary disclosure to make informed investment decisions in offerings by first time issuers.[378] The Commission emphasized that "the investing public should be aware that many such offerings of securities are of a highly speculative character and that the prospectus should be carefully examined before an investment decision is reached." [379] Accordingly, the Commission stated that, before accelerating the effectiveness of a registration statement for a first time issuer, it would consider whether the issuer had taken reasonable steps to send to investors a preliminary prospectus at least 48 hours before the mailing of confirmations.

The Commission formalized that 48-hour requirement in offerings by new issuers in 1982 when it amended Exchange Act Rule 15c2–8.[380] Rule 15c2–8 requires a broker or dealer, in connection with offerings by first time issuers, to deliver a copy of the preliminary prospectus to anyone expected to purchase in the offering. They must deliver the prospectus at least 48 hours before sending a confirmation. Rule 15c2–8 also requires that a broker or dealer take reasonable steps to comply promptly with any written request for a preliminary or final prospectus. Additionally, under the rule, brokers and dealers must make copies of the preliminary and final prospectus available to their sales associates that are expected to solicit orders for such securities.[381]

C. Prospectus Delivery Proposals

The Commission continues to believe that delivery of information to investors plays an integral role in their protection. In recognition of the importance of the prospectus to investors, we recently adopted rules that require the use of plain English in the prospectus.[382] Among other benefits, the use of plain English eliminates arcane, unnecessarily complex and incomprehensible language from key sections of the prospectus. We adopted these rules in order to allow investors to understand the intricacies and risks of an offering better when making their investment decisions. If the plain English prospectus reaches investors only after they have made their investment decisions, the full benefit is not realized.

1. Adequacy of Current Rules

Under current market practices, the Commission is concerned that Rule 460 and Rule 15c2–8 do not provide adequate assurance that all investors who need it will have sufficient time to consider the prospectus disclosure before making their investment decisions. Our concern about the adequacy of current rules is multifold.

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[368] *See* Staff no-action letter *Merrill, Lynch, Pierce, Fenner & Smith, Inc.* (Oct. 24, 1997).

[369] *See* proposed Exchange Act Rule 14a–1(l)(2)(v), 17 CFR 240.14a–1(l)(2)(v).

[370] *See* Exchange Act Rule 14a–2(a)(7), 17 CFR 240.14a–2(a)(7).

[371] Exchange Act Rule 101(b)(1), 17 CFR 242.101(b)(1).

[372] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 8 (1933).

[373] A final prospectus is a prospectus that conforms to Section 10(a) of the Securities Act, 15 U.S.C. § 77(j)(a).

[374] H.R. Report No. 1542, 83rd Cong., 2d Sess., 12 (1954).

[376] 17 CFR 230.460; Securities Act Release No. 3519 (Oct. 11, 1954) [19 FR 6727].

[377] Under Section 8(a) of the Securities Act, the Commission must give "due regard to the adequacy of the information respecting the issuer theretofore available to the public * * *" before accelerating the effectiveness of a registration statement. 15 U.S.C. § 77(h)(a).

[378] Securities Act Release No. 4968 (Apr. 24 1969) [34 FR 7235].

[379] Securities Act Release No. 4968, 34 FR at 7235.

[380] 17 CFR 240.15c2–8; Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380]. In the 1980 Rule 15c2–8 proposing release, the Commission noted that a preliminary prospectus delivery requirement may be appropriate for all issuers and solicited comment on extending it to every offering. Securities Act Release No. 6276 (Dec. 23, 1980) [46 FR 78]. Commenters expressed concern that such an extension would create an artificial waiting period that would impose an undue burden on an issuer's ability to tap favorable securities markets. *See* Securities Act Release No. 6338 (Aug. 6, 1981) [46 FR 42042].

[381] In the 1969 release proposing Rule 15c2–8, the Commission expressed its concern that salespersons were offering newly issued securities without seeing a copy of the preliminary prospectus. Exchange Act Release No. 8710 (Oct. 7, 1969) [34 FR 17034].

[382] Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370].

First, Rule 460 does not mandate delivery of preliminary prospectus information. Second, delivery of the preliminary prospectus information under Rule 15c2–8 covers only initial public offerings. While preliminary prospectus disclosure is essential in those offerings, investors' need for that disclosure before making investment decisions is not confined to those offerings.

Third, because Rule 15c2–8 measures the timing of delivery from the date of confirmation and uses only a 48-hour period, we are concerned that the Rule does not ensure a sufficient amount of time for investors to consider fully the intricacies of an offering. For example, in the typical marketed underwritten offering today, investors appear to make their investment decisions on or before the "circle date." This is the point at which investors are asked to "firm up" their orders in anticipation of pricing. On the circle date, an investor is asked to represent orally whether it will or will not purchase in the offering. The underwriter "circles" those indications of interest in its book that represent an affirmative response. The underwriters rely on these commitments in reaching final price and volume terms with the issuer. As a matter of practice, the investing public treats itself as committed at this point in time.[383] The circle date or dates in an offering can occur days before pricing. Confirmations are sent to investors after pricing occurs. While issuers and underwriters can always choose to deliver preliminary prospectuses earlier than required, and sometimes do under current practices, the 48-hour delivery period in the Rule may not effectively guarantee that investors receive prospectuses when they need them most.[384]

A fourth reason for concern that existing rules may not be sufficient relates to the fact that the Rule only applies to brokers and dealers. As the use of electronic media to make offerings becomes more prevalent, issuers may increasingly choose to offer their stock directly to the public.[385] Issuers are not subject to Rule 15c2–8's delivery obligation.[386] In current offerings not involving a broker or dealer, Rule 15c2–8 has no effect on prospectus delivery.

2. Prospectus Delivery and Developments in Communications

Investors' need for adequate time to review the preliminary prospectus may be particularly enhanced in marketed deals under the proposed system. Under today's proposals, we would permit the distribution of sales materials in addition to the preliminary prospectus. This may result in investors receiving much more sales literature in marketed offerings. In turn, investors may require more time with a preliminary prospectus in hand to evaluate all the materials they have. Providing investors with preliminary prospectuses sufficiently before their investment decisions would allow them to consider both the supplemental sales literature and the disclosure contained in the preliminary prospectus.

In the 29 years since the Commission first formulated the 48-hour delivery period, advances in technology, changes in practices and regulatory developments have profoundly altered the transmission of prospectus information. Today, in a matter of minutes, issuers can disseminate documents across the country and to the far corners of the world. Many issuers have Internet web sites that provide investors with instantaneous access to their financial reports and other company information. Electronic delivery of prospectuses is becoming more common, as companies and investors become more familiar with that medium.[387] Broker-dealers already make trade settlement information in connection with securities offerings available electronically on a real-time basis to institutional customers.[388] Print media also has seen its share of technological advancements. In those 29 years, we have moved from typewriters and typesetting to everyday use of computers. Today, a prospectus can be printed in a fraction of the time it took when the 48-hour period was formulated. In addition, regulatory changes such as shelf registration, unallocated shelf registration and, as proposed today, Form B registration have allowed and would allow issuers and underwriters to take advantage of any favorable changes in the securities markets quickly.

3. Final Prospectus Delivery Exemption

We believe that requiring delivery of only a final prospectus at the time of sale does not completely fulfill the Securities Act goal of protecting investors through disclosure in all offerings. In firm commitment underwritten offerings, the final prospectus invariably arrives after the investor has made its investment decision. While delivery of final prospectuses in those offerings may be useful to investors who are considering litigation or resale, it does little to fulfill the prophylactic goals of the Securities Act. As Professor Louis Loss noted, "[a] prospectus that comes with the security does not tell the investor whether or not he should buy. It tells him whether he has acquired a security or a lawsuit." [389]

In addition, because the Securities Act requires delivery of a final prospectus before or at the same time the confirmation is sent, the successful completion of the clearance and settlement process is contingent on prompt completion and delivery of the final prospectus. Broker-dealers sometimes experience practical difficulties in trying to comply with the current T+3 settlement cycle. In some cases, Exchange Act 10b–10 confirmations have had to be delayed in order to await completion of the final prospectus.[390] Any future shortening of the settlement cycle would simply exacerbate those difficulties.

The cost of delivery of a final prospectus, where it is otherwise readily available to the public,[391] may exceed

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[383] According to offering participants with whom the staff spoke, the "law of the Street" operates to require an investor either to purchase the securities it orally committed to buy on the circle date or harm its reputation by breaking its commitment. To break the commitment made on the circle date also is to risk exclusion from future offerings.

[384] Arguments have been made to the staff that providing for delivery in these marketed deals at such a late point in the offering process would still be effective because underwriters will allow their favored customers, even then, to back out of the trade without repercussions. We are concerned that reliance on that practice would disadvantage smaller investors and not reflect current offering practices.

[385] *See* Grant, *Small Firms Take Direct Route to Stock Offerings*, USA TODAY, Apr. 29, 1979, at 4b; Kollar, *Do-it-Yourself Public Offerings; The Internet Gives a New Dimension to an Old Financing Vehicle*, Investment Dealers' Digest, Mar. 24, 1997 at 4; Barlas, *Floating Stock on the Web; The Next Wave?*, Investor's Daily, Feb. 5, 1998, at A9.

[386] Rule 15c2–8, 17 CFR 240.15c2–8, would apply if the issuer itself is a broker or dealer.

[387] *See* Bagley & Tomkinson, *Internet Is Seeing Its Share of Securities Offerings*, The Nat'l L.J., Feb. 2, 1998, at C3; Weisul, *The New Plumbing on Wall Street; Forget the Hype: The Internet is Now Being Used by Securities Firms to Solve Workaday Problems*, Investment Dealers' Digest, Jun. 23, 1997, at 10.

[388] *See, e.g.*, Depository Trust Company's Institutional Delivery System User Manual at 1 (1994). Electronic messages containing the key information about the trade made in the offering are often sent earlier so that the clearance and settlement process may begin. Paper confirmations are then mailed later.

[389] Loss, Fundamentals of Securities Regulation 93 (1988).

[390] *See* the comment letters, in File No. S7–19–96, from the American Bar Association (Dec. 11, 1996), Merrill Lynch (Oct. 31, 1996), Morgan Stanley (Dec. 9, 1996), PSA The Bond Market Association (Nov. 8, 1996) and the Securities Industry Association (Nov. 13, 1996).

[391] Domestic issuers file final prospectuses with the Commission electronically via EDGAR. The filings are available on a real-time basis through

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any marginal benefit to investors. To provide investors with the maximum benefit from the prospectus, our proposals would re-focus prospectus delivery requirements on a point in time before investors have made their investment decisions. Accordingly, the Commission is proposing to create a new exemption from the Securities Act requirement to deliver a final prospectus.[392] The Commission is not proposing to change the final prospectus delivery requirement in Exchange Act Rule 15c2–8(d).[393] That rule requires all brokers or dealers that participate in a distribution of securities registered under the Securities Act to take reasonable steps to comply promptly with the written request of any person for a copy of the final prospectus. The broker or dealer must comply with such request until the expiration of the applicable 40-day or 90-day period under Section 4(3) of the Securities Act. We solicit comment on whether, as a condition to the exemption, issuers, like brokers and dealers,[394] should be required to provide to a purchaser upon request, and free of charge, a copy of the final prospectus.

a. Conditions to the Exemption

As a condition to the exemption, we would require that issuers, brokers and dealers tell investors, by the time investors receive their confirmations of sale, where they can acquire the information that constitutes the final prospectus free of charge.[395] We also would require as a condition the delivery of preliminary prospectus information in accordance with the Commission's new rule.[396]

Comment is solicited with respect to the notification condition. Given the availability of the final prospectus in all cases via the Commission's Internet web site or the Commission's Public Reference Room, is there a need to tell investors where to find it? Should the notification instead state that the registrant will provide promptly a copy of the final prospectus upon request? Would the proposals shift too heavy a burden to investors by requiring them to take action to obtain a final prospectus rather than to receive it automatically? Is the burden on investors enough that, despite EDGAR, we should continue to require final prospectus delivery?

b. Business Combinations and Exchange Offers

We are not planning to exempt offerings registered on the Securities Act forms for business combinations and exchange offers from the final prospectus delivery requirement.[397] These offerings differ from the other offerings registered under the Securities Act because the proxy rules and tender offer rules in conjunction with state law impose informational and delivery requirements in those transactions. The information contained in the final prospectus therefore would be delivered regardless of Securities Act requirements. In order to ensure consistency among the various rules and regulations applicable to these business combinations and exchange offers, the final prospectus delivery requirement would remain intact.

In addition to the Section 5(b)(2) requirement for final prospectus delivery, Forms S–4 and F–4 require the registrant, if it or the company to be acquired incorporates any documents into the prospectus, to deliver a prospectus no later than 20 business days before the date of the meeting or, if no meeting is held and proxies are solicited, 20 days before the corporate action or transaction is effected. This time period was established by the Commission in 1984 to address investors' need for sufficient time to acquire the documents incorporated by reference and, presumably, consider them.[398] Since 1984, we have witnessed the advent of EDGAR, the Internet and other sources of filed information. The Commission no longer believes that a 20-day time period is needed for that purpose. All of the documents that would be incorporated into proposed Form C would be available through the Commission's Internet web site, as well as other sources, before the time the registration statement becomes effective. We propose to eliminate the 20-day period. We solicit comment, however, on whether we should retain a set period and, if so, how long that period should be. Would delivery under the requirements applicable to these offerings not ensure sufficient time to obtain and consider the disclosure without one?

c. Rule 434 Final Prospectus Delivery Method

In 1995, the Commission adopted Rule 434[399] to ease the burden of prospectus delivery within the new T+3 settlement cycle.[400] At that time, four investment firms and the Securities Industry Association (SIA) had expressed concern that there would be insufficient time to mass print and mail final Section 10(a) prospectuses in a T+3 settlement cycle. Rule 434 provides that delivery of a final prospectus may be made in multiple documents at different intervals in the offering process.

Rule 434 allows issuers and other offering participants to meet their prospectus delivery requirement by delivering a preliminary prospectus and a term sheet or abbreviated term sheet before or at the time of sale. The information contained in the preliminary prospectus, confirmation and term sheet or abbreviated term sheet must in aggregate meet the informational requirements of Section 10(a). Therefore, only the Section 10(a) information not previously delivered to investors would have to appear in the term sheet or abbreviated term sheet. Consequently the term sheet or abbreviated term sheet could be printed and mass mailed quicker than the final integrated prospectus.[401]

As discussed earlier, the Commission is proposing to re-focus the prospectus delivery requirements on a point in time before investors have made their investment decision. If the proposed registration system is adopted, issuers and offering participants largely will be exempt from the requirement to deliver a final prospectus at the time of sale. Therefore, the printing and mailing of a final prospectus in time to meet the T+3 settlement cycle would not be required. Accordingly, the Commission is proposing to repeal Rule 434 for issuers other than investment companies as its purpose and usefulness to issuers and offering participants under the proposed registration system would be limited. The proposals do not exempt investment companies from the requirement to deliver a final prospectus at the time of sale. The

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various services and after a 24-hour delay at the Commission's web site (http://www.sec.gov).

[392] *See* proposed Securities Act Rule 173, 17 CFR 230.173. This Rule would not apply in the case of offerings on Forms C, SB–3, F–8, F–80 or F–10 (when that Form is used in a business combination transaction) or offerings of investment company securities.

[393] 17 CFR 240.15c2–8(d).

[394] *See* 17 CFR 240.15c2–8(a).

[395] *See* proposed Securities Act Rule 173(c), 17 CFR 230.173(c). In the case of Form B offerings, investors will be notified through the term sheet of where they can acquire this information.

[396] *See* proposed Securities Act Rule 172, 17 CFR 230.172.

[397] These Forms would include Forms C, SB–3, F–8, F–80 and F–10 (when that Form is used in a business combination transaction).

[398] Securities Act Release No. 6578 (Apr. 23 1985) [50 FR 18990].

[399] 17 CFR 230.434.

[400] Securities Act Release No. 7168 (May 11 1995).

[401] It appears, however, that most issuers and participants continued to deliver the integrated final Section 10(a) prospectus at the time of sale. Since September of 1996, only four (non-investment company) issuers have filed term sheets or abbreviated term sheets.

Commission therefore is proposing to retain Rule 434 for closed-end funds and unit investment trusts, which are currently covered by the Rule. We request comment on whether Rule 434 should be retained for these categories of investment companies.

4. Delivery of Preliminary Prospectus Information

Under the proposed registration system, we seek to ensure that high quality disclosure is delivered to investors when they need it most—before they make their investment decisions.[402] The proposed prospectus delivery requirements, like the current prospectus delivery requirements, do not contemplate that an issuer demonstrate that the investors actually received the prospectus. The issuer would have to take steps to ensure that the means it chooses to deliver the prospectus would reasonably result in delivery to the issuer by a certain date. As with other reforms, what prospectus information is required to be delivered, and when, will depend upon the nature of the issuer and offering.[403]

a. Form B Offerings

In all offerings of securities on Form B, we propose to mandate the delivery of transactional information before the investment decision.[404] We seek comment on two alternative proposals. Under the first proposal, we would mandate delivery of a securities term sheet. The securities term sheet would: (1) itemize the material terms of the securities in summary format; (2) identify a contact person to whom questions and requests for final documents may be directed; (3) name any person other than the issuer that is selling the securities and briefly identify any material relationship between such person and the issuer within the past three years; and (4) include a legend advising investors to read, before making an investment decision, the documents the issuer files with the Commission. We would require that the securities term sheet be delivered to investors before they make their investment decisions and be on file with the Commission before the first sale. Delivery of other information would not be mandated in proposed Rule 172 for Form B offerings.

Under the second proposal, we would require delivery of a prospectus containing all transactional disclosure currently required in Form S–3/F–3. That prospectus would have to be on file before first sale. Just like the first proposal, delivery of other information would not be mandated in proposed Rule 172.

We ask for comment on what kind of information should be mandated in the term sheet or prospectus. For example, should the term sheet include all "offering information"[405] filed in Form B offerings? Should the term sheet be more like a profile prospectus? Should mandated term sheet disclosure be a different subset of offering information? If so, should the term sheet include only categories of transactional information that must be disclosed in every Form B registration statement (*e.g.*, use of proceeds, changes in the registrant's affairs, etc.)? Should the term sheet include any of the categories of disclosure that must be included in the Form B filing if applicable (*e.g.*, transactional risk factors, dilution, etc.)? Should we require that the term sheet be written in plain English? Should we require in the prospectus fewer items of mandated disclosure? If so, which items should be excluded?

Similarly, should material changes in the issuer's affairs not previously reported be required on either the term sheet or the prospectus? Would there already be sufficient information available to investors and the market regarding certain securities such that delivery of a securities term sheet or prospectus would be unlikely to enhance investor protection significantly? Should we require delivery of a securities term sheet or prospectus in any Form B offering, regardless of whether or not the class of securities was previously registered?

b. Offerings by Small or Unseasoned Issuers

Delivery of information contained in the prospectus is especially important when the registrant is a new or relatively new public company. In those cases, there is comparatively little information available about the company. Due to the general lack of familiarity by investors with companies that are smaller or unseasoned, it is important that prospectus information be delivered early enough for investors to have sufficient time to assess the disclosure and, if necessary, seek further information in light of it. In these situations, we would not limit the requirement to deliver a preliminary prospectus to non-reporting companies, as Rule 15c2–8 does today. We are proposing to require the delivery of a Section 10 prospectus for all filings of small or unseasoned offerings.[406] The timing aspect of the delivery requirement would be dependent upon whether the offering was the registrant's initial public offering (or registered within a year of the registrant's initial public offering). If so, we propose to require that a Section 10 prospectus be delivered in a manner reasonably designed to be received by each investor no later than 7 calendar days before the date of pricing in a firm commitment underwritten offering. In a best efforts offering, or direct public offering, we would mandate delivery in a manner reasonably designed to be received by each investor no later than 7 calendar days before the investor signs a subscription agreement or other document in which it commits to purchase securities. For more seasoned issuers,[407] we would require that the prospectus (and any incorporated reports) be delivered so as to arrive at least 3 calendar days before the date of pricing, or the date the investor signs a subscription agreement or other document in which it commits to purchase the securities, as applicable.

We solicit comment on whether we should require earlier prospectus delivery. Should we mandate delivery, for example, at 10 or 15 days (rather than 7 days) and 5 or 10 days (rather than 3 days) before the date of pricing or commitment to purchase? We solicit comment on whether the proposed 7 and 3 day delivery dates are shorter or longer than the dates by which issuers typically deliver red herring prospectuses under the current system. Would the proposal alter current delivery practices in offerings of the type that would be made on Form A or

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[402] *See* proposed Securities Act Rule 172, 17 CFR 230.172, and proposed revisions to Exchange Act Rule 15c2–8, 17 CFR 240.15c2–8.

[403] If it chooses to, the issuer, underwriting or participating broker or dealer may deliver a final prospectus in lieu of the preliminary prospectus, so long as the delivery of the final prospectus satisfies the required time frame.

[404] A preliminary prospectus could be used to satisfy this obligation if an issuer so chooses. If a preliminary prospectus is delivered, delivery of a securities term sheet would not be required. Absent consent by the investor to electronic delivery, the issuer or underwriter would be required to send a paper copy of the securities term sheet.

[405] *See* Section V.A.1.a.ii. of this release for a discussion of what constitutes "offering information."

[406] This requirement would encompass [illegible] on Forms A, SB–1, SB–2, F–7, F–9, F–1 [illegible] involving a business combination) and certain Schedule B offerings. These proposals do not contemplate that issuers must satisfy their prospectus delivery requirements by using any specific method of delivery. Whether issuer [illegible]fy delivery requirements electronically or [illegible] traditional ways, they would be required to deliver the prospectus in a manner reasonably designed to result in delivery by the applicable date.

[407] For purposes of this delivery requirement, seasoned issuers are those whose initial public offerings took place one year or more before the effective date of the registration statement for the current offering of securities.

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the small business issuer system? If so, how?

Because information would be delivered to the investor before the transaction is declared effective and sold, material changes to the transaction or the company information may arise that were not disclosed in the preliminary prospectus delivered to investors. If investors are not otherwise informed about those changes, the information must be set forth in a document sent in a manner reasonably designed to be delivered to each investor at least 24 hours before the pricing of securities or the date the investor signs a subscription agreement or otherwise commits to purchase the securities.[408] Should we instead require delivery of material change information in 36 or 48 hours?

c. Foreign Government Issuers

We propose to exempt foreign government issuers [409] from the final prospectus delivery requirements and require them to deliver prospectus information under Rule 172 for the same reason we propose that treatment for other issuers: to provide more timely and efficient dissemination of information to investors.

Foreign government issuers are exempt from the reporting requirements under the Exchange Act unless they list their securities on a U.S. exchange.[410] Therefore, the proposed prospectus delivery requirements would serve a significant function in ensuring that investors have the information about foreign governments they need, at the time they need it, to make an informed investment decision. As in the case of corporate issuers, however, delivery may be needed more or less depending on the issuer and the offering. We believe that investors would need less time to review the prospectus information for a new offering by a seasoned issuer than it would that of an unseasoned one.

When a foreign government issuer makes an initial registered offering in the United States, it files a Schedule B with the Commission. The Schedule is publicly available, and in many cases contains much more information than is mandated.[411] Investors can access this information through the Commission at any time after the registration statement becomes publicly available. Depending on the nature of the offering and the issuer, analysts may cover the issuer and disseminate information about it and its offerings. For purposes of prospectus delivery, therefore, we would define "seasoned" foreign government issuers as those that already have registered a public offering on Schedule B. In the absence of a reporting history, we believe that is the best measure of seasoning.

Under proposed Rule 172, foreign government issuers would be divided into two categories: (1) larger seasoned issuers; and (2) smaller/unseasoned issuers. Larger seasoned issuers would consist of those that:

- Had registered an initial public offering with the Commission that was declared effective more than one year before the registration of its current offering on Schedule B; and
- Are registering an offering of securities in excess of $250 million that is being underwritten on a firm commitment basis.

All other foreign government issuers would be within the smaller/unseasoned category.

Large seasoned foreign government issuers that registered their offerings on Schedule B would be treated like Form B registrants for purposes of prospectus information delivery requirements. We would mandate the delivery of a term sheet describing the material terms of the security being offered. We also would require that the term sheet be on file with the Commission before the first sale.[412] These foreign government issuers would have to send the term sheet by means that would reasonably result in delivery to the investor before it makes a binding investment decision.

Foreign government issuers in the smaller/unseasoned category would be treated like Form A registrants. A foreign government issuer, regardless of size, registering its initial public offering on Schedule B (or registering within 1 year of it) would be included in the smaller/unseasoned category. That issuer would be treated like an issuer registering its initial public offering on Form A. Thus, we would require it to send a prospectus that satisfies the requirements of Section 10 of the Securities Act, by means reasonably designed so that the investor receives the prospectus at least 7 days before:

- The date of pricing the securities (for offerings underwritten on a firm commitment basis); or
- The date the investor signs a document that commits it to purchase the securities or otherwise commits to purchase (for offerings underwritten on a best efforts basis and non-underwritten offerings).

A seasoned foreign government issuer registering an offering of less than $250 million or registering an offering that is not underwritten on a firm commitment basis would be treated the same as a seasoned small issuer on Form A. It would have to deliver a prospectus 3 days before the date of pricing or the date an investor commits to purchase, as applicable.

We solicit comment on the prospectus delivery proposals as they relate to foreign government issuers. For unseasoned foreign governments, should we mandate prospectus delivery earlier than 7 days? Would 10 or 15 days be a better measure of time needed to digest the information and do any follow up inquiries. For other foreign government issuers in the smaller/unseasoned category, should we mandate prospectus delivery earlier than 3 days? Would 5 or 10 days be a better measure? For seasoned Schedule B issuers making smaller offerings or offerings not done on a firm commitment underwritten basis, should we mandate prospectus delivery earlier than 3 days? Would 5 or 10 days be a better measure? Should our definitions of "seasoned" for offerings by foreign government issuers require that the issuer have made its initial public offering more than 1 year earlier? Would two years earlier be a better test? Should we raise the offering threshold (*e.g.*, to $400 or $500 million) or lower it (*e.g.*, to $100 or $150 million)?

As we do regarding the term sheet required for Form B offerings, we solicit comment on whether the term sheet for Schedule B offerings should include information in addition to the material terms of the securities.

d. Canadian MJDS Issuers

We also would require earlier delivery with respect to offerings on Forms F–7 F–8, F–9, F–10 and F–80—the registration statements used in connection with the MJDS. Under the proposed registration system, issuers that register offerings under the MJDS, other than business combinations and exchange offers, also would be required to comply with proposed Rule 172.[413] We believe this requirement would be especially useful to U.S. investors who may need more time to familiarize themselves with the disclosure that Canadian companies prepare pursuant to the requirements of Canadian securities regulation, which would likely differ somewhat from disclosure generally prepared under U.S. federal securities laws.

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[408] For example, an issuer could choose to have the brokers tell investors orally about the changes when they call to determine if investors will commit to purchase.

[409] Securities Act Rule 405, 17 CFR 230.405, defines "foreign government" to mean the government of any foreign country or the government of any political subdivision of a foreign country.

[410] Section 15(d) of the Exchange Act expressly states that it does not apply to foreign government issuers. Section 12(g) of the Exchange Act applies only to issuers of equity securities, and foreign government issuers never issue equity. Accordingly, Section 12(b) is the only section under the Exchange Act that imposes a reporting requirement on foreign government issuers.

[411] Typically, the registration statements will include information about the issuer's country, form of government, economy, monetary system, public finance and national debt. Foreign government issuers disclose this additional information for marketing purposes and due to concern about the antifraud provisions of the federal securities laws. *See* Greene & Adee, *The Securities of Foreign Governments, Political Subdivisions and Multinational Organizations*, 10 N.C.J. of Int'l L. and Com. Reg. 1 (Winter 1985).

[412] *See* proposed Securities Act Rule 230.493A, 17 CFR 230.493A.

Issuers that register on MJDS Forms F–7, F–9 or F–10 (when that form does not involve a business combination) would be required to deliver a Section 10 prospectus under the proposed Rule. The delivery periods would mirror those applicable to Form A offerings. Seasoned issuers making offerings underwritten on a firm commitment basis would be required to deliver the prospectus to investors at least 3 days before the pricing date. For offerings underwritten on a best efforts basis, seasoned issuers would be required to deliver the prospectus to investors at least 3 days before the investor commits to purchase the securities. Unseasoned issuers would be required to deliver the Section 10 prospectus at least 7 days before the date of pricing or the date an investor commits to purchase, depending on the type of underwriting. Because there would be less public information available for unseasoned issuers, the proposed Rule calls for them to give investors more time to read the prospectus.

Comment is solicited with regard to these delivery obligations. Would the 7-day or 3-day delivery requirement provide investors with sufficient time to consider the issuer's disclosure? Should MJDS issuers be required to deliver sooner than proposed? Would 10 or 15 days (instead of 7) or 5 or 10 days (instead of 3) be better measures? Should we provide that MJDS issuers eligible to register on Form B be treated for purposes of delivery the same as Form B issuers, even though they rely on Canadian disclosure requirements? Is there any reason to differentiate the business combinations and exchange offers on MJDS forms from those on Form C or Form SB–3 with respect to the delivery requirements?

e. Effectiveness and Prospectus Delivery

In determining whether to accelerate effectiveness of registration statements, Section 8(a) of the Securities Act provides that the Commission consider whether there has been available adequate and understandable public information about an issuer and its offering. If not, the Commission may determine that it is not in the public interest to accelerate effectiveness of the registration statement. Under the proposed registration system, we would consider whether an issuer complied with its prospectus delivery obligations in evaluating any request for acceleration. We propose to amend Securities Act Rule 461 to reflect the consideration of compliance with delivery obligations under proposed Rule 172.[414]

f. Secondary Offerings

The proposed prospectus delivery requirements also would apply to registered secondary offerings made by selling security holders. We believe this is appropriate because most registered secondary offerings would be made in a manner that is similar to registered primary offerings. We solicit comment regarding whether it is appropriate to apply the same delivery requirements to all secondary offerings made by selling security holders that we apply to primary offerings made by the issuer. If not, why not, and how should they differ?

Are certain types of registered secondary offerings conducted in a sufficiently different manner from registered primary offerings that the delivery requirements are either not necessary or not appropriate? In particular, should the same delivery requirements apply to non-underwritten secondary sales into an existing trading market?

5. Aftermarket Prospectus Delivery

For a specified period of time after a registration statement becomes effective, the Securities Act requires dealers to deliver a final prospectus to persons who buy those securities. This aftermarket delivery obligation applies to all dealers, whether or not they participated in the offering itself.[415] The obligation arises because Section 5 applies to the dealer's transactions. The exemption generally relied upon by dealers, Section 4(3) of the Securities Act, is not available during a 40-day or 90-day period after the later of the effective date of a registration statement or the first bona fide offer of the security.[416] Thus, the aftermarket delivery period is defined primarily by the length of time Section 4(3) is unavailable.[417]

a. Background of Aftermarket Prospectus Delivery

An exemption from registration for dealers is not available during those periods because Congress determined to mandate that information be delivered to investors by all dealers while the securities are "in the stream of distribution."[418] Congress deemed protection of investors in the aftermarket important because: those investors are likely to be less sophisticated than the ones able to purchase in the initial sale, they frequently purchase at a higher price than the price of the initial offering, and they are solicited or influenced by the same selling efforts as the initial purchasers.[419] The Section 4(3) period was created to distinguish between transactions during distributions and ordinary trading transactions.[420]

Initially, Congress provided for a one-year aftermarket prospectus delivery period during which all dealers were obligated to deliver a prospectus. In 1954, Congress shortened the period to 40 days because it determined that distributions were completed well before the one-year period.[421] In 1964, Congress extended the 40-day period to 90 days for those transactions where no securities of an issuer had previously been sold pursuant to an earlier effective registration statement.[422] At the same time, Congress gave the Commission the power to shorten the 40-day and 90-day delivery period by rule, regulation or order.

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[413] Business combinations and exchange offers on Form F–8, F–80, and F–10 (when that Form is used in a business combination transaction) like business combinations on Forms C and SB–3, would not be subject to proposed Rule 172, 17 CFR 230.172, preliminary prospectus delivery. Instead, due to the nature of the transactions, they would continue to be subject to the final prospectus delivery obligations of Section 5. The timing of that delivery would be dependent on state law.

[414] *See* proposed Securities Act Rule 461(b)(2)(i), 17 CFR 230.461(b)(2)(i).

[415] The obligation is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments.

[416] The 90-day delivery period in Section 4(3) applies for securit[illegible] previously register[illegible] 40-day delivery period in Section 4(3) a[illegible] securities of issuers that previously regis[illegible] the Sec[illegible]

[417] As [illegible] e 174 [illegible] delivery [illegible]

[418] *See* S. Rep. N[illegible] 2d Sess. 7 (1954) (statement [illegible] rmick, former Comm[illegible] ties and Exchange Co[illegible] rrent president of the Amer[illegible]

[419] *See* S. Re[illegible] st Sess. 28 (1963).

[420] The primary pur[illegible] exempt from the s[illegible] by a dealer in sec[illegible] circumstances wi[illegible] offering." H.R. Rep[illegible] 6 (1933). The bright-lin[illegible] was considered less ambigu[illegible] easy evasion" than any attempt to esta[illegible] distinguishing dealer activities w[illegible] distributive from those which are [illegible] to ordinary trading. Throop and La[illegible] *Problems of Exemption Under the Secu[illegible] 1933*, 4 L. & Contemp. Problems 89, 120 [illegible]

[421] 1954 Amendments to the Securities Act of 1933, Pub. L. No. 83–577, 68 Stat. 683 (1954).

In response to the 1964 legislative action, the Commission promptly shortened the aftermarket delivery period for some offerings via the adoption of Rule 174.[423] Since 1964, the Commission has amended aftermarket delivery obligations in Rule 174 four times.[424]

Current Rule 174 exempts from aftermarket prospectus delivery any transaction relating to securities of a reporting company.[425] If the transaction relates to securities of a non-reporting company that will be listed on a national securities exchange or quoted on an electronic inter-dealer quotation system, current Rule 174 sets an aftermarket delivery period of 25 days.[426] For offerings by blank check companies, Rule 174 sets an aftermarket prospectus delivery period of 90 days after the funds are released from the escrow or trust account.[427] Where a registration statement relates to offerings to be made from time to time, Rule 174 provides that there is no aftermarket delivery requirement once the initial periodexpires.[428]

b. Aftermarket Underwriter Activities

In practice, aftermarket activities by underwriters occur in connection with offerings both by reporting and non-reporting companies. For example, the Commission's Office of Economic Analysis surveyed aftermarket underwriter short covering in 236 offerings completed between May and July 1997.[429] Short covering occurs when the underwriter creates a short position in the offering that it covers by exercising the over-allotment option, by purchases in the aftermarket or by a combination of the two.

In its survey, the Commission examined the frequency of short covering. Of the 236 offerings, underwriters in 54% of the initial public offerings and 73% of the non-initial public offerings covered short positions in the aftermarket.[430] Of those initial public offerings, 42% had underwriters still covering short positions 10 days after the offering. That percentage dropped to 13% at 25 days after the offering. Of the non-initial public offerings in which short position were taken, 28% had underwriters who were still covering short positions 10 days after the offering. That percentage dropped to 10% at 25 days after the offering.[431]

c. Recent Case Law Relating to Aftermarket Delivery Obligations

Since the *Gustafson* v. *Alloyd Co.*[432] decision by the Supreme Court, several federal district courts have concluded that the end of the prospectus delivery obligation also marks the end of the distribution for purposes of civil liability provisions under the Securities Act. Those decisions tie together the obligation to deliver a prospectus in the aftermarket with the existence of investor remedies in the aftermarket.

In *Gustafson*, the Supreme Court stated that "the liability imposed by Section 12[(a)](2) * * * cannot attach unless there is an obligation to distribute the prospectus in the first place (or unless there is an exemption)." [433] District courts have interpreted this dicta to mean that Section 12(a)(2) protections apply only where there is an obligation under Section 5 (read in conjunction with Section 4(3) and Rule 174) to deliver a prospectus.[434] Some courts have extended that reasoning by analogy to Section 11 as well.[435]

Under the current delivery requirements, that interpretation could result, and in some cases has resulted, in findings that Section 11 and Section 12(a)(2) protections do not extend to the entire distribution because Rule 174 creates an exemption from the prospectus delivery aspect of Section 5. We believe such an outcome is inconsistent with the investor protection provisions of the Securities Act and therefore seek to eliminate any potential confusion that could arise from Commission rules relating to prospectus delivery obligations.

d. Aftermarket Prospectus Delivery Proposals

We propose to continue the principle of applying a prospectus delivery obligation to transactions in the aftermarket. The concerns about aftermarket purchasers that caused Congress to apply Section 5's investor protections arguably remain just as valid today. We want to ensure that investors are suitably informed and protected in the aftermarket. When we adopted Rule 174, we intended simply to express when prospectus delivery was needed.[436] We did not intend to delineate when the remedies provisions in the Securities Act would or would not apply.

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[422] Securities Act Amendments of 1964, Pub. L. No. 88–467, 78 Stat. 580 (1964). Congress extended the period for two reasons. First, it viewed 90 days as a "more realistic appraisal of the time during which the distribution process continues in the case of many new issuers." *See* S. Rep. No. 379, 88th Cong., 1st Sess. 28 (1963). Second, it wished to protect investors from the "hot issue" allure characterized by a "seemingly insatiable appetite" for new issues with "rapid rises in the prices of such securities to premiums over the initial offering." *Id.*

[423] Securities Act Release No. 4749 (Dec. 23, 1964) [29 FR 19099].

[424] Securities Act Release No. 4886 (Nov. 29 1967) [32 FR 17933] (exempting securities registered on new Form S–7 from the prospectus delivery requirements of Section 4(3)); Securities Act Release No. 5101 (Nov. 19, 1970) [35 FR 18130] (eliminating the aftermarket delivery requirement for securities of reporting issuers); Securities Act Release No. 6763 (Apr. 4, 1988) [53 FR 11841] (reducing the aftermarket delivery requirement for securities issued in initial public offerings that are exchange-listed or quoted on an automated inter-dealer quotation system) and Securities Act Release No. 6932 (April 4, 1992) [57 FR 18037] (adopting a longer delivery requirement for securities of blank check companies).

[425] 17 CFR 230.174(b).

[426] 17 CFR 230.174(d). In establishing the 25-day period, the Commission considered how long it took for the market to be stabilized and to disseminate information. The Commission also studied the daily trading volume and relative prices changes in the aftermarket. Securities Act Release No. 6763 (Apr. 4, 1988).

[427] 17 CFR 230.174(g).

[428] 17 CFR 230.174(c).

[429] Of the 236 offerings studied, 114 were initial public offerings and 122 were primary, non-initial public offerings.

[430] As a result of the findings of this research, the Commission also reviewed the frequency of short covering based on differing criteria, such as average daily trading volume, market capitalization, and proceeds of the offering, to determine if there were other factors indicative of aftermarket activity. The Commission found no statistically significant deviations resulting from the various objective criteria selected. *Frequency of Aftermarket Price Stabilization*, Memorandum of the Commission's Office of Economic Analysis (July 24, 1998)

[432] 513 U.S. 561 (1995).

[433] *Id.* at 564.

[434] *Stack* v. *Lobo*, 903 F. Supp. 1361 (N.D. Cal. 1995)(characterizing *Gustafson* as imposing "prospectus liability only when the issuer is required to distribute a prospectus" and applying the civil liability provisions based on the 25-day period created by Rule 174 for IPOs); *Agryropoulous* v. *Mednet*, 1997 U.S. Dist. LEXIS 10497 (C.D. Cal. 1997) (citing *Gustafson* for the holding that "[S]ection 12(a)(2) imposes prospectus liability only when the issuer is required to distribute a prospectus") and *Gannon* v. *Continental Ins. Co.*, 920 F. Supp. 566 (D.N.J. 1996) (interpreting *Gustafson* to preclude liability under Section 12(a)(2) "for anything other than a stock purchase on an initial offering"). *See also Levitin* v. *A Pea in the Pod*, 1997 U.S. Dist. LEXIS 4985 (N.D. Tex. 1997) (reasoning "[a]ny redistribution of * * * stock within the statutory [mandatory prospectus delivery] period...takes on the characteristics of a new offering" and thus liability attaches).

[435] *See, e.g., In Re WRT Energy Securities Lit.*, 1997 U.S. Dist. LEXIS 14009 at *21 (S.D.N.Y. 1997); *Gould* v. *Harris*, 929 F. Supp. 353 (C.D. Cal. 1996); *Murphy* v. *Hollywood Enter. Corp.*, 1996 WL 393662 at *3 (D. Or. 1996); *Gannon* v. *Continental Ins. Co.*, 920 F. Supp. 566 (D.N.J. 1996) and *Stack*, 903 F. Supp. at 1361.

[436] Securities Act Release No. 4749 (Dec. 23 1964).

While we believe it is appropriate overall to continue to apply a prospectus delivery obligation in the aftermarket, we also recognize that the world of accessible investment information has changed in many respects since Congress last amended that obligation in 1964. We believe it is time to reassess how this particular delivery obligation may be satisfied. While the *Gustafson* Court stated that a prospectus delivery obligation must exist in order to apply Section 12(a)(2), Section 12(a)(2) does not speak to the method by which that obligation could be satisfied. Physical delivery of a prospectus would not necessarily be required for purposes of the section.

Today, prospectuses are readily available during the aftermarket period through our Internet web site as well as other electronic sources. The Commission realizes that some investors are technologically sophisticated and are just as able as dealers to download the final prospectus from the Internet. We also recognize, however, that there are still many investors who do not have the capacity to obtain information in that manner. Given that the final prospectus delivery obligation in the aftermarket truly protects investors primarily after they have made their initial investment decisions, we believe that obligation could be satisfied through a means other than physical delivery.

We propose to revise Rule 174 so that the prospectus delivery obligation would be satisfied if a final prospectus[437] is on file with the Commission and the dealer notifies each investor, before or at the same time it receives a confirmation, where it may promptly acquire, free of charge from the issuer, final prospectus information. For example, the dealer could notify investors that they can download a final prospectus in electronic form from our web site and request it in paper format by calling the dealer at the listed number. The notice may be in the form of a legend on the confirmation sent by the dealer under Exchange Act Rule 10b–10.

The proposed Rule would maintain the twin goals of the aftermarket prospectus delivery that Congress created: informing investors and preserving investor remedies throughout the stream of distribution of securities. By directing investors to a web site where they are able to view and print the final prospectus, and by allowing investors to request physical delivery of a final prospectus, the Commission would ensure investor awareness of the availability of information in the aftermarket. At the same time, the burden on dealers would be minimized to only those cases where investors seek a paper prospectus.

We propose to apply the Section 5 prospectus delivery obligation for transactions by all dealers for a period of 25 calendar days after the later of: the effective date of the registration statement, or the first date on which the security was bona fide offered to the public.[438] The aftermarket delivery obligation would apply regardless of whether the offering is an initial public offering or a repeat offering. The frequency and nature of the underwriter trading behavior demonstrates that aftermarket distributive activities are clearly not confined to offerings that are initial public offerings.[439]

The intent of Section 4(3) and Rule 174 was to provide Securities Act protection during the entire stream of distribution. Given our research and understanding of practices, we believe it is possible to set an appropriate delivery obligation period at 25 days for both initial public offerings and repeat offerings. The single period for all offerings would simplify compliance for dealers and provide a bright-line by which investors could set their expectations. Thus, the market should benefit from the clear definition of aftermarket transactions. While distributive activities continue in some offerings beyond that period, we believe the vast majority do not. We solicit comment, however, regarding whether the period should be shorter (*e.g.*, 20 days) or longer (*e.g.*, 30 days) or vary according to some other aspect of the offering.

We also solicit comment on whether dealers that were not members of the underwriting syndicate for an offering of a reporting company should have a prospectus delivery requirement. Would the cost of compliance by notification under proposed Rule 174 for those dealers be greater than the benefit of an informed aftermarket?

6. Proposed Repeal of Rule 153

Under the proposed prospectus delivery regime, Securities Act Rule 153 would not be necessary.[440] Rule 153 addresses delivery of final prospectuses in transactions between brokers taking place over a national securities exchange. The Rule states that the Section 5 delivery obligation of a final prospectus before or with a security will be satisfied if the issuer or underwriter delivers the final prospectus to the exchange. The Rule contemplates that these prospectuses will then be taken or copied by the members of the exchange that are on the buy side of the transaction and delivered to the beneficial purchaser.[441] The Rule is limited in that it applies only to transactions between members of a national securities exchange and only where the transaction was effected on that exchange.[442] The Rule is not applicable for transactions on an automated quotation system.

Based on our staff's discussions with exchanges and market participants, it appears that Rule 153 is not relied on (or rarely relied on) to accomplish prospectus delivery. There are two explanations for this. First, Rule 153 is narrow in scope and therefore does not apply to many transactions. Second, from a procedural standpoint, an underwriter finds it easier to mail prospectuses to all purchasers rather than differentiating among them.

Under the proposed aftermarket prospectus delivery system, Rule 153 would not be necessary. As we propose to revise Rule 174, dealers would have a prospectus delivery requirement for transactions relating to a registered security for a period of twenty-five calendar days after the later of: the effective date of the registration statement, or the first date on which the security was bona fide offered to the public. That delivery obligation would be deemed satisfied, however, if a final prospectus is on file with the

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[437] We would provide that the prospectus on file may omit price-related information in reliance on Securities Act Rule 430A, 17 CFR 230.430A, which deems that information to be part of the effective registration statement upon filing.

[438] Proposed revisions to Rule 174, 17 CFR 230.174, would retain some of the provisions of current Rule 174: (1) we would continue to apply a 90-day prospectus delivery obligation to securities of blank check companies; (2) we would retain the provision that Rule 174 does not shorten the prospectus delivery obligation with respect to securities covered by any registration statement that was the subject of a stop order under Section 8(a) of the Act; and (3) we would retain the provision expressing the our authority to set a different aftermarket delivery obligation in a particular case, as appropriate.

[439] We have considered but rejected an outright exemption of dealers' transactions from the aftermarket prospectus delivery obligation. Among the reasons for doing so is the risk that it could have the unintended effect of limiting remedies for purchasers in aftermarket transactions. We believe that result would frustrate the legislative and Commission intent to protect investors who buy throughout the distribution period, including the aftermarket part of it.

[440] 17 CFR 230.153.

[441] Some commentators have questioned whether in practice the re-delivery to the purchaser would occur. *See, e.g.*, Johnson & McLaughlin, *supra* note 76, at 548–49.

[442] *See In the Matter of Hazel Bishop Inc.*, Securities Act Release No. 4371 (June 7, 1961) [40 S.E.C. Docket 718 (1961)].

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Commission and each investor is notified where it can obtain the final prospectus information that satisfies Section 10(a). Thus, in the limited situations under the proposed system in which Rule 153 might apply, delivery is satisfied through another mechanism. We therefore propose to repeal Rule 153.

7. Record Keeping of Prospectus Delivery

We solicit comment on whether the Commission should, by rule, specifically require broker-dealers to keep records of their distribution of information relating to an offering of securities under the Securities Act.[443] For example, should the Commission require a broker-dealer to keep records on each offering regarding where and how prospectuses, term sheets and free writing material were disseminated? Should the Commission limit such a rule only to managing or principal underwriters or should the rule apply to every broker-dealer? Should records be required concerning prospectuses only, or should the records reflect all information distributed? Should this requirement be limited to the "offering period" only or should it extend through the aftermarket delivery time period required by the proposed amendment to Rule 174? Should this requirement be limited only to those offerings that become effectively automatically?[444] How long should these records be required to be kept? Is two years a long enough period? Is six years too long?

To enable easier tracking of compliance, should we require issuers that make offerings (other than Form B offerings) that are underwritten on a firm commitment basis disclose the pricing date? Should it be disclosed in the first quarterly report they would be required to file after the offering or in another Exchange Act report (*e.g.*, a Form 8–K)?

IX. The Role of Underwriters

A. Legislative Shaping of the Underwriters' Role

In passing the Securities Act in 1933, Congress was acting on its concern that misleading disclosure and high pressure sales tactics had overstimulated investors' demand for securities.[445] Congress' remedy was to require that investors get complete and truthful information regarding the offered securities. To help ensure that result, Congress deliberately placed underwriters within the scope of the liability provisions.[446] Congress recognized that underwriters occupied a unique position that enabled them to discover and compel disclosure of essential facts about the offering.[447] Congress believed that subjecting underwriters to the liability provisions would provide the necessary incentive to ensure their careful investigation of the offering.[448]

Congress' goal was not to have underwriters act as insurers of an issuer's securities.[449] Accordingly, Congress provided underwriters and others with a "due diligence" defense. An underwriter is not liable under Section 11 for the non-expertised portions of the registration statement if, after reasonable investigation, it had reasonable grounds to believe (and did believe) that the statements in the registration statement "were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.* * *''[450]

B. Case Law Interpretation of the Underwriters' Role

In the past, the courts also have recognized the important role underwriters play in the offering process. As the U.S. Court of Appeals for the Second Circuit noted, "[n]o greater reliance in our self-regulatory system is placed on any single participant in the issuance of securities than upon the underwriter.* * *''[451] Accordingly, courts have found that underwriters must conduct an investigation "reasonably calculated to reveal all of those facts [that] would be of interest to a reasonably prudent investor.''[452] As the courts have noted, it is impossible to have a rigid rule defining what is a reasonable investigation or how far an underwriter must go in order to verify an issuer's statements.[453]

C. Commission Interpretation of the Underwriters' Role

We, too, have provided guidance with regard to underwriter due diligence. In 1982, as part of a comprehensive program to integrate the disclosure requirements of the Securities Act and the Exchange Act, we adopted Rule 176.[454] Rule 176 identifies circumstances relevant in determining whether a person's conduct satisfies the due diligence standard in Section 11.[455] They are:

1. The type of issuer;
2. The type of security;
3. The type of person;
4. The office held when the person is an officer;
5. The presence or absence of another relationship to the issuer when the person is a director or proposed director;
6. Reasonable reliance on officers, employees and others whose duties should have given them knowledge of the particular facts;
7. For underwriters, the type of underwriting arrangement, the role as

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[443] The Commission would promulgate such a rule under Section 17 of the Exchange Act.

[444] The Act requires the Commission, in ruling upon requests for acceleration of the effective date of a registration statement, to consider whether adequate information is available to the public. *See* Securities Act Section 8(a). The Commission gives guidance as to what constitutes adequate information in Rule 460, 17 CFR 230.460. Many issuers provide the Commission with a description of their effort to satisfy the guidance set forth in Rule 460 in their requests for acceleration of the registration statement. Requests for acceleration are submitted pursuant to Securities Act Rule 461, 17 CFR 230.461. Under the proposals, in Form B offerings and certain offerings on Form A, underwriters and issuers would no longer submit to the Commission a request for acceleration.

[445] During the 1920s, $25,000,000,000 in securities (half of all those issued) proved to be worthless. H.R. Rep. No. 85, 73rd Cong., 1st Sess. 2 (1933) (hereinafter H.R. Rep. No. 85).

[446] Congress placed some of the responsibility for investors' losses on the securities industry. The House of Representatives' Committee on Interstate and Foreign Commerce noted that "the flotation of such a mass of essentially fraudulent securities was made possible because of the complete abandonment by many underwriters and dealers in securities of those standards of fair, honest and prudent dealing that should be basic to the encouragement of investment. * * *'' H.R. Rep. No. 85 at 2.

[447] *ABA Committee on Federal Regulation of Securities, Report of Task Force on Sellers' Due Diligence and Similar Defenses Under the Federal Securities Laws*, 48 Bus. Law. 1185, 1191 (May 1993).

[448] H.R. Rep. No. 85 at 5.

[449] H.R. Rep. No. 152, 73rd Cong., 1st Sess. 26 (1933). In order to remove any uncertainty with regard to the standard of reasonableness Section 11(c) of the Securities Act was amended in 1934 to replace the term "fiduciary" with the common law definition of the duty of a fiduciary. H.R. Rep. No. 1383, 73rd Cong., 2d Sess. (1934). *See also Escott, et al* v. *Barchris Construction Corp.*, 283 F. Supp 643, 697 (S.D.N.Y. 1968) ("In order to make the underwriters' participation in this enterprise of any value to the investors, the underwriters must make some reasonable attempt to verify the data submitted to them.").

[450] 15 U.S.C. § 77(k)(b)(3). For expertised portions of the registration statement, an underwriter need only show that it had no reasonable ground to believe, and did not believe, that the statements in the registration statement were untrue or omitted to state a material fact. *Id*

[451] *Chris-Craft Industries, Inc.* v. *Piper Aircraft Corp.*, 480 F.2d 341, 370 (2d Cir. 1983).

[452] *See, e.g.*, *Feit* v. *Leasco Data Processing Equipment*, 332 F. Supp. 544, 582 (E.D.N.Y. 1971).

[453] *Barchris*, 283 F. Supp. at 643.

[454] 17 CFR 230.176.

[455] The rule applies to persons other than the issuer. In the adopting release for Rule 176, the Commission acknowledged that there are other circumstances beyond those enumerated in the rule which may bear upon the reasonableness of an underwriter's investigation. *See* Securities Act Release No. 6383 (Mar. 3, 1982).

underwriter, and the availability of information with respect to the registration; and

8. Where a fact or document is incorporated by reference, whether the person had any responsibility for the fact or document when filed.

We wrote this list in a general way to apply to virtually any kind of offering and to apply to any person that could claim a due diligence defense.

We adopted Rule 176 to provide guidance to courts assessing the reasonableness of an investigation under the integrated disclosure system.[456] At that time, we expressly rejected the consideration of competitive timing and pressures when evaluating the reasonableness of an underwriter's investigation.[457]

In proposing Rule 176, we also discussed techniques available to underwriters that would allow them to expedite their due diligence investigations.[458] We stated that an underwriter could develop a "reservoir of knowledge," before an offering, by carefully reviewing a company's Exchange Act filings, analysts' reports, and by attending the company's meetings with analysts and brokers. This "reservoir of knowledge" would enable the underwriter to complete its due diligence investigations more quickly, because it would already be familiar with the company.

D. Proposed Guidance on Underwriter Due Diligence

The registration system we are proposing, among other things, would allow more reporting issuers to register capital faster and more efficiently. Consequently, underwriters may experience marginal additional timing pressures in conducting their due diligence investigations. Under those circumstances, underwriters must take care not to allow competitive pressures and issuers' demands for speed to lessen their due diligence investigations. We have been advised that firms currently underwriting expedited offerings by reporting issuers perform a reasonable investigation despite the very short period between when they are named the underwriter and when the offering is commenced. They reportedly use a combination of real-time and anticipatory due diligence practices. Those practices should work as well in connection with expedited offerings under the proposed registration system.

We believe that a court would, of its own accord, take into account all of the facts and circumstances that affect the ability of the underwriter to conduct a reasonable investigation or develop reasonable grounds for belief. Nevertheless, a rule that provides guidance with respect to expedited offerings by reporting companies could help those involved in the due diligence process and those assessing its adequacy. We believe we can identify several due diligence practices for those offerings that, if present, may be indicative of a "reasonable investigation" under Section 11 and "reasonable care" under Section 12(a)(2).

Accordingly, we are proposing to expand Rule 176.[459] First, we are proposing that Rule 176 address the reasonable care standard of Section 12(a)(2) as well as the reasonable investigation standard of Section 11. While Section 11 requires a more diligent investigation than Section 12(a)(2), any practices or factors that would be considered favorably under Section 11 also should be considered as favorably under the reasonable care standard of Section 12(a)(2).[460]

We also are proposing to add subsection (i) to the Rule. It would identify six due diligence practices that the Commission believes would enhance an underwriter's due diligence investigation when conducting an expedited offering. The Commission believes the courts should view these practices as positive factors when evaluating an underwriter's due diligence defense, though these practices in no way constitute an exclusive list or serve as a substitute for a court's analysis of all relevant circumstances. The absence of one or more of these practices, apart from the underwriter's review of the registration statement and inquiry into facts or circumstances that raise concerns about the adequacy or accuracy of the disclosure, should not be considered definitive in reaching a conclusion about the adequacy of the underwriter's investigation.

Subsection (i) would apply only to offerings of equity and non-investment grade debt securities that were marketed and completed in fewer than five days. Additionally, the proposed guidance would require that the issuer have registered the offering on Form B. These expedited offerings require the underwriter to perform the bulk of its due diligence on a compressed time schedule. For offerings conducted on a longer time schedule, the Commission believes that no additional guidance is required. For every offering, including expedited offerings, the courts would examine all the relevant circumstances. The six practices that the courts should consider as positive factors in expedited offerings are:

1. Whether the underwriter reviewed the registration statement and conducted a reasonable inquiry into any fact or circumstance that would cause a reasonable person to question whether the registration statement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

2. Whether the underwriter discussed the information contained in the registration statement with the relevant executive officer(s) of the registrant (including, at a minimum, the chief financial officer ("CFO") or chief accounting officer ("CAO") or his or her designee) and the CFO or CAO (or his or her designee) certified that he or she has examined the registration statement and that to the best of his or her knowledge, it does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

3. Whether the underwriter received a Statement on Auditing Standards ("SAS") No. 72 comfort letter from the issuer's auditors;

4. Whether the underwriter received a favorable opinion from issuer's counsel opining that nothing has come to its attention that has caused it to believe that the registration statement contains an unfair or untrue statement or omits to state a material fact;

5. Whether the underwriter employed counsel that, after reviewing the issuer's registration statement, Exchange Act filings and other information, opined that nothing came to its attention that would lead it to believe that the registration statement contains an untrue statement or omits to state a material fact; and

6. Whether the underwriter employed and consulted a research analyst that:

(i) Has followed the issuer or the issuer's industry on an ongoing basis for at least the 6 months immediately before the commencement of the offering; and

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[456] The integrated disclosure system (and later shelf registration) allowed issuers to complete registered offerings faster than previously possible. Underwriters expressed concern that those accelerated time schedules would increase pressure on them to expedite their due diligence investigations. *See* Securities Act Release No. 6335 (Aug. 6, 1981) [46 FR 42015]. *See also Feit,* 332 F. Supp. at 582. The Commission stated that the integrated disclosure system was not designed to modify the responsibility of underwriters and others to make a reasonable investigation. *See also* Securities Act Release No. 6499 (Nov. 17, 1983).

[457] Securities Act Release No. 6335 (Aug. 6, 1981).

[458] Securities Act Release No. 6335 (Aug. 6, 1981). These techniques were not codified as part of the rule but "were presented to help facilitate the development of procedures compatible with integrated approach to registration." *See* Securities Act Release No. 6383 (Mar. 3, 1982).

[459] See proposed revisions to Securities Act Rule 176, 17 CFR 230.176.

[460] If our proposed expansion of Securities Act Rule 176, 17 CFR 230.176, is adopted as proposed, we envision providing additional guidance in the adopting release as to the difference between the reasonable care standard of Section 12(a)(2) and the reasonable investigation standard of Section 11.

(ii) Has issued a report on the issuer or its industry within the 12 months immediately before commencement of the offering.

The Advisory Committee on Capital Formation also recommended expanding the factors listed in Rule 176.[461] We solicit comment on whether one of those factors, a management report to the audit committee of the board regarding procedures established to assure accurate and complete Exchange Act disclosure, be included in Rule 176 as a basis for underwriter due diligence.[462]

1. Proposed Practices Reflect Current Practice

Various underwriters and issuers have identified to the Commission staff potential elements of current due diligence investigations for expedited offerings. All of the six practices identified in the proposal reportedly are being used to some degree by most underwriters for those offerings. For example, even in the speediest of offerings, an underwriter interested in establishing that it had done a reasonable investigation would: read the disclosure, talk about it with management of the issuer, document management's conclusion about its adequacy, and follow up on matters of concern that arise in connection with its inquiry. An underwriter doing a due diligence investigation in an expedited offering may seek assurance from third parties involved in the offering that they have not discovered inadequacies in the disclosure. Thus, they may arrange for opinions from both the issuer's counsel and their own. Additionally, underwriters may arrange for a SAS 72 comfort letter from the issuer's auditor. Though we believe that underwriters' reliance on representations by third parties may, depending on the circumstances, be a factor in considering an underwriter defense in expedited offerings, in every instance we believe it is appropriate for underwriters to review the registration statement and make reasonable inquires about any suspicious statements or omissions. For that reason, we have indicated that a court could consider dispositive an underwriter's failure to do so. We request comment on whether reliance on third party representations alone could satisfy an underwriter's obligation.

2. The Role of Analysts

An underwriter will sometimes employ its research analysts to help it conduct its due diligence investigation. We believe it is appropriate to recognize that research analysts working for an underwriter can play an important role in facilitating the due diligence process in expedited offerings. A research analyst that follows an issuer's industry would likely be aware of the risks and prospects of an issuer's business. An analyst is employed to search out and analyze not only the Commission filings but also any other information that is available about the issuer and its industry. While an analyst may not have the same degree of access to issuer information as an underwriter performing long-term due diligence, he or she generally has regular contact with the issuer or companies in the issuer's industry. As a result, the analyst would have acquired the necessary "reservoir of information" about the issuer that helps fulfill due diligence requirements in expedited offerings.

Firms acting as underwriters in expedited offerings generally do so when they are already conducting a form of "due diligence" year round via their in-house analysts. Because of their analysts' prior work, these underwriters have less to do immediately before the offering.[463] While some brokerage firms may have "walled off" analysts from the underwriting side of their businesses, that no longer appears to be uniformly the case at the time where an analyst's knowledge can be instrumental in expediting the due diligence process.[464]

In this respect, we recognize that, in limited and controlled circumstances, cooperation between analysts and underwriters can be useful. The proposed system perceives the utility of a "one-way" wall between analysts and underwriters of the same firm, whereby information from the analysts who have a "reservoir of information" is available to the underwriters for purposes of Rule 176. We still would expect brokerage firms to maintain a wall between analysts and underwriters to prevent any flow of information from the underwriter to the analyst that would result in selective disclosure.

3. Other Due Diligence Practices

The Commission also wishes to solicit comment on a number of other due diligence practices that are currently being conducted or discussed by underwriters.

a. Disclosure Review by an Issuer's Independent Accountants

The role of the accountant in a due diligence investigation cannot be overlooked. Accountants are often the people most familiar with an issuer's financial standing and prospects. They play a vital role in the protection of investors. As noted earlier, underwriters also rely on accountants in performing their due diligence investigation. Underwriters often will request a SAS 72 comfort letter from an issuer's independent auditors as part of their due diligence investigation. Additionally, some issuers have their accountants conduct a SAS 71 review of their quarterly financial statements. We believe that this additional review of an issuer's quarterly financial statements augments compliance with our rules and regulations. Consequently, we request comment as to whether we should add to the proposed practices the fact that an independent accountant performed a timely review under SAS 71 of an issuer's quarterly financial information.

Recently, the American Institute of Certified Public Accountants ("AICPA") issued a Statement on Standards for Attestation Engagements No. 8 ("SSAE 8"). The SSAE 8 contemplates that an accountant may perform either an examination or a review of an issuer's management's and discussion and analysis ("MD&A") disclosure. The examination is intended to result in the accountant's expression of an opinion as to whether:

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[461] *See* Advisory Committee Report at 65–70. That Committee primarily suggested that compliance with both mandatory and voluntary "disclosure enhancements" recommended in its Report be added as factors for underwriters. In addition to the management report to the audit committee, those included:

—Senior management certification to the Commission regarding disclosure in Exchange Act reports;

—Reviews by outside professionals including:

—SAS 71 review by company's auditors

—SAS 72 comfort letter

—SAS 37 subsequent events procedures

—Rule 10b–5 opinion letter

—Existence of a disclosure review committee of the board of directors;

—The extent of access to analysts; and

—The size of the offering.

[462] *See* Section XI.A.4. of this release regarding Exchange Act disclosure.

[463] While the rule contemplates that the analyst has been following the issuer or its industry as part of its employment responsibilities for a period of time, the rule does not require that the analyst be employed by the underwriter for that entire period. The fact that an analyst moves from one analyst position to another should not be relevant where the analyst's coverage of the issuer continues.

[464] While we recognize the varying practices with respect to maintaining a wall between the analyst and underwriting sides of the brokerage firm, we do not suggest that brokerage firms should remove or lower those walls. Although we recognize the helpful role analysts perform in facilitating due diligence, we also recognize the wisdom of maintaining legitimate walls between analysts and underwriters that work for the same brokerage firm and share an interest in the same issuers. *See, e.g.,* *AutoZone Holders Sold Stock in June After Goldman, Analysts Talked Up Issue,* Wall St. J., Jan 15, 1997 at C1.

1. The issuer MD&A disclosure contains the required elements of Item 303 or Regulation S–K or Item 303 of Regulation S–B;

2. The historical financial information included in the MD&A is accurately derived from the issuer's financial statements; and

3. The issuer's underlying information, determinations, estimates and assumptions provide a reasonable basis for the disclosures contained in the MD&A.[465]

We believe that a SSAE opinion may further our disclosure goals and help obtain greater compliance with our rules. Therefore, we also solicit comment as to whether a SSAE 8 review should be added to the proposed practices.

b. Disclosure Review by an Independent Qualified Professional

We also request comment as to whether to include as one of the proposed practices an underwriter's review of a favorable report issued by a qualified independent professional to the issuer after the professional conducted a year-end disclosure review. The purpose of the qualified independent professional's review would be for the professional to assess the disclosure in the annual report the issuer is drafting before the issuer files it under the Exchange Act.[466] Although this practice is not common today, we believe it could enhance the quality of Exchange Act disclosure that is typically incorporated by reference into registration statements in connection with expedited and other offerings. In the event that a qualified independent professional completed such a review, a reasonable underwriter should be allowed to factor that in when figuring out what steps it needs to take in its due diligence.

We anticipate that such a disclosure review generally would occur independent of the offering process during the period after the end of the issuer's fiscal year but before it has filed its annual report. In the course of the review, the professional would read all of the issuer's Exchange Act reports for the year, as well as last year's annual report, to assist it in evaluating the quality of the Exchange Act annual report not yet filed by the issuer for the year just ended. The qualified independent professional also would perform a reasonable investigation.[467] It would have to issue its report before the commencement of the offering in order for the underwriters to place reasonable reliance on the report.

To issue a favorable report, the professional would have to state that, after reading those reports and doing a reasonable investigation, it believes that the disclosure in the non-expertised portions of the annual report to be filed is true and there were no omissions of material facts. As to the expertised portions (including the audited financial statements), the professional would have to state that it does not believe that the disclosure is untrue or there was an omission to state a material fact.

We also request comment as to whether certain qualifications should be required of the independent professional. While we anticipate that different professions could perform the disclosure review, should such a review be limited to only certain professions such as the legal or accounting profession? Would we need to provide guidance as to what would constitute an adequate disclosure review? Would there be a sufficient number of qualified professionals willing to undertake such a review? Since these professionals would be subject to liability, would this prevent a market for such services from developing? Would issuers be willing to pay for such a review?

Besides this proposed practice and the liability provisions of the Acts, are there more direct or better ways to enhance the underwriters' due diligence role with respect to an issuer's Exchange Act reports? If so, what are they?

E. Interpretation of the Guidance

While we believe that the due diligence practices we propose to add to Rule 176 would enhance an underwriter's investigation, these practices should not be viewed as mandatory. We also are not suggesting that some or all of these practices are the exclusive way to establish adequate due diligence, even in an expedited offering. The absence of any one or more of the practices in a particular case, except for the underwriter's review of the registration statement and inquiry into facts or circumstances that raise concerns about the adequacy or accuracy of the disclosure, should not be considered definitive in reaching a conclusion about the adequacy of due diligence efforts.[468] Each offering is unique, and therefore the underwriter must evaluate the surrounding circumstances and then choose the appropriate due diligence practices.

F. Investment Grade Debt Offerings

The proposed guidance would not apply to offerings of investment grade debt. Issuers that offer investment grade debt under a medium term note program may conduct frequent offerings. Consequently, underwriters' due diligence is usually performed periodically rather than with each offering of investment grade debt. Periodic due diligence normally would not be completed under the same time pressures associated with an expedited offering of equity or non-investment grade debt securities. We solicit comment, however, as to whether investment grade debt offerings should be included in the proposed amendments to Rule 176. If so, are there certain due diligence practices that would not be applicable to investment grade debt? Are there specific due diligence practices that are performed only with regard to investment grade debt offerings? Should these practices be added to Rule 176? Would these practices allow for due diligence to be performed on an offering-by-offering basis? Would additional guidance regarding investment grade debt offerings be useful to the courts?

G. Requests for Comment on the Proposed Guidance

The Commission requests comment on the proposed amendment to Rule 176. Because the courts already consider the surrounding circumstances of the offering when determining whether an underwriter's investigation was reasonable, would adding these practices to Rule 176 materially assist courts in evaluating due diligence efforts? Would adding them assist underwriters in crafting their due diligence practices? Would any of the proposed practices cause some underwriters, such as those that do not employ analysts, to suffer unfair competitive disadvantages?

Are there other due diligence practices that should be included in the proposed amendment? Are any of the practices not relevant to consider in assessing an underwriter's due diligence? Should the extent to which an underwriter has very recently underwritten another offering for the same issuer be explicitly identified as a relevant circumstance?

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[465] Statement on Standards for Attestation Engagement No. 8, American Institute of Certified Public Accountants.

[466] This annual report would be incorporated into the registration statement prepared for the offering.

[467] We envision this investigation as akin to the type of reasonable investigation an underwriter would undertake if the disclosure were contained in a Securities Act registration statement.

[468] We have reflected this position in proposed revisions to Rule 176, 17 CFR 230.176.

Should the proposed 5-day marketing period be shortened (*e.g.*, to two or three days) or lengthened (*e.g.*, to five business days)? Should the proposed guidance be limited to offerings that are underwritten on a firm commitment basis? Should the proposed guidance be expanded to cover offerings that are registered on Form A, particularly those for which the underwriter designates effectiveness? Will the proposed changes provide an incentive for underwriters and issuers to complete their offerings earlier than today? Do we need to define when an offering is considered first marketed? In general, we solicit comment on whether the proposed practices, separately or as a package, provide underwriters with sufficient guidance to enable them to perform adequate due diligence investigations. Are the proposals too lenient to serve that purpose? Should we add other practices to proposed Rule 176(i) to direct underwriters who participate in these offerings better? On the other hand, are the proposals overly burdensome?

H. Liability Safe Harbor

Several commenters on the Concept Release suggested that reform is needed to ensure that an underwriter's exposure to liability under Section 11 mirrors its ability to affect disclosure.[469] In expedited offerings, they argued, there is little time to conduct due diligence immediately before commencement. As a result, some commenters suggested that underwriters be protected from liability through a safe harbor in those offerings.[470] We are not proposing such a safe harbor from potential liability. To grant one to underwriters would be to lessen significantly their incentive to test the quality of the issuer's disclosure in such offerings. We recognize the value that underwriters add to the disclosure process. In our view, investors require that protection. In addition, like the courts and past Commissions, we do not believe that it would be possible to craft a single, finite list of steps that will, without fail, constitute a reasonable investigation in every set of circumstances in many different offerings. We believe our proposal to include specific guidance in Rule 176 about expedited offerings will aid underwriters considering how to conduct due diligence in those circumstances and assist in the event a court needs to assess those steps.

X. Integration of Registered and Unregistered Offerings

A. The Integration Doctrine

The integration doctrine reaches all the way back to 1933.[471] Put simply, integration is the process of combining separate transactions in securities as part of the same offering for purposes of analyzing whether the registration provisions of the Securities Act apply. It is what prevents an issuer from evading registration by artificially splitting what is in reality a single offering to make it appear that an exemption applies when no exemption for that offering was ever intended. When separate transactions are integrated into one offering, that offering must have an exemption from registration. If no exemption is available, then the transaction, if not registered, would be in violation of Section 5 of the Securities Act. Thus, integration is a concept that upholds the policies underlying both the registration system and the exemption system in the Securities Act.

The integration doctrine is not always easy for securities law practitioners to apply to offerings. The analysis generally is dependent on considering all the particular facts and circumstances for each offering. Over the years, however, the Commission has given guidance. In 1962, the Commission issued a release that established a framework for analyzing whether offerings should be integrated.[472] The five-factor test established in that release continues to apply today.[473] In addition, the Commission has created a number of safe harbors from integration in order to simplify the analysis in particular cases.[474] The application of the integration doctrine also has been the subject of staff interpretive letters.[475]

B. Rule 152

In 1935, the Commission adopted Rule 152.[476] It provides a safe harbor from integration when an issuer makes a private offering pursuant to Securities Act Section 4(2) and then decides to make a public offering and/or file a registration statement. The rule states that Section 4(2) shall be deemed to apply to transactions that did not involve any public offering at the time even though the issuer decides subsequently to make a public offering and/or file a registration statement.

Rule 152 has not been considered a model of clarity. Over the years, the scope of Rule 152 has been a matter of some uncertainty and the subject of Commission staff no-action letters. For example, questions have been raised about: whether the safe harbor is available to both completed private offerings and abandoned private offerings, whether the safe harbor is available when the registered offering was contemplated at the time of the private offering, and under what circumstances an offering is considered completed for purposes of the safe harbor.[477]

C. Proposed Safe Harbors for Completed and Abandoned Offerings; Related Rule Proposals

The integration doctrine and Rule 152 have received a great deal of attention in recent years from securities law practitioners. Their interest has reflected their clients' demand for speed in the offering process. One area in which frequent questions arise with respect to integration is the combination of private and public offerings.[478]

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[469] *See, e.g.*, comment letters, in File No. S7–19–96, from Merrill Lynch (Oct. 31, 1996), Morgan Stanley (Dec. 9, 1996) and the Securities Industry Ass'n (Nov. 13, 1996).

[470] *See, e.g.*, comment letters, in File Number S7–19–96, from Cleary, Gottlieb, Steen & Hamilton (Dec. 27, 1996) and Merrill Lynch (Oct. 31, 1996)

[471] *See* Securities Act Release No. 97 (Dec. 28 1933).

[472] *See* Securities Act Release No. 4552 (Nov. 6 1962) [27 FR 11316].

[473] The five factors are:

1. Are the offerings part of a single plan of financing?

2. Do the offerings have the same general purpose?

3. Are the offerings of the same class of securities?

4. Are the offerings being made at or about the same time?

5. Are the securities being sold for the same type of consideration?

These factors also are noted in Rule 502 of Regulation D, 17 CFR 230.502. The Commission has stated that any of the factors can be determinative. Securities Act Release No. 4552 (Nov. 6, 1962).

[474] For example, Rule 502(a), 17 CFR 230.502(a), provides that offers and sales made more than 6 months before the start of an offering under Regulation D or more than 6 months after the completion of an offering under Regulation D will not be integrated with the Regulation D offering if there were no non-Regulation D offers and sales of that class of securities (other than through employee benefit plans) during that period. *See also* Rule 147(b)(2), 17 CFR 230.147(b)(2), which provides a similar safe harbor for exempt intrastate offerings; Rule 251(c), 17 CFR 230.251(c), which provides a similar safe harbor under Regulation A for small offerings by non-reporting issuers; Rule 701(b)(6), 17 CFR 230.701(b)(6), which contains a non-integration provision in connection with exempt offerings to employees and consultants under compensation plans.

[475] *See, e.g.*, Staff interpretive letters *Squadron, Ellenoff, Pleasant and Lehrer* (Feb. 28, 1992) and *Black Box Inc.* (June 26, 1990).

[476] *See* Securities Act Release No. 305 (Mar. 2, 1935). *See also* Securities Act Release No. 4761 (Feb. 5, 1965) [30 FR 2022].

[477] *See, e.g.*, Staff interpretive letters *Quad City Holdings, Inc.* (Apr. 8, 1993); *Vulture Petroleum Corp.* (Feb. 2, 1987); *Verticom Inc.* (Feb. 12, 1986).

[478] Integration issues may relate to two or more private offerings, as well. Neither current nor proposed revisions to Rule 152, 17 CFR 230.152, addresses these issues.

We propose to revise Rule 152 to clarify and expand the integration safe harbor.[479] First, the rule would address the circumstances under which a completed unregistered private offering would not be integrated with a subsequent registered offering. Second, the rule would set conditions under which an unregistered private offering that has been abandoned may be followed by a registered offering. Third, the rule would provide a safe harbor for issuers that wish to abandon a registered offering and follow it with an unregistered private offering. Fourth, the rule would codify some of the staff positions taken with respect to integration and registration of resales. Finally, the exempt offerings covered by the rule would be expanded to include other types of unregistered private offerings in addition to Section 4(2) offerings.

We also are proposing related rule changes. Proposed Rule 159 would codify a current staff position concerning lock-up agreements before business combinations.[480] Rule 477 would be revised to facilitate withdrawals of registration statements.[481]

1. Completed Offerings

a. Issuer Transactions

Through revising Rule 152, we hope to avoid persistent interpretive questions concerning whether Section 5 problems arise if a private offering was completed within 6 months before the filing of a registration statement.[482] As proposed, if the private offering is completed before the registration statement is filed, the private offering would not be integrated with the registered offering regardless of the length of time between the two offerings.

The proposed rule would define the circumstances under which an offering would be considered completed for purposes of the safe harbor. An offering would be completed where all purchasers have fully paid the purchase price for the securities in the private offering. If certain conditions are met, an offering will be considered completed even if the purchase price for the securities has not been fully paid. For this exception to apply, the transaction may not be subsequently renegotiated. These conditions require that the purchaser be unconditionally obligated to pay for the securities. We would qualify that requirement to permit conditional obligations to purchase the securities as long as the obligation depends on a condition that is not within the direct or indirect control of any purchaser. Also, the purchase price in the private offering must be fixed and not contingent upon market prices around the time of the registered offering. This ensures that the purchaser assumes the market risk.

A private offering may involve the offer and sale of convertible securities or warrants. These securities are generally convertible or exercisable into a class of underlying securities (*e.g.*, common stock) over a period of time. While these securities are convertible or exercisable, the issuer, in effect, is conducting an offering of the underlying securities. During this time period, the issuer may file a registration statement under the Securities Act. The offering of the underlying securities concurrently with the registered offering has generated uncertainty about whether the offerings should be integrated. To address these concerns, we propose to expand the Rule 152 safe harbor to protect the offering of the underlying securities from integration with the registered offering. As proposed, the offering of the underlying securities would be considered completed when the offering of the convertible securities or warrants is completed.

A special approach would apply to a private offering made before an initial public offering where the private offering does not raise capital for the issuer but is conducted only to modify the issuer's capital structure. For this approach to apply, the private offering must not be a roll-up transaction under Rule 901(c) of Regulation S–K. When these conditions are satisfied, the private offering would not be integrated with the later registered offering.

We request your comments on our proposed safe harbor for completed offerings. Is our definition of completed offerings clear, especially those offerings where payment for the securities has not been made? Should other conditions be added for these offerings?

b. Resale Transactions

We would clarify in Rule 152 that it is permissible for an issuer to register the resale of securities that were originally sold by the issuer in a completed bona fide private offering. The private offering would be considered completed if the proposed conditions discussed above are met. An offering would be considered completed even though payment for the securities has not been made, or the securities have not been issued, when the registration statement for the resales is filed. Under this approach, payment for the securities may be made following filing or effectiveness of the registration statement for the resales. Also, the payment obligation may be conditioned upon effectiveness of the registration statement, assuming the purchasers have no control over that condition.

We would exclude from the safe harbor resales by affiliates of the issuer or a broker-dealer that has purchased directly from the issuer or an affiliate. In these transactions, there are questions as to whether the offering is a true resale transaction or a primary offering by the issuer. This determination may be made only after examining the facts and circumstances of each individual situation. Because of this uncertainty, we do not propose to extend the safe harbor for these resale offerings.

For purposes of this provision, the definition of "affiliate" would have the same meaning as that term has under Rule 144.[483] We have proposed to change the definition of affiliate under Rule 144.[484] If the Rule 144 definition is changed, the new definition also would apply to Rule 152.

We request your views on the safe harbor for resale offerings. Should the safe harbor cover resale offerings by affiliates? If it should, what conditions should be imposed to assure that the resales are bona fide secondary transactions and not part of a primary distribution? Should the Rule 144 definition of affiliate be used or would some subset of the persons that fall within that definition be more appropriate? If so, what?

c. Lock-up Agreements

The use of lock-up agreements in business combinations has become common. As part of the negotiations for these combinations, the acquiring party usually requires that management and principal security holders of the company to be acquired commit to vote for the acquisition. These so-called "lock-up" agreements are made when the acquisition agreement is finalized, before any action by the public security holders. These agreements could be considered investment decisions under the Securities Act. If they are, the offers and sales of securities were made to persons who entered into those agreements before the business combination is presented to the non-affiliated security holders for their vote. Under this reasoning, those offers and sales could not be included in the registration statement for the offering to the persons not entering into lock-up agreements.

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[479] *See* proposed revisions to Securities Act Rule 152, 17 CFR 230.152.

[480] *See* proposed Securities Act Rule 159, 17 CFR 230.159.

[481] *See* proposed revisions to Securities Act Rule 477, 17 CFR 230.477.

[482] The 6-month time period is found in Rule 502(a) of Regulation D, 17 CFR 230.502(a). Offers and sales within 6 months of the start or end of a Regulation D offering must be analyzed under the five-factor test to determine whether those offers and sales should be considered part of the Regulation D offering.

[483] Rule 144(a)(1), 17 CFR 230.144(a)(1), defines an affiliate of an issuer as a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.

[484] See Securities Act Release No. 7391 (Feb. 28, 1997) [62 FR 9246].

In recognition of the legitimate business reasons underlying the practice, the staff has permitted the registration of offers and sales under certain circumstances where lock-up agreements have been signed. We propose a rule that codifies this position.[485] Our proposed rule would allow registration of those offers and sales when:

(i) The lock-up agreements involve only executive officers, directors, affiliates, founders and their family members, and holders of 5% or more of the voting equity securities of the company being acquired;

(ii) The persons signing the agreements own less than 100% of the voting equity securities of the company being acquired; and

(iii) Votes will be solicited from shareholders of the company being acquired who have not signed the agreements and who would be ineligible to purchase in an offering under Section 4(2) or 4(6) of the Securities Act or Rule 506 of Regulation D.

The first condition would assure that the only persons who signed the agreements were insiders with access to corporate information who arguably would not need the protections of registration and prospectus disclosure. The last two conditions would make certain that registration under the Securities Act is required to accomplish the business combination. Where no vote is required or 100% of the shares are locked up, no investment decision would be made by non-affiliated shareholders and the transaction would have been completed via the lock-up agreement. If the non-affiliated shareholders were able to purchase under one of the private offering exemptions from registration, the entire transaction would be more akin to a private placement and registration of only resales would follow from that characterization.

We request your comments on proposed Rule 159. Should registration be permitted for securities under lock-up agreements? If no, why not? Are the proposed conditions sufficient or are different or additional conditions needed? Should some specified percentage lower than 100% (*e.g.*, 75%) be used? Would it matter what percentage had been locked up if a significant number of shareholders had not been? Should the proposed rule, which applies to lock-ups in connection with mergers and similar transactions, also apply to lock-ups in connection with tender offers? If so, would different conditions be appropriate?

2. Abandoned Offerings

An ongoing private offering may be abandoned by an issuer for any of a number of reasons. After commencement of a private offering, the issuer may discover that interest in the securities is soft and it is unable to sell the amount of securities it needs to sell. On the other hand, the issuer may encounter substantial interest from investors and wish to increase the size or scope of the offering. In the latter situation, the issuer may decide to switch the offering from a private one to a registered one.

Likewise, a registered offering may be abandoned for various reasons. For example, the issuer and its underwriter may discover after filing the registration statement that there is less investor interest than required to complete the registered offering successfully. The issuer may encounter delays in getting the registration statement effective and need funding on a more expedited basis. Changes in the market may make a registered offering less attractive.

a. Private to Public

Under Section 5 of the Securities Act, offers may not be made in registered offerings before filing a registration statement. Thus, an issuer generally is unable to begin a private offering by making offers and then decide to make the offering a registered one.

Under the proposed registration system, Form B issuers would have no difficulty beginning an offering as a private one and completing it as a registered public offering. Because the issuer would not be required to file a Form B until the time of sale, and offers could be made before filing, the transition from a unregistered offering to a registered offering would not have the same regulatory consequences as it does today.

Form A and other issuers, however, would not have the same freedom to proceed with offers in the absence of a filed disclosure document.[486] Thus, the same issues that exist today under the registration system would need to be addressed for those issuers. We propose to expand Rule 152 to permit Form A issuers to abandon an ongoing private offering and then conduct a public offering under the following conditions:

1. The issuer notifies all offerees in the private offering that the private offering is abandoned;
2. No securities were sold in the private offering;
3. Neither the issuer nor any person acting on its behalf offered the securities in the private offering by any form of general solicitation or general advertising;[487]
4. The issuer does not file the registration statement until at least 30 days after it notifies all offerees of abandonment if securities had been offered in the private offering to any person ineligible to purchase in an offering in accordance with Section 4(2), Section 4(6) or Rule 506; and
5. The issuer either files any selling materials used in the private offering as part of the registration statement or it informs all private offerees that the filed prospectus replaces the prior selling materials and any indications of interest are rescinded.

These conditions would assure that persons offered the securities in the private offering are treated the same as offerees and purchasers in the registered offering. The prohibition against sales would make sure that all purchasers have the protections of Section 11 liability. The prohibition on any public offers in the private offering and the 30-day waiting period (if applicable) would protect against issuers who had no intention of making a private offering abusing the safe harbor by making public offers before filing the registration statement containing the full and balanced disclosure. Because only Form B issuers are granted that freedom under the proposed communications rules, we would not want that distinction eroded by persons through the integration safe harbor. The 30-day waiting period also would be consistent with our communications proposals in that 30 days measures the limited communications period before a public offering.

The notification condition in the safe harbor would assure that all private offerees are aware of the abandonment of the private offering. Offerees in the private offering would receive the benefit of Section 11 liability on any selling materials used in the private offering where the issuer files those materials as part of the registration statement. If the issuer chooses not to do that, those offerees would be informed that they should rely on the prospectus for the registered offering instead of the earlier selling materials.

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[485] *See* proposed Securities Act Rule 159, 17 CFR 230.159.

[486] Issuers registering offerings on the small business issuer forms (*i.e.*, Forms SB–1, SB–2 and SB–3) would face the same issues as issuers registering on Form A. They would receive the same treatment for this purpose.

[487] These terms would have the same meanings as used in Rule 502(c) of Regulation D, 17 CFR 230.502(c).

Assuming the 30-day waiting period does not apply, if all of these conditions are met, the issuer need not wait before filing the registration statement. We request your comments on this safe harbor. Are the conditions adequate to assure full protection of investors? Are different or additional conditions needed? Is the 30-day waiting period sufficiently long to provide a disincentive to abuse of the safe harbor or should it be longer (*e.g.*, 45 or 60 days)? Would a company be able to condition the public market for its securities through beginning a private offering under this mechanism despite the 30-day waiting period? Should the offering materials used in the private offering always have to be filed either under proposed Rule 425 or as part of the effective registration statement?

b. Public to Private

The filing of a registration statement for a specific securities offering constitutes a general solicitation for that offering.[488] Thus, when an issuer wishes to convert an offering begun as a registered public offering into a private offering, or follow it soon after abandonment with a private offering, it is doubtful that a private offering exemption would be available. In addition, public offers under the registration statement may have been made to persons who would be ineligible to buy in the private offering. Issuers currently in this situation must wait a full six months to be certain that the public offering under the registration statement would not be integrated with the private offering. We are proposing a safe harbor that would shorten or eliminate that wait.

An issuer, especially a private company or a small business issuer, may not know whether investors will be interested in its securities. Expecting that investors will be interested, these issuers may undergo the time and expense of preparing and filing a registration statement under the Securities Act. During the public offering period, they may discover only limited investor interest. Faced with soft investor interest, these issuers may have to abandon the registered offering, but they still may need funding. Our proposal would eliminate integration concerns and permit these issuers to offer and sell securities in the private offering to persons eligible to buy under the private offering exemption even if they expressed interest as a result of public offers in the registered offering.[489] Thus, issuers faced with a soft market will receive at least some benefits from the time and expense incurred while pursuing registration.

We propose a safe harbor that would permit switching from a public offering (started either by the filing of a registration statement or begun under Form B before filing a registration statement) to an unregistered private offering if the following conditions are met:

1. If a registration statement has been filed, the issuer withdraws it under Rule 477;
2. If no registration statement has been filed (*i.e.*, Form B), the issuer notifies all offerees in a public offering that it is abandoning the public offering;
3. No securities were sold in the public offering;
4. Where the issuer first offers the securities in the private offering more than 30 days after abandonment or withdrawal, the issuer notifies each purchaser in the private offering that the offering is not registered, the securities are restricted, and that investors do not have the protections of Section 11 of the Securities Act; and
5. Where the issuer first offers the securities in the private offering 30 or fewer days after abandonment or withdrawal of the public offering, the issuer and any underwriter agree to accept liability for material misstatements or omissions in the offering documents used in the private offering under the standards of Section 11 and Section 12(a)(2) of the Securities Act.

The notification requirement for public offerings begun under Form B would assure that offerees are made aware of the termination of the public offering. If a registration statement has been filed, it must be withdrawn in order to end the public offering. Because the withdrawal of the registration statement is public information, it would signal to offerees that the public offering has been terminated.

If the private offering is begun more than 30 days after abandonment or withdrawal of the public offering, the intervening time period should reduce concerns that offerees in the private offering would be influenced by the public offering. Offerees in the private offering likely will discount any offering materials they may have received in the public offering due to this passage of time. Instead, they are more likely to rely on the private offering documents. We would require that the issuer notify purchasers in the private offering that the offering is not registered, the securities would be restricted securities and that they do not have the benefits of Section 11 liability. This disclosure requirement plus the intervening time period would assure that investors do not confuse the securities they are buying in the private offering with those offered in the public offering.

An issuer may need funding immediately and may not be able to wait more than 30 days. We would provide an option for companies that need to raise capital within the 30-day period. The reduced time period between the public offering and the private offering raises more investor protections concerns, however, about the lingering effects of the public offering. Offerees in the private offering may still be influenced by the public offering. In addition, we do not want issuers to use the integration safe harbor merely as a mechanism to avoid the prohibition on general solicitation and general advertising. Allowing an immediate switch from registered to private would encourage that abuse, absent some disincentives.

We propose as a condition that an issuer and any underwriter involved in the private offering enter into a binding agreement to apply Section 11 liability standards for any material misstatements or material omissions in the private offering materials with respect to any investor who purchases in the private offering within 30 days following the end of the public offering. These investors, who are likely to have been influenced by the public offering, should have the protections of Section 11 liability. We also would provide that investors who purchase in the private offering more than 30 days after the public offering ends would have the benefit of Section 12(a)(2) standards for liability for any material misstatements or material omission in the private offering materials.

Are the proposed conditions adequate to assure that investors in the private offering are fully protected? Should different or additional conditions be required? Is a 30-day time period adequate or should the time period be longer (*e.g.*, 45 or 60 days)? Should we permit private offerings to start within the 30-day period at all?

3. Definition of Private Offering

Rule 152 currently provides a safe harbor only for transactions under Section 4(2) of the Securities Act. There are other exemptions under the Securities Act which prohibit public

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[488] *See* Division of Corporation Finance, Current Issues and Rulemaking Outline available on the Commission's web site (http://www.sec.gov).

[489] While the proposed revisions would provide for no integration, the subsequent private offering must satisfy all of the conditions of the relevant exemption to proceed on that basis.

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offers. Section 4(6) [490] prohibits advertising or public solicitation in any transaction under that section. Rule 506,[491] which was adopted under Section 4(2), prohibits offers or sales by any form of general solicitation or advertising. These exemptions also have other requirements, in addition to the ban on public offers.

We propose to expand the private offerings covered by Rule 152 to include offerings under the Section 4(6) exemption and to specify in the Rule that it applies to the Rule 506 exemption. This would provide consistent treatment for Securities Act exemptions for private offerings. We request your views on the expansion of Rule 152 to these additional private offering exemptions. Are there reasons to continue to exclude either of these two exemptions?

Rule 505 of Regulation D,[492] unlike Rule 506, permits sales to persons who are neither accredited nor financially sophisticated.[493] Because these persons may purchase in Rule 505 offerings, we have not included those offerings in Rule 152. We solicit comment, however, as to whether sufficient protections exist under the proposed safe harbor to justify inclusion of Rule 505 offerings.

D. Proposed Changes to Rule 477

Rule 477 of Regulation C [494] contains the procedures to be followed by a registrant in order to withdraw a registration statement or an amendment filed under the Securities Act. The Commission must find that the withdrawal is consistent with the public interest and investor protection and affirmatively act to consent to the withdrawal. This finding requirement involves staff review of the withdrawal request and the time necessary for that review. The time needed for that review can vary. For a limited number of registration statements, the withdrawal request is deemed granted upon filing where the registration statement has not become effective.[495]

We propose to revise the rule to facilitate withdrawal of registration statements, particularly in light of the effect of withdrawals under proposed Rule 152. We would allow registration statements to be withdrawn automatically upon filing the request. The proposed changes would permit quick withdrawals for registration statements. These changes would expedite the use of proposed Rule 152 in switching from a registered public offering to a private offering and provide predictability in other cases.

We request your comments on the proposed change to Rule 477. Should we permit fewer types of registration statements to be withdrawn automatically upon filing? Should the rule be changed only to permit automatic withdrawal of any Form B registration statement, or any Form A registration statement where the registrant is eligible to incorporate by reference and become effective on an expedited basis? Should it be changed so that for all other registration statements, an application for withdrawal would become effective automatically ten days after filing, unless we grant the withdrawal earlier or notify the registrant during the ten-day period that the application will be reviewed? Are there reasons to limit the classes of registration statements that may be withdrawn automatically?

XI. Proposals Relating to Exchange Act Disclosure

To improve Exchange Act disclosure, we propose revisions to enhance the quality and timeliness of information in the periodic reports filed by domestic reporting companies.[496] Investors trading in the secondary markets look to Exchange Act reports for information. Moreover, seasoned issuers that file registration statements under the Securities Act incorporate information from their Exchange Act reports into their Securities Act filings. Investors buying in public offerings therefore also rely on Exchange Act disclosure. As we provide for further reliance on Exchange Act disclosure, we are particularly cognizant of the need to evaluate whether and how it can better serve investors.

Under our proposals, we would extend risk factor disclosure to Exchange Act reports, expand the items of disclosure required to be reported on Form 8–K and add a provision for voluntary reporting of information on Form 6–K. We also would require top management that sign Exchange Act registration statements and reports to certify that they have reviewed the disclosure in them and that they know of no untrue statement of a material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. In addition, we would require issuers to identify their web site addresses, if any, and an e-mail address, if any, on the cover page of all registration statements and Exchange Act reports. This requirement would make this information more accessible to investors, as well as ease investors' electronic communications with public companies.

Companies frequently issue press releases as a means of disseminating corporate information. In the case of quarterly and annual financial results, we are concerned that this manner of disclosure provides uneven results: some investors may learn of the information, others may not; some investors may have quicker access to the information than others. One of the purposes of the Commission's reporting system is to provide a single source where all investors can expect to find material company disclosure. To even the flow of disclosure to investors, we believe that companies should file material financial information that they may currently be making public only by press release.

We also note reports that corporate managers make conference calls after issuing press releases in order to "clarify" the information.[497] We are concerned that these conference calls exacerbate the problem of uneven disclosure, especially in the short-term.[498] This practice widens the information gap between large and small investors. Large investors, particularly institutional ones, may be on the conference call, or they frequently hire analysts that participate in conference calls and often obtain more detailed information about a company's earnings before the information is widely disseminated. While we believe analysts perform a valuable public function in filtering and passing on company information, we believe the small investors are the last to realize the benefits of this function. We think this is especially true when companies do not file with the Commission material information they issue in press releases or communicate by conference calls to analysts.[499]

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[490] 15 U.S.C. § 77d(6). Section 4(6) exempts a transaction that does not exceed $5 million, if offers or sales are made to only accredited investors and other conditions are met. Accredited investor is defined in Rule 501(a) of Regulation D. 17 CFR 230.501(a).

[491] 17 CFR 230.506. The Commission adopted Rule 506 to provide a safe harbor as to what type of offering would not be considered a public offering for purposes of Section 4(2). An issuer complying with Rule 506 is certain that it is conducting a valid Section 4(2) offering.

[492] 17 CFR 230.505. Rule 505 provides an exemption for offerings up to $5 million within a twelve-month period, if certain conditions are met. This exemption was created by the Commission under Section 3(b) of Securities Act, 15 U.S.C § 77c(b).

[493] Generally speaking, these investors must be limited to 35.

[494] 17 CFR 230.477.

[495] Rule 477(b), 17 CFR 230.477(b), currently permits this procedure for registration statements on Form F–2, relating to a dividend or interest reinvestment plan, or on Form S–4 complying with General Instruction G. of that Form.

[496] Some of these proposed revisions were suggested in substance by the Advisory Committee. While the Advisory Committee envisioned them as operating only where a company was part of a company registration pilot system, we believe implementing these improvements makes sense for all issuers regardless of whether they are concurrently registering an offering. The proposals relating to Exchange Act disclosure do not precisely follow the suggestions of the Advisory Committee. However, they emphasize the significance of Exchange Act reporting and would provide investors with a more current and fuller stream of information. That end corresponds with the Advisory Committee's goals.

[497] See, e.g., Frankel, et al., An Empirical Examination of Conference Calls as a Voluntary Disclosure Medium (Dec. 1996) (unpublished manuscript) (U. of Mich. Bus. Sch.) [hereinafter Conference Call Study]. This study noted that companies typically hold conference calls with analysts because of the declining relevance of historical financial data.

When there is a significant time lag between the occurrence of a material event and the reporting of that event, or the determination of the quarterly or annual results and the reporting of them, there is a greater chance that selected investors will learn about the information before others.[500] We seek to minimize the gap of information between all investors. One way to do that is to require the quicker filing of material company information with the Commission. Although this will not eliminate entirely the information gap, it will decrease the amount of time during which there is a trading advantage. By requiring companies to speed their reporting of material information such as earnings announcements and other financial data, we hope to decrease the information gap between the "have" and "have-not" investors. Accordingly, we propose to shorten the due dates for material event reports and to accelerate the reporting of annual and quarterly selected financial data.

A. Annual and Quarterly Reports

1. Risk Factor Disclosure

Most Securities Act registration statements currently require an analysis of the risks associated with an investment in a company's securities.[501] Item 503 of Regulation S–K[502] describes that required disclosure as a "discussion of the most significant factors that make the offering speculative or risky." The Commission promulgated this requirement because it assists investors in comprehending more fully whether the securities present an appropriate level of risk for them as an investment.

We propose to extend risk factor disclosure to Exchange Act registration statements[503] and periodic reports[504] of all issuers. The proposal would require issuers to articulate concisely the most significant risk factors relating to the company's future financial performance. This disclosure would be equally valuable whether investors are purchasing securities in a registered offering or trading in the secondary markets. Through the proposal, the Commission would ensure that timely disclosure about these types of risks does not depend on whether a public company decides to register an offering.

The annual disclosure specifically would consist of an itemization of the most significant factors with respect to the public company's business, operations, industry or financial position that may have a negative impact on its future financial performance. A foreign government issuer would set forth the most significant risk factors with respect to its financial position and the most significant country risks that are unlikely to be known or anticipated by investors.[505] The proposal would require that the issuer briefly explain how each risk affects it.

For public companies filing quarterly reports, we also are proposing that material changes in risk factor disclosure be reported quarterly. The company would disclose in the quarterly report only material risk factors that either:

1. Were not included in the later of the registrant's most recent Securities Act registration statement or Exchange Act periodic report; or
2. Had changed since the date of that registration statement or periodic report.

Foreign private issuers are not required to file reports on a quarterly basis under the Exchange Act; therefore, those companies would update their risk factors disclosure on an annual basis unless they choose to do so more frequently.[506]

A reporting company may incorporate risk factor disclosure into its Securities Act registration statement from its Exchange Act periodic reports. This Exchange Act disclosure may satisfy in whole or in part the risk factor disclosure required in the Securities Act registration statement. Where that is true, a registrant need not reiterate that risk factor disclosure in its Securities Act registration statement.[507]

Securities Act Rule 421(d) requires issuers to write and design their risk factor disclosure in registration statements using plain English principles. Where risk factor disclosure in Exchange Act reports currently is incorporated by reference into Securities Act registration statements, the Commission staff has advised issuers that the Exchange Act risk factor disclosure must comply with Rule 421(d). Under the proposals, registrants may more frequently incorporate Exchange Act risk factor disclosure into their Securities Act registration statements. In light of that, we are proposing an Exchange Act rule parallel to Rule 421(d) that would clarify that plain English requirements apply to Exchange Act risk factor disclosure.[508]

We seek comment on the proposals relating to risk factor disclosures for quarterly and annual reports. Should we require risk factor disclosure about specific matters that are in addition to those referred to in Item 503 of Regulation S–K? If so, what are they?

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[498] See Remarks by Arthur Levitt, Chairman of the Securities and Exchange Commission, A Question of Integrity: Promoting Investor Confidence by Fighting Insider Trading (Feb. 27, 1998), available on the Commission's web site (http://www.sec.gov).

[499] The Conference Call Study states that company managers often provide "detailed segment data" during the course of a conference call that is not available in the press release. They also make more forward-looking statements than in the press release. Conference Call Study supra note 497, at 9.

[500] See, e.g., Trading Picks Up During Conference Calls, Evidently leaving Small Investors on Hold, Wall St. J., Mar. 6, 1998, at C2; Small Investors Angered by Growth of After-Hours Profits Reports, Wall St. J., Jan. 21, 1997, at C1; The Price of Great Expectations, Wash. Post, Jan. 23, 1997, at E1.

[501] See, e.g., Forms F–1, F–2, F–3, F–4, S–1, S–2, S–3, S–4 and S–11. To provide uniformity, we also would mandate risk factor disclosure in Securities Act registration statements of foreign governments and their political subdivisions. Those are virtually the only Securities Act registration statements that do not currently mandate this disclosure. Because those investments are not free from risk, investors should benefit from a risk analysis by those issuers as well.

[502] 17 CFR 229.503.

[503] The Exchange Act registration forms affected are: Forms 10, 10–SB and 18. Form 20–F registration statements already require risk factor disclosure. See Item 1(b) of Form 20–F.

[504] The Exchange Act periodic reports affected are: Forms 20–F, 10–Q, 10–QSB, 10–K, 10–KSB and 18–K. The Advisory Committee suggested the use of risk factor disclosure in Form 10–K, with updates in Form 10–Q for any material change in the risk disclosure. Advisory Committee Report at Appendix B, p. 57.

[505] The forms used by foreign governments and their political subdivisions are Schedule B under the Securities Act and Forms 18 and 18–K under the Exchange Act.

[506] We are proposing to amend Form 6–K to create an Item by which foreign private issuers would identify information they are filing under that Form at their option that is not based on foreign requirements.

[507] In a Securities Act registration statement, the risk factors disclosure sometimes focuses on aspects of the particular security or the particular transaction that is the subject of the registration statement, in addition to company risk factors. The risk factor disclosure that issuers would include in Exchange Act reports would relate only to the risks that could affect the company's future financial performance. Thus, given the somewhat differing focus, the risk factor disclosure may vary.

[508] See proposed Exchange Act Rule 12b–24, 17 CFR 240.12b–24.

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2. Due Dates for Annual Reports of Foreign Private Issuers

Reporting companies that are foreign private issuers are required to file annual reports on Form 20–F.[509] These reports are due within six months after the end of fiscal year.[510] Like domestic issuers, foreign private issuers issue press releases containing their annual results before the due dates of their annual reports filed with the Commission. In fact, given the longer due date, they may do this far more frequently than domestic issuers.[511]

For the same reasons we propose to accelerate the reporting of annual results for domestic issuers through adding a Form 8–K filing, we also propose to accelerate the due date for annual reports of foreign private issuers. We propose that a foreign private issuer be required to file its annual report on Form 20–F within 5 months after its fiscal year end. Although that due date would remain significantly longer than the due date for annual reports of domestic companies, it would shorten the gap between the two. In light of the variety of foreign law requirements for annual reports, a gradual decrease in due dates for annual reports appears preferable. We believe foreign reporting companies should be able to prepare annual reports within 5 months or less without an undue increase in cost. We also propose to change the filing period for the transition report that must be filed after a foreign private issuer changes its fiscal year. We would reduce the time period for filing this report from six to five months.[512] We would not change the present three-month filing period where the transition period does not exceed six months and the issuer elects to file the abbreviated transition report.[513]

We seek comment on this proposal. Should we accelerate the due date to 4 months? How would the 4-month or 5-month due date compare to foreign requirements to report annual results?

3. Treating Quarterly Information as "Filed"

Under current Exchange Act rules,[514] the financial information required by Part I of Form 10–Q and Form 10–QSB is deemed not to be "filed."[515] Part I information is therefore not subject to liability under Section 18 of the Exchange Act.[516] Those rules originated in 1955 when the Commission proposed to require semi-annual reporting of certain financial information for the first time.[517] At that time, the Commission determined that semi-annual reports should be deemed not to be filed for purposes of Section 18 because interim earnings figures included in those reports would often be based on "reasonable estimates * * * or certain assumptions."[518]

Since 1955, the Commission has taken a few steps to expand periodic financial reporting. In 1970, we required that public companies file quarterly financial information on Form 10–Q.[519] In 1981, we expanded the information required by Form 10–Q to include disclosure of management's discussion and analysis of the registrant's financial condition and results of operations ("MD&A").[520] Most recently, we amended Form 10–Q in 1997 to require registrants to disclose qualitative and quantitative information about market risks.[521]

Both the existing registration system and the proposed registration system rely on Exchange Act disclosure. The rationale behind the rules granting relief from Section 18 seems out of place more than 40 years later in a market which now routinely relies on such reasonable estimates and assumptions. Furthermore, registrants have had 28 years of experience preparing quarterly financial statements and 17 years of preparing MD&A disclosures.

Accordingly, we propose to revise rules to treat the financial statements and MD&A disclosure in Forms 10–Q and 10–QSB as filed.[522] We would not extend the same treatment to market risk disclosure. Given the recent adoption of the rules requiring that disclosure, as well as the complex nature of that disclosure, we believe it would be appropriate to continue to treat that part of Form 10–Q disclosure as not "filed" for purposes of Section 18.

We solicit comment on whether applying Section 18 remedies to financial statements and MD&A disclosure would cause registrants to alter disclosure in quarterly reports that they make today. If so, what kinds of disclosure would change and how? Is there any reason to treat MD&A disclosure as "filed" but not the financial statements, or vice versa? How does the treatment of these parts as not "filed" affect investors? Should we also apply Section 18 remedies to quarterly market risk disclosures?

4. Request for Comment on Management Report to Audit Committee

We solicit comment on the Advisory Committee's recommendation to require the filing of a management report to the audit committee of the board of directors.[523] The report would disclose the procedures, if any, established to assure the accuracy and adequacy of Exchange Act reports. As the Advisory Committee envisioned it, the report would not specify a particular set of procedures to follow, nor would it require an assessment of the adequacy of the procedures. The report would be filed as an exhibit to the Form 10–K and would be refiled only when there was a material change in procedures. Would such a report enhance the quality of disclosure provided in Exchange Act reports?

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[509] "Foreign private issuer" is defined in Exchange Act Rule 3b–4(c), 17 CFR 240.3b–4(c).

[510] See General Instruction A.(b) of Form 20–F.

[511] Using electronic search databases, we found that foreign private issuers use Business Wire and PR Newswire and other services to issue press releases about their annual results, including detailed financial information. For comparative purposes, these companies disclose information about their most recent year end along with the same information for the prior year. While it appears that a minority of foreign companies issue these press releases as soon as two months after their fiscal year ends, others issue them within three or four months after the fiscal year end.

[512] *See* proposed Exchange Act Rule 13a–10(g)(3) 17 CFR 240.13a–10(g)(3) and proposed Exchange Act Rule 15d–10(g)(3), 17 CFR 240.15d–19(g)(3).

[513] *See* Exchange Act Rule 13a–10(g)(4), 17 CFR 240.13a–10(g)(4) and Exchange Act Rule 15d–10(g)(4), 17 CFR 240.15d–10(g)(4).

[514] Exchange Act Rule 13a–13(d), 17 CFR 240.13a–13(d), and Exchange Act Rule 15d–13(d), 17 CFR 240.15d–13(d).

[515] Part I of Form 10–Q consists of: the financial statements; the Management's Discussion and Analysis of Financial Condition and Results of Operations; and the Quantitative and Qualitative Disclosures About Market Risk. Part I of Form 10–QSB contains only the first two of those three categories.

[516] Section 18 provides a remedy for those relying on false or misleading statements made in any application, report, document or registration statement filed with the Commission under the Exchange Act.

[517] Exchange Act Release No. 5129 (Jan. 27, 1955) [20 FR 771].

[518] *Id.* See also Exchange Act Release No. 5189 (June 23, 1955) [20 FR 4816] (adopting the semi-annual reports as proposed).

[519] Exchange Act Release No. 9004 (Oct. 28, 1970) [35 FR 17537].

[520] Exchange Act Release No. 17524 (Feb. 17 1981) [46 FR 12480].

[521] *See* Exchange Act Release No. 38223 (Jan. 31 1997) [46 FR 6044].

[522] *See* proposed revisions to Exchange Act Rules 13a–13d and 15d–13(d), 17 CFR 240.13a–13(d) and 240.15d–13(d). Along with these proposed revisions to Rule 15d–13, we are correcting that Rule by removing paragraph (e), which is duplicative and was intended to be removed in a prior amendment to the Rule. *See* Exchange Act Release No. 13477 (Apr. 28, 1977) [42 FR 24062] and Exchange Act Release No. 13156 (Jan. 13, 1977) [42 FR 4424].

[523] *See* Advisory Committee Report at Appendix B, pp. 52–54. *See also* Section IX.D. of this release regarding whether the report should be considered as a factor in evaluating an underwriter's due diligence obligation.

B. Interim Reports on Form 8–K

1. Timely Disclosure of Annual and Quarterly Results of Domestic Companies

a. Form 8–K Requirement for Item 301 Information

A domestic reporting company must file an annual report on Form 10–K or Form 10–KSB within 90 days after the end of its fiscal year.[524] A domestic reporting company must file a quarterly report on Form 10–Q or 10–QSB within 45 days of the end of its quarter.[525]

Hundreds of public companies issue press releases to announce annual and quarterly results well before they file their annual and quarterly reports with the Commission.[526] We are cognizant that significant technological developments over at least the last three decades have simplified the process of preparing financial data and periodic reports. It appears that companies and their auditors have developed efficiencies over the years that allow them to generate basic financial data quickly.

The timing and frequency with which companies issue press releases about their annual and quarterly results indicates that companies complete the preparation of at least their core financial data well before the due dates of their periodic reports. That practice also reflects the importance of that financial information and investors' demand for it at the earliest time it is available.

While we applaud companies' practice of issuing press releases to keep investors informed, there are disadvantages to dissemination of information in this way. Not all investors subscribe to the publications that carry press release information. Not all publications report on every company's release or include all the information in the release.[527] The unevenness of press release disclosure raises concerns that not all investors are informed of a company's financial results at the same time. Moreover, presentation of annual and quarterly information in press releases differs from company to company. Sometimes this variance appears to arise because a company wants to focus on the positive aspects of the financial information.[528]

To ensure uniform and even disclosure by public companies, we propose to require domestic reporting companies to report selected financial data on Form 8–K. That report would be due on the earlier of the date they issue a press release containing earnings information or either the date that is 30 days after the end of each of the first three quarters of their fiscal year or 60 days after the end of their fiscal year.

The Form 8–K would include the selected financial data required by Item 301 of Regulation S–K for both the most recently completed fiscal quarter and interim period or year. For comparative purposes, we also would require companies to disclose Item 301 financial data for the same periods of the prior year. For example, if a company issued an early press release announcing earnings results for its second quarter, its Form 8–K would include Item 301 information for the three months comprising the second quarter as well as for the six months ending the second quarter. The Form also would include Item 301 information for the corresponding periods of the prior year so investors could compare current results with last year's results.

We believe the press releases of most companies include at least this level of basic material information. Accordingly, we do not believe the requirement would impose a significant burden on domestic reporting companies, particularly those that consistently issue press releases. As for companies that do not follow the press release practice, we believe that they nevertheless would be able to prepare Item 301 information by the 30th day after the end of their quarters or the 60th day after the end of their fiscal years.

Regulation S–B does not contain a disclosure requirement comparable to Item 301 of Regulation S–K. Thus, small business issuers now are not required to provide Regulation S–K, Item 301 information in their disclosure documents. Also, transitional small business issuers are not required to provide this information. We propose to require all small business issuers, including transitional small business issuers, to provide Regulation S–K, Item 301 information in Form 8–K reports filed in advance of their quarterly or annual reports. We request your comments on whether small business issuers should be required to provide Regulation S–K, Item 301 information in these current reports. Should small business issuers providing disclosure based on Regulation S–B be subject to this requirement? Should transitional small business issuers be subject to this requirement? Would it be more difficult for small business issuers to comply with this requirement? Would the additional time and cost of this disclosure requirement outweigh the increase in investor protection?

We believe that all investors and the market would benefit from being able to review selected financial data earlier than they can today. Would these benefits justify the cost associated with an additional filing? Should we require more or less than Item 301 information? If more, what kinds of additional information should we require? Should we require companies to discuss factors that may affect the comparability of current results with last year's results? If less, what should we omit? Would current interim financial data be meaningful absent presentation of historical comparative information? Given the limited nature of the information required by Item 301, should we require companies to file the Form 8–K even earlier than proposed (*e.g.*, 20 or 25 days after the end of the quarter and 45 or 50 days after the end of the year)?

b. Solicitation of Comment on Whether to Accelerate Due Dates

Since 1970, annual reports have been due 90 days after a reporting company's fiscal year end.[529] Quarterly reports, since they were first required in 1946, have always been due within 45 days after the end of a quarter.[530] Many companies file, or ostensibly could file, their periodic reports before they are due.

In this age of computers, instantaneous communications and electronic filing, we believe it is possible for reporting companies to file their annual and quarterly Exchange Act reports sooner than they are currently due. Public companies, as a group, have had decades of experience in preparing Exchange Act periodic reports within 90 and 45 days.[531]

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[524] *See* General Instructions A of Forms 10–K and 10–KSB. Foreign companies that do not satisfy the foreign private issuer definition in Exchange Act Rule 3b–4(c), 17 CFR 240.3b–4(c), also must report on Forms 10–K or 10–KSB.

[525] *See* General Instruction A of Forms 10–Q and 10–QSB. Foreign private issuers, as defined in Exchange Act Rule 3b–4(c) have no quarterly reporting obligation. *See* Exchange Act Rule 13a–13(b)(2), 17 CFR 240.13a–13(b)(2). Other non-governmental foreign issuers must file quarterly reports.

[526] Companies frequently issue press releases through Business Wire, PR Newswire and other publications. Through narrow searches of electronic databases, it is possible to find the press releases of hundreds of companies that relate to early annual and quarterly results or earnings information. Most companies seem to have included in their press releases the basic information that would be prepared for inclusion in a periodic report. Some companies also use press releases to announce the early filing of periodic reports with the Commission and to publish the same financial information that they include in their filings with the Commission.

[527] Some services apparently publish verbatim almost any company press release (*e.g.*, Business Wire or PR Newswire). Not all investors have access or know about these services.

[528] *See, e.g.*, Antilla, *Quarterly Reports Often Mask Companies' Ugly Truths*, The Dallas Morning News, Apr. 12, 1998 at 13A.

[529] *See* Exchange Act Release Nos. 9000 (Oct. 21, 1970) [35 FR 16919] and 9004 (Oct. 28, 1970) [35 FR 17537]. Before 1970, the due date for filing annual reports was 120 days after a company's fiscal year end.

[530] *See* Exchange Act Release No. 3803 (Mar. 28, 1946) [11 FR 10988].

As the proposed registration system makes clear, the securities markets move faster than they did before. Commentators have long remarked that because the due dates for quarterly reports are so lengthy, the information required by Form 10–Q or 10–QSB is stale by the time the reports are available.[532] Annual information—when provided 90 days after a fiscal year end—is also viewed as stale. We believe investors and the market would realize immediate and ongoing benefits if domestic reporting companies filed their annual and quarterly reports earlier than currently due. We also believe earlier due dates would provide investors with more timely disclosure as well as shorten the period during which periodic results would be available to only certain investors.

For these reasons, as an alternative to the proposal to add a financial reporting requirement to Form 8–K discussed above, we request comment on whether we should accelerate the due dates for annual and quarterly reports. Should we require companies to file quarterly reports on Forms 10–Q or 10–QSB within 30 days after their first three fiscal quarters? Should we require them to file annual reports within 60 days after their fiscal year end? Would companies find it feasible to prepare their periodic reports within those periods? If we adopt this alternative, should the periods be lengthened (*e.g.*, to 35 or 40 days after the end of a quarter and 70 or 75 days after the end of a fiscal year)? Should small business issuers, because they may have fewer resources, be given more time to prepare periodic reports than larger issuers? Should larger issuers, because their accounting issues may be more complex, be given the same amount or more time than small business issuers to prepare their periodic reports? If we were to reduce the time period for filing annual and quarterly reports, should we also shorten the filing period for the transition report that must be filed after an issuer changes its fiscal year?

We solicit comment on whether accelerated periodic reporting requirements would exacerbate the problems of selective disclosure by issuers to certain analysts or shareholders. Are there steps other than, or in addition to, accelerating the due dates of periodic and current reports that the Commission should take to address selective disclosure to institutional investors through conference calls, advance press releases or other methods?

2. Other Reporting Events

We propose to expand the items of disclosure that reporting companies must report on Form 8–K to include: material modifications to the rights of security holders; departure of a CEO or CFO; material defaults on senior securities; certain auditor notifications; and company name changes. Some of the proposed items currently have to be disclosed only on a quarterly basis. Other proposed items may be reported if the company chooses to do so or feels compelled to do so because of concerns about antifraud provisions. We believe that prompt reporting by issuers of each of these events would enhance investor protection. We solicit comment on whether other disclosure should be required on Form 8–K. If so, what types of information? If companies disclose less information to the market when experiencing difficulties, is there a need for more frequent reports or updates when events such as those we propose to add take place?

We also propose to accelerate the due date of reports that must be filed on Form 8–K. The longer the period of time between the occurrence of a material event and the public reporting of the event, the greater the likelihood that over the course of that period security holders will be selectively informed of that material information. The unfair trading advantage that may result can be significantly lessened if information about material events is reported earlier on Form 8–K.

a. Material Modifications to the Rights of Security Holders

The Commission believes, as did the Advisory Committee, that reporting companies should promptly and publicly notify their security holders about material modifications in their rights.[533] The Commission proposes to add an item to Form 8–K that would accelerate the disclosure of developments that materially modify the rights of security holders, favorably or unfavorably, to within five calendar days of the development or event causing the modification.

Under current requirements, a reporting company must disclose the general effects of those modifications in the report on Form 10–Q or Form 10–QSB for the quarter in which the modifications occur.[534] That requirement allows reporting companies to delay filing this information for up to four and a half months after changes to security holder rights have occurred. That timing is unnecessarily long given the significance of these matters to security holders and the possibility that modifications to their rights could have a dramatic effect on the value of the securities they own.

Under our proposal, reporting companies would be required to promptly disclose on Form 8–K any modification of the instruments that define security holder rights, modifications to security holder rights resulting from the issuance of another class of securities, and modifications resulting because of restrictions on working capital or payment of dividends.

We solicit comment on this proposal. Should it encompass other specific events that could materially affect security holder rights, such as reincorporation from one state to another, elimination of preemptive rights, or adoption of an anti-takeover plan.

b. Departure of CEO, CFO, COO or President

The departure of a reporting company's chief executive officer, chief financial officer, chief operating officer, president, or any person serving equivalent functions, is a material event that often can cause changes in the market price of the company's securities as well as changes to the company's business or goals. Today, reporting companies are not required to disclose these events on either a quarterly or current basis, although many do report them on a timely basis because the departure of a CEO, CFO, COO or president is usually viewed as a material event.[535]

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[531] Since 1970, we have expanded the information required by Form 10–Q only twice to any notable extent. In 1981, we added the requirement for MD&A information. Exchange Act Release No. 17524 (Feb. 17, 1981); *see* Item 2 of Part 2 of Form 10–Q. Last year we added a disclosure requirement relating to market risk. Exchange Act Release No. 38223 (Jan. 31, 1997); *see* Item 3 of Part 2 of Form 10–Q.

[532] "In a slower, paper-based world, quarterly reporting frames were deemed adequate for purposes of the 1934 Act's continuous disclosure system * * * [b]ut in an era of electronic reporting, it is possible to advocate a much more rapid reporting obligation." Coffee, *Brave New World? The Impact(s) of the Internet on Modern Securities Regulation*, 52 Bus. Law 1195, 1199 (Aug. 1997). In 1969, former Commission Chairman Manuel Cohen said: "because companies need not file the [quarterly] report until 45 days after the end of the quarter, the information is often stale." *See* Brown, *Corporate Communications and the Federal Securities Laws*, 53 Geo. Wash. L. Rev. 741, (1985).

[533] The Advisory Committee recommended that the Commission expand Form 8–K to require disclosure about developments that would result in material modifications to the rights of security holders. *See* Advisory Committee Report at p. 27 and Appendix B at p. 55.

[534] Item 2 of Part II of Form 10–Q and 10–QSB. Foreign private issuers are not required to file quarterly reports and therefore are not subject to this disclosure requirement.

The Advisory Committee recognized that general principles of materiality often cause reporting companies to promptly disclose the termination of their CEOs, CFOs, COOs or president; nonetheless, it recommended that the Commission expand Form 8–K to accelerate and mandate disclosure of the resignation or removal of a public company's top five executive officers.[536]

We believe it is important to investors and the market that public companies promptly report news of the departure of a CEO, CFO, COO, president or any person serving in those capacities. Whether the departure is the result of resignation or termination or another reason also would be of interest to investors. Accordingly, the Commission proposes to add an item to Form 8–K to require disclosure of that departure information. Given the significance of this information, we solicit comment on whether it should be reported within one business day of the departure.

We also seek comment on whether the proposal should be extended to include more than just a company's CEO, CFO, COO and president. Should we require a company to disclose on Form 8–K the departure of any of its five most highly compensated executive officers? Are other positions, whether or not based on compensation, significant enough to justify mandating Form 8–K disclosure when they are vacated? For example, should Form 8–K require disclosure of the departure of key personnel who make significant contributions to the company, such as a chief technology officer or head of information systems, a scientist, researcher, or head of marketing or production?

c. Material Defaults on Senior Securities

Any material default by a reporting company on payments of principal or interest or any other scheduled payment on its securities could have severe consequences to the reporting company, its business and its security holders. The default is especially significant when senior securities are involved, because a default on those securities may signal that the company faces imminent, serious financial difficulty.

Under current reporting requirements, disclosure of material defaults on senior securities need be made only on a quarterly basis.[537] The Commission believes quarterly reporting of such events is insufficient, as did the Advisory Committee.[538] Reporting companies should be required to provide current public notice of all material defaults on senior securities so that investors have time to consider the possible effects of any default, including whether to sell or hold their securities. Further, the Commission and the Advisory Committee share concerns that, under current reporting standards, default information may become stale before it reaches all the security holders of a reporting company.

For these reasons, we propose to revise 8–K to require current disclosure of material defaults under a company's governing instruments and material delinquencies in a company's payments of interest or a dividend preference due on its senior securities. Also, given the potentially grave consequences of a material default on senior securities, the Commission does not believe it would be appropriate to allow reporting companies to wait as much as five days to report the event. Instead, we believe that reporting companies should disclose this information as soon as possible, but certainly no later than the day following the material default. Accordingly, we propose to set the due date at one business day after the day the default occurred. Where the default occurred on a Saturday, Sunday or a federal holiday, we propose that the disclosure be due within two business days after the day the default occurred.

As with other proposed changes to Form 8–K, we solicit your comment. Do reporting companies need as much as five days before they are prepared to file material default reports? Should we limit the due date to one business day, instead of two business days, for reporting of material defaults that occur on a Saturday, Sunday or federal holiday?

d. Reliance on Prior Audit

Form 8–K already requires a reporting company to disclose promptly when its independent accountant resigns, declines to stand for reelection or is dismissed, as well as when it engages a new auditor.[539] To supplement these items, the Commission is proposing that a reporting company promptly report when:

(i) its independent auditor notifies it that it may no longer rely on the audit report included; and

(ii) the independent auditor notifies it that the auditor will not consent to the use of its prior audit report or the company or one of its significant subsidiaries.

The Commission believes that such announcements would be of interest and importance to investors and the market because they could signal a discrepancy in the company's audited financial reports.[540] Further, announcements or dissemination of information about such auditor notices, as with announcements and information about the other events proposed to be added to Form 8–K, could have an immediate and significant impact on the market price of a company's securities. We are concerned about the potential for unfair trading on the basis of selective information. The Advisory Committee stated these same concerns, and also posited that timely disclosure about matters relating to certifying would reinforce the auditor's role as a gatekeeper.[541]

Accordingly, we propose to add these events to those that relate to a

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[535] Item 6 of Form 8–K currently requires prompt disclosure of a director's resignation or declination to stand for re-election. The Item does not require similar disclosure with respect to CEOs, CFOs, COOs or president.

[536] *See* Advisory Committee Report at p. 27 and Appendix B at p. 55. The Committee did not limit its recommendation to disclosures regarding the CEO, CFO, COO and president. It extended its recommendation to the "top five" or "five most senior" executive officers.

[537] Item 3 of Part II of Form 10–Q and Item 3 of Part II of Form 10–QSB. Both Items require disclosure of defaults whether under the terms of a company's governing instruments or with respect to arrearages in the payment of a dividend or other delinquencies. Neither Item, however, requires disclosure of defaults or arrearages with respect to any class of securities held entirely by or for the account of the registrant or its wholly owned subsidiaries. *See* Instruction to Item 3 of Part II of Form 10–Q and Instruction to Item 3 of Part II of Form 10–QSB. Our proposal includes these same reporting exceptions.

[538] The Advisory Committee also recommended that the Commission accelerate disclosure of material defaults on senior securities. The Committee believed that prompt public disclosure would reduce the possibility of unfair trading based on selective disclosure and would improve market efficiency. *See* Advisory Committee Report at p. 27 and Appendix B at pp. 55–56.

[539] Item 4 of Form 8–K

[540] The Advisory Comi[illegible] kind of disclosure sl[illegible] Form 8–K. *See* Advisory C[illegible] 27 and Appendix B at pp. 55–56. As noted [illegible] Commission's proposals do not pre[illegible] w the Committee's suggestions. The Con[illegible] expressly suggest expanding I[illegible] disclosure of an accountant or auditor's [illegible] consent to use of its prior audit report

[541] *See* Advisory Committee Report, Appendix B at pp. 27–28 and 55–56. The Committee [illegible] that an auditor could provide a gatekeeping function when asked to furnish or update a consent to the use of its report. If the auditor does not satisfy itself that the repor[illegible] adjustments, it may withhold or refuse [illegible] to use of the report. By requiring compar[illegible] report when its auditor refuses to consent to use of its report, we elicit disclosure that may signal problems with the company's financials.

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company's accountants and auditors and that are already in Form 8–K.[542] We would require companies to report these events within one business day of their occurrence.

We solicit comment about whether other events concerning an auditor's report should be included in the Form 8–K. For example, should companies report when they seek to have another auditor reaudit a prior audited period? The Committee did suggest we require disclosure of engagement of a new auditor to reaudit a prior audited period. We seek comment on this subject.

With respect to the information about auditors already required by Item 4 of Form 8–K, we propose to accelerate the due date for reporting that information to one business day after the reporting event occurs. We believe the significance of that information warrants near immediate disclosure.

e. Name Changes

We propose to add to Form 8–K a requirement that a reporting company report any change in its name. This disclosure is not specifically required in current periodic reports, although companies may report name changes because general principles of materiality may call for it. Under our proposal, companies would report their former and current names within five calendar days after the change. Prompt reporting of a change in a reporting company's name is important to keep investors informed of the status of the company. Also, for investors that are not otherwise aware, a change in a company's name often signals the occurrence of some significant event concerning the company about which they should educate themselves. Timely public notice of a name change also would allow investors to continue to follow or research the reporting company and avoid concern about its fate when its familiar name is replaced by an unfamiliar one.

We solicit comment on this proposal. If the name change results from a business combination that was already publicly announced, should we nonetheless require name change reporting?

f. Due Dates for Reporting Events

Currently, most reports filed on Form 8–K are due within 15 calendar days after the occurrence of the event triggering the reporting requirement.[543] Some reports are due within 5 business days after the occurrence of the event.[544]

The Commission believes that, given the explosive growth of the secondary trading market and the importance of Exchange Act reporting to it, reporting companies should be required to disclose more information about material events and developments that concern them and their security holders sooner than they are required currently.

The Advisory Committee suggested that the due date for mandated reports on Form 8–K be accelerated from 15 calendar days to 5 business days.[545] The Commission believes it is appropriate to go further, however, and proposes to accelerate the general Form 8–K due date to 5 calendar days after occurrence of the events required to be reported on the Form.[546] For disclosures of material defaults and notices that a company's independent accountant has resigned, declined to stand for reelection or been replaced,[547] as discussed above, we generally would require companies to report within one business day after the date of the reportable event. We also propose to accelerate the reporting of resignations of any of the registrant's directors to within one business day of the reportable event.[548]

The Commission recognizes that acceleration of the due date may create some burdens for reporting companies; however, we believe that any burdens are outweighed by investors' and the market's need for current information. With respect to each proposed addition to or acceleration of reporting under Form 8–K, the Commission believes that security holders and the market have a need for prompt disclosure particularly because the events could impact the market price of the reporting company's securities. We also believe that the faster that material information is publicly disclosed, the less the potential for unfair trading on the basis of selective disclosure.

We ask for your comment on this proposal. Does the proposed 5-day reporting period provide reporting companies with enough time to file their reports? If not, should the due dates be extended, as the Committee suggested, to 5 business days? Should material defaults be reported faster than other events required to be reported on Form 8–K? Should the due date of other required reports similarly be set at one business day?

C. Signatures

1. Exchange Act Reports and Registration Statements

The Commission is proposing to revise the signatures section of all registration statements and periodic reports filed under the Exchange Act to mandate that the persons who are required to sign those reports must certify that they have read the registration statement or report and that they know of no untrue statement of a material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[549] The proposal also would expand the number of persons required to sign Forms 8–A, 10, 10–SB, 20–F, 40–F, 10–Q and 10–QSB, to include the principal executive officers of the registrant and a majority of the board of directors of the registrant.[550] Although we are not proposing to require that a majority of board members sign current reports filed under cover of Form 8–K and 6–K, we would require the signatory for the registrant to certify that he or she provided a copy of those reports to the registrant's board of directors. That certification should encourage board participation in the disclosures required to be made on those Forms.[551]

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[542] *See* proposed revisions to Item 304 of Regulation S–B, 17 CFR 228.304, and proposed revisions to Item 304 of Regulation S–K, 17 CFR 229 304.

[543] Events concerning changes in control of a registrant, acquisition or disposition by a registrant of a significant amount of assets, and a registrant's bankruptcy or receivership, as well as other events, must be reported within 15 calendar days of the occurrence of the event. *See* General Instruction B. of Form 8–K.

[544] Registrants must file reports on Form 8–K within 5 business days of both changes in the registrant's certifying accountant and the resignation of any of the registrant's directors. *See* General Instruction B. of Form 8–K.

[545] Advisory Committee Report at p. 27.

[546] As discussed above, this due date would not apply to the reporting of annual and quarterly financial results on Form 8–K.

[547] This information is currently required to be disclosed unde. Item 4 of Form 8–K, within 5 business days of the event.

[548] This information is currently required under Item 6 of Form 8–K and is due today within 5 business days of the event.

[549] The proposal relates to Exchange Act Forms 8–A, 10, 10–SB, 20–F, 40–F, 6–K, 8–K, 10–Q, 10–QSB, 10–K and 10–KSB. The Commission is not currently proposing to change the language in these Forms that direct the registrant to file a specified number of copies with the Commission. Of course, reporting entities that file the Forms electronically pursuant to Regulation S–T need not submit multiple copies electronically.

[550] Forms 10–K and 10–KSB already require those persons to sign those Forms. *See* Instruction D.(2)(a) of Form 10K and Instruction C.2. of Form 10–KSB. Forms 8–K and 6–K only require the signature of the officer signing on behalf of the registrant and in his or her capacity as an officer of the registrant. *See* Form 6–K and Form 8–K. We do not propose to revise either Form 6–K or 8–K to require more signatures.

[551] Although board members may not review the disclosures in those Forms before receiving them from the registrant, we believe that the delivery requirement would increase director awareness of

We believe that persons signing the report will be less likely to adopt the practice of simply signing blank signature pages without having even seen the report if they must affirmatively state that they have read the report and that they know of no untrue statement of a material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[552] Requiring a signatory of current reports to provide a copy of those reports to the registrant's board of directors would, at a minimum, help ensure that the board is quickly informed about material current developments or events that concern the registrant.

This proposal is based in part on the Advisory Committee's finding that the disclosures made in Exchange Act reports tends to be of a lesser quality than the disclosures made in Securities Act filings. The Committee believed that, generally, one way to improve Exchange Act disclosures would be to require senior management to review the Exchange Act reports filed on behalf of the company they managed.[553]

The Commission concurs with the Committee's goal that management take a more active role in the disclosure the registrant makes in its Exchange Act reports as well as acknowledge more responsibility for the disclosure in their reports.[554] We also note, as the Committee did, that revisions to enhance the disclosures in Form 8–K may improve disclosure for Securities Act purposes, because almost all seasoned issuers incorporate their Exchange Act reports into their Securities Act registration statements.

We recognize that companies may find it inconvenient to obtain the additional signatures that would be necessary to file the report. However, we believe the instructions to the Forms, current or proposed, that provide for conformed signatures would significantly ease any logistical burdens associated with obtaining the signatures.

2. Securities Act Filings

We also propose to revise the signature sections of certain registration statements under the Securities Act to mandate that any person signing the registration statements certify that he or she has read the registration statement and, to his or her knowledge, it does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.[555] Unlike the Exchange Act proposals, we would not expand the number of persons required to sign the registration statements.[556]

We hope that the certification requirement would cause the signatories, who typically also manage and control the issuer, to read the disclosure and perhaps even participate more in the preparation of the filing. We seek your comment on this proposal. Would the proposed certification have any effect on the extent to which the signatories participate in overseeing the disclosure? Would it change the extent to which management of the companies are given draft disclosure or given time to read the disclosure before filing? Given that signatories are already responsible for the disclosure under the liability provisions of the Securities Act,[557] would certification have any effect?

D. Form 6–K Submissions

Form 6–K is a critical part of the Exchange Act disclosure system for foreign private issuers. Form 6–K requires a foreign private issuer to furnish the Commission with all the material information that the foreign issuer:

1. Discloses or is required to disclose under the laws of its domicile or place of incorporation;
2. Files or is required to file with stock exchanges that list its securities; and
3. Distributes or is required to distribute to its security holders.[558]

Unlike Form 8–K,[559] Form 6–K does not explicitly encourage current voluntary disclosure that is not dependent upon foreign requirements. The Commission believes foreign issuers should be encouraged to keep their security holders and the market up-to-date, particularly because they may report less frequently than domestic issuers do under the Exchange Act system. Accordingly, the Commission proposes to add an instruction to Form 6–K to encourage foreign issuers to submit voluntarily current information that the issuer deems of importance to its security holders. Because the submission would be voluntary, we are not proposing a filing deadline, but we would recommend that foreign issuers promptly submit the Form 6–K after becoming aware of the information. We would deem information submitted voluntarily not to be filed for purposes of Section 18, just as we do all information under cover of Form 6–K.[560]

We solicit comment on the proposed instruction. Rather than encourage more disclosure by foreign private issuers, should we mandate particular disclosures not required under applicable foreign requirements? If so, what disclosures should be mandatory? For example, should we require issuers to report risk factor information similar to what would be required in Form 10–Q? Should we encourage reporting of other information about the issuer by enumerating in the proposed instruction areas of possible interest to investors?

The Commission is also proposing to revise Form 6–K to include four new

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the disclosure in the reports, and therefore possibly increase their participation. Moreover, the Commission has noted that certain companies may have no internal system by which to provide directors with significant corporate information. The Commission has indicated before that directors must assume some responsibility with respect to disclosures made by the companies on whose boards they sit. *See, e.g.*, Exchange Act Release No. 17114 (Sept. 2, 1980) [45 FR 63630].

[552] The Advisory Committee noted in its Report that it was advised that senior management of reporting companies routinely execute the signature pages for Exchange Act reports without having or reviewing the report itself. *See* Advisory Committee Report, Appendix B at p. 50. The Advisory Committee learned in various meetings and through research that board members devote less attention to Exchange Act reports than they devote to reviewing Securities Act filings. *See* Advisory Committee Report, Appendix A at pp. 49–53.

[553] The Committee also suggested that, the Commission require senior management to address and submit a report to the audit committee of the board of directors describing the procedures employed to ensure compliance with disclosure and accounting standards and requirements. *See* Advisory Committee Report, Appendix B at pp. 50–54.

[554] In 1980, the Commission amended Form 10–K to require that the Form be signed on behalf of the registrant by the registrant's principal executive officer(s), its principal financial officer, its controller or principal accounting officer and by at least a majority of the board of directors. Exchange Act Release No. 17114 (Sept. 2, 1980). The Commission noted that, while commentators either did not address or object to the proposal to require executive officers to sign the Form 10–K, they did object to the proposal that board members be required to sign. The Commission adopted the proposal over the commentators' objections because it concluded that the requirement would help shift the focus to Exchange Act reporting. By shifting the focus, the Commission expected that officers and directors would pay more attention to the disclosures made in Forms 10–K and to participate more in their preparation. It believed then, as we do now, that the signature requirement would impose an added measure of discipline that would provide benefits that outweighed the potential impact, if any, of the signature on legal liability.

[555] We would revise existing Securities Act Forms SB–1 and SB–2. Proposed Securities Act Forms A, B, C and SB–3 would include the same certification.

[556] Forms S–1, S–2, F–1, F–2, S–3, F–3, S–4, F–4 and S–11 currently require the signatures of the same persons we would require to sign proposed Forms A, B and C.

[557] *See* Securities Act Secti[illegible] U.S.C. § 77(k)(a)

[558] *See* General Instruction [illegible]–K

[559] *See* Item [illegible]

[560] For inter[illegible] add a box to the [illegible] check if they are v[illegible] 6–K pursuant to the proposed instruction

items in the list of examples of what issuers would disclose on Form 6–K if the information is disclosed under applicable foreign requirements. Those items are: (i) changes in the issuer's name; (ii) material modifications to the rights of security holders; (iii) any material defaults on indebtedness, material arrearages in dividends and other material delinquencies; and (iv) departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president (or anyone serving those functions). The existing list on Form 6–K mirrors the events that domestic issuers must report on Form 8–K. Because we are proposing to include these items on Form 8–K, we are proposing corresponding changes to the Form 6–K list. Each of the four relates to material events that all reporting issuers, foreign or domestic, should disclose to their security holders and the market of on a timely basis.

We seek comment on this revision. Are there reasons to omit any of the four from the instruction? Should we consider adding other, more specific, informational items?

E. Solicitation of Comment Regarding Plain English in Exchange Act Reports

The Commission recently adopted the requirement that Securities Act prospectuses be drafted in plain English. In the Securities Act registration system we propose today, investors would look increasingly to Exchange Act reports for information regarding the registrant. These proposals also would expand the documents that would be used in connection with an offering. The concerns that led to the plain English revisions included the need to read and understand easily the information that is the basis for the investment decision. Given today's proposals, these concerns would also seem to apply to Exchange Act documents that are incorporated by reference into the Securities Act prospectus. One proposal to require risk factor disclosure in Exchange Act registration statements and periodic reports also requires that disclosure be written using plain English principles. We solicit comment on whether we should extend the plain English requirement to all materials that are a part of the prospectus, including other parts of Exchange Act reports that are incorporated by reference into that document. Would it be more appropriate to extend the plain English requirements to all Exchange Act periodic reports, regardless of whether they are incorporated by reference into a Securities Act registration statement? Should we extend the plain English requirements only to certain parts of Exchange Act periodic reports, such as the description of the company's business or the MD&A section?

XII. Staff Review Policy

The Commission staff would continue to review all IPO registration statements for sufficiency of disclosure. The staff would review Form A registration statements by certain repeat issuers and Form C registration statements if they are selected in accordance with its review criteria.

Form B registration statements would not be reviewed by the staff before effectiveness. Although the Commission will continue to review their periodic reports on a regular basis, we see less need for regulatory supervision at the time of their offerings. We solicit comment, however, on whether the staff review should apply to Form B offerings of novel securities. If so, how should "novel" be defined so as to provide certainty as to the possibility of review? If the Commission staff reviews "novel" securities offerings, would those offerings tend to gravitate to the unregistered market?

Form B registration statements would be screened by the staff promptly after being filed with the Commission. The staff will determine whether the offering was eligible to be registered on Form B[561] and whether the disclosure raises any "red flags" concerning compliance with the antifraud provisions of the federal securities laws. If the offering filed on Form B is not eligible for registration on Form B, the issuer would have violated Section 5 of the Act and would be referred to the Division of Enforcement for appropriate action. If the disclosure raises "red flags," the staff will conduct an immediate review of the registration statement and take further action as appropriate.

Filings on Form A would be divided into two categories: those subject to review and those not subject to review. Filings by smaller and unseasoned issuers would be reviewed by the staff in the same way they are today. However, medium-sized seasoned issuers may designate the time and date that their registration statements on Form A would become effective; these filings obviously would not be subject to staff review prior to effectiveness. Some commenters on the Concept Release suggested that the Division disclose its review criteria to provide more predictability in the offering process.[562] They noted that, other than in the case of initial public offerings which are always reviewed by the staff, the Commission has not chosen to tell issuers planning an offering what criteria the staff will use to make its decision about reviewing their registration statements.

We intend to resolve this uncertainty in the case of Form B offerings by announcing that the staff will not review those offerings. These registration statements either would be effective upon filing or would become effective when the issuer chooses. The same would be true of Form A offerings either made by issuers with a public float greater than $75 million or made by seasoned issuers incorporating an annual report on Form 10–K or Form 20–F that has been reviewed previously by the Commission staff. In addition, we propose not to review certain offerings by large seasoned foreign government issuers registering on Schedule B. In all other repeat offerings, we believe that the positive effects on registration statement disclosure that result from the possibility of staff review outweigh the cost of uncertainty. As a result, the Division will not make its review criteria for other offerings public.

In order to increase efficiency and certainty for issuers, however, we propose several changes to the staff review process with respect to Exchange Act filings.

A. Notification of Selection for Review

If the proposals are adopted, the Division staff will begin to notify the issuer as soon as its Exchange Act reports are selected for review. This practice would eliminate the concerns expressed by issuers that they are taken by surprise when they receive a comment letter from the staff on their Exchange Act filings. The staff also will indicate in those notification telephone calls approximately when comments, if any, can be expected to be communicated to the issuer by the staff.

B. Voluntary Pre-Review of Filings

If the proposals are adopted, the Division staff will begin to consider requests by issuers for the staff to review their Exchange Act disclosure because the issuer is planning an offering in the near future. The Commission also reminds issuers that, as always, the Division is willing to discuss with issuers potential accounting problems that may arise either in due course or in connection with unusual transactions.

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[561] The issuer and the offering must meet the eligibility requirements set forth in General Instruction I. of Form B.

[562] *See, e.g.*, comment letters, in File No. S7–19–96, from PSA The Bond Market Trade Ass'n (Nov. 8, 1996); Cleary, Gottlieb, Steen & Hamilton (Dec. 27, 1996); and the N.Y. State Bar Ass'n (Oct. 25, 1996).

Resolution of those issues before filing benefits all interested parties.[563]

This voluntary review option would be available to reporting issuers that are concerned about receiving a staff comment letter requesting an amendment to an Exchange Act report that is being incorporated into a registration statement or that will serve as the basis for company disclosure in a registration statement. Subject to obvious limitations on staff resources, the staff will make every effort to accommodate an issuer's request when made a reasonable period before an offering. If the staff is unable to accommodate a request, the issuer will be so advised promptly after the request is made. If the staff informs the issuer that it is unable to review the issuer's Exchange Act reports at that time, the staff would not select those reports for a routine review during the 30 days thereafter. At any time more than 30 days thereafter, the staff could choose to perform a routine review of that issuer's reports. At all times, the Commission staff would reserve the right to review those reports for cause.

XIII. Request for Comments About Investment Company Issuers and Market Value Adjustment Contracts

A. Investment Company Issuers

Interested persons are asked to submit written comments on how any aspect of the proposals affects investment companies and on how the proposals should be modified to reflect the circumstances of investment companies. For example should the safe harbors for communications contained in proposed rules 167, 168 and 169 apply to investment companies or should investment companies be expressly excluded from these safe harbors? Do the proposals, which generally are tied to the form on which securities are registered, adequately address delivery obligations with respect to investment company securities, particularly the securities of closed-end investment companies?

B. Market Value Adjustment Contracts

Life insurance companies sometimes issue so-called "market value adjustment" contracts, either alone or in combination with a variable annuity contract. Under a market value adjustment contract, an insurer promises a contractowner a fixed interest rate, subject to an adjustment based on prevailing interest rates in the event of early surrender of the contract. Market value adjustment contracts have been registered on Form S–1, S–2 or S–3. Under today's proposals, they would be registered on Form A or B.

We solicit comment on how the proposals affect market value adjustment contracts and on how the proposals should be modified for these contracts. For example, what criteria should be used to determine whether a market value adjustment contract is registered on Form A or Form B? Is one of these forms more appropriate for all market value adjustment contracts? Should registration statements on Form B for market value adjustment contracts be subject to the same rules for time of filing and time of effectiveness as other Form B registration statements, or should they be treated similarly to investment company registration statements? Should the exemption permitting offers to be made in the pre-filing period apply to market value adjustment contracts registered on Form B? Should the same delivery requirements apply to market value adjustment contracts registered on Forms A and B as apply to other Form A and B offerings, or should market value adjustment contracts be treated similarly to investment company securities?

XIV. Cost-Benefit Analysis

The proposed new rules and amendments should modernize and improve the Commission's regulatory system for offerings under the Securities Act. We believe our proposals would enhance communications between public companies and investors, and promote investor protection. In this section we examine the benefits and costs of the proposed revisions of the Securities Act and Exchange Act, focusing on the groups that might be affected. We request that commentators provide views and supporting information as to the benefits and costs associated with the proposals.

A. Impact on Investors

We anticipate that the proposed rules and amendments would enhance investor protection by requiring issuers to deliver information to investors before they commit to purchasing securities.[564] Specifically, the proposed rules and amendments would require issuers registering securities on Form A to deliver preliminary prospectuses to potential buyers 7 days before pricing for initial public offerings and 3 days before pricing for repeat offerings. Issuers would have to notify offerees of material changes at least 24 hours before pricing. For Form B offerings, issuers would be required to deliver term sheets outlining the key features of the securities before accepting purchases from customers. In contrast to the proposed rules, the final prospectus currently is required to be sent to investors before, or at the same time as, the securities purchased.[565] Thus investors typically receive prospectuses after securities sales, rather than when they are considering the merits of investments. The proposed rules and amendments would accelerate the delivery of information to investors in some circumstances, thereby ensuring they receive written information before investing.

The proposed rules and amendments would also enhance the timeliness, uniformity, and quality of disclosure in Exchange Act reports by:

- Requiring registrants to file summary financial information on Form 8–K before they file Forms 10–K and 10–Q;
- Shortening the period during which foreign private registrants may file Form 20–F;
- Reducing the 15-day filing period for Form 8–K to 5 days, and reducing the 5-day filing period for disclosing independent accountant and director resignations, material defaults, dividend arrearages, and delinquencies filed on Form 8–K to 1 day;
- Requiring registrants to report additional events on Form 8–K, including:

—Material modifications to rights of security holders;
—Departures of CEO, CFO, COO or president (or persons in equivalent positions);
—Material defaults on senior securities (must be disclosed no later than one day following default);
—notices that reliance on prior audit is no longer permissible, or that auditor will not consent to use of its report in a Securities Act filing;[566] and
—change in company name.

- Altering Form 6–K to:

—Encourage registrants to voluntarily and promptly report current important information;
—Suggest that registrants report the same events that are reported pursuant to Form 8–K; and
—Include a signature requirement.

- Treating the information in Part I of Forms 10–Q and 10–QSB as "filed" for purposes of Section 18 under the Exchange Act;[567] and

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[563] We would exclude from this policy Exchange Act reports filed in accordance with requirements of foreign law, such as Forms 40–F and 6–K.

[564] *See* proposed Securities Act Rule 172, 17 CFR 230.172.

[565] In initial public offerings, issuers are required to deliver preliminary prospectuses to investors at least 48 hours before sending confirmations.

[566] *See* 17 CFR 228.304 and 17 CFR 229.304.

[567] *See* proposed revisions to Exchange Act Rules 13a–13(d) and 15d–13(d), 17 CFR 240.13a–13(d) and 17 CFR 240.15d–13(d).

- Requiring risk factors disclosure in Forms 10–K and 10–KSB with quarterly updating in Forms 10–Q and 10–QSB.[568]

Reducing filing periods and requiring firms to file summary financial information with the Commission before filing Forms 10–K and 10–Q would unify and in some instances accelerate the release of information to investors. The other requirements would enhance the uniformity and quality of information disseminated to the market and investors.

The Commission is proposing to require that all persons who sign a firm's registration statements filed under the Securities Act and reports filed under the Exchange Act certify they have read the filing and do not know of any material misstatement or omissions of information in the filing.[569] The proposals would expand the number of persons required to sign forms to include the registrant, the registrant's principal executive officer, principal financial officer, principal accounting officer, and at least a majority of the registrant's board.[570] These revisions would help ensure that information is adequately reviewed both internally by a registrant's senior management (and by its board), thereby enhancing investors' confidence in the quality of the information.

The proposed rules and amendments would also improve investors' access to information by allowing issuers to use "free writing" sales materials before the effectiveness of their registration statement.[571] Current limitations on communications originally were intended to focus investors' attention on prospectuses, whose contents were specified by the Commission. We believe that by allowing issuers the additional flexibility to communicate with investors before the effectiveness of a registration statement, investors may become better informed before making their investment decisions. These additional communications made during the offering period would be subject to the provisions of Section 12(a)(2) under the Securities Act and the antifraud provisions of the Securities and the Exchange Acts.[572] Additionally, investors would continue to have access to issuers' registration statements through the Commission's Internet web site and several non-governmental web sites. The Commission recognizes, however, that deregulating communications may impose an analytical burden on investors. For example, in some offerings, an investor may need to assemble and assimilate various free writing documents and Exchange Act materials in order to get the whole investment picture. We seek comment on whether investors would benefit overall from issuers communicating with investors during the waiting period.

The proposed rules and amendments would improve investors' access to information by allowing issuers that register offerings on Form B to communicate with investors before they file a registration statement.[573] The proposed rules and amendments would apply to:

- Large, seasoned companies;
- Offerings sold only to QIBs;
- Offerings to certain existing shareholders;
- Offerings of certain non-convertible investment securities; and
- Certain market making transactions by affiliated brokers/dealers.

In these instances, the Commission anticipates investors would benefit from receiving information from issuers during the pre-filing period, and believes that doing so would not create an investor protection concern, given the information is subject to the provisions of Section 12(a)(2) under the Securities Act and the antifraud provisions of the Securities and the Exchange Acts.[574] Moreover, given the abundance of readily accessible information about large, seasoned public companies, any communications made by them while in the process of registering an offering are less likely to have a significant impact by conditioning the market or stimulating interest in a proposed offering. The Commission, however, recognizes that deregulating communications may lead to issuers "hyping" securities more than today. We seek comment on whether such activities would interfere with investors' ability to evaluate offerings objectively.

Offerings to QIBs and existing shareholders also may be registered on Form B. We believe that these investors, due to their experience or nature, would be less susceptible than other investors to pre-filing hype about a new offering. For example, under the proposed rules, issuers may register on Form B an offering of securities to QIBs. Because of their sophistication, we believe QIBs are more likely than other investors to be in a position to insist that issuers explain any information disseminated before the filing of a registration statement. Similarly, we believe that certain existing shareholders would benefit from issuers communicating more freely. These investors are likely to be knowledgeable about the investments in which they would be eligible to receive additional issuer disclosures during the pre-offering period. And finally, we believe purchasers of non-convertible investment grade debt are unlikely to need the additional protections offered by Form A registration. We understand these securities' investors buy largely based on ratings and maturities. We request comment on the accuracy of these views.

The proposed new rules and amendments are designed to increase the amount of information provided to investors. For example, the proposals would allow analysts to distribute research reports around the time of offerings as long as they disclosed potential conflicts of interest.[575] Facilitating communication between analysts and investors would enhance investors' ability to evaluate offerings and should increase the speed at which the market discovers prices.

The proposed revisions also would reduce the effects of selected disclosure by requiring issuers to file all "free writing" materials with the Commission. These materials would then be available to all investors through our web site. In offerings today, many issuers and their representatives exclude some investors from roadshows and other issuer communications. The proposed rules and amendments should put investors with Internet access on a more equal footing with respect to receiving written information about the issuer, although issuers might continue or increase their selective disclosure of oral information. We request comment on whether investors without access to the Internet may be disadvantaged.

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[568] The proposed revisions would also require issuers to disclose risk factors in Forms 10, 10–SB, 18, 20–F, and 18–K.

[569] The proposed revisions would affect Forms A, B, C, SB–1, SB–2, and SB–3 under the Securities Act and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 10, 8–A, 10–SB, 20–F, 40–F, 18, 8–K, and 6–K under the Exchange Act.

[570] Foreign private issuers also would need to have an authorized representative in the United States sign. The proposed revisions would affect Forms A, B, C, SB–1, SB–2, and SB–3 under the Securities Act and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 10, 8–A, 10–SB, 20–F, 40–F, and 18 under the Exchange Act. For Forms 8–K and 6–K, we would require either the registrant's principal executive officer, principal financial officer, or principal accounting officer to sign a particular Exchange Act report and certify he or she provided a copy to board members.

[571] *See* proposed Securities Act Rule 165, 17 CFR 230.165, and Rule 166, 17 CFR 230.166.

[572] Under the proposals, Form B offering information would be subject to liability under Section 11 of the Securities Act.

[573] *See* proposed Securities Act Rule 166, 17 CFR 230 166.

[574] Under the proposals, Form B offering information would be subject to liability under Section 11 of the Securities Act.

[575] *See* proposed revisions to Securities Act Rules 137, 138, and 139, 17 CFR 230.137, 230.138, and 230.139.

The proposed new rules and amendments would likely expand the registered investment opportunities available to investors. The proposed revisions would lower the cost of registering public offerings which in turn may motivate issuers to shift at least some securities' sales from the private to the public market. Investors that are eligible to purchase securities in private placements today would be able to purchase securities that would be similar to those before, but would be freely resalable. The information would be subject to the higher liability standards of Section 11 under the Securities Act. Investors currently ineligible to purchase securities in private placements may have new investment opportunities. Shifting securities offerings from the private to the public market also would likely increase the liquidity of the public market.

Although it is difficult to estimate the number of offerings or aggregate amount of securities that might become available to the public market, we anticipate that larger seasoned issuers would register some offerings on Form B that otherwise would have been privately placed, resulting in more offerings becoming available to non-QIB investors. Smaller, less seasoned issuers would likely register at least some offerings on Form B that they offer exclusively to QIBs and to certain existing shareholders, or that are investment grade non-convertible securities, rather than privately place them, resulting in more offerings being traded in the public market.[576] The Commission recognizes that some smaller, less seasoned issuers, however, would choose today to register their securities on Form B as an offering exclusively to QIBs. In these instances, non-QIB investors under the proposals would not be able to participate in the initial distribution of securities. We request comment on the extent to which the proposed rules would integrate the private and public markets and bifurcate QIB versus non-QIB investment opportunities.

One cost to investors of the proposed revisions is that they might increase investors' analytical burden. The proposed new rules and amendments would allow Form A issuers with two years of reporting history to incorporate Exchange Act reports into prospectuses as long as they deliver the reports with prospectuses to investors. Investors in these offerings would have to physically compile the delivered integrated information. The Commission notes that investors have not complained they are unduly burdened when investing in offerings where company information is incorporated by reference from the issuer's Exchange Act reports. The Commission seeks comment from investors as to whether, as a practical matter, compiling delivered materials that are incorporated by reference into prospectuses is burdensome to investors. The Commission seeks comment from investors as to whether, in their experience, issuers or mutual fund companies have promptly delivered periodic reports incorporated by reference or, in the mutual fund context, the Statement of Additional Information, when such materials were requested. And we seek comment from companies on how often they receive requests from investors.

The proposed new rules and amendments could also increase investors' analytical burden if they receive transactional information in Form B registration statements that is not uniform. In addition, investors would have the burden of identifying omitted information that today may be mandated. In general, however, we expect few problems. We anticipate that issuers and underwriters would use the opportunity to craft disclosure based on investors' demand and the requirement to provide material information to investors. The proposed rules do not change issuers' or underwriters' liability, thus we expect they would have incentives to present complete and correct transactional information. The Commission also is proposing to continue mandating the same company information as today, as well as certain transactional disclosure items. We request your comments on the accuracy of this view.

The Commission recognizes that some fraction of the cost savings to issuers and underwriters reflects a shifting of costs from issuers to investors, including investment advisers, investment companies, and retail investors. These costs may include quantifiable costs (such as printing) and less quantifiable costs (such as time, effort, and inconvenience). Some portion of the printing costs that Form B companies would save by not printing and delivering final prospectuses might be shifted to investors. Under the proposals, prospectuses would be available to investors through the Commission's web site or issuers' toll-free telephone numbers. Investors could either rely on prospectuses' continued availability on the Internet (and not acquire hard copies), call issuers for free copies or download and print them.

The Commission seeks comment on the assumptions and quantitative data that should go into estimating the costs to investors of acquiring prospectuses in Form B offerings. For example, would investors be less likely to read and use prospectuses if prospectuses are not delivered and investors have to take extra steps to receive them? What percentage of investors would contact issuers for free copies of prospectuses? What percentage of investors would obtain prospectuses through the Internet? How much does it cost investors in terms of paper, Internet connection costs, and telephone connection time to download information and print prospectuses? How likely is it that investors would read prospectuses "on-line," and if they did so, how much in additional connection charges would they pay? What are the costs to issuers and underwriters of printing and delivering prospectuses? What are the costs of bulk printing of prospectuses through commercial printers relative to the cost of "retail printing" of prospectuses by individual investors? We request comment on the number of prospectuses that issuers and underwriters would no longer need to print and deliver to investors and the size of the resulting cost savings.

The proposed new rules and amendments would allow companies that currently are ineligible to register offerings on Forms SB–1 and SB–2 to use these forms, and to register business combinations on new Form SB–3.[577] One issue that could arise is the quality of the newly eligible firms' disclosures might be lower than today, because the small issuer disclosure system, of which

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[576] In a study of non-convertible debt, we found that at least 49% of the non-convertible debt issued in the 144A market in the first half of 1998 would have likely migrated to the public market under the proposed rules. The evidence indicates yields on privately placed investment grade securities and securities with registration rights are essentially the same as yields on registered securities with similar characteristics. The insignificant yield differential suggests that investors perceive few differences between these privately placed and publicly registered securities. Yet issuers pay as much as 100 basis points in extra issuance costs for privately placed investment grade securities and securities with registration rights. Presumably, issuers believe the additional expense is more than justified by the issuance and timing flexibility provided by the private market. Under the proposed rules, issuers would have much of the same flexibility when they register offerings on Form B that they currently have in the private market. We therefore anticipate that issuers would sell these securities in the public rather than private market. *See Effects of Streamlined Registration*, Memorandum by the Commission's Office of Economic Analysis (Sept. 18, 1998).

[577] *See* proposed revisions to Securities Act Rule 405, 17 CFR 230.405.

Forms SB–1 and SB–2 are part, allows companies to register offerings with less extensive disclosure requirements than those required by Forms S–1 and S–2. We do not anticipate, however, that classifying companies with revenues up to $50 million as small business issuers would harm investors. The information that we have suggests allowing more firms to file on Forms SB–1 and SB–2 would not cause or allow firms that otherwise would register on Forms A or B to misrepresent or omit material information to investors. We request your comments on the accuracy of this view.

A final concern is that eliminating staff review of offerings registered on Form B would diminish issuers' incentives to fully and accurately disclose information in prospectuses. Although the Commission's staff currently reviews relatively few offerings that would be registered on Form B under the proposals,[578] the possibility of review likely enhances the quality of disclosure. The Commission agrees that prospectus review is valuable, but believes the resources currently dedicated to prospectus review might better serve investors' interests if applied to reviews of Exchange Act reports. As discussed in the Advisory Committee report, the equity trading markets are approximately 35 times larger (approximately $5.5 trillion dollars in 1995) than the primary markets (approximately $155 billion dollars in 1995).[579] Given that larger seasoned issuers are followed by analysts and other providers of information, we believe that focusing on Exchange Act report reviews would benefit investors. We request your comments on the accuracy of this view.

B. Impact on Issuers

The proposed rules and amendments would change the registration forms on which issuers register offerings and business combinations. Issuers would use Forms A, B, and C rather than Forms S–1, F–1, S–2, F–2, S–3, F–3, S–4, and F–4. Form A would be available to all issuers: It would roughly parallel current Forms S–1, F–1, S–2, and F–2. Issuers that would have been reporting companies for at least two years and that used Form A would be able to incorporate Exchange Act reports by reference. Form B would be available to larger seasoned issuers; that is, issuers with either public floats of at least $75 million *and* ADTVs of $1 million *or* public floats of at least $250 million.[580] Alternatively, issuers could use Form B if they sell securities exclusively to QIBs and certain existing shareholders, or sell non-convertible investment grade securities. Issuers would use Form C to register business combinations. The Commission also is proposing to revise the definition of small business issuer to increase the revenue test from $25 to $50 million and remove the public float test.[581] Firms that meet this test would be eligible to register offerings on Forms SB–1 and SB–2, and business combinations on new Form SB–3.

In the table below, we estimate the impact of the proposed eligibility requirements on companies' form eligibility based on data from 1997. We apply the proposed Form A and Form B public float, ADTV, and reporting history form requirements to the companies that were publicly traded on the NYSE, AMEX, and NASDAQ market in 1997.[582] Of the 8,825 companies that were traded on these exchanges and market in 1997, 5,428 would have been required to register offerings on Form A under the proposals, unless they sold securities solely to QIBs and certain existing shareholders, or sold non-convertible investment grade securities.[583] Of those 5,428 companies, 1,075 of the companies would not have been allowed to incorporate Exchange Act reports by reference on Form A under the proposals, whereas 4,353 would have been permitted to incorporate Exchange Act reports by reference. Of the 4,353 companies that would have been permitted to incorporate Exchange Act reports by reference on Form A under the proposals, 2,526 were required to register offerings on Forms S–1 and F–1 in 1997, 400 were required to register offerings on Forms S–2 and F–2, and 1,427 were required to register offerings on Forms S–3 and F–3. Under the proposed rules and amendments, 3,397 registrants would have been eligible to register offering on Form B based on their public floats and ADTVs. Not shown in the table are the 4,087 companies, 1,050 more than today, that would have been eligible in 1997 to register offerings on Forms SB–1, SB–2, and SB–3 under the proposed rules.[584] The impact of these changes on issuers is discussed below.

TABLE: IMPACT OF PROPOSED FORM REQUIREMENTS ON REGISTRANTS

	Form A, no incorporation by reference	Form A, incorporation by reference	Form B	Total
Form S–1/F–1	1,075	2,526	0	3,601
Form S–2/F–2	0	400	0	400
Form S–3/F–3	0	1,427	3,397	4,824
Total	1,075	4,353	3,397	8,825

We anticipate that the proposed rules and amendments would lower the cost of raising capital in the public market for many issuers. For the purposes of the Paperwork Reduction Act, the table in Section XV summarizes our preliminary estimates of the internal burden hours that parties would spend to comply with the proposals. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that public companies would expend approximately 9,106,343 internal burden hours/year complying with the proposals. If we assume 70% of these burden hours would be expended by persons that cost the affected parties $85/hour and 30% of these burden hours would be expended by persons that cost $10/hour, then the proposals would cost approximately $573,699,609/year in internal staff time.[585] For the purposes of the Paperwork Reduction Act, we also estimate that parties would spend approximately $4,754,863,050/year on outside professional help to comply with the proposals. Thus we estimate that affected parties would spend approximately $5,328,562,659/year to comply with the proposals. Applying the same cost estimates to the burden imposed by the current rules, we estimate that issuers would spend approximately $5,581,739,205/year.[586] Note that these estimates do not attempt to quantify the proposals' intangible benefits, such as the benefits to issuers and investors of enhanced communications and the greater likelihood that issuers would shift capital raising from the private to the public market, nor its intangible costs, such as the cost to security holders of identifying misleading or incomplete pre-filing information. We request comment on the reasonableness of our estimates.

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[578] *See* Advisory Committee Report at Appendix A, p. 9, Table 2. The Commission reviewed approximately 15% of prospectuses of underwritten common equity registered in calendar years 1994 and 1995 on Form S–3, which roughly parallels Form B.

[579] *See* Advisory Committee Report at p. 2 and at Addendum to Appendix A, Fig. 2.

[580] Public float is the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates of the issuer. *See* 17 CFR 230.405.

[581] *See* proposed revisions to Securities Act Rule 405, 17 CFR 230.405.

[582] Market capitalization was used as a proxy for public float. We use data from the Center for Research in Security Prices. We also are proposing to change the requirements for Canadian foreign private issuers to be eligible for MJDS to roughly conform with the requirements for Form B. These changes affect Forms F–7, F–8, F–9, F–10, F–80 and 40–F. We request comment on the impact of the revisions on these issuers.

[583] The proposed rules would allow certain Form A issuers with at least $75 million in public float to go effective whenever they request. We estimate approximately 1,960 issuers would be eligible under the proposals.

[584] *See* 17 CFR 228.10.

The proposed rules would allow issuers that otherwise would not be eligible to register securities on Form B to use Form B if they sold securities exclusively to QIBs and certain existing shareholders, or sold non-convertible investment grade securities. Consequently, they would be able to incorporate Exchange Act reports by reference without delivering them to investors, and would be able to craft transactional disclosure, subject to Section 11 liability standards, with fewer constraints than under the current regime. These changes would lower issuers' expenses to publicly raise capital. Although we cannot estimate the number of offerings or aggregate amount of securities that these issuers might register on Form B rather than on Form A, we anticipate that they would register at least some offerings on Form B. If they used Form B, they would also be allowed to communicate with investors during the pre-offering period. We request your comments, including any supporting empirical information, on the benefits and costs to smaller, less seasoned issuers of registering securities on Form B under the proposed rules.

The proposed rules would simplify larger seasoned issuers' preparation of Form B by lifting restrictions on communications,[587] enhancing these issuers' control over the timing of public offerings,[588] and not requiring physical delivery of a prospectus.[589] Under the proposed rules, we would require issuers in Form B offerings to deliver only a term sheet of the securities' most important features, instead of a full prospectus. We request comment on the number of Form B offerings in which issuers would not have to deliver prospectuses, the number of offerees in these deals, and the percentage of investors that would not request prospectuses. To the extent investors do not request the prospectus or information incorporated by reference, or obtain such information on the Internet, issuers would save mailings costs. Specifically, how does the difference in costs between the bulk mailing of prospectuses, under current law, and the on-request mailing of prospectuses as proposed, affect the potential cost to Form B issuers? How much would it cost Form B issuers to establish toll-free telephone numbers? How much would it cost Form B issuers to deliver term sheets? In Form A offerings, issuers would no longer have to deliver final prospectuses, but would have to deliver preliminary prospectuses. How many prospectuses would Form A issuers have to send to offerees? How does this number compare to the number of investors in these offerings? Would it cost more or less to send preliminary prospectuses relative to sending final prospectuses today? We request comment on the benefits and costs of these revisions to issuers.

The proposed rules and amendments would increase all issuers' flexibility to raise capital in a number of ways. The proposals would allow issuers to "test the waters" to gauge investor interest in offerings, allowing them to withdraw unpopular offerings more quickly than under the current regime. Issuers would be able to convert more easily and with less regulatory uncertainty between public and private offerings,[590] and would no longer be required to announce public or private status in "limited content notices."[591] The Commission would also credit issuers' registration fees if they withdraw registration statements, and would allow small business issuers to increase the amount of securities they register on a statement by 50%, up from 20% today. The Commission is proposing to permit issuers in the small business issuer system to delay paying registration statement filing fees until shortly before they sell securities.[592] This provision is designed to help ease these issuers' liquidity concerns. We anticipate these changes would benefit issuers. We request comment on the reasonableness of this view.

These proposed new rules and amendments could slow issuers' access to the public market in quick offerings because issuers would be required to deliver preliminary prospectuses in some offerings and term sheets in others. The proposed rules and amendments would require issuers registering securities on Form A to deliver preliminary prospectuses to buyers 7 days before pricing for initial public offerings and 3 days before pricing for repeat offerings. In addition, issuers would have to notify offerees of material changes at least 24 hours in advance of pricing. For Form B offerings, issuers would be required to deliver term sheets outlining the key features of securities being offered.[593]

To assess the burden of the proposed Form A delivery requirements on issuers whose public floats, ADTVs, and reporting histories would otherwise require them to register offerings on Form A, we examine whether these issuers' offerings in 1996 would have been slowed by the proposed restrictions. In the case of non-shelf offerings, very few deals would have been affected.[594] In the case of shelf offerings, more deals, especially medium-term-note offerings, would have been slowed by the Form A prospectus delivery requirements.[595] In general, however, these offerings are sold to institutional buyers, and issuers would be eligible to register offerings on Form B if securities were sold solely to QIBs and certain existing shareholders, or were non-convertible investment grade securities. Registration on Form B would eliminate regulatory uncertainty and Form B issuers would be required to deliver only a securities term sheet to investors.

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[585] These hourly rates translate to annual salaries of $170,000/year and $20,000/year.

[586] For the purposes of the Paperwork Reduction Act, we estimate in the table of Section XV the burden hours imposed on parties to comply with the current rules. Assuming (as we did for the proposed rules) that 25% of the hours required to comply with the rules are provided by corporate staff at a cost of $63/hour (70% of the expended corporate staff time cost $85/hour, whereas 30% of the expended corporate staff time cost $10/hour), and 75% of the hours required to comply with the rules are provided by external professional help at a cost of $175/hour, we estimate that affected parties spend approximately 37,971,015 burden hours/year * $147/hour = $5,581,739,205/year.

[587] *See* proposed Securities Act Rules 165 and 166, 17 CFR 230.165 and 230.166.

[588] Offering materials would not be subject to staff review, and issuers could designate offerings' effective dates. Certain Schedule B filers also could designate the timing of their offerings' effectiveness.

[589] *See* proposed Securities Act Rules 172 and 173, 17 CFR 230.172 and 230.173.

[590] *See* proposed revisions to Securities Act Rule 152, 17 CFR 230.152.

[591] *See* proposed revisions to Securities [illegible] 135c and 135, 17 CFR 230.135c and 230 135

[592] *See* 17 CFR 228.512.

[593] *See* proposed Securities Act Rule 172, 17 CFR 230.172, and proposed revisions to Ex[illegible] Rule 15c2–8, 17 CFR 240 15c2–8.

[594] We found that 14 non-shelf offerings by 13 issuers would have been slowed by the proposed Form A delivery requirements. In all but one case, the requirement to deliver notice of material changes at least 24 hours in advance of pricing

Under the proposals, we would require issuers to file post-effective amendments for delayed shelf takedowns by the time of first sale. This requirement would accelerate issuers' filing obligation with respect to transactional disclosure in prospectus supplements relative to today. We do not, however, anticipate a substantial increase in burden on issuers. We ask comment on the reasonableness of this view.

C. Impact on Other Parties

We anticipate that the proposed rules and amendments would on balance benefit underwriters. The proposed changes would clarify and expand the current safe harbors for research reports. Analysts would be allowed to distribute research reports around the time of an offering as long as potential conflicts of interest were disclosed.[596] Thus analysts would be able to continue servicing their clients, even during offerings.

The proposed rules and amendments would also remove much of the burden on issuers and underwriters of delivering final prospectuses.[597] We anticipate these parties would experience tremendous cost savings from this change. The proposed rules would also facilitate the Commission moving towards quicker clearing and settling cycles in the future, reducing clearance and settlement risk to clearing corporations, their members, and public investors. The proposed rules and amendments would lift the obligation on dealers to deliver final prospectuses to investors in sales after initial distributions if final prospectuses are on file with the Commission and dealers notify investors where they may acquire them.[598]

The proposed rules, however, could increase the pressure on underwriters to rapidly review offerings because more offerings would be eligible to come to market quickly. Although underwriters' techniques to review offerings have improved since the introduction of shelf registration in 1982, several commentators on the Concept Release noted that further deregulation of the registration process could undermine their ability to influence the contents of issuer disclosure, leaving them liable for prospectus content. The Commission is proposing to revise Rule 176 to provide courts better guidance as to whether a due diligence investigation meets a "reasonable investigation" and "reasonable ground for belief" standard in a defense against liability under Sections 11 and 12(a)(2) in a quick offering.[599] We also are proposing to extend Rule 176 to cover liability under Section 12(a)(2) as well as Section 11. We believe the revisions would provide guidance to underwriters and the courts while preserving underwriters' as "gatekeepers."

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[600] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation. We note that for purposes of the Paperwork Reduction Act, we estimate the proposals would create an annual information collection paperwork preparation savings to issuers of more than $100 million. We request your comments on the reasonableness of this estimate.

In adopting rules under the Exchange Act, Section 23(a) requires the Commission to consider the impact that rules would have on competition and to not adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking and required to consider or determine whether the action is necessary or appropriate in the public interest, to also consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[601]

We believe the proposals would lower companies' cost of capital raising relative to today which would enhance their efficiency and facilitate capital formation. We anticipate the proposals would promote investor protection and enhance communications between public companies and investors, thereby increasing investors' confidence in the integrity of the securities markets.

To the extent that the proposals would lower the cost of raising capital in the United States, they could enhance the competitiveness of issuers that raise capital in the U.S. public capital markets. We anticipate the proposals also could reduce some of the competitive disadvantage of small issuers that today register offerings on Forms S–1, SB–1, and SB–2 relative to larger firms. Given that the proposals would (1) allow small issuers to raise capital from QIBs and certain existing shareholders, or sell non-convertible investment grade securities using Form B; (2) allow small businesses to incorporate Exchange Act reports by reference into registration statements as long as they deliver the reports with prospectuses to investors; and (3) allow certain Form A issuers' registration statements to go effective immediately if they are reporting companies for at least two years and have public floats of at least $75 million, we believe small companies' competitiveness could be enhanced relative to today.

The proposals to revise Rule 176 to provide courts better guidance as to whether a due diligence investigation meets a "reasonable investigation" and "reasonable ground for belief" standard

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would have caused the delay. Of course, the current registration regime encourages issuers to delay filing registration statement amendments, thus it is unclear as to whether these issuers could have filed their amendments earlier without incurring additional cost.

[595] In some cases, as discussed above, firms that currently use Forms S–3 and F–3 to issue securities from shelves would not have sufficient public float and ADTV to qualify to use Form B. These firms would have to meet the preliminary prospectus delivery requirements for Form A. Here we examine these firms' use in 1996 of unallocated shelf to see if the proposed prospectus delivery requirements would have slowed their offerings. In 1996, 187 firms that were eligible to use Forms S–3 and F–3, but which would not have been eligible to use Form B took securities off unallocated shelves. Not all of these offerings, however, would have been slowed. In roughly ⅔ of equity deals and ⅓ of non medium-term-note (MTN) debt deals, firms file preliminary takedown prospectuses (red herrings) with the Commission because they market the deals. Marketing, not regulatory requirements slow these deals. Such marketing is rare, however, for takedowns in MTN programs.

[596] *See* proposed revisions to Securities Act Rules 137, 138, and 139, 17 CFR 230.137, 230.138, and 230.139.

[597] *See* proposed Securities Act Rule 173, 17 CFR 230.173.

[598] *See* proposed revisions to Securities Act Rule 174, 17 CFR 230.174.

[599] *See* proposed revisions to Securities Act Rule 176, 17 CFR 230.176.

[600] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[601] 15 U.S.C. § 78c(f).

in a defense against liability under Sections 11 and 12(a)(2) in a quick offering could, however, put underwriters that do not have in-house analysts at a competitive disadvantage relative to other underwriters. The revision would allow underwriters to cite the employment and consultation of research analysts that are actively involved in an issuer's industry as a positive factor for the courts to consider when deciding whether underwriters' investigations are reasonable. Underwriters that cannot rely on this factor may be somewhat at a competitive disadvantage in underwriting quick offerings. We request comment on the significance of this disadvantage.

As discussed above, the Commission anticipates that the proposed rules and amendments would reduce the cost of raising capital in the public market, promoting efficiency, competition, and capital formation. The Commission requests comment on these preliminary views and encourages commentators to provide empirical data and other facts to support their views. We request data and analysis on the effect of the proposed changes on efficiency and capital formation. The Commission also requests comments on the competitive effects that may impact market participants under the proposed amendments.

XV. Initial Regulatory Flexibility Analysis

We prepared this Initial Regulatory Flexibility Analysis under 5 U.S.C. § 603 concerning the new rules, forms, and amendments proposed today. We will consider your written comments in the preparation of the final analysis.

A. Reasons and Objectives for Proposed Action

The purpose of the proposed new rules, forms, and amendments is to modernize, rationalize, and clarify the Commission's regulatory system for offerings under the Securities Act of 1933, enhance communications between public companies and investors, and promote investor protection.

B. Objectives and Legal Basis

We propose the new rules, forms, and amendments to the Commission's existing rules and forms pursuant to Sections 2(b), 6, 7, 8, 10, 19(a), and 28 of the Securities Act, as amended and Sections 3, 4, 10, 12, 15, 23, and 36 of the Exchange Act.

C. Small Entities Subject to the Rules

The proposed rules and amendments would affect small entities that are required to file registration statements and reports under the Securities Act, Exchange Act, and the Investment Company Act. For the purposes of the Regulatory Flexibility Act, the Securities Act and Exchange Act define a "small business" issuer, other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less.[602] When used with respect to an issuer that is an investment company, the term is defined as an investment company and any related investment company with aggregate net assets of $50 million or less as of the end of its most recent fiscal year.[603]

We currently are aware of approximately 1,100 reporting companies that are not investment companies with assets of $5 million or less. There are approximately 400 investment companies that satisfy the "small entity" definition. All of these companies would be subject to the proposed rules, forms, and amended rules. We have no reliable way, however, to determine how many businesses may become subject to Commission reporting obligations in the future, or may otherwise be impacted by the changes.

D. Reporting, Recordkeeping, and Other Compliance Requirements

For the most part, the proposals are deregulatory in nature, modernizing, rationalizing, and clarifying the Commission's regulatory system for offerings under the Securities Act and enhancing communications between public companies and investors. Under the proposed rules, small businesses would report and file essentially the same information as today, although more small companies would be eligible for the small business disclosure system's streamlined reporting. The Commission also is proposing a new small business combination form, Form SB–3. One exception to this generalization is the Commission would require issuers, both large and small, to file written communication used during the waiting period in a securities offering. The proposed rules and amendments also could change small issuers' recordkeeping of prospectus delivery to investors. Our preliminary view is that any additional recordkeeping burden resulting from our proposals for prospectus delivery would be minimal. To the extent that underwriters and issuers collect information to contact potential investors and collect information to send prospectuses and confirmations under the existing rules, we do not anticipate the proposals would impose a significant additional burden on underwriters and issuers. We request comment, however, on the accuracy of this view.

E. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the proposed rules forms, and amendments, we considered several alternatives, including:

- Establishing different compliance and reporting requirements or timetables that take into account the resources of small businesses;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rule for small businesses;
- Using performance rather than design standards; and
- Exempting small businesses from all or part of the requirements.

In a number of instances, the proposed rules, forms, and amendments would reduce the burden of complying with the Securities Act and Exchange Act to both large and small businesses. We propose to allow issuers to simultaneously register offerings under the Securities Act and classes of securities under the Exchange Act by checking a box on their Securities Act registration statements.[604] The revision would reduce the number of issuer filings. And the proposed rules and amendments would reduce uncertainty regarding staff review of Exchange Act reports through notification of review and pre-review. The proposed rules would allow issuers, both large and small, to raise capital from QIBs and certain existing shareholders, or sell non-convertible investment grade securities using Form B. These issuers would be able to incorporate Exchange Act reports by reference without necessarily delivering them to investors, and would be able to craft transactional disclosure, subject to Section 11 liability standards, with fewer constraints than under the current regime. These changes should lower issuers' expenses to publicly raise capital.

The proposed rules and amendments would increase all issuers' flexibility to raise capital in a number of ways. The proposals would allow issuers to "test the waters" to gauge investor interest in offerings, allowing them to withdraw unpopular offerings more quickly than under the current regime. Issuers would be able to convert more easily and with less regulatory uncertainty between public and private offerings,[605] and would no longer be required to announce public or private status in "limited content notices." [606] The Commission would credit issuers' registration fees if they withdraw registration statements. We anticipate these changes would benefit small issuers.

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[602] *See* 17 CFR 230.157 and 17 CFR 240.0–10.

[603] *See* 17 CFR 240.0–10.

[604] *See* proposed Securities Act Rule 499, 17 CFR 230.499, for Schedule B filers and proposed revisions to Exchange Act Rule 12d1–2, 17 CFR 240.12d1–2.

The proposals would also relax many of the restrictions on communications between issuers and investors and clarify any remaining limitations. Issuers would be able to more freely promote and sell securities to investors, subject to the provisions of Section 12(a)(2) under the Securities Act and the antifraud provisions of Rule 10b-5 under the Exchange Act.[607] Specifically, the proposed rules and amendments would allow all issuers to communicate freely with investors after registration statements are filed.[608] During the pre-filing period, issuers of offerings registered on Forms A, SB–1, and SB–2 and unregistered offerings would be somewhat limited in their ability to communicate with investors, but the proposed rules would clearly define the length of the period and would delineate the types of communications permitted and prohibited.[609] These changes would enhance small businesses' communications with investors and reduce regulatory uncertainty.

The proposed rules and amendments explicitly would reduce the impact on small businesses complying with the provisions of the Securities Act by allowing seasoned small businesses to incorporate Exchange Act reports by reference into the small business registration forms as long as they deliver the reports with prospectuses to investors. This provision should save issuers time and money. For example, we estimate issuers would spend approximately 533, or 343 fewer, burden hours preparing Form SB–2 registration statements under the proposed rules than today.[610] The Commission is proposing to allow more issuers to qualify for the small business disclosure system and to allow small business issuers to register business combinations and exchange offers on a new form, Form SB–3. Form SB–3 is designed to simplify and streamline the information that small businesses must disclose when they combine with other firms. As discussed in detail in Section XV, we estimate small business issuers would expend approximately 1,095 burden hours to file business combinations on Form SB–3,[611] or $163,155/filing in labor costs. Relative to filing on Forms S–4 or F–4 today, we estimate these issuers would save approximately 149 burden hours/filing or $22,201/filing in labor costs. The Commission also is proposing to permit issuers in the small business issuer system to delay paying registration statement filing fees until shortly before they sell securities.[612] This provision is designed to help ease these issuers' liquidity concerns. Small business issuers also would gain approximately $166/filing in interest because they would be able to defer paying registration fees.[613] Finally, the Commission would allow small business issuers to increase the amount of securities they register on a statement by 50%, up from 20% today.

The proposed rules and amendments could impose additional analytical burdens on investors that qualify as small entities, such as some investment companies and investment advisors. As discussed in Section XV, the proposed rules and amendments would allow issuers to communicate, including using written sales materials, with investors, both large and small, after registering offerings with the Commission. We seek comment on whether small investors would benefit overall from issuers communicating with investors during the waiting period. The proposed new rules and amendments also would allow Form A issuers with two years of reporting history to incorporate Exchange Act reports into prospectuses as long as they deliver the reports with prospectuses to investors. Investors in these offerings would have to physically compile the delivered integrated information. The Commission seeks comment from investors as to whether, as a practical matter, compiling delivered materials that are incorporated by reference into prospectuses would be burdensome to small investors. Finally, the proposals could also increase small investors' analytical burden if they receive transactional information in Form B registration statements that is not uniform in presentation from offering to offering. We request your comments on whether some issuer flexibility in crafting Form B transactional disclosure would unduly burden small investors.

As discussed in Section XV, the Commission recognizes that some portion of the printing costs that Form B companies would save by not printing and delivering final prospectuses might be shifted to small investors. Under the proposals, prospectuses would be available to investors through the Commission's web site or through issuers' toll-free telephone numbers. Small investors could either rely on prospectuses' continued availability on the Internet (and not acquire hard copies), call issuers for free copies or download and print them. The Commission seeks comment on whether the proposed revisions would unduly burden small investors.

We did not propose all of the alternatives that we considered. In some instances, the alternatives we chose not to propose would be inconsistent with our statutory mandate to require prospectuses to disclose fully and fairly all material information to investors. In other instances, the alternatives would significantly reduce the quality and timeliness of Exchange Act report information, depriving shareholders of an important means to evaluate investments. We believe that except in the specific instances, such as in the case of the small business disclosure system and Form B disclosure requirements, the proposed rules, forms, and amendments should apply equally to all entities required to disclose information to enhance protection of all investors. For these reasons, we also believe there would be no benefit in providing separate requirements for small issuers based on the use of performance rather than design standards.

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[605] *See* proposed revisions to Securities Act Rule 152, 17 CFR 230.152.

[606] *See* proposed revisions to Securities Act Rules 135c and 135, 17 CFR 230.135c and 230.135.

[607] Under the proposals, Form B offering information would be subject to liability under Section 11 of the Securities Act.

[608] *See* proposed Securities Act Rule 425, 17 CFR 230.425.

[609] *See* proposed Securities Act Rules 167, 168, and 169, 17 CFR 230.167, 230.168, and 230.169.

[610] *See* the detailed discussion in Section XV of this release.

[611] We base this estimate on the number of burden hours required to file Form SB–2 under the proposals relative to the number of burden hours required to file Form A. We then reduce the number of burden hours required today to file Form C by this ratio. Specifically, we estimate the number of hours required to file Form SB–3 under the proposed rules would be [(533 burden hours/SB–2 filing under the proposals / 606 burden hours/Form A filing under the proposals) * 1,244 burden hours/Form C filing under the proposals = 1,095 burden hours/SB–3 filing.

[612] *See* 17 CFR 228.512.

[613] In fiscal year 1998, small business issuers filed registration statements an average of 103 days before effectiveness. On average, these issuers raised $13,068,000/filing. At an interest rate of 15%/year, which the staff believes small firms could be required to pay, and Commission filing fees of 0.03% per dollar of capital raised, these issuers would have saved $166/filing on average in interest if they had been able to postpone paying their registration fee.

F. Overlapping or Conflicting Federal Rules

We do not believe any current federal rules duplicate, overlap or conflict with the rules, schedules, and amendments that we propose to amend.

We request your written comments on any aspect of this Initial Regulatory Flexibility Analysis. We particularly seek comment on:

- The number of small entities that would be affected by the proposed rules, forms, and amendments;
- The expected impact of the proposals as discussed above; and
- How to quantify the number of small entities that would be affected by, and how to quantify the impact of, the proposed rules, forms, and amendments.

We ask commentators to describe the nature of any impact and provide empirical data supporting the extent of the impact.

XVI. Paperwork Reduction Act

The proposed rules and amendments affect several regulations and forms that contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[614] The Commission has submitted proposed revisions to those rules and Forms to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The proposed new rules, forms, and amendments would modernize, rationalize, and clarify the Commission's regulatory system for offerings under the Securities Act of 1933, enhance communications between public companies and investors, and promote investor protection. The proposed forms and regulations set forth the disclosures that the Commission would require issuers to make about themselves and their securities offerings to the public. The requirements of the forms would largely be the same as today, except for a few changes that are discussed in detail below and in Section XIII. The information is needed so that prospective investors may make informed investment decisions both in registered offerings and in secondary transactions of registered securities. The information collection requirements imposed by the forms and regulations would be mandatory to the extent that companies are publicly owned and offer securities to the public. There would be no mandatory retention period for the information disclosed, and the information gathered would be made publicly available.

Form S–1 under the Securities Act (OMB Control Number 3235–0065) is used by issuers that are not eligible to use other forms to register offerings of securities.[615] The form sets forth the transactional and company information required by the Commission in securities offerings. Form S–2 under the Securities Act (OMB Control Number 3235–0072) is used by issuers that have reported under the Exchange Act for a minimum of three years and have timely filed all required reports during the 12 calendar months and any portion of the month immediately preceding the filing of the registration statement to register offerings of securities. The form sets forth the transactional and company information required by the Commission in securities offerings. It permits incorporation by reference of Exchange Act reports. Delivery of these incorporated documents as well as the prospectus to investors may be required. Form S–3 under the Securities Act (OMB Control Number 3235–0073) is used by issuers that have reported under the Exchange Act for a minimum of twelve months and have met the timely filing requirements set forth under Form S–3 (also, the offering and issuer must meet the eligibility tests prescribed by the form) to register offerings of securities. The form sets forth the transactional and company information required by the Commission in securities offerings. It permits incorporation by reference of Exchange Act reports. Form F–1 under the Securities Act (OMB Control Number 3235–0258) is used by foreign private issuers that are not eligible to use other forms to register offerings of securities. The form sets forth the transactional and company information required by the Commission in securities offerings. Form F–2 under the Securities Act (OMB Control Number 3235–0257) is used by foreign private issuers that have reported under the Exchange Act for a minimum of three years or have an equity float of at least $75 million worldwide or are registering non-convertible investment grade securities to register offerings of securities. The form is somewhat shorter than Form F–1 because it uses delivery of filings made by the issuer under the Exchange Act, particularly Form 20–F. Form F–3 under the Securities Act (OMB Control Number 3235–0256) is used by foreign private issuers that have reported under the Exchange Act for a minimum of twelve months and that have a worldwide public market float of more than $75 million (the form also may be used by eligible foreign private issuers to register offerings of non-convertible investment grade securities, securities to be sold by selling security holders, or securities to be issued to certain existing security holders) to register offerings of securities. The form allows issuers to incorporate Exchange Act reports by reference. Form SB–1 under the Securities Act (OMB Control Number 3235–0423) is used by small business issuers, as defined in Rule 405 of the Securities Act, to register offerings of up to $10 million of securities in a continuous 12-month period. The form sets forth the transactional and company information required by the Commission in securities offerings. It requires less detailed information about the issuer's business than Form S–1. Form SB–2 under the Securities Act (OMB Control Number 3235–0418) is used by small business issuers, as defined in Rule 405 of the Securities Act, to register securities offerings. The form sets forth the transactional and company information required by the Commission in securities offerings. It requires less detailed information about the issuer's business than Form S–1. Form S–4 under the Securities Act (OMB Control Number 3235–0324) is used by issuers to register securities offerings in connection with business combinations and exchange offers. The form sets forth the transactional and company information required by the Commission in securities offerings. Form F–4 under the Securities Act (OMB Control Number 3235–0325) is used by issuers to register securities offerings in connection with business combinations and exchange offers involving foreign private issuers. The form sets forth the transactional and company information required by the Commission in securities offerings. Form F–7 under the Securities Act (OMB Control Number 3235–0383) is used by publicly traded Canadian foreign private issuers to register rights offers extended to their U.S. holders. To be registered on Form F–7, the rights must be granted to U.S. shareholders on terms no less favorable than those extended to other shareholders. Form F–8 under the Securities Act (OMB

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[614] 44 U.S.C. § 3501 *et seq.*

[615] Regulations S–K and S–B do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is currently assigned one burden hour. The burden hours imposed by the disclosure regulations are currently included in the estimates for the forms that refer to the regulations.

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Control Number 3235–0378) is used by large publicly traded Canadian foreign private issuers to register securities offerings in connection with business combinations and exchange offers. To be registered on Form F–8, the securities must be offered to U.S. shareholders on terms no less favorable than those extended to other holders. Form F–9 under the Securities Act (OMB Control Number 3235–0377) is used by large publicly traded Canadian foreign private issuers to register non-convertible investment grade securities. Form F–10 under the Securities Act (OMB Control Number 3235–0380) is used by large publicly traded Canadian foreign private issuers to register any securities offerings, except certain derivative securities. Unlike Forms F–7, F–8, F–9, and F–80, however, Form F–10 requires the Canadian issuer to reconcile its financial statements to U.S. GAAP. Form F–80 under the Securities Act (OMB Control Number 3235–0404) is used by large publicly traded Canadian foreign private issuers to register securities offerings in connection with business combinations and exchange offers. To be registered on Form F–80, the securities must be offered to U.S. holders on terms no less favorable than those extended to other holders. Schedule B under the Securities Act is used by Foreign governments or political subdivisions thereof to register securities offerings. Generally, it contains a description of the country and its government, the terms of the offering, and the uses of proceeds. Form S–8 under the Securities Act (OMB Control Number 3235–0066) is used by issuers to register securities for offer and sale to employees in a compensatory or incentive context. Form A under the Securities Act (OMB Control Number to be determined) would be used by issuers that are not eligible to use other forms to register offerings of securities. The form would set forth the transactional and company information required by the Commission in securities offerings. Form B under the Securities Act (OMB Control Number to be determined) would be used by issuers that have reported under the Exchange Act for a minimum of twelve months and that have public floats of at least $75 million and ADTVs of $1 million or public floats of at least $250 million (alternatively, issuers could use Form B if they sell securities exclusively to QIBs and certain existing shareholders or register non-convertible investment grade securities) to register offerings of securities. These issuers would be able to incorporate Exchange Act reports by reference without necessarily delivering them to investors, and would be able to craft transactional disclosure, subject to Section 11 liability standards and some itemized requirements, with fewer constraints than under the current Form S–3. Form C under the Securities Act (OMB Control Number to be determined) would be used by issuers to register securities offerings in connection with business combinations and exchange offers. The form would set forth the transactional and company information required by the Commission in securities offerings. Form SB–3 under the Securities Act (OMB Control Number to be determined) would be used by small business issuers, as defined in Rule 405 of the Securities Act, to register securities offerings in connection with business combinations and exchange offers. The form would set forth the transactional and company information required by the Commission in securities offerings. It would require less detailed information about the issuer's business than Form A.

Form 10 under the Exchange Act (OMB Control Number 3235–0064) is used by registrants to file classes of securities. It requires certain business and financial information about the issuer. Form 8–A under the Exchange Act (OMB Control Number 3235–0056) is an optional short form used by issuers to file classes of securities. Form 10–SB under the Exchange Act (OMB Control Number 3235–0419) is used by small business issuers, as defined in Rule 12b–2 of the Exchange Act, to file classes of securities. This form requires slightly less detailed information about the issuer's business than Form 10 requires. Form 20–F under the Exchange Act (OMB Control Number 3235–0288) is used by foreign private issuers to register securities or file annual reports. Form 40–F under the Exchange Act (OMB Control Number 3235–0381) is used by Canadian foreign private issuers to register securities or file annual reports. Form 18 under the Exchange Act (OMB Control Number 3235–0121) is used by foreign governments or political subdivisions thereof to register securities on a national securities exchange. Form 10–K under the Exchange Act (OMB Control Number 3235–0063) is used by registrants to file annual reports. It provides a comprehensive overview of the registrant's business. Form 10–KSB under the Exchange Act (OMB Control Number 3235–0420) is used by small business registrants, as defined in Rule 12b–2 of the Exchange Act, to file annual reports. It provides a comprehensive overview of the registrant's business, although its requirements call for slightly less detailed information than required by Form 10–K. Form 18–K under the Exchange Act (OMB Control Number 3235–0120) is used by foreign governments or political subdivisions thereof to file annual reports. Form 10–Q under the Exchange Act (OMB Control Number 3235–0070) is used by registrants to file quarterly reports. It includes unaudited financial statements and provides a continuing view of the registrant's financial position during the year. The report must be filed for each of the first three fiscal quarters of the registrant's fiscal year. Form 10–QSB under the Exchange Act (OMB Control Number 3235–0416) is used by small business registrants, as defined in Rule 12b–2 of the Exchange Act, to file quarterly reports. It includes unaudited financial statements and provides a continuing view of the registrant's financial position during the year. The report must be filed for each of the first three fiscal quarters of the registrant's fiscal year. Form 8–K under the Exchange Act (OMB Control Number 3235–0060) is used by registrants to report the occurrence of material events or corporate changes. Form 6–K under the Exchange Act (OMB Control Number 3235–0116) is used by foreign private issuers to report information: (i) Required to be made public in the country of its domicile; (ii) filed with and made public by a foreign stock exchange on which its securities are traded; or (iii) distributed to security holders. The report must be furnished promptly after such material is made public. Issuers would also file under Rule 425 of the Securities Act (OMB Control Number to be determined) written communications (other than required registration statements) about pending offerings.

In addition to affecting these collections of information, the proposed rules and amendments also could change issuers' recordkeeping of prospectus delivery to investors and impose a new burden of tracking their "first offers" in Form B offerings. Our preliminary view is that any additional recordkeeping burden resulting from our proposals for prospectus delivery would be minimal. To the extent that underwriters and issuers collect information to contact potential investors and collect information to send prospectuses and confirmations under the existing rules, we do not anticipate the proposals would impose a significant additional burden on underwriters and issuers. We request comment, however, on the accuracy of this view. We also do not anticipate that requiring issuers to keep information provided to investors fifteen days before the first offer and any information used throughout the offering period would impose a significant burden on issuers. Issuers would only have to keep the information until they file it with us. Thus issuers might not have to keep it longer than the date of their first offer because they can file their registration statement with us at that time. The longest issuers would have to keep the information would be the length of the offering period, plus 15 days, since the latest they can file the registration statement is at first sale. We request comment and any supporting data on the burden that these requirements would impose on issuers and underwriters.

We anticipate that the proposed rules and amendments would lower the cost of raising capital in the public market for many issuers. For the purposes of the Paperwork Reduction Act, the table below summarizes our preliminary estimates of the burden hours that parties would spend to comply with the proposals. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that parties would expend approximately 9,106,343 burden hours/year to comply with the proposals. In addition, as discussed in more detail below, we estimate that parties would spend approximately $4,754,863,050/year on outside professional help to comply with the proposals. Note that these estimates do not attempt to quantify the proposals' intangible benefits, such as the benefits to issuers and investors of enhanced communications and the greater likelihood that issuers would shift capital raising from the private to the public market, nor its intangible costs, such as the cost to security holders of identifying misleading or incomplete pre-filing information. We request comment on the reasonableness of our estimates.

TABLE: BURDEN HOUR ESTIMATES

Form	Estimated burden hours/filing		Estimated filings/year		Estimated burden hours/year	
	Before revisions (A)	After revisions (B)	Before revisions (C)	After revisions (D)	Before revisions (E) = A*C	After revisions (F) = B*D
S–1	1,267	0	1,136	0	1,439,312	0
S–2	470	0	152	0	71,440	0
S–3	398	0	3,890	0	1,548,220	0
F–1	1,868	0	139	0	259,652	0
F–2	559	0	1	0	559	0
F–3	166	0	172	0	28,552	0
SB–1	710	178	8	8	5,680	1,424
SB–2	876	138	414	559	362,664	77,142
S–4	1,233	0	3,701	0	4,563,333	0
F–4	1,308	0	677	0	885,516	0
F–7	2	1	1	1	2	1
F–8	2	1	16	16	32	16
F–9	420	105	12	12	5,040	1,260
F–10	420	105	45	45	18,900	4,725
F–80	2	1	2	2	4	2
Schedule B	0	0	33	33	0	0
S–8	46	12	5,597	5,261	257,462	63,132
A	0	152	0	2,616	0	397,632
B	0	75	0	3,067	0	230,025
C	0	311	0	3,984	0	1,239,024
SB–3	0	280	0	394	0	110,320
10	95	24	124	124	11,780	2,976
8–A	7	7	2,293	0	15,363	0
10–SB	90	23	162	162	14,580	3,726
20–F	1,991	498	908	908	1,807,828	452,184
20–FR	95	24	99	99	9,405	2,376
40–F	1,991	498	121	121	240,911	60,258
40–FR	95	24	15	15	1,425	360
18	8	2	0	0	0	0
10–K	1,723	431	10,392	9,342	17,905,416	4,026,402
10–KSB	1,179	295	2,591	3,641	3,054,789	1,074,095
18–K	8	2	38	38	304	76
10–Q	144	36	29,551	26,401	4,255,344	950,436
10–QSB	131	33	7,521	10,671	985,251	352,143
8–K	5	5	27,519	69,087	137,595	345,435
6–K	8	8	10,582	11,000	84,656	88,000
Filings under Rule 425	0	0.25	0	10,628	0	2,657
Total					37,971,015	9,106,343

The Commission's experience indicates that allowing small companies to register offerings on Forms SB–1 and SB–2 reduces issuers' disclosure burden hours and cost. The proposed rules and amendments would therefore save time and money for 1,050 companies—companies that would become newly eligible to register offerings on Forms SB–1, SB–2, and SB–3 under the proposed rules and amendments.[616] Among those affected would be (1) non-reporting companies with revenues between $25 and $50 million that plan to register initial public offerings under the Securities Act or propose to register under the Exchange Act, (2) non-reporting companies with revenues under $25 million but public float over $25 million, because the public float test would be eliminated, and (3) reporting companies that would remain in the small business disclosure system longer than under the current system.

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[616] *See* proposed revisions to Securities Act Rule 405.

In fiscal year 1998, issuers registered eight offerings on Form SB–1. Given the limited use of this form, we do not expect any additional filings on this form under the proposed rules and amendments. Under the proposed rules, we estimate issuers would require 710 hours to file Form SB–1, the same as today.[617] Of the 710 hours, we estimate that 25% (178 internal burden hours) would be provided by corporate staff, and 75% (532 hours) by external professional help. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $93,100/filing in professional labor costs to file Form SB–1.[618] We request your comments and supporting empirical information on the reasonableness of these estimates.

In fiscal year 1998, issuers registered 414 offerings on Form SB–2. In addition to these filings, we expect an additional 143 filings/year, for a total of 559 filings/year, on Form SB–2 because more firms would be eligible to use Form SB–2 under the proposed rules and amendments.[619] Under the current rules, issuers expend approximately 876 hours to register securities on Form SB–2, which does not allow issuers to incorporate Exchange Act reports by reference. The proposed rules and amendments would allow seasoned issuers to incorporate Exchange Act reports by reference into Form SB–2 registration statements as long as they deliver the reports with prospectuses to investors. We anticipate this provision would save issuers time and money. We anticipate approximately 330 (59%) of the 559 filings/year would incorporate Exchange Act reports by reference under the proposed rules, whereas 229 (41%) would not.[620] Under the proposed rules, we estimate issuers would require 876 hours to file Form SB–2 if they cannot incorporate Exchange Act reports by reference under the proposals, and approximately 324 hours if they can.[621] On average, we estimate small business issuers would spend approximately 550 hours preparing Form SB–2 registration statements under the proposed rules than today.[622] Of the 550 hours, we estimate that 25% (138 internal burden hours) would be provided by corporate staff, and 75% (412 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $72,100/filing in professional labor costs to file Form SB–2.[623] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposed rules would simplify larger seasoned issuers' preparation of Form B by allowing them greater flexibility to craft their transactional disclosure. In fiscal year 1998, approximately 4,824 issuers registered 4,062 offerings on Forms S–3 and F–3.[624] Based on the proposed rule's public float and ADTV tests, approximately 3,397 or 70% of these issuers would be eligible to register offerings on Form B under the proposed rules.[625] The remaining 1,427 or 30% of issuers would be required to register offerings on Form A. Based on relative representation, and the total offerings registered on Forms S–3 and F–3 in fiscal year 1998, we estimate issuers would register approximately 2,843 offerings on Form B and 1,219 offerings on Form A.[626] (We anticipate, however, that many Form A issuers would register at least some offerings on Form B by selling their securities exclusively to QIBs and certain existing shareholders, or selling non-convertible investment grade securities, and thus would achieve the savings associated with filing on Form B.) We estimate 224 additional secondary offerings would be filed on Form B under the proposals that currently are filed on Form S–8.[627] Thus, we anticipate 3,067 offerings would be filed on Form B under the proposals. We anticipate that these issuers would save burden hours and money from the simplification of Form B. We estimate that issuers would require 300 hours to register securities on Form B. Of the 300 hours, we estimate that 25% (75 internal burden hours) would be provided by corporate staff, and 75% (225 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $39,375/filing in professional labor costs to file Form B.[628] We request your comments and supporting empirical information on the reasonableness of these estimates.

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[617] The numbers in Column B of the Table differ significantly from those in Column A of Table 2 because the estimated burden hours in Column A include the estimated corporate burden hours and outside labor hours that parties would require to file information statement. In Column B, we estimate only the corporate burden hours needed to file information statements (we estimate separately the expense, in dollar terms, of outside labor).

[618] We estimate filers would spend $93,100/filing in professional labor costs. We base this estimate on 532 hours of professional labor/Form SB–1 *$175/hour. In aggregate, we estimate that filers would spend $744,800/year to file 8 Form SB–1s/year.

[619] We base this estimate on the number of firms that would be eligible to register offerings on Form SB–2 under the proposals relative to the number of firms that are eligible to register offerings on Form SB–2 today, and on the number of SB–2 filings in fiscal year 1998. Specifically, we estimate the number of SB–2 filings under the proposals would be (4,087 firms eligible to register on Form SB–2 under the proposals/3,037 firms eligible to register on Form SB–2 today) *414 SB–2 filings/year today=559 SB–2 filings/year.

[620] We base this estimate on the number of repeat offerings registered on Form SB–2 today relative to the number of offerings registered on Form SB–2 today, and on the number of offerings we expect would be registered on Form SB–2 under the proposals. Specifically, we estimate the number of SB–2 filings/year that would incorporate Exchange Act reports by reference under the proposals would be (246 repeat offerings registered on Form SB–2 today/414 offerings registered on Form SB–2 today) *559 SB–2 filings/year under the proposals=330 SB–2 filings/year. We expect the remaining 229 offerings (559 SB–2 filings/year under the proposals – 330 SB–2 filings/year that would incorporate Exchange Act reports by reference under the proposals) not to incorporate Exchange Act reports by reference.

[621] We base this estimate on the number of burden hours required today to file Form S–2 (which allows issuers to incorporate Exchange Act reports by reference, but requires them to deliver the reports to investors) relative to the number of burden hours required today to file Form S–1. We then reduce the number of burden hours we estimate issuers would require under the proposed rules to file Form SB–2 if they cannot incorporate Exchange Act information by reference by this ratio. Specifically, we estimate the number of hours required to file Form SB–2 under the proposed rules if an issuer cannot incorporate Exchange Act reports by reference would be (470 burden hours/S–2 filing today/1,267 burden hours/S–1 filing today) *876 burden hours/SB–2 filing under the proposals with no incorporation by reference=324 burden hours/SB–2 filing with incorporation by reference.

[622] We base this estimate on [(876 hours/SB–2 filing under the proposals with no incorporation by reference *229 SB–2 filings under the proposals with no incorporation by reference)+(324 hours/SB–2 filing under the proposals with incorporation by reference *330 SB–2 filings under the proposals with no incorporation by reference)]/559 SB–2 filings under the proposals=550 hours/SB–2 filing on average under the proposed rules. Today, SB–2 filings require 876 hours/filing or 326 more hours than under the proposed rules.

[623] We estimate filers would spend $72,100/filing in professional labor costs. We base this estimate on 412 hours of professional labor/Form SB–2 *$175/hour. In aggregate, we estimate that filers would spend $40,303,900/year to file 559 Form SB–2s/year.

[624] In fiscal year 1998, issuers registered 3,890 offerings on Form S–3 and 172 offerings on Form F–3.

[625] We estimate the percentage of firms that currently are eligible to use Forms S–3 and F–3 that would be eligible under the proposals to register offerings on Form B based on their public floats and ADTVs would be (3,397 firms that would be required to register offerings on Form B under the proposals/4,824 firms that would be eligible to register offerings on Forms S–3 and F–3 today)=70%.

[626] Specifically, 70% *4,062 offerings/year=2,843 offerings/year on Form B under the proposals and 30% *4,062 offerings/year=1,219 offerings/year on Form A.

[627] In a random sample of 50 offerings filed in 1996 and 1997 on Form S–8, we found 6% would no longer be eligible to file on Form S–8 under the proposals. Under the proposed rules and based on our sample, we would require 4% (224) of the 5,597 offerings filed on Form S–8 in fiscal year 1998 to file on Form B, 1% (56) to file on Form A with automatic effectiveness and incorporation by reference, and 1% (56) to file on Form A with no automatic effectiveness.

The proposed rules and amendments also would simplify issuers' preparation of Form A prospectuses and reduce regulatory uncertainty. The proposals would allow certain Form A issuers' registration statements to go effective immediately if they are reporting companies for at least two years and have public floats of at least $75 million. We estimate approximately 1,960 Form A issuers would meet these criteria. The proposals would also allow Form A issuers to incorporate Exchange Act disclosure by reference in registration statements two years after becoming reporting issuers rather than after three years, as currently required. As discussed above, 2,526 companies that currently are required to register offerings on Forms S–1 and F–1 would become newly eligible to incorporate Exchange Act reports by reference. These firms would save burden hours and prospectus preparation costs when offering securities. Based on the number of offerings filed on Forms S–1, S–2, F–1, and F–2 in fiscal year 1998,[629] the proposed availability of Forms SB–1 and SB–2 to certain of these issuers,[630] the number of offerings by issuers that today would file on Forms S–3 and F–3 that would not be eligible for Form B,[631] and the number of offerings currently filed on Form S–8 that would be filed on Form A under the proposals,[632] we estimate issuers would file approximately 2,616 offerings/year on Form A.[633] We expect the 1,219 offerings/year that issuers registered in fiscal year 1998 on Forms S–3 and F–3 to incorporate Exchange Act reports by reference on Form A under the proposals. In addition, we expect approximately 978 of the 1,397 remaining filings on Form A to incorporate Exchange Act reports by reference each year.[634] Thus we expect issuers would incorporate Exchange Act reports by reference into 2,197 Form A offerings/year under the proposed rules. The remaining 419 offerings on Form A would not be eligible to incorporate Exchange Act reports by reference. We estimate issuers filing on Form A under the proposed rules and amendments would expend approximately 1,333 burden hours/filing if they cannot incorporate Exchange Act reports by reference,[635] and 471 burden hours if they can.[636] On average, we anticipate issuers would spend about 609 hours preparing Form A registration statements.[637] Of the 609 hours, we estimate that 25% (152 internal burden hours) would be provided by corporate staff, and 75% (457 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $79,975/filing in professional labor costs to file Form B.[638] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposed rules and amendments would also create new Form C for business combinations and new Form SB–3 for small business issuer combinations. In fiscal year 1998, issuers registered 4,378 business combinations on Forms S–4 and F–4. Of these, we estimate issuers would register approximately 3,984 on Form C and 394 on Form SB–3 under the proposed rules.[639] We estimate issuers

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[628] We estimate filers would spend $39,375/filing in professional labor costs. We base this estimate on 225 hours of professional labor/Form B * $175/hour. In aggregate, we estimate that filers would spend $120,763,125/year to file 3,067 Form Bs/year.

[629] Issuers registered 1,136 offerings on Form S–1, 152 offerings on Form S–2, 139 offerings on Form F–1, and one offering on Form F–2, for a total of 1,428 offerings in fiscal year 1998.

[630] Under the proposed rules, issuers would register these offerings on Form A, except for the 143 offerings we anticipate issuers would register on Form SB–2.

[631] We estimate 30% of the firms currently eligible to use Forms S–3 and F–3 would be required to register offerings on Form A based on their public floats and ADTVs. Specifically, the percentage would be (1,427 firms that would be required to register offerings on Form A under the proposals/4,824 firms that would be eligible to register offerings on Forms S–3 and F–3 today) = 30%. If we adjust the 4,062 offerings issuers registered on Forms S–3 and F–3 in fiscal year 1998 by this percentage, we estimate issuers would register approximately 1,219 of these offerings/year on Form A under the proposals.

[632] In a random sample of 50 offerings filed in 1996 and 1997 on Form S–8, we found 6% would no longer be eligible to file on Form S–8 under the proposals. Under the proposed rules and based on our sample, we would require 4% (224) of the 5,597 offerings filed on Form S–8 in fiscal year 1998 to file on Form B, 1% (56) to file on Form A with automatic effectiveness and incorporation by reference, and 1% (56) to file on Form A with no automatic effectiveness.

[633] Specifically, issuers would register on Form A under the proposed rules 1,428 offerings/year currently registered on Forms S–1, S–2, F–1, and F–2–143 offerings/year registered on Form SB–2 + 1,219 offerings/year currently registered on Form S–3 + 112 offerings/year currently registered on Form S–8 = 2,616 offerings/year.

[634] We base this conclusion on the number of firms that currently are required to register offerings on Forms S–1 and F–1 that would become newly eligible to incorporate Exchange Act reports by reference under the proposals relative to the number of firms that currently are required to register offerings on Forms S–1 and F–1. Specifically, the number of filings on Form A that would incorporate Exchange Act reports by reference each year would be (2,526 firms that would be eligible to incorporate Exchange Act reports by reference on Form A under the proposals/3,601 firms that currently are eligible to register offerings on Forms S–1 and F–1) *(2,616 offerings/year on Form A − 1,219 offerings/year on Form A that would incorporate Exchange Act reports by reference that are eligible to be registered on Form S–3 today) = 978 offerings/year (in addition to the 1,219 offerings/year on Form A that would incorporate Exchange Act reports by reference that are eligible to be registered on Form S–3 today).

[635] Both domestic and foreign issuers would be able to register offerings on Form A. Domestic issuers currently require 1,267 hours to complete Form S–1 (which does not allow issuers to incorporate Exchange Act reports by reference), whereas foreign issuers require 1,868 hours to complete Form F–1 (which also does not allow issuers to incorporate Exchange Act reports by reference). In fiscal year 1998, issuers registered 1,136 offerings on Form S–1 and 139 offerings on Form F–1. We estimate the number of hours that issuers would require to file Form A if they cannot incorporate Exchange Act reports by reference would be [(1,136 domestic Form A filings that previously would have been filed on Form S–1 *1,267 hours/domestic Form A filing that previously would have been filed on Form S–1) + (139 foreign Form A filings that previously would have been filed on Form F–1 *1,868 hours/foreign Form A filing that previously would have been filed on Form F–1)]/1,275 filings on Form A = 1,333 hours/filing.

[636] Both domestic and foreign issuers would be able to register offerings on Form A. Domestic issuers currently require 470 hours to complete Form S–2 (which allows issuers to incorporate Exchange Act reports by reference), whereas foreign issuers require 559 hours to complete Form F–2 (which allows issuers to incorporate Exchange Act reports by reference). In fiscal year 1998, issuers registered 152 offerings on Form S–2 and one offering on Form F–2. We therefore estimate the number of hours that issuers would require to file Form A if they can incorporate Exchange Act reports by reference would be 471 hours/filing.

[637] As discussed above, we anticipate issuers would register 419 offerings/year on Form A where Exchange Act reports would not be incorporated by reference and 2,197 offerings/year on Form A where Exchange Act reports would be incorporated by reference. The average hours to file Form A would be approximately 1,333 hours if they cannot incorporate Exchange Act reports by reference and 471 hours if they can incorporate Exchange Act reports by reference. On average we expect the number of hours issuers would expend to file Form A would be [(419 offerings/year on Form A where Exchange Act reports would not be incorporated by reference * 1,333 hours if they cannot incorporate Exchange Act reports by reference) + (2,197 offerings/year on Form A where Exchange Act reports would be incorporated by reference * 471 hours if they can incorporate Exchange Act reports by reference)]/2,616 offerings/year on Form A = 609 hours/filing.

[638] We estimate filers would spend $79,975/filing in professional labor costs. We base this estimate on 457 hours of professional labor/Form A * $175/hour. In aggregate, we estimate that filers would spend $209,214,600/year to file 2,616 Form As/year.

[639] Issuers registered 3,701 offerings on Form S–4 in fiscal year 1998 and 677 offerings on Form F–4, for a total of 4,378 business combinations. Based on the number of offerings we expect issuers would register on Forms SB–1 and SB–2 under the proposals relative to the number of offerings registered on Forms SB–1, SB–2, A, and B, and the number of business combinations in fiscal year 1998, we estimate the number of SB–3 filings

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would expend approximately 1,245 hours to complete Form C under the proposed rules and amendments.[640] Of the 1,245 hours, we estimate that 25% (311 internal burden hours) would be provided by corporate staff, and 75% (934 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $163,450/filing in professional labor costs to file Form C.[641] We estimate small business issuers would expend approximately 1,121 hours to file business combinations on Form SB–3.[642] Of the 1,121 hours, we estimate that 25% (280 internal burden hours) would be provided by corporate staff, and 75% (841 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $147,175/filing in professional labor costs to file Form B.[643] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposals also would relax many of the restrictions on communications between issuers and investors and clarify any remaining limitations. Issuers would be able to more freely promote securities to investors, subject to the provisions of Section 12(a)(2) under the Securities Act and the antifraud provisions of the Securities and the Exchange Acts.[644] Specifically, the proposed rules and amendments would allow all issuers to communicate freely with investors after a registration statement was filed.[645] During the pre-filing period, issuers of offerings registered on Forms A, SB–1, and SB–2 and unregistered offerings would be somewhat limited in their ability to communicate with investors, but the proposed rules would clearly define the length of the period and would delineate the types of communications permitted and prohibited.[646] The Commission would permit larger seasoned issuers and other issuers making particular kinds of offerings on Form B to communicate with investors both before and after registration statements are filed.[647] Proposed Rule 425 would require issuers to file written communications (in addition to required registration statements) about pending offerings. The rule, which would have few specific information requirements, would require issuers to attach their written communications and include a prominent legend advising investors to read the registration statement. The Commission recognizes that companies would incur costs from filing sales literature used in public offerings. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rule.[648] Not all issuers would use sales literature in offerings, especially those that occur quickly. In other offerings, however, issuers might communicate with investors using sales literature. Preliminarily, we estimate issuers would file, on average, one written communication (besides the required registration) for each offering. Thus, we anticipate issuers would register approximately 10,628 offerings on Forms A, B, C, SB–1, SB–2, and SB–3 per year. We estimate issuers would expend approximately 2,657 burden hours to file written communications under Rule 425. We request your comments and supporting empirical information on the reasonableness of these estimates.

We anticipate that the proposed rules and amendments would streamline and simplify issuers' filing of Exchange Act reports in two ways. First, the Commission would allow issuers to simultaneously register an offering under the Securities Act and a class of securities under the Exchange Act by checking a box on their Securities Act registration statements.[649] This change would not result in any loss of information to investors because the Securities Act registration forms would include any Exchange Act registration information currently not required by the Securities Act registration requirements. The revision, however, would reduce the number of issuer filings. As indicated in the Table, we anticipate that issuers would no longer need to file approximately 2,293 Form 8–As/year, saving approximately 7 burden hours/filing. Second, the proposed rules and amendments would reduce uncertainty regarding staff review of Exchange Act reports through notification of review and pre-review.

These proposed new rules and amendments, however, would enhance and expedite some of the disclosure required in Exchange Act reports filed by reporting companies. These revisions could increase issuers' cost of disclosure. To help assess the costs, we asked representatives of the American Society of Corporate Secretaries (ASCS), two issuers, one accounting firm, and two law firms to assess the impact of the proposed rule changes. These parties did not anticipate substantial increases in registrant costs if the Commission required reporting companies to file summary financial information on Form 8–K within 30 days after quarter-end and 45 days after fiscal year-end.[650] They reported that most firms release earnings information before quarter end and hence the requirement would codify and unify financial reporting

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issuers would file under the proposals would be (567 offerings registered on Forms SB–1 and SB–2 under the proposals / 6,250 offerings registered in fiscal year 1998) * 4,378 filings/year under the proposals = 394 SB–3 filings/year. The remaining 3,984 business combinations (4,378 filings/year—394 SB–3 filings/year) would be filed on Form C.

[640] Both domestic and foreign issuers would be required to register business combinations on Form C. Domestic issuers currently require 1,233 hours to complete Form S–4, whereas foreign issuers require 1,308 hours to complete Form F–4. In fiscal year 1998, issuers registered 3,701 business combinations on Form S–4 and 677 business combinations on Form F–4. We estimate the number of burden hours that issuers would require to file Form C would be [(3,701 Form C filings that previously would have been filed on Form S–4 * 1,233 hours/Form C filing that previously would have been filed on Form S–4) + (677 Form C filings that previously would have been filed on Form F–4 * 1,308 hours/Form C filing that previously would have been filed on Form F–4)]/4,378 filings on Form C = 1,245 hours/filing on Form C.

[641] We estimate filers would spend $163,450/filing in professional labor costs. We base this estimate on 934 hours of professional labor/Form C * $175/hour. In aggregate, we estimate that filers would spend $651,184,800/year to file 3,984 Form Cs/year.

[642] We base this estimate on the number of hours required to file Form SB–2 under the proposals relative to the number of hours required to file Form A. We then reduce the number of hours required today to file Form C by this ratio. Specifically, we estimate the number of hours required to file Form SB–3 under the proposed rules would be [(550 hours/SB–2 filing under the proposals / 609 hours/Form A filing under the proposals) * 1,245 hours/Form C filing under the proposals = 1,121 hours/SB–3 filing.

[643] We estimate filers would spend $147,175/filing in professional labor costs. We base this estimate on 841 hours of professional labor/Form A * $175/hour. In aggregate, we estimate that filers would spend $57,986,950/year to file 394 Form As/year.

[644] Under the proposals, Form B offering information would be subject to liability under Section 11 of the Securities Act.

[645] *See* proposed Securities Act Rule 165, 17 CFR 230.165.

[646] *See* proposed Securities Act Rules 167, 168, and 169, 17 CFR 230.167, 230.168, and 230.169.

[647] *See* proposed Securities Act Rule 166, 17 CFR 230.166.

[648] We base this estimate on the burden imposed by a similar filing requirement under Item 901(c) of Regulation S–K for roll-up transactions.

[649] *See* proposed Securities Act Rule 499, 17 CFR 230.499, for Schedule B filers and proposed revisions to Exchange Act Rule 12d1–2, 17 CFR 240.12d1–2.

[650] In a 1998 survey of its members, the ASCS found that although only 10% of respondents file Form 8–K with quarterly financial information, over 99% issue quarterly press releases. Of those, approximately 90% issue a press release within 30 days after quarter-end. The results of the survey indicate that 38% of respondents issue a summary or complete balance sheet, 46% issue a summary or complete income statement, 24% issue a summary or complete cash flow statement, 69% issue information on revenues or sales (including those that issued an income statement), 80% issue earnings (including those that issued an income statement), and 12% issue segment financial information.

practice. We estimate registrants would file 4 additional Form 8–Ks/year. If each Form 8–K filing requires a registrant to expend 5 burden hours, companies would expend approximately 20 additional burden hours/year.[651] We request comment on the reasonableness of this estimate.

The proposed rules and amendments would also reduce the Form 8–K filing period from 15 to 5 days, affecting only announcements of:

- Changes in control;
- Acquisitions or dispositions of assets;
- Bankruptcies or receiverships; and
- Changes of fiscal year.

The parties we contacted did not anticipate reducing the Form 8–K filing period for these events would substantially increase registrants' costs. They indicated that registrants typically issue press releases when these events occur, and thus would be able to file announcements on Form 8–K within 5 days at little additional cost. We request comment on the feasibility and cost of accelerating the filing deadline of Form 8–K for these events.

The proposed rules and amendments would also reduce the Form 8–K filing period from 5 to 1 days for announcements of:

- Independent accountant resignations;
- Director resignations; and
- Material defaults, dividend arrearages, and delinquencies.

The Commission does not anticipate that reducing the Form 8–K filing period for these events would substantially increase registrants' costs, and believes the benefits to investors would outweigh the costs to registrants. We request comment, however, on the validity of this view.

The proposed rules and amendments would require additional events required to be reported on Form 8–K, including:

- Material modifications to rights of security holders;
- Departures of CEO, CFO, COO or president (or persons in equivalent positions);
- Material default on senior securities (must be disclosed no later than one day following default);
- Notice that reliance on prior audit is no longer permissible, or that auditor will not consent to use of its report in a Securities Act filing;[652] and
- Change in company name.

As with the reduction in the Form 8–K filing period, the Commission anticipates the cost of these revisions to be low. After (or, in some cases, before) these events occur, registrants are likely to issue press releases and file a Form 8–K based on their more general obligation to release information about material events.[653] And most of these events are likely to be expected and thus issuers should be able to anticipate the need to file. We request your comments, including any supporting empirical information, on the costs that would be incurred by companies under the proposed revisions. We also view the proposed changes to Form 6–K as imposing little additional burden on foreign private issuers. In many instances, the firms that the Commission would ask to file a Form 6–K already are required to file similar information in their home countries. The proposed filings would also be voluntary, rather than required. We request comment on the burden of these revisions, along with the signature requirement, on foreign private issuers.

We propose to treat the information in Part I of Forms 10–Q and 10–QSB as "filed" for purposes of Section 18 under the Exchange Act. Although the revision would increase the liability associated with the financial information in Forms 10–Q and 10–QSB, we do not believe it would significantly increase registrants' costs. The reporting systems that generate this financial information also generate the financial information contained in Forms 10–K and 10–KSB, which currently is subject to liability under Section 18. We therefore do not anticipate that registrants would need to undertake substantial investments to generate information in quarterly reports that can withstand the heightened standard of liability. We request comment on this view.

Another proposed rule would require registrants to disclose risk factors in Forms 10–K and 10–KSB and to update them quarterly in Forms 10–Q and 10–QSB.[654] Again the Commission does not anticipate that the rule would impose a substantial burden on reporting companies. The Commission already requires issuers to disclose risk factors in most Securities Act registration statements. Thus the proposed revisions would require firms that recently have raised capital just to update previously disclosed risk factors. In a 1998 ASCS survey of its members, only 20% of respondents indicated that the costs of disclosing risk factors would be significant, 54% estimated modest cost increases, and 26% estimated no cost increase. Of those respondents estimating costs to be significant, 19% believed the impact would be short term, rather than on-going. To reflect this cost, we added one hour to the estimates for Forms 10–K, 10–KSB, 10–Q, and 10–QSB.[655] On average, we anticipate issuers would spend about 1,724 hours preparing Form 10–K.[656] Of the 1,724 hours, we estimate that 25% (431 internal burden hours) would be provided by corporate staff, and 75% (1,293 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $226,275/filing in professional labor costs to file Form 10–K.[657] We request your comments and supporting empirical information on the reasonableness of these estimates. Finally, the Commission is proposing to require that all persons who sign a firm's registration statements filed under the Securities Act and reports filed under the Exchange Act certify they have read the filing and do not know of any material misstatement or omissions of information in the filings.[658] The proposals would also

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[651] The parties consulted generally indicated that Form 8–K filings are prepared by corporate counsel.

[652] *See* 17 CFR 228.304 and 17 CFR 229.304.

[653] *See, e.g.*, the comment letter on the Concept Release, File No. S7–19–96, submitted by the American Bar Ass'n. (Dec. 11, 1996).

[654] The proposed revisions would also require issuers to disclose risk factors in Forms 10, 10–SB, 18, 20–F, and 18–K.

[655] We also added a burden hour to our estimates for Forms 10, 10–SB, 18, 20–F, and 18–K.

[656] As discussed above, we anticipate issuers would register 419 offerings/year on Form A where Exchange Act reports would not be incorporated by reference and 2,197 offerings/year on Form A where Exchange Act reports would be incorporated by reference. The average hours to file Form A would be approximately 1,333 hours if they cannot incorporate Exchange Act reports by reference and 471 hours if they can incorporate Exchange Act reports by reference. On average we expect the number of hours issuers would expend to file Form A would be [(419 offerings/year on Form A where Exchange Act reports would not be incorporated by reference * 1,333 hours if they cannot incorporate Exchange Act reports by reference) + (2,197 offerings/year on Form A where Exchange Act reports would be incorporated by reference * 471 hours if they can incorporate Exchange Act reports by reference)]/2,616 offerings/year on Form A = 609 hours/filing.

[657] We estimate filers would spend $226,275/filing in professional labor costs. We base this estimate on 1,293 hours of professional labor/Form 10–K* $175/hour. In aggregate, we estimate that filers would spend $2,113,861,050/year to file 9,342 Form 10–Ks/year. In fiscal year 1998, registrants filed 10,392 Form 10–Ks and 2,591 Form 10–KSBs. Under the proposals 1,050 companies that currently file their annual report on Form 10–K would be eligible to file on Form 10–KSB. Thus we anticipate registrants would file 9,342 Form 10–Ks and 3,641 Form 10–KSBs. In fiscal year 1998, registrants filed 29,551 Form 10–Qs and 7,521 Form 10–QSBs. Under the proposals 1,050 companies that currently file their quarterly reports on Form 10–Q would be eligible to file on Form 10–QSB. Thus we anticipate registrants would file 26,401 Form 10–Qs [29,551 Form 10–Qs today—(3 quarterly reports on Form 10–QSB/year * 1,050 companies)], and 10,671 Form 10–QSBs [7,521 Form 10–QSBs today + (3 quarterly reports on Form 10–QSB/year * 1,050 companies)].

[658] The proposed revisions would affect Forms A, B, C, SB–1, SB–2, and SB–3 under the Securities

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expand the number of persons required to sign forms to include the registrant, the registrant's principal executive officer, principal financial officer, principal accounting officer, and at least a majority of the registrant's board.[659] The cost to registrants of these proposals would be the cost associated with having managers and board members spend additional time reading documents so that they can affirm having read them. Given the involvement of most firms' senior managers in the reporting process, we do not anticipate significant additional cost to registrants from these proposals. We request comment, however, on this view.

In accordance with 44 U.S.C. § 3506c(2)(B), we solicit comment on the following:

- Whether the proposed changes in each collection of information are necessary for the proper performance of the function of the agency;
- The accuracy of our estimate of the burden of the proposed changes to each collection of information;
- The quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of any of the collections of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Anyone desiring to submit comments on any or all of the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–30–98. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

XVII. General Request for Comments

Given the scope and significance of this proposal, the Commission is particularly eager to receive your comments. We solicit comment, both specific and general, upon each component of the proposal. We believe your comments will be very important in determining the course these proposals will take. The Commission therefore intends to review with great care all comments received.

We also solicit comment on whether issuers would take advantage of some of the flexibility in registration or communication provided in the proposal to engage in fraudulent activities. If so, what elements of the proposal could be open to such abuse? How can we avoid abuse and continue to ensure investor protection, for example, in the proposals for automatic effectiveness and free communications, while at the same time provide issuers with timing certainty and allow market participants to take fuller advantage of today's technology?

We believe our proposals would provide additional benefits for smaller companies (*e.g.*, simpler and more flexible registration process, elimination of restrictions on post-filing communications and relaxed integration rules). We also believe that our proposals balance these benefits with enhanced protection for investors (*e.g.*, earlier prospectus delivery, filing of free writing prospectuses). We solicit comment on the impact that our proposals may have on microcap companies and microcap fraud. Should we exclude microcap companies from some of our proposals as a precautionary measure against microcap fraud? If so, which proposals? By excluding microcap companies from certain proposals would we be providing a competitive advantage to their non-microcap competitors? Rather than excluding microcap companies, should we provide for enhanced monitoring of microcap companies?

We encourage your comments on whether and how our proposal would affect the secondary trading markets for securities. How would our proposal affect public investors, broker-dealers and the companies whose securities are traded in the secondary markets? Our proposed changes to the Exchange Act disclosure system would enhance and speed corporate information to the marketplace, would add Commission resources to oversight of the secondary markets and should provide valuable benefits to investors. Besides the proposed Exchange Act reporting changes, our proposal relates primarily to the securities offering process, rather than secondary trading. Would these proposed changes adversely affect participants in secondary trading? Would investor protection in secondary market transactions be affected by our proposed changes? If so, how?

Any interested person wishing to submit written comments on any aspect of the proposals, as well as on other matters that might have an impact on the proposals, is requested to do so. In addition, the Commission requests comment on whether any further changes to the Commission's rules and forms are necessary or appropriate to implement the objectives of the proposals. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and should refer to file number S7–30–98.

XVIII. Statutory Bases

The proposed new rules, forms and amendments to the Commission existing rules and forms are being proposed pursuant to Sections 2(b), 6, 7, 8, 10, 19(a) and 28 of the Securities Act of 1933 as amended and Sections 3, 4, 10, 12, 15, 23 and 36 of the Securities Exchange Act of 1934.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegation (Government agencies).

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small business.

17 CFR Parts 229, 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

Act and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 10, 8–A, 10–SB, 20–F, 40–F, 18, 8–K, and 6–K under the Exchange Act. We also are proposing to require registrants to disclose their email address and web site on all registration statements and Exchange Act reports. We do not anticipate any additional burden from these requirements.

[659] Foreign private issuers also would need to have an authorized representative in the United States sign. The proposed revisions would affect Forms A, B, C, SB–1, SB–2, and SB–3 under the Securities Act and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 10, 8–A, 10–SB, 20–F, 40–F, and 18 under the Exchange Act. For Forms 8–K and 6–K, we would require either the registrant's principal executive officer, principal financial officer or principal accounting officer to sign a particular Exchange Act report and certify he or she provided a copy to board members.

Text of Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

§ 200.30–1 [Amended]

2. By removing paragraph (a)(4) in § 200.30–1 and by redesignating paragraphs (a)(5), (a)(6), (a)(7) and (a)(8) as paragraphs (a)(4), (a)(5), (a)(6) and (a)(7).

PART 202—INFORMAL AND OTHER PROCEDURES

3. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

4. By revising the seventh sentence of the introductory text of § 202.3a to read as follows:

§ 202.3a Instructions for filing fees.

* * * Filing fees paid pursuant to Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77a *et. seq.*) or pursuant to Section 307(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et. seq.*) should be designated as "restricted," except that filing fees paid with respect to registration statements filed in accordance with Form SB–1, SB–2 and SB–3 (§§ 239.9, 239.10 and 239.11 of this chapter) or pursuant to §§ 230.462(b), 230.462(e) and 230.462(f) of this chapter should be designated as "unrestricted." * * *

* * * * *

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

5. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

§ 210.3–14 [Amended]

6. By amending the Note following paragraph (a)(1) of § 210.3–14 by removing the words "Item 15 of Form S–11" and adding, in their place the words "Item 1107(b) of Regulation S–K (§ 229.1107(b) of this chapter)".

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

7. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

8. By amending § 228.10 by removing paragraph (b)(4); and revising paragraph (a) to read as follows:

§ 228.10 (Item 10) General.

(a) *Application of Regulation S–B.* Regulation S–B is the source of disclosure requirements for "small business issuer" filings under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act").

(1) *Definition of small business issuer.* A small business issuer is defined as a company that meets all of the following criteria:

(i) Has revenues (including revenues of any consolidated subsidiaries) of less than $50,000,000;

(ii) Is a U.S. or Canadian issuer;

(iii) Is not an investment company;

(iv) If a majority-owned subsidiary, the parent corporation is also a small business issuer; and

(v) Each majority-owned subsidiary of the company, if any, meets the criteria of paragraphs (a)(1)(ii) and (a)(1)(iii) of this section.

(2) *Entering and exiting the small business disclosure system.* (i) A company that meets the definition of small business issuer may use Form SB–1, SB–2 or SB–3 (§§ 239.9, 239.10 and 239.11 of this chapter), whichever is appropriate, for registration of its securities under the Securities Act; Form 10–SB (§ 249.210b of this chapter) for registration of its securities under the Exchange Act; and Forms 10–KSB and 10–QSB (§§ 249.310b and 249.308b of this chapter) for its annual and quarterly reports.

(ii) For a non-reporting company entering the disclosure system for the first time either by filing a registration statement under the Securities Act or a registration statement under the Exchange Act, the determination as to whether the company is a small business issuer is made with reference to its revenues during its last fiscal year.

(iii) Once a small business issuer becomes a reporting company, it will remain a small business issuer until it exceeds the revenue limit at the end of two consecutive years (or until it fails to meet one of the other criteria in the small business issuer definition).

(iv) A reporting company that is not a small business issuer must meet the definition of a small business issuer at the end of two consecutive fiscal years before it will be considered a small business issuer.

(v) The determination as to the reporting category (small business issuer or other issuer) made for a non-reporting company at the time it enters the disclosure system governs all Exchange Act reports relating to the remainder of that fiscal year. The determination made for a reporting company at the end of its fiscal year governs all Exchange Act reports relating to the next fiscal year. An issuer may not change from one category to another with respect to reports under the Exchange Act for a single fiscal year. A small business issuer may, however, choose not to use Form SB–1 or SB–2 (§ 239.9 or § 239.10 of this chapter) for registration under the Securities Act.

(vi) Notwithstanding paragraph (a)(2)(v) of this section, a company that is a reporting company as of _________ [insert effective date of the final rule] may determine at any time between _________ [insert effective date of the final rule] and _________ [insert date one year after effective date of the final rule] to begin reporting under the Exchange Act on the forms available only to small business issuers if it satisfies the small business issuer definition through having revenues of less than $50 million in each of its last two fiscal years and satisfying the other criteria in paragraph (a)(1) of this section.

* * * * *

9. By amending § 228.304 by revising the introductory text of paragraph (a)(1), paragraphs (a)(1)(i), (a)(1)(iii), (a)(1)(iv)(A), (a)(1)(iv)(B) introductory text, (a)(1)(iv)(B)(*2*), (a)(1)(iv)(B)(*3*), (a)(1)(iv)(D) and (a)(1)(iv)(E); and by adding a sentence at the end of paragraph (a)(3) to read as follows:

§ 228.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a)(1) The disclosure described below is required if the small business issuer, during its two most recent fiscal years or any subsequent interim period, dismissed its principal independent accountant or a significant subsidiary dismissed its independent accountant on whom the small business issuer's principal accountant expressed reliance in its report. The disclosure also is required if, during that time, any of those accountants: resigned; declined to stand for re-election after the current audit; notified the registrant or a significant subsidiary that reliance on the accountant's prior audit report is no longer permissible; or notified the registrant or a significant subsidiary that it will not consent to the use of the accountant's prior audit report in a filing with the Commission. State:

(i) Which of the actions described in paragraph (a)(1) of this section occurred and when;

* * * * *

(iii) If a change in accountants resulted, whether the decision to change accountants was recommended or approved by the board of directors or a committee thereof; and

(iv)(A) Whether, during the small business issuer's two fiscal years and any subsequent interim period immediately preceding the date of the action described in paragraph (a)(1) of this section, there were disagreements with the accountant, whether or not resolved to the accountant's satisfaction, on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure;

(B) The following information, if applicable. Indicate whether the accountant advised the small business issuer that:

* * * * *

(*2*) Information has come to the attention of the accountant that made the accountant unwilling to rely on management's representations, or unwilling to be associated with the financial statements prepared by management; or

(*3*) The scope of its audit should be expanded significantly, or that information has come to the accountant's attention that the accountant has concluded will, or if further investigated might, materially impact the fairness or reliability of a previously issued audit report or the underlying financial statements, or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent audited financial statements (including information that might preclude the issuance of an unqualified audit report); and

* * * * *

(D) Whether the board of directors or any committee thereof discussed the subject matter of each such disagreement with the accountant;

(E) If a change in accountants resulted, whether the small business issuer has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each such disagreement. If not, describe the nature of any limitation on responses and the reason for that limitation.

* * * * *

(3) * * * If the former accountant declines to furnish the registrant with a letter addressed to the Commission stating whether the accountant agrees with the statements made by the registrant in response to this Item 304(a), so state.

* * * * *

10. By amending § 228.512 by removing the words "Form S–3 or S–8 (§§ 239.13 or 239.16b of this chapter)" from the Note to paragraph (a)(1) and adding in their place the words "Form B or S–8 (§§ 239.5 or 239.16b of this chapter)"; and by adding paragraphs (g), (h) and (i) to read as follows:

§ 228.512 (Item 512) Undertakings.

* * * * *

(g) *Registration on Form SB–3 of securities offered for resale.* Include the following if the securities are being registered on Form SB–3 (§ 239.11 of this chapter) in connection with a transaction specified in paragraph (a) of § 230.145 of this chapter:

(1) Before a public reoffering of securities registered on this Form by any person who is considered an underwriter within the meaning of § 230.145(c) of this chapter through use of a prospectus that is a part of this registration statement, [Name of registrant] will ensure that the reoffering prospectus contains all the information called for by the Form concerning the reoffering by the underwriter(s) (in addition to the information required by other items of the Form).

(2) [Name of registrant] will file as part of an amendment to the registration statement any prospectus that is filed under paragraph (g)(1) of this Item or purports to meet the requirements of Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) and is used in connection with an offering of securities subject to § 230.415 of this chapter. We will not use such prospectus until the amendment containing the prospectus is effective. For purposes of determining any liability under the Securities Act of 1933 (15 U.S.C. 77a *et. seq.*), we acknowledge that each amendment will be considered a new registration statement relating to the securities being offered, and the offering of those securities at that time will be considered the initial bona fide offering of those securities.

(h) *Delayed payment of registration fee.* A small business issuer relying on § 230.456 of this chapter to delay paying the registration fee, must include the following undertaking:

> [Name of registrant] will pay the required registration fee no later than the earlier of:
>
> (1) The date on which we request that the Commission grant effectiveness of this registration statement under Section 8(a) of the Act (15 U.S.C. 77h(a)); or
>
> (2) The date on which we file an amendment to the registration statement that contains the statement set forth in § 230.473(b).

(i) *Registration on Form SB–1, SB–2 or SB–3.* If the securities are being registered on Form SB–1 (§ 239.9 of this chapter), Form SB–2 (§ 239.10 of this chapter) or on Form SB–3 (§ 239.11 of this chapter) include the following:

> The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

11. By amending § 228.601 by removing from paragraph (b)(1) the words "Form S–3 (§ 239.13)" and adding, in their place, the words "Form B (§ 239.5)"; by removing from paragraph (b)(10)(ii)(B)(*5*) the words ", or registering debt or non-voting preferred stock on Form S–2 (§ 239.12)"; by removing from Note 2 to paragraph (c)(1)(ii) the words "Form S–3 (§ 239.13 of this chapter)" and adding, in their place, the words "Form B (§ 239.5 of this chapter)"; by removing from Note 1 to paragraph (c)(1) the words "Form S–2 (§ 239.12 of this chapter), Form S–3 (§ 239.13 of this chapter)" and adding, in their place, the words "Items 11 and 12 of Form SB–2 (§ 239.10 of this chapter), Form B (§ 239.5 of this chapter)"; by removing from the introductory text of paragraph (c)(3) the words "Form S–1 (§ 239.11 of this chapter)" and adding, in their place, the words "Form A (§ 239.4 of this chapter)"; and by revising the exhibit table to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

EXHIBIT TABLE

	Securities Act forms				Exchange Act forms			
	B	SB–2	SB–3	S–8	10–SB	8–K	10–QSB	10–KSB
(1) Underwriting agreement	X	X	X			X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X		X	X	X	X
(3) (i) Articles of Incorporation		X	X		X		X	X
(ii) By-Laws		X	X		X		X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X				
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) [Removed and reserved]								
(8) Opinion re tax matters	X	X	X					
(9) Voting trust agreement		X	X		X			X
(10) Material contracts		X	X		X		X	X
(11) Statement re computation of per share earnings		X	X		X		X	X
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual or quarterly reports, Form 10–Q [1]		X	X					X
(14) [Removed and reserved]								
(15) Letter re unaudited interim financial information	X	X	X	X			X	
(16) Letter re change in certifying accountant [3]		X	X		X	X		X
(17) Letter re director resignation						X		
(18) Letter re change in accounting principles							X	X
(19) Report furnished to security holders							X	
(20) Other documents or statements to security holders						X		
(21) Subsidiaries of the registrant		X	X		X			X
(22) Published report regarding matters submitted to vote of security holders							X	X
(23) Consents of experts and counsel	X	X	X	X	X	[2] X	[2] X	[2] X
(24) Power of attorney	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X					
(26) Invitation for competitive bids	X	X	X					
(27) Financial Data Schedule [4]	X	X	X		X	X	X	X
(28) [Removed and reserved]								
(29) Underwriter Concurrence with Effective Date	X							
[Reserved (30) through (98)]								
(99) Additional Exhibits	X	X	X	X	X	X	X	X

[1] Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10–KSB, where the annual report is incorporated by reference into the text of the Form 10–KSB.

[2] Where the opinion of the expert counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] If required under Item 304 of Regulation S–K.

[4] Financial Data Schedules must be filed by electronic filers only. Such Schedule must be filed only when a filing includes annual and/or interim financial statement that have not been previously included in a filing with the Commission. See Item 601(c) of Regulation S–B.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

12. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 229.10 [Amended]

13. By amending § 229.10 by removing in paragraph (c)(1)(iii) the words "Form S–3 (§ 239.13 of this chapter)" and adding, in their place, the words "Form B (§ 239.5 of this chapter)".

§ 229.101 [Amended]

14. By amending § 229.101 by removing in paragraph (a)(2)(i) the words "Form S–1 (§ 239.11 of this chapter)" and adding, in their place, the words "Form A (§ 239.4 of this chapter)", and by removing in paragraph (a)(2)(iii)(B)(1) the words "Form S–1" and adding, in their place, the words "Form A".

§ 229.102 [Amended]

15. By amending § 229.102 by removing the words "Office of Engineering" in Instruction 4. to Instructions to Item 102 and adding, in their place, "Office of Natural Resources".

§ 229.201 [Amended]

16. By amending § 229.201 by removing in paragraph (a)(2) the words "Form S–1 (§ 239.11 of this chapter)" and adding, in their place, the words "Form A (§ 239.4 of this chapter)".

17. By amending § 229.304 by revising the introductory text of paragraph (a)(1), paragraph (a)(1)(i), the introductory text of paragraph (a)(1)(iii), paragraph (a)(1)(iv), the first sentence of the introductory text of paragraph (a)(1)(v), paragraph (a)(1)(v)(C)(*2*), paragraph (a)(1)(v)(D)(*2*); and by adding a sentence at the end of paragraph (a)(3) to read as follows:

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a)(1) The disclosure described below is required if the registrant, during its two most recent fiscal years or any subsequent interim period, dismissed its

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principal independent accountant or a significant subsidiary dismissed its independent accountant on whom the registrant's principal accountant expressed reliance in its report. The disclosure also is required if, during that time, any of those accountants: resigned; declined to stand for re-election after the current audit; notified the registrant or a significant subsidiary that reliance on the accountant's prior audit report is no longer permissible; or notified the registrant or a significant subsidiary that it will not consent to the use of the accountant's prior audit report in a filing with the Commission.

(i) State which of the actions described in paragraph (a)(1) of this section occurred and when;

*   *   *   *   *

(iii) If a change in accountants resulted, state whether the decision to change accountants was recommended or approved by:

*   *   *   *   *

(iv) State whether, during the registrant's two fiscal years and any subsequent interim period immediately preceding the date of the action described in paragraph (a)(1) of this section, there were disagreements with the accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure. In addition:

(A) Describe each such disagreement;

(B) State whether the board of directors or any committee thereof discussed the subject matter of each such disagreement with the accountant; and

(C) If a change in accountants resulted, state whether the registrant has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each such disagreement. If not, describe the nature of any limitation on responses and the reason for that limitation.

Instructions to Item 304(a)(1)(iv).

1. The registrant need only disclose information in response to this Item if the disagreement(s), if not resolved to the satisfaction of the accountant, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report.

2. The disagreements required to be reported in response to this Item include both those resolved to the accountant's satisfaction and those not resolved to the accountant's satisfaction.

3. Disagreements contemplated by this Item are those that occur at the decision-making level, *i.e.*, between personnel of the registrant responsible for the presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(v) If, during the registrant's two fiscal years and any subsequent interim period immediately preceding the date of the action described in paragraph (a)(1) of this Item, any of the events listed in paragraphs (a)(1)(v)(A) through (a)(1)(v)(D) of this Item occurred, provide the information required by paragraph (a)(1)(iv) of this Item for each event (even if the registrant and the accountant did not express a difference of opinion regarding the event). * * *

*   *   *   *   *

(C) * * *

(*2*) Due to the action described in paragraph (a)(1) of this Item, or for any other reason, the accountant did not so expand the scope of its audit or conduct such further investigation; or

(D) * * *

(*2*) Due to the action described in paragraph (a)(1) of this Item, or for any other reason, the issue has not been resolved to the accountant's satisfaction prior to such action.

*   *   *   *   *

(3) * * * If the former accountant declines to furnish the registrant with a letter addressed to the Commission stating whether the accountant agrees with the statements made by the registrant in response to this Item 304(a), so state.

*   *   *   *   *

18. By amending § 229.305 by revising Instruction 2.D. to General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), to read as follows:

§ 229.305 (Item 305) Quantitative and qualitative disclosures about market risk.

*   *   *   *   *

General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e):

*   *   *   *   *

2. * * *

D. For purposes of Instruction 1. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), market capitalization is the aggregate market value of common equity. The term "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall include the common equity held by affiliates and shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of January 28, 1997.

19. By amending § 229.404 by removing in the introductory text of paragraph (d) the words "Form S–1 under the Securities Act (§ 239.11 of this chapter)" and adding, in their place, the words "Form A under the Securities Act (§ 239.4 of this chapter)".

20. By amending § 229.501 by revising the section heading to read as follows:

§ 229.501 (Item 501) Front cover page of the registration statement and outside front cover page of the prospectus.

*   *   *   *   *

21. By amending § 229.512 by removing in paragraph (a)(1)(iii) the words "on Form S–3 (§ 239.13 of this chapter)" and adding in their place the words "on Form B (§ 239.5 of this chapter)"; in paragraph (a)(4), by removing in the third sentence the words "on Form F–3 (§ 239.33 of this chapter)" and adding, in their place, the words "on Form B (§ 239.5 of this chapter)", and removing the words "in the Form F–3." and adding in their place "in the Form B."; by revising paragraph (b) and the introductory text of paragraph (g); and by adding paragraph (k) to read as follows:

§ 229.512 (Item 512) Undertakings.

*   *   *   *   *

(b) *Filings incorporating by reference subsequent Exchange Act documents.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the initial effective date of the registration statement:

The undersigned registrant hereby undertakes that, for determining liability under the Securities Act of 1933, each of the registrant's reports pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

*   *   *   *   *

(g) *Registration on Form C or Form SB–3 of securities offered for resale.* Include the following if the registrant is registering an offering on Form C or Form SB–3 (§§ 239.6 or 239.11 of this chapter) in connection with a transaction specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter).

*   *   *   *   *

(k) *Registration on Form A, Form B or Form C.* If the securities are being registered on Form A (§ 239.4 of this chapter), Form B (§ 239.5 of this chapter) or on Form C (§ 239.6 of this chapter) include the following:

The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

22. By amending § 229.601 by removing from paragraph (b)(10)(iii)(B)(*6*) the words "or registering debt instruments or preferred stock which are not voting securities on Form S–2"; and by removing from Note 1 to Paragraph (c)(1) the words "Form S–2 (§ 239.12 of this chapter), Form S–3 (239.13 of this chapter)" and adding, in their place, the words "Form B (239.13 of this chapter), General Instruction VIII of Form A (§ 239.4 of this chapter)"; by revising the Exhibit Table, paragraph (b)(4)(ii) and paragraph (b)(8); and by adding paragraph (b)(28) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(4) *Instruments defining the rights of security holders, including indentures*

(i) * * *

(ii) Except as set forth in paragraph (b)(4)(iii) of this Item, for filings on Forms A and C under the Securities Act (§§ 239.4 and 239.6 of this chapter) and Forms 10 and 10–K (§§ 249.210 and 249.310 of this chapter) under the Exchange Act all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

* * * * *

(8) *Opinion re tax matters.* (i) *Real estate entity registrants and roll-up transactions.* The registrant must file an opinion of counsel, an opinion of an independent public or certified public accountant or a revenue ruling from the Internal Revenue Service supporting the tax matters and consequences to the investors it describes in its filing in the following circumstances:

(A) The registrant is required to provide the information required by Item 1108 of Regulation S–K (Tax treatment) in its registration statement on Form A (§ 239.4 of this chapter);

(B) Securities Act Industry Guide 5 applies to the offering; or

(C) The transaction being registered is a roll-up as defined in Item 901 of Regulation S–K (§ 229.901).

(ii) *All other registrants.* All other registrants must include this exhibit only when the tax consequences are material to an investor and the registrant includes a discussion of tax consequences in the filing. If a tax opinion is set forth in full in the filing, the exhibit may so state instead of repeating the full opinion. Any conditions or qualifications on the opinion must be adequately described in the filing.

* * * * *

(28) *Underwriter concurrence with effective date.* A registrant filing a registration statement listed in § 230.462(f)(1) of this chapter must file the written concurrence with the effective date, signed and dated by the managing underwriter(s), or if there are no managing underwriter(s), of the principal underwriter(s) of its offering. If the filed concurrence is not manually signed, a registrant must retain the manually signed underwriters' concurrence for a period of five years. Upon request, the registrant must provide a copy of that concurrence to the Commission or its staff.

* * * * *

EXHIBIT TABLE

	Securities Act forms			
	A	B	C	S–8
(1) Underwriting agreement	X		X	
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X		X	
(3) Articles of Incorporation	X		X	
(ii) By-Laws	X		X	
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X
(5) Opinion re legality	X	X	X	X
(6) [Removed and reserved]				
(7) [Removed and reserved]				
(8) Opinion re tax matters	X	X	X	
(9) Voting trust agreement	X		X	
(10) Materials contracts	X		X	
(11) Statement re computation of per share earnings	X		X	
(12) Statements re computation of ratios	X		X	
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders[1]	X		X	
(14) [Removed and reserved]				
(15) Letter re unaudited interim financial information	X		X	X
(16) Letter re change in certifying accountant	X[4]		X[4]	
(17) Letter re director resignation				
(18) Letter re change in accounting principles				
(19) Report furnished to security holders				
(20) Other documents or statements to security holders				
(21) Subsidiaries of the registrant	X		X	
(22) Published matters regarding matters submitted to vote of security holders				
(23) Consents of experts and counsel[2]	X	X	X	X
(24) Power of attorney	X		X	X
925) Statement of eligibility of trustee	X	X	X	
(26) Invitation for competitive bids	X		X	
(27) Financial Data Schedule[5]	X		X	
(28) [Removed and Reserved]				
(29) Underwriter Concurrence with Effective Date	X	X		
[Reserved (30) through (98)]				
(99) Additional Exhibits			X	X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[2] Where the opinion of the expert or counsel has been incorporate by reference into a previously filed Securities Act registration statement

[3] An exhibit need not be provided about a company if:

(a) the company meets the requirements of General Instruction I.A., I.B., I.C.1 of Form B; and

(b) The Exhibit would not have been required to be filed if the Company was registering a primary offering on Form B.

[4] If required pursuant to item 304 of Regulation S–K.

[5] Financial Data Schedules shall be filed by electronic filers only. Such schedule shall be filed only when a filing includes annual and/or interim financial statements that have not been previously included in a filing with the Commission. *See* Item 601 of Regulation S–K

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23. By amending Securities Act Industry Guide 5 (referenced in § 229.801(e)) by removing from paragraph 16 the words "Form S–1 or S–11" and adding, in their place, the words "Form A (§ 239.4 of this chapter)" and by revising paragraph 19.D. to read as follows:

Note: The text of Securities Act Industry Guide 5 does not and this amendment will not appear in the Code of Federal Regulations.

* * * * *

Guide 5

* * * * *

19. Summary of promotional and sales material

* * * * *

D.(1) The registrant or any offering participant must, before its use, provide the Commission staff supplementally any written sales material that it intends to furnish investors. This includes all materials described in paragraph B. The registrant or the offering participant need not, however, supplementally provide the staff with sales material if:

(i) the offering is registered on Form A and the registrant meets the requirements of General Instruction VIII. of that Form;

(ii) the offering is registered on Form B;

(iii) the staff has notified the registrant that its registration statement will not be reviewed; or

(iv) the sales material is used only internally.

(2) For purposes of this paragraph, sales material includes all marketing memoranda that are sent by the General Partner or its affiliates to broker/dealers or other sales personnel and may include material labeled "for broker/dealers use only." Staff comments, if any, will be promptly communicated to the registrant. The registrant should contact the staff before using any sales material that has been submitted to the staff.

Note to paragraph 19.D.: You should read Securities Act Rule 425. Sales materials may be required to be filed under that Rule.

24. By amending part 229 to add subpart 229.1100 to read as follows:

Subpart 229.1100—Real Estate Interests

229.1101 (Item 1101) Definitions.
229.1101 (Item 1102) Limitations on transfer.
229.1103 (Item 1103) Summary risk factor information.
229.1104 (Item 1104) Organization.
229.1105 (Item 1105) Operating and financing activities.
229.1106 (Item 1106) Real estate and other investment activities.
229.1107 (Item 1107) Description of real estate and operating data.
229.1108 (Item 1108) Tax treatment of you and your investors.
229.1109 (Item 1109) Certain relationships and related transactions.
229.1110 (Item 1110) Selection, management and custody of investments.
229.1111 (Item 1111) Conflict of interest policies.
229.1112 (Item 1112) Limitations of liability.
229.1113 (Item 1113) Sales to special parties.

Subpart 229.1100—Real Estate Interests

§ 229.1101 (Item 1101) Definitions

For purposes of this subpart 229.1100 of Regulation S-K:

(a) You are a *real estate entity* if you:

(1) Are a real estate investment trust under Section 856 of the Internal Revenue Code (26 U.S.C. 856(a)); or (2) Invest in real estate, interests in real estate, or securities of other real estate investors as your primary business.

Instruction to Item 1101(a)

"Real estate entity" does not include any issuer that is an investment company registered or required to register under the Investment Company Act of 1940.

(b) *Affiliated person* means:

(1) Your directors and officers;

(2) Any person directly or indirectly controlling or under direct or indirect common control with you;

(3) Any record owner who owns, or anyone you know who beneficially owns, 10 percent or more of any class of your equity securities;

(4) Any promoter directly or indirectly connected with you in any capacity;

(5) Principal underwriters of securities being registered;

(6) People performing management or advisory services; and (7) Any associate of any of these people.

§ 229.1102 (Item 1102) Limitations on transfer.

Disclose on the cover page of the prospectus any limitations on the transfer of the securities you are offering. If no market exists for the securities, so state on the cover page. If a market does exist, disclose in the prospectus the nature of the market and the market price as of the latest practicable date before the filing of the registration statement or an amendment to the registration statement.

§ 229.1103 (Item 1103) Summary risk factor information.

In a series of concise bullets or paragraphs, present a summary of the risk factors of the offering. Address the following, if appropriate:

(a) A comparison of the percentage of securities being offered to the public and those issued or to be issued to affiliated person;

(b) The extent to which security holders can be liable for your acts or obligations;

(c) The allocation of cash distributions between investors who are affiliated persons and those investors who are not affiliated persons; and

(d) The compensation and benefits affiliated persons will receive, directly or indirectly. With respect to underwriters, include a comparison of the aggregate compensation and benefits to be received by them with the aggregate net proceeds from the sale of the securities being registered.

§ 229.1104 (Item 1104) Organization.

(a) Provide the following information:

(1) Your name and form of organization;

(2) The State or other jurisdiction whose laws govern your organization;

(3) The date your governing instruments became operative; and

(4) The date on which your governing instruments will expire, if any and, if you may be finite life as defined in Item 901 of Regulation S–K, your planned time period for holding your assets.

(b) Outline any provisions of your governing instruments that provide that your duration or planned investment holding period may be shortened or extended.

(c) Summarize the provisions of your governing instruments, or any policy or proposed policy, relating to the holding of annual or other meetings of investors.

(d) If you were organized within the last five years, name all promoters. Indicate whether each promoter holds any position or intends to hold any position with you.

§ 229.1105 (Item 1105) Operating and financing activities.

For each of the following activities, describe your and your subsidiaries' policy or proposed policy, indicate if you may change each policy without a vote of investors, and indicate the extent to which you have engaged in each activity.

(a) Issue securities senior to the securities you are offering;

(b) Borrow money;

(c) Make loans. Purchasing a portion of publicly distributed bonds, debentures or other securities, in the original distribution, or otherwise, is not making a loan;

(d) Invest in another issuer's securities in order to exercise control;

(e) Underwrite other issuer's securities;

(f) Purchase, sell or trade investments;

(g) Offer securities in exchange for property;

(h) Repurchase or otherwise reacquire your securities; and

(i) Provide annual or other reports to investors. Indicate what the reports will cover and whether they will include audited financial statements.

Instruction to Item 1105.

Include a separate description of your policy for each activity. If you will not engage in a particular activity, specifically state that you will not.

§ 229.1106 (Item 1106) Real estate and other investment activities.

(a) Describe the types of real estate investments you intend to make and indicate whether you can change this plan without a vote of investors.

(b) Describe the principles and procedures you and your subsidiaries will use in investing in the assets.

(c) Disclose the percentage of your and your subsidiaries' assets you may invest in any one type of investment.

(d) You should include the information below if you or your subsidiaries might invest in the following types of assets:

(1) *Investments in real estate or real estate interests.* (i) Identify the geographic areas where you intend to invest;

(ii) Describe the types of real estate in which you may invest, such as office buildings, apartment buildings, shopping centers, industrial and commercial properties, special purpose buildings or undeveloped land;

(iii) Describe how you intend to operate and finance your real estate. Disclose any limit on the number or amount of mortgages you may place on any one piece of property;

(iv) Specifically state whether your policy is to acquire assets primarily for income or capital gain; and

(v) Disclose your policy as to the amount or percentages of your assets you may invest in any one property;

(2) *Investments in real estate mortgages and mortgage-backed securities.* (i) Describe the types of mortgages you may invest in, such as first or second mortgages. Disclose whether the mortgages are guaranteed, and if so, by whom;

(ii) Describe your policy as to the amount or percentage of assets you may invest in any single mortgage;

(iii) Describe each type of mortgage activity in which you intend to engage, such as originating or servicing mortgages;

(iv) Describe how long you anticipate holding these investments;

(v) Indicate the types of properties subject to mortgages in which you intend to invest, such as, single family homes, apartment buildings, office buildings, bowling alleys, commercial properties or undeveloped land; and

(vi) Identify the geographic areas where the property underlying the mortgages is located.

(3) *Securities of or interests in other real estate investors.* (i) Describe the types of securities or other interests in persons engaged in real estate activities in which you may invest, such as common stock, limited partnership interests, interests in real estate investment trusts, mortgage-backed securities and joint venture interests;

(ii) Disclose your policy as to the amount or percentage of your assets you may invest in each type of security or interest and the amount or percentage of your assets you may invest in any one issuer;

(iii) Describe the investment policies and primary activities of persons in which you will invest, such as mortgage sales, investment in office buildings or investment in undeveloped land; and

(iv) State your criteria for the purchase of these securities or interests, such as securities listed on a national securities exchange, minimum net income requirements, period of operation of issuer or rating of security.

(e) Indicate the type of other securities (*e.g.*, bonds, preferred stocks, common stocks) and the industry groups in which you may invest and the percentage of your assets which you may invest in each type or industry group. Describe how you will acquire these assets.

§ 229.1107 (Item 1107) Description of real estate and operating data.

Provide the following information separately for each material real estate interest. For all other real estate interests, provide the following information by classes or groups of properties that reasonably convey the required disclosure:

(a) For real estate interests in which you or your subsidiaries now invest or intend to invest:

(1) State the location and describe the general character;

(2) Identify the present and proposed use and discuss whether the real estate interests are suitable and adequate for the present or proposed use;

(3) Describe your title to or interest in the real estate;

(4) For each material mortgage, lien or other encumbrance:

(i) Disclose the principal amount;

(ii) Describe the interest and amortization provisions;

(iii) Describe the prepayment provisions;

(iv) Discuss any cross collateralization or cross default provisions;

(v) Identify the maturity date; and

(vi) Quantify the balance due at maturity assuming no prepayment of principal;

(5) Disclose principal lease terms;

(6) Outline the terms of any option or contract to purchase or sell the real estate interests;

(7) Briefly discuss proposed renovation, development or improvement programs. Quantify the cost of these programs. If you do not have any plans, state that you have no plan and indicate why you are investing or will invest in the real estate;

(8) Describe the general competitive conditions in the markets in which the real estate interests or the underlying properties are operated; and

(9) State whether management believes that the real estate interest or the underlying properties are adequately covered by insurance.

(b) For each improved material real estate interest in which you or your subsidiaries now invest or intend to invest:

(1) Occupancy rate, as a percentage of rentable square footage or units, for each of the past five years;

(2) Average annual effective rent paid per square foot or per unit for each of the past five years;

(3) The following schedule of lease expirations in each of the next ten years:

VOL
63
ISS
233
DE
4
1998
UMI

Year	(A) Total number of tenants with leases expiring	(B) Area covered by expiring leases (sq. feet)	(C) Annual rental of expiring leases ($)	(D) Percentage of gross annual rental for expiring leases
Year in which filing is made.				
Second Year.				
...				
...				
...				
Tenth Year.				

(4) The number of tenants that occupy ten percent or more of the rentable square footage, the main business of those tenants and the principal provisions of their lease including, but not limited to, annual rent, the expiration date and any renewal option;

(5) The principal businesses, occupations or professions conducted at the property underlying the real estate interest;

(6) The Federal tax basis, rate, depreciation method and life claimed for each real estate interest or component for which you charge depreciation; and

(7) The realty tax rate, annual realty taxes and estimated taxes on any proposed improvement.

Instructions to Item 1107.

1. You need not provide detailed legal and physical descriptions of your real estate interest. Rather, you should disclose all information necessary for an investor to evaluate and understand your real estate interests. We encourage tabular presentation.

2. A material real estate interest is one that:

(a) Has a book value representing ten percent or more of your total assets, including assets of your consolidated subsidiaries; or

(b) Produced gross revenue in the last fiscal year that was ten percent or more of your total revenues for the last fiscal year, including revenues of your consolidated subsidiaries.

§ 229.1108 (Item 1108) Tax treatment of you and your investors.

Describe material Federal income tax consequences for you, your subsidiaries and your investors including a discussion of:

(a) Your and your subsidiaries' treatment under Federal income tax laws;

(b) The treatment of distributions to investors under Federal income tax laws, including gains from the sale of securities or real estate interests in excess of annual net income; and

(c) The tax treatment of any exchange of securities for real estate interests or other securities.

§ 229.1109 (Item 1109) Certain relationships and related transactions.

Disclose the aggregate depreciation claimed by the seller for Federal income tax purposes if:

(a) You provide any information required by Instruction 5 to Item 404(a) of Regulation S–K; and

(b) The assets had been acquired by the seller within five years prior to the Item 404 of Regulation S–K transaction.

§ 229.1110 (Item 1110) Selection, management and custody of investments.

(a) Describe any arrangements you or your subsidiaries have made or propose to make with respect to the following. If any of the persons performing these services is a corporation or other organization, include the name and principal occupations during the last five years of each principal executive officer of such corporation or other organization:

(1) Management of your real estate interests, including arranging for purchases, sales, leases, maintenance and insurance;

(2) The purchase, sale and servicing of your mortgages; and

(3) Investment advisory services.

(b) If any of these services in paragraph (a) of this Item will be performed by any affiliated person, other than an officer or director performing the services in that capacity with no additional compensation, furnish the following information about each person:

(1) Name and address;

(2) Nature of principal business;

(3) Principal occupations during the last five years;

(4) Nature of all existing direct or indirect material interests in or business connections with you or any of your affiliated person;

(5) Nature of all services rendered to you; and

(6) Compensation received from you and your subsidiaries, directly or indirectly, during your last fiscal year and the capacities in which this remuneration was received.

§ 229.1111 (Item 1111) Conflict of interest policies.

Outline your policies and provisions of your governing instruments which limit any person from any of the following:

(a) Having any financial interest in any investment you or any of your subsidiaries will acquire or dispose of or in any transaction to which you or any of your subsidiaries are a party or have an interest; and

(b) Engaging for their own account in business activities of the types you and your subsidiaries conduct or will conduct.

§ 229.1112 (Item 1112) Limitations of liability.

Outline the principal provisions of your governing instruments or of any contract or arrangement to which you or a subsidiary are a party that limit the liability of affiliated person or any of their directors, officers or employees. Indicate the effect of Section 14 of the Act (15 U.S.C. 77n) upon any provision broad enough to cover liability arising under the Act.

§ 229.1113 (Item 1113) Sales to special parties.

Name each person or specify each class of persons (other than underwriters or dealers, acting in that capacity) to whom you or your subsidiaries have sold securities within the past six months or are going to sell securities at a different price than you are offering the same class of securities pursuant to this registration statement. Also provide this information with respect to any selling security holder registering securities pursuant to this registration statement. State the consideration given or to be given by each of these persons or class.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

By revising the general authority citation for part 230 to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

26. By revising paragraph (d) of § 230.110 to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(d) *Filings by facsimile.* Registration statements, post-effective amendments and prospectuses, filed pursuant to §§ 230.425(c), 230.462(a), (b), (e) or (f) may be filed by facsimile transmission with the Commission any day (except Saturdays, Sundays and federal holidays) from 5:30 p.m. to 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect.

By revising the introductory text of paragraph (b) of § 230.111 to read as follows:

§ 230.111 Payment of fees.

* * * * *

(b) Notwithstanding paragraph (a) of this section, payment of filing fees for registration statements filed pursuant to §§ 230.462(b), (e), or (f) between the hours of 5:30 p.m. and 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect may be made by:

* * * * *

By amending § 230.134 by revising the section heading and the introductory text, the introductory text of paragraph (a) and paragraphs (a)(3), (a)(13), (a)(14)(i), (b)(1), and (e) to read as follows:

§ 230.134 Registered investment company communications not deemed a prospectus.

The term prospectus as defined in Section 2(10) of the Act (15 U.S.C. 77b(10)) does not include a notice, circular, advertisement, letter, or other communication published or transmitted to any person after a registration statement has been filed by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1—80(a)–64) ("fund") if the communication contains only the statements required or permitted by this section.

(a) The communication may include any one or more of the following items of information, in any order:

* * * * *

(3)(i) The fund's classification and subclassification under the Investment Company Act of 1940, the type or category of fund and whether in the selection of investments emphasis is placed upon income or growth characteristics, and a general description of an investment company including its general attributes, methods of operation and services offered provided that such description is not inconsistent with the operation of the particular fund for which more specific information is being given, identification of the fund's investment adviser, any logo, corporate symbol or trademark of the fund or its investment adviser and any graphic design or device or an attention-getting headline, not involving performance figures, designed to direct the reader's attention to textual material included in the communication pursuant to other provisions of this section; and, with respect to a fund issuing redeemable securities:

(A) A description of the fund's investment objectives and policies, services, and method of operation;

(B) Identification of the fund's principal officers;

(C) The year of incorporation or organization or period of existence of the fund, its investment adviser, or both;

(D) The fund's aggregate net asset value as of the most recent practicable date;

(E) The aggregate net asset value as of the most recent practicable date of all funds under the management of the fund's investment adviser;

(F) Any pictorial illustration that is appropriate for inclusion in the fund's prospectus and not involving performance figures;

(G) Descriptive material relating to economic conditions, or to retirement plans or other goals to which an investment in the fund could be directed, but not directly or indirectly relating to past performance or implying achievement of investment objectives; and

(H) Written notice of the terms of an offer made solely to all registered holders of the securities, or of a particular class or series of securities, issued by the fund proportionate to their holdings, offering to sell additional shares to such holders of securities at prices reflecting a reduction in, or elimination of, the regular sales load charged: *Provided that,* if any printed material permitted by paragraphs (a)(3)(i) (A) through (H) of this section is included, or if any material permitted by paragraphs (a)(3)(i) (A) through (G) of this section is used in a radio or television advertisement, the communication shall also contain the following legend given emphasis no less than that used in the major portion of the advertisement:

> For more complete information about [Name of Fund] including charges and expenses [get] [obtain] [send for] a prospectus [from (Name and Address)] [by sending this coupon]. Read it carefully before you invest or [pay] [forward funds] [send money].

(ii) For purposes of paragraph (a)(3)(i)(B) of this section, principal officers means the president, secretary, treasurer, any vice-president in charge of a principal business function and any other person who performs similar policy making functions for the fund on a regular basis.

(iii) In the case of two or more funds having the same investment adviser or principal underwriter, the same information described in paragraph (a)(3)(i) may be included as to each such fund in a joint communication on the same basis as it is permitted in communications dealing with individual funds under paragraph (a)(3)(i).

* * * * *

(13) Offers, descriptions and explanations of any products and services not constituting securities subject to registration under the Act, and descriptions of corporations. The offers, descriptions and explanations may not relate directly to the desirability of owning or purchasing a security issued by a fund and all direct references to a security issued by a fund may contain only the statements required or permitted to be included by the other provisions of this section and must be placed in a separate and enclosed area in the communication.

(14)(i) With respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock, the security rating or ratings assigned to the class of securities by any nationally recognized statistical rating organization and the name or names of the nationally recognized statistical rating organization(s) that assigned such rating(s).

* * * * *

(b) * * *

(1) If the registration statement has not yet become effective, the following statement:

> A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This [communication] shall not constitute an offer to sell or the solicitation of an offer to buy.

* * * * *

(e) In the case of a fund that holds itself out as a "money market fund," a communication used under this section shall contain the disclosure required by § 230.482(a)(7).

By revising § 230.135 to read as follows:

§ 230.135 Notice of proposed offerings.

(a) *All Offerings.* For purposes of Section 5 of the Act (15 U.S.C. 77e) only, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a proposed offering will not be deemed to offer its securities for sale through that notice if:

(1) *Legend.* The notice includes a statement to the effect that it does not constitute an offer of any securities for sale; and

(2) *Limited notice content.* The notice otherwise includes no more than the following information:

(i) The name of the issuer;

(ii) The title, amount and basic terms of the securities offered;

(iii) The amount of the offering, if any, to be made by selling security holders;

(iv) The anticipated timing of the offering;

(v) A brief statement of the manner and the purpose of the offering;

(vi) Whether the issuer is directing its offering to only a particular class of purchasers;

(vii) Any statements or legends required by the laws of any state or foreign country or administrative authority; and

(viii) In the following offerings, the notice may contain additional information, as follows:

(A) In a rights offering to existing security holders:

(*1*) The class of security holders eligible to subscribe;

(*2*) The subscription ratio and expected subscription price;

(*3*) The proposed record date;

(*4*) The anticipated issuance date of the rights; and

(*5*) The subscription period or expiration date of the rights offering.

(B) In an offering to employees of the issuer or an affiliated company:

(*1*) The name of the employer;

(*2*) The class of employees being offered the securities;

(*3*) The offering price; and

(*4*) The duration of the offering period.

(C) In an exchange offer:

(*1*) The basic terms of the exchange offer;

(*2*) The name of the subject company; and

(*3*) The subject class of securities.

(b) *Corrections of misstatements about the offering.* A person that publishes a notice in reliance on this section may issue a notice that contains no more information than is necessary to correct inaccuracies published about the proposed offering.

(c) *Rule 145(a) offerings.* For purposes of Section 5 of the Act (15 U.S.C. 77e) only, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a transaction described in paragraph (a) of § 230.145 will not be deemed to offer its securities for sale through that notice if:

(1) *Legend.* The notice includes a statement to the effect that it does not constitute an offer of any securities for sale;

(2) *Limited notice content.* The notice otherwise includes no more than the following information:

(i) The name of the issuer;

(ii) The name of the person whose assets are to be sold in exchange for the securities to be offered;

(iii) The names of any other parties to the transaction;

(iv) A brief description of the business of the parties to the transaction;

(v) The date, time and place of the meeting of security holders to vote on or consent to the transaction;

(vi) A brief description of the transaction and the basis upon which the transaction will be made; and

(vii) Any statements or legends required by the laws of any state or foreign country or administrative authority.

§ 230.135c [Removed and Reserved]

30. By removing and reserving § 230.135c.

31. By amending § 230.135e by revising paragraph (b)(1) to read as follows:

§ 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press-related materials released offshore.

* * * * *

(b) * * *

(1) State that:

(i) The written press-related materials are not an offer of securities for sale in the United States;

(ii) The securities may not be offered or sold in the United States absent registration or an exemption from registration; and

(iii) Any registered public offering to be made in the United States will involve a registration statement that will contain information about the company and management, as well as financial statements.

* * * * *

32. By revising § 230.137 to read as follows:

§ 230.137 Publications by brokers or dealers that are not participating in a registrant's distribution of securities.

Under the following conditions, a broker or dealer shall not be considered an *underwriter* as defined in Section 2(a)(11) of the Act (15 U.S.C. 77b(a)(11)) solely because it publishes or distributes information, an opinion or a recommendation with respect to the securities of a registrant that proposes to file, has filed, or has an effective registration statement under the Act:

(a) The broker or dealer is not participating, and does not propose to participate, in the distribution of the registered securities;

(b) The issuer is not:

(1) A development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified entity or entities;

(2) A shell entity having few or no assets, earnings or operations; or

(3) Registering an offering of penny stock as defined in § 240.3a51–1 of this chapter; and

(c) In connection with its publication or distribution, the broker or dealer is not receiving consideration directly or indirectly from, or acting under any direct or indirect arrangement or understanding with:

(1) The registrant;

(2) A selling security holder;

(3) Any participant in the distribution; or

(4) Any other person with an interest in the securities that are the subject of the registration statement.

Instruction to paragraph (c):

This provision does not preclude payment of the regular subscription or purchase price of the document or other communication in which the broker or dealer's information, opinion or recommendation appears.

33. By revising § 230.138 to read as follows:

§ 230.138 Publications by a broker or dealer about securities other than those it is distributing or selling.

(a) *Registered offerings.* Under the following conditions, a broker's or dealer's publication or distribution of information, an opinion or a recommendation shall be exempt from Section 5(b)(1) and Section 5(c) of the Act (15 U.S.C. 77e(b)(1) and (c)) even if the broker or dealer is participating or will participate in the distribution of the issuer's securities to which the registration statement relates:

(1) The issuer is:

(i) Subject to the requirements of Section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l* or 78o(d)); or

(ii) A foreign private issuer that satisfies the public float threshold in General Instruction I.C.1. of Form B (§ 239.5 of this chapter) or the public float/average daily trading volume threshold in General Instruction I.C.1. of Form B (except measured on world-wide markets rather than only U.S. markets), and has equity securities trading on a designated offshore securities market as defined in § 230.902(b);

(2) The issuer is not:

(i) A development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified entity or entities;

(ii) A shell entity having few or no assets, earnings or operations; or

(iii) Registering an offering of penny stock as defined in § 240.3a51–1 of this chapter;

(3) The broker or dealer publishes or distributes the information, opinion or recommendation in the ordinary course of its business;

(4) The publication prominently describes the capacity in which the broker or dealer is participating in the distribution; and

(5) The information, opinion or recommendation relates to:

(i)(A) An issuer's common stock, or debt or preferred stock convertible into common stock; and

(B) The issuer proposes to file a registration statement, has filed a registration statement, or has an effective registration statement relating to non-convertible debt securities or non-convertible, nonparticipating preferred stock; or

(ii)(A) An issuer's non-convertible debt securities or non-convertible, nonparticipating preferred stock; and

(B) The issuer proposes to file a registration statement, has filed a registration statement, or has an effective registration statement relating solely to common stock or debt or preferred stock convertible into common stock.

(b) *Certain unregistered offerings.* (1) If the conditions set forth in paragraph (a)(1), (a)(2), (a)(3), (a)(4), (b)(2) and (b)(3) of this section are satisfied, a broker's or dealer's publication or distribution of information, an opinion or a recommendation:

(i) Shall not constitute directed selling efforts as defined in § 230.902(c);

(ii) Shall not be inconsistent with an offshore transaction as defined in § 230.902(h); and

(iii) Shall be an exception to the prohibition against offers to persons other than qualified institutional buyers in § 230.144A(d)(1)(i).

(2) The broker or dealer publishes or distributes the information, opinion or recommendation in a publication that is distributed with reasonable regularity in the ordinary course of business.

(3) The information, opinion or recommendation relates to:

(i)(A) An issuer's common stock, or debt or preferred stock convertible into common stock; and

(B) The issuer proposes to offer or is offering solely non-convertible debt securities or non-convertible, nonparticipating preferred stock; or

(ii)(A) An issuer's non-convertible debt securities or non-convertible, nonparticipating preferred stock; and

(B) The issuer proposes to offer or is offering solely common stock or debt or preferred stock convertible into common stock.

34. By revising § 230.139 to read as follows:

§ 230.139 Publications by brokers or dealers distributing securities.

(a) *Registered offerings.* Under the following conditions, a broker's or dealer's publication or distribution of information, an opinion or a recommendation shall be exempt from Section 5(b)(1) and Section 5(c) of the Act (15 U.S.C. 77e(b)(1) and (c)) even if the broker or dealer is participating or will participate in the distribution of the issuer's securities to which a registration statement relates:

(1) *Seasoned issuers; larger foreign issuers; foreign government issuers.* (i) The issuer:

(A) Has been subject to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l* or 78o(d)) for at least one year and has filed all reports it was required to file pursuant to Section 13, 14 or 15(d) of such Act (15 U.S.C. 78m, 78n or 78o(d)) during the last year;

(B) Is a foreign private issuer that:

(*1*) Is not subject to the requirements of Section 13 or 15(d) of the Exchange Act;

(*2*) Satisfies the public float threshold in General Instruction I.C.1. of Form B (§ 239.5 of this chapter) or the public float/average daily trading volume threshold in General Instruction I.C.1. of Form B (except measured on markets worldwide rather than only U.S. markets); and

(*3*) Has had equity securities trading on a designated offshore securities market (as defined in § 230.902(b)) for at least one year;

(C) Is a foreign government issuer eligible to register on Schedule B (15 U.S.C. 77aa), if the offering is a firm commitment underwritten offering in excess of $250 million in securities;

(ii) The issuer is not:

(A) A development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified entity or entities;

(B) A shell entity having few or no assets, earnings or operations; or

(C) Registering an offering of "penny stock" as defined in § 240.3a51–1 of this chapter;

(iii) The publication prominently describes the capacity in which the broker or dealer is participating in the distribution; and

(iv) The information, opinion or recommendation is contained in a publication that is distributed in the ordinary course of business.

(2) *All other reporting and non-reporting issuers.* (i) The conditions set forth in paragraphs (a)(1)(ii), (a)(1)(iii) and (a)(1)(iv) of this section are satisfied;

(ii) The information, opinion or recommendation is contained in a publication that is distributed with reasonable regularity in the ordinary course of business;

(iii) The information, opinion or recommendation is contained in a publication that includes similar information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry or sub-industry, or contains a comprehensive list of securities currently recommended by such broker or dealer;

(iv) The information, opinion or recommendation is given no materially greater space or prominence in the publication than that given to other securities or registrants; and

(v) If the publication contains an opinion or recommendation more favorable as to the issuer or any class of its securities than that last published by the broker or dealer prior to the commencement of participation in the distribution, the publication sets forth the last two opinions or recommendations published by the broker or dealer with respect to the issuer or its securities while not participating in a distribution by the issuer.

(b) *Certain unregistered offerings.* If the conditions set forth in paragraph (a)(1) of this section are satisfied, a broker's or dealer's publication or distribution of information, an opinion or a recommendation, if contained in a publication that is distributed with reasonable regularity in the ordinary course of business:

(1) Shall not constitute directed selling efforts as defined in § 230.902(c);

(2) Shall not be inconsistent with an offshore transaction as defined in § 230.902(h); and

(3) Shall be an exception to the prohibition against offers to persons other than qualified institutional buyers in § 230.144A(d)(1)(i).

Instructions to § 230.139.

1. For purposes of paragraph (a)(2) of this section, a research report has not been distributed with "reasonable regularity" if it contains information, an opinion or a recommendation concerning a company with respect to which a broker or dealer currently is not publishing research.

2. Projections constitute opinions within the meaning of this section.

3. For purposes of paragraph (a)(2)(ii) of this section, where projections of an issuer's sales or earnings are included in a publication, the broker or dealer must have published the projections previously on a regular basis in order for the publication to have been distributed with reasonable regularity in the ordinary course of business.

4. For purposes of paragraph (a)(2)(iii), the broker or dealer must have included projections with respect to either a substantial number of companies in the issuer's industry or sub-industry, or all companies represented in the comprehensive list of securities contained in the publication. Also, those projections may not cover significantly different periods with respect to the issuer as compared to the other companies.

35. By amending § 230.144A by redesignating paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii) and (d)(1)(iv) as paragraphs (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C) and (d)(1)(ii)(D); and by adding new paragraphs (d)(1)(i) and (d)(1)(ii) introductory text to read as follows:

§ 230.144A Private resales of securities to institutions.

* * * * *

(d) * * *

(1)(i) The securities are offered or sold only to a qualified institutional buyer or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer, except that if the seller is a broker or dealer, it may distribute information, an opinion or a recommendation in accordance with § 230.138(b) or § 230.139(b) while relying on this section.

(ii) In determining whether a prospective purchaser is a qualified institutional buyer, the seller and any person acting on its behalf shall be entitled to rely upon the following non-exclusive methods of establishing the prospective purchaser's ownership and discretionary investments of securities:

* * * * *

36. By amending § 230.145 by revising the last sentence of the first paragraph of the Preliminary Note and paragraph (b) to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

Preliminary Note: * * * Issuers must register transactions described in paragraph (a) of Rule 145 on Form C (§ 239.6 of this chapter), Form SB–3 (§ 239.11 of this chapter) or Form N–14 (§ 239.23 of this chapter).

* * * * *

(b) *Communications.* Communications in connection with a registered transaction described in paragraph (a) of this section may be made in accordance with §§ 230.135, 230.165, 230.166, 230.167, 230.168 or 230.169.

* * * * *

37. By revising § 230.152 to read as follows:

§ 230.152 Integration of private and public offerings.

(a) *Completed private offerings; resales.* (1) A completed bona fide private offering will not be considered part of an offering registered under the Act as long as the registration statement is filed after the completion of the private offering. At any time following the completion of a bona fide private offering, a registrant may register the securities sold in the private offering for purpose of resale by persons other than an affiliate or a dealer who has purchased directly from the issuer or an affiliate of the issuer.

(2) For purposes of paragraph (a)(1) of this section, a private offering will be considered completed:

(i) As of the date all purchasers in the private offering have paid the purchase price; or

(ii) As of the date the following are true, provided that the transaction is not subsequently renegotiated:

(A) All purchasers are unconditionally obligated to pay the purchase price, except that the purchase obligation may be contingent on a condition that is not within the direct or indirect control of any purchaser; and

(B) The purchase price is fixed and is not contingent on the market price of the securities at or around the time of the registered offering.

(3) For purposes of paragraph (a)(1) of this section, an offering of securities underlying convertible securities or warrants will be considered completed if the offering of the convertible securities or warrants to which it relates is completed. This is true regardless of when the convertible securities or warrants become convertible or exercisable.

(4) For purposes of paragraph (a)(1) of this section, an offering of securities prior to the issuer's initial offering registered under Section 5 of the Act (15 U.S.C. 77e) will be considered completed if:

(i) It does not raise capital for the issuer;

(ii) It is undertaken for the sole purpose of modifying the capital structure of the issuer; and

(iii) It does not involve a roll-up transaction as defined in § 228.901(c) of this chapter.

(b) *Abandoned private offerings followed by offerings registered other than on Form B.* A bona fide private offering of securities will not be considered part of an offering subsequently registered under Section 5 of the Act on a form other than Form B (§ 239.5 of this chapter) if:

(1) The registrant notifies all offerees in the private offering of its abandonment of that offering;

(2) The registrant does not file the registration statement for the registered offering until at least 30 days after it notified the offerees of abandonment, where the registrant (or any person acting on its behalf) offered securities in the private offering to any person ineligible to purchase in an offering in accordance with Section 4(2) or 4(6) of the Act (15 U.S.C. 77d(2) or 77d(6)) or § 230.506;

(3) Neither the issuer nor any person acting on its behalf offered the securities in the private offering by any form of general solicitation or general advertising (as those terms are used in § 230.502(c));

(4) No securities were sold in the private offering; and

(5) One of the following conditions is met:

(i) The registrant files any selling materials used in the private offering as part of the effective registration statement; or

(ii) The registrant informs offerees in the private offering that:

(A) The prospectus delivered in the registered offering supersedes any selling materials used in the private offering; and

(B) Any indications of willingness to purchase offerees gave during the private offering are considered rescinded.

(c) *Abandoned public offerings followed by private offerings.* An offering of securities for which a registration statement under the Act was filed or that would have been eligible to be registered on Form B (collectively, a "public offering") will not be considered part of a subsequent bona fide private offering if:

(1) The issuer notifies all offerees in the public offering of its abandonment of that offering or, if the issuer filed a

registration statement for that offering, the issuer withdraws it under § 230.477;

(2) No securities were sold in the public offering; and

(3) One of the following conditions is satisfied:

(i) If the issuer (or any person acting on its behalf) first offers the securities in the private offering more than 30 days after notification of abandonment or withdrawal of the public offering, it notifies each purchaser in the private offering that:

(A) The offering is not registered under the Act;

(B) The securities are restricted and cannot be resold unless they are registered under the Securities Act or unless an exemption from registration is available; and

(C) Investors do not have the protection of Section 11 of the Act (15 U.S.C. 77k).

(ii) If the issuer (or any person acting on its behalf) first offers the securities in the private offering 30 or fewer days after notification of abandonment or withdrawal of the public offering, the issuer and any underwriter:

(A) Agree in writing, in a manner enforceable by each investor committing to purchase in the 30-day period following abandonment or withdrawal of the public offering, that they will be liable for any material misstatements or omissions in the offering documents used in the private offering under the standards set by Section 11 of the Act; and

(B) Agree in writing, in a manner enforceable by each investor committing to purchase after the 30-day period following abandonment or withdrawal of the public offering, that they will be liable for any material misstatements or omissions in the offering documents used in the private offering under the standards set by Section 12(a)(2) of the Act (15 U.S.C. 77*l*(a)(2)).

(d) *Definition of terms.* For the purposes of this section only, a *private offering* means an unregistered offering of securities that is exempt from registration pursuant to Section 4(2) or 4(6) of the Act or § 230.506 of Regulation D.

§ 230.153 [Removed and Reserved]

38. By removing and reserving § 230.153.

39. By adding § 230.159 to read as follows:

§ 230.159 Lock-up agreements.

All offers and sales in a negotiated transaction described in § 230.145(a) may be registered under Section 5 of the Act (15 U.S.C. 77e) notwithstanding the fact that certain shareholders of the company to be acquired sign agreements with the acquiror to vote in favor of the transaction prior to the filing or the effective date of the registration statement, if:

(a) The agreements are limited to executive officers, affiliates and directors of the company to be acquired, the founder(s) of that company and their family members, and holders of 5% or more of the voting equity securities of that company;

(b) The persons signing the agreements own less than 100% of the voting equity securities of the company being acquired; and

(c) Votes will be solicited from shareholders of the company to be acquired who:

(1) Have not signed the agreements; and

(2) Would be ineligible to purchase under an exemption from registration pursuant to Section 4(2) or 4(6) of the Act (15 U.S.C. 77d(2) or 77d(6)) or § 230.506 of Regulation D.

40. By adding § 230.165 to read as follows:

§ 230.165 Post-filing free writing.

Notwithstanding Section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), any prospectus used in connection with an offering after the filing of a registration statement need not satisfy the requirements of Section 10 (15 U.S.C. 77j) of the Act if:

(a) Prospectus information is delivered in accordance with § 230.172, as applicable;

(b) The registrant files with the Commission any prospectus used in reliance on this section when so required by § 230.425; and

(c) The registrant files with the Commission the information necessary to satisfy the requirements of Section 10(a) of the Act prior to the first sale in the offering.

41. By adding § 230.166 to read as follows:

§ 230.166 Offers made before filing a registration statement.

(a) *Form B and seasoned Schedule B offerings.* Notwithstanding Section 5(c) of the Act (15 U.S.C. 77e(c)), an issuer, underwriter or participating dealer may make an offer to sell or solicit an offer to buy securities prior to the filing of a registration statement with respect to those securities if:

(1) At the time of the offer, the registrant and the offering satisfy the Eligibility Requirements of Schedule B or General Instruction I of Form B (§ 239.5 of this chapter);

(2) Either:

(i) The offering is later registered on Form B; or

(ii) The offering:

(A) Is later registered on Schedule B (15 U.S.C. 77aa);

(B) Is a firm commitment underwritten offering in excess of $250 million in securities; and

(C) Is registered 1 year or more after the effective date of the registrant's initial registered offering; and

(3) The registrant files any prospectus used in reliance on this section in the period beginning 15 days before the first offer and ending with the filing of the registration statement when so required by § 230.425.

(b) *Form C/SB–3 transactions.* Notwithstanding Section 5(c) of the Act, the offeror of securities in a transaction to be registered on Form C, SB–3, F–8, F–80 or F–10 (§§ 239.6, 239.11, 239.38, 239.41 or 239.40 of this chapter) (when that form is used in a business combination transaction) may make an offer to sell or solicit an offer to buy securities before the filing of a registration statement with respect to those securities if:

(1) Any prospectus relating to the transaction used in the period beginning with the first public announcement, and ending with the filing of the registration statement is filed in accordance with § 230.425; and

(2) In an exchange offer, the offers are made in accordance with the tender offer rules; and, in a transaction involving the vote of security holders, the offers are made in accordance with the proxy rules.

42. By adding § 230.167 to read as follows:

§ 230.167 Exemption from Section 5(c) for certain communications.

(a) In offerings registered on Form B (§ 239.5 of this chapter), any communication made before the offering period shall not constitute an offer to sell or an offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act (15 U.S.C. 77e(c)). "Offering period" is defined in Form B.

(b) In offerings registered on Forms C (§ 239.6 of this chapter), SB–3 (§ 239.11 of this chapter), F–8 (§ 239.38 of this chapter), F–80 (§ 239.41 of this chapter) or F–10 (§ 239.40 of this chapter) (when Form F–10 is used in connection with a business combination transaction), any communication before the first communication related to the offering (except for communications among the participants in the offering) shall not constitute an offer to sell or an offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act, provided that the parties to the transaction take all reasonable steps within their control to prevent further distribution or publication of such communication during the period between that first communication and the date of filing the registration statement.

(c) In all offerings other than those described in paragraph (a) or (b) of this section or those registered on Form S–8 (§ 239.16b of this chapter), any communication made by an issuer, underwriter or participating dealer more than 30 days before the date of filing of the registration statement shall not constitute an offer to sell or offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act, provided that the issuer, underwriter(s) or participating dealer(s) take all reasonable steps within their control to prevent further distribution or publication of such communication during the 30 days immediately preceding the date of filing the registration statement.

43. By adding § 230.168 to read as follows:

§ 230.168 Regularly released forward-looking information.

(a) Except in connection with offerings registered on Form S–8, C, SB–3, F–8, F–80 or F–10 (when that form is used in a business combination transaction), (§ 239.16b, 239.6, 239.11, 239.38, 239.41 or 239.40 of this chapter) in a registered offering by an issuer that is subject to the requirements of Section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)), the dissemination of regularly released forward-looking information by an issuer, underwriter or participating dealer in the 30-day period immediately preceding the filing of a registration statement shall be exempt from the prohibitions on offers to sell or offers to buy set forth in Section 5(c) of the Act (15 U.S.C. 77e(c)), if the registrant files any prospectus used in reliance on this section when so required by § 230.425.

(b) In an offering registered on Form S–8, C, SB–3, F–8, F–80 or F–10 (when that form is used in a business combination transaction) by an issuer that is subject to the requirements of Section 12 or 15(d) of the Exchange Act, the dissemination of regularly released forward-looking information by an issuer, underwriter or participating dealer in the period after the public announcement of the offering and prior to the filing of the registration statement shall be exempt from the prohibitions on offers to sell or offers to buy in Section 5(c) of the Act, if the registrant files any prospectus used in reliance on this section when so required by § 230.425.

(c) For purposes of this section, "regularly released forward-looking information" includes the information listed in paragraphs (c)(1) through (c)(4) of this section, if the issuer customarily releases information of this type in the ordinary course of business on a regular basis, it has done so in the two fiscal years (and any portion of a fiscal year) immediately prior to the communication, and the time, manner and form in which it is released is consistent with past practice:

(1) Projections of the issuer's revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) Statements about the issuer management's plans and objectives for future operations, including plans or objectives relating to the products or services of the issuer;

(3) Statements about the issuer's future economic performance of the type contemplated by the management's discussion and analysis of financial condition and results of operation described in § 229.303 of this chapter or Item 9 of Form 20–F (§ 249.220f of this chapter); and

(4) Assumptions underlying or relating to any of the information described in paragraphs (c)(1), (c)(2) and (c)(3) of this section.

By adding § 230.169 to read as follows:

§ 230.169 Factual business communications.

(a) Except in connection with offerings registered on Form S–8, C, SB–3, F–8, F–80 or F–10 (when that form is used in a business combination transaction), (§§ 239.16b, 239.6, 239.11, 239.38, 239.41 or 239.40 of this chapter), factual business communications made by an issuer, underwriter or participating dealer in the 30-day period immediately preceding the filing of a registration statement with respect to a registered offering shall be exempt from the prohibitions on offers to sell and offers to buy in Section 5(c) of the Act (15 U.S.C. 77e(c)).

(b) In an offering registered on Form S–8, C, SB–3, F–8, F–80 or F–10 (when that form is used in a business combination transaction), factual business communications made by an issuer, underwriter or participating dealer after the public announcement of the offering and prior to the filing of the registration statement shall be exempt from the prohibition on offers to sell and offers to buy in Section 5(c) of the Act.

(c) For purposes of this section, *factual business communications* include:

(1) Factual information about the issuer or some aspect of its business;

(2) Advertisement of the issuer's products or services;

(3) Factual business or financial developments with respect to the issuer;

(4) Dividend notices;

(5) Factual information set forth in any Exchange Act report the issuer is required to file; and

(6) Factual information communicated in response to unsolicited inquiries by persons that are not affiliates of the issuer, underwriter or participating dealer.

(d) For purposes of this section, *factual business communications* do not include:

(1) Information about the registered offering; or

(2) Forward-looking information.

45. By adding § 230.172 to read as follows:

§ 230.172 Delivery of prospectus information.

The issuer, selling security holders, any underwriter, any participating broker or dealer, and any person acting on behalf of any of them, must deliver prospectus information to each person offered securities in connection with an offering registered under the Act as follows:

(a) *Form B and Schedule B seasoned registrants.* If the registrant is offering securities as described in paragraph (a)(1) of this section, then delivery under paragraph (a)(2) of this section must be made.

(1) Securities in an offering registered on:

(i) Form B (§ 239.5 of this chapter), other than pursuant to General Instruction I.C.6. of Form B; or

(ii) Schedule B (15 U.S.C. 77aa), where it is a firm commitment underwritten offering in excess of $250 million in securities that is registered more than one year after the effective date of the registrant's initial registered offering;

(2) A term sheet prospectus that contains the following information must be sent in a manner reasonably designed to arrive before the date an investor makes a binding investment decision:

(i) An itemization of the material terms of the securities in summary format;

(ii) The name of any person, other than the issuer, for whose account securities are offered and a brief identification of any material relationship such person has (or had within the past three years) with the issuer or any affiliate of the issuer;

(iii) The identity and location of a contact person to whom questions may be directed; and

(iv) The identity and location of a person who, upon request, will send promptly the documents that define the terms of the securities.

(b) *Other registrants—firm commitment underwritten offerings.* If an offering is registered on Form A, Form SB–1, Form SB–2, Form F–7, Form F–9, Form F–10 (other than in a business combination transaction), (§§ 239.4, 239.9, 239.10, 239.37, 239.39, 230.40 of this chapter) or on Schedule B (other than as described in paragraph (a) of this section), is underwritten on a firm commitment basis and the offering:

(1) Is the registrant's initial offering registered in accordance with Section 5 of the Act (15 U.S.C. § 77e) or is an offering registered within one year of the effective date of the registrant's initial registered offering, then a prospectus satisfying Section 10 of the Act (15 U.S.C. § 77j) must be sent to each investor in a manner reasonably designed to arrive at least 7 calendar days before the pricing of the securities.

(2) Takes place more than one year after the effective date of the registrant's initial offering registered in accordance with Section 5 of the Act, then a prospectus satisfying Section 10 of the Act must be sent to each investor in a manner reasonably designed to arrive at least 3 calendar days before the pricing of the securities.

(c) *Other registrants—non-firm commitment underwritten offerings.* If an offering is registered on Form A, Form SB–1, Form SB–2, Form F–7, Form F–9, Form F–10 (other than in a business combination), or on Schedule B (other than as described in paragraph (a) of this section), is *not* underwritten on a firm commitment basis and the offering:

(1) Is the registrant's initial offering in accordance with Section 5 of the Act or is an offering taking place within one year of the effective date of the registrant's initial registered offering, then a prospectus satisfying Section 10 of the Act must be sent to each investor in a manner reasonably designed to arrive at least 7 calendar days before the investor signs a subscription agreement or otherwise commits to purchase securities.

(2) Takes place more than one year after the effective date of the registrant's initial registered offering in accordance with Section 5 of the Act, then a prospectus satisfying Section 10 of the Act must be sent to each investor in a manner reasonably designed to arrive at least 3 days before the investor signs a subscription agreement or otherwise commits to purchase the securities.

Note to paragraphs (b) and (c).

The issuer, underwriter or participating broker or dealer may choose to deliver a prospectus meeting the requirements of Section 10(a), instead of a prospectus meeting the requirements of Section 10, if it does so in accordance with the terms of paragraphs (b) and (c) of this section.

(d) *Roll-ups.* Notwithstanding paragraphs (a) through (c) of this section, if a registrant is registering a roll-up transaction as defined in § 229.901(c) of this chapter, a prospectus that satisfies the requirements of Section 10 of the Act must be sent to each investor no later than the earlier of:

(1) 60 calendar days before the meeting at which the roll-up transaction will be submitted to a vote or 60 calendar days before the earliest date on which partnership action could be taken by consent; and

(2) The date calculated by applying the maximum number of days permitted for giving notice under applicable state law.

(e) *Material changes.* If not previously disclosed by any other means to investors, material changes to the information reflected in the prospectus delivered must be set forth in a document sent to each investor in a manner reasonably designed to arrive at least 24 hours before:

(1) The securities are priced, if the offering is subject to paragraph (b) of this section;

(2) The investor signs a subscription agreement or otherwise commits to purchase securities, if the offering is subject to paragraph (c) of this section; or

(3) The date of the meeting at which the transaction will be submitted to a vote or on which partnership action could be taken by consent, if the offering is subject to paragraph (d) of this section.

(f) *Rule 462 registration statements.* Notwithstanding paragraphs (a) through (d) of this section, if an offering is registered in part through a registration statement filed under § 230.462(b) or § 230.462(e), a prospectus delivered with respect to the earlier registration statement to an investor in compliance with this § 230.172 will be deemed to satisfy the delivery requirements with respect to that investor under this § 230.172 with respect to the § 230.462(b) or § 230.462(e) registration statement for the offering, provided that the issuer, underwriter or participating dealer otherwise informs investors purchasing in the offering of the change in the size of the offering.

46. By adding § 230.173 to read as follows:

§ 230.173 Delivery of final prospectuses.

Notwithstanding Section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)), a prospectus that meets the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)) need not precede or accompany the carrying or delivery of any security by any person in an offering registered other than on Form S–8, Form C, Form SB–3, Form F–8, Form F–80 or F–10 (when that form is used in a business combination transaction) (§§ 239.16b, 239.6, 239.11, 239.38, 239.41 or 239.40 of this chapter) provided that:

(a) Prospectus information that satisfies the requirements of Section 10(a) of the Act other than the price-related information that may be omitted pursuant to § 230.430A is filed with the Commission prior to the transmission of any confirmation in connection with the offering;

(b) Delivery of prospectus information in accordance with § 230.172 or § 230.174, as applicable, has been made;

(c) At or before the time they receive any confirmation of sale, investors are informed where they can acquire promptly the prospectus information that meets the requirements of Section 10(a) of the Act, free of charge; and

(d) The security being carried or delivered is not issued by an investment company.

47. By revising § 230.174 to read as follows:

§ 230.174 Aftermarket delivery of prospectuses by dealers.

(a) For transactions that take place prior to the expiration of the 40-day or 90-day period specified in Section 4(3) of the Act (15 U.S.C. 77d(3)) in which a dealer is obliged to deliver a Section 10(a) (15 U.S.C. 77j(a)) prospectus, the dealer need only satisfy that obligation in transactions occurring during a period of twenty-five calendar days after the later of:

(1) The effective date of the registration statement; or

(2) The first date on which the security was bona fide offered to the public.

(b) For purposes of paragraph (a) of this section, the required prospectus is delivered if:

(1) A prospectus satisfying the requirements of Section 10(a) (other than omitting price-related information pursuant to § 230.430A) is on file with the Commission; and

(2) Prior to or at the same time each investor receives a confirmation the

dealer notifies it as to where it may obtain promptly that prospectus, free of charge.

(c) Paragraph (a) of this section shall not apply to any transaction relating to a *blank check company* (as defined in § 230.419). In such transactions, all dealers must deliver a prospectus satisfying the requirements of Section 10(a) for ninety calendar days after the date the funds and securities are released from the escrow or trust account under § 230.419.

(d) If a registration statement relates to offerings made on a continuous basis, a dealer's prospectus delivery obligation expires after the initial prospectus delivery period specified in this section.

(e) This section shall not apply to any transaction in which:

(1) The registration statement is the subject of a stop order issued under Section 8 of the Act (15 U.S.C. 77h); or

(2) The Commission provides, upon application or on its own motion, another aftermarket delivery obligation.

(f) Nothing in this section shall affect any obligation to deliver a prospectus pursuant to the provisions of Section 5 of the Act (15 U.S.C. 77e) by a dealer who:

(1) Is acting as an underwriter with respect to the securities involved; or

(2) Is engaged in a transaction as to securities constituting the whole or a part of an unsold allotment to, or subscription by, that dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

(g) No prospectus need be delivered in the 40-day or 90-day period specified in Section 4(3) of the Act (15 U.S.C. 77d(3)) if the registration statement is on Form F–6 (§ 239.36 of this chapter).

48. By amending § 230.176 by revising the section heading and the introductory text; by removing the word "and" at the end of paragraph (g); revising "incorporated." at the end of paragraph (h) to read "incorporated; and"; and by adding paragraph (i) to read as follows:

§ 230.176 Reasonable investigation and reasonable grounds for belief under Section 11 of the Act and reasonable care under Section 12(a)(2) of the Act.

In determining whether or not the conduct of a person, other than the issuer, constitutes a reasonable investigation or a reasonable ground for belief meeting the standard set forth in Section 11(c) of the Act (15 U.S.C. 77k(c)) or the exercise of reasonable care meeting the standard set forth in Section 12(a)(2) of the Act (15 U.S.C. 77*l*(a)(2)), relevant circumstances to include:

* * * * *

(i)(1) The circumstances listed in paragraph (i)(3) of this section if:

(i) The person is an underwriter;

(ii) Investment grade debt securities are not being offered;

(iii) The offering is marketed and priced in fewer than five days;

(iv) The issuer meets the requirements of General Instruction I.B.2. of Form B (§ 239.5 of this chapter); and

(v) The offering is registered on Form B (§ 239.5 of this chapter) pursuant to either General Instruction I.C.1. or I.C.2.

(2) The absence of any one or more of the circumstances listed in paragraph (i)(3) of this section, except for paragraph (i)(3)(i) of this section, should not be considered definitive in reaching a conclusion regarding whether the conduct of the underwriter met the standards set forth in Section 11(c) or 12(a)(2) of the Act.

(3)(i) Whether the underwriter:

(A) Reviewed the registration statement (which, for purposes of this section, includes all amendments and supplements to it and all documents incorporated by reference into it); and

(B) Conducted a reasonable inquiry into any fact or circumstance that would have caused a reasonable person to question whether the registration statement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(ii) Whether the underwriter discussed the information contained in the registration statement with the relevant executive officer(s) of the issuer (including, at a minimum, its chief financial officer or chief accounting officer or that person's designee (or person performing those functions)) and the issuer's chief financial officer or chief accounting officer or that person's designee (or person performing those functions) certified to the underwriter that:

(A) He or she has read the registration statement; and

(B) To the best of his or her knowledge after reasonable investigation, the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(iii) Whether the underwriter received from the independent accountants responsible for the audited financial statements included in the registration statement a letter contemplated by Statement on Auditing Standards No. 72 of the American Institute of Certified Public Accountants;

(iv) Whether the underwriter received an opinion from the issuer's legal counsel substantially to the effect that:

(A) Counsel is of the opinion that the registration statement and prospectus (except for financial statements, financial data and schedules included therein as to which counsel need not express any opinion) comply as to form in all material respects with the Act and the rules and regulations of the Commission thereunder; and

(B) Counsel has participated in the drafting and preparation of the registration statement and prospectus and nothing that has come to the attention of counsel that has caused it to believe that the registration statement (except for financial statements, financial data and schedules as to which counsel need not express any belief), contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(v)(A) Whether the underwriter employed legal counsel that reviewed:

(*1*) The issuer's registration statement and all periodic reports filed by the issuer with the Commission for the last full fiscal year ended prior to the offering and any portion of a fiscal year thereafter; and

(*2*) The issuer's charter, by-laws, corporate minutes for the last full fiscal year ended prior to the offering and any portion of a fiscal year thereafter, and all material contracts entered into by the issuer in the last five years prior to effectiveness of the registration statement;

(B) Whether underwriter's counsel opined substantially to the effect that nothing has come to its attention that would lead it to believe that the registration statement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(vi) Whether the underwriter employs a research analyst that:

(A) For at least the 6 months immediately prior to the commencement of the offering, has followed the issuer or the issuer's industry on an ongoing basis;

(B) Has issued a report on the issuer or the issuer's industry within the 12 months immediately prior to the commencement of the offering; and

(C) Has been consulted by the underwriter in connection with the disclosure used in the offering.

49. By amending § 230.401 by revising paragraph (g) to read as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) Except for registration statements and post-effective amendments that become effective automatically pursuant to § 230.462, § 230.464 and 230.485(b) (including registration statements that become effective automatically at the time designated by the issuer in accordance with § 230.462(f)(2)), a registration statement or any amendment thereto is deemed filed on the proper form unless the Commission objects to the form before the effective date.

50. By revising paragraph (d) of § 230.402 to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(d) Notwithstanding any other provision of this section, if a registrant files a registration statement pursuant to § 230.462(b), § 230.462(e) or § 230.462(f) by facsimile pursuant to § 230.110(d), the registrant need only file one complete copy of the registration statement with the Commission. That copy must include all exhibits and other documents that are a part of it. That copy need not be bound. It may include facsimile versions of signatures in accordance with paragraph (e) of this section.

* * * * *

51. By amending § 230.405 by revising the definition of "small business issuer" to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

(1) Has revenues (including revenues of any consolidated subsidiaries) of less than $50,000,000;

(2) Is a U.S. or Canadian issuer;

(3) Is not an investment company;

(4) If a majority-owned subsidiary, the parent corporation is also a small business issuer; and (5) Each majority owned subsidiary of the entity, if any, meets the criteria in paragraphs (2) and (3) of this definition.

* * * * *

§ 230.406 [Amended]

52. By amending § 230.406 by removing in paragraph (a) the words "Form S–3, F–2, F–3 (§ 239.13, 239.32 or 239.33 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form" and adding, in their place, the words "Form B (§ 239.5 of this chapter), or on Form A (§ 239.4 of this chapter) complying with General Instruction VIII. of that Form where the issuer plans to have the registration statement become effective upon filing or fewer than 20 days thereafter".

§ 230.415 [Amended]

53. By amending paragraph (a)(1)(x) of § 230.415 by removing the words "Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter)" and adding, in their place, the words "Form B (§ 239.5 of this chapter)".

54. By amending § 230.418 by revising the first sentence of the introductory text of paragraph to read as follows:

§ 230.418 Supplemental information.

(a) The Commission or its staff may, where it deems appropriate, request supplemental information not otherwise filed with the Commission concerning the registrant, the registration statement, the distribution of the securities, market activities and underwriters' activities. * * *

* * * * *

55. By removing in § 230.418(a)(3) the words "eligible to use Form S–2 or Form S–3 (§§ 239.12 or 239.13 of this chapter)" and adding, in their place, the words "that meets the requirements of General Instructions II.A. and II.B of Form A (§ 239.4 of this chapter) or is eligible to use Form B (239.5 of this chapter)".

56. By amending § 230.421 by adding paragraph (e) to read as follows:

§ 230.421 Presentation of Information in Prospectuses.

* * * * *

(e) If a prospectus is not subject to the informational requirements of Section 10 of the Act, it must contain a prominent legend that urges investors to read filed documents because they contain important information. The legend must identify the other types of filings available about the offering, for example: free writing, term sheet, Exchange Act reports, and prospectus (registration statement). The legend must also explain that investors can get the document(s) for free at the SEC's web site and explain which documents are free from the issuer. You may adapt the following legend or write your own in plain English:

Example: Before you invest, you should read the other document(s) that we have filed with the SEC. These documents [describe or name the documents] contain important information that you need to consider before making an investment decision. You may get these documents for free by visiting EDGAR on the SEC web site at www.sec.gov. We will send you [describe or name the documents] for free if you call us at 1 800 xxx–xxxx.

57. By amending § 230.424 by revising the section heading and paragraph (b)(2); revising Instruction 1 and redesignating it as "Instruction to § 230.424"; and by removing paragraph (b)(7) and Instruction 2 to read as follows:

§ 230.424 Filing of Section 10 prospectuses; number of copies.

* * * * *

(b) * * *

(2) A prospectus used in connection with a primary offering of securities made on a delayed basis pursuant to §§ 230.415(a)(1)(vii) or 230.415(a)(1)(viii) that discloses the public offering price, description of securities, specific method of distribution or similar matters shall be filed with the Commission no later than the second business day following the earlier of:

(i) The date the offering price is determined; and

(ii) The date the prospectus is first used after effectiveness in connection with a public offering or sale.

* * * * *

Instruction to § 230.424. Notwithstanding §§ 230.424(b)(2) and 230.424(b)(5), a form of prospectus or prospectus supplement relating to an offering of mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) that is required to be filed pursuant to paragraph (b) of this section shall be filed with the Commission no later than the second business day it is first used after effectiveness in connection with a public offering or sale.

* * * * *

58. By adding § 230.425 to read as follows:

§ 230.425 Filing of "free writing" and other prospectuses.

(a) A registrant must file under this section the information described in paragraph (b) of this section except that it need not file:

(1) Any factual business communication, as defined in § 230.169, regardless of when it is made;

(2) Any research report used in reliance on § 230.137, § 230.138, § 230.139, § 230.165 or § 230.166;

(3) Any information used in connection with an offering under Form S–8 (§ 239.16b of this chapter);

(4) Any information used in connection with an offering on Form B (§ 239.5 of this chapter) under a dividend or interest reinvestment plan;

(5) Any information used in connection with a direct stock purchase plan;

(6) Any information filed or to be filed as part of an effective registration statement (except in a business combination transaction registered on

Form C, SB–3, F–8, F–10 or F–80 (§§ 239.6, 239.11, 239.38, 239.40 or 239.41)); or

(7) Any confirmation described in § 240.10b–10 of this chapter;

(b)(1) Five copies of any prospectus used in reliance on § 230.165 shall be filed with the Commission on or before the date of first use.

(2) Five copies of any prospectus used prior to the filing of a registration statement in reliance on § 230.166(*a*) shall be filed with the Commission at the time the related registration statement is filed.

(3) Five copies of any prospectus used before the filing of a registration statement in reliance on § 230.166(b) shall be filed with the Commission on or before the date of first use. Each copy of a prospectus filed under this section must identify the filer and the company that is the subject of the offering in the upper right corner of the cover page in addition to the information required by paragraph (c) of this section.

(4) Five copies of any prospectus used in reliance on § 230.168 shall be filed with the Commission at the time the related registration statement is filed.

(c) Each copy of a prospectus filed under this section shall contain, in the upper right corner of the cover page, the Commission file number for the related registration statement or, if that file number is unknown, a description sufficient to identify the related registration statement.

§ 230.428 [Amended]

59. By removing in § 230.428(b)(2)(iii) the words "or F–1 (§ 239.31 of this chapter)" and adding, in their place, the words "or Form A (§ 239.4 of this chapter)".

60. By revising § 230.429 to read as follows:

§ 230.429 Prospectus relating to several registration statements.

(a) Where a registrant has filed two or more registration statements, it may file a single prospectus in the latest one in order to satisfy the requirements of the Act and the rules and regulations thereunder for that offering and any other offering(s) registered on the earlier registration statement(s). The combined prospectus in the latest registration statement must include all of the information that would currently be required in a prospectus relating to all offering(s) it covers. The combined prospectus may be filed as part of the initial filing of the latest registration statement, in a pre-effective amendment to it or in a post-effective amendment to it.

(b) Where a registrant relies on paragraph (a) of this section, the registration statement containing the combined prospectus shall act, upon effectiveness, as a post-effective amendment to those registration statements whose offerings have been combined into the new or amended registration statement. The registrant must identify the earlier registration statement(s) to which the combined prospectus relates by setting forth the Commission file number(s) at the bottom of the facing page of the latest registration statement.

61. By amending § 230.430A by removing the word "fifteen" and adding, in each place it appears, the word "five" in paragraph (a)(3) and by revising the last sentence of Instruction to Paragraph (a) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

Instruction to Paragraph (a). * * * Notwithstanding the foregoing, any increase or decrease in volume (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the price range may be reflected in the form of prospectus filed with Commission pursuant to § 230.424(b)(1) or § 230.497(h) if, in the aggregate, the changes in volume and price result in no more than a 20% change in the amount of net proceeds disclosed in a prospectus that was delivered to investors in accordance with § 230.172(b) or, if no prospectus was required to be delivered, in the prospectus that was part of the effective registration statement.

* * * * *

§ 230.431 [Removed and Reserved]

62. By removing and reserving § 230.431.

63. By revising § 230.434 to read as follows:

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings by registered investment companies.

(a) Where an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) registers an offering of securities on Form N–2 (§ 274.11a–1 of this chapter) or Form S–6 (§ 239.16 of this chapter) and the conditions described in paragraph (b) are satisfied, then:

(1) The prospectus subject to completion and the term sheet described in paragraph (b)(4), taken together, shall constitute a prospectus that meets the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)) for purposes of Section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) and Section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)); and

(2) The Section 10(a) prospectus described in paragraph (a)(1) shall have:

(i) Been sent or given prior to or at the same time that a confirmation is sent or given for purposes of Section 2(a)(10) of the Act; and

(ii) Accompanied or preceded the transmission of the securities for purpose of sale or for delivery after sale for purposes of Section 5(b)(2) of the Act.

(b) Conditions:

(1) The securities are offered for cash in a firm commitment underwritten offering;

(2) A prospectus subject to completion and any term sheet described in paragraph (b)(iv), together or separately, are sent or given prior to or at the same time with the confirmation;

(3) The prospectus subject to completion and term sheet, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or an effective post-effective amendment thereto (including, in both instances, information deemed to be a part of the registration statement at the time of effectiveness pursuant to Rule 430A(b) (§ 230.430A(b)); and

(4) The term sheet under this paragraph (b) sets forth all information material to investors with respect to the offering that is not disclosed in the prospectus subject to completion or the confirmation.

(c) The information contained in any term sheet described in this section shall be deemed to be a part of the registration statement as of the time such registration statement was declared effective.

Instruction: Any form of prospectus or term sheet used in reliance on this section shall be filed in accordance with § 230.497(h).

(d) Any term sheet described under this section shall state, at the top center of its cover page, that the term sheet is a supplement to a prospectus and identify that prospectus by issuer name and date; clearly identify the document as a term sheet used in reliance on Rule 434; set forth the approximate date of the term sheet's first use; and clearly identify the documents that, when taken together, constitute the Section 10(a) prospectus.

(e) For purposes of this section, prospectus subject to completion shall mean any prospectus that is either a preliminary prospectus used in reliance on Rule 430 (§ 230.430) or a prospectus omitting information in reliance on Rule 430A (§ 230.430A).

64. By revising § 230.455 to read as follows:

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission under the Act in paper format shall be filed at its principal office, except for registration statements and post-effective amendments thereto filed via facsimile pursuant to § 230.110(d). Materials not filed electronically or via facsimile may be filed by delivery to the Commission through the mails or otherwise.

65. By amending § 230.456 by revising the section heading; designating the current text as paragraph (a); and adding paragraph (b) to read as follows:

§ 230.456 Date of filing, timing for fee payment by small business issuers.

* * * * *

(b)(1) Notwithstanding Section 6 of the Act (15 U.S.C. 77f) and paragraph (a) of this section, a small business issuer filing a registration statement on Form SB–1, SB–2 or SB–3 (§§ 239.9, 239.10 or 239.11 of this chapter) that contains the delaying amendment described in § 230.473(a) may defer payment of the registration fee required by Section 6, provided that it pays the fee no later than the first date to occur of the following:

(i) The date on which the small business issuer requests that the Commission grant effectiveness of the registration statement under Section 8(a) of the Act (15 U.S.C. 77h(a)); or

(ii) The date on which the small business issuer files an amendment to the registration statement that states that the registration statement shall thereafter become effective in accordance with the provisions of Section 8(a) of the Act, as described in § 230.473(b).

(2) Notwithstanding Section 6(c) of the Act, where the small business issuer defers payment of the registration fee in accordance with paragraph (b)(1) of this section, the registration statement (and any amendment thereto) will be considered filed when it is received by the Commission (assuming all requirements of the Act and the rules that apply to such filing have been complied with, other than payment of the registration fee).

66. By amending § 230.457 by adding paragraphs (f)(5), (p) and (q) and revising the first sentence of paragraph (o) to read as follows:

§ 230.457 Computation of Fee.

* * * * *

(f) * * *

(5) If a filing fee is paid pursuant to this paragraph for the registration of an offering and the registration statement also covers the resale of such securities, no additional filing fee is required to be paid with respect to the resale.

* * * * *

(o) Where an issuer is registering an offering of securities, the registration fee may be calculated on the basis of the maximum aggregate offering price of all the securities listed in the "Calculation of Registration Fee" table. * * *

(p) Where all or a portion of the securities offered under a registration statement remain unsold after the offering's completion or termination, the dollar amount of the filing fee paid that is associated with the unsold securities may be used as an offset against the total filing fee due to be paid for a subsequent registration statement or registration statements. The subsequent registration statement(s) must be filed by the same registrant or a wholly-owned subsidiary of that registrant within five years of the completion or termination of the initial registration statement.

(q) Notwithstanding any other provisions of this section, no filing fee is required for the registration of an indeterminate amount of securities to be offered solely for market making purposes by an affiliate of the issuer.

67. By revising paragraph (b)(2) of § 230.461 to read as follows:

§ 230.461 Acceleration of effective date.

* * * * *

(b) * * *

(2)(i) Where delivery of prospectus information to investors required by § 230.172 is not accomplished, until the registrant, any underwriter and any participating dealer give the Commission adequate assurance that they have complied with § 230.172; and

(ii) Where the prospectus information delivered to investors is found to be inaccurate or inadequate in any material respect, until the registrant, any underwriter and any participating dealer give the Commission adequate assurance that they have informed investors that will purchase in the offering of the appropriate correcting information.

* * * * *

68. By amending § 230.462 by revising the section heading, paragraphs (a), (b)(2) and (c); and by adding paragraphs (e), (f) and (g) to read as follows:

§ 230.462 Effectiveness of certain registration statements and post-effective amendments.

(a) A registration statement filed in accordance with Form S–8 (§ 239.16b of this chapter) shall become effective upon filing with the Commission.

(b) * * *

(2) The registration statement is filed before the date confirmations are sent or given or, in an offering described in § 230.145(a), before the meeting date at which security holders approved the transaction or, if no meeting was held, the date the transaction was approved by security holders' authorization or consent; and

* * * * *

(c) A post-effective amendment shall become effective upon filing with the Commission if:

(1) Other than price-related information previously omitted in reliance upon § 230.430A, it contains no substantive changes from or additions to the prospectus previously filed:

(i) As part of the effective registration statement; or

(ii) As part of a post-effective amendment to that registration statement; and

(2) The post-effective amendment is filed:

(i) Prior to the time confirmations are sent or given; and

(ii) No more than 30 days after the effectiveness of the registration statement or another post-effective amendment thereto that contains a prospectus.

* * * * *

(e) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is filed on Form SB–1 (§ 239.9 of this chapter), Form SB–2 (§ 239.10 of this chapter) or Form SB–3 (§ 239.11 of this chapter) and is registering additional securities of the same class(es) as were included in an earlier effective registration statement filed on Form SB–1, Form SB–2 or Form SB–3 for the same offering;

(2) The registration statement is filed before the date confirmations are sent or given or, in an offering described in § 230.145(a), before the meeting date at which security holders approved the transaction or, if no meeting was held, the date the transaction was approved by security holders' authorization or consent; and

(3) The new registration statement registers additional securities in an amount and at a price that together represent no more than 50% of the maximum aggregate offering price set forth for each class of securities in the "Calculation of Registration Fee" table contained in the earlier registration statement.

(f)(1) The following registration statements shall become effective in accordance with paragraph (e)(2) of this section:

(i) A registration statement filed in accordance with Form B (§ 239.5 of this chapter);

(ii) A registration statement filed in accordance with Schedule B (15 U.S.C. 77aa) by a foreign government issuer that:

(A) Registered an offering under the Act within the 3 years before the filing date of the current offering; and

(B) Is registering an offering of at least $250 million in securities that is underwritten on a firm commitment basis; and

(iii) A registration statement filed in accordance with Form A (§ 239.4 of this chapter) by an issuer that:

(A) Satisfies the requirements of General Instruction II.A. or II.C. of Form A and is not disqualified as specified in General Instruction II.B. of Form A.; and

(B) Has a public float of $75 million or more as of the filing date; or

(C) Incorporates into the Form A its annual report filed under Section 13(a) or 15(d) of the Securities Exchange Act (15 U.S.C. 78m or 78o(d)) for the end of its most recently completed fiscal year and that annual report was reviewed fully by the staff of the Commission and was amended in accordance with the staff's comments (if so requested).

(2) The registrant shall designate the effective date of the registration statement listed in paragraph (f)(1) of this section. It must indicate on the front page of the Form or Schedule that the registration statement will become effective either:

(i) Upon filing with the Commission;

(ii) At the date and time set forth on the front page of the Form or Schedule; or

(iii) As specified in a later amendment to the Form or Schedule.

(g) An issuer may file only one registration statement pursuant to either paragraph (b) or (e) of this section for any offering.

69. By revising § 230.464 to read as follows:

§ 230.464 Effective date of a post-effective amendment filed on Form A, Form B or Form S–8.

(a) If at the time a registrant files a post-effective amendment on Form A, it meets the requirements set forth in General Instruction VIII. to Form A (§ 239.4 of this chapter):

(1) Its post-effective amendment filed on Form A shall become effective in accordance with the registrant's designation on the front page of Form A either:

(i) Upon filing with the Commission;

(ii) On the date set forth on the front page of Form A; or

(iii) As specified in a later post-effective amendment to the Form; and

(2) The effective date of the registration statement shall be deemed to be the effective date of the post-effective amendment.

(b) If at the time a registrant files a post-effective amendment on Form B (§ 239.5 of this chapter), it meets the eligibility requirements to file that post-effective amendment on Form B:

(1) Its post-effective amendment filed on Form B shall become effective in accordance with the registrant's designation on the front page of Form B either:

(i) Upon filing with the Commission;

(ii) On the date set forth on the front page of Form B; or

(iii) As specified in a later post-effective amendment to the Form; and

(2) The effective date of the registration statement shall be deemed to be the effective date of the post-effective amendment.

(c) If a registrant meets the eligibility requirement of Form S–8 (§ 239.16b of this chapter), its post-effective amendment filed on Form S–8:

(1) Shall become effective upon filing with the Commission; and

(2) The effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

70. By revising the first sentence of paragraph (a) of § 230.471 and adding paragraph (c) to read as follows:

§ 230.471 Signatures to amendments.

(a) Except as provided in paragraph (c) of this section or § 230.478, every amendment to a registration statement shall be signed by the persons specified in Section 6(a) of the Act (15 U.S.C. 77f(a)). * * *

* * * * *

(c)(1) All persons who sign a registration statement on Form B (§ 239.5 of this chapter) will be deemed to have signed a post-effective amendment to that registration statement where an authorized representative of the registrant signs that amendment if all the following are true:

(i) The registration statement relates to an offering under § 230.415(a)(1)(x);

(ii) The person did not grant a power of attorney for another person to sign a post-effective amendment; and

(iii) The post-effective amendment does not expressly state to the contrary.

(2) Despite paragraph (c)(2) of this section, if any person who signed the registration statement no longer acts in the capacity in which such person signed the registration statement, the registrant must provide the signature of the person who currently acts in that capacity in the post-effective amendment.

71. By revising paragraph (e) of § 230.472 to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(e) Notwithstanding any other provision of this section, if a registrant files a post-effective amendment pursuant to § 230.462(b), § 230.462(e) or § 230.462(f) by facsimile pursuant to § 230.110(d), the registrant need file only one complete copy of the registration statement with the Commission. That copy must include all exhibits and other documents that are a part of it. That copy need not be bound. It may include facsimile versions of signatures in accordance with § 230.402(e).

§ 230.473 [Amended]

72. By amending § 230.473 by removing in paragraph (d) the words "Form S–3, F–2 or F–3 (§ 239.13, § 239.32 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form" and adding, in their place, the words "Form B (§ 239.5 of this chapter) or on Form A (§ 239.4 of this chapter) complying with General Instruction VIII. of that Form".

§ 230.475a [Removed]

73. By removing § 230.475a.

74. By amending § 230.477 by revising paragraphs (b) and (c); and by adding paragraph (d) to read as follows:

§ 230.477 Withdrawal of registration statement or amendment.

* * * * *

(b) Any application for withdrawal of an entire registration statement will be deemed granted upon filing of the application with the Commission if made prior to the effective date.

(c) The registrant must sign any application for withdrawal and must state fully in it the grounds on which it is making the application. If the application for withdrawal is being made in anticipation of reliance on § 230.152(c), the registrant must state in the application that no securities were sold in connection with the offering and that it may undertake a subsequent private offering in reliance on § 230.152.

(d) Any withdrawn document will remain in the Commission's files, but an indication of the date of withdrawal will be included in the file for the withdrawn document along with a notation that it was withdrawn upon the request of the registrant with the consent of the Commission.

75. To add § 230.493A to read as follows:

§ 230.493A Filing of securities term sheet in certain offerings registered on Schedule B.

Foreign government issuers must file with the Commission any securities term sheet they deliver pursuant to § 230.172(a) as part of the prospectus in the related effective registration statement on Schedule B (15 U.S.C. 77aa). They must file the securities term sheet no later than the date of the first sale in the offering.

76. By adding § 230.499 to read as follows:

§ 230.499 Concurrent registration under the Exchange Act on Schedule B.

(a) Any issuer filing a registration statement pursuant to Schedule B (15 U.S.C. 77aa) also may use that Schedule to register concurrently under Section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78l(b) or (g)). The issuer may register any class of securities that is the subject of the offering it is registering under the Securities Act. To register, the issuer must check the appropriate box(es) and identify the class(es) of securities it is registering under Section 12(b) or 12(g) and the exchange or market for those securities. The issuer also must include the following paragraph and table on the facing page of the Schedule B registration statement:

The issuer is using Schedule B to register concurrently under Section 12(b) or 12(g) of the Exchange Act one or more classes of securities that are the subject of the offering being registered under the Securities Act. The issuer has checked the appropriate box(es) and identified the class(es) of securities it is registering under Section 12(b) or 12(g) on the table below:

☐Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

____

____

Name of exchange on which listed:

____

____

☐Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

____

____

Name of market on which quoted:

____

____

(b) Registration on Schedule B of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

(1) Receipt by the Commission of certification from the national securities exchange listed on the cover of the Schedule B that the securities have been approved for listing; or (2) Effectiveness of the Schedule B under the Securities Act.

(c) Registration on this Schedule B of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of:

(1) 60 days after the initial filing of this Schedule B; or

(2) The effectiveness of this Schedule B.

(d) The issuer must file at least one complete, signed copy of the registration statement on Schedule B with each exchange or market identified on the cover of the Schedule B.

77. By amending § 230.502 by removing in paragraph (b)(2)(ii)(B) the words "Form S–1 (§ 239.11 of this chapter)" and adding, in their place, the words "Form A (§ 239.4 of this chapter)", by removing "SB–2 (§ 239.10 of this chapter) or S–11 (§ 239.18 of this chapter)" and adding, in their place, the words "or SB–2 (§ 239.10 of this chapter)", by removing in paragraph (b)(2)(ii)(D) the words "Form F–1 (§ 239.31 of this chapter)" and adding, in their place, the words "Form A (§ 239.4 of this chapter)" by removing in paragraph (c)(2) the words "with § 230.135c" and adding, in their place, the words "with § 230.135"; revising the Note heading following paragraph (a) and adding a sentence at the end of that Note to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(a) *Integration.* * * *

Note to Paragraph (a). * * * *See also* § 230.152 which provides safe harbors from integration of public offerings and private offerings made around the same time, including offerings under § 230.506.

* * * * *

78. By revising paragraph (a) of § 230.504 to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this section shall be exempt from the provisions of Section 5 of the Act (15 U.S.C. 77e) under Section 3(b) of the Act (15 U.S.C. 77c(b)) if the issuer is not:

(1) An investment company;

(2) A development stage company that either:

(i) Has no specific business plan or purpose; or

(ii) Has indicated that its business plan is to engage in a merger or acquisition with an unidentified entity or entities; or

(3) Subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)), except that an issuer may be subject to those requirements in connection with the offer and sale of securities underlying convertible securities or warrants if:

(i) The issuer offered and sold the convertible securities or warrants in compliance with this section while it was not subject to those requirements; and

(ii) The issuer offered the securities underlying the convertible securities or warrants in compliance with this section prior to becoming subject to those requirements.

* * * * *

79. By amending § 230.902 by removing the word "and" at the end of paragraph (c)(3)(v)(B); by revising paragraph (c)(3)(vi); by removing the period at the end of paragraph (c)(3)(vii) and adding in its place "; and"; and by adding paragraphs (c)(3)(viii) and (h)(4) to read as follows:

§ 230.902 Definitions.

* * * * *

(c) *Directed selling efforts.* * * *

(3) * * *

(vi) Publication by an issuer of a notice in accordance with § 230.135;

* * * * *

(viii) Publication or distribution of information, an opinion or a recommendation by a broker or dealer in accordance with § 230.138 or § 230.139.

* * * * *

(h) *Offshore transaction.* * * *

(4) Notwithstanding paragraph (h)(1) of this section, publication or distribution of information, an opinion or a recommendation in accordance with § 230.138 or § 230.139 by a broker or dealer at or around the time of an offering in reliance on Regulation S (§§ 230.901 through 230.904) will not cause the transaction to fail to be an offshore transaction as defined in this section.

* * * * *

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILERS

80. By revising the authority citation for part 232 to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 77z-3, 78c(b), 78d, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 78mm, 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

81. By amending § 232.13 by revising paragraphs (a)(1)(ii), (a)(1)(iii) and (a)(3) before the Note; and by adding paragraph (a)(1)(iv) to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(1) * * *

(ii) The filing conforms to the applicable technical standards regarding electronic format in the EDGAR Filer Manual;

(iii) With respect to Securities Act filings, including filings under Section 24(f) of the Investment Company Act (15 U.S.C. 80a-24(f)), the required fee payment:

(A) For registration statements filed in accordance with Forms SB–1, SB–2 or SB–3 (§§ 239.9, 239.10 or 239.11 of this chapter) is made no later than the earlier of:

(*1*) The date on which the small business issuer requests, under § 230.461 of this chapter, that the Commission accelerate the effective date of its registration statement; or

(*2*) The date on which the small business issuer files an amendment to the registration statement that contains the statement set forth in § 230.473(b) of this chapter.

(B) For registration statements other than those filed in accordance with Forms SB–1, SB–2 or SB–3 is confirmed upon filing; and

(iv) Notwithstanding paragraph (a)(1)(iii) of this section, the failure to pay an insignificant amount of the fee at the required time, as a result of a bona fide error, shall not affect the filing.

(2) * * *

(3) Notwithstanding paragraph (a)(2) of this section, any registration statement or any post-effective amendment thereto filed pursuant to §§ 230.462(b), 230.462(e) or 230.462(f) of this chapter by direct transmission commencing on or before 10:00 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

82. By amending § 232.101 by revising the Note following paragraph (a)(3); by removing paragraph (c)(7); and by redesignating paragraphs (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), (c)(14), (c)(15), (c)(16) and (c)(17) as paragraphs (c)(7), (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), (c)(14), (c)(15) and (c)(16) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(3) * * *

Note to Paragraph (a): Failure to submit a required electronic filing pursuant to paragraph (a) of this section, as well as any required confirming electronic copy of a paper filing made in reliance on a hardship exemption as provided in §§ 232.201 and 232.202, will result in the ineligibility to use Form B and S–8 (§§ 239.5 and 239.16b of this chapter), restrict incorporation by reference of the document submitted in paper (*see* § 232.303), and toll certain time periods associated with tender offers (*see* §§ 240.13e-4(f)(12) and 240.14e-1(e) of this chapter).

* * * * *

83. By amending § 232.201 revising Note 1 following paragraph (b) to read as follows:

§ 232.201 Temporary hardship exemption.

* * * * *

(b) * * *

Note 1 to Paragraph (b): Failure to submit the confirming electronic copy of a paper filing made in reliance on a temporary hardship exemption, as required in paragraph (b) of this section, will result in the ineligibility to use Form B and S–8 (§§ 239.5 and 239.16b of this chapter), restrict incorporation by reference of the document submitted in paper (*see* § 232.303), and toll certain time periods associated with tender offers (*see* §§ 240.13e-4(f)(12) and 240.14e-1(e) of this chapter).

* * * * *

84. By amending § 232.202 by revising Note 3 following paragraph (d) to read as follows:

§ 232.202 Continuing hardship exemption.

* * * * *

(d) * * *

Note: 3 Failure to submit the confirming electronic copy of a paper filing made in reliance on a continuing hardship exemption granted pursuant to paragraph (d) of this section will result in the ineligibility to use Forms B and S–8 (§§ 239.5 and 239.16b of this chapter), restrict incorporation by reference of the document submitted in paper (*see* § 232.303), and toll certain time periods associated with tender offers (*see* §§ 240.13e-4(f)(12) and 240.14e-1(e) of this chapter).

85. By adding a sentence at the end of paragraph (a) of § 232.304 to read as follows:

§ 232.304 Graphic and image material.

(a) * * * Additionally, five copies of any prospectus filed in accordance with § 230.425 that contains graphic, imagine or audio material that cannot be reproduced in the electronic filing must be filed with the Commission in its original form.

* * * * *

§ 232.311 [Amended]

86. By amending § 232.311 by removing paragraph (i).

87. By amending § 232.401 by revising the last sentence of the Note to read as follows:

§ 232.401 Financial Data Schedule.

* * * * *

Note: * * * Further, electronic filers that have not filed a required Financial Data Schedule will be ineligible to use Form B and Form S–8 (§§ 239.5 and 239.16b of this chapter).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

88. By revising the general authority citation for part 239 to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 78mm, 78u-5, 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

§§ 239.11, 239.12, 239.13, 239.18, 239.25, 239.31, 239.32, 239.33, 239.34 and Forms S–1, S–2, S–3, S–4, S–11, F–1, F–2, F–3, and F–4 [Removed and Reserved]

89. By removing and reserving § 239.11, § 239.12, § 239.13, § 239.25, § 239.18, § 239.31, § 239.32, § 239.33, § 239.34, and by removing Forms S–1, S–2, S–3, S–4, S–11, F–1, F–2, F–3, and F–4

90. By adding § 239.4 and Form A to read as follows:

§ 239.4 Form A, for registration under the Securities Act of 1933 and optional concurrent registration under the Securities Exchange Act of 1934.

(a) This form shall be used for registration under the Securities Act of 1933 (15 U.S.C. 77a *et. seq.*) ("Securities Act") of any offering for which no other form is authorized or prescribed. Therefore, for example, this form shall not be used for:

(1) Any offering for which Form C or Form SB–3 (§ 239.6 or 239.11) is authorized; or

(2) Any offering by a foreign government or a political subdivision thereof for which Schedule B (15 U.S.C. 77aa) is authorized.

(b) A registrant also may use this form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form A will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form A—Registration Statement Under The Securities Act of 1933 [and Optional Registration Pursuant to Section 12(b) or 12(g) of The Securities Exchange Act of 1934]

(Exact name of Registrant as specified in its charter)

______

(Translation of Registrant's name into English, if applicable)

______

(State or other jurisdiction of incorporation or organization)

______

(I.R.S. Employer Identification Number)

______

(Address and telephone number of Registrant's principal executive offices)

______

(Name, address and telephone number of Registrant's agent for service)

______

(Web Site Address, if any)

______

(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales ______

If you are a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If you are not a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If any of the securities being registered on this Form are to be offered pursuant to Securities Act Rule 415, check the following box. [ ] ______

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ______

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(c) to re-start the 15-business-day period during which pricing must occur under Securities Act Rule 430A(a)(3) or to reflect a non-substantive change from, or addition to, the prospectus, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ______

If this Form is a post-effective amendment filed in accordance with Rule 462(d) under the Securities Act solely to add exhibits, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ______

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

______

______

Name of exchange on which listed:

______

______

This Section 12(b) registration will become effective upon the later of (1) effectiveness of this Form A; or (2) receipt by the Commission of certification from the national securities exchange listed above.

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

______

______

Name of market on which quoted:

______

______

Section 12(g) registration statements become effective automatically 60 days after filing. You may check box 1 or 2, below, to shorten this time period. Also, you may check box 3, below, to preserve your option to shorten this time period. If you check box 3 and do not file a later amendment, the registration of the class of securities listed above will become effective 60 days after filing of this Form A.

We propose that this filing become effective (check appropriate box):

1. [ ] upon filing with the Commission. By checking this box, the undersigned are certifying compliance with the delivery requirements of Securities Act Rule 172(b) in connection with the offering. In addition, in checking this box, any underwriter in connection with the offering also is requesting that the registration statement become effective upon filing.

2. [ ] on ______ at ______. By checking this box, the undersigned are certifying compliance with the delivery requirements of Securities Act Rule 172(b) in connection with the offering. In addition, in checking this box, any underwriter in connection with the offering also is requesting that the registration statement become effective upon the date and time designated.

3. [ ] as specified in a later amendment to this Form.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.

2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.

3. If the fee is calculated under Rule 457(o), the "Amount to be registered" and the "Proposed maximum offering price per unit" need not appear in this table.

4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. Rules as to Use of Form A

A. This Form shall be used for registration under the Securities Act of 1933 ("Securities Act") of any offering for which no other form is authorized or prescribed. Therefore, for example, this Form shall not be used for:

1. any offering for which Form C or Form SB–3 is authorized; or

2. any offering by a foreign government or a political subdivision thereof for which Schedule B is authorized.

B. A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g).

II. Registrant Information—Incorporation by Reference

A. *Registrants Eligible to Incorporate by Reference.* Unless otherwise provided in General Instruction II.B., a registrant may comply with Items 12 and 13, instead of Item 14, if it meets the following requirements:

1. the registrant:

(a) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act; or

(b) is required to file reports pursuant to Section 15(d) of the Exchange Act;

2. for a period of at least twenty-four full calendar months and any portion of a month immediately preceding the date of filing this Form, the registrant:

(a) has been subject to the requirements of Section 12 or Section 15(d) of the Exchange Act;

(b) has filed all material it was required to file pursuant to Sections 13, 14 and 15(d) of the Exchange Act; and

(c) has filed two annual reports if its public float is less than $75 million.

(3) for a period of at least twelve full calendar months and any portion of a month immediately preceding the date of filing this Form, the registrant has filed in a timely manner all materials it was required to file pursuant to Sections 13, 14 and 15(d) of the Exchange Act.

Note to General Instruction II.A.2.(c):

If a registrant filed a Form 12b–25 to delay filing any report (or portion of a report) during that time period, it must have filed the related report (or portion) within the time prescribed by Rule 12b–25.

B. *Registrants Ineligible to Incorporate by Reference and Rely on Automatic Effectiveness.* A registrant must comply with Item 14 and is ineligible to rely on Securities Act Rule 462(f)(1)(iv) if it fails to meet any of the conditions of General Instruction II.A. or any of the following is true:

1. within 2 years before the date of filing this Form, the registrant was a development stage company that either:

(a) had no specific business plan or purpose; or

(b) indicated that its business plan was to engage in a merger or acquisition with an unidentified entity or entities;

2. within two years before the date of filing this Form, the registrant was a shell entity having few or no assets, earnings or operations;

3. the registrant is registering an offering of "penny stock" as defined in Exchange Act Rule 3a51–1 or has issued it in the two years prior to the date of filing this Form;

4. the registrant or any of its subsidiaries has, since the end of the last fiscal year for which the registrant included certified financial statements in an Exchange Act report:

(a) failed to pay any dividend or sinking fund installment on preferred stock;

(b) caused any material delinquency with respect to preferred stock that was not cured within 30 days; or

(c) defaulted on any payment of principal, interest, a sinking fund installment, a purchase fund installment or any other installment on indebtedness, or defaulted on any rental on a long-term lease, if such debt and lease defaults in the aggregate are material;

5. the independent accountant that examined the registrant's financial statements for the most recent fiscal year expressed in its report substantial doubt about the registrant's ability to continue as a going concern;

6. within three years before the date of filing, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the registrant, or a court appointed a receiver, fiscal agent or similar officer with respect to the business or property of the registrant. If true, however, this would not disqualify the registrant if it has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency or receivership process;

7. within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter was convicted of any felony or misdemeanor described in clauses (i) through (iv) of Section 15(b)(4)(B) of the Exchange Act;

8. within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter was made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(a) prohibits future violations of any antifraud provision of the securities laws or Section 5 of the Securities Act;

(b) requires that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter cease and desist from violating any antifraud provision of the securities laws or from violating Section 5 of the Securities Act; or

(c) determines that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter violated any antifraud provision of the securities laws or Section 5 of the Securities Act;

9. the registrant is a "small business issuer," as defined in Securities Act Rule 405, that provided the "Information Required in Annual Report of Transitional Small Business Issuers" in its most recent annual report on Form 10–KSB; and

10. the registrant would incorporate by reference into its Form A registration statement a report under the Exchange Act that:

(a) the Commission, after review, requested that the registrant amend in accordance with its comments; and

(b) either the registrant did not amend the report or, in the Commission's judgment, did not amend the report in accordance with the Commission's comments.

C. *Successor Registrants.* We will deem a successor registrant to have satisfied the eligibility requirements of General Instruction II.A. of this Form if it satisfies either of the following requirements:

1.(a) taken together, the registrant and its predecessor(s) meet the eligibility requirements in General Instruction II.A. of this Form;

(b) the primary purpose of the succession was to change the state or other jurisdiction of incorporation of the predecessor(s) or to form a holding company for the predecessor(s); and

(c) the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

2. the predecessor(s) met the eligibility requirements of General Instruction II.A. of this Form at the time of succession and the registrant has continued to meet them since the succession.

III. Domestic and Foreign Registrants

A. *Definitions.*

1. As used in this Form, "U.S. registrant" includes all registrants other than foreign governments and foreign private issuers.

2. As used in this Form, "foreign registrant" includes only registrants that are foreign private issuers.

3. "Foreign government" and "foreign private issuer" are defined in Rule 405 of Regulation C.

B. *Information Required.*

1. U.S. registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to foreign registrants.

2. Foreign registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to U.S. registrants.

IV. Free Writing Prospectus Information

You should read Securities Act Rule 165. That rule permits a Form A registrant and those acting on its behalf to use "free writing" offering materials that do not meet the requirements of Section 10 of the Act. Those offering materials may be used after the registrant has filed with the Commission a registration statement containing the Section 10 prospectus. If you use a prospectus in reliance on that Rule, you must file it when required to do so by Securities Act Rule 425.

V. Securities Act Rules and Regulations

A. *Prospectus delivery.* You should read Securities Act Rule 172. That rule describes prospectus delivery obligations applicable to offerings registered on this Form.

B. *Preparation and filing of Form.* You should read the other rules and regulations under the Securities Act (Part 230 of Title 17 of the Code of Federal Regulations), particularly Regulation C, Regulation S–K and Form 20–F. Regulation C contains general requirements regarding the preparation and filing of registration statements. Regulation S–K contains non-financial statement disclosure requirements applicable to registration statements. Form 20–F also contains non-financial statement disclosure requirements, but they apply only to foreign private issuers.

C. *Blank check companies.* If the offering registered on this Form relates to a blank check company, you should read Securities Act Rule 419. Among other things, that Rule contains additional disclosure requirements.

VI. Foreign Registrant Financial Statements

A. A foreign registrant must reconcile its financial statements included in or incorporated into this registration statement. It must reconcile them to Item 18 of Form 20–F, except as otherwise permitted in paragraph B of this General Instruction.

B. A foreign registrant need only reconcile its financial statements to Item 17 of Form 20–F if:

1. it is registering an offering of its non-convertible investment grade securities. A security is "investment grade" if, at the time of sale:

(a) it is rated by at least one nationally recognized statistical rating organization ("NRSRO") (as that term is used in Exchange Act Rule 15c3–1(c)(2)(vi)(F)) in one of the generic rating categories that signify investment grade; and

(b) no other NRSRO rating the security has placed it in a category that does not signify investment grade;

2. it is registering an offering of its securities to be issued upon the exercise of outstanding rights granted pro rata to all existing security holders of the class of securities to which the rights attach;

3. it is registering an offering of its securities pursuant to a dividend or interest reinvestment plan;

4. it is registering an offering of its securities upon the conversion of outstanding convertible securities that it (or its affiliate) issued; or

5. it is registering an offering of its securities upon the exercise of outstanding transferrable warrants that it (or its affiliate) issued.

C. Notwithstanding paragraphs B.2., B.3., B.4. and B.5. of this General Instruction, if securities are to be offered or sold in a standby underwriting in the United States or by similar arrangement, the registrant must reconcile its financial statements to Item 18 of Form 20–F.

VII. Roll-Up Transactions

A. The registrant must comply with the disclosure provisions of Subpart 900 of Regulation S–K if it registers a roll-up transaction (as defined in Item 901(c) of Regulation S-K) on this Form, even if the registrant is a "small business issuer" as defined in Securities Act Rule 405. To the extent that the disclosure requirements of Subpart 900 are inconsistent with the disclosure requirements of this Form, the requirements of Subpart 900 control.

B. If the registrant registers a roll-up transaction on this Form, special prospectus delivery requirements apply. *See* Securities Act Rule 172(e).

C. You should read the proxy rules and Rule 14e–7 of the tender offer rules. They contain provisions specifically applicable to roll-up transactions. Those provisions apply whether or not the entities involved have registered securities under Section 12 of the Exchange Act.

VIII. Effectiveness of Registration Statement and Post-Effective Amendments

A.1. Registration statements on this Form will become effective automatically pursuant to Securities Act Rule 462(f)(1)(iv) on the date designated by the registrant on the front page of the Form if:

(i) the registrant meets the requirements of General Instruction II.A. or II.C. and is not disqualified as specified in General Instruction II.B.; and

(A) the registrant has a public float of $75 million or more; or

(B) the annual report filed by the registrant for its most recently completed fiscal year end was reviewed by the staff of the Commission, was amended in accordance with the staff's comments (if so requested) and is incorporated by reference into the Form A.

2. "Public float" means the aggregate market value of the registrant's outstanding voting and non-voting common equity securities held by persons other than affiliates of the registrant, as of the end of the registrant's last fiscal quarter.

3. Under Rule 462(f)(1)(iv), registrants may designate that the Form will become effective either:

(i) upon filing with the Commission;

(ii) at the date and time as set forth on the front page of the Form;

(iii) as specified in a later amendment to the Form.

4. Before filing this Form in reliance on Rule 462(f)(1)(iv), registrants must obtain the concurrence of the underwriter with the designated effective date.

5. Registration statements on this Form filed in reliance on Securities Act Rule 462(f)(1)(iv) become public upon filing and are not reviewed by the Commission staff prior to the effective date designated by the issuer. Confidential treatment requests with respect to information that the registrant is required to file in this Form may, however, be reviewed by the staff. As a result, when the issuer plans to have the Form become effective upon filing or fewer than 20 days thereafter, it must furnish to the staff in advance of filing, any request it wishes to make for confidential treatment of information relating to the Form. *See* Securities Act Rule 406. The Commission must act on the confidential treatment request before this Form becomes effective.

B. Any post-effective amendment filed on this Form by a registrant eligible to designate its effective date as described in General Instruction VIII.A. also shall become effective as designated by the registrant. *See* General Instruction VIII.A.2. and Securities Act Rule 464.

IX. Registration of Additional Securities.

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction IX.C.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

X. Concurrent Registration of Securities under the Exchange Act.

A. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

1. receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

2. effectiveness of this registration statement.

B. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective upon the effectiveness of this registration statement.

C. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

D. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover of this Form.

Part I—Information Required in the Prospectus

Item 1. Front Cover Page of the Registration Statement and Outside Front Cover Page of the Prospectus

(a) Provide the information required by Item 501 of Regulation S–K.

(b) If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1102 of Regulation S–K.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Provide the information required by Item 502 of Regulation S–K.

Item 3. Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges

(a) Provide the information required by Item 503 of Regulation S–K.

(b) If the registrant is a real estate entity as defined by Item 1101 of Regulation S–K,

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provide the information required by Item 1103 of Regulation S–K.

Note to Item 3.

Information is required by this Item only to the extent that it is not already incorporated by reference from an Exchange Act report.

Item 4. Use of Proceeds

Provide the information required by Item 504 of Regulation S–K.

Item 5. Determination of Offering Price

Provide the information required by Item 505 of Regulation S–K.

Item 6. Dilution

Provide the information required by Item 506 of Regulation S–K.

Item 7. Selling Security Holders

Provide the information required by Item 507 of Regulation S–K.

Item 8. Plan of Distribution

Provide the information required by Item 508 of Regulation S–K.

Item 9. Description of Securities

Provide the information required by Item 202 of Regulation S–K.

Item 10. Interests of Named Experts and Counsel

Provide the information required by Item 509 of Regulation S–K.

Item 11. Real Estate Entities

If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1104 and Items 1108 through Item 1112 of Regulation S–K.

Item 12. Information Required for Seasoned Form A Companies

If the registrant meets the requirements of General Instruction II. of this Form and elects to comply with this Item and Item 13 (instead of Item 14), it must do the following:

(a) *Annual report.* Deliver together with the prospectus a copy of its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act.

(b) *Quarterly information.* U.S. registrants: Provide the information required by Part I of Form 10–Q (or Form 10–QSB, if applicable) for the most recent fiscal quarter following the fiscal year covered by the annual report delivered pursuant to this Item. The registrant must:

(1) include that information in the prospectus; or (2) deliver together with the prospectus a copy of its latest Form 10–Q (or 10–QSB);

Notes to Items 12(a) and 12(b).

1. Indicate in the prospectus that it is accompanied by the reports that the registrant sends pursuant to paragraphs (a) and (b) of this Item.

2. If the registrant incorporates by reference portions of any other document into a report it delivers under this Item, it also must deliver the incorporated portions with it.

3. If the registrant's Form 10–Q (or 10–QSB) for the most recent quarter is not due to be filed prior to the effective date of the registration statement, it may provide the information for the previous fiscal quarter to satisfy Item 12(b). For this purpose, the due date is calculated without the extension provided by Exchange Act Rule 12b–25.

(c) *Current financial statements.* Foreign registrants: If the financial statements you incorporate by reference in accordance with Item 13 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X, you must provide financial statements necessary to comply with that Rule. You must do so through one of the following means:

(1) include that information in the prospectus; or

(2) include that information in an amended or a newly filed Exchange Act report, disclose in the prospectus that you have done so, incorporate that report by reference into the effective registration statement, and deliver it together with the prospectus.

(d) *Other financial information.* If not reflected in the registrant's annual report delivered to investors in accordance with paragraph (a) of this Item, provide:

(1) financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interest method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) or Regulation S–X;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements; or

(4) any financial information required because of a material disposition of assets outside the normal course of business. *See* Item 2 of Form 8–K and Instruction 3 to Rule 11–02(b) of Regulation S–X.

Instructions to Item 12(d).

1. You may incorporate by reference into the effective registration statement the information required by paragraph (d) of Item 12. If you incorporate it, you must deliver it together with the prospectus.

2. Foreign registrants: You should read Rules 4–01(a)(2) and 10–01 of Regulation S–X.

(e) *Material changes.* Describe any material change in the registrant's affairs that:

(1) has occurred since the end of the fiscal year covered by the annual report delivered pursuant to this Item; and

(2) the registrant has not described in an Exchange Act report delivered together with the prospectus in accordance with this Item.

Instructions to Item 12.

1. The registrant must deliver information required by this Item with the first prospectus it delivers. It need not deliver that information with any subsequent prospectus sent to the same person.

2. Any reports the registrant delivers together with the prospectus pursuant to this Item must be delivered without charge to the investor.

3. *Small business issuers.* Small business issuers may provide the information required by Item 11 of Form SB–2, instead of the information required by this Item.

Item 13. Incorporation of Certain Information by Reference for Seasoned Form A Companies

If the registrant provides information in accordance with Item 12 of this Form:

(a) it must incorporate by reference into the prospectus that is part of the effective registration statement:

(1) its latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements;

(2) any reports it filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of that fiscal year covered by its annual report incorporated in this Form.

Instructions to Item 13(a).

1. List in the prospectus that is part of the effective registration statement all documents filed prior to effectiveness that are incorporated by reference.

2. You should read Rule 439 regarding consent to the use of material incorporated by reference.

(b) You must set forth the following undertakings in the prospectus:

(1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester;

(4) that you will send a copy of that information within one business day of any request for that information;

(5) that you will send those incorporated documents in a manner that should result in delivery within three business days; and

(6) that the name, address and telephone number to which the request for this information must be made is: [*fill in information*].

Instructions to Item 13(b).

1. The undertakings cover all documents incorporated by reference through the date of responding to the request.

2. If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(c) In the prospectus, you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public:

(i) may read and copy materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800-SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and

information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 14. Information Required for All Other Companies

Any registrant that does not provide information in accordance with Items 12 and 13 must provide the following information:

(a) *Description of Business.*

(1) U.S. registrants: Item 101 of Regulation S-K.

(2) Foreign registrants: Item 1 of Form 20-F.

(b) *Description of Property.*

(1) U.S. registrants: Item 102 of Regulation S-K.

(2) Foreign registrants: Item 2 of Form 20-F.

(3) If the registrant is a real estate entity as defined in Item 1101 of Regulation S-K, provide the information required by Items 1105, 1106 and 1107 of Regulation S-K in lieu of the information required by paragraph (b)(i) or (b)(ii) of this Item.

(c) *Legal Proceedings.*

(1) U.S. registrants: Item 103 of Regulation S-K.

(2) Foreign registrants: Item 3 of Form 20-F.

(d) *Market Information.*

(1) U.S. registrants: If the registrant is offering common equity securities, Item 201 of Regulation S-K.

(2) Foreign registrants: Item 5 of Form 20-F.

(e) *Financial Statements.*

(1) U.S. registrants:

(i) financial statements meeting the requirements of Regulation S-X and any information required by Rule 3–05 and Article 11 of Regulation S-X;

(ii) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X where:

(A) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interest method of accounting; and

(B) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) or Regulation S-X;

(iii) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements; and

(iv) any financial information required because of a material disposition of assets outside the normal course of business. *See* Item 2 of Form 8-K and Instruction 3 to Rule 11–02(b) of Regulation S-X.

(2) Foreign registrants: Item 18 of Form 20-F except if you may comply with Item 17 of Form 20-F pursuant to General Instruction VI.

Instructions to Item 14(e).

1. File schedules required by Regulation S-X as "Financial Statement Schedules" pursuant to Item 20 of this Form.

2. Foreign registrants: Your financial statements must comply with Rule 3–19 of Regulation S-X. See also Rules 4–01(a)(2) and 10–01 of Regulation S-X.

(f) *Exchange Controls.*

(i) U.S. registrants: Not applicable.

(ii) Foreign registrants: Item 6 of Form 20-F.

(g) *Taxation.*

(i) U.S. registrants: Not applicable.

(ii) Foreign registrants: Item 7 of Form 20-F.

(h) *Selected Financial Data.*

(i) U.S. registrants: Item 301 of Regulation S-K.

(ii) Foreign registrants: Item 8 of Form 20-F.

(i) *Supplementary Financial Information.*

(i) U.S. registrants: Item 302 of Regulation S-K.

(ii) Foreign registrants: Not applicable.

(j) *Management's Discussion and Analysis.*

(i) U.S. registrants: Item 303 of Regulation S-K.

(ii) Foreign registrants: Item 9 of Form 20-F.

(k) *Changes In and Disagreements With Accountants.*

(i) U.S. registrants: Item 304 of Regulation S-K.

(ii) Foreign registrants: Not applicable.

(l) *Quantitative and Qualitative Disclosures of Market Risk.*

(i) U.S. registrants: Item 305 of Regulation S-K.

(ii) Foreign registrants: Item 9A of Form 20-F.

(m) *Directors and Executive Officers.*

(i) U.S. registrants: Item 401 of Regulation S-K.

(ii) Foreign registrants: Item 10 of Form 20-F.

(n) *Executive and Officer Compensation.*

(i) U.S. registrants: Item 402 of Regulation S–K.

(ii) Foreign registrants: Item 11 of Form 20–F.

(o) *Control of Registrant.*

(i) U.S. registrant: Item 403 of Regulation S–K.

(ii) Foreign registrant: Item 4 of Form 20–F.

(p) *Options Issued by Registrant.*

(i) U.S. registrants: Not applicable.

(ii) Foreign registrants: Item 12 of Form 20–F.

(q) *Interest of Management in Certain Transactions.*

(i) U.S. registrant: Item 404 of Regulation S–K.

(ii) Foreign registrant: Item 13 of Form 20–F.

Item 15. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Provide the information required by Item 510 of Regulation S–K.

Part II—Information Not Required in the Prospectus

Item 16. Other Expenses of Issuance and Distribution

Provide the information required by Item 511 of Regulation S–K.

Item 17. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S–K.

Item 18. Recent Sales of Unregistered Securities

Provide the information required by Item 701 of Regulation S–K, unless incorporated by reference.

Item 19. Sales to Special Parties

If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1113 of Regulation S–K.

Item 20. Exhibits

(a) Provide the information required by Item 601 of Regulation S–K.

(b) Provide the financial statement schedules required by Regulation S–X and Items 11 or 13 of this Form. List each schedule according to the number assigned to it in Regulation S–X.

Item 21. Undertakings

Provide the information required by Item 512 of Regulation S–K.

Signatures

The registrant certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) ________________________

By (Signature and Title) ________________

Date ______________________________

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ________________

Date ______________________________

By (Signature and Title) ________________

Date ______________________________

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the registrant;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

91. By adding § 239.5 and Form B to read as follows:

§ 239.5 Form B, for registration under the Securities Act of 1933 of certain offerings, and optional concurrent registration under the Securities Exchange Act of 1934.

(a) A registrant may use this Form for registration of securities offerings under the Securities Act of 1933 (15 U.S.C. 77a et seq.) ("Securities Act") if:

(1) It is not a foreign government as defined in § 230.405 of this chapter;

(2) It meets all of the requirements of General Instruction I.B. of this Form, unless otherwise specified in General Instruction I.C.;

(3) The offering is one of those described in General Instruction I.C. of this Form and is not a roll-up transaction as defined in Item 901(c) of Regulation S-K (§ 229.901(c) of this chapter); and

(4) Form C (§ 230.6 of this chapter) is not authorized for registration of the offering.

(b) A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form B will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

FORM B—Registration Statement Under The Act of 1933 [And Optional Registration Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934]

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English, if applicable)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

(Address and telephone number of Registrant's principal executive offices)

(Name, address and telephone number of Registrant's agent for service)

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales

If you are a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If you are not a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If any of the securities being registered on this Form are to be offered pursuant to Securities Act Rule 415, check the following box. [ ] ________

If you are using this Form to register concurrently under Section 12(b) or 12(g) Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

Name of exchange on which listed:

This Section 12(b) registration will become effective upon the later of (1) effectiveness of this Form B; or (2) receipt by the Commission of certification from the national securities exchange listed above.

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

Name of market on which quoted:

Section 12(g) registration statements become effective automatically 60 days after filing. You may check box 1 or 2, below, to shorten this time period. Also, you may check box 3, below, to preserve your option to shorten this time period. If you check box 3 and do not file a later amendment, the registration of the class of securities listed above will become effective 60 days after filing of this Form B.

We propose that this filing become effective (check appropriate box):

1. [ ] upon filing with the Commission. By checking this box, the undersigned are certifying compliance with the delivery requirements of Securities Act Rule 172(a) in connection with the offering. In addition, in checking this box, any underwriter in connection with the offering also is requesting that the registration statement become effective upon filing.

2. [ ] on (date) at (time). By checking this box, the undersigned are certifying compliance with the delivery requirements of Securities Act Rule 172(a) in connection with the offering. In addition, in checking this box, any underwriter in connection with the offering also is requesting that the registration statement become effective upon the date and time designated.

3. [ ] as specified in a later amendment to this Form.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.

2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.

3. If the fee is calculated under Rule 457(o), the "Amount to be registered" and the "Proposed maximum offering price per unit" need not appear in this table.

4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

5. Where two or more classes of securities are being registered pursuant to General Instruction I.C.1., I.C.2. or I.C.4. on a delayed or continuous basis pursuant to Securities Act Rule 415(a)(1)(x) and Rule 457(o), the registrant need only specify the "Proposed maximum aggregate offering price" and the "Amount of registration fee" for all classes listed in the fee table as a group, not for each individual class. The registrant must, however, list each of the classes of securities under the "Title of each class of securities to be registered" section of the fee table.

General Instructions

I. Eligibility Requirements for Form B

A. *General Requirement.*

1. A registrant may use this Form for registration of securities offerings under the Securities Act of 1933 if:

(a) it is not a foreign government as defined in Securities Act Rule 405;

(b) it meets all of the requirements of General Instruction I.B., unless otherwise specified in General Instruction I.C.;

(c) the offering is one of those described in General Instruction I.C. and is not a roll-up transaction as defined in Item 901(c) of Regulation S–K; and

(d) Form C is not authorized for registration of the offering.

2. A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act. It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g).

B. *Eligible Registrants.*

1. The registrant:

(a) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act; or

(b) is required to file reports pursuant to Section 15(d) of the Exchange Act.

2. For a period of at least 12 full calendar months and any portion of a month immediately preceding the date of filing this Form, the registrant:

(a) has been subject to the requirements of Section 12 or 15(d) of the Exchange Act;

(b) has filed all the material it was required to file pursuant to Sections 13, 14 and 15(d) of the Exchange Act;

(c) has filed in a timely manner all materials it was required to file pursuant to Sections 13, 14 and 15(d) of the Exchange Act.

Note to General Instruction I.B.2.(c): If a registrant filed a Form 12b–25 to delay filing any report (or a portion of a report) during that time period, it must have filed the related report (or portion) within the time prescribed by Exchange Act Rule 12b–25;

3. The registrant filed at least one annual report on Form 10–K or Form 20–F prior to the date of filing this Form;

4. Prior to the date of filing this Form, the registrant registered an offering of securities under the Securities Act other than on a Form B, Form F–7, Form F–8, Form F–9, Form F–10, Form F–80 or on any form that became effective upon filing. A registrant need not satisfy this requirement, however, if it became a publicly held entity through an unregistered spin-off transaction whereby its parent company distributed equity shares of the registrant on a pro rata basis to the parent's shareholders;

5. *Successor Registrants.* We will deem a successor registrant to have satisfied the eligibility requirements of General Instruction I.B.2, I.B.3. and I.B.4. of this Form if it satisfies either of the following requirements:

(a)(1) taken together, the registrant and its predecessor(s) meet the eligibility requirements in General Instructions I.B.2, I.B.3. and I.B.4.;

(2) the primary purpose of the succession was to change the state or other jurisdiction of incorporation of the predecessor(s) or to form a holding company for the predecessor(s); and

(3) the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor(s); or

(b) the predecessor met the eligibility requirements of General Instructions I.B.2, I.B.3. and I.B.4. at the time of succession and the registrant has continued to meet them since the succession.

6. *Disqualifications.* None of the following is true:

(a) within two years before the date of filing this Form, the registrant was a development stage company that either:

(1) had no specific business plan or purpose; or

(2) indicated that its business plan was to engage in a merger or acquisition with an unidentified entity or entities;

(b) within two years before the date of filing this Form, the registrant was a shell entity having few or no assets, earnings or operations;

(c) the registrant is registering an offering of "penny stock" as defined in Exchange Act Rule 3a51–1 or has issued penny stock in the two years prior to the date of filing this Form;

(d) the registrant or any of its subsidiaries has, since the end of the last fiscal year for which the registrant included certified financial statements in an Exchange Act report:

(1) failed to pay any dividend or sinking fund installment on preferred stock;

(2) caused any material delinquency with respect to preferred stock that was not cured within 30 days; or

(3) defaulted on any payment of principal, interest, a sinking fund installment, a purchase fund installment or any other installment on indebtedness, or defaulted on any rental on a long-term lease, if such debt and lease defaults in the aggregate are material;

(e) the independent accountant that examined the registrant's financial statements for the most recent fiscal year expressed in its report substantial doubt about the registrant's ability to continue as a going concern;

(f) within three years before the date of filing, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the registrant, or a court appointed a receiver, fiscal agent or similar officer with respect to the business or property of the registrant. If true, however, this would not disqualify the registrant if it has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency or receivership process;

(g) within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter was convicted of any felony or misdemeanor described in clauses (i) through (iv) of Section 15(b)(4)(B) of the Exchange Act;

(h) within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter was made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(1) prohibits future violations of any antifraud provision of the securities laws or Section 5 of the Securities Act;

(2) requires that the registrant, any executive officer, director or general partner of the registrant or person nominated any of those positions, or underwriter cease and desist from violating any antifraud provision of the securities laws or from violating Section 5 of the Securities Act; or

(3) determines that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter violated any antifraud provision of the securities laws or Section 5 of the Securities Act; and

(i) the registrant would incorporate by reference into its Form B registration statement a report under the Exchange Act that:

(1) the Commission, after review, requested that the registrant amend in accordance with its comments; and

(2) either the registrant did not amend the report or, in the Commission's judgment, did not amend the report in accordance with the Commission's comments; and

(j) the registrant is a "small business issuer," as defined in § 230.405, that

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provided the "Information Required in Annual Report of Transitional Small Business Issuers" in its most recent annual report on Form 10–KSB.

7. *MJDS Filers.* A registrant shall be ineligible to use Form B if the most recent annual report it filed pursuant to Section 13 or 15(d) of the Exchange Act was on Form 40–F.

C. *Eligible Offerings.*

1. *Offerings by Well-Followed Issuers.*

An offering of securities of a registrant that satisfies all of the registrant requirements in General Instruction I.B. is eligible where either the registrant's public float is $75 million or more and the average daily trading volume value of its equity securities is $1 million or more, or the registrant's public float is $250 million or more.

For purposes of this Instruction:

(a) "affiliate" has the meaning set forth in Securities Act Rule 144(a)(1);

(b) "average daily trading volume" means the average daily trading volume on U.S. markets during the three full calendar months, or any 90 consecutive calendar days ending within 10 calendar days, immediately preceding the filing of the registration statement;

(c) "common equity" has the meaning set forth in Securities Act Rule 405; and

(d) "public float" means the aggregate market value of the registrant's outstanding voting and non-voting common equity securities held by persons other than affiliates of the registrant, as of the end of the registrant's last fiscal quarter. The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold before the end of the last fiscal quarter, or the average of the bid and asked prices in the principal market for such common equity, as of the last reported date before the end of the last fiscal quarter.

2. *Offerings Made Solely to QIBs.*

An offering of securities of a registrant that satisfies the registrant requirements in General Instruction I.B. is eligible where the securities are offered and sold only to persons that the seller, and any person acting on behalf of the seller, reasonably believe are qualified institutional buyers.

Note to General Instruction I.C.2.: For purposes of this Instruction, "qualified institutional buyer" shall have the meaning set forth in Securities Act Rule 144A(a)(1) except that it shall not include dealers as defined in Section 2(a)(12) of the Act or investment advisers as defined in Section 202(a)(11) of the Investment Advisers Act of 1940. Rules 144A(a)(2)—(a)(5) shall apply to this Instruction. In determining whether an investor is a qualified institutional buyer, the registrant and any person acting on behalf of the registrant may rely on the non-exclusive methods set forth in Rule 144A(d)(1)(i)—(iv).

3. *Offerings to Certain Existing Shareholders.*

An offering by a registrant that satisfies all of the registrant requirements in General Instruction I.B. is eligible where the securities are offered and sold solely to existing security holders as follows:

(a) *Rights Offerings.* Securities of the registrant to be offered upon the exercise of outstanding rights granted by the registrant pro rata to all its existing security holders of the class to which the rights attach;

(b) *DRIPS.* Securities offered pursuant to a dividend or interest reinvestment plan, as defined in Securities Act Rule 405, provided that:

(1) with respect to a dividend reinvestment plan, securities will be offered only while the registrant has not discontinued dividend payments on the securities held, and with respect to an interest reinvestment plan, securities will be offered only while the registrant has not discontinued payment of interest on the securities held;

(2) the plan offering being registered on this Form represents no more than 15% of its public float (as defined in General Instruction I.C.1.(d)) when aggregated with the dollar amount of securities registered on this Form B by the registrant for offerings to its existing shareholders within the 12 months before the start of and during the offering on this Form. For purposes of determining the amount of 15% of the registrant's public float, the registrant should use the amount of public float reported on its most recently filed Form 10–K;

(3) the plan offering being registered on this Form is extended only to existing shareholders of the registrant that have held securities of the registrant continuously for at least a two-month period prior to becoming a participant; and

(4) the proposed aggregate purchase of securities by an existing shareholder and its affiliates in the offering registered on this Form and any other Form B offerings to existing shareholders made by the issuer during the preceding 12-month period, does not exceed the greater of:

(i) $10,000; or

(ii) whichever of the following amounts is smaller:

(A) 100% of the aggregate value of the same class(es) of the issuer's securities owned by the existing shareholder and its affiliates at the start of the 12-month period; or

(B) 5% of the total dollar amount of securities in the offering.

(c) *Common Stock Holders.* Offerings of the registrant's common stock solely to the registrant's existing common stock holders, without regard to whether pursuant to an ongoing plan, provided that:

(1) the offering being registered on this Form represents no more than 15% of the registrant's public float (as defined in General Instruction I.C.1.(d)) when aggregated with the dollar amount of securities registered by the registrant on Form B for offerings to its existing shareholders within the last 12 months before the start of and during the offering on this Form. For purposes of determining the amount of 15% of the registrant's public float, the registrant should use the amount of public float reported on its most recently filed Form 10–K;

(2) the offering is extended only to existing shareholders of the registrant that have held its common stock continuously for at least a two-month period prior to being offered the securities; and

(3) the proposed aggregate purchase of securities by an existing shareholder and its affiliates in the offering registered on this Form and any other Form B offerings to existing shareholders made by the issuer during the preceding 12-month period, does not exceed the greater of:

(i) $10,000; or

(ii) whichever of the following amounts is smaller:

(A) 100% of the aggregate value of the same class(es) of the issuer's securities owned by the existing shareholder and its affiliates at the start of the 12-month period; or

(B) 5% of the total dollar amount of securities in the offering.

(d) *Options Holders.* Securities of the registrant issued upon the exercise of its outstanding transferable options;

(e) *Holders of Convertible Securities.* Securities of the registrant issued upon conversion of its outstanding convertible securities; and (f)

(f) *Warrants Holders.* Securities of the registrant issued upon the exercise of its outstanding transferable warrants.

(g) *Standby Underwriting Agreements.* No portion of any offering registered pursuant to this paragraph 3. may be offered pursuant to a standby underwriting agreement, or similar arrangement, in the United States.

4. *Offerings of Non-Convertible Investment Grade Securities.*

(a) An offering of non-convertible investment grade securities of a registrant that satisfies the registrant requirements in General Instruction I.B. is eligible where the securities offered are, at the time of sale, investment grade securities.

(b) For purposes of this Form, a security is "investment grade" if, at the time of sale:

(1) it is rated by at least one nationally recognized statistical rating organization ("NRSRO") (as that term is used in Exchange Act Rule 15c3–1(c)(2)(vi)(F)) in one of the generic rating categories that signify investment grade; and

(2) no other NRSRO rating the security has placed it in a category that does not signify investment grade.

5. *Offerings by Majority-Owned Subsidiaries.*

If a registrant is a majority-owned subsidiary, it may register offerings of its non-convertible securities on this Form notwithstanding the fact that it does not satisfy a registrant eligibility requirement in General Instruction I.B.1., I.B.2., I.B.3. or I.B.4., or the public float/ADTV test in General Instruction I.C.1. if:

(a) its parent satisfies all registrant eligibility requirements in General Instruction I.B. and the public float/ADTV test in General Instruction I.C.1.;

(b) the offering satisfies the applicable transaction requirement; and

(c) its parent fully and unconditionally guarantees the payment obligations on the securities being offered in the registered transaction.

Note to General Instruction I.C.5.

The parent must concurrently register its offering of the guarantee and may register that on the same registration statement used for the offering of the guaranteed securities. Rule 3–10 of Regulation S–X specifies the financial statements of the guarantor and its affiliates that are required.

6. *Market-Making Transactions.*

An offering by a registrant that satisfies the registrant requirements in General Instruction I.B.1. and I.B.6. is eligible if:

(a) it registers transactions of a broker-dealer that is an affiliate of the issuer;

(b) the broker-dealer engages in the transactions solely in its ordinary capacity as a market maker as defined in Exchange Act Section 3a–38; and

(c) the transactions involve outstanding securities of the issuer that the broker-dealer has not acquired directly from the issuer or an affiliate of the issuer or indirectly by arrangement with the issuer or an affiliate of the issuer.

II. Securities Act Rules and Regulations

A. You should read Securities Act Rule 172. That rule describes prospectus delivery obligations that may be applicable to offerings registered on this Form.

B. You should read the other rules and regulations under the Securities Act (Part 230 of Title 17 of the Code of Federal Regulations), particularly Regulation C. That Regulation contains general requirements regarding the preparation and filing of registration statements.

C. You should read Rules 101, 201 and 202 of Regulation S–T. Those rules require registrants subject to the electronic filing requirements to make all applicable filings through the Commission's EDGAR system. Those rules also provide that failure to submit a required electronic filing will result in ineligibility to use this Form and restrictions on use of incorporation by reference until the required electronic filing has been made.

III. Offering Materials

A. You should read Securities Act Rule 166. That rule permits an eligible registrant to make offers prior to filing a Form B registration statement. If you use a prospectus to make offers in reliance on that rule in the offering period, you must file that prospectus when required to do so by Securities Act Rule 425.

B. You should read Securities Act Rule 165. That rule permits a Form B registrant and those acting on its behalf to use "free writing" offering materials that do not meet the requirements of Section 10 of the Securities Act. If you use a prospectus in reliance on that Rule, you must file it when required to do so by Securities Act Rule 425.

IV. Foreign Issuer Financial Statements

A. A foreign issuer must reconcile its financial statements included in or incorporated into this registration statement. It must reconcile them to Item 18 of Form 20–F, except as otherwise permitted in paragraph B of this General Instruction.

B. A foreign issuer need only reconcile its financial statements to Item 17 of Form 20–F if:

1. an offering of the registrant's non-convertible investment grade securities is being registered. *See* General Instruction I.C.4. for the definition of "investment grade' securities; '

2. an offering of the registrant's securities upon the exercise of outstanding rights that it granted pro rata to all existing security holders of the class of securities to which the rights attach is being registered;

3. an offering of the registrant's securities pursuant to a dividend or interest reinvestment plan is being registered;

4. an offering of the registrant's securities upon the conversion of outstanding convertible securities that it (or its affiliate) issued is being registered; or

5. an offering of the registrant's securities upon the exercise of outstanding transferrable warrants that it (or its affiliate) issued is being registered.

C. Notwithstanding paragraphs B.2., B.3., B.4. and B.5. of this General Instruction, if securities are to be offered or sold in a standby underwriting in the United States or by similar arrangement, the registrant must reconcile to Item 18 of Form 20-F.

V. Requests for Confidential Treatment

All registration statements on this Form become public upon filing. Registration statements filed on this Form are not reviewed by the Commission staff prior to the effective date. Confidential treatment requests with respect to information that the registrant is required to file in this Form may, however, be reviewed by the staff. As a result, when the issuer plans to have the Form become effective upon filing or fewer than 20 days thereafter, it must furnish to the staff in advance of filing, any request it wishes to make for confidential treatment of information relating to the Form. *See* Securities Act Rule 406. The Commission must act on that request before this Form becomes effective.

VI. Concurrent Registration of Securities Under the Exchange Act

A. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

1. receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

2. effectiveness of this registration statement.

B. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of (1) 60 days after the initial filing of this registration statement; or (2) the effectiveness of this registration statement.

C. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

D. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover of this Form.

Information Required in the Prospectus That Is Part of the Effective Registration Statement

1. *Offering Information.*

(a) Disclose the following information, all of which constitutes the "offering information" for purposes of this Form:

(1) the amount of securities being offered;

(2) material changes in the issuer's affairs since the end of the latest fiscal year that are not reflected in incorporated Exchange Act reports;

(3) the information required by Item 504 of Regulation S–K regarding use of proceeds;

(4) the information required by Item 507 of Regulation S–K regarding who is selling the securities;

(5) material information about the terms of the securities offered as required by Item 202 of Regulation S–K, unless capital stock is to be registered and securities of the same class are registered pursuant to Section 12 of the Exchange Act;

(6) information about the risks of the offering of the type described in Item 503 of Regulation S–K;

(7) information about the underwriter's discounts and commissions required by Item 501(b)(3) of Regulation S–K; and

(8) all information regarding the transaction that is material, which may include where applicable, but is not limited to:

(i) information about dilution of the type described in Item 506 of Regulation S–K;

(ii) information about the determination of the offering price of the type described in Item 505 of Regulation S–K;

(iii) information about the plan of distribution of the type described in Item 508 of Regulation S–K;

(iv) ratio of earnings to fixed charges as described in Item 503 of Regulation S–K.

(b) You must include any offering information disclosed by or on behalf of the issuer during the offering period, other than information communicated orally.

(c) You may include offering information communicated orally. You may not include offering information that has not been disclosed by or on behalf of the issuer during the offering period.

(d) For purposes of this Form, "offering period" means the period beginning 15 days in advance of the first offer made in connection with the offering and ending when the offering is completed.

2. *Incorporation of Previously Filed Information.*

State that you are incorporating by reference into the prospectus that is part of the effective registration statement the following documents, and list them:

(a) your latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements; and

(b) any reports you filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report you incorporate in this Form:

3. *Incorporation of Subsequently Filed Information.*

(a) Subject to paragraph (b) of this instruction, state that all documents you subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act during the offering period are deemed to be incorporated by reference into the prospectus that is part of the effective registration statement as of the date you file those documents.

(b) You may incorporate Exchange Act documents filed after the time of delivery in

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accordance with Securities Act Rule 172 only if you otherwise disclosed to investors the information contained in those documents prior to or at the same time as you delivered.

(c) You may not incorporate Exchange Act documents filed after the end of the offering period. For offerings done as part of a delayed shelf under Securities Act Rule 415(a)(1)(x), each takedown will be treated as having its own offering period. In each takedown post-effective amendment on this Form you must state that you are incorporating the documents required by paragraph 2.(a) of this instruction and list them.

(d) Securities Act Rule 424 is not available in connection with offerings registered on this Form. Material changes in disclosure must be reflected in pre-effective amendments, in post-effective amendments that the registrant may choose to designate as effective upon filing, or in Exchange Act documents where permitted to be incorporated by reference.

4. *Financial statements.*

(a) *Foreign registrants:* If the financial statements you incorporate by reference in accordance with paragraph 2 of this instruction of the Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X, you must provide financial statements necessary to comply with that Rule. You must through one of the following means:

(1) include that information in the prospectus; or

(2) include that information in an amended or a new Exchange Act report, disclose in the prospectus that you have done so, incorporate that report by reference into the effective registration statement, and deliver it together with the prospectus.

(b) *Other financial information.* Include the following information in the prospectus unless incorporated by reference:

(1) financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interest method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements; or

(4) any financial information required because of a material disposition of assets outside the normal course of business.

Instruction to paragraph 4.

1. Foreign registrants: You should read Rules 4–01(a)(2) and 10–01 of Regulation S–X

2. Small business issuers: You must provide the financial information specified in paragraph 4(b) if required by Item 310 of Regulation S-B.

5. *Securities Term Sheet.* File as part of the prospectus in the effective registration statement the term sheet prospectus that must be delivered to investors under Securities Act Rule 172(a)(2). That term sheet need contain only:

(a) an itemization of the material terms of the securities in summary format;

(b) the name of any person, other than the issuer, for whose account securities are offered and a brief identification of any material relationship such person has (or had within the past three years) with the issuer or any affiliate of the issuer;

(c) the identity and location of a contact person to whom questions may be directed; and

(d) the identity and location of a person to whom requests for documents defining the terms of the securities, which shall be sent promptly upon request, may be made.

6. *Material Changes Term Sheet.* File as part of the prospectus in the effective registration statement any document describing material changes that must be delivered to investors under Securities Act Rule 172(e).

7. *Undertakings.* Set forth the following undertakings in the prospectus:

(a) that you will provide to each investor, including any beneficial owner, a copy of any information that has been incorporated by reference in the prospectus but not delivered, as follows:

(i) upon written or oral request;

(ii) at no cost to the requester;

(b) that you will send that incorporated information within one business day of any request for it;

(c) that you will send that incorporated information in a manner that should result in delivery within three business days; and

(d) that the name, address, and telephone number to which the request for that information must be made is: [*fill in information*].

Notes to Paragraph 7.

(1) This undertaking covers all documents incorporated by reference through the date of responding to the request.

(2) If you send any of the information that is incorporated by reference in the prospectus to investors, you must also send any exhibits that are specifically incorporated by reference in that information.

8. *Aftermarket Delivery.* Include the legend required by Item 502(b) of Regulation S–K.

Information not Required in the Prospectus That Is Part of the Effective Registration Statement

1. *Exhibits.* Provide the exhibits required by Item 601 of Regulation S–K.

2. *Undertakings.*

(a) Include the undertakings required by Item 512 of Regulation S–K.

(b) *Aftermarket delivery period.* If not contained in the prospectus that is part of the effective registration statement, undertake that you will file a post-effective amendment to insert the date the aftermarket delivery period ends in the legend required by Item 502(b) of Regulation S–K.

Other Offering Materials

In addition to the offering information filed in the prospectus that is part of the effective registration statement, the registrant, any underwriter, any participating dealer or anyone acting on behalf of any of them may use free writing materials. "Free writing" materials for purposes of this Form consist of all information disclosed by or on behalf of the issuer during the offering period, other than offering information, factual business communications as defined in Securities Act Rule 169 or information disclosed orally. You must file free writing materials by the time of first sale. Securities Act Rule 425 describes the procedures for filing those offering materials with the Commission.

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form B. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) ____________________

By (Signature and Title) ________________

Date ____________________

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ________________

Date ____________________

By (Signature and Title) ________________

Date ____________________

Signature Instructions

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the registrant;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person

who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

5. Where eligibility for use of the Form is based on the assignment of a security rating, the registrant may sign the registration statement notwithstanding the fact that the security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states in the registration statement, that the security rating requirement will be met by the time of sale.

6. *Rule 415(a)(1)(x) offerings.*

(a) All persons who sign this registration statement will be deemed by doing so to grant an authorized representative of the registrant the power to sign any post-effective amendment to the registration statement on their behalf if:

(i) the registration statement relates to an offering pursuant to Rule 415(a)(1)(x);

(ii) a power of attorney has not been granted by the person in connection with signatures of post-effective amendments; and

(iii) the post-effective amendment does not provide otherwise.

(b) If, at the time of filing a post-effective amendment, any person who signed the effective registration statement no longer acts in the capacity in which he or she signed it, the person who currently acts in that capacity must sign the post-effective amendment.

92. By adding § 239.6 and Form C to read as follows:

§ 239.6 Form C, for registration under the Securities Act of 1933 of securities issued in business combination transactions, and for optional concurrent registration under the Securities Exchange Act of 1934.

(a) A registrant other than a small business issuer must use this Form to register an offering under the Securities Act of 1933 ("Securities Act") that is:

(1) A transaction of the type specified in paragraph (a) of § 230.145 of this chapter;

(2) A merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

(3) An exchange offer for securities of the issuer or another entity;

(4) A public reoffering or resale of any such securities acquired pursuant to this registration statement; or

(5) More than one of the kinds of transactions listed in paragraphs (a)(1) through (a)(4) of this section registered on one registration statement.

(b) A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form C will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form C—Registration Statement Under the Securities Act of 1933 [And Optional Registration Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934]

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English, if applicable)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

(Address and telephone number of Registrant's principal executive offices)

(Name, address and telephone number of Registrant's agent for service)

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales

If you are a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If you are not a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ____________

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(c) to re-start the 15-business-day period during which pricing must occur under Securities Act Rule 430A(a)(3) or to reflect a non-substantive change from, or addition to, the prospectus, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ____________

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(d) solely to add exhibits, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering.

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

Name of exchange on which listed:

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

Name of market on which quoted:

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.

2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.

3. If the fee is calculated under Rule 457(o), the "Amount to be registered" and the "Proposed maximum offering price per unit" need not appear in this table.

4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. See Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. Rules as to Use of Form C

A. A registrant other than a small business issuer must use this Form to register an offering under the Securities Act that is:

1. a transaction of the type specified in Securities Act Rule 145(a);

2. a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

3. an exchange offer for securities of the issuer or another entity;

4. a public reoffering or resale of any securities acquired pursuant to this registration statement; or 5. more than one of the kinds of transactions listed in paragraphs A.1. through A.4. of this instruction registered on one registration statement.

B. A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act. It may register any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g).

C. You may not use this Form if you are a registered investment company or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940.

D. You may not use this Form if you are a "small business issuer" as defined in Securities Act Rule 405 (§ 230.405). Small business issuers use Form SB–3 to register the transactions listed in General Instruction I.A.

II. Registrant Information

Provide information about the registrant as follows:

A. *Form B Registrants.* If the registrant meets the requirements of General Instructions I.B. and I.C.1. of Form B, it must comply with:

1. Items 11 and 12 of this Form;
2. Items 13 and 14 of this Form; or
3. Item 15 of this Form.

B. *Seasoned Form A Registrants.* If the registrant meets the requirements of General Instruction II. of Form A for incorporation by reference, it must comply with:

1. Items 13 and 14 of this Form; or
2. Item 15 of this Form.

C. *All Other Registrants.* All other registrants must comply with Item 15 of this Form.

III. Information With Respect to the Company Being Acquired

Provide information about the company being acquired (which includes any entity whose securities are to be exchanged for securities of the registrant) as follows:

A. *Form B Companies.* If the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B, provide information in accordance with:

1. Item 16 of this Form;
2. Item 17 of this Form; or
3. Item 18 of this Form.

B. *Seasoned Form A Companies.* If the company being acquired meets the requirements of General Instruction II. of Form A for incorporation by reference, provide information in accordance with:

1. Item 17 of this Form; or
2. Item 18 of this Form.

C. *All Other (Non-Small Business) Companies.* For all other companies being acquired, provide information in accordance with Item 18 of this Form.

D. *Transitional Small Business Issuer Companies.* If the company being acquired is a transitional small business issuer that meets the requirements of II.A.1. of Form SB–3, provide information in accordance with Item 19 of this Form.

E. *Seasoned Form SB–2 Companies.* If the company being acquired meets the requirements of General Instruction E.1. of Form SB–2, provide information in accordance with:

1. Item 20 of this Form; or
2. Item 21 of this Form.

F. *All Other Small Business Issuers.* All other companies being acquired that are small business issuers, including transitional small business issuers that choose to comply with this requirement, provide information in accordance with Item 21 of this Form.

IV. Securities Act Rules and Regulations

You should read the rules and regulations under the Securities Act (Part 230 of Title 17 of the Code of Federal Regulations), particularly Regulation C. That Regulation contains general requirements regarding the preparation and filing of registration statements.

V. Free Writing Prospectus Information

A. You should read Securities Act Rule 166. That Rule permits a registrant to make offers prior to filing a Form C registration statement. If you use a prospectus in reliance on that Rule, you must file that prospectus when required to do so by Securities Act Rule 425.

B. You should read Securities Act Rule 165. That Rule permits a Form C registrant and those acting on its behalf to use "free writing" offering materials that do not meet the requirements of Section 10 of the Securities Act. If you use a prospectus in reliance on Rule 165, you must file it when required to do so by Securities Act Rule 425.

VI. U.S. and Foreign Registrants.

A. *Definitions.*

1. As used in this Form, "U.S. registrant" includes all registrants other than foreign governments and foreign private issuers. "U.S. company being acquired" includes all entities being acquired other than foreign governments and foreign private issuers.

2. As used in this Form, "foreign registrant" includes only registrants that are foreign private issuers. "Foreign company being acquired" includes only entities being acquired that are foreign private issuers.

3. "Foreign private issuer" is defined in Rule 405 of Regulation C.

B. *Information Required.*

1. U.S. registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to foreign registrants or foreign companies being acquired.

2. Foreign registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to U.S. registrants or U.S. companies being acquired.

VII. Interaction With the Exchange Act

A. If Regulation 14A or 14C under the Exchange Act applies to the transaction registered on this Form:

1. the prospectus may be in the form of a proxy statement or information statement;

2. the prospectus must contain the information required by this Form in lieu of that required by Schedule 14A or 14C; and

3. material filed as a part of the registration statement shall be deemed filed also for purposes of Regulation 14A or 14C, as applicable.

B. If neither Regulation 14A nor 14C applies to the transaction registered on this Form, any proxy or information statement material sent to security holders must be filed prior to use as a part of the effective registration statement.

C. If you are registering an offering that is subject to Section 13(e), 14(d) or 14(e) of the Exchange Act, the provisions of those Sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

VIII. Business Combinations Effected on a Delayed Basis

A. A registrant may use this Form to register a transaction that will be effected on a delayed basis under Securities Act Rule 415(a)(1)(viii). In that event, it need only furnish information about the contemplated transaction and the company being acquired to the extent practicable as of the effective date of the registration statement. It must file a post-effective amendment to include the remaining required information about the transaction and the company being acquired in the registration statement.

B. A registrant may use this Form to register a transaction that would qualify for an exemption from Section 5 of the Securities Act but for the proximity in time of other similar transactions. In that event, the registrant need only file a prospectus supplement to provide the required information about the transaction and the company being acquired.

C. *Unallocated Shelf.* The registrant may register two or more classes of securities on this Form that it will offer on a delayed or continuous basis pursuant to Rule 415(a)(1)(viii). If the registrant meets the requirements of General Instruction I.B. of Form B and General Instruction I.C.1., I.C.2. or I.C.4. of Form B, it need only identify on an aggregate basis (and not by class) in the "Calculation of Registration Fee" table:

1. the amount to be registered;
2. the proposed maximum offering price per unit; and
3. the proposed maximum aggregate offering price.

IX. Roll-Up Transactions

A. Roll-up transactions (as defined in Item 901(c) of Regulation S-K) may be registered on this Form. In that event, the registrant must comply with the disclosure requirements of Subpart 900 of Regulation S-K. To the extent that the disclosure requirements of Subpart 900 are inconsistent with those in this Form, the requirements of Subpart 900 control.

B. If the registrant registers a roll-up transaction on this Form, special prospectus delivery requirements apply. See Securities Act Rule 172(e).

C. The proxy rules and Exchange Act Rule 14e–7 of the tender offer rules contain provisions specifically applicable to roll-up transactions. Those provisions apply whether or not the entities involved have registered securities pursuant to Section 12 of the Exchange Act.

X. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;
2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;
3. any required opinions and consents;
4. the signature page; and
5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and
2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction X.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

XI. Concurrent Registration of Securities Under the Exchange Act

A. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

1. receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or
2. effectiveness of this registration statement.

B. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective upon the effectiveness of this registration statement.

C. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

D. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover to this Form.

Part I—Information Required in the Prospectus

A. Information About the Transaction

Item 1. Front Cover Page of the Registration Statement and Outside Front Cover Page of the Prospectus

Provide the information required by Item 501 of Regulation S–K.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

(a) Provide the information required by Item 502 of Regulation S–K.

(b) If you incorporate information by reference into the prospectus, state on the inside front cover page:

(1) that the prospectus incorporates by reference important business and financial information about the company that is not delivered with it;

(2) that this information is available without charge to any person, including any beneficial owner, upon written or oral request;

(3) that you will send those incorporated documents in a manner that should result in delivery within three business days of the request;

(4) the name, address and telephone number to which persons must make this request; and

(5) that to obtain timely delivery, persons must request this information no later than __________ [specify date five business days before the date on which the final investment decision must be made]. You must highlight this statement by print type or otherwise.

Instruction to Item 2.

1. The undertaking covers all documents incorporated by reference through the date of responding to the request.
2. If you send any of the information that is incorporated by reference in the prospectus, you also must send any exhibits that are specifically incorporated by reference in that information.
3. If information is incorporated by reference in any document you are sending upon request, you also must send the information incorporated by reference.

Item 3. Prospectus Summary and Other Information

In the forepart of the prospectus, provide a summary of the information contained in the prospectus as described in Item 503(a) of Regulation S–K and the following information:

(a) *Contact information.* The name, complete mailing address and telephone number of the principal executive offices of the registrant and the company being acquired;

(b) *Risk factors.*

(1) The information required by Item 503(c) of Regulation S–K;

(2) If the registrant or the company to be acquired is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1103 of Regulation S–K in addition to the information required by paragraph (b)(1) of this Item.

(c) *Ratio of earnings to fixed charges.* The information required by Item 503(d) of Regulation S–K;

(d) *Business conducted.* A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(e) *Transaction being registered.* A brief description of the transaction in which the securities being registered will be offered;

(f) *Selected financial data.* The selected financial data required by Item 301 of Regulation S–K for U.S. registrants and U.S. companies being acquired and Item 8 of Form 20–F for foreign registrants and foreign companies being acquired. To the extent this information is required to be presented in the prospectus pursuant to other Items of this Form, it need not be presented pursuant to this Item;

(g) *Pro forma selected financial data.* If material, the information required by Item 301 of Regulation S–K for U.S. registrants and Item 8 of Form 20–F for foreign registrants, showing the pro forma effect of the transaction. To the extent the information is required to be presented in the prospectus pursuant to other Items of this Form, it need not be presented pursuant to this Item;

(h) *Pro forma information.* In a table designed to facilitate comparison, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the company being acquired for the following items:

(1) book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S–K for U.S. registrants and U.S. companies being acquired and Item

8 of Form 20–F for foreign registrants and foreign companies being acquired;

(2) cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K for U.S. registrants and U.S. companies being acquired and Item 8 of Form 20–F for foreign registrants and foreign companies being acquired; and

1(3) income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K for U.S. registrants and U.S. companies being acquired and Item 8 of Form 20–F for foreign registrants and foreign companies being acquired;

Instructions to Item 3(g) and 3(h).

1. For a business combination accounted for as a purchase, present the financial information required by paragraphs (g) and (h) only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, present the financial information required by paragraphs (g) and (h) (except for information with regard to book value) for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling, present the book value information as of the end of the most recent fiscal year and interim period.

2. Calculate the equivalent pro forma per share amounts for one share of the company being acquired by multiplying the exchange ratio times each of:

(a) the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction;

(b) the pro forma book value per share; and
(c) the pro forma dividends per share of the registrant.

3. Foreign Private Issuers: Instruction 7 to Item 8 of Form 20–F is applicable to the financial information presented hereunder to the extent that this Form requires reconciliation of financial statements of foreign private issuers to U.S. GAAP and Regulation S–X.

(i) *Market value of securities.* In a table designed to facilitate comparison, the market value of securities of the company being acquired (on a historical and equivalent per share basis) and the market value of the securities of the registrant (on a historical basis) as of the day before the date the public announcement of the proposed transaction. If no such public announcement was made, as of the day before the date the agreement with respect to the transaction was entered into;

(j) *Affiliates' voting shares.* With respect to the registrant and the company being acquired, a brief statement comparing the percentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates. State the vote required for approval of the proposed transaction;

(k) *Regulatory approval.* A statement as to whether any regulatory requirements must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approval;

(l) *Dissenters' rights.* A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 21 or 22 of this Form; and

(m) *Tax consequences.* A brief statement about the tax consequences of the transaction or, if appropriate, a cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the Transaction

(a) Provide a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) 3 the information required by Item 1004(a) of Regulation M–A (§ 229.1004(a) of this chapter); and

(2) where not organized in the same country, a discussion of any material differences in the corporate laws applicable to the company being acquired and to the surviving entity. The discussion should include, but not necessarily be limited to: corporate governance, board structure, quorums, class action suits, shareholder derivative suits, rights to inspect corporate books and records, rights to inspect the shareholder list and rights of directors and officers to obtain indemnification from the company.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party and such report, opinion or appraisal is referred to in the prospectus, provide the information called for by Item 1015(b) of Regulation S–K (§ 229.1015(b) of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus.

Item 5. Pro Forma Financial Information

Provide the financial information required by Article 11 of Regulation S–X with respect to this transaction.

Instructions.

1. Present any Article 11 information required by the other Items of this Form (where not incorporated by reference) together with the information provided under this Item. In presenting this information, you must clearly distinguish between this transaction and any other one.

2. You need only show the pro forma effect that the registered transaction has on any pro forma financial information that:

(i) is incorporated by reference; and

(ii) reflects all prior transactions.

Item 6. Material Contacts With the Company Being Acquired

Provide the information required by Items 1005(b) and 1011(a) of Regulation M–A for the registrant or its affiliates and the company being acquired or its affiliates. The information provided only need cover the periods for which financial statements are presented or incorporated by reference into this Form.

Item 7. Real Estate Entities

If the registrant or the company to be acquired is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1104 and Items 1108 through 1112 of Regulation S–K.

Item 8. Additional Information Required for Reoffering by Persons Deemed To Be Underwriters

If any person who is deemed to be an underwriter of the securities is reoffering any of the securities to the public, provide the following information in the prospectus prior to its use for the reoffer:

(a) The information required by Item 507 of Regulation S–K;

(b) Information with respect to the consummation of the transaction in which the securities were acquired; and

(c) A description of any material change in the registrant's affairs that occurred after the transaction in which the securities were acquired.

Note to Item 8.

You should read Item 512(g) of Regulation S–K regarding undertakings required in reoffering registration statements.

Item 9. Interests of Named Experts and Counsel

Provide the information required by Item 509 of Regulation S–K.

Item 10. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Provide the information required by Item 510 of Regulation S–K.

B. Information About the Registrant

Item 11. Information Required for Form B Companies

If the registrant meets the requirements of General Instructions I.B. and I.C.1. of Form B and elects to comply with this Item and Item 12 (instead of Items 13 and 14 or Item 15), it must provide the following information:

(a) *Material changes.* Describe any material change in the registrant's affairs that:

(1) has occurred since the end of the latest fiscal year for which it incorporates by reference audited financial statements in accordance with Item 12 of this Form; and

(2) the registrant has not described in an Exchange Act report.

(b) *Current financial statements.* Foreign registrants: If the financial statements you incorporate by reference in accordance with Item 12 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X, you must provide financial statements necessary to comply with that Rule. You must through one of the following means:

(1) include that information in the prospectus; or

(2) include that information in an amended or a newly filed Exchange Act report, disclose in the prospectus that you have done so, incorporate that report by reference into the effective registration statement, and deliver it together with the prospectus.

(c) *Other financial information.* Include the following information in the prospectus unless incorporated by reference:

(1) financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interests method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X, if a change in accounting principles or correction of an error requires a material retroactive restatement of financial statements; or

(4) any financial information required because of a material disposition of assets outside the normal course of business.

Instruction.

Foreign registrants: You should read Rules 4–01(a)(2) and 10–01 of Regulation S–X.

Item 12. Incorporation of Certain Information by Reference for Form B Companies

If the registrant provides information in accordance with Item 11 of this Form:

(a) It must incorporate by reference into the prospectus that is part of the effective registration statement the documents listed below:

(1) its latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements;

(2) any reports it filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by its annual report incorporated in this Form; and

(3) the description of capital stock contained in an Exchange Act registration statement, including any amendments or reports updating such description, if:

(i) capital stock is being registered and securities of the same class are registered under Section 12 of the Exchange Act; and

(ii) such stock is listed for trading or admitted to unlisted trading privileges on a national securities exchange; or

(iii) bid and offer quotations for such stock are reported in an automated quotations system operated by a national securities association.

Instructions to Item 12(a).

1. List in the prospectus that is part of the effective registration statement all documents that are filed prior to effectiveness and incorporated by reference.

2. Notwithstanding Instruction 2 to Item 404 of Regulation S–K, you need only provide Item 404 information covering one year if you incorporate that information by reference pursuant to this Item.

3. Foreign registrants: All annual reports or registration statements you incorporate by reference pursuant to this Item must contain financial statements that comply with Item 18 of Form 20–F except that your financial statements may comply with Item 17 of Form 20–F if the only securities you are registering are investment grade securities.

A security is "investment grade" if, at the time of sale:

(a) it is rated by at least one nationally recognized statistical rating organization ("NRSRO") (as that term is used in Exchange Act Rule 15c3–1(c)(2)(vi)(F)) in one of the generic rating categories that signify investment grade; and

(b) no other NRSRO rating the security has placed it in a category that does not signify investment grade.

4. Foreign registrants: You may incorporate by reference any Form 6–K satisfying the requirements of Form C. *See* Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

(b) It must state in the prospectus that all documents it files pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act are deemed to be incorporated by reference into the prospectus that is part of the effective registration statement if filed after effectiveness and before the latest of the following that is applicable:

(1) the date of any meeting of security holders of either the registrant or the company being acquired relating to the transaction described in the prospectus;

(2) the date on which the transaction described in the prospectus is consummated, if no meeting of security holders of either the registrant or the company being acquired is held;

(3) the date of the termination of any exchange offer registered on this registration statement; or

(4) the date of termination of any reoffering or resale of securities registered on this registration statement.

Note to Item 12(b).

You should read Securities Act Rule 439 regarding consent to the use of material incorporated by reference.

(c) In the prospectus, you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public:

(i) may read and copy any materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 13. Information Required for Seasoned Form A Companies

If the registrant meets the requirements of General Instruction II. of Form A and elects to comply with this Item and Item 14 (instead of Item 15), it must do the following:

(a) *Annual report.* Deliver together with the prospectus a copy of its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act;

(b) *Quarterly information.* U.S. registrants: provide the information required by Part I of Form 10–Q or Form 10–QSB for the most recent fiscal quarter following the fiscal year covered by the annual report delivered pursuant to this Item. The registrant must either:

(1) include that information in the prospectus; or

(2) deliver together with the prospectus a copy of its latest Form 10–Q or Form 10–QSB;

Notes to Item 13(a) and 13(b).

1. Indicate in the prospectus that it is accompanied by the reports that the registrant sends pursuant to paragraphs (a) or (b) of this Item.

2. If the registrant incorporates by reference portions of any document into a report it delivers under this Item, it also must deliver the incorporated portions with it.

3. If the registrant's Form 10–Q or Form 10–QSB for the most recent quarter is not due to be filed prior to the effective date of the registration statement, it may provide the information for the previous fiscal quarter to satisfy Item 13(b). For this purpose, the due date is calculated without the extension provided by Exchange Act Rule 12b–25.

(c) *Current financial statements.* Foreign registrants: If the financial statements you incorporate by reference in accordance with Item 14 are not sufficiently current to comply with Rule 3–19 of Regulation S–X, provide financial statements necessary to comply with that Rule. You must do so by one of the following means:

(1) include that information in the prospectus; or

(2) inclose that information in an amended or newly filed Exchange Act report, disclose in the prospectus that you have done so, incorporate that report by reference into the effective registration statement, and deliver it together with the prospectus.

(d) *Other financial information.* If not reflected in the registrant's annual report delivered to investors in accordance with paragraph (a) of this Item, provide:

(1) financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interests method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X, if a change in accounting principles or correction of an error requires a material retroactive restatement of financial statements; and

(4) any financial information required because of a material disposition of assets outside the normal course of business.

Instructions to Item 13(d).

1. You may incorporate by reference into the effective registration statement the information required by paragraph (d) of Item 13. If you incorporate it, you must deliver it together with the prospectus.

2. Foreign registrants: You should read Rules 4–01(a)(2) and 10–01 of Regulation S–X.

(e) *Material changes.* Describe any material change in the registrant's affairs that:

(1) has occurred since the end of the latest fiscal year for which it incorporates by reference audited financial statements in accordance with Item 14; and

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(2) the registrant has not described in an Exchange Act report delivered with the prospectus in accordance with this Item;

Instructions to Item 13.

1. The registrant must deliver information required by this Item with the first prospectus it delivers. It need not deliver that information with any subsequent prospectus sent to the same person.

2. Any reports the registrant delivers together with the prospectus pursuant to this Item must be delivered without charge to the investor.

Item 14. Incorporation by Reference by Seasoned Form A Companies

If the registrant provides information in accordance with Item 13 of this Form:

(a) It must incorporate by reference into the prospectus that is part of the effective registration statement:

(1) its latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements;

Note to Item 14(a)(1).

The registrant may satisfy this obligation to incorporate its annual report by incorporating a Form 40–F if it meets the requirements of General Instruction A.(2) of Form 40–F.

(2) any reports it filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by its annual report incorporated in this Form.

Instructions to Item 14(a).

1. List in the prospectus that is part of the effective registration statement all documents that are filed prior to effectiveness and incorporated by reference.

2. Notwithstanding Instruction 2 to Item 404 of Regulation S–K, you need only provide Item 404 information covering one year if you incorporate that information by reference pursuant to this Item.

3. Foreign registrants: All annual reports you incorporate by reference pursuant to this Item must contain financial statements that comply with Item 18 of Form 20–F, except that your financial statements may comply with Item 17 of Form 20–F if the only securities you are registering are investment grade securities as defined in Instruction 3 of Instructions to Item 12(a).

4. Foreign registrants may incorporate by reference and deliver with the prospectus any Exchange Act report containing information meeting the requirements of Form A. *See* Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

5. You should read Rule 439 regarding consent to the use of material incorporated by reference.

(b) In the prospectus, you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public;

(i) may read and copy any materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 15. Information Required for All Other Companies

Any registrant that does not provide information in accordance with Items 11 and 12 or Items 13 and 14 must provide the following information:

(a) *Description of Business.*

(i) U.S. registrants: Item 101 of Regulation S–K

(ii) Foreign registrants: Item 1 of Form 20–F.

(b) *Description of Property.*

(i) U.S. registrants: Item 102 of Regulation S–K

(ii) Foreign registrants: Item 2 of Form 20–F.

(iii) If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Items 1105, 1106 and 1107 of Regulation S–K in lieu of the information required by paragraph (b)(i) or (b)(ii) of this Item.

(c) *Legal Proceedings.*

(i) U.S. registrants: Item 103 of Regulation S–K

(ii) Foreign registrants: Item 3 of Form 20–F.

(d) *Common Equity Securities.* If the registrant is issuing common equity securities:

(i) U.S. registrants: Item 201 of Regulation S–K.

(ii) Foreign registrants: Item 5 of Form 20–F. You must update such information to cover any subsequent interim periods for which financial statements are required pursuant to Rule 3–19 of Regulation S–X.

(e) *Financial Statements.*

(i) U.S. registrants: Regulation S–X.

(ii) Foreign registrants: Item 18 of Form 20–F except if you are registering only investment grade securities as defined in the second instruction of Instructions to Item 11(a) of this Form. In that event, you may comply with Item 17 of Form 20–F instead of Item 18.

Instructions to Item 15(e).

1. File schedules required by Regulation S–X as "Financial Statement Schedules," as authorized by Item 25 of this Form.

2. Provide any financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered.

3. Foreign registrants: Your financial statements must comply with Rule 3–19 of Regulation S–X. *See also* Rules 4–01(a)(2) and 10–01 of Regulation S–X.

(f) *Exchange Controls.*

(i) U.S. registrants: not applicable.

(ii) Foreign registrants: Item 6 of Form 20–F.

(g) *Taxation.*

(i) U.S. registrants: not applicable.

(ii) Foreign registrants: Item 7 of Form 20–F.

(h) *Selected Financial Data.*

(i) U.S. registrants: Item 301 of Regulation S–K

(ii) Foreign registrants: Item 8 of Form 20–F.

(i) *Supplementary Financial Information.*

(i) U.S. registrants: Item 302 of Regulation S–K

(ii) Foreign registrants: not applicable.

(j) *Management's Discussion and Analysis.*

(i) U.S. registrants: Item 303 of Regulation S–K

(ii) Foreign registrants: Item 9 of Form 20–F.

(k) *Changes in and Disagreements with Accountants.*

(i) U.S. registrants: Item 304 of Regulation S–K

(ii) Foreign registrants: not applicable.

(l) *Quantitative and Qualitative Disclosures of Market Risk.*

(i) U.S. registrants: Item 305 of Regulation S–K

(ii) Foreign registrants: Item 9A of Form 20–F.

C. Information About the Company Being Acquired

Item 16. Information Required for Form B Companies

If the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B and compliance with this Item is elected, provide the information required by Items 11 and 12 of this Form as if the company being acquired were the registrant.

Instruction.

Foreign companies being acquired: Notwithstanding the requirements of Items 11 and 12, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 17. Information Required for Seasoned Form A Companies

If the company being acquired meets the requirements of General Instruction II. of Form A and compliance with this Item is elected, provide the information required by Items 13 and 14 of this Form as if the company being acquired were the registrant.

Instruction.

Foreign companies being acquired: Notwithstanding the requirements of Items 13 and 14, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 18. Information Required for All Other (Non-Small Business) Companies

If the company being acquired does not meet the requirements of General Instructions I.B. and I.C.1. of Form B or General Instruction II. of Form A, or compliance with this Item is elected, provide the information that would be required by Item 15 of this Form as if the company being acquired were the registrant, subject to the following:

(a) Only those schedules required by Rules 12–15, 28 and 29 of Regulation S–X need be provided with respect to the company being acquired;

(b) Notwithstanding the requirements of Item 14, the financial statements of any foreign company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F;

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a-3 or Rule 14c-3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a-3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (c).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

(d) Notwithstanding paragraph (c) of this Item, the financial statements of the company being acquired must be audited for the fiscal years required by paragraph (b)(2) of Rule 3–05 of Regulation S–X if this registration statement is used for resales by any person deemed to be an underwriter within the meaning of Securities Act Rule 145(c).

(e) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), provide the information required by Part I of Form 10–Q or Form 10–QSB for the most recent quarter for which a quarterly report would be due if the company being acquired were subject to those reporting requirements.

Item 19. Information Required for Companies That Are Transitional Small Business Issuers

If the company being acquired meets the requirements of General Instruction II.A.1. of Form SB–3, provide information in accordance with either Item 14 or 16 of Form SB–3.

Item 20. Information Required for Companies That Are Seasoned SB–2 Issuers

If the company being acquired meets the requirements of General Instruction E.1. of Form SB–2 and compliance with this Item is elected, provide the information required by Items 11 and 12 of Form SB–3 as if the company being acquired were the registrant on Form SB–3.

Instruction to Item 20.

Canadian small business issuers being acquired: Notwithstanding the requirements of Items 11 and 12 of Form SB–3, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 21. Information Required for All Other Small Business Issuers

If the company being acquired does not meet the requirements of General Instruction E.1. of Form SB–2, or compliance with this Item is elected, provide the information required by Item 13 of Form SB–3 as if the company being acquired were the registrant on Form SB–3, subject to the following:

(a) Canadian small business issuers being acquired: Notwithstanding the requirements of Item 13 of Form SB–3, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a-3 or Rule 14c-3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a-3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (b).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

(c) Notwithstanding paragraph (b) of this Item, the financial statements of the company being acquired must be audited for the fiscal years required by Item 310 of Regulation S–B if this registration statement is used for resales by any person deemed to be an underwriter within the meaning of Securities Act Rule 145(c).

(d) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), provide the information required by Part I of Form 10–QSB for the most recent quarter for which a quarterly report would be due if the company being acquired were subject to those reporting requirements.

D. Voting and Management Information

Item 22. Information if Proxies, Consents or Authorizations Will Be Solicited

(a) If either the registrant or the company being acquired is soliciting proxies, consents or authorizations, provide the following information:

(1) *Date, Time and Place Information.* Item 1 of Schedule 14A;

(2) *Revocability of Proxy.* Item 2 of Schedule 14A;

(3) *Dissenters' Rights of Appraisal.* Item 3 of Schedule 14A;

(4) *Persons Making the Solicitation.* Item 4 of Schedule 14A;

(5) *Persons with a Substantial Interest in the Matter.* Item 5 of Schedule 14A, with respect to both the registrant and the company being acquired;

(6) *Voting Securities and Principal Holders.* Item 6 of Schedule 14A, with respect to both the registrant and the company being acquired;

Instructions to Item 22(a)(6).

1. Foreign registrants and foreign companies being acquired: You may provide the information specified in Item 4 of Form 20–F in lieu of the information specified in Item 6(d) of Schedule 14A.

2. Small business issuers being acquired: You may provide the information specified in the Instruction to Item 20(a)(6) of Form SB–3 instead of the information specified in Item 6(d) of Schedule 14A.

(7) *Vote Required for Approval.* Item 21 of Schedule 14A; and

(8) *Directors and Executive Officers.* With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) U.S. registrants: Items 401, 402 and 404 of Regulation S–K; and

(ii) Foreign registrants: Items 10, 11, 12 and 13 of Form 20–F.

Instruction to Item 21(a)(8).

Small business issuers being acquired: You may provide the information specified in Item 20(a)(8)(i) or (ii) of Form SB–3 instead of the information specified in Item 21(a)(8) of this Form.

(b) If the registrant or the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B, General Instruction II. of Form A or General Instruction E.1. of Form SB–2, any information required by paragraphs (a)(6) or (a)(8) of this Item with respect to it may be incorporated by reference from its latest annual report.

Item 23. Information if Proxies, Consents or Authorizations Will Not Be Solicited or in an Exchange Offer

(a) If proxies, consents or authorizations will not be solicited in connection with the transaction or in an exchange offer, provide the following information:

(1) *Statement that Proxies are not to be Solicited.* Item 2 of Schedule 14C;

(2) *Date, Time and Place Information.* The date, time and place of the meeting of

security holders, unless such information is otherwise disclosed in material furnished to security holders with or preceding the prospectus;

(3) *Dissenters' Rights of Appraisal.* Item 3 of Schedule 14A;

(4) *Affiliates' Interests in the Transaction.* A brief description of any direct or indirect material interest of affiliates of the registrant and of the company being acquired in the proposed transaction;

Instruction to Item 23(a)(4).

You need not describe any interest arising from the ownership of securities where the affiliate receives no benefit not shared on a pro rata basis by all other holders of the same class.

(5) *Voting Securities and Principal Holders.* Item 6 of Schedule 14A, with respect to both the registrant and the company being acquired;

Instructions to Item 23(a)(5).

1. Foreign registrants and foreign companies being acquired: You may provide the information specified in Item 4 of Form 20–F in lieu of the information specified in Item 6(d) of Schedule 14A.

2. Small business issuers being acquired: You may provide the information specified in the Instruction to Item 21(a)(5) of Form SB–3 instead of the information specified in Item 6(d) of Schedule 14A.

(6) *Vote Required for Approval.* Item 21 of Schedule 14A; and

(7) *Directors and Executive Officers.* With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) U.S. registrants: Items 401, 402 and 404 of Regulation S–K; and

(ii) Foreign registrants: Items 10, 11, 12 and 13 of Form 20–F.

Instruction to Item 23(a)(7).

Small business issuers being acquired: You may provide the information specified in Item 21(a)(7)(i) or (ii) of Form SB–3 instead of the information specified in Item 22(a)(7) of this Form.

Instruction to Item 23(a).

If proxies, consents or authorizations will not be solicited in connection with the transaction because the transaction is an exchange offer, you need not provide the information required by paragraphs (a)(1) (a)(2) and (a)(3).

(b) If the registrant or the company being acquired meets the requirements of General Instruction I.B. and I.C.1. of Form B or General Instruction II. of Form A, any information required by paragraphs (a)(5) and (a)(7) of this Item with respect to it may be incorporated by reference from its latest annual report.

Part II—Information Not Required in the Prospectus

Item 24. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S–K.

Item 25. Exhibits and Financial Statement Schedules

(a) Provide the exhibits required by Item 601 of Regulation S–K.

Instruction to Item 25(a).

Provide exhibits required by Item 601(b)(10) with respect to both the registrant and the company being acquired.

(b) Provide the financial statement schedules required by Regulation S–X and Item 14(e) or Item 17(a) of this Form. List each schedule according to the number assigned to it in Regulation S–X.

(c) If information is provided pursuant to Item 4(b) of this Form, provide the report, opinion or appraisal as an exhibit to this Form, unless it is included in the prospectus.

Item 26. Undertakings

(a) Set forth in the effective registration statement the undertakings required by Item 512 of Regulation S–K.

(b) Set forth the following undertaking if the registrant is using this Form for a transaction to be effected on a delayed basis:

[Name of registrant] will file a post-effective amendment containing all required information concerning a transaction and the company being acquired that was not included in the registration statement when it became effective because it was not practicable to do so.

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form C. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) ______________________

By (Signature and Title) ______________

Date ______________________

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ______________

Date ______________________

By (Signature and Title) ______________

Date ______________________

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the registrant;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the registrant is a limited · partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

5. If the securities to be offered are those of an entity that is not yet in existence at the time the registration statement is filed, but which will be a party to a consolidation involving two or more existing entities, then each existing entity will be deemed a registrant and must be so designated on the cover page of the Form. In that case, each existing entity (and the applicable persons noted in Signature Instructions 1.—3.) must sign the registration statement as if it were the registrant.

93. By revising § 239.9 and amending Form SB–1 (referenced in § 239.9) by revising the title of the Form and the facing page, General Instruction A.3., General Instruction B.3., General Instruction H. and the Signatures section; by removing in General Instruction A.1.(b) the words "S–4" and adding, in their place, the words "SB–3" and by removing the words "S–3 (if the issuer incorporates by reference transitional Exchange Act reports),"; and by adding General Instruction I. and General Instruction J. to read as follows:

§ 239.9 Form SB–1, optional Form for the registration under the Securities Act of 1933 of securities to be sold to the public by certain small business issuers, and for optional concurrent registration under the Securities Exchange Act of 1934.

(a) A "small business issuer," as defined in Rule 405 of the Securities Act of 1933 (the "Securities Act"), may use this Form to register an offering of securities under the Securities Act. It may register up to $10,000,000 of securities to be sold for cash, if it has not registered more than $10,000,000 in securities offerings in any continuous 12-month period, including the transaction being registered. In calculating the $10,000,000 ceiling, the issuer must include all offerings that were registered under the Securities Act, other than any amounts registered on Form S–8 (§ 239.16b).

(b) A small business issuer also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the small business issuer must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form SB–1 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

FORM SB–1—Registration Statement Under the Securities Act of 1933 [and Optional Registration Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934]

(Amendment No. ____)

(Name of Small Business Issuer in its charter)

(Translation of Small Business Issuer's name into English, if applicable)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification Number)

(Address and telephone number of Registrant's principal executive offices)

(Address of principal place of business or intended principal place of business)

(Name, address and telephone number of agent for service)

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales

____

If you include the Securities Act Rule 473(a) delaying legend on this registration statement when you first file it, and you are relying on Securities Act Rule 456(b) to delay payment of the registration fee, check the following box. [ ]

If you do not include the Securities Act Rule 473(a) delaying legend on this registration statement when you first file it, or if you specifically state in a pre-effective amendment that this registration statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act, check the following box. [ ]

Note: If you check this box, you must pay the registration fee required by Section 6 of the Securities Act (unless previously paid) before the registration statement or pre-effective amendment will be considered filed.

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(e), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] __________

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(c) to re-start the 15-business-day period during which pricing must occur under Securities Act Rule 430A(a)(3) or to reflect a non-substantive change from, or addition to, the prospectus, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] __________

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(d) solely to add exhibits, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] __________

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

Name of exchange on which listed:

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

Name of market on which quoted:

Name of market on which quoted:

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.

2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.

3. If the fee is calculated under Rule 457(o), the "Amount to be registered" and the "Proposed maximum offering price per unit" need not appear in this table.

4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. See Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

The following delaying amendment is optional, but see Securities Act Rule 473 before omitting it:

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a) may determine.

Disclosure alternative used (check one):
Alternative 1 __________ Alternative 2 __________

General Instructions

A. Use of Form and Place of Filing

* * * * *

3. A small business issuer also may use this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act. It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the small business issuer must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g).

B. General Requirements

* * * * *

3. If you are engaged in real estate, oil and gas, or mining activities, you should read the Industry Guides in Item 801 or Regulation S-K. Real estate entities should also read Items 1105 (Real Estate and Other Investment Activities) and 1106 (Description of Real Estate and Operating Data) of Regulation S-K

* * * * *

H. Registration of Additional Securities

1. Under certain circumstances, a small business issuer may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b) or 462(e). That type of registration statement may include only the following:

(a) the facing page;

(b) a statement that the earlier registration statement, identified by file number, is incorporated by reference;

(c) any required opinions and consents;

(d) the signature page; and

(e) any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

2. The information contained in a Rule 462(b) or Rule 462(e) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) or Rule 462(e) registration statement.

3. The small business issuer may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) or Rule 462(e) registration statement if:

(a) the opinion or consent expressly allows that incorporation; and

(b) the opinion or consent also relates to the Rule 462(b) or Rule 462(e) registration statement.

Note to General Instruction H.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

I. Free Writing Prospectus Information

You should read Securities Act Rule 165. That rule permits the small business issuer and those acting on its behalf to use "free writing" offering materials that do not meet the requirements of Section 10 of the Securities Act. Those offering materials may be used after the small business issuer has filed that Section 10 prospectus with the Commission in the registration statement. If you use a prospectus in reliance on that Rule, you must file it when required to do so by Securities Act Rule 425.

J. Concurrent Registration of Securities Under Exchange Act

1. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

(a) receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

(b) effectiveness of this registration statement.

2. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of (1) 60 days after the initial filing of this registration statement; or (2) the effectiveness of this registration statement.

3. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

4. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover of this Form.

* * * * *

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form SB–1. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) ____________________

By (Signature and Title) ____________

Date ________________________

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ____________

Date ________________________

By (Signature and Title) ____________

Date ________________________

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the small business issuer;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

94. By revising § 239.10 and amending Form SB–2 by revising the title of the Form and the facing page, General Instruction A., General Instruction B.1. and B.2., and General Instruction C; by adding General Instructions B.4. and B.5., General Instruction D., General Instruction E., and General Instruction F.; by removing Items 9–11 and 15–23; by redesignating Items 12 and 13 as Items 9 and 10; by adding Items 11, 12 and 13; by redesignating Items 24–28 as Items 14–18; and by revising the Signatures section to read as follows:

§ 239.10 Form SB–2, optional Form for the registration under the Securities Act of 1933 of securities to be sold to the public by small business issuers, and for optional concurrent registration under the Securities Exchange Act of 1934.

(a) A "small business issuer," as defined in § 230.405 of this chapter, may use this Form to register under the Securities Act of 1933 (15 U.S.C. 77a *et. seq.*) ("Securities Act") an offering of securities for cash. *See also* Item 10(a) of Regulation S–B (§ 228.10(a) of this chapter).

(b) A small business issuer must file this registration statement in the Commission's Washington, D.C. office.

(c) A small business issuer also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the small business issuer must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form SB–2 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form SB–2—Registration Statement Under the Securities Act of 1933 [and Optional Registration Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934] (Amendment No. ___)

______
(Name of Small Business Issuer in its charter)

______
(Translation of Small Business Issuer's name into English, if applicable)

______
(State or other jurisdiction of incorporation or organization)

______
(Primary Standard Industrial Classification Code Number)

______
(I.R.S. Employer Identification Number)

______
(Address and telephone number of Registrant's principal executive offices)

______
(Address of principal place of business or intended principal place of business)

______
(Name, address and telephone number of agent for service)

______
(Web Site Address, if any)

______
(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales ______

If you include the Securities Act Rule 473(a) delaying legend on this registration statement when you first file it, and you are relying on Securities Act Rule 456(b) to delay payment of the registration fee, check the following box. [ ]

If you do not include the Rule 473(a) delaying legend on this registration statement when you first file it, or if you specifically state in a pre-effective amendment that this registration statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act, check the following box. [ ]

Note: If you check this box, you must pay the registration fee required by Section 6 of the Securities Act (unless previously paid) before the registration statement or pre-effective amendment will be considered filed.

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(e), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ______

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(c) to re-start the 15-business-day period during which pricing must occur under Securities Act Rule 430A(a)(3) or to reflect a non-substantive change from, or addition to, the prospectus, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ______

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(d) solely to add exhibits, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ______

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class: ______

Name of exchange on which listed: ______

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class: ______

Name of market on which quoted: ______

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.

2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.

3. If the fee is calculated under Rule 457(o), the "Amount to be registered" and the "Proposed maximum offering price per unit" need not appear in this table.

4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

The following delaying amendment is optional, but see Securities Act Rule 473 before omitting it:

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a) may determine.

General Instructions

A. Use of Form and Place of Filing

1. A "small business issuer," as defined in § 230.405 of this chapter, may use this Form to register under the Securities Act of 1933 ("Securities Act") an offering of securities for cash. See also Item 10(a) of Regulation S–B.

2. A small business issuer must file this registration statement in the Commission's Washington, D.C. office.

3. A small business issuer also may use this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act. It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the small business issuer must check the appropriate box(es) on the cover page of this Form and identify which

class(es) of securities it is registering under Section 12(b) or 12(g).

B. General Requirements

1. If you are registering securities for the first time, you should be aware of Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds.

2. If you are engaged in real estate, oil and gas, or mining activities, you should read the Industry Guides in Item 801 of Regulation S–K.

* * * * *

4. You should read Securities Act Rule 172. That Rule describes prospectus delivery obligations applicable to offerings registered on this Form.

5. If the offering registered on this Form relates to a blank check company, you should read Securities Act Rule 419. Among other things, that Rule contains additional disclosure requirements.

C. Registration of Additional Securities

1. Under certain circumstances, a small business issuer may increase the size of an offering after the effective date through filing a short-form registration statement under Rule 462(b) or Rule 462(e). That type of registration statement may include only the following:

(a) the facing page;

(b) a statement that the earlier registration statement, identified by file number, is incorporated by reference;

(c) any required opinions and consents;

(d) the signature page; and

(e) any price-related information omitted from the earlier registration statement in reliance on Rule 430A, if the registrant so chooses.

2. The information contained in a Rule 462(b) or Rule 462(e) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) or Rule 462(e) registration statement.

3. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) or Rule 462(e) registration statement if:

(a) the opinion or consent expressly allows that incorporation; and

(b) the opinion or consent also relates to the Rule 462(b) or Rule 462(e) registration statement.

Note to General Instruction C.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

D. Free Writing Prospectus Information

You should read Securities Act Rule 165. That Rule permits the small business issuer and those acting on its behalf to use "free writing" offering materials that do not meet the requirements of Section 10 of the Act. Those offering materials may be used after the small business issuer has filed that Section 10 prospectus with the Commission in the registration statement. If you use a prospectus in reliance on that Rule, you must file it when required to do so by Securities Act Rule 425.

E. Registrant Information—Incorporation by Reference

1. *Registrants Eligible to Incorporate by Reference.* Unless otherwise provided in General Instruction E.2., a registrant will be eligible to use Items 11 and 12, instead of Item 13, of this Form if it meets the following requirements:

(a) the registrant has a class of securities registered under Section 12(b) or 12(g) of the Exchange Act, or the registrant is required to file reports under Section 15(d) of the Exchange Act;

(b) the registrant has been subject to the requirements of Section 12 or 15(d) of the Exchange Act for at least 24 full calendar months and any portion of a month immediately preceding the date of filing this Form;

(c) the registrant has filed at least two annual reports under Section 13(a) or 15(d) of the Exchange Act; and

(d) the registrant has filed in a timely manner all reports and materials required by Section 13(a), 14 or 15(d) of the Exchange Act for at least 12 full calendar months and any portion of a month immediately before the date of filing this Form.

Note to General Instruction E.1.(d).

If the registrant filed an Exchange Act Rule 12b–25 notice to delay filing any report (or portion of a report) during that time period, it must have filed the related report (or portion) within the time prescribed by Rule 12b–25.

2. *Registrants Ineligible to Incorporate by Reference.* A registrant must comply with Item 13 if it fails to meet any of the conditions of General Instruction E.1. or any of the following is true:

(a) the registrant is a small business issuer that provided the "Information Required in Annual Report of Transitional Small Business Issuers" in its latest Form 10–KSB;

(b) within 2 years before the date of filing this Form, the registrant was a development stage company that either:

(1) had no specific business plan or purpose; or

(2) indicated that its business plan was to engage in a merger or acquisition with an unidentified entity or entities;

(c) within two years before the date of filing this Form, the registrant was a shell entity having few or no assets, earnings or operations;

(d) the registrant is registering an offering of "penny stock" as defined in Exchange Act Rule 3a51–1 or has issued it in the two years prior to the date of filing this Form;

(e) the registrant or any of its subsidiaries has, since the end of the last fiscal year for which the registrant included certified financial statements in an Exchange Act report:

(1) failed to pay any dividend or sinking fund installment on preferred stock;

(2) caused any other material delinquency with respect to preferred stock that was not cured within 30 days; or

(3) defaulted on any payment of principal, interest, a sinking fund installment, a purchase fund installment or any other installment on indebtedness, or defaulted on any rental on a long-term lease, if such debt and lease defaults in the aggregate are material;

(f) the independent accountant that examined the registrant's financial statements for the most recent fiscal year expressed in its report substantial doubt about the registrant's ability to continue as a going concern;

(g) within three years before the date of filing, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the registrant, or a court appointed a receiver, fiscal agent or similar officer with respect to the business or property of the registrant. If true, however, this would not disqualify the registrant if it has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency or receivership process;

(h) within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or its underwriter was convicted of any felony or misdemeanor described in clauses (i) through (iv) of Section 15(b)(4)(B) of the Exchange Act;

(i) within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or its underwriter was made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(1) prohibits future violations of any antifraud provision of the securities laws or Section 5 of the Securities Act;

(2) requires that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or its underwriter cease and desist from violating any antifraud provision of the securities laws or from violating Section 5 of the Securities Act; or

(3) determines that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter violated any antifraud provision of the securities laws or Section 5 of the Securities Act; and

(j) the registrant would incorporate by reference into its Form SB–2 registration statement a report under the Exchange Act that:

(1) the Commission, after review, requested that the registrant amend in accordance with its comments; and

(2) either the registrant did not amend the report or, in the Commission's judgment, did not amend the report in accordance with the Commission's comments.

3. *Successor Registrants.* We will deem a successor registrant to have satisfied the eligibility requirements of General Instruction E.1. of this Item if it satisfies either of the following requirements:

(a)(1) taken together, the registrant and its predecessor meet the eligibility requirements in General Instruction B.1. of this Item;

(2) the primary purpose of the succession was to change the state of incorporation of the predecessor or to form a holding company for the predecessor; and

(3) the assets and liabilities of the successor at the time of succession are

substantially similar to those of the predecessor; or

(b) the predecessor met the eligibility requirements of General Instruction E.1. at the time of succession and the registrant continues to meet those requirements since the succession.

4. *Reporting Companies Recently Entering the Small Business Disclosure System.*

(a) If the small business issuer meets the requirements of General Instruction E.1. and its latest annual report was filed on Form 10–K or Form 20–F (rather than Form 10–KSB), it may use Items 11 and 12 and incorporate that annual report. The annual report on Form 10–K or 20–F must be updated by the Form 10–QSB for its most recent quarter. *See* Item 10(a)(2) of Regulation S–B which explains when and how a reporting company may enter the small business disclosure system.

(b) If a Canadian small business issuer incorporates an annual report on Form 20–F that includes financial statements prepared and presented under Item 17 of Form 20–F, it must include in the prospectus financial statements prepared and presented under Item 18 of Form 20–F unless otherwise permitted under Note 2 of Item 310 of Regulation S–B.

(c) If the small business issuer chooses not to incorporate information from its latest annual report on Form 10–K or 20–F, it must provide the information required by Item 13. Item 13 requires disclosure based upon Regulation S–B, including Item 310 financial statements.

F. Concurrent Registration of Securities Under the Exchange Act

1. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

(a) receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

(b) effectiveness of this registration statement.

2. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of (1) 60 days after the initial filing of this registration statement; or (2) the effectiveness of this registration statement.

3. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

4. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover of this Form.

* * * * *

Item 11. Information Required for Seasoned Form SB–2 Companies

If you meet the requirements of General Instruction E.1. of this Form and elect to comply with this Item and Item 12 (instead of Item 13), you must:

(a) *Annual Report.* Deliver together with the prospectus a copy of your latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act.

(b) *Canadian Annual Report.* If you are a Canadian small business issuer and you incorporate an annual report on Form 20–F that includes financial statements prepared and presented pursuant to Item 17 of Form 20–F, include in the prospectus financial statements prepared and presented pursuant to Item 18 of Form 20–F.

Notes to Item 11(b).

1. You must state in the prospectus that it is accompanied by that annual report.

2. Canadian small business issuers: You may not satisfy this obligation by delivering an annual report on Form 40–F.

3. Canadian small business issuers: You do not need to include financial statements that comply with Item 18 of Form 20–F if the only securities offered are those listed in paragraphs (a) through (c) of Note 2 of Item 310 of Regulation S–B.

(c) *Quarterly Information.* Provide the information required by Part I of Form 10–QSB for the most recent fiscal quarter following the fiscal year covered by the annual report delivered pursuant to this Item. You must either:

(1) include that information in the prospectus; or

(2) deliver together with the prospectus a copy of your latest Form 10–QSB.

Notes to Item 11(c).

1. If your Form 10–QSB for the most recent quarter is not due to be filed before effectiveness of the registration statement, it may provide the information for the previous fiscal quarter to satisfy Item 11(c). For this purpose, the due date is calculated without reference to the extension provided by Exchange Act Rule 12b–25.

2. If you deliver your latest Form 10–QSB, you must state in the prospectus that it is accompanied by that report.

(d) *Financial statements and information.* If not included in your latest annual report delivered to investors pursuant to this Item, provide:

(1) financial statements and information required by Items 310 (c)–(e) of Regulation S–B;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interests method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Item 310(c) of Regulation S–B;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements;

(4) disclosure required by Item 310(b)(2)(v) of Regulation S–B regarding any material accounting change; or

(5) financial information required by Item 310(b)(2)(iv) of Regulation S–B regarding a significant disposition or purchase business combination;

Instruction to Item 11(d).

You may incorporate by reference into the effective registration statement the information required by paragraph (d) of Item 11. If you incorporate it, you must deliver it together with the prospectus.

(e) *Material changes.* Describe any material changes in your affairs which occurred since the end of the latest fiscal year covered by the annual report and which were not described in an Exchange Act Report that was delivered with the prospectus.

Instructions to Item 11.

1. You must deliver the information required by this Item with the first preliminary prospectus you deliver. You do not need to redeliver those documents with any later prospectus sent to the same person.

2. Any reports the registrant delivers together with the prospectus pursuant to this Item must be delivered without charge to the investor.

Item 12. Incorporation of Certain Information by Reference for Seasoned Form SB–2 Companies

If you provide information pursuant to Item 11 of this Form:

(a) You must incorporate by reference into the prospectus that is part of the effective registration statement:

(1) Your latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements; and

Note to Item 12(a)(1).

Canadian small business issuers: You may not satisfy this obligation by incorporating an annual report on Form 40–F.

(2) All other reports you filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report incorporated in this Form;

Instructions to Item 12(a).

1. List in the prospectus that is part of the effective registration statement all documents filed prior to effectiveness that are incorporated by reference.

2. You should read Rule 439 regarding consent to the use of material incorporated by reference.

(b) You must provide the following undertakings in the prospectus:

(1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester;

(4) that you will send a copy of information incorporated by reference into the prospectus but not delivered with it within one business day of any request for that information;

(5) that you will send these incorporated documents in a manner that should result in delivery within three business days; and

(6) the name, address and telephone number to which the request for this information must be made is: [*fill in information*].

Notes to Item 12(b).

1. The undertaking covers all documents incorporated by reference through the date of responding to the request.

2. If you send any of the information that is incorporated by reference in the prospectus to security holders, you must also send any exhibits that are specifically incorporated by reference in that information.

(c) In the prospectus you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public:

(i) may read and copy materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 13. Information Required for all Other Small Business Issuer Registrants

If you do not provide information in accordance with Item 10 or Items 11 and 12, you must provide the following information:

(a) *Description of Business.* Item 101 of Regulation S–B;

(b) *Description of Property.* Item 102 of Regulation S–B;

(c) *Legal Proceedings.* Item 103 of Regulation S–B;

(d) *Market for Common Stock and Related Stockholder Matters.* Item 201 of Regulation S–B;

(e) *Financial Statements.* Item 310 of Regulation S–B;

(f) *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.* Item 304 of Regulation S–B;

(g) *Management's Discussion and Analysis or Plan of Operation.* Item 303 of Regulation S–B;

(h) *Directors, Executive Officers, Promoters and Control Persons.* Item 401 of Regulation S–B;

(i) *Executive Compensation.* Item 402 of Regulation S–B;

(j) *Security Ownership of Certain Beneficial Owners and Management.* Item 403 of Regulation S–B; and

(k) *Certain Relationships and Related Transactions.* Item 404 of Regulation S–B.

* * * * *

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form SB–2. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) ____________________

By (Signature and Title) ____________________

Date ____________________

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ____________________

Date ____________________

By (Signature and Title) ____________________

Date ____________________

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the small business issuer;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

95. By revising § 239.11 and adding Form SB–3 to read as follows:

§ 239.11 Form SB–3, for registration under the Securities Act of 1933 of securities issued by small business issuers in business combination transactions.

Small business issuers must use this Form for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of offerings of securities:

(a) In a transaction of the type specified in paragraph (a) § 230.145 of this chapter;

(b) In a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any securities acquired pursuant to this registration statement; or

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) of this section registered on one registration statement.

Note: The text of Form SB–3 will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form SB–3—Registration Statement Under the Securities Act of 1933

____

(Exact name of Registrant as specified in its charter)

____

(Translation of Registrant's name into English, if applicable)

____

(State or other jurisdiction of incorporation or organization)

____

(I.R.S. Employer Identification Number)

____

(Address and telephone number of Registrant's principal executive offices)

____

(Name, address and telephone number of Registrant's agent for service)

____

(Web Site Address, if any)

____

(E-mail Address, if any)

If you include the Securities Act Rule 473(a) delaying legend on this registration statement when you first file it, and you are relying on Securities Act Rule 456(b) to delay payment of the registration fee, check the following box. [ ]

If you do not include the Rule 473(a) delaying legend on this registration statement when you first file it, or if you specifically state in a pre-effective amendment that this registration statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act, check the following box. [ ]

Note: If you check this box, you must pay the registration fee required by Section 6 of the Securities Act (unless previously paid) before the registration statement or pre-effective amendment will be considered filed.

If you are filing this Form to register additional securities for an offering in accordance with Rule 462(e) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ________

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

Name of exchange on which listed:

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

Name of market on which quoted:

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.

2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.

3. If the fee is calculated under Rule 457(o), the "Amount to be registered" and the "Proposed maximum offering price per unit" need not appear in this table.

4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. Rules as to Use of Form SB–3

A. A "small business issuer" as defined in Securities Act Rule 405 may use this Form to register an offering under the Securities Act of 1933 ("Securities Act") that is:

1. a transaction of the type specified in Securities Act Rule 145(a);

2. a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

3. an exchange offer for securities of the issuer or another entity;

4. a public reoffering or resale of any securities acquired pursuant to this registration statement; or

5. more than one of the kinds of transactions listed in paragraphs 1. through 4. registered on one registration statement.

B. You also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). You may register any class of securities that are the subject of the offering you are registering under the Securities Act. To register, you must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

C. You may not use this Form if you are a registered investment company or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940.

II. Registrant Information

Provide information about the registrant as follows:

A. *Transitional Small Business Issuer Registrants.* A registrant may comply with either Item 10(b) or (c) of this Form, as applicable, if it meets the following requirements:

1. it is a reporting company under the Exchange Act;

2. it provided the disclosure required by Alternative 1 or 2 of "Information Required in Annual Report of Transitional Small Business Issuers" in its most recent Form 10–KSB; and

3. it is eligible to use Form SB–1.

B. *Seasoned Form SB–2 Registrants.* If the registrant meets the requirements of General Instruction E.1. of Form SB–2, it must comply with:

1. Items 11 and 12 of this Form; or

2. Item 13 of this Form.

C. *All Other Small Business Issuer Registrants.* All other small business issuer registrants, including transitional small business issuers that choose not to rely on Item 10, must comply with Item 13 of this Form.

III. Information With Respect to the Company Being Acquired

Provide information about the company being acquired (which includes any entity whose securities are to be exchanged for securities of the registrant) as follows:

A. *Transitional Small Business Issuers.* If the company being acquired is a transitional small business issuer that meets the requirements of General Instruction II.A.1., it may provide the information required by either Item 14 or 16 of this Form.

B. *Seasoned Form SB–2 Companies.* If the company being acquired meets the requirements of General Instruction E.1. of Form SB–2, provide the information required by:

1. Item 15 of this Form; or

2. Item 16 of this Form.

C. *All Other Small Business Issuers.* For all other small business issuers being acquired, provide the information required by Item 16 of this Form.

D. *Form B Companies.* If the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B, provide information in accordance with:

1. Item 17 of this Form;

2. Item 18 of this Form; or

3. Item 19 of this Form.

E. *Seasoned Form A Companies.* If the company being acquired meets the requirements of General Instruction II. of Form A, provide information in accordance with:

1. Item 18 of this Form; or

2. Item 19 of this Form.

F. *All Other Companies.* For all other companies being acquired, provide information in accordance with Item 19 of this Form.

IV. Securities Act Rules and Regulations

You should read the rules and regulations under the Securities Act (Part 230 of Title 17 of the Code of Federal Regulations), particularly Regulation C. That Regulation contains general requirements regarding the preparation and filing of registration statements.

V. Free Writing Prospectus Information

A. You should read Securities Act Rule 166. That Rule permits a registrant to make offers prior to filing a Form SB–3 registration statement. If you use a prospectus in reliance on that Rule, you must file that prospectus when required to do so by Securities Act Rule 425.

B. You should read Securities Act Rule 165. That Rule permits the use of "free writing" offering materials that do not meet the requirements of Section 10 of the Act. If you use a prospectus in reliance on Rule 165,

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you must file it when required to do so by Securities Act Rule 425.

VI. U.S. and Foreign Companies Being Acquired

A. As used in this Form, "larger U.S. company being acquired" includes all entities being acquired other than U.S. small business issuers, foreign governments and foreign private issuers.

B. As used in this Form, "larger foreign company being acquired" includes only entities being acquired that are foreign private issuers. It does not include Canadian small business issuers.

C. "Foreign private issuer" is defined in Rule 405 of Regulation C.

D. "Small business issuer being acquired" includes only those entities being acquired that are small business issuers, as defined in Rule 405.

VII. Interaction With the Exchange Act

A. If Regulation 14A or 14C under the Exchange Act applies to the transaction registered on this Form:

1. the prospectus may be in the form of a proxy statement or information statement;

2. the prospectus must contain the information required by this Form in lieu of that required by Schedule 14A or 14C; and

3. material filed as a part of the registration statement shall be deemed filed also for purposes of Regulation 14A or 14C, as applicable.

B. If neither Regulation 14A nor 14C applies to the transaction registered on this Form, any proxy or information statement material sent to security holders must be filed prior to use as a part of the effective registration statement.

C. If you are registering an offering that is subject to Section 13(e), 14(d) or 14(e) of the Exchange Act, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

VIII. Business Combinations Effected on a Delayed Basis

A. A registrant may use this Form to register a transaction that will be effected on a delayed basis under Securities Act Rule 415(a)(1)(viii). In that event, it need only furnish information about the contemplated transaction and the company being acquired to the extent practicable as of the effective date of the registration statement. It must file a post-effective amendment to include the remaining required information about the transaction and the company being acquired in the registration statement.

B. A registrant may use this Form to register a transaction that would qualify for an exemption from Section 5 of the Securities Act but for the proximity in time of other similar transactions. In that event, the registrant need only file a prospectus supplement to provide the required information about the transaction and the company being acquired.

C. A registrant may register two or more classes of securities on this Form that it will offer on a delayed or continuous basis pursuant to Rule 415(a)(1)(viii).

IX. Roll-Up Transactions

A. Roll-up transactions (as defined in Item 901(c) of Regulation S–K) may be registered on this Form. In that event, the small business issuer registrant must comply with the disclosure requirements of Subpart 900 of Regulation S–K. To the extent that the disclosure requirements of Subpart 900 are inconsistent with those in this Form, the requirements of Subpart 900 control.

B. If the registrant registers a roll-up transaction on this Form, special prospectus delivery requirements apply. *See* Securities Act Rule 172(e).

C. The proxy rules and Exchange Act Rule 14e–7 of the tender offer rules contain provisions specifically applicable to roll-up transactions. Those provisions apply whether or not the entities involved have registered securities pursuant to Section 12 of the Exchange Act.

X. Registration of Additional Securities

A. Under certain circumstances, a small business issuer may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b) or Rule 462(e). That type of registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) or Rule 462(e) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) or Rule 462(e) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) or Rule 462(e) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) or Rule 462(e) registration statement.

Note to General Instruction X.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

XI. Concurrent Registration of Securities Under the Exchange Act

A. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

1. receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

2. effectiveness of this registration statement.

B. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of (1) 60 days after the initial filing of this registration statement; or (2) the effectiveness of this registration statement.

C. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

D. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover to this Form.

Part I—Information Required in the Prospectus

A. Information About the Transaction

Item 1. Front of Registration Statement and Front Cover of Prospectus

Provide the information required by Item 501 of Regulation S–B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

(a) Provide the information required by Item 502 of Regulation S–B.

(b) If you incorporate information by reference into the prospectus, state on the inside front cover page:

(1) that the prospectus incorporates by reference important business and financial information about the company that is not delivered with it;

(2) that this information is available without charge to any person, including any beneficial owner, upon written or oral request;

(3) that you will send those incorporated documents in a manner that should result in delivery within three business days of the request;

(4) the name, address and telephone number to which persons must make this request; and

(5) that to obtain timely delivery, persons must request this information no later than ____ [specify date five business days before the date on which the final investment decision must be made. You must highlight this statement by print type or otherwise.

Instruction to Item 2.

1. The undertaking covers all documents incorporated by reference through the date of responding to the request.

2. If you send any of the information that is incorporated by reference in the prospectus, you also must send any exhibits that are specifically incorporated by reference in that information.

3. If information is incorporated by reference in any document you are sending to a security holder upon request, you also must send the information incorporated by reference.

Item 3. Prospectus Summary and Other Information

In the forepart of the prospectus, provide a summary of the information contained in the prospectus as described in Item 503(a) of Regulation S–B and the following information:

(a) *Contact information.* The name, complete mailing address and telephone number of the principal executive offices of the registrant and the company being acquired;

(b) *Risk factors.* The information required by Item 503(c) of Regulation S–B;

(c) *Ratio of earnings to fix charges.* The information required by Item 503(d) of Regulation S–K;

(d) *Business conducted.* A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(e) *Transaction being registered.* A brief description of the transaction in which the securities being registered will be offered;

(f) *Selected financial data.* The selected financial data required by Item 301 of Regulation S–K for larger U.S. companies being acquired and Item 8 of Form 20–F for larger foreign companies being acquired. To the extent this information is required to be presented in the prospectus pursuant to other Items of this Form, it need not be presented pursuant to this Item;

(g) *Pro forma selected financial data.* If material, the information required by Item 310 of Regulation S–B for the registrant showing the pro forma effect of the transaction. To the extent the information is required to be presented in the prospectus pursuant to other Items of this Form, it need not be presented pursuant to this Item;

(h) *Pro forma information.* In a table designed to facilitate comparison, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the company being acquired for the following items:

(1) book value per share as of the dates financial data is presented;

(2) cash dividends declared per share for the periods for which financial data is presented; and

(3) income (loss) per share from continuing operations for the periods for which financial data is presented.

Instructions to Item 3(g) and 3(h).

1. For a business combination accounted for as a purchase, present the financial information required by paragraphs (g) and (h) only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, present the financial information required by paragraphs (g) and (h) (except for information with regard to book value) for the most recent two fiscal years and interim period. For purposes of these paragraphs, book value information need only be provided for the most recent balance sheet date.

2. Provide the per share data of the registrant and the company being acquired as of the dates that, or for the periods for which, financial data is presented pursuant to the applicable requirements of:

(a) Item 310 of Regulation S–B for small business issuer registrants and companies being acquired that are small business issuers;

(b) Item 301 of Regulation S–K for larger U.S. companies being acquired; and

(c) Item 8 of Form 20–F for larger foreign companies being acquired;

3. Calculate the equivalent pro forma per share amounts for one share of the company being acquired by multiplying the exchange ratio times each of:

(a) the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction;

(b) the pro forma book value per share; and

(c) the pro forma dividends per share of the registrant.

4. Larger foreign companies: Instruction 7 to Item 8 of Form 20–F is applicable to the financial information presented hereunder to the extent that this Form requires reconciliation of financial statements of foreign private issuers to U.S. GAAP and Regulation S–X.

(i) *Market value of securities.* In a table designed to facilitate comparison, the market value of securities of the company being acquired (on a historical and equivalent per share basis) and the market value of the securities of the registrant (on an historical basis) as of the day before the date the public announcement of the proposed transaction. If no such public announcement was made, as of the day before the date the agreement with respect to the transaction was entered into;

(j) *Affiliates' voting shares.* With respect to the registrant and the company being acquired, a brief statement comparing the percentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates. State the vote required for approval of the proposed transaction;

(k) *Regulatory approval.* A statement as to whether any regulatory requirements must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approval;

(l) *Dissenters' rights.* A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 20 or 21 of this Form; and

(m) *Tax consequences.* A brief statement about the tax consequences of the transaction or, if appropriate, a cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the Transaction

(a) Provide a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) the information required by paragraphs (a)(1) and (a)(2) of Regulation M–A (§ 229.1004(a)(1) and (a)(2) of this chapter) and

(2) where not organized in the same country, a discussion of any material differences in the corporate laws applicable to the company being acquired and to the surviving entity. The discussion should include, but not necessarily be limited to: corporate governance, board structure, quorums, class action suits, shareholder derivative suits, rights to inspect corporate books and records, rights to inspect the shareholder list and rights of directors and officers to obtain indemnification from the company.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party and such report, opinion or appraisal is referred to in the prospectus, provide the information called for by Item 1015(b) of Regulation M–A (§ 229.1015(b) of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus.

Item 5. Pro Forma Financial Information

Provide the financial information required by Item 310(d) of Regulation S–B with respect to this transaction.

Instructions.

1. Present any Item 310(d) information required by the other Items of this Form (where not incorporated by reference) together with the information provided under this Item. In presenting this information, you must clearly distinguish between this transaction and any other one.

2. You need only show the pro forma effect that the registered transaction has on any pro forma financial information that:

(i) is incorporated by reference; and

(ii) reflects all prior transactions.

Item 6. Material Contacts With the Company Being Acquired

Provide the information required by Items 1005(b) and 1011(a) of Regulation M–A (§ 229.1005(b) and § 229.1011(a) of this chapter) for the registrant or its affiliates and the company being acquired or its affiliates. The information provided only need cover the periods for which financial statements are presented or incorporated by reference into this Form.

Item 7. Additional Information Required for Reoffering by Persons Deemed To Be Underwriters

If any person who is deemed to be an underwriter of the securities is reoffering any of the securities to the public, provide the following information in the prospectus prior to its use for the reoffer:

(a) The information required by Item 507 of Regulation S–B;

(b) Information with respect to the consummation of the transaction in which the securities were acquired; and

(c) A description of any material change in the registrant's affairs that occurred after the transaction in which the securities were acquired.

Note to Item 7.

You should read Item 512(g) of Regulation S–K regarding undertakings required in reoffering registration statements.

Item 8. Interests of Named Experts and Counsel

Provide the information required by Item 509 of Regulation S–B.

Item 9. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Provide the information required by Item 510 of Regulation S–B.

B. Information About the Registrant

Item 10. Information Required for Transitional Small Business Issuers

(a) The registrant may rely upon either paragraph (b) or (c), as applicable, of this Item (instead of Item 13), if it meets all of the following requirements:

(1) it is a reporting company under the Exchange Act;

(2) it relied upon Alternative 1 or 2 of "Information Required in Annual Report of Transitional Small Business Issuers" in its most recent Form 10–KSB; and

(3) it is eligible to use Form SB–1.

(b) A registrant that meets the requirements of paragraph (a) of this Item and relied upon

Alternative 1 in its most recent Form 10–KSB may provide the information required by:

(1) *Offering Circular Model A of Form 1–A.* Questions 3, 4, 11, 43 and 47–50;

(2) *Market for Common Equity and Related Stockholder Matters.* If common equity securities are being issued, Item 201 of Regulation S–B;

(3) *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.* Item 304 of Regulation S–B; and

(4) *Financial Statements.* Item 310 of Regulation S–B.

(c) A registrant that meets the requirements of paragraph (a) of this Item and relied upon Alternative 2 in its most recent Form 10–KSB may provide the information required by:

(1) *Offering Circular Model B of Form 1–A.* Items 6 and 7;

(2) *Legal Proceedings.* Item 103 of Regulation S–B;

(3) *Market for Common Equity and Related Stockholder Matters.* If the registrant is issuing common equity securities, Item 201 of Regulation S–B;

(4) *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.* Item 304 of Regulation S–B; and

(5) *Financial Statements.* Item 310 of Regulation S–B.

Item 11. Information Required for Seasoned Form SB–2 Companies

If you meet the requirements of General Instruction E.1. of Form SB–2 and elect to comply with this Item and Item 12 (instead of Item 13), you must:

(a) *Annual Report.* Deliver together with the prospectus a copy of your latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act;

(b) *Canadian Annual Report.* If you are a Canadian small business issuer and you incorporate an annual report on Form 20–F that includes financial statements prepared and presented pursuant to Item 17 of Form 20–F, include in the prospectus financial statements prepared and presented pursuant to Item 18 of Form 20–F.

Notes to Item 11(a) and (b).

1. You must state in the prospectus that it is accompanied by that annual report.

2. Canadian small business issuers: You may not satisfy the requirement to deliver an annual report with an annual report on Form 40–F.

3. Canadian small business issuers: You do not need to include financial statements that comply with Item 18 of Form 20–F if the only securities offered are those listed in paragraphs (a) through (c) of Note 2 of Item 310 of Regulation S–B.

(c) *Quarterly Information.* Provide the information required by Part I of Form 10–QSB for the most recent fiscal quarter following the fiscal year covered by the annual report delivered pursuant to this Item. You must either:

(1) include that information in the prospectus; or

(2) deliver together with the prospectus a copy of your latest Form 10–QSB;

Notes to Item 11(c):

1. If your Form 10–QSB for the most recent quarter is not due to be filed before effectiveness of the registration statement, you may provide the information for the previous fiscal quarter to satisfy Item 11(c). For this purpose, the due date is calculated without reference to the extension provided by Exchange Act Rule 12b–25.

2. If you deliver your latest Form 10–QSB, you must state in the prospectus that it is accompanied by that report.

(d) *Financial statements and information.* If not included in your latest annual report delivered to investors pursuant to this Item, provide:

(1) financial statements and information required by Items 310(c)–(e) of Regulation S–B;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interests method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Item 310(c) of Regulation S–B;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements;

(4) disclosure required by item 310(b)(2)(v) of Regulation S–B regarding any material accounting change; or

(5) financial information required by Item 310(b)(2)(iv) of Regulation S–B regarding a significant disposition or purchase business combination.

Instruction to Item 11(d).

You may incorporate by reference into the effective registration statement the information required by paragraph (d) of Item 11. If you incorporate it, you must deliver it together with the prospectus.

(e) *Material Changes.* Describe any material changes in your affairs that occurred since the end of the latest fiscal year covered by the annual report and were not described in an Exchange Act report that was delivered with the prospectus.

Instructions to Item 11:

1. You must deliver the information required by this Item with the first preliminary prospectus you deliver. You do not need to redeliver those documents with any later prospectus sent to the same person.

2. Any reports the registrant delivers together with the prospectus pursuant to this Item must be delivered without charge to the investor.

Item 12. Incorporation of Certain Information by Reference for Seasoned Form SB–2 Companies

If you provide information pursuant to Item 11 of this Form:

(a) You must incorporate by reference into the prospectus that is part of the effective registration statement:

(1) Your latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements; and

Note to Item 12(a)(1).

Canadian small business issuers: you may not satisfy this obligation by incorporating an annual report on Form 40–F.

(2) All other reports you filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report incorporated in this Form.

Instructions to Item 12(a).

1. List in the prospectus that is part of the effective registration statement all documents filed prior to effectiveness that are incorporated by reference.

2. You should read Securities Act Rule 439 regarding consent to the use of material incorporated by reference.

(b) In the prospectus you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public:

(i) may read and copy materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 13. Information Required for all Other Small Business Issuer Registrants

If you do not provide information in accordance with Item 10 or Items 11 and 12, you must provide the following information:

(a) *Description of Business.* Item 101 of Regulation S–B;

(b) *Description of Property.* Item 102 of Regulation S–B;

(c) *Legal Proceedings.* Item 103 of Regulation S–B;

(d) *Market for Common Stock and Related Stockholder Matters.* Item 201 of Regulation S–B;

(e) *Financial Statements.* Item 310 of Regulation S–B;

(f) *Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.* Item 304 of Regulation S–B;

(g) *Management's Discussion and Analysis or Plan of Operations.* Item 303 of Regulation S–B;

(h) *Directors, Executive Officers, Promoters and Control Persons.* Item 401 of Regulation S–B;

(i) *Executive Compensation.* Item 402 of Regulation S–B;

(j) *Security Ownership of Certain Beneficial Owners and Management.* Item 403 of Regulation S–B; and

(k) *Certain Relationships and Related Transactions.* Item 404 of Regulation S–B.

C. Information About the Company Being Acquried

Item 14. Information Required for Companies That Are Transitional Small Business Issuers

(a) If the company being acquired meets the requirements to use Item 10(b) of this Form and compliance with this Item is elected, provide the information required by

Item 10(b) as if the company being acquired were the registrant.

(b) If the company being acquired meets the requirements to use Item 10(c) of this Form and compliance with this Item is elected, provide the information required by Item 10(c) as if the company being acquired were the registrant.

Item 15. Information Required for Seasoned SB–2 Issuers

If the company being acquired meets the requirements of General Instruction E.1. of Form SB–2 and compliance with this Item is elected, provide the information required by Items 11 and 12 of this Form as if the company being acquired were the registrant.

Instruction.

Canadian small business issuers being acquired: Notwithstanding the requirements of Items 11 and 12, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 16. Information Required for all Other Small Business Issuers

If the company being acquired does not meet the requirements of General Instruction E.1. of Form SB–2, or compliance with this Item is elected, provide the information required by Item 13 of this Form as if the company being acquired were the registrant, subject to the following:

(a) Canadian small business issuers being acquired: Notwithstanding the requirements of Item 13 of this Form, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (b).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

(c) Notwithstanding paragraph (b) of this Item, the financial statements of the company being acquired must be audited for the fiscal years required by Item 310 of Regulation S–B if this registration statement is used for resales by any person deemed to be an underwriter within the meaning of Rule 145(c).

(d) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), provide the information required by Part I of Form 10–QSB for the most recent quarter for which a quarterly report would be due as if the company being acquired were subject to those reporting requirements.

Item 17. Information Required for Form B Companies

If the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B and compliance with this Item is elected, provide the information required by Items 10 and 11 of Form C as if the company being acquired were the registrant on Form C.

Instruction.

Larger foreign companies being acquired: Notwithstanding the requirements of Items 10 and 11 of Form C, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 18. Information Required for Seasoned Form A Companies

If the company being acquired meets the requirements of General Instruction II. of Form A and compliance with this Item is elected, provide the information required by Items 12 and 13 of Form C as if the company being acquired were the registrant on Form C.

Instruction.

Foreign companies being acquired: Notwithstanding the requirements of Items 12 and 13 of Form C, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 19. Information Required for All Other Companies

If the company being acquired does not meet the requirements of General Instructions I.B. and I.C.1. of Form B or General Instruction II. of Form A, or compliance with this Item is elected, provide the information required by Item 14 of Form C as if the company being acquired were the registrant on Form C, subject to the following:

(a) Only those schedules required by Rules 12–15, 28 and 29 of Regulation S–X need be provided with respect to the company being acquired.

(b) Notwithstanding the requirements of Item 14 of Form C, the financial statements of any foreign company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (c).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

(d) Notwithstanding paragraph (c) of this Item, the financial statements of the company being acquired must be audited for the fiscal years required by paragraph (b)(2) of Rule 3–05 of Regulation S–X if this registration statement is used for resales by any person deemed to be an underwriter within the meaning of Rule 145(c).

(e) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), provide the information required by Part I of Form 10–Q or 10–QSB for the most recent quarter for which a quarterly report would be due as if the company being acquired were subject to those reporting requirements.

D. Voting and Management Information

Item 20. Information if Proxies, Consents or Authorizations Will Be Solicited

(a) If either the registrant or the company being acquired is soliciting proxies, consents or authorizations, provide the following information:

(1) *Date, Time and Place Information.* Item 1 of Schedule 14A;

(2) *Revocability of Proxy.* Item 2 of Schedule 14A;

(3) *Dissenters' Rights of Appraisal.* Item 3 of Schedule 14A;

(4) *Persons Making the Solicitation.* Item 4 of Schedule 14A;

(5) *Persons with a Substantial Interest in the Matter.* Item 5 of Schedule 14A, with respect to both the registrant and the company being acquired;

(6) *Voting Securities and Principal Holders.* Item 6 of Schedule 14A, with

respect to both the registrant and the company being acquired;

Instruction to Item 20(a)(6).

The following registrants and companies being acquired may provide the information required below instead of the information required by Item 6(d) of Schedule 14A:

1. Transitional small business issuers that rely upon Item 10(b) (if a registrant) or 14(a) (if an acquiree) of this Form: the information required by Questions 37 and 38 of Offering Circular Model A of Form 1–A;

2. Transitional small business issuers that rely upon Item 10(c) (if a registrant) or 14(b) (if an acquiree) of this Form: the information required by Item 10 of Offering Circular Model B of Form 1–A;

3. All other small business issuers, whether registrants or acquirees: the information required by Item 403 of Regulation S–B; and

4. Larger foreign companies being acquired: the information specified in Item 4 of Form 20–F.

(7) *Vote Required for Approval.* Item 21 of Schedule 14A; and

(8) *Directors and Executive Officers.* For the following companies, with respect to each person who will serve as a director or an executive officer of the registrant:

(i) Transitional Small Business Issuers:

(A) Questions 29–36 and 39–42 of Offering Circular Model A of Form 1–A, if the registrant or acquiree relied upon Item 10(b) or 14(a), respectively; or

(B) Items 8, 9 and 11 of Offering Circular Model B of Form 1–A, if the registrant or acquiree relied upon Item 10(c) or 14(b), respectively;

(ii) All other Small Business Issuers: Items 401, 402 and 404 of Regulation S–B;

(iii) Larger U.S. companies being acquired: Items 401, 402 and 404 of Regulation S–K; and

(iv) Larger foreign companies being acquired: Items 10, 11, 12 and 13 of Form 20–F.

(b) If the registrant or the company being acquired meets the requirements of General Instruction E.1. of Form SB–2, General Instructions I.B. and I.C.1. of Form B or General Instruction II. of Form A, any information required by paragraphs (a)(6) or (a)(8) of this Item with respect to it may be incorporated by reference from its latest annual report.

Item 21. Information if Proxies, Consents or Authorizations Will Not Be Solicited or in an Exchange Offer

(a) If proxies, consents or authorizations will not be solicited in connection with the transaction or in an exchange offer, provide the following information:

(1) *Statement that Proxies Are Not To Be Solicited.* Item 2 of Schedule 14C;

(2) *Date, Time and Place Information.* The date, time and place of the meeting of security holders, unless such information is otherwise disclosed in material furnished to security holders with or preceding the prospectus;

(3) *Dissenters' Rights of Appraisal.* Item 3 of Schedule 14A;

(4) *Affiliates' Interests in the Transaction.* A brief description of any direct or indirect material interest of affiliates of the registrant and of the company being acquired in the proposed transaction;

Instruction to Item 21(a)(4).

You need not describe any interest arising from the ownership of securities where the affiliate receives no benefit not shared on a pro rata basis by all other holders of the same class.

(5) *Voting Securities and Principal Holders.* Item 6 of Schedule 14A, with respect to both the registrant and the company being acquired;

Instruction to Item 21(a)(5).

The following registrants and companies being acquired may provide the information required below instead of the information required by Item 6(d) of Schedule 14A:

1. Transitional small business issuers that rely upon Item 10(b) (if a registrant) or 14(a) (if an acquiree) of this Form: the information required by Questions 37 and 38 of Offering Circular Model A of Form 1–A;

2. Transitional small business issuers that rely upon Item 10(c) (if a registrant) or 14(b) (if an acquiree) of this Form: the information required by Item 10 of Offering Circular Model B of Form 1–A;

3. All other small business issuers, whether registrants or acquirees: the information required by Item 403 of Regulation S–B; and

4. Larger foreign companies being acquired: the information specified in Item 4 of Form 20–F.

(6) *Vote Required for Approval.* Item 21 of Schedule 14A; and

(7) *Directors and Executive Officers.* With respect to each person who will serve as a director or an executive officer of the registrant, the information required by:

(i) Transitional Small Business Issuers:

(A) Questions 29–36 and 39–42 of Offering Circular Model A of Form 1–A, if the registrant or acquiree relied upon Item 10(b) or 14(a) of this Form, respectively; or

(B) Items 8, 9 and 11 of Offering Circular Model B of Form 1–A, if the registrant or acquiree relied upon Item 10(c) or 14(b) of this Form, respectively;

(ii) All other Small Business Issuers: Items 401, 402 and 404 of Regulation S–B;

(iii) Larger U.S. companies being acquired: Items 401, 402 and 404 of Regulation S–K; and

(iv) Larger foreign companies being acquired: Items 10, 11, 12 and 13 of Form 20–F.

Instruction to Item 21(a).

If proxies, consents or authorizations will not be solicited in connection with the transaction because the transaction is an exchange offer, you need not provide the information required by paragraphs (a)(1), (a)(2) and (a)(3).

(b) If the registrant or the company being acquired meets the requirements of General Instruction E.1. of Form SB–2, General Instruction I.B. and I.C.1. of Form B or General Instruction II. of Form A, any information required by paragraphs (a)(5) and (a)(7) of this Item with respect to it may be incorporated by reference from its latest annual report.

Part II—Information Not Required in the Prospectus

Item 22. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S–B.

Item 23. Exhibits and Financial Statement Schedules .

(a) Transitional small business issuer registrants must provide the exhibits required by Part II of Form SB–1. All other small business issuer registrants must provide the exhibits required by Item 601 of Regulation S–B.

Instruction to Item 23(a).

For the following companies being acquired, provide the exhibits required below:

(1) Transitional small business issuer being acquired: Item 2(6) of Part III—Exhibits of Form 1–A;

(2) Any other small business issuer being acquired: Item 601(b)(10) of Regulation S–B;

(3) Larger U.S. company being acquired: Item 601(b)(10) of Regulation S–K; or (4) Larger foreign company being acquired: Item 601(b)(10) of Regulation S–K.

(b) Provide the financial statement schedules required by Regulation S–X and Item 19 of this Form. List each schedule according to the number assigned to it in Regulation S–X.

(c) If information is provided pursuant to Item 4(b) of this Form, provide the report, opinion or appraisal as an exhibit to this Form, unless it is included in the prospectus.

Item 24. Undertakings

(a) Set forth in the effective registration statement the undertakings required by Item 512 of Regulation S–B.

(b) Set forth the following undertaking if the registrant is using this Form for a transaction to be effected on a delayed basis:

[Name of registrant] will file a post-effective amendment containing all required information concerning a transaction and the company being acquired that was not included in the registration statement when it became effective because it was not practicable to do so.

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form SB–3. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) ______________________

By (Signature and Title) ______________________

Date ______________________

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ______________

Date ______________

By (Signature and Title) ______________

Date ______________

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the registrant;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

5. If the securities to be offered are those of an entity that is not yet in existence at the time the registration statement is filed, but which will be a party to a consolidation involving two or more existing entities, then each existing entity will be deemed a registrant and must be so designated on the cover page of the Form. In that case, each existing entity (and the applicable persons noted in Signature Instructions 1.–3.) must sign the registration statement as if it were the registrant.

96. By amending Form S–8 (referenced in § 239.16b) by adding four lines immediately preceding the heading "Calculation of Registration Fee"; Note 3 immediately preceding the General Instructions; by removing General Instruction C.; by redesignating General Instructions D. through G. as General Instructions C. through F.; and by revising newly designated General Instruction D. to read as follows:

Note: The text of Form S–8 does not and this amendment will not appear in the Code of Federal Regulations.

Form S–8—Registration Statement Under the Securities Act of 1933

* * * * *

Telephone number, including area code, of agent for service ______________

____

(Web Site Address, if any)

____

(E-mail Address, if any)

Calculation of Registration Fee

* * * * *

Note 3: If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

* * * * *

D. Registration of Additional Securities

An issuer may register additional securities of the same class of securities that have been previously registered on this form. The registration statement for the additional securities shall consist only of the following:

(1) a facing page;

(2) a statement that the contents of the earlier registration statement, identified by its file number, is incorporated by reference;

(3) all required opinions;

(4) all required consents;

(5) any information required in the new registration statement that is not in the earlier registration statement; and

(6) a signature page; A filing fee required by the Act and Rule 457 of this chapter shall be paid with respect to the additional securities only.

* * * * *

97. By amending Form F–7 (referenced in § 239.37) to add four lines to the cover page of the registration statement, to add one check box to the cover page of the registration statement immediately before the Calculation of Registration Fee table, a paragraph to appear as the last paragraph on the cover page of the registration statement, paragraph K to General Instruction II, and General Instruction IV. and in Part II following the center heading to add the heading "Exhibits;" to designate the introductory text as paragraph (a); to add a heading "Undertakings;" and to add paragraph (b) to read as follows:

Note: The text of Form F–7 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form F–7—Registration Statement Under the Securities Act of 1933

* * * * *

____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States

____

(Web Site Address, if any)

____

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ______________

Calculation of Registration Fee*

* * * * *

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

K. You should read Securities Act Rule 172. That rule describes prospectus delivery obligations applicable to offerings registered on this Form.

* * * * *

IV. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;
2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;
3. any required opinions and consents;
4. the signature page; and
5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

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1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction IV.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

Part II—Information Not Required to be Sent to Shareholders

Exhibits

(a) * * *

* * * * *

Undertakings

(b) Include the following undertaking.

The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

98. By amending § 239.38 to revise paragraph (d)(4) and the heading "Instructions"; to add Instruction 5 to the Instructions to paragraph (d); and to revise paragraph (h)(3) to read as follows:

§ 239.38 Form F–8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

* * * * *

(d) * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more; and

(ii) A registrant conducting its own exchange offer need not meet either of the thresholds in paragraph (d)(4)(i) of this section.

Instructions to Paragraph (d).

* * * * *

5. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

(h) * * *

(3) *Public Float/ADTV.*

(i) Except for the successor registrant, each company participating in the business combination satisfies either of the following thresholds:

(A) The market value of the public float of the company's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the company's outstanding equity shares is $250 million or more; and

(ii) Any company participating in the business combination need not meet either of the thresholds in paragraph (h)(3)(i) of this section if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph (h)(3)(i) of this section. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have met either of the thresholds in paragraph (h)(3)(i) of this section if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 (§ 239.28, 239.39, 239.40 or 239.41) or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F (§ 240.13e–102 of this chapter) or Schedule 14D–1F (§ 240.14d–102 of this chapter); and

(B) The company would have satisfied either of the thresholds in paragraph (h)(3)(i) of this section immediately before commencing the exchange offer or tender offer.

* * * * *

99. By amending Form F–8 (referenced in § 239.38) by adding four lines to the cover page of the registration statement, by adding one check box to the cover page of the registration statement immediately before the Calculation of Registration Fee table, by adding a paragraph to appear as the last paragraph on the cover page of the registration statement, by revising paragraph (4) of General Instruction II.A., by adding Instruction 5 to the Instructions to General Instruction II.A., by revising paragraph (3) of General Instruction III.A, by adding General Instruction VI., by adding paragraph (c) to Part III. Item 1., to read as follows:

Note: The text of Form F–8 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form F–8—Registration Statement Under the Securities Act of 1933

* * * * *

____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States

____

(Web Site Address, if any)

____

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ____________

Calculation of Registration Fee *

* * * * *

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

* * * * *

II. Eligibility Requirements for Exchange Offers

A. * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of these thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant conducting its own exchange offer need not meet either of the thresholds in paragraph A.(4)(i).

Instructions

* * * * *

5. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10

calendar days immediately preceding the filing of the registration statement.

* * * * *

III. Eligibility Requirements for Business Combinations

A. * * *

(3) *Public Float/ADTV.*

(i) Except for the successor registrant, each company participating in the business combination satisfies either of the following thresholds:

(A) The market value of the public float of the company's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the company's outstanding equity shares is $250 million or more.

(ii) Any company participating in the business combination need not meet either of the thresholds in paragraph A.(3)(i) of this instruction if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph (A)(3)(i) of this section. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have met either of the thresholds in paragraph A.(3)(i) of this Instruction if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F or 14D–1F; and

(B) The company would have satisfied either of the thresholds in paragraph A.(3)(i) immediately before commencing the exchange offer or tender offer.

* * * * *

VI. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;
2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;
3. any required opinions and consents;
4. the signature page; and
5. any price-related information omitted from the earlier registration statement in reliance on Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and
2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction VI.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

* * * * *

Part III—Undertakings and Consent to Service of Process

Item 1. Undertakings

(a) * * *

(b) * * *

(c) The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

100. By amending § 239.39 to revise paragraph (b)(4); and to add Instruction 7 to the Instructions to paragraph (b) to read as follows:

§ 239.39 Form F–9, for registration under the Securities Act of 1933 of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.

* * * * *

(b) * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant need not meet either of the thresholds in paragraph (b)(4)(i) of this section if it is using this Form to register securities that are not convertible into another security.

Instructions

* * * * *

7. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

101. By amending Form F–9 (referenced in § 239.39) to add four lines to the cover page of the registration statement, to add a check box to the cover page of the registration statement immediately before the "Calculation of Registration Fee" table, and one paragraph to appear as the last paragraph on the cover page of the registration statement; to revise paragraph (4) of General Instruction I.B.; to add Instruction 7 to the Instructions to General Instruction I.B., paragraph M. to General Instruction II., General Instruction IV.; and in Part III Item 1., to designate the existing text as paragraph (a) and to add paragraph (b) to read as follows:

Note: The text of Form F–9 will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington D.C., 20549 Form F–9—Registration Statement Under the Securities Act of 1933

* * * * *

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States

---

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ]

Calculation of Registration Fee *

* * * * *

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. Eligibility Requirements for Use of Form F–9

* * * * *

B. * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant need not meet either of the thresholds in paragraph B.(4)(i) of this Instruction if it is using this Form to register securities that are not convertible into another security.

Instructions

* * * * *

7. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

II. Application of General Rules and Regulations

* * * * *

M. You should read Securities Act Rule 172. That rule describes prospectus delivery obligations applicable to offerings registered on this Form.

* * * * *

IV. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;
2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;
3. any required opinions and consents;
4. the signature page; and
5. any price-related information omitted from the earlier registration statement in reliance on Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and
2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction IV.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

* * * * *

Part III—Undertakings and Consents to Service of Process

Item 1. Undertakings

Include the following undertakings:

(a) * * *

(b) The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

102. By amending § 239.40 to revise paragraph (c)(4); and to add Instruction 5 to the Instructions to paragraph (c) to read as follows:

§ 239.40 Form F–10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

* * * * *

(c) * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) Except for the successor issuer, any company participating in the business combination need not meet either of the thresholds in paragraph (c)(4)(i) of this section if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph (c)(4)(i) of this section. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have satisfied either of the thresholds in paragraph (c)(4)(i) of this section if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 (§ 239.38, 239.39, 239.40 or 239.41) or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F (§ 240.13e–102 of this chapter) or Schedule 14D–1F (§ 240.14d–102 of this chapter); and

(B) The company would have satisfied either threshold in paragraph (c)(4)(i) of this section immediately before commencing the exchange offer or tender offer.

Instructions

* * * * *

5. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

103. By revising Form F–10 (referenced in § 239.40) to add four lines to the cover page of the registration statement, to add one check box to the cover page of the registration statement immediately before the "Calculation of Registration Fee" table, one paragraph to appear as the last paragraph on the cover page of the registration statement; to revise paragraph (4) of General Instruction I.C.; to add Instruction 5 to the Instructions to General Instruction I.C. and paragraph N. to General Instruction II, General Instruction IV.; and in Part III Item 1., to designate the second paragraph as paragraph (a) and to add paragraph (b) to read as follows:

* * * * *

Note: The text of Form F–10 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form F–10—Registration Statement Under the Securities Act of 1933

* * * * *

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ____________

Calculation of Registration Fee *

* * * * *

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. General Eligibility Requirements for Use of Form F–10

* * * * *

C. * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) Any individual company participating in the business combination need not meet either of the thresholds in paragraph C.(4)(i) of this Instruction if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph C.(4)(i). Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have satisfied either of the thresholds in paragraph C.(4)(i) of this Instruction if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F or 14D–1F; and

(B) The company would have satisfied either threshold in paragraph C.(4)(i) of this Instruction immediately before commencing the exchange offer or tender offer.

Instructions

* * * * *

5. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

II. Application of General Rules and Regulations

* * * * *

N. You should read Securities Act Rule 172. That rule describes prospectus delivery obligations applicable to offerings registered on this Form.

* * * * *

IV. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;
2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;
3. any required opinions and consents;
4. the signature page; and
5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and
2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction IV.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

* * * * *

Part III—Undertakings and Consent to Service of Process

Item 1. Undertakings

Include the following undertakings:

(a) * * *

(b) The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

104. By amending § 239.41 to revise paragraph (d)(4); to add Instruction 5 to the Instructions to paragraph (d); and to revise paragraph (h)(3) to read as follows:

§ 239.41 Form F–80, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

* * * * *

(d) * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant conducting its own exchange offer need not meet either of the thresholds in paragraph (d)(4)(i) of this section.

Instructions

* * * * *

5. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

(h) * * *

(3) *Public Float/ADTV.*

(i) Except for the successor registrant, each company participating in the business combination satisfies either of the following thresholds:

(A) The market value of the public float of the company's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the company's outstanding equity shares is $250 million or more.

(ii) Any company participating in the business combination need not meet either of the thresholds in paragraph (h)(3)(i) of this section if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph (h)(3)(i) of this section. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have met either of the thresholds in paragraph (h)(3)(i) of this section if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 (§ 239.38, 239.39, 239.40 or 239.41) or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F (§ 240.13e–102 of this chapter) or 14D–1F (§ 240.14d–102 of this chapter); and

(B) The company would have satisfied either threshold in paragraph (h)(3)(i) of this section immediately before commencing the exchange offer or tender offer.

105. By amending Form F–80 (referenced in § 239.41) to add four lines to the cover page of the registration

statement, to add one check box to the cover page of the registration statement immediately before the "Calculation of Registration Fee" table, one paragraph to appear as the last paragraph on the cover page of the registration statement; to revise paragraph (4) of General Instruction II.A.; to add Instruction 5 to the Instructions to General Instruction II.A.; to revise paragraph (3) of General Instruction III.A.; to add General Instruction VI.; and in Part III Item 1. to add paragraph (c) to read as follows:

* * * * *

Note: The text of Form F–80 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form F–80—Registration Statement Under the Securities Act of 1933

* * * * *

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] ________

Calculation of Registration Fee*

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

* * * * *

II. Eligibility Requirements for Exchange Offers

A. * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of these thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant conducting its own exchange offer need not meet either of the thresholds in paragraph A.(4)(i) of this Instruction.

Instructions

* * * * *

5. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

III. Eligibility Requirements for Business Combinations

A. * * *

(3) *Public Float/ADTV.*

(i) Except for the successor registrant, each company participating in the business combination satisfies either of the following thresholds:

(A) The market value of the public float of the company's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the company's outstanding equity shares is $250 million or more.

(ii) Any company participating in the business combination need not meet either of the thresholds in paragraph A.(3)(i) of this Instruction if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph A.(3)(i) of this Instruction. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have met either of the thresholds in paragraph A.(3)(i) of this Instruction if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F or 14D–1F; and

(B) The company would have satisfied either threshold in paragraph A.(3)(i) of this Instruction immediately before commencing the exchange offer or tender offer.

* * * * *

VI. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;
2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;
3. any required opinions and consents;
4. the signature page; and
5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and
2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction VI.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

* * * * *

Part III—Undertakings and Consent to Service of Process

Item 1. Undertakings

(a) * * *

(b) * * *

(c) The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

106. By revising the general authority citation for part 240 to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

107. By amending § 240.12b–2 by revising the definition of "small business issuer" to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

(1) Has revenues (including revenues of any consolidated subsidiaries) of less than $50,000,000;

(2) Is a U.S. or Canadian issuer;

(3) Is not an investment company;

(4) If a majority-owned subsidiary, the parent corporation is also a small business issuer; and

(5) Each majority-owned subsidiary of the entity, if any, meets the criteria of paragraphs (2) and (3) of this definition.

* * * * *

108. By adding § 240.12b–24 to read as follows:

§ 240.12b–24 Plain English risk factor disclosure.

(a) To enhance the readability of risk factor disclosure, you must use plain English principles in the organization, language and design of the risk factor section of any Exchange Act registration statement or report.

(b) Any disclosure you provide in those registration statements or reports that relates to risk factors must, at a minimum, substantially comply with each of the following plain English writing principles:

(1) Short sentences;

(2) Definite, concrete, everyday words;

(3) Active voice;

(4) Tabular presentation or bullet lists for complex material, whenever possible;

(5) No legal jargon or highly technical business terms; and

(6) No multiple negatives.

Note to this section.

You should read Securities Act Release No. 7497 (January 28, 1998) for more information on plain English principles.

109. By adding two notes at the end of § 240.12d1–2 to read as follows:

§ 240.12d1–2 Effectiveness of registration.

* * * * *

Notes to Rule 12d1–2

(1) As established by Section 12(g) of the Exchange Act (15 U.S.C. 78l(g)), a Form 8–A (§ 249.208a of this chapter) filed under paragraph (c) of this section becomes effective no more than 60 days after the date that registration statement is filed with the Commission. The automatic effectiveness described in paragraph (c) permits earlier effectiveness of the Form 8–A only.

(2) Registrants may use Forms A, B, C, SB–1, SB–2, or SB–3 or Schedule B (§ 239.4, 239.5, 239.6, 239.9, 239.10, or 239.11 or 15 U.S.C. 77aa) to register a class of securities under Section 12 of the Exchange Act concurrently with the registration of a public offering of securities of that class under the Securities Act. The Exchange Act registration on Forms A, B, C, SB–1, SB–2 or SB–3 will become effective as described in those forms. The Exchange Act registration on Schedule B will become effective as described in Securities Act Rule 499. Securities Act Rule 499 also sets forth disclosure and procedural requirements for registrants using Schedule B for concurrent registration under the Exchange Act and the Securities Act.

§ 240.13a–10 [Amended]

110. By amending § 240.13a–10 by removing the word "six" and adding, in its place, the word "five" in paragraph (g)(3).

* * * * *

111. By amending § 240.13a–13 by revising paragraph (d) to read as follows:

§ 240.13a–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

* * * * *

(d) Notwithstanding the foregoing provisions of this section, market risk disclosure required by Item 3 of Part I of Form 10–Q shall not be deemed to be "filed" for the purpose of Section 18 of the Act (15 U.S.C. 78r). That disclosure, therefore, shall not be subject to the liabilities of that Section. That disclosure shall, however, be subject to all other provisions of the Act.

112. By amending § 240.14a–2 by removing at the end of paragraph (a)(5) the words "Act of 1935; and" and adding, in their place, the words "Act of 1935;", at the end of paragraph (a)(6)(iii) the words "by security holders." and adding, in their place, the words "by security holders; and"; and by adding paragraph (a)(7) to read as follows.

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(a) * * *

(7) Any solicitation by a broker or dealer made in accordance with § 230.138 or § 230.139 of this chapter in connection with an offering registered under the Securities Act of 1933.

113. By amending § 240.14a–101 by revising Note E., by revising paragraph (b)(1), and by revising the heading to paragraph (b)(2) of Item 13 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

E. In Item 13 of this Schedule, the reference to "meets the requirements of Form B" shall mean a registrant who meets:

(1) the requirements of General Instruction I.B. of Form B; and

(2) one of the following:

(a) General Instruction I.C.1. of Form B;

(b) General Instruction I.C.4. of Form B, if action is to be taken as described in Item 11, 12 and 14 of this schedule that concerns non-convertible debt or preferred securities which are "investment grade securities." The time by which the rating must be assigned shall be the date on which definitive copies of the proxy statement are first sent or given to security holders; or

(c) General Instruction I.C.5. of Form B.

* * * * *

Item 13. Financial and Other Information

(See Notes D and E at the Beginning of this Schedule.)

* * * * *

(b) * * *

(1) *Form B registrants.* If the registrant meets the requirements of Form B (as defined in Note E), it may incorporate by reference to previously filed documents any of the information required by paragraph (a) of this Item, provided that the requirements of paragraph (c) are met. Where the registrant meets these requirements of Form B and has elected to furnish the required information by incorporation by reference, the registrant may elect to update the information incorporated by reference to information in subsequently filed documents.

(2) *All other registrants.*

* * * * *

114. By revising the section heading and paragraph (b) and by removing the words "of paragraphs (b) and (d)" in the last sentence of paragraph (d) of § 240.15c2–8 to read as follows:

§ 240.15c2–8 Delivery of prospectus information.

* * * * *

(b) A broker or dealer, and any person acting on behalf of them, must deliver prospectus information to each person offered securities in connection with an offering registered under the Securities Act as follows:

(1) *Form B and Schedule B Seasoned Issuers.* If the issuer is offering securities as described in paragraph (b)(1)(i), then delivery under paragraph (b)(1)(ii) must be made.

(i) Securities in an offering registered on:

(A) Form B (§ 239.5 of this chapter), other than pursuant to General Instruction I.C.6. of that Form; or

(B) Schedule B (15 U.S.C. 77aa) where a firm commitment underwritten offering in excess of $250 million in securities takes place more than one year after the effective date of the issuer's initial registered offering;

(ii) A term sheet prospectus that contains the following information must be sent in a manner reasonably designed to arrive before the date an investor makes a binding investment decision:

(A) An itemization of the material terms of the securities in summary format;

(B) The name of any person, other than the issuer, for whose account securities are offered and a brief identification of any material relationship such person has (or had within the past three years) with the issuer or any affiliate of the issuer;

(C) The identity and location of a contact person to whom questions may be directed; and

(D) The identity and location of a person who, upon request, will send promptly the documents that define the terms of the securities.

(2) *Other issuers—firm commitment underwritten offerings.* If an offering is registered on Form A, Form SB–1, Form SB–2, Form F–7, Form F–9, Form F–10 (other than in a business combination), (§ 239.4, 239.9, 239.10, 239.37, 239.39 or 239.40 of this chapter) or on Schedule B (other than as described in paragraph (b)(1) of this section), is underwritten on a firm commitment basis and the offering:

(i) Is the issuer's initial offering registered in accordance with Section 5 of the Securities Act (15 U.S.C. 77e) or is an offering taking place within one year of the effective date of the issuer's initial registered offering, then a prospectus satisfying Section 10 (15 U.S.C. 77j) of the Securities Act must be sent to each investor in a manner reasonably designed to arrive at least 7 calendar days before the pricing of the securities.

(ii) Takes place more than one year after the effective date of the issuer's initial offering registered in accordance with Section 5 of the Securities Act, then a prospectus satisfying Section 10 of the Securities Act must be sent to each investor in a manner reasonably designed to arrive at least 3 calendar days before the pricing of the securities.

(3) *Other issuers—non-firm commitment underwritten offerings.* If an offering is registered on Form A, Form SB–1, Form SB–2, Form F–7, Form F–9, Form F–10 (other than in a business combination), or on Schedule B (other than as described in paragraph (b)(1) of this section), is *not* underwritten on a firm commitment basis and the offering:

(i) Is the issuer's initial offering in accordance with Section 5 of the Securities Act or is an offering taking place within one year of the effective date of the issuer's initial registered offering, then a prospectus satisfying Section 10 of the Securities Act must be sent to each investor in a manner reasonably designed to arrive at least 7 calendar days before the investor signs a subscription agreement or otherwise commits to purchase securities.

(ii) Takes place more than one year after the effective date of the issuer's initial registered offering in accordance with Section 5 of the Securities Act, then a prospectus satisfying Section 10 of the Securities Act must be sent to each investor in a manner reasonably designed to arrive at least 3 calendar days before the investor signs a subscription agreement or otherwise commits to purchase securities.

Note to paragraphs (b)(2) and (b)(3). A broker or dealer may choose to deliver a prospectus meeting the requirements of Section 10(a) of the Securities Act, instead of a prospectus meeting the requirements of Section 10 of the Securities Act, if it does so in accordance with the terms of paragraphs (b)(2) and (b)(3).

(4) *Roll-ups.* Notwithstanding paragraphs (b)(1) through (b)(3) of this section, if an issuer is registering a roll-up transaction as defined in § 229.901(c) of this chapter, a prospectus that satisfies the requirements of Section 10 of the Securities Act must be sent to each investor no later than the earlier of:

(i) 60 calendar days before the meeting at which the roll-up transaction will be submitted to a vote or 60 calendar days before the earliest date on which partnership action could be taken by consent; and

(ii) The date calculated by applying the maximum number of days permitted for giving notice under applicable state law.

(5) *Material changes.* If not previously disclosed by any other means to investors, a broker or dealer must send to each investor a document setting forth material changes to the information in the prospectus delivered in a manner reasonably designed to arrive at least 24 hours before:

(i) The securities are priced, if the offering is subject to paragraph (b)(2) of this section;

(ii) The investor signs a subscription agreement or otherwise commits to purchase securities, if the offering is subject to paragraph (b)(3) of this section; or

(iii) The date of the meeting at which the transaction will be submitted to a vote or on which partnership action could be taken by consent, if the offering is subject to paragraph (b)(4) of this section.

(6) *Rule 462 registration statements.* Notwithstanding paragraphs (b)(1) through (b)(4) of this section, if an offering is registered in part through a registration statement filed under § 230.462(b) or § 230.462(e), a prospectus delivered with respect to the earlier registration statement to an investor in compliance with this § 240.15c2–8 will be deemed to satisfy the delivery requirements with respect to that investor under this § 240.15c2–8 with respect to the § 230.462(b) or § 230.462(e) registration statement for the offering, provided that the broker or dealer otherwise informs investors purchasing in the offering of the change in the size of the offering.

* * * * *

115. By amending § 240.15d–10 by removing the word "six" and adding, in its place, the word "five" in paragraph (g)(3).

116. By amending § 240.15d–13 by revising paragraph (d) and removing paragraph (e) to read as follows:

§ 240.15d–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

* * * * *

(d) Notwithstanding the foregoing provisions of this section, market risk disclosure required by of Item 3 of Part I of Form 10–Q shall not be deemed to be "filed" for the purpose of Section 18 of the Act (15 U.S.C. 78r). That disclosure, therefore, shall not be subject to the liabilities of that Section. That disclosure shall, however, be subject to all other provisions of the Act.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

117. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

§ 249.210 Authority Citation [Removed]

118. The authority citations following § 249.210 are removed.

119. By amending Form 8–A (referenced in § 249.208a) by revising the title of General Instruction A. and paragraph (a) of General Instruction A.; by designating Instruction D. of General Instructions as paragraph (a) of Instruction D. of General Instructions; by adding a sentence at the end of paragraph (a) of Instruction D. of General Instructions, paragraphs (b), (c), (d) and (e) to Instruction D. of General Instructions; and by revising the Signatures section to read as follows:

Note: The text of Form 8–A does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 8–A

* * * * *

General Instructions

* * * * *

A. Use of Form 8–A

(a) Subject to paragraph (b), you may use this Form for registration pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934 of any class of securities of any issuer that:

(1) Is required to file reports pursuant to Section 13(a) or 15(d) of the Act, and has filed all material required to be filed under Section 13, 14 or 15(d) for a period of at least 12 full calendar months and any portion of a month immediately preceding the date of filing this Form (or such shorter period that

the issuer was subject to those requirements); or

(2) Has securities listed on an exchange that is not registered as a national securities exchange, pursuant to an order exempting that exchange from such registration.

* * * * *

D. Signature and Filing of Registration Statement

(a) * * * *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

(b) The following persons, or persons performing similar functions, must sign the registration statement:

(1) The registrant;

(2) Its principal executive officer or officers;

(3) Its principal financial officer;

(4) Its controller or principal accounting officer; and

(5) At least the majority of its board of directors.

(c) Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

(d) Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

(e) Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement.

* * * * *

Signatures*

The registrant hereby certifies that it meets all of the requirements for filing on Form 8–A. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ______

By (Signature and Title) ______

Date ______

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ______

Date ______

By (Signature and Title) ______

Date ______

*See General Instruction D.

* * * * *

120. By amending Form 10 (referenced in § 249.210) by designating Instruction D. of General Instructions as paragraph (a) of Instruction D. of General Instructions; by adding a sentence at the end of paragraph (a) of Instruction D. of General Instructions, paragraphs (b), (c), (d) and (e) to Instruction D. of General Instructions, by adding four lines to the cover page of the registration statement, Item 1A. to the "Information Required in the Registration Statement" section; and by revising the Signatures section to read as follows:

Note: The text of Form 10 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10

* * * * *

General Instructions

* * * * *

D. Signature and Filing of Registration Statement

(a) * * * *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

(b) The following persons, or persons performing similar functions, must sign the registration statement:

(1) the registrant;

(2) its principal executive officer or officers;

(3) its principal financial officer;

(4) its controller or principal accounting officer; and

(5) at least the majority of its board of directors.

(c) Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

(d) Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

(e) Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement.

* * * * *

Form 10—General Form for Registration of Securities Pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934

* * * * *

______

(Exact name of registrant as specified in its charter)

Registrant's telephone number, including area code ______

* * * * *

Information Required in Registration Statement

* * * * *

Item 1A. Company Risk Factors

If the registrant is not required, as of the date of filing, to file reports pursuant to Section 13(a), set forth, under the caption "Company Risk Factors," the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

* * * * *

Signatures*

The registrant certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ______

By (Signature and Title) ______

Date ______

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ______

Date ______

By (Signature and Title) ______

Date ______

*See General Instruction D.

121. By amending Form 10–SB (referenced in § 249.210b) by adding four lines to the cover page of the registration statement, by adding a sentence at the end of General Instruction B.2., General Instruction B.3., B.4., B.5. and B.6., and Item 1A. to Part II; and by revising the Signatures section to read as follows:

Note: The text of Form 10–SB does not and these amendments will not appear in the Code of Federal Regulations.

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U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–SB

* * * * *

General Instructions

* * * * *

Issuer's telephone number ______________

____
(Web Site Address, if any)

____
(E-mail Address, if any)

* * * * *

B. Signature and Filing of Registration Statement

* * * * *

2. * * * *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

3. The following persons, or persons performing similar functions, must sign the registration statement:

(a) The small business issuer;

(b) Its principal executive officer or officers;

(c) Its principal financial officer;

(d) Its controller or principal accounting officer; and

(e) At least the majority of its board of directors.

4. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

5. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

6. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement.

* * * * *

Part II

* * * * *

Item 1A. Company Risk Factors

If the registrant is not required, as of the date of filing, to file reports pursuant to Section 13(a), set forth, under the caption "Company Risk Factors," the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

* * * * *

Signatures*

The registrant hereby certifies that it meets all of the requirements for filing on Form 10–SB. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ______________
By (Signature and Title) ______________
Date ______________

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ______________
Date ______________
By (Signature and Title) ______________
Date ______________

*See General Instruction B.

122. By amending Form 18 (referenced in § 249.218) by revising the title of the Form, by adding four lines to the cover page of the registration statement, by revising the "Rule as to the Use of Form 18" section and by adding paragraph 3A. after paragraph 3.(g) to the "Definitions" section to read as follows:

Note: The text of Form 18 does not and this amendment will not appear in the Code of Federal Regulations.

Form 18

* * * * *

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

____
(Web Site Address, if any)

____
(E-mail Address, if any)

* * * * *

Application for Registration Pursuant to Section 12(b) of the Securities Exchange Act of 1934

* * * * *

Rule as to the Use of Form 18

Foreign governments and political subdivisions shall use Form 18 for registration pursuant to Section 12(b) of the Securities Exchange Act of 1934.

* * * * *

Definitions

* * * * *

3A. If the registrant is not required, as of the date of filing, to file reports pursuant to Section 13, set forth, under the caption "Risk Factors": (i) the most significant factors with respect to the registrant's financial position; and (ii) country risks that are unlikely to be known or anticipated by investors. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

* * * * *

123. By amending Form 20–F (referenced in § 249.220f) by adding four lines to the cover page of registration statement, by removing in General Instruction G.(c) the words "Forms F–3 (§ 239.33 of this chapter) or F–2 (§ 239.32 of this chapter)" and adding, in their place, the words "Form B (§ 239.5 of this chapter) or Form A (§ 239.4 of this chapter)", in Item 1(a)(2)(i) the words "Form F–1 (§ 239.31 of this chapter)" and adding, in their place, the words "Form A (§ 239.4 of this chapter)", in Item 1(a)(2)(iii)(B)(*1*) the words "Form F–1" and adding, in their place, the words "Form A"; by revising paragraph (b) of General Instruction A. and General Instruction C.(a); by designating Instruction D. of General Instructions as paragraph (a) of Instruction D. of General Instructions; by adding a sentence at the end of paragraph (a) of Instruction D. of General Instructions, paragraphs (b), (c) and (d) to Instruction D. of General Instructions, by revising Item 1.(b); by redesignating the Instruction following Item 1.(b) as Instruction number 1; by adding Instruction number 2; by revising paragraph D. to General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d) and 9A(e); and by revising the Signatures section to read as follows:

Note: The text of Form 20–F does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 20–F

* * * * *

____
(Address of principal executive offices)

____
(Web Site Address, if any)

____
(E-mail Address, if any)

* * * * *

General Instructions

A. Rule as to Use of Form 20–F

* * * * *

(b) A foreign private issuer must file its annual report on this Form within five months after the end of the fiscal year covered by the report.

* * * * *

C. Preparation of Registration Statements and Reports

(a) Do not use this Form as a blank form to be filled in; use it only as a guide in the preparation of the registration statement or annual report. See General Instruction G. as to the items to be responded to in the registration statement or annual report. Where any item requires information in tabular form, provide the information in substantially the tabular form specified in the item. The registration statement or report must contain the numbers and captions of all items. The text following each caption in this Form, which describes what must be disclosed under each item, may be omitted if the disclosure provided in response to each item indicates the coverage of the item without the necessity of referring to the text. Omit the text of all instructions in this Form. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, make an appropriate statement to that effect.

* * * * *

D. Signature and Filing of Registration Statements and Reports

(a) * * * *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

(b) The following persons, or persons performing similar functions, must sign the registration statement or report:

(1) the registrant;

(2) its principal executive officer or officers;

(3) its principal financial officer;

(4) its controller or principal accounting officer;

(5) at least the majority of its board of directors; and

(6) its authorized representative in the United States.

(c) Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement or report.

(d) Type or print the name and title of each person who signs the registration statement or report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs it.

* * * * *

Part I

Item 1. Description of Business

* * * * *

(b) Set forth, under the caption "Company and Country Risk Factors": (i) the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance; and (ii) any material country risks that are unlikely to be known or anticipated by investors and could materially affect the registrant's operations. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

Instructions

1 * * *

2. If this Form is being used to register securities, registrants that are required, as of the date of filing, to file reports pursuant to Section 13(a) need not comply with the requirements of paragraph (b) of this Item.

* * * * *

Item 9A. Quantitative and Qualitative Disclosures About Market Risk

* * * * *

General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d), and 9A(e).

* * * * *

2. * * *

D. For purposes of paragraph 1. of this Instruction, market capitalization is the aggregate market value of common equity as set forth in General Instruction I.C.1. of Form B; provided, however that common equity held by affiliates is included in the calculation of market capitalization; and provided further that the market capitalization measurement date is January 28, 1997.

* * * * *

Signatures*

The registrant hereby certifies that it meets all of the requirements for filing on Form 20–F. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement [report] on its behalf. The undersigned certifies that he/she has read this registration statement [report] and to his/her knowledge the registration statement [report] does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ______________________
By (Signature and Title) ______________
Date ______________________________

The following persons certify that they have read this registration statement [report] and to their knowledge the registration statement [report] does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ______________
Date ______________________________
By (Signature and Title) ______________
Date ______________________________

*See General Instruction D.

* * * * *

By amending § 249.240f by revising paragraph (b)(4); and adding Instruction 7 to the Instructions following paragraph (b)(4) to read as follows:

§ 249.240f Form 40–F, for registration of securities of certain Canadian issuers pursuant to Section 12(b) or (g) and for reports pursuant to Section 15(d) and Rule 15d–4 (§ 240.15d–4 of this chapter).

* * * * *

(b) * * *

(4) *Public Float/ADTV.*

(i) The registrant meets either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more, or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant need not meet either of the thresholds in paragraph (b)(4)(i) of this section if it registered or is eligible to register non-convertible securities on Form F–9 (§ 239.39 of this chapter).

Instructions

* * * * *

7. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

125. By amending Form 40–F (referenced in § 249.240f) by adding four lines to the cover page of the registration statement, by revising paragraph (2)(iv) of General Instruction A.; adding Instruction 7 to the Instructions following paragraph (2)(iv) of General Instruction A.; revising paragraph (8) and adding paragraph (10) (before the Notes) to General Instruction D.; by revising the Signatures section; by redesignating Instructions A and B following the Signatures section as Instructions D and E; and by adding Instructions A, B and C following the Signatures section to read as follows:

Note: The text of Form 40–F does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

FORM 40–F—[ ] Registration Statement Pursuant to Seciton 12 of the Securities Exchange Act of 1934 or [ ] Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934

* * * * *

____
(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

(Web Site Address, if any) ______________
(E-mail Address, if any) ______________

* * * * *

General Instructions

* * * * *

A. Rules as to Use of Form 40–F

(2) * * *

(iv) *Public Float/ADTV.*

(A) The registrant meets either of the following thresholds:

(*1*) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more, or

(*2*) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(B) A registrant need not meet either of the thresholds in paragraph A.(2)(iv) of this Instruction if it registered or is eligible to register non-convertible securities on Form F–9 (§ 239.39 of this chapter).

Instructions

* * * * *

7. For the purposes of this Form, "average daily trading volume" shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

D. Application of General Rules and Regulations

* * * * *

(8) At least one copy of every registration statement or report filed on this Form shall be signed manually. Unsigned copies shall be conformed.

* * * * *

(10) Where this Form requires a manual signature on a document, the document may be manually signed, signed using typed signatures, or signed using duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory must manually sign, no later than the time of filing, a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in the filing. That manually signed page or document must be retained for five years by the registrant and must be furnished to the Commission or its staff upon request.

* * * * *

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form 40–F. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement [report] on its behalf. The undersigned certifies that he/she has read this registration statement [report] and to his/her knowledge the registration statement [report] does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ____________
By (Signature and Title) ____________
Date ____________

The following persons certify that they have read this registration statement [report] and to their knowledge the registration statement [report] does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ____________
Date ____________
By (Signature and Title) ____________
Date ____________

Instructions

A. The following persons, or persons performing similar functions, must sign the registration statement or report:

(1) the registrant;

(2) its principal executive officer or officers;

(3) its principal financial officer;

(4) its controller or principal accounting officer;

(5) at least the majority of its board of directors; and

(6) its authorized representative in the United States.

B. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement or report.

C. Type or print the name and title of each person who signs the registration statement or report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs it. *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

* * * * *

126. By amending Form 6–K (referenced in § 249.306) by revising the second paragraph of General Instruction B., by revising General Instruction C., by adding General Instruction E., by adding four lines to the cover page, a sentence and a check box to the cover page immediately before "Signatures"; and by revising the Signatures section to read as follows:

Note: The text of Form 6–K does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 6–K

* * * * *

General Instructions

* * * * *

B. Information and Document Required To Be Furnished

* * * * *

The information required to be furnished pursuant to (i), (ii) or (iii) above is that which is material with respect to the issuer and its subsidiaries. The information may concern, for example:

1. Changes in business;
2. Changes in the issuer's name;
3. Changes in control;
4. Acquisitions or dispositions of assets;
5. Bankruptcy or receivership;
6. Changes in the issuer's certifying accountants;
7. The financial condition and results of operations;
8. Material legal proceedings;
9. Changes in securities or in the security for registered securities;
10. Material modifications to the rights of security holders;
11. Material increases or decreases in the amount outstanding of securities or indebtedness;
12. Material defaults on indebtedness, material arrearages in dividends and other material delinquencies;
13. The results of the submission of matters to a vote of security holders;
14. Transactions with directors, officers, or principal security holders;
15. Departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president (or anyone serving those functions);
16. The granting of options or payment of other compensation to directors or officers; and
17. Any other information that the issuer deems of importance to security holders.

* * * * *

C. Preparation and Filing of Report

1. This report shall consist of: a cover page, the document or report furnished by the issuer and a signature page. Furnish to the Commission eight complete copies of each report on this Form. File with any national securities exchange or the Nasdaq stock market on which any class of the registrant's securities is listed at least one complete copy of the report.

2. The following persons, or persons performing similar functions, must sign the report:

(a) the principal executive officer or officers;

(b) the principal financial officer;

(c) the controller or principal accounting officer.

3. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one position must indicate each capacity in which that person signs it. *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

* * * * *

E. Voluntary Reporting of Other Events of Information

A foreign private issuer also may use this Form to disclose voluntarily events and information that it believes may be of interest or importance to its security holders. We encourage foreign private issuers to submit voluntary reports on this Form promptly after they learn about the information they are disclosing.

* * * * *

Form 6–K

____
(Address of principal executive offices)

____
(Web Site Address, if any)

____
(E-mail Address, if any)

* * * * *

If you are submitting information voluntarily pursuant to General Instruction E., check the following box. [ ]

Signatures *

The registrant hereby certifies that it meets all of the requirements for filing on Form 6–K. The registrant also certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The undersigned also certifies that he/she has provided a copy of this report to each member of the registrant's board of directors.

(Registrant) ________________________
By (Signature and Title) ________________
Date ________________________________

* See General Instruction C.

By amending Form 8–K (referenced in § 249.308) by adding four lines to the cover page, by revising General Instruction B.1.; by redesignating General Instructions B.3. and B.4. as General Instructions B.2. and B.3.; by revising General Instruction E., paragraph (a) and the Instruction following paragraph (b) of Item 4; by adding Items 10, 11, 12, 13 and 14; and by revising the Signatures section to read as follows:

Note: The text of Form 8–K does not and these amendments will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 8–K—Current Report

* * * * *

Registrant's telephone number, including area code

____
(Web Site Address, if any)

____
(E-mail Address, if any)

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. The date on which a report required by this Form is due is as follows:

(a) With respect to Items 1–3, 6, 9, 10, and 13 of this Form, within 5 calendar days after the occurrence of the event;

(b) With respect to Item 7 of this Form, in accordance with paragraph (a)(4) of that Instruction;

(c) With respect to Item 8 of this Form, within 5 calendar days after the date on which the registrant makes the determination to use a fiscal year end different than that used in its most recent filing with the Commission; and

(d) With respect to Items 4, 11 and 12 of this Form, within one business day after the reportable event occurred. In the case of Item 11, if the default occurred on a Saturday, Sunday or federal holiday, the due date would be within two business days after the day the default occurred.

(e) With respect to Item 14 of this Form:

(1) The date on which financial information for the registrant's most recent fiscal year is publicly released, but no later than 60 calendar days after the end of that fiscal year; and

(2) The date on which financial information for the registrant's most recent quarter (except for the last quarter of any fiscal year) is publicly released, but no later than 30 calendar days after the end of that quarter.

Instruction to General Instruction B.1.(e): No report under Item 14 is due, however, if the registrant has filed its Form 10–Q (or Form 10–QSB) or Form 10–K (or Form 10–KSB) for the period that is required to be presented in the Item 14 report.

* * * * *

E. Signature and Filing of Report

1. File with the Commission three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits. File with any national securities exchange or the Nasdaq stock market on which any class of the registrant's securities is listed at least one complete copy of the report, including any financial statements, exhibits or other documents filed as a part of it.

2. The following persons, or persons performing similar functions, must sign the report:

(a) The principal executive officer or officers;

(b) The principal financial officer; and

(c) The controller or principal financial officer.

3. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one position must indicate each capacity in which that person signs it. *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

* * * * *

Item 4. Changes in Registrant's Certifying Accountant

(a) Provide the information required by Item 304(a)(1) of Regulation S–K, including compliance with the related instructions to Item 304 and with Item 304(a)(3), if the registrant's principal independent accountant or a significant subsidiary's independent accountant upon whom the registrant's principal accountant expressed reliance in its report:

(1) resigns;

(2) declines to stand for re-election after the current audit;

(3) is dismissed;

(4) notifies the registrant that reliance on its prior audit report with respect to the registrant or a significant subsidiary is no longer permissible; or

(5) notifies the registrant that it will not consent to the use of its prior audit report with respect to the registrant or a significant subsidiary in a filing with the Commission.

(b) * * *

Instruction. The events described in paragraphs (a)(1)—(a)(5) are reportable events separate from the engagement of a new independent accountant. On some occasions involving a change in accountants, two reports on Form 8–K will be required. (For example, the registrant may file the first Form 8–K upon the accountant's resignation and the second Form 8–K upon the later engagement of a new accountant.) Under such circumstances, the registrant need not disclose information ordinarily required in the second Form 8–K if it was previously disclosed in the first Form 8–K.

* * * * *

Item 10. Material Modifications to the Rights of Security Holders

(a) If the instruments defining the rights of holders of any class of registered securities have been materially modified, identify the class of securities involved and state briefly the general effect of the modification upon those holders' rights.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification upon the rights of holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon the payment of dividends are to be reported pursuant to Item 9.

Item 11. Defaults, Dividend Arrearages and Delinquencies

(a) Disclose the information required by paragraph (b) of this Item if, with respect to indebtedness of the registrant or any of its significant subsidiaries exceeding 5% of the total assets of the registrant and its consolidated subsidiaries, there has been:

(1) any material default in the payment of principal, interest, a sinking or purchase fund installment; or

(2) any other material default.

(b) Identify the indebtedness and state the nature of the default. In the case of such a default under paragraph (a)(1), state the amount of the default and the total arrearage on the date of filing this report.

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Instruction. Paragraph (a) refers only to events that have become defaults under the governing instruments, *i.e.*, after the expiration of any grace period and compliance with any notice requirements.

(c) Disclose the information required by paragraph (d) of this Item if there is any material arrearage in the payment of dividends or any other material delinquency with respect to:

(1) Any class of the registrant's preferred stock that is registered;

(2) Any class of the registrant's preferred stock that ranks prior to any class of the registrant's securities that is registered; or

(3) Any class of preferred stock of any significant subsidiary of the registrant.

(d) State the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage as of the date of filing this report.

Instruction to Item 11. You need not report under this Item defaults or dividend arrearages relating to any class of securities all of which is owned by, or for the account of, the registrant or its wholly-owned subsidiaries.

Item 12. Departure of Registrant's Key Officers

If the registrant's chief executive officer, chief financial officer, chief operating officer, president or any person serving an equivalent function, has ceased serving the registrant in that capacity:

(a) State the date when that occurred;

(b) Indicate the reason for his or her departure; and

(c) State the name of any person chosen, to date, as a replacement.

Item 13. Name Change

If the registrant has changed its name, state both the former name and the current name of the registrant.

Item 14. Annual and Quarterly Financial Information

(a) Provide the financial information required by Item 301 of Regulation S–K, in a table designed to facilitate comparison, for the following periods:

(1) If the most recently completed fiscal period was the registrant's fiscal year:

(i) The most recently fiscal year ended; and

(ii) The preceding fiscal year (or for the life of the registrant and its predecessor, if less).

(2) If the most recently completed fiscal period was one of the first three quarters of the registrant's fiscal year:

(i) The most recent fiscal quarter ended;

(ii) The quarterly periods between the end of the last fiscal year and the end of the most recent fiscal quarter; and

(iii) The periods of the preceding fiscal year corresponding to the periods referred to in paragraphs (a)(2)(i) and (a)(2)(ii).

Instructions to Item 14.

The financial information required by this Item means the financial information for the registrant and its subsidiaries on a consolidated basis. The financial information may be unaudited.

Signatures*

The registrant certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The undersigned also certifies that he/she has provided a copy of this report to each member of the registrant's board of directors.

(Registrant) ______________________

By (Signature and Title) ______________

Date ____________________________

* See General Instruction E.

128. By amending Form 10–Q (referenced in § 249.308a) by revising General Instructions A., F., G., and H.2.b.; by adding four lines to the cover page, by adding Item 1A. to Part II; and in Part II, Item 2 by revising the heading, by removing paragraphs (a) and (b) and the Instruction following paragraph (d), and by redesignating paragraphs (c) and (d) as paragraphs (a) and (b); by removing Item 3 of Part II; by redesignating Items 4, 5 and 6 of Part II as Items 3, 4 and 5 of Part II; and by revising the Signatures section to read as follows:

Note: The text of Form 10–Q does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–Q

*   *   *   *   *

General Instructions

A. Rule as to Use of Form 10–Q

1. Unless eligible to use Form 10–QSB, a registrant must use Form 10–Q for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 as required by Exchange Act Rule 13a–13 or Rule 15d–13. A registrant must file a quarterly report on this Form within 45 days after the end of each of the first three fiscal quarters of each fiscal year. It need not file a quarterly report for the fourth quarter of any fiscal year.

2. Unless eligible to use Form 10–QSB, a registrant also must use Form 10–Q for transition and quarterly reports under Exchange Act Rule 13a–10 or Rule 15d–10. It must file those reports in accordance with the requirements set forth in those Rules which are applicable when a registrant changes its fiscal year end.

*   *   *   *   *

F. Filed Status of Market Risk Disclosure in the Form 10–Q

Pursuant to Exchange Act Rule 13a–13(d) and Rule 15d–13(d), market risk disclosures required by Item 3 of Part I of this Form are not deemed to be "filed" for purposes of Section 18 of the Act. That disclosure is therefore not subject to the liabilities of Section 18. Disclosure required by other Items of the Form is "filed" for purposes of Section 18, however, even if it is also required by Item 3 of Part I of the Form. Market risk disclosure required by Item 3 of Part I of this Form is subject to all other provisions of the Act.

G. Signature and Filing of Report

1. File with the Commission three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits. File with each exchange or the Nasdaq stock market on which any class of securities of the registrant is registered at least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof. Manually sign at least one complete copy of the report filed with the Commission and with each exchange or market. Type or print signatures on copies not manually signed. See Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

2. The following persons, or persons performing similar functions, must sign the report:

a. The registrant;

b. Its principal executive officer or officers;

c. Its principal financial officer;

d. Its controller or principal accounting officer; and

e. At least the majority of its board of directors.

3. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the report.

4. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the report.

5. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs it.

H. Omission of Information by Certain Wholly-Owned Subsidiaries

*   *   *   *   *

2. * * *

b. Such registrants may omit the information called for by Item 2 of Part II, Sales of Securities and Use of Proceeds, and Item 3. of Part II, Submission of Matters to a Vote of Security Holders.

*   *   *   *   *

Form 10–Q

*   *   *   *   *

____

(Registrant's telephone number, including area code)

____

(Web Site Address, if any)

____

(E-mail Address, if any)

*   *   *   *   *

Part II—Other Information:

*   *   *   *   *

Item 1A. Updated Company Risk Factors

Set forth any material disclosure regarding company risk factors (as described in Item 1A. of Part I of Form 10–K) that either was not included in the later of the registrant's most recent Securities Act registration statement or Exchange Act annual report, or has changed since the date of that registration statement or annual report. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

Item 2. Sales of Securities and Use of Proceeds

* * * * *

Signatures *

The registrant certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ____________________

By (Signature and Title) ____________________

Date ____________________

The following persons certify that they have read this report and to their knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ____________________

Date ____________________

By (Signature and Title) ____________________

Date ____________________

* See General Instruction G.

129. By amending Form 10–QSB (referenced in § 249.308b) by adding four lines to the cover page; by removing General Instruction E.; by redesignating General Instructions F., G. and H. as General Instructions E., F. and G.; in newly designated General Instructions E, F and G, by revising the first sentence of E.1. and E.2.; by adding E.3., E.4., E.5. and E.6.; by revising General Instruction F.2.(b); by adding a title and removing the words "Item 6(a)" and adding, in their place, the words "Item 5(a)" in General Instruction G.; in Part II, by adding Item 1A; by revising the title in Item 2; by removing paragraphs (a) and (b) and the Instruction to Item 2 following paragraph (d) and redesignating paragraphs (c) and (d) as paragraphs (a) and (b); by removing Item 3; and redesignating Items 4, 5 and 6 as Items 3, 4 and 5; and by revising the Signatures section to read as follows:

Note: The text of Form 10–QSB does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–QSB

* * * * *

____

(Registrant's telephone number, including area code)

____

(Web Site Address, if any)

____

(E-mail Address, if any)

* * * * *

General Instructions

* * * * *

E. Signature and Filing of Report

1. File three "complete" copies and five "additional" copies of the report with the Commission and file at least one complete copy with each exchange or the Nasdaq stock market on which any class of securities of the registrant is registered. * * *

2. Manually sign at least one complete copy of the report filed with the Commission and with each exchange or market. Type or print signatures on copies not manually signed. *See* Exchange Act Rule 12b–11 concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

3. The following persons, or persons performing similar functions, must sign the report:

(a) The small business issuer;

(b) Its principal executive officer or officers;

(c) Its principal financial officer;

(d) Its controller or principal accounting officer; and

(e) At least the majority of its board of directors.

4. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the report.

5. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the report.

6. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs.

F. Omission of Information by Certain Wholly-Owned Subsidiaries

* * * * *

2. * * *

b. Such registrants may omit the information called for by Items 2 and 3 of Part II.

G. Exhibits

* * * * *

Part II—Other Information:

* * * * *

Item 1A. Updated Company Risk Factors

Set forth any material disclosure regarding company risk factors (as described in Item 1A. of Form 10–KSB) that either was not included in the later of the registrant's most recent Securities Act registration statement or Exchange Act annual report, or has changed since the date of that registration statement or annual report. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

Item 2. Sales of Securities and Use of Proceeds

* * * * *

Signatures*

The registrant hereby certifies that it meets all of the requirements for filing on Form 10–QSB. The registrant also certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ____________________

By (Signature and Title) ____________________

Date ____________________

The following persons certify that they have read this report and to their knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ____________________

Date ____________________

By (Signature and Title) ____________________

Date ____________________

*See General Instruction F.

130. By amending Form 10–K (referenced in § 249.310) by revising General Instruction D.(1) and D.(2); by redesignating General Instruction D.(3) as General Instruction D.(7); by adding General Instructions D.(3), D.(4), D.(5) and D.(6); by revising the first two sentences of General Instruction G.(4); by adding four lines to the cover page; in Part I, by adding Item 1A. and by revising Item 2 and the Signatures section to read as follows:

Note: The text of Form 10–K does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–K

* * * * *

General Instructions

* * * * *

D. Signature and Filing of Report

(1) File with the Commission three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits. File with each exchange or the Nasdaq stock market on which any class of securities of the registrant is registered at least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof.

(2) Manually sign at least one complete copy of the report filed with the Commission and with each exchange or market. Type or print signatures on copies not manually signed. *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

(3) The following persons, or persons performing similar functions, must sign the report:

(a) The registrant;

(b) Its principal executive officer or officers;

(c) Its principal financial officer;

(d) Its controller or principal accounting officer; and

(e) At least the majority of its board of directors.

(4) Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the report.

(5) Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the report.

(6) Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs it.

* * * * *

C. Information To Be Incorporated by Reference

* * * * *

(4) Although Exchange Act Rule 12b–13 requires that this report contain the numbers and captions of all items, the material incorporated by reference into the report generally need not contain the numbers and captions. You must, however, caption the information provided in response to Item 1A. as "Company Risk Factors" even when incorporated by reference.

* * * * *

Form 10–K

* * * * *

(Issuer's telephone number, including area code)

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

Part I

* * * * *

Item 1A. Company Risk Factors

Set forth, under the caption "Company Risk Factors," the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

Item 2. Properties

(a) Furnish the information required by Item 102 of Regulation S–K; and

(b) If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, furnish the information required by Items 1105, 1106 and 1107 of Regulation S–K in lieu of the information required by paragraph (a) of this Item.

* * * * *

Signatures*

The registrant certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ________________

By (Signature and Title) ________________

Date ________________

The following persons certify that they have read this report and to their knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ________________

Date ________________

By (Signature and Title) ________________

Date ________________

*See General Instruction D.

* * * * *

131. By amending Form 10–KSB (referenced in § 249.310b) by adding four lines to the cover page; in General Instruction C, by revising the first sentence and removing the last sentence of C.1.; by revising C.2.; by redesignating C.3. as C.7.; by adding General Instructions C.3., C.4., C.5. and C.6.; by revising the first two sentences of General Instruction E.4.; by removing the words "S–4" and adding, in their place, the words "SB–3"; by removing the words "S–3 (if the issuer incorporates by reference transitional Exchange Act reports)" in General Instruction H.(b); by adding Item 1A. to Part I, by adding Item 1A. to Part II of the "Information Required in Annual Report of Transitional Small Business Issuers" section; and by revising the Signatures section to read as follows:

Note: The text of Form 10–KSB does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–KSB

* * * * *

(Registrant's telephone number, including area code)

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

General Instructions

* * * * *

C. Signature and Filing of Report

* * * * *

1. File three "complete" copies and five "additional" copies of the report with the Commission and file at least one complete copy with each exchange or the Nasdaq stock market on which any class of securities of the registrant is registered. * * *

2. Manually sign at least one complete copy of the report filed with the Commission and with each exchange or market. Type or print signatures on copies not manually signed. *See* Exchange Act Rule 12b–11 concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

3. The following persons, or persons performing similar functions, must sign the report:

(a) The small business issuer;

(b) Its principal executive officer or officers;

(c) Its principal financial officer;

(d) Its controller or principal accounting officer; and

(e) At least the majority of its board of directors.

4. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the report.

5. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the report.

6. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs.

* * * * *

E. Information To Be Incorporated by Reference

* * * * *

4. Although Exchange Rule 12b-13 requires that this report contain the numbers and captions of all items, the material incorporated by reference into the report generally need not contain the numbers and captions. You must, however, caption the information provided in response to Item 1A. as "Company Risk Factors" even when incorporated by reference.

* * * * *

Part I

* * * * *

Item 1A. Company Risk Factors

Set forth, under the caption "Company Risk Factors," the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b-24.

* * * * *

Information Required in Annual Report of Transitional Small Business Issues

* * * * *

Part II

* * * * *

Item 1A. Company Risk Factors

Set forth, under the caption "Company Risk Factors," the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

* * * * *

Signatures *

The registrant hereby certifies that it meets all of the requirements for filing on Form 10–KSB. The registrant also certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) ____________________

By (Signature and Title) ____________________

Date ____________________

The following persons certify that they have read this report and to their knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) ____________________

Date ____________________

By (Signature and Title) ____________________

Date ____________________

* See General Instruction C.

* * * * *

132. By amending Form 18-K (referenced in § 249.318) by adding paragraph 1A., by revising the "Rule as to Use of Form 18-K" section of the Instruction Book for Form 18-K, and by revising Instructions 1. and 3.(a) of the "Instructions as to the Preparation and Filing of the Report" section to read as follows:

Note: The text of Form 18-K does not and this amendment will not appear in the Code of Federal Regulations.

Form 18-K

* * * * *

1A. Set forth, under the caption "Risk Factors": (i) the most significant factors with respect to the registrant's financial position; and (ii) country risks that are unlikely to be known or anticipated by investors. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b-24.

* * * * *

Instruction Book for Form 18-K

* * * * *

Rule as to Use of Form 18-K

This Form is to be used for the annual reports of foreign governments and political subdivisions thereof.

Instructions as to the Preparation and Filing of the Report

1. Registrants shall file annual reports on this Form within nine months of the close of each fiscal year of the registrant.

2. * * *

3.(a) The registrant shall file the report on good quality, unglazed, white paper no larger than 8½ × 11 inches in size. If reduction of larger documents would render them illegible, the registrant may file such documents on paper larger than 8½ × 11 inches in size. The registrant may bind the report on the left.

* * * * *

By the Commission.

Dated: November 13, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31045 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 232, 239, and 240

[Release No. 33–7607; 34–40633; IC–23520; File No. S7–28–98]

RIN 3235–AG84

Regulation of Takeovers and Security Holder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission proposes to update and simplify the rules and regulations applicable to takeover transactions (including tender offers, mergers, acquisitions and similar extraordinary transactions). We propose to permit significantly more communications with security holders and the markets before the filing of a registration statement involving a takeover transaction, a proxy statement or tender offer statement. We also propose to put cash and stock tender offers on a more equal regulatory footing; integrate the forms and disclosure requirements in issuer tender offers, third-party tender offers and going private transactions and consolidate the disclosure requirements in one location; permit security holders to tender their securities during a limited period after the successful completion of a tender offer; more closely align merger and tender offer requirements; and update the tender offer rules to clarify certain requirements and reduce compliance burdens where consistent with investor protection. The proposals presented in this release should be considered together with the companion release issued today, the Securities Act Reform Release.

DATES: Comments should be submitted on or before April 5, 1999.

ADDRESSES: Comments concerning the proposed amendments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–28–98. This file number should be included on the subject line if e-mail is used to submit comments. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on our Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: James J. Moloney, in the Office of Mergers and Acquisitions, or P.J. Himelfarb, in the Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2920. For questions regarding proposed Rule 14e–5, please contact Irene A. Halpin or Michael R. Trocchio, in the Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772.

SUPPLEMENTARY INFORMATION: We propose amendments to Rules 13e–1, 13e–3, 13e–4, 14a–4, 14a–6, 14a–11, 14a–12, 14c–2, 14c–5, 14d–1, 14d–2, 14d–3, 14d–4, 14d–5, 14d–6, 14d–7, 14d–9, 14e–1[1] and Schedules 14A, 14C, 13E–3, and 14D–9[2] under the Securities Exchange Act of 1934 ("Exchange Act").[3] We also propose an amendment to Item 10 of Regulation S–K[4] and a new subpart of Regulation S–K, the 1000 series ("Regulation M–A"); a new tender offer schedule, Schedule TO, that would replace Schedules 13E–4 and 14D–1;[5] a new tender offer Rule 14e–5 that would replace Rule 10b–13;[6] and new tender offer Rules 14d–11 and 14e–8. Further, we propose to amend Rule 13(d) of Regulation S–T and Rules of Practice 30–1 and 30–3.[7] We also propose amendments to Rules 145 and 432, and new Rule 162, under the Securities Act of 1933 ("Securities Act").[8] In addition, in the Securities Act Reform Release,[9] we propose new rules, forms and amendments under the Securities Act affecting the regulatory scheme for takeovers. Some of these proposals are republished in this release for the convenience of readers, as follows: portions of proposed new Forms C and SB–3 and proposed new Rules 166, 167 and 425.

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I. Executive Summary and Background

Over the last several years, takeover activity has surpassed the extraordinary levels seen during the 1980s.[10] In 1996, there were over 7,000 merger and acquisition transactions completed in the U.S. valued at more than $650 billion. In 1997, U.S. merger and acquisition activity increased to approximately 7,800 transactions valued at over $790 billion.[11] Global merger and acquisition activity totaled approximately (U.S.) $900 billion in 1996.[12] In 1997, global merger and acquisition activity increased to (U.S.) $1.6 trillion.[13] This wave of takeovers has continued into 1998 with approximately $626 billion in domestic mergers and acquisitions announced as of June, 1998.[14]

Three characteristics are common to many of today's takeover transactions. First, many acquirors are offering securities or a combination of securities and cash to the security holders of subject companies ("targets"). In 1996, almost half of the completed takeover transactions involved some form of stock as consideration, as opposed to cash only.[15] In 1997, the number of stock-based takeovers remained relatively constant at approximately half of all completed transactions.[16] During the first half of 1998, approximately 43% of the completed transactions involved securities as consideration.[17]

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[1] 17 CFR 240.13e–1; 17 CFR 240.13e–3; 17 CFR 240.13e–4; 17 CFR 240.14a–4; 17 CFR 240.14a–6; 17 CFR 240.14a–11; 17 CFR 240.14a–12; 17 CFR 240.14c–2; 17 CFR 240.14c–5; 17 CFR 240.14d–1; 17 CFR 240.14d–2; 17 CFR 240.14d–3; 17 CFR 240.14d–4; 17 CFR 240.14d–5; 17 CFR 240.14d–6; 17 CFR 240.14d–7; 17 CFR 240.14d–9; and 17 CFR 240.14e–1.

[2] 17 CFR 240.14a–101; 17 CFR 240.14c–101; 17 CFR 240.13e–100; and 17 CFR 240.14d–101.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 229.10.

[5] 17 CFR 240.13e–101; 17 CFR 240.14d–100.

[6] 17 CFR 240.10b–13.

[7] 17 CFR 232.13(d); 17 CFR 200.30–1; 17 CFR 200.30–3.

[8] 17 CFR 230.145; 17 CFR 230.432; 15 U.S.C. 77a *et seq.*

[9] *See* Release No. 33–7606A (November 13, 1998).

[10] In 1988, approximately 3,000 domestic merger and acquisition transactions were completed with a total value of over $300 billion. In 1989, there were slightly more than 3,800 transactions valued at approximately $330 billion. *See* Mergers & Acquisitions, The Dealmaker's Journal, 1998 Almanac (March/April 1998), at 42.

[11] *Id.*

[12] *See* 1996 Mergers and Acquisitions, Corporate Financing Week (February 10, 1997).

[13] *See* Steven Lipin, *Murphy's Law Doesn't Apply: The Conditions Are Perfect For Continued Growth In Mergers*, Wall St. J., Jan. 2, 1998, at R6.

[14] *See* John R. Wilke & Bryan Gruley, *In Merger Blitz, Regulators Vie to Bust Biggest Prizes*, Wall St. J., June 11, 1998, at B1, *citing* Securities Data Corp. Although the boom in U.S. merger and acquisition activity has tempered slightly in recent months, it is expected to remain strong. *See Third Q M&A Soars, but the Bear Lurks*, Mergers & Acquisitions Report, October 5, 1998.

Second, there has been an increase in the number of hostile transactions involving proxy or consent solicitations. This trend appears to be the result of the adoption of anti-takeover devices by many public companies and the development of more stringent state anti-takeover laws in reaction to the wave of takeovers in the 1980s. Today's proxy and consent solicitations are primarily aimed at unseating incumbent directors, dismantling anti-takeover devices, and generally facilitating transactions opposed by management.

Third, significant technological advances in communications permit more frequent, timely and direct communications with security holders. These developments in technology affect how acquirors, targets, and other market participants communicate with security holders and the securities markets regarding proposed mergers and other extraordinary corporate transactions. For example, many companies post detailed information regarding corporate developments on their Internet web sites. In addition, companies use the Internet as a means of communicating with security holders during proxy contests and in connection with tender offers and mergers.[18] These changes in how companies, security holders, and market participants communicate with one another prompted the Commission to issue several releases addressing the use of the Internet and other electronic media under the federal securities laws.[19]

While the takeover market has evolved dramatically over the past 20 years, the applicable regulatory framework has remained substantially the same.[20] As a result, the application of our existing rules to today's extraordinary transactions can often raise complex regulatory issues. These issues may, in some instances, cause unnecessary burdens for companies without corresponding benefits to security holders. Today's proposals are intended to reduce these costs while maintaining the same high level of investor protection.

In formulating the proposals, we have drawn on the staff's experience in reviewing takeover disclosure, the suggestions of practitioners, and the recommendations of the Task Force on Disclosure Simplification.[21] We have examined all of the regulations relating to tender offers as well as other forms of takeovers with a view toward improving the regulatory scheme.

We encourage readers to keep in mind that these proposals were drafted, and should be considered, with the proposals presented in the Securities Act Reform Release also issued today. The goal underlying the proposals described below is the same as that underpinning the Securities Act Reform Release—making the regulatory scheme more workable for issuers and more effective for investors in today's capital markets. While we intend that both sets of proposals move towards adoption on the same track, we may adopt the proposals in either release without adopting those in the companion release.

The proposals vary in some respects from those in the Securities Act Reform Release because it is necessary to recognize the special nature of business combination transactions in contrast to capital-raising transactions. Specifically, we have considered that a security holder's decision regarding a proposed business combination is not always volitional, and that a change in security ownership can arise as a result of the security holder's inaction.[22] In addition, where the acquiror offers securities, the investment decision can be complex, requiring security holders to assess both the security of another company offered in exchange and the security they are asked to give up. They also must consider how the acquiror may change as a result of the acquisition, because they will receive securities in the combined entity. Therefore, it may be important for the companies involved to have the flexibility to announce and discuss the proposed acquisition, regardless of the size and seasoned status of the acquiror.[23] In addition, it is necessary for information about the transaction to be delivered timely to security holders who must evaluate the deal in order to protect their existing investment.[24]

In some cases, we have proposed significant modifications to the entire regulatory approach to takeovers. In doing so, we have attempted to treat different acquisition methods in a similar manner to the extent the different methods merit similar treatment. In other cases, we have focused on areas where current practice could be improved. Our goals are to update the regulations in order to reduce unnecessary regulatory burdens on participants, while maintaining investor protection and improving the quality of information that investors receive about business combination transactions.[25] We describe below three areas where the costs of compliance with the current rules applicable to takeovers may outweigh the benefits conferred upon security holders, and summarize the proposals in this release.

Restrictions on Communications to Security Holders and the Marketplace

A company's ability to communicate in a timely and effective manner with its security holders about a proposed takeover is limited by the Securities Act if the transaction involves an offering of securities. Although the impact of the Securities Act on capital formation has been the subject of great debate,[26] commentators have given somewhat less attention to the permissibility of communications relating to business combinations involving the issuance of securities. Offerors often have a compelling reason, and may under certain circumstances have an obligation under Rule 10b–5,[27] to disseminate promptly full, fair and accurate information regarding a planned extraordinary transaction to existing security holders as well as the securities markets. As a part of this release, we propose to increase significantly the ability of companies to communicate with security holders with respect to business combinations involving the registered offering of securities. In addition, many takeovers trigger the need for compliance with the tender offer and proxy rules, which also contain restrictions on the timing and content of communications. We propose to permit freer communications under the tender offer rules in connection with public announcements of tender offers. Similarly, we propose to permit freer communications under the proxy rules, whether or not the matter being voted on relates to a takeover.

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[15] Stock or a combination of stock and cash was offered to security holders in approximately 1,395 out of the 2,892 transactions announced in 1996. *See* Mergers & Acquisitions, The Dealmaker's Journal, 1998 Almanac (March/April 1998), at 47. The information reported in Mergers & Acquisitions 1998 Almanac was based on all completed mergers, acquisitions, and divestitures priced at $5 million and over, including purchases of partial interests of at least a 40% stake in the target company or an investment of a least $100 million. *Id.* at 42.

[16] Stock or a combination of stock and cash was offered to security holders in approximately 1,703 out of the 3,449 transactions announced in 1997. *Id.* at 47.

[17] *See* Mergers & Acquisitions, The Dealmaker's Journal, (September/October 1998) at p. 50.

[18] Companies also have broadcast annual security holder meetings over the Internet, and are increasingly soliciting proxies via the Internet.

[19] *See* Release Nos. 33–7233 (October 6, 1995) [60 FR 53458] and 33–7288 (May 9, 1996) [61 FR 24644], expressing the Commission's views on the use of electronic media to satisfy information delivery requirements under the federal securities laws. *See also* Release No. 33–7516 (March 27, 1998) [63 FR 14806] interpreting jurisdictional issues involving the use of the Internet by issuers, investment companies, broker-dalers, exchanges and investment advisers to solicit offshore securities transactions.

[20] One exception is the Commission's revisions to the proxy rules in 1992. The Commission eliminated the regulation of certain communications with or among security holders relating to corporate performance and other matters of interest to all security holders when made in the context of an actual or potential proxy solicitation. *See* Release No. 34–31326 (October 16, 1992) [57 FR 48276].

[21] The Commission staff's Report of the Task Force on Disclosure Simplification (March, 1996) recommended several of the proposals in this release. *See* "Significant Corporate Transactions" at pp. 51–57.

[22] *See* Form S–4 adopting release No. 33–6578 (April 23, 1995) [50 FR 18990, at 18991].

[23] By contrast, the Securities Act Reform Release conditions the extent to which communications will be liberalized on the size and seasoned status of the issuer.

[24] The Securities Act Reform Release proposes to reduce the prospectus delivery requirements under certain circumstances with respect to offerings by large, seasoned issuers.

[25] *See* Part II.A for a description of the basic methods of business combination and how they are treated under the current regulatory scheme.

Regulatory Disadvantage of Exchange Offers

Tender offers where the bidder is offering securities generally cannot commence until the Securities Act registration statement for the securities being offered becomes effective. In some cases, where the staff undertakes to review and comment during the waiting period,[28] the delay of effectiveness can be quite lengthy. This delay is particularly troublesome for bidders[29] in exchange offers.[30] In contrast, cash offers, which may compete with exchange offers, can commence as soon as the required information is filed with the Commission and disseminated to security holders. The delay in commencing an exchange offer can place the bidder at risk that a competing all-cash bid will commence and close before the exchange offer can even commence. As a result, bidders that offer securities in takeover transactions may not be as successful in acquiring targets as cash bidders, even when the value of the stock offered is equal to or greater than the value of the cash offered in a competing offer. In response to the disparities in regulatory treatment, we propose to permit exchange offers to commence on a similar time frame to cash tender offers.

Costs of Compliance WIth Multiple Regulatory Schemes

Many of today's takeover transactions involve a combination of tender offer, proxy solicitation and Securities Act registration issues. As a result, participants in a merger or acquisition may be required to comply with several distinct regulatory schemes. Companies can incur additional costs analyzing and complying with the multiple filing and disclosure regimes that may apply to a transaction. For example, when a company conducts an exchange offer for all outstanding securities of an affiliated company, three regulatory schemes may be involved, including the tender offer rules, the "going-private" rule, and the provisions of the Securities Act relating to the registration of securities. The proxy rules also can apply if the transaction involves a solicitation of votes or consents. We recognize that the application of multiple regulatory regimes to a single transaction can significantly increase the burdens and costs of compliance without necessarily benefiting investors. We propose to simplify the regulatory structure for takeovers by using combined forms and a uniform disclosure regulation.

In summary, we propose numerous revisions to the regulations to conform them to the realities of today's environment surrounding takeover transactions, while maintaining high quality investor protection and enhancing the timing and quality of information available to investors. The proposed revisions address changes in deal structure and advances in technology. Our principal proposals are to:

- Relax the current restrictions on communications with security holders to provide the market with more information on a timely basis; in particular,
- Permit free communications before the filing of a registration statement in connection with either a stock tender offer or a stock merger transaction;
- Permit free communications before the filing of a proxy statement (whether or not a takeover transaction is involved);
- Permit free communications about a planned tender offer without triggering the "commencement" of the offer, requiring the filing and dissemination of information;
- Harmonize the various communications principles applicable to business combinations under the Securities Act, tender offer rules and proxy rules;
- Eliminate the confidential treatment now available for merger proxy statements;
- Reduce the disparate treatment of stock and cash tender offers by permitting stock tender offers to commence upon the filing of a Securities Act registration statement;
- Simplify the regulatory scheme by integrating the disclosure requirements for tender offers, going-private transactions, and other extraordinary transactions into a new 1000 series of Regulation S–K, referred to as "Regulation M–A";
- Combine the current schedules for issuer and third-party tender offers into a single schedule available for all tender offers, entitled "Schedule TO";
- Require a "plain English" summary term sheet in all cash tender offer, cash merger and going-private transactions;
- Update the financial statement requirements for takeover transactions; in particular,
- Eliminate the need to file financial statements for target companies in most cash mergers, to harmonize with the treatment of cash tender offers;
- Clarify when financial statements of the acquiring company are not required in cash mergers, and when financial statements are required, reduce the financial statements required for the acquiror from three years to two;
- Clarify when the bidder's financial statements are not required in cash tender offers, and when financial statements are required in third-party offers, reduce the requirement from three years to two;
- Require pro forma and related financial information in cash tender offers where the bidder intends to engage in a back-end stock merger;
- Reduce the financial statements required for non-reporting target companies in stock mergers;
- Permit a subsequent offering period, similar to that available in many United Kingdom tender offers, during which security holders can tender their shares for a limited period after completion of a tender offer;

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[26] *See* the Securities Act Reform Release.

[27] 17 CFR 240.10–5. Rule 10b–5 prohibits misleading statements or omissions and other fraudulent or deceptive practices in connection with the purchase or sale of a security.

[28] The "waiting period" is the period of time between when a registration statement is first filed and when it becomes effective.

[29] The term "bidder" is used throughout this release to refer to the offeror or purchaser in a tender offer.

[30] Exchange offers, sometimes called stock tender offers, are tender offers where the consideration offered to security holders includes securities; these transactions generally are registered under the Securities Act.

- Clarify the rule that requires issuers to report any intended repurchases of their securities after a third-party tender offer has commenced (Rule 13e-1), and require information to be disseminated on a timely basis; and
- Clarify the rule that prohibits purchases outside a tender offer (Rule 10b-13), codify prior interpretations of and exemptions from the rule, and redesignate it as Rule 14e-5.

At this time we are not proposing, but are considering, whether we should:

- Impose a federally mandated proxy solicitation period in merger transactions comparable to the current minimum tender offer period, to allow security holders at least a minimum time to consider the proxy statement disclosure;
- Modify the proxy rules to permit direct delivery of proxy materials to non-objecting beneficial owners;
- Create a broad safe harbor under the proxy rules that would permit "test the waters" communications with security holders without requiring the filing or delivery of a proxy statement, so long as no proxy card is delivered to security holders;
- Require delivery of a disclosure document to security holders in cash tender offers, instead of permitting dissemination by summary advertisement alone, to conform the dissemination required in tender offers with that in proxy solicitations and securities offerings;
- Permit proxy cards to be sent to security holders before a registration statement for a stock merger is effective; and
- Expand by rule the coverage of the Private Securities Litigation Reform Act safe harbor from liability to include forward-looking statements made in connection with tender offers.

II. Discussion of Proposals

A. Overview of the Regulatory Schemes

It may be useful to discuss the regulatory schemes for different methods of business combination before addressing how our proposals would affect the current procedures. This release discusses two primary business combination methods: tender offers and mergers.[31] Tender offers may be made either by the issuer of the securities sought or by a third party.[32] The essence of a tender offer is that the offeror, or bidder, can go directly to security holders of the target company with an offer to buy their shares. Each security holder makes an individual decision whether or not to tender. A tender offer may or may not have the cooperation of the target company's board of directors. Even if the tender offer is successful, the bidder is unlikely to receive 100% of the shares. In contrast, a merger is a collective, voting decision.[33] The acquiror acquires the entire company if security holders of the target company approve the merger.[34] The acquiror generally needs the approval of the target's board of directors in order to present the transaction for a security holder vote.

In either a tender offer or a merger, the offeror may offer cash, securities, or a combination. If the consideration consists all or partly of securities, the offeror generally will have to register them under the Securities Act.[35] The offeror will have to give more information to security holders of the target company than if it were offering cash, since the investment decision is more complex. Security holders of the target need information about the issuer whose securities they will receive if the transaction is consummated, which really means information about the surviving, combined entity (the issuer plus the acquired company).

The following summarizes the regulatory process for the four basic business combination methods. These examples assume that the tender offers and proxy solicitations discussed are subject to our filing and dissemination requirements:

1. Cash tender offer—either issuer or third party. The bidder commences the offer by disseminating tender offer material to security holders, including a request that they tender their shares. On the same day, the bidder files this material publicly with the Commission, along with a tender offer schedule that contains additional information.[36] Unlike the other three transactions discussed below, the Commission staff does not have the opportunity to review the tender offer material until after the tender offer has begun. If the staff decides to review the filed material, and has comments, the staff gives comments to the bidder during the tender offer and the bidder addresses the comments appropriately. (For example, the bidder may need to send additional information to the security holders of the target and the offer may have to be extended.) The offer must remain open for at least 20 business days, and then the bidder can purchase the shares if all conditions to the offer have been satisfied or waived.[37]

2. Exchange offer (stock tender offer)—either issuer or third party.[38] The bidder files a Securities Act registration statement containing a preliminary prospectus covering the securities it is offering to security holders of the target in exchange for their shares. The prospectus also contains the information about the exchange offer required by the tender offer rules. This is a public document. The bidder may disseminate the preliminary prospectus to security holders of the target company, but it usually does not do so because it cannot request tenders or buy any shares until the registration statement is declared effective. If the staff decides to review the registration statement, it may give comments to the bidder. After these comments are resolved, the bidder requests that the staff declare the registration statement effective. Once the registration statement is effective, the tender offer may "commence"—the bidder disseminates the combined final prospectus/tender offer document to security holders, and requests that they tender their shares. On the same day, the bidder files with the Commission the

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[31] The discussion of "business combinations" in this release includes all mergers and tender offers addressed by our rules, including those that do not necessarily result in a "combination," such as issuer tender offers and tender offers where the bidder is not seeking control of the target.

[32] An offer by the company to purchase its own outstanding securities is an "issuer tender offer," while an offer by someone other than the issuer is a "third party tender offer." Third-party tender offers for a class of equity securities registered under Section 12 of the Exchange Act [15 U.S.C. 78*l*] must comply with the requirements of Regulation 14D. In addition, whether or not an offer is subject to Regulation 14D [17 CFR 240.14d-1 through 240.14d-101], the offer must comply with Regulation 14E [17 CFR 240.14e-1 through 240.14e7] and the antifraud requirements of Section 14(e) of the Exchange Act [15 U.S.C. 78n(e)]. Issuer tender offers for the equity securities of a public reporting must comply with Rule 13e-4. Whether or not the issuer is a public reporting company, the issuer tender offer must comply with Regulation 14E and Section 14(e).

[33] Throughout the release, where we discuss mergers we also include reclassifications, consolidations and transfers of assets where security holders are asked to vote or consent. *See* Rule 145(a) [17 CFR 230.145(a)].

[34] The security holders of the target company almost always must vote on the merger; sometimes the acquiring company's security holders also must vote. This is determined by state law, the company's governing instruments, and requirements of all applicable self-regulatory organizations. If either voting party's securities are equity registered under Section 12 of the Exchange Act, the voting party must comply with the proxy or information statement rules (Regulation 14A or 14C) [17 CFR 240.14a-1 through 240.14a-104 and 17 CFR 240.14c-1 through 240.14c-101].

[35] The offeror also must comply with the tender offer and proxy rules, if applicable. All business combination methods described in this release also are subject to the antifraud provisions of the federal securities laws. *See* Securities Act Section 17 [15 U.S.C. 77q]; Exchange Act Section 10(b) [15 U.S.C. 77j(b)]; Rule 10b-5, Rule 14a-9 [17 CFR 240.14a-9], and Exchange Act Section 14(e) and the rules under that section.

[36] Third-party tender offer statements are filed with the Commission on Schedule 14D–1, while issuer tender offers are filed on Schedule 13E–4.

[37] In a third-party tender offer, the target company must respond to the offer with a recommendation to its security holders. This recommendation is disseminated to the security holders and filed with the Commission along with a Schedule 14D–9 containing additional information. The staff may review the material and comment on it after it is filed, the same as with the bidders material.

[38] In this release we sometimes refer to "stock tender offers" and "stock mergers," but in both cases it is possible for the consideration offered to be either equity or debt.

same tender offer schedule as for a cash tender offer.[39] The offer must remain open for at least 20 business days from this point before the bidder can purchase any shares.

3. Cash merger. The offeror files a preliminary proxy statement with the Commission that describes the transaction. This is usually a public document, but the offeror can request that the preliminary merger proxy statement be treated confidentially, with some exceptions. The offeror may mail the preliminary proxy statement to security holders, but often waits until the proxy statement is final, or "definitive." This is because the offeror can send the proxy card only with the definitive proxy statement. The offeror may mail the definitive proxy statement ten days after the preliminary proxy statement is filed. However, if the staff decides to review the proxy material, in most cases offerors wait to receive staff comments before mailing. Once all comments have been resolved, the offeror mails the definitive proxy statement along with a proxy card for security holders to mark and return. There is no federally mandated time period between the date the offeror mails the proxy material and the date of the security holder meeting,[40] but state law generally requires security holder notice of the meeting a specified time before the meeting. If the vote at the meeting is to approve the merger and all conditions have been met, the merger can close.

4. Stock merger. The offeror files a Securities Act registration statement with the Commission that contains a preliminary prospectus as well as the information required in a proxy statement. Registration statements are filed publicly, but the material may be filed as a confidential proxy statement if the offeror so chooses. The registration statement is then filed as a "wrap around" the proxy statement when the offeror is ready to make the information public. The offeror may disseminate the preliminary prospectus/proxy statement, but ordinarily will not do so because the offeror may not include the proxy card. If the staff decides to review the filing, it gives comments to the offeror. After comments are resolved, the offeror requests that the staff declare the registration statement effective. Once the registration statement is effective, the offeror can mail the combined final prospectus/definitive proxy statement along with a proxy card. The process then continues as it would for a cash merger.

Any of the above transactions also could be a "going-private" transaction if it meets the criteria set forth in the "going-private" rule.[41] In this case, the offeror and any other party engaging in the transaction must file another schedule and provide additional information to the Commission and security holders, in addition to complying with the other regulatory requirements discussed. Usually this information is combined into a single disclosure document with the proxy statement, tender offer material or prospectus.

B. Expand Communications Permitted in Tender Offers and Mergers

1. Overview and General Considerations

As discussed above, the fast pace of today's securities markets and the ready accessibility of information through electronic media have caused changes in the mergers and acquisitions environment. We understand that participants in many merger and acquisition transactions are providing extensive, deal-related information to the marketplace immediately following the execution of a definitive merger or purchase agreement.

Frequently, parties to a merger or other similar transaction release information to the press containing pro firma financial information on the combined entity, as well as estimated cost savings or "synergies." The parties generally issue this type of information through press releases, analyst conferences, and meetings with institutional investors and the press.[42] The information provided to analysts often goes beyond the information disseminated to all security holders through press releases.

Parties to merger agreements have asserted several reasons for the need to disclose deal-related information at an early stage, including the duty to make "full disclosure" of material information under Rule 10b–5.[43] Under Rule 10b–5, it is unlawful to make any misstatement or omission of material fact in connection with the purchase or sale of a security. The rule applies to mergers, exchange offers and other extraordinary transactions. The duty to disclose can be triggered by, among other things: (1) line-item disclosure requirements in filings with the Commission; (2) the issuer or insider's duty to "disclose or abstain" from trading while in possession of material, non-public information;[44] (3) the duty to provide full and complete information when disclosing information to the markets;[45] and (4) the duty to correct false or misleading statements made by the company.[46] Companies also may be required by the particular rules of the stock exchange or inter-dealer quotation system upon which their securities trade to inform the marketplace in a timely manner of material corporate developments, including proposed mergers.[47]

We understand that parties involved in extraordinary transactions may have certain economic reasons as well for disclosing more information to the markets before a registration, proxy or tender offer statement is filed with the Commission. These reasons include: the need to maintain an orderly market for the securities to be offered as consideration;[48] the need to satisfy the market's increased demand for information regarding a proposed transaction;[49] and the need to inform customers, employees or other constituencies.

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[39] The target company has the same obligations as in a cash tender offer.

[40] *But see* note 94.

[41] *See* Rule 13e–3 and Schedule 13E–3. This rule covers specified transactions where a company may cease to be a public reporting company or a class of equity securities may cease to be registered or publicly traded.

[42] "The boundaries of the 'gun jumping' prohibition are being pushed in the current environment. A careful balance must be made between deal announcement activities and broader disclosures, which may serve legitimate disclosure issues, covering expected timetables managements financing plans, integration [of] operations and synergy expectations. Deal participants frequently are pressured for such information by analysts, reporters and institutional investors, and it is not uncommon for corporations to have full analyst presentations that announce, among other things, aggregate synergies/cost savings and CEO succession plans at the time of the announcement of an exchange offer, merger or spin-off transaction." *See* Brownstein & Cohen, "Navigating the M&A Waters: Greater Options, Greater Challenges," N.Y.L.J. (February 18, 1997), at p. 6 ("Brownstein & Cohen").

[43] The Commission has long recognized the need for issuers to communicate with their security holders with respect to important business and finance developments. *See* Releases No. 33–4697 (May 28, 1964) [29 FR 7317] and 33–5180 (August 16, 1971) [36 FR 16506]. *See also* Release No. 33–5927 (April 24, 1978) [42 FR 18163], in which the Division of Corporation Finance noted that compelling policy reasons exist, as reflected in the Williams Act disclosure requirements, to permit disclosure of information regarding contemplated "back-end" mergers in order to aid investors confronted with a tender offer investment decision that would otherwise "jump the gun" on a merger.

[44] *See SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833,848 (2d Cir. 1968).

[45] *Id.* at 862; *Basic* v. *Livinson*, 485 U.S.C. 224 (1988).

[46] *See Ross* v. *A.H. Robins Co., Inc.*, 465 F. Supp. 904 (S.D.N.Y.), *rev'd in part and remanded on other grounds*, 607 F. 2nd 545 (2d Cir. 1979), *cert. denied*, 446 U.S. 946 (1980); *Naye* v. *Boyd*, CCH ¶92,980 (W.D. Wash. Oct. 20, 1986); Sharp v. *Coopers & Lybrand*, CCH ¶96,952 (E.D. Pa. 1979); SEC v. *Shattuck Denn Minning Corp.* 297 F. Supp. 470 (S.D.N.Y. 1968); *Fischer* v. *Kletz*, 266 F. Supp. 180 (S.D.N.Y. 1967). Generally, however, there is no duty to correct statements issued by a third party unless the statements are attributable to the company. *See Electronic Specialty Co.* v. *Int'l Controls Corp.*, 409 F.2d 937 (2d Cir. 1969); *Zucker* v. *Sable*, 426 F. Supp. 658 (S.D.N.Y. 1976). Under certain circumstances courts have found a duty to update information previously disclosed when it is rendered misleading by subsequent developments. *See In re Time Warner, Inc.*, 9 F.3d 259 (2d Cir. 1993).

[47] *See* NYSE Listed Company Manual § 202.05 stating that "[a] listed company is expected to release quickly to the public any news or information that might reasonably be expected to materially affect the market for its securities"; and American Stock Exchange, Listing Standards, Policies and Requirements § 402 requiring disclosure of material information "likely to have a significant effect on the price of any of the company's securities or * * * likely to be considered important by a reasonable investor in determining a choice of action," providing as an example information regarding mergers and acquisitions. *See also* the National Association of Securities Dealers, Inc. ("NASD") Manual, Rules 4310(c)(16) and 4320(e)(14).

While there may be certain regulatory and economic reasons for early disclosure of deal-related information, provisions of the Securities Act and Exchange Act, including the Williams Act,[50] restrict the type of information that may be disseminated before the filing of a registration, proxy or tender offer statement. The flow of information to investors is constrained primarily by the concepts of "offer"[51] and "prospectus"[52] under the Securities Act, "solicitation" under the Exchange Act, and "commencement" under the Williams Act.[53] Each of these concepts reflect a judgment that the information needed to make an informed voting or investment decision should be provided within the four corners of a prescribed disclosure document.

We believe that alleviation of these regulatory constraints may be appropriate in today's marketplace, particularly given technological advances in communications. Information regarding a planned extraordinary transaction can be provided to all security holders on a more equal and timely basis. Restricting communications to one document may in fact serve to impede, rather than promote, informed investing and voting decisions. Of course, any proposed safe harbors permitting increased communications must be balanced to assure investor protection. Modifications to the existing regulatory scheme include conditions designed to provide full and fair disclosure to all investors and the broader marketplace and not simply to a limited audience of analysts and financially sophisticated market participants. Today's proposals are designed to reduce selective disclosure by permitting the widespread dissemination of information through a variety of media calculated to inform all security holders about the terms, benefits and risks of a proposed extraordinary transaction.

It is important to note that the proposals do not change the current requirement that before security holders are asked to vote or tender their shares, they must receive a mandated disclosure document—a prospectus, proxy statement, or tender offer statement—that sets forth complete and balanced information.[54] Our long-standing concern about communications conditioning the market before the dissemination of mandated disclosure documents (*i.e.*, "gun-jumping") is alleviated by continuing to require this disclosure document before the investment decision, as well as by the liability that could attach to knowingly false offering materials.

2. Eliminate Restrictions on Pre-filing Communications

We propose to eliminate the current restrictions on communications about an upcoming merger, tender offer, or other business combination. Each of the regulatory schemes would provide for a safe harbor, as described below, for oral and written communications about the transaction before the registration, proxy or tender offer statement is filed. Recognizing that deal-related disclosure, including forward-looking information, is important to a complete understanding of a transaction, we do not propose any content limitation on the communications. However, we request comment on whether any content restrictions should be included in the proposed safe harbors. Of course, even without content restrictions, the antifraud rules will continue to apply.

We do not propose to limit eligibility for the proposed safe harbors to transactions involving large or seasoned issuers. We considered making distinctions by size and seasoned status along the same lines as in the Securities Act Reform Release (*i.e.*, Form A and Form B), but believe that those distinctions are not as important as other considerations in the case of business combination transactions. In these transactions, the market does not need information about the offeror alone, but rather the combined entity, with which the market is unfamiliar in any case. Thus, the need for freer disclosure stems in large part from the fact that the offeror is, in essence, becoming a new company. Therefore, the market-driven disclosure is not company information but "synergies" and similar information about the combined entity. Further, we believe that regardless of seasoned status, the reasons for full and timely disclosure in a business combination still exist.

Nevertheless, we request comment as to whether the size and seasoned status of the parties to the transaction should determine the availability of the free communication safe harbors. Should the safe harbor be limited to Form B companies?[55] If the safe harbor were based upon the size and seasoned status of the parties, should it be the status of the acquiror or the target that would govern, or both? If the status of the acquiror controlled, different acquirors for the same target could be subject to different rules. Would the lack of a level playing field for competing acquirors have adverse effects on competition or the target's security holders?

While we believe that the parties involved in a business combination transaction should be permitted to rely on the free communications safe harbors regardless of size, certain safeguards to protect investors are necessary. All written communications by those parties from the date of the first announcement of the transaction would be required to be filed with the

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[48] In the takeover heyday of the 1980s, the price of participants' stock frequently dropped following the announcement of the transaction. This also can happen today, but market reaction can be positive when a deal appears to make business sense. Steven Lipin, "Corporations' Dreams Converge in One Idea: It's Time to Do a Deal," Wall St. J. (February 26, 1997).

[49] Wall Street may require education due to the complexity of the transaction, the non-apparent nature of its value or the obscure nature of the business. In any case, assuring that the value created by a transaction is properly appreciated by Wall Street, and relected in stock price, may be both a matter of responsibility to shareholders as well as protecting the deal itself." Brownstein & Cohen at p. 6. Indeed, commentators have argued that "winning the immediate favor of the market through disclosure of projections and other forward-looking information can be an essential element in ensuring the transaction's success." *See, e.g.*, Victor I. Lewkow and Paul J. Shim, *Law Puts Parties in a Bind When Ammouncing Merger*, Nat'l L. J. (Feb. 10, 1997), at p. B9.

[50] The Williams Act was enacted in 1968 as an amendment to the Exchange Act (Sections 13(d)–(e) and 14(d)–(f). The Williams Act regulates tender offers and imposes beneficial ownership reporting requirements. 15 U.S.C. 78m(d)-(e) and 15 U.S.C. 78n(d)–(f).

[51] Section 2(a)(3) of the Securities Act broadly defines "offer" as including every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. 15 U.S.C. 77b. Offers are prohibited during the pre-filing period and restricted during the waiting period.

[52] The term "prospectus" is defined in Section 2(a)(10) to include any prospectus, notice, circular, advertisement, letter of communication, written or by radio or television, that offers any security for sale or confirms the sale of the security, except for communications that are preceded or accompanied by a statutory prospectus. 15 U.S.C. 77b.

[53] "Solicitation" is broadly defined by the Commission to include "the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy." *See Rule 14a–1(l)* [17 CFR 240.14a–1(*l*)]. The Williams Act provides that only limited information can be announced without either commencing a crash tender offer or requiring the filing of a registration statement in a stock offer.

[54] *See* the discussion of proposed Form C in Part II.D.2.d below.

[55] If the proposals in the Securities Act Reform Release are not adopted, then the proposals presented in this release could be limited to companies that are Form S–3 eligible, including the requirement that the aggregate market value of voting and non-voting common equity held by non-affiliates equal or exceed $75 million.

Commission upon first use.[56] Although there would be no requirement to deliver this information to security holders, written communications would have to be filed upon first use in order to assure that the information is available to *all* security holders—not just analysts and institutional investors—at the same time. Furthermore, written information about a proposed combined entity or the "synergies" that are expected to result from a proposed transaction could be verified or confirmed, and corrective disclosure could be required if needed.

Each communication would be required to include a prominent legend advising investors to read the registration, proxy or tender offer statement.[57] We solicit comment on whether certain basic information, including the name and description of the acquiror, also should be required in each communication.[58]

We believe that bidders would welcome the opportunity to disclose deal information earlier in the process and that the filing on first use requirement would not "chill" disclosure of forward-looking information because of continuing market demands. We request comment, however, as to whether parties involved in tender offers would be reluctant, in light of the filing requirement, to disclose forward-looking information absent a safe harbor from liability for that information. The safe harbor established by the Private Securities Litigation Reform Act currently applies to merger transactions but does not apply to tender offers. We discuss below the possibility of expanding by rule the scope of that safe harbor to tender offers.[59]

Would parties to a transaction communicate more freely if the written communications could be filed at a later date, whether along with the mandated disclosure document[60] or some other date, instead of filing upon first use? If so, should the communications required to be filed be limited to those made during a specified period of time, such as 30 calendar days or 30 business days before the disclosure document is filed? In addition to the filing requirement for written communications, would any market conditioning effect of the pre-filing communications be cured by the built-in time period between delivery of the disclosure document and the final voting or tendering decision? Would offerors tend to shorten this time period, to the extent permitted by law, if they could engage in more extensive communications at an earlier point? We also ask whether security holders would tend to sell into the market on the basis of pre-filing communications, rather than waiting for the disclosure document.

As noted, the proposed free communications safe harbors would apply to oral as well as written communications. We do not propose to require that oral communications be reduced to writing and filed. As one objective of the proposal is to reduce selective disclosure, we solicit comment on whether liberalizing oral communications would remove incentives for offerors to file information and disseminate it in a widespread manner.[61] Should the safe harbors be available to oral communications?[62] If so, would the need to provide information to the markets generally provide a sufficient incentive for offerors to disseminate full, fair and balanced information in a widespread manner? Should a "notice" filing be required when oral communications are made?

As proposed in the Securities Act Reform Release, business information that is factual in nature and relates solely to ordinary business matters, not to the pending transaction, would be exempt from the prohibition on offers and would not be required to be filed. This type of information generally does not have the potential for conditioning the market before an extraordinary transaction and, as the dissemination of such information is usually routine, we do not view it as specifically related to the transaction.[63] The proxy and tender offer rules would provide the same exclusion.[64]

3. Waiting Period and Post-Effective Period Communications

In the Securities Act Reform Release, we propose to permit free oral and written communications during the period between filing and effectiveness of the registration statement, in order to provide an opportunity for open dialogue between the company and its potential investors.[65] This Securities Act safe harbor also would apply to the period after effectiveness of the registration statement.[66] The rule would be available for business combinations as well as for capital-raising transactions. We also would extend this safe harbor to the proxy and tender offer rules.[67] Like pre-filing communications, written communications during these periods would be required to be filed upon first use. Free communications during the waiting period would be particularly important if our proposal to permit exchange offers to commence before effectiveness is adopted.[68]

4. Alternative Communications Proposals

We are considering alternatives to the free communications safe harbors that would provide more limited flexibility for pre-filing communications. In particular, we are considering whether to allow the companies conducting the transaction to make deal-related disclosure only during a 48-hour period following the public announcement of a definitive merger agreement or takeover plan. Similar to the "free communications" proposal, there would be no content restrictions on the companies' communications during the proposed 48-hour period, other than the antifraud provisions. After the 48-hour period, the companies would be required to remain quiet regarding the transaction until a registration, proxy or tender offer statement is filed. If this alternative proposal is adopted, should the 48-hour time period be shorter or longer (*e.g.*, 24 or 72 hours), or should it be based on a number of business days, such as one, three or five business days?

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[56] *See* Part II.B.5 below. Written communications include communications that are published in electronic media, such as videos and CD–ROMs.

[57] The legend also would advise investors that they can obtain copies of the filed documents for free at the Commission's web site and explain which documents are available for free from the issuer. *See* proposed Securities Act Rule 421(e) in the Securities Act Reform Release, as well as proposed Rules 14a–12(a)(2), 13e–4(c) and 14d–2(b)(2) in this release.

[58] As discussed below, free pre-filing communications are permitted under the current scheme only in contested proxy solicitations under Rules 14s–11 and 14a–12. Those rules require that certain basic information (the identity of the participants in the solicitation and description of their interest in the transaction) be disclosed in each communication, whether written or oral.

[59] *See* Part II.E.6 below.

[60] This is the way Form B issuers would be treated in capital-raising transactions, as proposed in the Securities Act Reform Release.

[61] Of course, nothing in the proposal would affect a person's liability for trading on inside information. *See* Rules 10b–5 and 14e–3 [17 CFR 240.14e–3].

[62] The current safe harbor in Securities Act Rule 145(b)(2), discussed below, is limited to written communications.

[63] Proposed Rule 169. Also as proposed in the Securities Act Reform Release, there would be a safe harbor for regularly released forward-looking information (which would be filed under Rule 425), and the safe harbors for the publication of research reports by broker-dealers would be revised. All of these would apply to business combinations as well as to capital-raising transactions. *See* proposed Rule 168(b) and proposed revisions to Rules 137, 138, and 139 [17 CFR 230.137; 17 CFR 230.138 and 17 CFR 230.139].

[64] Proposed Rules 13e–4(c), 14a–12 and 14d–2.

[65] Proposed Rule 165.

[66] Currently, "free writing" is permitted after a registration statement becomes effective, but the "free writing" material, such as sales literature, must be accompanied or preceded by a final prospectus.

[67] Proposed Rules 14a–12 and 14d–2.

[68] *See* Part II.C.1 below.

Under this alternative proposal, the safe harbor would not be available to a company if it disclosed deal-related information after the 48-hour period without the relevant disclosure document on file. The company, however, could take steps to regain protection under the safe harbor by discontinuing communications related to the transaction for at least 30 calendar days (the "30-day quiet period") before a registration statement is filed. The 30-day quiet period would serve to cure any conditioning effect that the communications may have had on the market for the companies' securities.

As a third alternative to the free communications proposal and the 48-hour model, we also solicit comment on whether to permit free communications for an unlimited period of time after the deal is announced, so long as the parties observe a 30-day quiet period before filing the registration statement, proxy statement or tender offer material. This would be similar to the treatment of Form A companies in capital-raising transactions, as proposed in the Securities Act Reform Release. We ask commenters whether it would be practicable in the business combination context to require a minimum of 30 days between announcing the deal and filing the registration statement, proxy statement or tender offer material.

We request comment on whether, under the alternative proposals, the 30-day quiet period would be sufficient to cure any conditioning effect that earlier communications may have on the market. Is a longer quiet period necessary (e.g., 45 days), or would a shorter period suffice (e.g., 15 or 20 days)? We also solicit comment on whether the time period for staff review should be included in the 30-day quiet period. Should companies be permitted to file the relevant disclosure document as soon as it is prepared despite disclosure of deal-related information outside the 48-hour period? How should the announcement of a hostile transaction affect the type of communications permitted during the 30-day quiet period? Should the type of communications permitted outside the 48-hour period be different for friendly and hostile transactions? Should the communications be filed on first use, or not filed until the mandated disclosure document is filed?

Finally, we request comment as to whether either of the alternative proposals is preferable to the free communications safe harbors.[69] Commenters should keep in mind that we would conform the proxy rules and tender offer rules to whatever scheme we adopt under the Securities Act for business combinations.

5. Free Communications Under the Securities Act

To implement the overall scheme discussed above, we propose new Securities Act Rule 166(b) to permit free communications in connection with any registration statement for a business combination. As discussed above, this rule would not contain any content restrictions so that deal-related information could be disclosed to analysts and security holders alike. Given the potential breadth of the communications, these communications still would be considered offers under the Securities Act.

As discussed above, Section 5(c) of the Securities Act prohibits offers unless a registration statement is on file. In 1996, the Commission was granted exemptive authority under Section 28 of the Securities Act.[70] For the reasons stated above—including the need to reduce selective disclosure and provide deal-related information to all security holders on an equal basis—we believe that an exemption from Section 5(c) of the Securities Act for persons making offers in business combination transactions is in the public interest and is consistent with the protection of investors.

The proposed safe harbor under this exemption would be available to the acquiring company—the offeror of the securities. The company to be acquired would not ordinarily be subject to restrictions on communications under the Securities Act, but under some circumstances it could be viewed as joining the acquiring company in making the offer. In this event, it also could avail itself of the safe harbor. In addition, we request comment as to whether any other parties should be exempted from Section 5(c) and eligible to rely on the proposed safe harbor for pre-filing communications. For example, should the parties' affiliates, dealer-managers and others acting on behalf of the parties to the transaction be permitted to take advantage of the safe harbor?[71]

In cases where deal-related information is disclosed before filing a registration statement, the current practice has been to file the communications on Form 8–K[72] and then incorporate these filings by reference into the registration statement. As a result, these communications are subject to Section 11 liability.[73] As a condition to the proposed free communications safe harbor, written communications relating to the transaction would be filed upon first use as pre-filing prospectus supplements[74] that are subject to Section 12(a)(2) liability.[75] This is because we believe Section 12(a)(2) liability would adequately protect investors while not chilling parties' willingness to make these communications. However, we request comment on whether all written communications related to the transaction should be incorporated into the registration statement and subject to Section 11 liability under the Securities Act.[76] Would this encourage offerors to rely more on oral communications? We also ask whether it is necessary to condition the availability of the safe harbor on the timely filing of these communications, as proposed.

We note that relatively free written and oral pre-filing communications already are permitted under the current scheme for contested proxy solicitations. Such solicitations, if written, currently are not deemed offers under the Securities Act.[77] Written communications must be filed in accordance with proxy Rule 14a-12(b), as discussed below.

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[69] Like the free communications proposal, the alternative safe harbors would not restrict factual business communications at any time. These communications could occur throughout the pre-filing and waiting period without precluding reliance on the safe harbor or triggering a 30-day quiet period.

[70] The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of this title or any rule or regulation issued under this title to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with protection of investors. 15 U.S.C. 77bb.

[71] See the discussion of research reports in the Securities Act Reform Release.

[72] 17 CFR 249.308.

[73] 15 U.S.C. 77k.

[74] Written communications would be filed as offering material under proposed Rule 425(b)(3). Like Rule 424 [17 CFR 230.424], proposed Rule 425 would provide the procedural requirements for filing the written communications as pre-filing prospectus supplements. Comparable filing requirements are proposed under the proxy and tender offer rules (proposed Rules 13e–4(c), 14a–12 and 14d–2). These communications would be filed on EDGAR to the same extent that the related prospectus, tender offer or proxy statement would be required to be filed electronically. For a discussion of materials in various electronic media and how they would be filed, see Part VII.B of the Securities Act Reform Release. If a Rule 425 filing was required, filers would not also have to file the same document under the proxy and tender offer rules.

[75] 15 U.S.C. 77l(a)(2). Oral communications also would be offers subject to Section 12(a)(2) liability.

[76] In any event, if a pre-filing communication contains material information that is required to be in the registration statement, the filer will put the information in the registration statement, so Section 11 will apply.

To harmonize treatment of all merger transactions, whether contested or friendly, we propose to eliminate the provision that such communications are not offers under the Securities Act.[78] Thus, pre-filing communications in contested transactions also would be considered offers and pre-filing supplements to the prospectus subject to liability under Section 12(a)(2) of the Securities Act. We do not believe that communications would be chilled by this modification because of the heightened need for communications in hostile or competing transactions. In addition, we note that such communications already are subject to antifraud liability. We request comment, however, as to whether treating this information as offers—imposing Section 12(a)(2) liability under the Securities Act—would chill communications in hostile transactions.

Rule 135 notices are not currently, and are not proposed to be, filed with the Commission. We solicit comment, however, on whether Rule 135 notices involving prospective business combinations should be filed, since they could contain the initial public announcement of the transaction. The filing would be made under Rule 425, but since these notices are not considered "offers" they would not have liability as such; Rule 425 would be modified to make this clear.[79]

In the Securities Act Reform Release, the proposed scheme for capital-raising transactions for Form A issuers contemplates that communications more than 30 days before the filing of a registration statement do not constitute offers.[80] In contrast, the proposed scheme for business combinations treats all communications related to the transaction as offers, starting with the first communication relating to the transaction (except for communications among the participants in the transaction).[81] Thus, these communications would be subject to Section 12(a)(2) liability even if made more than 30 days before filing the registration statement. Should we treat business combinations the same as capital-raising transactions and apply the 30-day rule to both?[82] If we did this, we could still require communications before the 30-day window to be filed, but they would not have Securities Act liability as offers. We ask commenters to address whether the status of deal-related communications as offers should depend on how soon they are followed by the filing of a registration statement.

We also solicit comment on whether, if we do retain the first public announcement standard, we need to define "public announcement." We could define this as the first public communication about the transaction that gives more information than permitted by Rule 135. Alternatively, we could have a broader definition that includes any public communication identifying the offeror, the target company or class of securities, the number or percentage of securities sought, and the price or range of prices. Should the definition clarify what is meant by "public" (*i.e.*, communications that go beyond the participants to the transaction)?

6. Free Communications Under the Proxy Rules

a. Expand Rule 14a–12 Safe Harbor

In 1992, we significantly enhanced security holders' ability to communicate with one another regarding corporate matters without furnishing a proxy statement, so long as no proxy card or other authorization is furnished to or requested from security holders.[83] The enhancements have worked well to improve the quality and amount of information flowing to and among security holders. Under the current regulatory scheme, however, there are still some restrictions on communications. For instance, management or security holders seeking proxy authority may not communicate without first furnishing a proxy statement, unless the solicitation is either in connection with an election contest under Rule 14a–11[84] or in opposition to an earlier solicitation, invitation for tenders, or certain other publicized activity under Rule 14a–12.[85] Both rules permit solicitations before furnishing security holders with a written proxy statement, so long as: (i) no form of proxy (*i.e.*, proxy card) is furnished until a written proxy statement is furnished; (ii) the identity of the participants in the solicitation and a description of their interests are included in any communication published, sent, or given to security holders; and (iii) a written proxy statement is provided to security holders at the earliest practicable date. The rules apply to both oral and written solicitations.[86] Written soliciting material must be filed with, or mailed for filing to, the Commission no later than the date the material is first published, sent, or given to security holders.[87]

Despite the 1992 amendments, some have contended that the current rules may continue to unnecessarily restrict communications among security holders and/or between a company and its own security holders. Recent developments in information technology have enabled companies to engage in more frequent, direct and timely communications with their security holders about matters of particular interest. As the pace of the securities markets increases, there appears to be a greater need for some flexibility in the proxy rules to permit communications before filing and delivery of a written proxy statement. Accordingly, we propose to broaden the safe harbor in Rule 14a–12 to apply to all solicitations, not just to those involving opposed matters.

The other provisions in Rule 14a–12, including the condition that no form of proxy is furnished, the obligation to disclose participant information, and the delivery of a written proxy statement to all solicited security holders as soon as practicable, would be retained. We also would continue to require that written solicitations be filed upon first use. In addition, consistent with proposed changes to the Securities Act and tender offer rules, each communication would be required to prominently advise security holders to read the proxy statement.[88] These requirements, together with the antifraud provisions in Rule 14a–9, appear sufficient to assure the integrity and adequacy of the information and protect against misleading solicitations.[89]

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[77] See Rule 145(b)(2) [17 CFR 230.145(b)(2)]. Rule 145 is the rule that applies the registration requirements to business combinations involving security holder voting decisions.

[78] Rule 145(b)(2) would be rescinded. Rule 145(b)(1), which provides that certain written communications containing only specified information about mergers and similar transactions are not deemed offers, would be moved from Rule 145 to Rule 135 [17 CFR 230.135]. Rule 135 already contains similar provisions for communications about exchange offers. See the Securities Act Reform Release for the text of proposed Rule 135 revisions.

[79] In any event, under the proposed scheme these communications would need to be filed under the proxy or tender offer rules.

[80] See proposed Rule 167(c).

[81] See proposed Rule 167(b).

[82] In that case, we also would apply the 30-day rule to proxy and tender offer solicitations.

[83] *See* Rule 14a–2(b)(1). [17 CFR 240.14a–2(b)(1)]. The rule may not be used by the company itself. Also, there are various exceptions for persons with specified interests in the solicitation. For example, the rule may not be used by any person soliciting in opposition to a merger or other extraordinary transaction, when the soliciting person is a party to an alternative transaction.

[84] 17 CFR 240.14a–11.

[85] 17 CFR 240.14a–12. In addition, parties other than the company's management may solicit proxies from up to ten persons without being required to file a proxy statement. *See* Rule 14a–2(b)(2) [17 CFR 240.14a–2(b)(2)].

[86] The proxy antifraud rule, Rule 14a–9, applies to these communications.

[87] *See* Rules 14a–11(c) and 14a–12(b) [17 CFR 240.14a–11(c) and 240.14a–12(b)].

Filing of written communications upon first use also would assure consistency with the requirements we propose for extraordinary transactions under the Securities Act. We request comment, however, on whether the filing upon first use requirement should be modified if under the Securities Act we permit filing later than upon first use (*i.e.*, when the disclosure document is filed). We also request comment on whether to retain the requirement to disclose the identity of participants and their interests if we do not adopt a corresponding requirement under the tender offer rules and the Securities Act requirements for tender offers. If we change either the filing requirement or the participant information requirement, should the change apply only to proxy statements relating to business combinations?

We proposed expanding Rule 14a–12 in 1992 to permit solicitations before filing and delivering a written proxy statement regardless of the existence of an opposing solicitation.[90] We ultimately determined not to adopt the proposal because "the broad scope of current Rules 14a–11(d) (now Rule 14a–11) and 14a–12 reach virtually all contested and responsive solicitations."[91] We further noted that the need to extend Rule 14a–12 to all solicitations was mitigated by the proposal to allow registrants and other persons planning a solicitation to begin their solicitation on the basis of a publicly filed preliminary proxy statement.[92] However, given the pressures—both regulatory and market-induced—to disclose deal-related information immediately upon announcement, we now believe that the current rules may overly restrict communications among security holders and/or between a company and its own security holders. Based upon our experience with the 1992 liberalization of communications, we do not believe that further easing of restrictions would lead to abuse.

Under the proposed expansion of Rule 14a–12, management could engage more freely in communications regarding a prospective or pending acquisition. However, this proposal is not limited to takeover-related matters. For example, management could rely on the proposed safe harbor to obtain security holders' views in connection with certain corporate governance items that may require a security holder vote, such as the adoption or amendment of executive and director compensation plans, an increase in the number of authorized shares that may be issued, and the adoption or redemption of a security holder rights plan. We believe that management's ability to disseminate information on a more timely basis may result in more informed voting decisions by security holders and may increase the amount and quality of information generally available to all security holders.

We request comment as to whether there are certain instances when the requirement to deliver a proxy statement as soon as practicable would be too burdensome. In addition, are there any circumstances under which management or other parties may want to communicate that should not trigger the obligation to deliver a proxy statement at the earliest practicable date? For example, if a merger transaction was only under consideration by management, and no formal agreements were entered into, should it be necessary to send a proxy statement to security holders if the transaction does not materialize? As another example, management might find the proposed safe harbor useful to "road-test" an executive compensation proposal with large security holders, but not present the matter for a security holder vote if the reaction was negative. What impact would this have on smaller security holders?

We invite comments on whether the expansion of Rule 14a–12 to non-contested situations would have the intended effect of permitting management to communicate more freely with security holders and whether this would enhance the timing or quality of information given to security holders. One effect of the proposed expansion of Rule 14a–12 may be to eliminate any need for Rule 14a–11.[93] Would it be appropriate to eliminate Rule 14a–11 if we expanded Rule 14a–12 to cover all matters, whether or not they are contested?

As discussed above, one "check" on any conditioning effect that free communications might have on security holders is the fact that security holders will receive a mandated disclosure document in extraordinary transactions before making their tender or voting decision. In a tender offer, there is a mandated minimum 20-business day period between the time the disclosure document is disseminated and the expiration of the offer. As a general rule, however, there is no federally mandated time period for disseminating a proxy statement.[94] Many state laws, however, dictate that there be at least 10 and no more than 60 days between notice of the meeting and the meeting date. Generally, the state law notice and the federally mandated proxy statement are mailed together to security holders. During this period, security holders are able to assess the relevance and credibility of all written communications in light of the mandated disclosure. In some cases, state law permits a period so short that security holders may not have enough time to consider the information.

We request comment as to whether there should be a federally mandated solicitation period for mergers and similar transactions, given the free communications proposals and the need to digest the mandated disclosure in light of earlier communications. This period also would assure that record holders and beneficial owners alike would have enough time to consider the proxy materials. If a federally mandated

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[88] Proposed Rule 14a–12(a)(2).

[89] The proposed expansion of communications would not expand a company's ability to secure promises to vote a certain way before a proxy statement is provided. *See* the Securities Act Reform Release, however, for proposed Rule 159, which would provide exemptions from the proxy rules for certain "lock-up" arrangements.

[90] Release No. 34–30849 (June 24, 1992) [57 FR 29564].

[91] Release No. 34–31326 (October 16, 1992) [57 FR 48276]. Comments on the proposal were mixed. Those who objected "questioned whether there was a demonstrated need for the revisions and raised concern with the potential abuse that could arise." *Id*.

[92] *Id*. When a soliciting party uses a preliminary proxy statement to begin a solicitation, the form of proxy may not be included with the material distributed.

[93] Currently, Rule 14a–12 excludes matters covered by Rule 14a–11.

[94] Note, however, that there is a mandated 60-day solicitation period if the transaction is a roll-up. *See* Section 14(h)(1)(J) of the Exchange Act [15 U.S.C. 78n(h)(1)(J)]; Rule 14a–6(*l*) [17 CFR 240.14a–6(*l*); General Instruction I.2 to Form S–4 [17 CFR 239.25] and General Instruction G.2 to Form F–4 [17 CFR 239.34]. Also note that there is a requirement to send or give security holders a written information statement on Schedule 14C at least 20 calendar days before the meeting date or the earliest date on which corporate action may be taken if no meeting will be held. *See* Rule 14c–2(b) [17 CFR 240.14c–2(b)]. *See also* Release No. 34–33768 (March 16, 1994) [59 FR 13517]. "Although the rules do not specify the number of days before the meeting by which registrants must make their proxy materials available for distribution to their beneficial owners, in order to comply with the timeliness requirement, the materials must be mailed sufficiently in advance of the meeting to allow five business days for processing by the banks and brokers and an additional period to provide ample time for delivery of the material, consideration of the material by beneficial owners, return of their voting instructions, and transmittal of the vote from the bank or broker to the tabulator." *Id*. (footnotes omitted).

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solicitation period is adopted, how long should it be? Would 20 business days make sense so that it is harmonized with the mandated tender offer time period? Should it be 20 calendar days to conform with the information statement requirement, or should the information statement requirement be changed to 20 business days? Should the solicitation period be required only as a condition of the free communications safe harbor? Should it apply only to votes on business combinations?

We are particularly concerned about giving security holders time to consider proxy material in the case of street name holders—beneficial owners of securities who obtain their proxy material through banks, broker-dealers, or other nominees holding record title to the securities. Do street name holders receive correcting or updating material in a timely fashion? Would modifying the security holder communications provisions of the proxy rules to permit direct delivery of proxy statements and other soliciting materials to non-objecting beneficial owners facilitate more timely and fully informed voting decisions?[95]

b. "Test the Waters" Proxy Solicitations

We also are considering a broader exemption from the proxy rules that would not require delivery of a proxy statement after communicating with security holders. The only condition would be that no proxy card or other authorization be requested or sent. In effect, such a rule would permit both written and oral "test the waters" proxy solicitations.[96] Such an exemption would be crafted as part of Rule 14a–2,[97] which sets forth a number of solicitations that are exempt from the proxy statement disclosure and dissemination requirements. Would a broad exemption remove the need for any of the current exemptions in Rule 14a–2?[98] Would it remove the need for Rules 14a–11 and 14a–12? Would the same purpose be accomplished by amending Rule 14a–2(b)(1) to eliminate the exceptions, so the rule could be used by the company itself and interested parties?[99] Should the "test the waters" communication be required to include any minimal information?

Unlike Rule 14a–12, the "test the waters" proxy rule would not require that written communications be filed with the Commission.[100] However, we are considering requiring communications to be filed in order to harmonize with the treatment of written communications under the Securities Act and the Williams Act. Commenters should address whether the need to file material would reduce the usefulness of the "test the waters" proxy exemption. Would a filing requirement provide benefits to security holders by assuring that information is available on a widespread basis? If we do require filing of material under this exemption, should it be a "notice" filing only as opposed to requiring the communication itself to be filed? Should the filing requirement be limited to the business combination context? Or should the "test the waters" proxy solicitation be unavailable for business combination communications, leaving Rule 14a–12 as the sole safe harbor for these communications?

We request comment on whether a "test the waters" proxy rule would benefit security holders. This change would be consistent with the general theme of easing restrictions on communications under the Securities Act as expressed in this release and the Securities Act Reform Release. On the other hand, does the current requirement to follow up communications with delivery of a proxy statement impose a beneficial discipline on the solicitation process by discouraging premature insupportable communications? Should we require a "cooling-off period" (*e.g.*, 20 or 30 days) between the "test the waters" solicitation and a request for a proxy card? Commenters should advise whether they think the "test the waters" rule would work, not just in the context of takeover-related matters, but also in the context of any corporate governance matters or other topics that are likely to be the subject of a proxy solicitation.

c. Eliminate Confidential Treatment of Merger Proxies

Currently, preliminary proxy material relating to certain reclassifications and business combinations, other than going-private or roll-up transactions,[101] may be filed confidentially with the Commission.[102] In that case the proxy material is not filed on EDGAR and is not available for public inspection.[103] Due to the changing realities of today's markets, and the expressed need by many companies for an expanded safe harbor permitting early disclosure of information before a registration statement is on file, we propose to eliminate confidential treatment for merger proxy statements.[104] Often companies that invoke confidential treatment for their merger proxy statements already have made extensive pre-filing disclosure of information beyond what is permitted by current Securities Act Rule 145(b) and the proxy rules. It is unclear to us why a company that broadcasts extensive deal-related information to the securities markets soon after a definitive merger agreement is executed needs confidential treatment for the same information contained in its proxy materials. In some instances, the information disclosed to the market is more extensive than the information disclosed in the preliminary proxy statement filed confidentially.

We previously proposed to eliminate confidential treatment for all preliminary proxy statements, including those relating to mergers, in 1992.[105] The Commission ultimately decided to preserve confidential treatment for merger transactions in light of commenters' concerns that the inability to file documents relating to business combinations or acquisitions on a non-public basis would cause premature disclosure of information. The concern articulated was that merger negotiations might not be ripe at the time of filing and public disclosure "would adversely affect the timing of such transactions and thereby their costs, since they could not obtain Commission review of the offering documents while the participants were preparing for the public announcement of the transaction."[106] In light of the current practice of disclosing extensive deal-related information before the filing of a proxy statement, we do not believe that preliminary merger proxy materials continue to merit confidential treatment.

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[95] *See* Rules 14a–13 [17 CFR 240.14a–13], 14b–1 [17 CFR 240.14b–1], 14b–2 [17 CFR 240.14b–2] and 14c–7 [17 CFR 240.14c–7].

[96] Rule 14a–9 would, of course, impose antifraud liability on these communications.

[97] 17 CFR 240.14a–2.

[98] In particular, the exemption for solicitations that do not seek the power to act as a proxy for another security holder and do not furnish or otherwise request a form of revocation, abstention, consent or authorization in Rule 14a–2(b)(1) and the "ten person" exemption in Rule 14a–2(b)(2). [17 CFR 240.14a–2(b)].

[99] A person relying on Rule 14a–2(b)(1) currently is not permitted to change the exempt proxy solicitation to a non-exempt one and send a proxy card to security holders. This position would have to be modified to accomplish the objectives of the "test the waters" proxy solicitation proposal.

[100] Currently, communications exempt under Rule 14a–2 need not be filed, except that notice filings are required for certain communications under Rule 14a–2(b)(1) and the roll-up solicitation rule, Rule 14a–2(b)(4).

[101] A roll-up transaction is any transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves the combination or reorganization of one or more "finite-life" entities (usually limited partnerships) where the securities to be issued are publicly registered. *See* Release No. 33–6900 (June 17, 1991) [56 FR 28979]; Release No. 33–6922 (October 30 1991) [56 FR 57237]; Release No. 33–7113 (December 1, 1994 [59 FR 63676]; and the 900 series of Regulation S–K.

[102] Rule 14a–6(e)(2) [17 CFR 240.14a–6(e)(2)].

[103] The proxy material is filed publicly in definitive or final form when the staff has no further comments or when a related registration statement is filed that wraps-around (or incorporates) the information contained in the proxy statement.

[104] When the transaction is a stock merger, this would eliminate the need for the current practice of filing a (confidential) proxy statement before filing the related (public) registration statement.

[105] *See* Release No. 34–30849 (June 24, 1992) [57 FR 29564].

The elimination of confidential treatment of merger proxy statements would harmonize the treatment of preliminary proxy statements with preliminary prospectuses and tender offer materials, which are publicly available when filed. In addition, security holders would obtain faster access to information concerning extraordinary transactions. Without confidential treatment, security holders also would have more time to consider and respond to proposed mergers and acquisitions.

We request comment on whether confidential treatment should be retained under any limited circumstances. Should confidential treatment be available if the parties to the merger transaction do not rely on the new safe harbors permitting increased communications?

Some have expressed the view that confidential treatment makes registrants more comfortable with amending their materials to comply with staff comments, as the marketplace is not aware of the nature of the changes. If a proxy statement is filed publicly, the trading markets may act on the information disclosed and there may be liability concerns if the information disclosed is revised. Do commenters believe that these concerns outweigh the benefits of public filing? If so, how are merger proxies different from exchange offers and other types of filings that are not accorded confidential treatment?

We note that when the wrap-around procedure is used, registration statement exhibits are filed on a delayed basis. Would registrants be put at a significant disadvantage if they were required to file all exhibits when they filed their registration statements publicly, or would they continue the practice of filing exhibits when available? Should we continue to permit the filing of a proxy statement before the wrap-around registration statement, even though the proxy statement would be public?

d. Timing of Filings

In addition to the substantive changes to the proxy rules proposed above, we propose procedural amendments to the proxy filing requirements. Rule 14a-6(b) requires definitive material to be "filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders." Several other proxy and information statement filing rules contain similar language.[107] The option to mail proxy materials to the Commission is no longer relevant because companies that are subject to the proxy rules are now required to file electronically.[108] We propose to update these filing rules to eliminate the "mailed for filing" language in the rules. Filers would be required to file definitive material with the Commission no later than the date they send or give proxy materials to security holders.

We believe that making definitive material available to security holders, the market and the staff as promptly as possible is important. EDGAR, and other sources of electronic filings, including the Internet, have become essential in supplying the investment community with public information. Any discrepancy between the time information is first disseminated and the time it is filed with the Commission could place those who rely on our filings for public information at a disadvantage.

Filers (particularly those in time zones later than the Commission's) have argued that filing proxy materials on the same day is a hardship. It is not clear why this is the case, in view of the treatment of tender offer materials. Such materials must be filed "as soon as practicable" on the date the tender offer commences, and filers comply with that requirement without any apparent difficulty.[109] While the proposed electronic filing rule acknowledges that some information may be released when it is not possible to file it with the Commission, we believe that material distributed during Commission business hours should be available at that time to the public through our filing system.[110]

In connection with this change to the proxy filing rules, we propose to update our electronic filing rules to provide guidance to filers as to when to file material that is disseminated outside normal Commission business hours. The issue of when to file this type of material arises most often in the context of proxy soliciting material, although it may, on occasion, arise for tender offer filings. Our electronic filing rule already requires material that may be "mailed for filing" to be filed on or before publication or distribution; in the event of publication or distribution on a non-business day, the rule permits filing "as soon as practicable on the next business day."[111] We propose to modify this rule to eliminate "mailed for filing" and refer to material that is required to be filed on the same day it is disseminated. The revised rule would continue to permit filing as soon as practicable on the next business day if the material was disseminated on a non-business day, but would make it clear that dissemination after the Commission's business hours is treated the same as dissemination on a non-business day. The revised rule would apply to tender offer filings as well as proxy filings.

We solicit comment on the nature and extent of problems encountered with the timing requirement for filing proxy and tender offer material. Commenters should consider whether the proposed rule provides adequate guidance to filers disseminating materials outside of our business hours. Alternatively, the rule could be amended to require filing within one business day of dissemination instead of "as soon as practicable on the next business day," or by a certain time on the next business day (*e.g.*, 9:00 a.m. or 12:00 noon). We believe security holders and the public in general should be able to access public filings at the earliest possible time. Currently, filings are accepted on EDGAR as late as 10:00 p.m., although filings submitted after 5:30 p.m. receive a filing date of the next business day and are not available to the public until the next business day. We could amend Rule 13(d) of Regulation S–T to require submission of proxy material by 10:00 p.m. on the same day it is disseminated to security holders, unless dissemination occurs on a day that the Commission is not open.

7. Free Communications Under the Tender Offer Rules

A bidder's ability to communicate with security holders and the markets in general regarding a proposed offer is limited by the concept of "commencement" in the tender offer rules. A bidder is required to file and disseminate information regarding its offer upon "commencement." Commencement is the date an offer starts for purposes of the tender offer rules. A bidder's public announcement of certain minimal information about an offer may trigger commencement and can result in certain filing and disclosure obligations for the bidder, depending upon whether cash or stock is offered.[112] Similarly, the target cannot make a recommendation regarding the offer without triggering filing and disclosure obligations.

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[106] *Id.*

[107] *See* Rules 14a–4(f) [17 CFR 240.14a–4(f)], 14a–6(c) [17 CFR 240.14a–6(c)], 14a–11(c) [17 CFR 240.14a–11(c)], 14a–12(b) [17 CFR 240.14a–12(b)] and 14c–5(b) [17 CFR 240.14c–5(b)].

[108] *See* Rule 101(a)(iii) of Regulation S–T [17 CFR 232.101(a)(iii)]. Registrants may use paper only if a hardship exemption is available. Foreign private issuers that are not required to file electronically are exempt from the proxy and information statement requirements. 17 CFR 240.3a–12–3.

[109] *See* Rule 14d–3(a) [17 CFR 240.4d–3(a)]. *See also* Rule 14d–3(b) [17 CFR 240.14d–3(b)] (filing of additional tender offer material).

[110] In an interpretive letter, the Division of Corporation Finance stated that, where it is impracticable to file proxy materials on the same business day, it is consistent with the intent of Rule 13(d) to allow issuers and others to file electronically "promptly on the next business day following distribution to security holders." *See Henry Lesser, Esq.* (November 28, 1995). This proposal would supersede that interpretation. material disseminated during the Commission's business hours would be required to be filed on that day.

[111] *See* Rule 13(d) of Regulation S–T.

a. Disclosure Triggering Commencement

Currently, a third-party cash tender offer is deemed to commence on the date the bidder discloses certain information ("announcement"),[113] *unless* the bidder does one of two things within five business days of the announcement date. If the bidder files a tender offer statement with the Commission, and disseminates specified information to security holders, the offer is deemed to commence on the date of filing and dissemination, not on the date of announcement.[114] If the bidder makes a subsequent public announcement that it has determined not to proceed with the offer, the initial announcement will not be deemed to commence an offer.[115] If the bidder neither complies with the tender offer rules nor withdraws the offer, the offer is deemed to commence upon public announcement, resulting in filing and disclosure violations. We refer to this requirement as the "five business day rule."

Stock tender offers are not subject to the same five business day rule. Instead, stock offers are deemed to commence when a final prospectus is first disseminated to security holders.[116] A bidder can publicly announce its intention to make a stock offer, so long as the announcement contains only the limited information permitted by the Securities Act.[117] This announcement will *not* stitute commencement of the offer if the bidder promptly files a registration statement relating to the securities offered.[118]

In 1979, we recognized the "unsettling and disruptive effects" that cash tender offers can have on the trading markets when we proposed the five business day rule.[119] In adopting the rule, we noted it was common practice for bidders to publicly announce the material terms of their cash offers in advance of formal commencement.[120] We observed that pre-commencement public announcements regarding cash tender offers can trigger market mechanisms, such as arbitrageur activity, and cause security holders to make investment decisions with respect to a tender offer on the basis of incomplete information. The five business day rule was designed to prevent bidders from publicly announcing the material terms of an offer before formally commencing the offer.

Based on our experience with tender offers and the factors influencing the treatment of communications discussed earlier, we now believe that the communications restrictions imposed on bidders in both cash and stock tender offers may unnecessarily restrict communications with security holders. We believe that the reasoning behind easing restrictions on communications for other types of business combinations applies equally to tender offers. Unrestricted communications should result in the availability of more information to security holders on a timely basis. As a result, security holders should have a greater opportunity to inform themselves and assess the specific terms of a proposed offer. In light of the fact that tender offers generally remain open for a short period of time, usually 20 business days, advance notice of an offer should benefit security holders.

In an effort to increase bidders' ability to communicate with security holders, we propose to amend the provisions relating to commencement. Specifically, we propose to eliminate the obligation to commence or withdraw a cash offer within five business days of making a public announcement. We also propose to eliminate the requirement to promptly file a registration statement after public announcement of a stock offer. The revised rule would permit bidders to engage in free communications before commencement.[121] The communications permitted under the safe harbor, however, would not include a transmittal form or instructions on how to tender into the offer.

In place of the five business day rule and the requirement to promptly file a registration statement, we propose to require bidders to file and disseminate the required information when tenders are first requested. The Williams Act and the tender offer rules were designed to assure that there is adequate information available to security holders so that they can make an informed investment decision before tendering into an offer. The public announcement of an offer should not trigger the need to file or disseminate information. Instead, the focus should be on when security holders are provided the means to tender their shares into the offer. That is the time when information required by the tender offer rules must be available to security holders.[122]

Under the proposal, we would require bidders in both stock and cash tender offers to satisfy the filing and dissemination requirements upon first disseminating transmittal forms (the tender offer equivalent of a proxy card) or disclosing to security holders instructions on how to tender into an offer. For example, if a bidder published an advertisement that instructed security holders how to contact the bidder and receive information on tendering securities in the offer (*e.g.*, by publishing a telephone number for security holders to call to receive more information on how to tender), then the bidder would be required to comply with the filing and dissemination requirements at that time. The 20 business day period would begin to run at this time.

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[112] Issuer tender offers are not subject to pre-filing communication restrictions; thus no substantive change to the issuer tender offer rule is necessary, although we do propose some conforming changes.

[113] If solely cash and/or securities exempt from registration under Section 3 of the Securities Act are offered, then a public announcement of: the identity of the bidder, the identity of the subject company, the amount and class of securities sought and the price or range of prices offered will commence the tender offer. *See* Rule 14d–2 (b) and (c). [17 CFR 240.14d–2 (b) and (c)].

[114] *See* Rule 14d–2(b)(2). [17 CFR 240.14d–2(b)(2)].

[115] *See* Rule 14d–2(b)(1). [17 CFR 240.14d–2(b)(1)].

[116] *See* Rule 14d–2(a)(4) [17 CFR 240.14d–2(a)(4)].

[117] *See* Rule 135–2(a)(4) [17 CFR 230.135(a)(4)].

[118] *See* Rule 14d–2(e) [17 CFR 240.14d–2(e)].

[119] *See* Release No. 34–15548 (February 5, 1979) [44 FR 9956].

[120] *See* Release No. 34–16384 (November 29, 1979) [44 FR 70326].

[121] Proposed revision to Rule 14d–2. Shortly after adopting the five business day rule, the Commission authorized the issuance of an interpretive release discussing the staff's views with respect to when certain tender offers commence under Regulation 14D and 14E. *See* Release No. 16623 (March 5, 1980) [45 FR 15521]. If we rescind the five business day rule as proposed, many of the interpretations in the release regarding commencement would no longer be applicable.

[122] Although we propose to change the manner in which commencement of an offer is triggered, we are not defining the term "tender offer" or changing our position on what activities may be deemed to constitute a tender offer. Nothing in these proposals affects the fact that the tender offer rules may be triggered by activities that function as unconventional tender offers. We reiterate our position that the term "tender offer" should be interpreted flexibly in accordance with the intended purposes of Sections 14(d) and 14(e). A determination of whether a particular transaction or series of transactions constitutes a tender offer will, of course, depend on the particular facts and circumstances and is not limited to "conventional" tender offers. *See* Release No. 34–15548 (Feb. 5. 1979) [44 FR 9956].

The five business day rule and the requirement to file a registration statement promptly may serve as a protection against bidders making tender offer announcements without the intent or ability to follow through. In order to prevent the development of such practices if these requirements are eliminated, we propose a new rule to make it clear that such conduct would be prohibited as fraudulent under the tender offer rules.[123] The rule would prohibit a person from announcing a tender offer: without the intent to commence and complete the offer; with the intent to manipulate the price of either the bidder's or the target's securities; or without a reasonable belief that the person will have the means to purchase the securities sought. Are there other provisions that should be included to prevent inappropriate use of the free communications safe harbor, while not deterring legitimate communications?

We solicit comment on whether the five business day rule or the requirement to file a registration statement promptly provide investors, bidders, targets or security holders with any benefits that the proposed rule would not provide. Do these requirements cause bidders to provide security holders with needed information sooner?

We also ask whether the proposed rules increase the risk that investors will make investment decisions based solely on a bidder's pre-commencement communications without adequate information. Security holders might sell into the market based on a bidder's pre-filing communications. This risk, however, exists today under the current rules, although for a more limited time. Should the tender offer rules focus on this risk? Is the risk of market activity, based on incomplete information, greater for cash offers than it is for stock offers? If so, is it more important to maintain the five business day rule than to harmonize cash tender offers with other types of business combinations? Would the proposed obligation to file and disseminate information when security holders are first solicited to tender using a transmittal form adequately protect security holders? Is there less of a need to permit bidders to provide information to the marketplace before filing than there is for other types of business communications because cash tender offer material may be prepared and disseminated so quickly?

Currently, bidders are required to hand deliver a copy of the tender offer statement and additional tender offer materials to the target company and any other bidder for the same class of securities.[124] In addition, we propose to require delivery to the same parties of the first written communication a bidder makes that sets forth its identity, that of the target company, the amount and class of securities sought, and the price or range of prices offered.[125] Is this needed, or would the fact that the communication must be filed with the Commission provide adequate notice to the target company and any other bidders?

Each communication made in reliance on the safe harbor would be required to prominently advise security holders to read the complete tender offer material, consistent with the Securities Act and proxy rule proposals.[126] Should we require any additional information in these communications? For example, should a bidder be required to disclose information such as its identity, the target's identity, the form and amount of consideration offered, any conditions to the offer, and the bidder's interest(s) in the target, including security ownership? This would be similar to the current requirement in Rule 14a-12 that specified information be contained in any communications made before the filing of a proxy statement.

Currently, the tender offer rules require specified information to be included in any communications made *after* the bidder has commenced the offer and disseminated the complete tender offer disclosure document. These "additional tender offer materials" must include basic information about the identity of the bidder and subject company, the terms and the expiration date.[127] We propose to retain this requirement. Does the requirement serve a useful purpose in preventing confusion, particularly where there are competing offers? Would it be more important to require specific information in pre-commencement communications than in post-commencement additional material?

We also propose to revise the rules to permit targets the same freedom to make pre-commencement communications as bidders. A target (or other person who makes any solicitation or recommendation to security holders regarding the offer) must provide specified information to security holders and file a Schedule 14D–9 with the Commission on the same date that it makes a recommendation regarding the offer.[128] This obligation is triggered by the target's communications even if the bidder has not yet commenced the tender offer. We propose to amend the rule so this obligation is not triggered by communications made by the target before the bidder has filed its tender offer statement and commenced the offer. Targets would be required to file pre-commencement communications on first use. This would put the bidder and target in an equal position to engage in free pre-commencement communications. We solicit comment on whether there is any reason to treat bidders and targets differently. We also ask whether the target's communications should be required to contain a statement advising security holders to read the complete recommendation when it is available.

b. Methods to Disseminate an Offer

The tender offer rules currently provide for several non-exclusive methods to "commence" an offer. If one or more of the specified methods are followed,[129] the tender offer will be deemed "published, sent or given to security holders" for purposes of Section 14(d)(1) of the Exchange Act. The methods of disseminating information that will commence an offer include: (i) long form publication;[130] (ii) summary advertisement;[131] (iii) summary advertisement or long form publication using stockholder lists and security position listings;[132] and (iv) if securities are to be offered as consideration, publishing, sending, or giving copies of a final prospectus to security holders.[133] While a tender offer can be commenced in other ways,[134] the

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[123] Proposed Rule 14e–8.

[124] *See* Rule 14d–3(a)(2).

[125] The current rule also requires telephonic notice and mailing of tender offer material to any securities exchange or the NASD on which the securities are listed or traded. We do not propose to extend this to cover pre-commencement communications, as the exchanges and the NASD are moving away from relying on paper filings and increasingly using electronic databases to obtain EDGAR filings.

[126] *See* proposed Rules 13e–4(c) and 14d–2(b)(2).

[127] *See* Rule 14d–6(c), proposed to be redesignated Rule 14d–6(b).

[128] *See* Rule 14d–9. A target must respond to a tender offer by communicating a position on the offer no later than ten business days from the date the offer is disseminated. *See* Rule 14e–2.

[129] A bidder can use more than one method provided it complies fully with each method used.

[130] *See* Rule 14d–2(a)(1) [17 CFR 240.14d–2(a)(1)]. *See also* Rule 14d–4 for these methods of dissemination, which also are means of publicizing changes to the initial tender offer information.

[131] *See* Rule 14d–2(a)(2) [17 CFR 240.14d–2(a)(2)].

[132] *See* Rule 14d–2(a)(3) [17 CFR 240.14d–2(a)(3)].

[133] *See* Rule 14d–2(a)(4) [17 CFR 240.14d–2(a)(4)].

[134] *See* Rule 14d–2(a)(5) [17 CFR 240.14d–2(a)(5)] providing that an offer may commence when "the tender offer is first published, sent or given to security holders by the bidder by any means not

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methods listed above are generally regarded as safe harbors and will give the bidder comfort that the offer has commenced under the tender offer rules. Commencement is important because if an offer is not deemed to commence, the required 20 business day period will not begin to run.[135]

Long form publication requires the bidder to publish extensive information regarding the tender offer in a newspaper.[136] Before we adopted the summary advertisement method in 1979,[137] long form publication was the accepted means of dissemination. Due to escalating costs and scheduling problems associated with long form publication, summary publication has replaced long form publication as the common means of disseminating a tender offer. Given that long form publication is not viewed as cost-effective and is rarely used by bidders, we propose to eliminate it as a means of disseminating information about a tender offer.[138] We solicit comment, however, on whether the method should be retained, perhaps in connection with publication on the Internet in combination with other methods of dissemination.

Under the summary publication method, a bidder must publish an advertisement in a newspaper and furnish its tender offer materials with reasonable promptness to any security holder who requests a copy. The advertisement must contain, and is limited to, certain specified information.[139] Bidders are not permitted to include a transmittal form with the summary advertisement.[140] Security holders therefore must request and receive complete information from the bidder before they can tender into the offer.

Summary advertisements alone usually are not sufficient to prompt a large number of security holders to request a copy of the tender offer materials. Therefore, bidders generally will supplement their solicitation of tenders with a request for a stockholder list under Rule 14d–5, in addition to publishing a summary advertisement. Under this rule bidders can request a stockholder list from the target. The target has the option of either mailing the offering materials to security holders at the bidder's expense, or providing the bidder with a stockholder list of record holders prepared as of the most recent practicable date.[141]

We solicit comment on whether we should eliminate dissemination by summary advertisement alone (without the use of stockholder lists) to make the cash tender offer regulations more comparable to other business combination methods. Should the stockholder list requirement apply to amendments disclosing material changes as well as to initial tender offer material? We note that delivery is required if registered securities are offered, given that prospectuses must be delivered as required by the Securities Act. Similarly, delivery of a disclosure document would be necessary if security holder approval was solicited under the proxy rules.[142] While we note that bidders typically use stockholder lists, we solicit comment on whether there are circumstances when the use of stockholder lists is impracticable.

In addition, we solicit comment on whether to retain the current requirement that bidders using stockholder lists also publish summary advertisements. The summary advertisement serves as an additional means of publicizing tender offer information while it is in the process of being mailed to security holders. This may be particularly useful in the short time frame of a cash tender offer.

Finally, we request commenters' views on whether we should permit means of disseminating tender offer material other than those described. The increasing use of electronic media, particularly the Internet, provides an avenue for widespread access to information. On the other hand, many security holders rely on more traditional sources of information, such as newspapers and the mail. We do not want to put these security holders at a disadvantage in obtaining tender offer information. Therefore, we are not proposing that electronic media be permitted as a sole means of dissemination. We are, however, interested in comment as to how electronic media are currently used in the tender offer area and whether there are electronic sources of information that are as commonly available and widely followed as the newspapers of general circulation used for summary advertisements.[143]

C. Permit Exchange Offers To Commence on Filing

1. Early Commencement

The Commission first adopted the requirement for an effective registration statement before commencing an exchange offer in 1979.[144] In proposing the requirement, we noted that we intended to codify "the current practice of commencing the bidder's offer when its registration statement under the Securities Act becomes effective."[145] In 1983, a Commission Advisory Committee[146] noted the regulatory disincentives to offering securities as consideration[147] in a tender offer and recommended that exchange offers be permitted to commence as soon as the registration statement is filed.[148]

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otherwise referred to in paragraphs (a)(1) through (4) of this section."

[135] *See* Rule 14e–1(a) [17 CFR 240.14e–1(a)].

[136] A bidder must publish the information specified in Rule 14d–6(e)(1) [17 CFR 240.14d–6(e)(1)].

[137] *See* Release No. 34–16384 (November 29, 1979) [44 FR 70326].

[138] We propose this change both for issuer and third-party tender offers. *See* Rule 13e–4(e)(i) (issuer) and 14d–4(a)(1) (third party).

[139] *See* Rule 14d–6(a)(2) [17 CFR 240.14d–6(a)(2)]. Bidders, however, generally disclose more information in their summary advertisements than is currently permitted under the rules. There is some judicial support for the disclosure of additional information. *See Crouse-Hinds Co.* v. *Internorth, Inc.*, 518 F. Supp. 416 (N.D.N.Y. 1980) (permitting disclosure of conditions to an offer in a summary advertisement). Based on our proposals to permit free communications, we would amend Rule 14d–6(a)(2) to delete the language limiting the information that can appear in a summary advertisement. We would retain the prohibition against including a transmittal form with the summary advertisement. However, the summary advertisement could (and should, if it is designed to commence the offer) include the means to tender, *e.g.*, a telephone number to call to obtain the complete tender offer materials, including the transmittal form.

[140] *See* Rule 14d–6(e)(3) [17 CFR 240.13d–6(e)(3)].

[141] In Part II.E.4 below, we propose to expand the stockholder list rule to make it more useful by including beneficial owner information.

[142] When delivery is required by the rules, this can be accomplished by using electronic media, provided the bidder satisfies the guidelines set forth in Release No. 33–7233 (October 6, 1995) [60 FR 53458], regarding electronic delivery. For example, a summary advertisement for a tender offer could contain a consent form for a security holder to indicate his or her willingness to receive the complete tender offer materials by means of a specified electronic medium.

[143] Rule 14d–4(b) [17 CFR 240.14d–4(b)] provides that publication in all editions of a daily newspaper with a national circulation is deemed to constitute adequate publication.

[144] Release No. 34–16384 (November 29, 1979) [44 FR 70326, 70338].

[145] Release No. 34–15548 (February 5, 1979) [44 FR 9956].

[146] *See Advisory Committee on Tender Offer Report on Recommendations* (July 8, 1983). We established the Committee to examine the tender offer process and other techniques of acquiring control of public issuers and to recommend legislative and/or regulatory changes deemed appropriate or necessary. Release No. 34–19528 (February 24, 1983) [48 FR 9111].

[147] The Committee stated that "there are significant regulatory impediments to undertaking an exchange offer rather than a cash tender offer, which impediments are not necessary for the protection of shareholders" and that "regulation should not be a principal factor in determining the method of acquisition." Advisory Committee Report at 16. On that basis, the Committee issued Recommendation 5: Cash and securities tender offers should be placed on an equal regulatory footing so that bidder, the market and shareholders, and not regulation, decide between the two.

[148] Recommendation 12 of the Committee's Report stated:

In order to put cash and stock tender offers on a more level playing field, we propose to permit "early commencement" of third-party exchange offers. Currently, stock tender offers commence on the date the related registration statement becomes effective. Under today's proposal, exchange offers could commence upon the filing of a registration statement, or on a later date selected by the bidder.[149] As a result, the regulatory bias against stock offers would be reduced. We request comment as to whether the current regulatory scheme is a significant factor in deciding how offers are structured. Is it important to harmonize the regulatory treatment of cash and stock offers? If so, does the proposal accomplish this goal while continuing to protect investors?

Under the proposal, a bidder that wished to "commence" an exchange offer by requesting tenders would have to satisfy several requirements. First, the bidder would have to file a registration statement relating to the securities offered. The preliminary prospectus would need to include all information, including pricing information, necessary to allow security holders to make an informed investment decision. Information could not be omitted under Rule 430 or Rule 430A of the Securities Act.[150] Second, the prospectus would have to be disseminated to all security holders. Third, a tender offer statement would have to be filed with the Commission. The filing of a registration statement alone would not suffice. The bidder would have to file both a registration statement and a tender offer statement [151] and furnish a preliminary or final prospectus to security holders.[152] Security holders would have the right to withdraw shares tendered at any time until they were purchased, and bidders could not purchase shares until after the registration statement was effective.[153]

The "early commencement" proposal is limited to third-party exchange offers because the need to put cash and stock offers on a more level playing field appears to arise most often in that context. We ask for comment, however, on whether issuer exchange offers present the same timing and competitive concerns. Should the proposal be expanded to issuer exchange offers?

Going-private and roll-up transactions involving exchange offers would not be permitted to commence before the effectiveness of a related registration statement. These types of transactions often involve material disclosure issues. We continue to believe that the staff should have a full opportunity to review and comment upon the documents filed in connection with these transactions before commencement of an exchange offer in order to ensure that the rules are complied with and the appropriate level of disclosure is made to security holders.

Under the proposal, early commencement would be at the option of the bidder. The filing of a tender offer statement would serve as notice to the Commission and the public that the offer commenced and a prospectus was disseminated to security holders. A bidder could commence upon filing the registration statement, or wait for staff comments or effectiveness before actually commencing its offer.

We request comment on whether a bidder should be required to commence its offer as soon as it files a registration statement.

Alternatively, should bidders be free, as the rule proposes, to determine when a stock offer commences? If we do not require bidders to commence on filing the registration statement, should there be an outside date on which the exchange offer must commence (*e.g.*, no later than effectiveness of the related registration statement or no later than five or ten business days after effectiveness)?

The early commencement proposal is intended, in part, to provide bidders with an incentive to disseminate their offering materials broadly to all security holders at the earliest practicable date. The proposal would not prohibit bidders from making selective communications in addition to or instead of using the early commencement procedure to disseminate material to all security holders. When combined with the proposals above regarding communications, however, the availability of early commencement should encourage full and fair disclosure to all security holders. We request comment as to whether bidders would continue to communicate with large institutional investors to the exclusion of small retail investors. Is it necessary to require bidders to disseminate a prospectus to all security holders as soon as it is filed with the Commission? If we require delivery, however, the preliminary prospectus might include certain information that is not complete or accurate. In light of the inherent limitations on the information available to bidders that could be included in a preliminary prospectus, would mandatory dissemination to all security holders benefit or harm small retail investors?

The ability to commence upon filing may not be sufficient to level the playing field if bidders are not assured of having an effective registration statement within a reasonable period of time. While cash offers can expire after a minimum of 20 business days, stock offers could not expire under the proposal until the related registration statement became effective. Therefore, we solicit comment on whether expedited staff review is necessary to effectively harmonize the regulatory treatment of cash and stock tender offers. If so, how short would the Commission staff's review and comment period need to be in order to assure timely completion of a stock tender offer? Would it be helpful if the staff committed to an expedited review of stock tender offers whenever a competing cash tender offer emerges? Would it be necessary to provide for some form of accelerated effectiveness for stock offers to fully balance the treatment of cash and stock offers?

One way to achieve this balance would be to allow or require some or all exchange offers registered on Form C and Form SB–3 [154] to become effective

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Bidders should be permitted to commence their bids upon filing of a registration statement and receive tenders prior to the effective date of the registration statement. Prior to effectiveness, all tendered shares would be withdrawable. Effectiveness of the registration statement would be a condition to the exchange offer. If the final prospectus were materially different from the preliminary prospectus, the bidder would be required to maintain, by extension, a 10-day period between mailing of the amended prospectus and expiration, withdrawal and proration dates.

[149] Proposed Rule 14d–4(b).

[150] Generally, a prospectus that is used before effectiveness may omit certain pricing information including the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices or other matters dependent upon the offering price. *See* Rule 430 [17 CFR 230.430]. A prospectus in a registration statement that is declared effective may also omit certain syndicate, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other information that is dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date. *See* Rule 430A. [17 CFR 230.430A].

[151] Generally, tender offer statements in exchange offers incorporate by reference substantial portions of the information contained in the prospectus in response to the various disclosure requirements. Incorporation by reference would continue to be available under the proposal.

[152] Under the proposal, a bidder could disseminate a preliminary prospectus without requesting tenders, as permitted under the current rules, and not trigger commencement.

[153] Proposed Securities Act Rule 162.

[154] As noted in the Securities Act Reform Release, Form C (and Form SB–3 for small business issuers) would be the successor to Forms S–4 and F–4. If

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on filing,[155] or allow the bidder to specify the date after filing on which the registration statement would become effective.[156] This approach would provide bidders with greater certainty as to when their offer could close and shares could be accepted in the offer. "Early commencement" would then be unnecessary. This approach would allow bidders to freely decide between offering cash or stock without concern for regulatory delay. Of course, the staff would not have an opportunity to review the information before it is disseminated to security holders, but could review it after effectiveness just as it now reviews cash tender offer materials after they are mailed to security holders. We would not extend this approach to going-private or roll-up transactions. If this approach were permitted, should it be limited to third-party tender offers or also extend to issuer tender offers? Do the same timing concerns apply to mergers? If so, and this approach is adopted, should it apply to mergers as well? Should automatic effectiveness be limited to bidders entitled to use Form B?

We also are considering whether to harmonize the proxy rules with the tender offer rules by providing a proxy analogue to the "early commencement" proposal. If we did this, we would permit proxy cards in connection with mergers and similar business combinations to be sent with a preliminary proxy statement/prospectus, rather than requiring that they accompany only a definitive proxy statement/final prospectus. Proxies may be revoked at any time before the vote, just as tenders may be withdrawn before the offer expires. The vote could not take place until after the proxy statement was definitive or the registration statement was effective, and security holders would have to be given information about material changes in sufficient time to act on it, as discussed below in connection with exchange offers. Would this procedure be useful in mergers? Is the merger situation different from the tender offer situation; would there be greater risk that security holders would vote on the basis of premature or incomplete information and not receive updating or corrective information in a timely fashion? In particular, would street name holders receive this information in sufficient time to make an informed voting decision?

We have considered how the "early commencement" proposal interacts with our rules regarding stock purchases outside a tender offer. Regulation M[157] prohibits purchases of the bidder's securities during an exchange offer's restricted period, while Rule 10b–13[158] prohibits purchases of the target's securities once the offer is publicly announced. The Regulation M restricted period begins as of the date that the exchange offer is commenced, *i.e.*, when the bidder has first published, sent or given security holders the means to tender. In contrast, the restrictions of Rule 10b–13 start as of the time the offer is first publicly announced to security holders, which can be before the offer commences. We believe these rules would operate appropriately in the "early commencement" context, but solicit commenters" views.

2. Dissemination of a Supplement and Extension of the Offer

The Division of Corporation Finance staff decides whether to review a registration statement after it is filed, along with a related tender offer statement, based upon its selective review criteria. Under the "early commencement" proposal, the bidder already may have disseminated the combined prospectus/tender offer before staff comments are received. If the staff had material comments, the bidder would be required to file and disseminate a prospectus supplement, or possibly a post-effective amendment to the registration statement.

We propose to require bidders using "early commencement" to disseminate supplements to disclose any material changes, whether as a result of staff review, or due to any other material changes in the information previously disclosed. If a supplement contained material information, the exchange offer would need to remain open for a minimum period of time after a supplement was sent, as discussed below. The proposed rule would require a bidder to provide sufficient time for security holders to reconsider their investment decision (*i.e.*, by withdrawing previously tendered shares or tendering shares not yet tendered) based upon the additional information.

The tender offer rules do not currently establish a specific minimum time period with respect to the disclosure and dissemination of material changes, except for those relating to price or the amount of securities sought.[159] In an interpretive release relating to the tender offer rules, however, the Commission provided the following guidelines:

> As a general rule, the Commission is of the view that to allow dissemination to shareholders in a manner reasonably designed to inform (them) of such change (17 CFR 240.14d–4(c)), the offer should remain open for a minimum of five business days from the date that the material change is first published, sent or given to security holders. If material changes are made with respect to information that approaches the significance of price and share levels, a minimum period of ten business days may be required to allow for adequate dissemination and investor response. Moreover, the five business day period may not be sufficient where revised or additional materials are required because disclosure disseminated to security holders is found to be materially deficient. Similarly, a particular form of dissemination may be required. For example, amended disclosure material designed to correct materially deficient material previously delivered to security holders would have to be delivered rather than disseminated by publication.[160]

Under the "early commencement" proposal, if the bidder had to send a supplement containing material changes either before or after effectiveness of the registration statement, the offer would need to remain open for at least a specified minimum period.[161] The original expiration date would have to be extended if necessary. The offer would need to remain open at least:

- Five business days for a supplement containing a material change other than price or share levels;
- Ten business days for a supplement containing a change in price, the number of shares sought, the dealer's soliciting fee, or other similarly significant change;
- Ten business days for a supplement included as part of a post-effective amendment; and

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Forms C and SB–3 are not adopted, then the proposals in this release would apply to exchange offers registered on Form S–1, S–4, F–4 and S–11.

[155] The Task Force Disclosure Simplification recommended that registration statements on Forms S–4/F–4 relating to exchange offers by S–3/F–3 eligible companies become effective automatically upon filing, so long as the securities offered are common stock traded on a national securities exchange or quoted in the Nasdaq NMS, or are investment grade debt or preferred stock. *See* Report of the Task Force on Disclosure Simplification (March 1996) at p. 56. If the Securities Act Reform Release proposals are adopted, we could provide automatic effectiveness on filing for Form B issuers, or we could provide it for all registration statements on Form C only and not Form SB–3.

[156] This is how Form B would be treated in the Securities Act Reform Release.

[157] 17 CFR 242.100 through 242.105.

[158] 17 CFR 240.10b–13. Rule 10b–13 is proposed to be revised and redesignated as Rule 14e–5. *See* Part II.E.5 below.

[159] *See* Rule 14e–1(b) [17 CFR 240.14e–1(b)]. A tender offer must remain open for ten business days after a notice of an increase or decrease in the percentage of the class of securities being sought, the consideration offered, or the dealer's soliciting fee.

[160] Release No. 34–24296 (April 3, 1987) [52 FR 11458].

[161] Proposed Rule 14d–4(d)(2).

- 20 business days for a revised prospectus when the initial prospectus was materially deficient; for example, failing to comply with the going-private rules or filing a "shell" document solely to trigger commencement and staff review.[162]

We invite comment on whether these time periods are appropriate, and if not, what periods should be substituted. Would the ready availability of this information in electronic format (*e.g.,* on the Commission's or the bidder's Internet web site) mean that these time periods could be shorter? On the other hand, would shortening these periods deprive security holders of essential information if they are not willing or able to take advantage of electronic media? As proposed, this rule would apply only to exchange offers where "early commencement" is used. Should it instead replace Rule 14e–1(b) and thus apply to all tender offers?

We also solicit comment on whether bidders would be likely to take advantage of "early commencement" before receiving staff comments or a notification that the filing would not be reviewed. Would the risk of having to disseminate additional information and possibly extend the offer deter bidders from using this procedure? Or would they take those uncertainties into account as they now do for cash tender offers?

The Securities Act Reform Release proposes to eliminate the requirement that a final prospectus be delivered to investors who have received a preliminary prospectus.[163] This exemption would not apply to business combinations, which have a distinct scheme for delivery of information. However, we solicit comment on whether bidders who use the "early commencement" rule should be required to deliver a final prospectus after effectiveness. The informational purpose of the prospectus may be best served by requiring security holders to be given supplements setting forth significant changes, rather than by requiring the prospectus to be re-delivered.

3. Tenders into an Offer Exempt from Sale Requirements of the Securities Act

Under the "early commencement" proposal, once a bidder commenced an offer, security holders could tender into the offer before the related registration statement became effective, but the bidder could not purchase securities tendered until the offer expired. Security holders would have the right to withdraw tenders until the offer expired, as they do now. As discussed above, expiration always would be after effectiveness of the related registration statement. In order to prevent the tendering of securities into an offer from being viewed as a "sale" without an effective registration statement, we propose a new rule to address this issue.[164] We would use our new exemptive authority[165] to provide that transactions involving tenders during the "waiting period" when the early commencement rule is complied with would be exempt from the Securities Act requirements for sales.

The purpose of this rule is to place cash and exchange offers on a more equal footing by allowing them to operate on a more comparable time schedule and minimizing any regulatory factors that may influence a bidder's decision to offer cash instead of securities in a tender offer. The proposed exemption is necessary to assure bidders that they would not be viewed as violating Section 5 of the Securities Act[166] when security holders tender into an exchange offer during the waiting period. Investors would continue to receive disclosure before making an investment decision. We believe that it is consistent with the public interest and the protection of investors to reduce the regulatory bias towards cash so that the bidder's choice of consideration is not unduly affected by concerns about timing. However, we solicit comment on whether this is an appropriate use of the Commission's exemptive authority.

D. Integrate and Streamline the Disclosure Requirements for Tender Offers and Mergers

1. Subpart 1000 of Regulation S–K ("Regulation M–A") and Combination of Schedules

Currently, there is a different disclosure schedule for issuer tender offers, third-party tender offers and going-private transactions. Compliance with the line-item requirements in each of these schedules results in certain differences in the information disclosed to security holders.[167] These differences in the disclosure requirements can be particularly troublesome to companies that are seeking to comply with the disclosure requirements in today's fast-paced takeover environment. We believe that the cost of compliance could be reduced, and the quality of disclosure improved, if the disclosure requirements were integrated into one set of uniform regulations and unnecessary differences were harmonized.[168]

Accordingly, we propose to integrate the disclosure items contained in the schedules relating to issuer and third-party tender offers, tender offer recommendations, and going-private transactions. The disclosure items applicable to these transactions would be relocated into a new subpart of Regulation S–K called "Regulation M–A." The new series of items would contain the current disclosure requirements applicable to tender offers and going-private transactions, with minor modifications to harmonize and clarify the items as well as more substantive changes discussed below.[169] The new regulation includes some disclosure items for cash merger proxy statements and business combination registration statements as well. We have made an effort to use clear language and reduce legalese. We anticipate expanding the new regulation in the future to cover additional disclosure items.

We also propose to combine current Schedules 13E–4 and 14D–1 (the schedules now used for issuer and third-party tender offers, respectively), into a new schedule called "Schedule

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[162] This would, in effect, re-start the 20 business day period required by the tender offer rules. If the initial prospectus did not comply with the roll-up rules and was revised during the offering period, the minimum solicitation period under the roll-up rules would be tolled until a revised prospectus satisfying the roll-up rules was disseminated.

[163] Proposed Rule 173.

[164] Proposed Securities Act Rule 162.

[165] Section 28 of the Securities act [15 U.S.C. 77z–3].

[166] 15 U.S.C. 77e.

[167] For example, while Schedules 14D–1, 13E–4 and 13E–3 all require disclosure of high and low bid quotations of the subject security for each quarterly period during the preceding two years, only Schedules 13E–4 and 13E–3 require disclosure of the source of such quotations. *See* Item 1(c) of Schedule 13E–4 and Schedule 13E–3. As another example, Schedules 14D–1 and 13E–3 both require disclosure of past contacts, negotiations or transactions between the parties subject to a proposed tender offer or going-private transaction. Schedule 13E–3 (which generally requires more disclosure because of the affiliated nature of the transaction) requires disclosure for only the two preceding years, while Schedule 14D–1 requires disclosure for the preceding *three* years. *See* Item 3 of Schedule 13E–3 and Item 3 of Schedule 14D–1.

[168] Integration has worked well in the past. In 1985, the Commission integrated the disclosure requirements of the registration statement most commonly used in stock-based extraordinary transactions, Form S–4, with the disclosure requirements for proxy statements on Schedule 14A. *See* Release No. 33–6578 (April 23, 1985) [50 FR 18990].

[169] In some cases, disclosure requirements appear in the rules rather than the schedules. These requirements also would be moved to Regulation M–A. For instance, schedule 14D–1 does not specifically require disclosure of the expiration date of the tender offer; that requirement appears in Rule 14d–6(e).

TO."[170] The information required in Schedule 13E–4 is substantially similar to that required in Schedule 14D–1. Combining the schedules would harmonize the disclosure requirements applicable to issuer and third-party tender offers. Any differences in the information required due to the nature of the bidder (either issuer or third-party) would be addressed in items of the schedule and the applicable disclosure items in Regulation M–A.

In addition, we propose to permit a single filing to satisfy both the tender offer and going-private disclosure requirements. The disclosure items required by Schedules 14D–1, 13E–4 and 13E–3 could all be satisfied in one combined filing. For example, an affiliate engaging in a tender offer having a going-private effect could file a combined Schedule TO and Schedule 13E–3. Of course, all filing person(s) and applicable schedules would have to be identified on the cover page, but separate cover pages would not be required. Schedule 13E–3 would be filed separately when the underlying transaction was not a tender offer.

In permitting a combined tender offer and going-private filing, we would reduce the redundancy of having to file two schedules for what is essentially the same transaction. The disclosure requirements are generally satisfied in the same document—the offer to purchase. This will continue to be the case.

Schedule TO would contain an instruction specifying the items that need to be complied with for particular types of transactions.[171] In addition, we would revise the current instruction requiring information that is incorporated by reference to be filed as an exhibit to the Schedule. The revised instruction would permit document(s) previously filed electronically with the Commission to be incorporated by reference without filing the information as an exhibit. Documents filed electronically on EDGAR are readily available to security holders and the public (*e.g.*, through the Internet, our public reference room, brokers and investment advisors). This change also would apply to going-private statements.

We request comment on whether the ability to combine the disclosure currently required by Schedules 14D–1, 13E–4 and 13E–3 into one filing would be useful to filing persons. Would it be easier for the marketplace to follow this information if the filings were kept separate?[172]

Alternatively, should the Schedule 13E–3 be eliminated entirely for most transactions? Instead, the tender offer schedule, registration statement and proxy statement cover page would have a check box indicating a going-private transaction is involved. The document would be required to contain all of the disclosure and signatures currently called for by Schedule 13E–3.[173] If we took this approach, the Schedule 13E–3 would not be available as a place to provide negative answers to items. Currently, negative answers may be provided in the schedule rather than in the disclosure document disseminated to security holders.[174] Accordingly, if we eliminated Schedule 13E–3 we would either eliminate the requirement for negative answers or require negative answers to be provided in the disclosure document.

We also request comment on whether the concept of one filing satisfying all disclosure requirements should be applied to the Securities Act and proxy rules as well as the tender offer and going-private rules. Should one filing be permitted to satisfy all of these transactions? Currently, different signature pages may be required depending upon the schedules or forms combined.[175] If registration statements and proxy statements were permitted to be combined with tender offer and going-private schedules, then a uniform signature requirement would be necessary, or we could require that the more extensive signature requirements control.

Currently, security holders do not receive all of the information filed with the Commission in a tender offer or going-private schedule. Instead, the rules permit filers to send security holders a disclosure document that summarizes most of the information in the schedule. The schedule, as filed, consists of a cover page, list of items with their responses, exhibits and signatures. The disclosure document is filed as one of the exhibits. Many of the responses to the items in the schedule are incorporated by reference from the disclosure document. While we are not changing this basic approach, we propose two changes to streamline the requirements:

- Instead of specifying the items of each schedule required to be summarized, the rules would simply require that the document given to security holders summarize the entire schedule (except for exhibits). This is not intended to increase the information given to security holders, but rather to permit filers to exercise their judgment in determining what constitutes a fair and adequate summary. As discussed below, each disclosure document would include a Summary Term Sheet highlighting the basic information. Certain information required by the going-private rule would still be required to be set forth in full in the disclosure document.[176]
- Filers would no longer have to answer each item of the schedule with a statement that the information is incorporated by reference from specified pages or sections of the disclosure document.[177] It would be sufficient to have a general statement incorporating the required information from the disclosure document into the schedule. The schedule, as filed, would consist primarily of a cover page, exhibits and

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[170] Schedules 13E–3 and 14D–9 would be revised so that the format and instructions harmonize with schedule TO. These schedules would use clearer language and would refer to Regulation M–A for the substantive disclosure requirements. We do not propose to revise the schedules used in connection with the multijurisdictional disclosure system with Canada (*i.e.*, Schedules 14D–1F, 14D–9F and 13E–4F).

[171] An instruction will specify that certain items may be omitted when Schedule TO is combined with a Schedule 13E–3, to avoid redundant requirements. *See* General Instruction J to proposed Schedule TO.

[172] There would be check boxes on the cover page to indicate whether the filing was an issuer tender offer, third-party tender offer, and/or going-private transaction. EDGAR tags also would indicate this information. If this proposal is adopted, EDGAR would be programmed so that public users of information could quickly determine the nature of each filing.

[173] When a going-private transaction did not involve another Commission filing, the Schedule 13E–3 would be required as a stand-alone filing.

[174] *See* General Instruction A to Schedules 14D–9 and 13E–4; General Instruction B to Schedule 13E–3. As proposed, Schedule TO would include an instruction permitting filers to provide negative and "not applicable" answers in the schedule but not the disclosure document disseminated to security holders. A similar instruction is proposed for Schedules 13E–3 and 14D–9. *See* General Instruction E to proposed Schedules TO and 13E–3 and General Instruction C to proposed Schedule 14D–9. The ability to omit negative answers already exists to some extent for going-private and tender offer statements. *See* Instruction 1 to Rule 13e–3(e)(3); Instruction A to Rule 13e–4(d); and Rule 14d–6(e)(1)(vii). Negative answers are common in responding to items that call for information about civil and/or criminal proceedings involving the filing person and certain control persons for the five-year period before the filing. *See* Item 2 (e) and (f) to Schedules 13E–3 and 14D–1.

[175] For example, no signature is currently required for Schedule 14A proxy statements while Securities Act registration statements require signatures by the registrant, the principal executive officer, the principal financial officer, the controller or principal accounting officer, and at least a majority of the board of directors of persons performing similar functions. The current signature requirements in Schedules 14D–1, 13E–4 and 13E–3 are substantially the same; the schedule must be signed by each person on whose behalf the statement is filed.

[176] *See* Rules 14d–6(d), 14d–9(d), 13e–3(e) and 13e–4(d), as proposed to be revised.

[177] As an example of the current requirement, *see* General Instruction B to Schedule 14D–1.

signatures. The item numbers from the schedule would be included only to provide information not required to be in the disclosure document, such as negative or "not applicable" responses or information that goes beyond what is summarized in the disclosure document. This change is designed to make the schedules easier to prepare. It would still be necessary, of course, for filers to provide all the required information.[178]

The rest of this release discusses the most significant changes to the rules and schedules, many of which are incorporated into proposed Regulation M–A. In addition, we propose a number of less substantive changes to harmonize and update the requirements. For the complete text of all the technical, clarifying and conforming changes, including amendments to the tender offer and going-private rules, please see the text of the proposed rules at Part VII below. We request comment on these proposals as well.

2. Streamline Disclosure Requirements and Improve Disclosure

We believe that, in many cases, the current disclosure requirements can be simplified and clarified for filing persons. We also believe that disclosure to security holders can be improved. We discuss below several proposed amendments to the current rules and regulations that should help filing persons comply with their disclosure obligations and enhance security holders' understanding of tender offers and mergers.

a. "Plain English" Summary Term Sheet

The disclosure in tender offer and merger proxy statements often is lengthy, difficult to understand and uninviting to the reader. In many instances important information is buried in boilerplate. Security holders often must make a voting or investment decision within a relatively short period of time. With the increasing complexity of the transactions, filing persons should provide security holders with clear, concise and understandable disclosure as required by the Commission's rules.[179] Disclosure is not effective from an investor's perspective unless it is understandable, complete and timely.[180]

We propose to require that issuer and third-party cash tender offer statements, cash merger proxy statements, and going-private disclosure documents begin with a short "plain English" summary term sheet highlighting the most important features of the transaction.[181] The summary term sheet would be required to begin on the first or second page of the disclosure document. Each item covered in the summary term sheet would be presented in bullet point format with a cross-reference to a more detailed discussion found elsewhere in the tender offer, going-private or proxy materials.

In preparing a summary term sheet, filing persons would need to determine how best to highlight the most significant aspects of the transaction in a clear, concise and understandable manner. As noted by the Task Force, the summary term sheet should be used to answer the most common or frequently asked questions. In a tender offer, for example, the bidder should answer questions such as the following:

- Who is offering to buy my securities?
- What are the classes and amounts of securities sought in the offer?
- How much is the bidder offering to pay and what is the form of payment?
- Does the bidder have the financial resources to make payment?
- Is the bidder's financial condition relevant to my decision on whether to tender in the offer?
- How long do I have to decide whether to tender in the offer?
- Can the offer be extended, and under what circumstances?
- How will I be notified if the offer is extended?
- What are the most significant conditions to the offer?
- How do I tender my shares?
- Until what time can I withdraw previously tendered shares?
- How do I withdraw previously tendered shares?
- If the transaction is consensual, what does my board of directors think of the offer?
- Is this the first step in a going-private transaction?
- Will the tender offer be followed by a merger if all the company's shares are not tendered in the offer?
- If I decide not to tender, how will the offer affect my shares?
- What is the market value (if traded) or the net asset or liquidation value (if not traded) of my shares as of a recent date?
- Who can I talk to if I have questions about the tender offer?

In the case of a merger proxy statement, the summary term sheet should contain, among other things, a brief outline of the matters proposed, the material terms of the proposals including the parties to the proposed transaction, the consideration to be received by security holders, the board's recommendation on how to vote (if any), the effect of a vote for and against each proposal including the effects of not voting, the procedures for voting and changing or revoking a vote, and the existence of appraisal rights.

In going-private transactions, the summary term sheet would require a brief summary of the most material terms and consequences of the transaction. The summary term sheet should address, among other things, conflicts of interest, whether a fairness opinion was received, the identity, role and relationship of any affiliates involved in the transaction, the filing person's belief as to the fairness of the transaction to security holders, and any recommendations made to security holders regarding the transaction.

The proposed summary term sheet requirement would not specify the items to be addressed. Instead, the filing person would determine the most significant facts to highlight. We solicit comment, however, on whether the item should specify information that must be addressed in most situations. The information required could be specified in a manner similar to current Instruction 1 to Item 8 of Schedule 13E–3, which specifies factors that must normally be considered in determining the fairness of a going-private transaction to unaffiliated security holders. Other than the matters set forth above, what other information would rise to the level of requiring prominent disclosure in a summary term sheet?

Mergers or tender offers that involve the registration of securities are subject to the recently adopted "plain English" disclosure rules requiring issuers to write the cover page, summary, and risk factors section of their prospectuses in plain English.[182] In addition, Forms S–4 and F–4 currently require specified

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[178] *See* General Instructions E and F to Schedules TO and 13E–3 and General Instructions C and D to Schedule 14D–9. Similarly, we propose to eliminate the requirement in General Instruction F of current Schedule 13E–3 to provide a cross reference sheet showing where the responses are located.

[179] *See* Rule 421 of Regulation C [17 CFR 230.421]. Bidders in exchange tender offers also are reminded that effectiveness of a registration statement may be denied or a stop order issued when there has not been a bona fide effort to present information in a reasonably clear, concise and readable manner. *See* Rule 461(b)(1) of Regulation C [17 CFR 230.461(b)(1)]; *see also, In the Matter of Franchard Corporation,* 42 S.E.C. 163 (1964).

[180] Report of the Task Force on Disclosure Simplification, "Presentation of Information" at p. 17.

[181] Proposed Item 1001 of Regulation M–A. "Plain English" would have the same meaning as in Rule 421, as amended, effective October 1, 1998.

[182] *See* Release No. 33–7497 (January 28, 1998) [63 FR 6370].

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information about the transaction to appear in the front of the prospectus. This would be continued in proposed Forms C and SB–3. Therefore, we do not propose to require a summary term sheet for such transactions. Would a summary term sheet specifically adapted to these forms be useful?

b. Revise Item 14 of Schedule 14A to Clarify Requirements and Harmonize Cash Merger With Cash Tender Offer Disclosure

To help issuers prepare disclosure documents, we propose to clarify the disclosure required in proxy statements. Item 14 of Schedule 14A is triggered when a vote or consent is solicited on any of the following matters: (i) a merger; (ii) a consolidation; (iii) the acquisition of assets, a business or securities; (v) the sale or transfer of all or substantially all the assets of the registrant; (vi) a liquidation; or (vii) a dissolution. The Item calls for information about the transaction, as well as business and financial information about the companies involved. Item 14 information is similar to the information that would be required in a Form S–4 registration statement if registered securities were being offered.

We propose to revise this Item to make it easier to understand and to adapt the disclosure scheme to Form A and B companies instead of Forms S–1, S–2 and S–3 companies. Instead of setting forth the detailed requirements for information about the acquired and acquiring companies, Item 14 would simply refer to the applicable requirements in Forms C and SB–3.[183]

The revised Item would modify financial statement requirements in three principal respects. First, we propose to clarify that financial statements and other information about the acquiror in a cash merger are necessary only if material to the voting security holders' evaluation of the transaction.[184] Just as for financial statements of the bidder in a cash tender offer, discussed below, information about the acquiror in a merger generally is not needed if the target security holders are receiving cash and the acquiror has demonstrated the financial ability to satisfy the terms of the offer.[185]

Second, we propose to reduce the financial statements required for the acquiror under Item 14 from three years to two,[186] consistent with the proposed treatment of cash tender offers, as discussed below.[187]

Third, we propose to revise Item 14 with respect to when financial statements and other information about the *target* are required. Specifically, we propose to eliminate the requirement to provide information about the target in a cash merger when the acquiror's security holders are not voting on the transaction.[188] Security holders would receive a shorter document focusing on the terms and effect of the transaction. This revision would harmonize the disclosure required in cash merger transactions with that required in all-cash, all-share tender offers. Security holders are required to make substantially the same investment decision in both transactions.

Generally, financial statements of the target and other company information are not required in all-cash, all-share tender offers, although bidders sometimes provide this information in their tender offer materials on a voluntary basis. We do not believe the proxy rules should require disclosure of target information when the same transaction, structured as a cash tender offer, would not require disclosure of this information. In both types of transaction, security holders are asked to accept cash for their entire investment in the target, and most likely have received financial information previously with respect to the company whose security they already hold.

As proposed, we also would eliminate the requirement to provide information about the target when target security holders are voting on whether to approve a merger with the consideration consisting of acquiror securities exempt from Securities Act registration. This would be consistent with the requirements of the tender offer rules when exempt securities are being offered. Of course, information about the acquiring company would be material under these circumstances.

We do not propose to eliminate the requirement to provide financial statements of the target and other company information where the acquiror's security holders are voting on the transaction, since those security holders may not know anything about the target. In addition, we would continue to require target information in cash merger proxies that are going-private or roll-up transactions. We believe that target security holders have a need for current financial statements of their company if it is subject to one of these transactions.

We request comment on whether target security holders in mergers need financial statements and other information about their own company to determine whether or not to exercise their dissenters' or appraisal rights under state law. Are there circumstances under which the target security holders may have difficulty obtaining financial statements of the company whose securities they hold? Of course, if the proxy rules apply to the target, the target would be a reporting company. Does the liability imposed on financial statements filed under the proxy rules provide an added degree of protection to investors? If so, should the financial statements be incorporated by reference into the proxy material? Should we require the proxy statement to contain either summary financial statements,[189] or an undertaking to provide financial statements to any requesting security holder?

c. Reduce Financial Statements Required for Non-Reporting Target Companies

If our proposal to eliminate financial statements of the target in a cash merger when the acquiror's security holders are *not* voting is adopted, there still will be circumstances under which target financial statements are required. In particular, financial statements are required when the transaction is a stock merger or stock tender offer.

The rules currently provide special treatment when the target is not subject to the Commission's reporting requirements. We believe the existing requirements can be further relaxed under certain circumstances. In many transactions involving the acquisition of a non-reporting company, the target's financial statements are not readily available or can be obtained only at great expense. In some cases, companies have chosen to structure acquisitions so an exception from registration was available rather than obtain the financial statements needed to register the transaction. We propose to reduce the costs of preparing proxy statements and registration statements for business combinations by reducing the financial statement requirements when the target is a non-reporting company and the acquiror's security holders are not voting on the transaction.

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[183] As revised, Item 14 eliminates the ability to incorporate specified information by reference to the "glossy" annual report to security holders. This is consistent with proposed Form C, as discussed in the Security Act Reform Release.

[184] *See* Instruction 2 to Item 14 of Schedule 14A currently and as proposed to be revised. Pro forma information about the transaction also generally would not be required in a cash merger where only the target's security holders are voting on the transaction.

[185] Even if the acquiror's security holders are voting, we propose to permit the omission of acquiror information, as those security holders presumably have access to information about their own company.

[186] *See* proposed Item 14(c)(1) to Schedule 14A.

[187] *See* Part II.E.2.b below. Financial statements of the target, when required, generally would continue to be required for three years in order to be consistent with other requirements for financial statements of acquired companies.

[188] *See* Instruction 2 to Item 14 of Schedule 14A, as proposed to be revised.

[189] For example, we could require summary financial statements as specified in Rule 1–02(bb) of Regulation S–X [17 CFR 210.1–02(bb)] for the latest fiscal year and interim period.

Currently, the rules require the filing person (the acquiror) to provide financial statements "that would have been required to be included in an annual report to security holders" had the non-reporting company been required to furnish an annual report that complies with Rule 14a–3(b).[190] Rule 14a–3(b) requires audited balance sheets for each of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S–X.[191] We no longer believe non-reporting target companies (or their acquirors) should have to generate financial statements for three years when security holders of the non-reporting target most likely made their initial investment decision based on less extensive or different financial statements. The requirement to provide financial statements prepared in accordance with Regulation S–X going back three years can be costly and burdensome.

Under the proposal, when the acquiror's security holders are *not* voting on the acquisition, we would require financial statements of the target prepared in conformity with Generally Accepted Accounting Principles ("GAAP") for the latest fiscal year.[192] If the non-reporting target company previously provided its security holders with GAAP financial statements for either of the two fiscal years before the latest fiscal year (or both), GAAP financial statements also would be required for those years.

As is currently the case, the item would not require audited financial statements for years before the most recent fiscal year if the non-reporting target's financial statements were not audited previously. In addition, the financial statements for the latest fiscal year would have to be audited only to the extent practicable.

We would not change the existing requirement to provide pro forma financial information required by Article 11 of Regulation S–X. In addition, we are not changing the requirement to provide audited financial statements in accordance with Rule 3–05 of Regulation S–X if a registration statement is used for registering resales to the public by any person who, with regard to the securities being re-offered, is deemed an underwriter within the meaning of Rule 145(c). Further, the proposal would not change the financial statements currently required if the acquiror's security holders are voting on the transaction.[193] It should be noted that the Securities Act Reform Release includes a proposal to require certain additional non-financial information regarding non-reporting target companies.

If the non-reporting target is a foreign company, the proposed reduction in the required financial statements would operate in the same manner as for domestic companies. If the acquiror's security holders are not voting on the transaction, and the target's financial statements are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP ("foreign GAAP"), a reconciliation to U.S. GAAP would be required unless a reconciliation is unavailable or not otherwise obtainable without unreasonable cost or expense.[194]

The proposed change would not affect financial statements for a non-reporting target in roll-up transactions.[195] We believe that the acquiror's security holders have an independent need for financial statements of any non-reporting company that would be rolled-up into their company. We request comment on whether there are any other circumstances when this reduction in the target financial statements required should not apply. For example, should this reduction apply when the acquiror is a public shell company seeking to merge with or be acquired by a private company with substantial assets?

We invite comment on whether this proposal would provide sufficient regulatory relief to filers and still assure that target security holders have sufficient information. We also solicit comment on whether, if the acquiror's security holders are voting on the transaction and it is significant to the acquiror at the 50% level, audited financial statements of the target should be required.[196] Currently, if the target is a non-reporting company the rules provide for special treatment by permitting Rule 14a–3(b) financial statements, as described above.[197] We invite comment on whether this special treatment provides any benefit to acquirors who eventually will have to provide audited financial statements of the target in a Form 8–K or in connection with other securities offerings.

d. Registration Statement Form for Business Combinations

In the Securities Act Reform Release, we propose to replace Forms S–4 and F–4 with Form C (and Form SB–3 for small business issuers). These forms would be the only ones available for registered exchange offers, mergers and other business combinations.[198] Currently, Form S–1 is available for exchange offers and Form S–2 is available for issuer exchange offers. If these forms are rescinded, issuer exchange offers would be limited to Forms C and SB–3.

As discussed in more detail in the Securities Act Reform Release, Forms C and SB–3 would require basically the same information as the current forms about the transaction, the acquiror, the company to be acquired and the combined entity.[199] In that release, we propose to treat Form B issuers differently from other issuers in a number of respects. No information would be required to be delivered to investors until shortly before the investment decision; no final prospectus would be required to be delivered; and the registration statement would become effective upon filing, or upon a date designated by the filer. For the reasons discussed in Part II.B and C of this release, we do not propose the same scheme for Form C registration statements, even when the issuer and/or the target would be eligible to use Form B. Instead, our proposed approach for business combinations permits free communications, so long as security holders ultimately receive a mandated disclosure document with specified information before they make their tender or voting decision. We do, however, solicit comment on the extent to which aspects of the Form B scheme could be adopted for business combinations.

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[190] *See* Item 17(b)(7) of Form S–4, Item 17(b)(5) of Form F–4 and Item 14(b)(3)(ii)(A) of Schedule 14A. The item states that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. The item further states that financial statements need be audited only to the extent practicable.

[191] 17 CFR 240.14a–3(b).

[192] We proposed to implement this change in proposal forms C and SB–3. *See* Items 18(c) and 21(b) in Form C and Items 16(b) and 19(c) in Form SB–3. If these forms are not adopted, we would implement this amendment in Forms S–4 and F–4.

[193] The proposal also would not affect the current requirement that the acquiror ultimately provide audited financial statements under Item 7 of Form 8–K when the transaction is significant to the acquiror.

[194] At a minimum, however, filers should provide a narrative description of the material variations in accounting principles, practices and methods used in preparing the foreign GAAP financial statements from those accepted in the U.S.

[195] An exception from the going-private rules would not be necessary because the proposal is limited to the financial statement requirements of non-reporting companies, which are not subject to Rule 13e–3.

[196] *See* Rule 3–05(b)(4)(i) of Regulation S–X [17 CFR 210.3–05(b)(4)(i)]. Audited financial statements of the target are currently required in Form S–4 if the target is a reporting company, whether or not the acquiror's security holders are voting on the transaction. In addition, audited financial statements are required for other probable acquisitions (*i.e.*, acquisitions other than the one being voted on by security holders) at the 50% significance level.

[197] *See* note 190 above.

[198] These forms would be available for all transactions that can be registered on Forms S–4 and F–4 today. Forms S–4 and F–4 permit incorporation by reference of information about the acquiring and acquired companies to the extent those companies are eligible to use Forms S–2 and S–3 instead of S–1 (Forms F–1; F–2; and F–3 for foreign private issuers). Forms C and SB–3 would adapt the incorporation by reference provisions to the proposed new regulatory scheme, permitting incorporation by reference for Form B, seasoned Form A, and seasoned Form SB–2 companies.

Forms S–4 and F–4 currently require that the prospectus be delivered at least 20 business days before the date of the vote or the expiration of the exchange offer when incorporation by reference is used. The purpose is to assure that security holders have time to obtain the documents incorporated by reference and review their contents. The proxy rules impose a comparable provision for cash mergers.[200] We propose to eliminate these requirements because Commission filings incorporated by reference are now readily available from many sources, including our Internet web site, our public reference room, and presumably from brokers and investment advisers. We ask for comment as to whether security holders would still benefit from a mandated solicitation period when incorporation by reference is used.

E. Update the Tender Offer Rules

The tender offer rules have not been revised since 1986.[201] We are attempting to update them to correspond to the need of today's markets. We have already discussed several proposals affecting tender offers. These proposals involve expanding permissible communications, changing the timing and methods of commencement, combining tender offer schedules, integrating disclosure requirements and including a summary term sheet. In addition, as discussed below, we have several proposals to provide new tender offer procedures, revise and clarify the financial statements requirements and clarify the rules. We also solicit comment on whether the tender offer rules should include a safe harbor from liability for forward-looking information.

1. PERMIT SECURITIES TO BE TENDERED DURING A "SUBSEQUENT OFFERING PERIOD" WITHOUT WITHDRAWAL RIGHTS

We believe that there may be times when bidders should be able to accept shares in a tender offer after the tender offer is completed.[202] We propose to permit security holders to tender securities during a limited time after the initial offer, including all extensions, is completed, referred to as the "subsequent offering period."[203] The proposed subsequent offering period would be similar to the extended offering period that sometimes applies to tender offers made in the United Kingdom subject to the City Code on Take-overs and Mergers.[204] No withdrawal rights would be available during this period.[205] Security holders would be able to tender securities in the subsequent offering period only after all conditions to the offer were satisfied or waived and the shares tendered to that point were accepted for purchase and promptly paid for.[206] The subsequent offering period would be optional at the bidder's election.

We propose limiting the use of the subsequent offering period to third-party tender offers for all outstanding shares of the target. In addition, the bidder must intend to engage in a back-end merger with the target after the tender offer, either offering cash or securities. The bidder's intent to merge with the target would have to be publicly disclosed in its offering materials.

Under our proposal, a bidder would have to disclose its intention to provide a subsequent offering period in the initial tender offer materials filed and disseminated to security holders. The tender offer materials would have to adequately disclose the use of a subsequent offering period and explain how it would operate. If the "plain English" summary term sheet proposal is adopted, the subsequent offering period would be disclosed in the summary term sheet. If a bidder decided to include a subsequent offering period after the initial offering materials were filed and disseminated, that would be treated as a material change in information, requiring dissemination of a supplement and possibly an extension of the offer by up to five business days.[207]

The subsequent offering period would be strictly limited to offers for all outstanding shares.[208] The subsequent offering period would be a fixed ten business day period that would follow the date a bidder satisfied or waived all conditions to its offer and accepted for purchase any shares tendered to that point in time. The bidder's prompt payment obligation would apply to all shares accepted in the initial offering period before the subsequent offering period began. During the subsequent offering period, the bidder could solicit remaining security holders to tender. The bidder would be obligated to "promptly" pay for the shares tendered, with prompt payment running from the date of each separate tender.[209]

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[199] If the transaction is an exchange offer, the prospectus also must include certain information specified by the tender offer rules. *See* Rule 432. We propose a technical change to Rule 432.

[200] General Instruction A.2 to Form S–4; General Instruction A.2 to Form F–4; Note D.3 to Schedule 14A.

[201] In 1986, the Commission adopted amendments to the tender offer rules to provide that a third-party or issuer tender offer must be open to all holders of the class of securities subject to the tender offer (both record and beneficial owners) and that any security holder must be paid the highest consideration paid to any other security holder during the tender offer. *See* Release No. 34–23421 (July 11, 1986) [51 FR 25373] and Rule 14d–10 [17 CFR 240.14d–10]. More comprehensive revision of the tender offer rules has not been undertaken since 1979.

[202] For example, when a bidder is successful in acquiring a sufficient number of target shares to approve a back-end merger (typically a majority or two-thirds is required), most remaining security holders want to get cashed out, knowing that a back-end merger to acquire the remaining shares is a relative certainty. Under most state laws, the bidder must own at least 85 or 90% of the target to merge without security holder approval in a short-form merger.

[203] Proposed Rule 14d–11.

[204] The City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisition of Shares (the "City Code") Rule 31.4. *See also* Part IV.A of Release No. 34–29275 (June 5, 1991) [56 FR 27582].

[205] Rule 14d–7 would be amended. The withdrawal rights that exist after 60 days following the start of the tender offer, pursuant to Section 14(d)(5) of the Exchange Act [15 U.S.C. 78n(d)(5)], similarly would not be available.

[206] The proposed subsequent offering period could not be used where payment would be delayed. We have stated that payment may be delayed for certain governmental regulatory approvals. *See* Release No. 34–16623 (March 5 1980) [45 FR 15521]. However, the proposed subsequent offering period could not be used unless *all* conditions to payment have been satisfied or waived.

[207] Similarly, if the bidder stated that a subsequent offering period would be provided and then decided not to make one available, this would be a material change requiring dissemination and adequate time for security holders to receive and act on the information.

[208] Application of the subsequent offering period in a partial offer could raise complex proration issues if the offer is oversubscribed.

[209] Proposed revision to Rule 14e–1(c).

The subsequent offering period could not start until the offer was open at least 20 business days with withdrawal rights available to all tendering security holders. This would prevent bidders from offering withdrawal rights during the first ten business days of an offer but not the last ten business days.

The final amendment to reflect the results of the tender offer[210] would not be required until the end of the subsequent offering period. We solicit comment, however, on whether bidders should be required to issue a public announcement at the beginning of the subsequent offering period setting forth the number of shares tendered and accepted in the initial offering period.

The subsequent offering period would help security holders who do not tender into an offer, but then wish to participate in the offer after the bidder accepts shares and discloses the results. There may not be a very liquid trading market in the securities after the tender offer. As a result, security holders often are forced to either hold onto their shares until a back-end merger is completed or sell into the market below the offer price. Bidders may need to prepare and furnish a proxy statement or other disclosure documents before remaining security holders can obtain their final payment. We believe the subsequent offering period would minimize the delay in liquidating the investment of the relatively small number of security holders that do not tender in an offer, but later decide they want to tender and receive the offer price.

Comment is solicited on whether this procedure would be useful to bidders and security holders. Would there be any disadvantages for security holders? Should the subsequent offering period be mandatory? Should the subsequent offering period be longer or shorter (*e.g.*, five, seven, 15 or 20 business days)? Should the bidder be allowed to extend the subsequent offering period for either a limited number of days (*e.g.*, five or ten business days) or for whatever time period the bidder specifies? Would the subsequent offering period encourage security holders to delay tendering until the completion of the offer, and if so, how much of a disadvantage would this be to the bidder? Should the availability of the subsequent offering period be limited to circumstances where a substantial percentage of shares (such as 50%) has already been tendered? As proposed, the subsequent offering period would be available for both cash and stock tender offers, and the consideration offered in the back-end merger could be either cash or securities. Is there any reason to limit the proposal to cash tender offers or to situations where only cash is offered in the back-end merger? Should the subsequent offering period be limited to third-party offers, as proposed, or would it also be useful for issuer tender offers?

2. Clarify the Financial Information Required for Bidders in Cash Tender Offers

a. When the Bidder's Financial Statements Are Required in Cash Tender Offers

Under the current rules, the financial statements of a bidder in a cash tender offer must be disclosed if the information is "material."[211] There are several instructions in Schedule 14D–1 that help bidders determine the need for, and adequacy of financial statements. The first instruction states that materiality will depend on the facts and circumstances of the tender offer.

Once a bidder determines that financial statements are material, there is a provision in the instruction that details the type of financial statements deemed adequate for disclosure purposes. If a bidder provides financial statements that are prepared in compliance with Form 10, the financial statements requirement is deemed satisfied.[212] A second instruction permits incorporation by reference if the bidder is subject to the Exchange Act reporting requirements. A third instruction provides that non-reporting companies need not include audited financial statements if they are not available or obtainable without unreasonable cost or expense. Both third-party bidders and issuer offerors are required only to disseminate a fair and adequate summary of the financial information to security holders.[213]

In adopting the third-party tender offer rules, we identified four factors that should be considered when determining whether financial statements of the bidder are material in a cash tender offer:

- The terms of the tender offer, particularly those terms concerning the amount of securities sought, such as any-or-all, a fixed minimum with the right to accept additional shares tendered, all-or-none, and a fixed percentage of the outstanding;
- Whether the purpose of the tender offer is for control of the subject company;
- The plans or proposals of the bidder; and
- The ability of the bidder to pay for the securities sought in the tender offer and/or to repay any loans made by the bidder or its affiliates in connection with the tender offer or otherwise.[214]

Under the staff's current interpretation, the above factors are not exclusive, and it is not necessary that all factors be present to meet the materiality test. Based on our experience with tender offers since 1977, we believe it would be more helpful to provide specific guidance to bidders as to when financial statements are *not* required. We propose to include an instruction in Schedule TO[215] stating that a bidder's financial statements are not material when:

- Only cash is offered;
- There is no financing condition;

and *either:*

- The bidder is a public reporting company under the Exchange Act; *or*
- The offer is for all outstanding securities of the target.

Under the above circumstances, we believe that the burden of providing the bidder's financial statements may outweigh the usefulness of the information to security holders.[216] Based on the information currently available on EDGAR (via the Internet and other sources), we believe there is less need to require financial statements for bidders that are public reporting companies than for non-reporting entities.[217]

When the bidder is not a public reporting company, we believe financial statements should be provided when the offer is not for all outstanding shares of the target. Financial statements can be material in a partial tender offer because security holders may need to evaluate the bidder's financial condition in determining whether to tender into the offer or remain a security holder in a company in which the bidder will hold a substantial equity interest.[218]

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[210] *See* current General Instruction D to Schedule 14D–1; proposed to be moved to Rule 14d–3(b)(2).

[211] *See* Item 9 of Schedule 14D–1 and Item 7 of Schedule 13E–4.

[212] [17 CFR 249.210]. Financial statements prepared in accordance with Item 17 of Form 20–F will be deemed adequate for foreign bidders. [17 CFR 249.220f].

[213] *See* Rules 14d–6(e) [17 CFR 240.14d–6] and 13e–4(d) [17 CFR 240.13e–4(d)].

[214] *See* Release No. 34–13787 (July 21, 1977) [42 FR 38341].

[215] The proposed instruction would appear in both Schedules 14D–1 and 13E–4 if our proposal to combine the schedules is not adopted. *See* proposed Instruction 2 to Item 10 of Schedule TO. *See also* Part II.D.2. above. Thus, we propose to clarify the financial statements required in both issuer and third-party tendor offers.

[216] If the bidder is a reporting company, the financial statements could be incorporated by reference, as currently permitted.

[217] If the bidder is offering securities, as well as cash, then financial statements are material. The registration statement form for the securities offered will specify the financial statements required. If the bidder offers securities that are exempt from registration, the financial statements specified in Schedule TO would be filed.

We request comment on whether there are any other circumstances under which financial statements may not be material. Conversely, are there any circumstances under which we propose to exclude financial statements that the information would be material? For example, should we require financial statements of any non-reporting bidder unless the offer is for all shares and conditioned on acquiring a controlling interest in the target and the bidder intends a back-end merger? If an offer is not subject to a financing condition, could the bidder's financial statements be material even under our proposed instruction? Should the proposed instruction hinge upon whether financing for the offer is in place, as opposed to whether the offer is subject to a financing condition? If the offer is self-financed, are the bidder's financial statements needed even if there is no financing condition?

Should the criteria for determining when financial statements are required be applied differently when the bidder is a foreign company whose financial information may not be readily available?[219] To the extent that the financial statements of a foreign bidder are required and are prepared under foreign GAAP, a reconciliation to U.S. GAAP would be required unless a reconciliation is unavailable or not otherwise obtainable without unreasonable cost or expense.[220] Finally, we note that, although Item 9 does not require financial statements of bidders who are natural persons, financial information concerning such bidders may be material under the circumstances of the offer.[221] The practice has developed of including disclosure regarding the net worth of a bidder who is a natural person. We think such information is useful and therefore propose to codify this practice with an instruction to Schedule TO.

b. Content of Bidder's Financial Statements in Cash Tender Offers; Financial Statements in Going-Private Transactions

When financial statements of the bidder are material, the rules currently require three years of historical financial statements for a third-party tender offer. In contrast, only two years of financial statements of the issuer are required in an issuer tender offer or going-private transaction. We propose to harmonize these requirements by reducing the financial statements requirement for third-party tender offers to two years.[222] Currently, Instruction 1 to Item 9 of Schedule 14D–1 provides that financial statements prepared in compliance with Form 10 for a domestic bidder or Item 17 of Form 20–F for a foreign bidder will be deemed adequate for purposes of the disclosure requirement. We would eliminate this instruction and require the financial information specified in proposed Item 1010(a) and (b) of Regulation M–A, if material.

We solicit comment, however, on whether two years of financial statements are necessary to informed investor decisions. Should it matter if the bidder is offering securities that are exempt from registration rather than cash? Would one year of financial statements be adequate for third-party and issuer tender offers? Would one year of financial statements be adequate for a going-private transaction that is not subject to the more stringent registration or proxy statement requirements?

The current financial disclosure requirements in issuer tender offers and going-private transactions call for information regarding book value per share, as well as the pro forma effect of the transaction on the company's balance sheet and book value per share, as of the most recent fiscal year end and the latest interim balance sheet date.[223] In reviewing the disclosure items, we believe that it may be unnecessary to provide this data for both the latest fiscal year end and latest interim period, and propose to reduce the requirement to only the most recent balance sheet date.[224] This proposed change also would apply to third-party tender offers.

The current rules require that full financial statements of the bidder in a third-party tender offer and of the issuer in an issuer tender offer or going-private transaction be included in Schedule 14D–1, 13E–4 and 13E–3, respectively. Filers are permitted, however, to provide summary financial information instead of the full financial statements in the disclosure document sent to security holders. We believe the current requirements regarding summary financial information[225] are outdated and potentially confusing.[226] Therefore, we propose to revise the rules regarding summary information in all of these schedules to specifically require the information set forth in Rule 1–02(bb) of Regulation S–X.[227] The summary information would continue to be required for the same periods as the full financial statements. Rule 1–02(bb), however, calls for some information that is not currently required, specifically redeemable preferred stock, minority interests, and summarized financial information for unconsolidated subsidiaries and 50 percent or less owned persons. We solicit comment on whether this information is useful to investors.

The rules regarding summary financial information in issuer tender offers and going-private transactions currently require ratio of earnings to fixed charges, book value per share and, if material, pro forma data. These items are not specifically covered by Rule 1–02(bb). As proposed, Schedules TO and 13E–3 would call for these additional items as well as the information specified in Rule 1–02(bb). The current rule regarding summary financial information in third-party tender offers does not require book value per share information. As proposed, Schedule TO would call for this information, if material.

We also propose to clarify the reconciliation required for a foreign bidder's summary financial information if the financial statements are prepared on the basis of foreign GAAP.[228] A reconciliation to U.S. GAAP would be required to the same extent that a reconciliation or narrative is required for the full financial statements, as discussed above.

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[218] At least one court has observed that the bidder's financial condition can be material in an offer for all outstanding securities. In *Prudent Real Estate* v. *Johncamp Realty*, 599 F. 2d 1140 (2d Cir. 1979), Judge Friendly commented that: "If the bidder is in a flourishing financial condition, the stockholder might decide to hold his shares in hope that, if the offer was only partially successful, the bidder might raise its bide after termination of the offer or infuse new capital into the enterprise." An offer, however, by a company in poor financial condition "might cause the shareholder to accept for fear that control of the company would pass into irresponsible hands." *Id*. at 1147.

[219] Foreign private issuers are not required to file their Form 20–F electronically.

[220] As noted above in Part II.D.2.c, at a minimum, bidders should provide a narrative description of the material variations in accounting principles, practices and methods used in preparing the foreign GAAP financial statements from those accepted in the U.S.

[221] *See* Release No. 34–13787 (July 21, 1977) [42 FR 38348], at n. 22.

[222] *See* proposed Item 1010 of Regulation M–A. Of course, if the bidder is offering registered securities, the registration statement requirements will control. As noted in Part II.D.2.b above, we also propose to reduce the financial statements of acquiring companies in merger proxy statements from three to two years.

[223] *See* Item 14 to Schedule 13E–3 and Item 7 to Schedule 13E 4.

[224] *See* Item 1010 (a)(4), (b) (1) and (3) of proposed Regulation M–A. The book value per share change also would apply to merger proxy statements.

[225] *See* Rule 14d-6(e)(1)(viii) [17 CFR 240.14d-6(e)(1)(viii)]; Instruction B to Rule 13e-4(d)(1)(iv) [17 CFR 240.13e-4(d)(1)(iv)]; and Instruction 2 to Rule 13e-3(e)(3) [17 CFR 240.13e-3(e)(3)].

[226] At least one line item currently specified in the rules, "total assets less deferred research and developemnt charges and excess cost of assets acquired over book value" is not an appropriate measure under GAAP because it is inconsistent with FASB Statement 2, which prohibits capitalization of research and development costs.

[227] *See* proposed Item 10 to Schedule TO; proposed Item 13 to Schedule 13E–3; and proposed Item 1010 of Regulation M–A.

Finally, we are considering whether, in light of the proposals to reduce the number of years for which financial statements are required, security holders should receive the full financial statements whenever they are required, rather than summary financial information. Should we eliminate the provisions in Rules 13e-3, 13e-4 and 14d-1 that permit the substitution of summary financial information for the full financial statements in the disclosure document sent to security holders?

c. Bidder's Source of Funds

Regardless of the level of financial information security holders receive, we believe that a bidder's ability to pay for securities in an offer is a material disclosure item. The disclosure appearing in many tender offers relating to a bidder's ability to finance the offer has been meager at best, even when financial statements are provided. Therefore, we intend to clarify the information that is required in order to fully inform security holders of the bidder's ability to finance the offer. We propose to expand the "Source of Funds" item requirement in the tender offer and going-private rules[229] to require the specific source(s) of financing, any condition(s) to the financing, and the bidder's ability to finance the offer if the primary source of financing falls through.[230]

d. Pro Forma Financial Information in Two-Tier Transactions

A "two-tier" transaction is one in which the bidder first offers to acquire shares of the target in a cash tender offer with any securities remaining outstanding acquired in a back-end merger where securities are offered as consideration. In two-tier transactions, security holders are essentially asked to make an investment decision of whether to tender for cash in the front-end tender offer (to the extent pro ration allows their shares to be accepted), or hold on to their securities to receive securities of the bidder in the back-end. We believe security holders need pro forma financial information regarding the combined entity at the first tier so they can evaluate the second tier of the transaction when deciding whether to tender.[231]

In addition to the general need for the information, disclosure of pro forma financial information would be in keeping with the general theme of free communications expressed in this release and the Securities Act Reform Release. Also, as discussed in Part II.B.1 above, many bidders currently disclose pro forma information in order to satisfy the market's demand for information on a proposed transaction and to effectively sell the transaction to the market. Thus, we propose to require pro forma and related financial information in the first tier when a second tier is contemplated.

The requirement to provide financial information would be based on the bidder's intent to engage in a back-end merger with target security holders receiving securities of the bidder. Under the proposal, bidders would be required to provide the financial information specified by Item 3(f), (g) and (h) and Item 5 of proposed Forms C or SB–3,[232] as appropriate. This information would be required to be included in the tender offer materials for the cash tender offer.[233] We believe that this information, which would be required in any Form C or Form SB–3 filed when the securities are offered to security holders in the back-end, is necessary for security holders to make an informed investment decision. Consistent with the summary information provisions discussed above,[234] the proposed instruction for two-tier transactions would permit third-party bidders to provide only the financial information specified in Item 3(f), (g) and (h) of proposed Forms C or SB–3 in the disclosure document sent to security holders so long as the Schedule TO filed with the Commission included the information specified by Item 5.

The proposal is consistent with an interpretive position published in 1978 that the inclusion of certain information would not be considered an "offer to sell" under the Securities Act. In the interpretive release, the Division of Corporation Finance stated that the "gun jumping" doctrine, which is designed to prevent an issuer from conditioning the market by arousing investor interest before a registration statement has been filed, does not prevent bidders from providing material information regarding a planned back-end merger. The Division explained:

> The bidder's concern is purchasing the subject company's securities for cash, not priming the market for a subsequent registered offering of securities. Regardless of the bidder's intent, Schedule 14D–1 for compelling policy reasons reflected by the Williams Act requires (information regarding any negotiations, agreement in principle, or definitive merger agreement with the subject company) in order to provide full disclosure to investors confronted with an investment decision in the context of a tender offer.[235]

Of course, under the proposals to permit free communications in this release and the Securities Act Reform Release, disclosure of pro forma financial information at any stage would not result in "gun jumping" under the Securities Act.

We request comment on whether this could create practical difficulties for bidders by causing delays in disseminating the cash tender offer material, and if so, whether this would be offset by benefits to security holders receiving the information. Also, if commenters believe the proposed requirement is too extensive, should we require some other level of information? For example, would the pro forma information specified in proposed Item 1010(b) of Regulation M–A be adequate?[236] Alternatively, would the pro forma information required by Article 11 of Regulation S–X be a sufficient basis for an investment decision regarding the cash tender offer?

We also request comment on whether, even if a transaction is intended, there could be reasons why the disclosure of pro forma information could be premature or unwarranted. Conversely, are there circumstances where pro forma financial information should be permitted or required if a back-end merger is not "intended"? In addition, we invite comment on whether the requirement to provide pro forma financial information needs to be modified to minimize difficulties for bidders in hostile transactions.

3. Clarify the Requirement That a Target Report Purchases of its Own Securities After a Third-Party Tender Offer Is Commenced

Rule 13e-1 prohibits an issuer whose securities are the subject of a third-party tender offer from repurchasing any of its equity securities until information about the issuer's acquisition is filed with the Commission and is sent or given to security holders. We propose to update the rule, which was adopted in 1968,[237] and clarify its operation.

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[228] *See* Rule 14d-6(e)(ix) [17 CFR 240.14d-6(e)(ix)].

[229] *See* Item 4 to Schedule 14D–1; Item 6 to Schedule 13E–3; and Item 2 to Schedule 13E–4.

[230] *See* proposed Item 1007 of Regulation M–A.

[231] *See* Rule 11–01(a) of Regulation S–X.

[232] Specifically, these items call for disclosure of: selected financial data; pro forma selected financial data; pro forma information; and pro forma information required by Article 11 of Regulation S–X (§§ 210.11–01 through 210.11–03).

[233] *See* Instruction 5 to proposed Item 10 of Schedule TO.

[234] *See* Part II.E.2.b above.

[235] *See* Release No. 33–5927, also discussed in note 43 above. Teh position expressed in the release was limited, in the tender offer context, to disclosure required by Schedule 14D–1.

[236] *See* Part II.E.2.b above and Item 1010(b) of proposed Regulation M–A.

Once the required information is filed and sent to security holders, the issuer is free to repurchase its securities.[238] Under the current rule, an issuer can disseminate the required information to its security holders as early as six months before making any repurchases. As a result, issuers can send information regarding repurchases to security holders long before they become the target of a tender offer, diminishing the usefulness of this rule. We propose to revise the rule so that its purpose is to notify security holders that the issuer is purchasing its securities during a third-party tender offer for the securities. Therefore, the issuer's disclosure should be made only after a tender offer is made.

We also propose to rewrite the rule in plain English so that the rule is more understandable. It would call for the same information as the current rule, including the amount of securities to be purchased, identification of the sellers or market, purpose of the purchases, how the securities will be used, and the source of funds for the purchases. The revised rule would clarify that disclosure is required only when an issuer wants to repurchase its securities after a tender offer is made. The restriction on repurchases only applies during the term of the tender offer.

We invite comment on the timeliness of the information currently received under Rule 13e-1. Do security holders receive information either too early or too late to be of any use? We also solicit comment on whether the requirement to file and disseminate information during the limited time after a tender offer is made and before purchasing securities would impose an unreasonable burden on companies. How would this change affect companies with periodic stock repurchase plans? Should the rule not apply to routine purchases for employee benefit plans as to which the issuer has little or no discretion? If the issuer commences an issuer tender offer in response to the third-party tender offer, should the filing of the issuer's tender offer schedule satisfy the requirements of Rule 13e-1? Further, we request comment on the specific information that is required under the rule. Is there any information that either should or should not be required disclosure? Generally, the statement required by the rule consists of one or two pages of information.

We note that a limited number of statements are filed under the rule.[239] Given the relatively low number of filings, we question whether the rule provides any benefits to security holders and the market. Issuers may not be disclosing the required information, or they may not be triggering the reporting obligation. We invite comment on the usefulness of and the need for the information disclosed under the rule. Should we eliminate the rule entirely? If the information is beneficial, should issuers be required merely to make the filing with the Commission, and not disseminate the information to security holders?

4. Harmonize the Tender Offer and Proxy Rules Relating to the Delivery of a Stockholder List and Security Position Listing

We propose to revise Rule 14d-5, the rule relating to dissemination of certain tender offers by use of stockholder lists and security position listings, to more closely align it with the 1992 amendments to Rule 14a-7 (the parallel rule relating to proxy materials).[240]

Both Rule 14d-5 and Rule 14a-7 currently allow the "requesting party" (the bidder under Rule 14d-5 and the security holder soliciting in opposition under Rule 14a-7), to ask the company either to provide a stockholder list or to mail the requesting party's materials. Until 1992, both rules required that the list provided by the company identify no more than record holders. In 1992, the Commission amended Rule 14a-7 to require a stockholder list that includes a reasonably current list of non-objecting beneficial owners, as well as record holders, if the company has obtained or obtains a list of beneficial owners for its own use before the meeting or security holder action.[241] In contested situations, both the company and parties soliciting in opposition could use the list to engage in personal solicitation of non-objecting beneficial owners.

If the free communications proposals in this release are adopted, security holders may ultimately receive final disclosure documents closer to the time they are asked to make an investment decision. As a result, it may become more important for bidders to have access to stockholder lists that include non-objecting beneficial owners as well as record holders, particularly because of the time it takes for disclosure documents to be forwarded through street name holders to beneficial owners.

We propose to revise Rule 14d-5 to incorporate a stockholder list requirement in tender offers similar to that provided by Rule 14a-7 in proxy solicitations. Under the revised rule, a company that elects to provide a bidder with a stockholder list instead of mailing the bidder's materials would need to disclose the most recent list of names, addresses and security positions of non-objecting beneficial owners (as well as record holders) it has in its possession, or subsequently obtains. The list must be in the format requested by the bidder if this can be provided without undue burden or expense. The proposed amendment would give bidders the same ability as target companies to communicate directly with the non-objecting beneficial owners of securities.

This proposal would conform the stockholder list requirements so that the list required is the same whether security holders are solicited for proxies or for tenders. This should enhance a bidder's ability to timely communicate with non-objecting security holders of the target regarding the terms of its tender offer. Bidders would continue to be required to disseminate tender offer material to record holders (providing sufficient copies for the record holders to send to beneficial owners), but they would have the option also to send the material to non-objecting beneficial owners on the list. Would bidders find this useful? Should the rule permit bidders to send tender offer material to non-objecting beneficial owners instead of to record holders of those securities, and if so, should the issuer tender offer rule be revised the same way?[242] Would sending material, including transmittal forms, to beneficial owners unduly complicate the ability to keep track of tenders and count them accurately? Would beneficial owners receive tender offer material in a more timely manner than under the current system of dissemination through record holders?

5. Revise and Redesignate the Rule Prohibiting Purchases Outside an Offer

We propose to amend Exchange Act Rule 10b-13 and redesignate it as Rule 14e-5. The proposals would clarify the rule's text and codify several interpretations and exemptions.

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[237] *See* Release No. 34–8370 (july 30, 1968 [33 FR 11015].

[238] There is no schedule or form accompanying the rule. The required information is disclosed in a "Rule 13e-1 Transaction Statement" filed electrically on EDGAR under the submission-type SC 13E1.

[239] Approximately six statements were filed under Rule 13e-1 during the past five years.

[240] 17 CFR 240.14a-7.

[241] *See* Release No. 34–31326 (October 16, 1992) [57 FR 48276]. The list of beneficial owners includes only those who have not objected to the bank or broker nominee disclosing their identity to the issuer.

[242] *See* Rule 13e-4(e)(1)(ii).

Rule 10b-13 prohibits a person who is making a cash tender offer or exchange offer from purchasing or arranging to purchase, directly or indirectly, the security that is the subject of the offer (or any security that is immediately convertible into or exchangeable for the subject security) otherwise than as part of the offer.[243] The rule's prohibitions apply from the time the offer is publicly announced or otherwise made known to security holders until the time the bidder is required, by the offer's terms, either to accept or reject the tendered securities. Rule 10b-13 protects investors by preventing a bidder from extending greater or different consideration to some security holders by offering to purchase their securities outside the offer, while other security holders are limited to the offer's terms.[244] The rule applies to the bidder, whether the issuer or a third party, the bidder's affiliates, and the offer's dealer-manager.[245]

a. Proposed Amendments Redesignating and Clarifying the Rule

The Commission originally promulgated Rule 10b-13 under the provisions of Sections 10, 13 and 14 of the Exchange Act[246] to safeguard the interests of persons who sell their securities in response to a tender offer.[247] The dangers posed by a bidder's purchases outside an offer may involve fraud, deception and manipulation. Because the rule addresses conduct during tender offers, we believe it belongs with the other rules under Regulation 14E under the Exchange Act that directly address improper activities in the context of tender offers.[248]

The proposed amendments do not alter the rule's basic terms. Instead, they modify the rule's text to more clearly set forth the covered activities. New Rule 14e-5 would prohibit, in connection with a tender offer for equity securities, a covered person from purchasing or arranging to purchase any subject securities or any related securities otherwise than as part of the offer. As used in Regulation 14E, the term "tender offer" includes offers to exchange securities for cash and/or securities.[249]

We also propose to simplify the language describing the period during which the prohibition on purchases applies. Under proposed Rule 14e-5, this prohibition still would commence at the time the offer is first publicly announced or otherwise made known[250] to holders of subject securities and end with the offer's expiration. Under proposed Rule 14d-11, a tender offer could be extended under specific circumstances without offering withdrawal rights.[251] This gives security holders an additional opportunity to tender into the offer. We believe bidder purchases outside the offer during this subsequent offering period present the same concerns as during the initial offering period. Therefore, the proposed Rule 14e-5 restrictions would cover any subsequent offering period provided under proposed Rule 14d-11.

The rule applies from the time the offer is first publicly announced or otherwise made known to holders of subject securities. Should the rule apply if the bidder advises some but not all security holders that it intends to conduct a tender offer for the subject securities?

b. Persons and Securities Subject to the Rule

Scope of Persons Subject to the Rule. Rule 10b-13 applies to the person who makes the offer, which has been interpreted to cover the bidder, the bidder's affiliates, and the offer's dealer-manager.[252] Under proposed Rule 14e-5, the term "person" is replaced by "covered person" to codify this interpretation. Covered person is defined as: the offeror and its affiliates; the offeror's dealer-manager(s) and other advisors; and any person acting, directly or indirectly, in concert with them. The term "affiliate" is defined in proposed Rule 14e-5 as any person that "directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the offeror."[253]

Scope of Securities Subject to the Rule. Proposed Rule 14e-5 would apply only to offers for equity securities, just as Rule 10b-13 currently does. Moreover, Rule 10b-13 and proposed Rule 14e-5 prohibit purchases outside the offer of not only the target security, but also related securities. We propose several changes from Rule 10b-13 regarding the scope and treatment of related securities.

Proposed Rule 14e-5 would define "related securities" as "securities that are immediately convertible into, exchangeable for, or exercisable for subject securities." By covering securities that are immediately "exercisable for" subject securities, we are clarifying that securities, such as options, that can be exercised to receive target securities are included in the class of securities that a covered person cannot purchase outside the offer.

c. Excepted Transactions

Exercise of Related Securities. Rule 10b-13 specifies that if the person making the offer "is the owner of another security which is immediately convertible into or exchangeable for the security which is the subject of the offer, his subsequent exercise of his right of conversion or exchange with respect to such other security shall not be prohibited by this rule." We are amending this provision and relocating it in the part of proposed Rule 14e-5 covering excepted activities. When Rule 10b-13 was adopted, options were not nearly as common as they are today, and the text of this exception did not explicitly include the exercise of options. We believe the exercise of stock options is no more likely to lead to undesirable effects than the exchange or conversion of other related securities, so we want to make it clear that the exercise of options is included in this exception. Thus, we propose to permit a covered person to convert, exchange, or exercise related securities, as long as the covered person owned the related securities before the offer was publicly announced or otherwise made known to security holders.[254]

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[243] 17 CFR 240.10b-13.

[244] Release No. 34–8712 (October 8, 1969) ("Rule 10b-13 Adopting Release").

[245] *See e.g., Letter regarding Offers for Smith New Court PLC* (July 26, 1995) ("Smith New Court Letter").

[246] 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78n.

[247] Rule 10b-13 Adopting Release.

[248] Section 14(e) of the Exchange Act confers on the Commission the authority to define and prescribe means to prevent fraudulent, deceptive, or manipulative acts or practices in connection with any tender offer. *See United States v. O'Hagan*, 117 S. Ct. 2199, 2217 (1997) (holding that "under § 14(e), the Commission may prohibit acts, not themselves fraudulent under the common law or § 10(b), if the prohibition is 'reasonably designed to prevent * * * acts and practices [that] are fraudulent' " (*citing* 15 U.S.C. 78n(e)).

We prepose to amend the rule delegating exemptive authority to the Director of the Division of Market Regulation, Rule 30–3, and to replace references to Rule 10b-13 with Rule 14e-5. We also propose to add a parallel provision to Rule 30–1 to delegate exemptive authority to the Director of the Division of Corporation Finance.

[249] Thus, it is unnecessary to include paragraph (b) of Rule 10b-13 defining the term "exchange offer" in new Rule 14e-5.

[250] The phrase "otherwise made known" means any form of communication, other than public announcement, that notifies holders of subject securities of an offer.

[251] *See* Part II.E.1 above.

[252] *See, e.g.,* Smith New Court Letter. *See also In the Matter of Trinity Acquisition's Offer to Purchase the Ordinary Shares and American Depositary Shares of Willis Corroon Group plc,* Release No. 34–40246 (July 22, 1998) (67 S.E.C. Docket 1320).

[253] This definition is taken substantially from Rule 12b-2 under the Exchange Act [17 CFR 240.12b-2].

Purchases by or for Plans. Since the adoption of Rule 10b-13, there has been an exception for purchases of the target security (or a related security) by the issuer, by participating employees of the issuer or the employees of its subsidiaries, or by the trustee or other person acquiring the security for the account of the employees, under certain types of plans.[255] For example, issuers conducting tender offers for their equity securities may purchase subject securities on behalf of an employee plan. Rule 10b-13 partly incorporates outdated Internal Revenue Code provisions to define these excepted plans.

We propose to eliminate references to Internal Revenue Code provisions to define permissible plan purchases and rely instead on the more expansive plan provisions contained in the Commission's Regulation M. The exception would permit purchases of subject securities or related securities for any "plan" if the purchases are made by an "agent independent of the issuer" as these terms are defined in Regulation M.[256] This exception would recognize the phenomenal growth in variety of employee, security holder, and affinity group plans in recent years. Moreover, requiring that these purchases be made by an "agent independent of the issuer" should help assure that such purchases do not lead to the abuses that proposed Rule 14e-5 is designed to prevent.

Does the proposal regarding plans adequately address circumstances when a bidder may need to purchase shares during an offer on behalf of a plan? Are there situations when it would be appropriate for the bidder to buy shares directly on behalf of the plan? Should the rule expressly prevent a bidder from establishing a plan around the time of an offer and then purchasing shares on behalf of that plan through an independent agent or otherwise?

Purchases during Odd-Lot Offers. We propose to add a new exception that permits purchases during an issuer odd-lot tender offer conducted in compliance with the provisions of Rule 13e-4(h)(5) under the Exchange Act.[257] Under Rule 13e-4(h)(5), an issuer tender offer is excepted from application of Rule 13e-4 if the offer is directed solely to odd-lot security holders and provides "all holders" and "best price" protections to tendering security holders. This proposal codifies a class exemption from Rule 10b-13 issued by the Commission in connection with a recent revision to Rule 13e-4(h)(5).[258]

Unsolicited Purchases by a Dealer-Manager. We propose to except unsolicited purchases by a dealer-manager that are made on an agency basis. This exception, which codifies a prior exemption,[259] would allow a dealer-manager to continue to conduct its customary brokerage activities during a tender offer. Those activities generally do not raise the concerns that proposed Rule 14e-5 is intended to address. Of course, the unsolicited orders must be from a person other than a covered person and must be made in the ordinary course of business.

Should the exception permit riskless principal transactions by dealer-managers as well? Is it necessary to define the term "dealer-manager?"

d. Solicitation of Comments on Proposed Rule 14e-5

We solicit comment on all aspects of proposed Rule 14e-5. Are the current exceptions appropriate? Aside from plan transactions and purchases during an odd-lot offer, are there other circumstances when it would be appropriate to permit the bidder to purchase subject or related securities outside the offer? For example, should the bidder be permitted to purchase shares outside the offer if a purchase contract was entered into before public announcement of the offer and the per share purchase price is no higher than the offer consideration? Should any such exception be limited to cash tender offers for all outstanding shares?

In addition, we invite commenters to address whether a rule prohibiting purchases outside of a tender offer continues to be appropriate. Should we consider implementing a rule like that in the City Code, which permits purchases outside the offer if, among other things, the bidder increases the tender offer consideration to the highest price paid for any shares so acquired?[260]

Under what circumstances would it be appropriate not to apply Rule 14e-5 to the offer's dealer-managers and advisors? Should we consider provisions like those contained in the City Code that permit market makers affiliated with the offeror's advisors to continue their market making functions when the market maker is sufficiently independent from the advisor and other protections are present?[261]

6. Safe Harbor for Forward-Looking Statements

In permitting substantially greater communications before the filing of a tender offer statement and the commencement of an offer, we recognize that bidders may be unwilling to communicate freely about an offer absent a safe harbor from liability for forward-looking communications. Currently, the safe harbor provisions in the Private Securities Litigation Reform Act of 1995 ("PSLRA") for forward-looking statements do not apply to statements made in connection with a tender offer,[262] although they do apply to statements made in connection with mergers.[263] We solicit comment on whether we should extend the provisions of the PSLRA to forward-looking statements issued in connection with a tender offer. Just as with mergers, there are other policing mechanisms to protect against false and misleading forward-looking statements in the tender offer context.

Of course, under any extension of the PSLRA safe harbor, bidders would have to identify their forward-looking statements as "forward-looking" and the statements would need to be accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ significantly from those disclosed. In addition, bidders still may be subject to liability in any proceeding brought by the Commission. In order to promote balanced disclosure, we also would extend the safe harbor to statements made by targets as well as bidders.

We invite comment on whether the statutory safe harbor for forward-looking statements is necessary or appropriate to encourage bidders and targets to communicate fully and freely with security holders regarding proposed tender offers. What types of forward-looking information do bidders typically provide, or need to provide, before commencing a tender offer that merit safe harbor protection from private litigation? Could a safe harbor be abused in the fast-moving tender offer context? Are there any circumstances when a forward-looking information safe harbor should not be available? For example, should we limit our extension of the PSLRA safe harbor to only those communications made in reliance on the proposed free communications safe harbor?

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[254] As discussed above, proposed Rule 14e–5 would prohibit a covered persons from purchasing related securities from the time that the offer is publicly announced or otherwise made known to security holders.

[255] 17 CFR 240.10b–13(c).

[256] 17 CFR 242.100.

[257] 17 CFR 240.13e–4(h)(5).

[258] Release No. 34–38068 (December 20, 1996) [61 FR 68587].

[259] *Letter regarding Reuters Holdings PLC* (August 17, 1993).

[260] City Code, Rule 6.2.

[261] City Code, Rule 38; Statement 11.

[262] *See* Section 27A(b)(2)(C) of the Securities Act and Section 21E(b)(2)(C) of the Exchange Act. The safe harbor in the PSLRA also is unavailable to penny-stock companies, companies involved in "blank check" offerings, roll-up transactions or going-private transactions. *See* Section 27A(b)(1)(B)–(E) of the Securities Act and Section 21E(b)(1)(B)–(E) of the Exchange Act.

[263] The Commission's safe harbor rules, Securities Act Rule 175 [17 CFR 230.175] and Exchange Act Rule 3b–6 [17 CFR 240.3b–6], are available for certain forward-looking statements made in Commission filings, including those made in tender offers.

III. General Request for Comments

If you would like to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, we encourage you to do so. Besides the specific questions we asked in this release, we also solicit comment on the usefulness of the proposals to security holders, issuers, and the marketplace at large. We would like comments from the point of view of both bidders and targets, as well as security holders and market professionals involved in the mergers and acquisitions area. We also encourage the submission of written comments on any aspect of the initial regulatory flexibility analysis. We will consider any written comments we receive in preparing the final regulatory flexibility analysis if the proposed rules are adopted.

We believe that the proposals, if adopted, would promote efficiency, competition, and capital formation. However, we solicit comment on whether the proposals would promote efficiency, competition, and capital formation. We also request comment on whether the proposals, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act and the Exchange Act. We will consider these comments in complying with our responsibilities under Section 23(a)(2) of the Exchange Act.[264]

Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. You may also submit your comments electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–28–98; this file number should be included in the subject line if E-mail is used. Comment letters can be inspected and copied in the public reference room at 450 Fifth Street, N.W., Washington, D.C. We will post electronically submitted comments on our Internet Web site (http://www.sec.gov).

IV. Cost-Benefit Analysis

The proposed new rules, schedules, and amendments would update and simplify the rules and regulations that apply to takeover transactions, including tender offers, mergers, and similar extraordinary transactions. We propose to enhance communications between public companies and investors before companies file registration statements involving takeover transactions, proxy statements or tender offer statements. We also propose to put cash and stock tender offers on a more equal regulatory footing; integrate the forms and disclosure requirements applicable to issuer tender offers, third-party tender offers and going private transactions; and consolidate the disclosure requirements in one location. We propose to allow security holders to tender their shares during a limited period after the successful completion of a tender offer; more closely align the merger and tender offer requirements; and update the tender offer rules to clarify certain requirements and reduce compliance burdens where consistent with investor protection. In this section, we examine the benefits and costs associated with the proposed revisions, focusing on the groups that might be affected. We request that commenters provide their views and supporting data as to the benefits and costs of the proposals.

A. Communications

We anticipate the proposals would enhance price discovery and market efficiency by permitting companies to communicate more freely with investors in business combination transactions. Today, the provisions of the Securities Act and Exchange Act, including the Williams Act, restrict the type of information that can be disseminated before a bidder files a registration, proxy or tender offer statement. The proposals would allow companies to communicate with security holders both before and after they file their registration, proxy, and tender offer statements.[265] The proposed rules also would allow companies that are the target of a tender offer to communicate more freely with security holders.

We believe this increased flow of information would help security holders make more informed tender or voting decisions, despite the possibility that some deal participants might attempt to "condition the market" with false, misleading or confusing information. We believe security holders would benefit overall because they would receive issuers' registration, tender offer or proxy statements before having to tender or vote their shares. Therefore, security holders would have the opportunity to consider the statements in the disclosure document together with any other information disseminated by parties to business combination transactions. In addition, such information would be subject to high liability standards. Issuer communications made before filing with the Commission and during the waiting period would be subject to the anti-fraud provisions of Rule 10b–5 under the Exchange Act, as well as to the anti-fraud provisions of Rule 14a–9 and Section 14(e) if a transaction involves the proxy or tender offer rules, respectively. If the Securities Act is applicable, these communications also would be subject to the provisions of Section 12(a)(2) under the Securities Act. We have requested comment on whether these communications also should be deemed part of the registration statement and therefore subject to Section 11 of the Securities Act. We believe these standards of liability are sufficiently high to encourage parties to provide investors with fair and accurate information about transactions.

Does the benefit of greater freedom in communications outweigh the cost to security holders of obtaining and analyzing the additional information to determine its currency and accuracy and the cost to companies of filing such information? We do not believe that permitting offerors to communicate with security holders before filing their registration statements and during the waiting period would present a significant burden to investors or offerors. We request comment on the type and magnitude of burden this filing requirement would represent to deal participants.

In addition, we believe the proposed communication rules would reduce the current regulatory uncertainty for companies. As discussed above, the provisions of the Securities Act and Exchange Act, including the Williams Act, restrict communications before companies file their registration, proxy or tender offer statements. Companies have told us that they are uncertain whether and in what circumstances these restrictions conflict with their duties to make full and fair disclosure under Rule 10b–5 of the Exchange Act. Consequently, many companies are unsure how to balance their duty to disclose with their duty to be silent before the filing of a disclosure document. By relaxing restrictions on communications, the proposed revisions would minimize this regulatory tension. This clarification would benefit offerors and security holders alike.

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[264] 15 U.S.C. 78w(a)(2).

[265] *See* proposed Rules 166(b), 14d–2, and 14a–12.

One potential cost of the proposals is that some security holders may make investment decisions based on information received before the filing of a disclosure statement.[266] To the extent that such activity could occur under the proposals, it also could occur today. The current rules limit companies from communicating with investors before they file their statements. By allowing companies to publicly announce transactions before the filing of a mandated disclosure document and requiring companies to file their written communications on first use, we believe investors would be more likely to make informed investment decisions than under the current rules. We request comment on the accuracy of this view.

To further protect investors, we propose new Rule 14e–8 that would make it clear that it is unlawful to announce a tender offer without the intention of beginning and completing it with the intention of manipulating the market price of the bidder or target. It also would clarify that it is unlawful to announce a tender offer without the reasonable belief that the bidder has the means to purchase the securities in the offer. We believe such actions should be unlawful because it could cause investors to base their investment decisions on false or misleading information. We believe the proposed rule would help stem these activities, but request your comments on this viewpoint.

In addition to permitting increased communications between companies and investors, the proposed revisions would reduce the differential in information available to investors by requiring companies to file their written communications upon first use. This proposal would help assure that communications are immediately available to many more investors than currently is the case. The proposals also would increase the uniformity and timeliness of information received by investors.

We also propose to permit bidders to begin their exchange offers as soon as they file their registration statements; that is, they would no longer have to wait for the registration statements' effectiveness. We believe the ability to begin an exchange offer on filing would encourage issuers to file quickly with the Commission, thereby creating incentives for companies to publicly disseminate information rather than selectively communicate with only a few security holders.

We recognize that our proposals to liberalize oral communications, which would not need to be filed, may encourage companies to use oral communications rather than written communications, which would have to be filed. On balance, however, we believe the proposals will reduce the selective disclosure of information to the market. We request comment on whether the benefits to security holders of greater access to written information would outweigh any potential costs from deregulating oral communications.

In proxy solicitations, whether or not they involve a business combination, we propose to permit companies to more freely communicate with security holders. Under the proposed rules, companies would be able to communicate freely with security holders without first furnishing a written proxy statement.[267] The proposal would allow security holders to receive more information on upcoming votes than they do today.

We also propose to require companies to provide a short "plain English" summary term sheet in all cash mergers, cash tender offers, and going-private transactions.[268] We believe that this would facilitate investors' understanding of the basic terms of transactions, and thus allow them to make better-informed choices. We do not anticipate that companies would incur significant costs in writing plain English term sheets because they need to generate the same information to comply with other disclosure requirements and many should have experience writing plain English disclosures in connection with the Securities Act requirements. We request comment on the accuracy of this view.

B. Filings

We anticipate that the proposals would lower the costs of complying with the business combination disclosure and other regulatory requirements for many offerors. The proposals would integrate and streamline the disclosure requirements for business combinations, thereby reducing compliance costs. Specifically, the proposals would harmonize and integrate the disclosure requirements for tender offer, merger proxy, and going-private transaction statements. The proposals would allow issuers to file one schedule, rather than two, to satisfy the tender offer and going-private disclosure requirements when both apply to the transaction.

The proposals would reduce the burden of complying with the merger proxy requirements by,[269] among other things:

- Clarifying the disclosure requirements;
- Clarifying that financial statements are required for an acquiror in a cash transaction only if an acquiror has not demonstrated the financial ability to satisfy the terms of the offer or the information is otherwise material;
- Eliminating the requirement for financial statements of the target in a cash merger when the acquiror's security holders are not voting on the transaction;
- Reducing the financial statement requirements for non-reporting target companies (when security holders of the acquiring company are not voting on the transaction) to be only those financial statements the target previously furnished to its security holders (with a minimum of U.S. GAAP financial statements provided for the latest fiscal year) instead of financial statements for three years;[270] and
- Reducing the financial statements needed for acquiring companies in cash mergers and third-party cash tender offers from three years to two years.

In addition, we propose one offsetting cost. We would require that a bidder in a two-tier transaction, where security holders are offered cash in a tender offer and securities in a back-end merger, provide security holders with pro forma financial statements and other related information for the combined entity at the time of the cash tender offer. Rather than being an additional requirement, this proposal would accelerate the time at which bidders are required to disclose the information.

For the purposes of the Paperwork Reduction Act, Table 2 in Section VI summarizes our preliminary estimates of the internal burden hours that parties would spend to comply with the proposals. These estimates include the burden hours incurred by companies from filing pre-filing communications. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that parties would expend approximately 234,759 internal burden hours/year complying with the proposals. If we assume that 70% of these burden hours would be expended by persons that cost the affected parties $85/hour and 30% of these burden hours would be expended by persons that cost $10/hour, then the proposals would cost approximately $14,691,250/year in internal staff time. For the purposes of the Paperwork Reduction Act, we also estimate that parties would spend approximately $122,929,990/year on outside professional help to comply with the proposals. Thus we estimate that affected parties would spend approximately $137,621,240/year to comply with the proposals. Applying the same cost estimates to the burden imposed by the current rules, we estimate that companies and affected parties spend approximately $163,268,490/year.[271] Note that these estimates do not attempt to quantify the proposals' intangible benefits, such as the benefits to issuers and investors of enhanced communications and possible improvements in price discovery, nor its intangible costs, such as the cost to security holders of identifying misleading or incomplete pre-filing information. We request comment on the reasonableness of our estimates and our analysis of other costs and benefits.

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[266] The above proposals could cause some security holders to make premature investment decisions based on incomplete information if they buy or sell securities after an issuer announces a transaction, but before the issuer files its registration, proxy or tender offer statement.

[267] A company would, however, have to provide a proxy statement before or concurrently with soliciting a proxy card.

[268] Forms C and SB–3 would be subject to the current Form S–4 summary and plain English requirements; thus we would not need to require a term sheet for securities offerings, although we are soliciting comment on whether it would be useful.

[269] *See* Item 14 of Schedule 14A.

[270] This revision would apply to Form C and SB–3 transactions.

We propose to eliminate confidential treatment of merger proxy statements. Today, many of the filings we accord confidential treatment are preceded by public announcements of the transactions. Consequently, we question whether eliminating confidential treatment of merger proxy statements would impose a burden or cost on companies. We solicit comment on the possible impact on companies of this proposal.

C. Tender Offers

We propose to reduce a regulatory bias against using securities as consideration in tender offers by allowing third-party bidders to begin an exchange offer upon filing and dissemination of their Form C or SB–3 registration statement (like bidders offering cash). This proposal would give bidders more flexibility in determining whether to offer cash or securities as consideration in transactions. Under the proposals, a bidder could not purchase tendered securities until its registration statement was declared effective and the mandatory 20-business day tender offer period had elapsed. Security holders could withdraw their securities at any time until purchased by the bidder. This proposal would likely shorten the period of time to complete stock tender offers relative to today, putting them on a more equal footing with cash tender offers. Of course, it may also increase the risk that bidders offering securities would have to disseminate supplements to the tender offer materials after their offers begin due to changes in material information. If so, they would have to provide sufficient time for security holders to receive the supplements and reconsider their investment decisions. This risk, however, would not be unique to exchange offers; issuers run the same risk today with cash offers. We solicit comment on this analysis and on any other costs and benefits that may arise from bidders commencing their exchange offers earlier than today.

We also propose to permit bidders to purchase (at the stated offer price) securities from holders who did not tender their shares during the offer in a "subsequent offering period." We believe the proposal would minimize the delay that security holders encounter in liquidating their investments in a target's securities when a bidder is successful in purchasing a significant or controlling interest in the target. Under the proposal, however, security holders might wait to tender their shares in the subsequent offering period. We solicit comment on whether this would be likely to occur and whether it would outweigh the benefits of the proposal. We note that bidders would not be under any obligation to offer to purchase securities in a subsequent offering period.

We propose to eliminate the requirement for financial statements of the target in cash mergers when acquirors' security holders are not voting on the transaction, and require two, rather than three years of financial statements when they are material in third-party cash tender offers. If the security holders of the acquiror are not making a voting decision on the transaction, they do not need three years of historical financial statements. The reduction from three to two years of historical financial statements would thus lower acquirors' costs of complying with our rules, while continuing to protect security holders.

Finally, we propose to allow bidders greater access to security holders in tender offers by enabling them to contact non-objecting beneficial owners if the target company maintains a list of these persons. The proposed amendment would give bidders the same ability as target companies to communicate directly with the beneficial owners of securities similar to that provided under the proxy rules. We believe this proposal would benefit bidders and security holders because communications would be more efficient than today. We request your comments on the benefits and costs of this proposal.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[272] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request information on the potential impact of the proposed rules, schedules, and amendments on the economy on an annual basis. Commenters should provide empirical data on: (i) the annual effect on the economy; (ii) any increase in costs or prices for consumers or individual industries; and (iii) any effect on competition, investment or innovation. We note that U.S. merger and acquisition activity in 1997 was valued at over $790 billion.[273]

In adopting rules under the Exchange Act, Section 23(a) requires the Commission to consider the impact that rules would have on competition and to not adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, to consider or determine whether the action is necessary or appropriate in the public interest, and also to consider in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[274]

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[271] For the purposes of the Paperwork Reduction act, we estimate in Table 2 of Section VI the burden hours imposed on parties to comply with the current rules. Assuming (as we did for the proposed rules) that 25% of the hours required to comply with the rules are provided by corporate staff at a cost of $63/hour (70% of the expended corporate staff time cost $85/hour, whereas 30% of the expended corporate staff time cost $10/hour), and 75% of the hours required to comply with the rules are provided by external professional help at a cost of $175/hour, we estimate that affected parties spend approximately 1,110,670 burden hours/year • $147/hour-$163,268,490/year.

[272] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[273] *See* Mergers & Acquisitions, The Dealmaker's Journal, 1998 Almanac (March/April), at 42.

[274] 15 U.S.C. § 78c(f).

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V. Initial Regulatory Flexibility Analysis

A. Reasons for Proposed Action

We prepared this Initial Regulatory Flexibility Analysis under 5 U.S.C. § 603 concerning the new rules, schedules, and amendments proposed today. We will consider your written comments in the preparation of the final analysis. The primary purposes of the proposed new rules, schedules, and amendments are to enhance communications with security holders; harmonize the regulations affecting cash and stock tender offers; facilitate compliance with the rules and regulations associated with takeover and similar extraordinary transactions; and promote investor protection.

B. Objectives and Legal Basis

The resulting reduction in compliance costs for all persons subject to our rules and regulations would benefit small and large business entities alike. The proposals should result in security holders receiving more information on a timely basis. In addition, the proposals would give persons subject to our rules greater flexibility in structuring and completing tender offers, mergers, and other extraordinary transactions. We propose the new rules, schedules, and amendments under Sections 2(3), 5, 7, 8, 10, 12, 19, and 28 of the Securities Act, as amended, and Sections 3(b), 4(e), 10(b), 13, 14, 18, 23(a), 24, and 36 of the Exchange Act, as amended.

C. Small Entities Subject to the Rules

The proposals would affect small entities that are required to file registration statements, proxy statements, tender offer statements and other reports under the Securities Act, Exchange Act, and the Investment Company Act. For the purposes of the Regulatory Flexibility Act, the Securities Act and Exchange Act define a "small business" issuer, other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less.[275] When used with respect to an issuer that is an investment company, the term is defined as an investment company and any related investment company with aggregate net assets of $50 million or less as of the end of its most recent fiscal year.[276]

We currently are aware of approximately 1,100 reporting companies that are not investment companies with assets of $5 million or less. There are approximately 400 investment companies that satisfy the "small entity" definition. All of these companies would be subject to at least some of the proposed rules, schedules, and amendments and could be affected either as acquiring or as acquired companies. We have no reliable way, however, to determine how many reporting or non-reporting small businesses may actually rely on the proposed rules, or may otherwise be affected by the rule proposals. Nevertheless, we believe that the proposals would substantially benefit both small and large entities to the extent the proposals substantially reduce current restrictions on communications and facilitate compliance with existing rules and regulations.

D. Reporting, Recordkeeping, and Other Compliance Requirements

For the most part, the proposals are deregulatory in nature, significantly expanding the ability of businesses to structure and time their business combination transactions and communicate with security holders. Under the proposed rules, small businesses would report and file essentially the same information as today. One exception to this generalization is that offerors, both large and small, would be required to file pre-filing communications in business combination transactions with the Commission. This requirement arises, however, from the proposed deregulation of voluntary pre-filing communications. The proposed rules, schedules, and amendments in this release would treat all persons and entities alike, and would not distinguish among them based on size.

E. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the proposed rules, schedules, and amendments, we considered several alternatives, including:

- Establishing different compliance and reporting requirements or timetables that take into account the resources of small businesses;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rule for small businesses;
- Using performance rather than design standards; and
- Exempting small businesses from all or part of the requirements.

For the most part, the proposals are deregulatory in nature. They significantly expand the ability of businesses to structure and time their business combination transactions and communicate with security holders, while maintaining investor protections. Although we considered whether it would be appropriate to exclude smaller entities, we determined that the proposals should apply to all businesses regardless of their size; that is, we should not limit the rules and the corresponding benefits to large, seasoned issuers.

As a preliminary matter, we believe that there are no less restrictive alternatives to the proposed rules, schedules, and amendments that would serve the purposes of the proxy, tender offer, going-private, and registration requirements of the federal securities laws. We were unable to identify less burdensome alternatives to our proposals that would be consistent with our statutory mandate to require issuers to disclose material information fully and fairly to investors. We believe the proposed rules, schedules, and amendments should apply equally to all entities required to disclose information to enhance the protection of all investors. For these reasons, we also believe there would be no benefit in providing separate requirements for small issuers based on the use of performance rather than design standards.

F. Overlapping or Conflicting Federal Rules

We do not believe any current federal rules duplicate, overlap or conflict with the rules, schedules, and amendments that we propose to amend.

We request your written comments on any aspect of this Initial Regulatory Flexibility Analysis. We particularly seek comment on:

- The number of small entities that would be affected by the proposed rules, schedules, and amendments;
- The expected impact of the proposals as discussed above; and
- How to quantify the number of small entities that would be affected by, and how to quantify the impact of, the proposed rules, schedules, and amendments.

We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VI. Paperwork Reduction Act

The proposed rules, schedules, and amendments affect several regulations and forms that contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[277] We have submitted proposed revisions to those rules, schedules, and amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Table 1 below includes the titles for the affected collections of information under the Exchange Act, current OMB control numbers, if applicable, a summary of the collection of information, and a description of the likely respondents to each collection of information.[278]

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[275] *See* 17 CFR 230.157 and 17 CFR 240.0–10.

[276] *See* 17 CFR 240.0–10

TABLE 1: COLLECTIONS OF INFORMATION UNDER THE SECURITIES ACT AND EXCHANGE ACT

Title	OMB control No.	Summary of the collection of information and description of likely respondents
Schedule 14A	3235–0059	When a shareholder vote is required, persons soliciting proxies with respect to securities registered under Section 12 of the Exchange Act must furnish a proxy statement containing the information specified by Schedule 14A. The proxy statement is intended to provide security holders with the information necessary to enable them to vote in an informed manner on matters intended to be acted upon at security holders' meetings, whether the traditional annual meeting or a special meeting.
Schedule 14C	3235–0057	Companies with securities registered under Section 12 of the Exchange Act must send an information statement to every holder of the registered security that is entitled to vote on any matter for which a security holder vote is held, but proxies are not solicited. Schedule 14C sets forth the disclosure requirements for these information statements.
Schedule 13E–3	3235–0007	Companies or their affiliates that engage in specified transactions that cause a class of the company's equity securities registered under the Exchange Act to be: 1) held by fewer than 300 record holders, or 2) de-listed from a securities exchange or inter-dealer quotation system must file a Schedule 13E–3. Filers must disclose detailed information about transactions, including whether they believe the transactions are fair.
Schedule 14D–9	3235–0102	Interested parties (including issuers and beneficial owners of securities) that make a solicitation or recommendation to security holders regarding a tender offer subject to Regulation 14D must file a Schedule 14D–9.
Schedule 13E–4	3235–0203	Reporting companies that make tender offers for their own securities must file a Schedule 13E–4.
Schedule 14D–1	3235–0102	Any person, other than the issuer, making a tender offer for equity securities registered under Section 12 of the Exchange Act, which offer, if consummated, would cause that person to own over 5 percent of that class of the securities, must at the time of the offer file a Schedule 14D–1 and send it to certain other parties, such as the issuer and any competing bidders.
Schedule TO	t.b.d.	Any party that the SEC would require today to file a Schedule 13E–4 or Schedule 14D–1.

The proposed new rules, schedules, and amendments would update and simplify the rules and regulations for business combinations. The information is needed so that security holders may make informed tender and voting decisions in tender offers, mergers, acquisitions, and other extraordinary transactions. We propose to enhance communications between public companies and investors before companies file registration statements involving takeover transactions, proxy statements, and tender offer statements. We also propose to put cash and stock tender offers on a more equal regulatory footing; integrate the forms and disclosure requirements in issuer tender offers, third-party tender offers and going-private transactions; and consolidate the disclosure requirements in one location. We propose to allow security holders to tender their shares during a limited period after the completion of a tender offer; more closely align merger and tender offer requirements; and update the tender offer rules to clarify certain requirements and reduce compliance burdens where consistent with investor protection.

The affected schedules and regulations set forth the disclosures that the Commission would require offerors to make about business combination transactions and about themselves to the public. The requirements of the above schedules would largely be the same as today, except for a few changes. Specifically, under the proposals, Schedules 14A, 14C, 13E–3, 14D–9, and TO would require a short "plain English" summary term sheet, not currently required, in all cash mergers, cash tender offers, and going-private transactions.[279] The proposed rules would reduce the number of years of financial statements required by Schedules 14A and 14C for acquiring companies in cash mergers and cash tender offers from three years to two years. Under the proposals, Schedules 14A and 14C would no longer require the financial statements of the target in a cash merger when the acquiror's security holders are not voting on the transaction.[280] Proposed Schedule TO would replace current Schedules 13E–4 and 14D–1, harmonizing and clarifying their requirements. Under the proposals, Schedule TO would require a bidder in a two-tier transaction, where security holders are offered cash in a tender offer and securities in a back-end merger, provide security holders with pro forma financial statements and other related information for the combined entity at the time of the cash tender offer. The proposals would allow issuers to file one schedule, rather than two, to satisfy the tender offer and going-private disclosure requirements when both apply to the transaction.

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[277] 44 U.S.C. § 3501 *et seq.*

[278] Regulations S–K and S–B do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is currently assigned one burden hour. The burden hours imposed by the disclosure regulations are currently included in the estimates for the forms that refer to the regulations.

[279] Forms C and SB–3 would be subject to the current Form S–4 summary and plain English requirements; thus we would not need to require a term sheet for securities offerings, although we are soliciting comment on whether it would be useful.

[280] For transactions offering stock as consideration (*i.e.*, Form C and SB–3 transactions), the proposals would reduce the financial statement requirements for non-reporting target companies (when security holders of the acquiring company are not voting on the transaction) to be only those financial statements the target previously furnished to its security holders (with a minimum of U.S. GAAP financial statements provided for the latest fiscal year) instead of financial statements for three years.

The information collection requirements imposed by the schedules and regulations are mandatory to the extent that companies are publicly owned and undertake business combination transactions. There are no mandatory retention periods for the information disclosed. The information gathered is made publicly available,[281] unless granted confidential treatment. However, the release proposes to eliminate the confidential treatment of preliminary proxy statements.

As discussed in detail in Section IV, the proposals, if adopted, would reduce the burden of complying with the business combination disclosure and transaction requirements for many issuers. Public companies would expend approximately 988,986 burden hours/year to comply with the proposed rules, schedules, and amendments, cumulatively saving at least 191,592 burden hours/year. Table 1 of Section IV shows the estimated burden hours for the proposed forms and the approximate number of filings of each schedule under the proposed rules, schedules, and amendments.

The proposals would integrate and streamline the disclosure requirements for business combinations, thereby reducing issuers' compliance costs. For the purposes of the Paperwork Reduction Act, Table 2 below summarizes our preliminary estimates of the burden hours that parties would spend to comply with the proposals. These estimates include the burden hours incurred by companies from filing pre-filing communications. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that parties would expend approximately 234,759 burden hours/year to comply with the proposals. In addition, as discussed in more detail below, we estimate that parties would spend approximately $122,929,990/year on outside professional help to comply with the proposals. Note that these estimates do not attempt to quantify the proposals' intangible benefits, such as the benefits to issuers and investors of enhanced communications and possible improvements in price discovery. We discuss our preliminary estimates in greater detail below. We request comment on the reasonableness of our estimates.

TABLE 2: BURDEN HOUR ESTIMATES

Schedule	Estimated burden hours/filing		Estimated filings/year[282]		Estimated burden hours	
	Before Revisions (A)	After Revisions (B)	Before Revisions (C)	After Revisions (D)	Before Revisions (E) = A*C	After Revisions (F) = B*D
14A	87.00	13.12	9,892	13,255	860,604	173,906
14C	87.00	13.12	253	339	22,011	4,448
13E–3	139.25	34.31	96	96	13,368	3,294
14D–9	354.25	64.43	258	353	91,397	22,744
13E–4	232.00	0.00	139	0	32,248	0
14D–1	354.25	0.00	257	0	91,042	0
TO	0.00	43.50	0	705	0	30,668
Total					1,110,670	235,060

[282] The estimated filings/year are based on the number of filings in fiscal year 1998.

We anticipate the proposals would reduce the number of hours required to file a full Schedule 14A from 87 hours today to 70 hours under the proposals.[283] Of the 70 hours, we estimate that 25% (17.5 internal burden hours) would be provided by corporate staff, and 75% (52.5 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other parties would file approximately 9,892 full Schedule 14As/year. Under the proposed rules, companies and other parties also would be required to file under cover of Schedule 14A any pre-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[284] The rule would require filers to attach their written communications and would have few specific information requirements. For fiscal year 1998, we estimate 34% of the 9,892 full Schedule 14As filed involved cash rather than securities.[285] We estimate that parties, on average, would file one written communication (in addition to the required proxy statement) for each cash transaction. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rules.[286] Thus, we estimate parties would file 9,892 full Schedule 14As/year (expending 17.5 internal burden hours/filing) and 3,363 written communications/year (expending 0.25 internal burden hours/filing). On average, filers would require approximately 13.12 internal burden hours to file 13,255 full Schedule 14As and written communications. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $9,188/filing in professional labor costs to file a full Schedule 14A.[287] We request your comments and supporting empirical information on the reasonableness of these estimates.

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[281] If, however, a bank finances all or part of a tender offer, we permit the offeror to conceal the bank's name if the offeror files a request and the bank's name with the Secretary of the Commission. *See* Item 4 of Schedule 14D–1.

[283] The numbers in Column B of Table 2 differ significantly from those in Column A of Table 2 for two reasons. First, the estimated burden hours in Column A include the estimated corporate burden hours and outside labor hours that parties would require to file each disclosure document. In Column B, we estimate only the corporate burden hours needed to file each disclosure document (we estimate separately the expense, in dollar terms, of outside labor). Second, the estimates in Column B include the estimated burden hours that bidders would require to file pre-filing communications. Because parties would require less time to file communications than full Schedule 14As, the average estimated burden hours in Column B are lower than in Column A.

[284] Under the proposed rules, bidders would file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration. Because we are proposing Rule 425 in the Securities Act Reform Release, we estimate the burden hours for filings of pre-filing communications for those transactions in that release.

[285] According to Securities Data Corporation, in 1996 security holders received only cash in 34% of merger transactions.

[286] We base this estimate on the burden imposed by a similar filing requirement under Item 901(c) of Regulation S–K for roll-up transactions.

[287] We estimate filers would spend $9,188/filing in professional labor costs. We base this estimate on

We anticipate the proposals would reduce the number of hours required to file a full Schedule 14C from 87 hours today to 70 hours under the proposals. Of the 70 hours, we estimate that 25% (17.5 internal burden hours) would be provided by corporate staff, and 75% (52.5 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other parties would file approximately 253 full Schedule 14Cs/year. Under the proposed rules, companies and other parties also would be required to file under cover of Schedule 14C any pre-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[288] The rule would require filers to attach their written communications and would have few specific information requirements. For fiscal year 1998, we estimate 34% of the 253 full Schedule 14Cs filed involved cash rather than securities.[289] We estimate that parties, on average, would file one written communication (in addition to the required information statement) for each cash transaction. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rules. Thus, we estimate parties would file 253 full Schedule 14Cs/year (expending 52.50 burden hours/filing) and 86 written communications/year (expending 0.25 internal burden hours/filing). On average, filers would require approximately 13.12 internal burden hours to file 339 full Schedule 14Cs and written communications. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $9,188/filing in professional labor costs to file a full Schedule 14C.[290] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposals would clarify and make several technical changes to Schedule 13E–3. We anticipate a savings of two hours, from 139.25 hours/filing to 137.25 hours/filing, to file Schedule 13E–3 under the proposals. Of the 137.25 hours, we estimate that 25% (34.31 internal burden hours) would be provided by corporate staff, and 75% (102.94 hours) by external professional help. Based on filings in fiscal year 1998, we estimate parties would file 96 Schedule 13E–3s/year. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $18,015/filing in professional labor costs to file a full Schedule 13E–3.[291] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposals would clarify and make several technical changes to Schedule 14D–9. We anticipate a savings of two hours, from 354.25 hours/filing to 352.25 hours/filing, to file a full Schedule 14D–9 under the proposals. Of the 352.25 hours, we estimate that 25% (88.06 internal burden hours) would be provided by corporate staff, and 75% (264.19 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other parties would file approximately 258 full Schedule 14D–9s/year. Under the proposed rules, companies and other parties also would be required to file under cover of Schedule 14D–9 any pre-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[292] The rule would require filers to attach their written communications and would have few specific information requirements. For fiscal year 1998, we estimate 37% of the 258 full Schedule 14D–9s filed involved cash rather than securities.[293] We estimate that parties, on average, would file one written communication (in addition to the required information statement) for each cash transaction. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rules. Thus, we estimate parties would file 258 full Schedule 14D–9s/year (expending 88.06 internal burden hours/filing) and 95 written communications/year (expending 0.25 internal burden hours/filing). On average, filers would require approximately 64.43 internal burden hours to file 353 full Schedule 14D–9s and written communications. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $46,233/filing in professional labor costs to file a full Schedule 14D–9.[294] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposals also would replace Schedules 13E–4 and 14D–1 with a new tender offer schedule, Schedule TO. Schedule TO would harmonize and clarify the requirements in current Schedules 13E–4 and 14D–1. Based on the number of Schedule 13E–4 and Schedule 14D–1s filed in fiscal year 1998, and the number of hours required to complete them, we estimate that bidders would require approximately 309 hours to file a full Schedule TO under the proposed rules.[295] Of the 309 hours, we estimate that 25% (77.25 internal burden hours) would be provided by corporate staff, and 75% (231.75 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other parties would file approximately 396 full Schedule TOs/year. Under the proposed rules, companies and other parties also would be required to file under Schedule TO written communications (in addition to the required tender offer statement) concerning business combinations for

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52.50 hours of professional labor/full Schedule 14A filing * $175/hour. In aggregate, we estimate that filers would spend $90,887,696/year to file 9,892 full Schedule 14As/year.

[288] Under the proposed rules, bidders would file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration. Because we are proposing Rule 425 in the Securities Act Reform Release, we estimate the burden hours of filings of pre-filing communications for those transactions in that release.

[289] According to Securities Data corporation, in 1996 security holders received only cashe in 34% of merger transactions.

[290] We estimate filers would spend $9,188/filing in professional labor costs. We base this estimate on 52.50 hours of professional labor/full Schedule 14C filing * $175/hour. In aggregate, we estimate that filers would spend $2,324,564/year to file 253 full Schedule 14Cs/year.

[291] We estimate filers would spend $18,015/filing in professional labor costs. We base this esimate on 102.94 hours of professional labor/full Schedule 13e–3 filing * $175/hour. In aggregate, we estimate that filers would spend $1,729,440/year to file 96 full Schedule 13E–3s/year.

[292] Under the proposed rules, bidders would file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration. Because we are proposing Rule 425 in the Securities Act Reform Release, we estimate the burden hours of filings of pre-filing communications for those transactions in that release.

[293] According to Securities Data corporation and *Mergerstat*, in 1996 security holders received only cash in 37% of merger and tender offer transactions.

[294] We estimate filers would spend $46,233/filing in professional labor costs. We base this esimate on 264.19 hours of professional labor/full Schedule 14D–9 filing * $175/hour. In aggregate, we estimate that filers would spend $11,928,114/year to file 258 full Schjedule 14D–9s/year.

[295] Offerors currently require 232 hours to complete Schedule 13E–4, and 354.25 hours to complete Schedule 14D–1. In fiscal year 1998, offerors registered 139 business combinations on Schedule 13E–4 and 257 business combinations on Schedule 14D–1. We estimate the number of burden hours that offerors would require to file a full Schedule TO would be [(139 Schedule TO filings that previously would have been filed on Schedule 13E–4 * 232 hours/Schedule TO filing that previously would have been filed on Schedule 13E–4) + (257 Schedule TO filings that previously would have been filed on Schedule 14D–1 * 354.25 hours/Scheduel TO filing that previously would have been filed on Schedule 14D–1)—2 burden hours from simplification]/396 filings on Schedule TO=309 hours/filing on Schedule TO.

cash.[296] The rule would require filers to attach their written communications and would have few specific information requirements. We estimate that parties, on average, would file one written communication (in addition to the required information statement) for each cash transaction. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rules. Based on data from fiscal year 1998, we estimate parties would file 396 full Schedule TOs/year (expending 77.25 internal burden hours/filing) and 309 written communications/year (expending 0.25 internal burden hours/filing).[297] On average, filers would require approximately 43.50 internal burden hours to file 705 full Schedule TOs and written communications. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $40,556/filing in professional labor costs to file a full Schedule TO.[298] We request your comments and supporting empirical information on the reasonableness of these estimates.

In accordance with 44 U.S.C. § 3506c(2)(B), we solicit comment on the following:

- Whether the proposed changes in each collection of information are necessary for the proper performance of the function of the agency;
- The accuracy of our estimate of the burden of the proposed changes to each collection of information;
- The quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of any of the collections of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Anyone desiring to submit comments on any or all of the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–28–98. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Statutory Basis and Text of Proposed Amendments

The proposed rules, rule amendments, schedules, and schedule amendments in this release are being proposed under Sections 2(3), 5, 7, 8, 10, 12, 19 and 28, of the Securities Act of 1933, as amended, and Sections 3(b), 4(e), 10(b), 13, 14, 18, 23(a), 24 and 36 of the Securities Act of 1934, as amended.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegation.

17 CFR Parts 229, 230, 232, 239 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

For the reasons set out in the preamble, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. By adding paragraph (e)(16) to § 200.30–1, to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(16) Pursuant to Rule 14e–5(d) (§ 240.14e–5(d) of this chapter), to grant requests for exemptions from Rule 14e–5 (§ 240.14e-5 of this chapter).

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§ 200.30–3 [Amended]

3. By amending paragraph (a)(6) of § 200.30–3 to remove the phrase "Rules 10b–13(d), 14e–4(c), and 15c2–11(h) (§ § 240.10b–13(d), 240.14e–4(c), and 240.15c2–11(h) of this chapter)" and in its place add "Rules 14e–4(c), 14e–5(d), and 15c2–11(h) (§ § 240.14e–4(c), 240.14e–5(d), and 240.15c2–11(h) of this chapter)", and to remove the phrase "to grant requests for exemptions from Rules 10b–13, 14e–4, and 15c2–11) (§ § 240.10b–13, 240.14e–4, and 240.15c2–11 of this chapter)" and in its place add "to grant requests for exemptions from Rules 14e–4, 14e–5, and 15c2–11 (§ § 240.14e–4, 240.14e–5, and 240.15c2–11 of this chapter)".

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77(e), 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

5. By revising paragraph (a)(2) of § 229.10 to read as follows:

§ 229.10 General.

(a) *Application of Regulation S–K.* * * *

(2) Registration statements under section 12 (subpart C of part 249 of this chapter), annual or other reports under sections 13 and 15(d) (subparts D and E of part 249 of this chapter), going-private transactions under section 13 (part 240 of this chapter), tender offer statements under sections 13 and 14 (part 240 of this chapter), annual reports to security holders and proxy and information statements under section 14 (part 240 of this chapter), and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under that Act.

* * * * *

6. By adding an undesignated center heading and §§ 229.1000 through 229.1016 to read as follows:

Mergers and Acquisitions (M–A)

Sec.
229.1000 (Item 1000) Definitions.
229.1001 (Item 1001) Summary term sheet.
229.1002 (Item 1002) Subject company information.
229.1003 (Item 1003) Identity and background of filing person.

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[296] Under the proposed rules, bidders would file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration. Because we are proposing Rule 425 in the Securities Act Reform Release, we estimate the burden hours of filings of pre-filing communications for those transactions in that release.

[297] According to *Mergerstat*, in 1996 security holders received only cash in 78% of tender offer transactions.

[298] We estimate filers would spend $40,556/filing in professional labor costs. We base this estimate on 231.75 hours of professional labor/full Schedule TO filing * $175/hour. In aggregate, we estimate that filers would spend $16,060,176/year to file 396 full Schedule TOs/year.

229.1004 (Item 1004) Terms of the transaction.
229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.
229.1006 (Item 1006) Purpose of the transaction and plans or proposals.
229.1007 (Item 1007) Source and amount of funds or other consideration.
229.1008 (Item 1008) Interest in securities of the subject company.
229.1009 (Item 1009) Persons/assets, retained, employed, compensated or used.
229.1010 (Item 1010) Financial statements.
229.1011 (Item 1011) Additional information.
229.1012 (Item 1012) The solicitation or recommendation.
229.1013 (Item 1013) Purposes, alternatives, reasons and effects in a going-private transaction.
229.1014 (Item 1014) Fairness of the going-private transaction.
229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.
229.1016 (Item 1016) Exhibits.

Mergers and Acquisitions (M–A)

§ 229.1000 (Item 1000) Definitions.

The following definitions apply to the terms used in Regulation M–A (§§ 229.1000–229.1016), unless specified otherwise:

(a) *Associate* has the same meaning as in § 240.12b–2 of this chapter;

(b) *Instruction C* means General Instruction C to Schedule 13E–3 (§ 240.13e–100 of this chapter) and General Instruction C to Schedule TO (§ 240.14d–100 of this chapter);

(c) *Issuer tender offer* has the same meaning as in § 240.13e–4(a)(2) of this chapter;

(d) *Offeror* means any person on whose behalf a tender offer is made;

(e) *Rule 13e–3 transaction* has the same meaning as in § 240.13e–3(a)(3) of this chapter;

(f) *Subject company* means the company or entity whose securities are sought to be acquired in the transaction (*e.g.*, the target), or that is otherwise the subject of the transaction;

(g) *Subject securities* means the securities or class of securities that are sought to be acquired in the transaction or that are otherwise the subject of the transaction; and

(h) *Third-party tender offer* means a tender offer that is not an issuer tender offer.

§ 229.1001 (Item 1001) Summary term sheet.

Summary term sheet. Provide security holders with a summary term sheet that is written in plain English. The summary term sheet must briefly describe in bullet point format the most material terms of the proposed transaction. The summary term sheet must provide security holders with sufficient information to understand the essential features and significance of the proposed transaction. The bullet points must cross-reference a more detailed discussion contained in the disclosure document that is disseminated to security holders.

Instructions to Item 1001

1. The summary term sheet must not recite all information contained in the disclosure document that will be provided to security holders. The summary term sheet is intended to serve as an overview of all material matters that are presented in the accompanying documents provided to security holders.

2. The summary term sheet must begin on the first or second page of the disclosure document provided to security holders.

3. Refer to Rule 421(d) of Regulation C of the Securities Act (§ 230.421 of this chapter) for a description of plain English disclosure.

§ 229.1002 (Item 1002) Subject company information.

(a) *Name and address.* State the name of the subject company (or the issuer in the case of an issuer tender offer), and the address and telephone number of its principal executive offices.

(b) *Securities.* State the exact title and number of shares outstanding of the subject class of equity securities as of the most recent practicable date (which may be based upon information in the most recently available filing with the Commission by the subject company unless the filing person has more current information).

(c) *Trading market and price.* Identify the principal market in which the subject securities are traded and state the high and low sales prices for the subject securities in the principal market (or, if there is no principal market, the range of high and low bid quotations and the source of the quotations) for each quarter during the past two years. If there is no established trading market for the securities (except for limited or sporadic quotations), so state.

(d) *Dividends.* State the frequency and amount of any dividends paid during the past two years with respect to the subject securities and briefly describe any restriction on the issuer's current or future ability to pay dividends. If the filing person is an affiliate of the subject company, furnish this information to the extent known after making reasonable inquiry.

(e) *Prior public offerings.* If the filing person has made an underwritten public offering of the subject securities for cash during the past three years that was registered under the Securities Act of 1933 or exempt from registration under Regulation A (§ 230.251 through § 230.263 of this chapter), state the date of the offering, the amount of securities offered, the offering price per share (adjusted for stock splits, stock dividends, etc. as appropriate) and the aggregate proceeds received by the filing person.

(f) *Prior stock purchases.* If the filing person purchased any subject securities during the past two years, state the amount of the securities purchased, the range of prices paid and the average purchase price for each quarter during that period. Affiliates need not give information for purchases made before becoming an affiliate.

§ 229.1003 (Item 1003) Identity and background of filing person.

(a) *Name and address.* State the name, business address and business telephone number of each filing person. Also state the name and address of each person specified in Instruction C to the schedule (except for Schedule 14D–9 (§ 240.14d–101 of this chapter)). If the filing person is an affiliate of the subject company, state the nature of the affiliation. If the filing person is the subject company, so state.

(b) *Business and background of entities.* If any filing person (other than the subject company) or any person specified in Instruction C to the applicable schedule is not a natural person, state the person's principal business, state or other place of organization, and the information required by paragraphs (c)(3) and (c)(4) of this section for each person.

(c) *Business and background of natural persons.* If any filing person or any person specified in Instruction C to the schedule is a natural person, provide the following information for each person:

(1) Current principal occupation or employment and the name, principal business and address of any corporation or other organization in which the employment or occupation is conducted;

(2) Material occupations, positions, offices or employment during the past five years, giving the starting and ending dates of each and the name, principal business and address of any corporation or other organization in which the occupation, position, office or employment was carried on;

(3) A statement whether or not the person was convicted in a criminal proceeding during the past five years (excluding traffic violations or similar misdemeanors). If the person was convicted, describe the criminal proceeding, including the dates, nature of conviction, name and location of

court, and penalty imposed or other disposition of the case;

(4) A statement whether or not the person was a party to any judicial or administrative proceeding during the past five years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws. Describe the proceeding, including a summary of the terms of the judgment, decree or final order; and

(5) Country of citizenship.

(d) *Tender offer.* Identify the tender offer and the class of securities to which the offer relates, the name of the offeror and its address (which may be based on the offeror's Schedule TO (§ 240.14d-100 of this chapter) filed with the Commission).

Instruction to Item 1003

If the filing person is making information relating to the transaction available on the Internet, state the address where the information can be found.

§ 229.1004 (Item 1004) Terms of the transaction.

(a) *Material terms.* State the material terms of the transaction.

(1) *Tender offers.* In the case of a tender offer, the information must include:

(i) The total number and class of securities sought in the offer;

(ii) The type and amount of consideration offered to security holders;

(iii) The scheduled expiration date;

(iv) Whether a subsequent offering period will be available, if the transaction is a third-party tender offer;

(v) Whether the offer may be extended, and if so, how it could be extended;

(vi) The dates before and after which security holders may withdraw securities tendered in the offer;

(vii) The procedures for tendering and withdrawing securities;

(viii) The manner in which securities will be accepted for payment; and

(ix) The periods for accepting securities on a pro rata basis and the offeror's present intentions in the event that the offer is oversubscribed (if the offer is for less than all securities of a class).

(2) *Mergers or Similar Transactions.* In the case of a merger or similar transaction, the information must include:

(i) A brief description of the transaction;

(ii) The consideration offered to security holders;

(iii) The reasons for engaging in the transaction;

(iv) An explanation of any material differences in the rights of security holders as a result of the transaction;

(v) The vote required for approval of the transaction;

(vi) A brief statement as to the accounting treatment of the transaction; and

(vii) The federal income tax consequences of the transaction.

Instruction to Item 1004(a)

If the consideration offered consists solely of stock exempt from registration under the Securities Act of 1933, provide a description of the securities that complies with Item 202 of Regulation S–K (§ 229.202). This description is not required if the issuer of the securities meets the requirements of General Instructions I.B. and I.C.1. of Form B (§ 239.5 of this chapter) and elects to furnish information pursuant to Item 10; only capital stock is to be issued; and securities of the same class are registered under section 12 of the Exchange Act and either are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

(b) *Purchases.* State whether any securities are to be purchased from any officer, director or affiliate of the subject company and provide the details of each transaction.

(c) *Different terms.* Describe any term or arrangement in the Rule 13e-3 transaction that treats any subject security holders differently from other subject security holders.

(d) *Appraisal rights.* State whether or not dissenting security holders are entitled to any appraisal rights. If so, summarize the appraisal rights. If there are no appraisal rights available under state law for security holders who object to the transaction, briefly outline any other rights that may be available to security holders under the law.

(e) *Provisions for unaffiliated security holders.* Describe any provision made by the filing person in connection with the transaction to grant unaffiliated security holders access to the corporate files of the filing person or to obtain counsel or appraisal services at the expense of the filing person. If none, so state.

(f) *Eligibility for listing or trading.* If the transaction involves the offer of securities of the filing person in exchange for equity securities held by non-affiliated security holders of the subject company, describe whether or not the filing person will take steps to assure that the securities offered are or will be eligible for trading on any national securities exchange or an automated inter-dealer quotation system.

§ 229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.

(a) *Transactions.* Briefly state the nature and approximate dollar amount of any transaction, other than those described in paragraphs (b) or (c) of this section, that occurred during the past two years, between the filing person (including any person specified in Instruction C of the schedule) and;

(1) The subject company or any of its affiliates that are not natural persons if the aggregate value of the transactions is more than one percent of the subject company's consolidated revenues for:

(i) The fiscal year when the transaction occurred; or

(ii) The past portion of the current fiscal year, if the transaction occurred in the current year; and

Instruction to Item 1005(a)(1)

The information required by this Item may be based on information in the subject company's most recent filing with the Commission, unless the filing person has reason to believe the information is not accurate.

(2) Any executive officer, director or affiliate of the subject company that is a natural person if the aggregate value of a transaction or series of similar transactions with that person exceeds $60,000.

(b) *Significant corporate events.* Describe any negotiations, transactions or material contacts during the past two years between the filing person (including subsidiaries of the filing person and any person specified in Instruction C of the schedule) and the subject company or its affiliates concerning any:

(1) Merger;

(2) Consolidation;

(3) Acquisition;

(4) Tender offer for or other acquisition of any class of the subject company's securities;

(5) Election of the subject company's directors; or

(6) Sale or other transfer of a material amount of assets of the subject company.

(c) *Negotiations or contacts.* Describe any negotiations or material contacts concerning the matters referred to in paragraph (b) of this section during the past two years between:

(1) Any affiliates of the subject company; or

(2) The subject company or any of its affiliates and any person not affiliated with the subject company who would have a direct interest in such matters.

Instruction to Item 1005(c)

Identify the person who initiated the contacts or negotiations.

(d) *Conflicts of interest.* If material, describe any agreement, arrangement or understanding and any actual or potential conflict of interest between the filing person or its affiliates and:

(1) The subject company, its executive officers, directors or affiliates; or

(2) The offeror, its executive officers, directors or affiliates.

Instruction to Item 1005(d)

If the filing person is the subject company, no disclosure called for by this paragraph is required in the document disseminated to security holders, so long as substantially the same information was filed with the Commission previously and disclosed in a proxy statement, report or other communication sent to security holders by the subject company in the past year. The document disseminated to security holders, however, must refer specifically to the discussion in the proxy statement, report or other communication that was sent to security holders previously. The information also must be filed as an exhibit to the schedule.

(e) *Agreements involving the subject company's securities.* Describe any agreement, arrangement, or understanding between the filing person (including any person specified in Instruction C of the schedule) and any other person with respect to any securities of the subject company. Name all persons that are a party to the agreements, arrangements, or understandings and describe all material provisions.

Instructions to Item 1005(e)

1. The information required by this Item includes: the transfer or voting of securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies, consents or authorizations.

2. Include information for any securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of the subject securities. No disclosure, however, is required about standard default and similar provisions contained in loan agreements.

§ 229.1006 (Item 1006) Purpose of the transaction and plans or proposals.

(a) *Purposes.* State the purposes of the transaction.

(b) *Use of securities acquired.* Indicate whether the securities acquired in the transaction will be retained, retired, held in treasury, or otherwise disposed of.

(c) *Plans.* Describe any plans, proposals or negotiations that relate to or would result in:

(1) Any extraordinary transaction, such as a merger, reorganization or liquidation, involving the subject company or any of its subsidiaries;

(2) Any purchase, sale or transfer of a material amount of assets of the subject company or any of its subsidiaries;

(3) Any material change in the present dividend rate or policy, or indebtedness or capitalization of the subject company;

(4) Any change in the present board of directors or management of the subject company, including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board or to change any material term of the employment contract of any executive officer;

(5) Any other material change in the subject company's corporate structure or business, including, if the subject company is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by Section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a–13);

(6) Any class of equity securities of the subject company to be delisted from a national securities exchange or cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(7) Any class of equity securities of the subject company becoming eligible for termination of registration under Section 12(g)(4) of the Act (15 U.S.C. 78*l*);

(8) The suspension of the subject company's obligation to file reports under Section 15(d) of the Act (15 U.S.C. 78o);

(9) The acquisition by any person of additional securities of the subject company, or the disposition of securities of the subject company; or

(10) Any changes in the subject company's charter, bylaws or other governing instruments or other actions that could impede the acquisition of control of the subject company.

(d) *Subject company negotiations.* If the filing person is the subject company:

(1) State whether or not that person is engaged in any negotiations in response to the tender offer that relate to:

(i) A tender offer or other acquisition of the subject company's securities by the filing person or any of its subsidiaries; or

(ii) Any of the matters referred to in paragraphs (c)(1) through (c)(3) of this section; and

(2) Describe any transaction, board resolution, or signed contract that is entered into in response to the tender offer that relates to one or more of the matters referred to in paragraph (d)(1) of this section.

Instruction to Item 1006(d)(1)

If an agreement in principle has not been reached at the time of filing, no disclosure under paragraph (d)(1) of this section is required of the possible terms of or the parties to the transaction if in the opinion of the board of directors of the subject company disclosure would jeopardize continuation of the negotiations. In that case, disclosure indicating that negotiations are being undertaken or are underway and are in the preliminary stages is sufficient.

§ 229.1007 (Item 1007) Source and amount of funds or other consideration.

(a) *Source of funds.* State the specific sources and total amount of funds or other consideration to be used in the transaction. If the transaction involves a tender offer, disclose the amount of funds or other consideration required to purchase the maximum amount of securities sought in the offer.

(b) *Conditions.* State any material conditions to the financing discussed in response to paragraph (a) of this section. Disclose any alternative financing arrangements or alternative financing plans in the event the primary financing plans fall through. If none, so state.

(c) *Expenses.* Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the transaction including, but not limited to, filing, legal, accounting and appraisal fees, solicitation expenses and printing costs and state whether or not the subject company has paid or will be responsible for paying any or all expenses.

(d) *Borrowed funds.* If all or any part of the funds or other consideration required is, or is expected to be borrowed, directly or indirectly, for the purpose of the transaction:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and any other material terms or conditions of the loan; and

(2) Briefly describe any plans or arrangements to finance or repay the loan, or, if no plans or arrangements have been made, so state.

Instruction to Item 1007(d)

If the transaction is a third-party tender offer and the source of all or any part of the funds used in the transaction is to come from a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act (15 U.S.C. § 78c), the name of the bank will not be made available to the public if the filing person so requests in writing and files the request, naming the bank, with the Secretary of the Commission.

§ 229.1008 (Item 1008) Interest in securities of the subject company.

(a) *Securities ownership.* State the aggregate number and percentage of subject securities that are beneficially owned by each person named in response to Item 1003 of Regulation M–A (§ 229.1003) and by each associate and majority-owned subsidiary of those persons. Give the name and address of any associate or subsidiary.

Instructions to Item 1008(a)

1. For purposes of this section, beneficial ownership is determined in accordance with Rule 13d–3 (§ 240.13d–3 of this chapter) under the Exchange Act. Identify the shares that there is a right to acquire.

2. The information required by this section may be based on the number of outstanding securities disclosed in the subject company's most recently available filing with the Commission, unless the filing person has more current information.

3. The information required by this section with respect to officers, directors and associates of the subject company must be given to the extent known after making reasonable inquiry.

(b) *Securities transactions.* Describe any transaction in the subject securities during the past 60 days. The description of transactions required must include, but not necessarily be limited to:

(1) The identity of the persons specified in the Instruction to this section who effected the transaction;

(2) The date of the transaction;

(3) The amount of securities involved;

(4) The price per share; and

(5) Where and how the transaction was effected.

Instructions to Item 1008(b)

1. Provide the required transaction information for the following persons:

(a) The filing person (for all schedules);

(b) Any person named in Instruction C of the schedule and any associate or majority-owned subsidiary of the issuer or affiliate filing the schedule (for all schedules except Schedule 14D–9 (§ 240.14d–101 of this chapter));

(c) Any executive officer, director, affiliate or subsidiary of the filing person (for Schedule 14D–9 (§ 240.14d–101 of this chapter);

(d) The issuer and any executive officer or director of any subsidiary of the issuer or filing person (for an issuer tender offer on Schedule TO (§ 240.14d–100 of this chapter)); and

(e) The issuer and any pension, profit-sharing or similar plan of the issuer or affiliate filing the schedule (for a going-private transaction on Schedule 13E–3 (§ 240.13e–100 of this chapter)).

2. Provide the information required by this Item if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not initially available, it must be obtained and filed with the Commission promptly, but in no event later than three business days after the date of the filing, and if material, disclosed in a manner reasonably designed to inform security holders.

§ 229.1009 (Item 1009) Persons/assets, retained, employed, compensated or used.

(a) *Solicitations or recommendations.* Identify all persons and classes of persons that are directly or indirectly employed, retained, or to be compensated to make solicitations or recommendations in connection with the transaction. Provide a summary of all material terms of employment, retainer or other arrangement for compensation.

(b) *Employees and corporate assets.* Identify any officer, class of employees or corporate assets of the subject company that has been or will be employed or used by the filing person in connection with the transaction. Describe the purpose for their employment or use.

Instruction to Item 1009(b)

Provide all information required by this Item except for the information required by paragraph (a) of this section and Item 1007 of Regulation M–A (§ 229.1007).

§ 229.1010 (Item 1010) Financial statements.

(a) *Financial information.* Furnish the following financial information:

(1) Audited financial statements for the two fiscal years required to be filed with the company's most recent annual report under Sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m; 15 U.S.C. 78o);

(2) Unaudited balance sheets, comparative year-to-date income statements and related earnings per share data, statements of cash flows, and comprehensive income required to be included in the company's most recent quarterly report filed under the Exchange Act;

(3) Ratio of earnings to fixed charges, computed in a manner consistent with § 229.503(d), for the two most recent fiscal years and the interim periods provided under paragraph (a)(2) of this section; and

(4) Book value per share as of the date of the most recent balance sheet presented.

(b) *Pro forma information.* If material, furnish pro forma information disclosing the effect of the transaction on:

(1) The company's balance sheet as of the date of the most recent balance sheet presented under paragraph (a) of this section;

(2) The company's statement of income, earnings per share, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period provided under paragraph (a)(2) of this section; and

(3) The company's book value per share as of the date of the most recent balance sheet presented under paragraph (a) of this section.

(c) *Summary information.* Furnish a fair and adequate summary of the information specified in paragraphs (a) and (b) of this section for the same periods specified. A fair and adequate summary includes:

(1) The summarized financial information specified in § 210.1–02(bb) of this chapter;

(2) Income per common share from continuing operations (basic and diluted, if applicable);

(3) Net income per common share (basic and diluted, if applicable);

(4) Ratio of earnings to fixed charges, computed in a manner consistent with § 229.503(d);

(5) Book value per share as of the date of the most recent balance sheet; and

(6) If material, pro forma data for the summarized financial information specified in paragraph (c)(1) through (c)(6) of this section disclosing the effect of the transaction.

§ 229.1011 (Item 1011) Additional information.

(a) *Agreements, regulatory requirements and legal proceedings.* If material to a security holder's decision whether to sell, tender or hold the securities sought in the tender offer, furnish the following information:

(1) Any present or proposed material agreement, arrangement, understanding or relationship between the offeror or any of its executive officers, directors, controlling persons or subsidiaries and the subject company or any of its executive officers, directors, controlling persons or subsidiaries (other than any agreement, arrangement or understanding disclosed under any other sections of Regulation M–A (§§ 229.1000–229.1016));

Instruction to Paragraph (a)(1)

In an issuer tender offer disclose any material agreement, arrangement, understanding or relationship between the offeror and any of its executive officers, directors, controlling persons or subsidiaries.

(2) To the extent known by the offeror after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(3) The applicability of any anti-trust laws;

(4) The applicability of margin requirements under Section 7 of the Act (15 U.S.C. 78g) and the applicable regulations; and

(5) Any material pending legal proceedings relating to the tender offer, including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties, and a brief summary of the proceedings and the relief sought.

Instruction to Item 1011(a)(5)

A copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding must be furnished promptly to the Commission staff on a supplemental basis.

(b) *Other material information.* Furnish such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

§ 229.1012 (Item 1012) The solicitation or recommendation.

(a) *Solicitation or recommendation.* State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the filing person is advising holders of the subject securities to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, describe the other action recommended. If the filing person is the subject company and is not making a recommendation, state whether the subject company is expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) *Reasons.* State the reasons for the position (including the inability to take a position) stated in paragraph (a) of this section. Conclusory statements such as "The tender offer is in the best interests of shareholders" are not considered sufficient disclosure.

(c) *Intent to tender.* To the extent known by the filing person after making reasonable inquiry, state whether the filing person or any executive officer, director, affiliate or subsidiary of the filing person currently intends to tender, sell or hold the subject securities that are held of record or beneficially owned by that person.

(d) *Intent to tender or vote in a going-private transaction.* To the extent known by the filing person after making reasonable inquiry, state whether or not any executive officer, director or affiliate of the issuer (or any person specified in Instruction C to the schedule) currently intends to tender or sell subject securities owned or held by that person and/or how each person currently intends to vote subject securities, including any securities the person has proxy authority for. State the reasons for the intended action.

Instruction to Item 1012(d)

Provide the information required by this section if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not available, it must be filed with the Commission promptly, but in no event later than three business days after the date of the filing, and if material, disclosed in a manner reasonably designed to inform security holders.

(e) *Recommendations of others.* To the extent known by the filing person after making reasonable inquiry, state whether or not any person specified in paragraph (d) of this section has made a recommendation either in support of or opposed to the transaction and the reasons for the recommendation.

§ 229.1013 (Item 1013) Purposes, alternatives, reasons and effects in a going-private transaction.

(a) *Purposes.* State the purposes for the Rule 13e–3 transaction.

(b) *Alternatives.* If the subject company or affiliate considered alternative means to accomplish the stated purposes, briefly describe the alternatives and state the reasons for their rejection.

(c) *Reasons.* State the reasons for the structure of the Rule 13e–3 transaction and for undertaking the transaction at this time.

(d) *Effects.* Describe the effects of the Rule 13e–3 transaction on the subject company, its affiliates and unaffiliated security holders, including the federal tax consequences of the transaction.

Instructions to Item 1013

1. Conclusory statements will not be considered sufficient disclosure in response to this section.

2. The description required by paragraph (d) of this section must include a reasonably detailed discussion of both the benefits and detriments of the Rule 13e–3 transaction to the subject company, its affiliates and unaffiliated security holders. The benefits and detriments of the Rule 13e–3 transaction must be quantified to the extent practicable.

3. If this statement is filed by an affiliate of the subject company, the description required by paragraph (d) of this section must include, but not be limited to, the effect of the Rule 13e–3 transaction on the affiliate's interest in the net book value and net earnings of the subject company in terms of both dollar amounts and percentages.

§ 229.1014 (Item 1014) Fairness of the going-private transaction.

(a) *Fairness.* State whether the subject company or affiliate filing the statement reasonably believes that the Rule 13e–3 transaction is fair or unfair to unaffiliated security holders. If any director dissented to or abstained from voting on the Rule 13e–3 transaction, identify the director, and indicate, if known, after making reasonable inquiry, the reasons for the dissent or abstention.

(b) *Factors considered in determining fairness.* Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this section is based and, to the extent practicable, the weight assigned to each factor. The discussion must include an analysis of the extent, if any, to which the filing person's beliefs are based on the factors described in Instruction 2 of this section, paragraphs (c), (d) and (e) of this section and § 229.1015.

(c) *Approval of security holders.* State whether or not the transaction is structured so that approval of at least a majority of unaffiliated security holders is required.

(d) *Unaffiliated representative.* State whether or not a majority of directors who are not employees of the subject company has retained an unaffiliated representative to act solely on behalf of unaffiliated security holders for purposes of negotiating the terms of the Rule 13e–3 transaction and/or preparing a report concerning the fairness of the transaction.

(e) *Approval of directors.* State whether or not the Rule 13e–3 transaction was approved by a majority of the directors of the subject company who are not employees of the subject company.

(f) *Other offers.* If any offer of the type described in paragraph (viii) of Instruction 2 to this section has been received, describe the offer and state the reasons for its rejection.

Instructions to Item 1014

1. A statement that the issuer or affiliate has no reasonable belief as to the fairness of the Rule 13e–3 transaction to unaffiliated security holders will not be considered sufficient disclosure in response to paragraph (a) of this section.

2. The factors that are important in determining the fairness of a transaction to unaffiliated security holders and the weight, if any, that should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraphs (c), (d) and (e) of this section and whether the consideration offered to unaffiliated security holders constitutes fair value in relation to:

(i) Current market prices;

(ii) Historical market prices;

(iii) Net book value;

(iv) Going concern value;

(v) Liquidation value;

(vi) Purchase prices paid in previous purchases disclosed in response to § 229.1002(f);

(vii) Any report, opinion, or appraisal described in § 229.1015; and

(viii) Firm offers of which the subject company or affiliate is aware made by any unaffiliated person, other than the filing persons, during the past two years for:

(A) The merger or consolidation of the subject company with or into another company, or *vice versa;*

(B) The sale or other transfer of all or any substantial part of the assets of the subject company; or

(C) A purchase of the subject company's securities that would enable the holder to exercise control of the subject company.

3. Conclusory statements, such as "The Rule 13e–3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer" will not be considered sufficient disclosure in response to paragraph (b) of this section.

§ 229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.

(a) *Report, opinion or appraisal.* State whether or not the subject company or affiliate has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party that is materially related to the Rule 13e–3 transaction, including, but not limited to: any report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the transaction to the issuer or affiliate or to security holders who are not affiliates.

(b) *Preparer and summary of the report, opinion or appraisal.* For each report, opinion or appraisal described in response to paragraph (a) of this section or any negotiation or report described in response to Item 1014(d) of Regulation M–A (§ 229.1014) or Item 14(b)(6) of Schedule 14A (§ 240.14a–101 of this chapter) concerning the terms of the transaction:

(1) Identify the outside party and/or unaffiliated representative;

(2) Briefly describe the qualifications of the outside party and/or unaffiliated representative;

(3) Describe the method of selection of the outside party and/or unaffiliated representative;

(4) Describe any material relationship that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship between:

(i) The outside party, its affiliates, and/or unaffiliated representative; and

(ii) The subject company or its affiliates;

(5) If the report, opinion or appraisal relates to the fairness of the consideration, state whether the subject company or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and

(6) Furnish a summary concerning the negotiation, report, opinion or appraisal. The summary must include, but need not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the subject company or affiliate; and any limitation imposed by the subject company or affiliate on the scope of the investigation.

Instruction to Item 1015(b)

The information called for by paragraphs (b)(1), (2) and (3) of this section must be given with respect to the firm that provides the report, opinion or appraisal rather than the employees of the firm that prepared the report.

(c) *Availability of documents.* Furnish a statement to the effect that the report, opinion or appraisal will be made available for inspection and copying at the principal executive offices of the subject company or affiliate during its regular business hours by any interested equity security holder of the subject company or representative who has been so designated in writing. This statement also may provide that a copy of the report, opinion or appraisal will be transmitted by the subject company or affiliate to any interested equity security holder of the subject company or representative who has been so designated in writing upon written request and at the expense of the requesting security holder.

§ 229.1016 (Item 1016) Exhibits.

File as an exhibit to the schedule:

(a) Any disclosure materials furnished to security holders by or on behalf of the filing person, including:

(1) Tender offer materials (including transmittal letter);

(2) Solicitation or recommendation (including those referred to in § 229.1012;

(3) Going-private disclosure document;

(4) Prospectus used in connection with an exchange offer where securities are registered under the Securities Act of 1933; and

(5) Any other disclosure materials;

(b) Any loan agreement referred to in response to § 229.1007;

Instruction to Item 1016(b)

If the filing relates to a third-party tender offer and a request is made under § 229.1007(d), the identity of the bank providing financing may be omitted from the loan agreement filed as an exhibit.

(c) Any report, opinion or appraisal referred to in response to § 229.1014(d) or § 229.1015;

(d) Any document setting forth the terms of any agreement, arrangement, understanding or relationship referred to in response to § 229.1005(e) or § 229.1011(a)(1);

(e) Any agreement, arrangement or understanding referred to in response to § 229.1005(d), or the pertinent portions of any proxy statement, report or other communication containing the disclosure required by § 229.1005(d);

(f) A detailed statement describing security holders' appraisal rights and the procedures for exercising those appraisal rights referred to in response to § 229.1004(d);

(g) Any written instruction, form or other material that is furnished to persons making an oral solicitation or recommendation by or on behalf of the filing person directly or indirectly in connection with the transaction; and

(h) Any written opinion prepared by legal counsel at the filing person's request and communicated to the filing person pertaining to the tax consequences of the transaction.

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M–A

	13E–3	TO	14D–9
Disclosure Material	X	X	X
Loan Agreement	X	X	
Report, Opinion or Appraisal	X		
Contracts, Arrangements or Understandings	X	X	X
Statement re: Appraisal Rights	X		
Oral Solicitation Materials	X	X	X

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M–A—Continued

	13E–3	TO	14D–9
Tax Opinion		X	

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

7. The authority citation for part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

8. In § 230.145 as proposed to be amended in a document published elsewhere in this **Federal Register**, republish the last sentence of the first paragraph of Preliminary Note and paragraph (b) to read as follows:

§ 230.145 Reclassifications of securities, mergers, consolidations and acquisitions of assets.

Preliminary Note: * * * Issuers must register transactions described in paragraph (a) of this section on Form C (§ 239.6 of this chapter), Form SB–3 (§ 239.11 of this chapter) or Form N–14 (§ 239.23 of this chapter).

* * * * *

(b) *Communications.* Communications in connection with a registered transaction described in paragraph (a) of this section may be made in accordance with § 230.135, § 230.165, § 230.166, § 230.167, § 230.168 or § 230.169.

* * * * *

9. By adding § 230.162 to read as follows:

§ 230.162 Submission of tenders in registered exchange offers.

Notwithstanding Section 5(a) of the Act (15 U.S.C. 77e), security holders may tender their securities in an exchange offer subject to Regulation 14D (§§ 240.14d–1 through 240.14d–101) before a registration statement is effective as to the security offered, so long as no securities are purchased until the registration statement is effective and the tender offer has expired in accordance with the tender offer rules.

10. In § 230.166 as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (b) to read as follows:

§ 230.166 Offers made before filing a registration statement.

* * * * *

(b) *Form C/SB–3 transactions.* Notwithstanding Section 5(c) of the Act (15 U.S.C. 77e), the offeror of securities in a transaction to be registered on Form C (§ 239.6 of this chapter), SB–3 (§ 239.11 of this chapter), F–8 (§ 239.38 of this chapter), F–80 (§ 239.41 of this chapter) or F–10 (§ 239.40 of this chapter) (when that form is used in a business combination) may make an offer to sell or solicit an offer to buy securities before the filing of a registration statement with respect to those securities if:

(1) Any prospectus relating to the transaction used in the period beginning with the first public announcement and ending with the filing of the registration statement is filed in accordance with § 230.425; and

(2) In an exchange offer, the offers are made in accordance with the tender offer rules; and, in a transaction involving the vote of security holders, the offers are made in accordance with the proxy rules.

11. In § 230.167 as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (b) to read as follows:

§ 230.167 Exemption from Section 5(c) for certain communications.

* * * * *

(b) In offerings registered on Form C (§ 239.6 of this chapter), SB–3 (§ 239.11 of this chapter), F–8 (§ 239.38 of this chapter), F–80 (§ 239.41 of this chapter) or F–10 (§ 239.40 of this chapter) (when Form F–10 is used in connection with a business combination transaction), any communication before the first communication related to the offering (except for communications among the participants in the offering) shall not constitute an offer to sell or an offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act, provided that the parties to the transaction take all reasonable steps within their control to prevent further distribution or publication of such communication during the period between that first communication and the date of filing the registration statement.

* * * * *

12. In § 230.425 as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (b)(3) to read as follows:

§ 230.425 Filing of "free writing" and other non-section 10 prospectuses.

* * * * *

(b) * * *

(3) Five copies of any prospectus used before the filing of a registration statement in reliance on § 230.166(b) must be filed with the Commission on or before the date of first use. Each copy of a prospectus filed under this section must identify the filer and the company that is the subject of the offering in the upper right hand corner of the cover page, in addition to the information required by paragraph (c) of this section.

* * * * *

13. By revising § 230.432 to read as follows:

§ 230.432 Additional information required to be included in prospectuses relating to tender offers.

Notwithstanding the provisions of any form for the registration of securities under the Act, any prospectus relating to securities to be offered in connection with a tender offer for, or a request or invitation for tenders of, securities that is subject to section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n) must include all of the information required by § 240.14d–6(d)(1) of this chapter to be included in all such tender offers, requests or invitations, published or sent or given to the holders of such securities.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

14. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

§ 232.13 [Amended]

15. By amending § 232.13 in the first sentence of paragraph (d) by removing the phrase "may be 'mailed for filing with the Commission' at the same time" and adding in its place "must be filed on the same day" and by removing the phrase "on a business day" and adding in its place "during the official business hours".

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

16. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

17. In Form C (referenced in § 239.6) as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (c) of Item 18 and paragraph (b) of Item 21 to read as follows:

Note: Form C does not and this amendment will not appear in the Code of Federal Regulations.

Form C

* * * * *

Item 18. Information Required for All Other (Non-Small Business) Companies

* * * * *

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3 (b)(1) and (b)(2) if one was required.

Instructions to paragraph (c):

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

Item 21. Information Required for All Other Small Business Issuers

* * * * *

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3 (b)(1) and (b)(2) if one was required.

Instructions to paragraph (b):

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

18. In Form SB–3 (referenced in § 239.11) as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (b) of Item 16 and paragraph (c) of Item 19 to read as follows:

Note: Form SB–3 does not and this amendment will not appear in the Code of Federal Regulations.

Form SB–3

* * * * *

Item 16. Information Required for All Other Small Business Issuers

* * * * *

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3 (b)(1) and (b)(2) if one was required.

Instructions to paragraph (b):

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

Item 19. Information Required for All Other Companies

* * * * *

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3 (b)(1) and (b)(2) if one was required.

Instructions to paragraph (c):

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

19. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.10b–13 [Removed and Reserved]

20. By removing and reserving § 240.10b–13.

21. By revising the section heading and § 240.13e–1 to read as follows:

§ 240.13e–1 Purchase of securities by the issuer during a third-party tender offer.

An issuer that has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Act (15 U.S.C. 78n), that has commenced under § 240.14d–2 must not purchase any of its equity securities during the tender offer unless the issuer first:

(a) Files a statement with the Commission containing the following information:

(1) The title and number of securities to be purchased;

(2) The names of the persons or classes of persons from whom the issuer will purchase the securities;

(3) The name of any exchange, inter-dealer quotation system or any other market on or through which the securities will be purchased;

(4) The purpose of the purchase;

(5) Whether the issuer will retire the securities, hold the securities in its treasury, or dispose of the securities. If the issuer intends to dispose of the securities, describe how it intends to do so; and

(6) The source and amount of funds or other consideration to be used to make the purchase. If the issuer borrows any funds or other consideration to make the purchase or enters any agreement for the purpose of acquiring, holding, or trading the securities, describe the transaction and agreement and identify the parties;

(b) Sends the statement containing the information in paragraph (a) of this section to all of its equity security holders before purchasing any securities; and

(c) Pays the fee required by § 240.0–11 when it files the initial statement.

Instruction to § 240.13e–1

File eight copies if paper filing is permitted.

22. By amending § 240.13e–3 by revising paragraphs (d) and (e); revising the title of paragraph (f); removing the reference "Chapter X" in paragraph (g)(5) and in its place add "Chapter XI"; removing the reference "section 174" in paragraph (g)(5) and in its place add "section 1125(b)"; and removing the reference "section 175 of the Act" in paragraph (g)(5) and in its place add "section 1125(b) of that Act", to read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

* * * * *

(d) *Material required to be filed.* The issuer or affiliate engaging in a Rule 13e–3 transaction must file with the Commission:

(1) A Schedule 13E–3 (§ 240.13e–100), including all exhibits;

(2) An amendment to Schedule 13E–3 reporting promptly any material changes in the information set forth in the schedule previously filed; and

(3) A final amendment to Schedule 13E–3 reporting promptly the results of the Rule 13e–3 transaction.

(e) *Disclosure of information to security holders.* (1) In addition to disclosing the information required by any other applicable rule or regulation under the federal securities laws, the issuer or affiliate engaging in a Rule 13e–3 transaction must disclose to security holders of the class that is the subject of the transaction, as specified in paragraph (f) of this section, the following:

(i) The information required by Item 1 of Schedule 13E–3 (§ 240.13e–100) (Summary Term Sheet);

(ii) The information required by Items 7, 8 and 9 of Schedule 13E–3, which must be prominently disclosed in a "Special Factors" section in the front of the disclosure document;

(iii) A prominent legend on the outside front cover page that indicates that neither the Securities and Exchange Commission nor any state securities commission has: approved or disapproved of the transaction; passed upon the merits or fairness of the transaction; or passed upon the adequacy or accuracy of the disclosure in the document. The legend also must make it clear that any representation to the contrary is a criminal offense;

(iv) The information concerning appraisal rights required by § 229.1016(f) of this chapter; and

(v) The information required by the remaining items of Schedule 13E–3, except for § 229.1016 of this chapter (exhibits), or a fair and adequate summary of the information.

Instructions to Paragraph (e)(1)

1. If the Rule 13e–3 transaction also is subject to Regulation 14A (§§ 240.14a–1 through 240.14b–2) or 14C (§§ 240.14c–1 through 240.14c–101), the registration provisions and rules of the Securities Act of 1933, Regulation 14D or § 240.13e–4, the information required by paragraph (e)(1) of this section must be combined with the proxy statement, information statement, prospectus or tender offer material sent to security holders.

2. If the Rule 13e–3 transaction involves a registered securities offering, the legend required by § 229.501(b)(7) of this chapter must be combined with the legend required by paragraph (e)(1)(iii) of this section.

3. The required legend must be written in clear, plain language.

(2) If there is any material change in the information previously disclosed to security holders, the issuer or affiliate must disclose the change promptly to security holders as specified in paragraph (f)(1)(iii) of this section.

(f) *Dissemination of information to security holders.* * * *

* * * * *

23. By amending § 240.13e–4 by removing the reference:

a. "Schedule 13E–4 [§ 240.13E–101]" that appears in the introductory text of paragraph (a) and paragraph (a)(3) and in its place add "Schedule TO (§ 240.14d–100)";

b. "Schedule 13E–4 Issuer Tender Offer Statement (§ 240.13e–101)," that appears in paragraph (f)(12) and in its place add "Schedule TO (§ 240.14d–100),"; "paragraph (a) of Item 9 of that Schedule" that appears in paragraph (f)(12) and in its place add "Item 1016(a)(1) of Regulation M–A (§ 229.1016(a)(1) of this chapter)"; and

c. "Schedule 13E–4" that appears in the introductory text of paragraph (g) and in its place add "Schedule TO (§ 240.14d–100)".

24. By amending § 240.13e–4 by redesignating paragraph (b) as paragraph (i); removing the reference "paragraph (b)(1)" in newly redesignated paragraph (i)(2)(ii) and in its place add "paragraph (i)(1)"; adding new paragraph (b); revising paragraph (a)(4); and revising the title and text of paragraphs (c), (d) and (e) to read as follows:

§ 240.13e–4 Tender offers by issuers.

(a) *Definitions.* * * *

(4) The term *commencement* means 12:01 a.m. on the date that the issuer or affiliate has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

* * * * *

(b) As soon as practicable on the date of commencement of the issuer tender offer, the issuer or affiliate making the issuer tender offer must comply with:

(1) The filing requirements of paragraph (c)(2) of this section;

(2) The disclosure requirements of paragraph (d)(1) of this section; and

(3) The dissemination requirements of paragraph (e)(1) of this section.

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(c) *Material required to be filed.* The issuer or affiliate making the issuer tender offer must file with the Commission:

(1) All written communications made by the issuer or affiliate relating to the issuer tender offer, from and including the first public announcement, as soon as practicable on the date of the communication;

(2) A Schedule TO (§ 240.14d–100), including all exhibits;

(3) An amendment to Schedule TO (§ 240.14d–100) reporting promptly any material changes in the information set forth in the schedule previously filed; and

(4) A final amendment to Schedule TO (§ 240.14d–100) reporting promptly the results of the issuer tender offer.

Instructions to § 240.13e–4(c)

1. Pre-commencement communications must be filed under cover of Schedule TO (§ 240.14d–100) and the box on the cover page of the schedule must be marked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed to have been filed under this section as well.

3. Each pre-commencement communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer.

4. See §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter for pre-commencement communications made in connection with registered exchange offers.

5. Communications of the type described under § 230.169 of this chapter need not be filed under this section.

(d) *Disclosure of tender offer information to security holders.* (1) The issuer or affiliate making the issuer tender offer must disclose, in a manner prescribed by paragraph (e)(1) of this section, the following:

(i) The information required by Item 1 of Schedule TO (§ 240.14d–100) (summary term sheet); and

(ii) The information required by the remaining items of Schedule TO for issuer tender offers, except for Item 12 (exhibits), or a fair and adequate summary of the information.

(2) If the issuer or affiliate is registering securities under the Securities Act of 1933 in connection with the issuer tender offer, the prospectus must contain the information specified in paragraph (d)(1) of this section in addition to the information required to be disclosed under the Securities Act and the rules and regulations.

(3) If there are any material changes in the information previously disclosed to security holders, the issuer or affiliate must disclose the changes promptly to security holders in a manner specified in paragraph (e)(2) of this section.

(4) If the issuer or affiliate disseminates the issuer tender offer by means of summary publication as described in paragraph (e)(1)(ii) of this section, the summary advertisement must not include a transmittal letter that would permit security holders to tender securities sought in the offer and must disclose at least the following information:

(i) The identity of the issuer or affiliate making the issuer tender offer;

(ii) The information required by § 229.1004(a)(1) and § 229.1006(a) of this chapter;

(iii) Instructions on how security holders can obtain promptly a copy of the statement required by paragraph (d)(1) of this section, at the issuer or affiliate's expense; and

(iv) A statement that the information contained in the statement required by paragraph (d)(1) of this section is incorporated by reference.

(e) *Dissemination of tender offers to security holders.* (1) An issuer tender offer will be deemed to be published, sent or given to security holders if the issuer or affiliate making the issuer tender offer complies fully with one or more of the methods described in paragraph (e)(1)(i) or (e)(2)(ii) of this section. For purposes of paragraph (e)(1)(ii) of this section, adequate publication of the issuer tender offer may require publication in a newspaper with a national circulation, a newspaper with metropolitan or regional circulation, or a combination of the two, depending upon the facts and circumstances involved.

(i) Dissemination of any issuer tender offer by use of stockholder and other lists:

(A) By mailing or otherwise furnishing promptly a statement containing the information required by paragraph (d)(1) of this section to each security holder whose name appears on the most recent stockholder list of the issuer;

(B) By contacting each participant on the most recent security position listing of any clearing agency within the possession or access of the issuer or affiliate making the issuer tender offer, and making inquiry of each participant as to the approximate number of beneficial owners of the securities sought in the offer that are held by the participant;

(C) By furnishing to each participant a sufficient number of copies of the statement required by paragraph (d)(1)(ii) of this section for transmittal to the beneficial owners; and

(D) By agreeing to reimburse each participant promptly for its reasonable expenses incurred in forwarding the statement to beneficial owners.

(ii) Dissemination of certain cash issuer tender offers by summary publication:

(A) If the issuer tender offer is not subject to § 240.13e–3 (§ 240.13e–3), by making adequate publication of a summary advertisement containing the information required by paragraph (d)(4) of this section in a newspaper or newspapers, on the date of commencement of the issuer tender offer; and

(B) By mailing or otherwise furnishing promptly the statement required by paragraph (d)(1) of this section and a transmittal letter to any security holder who requests a copy of the statement or transmittal letter.

(2) If a material change occurs in the information published, sent or given to security holders, the issuer or affiliate must disseminate promptly disclosure of the change in a manner reasonably calculated to inform security holders of the change.

* * * * *

25. By revising § 240.13e–100 to read as follows:

§ 240.13e–100 Schedule 13E–3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e–3 (§ 240.13e–3) thereunder.

Securities and Exchange Commission,
Washington, D.C. 20549

Rule 13e–3 Transaction Statement under Section 13(e) of the Securities Exchange Act of 1934

(Amendment No.) ______
(Name of the Issuer) ______
(Names of Persons Filing Statement) ______
(Title of Class of Securities) ______
(CUSIP Number of Class of Securities) ______

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of the Persons Filing Statement)

This statement is filed in connection with (check the appropriate box):

a. [ ] The filing of solicitation materials or an information statement subject to Regulation 14A (§ § 240.14a–1 through 240.14b–2), Regulation 14C (§ § 240.14c–1 through 240.14c–101) or Rule 13e–3(c) (§ 240.13e–3(c)) under the Securities Exchange Act of 1934 ("the Act").

b. [ ] The filing of a registration statement under the Securities Act of 1933.

c. [ ] A tender offer.

d. [ ] None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies: [ ]

Check the following box if the filing is a final amendment reporting the results of the transaction: [ ]

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check the box if any part of the fee is offset as provided by § 240.0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: ____________
Form or Registration No.: ____________
Filing Party: ____________
Date Filed: ____________

General Instructions

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by § 240.0–11(b).

C. If the statement is filed by a general or limited partnership, syndicate or other group, the information called for by Items 3, 5, 6, 10 and 11 must be given with respect to: (i) each partner of the partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the items specified above must be given with respect to: (a) each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.

D. Depending on the type of Rule 13e–3 transaction (§ 240.13e–3(a)(3)), this statement must be filed with the Commission:

1. At the same time as filing preliminary or definitive soliciting materials or an information statement under Regulations 14A or 14C of the Act;

2. At the same time as filing a registration statement under the Securities Act of 1933;

3. As soon as practicable on the date a tender offer is first published, sent or given to security holders; or

4. At least 30 days before any purchase of securities of the class of securities subject to the Rule 13e–3 transaction, if the transaction does not involve a solicitation, an information statement, the registration of securities or a tender offer, as described in paragraphs 1, 2 or 3 of this Instruction; and

5. If the Rule 13e–3 transaction involves a series of transactions, the issuer or affiliate must file this statement at the time indicated in paragraphs 1 through 4 of this Instruction for the first transaction and must amend the schedule promptly with respect to each subsequent transaction.

E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses, except that responses to Items 7, 8 and 9 of this schedule must be provided in full. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

G. If the Rule 13e–3 transaction also involves a transaction subject to Regulation 14A (§ § 240.14a–1 through 240.14b–2) or 14C (§ § 240.14c–1 through 240.14c–101) of the Act, the registration of securities under the Securities Act of 1933 and the General Rules and Regulations of that Act, or a tender offer subject to Regulation 14D (§ § 240.14d–1 through 240.14d–101) or § 240.13e–4, this statement must incorporate by reference the information contained in the proxy, information, registration or tender offer statement in answer to the items of this statement.

H. The information required by the items of this statement is intended to be in addition to any disclosure requirements of any other form or schedule that may be filed with the Commission in connection with the Rule 13e–3 transaction. If those forms or schedules require less information on any topic than this statement, the requirements of this statement control.

I. If the Rule 13e–3 transaction involves a tender offer, then a combined statement on Schedules 13E–3 and TO may be filed with the Commission under cover of Schedule TO (§ 240.14d–100). See Instruction J of Schedule TO (§ 240.14d–100).

J. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Summary Term Sheet

Furnish the information required by Item 1001 of Regulation M–A (§ 229.1001 of this chapter).

Item 2. Subject Company Information

Furnish the information required by Item 1002 of Regulation M–A (§ 229.1002 of this chapter).

Item 3. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) through (c) of Regulation M–A (§ 229.1003 of this chapter).

Item 4. Terms of the Transaction

Furnish the information required by Item 1004(a) and (c) through (f) of Regulation M–A (§ 229.1004 of this chapter).

Item 5. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(a) through (c) and (e) of Regulation M–A (§ 229.1005 of this chapter).

Item 6. Purpose of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(b) and (c)(1) through (8) of

Regulation M–A (§ 229.1006 of this chapter).

Instruction to Item 6

In providing the information specified in Item 1006(c) for this item, discuss any activities or transactions that would occur after the Rule 13e–3 transaction.

Item 7. Purposes, Alternatives, Reasons and Effects

Furnish the information required by Item 1013 of Regulation M–A (§ 229.1013 of this chapter).

Item 8. Fairness of the Transaction

Furnish the information required by Item 1014 of Regulation M–A (§ 229.1014 of this chapter).

Item 9. Reports, Opinions, Appraisals and Negotiations

Furnish the information required by Item 1015 of Regulation M–A (§ 229.1015 of this chapter).

Item 10. Source and Amounts of Funds or Other Consideration

Furnish the information required by Item 1007 of Regulation M–A (§ 229.1007 of this chapter).

Item 11. Interest in Securities of the Subject Company

Furnish the information required by Item 1008 of Regulation M–A (§ 229.1008 of this chapter).

Item 12. The Solicitation or Recommendation

Furnish the information required by Item 1012(d) and (e) of Regulation M–A (§ 229.1012 of this chapter).

Item 13. Financial Statements

Furnish the information required by Item 1010(a) through (b) of Regulation M–A (§ 229.1010 of this chapter) for the issuer of the subject class of securities.

Instructions to Item 13

1. The disclosure materials disseminated to security holders may contain the summarized financial information required by Item 1010(c) of Regulation M–A (§ 229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M–A must be disclosed directly or incorporated by reference in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 2.

2. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter).

3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) the financial statements substantially meet the requirements of this Item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the matter incorporated by reference is not filed with this Schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given. *See* General Instruction F to this Schedule.

Item 14. Persons/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009 of Regulation M–A (§ 229.1009 of this chapter).

Item 15. Additional Information

Furnish the information required by Item 1011(b) of Regulation M–A (§ 229.1011 of this chapter).

Item 16. Exhibits

File as an exhibit to the Schedule all documents specified in Item 1016(a) through (d), (f) and (g) of Regulation M–A (§ 229.1016 of this chapter).

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) ____________________

(Name and title) ____________________

(Date) ____________________

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See § 240.12b-11 with respect to signature requirements.

26. By removing and reserving § 240.13e-101.

§ 240.14a–4 [Amended]

27. By amending § 240.14a-4, paragraph (f), remove the words ", or mailed for filing to,".

28. By amending § 240.14a-6 to remove the phrase ", or mailed for filing to," from the first sentence of paragraph (b) and paragraph (c); remove the note following paragraph (b); revise paragraphs (e) and (j); remove the phrase "Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34)," from paragraph (l) and in its place add "Forms C (§ 239.6 of this chapter) or SB–3 (§ 239.11 of this chapter)"; and add paragraph (o) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(e) *Public availability of information.* All copies of preliminary proxy statements and forms of proxy filed under paragraph (a) of this section must be clearly marked "Preliminary Copies," and will be deemed immediately available for public inspection.

* * * * *

(j) *Merger proxies.* Any proxy statement, form of proxy or other soliciting material required to be filed by this section that also is included in a registration statement filed under the Securities Act of 1933 on Forms C (§ 239.6 of this chapter), SB–3 (§ 239.11 of this chapter) or N–14 (§ 239.23 of this chapter) or filed under §§ 230.424 or 230.425 of this chapter may be filed only under the Securities Act, and will be deemed to be filed under this section. In that case, the fee required under paragraph (i) of this section need not be paid.

* * * * *

(o) *Solicitations before furnishing a definitive proxy statement.* Solicitations that are published, sent or given to security holders before they have been furnished a definitive proxy statement must be made in accordance with §§ 240.14a-11 or 240.14a-12.

§ 240.14a–11 [Amended]

29. By amending § 240.14a-11 in paragraph (c) remove the words ", or mailed for filing to," from the first sentence.

30. By revising the section heading and § 240.14a-12 to read as follows:

§ 240.14a-12 Solicitation before furnishing written proxy statement.

(a) Notwithstanding the provisions of § 240.14a-3(a), a solicitation (other than one subject to § 240.14a-11) may be made before furnishing security holders with a written proxy statement meeting the requirements of § 240.14a-3(a) if:

(1) No form of proxy is furnished to security holders before a definitive written proxy statement required by § 240.14a-3(a) is furnished to security holders;

(2) Each communication made in connection with the solicitation includes:

(i) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a-101)) and a description of their interests direct or indirect, by security holdings or otherwise; and

(ii) A prominent legend in clear, plain language advising security holders to read the proxy statement when it is available because it contains important information. The legend also must advise investors that they can get the proxy statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer; and

(3) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this section at the earliest practicable date.

(b) Any soliciting material published, sent or given to security holders in accordance with paragraph (a) of this section must be filed with the Commission no later than the date the material is published, sent or given to security holders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14A (§ 240.14a-101) and the appropriate box on the cover page must be marked. Soliciting material in connection with a registered offering must be filed only under § 230.425 of this chapter, and will be deemed to be filed under this section.

Instructions to § 240.14a-12

1. Communications of the type described by § 230.169 of this chapter need not be filed under this section.

2. If paper filing is permitted, file eight copies of the soliciting material with the Commission.

3. Any communications made under this rule after the definitive proxy statement is on file but before it is disseminated also must specify that the proxy statement is publicly available and the anticipated date of dissemination.

31. By amending § 240.14a-101 on the cover page by removing the box and accompanying text "Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))"; removing Notes D.3 and D.4; in Note G, redesignate the second paragraph (2)(e) and paragraphs (2)(f), (2)(g) and (2)(h) as paragraphs (2)(f), (2)(g), (2)(h) and (2)(i), in newly redesignated paragraph (2)(f) and paragraph (3)(f), revising the reference "Items 13 or 14" to read "Item 13", removing newly redesignated paragraphs (2)(h) and (2)(i) and paragraphs (3)(h) and (3)(i), adding the word "and" after newly redesignated paragraph (2)(f) and paragraph (3)(f), and removing the semicolons after newly redesignated paragraph (2)(g) and paragraph (3)(g) and in their place add a period; and revising Item 14 to read as follows:

§ 240.14a–101 Schedule 14A Information required in proxy statement.

* * * * *

Item 14. Mergers, consolidations, acquisitions and similar matters. (See Notes A and D at the beginning of this Schedule.)

Instructions to Item 14

1. In transactions in which the consideration consists wholly or in part of securities registered under the Securities Act of 1933, furnish the information required by Form C (§ 239.6 of this chapter) or Form SB–3 (§ 239.11 of this chapter), as applicable, instead of this Item. Only a Form C (or Form SB–3) must be filed in accordance with § 240.14a–6(j).

2. In transactions in which the consideration consists wholly of cash, information about the acquiring company required by paragraph (c)(1) of this Item need not be provided unless the information is material to an informed voting decision (*e.g.*, the security holders of the target company are voting and financing is not assured). Additionally, if only the security holders of the target company are voting:

i. Financial information in paragraphs (b)(8)–(11) of this Item need not be provided; and

ii. Information about the target company in paragraph (c)(2) of this Item need not be provided. However, the information required by paragraph (c)(2) of this Item must be provided if the transaction is a going-private (as defined by § 240.13e–3) or roll-up (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)) transaction.

3. In transactions in which the consideration consists wholly of securities exempt under the Securities Act of 1933 or partially of exempt securities and partially of cash, information about the acquiring company required by paragraph (c)(1) of this Item need not be provided if only the security holders of the acquiring company are voting, unless the information is material to an informed voting decision. Additionally, if only the security holders of the target company are voting, information about the target company in paragraph (c)(2) of this Item need not be provided. However, the information required by paragraph (c)(2) of this Item must be provided if the transaction is a going-private (as defined by § 240.13e–3) or roll-up (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)) transaction.

4. The information required by paragraphs (b)(8)–(11) and (c) need not be provided if the plan being voted on involves only the acquiring company and one or more of its totally held subsidiaries and does not involve a liquidation or a spin-off.

5. To facilitate compliance with Rule 2–02(a) of Regulation S–X (§ 210.2–02(a) of this chapter) (technical requirements relating to accountants' reports), one copy of the definitive proxy statement filed with the Commission must include a signed copy of the accountant's report. If the financial statements are incorporated by reference, a signed copy of the accountant's report must be filed with the definitive proxy statement.

6. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with §§ 210.12–15, 210.12–28 and 210.12–29 of this chapter (or, for management investment companies, §§ 210.12–12 through 210.12–14 of this chapter) of that regulation need be furnished in the proxy statement.

7. If the preliminary proxy material incorporates by reference financial statements required by this Item, a draft of the financial statements must be furnished to the Commission staff upon request if the document from which they are incorporated has not been filed with or furnished to the Commission.

8. Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraphs (b)(8) and (b)(9) of this Item or paragraphs (h), (i) and (j) of Item 14 of Form C (§ 239.6).

9. A registered management investment company need not comply with paragraphs (a), (d), (h), (i), (j) and (l) of Item 14 of Form C (§ 239.6).

(a) *Applicability.* If action is to be taken with respect to any of the following transactions, provide the information required by this Item:

(1) A merger or consolidation;

(2) An acquisition of securities of another person;

(3) An acquisition of any other going business or the assets of a going business;

(4) A sale or other transfer of all or any substantial part of assets; or

(5) A liquidation or dissolution.

(b) *Transaction information.* Provide the following information for each of the parties to the transaction unless otherwise specified:

(1) *Summary term sheet.* The information required by Item 1001 of Regulation M–A (§ 229.1001 of this chapter).

(2) *Contact information.* The name, complete mailing address and telephone number of the principal executive offices.

(3) *Business conducted.* A brief description of the general nature of the business conducted.

(4) *Terms of the transaction.* The information required by Item 1004(a)(2) of Regulation M–A (§ 229.1004 of this chapter).

(5) *Regulatory approvals.* A statement as to whether any federal or state regulatory

requirements must be complied with or approval must be obtained in connection with the transaction and, if so, the status of the compliance or approval.

(6) *Reports, opinions, appraisals.* If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the information required by Item 1015(b) of Regulation M–A (§ 229.1015 of this chapter).

(7) *Past contacts, transactions or negotiations.* The information required by Items 1005(b) and 1011(a)(1) of Regulation M–A (§ 229.1005 of this chapter and § 229.1011 of this chapter), for the parties to the transaction and their affiliates during the periods for which financial statements are presented or incorporated by reference under this Item.

(8) *Selected financial data.* The selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

(9) *Pro forma selected financial data.* If material, the information required by Item 301 of Regulation S–K (§ 229.301 of this chapter), showing the pro forma effect of the transaction.

(10) *Pro forma information.* In a table designed to facilitate comparison, historical and pro forma per share data of the acquiring company and historical and equivalent pro forma per share data of the target company for the following Items:

(i) Book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter);

(ii) Cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter); and

(iii) Income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter).

Instructions to Paragraphs (b)(9) and (b)(10)

1. For a business combination accounted for as a purchase, present the financial information required by paragraphs (b)(9) and (b)(10) only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, present the financial information required by paragraphs (b)(9) and (b)(10) (except for information with regard to book value) for the most recent three fiscal years and interim period. For purposes of these paragraphs, book value information need only be provided for the most recent balance sheet date.

2. Calculate the equivalent pro forma per share amounts for one share of the company being acquired by multiplying the exchange ratio times each of:

(i) The pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction;

(ii) The pro forma book value per share; and

(iii) The pro forma dividends per share of the acquiring company.

(11) *Financial information.* If material, financial information required by Article 11 of Regulation S–X (§ 210.10–01 through § 229.11–03 of this chapter) with respect to this transaction.

Instructions to Paragraph (b)(11)

1. Present any Article 11 information required by the other Items of this schedule (where not incorporated by reference) together with the information provided under this Item. In presenting this information, you must clearly distinguish between this transaction and any other.

2. You need only show the pro forma effect that this transaction has on any pro forma financial information that:

(i) Is incorporated by reference; and

(ii) Reflects all prior transactions.

(c) *Information about the parties to the transaction.*

(1) *Acquiring company.* Furnish the information required by Part II (Registrant Information) of Form C (§ 239.6 of this chapter) or Form SB–3 (§§ 239.11 of this chapter) for the acquiring company. However, financial statements need only be presented for the latest two fiscal years and interim period.

(2) *Acquired company.* Furnish the information required by Part III (Information with Respect to the Company Being Acquired) of Form C (§ 239.6 of this chapter).

Instruction to Paragraph (c)

Information may be incorporated by reference to the same extent as permitted by Forms C (§ 239.6 of this chapter) and SB–3 (§ 239.11 of this chapter).

§ 240.14c–2 [Amended]

32. By amending the introductory text in paragraph (a) of § 240.14c–2 by removing the reference "Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter)" and in its place add "Form C or SB–3 (§ 239.6 or § 239.11 of this chapter)"; removing the reference "Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34)" in paragraph (c) and in its place add "Form C or SB–3 (§ 239.6 or § 239.11 of this chapter)".

33. By amending § 240.14c–5 by removing the phrase ", or mailed for filing to," from the first sentence of paragraph (b); removing the note following paragraph (b); revising paragraph (d); removing the reference in paragraph (f) "Form N–14, S–4, or F–4 (§ 239.23, § 239.25 or § 239.34 of this chapter)" and in its place add "Form C, SB–3, or N–14 (§ 239.6, § 239.11 or § 239.23 of this chapter)"; removing the reference in paragraph (f) "Form N–14, S–4, or F–4" and in its place add "Form C, SB–3, or N–14 (§ 239.6, § 239.11 or § 239.23 of this chapter)" to read as follows:

§ 240.14c–5 Filing requirements.

* * * * *

(d) *Public availability of information.* All copies of material filed under paragraph (a) of this section must be clearly marked "Preliminary Copies," and will be deemed immediately available for public inspection.

* * * * *

§ 240.14c–101 [Amended]

34. By amending the cover page of § 240.14c–101 by removing the box and accompanying text "Confidential, for Use of the Commission Only (as permitted by Rule 14c–5(d)(2))".

35. By amending § 240.14d–1 by removing the reference "Schedules 14D–1" in the introductory text of paragraph (b) and adding in its place "Schedules TO"; redesignating paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6) and (e)(7) as paragraphs (e)(2), (e)(7), (e)(5), (e)(1), (e)(9), (e)(3) and (e)(6), respectively; in newly redesignated paragraph (e)(1) remove the reference "Rule 14d–3, Rule 14d–9(d) and Item 6 of Schedule 14D–1" and in its place add "Rule 14d–3 and Rule 14d–9(d)"; and adding new paragraphs (e)(4) and (e)(8) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to regulations 14D and 14E.

* * * * *

(e) *Definitions.* * * *

(4) The term *initial offering period* means the period from the time the offer commences until all minimum time periods, including extensions, required by Regulations 14D (§§ 240.14d–1 through 240.14d–103) and 14E (§§ 240.14e–1 through 240.14e–8) have been satisfied and all conditions to the offer have been satisfied or waived within these time periods.

* * * * *

(8) The term "subsequent offering period" means the ten business day period immediately following the initial offering period meeting the conditions specified in § 240.14d–11.

* * * * *

36. By revising the section heading and § 240.14d–2 to read as follows:

§ 240.14d–2 Commencement of a tender offer.

(a) *Date of commencement.* A bidder will have commenced its tender offer for purposes of section 14(d) of the Act (15 U.S.C. 78n) and the rules promulgated thereunder at 12:01 a.m. on the date when the bidder has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

(b) *Pre-commencement communications.* A communication by the bidder will not be deemed to constitute commencement of a tender offer if:

(1) It does not include the means for security holders to tender their shares into the offer; and

(2) All written communications relating to the tender offer, from and including the first public announcement, are filed under cover of Schedule TO (§ 240.14d–100) with the Commission as soon as practicable on the date of the communication. The bidder also must deliver to the subject company and any other bidder for the same class of securities the first communication that discloses the identities of the bidder and the subject company, the amount and class of securities sought, and the price or range of prices offered, as soon as practicable on the date of the communication.

Instructions to Paragraph (b)(2)

1. The box on the front of Schedule TO indicating that the filing contains pre-commencement communications must be checked.
2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed to have been filed under this section as well.
3. Each pre-commencement communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer.
4. For pre-commencement communications in connection with registered exchange offers, also see §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter.
5. Communications of the type described under § 230.169 need not be filed under this section.

(c) *Filing and other obligations triggered by commencement.* As soon as practicable on the date of commencement, a bidder must comply with the filing requirements of § 240.14d–3(a), the dissemination requirements of § 240.14d–4(a) or (b), and the disclosure requirements of § 240.14d–6(a).

37. By amending § 240.14d–3 by removing the reference "Schedule 14D–1" in paragraphs (a)(1), (a)(2), (a)(2)(ii), the introductory text of (a)(3), and paragraph (c) each time it appears and adding in its place "Schedule TO"; removing the word "ten copies of" in paragraphs (a)(1); and revising paragraph (b) to read as follows:

§ 240.14d–3 Filing and transmission of tender offer statement.

* * * * *

(b) *Post-commencement amendments and additional materials.* The bidder making the tender offer must file with the Commission:

(1) An amendment to Schedule TO (§ 240.14d–100) reporting promptly any material changes in the information set forth in the schedule previously filed and including copies of any additional tender offer materials as exhibits; and

(2) A final amendment to Schedule TO (§ 240.14d–100) reporting promptly the results of the tender offer.

Instruction to Paragraph (b)

A copy of any additional tender offer materials or amendment filed under this section must be sent promptly to the subject company and to any exchange and/or NASD, as required by paragraph (a) of this section, but in no event later than the date the materials are first published, sent or given to security holders.

* * * * *

38. Amend § 240.14d–4 by revising the section heading and adding introductory text to § 240.14d–4; revising the introductory text of paragraph (a); removing paragraph (a)(1); redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2); revising newly redesignated paragraph (a)(2); adding an Instruction to paragraph (a); redesignating paragraphs (b) and (c) as paragraphs (c) and (d)(1) and adding a new paragraph (b); revising the heading of newly redesignated paragraph (d); in the first sentence of newly redesignated paragraph (d)(1) remove the phrase "paragraph (a) of"; and adding paragraph (d)(2) to read as follows:

§ 240.14d–4 Dissemination of tender offers to security holders.

As soon as practicable on the date of commencement of a tender offer, the bidder must publish, send or give the disclosure required by § 240.14d–6 to security holders of the class of securities that is the subject of the offer, by complying with all of the requirements of any of the following:

(a) *Cash tender offers and exempt securities offers.* For tender offers in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77c):

(1) *Summary publication.* * * *

(2) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings under § 240.14d–5 must comply with paragraph (a)(1) of this section on or before the date of the bidder's request for such lists or listing under § 240.14d–5(a).

Instruction to Paragraph (a)

Tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication and the use of stockholder lists and security position listings under § 240.14d–5, paragraphs (a)(1) and (a)(2) of this section are exclusive.

(b) *Registered securities offers.* For tender offers in which the consideration consists solely or partially of securities registered under the Securities Act of 1933, a registration statement containing all of the required information, including pricing information, has been filed and a preliminary or final prospectus is delivered to security holders. However, for going-private transactions (as defined by § 240.13e–3) and roll-up transactions (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)), a registration statement registering the securities to be offered must have become effective and only a final prospectus may be delivered to security holders on the date of commencement.

Instructions to Paragraph (b)

1. If the prospectus is being delivered by mail, mailing on the date of commencement is sufficient.
2. A preliminary prospectus used under this section may not omit information under § 230.430 and 230.430A of this chapter.
3. If a preliminary prospectus is used under this section and the bidder must disseminate material changes, the tender offer must remain open for the period specified in paragraph (d)(2) of this section.
4. If a preliminary prospectus is used under this section, tenders may be requested in accordance with § 230.162 of this chapter.

(c) *Adequate publication.* * * *

(d) *Publication of changes and extension of the offer.*

(1) * * *

(2) In a registered securities offer where the bidder disseminates the preliminary prospectus as permitted by paragraph (b) of this section, the offer must remain open from the date that material changes to the tender offer materials are disseminated to security holders, as follows:

(i) Five business days for a supplement containing a material change other than price or share levels;

(ii) Ten business days for a supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee, or other similarly significant change;

(iii) Ten business days for a supplement included as part of a post-effective amendment; and

(iv) Twenty business days for a revised prospectus when the initial prospectus was materially deficient.

39. By amending § 240.14d–5 by revising paragraph (c)(1) to read as follows:

§ 240.14d–5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

* * * * *

(c) * * *

(1) No later than the third business day after the date of the bidder's request, the subject company must furnish to the bidder at the subject company's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section; the names and addresses of participants identified on the most recent security position listing of any clearing agency that is within the access of the subject company; and the most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a–13(b), in the possession of the subject company, or that subsequently comes into its possession. All security holder list information must be in the format requested by the bidder to the extent the format is available to the subject company without undue burden or expense.

* * * * *

40. By revising the section heading and § 240.14d–6 to read as follows:

§ 240.14d–6 Disclosure of tender offer information to security holders.

(a) *Information required on date of commencement.* (1) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication under § 240.14d–4(a)(1):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials furnished by the bidder upon request of any security holder must include the information required by paragraph (d)(1) of this section.

(2) *Use of stockholder lists and security position listings.* If a tender offer is published, sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings under § 240.14d–4(a)(2):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder must include the information required by paragraph (d)(1) of this section.

(3) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to § 240.14d–4(a), the tender offer materials that are published or sent or given to security holders on the date of commencement of such offer must include the information required by paragraph (d)(1) of this section.

(b) *Information required in other tender offer materials published after commencement.* Except for tender offer materials described in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section, additional tender offer materials published, sent or given to security holders after commencement must include:

(1) The identities of the bidder and subject company;

(2) The amount and class of securities being sought;

(3) The type and amount of consideration being offered; and

(4) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer.

Instruction to Paragraph (b)

If the additional tender offer materials are summary advertisements, they also must include the information required by paragraphs (d)(2)(v) of this section.

(c) *Material changes.* A material change in the information published or sent or given to security holders must be promptly disclosed to security holders in additional tender offer materials.

(d) *Information to be included.* (1) *Tender offer materials other than summary publication.* The following information is required by paragraphs (a)(1)(ii), (a)(2)(ii) and (a)(3) of this section:

(i) The information required by Item 1 of Schedule TO (§ 240.14d–100) (Summary Term Sheet); and

(ii) The information required by the remaining items of Schedule TO (§ 240.14d–100) for third-party tender offers, except for Item 12 (exhibits) of Schedule TO (§ 240.14d–100), or a fair and adequate summary of the information.

(2) *Summary publication.* The following information is required in a summary advertisement under paragraphs (a)(1)(i) and (a)(2)(i) of this section:

(i) The identity of the bidder and the subject company;

(ii) The information required by Item 1004(a)(1) of Regulation M–A (§ 229.1004(a)(1) of this chapter);

(iii) If the tender offer is for less than all of the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject company;

(iv) A statement that the information required by paragraph (d)(1) of this section is incorporated by reference into the summary advertisement;

(v) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(vi) In a tender offer published or sent or given to security holders by use of stockholder lists and security position listings under § 240.14d–4(a)(3), a statement that a request is being made for such lists and listings. The summary publication also must state that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of security holders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities. If the list furnished to the bidder also included beneficial owners pursuant to § 240.14d–5(c)(1) and tender offer materials will be mailed directly to beneficial holders, a statement to that effect also should be included.

(3) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement may include a transmittal letter (the letter furnished to security holders for transmission of securities sought in the tender offer) or any amendment to the transmittal letter.

41. By amending § 240.14d–7 to redesignate paragraph (a) as (a)(1) and to add paragraph (a)(2) to read as follows:

§ 240.14d–7 Additional withdrawal rights.

(a) * * *

(2) *Exemption during subsequent offering period.* Notwithstanding the provisions of Section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)) and paragraph (a) of this section, the bidder need not offer withdrawal rights during a subsequent offering period.

* * * * *

42. By amending § 240.14d–9 by revising the section heading; redesignating paragraphs (a) through (f) as paragraphs (b) through (g); adding new paragraph (a); and revising the introductory text of newly redesignated paragraph (b) to read as follows:

§ 240.14d–9 Recommendation or solicitation by the subject company and others.

(a) *Pre-commencement communications.* A communication by persons described in paragraph (e) of this section with respect to a tender offer will not be deemed to constitute a recommendation or solicitation under this section if:

(1) The tender offer has not commenced under § 240.14d–2; and

(2) The communications are filed under cover of Schedule 14D–9 (§ 240.14d–101) with the Commission as soon as practicable on the date of the communication.

Instructions to Paragraph (a)(2)

1. The box on the front of Schedule 14D–9 (§ 240.14d–101) indicating that the filing contains pre-commencement communications must be checked.
2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed to have been filed under this section as well.
3. For pre-commencement communications in connection with registered exchange offers, also see §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter.
4. Communications of the type described under § 230.169 need not be filed under this section.

(b) *Post-commencement communications.* After commencement by a bidder under § 240.14d–2, no solicitation or recommendation to security holders may be made by any person described in paragraph (e) of this section with respect to a tender offer for such securities unless as soon as practicable on the date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following:

* * * * *

§ 240.14d–9 [Amended]

43. By amending § 240.14d–9 by removing the words "eight copies of" in newly redesignated paragraph (b)(1); removing the reference "14D–1" in newly redesignated paragraphs (b)(2)(i) and (b)(3)(i) and in its place add "TO", removing the reference "Items 2 and 4(a) of Schedule 14D–9" in newly redesignated paragraph (b)(2)(ii) and in its place add "Items 1003(d) and 1012(a) of Regulation M–A (§ 229.1003(d) and § 229.1012(a))"; removing the reference "paragraph (a)(2) or (3)" in newly redesignated paragraph (c)(2) and in its place add "paragraph (b)(2) or (3)"; removing the reference "Items 1, 2, 3(b), 4, 6, 7 and 8" in newly redesignated paragraph (d) and in its place add "Items 1 through 8"; removing the reference "paragraphs (d)(2) and (e)" in the introductory text of newly redesignated paragraph (e)(1) and in its place add "paragraphs (e)(2) and (f)"; removing the reference "14D–1 (§ 240.14d–101)" in newly redesignated paragraph (e)(2)(i) and in its place add "TO (§ 240.14d–100)"; and removing the reference to "paragraph (e)(3)" in newly redesignated paragraph (f)(4) and in its place add "paragraph (f)(3)".

44. By adding § 240.14d–11 to read as follows:

§ 240.14d–11. Subsequent offering period.

A bidder may elect to provide a ten business day subsequent offering period during which tenders will be accepted if:

(a) The initial offering period has expired;

(b) The offer is for all outstanding securities of the class that is the subject of the tender offer;

(c) When the initial offering period expires, the bidder immediately accepts and promptly pays for all securities tendered during the initial offering period;

(d) The bidder immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period;

(e) The bidder discloses its intention to offer a subsequent offering period and describes the subsequent offering period in the initial tender offer materials filed and disseminated to security holders. If the bidder elects to offer a subsequent offering period after the initial tender offer materials have been disseminated to security holders, it must amend the tender offer materials to reflect this decision, disseminate the information to security holders in a manner reasonably calculated to inform security holders of this change, and give shareholders a sufficient period of time to consider the information; and

(f) The bidder intends to acquire all securities remaining after the tender offer through a merger or similar transaction, and discloses this intention in the initial or supplemental tender offer materials filed and disseminated to security holders.

45. By revising § 240.14d–100 to read as follows:

§ 240.14d–100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission,
Washington, D.C. 20549

Schedule TO

Tender Offer Statement under Section 14(d)(1) o[illegible]3(e)(1) of the Securities Exchange Act of 1934

(Amendment No.)* ______

(Name of Subject Company (issuer)) ______
(Names of Filing Persons (identifying status as offeror, issuer or other person)) ______
(Title of Class of Securities) ______
(CUSIP Number of Class of Securities) ______

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check the box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: ______
Form or Registration No.: ______
Filing Party: ______
Date Filed: ______

[ ] Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

[ ] third-party tender offer subject to Rule 14d–1.
[ ] issuer tender offer subject to Rule 13e–4.
[ ] going-private transaction subject to Rule 13e–3.
[ ] amendment to Schedule 13D under Rule 13d–2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: [ ]

General Instructions

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by § 240.0–11.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 3 and 5–9 for a third-party tender offer and Items 5–8 for an issuer tender offer must be given with respect to: (i) each partner of the partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the statement is filed by a corporation or if a person referred to in

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(i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the items specified above must be given with respect to: (a) each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.

D. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature or filing fee is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Securities Exchange Act of 1934 ("the Act").

G. A filing person may amend its previously filed Schedule 13D (§ 240.13d–101) on Schedule TO (§ 240.14d–100) if the appropriate box on the cover page is checked to indicate a combined filing and the information called for by the fourteen disclosure items on the cover page of Schedule 13D (§ 240.13d–101) is provided on the cover page of the combined filing with respect to each filing person.

H. The final amendment required by §§ 240.14d–3(b)(2) and 240.13e–4(c)(4) will satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the offeror in the tender offer.

I. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

J. If the tender offer disclosed on this statement involves a going-private transaction, a combined Schedule TO (§ 240.14d–100) and Schedule 13E–3 (§ 240.13e–100) may be filed with the Commission under cover of Schedule TO. The Rule 13e–3 box on the cover page of the Schedule TO must be checked to indicate a combined filing. All information called for by both schedules must be provided except that Items 1–3, 5, 8 and 9 of Schedule TO may be omitted to the extent those items call for information that duplicates the item requirements in Schedule 13E–3.

K. For purposes of this statement, the following definitions apply:

(1) The term *offeror* means any person on whose behalf a tender offer is made;

(2) The term *issuer tender offer* has the same meaning as in Rule 13e–4(a)(2); and

(3) The term *third-party tender offer* means a tender offer that is not an issuer tender offer.

Special Instructions for Complying With Schedule to:

Under Sections 13(e), 14(d) and 23 of the Act and the rules and regulations of the Act, the Commission is authorized to solicit the information required to be supplied by this schedule.

Disclosure of the information specified in this schedule is mandatory, except for I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of disclosing tender offer and going-private transactions. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing tender offer and going-private statements.

Failure to disclose the information required by this schedule, except for I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules.

Item 1. Summary Term Sheet

Furnish the information required by Item 1001 of Regulation M–A (§ 229.1001 of this chapter).

Item 2. Subject Company Information

Furnish the information required by Item 1002(a) through (c) of Regulation M–A (§ 229.1002 of this chapter).

Item 3. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) through (c) of Regulation M–A (§ 229.1003 of this chapter) for a third-party tender offer and the information required by Item 1003(a) of Regulation M–A (§ 229.1003 of this chapter) for an issuer tender offer.

Item 4. Terms of the Transaction

Furnish the information required by Item 1004(a) of Regulation M–A (§ 229.1004 of this chapter) for a third-party tender offer and the information required by Item 1004(a) through (b) of Regulation M–A (§ 229.1004 of this chapter) for an issuer tender offer.

Item 5. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(a) and (b) of Regulation M–A (§ 229.1005 of this chapter) for a third-party tender offer and the information required by Item 1005(e) of Regulation M–A (§ 229.1005) for an issuer tender offer.

Item 6. Purpose of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(a) and (c)(1) through (7) of Regulation M–A (§ 229.1006 of this chapter) for a third-party tender offer and the information required by Item 1006(a) through (c) of Regulation M–A (§ 229.1006 of this chapter) for an issuer tender offer.

Item 7. Source and Amount of Funds or Other Consideration

Furnish the information required by Item 1007(a), (b) and (d) of Regulation M–A (§ 229.1007 of this chapter).

Item 8. Interest in Securities of the Subject Company

Furnish the information required by Item 1008 of Regulation M–A (§ 229.1008 of this chapter).

Item 9. Persons/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009(a) of Regulation M–A (§ 229.1009 of this chapter).

Item 10. Financial Statements

If material, furnish the information required by Item 1010(a) and (b) of Regulation M–A (§ 229.1010 of this chapter) for the issuer in an issuer tender offer and for the offeror in a third-party tender offer.

Instructions to Item 10

1. Financial statements must be provided when the offeror's financial condition is material to security holder's decision whether to sell, tender or hold the securities sought. The facts and circumstances of a tender offer, particularly the terms of the tender offer, may influence a determination as to whether financial statements are material, and thus required to be disclosed.

2. Financial statements are *not* considered material when: (a) the consideration offered consists solely of cash; (b) the offer is not subject to any financing condition; *and* either: (c) the offeror is a public reporting company under Section 13(a) or 15(d) of the Act, or (d) the offer is for all outstanding securities of the subject class.

3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) the financial statements substantially meet the requirements of this item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the matter incorporated by reference is not filed with this schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given. *See* General Instruction F to this schedule.

4. If the offeror in a third-party tender offer is a natural person, and such person's financial information is material, disclose the net worth of the offeror. If the offeror's net worth is derived from material amounts of assets that are not readily marketable or there are material guarantees and contingencies, provide appropriate disclosure.

5. If the offeror in a third-party cash tender offer intends to engage in a merger or similar transaction with the subject company after the tender offer and non-tendering security holders will receive securities in the subsequent transaction, the offeror must disclose the financial information specified in Item 3(f), (g) and (h) and Item 5 of Form C (§ 239.6 of this chapter) or Form SB–3 (§ 229.11 of this chapter), as applicable. The disclosure document sent to security holders may include only the information specified in Items 3(f), (g) and (h) so long as the schedule filed with the Commission contains all information required by this instruction and the disclosure document advises security holders where the full financial information can be found.

6. The disclosure materials disseminated to security holders may contain the summarized financial information specified by Item 1010(c) of Regulation M–A (§ 229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M–A must be disclosed directly or incorporated by reference in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 8 of this Item.

7. If the offeror is not subject to the periodic reporting requirements of the Act, the financial statements required by this Item need not be audited if audited financial statements are not available or obtainable without unreasonable cost or expense. Make a statement to that effect and the reasons for their unavailability.

8. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter), unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

Item 11. Additional Information

Furnish the information required by Item 1011 of Regulation M–A (§ 229.1011 of this chapter).

Item 12. Exhibits

File as an exhibit to the Schedule all documents specified by Item 1016(a), (b), (d), (g) and (h) of Regulation M–A (§ 229.1016 of this chapter).

Item 13. Information Required by Schedule 13E–3

If the Schedule TO is combined with Schedule 13E–3 (§ 240.13e–100), set forth the information required by Schedule 13E–3 that is not included or covered by the items in Schedule TO.

Signature

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) ______________________
(Name and title) ______________________
(Date) ______________________

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See §§ 240.12b–11 and 240.14d–1(f) with respect to signature requirements.

46. By revising § 240.14d–101 to read as follows:

§ 240.14d–101 Schedule 14D–9.

Securities and Exchange Commission,
Washington, D.C. 20549

Schedule 14D–9

Solicitation/Recommendation Statement under Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No.———) ______________
(Name of Subject Company) ______________
(Names of Persons Filing Statement) ________
(Title of Class of Securities) ______________
(CUSIP Number of Class of Securities) ______

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of the persons filing statement)

( ) Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

General Instructions

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

C. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

D. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Securities Exchange Act of 1934 ("the Act").

E. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Subject Company Information

Furnish the information required by Item 1002(a) and (b) of Regulation M–A (§ 229.1002 of this chapter).

Item 2. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) and (d) of Regulation M–A (§ 229.1003 of this chapter).

Item 3. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(d) of Regulation M–A (§ 229.1005 of this chapter).

Item 4. The Solicitation or Recommendation

Furnish the information required by Item 1012(a) through (c) of Regulation M–A (§ 229.1012 of this chapter).

Item 5. Person/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009(a) of Regulation M–A (§ 229.1009 of this chapter).

Item 6. Interest in Securities of the Subject Company

Furnish the information required by Item 1008(b) of Regulation M–A (§ 229.1008 of this chapter).

Item 7. Purpose of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(d) of Regulation M–A (§ 229.1006 of this chapter).

Item 8. Additional Information

Furnish the information required by Item 1011(b) of Regulation M–A (§ 229.1011 of this chapter).

Item 9. Exhibits

File as an exhibit to the Schedule all documents specified by Item 1016(a), (e) and (g) of Regulation M–A (§ 229.1016 of this chapter).

Signature

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) ______________________

(Name and title) ______________________

(Date) ______________________

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is Signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See § 240.14d–1(f) with respect to signature requirements.

47. By amending § 240.14e–1 by revising paragraph (c) to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(c) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer. This paragraph does not prohibit a bidder electing to offer a subsequent offering period under § 240.14d–11 from paying for securities during the subsequent offering period in accordance with that section.

* * * * *

47. By adding § 240.14e–5 to read as follows:

§ 240.14e–5 Prohibiting purchases outside the tender offer.

(a) *Unlawful activity.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with a tender offer for equity securities, no covered person may directly or indirectly purchase or arrange to purchase any subject securities or any related securities, except as part of the offer. This prohibition applies from the time the offer is first publicly announced or otherwise made known to holders of the subject securities until the offer expires.

(b) *Excepted activity.* The following transactions in subject securities or related securities are not prohibited by paragraph (a) of this section:

(1) *Exercises of securities.* Transactions by covered persons to convert, exchange, or exercise related securities into subject securities, if the covered person owned the related securities before the offer was first publicly announced or otherwise made known to security holders;

(2) *Purchases for plans.* Purchases or arrangements to purchase by or for a plan that are made by an agent independent of the issuer;

(3) *Purchases during odd-lot offers.* Purchases or arrangements to purchase if the offer is exempt under § 240.13e–4(h)(5); and

(4) *Unsolicited purchases.* Unsolicited purchases by a dealer-manager that are made on an agency basis.

(c) *Definitions.* For purposes of this section, the term:

(1) *Affiliate* means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the offeror;

(2) *Agent independent of the issuer* has the same meaning as in § 242.100(b);

(3) *Covered person* means:

(i) The offeror and its affiliates;

(ii) The offeror's dealer-manager(s) and other advisors; and

(iii) Any person acting, directly or indirectly, in concert with any of the persons specified in this paragraph (c)(3) in connection with any purchase or arrangement to purchase any subject securities or any related securities;

(4) *Plan* has the same meaning as in § 242.100(b) of this chapter;

(5) *Related securities* means securities that are immediately convertible into, exchangeable for, or exercisable for subject securities; and

(6) *Subject securities* has the same meaning as in § 229.1000 of this chapter.

(d) *Exemptive authority.* Upon written application or upon its own motion, the

Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms or conditions, to any transaction or class of transactions.

49. By adding § 240.14e–8 to read as follows:

§ 240.14e–8 Prohibited conduct in connection with pre-commencement communications.

It is a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act (15 U.S.C. 78n) for any person to publicly announce that the person (or a party on whose behalf the person is acting) plans to make a tender offer that has not yet been commenced, if the person:

(a) Is making the announcement of a potential tender offer without the intention to commence and complete the offer;

(b) Intends, directly or indirectly, for the announcement to manipulate the market price of the stock of the bidder or subject company; or

(c) Does not have the reasonable belief that the person will have the means to purchase securities to complete the offer.

Dated: November 3, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30227 Filed 12–3–98; 8:45 am]

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Part III

Department of Agriculture

Office of the Secretary

7 CFR Part 15f

Administrative Civil Rights Adjudications Under Section 741; Interim Final Rule

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 15f

Administrative Civil Rights Adjudications Under Section 741

AGENCY: Office of the Secretary, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements the United States Department of Agriculture (USDA) adjudication process for certain civil rights discrimination complaints filed administratively with USDA, as authorized by section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277.

DATES: This interim final rule is effective December 4, 1998. Written comments via letter, facsimile, or Internet are invited from interested individuals and organizations, and must be received by January 4, 1999.

ADDRESSES: Comments should be sent to Alyce Boyd-Stewart, Special Assistant to the Director, Office of Civil Rights. 202-720-5212.

FOR FURTHER INFORMATION CONTACT: Alyce Boyd-Stewart, Special Assistant to the Director, Office of Civil Rights. 202-720-5212.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under E.O. 12866, and it has been determined that it is not a "significant regulatory action" because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This final rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in E.O 12866.

Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

USDA has determined that the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action taken by an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

Background and Purpose

History

During much of the 1980's and 1990's, the USDA administrative processes for review of program civil rights complaints filed against USDA agencies by program participants did not function effectively. As a result, while administrative complaints were pending, the statutes of limitation for certain discrimination statutes under which complainants potentially could obtain relief continued to run and the time periods available for obtaining relief expired, thus foreclosing the possibility for relief for those who had filed discrimination complaints administratively with the Department. Accordingly, the Secretary of Agriculture sought the enactment of legislation to waive the applicable statutes of limitation for those individuals who had filed nonemployment related discrimination complaints with USDA alleging discrimination during that time period.

Requirements of Section 741 Statute

Congress enacted legislation to so waive the applicable statutes of limitation in section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277, for a period of two years after the enactment of that Act. The section 741 provisions are available to any person who filed a nonemployment related discrimination complaint with USDA before July 1, 1997, that alleged discrimination by USDA occurring at any time between January 1, 1981, and December 31, 1996, either (1) in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) with respect to the administration of a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account, or with respect to a housing program established under title V of the Housing Act of 1949, or (2) in the administration of a commodity program or a disaster assistance program. Section 741 also allows an eligible complainant to bring suit directly either in the United States Court of Federal Claims or a United States District Court to seek relief on the same bases within two years of enactment of Pub. L. 105-277.

Section 741(b) of the statute also preserves to an eligible complainant the right, in lieu of court proceedings, to first seek an administrative determination by USDA on the merits of his or her complaint. Such an administrative determination then would still be subject to de novo review in either the United States Court of Federal Claims or a United States District Court, if filed within 180 days of the final USDA determination.

Section 741(b) provides some minimal steps that must be a part of this administrative process, but the language of section 741 triggers the application of other law that fills out the balance of the required procedures. Section 741(b)(1) provides the complainant with the right of an opportunity for a hearing on the record before USDA makes a determination on the complaint. A statutory requirement for a determination to be made on the record after opportunity for hearing generally makes an agency administrative process for making a determination subject to section 554(a) of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, and thus specifically triggers the application of the provisions of the APA applicable to formal adjudications, i.e., 5 U.S.C. §§ 554, 556, 557, and 3105. *See, e.g., Lane* v. *U.S. Dept. of Agriculture*, 120 F.3d 106 (8th Cir. 1997); *City of West Chicago, Ill.* v. *U.S. Nuclear Regulatory Comm'n.*, 701 F.2d 632 (7th Cir. 1983). Section 741(g) applies chapter 5 of title 5 of the United States Code generally to these proceedings, except for the standard for judicial review. Both the APA and the Equal Access to Justice Act, 5 U.S.C. § 504 (EAJA), which permits eligible prevailing parties to recover attorneys fees when the position of the agency is not substantially justified in an administrative adversary adjudication, are included in chapter 5 of title 5 of the United States Code.

On the basis of these provisions of section 741, USDA has determined that the provisions of the APA applicable to formal adjudications, as well as EAJA, are applicable to the formal consideration of administrative complaints processed by USDA under section 741. The regulations promulgated below implement a process for eligible complainants to seek an administrative determination on their complaints from USDA under section 741(b) that complies with the requirements of both the APA and EAJA.

Initiating USDA Consideration of a Complaint Under Section 741

In order for a complaint to be processed under these regulations, it must already have been filed with USDA and be an "eligible complaint" as defined in section 741(e). Therefore these regulations presume that there is a pre-existing complaint, and that proceedings under these regulations will be at the request of, or with the consent of, the complainant to consider his or her pre-existing complaint under these procedures. Accordingly, a brief description of the process follows.

The USDA Office of Civil Rights (OCR) has reviewed, or already is in the process of reviewing, many of these eligible complaints. For those already reviewed or in process, OCR automatically will docket them for consideration as "Section 741 Complaint Requests" under these rules. OCR will issue a letter notifying the complainants of this action, and their Section 741 Complain Request docket number, by March 1, 1999. Such a letter also will provide further instructions or options for the individual circumstances of each complainant, and may include an offer of settlement for the complaint.

For those complaints not currently under review by OCR, or for those complainants who do not receive letters by March 29, 1999, notifying them that their complaints have been docketed under these rules, complainants must file a Section 741 Complaint Request with OCR seeking review of his or her complaint under these regulations. OCR will assign the Section 741 Complaint Request a docket number, and will so notify the complainant.

OCR Administrative Review and Settlement Opportunities

Until a complainant elects to request a hearing, the Section 741 Complaint Request will be reviewed by OCR. The intent of these regulations is to provide all eligible complainants with every opportunity to seek administrative (informal and formal) and judicial adjudication of their complaints as permitted by Section 741. The Director will review all eligible complaints and consider possible settlement opportunities. Specifically, if the Director finds that your complaint is an eligible complaint, the Director will: (1) review all documents and evidence submitted by you; (2) review all agency or OCR files, if any exist, regarding the circumstances surrounding the alleged discrimination; (3) review any damage claims; and (4) seek any further clarification, if necessary, from either you or the agency. OCR also may refer your eligible complaint for a formal investigation by the OCR Program Investigation Division or by an outside contractor. Based on his or her review, the Director will either (1) undertake negotiations with you to resolve the complaint; or (2) inform you that OCR will not settle the complaint and explain to you your rights, including your right to pursue formal proceedings before an ALJ under these rules. If the complaint is successfully resolved or settled, the Director will issue a final determination disposing of the matter and concluding consideration of the complaint under these procedures.

Notwithstanding the informal settlement process, once OCR dockets a complainant's Section 741 Complaint Request, a complainant may request a hearing before an administrative law judge (ALJ) at any time during consideration of his or her complaint under these rules. These rules provide procedures for the conduct of such hearings.

Proceedings Before an Administrative Law Judge

As noted above, the complainant may request a hearing on the record before an ALJ at any time after his Section 741 Complaint Request is docketed. OCR will turn over to the ALJ its entire file on the complaint, and file a report with the ALJ stating its position with respect to whether the complaint is an eligible complaint, and, if so, its position on the merits of the complaint. If the complainant chooses to have an ALJ consider the complaint, he or she may either request that the ALJ render a proposed determination on the written record consisting of the complaint, the Section 741 Complaint Request, the OCR report, and other submissions of the parties, or proceed with a full hearing.

The ALJ will make a proposed decision that may either deny the complaint or sustain the complaint and recommend award to the complainant of such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed, notwithstanding any statute of limitations. The proposed decision of the ALJ will become final within 35 days, unless you request review of the determination by the Assistant Secretary for Administration (ASA). The ASA may also choose to review this on his or her own motion.

Timing of Final Determinations and Judicial Review

Whether with or without a hearing or review by the ASA, the USDA will render a final determination to the maximum extent practicable within 180 days after docketing of the Section 741 Complaint Request. If the complaint is denied by USDA, in whole or in part, the complainant will have at least 180 days to file suit in Federal court seeking a review of the denial, regardless of any applicable statute of limitations.

Determination To Issue an Interim Final Rule

Delay, neglect, and inadequate consideration of these discrimination complaints by USDA in the past created the need for Congress to pass this extraordinary relief statute in the first instance. The waiver of the statute of limitations in section 741(a) is available only for a period of 2 years after the date of enactment which occurred on October 21, 1998. That is, all complaints under section 741 must be filed either in court or with USDA by October 21, 2000. (Those complainants, who initially seek USDA administrative review, then will have 180 days after USDA's issuance of a final determination under section 741 to pursue an action for judicial review even if the USDA review or the 180-day period extends beyond October 21, 2000.) Since less than two years remain for those who allegedly have suffered discrimination to file complaints with USDA, time is of the essence in implementing this procedure as soon as possible. Accordingly, publication of these rules of procedure as interim final, without prior notice and comment, is permissible under either the procedural rules or good cause exceptions to the APA requirement for notice and comment rulemaking. 5 U.S.C. § 553(b)(3) (A) and (B). However, USDA is providing a comment period of 30 days to provide for comment and subsequent modification of this rule, if necessary.

List of Subjects in 7 CFR Part 15f

Administrative practice and procedure, Agriculture, Appeal procedures, Civil rights, Equal access to justice, Ex parte communications, Farmers, Federal aid programs, Guaranteed loans, Insured loans, Loan

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programs, Nondiscrimination, Price support programs.

For the reasons set out in the preamble, subtitle A of Title 7 of the Code of Federal Regulations is amended as set forth below:

Part 15f is added to read as follows:

PART 15F—ADJUDICATIONS UNDER SECTION 741

Subpart A—What Is The Purpose Of These Regulations And To Whom And To What Programs Do They Apply?

Sec.
15f.1 What is the purpose of these regulations?
15f.2 Who may use these procedures for processing their discrimination complaint with USDA?
15f.3 If I want to use these procedures to have USDA consider my complaint, how long will it take for USDA to make a decision?
15f.4 What do certain words and phrases in these regulations mean?

Subpart B—I Filed A Complaint With USDA Prior To July 1, 1997, How Do I Request That USDA Consider My Complaint Using These Procedures?

15f.5 How do I request that USDA consider my complaint under these procedures?
15f.6 What must I say or include in my Section 741 Complaint Request?
15f.7 May I be represented by an attorney?

Subpart C—What Happens After I Send In My Request? May I Seek to Resolve My Complaint Informally With OCR?

15f.8 What does the Docketing Clerk do with my request?
15f.9 What will the Director do to settle my Section 741 Complaint Request when it is received?
15f.10 What if I do not want the Director to review my Section 741 Complaint Request and I want to proceed directly to a hearing?

Subpart D—If I Request A Hearing, What Will Happen? How Will The Hearing Be Conducted?

15f.11 Where must I file a hearing request and what happens to it?
15f.12 Am I entitled to a hearing in all circumstances?
15f.13 What is the function of the ALJ and who may communicate with him?
15f.14 What happens after I file a request for a hearing?
15f.15 What Happens After the Docketing Clerk Notifies All Parties?
15f.16 Although I request a hearing, may I request the ALJ to issue a decision without a hearing?
15f.17 What happens before the hearing?
15f.18 May I depose potential witnesses?
15f.19 Other than myself, OCR, and the agency, may any other interested party participate in the proceeding?
15f.20 May I subpoena witnesses to the hearing?
15f.21 What rules are applicable to the actual conduct of the hearing?
15f.22 What happens after the hearing?
15f.23 What will constitute the record for the final determination?
15f.24 When and in what form will a final determination be made on my complaint by USDA?
15f.25 Will USDA pay my attorneys fees if I win?

Subpart E—What If I Do Not Agree With The Final Determination By USDA?

15f.26 May I seek judicial review of the final determination?

Subpart F—How Do I Count Days For Purposes Of Deadlines And What Happens If I Miss A Deadline In These Rules?

15f.27 When is something considered "filed" as required by these rules and to whom do I need to give copies of what I file?
15f.28 When I or someone else has to do something within a certain number of days, how will USDA or the ALJ count the days?
15f.29 May I request an extension of a deadline or may I get relief for missing a deadline in these rules?

Authority: 5 U.S.C. 301; section 101(a) of Pub. L. 105–277, 112 Stat. 2681; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

Subpart A—What Is The Purpose Of These Regulations And To Whom And To What Programs Do They Apply?

§ 15f.1 What is the purpose of these regulations?

These regulations provide the rights of complainants and the procedures for the processing of certain nonemployment related complaints alleging discrimination by USDA that were filed with USDA prior to July 1, 1997, as authorized under section 741(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277.

§ 15f.2 Who may use these procedures for processing their discrimination complaint with USDA?

A person may use these procedures if he or she filed a nonemployment related discrimination complaint with USDA prior to July 1, 1997, that alleged discrimination by USDA at any time during the period beginning January 1, 1981 and ending December 31, 1996 :

(a) In violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) in administering—

(1) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(2) A housing program established under title V of the Housing Act of 1949; or

(b) In the administration of a commodity program or a disaster assistance program.

§ 15f.3 If I want to use these procedures to have USDA consider my complaint, how long will it take for USDA to make a decision?

To the maximum extent practicable, a final determination under these procedures will be issued within 180 days after you have filed your request.

§ 15f.4 What do certain words and phrases in these regulations mean?

Agency means the USDA agency, office, or committee that the complainant alleges has discriminated against the complainant in the administration of a covered program.

ALJ means an Administrative Law Judge appointed pursuant to the Administrative Procedure Act (5 U.S.C. 557(b)(3), 3105) who presides over a hearing if requested by a complainant.

ASA means the Assistant Secretary for Administration.

Complainant means a person who requests that USDA consider his or her complaint under the procedures of this part.

Complaint means a written document filed with USDA by a person alleging discrimination by USDA under a covered program.

Covered program means:

(1) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account;

(2) A housing program established under title V of the Housing Act of 1949; or

(3) A commodity program or disaster assistance program.

Director means the Director of USDA, OCR, or his or her subordinate designee.

Docketing clerk means an employee of the USDA Office of Civil Rights, designated to serve in this capacity.

Eligible complaint means a complaint that was filed with the Department of Agriculture before July 1, 1997, and that alleges discrimination occurring at any time during the period beginning on January 1, 1981 and ending December 31, 1996—

(1) In violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) in administering—

(i) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(ii) A housing program established under title V of the Housing Act of 1949; or

(2) In the administration of a commodity program or a disaster assistance program.

Ex parte communication means a prohibited communication between a party to a proceeding and the ALJ outside of the presence of, or without notice to, the other parties to the proceeding, as explained more fully in § 15f.13.

Final determination means the final USDA decision made on your complaint under these rules.

Hearing means a proceeding in which you may present your case before the ALJ.

Interested party means a person, other than the complainant, OCR, and the agency, who has an interest in a proceeding under these rules and is admitted to the proceeding under § 15f.20.

OCR means the USDA Office of Civil Rights.

Party or parties means the complainant, OCR, the agency, or a person admitted to the proceeding as an interested party.

Secretary means the Secretary of Agriculture.

Section 741 means section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277.

Section 741 Complaint Request (or Request) means a request by a complainant to consider his complaint under these rules.

USDA means the United States Department of Agriculture.

Subpart B—I Filed A Complaint With USDA Prior To July 1, 1997, How Do I Request That USDA Consider My Complaint Using These Procedures?

§ 15f.5 How do I request that USDA consider my complaint under these procedures?

In order for USDA to consider your complaint under these procedures, a Section 741 Complaint Request must be docketed with the Docketing Clerk in the USDA OCR.

(a) *Do I have to file a "Section 741 Complaint Request" if USDA is already working on my complaint? Do I have to file again?* If USDA OCR already reviewed or is working on your complaint, you will receive a notice by March 1, 1999, indicating that your complaint automatically has been docketed as a Section 741 Complaint Request for consideration under these procedures. The notice will provide you with the docket number assigned your Request and will give you further instructions with respect to what options you have or what actions you must take.

(b) *What if USDA is not working on my complaint? If I think USDA has reviewed or is working on my complaint, but do not receive a letter by March 1, 1999, what should I do?* If USDA is not already working on your complaint, or you do not receive a letter from USDA by March 1, 1999, or within 30 days thereafter, you should file a Section 741 Complaint Request with the Docketing Clerk at USDA OCR.

(c) *How long do I have to file my Section 741 Complaint Request?* You have until October 21, 2000 to file your Section 741 Complaint Request.

§ 15f.6 What must I say or include in my Section 741 Complaint Request?

If you must file a Section 741 Complaint Request, it should include a copy of your original complaint, a request in writing that USDA consider the complaint in accordance with these procedures, a statement as to when your complaint was filed with USDA, and any other evidence you consider necessary to prove that your complaint is an eligible complaint suitable for consideration under these procedures.

§ 15f.7 May I be represented by an attorney?

(a) If your Section 741 Complaint Request is automatically docketed as set forth in § 15f.5(a), and you already are represented by counsel of whom you have notified USDA, then this section does not apply.

(b) If you are filing your Section 741 Complaint Request with USDA, and if you are represented by an attorney, your Section 741 Complaint Request should also include an authorization signed by you indicating that the attorney is entitled to represent you on your behalf. If USDA receives such an authorization, all documents in connection with consideration of your complaint under these procedures will be sent to your attorney and not to you.

(c) Once your Section 741 Complaint Request is docketed with USDA, and you afterwards retain an attorney, you should forward an authorization to USDA signed by you indicating that the attorney is entitled to represent you on your behalf. If USDA receives such an authorization, all documents in connection with consideration of your complaint under these procedures will be sent to your attorney and not to you.

Subpart C—What Happens After I Send In My Section 741 Complaint Request? May I Seek to Resolve My Complaint Informally With OCR?

§ 15f.8 What does the Docketing Clerk do with my Section 741 Complaint Request?

All Section 741 Complaint Requests docketed by the OCR Docketing Clerk will be referred to the Director for an informal review. The Director will determine if the complaint is one that can be resolved informally, and, if so, the Director will seek to resolve the complaint informally with the complainant.

§ 15f.9 What will the Director do to settle my Section 741 Complaint Request when it is received?

The Director will review each Section 741 Complaint Request. If the Director finds that your complaint is an eligible complaint, the Director will: review all documents and evidence submitted by you; review all agency or OCR files, if any exist, regarding the circumstances surrounding the alleged discrimination; review any damage claims; and seek any further clarification, if necessary, from either you or the agency. OCR also may refer your eligible complaint for a formal investigation by the OCR, Program Investigation Division or by an outside contractor. Based on his or her review, the Director will either undertake negotiations with you to resolve the complaint; or inform you that OCR will not settle the complaint and explain to you your options, including your right to pursue formal proceedings before an ALJ under subpart D. If the complaint is successfully resolved or settled, the Director will issue a final determination disposing of the matter.

§ 15f.10 What if I do not want the Director to review my Section 741 Complaint Request and I want to proceed directly to a hearing?

If you do not want the Director to review your Section 741 Complaint Request, you may request a hearing following the procedures below in subpart D. You may request a hearing at any time during informal review or negotiations with the Director, or at any time during USDA consideration of your Section 741 Complaint Request.

Subpart D—If I Request A Hearing, What Will Happen? How Will The Hearing Be Conducted?

§ 15f.11 Where must I file a hearing request and what happens to it?

If you desire a hearing, you must file a request for a hearing with the Docketing Clerk, citing the docket number assigned to your Section 741 Complaint Request. When the Docketing Clerk receives your request for a hearing, your Section 741 Complaint Request will be assigned to an ALJ. The Docketing Clerk will send a notice of your hearing request to OCR and the agency, notifying them of the docket number and the assigned ALJ. The Docketing Clerk also will send you a notice of receipt of the hearing request that will inform you of the name of the assigned ALJ.

§ 15f.12 Am I entitled to a hearing in all circumstances?

Under section 741, you have a right to a hearing as part of the process for USDA to render a final determination on your eligible complaint. However, if at any time the ALJ determines that your complaint is not an eligible complaint, he or she may dismiss your complaint with a final determination and USDA review of your complaint will then have been completed. You also are not entitled to a hearing if there are no material issues of fact in dispute between you and USDA. In other words, if the only dispute remaining is a question of law, you will not receive a hearing and the ALJ will make a final determination under § 15f.16.

§ 15f.13 What is the function of the ALJ and who may communicate with him?

(a) *What are the powers of the ALJ?* The ALJ is responsible for conducting a hearing at your request on your Section 741 Complaint Request. He or she will have all powers prescribed in these rules and will make a proposed determination on your complaint. The proposed determination then will become the final determination after 35 days, unless the ASA reviews the proposed determination.

(b) *What is an ex parte communication?* An ex parte communication is a communication by one party to a proceeding with the ALJ outside of the presence of, or without notice to, the other parties to a proceeding. *Ex parte* communications in the proceedings on your complaint are prohibited and will be handled as follows:

(1) The ALJ will not engage in *ex parte* communications regarding the merits of a complaint with any party or with any person having any interest in the proceedings on the complaint, including OCR and any person in an advocacy or investigative capacity, at any time between the assignment of a hearing to him or her and the issuance of a proposed determination. This prohibition does not apply to:

(i) Discussions of procedural matters related to the complaint; or

(ii) Discussions of the merits of the complaint where all parties to the proceeding on the complaint have been given notice and an opportunity to participate.

(2) In the case of a communication described in paragraph (b)(1)(ii) of this section, a memorandum of any such discussion shall be included in the hearing record.

(3) No party to the proceeding or other interested person shall make or knowingly cause to be made to the ALJ an *ex parte* communication relevant to the merits of the complaint.

(4) If the ALJ receives an ex parte communication in violation of this section, the ALJ will place in the written record:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses to such communications, and memoranda stating the substance of any oral responses to such communications.

(c) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the ALJ may, to the extent consistent with the interests of justice and the policy underlying these proceedings, require the party or other interested person making the communication to show cause why such party's claim or interest in the complaint should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

§ 15f.14 What happens after I file a request for a hearing?

Within 20 days after you have filed your request for a hearing, ALJ shall file with the Docketing Clerk a notice stating the time, place, and manner of the hearing. The ALJ will have due regard for the public interest and the convenience and necessity of the parties in determining the time, place, and manner of the hearing. The notice will state whether the hearing will be conducted by telephone, audiovisual telecommunication, or personal attendance of any individual expected to participate in the hearing. The Docketing Clerk will send copies of the notice to the complainant and to all other parties to the proceeding.

§ 15f.15 What happens after the Docketing Clerk notifies all parties?

The first step in this process involves a response to your hearing request by OCR. OCR will turn over its entire file on your complaint to the ALJ. OCR also will file a report with the ALJ stating its position with respect to whether or not your complaint is an eligible complaint, with reasons for its position, as well as stating its position with respect to the merits of your complaint. OCR must turn over its file and make its report on its position on your complaint within 35 days. OCR must provide a copy to you of anything it provides to the ALJ.

§ 15f.16 Although I request a hearing, may I request the ALJ to issue a decision without a hearing?

(a) At any time after the parties have been notified of your hearing request, you may file a request with the ALJ to make a determination based on the written record. With your request, you should file any other arguments or evidence that you wish the ALJ to consider. The agency and OCR will have 35 days after you file your request to file any additional information, arguments, or evidence for the consideration of the ALJ. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The ALJ will make a proposed determination on your complaint based on the original complaint, the Section 741 Complaint Request, the OCR report, and any other evidence or written documents filed by the parties. The proposed determination will become the final determination 35 days after it is filed unless you request review of the proposed determination by the ASA. The ASA also may review the proposed determination on his or her own initiative. If the ASA reviews the decision, he or she will allow the parties a reasonable opportunity to file briefs in support of or opposition to the proposed determination, and afterwards will issue a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be made within 180 days of your filing of the Section 741 Complaint Request.

§ 15f.17 What happens before the hearing?

(a) *Do I need to file another answer or pre-hearing brief?* You may file a pre-hearing brief in support of your complaint.

(b) *Will there be a pre-hearing conference?* The ALJ may hold a pre-hearing conference. If such a conference is to be held, the notice of the pre-hearing conference also will contain a notice to the parties of a time and date for the pre-hearing conference. Pre-hearing conferences normally will be held by telephone. Issues that may be addressed at the pre-hearing conference may include: simplification of the issues; the possibility of obtaining stipulations of fact and of the authenticity of documents; limitation of the number of witnesses; exchange of copies of hearing exhibits; negotiation, compromise or settlement of issues; identification of documents of which official notice will be requested; a schedule for completion of the actions decided upon at the conference; and any other matters that may aid and expedite the conclusion of the proceeding. No transcript of the pre-hearing conference will be made but the ALJ will issue a written memorandum summarizing the results of the pre-hearing conference.

(c) *What else may the ALJ ask for before the hearing?* Prior to the hearing, the ALJ may require each of the parties to furnish any or all of the following: an outline of a party's position with respect to the complaint, the facts upon which the party intends to rely, the legal theories upon which the party intends to rely, copies of or a list of the documents and exhibits which the party anticipates on introducing at the hearing, and a list of anticipated witnesses.

§ 15f.18 May I depose potential witnesses?

(a) A party may request an order from the ALJ to take the testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence. The application for the order must specify the reason and need for taking testimony by deposition.

(b) The time, place, and manner of taking depositions will be as mutually agreed by the parties, or failing agreement, by order of the ALJ.

(c) No testimony taken by depositions will be considered as part of the evidence in the hearing until such testimony is offered and received in evidence at the hearing, and ordinarily it will not be received into evidence if the deponent is present and can testify at the hearing. However, when the deponent is present and can testify, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. Where you have requested a final determination by the ALJ based on the written record without a hearing, the ALJ, in his or her discretion, may receive depositions to supplement the record.

(d) Each party will bear its own expenses associated with the taking of any deposition.

§ 15f.19 Other than myself, OCR, and the agency, may any other interested party participate in the proceeding?

In most cases, there will be no parties to a proceeding under these rules, other than the complainant, OCR, and, and if it so desires, the agency. However, if there are circumstances in which additional parties have an interest in the proceeding, such as a bank which participated in a case involving a guaranteed loan, such other interested parties may be permitted to participate in the proceeding at the discretion of the ALJ.

§ 15f.20 May I subpoena witnesses to the hearings?

No. USDA has no statutory authority to subpoena witnesses to testify at the hearing.

§ 15f.21 What rules are applicable to the actual conduct of the hearing?

(a) *Who may appear at the hearing?* You may appear at the hearing in person or through your attorney. OCR or the agency will appear through a designated representative, which may include a USDA attorney. Any person who appears as counsel must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(b) *What happens if I fail to show up?* If, after having received notice of the hearing under § 15f.14, you fail to appear at the hearing without good cause, you will have waived your right to a hearing in the proceeding and the ALJ may proceed to issue a final determination based on the written record as provided for under § 15f.16.

(c) *Which party presents its case first at the hearing?* You, as the complainant, will proceed first at the proceeding, unless otherwise determined by the ALJ.

(d) *What kind of evidence will be admitted and how will it be handled?* (1) *In general.* The hearing will be conducted by the ALJ in the manner he or she determines most likely to obtain the facts relevant to the matter or matters at issue. The ALJ may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Each party will have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. The testimony of witnesses at a hearing will be on oath or affirmation and will be subject to cross-examination. Any evidence may be received by the ALJ without regard to whether that evidence could be admitted in judicial proceedings. Upon a finding of good cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the ALJ, the party must state briefly the grounds of such objection.

(ii) Only objections made before the ALJ may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness will be admitted in the manner provided in and subject to the provisions of § 15f.18(c) of these rules.

(4) *Exhibits.* Unless the ALJ finds that the furnishing of copies is impracticable, two copies of each exhibit must be filed with the ALJ. A party submitting an exhibit must provide every other party (except interested parties) a copy of the exhibit one week before the hearing. A true copy of an exhibit may be substituted for the original.

(5) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, will be admissible in evidence without the production of the person who made or prepared the same, and will be *prima facie* evidence of the relevant facts stated therein. Such record or document must be evidenced by an official publication thereof or a copy certified by a person having legal authority to make such certification.

(6) *Official notice.* Official notice will be taken of such matters as are judicially noted by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character if the parties are given adequate notice of matters so noticed, and the parties will be given adequate opportunity to show that such facts are erroneously noticed.

(7) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which must be included in the transcript. The offer of proof should consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it must be included in the transcript in its entirety. If the evidence

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consists of an exhibit, it must be marked for identification and inserted in the hearing record.

(8) *Interlocutory review.* Interlocutory review of rulings by the ALJ will not be permitted.

(9) *Transcript or recording.* (i) Hearings to be conducted by telephone will be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or by the personal attendance of parties and witnesses must be transcribed, unless the ALJ finds that recording the hearing verbatim would expedite the proceeding and the ALJ orders the hearing to be recorded verbatim. The ALJ must certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(ii) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the ALJ determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the ALJ shall order the verbatim transcription of the recording as requested by the party.

(iii) The costs of transcription or verbatim recordings will be paid for by USDA and charged to the agency whose action gave rise to the complaint at issue. Copies of recordings or transcripts of hearings will be made available to any party at the actual cost of duplication.

§ 15f.22 What happens after the hearing?

The ALJ will fix a reasonable time for filing posthearing briefs, proposed findings of fact and conclusions of law, and if permitted, reply briefs. Briefs should include a summary of evidence relied upon together with references to exhibit numbers and citations to the transcript and authorities relied upon. Briefs must be filed with the Docketing Clerk with copies to all parties.

§ 15f.23 What will constitute the record for the final determination?

The original complaint, the Section 741 Complaint Request, the OCR report, the agency answer, the transcript of testimony, exhibits, affidavits, depositions, briefs, memoranda of law, and all pleadings, motions, papers, and requests filed in the proceeding, including rulings, and the proposed determination by an ALJ (if applicable) shall constitute the exclusive record for the final determination.

§ 15f.24 When and in what form will a final determination be made on my complaint by USDA?

(a) The ALJ will make a proposed determination orally at the close of a hearing, or in writing within 35 days. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The proposed determination will become the final determination 35 days after it is made, unless you request review of the proposed determination by the ASA. The ASA also may review the proposed determination on his or her own initiative. If the ASA reviews the proposed determination, he or she will allow the parties a reasonable opportunity to file briefs in support or opposition to the proposed determination, and afterwards file a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be filed within 180 days after you filed your Section 741 Complaint Request.

§ 15f.25 Will USDA pay my attorneys fees if I win?

If you prevail on your eligible complaint, either in whole or in part, after a proceeding before an ALJ under the procedures in this subpart, you may be eligible for an award of attorneys fees as a prevailing party under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504. To get an EAJA award, you must file an application for such fees with the ALJ within 30 days after the final determination is made. Instructions for filing an EAJA application and obtaining an EAJA award are contained in 7 CFR part 1, subpart J. The ALJ must follow those rules, and not these Section 741 Complaint Request rules, in making any EAJA award.

Subpart E—What If I Do Not Agree With The Final Determination by USDA?

§ 15f.26 May I seek judicial review of the final determination?

Section 741 provides that you have at least 180 days after a final determination denying your eligible complaint under these rules to seek judicial review in the United States Court of Federal Claims or a United States District Court of competent jurisdiction.

Subpart F—How Do I Count Days For Purposes Of Deadlines and What Happens If I Miss A Deadline In These Rules?

§ 15f.27 When is something considered "filed" as required by these rules and to whom do I need to give copies of what I file?

A document, or other item, that must be "filed" under these rules is considered filed when postmarked or when it is received and date-stamped by the Docketing Clerk.

§ 15f.28 When I or someone else has to do something within a certain number of days, how will USDA or the ALJ count the days?

Unless otherwise specifically noted, a "day" refers to a calendar day and a document that must be filed by a certain date must either be postmarked on that date or received by the Docketing Clerk on that date. For documents that must be or are "filed" under these regulations, you count the number of days after filing starting with the day after the filing date as day one. For other time periods, you calculate the time period by counting the day after receipt by the party as day one. If the last day of a time period expires on a Saturday, a Sunday, or a Federal holiday, the last day of the time period will expire on the next business day.

§ 15f.29 May I request an extension of a deadline or may I get relief for missing a deadline in these rules?

You may request that the ALJ extend a deadline in these rules, or afford you relief for missing a deadline, which he or she may do, consistent with the principles of sovereign immunity, the terms of any applicable statute, these rules, and the necessity of expeditious completion of the public business. It is the intent of USDA that the time deadlines expressed in these regulations be construed equitably to ensure resolution of eligible complaints, to the extent permitted by law.

Done at Washington, D.C., this 30th day of November, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–32279 Filed 12–2–98; 1:00 pm]

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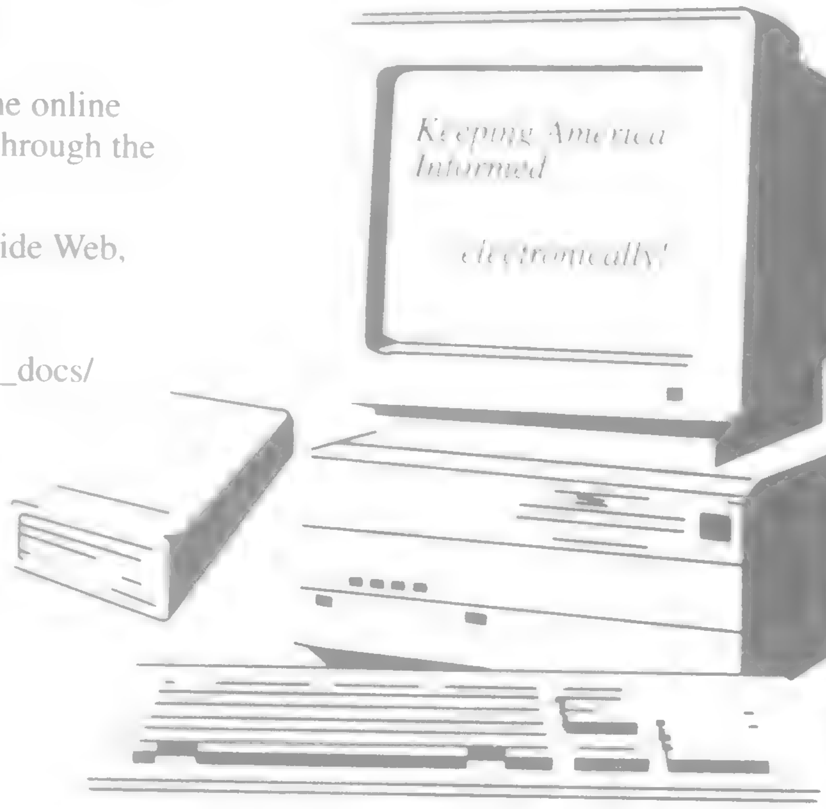

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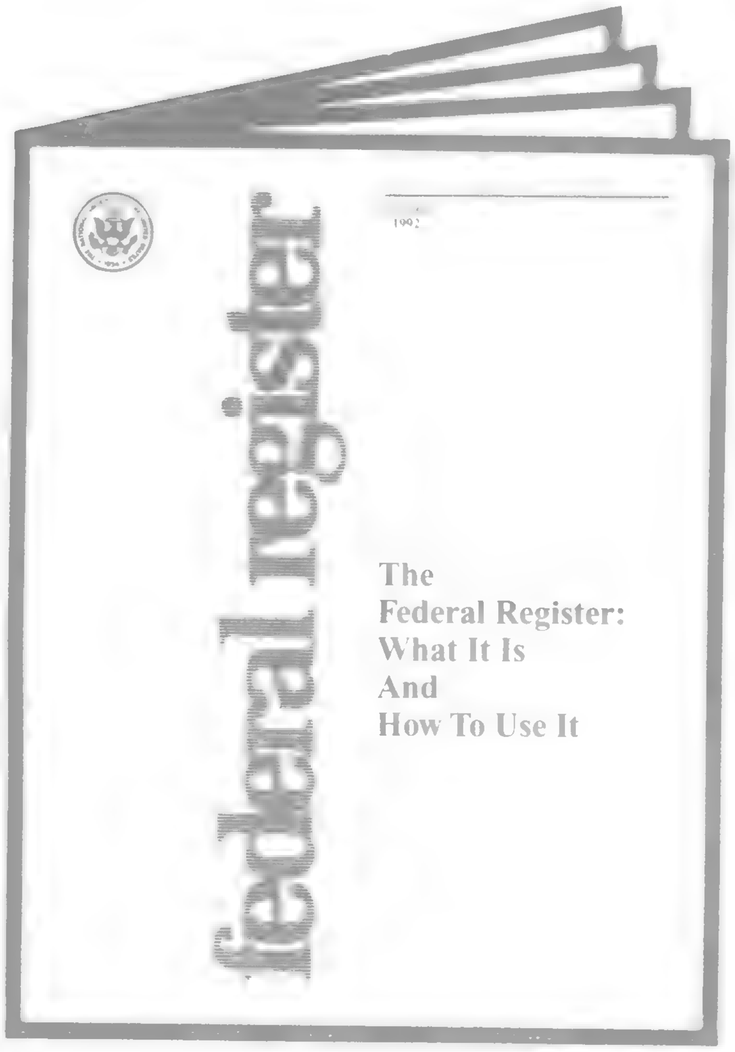

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 78N–036L]

RIN 0910–AA01

Drug Labeling; Warning and Direction Statements for Rectal Sodium Phosphates for Over-the-Counter Laxative Use; Final Rule; Stay of Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; stay of compliance.

SUMMARY: The Food and Drug Administration (FDA) is staying compliance for the regulation for warning and direction statements for over-the-counter (OTC) dibasic sodium phosphate/monobasic sodium phosphate (sodium phosphates) drug products intended for rectal (enema) use until December 7, 1998. The regulation established conditions under which the labeling must include warning and direction statements for oral and rectal sodium phosphates products. This stay of compliance applies only to rectal sodium phosphates products and is in response to requests and a citizen petition that the final rule did not allow sufficient time for relabeling of these products. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Section 201.307(b)(2)(ii) and (b)(3)(i) published on May 21, 1998 (63 FR 27836), are effective September 18, 1998, however, compliance with § 201.307(b)(2)(ii) and (b)(3)(i) as they relate to rectal sodium phosphates products is not mandatory until December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Turner, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2291.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 31, 1994 (59 FR 15139), the agency proposed to amend the tentative final monograph for over-the-counter (OTC) laxative drug products to limit the OTC container size for sodium phosphates oral solution to not greater than 90 milliliters (mL). The agency also proposed a warning for all sodium phosphates products not to exceed the recommended dosage unless directed by a doctor.

In the **Federal Register** of May 21, 1998 (63 FR 27836), FDA issued a final rule for OTC laxative drug products containing sodium phosphates § 201.307(b)(1), (b)(2), and (b)(3) (21 CFR 201.307(b)(1), (b)(2), and (b)(3)) establishing a container size limitation of 90 mL for oral sodium phosphates (sodium phosphates oral solution), and new warning and direction statements for OTC oral and rectal sodium phosphates for relief of occasional constipation, or for preparing the colon for x-ray or endoscopic examination. On May 21, 1998 (63 FR 27886), FDA also issued a proposed rule to amend the tentative final monograph for OTC laxative drug products (21 CFR 334.16 and 334.58) to include additional general labeling and professional labeling for oral and rectal sodium phosphates and a new time-to-effect statement for rectal products.

The final rule requires manufacturers to add certain new labeling for rectal sodium phosphates drug products. The new warning in § 201.307(b)(2)(ii) states: "Using more than one enema in 24 hours can be harmful." The new directions in § 201.307(b)(3)(i) state: "Do not" ("take" or "use") "more unless directed by a doctor. See Warnings." The final rule specified an effective date of September 18, 1998, for these warning and direction statements for rectal sodium phosphates products.

In the final rule (63 FR 27836 at 27842), the agency stated that relabeling costs of the type required by this final rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). At that time, the agency was aware of three manufacturers that together produce approximately 125 SKU's of rectal sodium phosphates drug products. The agency mentioned that there may be a few additional small manufacturers or a few additional products in the marketplace that are not identified in the sources FDA reviewed. The agency stated that some entities, especially those private label manufacturers that provide labeling for a number of the affected products, may incur significant impacts (63 FR 27836 at 27843).

In response to the final rule, the agency received two comments (Refs. 1 and 2) and two citizen petitions (Ref. 3). One private label manufacturer (Ref. 1) stated that the economic impact of the final rule was severe because it currently had 126 SKU's of rectal sodium phosphates products. The manufacturer stated that its relabeling cost was approximately $3,500 per SKU or $441,000. In addition, the cost of stickering the current inventory of 2 million printed folding cartons is $160,000 with a capital expenditure of $25,000. The cost of obsolescence for unused printed folding cartons during the transition period was estimated to be $100,000, making total costs approximately $776,000. The manufacturer requested that the implementation date of the final rule for enema products be 1 year after its effective date. A major manufacturer of oral and rectal sodium phosphates products (Ref. 2) objected to the content of the final rule and argued that the new warning and direction statements were not justified for rectal sodium phosphates products.

On July 15, 1998, at a public meeting between representatives of FDA and industry (Ref. 4), industry representatives stated the following concerns: (1) The warning in § 201.307(b)(2)(ii) would be confusing for consumers because it may conflict with how some physicians prescribe rectal sodium phosphates for cleansing the bowel in preparation for a medical procedure, and (2) 120 days is not enough time for manufacturers to relabel their rectal sodium phosphates products. Industry representatives suggested that the agency revise the warning to read: "Use only one enema in 24 hours unless recommended by a doctor. Serious side effects may occur from excess dosage." No revisions were suggested for the direction statement in § 201.307(b)(3)(i).

Petitions (Ref. 3) for a "stay of action and reconsideration" for OTC enemas containing sodium phosphates, submitted in response to this meeting, requested: (1) An indefinite stay of the warning and directions required by § 201.307(b)(2)(ii) and (b)(3)(i), (2) revision of the warning in § 201.307(b)(2)(ii) to read: "Do not use more than one enema in a 24-hour period unless directed by a doctor," and (3) revision of the directions in § 201.307(b)(3)(i) to read: "Use only single daily dose unless directed by a doctor. See Warnings."

II. The Agency's Response

The agency acknowledged in its analysis of impacts in the final rule (63 FR 27836 at 27842) that private label manufacturers that provide labeling for a number of the affected products may incur significant impacts. Based on the comment's information (Ref. 1), the agency agrees that the economic impact for this specific manufacturer is high. In addition, other industry representatives concurred that 120 days was insufficient time for manufacturers to relabel their rectal sodium phosphates products. Therefore, the agency is staying compliance with the regulation for relabeling of rectal sodium phosphates products until December 7, 1998, to provide manufacturers additional time to comply with the labeling requirements of the final rule. Industry was previously informed of this stay of compliance with the regulation (Ref. 5). The agency is not granting a longer stay of compliance or an indefinite stay of compliance of this portion of the final rule because of the safety concerns discussed in the final rule (63 FR 27836 at 27840 to 27841).

The petitioner's request for reconsideration and revision of the warning and direction statements based on professional uses of these products is denied (Ref. 5). The warning in the March 31, 1994, proposed rule (59 FR 15139 at 15142) was intended to promote the safe, direct consumer use of these products. The agency considers the warning in § 201.307(b)(2)(ii) and the directions in § 201.307(b)(3)(i) in the May 21, 1998, final rule consistent with the safe, direct consumer use of rectal sodium phosphates products as intended in the proposed rule. The agency may reconsider the wording in this labeling if convincing data are submitted that demonstrate consumer confusion. The agency believes that professional labeling for these products, which will be reproposed in a future issue of the **Federal Register**, will address any remaining labeling concerns.

Publication of this document constitutes final action on the warning and labeling directions for rectal sodium phosphates products in § 201.307(b)(2)(ii) and (b)(3)(i) under the Administrative Procedure Act (5 U.S.C. 553). Because this final rule is a stay of compliance of the regulation, FDA finds that the notice and comment procedures are unnecessary and not in the public interest (5 U.S.C. 553(b) and (d)). The agency believes that staying compliance with the regulation, as it relates to rectal sodium phosphates products, until December 7, 1998, will provide sufficient time for industry to implement the labeling revisions required for rectal sodium phosphates products.

III. References

The following references are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested parties between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. C190, Docket No. 78N–036L, Dockets Management Branch.
2. Comment No. LET176, Docket No. 78N–036L, Dockets Management Branch.
3. Comment No. PRC1, Docket No. 78N–036L, Dockets Management Branch.
4. Comment No. MM16, Docket No. 78N–036L, Dockets Management Branch.
5. Letter from D. Bowen, FDA, to P. Reichertz, Arent Fox Kintner Plotkin & Kahn, coded LET178, Docket No. 78N–036L, Dockets Management Branch.

IV. Analysis of Impacts

The economic impact of the final regulation was discussed in the final rule (63 FR 27836 at 27842 and 27843). A stay of compliance for the warning and direction statements for rectal sodium phosphates products will provide additional time for companies to relabel these products and will reduce label obsolescence, as there will be additional time to use up more existing labeling. Thus, this final rule granting a stay of compliance should reduce the economic impact on industry.

FDA has examined the impacts of the final rule (stay of compliance) under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule provides a stay of compliance, which will provide manufacturers additional time to use up existing product labeling. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling is a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32391 Filed 12–4–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 98–075]

RIN 2115–AE46

Special Local Regulations; BellSouth Winterfest Boat Parade, Broward County, Fort Lauderdale, Fl

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special local regulations are being adopted for the BellSouth Winterfest Boat Parade. The event will be held on December 12, 1998, on the waters of the Port Everglades turning basin and the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to the Pompano Beach Day Beacon 74 (LLNR 47230). The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 5 p.m. and terminate at 10 p.m. EST on December 12, 1998.

FOR FURTHER INFORMATION CONTACT: QMCS T.E. KJERULFF, Coast Guard Group, Miami, Florida at (305) 535–4448.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The BellSouth Winterfest Boat Parade is a nighttime parade of approximately 110 pleasure boats ranging in length from 20 feet to 200 feet decorated with holiday lights. Approximately 1000 spectator craft are anticipated. The parade will form in the staging area at the Port Everglades turning basin then proceed north on the Intracoastal Waterway (ICW) to Lake Santa Barbara where the parade will disband. The regulated area includes the staging area and the parade route. The staging area encompasses the Port Everglades turning basin, north to Dania Sound Light 35 LLNR 42865. The parade route encompasses the Intracoastal Waterway from Dania Sound Light 35 (LLNR 47575) to Pompano Beach day beacon 74 (LLNR 47230). No anchoring is permitted in the staging area. Further, no anchoring is permitted in the vicinity of the viewing area which extends from the Sunrise Blvd Bridge south to the New River Sound Light 3 (LLNR 47240) west of the ICW. During the parade transit, these regulations prohibit nonparticipating vessels from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels will be allowed to resume normal operations at the discretion of the Patrol Commander.

In accordance with 5 U.S.C. § 553, good cause exist for making these regulations effective less than 30 days after the **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying the effective date would be contrary to national safety interest since immediate action is needed to minimize potential danger to the public as the permit was only recently received from the event organizer.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately five hours in a limited area of the ICW.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T–07–075 is added to read as follows:

§ 100.35T–07–075 Bellsouth Winterfest Boat Parade, Broward County, Ft. Lauderdale, FL

(a) *Definitions:*

(1) *Staging Area:* The staging area is the Port Everglades Turning Basin and that portion of the Intracoastal Waterway extending from Port Everglades Turning Basin to Dania Sound light 35 (LLNR 42865).

(2) *Parade Route:* The parade route includes the Intracoastal Waterway from Dania Sound light 35 (LLNR 47575) to Pompano Beach daybeacon 74 (LLNR 47230).

(3) *Viewing area:* The viewing area extends from the Sunrise Blvd Bridge south to the New River Sound Light 3 (LLNR 47240) west of the ICW.

(4) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida. The Coast Guard assumes no responsibility for the operation of the event, the safety of participants and spectators, the safety of transient craft, and the qualification and instruction of participants. These

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responsibilities rest solely with the sponsor of the event.

(b) *Special Local Regulations:*

(1) Staging area: Entry or anchoring in the staging area by nonparticipating vessels is prohibited, unless authorized by the Patrol Commander.

(2) Parade route: During the parade transit, nonparticipating vessels are prohibited from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade unless authorized by the Patrol Commander.

(3) Viewing Area: Anchoring in the vicinity of the viewing area is prohibited.

(4) Miscellaneous: A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately. At the discretion of the Patrol Commander, all vessels may resume normal operations after the passage of the parade participants.

(c) *Dates:* These regulations become effective at 5 p.m. and terminate at 10 p.m. EST on December 12, 1998.

Dated: November 20, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–32404 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–009]

RIN 2115–AE47

Drawbridge Operation Regulations; Billy's Creek, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the State Road 80 bridge, across Billy's Creek, Fort Myers, Lee County by changing the operating regulations to allow the drawbridge to remain closed. This action will accommodate the needs of auto traffic and still provide for the reasonable needs of navigation.

DATES: The rule becomes effective January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Manager, Bridge Section, (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 1, 1998, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operations Regulations, Billy's Creek, FL in the **Federal Register** (63 FR 29676). The Coast Guard received one comment on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The State Road 80 bridge across Billy's Creek near Fort Myers currently is required to open with 24 hours advance notice. However, no requests for bridge opening have been received since 1987.

Discussion of Comments and Changes

One comment was received from a property owner along the river requesting that the bridge not be permanently closed, as there is a potential for increased traffic in the area as the property is zoned for commercial use and it could be developed as a marine facility. The Coast Guard agrees, and a provision has been added to restore the bridge to operable condition within 6 months of notification by the District Commander to do so.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation. (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because of the lack of requests to open the draw.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. *Small entities* may include small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed the rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 32 of Commandant Instruction M16475.1C, that the promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" has been prepared and is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations: In consideration of the foregoing, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—[Amended]

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.268 is added to read as follows:

§ 117.268 Billy's Creek.

The draw of the State Road 80 bridge at Fort Myers need not be opened for the passage of vessels; however, the draw shall be restored to operable condition within 6 months after notification by the District Commander to do so.

Dated: November 2, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–32405 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 491

Garnishment of Postal Employee Salaries

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: These amended regulations implement the statutory provision which provides that the pay of employees of the United States Postal Service and the Postal Rate Commission will be subject to garnishment orders.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: William B. Neel, Attorney, Law Department Mid-Atlantic Office, (202) 314–6814.

SUPPLEMENTARY INFORMATION: On October 6, 1993, Congress enacted section 9 of Public Law 103–94 entitled, "Garnishment of Federal Employees' Pay." This law is a limited waiver of the Federal Government's sovereign immunity to permit pay from an agency to an employee to be garnished by federal, state and local legal process, subject to certain limitations. Child support garnishment is already covered by other federal law. On February 3, 1994, the President signed Executive Order 12897, which delegated responsibility to the Postal Service to issue implementing regulations for its employees and for the employees of the Postal Rate Commission. These regulations are amended in accordance with this delegation of authority.

The Postal Service is amending its regulations implementing garnishment withholding under Section 9 of Public Law 103–94. This federal law supersedes state law with regard to a variety of issues in garnishment. Accordingly, regardless of state law, legal process must be in conformity with these regulations.

This waiver of immunity for the garnishment process confers jurisdiction only over an employee's pay, and does not confer jurisdiction over the Postal Service or the Postal Rate Commission as a party to a lawsuit, nor does it waive immunity for the purpose of orders to show cause or for penalties or sanctions such as default judgments. In *First Virginia Bank* v. *Randolph*, 920 F.Supp. 213 (D.D.C. 1996), rev'd., No. 96–5205 (D.C. Cir. April 11, 1997) the Circuit Court held that the Federal Government's waiver of sovereign immunity is limited and the Federal Government cannot be held liable to pay money damages for failure to comply with legal process. These regulations embody language consistent with that holding.

List of Subjects in 39 CFR Part 491

Government employees, Postal Service, Wages.

For the reasons stated, in subchapter F of chapter I of title 39, Code of Federal Regulations, part 491 is revised to read as follows:

PART 491—GARNISHMENT OF SALARIES OF EMPLOYEES OF THE POSTAL SERVICE AND THE POSTAL RATE COMMISSION

Sec.
491.1 Authorized Agent to receive service.
491.2 Manner of service.
491.3 Sufficient legal form.
491.4 Identification of employees.
491.5 Costs.
491.6 Response to process.
491.7 Release of information.
491.8 Execution of process.
491.9 Restrictions on garnishment.

Authority: 5 U.S.C. 5520a; 39 U.S.C. 401; E.O.12897, 59 FR 5517, 3 CFR, 1994 Comp., p. 858.

§ 491.1 Authorized Agent to receive service.

Notwithstanding the designation, in § 2.2 of this chapter, of the General Counsel as agent for the receipt of legal process against the Postal Service, the sole agent for service of garnishment process directed to the pay of Postal Service employees and employees of the Postal Rate Commission ("employees") is the Manager, Payroll Processing Branch, 2825 Lone Oak Parkway, Eagan, MN 55121–9650 ("Authorized Agent"). The Authorized Agent shall have sole authority to receive service of legal process in the nature of garnishment (hereinafter sometimes referred to as "process") arising under the law of any state, territory, or possession, or the order of a court of competent jurisdiction of any state, territory, or possession (including any order for child support and alimony or bankruptcy). The Authorized Agent may not receive or transmit service of process in a private legal matter on behalf of an employee. No process shall be effectively served until it is received by the Authorized Agent or his designee. No other employee shall have the authority to accept service of such process. Service of process in conformity with Rule 4(i) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) is not waived for any suit or action wherein the Postal Service, its officers, or employees are parties. Any Order, issued in bankruptcy, for the withholding of sums from pay due an employee and which is directed to the Postal Service for handling outside the voluntary allotment procedure, is legal process subject to the provisions of these regulations.

§ 491.2 Manner of service.

Service of process on the Authorized Agent or his designee may be made in person or by certified or registered mail, with return receipt requested, at the address of the Authorized Agent. Service may also be made on the Authorized Agent by means of any private delivery service pursuant to its authority for the private carriage of letters under an exception to the Private Express Statutes, 39 U.S.C. 601–606, provided that the private delivery organization issues a receipt bearing the name and address of both the addressee and sender, as well as the date of delivery and the signature of the receiving agent. No garnishment is effectively served until it is received by the Authorized Agent or his designee regardless of the chosen mode of delivery. Process addressed to, delivered to, or in any manner given to any employee, other than the Authorized Agent or his designee, may, at the sole discretion of the employee, be returned to the issuing court marked "Not Effectively Served." A copy of or reference to these regulations may be included. Employees are not authorized to redirect or forward garnishment process to the Authorized Agent. In the event that the address of the Authorized Agent is changed, mail may be forwarded from his last published address to his new official address until such time as these regulations are amended to reflect the new address.

§ 491.3 Sufficient legal form.

No document purporting to garnish employee wages shall be deemed sufficient unless it can be determined from the face of the document that it is legal process in the nature of garnishment; that it is issued by a court of competent jurisdiction or an authorized official pursuant to an order of such a court or pursuant to federal, state or local law, evidenced by a signature of the issuing person; and that it contains the name of the garnished party, with his or her social security number, orders the employing agency to withhold from pay a specific amount of money, specifically describes the judgment of debt or administrative action complete with statutory citation and contains specific advice as to where to send the funds as they are periodically withheld including the complete Zip Code (Zip + 4). When there is a suggestion that the employee is under the jurisdiction of a bankruptcy proceeding, the creditor must provide documentary evidence to prove that his legal process is not in violation of the bankruptcy court's jurisdiction before the creditor's garnishment may be processed. Documents deficient in any of these respects may be returned to the issuing court or authorized official inscribed "Insufficient as to legal form."

§ 491.4 Identification of employees.

Garnishments must be accompanied by sufficient information to permit prompt identification of the employee and the payments involved. Garnishment of an employee whose name and social security number is similar to but not identical with the name and social security number on the garnishment will not be processed. An exact match of both name and social security number is required in order to permit processing; otherwise, the garnishment will be returned marked "Insufficient identifying information." Garnishments which are insufficient in regard to identifying information will not be held pending receipt of further information and must be served again when the proper information is obtained.

§ 491.5 Costs.

The Postal Service's administrative costs in executing the garnishment action shall be added to each garnishment and the costs recovered shall be retained as offsetting collections. The Postal Service reserves the right to redetermine the administrative cost of any garnishment if, in administering any garnishment, extra costs beyond those normally encountered are incurred, and add the extra cost to each garnishment. The extra costs recovered shall be retained as offsetting collections.

§ 491.6 Response to process.

(a) Within fifteen days after receipt of process that is sufficient for legal form and contains sufficient information to identify the employee, the Authorized Agent shall send written notice that garnishment process has been served, together with a copy thereof, to the affected employee at his or her duty station or last known address. The Authorized Agent shall respond, in writing, to the garnishment or interrogatories within thirty days of receipt of process. The Authorized Agent may respond within a longer period of time as may be prescribed by applicable state Law. Neither the Authorized Agent nor any employee shall be required to respond in person to any garnishment served according to the provisions of 5 U.S.C. 5520a and the regulations in this section. A sufficient response to legal process shall consist of any action of the Postal Service consistent with these regulations. The action shall be considered to be given under penalty of perjury and shall constitute a legally sufficient answer to any garnishment. The Postal Service may, in its sole discretion, answer or otherwise respond to documents purporting to be legal process which are insufficient as to the manner of service, insufficient as to the identification of the employee, insufficient as to legal form or insufficient for any other reason.

(b) The requirements of paragraph (a) of this section are illustrated by the following example:

Example: Each periodic check with the accompanying Financial Institution Statement shall be considered to be a legally sufficient answer. Where legal process has been processed but no money was deducted, (for the reason of insufficient pay, prior garnishment in force, etc.) the mailing label or other written response shall be a sufficient answer. Where the Postal Service sends a check or mailing label, no further action will be required (such as a cumulative report or notarized statement.) Documents which are defective with respect to service, lack of legal sufficiency, failure to properly identify the employee, or other reason, do not require a response or an answer but if the Postal Service chooses to act in any way, such as to return the document, that act shall be a sufficient answer.

§ 491.7 Release of information.

(a) No employee whose duties include responding to interrogatories to garnishments shall release information in response to a garnishment until it is determined that sufficient information, as required in § 491.4, has been received in writing as part of the garnishment legal process. The Authorized Agent may, at his or her sole discretion, accept or initiate telephone or telefax inquiries concerning garnishments. No other employee may release any information about employees except in conformity with the Privacy Act of 1974, 5 U.S.C. 552a, and the regulations in 39 CFR Part 266, "Privacy of Information."

(b) The Authorized Agent's response to legal process is sufficient if it contains only that information not otherwise protected from release by any federal statute including the Privacy Act. Neither the Postal Service nor the Postal Rate Commission shall be required to provide formal answers to interrogatories received prior to the receipt of legal process. Employment verification may be obtained by accessing the Postal Service's employment verification system by dialing 1–(800) 276–9850.

§ 491.8 Execution of process.

(a) All legal process in the nature of garnishment shall be date and time stamped by the Authorized Agent when received for the purpose of determining the order of receipt of process which is sufficient as to legal form and contains sufficient information for identification of the employee, the Authorized Agent's date and time stamp shall be conclusive evidence. Child support and alimony garnishments will be accorded priority over commercial garnishments under 5 U.S.C. 5520a as provided in 5 U.S.C. 5520a(h)(2). Garnishments shall be executed provided that the pay cycle is open for input or, if closed, will be held until the next cycle. In no event shall the Postal Service be required to vary its normal pay or disbursement cycles in order to comply with legal process of any kind. Garnishments shall be recalculated, if required, to fit within the normal postal pay cycles. The Postal Service shall not be required to withhold pay and hold the funds in escrow. The Postal Service, in its sole discretion, may process more than one garnishment at a time within the restrictions on garnishments in Section 491.9 of these regulations. The Postal Service may, in its sole discretion, accept and hold for processing garnishments received after the garnishment currently in force.

(b) The Postal Service will only accept and effectuate legal process for a person who is currently employed. Upon cessation of employment, process relating to that individual will be terminated and not retained. The Postal Service shall not be required to establish an escrow account to comply with legal process even if the applicable law of the jurisdiction requires private employers to do so. Legal process must state on its face that the Postal Service withhold up to a specific total amount of money, the Postal Service will not calculate interest, charges, or any variable in processing a garnishment. The Postal Service may continue processing a garnishment if the garnishing attorney provides the adjusted total including the additional money owed, as determined from his calculation of the variable amounts. The attorney is deemed to certify on his professional responsibility that the calculations are correct and will indemnify the employee directly for any errors. All garnishments of periodic pay may be effectuated in accordance with the bi-weekly pay schedule. The Postal Service need not vary its pay and disbursement cycles to accommodate withholding on any other cycle.

(c) Neither the Postal Service, the Postal Rate Commission nor any disbursing officer shall be liable for any payment made from moneys due from, or payable by the Postal Service or the Postal Rate Commission to any individual pursuant to legal process regular on its face.

(d) The Postal Service, the Postal Rate Commission, any disbursing officer or any other employee shall not be liable to pay money damages for failure to comply with legal process.

§ 491.9 Restrictions on garnishment.

Garnishments under this section shall be subject to the restrictions in 15 U.S.C. 1671–1677, including limits on the amounts which can be withheld from an employee's pay and the priority of garnishments.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 98–32311 Filed 12–4–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–7162a; A–1–FRL–6196–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; 15 Percent Rate-of-Progress and Contingency Plans; Vapor Recovery Controls for Gasoline Distribution and Dispensing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions establish 15 percent rate-of-progress (ROP) and contingency plans for ozone nonattainment areas in the State. The revisions also include regulations adopted by New Hampshire to control volatile organic compound (VOC) emissions from gasoline dispensing facilities and from gasoline tank trucks. The intended effect of this action is to approve these plans and regulations as revisions to the State's SIP. This action is being taken in accordance with the Clean Air Act.

EFFECTIVE DATE: This rule is effective on January 6, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Robert McConnell, (617) 565–9266.

SUPPLEMENTARY INFORMATION: Section 182(b)(1) of the Act requires ozone nonattainment areas classified as moderate or above to develop plans to reduce volatile organic compounds (VOC) emissions by 15 percent from 1990 baseline levels. There are two serious ozone nonattainment areas in New Hampshire. The areas are referred to as the Portsmouth-Dover-Rochester area (the "Por-Dov-Roc area"), and the New Hampshire portion of the Boston-Lawrence-Worcester area (the "Bos-Law-Wor area). New Hampshire is, therefore, subject to the 15 percent ROP requirement.

I. Background

On October 27, 1997 (62 FR 55544), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed approval of the State's 15 percent ROP and contingency plans. The formal SIP revision was submitted by New Hampshire on August 29, 1996.

The proposed approval of New Hampshire's 15 percent ROP and contingency plans which was published in the October 27, 1997 **Federal Register** (62 FR 55544), stated that EPA accepted the level of emission reductions projected to occur from the State's VOC RACT rules, Stage I rule, and Stage II rule. EPA's proposed rulemaking noted that although the State had submitted these rules to EPA, they had not been approved by EPA as of October 27, 1997. On March 10, 1998 (63 FR 11600), EPA approved the New Hampshire VOC RACT rules into the State's SIP. On September 21, 1998 (63 FR 50180), EPA proposed approval of New Hampshire's Part Env–A 1205 "Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks." This regulation contains the State's Stage I and Stage II vapor recovery control requirements. Today's action also includes a final approval of New Hampshire's Part Env–A 1205.

Transportation Conformity Budgets

Under EPA's transportation conformity rule the 15 percent plans are a control strategy SIP. The plans for New Hampshire establish VOC emission budgets for on-road mobile sources within the respective nonattainment areas. These plans do not establish NO_x emission budgets for on-road mobile sources. However, New Hampshire submitted an ozone attainment demonstration SIP revision to EPA on June 30, 1998. The ozone attainment demonstration establishes the VOC and NO_x emission budgets for 2003 shown in Table 1.

TABLE 1.—2003 EMISSION BUDGETS FOR ON-ROAD MOBILE SOURCES

Nonattainment area	VOC Budget tons per summer day	NO_x Budget tons per summer day
NH portion of Bos-Law-Wor area	10.72	21.37
Pos-Dov-Roc area	6.97	13.68

By letter dated August 19, 1998, EPA informed New Hampshire that the motor vehicle budgets contained within the State's ozone attainment demonstration were adequate for conformity purposes. EPA believes that the VOC and NO_x budgets established by the New Hampshire ozone attainment demonstration are currently the controlling budgets for conformity determinations for 2003 and later years. The budgets in the attainment demonstration specifically address anticipated mobile source emissions in 2003, whereas the 15 percent plan establishes a budget for 1996. The time period for the budget in the 15 percent plans has passed. Additionally, the attainment demonstration establishes a more stringent budget.

EPA's rationale for granting approval to these plans, and the details of New Hampshire's submittal are contained in the NPR and the accompanying technical support document and will not be restated here.

II. Public Comments

No comments were received on the October 27, 1997 NPR regarding EPA's proposed action on the New Hampshire 15 percent ROP and contingency plans, or on the September 21, 1998 NPR regarding the State's Gasoline Dispensing Facilities and Gasoline Tank Trucks regulation.

III. Final Action

EPA is approving the New Hampshire 15 percent ROP and contingency plans as revisions to the State's SIP. EPA is also approving New Hampshire's Part Env–A 1205 "Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks" into the New Hampshire SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an "economically significant" action under Executive Order 12866.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 19, 1998.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraphs (c)(53) and (c)(58) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on August 29, 1996. This revision is for the purpose of satisfying the rate-of-progress requirement of section 182(b) and the contingency measure requirement of section 172(c)(9) of the Clean Air Act, for the Portsmouth-Dover-Rochester serious ozone nonattainment area, and the New Hampshire portion of the Boston-Lawrence-Worcester serious ozone nonattainment area.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated August 29, 1996 submitting a revision to the New Hampshire State Implementation Plan.

* * * * *

(58) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on November 25, 1992.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated November 24, 1992 submitting a revision to the New Hampshire State Implementation Plan.

(B) Part Env–A 1205 "Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks," effective in the State of New Hampshire on August 17, 1992.

(ii) Additional materials.

(A) New Hampshire Department of Environmental Services "Stage II Equivalency Demonstration," dated November 1992.

(B) Nonregulatory portions of the submittal.

[FR Doc. 98–32421 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE100–2014 & DC100–1017; FRL–6193–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware and District of Columbia; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by Delaware and the District of Columbia that are incorporated by reference (IBR) into their respective State implementation plans (SIPs). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA. This format revision will primarily affect the "Identification of plan" sections of CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review remain unchanged.

EFFECTIVE DATE: This final rule is effective on December 7, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; and the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 566–2108 or by e-mail at frankford.harold@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What a SIP is.
How EPA enforces SIPs.
How the state and EPA updates the SIP.
How EPA compiles the SIPs.
How EPA organizes the SIP compilation.
Where you can find a copy of the SIP compilation.
The format of the new Identification of Plan section.
When a SIP revision become Federally enforceable.
The historical record of SIP revision approvals.
What EPA is doing in this action.
How this document complies with the Federal administrative requirements for rulemaking.

* * * * *

What a SIP Is

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

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How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in Part 52 (Approval and Promulgation of Implementation Plans), title 40 of the Code of Federal Regulations (40 CFR Part 52). The actual state regulations approved by EPA are not reproduced in their entirety in 40 CFR Part 52, but are "incorporated by reference" which means that EPA has approved a given state regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

How the State and EPA Updates the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR.

EPA began the process of developing: (1) a revised SIP document for each state that would be IBR under the provisions of 1 CFR Part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the "Identification of Plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and "Identification of Plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIPs

The Federally-approved regulations, source-specific permits, and nonregulatory provisions (entirely or portions of) submitted by each state agency have been compiled by EPA into a "SIP compilation." The SIP compilation contains the updated regulations, source-specific permits, and nonregulatory provisions approved by EPA through previous rulemaking actions in the **Federal Register**. The compilations are contained in three-ring binders and will be updated, primarily on an annual basis.

How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the regulations, part two contains the source-specific requirements that have been approved as part of the SIP and part three contains nonregulatory provisions that have been EPA approved. Each part consists of a table of identifying information for each SIP-approved regulation, each SIP-approved source-specific permit, and each nonregulatory SIP provision. In this action, EPA is publishing the tables summarizing Parts one and two for each State. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR Part 52 for these states. EPA will publish the summary list of Part Three SIP provisions for Delaware and the District of Columbia in a separate action. EPA Regional Offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

EPA Region III developed and will maintain the compilation for Delaware and the District of Columbia. A copy of the full text of each state's regulatory and source-specific SIP compilation will also be maintained at the OFR and EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the "Identification of Plan" section and included additional information to clarify the enforceable elements of the SIP. The revised Identification of Plan section contains five subsections:

1. Purpose and scope
2. Incorporation by reference
3. EPA-approved regulations
4. EPA-approved source-specific permits
5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of Plan section found in each subpart of 40 CFR Part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of Part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether or not to retain the Identification of Plan appendices for some further period.

What EPA Is Doing in This Action

Today's rule constitutes a "housekeeping" exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR Part 52. State SIP revisions are controlled by EPA regulations at 40 CFR Part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the "good cause" exemption in Section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and Section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under Section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Delaware and District of Columbia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these "Identification of plan" reorganization actions for Delaware and the District of Columbia.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 17, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. Section 52.420 is redesignated as § 52.465 and the section heading and paragraph (a) are revised to read as follows:

§ 52.465 Original identification of plan section.

This section identifies the original "Air Implementation Plan for the State of Delaware" and all revisions submitted by Delaware that were federally approved prior to July 1, 1998.

* * * * *

3. A new § 52.420 is added to read as follows:

§ 52.420 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for Delaware under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1998 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 3 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 3 EPA Office at 1650 Arch Street, Philadelphia, PA 19103; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460.

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title subject	State effective date	EPA approval date	Comments
Regulation 1—Definitions and Administrative Principles				
Section 1	General Provisions	5/28/74	03/23/76 41 FR 12010.	
Section 2	Definitions	2/8/95	2/28/96 61 FR 7415	Some terms not in SIP due to subject matter.
Section 3	Administrative Principles	1/7/72	05/31/72 37 FR 10842.	
Section 4	Abbreviations	2/1/81	3/15/82 48 FR 11013	Abbreviation of "CAA" only.
Regulation 2—Permits				
Section 1	General Provisions	10/8/82	1/26/83 48 FR 3598.	
Section 2	Construction, Installation, Alteration and Operation Permits	1/31/90	6/29/90 55 FR 26689	Section 2.1.h is not in the SIP.
Section 3	Exemptions	3/6/90	1/27/93 58 FR 40065.	
Section 4	Applications Prepared by Interested Parties	7/17/84	7/2/85 50 FR 27244.	
Section 5	Cancellation of Permits	10/8/82	1/26/83 48 FR 3598.	
Section 6	Action on Applications	10/8/82	1/26/83 48 FR 3598.	
Section 7	Suspension or Revocation of Operating Permits	7/17/84	7/2/85 50 FR 27244.	
Section 8	Transfer of Permit Prohibited	7/17/84	7/2/85 50 FR 27244.	
Section 9	Availability of Permits	7/17/84	7/2/85 50 FR 27244.	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Regulation 3—Ambient Air Quality Standards				
Section 1	General Provisions	03/29/88	4/6/94 48 FR 46986.	
Section 2	General Restrictions	3/11/80	10/30/81 46 FR 53663.	
Section 3	Suspended Particulates	3/11/80	10/30/81 46 FR 53663.	
Section 4	Sulfur Dioxide	3/11/80	10/30/81 46 FR 53663.	
Section 5	Carbon Monoxide	3/11/80	10/30/81 46 FR 53663.	
Section 6	Ozone	3/11/80	10/30/81 46 FR 53663.	
Section 8	Nitrogen Dioxide	3/11/80	10/30/81 46 FR 53663.	
Section 10	Lead	3/11/80	3/11/82 48 FR 10535.	
Section 11	PM_{10} Particulates	12/7/88	4/6/94 48 FR 46986.	
Regulation 4—Particulate Emissions From Fuel Burning Equipment				
Section 1	General Provisions	5/28/74	41 FR 12010.	
Section 2	Emission Limits	5/28/74	41 FR 12010.	
Regulation 5—Particulate Emissions From Industrial Process Operations				
Section 1	General Provisions	5/28/74	3/23/76 41 FR 12010.	
Section 2	General Restrictions	5/28/74	3/23/76 41 FR 12010.	
Section 3	Restrictions on Hot Mix Asphalt Batching Operations	5/28/74	3/23/76 41 FR 12010.	
Section 4	Restrictions on Secondary Metal Operations	12/2/77	07/30/79 44 FR 44497.	
Section 5	Restrictions on Petroleum Refining Operations	9/26/78	08/01/80 45 FR 51198	SIP-approved process weight rate unit (see Table 4) is "Barrels Per Day".
Section 6	Restrictions on Prill Tower Operations	9/26/78	08/01/80 45 FR 51198.	
Section 7	Control of Potentially Hazardous Particulate Matter	1/7/72	5/31/72 37 FR 10842.	
Regulation 6—Particulate Emissions From Construction and Materials Handling				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842.	
Section 2	Demolition	5/28/74	03/23/76 41 FR 12010.	
Section 3	Grading, Land Clearing, Excavation and Use of Non-Paved Roads.	5/28/74	03/23/76 41 FR 12010.	
Section 4	Material Movement	5/28/74	03/23/76 41 FR 12010.	
Section 5	Sandblasting	5/28/74	03/23/76 41 FR 12010.	
Section 6	Material Storage	5/28/74	03/23/76 41 FR 12010.	
Regulation 7—Emissions From Incineration of Noninfectious Waste				
Section 1	General Provisions	05/28/74	03/23/76 41 FR 12010.	
Section 2	Restrictions	05/28/74	03/23/76 41 FR 12010	Provisions were revised 10/13/89 by State, but not submitted to EPA as SIP revisions.

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EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Regulation 8—Sulfur Dioxide Emissions From Fuel Burning Equipment				
Section 1	General Provisions	12/8/83	10/3/84 49 FR 39061.	
Section 2	Limit on Sulfur Content of Fuel	5/9/85	12/08/86 51 FR 44068.	
Section 3	Emissions Control in Lieu of Sulfur Content Limits of Section 2.	5/9/85	12/08/86 51 FR 44068.	
Regulation 9—Emissions of Sulfur Compounds From Industrial Operations				
Section 1	General Provisions	5/9/85	12/08/86 51 FR 44068.	
Section 2	Restrictions on Sulfuric Acid Manufacturing Operations	12/29/80	03/11/82 48 FR 10535	Section 2.1 only is in the SIP. Sections 2.2 through 2.4 are federally enforceable as a Section 111(d) plan and codified at 40 CFR 62.1875.
Section 3	Restriction on Sulfur Recovery Operations	5/28/74	03/23/76 41 FR 12010.	
Section 4	Stack Height Requirements	4/18/83	09/21/83 48 FR 42979.	
Regulation 10—Control of Sulfur Dioxide Emissions—Kent and Sussex Counties				
Section 1	Requirements for Existing Sources of Sulfur Dioxide	1/7/72	05/31/72 37 FR 10842.	
Section 2	Requirements for New Sources of Sulfur Dioxide	5/28/74	03/23/76 41 FR 12010	
Regulation 11—Carbon Monoxide Emissions From Industrial Process Operations—New Castle County				
Section 1	General Provisions	5/28/74	03/23/76 41 FR 12010	
Section 2	Restrictions on Petroleum Refining Operations	1/7/72	05/31/72 37 FR 10842	Citation revised 3/23/76 41 FR 12010.
Regulation 13—Open Burning				
Section 1	Prohibitions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 2	Prohibitions-Specific Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 3	General Restrictions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Section 4	Exemptions-All Counties	2/8/95	03/12/97 62 FR 11329	EPA effective date is 5/1/98.
Regulation 14—Visible Emissions				
Section 1	General Provisions	7/17/84	07/02/85 50 FR 27244	
Section 2	Requirements	7/17/84	07/02/85 50 FR 27244	
Section 3	Alternate Opacity Requirements	7/17/84	07/02/85 50 FR 27244	
Section 4	Compliance with Opacity Standards	7/17/84	07/02/85 50 FR 27244	
Regulation 15—Air Pollution Alert and Emergency Plan				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842	
Section 2	Stages and Criteria	3/29/88	04/06/94 59 FR 16140	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Section 3	Required Actions	1/7/72	05/31/72 37 FR 10842	Delaware removed the word "standby" from Table III, Section 3B effective 5/28/74, but did not submit as a SIP revision.
Section 4	Standby Plans	1/7/72	05/31/72 37 FR 10842	
Regulation 16—Sources Having an Interstate Air Pollution Potential				
Section 1	General Provisions	1/7/72	05/31/72 37 FR 10842	Delaware revised provision effective 5/28/74, but did not submit as a SIP revision.
Section 2	Limitations	1/7/72	05/31/72 37 FR 10842	
Section 3	Requirements	1/7/72	05/31/72 37 FR 10842	
Regulation 17—Source Monitoring, Record-Keeping and Reporting				
Section 1	Definitions and Administrative Principles	1/11/93	02/28/96 61 FR 7453	
Section 2	Sampling and Monitoring	7/17/84	07/02/85 50 FR 27244	Former SIP Sections 1 through 5 respectively; citation revised 2/28/96, 62 FR 7453. **Note:** Delaware revised Sections 4 and 6 effective 1/11/93, but did not submit as a SIP revision.
Section 3	Minimum Emission Monitoring Requirements for Existing Sources.	1/10/77	8/25/81 46 FR 43150.	
Section 4	Performance Specifications	1/10/77	8/25/81 46 FR 43150.	
Section 5	Minimum Data Requirements	1/10/77	8/25/81 46 FR 43150.	
Section 6	Data Reduction	1/10/77	8/25/81 46 FR 43150.	
Section 7	Emission Statement	1/11/93	02/28/96 61 FR 7453.	
Regulation 23—Standards of Performance for Steel Plants: Electric Arc Furnaces				
Section 1	Applicability	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.
Section 2	Definitions	04/18/83	09/21/83 49 FR 39061.	
Section 3	Standard for Particulate Matter	04/18/83	09/21/83 49 FR 39061.	
Section 4	Monitoring of Operations	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.
Section 5	Test Methods and Procedures	12/2/77	07/30/79 44 FR 44497	Correction published 8/20/80, 45 FR 55422.
Regulation 24—Control of Volatile Organic Compound Emissions				
Section 1	General Provisions	1/11/93	5/3/95 60 FR 21707.	
Section 2	Definitions	11/29/94	01/26/96 61 FR 2419.	
Section 3	Applicability	1/11/93	5/3/95 60 FR 21707.	
Section 4	Compliance Certification, Recordkeeping, and Reporting Requirements for Coating Sources.	11/29/94	01/26/96 61 FR 2419.	
Section 5	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources.	1/11/93	5/3/95 60 FR 21707.	

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EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Section 6	General Recordkeeping	1/11/93	5/3/95 60 FR 21707.	
Section 7	Circumvention	1/11/93	5/3/95 60 FR 21707.	
Section 8	Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs).	11/29/94	01/26/96 61 FR 2419.	
Section 9	Compliance, Permits, Enforceability	1/11/93	5/3/95 60 FR 21707.	
Section 10	Aerospace Coatings	11/29/94	01/26/96 61 FR 2419.	
Section 11	Motor Vehicle Refinishing	11/29/94	01/26/96 61 FR 2419.	
Section 12	Surface Coating of Plastic Parts	11/29/94	01/26/96 61 FR 2419.	
Section 13	Automobile and Light-Duty Truck Coating Operations	1/11/93	5/3/95 60 FR 21707.	
Section 14	Can Coating	1/11/93	5/3/95 60 FR 21707.	
Section 15	Coil Coating	1/11/93	5/3/95 60 FR 21707.	
Section 16	Paper Coating	1/11/93	5/3/95 60 FR 21707.	
Section 17	Fabric Coating	1/11/93	5/3/95 60 FR 21707.	
Section 18	Vinyl Coating	1/11/93	5/3/95 60 FR 21707.	
Section 19	Coating of Metal Furniture	1/11/93	5/3/95 60 FR 21707.	
Section 20	Coating of Large Appliances	1/11/93	5/3/95 60 FR 21707.	
Section 21	Coating of Magnet Wire	11/29/94	01/26/96 61 FR 2419.	
Section 22	Coating of Miscellaneous Metal Parts	1/11/93	5/3/95 60 FR 21707.	
Section 23	Coating of Flat Wood Panelling	1/11/93	5/3/95 60 FR 21707.	
Section 24	Bulk Gasoline Plants	1/11/93	5/3/95 60 FR 21707.	
Section 25	Bulk Gasoline Terminals	11/29/94	01/26/96 61 FR 2419.	
Section 26	Gasoline Dispensing Facility—Stage I Vapor Recovery	1/11/93	5/3/95 60 FR 21707.	
Section 27	Gasoline Tank Trucks	1/11/93	5/3/95 60 FR 21707.	
Section 28	Petroleum Refinery Sources	1/11/93	5/3/95 60 FR 21707.	
Section 29	Leaks from Petroleum Refinery Equipment	11/29/94	01/26/96 61 FR 2419.	
Section 30	Petroleum Liquid Storage in External Floating Roof Tanks	11/29/94	01/26/96 61 FR 2419.	
Section 31	Petroleum Liquid Storage in Fixed Roof Tanks	11/29/94	01/26/96 61 FR 2419.	
Section 32	Leaks from Natural Gas/Gasoline Processing Equipment	11/29/94	01/26/96 61 FR 2419.	
Section 33	Solvent Metal Cleaning	11/29/94	01/26/96 61 FR 2419.	
Section 34	Cutback and Emulsified Asphalt	1/11/93	5/3/95 60 FR 21707.	
Section 35	Manufacture of Synthesized Pharmaceutical Products	11/29/94	01/26/96 61 FR 2419.	
Section 36	Stage II Vapor Recovery	1/11/93	6/10/94 59 FR 29956.	
Section 37	Graphic Arts Systems	11/29/94	01/26/96 61 FR 2419.	
Section 38	Petroleum Solvent Dry Cleaners	1/11/93	5/3/95 60 FR 21707.	
Section 39	Perchloroethylene Dry Cleaning	1/11/93	5/3/95 60 FR 21707.	
Section 40	Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment.	1/11/93	5/3/95 60 FR 21707.	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Section 41	Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins.	1/11/93	5/3/95 60 FR 21707.	
Section 42	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	1/11/93	5/3/95 60 FR 21707.	
Section 43	Bulk Gasoline Marine Tank Vessel Loading Facilities	11/29/94	01/26/96 61 FR 2419.	
Section 44	Batch Processing Operations	11/29/94	01/26/96 61 FR 2419.	
Section 45	Industrial Cleaning Solvents	11/29/940	1/26/96 61 FR 2419.	
Section 47	Offset Lithographic Printing	11/29/94	05/14/97 62 FR 26399.	
Section 48	Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry.	11/29/94	01/26/96 61 FR 2419.	
Section 49	Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels.	11/29/94	01/26/96 61 FR 2419.	
Section 50	Other Facilities that Emit Volatile Organic Compounds (VOCs).	11/29/94	03/12/97 62 FR 11329	EPA effective date for Sections 50(a)(5) and 50(b)(3) is 5/1/98
Appendix "A"	Test Methods and Compliance Procedures: General Provisions.	11/29/94	01/26/96 61 FR 2419.	
Appendix "B"	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	1/11/93	5/3/95 60 FR 21707.	
Appendix "C"	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	1/11/93	5/3/95 60 FR 21707.	
Appendix "D"	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	11/29/94	01/26/96 61 FR 2419.	
Appendix "E"	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	1/11/93	5/3/95 60 FR 21707.	
Appendix "F"	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOCs).	1/11/93	5/3/95 60 FR 21707	
Appendix "G"	Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons.	1/11/93	5/3/95 60 FR 21707	
Appendix "H"	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	1/11/93	5/3/95 60 FR 21707	
Appendix "I"	Method to Determine Length of Rolling Period for Liquid-Liquid Material Balance Method.	11/29/94	01/26/96 61 FR 2419	
Appendix "J"	Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities.	1/11/93	6/10/94 59 FR 29956	
Appendix "J1"	Certified Stage II Vapor Recovery Systems	1/11/93	6/10/94 59 FR 29956	
Appendix "J2"	Pressure Decay/Leak Test Procedure for Verification of Proper Functioning of Stage I & Stage II Vapor Recovery Equipment.	1/11/93	6/10/94 59 FR 29956	
Appendix "J3"	Dynamic Backpressure (Dry) Test and Liquid Blockage (Wet) Test Procedure for Verification of Proper Functioning of Stage II Vapor Balance Recovery Systems.	1/11/93	6/10/94 59 FR 29956	
Appendix "K"	Emission Estimation Methodologies	11/29/94	01/26/96 61 FR 2419	
Appendix "L"	Method to Determine Total Organic Carbon for Offset Lithographic Solutions.	11/29/94	01/26/96 61 FR 2419	
Appendix "M"	Test Method for Determining the Performance of Alternative Cleaning Fluids.	11/29/94	01/26/96 61 FR 2419	
	Regulation 25—Requirements for Preconstruction Review			
Section 1	General Provisions	5/15/90	01/27/93 58 FR 26689	
Section 2	Emission Offset Provisions	7/6/82	10/17/83 48 FR 46986	
Section 3	Prevention of Significant Deterioration of Air Quality	5/15/90	01/27/93 58 FR 26689	

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title subject	State effective date	EPA approval date	Comments
Regulation 26—Motor Vehicle Emissions Inspection Program				
Section 1	Applicability and Definitions	4/1/90	01/06/92 57 FR 351	Revised Regulation 26 submitted 2/17/95, and conditionally approved by EPA on May 19, 1997, 62 FR 27195, at § 52.424(b).
Section 2	General Provisions	4/1/90	01/06/92 57 FR 351.	
Section 3	Registration Requirement	5/9/85	12/08/86 51 FR 44068.	
Section 4	Exemptions	4/1/90	01/06/92 57 FR 351.	
Section 5	Enforcement	7/6/82	10/17/83 48 FR 46986.	
Section 6	Compliance, Waivers, Extensions of Time, and Repairs	4/1/90	01/06/92 57 FR 351.	
Section 7	Inspection Facility Requirements	7/6/82	10/17/83 48 FR 46986.	
Section 8	Certification of Motor Vehicle Officers	7/6/82	10/17/83 48 FR 46986.	
Section 9	Calibration and Test Procedures and Approved Equipment	7/6/82	10/17/83 48 FR 46986.	
Technical Memorandum 1.	Motor Vehicle Inspection, and Maintenance Program, Vehicle Test Procedure and Machine Calibration.	4/1/90	01/06/92 57 FR 351.	
Technical Memorandum 2.	Motor Vehicle Inspection and Maintenance Program Emission Limit.	4/1/90	01/06/92 57 FR 351.	
Regulation 27—Stack Heights				
Section 1	General Provisions	4/18/83	09/21/83 48 FR 42979.	
Section 2	Definitions Specific to this Regulation	12/7/88	06/29/90 55 FR 26689.	
Section 3	Requirements for Existing and New Sources	2/18/87	06/29/90 55 FR 26689.	
Section 4	Public Notification	2/18/87	06/29/90 55 FR 26689.	
Regulation 35—General Conformity				
Section 1	Purpose	8/14/96	07/15/97 62 FR 37722.	
Section 2	Definitions	8/14/96	07/15/97 62 FR 37722.	
Section 3	Applicability	8/14/96	07/15/97 62 FR 37722.	
Section 4	Conformity Analysis	8/14/96	07/15/97 62 FR 37722.	
Section 5	Reporting Requirements	8/14/96	07/15/97 62 FR 37722.	
Section 6	Public Participation and Consultation	8/14/96	07/15/97 62 FR 37722.	
Section 7	Frequency of Conformity Determinations	8/14/96	07/15/97 62 FR 37722.	
Section 8	Criteria for Determining Conformity of General Federal Actions.	8/14/96	07/15/97 62 FR 37722.	
Section 9	Procedures for Conformity Determinations of General Federal Actions.	8/14/96	07/15/97 62 FR 37722.	
Section 10	Mitigation of Air Quality Impacts	8/14/96	07/15/97 62 FR 37722.	
Section 11	Savings Provision	8/14/96	07/15/97 62 FR 37722.	

(d) EPA approved State Source specific requirements.

EPA-APPROVED DELAWARE SOURCE-SPECIFIC PERMITS

Name of source	Permit number	State effective date	EPA approval date	Comments
Getty Oil Co	75–A–4	8/5/75	3/7/79 44 FR 12423	§ 52.420(c)(11).
Phoenix Steel Co.-Electric Arc Furnaces Charging & Tapping #2.	77–A–8	12/2/77	7/30/79 44 FR 25223	§ 52.420(c)(12).
Delmarva Power & Light—Indian River	89–A–7/APC 89/197	2/15/89	1/22/90 55 FR 2067	§ 52.420(c)(38).

(e) (Reserved)

Subpart J—District of Columbia

4. Section 52.470 is redesignated as § 52.515 and the heading and paragraph (a) are revised to read as follows:

§ 52.515 Original identification of plan section.

(a) This section identifies the original "Air Implementation Plan for the District of Columbia" and all revisions submitted by the District of Columbia that were federally approved prior to July 1, 1998.

* * * * *

5. A new § 52.470 is added to read as follows:

§ 52.470 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for the District of Columbia under section 110 of the Clean Air Act (42 U.S.C. 7401) and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1998 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 3 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 3 EPA Office at 1650 Arch Street, Philadelphia, PA 19103; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

(c) EPA approved regulations.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
Chapter 1—General				
Section 100	Purpose, Scope and Construction	3/15/85	8/28/95 60 FR 44431.	
Section 101	Inspection	3/15/85	8/28/95 60 FR 44431.	
Section 102	Orders for Compliance	3/15/85	8/28/95 60 FR 44431.	
Section 104	Hearings	3/15/85	8/28/95 60 FR 44431.	
Section 105	Penalty	3/15/85	8/28/95 60 FR 44431.	
Section 106	Confidentiality of Reports	3/15/85	8/28/95 60 FR 44431.	
Section 107	Control Devices or Practices	3/15/85	8/28/95 60 FR 44431.	
Section 199	Definitions and Abbreviations	4/29/97	7/31/97	
Section 8–2: 702	Definitions; definition of "stack"	7/7/72	9/22/72 37 FR 19806.	
Section 8–2: 724	Variances	7/7/72	9/22/72 37 FR 19806.	
Chapter 2—General and Non-Attainment Area Permits				
Section 200	General Permit Requirements	4/29/97	7/31/97 62 FR 40937.	
Section 201	General Requirements for Permit Issuance	4/29/97	7/31/97 62 FR 40937.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Section 202	Modification, Revocation and Termination of Permits.	4/29/97	7/31/97 62 FR 40937.	
Section 204	Requirements for Sources Affecting Nonattainment Areas.	4/29/97	7/31/97 62 FR 40937.	
Section 206	Notice and Comment Prior To Permit Issuance	4/29/97	7/31/97 62 FR 40937.	
Section 299	Definitions and Abbreviations	4/29/97	7/31/97 62 FR 40937.	
Section 8–2: 720	Permits to Construct or Modify; Permits to Operate.	7/7/72	9/22/72 37 FR 19806.	Paragraphs (c) through (i), as they apply to operating permits for sources not subject to the provisions of Section 204.
Chapter 4—Ambient Monitoring and Emergency Procedures				
Section 400	Air Pollution Monitoring	3/15/85	8/28/95 60 FR 44431.	
Section 401	Emergency Procedures	3/15/85	8/28/95 60 FR 44431.	
Section 499	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431.	
Chapter 5—Source Monitoring and Testing				
Sections 500.1 through 500.3	Records, Reports and Monitoring Devices	3/15/85	8/28/95 60 FR 44431.	
Sections 500.4, 500.5	Records, Reports, and Monitoring Devices	9/30/93	1/26/95 60 FR 5134.	
Section 500.7	Emission Statements	9/30/93	5/26/95 60 FR 27944.	
Section 501	Monitoring Devices	3/15/85	8/28/95 60 FR 44431.	
Sections 502.1 through 502.15	Sampling, Tests and Measurements	3/15/85	8/28/95 60 FR 44431	Exceptions: Paragraphs 5.11, 5.12 and 5.14 are not part of the SIP.
Section 502.18	Sampling, Tests and Measurements	9/30/93	1/26/95 60 FR 5134.	
Section 599	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431.	
Chapter 6—Particulates				
Section 600	Fuel-Burning Particulate Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 601	Rotary Cup Burners	3/15/85	8/28/95 60 FR 44431.	
Section 602	Incinerators	3/15/85	8/28/95 60 FR 44431.	
Section 603	Particulate Process Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 604	Open Burning	3/15/85	8/28/95 60 FR 44431.	
Section 605	Control of Fugitive Dust	3/15/85	8/28/95 60 FR 44431.	
Section 606	Visible Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 699	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431.	
Chapter 7—Volatile Organic Compounds				
Section 710	Engraving and Plate Printing	3/15/85	8/4/92 57 FR 34249.	
Section 8–2: 707(a)	Storage of Petroleum Products	3/1/74	6/23/75 40 FR 26274.	
Section 8–2: 707(b)	Gasoline Loading	2/26/81	12/16/81 46 FR 61254.	
Section 8–2: 707(c)	Gasoline Transfer Vapor Control	2/26/81	12/16/81 46 FR 61254.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Section 8–2: 707(d)	Control of Evaporative Losses from the Filling of Vehicular Tanks.	2/26/81	12/16/81 46 FR 61254.	
Section 8–2: 707(e)	Dry Cleaners	3/1/74	6/23/75 40 FR 26274.	
Section 8–2: 707(f)	Organic Solvents	3/1/74	9/28/77 42 FR 49811.	
Section 8–2: 707(g)	Pumps and Compressors	7/7/72	9/22/72 37 FR 19806	Citation revised 6/23/75 @ 40 FR 26274.
Section 8–2: 707(h)	Waste Gas Disposal from Ethylene Producing Plant.	7/7/72	9/22/72 37 FR 19806	Citation revised 6/23/75 @ 40 FR 26274.
Section 8–2: 707(i)	Waste Gas Disposal from Vapor Blow-Down System.	7/7/72	9/22/72 37 FR 19806	Citation revised 6/23/75 @ 40 FR 26274.
Section 8–2: 707(j)	Solvent Cleaning Degreasing	2/26/81	12/16/81 46 FR 61254.	
Section 8–2: 707(k)	Asphalt Operations	2/26/81	9/22/72 37 FR 19806.	
Chapter 8—Asbestos, Sulfur and Nitrogen Oxides				
Section 801	Sulfur Content of Fuel Oils	3/15/85	8/28/95 60 FR 44431.	
Section 802	Sulfur Content of Coal	3/15/85	8/28/95 60 FR 44431.	
Section 803	Sulfur Process Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 804	Nitrogen Oxide Emissions	3/15/85	8/28/95 60 FR 44431.	
Section 899	Definitions and Abbreviations	3/15/85	8/28/95 60 FR 44431.	
Chapter 9—Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants				
Section 904	Oxygenated Fuels	9/30/93	1/26/95 60 FR 5134.	
Appendices				
Appendix 1	Emission Limits for Nitrogen Oxide	3/15/85	8/28/95 60 FR 44431.	
Appendix 2	Table of Allowable Particulate Emissions from Process Sources.	3/15/85	8/28/95 60 FR 44431.	
Appendix 3	Allowable VOC Emissions Under Section 710	3/15/85	8/28/95 60 FR 44431.	

(d) EPA approved State Source specific requirements.

EPA-APPROVED DISTRICT OF COLUMBIA SOURCE-SPECIFIC PERMITS

Name of source	Permit number	State effective date	EPA approval date	Comments
None				

(e) [Reserved].

[FR Doc. 98–32422 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0105; FRL–6195–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following districts: San Diego Air Pollution Control District (SDAPCD) and Ventura County Air Pollution Control District (VTCAPCD). The rules control particulate matter (PM) emissions related to visible emissions and abrasive blasting, respectively. This approval action will incorporate these rules into the federally approved SIP.

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The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

DATES: This rule is effective on February 5, 1999 without further notice, unless EPA receives relevant adverse comments by January 6, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105
Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, DC 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812
San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096
Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1903.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: SDAPCD Rule 50, Visible Emissions and VTCAPCD Rule 74.1, Abrasive Blasting. These rules were submitted by the California Air Resources Board to EPA on June 23, 1998 and January 28, 1992, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Diego Air Basin (West portion of San Diego County) (43 FR 8964; 40 CFR 81.305). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B)(iii) of the Act were designated unclassifiable by operation of law. The San Diego Air Basin and Ventura County were not among the areas designated unclassifiable.

As part of updating the California SIP, the State of California submitted many PM–10 rules for incorporation into the California SIP on June 23, 1998 and January 28, 1992, including the rules being acted on in this document. This document addresses EPA's direct-final action for SDAPCD Rule 50, Visible Emissions, and VTCAPCD Rule 74.1, Abrasive Blasting. SDAPCD adopted Rule 50 on August 13, 1997. VTCAPCD adopted Rule 74.1 on November 12, 1991. These submitted rules were found to be complete on August 25, 1998 and April 3, 1992, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[2] and are being finalized for approval into the SIP.

SDAPCD Rule 50 is a generally applicable rule that controls visible emissions from a variety of sources. VTCAPCD Rule 74.1 controls emissions from abrasive blasting. PM emissions can harm human health and the environment. These rules were originally adopted as part of SDAPCO's and VTCAPCD's efforts to maintain the National Ambient Air Quality Standard (NAAQS) for PM–10. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

There is currently no version of VTCAPCD Rule 74.1, Abrasive Blasting, in the SIP. The submitted rule includes the following provisions:

- A Ringlemann 1 (20 percent opacity) standard applies to abrasive blasting conducted within a permanent building;
- A Ringlemann 2 (40 percent opacity) standard applies to abrasive blasting conducted outside of a permanent building;
- All abrasive blasting operations must be conducted within a permanent building with certain exceptions;
- Abrasives used for dry outdoor blasting must be certified by the California Air Resources Board to meet percent by weight material standards. Otherwise, wet abrasive blasting, hydroblasting or vacuum blasting must be used with certain exceptions.

On September 28, 1981, EPA approved into the SIP a version of Rule 50 that had been adopted by SDAPCD prior to this date.

SDAPCD's submitted Rule 50, Visible Emissions, includes the following significant changes from the current SIP:

- Adds source-specific exemptions;
- Relaxes the standard for asphalt plant drop zone discharges from Ringlemann 1 (20% opacity) to Ringlemann 2 (40% opacity);
- Adds a specific provision for diesel pile-driving hammers that relaxes the applicable Ringlemann 1 standard not to exceed three minutes per hour to a Ringlemann 1 standard not to exceed four minutes during the driving of a single pile or, when kerosene fuel, smoke-suppressing fuel additives and synthetic lubricating oil are used, a Ringlemann 2 standard not to exceed four minutes during the driving of a single pile;
- Relaxes the standard for discharges from asphalt paving equipment with an application temperature specification of 320 degrees Fahrenheit or higher and pavement rehabilitation equipment from Ringlemann 1 to Ringlemann 2;
- Relaxes the standard for discharges from the operation, maintenance or testing of fire fighting training units used exclusively for the purpose of shipboard fire fighting training from Ringlemann 1 to Ringlemann 2.

While some provisions are being relaxed, EPA believes these relaxations are de minimis and do not violate section 110(l) of the Clean Air Act. EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and

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[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA policy. Therefore, SDAPCD Rule 50, Visible Emissions, and VTCAPCD Rule 74.1, Abrasive Blasting, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a). A more detailed evaluation can be found in EPA's evaluation report for these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective February 5, 1999 without further notice unless the Agency receives relevant adverse comments by January 6, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 5, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 20, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(187)(i)(B)(*2*) and (256)(i)(B)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(187) * * *

(i) * * *

(B) * * *

(*2*) Rule 74.1, adopted on November 12, 1991.

* * * * *

(256) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(*1*) Rule 50, adopted on August 13, 1997.

[FR Doc. 98–32417 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 96–83; FCC 98–214]

Preemption of Local Zoning Regulation of Satellite Earth Stations and Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition on reconsideration.

SUMMARY: This Order on Reconsideration affirms and clarifies the Over-the-Air Reception Devices Rule, which prohibits governmental and non-governmental restrictions that impair a viewer's ability to receive video programming through devices designed for over-the-air reception of DBS, MDS, or television broadcast signals. This Order resolves petitions for reconsideration of the Preemption of Restrictions on Over-the-Air Reception Devices Report and Order (CS Docket No. 96–83, FCC 96–328, 61 FR 46557) by reaffirming and clarifying certain parts of the rule.

EFFECTIVE DATES: January 6, 1999, except § 1.4000(d) and (e) contain information collection requirements that will become effective February 16, 1999 following approval by the Office of Management and Budget, unless timely notice is published in the **Federal Register**. The Commission will publish a document in the **Federal Register** announcing the effective dates for those sections. Written comments by the public on the modified information collection requirements are due on or before February 5, 1999. If you anticipate that you will be submitting comments on the modified information collection requirements, but find it difficult to do so within the period of time allowed by this notice, you should advise Judy Boley, listed in the address section, as soon as possible.

ADDRESSES: A copy of any comments on the modified information collection requirements contained herein should be submitted to Judy Boley, Federal Communications, Room C1804, 445 12th St., S.W., Washington, DC 20554 or via Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Eloise Gore at (202) 418–1066 or via internet at egore@fcc.gov or Darryl Cooper at (202) 418–1039 or via internet at dacooper@fcc.gov. For additional information concerning the modified information collection requirements contained in the Order on Reconsideration contact Judy Boley at (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration, CS Docket No. 96–83, adopted August 27, 1998 and released September 25, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at http://www.fcc.gov/Bureaus/Cable/WWW/csb.html. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act

The requirements contained in this Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and would impose modified information collection requirements on the public. As part of its continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collection requirements contained in this Order on Reconsideration, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public comments are due 60 days from date of publication of this Order on Reconsideration in the **Federal Register** and then implementation of any modified information collection requirements will be subject to approval by the Office of Management and Budget ("OMB") as prescribed by the 1995 Act. Comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0707.

Title: Over-the-Air Reception Devices.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals, state and local governments.

Number of Respondents: 320.

Estimated Time Per Response: 2–6 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 1,240 hours.

Total Annual Cost to Respondents: $138,000.

Needs and Uses: Petitions for waivers of the Section 207 rules are used by the Commission to determine whether the state, local or non-governmental regulation or restriction is unique in a way that justifies waiver of our rules prohibiting restrictions on the use of over-the-air reception devices. Petitions for declaratory rulings pursuant to the Section 207 rules are used by the Commission to determine whether the state, local or non-governmental regulation or restriction is preempted.

Synopsis of Order on Reconsideration

Introductory Background

1. In the Order on Reconsideration, the Commission grants in part and denies in part petitions for reconsideration of the Commission's implementation of section 207 of the Telecommunications Act of 1996 ("1996 Act") (Pub. L. 104–104, 110 Stat. 114 (Feb. 8, 1996)) in its Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking ("Report and Order" and "Further Notice") released on August 6, 1996 (In re Preemption of Local Zoning Regulation of Satellite Earth Stations, and In re Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service, IB Docket No. 95–59, CS Docket No. 96–83 (consolidated), 61 FR 46557 September 4, 1996). The Report and Order adopted 47 CFR 1.4000 (the "Section 207 rules"), that generally prohibits both governmental and nongovernmental restrictions that impair the installation, maintenance or use of over-the-air reception devices covered by Section 207 ("Section 207 devices"), unless the restriction is necessary for safety or historic preservation reasons and is no more burdensome than necessary to achieve those objectives. Section 207 expressly covers over-the-air reception devices used to receive television broadcast signals ("TVBS"), multichannel multipoint distribution service ("MMDS"), and direct broadcast satellite services ("DBS"). The rules implementing Section 207 also cover: (1) any type of multipoint distribution service, including not only MMDS but also instructional television fixed service ("ITFS") and local multipoint distribution service ("LMDS"); (2) medium-power satellite services using antennas of one meter or less, even though such services may not be technically defined as DBS elsewhere in the Commission's rules; and (3) DBS antennas of over one meter in Alaska (smaller DBS antennas do not work in Alaska). Under the rules the Commission promulgated pursuant to Section 207, a restriction impairs a viewer's Section 207 rights if it (1) unreasonably delays or prevents installation, maintenance, or use of a covered Section 207 reception device, (2) unreasonably increases the costs of installation, maintenance or use of a covered Section 207 reception device, or (3) precludes reception of an acceptable quality signal by the device. In addition, the rules create exceptions for restrictions that promote safety objectives and historic preservation.

2. Seven petitions for reconsideration of the Report and Order were filed raising approximately 15 issues for reconsideration. In this Order on Reconsideration, the Commission

(1) reaffirms the decision not to prohibit all restrictions on a viewer's ability to install, maintain and use Section 207 reception equipment;

(2) denies a petition to revise the safety exception to apply only to "compelling" safety objectives; adopts a proposal to remove the appearance of a device from the factors examined to determine the validity of a safety objective; and revises the Section 207 rules to examine how a safety objective treats other objects that pose a similar or greater safety risk;

(3) denies a request to exclude nongovernmental entities from using the safety exception;

(4) reaffirms the decision not to exercise exclusive jurisdiction over the enforcement of our Section 207 rules at this time;

(5) reaffirms the decision that, based on the current record, the permit requirements of the Building Officials & Code Administrators International, Inc. ("BOCA") code are reasonable safety restrictions;

(6) reaffirms that permit requirements designed to enforce placement restrictions are preempted by our rules;

(7) declines to adopt a *per se* restriction on DBS antenna painting requirements;

(8) adopts a proposal that a viewer be given at least 21 days during which to comply with a court or Commission order upholding a restriction before any fine or penalty may be imposed if the viewer's claim is not frivolous;

(9) reaffirms the standard for signal degradation that qualifies as an impairment under the Section 207 rules;

(10) denies a request that the Section 207 rules protect certain antennas not specifically listed in the Section 207 rules and concludes that a proponent of a new antenna must make a particular showing that the antenna should be covered by the Section 207 rules;

(11) adopts a proposal that the Section 207 rules protect antennas that have only transmission capability if these transmission antennas are used in conjunction with antennas that receive video programming;

(12) denies a request to revise the historic preservation exception to eliminate from its protection districts eligible to be listed on the National Register of Historic Places, and amends the rules to clarify the exception to include historic properties as they are

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defined in the National Historic Preservation Act;

(13) denies a petition seeking a statement that any fee for installing a Section 207 device is unreasonable and declines to set a maximum cost that regulations may impose on installation that will impair, but clarifies that certain fees are unreasonable;

(14) clarifies that petitions for declaratory ruling and petitions for waiver must be served on all interested parties;

(15) revises the Section 207 rules to include certain statements made in the Report and Order;

(16) clarifies the rights of a tenant under the Section 207 rules where the tenant has the permission of the property owner to install an antenna;

(17) clarifies that a viewer with a direct or indirect ownership interest in property over which the viewer exercises exclusive use is protected by the Section 207 rules even though the viewer may not exercise exclusive control over the property; and

(18) clarifies that an association or a landlord may prohibit viewers from installing individual Section 207 devices under the Section 207 rules if the association or a landlord provides the tenant access to a central antenna facility that does not impair the viewers' rights under the Section 207 rules.

Conclusions

Not all antenna restrictions are preempted

3. Two petitions for reconsideration argued that the Commission improperly failed to preempt all restrictions on viewers' ability to install, maintain or use a reception device covered by Section 207. In this Order, the Commission reaffirms the conclusion in the Report and Order that Congress intended that the Commission exercise its discretion when determining which restrictions should be preempted under Section 207. It cannot have been Congress' intent, nor can it be in the public interest, for the Section 207 rules to override legitimate safety concerns or laws establishing the National Register of Historic Places or restrictions that in no way impair the viewer's ability to receive video programming. For example, if the viewer can receive the same strength signal in the back yard as in the front yard, then it would be an unnecessary interference with the legitimate prerogatives of local governments to preempt a restriction limiting the placement of the reception device to the back yard.

Safety exception reaffirmed, clarified and revised

4. Under the Section 207 rules, a restriction is permitted if "it is necessary to accomplish a clearly defined safety objective." Several petitions requested that the Commission alter the rule to require a "compelling" safety objective. The Commission declines to permit only compelling safety exceptions, but reaffirms and clarifies that to fall within the safety exception, the safety objective must be "clearly defined" and "serve legitimate safety goals," and the proponent of the safety restriction must prove that it is neither discriminatory nor more burdensome than necessary to achieve the safety objective. The rules are modified to include the term "legitimate" in the definition of a safety objective.

5. In the Order on Reconsideration, the Commission deletes the term "appearance" from the list of potential attributes that should be examined to determine whether a safety restriction is being applied in a discriminatory manner. The rules are revised to examine whether a restriction is applied to fixtures or devices posing a similar or greater safety risk as the Section 207 device and whether the restriction is applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures, considering factors such as size, weight, and safety risk. In addition, if "safety boilerplate" is added to restrictive covenants for anticompetitive reasons, the Commission will weigh this factor heavily in determining whether the restriction is necessary, nondiscriminatory, and no more burdensome than necessary to accomplish the objective.

Nongovernmental safety restrictions

6. Two petitions requested that nongovernmental entities, such as homeowners' associations, be prohibited from establishing safety restrictions under our Section 207 rules. The Commission denies these requests and concludes that Section 303 of the Communications Act of 1934 (47 U.S.C. 303) ("Section 303") permits the Commission to consider and minimize the impact of our rules on local associations and governments. If the rules did not permit private safety-based restrictions, the rules would effectively preempt portions of state tort liability law, and, because homeowners' associations focus on the problems that face a particular area or development, they are well-positioned to assess the safety needs of their individual communities.

Jurisdiction for declaratory ruling petitions

7. The Report and Order and Section 207 rules provide concurrent jurisdiction to the Commission and to courts of competent jurisdiction to hear petitions for a declaratory ruling to determine whether a particular restriction is permissible or prohibited under the Section 207 rules. This Order on Reconsideration denies several petitions that requested the Commission to reconsider the decision not to assert exclusive jurisdiction over petitions for declaratory rulings. The Communications Act does not require the Commission to exercise exclusive jurisdiction over these disputes; therefore, the Commission reaffirms its discretion to decide that it is in the public interest at the current time to share jurisdiction to adjudicate disputes with the courts and retain discretion to provide, on the Commission's motion or in response to a petition, interpretive guidance for the future based on our expertise in developing and applying the statute and the rules. The Commission also reiterates that a court may refer an issue to the Commission under the doctrine of primary jurisdiction, particularly when cases involve the determination of novel issues.

The BOCA Code restrictions

8. The Report and Order adopted rules that reflected the Building Officials & Code Administrators International, Inc. ("BOCA") code permit provisions on antenna height and set back requirements (i.e., require an antenna user to obtain a permit to install an antenna that extends more than twelve feet above the roofline or that is taller than the distance between the antenna and the lot line, but no permit is required for antennas that are no taller than the distance between the antenna and the lot line.) Two petitions asked the Commission to reconsider and delete reliance on the BOCA code. The Order on Reconsideration reaffirms that, in the absence of superior information from those engaged in the installation or use of antennas, the BOCA code provisions regarding permits for height and setback requirements qualify as legitimate safety objectives under Section 207 rules. Acceptance of the BOCA code, however, is limited to the permit requirement and does not constitute a blanket per se prohibition of masts of a particular height. To the extent that a local authority applies BOCA in a discriminatory manner by

not requiring permits for items that pose similar or greater safety risks, such discrimination may be challenged in a particular case, and would, if not justified, be deemed impermissible under the rules. If a local authority created a per se bar to antennas over a certain height, the restriction would be prohibited. To bring the Section 207 rules into accord with the Report and Order, the rules are modified to include masts in the definition of antennas.

Prohibition of permit requirements

9. The Order on Reconsideration reaffirms that permit requirements are permissible to ensure compliance with restrictions that serve safety or historic preservation objectives. Outside of these contexts, blanket permit requirements (i.e., requiring any viewer who wants to install an antenna to obtain a permit) are generally impermissible because they cast too wide a net. A blanket permit requirement imposes unreasonable delay and expense on viewers' ability to install, maintain or use a Section 207 reception device. The Commission affirms the decisions previously made on this issue: In re Michael J. MacDonald, 13 FCC Rcd 4844 (CSB, 1997); In re CS Wireless Systems, Inc., 13 FCC Rcd 4826 (CSB, 1997); and In re Star Lambert and SBCA, 12 FCC Rcd 10424 (CSB, 1997). By contrast, in the case of legitimate safety or historic preservation restrictions, a shift in the permit framework is justified because restrictions based on safety or historic preservation objectives are enforceable even if they impair a viewer's ability to install, maintain or use a Section 207 reception device.

Painting of reception devices

10. Two petitions requested reconsideration of the Report and Order's policy accepting a requirement to paint an antenna to blend into the background provided painting does not interfere with reception. The Order on Reconsideration denies these requests and reiterates that the statement applies only to painting requirements that will not interfere with reception. This Order also clarifies that if complying with a painting requirement causes an impairment of a viewer's ability to install, maintain or use a Section 207 reception device, the requirement is prohibited under our rules; e.g., if a restriction required painting a Section 207 reception device in a manner that unreasonably increases costs or impairs the ability of the device to receive a signal, then the regulation would be impermissible.

Grace periods to comply with rulings and collection of attorneys fees

11. The Order on Reconsideration concludes that it is consistent with the purpose underlying this rule that the potential threat of a fine or penalty could operate as a substantial deterrent to viewers exercising their right to install an antenna while such a restriction is under review. Therefore, the rule is amended to give viewers at least 21 days to comply with an adverse ruling issued in a proceeding before a fine may be collected, unless the proponent of the restriction can show in the same proceeding that the viewer's claim was frivolous. During this grace period, no additional fines or penalties shall accrue against the viewer, but if at the end of the grace period the viewer has not complied with the adverse ruling, then the initial fine may be imposed. The rule does not grant a grace period to every viewer who unknowingly violates a restriction that has already been upheld in a proceeding pursuant to our rules. Nevertheless, if a viewer believes that the restriction is invalid as applied to the particular viewer and challenges a previously upheld restriction in a proceeding as provided for in our rules, and the viewer does not have a frivolous claim that the upheld restriction is invalid as applied to the particular viewer, then the viewer may be granted at least a 21 day grace period.

12. In addition, as with fines and penalties, some associations attempt to collect from viewers the attorney's fees expended by an association in its efforts to enforce a restriction even while a proceeding is pending to determine whether the association's restriction constitutes an impairment under the rules (See, e.g., In re James Sadler, (DA 98–1284, rel. July 1, 1998)). As with fines or other penalties, the attempt to assess attorney's fees while a proceeding is pending and the validity of an arguably invalid restriction has not yet been determined would undermine the purpose underlying both the Section 207 rules and the petition process. Therefore, the rules are amended to prohibit the assessment or collection of attorney's fees while a proceeding is pending.

Definition of signal impairment

13. A restriction impairs a viewer's ability to receive video programming signals if it precludes reception of an acceptable quality signal. Under the balance struck in the rules, viewers are entitled to an antenna location, if one is available, that will provide an "acceptable" quality signal. Subject to that limitation, local governments and community associations are entitled, in order to protect the interests of local residents, to restrict antenna placement. The proper balance is struck if an acceptable, but not necessarily always optimal, quality signal is available. For example, with respect to signals that are subject to a variety of different but gradual impairments, the rules do not mandate that an antenna can be placed at whatever height reception would be optimized.

14. The situation is altogether different, however, for devices designed to receive digital signals, such as DBS antennas, digital MMDS antennas and digital television ("DTV") antennas. Digital antennas will at times provide no picture or sound unless they are placed and oriented for optimal reception. Where a DBS antenna has an unobstructed, direct view of a satellite, the antenna will produce a complete picture and sound and is less likely to be subjected to frequent weather blackouts. For this reason, to receive an acceptable quality signal, a DBS antenna or other digital reception device covered by Section 207 must be installed where it has an unobstructed, direct view of the satellite or other device from which video programming service is received, if such a location exists on the viewer's property and the property is covered by our rules.

Other technologies that provide over-the-air reception of video programming services

15. Section 207 and the rules apply to restrictions on devices used to receive video programming services. The Order on Reconsideration denies petitions that requested application of the rules to interactive and data transmitting antennas because petitioners did not show that these antennas receive "video programming" as that term is used in the Communications Act of 1934: "programming provided by, or generally considered comparable to programming provided by, a television broadcast station" (see Section 602(20) of the Act; 47 U.S.C. 522(20)). Section 207 is flexible and will encompass newly developed technologies if they are shown to have similar technology and functions and to provide similar services as devices encompassed by Section 207. (For example, because of their similarity in terms of function and technology to services enumerated in Section 207, MDS, ITFS and LMDS are covered by Section 207 and the Section 207 rules even though these services were not mentioned in Section 207.) Proponents must make a particular

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showing that the new technology should be covered by the rules.

Transmission-only antennas that assist reception antennas

16. The Report and Order stated that the rule does not apply to devices that have transmission capability only, but antennas that have transmission capability designed for the viewer to select or use video programming are considered reception devices under this rule. The Order on Reconsideration clarifies that the rules do not distinguish between a single antenna that both receives and transmits and paired transmission and reception antennas that perform the same functions. Restrictions that impair transmission devices that work in tandem with and are necessary to enable a viewer to select video programming on a reception device are prohibited by the rules if they impair a "viewer's ability to receive video programming" as set forth in the Section 207 rules. This protection extends only to transmission antennas that are within the size parameters of the Section 207 rules, installed at the viewer's location, and necessary for the viewer to select video programming.

Districts eligible to be listed on the National Register of Historic Places

17. The historic preservation exception to the Section 207 rules (Section 1.4000(b)(2)) is consistent with the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f; see also 16 U.S.C. 470a(b)(3)(F) and (I)) ("NHPA"). To maintain that consistency, the Order on Reconsideration denies a petition to eliminate properties designated "eligible to be listed" but not yet listed. The rule is also revised to clarify exemption of "any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places" to follow more faithfully the definition of historic properties in the NHPA (see 16 U.S.C. 470w(5)).

Limits on fees and costs

18. The Section 207 rules regarding fees and costs are designed to protect viewers from unreasonable expenses that discourage choosing alternative video reception devices. Both fees imposed directly by a restricting entity and costs imposed indirectly as a result of an entity's requirements or restrictions can impose an unreasonable expense that is prohibited by the Section 207 rules. For example, a fee imposes unreasonable expense when the fee is for a permit that a local government has no discretion to require. On this issue the decision of In re Star Lambert (12 FCC Rcd. 10455 (CSB, 1997)) is affirmed. The rules, however, do not prohibit all fees because a reasonable fee, in connection with a permissible requirement, may be within the standards of the Section 207 rules. The Order on Reconsideration reiterates that the standard for determining reasonable fees and costs is whether the expense imposed is reasonable in light of the cost of the equipment or services and the restriction's treatment of comparable devices. The rules are modified to include this language.

Service of petitions and pleadings

19. The Section 207 rules are revised to include language from the Report and Order clarifying that petitions for declaratory rulings and waivers must be served on interested parties. The term "interested" is narrowly interpreted. For example, if a homeowners' association files a petition or a lawsuit seeking to have a restriction declared valid and seeking to enforce the restriction against a particular viewer, service must be made on the particular viewer. The homeowners' association is not required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests may foreseeably be affected by the proceeding (e.g., by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter). Similarly, if a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (e.g., by placing a notice in a local newspaper of general circulation). If a viewer files a petition or lawsuit challenging a local government's ordinance or an association's restriction, the viewer must serve the local government or association. Certificates of service and proof of constructive notice must be provided with a petition. The petitioner should provide a copy of the notice and an explanation of where the notice was placed and how many people the notice might reasonably have reached. Parties to a lawsuit that raises issues involving the applicability or the interpretation of Section 207 or the Section 207 rules are encouraged to provide notice of the lawsuit to the Commission and to provide the Commission with a copy of the relevant pleading.

Placing statements from the Report and Order in the Section 207 rules

20. The rules are revised to include certain statements from the Report and Order. First, the revised rules provide that if a petition is filed challenging a restriction, enforcement of that restriction (except restrictions pertaining to safety and historic preservation) is prohibited pending completion of review by a court or the Commission. (Commission review is completed when an order is released and is no longer subject to review or appeal, or when the petition is dismissed or returned without further action.) In addition, the rules are revised to clarify that the party seeking to enforce a restriction has the burden of demonstrating that a particular restriction complies with the rules. The Order on Reconsideration reiterates that placing the burden on consumers would hinder competition and fail to implement Congress' directive, as such a burden could serve as a disincentive to consumers to choose TVBS, MMDS, or DBS services.

21. The standard for review of aesthetic requirements is further clarified by adding the following explanatory language from the Report and Order to paragraph (a) of Section 1.4000: "Any fee or cost imposed on a viewer by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices."

Application of the Section 207 rules to tenants who have the owner's permission to install an antenna

22. For purposes of the Section 207 rules, a renter, tenant, or any other person residing on a property owner's property with the property owner's permission ("tenant viewer"), who has the property owner's permission to install, maintain and use a Section 207 reception device on the property, shall be treated as a covered viewer with regard to third party restrictions under our Section 207 rules. In this connection, the tenant viewer shall have the same rights under the Section 207 rules as would the owner vis-a-vis restrictions enacted by a homeowners' association, condominium or cooperative association, townhome association, manufactured housing park owner, government and/or any other third party. Thus, if an owner residing on the property were entitled to install a Section 207 device on the property under the rules, then a tenant occupying the property is also entitled to install a

Section 207 device on the property provided the property owner consents.

Property under the exclusive use of the viewer

23. The Section 207 rules protect "property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest." The Order on Reconsideration clarifies that the rules protect a viewer who has either exclusive use *or* exclusive control of property in which the viewer has a direct or indirect ownership interest. It is not necessary for a viewer to have exclusive control over the property to be protected by the Section 207 rules. For instance, condominium owners, townhome owners, cooperative owners or owners of a manufactured home may not have exclusive control over their dwellings because the association or the park owner may retain rights to enter their dwellings to perform inspections or repairs. These owners have exclusive use over their dwellings because they are the only parties entitled to the beneficial use of the dwellings. A condominium owner, townhome owner, owner of a manufactured home, or cooperative unit dweller who has exclusive use of a balcony, balcony railing, deck, patio, or any other type of property where they have a direct or indirect property interest, has the right, subject to certain restrictions of our Section 207 rules, to place Section 207 devices thereon. That third parties have rights to enter and/or exercise control (e.g., banning grills on balconies) over the owner's exclusive-use area does not defeat the owner's Section 207 rights.

24. With respect to condominiums and cooperatives, the rule applies to antenna restrictions on balconies, decks, patios or similar areas even if the unit owner does not have exclusive ownership, so long as the unit owner has direct or indirect ownership and exclusive use over the area. (In a housing cooperative, the residents' ownership interest in the controlling entity entitles them to exclusive use of a unit and nonexclusive use and enjoyment of other common areas.) Restrictions on a cooperative owner's use of his or her unit and exclusive use areas are prohibited because (1) the owner has an indirect ownership interest in his or her unit and (2) the owner exercises exclusive use or control. Restrictions on the cooperative owner's use of common cooperative property are not prohibited if the cooperative owner does not exercise exclusive use over the common property. With respect to manufactured (mobile) homes, the owner of a manufactured home is protected by the Section 207 rules even if the home rests on property leased from someone else because the owner has a direct property interest in the home and has exclusive use of the home. Thus, a manufactured home owner, or the owner of any other type of home that rests on leased property, has rights under Section 207, subject to the rules' language and exceptions, to place a Section 207 device anywhere on the home.

Restrictions related to the existence of a Central Antenna

25. The Further Notice requested comments on a proposal to create an exception to the rules to allow antenna restrictions if a community association, landlord or similar private entity voluntarily makes video programming available through a central reception facility. The Order on Reconsideration concludes that this proposal is properly analyzed under the current Section 207 framework, and it is not necessary to amend the Section 207 rules to allow for a central antenna. The installation of a central antenna, and a concomitant restriction on the installation of individual antennas, does not constitute an impairment under the Section 207 rules if, like any other restriction, it does not impair installation, maintenance and use. This Order clarifies that restrictions related to the existence and availability of a central antenna are generally permissible provided that: (1) the viewer receives the particular video programming service the viewer desires and could receive with an individual antenna (e.g., the viewer would be entitled to receive service from a specific DBS provider, not simply a DBS service selected by the association); (2) the video reception in the viewer's home using the central antenna is of an acceptable quality as good as, or better than, the quality the viewer could receive with an individual antenna; (3) the costs associated with the use of the central antenna (including installation and subscriber fees) are not greater than the expense of installation, maintenance and use of an individual antenna; and (4) the requirement to use the central antenna in lieu of an individual antenna does not unreasonably delay the viewer's ability to receive video programming. The Order on Reconsideration further clarifies that no community or association is required by these rules to install a central antenna.

Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in International Bureau (IB) Docket No. 95–59 ("DBS Order and Further Notice") and in Cable Services Bureau (CS) Docket No. 96–83 ("TVBS-MMDS Notice"). The Commission sought written public comment on the proposals in those proceedings, including comment on the IRFA's. The Commission's Final Regulatory Flexibility Analysis ("FRFA") was issued in the Report and Order and conformed to the RFA. Pursuant to the RFA, the Commission's final analysis with respect to this Order on Reconsideration is as follows.

Need for, and Objectives of, this Order on Reconsideration

27. This Order on Reconsideration implements Section 207 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56. Section 207 directs the Commission to promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through certain devices designed for over-the-air reception, including MMDS, LMDS, DBS, TVBS and ITFS ("Section 207 devices"). This action is authorized under the Communications Act of 1934 1, as amended, 47 U.S.C. 151, pursuant to the Communications Act of 1934 § 303, as amended, 47 U.S.C. 303, and by Section 207 of the Telecommunications Act of 1996. This Order on Reconsideration provides guidance on how the Commission will interpret its Section 207 rules and amends the Section 207 rules to provide more clarity in the existing rules.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

28. None of the parties in this proceeding filed comments on how issues raised in the petitions for reconsideration would impact small entities. Nevertheless, the impact of the amendment of our Section 207 rules on small entities was considered, as discussed below.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

29. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and "the same meaning as the term "small business concern" under Section 3 of the Small Business Act." The rule applies to small organizations, small governmental jurisdictions, and small businesses.

30. The term "small governmental jurisdiction" is defined as "governments of . . . districts, with a population of less than fifty thousand." There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that restrictions concerning antenna installation are usually promulgated by cities, towns and counties, not school or utility districts. Of the 85,006 governmental entities, 38,978 are counties, cities and towns; and of those, 37,566, or 96%, have populations of fewer than 50,000. One commenter estimates that there are 37,000 "small governmental jurisdictions" that may be affected by the proposed rule.

31. Section 601(4) of the Regulatory Flexibility Act defines "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This definition includes homeowner and condominium associations that operate as not-for-profit organizations. An industry association estimates that there were 150,000 associations in 1993. Given the nature of a neighborhood association, we assume for the purposes of this FRFA that all 150,000 associations are small organizations.

32. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Industry sources estimate that the following SIC codes apply to this industry: SIC Codes 6512 (operators of nonresidential buildings), 6513 (operators of apartment buildings), and 6514 (operators of dwellings other than apartment buildings). The SBA defines a small entity in each of these codes as one with less than $5,000,000 in gross annual revenues. Based on census data that lists businesses according to these SIC codes and their total revenue, industry sources state that there are 28,089 operators of nonresidential buildings and 39,903 operators of apartment buildings. Industry sources state the Bureau of Census includes operators of dwellings other than apartment buildings in the same category as other types of businesses, but states that the figures for this category as a whole show that the number of operators of dwellings other than apartment buildings are similar to the numbers of operators covered by SIC codes 6512 and 6513.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. The revised rules clarify that petitions for declaratory judgment and waivers must be served on interested parties and that a certificate of service must be filed with the petition or the complaint. In addition, the revised rules require associations and local governments in Commission proceedings to provide constructive notice to their members or citizens and file a copy of the notice with the Commission with a statement explaining where the notice was placed and why such placement was reasonable. In a court proceeding brought by an association, the association must give constructive notice to its members.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Rejected

34. The Commission finds that there are no significant alternatives to the rules and policies set forth in this Order that would minimize the economic impact on small entities, and notes that no commenter proffered alternatives to these rules and policies. Because most of the conclusions reached in this Order on Reconsideration merely clarify and provide guidance under the current Section 207 rules, those conclusions need not be analyzed here because the impact of the current Section 207 rules was already analyzed in the Report and Order. Nevertheless, there are some changes to the rules that are addressed here.

35. First, the Commission adopts a proposal that viewers be given at least 21 days during which to comply with a court or Commission order upholding a restriction before any fine or penalty may be imposed on the viewer if the viewer's claim is not frivolous that the restriction was facially invalid or was invalid as applied to the specific viewer. The Order concludes that the potential threat of a fine or penalty could operate as a substantial deterrent to viewers exercising their right to install an antenna while such a restriction is under review and there is no significant alternative way to remove this deterrent.

36. Second, the revised rules clarify that the burden of demonstrating that a particular restriction complies with the Section 207 rules rests with the proponent in both a court and Commission proceeding. No one proposed a significant alternative to this rule.

37. Third, the Section 207 rules protect antennas that have transmission capability only if these transmission antennas are used in conjunction with antennas that receive video programming. Because this ruling was merely a clarification of the initial rule, this ruling has no more impact than the initial ruling analyzed in the Report and Order.

38. Fourth, the revised rules protect "properties," not just "districts," listed or eligible to be listed on the National Register of Historic Places. No significant alternative was proposed that would not run afoul of federal laws and regulations protecting such properties.

39. Fifth, the Order rejects a proposal that the Section 207 rules protect per se any other new antenna not specifically listed in the Section 207 rules. This decision was required by the statutory language of Section 207. Moreover, the impact of this rule is diminished because the Commission will consider on a case by case basis whether a particular device is covered by the rules.

40. Sixth, as set forth, the rules clarify how service should be made and how certification of service provided. No significant alternative was proposed.

Report to Congress: The Commission will send a copy of this Order on Reconsideration, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

41. Accordingly, it is ordered that, pursuant to authority found in Sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303, and Section 207 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56, the Commission's rules are hereby amended. The amendments shall become effective January 6, 1999, except that § 1.4000 (d) and (e), which contain new information collection requirements that shall become effective upon approval by OMB, but no sooner than February 16, 1999. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

42. It is further ordered that the Petitions for Reconsideration in CS Docket No. 96–83 are granted in part and denied in part.

43. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance

with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 1

Antenna, Satellite, Telecommunications, Television.

Federal Communications Commission.
Shirley S. Suggs,
Chief, Publications Branch.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309.

2. Section 1.4000 is revised to read as follows:

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a) (1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulation, or any private covenant, homeowners' association rule or similar restriction on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property, that impairs the installation, maintenance, or use of

(i) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska;

(ii) an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement;

(iii) an antenna that is designed to receive television broadcast signals; or

(iv) a mast supporting an antenna described in paragraphs (a)(1)(i), (ii) or (iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it

(i) Unreasonably delays or prevents installation, maintenance or use,

(ii) Unreasonably increases the cost of installation, maintenance or use, or

(iii) Precludes reception of an acceptable quality signal.

(3) Any fee or cost imposed on a viewer by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (c) or (d) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (c) or (d) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a viewer, the viewer shall be granted at least a 21 day grace period in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the viewer if the viewer complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the viewer's claim in the proceeding was frivolous.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraph (b)(1) or (2) of this section.

(c) Local governments or associations may apply to the Commission for a waiver of this section under § 1.3 of this part. Waiver requests must comply with the procedures in paragraphs (e) and (g) of this section and will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(d) Parties may petition the Commission for a declaratory ruling under § 1.2 of this part, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (e) and (g) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(e) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition, in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(f) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance or use of devices designed for over-the-air reception of video programming services shall be on the party that seeks to impose or maintain the restriction.

(g) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th St. S.W., Washington, D.C. 20554, Attention: Cable Services Bureau. Copies of the petitions and related pleadings will be available for public inspection in the Cable Reference Room in Washington, D.C. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

(h) So long as the property owner consents, a person residing on the property owner's property with the property owner's permission shall be treated as an antenna user covered by this section and shall have the same rights as the property owner with regard to third parties, including but not limited to local governments and associations, other than the property owner.

[FR Doc. 98–32362 Filed 12–4–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–138; RM–9309]

Radio Broadcasting Services; Whitehall, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 274A to Whitehall, Montana, in response to a petition filed by Whitehall Broadcasting Company. *See* 63 FR 41765, August 5, 1998. The coordinates for Channel 274A at Whitehall are 45–56–11 and 112–13–51. There is a site restriction 12.7 kilometers (7.9 miles) northwest of the community. With this action, this proceeding is terminated. A filing window for Channel 274A at Whitehall, Montana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–138, adopted November 18, 1998, and released November 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Whitehall, Channel 274A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32366 Filed 12–4–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–164; RM–9357]

Radio Broadcasting Services; Linn, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276A to Linn, Missouri, in response to a petition filed by R. Lee and Sarah H. Wheeler. *See* 63 FR 49682, September 17, 1998. The coordinates for Channel 276A at Linn are 38–29–06 and 91–51–06. With this action, this proceeding is terminated. A filing window for Channel 276A at Linn, Missouri, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–164, adopted November 11, 1998, and released November 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Linn, Channel 276A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32364 Filed 12–4–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 234
Monday, December 7, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1946–98; AG Order No. 2194–98]

RIN 1115–AF29

Delegation of the Adjudication of Certain H–2A Petitions to the Department of Labor

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations by delegating to the United States Department of Labor (DOL) the adjudication of certain petitions for aliens coming temporarily to the United States to perform agricultural labor or services (H–2A petition). The H–2A petitions affected by this action would involve only petitions filed for initial H–2A employment where the alien is not physically present in the United States and petitions to replace H–2A workers who were terminated before the end of their authorized stays with workers from outside the United States. This rule would not affect the Service's authority to make determinations at the port-of-entry of an alien's admissibility to the United States or to adjudicate other petitions. The Service has proposed these changes in order to streamline the existing H–2A petitioning process for certain foreign agricultural workers, and the proposals are intended to make it easier and less burdensome for United States employers to file petitions for such workers.

DATES: Written comments must be submitted on or before February 5, 1999.

ADDRESSES: Please submit the original and two copies of written comments to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1946–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Programs Division, Immigration and Naturalization Service, 425 I Street, N.W., Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Background

What Is an H–2A Agricultural Worker?

Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (Act) defines an H–2A worker as an alien "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services * * * of a temporary or seasonal nature." 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1188(i)(2).

What Is the Current Procedure for Hiring an H–2A Agriculture Worker?

Section 218 of the Act provides the statutory framework for the H–2A nonimmigrant program. 8 U.S.C. 1188. The current procedures for filing an H–2A petition to hire an alien to perform temporary or seasonal agricultural labor or services are described at 8 CFR 214.2(h)(5). A United States employer that desires to hire an H–2A agricultural worker must first obtain a labor certification from the DOL. The procedures for obtaining a labor certification are contained in the DOL regulations at 20 CFR part 655, subpart B. Briefly, the prospective United States employer must establish, among other things, that there are not sufficient available United States workers for the position and that the employer will pay the foreign worker in accordance with the regulations of the DOL and the United States Department of Agriculture (USDA). If the United States employer and the proposed employment of the H–2A worker meet all of the DOL requirements, the DOL will issue a labor certification. If the application for a labor certification is denied, an employer may obtain review of the denial by an administrative law judge within the DOL. After obtaining a labor certification from the DOL, the employer is required to file a Form I–129, Petition for nonimmigration Worker, with the Service. The Service reviews the Form I–129 and supporting documentation and, if approved, forwards notice of the approved petition to a consular post or port-of-entry. The foreign workers are then identified and either apply for a nonimmigrant visa at a United States consular post or for admission to the United States if exempt from the nonimmigrant visa requirements. If an H–2A petition is denied by the Service, the employer may appeal the denial of the petition to the Administrative Appeals Office (AAO). See 8 CFR 103.3, 214.2(h)(12).

Why Is the Service Making These Changes?

The Administration, including the Department of State (DOS), the DOL, the USDA, and the Service, has, for some time, been considering possible changes to the H–2A program to help streamline it, improve its operation, and address complaints by some users of the program, without weakening the program's worker protections. The General Accounting Office and the DOL's Office of Inspector General have recently completed in-depth reviews of the H–2A program, providing useful analysis and findings and making several recommendations for program changes, many of which have been accepted by the administering agencies. This rulemaking represents an attempt by the Service to simplify the petitioning process for United States employers seeking to employ foreign agricultural workers. The DOL published corresponding, proposed regulations in the **Federal Register** on October 2, 1998, 63 FR 53244–53249.

The Service's current role in the adjudication of H–2A petitions generally is limited to reviewing the Form I–129 filed by the United States employer to determine if the job offered to the foreign worker is temporary and if the United States employer has obtained a labor certification from the DOL. Moreover, the labor certification issued by the DOL is normally accepted by the Service as evidence that the position is temporary and that the United States employer has met all of the DOL's requirements with respect to the H–2A classification. Although the Service currently is authorized to approve a H–2A petition in spite of the DOL's denial of a labor certificate, it can do so only if the petitioner overcomes the DOL's finding that qualified domestic labor is available. 8 CFR 214.2(h)(5)(ii). The Service, however, accords great weight to the DOL's findings and rarely overturns them. In addition, most Form I–129 petitions are filed for unnamed beneficiaries; the vast majority of United States employers, due to the nature of the agricultural industry, identify only the number of positions that they want to fill, not the names of the specific foreign workers. The foreign workers are identified only after the petition is approved by the Service and before visas are issued. Thus, as a practical matter, the Service's role in the processing of H–2A petitions for aliens outside of the United States generally is limited to a review of the Form I–129 petition to determine if it is accompanied by a labor certificate. Given its minimal role in this process, the Service has determined that the interests in streamlining the H–2A process outweigh those of retaining jurisdiction over the adjudication of H–2A petitions filed on behalf of aliens outside of the country.

Explanation of Changes

What Changes Are We Making to the Regulations?

The control of aliens admitted to the United States as nonimmigrants is solely the responsibility of the Attorney General. 8 U.S.C. 1103(a). Under section 103(a)(6) of the Act, however, the Attorney General has the authority "to confer or impose upon any employee of the United States * * * any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service." 8 U.S.C. 1103(a)(6). Pursuant to this section of the Act, the Attorney General proposes to amend the Service's regulations by delegating to the Secretary of Labor her authority to adjudicate H–2A petitions where the beneficiary is not physically present in the United States.

This rule proposes to implement this delegation to the Secretary of Labor by amending 8 CFR 214.2(h)(5)(i). The rule would further advise potential United States employers to refer to the DOL regulations for information regarding the filing requirements for petitions for H–2A agricultural workers who are not physically present in the United States.

This proposed rule also would amend 8 CFR 214.2(h)(5)(ix) to delegate authority to the DOL to adjudicate a petition filed to replace an H–2A worker whose employment has been terminated early with a worker from outside of the United States. The Service, however, would retain its authority to adjudicate petitions where the substitute worker is physically present in the United States. The Service would also retain authority to adjudicate extensions of stay and petitions filed in connection with applications to change an alien's nonimmigrant status to H–2A nonimmigrant status.

What Portions of the H–2A Program Are Not Being Changed by This Rule?

As noted above, the Service does not propose to delegate its authority to adjudicate extensions of temporary stay and changes of nonimmigrant status to an H–2A nonimmigrant. The Service proposes to retain its authority in these two areas because the decisions to change nonimmigrant status and to extend an alien's period of temporary stay require complex determinations as to whether the alien is maintaining a valid nonimmigrant status and is eligible for other benefits under the Act. In addition, it would be burdensome on the DOL, whose mission does not include direct control over aliens, to make these determinations. For these reasons, the Service will not remove itself entirely from the H–2A program, but will retain a certain amount of control over the program in order to ensure that both the employer and the foreign agricultural worker remain in compliance with the Act.

Under the proposed regulation, extensions of stay would continue to be filed with the Service in accordance with 8 CFR 214.1 and 8 CFR 214.2(h)(15)(ii)(C). In addition, requests for a change of nonimmigrant status to H–2A nonimmigrant classification would continue to be filed with the Service pursuant to 8 CFR part 248. The Service also would retain its authority to adjudicate petitions filed for a change of United States employers under this proposed regulation.

The Service also intends to retain its right to adjudicate appeals of denied H–2A petitions. See 8 CFR 103.3, 214.2(h)(12). Petitions denied by the DOL would, therefore, continue to be appealed to the AAO. In this regard, the proposed regulation clarifies that, as a condition to delegation of authority, the DOL has agreed to provide notice to the petitioner of the reasons for denial and of the right to appeal to the AAO. The Service's retention of its appeal authority ensures that United States employers can obtain an independent, second-agency review of a petition denied by the DOL. This is not to be confused with the DOL's decision with respect to an application for a labor certification. Under this proposed rule, the DOL will be rendering two decisions, one on the application for a labor certification and one on the H–2A petition itself. Appeals from the denial of a labor certification will continue to be handled by the DOL.

The Service also intends to retain its authority, described in 8 CFR 214.2(h)(11), to revoke an H–2A petition approved by the DOL.

This proposed rule also would not alter the petitioner's responsibilities, set forth in 8 CFR 214.2(h)(5)(vi), to notify the Service if an H–2A alien absconds or the alien's employment ends more than 5 days before the labor certification expires. Similarly, the proposed rule would not change the provisions in 8 CFR 214.2(h)(5)(vi) requiring the petitioner to pay liquidated damages for violating its notification obligations. Further, this proposed rule would not alter 8 CFR 214.2(h)(5)(viii), which sets forth the period of an H–2A nonimmigrant admission to the United States.

In addition, the delegation of the authority to adjudicate certain H–2A petitions would not, in any way, affect the Service's responsibilities with respect to the employer sanctions provisions contained at 8 CFR part 274a, including the limitation that an H–2A worker may be employed only by the petitioning employer, as described at 8 CFR 274a.12(b)(9).

This rule also would not delegate authority to make determinations of admissibility to the United States. The Service would retain sole authority to make such determinations at the time an alien makes an application for admission at a designated port-of-entry. The delegation in this rule would only involve the approval of petitions for H–2A nonimmigrant classification. The H–2A workers would still be required to obtain a nonimmigrant visa abroad, where applicable, and make application for admission to the United States.

Finally, the Service will continue to issue Form I–94, Arrival-Departure Record, to the foreign worker at the time the alien is admitted to the United States. The Service will also continue to issue replacement Form I–94s.

What Is the Effect of These Proposed Changes?

These proposed changes will make it easier for United States employers to file petitions for H–2A agricultural workers located outside of the United States. Under this proposed rule, these employers generally will be required to file petition-related documents with only one agency—the DOL—instead of the current two agencies. This proposed change should shorten the time required for these employers to obtain the services of H–2A workers located outside of the United States because it generally will remove the Service from the H–2A petition approval process, thereby eliminating the time and mailing costs associated with the submission of the petition package to the Service.

What Issues Will Remain After These Proposed Changes Are Made?

The adoption of the changes proposed in this rule will create a number of issues to be resolved among the Service, the DOL, and the DOS. These issues will require further discussion between the agencies and, possibly, further rulemaking. An example of one such issue is whether the DOL should use the Service's Form I–129 or create its own form to capture the information required to determine eligibility for the H–2A classification. Another issue is whether, if the DOL devises its own form, it should gather the same information that the Service currently captures on Form I–129. A further example is the issue of how to notify consular posts and ports-of-entry after a petition is approved. In this regard, the DOL could continue to use the Service's Form I–797, Notice of Action, or devise another mechanism to notify the appropriate parties of its actions. The Service, the DOL, and the DOS will continue to discuss and to work collaboratively on these issues, and others, as they arise in order to determine the best procedures to implement the delegation described in this rule. Such procedures will be addressed by the agencies in their respective regulations through the rulemaking process.

What Types of Comments Does the Service Wish to Receive From the Public?

In addition to comments directly addressing the changes proposed in this rule, the Service would appreciate comments from the public on other pertinent issues associated with this proposed delegation of authority. The Service does not wish to adopt changes that would have an adverse impact on the users of the H–2A program.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Service is issuing this rule to reduce the impact on small entities that petition for agricultural workers who are not physically present in the United States. This change is intended to reduce the amount of time required to petition for an H–2A worker and should ease the paperwork burden on prospective United States employers.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 12612

This rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Removing the reference to "H–2A," from the first sentence in paragraph (h)(2)(i)(A);

b. Revising paragraph (h)(5)(i);

c. Revising paragraph (h)(5)(ix); and by

d. Revising paragraph (h)(10)(iii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(5) * * *

(i) *Petition for alien to perform agricultural labor or services of a temporary or seasonal nature (H–2A)*—(A) *Filing a petition on behalf of an alien who is not physically present in the United States.* Pursuant to section 103 of the Act, the Attorney General has delegated the authority to adjudicate H–2A petitions where the beneficiary is outside of the United States to the Secretary of Labor. Therefore, an H–2A petition for a foreign agricultural worker who is not physically present in the United States shall be filed with the United States Department of Labor pursuant to its regulations at 20 CFR part 655, subpart B.

(B) *H–2A petitions filed for an alien who is in the United States or for a change of nonimmigrant status to an H–2A nonimmigrant alien.*—(*1*) *General.* An H–2A petition filed by a United States employer for an alien currently in the United States, or an H–2A petition requesting a change of an alien's nonimmigrant status to that of an H–2A nonimmigrant alien, must be filed with the Service on Form I–129. The petition must be filed with a single valid temporary agricultural labor certification. However, if a certification is denied, domestic labor subsequently fails to appear at the worksite, and the Department of Labor denies an appeal under section 218(e)(2) of the Act, the written denial of appeal shall be considered a certification for this purpose if filed with evidence that establishes that qualified domestic labor is unavailable. An H–2A petition may

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be filed by either the employer listed on the certification, the employer's agent, or the association of United States agricultural producers named as a joint employer on the certification.

(*2*) *Multiple beneficiaries not present in the United States.* The total number of beneficiaries of a petition or series of petitions based on the same certification may not exceed the number of workers indicated on that document. A single petition can include more than one beneficiary if the total number does not exceed the number of positions indicated on the relating certification, and all beneficiaries will obtain a visa at the same consulate or not required to have a visa and will apply for admission at the same port-of-entry.

(*3*) *Unnamed beneficiaries not present in the United States.* The sole beneficiary of an H–2A petition must be named in the petition. In a petition for multiple beneficiaries, each beneficiary must be named unless he or she is not named in the certification and is outside the United States. Unnamed beneficiaries must be shown on the petition by total number.

(*4*) *Evidence supporting H–2A petitions filed with the Service.* An H–2A petitioner must show that the proposed employment qualifies as a basis for H–2A status, and that any named beneficiary qualifies for that employment. A petition will be automatically denied if filed without the certification evidence required in paragraph (h)(5)(i)(B)(*1*) of this section and, for each named beneficiary, without the initial evidence required in paragraph (h)(5)(v) of this section.

(*5*) *Special filing requirements for H–2A petitions filed with the Service.* Where a certification shows joint employers, a petition must be filed with an attachment showing that each employer has agreed to the conditions of H–2A eligibility. A petition filed by an agent must be filed with an attachment in which the employer has authorized the agent to act on its behalf, has assumed full responsibility for all representations made by the agent on its behalf, and has agreed to the conditions of H–2A eligibility.

(C) *Petitions for H–2A nonimmigrant aliens requesting an extension of temporary stay.* An H–2A petition requesting an extension of the beneficiary's temporary stay shall be filed on Form I–129 with the Service pursuant to paragraph (h)(15)(ii)(C) of this section.

* * * * *

(ix) *Substitution of beneficiaries who are terminated prior to the completion of their authorized stay in H–2A classification.* An H–2A petition may be filed to replace an H–2A worker whose employment has been terminated prior to the completion of the alien's authorized stay. In cases where the worker replacing the terminated H–2A worker is located outside the United States, the authority to adjudicate the H–2A petition is delegated to the Department of Labor. In such cases, the petition must be filed pursuant to the Department of Labor's regulations at 20 CFR part 655, subpart B. In cases where the worker who will replace the terminated H–2A worker is physically present in the United States, the H–2A petition for the substitute worker must be filed with the Service.

* * * * *

(10 * * *

(iii) *Notice of denial.* The petitioner shall be notified of the reasons for the denial and of his or her right to appeal the denial of the petition under 8 CFR part 103. In cases where the Department of Labor has adjudicated an H–2A petition, the Department of Labor will notify the petitioner of the reasons for the denial and of his or her right to file an appeal with the Administrative Appeals Office pursuant to 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien.

* * * * *

Dated: December 1, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–32396 Filed 12–4–98; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1028]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff commentary.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation M, which implements the Consumer Leasing Act. The commentary applies and interprets the requirements of the regulation. The proposed update would provide guidance on disclosures for lease advertisements, multiple-item leases, renegotiations and extensions and estimates of official fees and taxes.

DATES: Comments should be received by January 22, 1999.

ADDRESSES: Comments should refer to Docket No. R–1028, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., in accordance with §§ 261.12 and 261.14, of the Board's Rules Regarding the Availability of Information. 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Staff Attorney, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The Board's Regulation M (12 CFR part 213) implements the Act. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the Act.

The commentary (12 CFR Part 213 (Supp. I)) is a substitute for individual written staff interpretations; it is updated annually, as necessary, to address significant questions that arise. This is the first update since the January 1, 1998 compliance date for the revised regulation. The Board expects to adopt revisions to the commentary in final form in March 1999. To the extent the revisions require changes in lessors' compliance procedures, the effective date for mandatory compliance is October 1, 1999.

II. Proposed Revisions

Section 213.3—General Disclosure Requirements

3(d) Use of Estimates

Comment 3(d)(1)–1(i) provides an example for estimating official fees and taxes. The language of the example would be revised and moved to comment 4(n)–2.

Section 213.4—Content of Disclosures

4(c) Payment Schedule and Total Amount of Periodic Payments

Comment 4(c)–1 would be revised to clarify that scheduled payments can be made at both regular and irregular intervals. A similar revision would be made in comment 1 to appendix A.

4(f) Payment Calculation

Motor vehicle lease disclosures must include a mathematical progression of how periodic payments are derived. Comment 4(f)–2 would be added to address lease transactions that involve multiple items of leased property if one of the items is not a motor vehicle under state law.

4(n) Fees and Taxes

The lessor must disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, and taxes. These amounts may vary over the course of the lease, and some lessors have requested guidance for calculating an estimated total amount. Proposed comment 4(n)–2 would clarify lessors' ability to use rates or charges in effect at the time of disclosure. The proposed comment would also provide guidance for estimating fees and taxes that are based on the future market value of the leased property, both of which may vary depending on the valuation method used.

Section 213.5—Renegotiations, Extensions, and Assumptions

5(a) Renegotiations

A renegotiation occurs where a lease is satisfied and replaced by a new lease which generally triggers new disclosures. Proposed comment 5(a)–1 would be added to clarify that disclosures should conform to the lessee's legal obligation.

5(b) Extensions

Proposed comment 5(b)–3 would be added to provide guidance on lease extensions, which sometimes are consummated before the end of the initial lease term. The revisions would clarify that disclosures should be based on the lessee's obligation for the period of the extension, whether the extension agreement is consummated during the initial lease term or afterwards. Any fees required in connection with the extension also must be reflected in the new disclosures, regardless of when the fees are paid.

Section 213.7—Advertising

7(d)(2) Additional Terms

Proposed comment 7(d)(2)–1 would be revised to provide guidance for advertising periodic lease payments that are affected by third-party fees that vary by state or locality, such as taxes or licenses.

Appendix A—Model Forms

Comment 1 to appendix A would be revised to provide additional examples of permissible changes to the model forms.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1028, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 213 as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 would continue to read as follows:

Authority: 15 U.S.C. 1604; 1667f.

2. In Supplement I to Part 213, under *§ 213.3—General disclosure requirements*, under *Paragraph 3(d)(1) Standard*, paragraph 1. would be amended by removing "For example:" from the last line and paragraph 1.i. would be removed.

3. In Supplement I to Part 213, under *§ 213.4—Content of disclosures*, the following amendments would be made:

a. Under *4(c) Payment Schedule and Total Amount of Periodic Payments*, paragraph 1. would be revised; and

b. Under *4(f) Payment Calculation*, a new paragraph 2. would be added.

c. Under *4(n) Fees and Taxes*, a new paragraph 2. would be added.

The additions and revisions would read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

§ 213.4 Content of disclosures.

* * * * *

4(c) Payment Schedule and Total Amount of Periodic Payments

1. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments that are made at regular ►or irregular◄ intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including, for example, taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under § 213.4(c).

* * * * *

4(f) Payment Calculation

* * * * *

►2. *Multiple-items.* If a lease transaction involves multiple items of leased property, one of which is not a motor vehicle under state law, at their option, lessors may include all items in the disclosures required under 4(f). See comment 3(a)–4 regarding disclosure of multiple transactions.◄

* * * * *

4(n) Fees and Taxes

* * * * *

►2. *Estimates.* Lessors may estimate the total amount for fees and taxes based on the rates or charges in effect at the time of the disclosure and identify it as an estimate. Where a rate is applied to the market value of the leased property, lessors have flexibility in estimating the future value of the property, including using the unamortized balance under the lease or a published valuation guide. Lessors may accompany the estimate with a statement that the actual fee or tax may be higher or lower depending on the rate in effect or the value of the leased property at the time the fee or tax is due.◄

* * * * *

4. In Supplement I to Part 213, under § 213.5—Renegotiations, extensions, and assumptions, the following amendments would be made:

a. A new undesignated heading, *5(a) Renegotiations*, and paragraph 1. would be added; and

b. Under *Paragraph 5(b) Extensions.*, a new paragraph 3. would be added.

The additions would read as follows:

§ 213.5 Renegotiations, extensions, and assumptions.

* * * * *

5(a) Renegotiations

►1. *Basis of disclosures.* Lessors have flexibility in making disclosures so long as they reflect the legal obligation under the renegotiated lease. For example, assume that a 24-month lease is replaced by a 36-month lease. The initial lease began on January 1, 1998, and was renegotiated and replaced on July 1, 1998, so that the new lease term ends on January 1, 2001. If the renegotiated lease covers the 36-month period beginning January 1, 1998, the new disclosures would reflect all payments made by the lessee on the initial lease and all payments on the renegotiated lease. However, if the renegotiated lease covers only the remaining 30 months, from July 1, 1998, to January 1, 2001, the disclosures would reflect only the charges incurred in connection with the renegotiation and the payments for the remaining period.◄

* * * * *

5(b) Extensions

* * * * *

►3. Basis of disclosures. The disclosures should be based on the extension period, including any upfront costs paid in connection with the extension. For example, assume that initially a lease ends on March 1, 1999. In January 1999, agreement is reached to extend the lease until October 1, 1999. The disclosure would include any extension fee paid in January and the periodic payments for the seven-month extension period beginning in March.◄

* * * * *

5. In Supplement I to Part 213, under *§ 213.7—Advertising,* under *Paragraph 7(d)(2) Additional Terms.*, paragraph 1. would be revised as follows:

* * * * *

§ 213.7 Advertising.

* * * * *

7(d)(2) Additional Terms

* * * * *

1. *Third-party fees that vary by state or locality.* The disclosure of ►a periodic payment or◄[the] total amount due at lease signing or delivery may:

i. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or

ii. Provide a ►periodic payment or◄ total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

* * * * *

6. In Supplement I to Part 213, under *Appendix A—Model Forms,* paragraph 1. would be revised as follows:

Appendix A—Model Forms

* * * * *

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other ►regular or irregular periodic payments. The model form may also be modified to reflect that a transaction is an extension.◄ The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32338 Filed 12–4–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1029]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses the prohibition against the issuance of unsolicited credit cards. It provides guidance on calculating payment schedules involving private mortgage insurance. In addition, the proposed update discusses credit sale transactions where downpayments include cash and property used as a trade-in.

DATES: Comments must be received on or before January 22, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1029, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m. in accordance with §§ 261.12 and 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, or Pamela Morris Blumenthal or James H. Mann, Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate. Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 1999; to the extent the revisions impose new requirements on creditors, compliance would be optional until October 1, 1999, the effective date for mandatory compliance.

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions. 2(a)(15) Credit Card. Section 226.2(a)(15) defines a credit card to include any card or credit device that may be used from time to time to obtain credit. Comment 2(a)(15)–2 provides examples of cards and devices that are and are not credit cards. The comment would be revised to include additional examples of cards or devices that are credit cards, addressing recent programs where cards are marketed from the outset with both credit and non-credit features.

2(a)(18) Downpayment. Comment 2(a)(18)–3 provides guidance on how a creditor discloses the downpayment if a trade-in is involved in a credit sale transaction and if the amount of an existing lien exceeds the value of the trade-in. The comment would be revised to provide additional examples when the downpayment also includes a cash payment.

Subpart B—Open-end Credit

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards. 12(a)(1). Section 226.12(a) prohibits creditors from issuing credit cards except in response to a consumer's request or application for the card or as a renewal of, or substitute for, a previously accepted credit card. The prohibition addresses various concerns including the potential for theft and fraud and the consumer inconvenience of refuting claims of liability.

The law does not prohibit creditors from issuing unsolicited cards that have a non-credit purpose—such as check-guarantee or purchase price-discount cards, so long as they cannot be used also to obtain credit. Consumers may later be able to convert these cards to credit cards if the issuer makes a credit feature available and the consumer requests the credit.

Comment 12(a)(1)–7 provides guidance regarding a card that is issued and accepted by the consumer as a non-credit device and that subsequently is converted for use as a credit device at the consumer's request. The comment would be revised to reflect more clearly its intended purpose. For example, a purchase-price discount card may be issued on an unsolicited basis if the card issuer does not propose to connect the card with any credit plan. If the issuer later establishes a credit plan to which the card could be connected and the consumer requests access to the plan, the previously issued card can be re-encoded (or the issuer may reprogram its computers to allow the card to be used to access credit) without violating TILA.

Questions about the comment's meaning have been raised regarding its application to recent programs where unsolicited cards are marketed from the outset as both stored-value cards and credit cards. The revised comment would clarify that, because these multifunction cards are connected with credit plans when they are issued, and thus are credit cards, these cards may not be sent without the consumer's prior request or application. See comment 2(a)(15)–2. To the extent that the interpretation of rule previously may have been unclear, the Board believes that liability should not attach to a card issuer's prior reliance on comment 12(a)(1)–7 in issuing multifunction cards that included a credit feature.

Section 226.14—Determination of Annual Percentage Rate

14(c) *Annual Percentage Rate for Periodic Statements.* Comment 14(c)–10 addresses finance charges that are imposed during the current billing cycle but that relate to account activity that occurred during a prior billing cycle. The comment refers expressly to current-cycle and prior-cycle debits but not to current-cycle or prior-cycle credits. The comment is meant to cover both debits and credits, and would be revised accordingly.

Subpart C—Closed-end Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule. The Homeowners Protection Act of 1998 (HPA) limits the amount of private mortgage insurance consumers can be required to purchase. Borrowers may request cancellation of private mortgage insurance under some circumstances and lenders must terminate private mortgage insurance automatically when certain conditions are met. For example, creditors must stop collecting insurance premiums when the outstanding loan balance is 78 percent of the original value of the property provided the account is current (unless the mortgage is "high-risk" as defined in the statute).

Comment 18(g)–5 would be added in response to creditors' requests for guidance on how the requirements of the HPA affect TILA disclosures. TILA disclosures are based on the legal obligation between the parties. (See § 226.17(c)(1).) The payment schedule disclosure required by section 18(g) should reflect all components of the finance charge, including private mortgage insurance for the time period there is a legal obligation to maintain the insurance.

18(j) Total Sale Price. Comment 18(j)–2 provides the formula for calculating the total sale price in a credit sale transaction. In response to requests for guidance, the comment would be revised to address how the total sale price may be affected by downpayments involving cash and property that is being used as a trade-in and that has a lien exceeding the value of the trade-in.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1029, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction,* the following amendments would be made:

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a. Under *Paragraph 2(a)(15) Credit card.*, paragraph 2. would be revised; and

b. Under *Paragraph 2(a)(18) Downpayment.*, paragraph 3. would be revised.

The revisions would read as follows:

* * * * *

Supplement I—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

§ 226.2 Definitions and rules of construction

2(a) Definitions.

* * * * *

2(a)(15) Credit card.

* * * * *

2. Examples. i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

►E. A card or device that can be activated upon receipt to access credit, notwithstanding the fact that the recipient must first contact the card issuer before using the card.

F. A card that has a substantive use other than credit, such as a purchase-price discount card, if the card also may be used to obtain credit (even if the recipient must first contact the card issuer to access or activate the credit feature).◄

ii. In contrast, a credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

* * * * *

2(a)(18) Downpayment.

* * * * *

3. *Effect of existing liens.* In a credit sale, the "downpayment" may only be used to reduce the cash price. For example, when the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not -$2,000. ►Similarly, if the consumer pays $1,500 in cash (which does not extinguish the $2,000 deficit) the creditor should disclose a downpayment of $0, not -$500. But if the consumer provides $3,000 in cash (which eliminates the $2,000 deficit and contributes $1,000 to reduce the cash price), the creditor should disclose a downpayment of $1,000.◄

* * * * *

3. In Supplement I to Part 226, under *Section 226.12—Special credit card provisions*, under *Paragraph 12(a)(1)*, paragraph 7. would be revised to read as follows:

* * * * *

Subpart B—Open-End Credit

* * * * *

§ 226.12 Special credit card provisions

* * * * *

12(a) Issuance of credit cards.
Paragraph 12(a)(1)

* * * * *

7. *Issuance of non-credit cards.* ►i. *General.* Under 12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A credit feature may be added to a previously issued non-credit card only upon the consumer's specific request. Adding a credit feature includes re-encoding the non-credit device, or reprogramming the issuer's computer program or automated teller machines.

ii. *Examples.* Purchase-price discount cards may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. If the issuer subsequently establishes a credit plan that could be accessed by the card, it may solicit customers who have received the discount cards to offer them the credit feature, and may then reprogram its computers to provide credit access to consumers who request activativation of the credit feature.◄

[The issuance of an unsolicited device that is not, but may become, a credit card, is not prohibited provided:

- The device has some substantive purpose other than obtaining credit, such as access to non-credit services offered by the issuer;
- It cannot be used as a credit card when issued; and
- A credit capability will be added only on the recipient's request.

For example, the card issuer could send a check guarantee card on an unsolicited basis, but could not add a credit feature to that card without the consumer's specific request. The re-encoding of a debit card or other existing card that had no credit privileges when issued would be appropriate after the consumer has specifically requested a card with credit privileges. Similarly, the card issuer may add a credit feature, for example, by reprogramming the issuer's computer program or automated teller machines, or by a similar program adjustment.]

* * * * *

4. In Supplement I to Part 226, *Section 226.14—Determination of Annual Percentage Rate*, under *Paragraph 14(c) Annual percentage rate for periodic statements.*, paragraph 10.ii. is republished and paragraph 10.ii.B. would be revised to read as follows:

* * * * *

§ 226.14 Determination of annual percentage rate

* * * * *

14(c) Annual percentage rate for periodic statements.

* * * * *

10. *Prior-cycle adjustments.*

* * * * *

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

* * * * *

B. If a finance charge ►that is posted◄[debited] to the account relates to activity for which a finance charge was debited ►or credited◄ to the account in a previous billing cycle, for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons, the creditor shall at its option:

1. Calculate the annual percentage rate in accord with ii.A. of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

* * * * *

5. In Supplement I to Part 226, under *§ 226.18—Content of disclosures*, the following amendments would be made:

a. Under *18(g) Payment schedule.*, a new paragraph 5. would be added; and

b. Under *18(j) Total sale price.*, paragraph 2. would be revised.

The addition and revision would read as follows:

* * * * *

Subpart C—Closed-End Credit

* * * * *

§ 226.18 Content of disclosures

* * * * *

18(g) Payment schedule.

* * * * *

►5. *Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier.◄

* * * * *

18(j) Total sale price.

* * * * *

2. *Calculation of total sale price.* The figure to be disclosed is the sum of the cash price, other charges added under § 226.18(b)(2), and the finance charge disclosed under § 226.18(d). ►When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. To illustrate, assume a consumer finances the purchase of an automobile with a cash price of $20,000. The consumer owes $10,000 on an existing loan on an automobile with a trade-in value of $8,000, leaving a $2,000 deficit that the consumer must finance. If the consumer pays $3,000 in cash and no other costs are financed, the total sale price would be the sum of the $20,000 cash price and the finance charge; because the $3,000 cash payment extinguishes the $2,000 trade-in deficit no charges are added under § 226.18(b)(2). (The remaining $1,000 is a downpayment, which does not affect the total sales price.) However, if the cash payment were $1,500, the total sale price would be the sum of the $20,000 cash price, an additional $500 financed under § 226.18(b)(2) (the $2,000 deficit reduced by the $1,500 cash payment), and the finance charge.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32339 Filed 12–4–98; 8:45 am]

BILLING CODE 6210–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0105; FRL–6195–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Diego Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from visible emissions and abrasive blasting.

The intended effect of proposing approval of these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received January 6, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096
Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003
California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Rulemaking (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1903

SUPPLEMENTARY INFORMATION: This document concerns San Diego Air Pollution Control District Rule 50, Visible Emissions, and Ventura County Air Pollution Control District Rule 74.1, Abrasive Blasting, submitted to EPA on June 23, 1998 and January 28, 1992, respectively, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 20, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–32418 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[CS Docket No. 98–201; FCC 98–302]

Satellite Delivery of Broadcast Network Signals Under the Satellite Home Viewer Act

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document requests comment on the Commission's authority to modify the Grade B construct in response to petitions for rulemaking filed by the National Rural Telecommunications Cooperative (NRTC) and EchoStar Communications Corporation (Echostar) in connection with the Satellite Home Viewer Act. The intended effect is to better identify those households that are "unserved," for purposes of the SHVA, by their local broadcast stations using conventional rooftop antennas.

DATES: Comments are due on or before December 11, 1998 and reply comments are due on or before December 21, 1998. Comments by the public on the modified information collection requirements are due on or before January 6, 1999. Comments by the Office of Management and Budget ("OMB") on the modified information collection requirements are due on or before February 5, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24, 121 (Friday, January 2, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. A copy of any comments on the new and modified information collection requirements contained herein should be submitted to Judy Boley, Federal Communications, Room C1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Donnie Fowler at (202) 418–7200 or via internet at dfowler@fcc.gov. For additional information concerning the modified information collection requirements contact Judy Boley at (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, FCC 98–302, CS Docket No. 98–201, adopted November 17, 1998 and released November 17, 1998. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at <http://www.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8022.html>. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Ex Parte Rules

This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the rules. (47 CFR 1.1206(b), as revised). Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. (See 47 CFR 1.1206(b)(2), as revised.) Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Synopsis of Notice of Proposed Rulemaking

I. Introductory Background

1. In this proceeding we respond to petitions for rulemaking filed by the National Rural Telecommunications Cooperative (NRTC) and EchoStar Communications Corporation (EchoStar). The petitions address the methods for determining whether a household is "unserved" by local network affiliated television broadcast stations for purposes of the 1988 Satellite Home Viewer Act (SHVA) (17 CFR 119 (1998). The NRTC petition was filed July 8, 1998 and placed on public notice on August 5, 1998. The EchoStar petition was filed August 18, 1998 and placed on public notice on August 26, 1998. The Commission has received comments on both petitions.

A. The Satellite Home Viewer Act

2. In the Satellite Home Viewer Act, Congress granted a limited exception to the exclusive programming copyrights enjoyed by television networks and their affiliates because it recognized that some households are unable to receive network station signals over the air. The exception is a narrow compulsory copyright license that direct-to-home (DTH) satellite video providers may use for retransmitting signals of a defined class of television network stations "to persons who reside in unserved households." The term "unserved household," with respect to a particular television network station is defined by SHVA to mean a household that—

"(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network." 17 CFR 119(d)(10).

In any action brought under the SHVA, the law specifies that "the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household."

3. The network station compulsory copyright licenses created by the Satellite Home Viewer Act are limited because Congress recognized the importance that the network-affiliate relationship plays in delivering free, over-the-air broadcasts to American families, and because of the value of localism in broadcasting. Localism, a principle underlying the broadcast service since the Radio Act of 1927, serves the public interest by making available to local citizens information of interest to the local community (e.g., local news, information on local weather, and information on community events). Congress was concerned that without copyright protection, the economic viability of local stations, specifically those affiliated with national broadcast networks, might be jeopardized, thus undermining one important source of local information.

B. Grade B Contours and Signal Intensity

4. The Grade B intensity standard is a Commission-defined measure of the strength of a television station's broadcast signal. (See 47 CFR 73.683 and 73.685.) Developed in the 1950s, the Commission has used the Grade B standard for a variety of purposes, many of which were not envisioned at the time it was adopted. Significantly, while the Commission anticipated that the Grade B standard might be used

generally to determine the service area, or contour, of a television station, use of the standard to identify individual unserved households under SHVA was not then at issue. Grade B represents the field strength of a signal 30 feet above ground that is strong enough, in the absence of man-made noise or interference from other stations, to provide a television picture that the median observer would classify as "acceptable" using a receiving installation (antenna, transmission line, and receiver) typical of outlying or near-fringe areas. (See O'Connor, Robert A., "Understanding Television's Grade A and Grade B Service Contours," IEEE Transactions on Broadcasting, 139 (December 1968).) The Grade B contour is defined as the set of points along which the best 50% of the locations should get an acceptable picture at least 90% of the time. The "time variability" planning factor used in the determination of the Grade B standard may create some confusion. In the TV & Cable Factbook, TV Stations Volume (1998 edition page A–15), the Grade B is described as providing service to 50% of locations 90% of the time. The Commission's *Sixth Report and Order* in Dockets 8736 et al. 41 FCC 148, 177 (1952), which adopted the initial television station allocation rules, states, "In the case of Grade B service the figures are 90 percent of the time and 50 percent of the locations." Both the broadcast and satellite parties state the time variability factor differently than stated. They describe the field strength at the Grade B contour as being available to at least 50% of the locations at least 50% of the time. This apparent inconsistency arises from an adjustment the Commission adopted for the Grade B signal strength values when it originally established them. This adjustment results in a Grade B value that predicts reception of an acceptable picture 90% of the time. For example, on channels 2–6, a signal strength of 41 dBu is needed for an acceptable picture. In order for this signal strength to be available 90% of the time, the median or F(50,50) field strength is set at 47 dBu.

5. The Grade B contour values (which represent the required field strength in dB above one micro-volt per meter) are defined for each television channel in section 73.683 of the Commission's rules:

Channels 2–6—47 dBu
Channels 7–13—56 dBu
Channels 14–69—64 dBu

Section 73.684 contains the Commission's "traditional" methodology for predicting station service coverage and section 73.686 describes a procedure for making field strength measurements.

C. The PrimeTime 24 Lawsuits

6. This proceeding was precipitated by petitions for rulemaking filed following the decisions of the United States District Court for the Southern District of Florida in *CBS, Inc. et al.* v. *PrimeTime 24 Joint Venture*, 9 F.Supp.2d 1333 (S.D. FL., May 13, 1998). In that litigation, the plaintiffs—CBS Inc.; Fox Broadcasting Co.; CBS Television Affiliates Association; Post-Newsweek Stations Florida, Inc.; KPAX Communications, Inc.; LWWI Broadcasting, Inc.; and Retlaw Enterprises—brought a copyright infringement action against PrimeTime 24, a satellite carrier, for retransmitting distant network programming to satellite dish owners in violation of the SHVA. The plaintiffs alleged that PrimeTime 24 distributed the signals of distant network-affiliated television broadcast stations by satellite to subscribers that were not "unserved households" within the meaning of the SHVA. Finding evidence that violations of the Act had taken place, the court issued a preliminary, nationwide injunction ordering PrimeTime 24 not to deliver CBS or Fox television network programming to any customer that does not live in an unserved household. It was specifically enjoined from providing CBS or Fox network programming:

> to any customer within an area shown on Longley-Rice propagation maps, created using Longley-Rice Version 1.2.2 in the manner specified by the Federal Communications Commission ("FCC"), as receiving a signal of at least grade B intensity of a CBS or Fox primary network station, without first either (i) obtaining the written consent of the CBS or Fox station affiliated or the relevant network, or (ii) after giving 15 business days written advance notice to the stations of its intention to conduct a test and of the time and place at which the test will be conducted, providing the station with a signal strength test at the customer's household showing that the household cannot receive a signal of grade B intensity.

The court ruled that the signal strength test at individual households within a station's predicted Longley-Rice contour should be "conducted in accordance with the procedures outlined in the Declaration of Jules Cohen, filed on March 11, 1997."

7. The court initially provided PrimeTime 24 with 90 days to comply with the preliminary injunction, which applies only to subscribers who signed up with PrimeTime 24 after March 11, 1997 (the day the plaintiffs filed their lawsuit). The parties subsequently and jointly agreed to an extension of the compliance date to February 28, 1999, and the court approved the parties' agreement on October 6, 1998. If enforced, the preliminary injunction could result in the termination of network signals to an estimated 700,000 to one million subscribers. A permanent injunction could end satellite network service to as many as 2.2 million subscribers. If the court issues a permanent injunction, the 700,000 to one million subscribers affected by the preliminary injunction will increase to include PrimeTime 24's subscribers before March 11, 1997. This would be an additional 1.5 million subscribers, thus raising the total subscribers affected by the Miami court orders to 2.2 million.

8. On July 16, 1998, a Raleigh, North Carolina, federal district court ruled against PrimeTime 24 in a similar lawsuit brought by the local ABC affiliate, *ABC, Inc.* v. *PrimeTime 24, Joint Venture*, 1998 WL 544286 (M.D. N.C., July 16, 1998) (Case No. Civ. A. 1:97CV00090). A permanent injunction followed on August 19, 1998 (1998 WL 544297 (M.D. N.C., Aug. 19, 1998) (Case No. Civ. A. 1:97CV00090)). Similar to the Miami ruling, the court found that the SHVA defines unserved household and Grade B using strictly objective standards. The court stated, "PrimeTime's screening procedures have systematically substituted a subjective inquiry into the quality of the picture on a potential subscriber's television set for any signal strength showing. PrimeTime has ignored or turned a blind eye to the necessity of objective signal strength testing and thus willfully or repeatedly provides network programming to subscribers under SHVA." In contrast to the Miami ruling, the Raleigh court did not use the Longley-Rice predictive model to identify the affected subscribers, but applied the injunction to all subscribers living within 75 miles of the affiliate's transmitting tower. PrimeTime 24 has provided network services to as many as 35,000 households in the ABC affiliate's Raleigh/Durham market. At the time of the court's decision, PrimeTime 24 continued to serve more than 9,000 subscribers within the affiliate's Grade B contour. A third lawsuit was brought by an NBC affiliate in Amarillo, Texas, and awaits judgment by a federal court. *Kannan Communications, Inc.* v. *Primetime 24 Joint Venture*, No. 2–96–CV–086 (N.D. Tex.). A fourth lawsuit was filed by EchoStar against CBS, Fox,

NBC, and ABC on October 19, 1998. EchoStar asks the court to find that the Commission has never endorsed a particular model for predicting or measuring Grade B intensity for the purposes of the SHVA. EchoStar wants the court to declare that a viewer's own opinion of the quality of his or her signal quality is adequate for determining whether that home is unserved under the SHVA, and asks the court to endorse a predictive model for identifying served households such that 95% of households receive a Grade B signal 95% of the time with a 50% degree of confidence. (EchoStar's 95 / 95 / 50 court request contrasts with the request in its petition before the Commission, in which it asks for a 99 / 99 / 99 model.

D. The NRTC and EchoStar Petitions

9. In response to the Miami court case, the NRTC and EchoStar filed their petitions.

We address both Petitions in this rulemaking because the issues are similar and for reasons of administrative efficiency. The NRTC, a distributor of DirecTV DBS service, has asked the Commission to adopt, exclusively for purposes of interpreting the SHVA, a new definition of "unserved" that includes all households located outside a Grade B contour encompassing a geographic area in which 100 percent of the population receives over-the-air coverage by network affiliates 100 percent of the time using readily available, affordable receiving equipment. EchoStar, which is a provider of DBS service, urges the Commission to adopt a prediction model to locate unserved households. EchoStar endorses a model that predicts an area where 99 percent of households receive a Grade B signal 99 percent of the time with a 99 percent confidence level. EchoStar also urges adoption of a methodology for measuring signal strength that more closely reflects the signal that a viewer's television set actually receives. It argues that a number of flaws exist in the current measurement and prediction processes when they are used for SHVA purposes.

10. Several parties filed comments either opposing or supporting the petitions. Those opposing the petitions generally represented broadcast interests, while those supporting the petitions generally included DTH satellite interests. Broadcasters generally argue that Congress did not grant the Commission the authority to amend the definition of Grade B for purposes of the SHVA.

Specifically, they contend that Congress chose the Grade B definition that existed at the time of the SHVA's adoption because it wanted to balance the viability of network/affiliate relationships with consumers' interest in receiving broadcast network service. If the Commission alters the Grade B definition, the petitioners' opponents argue, the number of households entitled to receive distant network signals may inappropriately rise and the number of people watching the local stations will fall as the stations' viewing area shrinks. Fewer viewers could mean lower ratings and less advertising revenue. Further, the petitioners' opponents argue that a reduced viewing area might impact a network station's ability to enforce its exclusivity rights within that area.

11. Opponents to the petitions also contend that Congress did not craft the SHVA with competition in mind, and, although competition is an important goal, it carries little weight in this context. Furthermore, broadcasters challenge the DTH industry's concerns about subscribers who will lose their network signals under the Miami court's injunction by declaring that many of those subscribers are receiving that service illegally. The broadcasters advocate a local-into-local approach for satellite-delivery of network signals, whereby all local network signals would be retransmitted into a local area (e.g., Boston network affiliates would be retransmitted to Boston subscribers). Until that time, broadcasters urge the Commission to refrain from acting on a copyright issue that falls outside of its purview.

12. The DTH industry, on the other hand, contends that Congress did not freeze the definition of Grade B when it enacted the SHVA, and asserts that the Commission has legal authority to change that definition. The supporters of the petitions argue that the Commission can and should conduct a rulemaking to make the definition of Grade B more applicable to the SHVA. Some commenters contend that the current Grade B standard makes it more difficult for DTH providers to compete with cable companies, because DTH providers cannot offer network programming to subscribers while cable can. These commenters argue that subscribers are therefore less likely to consider DTH as a true alternative to cable. The DTH industry states that the Commission has not adopted a definition of Grade B for purposes of SHVA and urges adoption of a standard that reflects actual reception of an adequate television signal at a household's television set. Moreover, instead of an actual testing regime for determining a household's eligibility for retransmission of a network television station's signal, they argue, the Commission should adopt a predictive testing methodology that will be accurate and cost-effective. The DTH industry suggests a predictive testing methodology that will return results that reveal, with 99 to 100% confidence, that 99 to 100% of households within a given area can receive a network television station's signal 99 to 100% of the time. The DTH industry requests that the Commission act now to further consumer choice, foster competition, and respond to congressional support for action.

13. Members of Congress and the Executive Branch have expressed their concern about the issues raised in the petitions. On July 8, 1998, Senator McCain, Chairman of the Senate Commerce Committee, and Representative Bliley, Chairman of the House Commerce Committee, wrote the Commission, indicating that the Miami injunction "threatens to undermine the progress the Congress has made in promoting competition." On August 7, 1998, Representative Boucher and 22 other members of Congress stated in a letter to the Commission that the court's preliminary injunction "raises serious consumer and competitive issues that require immediate review and action by the Commission." The letter continued, "As the expert regulatory agency in telecommunications matters, the Commission was specifically authorized by Congress to define 'Grade B' for purposes of the SHVA. . . . [W]e believe the Commission should expeditiously act to prevent the imminent disenfranchisement of more than a million satellite customers."

14. Larry Irving, director of the National Telecommunications Information Administration (NTIA) at the Department of Commerce, stated that, depending upon which predictive methodology is used, as many as nine million households (10 percent of American television households) could change from served to unserved households. He reiterated the Administration's support for "robust competition" in the MVPD industry and noted that the definition of Grade B intensity could have a "marked effect" on satellite companies" competitive position in the market.

II. Analysis and Request for Comments

15. These rulemaking petitions address issues that are significant to consumers and the promotion of competition, as well as to the affected industry parties, and we believe that an expedited rulemaking is necessary to protect satellite subscribers who are

truly unserved from losing network service. We seek to ensure that as many consumers as possible can receive a broadcast network signal consistent with the intent of the SHVA. We also seek to promote competition among multichannel video programming distributors, where that is possible under the SHVA, and we recognize the important role that local broadcast stations play in their communities. We acknowledge that the SHVA limits the proposals we can make to further these goals and address the petitions. Further, we do not appear to have the statutory authority to prevent most of PrimeTime 24's subscribers from losing their network service under the Miami preliminary injunction (and under a possible permanent injunction). The evidence in the Miami and Raleigh court cases strongly suggests that many, if not most, of those subscribers do not live in "unserved households" under any interpretation of that term.

16. Two courts have noted that Congress used the Grade B standard when it defined "unserved households" because it wanted an objective measure of a television signal's strength. The Commission has sought in its own regulations to advance this approach by establishing discrete field strength values (measured in dBu's) when it defined Grade B and when it created a detailed methodology for determining Grade B contours. (See 47 CFR 73.683 and 73.684.) Consequently, a satellite company may not deliver network signals to a viewer simply because the viewer is subjectively unhappy with his or her television picture. The Miami and Raleigh district courts both concluded that PrimeTime 24 has chosen not to abide by the SHVA's and the Commission's objective standard.

17. We will explore four issues in this NPRM. First, we seek comment on the Commission's authority to address the issues raised in the court decisions and the NRTC and EchoStar petitions. Second, we seek comment on changing the definition of Grade B intensity so that truly unserved households can be better identified. Third, we seek comment on endorsing or developing a methodology for accurately predicting whether an individual household is able to receive a signal of Grade B intensity. Fourth, we seek comment on developing an easy-to-use and inexpensive method for testing the strength of a broadcast network signal at an individual household.

A. Commission's Authority to Proceed

18. Several broadcasters contend that the Commission lacks the authority to grant the relief requested in the NRTC and EchoStar petitions. They state that Congress incorporated by reference the Commission's Grade B definitions and measurement procedures—effectively freezing them in place—when the SHVA was adopted in 1988. Accordingly, the broadcasters conclude that the Commission may not change its rules now. Some commenters cite legislative history purporting to show that section 73.683 was specifically included as part of an early draft of the unserved household definition, thus demonstrating Congress' intention to incorporate the definition as it existed at passage. Commenters argue that Congress did not explicitly direct the Commission to conduct a rulemaking on the definition, so the Commission has no authority to change it. They note that the SHVA is a copyright statute, not a communications law to be administered by the Commission. The National Association of Broadcasters cites a number of cases, including the Supreme Court's decision in *Hassett* v. *Welch*, for the "well settled canon" that "[w]here one statute adopts the particular provisions of another by a specific and descriptive reference to the statute or provisions adopted * * * [s]uch adoption takes the statute as it exists at the time of adoption and does not include subsequent additions or modifications by the statute so taken unless it does so by express intent." (303 U.S. 303, 314 (1938).)

19. Parties supporting the petitions respond that Grade B intensity is an ambiguous and open-ended term in the SHVA, evidenced by Congress' failure to explicitly incorporate a rule section into the SHVA's definition of unserved households. These commenters conclude that Congress intentionally left the definition in the Commission's hands. EchoStar cites the Supreme Court's holding in *Lukhard* v. *Reed* that "[i]t is of course not true that whenever Congress enacts legislation using a word that has a given administrative interpretation it means to freeze that administrative interpretation in place." (481 U.S. 368, 379 (1989).)

20. There are four matters relating to the Commission's authority to proceed on particular issues in this rulemaking. First, we seek comment on whether Congress "froze" the definition of a signal of Grade B intensity for purposes of the SHVA when it adopted the Act in 1988. That is, if the Commission were to revise the definition as a general matter, would the definition nevertheless remain unchanged for the purposes of the SHVA? We tentatively conclude that Congress did not "freeze" the definition of a signal of Grade B intensity for SHVA purposes in 1988 and seek comment on this tentative conclusion. When Congress incorporated Grade B into the definition of "unserved households" it did not incorporate specific values, such as the dBu levels the Commission uses in section 73.683. Further, nothing in the SHVA or legislative history indicates that Congress intended to freeze the value of Grade B when it passed the law in 1988 or when it renewed it in 1994. Where Congress intended to incorporate regulations as they existed on a certain date, it has expressly done so. For example, in section 111(f) of the Copyright Act, Congress' definition of "local service area of a primary transmitter" explicitly references Commission regulations "in effect on April 15, 1976, or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993) * * * "The federal courts and the Copyright Office of the Library of Congress are primarily responsible for enforcing and administering the copyright laws, but Congress unquestionably turned to the Commission's expertise when it defined unserved household in reference to a "signal of Grade B intensity (as defined by the Federal Communications Commission)."

21. With respect to the cases cited by commenters, we note that in reaching its conclusion in *Lukhard* v. *Reed*, the Court followed *Helvering* v. *Wilshire*, in which it held that "a regulation interpreting a provision of one act [does not become] frozen into another act merely by reenactment of that provision." (308 US 90, 100–101 (1939).) Indeed, the Supreme Court reasoned that if legislation so constrained an agency's ability to conduct rulemaking under its enabling legislation, then "the result would be to read into the grant of express administrative powers an implied condition that they were not to be exercised unless, in effect, the Congress had consented. We do not believe that such impairment of the administrative process is consistent with the statutory scheme which the Congress has designed." Both *Helvering* and *Lukhard* suggest that the meaning of "signal of Grade B intensity" in SHVA was not frozen for purposes of that Act when SHVA was enacted, but rather can be modified over time by the Commission.

22. Second, we seek comment on whether the Commission has the authority to revise its Grade B construct specifically for the purposes of the SHVA. The Grade B construct includes (1) the signal intensity levels assigned to Grade B, 47 CFR 73.683; (2) models for

predicting where a Grade B signal exists in an area or at an individual point (or household), e.g., 47 CFR 73.684 and 73.686 predictive models; and (3) the methodologies for testing signal strength in an area or at an individual point. Initially, we note that it is indisputable that the Commission has the authority, as a general matter, to revise any of its rules, as long as we explain our reasons for doing so. But may we create special provisions that would apply only to SHVA? Does the statute permit the Commission to promulgate a special definition of Grade B intensity for the exclusive purposes of the SHVA? What was the Congress' intent? Some commenters argue that we ought to make a specific definition for the SHVA because the Grade B construct is most often used for determining signal intensity over broad areas, not for individual households as the SHVA contemplates. The Commission has tailored its rules for specific purposes in the past. For example, the Commission determines television stations' service areas using two different, but related, methods, depending on the purpose. For exceptions to the cable syndicated exclusivity rules and for cross-ownership purposes, the Commission uses its traditional Grade B contour scheme, but for digital television stations, the Commission uses the Longley-Rice predictive model.

23. Third, we seek comment on whether the Commission has the authority to develop a model for predicting whether an individual household can receive a signal of Grade B intensity for purposes of the SHVA. The Commission has developed and used predictive models for determining signal intensity in other contexts—for example, the traditional Grade B contour and the Longley-Rice models. Broadcasters argue that the Commission does not have the authority to develop a predictive model for SHVA purposes, because the definition of "unserved households" depends on a household's actual ability to receive a signal of Grade B intensity as measured at the household itself. While satellite providers and broadcasters may negotiate the use of a predictive model, the argument continues, the SHVA does not provide the Commission with jurisdiction to interfere with or to endorse a particular predictive methodology. The satellite providers respond by citing the Commission's current use of predictive methodologies for other purposes. They argue that the Commission may therefore develop a predictive model specifically for the SHVA.

24. A predictive model need not replace actual measurement, but could serve as a presumption of service or lack of service for purposes of the SHVA. We note that some broadcasters have entered into agreements with Primestar and Netlink (satellite television providers) to resolve disputes arising from the SHVA requirements. These settlements assign five-digit zip codes to each station and classify each zip code as "red light" if more than 50% of the zip code's population is served—based on Longley-Rice propagation data—and as "green light" of 50% or less of the population in the zip code is served. A presumption could make administration of the unserved household rule easier and more cost-effective for consumers and the industry. Broadcasters and satellite providers would be able to rely on a Commission-endorsed model when deciding whether individual consumers are presumed to be eligible to receive satellite-delivered network signals. Moreover, a predictive process might be a judicially acceptable means for a satellite service provider to carry its burden of showing "that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household." Such an approach is consistent with the federal court's use of a variation of the Commission's Longley-Rice predictive methodology in its preliminary injunction in the PrimeTime 24 proceeding in Miami.

25. Fourth, we seek comment on our conclusion that the Commission's authority to define a signal of Grade B intensity reasonably includes the authority to adopt a method of measuring signal intensity at an individual household. The Commission has already established a method of measuring service within an area or for propagation analysis, but has not established a method specifically for measuring signal intensity at an individual household. The SHVA is concerned with adequate television signals at individual households. Importantly, it does not matter to consumers that other households (a next-door neighbor or a family across town) can actually receive network signals when they cannot.

B. Definition, Prediction, and Measurement Proposals

26. The measurement and prediction techniques included in part 73 of the Commission's rules and as developed in other contexts constitute a set of tools relating to signal propagation and reception that are useful for a variety of purposes. Although this proceeding focuses on concerns that are specific to SHVA, we recognize that refinements in the rules and in our knowledge about the in-home viewing environment (antennas, transmission lines, and receivers) and prediction methodologies have potential carryover into some other aspects of the Commission's rules. In some respects, however, the matters are unique to the SHVA context. Thus, for example, the Commission's rules do not typically focus on signal availability measurement techniques relating to service to a single discrete location or household. Standardization of a single household measurement process would thus not necessarily have broad implications for other parts of the Commission's rules. Although our focus is on changes specifically relevant for SHVA purposes, we seek comment on the general question of what other non-SHVA rules or policies might be implicated by the changes that are discussed below. We note, for example, that our DTV service replication models are also based upon duplicating the Grade B service area of existing analog broadcast stations. Certain interference criteria also incorporate the Grade B service area of television broadcast stations. We also note that the Commission has a history of using different tools in different contexts depending on the degree of precision desired, the expense of the process used, and the economic and technical tradeoffs involved in any specific issue. We invite comment on this issue and request that parties provide specific rationales for any differences between SHVA and non-SHVA definitions, prediction models, and measurement methods that they advocate.

1. Defining a Signal of Grade B Intensity

27. A signal of Grade B intensity is an objective standard that, as currently defined in section 73.683, may not distinguish adequately between served and unserved households. The Grade B signal intensity values specified in our rules were designed to enable reception of a television picture that is acceptable to the median observer, "assuming a receiving installation (antenna, transmission line, and receiver) considered to be typical of outlying or near-fringe areas." Grade B service also assumes the absence of man-made noise or interference from other stations. There was little specific comment in the NRTC and EchoStar petitions or in the responsive pleadings addressing possible changes in the field strength levels specified in the rules. Has what constitutes a "conventional outdoor rooftop receiving antenna" and the concept of the quality of service that viewers consider acceptable changed

since the Commission adopted the Grade B signal strength levels in the 1950s? Would these standards need modification so that the median observer would continue to find the service acceptable? For example, receivers may have improved, or the assumptions regarding interference in outlying areas may no longer be valid. (See, e.g., Gary S. Kalagian, "A review of the Technical Planning Factors for the VHF Television Service," FCC, Office of Chief Engineer, Bulletin RS77–01 (March 1, 1977), p. 11.) Changing the standard of an acceptable signal could have detrimental effects on the viability of local television stations and, potentially, on the goal of localism. We have no evidence that the underlying technical planning factors have changed in a way that would justify revising the current Grade B signal intensity levels. We welcome comments, supported by evidence, regarding any claimed changes to the assumptions made in deriving the Grade B signal intensity.

28. In soliciting comments on this issue, we recognize that our flexibility to change the Grade B intensity values is naturally constrained by the existence of the Grade A standard. The Grade A intensity values are based on 70% of the locations receiving an acceptable picture 90% of the time. Therefore, we believe that we cannot modify Grade B intensity so much that it effectively equals or exceeds Grade A signal intensity. We invite comments on all the factors that determine the Grade B signal intensity. We also seek comment on whether changes to the current intensity values would have a detrimental effect on network-affiliate relationships and localism, as well as other Commission rules that involve the current Grade B standard.

2. Predicting a Signal of Grade B Intensity

29. The definition of an unserved household as a household that "cannot receive * * * a signal of Grade B intensity" most logically refers to signal measurement at an individual household to determine if an adequate signal is actually received. Because of the costs and difficulties of individual measurements, however, for many purposes a predictive model is used in lieu of actual measurements. Consistent with this notion, the EchoStar petition asks the Commission to adopt or endorse an accurate model for predicting whether an individual household receives a Grade B intensity signal.

30. We believe that predictive models can be effective proxies for individual household measurements. The satellite and broadcast industry currently make use of predictive models such as the Longley-Rice methodology. However, different parties do not always agree on which model is most appropriate for identifying unserved households. Even when parties use the same model, they may disagree on the factors that are considered in that model. For example, different variations of the Longley-Rice model may or may not account for vegetation or buildings. In addition, studies using the Longley-Rice model, such as our DTV analyses, may account for interference. If the Commission endorses a predictive model in this rulemaking, parties will not need to spend future resources and time debating methodology. However, consistent with the SHVA, no Commission-endorsed model will preclude a party from using actual measurements at individual households.

31. The difference in taking actual measurements at individual households and using predictive models is significant, because measurement requires time, money, and other resources that often outweigh the benefits. For example, it may cost more for a satellite company to take a measurement than it can recover through subscriber fees. To avoid these costs, satellite providers, broadcasters, and consumers have often turned to predictive models that erroneously permit some served households to receive satellite network service, or, conversely, that prevent some unserved households from being eligible to receive network stations via satellite.

32. Even though Grade B signal intensity is defined as discrete values measured in dBu's, the intensity of broadcast signals at particular locations and at particular times cannot be precisely determined, regardless of the predictive method used. Signal strength varies randomly over location and time, so signal propagation must be considered on a statistical basis. This is true whether the signal intensity is predicted at a fixed location (such as an individual household) or over an area. Some prediction methods, including the Commission's propagation curves, predict the occurrence of median signal strengths (i.e., signal strengths expected to be exceeded at 50% of the locations in a particular area at least 50% of the time). Under this approach, "location" and "time" variability factors are added to the signal level for an acceptable picture so that the desired statistical reliability is achieved. The values chosen for the Grade B signal intensity account for this variability, and therefore, predict that the best 50% of the locations along the Grade B contour will receive an acceptable picture 90% of the time. In other predictive models, including the Longley-Rice point-to-point model, this variability is built into the model, rather than into the signal intensity value. We seek comment on whether it would be appropriate to consider changing the location and time variability percentages. For example, should more than 50% of viewers receive an acceptable picture more than 90% of the time? We also seek comment on whether such changes should be incorporated into the signal intensity values or the predictive model.

33. As previously noted, the Commission has used predictive models for determining signal intensity in the past. We seek comment on the application of these models in the SHVA context. We tentatively conclude that the Commission's traditional predictive methodology for determining a Grade B contour, outlined in section 73.684 of the Commission's rules, is insufficient for predicting signal strength at individual households. We seek comment on this tentative conclusion. The traditional Grade B methodology predicts a signal's strength by using radial lines extending ten miles from a television station's transmitter. (See 47 CFR 73.684(d) and 73.686(b).) This methodology does not accurately reflect topographic differences in a station's transmission area, and explicitly does not account for interference from other signals. These omissions result in an imperfect methodology for predicting whether an individual household can receive an adequate signal. For example, terrain features beyond 10 miles from a station's transmitter site may block a house's reception or a house that sits at the edge of two different television markets may suffer from interfering signals.

34. While our traditional Grade B contour methodology is inadequate for predicting the signal level at a single location, we have recently adopted rules in the DTV proceeding for analyzing TV service using a point-to-point prediction method based on the Longley-Rice propagation model. Our implementation of the Longley-Rice model for analysis of DTV and analog TV service in the DTV proceeding is described in "Longley-Rice Methodology for Evaluating TV Coverage and Interference," OET Bulletin 69, Federal Communications Commission (July 2, 1997) <http://www.fcc.gov/oet/info/documents/bulletins/#69>. Longley-Rice is the Commission's designated methodology for determining where service is provided by a DTV station. (See 47 CFR 73.622(e).) We propose that

the Longley-Rice propagation model, as implemented for DTV, be used to refine the Grade B service prediction for the purpose of SHVA determinations. The Longley-Rice propagation model is the most widely-used private means of predicting a Grade B coverage area for SHVA purposes. It provides an estimate of signal strength, similar to the traditional Grade B contour method. However, the Longley-Rice model adjusts the predictions for changes in terrain (e.g., hills and valleys) along the entire path from the transmitter site to the specified receive site. Thus, while the traditional method often results in smooth concentric circles surrounding a transmission tower, the Longley-Rice method more precisely describes actual areas of coverage. While the broadcasters support the use of the Longley-Rice model in the SHVA context, the satellite interests claim it is insufficient. The detractors agree that a Longley-Rice analysis has advantages over a traditional Grade B contour, but note that it fails to account for several important factors that affect signal availability, including interference from other signals, vegetation, and buildings. We seek comment generally on this proposal, as well as specifically on the following questions. Should consideration of co-channel and adjacent-channel interference as implemented for DTV be part of the methodology used for SHVA purposes? Is it necessary to prescribe how accurately receive location coordinates are specified? Can Longley-Rice be modified to increase the probability of identifying served and unserved households more accurately? How? What are the predictive factors that are missing in the current Longley-Rice model? Can Longley-Rice reasonably be modified to account for all these factors? What effect would incorporation of these additional factors have on the cost and practicality of the Longley-Rice methodology? Can Longley-Rice or a modified version of Longley-Rice be used in conjunction with a commercially available geocoding process to provide a workable predictive model for satellite providers, broadcasters, and consumers to use for determining whether a given subscriber is presumed to be unserved? We seek comment on whether such currently-available approaches are working well for the industries and consumers. For example, Decisionmark Corporation is currently working with broadcasters and satellite providers to provide mapping information about signal areas. They sponsor web sites, <http://www.shva.com/maps> and <http://getawaiver.com>, that provide information about served and unserved areas to consumers, broadcasters and participating satellite providers.

35. We also invite parties to submit any other methodology that they believe will more accurately and cost-effectively predict whether an individual household is able to receive a signal of Grade B intensity. We seek to identify a predictive model that more accurately determines whether a household is unserved for purposes of the SHVA. Is there a predictive methodology that will increase the probability that unserved households will be more accurately identified (e.g., by taking into account interference)? What is that methodology? For either a version of the Longley-Rice model or another alternative methodology, how might parties use a new predictive model? Can and should the Commission endorse or develop a predictive model? Should we endorse a model that already exists or endorse such a model with modifications? What are the costs associated with any of the suggested methodologies?

36. We acknowledge and reiterate Congress' decision in the SHVA to protect network-affiliate relationships and to foster localism in broadcasting. If we change the number of viewers predicted to receive a local station, we may substantially affect these policies. As we have noted, localism is central to our policies governing broadcasting and the obligation of broadcasters to serve the public interest. In proposing a new or modified predictive model for purposes of the SHVA, we seek comment on what, if any, effects different predictive models will have on these policies, and what, if any, steps we can take to further such policies.

3. Testing for Signal Intensity at Individual Households

37. For the SHVA to function properly, a relatively low cost, accurate, and reproducible methodology for measuring the presence of a Grade B intensity signal in a household is of particular importance. Although, because of the costs and delays involved, it would be desirable to minimize the need for individual testing to the extent possible, individual testing is the key safety net mechanism under the SHVA for proving that a specific household is unserved and thus eligible under the law to receive satellite delivery of network affiliated television stations. We therefore propose to explore a method of measuring signal intensity at individual households that is accurate, easier, and less expensive than the current method.

38. The Commission's current method of measuring the field strength of over-the-air signals in a station service area requires a so-called 100-foot mobile run. The run typically involves a truck with a 30-foot antenna that takes continuous measurements while being driven a distance of 100 feet. The antenna must be rotated to the best receiving position, and engineers record factors that might affect signals, such as topography, height and type of vegetation, buildings, obstacles, and weather. If overhead obstacles get in the way, a cluster of measurements must be taken at locations within 200 feet of each other. This elaborate procedure can cost several hundred dollars each time it is performed. This is an expensive proposition for a satellite company or a consumer who wants to prove that a household is unserved by over-the-air signals. When multiplied over hundreds of households at the outer edges of a station's service area, the cost may become prohibitive and may prevent many truly unserved consumers from receiving broadcast network service.

39. In addition to the difficulties inherent in this test, many of its assumptions may not hold in individual situations. For example, many homes do not have antennas 30 feet above the ground, especially if they are one-story homes. The definition of unserved household only describes reception over a conventional outdoor rooftop receiving antenna, so requiring measurements on a 30-foot antenna may not reflect what is "conventional." Requiring the truck's antenna to face the direction of the station's tower ignores the reality that consumers' antennas receive several stations, and many do not rotate to the best position for each station. Finally, requiring clusters of tests and a 100-foot mobile run ignores the fact that homes are stationary and that reception may vary considerably over a mobile run on a nearby street. The purpose of the procedure specified in the rules is not to determine the receivability of a signal at a single spot, but to determine, through measurements at a series of grid intersections over a community, the nature of service to the community. The Miami court ruled that the signal strength test should be "conducted in accordance with the procedures outlined in the Declaration of Jules Cohen, filed on March 11, 1997," which "was based on that prescribed by the FCC in 47 CFR 73.686." At an accessible road closest to a household, a 100-foot mobile run is made with a conventional rooftop antenna elevated to 30 feet. During the run, a station's field intensity is

recorded and the data is stored in a computer. Analysis of the data, made with the aid of a computer program, permits the extraction of the maximum, minimum, and median field intensity found, together with the standard deviation. Median field intensity minus standard deviation is a measure of the least signal intensity likely to be found at the specific location of the household. In contrast, EchoStar proposed a signal strength test that focuses more directly on a single point at a household, involving placement of a conventional outdoor rooftop antenna within three feet of the home and raised to the height of the roof. The antenna is oriented to maximize signal strength for the one local station that the consumer watches most often. A length of standard household cable is attached to the antenna, and a number of splitters are attached to duplicate the number of splitters the consumer uses to service multiple televisions. A signal measurement is then conducted. If the signal strength is not stable, the antenna is relocated and the same procedure utilized until a stable signal strength is achieved. Readings are taken approximately every thirty seconds for a period of five minutes. If any of the signal strength readings register less than the Grade B signal strength threshold as established by Congress and the FCC, the consumer will be deemed an "unserved household" eligible to receive distant network signals.

40. We seek comment on the modification of the current testing methodology or the creation of a new methodology for measuring signal strength. Any recommendations should lead to a test that is relatively easy to use and inexpensive enough to make it economically practical for the industry and for consumers. We seek comment on what qualifies as "a conventional outdoor rooftop receiving antenna." Are different antennas required for different parts of the country, or as one moves farther from a television transmitter? What special problems do viewers in multiple dwelling unit buildings ("MDUs") face in gaining access to a conventional outdoor rooftop television antenna? Should the testing methodology be different for high-rise MDUs? Does "conventional outdoor rooftop receiving antenna" include a rotor? How, if at all, should the Grade B criterion of typical of outlying or near-fringe areas influence the concept of "conventional" antenna? On another note, how do we ensure the objectivity and accuracy of any signal strength test? How do we do so without making the test more difficult, impractical, or expensive? How should antenna height be measured? Should antenna height be set at 30 feet, should it be five feet above the roof, or something else? Should the measurement be related to the placement of the satellite receiver in situations where the satellite and local signal antennas are integrated? If antenna designs are improved over those historically available so that the definition of "conventional" changes, how should that be accommodated in the measurement process? How should we account for the challenges of raising a rooftop antenna in multiple dwelling units? How should the test account for rotation, or lack of rotation, of antennas that receive the signals of several stations? What type and calibration of measurement equipment is needed? How can the process account for the variations of signal level over the course of a day or with seasonal changes?

C. Other Issues

41. We seek comment on whether the lack of an established methodology for measuring Grade B signal intensity at individual households has hampered the effective functioning of the SHVA. In particular, we note that the SHVA contains a "loser pays" mechanism that allows recovery, in any civil action, of signal measurement costs at a subscriber's household. (17 CFR 119(a)(9).) Under the SHVA, if a network station questions whether a particular subscriber is unserved, an actual measurement at the subscriber's household may result. If the household is unserved, the broadcast station must pay for the measurement; if the household is served, the satellite carrier must pay. We believe that the loser pays mechanism, if used even in the absence of a civil action, would substantially alleviate the cost burden of actual signal measurements by giving both parties an economic incentive to avoid actual measurements in most circumstances. We seek comment on whether parties are making use of the "loser pays" mechanism. If they are not, why not? Can and should we establish rules or policies that will facilitate their ability to do so? We also seek comment on whether the loser pays mechanism, combined with a predictive model that would minimize the need for individual testing in most cases, would facilitate the effective functioning of the Act.

42. We also seek comment on whether we can and should adopt a procedure similar to the SHVA's expired transitional "loser pays" mechanism. (17 CFR 119(a)(8)(B)(ii) and (C)(ii).) Does that provision represent a workable system for allocating burdens of proof, and appropriate incentives to challenge a presumptive rule, in determining who is and who is not an unserved household? Establishing a system based on an initial presumption would help create certainty and provide a good starting point for managing this issue on a large scale. Are there other mechanisms that can better serve the purposes of the SHVA? One alternative might be the agreement reached between broadcasters and two satellite carriers, Primestar Partners and Netlink USA, that created presumptive zones of served and unserved households based on zip codes. Yet another alternative might be the methodology developed by Decisionmark Corporation of Cedar Rapids, Iowa, that is used by both PrimeTime 24 and broadcasters in the Miami federal court case. This methodology uses a variation of the Longley-Rice methodology to determine whether individual homes are unserved. We seek comment on these approaches. Are there additional actions the Commission can and should take to make enforcement of the SHVA more effective?

43. Finally, we seek comment on the prospect that the industry will develop "local-into-local" technology to serve every community. The local-into-local concept means that satellite carriers would provide subscribers with the signals of their local broadcast network affiliates instead of signals from distant stations. If satellite carriers were allowed to retransmit a broadcast network station's signal into that station's local market, then the risks of damaging the goals of broadcast localism could be mitigated. Some satellite carriers have already developed limited plans for accomplishing local-into-local service. For example, EchoStar has a local-into-local option for unserved households in more than a dozen television markets, and Capitol Broadcasting Inc. of Raleigh, North Carolina, has reportedly developed the technology to deliver local-into-local service for most, if not all, television markets. We note that some interested parties have argued that a local-into-local extension of the compulsory license in the current copyright laws might obviate the need for Commission action in this area. The Commission, of course, lacks the statutory authority to create such an extension. However, section 335(a) of the Communications Act of 1934 instructs the Commission to "examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such

principle may be served through technological and other developments in, or regulation of, such service." If Congress adopted a local-into-local extension of the compulsory license, how would such a change affect the need for, and viability of, the proposals in this rulemaking? We seek comment on the feasibility—particularly the technical feasibility—of a local-into-local option and on a time frame for implementing this possible solution to the demands for satellite delivery of network station signals.

III. Paperwork Reduction Act

The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and would impose new and modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the proposed information collection requirements contained in this Notice, as required by the 1995 Act. Public comments are due on or before 30 days from date of publication of this Notice in the **Federal Register**. OMB comments are due on or before 60 days from date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None. This is a new collection.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 848. The proposed action in this NPRM applies to entities providing DBS service. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified that could potentially fall into the DBS category.

Estimated Time Per Response: Two hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 2,000,000 hours. At this time the Commission provides broad estimates of the annual paperwork burden resulting from the proposed new and modified information collection requirements contained in this Notice. Based on comments received in this proceeding, the Commission will be in a position to provide more accurate paperwork burden estimates upon adoption of final rules. In our current estimates, we define a response to the proposed information collection requirements as including the burden to conduct signal strength measurements at individual households or by using predictive models; to report measurement findings to appropriate parties; and to keep records of such findings. We estimate that as many as one million responses will be typically be initiated in the course of a year. Each response is estimated to entail a burden of two hours.

1,000,000 responses x 2 hours each = 2,000,000 hours.

Total Annual Cost to Respondents: $500,000. Cost to respondents is defined as capital, start-up, operation and maintenance costs pursuant to the Paperwork Reduction Act of 1995. The DBS industry has conducted signal strength measurements and has reported the findings of such measurements for several years pursuant to requirements set forth by the Satellite Home Viewer Act; therefore the Commission foresees no additional capital or start-up costs as a result of proposals contained in this Notice. However, here we account for postage and stationery costs incurred by entities at an estimated 50 cents per response. 1,000,000 responses x 50 cents = $500,000.

Needs and Uses: The information gathered as part of Grade B signal strength tests, as proposed, will be used to indicate whether a consumers are "unserved" by over-the-air network signals. Parties using this information will include consumers, the Commission, and the satellite and broadcasting industries.

IV. Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA") (5 CFR 603), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and proposed action in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") and to Congress.

A. Need for, and Objective of, the NPRM

In this NPRM, the Commission responds to Petitions for Rulemaking filed by the National Rural Telecommunications Cooperative and EchoStar Communications Corporation requesting that the Commission address the methods for determining whether a household is "unserved" by network television stations for purposes of the 1988 Satellite Home Viewer Act (17 CFR 119).

B. Legal Basis

This NPRM is authorized under sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 CFR 151, 154(i), and 154(j) and section 119(d)(10)(a) of the Copyright Act, 17 CFR 119(d)(10)(a).

C. Description and Estimate of the Number of Small Entities To Which the NPRM Will Apply

The RFA directs the Commission to provide a description of and, where feasible, and estimate of the number of small entities that will be affected by the proposed action. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The proposed action in this NPRM will affect television broadcasting licensees and DBS operators.

Television Stations

The policies and proposed action in this NPRM will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business (Standard Industrial Code ("SIC") 4833 (1996)). Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and that produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under SIC 7812 (Motion Picture and Video Tape Production) and SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs). There were 1,509 television broadcasting stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998. In addition, as of October 31, 1997, there were 1,880 low power television broadcasting ("LPTV") broadcasting stations that may also be affected by our proposed rule changes. Given the nature of LPTV stations, we will presume that all LPTV's qualify as small entities. For 1992 the number of television broadcasting stations that produced less than $10.0 million in revenue was 1,155 establishments.

Thus, the proposed action will affect many of the approximately 1,574 television broadcasting stations; approximately 1,200 of those stations are considered small businesses. Given the nature of LPTV stations, we will presume that all LPTV's qualify as small entities. These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

In addition to owners of operating television broadcasting stations, any entity who seeks or desires to obtain a television broadcasting license may be affected by the proposed action contained in this item. The number of entities that may seek to obtain a television broadcasting license is unknown. We invite comment as to such number.

DBS

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or DBS service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts (SIC Code 4899). According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified that could potentially fall into the DBS category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. The proposed action in this NPRM applies to entities providing DBS service. Small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services. Because this is an established service, however, with limited spectrum and orbital resources for assignment, we estimate that no more than fifteen entities will be Commission licensees providing these services. Therefore, because of the high implementation costs and the limited spectrum resources, we do not believe that small entities will be impacted by proposed action in this NPRM.

D. Description of Projected Reporting, Record-keeping, and Other Compliance Requirements

There may be reporting, record-keeping, and compliance requirements for television broadcasting stations and DBS operators in the form of testing, record-keeping, and reporting, if the Commission adopts any rule changes as a result of this NPRM. We solicit comments on how these projected requirements may be eliminated, reduced, or streamlined.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

In discussing the proposed action contained in this NPRM, we have attempted to minimize the burdens on all entities. We seek comment on the impact of our proposed action on small entities and on any possible alternatives that would minimize its impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule Changes

None.

Ordering Clauses

It is ordered that, pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 CFR 151, 154(i), and 154(j); and section 119(d)(10)(a) of the Copyright Act, 17 CFR 119(d)(10)(a), notice is hereby given of proposed amendments to Part 73, in accordance with the proposals, discussions and statements of issues in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussions and statements of issues. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32397 Filed 12–2–98; 12:21 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–209; RM–9406]

Radio Broadcasting Services; De Ridder, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Willis Broadcasting Corporation, licensee of Station KEAZ(FM), Channel 269A, De Ridder, Louisiana, proposing the substitution of Channel 250A for Channel 269A at De Ridder and modification of the license for Station KEAZ(FM) accordingly. Coordinates for Channel 250A at De Ridder 30–52–43 and 93–17–25.

As the petitioner's modification proposal seeks an equivalent channel substitution, we will not accept competing expressions of interest in the use of Channel 250A at De Ridder, Louisiana.

DATES: Comments must be filed on or before January 19, 1999, and reply comments on or before February 3, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John C. Trent, Esq., Putbrese Hunsaker & Trent, P.C., 100 Carpenter Drive, Suite 100, P.O. Box 217, Sterling, VA 20167–0217.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–209, adopted November 18, 1998, and released November 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32365 Filed 12–4–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 113098B]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) has scheduled a 1-day meeting to take action on the Spiny Dogfish Fishery Management Plan (FMP).

DATES: The meeting will be held at 9:30 a.m. on Thursday, December 17, 1998.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, 427 Walnut Street, Wakefield, MA 01880; telephone (781) 245–9300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone (781) 231–0422.

SUPPLEMENTARY INFORMATION: The Council intends to discuss and approve the FMP, which has been prepared jointly with the Mid-Atlantic Fishery Management Council.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 1, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32430 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 111998A]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Atlantic Sea Scallop Fishery, and Atlantic Salmon Fishery; Fishery Management Plan (FMP) Amendments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Amendment to a notice of availability of an omnibus amendment to FMPs; request for comments.

SUMMARY: On December 1, 1998, NMFS published a notice of availability (NOA) of an omnibus amendment that included Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. The NOA described the Essential Fish Habitat (EFH) measures contained in the omnibus amendment. In addition to the EFH measures, Amendment 1 to the Atlantic Salmon FMP includes a discussion of an overfishing definition and an aquaculture framework adjustment process for Atlantic salmon. This notice informs the public that these additional measures are under review by the Secretary of Commerce (Secretary) and invites public comment.

DATES: Public comments must be received on or before February 1, 1999.

ADDRESSES: Comments on this amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the outside of the envelope: "Comments on Essential Fish Habitat Amendment."

Copies of the amendment and the environmental assessment are available from Paul Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Jonathan M. Kurland, Assistant Habitat Program Coordinator, 978–281–9204.

SUPPLEMENTARY INFORMATION: On December 1, 1998, NMFS published a notification in the **Federal Register** (63 FR 66110) announcing that the New England Fishery Management Council submitted for review and approval by the Secretary an omnibus amendment containing EFH provisions that would implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act. The omnibus amendment describes and identifies EFH for specified fisheries, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH. The amendment includes no new fishery management measures, so no regulations are proposed.

In addition to EFH information, Amendment 1 to the Atlantic Salmon FMP also contains information related to the overfishing definition for Atlantic salmon and an aquaculture framework adjustment process for the Atlantic Salmon FMP. Because the December 1, 1998 notice did not specifically indicate that these measures were included in Amendment 1 to the Atlantic Salmon FMP, this notice informs the public that these additional measures are under Secretarial review for approval, disapproval, or partial approval, and invites public comment. To be considered, comments must be received by February 1, 1999.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 2, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32532 Filed 12–3–98; 4:16 pm]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 63, No. 234
Monday, December 7, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent to Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's intention to request approval for collection of new information from State officials on the services, work slots, participants and expenditures of their Food Stamp Employment and Training (E&T) programs. These data will be used to assess changes in State Food Stamp E&T programs after implementation of the Balanced Budget Act of 1997 and will be compiled in a mandated report to Congress on "State Use of Funds to Increase Work Slots for Food Stamp Recipients."

DATES: Written comments on this notice must be received by February 5, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information or copies of the proposed information collection forms should be directed to David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room 2130, Washington, DC 20036–5831, 202–694–5466.

SUPPLEMENTARY INFORMATION:

Title: Report on State Use of Funds to Increase Work Slots for Food Stamp Recipients.

Type of Request: Approval to collect new informtion on State Food Stamp Employment and Training programs.

Abstract: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 imposed work requirements and a three month time limit on able-bodied adults without dependents (ABAWDs) in the Food Stamp Program. In 1997, Congress included a provision in the Balanced Budget Act of 1997 (BBA) that had the intention of directing new funds to States to modify and expand the Food Stamp Employment and Training (E&T) program in ways that would allow more ABAWDs to meet the work requirements and maintain their food stamp benefits. The BBA provision significantly increased the funding for State Food Stamp E&T programs, allocated the Federal grant funds among States based on the number of ABAWDs in their caseload, and required States to set-aside 80 percent of the allocated grant funds to serve ABAWDs. In addition, the legislation mandated a report to Congress on State use of the new BBA funds. In order to meet the Congressional mandate, a data collection effort will need to be undertaken to obtain new information from State Food Stamp Agencies that is not available from existing State reports to the Food and Nutrition Service.

Information will be collected from all States and the District of Columbia through two methods. A telephone interview will be conducted with State food stamp directors and State E&T managers. The purpose of this interview is to collect descriptive information on the States' food stamp E&T programs. In up to five county-administered States, where counties run more autonomous programs and States do not compile Statewide information on their E&T programs, telephone interviews will also be conducted with E&T managers in three counties. The second type of data collection will involve mailing out a data collection form to be completed by a State E&T official identified by the State food stamp director. The purpose of this mail-out data collection form is to collect numerical data on E&T program slots, participants and costs. The only numerical data that will be collected in this study will be information not already collected by the USDA Food and Nutrition Service as part of State reporting requirements. In this way the burden will be relieved on State reporters and duplication of effort will be prevented.

Respondents: State and local governments.

Estimated Number of Respondents: 217

Estimates of Burden: The estimated reporting burden on each respondent type is as follows: (1) Telephone interviews with State food stamp directors will average 20 minutes; (2) telephone interviews with State Food Stamp Employment and Training program managers will average 40 minutes; (3) telephone interviews with selected county E&T managers will average 40 minutes; (4) for each State, completion of the mailed out data collection form will require designated State food stamp agency employees to spend an average of 8 hours compiling data and filling out the form and 20 minutes on the telephone to review the completed form with the researchers.

Estimated Total Annual Burden on Respondents: 486 hours.

Copies of the information to be collected can be obtained from David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room 2130, Washington, DC 20036–5831, 202–694–5466.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology. Comments may be sent to: David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room 2130, Washington, DC 20036–5831, 202–694–5466. All responses to this notice will be summarized and included in the request of OMB approval. All comments will also become a matter of public record.

Dated: November 23, 1998.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 98–32411 Filed 12–4–98; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in fiscal Year 1999

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: On November 25, 1998, the President of the Commodity Credit Corporation, who is the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, determined that 9,500 metric tons of nonfortified nonfat dry milk in 25 kg domestic commercially-marked bags, 50,000 metric tons of corn, and wheat that may be acquired by the Commodity Credit Corporation (CCC) under its surplus removal operations are available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1999.

FOR FURTHER INFORMATION CONTACT: Ira Branson, Director, CCC Program Support Division, FAS, USDA, (202) 720–3573.

Dated: November 20, 1998.

Christopher E. Goldthwait,

Vice President, CCC.

[FR Doc. 98–32410 Filed 12–4–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35)

Agency: National Telecommunications and Information Administration (NTIA).

Title: Telecommunications and Information Infrastructure Assistance Program (TIAAP) Reviewer Information Form.

Agency Form Number(s): None assigned.

OMB Approval Number: 0660–0010.

Type of Request: Regular Submission—Reinstatement.

Burden: 50 hours.

Number of Respondents: 130.

Avg. Hours Per Response: 18 minutes.

Needs and Uses: The title making appropriations for the Department of Commerce and related agencies in the Omnibus Consolidated and Emergency Supplemental Appropriations Bill for Fiscal Year 1999 (Pub. L. 105–277) includes provision allowing NTIA to make grants to public and nonprofit entities. In order to expedite the review of grant applications, NTIA will use this form to collect information from individuals interested in serving as external reviewers. Information collected will be used to process stipend payment and travel reimbursement.

Affected Public: Experts from state and local government, non-profit institutions, and the private sector.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Tim Fain, (202) 395–3561.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Tim Fain, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: December 1, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief, Information Officer.

[FR Doc. 98–32451 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Multi-Purpose Application.

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0088.

Type of Request: Extension of a currently approved collection of information.

Burden: 9,895 hours.

Average Time Per Response: 40 to 67 minutes per response.

Number of Respondents: 10,693 respondents.

Needs and Uses: This collection is required in compliance with U.S. export regulations. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: December 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32452 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany: Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending by 120 days the time limit of the preliminary results of the antidumping duty administrative review of the antidumping duty on brass sheet and strip from Germany covering the period March 1, 1997, through February 28, 1998, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Gabriel Adler, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4162 and 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1998).

Postponement of Preliminary Results of Review

On April 24, 1998, the Department initiated an administrative review of the antidumping duty order on brass sheet and strip from Germany, covering the period of March 1, 1997, through February 28, 1998. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 63 FR 20378 (April 24, 1998).

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. Per this requirement, the deadline for the preliminary results of this review would have been December 1, 1998. However, section 751(a)(3)(A) of the Act provides that when it is not practicable to complete the review within the specified time period, the Department may extend this time period by 120 days. Since the Department has determined that it is not practicable to issue the preliminary results of this review by December 1, 1998, the Department is extending the time limit for issuance of these results by 120 days. *See* Memorandum from Richard W. Moreland to Robert S. LaRussa, dated December 1, 1998.

In accordance with section 751(a)(3)(A) of the Act, we plan to issue the final results of this administrative review within 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 1, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32434 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope from Mexico: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits For Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4106 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

Background

On March 31, 1998, the Department of Commerce (the Department) received requests from Aceros Camesa, S.A. de C.V. (Camesa) and from the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (Committee) for an antidumping duty administrative review of carbon steel wire rod from Mexico. On April 24, 1998, the Department published its initiation of this antidumping duty administrative review covering the period of March 1, 1998 through February 28, 1998 (63 FR 20378).

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Act directs the Department to make a preliminary determination within 245 days for each administrative review. The section provides, however, that "if it is not practicable to complete the review within the foregoing time, the administrative authority may extend that 245-day period to 365 days. . . ." Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Review of Steel Wire Rope from Mexico, dated November XX, 1998, it is not practicable to complete this review within the 245-day time limit.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 90 days to March 1, 1998.

Dated: November 24, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–32444 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Extension of Time Limit of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results in the administrative review of the antidumping order on certain fresh cut flowers from Colombia, covering the period March 1, 1997, through February 28, 1998, since it is not practicable to complete the review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675 (a)(3)(A).

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Marian Wells or Rosa Jeong, Import Administration, U.S. Department of Commerce, Room 3099, 14th and Constitution Avenue, N.W., Washington, DC, 20230; telephone (202) 482–6309 or 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the current regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1998, the Department initiated an administrative review of the antidumping duty order on Fresh Cut Flowers from Colombia ("Flowers"), covering the period March 1, 1997, through February 28, 1998 (63 FR 19709). Originally, the preliminary determination was due on December 1, 1998 and the final determination was due within 120 days after the publication of the preliminary determination, in accordance with the requirements in section 751(a)(3)(A) of the Act (*see* below).

Postponement of the Preliminary Results

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) of the Act allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results within 245 days because of the large number of respondents and the complexity of the legal and methodological issues in this review.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than February 10, 1999. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

This extension is in accordance with section 751 (a)(3)(A) of the Act.

Dated: November 25, 1998.

Richard W. Moreland,

Deputy Assistant Secretary, AD/CVD Enforcement, Group I.

[FR Doc. 98–32441 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On September 29, 1998, the Department of Commerce initiated an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy. This review was requested by Ausimont SpA, a manufacturer/exporter of subject merchandise, for the period August 1, 1997 through July 31, 1998. Ausimont SpA filed a timely withdrawal of its request for this review on November 12, 1998. Because no other interested party requested a review, we are rescinding this review.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Gabriel Adler, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4162 and (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (1998).

Background

On August 31, 1998, Ausimont SpA (Ausimont) requested that the Department conduct an administrative review of granular polytetrafluoroethylene (PTFE) resin from Italy for the period August 1, 1997 through July 31, 1998. No other interested party requested that the Department conduct an administrative review.

On September 29, 1998, the Department published in the **Federal Register** a notice of initiation of administrative review with respect to Ausimont. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part;* 63 FR 51893 (September 29, 1998). Subsequently, on November 12, 1998, Ausimont filed a letter with the Department withdrawing its request for an administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. There were no requests for administrative review from other interested parties, and the only party affected by the withdrawal request is the party making the timely request. Given that the review has not progressed substantially and there would be no undue burden on the parties or the Department, the Department has determined that it is reasonable to accept respondent's withdrawal. Therefore, the Department is rescinding this review.

This rescission of the administrative review and notice are in accordance with section 751 of the Act and 19 CFR 351.213(d).

Dated: November 27, 1998.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–32440 Filed 12–--98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From Korea; Postponement of Preliminary Results of Antidumping Duty New Shipper Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit and partial rescission of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the new shipper administrative review of the antidumping duty order on polyethylene terephthalate, film, sheet, and strip (PET film) from Korea. The Department is also rescinding the

review with respect to Kohap, Ltd. (Kohap). The review covers two manufacturers/exporters of the subject merchandise and the period June 1, 1997 through May 31, 1998.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 482–0649, respectively.

Postponement of Preliminary Results of Review and Rescission of Review With Respect To Kohap

On July 16, 1998, the Department initiated this new shipper review of the antidumping duty order on PET film from Korea, manufactured by H.S. Industries and Kohap, Ltd. (63 FR 38371). The current deadline for the preliminary results is January 12, 1999. We have determined that this review is extraordinarily complicated, and that we are unable to complete it within the original timeframe. (See Memorandum to the File dated November 24, 1998.)

Accordingly, the deadline for issuing the preliminary results is now due no later than May 12, 1999. The deadline for issuing the final results will be no later than 90 days from the publication of the preliminary results.

On August 21, 1998, Kohap withdrew its request for a new shipper administrative review. Accordingly, we are rescinding this new shipper review with respect to Kohap. Upon publication of this notice in the **Federal Register**, we will instruct the U.S. Customs Service to require cash deposits on all shipments of PET film manufactured by Kohap and entered or withdrawn from warehouse.

This notice is in accordance with Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(2)(B)(iv)).

Dated: November 29, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 98–32442 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate, Film, Sheet, and Strip From Korea; Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. The review covers two manufacturers/exporters of the subject merchandise and the period June 1, 1997 through May 31, 1998.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 482–0649, respectively.

Postponement of Preliminary Results of Review

On July 28, 1998, the Department initiated this administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea. (63 FR 40258). The current deadline for the preliminary results is March 2, 1999. We determine that it is not practicable to complete this review within the original time frame. (See Memorandum to the File dated November 24, 1998.)

Accordingly, the deadline for issuing the preliminary results of this review is now due no later than June 30, 1999. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: November 21, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 98–32443 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper administrative review of the antidumping duty order on static random access memory semiconductors from Taiwan. In accordance with 19 CFR 351.214(d), we are initiating this administrative review.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Sergio Gonzalez, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–1776 or 482–1779, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the provisions codified at 19 CFR part 351 (62 FR 27295, May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Giga Semiconductor Inc. (GSI Technology), in accordance with 19 CFR 351.214(d), for a semiannual new shipper review of the antidumping duty order on certain static random access memory semiconductors (SRAMS) from Taiwan, which has an October semiannual anniversary date. GSI Technology (the respondent) has certified in its October 15, 1998, and its November 20, 1998, submissions to Department that it did not export SRAMS to the United States for sale during the period of investigation (POI) and that it is not affiliated with any exporter or producer which did export SRAMS for sale during the POI. According to 19 CFR 351.214(b)(2)(i), a person may request a new shipper review if the person did not export subject merchandise to the United States during the POI. GSI Technology's new shipper request indicates that it did export subject merchandise during the POI. However, GSI Technology certified that such exports were samples used for customer qualification purposes and were never sold. Because GSI Technology's exports were never sold, we have determined that they were not "exports" within the meaning of 19 CFR 351.214(b)(2)(i). Thus, GSI Technology qualifies as a new shipper. However, GSI Technology's claim that the merchandise it exported during the POI was never sold is subject to verification.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review as requested.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on SRAMS from Taiwan. Under section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i), the Secretary will issue preliminary results of this review within 180 days after the date on which the review is initiated and will issue the final results of the review within 90 days after issuance of the preliminary result. In accordance with our practice, all other provisions of 19 CFR 351.214 will apply to GSI Technology throughout the duration of this new shipper review.

Antidumping duty proceeding	Period to be reviewed
Taiwan: Static Random Access Memory Semiconductors, A–583–827 Giga Semiconductor Inc	10/01/97–09/30/98

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed company. This action is in accordance with 19 CFR 351.214(e) and (j)(3).

Interested parties that need access to the proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: November 30, 1998.

Holly Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–32437 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[C–533–816]

Preliminary Negative Countervailing Duty Determination: Elastic Rubber Tape From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Suresh Maniam, Office I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815 or 482–0176, respectively.

Preliminary Determination

The Department of Commerce preliminarily determines that no countervailable subsidies are being provided to producers and exporters of elastic rubber tape from India.

Petitioners

The petition in this investigation was filed on August 18, 1998. The petitioners are Fulflex, Inc., Middletown, Rhode Island; Elastomer Technologies Group, Inc., Stuart, Virginia; and RM Engineered Products, Inc., North Charleston, South Carolina ("the petitioners").

Case History

Since the publication of the notice of initiation in the **Federal Register** (see Notice of Initiation of Countervailing Duty Investigation: Elastic Rubber Tape from India, 63 FR 49549 (September 16, 1998)), the following events have occurred. On September 18, 1998, and October 15, 1998, we issued countervailing duty questionnaires to the Government of India ("GOI") and the only known producer and exporter of the subject merchandise, Garware Elastomerics, Ltd. ("GEL"). On November 3 and November 13, 1998, we issued supplemental questionnaires to GEL and the GOI, respectively.

We received questionnaire responses from the GOI and GEL on November 9, 1998, and a supplemental questionnaire response from GEL on November 16, 1998.

On October 30, 1998, we postponed the preliminary determination of this investigation until November 30, 1998. (See Notice of Postponement of Time Limit for Countervailing Duty Investigation: Elastic Rubber Tape from India, 63 FR 601762.)

Period of Investigation

The period for which we are measuring subsidies ("the POI") is GEL's 1997 fiscal year from April 1, 1997 through March 31, 1998.

Scope of Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and ⅛ inches to 1⅝ inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). The Department of Commerce ("the Department") is conducting this investigation in accordance with section 701 of the Act. All other references are to the Department's regulations codified at 19 CFR Part 351 (1997), unless otherwise indicated.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from

India materially injure, or threaten material injury to, a U.S. industry. On October 15, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports of the subject merchandise from India (see 63 FR 55407 (October 15, 1998)).

Affiliated Company

In accordance with section 771(33) of the Act, the Department considers the following persons to be affiliated or affiliated persons: (1) Members of a family; (2) any officer or director of an organization and such organization; (3) partners; (4) employer and employee; (5) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (6) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (7) any person who controls any other person and such other person.

In cases when a company under investigation is affiliated with another company, the Department will require the affiliated company to respond to a countervailing duty questionnaire, if (1) that company produces the subject merchandise or (2) that company is related to the company under investigation, and financial transactions on terms inconsistent with commercial considerations have occurred between them. Normally, we consider companies to be related, if they prepare consolidated financial statements or if one of the companies has at least 20 percent ownership in the other. (See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy, 61 FR 30288, 30290 (June 14, 1996).) If an affiliated company, which is related to the company under investigation and has had financial transaction on terms inconsistent with commercial considerations with that company, is found to have benefitted from subsidies during the POI, the Department will attribute a portion of these subsidies to the company under investigation.

In this case, based on proprietary information in GEL's November 9, 1998 questionnaire response and its November 16, 1998 supplementary questionnaire response, we have preliminarily determined that GEL is related to its affiliate through direct and indirect stock ownership and through shared board members. In addition, GEL reported that financial transactions have taken place between the two companies.

During GEL's start up in 1995, the affiliated company supplied technical advice to GEL. It has also provided loans and loan guarantees to GEL. In addition, the affiliated company provided certain machinery and equipment to GEL during its start up year and, on limited occasions, certain inputs to production. GEL claims that the machinery, inputs to production, loans and technical advise have been provided to it on market terms and, in support of its claim, has referred to an annexure to its 1997 audited financial statements. In this annexure, the auditors stated that the prices and terms for GEL purchases and sales of goods, materials, and services are reasonable based on the prices prevailing in the market. The auditors qualify this statement, however, indicating that it does not apply to those goods, materials, and services for which comparable quotations were not available because of the specialized nature of the goods, materials, and services. Regarding the loans and loan guarantees received by GEL, the auditors stated that the interest rate and other terms on loans from companies and other parties were not prejudicial to the interest of GEL.

Based on the auditors' statements and other information currently on the record, we are unable to preliminarily conclude that the financial transactions between GEL and its affiliate are on terms consistent with commercial considerations. In the case of goods, materials, and services, the auditors' statement applies only to those purchases for which comparable products could be found in the market place. In the case of the loans, the auditors' statement may be suggesting that the loans to GEL were provided on favorable terms to the company. Therefore, we are currently gathering additional information about these financial transactions. Once this information has been obtained and, subject to verification, we will determine whether they were on terms inconsistent with commercial considerations. If we find these transactions to be inconsistent with commercial considerations, we will request that the affiliated company respond to a countervailing duty questionnaire and, if appropriate, attribute a portion of any subsidies that it may have received to GEL in calculating a subsidy rate for the final determination.

Critical Circumstances

The petitioners have alleged that critical circumstances within the meaning of section 703(e) of the Act exist with respect to the subject merchandise. For critical circumstances to exist, there must be massive imports of the subject merchandise over a relatively short period, and the company must have received a countervailable subsidy, which is inconsistent with the Subsidies Agreement. In this investigation, GEL has responded that it has not used nor benefitted from any of the programs under investigation. Therefore, we have preliminarily found no subsidies which are inconsistent with the Subsidies Agreement. On this basis, we preliminarily determine that critical circumstances do not exist in this investigation. However, because of the outstanding affiliation issue, we will continue to gather import statistics in the event that subsidies inconsistent with the Subsidies Agreement may be identified later in this investigation.

Programs Preliminarily Determined To Be Not Used

Based upon the information provided in the responses, we determine that GEL did not apply for or receive benefits under the following programs during the POI:

A. *Passbook/Duty Entitlement Passbook Scheme*
B. *Export Promotion Capital Goods Scheme*
C. *Export Processing Zones/Export Oriented Units Programs*
D. *Income Tax Exemption Scheme*
E. *Pre-Shipment Export Financing*
F. *Post-Shipment Export Financing*
G. *Import Mechanism (Sale of Import Licenses)*
H. *Exemption of the Interest Tax on Export Credits*
I. *Rediscounting of Export Bills Abroad*
J. *Programs Operated by the Small Industries Development Bank of India*
K. *Special Imprest Licenses*
L. *Market Development Assistance*
M. *Special Benefits to Export and Trading Houses and Super Star Trading Houses*
N. *Duty Drawback on Excise Taxes*
O. *Pre-Shipment Export Financing in Foreign Currency*
P. *Preferential Freight Rates*

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondent prior to making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will tentatively be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and three copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and three copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the date of publication of the preliminary determination. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is issued and published in accordance with pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: November 30, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32436 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Postponement of Time Limit for Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of time limit for preliminary results of countervailing duty investigation

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determination in the countervailing duty investigation of hot-rolled flat-rolled carbon-quality steel products from Brazil because we deem this investigation to be extraordinarily complicated, and determine that additional time is necessary to make the preliminary determination.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard or Javier Barrientos, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Postponement

On October 15, 1998, the Department of Commerce ("the Department") initiated the countervailing duty investigation of hot-rolled flat-rolled carbon-quality steel products from Brazil. See Initiation of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 63 FR 56623 (October 22, 1998). The preliminary determination currently must be issued by December 21, 1998. Respondents have indicated that they will be cooperating in the investigation. In addition, we are investigating several complex alleged countervailable subsidy practices. Accordingly, as detailed in the December 1, 1998, Memorandum to Robert S. LaRussa, Assistant Secretary for Import Administration (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), we deem this investigation to be extraordinarily complicated, and determine that additional time is necessary to make the preliminary determination. Therefore, pursuant to section 703(c)(1) of the Tariff Act of 1930, as amended ("the Act"), we are postponing the preliminary determination in this investigation to no later than January 25, 1999.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32435 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Postponement of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits for Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is extending by no longer than 120 days the time limit of the preliminary results of the administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (C–412–811), covering the period January 1, 1997, through December 31, 1997, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

EFFECTIVE DATE: December 7, 1998.

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FOR FURTHER INFORMATION CONTACT: Gayle Longest and Chris Cassel, Antidumping Duty and Countervailing Duty Enforcement, Group II, Office Six, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3338 and 482–4847, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to the current regulations as codified at 19 CFR 351 (1998).

Background

On April 24, 1998, the Department of Commerce ("the Department") initiated an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom ("UK"), covering the period January 1, 1997, through December 31, 1997 (63 FR 20378). In our notice of initiation, we stated our intention to issue the final results of this review no later than March 31, 1998. The preliminary results of review are currently due no later than December 1, 1998. Due to the complexity of the legal and methodological issues presented by this review, the Department has determined that it is not practicable to complete this review within the time limits mandated by the Act (19 U.S.C. 1675 (a)(3)(A)).

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to a maximum of 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results this review within the original time frame. See Memorandum from Holly A. Kuga to Robert S. LaRussa, "Extension of Preliminary Results: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom (C–412–811)", dated November 27, 1998.

The deadline for issuing the preliminary results of this review is now no later than March 31, 1999, which is the full amount of time the Department can extend the preliminary results under section 751(a)(3)(A) of the Act. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: November 27, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32439 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits of Preliminary Results of Reviews.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative reviews of the countervailing duty order on certain welded carbon steel pipes and tubes and welded carbon steel line pipe from Turkey. The reviews cover two manufacturers/exporters and the period January 1, 1997 through December 31, 1997.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric B. Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete these reviews within the initial time limits established by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limits for completion of the preliminary results until no later than March 31, 1999. See Memorandum to Robert S. LaRussa, dated November 25, 1998, which is a public document on file in the Central Records Unit. The deadline for the final results of these reviews will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 25, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32438 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Cooperative Program for Operational Meteorology, Education, and Training (COMET)

AGENCY: National Weather Service (NWS).

ACTION: Notice of Intent to Issue Notice of Noncompetitive Financial Assistance Award.

SUMMARY: NOAA issues this notice to announce its fiscal year 1999 plan to continue its financial support of the COMET Cooperative Agreement sponsored by the NWS. The COMET program, which is part of the University Corporation for Atmospheric Research (UCAR), establishes scientific training in meteorology for Federal agencies, the private sector, and universities; expedites the transfer of scientific knowledge; provides for formal collaborative research agreements between the NWS and participating universities and other groups; and finds innovative ways to enhance the performance of weather forecasters and improve the utilization of weather products by the public.

FOR FURTHER INFORMATION CONTACT: LeRoy Spayd, Chief, Science and Training Core, Office of Meteorology, NWS, Room 13308, 1325 East-West Highway, Silver Spring, Maryland 20910. Telephone: 301–713–1970 x 194. E-mail: leroy.spayd@noaa.gov.

SUPPLEMENTARY INFORMATION: The COMET cooperative agreement represents a close link between NOAA staff and universities, enabling the participating university staff, students, and NWS operational staff to share observations, interpretations, and theory of the complex atmospheric circulations, which are now observable with new information obtained through the modernization of the NWS. A Memorandum of Agreement (MOA) exists between UCAR and NOAA although no financial assistance is provided through the MOA. The research is currently funded by a cooperative agreement. The period of the cooperative agreement starting with the fiscal year 1999 funding cycle will be for 3 years.

Subject to the availability of funds, NOAA intends to continue support to the COMET program during the fiscal year 1999 funding cycle. The COMET program is a cooperative agreement between the NWS and the UCAR, which represents all universities with meteorology and oceanographic graduate and undergraduate programs. We believe UCAR is the only entity which can draw on all of the talent of the participating universities to provide the programs needed by the Federal and university meteorological community.

NOAA does not intend to establish or fund new cooperative agreements at this time. This notice is not a solicitation for proposals.

Catalogue of Federal Domestic Assistance: The NWS COMET program is listed in the Catalogue of Federal Domestic Assistance under number 11.467, Meteorologic and Hydrologic Modernization Development.

Classification: This action has been determined not to be significant for purposes of E.O. 12866.

Dated: December 1, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98–32450 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120198A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request to transfer a non-releasable rehabilitated marine mammal.

SUMMARY: Notice is hereby given that the Marine Mammal Care Center at Fort MacArthur, 3601 South Gaffey Street, San Pedro, CA 90731, has requested authorization to transfer a non-releasable rehabilitated California sea lion (*Zalophus californianus*) to Gabriel J. Kerschner, Wild Things, Inc., 1211 Ponderosa Way, Weimar, CA 95736, for purposes of public display.

DATES: Written or telefaxed comments must be received on or before January 6, 1999.

ADDRESSES: The authorization request and related documents are available for review upon written request or by appointment in the following office:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

Written comments on this request should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Ann Hochman, 301/713–2289.

SUPPLEMENTARY INFORMATION: The Marine Mammal Care Center is requesting authorization to transfer one female California sea lion from unreleasable beached and stranded stock for the purpose of public display, as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permanent retention for public display purposes of a beached or stranded marine mammal taken for the purpose of rehabilitation under section 109(h) of the MMPA must be authorized by NMFS before such animals may be retained by the rehabilitating facility, transported domestically to a public display facility, or exported to another facility for public display purposes, in accordance with applicable MMPA requirements.

In order to obtain any marine mammal for public display purposes, the recipient must meet the following three public display criteria: (1) Offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community; (2) be registered or hold a license issued under 7 U.S.C. 2131 *et seq.*, ie., from the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture; and (3) maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and to which access is not limited or restricted other than by charging of an admission fee.

Wild Things, Inc., has an exhibitor's license, No. 93–C–0382, issued by APHIS under the Animal Welfare Act (AWA). However, Wild Things, Inc., does not currently maintain marine mammals. The care and maintenance of captive marine mammals must adhere to the requirements of the AWA. Consequently, a copy of the request is also being sent to APHIS.

Wild Things, Inc., is open to the public on the first Saturday of each month with access that is not limited or restricted other than by charging an admission fee, and will offer an educational program based upon the standards of the American Association of Zoos and Aquariums. Wild Things, Inc., plans to add this marine mammal to its outreach program to local school assembly programs. Transportation associated with these assembly programs will be conducted according to APHIS standards under the AWA. Also, Wild Things, Inc., will be required to submit to NMFS a transport notification 15 days in advance of any proposed transport, as required under section 104(c) of the MMPA.

Dated: December 1, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–32431 Filed 12–4–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Mercantile Exchange for Designation as a Contract Market in PJM Electricity Futures and Options, Submitted Under 45-Day Fast Track Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed terms and conditions for applications for contract market designation.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in PJM (Pennsylvania-Maryland-New Jersey) electricity futures and

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option contracts. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 22, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to NYMEX PJM electricity futures and option contracts.

FOR FURTHER INFORMATION, CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on January 11, 1999, 45 days after receipt of the proposals. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at 222.cftc.gov under "What's New & Pending".

Other materials submitted by the NYMEX in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 1, 1998.

Steven Manaster,

Director.

[FR Doc. 98–32403 Filed 12–4–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 5, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 1, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Family Education Loan (FFEL) Program Loan Deferment Applications.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden:
Responses: 1,148,818.
Burden Hours: 183,811.

Abstract: These forms will serve as the means of collecting the information necessary to determine whether a FFEL borrower qualifies for a specific type of loan deferment.

[FR Doc. 98–32368 Filed 12–4–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 6, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfeld@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *PatSherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 1, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart I—Immigration Status Confirmation.

Frequency: On occasion.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Burden:
Responses: 7,310.
Burden Hours: 23,026.

Abstract: Collection of this information used for immigration status confirmation reduces the potential of fraud and abuse caused by ineligible aliens receiving Federally subsidized student financial assistance under Title IV of the Higher Education Act (HEA) of 1965, as amended. The respondent population is comprised of 7,310 postsecondary institutions who participate in administration of the Title IV, HEA programs.

[FR Doc. 98–32367 Filed 12–4–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.287]

21st Century Community Learning Centers; Notice Inviting Applications for New Awards for Fiscal Year 1999

Purpose of program: The 21st Century Community Learning Centers Program was established by Congress to award grants to rural and inner-city public schools, or consortia of such schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social services, cultural and recreational needs of the community. School-based community learning centers can provide a safe, drug-free, supervised and cost-effective after-school, weekend or summer haven for children, youth and their families.

Eligible Applicants: Only rural or inner-city public elementary or secondary schools, consortia of those schools, or LEAs applying on their behalf, are eligible to receive a grant under the 21st Century Community Learning Centers Program. An LEA considering serving more than one school is encouraged to submit a consortium application on their behalf. Applicants must demonstrate that they meet the statutory program purpose as being either a "rural" or "inner-city" school or a consortium of such schools.

Applications available: December 3, 1998.

Deadline for Transmittal of Applications: March 1, 1999.

Deadline for intergovernmental review: May 1, 1999.

Available funds: $100 million.

Estimated range of awards: $35,000—$2,000,000, depending on the number of Centers included in each grant application.

Estimated average size of awards: $375,000, for a grant that will support 3 Centers. The average funding for a single Center is $125,000.

Estimated number of awards: 275—300, but the actual number will depend on how many awards will assist multiple Centers.

Project period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Note: The Department is not bound by any estimates in this notice.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86, and (b) the regulations in 34 CFR part 299.

Priorities

The Absolute Priority and Competitive Priority 1 in the notice of final priorities for this program published in the **Federal Register** on December 2, 1997 (62 FR 63773) and repeated below, apply to this competition. In addition, the Secretary gives preference to applications that meet Competitive Priority 2 (34 CFR 75.105(c)(2)(ii) and 34 CFR 299.3(a)). The Secretary selects an application that meets Competitive Priority 2 over an application of comparable merit that does not meet this competitive priority.

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the absolute priority in the next paragraph. The Secretary funds under this competition only applications that meet this absolute priority.

Activities To Expand Learning Opportunities

The Secretary funds only those applications for 21st Century Community Learning Centers grants that include, among the array of services required and authorized by the statute, activities that offer significant expanded learning opportunities for children and youth in the community and that contribute to reduced drug use and violence.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i), the Secretary gives preference to applications that meet one or both of the two competitive priorities in the next two paragraphs.

Competitive Priority 1—Projects designed to assist students to meet or exceed State and local standards in core academic subjects such as reading, mathematics or science, as appropriate to the needs of the participating children. The Secretary awards up to five (5) points for projects that address this priority. These points are in addition to the 100 points an application may earn under the selection criteria that will be included in the application package.

Competitive Priority 2—Projects that will use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

Supplementary Information: The 21st Century Community Learning Centers Program is authorized under Title X, Part I (20 U.S.C. 8241) of the Elementary and Secondary Education Act. Grantees under this program are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 U.S.C. 8245), as listed below:

(1) Literacy education programs;
(2) Senior citizen programs;
(3) Children's day care services;
(4) Integrated education, health, social service, recreational, or cultural programs;
(5) Summer and weekend school programs in conjunction with recreation programs;
(6) Nutrition and health programs;
(7) Expanded library service hours to serve community needs;
(8) Telecommunications and technology education programs for individuals of all ages;
(9) Parenting skills education programs;
(10) Support and training for child day care providers;
(11) Employment counseling, training, and placement;
(12) Services for individuals who leave school before graduating from secondary school, regardless of the age of such individual; and
(13) Services for individuals with disabilities.

Applicants should propose an array of inclusive and supervised services that include extended learning opportunities (such as instructional enrichment programs, tutoring, or homework assistance) but may also include recreational, musical and artistic activities; opportunities to use advanced technology, particularly for those children who do not have access to computers or telecommunications at home, or safety and substance-abuse prevention programs. Grants awarded under this program may be used to plan, implement, or expand community learning centers.

Geographic distribution: In awarding grants, the Secretary assures an equitable distribution of assistance among the States, among urban and rural areas of a State, and among urban and rural areas of the United States.

To Obtain an Application Package: Written requests should be mailed to: Adria White, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Washington, DC 20208–5644, Attn: 21st Century Center Learning Centers. Requests may also be e-mailed to *21stCCLC@ed.gov* or faxed to (202) 219–2198. Applications may also be requested by calling 1–800–USA-LEARN.

For Further Information Contact: Amanda Clyburn (202–219–2180) or Steve Balkcom (202–219–2089), U. S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Washington D.C. 20208-5644. E-mail inquiries should be sent to: *21stCCLC@ed.gov*. Faxed inquiries should be sent to: (202) 219–2198.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons identified in this notice.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) via Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8246.

Dated: December 2, 1998.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (Listed Alphabetically by State)

California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kansas: Kansas City
Kentucky: Kentucky Highlands Area
    (Clinton, Jackson, and Wayne Counties)

Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid-Delta Area (Bolivar, Holmes, Humphreys, and LeFlore Counties)
Missouri: Kansas City
New Jersey: Camden
New York: Harlem, Bronx
Pennsylvania: Philadelphia
Texas: Houston, Rio Grande Valley Area (Cameron, Hidalgo, Starr, and Willacy Counties)

Supplemental Empowerment Zones (Listed Alphabetically by State)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (Listed Alphabetically by State)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border Area, (Cochise, Santa Cruz and Yuma Counties), Phoenix
Arkansas: East Central Area (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles (Huntington Park), San Diego,
San Francisco (Hayview, Hunter's Pointer), Watsonville
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County
Georgia: Central Savannah River Area (Burke, Hancock, Jefferson, McDuffie, Tallaferro, and Warrent Counties), Crisp County, Dooley County
Illinois: East St. Louis, Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville, McCreary County
Louisiana: Macon Ridge Area (Catahouis, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Delta Area (Madison Parish), Quachita Parish
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie, St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, Moro County, Rio Arriba County, Taos County
New York: Albany, Buffalo, Kingston, Newburgh, Rochester, Schenectady, Troy
North Carolina: Charlotte, Edgecombe County, Halifax County, Robeson County, Wilson County
Ohio: Akron, Columbus, Greater Portsmouth Area (Scioto County)
Oklahoma: Choctaw County, McCurtain County, Oklahoma City
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh
Rhode Island: Providence
South Carolina: Charleston, Williamsburg County
South Dakota: Beadle County, Spink County
Tennessee: Fayette County, Haywood County, Memphis, Nashville, Scott County
Texas: Dallas, El Paso, San Antonio, Waco
Utah: Ogden
Vermont: Accomack County, Norfolk
Washington: Lower Yakima County, Seattle, Tacoma
West Virginia: Huntington, McDowell County, West Central Areas (Braxton, Clay, Fayette, Nichols, and Roane Counties)
Wisconsin: Milwaukee

[FR Doc. 98–32455 Filed 12–3–98; 10:56 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Notice of Restricted Eligibility Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions

AGENCY: Federal Energy Technology Center (FETC), U.S. Department of Energy (DOE).

ACTION: Notice of Restricted Eligibility.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to U.S. Historically Black Colleges and Universities and Other Minority Institutions in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a limited number of applicants on the basis of the scientific merit of the application, application of relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Columbia, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh PA 15236–0940, Telephone: (412) 892–6219, FAX: (412) 892–6216, E-mail: Columbia@FETC.DOE.GOV. The solicitation (available in both Word Perfect 6.1 for Windows and Portable Document Format (PDF)) will be released on DOE's FETC World Wide Web Server Internet System (http://www.fetc.doe.gov/business/solicit) on or about November 30, 1998. If applicants do not have Internet capability, a 3.5" double sided/high density diskette copy of the solicitation will be available, upon receipt of a written request submitted via facsimile (fax) at (412) 892–6216 or e-mail at columbia@fetc.doe.gov. No telephone requests will be honored for request of diskettes.

SUPPLEMENTARY INFORMATION:

Title of Solicitation

"Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and Other Minority Institutions."

Objectives

Through Program Solicitation No. DE–PS26–99FT40192, the Department of Energy seeks applications from Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) and HBCU/OMI-affiliated research institutes for innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. The resultant grants are intended to maintain and upgrade educational, training, and research capabilities of our HBCU/OMI in the fields of science and technology related to fossil energy resources; to foster private sector participation, collaboration, and interaction with HBCU/OMI; and to provide for the exchange of technical information and to raise the overall level of HBCU/OMI competitiveness with other institutions in the field of fossil energy research and development. Thus, the establishment of linkages between the HBCU/OMI and the private sector fossil energy community is critical to the success of this program, and consistent with the Nation's goal of ensuring a future supply of fossil fuel scientists and engineers from an previously under-utilized resource.

Eligibility

Eligibility for participation in this Program Solicitation is restricted to Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) recognized by the Office for Civil Rights (OCR), U.S. Department of Education, and identified on the OCR's United States Department of Education list of U.S. Accredited Postsecondary Minority Institutions list in effect on the closing date of the program solicitation. *Applications submitted by any institution not on OCR's aforementioned list are ineligible for technical evaluation and award.* For information regarding the qualification criteria and process of becoming recognized by the Education Department's Office for Civil Rights as a "Minority Institution", institutions should contact the Education Department directly at the following

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address: Mr. Peter A. McCabe, Office for Civil Rights, U.S. Department of Education, Washington, DC 20202, Telephone (202) 205–9567. Note: The Education Department should only be contacted on matters related to Institutional status; questions regarding the Program Solicitation should be directed to Mr. Columbia at DOE by telefacsimilie on (412) 892–6216.

Applications from HBCU/OMI-affiliated research institutes must be submitted through the college or university with which they are affiliated. The university (*not* the university-affiliated research institute) will be the recipient of any resultant DOE grant award. Applications submitted in response to the solicitation must meet the following two criteria: the Principal Investigator or a Co-Principal Investigator must be a teaching professor at the submitting university listed in the application; *and* a minimum of 30% of personnel time invoiced under the grant is to pay for student assistance for each year of the grant. Although it is not required as an application qualification criterion, collaboration with the private sector is encouraged, and applications proposing private sector collaboration may be evaluated more favorably. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor. Collaboration by the private sector with the HBCU/OMI may be in the form of cash cost sharing, consultation, HBCU/OMI access to industrial facilities or equipment, experimental data and/or equipment not available at the university, or as a subgrantee/subcontractor to the HBCU/OMI.

Areas of Interest

In order to develop and sustain a national program of HBCU/OMI research in advanced and fundamental fossil fuel studies, the Department is interested in innovative research and development of advanced concepts pertinent to fossil fuel conversion and utilization limited to the following seven (7) technical topics:

Topic 1—Advanced Environmental Control Technologies for Coal
Topic 2—Advanced Coal Utilization
Topic 3—Coal Liquefaction Technology
Topic 4—Heavy Oil Upgrading and Processing
Topic 5—Advanced Recovery, Completion/Stimulation, and Geoscience Technologies for Oil
Topic 6—Natural Gas Supply, Storage, and Processing
Topic 7—Faculty/Student Exploratory Research Training Grants

Note: Technical Topic No. 7, *Faculty/Student Exploratory Research Training Grants*, is the *only* topic under this Program Solicitation wherein the inclusion or exclusion of private sector collaboration will not affect the technical evaluation of the application.

Awards

DOE anticipates issuing financial assistance (grants) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for each selected grant to be awarded under this Program Solicitation is as follows:

Topics 1–6	Maximum award
To 12 months grant duration	$85,000.00
13–24 months grant duration	150,000.00
25–36 months grant duration	200,000.00

Topic 7	Maximum award
To 12 months grant duration	$20,000.00

Approximately $850,000 is planned for this solicitation. The total should provide support for four to eight R&D application selections (Topics 1–6), and approximately two to twelve faculty/student exploratory research training application selections (Topic 7).

Solicitation Release Date

The Program Solicitation is expected to be ready for release on or about November 30, 1998. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation. To be eligible, applications must be Received by the designated DOE office by the closing time and date specified in the Program Solicitation (anticipated to be on or about January 20, 1999, at 5:00 PM Eastern Standard Time).

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 98–32457 Filed 12–4–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Solicitation for Cooperative Agreement Proposal (SCAP); Research Titled: Early Entrance Coproduction Plant

AGENCY: U.S. Department of Energy (DOE), Federal Energy Technology Center.

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: On or about January 22, 1999, The U.S. Department of Energy, Federal Energy Technology Center, plans to issue a Solicitation for Cooperative Agreement Proposal (SCAP) No. DE–SC26–99FT40040 for the solicitation of applications in support of research and development entitled "Early Entrance Coproduction Plant." Authority for this action is the DOE Organization Act Public Law 95–91 and the DOE Financial Assistance Regulations 10 CFR Part 600. DOE anticipates multiple awards with a project duration of approximately five years. DOE plans to make available funds totaling $30,000,000 over the project duration; a minimum cost share of 20 percent for the concept definition and RD&T planning, 35 percent for research, development, and testing; and 50 percent for the preliminary EECP design is required.

DATES: Proposals are due 60 days after release of solicitation.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, IO7, Internet address: csharp@fetc.doe.gov, U.S. Department of Energy, Federal Energy Technology. Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone (304) 285–4442, Procurement Request No. 26–99FT40040.000.

SUPPLEMENTARY INFORMATION: The objective of this effort is to determine the feasibility of an EECP located at a specific site which produces fuels or chemicals in combination with electric power from synthesis gas derived from coal, or, coal in combination with some other carbonaceous feedstock. The project will consist of three budget periods: Budget Period 1—Concept Definition and RD&T Planning; Budget Period 2—Research, Development and Testing; and Budget Period 3—EECP Engineering Design. Efforts in Budget Period 1 (estimated at 1.5 years), are to focus on performing the necessary feasibility analyses and initial project definition to better define the proposed concept. Budget Period 2 (estimated at 2 years), efforts are to focus on research development and testing of components and subsystems. Budget Period 3 (estimated at 1 year), efforts are to focus on completion of the EECP engineering design. An Information Package describing the draft technical requirements is currently available on FETC's Homepage at http://www.fetc.doe.gov/business/solicit/. Offerors and interested parties are encouraged to provide comments, suggestions, and/or questions regarding the information package. DOE plans to post the solicitation on FETC's Homepage in late January 1999. Again, FETC Homepage address is http://www.fetc.doe.gov/business/solicit/. Offerors and other interested parties are encouraged to download the solicitation once it becomes available, as paper copies will not be distributed. Any amendments to the solicitation will also be posted on the FETC Homepage. Electronic WordPerfect version 6.1 copies of the solicitation may be obtained by submitting a written request to the address provided above. Telephone requests will not be honored.

Dated: November 24, 1998.

Randolph L. Kesling,

Acquisition and Assistance Division, Federal Energy Technology Center.

[FR Doc. 98–32456 Filed 12–4–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–717–000; FERC–717]

Proposed Information Collection and Request for Comments

December 1, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before February 5, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–717 "Open Access Same Time Information System" (OMB No. 1902–0173) is used by the Commission to carry out the general authority in Sections 309 and 311 of the Federal Power Act 1978 (FPA) (16 U.S.C. 825h and 825j). On April 24, 1996, the Commission issued two separate but interrelated final rules. The first rule, Order No. 888, required that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory service. The second rule and the subject of this collection of information, Order No. 889, required utilities to establish electronic systems to share information about available transmission capacity. Under this rule, each public utility (or its agent) that owns, controls, or operates transmission facilities must create or participate in an Open Access Same-Time Information System (OASIS) that provides open access transmission customers (current and potential) with electronic information about transmission capacity, prices, and other information necessary to obtain open access nondiscriminatory transmission services. The rule also established standards of conduct to ensure that a public utility's employees engaged in a transmission operations function independently of those employees engaged in wholesale purchases and sales of electric energy in interstate commerce. In addition, specifics with respect to various standards and protocols were identified to ensure that the OASIS system presents information in a consistent and uniform manner (these have been subject to additional changes as it has become necessary). The compliance with these requirements is mandatory. The reporting requirements are found at 18 CFR Part 37.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) x (2) x (3)
140	1	1,418	198,520

The estimated total cost to respondents is $21,157,500.

In the Commission's initial submission to OMB it included an estimate of the annualized Capital/Startup costs necessary for setting out a world wide web site on the Internet. However, nearly three years have passed since that initial estimate and OASIS is now in full operation. Therefore the Commission will only consider costs for the continued operation of OASIS. (Operations and Maintenance costs include the use of staff to maintain the web site plus human resources necessary for developing and handling data for OASIS. The Commission has assumed that 4.5 personnel are necessary for staffing and using a total personnel cost of $109,889, the result is $494,501. To get the total cost, add annual ongoing costs of $110,000 plus staffing costs for a total of $604,501 divided by 4 = $151,125). The estimated total cost of the OASIS requirement is 140 respondents x $151,125 or $21,157,500.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information;

and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

David P. Boergers,

Secretary.

[FR Doc. 98–32371 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–97–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 1998.

Take notice that on November 25, 1998, Chandeleur Pipe Line Company Pipe Line (Chandeleur) tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, Ninth Revised Sheet No. 5. Chandeleur is proposing to change it's Fuel and Line Loss Allowance from 0.6% to 0.7%, to become effective January 1, 1999.

Chandeleur states that copies of the filing were served upon the company's jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32378 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–88–001]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

December 1, 1998.

Take notice that on November 25, 1998, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become a part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective November 2, 1998:

First Revised Volume No. 1

Substitute First Revised Sheet No. 107A
Substitute First Revised Sheet No. 107B
Substitute Fifth Revised Sheet No. 136

On November 12, 1998, the Commission's Office of Pipeline Regulation issued a letter order accepting tariff sheets filed by Cove Point subject to Cove Point making certain revisions to its tariff sheets. The above-described tariff sheets were filed to make the specified revisions.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32374 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–158–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

December 1, 1998.

Take notice that on November 24, 1998, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on the attachment to the filing, with an effective date of January 1, 1999.

Discovery states that the purpose of the filing is to provide the necessary flexibility under its tariff to negotiate rates with its customers. This filing is made in accordance with the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, issued on January 31, 1996, in Docket No. RM95–6–000 (Policy Statement) and the orders applying the Policy Statement. Discovery proposes an effective date of January 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32375 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–006]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

December 1, 1998.

Take notice that on November 25, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective January 1, 1999.

Natural states that these tariff sheets have been filed in compliance with the Commission's "Order on Contested Settlement" issued November 10, 1998 in Docket No. RP97–431–005, which approved Natural's settlement in said docket, subject to limited modifications. The tariff sheets deal primarily with Natural's procedures for posting, auctioning, allocating and awarding firm capacity. The instant filing makes the required modifications.

Natural states that copies of the filing are being mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–431.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rule and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32373 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–57–005]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 1, 1998.

Take notice that on November 25, 1998, NorAm Gas Transmission Company (ANGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 1997:

Substitute Original Sheet No. 299A

NGT states that the revised tariff sheet is being filed to replace inadvertently omitted tariff language that was dropped in its May 20, 1997 Compliance Filing in the referenced docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32372 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–84–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

December 1, 1998.

Take notice that on November 20, 1998, Northern Natural Gas Company (Northern), 111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP99–84–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate a delivery point to provide natural gas transportation service to Burlington Resources Oil & Gas Company (Burlington) authorized in blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to convert a 6-inch side valve in Upton County, Texas from a receipt point to a delivery point so that it can provide natural gas service for Burlington for use at the McCamey Oil field. Northern reports that they would incur no cost as the existing facility is a currently designated receipt point on Northern's system. Burlington would perform the required modifications to their existing facility downstream of the tap. Northern reports that the proposed delivery point would be 500 Dth on a peak day and 40,000 Dth on an annual basis. Northern further reports that they would not incur any cost under the proposal.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–32369 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–92–000]

Questar Pipeline Company; Notice of Application

December 1, 1998.

Take notice that on November 25, 1998, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP99–92–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Questar to increase the certificated maximum allowable operating pressure (MAOP) for Questar's existing Main Line (M.L.) No. 101 pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar proposes to increase the certificated MAOP of its 41.2 mile, 20-inch diameter M.L. No. 101 pipeline in Sweetwater County, Wyoming and Daggett County, Utah, from 1,200 psig to 1,416 psig. Questar indicates that the proposed MAOP increase will provide more efficient operation of Questar's system, within the physical-design capacity of the pipeline, by enabling Questar to intermittently free flow natural gas volumes directly from Questar's Clay Basin storage field during periods when the storage-reservoir pressures are high, to an interconnection with Wyoming Interstate Company, Ltd., located at Questar's Nightingale/Kanda/Coleman Compressor Complex. Questar also indicates that the proposed MAOP increase will provide system benefits to Questar's customers by reducing fuel-gas costs and compressor station wear and tear at Nightingale/Kanda/Coleman Compressor Complex. Questar states that there will be no annual capacity increase associated with the proposal.

Any person desiring to be heard or making any protest with reference to said application should on or before December 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–32370 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–55–000]

Questar Pipeline Company; Notice of Tariff Filing

December 1, 1998.

Take notice that on November 27, 1998, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with an effective date of January 1, 1999:

First Revised Volume No. 1

Tenth Revised Sheet No. 5

Original Volume No. 3

Twenty First Revised Sheet No. 8

Questar states that the tendered tariff sheets show a revised Fuel Gas Reimbursement Percentage (FGRP) of 1.9%, replacing the currently effective 1.4% for tracking fuel-use and lost-and-unaccounted-for gas. The difference of 0.5% includes 0.3% to recover 703,626 Dth that was recorded in Questar's FGRP current deferral account during the 12 months ended September 30, 1998, and 0.2% to reflect the increase in fuel, lost and unaccounted for gas from the current FGRP rate of 1.4% to 1.6% for the prospective 12 months ending December 31, 1999.

Further, Questar states that the revised FGRP is filed pursuant to Section 12.14 of the General Terms and Conditions of Part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Secretary.

[FR Doc. 98–32377 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–159–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

December 1, 1998.

Take notice that on November 25, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised tariff sheets, to become effective December 1, 1998:

Second Revised Sheet No. 45 of Rate Schedule FT
First Revised Sheet No. 58b of Rate Schedule FT–NN
Third Revised Sheet No. 65 of Rate Schedule IT
First Revised Sheet No. 66 of Rate Schedule IT

Southern states that the tariff sheets are being filed pursuant to Section 4 of the Natural Gas Act and in compliance with the Commission's October 28, 1998 Order in Docket Nos. CP96–153–002, –003, and –004.

On the October 28 Order, the Commission issued an order in Docket No. CP96–153–002, –003, and –004 requiring Southern to revise its Tariff to identify the circumstance under which it construct facilities at its cost under Section 6 of Southern's FERC Gas Tariff, Seventh Revised Volume No. 1 and state the circumstances under which Southern will make contributions in aid of construction (CIAC). Southern states that it has made such revisions to Section 6 of Rate Schedule FT and IT and Section 7 of Rate Schedule FT–NN of its FERC Gas Tariff in the tariff filing submitted herewith.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Secretary.

[FR Doc. 98–32376 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–29–000, et al.]

PDC–El Paso Milford, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 30, 1998.

Take notice that the following filings have been made with the Commission:

1. PDC–El Paso Milford, LLC

[Docket No. EG99–29–000]

Take notice that on November 24, 1998, PDC–El Paso Milford LLC, 200 High Street, Boston, Massachusetts 02110, tendered for filing with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant is a Connecticut limited liability company that proposes to construct and own a five hundred forty-four (544) megawatt natural gas-fired electric generation facility, including ancillary and appurtenant structures, on a site in the city of Milford, Connecticut.

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application

2. Wisconsin Electric Power Company, Complainant v. Northern States Power Company (Minnesota), and (Wisconsin) Respondent

[Docket No. EL99–12–000]

Take notice that on November 24, 1998, Wisconsin Electric Power Company (Wisconsin Electric), pursuant to Section 206 of the Federal Power Act, tendered for filing a complaint against Northern States Power Company (NSP), alleging violations of NSP's open access transmission tariff and standards of conduct. On twenty-one different occasions, from mid-May through August of this year, NSP curtailed the firm transmission service needed to support Wisconsin Electric's purchase of firm capacity and power. The complaint alleges that NSP has violated: (1) the terms and conditions of NSP's open access transmission tariff (OATT), including the Commission's policies regulating curtailment practices; (2) the Commission's policies precluding "and" pricing or other extra-tariff pricing for open access transmission; and (3) NSP's standards of conduct which prohibit both discriminatory application of its OATT and preferential treatment for itself.

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint are also due on or before December 24, 1998.

3. Duke Power Company

[Docket No. ER97–2398–000]

Take notice that on November 24, 1998, Duke Energy Corporation tendered for filing a settlement in the above-reference docket.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket No. ER99–678–000]

Take notice that on November 24, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing its Summary Report of O&R transactions during the calendar quarter ending September, 1998 pursuant to the market based rate power service tariff, made effective by the Commission on March 27, 1997 in Docket No. ER97–1400–000.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. New Energy Ventures, Inc.

[Docket No. ER99–679–000]

Take notice that on December 1, 1998, New Energy Ventures, Inc. (NEV Inc.), tendered for filing a notice of succession in operations pursuant to 18 CFR 35.16 in order to reflect its name change from New Energy Ventures, L.L.C.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. New Energy Holdings, Inc.

[Docket No. ER99–680–000]

Take notice that on November 24, 1998, New Energy Holdings, Inc. (NEV Holdings), tendered for filing a notice of cancellation pursuant to 18 CFR 35.15 in order to reflect the cancellation of its Market Rate Schedule originally accepted for filing by the Commission in Docket No. ER96–1387–000.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PP&L, Inc.

[Docket No. ER99–683–000]

Take notice that on November 24, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule No. 58, effective date February 1, 1994, and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER99–684–000]

Take notice that on November 24, 1998, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with Electric Clearinghouse, Inc., (ECI).

Northern Indiana has requested an effective date of November 20, 1998.

Copies of this filing have been sent to ECI, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER99–685–000]

Take notice that on November 24, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Firm Transmission Service Agreement between WPSC and New Energy Ventures, Inc., providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC requests an effective date to make the agreement effective on the date of execution by WPSC, November 12, 1998.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER99–686–000]

Take notice that on November 24, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Non-Firm Transmission Service Agreement between WPSC and New Energy Ventures, Inc., provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC requests an effective date to make the agreement effective on the date of execution by WPSC, November 17, 1998.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Light Company

[Docket No. ER99–687–000]

Take notice that on November 24, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, New Energy Venture, Inc., and Ameren Services Company and one notice of contract termination from Southern Company Energy Marketing for Vastar Power Marketing Inc.

CILCO requested an effective date of November 18, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER99–688–000]

Take notice that on November 24, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Transalta Energy Marketing (U.S.) Inc., dated October 28, 1998, and a Firm Transmission Service Agreement with Entergy Power Marketing Corp., dated November 18, 1998, and a NonFirm Transmission Service Agreement with Transalta, dated October 28, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of October 28, 1998, for the Agreements with Transalta, and November 18, 1998, for the Agreement with Entergy, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Transalta, Entergy, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER99–689–000]

Take notice that on November 24, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Constellation Power Source, Inc., and El Paso Energy Marketing Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER99–690–000]

Take notice that on November 24, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service with TransAlta Energy Marketing Inc., and a Short-Term Firm Point-to-Point Transmission Service Agreement with TransAlta Energy Marketing Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of November 2, 1998, for each Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER99–691–000]

Take notice that on November 24, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Buckeye Power, Inc., as agent for The Iams Company, Firm and Non-Firm Point-to-Point Transmission Service Agreements for TransAlta Energy Marketing (U.S.) Inc., and a Firm Point-to-Point Transmission Service Agreement for Southeastern Power Administration, all under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff

Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after November 1, 1998.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PP&L, Inc.

[Docket No. ER99–692–000]

Take notice that on November 24, 1998, PP&L, Inc. (PP&L), tendered for filing a Service Agreement for Affiliate Sales, dated November 20, 1998, with PP&L EnergyPlus Co., under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds PP&L EnergyPlus Co., as an eligible customer under the Tariff.

PP&L requests an effective date of November 20, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PP&L EnergyPlus Co., and to the Pennsylvania Public Utility Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER99–693–000]

Take notice that on November 24, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and TransAlta. The Transmission Service Agreements allow TransAlta to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on TransAlta, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Energy Canal, L.L.C.

[Docket No. ER99–694–000]

Take notice that on November 24, 1998, Southern Energy Canal, L.L.C. (Southern Canal), tendered for filing an application requesting that the Commission accept for filing agreements for cost-based wholesale power sales by Southern Canal to Cambridge Electric Light Company, Commonwealth Electric Company, New England Power Company, Montaup Electric Company, and Boston Edison Company.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. John R. Fielder

[Docket No. ID–3259–000]

Take notice that on November 24, 1998, John R. Fielder tendered for filing an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Southern California Edison Company
Director, California Independent System Operator Corporation
Director, California Power Exchange Corporation

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Polk Power Partners, L.P., a Delaware Limited Partnership

[Docket No. QF92–54–007]

Take notice that on November 24, 1998, Polk Power Partners, L.P., a Delaware limited partnership of 1125 U.S. 98 South Suite 100, Lakeland, Florida 33801, filed with the Federal Energy Regulatory Commission supplemental information to an application for recertification of a facility as a qualifying cogeneration facility that was filed with the Commission on September 16, 1998 pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the cogeneration facility is located in Polk County, Florida. The Commission previously certified the facility as a qualifying facility in 61 FERC ¶ 61,030 (1992), and recertified in 65 FERC ¶ 62,136 (1993), 66 FERC ¶ 61,116 (1994) and 68 FERC ¶ 62,152 (1994). Notices of self-certification and self-recertification were filed on December 23, 1991 and September 7, 1993. According to the Applicant, the supplemental information is being provided to correct two typographical errors and to answer questions posed by the Commission's Staff.

Comment date: December 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,
Secretary.

[FR Doc. 98–32402 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–800–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1999 System Expansion Project and Request for Comments on Environmental Issues

December 1, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Eastern Shore Natural Gas Company's (Eastern Shore) proposal to construct about 4.5 miles of 16-inch-diameter pipeline in Chester County, Pennsylvania; 3.5 miles of 16-inch-diameter pipeline in New Castle County, Delaware; and one 1,085 horsepower (hp) compressor unit in New Castle County proposed in the 1999 System Expansion Project.[1] This EA will be used by the Commission in its decision-making process to

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[1] Eastern Shore Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

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determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Eastern Shore seeks authorization for the following:

- Install a 1,085 hp compressor unit at its existing Del City Compressor Station, 3 miles west of Delaware City, New Castle County, Delaware;
- Construct about 4.5 miles of 16-inch-diameter loop in Chester County, Pennsylvania;
- Construct about 3.5 miles of 16-inch-diameter loop in New Castle County, Delaware.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 56.1 acres of land. Following construction, about 36.1 acres would be maintained as new permanent right-of-way. The remaining 20.0 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 4 and 5 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may be changed based on your comments and our analysis.

- One federally listed threatened species, the bog turtle, may occur in the proposed project area.
- Nineteen streams and thirteen wetlands would be crossed by the project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–800–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 4, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr.

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[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32379 Filed 12–4–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6197–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Proposed Collection; Small System Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Small System Survey, ICR #1863.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1863.01.

SUPPLEMENTARY INFORMATION:

Title: Small System Survey, ICR #1863.01. This is a new collection.

Abstract: The Environmental Protection Agency has developed three interrelated Supplemental Surveys as part of an ongoing, scientific research and information collection program associated with the 1996 Information Collection Rule (ICRule) that supports drinking water regulation development. The overall objective of this research and information collection program is to provide a sound scientific and technical basis for generating and evaluating strategies for reducing risks associated with microbial pathogens and disinfection byproducts in the US drinking water supply.

EPA must conduct a Regulatory Impact Analysis (RIA) for the upcoming Stage 2 Long Term Enhanced Surface Water Treatment Rule (LT2ESWTR) and Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR) and that evaluates the potential impacts on all system sizes. This rule is scheduled for promulgation in May 2002. A major regulatory option being considered is to target treatment for protozoa as a means for controlling not only protozoa but other waterborne pathogens. Therefore, a critical element of the RIA is a characterization of the national distribution of protozoa in source waters for all size systems. Additional data are needed to better characterize these distributions because: (1) the ICRule only targets systems serving 100,000 people or more, (2) the ICRule protozoa method exhibits low recovery and a high detection limit, and (3) limited data are available for systems serving less than 100,000. As these protozoan concentration estimates are inputs to the Regulatory Impact Analysis for this next phase of rulemaking, the Regulatory Impact Analysis may underestimate the level of treatment required for protozoa removal along with the resulting cost impacts of this rule.

To address these remaining data needs, EPA has developed and funded the ICRule Supplemental Surveys. Although the existing ICRule method remains available for possible use in these surveys, a key component of the Supplemental Surveys will be reliance upon a new analytical method, Method 1622, to measure Cryptosporidium and potentially Giardia concentrations. Because of its anticipated higher recovery rate and lower detection limit, Method 1622 is expected to provide a more accurate estimate of Cryptosporidium concentrations in source waters. The Supplemental Surveys will focus on gathering and analyzing data from a subset of large, medium and small systems. Today's notice focuses on the information collection burden associated with small systems only. The burden associated with the large and medium surveys was covered under the Information Collection Request for the 1996 ICRule.

Participation in the Small System Supplemental Surveys will be voluntary. As is appropriate in survey design, the size of the initial sampling list (a simple random sample) will be large enough to allow for some expected declinations. Forty small systems will participate in the survey and will sample twice a month during a 12 month monitoring period. The first monthly sample event will include protozoa (Cryptosporidium and potentially Giardia), bacterial samples (total coliform and E. coli or fecal coliform), wet chemistry samples (total organic carbon (TOC), alkalinity, UV254, bromide and ammonia), and water quality parameters (turbidity, pH and temperature). The second monthly sample event will include protozoa, bacterial samples, and water quality parameters. Twenty percent of the sample events will collect an additional raw water sample for use as a matrix spike to assess how the water matrices may be affecting method performance. Additional parameters that will be measured during the matrix spike events include dissolved organic carbon (DOC), total suspended solids (TSS), total dissolved solids (TDS) and conductivity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/24/98 (63 FR 34379); 1 set of comments was received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 32 hours per utility. An additional 40 hrs are attributed to the recruitment portion of this survey where 200 utilities will be asked to complete a reply form (at 0.2 hours per utility to complete the form) and from those 200 utilities, 40 will be selected to participate in the survey. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Public water systems serving less than 10,000 people.

Estimated Number of Respondents: 200.

Frequency of Response: 2 per month.

Estimated Total Annual Hour Burden: 1320 hours.

Estimated Total Annualized Cost Burden: $55,000.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1863.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 30, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–32414 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–2]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on December 15 and 16, 1998 at the Park Hyatt Hotel, 24th and M Street, NW., Washington DC for the purpose of information exchange with stakeholders on issues related to the development of regulations to control microbial pathogens and disinfection byproducts in drinking water, including a Stage 2 Disinfectants/Disinfection Byproducts Rule and a Long-term 2 Enhanced Surface Water Treatment Rule. The meeting will start at 9:00 AM on December 15 and will adjourn on December 16 at 3:30 PM. The meeting will provide: (1) A review of the Stage 1 Disinfectants/Disinfection Byproducts Rule and the Interim Enhanced Surface Water Treatment Rule; (2) an overview of the Information Collection Rule and research supporting the drinking water rules; (3) an opportunity for stakeholders to discuss the issues and process for completing the Stage 2 deliberations; and (4) an opportunity to discuss schedules for subsequent meetings.

EPA is inviting all interested members of the public to participate in the meeting. As with all previous meetings in this series, to the extent that space is available, EPA is instituting an open door policy to allow any member of the public to attend any of the meetings for any length of time. Approximately 50 seats will be available for the public. Seats will be available on a first-come, first served basis.

For additional information about the meeting, please contact Ephraim King or Mike Cox of EPA's Office of Ground Water and Drinking Water at (202) 260–7575 or by e-mail at cox.michael@epamail.epa.gov.

Dated: December 1, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–32413 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–848; FRL–6047–2]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–848, must be received on or before January 6, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Mary Waller (PM 21)	Rm. 247, CM #2, 703–308–9354, e-mail:waller.mary@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 247, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–848] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 24, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. BASF Corporation, Agricultural Products

PP 7E4874

EPA has received a pesticide petition (PP 7E4874) from BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an import tolerance for residues of the fungicide fenpropimorph, (+)-cis-4-(3-(4-tert-butylphenyl)-2-methylpropyl)-2,6-dimethylmorpholine in or on the raw agricultural commodity bananas at 1.5 parts per million (ppm) of which no more than 0.3 ppm is found in the pulp. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant and animal metabolism.* BASF Corporation notes that metabolism in plants and animals is understood.

2. *Analytical method.* The method of analysis includes extraction, liquid/liquid partition, column clean-up, and quantitation by gas chromatography/nitrogen-phosphorus detector. The overall fortification recoveries from the unpeeled, whole banana, and the peeled (pulp) samples together averaged 87.1% ± 9.3% (N=76).

3. *Magnitude of residues.* Fifteen crop residue trials were conducted in the banana growing regions of Mexico, South, and Central America including three sites in Colombia, four sites in Costa Rica, four sites in Ecuador, one site in Guatemala, two sites in Honduras, and one site in Mexico. Four sequential applications were made at the target rate of 545 g/ha to both bagged and unbagged bananas at each site. Fruit from both the bagged and unbagged treatments were harvested at 0 days following the last application.

Whole fruit (peel and pulp) samples and pulp only samples were analyzed for all treatments at all sites. Under typical practices (bagged bananas) residue in the whole fruit ranged from < the limit of quantitation (LOQ) (0.050 milligrams/kilogram (mg/kg)) to a maximum of 0.4 mg/kg. Banana pulp residues from bagged bananas ranged from < the LOQ (0.050 mg/kg to 0.20 mg/kg and averaged 0.0518 mg/kg. The average value was calculated by assuming all values below the LOQ were equal to one-half the LOQ or 0.025 mg/kg.

Under worst-case practices (unbagged bananas) residue in the whole fruit ranged from < the LOQ (0.050 mg/kg to a maximum of 1.4 mg/kg. Banana pulp residues from unbagged bananas ranged from < the LOQ (0.050 mg/kg to 0.43 mg/kg and averaged 0.1149 mg/kg. The average value was calculated by assuming all values below the LOQ were equal to one-half the LOQ or 0.025 mg/kg.

B. Toxicological Profile

1. *Acute toxicity.* Based on available acute toxicity data fenpropimorph does not pose any acute toxicity risks. These studies are not required for an import tolerance, but we have provided the following paragraph to demonstrate that fenpropimorph is not an acute toxicant. The acute toxicity studies place technical fenpropimorph in acute toxicity category III for acute oral, dermal, inhalation, and skin irritation; and in acute toxicity category IV for eye irritation and the technical material is not a skin sensitizer. Additionally, results of an acute oral neurotoxicity and a subchronic oral feeding neurotoxicity study demonstrated that fenpropimorph was not a neurotoxic compound.

2. *Genotoxicity.* A Modified Ames Test (1 Study; point mutation): Negative; *In Vitro* Cytogenetics-Human lymphocytes (1 Study; Chromosome Aberrations): Negative; Mouse Micronucleus Assay (1 Study; Chromosome Aberrations): Negative; *In Vitro* UDS Test Using Rat Hepatocytes (1 Study; DNA damage and repair): Negative; fenpropimorph has been tested in a total of 4 genetic toxicology assays. These assays were performed both *in vitro* and *in vivo* and multiple assays were conducted for each of the three EPA Guideline requirement categories. Based on the data presented in this petition, fenpropimorph does not induce gene mutations and does not induce other effects indicative of genotoxicity. Fenpropimorph does not pose a mutagenic hazard to humans.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study with rats fed dosages of 0, 0.625, 1.25, and 2.5 milligrams/kilogram/day (mg/kg/day) (average mg/kg/day dose levels for both male and female rats) with a reproductive no observed adverse effect level (NOAEL) of 2.5 mg/kg/day and with a parental NOAEL of 2.5 mg/kg/day based on; (i) no treatment-related clinical signs, significant body weight changes, parameters of fertility and gestation, or macro- or histopathological changes were observed for the parental F0 and F1 at all dose levels tested; (ii) in the F1 litters, a slight increased incidence of stillborn pups, unfolding of the ear, and slight reduced body weight development during lactation were observed in the 2.5 mg/kg/day dose level group; and (iii) in the F2 litters, no treatment-related effects were observed at all dose levels tested.

A developmental prenatal study was conducted via oral gavage in rats resulted in dosages of 0,2.5, 10, 40, and 160 highest dose tested (HDT) mg/kg/day from day 6 to 15 of gestation with a development toxicity NOAEL of 40 mg/kg/day and a maternal toxicity of 10 mg/kg/day based on the following: (i) signs of maternal toxicity, in the form of decreased body weights and/or clinical signs observed at dose levels > 40 mg/kg/day; (ii) maternal animals in the 160 mg/kg/day dose group showed an increased incidence of vaginal bleeding from day 10 to 19 of gestation and increased placental weight; (iii) maternal animals in the 160 mg/kg/day dose group showed an increase in the number of resorptions as compared to controls; (iv) decreases in fetal body weights and size and number of viable fetus were observed at the HDT; (v) a significant number of fetuses had a finding of cleft palate in the high dose group tested were observed; and (vi) litters from animals treated at the lower doses remained entirely unaffected.

A second developmental perinatal study was conducted via oral gavage in rats resulted in dosages of 0, 2.5, 10, 40, and 160 HDT mg/kg/day from day 15 to 21 of gestation with a development toxicity NOAEL of 40 mg/kg/day and a maternal toxicity of 40 mg/kg/day based on the following: (i) four animals died on days 1 to 6 after delivery; (ii) signs of maternal toxicity, in the form of decreased body weights and/or clinical signs observed at the top dose level; (iii) at birth, body weight was significantly reduced in the pups of the top dose group; (iv) the brood care at the top dose group animals was generally unsatisfactory and led to a high perinatal mortality of the fetuses with only 30 viable fetuses left on day 1 post partum, the dead fetuses showed no increased incidence of malformations; (v) the few surviving pups of the dams at the 160 mg/kg/day dose group showed decreases in fetal body weights and size was retarded, no disturbances were found in the functional and behavioral tests that were conducted on the surviving pups; (vi) at necropsy, all dams showed comparable number of implantations and the animals scarified as scheduled revealed no treatment-related changes and also the mean organ weights were similar in treated and untreated groups; and (vii) litters from animals treated at the lower doses remained entirely unaffected and no pathological findings were also noted in these pups.

A series of two developmental study, Study A dose levels were 0, 2.4, 12, 36, and 60 mg/kg/day and, Study B dose levels were 0, 7.5, 15, and 30 mg/kg/day were conducted via oral gavage in rabbits resulted in dosages of 0, 2.4, 7.5, 12, 15, 30, 36, and 60 HDT mg/kg/day with a development toxicity NOAEL of 15 mg/kg/day and a maternal toxicity of 15 mg/kg/day based on the following: (i) Severe clinical signs and/or mortality were observed at dose levels > 30 mg/kg/day; (ii) decreased body weight, food consumption, and absorption/premature delivery in the 36 and 60 mg/kg/day dose groups which survived to the end of the studies; (iii) fetal effects consisted of high number of dead fetuses and several gross malformations (pseudo ancylosis, syndactylia, micromelia, aplasia of the twelveth rib) at the HDT; and (iv) pseudo ancylosis was also seen in 1 fetus from the 12 mg/kg/day dose group and in 6 fetuses in the 36 mg/kg/day dose level, but this finding is known to occur spontaneously in rabbits of this strain used and the contractures usually normalize during early stages of life. Due to the severe effect at the high dose level (HDL), these effects may be considered to represent a specific teratogenic effect of the treatment.

4. *Chronic toxicity*. Based on review of the available data, BASF believes the Reference Dose (RfD) for fenpropimorph will be based on a 2-year feeding study in rats with a threshold NOAEL of 0.3 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.003 mg/kg/day. The following are summaries of the pertinent toxicity data supporting fenpropimorph tolerances. Additionally, these are summaries of EPA reviewed Phase III Toxicology Summaries prepared by BASF Corporation for EPA.

A 1 year feeding study in dogs fed dosages of 0, 0.8, 3.2, or 12.7 mg/kg/day with a NOAEL of 3.2 mg/kg/day based on the following effects: (i) no changes in body weights nor food consumption for both the high dose male and female dogs were observed at all tested dose levels as compared to controls; (ii) blood biochemistry values were slightly increased in high dose males (alkaline phosphatase) and females (alanine aminotransferase); (iii) the cholininesterase from plasma, red blood cells, and brain showed comparable activities in treated and untreated dogs; and (iv) neither organ weight analyses nor macro- and histopathological examinations demonstrated any treatment related effects as compared to controls.

A combined chronic feeding/oncogenicity study was performed in rats being fed dosages of 0, 0.2, 0.3, 1.7 and 8.8 mg/kg/day (males) and 0, 0.2, 0.4, 2.1, and 11.2 mg/kg/day (females) with a NOAEL of 0.3 mg/kg/day (males) and 0.4 mg/kg/day (females) based on the following effects: (i) decreased in body weights were observed in both males and female rat at dose levels > 1.7 mg/kg/day with a very slight progression of severity to the upper level; (ii) decreased food consumption in female rats at the HDT; (iii) significantly lower activities of plasma cholinesterase were noted in male and female rats in the HDT where as no effect was found for red blood cell cholinesterase values; (iv) at terminal sacrifice, reduced activities of brain cholinesterase were detected in males, only, at the 1.7 and 8.8 mg/kg/day dose levels groups tested; (v) increased liver weights for females at dose levels > 2.1 mg/kg/day and in males of the top dose group; (vi) microscopic findings were observed in the liver of male and female rats in the HDLs, only; and (vii) no increased incidence of neoplasms occurred at any dose levels tested in this study.

A carcinogenicity study in mice fed dosages of 0, 0.5, 3.0, 16, and 106 HDT mg/kg/day (males) and 0, 0.5, 3.5, 17, and 118 HDT mg/kg/day (females) with a NOAEL of 3.0 and 3.5 mg/kg/day for male and female mice, respectively, based on the following effects: (i) decreased body weights and slight inferior food conversion ratio were observed in both male and female mice at the HDT; (ii) decreased cholinesterase activities were observed in red blood cells for female mice in the 17 and 118 mg/kg/day dose level tested at terminal sacrifice; (iii) at the HDT increased liver weights were observed for female mice at terminal sacrifice and in males at interim sacrifice after 52 weeks; and (iv) no increased incidence of neoplasms occurred at any dose levels tested in this study.

5. *Endocrine disruption*. No specific tests have been performed with fenpropimorph to determine whether the chemical may have an effect in humans that is similar to an effect produced by naturally occurring estrogen or other endocrine effects. However, there are significant findings in other relevant toxicity studies, i.e. teratology and multi-generation reproductive studies, that would suggest fenpropimorph produces endocrine related effects.

C. Aggregate Exposure

Based on the information above it is concluded that the RfD used to assess safety to children should be 0.003 mg/kg/day dose level established in the 2-year rat oral feeding study. Using the assumption stated for the general population, BASF concluded that the most sensitive child population group is that of children > 1 year. Using the same RfD and the same conservative exposure assumptions employed in the dietary risk analysis for the general population. It was calculated that the exposure to this group to be approximately > 11% of the RfD for all uses proposed in this document. Therefore, based on the completeness and reliability of the toxicity data, and the exposure assessment discussed above, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of fenpropimorph, including all anticipated dietary exposure.

1. *Dietary exposure*. For the purpose of assessing the potential chronic dietary exposure, BASF has estimated aggregate exposure based on Theoretical Maximum Residue Contribution (TMRC) from the tolerance of fenpropimorph on bananas at 0.3 ppm the maximum residue found in bananas. The TMRC is a "worse case" estimate of dietary exposure since it is assumed that 100% of all crops for which the tolerances are established are treated and that pesticide residues are always found at tolerance levels. Based on the expected RfD of 0.003 mg/kg/day (from the NOAEL determined in the 2-year feeding study in rats and a 100 fold safety factor) and the tolerance level residue chronic dietary exposure of the general population is less than 2.5% of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the exposure assessment discussed above, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of fenpropimorph, including all anticipated dietary exposure.

2. *Food*. BASF has reviewed the available toxicology database to determine the endpoints of concern. For Fenpropimorph BASF believes there is no concern regarding an acute dietary risk since the available data do not indicate any evidence of significant toxicity from a 1-day or single, event exposure by the oral route.

3. *Drinking water/Non-dietary exposure*. There are no other potential sources (such as in drinking water and exposure from non-occupational sources) of exposure to fenpropimorph for the general population to residues of fenpropimorph due to the fact the action being requested is to establish an import tolerance, only.

4. *Threshold and non-threshold effects*. The proposed RfD for fenpropimorph is based on a 2-year feeding study in rats with a threshold NOAEL of 0.3 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.003 mg/kg/day. Fenpropimorph is considered not to be a carcinogenic material. Therefore, it should be regulated by the traditional RfD approach to quantify human risk.

D. Cumulative Effects

BASF has considered the potential for cumulative effects of fenpropimorph and other substances that have a common mechanism of toxicity. BASF is not aware of any other active ingredients which is structurally similar to fenpropimorph that are registered on bananas. Therefore, BASF has considered only the potential risks of fenpropimorph in its exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the exposure assumptions described above, based on the completeness and there liability of the toxicity data, BASF has estimated that aggregate exposure to fenpropimorph will utilize > 2.5% of the RfD for the U.S. population. EPA generally has no concern for exposure below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the exposure assessment discussed above, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of fenpropimorph, including all anticipated dietary exposure.

2. *Infants and children*. The findings in the rat and rabbit are most likely as a result of excessive maternal toxicity, treatment of pregnant rats and rabbits with fenpropimorph induced embryotoxic effects which manifested themselves in the form of early resorptions and structural anomalies in the offspring. In both the rat and rabbit, the dose-effect relationship was rather steep and showed clear threshold levels. At dose levels below the threshold of maternal toxicity, reproductive parameters as well as the offsprings remained entirely unaffected. This data demonstrates that the rat and rabbit are similarly sensitive to fenpropimorph. Additionally, the NOAEL of 0.3 mg/kg/day from the chronic rat study used to set the RfD is 33x to 50x lower than the maternal NOAELs established in the rat and rabbit teratology studies, respectively. The developmental effects observed in either the rat or rabbit occurred only at maternally toxic doses. Therefore, no additional safety factor is needed for children.

A 2-generation reproduction study with rats fed dosages of 0, 0.625, 1.25, and 2.5 mg/kg/day (average mg/kg/day dose levels for both male and female rats) with a reproductive NOAEL of 2.5 mg/kg/day and with a parental NOAEL of 2.5 mg/kg/day based on: (i) no treatment-related clinical signs, significant body weight changes, parameters of fertility and gestation, or macro-or histopathological changes were observed for the parental F0 and F1 at all dose levels tested; and (ii) in the F1 litters, a slight increased incidence of stillborn pups, unfolding of the ear, and slight reduced body weight development during lactation were observed in the 2.5 mg/kg/day doselevel group; (iii) in the F2 litters, no treatment-related effects were observed at all dose levels tested. As stated above, the NOAEL of 0.3 mg/kg/day from the chronic rat study used to set the RfD is approximately 8x lower than the maternal NOAEL established in the rat reproduction study. Therefore, no additional safety factor is needed for children.

F. International Tolerances

A maximum residue level has not been established under Codex Alimentarius Commission for fenpropimorph in any of the crops petitioned: bananas.

2. Rohm and Haas Company

PP 1F3995, 1F3989 and 2F4154

EPA has received data intended to satisfy the conditions which caused time-limits to be placed on the tolerances proposed by the three pesticide petitions PP 1F3995, 1F3989, and 2F4154 from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending until December 31, 2001 the time-limited tolerances for residues of fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) in or on the raw agricultural commodities bananas at 0.3 parts per million (ppm), banana pulp at 0.05 ppm, stone fruits (except plums and prunes) at 2.0 ppm, and pecans at 0.1 ppm. EPA has determined that the submissions concern the additional data requirements as elements set forth in section 408(f)(1) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time.

A summary of the data that support the tolerances, and of exposure to and risks from the use of fenbuconazole, is printed below. This summary of the petitions was prepared by the registrant and represents the views of the registrant. EPA is publishing the petition summary with only minor editing changes. The petition summary includes an announcement of the availability of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues.

A. Residue Chemistry

The tolerance expression for fenbuconazole residues in or on bananas, banana pulp, pecans, and stone fruit (except plums and prunes) is the combined residues of fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) and its metabolites cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone and trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3H-furanone. Residues of these compounds are combined and expressed as parent compound to determine the total residue in or on bananas, banana pulp, pecans, and stone fruit (except plums and prunes). No changes in the tolerances of fenbuconazole or in the tolerance expression (parent plus lactone metabolites) for pecans, bananas, or stone fruit from that indicated in 40 CFR 180.480 will be necessary for the tolerance extensions. Current tolerances for fenbuconazole are 0.3 ppm for banana whole fruit, 0.05 ppm for banana pulp, 0.1 ppm for pecans, and 2.0 ppm for the stone fruit crop group (except plums and prunes). There is also a current time-limited (Section 18) tolerance for fenbuconazole on blueberries of 1.0 ppm.

1. *Analytical method.* Fenbuconazole residues (parent plus lactones) are measured in pecans, stone fruit, and bananas at an analytical sensitivity of 0.01 milligrams/kilogram (mg/kg) by soxhlet extraction of samples in methanol, partitioning into methylene chloride, redissolving in toluene, clean up on silica gel, and gas liquid chromatography using nitrogen specific thermionic detection.

2. *Magnitude of residues*—i. *Pecans.* Four field trials were conducted in pecans. Eight to ten applications were made at the maximum use rate of 0.125 lb a.i./A, and nuts were harvested 28 days after the last application. Field residue values in nutmeat for the four trials were 0.004, 0.004, <0.01, and <0.01 ppm.

ii. *Bananas.* Fourteen field trials were conducted on pulp from bagged bananas, and nine field trials were conducted on whole fruit from bagged bananas. Bagged bananas are typically used in commerce. Eight applications (5 and 7 applications in two trials) were made at the maximum use rate of 0.09 lb a.i./A and bananas were harvested on the last day of application. The highest field residue values were 0.019 ppm in pulp and 0.0589 ppm in whole fruit. The average field residue values were 0.004 ppm in pulp and 0.010 ppm in whole fruit.

iii. *Stone fruit*—a. *Peaches.* Ten field trials were conducted on peaches. Seven to ten applications were made at the maximum use rate of 0.1 lb a.i./A and fruit were harvested on the last day of application. The highest field residue value was 0.5096 ppm, and the average field residue value was 0.351 ppm.

b. *Cherries.* Eleven field trials were conducted on cherries. Five to six applications were made at the maximum use rate of 0.1 lb a.i./A and fruit were harvested on the last day of application. The highest field residue value was 0.641 ppm, and the average field residue value was 0.434 ppm.

c. *Apricots.* Two field trials were conducted on apricots. Six applications were made at the maximum use rate of 0.125 lb a.i./A and fruit was harvested on the last day of application. The field residue values in four samples measured were 0.168, 0.226, 0.268, and 0.279 ppm.

B. Toxicological Profile

The toxicology of fenbuconazole is summarized in the following sections. There is no evidence to suggest that human infants and children will be more sensitive than adults, that fenbuconazole will modulate human endocrine systems at anticipated dietary exposures, or cause cancer in humans at the dietary exposures anticipated for this fungicide. While the biochemical target for the fungicidal activity of members of the DMI class is shared, it cannot be concluded that the mode of action of fenbuconazole which produces phytotoxic effects in plants or toxic effects in animals is also common to a single class of chemicals.

1. *Acute toxicity.* Fenbuconazole is practically nontoxic after administration by the oral, dermal andrespiratory routes. The acute oral LD_{50} in mice and rats is >2,000 mg/kg. The acute dermal LD_{50} in rats is >5,000 mg/kg. Fenbuconazole was not significantly toxic to rats after a 4 hour inhalation exposure, with an LD_{50} value of > 2.1 mg/L. Fenbuconazole is classified as not irritating to skin (Draize score = 0), in consequentially irritating to the eyes (mean irritation score= 0), and it is not a sensitizer. No evidence exists regarding differential sensitivity of children and adults to acute exposure.

2. *Genotoxicity.* Fenbuconazole has been adequately tested in a variety of *in vitro* and *in vivo* mutagenicity tests. It is negative in the Ames test, negative in *in vitro* and *in vivo* somatic and germcell tests, and did not induce unscheduled in DNA synthesis (UDS). Fenbuconazole is not genotoxic.

3. *Reproductive and developmental toxicity.* These conclusions were extracted from 60 FR 27419, May 24, 1995. Fenbuconazole is not teratogenic. The maternal no observed adverse effect level (NOAEL) in rabbits was 10 mg/kg/day and 30 mg/kg/day in rats. The fetal NOAEL was 30 mg/kg/day in both species. The parental NOAEL was 4.0 mg/kg/day (80 ppm) in a 2-generation reproduction study in rats. The reproductive NOAEL in this study was greater than 40.0 mg/kg/day (800 ppm; highest dose tested (HDT)). Fenbuconazole had no effect on male reproductive organs or reproductive performance at any dose. The adult lowest observed adverse effect level (LOAEL) was 40.0 mg/kg/day (800 ppm; HDT). Systemic effects of decreased body weight gain; maternal deaths; and hepatocellular, adrenal, and thyroid follicular cell hypertrophy were observed. No effects on neonatal survival or growth occurred below the adult toxic levels. Fenbuconazole does not produce birth defects and is not toxic to the developing fetus at doses below those which are toxic to the mother.

4. *Subchronic toxicity.* In a 21 day dermal toxicity study in the rat, the NOAEL was greater than 1,000 mg/kg/day, with no effects seen at this limit dose.

5. *Chronic toxicity.* In 2 year combined chronic toxicity/ oncogenicity studies in rats, the NOAEL was 80 ppm (3.03 mg/kg/day for males and 4.02 mg/kg/day for females) based on decreased body weight, and liver and thyroid hypertrophy. In a 1 year chronic toxicity study in dogs, the NOAEL was 150 ppm (3.75 mg/kg/day) based on decreased body weight, and increased liver weight. The LOAEL was 1,200 ppm (30 mg/kg/day). In a 78 week oncogenicity study in mice, the NOAEL was 10 ppm (1.43 mg/kg/day). The LOAEL was 200 ppm (26.3 mg/kg/day, males) and 650 ppm (104.6mg/kg/day, females) based on increased liver weights and histopathological effects on the liver. These effects were consistent with chronic enzyme induction from high dose dietary exposure.

A Reference Dose (RfD) for systemic effects at 0.03 mg/kg/day was established by EPA in 1995 based on the NOAEL of 3.0 mg/kg/day from the rat chronic study. This RfD adequately protects both adults and children.

Twenty-four month rat chronic feeding/carcinogenicity studies with fenbuconazole showed effects at 800 and 1,600 ppm. Fenbuconazole produced a minimal, but statistically significant increase in the incidence of combined thyroid follicular cell benign and malignant tumors. These findings occurred only in male rats following life-time ingestion of very high levels (800 and 1,600 ppm in the diet) fenbuconazole. Ancillary mode-of-action studies demonstrated that the increased incidence of thyroid tumors was secondary to increased liver metabolism and biliary excretion of thyroid hormone in the rat. This mode of action is a nonlinear phenomenon in that thyroid tumors occur only at high doses where there is an increase in liver mass and metabolic capacity of the liver. At lower doses of fenbuconazole in rats, the liver is unaffected and there is no occurrence of the secondary thyroid tumors. Worst-case estimates of dietary intake of fenbuconazole in human adults and children indicate effects on the liver or thyroid, including thyroid tumors, will not occur, and there is a reasonable certainty of no harm.

In support of the findings above, EPA's Science Advisory Board has approved a final thyroid tumor policy, confirming that it is reasonable to regulate chemicals on the basis that there exists a threshold level for thyroid tumor formation, conditional upon providing plausible evidence that a secondary mode of action is operative. This decision supports a widely-held and internationally respected scientific position.

In a 78 week oncogenicity study in mice there was no statistically significant increase of any tumor type in males. There were no liver tumors in the control females and liver tumor incidences in treated females just exceeded the historical control range. However, there was a statistically significant increase in combined liver adenomas and carcinomas in females at the high dose only (1,300 ppm; 208.8 mg/kg/day). In ancillary mode-of-action studies in female mice, the increased tumor incidence was associated with changes in several parameters in mouse liver following high doses of fenbuconazole including: an increase in P450 enzymes (predominately of the CYP 2B type), an increase in cell proliferation, an increase in hepatocyte hypertrophy, and an increase in liver mass (or weight). Changes in these liver parameters as well as the occurrence of the low incidence of liver tumors were nonlinear with respect to dose (i.e., were observed only at high dietary doses of fenbuconazole). Similar findings have been shown with several pharmaceuticals, including phenobarbital, which is not carcinogenic in man. The nonlinear relationship observed with respect to liver changes (including the low incidence of tumors) and dose in the mouse indicates that these findings should be carefully considered in deciding the relevance of high-dose animal tumors to human dietary exposure.

The Carcinogenicity Peer Review Committee (PRC) of the Health Effects Division (HED) classified fenbuconazole as a Group C tumorigen (possible human carcinogen with limited evidence of carcinogenicity in animals). The PRC used a low-dose extrapolation model. The Q_1^* risk factor applied (1.06×10^{-2} $(mg/kg/day)^{-1}$) was based on the rat oncogenicity study and surface area was estimated by $(body\ weight)^{3/4}$.

Since the PRC published the above estimate they have agreed that low-dose extrapolation for fenbuconazole, based on rat thyroid tumors, is inappropriate given the EPA's policy regarding thyroid tumors and the data which exist for fenbuconazole. The PRC agrees that the more appropriate data set for the low-dose extrapolation and risk factor estimate is the mouse. From these data a Q_1^* of ($0.36 \times 10^{-2}$$(mg/kg/day)^{-1}$) is calculated when surface area is estimated by $(bodyweight)^{3/4}$. All estimates of dietary oncogenic risk are based on this risk factor.

Since fenbuconazole will not leach into groundwater (see below) there is no increased cancer risk from this source. Neither is fenbuconazole registered for residential use, so there is no risk from non-occupational residential exposure either. All estimates of excess risk to cancer are from dietary sources.

6. *Endocrine disruption*. The mammalian endocrine system includes estrogen and androgens as well as several other hormone systems. Fenbuconazole does not interfere with the reproductive hormones. Thus, fenbuconazole is not estrogenic or androgenic.

While fenbuconazole interferes with thyroid hormones in rats by increasing thyroid hormone excretion, it does so only secondarily and only above those dietary levels which induce metabolism in the liver. These effects are reversible in rats, and humans are far less sensitive to these effects than rats. The RfD protects against liver induction because it is substantially below the animal NOAEL. As noted previously, maximal human exposures are far below the RfD level, and effects on human thyroid will not occur at anticipated dietary levels.

We know of no instances of proven or alleged adverse reproductive or developmental effects to domestic animals or wildlife as a result of exposure to fenbuconazole or its residues. In fact, no effects should be seen because fenbuconazole has low octanol/water partition coefficients and is known not to bioaccumulate. Fenbuconazole is excreted within 48 hours after dosing in mammalian studies.

C. Aggregate Exposure and Risk

1. *Dietary exposure—Chronic exposure and risk*. Risk associated with chronic dietary exposure from fenbuconazole was assessed on two level using two dietary exposure models. In the first assessment, tolerance level residues were assumed and in the second assessment average field trial residues were used. Both assessments assumed 100% of crop treated, except for stone fruit in which 12.8% of crop treated was assumed 63 FR 31636, June 10, 1998, (FRL 5791-9). Residues in pulp from bagged bananas were used in the assessments, since only bagged bananas are used in commerce. The Anticipated Residue Contribution (ARC) from all existing food uses of fenbuconazole was assessed; these foods included stone fruit (except plums, and prunes), bananas, pecans, and blueberries).

The RfD used for the chronic dietary analysis is 0.03 mg/kg/day. Potential chronic exposures were estimated using NOVIGEN's Dietary Exposure Evaluation Model (DEEM Version 5.31), which uses USDA food consumption data from the 1989-1992 survey, and the EPA's Dietary Risk Evaluation System (DRES), which uses USDA food consumption data from 1977-1978. The existing fenbuconazole tolerances and average fenbuconazole residues result in ARCs that are equivalent to the following percentages of the RfD.:

Population Subgroup	DEEM[1] %RfD	DEEM[2] %RfD	DRES[1] %RfD	DRES[2] %RfD
U. S. Population (48 States)	0.2%	<0.01%	0.31%	0.06%
Nursing Infants (<1 year old)	0.4%	0.1%	1.47%	0.27%
Non-Nursing Infants (<1year old)	1.3%	0.2%	2.46%	0.45%

Population Subgroup	DEEM[1] %RfD	DEEM[2] %RfD	DRES[1] %RfD	DRES[2] %RfD
Children (1-6 years old)	0.5%	0.1%	0.74%	0.14%
Children (7-12 years old)	0.3%	<0.01%	0.44%	0.08%
Females (13+/nursing)	0.3%	<0.01%	0.28%	0.05%

[1] Assumes residues are present at tolerance levels and 100% of crop treated except stone fruit (12.8% of crop treated).

[2] Assumes residues are present at their average field residue levels and 100% of crop treated except stone fruit (12.8% of crop treated).

D. Aggregate Cancer Risk for U.S. Population

Fenbuconazole has been classified as a Group C Carcinogen with a Q_1^* value of 0.00359 $mg/kg/day^{-1}$. Assuming fenbuconazole residues are present at tolerance levels and assuming 100% crop treated, except stone fruit (12.8% of crop treated assumed), give a cancer risk assessment for existing food uses for the U.S. population of 3.31×10^{-7} for the DRES and DEEM analyses, respectively. Assuming fenbuconazole residues are present at average field residue levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed), gives a cancer risk assessment for existing food uses for the U.S. population of 6.34×10^{-8} and 4.94×10^{-8} for the DRES and DEEM analyses, respectively.

The individual crop cancer risk assessments for bananas, stone fruit, pecans, and blueberries were 4.11×10^{-8}, 2.78×10^{-7}, 1.73×10^{-9}, and 9.74×10^{-9}, respectively (DRES analysis), and were 5.11×10^{-8}, 1.67×10^{-7}, 7.37×10^{-10}, and 1.38×10^{-8}, respectively (DEEM analysis).

1. *Drinking water*. Fenbuconazole has minimal tendency to contaminate groundwater or drinking water because of its adsorptive properties on soil, solubility in water, and degradation rate. Data from laboratory studies and field dissipation studies have been used in the USDA PRZM/GLEAMS computer model to predict the movement of fenbuconazole. The model predicts that fenbuconazole will not leach into groundwater, even if heavy rainfall is simulated. The modeling predictions are consistent with the data from environmental studies in the laboratory and the results of actual field dissipation studies. There are no data on passage of fenbuconazole through water treatment facilities and there are no State water monitoring programs which target fenbuconazole.

2. *Non-dietary exposure*. Fenbuconazole has no veterinary applications and is not approved for use in swimming pools. It is not labeled for application to residential lawns or for use on ornamentals, nor is fenbuconazole applied to golf courses or other recreational areas. Therefore, there are no data to suggest that these exposures could occur. Any acute exposures to children would come from dietary exposure or inadvertent dermal contact . As previously discussed, fenbuconazole is neither orally or dermally acutely toxic. Thus, there is a reasonable certainty that no exposure would occur to adults, infants or children from these sources.

E. Cumulative Effects

The toxicological effects of fenbuconazole are related to its effects on rodent liver. These are manifested in rats and mice differently. Fenbuconazole causes liver toxicity in rats and mice in the form of hepatocyte enlargement and enzyme induction. In rats the liver enzyme induction causes increased biliary removal of thyroxin and the hepatotoxicity leads to elevated thyroid stimulating hormone levels with subsequent development of thyroid gland hyperplasia and tumors. This process is reversible and demonstrates a dose level below which no thyroid gland stimulation can be demonstrated in rats. Liver toxicity in the mouse is manifest by hepatocyte enlargement, enzyme induction, and hepatocellular hyperplasia (cell proliferation). These processes are associated with the appearance of a small number of liver tumors. In both cases, rats and mice, the initiating event(s) do not occur below a given dose, i.e., the effects are nonlinear, and the processes are reversible. Therefore, since the tumors do not occur at doses below which hepatocyte enlargement and enzyme induction occur, the RfD protects against tumors because it is substantially below the NOAEL for liver effects and maximal human exposures are below the RfD. Effects on human thyroid will not occur at anticipated dietary levels. The mode of action data should be carefully considered in deciding the relevance of these high-dose animal tumors to human dietary exposure.

Extensive data are available on the biochemical mode of action by which fenbuconazole produces animal tumors in both rats and mice. However, there are no data which suggest that the mode of action by which fenbuconazole produces these animal tumors or any other toxicological effect is common to all fungicides of this class. In fact, the closest structural analog to fenbuconazole among registered fungicides of this class is not tumorigenic in animals even at maximally tolerated doses and has a different spectrum of toxicological effects.

F. Safety Determination.

1. *All crops (current food uses)*. The exposure to fenbuconazole from all current food uses will utilize 1.3% (non-nursing infants < 1 year old) and 0.4% (nursing infants < 1 year old) of the RfD (DEEM analysis), and will utilize 2.46% (non-nursing infants < 1 year old) and 1.47% (nursing infants < 1 year old) of the RfD (DRES analysis), assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed). The percent of the RfD that will be utilized by children 1-6 years old and 7-12 years old is 0.5 and 0.3%, respectively (DEEM analysis), and 0.74 and 0.44%, respectively (DRES analysis), assuming residues are present at tolerance levels and assuming 100% crop treated, except stone fruit.

2. *Stone Fruit (except plums and prunes)*. The exposure to fenbuconazole from stone fruit (excluding plums and prunes) will utilize 1.1% of the RfD for non-nursing infants < 1 year old, 0.3% of the RfD for nursing infants < 1 year old, 0.4% of the RfD for children 1-6 years old, and 0.2% of the RfD for children 7-12 years old (DEEM analysis) assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed).

3. *Bananas*. The exposure to fenbuconazole from bananas will utilize 0.2% of the RfD for non-nursing infants < 1 year old, 0.1% of the RfD for nursing infants < 1 year old, 0.1% of the RfD for children 1-6 years old, and 0.1% of the RfD for children 7-12 years old (DEEM analysis) assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed).

4. *Pecans*. The exposure to fenbuconazole from pecans will utilize

<0.01% of the RfD for each of the population subgroups: non-nursing infants < 1 year old, nursing infants < 1 year old, children 1-6 years old, and children 7-12 years old (DEEM analysis) assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed).

5. *Blueberries.* The exposure to fenbuconazole from blueberries, will utilize < 0.01% of the RfD for each of the population subgroups, non-nursing infants < 1 year old, nursing infants < 1 year old, children 1-6 years old, and children 7-12 years old (DEEM analysis) assuming residues are present at tolerance levels and assuming 100% of crop treated, except stone fruit (12.8% of crop treated assumed).

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOAEL in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/MOE exposure (safety) is designed to account for combined inter- and intra-species variability. EPA believes that reliable data support using the standard hundredfold margin/factor but not the additional tenfold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor.

The Agency FQPA Safety Factor Committee removed the additional 10x safety factor to account for sensitivity of infants and children. Rohm and Haas Company concludes that there is a reasonable certainty that no harm will result from exposure to fenbuconazole residues to the U.S. population or to infants and children.

G. International Tolerances

There are no Codex maximum residue limits (MRLs) for fenbuconazole, but the fenbuconazole database was evaluated by the WHO and FAO Expert Panels at the Joint Meeting on Pesticide Residues (JMPR) in September, 1997. An ADI (RfD) of 0.03 mg/kg/day was proposed and accepted (Pesticide Residues in Food—WHO/FAO Report 1997; No. 145), and a total of 36 Codex MRLs, including MRLs for pecans, stone fruit, and bananas, have been submitted for review.

[FR Doc. 98–32426 Filed 12–4–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 95–155]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Notice; letter.

SUMMARY: The Network Services Division, Common Carrier Bureau, has issued a letter stating that 145 RespOrgs failed to report to Database Service Management, Inc., as required, that they gave notice to all of their subscribers having right of first refusal for set-aside 888 numbers. By December 11, 1998, these RespOrgs must explain why they failed to comply with this requirement and must describe their actions to remedy their non-compliance. RespOrgs that fail to submit explanations or that fail to provide satisfactory explanations will be subject to possible forfeiture penalties, decertification as RespOrgs, or fines, imprisonment, or both.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer 202–418–2334.

SUPPLEMENTARY INFORMATION: The Bureau's letter is attached.

Federal Communications Commission.

Anna M. Gomez,

Chief, Network Services Division, Common Carrier Bureau.

Attachment

November 24, 1998.

Mr. Michael Wade
President, Database Service Management, Inc.
6 Corporate Place
Room PYA—1F286
Piscataway, NJ 08854–4157

Re: RespOrg non-compliance with the set-aside 888 number right-of-first-refusal process—Requirement for specified RespOrgs to submit letters of explanation by December 11, 1998

Dear Mr. Wade: The Bureau's letter to you dated April 15, 1998, initiated the process for subscribers to exercise their right of first refusal to request 888 numbers that had been set aside for them. It required RespOrgs to give notice of this right to their subscribers. Further, among other things, it required RespOrgs, for each set-aside 888 number, to submit to DSMI either the subscriber's request to accept or reject an 888 set-aside number, with documentation, or certification that the subscriber did not respond to the notice.

The Bureau's letter to you dated May 15, 1998, extended to August 21, 1998, the time for RespOrgs to give the required notice to their subscribers, although it provided that requests received from subscribers after that date must still be processed. It also explained that the certification that RespOrgs were required to provide for subscribers who did not respond must include contact information containing the subscriber's name, address, and phone number, as well as the date and means by which the RespOrg notified the subscriber.

The attachment to this letter summarizes the RespOrgs' compliance with this process, using information provided by your staff in response to the Bureau's request. For each of 179 RespOrgs, the attachment shows the total percentage of requests and certifications of no response reported to DSMI as of October 5, 1998, based on the RespOrg's initial count of set-aside 888 numbers as of July 1998. It indicates that only 34 RespOrgs reported subscriber notification results for all of their set-aside 888 numbers (100%). Of the remaining 145 RespOrgs, 93 reported results for some but not all of their set-aside 888 numbers (0.1% to 99.7%), and 52 did not report any results for their set-aside 888 numbers (0%).

The Commission is concerned that a RespOrg's failure to report that it gave notice to each of its set-aside 888 number subscribers may indicate that the RespOrg is operating in defiance of Commission orders, that it is warehousing set-aside 888 numbers or the corresponding 800 numbers, or that it has falsely indicated that it has identified subscribers for those numbers. The Commission stated last year that it may penalize RespOrgs that warehouse toll free numbers, by imposing forfeiture penalties on them or referring them to the Department of Justice to determine whether a fine, imprisonment, or both are warranted, or may decertify them as RespOrgs. It also stated that RespOrgs that falsely indicate they have identified subscribers for particular numbers may be criminally liable for false statements under Title 18 of the United States Code. The Commission stated as follows:

"We conclude that the Commission's exclusive jurisdiction over the portions of the North American Numbering Plan that pertain to the United States, found at section 251(e)(1) of the Communications Act, as amended, authorizes the Commission to penalize RespOrgs that warehouse toll free numbers. We may impose a forfeiture penalty under section 503(b). In addition, if a person violates a provision of the Communications Act or a rule or regulation issued by the Commission under authority of the Communications Act, the Commission can refer the matter to the Department of Justice to determine whether a fine, imprisonment, or both are warranted under section 501 or section 502 of the Communications Act. We also may limit any RespOrg's allocation of toll free numbers or possibly decertify it as

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a RespOrg under section 251(e)(1) or section 4(i). In addition, RespOrgs that falsely indicate that they have identified subscribers for particular numbers may be liable for false statements under Title 18 of the United States Code. . . ." (footnotes omitted).

Toll Free Service Access Codes, *Second Report and Order and Further Notice of Proposed Rulemaking,* CC Docket No. 95–155, 12 F.C.C. Rcd. 11162 (1997).

In light of the above enforcement policy, the Bureau in this letter directs DSMI to forward a copy of this letter, with the attachment, to all RespOrgs. With this letter, the Bureau directs all RespOrgs that have reported less than 100% subscriber results to submit a letter to the Commission's Common Carrier Bureau, Network Services Division, by December 11, 1998, explaining why the process required by the Bureau was not completed as directed. Such RespOrgs must also describe any action they have taken or are now taking to remedy this apparent non-compliance with their legal obligations. The names of RespOrgs that fail to provide satisfactory explanation in their letters or that fail to submit letters altogether will be referred to the Bureau's Enforcement Division for action in accord with the Commission's enforcement policy.

Sincerely,

Anna M. Gomez,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–32458 Filed 12–4–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS NOTICE: 63 FR 65209, November 25, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, December 2, 1998.

CHANGE IN THE MEETING: The following topic was added to the open portion of the meeting:

- Federal Home Loan Bank Presidents' 1999 Base Salary Caps.

The Board determined that agency business required its consideration of this matter on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–32523 Filed 12–3–98; 1:01 pm]

BILLING CODE 6725–01–P

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities: Request for Comments on a New Information Collection Activity in Support of the Access Certificates for Electronic Certificates (ACES) Program

AGENCY: Federal Technology Service, GSA.

ACTION: Notice of request for approval of a new information collection entitled Access Certificates for Electronic Services (ACES).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Technology Service (FTS) is publishing a summary of a proposed new information collection activity for public and agency comment. The proposed information collection activity is designed to support a new FTS program entitled Access Certificates for Electronic Services (ACES). The ACES Program is intended to facilitate and promote secure electronic communications between on-line automated information technology application systems authorized by law to participate in the ACES Program and users who elect to participate in the program, through the implementation and operation of digital signature certificate technologies. Individual digital signature certificates will be issued at no cost to individuals based upon their presentation of verifiable proof of identity to an authorized ACES Registration Authority. Business Representative digital signature certificates will be issued to individuals based upon their presentation of verifiable proof of identity and verifiable proof of authority from the claimed entity to an authorized ACES Registration Authority. If authorized by law, a fee may be charged for issuance of a Business Representative certificate.

DATES: Submit comments on or before February 5, 1999.

ADDRESSES: Address all comments concerning this notice to Stanley Choffrey, General Services Administration, Federal Technology Service, Office of Information Security, Room 5060, 7th and D Streets, SW., Washington, DC 20407, or e-mail to stanley.choffrey@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Stanley Choffrey, General Services Administration, Federal Technology Service, Office of Information Security at (202) 708–7943, or by e-mail to stanley.choffrey@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this notice is to consult with and solicit comments from the public and affected agencies concerning the proposed collection of information under the ACES Program in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of GSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond.

Comments relating to any additional aspects and features of the ACES Program are also welcomed, and will be carefully considered.

B. Annual Reporting Burden

Respondents: 1,000,000; *annual responses:* 1,000,000; *average hours per response:* .15; *burden hours:* 250,000.

Copy of Proposal

A copy of this proposal may be obtained by contacting Stanley Choffrey at the above address.

Dated: November 30, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–32381 Filed 12–4–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment Concerning the Impact of the Adoption and Safe Families Act of 1997 on Adjudicated Juvenile Delinquents Whose Foster Care Placements are Funded Through Title IV–E of the Social Security Act

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of request for public comment.

SUMMARY: The Children's Bureau, in the Administration on Children, Youth and Families, administers the title IV–E

foster care maintenance program which provides funds to States to assist them in meeting the needs of certain children who are removed from their homes and placed in foster care. Federal financial participation (FFP) is available for a portion of the costs States incur in their placement and care responsibilities for title IV–E eligible children. The Children's Bureau plans to issue guidance clarifying policy and regulations for the foster care maintenance program with respect to children who have been adjudicated delinquent. We think it is critical that we receive input from a wide variety of sources and perspectives prior to issuing any guidance. On July 28, 1998, Federal staff attended the National Juvenile Justice Roundtable on the Adoption and Safe Families Act of 1997 (ASFA) in Arlington, Texas to begin the consultation process for identifying and clarifying the issues related to applying the ASFA to children who are adjudicated delinquent. This notice invites public comment on issues and concerns which have been identified in the course of examining the ASFA and its implications for title IV–E eligible children who have been adjudicated delinquent. These comments will assist the Children's Bureau in clarifying the policy and regulatory framework within which title IV–E operates and is administered.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 6, 1999.

ADDRESSES: Mail written comments (in duplicate) to Kathy McHugh, Director, Division of Policy, Children's Bureau, 330 C St., SW., Washington, DC 20447. Respondents may also provide comments electronically at kmchugh@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Joe Bock, Child Welfare Program Specialist, Children's Bureau, 330 C St., SW., Washington, DC 20447; (202) 205–9632. jbock@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION: Congress authorized the title IV–E program with the intent that it would benefit children who were subjected to abuse and/or neglect in their homes. Some children who have been adjudicated delinquent, however, are appropriately served by the title IV–E program, as well. Specifically, those children who meet the title IV–E eligibility criteria and who present with child protection and/or dependency issues, in addition to their delinquent status, may be eligible for title IV–E foster care. States must meet all title IV–B and IV–E program and/or eligibility requirements with respect to children who are adjudicated delinquent, including the case plan and case review protections afforded them at sections 422(b)(10) and 471(a)(16) of the Social Security Act (the Act).

Eligibility of the Child

States have been challenged in their attempts to meet the title IV–B and IV–E requirements within a juvenile justice framework. Particularly challenging for States are the statutory eligibility requirements for a State to obtain judicial determinations to the effect that:

- Remaining at home is contrary to a child's welfare;
- The State agency (or the juvenile justice agency with an agreement that is in effect between it and the State child welfare agency) has made reasonable efforts to prevent the child's removal;
- The State agency (or the juvenile justice agency with an agreement that is in effect between it and the State child welfare agency) has made reasonable efforts to reunify the child and family; and
- The State agency (or the juvenile justice agency with an agreement that is in effect between it and the State child welfare agency) has made reasonable efforts to make and finalize an alternate permanent placement if the child is not able to return home.

Yet, these judicial determinations embody the critical protections that Congress requires with respect to children who are title IV–E eligible and differentiate between the adjudicated delinquents who are appropriately served through the title IV–E program and those who are not.

Eligibility of the Facility

States have also experienced difficulty in meeting title IV–E requirements in a juvenile justice framework with respect to claiming reimbursement for foster care maintenance payments.

The statute, at section 472(c)(2), specifically excludes ". . . detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent . . ." from the definition of "child-care institution," thereby prohibiting the expenditure of title IV–E funds for children placed in such facilities. Some States are inappropriately claiming title IV–E reimbursement for children placed in facilities that are not child-care institutions as defined at section 472(c)(2) of the Act and are, therefore, ineligible facilities.

On November 19, 1997, the President signed into law the Adoption and Safe Families Act of 1997, Public Law 105–89. The ASFA emphasizes and seeks to strengthen the original goals of Public Law 96–272: safety; permanency; and child and family well-being. It does so, in part, by emphasizing individual parental responsibility and State accountability for moving children to permanency in a timely manner through accelerated statutory time frames for meeting certain case review system requirements. These shorter time frames will increase the challenges to States in meeting title IV–B and IV–E requirements for the juvenile justice population.

The challenges presented in the ASFA have compelled us to review our policies regarding the application of title IV–B and IV–E program and/or eligibility requirements for children who are adjudicated delinquent. We request comments that address issues stemming from the following:

(1) The requirements to:

- Obtain judicial determinations regarding contrary to the welfare (section 472(a)(1) of the Act) and reasonable efforts (required at section 472(a)(1) and defined at section 471(a)(15) of the Act); and,
- Develop case plans, hold six-month administrative reviews, hold permanency hearings, and comply with the requirement to file a petition to terminate parental rights when a child has been in foster care for 15 out of the most recent 22 months (required at sections 422(b)(10) and 471(a)(16) of the Act and defined at sections 475(1), (5), and (6) of the Act);

(2) The requirements for ensuring children's safety, both in their homes and in foster care;

(3) The requirements for expediting permanency;

(4) Setting parameters for and defining appropriate child-care facilities, from a title IV–E perspective, in which children who are adjudicated delinquent may be placed; and

(5) The types of technical assistance States will need to implement the ASFA for the juvenile justice population.

Dated: November 20, 1998.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–32388 Filed 12–4–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General and Health Care Financing Administration

Solicitation of Comments on the OIG/HCFA Special Advisory Bulletin on the Patient Anti-Dumping Statute

AGENCY: Office of Inspector General (OIG) and Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Proposed Special Advisory Bulletin.

SUMMARY: This **Federal Register** notice seeks the input and comments of interested parties on a Special Advisory Bulletin being developed by the OIG and HCFA designed to address requirements of the patient anti-dumping statute and the obligations of hospitals to screen all patients seeking emergency services and provide stabilizing medical treatment to enrollees of managed care plans if their condition warrants it. In developing this proposed issuance and soliciting public comment, it is our goal to provide clear and meaningful advice with regard to the application of the anti-dumping provisions, and ensure greater public awareness of the hospitals' obligations in providing emergency medical services to those individuals insured by managed care plans.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on January 6, 1999.

ADDRESSES: Please mail or deliver your written comments and recommendations to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–33–SFA, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–33–SFA. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION: In an effort to identify and eliminate fraud, waste and abuse in the Department's health care programs, the OIG periodically develops and issues Special Fraud Alerts and, with the cooperation of HCFA, Advisory Bulletins to alert health care providers and program beneficiaries about potential problems. This proposed bulletin is being developed by the OIG and HCFA to address the principal requirements of the patient anti-dumping statute (section 1867 of the Social Security Act) and to discuss how the requirements of that statutory provision apply to individuals insured by managed care plans that require "prior authorization" for emergency services. We have attempted to conform this proposed bulletin with policies set forth in the HCFA State Operations Manual on Provider Certification (Transmittal No. 2, May 1998) which provides guidelines and investigative procedures for reviewing the responsibilities of Medicare participating hospitals.

Section 1867 of the Act imposes specific obligations on Medicare-participating hospitals that offer emergency services with respect to individuals coming to the hospital and seeking treatment of possible emergency medical conditions. Specifically, the draft Special Advisory Bulletin proposes to address: (1) The obligations of these hospitals in providing screening to all patients seeking emergency services and stabilizing emergency treatment to individuals seeking such care; (2) the special concerns in the provision of emergency services to enrollees of managed care plans; (3) the rules governing Medicare and Medicaid managed care plans with respect to prior authorization requirements and payment for emergency services; and (4) what types of practices will serve to promote compliance by hospitals with the patient anti-dumping statute when managed care enrollees seek emergency services. We would appreciate receiving specific comments, recommendations and suggestions on the issues discussed in this proposed bulletin.

Set forth below for comment is the proposed OIG/HCFA Special Advisory Bulletin addressing the patient dumping statute.

OBLIGATIONS OF HOSPITALS TO RENDER EMERGENCY CARE TO ENROLLEES OF MANAGED CARE PLANS

What Are the Obligations of Medicare-Participating Hospitals That Offer Emergency Services to Individuals Seeking Such Services?

- The anti-dumping statute (section 1867 of the Social Security Act; 42 U.S.C. 1395dd) sets forth the Federally-mandated responsibilities of Medicare-participating hospitals to individuals with potential emergency medical conditions.
- Under the anti-dumping statute, a hospital must provide to any person who comes seeking emergency services an appropriate medical screening examination sufficient to determine whether he or she has an emergency medical condition, as defined by statute. When appropriate, ancillary services routinely available at the hospital must be provided as part of the medical screening examination.
- If the person is determined to have an emergency medical condition, the hospital is required to stabilize the medical condition of the individual, within the staff and facilities available at the hospital, prior to discharge or transfer.
- If the patient's medical condition cannot be stabilized before a transfer requested by the patient (or determined to be in the patient's best interest by the responsible medical personnel), the hospital is required to follow very specific statutory requirements designed to facilitate a safe transfer to another facility.
- A hospital may not delay the provision of an appropriate medical screening examination or further medical examination and stabilizing medical treatment in order to inquire about the individual's method of payment or insurance status.
- Regulations implementing these statutory obligations are found at 42 CFR part 489. The anti-dumping statute is enforced jointly by the Health Care Financing Administration (HCFA) and the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS).
- Sanctions that may be imposed by HHS for violations of the anti-dumping statute include the termination of the hospital's provider agreement, and the imposition of civil money penalties against both the hospital and the physician responsible for examination, treatment, or transfer of an individual. In addition, the anti-dumping statute provides for the exclusion of such physician if the violation is gross and flagrant or repeated.

Why Is There a Special Concern About the Provision of Emergency Services to Enrollees of Managed Care Plans?

Many managed care plans require their members to seek prior authorization for some medical services, including emergency services. As noted above, the anti-dumping statute prohibits a hospital's inquiry about a patient's method of payment or insurance status, or use of such information, from delaying a screening examination or stabilizing medical treatment. It has come to our attention that some hospitals routinely seek prior authorization from a patient's primary care physician or from the plan when a managed care patient requests emergency services, since the failure to obtain authorization may result in the plan refusing to pay for the emergency services. In such circumstances, the patient may be personally liable for the costs.

A reasonable argument can be made that patients (other than those arriving in dire condition) should be informed when they request emergency services of their potential financial liability for services. Some would go further and argue that the hospital itself should seek prior approval from the patient's health plan for emergency services to preserve the patient's right to seek coverage for such services. However, our concern is that, such an inquiry may improperly or unduly influence patients to leave the hospital without receiving an appropriate medical screening examination. This result would be inconsistent with the goals of the anti-dumping statute and could leave the hospital exposed to liability under the statute.

Investigations of allegations of the anti-dumping statute violations across the country have persuaded the OIG and HCFA that managed care patients may be at risk of being discharged or transferred without receiving a medical screening examination, largely because of the problems inherent in seeking "prior authorization." Hospitals sometimes are caught between the legal obligations imposed under the anti-dumping statute and the terms of agreements which they have with managed care plans. For example, some Medicaid managed care contractors, as a condition of contracting with hospitals to provide services to their enrollees, have attempted to require such hospitals to obtain prior authorization from the plan before screening or treating an enrollee in order to be eligible for reimbursement for services provided.

The OIG's and HCFA's view of the legal requirements of the anti-dumping statute in this situation is as follows. Notwithstanding the terms of any managed care agreements between plans and hospitals, the anti-dumping statute continues to govern the obligations of hospitals to screen and provide stabilizing medical treatment to individuals who come to the hospital seeking emergency services regardless of the individual's ability to pay. While managed care plans have a financial interest in controlling the kinds of services for which they will pay, and while they may have a legitimate interest in deterring their enrollees from over-utilizing emergency services, no contract between a hospital and a managed care plan can excuse the hospital from its anti-dumping statute obligations. Once a managed care enrollee comes to a hospital that offers emergency services, the hospital must provide the services required under the anti-dumping statute without regard for the patient's insurance status or any prior authorization requirement of such insurance.[1]

What About Arrangements Between Hospitals and Managed Care Plans for "Dual Staffing" of Emergency Departments?

Some managed care organizations (MCOs) and hospitals have entered into, or are considering entering into, arrangements whereby the hospital permits the MCO to station its own physicians in the hospital's emergency department, separate from the hospital's own emergency physician staff, for the purpose of screening and treating MCO patients who request emergency services. This kind of arrangement is known as "dual staffing." In a dual staffing setting, two separate groups of physicians would be providing emergency care, perhaps using different policies and protocols, performing different procedures, using different referral practices and drug formularies, relying on different on-call physicians, and having different credentials.

It is believed by some that dual staffing in emergency departments can facilitate the expeditious provision of services to MCO patients by physicians and other practitioners in their own health plans, particularly when patients present in emergency departments in stable condition. However, some hospitals and emergency physicians have raised questions about how the requirements of the patient anti-dumping statute may affect dual staffing arrangements, and we have been considering how to respond. As interpreted by this Department, the statute requires that a hospital and its physicians provide medically adequate screening and stabilization, supported by professionally recognized standards of care, to individuals seeking emergency services. Theoretically, one could construct two equally good emergency service "tracks," each adequately staffed and each with equally good access to all of the medical capabilities of the hospital, such that both MCO and non-MCO patients received equal access to screening and stabilizing medical treatment. This arrangement would seem to satisfy the requirements of the anti-dumping statute.

Absent such equivalency, implementation of dual staffing raises some concerns under the patient anti-dumping statute. For example, what if either the MCO or non-MCO track is understaffed or simply overcrowded, and a patient in a particular track is subjected to a significant delay in screening and stabilizing treatment, even though a physician in the alternative track was available to see the individual? What if the protocols, referral patterns, use of specialists and patient guidelines are substantially different between the MCO and non-MCO tracks such that two different standards of care are provided in performing screenings or stabilizing treatment? How can a hospital be sure that all patients requesting emergency services receive, as required by statute, an appropriate screening examination within the full capabilities of the hospital, and necessary stabilizing treatment within the capability of the staff and facilities of the hospital, if the MCO track operates independently from the hospital's own emergency care system? These are difficult questions, and we have not yet determined how to treat issues related to dual staffing under the patient anti-dumping act. As a result, we are specifically soliciting comments and suggestions from the public on this issue, and we expect to offer some specific guidance in this area in the final version of this Special Advisory Bulletin.

What are the Rules Governing Medicare and Medicaid Managed Care Plans with Respect to Prior Authorization Requirements and Payment for Emergency Services?

There are special requirements for managed care plans that contract with Medicare and Medicaid to provide services to beneficiaries of those programs. Congress has specified that Medicare and Medicaid managed care plans may not require prior authorization for emergency services, and must pay for such services, without regard to whether the hospital providing such services has a contractual relationship with the plan. Under statutory amendments recently enacted in the Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33),[2] Medicare and Medicaid managed care plans are prohibited from requiring prior authorization for emergency services, including those that "are needed to evaluate or stabilize an emergency medical condition." Moreover, Medicare and Medicaid managed care plans are required to pay for emergency services provided to their enrollees. The obligation to pay for emergency services is based on a "prudent layperson" standard, which means that the need for emergency services should be determined from a reasonable patient's perspective at the time of presentation of the symptoms.[3]

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[1] Separate and apart from the anti-dumping statute, in accordance with sections 1857(g), 1876(i)(6), 1903(m)(5) and 1932(e) of the Social Security Act, the OIG (acting on behalf of the Secretary) has the authority to impose intermediate sanctions against Medicare and Medicaid contracting managed care plans that fail to provide medically necessary services, including emergency services, to enrollees where the failure adversely affects (or has a substantial likelihood of adversely affecting) the enrollee. Medicare and Medicaid managed care plans that fail to comply with the above provision are subject to civil money penalties of up to $25,000 for each denial of medically necessary services.

What Practices Will Promote Compliance with the Anti-Dumping Statute by Hospitals When Managed Care Enrollees Seek Emergency Services?

The OIG and HCFA are concerned that discussion by hospital personnel with a patient regarding the possible need for prior authorization, or his or her potential financial liability for medical services provided by a hospital that offers emergency services, could influence patients to leave the emergency department without receiving an appropriate medical screening examination. Without also informing the patient of his or her rights to a medical screening examination and to stabilizing medical treatment if the patient's condition warrants it, a discussion about insurance, ability to pay and seeking prior authorization may impede a hospital's compliance with its obligation under the anti-dumping statute. Discussions between a hospital staff member and a patient regarding potential prior authorization requirements and their financial consequences that have the effect of delaying a medical screening are violations of the anti-dumping statute. Moreover, the OIG and HCFA believe that in the absence of an initial screening, the decision of a managed care plan regarding the need for treatment is likely to be ill-informed. Patients are entitled to receive a medical screening examination and stabilizing medical treatment under the anti-dumping statute regardless of a hospital's contract with a health plan that requires prior authorization. Accordingly, the OIG and HCFA suggest the following practices to minimize the likelihood that a hospital will violate the statute:

- *No Prior Authorization Before Screening or Stabilization.* It is not appropriate for a hospital to request or a health plan to require prior authorization before the patient has received a medical screening examination to determine the presence or absence of an emergency medical condition or before the patient's emergency medical condition is stabilized.[4]
- *No Financial Responsibility or Advanced Beneficiary Notification Forms.* Prior to performing an appropriate medical screening examination, the hospital should not ask a patient to complete a financial responsibility form or an advanced beneficiary notification form, and should not ask the patient to provide a co-payment for any services rendered. Such a practice could deter the patient from remaining at the hospital to receive care to which he or she is entitled and which the hospital is obligated to provide regardless of ability to pay, and could cause unnecessary delay.
- *Qualified Medical Personnel Must Perform Medical Screening Examination.* A hospital should ensure that either a physician or other qualified medical personnel (i.e., hospital staff approved by the hospital's governing body to perform certain medical functions) provides an appropriate medical screening examination to all individuals seeking emergency services. Depending upon the individual's presenting symptoms, this screening examination may range from a relatively simple examination to a complex one which requires substantial use of ancillary services available at the hospital and on-call physicians.
- *When a Patient Inquires About Financial Liability for Emergency Services.* If a patient inquires about his or her obligation to pay for emergency services, such an inquiry should be answered by a staff member who has been well trained to provide information regarding potential financial liability. This staff member also should be knowledgeable about the hospital's anti-dumping statute obligations and must clearly inform the patient that, notwithstanding the patient's ability to pay, the hospital stands ready and willing to provide a medical screening examination and stabilizing treatment, if necessary. Hospital staff should encourage any patient who believes that he or she may have an emergency medical condition to remain for the medical screening examination and to defer further discussion of financial responsibility issues until after the medical screening has been performed. If the patient chooses to withdraw his or her request for examination or treatment, a staff member with appropriate medical training must discuss the medical issues related to a "voluntary withdrawal."
- *Voluntary Withdrawal.* If an individual chooses to withdraw his or her request for examination or treatment at the presenting hospital, a hospital must perform the following: (1) offer the individual further medical examination and treatment within the staff and facilities available at the hospital as may be required to identify and stabilize an emergency medical condition; (2) inform the individual of the risks and benefits of such examination and treatment, and of the risks and benefits of withdrawal prior to receiving such examination and treatment; and (3) take all reasonable steps to secure the individual's written informed consent to refuse such examination and treatment. The medical record should contain a description of the examination, treatment, or both, if applicable, that was refused.

In the event that an individual, e.g., nurse, doctor, other emergency room staff member or patient, believes that a hospital may have violated the anti-dumping statute, that individual should report the alleged violation to the HCFA office in the region in which the hospital is located.

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[2] See section 4001 of the BBA, which created section 1852(d) of the Act. Section 1852(d) covers emergency services and prior authorization for Medicare enrollees. Also, section 4704(a) of the BBA created section 1932(b) of the Act, which contains Medicaid provisions covering emergency services and prior authorization.

[3] With respect to Medicare, prior authorization requirements were already explicitly prohibited by regulations before the passage of the BBA for emergency services provided outside an HMO or competitive medical plan (42 CFR 417.414(c)(1)), and by implication for services provided within such a plan. Similarly, while the BBA clarified and codified the "prudent layperson" standard, a variation of this standard has always been part of the Medicare policy for managed care plans. However, all of these requirements are new to Medicaid.

[4] Of course, this would not preclude an emergency physician from contacting the patient's physician at any time to seek advice regarding the patient's medical history and needs that may be relevant to the medical screening and treatment of the patient. Further, a patient who has not already contacted his or her health plan is free to do so at any time during his or her wait for emergency services.

Dated: November 24, 1998.

June Gibbs Brown,

Inspector General.

Dated: November 24, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–32480 Filed 12–4–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–42]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 25, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of proposal: Land Sales Registration, Purchase's Revocation Rights, Sales Practices and Standards, and Formal Procedures and Rules of Practice.

Office: Housing.

OMB Approval Number: 2502–0243.

Description of The Need for The Information and its Proposed Use: The Interstate Land Sales Full Disclosure Act requires developers to register subdivisions and provide each purchaser with a property report. Information is submitted to HUD to assure compliance with the Act and the implementing regulations.

Form Number: None.

Respondents: Business or Other For-Profit and State, Local or Tribal Government.

Frequency of Submission: Annually and Broadcasting.

Reporting Burden:

	Number of respondents	Frequence of response	Hours per response	Burden hours
Information Collection	1291	8.63	1.75	19,513

Total Estimated Burden Hours: 19,513.

Status: Reinstatement, with changes.

Contact: Anita Hart, HUD, (202) 708–0502, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–32448 Filed 12–4–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–43]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be

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affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 30, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Assessment of Neighborhood Networks.

Office: Policy and Development and Research.

OMB Approval Number: 2528–xxxx.

Description of The Need For The Information and Its Proposed Use: The purpose is to evaluate the impact of Neighborhood Networks on low-income families living in HUD-insured and assisted properties. More specifically, to determine the extent to which on-site access to computers and training resources influences the self-sufficiency, employability, and economic self-reliance of clients.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	Frequency of responses	House per response	Burden hours
	1215	[illegible]	.74	903

Total Estimated Burden Hours: 903.

Status: New Collection.

Contact: Priscila Prunella, HUD, (202) 708–3700, x5711, Joseph F. Lackey, Jr., OMB, (202) 394–7316.

[FR Doc. 98–32449 Filed 12–4–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4424–C–02]

Notice of Funding Availability for: The HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1999, and the Section 108 Loan Guarantee Program for Small Communities in New York State; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA); correction.

SUMMARY: On Wednesday, November 25, 1998, HUD published a notice of funding availability (NOFA) announcing: (1) the availability of approximately $54,558,000 in Fiscal Year (FY) 1999 funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant (CDBG) Program; and (2) the availability of a maximum of approximately $200,000,000–$250,000,000 in FY 1999 funding under the Section 108 Loan Guarantee program for small cities in New York State. Due to a typographical error, the November 25, 1998 NOFA incorrectly provided for an application deadline date of February 8, 1999. The application due date for this NOFA is February 3, 1999. The purpose of this document is to correct the application due date in the November 25, 1998 NOFA.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 98–31516, Notice of Funding Availability for: the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1999; and the Section 108 Loan Guarantee Program for Small Communities in New York State (FR–4424-N–01), published in the **Federal Register** on November 25, 1998 (63 FR 65486) is corrected as follows:

1. On page 65486, in column 2, the **DATES** section is corrected to read as follows:

DATES: Applications are due by February 3, 1999. Application kits may be obtained from and must be submitted to either HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.) In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at (800) 998–9999.

Applications, if mailed, must be postmarked no later than midnight on February 3, 1999 and received within 10 calendar days of the deadline. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. (local time) on February 3, 1999.

Application kits will be made available by a date that affords applicants no fewer than 45 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II. of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received by 4:00 p.m. on, or postmarked by February 3, 1999. Applicants should take this procedure into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

2. On page 65487, in column 3, the first full paragraph in that column is corrected to read as follows:

If possible, an applicant should submit the abbreviated consolidated plan in advance of the Small Cities application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities Program in New York will be February 3, 1999 (the application due date for the Small Cities application). *Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency.* Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

3. On page 65489, in column 3, the first sentence in Section I.E.1. (captioned "General"), is corrected to read as follows:

E. Selection Criteria/Ranking Factors and Final Selection.

1. *General.* Complete applications received from eligible applicants by February 3, 1999 will be rated and scored by HUD.

4. On page 65490, in column 1, the final full paragraph in that column (captioned "Note") is corrected to read as follows:

Note: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant that fails to meet the percentages specified above may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after February 3, 1999 be accepted, unless specifically requested by HUD.

5. On page 65497, in columns 2 and 3, Section II.B. (captioned "Submitting Applications") is corrected to read as follows:

B. *Submitting Applications.* A final application must be submitted to HUD no later than February 3, 1999. A final application includes an original and two photocopies. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, February 3, 1999. If an application is hand-delivered to the New York or Buffalo Offices, the application must be delivered by 4:00 p.m. on the application deadline date. Applicants in the counties of Sullivan, Ulster, Putnam, and in nonparticipating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the addresses listed above in section II.A.

The above-stated application deadline is firm as to *date* and *hour.* In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received on, or postmarked by February 3, 1999. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

6. On page 65498, in column 1, Section II.C.2. (captioned "Streamlined Application Requirements for Certain Applicants") is corrected to read as follows:

2. Streamlined Application Requirements for Certain Applicants

Single Purpose applications submitted under the FY 1997/98 NOFA but not selected for funding will be reactivated for consideration under this NOFA, if the applicant notifies HUD in writing by February 3, 1999 that the applicant wishes the prior application to be considered in this competition. Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

Dated: December 2, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–32446 Filed 12–4–98; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–12]

Announcement of OMB Approval Number for the HOME Investment Partnerships Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB Approval Number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the HOME Investment Partnership Program.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2470. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the HOME Investment Partnerships Program. The OMB approval number for this information collection is 2506–0013, which expires on November 30, 2001.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: December 1, 1998.

John M. Simmons,

Acting Director for Office of Executive Services.

[FR Doc. 98–32447 Filed 12–4–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Issue a Draft Comprehensive Conservation Plan and Associated Environmental Assessment for Sevilleta National Wildlife Refuge, San Acacia, New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared a draft Comprehensive Conservation Plan (CCP) and associated Environmental Assessment for the Sevilleta National Wildlife Refuge, San Acacia, New Mexico pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations.

If the draft CCP is approved, various management objectives, strategies, and actions will be adopted inclusive of the following:

- Continue implementation of Mexican wolf captive propagation program on Refuge, and ensure continued operation within all regulations, protocols, and safety guidelines.
- Preserve Refuge habitat diversity and important habitat for threatened and endangered species by preserving and restoring habitats to their natural condition.
- Maintain a viable population of Silvery minnows on the Refuge's stretch of the Rio Grande river.
- Evaluate Refuge grasslands potential as an introduction site for the endangered northern Aplomado falcon.
- Protect threatened and endangered species on Refuge and adjacent properties through outreach, educational activities and effective enforcement of fish and wildlife laws.

- Promote and support the introduction of native threatened and endangered species on the Refuge.
- Insure integrity of all naturally occurring biotic communities on the Sevilleta NWR.
- Maintain migratory bird populations at healthy levels in the Upper/Middle Rio Grande Ecosystem.
- Reverse declining trends in quality and quantity of riparian/wetland habitats; restore, maintain, and enhance the species composition, aerial extent, and spatial distribution of riparian/wetland habitats.
- Protect, restore, and maintain upland terrestrial communities at the landscape level within the Upper/Middle Rio Grande Ecosystem.
- Use sound land use practices and management tools to protect upland terrestrial habitats in the Upper/Middle Rio Grande Ecosystem.
- Through the Rio Grande Initiative, preserve, enhance and restore hydrological regimes which perpetuate a healthy river ecosystem. The Initiative will result in the creation of partnerships which address water management, habitat enhancement and restoration, and impacts of non-native flora and fauna on native biodiversity and endangered species.
- Compile a data base of the baseline natural conditions, processes, and species associated within refuge ecosystems by October 2004.
- Attain baseline natural conditions, processes, and populations of species in 50% of each habitat type by 2010. When attainment is not possible, assess desired condition and implement adaptive management strategies.
- Restore and maintain natural hydrological regimes.
- Contribute to the integrity of the Upper Middle Rio Grande Watershed using sound management tools and practices.
- Develop partnerships, relationships, and communication to improve implementation of Refuge wildlife and habitat management goals.
- Minimize human impacts to Refuge ecosystems.
- Encourage research that improves management and monitoring of species, communities and processes on the Refuge and the Upper Middle Rio Grande.
- Permit research from a wide range of interested parties and institutions while protecting the faunal and floral components of the ecosystem from the detrimental aspects of human intrusion and manipulative research protocols.
- Minimize impacts of research activities.
- Provide the research community a unique opportunity to conduct wildlife related research which provides the Refuge with management direction.
- Obtain (purchase or mitigation) sufficient water rights to manage refuge wetlands associated with the Rio Grande.
- Acquire in stream flow rights for the perennial portion of the Rio Salado.
- Protect upland seeps, springs and wetlands of the Refuge.
- Provide the general public with high quality compatible wildlife dependent experiences on and off the Refuge.
- Provide the general public with high quality environmental education and wildlife dependent experiences on and off the Refuge.
- Develop sound management practices to protect cultural resources, within the scope of Part 614 of the Service Manual and all applicable Federal laws and regulations.
- Minimize obtrusive impacts to Refuge lands or adjacent lands.
- Document the need for additional staffing.
- Obtain adequate staffing to implement management plans benefitting the Middle Rio Grande Ecosystem both on and off Refuge lands.
- Effect improvements to facilities that will result in enhancement of Refuge capabilities and resources including the construction of an approximately 6,000 square foot visitor center/administrative complex, 2 1,500 foot staff residences, and a multi-unit living accommodation facility for refuge volunteers.
- Develop and apply the Ecosystem Management approach.
- Solicit input from involved agencies, institutions, and groups to help coordinate and evaluate Refuge activities.

DATES: The Service will be open to written comments through January 4, 1998.

ADDRESSES: Copies may be obtained by writing to: Mr. Tom Baca, Natural Resource Planner, Division of Refuge, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306. Comments should be submitted to: Lou Bridges, Project Coordinator, Research Management Consultants, Inc., 1746 Cole Blvd., Bldg. 21, Suite 300, Golden, CO 80401.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of the draft documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service intends to consider comments and advice generated in response to the draft documents prior to the preparation of a final CCP. The Service is furnishing this notice in compliance with Service CCP policy: (1) to advise other agencies and the public of the availability of the draft documents, and (2) to obtain suggestions and advice for consideration in preparation of final documents.

The Service anticipates that final CCP documents and any associated NEPA documents will be available by February 28 1998, or sooner.

Dated: November 23, 1998.

Geoffrey L. Haskett,

Deputy Regional Director.

[FR Doc. 98–32387 Filed 12–4–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P and AA–01534]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Sealaska Corporation for 5.99 acres. The lands involved are in the vicinity of Yakutat, Alaska.

Lot 5, U.S. Survey No. 10271, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until (January 6, 1999) to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia K. Underwood,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 98–32386 Filed 12–4–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

New Orleans Jazz National Historical Park, Louisiana; Notice of Availability of Draft General Management Plan/Environmental Impact Statement

SUMMARY: This Draft General Management Plan/Environmental Impact Statement (GMP/EIS) describes three conceptual alternatives. Alternative A is the no-action, or status quo, alternative and provides a baseline for comparison with the other alternatives. Alternative B emphasizes conveying the park's interpretive story through personal programs such as interpretive talks and demonstrations, interpreted performances "informances," seminars, and performances. Educational activities would be given maximum emphasis in this alternative. It would allow the park to assist in the adaptive use of structures related to jazz. Interpretive programming would depend heavily on the involvement of local musicians and educators, thus supporting cultural preservation. Under this alternative, the visitor center would be located in the Old U.S. Mint. Alternative C emphasizes a strong partnership program with significant resources coming from partners. The extent and success of this alternative would depend on substantial support from these partners, and especially from the private sector. Interpretive media would be extensively used, and the size and scope of park educational and preservation programs would be guided by the development of partnerships. Under this alternative, the visitor center would be located at a complex in Louis Armstrong Park. Of these alternatives, the National Park Service's Proposed Action is Alternative C. Environmental impacts that would result from implementation of the alternatives are addressed in the document. Impact topics include cultural and natural resources, visitor experience, interpretation, education, transportation, and the socioeconomic environment.

DATES: The Draft GMP/EIS will be on review until January 25, 1999. Comments may be sent to the Superintendent at the following address.

ADDRESSES: A limited number of copies are available from the Superintendent at the following address.

FOR FURTHER INFORMATION CONTACT: Superintendent, New Orleans Jazz National Historical Park, 365 Canal Street, Suite 2400, New Orleans, LA 70130, Telephone: (504) 589–3882.

SUPPLEMENTARY INFORMATION: Several public meetings will be held concerning this document in the near future. Contact the park for information about these meetings. Notices will appear in local newspapers announcing these meetings.

Dated: November 21, 1998.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 98–32383 Filed 12–4–98; 8:45 am]

BILLING CODE 4310–70–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 15–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Tuesday, December 15, 1998, 10:00 a.m.

SUBJECT MATTER:

A. Hearings on the Record on Objections to Proposed Decisions on claims against Albania, as follows:

Claim No. ALB–042 Xhani Femera et al., ALB–072 Thomas Michael Toma, ALB–220 Gjergji Gjeli, ALB–315 Afroditi Botsis.

B. Proposed Decisions on claims against Albania

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, December 2, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–32481 Filed 12–2–98; 5:23 pm]

BILLING CODE 4410–BA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, December 9, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Austin Powder Co.*, Docket No. YORK 95–57–M. (Issues include whether (1) substantial evidence supports the judge's credibility-based determination that the operator violated 30 CFR § 56.15005, and whether the violation was significant and substantial; (2) in the absence of a finding of unwarrantable failure on the part of the operator, the judge could find its foreman liable under the Mine Act section 110(c) for the violation, and whether substantial evidence supports that finding; and (3) despite the vacation of the unwarrantable failure finding, the judge could leave unreduced his penalty assessment against the operator, and whether substantial evidence supports his finding of high negligence.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 98–32524 Filed 12–3–98; 12:51 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board; Yankee Atomic Electric Company (Yankee Nuclear Power Station) License Termination Plan; Change in Filing Schedules and Date of Prehearing Conference

[Docket No. 50–029–LA–R, ASLBP No. 99–754–01–LA–R]

November 30, 1998.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Thomas S. Elleman, Thomas D. Murphy.

Notice is hereby given that, at the request of the Citizens Awareness Network, Inc. (based on recent physical injuries to its designated representative), and without objection from any party or other participant, the prehearing conference heretofore scheduled to commence on Wednesday, December 16, 1998, at the Grand Jury Room (top floor), Franklin County Courthouse, 425 Main Street, Greenfield, MA 01301, is hereby rescheduled to commence at 9:30 a.m., Tuesday, January 26, 1999 and, to the extent necessary, to continue on Wednesday, January 27, 1999 and Thursday, January 28, 1999, beginning at 9:00 a.m. each day, at the same location.

Because of the change in schedule, the schedule for the filing of contentions and responses thereto is also changed. Contentions are to be in our hands, and in those of parties and other participants, by close of business Tuesday, January 5, 1999 (replacing the current filing date of November 30, 1998). Responses to those contentions are to be in our hands (and those of other participants) by close of business Wednesday, January 20, 1998.

The purpose of the conference will be to determine whether either of the petitioners found by the Commission in CLI–98–21 to have standing—i.e., the New England Coalition on Nuclear Pollution, Inc. (NECNP) and the Citizens Awareness Network, Inc. (CAN)—have submitted admissible contentions conforming to the criteria set forth in 10 CFR 2.714(b) and (d). If so, they will become parties to the proceeding. The conference will also consider petitions, if any, from interested States or governmental bodies, as discussed by the Commission in CLI–98–21. Finally, to the extent necessary, the conference will consider discovery and future schedules for various aspects of the proceeding.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at this prehearing conference. Any person not a party to the proceeding or a petitioner for intervention will be permitted to make such a statement, either orally or in writing, setting forth his or her position on issues of concern. These statements do not constitute testimony or evidence but may help the Board and/or parties in their deliberations on the extent of the issues to be considered.

Oral limited appearance statements may be given from 7:00 p.m. to 9:30 p.m. on Tuesday, January 26, 1999 (or such lesser time as is necessary to accommodate speakers who are present), at the same location as the site of the prehearing conference. (To the extent that the Board is apprised of a need to accommodate further speakers, it will attempt to do so at the beginning or end of any later session of the conference that may be necessary.) The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (Normally, each oral statement may extend for up to five (5) minutes.) Written statements may be submitted at any time. Written statements, and requests for oral statements, should be submitted to the Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington DC 20555. A copy of such statement or request should also be served on the Chairman of this Licensing Board. (Persons desiring to make oral statements who have filed a written request will be given priority over those who have not filed such a request.)

Documents relating to this application are on file at the Local Public Document Room, located at the Greenfield Community College, 1 College Drive, Greenfield, MA 01301, as well as at the Commission's Public Document Room, the Gelman Building, 2120 L St., NW, Washington DC 20037.

It is so ordered.

Rockville, Maryland, November 30, 1998.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 98–32395 Filed 12–4–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Natural Resources Defense Council; Petition

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Receipt of Petition for U.S. Nuclear Regulatory Commission Action.

Notice is hereby given that by petition dated October 15, 1998, the Natural Resources Defense Council (NRDC) has requested that the U.S. Nuclear Regulatory Commission (NRC) exert authority to ensure that the United States Army Corps of Engineers' (the "Corps") handling of radioactive materials in connection with the Formerly Utilized Sites Remedial Action Program (FUSRAP) is effected in accord with properly issued license and all other applicable requirements. As NRDC notes in its petition, FUSRAP began in 1974 as a program of the Department of Energy (DOE), and that DOE had identified a total of 46 sites for cleanup under FUSRAP. By 1997, cleanup of 25 of these sites had been completed. There are currently 21 sites still in need of remediation. In October 1997, Congress transferred funding for FUSRAP from DOE to the Corps. NRDC believes that the Corps should obtain an NRC license to conduct activities under FUSRAP. At this time, the NRC has not required the Corps to obtain a license.

The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. A copy of the petition is being sent to DOE and the Corps, and DOE and the Corps are being given the opportunity to comment. Appropriate action will be taken on this petition within a reasonable time.

FOR FURTHER INFORMATION CONTACT: John Lusher, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, DC 20555. Telephone 301/415–7694. A copy of the petition is available for inspection at the Commission's Public Document Room at 2121 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of November 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32393 Filed 12–4–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Fixed Gauges Licenses," Dated October 1998

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1556, Volume 4, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Fixed Gauges Licenses," dated October 1998.

ADDRESSES: Copies of NUREG–1556, Vol. 4, may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7874.

SUPPLEMENTARY INFORMATION: On December 23, 1997 (62 FR 67100), NRC announced the availability of draft NUREG–1556, Volume 4, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Fixed Gauges Licenses," dated October 1997, and requested comments on it. This draft NUREG report was the fourth program-specific guidance developed to support an improved materials licensing process. The NRC staff considered all the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG–1556, Volume 4, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in Draft Regulatory Guide and Value/Impact Statement, FC 404–4, "Guide for the Preparation of Applications for Licenses for the Use of Sealed Sources and Nonportable Gauging Devices," dated January 1985, in Office of Nuclear Material Safety and Safeguards (NMSS) Policy and Guidance Directive (P&GD), FC 85–4, "Standard Review Plan for Applications for Use of Sealed Sources and Nonportable Gauging Devices," dated February 6, 1985, and in NMSS P&GD, FC 85–8, Revision 1, "Licensing of Fixed Gauges and Similar Devices," dated June 29, 1988. In addition, the draft report also contained information found in pertinent Technical Assistance Requests and Information Notices. NRC staff will use this final report in reviewing these applications.

NUREG–1556, Volume 4, will also be available electronically approximately 1 month after publication of this notice by visiting NRC's Home Page (http://www.nrc.gov) and choosing "Nuclear Materials," and then "NUREG–1556, Volume 4."

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 30th day of November, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32392 Filed 12–4–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance about Materials Licenses: Program-Specific Guidance About Master Materials Licenses, Availability of Draft NUREG

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of and requesting comment on draft NUREG–1556, Volume 10, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Master Materials Licenses," dated October 1998.

NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG series of reports. This draft NUREG report is the tenth program-specific guidance developed to support an improved materials licensing process.

The guidance is intended for use by Federal applicants and licensees, and NRC staff. This document updates the guidance for applicants and licensees previously found in Policy and Guidance Directive (P&GD) 6–02, Revision 1: "Standard Review Plan (SRP) for License Application for Master Material License," dated September 25, 1997. Note that this document is strictly for public comment and is not for use in preparing or reviewing applications for Master Materials licenses until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends March 8, 1999. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 10, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 10, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: slm2@nrc.gov.

Electronic Access

Draft NUREG–1556, Volume 10, will be available electronically by visiting NRC's Home Page (http://www.nrc.gov/

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NRC/nucmat.html) approximately 4 weeks after the publication date of this notice.

Dated at Rockville, Maryland, this 30th day of November, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32394 Filed 12–4–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unity Bancorp, Inc., Common Stock, No Par Value) File No. 1–12431

December 1, 1998.

Unity Bancorp, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

On August 20, 1998, the Board of Directors of the Company unanimously approved a resolution to withdraw the Company's Security from trading on the Exchange and to list the Security on the Nasdaq. In making the decision to withdraw its Security from listing on the Exchange, the Company considered the direct and indirect costs and benefits involved and determined that trading on the Nasdaq better suited its needs. Trading in the Company's Security on the Nasdaq commenced at the opening of business on September 21, 1998.

The Company has complied with Rule 18 of the Amex by notifying Amex of its intention to withdraw its Security from listing on the Exchange by letter dated August 24, 1998, and by filing a copy of the resolution with the Exchange. The Exchange replied by letter dated August 26, 1998, advising that the Exchange would not interpose any objection to such action, nor require the Company to send common stockholders any statement with respect thereto.

The Company also originally intended to delist its Common Stock Purchase Warrants ("Warrants") from Amex and to list the Warrants on Nasdaq. The Warrants, however, did not meet the Nasdaq's float requirement and the Company elected to keep the Warrants on the Amex. By letter dated September 14, 1998, the Amex consented to this procedure.

Any interested person may, on or before December 22, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32380 Filed 12–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40723; File No. SR–NASD–98–52]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to Supervision of Correspondence

November 30, 1998.

I. Introduction

On July 24, 1998, the National Association of Securities Dealers, Inc. ("NASD") or "Association"), through its wholly-owned subsidiary, the NASD Regulation, Inc. ("NASDR"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 3010 to state that firms must review incoming, written correspondence to identify customer complaints and funds. On August 26, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on September 3, 1998.[4] Four comment letters were received on the proposal.[5] On November 12, 1998, the NASDR filed Amendment No. 2 to the proposed rule change.[6] The Commission solicits comments on Amendment No. 2 from interested persons. This order approves the proposed rule change and Amendment No. 1 thereto and approves Amendment No. 2 to the proposed rule change on an accelerated basis.

II. Background and Description of the Proposal

In December 1997, the SEC approved rule amendments and a Notice to Members that were designed to allow firms to develop flexible supervisory procedures for the review of correspondence with the public.[7] The amendments were intended to recognize the growing use of electronic communications such as "e-mail" while still providing for effective supervision. Notice to Members 98–11, issued by the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 24, 1998 ("Amendment No. 1"). In Amendment No. 1, NASDR proposes to replace the word "should" in the text of the proposed rule with the word "must."

[4] *See* Securities Exchange Act Release No. 40372 (August 27, 1998), 63 FR 47059..

[5] *See* Letters to Jonathan G. Katz, Secretary, Commission, from Michael L. Kerley, Vice President and Chief Legal Officer, MML Investors Services, Inc., dated September 18, 1998 ("MML Letter"); Theodore A. Mathas, President NYLIFE Securities, dated September 23, 1998 ("NYLSEC Letter"); Janet G. McCallen, Executive Director, International Association for Financial Planing, dated September 23, 1998 ("IAFP Letter"); and Joseph P. Savage, Assistant Counsel, Investment Company Institute, dated September 24, 1998 ("ICI Letter").

[6] *See* Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division, Commission, dated November 12, 1998 (Amendment No. 2"). In Amendment No. 2, in addition to making several technical amendments, the NASDR addresses the issues raised in the comment letters. The NASDR proposes to revise its draft Notice to Members to clarify that: (1) registered representatives can forward opened mail; (2) maintenance of a log should be only for "securities" products; and (3) customers should be informed that they can contact a central office of the member firm for any reason, including to file a complaint. The NASDR also proposes to specifically state that member firms have a legal right to review incoming, written correspondence. Finally, the NASDR proposes to change the effective date of the new amendments to 60 days following publication of its Notice to Members.

[7] *See* Securities Exchange Act Release No. 39510 (December 31, 1997) 63 FR 1131 (January 8, 1998).

NASD in January 1998, announced approval of the rule amendments, the effective date of the new rules, and provided guidance to firms on how to implement these rules. Subsequent to Commission approval of the amendments, but before the amended rules went into effect, the Commission received 14 comment letters, primarily from members in the insurance industry, objecting to certain provisions in the new rules.[8] The commenters primarily objected to a provision in Notice to Member 98–11 which states that firms will be required to review all incoming, written correspondence directed to registered representatives and related to a member's investment banking or securities business. The NASDR added this provision to Notice to Members 98–11 to address two regulatory concerns raised by the Commission: (1) ensuring that firms capture all customer complaints; and (2) preventing registered representatives from taking cash or checks out of customer letters.

The commenters stated that it would be very difficult or impossible for a registered principal to conduct a pre-distribution review of all incoming, written correspondence, particularly correspondence received by registered representatives in small, one- or two-person offices. In response to these concerns, the effective date of the requirement to review all incoming, written correspondence was delayed to allow the NASDR and member firms time to develop and implement alternative, workable procedures for the review of incoming, written correspondence that addresses the regulatory concerns about preventing misappropriation of customer funds and diversion of customer complaints.[9] The rule amendments and all other provisions in the Notice became effective on April 7, 1998.[10]

NASDR Rule 3010(d)(2) currently requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. The NASDR proposes to amend the rule to state that these procedures must include review of incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints, funds, and securities. This proposed amendment will clarify that firms must develop supervisory procedures that specifically address the regulatory concerns identified by the Commission.

The accompanying Notice to Members will provide guidance on how to implement the proposed rule change.[11] In particular, the Notice states that, in conducting reviews of incoming, written correspondence to identify customer complaints and funds, where the office structure permits review of all correspondence, members should designate a registered or associated person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the registered person whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and checks would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence prior to use or distribution, the Notice states that the firm would have to employ alternative procedures reasonably designed to assure adequate handling of complaints and checks. Procedures that could be adopted include the following:

- After opening his or her own mail, the registered representative can forward incoming, written correspondence related to the firm's investment banking or securities business to an Office of Supervisory Jurisdiction (OSJ) or a branch manager for review on a weekly basis;
- Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch on a weekly basis;
- Communication to clients that they can contact the broker/dealer directly for any matter, including the filing of a complaint and provides them with an address and phone number of a central office of the broker/dealer for this purpose; and
- Branch examination verification that the procedures are being followed.

The Notice also states that, regardless of the method used for initial review of incoming, written correspondence, as with other types of correspondence, Rule 3010(d)(1) would still require review by a registered principal of some of each registered representative's correspondence with the public relating to the member's investment banking or securities business.

III. Summary of Comments

The Commission received four comment letters on the proposed rule change.[12] Two of the commenters generally opposed the proposal;[13] two of the commenters generally supported the proposal.[14] The commenters opposing the proposal believe that any possible benefits of the proposal are outweighed by the associated burdens.[15] Specifically, the proposal's opponents believe that even if a member firm's business structure permits the review of incoming, written correspondence prior to use or distribution, NASD Rule 3010 should not require such review.[16] Instead, member firms should be permitted the flexibility to design their own procedures to identify customer complaints and funds.[17] The NASDR has not modified its proposal in response to these comments.

One commenter also recommends that NASDR should eliminate the "requirements" to forward correspondence and logs to a reviewer on a weekly basis and instead, to permit review on a regular basis.[18] In response, the NASDR notes that its proposed Notice to Members does not establish "requirements" for those member firms with office structures that do not permit review of all incoming correspondence.[19] Instead, the proposed Notice to Members provides several examples of alternative procedures that member firms might employ to assure adequate handling of customer complaints and funds.

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[8] *See* Letters to Jonathan G. Katz, Secretary, Commission, from Carl B. Wilkerson, American Council of Life Insurance, dated January 9, 1998 and January 29, 1998; Beverly A. Byrne, BenefitsCorp Equities, Inc., dated January 26, 1998; Michael S. Martin, The Equitable Life Assurance Society of the United States, dated January 29, 1998; Janet G. McCallen, International Association for Financial Planning, dated February 13, 1998; W. Thomas Boulter, Jefferson Pilot Financial, dated January 28, 1998; Leonard M. Bakal, Metropolitan Life Insurance Company and MetLife Securities, Inc., dated January 28, 1998; Michael L. Kerley, MML Investors Services, Inc. dated January 26, 1998; Mark D. Johnson, The National Association of Life Underwriters, dated February 5, 1998; Theodore Mathas, NYLIFE Securities, dated January 16, 1998 and January 29, 1998; Beverly A. Byrne, One Orchard Equities, Inc., dated January 26, 1998; Dodie Kent, Pruco Securities Corporation, dated January 29, 1998; and James T. Bruce, Wiley, Rein & Fielding, on behalf of the Electronic Messaging Association, dated January 30, 1998.

[9] *See* Securities Exchange Act Release Nos. 39665 (February 13, 1998) 63 FR 9032 (February 23, 1998); 39866 (April 14, 1998) 63 FR 19778 (April 21, 1998); and 40178 (July 7, 1998) 63 FR 37911 (July 14, 1998).

[10] *See* Securities Exchange Act Release No. 39866, *supra* note 9.

[11] The Notice that will be issued when this proposed rule is approved will state that the requirement set forth in Notice to Members 98–11 is no longer applicable and has been superseded by the amendment to Rule 3010(d)(2) and the guidance provided in the Notice.

[12] *See* note 5, *supra*.

[13] *See* NYLSEC Letter and ICI Letter, *supra* note

[14] *See* MML Letter and IAFP Letter, *supra* note 5.

[15] *See* NYLSEC Letter and ICI Letter, *supra* note

[16] *Id*

[18] *See* NYLSEC Letter, *supra* note 5.

One commenter requests that if the proposal is adopted, the effective date of the amendments should be postponed for six months to provide member firms with sufficient time to implement the additional requirements.[20] The NASDR declines to postpone the effective date of the amendments for six months, noting that member firms have been on notice since the issuance of NASD's Notice to Members 98–11 in January 1998 that some type of review of incoming, written correspondence would be required. To provide member firms with some time to implement the required changes, the NASDR proposes to change the effective date of the new amendments to 60 days following publication of the Notice to Members announcing Commission approval of the proposal.[21]

In addition, one commenter suggests that the rule specify that if a member firm doesn't normally receive written correspondence directed to register representatives, the member should not have to develop procedures to address such correspondence.[22] The NASDR has not modified its proposal in response to this comment.

One commenter requests that the NASDR specifically state that member firms have a legal right to review incoming mail, to parallel a similar statement made by the New York Stock Exchange.[23] In response, the NASDR proposes to revise its draft Notice to Members to include such a statement.[24]

Another commenter recommends that the NASDR clarify in the examples provided in its Notice to Members that: (1) Registered representatives can forward opened mail; (2) maintenance of a log should be only for "securities" products; and (3) customers should be informed that they can contact a central office of the member firm for any reason, including to file a complaints.[25] The NASDR proposes to revise its draft Notice to Members to implement the commenter's recommendations.[26]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[27] Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act[28] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission believes that the proposal, which clarifies member firms' responsibilities with respect to the review of incoming, written correspondence, is designed to protect existing and prospective customers by ensuring that customer complaints and customer funds and securities are handled properly.

The NASDR proposes to amend NASD Rule 3010 to require that member firms' written procedures regarding the review of correspondence must include a review of incoming, written correspondence directed to registered representatives to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. In its draft Notice to Members, the NASDR explains that the method used in conducting such reviews will depend on the firm's particular office structure. Where the office structure permits review of all correspondence, the NASDR will require that member firms designate an individual to open and review such correspondence prior to use or distribution to identify customer complaints and funds. The Commission agrees that wherever practicable, prior review of incoming, written correspondence should be mandated, to protect customer interests and possibly, reduce member firms' potential liability.

The Commission recognizes, however, that there may be circumstances in which such prior review of incoming, written correspondence is not practical. In such cases, the Commission believes that the NASDR's proposal to require member firms to employ alternative procedures reasonable designed to assure adequate handling of customer complaints, funds, and securities is reasonable. The Commission believes that member firms that do not require prior review of all incoming, written correspondence should require, at a minimum, some combination of those alternative procedures provided by the NASDR as an example, or similar procedures, rather than relying on only one alternative procedure. The Commission believes that employing more than one alternative procedure should serve to provide additional assurances that incoming, written correspondence is handled appropriately.

The Commission notes that the proposal requires the review by a registered principal of some of each registered representative's correspondence with the public relating to the member firm's investment banking or securities business, regardless of the method used for the initial review of incoming, written correspondence. The Commission believes that this requirement should ensure that appropriate persons within the firm will undertake to supervise the activities of the firm's registered representatives. The Commission expects that in the event that the firm learns of any suspect activities on the part of any of its registered representatives, the firm will commence a more thorough review of that representative's activities, including his/her correspondence with the public.

The Commissions finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the NASDR addresses the concerns raised in the four comment letters received by the Commission on this proposal. Amendment No. 2 modifies the original filing and the accompanying draft Notice to Members only slightly, in response to specific comments raised by interested parties. Specifically, Amendment No. 2 clarifies that member firms have the legal right to review incoming written correspondence and that the rules apply to the member firms' investment banking and securities business. As the modifications proposed in Amendment No. 2 are reasonable and do not significantly alter the original proposal, the Commission believes that Amendment No. 2 raises no issues of regulatory concern. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act[29] to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of all such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–52 and should be submitted by December 28, 1998.

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[19] *See* Amendment No. 2, *supra* note 6.

[20] *See* NYLSEC Letter, *supra* note 5.

[21] *See* Amendment No. 2, *supra* note 6.

[22] *See* ICI Letter, *supra* note 5.

[23] *See* MML Letter, *supra* note 5.

[24] *See* Amendment No. 2, *supra* note 6.

[25] *See* IAFP Letter, *supra* note 5.

[26] *See* Amendment No. 2, *supra* note 6.

[27] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78o–3(b)(6).

[29] 15 U.S.C. 78o–3(b)(6).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NASD–98–52), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32400 Filed 12–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40718; File No. SR–NASD–98–96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Correcting Cross-References in Rules to NASD By-Laws

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to correct cross-references in the NASD Rules to the NASD By-Laws. The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

Rule 0112. Effective Date

The Rules shall become effective as provided in Section 1 of Article [XII] *XI* of the By-Laws.

Rule 0120. Definitions

* * * * *

(i) "Member"

The term "member" means any individual, partnership, corporation or other legal entity admitted to membership in the Association under the provisions of Articles [II and] III *and IV* of the By-Laws.

* * * * *

Rule 1060. Persons Exempt from Registration

(a) No change.

(b) No change.

(1) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article [II] *III*, Section 4 of the Association's By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

* * * * *

Rule 1100. Foreign Associates

(a) No change.

(b) No change.

(1) Such person is not subject to any of the prohibitions to registration with the Association contained in Article [II] *III*, Section 4 of the By-Laws of the Association.

* * * * *

(c) In the event of the termination of the employment of a Foreign Associate, the member must notify the Association immediately by filing a notice of termination as required by Article [IV] *V*, Section 3 of the By-Laws.

* * * * *

IM–2110–4. Trading Ahead of Research Reports

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In accordance with Article VII, Section 1(a)[(2)](*ii*) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110.

* * * * *

IM–2210–4. Limitations on Use of Association's Name

(a) Use of Association Name

Members may indicate membership in the Association in conformity with Article [XVI] *XV*, Section 2 of the NASD By-Laws in one or more of the following ways:

* * * * *

IM–2420–1. Transactions Between Members and Non-Members[1]

(a) Non-members of the Association.

* * * * *

(4) Broker or Dealer Registration Revoked by SEC

Revocation by the Commission of an Association member's registration as a broker or dealer automatically terminates the membership of such broker or dealer in the Association as of the effective date of such order. Under Article [II] *III*, Section 4 of the By-Laws of the Corporation, a firm whose registration as a broker or dealer is revoked is thereby disqualified for membership in the Association, and from the effective date of such order, the membership of such broker or dealer in the Association is discontinued. Thereafter such broker or dealer is a non-member of the Association.

(5) Membership Resigned or Canceled

The membership of a broker or dealer in the Association is automatically terminated when the Association accepts the resignation of such member or cancels its membership in the Association under the provisions of Article [II] *III*, Section 3; Article [III] *IV*, Section 5; or Article [XIV] *XIII*, Section 1, of the By-Laws. After the date of acceptance by the Association of the resignation of such member or the date of cancellation of membership by the Association, such broker or dealer is a non-member of the Association.

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IM–2420–2. Continuing Commissions Policy

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[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[1] Text of note unchanged.

Under no circumstances shall payment of any kind be made by a member to any person who is not eligible for membership in the Association or eligible to be associated with a member because of any disqualification, as set forth in Article [II] *III* of the Association's By-Laws, such as revocation, expulsion, or suspension still in effect.

* * * * *

IM–2440. Mark-Up Policy [3]

The question of fair mark-ups or spreads is one which has been raised from the earliest days of the Association. No definitive answer can be given and no interpretation can be all-inclusive for the obvious reason that what might be considered fair in one transaction could be unfair in another transaction because of different circumstances. In 1943, the Association's Board adopted what has become known as the "5% Policy" to be applied to transactions executed for customers. It was based upon studies demonstrating that the large majority of customer transactions were effected at a mark-up of 5% or less. The Policy has been reviewed by the Board of Governors on numerous occasions and each time the Board has reaffirmed the philosophy expressed in 1943. Pursuant thereto, and in accordance with Article VII, Section 1(a)[(2)](*ii*) of the By-Laws, the Board has adopted the following interpretation under Rule 2440.

* * * * *

Rule 3010. Supervision

* * * * *

(e) Qualifications Investigated

Each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association. Where an applicant for registration has previously been registered with the Association, the member shall obtain from the Firm Access Query System (FAQS) or from the applicant a copy of the Uniform Termination Notice of Securities Industry Registration (Form U–5) filed with the Association by such person's most recent previous NASD member employer, together with any amendments thereto that may have been filed pursuant to Article [IV] *V*, Section 3 of the Association's By-Laws. The member shall obtain the Form U–5 as required by this Rule no later than sixty (60) days following the filing of the application for registration or demonstrate to the Association that it has made reasonable efforts to comply with the requirement. A member receiving a Form U–5 pursuant to this Rule shall review the Form U–5 and any amendments thereto and shall take such action as may be deemed appropriate.

* * * * *

6120. Participation in ACT

(a) Mandatory Participation for Clearing Agency Members

(1) Pursuant to Article VII, Section 1(a)[(6) and (7)](*vi) and (vii)* of the By-Laws participation in ACT is mandatory for all brokers that are members of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for all brokers that have a clearing arrangement with such a broker.

. . . . .

10101. Matters Eligible for Submission

This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)[(4)](*iv*) of the By-Laws of the Association for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company.

. . . . .

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to correct cross-references to the NASD By-Laws in Rules 0112, 0120, 1060, 1100, 3010, 6120, and 10101 and Interpretive Material 2110–4, 2210–4, 2420–1, 2420–2, and 2440. In late 1997, the Commission approved substantial amendments to the NASD's corporate documents that were designed to: (1) implement a corporate restructuring developed in 1997; (2) comply with the SEC's August 8, 1996 Order making certain findings and imposing remedial sanctions,[4] and (3) implement certain recommendations found in the *Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors.*[5] A number of articles and sections were added or removed from the NASD By-Laws, resulting in the need to renumber the By-Laws. A substantial number of corrections to By-Law cross-references in the NASD Rules were made in the rule filing that substantially amended the NASD's corporate documents. The purpose of the proposed rule change is to completer the corrections of the cross-references to the currently approved By-Laws so that all of the NASD Rules conform to the By-Laws.[6]

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change simply corrects cross-references to the NASD By-Laws in the NASD Rules and would not result in a substantive change in any rule.

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[3] In SR–NASD–97–61, which has been published for comment by the Commission, NASD Regulation proposed to renumber IM–2440 as IM–2440–1. *See* Securities Exchange Act Release No. 40511 (Sept. 30, 1998), 63 FR 54169 (Oct. 8, 1998).

[4] Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Stock Market (August 8, 1996) and Securities Exchange Act Release No. 37538 (August 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc.)

[5] In November 1994, the NASD Board of Governors appointed the Select Committee on Structure and Governance to review the NASD's corporate governance structure and to recommend changes to enable the NASD to meet its regulatory and business obligations.

[6] The Commission recently approved other changes to the NASD By-Laws. *See* Securities Exchange Act Release No. 40615 (Oct. 28, 1998), 63 FR 59614 (Nov. 4, 1998). None of these changes require corrections to the cross-references in the NASD Rules.

[7] 15 U.S.C. 78o–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act,[8] and Rule 19b–4(e)(1)[9] thereunder, in that it is designated by the NASD as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–86 and should be submitted by December 28, 1998.

It is therefore ordered, pursuant to Section 19(b)(2)[11] of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32401 Filed 12–4–98; 8:45 am]

BILLING CODE 8010–01–M

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[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(e)(1).

[10] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9A54]

State of Idaho and Contiguous Counties in Montana and Washington

Boundary County and the contiguous counties of Bonner in the State of Idaho, Lincoln County in the State of Montana, and Pend Oreille County in the State of Washington constitute an economic injury disaster loan area as a result of a debris flow and landslide that occurred on October 17. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on August 27, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The numbers assigned for economic injury for this disaster are 9A5400 for Idaho; 9A5500 for Montana; and 9A5600 for Washington.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: November 27, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–32433 Filed 12–4–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

New England States Regional Fairness Board Strategy Meeting

The Small Business Administration Region I New England States Regional Fairness Board located in the geographical area of Boston Massachusetts, will hold a strategy meeting at 9:30 a.m. on Friday, December 11, 1998 at the SBA Regional Office 10 Causeway Street, (8th Floor), O'Neil Federal Building, Boston, MA 02222–1903, to collect Fairness Board members' comments on the 6/22/98 proceedings, as well as to obtain recommendations and other input for the annual Report to Congress.

For further information, write or call, Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–32432 Filed 12–4–98; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1510).

TIME AND DATE: 9. a.m. (CST), December 9, 1998.

PLACE: Shawnee Fossil Plant Auditorium, Paducah, Kentucky.

STATUS: Open.

Agenda

Approvial of minutes of meetings held on September 23 and October 23, 1998.

New Business

C—Energy

C1. Contract with Asea Brown Boveri Power Transmission and Distribution Company, Inc., for supply of power transformers.

C2. Contracts with Gardner Service Corporation, Brentwood, Tennessee; Raines Brothers, Inc., Schaerer Contracting Company, Inc., and Vega Corporation of Tennessee, Chattanooga, Tennessee; and Turner Construction Company, Nashville, Tennessee, for construction and/or modification services at TVA facilities located in the metropolitan and surrounding areas of Chattanooga and Nashville, Tennessee.

C3. Contract with Ecolochem, Inc., for chemicals, equipment, and related services for bulk, package, lab, herbicide, pesticide, dust suppression, boiler cleaning, and water treatment for all TVA locations.

C4. Contract with Southeastern Construction and Equipment Company, LLC, for initial clearing, restoration, and reclamation of right-of-way areas to support construction of new transmission lines for the central TVA region.

C5. Contract with Crisp & Crisp, Inc., for initial clearing, restoration, and reclamation of right-of-way areas to support construction of new transmission lines for the eastern TVA region.

C6. Contract with Calgon Corporation for raw water and speciality chemicals and raw water chemical treatment services at TVA nuclear facilities.

C7. Supplements to engineering services contracts with Midpoint International Corporation (TV–95252V) and Martin-Williams International, Inc. (TV–95264V), to provide engineering services in a staff augmentation role to TVA.

C8. Supplement to Contract No. TV–89742V with Gilbert/Commonwealth, Inc.

C9. Contracts with ABB Environmental Systems, Inc., for selective catalytic reduction process equipment for Paradise Fossil Plant Units 1 and 2, and Cormetech, Inc., for furnishing catalyst for Paradise Fossil Plant Units 1 and 2 and long-term catalyst supply.

C10. Contract with ABB Power Generation for generator uprating and related system upgrade for Raccoon Mountain Pumped-Storage Plant.

C11. Contract with General Electric Company for generator field rewinds of the GE combustion turbine generating units.

C12. Contract with General Electric Company for the combustion turbine dual fuel conversion project at Johnsonville Fossil Plant.

C13. Abandonment of surface rights overlying coal and associated right to mine and remove such coal affecting approximately 176.84 acres of Koppers Coal Reserve in Campbell County, Tennessee (Tract No. EKCR–10).

E—Real Property Transactions

E1. Grant of a 25-year public recreation easement affecting 35.3 acres of Chatuge Lake land in Towns County, Georgia (Tract No. XTCHR–29RE).

Information Items

1. Medical contribution plan for certain employees, retirees, and dependents not eligible for the TVA Retirement System supplement benefit, future access to retiree medical coverage, future access to contributions toward retiree health coverage costs for Civil Service and Federal Employees Retirement System retirees.

2. Approval of land exchange by the United States Department of Agriculture, Forest Service, affecting approximately 3.7 acres of former TVA land on Fontana Lake in Swain County, North Carolina (Tract No. XTFR–3).

3. Approval to file a condemnation case affecting the New Albany-Holly Springs Loop to Hickory Flat Transmission Line (Tract No. THSHF–2).

4. Approval to award a fixed-price contract with General Electric Company for the manufacture and turnkey installation of eight combustion turbine generating units for operation beginning June 2000.

5. Approval of land exchange by the United States Department of Agriculture, Forest Service, affecting approximately 2.93 acres of former TVA land on Watauga Lake in Carter County, Tennessee (Tract No. XTWAR–30).

6. Modification of a permanent easement to the Utilities Board, City of Muscle Shoals, affecting 0.9 acre of land on the Muscle Shoals Reservation, Colbert County, Alabama (Tract No. XT2NPT–16E).

7. Rescission of a February 1, 1995, authorization of a grant of permanent easement for highway improvements to the Tennessee Department of Transportation affecting approximately 21 acres of land on Cherokee Lake, Grainger County, Tennessee (Tract No. XTCK–61H), and grant of a permanent easement for highway improvements to the Tennessee Department of Transportation affecting approximately 34 acres of land on Cherokee Lake (Tract No. XTCK–61H).

8. 1999 edition of the Transmission Service Guidelines, providing open access transmission service over the TVA system, and the rates for transmission service and ancillary services included in the Guidelines.

9. Delegation of authority to the Senior Vice President, Procurement, to enter into contractual obligations required for TVA to obtain financial market data.

10. Approval of Fiscal Year 1998 tax-equivalent payments to states and counties and estimated tax-equivalent payments for FY 1999.

11. Approval of the sale of TVA Power Bonds.

12. Approval of the Chief Financial Officer's proposed power system operating budget and power system capital budget for Fiscal Year 1999.

13. Approval for the sale of TVA Power Bonds and delegation of authority to enter into currency swap arrangements with Morgan Guaranty Trust Company.

14. Approval to file a condemnation case affecting the Oneida-McCreary Loop into Winfield Transmission Line.

15. Approval of amendments to resolutions adopted on March 2, 1998 (and amended June 10, 1998), relating to the sale of Tennessee Valley Authority Power Bonds.

16. Approval of changes in accounting policies in conjunction with the Fiscal Year 1999 budget.

17. Approval for an increase in the amount of short-term debt that may be issued through the book-entry system of the Federal Reserve Banks.

FOR MORE INFORMATION: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: December 2, 1998.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 98–32487 Filed 12–3–98; 12:25 pm]

BILLING CODE 8210–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4765]

Intent to Prepare a Programmatic Environmental Assessment for the Coast Guard "Optimize Training Infrastructure" Initiative; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent; notice of meetings and request for comments; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** of November 19, 1998, announcing its intent to prepare a Programmatic Environmental Assessment (PEA) on its "Optimize Training Infrastructure" (OTI) Initiative and to begin the public scoping process to gather public input on issues and concerns to be analyzed and addressed in the PEA. To assist in gathering public comments, three public scoping meetings were scheduled. The time for the meeting in Cape May, New Jersey, and for the public open house before that meeting were incorrect.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, the NEPA process, and NEPA documents, contact Ms. Susan Boyle, Environmental Branch Chief of the Coast Guard Maintenance and Logistics Command Pacific; telephone: 510–437–3973; e-mail: CoastGuard@ttsfo.com. For questions on the OTI Initiative, contact LCDR Keith Curran, Reserve and Training Directorate, Coast Guard Headquarters;

telephone: 202–267–2429; e-mail: *CoastGuard@ttsfo.com*. For questions on viewing or submitting material to the docket, contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation; telephone: 202–366–9329.

Correction

In the **Federal Register** of November 19, 1998, in FR Doc. 98–30991, on page 64309, in the second column, correct the DATES caption to read:

DATES: The meeting dates are—

1. December 7, 1998, from 4:30 p.m. until 7 p.m., Cape May, NJ.
2. December 8, 1998, from 6:30 to 9 p.m., Yorktown, VA.
3. December 10, 1998, from 6:30 to 9 p.m., Petaluma, CA.

A public open house will be held before the Cape May meeting from 3 p.m. to 4:30 p.m. and before the Yorktown and Petaluma meetings from 3:30 p.m. to 5:30 p.m.

Written comments must reach the Docket Management Facility on or before December 24, 1998.

Dated: December 1, 1998.

D.E. Clapp,

Capt, USCGR, Director of Reserve and Training Acting.

[FR Doc. 98–32389 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 20–XX FSCAP]

Proposed Advisory Circular (AC) on Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts (FSCAP), Engines, and Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed FSCAP AC and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC pertaining to guidance for use in determining the eligibility of and evaluating U.S. military surplus flight safety critical aircraft parts for installation on U.S. type certificated products. This notice is necessary to give all interested persons the opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before February 5, 1999.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Continuous Airworthiness Maintenance Division, AFS–300, 800 Independence Avenue, SW., Washington, DC 20591, attention Al Michaels. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Al Michaels, AFS–300, at the above address, or telephone (202) 267–8203, or facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by downloading through the Internet at the following Uniform Resource Location (URL): http://www.faa.gov/avr/afs/acs/fscap.doc. The file name is "FSCAP." doc in word 6 format.

Interested persons are invited to comment on the draft AC by submitting such written data, views, or arguments as they may desire or E:mail Al Michaels at Albert.Michaels@faa.gov. Commenters should identify FSCAP AC, Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts, Engines, and Propellers to the address specified above. All comments will be considered by the Continuous Airworthiness Maintenance Division, AFS–300, before issuing the final AC.

Background

The U.S. Federal Property and Administrative Services Act of 1949, as amended, requires the Department of Defense (DoD) to dispose of its surplus property. However, the DoD is prevented from destroying property with economic value. With the "downsizing" of military requirements, increasing quantities of surplus DoD aircraft and their parts have become available for civil purchase. Depending on the aircraft type and/or whether these surplus military products have had civilian counterpart models for which an FAA U.S. type certificate had been issued, such aircraft may have potential eligibility for issuance of either standard or special airworthiness certificates. Concerns regarding military surplus aircraft parts, specifically those parts designated by the proponent military service as Flight Safety Critical Aircraft Parts (FSCAP), entering into the civil market place led to the forming of a joint DoD/FAA FSCAP Process Action Team (PAT). This team, representing the Defense Logistics Agency, the Departments of the Army, Navy and Air Force, and the FAA, produced recommendations related to the identification, disposition and control of military surplus FSCAP. DoD and the FAA accepted the PAT recommendations and jointly signed the implementation plan memorandum in 1995. This proposed FSCAP AC is part of the Flight Safety Critical Aircraft Parts, Process Action Team's (PAT) implementation recommendations and provides guidance that is pertinent to any member of the aviation community concerned with the potential installation of military surplus FSCAP on FAA type-certificated products. While many military parts may be the same as their FAA-approved civil counterparts, they are not generally FAA-approved for installation. Typically, the procuring military service specifies requirements for the design, production, and acquisition of parts that may not meet 14 Code of Federal Regulations (CFR); however, certain parts procured by the DoD have the potential to be approved for civil use. Conversely, certain military unique FSCAP are currently part of FAA-certificated, restricted category military surplus products. Some military unique replacement parts have no alternative source other than the military surplus stocks originally procured solely for armed forces use.

The DoD makes no representation as to a military surplus part's eligibility for installation on FAA type certificated products. Therefore, prior to installing such parts on a certificated product, the installer must make a determination of airworthiness. In order to maintain the airworthiness of any aircraft, parts used to maintain the aircraft must meet that aircraft's applicable airworthiness requirements. Failure to comply with Federal Aviation Regulation requirements can subject the owner and/or installer to enforcement actions. Since military surplus parts may not meet FAA type design, and/or may have been operated outside the limitations specified by the Code of Federal Regulations inspections and/or FAA approvals may be needed to determine the part's condition for safe operation and eligibility for installation on a type-certificated product. This Advisory Circular (AC) would address a means to help the installer make these required determinations.

Issued in Washington, DC, on December 1, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

[FR Doc. 98–32407 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on 6 currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before February 5, 1999.

ADDRESSES: Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Corporate Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

Following are short synopses of the 6 currently approved pubic information collection activities, which will be submitted to OMB for review and renewal:

1. *2120–0003, Malfunction or Defect Report.* The information collections are required by CFR 135 and 145. Malfunction or Defect Reports are mandatory submissions on FAA Form 8010–4, by repair stations certificated under Part 145, and Air taxi operators certificated under Part 135. The collection of this information permits the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or the lack thereof. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents. The current number of respondents is estimated to be 20,500 part 135,145, and other operators encouraged to submit reports. The estimated burden on the public is estimated to be 6,200 hours annually.

2. *2120–0005, General Operating and Flight Rules—FAR 91.* Part A of Subtitle VII of the Revised Title 49 USC authorizes the issuance of regulations governing the use of navigable airspace. The reporting and recordkeeping requirements of 14 CFR Part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets and unmanned free balloons) within the United States. The reporting and recordkeeping requirements prescribed by various sections of Part 91 are necessary for FAA to ensure compliance with these provisions. The respondents are individual airmen, state or local governments and businesses. The estimated burden associated with this collection is 230,000 hours annually.

3. *2120–0042, Aircraft Registration.* Public Law 103–272 states that all aircraft must be registered before they may be flown. The registration system provides identification of all civil aircraft in the United States. The registration record also provides evidence of ownership. The respondents are anyone, individual or businesses, wishing to register an aircraft. The respondent population is estimated to be 73,000 with an estimated annual burden of 74,000 hours.

4. *2120–0514, Aviation Insurance.* The Federal Aviation Administration is authorized to provide aviation insurance in emergency situations in which the President determines that continuation of air service is in the foreign policy interest of the United States and the Administrator has determined that aviation insurance is not available on reasonable terms and conditions from commercial sources. There are an estimated 45 respondents, and an estimated burden of 68 hours.

5. *2120–0517, Airport Noise Compatibility Planning—FAR 150.* The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval. FAA approval makes airport operators' noise compatibility programs eligible for a 10 percent set-aside of discretionary grant funds under the FAA Airport Improvement Program. The respondents are an estimated 17 state and local governments (airport operators) for an estimated 55,000 hours.

6. *2120–0570, Certificated Training Centers Simulator Rule—Part 142.* To determine compliance, there is a need for airmen to maintain records of certain training and regency of experience. There is a need for training centers to maintain records of students trained, employee qualification and training, and training program approvals. Information is used to determine compliance with airmen certification and testing to ensure safety. The respondents are an estimated 42 businesses with an estimated annual burden of 5500 hours.

Issued in Washington, DC, on December 1, 1998.

Steve Hopkins,

Manager, Corporate Information Division, APF–100.

[FR Doc. 98–32408 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–23]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 22, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–2132.

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 2, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 27396.

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.401(d), 121.433(c)(1)(iii), 121.440(a), and 121.441(a)(1) and (b)(1); appendix F.

Description of Relief Sought/Disposition: To permit Northwest Airlines (NWA) to combine recurrent flight and ground training and proficiency checks for NWA's flight crewmembers in a single annual training and proficiency evaluation program and meet the line check requirements of 121.440(a) and SFAR No. 58 through and FAA-approved alternative line check program.

Grant: November 3, 1998, Exemption No. 5815C.

Docket No.: 23940.

Petitioner: Eagle Canyon Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.345(c)(2).

Description of Relief Sought/Disposition: To permit Eagle Canyon Airlines to operate certain aircraft under the provisions of part 121 without a TSO–C112 (Mode S) transponder installed on each of those aircraft.

Grant, November 3, 1998, Exemption No. 6839.

Docket No.: 010NM.

Petitioner: Boeing Commercial Airplane Group.

Sections of the FAR Affected: 14 CFR 121.583(c).

Description of Relief Sought/Disposition: To permit the initial and recurrent training mandated for flightcrew by operational regulatory requirements (e.g., subpart N of part 121) shall include the use of inertia reels and harnesses, including for the evacuation of incapacitated occupants.

Grant: November 5, 1998, Exemption No. 4808B.

[FR Doc. 98–32409 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RIN 2120–AF 04

Policy on the Use for Enforcement Purposes of Information Obtained from an Air Carrier Flight Operational Quality Assurance (FOQA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: General Statement of Policy.

SUMMARY: This document states the FAA policy concerning the use for enforcement purposes of information obtained from an air carrier voluntary Flight Operational Quality Assurance (FOQA) program, and sets forth what the FAA considers to be a FOQA program for purposes of this policy.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas M. Longridge, Air Transportation Division, Flight Standards Service, telephone (703) 661–0260, facsimile (703) 661–0274, email: Thomas.Longridge@faa.fov, mailing address: AFS–230, P.O. Box 20027, Washington, D.C. 20041, or Peter J. Lynch, Enforcement Division, Office of the Chief Counsel, telephone (202) 267–3137, facsimile (202) 267–7257, email: Peter.Lynch@faa.gov, mailing address: AGC–300, 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

Since the mid-1940's the civil air transport accident rate has significantly decreased. This decrease is due in part to the air transport industry's practice of discovering, understanding, and eliminating factors that lead to accidents and incidents. For many years, industry, the FAA, and the National Transportation Safety Board (NTSB) have used information from flight data recorders (FDRs) and digital flight data recorders (DFDRs) to identify the causes of accidents and to attempt to eliminate those causes systematically.

Airplanes used in operation as conducted under 14 CFR part 121 and certain types of aircraft used in operations conducted under parts 91, 125, and 125 are required to have flight data recorders. Any operator who has installed approved flight recorders is required to keep the recorded information for at least 60 days after an accident or incident requiring immediate notification to the NTSB (14 §§ CFR 91.609(G), 121.343(I), 125.225(G), AND 135.152(E)). The flight data recorder information can thus be analyzed to determine causes of an accident or incident.

In the past 20 years, technological advances in digital flight data recording and on-board storage media have increased the potential for obtaining and analyzing information on the flight characteristics of an aircraft during its operation. This information can be analyzed on a routine basis in order to identify trends which, if uncorrected, could lead to an unsafe situation. The key potential safety benefit of this strategy is that it would enable the FAA and aircraft operators to take early action to prevent accidents. This benefit would be in addition to current sources of safety information on which the agency and industry rely for after-the-fact accident- or incident-driven data extraction and analysis which may then be used to develop safety fixes to prevent later accidents, and information from operator self-disclosure programs. Because of its capacity to provide early objective identification of safety shortcoming, the routine analysis of digital flight data offers significant additional potential for accident avoidance.

In January 1995 the Department of Transportation sponsored an Aviation Safety Conference in cooperation with key representatives from industry and government. A major concern of the conference was a projection that even if the currently low accident rate remains constant, the number of accidents per year could nevertheless continue to increase due simply to the increase in traffic volume expected in the future. The conference focused therefore on the development of additional measures that the FAA and industry might pursue in the interest of precluding this possibility. It was observed that while enforcement will remain a useful tool for the protection of public safety, enforcement alone is unlikely to achieve the further reductions in the accident rate that are needed. Industry must play an active role in better identifying potential threats to safety and in self-initiating the necessary corrective actions before they lead to accidents. Among the recommendations from the conference, the voluntary implementation of FOQA programs was identified as one of the most promising industry initiatives with realistic potential to reduce accidents.

Conference participants further recommended that the FAA sponsor a FOQA Demonstration Study in cooperation with industry in order to permit both government and industry to develop hands-on experience with FOQA technology in a U.S. environment, document the cost-benefits of voluntary implementation, and initiate the development of organizational strategies for FOQA information management and use. In the interest of encouraging participation in such a study, and in response to industry expressions of concern over the enforcement ramifications of participating in it, the FAA committed itself at the conference to issuing an interim policy statement concerning the use of FOQA information by the FAA.

In February 1995, the FAA Administrator issued a statement of policy on the use of FOQA information for enforcement purposes. In letters to the President of the Air Line Pilots Association (ALPA) and the President of the Air Transport Association (ATA), the Administrator committed to limitations on the use of FOQA information for enforcement purposes. The letters also stated that, "The FAA will use information from the demonstration study as well as experience gained as a basis for determining appropriate future action regarding the need for and appropriateness of rulemaking to codify the limitations on the FAA's use of FOQA information."

The FOQA Demonstration Study has been conducted over the past 3 years in cooperation with major airlines in the U.S. Analysis of the flight data information, which is deidentified at the time of collection, has provided substantial documentation of the benefits of FOQA. The Demonstration Study's findings are very similar to the results obtained by foreign air carriers, many of whom have long experience in the use of this technology. These include documenting unusual autopilot disconnects, GPWS warnings, excessive rotation rates on take-off, unstabilized approaches, hard landings, and compliance with standard operating procedures. They also include use of FOQA data for monitoring fuel efficiency, identifying out-of-trim airframe configurations, enhanced engine condition monitoring, noise abatement compliance, rough runway surfaces and aircraft structural fatigue. These results clearly validate the value of FOQA for safety enhancement.

Based on the results of the Demonstration Study, the FAA has concluded that FOQA can provide a source of objective information on which to identify needed improvements in flight crew performance, air carrier training programs, operating procedures, air traffic control procedures, airport maintenance and design, and aircraft operations and design. The acquisition and use of such information to achieve improvements in these areas clearly enhances safety. The FAA therefore finds that encouraging the voluntary implementation of FOQA programs by U.S. operators is in the public interest.

Policy Statement

The FAA encourages voluntary airline collection of deidentified digital flight data recorder data to monitor line operations on a routine basis, along with the establishment of procedures for taking corrective action that analysis of such data indicates is necessary in the interest of safety. The FAA also recognizes the industry's concerns regarding the use of deidentified FOQA information to undertake enforcement actions. The FAA therefore has determined that the appropriate policy is to refrain from using deidentified FOQA information to undertake enforcement actions except in egregious cases, i.e., those that do not meet the conditions listed in section 9, paragraph c of Advisory Circular 00–46D governing the Aviation Safety Reporting Program. This policy applies only to information collected specifically in a FOQA program that is FAA-approved.

For purposes of this policy, the term "FOQA program" means an FAA-approved program for the routine collection and analysis of in-flight operational data by means of a DFDR. The program would include a description of the operator's plan for collecting and analyzing the data, procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety, procedures for providing the FAA access at the carrier's offices to deidentified aggregate FOQA information, and procedures for informing the FAA as to any corrective action being undertaken. The FAA will be able to monitor safety trends evident in the FOQA data and the operator's effectiveness in correcting adverse safety trends.

Issued in Washington, DC on December 2, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–32483 Filed 12–3–98; 11:27 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Preemption Determination No. PD–14(R) (Docket No. PDA–15(R))

Houston, Texas, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

APPLICANT: Association of Waste Hazardous Materials Transporters (AWHMT).

LOCAL LAWS AFFECTED: Houston, Texas, Ordinance No. 96–1249 adopting the 1994 Uniform Fire Code with certain modifications.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 40 CFR Parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: The Houston Fire Code contains express exceptions for flammable and combustible liquids and other hazardous materials when being transported "in accordance with" DOT's regulations. For that reason, the following requirements in the Houston Fire Code do not apply, and are not preempted by Federal hazardous material transportation law, when the transportation of flammable and combustible liquids is subject to the requirements in the HMR: (1) permits for the storage, handling, transportation, dispensing, mixing, blending or using hazardous materials, including the definition of "hazardous materials" as part of these permit requirements; (2) the design, construction, or operation of tank vehicles used for flammable or combustible liquids; (3) physical bonding during loading of the vehicle; (4) unattended parking of the vehicle; and (5) the service rating of the fire extinguisher required to be carried on the vehicle.

RSPA denies the request in AWHMT's May 1997 comments to consider a provision limiting the time for unloading flammable or combustible liquids from rail tank cars after delivery, because that requirement is unrelated to the issues raised in AWHMT's application.

FOR FURTHER INFORMATION CONTACT:

Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Application and Public Notices

In February 1996, AWHMT applied for an administrative determination that Federal hazardous material transportation law preempts certain provisions of the Fire Code of the City of Houston, Texas, as adopted March 15, 1995, in Ordinance No. 95–279. At that time, the Houston Fire Code consisted of the Uniform Fire Code (1991 edition) as modified in a "Conversion Document."

In its application, AWHMT stated that the challenged provisions were being applied to tank vehicles that picked up or delivered hazardous materials within the City of Houston (City) and involved: (1) inspections and fees required to obtain an annual permit to store, handle, transport, dispense or use hazardous materials (including flammable and combustible liquids) in excess of specified amounts; (2) the definition of "hazardous materials"; and (3) additional requirements applicable to tank vehicles used for flammable and combustible liquids. AWHMT separately provided copies of citations issued to operators of cargo tank motor vehicles for loading or unloading corrosive materials within the City without the permit required by the Houston Fire Code.

The test of AWHMT's application was published in the **Federal Register** on March 20, 1996, and interested parties were invited to submit comments. 61 FR 11463. Comments were submitted by the Hazardous Materials Advisory Council (HMAC), the National Tank Truck Carriers, Inc. (NTTC), the Texas Tank Truck Carriers Association, Inc. (TTTC), and the City. Rebuttal comments were submitted by AWHMT. In its comments, the City stated that the Houston Fire Department would be submitting the 1994 edition of the Uniform Fire Code to the Houston City Council for adoption. According to the City, the revised version of the Houston Fire Code would (1) make clear that the permit requirements did not apply to over-the-road (or "off-site") transportation of hazardous materials, and (2) modify some of the requirements applicable to tank vehicles used for flammable or combustible liquids.

In February 1997, the City provided a certified copy of Ordinance No. 96–1249, approved by the Houston City Council on November 26, 1996, which (among other matters) amended Ordinance No. 95–279 to adopt the 1994 edition of the Uniform Fire Code together with certain "City of Houston Amendments." Thereafter, RSPA published a notice in the **Federal Register** reopening the comment period on AWHMT's application so that interested parties could provide further information on the current status of the challenged provisions in the Houston Fire Code, and how those provisions are being applied or enforced in light of the exceptions in the Houston Fire Code for "[t]ransportation of flammable and combustible liquids when in accordance with DOT regulations," and "[o]ff-site hazardous materials transportation in accordance with DOT requirements." 62 FR 17281, 17282 (April 9, 1997).

In the April 1997 notice, RSPA also invited interested parties to comment on whether AWHMT's application raised issues concerning the applicability of the HMR that should be considered (in addition to or instead of action on AWHMT's application) in the rulemaking under Docket No. HM–223, "Applicability of the Hazardous Materials Regulations to Loading, Unloading and Storage." *See* RSPA's Advance Notice of Proposed Rulemaking, 61 FR 39522 (July 29, 1996), and Notices of Meeting, 61 FR 49723 (Sept. 23, 1996) and 61 FR 53483 (Oct. 11, 1996). Further comments were submitted by the City, AWHMT, and TTTC. The City and AWHMT also submitted rebuttal comments.

Althought the City has asked RSPA to postpone consideration of AWHMT's application pending issuance of a final rule in HN–223, there is no reason for deferral. The circumstances here are not comparable to those in PDs 8(R)–11(R), California and Los Angeles County Requirements Applicable to On-site Handling and Transportation of Hazardous Materials, 60 FR 8774 (Feb. 15, 1995), where RSPA is deferring consideration of petitions for reconsideration. Those proceedings, which involve requirements in the Uniform Fire Code (as adopted by Los Angeles County), raise issues of the applicability of the HMR as applied to the "on-site" handling and transportation of hazardous materials. In contrast, no party here disputes that the HMR apply to carriers who pick up or deliver hazardous materials within the City for "off-site" transportation. The main issue in this case is whether the Houston Fire Code applies to those carriers and their vehicles—not whether the HMR apply.

AWHMT, the City, and other parties who submitted comments in this proceeding are encouraged to participate fully in HM–223 because of the relationship between the applicability of the HMR and the Uniform Fire Code to transportation-related activities involving hazardous materials.

B. The Challenged Houston Fire Code Requirements

At its outset, the 1994 Uniform Fire Code adopted in the City's Ordinance No. 96–1249 states that it:

> prescribes regulations consistent with nationally recognized good practice for the safeguarding to a reasonable degree of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life and property in the use or occupancy of buildings and premises.

Sec. 101.2 ("Scope"). The Uniform Fire Code includes "general provisions for safety" (*e.g.*, access and water supply, fire protection equipment, emergency exits), as well as more specific requirements on "special occupancy uses" (*e.g.*, places of assembly and shopping malls, temporary structures, dry cleaners and lumber yards), "special processes" (*e.g.*, welding, organic coatings), and "special equipment" (*e.g.*, oil-burning equipment, drying ovens, refrigeration). A separate part of the Uniform Fire Code covers "special subjects," including flammable and combustible liquids (in Article 79) and hazardous materials (in Article 80).

Within both Articles 79 and 80 (as well as Article 1) are requirements for permits, and Article 79 contains additional provisions concerning "tank vehicles and vehicle operations" relating to flammable and combustible liquids. Because the categories of "hazardous materials" include flammable and combustible liquids, *both* Articles 79 and 80 appear to apply to flammable and combustible liquids. These articles of the Uniform Fire Code also contain several exceptions, including the following in Sec. 7901.1.1:

> Transportation of flammable and combustible liquids when in accordance with DOT regulations on file with and approved by DOT.

And in Sec. 8001.1.1:

> Off-site hazardous materials transportation in accordance with DOT requirements.

To the above-quoted language in Sec. 8001.1.1, the City has added that the exception also applies to "other activities for which local regulation is preempted by federal or state law." In the following sections containing the permit requirements challenged by AWHMT, the City of Houston Amendments also state that, "A permit is not required for any activity where the requirement of local permits is preempted by federal or state law": Secs. 105.8.f.3, 108.5.h.1, 7901.3.1, 8001.3.1.

The provisions in the Houston Fire Code covered by AWHMT's application relate to the following:

> *Permits*. A permit is required to:
>
> "Store, handle, transport, dispense, mix, blend or use flammable or combustible liquids" in excess of certain quantities (Sec. 7901.3.1) and to ". . . operate tank vehicles . . . and similar facilities where flammable and combustible liquids are producted, processed, transported, stored, dispensed or used" (Sec. 105.8.f.3.3).
>
> "Store, transport on site, dispense, use or handle hazardous materials" in excess of certain specified amounts (Sec. 105.8.h.1; *see also* Sec. 8001.3.1 ["store, dispense, use or handle hazardous material"]).

Before a permit is issued, the fire chief "is authorized, but not required, to inspect and approve the receptacles, vehicles, buildings, devices, premises, storage spaces or areas to be used." Sec. 105.4. The City charges a $175 fee "for the permits and inspections" applicable to flammable and combustible liquids and other hazardous materials, and additional fees for an inspection performed "outside of regular hours." Secs. 106.1, 106.3.3, Table 106–A.

"Hazardous materials". The classification and categories of "hazardous materials," as regulated by the Houston Fire Code, are set forth in Appendix VI–A, which states that these categories are based on the regulations of the Department of Labor's Occupational Safety and Health Administration (OSHA) in Title 29 of the CFR. *See also* Secs. 209 and 8001.1.2. The only relevance of the term "hazardous materials" to this proceeding appears to be its use in the permit requirement in Secs. 105.8h.1 and 8001.3.1.

Tank Vehicles. Among the requirements in Article 79 specifically applicable to tank vehicles used for flammable or combustible liquids are the following:

> Sec. 7904.6.1. Tank vehicles shall be designed in accordance with U.F.C. Standard 79.4 and Section 7904.6.
>
> Sec. 7904.6.3.4. Bonding shall be in accordance with Section 7904.5.2.3 [which requires a metallic bond between the truck and the fill stem or some part of the rack in electrical contact with the fill stem, in order "to prevent the accumulation of static charges during truck-filling operations * * * through open domes * * *"].
>
> Sec. 7904.6.5.2.1. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152.4 m) of a residential area, apartment, or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the chief, present an extreme life hazard.
>
> Sec. 7904.6.7. Tank vehicles shall be equipped with a fire extinguisher having a minimum rating of 2–A, 20–B:C. During unloading of the tank vehicle, the fire extinguisher shall be out of the carrying device on the vehicle and shall be 15 feet (4572 mm) or more from the unloading valves.

In adopting the 1994 edition of the Uniform Fire Code, the City reduced the number of fire extinguishers required on tank vehicles from two (in former Sec. 79.1207) to one; it also eliminated a provision challenged by AWHMT, requiring "NO SMOKING" and "FLAMMABLE" signs and other identification on tank vehicles (former Sec. 79.1203(n)).

In its May 23, 1997 comments, AWHMT asked RSPA to consider an additional requirement that rail tank cars containing flammable or combustible liquids "shall be unloaded as soon as possible after arrival at point of delivery" and within 24 hours of being connected for transfer operations, unless otherwise approved by the fire chief. Sec. 7904.5.4.3. AWHMT noted that the same tank car unloading requirement in the Uniform Fire Code, as adopted by Los Angeles County, was found to be preempted in PD–9(R), Los Angeles County Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property, 60 FR 8774, 8783, 8788 (Feb. 15, 1995). Petitions for reconsideration of that decision and the other determinations made in PDs 8(R)–11(R) are being deferred pending RSPA's consideration of the scope of the HMR in HM–223.

Unlike the challenge to the Los Angeles County requirements, however, neither AWHMT nor any other party has submitted any information as to how Sec. 7904.5.4.3 is being applied or whether there are practical problems in complying with the 24-hour unloading requirement. AWHMT itself acknowledged that the tank car unloading requirement in Sec. 7904.5.4.3 applies to the recipient or consignee of a shipment of hazardous materials in a tank car and, in this respect, differs from the other "requirements imposed on carriers and equipment under the care, control and custody of carriers" involved in AWHMT's application.[1]

RSPA believes that the City and other parties who submitted comments understood, as RSPA did, that AWHMT's application challenged requirements in the Houston Fire Code only as applied to motor carriers that pick up or deliver hazardous materials within the City. Indeed, NTTC objected to "the City's permit system [because] it involves only cargo tank vehicles." In the absence of additional information, RSPA cannot add to its prior discussion in PDs 8(R)–11(R) on this requirement, and RSPA is denying AWHMT's belated request to consider the 24-hour tank car unloading requirement because that requirement is unrelated to the issues raised in AWHMT's application.

C. The HMR and Federal Preemption

Federal hazardous material transportation law and the MHR apply to the transportation of hazardous materials in commerce. "Transportation" is defined as "the movement of property and loading, unloading, or storage incidental to the movement." 49 U.S.C. 5102(12). With respect to motor carriers, ground transportation is "in commerce" when it takes place "on, across, or along a public road," and the HMR "apply to the ground transportation of hazardous material on, across, or along a public road, including loading, unloading and storage incidental to that transportation." PDs 8(R)–11(R), 60 FR at 8777.[2] In the terminology used in PDs 8 (R)–11(R), the HMR unquestionably apply to "off-site" transportation; the issues that RSPA hopes to resolve in HM–223 concern the scope of "transportation" and the "on-site" activities to which the HMR apply.

The HMR do not contain requirements for permits, and regulations have not yet been issued by DOT to implement the provisions of 49 U.S.C. 5109 regarding Federal motor carrier safety permits. In Part 173 of 49 CFR, the HMR contain specific rules for classifying hazardous materials (in some cases differently than OSHA), and, at 49 CFR 172.101, there is a lengthy table listing the materials designated as hazardous for the purpose of transportation.

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[1] The City also points out that the current tank car unloading requirement (in the 1994 Uniform Fire Code) is unchanged from the requirement in Section 79.809(c) of the 1991 Uniform Fire Code and could have been raised in AWHMT's application.

[2] As of October 1, 1998, the HMR apply to all transportation of hazardous materials by motor vehicle. 49 CFR 171.1(a)(1). Previously, intrastate motor carriers of hazardous materials other than hazardous wastes, hazardous substances, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks were regulated only by similar requirements in State or local law (and Texas has adopted the HMR as State law). *Id.*

The HMR include specifications for the construction of cargo tank motor vehicles used to transport flammable liquids, *see* 49 CFR 178.345–178.348, but authorize the use of nonspecification cargo tank motor vehicles for the domestic highway transportation of combustible liquids. 49 CFR 173.150(f). The HMR contain specific requirements for physical bonding during the transfer of hazardous materials to or from a cargo tank. 49 CFR 177.837(c). The HMR incorporate by reference requirements in the Federal Motor Carrier Safety Regulations concerning unattended parking of a motor vehicle containing hazardous materials, 49 CFR 397.5(c), and fire extinguishers on a power unit used to transport hazardous materials. 49 CFR 393.95(a)(2)(i).[3]

Strong Federal preemption is a central feature of Federal hazardous material transportation law, contained in 49 U.S.C. 5101 *et seq.* (Which codified and replaced the former Hazardous Materials Transportation Act (HMTA), Pub. L. 93–633, 88 Stat. 2156, amended by Pub. L. 101–615, 104 Stat. 3244). In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying and conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

> (3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,
>
> (4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,
>
> (5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments which expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to AWHMT's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

> (1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the HMTA. The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement about any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

> (A) the designation, description, and classification of hazardous material.
>
> (B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Subsection (g)(1) provides that a State, political subdivision, or Indian tribe may

> impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which have been delegated to FHWA. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register.** Following the receipt and consideration of written comments, RSPA publishes its determination in the **Federal Register.** *See* 49 CFR 107.209(d). A short period of time is allowed for filing petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of the Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

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[3] As provided in 49 CFR 177.804, motor carriers of hazardous materials "and other persons subject to this subpart shall comply with 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those regulations apply."

II. Discussion

The focus of the comments in this proceeding has been the provisions in the Houston Fire Code for a permit—including the related inspection and fee requirements—and their application to "off-site" transportation. RSPA has repeatedly found that a State or local permit requirement is not *per se* preempted; rather, "a permit itself is inextricably tied to what is required in order to get it." IR–2, 44 FR at 75570–71; *see also* IR–3, Boston Rules Governing Transportation of Certain Hazardous Materials by Highway Within the City, 46 FR 18918, 18923 (Mar. 23, 1981), action on appeal, 47 FR 18457 (Apr. 29, 1982); IR–20, Triborough Bridge and Tunnel Authority Regulations Governing Transportation or Radioactive Materials and Explosives, 52 FR 24396, 24397 (June 30, 1987); and IR–28, City of San Jose, California, Restrictions on Storage of Hazardous Materials, 55 FR 8884, 8890 (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992).

According to the initial comments submitted by the City and TTTC, until the effective date of Ordinance No. 95–279, Houston had a simple, straightforward exception: the City did not apply its fire code requirements for permits or inspections to any tank truck that was operated within the City for less than 30 days. Beginning in January 1996, however, TTTC noticed a significant increase in citations issued to tank vehicles for failing to have the hazardous materials permit required by Section 4.108 of the Houston Fire Code. According to TTTC, the City was applying the Fire Code adopted in Ordinance No. 95–279 to require a permit for every tank vehicle operating within the City that was "not on the hazardous material route or one of the main arteries traveling through the Houston area, such as Highway 59."

Although the exception for "off-site hazardous materials transportation in accordance with DOT requirements" was contained in former Sec. 80.101(a) of the 1991 edition of the Uniform Fire Code, TTTC states that the City was interpreting the term "off-site" as applying only to the designated hazardous materials routes and main arteries through the City. Because the pick-up or delivery of any material presumably takes place at a location off the designated hazardous materials routes and main arteries, this interpretation of "off-site" meant that the City was applying its Fire Code requirements to any vehicle that picked up or delivered hazardous materials within the City—or stopped at a point off the designated hazardous materials routes and main arteries for rest, fuel, food, or other purposes. TTTC states that the term "off-site" should apply to "vehicles making deliveries over-the-road" and that these off-site movements should be completely exempt from the permit and inspection requirements under the Houston Fire Code adopted in Ordinance 96–1249. TTTC contends that the Houston Fire Code should apply only to "on-site" transportation, or when "a vehicle is used *exclusively* on the *premises* of a facility" (emphasis in original).

TTTC states that, following AWHMT's application, the City appears to have stopped applying its permit and inspection requirements to tank vehicles that simply picked up or delivered hazardous materials within the City. AWHMT states that it has no evidence "that the City is continuing to enforce its permit and other hazardous materials requirements on motor carriers," although it believes that the withholding of enforcement may be "contingent on the outcome of this proceeding."

In the conclusion of its initial comments, the City stated that the "express exceptions for DOT-regulated activities" in Secs. 7901.1.1 and 8001.1.1 mean that "the Fire Code should not be read as applicable to over-the-road (off-site) transportation * * *" The City elaborated that "permits will not be required for DOT-regulated activities"; the "hazardous materials classifications [in the Houston Fire Code] * * * are not applicable to activities regulated by the DOT"; and that provisions in the Fire Code setting design and construction requirements for tank vehicles apply only to "off-road (or on-site) transportation of flammable or combustible liquids not regulated by DOT."

In its more recent comments, the City now confirms that it does not require permits, apply its definition of "hazardous materials," or apply its tank design requirements to vehicles "meeting DOT requirements." (The City also states that its "30-calendar-day requirement is no longer in effect.") This clearly appears to be the proper interpretation of the exceptions in Secs. 7901.1.1 and 8001.1.1, which apply to the entire contents of Articles 79 and 80—not just the permit requirements.

Although the City states that the provisions in Article 79 concerning physical bonding, unattended parking, and fire extinguishers "are not affected by the [e]xceptions" in Secs. 7901.1.1 and 8001.1.1, that conclusion is in direct conflict with the plain language of these exceptions. It is not possible to read these exceptions as applying to some, but not all, of the Houston Fire Code requirements on flammable and combustible liquids (Article 79) and hazardous materials (Article 80). If, because of these exceptions, the permit and inspection requirements in these articles do not apply to a cargo tank motor vehicle that is subject to regulation under the HMR, all the other requirements in these articles (including those on physical bonding, unattended parking, and fire extinguishers) also cannot apply. In the absence of more detailed comments on these other requirements—and specific information that the City is actually enforcing these requirements against carriers that the City does not require to obtain permits or undergo inspections—RSPA must assume that the City applies the exceptions in Secs. 7901.1.1 and 8001.1.1 in a consistent manner.[4]

Because the City now correctly equates the exceptions in the Houston Fire Code for vehicles "meeting DOT requirements" with "subject to regulation by DOT" under the HMR, AWHMT's challenges to these requirements have become moot. Federal hazardous material transportation law does not preempt non-Federal requirements that do not apply to "transportation in commerce." RSPA agrees with the City's statements that, when it applies the Houston Fire Code to "motor vehicles that are transporting hazardous materials exclusively on private property," its local provisions are not preempted because "transportation that takes place entirely on private property is not transportation 'in commerce' " Quoting from PD–9(R), 60 FR at 8785; *see also* PD–10(R), 60 FR at 8792.[5]

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[4] As a general matter, an inconsistent or erroneous interpretation of a non-Federal regulation should be addressed in the appropriate State or local forum, because "isolated instances of improper enforcement (e.g., misinterpretation of regulations) do not render such provisions inconsistent" with Federal hazardous material transportation law. IR–31, Louisiana Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, 25584 (June 21, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992), quoted in PD–4 (R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48940 (Sept. 20, 1993), decision on reconsideration, 60 FR 8800 (Feb. 15, 1995).

[5] Certain activities that take place on private property, including the "loading, unloading, or storage [of hazardous material] incidental to the movement" of that material in commerce, fall within the scope of "transportation" in commerce 49 U.S.C. 5102(12), and are subject to regulation under the HMR. *See* PD–9(R), 60 FR at 8788, 8789 (a 24-hour limit for unloading a tank car is preempted because it is not substantively the same as Federal requirements, and a prohibition against unloading hazardous materials in accordance with a DOT exemption creates an obstacle to

III. Ruling

Because the following Houston Fire Code sections do not apply when the transportation of flammable and combustible liquids is subject to regulation under the HMR, these requirements are not preempted by Federal hazardous material transportation law:

105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., concerning permits and inspections;
209 and 8001.1.2, concerning the definition of "hazardous materials" (as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1);
7904.6.1, concerning requirements for the design and construction of tank vehicles;
Sec. 7904.6.3.4, concerning physical bonding during truck-filling operations to prevent the accumulation of static charges;
Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or "at any other place that would, in the opinion of the chief, present an extreme life hazard"; and
Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2–A, 20–B:C on board a tank vehicle used for flammable or combustible liquids.

IV. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register.** Any party to this proceeding may seek review of RSPA's decision "in an appropriate district court of the United States . . . not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 40 CFR 107.211(d).

Issued in Washington, DC, on November 30, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–32382 Filed 12–4–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Customs Service

Extension of National Customs Automation Program Test Regarding Remote Location Filing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs second extension of the second prototype of Remote Location Filing (RLF). This notice also invites public comments concerning any aspect of the current test, informs interested members of the public of the eligibility requirements for voluntary participation, describes the basis for selecting participants, and establishes the process for developing evaluation criteria. To participate in the prototype test, the necessary information, as outlined in this notice, must be filed with Customs and approval granted. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program.

Based on our experience in the extension of the second prototype of RLF, we have made modifications to the sections detailing Eligibility Criteria, Prototype Two Applications, and Misconduct. The changes to the Prototype Two Applications will affect parties who wish to apply for participation in the extension of the second prototype of RLF. Current participants may continue their participation without reapplying.

EFFECTIVE DATE: The extension of the second prototype will commence no earlier than January 1, 1999, will continue, and be concluded, no earlier than December 31, 1999, by a notice in the **Federal Register**. Comments concerning any aspect of the remote filing prototype test must be received on or before [insert date 30 days after date of publication of this document in the **Federal Register**].

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in the prototype should be addressed to the Remote Filing Team, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.2 A, Washington, DC 20229–0001.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Joseph Palmer (202) 927–0173, Jackie Jegels (301) 893–6717, or Patricia Welter (305) 869–2782.

For operational or policy issues: Jennifer Engelbach (202) 927–2293, or Bonnie Brigman (202) 927–0294.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414). These define and list the existing and planned components of the NCAP (Section 411), promulgate program goals (Section 412), provide for the implementation and evaluation of the program (Section 413), and provide for remote location filing (Section 414).

The Remote Location Filing (RLF) prototype will allow an approved participant to file electronically a formal or informal consumption entry with Customs from a location within the United States other than the port of arrival (POA), or from within the port of arrival with a requested designated exam site (DES) outside of the POA. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the testing of NCAP components. See, T.D. 95–21 (60 FR 14211, March 16, 1995).

Since June 1994, the Customs Remote Team has shared the Customs RLF concept through many public meetings and concept papers, as well as posted information on the Customs Electronic Bulletin Board (CEBB), the Customs Administrative Message System, and the Customs Web Site on the Internet at "http://www.customs.treas.gov/rlf." Pursuant to § 101.9, Customs Regulations, Customs has been testing the RLF concept.

On April 6, 1995, Customs announced in the **Federal Register** (60 FR 17605) its plan to conduct the first of at least two prototype tests regarding RLF. The first test, Prototype One, began on June 19,

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accomplishing and carry out the HMR). The City is free to adopt the HMR's requirements as local regulations and apply those consistent requirements to the "off-site" transportation of hazardous materials, including flammable and combustible liquids.

1995. On February 27, 1996, Customs announced in the **Federal Register** (61 FR 7300) that it was permitting an extension and expansion of the RLF Prototype One until the implementation of Remote Prototype Two. On November 29, 1996, Customs announced in the **Federal Register** (61 FR 60749) its plan to conclude the first prototype test on December 31, 1996, and conduct a second prototype test of RLF commencing no earlier than January 1, 1997. On December 3, 1997, Customs announced in the **Federal Register** (62 FR 64043) its plan to extend the second prototype through December 31, 1998. In today's document, Customs is announcing that it will permit a second extension of the RLF Prototype Two.

The first remote location prototype test was offered in the Automated Commercial System (ACS). Although the second remote prototype test was originally scheduled to be tested in the Automated Commercial Environment (ACE), the success of Prototype One precipitated the second test under ACS with a larger participant pool. Remote location filing will be a capability of ACE.

Additional prototypes of RLF are being developed by Customs to determine the systemic and operational design of the final RLF program which will allow all filers to participate in this type of entry process at the national level. Prototype participants must recognize that these prototypes test the benefits and potential problems of RLF for Customs, the trade community, and other parties impacted by this program.

Description of RLF Program

The RLF program will be determined by the experiences of the planned remote prototypes and with other Customs initiatives, such as the Trade Compliance Redesign, and ACE. The Customs RLF team's objectives are:

(1) To work with the trade community, other agencies, and other parties impacted by this program in the design, conduct, and evaluation of the second prototype test of RLF;

(2) To obtain experience through prototype tests of RLF for use in the design of operational procedures, automated systems, and regulations; and

(3) To implement RLF at the national level in conjunction with the Trade Compliance Redesign and ACE.

Description of Proposed Test

Prototype Two commenced January 1, 1997, and will run until concluded, no earlier than December 31, 1999, by a notice in the **Federal Register**. Prototype Two will evaluate the operational impact and procedures for a larger participant base, and test filing from a remote location and alternate location examinations.

Regulatory Provisions Suspended

Certain provisions in Parts 111 and Part 141 of the Customs Regulations will be suspended during this prototype test. This will allow brokers to file remotely to service ports, designated as "broker districts" in accordance with a general notice published in the **Federal Register** (60 FR 49971, dated September 27, 1995), where they currently do not hold permits, and allow for the movement of cargo from its POA to a DES outside of the POA.

Eligibility Criteria

To qualify, a participant must have proven capability to provide electronically, on an entry-by-entry basis, the following: entry; entry summary; invoice information using the Electronic Invoice Program (EIP) when required by Customs; and the payment of duties, fees, and taxes through the Automated Clearinghouse (ACH).

The following eleven requirements and conditions apply:

1. Participants must be operational on ACH 30 days before applying for Prototype Two.
2. Participants must be operational on EIP before applying for Prototype Two.
3. The requested Customs locations must have operational experience with EIP and have received RLF training.

RLF Trained Locations

The following are locations currently operational under the RLF Prototype Two test as both ports of arrival (POA) and designated examination sites (DES).

Anchorage, AK
Atlanta, GA
Baltimore, MD
Baton Rouge, LA
Boston, MA
Brunswick, GA
Buffalo, NY
Calais, ME
Champlain-Rouses Point, NY
Charleston, SC
Charlotte, NC
Chattanooga, TN
Chicago, IL
Cincinnati, OH
Cleveland, OH
Columbus, OH
Dayton, OH
Dallas/Fort Worth, TX
Del Rio, TX
Detroit, MI
Durham, Raleigh, NC
Erie, PA
Gloucester, MA
Gramercy, LA
Greenville-Spartanburg, SC
Gulfport, MS
Houlton, ME
Houston, TX
Huntsville, AL
Indianapolis, IN
Jacksonville, FL
JFK International Airport
Knoxville, TN
Lake Charles, LA
Laredo/Eagle Pass, TX
LAX International Airport
Little Rock, AR
Logan Airport, MA
Longview, WA
Los Angeles/Long Beach, CA
Louisville, KY
Memphis, TN
Miami, FL
Morgan City, LA
Mobile, AL
Nashville, TN
New Bedford, MA
New Orleans, LA
Newport News, VA
Norfolk, VA
NY/Newark Area
NY Seaport, NY
Orlando, FL
Pascagoula, MS
Philadeophia/Chester, PA
Port Everglades, FL
Port Huron, MI
Portland, ME
Portland, OR
Portland Int'l Airport, OR
Providence, RI
Richmond, VA
Rochester, NY
San Diego/Otay Mesa, CA
San Francisco/Oakland, CA
Savannah, GA
Seattle, WA
Shreveport, LA
Springfield, MA
Tampa, FL
Toledo, OH
Utica/Syracuse, NY
Vicksburg/Jackson, MS
West Palm Beach, FL
Wilmington, NC
Winston-Salem, NC
Worcester, MA
Washington, DC

Future RLF Trained Locations

As the prototype continues and trade interest warrants, ports which are not currently trained in EIP and RLF processing will be trained. Announcements on newly trained ports will be placed on the CEBB, Administrative Message System, and Customs Web Site on the Internet. One criteria for selecting a port for training will be interest from the trade. Participants who would like to expand their participation to a non-trained port, should send the following information to the Remote Filing Team (at the address listed at the front of this document):

a. Company name;
b. Contact name and phone number;
c. Importer name;
d. Port(s) of interest; and
e. The estimated number of entries a month.

4. Participants must maintain a continuous bond which meets or exceeds the national guidelines for bond sufficiency.

5. Only entry types 01 (consumption) and 11 (informal) will be accepted.

6. Cargo release must be certified from the entry summary (EI) transaction with the exception of immediate delivery explained in #7.

7. RLF participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border using paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS). This must be done in accordance with 19 CFR 142.21(a). Submission of all line items at the time of release will be required of Northern Border filers if the release is effected using BCS or CS. If an examination is required for a line release transaction, the filer must submit all relevant line item information through BCS or CS. Under BCS and CS, the examination will be performed at the port of arrival using paper invoices. If the filer wishes the examination to be performed at an alternate site, full entry summary information (an EI transaction in ABI) with electronic invoice must be transmitted.

8. Participants will not be allowed to file an RLF entry involving cargo that has already been moved using in-bond procedures.

9. Participants will be required to use other government agency interfaces where available.

10. When necessary, cargo will be examined at the Customs port of arrival, or, at Customs discretion, a filer's requested DES, which must be the Customs port nearest the final destination. The scheduling (approval) of merchandise for examination at a DES that is not at the port of arrival will be considered a conditional release under permit that automatically obligates the importer's bond pursuant to 19 CFR 113.62 for an immediate redelivery to the DES. This **Federal Register** Notice advises the importer of record for such merchandise that this movement is a redelivery and he/she will not receive an individual notice of redelivery, Customs Form 4647, and that the redelivery clause of the importer's bond is automatically triggered whenever Customs decides to examine the merchandise at a DES that is not at the port of arrival.

11. If a notice of redelivery is not complied with, or delivery to unauthorized locations, or delivery to the consignee without Customs permission occurs, the obligors agree to pay liquidated damages in the amount specified pursuant to the bond in 19 CFR 113.62(f).

Customs will work with all participants to ensure that:

(1) Customs contacts and problem solving teams are established, and

(2) Procedures for remote entry and entry summary processing are prepared.

Prototype Two Applications

This notice solicits applications for participation in Remote Location Filing Prototype Two. All applications must initially be submitted to Customs (at the address listed at the front of this document). Applications will be accepted up to 30 days before the close of the Prototype Two extension.

Since this is an extension of Remote Prototype Two, current participants may continue their participation without reapplying. Note that participation in RLF Prototype Two is not confidential, and that lists of participants will be made available to the public. New applicants will follow a two-step application process.

First Stage Application

During the first step, the filer must submit the following information to U.S. Customs Headquarters (address cited above):

1. Filer or Broker name, address, filer code and IRS#;
2. Electronic Invoicing Program status and starting date;
3. Electronic Payment (ACH) status and starting date;
4. Site(s) from which the broker will be transmitting the electronic information;
5. Type of protocol: AII, EDIFACT or both; and
6. Point of contact.

Second Stage Application

Once a filer has received written approval from U.S. Customs Headquarters to proceed with the second step of the application process, the filer must submit the following information to the Port Director(s) overseeing each requested POA and DES location for each client (importer):

1. Participating importer name, telephone number, contact name, and Importer Number;
2. Supplier name, address, and manufacturer's number;
3. Types of commodities to be imported;
4. Other government agency requirements;
5. Site(s) from which the applicant will be transmitting the electronic information;
6. Port name and port code for port(s) of arrival;
7. Port name and port code for designated examination site(s) located nearest the final destination(s);
8. Monthly entry volume anticipated;
9. Carriers used and their Automated Manifest System (AMS) status;
10. Main contact person and telephone number of filer; and
11. Certification that a copy of this application letter has been provided to the Client named in item 1.

Basis for Participant Selection

The basis for applications approved by Customs Headquarters will be EIP operational experience, electronic abilities, available electronic interfaces with other agency's import requirements, and operational limitations. For application scenarios requesting a DES outside of the POA, the compliance rate of the parties involved will be taken into consideration.

The basis for applications being approved or denied by the Port Director(s) will involve issues such as commodity documentation requirements and whether the port has been trained in EIP/RLF.

Upon receipt of an application, the Port Director or designate, will send the applicant a letter of acknowledgment. If there are no issues to be resolved, the application will be considered approved twenty (20) days from the date of the acknowledgment letter. If there are issues to be resolved prior to a decision on the application, the Port Director or designate will send the applicant, within twenty (20) days, a letter indicating that the application is pending further review until joint resolution of the issues can be achieved. If the application is denied, the Port Director or designate will issue a denial letter with reasons to the applicant. If denied, the applicant may appeal to the Remote Filing Team at Headquarters in writing within twenty (20) days from the date of denial or reapply to the Port Director(s).

Misconduct

If a program participant attempts to submit data for merchandise subject to quota, anti-dumping duties, countervailing duties, or other non-eligible merchandise, or fails to exercise reasonable care in the execution of participant obligations and the filing of information regarding the admissibility of merchandise, and declaring the classification, value, and rate of duty applicable to the merchandise, or otherwise fails to follow the procedures (outlined herein) or applicable laws and regulations, then the participant may be subject to liquidated damages, penalties, and/or other administrative sanctions, expelled or suspended from the prototype, and/or prevented from participation in future prototypes. Customs has the discretion to suspend prototype participation based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after acceptance in the prototype.

Any decision proposing suspension of a participant may be appealed in writing to the Headquarters Remote Team within twenty (20) days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how he does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the suspension may be effective immediately.

Any other action commenced by Customs for misconduct may be appealed in writing through existing procedures or, if none exists, to the Headquarters Remote Team within twenty (20) days of the action.

Test Evaluation Criteria

Once participants are selected, Customs and the participants will meet publicly or in an electronic forum to review comments received concerning the methodology of the test program or procedures, complete procedures in light of those comments, and establish baseline measures and evaluation methods and criteria. Evaluations of the prototype will be conducted and the final results will be published in the **Federal Register** as required by § 101.9(b), Customs Regulations.

The following evaluation methods and criteria have been identified.

1. Baseline measurements will be established through data queries and questionnaires.
2. Reports will be run through use of data query throughout the prototype.
3. Questionnaires will be distributed during and after the prototype period. Participants are required to complete the questionnaires in full and return them within 30 days of receipt.

Customs may evaluate any or all of the following items:

- Workload impact (workload shifts, volume, etc.);
- Policy and procedural accommodation;
- Trade compliance impact;
- Alternate exam site issues (workload shift, coordination/communication, etc.);
- Problem solving;
- System efficiency; and
- The collection of statistics.

The trade will be responsible for evaluating the following items:

- Service in cargo clearance;
- Problem resolution;
- Cost benefits;
- System efficiency;
- Operational efficiency; and
- Other items identified by the participant group.

Dated: December 1, 1998.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–32459 Filed 12–4–98; 8:45 am]

BILLING CODE 4820–02–P

federal register

Monday
December 7, 1998

Part II

Federal Reserve System

12 CFR Parts 208, 211, and 225

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 21

Federal Deposit Insurance Corporation

12 CFR Part 326

Department of the Treasury

Office of Thrift Supervision
12 CFR Part 563

Regulations H, K, and Y: State Banking Institutions Federal Reserve System Membership, International Banking Operations, and Bank Holding Companies and Bank Control Change; "Know Your Customer" Requirements; Minimum Security Devices and Procedures and Bank Secrecy Act Compliance; and the Development and Maintenance of "Know Your Customer" Programs to Deter and Detect Financial Crimes; Proposed Rules

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, and 225

[Regulations H, K and Y; Docket No. R–1019]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is requesting comments on proposed regulations requiring domestic and foreign banking organizations supervised by the Board to develop and maintain "Know Your Customer" programs. As proposed, the regulations would require each banking organization to develop a program designed to determine the identity of its customers; determine its customers' sources of funds; determine, understand and monitor the normal and expected transactions of its customers; and report appropriately any transactions of its customers that are determined to be suspicious, in accordance with the Board's existing suspicious activity reporting regulations. By requiring banking organizations to determine the identity of their customers, as well as to obtain knowledge regarding the legitimate activities of their customers, the proposed regulations will reduce the likelihood that banking organizations will become unwitting participants in illicit activities conducted or attempted by their customers.

The proposed regulations also implement the provisions of 12 U.S.C. 1818(s) by specifically requiring certain bank holding companies and their nonbank subsidiaries, Edge and Agreement corporations, and the U.S. branches and agencies and other offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Currency and Foreign Transaction Reporting Act (31 U.S.C. 5311 *et seq.*) and the accompanying regulations issued thereunder by the United States Department of the Treasury (31 CFR 103.11 *et seq.*)(collectively referred to as the Bank Secrecy Act).

DATES: Comments must be received by March 8, 1999 .

ADDRESSES: Comments should refer to Docket No. R–1019, and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.14 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Richard A. Small, Assistant Director, Division of Banking Supervision and Regulation, (202) 452–5235 or Pamela J. Johnson, Senior Anti-Money Laundering Coordinator, Division of Banking Supervision and Regulation, (202) 728–5829. For users of Telecommunications Devices for the Deaf (TDD) *only* contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

The integrity of the financial sector depends on the ability of banks and other financial institutions to attract and retain legitimate funds from legitimate customers. Banking organizations are able to attract and retain the business of legitimate customers because of the quality and reliability of the services being rendered and, as important, the sound and highly respected reputation of banking organizations. Illicit activities, such as money laundering, fraud, and other transactions designed to assist criminals in their illegal ventures, pose a serious threat to the integrity of financial institutions. When transactions at financial institutions involving illicit funds are revealed, these transactions invariably damage the reputation of the institution involved. While it is impossible to identify every transaction at a financial institution that is potentially illegal or is being conducted to assist criminals in the movement of illegally derived funds, it is fundamental for safe and sound operations that financial institutions take reasonable measures to identify their customers, understand the legitimate transactions to be conducted by those customers and, consequently, identify those transactions conducted by their customers that are suspicious in nature. By identifying and, when appropriate, reporting such transactions, in accordance with existing suspicious activity reporting requirements, financial institutions are protecting their integrity and are assisting the efforts of the bank regulatory agencies and law enforcement authorities to thwart illicit activities at financial institutions.

The Board has long advocated that one of the most effective means by which a financial institution can both protect itself from engaging in transactions designed to facilitate illicit activities and ensure compliance with applicable suspicious activity reporting requirements is for the institution to have adequate "Know Your Customer" policies and procedures. While some customers may view "Know Your Customer" procedures as an unnecessary intrusion into their privacy, these procedures are important for complying with the Bank Secrecy Act and suspicious activity reporting requirements. The adoption of the proposed "Know Your Customer" requirements may also assist banks in ascertaining those banking services that will most effectively serve the customers' interests and for managing risks to the bank. Many financial institutions have already adopted policies and procedures that are consistent with the proposed "Know Your Customer" requirements. Additionally, such policies and procedures have enabled banks to better serve their clientele, as well as comply with existing regulatory requirements.

The position of the Board is consistent with that of other countries throughout the world, as evidenced by the pronouncements of several international organizations.[1] Numerous countries have adopted the idea of "Know Your Customer" and mandatory suspicious transaction reporting as the best means of protecting the financial sector from participating in the movement of illicit funds. Such "Know Your Customer" programs seek to stifle the criminal element, which tends to gravitate towards financial institutions that operate within poorly regulated and supervised jurisdictions, in its attempts to conduct transactions involving illegally derived funds.

The requirement to establish a "Know Your Customer" program should assist financial institutions in obtaining information from their customers regarding the identity, the types of transactions to be conducted and the source of funds, among other things. The collection of such information will further assist financial institutions in making a risk-based determination on matters including the extent of identifying information necessary and the amount of monitoring required, by allowing institutions to categorize their customers into different groups based on the types of services being requested and the magnitude and extent of the transactions being conducted. Effective "Know Your Customer" programs will evidence the intent of state member banks, bank holding companies, Edge and Agreement corporations, and the U.S. branches and agencies of foreign banks to take all reasonable measures to thwart the facilitation of potential criminal activity.

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[1] See the Basle Committee on Banking Regulations and Supervisory Practices, "Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering" (December 1988), as well as the Committee's, "Core Principles for Effective Banking Supervision" (April 1997); the 1988 United Nations Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the 1990 Council of Europe Convention; and the Financial Action Task Force Forty Recommendations, issued in 1989 and amended in 1996.

Effective "Know Your Customer" programs will necessarily require that banking organizations develop "customer profiles" to understand their customers" intended relationships with the institution, and, thereafter, realistically determine when customers conduct transactions that are suspicious or potentially illegal. Banking organizations that already recognize the value of effective "Know Your Customer" programs and have implemented such programs may have found it difficult to convince customers of the need to provide certain information, especially when other financial institutions do not ask for such information. Because such programs will now be required by regulation, financial institutions will not be prejudiced or criticized for needlessly inquiring into the affairs of their customers. Moreover, legitimate customers should be more willing to provide the information requested by the financial institutions because they will be aware that a similar legal responsibility exists for all banking organizations supervised by the federal bank supervisory agencies.

The Board recognizes that a "Know Your Customer" requirement will impose additional burdens on some banking organizations. Mindful of that fact, the Board is striving to impose only those requirements that are necessary to ensure that banking organizations have in place adequate "Know Your Customer" programs. In a supplemental document to be provided at the time these regulations become final, the Board, in coordination with the other federal bank supervisory agencies, will provide detailed guidance on specific steps that banking organizations may consider taking as they implement the regulations. The guidance is not intended to provide additional interpretive explanations of the regulations, but rather it will provide concrete examples of proven effective means to accomplish the requirements of the regulations, such as identifying customers and monitoring customer transactions. The Board believes that this approach will strike an appropriate balance that responds to requests for additional guidance in this area while preserving the flexibility for each institution to take steps appropriate for its customers.

In order to ensure the effective implementation of "Know Your Customer" programs at each of the domestic and foreign banking organizations supervised by the Board, the proposal also implements the provisions of Section 8(s)(1) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818(s)(1)). The "Know Your Customer" programs required by this proposal would be part of the Bank Secrecy Act-related procedures required to be adopted by the domestic and foreign banking organizations supervised by the Board.

Authority to Issue Regulations

The proposed regulations are authorized pursuant to the Board's statutory authority under Section 8(s)(1) of the Federal Deposit Insurance Act, as amended by Section 2596(a)(2) of the Crime Control Act of 1990 (Pub.L. 101–647), which requires, *inter alia*, the Board to issue regulations requiring state member banks, as well as other domestic and foreign banking organizations operating in the United States supervised by the Board, to establish and maintain internal procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. Effective "Know Your Customer" programs serve to facilitate compliance with the Bank Secrecy Act.

The regulations are also being proposed under the Board's general authority to prevent unsafe and unsound practices and to adopt regulations defining safe and sound conduct for banking organizations under its supervision, as well as under the Board's authority to prescribe specific operational and managerial standards for banks, as set forth in 12 U.S.C. 1831p–1(a)(2).

Proposal

The Board proposes to revise 12 CFR Parts 208, 211, and 225 by requiring state member banks, certain bank holding companies and their nonbank subsidiaries, U.S. branches and agencies and nonbank subsidiaries of foreign banks, and Edge and Agreement corporations (collectively referred to as a "bank" or "banks") to develop and implement a "Know Your Customer" program within their institutions.[2]

The requirements of the "Know Your Customer" program are set out in general terms, reflecting the Board's view that a "Know Your Customer" program that is appropriate for one institution may not be appropriate for another. Under the proposed regulations, the Board would expect each banking organization to design a program that is appropriate to that organization, given its size and complexity, the nature and extent of its activities, its customer base and the levels of risk associated with its various customers and their transactions. The Board believes that this approach is preferable to a detailed regulation that imposes the same list of specific requirements on every organization regardless of its specific circumstances or situation.

The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration are proposing to adopt substantially similar regulations covering national banks, federal branches and agencies of foreign banks, state nonmember banks, insured state chartered branches of foreign banks, savings associations and credit unions, respectively. The Board expects that federal regulators of non-bank financial institutions, such as broker-dealers, will propose similar rules in the future.

The Board proposes to add a new paragraph (d) to section 208.63 of Regulation H of the Board (12 CFR 208.63). New paragraph 208.63(d) describes the requirements for a "Know Your Customer Program" at a state member bank. New sections 211.8(b) and 211.24(f)(2) of the Board's Regulation K and new section 225.4(g) of the Board's Regulation Y make all of section 208.63 of the Board's Regulation H, including the new "Know Your Customer" provisions of section 208.63(d), applicable to Edge and Agreement corporations, the U.S. branches and agencies of foreign banks (except a federal branch or federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation), and certain bank holding companies and their nonbank subsidiaries, respectively.

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[2] Generally, the "Know Your Customer" requirements set forth in this proposal will be applicable only to those bank holding companies and their nonbank subsidiaries that engage in business activities or transactions with the public and that are involved with the receipt or disbursal of customer funds.

Section-by-Section Analysis

Section 208.63—Procedures for Monitoring Bank Secrecy Act Compliance

Paragraph (d)(1)—Purpose

The proposal makes it clear, by delineating the purposes for which a "Know Your Customer" program should be developed, that it is in each bank's own best interest to establish and implement such a program. The creation of a "Know Your Customer" program is intended to protect the reputation of the bank; facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the Board's suspicious activity reporting regulations) and with safe and sound banking practices; and protect the bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers.

Paragraph (d)(2)—Definitions

Because the text of the proposed regulations is set forth in Regulation H, the term "bank" is defined to mean a state member bank. Regulations K and Y will incorporate by reference the "Know Your Customer" provisions from Regulation H without repeating the entire text of the regulations and make them applicable to bank holding companies and their nonbank subsidiaries, foreign banks operating in the United States that are subject to the Bank Holding Company Act and their nonbank subsidiaries operating in the United States, Edge corporations, Agreement corporations, and branches and agencies of foreign banks in the United States, subject to Regulations K and Y. In most instances, however, banking organizations that do not engage in business transactions with the public will be excluded from the definition of bank, as set forth in paragraph (d)(2). For example, shell bank holding companies that solely own or control the shares of their subsidiary banks or thrifts and nonbank subsidiaries of bank holding companies that operate solely to service the activities of their affiliates and, in so doing, do not interact in any manner with any public customers will not be covered by this proposal. In addition, the proposed regulations will not apply to credit card banks, bankers banks or other banks that operate solely to service the activities of their affiliates.

The proposed regulations define the term "customer" as the person or entity who has an account involving the receipt or disbursal of funds at a bank and any other person or entity on behalf of whom such an account is maintained. The term encompasses direct and indirect beneficiaries of deposit, loan and other accounts that involve the receipt or disbursal of funds. The term also encompasses a person or entity who owns or is represented by the customer. Under this definition, a "customer" would include an accountholder, a beneficial owner of an account or a borrower and could include the beneficiary of a trust, an investment fund, a pension fund or company whose assets are managed by an asset manager, a controlling shareholder of a closely held corporation or the grantor of a trust established in an off-shore jurisdiction. The term "customer" is not meant to include receipt of services from the bank for which no transaction involving the receipt or disbursal of customer funds occurs, such as a bank's provision of safe deposit boxes.

Paragraph (d)(3)—Establishment of Know Your Customer Program

This section of the proposed regulations requires that each bank supervised by the Board establish a "Know Your Customer" program by April 1, 2000. Additionally, this section of the proposal will require that the "Know Your Customer" program be reduced to writing and approved by the board of directors of the bank, or a committee thereof, and the approval recorded in the official minutes of the board. For the U.S. offices of foreign banks, such approval may be obtained from the highest level management official in the United States.

Paragraph (d)(4)—Contents of Know Your Customer Program

This section of the proposed regulations sets forth the specific requirements for the contents of the "Know Your Customer" program. Banks vary considerably in the way in which they conduct their business on a day-to-day basis. Therefore, the Board believes that to impose regulations that simply require each bank to follow a pre-designed, standardized checklist would not be appropriate. The proposed regulations allow each bank to develop and delineate a system that will comprise the "Know Your Customer" program, consistent with the banking practices of the particular bank that, when followed by the bank, will effectively meet the requirements and goals of the regulations. This will allow each bank to design a "Know Your Customer" program specifically suited to its own situation that appropriately reflects the size and complexity of the bank, the types of customers it serves and the nature and extent of their activities at the bank.

Additionally, this section recognizes that each bank's "Know Your Customer" program may vary depending on the nature of the specific activity, the type of customers involved, the size of the transactions and other factors that reflect the bank's assessment of the risk presented. This section recognizes that it may be beneficial for banks to classify customers into varying risk-based categories that the banks can use in determining the amount and type of information, documentation and monitoring that is appropriate. While these proposed regulations will provide banking organizations with substantial flexibility in devising an appropriate "Know Your Customer" program, the Board believes that all "Know Your Customer" programs should contain certain critical features, which are set forth herein.

Paragraph (d)(4)(i) of the proposed regulations also requires that the "Know Your Customer" program delineate acceptable documentation requirements and the due diligence procedures the bank will follow in meeting the requirements of the proposed regulations. The delineation of this information in the "Know Your Customer" program will ensure that the same standards are applied throughout the bank and will inform auditors and examiners of the bank's established standards for review of customer information.

Paragraph (d)(4)(ii) of the proposal sets forth the minimum requirements for an acceptable "Know Your Customer" program. The proposed regulations require that, rather than following a "checklist" approach, a bank may develop a "system" designed to meet the basic requirements of the regulations. The system approach allows each bank to design its own program, in accordance with its own business practices, that will best suit the bank. While this places some burden on the bank to develop the specifics of the "Know Your Customer" program, such an approach recognizes that each bank conducts business in accordance with its own policies, procedures, goals and objectives. The "Know Your Customer" program, in order to be the most effective, must be developed and implemented with the bank's regular and ordinary business practices in mind. Potentially, there can be a variety of ways in which a "Know Your Customer" program can be established and operated to best meet the needs of the bank while fulfilling the requirements of the regulations.

Paragraph (d)(4)(ii)(A) of the proposed regulations requires that the "Know Your Customer" program provide a system for determining the identity of customers maintaining accounts at the bank, as defined. It is imperative that a bank establish, to its own satisfaction, that it is dealing with a legitimate person, whether the person is a natural person, corporation or other business entity. The nature and extent of the identification process should be commensurate with the types of transactions anticipated by the customer and the risks associated with such transactions.

The Board does not believe that it is practicable for a financial institution to conduct a large-scale information request from all its existing customers. Rather, the Board contemplates that a financial institution will be able to comply with the proposed regulation with respect to its existing customers by determining their normal and expected transactions using available account data, monitoring their transactions for potentially suspicious activities, and obtaining and documenting additional information from them in order to explain unusual transactions or when otherwise needed. However, for some customers, depending on the severity of the risk associated with such customers and their transactions, it may be necessary to fulfill all of the requirements of these regulations as if these were new customers.

The identity of a prospective customer should be satisfactorily established before a customer relationship with the bank is permanently established. If a prospective customer refuses to provide any of the requested information the customer relationship should not be established. Similarly, if additional or follow-up information is not forthcoming consideration should be given to terminating the relationship.

The best identification documents available for verifying the identity of prospective customers are those which are the most difficult to obtain illicitly and the most difficult to counterfeit. No single form of identification can be guaranteed to be genuine, however, and, therefore, the identification process should be cumulative, obtaining enough information and documentation to assure the bank that it has properly identified the prospective customer.

As an example, an integral part of the identification process should be the prospective customer's address or place of business and telephone number. Verification of this information for some customers could include physical observation of the location at the address provided and return telephone calls, or "call backs," to determine the authenticity of the telephone number provided. Extra consideration may be required when it is determined that a prospective customer is situated outside of the area normally served by the bank.

The identification process for natural persons wishing to establish a customer relationship should, when appropriate and practicable, include the review of appropriate identification documentation. In these instances, acceptable forms of documentation should include within the document a photograph and description of the individual, along with the signature of the individual. The documentation should also be easily recognizable identification issued by a government entity. While not an exhaustive list, some examples of acceptable identification documentation could include: driver's license with photograph issued by the State in which the bank is located;[3] State identity card with photograph issued by the State in which the bank is located; and United States passport or alien registration card. Other forms of identification, while not sufficient to be used without corroboration, are satisfactory as forms of secondary identification that could be used in conjunction with the types of identification documentation described above to assist in identifying or verifying the identity of the prospective customer. Some examples, again while not an exhaustive list, could include: employer identification card; student identification card; out-of-State driver's license; credit card; and current utility bills from place of residence. At a minimum, the accepted forms of identification should be recorded and, if no legal impediment exists, duplicated and maintained in the customer's "file" at the bank.

Similarly, for prospective corporate or business customers, the customer identification process should include the review of appropriate documentation that allows for a means to verify that the corporation or other business entity does exist and does engage in the business, as stated. In establishing the identity of a corporate or business customer, the prospective customer should provide evidence of legal status, such as an incorporation document, a partnership agreement, association documents, or a business license. In some instances, it may also be necessary to obtain information on the controlling owners of the business or legal entities. Additionally, the prospective customer should provide a financial statement of the business, a description of the business to include such information as whether the business is in the wholesale or retail markets, and a description of the business's primary area of trade. It also may be appropriate to obtain information related to customers and suppliers of the prospective customer for purposes of verifying information presented by the prospective customer. At a minimum, all documentation reviewed, as well as verifications of the information contained therein, should be recorded and maintained within the customer's "file" at the bank.

Any practice of a bank that allows for the establishment of a customer relationship without face to face contact with bank personnel, such as banking by mail or Internet banking, poses difficulties in the identification of the prospective customer by use of the traditionally accepted practice of obtaining identification documentation to include photographic identification. Even though photographic identification in such circumstances will be impractical, other accepted means of identifying a customer are still viable. In such circumstances, special care should be given to verification of address and telephone number, as well as the use of commercially available data to compare such items as name with date of birth and social security number.

Introductions or referrals of prospective customers by established customers of the bank, while extremely valuable in providing background information about the prospective customer, cannot take the place of identification requirements that should be set forth in the bank's "Know Your Customer" program. Details regarding the introduction or referral should be documented so that the information obtained can be effectively used to assist in the verification of the prospective customer.

The proposed regulations allow each bank to determine what documentation will be appropriate and acceptable in light of circumstances regarding that particular bank. If the identification process will allow for the possibility of exceptions to the established practice, for, as an example, accounts being established for senior citizens or minors, the possible exceptions should be delineated within the "Know Your Customer" program.

Heightened interest in the marketing of private banking activities by banks, as well as the heightened interest by banking customers, in the benefits derived from using private banking services has lead to a demonstrable increase in the number of private banking clients.[4] As the market for private banking grows, so does the level of competition among institutions that provide private banking services. Accordingly, there is increased pressure to obtain new customers, increase the assets under management, and contribute a greater percentage to the net income of the bank.[5] Emphasizing customer growth, without adopting appropriate procedures to understand a customer's personal and business background, source of funds and intended use of the private banking services, may well certainly lead to increased reputational and legal risks.

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[3] For customers that are located in a multi-state regional area, such as the Washington, D.C. metropolitan region, which encompasses parts of Maryland and Virginia, identification documents from a neighboring state would be acceptable.

Typically, private banking customers make use of such account vehicles as personal investment companies (PICs), trusts, personal mutual investment funds, or are clients of financial advisors. The establishment of such accounts serves the stated purposes of protecting the legitimate confidentiality and financial privacy of the customers that use such accounts. However, banks need to identify properly the beneficial owners of such accounts, through an effective "Know Your Customer" program. Therefore, "Know Your Customer" procedures for identifying the beneficial owners of such accounts should be no different than the procedures for identifying other customers of the bank. Any needed confidentiality required by customers of a bank's private bank can be addressed by the development of special protections to limit access to information that would generally reveal the beneficial owners of these accounts.[6]

Equally important is the identification of beneficial owners of assets bought, sold or managed through a relationship with a bank. Such transactions often occur at the behest of intermediaries, such as asset managers, who may or may not be registered investment advisors, who deal with banks on behalf of one or more of their clients. For purposes of the proposed regulations, the "customer" of the bank in these types of situations would include the beneficiaries of the transactions and not just the intermediaries. The extent of the information regarding the customer that may be necessary to fulfill the bank's "Know Your Customer" obligations should depend on a risk-based assessment of the customer and the transactions that will occur, such as the type, duration and size of the transactions, and should be addressed within the bank's "Know Your Customer" program.

Ultimately, the amount of information necessary to identify adequately the beneficial owner of an account should be the result of a risk assessment of the customer and the intended transactions of the customer. The bank's "Know Your Customer" program should provide the flexibility to group or categorize customers in a manner that allows the bank to better determine the amount of information necessary for such groups or categories. In some instances, however, it may not be necessary to determine the identity of the beneficiaries of the bank's customers, because the identity of these customers has already been satisfactorily established. For example, if the bank's customer is a widely-held mutual fund or asset management fund, a bank does not have to "know" all of the customer's shareholders and certainly does not have to monitor the shareholders' individual transactions that may occur through the bank. Similarly, in the event that a bank's customer is a financial institution supervised by the Board or another federal or state financial institutions supervisory agency and the bank is acting as an intermediary for the financial institution that is the bank's customer in such activities as check clearing or funds transfer processing, the bank is under no obligation to "know" the customers of the financial institution or monitor the transactions of the financial institution's customers. On the other hand, if the bank's customer is a mutual fund established in an off-shore jurisdiction that has a limited number of shareholders, the bank will be required to "know" the customers of the mutual fund.

Paragraph (d)(4)(ii)(B) of the proposed regulations requires that the "Know Your Customer" program provide a system for determining the source of funds of customers. An effective "Know Your Customer" program requires that a bank understand the nature and source of the funds being placed in the bank by the customer including the types of instruments used and from where the funds or assets were derived or generated. Under standards that currently exist in criminal law, failure to obtain knowledge that is readily available, such as the source of funds of a particular customer, because of a desire to avoid the perceived embarrassment of having to obtain such information, can lead to the prosecution for a money laundering violation when it is later determined that the funds in question were derived from illicit activity.[7] Adoption of, and adherence to, a "Know Your Customer" program can substantially minimize the risks to a bank.

For purposes of determining and documenting the source of funds, the amount of information necessary can depend on the type of customer in question. As an example, for a majority of retail banking customers that maintain transaction accounts, where practically the only source of funds comes from payroll deposits, it is a relatively simple task to identify and document the source of funds as payroll deposits. On the other hand, a more detailed analysis, with a more extensive documentation process, would necessarily be required for high net worth customers with multiple deposits from a variety of sources. For these reasons, among others, it may be beneficial for banks to classify customers into varying categories, based on such factors as the types of accounts maintained and the types of transactions conducted and the potential risk of illicit activities associated with such accounts and transactions. Banks could then develop procedures, as part of the "Know Your Customer" programs, to obtain necessary information and documentation based on the risk assessment for the various categories or classes established by a bank.

Paragraph (d)(4)(ii)(C) of the proposed regulations requires that the "Know Your Customer" program provide a system for determining customers' normal and expected transactions involving the bank. The primary objective of such a process is to enable the bank to predict with relative certainty the types of transactions in which a customer is likely to be engaged. Without an understanding of the normal and expected transactions of the customers of the bank is virtually impossible to determine if any particular transaction conducted by a customer is suspicious.

Understanding a customer's normal and expected transactions is not a task that can be accomplished entirely at the inception of the account relationship. While it should be a simple task to obtain and record information as to a customer's expectations at the time of account opening, only after reviewing the customer's activity for a given period of time can a determination as to the customer's normal transactions be made. For this reason, effective "Know Your Customer" procedures for determining the normal and expected transactions for a bank's customers should envision an amount of time adequate to make these assessments.

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[4] For an in-depth discussion of private banking and sound practices associated with the administration of private banking activities, see the July 1997 Guidance on Sound Risk Management Practices Governing Private Banking Activities, prepared by the Federal Reserve Bank of New York and issued by the Board (hereinafter referred to as the "Sound Practices Paper"). The Sound Practices Paper was distributed, or made available, to banking organizations supervised by the Board by the Federal Reserve Banks pursuant to the Board's Division of Banking Supervision and Regulation SR Letter 97–19 (SUP). Copies of the Sound Practices Paper and SR Letter are available on the Board's public Internet web site (www.federalreserve.gov).

[5] *See* Sound Practices Paper at page 2.

[6] For a more specific discussion of suggested "Know Your Customer" procedures appropriate for private banking operations *see generally* Sound Practices Paper.

[7] *See* 18 U.S.C. 1956 and 1957.

The "Know Your Customer" procedures for determining normal and expected transactions should also take into consideration the type of account that is being established. As an example, a demand deposit account associated with a payroll deposit will not require an inordinate effort to determine that the customer will, most likely, use the account for ordinary living expenses and the deposit of the customer's salary. Conversely, a business account or an account maintained by a private banking customer may require a more in-depth analysis of the customer's intended use of the account coupled with a heightened ongoing review of account activity to determine if, in fact, the customer has acted in accordance with the expectations developed at the inception of the account relationship.

Paragraph (d)(4)(ii)(D) of the proposed regulations requires that the "Know Your Customer" program provide a system for monitoring, on an ongoing basis, the transactions conducted by customers to determine if their transactions are consistent with the normal and expected transactions for particular customers or for customers in the same or similar categories or classes. The proposed regulations do not require that every transaction of every customer be reviewed on a daily basis. However, banks must develop and implement effective monitoring systems, commensurate with the risks presented by the types of accounts maintained at the bank and the types of transactions conducted through those accounts.

The Board is not suggesting that banks must expend considerable resources to purchase sophisticated computer hardware or software as a means of complying with the proposed regulations. The effectiveness of the monitoring system of a bank's "Know Your Customer" program will be based on that particular bank's ability to monitor transactions consistent with the volume and types of transactions conducted at the bank.

There are numerous means by which a system can be developed to carry out the ongoing monitoring of the transactions being conducted by the customers of the bank. Therefore, it would be appropriate for a bank to design a monitoring system that would correspond to the risk associated with the types of accounts maintained and the types of transactions conducted through those accounts.

The design of such a monitoring system, for example, could involve the classification of accounts into various categories based on such factors as the type of account, the types of transactions conducted in the various types of accounts, the size of the account, the number and size of transactions conducted through the account, and the risk of illicit activity associated with the type of account and the transactions conducted through the account. For certain classes or categories of accounts, which may be the majority of accounts at some banks, it may be sufficient for an effective monitoring system to establish parameters for which the transactions within these accounts will normally occur. Rather than monitoring each transaction, an effective monitoring system could entail monitoring only for those transactions that exceed the established parameters for that particular class or category of accounts. Under the proposed regulations, a bank's determination as to how to monitor its various accounts based on the risks associated with those accounts will be given great deference by the Board.

In many instances, monitoring is already occurring. As an example, monitoring of transactions already occurs as a means of complying with existing suspicious activity reporting regulations. Similarly, monitoring occurs for such things as large cash transactions, check kiting and attempted withdrawals from accounts with insufficient funds or from closed accounts.

For other categories or classes of accounts, it may be necessary to monitor most, if not all, transactions conducted. One such example are transactions conducted by private banking customers. As a general proposition, transactions of private banking customers usually involve large sums of money. For this reason alone, it is important that a bank understands the nature of these transactions and reviews these transactions to ensure that the transactions are consistent with the normal and expected transactions for that particular customer or for customers in the same or similar categories or classes. It is the Board's experience that relationship managers are very aware of transactions conducted by a private banking customer and, in most instances, assist the private banking customer in conducting the transactions. Therefore, there should be little, if any, hardship associated with reviewing transactions to ensure that they are consistent with the normal and expected transactions for that particular customer.

Many banks already engage in sufficient account monitoring activities. These practices should be formalized in a sound "Know Your Customer" program, which will ensure that banks have identified and implemented procedures that adequately monitor a broad range of account activity while providing flexibility in defining the requisite monitoring activity in light of the risks associated with particular customers and the transactions being conducted.

Paragraphs (d)(4)(ii)(E) of the proposed regulations require that the "Know Your Customer" program provide a system for determining if a transaction is suspicious and making a report, when necessary, in accordance with the Board's suspicious activity reporting regulations. In identifying reportable transactions, a bank should not conclude that every transaction that falls outside what is expected for a given customer, or for categories or classes of customers, should be reported. Rather, a bank should focus on patterns of inconsistent transactions and isolated transactions that present risk factors that warrant further review.

Paragraph (d)(5)—Compliance With Know Your Customer Program

Paragraph (d)(5) of the proposed regulations sets forth the requirements a bank must follow to ensure that it is in compliance with its "Know Your Customer" program. The requirements include that a bank provide for and document a system of internal controls to ensure ongoing compliance, as well as provide for and document independent testing for compliance with the "Know Your Customer" program. Additionally, the bank must designate an individual responsible for coordinating and monitoring day-to-day compliance and provide for and document training to all appropriate personnel of the content and requirements of the "Know Your Customer" program.

Paragraph (d)(6)—Availability of Documentation

Paragraph (d)(6) of the proposed regulations requires, for all accounts opened or maintained in the United States, that all information and documentation necessary to comply with the regulations be made available for examination and inspection, at a location specified by a Board or Reserve Bank representative, within 48 hours of a request for the provision of such information and documentation. In instances where the information and documentation is at a location other than where the customer's account is maintained or the financial services are rendered, the bank must include, as part of its "Know Your Customer" program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel.

Issues may arise, on occasion, concerning whether foreign laws permit a bank to disclose certain customer information to bank supervisory agencies, such as the Board. The Board believes that nondisclosure provisions that may exist in foreign, if they exist, should not, in any event, present a bar to the disclosure of such information and documentation. In instances where foreign laws have been raised as creating a prohibition to the disclosure of information that is required by the proposed regulations, the Board's experience is that the information already exists within the banking organization in the United States because the information is used by the relationship manager, who resides in the United States, as well as other components of the bank, to provide banking services to the customer. Moreover, in other instances where banks have raised foreign law disclosure issues, the banks, at the Board's suggestion, have obtained from their customers waivers to any perceived prohibition to disclosure of the information and documentation. Therefore, in the opinion of the Board, there is no prohibition or insurmountable bar to the disclosure of the required information and documentation.

Comments Sought

In addition to other comments that commenters may feel are appropriate, the Board is seeking comments specific to the following:

1. Whether the proposed definition of "customer" is sufficient to include all persons who benefit from the transactions conducted at the bank, such as persons who establish off-shore shell companies or entities or otherwise conduct their business through intermediaries.
2. Whether the proposed definition of "customer" is too broad and will unnecessarily include persons that pose a minimal "Know Your Customer" risk.
3. Whether a bank's "Know Your Customer" program should apply to a bank's counterparty relationships with respect to transactions in wholesale financial markets (e.g., sales or purchases involving foreign exchange or securities) and correspondent banking relationships or if, in such markets, a different standard than that applicable to retail relationships would be more appropriate and, if such a distinction is appropriate, how the definition of "customer" can be distinguished between transactional counterparty customers, correspondents and retail customers.
4. Whether the proposed regulations will create a competitive disadvantage with respect to other financial sector entities offering similar services that may not be subject to the proposed regulations (citing, where possible, specific examples).
5. Whether the proposed regulations will create a competitive disadvantage with respect to other financial entities offering similar services that may not be subject to similar regulations.
6. Whether the actual or perceived invasion of personal privacy interests is outweighed by the additional compliance benefits anticipated by this proposal.
7. Whether there would be a minimum account size threshold below which the "Know Your Customer" requirements would be waived.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the **Federal Register** along with its general notice of proposed rulemaking.

The Board hereby certifies that the proposal will not have a significant economic impact on a substantial number of small entities. The proposal should result in a net benefit to banks regardless of size because it establishes uniform rules relating to the identification of customers for all banking organizations supervised by the Board. Most banking organizations, from small to large, already have policies and procedures aimed at collecting, retaining and reviewing the types of information required by this proposal, and there should, thus, be little economic impact from this proposal.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this proposed regulation are found in 12 CFR 208, 211, and 225. This information is required to evidence compliance with section 8(s) of the Federal Deposit Insurance Act. The recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for five years for inspection under the institution's established standards for review of customer information and pursuant to the Bank Secrecy Act.

The OMB control number for the information collection contained in the proposed rule is 7100–0212. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number.

Recordkeepers for this information collection include all state member banks, U.S. branches and agencies of foreign banks, Edge and agreement corporations supervised by the Board, and certain bank holding companies and nonbank subsidiaries of bank holding companies.[8] The Federal Reserve estimates there will be 3,500 recordkeepers in the first year; in subsequent years, the recordkeepers will consist of newly-chartered institutions subject to the rule. The majority of the paperwork burden associated with the proposed rule is the one-time cost of developing a plan and implementing written policies and procedures. In the normal course of business, most institutions likely already have sufficient information about their customers in their files and would only need to organize and review such information. Because each institution would design its own program in accordance with its own business practices, the Federal Reserve estimates that the burden of the proposed rule would vary considerably and may range from ten to thirty hours.

The proposed rule is not expected to significantly increase the ongoing annual burden for the recordkeepers because most of the ongoing burden is incurred and accounted for under other existing information collections.

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[8] The proposed rule will not apply to shell bank holding companies.

Ongoing costs include gathering the required information about customers (to the extent that the bank does not already possess such information), monitoring customer transactions, and reporting unusual or suspicious transactions. Institutions likely perform most, if not all, of these tasks currently as part of their fraud prevention procedures, as part of their monitoring of transactions for reporting on the Department of the Treasury's Currency Transaction Reports (OMB No.1545–0183), and as part of their procedures to detect violations or suspicious activity reported on the Suspicious Activity Report. Because the records would be maintained at the subject organizations and are not provided to the Board, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0212), Washington, DC 20503.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, parts 208, 211, and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for 12 CFR Part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78o–5, 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Section 208.63 is amended by adding a new paragraph (d) to read as follows:

§ 208.63 Procedures for monitoring Bank Secrecy Act Compliance.

* * * * *

(d) *Know your customer program*—(1) *Purpose.* This paragraph (d) requires that member banks establish and regularly maintain procedures reasonably designed to determine the identity of their customers, as well as their customers' normal and expected transactions and sources of funds involving the bank. These procedures (referred to as the "Know Your Customer" program) are intended to: protect the reputation of the bank; facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the suspicious activity reporting requirements of 12 CFR 208.20) and with safe and sound banking practices; and protect the bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers. In general, the "Know Your Customer" rules apply to all state member banks, however, the rules do not apply to credit card banks, bankers' banks, or banks that operate solely to service the activities of their affiliates.

(2) *Definitions.* For the purposes of this paragraph (d):

(i) *Bank* means a state member bank.

(ii) *Customer* means:

(A) Any person or entity who has an account involving the receipt or disbursal of funds with a bank; and

(B) Any person or entity on behalf of whom such an account is maintained.

(3) *Establishment of Know Your Customer program.* By April 1, 2000, each bank shall develop and provide for the continued administration of a Know Your Customer program. The Know Your Customer program shall be reduced to writing and approved by the board of directors (or a committee thereof) with the approval recorded in the official minutes of the board.

(4) *Contents of Know Your Customer program.* The Know Your Customer program may vary in complexity and scope depending on different categories or classes of customers established by the bank and the potential risk of illicit activities associated with those customers' accounts and transactions. Components of the program should include the following:

(i) Appropriate documentation requirements and due diligence procedures established by the bank to comply with this paragraph (d); and

(ii) A system for:

(A) Determining the identity of the bank's new customers and if the bank has reasonable cause to believe that it lacks adequate information to know the identity of existing customers, determining the identity of those existing customers;

(B) Determining the customer's sources of funds for transactions involving the bank;

(C) Determining the particular customer's normal and expected transactions involving the bank;

(D) Monitoring customer transactions and identifying transactions that are inconsistent with normal and expected transactions for that particular customer or for customers in the same or similar categories or classes, as established by the bank; and

(E) Determining if a transaction is suspicious, in accordance with the Board's suspicious activity reporting regulations and reporting accordingly.

(5) *Compliance with Know Your Customer program.* The bank shall comply with its Know Your Customer program. To ensure compliance, the bank shall:

(i) Provide for and document a system of internal controls;

(ii) Provide for and document independent testing for compliance to be conducted by bank personnel or by an outside party on a regular basis;

(iii) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(iv) Provide for and document training to all appropriate personnel, on at least an annual basis, of the content and required procedures of the Know Your Customer program.

(6) *Availability of documentation.* For all accounts opened or maintained in the United States, each bank must

ensure that all information and documentation sufficient to comply with the requirements of this paragraph (d) are available for examination and inspection, at a location specified by a Board or Reserve Bank representative, within 48 hours of a Board or Reserve Bank representative's request for such information and documentation. In instances where the information and documentation is maintained at a location other than where the customer's account is maintained or the financial services are rendered, the bank must include, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel in order to comply with this paragraph (d).

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for 12 CFR part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. A new § 211.9 would be added to read as follows:

§ 211.9 Procedures for monitoring Bank Secrecy Act compliance.

(a) Each Edge corporation or any branch or subsidiary thereof, Agreement corporation or branch or subsidiary thereof, shall, by April 1, 2000, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(1) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(2) A "Know Your Customer" program reasonably designed to identify customers of the Edge or Agreement corporation or subsidiary thereof, including customers' normal and expected transactions at or through the institution.

3. Section 211.24 is amended as follows:

a. Paragraph (f) is redesignated as paragraph (f)(1); and

b. A new paragraph (f)(2) is added.

The addition would read as follows:

§ 211.24 Approval of officers of foreign banks; procedures for applications; standards for approval; representative-office activities and standards for approval; preservation of existing authority; reports of crimes and suspected crimes; government securities sales practices.

* * * * *

(f) *Reports of crimes and suspected crimes.*—(1) * * *

(2) *Procedures for monitoring Bank Secrecy Act compliance.* Each branch and agency of a foreign bank (except a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation) in the United States shall, by April 1, 2000, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(i) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(ii) A "Know Your Customer" program reasonably designed to identify customers of the branch or agency, including customers' normal and expected transactions at or through the institution.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b) 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.4 is amended by adding a new paragraph (g) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(g) *Procedures for Monitoring Bank Secrecy Act Compliance.*—(1) By April 1, 2000, each company described in paragraph (g)(2) of this section, shall, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(i) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(ii) A "Know Your Customer" program reasonably designed to identify customers of the company, subsidiary, or foreign bank including customers' normal and expected transactions at or through the institution.

(2) Paragraph (g)(1) of this section shall apply to each company that:

(i)(A) Is a bank holding company or a nonbank subsidiary thereof; or

(B) Is a nonbank company operating in the United States that is a subsidiary of a foreign bank that is a bank holding company or that is subject to the BHC Act by virtue of section 8(a) of the International Banking Act (12 U.S.C 3106(a)); and

(ii) Holds accounts involving the receipt or disbursal of funds for persons other than affiliates.

By order of the Board of Governors of the Federal Reserve System, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32332 Filed 12–4–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 98–15]

RIN 1557–AB66

"Know Your Customer" Requirements

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC is proposing to issue a regulation requiring national banks to develop and maintain "Know Your Customer" programs. As proposed, the regulation would require each bank to develop a program designed to determine the identity of its customers; determine its customers' sources of funds; determine the normal and expected transactions of its customers; monitor account activity for transactions that are inconsistent with those normal and expected transactions; and report any transactions of its customers that are determined to be suspicious, in accordance with the OCC's existing suspicious activity reporting regulation. By requiring banks to determine the identity of their customers, as well as to obtain knowledge regarding the legitimate activities of their customers, the proposed regulation will reduce the likelihood that banks will become unwitting participants in illicit activities conducted or attempted by their customers.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 98–15. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Robert Pasley, Assistant Director, Enforcement and Compliance Division (202) 874–4879; Thomas Fleming, Compliance Specialist (202) 874–4879, or Susan Quill, Compliance Expert (202) 874–4879, Community and Consumer Policy; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division (202) 874–4879.

SUPPLEMENTARY INFORMATION:

Background

The integrity of the financial sector depends on the ability of banks and other financial institutions to attract and retain legitimate funds from legitimate customers. Banks are able to attract and retain the business of legitimate customers because of the quality and reliability of the services being rendered and, as important, the sound and highly respected reputation of banks. Illicit activities, such as money laundering, fraud, and other transactions designed to assist criminals in their illegal ventures, pose a serious threat to the integrity of banks. When transactions at banks involving illicit funds are revealed, these transactions invariably damage the reputation of the banks involved. While it is impossible to identify every transaction at a bank that is potentially illegal or is being conducted to assist criminals in the movement of illegally derived funds, it is fundamental for safe and sound operations that banks take reasonable measures to identify their customers, understand the normal and expected transactions typically conducted by those customers, and, consequently, identify those transactions conducted by their customers that are suspicious in nature. By identifying and, when appropriate, reporting such transactions in accordance with existing suspicious activity reporting requirements, banks are protecting their integrity and are assisting the efforts of the bank regulatory agencies and law enforcement authorities to combat illicit activities at financial institutions.

One of the most effective means by which a bank can both protect itself from engaging in transactions designed to facilitate illicit activities and ensure compliance with applicable suspicious activity reporting requirements is for the bank to have adequate Know Your Customer policies and procedures. By knowing its customers, a bank is both better able to serve the legitimate needs of its customers and to fulfill its compliance responsibilities, including its Bank Secrecy Act and suspicious activity reporting requirements.

Recognizing that a Know Your Customer program for one bank will not necessarily be appropriate for another, the proposed regulation focuses on the basic components that the OCC believes should be contained in any Know Your Customer program. In supplemental guidance to be provided at the time this regulation becomes final, the OCC will provide further information about specific steps that banks may consider taking to ensure that their Know Your Customer programs comport with the regulations. The OCC believes that this approach strikes an appropriate balance that responds to requests for additional guidance in this area while preserving the flexibility for each bank to take steps appropriate for the size and complexity of its business.

Privacy Issues

The proposed regulation requires banks to gather information about customers that, if misused, could result in an invasion of a customer's privacy. Accordingly, it is the OCC's expectation that, in complying the Know Your Customer regulation, a bank will obtain only that information that is necessary to comply with the regulation and will limit the use of this information to complying with the regulation. Financial institutions need to safeguard and handle responsibly the information gathered in connection with complying with these obligations, and should integrate comprehensive privacy practices into their Know Your Customer programs.

Authority to Issue Regulation

The proposed regulation is authorized pursuant to the OCC's statutory authority under section 8(s)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(s)(1)), as amended by section 2596(a)(2) of the Crime Control Act of 1990 (Pub. L. 101–647), which mandates that the OCC issue regulations requiring banks under its supervision to establish and maintain internal procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. Effective Know Your Customer programs serve to facilitate compliance with the Bank Secrecy Act.

Proposal

The OCC proposes to revise 12 CFR Part 21 by requiring national banks to develop and implement Know Your Customer programs. Under the proposed regulation, the OCC would expect each bank to design a program that is appropriate given the bank's size and complexity, the nature and extent of its activities, its customer base and the levels of risk associated with its various customers and their transactions. The OCC believes that this approach is preferable to a detailed regulation that imposes the same list of specific requirements on every bank regardless of its circumstances.

Each of the other Federal bank supervisory agencies is proposing to adopt Know Your Customer regulations covering state member and nonmember banks, state-chartered branches and agencies of foreign banks, and savings associations.[1] The OCC also has been discussing with the Federal regulators of non-bank financial institutions, such as broker-dealers, the need to propose similar rules governing the activities of these non-bank institutions.

Section-by-Section Analysis

The OCC proposes to add a new § 21.22. The various components of the Know Your Customer rule are summarized below.

Purpose and scope (§ 21.22(a))

The purposes of adopting a Know Your Customer program are to protect the reputation of the bank; to facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the OCC's suspicious activity reporting regulations) and with safe and sound banking practices; and to protect the bank from becoming a vehicle for, or a victim of, illegal activities perpetrated by its customers. The rules apply, as a general matter, to all national banks. However, the rules do not apply to credit card banks, bankers' banks, or other banks that operate solely to service the activities of their affiliates. The OCC recognizes that certain banks operate solely to service the activities of their affiliates or other banks and, in so doing, do not interact in any manner with any public customers. The OCC does not intend the proposed regulation to impose any requirements on those banks.

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[1] As of the date this proposed rule was signed, the National Credit Union Administration was still reviewing the issue of whether to adopt a regulation that would create similar Know Your Customer obligations for credit unions.

The rules also apply to all Federal branches or agencies of foreign banks licensed or chartered by the OCC. The OCC expects U.S. banks to implement Know Your Customer systems in their overseas branches that are equivalent to those that they have in the United States in order to minimize the risk to the bank posed by illegal activities in the overseas branches.

Definition of Customer (§ 21.22(b))

The proposed regulation defines the term "customer" as any person or entity who has an account involving the receipt or disbursal of funds with an institution covered by this regulation and any person or entity on behalf of whom an account is maintained. If, for instance, a bank knows that an account is opened on behalf of a third party, the bank will need to treat as a customer both the person or entity opening the account and the person or entity for whom the account is opened. The regulation applies to deposit accounts, loan accounts, and any other type of account involving the receipt or disbursal of funds. It does not include, for instance, transactions such as renting safe deposit boxes.

Except for the provisions regarding identifying customers (*see* the discussion of paragraph (d)(2)(i) of the proposed rule, below) the proposed regulation does not differentiate between current customers and new customers. The effectiveness of a bank's Know Your Customer program would be greatly reduced if all customer accounts in existence prior to the effective date of the regulation were excluded from its scope. However, the OCC does not believe that it is practicable for a bank to conduct a large-scale information request from all its existing customers. Rather, a bank may comply with the proposed regulation with respect to its current customers by determining their normal and expected transactions using available account data and monitoring their transactions for suspicious activities. However, depending on the nature of the risk associated with some customers and their transactions (for instance, transactions involving private banking customers), it may be necessary to fulfill all of the requirements of this regulation as if they were new customers.

Establishment of Know Your Customer Program (§ 21.22(c))

This section requires that each bank establish a Know Your Customer program by April 1, 2000. Additionally, this section requires that the Know Your Customer program be reduced to writing and approved by the board of directors of the bank, or a committee thereof, and the approval recorded in the official minutes of the board.

Contents of Know Your Customer Program (§ 21.22(d))

This section sets forth the specific requirements for the contents of the Know Your Customer program. As previously noted, the OCC believes that to impose a regulation that requires each bank to follow a pre-designed, standardized checklist would not be appropriate. The proposed regulation thus allows each bank to develop and delineate a system that will comprise the Know Your Customer program, consistent with the banking practices of the particular bank that, when followed by the bank, will effectively meet the requirements and goals of the regulation.

Section 21.22(d) reflects the OCC's recognition that each bank's Know Your Customer program may vary depending on the nature of the specific activity, the type of customers involved, the size of the transactions, and other factors that reflect the bank's assessment of the risk presented. In complying with this section, it may be beneficial for banks to classify customers into varying risk-based categories that the banks can use in determining the amount and type of information, documentation and monitoring that is appropriate. While the proposed regulation will provide banks with substantial flexibility in devising an appropriate Know Your Customer program, the OCC believes that all Know Your Customer programs should contain certain critical features, which are discussed below.

Documentation and Due Diligence

Paragraph (d)(1) of § 21.22 requires that the Know Your Customer program delineate acceptable documentation requirements and due diligence procedures the bank will follow in meeting the requirements of the proposed regulation. The delineation of this information in the Know Your Customer program will ensure that the same standards are applied throughout the bank and will inform auditors and examiners of the bank's established standards for review of customer information.

Minimum Steps to Take to Comply With the Know Your Customer Rule

Paragraph (d)(2) of § 21.22 sets forth the steps a bank needs to take in order to know its customers. These steps are discussed below.

Identify the customer. Paragraph (d)(2)(i) requires that the Know Your Customer program provide a system for determining the identity of new customers. If a bank has reasonable cause to believe that it lacks sufficient information to know the identity of an existing customer, paragraph (d)(2)(i) also requires that the program provide a system for determining the identity of that customer.

It is imperative that a bank establish, to its own satisfaction, that it is dealing with a legitimate customer, whether the customer is a natural person, corporation, or other business entity. The nature and extent of the identification process should be commensurate with the types of transactions anticipated by the customer and the risks associated with such transactions. If a bank is unable to establish the identity or legitimacy of the customer, sound practices require that the bank not open the account (or terminate the account if the bank lacks adequate information to know the identity of an existing customer and is unable to obtain the information).

The best identification documents for verifying the identity of prospective customers are the ones that are the most difficult to obtain illicitly and the most difficult to counterfeit. No single form of identification can be guaranteed to be genuine, however. Therefore, the identification process should be cumulative, obtaining enough information and documentation to assure the bank that it has adequately identified the prospective customer. For individual accounts, this might include, for instance, a photograph and signature of the individual. For corporate or business customers, the customer identification process could include the review of appropriate documentation that allows for a means to verify that the corporation or other business entity does exist and does engage in the business, as stated. All documentation reviewed, as well as verifications of the information contained therein, should be recorded and maintained by the bank.

Any practice of a bank that allows for the establishment of a customer relationship without face-to-face contact with bank personnel, such as banking by mail or Internet banking, poses difficulties in the identification of the prospective customer by use of the traditionally accepted practice of obtaining photographic identification. Even though photographic identification in such circumstances will be impractical, other accepted means of identifying a customer are still viable. In such circumstances, special care should be given to verification of address and telephone number.

If a bank offers private banking services, it is important that the bank understand a customer's personal and business background, source of funds, and intended use of the private banking services. Typically, private banking customers are clients of financial advisors or make use of account vehicles such as personal investment companies, trusts, and personal mutual investment funds. The establishment of such accounts protects the legitimate confidentiality and financial privacy of the customers who use such accounts. However, banks need to identify properly the beneficial owners of such accounts in order to have an effective Know Your Customer program. Any needed confidentiality required by customers of a bank's private banking department can be addressed by the development of special protections to limit access to information that would generally reveal the beneficial owners of those accounts.

Introductions or referrals of prospective customers by established customers of the bank, while extremely valuable in providing background information about the prospective customer, cannot take the place of identification requirements that should be set forth in the bank's Know Your Customer program. Details regarding the introduction or referral should be documented so that the information obtained can be effectively used to assist in the verification of the prospective customer.

Determine the source of funds. Paragraph (d)(2)(ii) requires that the Know Your Customer program provide a system for determining the source of a customer's funds. The amount of information needed to do this can depend on the type of customer in question. As an example, if a retail banking customer maintains demand deposit accounts funded primarily from payroll deposits, it should be a relatively simple task to identify and document the source of funds as payroll deposits. On the other hand, a more detailed analysis, with a more extensive documentation process, would be required for high net worth customers with multiple deposits from a variety of sources. For these reasons, among others, it may be beneficial for banks to classify customers into varying categories, based on factors such as the types of accounts maintained, the types of transactions conducted, and the potential risk of illicit activities associated with such accounts and transactions. Banks could then develop procedures to obtain necessary information and documentation based on the risk assessment for the various categories or classes established by a bank.

Determine normal and expected transactions. Paragraph (d)(2)(iii) requires that the Know Your Customer program provide a system for determining a customer's normal and expected transactions involving the bank. Without this information, a bank is unable to identify suspicious transactions. A bank's understanding of a customer's normal and expected transactions should be based on information obtained both when an account is opened and during a reasonable period of time thereafter. It also should be based on normal transactions for similarly situated customers.

Monitor the account transactions. Paragraph (d)(2)(iv) requires that the Know Your Customer program provide a system for monitoring, on an ongoing basis, the transactions conducted by customers and identifying transactions that are inconsistent with the normal and expected transactions for particular customers or for customers in the same or similar categories or classes. The proposed regulation does not require that every transaction of every customer be reviewed. Rather, it requires that a bank develop a monitoring system that is appropriate for the risks presented by the accounts maintained at that bank.

In designing a monitoring system, a bank may choose to classify accounts into various categories based on factors such as the type and size of account, the types, number, and size of transactions conducted in the account, and the risk of illicit activity associated with the account. For certain classes or categories of accounts, it would be sufficient for an effective monitoring system to establish parameters for which the transactions within these accounts will normally occur. Rather than monitoring each transaction, an effective monitoring system could entail monitoring only for those transactions that exceed the established parameters for that particular class or category of accounts. For other categories or classes of accounts, such as private banking accounts, it may be necessary to monitor each significant transaction.

Determine if transaction should be reported. Once a transaction is identified as inconsistent with normal and expected transactions, paragraph (d)(2)(v) requires that a bank determine if the transaction warrants the filing of a Suspicious Activity Report. This is consistent with a bank's existing obligations under 12 CFR 21.11(c). In identifying reportable transactions, a bank should not conclude that every transaction that falls outside what is expected for a given customer should be reported. Rather, a bank should focus on patterns of inconsistent transactions and isolated transactions that present risk factors that warrant further review.

Compliance with Know Your Customer Program (§ 21.22(e))

This section sets forth the requirements a bank must follow to ensure that it is in compliance with its Know Your Customer program. The requirements include that a bank provide for and document a system of internal controls to ensure ongoing compliance, as well as provide for and document independent testing for compliance with the Know Your Customer program. Additionally, the bank must designate an individual responsible for coordinating and monitoring day-to-day compliance and provide for and document training to all appropriate personnel of the content and requirements of the Know Your Customer program.

Availability of Documentation (§ 21.22(f))

This section requires, for all accounts opened or maintained in the United States, that all information and documentation necessary to comply with the regulation be made available for examination and inspection, at a location specified by a OCC representative, within 48 hours of a request for such information and documentation. In instances where the information and documentation is at a location other than where the customer's account is maintained or the financial services are rendered, the bank must adopt, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed by personnel at the location where the customer's account is located or the financial services are rendered, and the bank should provide written evidence that the appropriate review of the information and documentation is being performed by the personnel at that location on a regular basis.

While issues arise on occasion concerning whether foreign laws permit a bank to disclose certain customer information, the OCC's experience is that the information typically already exists within the bank in the United States because the information is used by the relationship manager, who resides in the United States, as well as other components of the bank, to provide banking services to the customer. Moreover, in instances where banks have raised foreign law disclosure issues, the banks, at the OCC's suggestion, have obtained from their customers waivers to any perceived prohibition to disclosure of the information and documentation. Thus, the OCC does not anticipate that foreign laws will preclude the production of information relating to accounts opened and maintained in the United States.

Comments Sought

The OCC invites comment on any aspect of the proposed regulation, and specifically seeks comment on the following issues:

1. Whether the proposed definition of "customer" is sufficient to include all persons who benefit from an account opened at a bank, such as persons who establish off-shore shell companies or entities or otherwise conduct their business through intermediaries.
2. Whether the proposed definition of "customer" is too broad and will unnecessarily include persons that pose a minimal Know Your Customer risk.
3. Whether a bank's Know Your Customer program should apply to a bank's counterparty relationships with respect to transactions in wholesale financial markets (e.g., sales or purchases involving foreign exchange or securities) and correspondent banking relationships.
4. Whether a different standard than that applicable to retail relationships would be more appropriate for wholesale and correspondent banking relationships, and, if such a distinction is appropriate, how the definition of "customer" can be distinguished between transactional counterparty customers, correspondents, and retail customers.
5. Whether the proposed regulation will create a competitive disadvantage with respect to other financial entities offering similar services that may not be subject to the similar regulations (citing, where possible, specific examples) and, if so, what could be done to mitigate the disadvantage consistent with the OCC's supervisory responsibilities.
6. Whether the actual or perceived invasion of personal privacy interests is outweighed by the additional compliance benefits anticipated by this proposal.
7. Whether there should be a minimum account size threshold below which the Know Your Customer requirements should be waived.
8. Whether credit card banks should be exempt from the regulation.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the OCC certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Most banks, from small to large, already have policies and procedures aimed at collecting, retaining, and reviewing the types of information required by this proposal. Therefore, there should not be a significant economic impact from this proposal.

Paperwork Reduction Act

The OCC invites comment on:

(1) Whether the proposed collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–KYCP), Washington, D.C. 20503, with copies to Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Attention: 1557–KYCP, Washington, D.C. 20219.

The proposed rule is not expected to significantly increase the ongoing annual paperwork burden for the recordkeepers because most of the ongoing burden is incurred and accounted for under other existing information collections. As discussed in the preamble to the proposed rule, banks already must report suspicious transactions, pursuant to 12 CFR 21.11. Therefore, they already must gather information about customers and monitor customer transactions as part of their usual and customary activities in order to comply with the suspicious activity reporting requirements. Moreover, the OCC has drafted the proposed regulation in a way that is designed to give banks as much flexibility as possible to design a system that is appropriate for each individual bank and generally has not proposed to require compliance with specific paperwork burdens.

The majority of the paperwork burden associated with the proposed rule is the one-time burden of developing a plan. In the normal course of business, most institutions likely already have sufficient information about their customers in their files and would only need to organize and review such information. Because each institution would design its own program in accordance with its own business practices, the OCC estimates that the burden of the proposed rule would vary considerably and may range, during the initial year, from 10 to 30 hours, with an average of 20 hours per recordkeeper.

The collection of information requirements in this proposed rule are found in 12 CFR 21.22(c) and 21.22(e)(3). This information is required to evidence compliance with the requirements that the Know Your Customer program has been developed and approved by a bank's board of directors (or committee thereof) and to identify the person(s) responsible for coordinating and monitoring compliance with the program. The likely respondents are national banks, District banks, and Federal branches and agencies of foreign banks licensed or chartered by the OCC.

Estimated average annual burden hours per recordkeeper: 20 hours for the first year, with an average over the first three years of 8 hours per year.

Estimated number of recordkeeper: 2,600.

Estimated total annual recordkeeping burden: 52,000 for the first year, with an average over the first three years of 20,800 hours per year.

Start-up costs: None.

Executive Order 12866

The Office of Management and Budget has concurred with the OCC's determination that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. Most banks already have policies and procedures aimed at collecting, retaining and reviewing the types of information required by this proposal and, thus, this proposal should not result in substantial additional expenditures.

List of Subjects in 12 CFR Part 21

Currency, National banks, Reporting and recordkeeping requirements, Security measures.

Authority and Issuance

For the reasons set forth in the preamble, part 21 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

1. The authority citation for part 21 continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

2. A new § 21.22 is added to read as follows:

§ 21.22 Know Your Customer rules.

(a) *Purpose and scope*—(1) *Purpose.* The Know Your Customer rules require that national banks and Federal branches or agencies of foreign banks establish and regularly maintain procedures designed to determine the identity of their customers, as well as their customers' normal and expected transactions and sources of funds involving the bank. These procedures (referred to as the "Know Your Customer" program) are intended to: protect the reputation of the bank; facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the suspicious activity reporting requirements of 12 CFR 21.11) and with safe and sound banking practices; and protect the bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers.

(2) *Scope.* In general, the Know Your Customer rules apply to all national banks as well as all Federal branches or agencies of foreign banks licensed or chartered by the OCC. However, the rules do not apply to credit card banks, bankers's banks, or other banks that operate solely to service the activities of their affiliates.

(b) *Definition of customer.* For the purposes of this section, customer means:

(1) Any person or entity who has an account involving the receipt or disbursal of funds with an institution covered by this section; and

(2) Any person or entity on behalf of whom an account is maintained.

(c) *Establishment of Know Your Customer program.* Each bank shall develop and provide for the continued administration of a Know Your Customer program by April 1, 2000. The Know Your Customer program shall be reduced to writing and approved by the board of directors (or a committee thereof) with the approval recorded in the official minutes of the board.

(d) *Contents of Know Your Customer program.* The Know Your Customer program may vary in complexity and scope according to categories or classes of customers established by the bank and the potential risk of illicit activities associated with those customers' accounts and transactions. Components of the program should include the following:

(1) Appropriate documentation requirements and due diligence procedures established by the bank to comply with this section; and

(2) A system for:

(i) Determining the identity of the bank's new customers and, if the bank has reasonable cause to believe that it lacks adequate information to know the identity of existing customers, determining the identity of those existing customers;

(ii) Determining the customer's sources of funds for transactions involving the bank;

(iii) Determining the particular customer's normal and expected transactions involving the bank;

(iv) Monitoring customer transactions and identifying transactions that are inconsistent with normal and expected transactions for that particular customer or for customers in the same or similar categories or classes, as established by the bank; and

(v) Determining if a transaction should be reported in accordance with the OCC's suspicious activity reporting regulations and, if so, reporting accordingly.

(e) *Compliance with Know Your Customer program.* The bank shall comply with its Know Your Customer program. To ensure compliance, the bank shall:

(1) Provide for and document a system of internal controls;

(2) Provide for and document independent testing for compliance to be conducted by bank personnel or by an outside party on a regular basis;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide for and document training to all appropriate personnel, on at least an annual basis, of the content and required procedures of the Know Your Customer program.

(f) *Availability of documentation.* For all accounts opened or maintained in the United States, each bank must ensure that all information and documentation sufficient to comply with the requirements of this section are available for examination and inspection, at a location specified by an OCC representative, within 48 hours of an OCC representative's request for such information and documentation. In instances where the information and documentation is maintained at a location other than where the customer's account is maintained or the financial services are rendered, the bank must include, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel in order to comply with this section.

Dated: October 17, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 98–32333 Filed 12–4–98; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

RIN 3064–AC19

Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to issue a regulation requiring insured nonmember banks to develop and maintain "Know Your Customer" programs. As proposed, the regulation would require each nonmember bank to develop a program designed to determine the identity of its customers; determine its customers' sources of funds; determine the normal and expected transactions of its customers; monitor account activity for transactions that are inconsistent with those normal

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and expected transactions; and report any transactions of its customers that are determined to be suspicious, in accordance with the FDIC's existing suspicious activity reporting regulation. By requiring insured nonmember banks to determine the identity of their customers, as well as to obtain knowledge regarding the legitimate activities of their customers, the proposed regulation will reduce the likelihood that insured nonmember banks will become unwitting participants in illicit activities conducted or attempted by their customers. It also will level the playing field between institutions that already have adopted formal Know Your Customer programs and those that have not.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Comments should be directed to: Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. In addition, comments may be sent by fax to (202) 898–3838, or by electronic mail to comments@FDIC.gov. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, D.C., between 9 a.m. and 4:30 p.m., on business days.

FOR FURTHER INFORMATION CONTACT: Carol A. Mesheske, Special Activities Section, Division of Supervision, (202) 898–6750, or Karen L. Main, Counsel, Legal Division (202) 898–8838.

SUPPLEMENTARY INFORMATION:

Background

The integrity of the financial sector depends on the ability of banks and other financial institutions to attract and retain legitimate funds from legitimate customers. Financial institutions are able to attract and retain the business of legitimate customers because of the quality and reliability of the services being rendered and, as important, the sound and highly respected reputation of the banking industry. Illicit activities, such as money laundering, fraud, and other transactions designed to assist criminals in their illegal ventures, pose a serious threat to the integrity of financial institutions. When transactions at financial institutions involving illicit funds are revealed, these transactions invariably damage the reputation of the financial institutions involved and, potentially, the entire financial sector. While it is impossible to identify every transaction at an institution that is potentially illegal or is being conducted to assist criminals in the movement of illegally derived funds, it is fundamental for safe and sound operations that financial institutions take reasonable measures to identify their customers, understand the legitimate transactions typically conducted by those customers, and, consequently, identify those transactions conducted by their customers that are unusual or suspicious in nature. By identifying and, when appropriate, reporting such transactions in accordance with existing suspicious activity reporting requirements, financial institutions are protecting their integrity and are assisting the efforts of the financial institution regulatory agencies and law enforcement authorities to combat illicit activities at such institutions.

One of the most effective means by which an insured nonmember bank can both protect itself from engaging in transactions designed to facilitate illicit activities and ensure compliance with applicable suspicious activity reporting requirements is for the nonmember bank to have adequate Know Your Customer policies and procedures. By knowing its customers, an insured nonmember bank is better able to fulfill its compliance responsibilities, including its Bank Secrecy Act and suspicious activity reporting requirements, 12 CFR 326.8 and 12 CFR part 353, respectively.

Recognizing that a Know Your Customer program for one nonmember bank will not necessarily be appropriate for another, the proposed regulation identifies only the basic components that the FDIC believes should be contained in any Know Your Customer program. In supplemental guidance to be provided at the time this regulation becomes final, the FDIC, in coordination with the other federal financial institution supervisory agencies, will provide further information about specific steps that institutions may consider taking as they implement their Know Your Customer programs. The FDIC believes that this approach strikes an appropriate balance that responds to requests for additional guidance in this area while preserving the flexibility for each insured nonmember bank to take steps appropriate for its customers.

Privacy Issues

The proposed regulation requires insured nonmember banks to gather information about customers that, if misused, could result in an invasion of a customer's privacy. Given the potential for abuse in this area, it is the FDIC's expectation that, in complying with the Know Your Customer regulation, a nonmember bank will obtain only that information that is necessary to comply with the regulation and will limit the use of this information to complying with the regulation. Insured nonmember banks need to safeguard and handle responsibly the information gathered in connection with complying with these obligations, and should integrate comprehensive privacy practices into their Know Your Customer programs.

Authority To Issue the Regulation

The proposed regulation is authorized pursuant to the FDIC's statutory authority under section 8(s)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(s)(1)), as amended by section 2596(a)(2) of the Crime Control Act of 1990 (Pub. L. 101–647), which requires the FDIC to issue regulations requiring banks under its supervision to establish and maintain internal procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. Effective Know Your Customer programs serve to facilitate compliance with the Bank Secrecy Act.

Proposal

The FDIC proposes to revise 12 CFR part 326 by adding a new subpart requiring insured nonmember banks to develop and implement Know Your Customer programs. Under the proposed regulation, the FDIC would expect each nonmember bank to design a program that is appropriate given its size and complexity, the nature and extent of its activities, its customer base and the levels of risk associated with its various customers and their transactions. The FDIC believes that this approach is preferable to a detailed regulation that imposes the same list of specific requirements on every bank regardless of its circumstances. The FDIC recognizes that a Know Your Customer requirement will impose additional burdens on some insured nonmember banks. Mindful of that fact, the FDIC is striving to impose only those requirements that are necessary to ensure that insured nonmember banks have in place adequate Know Your Customer programs.

Each of the other federal bank supervisory agencies is proposing to adopt substantially identical regulations covering state member and national banks, federally-chartered branches and agencies of foreign banks, savings associations, and credit unions. There also have been discussions with the federal regulators of non-bank financial institutions, such as broker-dealers, concerning the need to propose similar rules governing the activities of these non-bank institutions.

Analysis of Subpart C

Section 326.9 Know Your Customer Compliance

Paragraph (a)—Purpose

The purposes of adopting a Know Your Customer program are to protect the reputation of the insured nonmember bank; to facilitate the insured nonmember bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the FDIC's suspicious activity reporting regulations) and with safe and sound banking practices; and to protect the insured nonmember bank from becoming a vehicle for, or a victim of, illegal activities perpetrated by its customers.

This subpart applies to all insured state nonmember banks as well as any insured, state-licensed branches of foreign banks.

Paragraph (b)—Definitions

The proposed regulation defines the term "customer" as any person or entity who has an account involving the receipt or disbursal of funds with an insured nonmember bank covered by this regulation and any person or entity on behalf of whom an account is maintained. Thus, for instance, if an account is opened on behalf of a third party, the nonmember bank will need to treat as a customer both the person or entity opening the account and the person or entity for whom the account is opened. A customer would include an accountholder, a beneficial owner of an account, or a borrower. A "customer" could include the beneficiary of a trust, an investment fund, a pension fund or a company whose assets are managed by an asset manager; a controlling shareholder of a closely held corporation; or the grantor of a trust established in an off-shore jurisdiction. The term "customer" does not include recipients of services for which the receipt or disbursal of customer funds is incidental, for instance, safe deposit box rentals.

The proposed regulation does not differentiate between current customers and new customers. The effectiveness of an insured nonmember bank's Know Your Customer program would be greatly reduced if all customer accounts in existence prior to the effective date of the regulation were excluded from its scope. However, the FDIC does not believe that it is practicable for a nonmember bank to conduct a large-scale information request from all its existing customers. Rather, a nonmember bank may comply with the proposed regulation with respect to its current customers by determining their normal and expected transactions, using available account data, and monitoring their transactions for suspicious activities. However, depending on the nature of the risk associated with some customers and their transactions (for instance, transactions involving private banking customers), it may be necessary to fulfill all of the requirements of this regulation as if they were new customers.

Paragraph (c)—Establishment of Know Your Customer Program

This paragraph requires that each insured nonmember bank establish a Know Your Customer program by April 1, 2000. Additionally, this paragraph requires that the Know Your Customer program be reduced to writing and approved by the board of directors of the nonmember bank, or a committee thereof, and the approval recorded in the official minutes of the board.

Paragraph (d)—Contents of Know Your Customer Program

This paragraph sets forth the specific requirements for the contents of the Know Your Customer program. The FDIC recognizes that insured nonmember banks vary considerably in the way in which they conduct their business on a day-to-day basis. Therefore, the FDIC believes that to impose a regulation that simply requires each insured nonmember bank to follow a pre-designed, standardized checklist would not be appropriate. The proposed regulation thus allows each nonmember bank to develop and delineate a system that will comprise the Know Your Customer program, consistent with the banking practices of the particular bank that, when followed by the nonmember bank, will effectively meet the requirements and goals of the regulation.

Section 326.9(d) reflects the FDIC's recognition that each insured nonmember bank's Know Your Customer program may vary depending on the nature of the specific activity, the type of customers involved, the size of the transactions, and other factors that reflect the nonmember bank's assessment of the risk presented. In complying with this section, it may be beneficial for insured nonmember banks to classify customers into varying risk-based categories that the insured nonmember banks can use in determining the amount and type of information, documentation and monitoring that is appropriate. While the proposed regulation will provide nonmember banks with substantial flexibility in devising an appropriate Know Your Customer program, the FDIC believes that all Know Your Customer programs should contain certain critical features, which are discussed below.

Documentation and due diligence. Paragraph (d)(1) of § 326.9 requires that the Know Your Customer program delineate acceptable documentation requirements and due diligence procedures the insured nonmember bank will follow in meeting the requirements of the proposed regulation. The delineation of this information in the Know Your Customer program will ensure that the same standards are applied throughout the nonmember bank and will inform auditors and examiners of the nonmember bank's established standards for review of customer information.

Minimum steps to take to comply with the Know Your Customer rule. Paragraph (d)(2) of § 326.9 sets forth the steps an insured nonmember bank needs to take in order to know its customers. The proposed regulation requires that, rather than following a "checklist" approach, an insured nonmember bank may develop a "system" designed to meet the basic requirements of the regulation. The system approach allows each insured nonmember bank to design its own program, in accordance with its own business practices, that will best suit the nonmember bank. While this places some burden on the nonmember bank to develop the specifics of the Know Your Customer program, such an approach recognizes that each insured nonmember bank conducts business in accordance with its own policies, procedures, goals and objectives. The Know Your Customer program, in order to be the most effective, must be developed and implemented with the nonmember bank's regular and ordinary business practices in mind. The FDIC believes that all Know Your Customer programs should contain certain critical features, which are set forth below.

Identify the customer. Paragraph (d)(2)(i) requires that the Know Your Customer program provide a system for determining the true identity of prospective customers. If an insured nonmember bank has reasonable cause to believe that it lacks sufficient information to know the identity of an existing customer, paragraph (d)(4)(ii)(A) also requires that the program provide a system for

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determining the identity of that customer.

It is imperative that an insured nonmember bank establish, to its own satisfaction, that it is dealing with a legitimate customer, whether the customer is a natural person, corporation, or other business entity. The nature and extent of the identification process should be commensurate with the types of transactions anticipated by the customer and the risks associated with such transactions. If a prospective customer refuses to provide any of the requested information, sound practices would require that the nonmember bank not open the account. Similarly, if additional or follow-up information is not forthcoming from an established customer, sound practices would require that consideration be given to terminating the account relationship.

The best identification documents for verifying the identity of prospective customers are the ones that are the most difficult to obtain illicitly and the most difficult to counterfeit. No single form of identification can be guaranteed to be genuine, however. Therefore, the identification process should be cumulative, obtaining enough information and documentation to assure the insured nonmember bank that it has adequately identified the prospective customer. For individual accounts, this might include, for instance, a document containing a photograph and signature of the individual. For corporate or business customers, the customer identification process could include the review of appropriate documentation that allows for a means to verify that the corporation or other business entity does exist and does engage in the business, as stated. All documentation reviewed, as well as verifications of the information contained therein, should be recorded and maintained by the nonmember bank.

Any practice of an insured nonmember bank that allows for the establishment of a customer relationship without face-to-face contact with bank personnel, such as banking by mail or Internet banking, poses difficulties in the identification of the prospective customer by use of the traditionally accepted practice of obtaining identification documentation, to include photographic identification. Even though photographic identification in such circumstances will be impractical, other accepted means of identifying a customer are still viable. In such circumstances, special care should be given to verification of address and telephone number. Moreover, insured nonmember banks should consider using commercially available data to compare items such as name with date of birth and social security number.

If an insured nonmember bank offers private banking services, it is important that the nonmember bank understand a customer's personal and business background, source of funds, and intended use of the private banking services. Typically, private banking customers are clients of financial advisors or make use of account vehicles such as personal investment companies, trusts, and personal mutual investment funds. The establishment of such accounts serves the stated purposes of protecting the legitimate confidentiality and financial privacy of the customers who use such accounts. However, the need to identify properly the beneficial owners of such accounts, through an effective Know Your Customer program, is necessary to the continued safe and sound operation of the insured nonmember bank. Any needed confidentiality required by customers of an insured nonmember bank's private banking department can be addressed by the development of special protections to limit access to information that would generally reveal the beneficial owners of those accounts.

Introductions or referrals of prospective customers by established customers of the insured nonmember bank, while extremely valuable in providing background information about the prospective customer, cannot take the place of identification requirements that should be set forth in the nonmember bank's Know Your Customer program. Details regarding the introduction or referral should be documented so that the information obtained can be effectively used to assist in the verification of the prospective customer.

The extent of the information regarding the customer that may be necessary to fulfill the nonmember bank's Know Your Customer obligations should depend on a risk-based assessment of the customer and the transactions that are expected to occur, and should be addressed within the insured nonmember bank's Know Your Customer program.

Determine the source of funds. Paragraph (d)(2)(ii) requires that the Know Your Customer program provide a system for determining the source of a customer's funds. The amount of information needed to do this can depend on the type of customer in question. As an example, if a retail banking customer maintains demand deposit accounts funded primarily from payroll deposits, it should be a relatively simple task to identify and document the source of funds as payroll deposits. On the other hand, a more detailed analysis, with a more extensive documentation process, would be required for high net worth customers with multiple deposits from a variety of sources. For these reasons, among others, it may be beneficial for insured nonmember banks to classify customers into varying categories, based on factors such as the types of accounts maintained, the types of transactions conducted, and the potential risk of illicit activities associated with such accounts and transactions. An insured nonmember bank could then develop procedures to obtain necessary information and documentation based on the risk assessment for the various categories or classes established by the nonmember bank.

Determine normal and expected transactions. Paragraph (d)(2)(iii) requires that the Know Your Customer program provide a system for determining a customer's normal and expected transactions involving the insured nonmember bank. A nonmember bank's understanding of a customer's normal and expected transactions should be based on information obtained both when an account is opened and during a reasonable period of time thereafter. It also should be based on normal transactions for similarly situated customers. Without this information, an insured nonmember bank is unable to identify suspicious transactions.

Monitor the account transactions. Paragraph (d)(2)(iv) requires that the Know Your Customer program provide a system for monitoring, on an ongoing basis, the transactions conducted by customers to identify transactions that are inconsistent with the normal and expected transactions for particular customers or for customers in the same or similar categories or classes. The proposed regulation does not require that every transaction of every customer be reviewed. Rather, it requires that an insured nonmember bank develop a monitoring system that is commensurate with the risks presented by the accounts maintained at that bank.

In designing a monitoring system, an insured nonmember bank may choose to classify accounts into various categories based on factors such as the type and size of account, the types, number, and size of transactions conducted in the account, and the risk of illicit activity associated with the account. For certain classes or categories of accounts, it would be sufficient for an effective monitoring system to establish parameters for which the transactions within these accounts will normally occur. Rather than monitoring each transaction, an effective monitoring system could entail monitoring only for those transactions that exceed the established parameters for that particular class or category of accounts. For other categories or classes of accounts, such as private banking accounts, it may be necessary to monitor each significant transaction.

Determine if transaction should be reported. Once a transaction is identified as inconsistent with normal and expected transactions, paragraph (d)(2)(v) requires that an insured nonmember bank determine if the transaction warrants the filing of a Suspicious Activity Report. This is consistent with an insured nonmember bank's existing obligations under 12 CFR 353.3(a). In identifying reportable transactions, an insured nonmember bank should not conclude that every transaction that falls outside what is expected for a given customer should be reported. Rather, a nonmember bank should focus on patterns of inconsistent transactions and isolated transactions that present risk factors that warrant further review.

Paragraph (e)—Compliance With Know Your Customer Program

This paragraph sets forth the requirements an insured nonmember bank must follow to ensure that it is in compliance with its Know Your Customer program. The requirements include that an insured nonmember bank provide for and document a system of internal controls to ensure ongoing compliance, as well as provide for and document independent testing for compliance with the Know Your Customer program. Additionally, the nonmember bank must designate an individual responsible for coordinating and monitoring day-to-day compliance and provide for and document training to all appropriate personnel of the content and requirements of the Know Your Customer program.

Paragraph (f)—Availability of Documentation

This paragraph requires, for all accounts opened or maintained in the United States, that all information and documentation necessary to comply with the regulations be made available for examination and inspection, at a location specified by an FDIC representative, within 48 hours of a request for such information and documentation. In instances where the information and documentation is at a location other than where the customer's account is maintained or the financial services are rendered, the insured nonmember bank must adopt, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate personnel. The nonmember bank should maintain written evidence that the appropriate review is being performed on a regular basis.

While issues arise on occasion concerning documentation on accounts domiciled in the United States by foreign accountholders, the FDIC believes that the information typically already exists within the insured nonmember bank in the United States because the information is used by the relationship manager, who resides in the United States, as well as other components of the nonmember bank to provide banking services to the customer.

Comments Sought

The FDIC invites comment on any aspect of the rule, and specifically seeks comment on the following issues:

1. Whether the proposed definition of "customer" is sufficient to include all persons who benefit from an account opened at an insured nonmember bank such as persons who establish off-shore shell companies or entities or otherwise conduct their business through intermediaries.
2. Whether the proposed definition of "customer" is too broad and will unnecessarily include persons that pose a minimal Know Your Customer risk.
3. Whether an insured nonmember bank's Know Your Customer program should apply to a nonmember bank's counterparty relationships with respect to transactions in wholesale financial markets (e.g., sales or purchases involving foreign exchange or securities) and correspondent banking relationships. If so, would a different standard than that applicable to retail relationships be more appropriate for wholesale and correspondent banking relationships? If such a distinction is appropriate, is the proposed definition of "customer" sufficient?
4. Whether the benefits of implementing Know Your Customer requirements outweigh the costs involved.
5. Whether the proposed regulation will create a competitive disadvantage with respect to other financial entities offering similar services that may not be subject to similar regulations (citing, where possible, specific examples) and, if so, what could be done to mitigate the disadvantage consistent with the FDIC's supervisory responsibilities.
6. Whether the actual or perceived invasion of personal privacy interests is outweighed by the additional compliance benefits anticipated by this proposal.
7. Whether there should be a minimum account size threshold below which the Know Your Customer requirements should be waived.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, the FDIC must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this proposed rule, or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is designed to be flexible so that each insured nonmember bank can design a Know Your Customer program appropriate for its circumstances. While advantageous to insured nonmember banks, this flexibility makes it difficult to predict the magnitude of the economic impact of the proposed rule on insured nonmember banks. The FDIC cannot, at this time, determine whether the proposed rule would have a significant economic impact on a substantial number of small entities. The FDIC, therefore, includes this IRFA.

A. Reasons For and Objectives of the Proposed Rule.

The proposed Know Your Customer rule is designed to deter and detect financial crimes, such as money laundering, tax evasion, and fraud. Financial crimes conducted at or through financial institutions, even where financial institutions are not parties to the transactions, can damage the reputations of the institutions involved, and possibly of the entire banking industry. Under current law, financial institutions are required to report suspicious activities to law enforcement authorities, but are not required to specifically search for suspicious activities. As a result, suspicious activities may go unreported, and illegal activity may go undetected. Know Your Customer programs would better enable financial institutions to alert law enforcement authorities to potential criminal conduct and help deter criminal conduct in the banking industry.

The FDIC has two primary objectives for this proposed rulemaking: (1) increasing insured nonmember banks' detection and reporting of suspicious customer activities; and, (2) deterring financial crimes at insured nonmember banks.

The proposed rule would apply to large and small insured nonmember banks. Small nonmember banks are generally defined, for Regulatory Flexibility Act purposes, as those with assets of $100 million or less. This proposed rule would apply to approximately 3,950 small insured nonmember banks.

B. Requirements of the Proposed Rule.

The proposed rule would require insured nonmember banks to identify their customers, determine their customers' normal and expected transactions, determine their customers' sources of funds, monitor transactions to find those that are not normal and expected, and, for transactions that are not normal and expected, identify which are suspicious. Insured nonmember banks are required to report any suspicious transactions under current law, and this proposed rule would have no additional reporting requirements.

The impact of the proposed regulation on a nonmember bank's resources, and the skills necessary to comply with it, will vary from one nonmember bank to another because the proposed regulation is designed to take into account each bank's size and resources. Because each nonmember bank would be able to design an individualized Know Your Customer program, it is difficult to specify the type of professional skills necessary for preparing any required records or reports. Large insured nonmember banks may be more likely to use computerized Know Your Customer programs, and in that event would be more likely to need professional computer skills. Small nonmember banks that choose to automate their Know Your Customer programs would need professional computer skills.

Know Your Customer monitoring would be similar to monitoring that insured nonmember banks already do. For example, insured nonmember banks monitor customer transactions to ensure that cash transactions exceeding $10,000 are reported under the Bank Secrecy Act, to ensure that customers do not overdraw their accounts, and to ensure that loan payments are accurate and timely. Thus, Know Your Customer monitoring would rely, at least in part, on computer and other skills that insured nonmember bank personnel already have and regularly use.

C. Significant Alternatives

1. No Know Your Customer Requirements

The FDIC considered recommending Know Your Customer procedures rather than proposing regulatory requirements. The FDIC decided to propose this rulemaking, however, because of the risks that insured nonmember banks face from customers who attempt illegal activities. Illegal activities would harm a nonmember bank's reputation and that of the entire banking industry. Requiring Know Your Customer programs significantly reduces the likelihood that some insured nonmember banks would not establish or adhere to such programs. In addition, because other federal banking agencies are proposing Know Your Customer rules, the FDIC believes that criminals would quickly move their illegal funds transfers into insured nonmember banks without Know Your Customer programs, thus increasing those banks' exposure to illegal activity.

Moreover, recommending rather than requiring Know Your Customer programs would allow customers to simply refuse to answer appropriate questions about their identities or transactions. If Know Your Customer programs are required, insured nonmember banks can more easily collect the necessary information because customers cannot turn readily to another financial institution free of such requirements.

For these reasons, merely recommending Know Your Customer programs would interfere with the FDIC's goals of increasing insured nonmember banks' detection and reporting of suspicious customer activities, and deterring financial crimes at insured nonmember banks.

2. Exemption for Small Nonmember Banks

The FDIC considered exempting small nonmember banks from Know Your Customer requirements. However, this alternative has the disadvantage of possibly creating a haven for criminal activity. It is likely that criminals would concentrate their activity at those nonmember banks not subject to any Know Your Customer requirements. An exemption for small insured nonmember banks would conflict with the FDIC's goals of increasing insured nonmember banks' detection and reporting of suspicious customer activities and deterring financial crimes at insured nonmember banks.

3. Flexible Know Your Customer Requirements

The FDIC is proposing to require that all insured nonmember banks establish and follow Know Your Customer programs, but the proposal will allow each nonmember bank to develop a program appropriate for its circumstances, including but not limited to its size and resources. This approach is preferable to the first two alternatives because it does not allow criminals to choose an insured nonmember bank without Know Your Customer requirements to conduct illegal activities. A flexible alternative also avoids requirements beyond the means of small nonmember banks. Small nonmember banks could use simpler, less costly, and less burdensome programs than larger insured nonmember banks.

D. Other Matters

The FDIC has the statutory authority to promulgate this proposed regulation. There are no federal rules that duplicate, overlap, or conflict with this proposed rule.

The FDIC encourages comment on all aspects of this IRFA, including comments on any significant economic impact the proposed rule would have on small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. A collection of information contained in this rule and described below has been submitted to OMB for review. Comments on the collection of information should be sent to the desk officer for the FDIC: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Copies of comments should also be sent to: Steven F. Hanft, FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, (202) 898–3907. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. [Fax number (202) 898–3838; Internet address: COMMENTS@FDIC.GOV]. For further information on the Paperwork Reduction Act aspect of this rule, contact Steven F. Hanft at the above address. OMB will make a decision concerning the change in the information collection between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. Unless the FDIC publishes a notice to the contrary, the public may assume that the change in the collection was approved within 60 days of this publication.

Comment is solicited on: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of the collection: The proposed rule will modify an information collection previously approved by OMB titled "Procedures for Monitoring Bank Secrecy Act Compliance" under OMB control number 3064–0087.

Summary of the change to the collection: The proposed rule will modify the collection by adding a requirement that each bank develop a written "Know Your Customer" program.

Need and Use of the information: Banks will use the Know Your Customer program to assure that they do not become unwitting participants in illicit activities conducted or attempted by their customers. The FDIC will use the information kept to ensure and monitor compliance with the Bank Secrecy Act.

Respondents: State nonmember banks (approximately 6,000).

Estimated annual burden: The majority of the paperwork burden associated with the proposed rule is the one-time cost of developing a plan and implementing written policies and procedures which will occur in the first year of the rule's application to a covered bank. In the normal course of business, most institutions likely already have sufficient information about their customers in their files and would only need to organize and review such information. The FDIC estimates that there will be 6,000 recordkeepers in the first year. In subsequent years, the recordkeepers will consist of newly-chartered institutions subject to the rule. The proposed rule is not expected to significantly increase the ongoing annual burden for the recordkeepers because most of the ongoing burden is incurred in the normal course of their business activities and or accounted for under other existing information collections including their fraud prevention procedures, their monitoring of transactions for reporting on the Department of the Treasury's Currency Transaction Reports and as part of their procedures to detect violations or suspicious activity reported on the Suspicious Activity Report. Because the records would be maintained at the subject organizations and are not provided to the Board, no issue of confidentiality under the Freedom of Information Act arises.

Frequency of response: Occasional.

Number of responses: 6,000.

Number of hours to prepare a response: 10—30 hours, with an average of 20 hours.

Total annual burden: 120,000.

List of Subjects in 12 CFR Part 326

Banks, banking, Bank robbery, Bank Secrecy Act, Crime, Currency, Reporting and recordkeeping requirements, Security measures.

Authority and Issuance

For the reasons set forth in the preamble, part 326 of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 326 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819[Tenth], 1881–1883; 31 U.S.C. 5311–5324.

2. A new subpart C is added to read as follows:

Subpart C—Know Your Customer Compliance

§ 326.9 Know Your Customer rule.

(a) *Purpose.* This subpart requires that all insured nonmember banks as defined in 12 CFR 326.1(a) establish and regularly maintain procedures designed to determine the identity of their customers, as well as their customers' normal and expected transactions and sources of funds involving the nonmember bank. These procedures (referred to as the "Know Your Customer" program) are intended to: protect the reputation of the nonmember bank; facilitate the nonmember bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the suspicious activity reporting requirements of 12 CFR 353.3) and with safe and sound banking practices; and protect the insured nonmember bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers.

(b) *Definition of customer.* For the purposes of this section, customer means:

(1) Any person or entity who has an account with an insured nonmember bank covered by this subpart involving the receipt or disbursal of funds; and

(2) Any person or entity on behalf of whom an account is maintained.

(c) *Establishment of Know Your Customer program.* Each insured nonmember bank shall develop and provide for the continued administration of a Know Your Customer program by April 1, 2000. The Know Your Customer program shall be reduced to writing and approved by the board of directors (or a committee thereof) with the approval recorded in the official minutes of the board.

(d) *Contents of Know Your Customer program.* The Know Your Customer program may vary in complexity and scope according to categories or classes of customers established by the nonmember bank and the potential risk of illicit activities associated with those customers' accounts and transactions.

(1) Appropriate documentation requirements and due diligence procedures established by the insured nonmember bank to comply with this section.

(2) A system for:

(i) Determining the identity of the insured nonmember bank's new customers and, if the nonmember bank has reasonable cause to believe that it lacks adequate information to know the identity of existing customers, determining the identity of those existing customers;

(ii) Determining the customer's sources of funds for transactions involving the insured nonmember bank;

(iii) Determining the particular customer's normal and expected transactions involving the insured nonmember bank;

(iv) Monitoring customer transactions and identifying transactions that are inconsistent with normal and expected transactions for that particular customer or for customers in the same or similar categories or classes, as established by the insured nonmember bank; and

(v) Determining if a transaction should be reported in accordance with the FDIC's suspicious activity reporting regulations and, if so, reporting accordingly.

(e) *Compliance with Know Your Customer program.* The insured nonmember bank shall comply with its Know Your Customer program. To ensure compliance, the nonmember bank shall:

(1) Provide for and document a system of internal controls;

(2) Provide for and document independent testing for compliance to be conducted by bank personnel or by an outside party on a regular basis;

(3) Designate an individual or individuals as responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide for and document training to all appropriate personnel, on at least an annual basis, of the content and required procedures of the Know Your Customer program.

(f) *Availability of documentation.* For all accounts opened or maintained in the United States, each insured nonmember bank must ensure that all information and documentation sufficient to comply with the requirements of this section are available for examination and inspection, at a location specified by an FDIC representative, within 48 hours of an FDIC representative's request for such information and documentation. In instances where the information and documentation is maintained at a location other than where the customer's account is maintained or the financial services are rendered, the insured nonmember bank must include, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel in order to comply with this subpart.

By order of the Board of Directors.

Dated at Washington, D.C. this 27th day of October, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–32334 Filed 12–4–98; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 98–114]

RIN 1550–AB15

Know Your Customer

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to issue a regulation requiring savings associations to develop and maintain Know Your Customer programs to deter and detect financial crimes. The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency are proposing substantially similar rules in separately published notices. The proposed regulation would reduce the likelihood that savings associations will become unwitting participants in any customer's illicit activities by requiring savings associations to determine the true identities and legitimate activities of their customers. The proposal would require each savings association to determine the identity of its customers, to determine normal and expected transactions for its customers, to determine its customers' sources of funds, to identify transactions that are not normal or expected transactions for the customer, and to report suspicious transactions under existing suspicious activity reporting requirements. The proposal's flexible approach would allow each savings association to design a Know Your Customer program suitable for its own circumstances.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 98–114. Hand deliver comments to Public Reference Room, 1700 G Street, NW., lower level, from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Larry A. Clark, Senior Manager, Compliance and Trust Programs, Compliance Policy, (202) 906–5628, Gary C. Jackson, Analyst, Compliance Policy, (202) 906–5653, Christine Harrington, Counsel (Banking and Finance), (202) 906–7957, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The financial sector's integrity depends on depository institutions' ability to attract and retain legitimate funds from law abiding customers. Depository institutions' ability to do so rests on the quality and the reliability of their services and on their sound reputation within the financial sector. Illicit financial activities, such as money laundering and fraud, pose a serious threat to financial institutions' integrity. Illicit funds transactions can damage the reputations of the involved financial institution, may subject the institution to criminal liability,[1] and may ultimately damage the reputation of the entire financial sector. While it is impossible to identify every transaction that is illegal or that assists criminals in moving illegally derived funds, financial institutions must take every reasonable step to detect such activity. When institutions identify their customers and determine what transactions are normal and expected for these customers, they are able to monitor transactions to identify unusual or suspicious transactions. By identifying and reporting unusual or suspicious transactions, financial institutions protect their integrity and assist the Federal banking agencies and law enforcement authorities in thwarting illicit activities.

The proposed regulation would implement 12 U.S.C. 1818(s). This statute requires the Federal banking agencies to prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Currency and Foreign Transaction Reporting Act (31 U.S.C. 5311 *et seq.*) Effective Know Your Customer programs should facilitate compliance with the Currency and Foreign Transaction Reporting Act and the regulations issued thereunder (31 CFR 103.11 *et seq.*) (collectively referred to as the Bank Secrecy Act).

Accordingly, OTS is proposing to issue rules requiring savings associations to develop and maintain Know Your Customer programs to detect and deter financial crimes. The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation are also proposing similar Know Your Customer regulations. OTS believes that similar rules applicable to different types of financial institutions will prevent competitive disparities between industries. OTS's proposal uses the plain language drafting techniques described in President Clinton's Memorandum on Plain Language in Government Writing (June 1, 1998), Vice President Gore's Memorandum Implementing the Presidential

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[1] *See* 18 U.S.C. 1956 and 1957.

Memorandum on Plain Language (July 20, 1998), and the **Federal Register** Document Drafting Handbook.

The Federal banking agencies' position regarding the importance of a Know Your Customer program is consistent with that of other countries, as evidenced by the pronouncements of several international organizations.[2] Numerous countries have supported Know Your Customer programs and mandatory suspicious transaction reporting as the best means of protecting the financial sector. Criminal elements tend to gravitate towards financial institutions that operate within poorly regulated and poorly supervised jurisdictions. Know Your Customer programs work to stifle transactions involving illegally derived funds.

OTS recognizes that the proposed Know Your Customer requirements would impose additional burdens on some institutions. Consequently, OTS has proposed only the minimal requirements necessary to ensure that savings associations have adequate programs. Moreover, the proposed regulation is designed to be flexible so that savings associations can create Know Your Customer programs appropriate for their circumstances. In addition, the Federal banking agencies intend to publish interpretive guidance on Know Your Customer issuesat the same time as the regulations become final. This guidance, coupled with a flexible regulation, will aid savings associations in complying with the regulations.

Section-by-Section Analysis

OTS proposes to add a new regulation at 12 CFR 563.178 that would require every savings association to develop and implement a Know Your Customer program. The proposed rule describes the basic requirements of a Know Your Customer program, but does not set forth specific mandates in a checklist style. Rather, the proposal would give each savings association the flexibility to design a Know Your Customer program that is appropriate for its size, the nature and complexity of its operations, and its risk of illicit activity. The proposed rule is summarized below.

Section 563.178(a) Who Must Establish a Know Your Customer Program?

Proposed paragraph (a) would require each savings association to establish and comply with a written Know Your Customer program. The savings association's board of directors or a committee of the board would be required to approve the program and record the approval in the official board minutes. These requirements would ensure that the same standards are applied throughout the savings association and would inform auditors and examiners of the program's requirements.

OTS intends to allow savings associations a sufficient time after publication of a final rule to establish Know Your Customer programs. OTS proposes to make the final Know Your Customer rule effective on April 1, 2000. In this way, savings associations will have a sufficient period to establish and implement their Know Your Customer programs.

Section 563.178(b) Why Must I Establish a Know Your Customer Program?

Paragraph (b) of the proposed rule would explain why a savings association must establish a Know Your Customer program. Such programs serve several purposes: protecting the savings association's reputation; facilitating its compliance with the Bank Secrecy Act, the OTS's suspicious activity reporting regulations, and safe and sound practices; and protecting the savings association from becoming a vehicle for, or a victim of, illegal activities by its customers.

Section 563.178(c) Who Is My Customer?

The proposed rule defines "customer" to include any person or entity who has an account with a savings association that involves the receipt or disbursal of funds, and any person or entity on behalf of whom an account is maintained. The term includes direct and indirect beneficiaries of the account when the activity in the account involves the receipt or disbursal of funds. A "customer" would include an accountholder, a beneficial owner of an account, or a borrower. A "customer" could include the beneficiary of a trust, an investment fund, a pension fund or a company whose assets are managed by an asset manager; a controlling shareholder of a closely held corporation; or the grantor of a trust established in an off-shore jurisdiction. The term "customer" does not include recipients of services for which the receipt or disbursal of customer funds is incidental, such as rental of safe deposit boxes.

The proposed definition would include both existing and new customers. The effectiveness of a Know Your Customer program would be greatly reduced if all customer accounts in existence prior to the effective date of the regulations were excluded from its scope. However, the OTS does not believe that it is practicable for a savings association to conduct a large-scale information request from all its existing customers. Rather, a savings association could comply with the proposed regulation by determining its current customers' normal and expected transactions using available account data, and monitoring their transactions for suspicious activities. However, if existing customers and their transactions present unusual risk of illegal activity (for instance, transactions involving private banking customers), it may be necessary to fulfill all of the requirements of this regulation as if they were new customers.

Section 563.178(d) What Transactions Are Covered Under This Section?

The regulation would define "transaction" to include any transaction by a customer that is conducted at a savings association's facilities or that involves the savings association, regardless of where the transaction is conducted.

Section 563.178(e) What Must My Know Your Customer Program Contain?

Proposed paragraph (e) sets forth the basic requirements for Know Your Customer programs. Savings associations vary considerably in how they conduct their day-to-day business. OTS believes that requiring each savings association to follow a standard checklist would be of little value. Accordingly, the proposed regulation would allow each savings association to develop an individualized Know Your Customer program. Such individualized programs would more appropriately reflect the size and complexity of the savings association, the types of customers it serves, the nature and extent of its customers' activities, and its risks of illicit activity. In particular, proposed paragraph (e) would allow a savings association to develop "customer profiles" for classifying customers into risk-based categories to determine the information and monitoring that is appropriate for those customers and to determine when customers' transactions may be suspicious.

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[2] *See* the Basle Committee on Banking Regulations and Supervisory Practices' December 1988 "Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering," as well as the Committee's April 1997 "Core Principles for Effective Banking Supervision;" the 1988 United Nations Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the 1990 Council of Europe Convention; and the Financial Action Task Force Forty Recommendations, issued in 1989 and amended in 1996.

While the proposed regulation would provide savings associations with substantial flexibility to devise individualized Know Your Customer programs, all Know Your Customer programs must contain certain critical features. First, proposed § 563.178(e)(1) would require each savings association to determine the identities of its prospective customers. For existing customers, a savings association also would be required to determine their identity if it has reason to believe that it lacks adequate information to know their identity.

Each savings association would need to establish, to its own satisfaction, that it is dealing with a legitimate person or entity, and must verify its customer's identity. The nature and extent of the identification process should be commensurate with the anticipated transactions and the risks of illegal activity associated with such transactions.

If a prospective customer refuses to provide any requested information, sound practices would require that the savings association not establish the customer relationship. Similarly, if an established customer refuses to provide requested information, sound practices would require the savings association to consider terminating the relationship.

The best documents for verifying the identity of a prospective customer are the ones that are the most difficult to obtain illicitly and the most difficult to counterfeit. Because no single form of identification can be guaranteed to be genuine, a savings association should use a cumulative identification process and should obtain enough information and documentation to ensure that it has properly identified its customer. In addition to the customer's name, key identifying information may include the customer's address, place of business, and telephone number. A savings association may find it appropriate to verify addresses by physically observing the locations, and to verify telephone numbers by calling the numbers. Extra steps may be appropriate for customers outside a savings association's normal service area.

If a customer is a natural person, acceptable forms of identification would include a document with a photograph, a description of the person, the person's signature, and an easily recognizable identification issued by a government entity. While not an exhaustive list, examples of acceptable identification issued by a government entity include a driver's license or an identification card with a photograph issued by the State where the savings association is located, or a United States passport or alien registration card. Other forms of identification, while not sufficient without corroboration, can serve as helpful cumulative information. Examples of such information include an employer or student identification card, an out-of-State driver's license, a credit card, or a customer's current home utility bills.

For corporate or business customers, a savings association should verify that the corporation or business entity exists and engages in its stated business. A savings association should obtain evidence of a business's legal status, such as an incorporation document, a partnership agreement, association documents, or a business license. In some instances, it may also be appropriate to obtain information on the business's controlling owners. Additionally, a savings association should obtain a business customer's financial statements, a description of the business, and a description of its primary areas of trade. To verify information, a savings association may also obtain information related to a business's customers and suppliers.

At a minimum, for both natural persons and corporate or business customers, the savings association's records should indicate the type of identification obtained. If no legal impediment exists, the savings association should duplicate and maintain a copy of the documentation.

Establishing a customer relationship without face to face contact (e.g., by mail, Internet, or other electronic operations) poses difficulties in identifying customers. Even though photographic identification may be impractical, other acceptable means of identifying the customer are available. In such circumstances, a savings association should carefully verify a customer's address and telephone number. The savings association may use other commercially available data, such as credit reports and traditional information sources, to compare items such as a customer's name with his or her date of birth and social security number.

Introductions or referrals of prospective customers by established customers can provide extremely valuable background information about a prospective customer. The savings association should, of course, document details regarding the introduction or referral to assist in verifying the prospective customer's identity. Introductions and referrals cannot, however, take the place of the identification required under the proposed regulation.

Private banking accounts pose unique risks because customers may use them to protect or conceal their identities by using such account vehicles as personal investment companies, trusts, personal mutual investment funds, or a financial advisor's account. However, OTS and other Federal banking agencies believe that properly identifying private banking customers is necessary to depository institutions' safe and sound operation. Procedures for identifying private banking customers should be no different than the procedures for identifying other customers. A savings association can address private banking customers' confidentiality needs by developing special protections that limit access to information that could reveal the beneficial owners of these accounts.[3]

A savings association must also identify beneficial owners of assets bought, sold or managed through the savings association. Such transactions often occur at the behest of intermediaries, such as asset managers. The "customer" in these situations would include the beneficiaries of the transactions, not just the intermediaries. The amount of information necessary to fulfill Know Your Customer obligations would depend on the risk of illicit activity. Risk depends on matters such as the type, duration, and size of the transactions that a customer will conduct. Savings associations should address the type and amount of information necessary as a part of their Know Your Customer programs.

Where there is little risk of illegal activities by customers, savings associations would not be required to identify those indirect customers or monitor their transactions. For example, if the customer is a widely-held mutual fund or asset management fund whose shares are traded on a public exchange, there is little risk that the customer's shareholders would conduct illegal acts at the savings association. Similarly, if a savings association's customer is a regulated financial institution for whom the savings association is an intermediary in check clearing or funds transfer processing, there is little risk that the financial institution's customers would conduct illegal acts at the savings association. On the other hand, if the savings association's customer is a mutual fund established in an off-shore jurisdiction that has a limited number of shareholders, the risk of illegal activity is higher. In that case, the savings association would be required to identify and monitor the customers of the mutual fund.

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[3] For an in-depth discussion of private banking and sound practices associated with the administration of private banking activities, see the July 1997 Guidance on Sound Risk Management Practices Governing Private Banking Activities, prepared by the Federal Reserve Bank of New York and issued by the Federal Reserve Board. It is available on the Federal Reserve Board's public Internet website (www.federalreserve.gov/).

In addition to identifying each customer as a part of the Know Your Customer program, proposed § 563.178(e)(2) would require a savings association to identify its customer's sources of funds for transactions at the savings association. For purposes of determining and documenting the sources of funds, the amount of information necessary will depend on the type of customer. A savings association may categorize customers and obtain more or less information depending on the risks of illicit activities in the category. For example, many customers with demand deposit accounts obtain their funds from payroll deposits. Thus, a savings association may identify and document these customers' sources of funds relatively easily. On the other hand, a savings association would be required to obtain more documentation for customers with multiple deposits from a variety of sources. The proposed regulation would allow, and OTS would encourage, savings associations to categorize customers that share common characteristics in order to collect pertinent information with the least burden.

Proposed § 563.178(e)(3) would require a savings association to determine its customers' normal and expected transactions. This determination forms the basis for identifying transactions that are out of the ordinary, unexpected, and possibly suspicious. A savings association cannot completely determine a customer's normal and expected transactions when it first establishes a customer relationship. Accordingly, an effective Know Your Customer program should include procedures for periodically reviewing a savings association's original determination to determine whether the same transactions are still normal and expected.

OTS encourages savings associations to design flexible Know Your Customer programs. This proposed rule would allow savings associations to determine normal and expected transactions for categories or classes of customers that share common characteristics. Associations may use this flexibility to focus their efforts on areas with the greatest risk of illicit activity. For example, customers with demand deposit accounts funded by payroll deposits will, most likely, use the accounts for depositing salaries and for ordinary living expenses. Such accounts would require little analysis. Conversely, business accounts or private banking customers' accounts may require more in-depth analysis of the customers' intended use of the accounts.

Proposed § 563.178(e)(4) would require a savings association to monitor customers' transactions to determine if transactions are normal and expected for individual customers or for categories or classes of customers. While monitoring is critical, a savings association would not be required to monitor every transaction of every customer. Similarly, OTS does not suggest that savings associations must purchase expensive, sophisticated computer hardware or software to comply with the proposed rule. Rather, OTS encourages each savings association to design an effective monitoring program that is appropriate for that institution and that corresponds to the risk of illegal activities by its customers. For example, a savings association may categorize, for monitoring purposes, by account type, transaction type, account size, or number and size of transactions in accounts. A savings association may choose to monitor only those transactions that meet established parameters, such as dollar size, frequency, or source of funds, for a particular category of account. Whatever the method, savings associations should focus their monitoring on areas with the greatest risk of illegal activity. The Federal banking agencies are working on interpretive guidance to help institutions in this area. OTS will give deference to a savings association's monitoring program.

For some categories or classes of accounts, a savings association may have to monitor each transaction. For example, a savings association should understand the nature of and monitor each significant private banking transaction. Because one of the goals of private banking is to offer highly individualized service through the use of relationship managers, OTS does not believe that the burden of monitoring each transaction of private banking customers is significant.

In many instances, savings associations already monitor their customers' transactions. For example, savings associations monitor transactions in order to comply with suspicious activity reporting requirements. Similarly, savings associations monitor for large cash transactions, check kiting and attempted withdrawals from accounts with insufficient funds or from closed accounts. Savings associations' experience in monitoring these transactions should ease the impact of Know Your Customer monitoring requirements.

Proposed § 563.178(e)(4) would require savings associations to identify customer transactions that are not normal and expected. Under this proposed rule, a savings association would not be required to detect every abnormal or unexpected transaction. Rather, a savings association would be required to identify those monitored transactions that were not consistent with its determination of what is normal and expected for a particular customer.

Under proposed § 563.178(e)(5), the savings association would be required to determine whether each identified transaction is unusual or suspicious. If the transaction is suspicious, the association would be required to report the transaction under OTS's existing suspicious activities reporting requirements at 12 CFR 563.180. The proposed Know Your Customer regulation would impose no additional reporting requirements.

Section 563.178(f) How Do I Ensure Compliance With My Know Your Customer Program?

Under proposed § 563.178(f), a savings association must follow its Know Your Customer program. To do so, a savings association would have to establish internal controls to ensure ongoing compliance. In addition, the savings association would be required to use either outside parties or independent employees to test its compliance. The proposed rule would also require each savings association to designate at least one individual to be responsible for coordinating and monitoring day-to-day compliance. Finally, a savings association would be required to train the appropriate personnel in the Know Your Customer program at least annually.

These requirements are very similar to OTS's procedures for monitoring Bank Secrecy Act compliance.[4] Savings associations are familiar with, and regularly use, the Bank Secrecy Act procedures. Where appropriate, a savings association may charge its Bank Secrecy Act compliance officer with the responsibility for its Know Your Customer program. This should ease the burdens associated with complying with the new Know Your Customer regulation.

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[4] 12 CFR 563.177(c) (1998).

Section 563.178(g) How Do I Document My Compliance With My Know Your Customer Program?

Proposed section 563.178(g) would require a savings association to maintain information and documents demonstrating that it has complied with all of the requirements of the Know Your Customer regulation, including the internal control, independent testing, and training requirements listed under the compliance requirements. The proposed rule would further require a savings association to make all Know Your Customer documents available to OTS within 48 hours of a request, unless OTS specifies a different time period.

In addition, if a savings association maintains information or documents at a location other than where it maintains a customer's account or where it renders financial services, it must also establish and follow procedures designed to ensure that its employees review, on an ongoing basis, information and documents to ensure that it has complied with the Know Your Customer requirements.

Comments Sought

OTS specifically seeks comments on the following questions:

1. Is the proposed definition of "customer" sufficient to include all persons who benefit from an account opened at a savings association, such as persons who establish off-shore shell companies, or entities that otherwise conduct their business through intermediaries?
2. Is the proposed definition of "customer" too broad, unnecessarily reaching persons who pose a minimal risk of illicit activities at savings associations?
3. Should "customer" include savings associations' counterparties in wholesale financial transactions? Should "customer" include correspondent banking relationships? Would a different standard be more appropriate for those transactions or relationships?
4. Would the benefits of implementing Know Your Customer requirements outweigh the costs involved? Are there alternatives that would better balance these costs and benefits?
5. Would the proposed regulation place savings associations at a competitive disadvantage with respect to other financial entities offering similar services that are not subject to similar requirements? Please cite specific examples.
6. Would the added compliance benefits of this proposal outweigh the actual or perceived invasion of personal privacy interests?
7. Should OTS waive Know Your Customer requirements for accounts below a minimum size threshold? If so, where should OTS set the threshold?

Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, OTS must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this proposed rule, or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is designed to be flexible so that each savings association could design a Know Your Customer program appropriate for its circumstances. While advantageous to savings associations, this flexibility makes it difficult to predict the economic impact of the proposed rule. OTS cannot, at this time, determine whether the proposed rule would have a significant economic impact on a substantial number of small institutions. OTS, therefore, includes this IRFA.

A. Reasons for and Objectives of the Proposed Rule

The proposed Know Your Customer rule is designed to deter and detect financial crimes, such as money laundering, tax evasion, and fraud. Financial crimes conducted at or through savings associations, even where savings associations are not parties to the transactions, can damage the reputations of the institutions involved, and possibly of the entire thrift industry. Under current law, savings associations are required to report suspicious activities to law enforcement authorities, but are not required to specifically search for suspicious activities. As a result, suspicious activities may go unreported, and illegal activity may go undetected. Know Your Customer programs would better enable savings associations to alert law enforcement authorities to potential criminal conduct and help deter criminal conduct in the thrift industry.

OTS has two primary objectives for this proposed rulemaking: (1) increasing savings associations' detection and reporting of suspicious customer activities; and (2) deterring financial crimes at savings associations.

The proposed rule would apply to large and small savings associations. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[5] This proposed rule would apply to approximately 600 small savings associations.

B. Requirements of the Proposed Rule

The proposed rule would require savings associations to identify their customers, determine their customers' normal and expected transactions, determine their customers' sources of funds, monitor transactions to find those that are not normal and expected, and, for transactions that are not normal and expected, identify which are suspicious. Savings associations are required to report any suspicious transactions under current law, and this proposed rule would have no additional reporting requirements.

The impact of the proposed regulation on an institution's resources, and the skills necessary to comply with it, will vary from one institution to another because the proposed regulation is designed to take into account each institution's size and resources. Because each institution would be able to design an individualized Know Your Customer program, it is difficult to specify the type of professional skills necessary for preparing any required records or reports. Large institutions may be more likely to use computerized Know Your Customer programs, and in that event would be more likely to need professional computer skills. Small institutions that choose to automate their Know Your Customer programs would need professional computer skills.

Know Your Customer monitoring would be similar to monitoring that savings associations already do. For example, savings associations monitor customer transactions to ensure that cash transactions exceeding $10,000 are reported under the Bank Secrecy Act, to ensure that customers do not overdraw their accounts, and to ensure that loan payments are accurate and timely. Thus, Know Your Customer monitoring would rely, at least in part, on computer and other skills that savings association personnel already have and regularly use.

C. Significant Alternatives

1. No Know Your Customer Requirements

OTS considered recommending rather than requiring Know Your Customer procedures. OTS decided to propose this rulemaking, however, because of the risks that savings associations face from customers who attempt illegal activities. Illegal activities would harm an association's reputation and that of the entire thrift industry. Requiring Know Your Customer programs significantly reduces the likelihood that some savings associations would not establish or adhere to such programs. In addition, because other Federal banking agencies are proposing Know Your Customer rules, OTS believes that criminals would quickly move their illegal funds transfers into savings associations without Know Your Customer programs, thus increasing those savings associations' exposure to illegal activity.

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[5] 13 CFR 121.201, Division H (1998).

For these reasons, merely recommending Know Your Customer programs would interfere with OTS's goals of increasing savings associations' detection and reporting of suspicious customer activities, and deterring financial crimes at savings associations.

2. Exemption for Small Savings Associations

OTS considered exempting small institutions from Know Your Customer requirements. However, this alternative has the disadvantage of possibly creating a haven for criminal activity. It is likely that criminals would concentrate their activity at those institutions not subject to any Know Your Customer requirements. An exemption for small savings associations would conflict with OTS's goals of increasing savings associations' detection and reporting of suspicious customer activities and deterring financial crimes at savings associations.

3. Flexible Know Your Customer Requirements

OTS proposes requiring all savings associations to establish and follow Know Your Customer programs, but proposes allowing each institution to develop a program appropriate for its circumstances, including but not limited to its size and resources. This approach is preferable to the first two alternatives because it does not allow criminals to choose a savings association without Know Your Customer requirements to conduct illegal activities. A flexible alternative also avoids requirements beyond the means of small institutions. Small institutions could use simpler, less costly, and less burdensome programs than larger institutions.

D. Other Matters

OTS has statutory authority to promulgate these proposed regulations.[6] There are no federal rules that duplicate, overlap, or conflict with this proposed rule. The proposed rule complement OTS rules implementing the Bank Secrecy Act at 12 CFR 563.178 and the suspicious activity reporting requirements at 12 CFR 563.180.

OTS encourages comments on all aspects of this initial regulatory flexibility analysis, including comments on any significant economic impacts the proposed rule would have on small entities.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

OTS invites comment on:

Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility;

The accuracy of OTS's estimate of the burden of the proposed information collection;

(1) Ways to enhance the quality, utility, and clarity of the information to be collected; Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OTS has submitted the collection of information requirements contained in this proposal to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collections of information to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Regulations and Legislation Division (1550), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

The collection of information requirements in this proposed rule are found in 12 CFR 563.178. OTS requires this information for the proper supervision of savings associations' compliance with the Bank Secrecy Act. The likely respondents/recordkeepers are savings associations.

Estimated average annual burden hours per respondent/recordkeeper: 8.

Estimated number of respondents: 1191.

Estimated total annual reporting and recordkeeping burden: 9528.

Start up costs to respondents: None.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision proposes to amend Title 12, Chapter V as set forth below:

PART 563—[AMENDED]

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1818, 1820, 1828, 1831p-1, 3806; 42 U.S.C. 4106.

2. Section 563.178 is added to read as follows:

§ 563.178 Know your customer.

(a) *Who must establish a Know Your Customer program?* Each savings association ("you") must establish and comply with a written Know Your Customer program that describes your procedures for complying with this section. Your board of directors, or a committee of your board, must approve your Know Your Customer program and must record that approval in your official board minutes.

(b) *Why must I establish a Know Your Customer program?* These procedures: protect your reputation; facilitate your compliance with the Bank Secrecy Act, the suspicious activity reporting

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[6] 12 U.S.C. 1464(a)(1), 1464(d)(6)(A), 1818(s)(1).

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requirements of § 563.180, and safe and sound practices; and protect you from becoming a vehicle for, or a victim of, your customers' illegal activities.

(c) *Who is my customer?* Your customer is any person or entity who has an account with you involving the receipt or disbursal of funds, and any person or entity on behalf of whom such an account is maintained.

(d) *What transactions are covered under this section?* A transaction is any transaction by a customer that is conducted at your facilities or that involves you, regardless of where the transaction is conducted.

(e) *What must my Know Your Customer program contain?* Your Know Your Customer program may vary in scope and complexity according to categories or classes of customers that you establish, and the potential risk of illicit activities associated with your customers' accounts and transactions. Under your Know Your Customer program, you must do all of the following:

(1) Determine your prospective customers' identities. You must also determine the identities of your existing customers if you have reason to believe that you lack adequate information to know the identities of those customers.

(2) Identify the sources of funds for your customers' transactions. You may make this determination for a customer individually, or for categories or classes of customers that share common characteristics.

(3) Determine the types of transactions that you expect your customers to normally conduct ("normal and expected transactions"). You may make this determination for a customer individually, or you may determine what types of transactions are normal and expected for categories or classes of customers that share common characteristics.

(4) Monitor your customers' transactions and identify transactions that are not consistent with your customers' normal or expected transactions as determined under paragraph (e) (2) and (3) of this section. You may monitor transactions for each customer individually, or you may monitor transactions for categories or classes of customers that share common characteristics.

(5) Determine whether transactions identified under paragraph (e)(4) of this section are unusual or suspicious. If any are suspicious, you must follow OTS's suspicious activity reporting regulations at 12 CFR 563.180.

(f) *How do I ensure compliance with my Know Your Customer program?* To ensure compliance, you must do all of the following:

(1) Establish internal controls to ensure your ongoing compliance.

(2) Independently test your compliance. Your employees or outside parties may conduct the testing.

(3) Designate an individual(s) responsible for coordinating and monitoring day-to-day compliance.

(4) Train all appropriate personnel on your program at least annually.

(g) *How do I document my compliance with my Know Your Customer program?* (1) You must maintain information and documents demonstrating that you have complied with all of the requirements of this section, including internal control, independent testing, and training requirements of paragraph (f) of this section.

(2) You must provide all information and documents demonstrating your compliance with this section to OTS for examination and inspection within 48 hours of an OTS request, unless OTS specifies a different time period.

(3) If you maintain information or documents at a location other than where you maintain a customer's account or where you render financial services, you must establish and follow procedures designed to ensure that your employees review, on an ongoing basis, information and documents to ensure that you comply with this section.

Dated: November 9, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–32335 Filed 12–4–98; 8:45 am]

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federal register

Monday
December 7, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91 et al.

Special Flight Rules in the Vicinity of Grant Canyon National Park; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; SFAR 50–2; Notice No. 98–18]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On December 31, 1996, the FAA published a final rule that codified the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modified the dimensions of GCNP Special Flight Rules Area (SFRA); established new and modified existing flight-free zones; established new and modified existing flight corridors; established reporting requirements for commercial sightseeing companies operating in the SFRA; prohibited commercial sightseeing operations during certain time periods; and limited the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. On February 21, 1997, the FAA delayed the implementation of certain portions of that final rule. Specifically, that action delayed the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the final rule and reinstated portions of and amended the expiration date of SFAR No. 50–2. However, that action did not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or the other portions of the rule. This proposal would delay the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the December 31, 1996 final rule until January 31, 2000. Additionally, this proposal would amend the expiration date of those portions of SFAR No. 50–2 that were reinstated in the February 21, 1997 final rule and extended in the rule published on December 17, 1997.

DATES: Comments must be received on or before January 6, 1999.

ADDRESSES: Comments should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Ave., SW., Washington, DC 20591. Comments may be sent electronically to the Rules Docket by using the following Internet address nprmcmts@mail.faa.dot.gov. Comments must be marked Docket No. 28537. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking (NPRM), and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to further reduce the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amended part 93 of the Federal Aviation Regulations and added a new subpart to codify the provisions of SFAR No. 50–2, modified the dimensions of the GCNP Special Flight Rules Area; established new and modifies existing flight-free zones; established new and modifies existing flight corridors; and established reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibited commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. These provisions originally were to become effective on May 1, 1997.

On February 21, 1997, the FAA issued a final rule and request for comments that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26,1 997). Specifically, that action delayed the effective date, until January 31, 1998, of those sections of the rule that address the Special Flight Rules Area, flight-free zones, and flight corridors, respectively §§ 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated and the expiration date was extended. With the goal to produce the best air tour routes possible, implementation was delayed to allow the FAA and the Department of Interior (DOI) to consider comments and suggestions to improve the proposed route structure. This latter action did not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule. This delay was subsequently extended until January 31, 1999 (62 FGR 66248; December 17, 1997).

Discussion of Comments

Eleven comments were submitted in response to the December 17, 1997, final rule that extended the implementation date of certain provisions of the final rule issued on December 31, 1996.

The Hualapai nation applauded the delay, saying that the FAA should reconsider what the Tribe considers the double standard used for measuring noise in the GCNP versus the Hualapai reservation. The Hualapai urged the FAA to develop an appropriate noise measurement standard for its religious sites and ceremonies. The nation also repeated its admonition to the FAA to be considered as a sovereign nation with incumbent rights therein.

The Sierra Club generally criticized the FAA and NPS for not making greater progress in the overall reduction of noise in GCNP. It also urged that the Zuni and Dragon corridors be closed to air tour traffic.

The Grand Canyon Air Tour Council (GCATC) was critical of the FAA for issuing a final rule with comment instead of a proposal, stating that there is no incentive for FAA to respond to comments after the fact and that such action without notice created 'discriminatory uncertainty'. GCATC also urged the FAA to delay implementation of the December 1996 final rule until the Air Tour Management Plan is completed.

Likewise, the Wilderness Society was critical of the FAA for not seeking comment on a proposal rather than publishing a final rule extension. The Society also commented that the delay was not warranted, that there has been little progress since the legislation 10 years ago, and that the FAA should cap operations now. National Parks and Conservation Society filed a similar comment, objecting to the delay and calling for a cap on operations.

The Grand Canyon Trust's comment incorporated its comments from previously filed comments on the July 1, 1996, notice.

A number of comments were submitted by individuals; the majority of these persons regretted the delay as being a setback for enjoyment of the park.

FAA's Response

The FAA agrees that the proper procedure for the delay in implementation of a final rule is through notice and comment. The FAA and NPS have expended substantial resources on trying to determine the most appropriate air tour route through the SFRA in GCNP. These expenditures include noise modeling, interagency discussions, consultations with Native Americans, clarification of comments made on the various rulemakings, and preliminary development of the Comprehensive Noise Management Plan. To the extent that time permitted, the agencies would have sought comment prior to issuing a final decision to extend the effective date for the 1996 final rule. However, the FAA is responding to previously filed comments and now seeks comments from affected parties before further delaying those portions of the 1996 final rule pertaining to FFZs and flight corridors.

In response to those comments that nothing has been accomplished since the Overflights Act was enacted, the FAA and NPS disagree. The number of air tour operations in the GCNP have decreased in the past year. There is a cap on the number of aircraft permitted to operate in the Park, which prevents the addition of new aircraft into the SFRA. The curfew has been effective in removing both very early morning and late afternoon noise during peak tourist seasons for covered areas. The reporting requirement has provided the agencies with valuable information on how many operations there are, where they are occurring, and definitive noise footprints for most areas of the GCNP. In addition, valuable information has been gained through public meetings with the interested parties, through open forums exploring additional routes, and through consultations with the Native Americans.

Recent Actions

On May 15, 1997, the FAA published a Notice of Availability of Proposed Routes and a companion NPRM, Notice No. 97–6, that proposed two quiet technology corridors in GCNP. The first corridor, through the Bright Angel flight-free zone, would be used for quiet technology aircraft only. The second corridor, through National Canyon, would be for quiet technology aircraft for westbound traffic after December 21, 2001. The FAA, in consultation with the National Park Service (NPS), has determined to not proceed with the proposals set forth in Notice No. 97–6. The two agencies are considering alternatives to the National canyon area for air tour routes. Consequently, the FAA withdrew Notice No. 97–6 and amended the proposed rule, Notice No. 96–15, to remove the two sections that first proposed a National Canyon corridor through the Torroweap/Shinumo Flight-free Zone (FR 63 38232; July 15, 1998).

In addition, on April 28, 1998, the FAA convened interested parties for a public meeting in Flagstaff, Arizona to discuss yet another possible air tour route that is being considered by the FAA and NPS.

Most recently, by petition dated September 22, the Clark County Department of Aviation (Clark County) requests that the FAA delay the current January 31, 1999, effective date for the airspace portions of the final rule to January 31, 2001, to avoid unnecessary impacts to aviation safety and the Grand Canyon air tour industry. Petitioner also asks that the FAA initiate a stakeholder-based cooperative process to complete the Grand Canyon overflight regulatory structure in a coherent and timely fashion. Specific to this proposal, Clark County points out that it is too late for the FAA to promulgate a safe and defensible set of air tour routes prior to the January 31, 1999, effective date. The petitioner notes that the closing of the current tour route, Blue 1, by making the FFZ's effective, would divert an immense quantity of traffic onto other routes, such as Blue 2 and Blue Direct. Clerk County cites the significant economic impact that the lack of safe and viable air tour routes would effect; not only would air tour operators be affected, but there would be impacts on the ability of the region to attract both American and foreign tourists and on the ability of the Clark County airport system to support Southern Nevada aviation needs. Petitioner states that it does not seek an extension for the sake of delay; rather the uncertainty of the regulatory environment is harmful to air tour operators, local governments operating airports, Native Americans, and investors. For this reason, Clark County encourages a concerted effort whereby all stakeholders will negotiate long-term workable rules.

In response to Clark County's petition, the FAA finds that, because of the need to meet the legislative mandate to work toward the substantial restoration of natural quiet in GCNP, it cannot extend the effective date of the final rule as it relates to flight corridors and flight-free zones beyond January 31, 2000. Based on a substantial dedication of resources, in cooperation with NPS, the FAA believes that an acceptable route structure may be established by January 2000. In addition, while the FAA commends Clark County for its interest in a negotiated rulemaking effort to meet the needs of all stakeholders, it lacks the resources to direct this effort. Accordingly, the FAA must deny Clark County's petition. However, if the stakeholders can negotiate GCNP issues successfully, the FAA would be willing to accept a recommendation that it then could publish for comment.

Proposal

As of this date, the FAA is still working with the NPS to determine a route through the western portions of the Park that will provide air tour operators with a safe, viable air tour route while at the same time moving toward the legislatively mandated goal of the substantial restoration of natural quiet in Grand Canyon National Park. Because the air tour routes, flight free zones, and flight corridors are intrinsically related and thus must be implemented at the same time, the FAA proposes to extend the effective date of these portions of the December 1996 final rule until January 31, 2000. Although Clark County Department of Aviation requests that this date be extended to January 31, 2001, the FAA and NPS are optimistic that prior work done on proposed routes in the western portion of the GCNP will assist them in making a final determination in order to accommodate a January 31, 2000, effective date.

Economic Evaluation

In issuing the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket Number 28537. That economic evaluation was later revised based on new information received on the number aircraft being operated in the SFRA. The reevaluation of the economic data, including alternatives considered, was published in the Notice of Clarification (62 FR 58898). In the notice, the FAA concluded that the rule is still cost beneficial. This extension of the effective date for the final rule will not affect that reevaluation, although the delay in the implementation of the FFZs will be cost relieving for air tour operators.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This analysis was also reevaluated and revised findings were published in the Notice of Clarification referenced above, as a Supplemental Regulatory Flexibility Analysis. This extended delay of the compliance date will not affect that supplemental analysis.

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Federalism Implications

The regulation proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed regulation would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Proposal

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(G), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702 44705, 44709, 44711–44713, 44715–44717, 44722.

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec 9. *Termination date.* Sections 1. Applicability, Section 4. Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 2000.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new Sections 93.301, 93.305, and 93.307 to be added to 14 CFR Chapter I, is delayed until 0901 UTC, January 31, 2000.

Issued in Washington, DC, on December 1, 1998.

William J. Marx,

Acting Program Director, Air Traffic Airspace Management Program.

[FR Doc. 98–32406 Filed 12–2–98; 3:03 pm]

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federal register

Monday
December 7, 1998

Part IV

Environmental Protection Agency

National Recommended Water Quality Criteria; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–6186–6a]

National Recommended Water Quality Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Compilation of recommended water quality criteria and notice of process for new and revised criteria.

SUMMARY: EPA is publishing a compilation of its national recommended water quality criteria for 157 pollutants, developed pursuant to section 304(a) of the Clean Water Act (CWA or the Act). These recommended criteria provide guidance for States and Tribes in adopting water quality standards under section 303(c) of the CWA. Such standards are used in implementing a number of environmental programs, including setting discharge limits in National Pollutant Discharge Elimination System (NPDES) permits. These water quality criteria are not regulations, and do not impose legally binding requirements on EPA, States, Tribes or the public.

This document also describes changes in EPA's process for deriving new and revised 304(a) criteria. Comments provided to the Agency about the content of this Notice will be considered in future publications of water quality criteria and in carrying out the process for deriving water quality criteria. With this improved process the public will have more opportunity to provide data and views for consideration by EPA. The public may send any comments or observations regarding the compilation format or the process for deriving new or revised water quality criteria to the Agency now, or anytime while the process is being implemented.

ADDRESSES: A copy of the document, "National Recommended Water Quality Criteria" is available from the U.S. EPA, National Center for Environmental Publications and Information, 11029 Kenwood Road, Cincinnati, Ohio 45242, phone (513) 489–8190. The publication is also available electronically at: http://www.epa.gov/ost. Send an original and 3 copies of written comments to W–98–24 Comment Clerk, Water Docket, MC 4104, US EPA, 401 M Street, S.W., Washington, D.C. 20460. Comments may also be submitted electronically to OW-Docket@epamail.epa.gov. Comments should be submitted as a WP5.1, 6.1 or an ASCII file with no form of encryption. The documents cited in the compilation of recommended criteria are available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB57, East Tower Basement, USEPA, 401 M St., S.W., Washington, D.C. 20460. For access to these materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Cindy A. Roberts, Health and Ecological Criteria Division (4304), U.S. EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–2787; roberts.cindy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Are Water Quality Criteria?

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating federal regulations under section 303(c) when such action is necessary.

II. What is in the Compilation Published Today?

EPA is today publishing a compilation of its national recommended water quality criteria for 157 pollutants. This compilation is also available in hard copy at the address given above.

The compilation is presented as a summary table containing EPA's water quality criteria for 147 pollutants, and for an additional 10 pollutants, criteria solely for organoleptic effects. For each set of criteria, EPA lists a **Federal Register** citation, EPA document number or Integrated Risk Information System (IRIS) entry (www.epa.gov/ngispgm3/iris/irisdat). Specific information pertinent to the derivation of individual criteria may be found in cited references. If no criteria are listed for a pollutant, EPA does not have any national recommended water quality criteria.

These water quality criteria are the Agency's current recommended 304(a) criteria, reflecting the latest scientific knowledge. They are generally applicable to the waters of the United States. EPA recommends that States and Tribes use these water quality criteria as guidance in adopting water quality standards pursuant to section 303(c) of the Act and the implementing of federal regulations at 40 CFR part 131. Water quality criteria derived to address site-specific situations are not included; EPA recommends that States and Tribes follow EPA's technical guidance in the "Water Quality Standards Handbook—2nd Edition," EPA, August 1994, in deriving such site-specific criteria. EPA recognizes that in limited circumstances there may be regulatory voids in the absence of State or Tribal water quality standards for specific pollutants. However, States and Tribes should utilize the existing State and Tribal narrative criteria to address such situations; States and Tribes may consult EPA criteria documents and cites in the summary table for additional information.

The national recommended water quality criteria include: previously published criteria that are unchanged; criteria that have been recalculated from earlier criteria; and newly calculated criteria, based on peer-reviewed assessments, methodologies and data, that have not been previously published.

The information used to calculate the water quality criteria is not included in the summary table. Most information has been previously published by the Agency in a variety of sources, and the summary table cites those sources.

When using these 304(a) criteria as guidance in adopting water quality standards, EPA recommends States and Tribes consult the citations referenced in the summary table for additional information regarding the derivation of individual criteria.

The Agency intends to revise the compilation of national recommended water quality criteria from time to time to keep States and Tribes informed as to the most current recommended water quality criteria.

III. How Are National Recommended Water Quality Criteria Used?

Once new or revised 304(a) criteria are published by EPA, the Agency expects States and Tribes to adopt promptly new or revised numeric water quality criteria into their standards consistent with one of the three options in 40 CFR 131.11. These options are: (1) Adopt the recommended section 304(a) criteria; (2) adopt section 304(a) criteria modified to reflect site-specific conditions; or, (3) adopt criteria derived using other scientifically defensible methods. In adopting criteria under option (2) or (3), States and Tribes must adopt water quality criteria sufficient to protect the designated uses of their waters. When establishing a numerical value based on 304(a) criteria, States and Tribes may reflect site specific conditions or use other scientifically defensible methods. However, States and Tribes should not selectively apply data or selectively use endpoints, species, risk levels, or exposure parameters in deriving criteria; this would not accurately characterize risk and would not result in criteria protective of designated uses.

EPA emphasizes that, in the course of carrying out its responsibilities under section 303(c), it reviews State and Tribal water quality standards to assess the need for new or revised water quality criteria. EPA generally believes that five years from the date of EPA's publication of new or revised water quality criteria is a reasonable time by which States and Tribes should take action to adopt new or revised water quality criteria necessary to protect the designated uses of their waters. This period is intended to accommodate those States and Tribes that have begun a triennial review and wish to complete the actions they have underway, deferring initiating adoption of new or revised section 304(a) criteria until the next triennial review.

IV. What is the Status of Existing Criteria While They Are Under Revision?

The question of the status of the existing section 304(a) criteria often arises when EPA announces that it is beginning a reassessment of existing criteria. The general answer is that water quality criteria published by EPA remain the Agency's recommended water quality criteria until EPA revises or withdraws the criteria. For example, while undertaking recent reassessments of dioxin, PCBs, and other chemicals, EPA has consistently upheld the use of the current section 304(a) criteria for these chemicals and considers them to be scientifically sound until new, peer reviewed, scientific assessments indicate changes are needed. Therefore, the criteria in today's notice are and will continue to be the Agency's national recommended water quality criteria for States and Tribes to use in adopting or revising their water quality standards until superseded by the publication of revised criteria, or withdrawn by notice in the **Federal Register**.

V. What is the Process for Developing New or Revised Criteria?

Section 304(a)(1) of the CWA requires the Agency to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. The Agency has developed an improved process that it intends to use when deriving new criteria or conducting a major reassessment of existing criteria. The purpose of the improved process is to provide expanded opportunities for public input, and to make the process more efficient.

When deriving new criteria, or when initiating a major reassessment of existing criteria, EPA will take the following steps.

1. EPA will first undertake a comprehensive review of available data and information.

2. EPA will publish a notice in the **Federal Register** and on the Internet announcing its assessment or reassessment of the pollutant. The notice will describe the data available to the Agency, and will solicit any additional pertinent data or views that may be useful in deriving new or revised criteria. EPA is especially interested in hearing from the public regarding new data or information that was unavailable to the Agency, and scientific views as to the application of the relevant Agency methodology for deriving water quality criteria.

3. After public input is received and evaluated, EPA will then utilize information obtained from both the Agency's literature review and the public to develop draft recommended water quality criteria.

4. EPA will initiate a peer review of the draft criteria. Agency peer review consists of a documented critical review by qualified independent experts. Information about EPA peer review practices may be found in the Science Policy Council's Peer Review Handbook (EPA 100–B–98–001, www.epa.gov).

5. Concurrent with the peer review in step four, EPA will publish a notice in the **Federal Register** and on the Internet, of the availability of the draft water quality criteria and solicit views from the public on issues of science pertaining to the information used in deriving the draft criteria. The Agency believes it is important to provide the public with the opportunity to provide scientific views on the draft criteria even though we are not required to invite and respond to written comments.

6. EPA will evaluate the results of the peer review, and prepare a response document for the record in accordance with EPA's Peer Review Handbook. EPA at the same time will consider views provided by the public on issues of science. Major scientific issues will be addressed in the record whether from the peer review or the public.

7. EPA will then revise the draft criteria as necessary, and announce the availability of the final water quality criteria in the **Federal Register** and on the Internet.

VI. What is the Process for Minor Revisions to Criteria?

In addition to developing new criteria, and conducting major reassessments of existing criteria, EPA also from time to time recalculates criteria based on new information pertaining to individual components of the criteria. For example, in today's notice, EPA has recalculated a number of criteria based on new, peer-reviewed data contained in EPA's IRIS. Because such recalculations normally result in only minor changes to the criteria, do not ordinarily involve a change in the underlying scientific methodologies, and reflect peer-reviewed data, EPA will typically publish such recalculated criteria directly as the Agency's recommended water quality criteria. If it appears that a recalculation results in a significant change EPA will follow the process of peer review and public input outlined above. Further, when EPA recalculates national water quality criteria in the course of proposing or promulgating state-specific federal water quality standards pursuant to section 303(c), EPA will offer an opportunity for national public input on the recalculated criteria.

VII. How Does the Process Outlined Above Improve Public Input and Efficiency?

In the past, EPA developed draft criteria documents and announced their availability for public comment in the **Federal Register**. This led to new data and views coming to EPA's attention after draft criteria had already been developed. Responding to new data would sometimes lead to extensive revisions.

The steps outlined above improve the criteria development process in the following ways.

1. The new process is Internet-based which is in line with EPA policy for public access and dissemination of information gathered by EPA. Use of the Internet will allow the public to be more engaged in the criteria development process than previously and to more knowledgeably follow criteria development. For new criteria or major revisions, EPA will announce its

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intentions to derive the new or revised criteria on the Internet and include a list of the available literature. This will give the public an opportunity to provide additional data that might not otherwise be identified by the Agency.

2. The public now has two opportunities to contribute data and views, before development and during development, instead of a single opportunity after development.

3. EPA has instituted broader and more formal peer review procedures. This independent scientific review is a more rigorous disciplinary practice to ensure technical improvements in Agency decision making. Previously, EPA used the public comment process outlined above to obtain peer review. The new process allows for both public input and a formal peer review, resulting in a more thorough and complete evaluation of the criteria.

4. Announcing the availability of the draft water quality criteria on the Internet will give the public an opportunity to provide input on issues of science in a more timely manner.

VIII. Where Can I Find More Information About Water Quality Criteria and Water Quality Standards?

For more information about water quality criteria and Water Quality Standards refer to the following: Water Quality Standards Handbook (EPA 823–B94–005a); Advanced Notice of Proposed Rule Making (ANPRM), (63 FR 36742); Water Quality Criteria and Standards Plan—Priorities for the Future (EPA 822–R–98–003); Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents (45 FR 79347); Draft Water Quality Criteria Methodology Revisions: Human Health (63 FR 43755, EPA 822–Z–98–001); and Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (EPA 822/R–85–100); National Strategy for the Development of Regional Nutrient Criteria (EPA 822–R–98–002).

These publications may also be accessed through EPA's National Center for Environmental Publications and Information (NCEPI) or on the Office of Science and Technology's Home-page (www.epa.gov/OST).

IX. What Are the National Recommended Water Quality Criteria?

The following compilation and its associated footnotes and notes presents the national recommended water quality criteria.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS

Priority pollutant	CAS No	Freshwater		Saltwater		Human health for consumption of		FR cite source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
1 Antimony	7440360					14^{B,Z}	4300^{B}	57 FR 60848
2 Arsenic	7440382	340^{A,D,K}	150^{A,D,K}	69^{A,D,bb}	36^{A,D,bb}	0.018^{C,M,S}	0.14^{C,M,S}	62 FR 42160 57 FR 60848
3 Beryllium	7440417					J,Z	J	62 FR 42160
4 Cadmium	7440439	4.3^{D,E,K}	2.2^{D,E,K}	42^{D,bb}	9.3^{D,bb}	J,Z	J	62 FR 42160
5a Chromium III	16065831	570^{D,E,K}	74^{D,E,K}			J,Z Total	J	EPA 820/B-96-001 62 FR 42160
5b Chromium VI	18540299	16^{D,K}	11^{D,K}	1,100^{D,bb}	50^{D,bb}	J,Z Total	J	62 FR 42160
6 Copper	7440508	13^{D,E,K,cc}	9.0^{D,E,K,cc}	4.8^{D,cc,ff}	3.1^{D,cc,ff}	1,300^{U}		62 FR 42160
7 Lead	7439921	65^{D,E,bb,gg}	2.5^{D,E,bb,gg}	210^{D,bb}	8.1^{D,bb}	J	J	62 FR 42160
8 Mercury	7439976	1.4^{D,K,hh}	0.77^{D,K,hh}	1.8^{D,ee,hh}	0.94^{D,ee,hh}	0.050^{B}	0.051^{B}	62 FR 42160
9 Nickel	7440020	470^{D,E,K}	52^{D,E,K}	74^{D,bb}	8.2^{D,bb}	610^{B}	4,600^{B}	62 FR 42160
10 Selenium	7782492	L,R,T	5.0^{T}	290^{D,bb,dd}	71^{D,bb,dd}	170^{Z}	11,000	62 FR 42160 IRIS 09/01/91
11 Silver	7440224	3.4^{D,E,G}		1.9^{D,G}				62 FR 42160
12 Thallium	7440280					1.7^{B}	6.3^{B}	57 FR 60848
13 Zinc	7440666	120^{D,E,K}	120^{D,E,K}	90^{D,bb}	81^{D,bb}	9,100^{U}	69,000^{U}	62 FR 42160 IRIS 10/01/92
14 Cyanide	57125	22^{K,Q}	5.2^{K,Q}	1^{Q,bb}	1^{Q,bb}	700^{B,Z}	220,000^{B,H}	EPA 820/B-96-001 57 FR 60848
15 Asbestos	1332214					7 million fibers/L^{I}		57 FR 60848
16 2, 3, 7, 8 TCDD Dioxin	1746016					1.3E-8^{C}	1.4E-8^{C}	62 FR 42160
17 Acrolein	107028					320	780	57 FR 60848
18 Acrylonitrile	107131					0.059^{B,C}	0.66^{B,C}	57 FR 60848
19 Benzene	71432					1.2^{B,C}	71^{B,C}	62 FR 42160
20 Bromoform	75252					4.3^{B,C}	360^{B,C}	62 FR 42160
21 Carbon Tetrachloride	56235					0.25^{B,C}	4.4^{B,C}	57 FR 60848
22 Chlorobenzene	108907					680^{B,Z}	21,000^{B,H}	57 FR 60848
23 Chlorodibromomethane	124481					0.41^{B,C}	34^{B,C}	62 FR 42160
24 Chloroethane	75003							
25 2-Chloroethylvinyl Ether	110758							
26 Chloroform	67663					5.7^{B,C}	470^{B,C}	62 FR 42160
27 Dichlorobromomethane	75274					0.56^{B,C}	46^{B,C}	62 FR 42160
28 1,1-Dichloroethane	75343							
29 1,2-Dichloroethane	107062					0.38^{B,C}	99^{B,C}	57 FR 60848
30 1,1-Dichloroethylene	75354					0.057^{B,C}	3.2^{B,C}	57 FR 60848
31 1,2-Dichloropropane	78875					0.52^{B,C}	39^{B,C}	62 FR 42160
32 1,3-Dichloropropene	542756					10^{B}	1,700^{B}	57 FR 60848
33 Ethylbenzene	100414					3,100^{B,Z}	29,000^{B}	62 FR 42160
34 Methyl Bromide	74839					48^{B}	4000^{B}	62 FR 42160
35 Methyl Chloride	74873					J	J	62 FR 42160
36 Methylene Chloride	75092					4.7^{B,C}	1600^{B,C}	62 FR 42160
37 1,1,2,2-Tetrachloroethane	79345					0.17^{B,C}	11^{B,C}	57 FR 60848
38 Tetrachloroethylene	127184					0.8^{C}	8.85^{C}	57 FR 60848
39 Toluene	108883					6,800^{B,Z}	200,000^{B}	62 FR 42160
40 1,2-Trans-Dichloroethylene	156605					700^{B,Z}	140,000^{B}	62 FR 42160
41 1,1,1-Trichloroethane	71556					J,Z	J	62 FR 42160
42 1,1,2-Trichloroethane	79005					0.60^{B,C}	42^{B,C}	57 FR 60848
43 Trichloroethylene	79016					2.7^{C}	81^{C}	57 FR 60848
44 Vinyl Chloride	75014					2^{C}	525^{C}	57 FR 60848
45 2-Chlorophenol	95578					120^{B,U}	400^{B,U}	62 FR 42160
46 2,4-Dichlorophenol	120832					93^{B,U}	790^{B,U}	57 FR 60848
47 2,4-Dimethylphenol	105679					540^{B,U}	2,300^{B,U}	62 FR 42160
48 2-Methyl-4,6-Dinitrophenol	534521					13.4	765	57 FR 60848
49 2,4-Dinitrophenol	51285					70^{B}	14,000^{B}	57 FR 60848
50 2-Nitrophenol	88755							
51 4-Nitrophenol	100027							
52 3-Methyl-4-Chlorophenol	59507							

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS—Continued

	Priority pollutant	CAS No	Freshwater		Saltwater		Human health for consumption of		FR cite/source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
53	Pentachlorophenol	87865	19 ^{F,K}	15 ^{F,K}	13 ^{bb}	7.9 ^{bb}	0.28 ^{B,C}	8.2 ^{B,C,H}	62 FR 42160
54	Phenol	108952					21,000 ^{B,U}	4,600,000 ^{B,H,U}	62 FR 42160 57 FR 60848
55	2,4,6-Trichlorophenol	88062					2.1 ^{B,C}	6.5 ^{B,C}	62 FR 42160
56	Acenaphthene	83329					1,200 ^{B}	2,700 ^{B}	62 FR 42160
57	Acenaphthylene	208968							
58	Anthracene	120127					9,600 ^{B}	110,000 ^{B}	62 FR 42160
59	Benzidine	92875					0.00012 ^{B,C}	0.00054 ^{B,C}	57 FR 60848
60	BenzoaAnthracene	56553					0.0044 ^{B,C}	0.049 ^{B,C}	62 FR 42160
61	BenzoaPyrene	50328					0.0044 ^{B,C}	0.049 ^{B,C}	62 FR 42160
62	BenzobFluoranthene	205992					0.0044 ^{B,C}	0.049 ^{B,C}	62 FR 42160
63	BenzoghiPerylene	191242							
64	BenzokFluoranthene	207089					0.0044 ^{B,C}	0.049 ^{B,C}	62 FR 42160
65	Bis2-ChloroethoxyMethane	111911							
66	Bis2-ChloroethylEther	111444					0.031 ^{B,C}	1.4 ^{B,C}	57 FR 60848
67	Bis2-ChloroisopropylEther	39638329					1,400 ^{B}	170,000 ^{B}	62 FR 42160 57 FR 60848
68	Bis2-EthylhexylPhthalate ^{X}	117817					1.8 ^{B,C}	5.9 ^{B,C}	57 FR 60848
69	4-Bromophenyl Phenyl Ether	101553							
70	Butylbenzyl Phthalate ^{W}	85687					3,000 ^{B}	5,200 ^{B}	62 FR 42160
71	2-Chloronaphthalene	91587					1,700 ^{B}	4,300 ^{B}	62 FR 42160
72	4-Chlorophenyl Phenyl Ether	7005723							
73	Chrysene	218019					0.0044 ^{B,C}	0.049 ^{B,C}	62 FR 42160
74	Dibenzoa,hAnthracene	53703					0.0044 ^{B,C}	0.049 ^{B,C}	62 FR 42160
75	1,2-Dichlorobenzene	95501					2,700 ^{B,Z}	17,000 ^{B}	62 FR 42160
76	1,3-Dichlorobenzene	541731					400	2,600	62 FR 42160
77	1,4-Dichlorobenzene	106467					400 ^{Z}	2,600	62 FR 42160
78	3,3'-Dichlorobenzidine	91941					0.04 ^{B,C}	0.077 ^{B,C}	57 FR 60848
79	Diethyl Phthalate ^{W}	84662					23,000 ^{B}	120,000 ^{B}	57 FR 60848
80	Dimethyl Phthalate ^{W}	131113					313,000	2,900,000	57 FR 60848
81	Di-n-Butyl Phthalate ^{W}	84742					2,700 ^{B}	12,000 ^{B}	57 FR 60848
82	2,4-Dinitrotoluene	121142					0.11 ^{C}	9.1 ^{C}	57 FR 60848
83	2,6-Dinitrotoluene	606202							
84	Di-n-Octyl Phthalate	117840							
85	1,2-Diphenylhydrazine	122667					0.040 ^{B,C}	0.54 ^{B,C}	57 FR 60848
86	Fluoranthene	206440					300 ^{B}	370 ^{B}	62 FR 42160
87	Fluorene	86737					1,300 ^{B}	14,000 ^{B}	62 FR 42160
88	Hexachlorobenzene	118741					0.00075 ^{B,C}	0.00077 ^{B,C}	62 FR 42160
89	Hexachlorobutadiene	87683					0.44 ^{B,C}	50 ^{B,C}	57 FR 60848
90	Hexachlorocyclopentadiene	77474					240 ^{B,U,Z}	17,000 ^{B,H,U}	57 FR 60848
91	Hexachloroethane	67721					1.9 ^{B,C}	8.9 ^{B,C}	57 FR 60848
92	Ideno 1,2,3-cdPyrene	193395					0.0044 ^{B,C}	0.049 ^{B,C}	62 FR 42160
93	Isophorone	78591					36 ^{B,C}	2,600 ^{B,C}	IRIS 11/01/97
94	Naphthalene	91203							
95	Nitrobenzene	98953					17 ^{B}	1,900 ^{B,H,U}	57 FR 60848
96	N-Nitrosodimethylamine	62759					0.00069 ^{B,C}	8.1 ^{B,C}	57 FR 60848
97	N-Nitrosodi-n-Propylamine	621647					0.005 ^{B,C}	1.4 ^{B,C}	62 FR 42160
98	N-Nitrosodiphenylamine	86306					5.0 ^{B,C}	16 ^{B,C}	57 FR 60848
99	Phenanthrene	85018							
100	Pyrene	129000					960 ^{B}	11,000 ^{B}	62 FR 42160
101	1,2,4-Trichlorobenzene	120821					260 ^{Z}	940	IRIS 11/01/96
102	Aldrin	309002	3.0 ^{G}		1.3 ^{G}		0.00013 ^{B,C}	0.00014 ^{B,C}	62 FR 42160
103	alpha-BHC	319846					0.0039 ^{B,C}	0.013 ^{B,C}	62 FR 42160
104	beta-BHC	319857					0.014 ^{B,C}	0.046 ^{B,C}	62 FR 42160
105	gamma-BHC (Lindane)	58899	0.95 ^{K}		0.16 ^{G}		0.019 ^{C}	0.063 ^{C}	62 FR 42160
106	delta-BHC	319868							
107	Chlordane	57749	2.4 ^{G}	0.0043 ^{G,aa}	0.09 ^{G}	0.004 ^{G,aa}	0.0021 ^{B,C}	0.0022 ^{B,C}	62 FR 42160 IRIS 02/07/98

108	4,4' DDT	50293	1.1[G,J]	0.001[G,aa]	0.13[G]	0.001[G,aa]	0.00059[B,C]	0.00059[B,C]	62 FR 42160
109	4,4' DDE	72559					0.00059[B,C]	0.00059[B,C]	62 FR 42160
110	4,4' DDD	72548					0.00083[B,C]	0.00084[B,C]	62 FR 42160
111	Dieldrin	60571	0.24[K]	0.056[K,O]	0.71[G]	0.0019[G,aa]	0.00014[B,C]	0.00014[B,C]	62 FR 42160
112	alpha Endosulfan	959988	0.22[G,Y]	0.056[G,Y]	0.034[G,Y]	0.0087[G,Y]	110[B]	240[B]	62 FR 42160
113	beta Endosulfan	33213659	0.22[G,Y]	0.056[G,Y]	0.034[G,Y]	0.0087[G,Y]	110[B]	240[B]	62 FR 42160
114	Endosulfan Sulfate	1031078					110[B]	240[B]	62 FR 42160
115	Endrin	72208	0.086[K]	0.036[K,O]	0.037[G]	0.0023[G,aa]	0.76[B]	0.81[B,H]	62 FR 42160
116	Endrin Aldehyde	7421934					0.76[B]	0.81[B,H]	62 FR 42160
117	Heptachlor	76448	0.52[G]	0.0038[G,aa]	0.053[G]	0.0036[G,aa]	0.00021[B,C]	0.00021[B,C]	62 FR 42160
118	Heptachlor Epoxide	1024573	0.52[G,V]	0.0038[G,V,aa]	0.053[G,V]	0.0036[G,V,aa]	0.00010[B,C]	0.00011[B,C]	62 FR 42160
119	Polychlorinated Biphenyls PCBs			0.014[N,aa]		0.03[N,aa]	0.00017[B,C,P]	0.00017[B,C,P]	62 FR 42160 63 FR 16182
120	Toxaphene	8001352	0.73	0.0002[aa]	0.21	0.0002[aa]	0.00073[B,C]	0.00075[B,C]	62 FR 42160

Footnotes:

A[A] This recommended water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic, which might imply that arsenic (III) and arsenic (V) are equally toxic to aquatic life and that their toxicities are additive. In the arsenic criteria document (EPA 440/5-84-033, January 1985), Species Mean Acute Values are given for both arsenic (III) and arsenic (V) for five species and the ratios of the SMAVs for each species range from 0.6 to 1.7. Chronic values are available for both arsenic (III) and arsenic (V) for one species, for the fathead minnow, the chronic value for arsenic (V) is 0.29 times the chronic value for arsenic (III). No data are known to be available concerning whether the toxicities of the forms of arsenic to aquatic organisms are additive.

A[B] This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

A[C] This criterion is based on carcinogenicity of 10^{-6} risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10^{-5}, move the decimal point in the recommended criterion one place to the right).

A[D] Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. The recommended water quality criteria value was calculated by using the previous 304(a) aquatic life criteria expressed in terms of total recoverable metal, and multiplying it by a conversion factor (CF). The term "Conversion Factor" (CF) represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. (Conversion Factors for saltwater CCCs are not currently available. Conversion factors derived for saltwater CMCs have been used for both saltwater CMCs and CCCs.) See "Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria," October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource center, USEPA, 401 M St., SW, mail code RC4100, Washington, DC 20460; and 40 CFR §131.36(b)(1). Conversion Factors applied in the table can be found in Appendix A to the Preamble—Conversion Factors for Dissolved Metals.

A[E] The freshwater criterion for this metal is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 100 mg/l. Criteria values for other hardness may be calculated from the following: CMC (dissolved) = exp {m_A [ln(hardness)]+b_A} (CF), or CCC (dissolved) = exp {m_C [ln (hardness)]+b_C} (CF) and the parameters specified in Appendix B to the Preamble—Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent.

A[F] Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH, and are calculated as follows: CMD=exp(1.005(pH)−4.869); CCC=exp(1.005(pH)−5.134). Values displayed in table correspond to a pH of 7.8.

A[G] This Criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5–80–019), Chlordane (EPA 440/5–80–027), DDT (EPA 440/5–80–038), Endosulfan (EPA 440/5–80–046), Endrin (EPA 440/5–80–047), Heptachlor (440/5–80–052), Hexachlorocyclohexane (EPA 440/5–80–054), Silver (EPA 440/5–80–071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a "CMC" derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

A[H] No criterion for protection of human health from consumption of aquatic organisms excluding water was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow the calculation of a criterion, even though the results of such a calculation were not shown in the document.

A[I] This criterion for asbestos is the Maximum Contaminant Level (MCL) developed under the Safe Drinking Water Act (SDWA).

A[J] EPA has not calculated human health criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics.

A[K] This recommended criterion is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, (EPA–820–B–96–001, September 1996). This value was derived using the GLI Guidelines (60 FR 15393–15399, March 23, 1995; 40 CFR 132 Appendix A); the difference between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.

A[L] The CMC = 1/[(f1/CMC1)+(f2/CMC2)] where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate, respectively, and CMC1 and CMC2 are 185.9 µg/l and 12.83 µg/l, respectively.

A[M] EPA is currently reassessing the criteria for arsenic. Upon completion of the reassessment the Agency will publish revised criteria as appropriate.

A[N] PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.

A[O] The derivation of the CCC for this pollutant did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.

A[P] This criterion applies to total pcbs, i.e., the sum of all congener or all isomer analyses.

A[Q] This recommended water quality criterion is expressed as µg free cyanide (as CN)/L.

A[R] This value was announced (61 FR 58444–58449, November 14, 1996) as a proposed GLI 303(c) aquatic life criterion. EPA is currently working on this criterion and so this value might change substantially in the near future.

A[S] This recommended water quality criterion refers to the inorganic form only.

A[T] This recommended water quality criterion is expressed in terms of total recoverable metal in the water column. It is scientifically acceptable to use the conversion factor of 0.922 that was used in the GLI to convert this to a value that is expressed in terms of dissolved metal.

A[U] The organoleptic effect criterion is more stringent than the value for priority toxic pollutants.

[Av] This value was derived from data for heptachlor and the criteria document provides insufficient data to estimate the relative toxicities of heptachlor and heptachlor epoxide.

[Aw] Although EPA has not published a final criteria document for this compound it is EPA's understanding that sufficient data exist to allow calculation of aquatic criteria. It is anticipated that industry intends to publish in the peer reviewed literature draft aquatic life criteria generated in accordance with EPA Guidelines. EPA will review such criteria for possible issuance as national WQC.

[Ax] There is a full set of aquatic life toxicity data that show that DEHP is not toxic to aquatic organisms at or below its solubility limit.

[Ay] This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

[Az] A more stringent MCL has been issued by EPA. Refer to drinking water regulations (40 CFR 141) or Safe Drinking Water Hotline (1-800-426-4791) for values.

[Aaa] This CCC is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60 FR 15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[Abb] This water quality criterion is based on 304(a) aquatic life criterion that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85–227049, January 1985) and was issued in one of the following criteria documents: Arsenic (EPA 440/5–84–033), Cadmium (EPA 440/5–84–032), Chromium (EPA 440/5–84–029), Copper (EPA 440/5–84–031), Cyanide (EPA 400/5–84–028), Lead (EPA 440/5–84–027), Nickel (EPA 440/5–86–004), Pentachlorophenol (EPA 440/5–86–009), Toxaphene (EPA 440/5–86–006), Zinc (EPA 440/5–87–003).

[Acc] When the concentration of dissolved organic carbon is elevated, copper is substantially less toxic and use of Water-Effect Ratios might be appropriate.

[Add] The selenium criteria document (EPA 440/5–87–006, September 1987) provides that if selenium is as toxic to saltwater fishes in the field as it is to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 µg/L in salt water because the saltwater CCC does not take into account uptake via the food chain.

[Aee] This recommended water quality criterion was derived on page 43 of the mercury criteria document (EPA 440/5–84–026, January 1985). The saltwater CCC of 0.025 µg/L given on page 23 of the criteria document is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[Aff] This recommended water quality criterion was derived in Ambient Water Quality Criteria Saltwater Copper Addendum (Draft, April 14, 1995) and was promulgated in the Interim final National Toxics Rule (60FR22228–22237, May 4, 1995).

[Agg] EPA is actively working on this criterion and so this recommended water quality criterion may change substantially in the near future.

[Ahh] This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criteria was derived.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR NON PRIORITY POLLUTANTS

	Non priority pollutant	CAS No	Freshwater		Saltwater		Human health for consumption of:		FR cite/source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
1	Alkalinity			20000 [F]					Gold Book
2	Aluminum pH 6.5–9.0	7429905	750 [G,I]	87 [G,I,L]					53 FR 33178
3	Ammonia	7664417	FRESHWATER CRITERIA ARE pH DEPENDENT—SEE DOCUMENT SALTWATER CRITERIA ARE pH AND TEMPERATURE DEPENDENT						EPA822–R–98–008 EPA440/5–88–004
4	Aesthetic Qualities		NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
5	Bacteria		FOR PRIMARY RECREATION AND SHELLFISH USES—SEE DOCUMENT						Gold Book
6	Barium	7440393					1,000 [A]		Gold Book
7	Boron		NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
8	Chloride	16887006	860000 [G]	230000 [G]					Gold Book
9	Chlorine	7782505	19	11	13	7.5			53 FR 19028
10	Chlorophenoxy Herbicide 2,4,5,-TP	93721					10 [A]		Gold Book
11	Chlorophenoxy Herbicide 2,4-D	94757					100 [A,C]		Gold Book
12	Chlorpyrifos	2921882	0.083 [G]	0.041 [G]	0.011 [G]	0.0056 [G]			Gold Book
13	Color		NARRATIVE STATEMENT—SEE DOCUMENT [F]						Gold Book
14	Demeton	8065483		0.1 [F,H]		0.1 [F,H]			Gold Book
15	Ether, Bis Chloromethyl	542881					0.00013 [E]	0.00078 [E]	IRIS 01/01/91
16	Gases, Total Dissolved		NARRATIVE STATEMENT—SEE DOCUMENT [F]						Gold Book
17	Guthion	86500		0.01 [F,H]		0.01 [F,H]			Gold Book
18	Hardness		NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
19	Hexachlorocyclo-hexane-Technical	319868					0.0123	0.0414	Gold Book
20	Iron	7439896		1000 [F]			300 [A]		Gold Book
21	Malathion	121755		0.1 [F,H]					Gold Book
22	Manganese	7439965					50 [A]	100 [A]	Gold Book
23	Methoxychlor	72435		0.03 [F,H]		0.03 [F,H]	100 [A,C]		Gold Book
24	Mirex	2385855		0.001 [F,H]		0.001 [F,H]			Gold Book
25	Nitrates	14797558					10,000 [A]		Gold Book
26	Nitrosamines						0.0008	1.24	Gold Book

27	Dinitrophenols	25550587					70	14,000	Gold Book
28	Nitrosodibutylamine,N	924163					0.0064 [A]	0.587 [A]	Gold Book
29	Nitrosodiethylamine,N	55185					0.0008 [A]	1.24 [A]	Gold Book
30	Nitrosopyrrolidine,N	930552					0.016	91.9	Gold Book
31	Oil and Grease		NARRATIVE STATEMENT—SEE DOCUMENT [F]						Gold Book

27	Dinitrophenols	25550587		....	....	....	70	14,000	Gold Book
28	Nitrosodibutylamine,N	924163					0.0064[A]	0.587[A]	Gold Book
29	Nitrosodiethylamine,N	55185					0.0008[A]	1.24[A]	Gold Book
30	Nitrosopyrrolidine,N	930552					0.016	91.9	Gold Book
31	Oil and Grease		NARRATIVE STATEMENT—SEE DOCUMENT[F]						Gold Book
32	Oxygen, Dissolved	7782447	WARMWATER AND COLDWATER MATRIX—SEE DOCUMENT[O]						Gold Book
33	Parathion	56382	0.065[J]	0.013[J]					Gold Book
34	Pentachlorobenzene	608935					3.5[E]	4.1[E]	IRIS 03/01/88
35	pH			6.5–9[F]		6.5–8.5[F,K]	5–9		Gold Book
36	Phosphorus Elemental	7723140				0.1[F,K]			Gold Book
37	Phosphate Phosphorus		NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
38	Solids Dissolved and Salinity						250,000[A]		Gold Book
39	Solids Suspended and Turbidity		NARRATIVE STATEMENT—SEE DOCUMENT[F]						Gold Book
40	Sulfide-Hydrogen Sulfide	7783064		2.0[F,H]		2.0[F,H]			Gold Book
41	Tainting Substances	.. ....	NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
42	Temperature		SPECIES DEPENDENT CRITERIA—SEE DOCUMENT[M]						Gold Book
43	Tetrachlorobenzene,1,2,4,5	95943					2.3[E]	2.9[E]	IRIS03/01/91
44	Tributyltin TBT	......	0.46[N]	0.063[N]	0.37[N]	0.010[N]			62 FR 42554
45	Trichlorophenol,2,4,5-	95954					2,600[B,E]	9,800[B,E]	IRIS 03/01/88

Footnotes:

A[A] This human health criterion is the same as originally published in the Red Book which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is now published in the Gold Book.

A[B] The organoleptic effect criterion is more stringent than the value presented in the non priority pollutants table.

A[C] A more stringent Maximum Contaminant Level (MCL) has been issued by EPA under the Safe Drinking Water Act. Refer to drinking water regulations 40 CFR 141 or Safe Drinking Water Hotline (1–800–426–4791) for values.

A[D] According to the procedures described in the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, except possibly where a very sensitive species is important at a site, freshwater aquatic life should be protected if both conditions specified in Appendix C to the Preamble—Calculation of Freshwater Ammonia Criterion are satisfied.

A[E] This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) used to derive the original criterion was retained in each case.

A[F] The derivation of this value is presented in the Red Book (EPA 440/9–76–023, July, 1976).

A[G] This value is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85–227049, January 1985) and was issued in one of the following criteria documents: Aluminum (EPA 440/5–86–008); Chloride (EPA 440/5–88–001); Chloropyrifos (EPA 440/5–86–005).

A[H] This CCC is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60 FR 15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

A[I] This value is expressed in terms of total recoverable metal in the water column.

A[J] This value is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water (EPA–820–B–96–001). This value was derived using the GLI Guidelines (60 FR 15393–15399, March 23, 1995; 40 CFR 132 Appendix A); the differences between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. No decision concerning this criterion was affected by any considerations that are specific to the Great Lakes.

A[K] According to page 181 of the Red Book: For open ocean waters where the depth is substantially greater than the euphotic zone, the pH should not be changed more than 0.2 units from the naturally occurring variation or any case outside the range of 6.5 to 8.5. For shallow, highly productive coastal and estuarine areas where naturally occurring pH variations approach the lethal limits of some species, changes in pH should be avoided but in any case should not exceed the limits established for fresh water, i.e., 6.5–9.0.

A[L] There are three major reasons why the use of Water-Effect Ratios might be appropriate. (1) The value of 87 µg/l is based on a toxicity test with the striped bass in water with pH=6.5–6.6 and hardness <10 mg/L. Data in "Aluminum Water-Effect Ratio for the 3M Plant Effluent Discharge, Middleway, West Virginia" (May 1994) indicate that aluminum is substantially less toxic at higher pH and hardness, but the effects of pH and hardness are not well quantified at this time. (2) In tests with the brook trout at low pH and hardness, effects increased with increasing concentrations of total aluminum even though the concentration of dissolved aluminum was constant, indicating that total recoverable is a more appropriate measurement than dissolved, at least when particulate aluminum is primarily aluminum hydroxide particles. In surface waters, however, the total recoverable procedure might measure aluminum associated with clay particles, which might be less toxic than aluminum associated with aluminum hydroxide. (3) EPA is aware of field data indicating that many high quality waters in the U.S. contain more than 87 µg aluminum/L, when either total recoverable or dissolved is measured.

A[M] U.S. EPA. 1973. Water Quality Criteria 1972. EPA–R3–73–033. National Technical Information Service, Springfield, VA.; U.S. EPA. 1977. Temperature Criteria for Freshwater Fish: Protocol and Procedures. EPA–600/3–77–061. National Technical Information Service, Springfield, VA.

A[N] This value was announced (62 FR 42554, August 7, 1997) as a proposed 304(a) aquatic life criterion. Although EPA has not responded to public comment, EPA is publishing this as a 304(a) criterion in today's notice as guidance for States and Tribes to consider when adopting water quality criteria.

A[O] U.S. EPA. 1986. Ambient Water Quality Criteria for Dissolved Oxygen. EPA 440/5–86–003. National Technical Information Service, Springfield, VA.

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NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR ORGANOLEPTIC EFFECTS

Pollutant	CAS No.	Organoleptic effect criteria (µg/L)	FR cite/source
1 Acenaphthene	208968	20	Gold Book
2 Monochlorobenzene	108907	20	Gold Book
3 3-Chlorophenol		0.1	Gold Book
4 4-Chlorophenol	106489	0.1	Gold Book
5 2,3-Dichlorophenol		0.04	Gold Book
6 2,5-Dichlorophenol		0.5	Gold Book
7 2,6-Dichlorophenol		0.2	Gold Book
8 3,4-Dichlorophenol		0.3	Gold Book
9 2,4,5-Trichlorophenol	95954	1	Gold Book
10 2,4,6-Trichlorophenol	88062	2	Gold Book
11 2,3,4,6-Tetrachlorophenol		1	Gold Book
12 2-Methyl-4-Chlorophenol		1800	Gold Book
13 3-Methyl-4-Chlorophenol	59507	3000	Gold Book
14 3-Methyl-6-Chlorophenol		20	Gold Book
15 2-Chlorophenol	95578	0.1	Gold Book
16 Copper	744058	1000	Gold Book
17 2,4-Dichlorophenol	120832	0.3	Gold Book
18 2,4-Dimethylphenol	105679	400	Gold Book
19 Hexachlorocyclopentadiene	77474	1	Gold Book
20 Nitrobenzene	98953	30	Gold Book
21 Pentachlorophenol	87865	30	Gold Book
22 Phenol	108952	300	Gold Book
23 Zinc	7440666	5000	45 FR 79341

General Notes:

1. These criteria are based on organoleptic (taste and odor) effects. Because of variations in chemical nomenclature systems, this listing of pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. Also listed are the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical

National Recommended Water Quality Criteria

Additional Notes

1. Criteria Maximum Concentration and Criterion Continuous Concentration

The Criteria Maximum Concentration (CMC) is an estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed briefly without resulting in an unacceptable effect. The Criterion Continuous Concentration (CCC) is an estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect. The CMC and CCC are just two of the six parts of a aquatic life criterion; the other four parts are the acute averaging period, chronic averaging period, acute frequency of allowed exceedence, and chronic frequency of allowed exceedence. Because 304(a) aquatic life criteria are national guidance, they are intended to be protective of the vast majority of the aquatic communities in the United States.

2. Criteria Recommendations for Priority Pollutants, Non Priority Pollutants and Organoleptic Effects

This compilation lists all priority toxic pollutants and some non priority toxic pollutants, and both human health effect and organoleptic effect criteria issued pursuant to CWA § 304(a). Blank spaces indicate that EPA has no CWA § 304(a) criteria recommendations. For a number of non-priority toxic pollutants not listed, CWA § 304(a) "water + organism" human health criteria are not available, but, EPA has published MCLs under the SDWA that may be used in establishing water quality standards to protect water supply designated uses. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. Also listed are the Chemical Abstracts Service CAS registry numbers, which provide a unique identification for each chemical.

3. Human Health Risk

The human health criteria for the priority and non priority pollutants are based on carcinogenicity of 10^{-6} risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10-5, move the decimal point in the recommended criterion one place to the right).

4. Water Quality Criteria Published Pursuant to Section 304(a) or Section 303(c) of the CWA

Many of the values in the compilation were published in the proposed California Toxics Rule (CTR, 62 FR 42160). Although such values were published pursuant to Section 303(c) of the CWA, they represent the Agency's most recent calculation of water quality criteria and thus are published today as the Agency's 304(a) criteria. Water quality criteria published in the proposed CTR may be revised when EPA takes final action on the CTR.

5. Calculation of Dissolved Metals Criteria

The 304(a) criteria for metals, shown as dissolved metals, are calculated in one of two ways. For freshwater metals criteria that are hardness-dependent, the dissolved metal criteria were calculated using a hardness of 100 mg/l as $CaCO_3$ for illustrative purposes only. Saltwater and freshwater metals criteria that are not hardness-dependent are calculated by multiplying the total recoverable criteria before rounding by the appropriate conversion factors. The final dissolved metals criteria in the table are rounded to two significant figures. Information regarding the calculation of hardness dependent conversion factors are included in the footnotes.

6. Correction of Chemical Abstract Services Number

The Chemical Abstract Services number (CAS) for Bis(2-Chloroisopropyl) Ether, has been corrected in the table. The correct CAS number for this chemical is 39638–32–9. Previous publications listed 108–60–1 as the CAS number for this chemical.

7. Maximum Contaminant Levels

The compilation includes footnotes for pollutants with Maximum Contaminant Levels (MCLs) more stringent than the recommended water quality criteria in the compilation. MCLs for these pollutants are not included in the compilation, but can be found in the appropriate drinking water regulations (40 CFR 141.11–16 and 141.60–63), or can be accessed through the Safe Drinking Water Hotline (800–426–4791) or the Internet (http://www.epa.gov/ost/tools/dwstds-s.html).

8. Organoleptic Effects

The compilation contains 304(a) criteria for pollutants with toxicity-based criteria as well as non-toxicity based criteria. The basis for the non-toxicity based criteria are organoleptic effects (e.g., taste and odor) which would make water and edible aquatic life unpalatable but not toxic to humans. The table includes criteria for organoleptic effects for 23 pollutants. Pollutants with organoleptic effect criteria more stringent than the criteria based on toxicity (e.g., included in both the priority and non-priority pollutant tables) are footnoted as such.

9. Category Criteria

In the 1980 criteria documents, certain recommended water quality criteria were published for categories of pollutants rather than for individual pollutants within that category. Subsequently, in a series of separate actions, the Agency derived criteria for specific pollutants within a category. Therefore, in this compilation EPA is replacing criteria representing categories with individual pollutant criteria (e.g., 1,3-dichlorobenzene, 1,4-dichlorobenzene and 1,2-dichlorobenzene).

10. Specific Chemical Calculations

A. Selenium

(1) Human Health

In the 1980 Selenium document, a criterion for the protection of human health from consumption of water and organisms was calculated based on a BCF of 6.0 L/kg and a maximum water-related contribution of 35 µg Se/day. Subsequently, the EPA Office of Health and Environmental Assessment issued an errata notice (February 23, 1982), revising the BCF for selenium to 4.8 L/kg. In 1988, EPA issued an addendum (ECAO–CIN–668) revising the human health criteria for selenium. Later in the final National Toxic Rule (NTR, 57 FR 60848), EPA withdrew previously published selenium human health criteria, pending Agency review of new epidemiological data.

This compilation includes human health criteria for selenium, calculated using a BCF of 4.8 L/kg along with the current IRIS RfD of 0.005 mg/kg/day. EPA included these recommended water quality criteria in the compilation because the data necessary for calculating a criteria in accordance with EPA's 1980 human health methodology are available.

(2) Aquatic Life

This compilation contains aquatic life criteria for selenium that are the same as those published in the proposed CTR. In the CTR, EPA proposed an acute criterion for selenium based on the criterion proposed for selenium in the Water Quality Guidance for the Great Lakes System (61 FR 58444). The GLI and CTR proposals take into account data showing that selenium's two most prevalent oxidation states, selenite and selenate, present differing potentials for aquatic toxicity, as well as new data indicating that various forms of selenium are additive. The new approach produces a different selenium acute criterion concentration, or CMC, depending upon the relative proportions of selenite, selenate, and other forms of selenium that are present.

EPA notes it is currently undertaking a reassessment of selenium, and expects the 304(a) criteria for selenium will be revised based on the final reassessment (63 FR 26186). However, until such time as revised water quality criteria for selenium are published by the Agency, the recommended water quality criteria in this compilation are EPA's current 304(a) criteria.

B. 1,2,4-Trichlorobenzene and Zinc

Human health criteria for 1,2,4-trichlorobenzene and zinc have not been previously published. Sufficient information is now available for calculating water quality criteria for the protection of human health from the consumption of aquatic organisms and the consumption of aquatic organisms and water for both these compounds. Therefore, EPA is publishing criteria for these pollutants in this compilation.

C. Chromium (III)

The recommended aquatic life water quality criteria for chromium (III) included in the compilation are based on the values presented in the document titled: 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, however, this document contains criteria based on the total recoverable fraction. The chromium (III) criteria in this compilation were calculated by applying the conversion factors used in the Final Water Quality Guidance for the Great Lakes System (60 FR 15366) to the 1995 Update document values.

D. Ether, Bis (Chloromethyl), Pentachlorobenzene, Tetrachlorobenzene 1,2,4,5- Trichlorophenol

Human health criteria for these pollutants were last published in EPA's Quality Criteria for Water 1986 or "Gold Book". Some of these criteria were calculated using Acceptable Daily Intake (ADIs) rather than RfDs. Updated q1*s and RfDs are now available in IRIS for ether, bis (chloromethyl), pentachlorobenzene, tetrachlorobenzene 1,2,4,5-, and trichlorophenol, and were used to revise the water quality criteria for these compounds. The recommended water quality criteria for ether, bis (chloromethyl) were revised using an updated q1*, while criteria for pentachlorobenzene, and tetrachlorobenzene 1,2,4,5-, and trichlorophenol were derived using an updated RfD value.

E. PCBs

In this compilation EPA is publishing aquatic life and human health criteria based on total PCBs rather than individual arochlors. These criteria replace the previous criteria for the seven individual arochlors. Thus, there are criteria for a total of 102 of the 126 priority pollutants.

Dated: October 26, 1998.

J. Charles Fox,

Assistant Administrator, Office of Water.

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Appendix A—Conversion Factors for Dissolved Metals

Metal	Conversion factor freshwater CMC	Conversion factor freshwater CCC	Conversion factor saltwater CMC	Conversion factor saltwater CCC
Arsenic	1.000	1.000	1.000	1.000
Cadmium	1.138672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]	0.994	0.994
Chromium III	0.316	0.860		
Chromium VI	0.982	0.962	0.993	0.993
Copper	0.960	0.960	0.83	0.83
Lead	1.46203-[(ln hardness)(0.145712)]	1.46203-[(ln hardness)(0.145712)]	0.951	0.951
Mercury	0.85	0.85	0.85	0.85
Nickel	0.998	0.997	0.990	0.990
Selenium		—	0.998	0.998
Silver	0.85		0.85	
Zinc	0.978	0.986	0.946	0.946

Appendix B—Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent

Chemical	m_A	b_A	m_C	b_C	Freshwater conversion factors (CF)	
					Acute	Chronic
Cadmium	1.128	−3.6867	0.7852	−2.715	1.136672-[ln (hardness)(0.041838)]	1.101672-[ln (hardness)(0.041838)]
Chromium III	0.8190	3.7256	0.8190	0.6848	0.316	0.860
Copper	0.9422	−1.700	0.8545	−1.702	0.960	0.960
Lead	1.273	−1.460	1.273	−4.705	1.46203-[ln (hardness)(0.145712)]	1.46203-[ln (hardness)(0.145712)]
Nickel	0.8460	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	−6.52			0.85	
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Appendix C—Calculation of Freshwater Ammonia Criterion

1. The one-hour average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CMC calculated using the following equation:

$$CMC = \frac{0.275}{1+10^{7.204-pH}} + \frac{39.0}{1+10^{pH-7.204}}$$

In situations where salmonids do not occur, the CMC may be calculated using the following equation:

$$CMC = \frac{0.411}{1+10^{7.204-pH}} + \frac{58.4}{1+10^{pH-7.204}}$$

2. The thirty-day average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CCC calculated using the following equation:

$$CCC = \frac{0.0858}{1+10^{7.688-pH}} + \frac{3.70}{1+10^{pH-7.688}}$$

[FR Doc. 98–30272 Filed 12–4–98; 8:45 am]

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federal register

Monday
December 7, 1998

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 545

Inmate Work and Performance Pay Program: Work Evaluation; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

[BOP–1078–F]

RIN 1120–AA74

Inmate Work and Performance Pay Program: Work Evaluation

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its regulations on inmate work and performance pay to allow for quarterly rather than monthly evaluations of inmates whose work performance is above average. This amendment is intended to streamline institution operations.

EFFECTIVE DATE: December 7, 1998.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on inmate work and performance pay. A final rule on this subject was published in the **Federal Register** on October 1, 1984 (49 FR 38915) and was amended May 21, 1991 (56 FR 23478), July 10, 1991 (56 FR 31531), January 4, 1996 (61 FR 379).

Provisions for inmate work assignment evaluation are contained in § 545.26(e). These provisions are being revised to allow for quarterly work evaluations for inmates who receive above average ratings for their performance. Inmates who receive average or below average ratings will continue to receive monthly work evaluations.

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. After review of the law and regulations, the Director, Bureau of Prisons certifies that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

Because this amendment merely streamlines institution management operations by foregoing unnecessary work evaluations, the Bureau finds good cause for exempting it from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

List of Subjects in 28 CFR Part 545

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 545 in subchapter C of chapter V of 28 CFR is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

1. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 545.26, paragraph (e) is revised to read as follows:

§ 545.26 Performance pay provisions.

* * * * *

(e) *Work evaluation.* (1) At the end of each month the work detail/program supervisor shall compute the hours worked by the inmate and the pay to be awarded for that month.

(2) An inmate shall receive performance pay only for those hours during which the inmate is actively participating in a work assignment or an education/vocational program.

(3) The work detail/program supervisor shall rate the inmate's performance in each of several categories on a monthly basis when the inmate's work performance is average or below average or on a quarterly basis when the inmate's work performance is above average. For example, an inmate may be rated in such categories as quality of work, quantity of work, initiative, ability to learn, dependability, response to supervision and instruction, safety and care of equipment, ability to work with others, and overall job proficiency. Any exception to the work performance evaluation procedures cited in this paragraph requires approval of the Assistant Director, Correctional Programs Division, Central Office. The work detail/program supervisor shall review the evaluation with the inmate. The supervisor shall request that the inmate sign the evaluation form. If the inmate refuses to sign the form, the supervisor shall note this refusal on the evaluation and, if known, the reasons for refusal.

* * * * *

[FR Doc. 98–32358 Filed 12–4–98; 8:45 am]

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federal register

Monday
December 7, 1998

Part VI

Environmental Protection Agency

40 CFR Parts 262, 264, 265, and 270
Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management System; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, 265, and 270

[FRL–6197–7]

Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment on proposed rule and draft final project agreement.

SUMMARY: Today's proposed rule would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended. It would allow participating New York State Utilities to accumulate hazardous waste, which they generate at remote locations, at designated Utility-owned central collection facilities (UCCFs) for up to 90 days subject to specified hazardous waste generator requirements. EPA is proposing this rule to implement an XL project for Utilities in New York State. The terms of the XL project are defined in the draft Final Project Agreement (FPA) on which EPA is also requesting comments. The draft FPA explains the project in detail, while the proposed rule would enable New York State Department of Environmental Conservation (NYSDEC) to implement portions of the project requiring regulatory authorization.

In order to qualify for the flexibility that the proposed rule, if adopted, would provide, New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation and approval of UCCFs. Subsequent to these public participation procedures, Utilities must receive authorization from EPA to participate in the flexibility provided by this proposed rule. This proposed rule is intended to provide regulatory changes to implement this XL project. The agency expects this XL project to result in superior environmental performance in New York State, while providing cost savings to participating Utilities.

DATES: Public Comments: Comments on the proposed rule and/or FPA must be received on or before January 6, 1999.

Public Hearing: Commenters may request a public hearing during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so after the public comment period. Requests for a public hearing should be submitted to the address below. If a public hearing is scheduled, the date, time, and location will be announced in the **Federal Register**.

ADDRESSES: Written comments and requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–98–NYSP–FFFFF. A copy should also be sent to Mr. Philip Flax at U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866.

Viewing Docket Materials: A docket containing public comments and supporting materials is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00am to 4:00pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–98–NYSP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866 during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Philip Flax in advance, by telephoning (212) 637–4143. Information is also available on the world wide web at http://www.epa.gov/ProjectXL.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Flax, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866. (212) 637–4143.

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is organized as follows:

I. Authority
II. Background
  A. Overview of Project XL
  B. Overview of the NYSDEC XL Project
  1. Introduction
  2. NYSDEC XL Project Description
  3. Environmental Benefits
  4. Economic Benefits
  5. Stakeholder Involvement
  6. Project Duration and Completion
  C. Rule Description
III. Additional Information
  A. Public Hearing
  B. Executive Order 12866
  C. Regulatory Flexibility
  D. Paperwork Reduction Act
  E. Unfunded Mandates Reform Act
  F. RCRA/HSWA
  1. Applicability of Rules in Authorized States
  2. Effect on New York State Authorization
  G. Applicability of Executive Order 13045
  H. Executive Order 12875: Enhancing Intergovernmental Partnerships
  I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  J. National Technology Transfer and Advancement Act

I. Authority

These regulations are being proposed under the authority of sections 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, and 6974.

II. Background

A. Overview of Project XL

The draft FPA sets forth the intentions of EPA and the NYSDEC with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. The regulation would facilitate implementation of the project. Project XL—"eXcellence and Leadership"was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting the risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document. For further discussion as to how the NYSDEC XL project addresses the XL criteria, readers should refer to the draft Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site-or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, it expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site-or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, e.g., Section 8001 of RCRA.

B. Overview of the NYSDEC XL Project

1. Introduction

EPA is today requesting comments on the draft FPA and proposing a rule to implement key provisions of this Project XL initiative. Today's proposed rule would facilitate implementation the draft FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, New York State Department of Environmental Conservation (NYSDEC), New York State Utilities, and other stakeholders. After comments on the draft FPA have been considered, EPA and NYSDEC expect to sign a final FPA. The draft FPA is available for review in the docket for today's action and on the world wide web at http://www.epa.gov/ProjectXL. The draft FPA addresses the eight Project XL criteria, and the expectation of EPA that this XL project will meet those criteria. Those criteria are: (1) Environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden). The draft FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

2. NYSDEC XL Project Description

Utilities maintain rights-of-way, such as oil and gas pipelines, telephone lines, and electric power distribution systems, in some cases extending hundreds of miles. Frequently, hazardous waste is generated at remote locations that are not continuously staffed. The generation "events" are sometimes planned in advance, but often are not, particularly in cases where there has been a sudden, unexpected interruption of service. Waste may also be generated as part of routine service. This waste is generally generated as a result of sediments accumulating at Utility access points.

In the case of electric power and telephone systems, the locations involved are usually transformer vaults, service boxes, and manholes, which are most often located in the middle of public roads. In order to access conduits and service the system, sediment and/or infiltration water must be removed. These materials commonly fail the Toxicity Characteristic (TC) for lead and may be hazardous waste. For electric power systems, polychlorinated biphenyl (PCB) contamination is also possible. Waste containing PCBs is regulated under the Toxic Substances Control Act (TSCA). In the case of oil and gas pipelines, the waste may consist of pipeline condensate which collects in "drip" pipes downstream of pressure regulating stations. This waste commonly exhibits the characteristic of ignitability, commonly fails the TC for benzene and may contain PCBs.

Generally, hazardous waste may qualify for conditional exemption under RCRA because it is generated in quantities less than 100 kilograms per calendar month. However, when hazardous waste generated exceeds 1000 kilograms per calendar month, it is subject to applicable regulations at 40 CFR Part 262. In addition, when one kilogram or more of an acutely hazardous waste is generated per calendar month at a remote location, it is also subject to applicable regulations at 40 CFR Part 262.

Utilities are currently allowed to accumulate hazardous waste without a permit at the remote location where it is generated for up to 90 (or, under certain circumstances, 180 days) days without RCRA permits prior to transporting it to a permitted treatment, storage and disposal facility (TSDF) or other designated facility. However, since remote Utility locations are often unstaffed, it is very difficult to store hazardous waste and secure against releases resulting from accidents or vandalism. Arranging for a commercial transporter to bring hazardous waste directly to a TSDF may take several days, particularly if the event was unplanned. To effectively and adequately protect public health, safety, and the environment, it would be preferable if hazardous waste generated at remote locations could be transported to a secured location as soon as possible upon completion of the generation event.

RCRA regulations generally do not allow the shipment to, or consolidation of, hazardous waste at off-site facilities other than a permitted or interim status TSDF or other designated facility. Furthermore, for each remote location that generates more than 1,000 kilograms during any single month, the utility must prepare and submit a Biennial Report. The RCRA-authorized state processes each report and enters the data into state databases, and EPA enters it into the Biennial Report System (BRS) database. As a result, both state and federal databases may include hundreds of "sites" which are actually only drip pipes and/or manholes.

Additionally, utilities must arrange frequent shipments of small loads of hazardous waste which must be sent directly to a permitted TSDF. The current handling of hazardous waste from remote locations may result in unsafe storage and hazardous conditions, additional paperwork and expenditure of time and labor, and inefficiencies in transportation, increasing direct costs.

Utilities would prefer to have hazardous waste transported immediately from remote locations to a UCCF to which the remote locations are connected by a right-of-way, such as a pipeline, that the Utility controls. At such secured locations, the Utilities would then accumulate this waste in accordance with specified hazardous waste generator requirements. These requirements would allow up to 90 days to safely consolidate similar waste from different remote locations without RCRA permits to achieve important efficiencies in transportation and waste management. To the extent that wastes arriving at the UCCF on different dates are consolidated in the same container, the 90-day period would run from the earlier of the two dates that the wastes arrived. The proposed rule would allow vehicles transporting waste from a UCCF to a commercial TSDF to carry relatively full loads. On the other hand, if hazardous waste must be transported to a TSDF directly from remote locations, more vehicle trips would be required, each carrying smaller loads.

This proposed rule would avoid the problems of unsafe storage, transportation inefficiencies, and unnecessary paperwork by allowing alternative handling for hazardous waste generated at remote locations by Utilities. If the proposed rule is adopted, EPA expects the following to occur:

1. Chemically similar hazardous waste can be consolidated without a RCRA permit for up to 90 days at a UCCF, in compliance with specified requirements set forth in today's proposed rule. Each UCCF would only handle waste generated at its remote locations. The waste would be removed from each remote location immediately. If wastes arriving at the UCCF on different dates are consolidated in the same container, the 90-day period would run from the earlier of the two dates that the wastes arrived.

2. Waste generated at remote locations can be accounted for in a combined Biennial Report, submitted by the UCCF, instead of requiring the submission of a Biennial Report for each remote location.

Thus, today's proposed rule would allow participating New York State Utilities to accumulate hazardous waste, which they generate at remote locations and remove immediately, at designated UCCFs without RCRA permits for up to 90 days subject to specified requirements.

Under the proposed rule a UCCF would be able to accumulate hazardous waste received from remote locations at the UCCF for up to 90 days, thereby allowing time for consolidation of wastes that are chemically similar. The requirements applicable to the UCCF would include all requirements currently applicable to 90-day on-site accumulation, plus certain additional requirements specific to this project. A UCCF may prepare a single Biennial Report for waste received from its associated remote locations. A separate Biennial Report must be prepared for any shipment of hazardous waste sent directly to a permitted TSDF that would ordinarily require a Biennial Report.

In order to participate in the flexibility provided by the proposed rule, New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation(s) and approval of UCCF(s). Subsequent to these public participation procedures, Utilities must receive authorization from EPA to participate in the flexibility provided by this proposed rule. EPA may determine that a Utility or UCCF should not be authorized to participate in the relief afforded by the proposed rule based on anything learned before, during or after the public notice procedures, including a Utility's compliance history.

The proposed rule would enhance the protection of public health and the environment by facilitating and requiring the immediate removal of hazardous waste that is difficult to properly secure at remote locations. Such waste would be required by the terms of the proposed rule to be moved to the UCCF for consolidation immediately after the generation event is ended. Hazardous traffic conditions that endanger public safety may also diminish.

Utilities would realize considerable savings in direct costs through efficiencies in transportation by consolidating hazardous waste. Reducing the number of trips made by waste-transporting vehicles also reduces mobile source emissions. Elimination of the need to complete biennial reports would bring about a very significant reduction in paperwork and savings in time and labor, both for Utilities and environmental regulatory agencies, who can then redirect such resources to other environmental needs.

In addition, the proposed rule would require Utilities to reinvest at least one-third of the direct savings realized from participation in the XL project into one or more environmental projects, such as pollution prevention, that are over and above existing legal requirements and that have not been initiated prior to the Utility's authorization to manage hazardous waste pursuant to the rule.

The proposed rule applies only to the storage, transport, and disposal of waste generated at a Utility's remote locations and sent to a designated UCCF; the proposed rule would not apply to waste received by the UCCF from locations other than those defined as remote locations. In addition, except as explicitly provided for in the proposed rule, the rule would not affect any other requirements pertaining to the storage, transport, and disposal of waste generated at a Utility's remote locations. For example, a Utility would still be required to determine whether waste generated at a remote location is subject to the land disposal restrictions set forth in 40 CFR part 268 and the Toxic Substances Control Act and its implementing regulations set forth in 40 CFR part 761 at the point of generation, prior to any commingling of waste. In addition, nothing in the proposed rule prohibits a Utility from treating hazardous waste in an accumulation tank or container pursuant to the provisions set forth in 262.90 provided the Utility complies with the requirements for tanks set forth in Subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200, and/or the requirements for containers set forth in Subpart I of 40 CFR part 265.

Similarly, it is not the intent of the proposed rule to expand the size of the regulated universe nor to subject uniquely managed waste to increased regulation. Therefore, whether a Utility designates UCCFs or not, waste generated at individual remote locations that does not exceed 100 kilograms in a calendar month will continue to be subject to the requirements for Conditionally Exempt Small Quantity Generators (CESQG) at 40 CFR 261.5.

3. Environmental Benefits

This XL project would allow hazardous waste, generated by Utilities at "remote" locations that are not permanently staffed, to be transported to a secured location that may not be a permitted TSDF immediately after the generation event is ended. At the present time, particularly when the generation event is unplanned, it may take several days to make arrangements for removal of the material directly to a TSDF. In the meantime, if the material remains at the remote location, it may endanger public health and the environment because it may be difficult for the Utility to provide secure storage for the material, safe from releases through accidents or vandalism. Moreover, if the material is left at a street location where it continues to disrupt normal traffic patterns (vehicular and/or pedestrian), public safety is threatened, even if there are no releases. Particularly in urban settings (e.g., New York City), the disruption of traffic patterns can lead to a substantial risk of vehicular collisions or vehicle/pedestrian accidents. Leaving the material at a street location may result in forced merging of high-volume traffic lanes. This project should help to enhance public safety and prevent endangerment to human health and the environment.

There would also be direct environmental results to be realized from the consolidation of similar waste at UCCFs. By minimizing the number of vehicle trips that must be made to the ultimate TSDF, emissions from mobile sources are reduced, as well as vehicular fuel consumption and the possibility of an accident involving a vehicle transporting this waste.

Indirect environmental benefits would result from the reduced need for human resources, time and paperwork. More Utility and regulatory agency resources would be made available to address high-priority environmental issues.

In addition, participating Utilities would reinvest one-third of the direct cost savings accrued due to participation in this project into one or more environmentally beneficial projects that are above and beyond what is legally required by law and that were not planned prior to the initiation of this XL project. Participating Utilities would identify, in annual Progress Reports, the monetary value of the direct cost savings which they have experienced as a result of the project and the environmental activities in which one-third of these direct cost savings have been reinvested.

4. Economic Benefits

Utilities would realize direct cost savings. Through the need for reduced resources, time and paperwork, they also anticipate indirect savings. NYSDEC and EPA would realize indirect savings through reduced resource demands, time saved (including computer time), and reduced paperwork.

Utilities could realize a variety of direct cost savings. First, Utilities would not incur expenses for having to store hazardous waste at remote locations, even temporarily. Second, Utilities would realize direct cost savings through efficiencies in transportation. By being able to consolidate waste at the UCCF that is chemically similar, fewer vehicle trips to ultimate destination facilities would be required. Third, Utilities could avoid the costs of having to secure hazardous waste facility permits for facilities that receive hazardous waste for short-term management from remote locations. And fourth, the proposed rule would subject the UCCFs to specified generator requirements (rather than TSDF requirements). These savings may include: database management for each remote location as an individual generator, State annual Hazardous Waste Report preparation costs, Biennial Report preparation costs, Part B permit application costs, closure plan preparation costs, P.E. certification of closure, financial assurance costs, annual state TSDF operating fee, TSDF corrective action liability costs, and cost savings realized from consolidation of waste for economical shipment.

Utilities would realize indirect savings in resources, time, and reduced paperwork by not having to submit Biennial Reports for remote locations that generate in excess of 1,000 kilograms of hazardous waste during the generation event. Instead, the hazardous waste generated at remote locations would be included in the Biennial Reports of the UCCFs to which they are brought. All such hazardous waste would still be fully accounted for without increasing the number of Biennial Reports that the Utility must prepare and submit. EPA would also realize indirect savings in human resources, time (including computer time), and reduced paperwork. Biennial Reports for remote locations would no longer need to be processed and entered in federal databases. As long as the quantities and types of hazardous waste from these locations are accounted for, the minimal benefits of these excess reports do not justify the extra work involved in preparing and processing the reports.

In addition to the savings reaped from eliminating Biennial Reports for remote locations, NYSDEC is considering eliminating its State annual Hazardous Waste Reports for remote locations. Should NYSDEC eliminate these reports, the savings discussed above would apply to that change as well.

5. Stakeholder Involvement

NYSDEC and EPA have been involved in the development of this project, and both support it. Bell Atlantic acted as lead for the telephone industry. Consolidated Edison acted as lead for the electric power industry, with assistance from the New York State Power Pool. Brooklyn Union Gas acted as lead for the oil and gas pipeline industry (intrastate and interstate). Consolidated Edison and the New York State Power Pool solicited comments from other electric power companies in New York State which were then funneled through Consolidated Edison. Brooklyn Union Gas provided the same service to other intrastate and interstate oil and gas pipelines.

The development of the draft FPA was accomplished through implementation of a Public Participation and Outreach Plan, which is included in the docket for this proposed rulemaking. This Plan provided opportunity for participation by potential industrial participants, environmental organizations, the general public and other interested parties. The proposed rule and draft FPA also provide for public participation in the designation and approval of UCCFs by participating Utilities, subsequent to the signing of the Final Project Agreement and the effective date of the proposed rule.

EPA is today soliciting comments on both the proposed rule and the draft FPA. Commentators may request a public hearing during the public comment period. If EPA determines that there is a basis to hold a public hearing, it will do so after the public comment period.

Finally, since the proposed regulations modify regulations originally promulgated pursuant to RCRA, the NYSDEC intends to propose and (subject to public comment) promulgate an equivalent state regulation.

6. Project Duration and Completion

As with all XL projects testing alternative environmental protection strategies, the term of the NYSDEC XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be 60 months from the effective date of this rule. However, EPA may suspend or terminate the regulatory relief provided to the Utilities or a specific Utility or UCCF at any time.

C. Rule Description

The proposed rule would add a new section to the Standards Applicable to Generators of Hazardous Waste, 40 CFR part 262. Paragraph (a) of the proposed rule would define terms used in the new rule. The definition of remote location in paragraph (a)(3) is of particular interest because of its importance in the implementation of the regulation. Paragraph (b) would include the requirements that a Utility and UCCF would comply with in order to accumulate hazardous waste for up to 90 days at the UCCF. Utilities and UCCFs must follow these requirements in order to accumulate hazardous waste at UCCF's. For example, under proposed § 262.90(b)(1), the utility would be required to use a Uniform Hazardous Waste Manifest (Form 8700–22) for all shipments of hazardous waste greater than 100 kilograms being sent from a remote location to a UCCF. The manifest used to transport hazardous waste from the remote location to the UCCF would be prepared as follows:

(1) The EPA ID # of the UCCF would be entered on the Manifest Form in Item 1.

(2) The name and location of the remote location would be entered in the Generator's Name and Mailing Address block (Item 3).

(3) The transporter's name and EPA ID number would be entered in the Transporter 1 Company Name box (Items 5 and 6) .

(4) The UCCF name would be entered in the Designated Facility Name and Site Address (Item 9) as the facility which will be handling the waste described on the manifest.

(5) The DOT description and other information about the waste would be entered in Items 11 through 14.

(6) The Generator's Certification (Item 16) would be signed.

(7) The Transporters Acknowledgment of Receipt (Item 18) would be signed.

(8) The person accepting the waste on behalf of the UCCF would sign the Certification of receipt of hazardous materials covered by this manifest (Item 20).

(9) A copy of the manifest, signed by all required signatories, must be retained at the UCCF for a minimum of three years. A copy of the manifest must also be provided to the transporter, if other than the utility.

The utility would also complete a new manifest in accordance with 40 CFR 262.20, for all hazardous waste transported to a TSDF from the UCCF.

Paragraph (c) of the proposed rule would require public notification of a Utility's and UCCF's participation. These requirements ensure that there is adequate public notice and comment on participation. Paragraph (d) includes items that need to be included in a notification of participation that would be sent to EPA Region II. Paragraph (e) would describe the procedures for designating UCCFs, including how information from the public comments will be incorporated in the authorization process. Paragraph (f) would include requirements for the addition or deletion of UCCFs from participation. Paragraph (g) would include the requirements for an Annual Progress Report that Utilities would have to submit to EPA, including information on the number of remote locations and savings reaped from participation. Paragraph (h) would set forth examples of the direct savings that a Utility would receive as a result of participation. Paragraph (i) would discuss grounds for termination of a Utility or UCCF's participation. Paragraph (j) would set forth the expiration date of the rule. Amendments to Parts 264, 265, and 270 would clarify that a Utility that opted to participate under 40 CFR 262.90 would be exempt from TSDF and permitting requirements.

III. Additional Information

A. Public Hearing

After the close of the public comment period, EPA may decide to hold a public hearing regarding this proposed rule if a commenter requests such a hearing and provides a basis for holding such a hearing. EPA may also decide to hold a public hearing on its own initiative. Any public hearing will comply with 42 U.S.C. 7004(b)(1); 40 CFR Part 25. A verbatim transcript of the public hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

((4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the draft FPA, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an Agency to conduct a Regulatory Flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA believes that in determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the required analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed [or final] rule on small entities." 5 U.S.C. 603 and 604. Thus, EPA may certify as not having a significant economic impact on a substantial number of small entities rules that relieve regulatory burden, or otherwise have a positive economic effect on the small entities subject to the rule. EPA has concluded that today's proposed rule will relieve regulatory burden for all types of entities, including any affected small entities. Further, today's rule does not impose any requirements on any utility unless the utility opts to participate and receives authority to participate. Therefore, EPA certifies today's rule is unlikely to have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1755.03, OMB Control No. 2010–0026) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

EPA is collecting information regarding the locations and amount of waste involved as well as the money saved and what the savings was invested in. EPA plans to use this information to determine whether the XL project is successful. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a Utility decides to participate, EPA requires the filing of a report containing pertinent information. These reports will be publicly available. The estimated cost burden of filing the annual report is $10,000 and the estimated length of time to prepare the report is 40 hours. The estimated number of respondents is 15. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA will amend the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements, if any, contained in the final rule.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 7, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by January 6, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to New York State Utilities. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA/HSWA

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous waste within the state. (See 40 CFR Part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the

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federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized states have primary enforcement responsibility.

After authorization, rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. New federal requirements imposed by those rules do not take effect in an authorized state until the state adopts the requirements as state law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time they take effect in nonauthorized states. EPA is directed to carry out those requirements and prohibitions in authorized states until the state is granted authorization to do so.

2. Effect on New York State Authorization

Today's proposed rule, if finalized, would be promulgated pursuant to RCRA, rather than HSWA. New York State has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the federal program. New York State has received authority to administer hazardous waste standards for generators. As a result, if today's proposed rule is finalized, it would not be effective in New York State until the State adopts equivalent requirements as State law. It is EPA's understanding that subsequent to the promulgation of this rule, New York State intends to propose a rule containing equivalent provisions. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

G. Applicability of Executive Order 13045

The Executive Order, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects

40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous waste, Recordkeeping requirements.

Dated: November 30, 1998.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, parts 262, 264, 265, and 270 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Subpart I consisting of § 262.90 is added to read as follows:

262.90 Project XL for Public Utilities in New York State.

(a) The following definitions apply to this section:

(1) A *Utility* is any company that operates wholesale and/or retail oil and gas pipelines, or any company that provides electric power or telephone service and is regulated by New York State's Public Service Commission or the New York Power Authority.

(2) A *right-of-way* is a fixed, integrated network of aboveground or underground conveyances, including land structures, fixed equipment, and other appurtenances, controlled or owned by a Utility, and used for the purpose of conveying its products or services to customers.

(3) A remote location is a location in New York State within a Utility's right-of-way network that is not permanently staffed.

(4) *A Utility's central collection facility* (UCCF) is a Utility-owned facility within the Utility's right-of-way network to which hazardous waste, generated by the Utility at its remote locations, is brought for storage and, if necessary, waste analysis.

(b) A UCCF designated pursuant to paragraph (e) of this section may accumulate hazardous waste (with the exception of mixed waste) generated by that Utility at its remote locations for up to 90 days without a permit or without having interim status, provided that:

(1) The Utility complies with all applicable requirements for generators in 40 CFR Part 262 (except § 262.34 (d) through (f)) for hazardous waste generated at its remote locations and at the UCCF, including the manifest and pretransport requirements for all shipments greater than 100 kilograms sent from a remote location to a UCCF.

(2) The Utility removes the hazardous waste from the remote location immediately after the generation event has ended.

(3) The Utility complies with all applicable requirements for transporters in 40 CFR Part 263 for each shipment of hazardous waste greater than 100 kilograms which is sent from remote location to the UCCF, and all applicable Department of Transportation requirements.

(4) All hazardous waste generated at each remote location and shipped to the UCCF is accumulated at the UCCF in accordance with 40 CFR 262.34 (a) through (c), regardless of the total quantity generated or accumulated per calendar month.

(5) The Utility submits a biennial report in accordance with 40 CFR 262.41 including all hazardous waste shipped from remote locations to the UCCF. This UCCF biennial report may be submitted in lieu of submitting a biennial report for each remote location. However, for hazardous waste generated at a particular remote location that exceeds 1000 kg per calendar month and that is not sent to the UCCF, the Utility must submit a separate biennial report.

(6) Waste generated at a remote location that is not sent to a UCCF is managed according to the requirements of Parts 260 through 270 of this chapter.

(7) The Utility maintains records at the UCCF in accordance with all the recordkeeping requirements set forth in Subpart D of 40 CFR part 262, including 40 CFR 262.40, and maintains records on any PCB test results for hazardous wastes brought to the facility from remote locations.

(8) The UCCF obtains an EPA identification number.

(9) The UCCF receives hazardous waste only from a remote location.

(10) The Utility reinvests at least one-third of the direct savings described in paragraph (h) of this section in one or more environmentally beneficial projects, such as remediation or pollution prevention, that are over and above existing legal requirements and that have not been initiated prior to the Utility's authorization to manage hazardous waste pursuant to this section.

(c) Utilities seeking to have UCCFs designated under paragraph (e) of this section must comply with the following requirements:

(1) Any New York State Utility seeking authority to accumulate hazardous waste under this section must notify local governments and communities of the Utility's intent to designate specific UCCFs.

(2) In carrying out paragraph (c)(1) of this section, the Utility must solicit public comment. In soliciting public comment, the Utility must use the notice method set forth in paragraph (c)(2)(i) of this section, as well as at least two of the methods set forth in paragraphs (c)(2)(ii) through (vii) of this section.

(i) A public notice in a newspaper of general circulation within the area in which each proposed UCCF is located;

(ii) A radio announcement in each affected community during peak listening hours;

(iii) Mailings to all citizens within a five-mile radius of proposed UCCF;

(iv) Well-publicized community meetings;

(v) Presentations to the local community board;

(vi) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section in the local library nearest the proposed UCCF, and inclusion of the name and address of the library in the newspaper notice; and

(vii) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section on the Utility's web site, and inclusion of the web site's address in the newpaper notice.

(3) All outreach efforts made under paragraph (e)(2) of this section shall be prepared in English (and any other language spoken by a large number of persons in the community of concern) and at a minimum shall include the following information:

(i) A brief description of the XL project, the intended new use of the facility, and a request for comments on the proposed UCCF.

(ii) The name, if any, and address of the proposed UCCF and its current status under the RCRA Subtitle C program.

(iii) The intended duration of use of the UCCF under the requirements of this section.

(iv) Names, addresses, and telephone numbers of contact persons, representing the Utility, to whom questions or comments may be directed.

(v) Notification of when the comment period of no less than 30 days will close.

(4) The Utility must submit copies of each notice, announcement or mailing directly to local governments and to the EPA officials identified in paragraph (d) of this section.

(5) At the close of the comment period, the Utility shall prepare a

Responsiveness Package containing a summary of public outreach efforts, all comments and questions received as a result of its outreach efforts, and the Utility's written responses to all comments and questions. The Utility shall provide copies of its Responsiveness Package to any citizens that participated in the public notice process, local governments and the EPA officials identified in paragraph (d) of this section.

(d) Upon completion of the public notice procedures described in paragraph (c) of this section, the Utility must provide written notice to the Director, Division of Enforcement and Compliance Assistance at EPA-Region II of its intent to participate. The Notice of Intent must contain the following information:

(1) The name of the Utility, corporate address, and corporate mailing address, if different.

(2) The name, mailing address, and telephone number of a corporate-level contact person to whom communications and inquiries may be directed. This contact person may be changed by notifying EPA.

(3) A list of the names, addresses, and EPA identification numbers of all Utility-owned facilities in New York State that are proposed UCCFs and the names and telephone numbers of a designated contact person at each facility.

(4) A summary of public outreach efforts undertaken pursuant to paragraph (c) of this section.

(5) A commitment that one-third of the direct cost savings outlined in paragraph (h) of this section due to project participation will be reinvested in one or more environmentally beneficial projects which are over and above existing legal requirements and which have not been initiated prior to the Utility's authorization to manage hazardous waste pursuant to this section.

(6) An acknowledgment that the signatory is personally familiar with the terms and conditions of this section and has the authority to obligate and does obligate the Utility to comply with all such terms and conditions. The Utility shall comply with the signatory requirements set forth in 40 CFR 270.11(a)(1).

(e) The procedures for designating UCCFs are as follows:

(1) Subject to paragraphs (e) (2) through (4) of this section, the Utility and specified UCCF shall be authorized to comply with the requirements set forth in paragraph (b) of this section upon the receipt of written acknowledgment from EPA that the Notice of Intent described in paragraph (d) of this section has been received and found to be complete and in compliance with all the requirements set forth in paragraph (d) of this section. This acknowledgment will state whether the UCCF has been designated under this section.

(2) Based on information provided and comments received during or after the public notice and comment period, designated UCCFs may be rejected for the proposed use, or, if EPA determines that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors, the acknowledgment may impose conditions in addition to those in paragraph (b) of this section.

(3) If EPA determines that a site-specific informational public meeting is warranted prior to determining the acceptability of a designated UCCF, the acknowledgment will so state.

(4) Subsequent to any public meeting, EPA may reject or prohibit UCCFs from participating in this project based on information provided or comments received during or after the public notice process or based on a determination that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors.

(f) At any time, a Utility may add or remove UCCF designations by complying with the following requirements:

(1) A Utility may notify EPA of its intent to designate additional UCCFs. Such a notification shall be submitted to, and processed by, EPA, in the manner indicated in paragraphs (d) and (e) of this section.

(2) To have one or more additional UCCFs designated, the Utility must comply with paragraph (c) of this section.

(3) A Utility can discontinue use of a facility as a UCCF by notifying EPA in writing.

(g) Each Utility authorized to accumulate hazardous waste pursuant to this section shall submit an Annual Progress Report with the following information for the preceding year:

(1) The number of remote locations statewide for which hazardous waste was handled in accordance with paragraph (b) of this section.

(2) The total tonnage of hazardous waste generated at such remote locations statewide.

(3) The number of remote locations statewide that generated in excess of 1,000 kilograms of hazardous waste during a generation event.

(4) The number of remote locations statewide that generated between 100 and 1,000 kilograms of hazardous waste during a generation event.

(5) An estimate of the monetary value, on a Utility-wide basis, of the direct savings realized by participation in this project. Direct savings at a minimum include those outlined in paragraph (h) of this section.

(6) Descriptions of the environmental compliance, remediation, or pollution prevention projects or activities into which the savings, described in paragraph (h) of this section, have been reinvested, with an estimate of the savings reinvested in each. Any such projects must consist of activities that are over and above existing legal requirements and that have not been initiated prior to the Utility's authorization to manage hazardous waste pursuant to this section.

(7) The addresses and EPA identification numbers for all facilities that served as UCCFs for hazardous waste from remote locations.

(h) Utilities authorized to accumulate hazardous waste pursuant to this section must assess the direct savings realized as a result. Cost estimates shall include direct savings based on relief from any of the following requirements which the facility expects to be relieved from due to compliance with the provisions of this section:

(1) Database management for each remote location as an individual generator;

(2) Biennial Report preparation costs;

(3) Part B permit application costs;

(4) Closure plan preparation costs;

(5) P.E. certification of closure;

(6) Financial assurance costs;

(7) Annual state TSD operating fee;

(8) TSD corrective action liability costs (e.g.—RFA preparation, etc.); and/or

(9) Cost savings realized from consolidation of waste for economical shipment (including no longer shipping waste directly to a TSD from remote locations)

(i) If any UCCF or Utility authorized under this section fails to comply with any of the requirements of this section, EPA may terminate or suspend the UCCF's or Utility's authorization. EPA will provide a UCCF or Utility with 15 days written notice of its intent to terminate or suspend authorization. During this period, the UCCF will have the opportunity to come back into compliance or provide a written explanation as to why it was not in compliance with the terms of this section and how it will come back into compliance. If EPA then issues a written notice terminating or suspending authorization, the Utility must take immediate action to come into compliance with all otherwise applicable federal requirements. EPA or NYSDEC may also take enforcement action against a Utility for non-compliance with the provisions of this section.

(j) This section will expire on [DATE FIVE YEARS FROM EFFECTIVE DATE OF FINAL RULE].

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding paragraph (g)(12) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(12) A New York State Utility central collection facility accumulating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937.

2. Section 265.1 is amended by adding paragraph (c)(15) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(15) A New York State Utility central collection facility accumulating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding paragraph (c)(2)(ix) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(ix) A New York State Utility central collection facility accumulating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

[FR Doc. 98–32425 Filed 12–4–98; 8:45 am]

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Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

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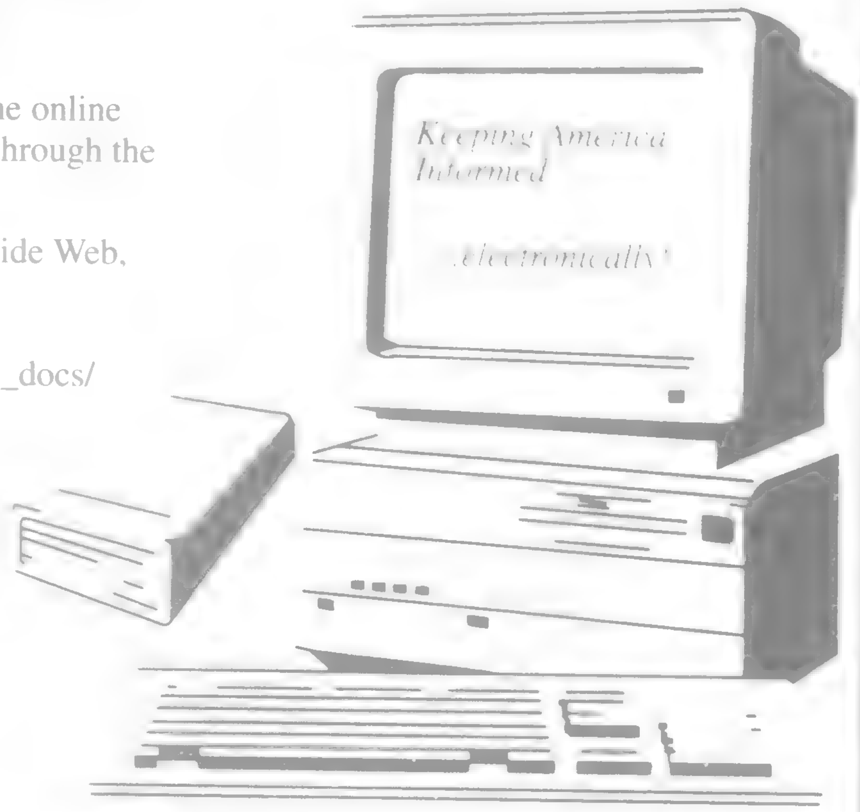

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9 CFR Part 9

[Docket No. 9

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Rules and Regulations

Federal Register
Vol. 63, No. 235
Tuesday, December 8, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–086–2]

Changes in Disease Status of Belgium, France, Greece, Luxembourg, Portugal, and Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Luxembourg and Portugal free of rinderpest and foot-and-mouth disease; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of exotic Newcastle disease; Portugal free of African swine fever; and Belgium, France, and Portugal free of swine vesicular disease. These actions are based on a request from the European Commission's Directorate General for Agriculture and on our review of the supporting documentation supplied with that request. These actions will relieve some restrictions on the importation into the United States of certain animals and animal products from those countries. However, because of the status of those countries with respect to other diseases, and because of other factors that could result in a risk of introducing animal diseases into the United States, the importation into the United States of animals and animal products from those countries will continue to be subject to certain restrictions.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–8695; or e-mail: John.W.Cougill@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases, including foot-and-mouth disease (FMD), rinderpest, exotic Newcastle disease (END), African swine fever (ASF), hog cholera, swine vesicular disease (SVD), and bovine spongiform encephalopathy (BSE). These are dangerous and destructive communicable diseases of ruminants, swine, and poultry.

On November 14, 1997, we published in the **Federal Register** (62 FR 61036–61041, Docket No. 97–086–1) a proposal to amend the regulations to declare Luxembourg and Portugal free of FMD and rinderpest; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of END; Portugal free of ASF; and Belgium, France, and Portugal free of SVD. We proposed those actions in response to a request submitted to the Animal and Plant Health Inspection Service (APHIS) in July 1997 by the European Commission's Directorate General for Agriculture.

We solicited comments concerning our proposal rule for 60 days ending January 13, 1998. We received one comment by that date. The comment was from a veterinary association and fully supported the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes certain restrictions on the importation into the United States of certain animals and animal products from Belgium, France, Greece, Luxembourg, Portugal, and Spain. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of these changes in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the regulations by declaring Luxembourg and Portugal free of rinderpest and FMD; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of END; Portugal free of ASF; and Belgium, France, and Portugal free of SVD.

Pork and Pork Products and Swine

Although this rule declares Luxembourg and Portugal free of rinderpest and FMD; Greece free of rinderpest; Belgium, France, and Portugal free of SVD; and Portugal free of ASF, all those countries are still considered affected with hog cholera, and Greece is still considered to be affected with FMD. Because of this, this rule will not lead to any substantive relaxation of restrictions imposed on the importation of pork and pork products and live swine from those countries, as these products will continue to be restricted based on the presence of hog cholera and, in the case of Greece, FMD. Therefore, the effect of this rule on the importation of pork and pork products and live swine will be minimal, and thus the potential impact on the domestic producers of pork and pork products and swine will be minimal.

Ruminants and Ruminant Products

This rule declares Greece free of rinderpest, but that country is still considered to be affected with FMD and, as a result of an interim rule effective on December 12, 1997, and published in the **Federal Register** on January 6, 1998 (63 FR 406–408, Docket No. 97–127–1), is listed in § 94.18(a)(2) as a region from which the importation of live ruminants, meat and meat products from ruminants, and certain other ruminant products is restricted due to the risk of BSE. Similarly, this rule declares Portugal and Luxembourg free of rinderpest and FMD, but those countries are considered to be affected with BSE. (Luxembourg was not considered to be affected with BSE at the time the proposed rule was published, but it was added to the list of regions where BSE exists in an interim rule that was effective on December 2, 1997, and published in the **Federal Register** on December 17, 1997 (62 FR 65999–66001, Docket No. 97–118–1).) Because imports of ruminants and ruminant products from Greece are restricted due to FMD and BSE, and because imports of ruminants and ruminant products from Portugal and Luxembourg are restricted due to BSE, this rule will not lead to a substantive change in the restrictions imposed on the importation of ruminants and ruminant products from those three countries.

Bird and Poultry Products

This rule declares France, Greece, Luxembourg, and Spain free of END. This action relieves restrictions on the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from those countries, and relieves certain restrictions on the importation of eggs (other than hatching eggs) laid by poultry, game birds, or other birds from those countries. This action also relieves the quarantine requirements for poultry hatching eggs imported from France, Greece, Luxembourg, and Spain.

Egg production in those four countries is considerable: In 1995, the reported egg production in Belgium and Luxembourg was 3,858 million; in France, 16,911 million; in Greece, 2,600 million; and in Spain, 9,983 million ("Agriculture Statistics," 1997). U.S. production is also large, 74,280 million in 1995. In addition, the U.S. imports few eggs, with the total amount being equal to less than 0.1 percent of U.S. production. We believe that it is unlikely that these countries will redirect a significant portion of their production toward such a small U.S. import market.

Total poultry meat production in France, Greece, Luxembourg, and Spain in 1995 was about 3.5 million metric tons, or about 26 percent the size of U.S. production of 13.8 million metric tons. However, the United States is a very strong net exporter of poultry meat, with imports of only 3,546 metric tons and exports of more than 2 million metric tons in 1996 ("World Trade Atlas," June 1997). Very few of the imports are from western Europe. Moreover, more than 99 percent of U.S. poultry meat imports originated in Canada. We do not expect that these countries will redirect a significant amount of poultry meat toward such a small U.S. import market.

Impact on Small Entities

The Regulatory Flexibility Act requires that the Agency specifically consider the economic impact associated with the rule on small entities. Those likely to be affected by this rule are those entities engaged in the production of live swine, pork and pork products, live ruminants, meat, meat products, and dairy products derived from ruminants, and poultry products.

The Small Business Administration's (SBA's) definition of a "small" cattle, swine, or poultry farm is one whose total sales is less than $0.5 million annually. In 1992, 97.8 percent of cattle and calf farms would be considered small entities. The vast majority of the domestic hog and pig farms qualify as small entities (96.3 percent in 1992). Eighty-seven percent of poultry farms would be considered small entities in 1992 ("1992 Census of Agriculture," U.S. Department of Commerce, 1993).

The SBA's guidelines state that a "small" producer of poultry meat (Standard Industrial Classification (SIC) 2015, poultry slaughtering and processing) is one employing fewer than 500 workers. In 1992, 74 percent of 591 poultry slaughtering and processing establishments were considered small entities. These small entities accounted for approximately 30 percent of the total value of shipments of the industry, $7.2 billion.

The SBA's guidelines state that a "small" producer of pork and ruminant products (part of SIC 2011 or 2013, meat packing plants) is one employing fewer than 500 workers. In 1992, 97 percent of the 1,367 meat packing establishments in SIC 2011 were considered small entities. These small establishments accounted for approximately 40 percent of the total value of shipments of the industry, $50.4 billion. Ninety-eight percent of the 1,264 establishments in SIC 2013 were considered small entities in 1992. These producers accounted for 84 percent of the total value of shipments of the industry, $19.97 billion.

Although the majority of the domestic entities potentially affected by this rule are small, there will likely be only a minimal change in the level of imports that may compete with the output of these small entities, and thus there will be a minimal impact on any domestic producer of these products, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 94.1 is amended as follows:

a. In paragraph (a)(1), the words "or (a)(3)" are added immediately after the words "paragraph (a)(2)".

b. In paragraph (a)(2), the word "Luxembourg," is added immediately after the word "Japan," and the word "Portugal," is added immediately after the word "Poland,";

c. A new paragraph (a)(3) is added to read as set forth below.

d. In the introductory text of paragraph (c), the words "paragraph (a) of" are removed and the words "paragraph (a)(2) of" are added in their place.

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

(a) * * *

(3) The following regions are declared to be free of rinderpest: Greece.

* * * * *

§ 94.3 [Amended]

3. Section 94.3 is amended by adding the words "where rinderpest or foot-

and-mouth disease exists, as" immediately before the word "designated".

§ 94.4 [Amended]

4. In § 94.4(a), the introductory text of the paragraph is amended by adding the words "where rinderpest or foot-and-mouth disease exists, as" immediately before the word "designated".

5. In § 94.6, paragraph (a)(2) is revised to read as follows:

§ 94.6 Carcasses, or parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where Exotic Newcastle disease (END) or S. enteritidis is considered to exist.

(a) * * *

(2) The following regions are considered to be free of Exotic Newcastle disease (END): Australia, Canada, Chile, Costa Rica, Denmark, Fiji, Finland, France, Great Britain (England, Scotland, Wales, and the Isle of Man), Greece, Iceland, Luxembourg, New Zealand, Republic of Ireland, Spain, Sweden, and Switzerland.

* * * * *

§ 94.8 [Amended]

6. In § 94.8, the introductory text of the section is amended by removing the words "Malta, and Portugal" and adding in their place the words "and Malta".

§ 94.11 [Amended]

7. In § 94.11, paragraph (a), the first sentence is amended by adding the word "Luxembourg," immediately after the word "Japan,"; by adding the word "Portugal," immediately after the word "Poland,"; and by removing the reference "§ 94.1" and adding the reference "§ 94.1(a)(2)" in its place.

§ 94.12 [Amended]

8. In § 94.12, paragraph (a) is amended by adding the word "Belgium," immediately after the words "The Bahamas,"; by adding the word "France," immediately after the word "Finland,"; and by adding the word "Portugal," immediately after the word "Panama,".

§ 94.13 [Amended]

9. In § 94.13, the introductory text of the section is amended by adding the word "Belgium," immediately after the words "The Bahamas,"; by adding the word "France," immediately after the word "Denmark,"; and by adding the word "Portugal," immediately after the words "Northern Ireland,".

Done in Washington, DC, this 2nd day of December 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32520 Filed 12–7–98; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1030]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of adjustment of dollar amount.

SUMMARY: The Board is publishing an adjustment to the dollar amount that triggers certain requirements of Regulation Z (Truth in Lending) for mortgages bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. For 1999, the adjusted dollar amount is $441.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf *only*, please contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226).

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, 1995, are contained in § 226.32 of the regulation and impose additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the rules in § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3)) and section 226.32(a)(1)(ii) The Board adjusted the $400 amount to $412 for 1996, to $424 for 1997, and to $435 for 1998.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not "report" a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 1998, was the CPI–U index "in effect" on June 1, and reflects the percentage increase from April 1997 to April 1998. The adjustment to the $400 figure below reflects a 1.4 percent increase in the CPI–U index for this period.

Adjustment

For the reasons set forth in the preamble, for purposes of determining whether a mortgage transaction is covered by § 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $441 or 8 percent of the total loan amount, effective January 1, 1999.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 2, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32460 Filed 12–7–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–63–AD; Amendment 39–10836; AD 98–21–28]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 98–21–28, which applies to certain British Aerospace Jetstream Model 3101 airplanes. AD 98–21–28 requires modifying the propeller de-icing system to assure system performance at low ambient temperatures. This AD was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified in this AD are intended to prevent propeller-induced vibrations from occurring during icing encounters at low ambient temperatures, which could result in decreased performance of the de-icing system during icing encounters with possible loss of control of the airplane.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on October 14, 1998 (63 FR 55015). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on January 15, 1999. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on December 1, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32473 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–13–U

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Freedom of Information Act Regulation

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: This document amends the Agency's current regulation implementing the Freedom of Information Act (FOIA) to conform with requirements made by the Electronic Freedom of Information Act (EFOIA) of 1996 as amended.

EFFECTIVE DATE: January 7, 1999.

ADDRESSES: Freedom of Information Office, United States Information Agency, Room M–29, 301 4th Street, SW, Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, Chief, FOIA/PA Unit, (202) 619–5499.

SUPPLEMENTARY INFORMATION: The United States Information Agency last published a Final Rule to revise its Freedom of Information Act (FOIA) regulations on February 8, 1994, 59 FR 5708, 22 CFR Ch. V (4–1–96 Edition). This new amendment to USIA's regulation implementing the FOIA is required by the EFOIA of 1996 as amended by Pub. L. 104–231. The amendments are made to address and explain how records of USIA will be reviewed and released when the records are maintained in electronic format. However, documentation not previously subject to the FOIA when maintained in a non-electronic format is not made subject to FOIA by this new amendment. It has been determined that this addition is not a significant regulatory action and it will not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof;

(4) Have a significant economic impact on a substantial number of small entities; or

(5) Impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 22 CFR Part 503

Freedom of information.

Accordingly, 22 CFR part 503 is amended as set forth below:

PART 503—FREEDOM OF INFORMATION ACT REGULATION

1. The authority citation for part 503 reads as follows:

Authority: 5 U.S.C. 301, 552; 13 U.S.C. 8; 22 U.S.C. 503, 2658; E.O. 10477, 18 FR 4540, 3 CFR, 1949–1953 Comp., p. 958; E.O. 10822, 24 FR 4159, 3 CFR, 1959–1963 Comp., p. 355; E.O. 12292, 46 FR 13967, 3 CFR, 1981 Comp., p. 134; E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. In § 503.1, revise the definition for "Records" in paragraph (b) to read as follows:

§ 503.1 Introduction and definitions.

* * * * *

(b) Definitions * * *

Records (and any other term used in this section in reference to information) includes any information that would be an agency record subject to the requirements of this section when maintained by the Agency in any format, including an electronic format. Records also include any handwritten, typed or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards; magnetic tapes, cards, or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures). It does not include objects or articles such as exhibits, models; equipment, and duplication machines or audiovisual processing materials. Nor does it include books, magazines, pamphlets, or other reference material in formally organized and officially designated USIA libraries, where such materials are available under the rules of the particular library.

* * * * *

3. In § 503.2, paragraph (b) is revised, the undesignated text at the end of the section is removed, and paragraph (e)(2) is revised to read as follows:

§ 503.2 Making a request.

* * * * *

(b) *Details in your letter.* Your request for documents should provide as many details as possible that will help us find the records you are requesting. If there is insufficient information, we will ask you for more. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, you may call the FOIA Office to request a copy of the Agency's booklet "Guide and Index of Records," or access the same information via the Internet on USIA's World Wide Web site (http://www.usia.gov). The more specific the request for documents, the faster the Agency will be able to respond to your request(s).

* * * * *

(e) *Responding to your request.* * * *

(2) *Furnishing records.* (i) The Agency is only required to furnish copies of records which we have or can retrieve, we are not compelled to create new records. The Agency will aid requesters by providing records and information in the form requested, including electronic format, if we can readily reproduce them in that form or format.

(ii) We may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records, in paper form or electronically, rather than copying them all. If the effort to produce records in electronic format would significantly interfere with the operations of the Agency, we will consider the effort to be an unreasonable search.

(iii) The Agency is required to furnish only one copy of a record. If we are unable to make a legible copy of a record to be released, we will not attempt to reconstruct it. Rather we will furnish the best copy possible and note its poor quality in our reply or on the copy.

(iv) If we cannot accommodate the request for form or format, we will provide responsive, nonexempt information in a reasonably accessible form.

§ 503.3 [Amended]

4. In § 503.3 revise "partial of" in the first sentence of paragraph (d) to read "partial or".

5. In § 503.4, revise paragraph (b)(1), redesignate paragraph (b)(3) as paragraph (b)(3)(i), and add paragraphs (b)(3)(ii) and (b)(3) (iii) to read as follows:

§ 503.4. Time limits.

* * * * *

(b) *Time allowed.* (1) We will decide whether to release records within 20 working days after your request reaches the appropriate area office that maintains the records you are requesting. When we decide to release records, we will actually provide the records at that time, or as soon as possible after that decision, or let you inspect them as soon as possible thereafter.

* * * * *

(3)(i) * * *

(ii) If an extra ten days still does not provide sufficient time for the Agency to deal with your request, we will inform you that the request cannot be processed within the statutory time limit and provide you with the opportunity to limit the scope of your request and/or arrange with us a negotiated deadline for processing your request.

(iii) If you refuse to reasonably limit the scope of your request or refuse to agree upon a time frame, the Agency will process your case as it would have, had no modification been sought. We will make a diligent, good-faith effort to complete our review within the statutory time frame.

6. In § 503.5, revise paragraphs (a) introductory text, (a)(4), and (c) to read as follows: § 503.5 Records available for public inspection.

(a) To the extent that they exist, we will make the following records of general interest available for you in paper form or electronically for inspection or copying:

* * * * *

(4) In addition to such records as those described in this paragraph (a), we will make available to any person a copy of all other Agency records, in the format requested, if available, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and § 503.8 and § 503.9 of this part.

* * * * *

(c) The Agency's FOIA Guide and Index will be available electronically via the Internet, or you may request a copy of it by mail.

7. In § 503.7, revise paragraphs (c)(2) and (e)(3) to read as follows;

§ 503.7 Fees.

* * * * *

(c) * * *

(2) *Computer searching and printing.* Except in unusual cases, the cost of computer time will not be a factor in calculating the two free hours of search time. In those unusual cases, where the cost of conducting a computerized search significantly detracts from the Agency's ordinary operations, no more than the dollar equivalent of two hours of manual search time shall be allowed. For searches conducted beyond the first two hours, the Agency shall only charge the direct costs of conducting such searches.

* * * * *

(e) *Waiver or reduction of fees.* * * *

(3) You must make your request for a waiver or reduction at the same time you make your request for records. Only the FOIA Officer may make the decision whether to waive or reduce the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate the appeal official.

8. In § 503.8, remove the period at the end of paragraph (d)(5)(vi) and add a semicolon in its place, and add paragraph (d)(5)(vii) to read as follows:

§ 503.8 Exemptions.

* * * * *

(d) *Exemption four—Trade secrets and confidential commercial or financial information*

* * * **

(5) *Exceptions to predisclosure notification.* * * *

(vii) We withhold the information because another statute requires its withholding.

* * * * *

Dated: December 1, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–32511 Filed 12–7–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8611]

RIN 1545–AS40

Conduit Arrangement Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 8611), which were published in the **Federal Register** on Friday, August 11, 1995 (60 FR 40997) relating to conduit financing arrangements.

DATES: This correcting amendment is effective September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Phyllis Marcus, (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under

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section 7701(l) of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8611) contain an error which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correcting Amendment to Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 1.881–3 [Corrected]

Par. 2. In § 1.881–3, paragraph (a)(2)(ii)(B)(*3*) is redesignated as paragraph (a)(3).

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–32466 Filed 12–7–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 98–0713170–8289–03]

RIN 0651–AA96

Revision of Patent Fees for Fiscal Year 1999

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent cases to reduce patent "statutory" fee amounts to conform to the fee amounts set by law in the United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999 (Pub. L. 105–358). The PTO is reducing, by a corresponding amount, a few fees that track the statutory fees. The PTO is also reducing a non-statutory fee to reflect current business practice. This final rule supersedes the final rule that was published on July 24, 1998, and corrected on September 3, 1998.

EFFECTIVE DATE: The effective date for the amendments to the fee amounts in 37 CFR 1.16, 1.17(a) through (d), (l), and (m), 1.18, 1.20, and 1.492 is the date of enactment of Pub. L. 105–358 (November 10, 1998). The effective date for the amendments to the fee amounts in 37 CFR 1.17(r) and (s), and 1.21(a)(6)(ii) is December 8, 1998.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by telephone at (703) 305–8051, by facsimile at (703) 305–8007, or by e-mail at matthew.lee@uspto.gov.

SUPPLEMENTARY INFORMATION: This final rule adjusts PTO fees in accordance with the United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999 (Pub. L. 105–358).

Background

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. The fees established under 35 U.S.C. 41(a) and (b) are referred to as the "statutory" fees. Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on an annual basis to reflect fluctuations in the Consumer Price Index (CPI). Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (amended by section 8001 of Pub. L. 103–66) provided that there would be a surcharge on all fees established under 35 U.S.C. 41(a) and (b). This surcharge provision was scheduled to expire on October 1, 1998.

Against this background, the PTO published a final rule in the **Federal Register** of July 24, 1998, that revised patent fees for fiscal year 1999 (63 FR 39731). See also 63 FR 46891 (September 3, 1998) (correcting one of the fee amounts specified in the July 24, 1998 final rule). The final rule had an effective date of October 1, 1998. The notice provided that if superseding legislation were passed, the PTO would publish a document in the **Federal Register** to ensure that the fees established under the final rule would not take effect.

Superseding legislation was passed. First, a series of continuing resolution appropriations bills were enacted that maintained PTO fee amounts at fiscal year 1998 rates from October 1, 1998, through October 21, 1998. *See* H.J. Res. 128, Pub. L. 105–240; H.J. Res. 133, Pub. L. 105–249; H.J. Res. 134, Pub. L. 105–254; H.J. Res. 135, Pub. L. 105–257; H.J. Res. 136, Pub. L. 105–260; and H.J. Res. 137, Pub. L. 105–273. In response, the PTO published a final rule in the **Federal Register** of October 1, 1998, which delayed the effective date of the July 24, 1998 final rule (63 FR 46891).

Second, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277) was signed by the President on October 21, 1998. It maintained patent fees at their September 30, 1998 (fiscal year 1998) rates through either enactment of a reauthorization statute, or if no such statute, then June 15, 1999. Thus, it also superseded the PTO's July 24, 1998 final rule.

Finally, the United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999 (Pub. L. 105–358) was signed by the President on November 10, 1998. Pub. L. 105–358 amends 35 U.S.C. 41(a) and (b) and, thus, statutorily resets 35 U.S.C. 41(a) and (b) fees. That is, the fees established under 35 U.S.C. 41(a) and (b)—which in previous years had been determined using a base amount, a surcharge amount, and cumulative CPI adjustments—are for the balance of fiscal year 1999 set at the amounts specified in Pub. L. 105–358. (In future years, these fees may be adjusted to reflect fluctuations in the CPI.)

This final rule conforms the patent fees set forth in 37 CFR 1.16, 1.17(a) through (d), (l), and (m), 1.18, 1.20, and 1.492 to the fee amounts specified in Pub. L. 105–358. Specifically, it amends the following sections to correspond to the patent fees specified in amended 35 U.S.C. 41(a):

1.16 (paragraphs (a) through (d), and (f) through (j)),
1.17 (paragraphs (a) through (d), (l) and (m)),
1.18 (paragraphs (a) through (c)), and
1.492 (paragraphs (a) through (d)).

Section 1.20 (paragraphs (d) through (g)) is amended to indicate the patent fees specified in amended 35 U.S.C. 41(b).

This final rule also adjusts two fees that track statutory fees, and one non-statutory fee. Section 1.17, paragraphs (r) and (s), is reduced to correspond to the fee provided in 35 U.S.C. 41(a)(1)(A), as amended by Pub. L. 105–358. Section 1.21(a)(6)(ii) is being reduced to reflect current business practice. The adjustment to section 1.21(a)(6)(ii) was announced in the July 24, 1998 final rule.

Pub. L. 105–358 supersedes Pub. L. 105–277. The present notice therefore supersedes any and all prior notices or corrections revising patent fees for fiscal year 1999.

A comparison of the September 30, 1998 fee amounts (i.e., the fiscal year 1998 fee amounts) and the new fee amounts for fiscal year 1999 is included as an Appendix to this final rule.

Procedures for Determining the Fee Owed During the Transition to the New Fee Schedule

With two exceptions, any fee amount that is paid on or after the effective date of the final fee adjustment would be subject to the new fees then in effect. As will be further explained below, the two exceptions are the filing fee required for a patent application filed under 35 U.S.C. 111 and the national fee for an application entering the national stage under 35 U.S.C. 371.

If a Certificate of Mailing or Transmission was used, and was proper under § 1.8(a)(1), the fee required is the lower of:

(1) The fee in effect on the date the PTO receives the fee; or

(2) The fee in effect on the date of mailing indicated on a proper Certificate of Mailing or Transmission under § 1.8(a)(1).

Items for which a Certificate of Mailing or Transmission under § 1.8(a)(1) is not proper to include, for example, Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Under § 1.10(a), any correspondence delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) is considered filed or received in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

a. The Filing Fee for Applications Filed Under 35 U.S.C. 111 and 37 CFR 1.53

35 U.S.C. 111 provides for the filing of a patent application with the PTO. If the filing fee for an application filed under 35 U.S.C. 111 is received when the application is filed, the filing fee required is the filing fee in effect on the filing date assigned the application. If the PTO receives the filing fee on a date later than the filing date assigned the application, the filing fee required is the higher of:

(1) The filing fee in effect on the filing date assigned the application; or

(2) The filing fee in effect on the date the PTO receives the filing fee.

The filing fee includes the basic fee, excess claims fees (if any), and the multiple dependent claim fee (if any), for claims present on filing (unless the excess or multiple dependent claims are canceled before the filing fee is paid). Of course, if the basic filing fee is received on a date later than the filing date assigned the application filed under 35 U.S.C. 111, a surcharge as set forth in § 1.16(e) is also required.

b. The Fees for International Applications Entering the National Stage Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495

35 U.S.C. 371 provides for the national stage filing of a patent application under the Patent Cooperation Treaty. The basic national fee for an international application entering the national stage is due not later than the expiration of 20 months from the priority date in the international application (or 30 months from the priority date if the United States was elected prior to the expiration of 19 months from the priority date). The amount of the basic national fee that is required to be paid is the basic national fee in effect on the date the full fee is received.

The excess claim fees or the multiple dependent claim fee is the higher of:

(1) The excess claims fees and the multiple dependent claim fee in effect on the date the PTO receives the basic national fee; or

(2) The excess claims fees and the multiple dependent claim fee in effect on the date the PTO receives (any of) these fees.

In this respect, the practice for determining the fees due for excess claims and any multiple dependent claim when entering into the national stage is analogous to the practice for applications filed under 35 U.S.C. 111.

Fees for claims which are added after entry into the national stage are determined by the fees in effect (for excess claims and multiple dependent claim) on the date the PTO receives the fee(s).

Other Considerations

This final rule contains no information collection within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be significant for purposes of Executive Order 12866.

This final rule conforms the patent fees indicated in Part 1 of title 37, Code of Federal Regulations, to the patent fee amounts set by law. Therefore, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), and 30-day prior publication in the **Federal Register** and the Official Gazette of the Patent and Trademark Office is not required pursuant to 35 U.S.C. 41(f). As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a) through (d), and (f) through (j), to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design or plant applications:

By a small entity (§ 1.9(f))—$380.00
By other than a small entity—$760.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f))—$39.00
By other than a small entity—$78.00

(c) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each claim in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes.):

By a small entity (§ 1.9(f))—$9.00
By other than a small entity—$18.00

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f))—$130.00
By other than a small entity—$260.00

* * * * *

(f) Basic fee for filing each design application:

By a small entity (§ 1.9(f))—$155.00
By other than a small entity—$310.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.9(f))—$240.00
By other than a small entity—$480.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.9(f))—$380.00
By other than a small entity—$760.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number

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of independent claims in the original patent:

By a small entity (§ 1.9(f))—$39.00
By other than a small entity—$78.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes.):

By a small entity (§ 1.9(f))—$9.00
By other than a small entity—$18.00

* * * * *

3. Section 1.17 is amended by revising paragraphs (a)(1) through (5), (b) through (d), (l), (m), (r), and (s), to read as follows:

§ 1.17 Patent application processing fees.

(a) * * *

(1) For reply within first month:

By a small entity (§ 1.9(f))—$55.00
By other than a small entity—$110.00

(2) For reply within second month:

By a small entity (§ 1.9(f))—$190.00
By other than a small entity—$380.00

(3) For reply within third month:

By a small entity (§ 1.9(f))—$435.00
By other than a small entity—$870.00

(4) For reply within fourth month:

By a small entity (§ 1.9(f))—$680.00
By other than a small entity—$1,360.00

(5) For reply within fifth month:

By a small entity (§ 1.9(f))—$925.00
By other than a small entity—$1,850.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f))—$150.00
By other than a small entity—$300.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.9 (f))—$150.00
By other than a small entity—$300.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f))—$130.00
By other than a small entity—$260.00

* * * * *

(l) For filing a petition:

(1) For the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, or

(2) For delayed payment of the issue fee under 35 U.S.C. 151 (§ 1.137(a)):

By a small entity (§ 1.9(f))—$55.00
By other than a small entity—$110.00

(m) For filing a petition:

(1) For revival of an unintentionally abandoned application, or

(2) For the unintentionally delayed payment of the fee for issuing a patent (§ 1.137(b)):

By a small entity (§ 1.9(f))—$605.00
By other than a small entity—$1,210.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.9(f))—$380.00
By other than a small entity—$760.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.9(f))—$380.00
By other than a small entity—$760.00

4. Section 1.18 is revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.9(f))—$605.00
By other than a small entity—$1,210.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.9(f))—$215.00
By other than a small entity—$430.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f))—$290.00
By other than a small entity—$580.00

5. Section 1.20 is amended by revising paragraphs (d) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.9(f))—$55.00
By other than a small entity—$110.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.9(f))—$470.00
By other than a small entity—$940.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.9(f))—$950.00
By other than a small entity—$1,900.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.9(f))—$1,455.00
By other than a small entity—$2,910.00

* * * * *

6. Section 1.21 is amended by revising paragraph (a)(6)(ii) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *

(6) * * *

(ii) Regrading of afternoon section (Claim Drafting)—$230.00

* * * * *

7. Section 1.492 is amended by revising paragraphs (a) through (d), to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f))—$335.00
By other than a small entity—$670.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.9(f))—$380.00
By other than a small entity—$760.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f))—$485.00
By other than a small entity—$970.00

(4) Where an international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):

By a small entity (§ 1.9(f))—$48.00
By other than a small entity—$96.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.9(f))—$420.00
By other than a small entity—$840.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f))—$39.00
By other than a small entity—$78.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.9(f))—$9.00
By other than a small entity—$18.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f))—$130.00
By other than a small entity—$260.00

* * * * *

Dated: December 2, 1998.

Q. Todd Dickinson,

Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks.

Note: The following appendix is provided as a courtesy to the public, but is not a substitute for the rules. It will not appear in the Code of Federal Regulations.

APPENDIX A.—COMPARISON OF PRIOR AND NEW REDUCED FEE AMOUNTS

37 CFR Sec.	Description	Indicates fees remain at FY 1998 amount	
		FY 1998	FY 1999
1.16(a)	Basic Filing Fee	$790	$760
1.16(a)	Basic Filing Fee (Small Entity)	395	380
1.16(b)	Independent Claims	82	78
1.16(b)	Independent Claims (Small Entity)	41	39
1.16(c)	Claims in Excess of 20	22	18
1.16(c)	Claims in Excess of 20 (Small Entity)	11	9
1.16(d)	Multiple Dependent Claims	270	260
1.16(d)	Multiple Dependent Claims (Small Entity)	135	130
1.16(e)	Surcharge—Late Filing Fee	130	
1.16(e)	Surcharge—Late Filing Fee (Small Entity)	65	
1.16(f)	Design Filing Fee	330	310
1.16(f)	Design Filing Fee (Small Entity)	165	155
1.16(g)	Plant Filing Fee	540	480
1.16(g)	Plant Filing Fee (Small Entity)	270	240
1.16(h)	Reissue Filing Fee	790	760
1.16(h)	Reissue Filing Fee (Small Entity)	395	380
1.16(i)	Reissue Independent Claims	82	78
1.16(i)	Reissue Independent Claims (Small Entity)	41	39
1.16(j)	Reissue Claims in Excess of 20	22	18
1.16(j)	Reissue Claims in Excess of 20 (Small Entity)	11	9
1.16(k)	Provisional Application Filing Fee	150	
1.16(k)	Provisional Application Filing Fee (Small Entity)	75	
1.16(l)	Surcharge—Incomplete Provisional App. Filed	50	
1.16(l)	Surcharge—Incomplete Provisional App. Filed (Small Entity)	25	
1.17(a)(1)	Extension—First Month	110	
1.17(a)(1)	Extension—First Month (Small Entity)	55	
1.17(a)(2)	Extension—Second Month	400	380
1.17(a)(2)	Extension—Second Month (Small Entity)	200	190
1.17(a)(3)	Extension—Third Month	950	870
1.17(a)(3)	Extension—Third Month (Small Entity)	475	435
1.17(a)(4)	Extension—Fourth Month	1,510	1,360
1.17(a)(4)	Extension—Fourth Month (Small Entity)	755	680
1.17(a)(5)	Extension—Fifth Month	2,060	1,850
1.17(a)(5)	Extension—Fifth Month (Small Entity)	1,030	925
1.17(b)	Notice of Appeal	310	300
1.17(b)	Notice of Appeal (Small Entity)	155	150
1.17(c)	Filing a Brief	310	300
1.17(c)	Filing a Brief (Small Entity)	155	150
1.17(d)	Request for Oral Hearing	270	260
1.17(d)	Request for Oral Hearing (Small Entity)	135	130
1.17(h)	Petition—Not All Inventors	130	
1.17(h)	Petition—Correction of Inventorship	130	
1.17(h)	Petition—Decision on Questions	130	
1.17(h)	Petition—Suspend Rules	130	
1.17(h)	Petition—Expedited License	130	
1.17(h)	Petition—Scope of License	130	
1.17(h)	Petition—Retroactive License	130	
1.17(h)	Petition—Refusing Maintenance Fee	130	
1.17(h)	Petition—Refusing Maintenance Fee—Expired Patent	130	
1.17(h)	Petition—Interference	130	
1.17(h)	Petition—Reconsider Interference	130	
1.17(h)	Petition—Late Filing of Interference	130	
1.20(b)	Petition—Correction of Inventorship	130	
1.17(h)	Petition—Refusal to Publish SIR	130	
1.17(i)	Petition—For Assignment	130	
1.17(i)	Petition—For Application	130	

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APPENDIX A—COMPARISON OF PRIOR AND NEW REDUCED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Indicates fees remain at FY 1998 amount	
		FY 1998	FY 1999
1.17(i)	Petition—Late Priority Papers	130	
1.17(i)	Petition—Suspend Action	130	
1.17(i)	Petition—Divisional Reissues to Issue Separately	130	
1.17(i)	Petition—For Interference Agreement	130	
1.17(i)	Petition—Amendment After Issue	130	
1.17(i)	Petition—Withdrawal After Issue	130	
1.17(i)	Petition—Defer Issue	130	
1.17(i)	Petition—Issue to Assignee	130	
1.17(i)	Petition—Accord a Filing Date Under § 1.53	130	
1.17(i)	Petition—Accord a Filing Date Under § 1.62	130	
1.17(i)	Petition—Make Application Special	130	
1.17(j)	Petition—Public Use Proceeding	1,510	
1.17(k)	Non-English Specification	130	
1.17(l)	Petition—Revive Abandoned Appl	110	
1.17(l)	Petition—Revive Abandoned Appl. (Small Entity)	55	
1.17(m)	Petition—Revive Unintentionally Abandoned Appl	1,320	1,210
1.17(m)	Petition—Revive Unintent Abandoned Appl. (Small Entity)	660	605
1.17(n)	SIR—Prior to Examiner's Action	920	
1.17(o)	SIR—After Examiner's Action	1,840	
1.17(p)	Submission of an Information Disclosure Statement (§ 1.97)	240	
1.17(q)	Petition—Correction of Inventorship (Prov. App.)	50	
1.17(q)	Petition—Accord a filing date (Prov. App.)	50	
1.17(q)	Petition—Entry of submission after final rejection (Prov. App.)	50	
1.17(r)	Filing a submission after final rejection (1.129(a))	790	760
1.17(r)	Filing a submission after final rejection (1.129(a)) (Small Entity)	395	380
1.17(s)	Per add'l invention to be examined (1.129(b))	790	760
1.17(s)	Per add'l invention to be examined (1.129(b)) (Small Entity)	395	380
1.18(a)	Issue Fee	1,320	1,210
1.18(a)	Issue Fee (Small Entity)	660	605
1.18(b)	Design Issue Fee	450	430
1.18(b)	Design Issue Fee (Small Entity)	225	215
1.18(c)	Plant Issue Fee	670	580
1.18(c)	Plant Issue Fee (Small Entity)	335	290
1.19(a)(1)(i)	Copy of Patent	3	
1.19(a)(1)(ii)	Patent Copy—Overnight delivery to PTO Box or overnight fax	6	
1.19(a)(1)(iii)	Patent Copy Ordered by Expedited Mail or Fax—Exp. service	25	
1.19(a)(2)	Plant Patent Copy	15	
1.19(a)(3)(i)	Copy of Utility Patent or SIR in Color	25	
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed	15	
1.19(b)(1)(ii)	Certified Copy of Patent Application as Filed, Expedited	30	
1.19(b)(2)	Cert or Uncert Copy of Patent-Related File Wrapper/Contents	150	
1.19(b)(3)	Cert. or Uncert. Copies of Office Records, per Document	25	
1.19(b)(4)	For Assignment Records, Abstract of Title and Certification	25	
1.19(c)	Library Service	50	
1.19(d)	List of Patents in Subclass	3	
1.19(e)	Uncertified Statement-Status of Maintenance Fee Payment	10	
1.19(f)	Copy of Non-U.S. Patent Document	25	
1.19(g)	Comparing and Certifying Copies, Per Document, Per Copy	25	
1.19(h)	Duplicate or Corrected Filing Receipt	25	
1.20(a)	Certificate of Correction	100	
1.20(c)	Reexamination	2,520	
1.20(d)	Statutory Disclaimer	110	
1.20(d)	Statutory Disclaimer (Small Entity)	55	
1.20(e)	Maintenance Fee—3.5 Years	1,050	940
1.20(e)	Maintenance Fee—3.5 Years (Small Entity)	525	470
1.20(f)	Maintenance Fee—7.5 Years	2,100	1,900
1.20(f)	Maintenance Fee—7.5 Years (Small Entity)	1,050	950
1.20(g)	Maintenance Fee—11.5 Years	3,160	2,910
1.20(g)	Maintenance Fee—11.5 Years (Small Entity)	1,580	1,455
1.20(h)	Surcharge—Maintenance Fee—6 Months	130	
1.20(h)	Surcharge—Maintenance Fee—6 Months (Small Entity	65	
1.20(i)(1)	Surcharge—Maintenance After Expiration—Unavoidable	700	
1.20(i)(2)	Surcharge—Maintenance After Expiration—Unintentional	1,640	
1.20(j)(1)	Extension of Term of Patent Under 1.740	1,120	
1.20(j)(2)	Initial Application for Interim Extension Under 1.790	420	
1.20(j)(3)	Subsequent Application for Interim Extension Under 1.790	220	
1.21(a)(1)(i)	Application Fee (non-refundable)	40	
1.21(a)(1)(ii)	Registration examination fee	310	
1.21(a)(2)	Registration to Practice	100	

APPENDIX A.—COMPARISON OF PRIOR AND NEW REDUCED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Indicates fees remain at FY 1998 amount	
		FY 1998	FY 1999
1.21(a)(3)	Reinstatement to Practice	40	
1.21(a)(4)	Certificate of Good Standing	10	
1.21(a)(4)	Certificate of Good Standing, Suitable Framing	20	
1.21(a)(5)	Review of Decision of Director, OED	130	
1.21(a)(6)(i)	Regrading of A.M. section (PTO Practice and Procedure	230	
1.21(a)(6)(ii)	Regrading of P.M. section (Claim Drafting)	540	230
1.21(b)(1)	Establish Deposit Account	10	
1.21(b)(2)	Service Charge Below Minimum Balance	$25	
1.21(b)(3)	Service Charge Below Minimum Balance	25	
1.21(c)	Filing a Disclosure Document	10	
1.21(d)	Box Rental	50	
1.21(e)	International Type Search Report	40	
1.21(g)	Self-Service Copy Charge	.25	
1.21(h)	Recording Patent Property	40	
1.21(i)	Publication in the OG	25	
1.21(j)	Labor Charges for Services	40	
1.21(k)	Unspecified Other Services	(1)	
1.21(k)	Terminal Use APS–CSIR (per hour)	50	
1.21(l)	Retaining abandoned application	130	
1.21(m)	Processing Returned Checks	50	
1.21(n)	Handling Fee—Incomplete Application	130	
1.21(o)	Terminal Use APS–TEXT	40	
1.24	Coupons for Patent and Trademark Copies	3	
1.296	Handling Fee—Withdrawal SIR	130	
1.445(a)(1)	Transmittal Fee	240	
1.445(a)(2)(i)	PCT Search Fee—Prior U.S. Application	450	
1.445(a)(2)(ii)	PCT Search Fee—No U.S. Application	700	
1.445(a)(3)	Supplemental Search	210	
1.482(a)(1)(i)	Preliminary Exam Fee	490	
1.482(a)(1)(ii)	Preliminary Exam Fee	750	
1.482(a)(2)(i)	Additional Invention	140	
1.482(a)(2)(ii)	Additional Invention	270	
1.492(a)(1)	Preliminary Examining Authority	720	670
1.492(a)(1)	Preliminary Examining Authority (Small Entity)	360	335
1.492(a)(2)	Searching Authority	790	760
1.492(a)(2)	Searching Authority (Small Entity)	395	380
1.492(a)(3)	PTO Not ISA nor IPEA	1,070	970
1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	535	485
1.492(a)(4)	Claims—IPEA	98	96
1.492(a)(4)	Claims—IPEA (Small Entity)	49	48
1.492(a)(5)	Filing with EPO/JPO Search Report	930	840
1.492(a)(5)	Filing with EPO/JPO Search Report (Small Entity)	465	420
1.492(b)	Claims—Extra Individual (Over 3)	82	78
1.492(b)	Claims—Extra Individual (Over 3) (Small Entity)	41	39
1.492(c)	Claims—Extra Total (Over 20)	22	18
1.492(c)	Claims—Extra Total (Over 20) (Small Entity)	11	9
1.492(d)	Claims—Multiple Dependents	270	260
1.492(d)	Claims—Multiple Dependents (Small Entity)	135	130
1.492(e)	Surcharge	130	
1.492(e)	Surcharge (Small Entity)	65	
1.492(f)	English Translation—After 20 Months	130	
2.6(a)(1)	Application for Registration, Per Class	245	
2.6(a)(2)	Amendment to Allege Use, Per Class	100	
2.6(a)(3)	Statement of Use, Per Class	100	
2.6(a)(4)	Extension for Filing Statement of Use, Per Class	100	
2.6(a)(5)	Application for Renewal, Per Class	300	
2.6(a)(6)	Surcharge for Late Renewal, Per Class	100	
2.6(a)(7)	Publication of Mark Under § 12(c), Per Class	100	
2.6(a)(8)	Issuing New Certificate of Registration	100	
2.6(a)(9)	Certificate of Correction of Registrant's Error	100	
2.6(a)(10)	Filing Disclaimer to Registration	100	
2.6(a)(11)	Filing Amendment to Registration	100	
2.6(a)(12)	Filing Affidavit Under Section 8, Per Class	100	
2.6(a)(13)	Filing Affidavit Under Section 15, Per Class	100	
2.6(a)(14)	Filing Affidavit Under Sections 8 & 15, Per Class	200	
2.6(a)(15)	Petitions to the Commissioner	100	
2.6(a)(16)	Petition to Cancel, Per Class	200	
2.6(a)(17)	Notice of Opposition, Per Class	200	
2.6(a)(18)	Ex Parte Appeal to the TTAB, Per Class	100	

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APPENDIX A.—COMPARISON OF PRIOR AND NEW REDUCED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Indicates fees remain at FY 1998 amount	
		FY 1998	FY 1999
2.6(a)(19)	Dividing an Application, Per New Application Created	100	
2.6(b)(1)(i)	Copy of Registered Mark	3	
2.6(b)(1)(ii)	Copy of Registered Mark, overnight delivery to PTO box or fax	6	
2.6(b)(1)(ii)	Copy of Reg. Mark Ordered Via Exp. Mail or Fax, Exp. Svc.	25	
2.6(b)(2)(i)	Certified Copy of TM Application as Filed	15	
2.6(b)(2)(ii)	Certified Copy of TM Application as Filed, Expedited	30	
2.6(b)(3)	Cert. or Uncert. Copy of TM-Related File Wrapper/Contents	50	
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status	15	
2.6(b)(4)(ii)	Cert. Copy of Registered Mark, Title or Status—Expedited	30	
2.6(b)(5)	Certified or Uncertified Copy of TM Records	25	
2.6(b)(6)	Recording Trademark Property, Per Mark, Per Document	40	
2.6(b)(6)	For Second and Subsequent Marks in Same Document	25	
2.6(b)(7)	For Assignment Records, Abstracts of Title and Cert.	25	
2.6(b)(8)	Terminal Use X–SEARCH	40	
2.6(b)(9)	Self-Service Copy Charge	0.25	
2.6(b)(10)	Labor Charges for Services	40	
2.6(b)(11)	Unspecified Other Services	([1])	

[1] Actual cost

[FR Doc. 98–32518 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–21–1; SC–23–1–9832a; FRL–6197–6]

Approval and Promulgation of Implementation Plans; South Carolina: Approval of Revisions to the South Carolina SIP Regarding Volatile Organic Compounds (VOC) Definition Adoptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the South Carolina State Implementation Plan (SIP) which were submitted to EPA by South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC), on June 6, 1989, and September 27, 1990. The EPA is approving the revisions and adoptions of general definitions to the South Carolina regulation 62.1 Definitions, Permit Requirements, and Emission Inventory.

DATES: This final rule is effective February 8, 1999 unless adverse or critical comments are received by January 7, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Randy B. Terry at the Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference South Carolina files 21–1, and 23–1. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

South Carolina Department of Health and Environmental Control 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at (404) 562–9032.

SUPPLEMENTARY INFORMATION: On June 6, 1989 and September 27, 1990, the State of South Carolina submitted revisions to the South Carolina SIP. The revisions include modifications to existing definitions and additions of new definitions. EPA is approving the revisions described herein as listed in regulation 62.1 Definitions, Permit Requirements and Emission Inventory.

South Carolina adopted these revisions into the South Carolina State Implementation Plan to adequately define words that are used throughout the SIP. EPA is approving the following new definitions because they are consistent with EPA requirements:

- Afterburner.
- Air curtain incinerator.
- Boiler.
- Chemotherapeutic waste.
- "Continuous program of physical on-site construction."
- Crematory incinerator.
- Hazardous waste.
- Hazardous waste fuel.
- Hazardous waste incinerator.
- Industrial boiler.
- Industrial furnace.
- Industrial incinerator.
- "In existence."
- Infectious waste.
- Medical waste.
- Medical waste incinerator.
- Medical waste incinerator facility.
- Multiple-chamber incinerator.
- Municipal incinerator.
- Municipal waste.
- Non-industrial boiler.
- Non-industrial furnace.
- Non-spec oil.
- Retail business type incinerator.
- Sludge incinerator.
- Substantial loss.
- Used oil.
- Utility boiler.
- Virgin fuel.
- Waste.
- Waste fuel.

South Carolina amended their state definition for incinerator to be more consistent with the EPA requirements.

Final Action

The EPA is approving the aforementioned revisions contained in the State's June 6, 1989 and September

27, 1990, submittals because they are compatible with the requirements set forth in the Clean Air Act amendments of 1990.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 8, 1999 unless, by January 7, 1999, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 8, 1999.

Nothing in this action should be construed as making any determination or expressing any position regarding South Carolina's audit privilege and penalty immunity law S.C. code ann. 4587–57–10 *et. seq.* (Supp. 1996) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of South Carolina's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review".

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995

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("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 23, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. In Section 52.2120, the entry for Regulation number 62.1 Section I Definitions in the "EPA Approved South Carolina Regulations" table in paragraph (c) is revised to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) EPA approved regulations.

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal register notice
Regulation No. 62.1	Definitions, Permits Requirements, and Emissions Inventory			
*	*	*	*	*
Section I	Definitions	5/25/90	2/8/99	

* * * * *

[FR Doc. 98–32341 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–102–106–9903a; FRL–6192–1]

Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC), submitted to EPA on February 3, 1998, revisions to the Kentucky State Implementation Plan (SIP) adding Stage II controls at certain gasoline dispensing facilities. Subsequently, on September 11, 1998, the Commonwealth submitted the 15 Percent Volatile Organic Compound (VOC) Reduction Plan (15 Percent Plan) and the Vehicle Inspection and Maintenance (I/M) program.

EPA is approving the Kentucky 15 Percent Plan, the I/M program and the 1990 baseline emissions inventory. The adoption of a 15 Percent Plan, an I/M program, and a baseline emissions inventory are required by the 1990 Clean Air Act Amendments for the Northern Kentucky Counties of Boone, Campbell, and Kenton which are a part of the Cincinnati-Hamilton moderate nonattainment area for the one-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, in this document, EPA is approving the revisions to the Kentucky SIP for the implementation of the rule regarding Stage II control at gasoline dispensing facilities and revisions to the existing open burning rule which provide a portion of the VOC emission reductions included in the 15 Percent Plan.

DATES: This direct final rule is effective on February 8, 1999 without further notice, unless EPA receives adverse comments by January 7, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Randy Terry at the Environmental Protection Agency, Region 4, Air Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY–102–106–9903. The Region 4 Office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Pesticides & Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Randy Terry at 404/562–9032, or Karla McCorkle at 404/562–9043. For additional information concerning the Inspection/Maintenance Program contact Dale Aspy at 404/562–9041.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act as amended in 1990 (CAA) includes new requirements for the improvement of air quality in nonattainment areas for the ozone NAAQS. Under section 181(a) of the CAA, nonattainment areas were categorized by the severity of the area's ozone problem, and progressively more stringent control measures were required for each category of higher ozone concentrations. The EPA, in response to requirements of the CAA, designated the Cincinnati area as a moderate interstate ozone nonattainment area. This designation includes the Northern Kentucky Counties of Boone, Campbell, and Kenton and the Ohio Counties of Hamilton, Warren, Butler, and Clermont. The basis for classifying an area in a specific category was the ambient air quality data obtained in the three year period 1987–1989. The CAA requires states to submit revisions to the SIP that include a plan for reducing emissions of VOCs by 15 percent from the 1990 Adjusted Base Year Emissions Inventory. The 15 Percent Plan was required by the CAA to be effective for the 1996 ozone season (April 1 through October 30). The CAA delineates in section 182 the SIP requirements for ozone nonattainment areas based on their classifications.

Kentucky submitted a plan in November 1993, to achieve the 15 percent emission reduction and subsequently revised and resubmitted the plan in March 1994. By the end of the 1994 ozone season, air quality monitoring data for the entire Cincinnati area showed attainment of the NAAQS for ozone and both Ohio and Kentucky requested redesignation of the respective portions of the area to attainment. On February 22, 1995, EPA Region 4 responded to an inquiry from Kentucky, and stated that if an area had reached attainment without the implementation of the emission reduction programs outlined in the proposed 15 percent emission reduction program, then those programs need not be implemented unless necessary to offset growth of emissions in future years. On June 29, 1995, in a letter signed by the Secretary of the KNREPC, the Commonwealth requested that EPA take no further action on Kentucky's proposed 15 Percent Plan for Northern Kentucky. A subsequent violation of the NAAQS for ozone in 1995 in the nonattainment area prompted the EPA to deny Kentucky's request to redesignate the area to attainment, thereby making the 15 Percent Plan again an applicable requirement for the area. On September 11, 1998, the KNREPC submitted a revision to the Kentucky SIP for reducing the emissions of VOCs by 15 percent in the Northern Kentucky portion of the Cincinnati-Hamilton area.

The CAA also included limitations on the credibility of certain types of reductions. Specifically, a state cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures promulgated prior to 1990, or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990 or required under section 211(h) of the CAA. Furthermore, the CAA does not allow credit for corrections to motor vehicle I/M Programs or Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

1990 Baseline Emissions Inventory

In this action, the EPA is approving the 1990 baseline emissions inventory for the Northern Kentucky portion of the Cincinnati-Hamilton ozone nonattainment area. This inventory satisfies the requirements of section 182(a)(1) of the CAA. Detailed information on the emissions calculations can be obtained at the Regional Office address above. The following table is a summary of the baseline emissions inventory.

CINCINNATI 1990 BASELINE EMISSIONS INVENTORY

(Tons/day)

Source category	1990 emissions (tons per day)	Percent of total VOC emissions
Point Sources	3.90	5.57
Area Sources	13.20	18.86
Mobile Sources	17.54	25.06
Non-Highway Mobile sources	8.60	12.29
Biogenic Emissions	26.75	38.22
Total	69.99	100.0

The adjusted base year inventory requires exclusion of emission reductions that would occur by 1996 as a result of the FMVCP and the RVP promulgated prior to 1990. The following table is a summary of the adjusted base year inventory.

CINCINNATI 1990 ADJUSTED BASELINE INVENTORY

(Tons/day)

Source category	1990 base year emissions (TPD)	1990 adjusted emissions (TPD)
Point Sources	3.90	3.9
Area Sources	13.20	12.6
Mobile Sources	17.54	13.9
Non-Highway Mobile sources	8.60	8.6
Total	43.24	39.0

1990 Rate-of-Progress Inventory

The Rate-of-Progress Inventory is comprised of the anthropogenic stationary (point and area) and mobile sources in the nonattainment area with all biogenic emissions removed from the baseline inventory. The following table is a summary of the Rate-of-Progress baseline inventory.

CINCINNATI 1990 RATE-OF-PROGRESS BASELINE
(Tons/day)

Source category	1990 emissions (tons per day)	Percent of total VOC emissions
Point Sources	3.90	9.0
Area Sources	13.20	30.5
Mobile Sources	17.54	40.6
Non-Highway Mobile sources	8.60	19.8
Total	43.24	100 0

15 Percent Plan

The Commonwealth of Kentucky submitted a 15 Percent Plan for the Northern Kentucky portion of the nonattainment area on September 11, 1998. This submittal is required in section 182(b)(2) in order to demonstrate reasonable further progress toward attainment of the NAAQS for ozone. The CAA required moderate ozone nonattainment areas to submit a plan by November 15, 1993, and to attain the ozone NAAQS by 1999. In order to demonstrate progress, the area must achieve actual VOC emission reductions of at least 15 percent from the baseline and account for growth during the first six years after enactment of the CAA. The 15 percent reduction must be based on a decrease from the 1990 baseline emissions, excluding emissions from other reductions programs and emission sources outside the nonattainment area.

Creditable 15% Reduction

The adjusted base year inventory of 39.0 tons/day is multiplied by 0.15 to calculate the creditable 15 percent reduction in tons/day. Kentucky needs a reduction of 5.85 tons/day to obtain the creditable 15 percent reduction.

Total Expected Reductions by 1999

The total expected reductions by 1999 include the required 15 percent (5.85 tons/day), the reductions from FMCVP and RVP (3.65 tons/day), and the reductions from the I/M program (0.55 tons/day). Kentucky expects to have a total of 10.05 tons/day of reductions by 1999.

Target Level Emissions for 1999

To calculate the 1999 target emissions level, the total expected reductions (10.05 tons/day) are subtracted from the 1990 Rate-of-Progress baseline inventory (43.24 tons/day) for the Cincinnati nonattainment area. The resulting 1999 target level emissions are 33.19 tons/day.

Reductions Needed by 1999 to Achieve 15 Percent Emission Reduction Accounting for Growth

The reductions needed to achieve 15 percent net growth are determined by subtracting the target level emissions (33.19 tons/day) from the 1999 estimated emissions (41.53 tons/day) giving a total of 8.34 tons/day in additional reductions needed.

Reductions Required by 1999

In order to meet the target level required for 1999, Kentucky must reduce VOC emissions by an additional 8.34 tons/day. The 1990 Rate-of-Progress Baseline Inventory is the base inventory from which the 15 percent reduction on existing sources and the reduction from growth by 1999 must be calculated to meet requirements of the CAA.

The following is a summary of the reductions Kentucky will obtain to meet this requirement and the projected emissions for 1999. The projected emissions for 1999 have been calculated by applying the control measures discussed below to the 1999 estimated emissions. More detailed information can be found in the Technical Support Document (TSD) located at the Regional EPA address listed above.

ANTICIPATED EMISSIONS AFTER PLAN IMPLEMENTATION

Source category	1999 projected emissions	Anticipated emissions after plan	Tons reduced
Point Sources	3.28	3.09	0.19
Area Sources	13.62	11.13	2.49
Mobile Sources	15.25	9.94	5.31
Non-Highway Mobile Sources	9.38	9.17	0.21
Total	41.53	33.33	8.20

The 1999 Target Level Emissions are 33.19 tons/day. The 1999 Projected Emissions after plan implementation are 33.33 tons/day, which provides a 15 percent emission reduction.

Control Strategies

Point Source Control Measures

Point Source Rule Effectiveness Improvements

Kentucky documented that creditable reductions of VOC emissions have occurred since 1990 due to facilities that improved technology and ceased operation. Additionally, the Cabinet implemented a program to increase the rule effectiveness of emission controls at facilities within this region from the default 80 to 95 percent. This program increased frequency of inspections at point source facilities to improve the existing emission controls. The increased inspections are expected to account for a 0.19 tons/day reduction from point sources. The projected inventory for 1999 shows emissions of 3.28 tons/day. Documentation of these projected emission reductions are included in the Technical Support Document (TSD).

Area Source Control Measures

Stage I Vapor Control—Increased Rule Effectiveness

Kentucky implemented a program to increase the rule effectiveness of the Stage I gasoline vapor control program. This program increased the frequency of inspections at gasoline facilities to guarantee that State I vapor controls work properly. The program is projected to increase the rule effectiveness of Stage I controls from the default 80 to 95 percent, and create an emissions reduction of 0.57 tons/day. Documentation of how the projected emission reductions were calculated is included in the TSD.

Architectural Coatings, Traffic Paints, Auto Body Refinishing, and Commercial/Consumer Products

The EPA has determined that implemented or forthcoming federal guidance or regulation will reduce the amount of VOC emissions from Architectural and Industrial Maintenance Coatings, Auto Body Refinishing, and Commercial Consumer

Products. Credit for these reductions can be utilized by state and local agencies in developing plans to achieve the 15 percent VOC emission reduction. The amount of reduction which can be assumed in the plan is 20 percent for application of architectural coatings, 27 percent from auto body refinishing, and 20 percent from Consumer Commercial Products. The emission reduction from these area source programs will result in 1.59 tons/day reduction. The guidance and equations used in these reductions calculations are included in the TSD.

Open Burning

On February 3, 1998, the KNREPC, submitted revisions to rule 401 KAR 63:005 Open burning for adoption into the Kentucky SIP.

Section 1–2—The order of Section 1 Applicability and Section 2 Definitions was changed to Section 1 Definitions and Section 2 Applicability.

Section 1—A reference to 401 KAR 63:001 for terms not defined in this section was added.

Section 1(3)—The definition of "Open burning" was amended for clarity to include the burning of any matter without an approved burn chamber with a stack or chimney and approved control devices as open burning.

Section 1(4)—The definition of "Priority I Region" was added for region classification according to Priority I in 401 KAR 50:020 Appendix A.

Section 2—A statement was added that applies to all open burning that is not subject to another regulation in 401 KAR Chapters 50 and 65.

Section 3—Various word structure changes were made to add clarity.

Section 4—The revised restrictions for the three Northern Kentucky counties exceed those that apply to the remainder of the Commonwealth, and will be in effect from May through September on an annual basis. Previously allowed activities which these amendments will prohibit during the specified time period include:

- Fires set for cooking of food for human consumption,
- Fires set for prevention of fire hazard, including disposal of dangerous materials if there is no safe alternative,
- Fires set for instruction and training in the methods of fire fighting,
- Fires set for recognized agricultural, silvicultural, range, and wildlife management,
- Fires set to dispose of accidental spills and the disposal of absorbent material used in their removal, and
- Fires set for recreational and ceremonial purposes.

The restriction of burning activities in ozone nonattainment areas and ozone maintenance areas during the peak ozone season will result in a reduction of volatile organic compound emissions. The emission reduction credit taken for these rule modifications was 0.90 tons per day. Emissions calculations for this reduction are included in the TSD.

Mobile Sources

Inspection/Maintenance (I/M) Program

Background

The CAA requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(b)(4) of the CAA requires moderate ozone nonattainment areas to develop and implement a basic I/M program. Additionally, section 182(a)(2)(B) of the CAA directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373).

The I/M regulation establishes minimum performance standards for I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the CAA.

On September 11, 1998, the Commonwealth of Kentucky submitted to EPA a basic I/M program for incorporation into the SIP. The program meets the requirements of EPA's rule for a basic I/M program. The basic components of the Kentucky I/M program are listed below.

- Idle test for all vehicles.
- Anti-tampering/anti-misfueling checks on all 1975 and newer vehicles.
- Registration denial for vehicles that do not comply with program requirements.
- Training program for mechanics servicing vehicles in the area.
- Pressure check on 1981 and newer vehicles.
- Opacity check for diesel vehicles.

The full description of the Kentucky I/M program can be found in rule 401 KAR 65:010 of the Kentucky SIP and in Appendix K of the Kentucky 15 percent plan submittal.

Reformulated Gasoline (RFG)

Kentucky requested to opt-in to the federal RFG program in moderate ozone nonattainment areas within Kentucky beginning in 1995. This program included the three northern Kentucky Counties of Boone, Campbell, and Kenton. In addition, Kentucky has opted to remain in the federal RFG program for this area as it goes into phase II in 2000, which will provide additional VOC reductions.

Stage II

On February 3, 1998, Kentucky, submitted rule 401 KAR 59:174 Stage II Controls at Gasoline Dispensing Facilities for adoption into the Kentucky SIP.

The provisions in this regulation meet EPA requirements for gasoline dispensing facilities that install and operate vapor recovery systems that capture gasoline vapors displaced from motor vehicle gasoline tanks during refueling (i.e., Stage II). The reductions due to the installation of Stage II are needed for the required 15 percent reduction in dispensing facilities, which are located in an area that is designated moderate, serious, or severe nonattainment for the ozone NAAQS, and which have an average monthly gasoline throughput of greater than 10,000 gallons, install Stage II vapor recovery systems. Independent small business marketers with an average monthly throughput of 50,000 gallons or less and all other gasoline dispensing facilities with an average monthly throughput of 10,000 gallons or less have been exempted from this regulation. These facilities are required to maintain current records covering a two year period which demonstrate that the applicable throughput limits have not been exceeded.

The CAA specifies that Stage II regulations must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the CAA defines an ISBM.

Consistent with EPA's guidance, the regulation requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using a system approved by the California Air Resources Board (CARB). The regulation requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change). Kentucky has also established procedures for enforcing violations of the Stage II requirements.

Kentucky expects a 5.31 ton/day reduction from these mobile source controls.

Non-Highway Mobile Sources

Kentucky is using a method developed by EPA to use RFG in non-highway mobile sources. The method was described in an August 18, 1993 memo from Phil Lorang, Director of Emission Planning and Strategies Division, of EPA's Office of Mobile Sources. This method provides approximately one-half the on-highway mobile source credit for non-highway mobile sources. Using this method, a 0.21 ton per day reduction is calculated for non-highway mobile sources. Further emission reductions will be realized after Phase II RFG is implemented.

EPA is approving Kentucky's 15 percent plan and the underlying regulations (Stage II and Open Burning), the I/M Program, and the 1990 baseline emissions inventory because they are consistent with EPA guidance and the requirements set forth in the CAA.

Final Action

The EPA is approving the aforementioned changes to the SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective February 8, 1999 without further notice unless the Agency receives adverse comments by January 7, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 8, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law KRS–224.01–040 or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

G. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999 Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 13, 1998.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(92) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(92) Revisions to the Kentucky State Implementation Plan submitted by the Natural Resources and Environmental Protection Cabinet on February 3, 1998. The regulations being revised are 401 KAR 59:174 Stage II control at gasoline dispensing facilities, 401 KAR 63:005 Open burning, and 401 KAR 65:010 Vehicle emission control programs rules. Adoption of the Kentucky 15 Percent Plan, the I/M program and the 1990 baseline emissions inventory.

(i) Incorporation by reference.

(A) Division of Air Quality regulations 401 KAR 59:174 Stage II control at gasoline dispensing facilities, 401 KAR 63:005 Open burning, and 401 KAR 65:010 Vehicle emission control programs rules are effective January 12, 1998.

(B) Tables showing the Cincinnati 1990 Baseline Emissions Inventory, 1990 Adjusted Baseline Inventory, and 1990 Rate of Progress Inventory, Summary of Biogenic Emissions and Anticipated Emissions after Plan Implementation which are effective September 11, 1998.

(ii) Other material. None.

[FR Doc. 98–32423 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region VII Docket No. MO–057–1057a; FRL–6197–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a revision to the State Implementation Plan (SIP) which incorporates new Missouri rule 10 CSR 10–6.330 entitled "Restriction of Emissions from Batch-Type Charcoal Kilns." Missouri's rule requires a

substantial reduction of emissions of volatile organic compounds (VOC) (some of which are toxic), particulate matter (PM_{10}), and carbon monoxide (CO) from charcoal-producing ovens commonly called charcoal kilns. The implementation of this rule will result in a significant improvement in air quality, especially in central and southern Missouri where most of these facilities are located.

DATES: This direct final rule is effective on February 8, 1999 without further notice, unless the EPA receives adverse comment by January 7, 1999. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Joshua A. Tapp at Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp of the Environmental Protection Agency at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

Background

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. These ambient standards are established under section 109 of the CAA and they currently address six criteria pollutants. These pollutants are: CO, nitrogen dioxide, ozone, lead, PM_{10}, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Currently, each state has a Federally approved SIP which protects air quality, primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state may submit the adopted provisions to the EPA and request that these provisions be included in the Federally enforceable SIP. The EPA must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If adverse comments are received, they must be addressed prior to a final action by the EPA.

All state regulations and supporting information approved by the EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which were approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that the EPA has approved a given state regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state function. However, once the regulation is Federally approved, the EPA and the public may take enforcement action against violators of these regulations if the state fails to do so.

What is being acted on in this document?

Missouri rule 10 CSR 10–6.330, entitled "Restriction of Emissions from Batch-Type Charcoal Kilns," applies throughout the state of Missouri to batch-type charcoal kilns. The majority of these facilities are located in south-central Missouri near the lumber mills which are the primary provider of the waste wood materials commonly used to produce charcoal.

Until recently, batch-type charcoal kilns have operated under exemptions from Missouri visibility regulations (10 CSR 10–3.080) and PM_{10} regulations (10 CSR 10–3.050). In 1991 and 1996, the EPA and the Missouri Department of Natural Resources (MDNR) conducted ambient air quality studies in response to citizen complaints regarding air quality. Data from these studies have shown that this industry has the potential to cause or contribute to violations of the NAAQS for PM_{10}.

In response to these data, MDNR and the charcoal industry worked together to develop a plan which ensures maintenance of the NAAQS for PM_{10}, but which also concurrently addresses emissions of VOC and CO.

This effort required an evaluation of best performing existing control technologies, new control technologies, and the best available work practices. Based on this review, MDNR determined that afterburners were an acceptable control technology which were capable of reducing emissions of PM_{10} by 98 percent, and CO and VOCs by 99 percent.

MDNR worked with the industry to convert this plan into an enforceable regulation which embodied these requirements in the form of emission limits. Monitoring, maintenance and operating work practices, recordkeeping, and reporting requirements were also incorporated into the rule to improve emission reductions and compliance demonstrations. MDNR held a public hearing on this rule on February 3, 1998. No negative comments were received. The Missouri Air Conservation Commission adopted the rule on March 26, 1998, and it became effective on July 30, 1998.

What action is being taken by the EPA?

MDNR submitted this rule for incorporation into the Federally approved SIP on July 30, 1998.

The EPA has reviewed this submittal against all applicable statutory, regulatory, and policy guidelines, and has determined that this rule is consistent with all applicable requirements and will result in a substantial improvement in air quality.

Because the industry participated in the development of this rule, and because there was broad support for this rule during that state administrative and public processes, the EPA views its approval of this rule as non-controversial.

The EPA is, therefore, taking direct final action to approve this rule as a revision to the Missouri SIP.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 8, 1999 without further notice unless the Agency receives adverse comments by January 7, 1999.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 8, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments; the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. See Section F, "Unfunded Mandates," listed below. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13084

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribes operated or own any Missouri charcoal kilns, nor are any tribal lands located near these facilities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that would have a disproportionate effect on children.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 24, 1998.

Dennis Grams,

P.E., Regional Administrator, Region VII.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding new paragraph (c)(111) to read as follows:

52.1320 Identification of plan.

* * * * *

(c) * * *

(111) A revision submitted by the Governor's designee on July 30, 1998, that reduces air emissions from batch-type charcoal kilns throughout the state of Missouri.

(i) Incorporation by reference:

(A) New Missouri rule 10 CSR 10–6.330, Restriction of Emissions from Batch-Type Charcoal Kilns, effective July 30, 1998.

[FR Doc. 98–32419 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–6987a; A–1–FRL–6192–7]

Approval and Promulgation of Air Quality Implementation Plans; Interim Final Determination of Correction of Deficiencies in 15 Percent Rate-of-Progress and Contingency Plans; Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, by direct final rule, State Implementation Plan (SIP) revisions submitted by the State of Rhode Island to address ground level ozone air pollution in the State. The revisions consist of the State's 15 percent rate-of-progress (ROP) plan and contingency plan, and minor revisions to the Rhode Island 1990 emission inventory of ozone precursors. The intended effect of this action is to approve these plans in accordance with the Clean Air Act, 42 U.S.C. 7401 et seq. (the Act). In recognition of this approval of Rhode Island's 15 percent and contingency plans, EPA is making an interim final determination, by this action, that the State has corrected the deficiencies prompting the original disapproval of these plans. The interim final determination will act to defer the application of the offset sanction which would have been implemented on November 19, 1998, and defers the future application of the highway sanction. The interim final action is being taken under Section 110 of the Act.

DATES: This direct final rule approving the Rhode Island 15 percent and contingency plans, and minor revisions to the State's 1990 base year inventory, is effective on February 8, 1999 without further notice, unless EPA receives relevant adverse comment by January 7, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

The interim final determination is effective upon publication. However, EPA will take comment on this determination as well as EPA's direct final rule approving the State's submittal. Written comments on this interim final determination must be received on or before January 7, 1999. EPA will publish a final notice taking into consideration any relevant adverse comments received on EPA's interim final action.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and at the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, (617) 918–1046.

SUPPLEMENTARY INFORMATION: On September 21, 1998, the State of Rhode Island submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions consist of the State's 15 percent ROP and contingency plans, and minor revisions to the Rhode Island 1990 inventory of ozone precursor emissions. The 15 percent plan is designed to meet the requirement in section 182(b)(1) of the Act that certain ozone nonattainment areas achieve a 15 percent reduction in volatile organic compound emissions from a 1990 baseline.

EPA published a limited approval, limited disapproval of 15 percent ROP and contingency plans submitted by Rhode Island in 1994 in the April 17, 1997 **Federal Register** (62 FR 18712). The limited disapproval was issued primarily due to the State's failure to implement the enhanced automobile inspection and maintenance (I/M) program identified within these plans. The failure of Rhode Island to implement its I/M program resulted in emission reduction shortfalls in the State's 15 percent ROP and contingency plans.

EPA published a direct final rule approving the Rhode Island 1990 emission inventory of ozone precursors in the October 30, 1996 **Federal Register** (61 FR 55943).

I. Summary of SIP Revision

The final rule issuing a limited approval, limited disapproval of the Rhode Island 15 percent ROP and contingency plans which was published in the **Federal Register** on April 17, 1997, approved the State's calculation of the required emission reductions, and also approved the emission reduction credit claimed from a number of source categories. Additionally, the final rule approved the calculation of the required emission reductions to satisfy the contingency measure obligation, and also approved portions of the emission reduction credits claimed from two control measures contained in the contingency plan.

The 15 percent ROP and contingency plans submitted by Rhode Island on September 21, 1998, (hereafter referred to as the revised 15 percent plan and revised contingency plan) continue to rely upon the portions of these plans which were approved by EPA in the April 17, 1997 final rule, with the exceptions noted below. Additionally, minor revisions were made to the State's 1990 base year emission inventory of ozone precursors.

Revisions to Base Year Inventory

Rhode Island's September 21, 1998 SIP submittal contained the following revisions to the State's 1990 base year emission inventory:

1. VOC emissions from one point source emitter were revised upward based on revised information provided by the company, and a source whose VOC emissions should have been included in the original point source inventory but were not, were added to the State's 1990 point source inventory. The net effect of these changes is a 0.66 ton per summer day (tpsd) increase in base year VOC point source emissions.
2. Non-road mobile source VOC emissions were revised upward by 0.3 tpsd to correct rounding errors discovered in the original base year emission estimate.
3. Area source combustion calculations were revised to account for a corrected gallons per barrel factor, using the correct figure of 42 gallons per barrel rather than 55 gallons. These calculations were also revised to reflect updated 1990 data obtained from the Department of Energy regarding the amount of fuel consumed by sources in this category . The net effect of these changes was to increase VOC emissions by 0.03 tpsd, and NO_X emissions by 0.14 tpsd.

The Rhode Island 1990 base year emission inventory was approved by a direct final rule published in the October 30, 1996 **Federal Register** (61 FR 55897). Table 1 contains the VOC emission estimates approved in the October 30, 1996 final rule, and the revised estimates being approved in today's final rule.

TABLE 1.—1990 VOC EMISSION ESTIMATES

[Tons per summer day]

Emission category	10/30/96 final rule	Today's final rule
Area	60.50	60.53
Point	25.90	26.56
On-road Mobile	65.60	65.60
Off-road Mobile	32.10	32.40
Biogenics	72.90	72.90
Total	257.00	257.99

Additionally, the area source NO_X emission estimate is revised upward by 0.14 tpsd for the reason explained above. The area source NO_X emission estimate approved in the October 30, 1996 final rule of 3.80 tpsd is therefore revised upward to 3.94 tpsd. The original NO_X total emission estimate of 100.80 tpsd is revised upward to 100.94 tpsd. The EPA approves these revisions to the Rhode Island 1990 base year emission inventory.

Revisions to Derivation of Required Emission Reductions

The minor revisions to the State's 1990 base year inventory impact the derivation of the 1996 VOC emissions target level and derivation of required emission reductions which were approved in the April 17, 1997 final rule. Additionally, the State's September 21, 1998 submittal included the following revisions which also acted to change the original target level and derivation of required emission reductions approved in the April 17, 1997 final rule:

1. The State recalculated the non-creditable emission reductions which accrue from the Federal Motor Vehicle Control Program (FMVCP), and the Federal Gasoline Reid Vapor Pressure (RVP) Control Program, using the newer Mobile 5b emission estimation model. Mobile 5a was used in the original plan submitted by the State. The newer Mobile 5b model more accurately depicts emissions from motor vehicles by accounting for emission reductions from onboard refueling vapor recovery systems, detergent gasoline, and reductions from phase II of the federal reformulated gasoline program. The Mobile 5b model is also a better tool for use in analyzing emission reductions from innovative I/M programs. Rhode Island has also applied guidance issued by EPA on August 13, 1996, and December 23, 1996, that explained how State's should incorporate into 15 percent plans emission reductions achieved from I/M programs by November 15, 1999.
2. Emissions of acetone were excluded in deriving the adjusted base year inventory, as acetone has been found by EPA to be photochemically non-reactive. The State's previous submittal contained a similar adjustment for perchloroethylene emissions, which is also contained in the State's September 21, 1998 submittal. The exclusion of these emissions is made during the derivation of the adjusted base year emission inventory.
3. The State improved the estimate of 1996 projected emissions that was contained in the original 15 percent ROP and contingency plans. The timing of the State's September 21, 1998 revised submittal allowed that submittal to contain actual emission estimates for many source categories, including all industrial point sources and a portion of the area source categories. In instances where actual emissions data for 1996 was not available, the State used 1995 actual emissions data in conjunction with a growth adjustment to reflect 1996 emission levels, or alternatively used updated growth factors from the Bureau of Economic Analysis to project 1990 emission estimates to 1996 uncontrolled levels. The original plans, which were submitted to EPA in 1994, had relied upon projections of emission levels using growth factors for all source categories. The use of actual emission data to replace projected emission levels, coupled with the use of newer growth factors, has improved the State's estimates of 1996 emission levels. The application of these revised data to the State's ROP plan resulted in fewer emission reductions being needed through the application of new controls, as the growth assumptions used in the original plan had forecast more emissions growth than actually occurred according to the revised 15 percent plan.

Table 2 provides a summary of the target level calculation as approved in the April 17, 1997 final rule and the revisions to the target level calculation contained in the State's September 21, 1998 SIP revision.

TABLE 2.—CALCULATION OF REQUIRED REDUCTION

[Tons per summer day of VOC]

Calculation step	4/17/97 final rule	Today's final rule
1990 Anthropogenic Emission Inventory	184.1	185.1
Non-creditable reductions	15.7	16.0
1990 Adjusted Inventory [1]	168.4	166.5
15% of Adjusted Inventory	25.3	25.0
1996 Target	143.1	141.5
1996 Projected, uncontrolled emissions	181.7	167.7
Required Reduction	38.6	26.2

[1] The Adjusted Inventory is derived by subtracting the non-creditable reductions from the FMVCP and RVP programs, and emissions of photochemically non-reactive compounds, from the 1990 Anthropogenic Emission Inventory.

The EPA approves these revisions to the Rhode Island 15 percent ROP plan.

Measures Achieving Emission Controls

Rhode Island's revised 15 percent ROP plan continues to rely upon emission reductions from the following measures that were approved by EPA's April 17, 1997 final rule, with some adjustments to the emission reduction credits claimed:

1. Surface coating operations;
2. Printing operations;
3. Marine vessel loading;
4. Plant closures (0.79 tons per day approved out of 0.84 claimed);
5. Cutback asphalt;
6. Auto refinishing;
7. Stage II gasoline vapor recovery at service stations;
8. Reformulated gasoline in on-road and off-road engines; and
9. Tier I motor vehicle controls.

Additionally, the updated growth analysis contained within the revised plan resulted in fewer emission reductions being needed to meet the 1996 emissions target level, and generally reduced the emission level of 1996 controlled emissions from the four source categories discussed below.

Point Source Controls

The revised Rhode Island 15 percent plan contains actual 1996 emission data reported to the State by industrial sources pursuant to the State's emission statement reporting regulation. This data provides the State with an accurate means by which to determine the effectiveness of control regulations on these facilities. The State found that VOC emissions from industrial sources totaled 16.10 tpsd, which is 9.57 tpsd lower than what was reported for 1990 for these sources. The State's revised 15 percent plan notes that although the regulation pertaining to Marine Vessel Loading operations is still applicable in the State, all sources that were subject to this regulation have ceased such activity.

EPA's review of emission reductions claimed from industrial sources indicates that reductions were claimed from two facilities that have chosen to comply with the State's Reasonably Available Control Technique (RACT) rule for non-Control Technique Guideline (CTG) sources using the alternative compliance option which that rule contains. Rhode Island has submitted to EPA the single source non-CTG RACT order for one source, Cranston Print Works, but has not submitted the required order for the other source, the Hoechst company. The total emission reduction expected from these two sources is 0.4 tpsd, and is not currently approvable because these reductions have not been made part of the State's SIP. EPA approves the emission reductions claimed by Rhode Island from industrial sources in the State, with the exception of the 0.4 tpsd claimed from the two sources noted above.

Area Source Controls

The State's revised 15 percent plan contains updated estimates of 1996 emissions for several area source categories. Rhode Island contacted asphalt suppliers and determined that cutback and emulsified asphalts were not used during the 1996 ozone season. The State accordingly assumed that no emissions occurred from this activity. A 2.99 tpsd reduction is now claimed for this source category, compared to the 2.57 tpsd reduction approved in the EPA's April 17, 1997 final rule. EPA approves the State's revised estimate of 1996 controlled emissions from this source category.

EPA guidance recommends that emissions from automobile refinishing operations be determined by multiplying the number of workers employed in this activity by per employee emission factors. Rhode Island's revised 15 percent plan utilizes more current estimates of 1996 employment levels for this category, which resulted in 2.14 tpsd in emission reductions being claimed for this source category. The State's original plan had claimed 2.97 tpsd in emission reductions. EPA approves the State's revised estimate of 1996 controlled emissions from this source category.

The EPA's April 17, 1997 final rule approved 3.30 tpsd in emission reductions attributable to gasoline service station refueling controls, which are commonly referred to as "Stage II" vapor recovery controls. The State's revised plan includes a recalculation of emission reductions achieved by 1996 from this program. The recalculation was performed based upon actual 1996 fuel consumption and use of the EPA's Mobile 5b emissions model, neither of which were available when the previous plan was submitted. The revised emission reduction claimed from this source category is 3.47 tpsd. EPA approves the State's revised estimate of 1996 controlled emissions from this source category.

Rhode Island's original 15 percent ROP plan did not include an estimate of emission reductions from regulations on consumer and commercial products, or from architectural and industrial maintenance (AIM) coatings. The State did include emission reductions for these emission categories in its original contingency plan. The State's revised 15 percent plan relies upon emission reductions expected from recently promulgated federal controls on these emission source categories. The State estimated the expected emission reductions using procedures recommended by EPA, in conjunction with the most current population figures for the State. A 1.03 tpsd emission reduction is expected from the consumer and commercial products category, and a 1.83 tpsd reduction from the AIM coatings category, compared with 1.1 and 1.9 tpsd, respectively, that EPA approved on April 17, 1997. EPA approves the State's revised estimate of emission reductions achieved from these source categories.

On Road Mobile Source Controls

The primary reason for the limited disapproval of the State's original 15 percent ROP plan was its reliance on emission reductions from an enhanced automobile inspection and maintenance program that was not being implemented. Rhode Island has restructured its I/M program, and now projects that testing of motor vehicles will commence in mid-1999. A biennial test and repair program using a transient IM testing regime will be used. The State's revised 15 percent plan uses the EPA's Mobile 5b program in conjunction with EPA guidance that allows emission reductions from I/M programs that achieve benefits by November 15, 1999, to count towards the 15 percent emission reduction, to determine that 2.15 tpsd in emission reductions from the State's I/M program should be creditable towards the 15 percent emission reduction requirement. However, EPA has not yet approved the State's I/M program. Accordingly, EPA defers action on a judgement as to the validity of the State's emission reduction claim from the I/M program at this time.

Rhode Island used the EPA's Mobile 5b program to determine that 13.2 tpsd in emission reductions will accrue from its set of on-road mobile source control measures, which include I/M, Tier I motor vehicle controls, reformulated gasoline, and low emission vehicles. The State's prior submittal had anticipated 20.8 tpsd in reductions from controls on motor vehicles. The primary reason for the decreased level of emission reductions from motor vehicles is that the original plan had claimed credit from a full cycle of testing motor vehicles through an enhanced I/M program, whereas the revised plan only claims credit from a partial cycle commensurate with the start date envisioned for the State's I/M program. EPA approves the State's determinations of emission reductions from these measures, with the exception of the 2.15 tpsd attributed to I/M, which EPA defers action on at this time.

Non-road Controls

Rhode Island's revised plan continues to rely upon emission reductions achieved by the use of reformulated gasoline in non-road engines. The State's revised plan uses more current growth projections for this source category. Additionally, a minor change was made to the base year emission estimate as noted in the text above. The State envisions that controls on this source category will reduce emissions by 0.87 tpsd; the State's original plan had projected a 0.97 tpsd emission reduction. EPA approves the State's determinations of emission reductions from the sale of reformulated gasoline in non-road engines.

Emission Reduction Surplus

The State's revised 15 percent plan contains a calculation showing that a 10.6 tpsd emission reduction surplus exists in the plan. The State's determination is summarized in Table 3.

TABLE 3.—DETERMINATION OF EMISSION REDUCTION SURPLUS

Category	1996 projected, controlled emissions from original plan (tpsd)	1996 projected, controlled emissions from revised plan (tpsd)
Point	19.02	16.10
Area	55.02	44.70
On-road mobile	33.98	40.1
Non-road mobile	34.08	30.0
Total	142.1	130.9
Target Level of Emissions	143.1	141.5
Surplus	1.0	10.6

EPA agrees that the revised 15 percent plan contains an emission reduction surplus. However, since Rhode Island's I/M program has not been approved by EPA, the 2.2 tpsd emission reduction credit expected from this program is not approved as part of the State's surplus. Additionally, 0.4 tpsd in emission reductions are not currently approvable because they stem from two industrial sources for which non-CTG VOC RACT orders must be incorporated into the State's SIP, which has not yet occurred. The emission reduction surplus approved by EPA is therefore 8.0 tpsd.

Contingency Plan

The EPA's April 17, 1997 final rule issued a limited approval, limited disapproval of the Rhode Island Contingency plan. The State's revised 15 percent plan contains a new adjusted base year inventory of 166.5 tpsd, from which the 3 percent contingency measure obligation of 5 tpsd is derived. Rhode Island's 15 percent plan documents that the plan achieves surplus emission reductions sufficient to cover the State's contingency measure obligation of 5 tpsd. Additionally, the surplus emission reductions found in the State's 15 percent plan are still sufficient if the non-creditable reductions from I/M and two industrial point sources are excluded. EPA therefore finds that Rhode Island has complied with the contingency measure requirements of sections 172(c)(9) and 182(c)(9) of the CAA.

Transportation Conformity Budgets

Under EPA's transportation conformity rule the 15 percent plans are a control strategy SIP. The plan for Rhode Island establishes a VOC emission budget for on-road mobile sources within the Providence nonattainment area, which encompasses the entirety of the state. The 15 percent plan does not establish NO_X emission budgets for on-road mobile sources. However, Rhode Island has submitted a complete SIP revision consisting of a reasonable further progress plan to achieve a 9 percent emission reduction in ozone precursor emissions after 1996 (post-96 plans). This plan was submitted on September 21, 1998. These revisions establish the VOC and NO_X emission budgets for 1999. The 1999 VOC emission budget is 41.57 tpsd, and the 1999 NO_X emissions budget is 46.40 tpsd.

EPA believes that the VOC and NO_X budgets established by the post-96 plans for Rhode Island are currently the controlling budgets for conformity determinations for 1999 and later years. The budgets in the post-1996 plans specifically address the 1999 reasonable further progress milestone year, whereas the 15 percent plan establishes a budget for the prior reasonable further progress milestone year of 1996. The time period for the budget in the 15 percent plans has passed. These budgets reflect the currently projected start date for Rhode Island's I/M program. Therefore, EPA is here confirming its finding made on September 29, 1998, that the budgets for VOC and NO_X in the current post-1996 plan can be used for determining conformity.

Rationale for Interim Final Determination

By means of an April 17, 1997 final rule, EPA disapproved portions of the original 15 percent and contingency plans that were submitted by Rhode Island in 1994. The disapproval triggered the 18 month time clock for the mandatory application of sanctions under section 179(a) of the Act. That 18 month sanctions clock will expire on November 19, 1998. To remedy that failure, on September 21, 1998, Rhode Island submitted revised 15 percent and contingency plans to EPA, requesting approval action under the Act.

Within this final rule, EPA is approving the State's revised 15 percent and contingency plans. Additionally, EPA has proposed approval of the revised 15 percent plan in the proposed rules section of today's **Federal Register**. EPA has determined that, as a result of the proposed approval of these revised plans, Rhode Island has remedied the SIP deficiency triggering the sanctions clock for the duration of EPA's rulemaking process on the revised plans. This interim determination will not halt or reset the sanctions deadline, but will continue to defer the implementation of sanctions until one of the following outcomes with respect to the 15 percent and contingency plans: (1) the plans become effective on February 8, 1999 pursuant to this direct final approval of the revised Rhode Island 15 percent and contingency plans, at which time the sanctions clock will be removed; (2) EPA approves the 15 percent and contingency plans after responding to any relevant adverse comments received pursuant to EPA's approval, at which time the sanction clock will be removed; or (3) EPA disapproves, or proposes to disapprove, the revised plans.

Today EPA is also providing the public with an opportunity to comment on this interim final determination. If, based on any comments received by EPA upon this interim final determination action and any comments on EPA's proposed approval of the State's revised 15 percent and contingency plans, EPA determines that the SIP revision is not approvable and this final action was inappropriate, EPA will take further action to disapprove the State's revised plans. If EPA disapproves or proposes to disapprove the Rhode Island 15 percent and contingency plans, then sanctions would be applied as required under section 179(a) of the Act and 40 CFR 52.31.

II. Final Action

Direct Final Rule

EPA is approving the State of Rhode Island 15 percent ROP and contingency plan, and approving minor revisions to the Rhode Island 1990 emission inventory of ozone precursors. EPA published a final rule issuing a limited approval, limited disapproval of the original Rhode Island 15 percent and contingency plans in the April 17, 1997 **Federal Register** (62 FR 18712). Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. This final rule approving the Rhode Island 15 percent plan and contingency plan stops the sanctions clock which began on the effective date of EPA's April 17, 1997 final rule, which was May 19, 1997.

EPA's April 17, 1997 final rule rescinded the protective finding which had previously been made on the motor vehicle emission budget contained within the original Rhode Island 15 percent plan submitted to EPA in 1994. This caused a transportation conformity freeze to occur 120 days after the effective date of EPA's April 17, 1997 final rule. By letter dated September 29, 1998, EPA informed Rhode Island that the State's September 21, 1998 SIP revision request consisting of revised 15 percent and post 1996 rate-of-progress plans contained motor vehicle emission budgets that were adequate for use in determining transportation conformity, and so the transportation conformity freeze was being removed.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective February 8, 1999 without further notice unless the Agency receives relevant adverse comments by January 7, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 8, 1999 and no further action will be taken on the proposed rule.

Interim Final Rule

EPA has determined that the State has corrected the deficiencies that prompted the disapproval of portions of the Rhode Island 15 percent and contingency plans by EPA in the April 17, 1997 **Federal Register**. Therefore, EPA concludes that sanctions should be stayed until either the effective date of EPA's approval of the revised Rhode Island 15 percent and contingency plans pursuant to either this direct final rule or the proposed approval, at which time the sanctions clock will be removed, or EPA disapproves, or proposes to disapprove, the revised plans in light of comments from the public that persuade EPA that disapproval is a more appropriate action.

Because EPA has determined that the September 21, 1998 Rhode Island 15 percent and contingency plan SIP is approvable, relief from future sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[2] 5 U.S.C. 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest.

The EPA, through this notice, is approving the State's revised 15 percent and contingency plans that were submitted to EPA on September 21, 1998. This approval remedies the deficiency that caused the sanctions clock to begin. Therefore, it is not in the public interest to initially apply sanctions when the State has corrected the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the expiration of the 18 month sanction clock, which is November 19, 1998. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions until either: the effective date of EPA's approval of the revised Rhode Island 15 percent and contingency plans pursuant to either this direct final rule or the proposed approval, at which time the sanctions clock will be removed, or EPA disapproves, or proposes to disapprove, the revised plans in light of comments from the public that persuade EPA that disapproval is a more appropriate action. In addition, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

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[2] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an "economically significant" action under Executive Order 12866.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 13, 1998.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart 00—Rhode Island

2. Section 52.2070 is amended by revising paragraph (c)(50) to read as follows:

§ 52.2070 Identification of plan

* * * * *

(c) * * *

(50) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on September 21, 1998. The revisions consist of the State's 15 Percent plan and Contingency plan. The EPA is approving the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating operations, printing operations, plant closures, cutback asphalt, synthetic pharmaceutical manufacturing, automobile refinishing, consumer and commercial products, architectural and industrial maintenance coatings, stage II vapor recovery, reformulated gasoline in on-road and off-road engines, tier I motor vehicle controls, and low emitting vehicles. EPA is taking no action at this time on the emission reduction credit claim made for the Rhode Island automobile inspection and maintenance program.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated September 21, 1998 submitting a revision to the Rhode Island State Implementation Plan.

3. Section 52.2084 is amended by removing and revising paragraph (a)(2).

4. Section 52.2086 is amended by adding paragraph (d) to read as follows:

§ 52.2086 Emission inventories

* * * * *

(d) Minor revisions to the Rhode Island 1990 base year emission inventory were submitted to EPA on September 21, 1998. The revised emission estimates were prepared in accordance with EPA guidance, and are approved into the State's SIP.

[FR Doc. 98–32415 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5316

Types of Contracts

AGENCY: Department of the Air Force, Department of Defense

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 48, Chapter 53 of the CFR by removing Part 5316, Types of Contracts. This rule is removed because it does not meet the requirement for codification. It was revised as part of the Federal Acquisition Regulation Part 15 rewrite, and was changed in the AFFARS on an interim basis by Contracting Policy memo 93-C–02 on January 8, 1998. It contains internal operating procedures that will be finalized in AFAC 96–2.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Powell, Contracting Policy Branch, SAF/AQCP, 1060 Air Force Pentagon, Washington, DC 20330–1060, telephone (703) 588–7062.

SUPPLEMENTARY INFORMATION: Under the authority of 5 U.S.C. 301 and FAR 1.301 48 CFR, Chapter 53, is amended by removing Part 5316.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 98–32530 Filed 12–7–98; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 381 and 383

[FHWA Docket No. FHWA–98–4145]

RIN 2125–AE48

Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is adopting regulations to implement section 4007 of the Transportation Equity Act for the 21st Century (TEA–21), concerning waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), and the administration of pilot programs to evaluate innovative alternatives to the regulations. The regulations establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions. The regulations also codify statutory requirements concerning the agency's administration of pilot programs. This rulemaking is intended to provide procedures to ensure the timely processing of requests for waivers and applications for exemptions, and public disclosure of the procedures the agency would use in initiating and managing pilot programs.

DATES: This rule is effective December 8, 1998. Comments must be received on or before February 8, 1998.

ADDRESSES: Submit written, signed comments to FHWA Docket No. FHWA–98-4145, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001.

Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the GPO's web page at: *http://www.access.gpo.gov/nara.*

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant waivers from the FMCSRs for a person(s) seeking regulatory relief from those requirements. The statute provides the Secretary with the authority to grant waivers and exemptions. The duration of a waiver is limited to three months and the Secretary may grant the waiver without requesting public comment.

By contrast, an exemption may be up to two years in duration, and may be renewed. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the request.

Section 4007 also provides the Secretary with authority to conduct pilot programs, research studies in which an exemption(s) would be granted to allow innovative alternatives to certain FMCSRs to be tested. The Secretary must provide the public with an opportunity to comment before starting such a program.

Prior to the enactment of TEA–21, 49 U.S.C. 31136(e) and 31315 provided the FHWA explicit authority to waive any regulation issued under the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832), the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–170), and the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, 105 Stat. 952). The FHWA could waive any part of a regulation, as it applied to a person or class of persons, if the waiver was first determined to be consistent with the public interest and the safe operation of commercial motor vehicles (CMVs). Before granting a waiver under these provisions of the United States Code, the FHWA had to publish a notice in the **Federal Register** requesting public comment on the terms and conditions of the waiver. Generally, the agency used its waiver authority sparingly because it was difficult to determine beforehand, with a reasonable degree of certainty, whether an activity that is prohibited under the current regulations could be safely conducted under the terms and conditions of a waiver. The difficulties of that waiver process are exemplified by the decision of the U.S. Court of Appeals for the D.C. Circuit in *Advocates for Highway and Auto Safety* v. *Federal Highway Administration*, 28 F. 3d 1288 (1994), concerning the FHWA's Vision Waiver Program for CMV drivers.[1]

With the enactment of TEA–21, the FHWA may grant a waiver or exemption that relieves a person from compliance in whole or in part with a regulation if the FHWA determines that the waiver or exemption is in the public interest and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation to which the waiver or exemption would apply. The TEA–21 also permits the FHWA to conduct pilot programs to evaluate alternatives to regulations relating to motor carrier, CMV, and driver safety. Pilot programs would include the use of exemptions under strict controls to enable the collection and analysis of data, and the preparation of a report to Congress. The TEA–21 makes a clear distinction between "waivers" and "exemptions" and specifies requirements for pilot programs.

Waivers

The TEA–21 gives the FHWA the authority to grant short-term waivers without requesting public comment, and without providing public notice. In addition to the safety criterion that applies to both waivers and exemptions, waivers will require a "public interest" finding. Waivers may only be granted to a person for a specific unique, non-emergency event for periods up to three months.

Exemptions

The exemption provision is intended to broaden the agency's discretion to provide regulatory relief by overcoming the strict interpretation of 49 U.S.C. 31136(e) in *Advocates for Highway and Auto Safety* v. *Federal Highway Administration*, supra, concerning the FHWA's Vision Waiver Program for CMV drivers. As expressed in the legislative history of section 4007 of TEA–21:

> The Court found that the statutory language [49 U.S.C. 31136(e)] required the Secretary to determine, before issuing any waiver, that no diminution in safety would result, i.e., that it be determined beforehand there would be absolutely no increase in crashes as a result of the waivers. To deal with the decision, this section substitutes the term "equivalent" to describe a reasonable expectation that safety will not be compromised. In the absence of greater discretion to deal with waivers and exemptions and a new standard by which to judge them, the Congress would continue to be the only source to provide regulatory exemptions.
>
> H.R. Conf. Rep. No. 105–550, at 489–490 (1998)

The TEA–21 requires the FHWA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FHWA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

In addition, the agency is required to monitor the implementation of each exemption to ensure compliance with its terms and conditions.

If the FHWA denies a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person who was denied the exemption and the reasons for the denial. Section 4007 gives the agency the option of publishing a notice for each denial of an exemption, or periodically publishing notices for all denials during a given period of time.

Generally, the duration of exemptions issued under the authority of section

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[1] On August 2, 1994, the D.C. Circuit found that the agency's determination that the waiver program will not adversely affect the safe operation of commercial motor vehicles lacked empirical support in the record. Accordingly, the Court found that the FHWA failed to meet the exacting requirements of 49 U.S.C. 31136(e). The Court concluded that the FHWA's adoption of the waiver program was contrary to law, and vacated and remanded the rule to the agency.

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4007 is limited to two years from the date of approval, but may be renewed.

The FHWA is required to immediately revoke an exemption if—

(1) The person fails to comply with the terms and conditions of the exemption;

(2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(3) Continuation of the exemption would not be consistent with the goals and objectives of the regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

Pilot Programs

The TEA–21 permits the FHWA to conduct pilot programs to evaluate alternatives to regulations relating to motor carrier, CMV, and driver safety. These programs may include exemptions from one or more regulations. The FHWA must publish, in the **Federal Register**, a detailed description of each pilot program, including the exemptions being considered, and provide notice and an opportunity for public comment before the effective date of the program. The agency is required to ensure that the safety measures in the pilot programs are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved through compliance with the safety regulations. The duration of pilot programs is limited to three years from the starting date.

The FHWA is required to immediately revoke participation of a motor carrier, CMV, or driver for failure to comply with the terms and conditions of the pilot program, or if continued participation is inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136. The agency is required to immediately terminate a pilot program if its continuation is inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

At the conclusion of each pilot program, the FHWA must report to Congress the findings, conclusions, and recommendations of the program, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs.

Public Meeting to Discuss the FHWA's Implementation of Section 4007

On August 20, 1998, the FHWA held a public meeting at the Department of Transportation headquarters to solicit information from interested parties on issues the agency should consider in implementing section 4007 of TEA–21. A notice announcing the meeting was published on July 29, 1998 (63 FR 40387). The notice also provided interested parties with an opportunity to submit written comments to the docket.

Discussion of Comments Made During the Public Meeting

The following companies and organizations were represented at the public meeting: Advocates for Highway and Auto Safety (Advocates); American Association of Motor Vehicle Administrators (AAMVA); the American Automobile Association (AAA); American Road and Transportation Builders Association (ARTBA); the American Trucking Associations, Inc. (ATA); Associated General Contractors (AGC); Institute for Public Representation; Maryland State Highway Administration; Nalley and Associates; National Automobile Dealers Association (NADA); National Private Truck Council (NPTC); Petroleum Marketers Association (PMA); Kenneth Pierson, a safety consultant; Truckload Carriers Association; U.S. Department of Energy; and Western Atlas International. A transcript of the meeting has been placed in the docket.

Generally, the participants in the public meeting supported the implementation of section 4007 of the TEA–21. There were differing views on how complex or detailed the procedural rules should be; what criteria to use for granting waivers and exemptions and allowing participation in pilot programs; and how the FHWA should monitor persons who are granted waivers or exemptions, and participants in pilot programs.

The ATA discussed the need for making a distinction between the procedural rules for waivers and exemptions. The ATA stated:

> With respect to waivers, since they are for a short duration and are intended to be limited in scope to address unique circumstances, there should be fewer entry hurdles for applicants, as well as less monitoring by the government.
>
> Applicants should be required to describe the circumstances that make their operations so unique as to support a limited waiver, and why there is a reasonable public interest—because that is one of the legislative tests.
>
> Applicants must also be required to describe the safety controls that will be put in place in order to mitigate any potential safety concerns. And since waivers will be limited in duration, [the FHWA], as I indicated, should limit the amount of monitoring or reporting involved.
>
> And we believe in some cases maybe there is no reporting and maybe there is no monitoring, depending on the circumstances.

The ATA recommended that the FHWA consider providing examples of such countermeasures, and be willing to assist the applicants by providing information on the types of safety impact analyses that might be included in an application.

The AAA believes that "open, timely, and two-way" communication among the FHWA and the States, and the public is critical. The AAA also indicated that certain terms should be defined in the regulations and that certain conditions should be met by applicants for exemptions and waivers. The AAA stated:

> Although the statute does not require public notice or comment, it also does not prohibit this critical component. AAA believes that FHWA should take full advantage of all opportunities to communicate its goals in motor carrier safety and therefore recommends that FHWA provide formal public notice of waivers.
>
> A notice in the **Federal Register** would not be burdensome and would at least communicate the public interest to be served by the waiver. Such notice would also signal to the public that the agency values communication, which is so important for the public to feel like they're a part of the process.
>
> We further recommend that FHWA approach states and communities affected by the waiver again as partners and provide notice sufficiently in advance so that their objections, recommendations, or concerns regarding the proposed waiver may be fairly and adequately considered and make them a part of the process.
>
> AAA also urges FHWA to clearly define the term "public interest" in its rule implementing the waiver authority. Clear definitions are critical to public understanding and acceptance.
>
> Moving on to the area of exemptions, AAA recommends that the regulations governing requests for exemption go beyond those required "at a minimum" in the statute and should include some of the following areas:
>
> 1. The public interest to be served by the exemption;
> 2. A clear statement of the necessity for and purpose of the exemption;
> 3. An analysis of the enforcement impacts of the exemption and, if substantial, how cost recovery to states might be achieved;
> 4. And then identification of the economic benefits to participants.

The AGC and PMA expressed interest in having the FHWA exercise its authority under section 4007 of the TEA–21 to provide an exemption and pilot program, respectively, concerning the hours-of-service regulations (49 CFR 395). The AGC stated:

> AGC calls on FHWA to use these new authorities to grant broad exemption from the hours of service restrictions for the construction industry. No other set of regulations are considered more onerous to the industry than these restrictions and the attendant requirements that go along with them.
>
> And from our point of view, they have the least positive impact on safety in construction. And as I said, I gave a detailed—detailed comments that we've submitted to the record before on hours of service, detailing why we think the industry is unique and why it should be exempted.

The PMA made reference to the FHWA's Winter Home Heating Oil Delivery State Flexibility Program developed in response to section 346 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568). The PMA requested that a program similar to the one described in the FHWA's January 29, 1997 (62 FR 4372) notice of final determination "fit comfortably within the constructs of the rule we discuss here today."

The PMA also provided comments about monitoring participants in pilot programs. The PMA stated:

> In regard to monitoring of participants, monitoring of these programs—especially Pilot Project Programs—should be done by requiring participants to submit periodic reports as part of the FHWA Plan.
>
> Additionally, PMA suggests the Federal Highway Administration consider the creation of small, program-specific agency appointed review boards consisting of agency personnel, affected state regulators and industry representatives, who would be responsible for overall monitoring of an individual program.
>
> The review board should be given periodic updates regarding their specific program, as provided by the FHWA. In this way, Pilot Programs will be treated with the utmost level of seriousness, with meaningful consideration being given to all aspects of the process.
>
> The review board could also be available to advise the Secretary at his request as to key elements of rule implementation, in addition to monitoring, including revocation of participation; program termination; the report to Congress; and other items as the Secretary may request.

Discussion of Written Comments Received in Response to the FHWA's July 29, 1998, Notice

The FHWA received written comments from: the AAA; the AAMVA; the ARTBA; the ATA; the Insurance Institute for Highway Safety (IIHS); Parents Against Tired Truckers; and the PMA.

The IIHS stated:

> Some federal motor carrier safety rules are so vital to the protection of commercial drivers and the general public that waivers and exemptions should not be permitted. One example is the current limitation on driving hours. The agency has no sound evidence that these hours-of-service limits can be extended without increasing crash rates.
>
> Motor carriers seeking waivers or exemptions from safety rules should expect to furnish sound data to justify these exemptions and undergo continued close scrutiny of their safety records. FHWA should not simply accept motor carriers' assertions that their safety records are excellent. Rather, the agency should review compliance data and perform compliance reviews if none have been performed within the past five years. Similarly, a reasonable percentage, perhaps 20 percent, of vehicles from motor carriers seeking exemptions should be inspected by state or federal personnel. Because of the high percentage of out-of-state citations and crashes that do not show up in the records of the States issuing commercial licenses to individual drivers, the agency also should gather crash and citation data from all states in which the motor carrier operates. In addition, the reported vehicle-miles of travel should be verified. If FHWA decides to grant a waiver or exemption, these data should continue to be actively collected to determine whether public safety has been compromised.

The ARTBA stated:

> While we support the goals of section 4007, we urge FHWA to take steps to ensure participants in section 4007 will not be subject to an increased level of enforcement scrutiny relative to non-participants. Specifically, FHWA should include directives that enforcement frequency should be unaffected by an individual or industry's status of participation in section 4007. Without this type of assurance, participation will potentially be discouraged.

FHWA Response to Comments

The FHWA has considered the remarks of the participants in the August 20, 1998, public meeting, and the comments submitted to the docket and believes the procedural rules provide a straightforward process for the implementation of the waiver, exemption, and pilot program authority provided by section 4007 of the TEA–21. The FHWA does not agree with commenters who suggest that the procedural rules include specific details on how the agency would determine whether to grant or deny a waiver or exemption, and monitor the persons who are granted waivers and exemptions. The FHWA also disagrees with commenters' suggestions to include specific details on how the agency would communicate with State agencies.

The FHWA does not believe it is practical to establish rules on who should be eligible to apply for waiver or exemption without knowing the specific regulatory relief the person is requesting. Each request for a waiver and application for an exemption should be reviewed on a case-by-case basis to determine if the person can satisfy the statutory criteria for waivers and exemptions. In the case of exemption applications, the FHWA notes that the agency must publish a notice in the **Federal Register** to provide the public with an opportunity to review the application and safety impact analysis provided with the application. The agency believes this process will be adequate to ensure that all interested parties may comment on the applicant's safety performance and the specific regulatory relief being requested.

The FHWA agrees with the ATA's comments about the need for making a distinction between the procedural rules for waivers and exemptions. Since waivers are for temporary (three months or less) regulatory relief for unique, non-emergency events, there should be a simple process for requesting a waiver, and the FHWA should ensure a timely response to the applicant.

The FHWA believes the interim final rule establishes an effective process to ensure a timely response to the persons who request a waiver. Although the FHWA has the authority to publish a **Federal Register** notice to request public comments on waiver applications—a point emphasized by the AAA during the public meeting—the agency has tentatively determined that it would be impractical to request public comment each time someone needs a waiver for a unique, non-emergency event, especially given the three-month statutory limitation on the duration of the waiver. The agency believes that unless the application is submitted far in advance of the date for the unique event, it is very likely that the waiver could not be processed in time. Also, the time required to go through a notice-and-comment process would typically exceed the duration of the unique event.

In response to the ATA's comments that the FHWA assist exemption applicants by providing information on the types of safety impact analyses that might be included in an application, the FHWA will consider providing assistance to the extent that there are available resources at the time the request for assistance is made. The FHWA notes that the primary responsibility for preparing an application for an exemption rests with the applicant. Prior to requesting assistance from the FHWA, each applicant should carefully review its plans for achieving a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation from which it would be granted an exemption, and review the safety management controls it would use as an alternative to the regulation.

The FHWA acknowledges that the statutory language suggests, and the interim final rule establishes, an application review process that is not completely data-driven. Specific pass-fail criteria (e.g., crash rates, safety ratings, compliance review results, driving records, etc.) for applications are not required. However, given the broad authority provided by section 4007 of the TEA–21 and the diversity of the motor carrier industry, establishing one-size-fits-all, pass-fail criteria for all exemption applicants is not feasible. The FHWA will make its determination based upon the research, technical, and safety data available at the time it reviews an application and consider the public comments received in response to the **Federal Register** notice required for each exemption application.

With regard to the issue of monitoring of waiver and exemption grantees, the accident register requirements of § 390.15 will remain applicable. The FHWA will provide the specific terms and conditions, including monitoring and reporting provisions, for each waiver and exemption on a case-by-case basis. For exemptions, the terms and conditions will be part of the **Federal Register** notice requesting public comment.

The FHWA believes the notice-and-comment procedures established for exemption applications are consistent with the requirements of section 4007 and will help to ensure the public has the opportunity to participate in the exemption process.

The FHWA disagrees with the AAA's recommendation that minimum requirements for exemption applications include an analysis of the enforcement impacts and how the States would be reimbursed for any substantial expenses involved with enforcing the terms and conditions of the exemption, and monitoring the exemption grantees. The agency also disagrees with the recommendation that applicants be required to identify economic benefits.

The FHWA through its Motor Carrier Safety Assistance Program (MCSAP) provides States with Federal funding to help support motor carrier safety enforcement programs. The FHWA does not intend or expect the level of effort from the State agencies to increase for the purpose of enforcing the terms and conditions of the exemptions that would be granted. It is expected that the processes/systems used to select drivers and vehicles for inspection, and to visit motor carriers for compliance reviews would remain the same. If a motor carrier operating under the terms and conditions of a waiver or exemption has one of its vehicles inspected, or is selected for a compliance review, the officer or investigator would verify compliance with terms and conditions of the waiver or exemption at that time.

The FHWA believes it is inappropriate to subject a motor carrier to additional roadside inspections and compliance reviews based solely on its receipt of a waiver or exemption. The benefits of granting waivers and exemptions would be lost if regulatory relief were replaced with more rigorous or frequent enforcement activities targeted at the carriers who receive them. The FHWA shares the ARTBA's concerns that motor carriers would be discouraged from taking advantage of the opportunities provided by section 4007 if there were an increased level of enforcement scrutiny.

On the subject of economic benefits, the FHWA does not believe applicants should be required to document the economic benefits to the exemption. The agency believes that it is more likely than not that motor carriers would only apply for an exemption if the motor carrier believes there is a significant economic benefit. There is no readily apparent safety benefit to requiring motor carriers to assign a dollar value to the economic benefits and prove that their estimates are valid.

The FHWA disagrees with the AAA's request that the agency define "public interest" as the term is used in 49 U.S.C. 31315(a) concerning waivers. The FHWA believes that the public interest is being served if alternatives that are likely to achieve safety outcomes that are equal to, or greater than, the outcomes provided by the current regulations are proven to be successful. The agency's objective is to work with the motor carrier industry, States, and safety groups to improve highway safety. Providing motor carriers with flexibility to explore new approaches to improving safety is in the public interest.

The agency has not included a definition of "equivalent" in the interim final rule but requests public comment on whether there is a need to define the term. Commenters are encouraged to include suggestions or recommendations on how the term should be defined.

With regard to the PMA's suggestion that the FHWA consider the creation of a review board for the monitoring of individual pilot programs, the agency does not believe this is necessary or practical. The terms and conditions for participation in a pilot program would include certain safety-related reports that could be used to help the agency monitor the motor carriers. If a participant fails to comply with the terms and conditions of the pilot program, the FHWA must immediately revoke participation of the motor carrier, driver, or vehicle.

In response to the AGC and the PMA comments about regulatory relief from the hours-of-service regulations, the FHWA believes this rulemaking is not the proper forum for resolving those concerns. Now that procedural rules are in place, the AGC and the PMA members may apply for an exemption and request the development of a pilot program, respectively.

The FHWA agrees with commenters' emphasis on the importance of working with the States. The FHWA will ensure that State officials are informed about the waivers, exemptions, and pilot programs. The States, as well as all interested parties, may comment in response to the **Federal Register** notices required by section 4007 of the TEA–21. The FHWA will notify the States of waivers and exemptions granted.

Discussion of Regulatory Language

The FHWA is creating Part 381, Waivers, Exemptions, and Pilot Programs, to specify the requirements for requesting waivers and applying for exemptions, the process the agency will use in reviewing waiver requests and exemption applications, and the initiation and administration of pilot programs. Part 381 is divided into six subparts:

Subpart A—General describes the purpose and applicability of part 381, and defines certain terms used throughout the part;

Subpart B—Procedures for Requesting Waivers provides a plain-language description of waivers, the procedures for requesting a waiver and the process the FHWA will use to review waiver requests;

Subpart C—Procedures for Applying for Exemptions provides a plain-language description of exemptions, the procedures for applying for an exemption, the process the FHWA will use to review exemption applications, and the conditions under which the FHWA will revoke an exemption;

Subpart D—Initiation of Pilot Programs explains how pilot programs operate, and how a pilot program can be initiated (which includes a detailed list of information the FHWA requests from individuals who would like to recommend that the agency start a pilot program);

Subpart E—Administration of Pilot Programs codifies in the FMCSRs a plain-language version of the statutory requirements concerning the FHWA's administration of pilot programs so that all interested parties will have a convenient reference; and

Subpart F—Preemption of State Rules codifies in the FMCSRs a plain-language version of the Federal preemption of any State law and regulation that conflicts with or is inconsistent with a waiver, exemption, or pilot program with respect to a person operating under a waiver or exemption or participating in a pilot program.

Regulations for Which Waivers and Exemptions May Be Granted

Section 4007 of the TEA–21 authorizes the FHWA to grant waivers and exemptions from any FMCSRs issued under the authority of 49 U.S.C. 31136 and chapter 313. Section 4007 does not give the FHWA the authority to grant waivers and exemptions from regulations issued under the authority of other statutes, for example, the financial responsibility regulations codified at 49 CFR part 387 which were issued under the authority of 49 U.S.C. 31138 and 31139, concerning the transportation of passengers and property, respectively. Also, the FHWA does not have the authority to grant waivers and exemptions from certain requirements (e.g., surety bonds and policies of insurance for motor carriers and property brokers, surety bonds and policies of insurance for freight forwarders) which were transferred from the former Interstate Commerce Commission to the FHWA and are codified at 49 CFR 387. The statutory authority for those requirements is 49 U.S.C. 13101, 13301, 13906, and 14701.

Another example of a requirement from which the FHWA cannot grant a waiver or exemption is 49 CFR 396.25, qualifications of brake inspectors. This rule establishes minimum qualifications for motor carrier employees that are responsible for the inspection, repair, or maintenance of CMV brake systems. This rule was issued under the authority of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the specific provision concerning qualifications of brake inspectors is codified at 49 U.S.C. 31137(b)).

To assist the motor carrier industry and the general public in identifying the requirements for which waivers and exemptions may be granted, the FHWA has included a list in §§ 381.200, 381.300, and 381.400 which define in context, a waiver, exemption, and pilot program, respectively. Generally, the list of regulations for which a waiver or exemption could be granted includes:

(1) Part 382—Controlled Substances and Alcohol Use and Testing;

(2) Part 383—Commercial Driver's License Standards; Requirements and Penalties;

(3) § 385.21 Motor Carrier Identification Report;

(4) § 390.21 Marking of commercial motor vehicles;

(5) Part 391—Qualifications of Drivers;

(6) Part 392—Driving of Commercial Motor Vehicles;

(7) Part 393—Parts and Accessories Necessary for Safe Operation;

(8) Part 395—Hours of Service of Drivers;

(9) Part 396—Inspection, Repair, and Maintenance (except § 396.25); and

(10) Part 399—Step, Handhold, and Deck Requirements.

The FHWA has excluded the accident register requirements (49 CFR 390.15) from the list of regulations eligible for a waiver or exemption because the agency believes it has a responsibility to monitor the accident involvement of entities operating under the terms of a waiver. The FHWA requests comments on this issue.

The FHWA has included the motor carrier identification report (Form MCS–150) requirement (49 CFR 385.21) as one of the rules which could be waived because the agency believes there is no apparent benefit to using that report to gather information on entities that have not previously operated CMVs in interstate commerce and do not intend to operate CMVs in interstate commerce after the term of the waiver expires. The information from the Form MCS–150 would be used to create a file in the Motor Carrier Management Information System (MCMIS), a database containing safety information (e.g., compliance review results, roadside inspection results, CMV accidents, etc.) about interstate motor carriers. The entities that would benefit from this action would be certain intrastate motor carriers that are not subject to State requirements to complete the Form MCS–150, and businesses or groups that rarely (except for a unique, non-emergency event) operate CMVs.

Several States currently require intrastate motor carriers to complete Form MCS–150 and obtain a USDOT identification number. These motor carriers are listed in the MCMIS as intrastate only carriers. The addition of these motor carriers to the MCMIS enables the States and the FHWA to work together in determining the number of active motor carriers operating in the United States, and to monitor the safety performance of motor carriers. The intrastate motor carriers subject to State requirements for completing Form MCS–150 would have already completed the form prior to applying for a waiver to conduct a short-term operation in interstate commerce, and would continue to be subject to the State requirements at the end of the waiver period.

Since intrastate motor carriers and non-motor carrier entities would be subject to the FHWA's jurisdiction for only a short period of time, adding them to the interstate motor carrier census could, depending on the number of intrastate motor carriers and non-motor carrier entities who are granted waivers, skew the data in the MCMIS. Furthermore, since the agency would be able to identify these entities through the information submitted as part of the waiver application, the submission of Form MCS–150 would be redundant. The FHWA requests comments on whether these entities should be required to submit Form MCS–150. The agency also requests comments on whether waivers granted to intrastate motor carriers and non-motor carrier entities should also include relief from all of the vehicle marking requirements in 49 CFR 390.21, or only the display of the motor carrier census number (i.e., USDOT identification number) that is assigned when Form MCS–150 is completed.

With regard to exemptions, the FHWA is requiring intrastate motor carriers and non-motor carrier entities to complete Form MCS–150 and to mark all CMVs as required in § 390.21. The agency believes an entity that chooses to operate a CMV in interstate commerce for more than 3 months should be treated as an interstate motor carrier for the purposes of the MCMIS. Since exemptions provide regulatory relief for up to two years, and may be renewed, the FHWA believes it is important that all CMVs operated in interstate commerce under the terms of the exemption should be marked. The FHWA requests comments on these issues.

For the purposes of exemptions granted as part of a pilot program, the FHWA is using the same list of regulations provided in § 381.300, *What is an exemption?* The FHWA is using the same list because the agency does not believe entities participating in a pilot program which could continue for up to three years should be treated differently from interstate motor carriers who are required to complete the Form MCS–150 and to mark their CMVs.

The FHWA requests comments from all interested parties on whether any of the regulations on the lists should be considered "off-limits" for the purposes of granting waivers and exemptions. Commenters are encouraged to explain in detail why the agency should refuse to consider waivers or exemptions to those requirements.

Process for Requesting a Waiver and Applying for an Exemption

The FHWA has attempted to keep the processes for requesting a waiver and applying for an exemption simple. The person requesting a waiver or applying for an exemption is required to send a written request (which could be a typed or handwritten (printed) letter) to the Federal Highway Administrator. The written request must include basic information such as the identity of the person who would be covered by the waiver or exemption, the name of the motor carrier or other entity that would be responsible for the use or operation of CMVs during the waiver or exemption period, and the principal place of business of the motor carrier or other entity. The interim final rule requires that the request or application include a written statement that: (1) Describes the event or CMV operation for which the waiver or exemption would be used; (2) identifies the regulation from which the applicant is requesting relief; (3) estimates the total number of drivers and CMVs that would be operated under the terms and conditions of the waiver or exemption; and (4) explains how the recipient of the waiver or exemption would ensure that they achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation. For exemption applications, the written request must also include an assessment of the safety impacts the exemption may have, describe the impacts (e.g., inability to test innovative safety management control systems, etc.) that would be experienced if the exemption is not granted, and include a copy of all research reports, technical papers, and other publications and documents referenced in the application.

The complete list of information to be included in the requests for waivers and applications for exemptions is provided in § 381.210, *How do I request a waiver?*, and § 381.310, *How do I apply for an exemption?*. The FHWA believes these requirements are consistent with the statutory language in TEA–21. The agency requests comments on the information that persons requesting waivers or applying for exemptions are required to submit.

FHWA Procedures for the Review of Waiver Requests

The Office of Motor Carrier and Highway Safety is responsible for reviewing requests for waivers and making recommendations to the Federal Highway Administrator (the Administrator). A copy of the decision signed by the Administrator will be sent to the applicant. It will include the terms and conditions for the waiver, or the reason(s) for denying the waiver application.

FHWA Procedures for the Review of Exemption Applications

With regard to exemptions, the review process differs because of the requirements in section 4007 of the TEA–21. The Office of Motor Carrier and Highway Safety will review the application for an exemption and prepare, for the Administrator's signature, a **Federal Register** notice requesting public comment. After a review of the comments received, the Office of Motor Carrier and Highway Safety will make a recommendation to the Administrator. Notice of the Administrator's decision will be published in the **Federal Register**.

Initiation and Administration of Pilot Programs

Although TEA–21 does not require the agency to develop regulations concerning pilot programs, the FHWA has included, in subparts D and E of part 381, information on how pilot programs are initiated, and the statutory requirements for the agency's administration of pilot programs, respectively. The agency believes that including information on pilot programs in the FMCSRs will provide a more convenient reference to the motor carrier industry and the general public than title 49 of the United States Code. The regulations indicate that the FHWA has the authority to initiate pilot programs after providing notice and an opportunity for public comment; they also provide general information on the types of information that interested parties should submit to the agency if they would like to recommend or suggest a pilot program. The information presented in subpart E is intended to be a plain-language version of the statutory requirements for the administration of pilot programs.

Preemption of State Rules

Section 4007(d) of the TEA–21 indicates that during the time period that a waiver, exemption, or pilot program is in effect, no State shall enforce a law or regulation that conflicts with or is inconsistent with the waiver, exemption, or pilot program with respect to a person operating under a waiver or exemption or participating in a pilot program. The FHWA has included the preemption language in part 381, and will also include the language in the waiver documents and **Federal Register** notices concerning exemptions and pilot programs. The agency believes this approach will ensure that State officials are notified about the Federal preemption authority. Including the preemption language in the waiver and in the exemption and pilot project notices will enable motor carriers to present inspectors with one document which informs them of the terms and conditions of the waiver, exemption, or pilot program and advises them that State laws and regulations that conflict with the waiver, exemption or pilot program are automatically preempted, and the duration of the preemption. The agency requests comments on this preliminary decision.

Rescission of Waiver Provision 49 CFR Part 383

The FHWA is rescinding § 383.7, Waiver provisions, of part 383 concerning commercial driver's license (CDL) standards, requirements and penalties. Section 383.7 sets forth the procedures a person must follow to petition the FHWA for a waiver of the CDL regulations. Because section 4007 of the TEA–21 replaced the statutory standards for CDL waivers in 49 U.S.C. 31315 with a new set of standards for waivers, exemptions, and pilot programs applicable to all safety regulations, § 383.7 is no longer valid and must be rescinded.

Rulemaking Analyses and Notices

The Administrative Procedure Act (5 U.S.C. 553(b)) provides that its notice and comment requirements do not apply when an agency, for good cause, finds that they are impracticable, unnecessary, or contrary to the public interest. Since section 4007 of the TEA–21 requires the FHWA to specify by regulation the procedures by which a person may request an exemption within 180 days after the enactment of the statute, the FHWA has determined that it is impracticable to publish a notice of proposed rulemaking, review the public comments, and issue a final rule prior to the December 6, 1998, deadline.

Although the FHWA did not publish a notice of proposed rulemaking, the agency held a public meeting on August 20, 1998, to solicit information from interested parties on issues the agency should consider in implementing section 4007 of TEA–21. A notice announcing the meeting was published on July 29, 1998 (63 FR 40387). The notice also provided interested parties with an opportunity to submit written comments to the docket. The FHWA has considered the remarks of the participants in the August 20 public meeting, and the comments submitted to the docket. Therefore, the agency has, to the greatest extent practicable given the statutory deadline, made an effort to provide the public with an opportunity to offer comments and suggestions on how the agency should develop the procedural rules to implement section 4007 of the TEA–21.

The interim final rule establishes the procedures to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions. The rule also codifies statutory requirements concerning the agency's administration of pilot programs. Since the interim final does not establish pass-fail criteria (e.g., crash rates, safety ratings, compliance review results, driving records, etc.) for persons who request waivers or apply for exemptions, the requirements are administrative in nature and relate to agency procedure and practice.

Accordingly, the FHWA finds that there is good cause to waive prior notice and comment for the limited reasons described above. For the same reasons, the FHWA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the interim final rule effective upon publication.

The interim final rule will remain in effect until the agency reviews the comments received in response to this notice and issues a final rule. Comments received will be considered in evaluating whether any changes to this interim final rule are required.

All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FHWA may adopt a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the Department of Transportation's regulatory policies and procedures. This interim final rule establishes the rules and procedures concerning the handling of requests for waivers and applications for exemptions from the FMCSRs, and the initiation and administration of pilot programs. It is anticipated that these rules will help to promote increased cooperation between the private sector and the government by providing a mechanism for exploring alternatives to certain safety regulations, while ensuring a level of safety equivalent to, or greater than, that obtained by complying with the regulations. The FHWA believes this interim final rule could result in incremental, although not substantial, economic benefits in those cases in which the alternatives provide a more cost-effective approach to ensuring motor carrier safety. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this interim final rule on small entities. This rulemaking establishes the rules and procedures concerning the handling of requests for waivers and applications for exemptions from the FMCSRs, and the initiation and administration of pilot programs. It is anticipated that theses rules will help to promote increased cooperation between the private sector and the government by providing a mechanism for exploring alternatives to certain safety regulations, while ensuring a level of safety equivalent to that obtained by complying with the regulations. The provisions concerning waivers and exemptions will be especially beneficial to small entities since these entities may be more in need of regulatory relief than larger companies. The FHWA has written the regulations in question-and-answer format and attempted to use plain language to help ensure that small entities understand how to request a waiver and apply for an exemption, and how the agency will handle such requests and applications. Since the interim final rule does not require small entities to take any actions unless they request a waiver or apply for an exemption, and the information that would be required as part of the request for a waiver and application for an exemption has been kept to a minimum, the FHWA believes the economic impact of the rule will be minimal. Any economic benefits that small entities might realize from this interim rule would be incremental and, thus, not significant within the meaning of the Regulatory Flexibility Act. Therefore, the FHWA hereby certifies that this action would not have an adverse economic impact on, a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This interim final rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Although this rulemaking, in and of itself, does not preempt State and local laws and regulations, the waivers and exemptions that would be granted under the authority of 49 U.S.C. 31136(e) and 31315 would preempt such laws or regulations if they conflict with or are inconsistent with the terms and conditions of the waivers or exemptions. Also, the exemptions granted as part of a pilot program would preempt State and local laws and regulations which conflict with or are inconsistent with the terms and conditions of the pilot program.

The FHWA will consider the preemptive effect of each waiver prior to granting the waiver. With regard to exemptions and pilot programs, State and local governments will have the opportunity to respond to the **Federal Register** notices required by section 4007 of TEA–21 and inform the FHWA of concerns about preemption during the time period that an exemption or pilot program would be in effect.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq*]. However, the waivers, exemptions, and pilot programs will include certain information collection requirements as part of the terms and conditions for the regulatory relief granted. The agency is required by section 4007 of the TEA–21 to monitor the implementation of exemptions to ensure compliance with the terms and conditions, and ensure that sufficient records are kept by participants in pilot programs to facilitate the collection and analysis of data. The FHWA will consider the information collection requirements for each waiver, exemption, and pilot program and, if necessary, request approval from the Office of Management and Budget for any special recordkeeping requirements associated with the waiver, exemption, or pilot program.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 381

Motor carriers, Motor vehicle equipment, Waivers and exemptions.

49 CFR Part 383

Commercial driver's license, Commercial motor vehicles, Motor carriers.

Issued on: November 30, 1998.

Kenneth R. Wykle,

Federal Highway Administration.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, by adding part 381 and by amending part 383 as set forth below:

1. Part 381 is added to read as follows:

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

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Sec.

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Subpart F—Preemption of State Rules

381.600 Do waivers, exemptions, and pilot programs preempt State laws and regulations?

Authority: 49 U.S.C. 31136(e), 31315; 49 CFR 1.48.

Subpart A—General

§ 381.100 What is the purpose of this part?

This part prescribes the rules and procedures for requesting waivers and applying for exemptions from those provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) which were issued on the authority of 49 U.S.C. 31136 or chapter 313, and the initiation and administration of pilot programs.

§ 381.105 Who is required to comply with the rules in this part?

(a) You must comply with the rules in this part if you are going to request a waiver or apply for an exemption.

(b) You should follow the instructions in subpart D of this part if you would like to recommend the agency initiate a pilot program.

§ 381.110 What definitions are applicable to this part?

Commercial motor vehicle means any motor vehicle that meets the definition of "commercial motor vehicle" found at 49 CFR 382.107 concerning controlled substances and alcohol use and testing, 49 CFR 383.5 concerning commercial driver's license standards, or 49 CFR 390.5 concerning parts 390 through 399 of the FMCSRs.

Federal Highway Administrator (the Administrator) means the chief executive of the Federal Highway Administration, an agency within the Department of Transportation.

FMCSRs means Federal Motor Carrier Safety Regulations (49 CFR parts 382 and 383, §§ 385.21 and 390.21, parts 391 through 393, 395, 396, and 399).

You means an individual or motor carrier or other entity that is, or will be, responsible for the operation of a CMV(s). The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. *You* also includes any interested party who would like to suggest or recommend that the FHWA initiate a pilot program.

Subpart B—Procedures for Requesting Waivers

§ 381.200 What is a waiver?

(a) A waiver is temporary regulatory relief from one or more FMCSR given to a person subject to the regulations, or a person who intends to engage in an activity that would be subject to the regulations.

(b) A waiver provides the person with relief from the regulations for up to three months.

(c) A waiver is intended for unique, non-emergency events and is subject to conditions imposed by the Administrator.

(d) Waivers may only be granted from one or more of the requirements contained in the following parts and sections of the FMCSRs:

(1) Part 382—Controlled Substances and Alcohol Use and Testing;

(2) Part 383—Commercial Driver's License Standards; Requirements and Penalties;

(3) § 385.21 Motor Carrier Identification Report;

(4) § 390.21 Marking of commercial motor vehicles;

(5) Part 391—Qualifications of Drivers;

(6) Part 392—Driving of Commercial Motor Vehicles;

(7) Part 393—Parts and Accessories Necessary for Safe Operation;

(8) Part 395—Hours of Service of Drivers;

(9) Part 396—Inspection, Repair, and Maintenance (except § 396.25); and

(10) Part 399—Step, Handhold and Deck Requirements.

§ 381.205 How do I determine when I may request a waiver?

(a) You may request a waiver if one or more FMCSR would prevent you from using or operating CMVs, or make it unreasonably difficult to do so, during a unique, non-emergency event that will take no more than three months to complete.

(b) Before you decide to request a waiver, you should carefully review the regulation to determine whether there are any practical alternatives already available that would allow your use or operation of CMVs during the event. You should also determine whether you need a waiver from all of the requirements in one or more parts of the regulations, or whether a more limited waiver of certain sections within one or more of the parts of the regulations would provide an acceptable level of regulatory relief. For example, if you need relief from one of the recordkeeping requirements concerning driver qualifications, you should not request relief from all of the requirements of part 391.

§ 381.210 How do I request a waiver?

(a) You must send a written request (for example, a typed or handwritten (printed) letter), which includes all of the information required by this section, to the Federal Highway Administrator, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(b) You must identify the person who would be covered by the waiver. The application for a waiver must include:

(1) Your name, job title, mailing address, and daytime telephone number;

(2) The name of the individual, motor carrier, or other entity that would be responsible for the use or operation of CMVs during the unique, non-emergency event;

(3) Principal place of business for the motor carrier or other entity (street address, city, State, and zip code); and

(4) The USDOT identification number for the motor carrier, if applicable.

(c) You must provide a written statement that:

(1) Describes the unique, non-emergency event for which the waiver would be used, including the time period during which the waiver is needed;

(2) Identifies the regulation that you believe needs to be waived;

(3) Provides an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the waiver; and

(4) Explains how you would ensure that you could achieve a level a safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

§ 381.215 What will the FHWA do after the agency receives my request for a waiver?

(a) The Office of Motor Carrier and Highway Safety will review your request and make a recommendation to the Administrator. The final decision whether to grant or deny the application for a waiver will be made by the Administrator.

(b) After a decision is signed by the Administrator, you will be sent a copy of the document, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

§ 381.220 How long will it take the agency to respond to my request for a waiver?

You should receive a response from the agency within 60 calendar days from the date the Administrator receives your request. However, depending on the complexity of the issues discussed in your application, and the availability of staff to review the material, a final decision may take up to 120 days.

§ 381.225 Who should I contact if I have questions about the information I am required to submit to the FHWA or about the status of my request for a waiver?

You should contact the Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366–1790.

Subpart C—Procedures for Applying for Exemptions

§ 381.300 What is an exemption?

(a) An exemption is temporary regulatory relief from one or more FMCSR given to a person or class of persons subject to the regulations, or who intend to engage in an activity that would make them subject to the regulations.

(b) An exemption provides the person or class of persons with relief from the regulations for up to two years, and may be renewed.

(c) Exemptions may only be granted from one or more of the requirements contained in the following parts and sections of the FMCSRs:

(1) Part 382—Controlled Substances and Alcohol Use and Testing;

(2) Part 383—Commercial Driver's License Standards; Requirements and Penalties;

(3) Part 391—Qualifications of Drivers;

(4) Part 392—Driving of Commercial Motor Vehicles;

(5) Part 393—Parts and Accessories Necessary for Safe Operation;

(6) Part 395—Hours of Service of Drivers;

(7) Part 396—Inspection, Repair, and Maintenance (except for § 396.25); and

(8) Part 399—Step, Handhold and Deck Requirements.

§ 381.305 How do I determine when I may apply for an exemption?

(a) You may apply for an exemption if one or more FMCSR prevents you from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

(b) Before you decide to apply for an exemption you should carefully review the regulation to determine whether there are any practical alternatives already available that would allow you to conduct your motor carrier operations. You should also determine whether you need an exemption from all of the requirements in one or more parts of the regulations, or whether a more limited exemption from certain sections within one or more parts of the regulations would provide an acceptable level of regulatory relief. For example, if you need regulatory relief from one of the recordkeeping requirements concerning driver qualifications, you should not request regulatory relief from all of the requirements of part 391.

§ 381.310 How do I apply for an exemption?

(a) You must send a written request (for example, a typed or handwritten (printed) letter), which includes all of the information required by this section, to the Federal Highway Administrator, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) You must identify the person or class of persons who would be covered by the exemption. The application for an exemption must include:

(1) Your name, job title, mailing address, and daytime telephone number;

(2) The name of the individual or motor carrier that would be responsible for the use or operation of CMVs;

(3) Principal place of business for the motor carrier (street address, city, State, and zip code); and

(4) The USDOT identification number for the motor carrier.

(c) You must provide a written statement that:

(1) Describes the reason the exemption is needed, including the time period during which it is needed;

(2) Identifies the regulation from which you would like to be exempted;

(3) Provides an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption;

(4) Assesses the safety impacts the exemption may have;

(5) Explains how you would ensure that you could achieve a level a safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation; and

(6) Describes the impacts (e.g., inability to test innovative safety management control systems, etc.) you could experience if the exemption is not granted by the FHWA.

(d) Your application must include a copy of all research reports, technical papers, and other publications and documents you reference.

§ 381.315 What will the FHWA do after the agency receives my application for an exemption?

(a) The Office of Motor Carrier and Highway Safety will review your application and prepare, for the Administrator's signature, a **Federal Register** notice requesting public comment on your application for an exemption. The notice will give the public an opportunity to review your request and your safety assessment or analysis (required by § 381.310) and any other relevant information known to the agency.

(b) After a review of the comments received in response to the **Federal Register** notice described in paragraph (a) of this section, the Office of Motor Carrier and Highway Safety will make a recommendation(s) to the Administrator to either to grant or deny the exemption. Notice of the Administrator's decision will be published in the **Federal Register**.

(c)(1) If the exemption is granted, the notice will identify the provisions of the FMCSRs from which you will be exempt, the effective period, and all terms and conditions of the exemption.

(2) If the exemption is denied, the notice will explain the reason for the denial.

(d) A copy of your application for an exemption and all comments received in response to the **Federal Register** notice will be included in a public docket and be available for review by interested parties.

(1) Interested parties may view the information contained in the docket by visiting the Department of Transportation, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington DC. All information in the exemption docket will be available for examination at this address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

(2) Internet users can access all information received by the U.S. DOT Dockets, Room PL–401, by using the universal resources locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

§ 381.320 How long will it take the agency to respond to my application for an exemption?

The agency will attempt to issue a final decision within 180 days of the date it receives your application. However, if you leave out important details or other information necessary for the FHWA to prepare a meaningful request for public comments, the agency will attempt to issue a final decision within 180 days of the date it receives the additional information.

§ 381.325 Who should I contact if I have questions about the information I am required to submit to the FHWA or about the status of my application for an exemption?

You should contact the Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366–1790.

§ 381.330 What am I required to do if the FHWA grants my application for an exemption?

(a) You must comply with all the terms and conditions of the exemption.

(b) The FHWA will immediately revoke your exemption if:

(1) You fail to comply with the terms and conditions of the exemption;

(2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(3) Continuation of the exemption is determined by the FHWA to be inconsistent with the goals and objectives of the FMCSRs.

Subpart D—Initiation of Pilot Programs

§ 381.400 What is a pilot program?

(a) A pilot program is a study in which temporary regulatory relief from one or more FMCSR is given to a person or class of persons subject to the regulations, or a person or class of persons who intend to engage in an activity that would be subject to the regulations.

(b) During a pilot program, the participants would be given an exemption from one or more sections or parts of the regulations for a period of up to three years.

(c) A pilot program is intended for use in collecting specific data for evaluating alternatives to the regulations or innovative approaches to safety while ensuring that the safety performance goals of the regulations are satisfied.

(d) The number of participants in the pilot program must be large enough to ensure statistically valid findings.

(e) Pilot programs must include an oversight plan to ensure that participants comply with the terms and conditions of participation, and procedures to protect the health and safety of study participants and the general public.

(f) Exemptions for pilot programs may be granted only from one or more of the requirements contained in the following parts and sections of the FMCSRs:

(1) Part 382—Controlled Substances and Alcohol Use and Testing;

(2) Part 383—Commercial Driver's License Standards; Requirements and Penalties;

(3) Part 391—Qualifications of Drivers;

(4) Part 392—Driving of Commercial Motor Vehicles;

(5) Part 393—Parts and Accessories Necessary for Safe Operation;

(6) Part 395—Hours of Service of Drivers;

(7) Part 396—Inspection, Repair, and Maintenance (except for § 396.25); and

(8) Part 399—Step, Handhold and Deck Requirements.

§ 381.405 Who determines whether a pilot program should be initiated?

(a) Generally, pilot programs are initiated by the FHWA when the agency determines that there may be an effective alternative to one or more of the requirements in the FMCSRs, but does not have sufficient research data to support the development of a notice of proposed rulemaking to change the regulation.

(b) You may request the FHWA to initiate a pilot program. However, the decision of whether to propose a pilot program will be made at the discretion of the FHWA. The FHWA is not required to publish a notice in the **Federal Register** requesting public comment on your ideas or suggestions for pilot programs.

§ 381.410 What may I do if I have an idea or suggestion for a pilot program?

(a) You may send a written statement (for example, a typed or handwritten (printed) letter) to the Federal Highway Administrator, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(b) You should identify the persons or class of persons who would be covered by the pilot program exemptions. Your letter should include:

(1) Your name, job title, mailing address, and daytime telephone number;

(2) The name of the individuals or motor carrier that would be responsible for the use or operation of CMVs covered by the pilot program, if there are motor carriers that have expressed an interest in participating in the program;

(3) Principal place of business for the motor carrier (street address, city, State, and zip code); and

(4) The USDOT identification number for the motor carrier.

(c) You should provide a written statement that:

(1) Presents your estimate of the potential benefits to the motor carrier industry, the FHWA, and the general public if the pilot program is conducted, and describes how you developed your estimate;

(2) Estimates of the amount of time that would be needed to conduct the pilot program (e.g., the time needed to complete the collection and analysis of data);

(3) Identifies the regulation from which the participants would need to be exempted;

(4) Recommends a reasonable number of participants necessary to yield statistically valid findings;

(5) Provides ideas or suggestions for a monitoring plan to ensure that participants comply with the terms and conditions of participation;

(6) Provides ideas or suggestions for a plan to protect the health and safety of study participants and the general public.

(7) Assesses the safety impacts the pilot program exemption may have; and

(8) Provides recommendations on how the safety measures in the pilot project would be designed to achieve a level a safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

(d) Your recommendation should include a copy of all research reports, technical papers, publications and other documents you reference.

§ 381.415 Who should I contact if I have questions about the information to be included in my suggestion?

You should contact the Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366–1790.

§ 381.420 What will the FHWA do after the agency receives my suggestion for a pilot program?

(a) The Office of Motor Carrier and Highway Safety will review your suggestion for a pilot program and make a recommendation to the Administrator. The final decision whether to propose the development of a pilot program based upon your recommendation will be made by the Administrator.

(b) You will be sent a copy of the Administrator's decision. If the pilot program is approved, the agency will follow the administrative procedures contained in subpart E of this part.

Subpart E—Administrative Procedures for Pilot Programs

§ 381.500 What are the general requirements the agency must satisfy in conducting a pilot program?

(a) The FHWA may conduct pilot programs to evaluate alternatives to regulations, or innovative approaches, concerning motor carrier, CMV, and driver safety.

(b) Pilot programs may include exemptions from the regulations listed in § 381.400(f) of this part.

(c) Pilot programs must, at a minimum, include all of the program elements listed in § 381.505.

(d) The FHWA will publish in the **Federal Register** a detailed description of each pilot program, including the exemptions to be considered, and provide notice and an opportunity for public comment before the effective date of the pilot program.

§ 381.505 What are the minimum elements required for a pilot program?

(a) *Safety measures.* Before granting exemptions for a pilot program, the FHWA will ensure that the safety measures in a pilot program are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the regulations.

(b) *Pilot program plan.* Before initiating a pilot program, the FHWA will ensure that there is a pilot program plan which includes the following elements:

(1) A scheduled duration of three years or less;

(2) A specific data collection and safety analysis plan that identifies a method of comparing the safety performance for motor carriers, CMVs, and drivers operating under the terms and conditions of the pilot program, with the safety performance of motor carriers, CMVs, and drivers that comply with the regulation;

(3) A reasonable number of participants necessary to yield statistically valid findings;

(4) A monitoring plan to ensure that participants comply with the terms and conditions of participation in the pilot program;

(5) Adequate safeguards to protect the health and safety of study participants and the general public; and

(6) A plan to inform the States and the public about the pilot program and to identify approved participants to enforcement personnel and the general public.

§ 381.510 May the FHWA end a pilot program before its scheduled completion date?

The FHWA will immediately terminate a pilot program if there is reason to believe the program is not achieving a level of safety that is at least equivalent to the level of safety that would be achieved by complying with the regulations.

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§ 381.515 May the FHWA remove approved participants from a pilot program?

The Administrator will immediately revoke participation in a pilot program of a motor carrier, CMV, or driver for failure to comply with the terms and conditions of the pilot program, or if continued participation is inconsistent with the goals and objectives of the safety regulations.

§ 381.520 What will the FHWA do with the results from a pilot program?

At the conclusion of each pilot program, the FHWA will report to Congress the findings and conclusions of the program and any recommendations it considers appropriate, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs.

Subpart F—Preemption of State Rules

§ 381.600 Do waivers, exemptions, and pilot programs preempt State laws and regulations?

Yes. During the time period that a waiver, exemption, or pilot program authorized by this part is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with the waiver, exemption, or pilot program with respect to a person operating under the waiver or exemption or participating in the pilot program.

PART 383—[AMENDED]

2. The authority citation for 49 CFR Part 383 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

§ 383.7 [Removed and Reserved]

3. Section 383.7 is removed and reserved.

[FR Doc. 98–32454 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653 and 654

[Docket No. FTA–97–2925]

RIN 2132–AA56

Prevention of Prohibited Drug Use in Transit Operations: Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is amending its drug and alcohol testing regulations to allow employers to use the results of post-accident drug and alcohol tests administered by State or local law enforcement personnel when the State and local law enforcement officials have independent authority for the tests and when the employer is able to obtain the results in conformance with State and local law. Under the amendment, the employer will be relieved of administering post-accident drug and alcohol tests in certain limited circumstances. This amendment may ease the burden of employers in testing "safety-sensitive" employees after an accident has occurred; it may also relieve some "safety-sensitive" employees from taking duplicative post-accident drug and alcohol tests.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Meade, Director of the Office of Safety and Security (202) 366–2896 (telephone) or (202) 366–7951 (fax). For legal issues: Michael Connelly, Office of the Chief Counsel (202) 366–4011 (telephone) or (202) 366–3809 (fax). Electronic access to this and other rules may be obtained through FTA's Transit Safety and Security Bulletin Board at 1–800–231–2061 or through the FTA World Wide Web home page at http://www.fta.dot.gov; both services are available seven days a week.

SUPPLEMENTARY INFORMATION: On September 30, 1997, FTA published a Notice of Proposed Rulemaking (NPRM) proposing to amend its drug and alcohol testing rules to allow employers to use the results of post-accident drug and alcohol tests administered by State or local law enforcement personnel when the State and local law enforcement officials have independent authority for the tests and the employer obtains the results in conformance with State and local law. FTA received seven comments over a two-month period

I. Post-Accident Testing

Comments

Of the seven comments received, five commenters generally favored adoption of the proposal; two opposed allowing employers to use the results from post-accident drug and alcohol tests administered by an entity other than collection site personnel observing the collection procedures mandated by 49 CFR Part 40. Those in favor of adopting the amendment lauded its emphasis on obtaining an actual test result (as opposed to requiring an agency to state why it did not conduct a Federally-mandated post-accident test), and its ability to assist transit agencies in promoting safety among its safety-sensitive workers. Several commenters, including those in favor of adopting the amendment, raised the following issues:

Nothing that the proposed amendments allowed for use of post-accident test results when those results are "obtained by the employer," two commenters (the National Association of Collection Sites (NACS) and the American Public Transit Association (APTA)) noted the problem of employers receiving test results administered by State or local officials. NACS asserted that obtaining such post-accident results may require a subpoena, while APTA suggested an overall "difficulty" in an employer receiving these results. A third commenter (Atlantic Health Group), while in favor of the amendment, noted the "problem" of getting the results to the correct employer official, and ensuring that such post-accident test results are legally acceptable.

Two commenters (NACS and APTA) interpreted the proposal to mean either that law enforcement officials would be required to conduct Federal post-accident testing, or that transit systems would "rely" on State and local law enforcement authorities to perform Federal post-accident testing.

Two commenters (NACS and Intoximeters) expressed concern that the State and local law enforcement authorities may use faulty testing equipment, and that local testing practices (e.g., no confirmatory test, no DOT chain-of-custody form, no fifteen minute observation period) may result in tests being declared invalid.

Discussion

FTA agrees with those commenters that favor allowing employers to use the results of post-accident drug and alcohol tests administered by State and local law enforcement personnel when those officials have independent authority to administer the test and when the employer obtains the test results in conformance with State and local law. The benefits of having properly administered post-accident test, even if that test is not conducted per 49 CFR Part 40, outweigh the concerns of those opposing this amendment.

As a preliminary matter, FTA notes that this amendment would apply in only a small number of instances where the employer is unable to perform a post-accident test according to the FTA drug and alcohol testing regulations but where State or local law enforcement personnel, on their own authority, have conducted post-accident tests. Results from tests administered by State or local law enforcement personnel may not be used when the employer could have, but did not, conduct its own test. Rather, this amendment applies exclusively to those few instances where the employer is unable to perform a post-accident test. Employers may not rely on State or local law enforcement personnel to conduct post-accident testing. While this provision does not prohibit duplicative post-accident testing (*i.e.*, the employer testing under FTA regulations and State or local officials testing under their own authority), it does not permit employers to ignore their obligation to test.

As was explicitly noted in the September 30, 1997, NPRM, this amendment imposes no requirement on State or local law enforcement personnel to perform post-accident testing. In fact, employers should not assume State or local law enforcement personnel routinely perform post-accident drug and alcohol testing; nor should employers assume such test results will be readily available to them. The FTA knows of no situation in which State or local law enforcement agencies routinely give employers the results from post-accident testing. If an employer knows that a State or local law enforcement agency has, of its own authority, administered a post-accident test, and the employer would like to obtain the test result because it (the employer) was unable to perform a post-accident test in accordance with Federal regulations, the employer must either obtain those results (through, for example, a subpoena) or prepare and maintain a record stating why a post-accident test was not promptly administered, as required by FTA rules. This amendment does not impose an affirmative obligation on an employer to obtain results of a post-accident drug and/or alcohol test administered by State or local law enforcement officials.

Refusal by a safety-sensitive worker to submit to a law enforcement-administered post-accident test shall not constitute "refusal to submit" as that term is defined at 49 CFR 653.7 and 654.7. In the event both a law enforcement agency and the employer (proceeding under 49 CFR Parts 40, 653 and 654) conduct post-accident tests, the test results obtained by the employer shall take precedence for purposes of compliance with Parts 653 and 654.

The remaining objections to this amendment involve Federal deference to State and local law enforcement, and their post-accident testing methodology. FTA will accept the results from post-accident drug and alcohol tests performed by State or local law enforcement agencies, under their own authority, in conformity with applicable Federal, State, or local testing requirements, when the employer was unable to conduct a test, even when the test may have been administered in a manner different than that prescribed by 49 CFR Part 40.

II. Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no significant Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities; allowing employers to use the results of a post-accident drug and alcohol test administered by or under the direction of State of local law enforcement personnel is unlikely to significantly increase the costs for employers.

List of Subjects in 49 CFR Parts 653 and 654

Alcohol testing, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, FTA amends Title 49 Code of Federal Regulations, part 653 and 654 as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 653.45 [Amended]

2. Section 653.45 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The results of a blood or urine test for the use of prohibited drugs, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer.

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

3. The authority citation for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.52.

§ 654.33 [Amended]

4. Section 654.33 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The results of a blood or breath test for the misuse of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements to this section, provided such tests conform to the applicable Federal, State, or local testing requirements, and that the results of the tests are obtained by the employer.

Issued: December 2, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–32478 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; New 12-month Finding for a Petition to List the Florida Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of new 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a new 12-month finding for a petition to list the Florida black bear (*Ursus americanus floridanus*) under the Endangered Species Act of 1973, as amended. After a review of all available scientific and commercial information, the Service finds that listing of the Florida black bear is not warranted at this time. This finding supersedes the previous 12-month finding that found listing of the Florida black bear to be warranted but precluded by higher priority listing actions. Furthermore, because the definition of a candidate species, one for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule, no longer applies to the Florida black bear, we remove this species from the candidate species list.

DATES: The finding announced in this document was made on November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Jacksonville, Florida 32216 (904/232–2580, ext. 106).

SUPPLEMENTARY INFORMATION:

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Background

The Florida black bear (*Ursus americanus floridanus*) is a subspecies of the black bear (*Ursus americanus*), which ranges from northern Alaska and Canada south to northern Mexico. According to Hall (1981), historically the Florida black bear was primarily restricted to Florida, but also occurred in coastal plain areas of Georgia, Alabama, and extreme southeastern Mississippi. Following extensive human development, the distribution of the Florida black bear has become fragmented and reduced, perhaps occupying 27 percent of its former range in Florida (Florida Game and Fresh Water Fish Commission (Commission 1993). Population sizes and densities prior to the arrival of the first European colonists are not known and probably varied throughout the different habitats found in this part of the Southeast. The Commission (1993) estimated that possibly 11,500 bears once inhabited Florida. The bear is currently State-listed as a threatened species by the Commission, except in Baker and Columbia counties and in Apalachicola National Forest where it is considered a game species, although there is currently no open season. It is considered threatened by the Florida Committee on Rare and Endangered Plants and Animals (Williams 1978, Maehr and Wooding 1992). The States of Alabama and Georgia consider it a game animal, with no hunt allowed in Alabama and a limited hunt (6 days on 3 weekends in September and October and a 3-day hunt on December 3, 4, and 5, which was added this year) of the Okefenokee population in Georgia.

Service involvement with the Florida black bear began with the species' inclusion as a category 2 species in notices of review published on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). At that time, category 2 species were defined as those for which information in the possession of the Service indicated that listing was possibly appropriate, but for which sufficient data on biological vulnerability and threat were not currently available to support proposed rules. On May 20, 1990, we received a petition from Ms. Inge Hutchison of Lake Geneva, Florida, to list the Florida black bear as a threatened species. The petition cited the following threats: (1) Illegal hunting by beekeepers; gallbladder poachers, and others; (2) loss and fragmentation of critical habitat; (3) hunting pressure; and (4) road mortality. The Service made a 90-day petition finding on October 18, 1990 (55 FR 42223), that the petition presented substantial information. Based on the information received and information in Service files, a 12-month finding was made on January 7, 1991 (56 FR 596), indicating that the Service believed that listing was warranted but precluded by higher priority listing actions. At the time of the finding, we assigned the species a level 9 priority in our listing priority system published on September 21, 1983 (48 FR 43098). That level indicated that the species was subject to imminent but moderate-to-low threats throughout its range. Since we determined that listing was warranted, the species was included as a category 1 candidate in the November 15, 1994, animal review notice (59 FR 58982). At that time, a category 1 candidate (now referred to as a "candidate") was one for which the Service had on file sufficient information to support issuance of a proposed rule. Designation of a category system of candidates was discontinued in the February 28, 1996, notice of review (61 FR 7956). The Florida black bear was included as a candidate in that notice with a listing priority number of 12, indicating a species under non-imminent moderate-to-low threat. Since the 12-month finding, the Service's Southeast Region has used its listing resources to process higher priority listing actions.

The processing of this finding conforms to the Service's final listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings. The highest priority is given to handling emergency situations (Tier 1), second highest priority (Tier 2) to processing final decisions on proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and delisting or reclassifying actions, and lowest priority (tier 3) to actions involving critical habitat determinations. The processing of this final rule falls under tier 2. At this time, the Southeast Region has no pending tier 1 actions.

The Service contracted a taxonomic review of southeastern black bears in 1992 (Vaughan *et al.* 1998), to clarify the relationships of the Florida, Louisiana (*U. a. luteolus*), and American black bears. The results indicate that the current taxonomic arrangement remains valid (Kasbohm and Bentzien 1998), and the Florida black bear qualifies as a "species" as defined by the Act.

The Service contracted a population ecology study of the Okefenokee-Osceola population with the University of Tennessee in 1994; the work is ongoing in 1998. Studies to determine basic information such as bear population demographics and movement are also underway in southern Alabama, on Eglin Air Force Base, and in the Chassahowitzka area of west central Florida.

On January 21, 1997, the Service entered into a revised settlement agreement in the *Fund for Animals et al.* v. *Babbitt* case (Civil No. 92–0800 SS, U.S. District Court for the District of Columbia). One of the stipulations of the agreement was that we would resolve the conservation status of the Florida black bear by December 31, 1998.

In 1998, we updated the status review of this species (Kasbohm and Bentzien 1998) to include additional information concerning the status of the Florida black bear that had become available since the 1992 assessment.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species (in danger of extinction throughout all or a significant portion of its range) or threatened species (likely to become endangered in the foreseeable future throughout all or a significant portion of its range) due to one or more of the five factors described in section 4(a)(1). The factors and their application to the Florida black bear are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Much of the historical habitat of the Florida black bear has been lost to land clearing and alteration by man. Currently, the bear is found mainly in seven more-or-less separate populations (Kasbohm and Bentzien 1998), some of which are sufficiently isolated by distance or unsuitable habitat that there would be little chance of interchange between them. These, and other Florida black bear populations, are discussed below.

1. In Alabama, the Florida black bear appears restricted to the Mobile River Basin and adjacent areas, including portions of Baldwin, Clarke, Choctaw, Mobile, and Washington counties. About 377 square kilometers (sq km) (93,000 acres (ac)) support an estimated population of less than 50 bears. Bears may also occur occasionally on an additional 6,641 sq km (1,640,327 ac) of

adjacent lands, but not as a resident breeding population. Most of these lands are private, and residential development is expected to continue, significantly affecting primary bear habitat within the next ten years. This population shows morphological indications of excessive inbreeding (Kasbohm *et al.* 1994), including kinked or absent tails, prolapsed (slipping outward) rectums, and no external scrotum or testes. Because of its low numbers, shrinking habitat, and genetic problems, this population could be extirpated in the near future.

2. Eglin Air Force Base (AFB) and surrounding public lands in the western Florida panhandle include about 2,700 sq km (667,000 ac). Eglin AFB contains 1,680 sq km (414,960 ac) of usable bear habitat but only 722 sq km (178,334 ac) are considered of high quality (Cox *et al.* 1994). Based on recent studies, it is estimated that 60 to 100 bears may occur on Eglin AFB. There are an estimated 6,641 sq km (1,640.327 ac) of additional land in the area where bears occasionally occur, and it is possible that numbers and distribution are greater than currently known; Cox *et al.* (1994) estimated that existing Eglin AFB and adjacent conservation lands could support as many as 150 to 210 bears, not including conservation lands north of Interstate 10 (such as Blackwater State Forest) that appear to be suitable bear habitat but which may be severed from the Eglin population by the Interstate and U.S. 90. Cox *et al.* (1994) considered this population to be stable.

Based on human population growth projections (Floyd *et al.* 1996), development in this area will continue to reduce and fragment bear habitat on private lands. Road mortality may be the greatest threat to this population; bears on Eglin AFB have large home ranges due to limited availability of preferred habitat and, therefore, may have to cross roads frequently (Carl Petrick, Natural Resources, Eglin AFB, pers. comm.). Dunbar *et al.* (1996) reported physical signs of inbreeding in this population, although recent bear captures have not detected such signs (Carl Petrick, Natural Resources, Eglin AFB, pers. comm.). We believe the Eglin AFB population is currently stable, but based on uneven habitat quality on occupied conservation lands and the probability of significant human population growth on adjacent private lands, management (e. g., occasional transfers of bears from another population) could be necessary in the future to keep the population viable.

3. In the central Florida panhandle, bears occur primarily on the Apalachicola National Forest (NF) and adjacent conservation and private lands. The area includes 10,930 sq km (2,700,000 ac) of potential, mostly high quality bear habitat. Existing and projected acquisition of public lands will provide about 4,100 sq km (over 1,000,000 ac) of secure habitat. While additional research is necessary to determine population size throughout this area, we estimate that it exceeds 400 animals.

Projected land use indicates that habitat alteration and human development will occur at slow rates, significant areas of private lands are expected to remain forested habitat through the foreseeable future. Considering the large contiguous area of conservation lands, the estimated number of bears present, the slow rate of human development, and the lack of substantial mortality, we believe the Apalachicola NF population is secure for the foreseeable future and may be able to expand into 6,000 sq km (1,482,000 ac) of apparently unoccupied habitat in the Big Bend area of Florida.

4. A small bear population occurs in Citrus, Hernando, and Pasco Counties on the middle Gulf Coast of Florida, and is often referred to as the Chassahowitzka population. There are an estimated 850 sq km (209,950 ac) of potential habitat in the area, but only 250 sq km (61,750 ac) are in public ownership. Less than 20 bears are believed to reside in this area. There are an additional 200 sq km (49,400 ac) of conservation lands along the Withlacoochee River, 100 sq km (24,700 ac) in Pasco County, and 526 sq km (129,922 ac) in the Green Swamp area (another 626 sq km (154,622 ac) are proposed for acquisition there). While bear sightings are known from these areas, they are unlikely to maintain linkages with the Chassahowitzka area and none of these lands in the area are large enough to support a long-term bear population without management. The Chassahowitzka area is likely to have continued rapid human development with the consequent loss of forested lands and the expansion of roads. This indicates that the Chassahowitzka population is unlikely to persist into the foreseeable future. However, Cox *et al.* (1994) believed the Green Swamp area was capable of supporting 24 to 48 bears, and that such a population would have a fair chance of survival for very long periods (under favorable management conditions, possibly greater than 80 percent chance of survival for 200 years). The Commission intends to investigate the status of bears in the Green Swamp, and with management, a small population could likely be maintained on these public lands. A self-sustaining bear population, however, does not appear likely in the Chassahowitzka area.

5. The Ocala NF and the northeastern peninsula of Florida support populations of bears that were (and still are) connected, but the conservation situation is different for each area. The Ocala area includes about 8,935 sq km (2,207,000 ac) of high quality bear habitat, 2,223 sq km (549,000 ac) of which are nearly contiguous public conservation lands. Proposed acquisition projects would increase public lands in the Ocala NF area to 2,600 sq km (642,000 ac). Wooding *et al.* (1994) estimated a minimum density of 0.08 bears per sq km (0.2 bears per square mile (sq mi)) in the forest, and extrapolated this to a possible population size of 125 for the entire forest. Roof and Wooding (1996) studied bears in the vicinity of the wildlife underpass on State Route 46 south of Ocala NF and estimated a density of 0.53 bears sq km (0.28 bears per sq mi). The latter density observation leads us to believe that the estimate of 125 bears (Cox *et al.* (1994) for the Ocala NF is too low, and that several hundred bears occur on the forest and adjacent public conservation lands. Based on the fact that 2,600 sq km (642,000 ac) of protected habitat are projected to be available to bears in the future (2,223 sq km is already protected), and the high productivity of the area, the Service believes the Ocala black bear population will remain viable into the foreseeable future.

Most bear habitat in the St. Johns area is on private commercial timber lands. Several public land holdings provide corridors for the Ocala population to reach private lands to the east, and the continued existence of bears in the St. Johns area probably depends on continued connection to the Ocala NF area. In the southern St. Johns area, the Tosohatchee State Reserve and adjacent conservation lands total about 356 sq km (87,932 ac) and are believed to support a small bear population. Persistence of this population is also dependent on maintaining interchange with the rest of the St. Johns and Ocala areas. The northern St. Johns population extends into Duval County, nearly to Jacksonville. The metropolitan area is expanding rapidly from southern Duval County through St. Johns County and southward, making it unlikely that bears will persist in this area, particularly east of Interstate 95. The St. Johns area is most likely to retain bears if corridors are maintained with the Ocala population. Given the increased density of humans in this area, it is unlikely that effective connections can be maintained in much of the area. Failing such connections, bear habitat will become increasingly fragmented, with bears being extirpated in the St. Johns area.

6. The Okefenokee National Wildlife Refuge (NWR), Osceola National Forest, and nearby lands support a large bear population. The area has about 5,872 sq km (about 1,500,000 ac) of occupied habitat and 4,395 sq km (about 1,100,000 ac) of potentially occupied or suitable habitat (Commission 1993). About 2,532 sq km (625,404 ac) of primary bear range is protected in State and Federal ownership. Many timber lands surrounding the Okefenokee NWR provide important upland habitat for bears. Many of these areas are leased to local hunt clubs; the hunt clubs and landowners view the bears as an asset because of the interest in the Georgia hunt. Most of these lands are projected to remain in commercial timber production in the future. In Florida, losses of forested area are anticipated around the Jacksonville and Lake City areas, but these are on the periphery of the range and are not expected to affect the core population.

Population density estimates range from 0.1 to 0.4 bears per sq km (0.259 to 1.0 bears per sq mi) (Clark *et al.* unpublished data, Abler 1983). Population extrapolation, assuming a density of 0.25 bears per sq km (derived from the low range of Abler and mid-range of Clark), yields a conservative estimate of 630 bears for currently protected lands, and over 1,200 bears for all occupied habitat in the area.

Based on the low human population in this area, the slow anticipated rate of development, and the large core of protected lands, this population is secure and should remain viable into the foreseeable future.

7. In south Florida, bears are found on private and public lands in four counties in and near the Big Cypress Swamp, and in the vicinity of Highlands County to the north. There are an estimated 3,257 sq km (804,479 ac) of potential habitat (both public and private) in the Big Cypress area (Cox *et al.* 1994); about 3,393 sq km (838,071 ac) of land in this area is included in Federal and State conservation lands, but only 2,700 sq km (666,900 ac) of this protected habitat is believed to be bear habitat. Projected conservation land acquisitions would bring the total protected land area to over 3,850 sq km (950,950 ac). This would encompass 94 percent of the 3,257 km sq of bear habitat identified by Cox *et al.* (1994); 83 percent (2,700 sq km) is currently in Federal and State conservation lands. Based on a density estimate of 0.12 bears per sq km (.31 per sq mi) (Maehr 1997), the Big Cypress area may support 390 bears. The Highlands County area contains about 704 sq km (173,888 ac) of suitable habitat and only 44.5 sq km (10,992 ac) of protected lands, in three scattered areas, and could contain 85 bears.

Projected land use in this region includes urban development and citrus conversion. Based on past rates of forest conversion, most of the forested land in private ownership may be lost to development in the foreseeable future, both in the Highlands and Big Cypress areas. While the Highlands County population will lack sufficient area and connectivity to support a population, the Big Cypress population should remain secure and viable on public conservation lands into the foreseeable future.

We believe that there are four viable Florida black bear populations, Apalachicola NF, Ocala NF, Okefenokee NWR-Osceola NF, and Big Cypress National Preserve, which are secure on public conservation lands, and will be maintained on those lands into the foreseeable future. These populations are distributed over most of the historical range of the species. Therefore, we conclude that habitat loss and fragmentation are not likely to cause the Florida black bear to become endangered in the foreseeable future over all or a significant portion of its range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Florida black bear is a game species in Alabama, Georgia, and in the Apalachicola National Forest and Baker and Columbia counties in Florida. Bears in the remaining range in Florida are State-listed as threatened. There is currently no open season in Alabama and Florida.

Georgia allows a 6-day hunt of the Florida black bear around the Okefenokee Swamp for three consecutive weekends in September and October and this year added a 3-day hunt in the Dixon Memorial Forest (part of the Okefenokee population) on December 3, 4, and 5. From 1988 to 1997, 392 bears were legally killed, with a mean annual kill of 39 bears. Mean ages of males (4.7 years) and females (6.1 years) taken throughout the history of the hunt indicate a relatively old age distribution, and a sustainable hunt (Bunnell and Tait 1985, Garshelis 1990). Preliminary estimates indicate annual harvest rates of 10 to 13 percent, a level that should not cause a population decrease (J. Clark *et al.* University of Tennessee, unpublished data). Continued State monitoring of the hunt should ensure that excessive proportions of females are not taken and that excessive kills do not occur in years when failures of natural foods cause bears to leave Okefenokee NWR in unusually large numbers. Beginning in 1992, the Georgia Department of Natural Resources implemented and continues to conduct annual bait station surveys to monitor the population.

We do not consider the current legal hunt a threat to the continued existence of the Florida black bear, and conclude that this factor is not likely to cause the species to become endangered throughout all or a significant part of its range in the foreseeable future.

C. Disease or Predation

Southeastern black bears are known to host a variety of disease organisms; none of these seem to represent a serious problem (Davidson and Nettles 1988). Disease in not known to be a factor in the decline of the Florida black bear. This species has few natural enemies; predation is not a threat. These factors are not a threat to the Florida black bear now or in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

The Alabama Department of Conservation and Natural Resources (Division of Game and Fish), Florida Game and Fresh Water Fish Commission, and Georgia Department of Natural Resources (Wildlife Resources Division) have authority and responsibility for the management of the Florida black bear in their respective States. Their capabilities include the regulation of hunting and take (illegal killing), management of State wildlife management areas, law enforcement, research, and conservation and educational activities relating to the Florida black bear. We believe the authority and interest of these agencies are sufficient to monitor the status of the Florida black bear on the four major populations on public lands. The Federal and State protection afforded on the four primary public land areas will be adequate to ensure the continued existence of bears. The agencies are able to move bears if necessary, and, in the case of Florida, may help maintain the bear on one or possibly two additional areas of public lands (Eglin Air Force Base and possibly the Green Swamp) where occasional translocations may be necessary.

We believe there are currently adequate levels of protection and management authority to ensure the survival of the Florida black bear on the four major public land areas through the foreseeable future, through the existing authority of the U.S. Forest Service, the National Park Service, the Service's National Wildlife Refuge System, and State and other conservation land managers.

Federal protection against illegal trade in bears or bear parts (e.g., gall bladders and claws) that crosses State lines is available through the Lacey Act. Such take is not currently known to be a significant problem (see discussion below).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Poaching is a potential threat to the Florida black bear, including kills of nuisance bears, hunting out of season, and killing of bears for commercially valuable parts such as claws and gall bladders. Currently, directed poaching of Florida black bears for parts appears to be absent or undetectable. Ongoing work in the Okefenokee NWR-Osceola NF area, for example, has not identified a significant level of poaching or illegal killing of black bears (Kasbohm and Bentzien 1998). Further, poaching and illegal kill are not known to be significant mortality factors for other Florida black bear populations.

Road-kills are a mortality factor for the Florida black bear throughout its range. Following the cessation of the legal hunt in Florida after the 1993–1994 season, the main mortality factor in the Apalachicola NF area may be road-kills. At least 81 bears were killed in vehicle collisions from 1976 to 1995 in and near to Apalachicola NF. However, road-kill mortality at current levels seems unlikely to negatively affect the overall Apalachicola bear population due to the slow rate of human population growth in the area and large areas of forested lands that are expected to remain intact. In the Ocala population, 187 road-killed bears were recorded from 1976 to 1995. As in other parts of the State, this mortality rate has increased in the last few years, with 35 percent of all the road-kills occurring from 1993 to 1995. Expansion of State Routes 40, 44, and 46 may lead to higher mortality, reduce the number of bears in the vicinity of these roads, and tend to isolate black bears to fragments of the Ocala NF. Although road-kills represent a significant mortality factor for this population, annual mortality rates calculated for this population, based on radiotelemetry studies (Wooding and Hardisky 1994, Roof and Wooding 1996), were less than those for most bear populations examined in the eastern United States (Bunnell and Tait 1985). A wildlife underpass was installed on State Route 46 in 1994 and appears to have been effective in reducing road-kills (Roof and Wooding 1996). According to Lande and Barrowclough (1987), a subdivided population can be considered approximately panmictic (random mating occurring throughout the population) if separate colonies exchange on the order of one or more migrants (bears in this case) per generation. The abundance and movements of bears in and near Ocala NF (Roof and Wooding 1996) make it unlikely that this level of migration would be prevented in the foreseeable future. Therefore, it appears unlikely that the Ocala population would become genetically isolated due to road widening.

Road-kills in the Big Cypress and Highlands County areas totaled 76 and 27 bears, respectively, from 1976 to 1995 with 80 percent occurring before 1993. This mortality rate may have been alleviated by the establishment of 24 wildlife underpasses on Interstate 75 and two on State Route 29 in Collier County (Gilbert and Wooding 1996).

We conclude that neither illegal killing of black bears nor road mortality is likely to cause the Florida black bear to become endangered throughout all or a significant portion of its range in the foreseeable future.

A basic question in assessing the conservation status of these populations is the likelihood of their persisting into the foreseeable future. Many factors affecting population dynamics and the chance of extinction are uncertain, i.e., due to chance or random events. Demographic uncertainty, environmental variability, and genetic uncertainty are primary threats to vertebrate populations. Demographic uncertainty results from random events in the survival and reproduction of individuals. Environmental uncertainty is due to random or unpredictable changes in weather, food supply, and the populations of competitors, predators, and parasites, etc.; and natural catastrophes occurring at random intervals. Genetic uncertainty or random changes in genetic make-up may occur due to the founder effect (the principle that the founders of a new population carry only a random fraction of the genetic diversity of the parent population), genetic drift (random gene frequency changes in a small population due to chance), or inbreeding (Shaffer 1987).

Minimum viable population modeling (Soulé 1987) is a predictive tool to assess the potential fate of a population by predicting the probability of its persistence for a specific time, based on demographic characteristics of the species and incorporating environmental variability as described above. Cox *et al.* (1994) used such simulations to predict the probability of persistence of the Florida black bear, under varying environmental conditions (favorable, moderate, and unfavorable), for 200 years. The model assumed that a catastrophic event lowering reproduction by 40 percent would occur, on average, every 25 years. Simulations indicated that a population of about 60 bears under favorable conditions would have a 95 percent chance of persistence for 200 years. This probability of persistence would require 100 bears under moderate environmental conditions and 130 bears under unfavorable conditions.

Based on data from stock breeders, Franklin (1980) recommended a minimum effective population size of 50 individuals as a threshold above which the population would maintain acceptably low levels of inbreeding for many generations, but that 500 might be required to maintain typical levels of heritable variation. Effective population size (the size of an ideal population that would undergo the same amount of random genetic drift as the actual population) is always less than the size of a breeding population. Cox *et al.* (1994) estimated that an effective population size of 50 for the Florida black bear would require a total population of 75 to 130. They recommended a general goal of ten secure populations of at least 200 individuals for rare vertebrates, with conservation areas of 2,000 to 4,000 sq km recommended for bears. Given the large amount of relatively undeveloped land required to support such populations, it appears unlikely that this goal can be achieved within the historical range of the Florida black bear. There are currently four populations on public conservation lands, distributed widely over the historical range, that meet the above criteria for population size and size of conservation area. Cox *et al.* (1994) indicated that habitat persistence of wildlife populations was more dependent on appropriate management than population size. Natural resource management of significant conservation lands supporting Florida black bears is discussed below.

Current natural resource management on Eglin AFB includes the maintenance of habitat diversity and includes prescribed burning to maintain natural ecological conditions, uneven aged stands, replacement of sand pine when it has invaded longleaf pine communities, and maintenance of riparian and forested wetlands on which

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bears depend (Department of the Air Force 1993). This management is expected to be compatible with the continued existence of bears, although the limited bear population size may require augmentation in the future.

The USDA Forest Service Land and Resource Management Plan (Plan) for National Forests in Florida, covering lands which make up most core bear conservation lands, is expected to be compatible with the continued maintenance of bears at current levels (U.S. Forest Service 1998). The main land management practices in the Plan are prescribed burning and timber management. One of the Plan's goals is to maintain or restore ecosystem composition, structure, and function within the natural range of variability. Meeting this goal should ensure that silvicultural practices are compatible with maintaining bears on the National Forests. Specific management activities include thinning of young pine plantations, initiation of uneven-aged management, and sand pine clearcuts. Hardwoods will be left to supply mast (nuts and fruits of forest trees). Prescribed fire will emphasize growing-season burns. These measures are predicted to increase forage and acorn availability for bears. Most road activity is expected to be maintenance and reconstruction of existing Forest Service roads. Cross-country travel will be limited to pedestrians and horse riders.

The Big Cypress National Preserve management goals are to preserve the watershed and its natural flora and fauna, through prescribed burning, the control of exotic plants, and the restoration of hydrology (National Park Service 1991). This management is expected to be compatible with the continued existence of the bear.

On National Wildlife Refuges, management goals include ecosystem management for the maintenance of diverse natural habitats for a variety of wildlife. The forestry and burning practices plans of Okefenokee and Florida Panther NWRs are expected to continue providing good bear habitat into the foreseeable future.

Based on projected compatible habitat management for bears on core habitat areas, these lands are predicted to continue providing secure bear habitat into the foreseeable future.

The Florida black bear, in comparison to bears not federally protected in other parts of the southeast, is similar in population size and total secure habitat. The recovery criteria for the federally threatened Louisiana black bear (*Ursus americanus luteolus*) (U.S. Fish and Wildlife Service 1995) calls for two viable subpopulations linked by a corridor, with long-term protection of the habitat. In contrast, the Florida black bear currently has four stable populations on conservation lands that have long-term protection.

Finding

We have reviewed the petition, 1998 status review, available literature, and other information. After reviewing the best scientific and commercial information available, we conclude that the continued existence of the Florida black bear is not threatened by any of the five factors alone or in combination. We find, therefore, that the Florida black bear is not endangered nor likely to become endangered within the foreseeable future throughout all or a significant portion of its range and that listing as threatened or endangered is not warranted.

References Cited

A complete list of all references cited herein is available from the Jacksonville Field Office (see FOR FURTHER INFORMATION section).

Author: The primary author of this notice is Dr. Michael M. Bentzien (for address and phone number, see FOR FURTHER INFORMATION section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 25, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–32547 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to Delist the Squirrel Chimney Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service announces a 90-day finding for a petition to delist the Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) under the Endangered Species Act of 1973, as amended. We find that the petition does not present substantial scientific or commercial information indicating that delisting this Florida species due to extinction may be warranted.

DATES: The finding announced in this document was made on November 25 1998.

ADDRESSES: Those having questions, comments, or information concerning this petition may send them to the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. The petition finding, supporting data, and comments are available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Milio at the above address or telephone 904/232–2580, ext. 112.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. To the maximum extent practicable, we will make the finding within 90 days of receipt of the petition, and promptly publish the finding in the **Federal Register**. Following a positive finding, we must promptly commence a status review of the species.

The processing of this petition conforms with our current listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition is a Tier 2 action.

The Florida Game and Fresh Water Fish Commission (GFC) submitted the petition, dated August 5, 1997, which we received on August 8, 1997. We have made a 90-day finding on this petition to delist the Squirrel Chimney cave shrimp, *Palaemonetes cummingi*.

Palaemonetes cummingi is a very rare species, with no more than a dozen collections (Chace 1954, Dobkin 1971, Franz 1994b) recorded between its discovery in 1953 (Chace 1954) and last observation in 1973 (Franz 1994b). All collections and observations occurred at Squirrel Chimney Cave (Franz 1994a). Squirrel Chimney Cave is a partially water-filled, solution cavity located on private land near Gainesville, Alachua County, Florida (Franz 1994a). Surveys to confirm the species continued existence at Squirrel Chimney Cave (Morris and Butt 1992, Franz 1994b) and to locate specimens at other nearby underground sites (Franz et al. 1994) were unsuccessful. We listed *P. cummingi* as a threatened species on June 21, 1990 (55 FR 25588).

The petition contends that the failure to locate the species during a two-year (1994–1996) status survey, supports its removal from the List of Endangered and Threatened Wildlife. The status survey included Squirrel Chimney and four additional underground aquatic sites (Doonan 1997). Except for a 2.5 meter (8 foot) drop in water level, physical conditions at Squirrel Chimney remained relatively unchanged since Hobbs (1942) discovered the site in the early 1940's. Chemical analysis of water samples revealed good overall water quality. The survey confirmed the continued presence of redeye chub (*Notropis harperi*) in Squirrel Chimney Cave. Morris and Butt (1992) first documented this small, predatory fish within that locality. Its presence may be the result of a natural colonization through underwater passageways linked to other underground sites. Since the chub is capable in lab situations of eating other crustacea the size of *Palaemonetes cummingi* larvae (L. Straub, U.S. Geological Survey, Biological Resources Division, pers. comm., 1997, in Doonan 1997), the survey report suggested that this fish may be responsible for the apparent absence of the shrimp from Squirrel Chimney Cave. Based on survey results and analyses, the GFC report indicated that *P. cummingi* may be extinct. The GFC acknowledges that this assessment is not conclusive, because it only surveyed a small percentage of potential habitat and it omitted two high priority sites from its survey.

We have reviewed the petition, its supporting information, information in our files, other available literature, and consulted with species and habitat experts. Using the best scientific and commercial information available, we find that the petition does not present substantial information indicating that delisting this species due to extinction may be warranted.

We base our finding on the inadequacy of existing information on the Squirrel Chimney cave shrimp and its habitat. The GFC status survey does not include a number of underground sites the GFC rated as ecologically similar to and within about 8 kilometers (5 miles) of Squirrel Chimney. These sites are part of the Newberry Limestone Plain and characteristic of the karst (limestone) topography of that area (Williams *et al.* 1977). Connections among underground features occur frequently in karst topography (Doonan 1997). The emergence of redeye chub in Squirrel Chimney and its presence at other nearby underground sites suggest that fissures found at Squirrel Chimney actually may represent underwater connections to those other sites (Doonan 1997). Such passageways may shelter Squirrel Chimney cave shrimp and also provide for their dispersal. In addition, the extreme rarity of *P. cummingi* and lack of life history information suggest that its detection requires extensive sampling (N. Burkhead, U.S. Geological Survey, in litt. 1997). We believe the number of visual and trap samples taken during the GFC survey at sites other than Squirrel Chimney were too small to provide an accurate assessment of the species' status at those sites.

We continue to seek new information on the Squirrel Chimney cave shrimp's biology, ecology, distribution, and habitat, as well as threats to its survival. Such information will enable us to work with the GFC to correctly assess the species' status and make the best recommendations and decisions regarding its conservation, recovery, and possible reclassification. We encourage interested parties to send any comments, data, or other information involving *P. cummingi* and its habitat to our Jacksonville Field Office listed in the **ADDRESSES** section of this notice.

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Author: The primary author of this document is John F. Milio, Jacksonville Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 25, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–32546 Filed 12–7–98; 8:45 am]

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DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE38

Migratory Bird Hunting; Temporary Conditional Approval of Tungsten-Matrix Shot as Nontoxic for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) amends Section 20.21(j) to grant temporary conditional approval of tungsten-matrix shot as nontoxic for the 1998–99 migratory bird hunting season only, except in the Yukon-Kuskokwim (Y–K) Delta, Alaska, while chronic toxicity/reproductive testing is being completed. Tungsten-matrix shot has been submitted for consideration as nontoxic by Kent

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Cartridge Manufacturing Company, Ltd. (Kent), of Kearneysville, West Virginia.

DATES: This rule takes effect immediately upon publication on December 8, 1998.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634–ARLSQ, Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved by the Service as nontoxic. On October 7, 1998 tungsten-iron (63 FR 54015) and tungsten-polymer (63 FR 54021) shot were given temporary conditional approval for the 1998–99 hunting season. Compliance with the use of nontoxic shot has increased over the last few years. The Service believes that this level of compliance will continue to increase with the availability and approval of other nontoxic shot types. The Service is eager to consider these other materials for approval as nontoxic shot.

The revised procedures for approving nontoxic shot (50 CFR 20.134) consist of a three-tier process whereby existing information can minimize the need for full testing of a candidate shot. However, applicants still carry the burden of proving that the candidate shot is nontoxic. By developing the new approval procedure, it was the Service's intent to discontinue the practice of granting temporary conditional approval to candidate shot material. However, the application by Kent was initiated prior to implementation of the new protocol. To date, scientific information presented in the application suggests that tungsten-matrix is nontoxic under conditions for the proposed shot configuration. Therefore, the Service will grant temporary conditional approval for the 1998–99 hunting season only. Final approval will not be granted until chronic toxicity/reproductive testing is successfully completed and the results are reviewed and approved by the Director.

Kent's original candidate shot was fabricated from what is described in their application as "* * * a mixture of powdered metals in a plastic matrix whose density is comparable to that of lead. All component metals are present as elements, not compounds. Tungsten-matrix pellets have specific gravity of 9.8 g/cm^3 and is composed of 88 percent tungsten, 4 percent nickel, 2 percent iron, 1 percent copper, and 5 percent polymers by mass" (63 FR 30044; June 2, 1998). After consultation with the Service, Kent subsequently changed the composition of their shot and removed several metal components. The new shot material being considered has a density of 10.7 g/cm^3 and is composed of approximately 95.9 percent tungsten and 4.1 percent polymers.

Kent's updated application includes a description of the reformulated tungsten-matrix shot, a toxicological report (Thomas 1997), and results of a 30-day dosing study of the toxicity of the original formulation in game-farm mallards (Wildlife International, Ltd. 1998). The toxicological report incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles) and information on environmental fate and transport. The toxicity study is a 30-day dosing test to determine if the original candidate shot poses any deleterious effects to game-farm mallards. This will meet the requirements for Tier 2, as described in 50 CFR 20.134(b)(3). Because the re-formulated shot contains no new components, and in fact has had components removed, the Service determined that testing of the reformulated shot in the form of a new 30-day dosing study was not necessary.

Toxicity Information: There is considerable difference in the toxicity of soluble and insoluble compounds of tungsten. Elemental tungsten, which is the material used in this shot, is virtually insoluble and is therefore expected to be relatively nontoxic. Even though most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten (while the toxicity of the polymers is negligible due to its insolubility), there appears to be no basis for concern of toxicity to wildlife for tungsten-matrix shot (metallic tungsten and polymers) via ingestion by fish, birds, or mammals (Wildlife International Ltd., 1998; Bursian et al., 1996; Gigiema, 1983; Patty, 1981; Industrial Medicine 1946; Karantassis 1924).

Environmental Fate and Transport: Tungsten is insoluble in water and, therefore, not mobile in hypergenic environments. Tungsten is very stable in acids and does not easily complex. Preferential uptake by plants in acid soil suggests that uptake of tungsten in the anionic form is associated with tungsten minerals rather than elemental tungsten (Kabata-Pendias and Pendias 1984).

Environmental Concentrations: Calculation of the estimated environmental concentration (EEC) of tungsten in a terrestrial ecosystem is based on 69,000 shot per hectare (Pain 1990), assuming complete erosion of material in 5 cm of soil. The EECs for tungsten and the 2 polymers in soil are 25.7 mg/kg, 4.2 mg/kg, and 0.14 mg/kg, respectively. Calculation of the EEC in an aquatic ecosystem assumes complete erosion of the shot in one cubic foot of water. The EECs in water for tungsten and the 2 polymers are 4.2 mg/L, 0.2 mg/L, and 0.02 mg/L, respectively. Tungsten-matrix shot is considered insoluble and is stable in basic, neutral, and mildly acidic environments. Therefore, erosion of shot is expected to be minimal, and adverse effects on biota are not expected to occur.

Effects on Birds: An extensive literature review provided information on the toxicity of elemental tungsten to waterfowl and other birds. Ringelman et al. (1993), orally dosed 20 8-week-old game-farm mallards with 12–17 (1.03g) tungsten-bismuth-tin (TBT) pellets and monitored them for 32 days for evidence of intoxication. No birds died during the trial, gross lesions were not observed during the postmortem examination, histopathological examinations did not reveal any evidence of toxicity or tissue damage, and tungsten was not detectable in kidney or liver samples. The authors concluded that TBT shot presented virtually no potential for acute intoxication in mallards.

Kraabel et al. (1996) assessed the effects of embedded TBT shot on mallards and concluded that TBT was not acutely toxic when implanted in muscle tissue. Inflammatory reactions to TBT shot were localized and had no detectable systemic effects on mallard health.

Nell et al. (1981) fed laying hens (Gallus domesticus) 0.4 or 1 g/kg tungsten in a commercial mash for five months to assess reproductive performance. Weekly egg production was normal and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding, resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell et al. 1981). The loss of tungsten from the liver occurred in an exponential manner with a half-life of

27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 mg/g liver. At that concentration, xanthine dehydrogenase activity was zero.

The two plastic polymers used in tungsten-matrix shot act as a physical matrix in which the tungsten is distributed as ionically-bound fine particles. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson, 1977). A literature review did not reveal studies in which either of the two polymers were evaluated for toxicity in birds. Montgomery (1982) reported that feeding Nylon 6 to rats at a level of 25 percent of the diet for 2 weeks caused a slower rate of weight gain, presumably due to a decrease in food consumption and feed efficiency. However, the rats suffered no anatomic injuries due to the consumption of nylon.

Kent's 30-day dosing study on the original formulation (Wildlife International Ltd., 1998) included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 tungsten-matrix; whereas the control group received no shot. The 2 tungsten-matrix treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tungsten-matrix-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tungsten-matrix treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tungsten-matrix shot and monitored over a 30-day period. Tungsten was found to be below the limit of detection in all samples of femur, gonad, liver, and kidney from treatment groups.

Based on the results of the toxicological report and the toxicity test of the original shot formulation (Tier 1 and 2), the Service concludes that tungsten-matrix shot, (approximately 95.9 percent tungsten and 4.1 percent polymer, by weight with <1 percent residual lead), does not appear to pose a significant danger to migratory birds or other wildlife and their habitats. However, the Service has some concern that absorption of tungsten into the femur, kidney, and liver, as noted in a separate study on mallards, could potentially affect the spectacled eider (*Somateria fischeri*); a species already subject to adverse weather, predation, and lead poisoning on the Yukon-Kuskokwim (Y–K) Delta, Alaska. Until chronic toxicity/reproductive testing has been successfully completed and the Service has reviewed and approved the results, tungsten-matrix shot cannot be approved for the Y–K Delta.

The first condition of approval is toxicity testing. Candidate materials not approved under Tier 1 and/or 2 testing are subjected to standards of Tier 3 testing. The scope of Tier 3 includes chronic exposure under adverse environmental conditions and effects on reproduction in game-farm mallards, as outlined in 50 CFR 20.134 (b)(4)(i)(A and B) (Tier 3), and in consultation with the Service's Office of Migratory Bird Management and the U.S. Geological Survey's Division of Biological Resources. This study includes assessment of long-term toxicity under depressed temperature conditions using a nutritionally-deficient diet, as well as a moderately long-term study that includes reproductive assessment. The tests require the applicant to demonstrate that tungsten-matrix shot is nontoxic to waterfowl and their offspring.

The second condition of final unconditional approval is testing for residual lead levels. Any tungsten-matrix shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. In the **Federal Register** of August 18, 1995 (60 FR 43314), the Service indicated that it would establish a maximum level for residual lead. The Service has determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent and has incorporated this requirement (50 CFR 20.134(b)(5)) in the December 1, 1997, final rule (62 FR 63608). Kent documented that tungsten-matrix shot has no residual lead levels equal to or exceeding 1 percent.

The third condition of final unconditional approval involves enforcement. In the August 18, 1995 **Federal Register** (60 FR 43314), the Service indicated that final unconditional approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. This requirement was incorporated into regulations at 50 CFR 20.134(b)(6) in the December 1, 1997, final rule (62 FR 63608). A noninvasive field testing device is under development to separate tungsten-matrix shot from lead shot. Tungsten-matrix shot cannot be drawn to a magnet as a simple field detection method. The Service incorrectly stated in the proposed rule of October 19, 1998, that tungsten-matrix was magnetic (63 FR 55842).

In summary, this rule amends 50 CFR 20.21(j) by temporarily approving tungsten-matrix shot as nontoxic for the 1998–99 migratory bird hunting season throughout the United States, except for the Y–K Delta in Alaska. It is based on the request made to the Service by Kent Cartridge on September 18, 1997 (subsequently modified), the toxicological reports, and the acute toxicity studies. Results of the toxicological report and 30-day toxicity test undertaken for Kent Cartridge indicate the apparent absence of any deleterious effects of tungsten-matrix shot when ingested by captive-reared mallards or to the ecosystem. Final unconditional approval of tungsten-matrix shot as nontoxic for the entire U.S. will not be considered until all required chronic toxicity/reproductive tests have been successfully completed and the results are reviewed and approved by the Director.

Public Comments and Responses

The October 19, 1998, proposed rule published in the **Federal Register** (63 FR 55840) invited public comments from interested parties. The closing date for receipt of all comments was November 18, 1998. During this 30-day comment period, the Service received eight comments.

The California Waterfowl Association strongly supported the proposed temporary approval of tungsten-matrix shot for the 1998–99 season. They believed that temporary approval of tungsten-matrix shot was an important step to address concerns relating to efforts to reduce unnecessary crippling of waterfowl through development of more effective nontoxic shot materials.

The Wildlife Legislative Fund of America encouraged the Service to approve tungsten-matrix shot for the 1998–99 season. They believe that approval of tungsten-matrix would help fulfill the objective of making lead shot substitutes available to hunters.

The International Association of Fish and Wildlife Agencies supported temporary and conditional approval of tungsten-matrix shot for the 1998–99 season. They acknowledged that final approval is pending successful completion of further testing.

The Wisconsin Department of Natural Resources (Wisconsin) supported temporary approval of tungsten-matrix

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provided there is no scientific evidence that indicates it is toxic to waterfowl or the environment. However, Wisconsin expressed concern about the timing of the proposed and final rules and the confusion that it creates for hunters. They encouraged the Service to initiate publication of rules concerning nontoxic shot before August 1 to allow proper planning by States.

The National Rifle Association urged the Service to temporarily approve tungsten-matrix shot for the remainder of the 1998–99 season. They further expressed their support of research and development of ballistically efficient nontoxic shot ammunition.

The WILDFOWL.NET organization expressed concern that the Service has not taken steps to approve tungsten-matrix shot in a prompt manner. They questioned why the Service could not approve a generic tungsten shotload, in a manner similar to steel shot. Finally, they inquired whether the Service intends to either arrest and/or cite waterfowl hunters that use tungsten-matrix shot prior to granting final approval of the shot.

Kent Cartridge Company (Kent) supported prompt conditional approval of tungsten-matrix shot for the 1998–99 waterfowl hunting season. They stated that they fully intend to complete chronic toxicity/reproductive testing on tungsten-matrix shot that is required before final approval can be considered. Kent pointed out that the concentration of lead in their shot is below the 1 percent level that the Service has stipulated for nontoxic shot. Furthermore, they indicated that noninvasive field testing equipment for detecting tungsten-matrix shot is expected to be available shortly.

The Federal Cartridge Company (Federal) noted that a complete description of candidate shot materials must be submitted to the Director, and that a complete description of tungsten-matrix shot was not published in the **Federal Register**. Federal also questioned whether the 2 percent iron, referenced in the initial application, was removed from the candidate shot as it was not mentioned in the October 19 proposed rule description. Lastly, Federal questioned whether tungsten-matrix shot could be drawn to a magnet as a field test method.

Service Response: Regarding the timing of the rulemaking, the Service recognizes the information dissemination problems caused by conditionally approving tungsten-matrix shot at this time. However, the Service acts on nontoxic shot applications as they are received. Therefore, when applications are approved, either conditionally or permanently, the Service proceeds with the application process regardless of the timing of hunting seasons. Because Kent's application was being treated under the old nontoxic shot approval process, which provided for conditional approval, the Service decided to proceed with this rulemaking. Providing another nontoxic shot option for hunting waterfowl and coots likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

Regarding the assertion that the Service has not processed temporary approval of tungsten-matrix shot in a prompt manner, we stress that the Service made every attempt to process Kent's application as quickly as possible.

Regarding the question of whether approval can be given for generic tungsten shots, we point out that for the three tungsten shot applications currently being processed by the Service (tungsten-iron, tungsten-polymer, and tungsten-matrix), no data has been submitted on the required chronic toxicity/reproductive tests. Without such information, it would not be prudent to approve a generic tungsten shot type. The revised test protocol for nontoxic approval procedures (50 CFR 20.134) published in the **Federal Register** on December 1, 1997 (62 FR 63608) established a three-tier approval process. The system has three tiers, with each tier enhancing the information base on the candidate material. Those candidate materials where appropriate background information, toxicological data, ecological risk assessment, and reproductive effects information are available demonstrating the candidate material to be benign may receive nontoxic approval. Applications for nontoxic approval of candidate shots submitted after December, 1997, must satisfy all information requirements determined by the Service before any form of approval can be granted. Without chronic toxicity/reproductive test data (Tier 3) there would be insufficient information to approve future tungsten shot applications under the new test protocol. Furthermore, depending on the specific composition of future tungsten candidate shot types and associated concerns over their toxicity, there may be sufficient cause for requiring additional information before approval can be granted.

Regarding whether the Service intends to arrest or cite waterfowl hunters that use tungsten-matrix shot prior to granting final permanent approval of the shot, we would like to clarify that the Service is not requiring final permanent approval of tungsten-matrix shot before making it legal for the 1998–99 season. Final permanent approval of tungsten-matrix will not be considered until results from chronic toxicity/reproductive testing, scheduled to be conducted during spring 1999, are submitted to the Service for review. We emphasize that this rule grants temporary approval of the shot for hunting waterfowl and coots for the remainder of the 1998–99 hunting season only. Therefore, as of the publication date of this rule and for the remainder of the 1998–99 season only, hunters using tungsten-matrix to hunt waterfowl and coots during the current season would be in compliance with the law and should not be cited.

The Service is pleased that Kent intends to complete the required chronic toxicity/reproductive testing of their tungsten-matrix shot. We look forward to reviewing the results of such tests as soon as possible so that a decision can be made on the shot's nontoxic status before the 1999–2000 hunting season.

Regarding the questions on shot composition, the composition of tungsten-matrix shot approved by this rule is not magnetic and no longer contains 2 percent iron. Both of these issues were oversights on our part in the October 19 proposed rule. Regarding the completeness of the description of the subject shot material, Kent included a complete description of tungsten-matrix shot in their application to the Service, including the specific polymers used in the shot. Sufficient information was contained in Kent's application to allow the Service to assess short-term toxicity of the shot and subsequently grant temporary approval for the remainder of the 1998–99 hunting season. Because Kent requested that the Service not divulge proprietary information concerning the nature of the polymers used in their shot, the exact description of the polymers will not be published.

Effective Date

Under the APA (5 U.S.C. 553 (d)) the Service waives the 30-day period before the rule becomes effective and finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the APA, and this rule will, therefore, take effect immediately upon publication. This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. During the public comment period for temporary conditional approval the Service received eight comments. Of these comment letters, six were from conservation organizations, one was from a State natural resource agency, and one was from an ammunition manufacturer. All objections/comments have been remedied satisfactorily and are discussed under the **PUBLIC COMMENT AND RESPONSES** section of this document. It is in the best-interest of migratory birds and their habitats to grant temporary conditional approval to tungsten-matrix shot as nontoxic for the 1998–99 migratory bird hunting season. It is in the best interest of the hunting public to provide them an additional legal option for hunting waterfowl and coots for the 1998–99 season, which began on September 1, 1998. It is in the best interest of small retailers who have stocked tungsten-matrix shot for the current season. The Service believes another nontoxic shot option likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared an Environmental Assessment in October 1998. This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the information in the EA, the Service has determined that amending 50 CFR 20.21(j) to extend temporary approval of tungsten-matrix shot as nontoxic for the 1998–99 migratory bird hunting season would not be a major Federal action that would significantly affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531, *et seq.*), provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *." The Service has completed a Section 7 consultation under the ESA for this rule and determined that granting temporary approval of tungsten-matrix shot for the 1998–99 hunting season, except on the Yukon-Kuskokwin (Y–K) Delta, is not likely to affect any threatened, endangered, proposed or candidate species. The result of the Service's consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. The economic impacts of annual hunting on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis), under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), was issued by the Service in 1998 (copies available upon request from the Office of Migratory Bird Management). The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey which it was estimated that migratory bird hunters would spend between $429 and $1084 million nationwide at small businesses in 1998. The approval of tungsten-matrix as an alternative shot to steel will have a minor positive impact on small businesses by allowing them to sell another nontoxic shot to the hunting public. However, the overall effect to hunting expenditures in general would be minor. Therefore, the Service determined this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. The Service anticipates no dislocation or other local effects, with regard to hunters and others.

Executive Order 12866

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, N.W., Washington, D.C. 20240. Comments may also be e-mailed to: Exsec@ios.doi.gov.

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Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress. Because this rule deals with the Service's migratory bird hunting program, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. However, the Service does have OMB approval (1018–0067; expires 06/30/2000) for information collection relating to what manufacturers of shot are required to provide the Service for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502, et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Service, in promulgating this rule, determines that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Authorship

The primary author of this proposed rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and record-keeping requirements, Transportation, Wildlife. Accordingly, Part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising paragraph (j) introductory text, and adding paragraph (j)(4) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron ([nominally] 40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in 20.134, provided that:

(1) * * *

(4) Tungsten-matrix shot (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1998–1999 hunting season only, except for the Yukon-Kuskokwim Delta habitat in Alaska.

Dated: December 1, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–32470 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 227, and 600

[I.D. 091498A]

Atlantic Pelagic Fishery; Marine Mammals; Endangered and Threatened Fish and Wildlife; Public Workshops; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction.

SUMMARY: On October 21, 1998, NMFS published a document announcing four of the five workshops for longline vessel operators scheduled during 1998. This document corrects the date for the Barnegat Light, NJ, workshop from December 17, 1998, to December 18, 1998.

DATES: Effective on December 8, 1998.

FOR FURTHER INFORMATION CONTACT: Rebecca Lent, 301–713–2347, Cathy Eisele, 301–713–2322, or Therese Conant, 301–713–1401.

SUPPLEMENTARY INFORMATION: On October 21, 1998, NMFS published a document announcing four of the five workshops for longline vessel operators scheduled during 1998 (63 FR 56094). This correction changes the date for the Barnegat Light, NJ, workshop from December 17, 1998, to December 18, 1998.

In FR Doc 98–28210, published on October 21, 1998 (63 FR 56094) make the following correction. On page 56094, in the second column, under **DATES**, change the date for the fourth workshop to December 18, 1998.

Dated: November 27, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32533 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 235
Tuesday, December 8, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 98–62]

RIN 3069–AA77

Collateral Eligible to Secure Federal Home Loan Bank Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing eligible collateral for Federal Home Loan Bank (FHLBank) advances to clarify that certain assets, including the insured or guaranteed portions of federally-insured or guaranteed loans, securities representing an equity interest in eligible collateral, and mortgage assets or government securities held by members' wholly-owned investment subsidiaries, qualify as eligible collateral to secure FHLBank advances. The proposed rule would also amend the Finance Board's regulation on collateral verification to eliminate certain ambiguities therein.

DATES: Comments are due on or before February 8, 1999.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408–2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(a) of the Federal Home Loan Bank Act (Bank Act) enumerates four categories of collateral that are eligible to secure FHLBank advances: (1) Current whole first mortgage loans on improved residential property and securities representing a whole interest in such mortgages; (2) securities that are issued, guaranteed, or insured by the United States Government, or any agency thereof; (3) deposits of a FHLBank; and (4) other real-estate related collateral in a total amount not to exceed 30 percent of the borrowing member's capital. *See* 12 U.S.C. 1430(a).

The Finance Board promulgated part 935 of its regulations, 12 CFR part 935, governing FHLBank advances, in 1993. *See* 58 FR 29469 (May 20, 1993). Among other things, the Advances Regulation implements and clarifies the statutory requirements of 12 U.S.C. 1430 relating to the security interests that a FHLBank must obtain and maintain when making advances to member institutions. *See* 12 CFR 935.9–935.12. Among the issues that the Regulation addresses are: the types and amounts of collateral that a FHLBank may or must accept when making advances; the priority of FHLBank claims to such collateral in relation to other creditors; and requirements regarding the valuation and verification of the existence of pledged collateral.

In the five and one-half years since the promulgation of the Advances Regulation, the Finance Board has received numerous requests from both FHLBanks and their members to clarify or interpret these collateral provisions in the context of specific transactions, which the agency has done on a case-by-case basis. In other instances, FHLBanks have requested permission to enter into various collateral arrangements that, while permissible under the terms of the advances provisions of the Bank Act, are not clearly authorized under the Advances Regulation. The Finance Board is now proposing to amend certain of the collateral provisions of its Advances Regulation, and to add other provisions, in order to codify in the Regulation various collateral arrangements that have been the subject of regulatory interpretations and requests for such interpretations from the FHLBanks and their members.

The Finance Board requests comments on all aspects of the proposed rule.

II. Analysis of the Proposed Rule

A. Definitions

The proposed rule would amend § 935.1 of the Advances Regulation, 12 CFR 935.1, which sets forth definitions of terms used in part 935, by adding thereto a definition of the term "qualifying investment subsidiary." This term is used in proposed § 935.9(b) to refer to certain member-owned subsidiaries. Because the definition of "qualifying investment subsidiary" is intended primarily to make clear the parameters of the authority granted to the FHLBanks under proposed § 935.9(b), the term is addressed in detail in the discussion of that section, set forth below.

The proposed rule also would make technical amendments to the definition of the term "mortgage-backed security" set forth in § 935.1, in order to eliminate redundant language contained in the existing definition and otherwise make it more readable.

B. Mortgage Collateral

Substantively, the proposed rule would make several revisions to § 935.9(a) of the Advances Regulation, which implements and clarifies the statutory requirements set forth in section 10(a) of the Bank Act, governing collateral eligible to secure FHLBank advances to members. *See* 12 U.S.C. 1430(a). Section 935.9(a)(1) of the existing Advances Regulation implements section 10(a)(1) of the Bank Act by authorizing the FHLBanks to accept as collateral for advances current whole first mortgage loans on improved residential property and high-quality privately-issued mortgage-backed securities (MBS). The proposed rule would add a new paragraph (iii) to permit the FHLBanks to accept any security the ownership of which would represent an undivided equity interest in such whole mortgage loans or MBS. Although such equity securities arguably also fall within the definition of MBS set forth in § 935.1, § 935.9(a)(1)(iii) has been included in the proposed rule to make clear that shares of mutual funds and similar investments that are not ordinarily considered to be MBS may constitute eligible collateral when the underlying assets consist only of current whole first mortgage loans on residential property or eligible privately-issued MBS.

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C. Government Securities

Section 935.9(a)(2) of the Advances Regulation implements section 10(a)(2) of the Bank Act by authorizing the FHLBanks to accept as collateral for advances to members securities issued, insured, or guaranteed by the United States Government, or any agency thereof. Under the proposed rule, the text of existing § 935.9(a)(2) would be modified slightly to make clear that MBS that are issued or guaranteed by any agency of the United States Government—and not merely those issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae—may be accepted as collateral. This text also would be redesignated as the introductory paragraph and paragraph (A) of proposed § 935.9(a)(2)(i).

Paragraph (B) of proposed § 935.9(a)(2)(i) would contain a new provision clarifying that the FHLBanks may accept as collateral mortgages or other loans, regardless of the delinquency status of the mortgages or other loans, to the extent that repayment of the principal and/or interest on such mortgages or loans is backed by the full faith and credit of the United States. For example, under this provision, FHLBanks would be permitted to accept the insured portions of Federal Housing Administration (FHA) and Veteran's Administration (VA)-insured mortgage loans, or the guaranteed portions of small business loans guaranteed by the Small Business Administration (SBA).

While section 10(a)(2) of the Bank Act mentions MBS as an example of securities that FHLBanks are authorized to accept thereunder, the Act does not limit the FHLBanks to acceptance of any particular types of securities, aside from requiring that they be issued, guaranteed, or insured by the United States Government or any of its agencies. Section 10(a)(1) of the Bank Act (and § 935.9(a)(1) of the Advances Regulation), in authorizing FHLBanks to accept whole mortgage loans as collateral, requires that such mortgages be "not more than 90 days delinquent." However, this requirement addresses a safety and soundness concern that is effectively mooted to the extent that the principal and/or interest payments on a particular loan are backed by the full faith and credit of the United States. As such, the Finance Board has determined that the authorization contained in proposed § 935.9(a)(2)(i)(B) is consistent with the requirements of section 10(a) of the Bank Act.

Paragraph (C) of proposed § 935.9(a)(2)(i) would provide that FHLBanks may also accept as collateral securities that are backed by, or represent equity interests in, pools of loans or mortgages that are insured or guaranteed by the United States Government or its agencies, even if the investment instrument itself is not so insured or guaranteed. In this case, the benefit of the government insurance or guarantee would pass through to the security holders and serve as the functional equivalent of a guaranty of, or insurance on, the security itself.

Proposed § 935.9(a)(2)(ii) parallels paragraph (iii) of proposed § 935.9(a)(1) in that it would permit FHLBanks to accept as collateral shares of mutual funds and other similar investments that represent an undivided equity interest in pools of government securities.

D. Eligible Collateral Held by a Qualifying Investment Subsidiary

The proposed rule would redesignate paragraphs (b) through (e) of existing § 935.9 as paragraphs (c) through (f) and would add a new paragraph (b) to § 935.9. Proposed § 935.9(b) would permit FHLBanks, under certain circumstances, to accept as collateral for advances assets that would otherwise constitute eligible collateral under §§ 935.9(a)(1) or (2), but that are held by the member's qualifying investment subsidiary, as opposed to the member itself. The proposed rule would add a definition of the term "qualifying investment subsidiary" (QIS) to § 935.1 of the Advances Regulation.

A QIS would include any business entity: 100 percent of the voting stock of which is owned and controlled, directly or indirectly, by a FHLBank member; that is operated for the sole purpose of holding investment or real estate assets on behalf of that member; and that holds only cash equivalents and assets that are eligible to secure advances under §§ 935.9(a)(1) and (2) of the Advances Regulation (*i.e.*, whole residential mortgages, high-quality privately-issued MBS, and government securities). The term is intended to include any entity established by a member, to reduce its tax burden or for other financial management purposes, as a passive repository for assets that the member would otherwise hold on its own balance sheet. Examples of entities that might qualify as a QIS include a Real Estate Investment Trust (REIT) established by a member in conformity with the requirements of the Internal Revenue Code (IRC), *see* 26 U.S.C. 856–68, or a security corporation established under Massachusetts law, *see* Mass. Gen. Laws Ann. ch. 63 section 38B, or other state law.

Under the proposed definition, a QIS may include entities that are wholly-owned indirectly by a member. For example, an entity that is wholly-owned by a holding company that itself is wholly-owned by the member institution may qualify as a QIS. By requiring 100 percent of only the voting stock of a QIS to be controlled by a member, the proposed rule would permit entities having non-voting preferred shares that are owned by individuals or entities other than the member to qualify as a QIS. For example, to qualify as a REIT under the IRC, an entity must be beneficially owned by at least 100 stockholders. *See* 26 U.S.C. 856(a)(5). If this IRC requirement is implemented through distribution by the REIT of a limited number non-voting preferred shares to persons or entities other than the member, that distribution would not invalidate the entity's status as a QIS under the proposed rule, so long as the member owns and controls all of the voting stock of the entity.

While the Bank Act requires that a member assume a primary and unconditional obligation to repay all advances, *see* 12 U.S.C. 1430(d), and that advances be fully secured by eligible collateral, *see id.* 1430(a), the Act does not expressly require that such collateral be pledged by the member itself. Section 10(f) of the Bank Act, which addresses priorities of FHLBank security interests, specifically mentions, and presumes the possible existence of, security interests granted by an "affiliate" of a member. *See id.* 1430(f). A wholly-owned subsidiary that would qualify as a QIS under the proposed rule clearly would be an "affiliate" of its member/parent, even under the most conservative definition of that term.

Without passing upon the question of whether eligible collateral held by a third party may be used in all cases to secure a FHLBank advance to a member, the Finance Board has concluded that such collateral held by a QIS of a member may be used to secure an advance to that member where the FHLBank's legal rights and privileges with respect to such collateral are functionally equivalent in all material aspects to those that the FHLBank would possess if the member were to pledge the same collateral on its own behalf. This conclusion is reflected in § 935.9(b)(1) of the proposed rule, which would permit FHLBanks to accept pledges of collateral from a member's QIS to secure advances to that member if these criteria are met. The Finance Board anticipates that this will be a determination that will need to be made on a case-by-case basis after careful legal review and analysis by each FHLBank that decides to accept such collateral, taking into consideration the structure of the transaction and the law of the state that governs the transaction.

In order to provide guidance as to the factors that a FHLBank must consider in determining whether this general requirement has been met, the Finance Board has set forth in proposed § 935.9(b)(2) four "safe harbor" requirements which, if each is met by the FHLBank, would ensure that the FHLBank is in compliance with proposed § 935.9(b)(1). A FHLBank would not need to meet these safe harbor requirements to be in compliance with proposed § 935.9(b) if it otherwise demonstrated that its legal rights and privileges with respect to the QIS-held collateral are functionally equivalent in all material aspects to those that the FHLBank would possess if the member were to pledge the same collateral on its own behalf.

To meet the proposed safe harbor requirements, the FHLBank first must obtain from the QIS and maintain, as collateral for repayment of the advance, a legally enforceable security interest in assets held by the QIS that are eligible collateral under §§ 935.9(a)(1) or (2). To determine whether such a pledge is legally enforceable, a FHLBank, among other things, will need to satisfy itself that the QIS has the legal authority to make the pledge and that sufficient consideration has passed between the parties to make the pledge enforceable as a matter of contract law.

Because the Bank Act requires that each advance be fully secured, *see id.* 1430(a), a guaranty by the QIS of the member's obligation, backed by the eligible assets held by the QIS, would not meet the requirements of the Bank Act or the proposed rule, as the collateral would then be securing the QIS's secondary obligation and not the advance itself. However, as provided by proposed § 935.9(b)(2)(i), where the QIS enters into a surety arrangement under which it assumes a primary joint and several co-obligation to repay the advance made to the member, and fully secures this primary surety obligation with eligible collateral, such collateral would be considered as securing the advance itself as required by the statute.

Second, the FHLBank must obtain from the QIS a legally enforceable waiver of defenses, that the QIS might have as a third party pledgor that would not apply to a party pledging collateral in support of its own obligation. For example, under section 3–605 of the Uniform Commercial Code, a surety may be discharged from its obligation in certain cases where the obligor and obligee have modified their agreement without the knowledge or consent of the surety. *See* U.C.C. 3–605 (1995). However, the surety may waive this right of discharge in advance "by general language indicating that parties waive defenses based on suretyship." *See id.* 3–605(i).

The types of defenses that third parties may be permitted to raise would vary depending upon the structure of the transaction in question and the law of the state that governs the transaction. The possibility that the QIS may be able to raise such a defense, even if remote in a practical sense, would render its pledge of collateral materially inferior to a pledge made directly by the member. Again, FHLBank staff would need to review thoroughly each transaction, as well as the applicable provisions of state law, to determine the types of defenses that could be raised by the QIS and whether these defenses could be effectively waived. If such defenses could not be waived, the transaction would fail to meet the safe harbor requirements. However, the FHLBank still might be able to comply with the general requirements of § 935.9(b)(1) by structuring the transaction to ensure that a scenario that might give rise to any such defenses could not occur.

Third, the FHLBank would need to take such precautions as are necessary to ensure that the pledge of collateral by the QIS would be neither voidable under the fraudulent conveyance provisions of applicable state and federal bankruptcy laws, *see* 11 U.S.C. 548, nor subject to the claims of other creditors. The Finance Board anticipates that both components of this requirement can be effectively addressed through contractual provisions. For example, provisions prohibiting the QIS from pledging collateral to any other party, or from incurring any type of debt, might be sufficient to ensure that the collateral could not be subject to the claims of any other creditors. Likewise, provisions that (1) limit the amount of any pledge of collateral to a fixed percentage (less than 100 percent) of the fair market value of the collateral and require substitution of collateral should this fair market value drop below a certain threshold, or (2) permit the FHLBank to force the liquidation of the QIS when certain criteria are met, might be sufficient to ensure that the collateral transaction could not be voidable under any fraudulent conveyance provisions. Again, the FHLBank would need to ensure that sufficient consideration has passed between the parties to support the pledge of collateral by the QIS.

Fourth and last, in order to qualify under the safe harbor provisions of proposed § 935.9(b)(2), a FHLBank would need to obtain from its member and maintain a perfectible security interest in stock or other securities representing the member's controlling equity interest in its QIS. In cases where the QIS is itself owned by a holding company that is wholly-owned by the member, the voting stock of both the QIS and the holding company would need to be pledged in order to meet this safe harbor requirement.

Security interests obtained and maintained by a FHLBank pursuant to proposed § 935.9(b) would be entitled to the benefit of the priority lien granted to FHLBanks under section 10(f) of the Bank Act, which applies to "any security interest granted to a [FHL]Bank by any member of a [FHL]Bank or any affiliate of any such member." *See* 12 U.S.C. 1430(f).

E. Collateral Verification

Finally, the proposed rule would amend § 935.11(b) of the Finance Board's Advances Regulation, which requires that each FHLBank regularly verify the existence of collateral securing its advances. Existing § 935.11(b) requires that each FHLBank establish written collateral verification procedures containing standards that are "similar to those established by the Auditing Standards Board of the American Institute of Public Accountants" (AICPA). The Finance Board has found that the ambiguity of this reference renders it effectively unenforceable. The proposed rule, therefore, eliminates the reference to AICPA standards and requires merely that the FHLBanks establish "written procedures and standards" for collateral verification. Under this provision, the Finance Board will be able to evaluate each FHLBank's procedures and standards taking into account only the relevant safety and soundness considerations that apply to that FHLBank without reference to the AICPA, or any other external, standards.

III. Regulatory Flexibility Act

The proposed rule applies only to the FHLBanks, which do not come within the meaning of "small business," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

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Accordingly, the Finance Board proposes to amend 12 CFR part 935 as follows:

PART 935—ADVANCES

1. The authority citation for part 935 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

Subpart A—Advances to Members

2. Amend § 935.1 by revising the definition of "Mortgage-backed security" and adding the definition of "Qualifying investment subsidiary" to read as follows:

§ 935.1 Definitions.

* * * * *

Mortgage-backed security means:

(1) An equity security representing an ownership interest in:

(i) Fully disbursed, whole first mortgage loans on improved residential real property; or

(ii) Mortgage pass-through or participation securities which are themselves backed entirely by fully disbursed, whole first mortgage loans on improved residential real property; or

(2) An obligation, bond, or other debt security backed entirely by the assets described in paragraph (1) (i) or (ii) of this definition.

* * * * *

Qualifying Investment Subsidiary means a business entity, including, without limitation, a Real Estate Investment Trust (REIT) or a state security corporation:

(1) 100 percent of the voting stock of which is owned and controlled, directly or indirectly, by a member;

(2) That is operated for the sole purpose of holding investment or real estate assets on behalf of that member; and

(3) That holds only cash equivalents and assets that are eligible to secure advances to members under § 935.9(a)(1) or (a)(2) of this part.

* * * * *

3. Amend § 935.9 as follows:

a. Add to the headings of paragraphs (b), (c) and (e) the word "advances" preceding the word "collateral";

b. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f); and

c. Revise paragraph (a) and add paragraph (b) as follows:

§ 935.9 Collateral.

(a) *Eligible security for advances.* At the time of origination or renewal of an advance, each Bank shall obtain, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent;

(ii) Privately issued mortgage-backed securities, excluding the following:

(A) Securities which represent a share of only the interest payments or only the principal payments from the underlying mortgage loans;

(B) Securities which represent a subordinate interest in the cash flows from the underlying mortgage loans;

(C) Securities which represent an interest in any residual payments from the underlying pool of mortgage loans; or

(D) Such other high-risk securities as the Board in its discretion may determine; or

(iii) Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify as eligible collateral under paragraphs (a)(1)(i) or (ii) of this section.

(2) *Agency securities.* (i) Securities issued, insured, or guaranteed by the United States Government, or any agency thereof, including without limitation:

(A) Mortgage-backed securities, as defined in § 935.1 of this part, issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, or any other agency of the United States Government; and

(B) Mortgages or other loans, regardless of delinquency status, to the extent that such mortgage or loan is insured or guaranteed by the United States or any agency thereof, or otherwise is backed by the full faith and credit of the United States; or

(C) Securities backed by, or representing an equity interest in, mortgages or other loans referred to in paragraph (a)(2)(i)(B) of this section; or

(ii) Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify as eligible collateral under paragraph (a)(2)(i) of this section.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(i)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(b) *Eligible advances collateral held by investment subsidiaries.* (1) *General rule.* Assets held by a member's Qualifying Investment Subsidiary that are eligible to secure advances under paragraphs (a)(1) or (a)(2) of this section may be used to secure advances to that member if the Bank obtains and maintains a security interest pursuant to which the Bank's legal rights and privileges with respect to such assets are functionally equivalent in all material aspects to those that the Bank would possess if the member were to pledge eligible collateral directly;

(2) *Safe harbor provision.* A Bank's legal rights and privileges with respect to eligible assets held by a Qualifying Investment Subsidiary will be deemed to be functionally equivalent in all material aspects to those that the Bank would possess if the member were to pledge eligible collateral directly if:

(i) The Bank obtains from the Qualifying Investment Subsidiary, and maintains, a perfectible and legally enforceable security interest in collateral eligible to secure advances under paragraphs (a)(1) or (a)(2) of this section either:

(A) To secure the member's obligation to repay advances; or

(B) To secure a surety agreement under which the Qualifying Investment Subsidiary has assumed, along with the member, a primary obligation to repay advances made to the member;

(ii) The Bank obtains from the Qualifying Investment Subsidiary a legally enforceable waiver of any defenses that the Subsidiary may have as a pledgor of collateral on behalf of a third party, or as a surety, as appropriate;

(iii) The Bank takes such precautions as are necessary to ensure that the pledge of collateral by the Qualifying Investment Subsidiary will be neither voidable under the fraudulent conveyance provisions of applicable federal and state bankruptcy laws, nor subject to the claims of other creditors; and

(iv) The Bank obtains from the member, and maintains, a perfectible security interest in securities representing the member's equity interest in its Qualifying Investment Subsidiary.

* * * * *

4. Amend § 935.11 by revising paragraph (b) to read as follows:

§ 935.11 Pledged collateral; verification.

* * * * *

(b) *Collateral verification.* Each Bank shall establish written procedures and standards for verifying the existence of collateral securing the Bank's advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures and standards.

Dated: December 2, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–32527 Filed 12–7–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–76–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace Jetstream Model 3101 airplanes that have a certain wheel assembly incorporated and all Jetstream Model 3201 airplanes that are equipped with Dunlop AH54450 brake units. The proposed AD would require inspecting the main landing gear brake units for correct setting of the wear indicator pins, and re-setting the pins if incorrect. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent failure of the main landing gear brakes because the wear indicator pins present a false indication of the remaining wear of the brake units, which could result in loss of control of the airplane during takeoff, landing, or taxi operations.

DATES: Comments must be received on or before January 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–76–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Jetstream Model 3101 airplanes that have Jetstream Kit JK12097 or Jetstream Service Bulletin 32–JK12097 incorporated and all Jetstream Model 3201 airplanes that are equipped with Dunlop AH54450 main landing gear brake units. Kit JK12097 and Service Bulletin 32–JK12097 include the procedures necessary to incorporate J3200 series wheels with 12-ply rated tires and brakes for Jetstream Model 3101 airplanes.

The CAA reports an incident of a totally worn brake unit heat pack found during a routine inspection on one of the affected airplanes. The wear indicator pins showed 0.1 inch of wear remaining. Further investigation revealed that these pins were incorrectly set.

This condition, if not corrected in a timely manner, could result in failure of the main landing gear brakes with possible loss of control of the airplane during takeoff, landing, or taxi operations.

Relevant Service Information

British Aerospace has issued Jetstream Alert Service Bulletin 32–A–JA980540, ORIGINAL ISSUE: July 6, 1998, which specifies procedures for inspecting the main landing gear brake units for correct setting of the wear indicator pins, and re-setting the pins if incorrect.

The CAA classified this service bulletin as mandatory and issued British AD 003–07–98, dated July 13, 1998, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Jetstream Models 3101 and 3201 airplanes of the same type design that are registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the main landing gear brake units for correct setting of the wear indicator pins, and re-setting the pins if incorrect. Accomplishment of the proposed actions would be required in accordance with British Aerospace Jetstream Alert Service Bulletin 32–A–JA980540, ORIGINAL ISSUE: July 6, 1998.

Compliance Time of This AD

Although failure of the main landing gear brakes would only be unsafe while the airplane was in operation, the cause of this condition is not a result of the number of times the airplane is operated. The chance of the brake wear pin being incorrectly set is the same for an airplane with 10 hours time-in-service (TIS) as it would be for an airplane with 1,000 hours TIS. For this reason, the FAA has proposed a compliance based on calendar time in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Cost Impact

The FAA estimates that 296 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $53,280, or $180 per airplane.

The FAA has no way of determining the number of wear indicator pins that would be found incorrectly set, and would require re-setting. Therefore, the above figures only represent the inspection costs of the proposed AD.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 98–CE–76–AD.

Applicability: The following aircraft, certificated in any category:

—Jetstream Model 3101 airplanes, all serial numbers, that have Jetstream Kit JK12097 or Jetstream Service Bulletin 32–JK12097 incorporated; and

—Jetstream Model 3201 airplanes, all serial numbers, that are equipped with Dunlop AH54450 brake units.

Note 1: Jetstream Kit JK12097 and Jetstream Service Bulletin 32–JK12097 include the procedures necessary to incorporate J3200 series wheels with 12-ply rated tires and brakes for Jetstream Model 3101 airplanes.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the main landing gear brakes because the wear indicator pins present a false indication of the remaining wear of the brake units, which could result in loss of control of the airplane during takeoff, landing, or taxi operations, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, inspect the main landing gear brake units for correct setting of the wear indicator pins, in accordance with the instructions in *PART 2* of British Aerospace Jetstream Alert Service Bulletin 32–A–JA980540, ORIGINAL ISSUE: July 6, 1998. Prior to further flight, re-set the pins if the existing setting is incorrect, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person may install Dunlop AH54450 brake units on any Jetstream Model 3201 airplane or incorporate Jetstream Kit JK12097 and Jetstream Service Bulletin 32–JK12097 on any Jetstream 3101 airplane, unless the inspection and possible follow-up requirements of paragraph (a) of this AD have been accomplished on the parts.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to British Aerospace Jetstream Alert Service Bulletin 32–A–JA980540, ORIGINAL ISSUE: July 6, 1998, should be directed to

British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in British AD 003–07–98, dated July 13, 1998.

Issued in Kansas City, Missouri, on December 1, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32475 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–92–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The proposed AD would require inspecting the elevator bias spring assembly for correct installation and to assure that the correctly manufactured bias spring is installed. The proposed AD would also require replacing any incorrectly manufactured bias spring and reworking any incorrectly installed bias spring assembly, inspecting the link assembly for distortion or damage, and replacing any distorted and/or damaged parts. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent failure of the bearings in the elevator down bias spring assembly caused by the installation of an incorrectly manufactured bias spring or damage or distortion to the assembly, which could result in reduced or loss of control of the airplane.

DATES: Comments must be received on or before January 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–92–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–92–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–92–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reports that a link at a bearing that connects the elevator bias assembly spring to the elevator quadrant detached on three of the affected airplanes. This spring provides an additional feel force when the pilot moves the elevators to the aircraft nose-up position. The force is effective to the pilot when the airspeed of the airplane is low and the power is high.

Further investigation revealed that an incorrectly manufactured bias spring was installed in each instance. The bearing that connects the spring is designed to accommodate a limited amount of twist force. The incorrectly manufactured bias spring provided too much twist force on the bearings due to an incorrect orientation of the spring hook ends.

This condition, if not detected and corrected in a timely manner, could result in failure of the bearings in the elevator down bias spring with possible reduced or loss of control of the airplane.

Relevant Service Information

British Aerospace has issued Jetstream Alert Service Bulletin 27–A–JA980606, Original Issue: July 6, 1998, Revision 1: July 31, 1998, which includes procedures for the following:

—inspecting the elevator bias spring assembly for correct installation and to assure that the correctly manufactured bias spring is installed;
—replacing any incorrectly manufactured bias spring and reworking any incorrectly installed bias spring assembly;
—inspecting the link assembly for distortion or damage; and
—replacing any distorted and/or damaged parts.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design that are registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the elevator bias spring assembly for correct installation and to assure that the correctly manufactured bias spring is installed. The proposed AD would also require replacing any incorrectly manufactured bias spring and reworking any incorrectly installed bias spring assembly, inspecting the link assembly for distortion or damage, and replacing any distorted and/or damaged parts

Accomplishment of the proposed actions would be required in accordance with Jetstream Alert Service Bulletin 27-A-JA980606, Original Issue: July 6, 1998, Revision 1: July 31, 1998.

Cost Impact

The FAA estimates that 350 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $40 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,000, or $100 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 98–CE–92–AD.

Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the bearings in the elevator down bias spring assembly caused by the installation of an incorrectly manufactured bias spring or damage or distortion to the assembly, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD, inspect the elevator bias spring assembly assembly for correct installation and to assure that the correctly manufactured bias spring is installed, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Alert Service Bulletin 27–A–JA980606, Original Issue: July 6, 1998, Revision 1: July 31, 1998.

(b) If an incorrectly manufactured bias spring is installed or the elevator bias spring assembly is incorrectly installed, prior to further flight, accomplish the following in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Alert Service Bulletin 27–A–JA980606, Original Issue: July 6, 1998, Revision 1: July 31, 1998.

(1) Rework any incorrectly installed bias spring assembly;

(2) Replace any incorrectly manufactured bias spring; and

(3) Inspect the link assembly for distortion or damage, and replace any distorted and/or damaged parts.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate

(e) Questions or technical information related to British Aerospace Jetstream Alert Service Bulletin 27–A–JA980606, Original Issue: July 6, 1998, Revision 1: July 31, 1998, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Alert Service Bulletin 27–A–JA980606, Original Issue: July 6, 1998, Revision 1: July 31, 1998. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on December 1, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32474 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–91–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain British Aerospace Jetstream Model 3201 airplanes. The proposed AD would require replacing the nose landing gear downlock actuator, the flap actuator, the steering selector valve, the hydraulic reservoir, and the emergency selector valve. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent internal corrosion of the hydraulic components on airplanes where these components were exposed to water contamination, which could result in reduced or loss of control of the airplane.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–91–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–91–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–91–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Jetstream Model 3201 airplanes. The CAA reports incidents of hydraulic components having significant internal corrosion.

This condition, if not corrected in a timely manner, could result in loss of hydraulic power with consequent reduced or loss of control of the airplane.

Relevant Service Information

British Aerospace has issued Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998, which specifies replacing the following critical components of the hydraulic system in accordance with the applicable maintenance manual:

—the nose landing gear downlock actuator;
—the flap actuator;
—the steering selector valve;
—the hydraulic reservoir; and
—the emergency selector valve.

The CAA classified this service bulletin as mandatory and issued British AD 001–02–98, not dated, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Jetstream Model 3201 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the nose landing gear downlock actuator, the flap actuator, the steering selector valve, the hydraulic reservoir, and the emergency selector valve. Accomplishment of the proposed actions would be required in accordance with the applicable maintenance manual, as specified in Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998.

Cost Impact

The FAA estimates that 9 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 33 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts to accomplish the replacements cost approximately $46,636. (Overhauled or repaired parts are available from the agencies of equipment manufacturers or from the aircraft manufacturer's agency). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $437,544, or $48,616 per airplane.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in both calendar time and hours time-in-service (TIS). Corrosion could occur on the hydraulic system components and then either continue to deteriorate the part over time regardless of airplane operation or develop into stress cracks over time based on airplane operation. In order to assure that this condition does not go undetected, a compliance time of specific hours TIS and calendar time is proposed.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 98–CE–91–AD.

Applicability: Jetstream Model 3201 airplanes, constructor numbers 841, 842, 844 through 848, 851, 853 through 855, 857, 859 through 862, and 864; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required at whichever of the following occurs later, unless already accomplished:

1. Upon accumulating 8,000 landings on the airplane or within 5 years since the last time the hydraulic system components were replaced (see paragraph (a) of this AD for listing of components), whichever occurs first; or

2. Within the next 12 calendar months after the effective date of this AD.

Note 2: If the number of landings is unknown, hours time-in-service (TIS) may be used by dividing 8,000 by 0.75. If hours TIS are utilized to calculate the number of landings, this would calculate the 8,000 landings compliance time to 10,667 hours TIS.

To prevent internal corrosion of the hydraulic components on airplanes where these components were exposed to water contamination, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Replace the following critical components of the hydraulic system, in accordance with the applicable maintenance manual, as specified in Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998:

(1) the nose landing gear downlock actuator;
(2) the flap actuator;
(3) the steering selector valve;
(4) the hydraulic reservoir; and
(5) the emergency selector valve.

Note 3: The FAA highly recommends replacing the hydraulic fluid while these system components are being replaced, as specified in Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to British Aerospace Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 5: The subject of this AD is addressed in British AD 001–02–98, not dated.

Issued in Kansas City, Missouri, on December 1, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32471 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209446–82]

RIN 1545–AT52

Pass Through of Items of an S Corporation to its Shareholders; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the pass through of items of an S

corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation.

DATES: The public hearing originally scheduled for Tuesday, December 15, 1998, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, August 18, 1998 (63 FR 44181), announced that a public hearing was scheduled for Tuesday, December 15, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1366, 1367 and 1368 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Monday November 16, 1998.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of December 2, 1998, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, December 15, 1998, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–32467 Filed 12–7–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 59

RIN 1024–AC68

Land and Water Conservation Fund Program of Assistance to States: Post Completion Compliance Responsibilities

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify Land and Water Conservation Fund (L&WCF) post-completion requirements by clarifying the state planning prerequisite for conversion approval, allowing the recipients of a L&WCF grant to use non-recreation land they currently own, or non-recreation land that is transferred from one public agency to another without payment, to satisfy the replacement requirement when land acquired with L&WCF assistance is proposed for conversion to other than public outdoor recreation uses, assuming all other eligibility criteria are met, eliminating the requirement that the National Park Service be notified of all instances of obsolescence and facility use changes, and establishing standards for resolving premature conversions to ensure their timely resolution. These changes are necessary to implement the recommendations of the park protection and stewardship task force which was established by the NPS to reengineer the post-completion compliance functions of the program and to address the recommendations of the Department of the Interior's Office of Inspector General.

DATES: Written comments will be accepted until February 8, 1999.

ADDRESSES: Comments should be sent to the Chief, Recreation Programs Division, National Park Service, Department of the Interior, 1849 "C" St., NW., Room 3624, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Strum (202–565–1129) or Mr. Kenneth R. Compton (202–565–1140).

SUPPLEMENTARY INFORMATION:

Background

Section 6(f)(3) of the L&WCF Act of 1965 stipulates that changes in use to other than public outdoor recreation at assisted sites may only be made with the approval of the Secretary of the Interior if such a conversion is in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and only if a converted property is replaced by substitute property of at least equal fair market value and of reasonably equivalent location and usefulness. On September 25, 1986, NPS published a final rule describing the post-completion compliance responsibilities for recipients of grants under the L&WCF grant-in-aid program. The regulations were subsequently amended on June 15, 1987 (52 FR 22747), to implement section 303 of the Emergency Wetlands Resources Act of 1986 which clarifies the equivalent usefulness criterion. The conversion requirements are codified at 36 CFR 59.3.

As part of the Vice President's National Performance Review, NPS established a park protection and stewardship task force to examine how local, State, and Federal governments could work together to better protect the public recreation estate created by L&WCF grant-in-aid program from the twin challenges of increasing development and shrinking manpower and financial resources at all levels of government. The goal of the task force members was to simplify and streamline the conversion review and approval process in 36 CFR part 59 without compromising the integrity of the recreation estate established through the L&WCF State grant program. The task force report, "Protecting the Legacy," issued in November 1996, included several recommendations which will lighten the burden of the 56 States and Territories, the primary recipients of L&WCF grant assistance, as well as thousands of pass-through recipients at the local level. Some recommendations can be implemented administratively. However, three of the recommendations require revisions or amendments to the published regulations. This rulemaking is also being used to clarify language in the preamble to the 1986 rulemaking regarding the role of the SCORP in the conversion review and approval process.

Every State must have a SCORP which has been reviewed and accepted by NPS before it can apply for and receive grants under the L&WCF program. In addition, the prerequisites for conversion approval found in § 59.3(b) include the requirement that a conversion and substitution must be in accord with the then-existing SCORP or equivalent recreation plans. In the discussion of public comments found in the preamble to the 1986 final rule (51 FR 34182), equivalent recreation plans are described as whatever planning effort exists after program funding ends which most closely compares with that of the SCORP and which the State would maintain at the impetus of State law or for some other appropriate reason. It is possible that this language could be misinterpreted to preclude any conversion request unless justified by a single plan, statewide in scope and maintained by the State. The intent of the equivalent recreation plans language was to give the States and local project sponsors the flexibility to pursue legitimate conversion requests in the absence of a formal SCORP as long as a suitable planning alternative was available—whether a recreation plan developed by a State as part of its own comprehensive planning efforts or any local or regional plan(s) acceptable to the State for the purpose of complying with section 6(f)(3). Such a plan may be considered as equivalent and could serve in lieu of an official SCORP to support (or reject) a conversion request but only if it has been formulated with benefit of public input and the existing SCORP has expired and L&WCF grant funding has ceased.

Subsection 59.3(b)(4)(iv) of the regulation prohibits land which is currently in public ownership from being used as replacement for land acquired as part of a L&WCF project. This prohibition includes land acquired from another public agency unless the selling agency is required by law to receive payment for the land.

Before 1982, program policy dictated that replacement real property must be newly acquired land and meet the standards for new acquisition projects. Therefore, replacement property could not be rededicated publicly owned lands regardless of whether the original project was for the acquisition of land or the development of facilities. However, in January 1982, NPS implemented a policy change which permitted rededicated public land not currently used or dedicated to public recreation/conservation, to be used as replacement land when a section 6(f)(3) conversion occurs within the boundaries of a L&WCF-assisted development project.

The task force concluded that this policy could apply equally well to acquisition projects, that there would be no diminution of the recreation estate if project sponsors were allowed to use non-recreation land it currently owns (or nonrecreation land that is transferred from one public agency to another without payment) to satisfy the replacement requirement on acquisition projects. Since public recreation is being protected in perpetuity, the other requirements of the L&WCF Act must still be met and the approval of a conversion proposal remains subject to the Secretary's approval authority. NPS concurs in the recommendation of the task force and proposes that this subsection be removed.

Existing § 59.3(d) requires NPS approval for any facility use change which would significantly contravene the intended recreation use of the area when the L&WCF assistance was provided. Although it does not require NPS approval for each and every facility use change or every time the maintenance of a park structure or use of an improvement funded with L&WCF assistance is discontinued after outliving its useful life (obsolescence), current regulations do require that NPS be notified of *all* proposed changes in advance of their occurrence regardless of cause. The intent of this review requirement was to ensure that no significant change occurs, or conversion of use takes place, without proper review and approval.

The task force recommended and NPS agreed that notification for every facility use change or every instance of facility obsolescence or deterioration of a L&WCF-assisted improvement requiring its removal or replacement was an unnecessary burden on L&WCF project sponsors. Therefore, in proposed § 59.3(d), this notification requirement for instances of obsolescence has been deleted except in the following two situations: (1) determinations of obsolescence which occur during the first five years after project closeout (to ensure contract compliance and to monitor fraud, waste and abuse), and (2) any instance of obsolescence which triggers a significant change of use. The State will continue to maintain a record for determinations of obsolescence after the five year period.

Facility use changes are addressed separately in new § 59.3(e). This section sets forth the requirement that NPS approval is required only for proposed changes to an otherwise eligible facility use which would significantly contravene the intended recreation use of the area when the L&WCF assistance was provided. In determining whether NPS approval is required, recipients are encouraged to review the original project application, agreement, amendments and any other related project documentation that would clarify the intended use of the park. The recipient should also view the project area in the context of its overall use and the area should be monitored in this context, e.g., a change from developed sports and play fields to a natural area, or vice versa, would require NPS review and approval. In addition, local recipients may wish to consult with the State administering agency for advice and counsel in determining the significance of a facility use change. All changes of use, whether significant or not, must nonetheless be public outdoor recreation uses otherwise eligible under the L&WCF program. Changes to other than eligible public outdoor recreation uses will constitute a conversion of use.

Conversions of L&WCF-assisted projects to other than public outdoor recreation use which are underway or which have been completed without the prior approval of the State and NPS are still subject to the statutory requirements for conversion review including the provision of suitable replacement property if subsequently approved; and the responsibility for resolving these premature conversion actions has and continues to rest with the agency responsible for administering the L&WCF program at the State level. However, internal audits have noted that there are no guidelines or standards for insuring that premature conversions (including the identification of suitable replacement property) are resolved in a timely manner. Therefore a new § 59.3(f), is added which establishes a 120-day time period from the date of conversion discovery, before the expiration of which the State is required to notify NPS of the actions it has taken or proposes to take to bring the project back into compliance with the grant agreement. It is important to note that approval of such conversions is not guaranteed unless all the prerequisites for a conversion set forth in § 59.3(b) are fulfilled including conclusively demonstrating that all practical alternatives which existed prior to taking the unauthorized action were taken into consideration.

Drafting Information

The primary author of this rule is Wayne Strum, Recreation Programs Division, National Park Service, Washington, DC 20240.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon analysis of the comments.

Compliance With Other Laws

1. Regulatory Planning and Review

This rule is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(a) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The changes proposed will only affect NPS and its grant recipients.

(c) This rule does alter the budgetary effects or entitlements, grants, user fees, or loan program or the rights or obligations of their recipients. Grant recipients will benefit by reduced reporting requirements and increased flexibility in identifying eligible replacement property.

(d) This rule does not raise novel legal issues. That portion involving eligibility of replacement property represents a revision to existing policy.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The procedural changes have no economic impact; the change in the eligibility of replacement land for conversions will have little effect since the value of conversions involving recipients of all types of entities (State governments, counties, cities and small communities) totaled only $6.5 million annually for the past three fiscal years.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. It *clarifies* a state planning requirement, *eliminates* a reporting requirement, *establishes* a time standard for timely resolution of after-the-fact conversions, and gives States and local units of government increased *flexibility* in the identification of suitable replacement property. The latter will result in a cost savings to the grant recipient but as indicated above, the impact is far less than the $100 million threshold.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. To the contrary, State and local governments will realize some cost savings in those instances when land already in public ownership may be used as replacement.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking affects only the relationship between the National Park Service and its State and local partners under the L&WCF grant program, not U.S. commerce.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It imposes no new requirements in addition to those set forth in the grant contract and the existing regulations, and, in fact, facilitates contract compliance by the recipient (States) and sub-recipients (local units of government).

5. Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This will reduce the number of replacement acquisitions required and therefore result in less interference with the use of private property.

6. Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. The States are the primary recipients of L&WCF grant assistance and have been consulted during the development of the task force report referenced above, and as a result of the rulemaking, States and local units of government will realize increased flexibility in the conversion process.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

This regulation does not require any new information collection requirements from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

9. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. As a regulation of an administrative nature, the environmental effects of which are too broad, speculative or conjectural to lend them themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case, this rule is categorically excluded from the NEPA process pursuant to 516 DM 2, Appendix 1 of the Departmental Manual.

10. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the rule in the Supplementary Information section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to his address: Exsec@ios.doi.gov

List of Subjects in 36 CFR Part 59

Grant programs—recreation, Recreation and recreation areas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NPS proposes to amend 36 CFR part 59 as follows:

PART 59—LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES

1. The authority citation for part 59 is revised to read as follows:

Authority: Sec. 6, Pub. L. 88–578, 78 Stat. 897 (16 U.S.C. 460l–4 *et seq.*).

2. Amend § 59.3 by removing paragraph (b)(4)(iv), revising paragraph (d), and adding new paragraphs (e) and (f), to read as follows:

§ 59.3 Conversion requirements.

* * * * *

(d) *Does the perpetual use requirement mean that an obsolete facility or improvement must continue to remain available for public recreation use?* (1) Recipients are not required to continue operation of a Fund-assisted facility or improvement beyond its useful life.

(2) It is normally not necessary for the recipient to notify NPS or seek approval to determine that a facility or improvements is obsolete. However, NPS approval is required and must be requested in writing by the State for any proposed obsolete facility determination which occurs during the first 5 years after project closeout or results in a significant change in the use of the project area from what was intended in the original project agreement and amendments. The latter will require review and approval in accordance with paragraph (e) of this section.

(3) The project sponsor must maintain the entire area acquired or developed with Fund assistance for public outdoor recreation following discontinuance of the assisted facility or improvement.

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Failure to do this is considered to be a conversion and requires NPS approval and the substitution of replacement land in accordance with section 6(f)(3) of the L&WCF Act and paragraphs (a) through (c) of this section.

(e) *Is NPS approval required for every change of use?* (1) Recipients are not required to notify or seek NPS approval for every change in facility use.

(2) A State must request NPS approval in writing when there is a proposed change to another otherwise eligible facility use at the same site which will significantly contravene the original project agreement, amendments and other project documentation. A project area should be viewed in the context of overall use and should be monitored in this context.

(3) In reviewing a request for changes in use, NPS will consider the proposal's consistency with the Statewide Comprehensive Outdoor Recreation Plan or equivalent recreation plan.

(4) Any facility use change to other than a public outdoor recreation use is considered to be a conversion and will require NPS approval and the substitution of replacement land in accordance with section 6(f)(3) of the L&WCF Act and paragraphs (a) through (c) of this section.

(f) *Must conversions which have taken place prematurely satisfy the same tests as those which have not yet occurred?* Conversions of Fund-assisted projects to other than public outdoor recreation use which are underway or which have been completed without the prior approval of the State and NPS are still subject to the statutory requirements for conversion review, including the provision of suitable replacement property if approved. To ensure that premature conversions are resolved in a timely manner (including the identification of suitable replacement property if retroactively approved), the State, within 120 days from the date of conversion discovery, must notify NPS of the corrective actions it has taken or proposes take to bring the project back into compliance with the terms of the grant agreement and paragraphs (a) through (c) of this section. The notice must include a schedule for the actions to be taken through completion of this process.

Dated: August 13, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–32385 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–6987b; A–1–FRL–6192–6]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; 15 Percent Rate-of-Progress and Contingency Plans; Revisions to 1990 Ozone Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. The SIP revisions consist of the State's 15 percent rate of progress (ROP) plan and contingency plans, and minor revisions to the State's 1990 ozone emission inventory. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 7, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and at the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, (617) 565–9266.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: November 13, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–32416 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–106–102–9903b; FRL–6191–9]

Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Kentucky 15 Percent Plan, the automobile inspection and maintenance (I/M) program and the 1990 baseline emissions inventory submitted by the Commonwealth of Kentucky through the Kentucky Natural Resources Environmental Protection Cabinet on September 11, 1998. The adoption of a 15 Percent Plan, an I/M program and a baseline emissions inventory are required by the 1990 Clean Air Act Amendments for the Northern Kentucky Counties of Boone, Campbell, and Kenton, which are a part of the Cincinnati-Hamilton moderate nonattainment area for the one-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, EPA proposes to approve revisions to the Kentucky State Implementation Plan (SIP) submitted on February 3, 1998, for the implementation of the rule regarding Stage II control at gasoline dispensing facilities and revisions to the existing open burning rule which provide a portion of the emission reductions included in the 15 Percent Plan.

In the final rules section of this **Federal Register**, the EPA is approving Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA

will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: To be considered, comments must be received by January 7, 1999.

ADDRESSES: Written comments should be addressed to Randy Terry at the Environmental Protection Agency, Region 4, Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY–102–106–9903. The Region 4 Office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Randy Terry at 404–562–9032 or Karla L. McCorkle at 404/562–9043. For additional information concerning the Inspection/Maintenance Program contact Dale Aspy at 404–562–9041.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 13, 1998.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 98–32424 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region VII Docket No. MO–057–1057b; FRL–6196–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve new Missouri rule 10 CSR 10–6.330 entitled "Restriction of Emissions from Batch-Type Charcoal Kilns" as a revision to the Missouri SIP. This rule requires batch-type charcoal kilns to substantially reduce emissions of particulate matter, volatile organic compounds, and carbon monoxide. In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 7, 1999.

ADDRESSES: All comments should be addressed to: Joshua A. Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules section of this **Federal Register**.

November 24, 1998.

Dennis Grams,

P.E., Regional Administrator, Region VII.

[FR Doc. 98–32420 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–21–1; SC–23–1–9832b; FRL–6197–5]

Approval and Promulgation of Implementation Plans; South Carolina: Approval of Revisions to the South Carolina SIP Regarding Volatile Organic Compounds (VOC) Definition Adoptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 6, 1989 and September 27, 1990, the State of South Carolina submitted revisions to the South Carolina SIP. The revisions include modifications to an existing definition and the adoption of multiple definitions. In the final rules section of this **Federal Register**, the EPA is approving the revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting should do so at this time.

DATES: To be considered, comments must be received by January 7, 1999.

ADDRESSES: Written comments on this action should be addressed to Randy B. Terry at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day and reference South Carolina files 21–1 and 23–1–9832. The Region 4 office may

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have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

South Carolina Department of Health and Environmental Control 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303. The telephone number is (404) 562–9032.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 23, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–32342 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition to List the Bonneville Cutthroat Trout as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The Fish and Wildlife Service announces a 90-day finding for a petition to list the Bonneville cutthroat trout (*Oncorhynchus clarki utah*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). We find that the petition presented substantial information indicating that listing this species may be warranted, and we are initiating a status review of this species.

DATES: The finding announced in this document was made on November 25, 1998. To be considered in the 12-month finding for this petition, comments and materials should be submitted to the Service by January 7, 1999.

ADDRESSES: Information, data, or comments concerning this petition should be submitted to the Field Supervisor, Ecological Services, Utah Field Office, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Janet A. Mizzi, Utah Field Office, at the above address, or telephone 801/524–5001.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service also is required to promptly commence a review of the status of the species involved.

We have made a 90-day finding on a petition to list the Bonneville cutthroat trout (*Oncorhynchus clarki utah*) as threatened throughout its range. The petition, dated February 5, 1998, and received February 26, 1998, was submitted by the Biodiversity Legal Foundation, Boulder, Colorado. The petitioner requested that we list the Bonneville cutthroat trout as threatened in United States river and lake ecosystems where it presently continues to exist and to designate its occupied habitat as critical habitat within a reasonable period of time following the listing. The petitioner submitted information on the historical and current status, distribution, and threats to the species, as well as other information including scientific references in support of the petition.

The processing of this petition conforms with the Service's listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502) for fiscal years 1998 and 1999, which supplements the 1983 listing priority guidance. Administrative findings for listing petitions that are not assigned to Tier 1, emergency listing actions, are processed as a Tier 2 priority. The processing of this petition falls under Tier 2.

Bonneville cutthroat trout are native to the Bonneville Basin in Utah, Idaho, Nevada, and Wyoming. Their habitat is widely distributed and variable and includes both river and lake ecosystems. The subspecies occurs in streams with coniferous and deciduous riparian trees at 3,500 meters (m) (11,483 feet (ft)) above mean sea level, to streams in sage-steppe grasslands with herbaceous riparian zones at 1,000 (m) (3281 ft) above mean sea level, to lake environments.

Based on 1996 data, the petitioner estimated the current status of the species as 81 populations occupying 234 stream miles (mi). Eighty-three (83) percent of the populations occur on Forest Service lands, with 14 percent occurring on Bureau of Land Management administered lands and the remaining one (1) percent on State or other lands. The petitioner estimated that 90 percent of streams within the Bonneville Basin had historic occurrences of Bonneville cutthroat trout, and that current occupancy was now restricted to 3.7 percent of the historic stream miles. More precisely, the petitioner estimated that the subspecies was now extirpated (extinct) in 76 percent of sub-basins on six National Forests in Utah, and in 43 percent of sub-basins on two National Forests in Idaho. Furthermore, the petitioner identified that 72 percent of current populations were secure or stable, while 25 percent were declining or at risk, with the status of the remaining three percent unknown. The petitioner asserted that habitat conditions for the Bonneville cutthroat trout on National Forests have been rated as 13 percent excellent, 49 percent good, 18 percent fair, 11 percent poor and 2 percent extremely degraded.

Threats to the Species

The following specific threats were identified by the petitioner as factors in the decline of the species or as current threats to the continued existence of Bonneville cutthroat trout: competition and predation from exotic species; habitat removal/damage; altered hydrologic regimes; overfishing; anthropogenic activities; loss of connectivity to sub-basins; nonnative fish introductions (largely rainbow (*Oncorhynchus mykiss*), brown (*Salmo trutta*), and brook trout (*Salvelinus fontinalis*)); habitat fragmentation; decreases in Bonneville cutthroat throughout the Basin; hybridization; channelization, dewatering, diversions and damming of streams; unscreened irrigation ditches; increased sedimentation from livestock grazing, mining, logging and road building which has damaged spawning substrates and raised water temperatures; poorly designed road culverts which become migration barriers; damage to riparian zones; herbicide applications in riparian zones; oil spills; undesirable genetic mixing and fragmentation which has genetically isolated some populations; drought; disease; the lack of accountability of proactive programs among agencies; and the inadequacy of existing regulatory mechanisms.

The Service, other Federal management agencies, and affected State agencies, have previously recognized numerous threats affecting the continued existence of the Bonneville cutthroat trout. These threats have been identified in current management plans, Notices of Review, the Utah Conservation Agreement (Lentsch et al. 1997), and the Forest Service's Conservation Assessment for Inland Cutthroat Trout (USDA 1995), as well as other literature. Resource agencies have identified habitat degradation and the threats from nonnative species as the most important factors threatening the continued existence of Bonneville cutthroat trout. We believe other threats, such as those asserted by the petitioner, affect the species as well. The expansion of whirling disease, most recently to Utah waters, is an imminent threat. Fragmentation and the genetic isolation of many populations have also been identified.

Current Distribution

The majority of the current Bonneville cutthroat trout populations resides in Utah, with smaller populations present in Nevada, Idaho, and Wyoming. In Utah the species is located in five geographic management units within the State; the Bear Lake, Bear River, Northern Bonneville, West Desert, and Southern Bonneville Management Units. There are presently a total of 40 known Bonneville cutthroat trout populations occupying approximately 147.4 stream mi (235.8 kilometers (km)) and 35,108 surface acres (ac) (14,043 hectares (ha)) of lentic water (lakes or ponds) throughout the management units in Utah (Lentsch et al. 1997).

In Nevada, populations of Bonneville cutthroat trout were historically restricted to the extreme eastern border of the State, including the east slope of the Snake and Goshute ranges, the Pilot Peak Range, and the Thousand Springs Creek drainage. In 1987, the Nevada population was restricted to approximately 12.5 stream mi (20 km) in Goshute, Hendrys, Hampton, and Pine-Ridge Creeks (Haskins 1987). Their current distribution within Nevada has recently expanded to include Deadman Creek.

Bonneville cutthroat trout populations in Idaho are restricted to the Bear River drainage. In the late 1970's, the species was documented in the Thomas Fork tributaries of Giraffe, Dry, and Preuss Creeks. In 1993 and 1994, four additional streams with pure Bonneville cutthroat trout and seven more with suspected Bonneville cutthroat trout were identified. These included both the upper and lower mainstem Thomas Fork of the Bear River, several reaches of the mainstem Bear River, and numerous tributaries of the Bear River. Bonneville cutthroat trout are also present in Bear Lake at the Idaho/Utah border.

In Wyoming, Bonneville cutthroat trout populations are restricted to 36 streams (about 280 stream mi or 448 km) in the Bear River system. Additionally, Lake Alice, a 230 ac (92 ha) lake, contains a naturally reproducing, native population of Bonneville cutthroat trout.

Current Management Status

Both the Bureau of Land Management and Forest Service classify the species as sensitive and afford it special management consideration. All four States implement special fishing regulations to protect sensitive populations of the species. States throughout the range of the species have developed conservation plans and have expressed interest in developing a larger multi-State, multi-agency conservation strategy for Bonneville cutthroat trout. The State of Utah has taken the lead on this effort and is currently preparing a preliminary draft document for review among the States and other management agencies.

In Utah, the Bonneville cutthroat trout is protected as a conservation species, identifying it as a species managed through implementation of a multi-agency Conservation Agreement. The Utah Division of Wildlife Resources developed this Agreement, which has been in place since early 1997, with the Service, Bureau of Land Management, Forest Service, Confederated Tribes of the Goshute Reservation, Bureau of Reclamation, and Utah Reclamation Mitigation and Conservation Commission. Conservation actions to protect and expand the species have been ongoing since the 1980's.

In 1987, the Nevada Division of Wildlife developed a Bonneville Cutthroat Trout Species Management Plan. Both the Bureau of Land Management and the Humboldt National Forest concurred with this plan. The Plan identified schedules for: (1) Population protection measures for existing populations; (2) population habitat enhancement measures; (3) population expansion within historic range including eradication and reintroduction projects and; (4) population introductions outside historic range. Proposed work schedules of the Plan were updated once and many habitat improvement issues have been resolved through changes in Bureau of Land Management and Forest Service livestock grazing plans. Habitat conditions for existing and proposed populations are in good to excellent condition. The Hendries Creek population was expanded to include the lower 3.5 mi (5.6 km) of stream below a fish passage barrier. Nonnative fishes have been removed from the Smith, Deadman and Deep Creek systems and Bonneville cutthroat trout reintroductions were initiated in 1997 in Deadman Creek.

The State of Wyoming classifies the Bonneville cutthroat trout as a State sensitive (S2) species. A Bonneville Cutthroat Trout Inter-Agency Five Year Management Plan (1993–1997) has directed conservation activities within the State. Review of the Plan is underway and future management will be directed accordingly.

In 1994, the State of Idaho prepared a draft Habitat Conservation Assessment and Strategy for Bonneville cutthroat trout. The strategy has been implemented in 8–12 percent of the species' range in southeastern Idaho through a 1995 conservation agreement among the Service, Forest Service, Idaho Department of Fish and Game, Idaho Natural Resources Conservation Service, and the Caribou Cattleman's Association. Several on-the-ground actions have been implemented since inception of this agreement. These include fencing of riparian areas, modifying grazing practices, and working on restoration of connectivity. These activities have resulted in stabilization of riparian habitat and increases in the populations of Bonneville cutthroat trout in Pruess, Giraffe, and Dry Creeks.

Additional work is in progress to remove threats to the species on other streams in Idaho, specifically St. Charles Creek, Bailey Creek, Cub River, and the main stem Bear River. The draft conservation strategy for Idaho is being revised by Idaho Fish and Game to reflect goals and objectives similar to the multi-agency conservation agreement implemented for the species in Utah.

Conclusion and Finding

We have reviewed the petition and the references cited in the petition, and we have discussed current status with experts in the appropriate State and Federal management agencies. On the basis of the best scientific and commercial information available, we find that the petition presents substantial information that listing this species may be warranted. The scientific and commercial information available to us is, for the most part, consistent with the information presented in the petition, although the petition lacked current information concerning recent conservation efforts on the species' behalf.

We concur that numerous factors may threaten the continued existence of the Bonneville cutthroat trout. These threats suggest that listing may be warranted. However, a thorough review of current management efforts is necessary to determine if the threats may have been alleviated through recent conservation efforts. Furthermore, we believe a more thorough review of the genetic characteristics of Bonneville cutthroat populations is necessary.

When we make a positive 90-day finding, we are required to promptly commence a review of the status of the species concerned. We have been provided considerable additional information concerning recent and ongoing efforts to remove threats to the Bonneville cutthroat trout throughout its range. We have reviewed much of this information and will consider all the relevant information in conducting a full status review of the species to determine if listing is warranted. We are hereby requesting any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Bonneville cutthroat trout throughout its range. We are soliciting information primarily on (1) genetic variability and purity of the various subpopulations, (2) population status and trends, (3) management policies and conservation plans affecting Bonneville cutthroat trout, and (4) threats to the species, including those identified in the petition. Based upon the available and any newly obtained information, we will conduct a full status review of Bonneville cutthroat trout and issue a 12-month finding as required by Section 4(b)(3)(B) of the Act. The petitioner also requested that critical habitat be designated for this species. If we determine in the 12-month finding that listing of the Bonneville cutthroat trout is warranted, the designation of critical habitat would be addressed in the subsequent proposed rule.

References Cited

Haskins, Richard L., II. 1987. Bonneville cutthroat trout species management plan. Nevada Department of Wildlife, Fisheries Management Plan. Federal Aid Project No. F–20–23, Job No. 207.2. 17 pp. + Appendices.

Lentsch, L., Y. Converse and J. Perkins. 1997. Conservation agreement and strategy for Bonneville cutthroat trout in the State of Utah. Publication Number 97–19. 73 pp.

United States Department of Agriculture (USDA), Forest Service. 1995. Conservation assessment for inland cutthroat trout. Rocky Mountain Range and Experiment Station. General Technical Report RM–GTR–256. 61 pp.

Author

The Primary author of this document is Janet A. Mizzi, Utah Field Office (see **ADDRESSES** section above).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 25, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–32469 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 235
Tuesday, December 8, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–114–1]

AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Canola Genetically Engineered for Male Sterility, Fertility Restoration, and Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for certain canola transformation events, which have been genetically engineered for male sterility, fertility restoration, and tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these canola transformation events present a plant pest risk.

DATES: Written comments must be received on or before February 8, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–114–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–114–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14thStreet and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On October 5, 1998, APHIS received a petition (APHIS Petition No. 98–278–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for canola (*Brassica napus* L.) designated as In Vigor® Hybrid Canola Transformation Events (transformation events) MS8 and RF3, and their hybrid combination MS8/RF3. The subject transformation events have been genetically engineered for male sterility (MS8), fertility restoration (RF3), and tolerance to the herbicide glufosinate (both MS8 and RF3), to enable the production of pure hybrid canola varieties by the use of a pollination control system. AgrEvo's petition states that the subject canola transformation events should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, these canola transformation events have been genetically engineered to contain a *barnase* gene (MS8) for male sterility or the *barstar* gene (RF3) for fertility restoration. The *barnase* gene expresses a ribonuclease that blocks pollen development and results in a male sterile plant, while the *barstar* gene encodes a specific inhibitor of this ribonuclease and restores fertility. The *barnase* and *barstar* genes were derived from *Bacillus amyloliquefaciens*, and are linked in the subject transformation events to the *bar* gene derived from *Streptomyces hygroscopicus*. The *bar* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. The herbicide tolerance trait allows for selection of plants carrying the linked genes for pollination control during breeding and for tolerance to the herbicide during commercial cultivation. Expression of the added genes is controlled in part by gene sequences derived from *Arabidopsis thaliana, Nicotiana tabacum*, and the plant pathogen *Agrobacterium tumefaciens*. The *A. tumefaciens* method was used to transfer the added genes into the parental canola variety, Drakkar.

Canola transformation events MS8, RF3, and their hybrid combination MS8/RF3 have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from a plant pathogen. These canola transformation events have been field tested in Canada since 1994, in Europe since 1995, and in the U. S. since 1997 under APHIS permits and notifications. In the process of reviewing the permit applications and notifications for field trials of these canola transformation events, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination. Canola transformation events MS8, RF3, and their hybrid combination MS8/RF3 were approved in 1996 by Agriculture and Agri-Food Canada for unconfined environmental release and use as livestock feed in Canada, and in 1997, Health Canada

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approved oil from the subject transformation events for sale as human food in Canada.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), *plant pest* is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U. S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. Accordingly, AgrEvo has submitted to EPA both registration and tolerance exemption applications for glufosinate use on canola.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. AgrEvo has completed consultation with FDA on the subject canola transformation events.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the ADDRESSES section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's canola transformation events MS8, RF3, and their hybrid combination MS8/RF3, and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 2nd day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32519 Filed 12–7–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Frank Church—River of No Return Wilderness (FC–RONR) Programmatic Management Plan, Boise, Bitterroot, Nez Perce, Payette, and Salmon-Challis National Forests; Boise, Custer, Idaho, Lemhi and Valley Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Supplement of a Notice of Intent to extend the public comment period.

SUMMARY: This **Federal Register** notice revises the Notice of Availability published in the January 23, 1998 **Federal Register** (40 CFR 1506.9) Vol. 63, No. 15, page 3563. On January 15, 1998, the Forest Service issued a Draft Environmental Impact Statement for the management of the Frank Church-River of No Return Wilderness. This revised notice of availability extends the time for public review and comment. Comments will be due February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth T. Wotring, FC–RONR Wilderness Coordinator, RR 2 Box 600, H2y 93 S, Salmon ID 83467, telephone 208–756–5131.

Dated: December 1, 1998.

George Matejko,

Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. 98–32499 Filed 12–7–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Burearu of Export Administration

Action Affecting Export Privileges; KIYOYUKI YASUTOMI; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of Kiyoyuki Yasutomi, M.E.I. Japan, 6F Sanyo Bldg., 1 Naitocho, Shinjuku-ku, Tokyo 160, Japan.

On January 5, 1998, Kiyoyuki Yasutomi (Yasutomi) was convicted in the United States District Court for the District of Columbia on one count of violating the Export Administration Act of 1979, as amended (currently codified at 50 USCA app. §§ 2401–2420 (1991 & Supp. 1998)) (the Act).[1] Yasutomi was convicted of knowingly reexporting and causing to be reexported, from Japan to Pakistan, computer equipment designated on the Commodity Control List, without obtaining the required authorization from the Department of Commerce.

Section 11(h) of ,the Act provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the act or the Export

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[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (63 FR 44121, August 17, 1998), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 USCA §§ 1701–1706 (1991 & Supp. 1998)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

Administration Regulations (currently codified at 15 CFR Parts 730–774 (1998)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Yasutomi's conviction for violating the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Yasutomi permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on January 5, 2008. I have also decided to revoke all licenses issued pursuant to the Act in which Yasutomi had an interest at the time of his conviction.

Accordingly, it is hereby ordered

I. Until January 5, 2008, Kiyoyuki Yasutomi, MEI, Japan, 6F Sanyo Bldg., 1 Naitocho, Shinjuku-hu, Tokyo 160, Japan, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Yasutomi by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 5, 2008.

VI. A copy of this Order shall be delivered to Yasutomi. This Order shall be published in the **Federal Register**.

Dated: November 23, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–32529 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 19–98]

Foreign-Trade Zone 32—Miami, FL; Application for Subzone Status: Amendment of Application, Komatsu Latin-America Corporation (Distribution of Construction and Mining Equipment Parts)

Notice is hereby given that the application of the Greater Miami Foreign-Trade Zone, Inc., grantee of FTZ 32, requesting authority for special-purpose subzone status for the construction and mining equipment parts distribution facility of Komatsu Latin-America Corporation in Miami, Florida (63 FR 18363, 4/15/98), has been amended to include an additional site (1.5 acres), contiguous to the proposed subzone site. The additional space will be used for storage and display of products. The application remains otherwise unchanged.

The comment period is extended (to December 28, 1998. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

A copy of the application and the amendment and accompanying exhibits are available for public inspection at the following locations:

Greater Miami Foreign-Trade Zone Inc.,
1601 Biscayne Boulevard, Omni
International Complex, Miami,
Florida 33132

Office of the Executive Secretary,
Foreign-Trade Zones Board, Room
3716, U.S. Department of Commerce,
14th & Pennsylvania Avenue, N.W.,
Washington, D.C. 20230

Dated: November 30, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–32543 Filed 12–7–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, findings, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to request a review: Not later than the last day of December 1998, interested parties may request administrative review of the following orders, finding, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings	
Brazil:	
Certain Carbon Steel Butt-Weld Pipe Fittings, A–351–602	12/1/97–11/30/98
Silicomanganese, A–351–824	12/1/97–11/30/98
Canada: Elemental Sulphur, A–122–047	12/1/97–11/30/98
Germany: Animal Glue and Inedible Gelatin, A–428–062	12/1/97–11/30/98
India: Stainless Steel Wire Rod, A–533–808	12/1/97–11/30/98
Japan:	
Business Telephone Systems and Subassemblies Thereof, A–588–809	12/1/97–11/30/98
Cellular Mobile Telephones and Subassemblies, A–588–405	12/1/97–11/30/98
Drafting Machines and Parts Thereof, A–588–811	12/1/97–11/30/98
Polychloroprene Rubber, A–588–046	12/1/97–11/30/98
P.C. Steel Wire Strand, A–588–068	12/1/97–11/30/98
Mexico: Porcelain-on-Steel Cooking Ware, A–201–504	12/1/97–11/30/98
New Zealand: Low-Fuming Brazing Copper Wire and Rod, A–614–502	12/1/97–11/30/98
South Korea: Welded ASTM A–312 Stainless Steel Pipe, A–580–810	12/1/97–11/30/98
Sweden: Welded Hollow Products, A–401–603	12/1/97–11/30/98
Taiwan:	
Business Telephone Systems and Subassemblies Thereof, A–583–806	12/1/97–11/30/98
Carbon Steel Butt-Weld Pipe Fittings, A–583–605	12/1/97–11/30/98
Porcelain-On-Steel Cooking Ware, A–583–508	12/1/97–11/30/98
Welded ASTM A–312 Stainless Steel Pipe, A–583–815	12/1/97–11/30/98
The People's Republic of China:	
Cased Pencils, A–570–827	12/1/97–11/30/98
Porcelain-on-Steel Cooking Ware, A–570–506	12/1/97–11/30/98
Silicomanganese, A–570–828	12/1/97–11/30/98
Countervailing Duty Proceedings	
Mexico: Porcelain-on-Steel Cooking Ware, C–201–505	1/1/97–12/31/97
Suspension Agreements	
None.	

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1996)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of December 1998. If the Department does not receive, by the last day of December 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

December 2, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–32540 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Final Results of Expedited Sunset Review: Elemental Sulphur From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Review: Elemental Sulphur from Canada.

SUMMARY: On August 3, 1998, the Department of Commerce ("the Department") initiated a sunset review (63 FR 41227) of the antidumping finding on elemental sulphur from Canada pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels located in the Appendix to this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 8, 1998.

Statute and Regulations

This review was conducted pursuant to section 751(c) and 752 of the Act. The Department's procedures for the conduct of the sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Order,* 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to this antidumping finding is elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

This review covers all manufacturers and exporters of elemental sulphur from Canada other than the following for which the finding has been revoked: Shell Canada Resources, Ltd., Canadian Superior Oil, Ltd., Chevron Standard, Ltd., Gulf Oil Canada, Ltd., Hudson's Bay Oil & Gas, Ltd.,[1] Sulconan, Inc., Irving Oil, Ltd.,[2] Tiger Chemicals Ltd., Pan Canadian Petroleum Ltd., Amoco Canada Petroleum Company, Ltd., Imperial Oil Ltd./Exxon Chemical Americas, Inc., Canterra Energy Ltd.(formerly Aquitaine Company of Canada, Ltd.), CDC Oil & Gas Ltd., Dome Petroleum Ltd.,[3] PetroGass Processing, Ltd., Cities Service Oil & Gas, Imperial Oil Limited, and Texaco Canada Ltd.,[4] BP Resources Oil, Cornwell Chemical Ltd., Home Oil Ltd., Suncor,[5] InterRedec,[6] Petro Canada,[7] and Sulco Chemicals Ltd.[8]

Background:

On August 3, 1998, the Department initiated a sunset review of the antidumping duty finding on elemental sulphur from Canada (63 FR 41227) pursuant to section 751(c) of the Tariff Act of 1930. On August 18, 1998, the Department received a Notice of Intent to Participate from Freeport-McMoRan Sulphur Inc. ("Freeport"). Freeport claimed interested party status under section 771(9)(C) of the Act as a U.S. manufacturer of elemental sulphur. Freeport stated that it acquired the sulphur production operations of Pennzoil Company ("Pennzoil") and Duval, a subsidiary of Pennzoil. Duval was the original petitioner in this proceeding in 1972 and has actively participated in several administrative reviews. We received a complete substantive response from Freeport on September 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Noting that it has requested revocation of the finding, on

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[1] *Elemental Sulphur From Canada; Final Results of Administrative Review and Partial Revocation of Antidumping Finding;* 47 FR 3811 (January 27, 1982) (revocation with respect to Shell Canada, Ltd. and Canadian Superior Oil, Ltd.); *Elemental Sulphur From Canada; Partial Revocation of Antidumping Finding;* 48 FR 40760 (September 9, 1983) (revocation with respect to Chevron); *Elemental Sulphur From Canada; Revocation of Antidumping Finding in Part;* 49 FR 1920 (January 16, 1984) (revocation with respect to Hudson's Bay Oil & Gas Company Limited and Gulf Oil Canada Limited); *Elemental Sulphur From Canada, Reinstatement in Part of Antidumping Finding;* 51 FR 19580 (May 30, 1986) (reinstatement of finding with respect to Shell Canada Resources, Ltd., Canadian Superior Oil, Ltd., Chevron Standard, Ltd., Gulf Oil Canada, Ltd., and Hudson's Bay Oil & Gas, Ltd.); and *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 53 FR 1048 (January 15, 1988) (revocation with respect to Shell Canada Resources, Ltd., Canadian Superior Oil, Ltd., Chevron Standard, Ltd., Gulf Oil Canada, Ltd., and Hudson's Bay Oil & Gas, Ltd.).

[2] *Elemental Sulphur From Canada; Final Results of Administrative Review and Partial Revocation of Antidumping Finding;* 47 FR 31716 (July 22, 1982). (revocation with respect to Sulconam, Inc. and Irving Oil, Ltd.).

[3] *Elemental Sulphur From Canada, Final Results of Administrative Review of Antidumping Finding and Revocation in Part,* 50 FR 37889 (September 18, 1985) (revocation with respect to Tiger Chemicals, Ltd., Pan Canadian Petroleum, Ltd., Amoco Canada Petroleum Company, Ltd., Imperial Oil, Ltd./Exxon Chemical Americas, Inc., Canterra Energy (formerly Aquitaine Company of Canada, Ltd.), CDC Oil & Gas, Ltd., and Dome Petroleum, Ltd.).

[4] *Elemental Sulphur From Canada, Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 55 FR 13179 (April 9, 1990) (revocation with respect to PetroGass Processing, Cities Service Oil & Gas, Imperial Oil, and Texaco Canada).

[5] *Elemental Sulphur From Canada, Final Results of Antidumping Duty; Administrative Review and Revocation in Part;* 55 FR 43152 (October 26, 1990) (revocation with respect to B.P. Resources Canada, Cornwall Chemical, Home Oil, and Suncor).

[6] *Elemental Sulphur From Canada, Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 56 FR 5391 (February 11, 1991) (revocation with respect to InterRedec Sulphur Corporation).

[7] *Elemental Sulphur From Canada, Final Results of Antidumping Duty Administrative Review and Revocation in Part,* 56 FR 15068 (April 19, 1991) (revocation with respect to Petro-Canada).

[8] *Elemental Sulphur From Canada, Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 57 FR 1452 (January 14, 1992) (revocation with respect to Sulco Chemicals, Ltd.).

September 1, 1998, Husky Oil Ltd., waived its right to participate in the Department's sunset review. We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 CFR 351.218(e)(1)(ii)(C)(2)), the Department determined to conduct an expedited review.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping would be likely to lead to continuation or recurrence of dumping. Section 752 of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

The antidumping finding on elemental sulphur from Canada was published in the **Federal Register** as Treasury Decision 74–1 (38 FR 34655, Dec. 17, 1973). Since that time, the Department has conducted numerous administrative reviews.[9] The finding remains in effect for all imports of elemental sulphur from Canada other than those for which the finding has been revoked, as discussed previously.

In its substantive response, Freeport applied the criteria contained in the Department's *Sunset Policy Bulletin* and concluded that revocation of the finding would result in continued and increased dumping. Freeport provided in its comments a table which identified dumping margins, by company, over the life of the finding. Freeport claimed that this evidence demonstrated that, in practically every case, dumping not only continued, but that the margin of dumping remained steady or increased. In addition, Freeport provided a table presenting Census data on the total quantity of sulphur imported into the United States from Canada and stated that imports have decreased every year since 1992, when the domestic industry began requesting administrative reviews.

We find that the existence of dumping margins after the issuance of the finding is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above de minimis levels continue in effect for exports by several Canadian manufacturers and exporters of elemental sulphur (for example Allied Signal Inc., Brimstone Export, Mobil Oil Canada, Ltd., Norcen Energy Resources, Petrosul International). As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Therefore, given that dumping has continued over the life of the finding, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the finding were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, in a sunset review of an antidumping finding for which no company-specific margin or "all others" rate is included in the Treasury finding published in the **Federal Register**, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. Additionally, if the first final results do not contain a margin for a particular company, the Department normally will provide the Commission, as the margin for that company, the first "new shipper" rate established by the Department for that finding. (*See* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* section II.B.2 and 3 of the *Sunset Policy Bulletin*.)

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[9] *Elemental Sulphur From Canada; Final Results of Administrative Review and Partial Revocation of Antidumping Finding;* 47 FR 3811 (January 27, 1982); *Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding;* 47 FR 14507 (April 25, 1982); *Elemental Sulphur From Canada; Final Results of Administrative Review and Partial Revocation of Antidumping Finding;* 47 FR 31716 (July 22, 1982); *Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding;* 47 FR 31911 (July 23, 1982); *Elemental Sulphur From Canada; Partial Revocation of Antidumping Finding;* 48 FR 40760 (September 9, 1983); *Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding;* 48 FR 53592 (November 28, 1983); *Elemental Sulphur From Canada; Revocation of Antidumping Finding in Part;* 49 FR 1920 (January 16, 1984); *Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding and Revocation in Part;* 50 FR 37889 (September 18, 1985); *Elemental Sulphur From Canada; Reinstatement in Part of Antidumping Finding;* 51 FR 19580 (May 30, 1986); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review;* 51 FR 43954 (December 5, 1986); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review;* 51 FR 45153 (December 17, 1986); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review;* 52 FR 41601 (October 29, 1987); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 53 FR 1048 (January 15, 1988); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review;* 53 FR 15257 (April 28, 1988); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 55 FR 13179 (April 9, 1990); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review;* 55 FR 28794 (July 13, 1990); *Elemental Sulphur From Canada; Final Results of Antidumping Duty; Administrative Review and Revocation in Part;* 55 FR 43152 (October 26, 1990); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 56 FR 5391 (February 11, 1991); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part;* 57 FR 1452 (January 14, 1992); *Elemental Sulphur From Canada; Final Results of Antidumping Finding Administrative Review;* 61 FR 8239 (March 4, 1996); *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Reviews;* 62 FR 37970 (July 15, 1997).

Because Treasury did not publish weighted-average dumping margins in its finding, and such margins are not otherwise publicly available, the margins determined in the original investigation are not available to the Department for use in this sunset review. Under these circumstances, the Department normally will select the margin from the first administrative review conducted by the Department as the magnitude of the margin of dumping likely to prevail if the finding is revoked. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive comments, Freeport suggests that the Department use the margins from both the first (which covered 33 companies) and second (which covered 17 companies) final results of administrative review because both determinations established company-specific margins for the period in the 1970s immediately following the issuance of Treasury's 1973 antidumping finding. For companies covered in either of these first two reviews for which margins have increased over the life of the finding, Freeport recommends that the Department select the highest rate applied to those companies. Finally, for companies covered by neither of these two reviews, but covered in subsequent reviews, Freeport recommends either the first "all others" rate calculated by the Department, the highest company-specific rate calculated by the Department, or, in the case to two manufacturer/exporter combinations, the only rate ever calculated for the combination. Other than its discussion related to the appropriate margin for Husky, Freeport merely suggests that the Department's policy provides for the selection of the highest rate for companies where the Department has calculated a margin higher than the original.

With respect to Husky Oil, Ltd. ("Husky") (a company that was first reviewed by the Department during the 1991–1992 administrative review), Freeport argues that, if the finding were revoked, the magnitude of the margin likely to prevail would be the highest rate calculated for Husky. Freeport notes that the margins determined by the Department for Husky in the 91–92, 92–93, 93–94, and 94–95 administrative reviews have been 7.17%, 40.38%, 3.38% and 0.33%, respectively. Freeport argues that the enormous increase in Husky's margin between the 91–92 and 92–93 administrative reviews reflects Husky's choice to increase dumping in a effort to maintain market share, particularly during a period when U.S. market prices declined significantly. Freeport further argues that Husky's margins from the 93–94 and 94–95 administrative reviews are aberrationally low and reflect dramatic reduction in Husky's U.S. sales volumes and reversible changes in its operations designed to minimize the margins calculated by the Department.

Using the non-confidential ranged figures reported by Husky during the course of the administrative reviews, Freeport states that Husky's U.S. sales volumes decreased from the 91–92 administrative review high to a 92–93 all time low, and then increased during the 94–95 administrative review. Freeport adds that in the course of the ongoing administrative review of the 96–97 administrative review, Husky again decreased the volume of its exports of sulphur to the U.S. market.

Freeport notes that the overwhelming majority of Husky's (and Canada's) sulphur is produced at major sour gas processing plants. Freeport then states that, under the discipline of the finding, Husky made changes in its operations by limiting its U.S. exports to sulphur produced at an unrepresentative facility (the Lloydminster heavy oil upgrader, as opposed to sour gas processing plants) and shifted to production of formed sulphur at its sour gas facilities. Freeport adds that these changes had a major impact on Husky's reported cost of production and constructed value and the resultant dumping margins calculated by the Department.

Freeport concludes that in the absence of the constraints imposed by the antidumping finding, Husky would again export much larger volumes of sulphur to the United States, would resume exporting to the U.S. from its major sour gas production facilities and would otherwise revert to its normal commercial operations.

On April 5, 1982, the Department issued the final results of review of this finding covering 47 of the 52 known exporters and, generally, the period July 1, 1978 through November 30, 1980 (47 FR 14507). On November 28, 1983, the Department issued the final results of review of this finding covering 43 of the 49 manufacturers and/or exporters and, generally, the period December 1, 1980 through November 30, 1981 (48 FR 53592). We note, however, that for some companies, the November 1983 notice covered an earlier review period than did the April 1982 notice. For example, the November 1983 notice covered entries dating back to 1973 for certain companies. Therefore, we agree with Freeport and have selected, as the magnitude of the margin likely to prevail, the margin for the first period reviewed for each company, regardless of which **Federal Register** notice contained the review results.

With respect to selecting the highest rate calculated by the Department for companies whose dumping margins have increased over time, we do not agree with Freeport. In the *Sunset Policy Bulletin* the Department stated that "a company may choose to increase dumping in order to maintain or increase market share" and that "the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company, where, for that particular company, dumping margins increased after the issuance of the order." (*See* section II.B.2 of the *Sunset Policy Bulletin*.) The Department's intent was to establish a policy of using the original investigation margin as the starting point, thus providing interested parties the opportunity and incentive to come forward with data which would support a different estimate. Freeport, however, merely asserts that the highest rate calculated should be selected based on "the 'increasing margins' criterion" established in the *Sunset Policy Bulletin*. (*See* Freeport's September 2, 1998, Substantive Response, p. 9.) Freeport did not, however, present arguments with respect to changes in margin levels as related to market share. The statistics provided by Freeport, 1991–1997 annual volume and value of imports from Canada, do not show an increase in imports concurrent with an increase in dumping, nor does it present the Department with a picture of the relative market shares held by Canada manufacturers and exporters. Given the information available to the Department, it is not possible to discern whether any increases or decreases in margins reflect an effort to maintain or increase market share. Similarly, Freeport did not offer any reason for its request that the Department select the highest margin or "all others" rate, whichever is higher, for those companies that were not reviewed in either of the first or second administrative reviews conducted by the Department.

Finally, with respect to the magnitude of the margin likely to prevail with respect to Husky, we are not persuaded by Freeport's arguments. While we agree that the volume of Husky's exports declined significantly after the 91–92 review, and never reached the 91–92 level, the level of Husky's exports increased between 92–93 and 93–94. Further, we have no reason to believe that Husky will, if the finding is revoked, revert to producing sulphur for export to the United States at its other facilities. Therefore, as discussed previously, we have determined that the magnitude of the margin likely to prevail for Husky is the first "new shippers" rate determined by the Department (*see Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding*; 48 FR 53592 (November 28, 1982)).

Our review of the margin history over the life of this finding demonstrates that there have, with respect to some companies, been fluctuations in the level of the margins. We do not, however, view them as demonstrating a consistent patter of behavior. Therefore, the Department finds no reason to deviate in this review from our stated policy of using the first rates calculated by the Department. We determine that the original margins calculated by the Department are probative of the behavior of Canadian manufacturers and exporters of elemental sulphur. (*See Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding*; 47 FR 14507 (April 5, 1982 and *Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding*; 48 FR 53592 (November 28, 1983)). We will report to the Commission the company-specific and "all others" rate included in the Appendix to this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Appendix to this notice.

This notice serves as the only reminder to parties to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return or destruction of APO materials or conversation to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with section 751(c) and 777(i) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Manufacturer/exporter	Margin (percent)
Amerada Minerals	28.90
Amoco Canada	Revoked
Brimstone Export/all other mfgs.	87.65.
Canadian Bright Sulphur	26.95.
Canadian Reserve	19.06
Canadian Reserve/Canamex	87.65.
Canamex Commodity	3.20.
Canterra Energy (formerly Aquitaine Co. of Canada Ltd.	Revoked.
Canterra/Brimstone	87.65
Canterra/Canamex	5.56.
CDC Oil & Gas	Revoked.
Cornwall Chemicals	Revoked.
Dome Petroleum	Revoked.
Home Oil	Revoked
Home Oil-Canamex	2.86
Imperial Oil	Revoked.
Imperial Oil/Exxon	Revoked.
Irving Oil	Revoked
Koch Oil	26.95
Marathon Oil	28.90
Pacific Petroleum	26.95
Pacific Petroleum-Canamex	20.28.
Pan Canadian	Revoked
Pan Canadian/Canamex	0.
Petro Canada Exploration	Revoked.
Petrofina	28.90
Petrogas Processing	Revoked.
Petrosul	0
Rampart Resources/Sulbow Minerals.	0.
Real Int'l Marketing	0.21.
Sulbow Minerals	26.95
Sulconam (formerly Laurentide Sulphur & Chemicals, Ltd.).	Revoked.
Sulmar Canada	26.95
Sulpetro (formerly Candel Oil).	28.90.
Suncor, Inc. (formerly Sun Oil Company of Canada, Ltd. and Great Canadian Oil Sands, Ltd.).	Revoked.
Suncor/Canamex	20.28.
Texaco Canada	Revoked.
Tiger Chemicals	Revoked.
Union Texas	0
West Decalta	28.90
West Coast Transmission	28.90.
All others	5.56

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–820]

Ferrosilicon From Brazil: Notice of Partial Rescission and Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission and preliminary results of antidumping duty administrative review.

SUMMARY: In response to timely requests for administrative review for the period March 1, 1997 through February 28, 1998, the Department of Commerce is conducting an administrative review of the antidumping duty order on ferrosilicon from Brazil. We preliminarily determined that during the period of review, one of the two manufacturers/exporters that are under review sold ferrosilicon to customers in the United States at less than normal value. If the preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on the preliminary results of this review. Parties who submit comments on issues in this proceeding should submit with each comment (1) a statement of the issue; and (2) a brief summary of their comment.

EFFECTIVE DATE: December 8, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur, Howard Smith, or Wendy Frankel, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5346, (202) 482–5193, or (202) 482–5849, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on ferrosilicon from Brazil covering the period March 1, 1997, through February 28, 1998. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 63 FR 1868 (March 11, 1998); *see also Antidumping Duty Order: Ferrosilicon From Brazil*, 59 FR 11769 (March 14, 1994). Pursuant to the notice of opportunity to request an administrative review and 19 CFR 351.213(b) of the Department's regulations, in March 1998, Companhia de Ferro Ligas da Bahia (Ferbasa) and Companhia Brasileira Carbureto de Calcio (CBCC) requested that the Department conduct an administrative review of their respective shipments of ferrosilicon to the United States. Additionally, in March 1998, AIMCOR and SKW Metals & Alloys, Inc., (collectively petitioners), domestic interested parties under 19 CFR 351.102(b) of the Department's regulations, requested that the Department conduct an administrative review of Companhia Ferroligas Minas Gerais-Minasligas (Minasligas) as well as the aforementioned companies. In response to these requests, the Department initiated an antidumping duty administrative review of Ferbasa, CBCC, and Minasligas (collectively respondents). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 63 FR 20378 (April 24, 1998).

The Department issued an antidumping duty questionnaire to the respondents in May 1998 and received responses thereto in June and July 1998. In June 1998, the Department granted Ferbasa's request that it be allowed to limit its reporting period for sales in the comparison market to the period that is contemporaneous with its U.S. sale, namely, May 1, 1997 through October 31, 1997. In a letter granting this request, the Department also instructed Ferbasa to report its cost figures for ferrosilicon for this limited period. Additionally, based on U.S. Custom's documents obtained by the Department, we determined, and CBCC confirmed, that CBCC did not have any entries of ferrosilicon for consumption in the U.S. customs territory during the period of review (POR). Therefore, we are rescinding this review with respect to CBCC. The Department issued supplemental questionnaires to the remaining respondents in September, October, and November 1998 and received responses thereto in these same three months.

The Department is conducting this antidumping duty administrative review in accordance with section 751 of the Act.

Duty Absorption

On May 20, 1998, petitioners requested that the Department determine, with respect to Minasligas, whether antidumping duties had been absorbed during the POR. On May 28, 1998, Minasligas requested that the Department reject petitioners' request for a determination regarding duty absorption because Minasligas did not sell the subject merchandise to the United States through an affiliated importer during the POR.

Section 751(a)(4) of the Act provides that the Department, if requested, shall determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's regulations provides that the Department will make a duty-absorption determination, if requested, in any administrative review initiated in 1996 or 1998. Because the order on ferrosilicon from Brazil has been in effect since 1994, it is a transition order in accordance with section 751(c)(6)(C) of the Act. The instant review of Minasligas was initiated in 1998. However, during the POR, Minasligas did not sell the subject merchandise to the United States through importers that are affiliated within the meaning of section 751(a)(4) of the Act and, therefore, we did not make a duty absorption determination in this segment of the proceeding.

Scope of the Review

The merchandise subject to this review is ferrosilicon, a ferro alloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element. Ferrosilicon is a ferro alloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon. Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this review. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferro alloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferro alloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium. Ferrosilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this review is dispositive.

Ferrosilicon in the form of slag is included within the scope of this order if it meets, in general, the chemical content definition stated above and is capable of being used as ferrosilicon. Parties that believe their importations of ferrosilicon slag do not meet these definitions should contact the Department and request a scope determination.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products within the scope of this review that were produced by the respondents, and sold in the ordinary course of trade in the comparison market during the POR, to be foreign like products for purposes of determining the appropriate product comparisons to U.S. sales.

Fair Value Comparisons

To determine whether the respondents' sales of ferrosilicon to customers in the United States were made at less than fair value, we compared export price (EP) to normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to the prices of individual U.S. transactions.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which in this review, is from the exporter to the U.S. importer.

Neither respondent claimed a LOT adjustment. Nevertheless, in order to determine whether the respondents' NV sales are at a different LOT than their EP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the respondent producers and the unaffiliated customers. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From South Africa,* 62 FR 61731 (November 19, 1997).

During the POR, Ferbasa sold ferrosilicon to an unaffiliated trading company in the U.S. market and to unaffiliated resellers and end users in the comparison market, while Minasligas sold ferrosilicon to unaffiliated trading companies and end users in the U.S. market and unaffiliated end users in the comparison market. We found that the selling functions associated with each respondent's U.S. and comparison markets sales of ferrosilicon are generally the same. For example, Ferbasa negotiated the sales terms, prepared ferrosilicon for shipment, and maintained sales records in both the U.S. and comparison market. Minasligas negotiated the sales terms and arranged for delivery, either to the customer's location, in the case of certain sales in the comparison market, or to the Brazilian port, in the case of sales to U.S. customers. We noted, however, that Ferbasa sold ferrosilicon from inventory in the comparison market, while it manufactured ferrosilicon to order for the U.S. market. In addition, Ferbasa incurred commission, freight, and brokerage and handling expenses in connection with sales of ferrosilicon to the U.S. market, while it did not incur these expenses on sales of ferrosilicon in the comparison market. With regard to Minasligas, the company incurred expenses at the port in connection with sales of ferrosilicon to the U.S. market, but it did not incur such expenses on sales of ferrosilicon in the comparison market. These differences primarily involve differences in handling and transporting ferrosilicon to customers, not differences in selling functions. Although Ferbasa maintained inventory only for its comparison market customers, this simply involved storing piles of ferrosilicon in open stalls at the factory. We concluded that this is not a significant selling function given the low level of service that is required to maintain inventory in such a fashion and, thus, we did not consider Ferbasa's maintenance of inventory to be a significant difference in selling activities. In the absence of differences in other selling activities such as the sales order process, advertising, warranty service, technical support, or the maintenance of distribution warehouses, we found that the differences noted above do not constitute substantial differences indicating that either respondent's sales in the U.S. and comparison markets occurred at different marketing stages. Therefore, we determined that a single level of trade exists in each market for both respondents and, moreover, all U.S. and comparison market sales were made at the same level of trade for each respondent. Consequently, we did not make a level of trade adjustment in calculating NV for either respondent.

Export Price

We calculated EP in accordance with sections 772(a) and (c) of the Act because the respondents sold the subject merchandise directly to the first unaffiliated purchasers in the United States prior to importation and constructed export price was not otherwise warranted based on the facts on the record. Specifically, we calculated EP based on the packed prices to unaffiliated customers in the United States from which we made deductions, where appropriate, for foreign inland freight and insurance, brokerage and handling, port warehousing, weighing and clerical expenses.

For Minasligas, we based EP on the U.S. dollar-denominated prices that Minasligas negotiated with its U.S. customers and listed on commercial invoices for its U.S. sales, rather than the Reais-denominated prices that Minasligas reported on the sales tape. For further information, *see* the Memorandum from Alexander Amdur to the File on Minasligas: Calculations for the Preliminary Results of the 1997–1998 Administrative Review of Ferrosilicon from Brazil (Minasligas Calculation Memorandum) dated December 1, 1998 on file in the Central Records Unit (CRU) located in room B–099 of the main Department of Commerce Building.

For Ferbasa, we based EP on the U.S. dollar-denominated price that Ferbasa reported for its U.S. transaction on the sales tape. We accepted the reported price notwithstanding the petitioners' allegation of November 5, 1998, that the price may not have been the result of a *bona fide* arm's-length transaction. We have reviewed the information contained in the administrative record and concluded that the evidence does not demonstrate that the transaction in question was not *bona fide*. Therefore, for the preliminary results, we have based Ferbasa's EP on the price reported in the sales tape. For further information, *see* the Concurrence Memorandum From Howard Smith to Holly Kuga regarding this issue, dated December 1, 1998, on file in the CRU located in room B–099 of the main Department of Commerce Building.

Normal Value

In accordance with section 773(a)(1)(C)(ii) of the Act, we determined that the home market for each respondent serves as a viable basis for calculating NV because the aggregate volume of each respondent's home market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP. In accordance with section 773(a)(6) of the Act, we adjusted NV, where applicable, by adding U.S. packing costs and subtracting home market packing costs, ICMS and IPI tax expenses, and freight expenses. Moreover, in accordance with section 773(a)(6) of the Act, we adjusted NV for differences in the circumstances of sale by adding late payment charges, where applicable, and U.S. credit expenses, and by subtracting home market credit expenses.

For Minasligas, we recalculated the amount of the U.S. credit expense that was used as an adjustment to NV by making the following changes. First, we used, as the date of payment, the date Minasligas' bank received payment from Minasligas' U.S. customers for each U.S. sale, rather than the date the bank advanced Minasligas money on the sale through Advance Exchange Contracts (ACCs). Second, we used the actual average interest rate of the ACCs that Minasligas used to finance its U.S. sales during the POR, rather than the average monthly Brazilian Taxa referencial de juros (TR) rate for the POR reported by Minasligas in its response. The Department's questionnaire instructs respondents to calculate U.S. credit expense using the interest rate paid on short-term U.S. dollar borrowings. Although Minasligas claimed that it had no short-term U.S. dollar borrowings during the POR, we determined that the advances obtained from the ACCs were short-term U.S. dollar borrowings.

In its response, Minasligas calculated home market credit expense using a gross unit price net of one month's credit expense, regardless of the credit period applicable to the sale. Because the Department's practice is to calculate credit expense based on gross unit price without any adjustments, we recalculated Minasligas's home market credit expense using the unadjusted gross unit price. Furthermore, we recalculated the home market credit expense using the average monthly TR rate for the POR reported by Minasligas in the narrative portion of its response, rather than the interest rate that Minasligas inadvertently used to calculate credit expense on its sales tape. For further information, *See* Minasligas Calculation Memorandum.

For Ferbasa, we adjusted NV by adding U.S. commissions and subtracting home market indirect selling expenses up to the amount of the U.S. commission, in accordance with 19 CFR 351.410(e). We did not reduce NV by the reported home market packing expense because we determined that Ferbasa reported packing revenue, rather than packing expense, in its home market sales tape. In addition, although Ferbasa revised its reported cost of manufacturing, it failed to revise its home market inventory carrying cost which was based on manufacturing costs. Therefore, we recalculated home market inventory carrying cost using the revised cost of manufacturing figure reported by Ferbasa in its November 10, 1998, supplemental response.

I. Cost of Production (COP) Analysis

Because we disregarded sales below the COP for Ferbasa and Minasligas in the last completed segments of the proceeding (*See Ferrosilicon from Brazil; Notice of Final Results of Antidumping Duty Administrative Review*, 63 FR 28355 (May 22, 1998) with respect to Ferbasa, and 62 FR 43504 (August 14, 1997) with respect to Minasligas), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated investigations to determine whether the respondents sold ferrosilicon in the home market during the POR at prices that were less than their COP.

a. Calculation of COP. In accordance with section 773(b)(3) of the Act, we calculated each respondent's COP based on the sum of the cost of materials and fabrication employed in producing the foreign like product, plus amounts for SG&A, financing expenses and, for Minasligas, packing costs. We did not include packing costs in COP for Ferbasa because the company failed to report this cost separately. We adjusted Ferbasa's reported costs by (1) adjusting general and administrative expenses by other operating income and non-operating expenses related to the general operations of the company, and (2) increasing financing expense by monetary correction losses. For further information, *see* the Ferbasa Preliminary Results Calculation Memorandum dated December 1, 1998, on file in the CRU located in room B–099 of the main Department of Commerce Building. We adjusted Minasligas' reported costs by using, as the fixed overhead cost for all grades of ferrosilicon, the one cost that Minasligas originally reported for all grades of ferrosilicon, rather than the separate fixed overhead costs that Minasligas subsequently allocated to the standard and refined grades of ferrosilicon. We recalculated the indirect selling expenses using a value-based, rather than quantity-based, allocation methodology. For further information, *see* Minasligas Calculation Memorandum.

b. Test of Home Market Prices. In order to determine whether the respondents made home market sales during the POR at prices below the COP on a product-specific basis, we compared the weighted-average COP (net of selling and, where applicable, packing expenses and adjusted as noted above) to home market prices less ICMS and IPI tax expenses, direct and indirect selling expenses and, where applicable, home market packing expenses. In addition, where applicable, we added interest revenue to home market prices before comparing them to the COP. We excluded ICMS and IPI tax expenses from the home market prices used in our sales-below-cost analysis because the COP did not contain these expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product during the POR were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined that such sales were made in "substantial quantities" within an extended period of time and not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(C) & (D) of the Act. Therefore, we disregarded the below-cost sales.

In the instant review, we found that for certain ferrosilicon products, more than 20 percent of Ferbasa's and Minasligas' home market sales were sold at prices less than the COP within an extended period of time, and that the prices did not provide for the recovery of costs within a reasonable period of time. Therefore, in accordance with section 773(b)(1) of the Act, we disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV.

Currency Conversion

Pursuant to section 773(A)(a) of the Act, for purposes of the preliminary results, we converted foreign currencies into U.S. dollars using the official exchange rates in effect on the date of the U.S. sales. These official exchange

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rates are based on the daily rates identified by the Dow Jones Business Information Services. Section 773(A)(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a "fluctuation." It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey* (61 FR 35188, 35192) (July 5, 1996). The benchmark rate is defined as the moving average of the rates for the past 40 business days. Where we determined that the daily rates applicable to this review fluctuated, as defined above, we converted foreign currencies into U.S. dollars using the benchmark exchange rate.

Preliminary Results of The Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Weighted-average margin (percent)
Companhia Ferroligas Minas Gerais-Minasligas (Minasligas)	10.16
Companhia de Ferro Ligas da Bahia (Ferbasa)	0.00

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. A hearing, if requested, will be held 44 days after the publication of this notice or the first business day thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, for each importer we will divide the total applicable dumping margin (calculated as the difference between NV and EP) by the total number of metric tons sold. We will direct Customs to assess the resulting per-metric ton dollar amount against each metric ton of subject merchandise entered by the importer during the POR. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of ferrosilicon from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies (Ferbasa and Minasligas) will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent, *ad valorem* and, therefore, *de minimis*, the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise and; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original LTFV investigation, the cash deposit rate will be 35.95 percent, the "All Others" rate established in the original LTFV investigation (59 FR 11769, March 14, 1994). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32542 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–056]

Final Results of Expedited Sunset Review: Melamine, in Crystal Form, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Melamine, in Crystal Form, from Japan.

SUMMARY: On August 3, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping finding on melamine, in crystal form, from Japan (63 FR 41227) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Magnitude of the Margin section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 8, 1998.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping finding is melamine, in crystal form, from Japan. Melamine, in crystal form, is a fine white crystalline powder used to manufacture melamine formaldehyde resins, currently classifiable under 2933.61.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

On February 28, 1997 (62 FR 9176), melamine, in crystal form, with special physical characteristics (100% of the particles are smaller than 10 microns) was determined to be within the scope of the order. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

This review covers all manufacturers and exporters of melamine, in crystal form, from Japan.

Background

On August 3, 1998, the Department initiated a sunset review of the antidumping finding on melamine, in crystal form, from Japan (63 FR 41227), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate from Melamine Chemicals Inc. ("MCI") on August 14, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. MCI claimed interested party status under section 771(9)(C) of the Act, as a United States manufacturer of melamine. We received a complete substantive response from MCI on September 1, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and our regulations (19 CFR 351.218(e)(1)(ii)(C)(*2*)), the Department determined to conduct an expedited review.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

The antidumping finding on melamine, in crystal form, from Japan was published in the **Federal Register** as Treasury Decision 73–54 (42 FR 6366, February 2, 1977). Since that time, the Department has conducted several administrative reviews. The finding remains in effect for all imports from all manufacturers of melamine, in crystal form, from Japan.

In its substantive response, MCI argues that "there is a strong likelihood that dumping by Japanese producers (of melamine) would resume" if the antidumping finding were revoked (*See* Substantive Response, September 1, 1998). With respect to whether dumping continued at any level above *de minimis* after the issuance of the finding, MCI asserts that, as documented in the final results of reviews reached by Treasury and the Department, when Japanese shipments to the United States market were examined, dumping margins of 60 and 70.22% were found. MCI states that the conclusion to be drawn from these dumping margins is that respondents in this case have been unable or unwilling to restructure their operations so as to sell melamine in the United States at fair value. Furthermore, MCI asserts that competitive pricing pressures and global market conditions for melamine, in crystal form, are such that any future sales of the subject merchandise to the United States would likely be at less than fair value. It argues in its substantive response, as well as in previous submissions to the Department, that there is, and has been, excess production capacity in both the U.S. and Japanese melamine industries. According to MCI, this excess capacity has prompted Japanese melamine producers to sell their products in Southeast Asian, Australian, and Iranian markets at less than fair value. MCI asserts that revocation of the finding would allow the Japanese producers to take similar actions in the United States.

With respect to import volumes, MCI had indicated that there has been a cessation of exports of the subject merchandise to the United States. The final results from the three most recent administrative reviews indicate that there were no shipments of melamine, in crystal form, from Japan.[1]

In the administrative reviews conducted by the Department over the life of this finding, only one firm ever reported shipments.[2] In each of the subsequent reviews, the Department

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[1] As indicated in 47 FR 23507, May, 28, 1983; 47 FR 44597, October 8, 1982; and 48 FR 38527, August 24, 1983.

[2] *See Melamine in Crystal Form From Japan; Final Results of Administrative Review of Antidumping Finding;* 46 FR 15305 (March 5, 1981).

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determined that there were no shipments from any of the known exporters of melamine from Japan.[3] We find, therefore, that the cessation of imports after the issuance of the finding and the existence of dumping margins after the issuance of the finding are highly probative of the likelihood of continuation of dumping. Deposit rates above *de minimis* levels continue in effect for exports by all known Japanese exporters of melamine, in crystal form. As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if imports cease after the order is issued, we may reasonably assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. Furthermore, if companies continue to dump with the discipline of an order in place, we may reasonably assume that dumping would continue if the discipline were removed. Therefore, absent argument and evidence to the contrary and, given that exports of the subject merchandise have ceased and dumping margins above *de minimis* continue in effect, the Department determines that dumping is likely to continue or recur if the finding were revoked.

Because the Department based this determination on the cessation of dumping and the continued existence of margins above *de minimis*, it is not necessary to address MCI's arguments concerning competitive pricing pressures, global market conditions, or excess U.S. production capacity in this notice.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, in a sunset review of an antidumping finding for which no company-specific margin or all others rate is included in the Treasury finding published in the **Federal Register**, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. Additionally, if the first final results do not contain a margin for a particular company, the Department normally will provide the Commission, as the margin for that company, the first "new shipper" rate established by the Department for that finding. (*See* section II.B.1. of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3. of the *Sunset Policy Bulletin*).

Treasury did publish a weighted-average dumping margin in this finding for Nissan Chemical Industries, Ltd. of 60 percent (41 FR 41727, September 23, 1976). However, Treasury did not publish a "new shipper" rate or a rate for any other company exporting subject merchandise in this or any subsequent determination. Under these circumstances, the Department normally will provide the Commission, as the margin for any new company not reviewed by Treasury, the first "new shipper" rate established by the Department for that finding. The first "new shipper" rate established by the Department was 70.22 percent (47 FR 23507, May 28, 1982).

In its substantive response, MCI suggests that the Department choose the 60% dumping margin originally imposed by Treasury for Nissan Chemical Industries, Ltd. In addition, according to MCI, the Department should select the 70.22% dumping margin for other companies applied by the Department in subsequent administrative reviews.

We agree with MCI and, consistent with the policy, we determine that the original margins calculated by the Department and Treasury are probative of the behavior of the Japanese manufacturers and exporters of melamine, in crystal form. We will report to the Commission the company-specific and "all other's" margins contained in the Final Results section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturer/exporter	Margin (percent)
Nissan Chemicals, Ltd.	60
All Others	70.22

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32537 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Final Results of Expedited Sunset Review: Polychloroprene Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Polychloroprene rubber from Japan.

SUMMARY: On August 3, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping finding on polychloroprene rubber from Japan (63 FR 41227) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Magnitude of the Margin section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 8, 1998.

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[3] *See Melamine in Crystal Form From Japan; Final Results of Administrative Review of Antidumping Finding*; 47 FR 23507 (May 28, 1982), *Melamine in Crystal Form From Japan; Final Results of Administrative Review of Antidumping Finding*; 47 FR 44597 (October 8, 1982), *Melamine in Crystal Form From Japan; Final Results of Administrative Review of Antidumping Finding*; 48 FR 38527 (August 24, 1983), and *Melamine in Crystal Form From Japan; Final Results of Administrative Review of Antidumping Finding and Determination Not To Revoke*; 49 FR 32634 (August 14, 1984).

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping finding are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00. HTSUS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

This review covers all manufacturers and exporters of polychloroprene rubber from Japan.

Background

On August 3, 1998, the Department initiated a sunset review of the antidumping finding on polychloroprene rubber from Japan (63 FR 41227), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate from Dupont Dow Elastomers L.L.C. ("DuPont") on August 18, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. DuPont claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of the domestic like product. We received a complete substantive response from Dupont on September 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and our regulations (19 CFR 351.218(e)(1)(ii)(C)(2)), the Department determined to conduct an expedited review.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to a continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the base for likelihood determinations. In its *Sunset Policy Bulletin,* the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3 of the *Sunset Policy Bulletin*). In addition, the Department indicated that it normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

The antidumping finding on polychloroprene rubber from Japan was published in the **Federal Register** as Treasury Decision 73–333 (38 FR 33593, December 6, 1973). Since that time, the Department has conducted a number of administrative reviews.[1] The finding remains in effect for all imports of polychloroprene rubber from Japan.

In its substantive response, DuPont argues that the history of the case and actions taken by Japanese producers and exporters of polychloroprene rubber prior to and during the pendency of this proceeding demonstrate that revocation likely would result in recurrence of dumping of polychloroprene rubber in the United States (*see* September 2, 1998 Substantive Response of DuPont). With respect to whether imports of the subject merchandise ceased after the issuance of the finding, DuPont states that in the four years prior to the finding of dumping by Treasury in 1973, Japanese imports of polychloroprene rubber trebled. However, according to DuPont, after the issuance of the finding, imports of polychloroprene rubber from Japan declined and then ceased. DuPont states that the results of final determination by Treasury and by the Department indicate shipments of polychloroprene rubber from Japan ceased after the issuance of the finding and have not resumed. In conclusion, DuPont argues that the Department should determine that there is a likelihood that dumping would continue were the finding revoked because imports of polychloroprene rubber ceased soon after the issuance of the order.

In each of the administrative reviews conducted by the Department, with the exception of the first administrative review covering various periods from July 1, 1973 through November 30, 1980, the Department found that there were no known shipments by the known exporters of polychloroprene rubber from Japan.[2] We find, therefore,

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[1] *See Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding;* 47 FR 14746 (April 6, 1982); *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding,* 48 FR 9678 (March 8, 1983); *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding;* 49 FR 10694 (March 22, 1984); *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding;* 49 FR 46454 (November 26, 1984); *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding;* 61 FR 29344 (June 10, 1996); and *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding,* 61 FR 67318 (December 20, 1996).

[2] *See Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding;* 47 FR 14746 (April 6, 1982); *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding,*

Continued

that the cessation of imports after the issuance of the finding is highly probative of the likelihood of continuation or dumping. Furthermore, deposit rates above *de minimis* levels continue in effect for two of the eight known Japanese polychloroprene rubber producers and/or exporters. As discussed in Section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if imports cease after the order is issued, we may reasonably assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. Therefore, absent argument and evidence to the contrary, and given that shipments of the subject merchandise ceased soon after the issuance of the finding and that dumping margins continued after the issuance of the finding, the Department, consistent with Section II.A.3 of the *Sunset Policy Bulletin*, determines that dumping is likely to continue or recur if the finding were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, in a sunset review of an antidumping finding for which no company-specific margin or all others rate is included in the Treasury finding published in the **Federal Register**, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. Additionally, if the first final results do not contain a margin for a particular company, the Department normally will provide the Commission, as the margin for that company, the first "new shipper" rate established by the Department for that finding. (*See* section II.B.1. of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3. of the *Sunset Policy Bulletin*).

Because Treasury did not publish weighted-average dumping margins in its finding, the margins determined in the original investigation are not available to the Department for use in this sunset review. Under these circumstances, the Department normally will select the margin from the first administrative review conducted by the Department as the magnitude of the margin of dumping likely to prevail if the finding is revoked. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, DuPont argues that because Treasury did not publish company-specific margins or a "new shipper's" rate in this finding, the Department, consistent with its *Sunset Policy Bulletin*, should report the company-specific margins and "new shipper's" rate calculated by the Department in the final results of the first administrative review.

The Department finds no reason to deviate from our *Sunset Policy Bulletin* in this review. We determine that the original margins calculated by the Department are probative of the behavior of the Japanese manufacturers and exporters of polychloroprene rubber. (*See Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding*; 47 FR 14746 (April 6, 1982). We will report to the Commission the company-specific and "all other's" rate contained in the Final Results section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Denki Kagaku Kogyo, K.K.	0
Denki Kagku Kogyo, K.K./Hoei Sangyo Co., Ltd.	55
Suzugo Corporation	55
All Other's Rate	55

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32539 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Final Results of Expedited Sunset Review: Stainless Steel Plate From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: stainless steel plate from Sweden.

SUMMARY: On August 3, 1998, the Department of Commerce ("the Department") initiated a sunset review (63 FR 41227) of the antidumping finding on stainless steel plate from Sweden pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of the domestic industry and substantive comments filed on behalf of the domestic industry and a respondent interested party, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Magnitude of the Margin section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 8, 1998.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the

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48 FR 9678 (March 8, 1983); *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding*; 49 FR 10694 (March 22, 1984); *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding*; 49 FR 46454 (November 26, 1984); *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding*; 61 FR 29344 (June 10, 1996); and *Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding* 61 FR 67318 (December 20, 1996).

Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping finding is stainless steel plate from Sweden, which is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting. Stainless steel plate is classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7219.11.00.00, 7219.12.00.05, 7219.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7219.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheading is provided for convenience and customs purposes, the written description of the merchandise remains dispositive.

On July 11, 1995, the Department determined that Stavax ESR (Stavax), UHB Ramax (Ramax), and UHB 904L (904L) when flat-rolled are within the scope of antidumping finding. On November 3, 1995, the Department determined that stainless steel plate products Stavax, Ramax, and 904L when forged, are within the scope of the antidumping finding. On December 30, 1997, the Department determined that merchandise rolled into hot bands in Sweden from British slabs is subject to the finding.

This review covers all known manufacturers and exporters of stainless steel plate from Sweden.

Background

On August 3, 1998, the Department initiated a sunset review of the antidumping finding on stainless steel plate from Sweden (63 FR 41227) pursuant to section 751(c) of the Act. We received a Notice of Intent to Participate from the Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., G.O. Carlson, Inc., and Bethlehem Lukens Plate (collectively "the petitioners") within the applicable deadline (August 18, 1998) specified in section 351.218(d)(1)(i)) of the *Sunset Regulations*. The petitioners claimed interested party status under section 771(9)(C) of the Act, as domestic manufacturers of the subject merchandise. We received timely and complete substantive responses to the notice of initiation on September 2, 1998, on behalf of the petitioners and one respondent interested party, Uddeholm Tooling AB, and their American subsidiary, Bohler-Uddeholm Corporation ("Uddeholm"). Uddeholm claimed interested party status under section 771(9)(A) of the Act, as a foreign manufacturer and exporter of the subject merchandise. We received a waiver of participation from the other known Swedish manufacturer of stainless steel plate, Avesta Sheffield AB, and their American subsidiary, Avesta Sheffield NAD ("Avesta").

Using the value of exports information submitted by Uddeholm and the value of imports as reported by the United States Customs Service in its annual reports to Congress on administration of the antidumping and countervailing duty laws,[1] the Department determined that exports by Uddeholm accounted for significantly less than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review. Therefore, on September 22, 1998, the Department determined that respondent interested parties provided inadequate response to the notice of initiation, and, the Department determined to conduct an expedited review (*see* memo concerning adequacy of respondent's submission dated September 22, 1998) in accordance with section 351.218(e)(1)(ii)(C)(2) of the *Sunset Regulations*.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding and, shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

The antidumping finding on stainless steel plate from Sweden was published in the **Federal Register** as Treasury Decision 73–157 (38 FR 15079, June 8, 1973). Since that time, the Department has conducted several administrative reviews.[2] The finding remains in effect for all imports of stainless steel plate from Sweden.

In its substantive response, the petitioners argued that the actions taken by producers and exporters of Swedish stainless steel plate during the life of the finding indicate that "dumping will continue in the event of revocation" (*see* September 2, 1998, Substantive Response of petitioners). With respect to whether dumping continued at any level above *de minimis* after the issuance of the finding, petitioners argued that, as documented in the final determinations reached by the Department, dumping levels have fluctuated during the life of the finding, with company-specific margins ranging between 0 and 24.67 percent.[3]

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[1] This information is available to the public on the Internet at "http://www.ita.doc.gov/import__admin/ records/sunset".

[2] See *Stainless Steel Plate From Sweden. Final Results of Antidumping Duty Administrative Review*; 47 FR 29867 (July 9, 1982); *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 47 FR 41151 (September 17, 1982); *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 49 FR 39885 (October 11, 1984); *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 63 FR 1824 (January 11, 1998); *Stainless Steel Plate From Sweden: Amended Final Results of Antidumping Duty Administrative Review*; 63 FR 8434 (February 19, 1998); and *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 63 FR 63706 (November 16, 1998).

With respect to whether imports of the subject merchandise ceased after the issuance of the finding, the petitioners argued that imports of the subject merchandise have fallen dramatically since the issuance of the finding in 1973. Petitioners state that import volumes of the subject merchandise in 1972 were 9,990 short tons and that imports fell rapidly, reaching a low of 291 short tons in 1983 and remaining below 3,250 short tons up to the present, excluding a brief surge in 1996. The petitioners stated, citing U.S. International Trade Commission publications and U.S. Department of Commerce IM146 reports, that imports of the subject merchandise fell dramatically since the issuance of the finding increasing only in 1995, at which time petitioners began requesting administrative reviews. Uddeholm does not dispute that dumping is likely to continue.

In conclusion, the petitioners argued that the Department should determine that there is a likelihood that dumping would continue were the finding revoked because dumping margins have fluctuated above *de minimis* levels over the life of the finding, and because import volumes of the subject merchandise have decreased sharply after the issuance of the finding.

In its substantive response, Uddeholm stated that the likely effects of revocation of the dumping finding are (1) no significant change in the volume of Stavax and Ramax imports and (2) no significant change in the price of Stavax and Ramax sold by Bohler-Uddeholm in the United States.

Uddeholm did not address the fact that dumping margins above *de minimis* continue to exist except to offer a calculated rate from the 1995–1996 administrative review as the dumping margin likely to prevail if the finding were revoked. Uddeholm did address the question of import volumes. It argues that much of the decrease in import volumes after the early 1980's was do to a restructuring of the Swedish stainless steel industry which resulted in Uddeholm discontinuing exports of subject merchandise to the United States. Uddeholm claims that the only products it exports to the United States covered by this finding are Stavax and Ramax (See scope determination dated July 11, 1995). Only after the 1995 scope ruling did Uddeholm again participate in administrative reviews. Furthermore, Uddeholm argues that the demand for Stavax and Ramax is "driven solely by the market economics of the plastics molding industry" (*see* Uddeholm's Substantive Response dated September 2, 1998). Uddeholm stated that it did not anticipate any significant increase or decrease in the imports and/or prices of Stavax or Ramax if the Department revokes this finding.

In rebuttal, the petitioners argued that Uddeholm's product mix is irrelevant and the rate from the first administrative review in which Stavax and Ramax are included should not be considered "the first rate calculated." Petitioners cite that there is no statute, regulation, or policy which permits consideration of a company's product mix in the determination of a dumping margin.

We find that the existence of dumping margins above *de minimis* levels and a reduction in export volumes over the life of the finding is highly probative of the likelihood of continuation or recurrence of dumping. As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, "[i]f companies continue to dump with the discipline of the order in place, it is reasonable to assume that dumping would continue if the discipline were removed." Therefore, given that dumping margins continued after the issuance of the finding, and absent argument and evidence to the contrary, the Department, consistent with Section II.A.3 of the *Sunset Policy Bulletin*, determines that dumping is likely to continue if the finding were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin* the Department stated that, in a sunset review of an antidumping finding for which no company-specific margin or all others rate is included in the Treasury finding published in the **Federal Register**, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. Additionally, if the first final results do not contain a margin for a particular company, the Department normally will provide the Commission, as the margin for that company, the first "new shipper" rate established by the Department for that finding. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, as appropriate, and consideration of duty absorption determinations. (*See* section II.B.2 and 3 of the *Sunset Policy Bulletin*).

Because Treasury did not publish the weighted-average dumping margins in this finding, the margins determined in the original investigation are not available to the Department for use in this sunset review. Therefore, the Department normally will select the margin from the first administrative review conducted by the Department as the magnitude of the margin of dumping likely to prevail if the finding is revoked. For any company not covered in the first administrative review, the Department will provide to the Commission the first "new shipper" rate established for that finding. The Department received a request for a duty absorption determination in the ongoing administrative review covering 1996–1997, however, the Department has not issued a final determination in that review.

In its substantive comments, the petitioners argue that the Department should select the highest company-specific margins from the final results of the most recently completed administrative reviews. For Uddeholm, the petitioners argue that the Department should use the final rate from the 1996–1997 administrative review, unless that rate is lower than Uddeholm's highest rate otherwise in this case.

In its substantive response, Uddeholm argues that the Department should select the margin calculated in the 1995–1996 administrative review as the rate likely to prevail if the Department were to revoke the finding (*see* Uddeholm's Substantive Response dated September 2, 1998). Uddeholm claims that, between the early 1980's and 1995, it did not export any products covered by this finding to the United States. Only after the July 11, 1995 scope clarification, in which the Department clarified that Stavax and

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[3] See *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 47 FR 29867 (July 9, 1982); *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 47 FR 41151 (September 17, 1982); *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 49 FR 39885 (October 11, 1984); *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 63 FR 1824 (January 11, 1998); *Stainless Steel Plate From Sweden: Amended Final Results of Antidumping Duty Administrative Review*; 63 FR 8434 (February 19, 1998); and *Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*; 63 FR 63706 (November 16 1998).

Ramax were within the scope of the finding, did Uddeholm again export subject merchandise to the United States. Because of the restructuring of the Swedish stainless steel industry and its long absence from the exportation of subject merchandise, Uddeholm argues that the first calculated rate after the inclusion of Stavax and Ramax is the "first dumping margin established for these products" (*see* Uddeholm's Substantive Response dated September 2, 1998).

In rebuttal, petitioners argue that product mix should be irrelevant in the Department's choice of margins. The petitioners state that the restructuring of the Swedish stainless steel industry and the inclusion of Stavax and Ramax into the scope of the order should have no bearing on the Department's margin decision. Furthermore, Uddeholm has not confirmed the variation in product mix with any specific or convincing facts. According to petitioners, Uddeholm's data simply demonstrate that its "volumes and values of imports of subject merchandise into the United States fluctuate and are not stable" (*see* Petitioner's Rebuttal Comments dated September 11, 1998).

The Department disagrees with the petitioners in part. In the *Sunset Policy Bulletin* the Department stated that "a company may choose to increase dumping in order to maintain or increase market share" and that "the Department may, in response to an argument from an interested party, provide to the Commission a more recently calculated margin for a particular company, where, for that particular company, dumping margins increased after the issuance of the order." (*See* section II.B.2 of the *Sunset Policy Bulletin*.) The Department's intent was to establish a policy of using the original investigation margin as a starting point, thus providing interested parties the opportunity and incentive to come forward with data which would support a different estimate. With respect to Uddeholm, the Department finds the petitioners' argument of choosing the highest margin calculated unpersuasive because the increase in imports of stainless steel plate from Sweden did not correspond to an increase in Uddeholm's dumping margin. In fact, during the initial surge in imports in 1995, Uddeholm's dumping margin decreased from 4.46 to 2.95 percent.

As for the alternative choice of the most recent margins, the Department again disagrees with the petitioners. The petitioners argue that, according to the Department's *Sunset Policy Bulletin*, if the original finding by the Treasury Department does not supply a margin, "the Department normally will provide the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department" *Sunset Policy Bulletin* (63 FR 18873). However, "the Department may * * * provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins increased after the issuance of the order" *Sunset Policy Bulletin* (63 FR 18873). The petitioners argue that both Uddeholm and Avesta have accelerated their rates of dumping considerably over the life of the finding and, therefore, the Department should report to the Commission a more recently calculated rate. With respect to Uddeholm, there has been no consistent pattern of increasing margins. Excluding the most recent administrative review, Uddeholm's margins have decreased since June 1980.

With respect to the petitioners' rebuttal comments, the Department agrees with the petitioners' objection to the 1995–1996 administrative review being considered the "first calculated rate" for Uddeholm. In essence, Uddeholm is arguing that the Department view this finding as two separate findings; the first covering material under the original scope of the finding and the second covering Stavax and Ramax, as incorporated into the scope of the finding by the July 11, 1995 scope clarification. Uddeholm is arguing, for the purposes of margin selection, that the Department ignore the margins calculated prior to 1995 in this finding. Scope clarification decisions are meant to clarify what products are covered by the scope of a particular finding; they are not intended to be viewed as new findings in and of themselves. The Department believes that a review of the entire margin history of the finding is essential for understanding a company's behavior with the discipline of the finding in place. Therefore, the Department finds little basis for Uddeholm's assertion that the margin from the 1995–1996 administrative review is the *de facto* first rate calculated for this finding.

As for the choice of the 2.95 percent as the margin likely to prevail if the finding were revoked, the Department disagrees with Uddeholm. First, Uddeholm has provided little or no evidence to support their assertions of a restructuring of the Swedish stainless steel industry, the basis for its suggestion of the 2.95 percent margin. Without such evidence, the Department has no reason to believe that Uddeholm's decrease in exportation during the 1980's and early 1990's was not attributable to its inability to sell subject merchandise in the United States without dumping. Second, other than its assertion that the 2.95 percent rate is the *de facto* first margin calculated, an assertion that the Department finds invalid, Uddeholm has offered no other reason why the Department should report this rate to the Commission. Lastly, Uddeholm has demonstrated a willingness to dump subject merchandise above a *de minimis* level in the United States, regardless of the *type* of subject merchandise or the structure of the Swedish stainless steel market as evidenced by the entire margin history of this finding.

With respect to Avesta, the petitioners argue, in their substantive response, that the Department should select the highest company-specific margin from the final results of the most recently completed administrative review. However, in its rebuttal comments, the petitioners argue, based on Avesta's waiver of participation, that the Department should select the highest margin found in any segment of this proceeding for Avesta. The highest margin calculated for Avesta is 24.67 percent, a rate determined in the 1995–1996 administrative review (63 FR 1834, February 19, 1998).

The Department disagrees with the petitioners, in part, regarding the choice of the highest margin calculated during the life of the finding as the rate to report to the Commission for Avesta. The Department disagrees that a waiver of participation is sufficient cause for the Department to select the highest margin calculated. In fact, both the statute and the regulations provide that respondent interested parties may waive participation in a sunset review before the Department with the intent of reducing the burden on all parties. Waiving participation before the Department does not, therefore, result in the use of an adverse inference by the Department.

However, the Department does agree with petitioners' comments that the 24.67 percent rate calculated in the 1995–1996 administrative review should be for used for Avesta. As noted above, in the *Sunset Policy Bulletin*, the Department stated that "a company may choose to increase dumping in order to maintain or increase market share" and that "the Department may, in response to an argument from an interested party, provide to the Commission a more recently calculated margin for a particular company, where, for that particular company, dumping margins increased after the issuance of the order." (*See* section II.B.2 of the *Sunset Policy Bulletin.*) The Department finds that the recent surge in import volumes of subject merchandise in 1995 and 1996 accompanied by the dramatic increase in dumping margins by Avesta is sufficient cause for the Department to select a more recently calculated margin in this case.

In conclusion, consistent with the policy, we determine that the 5.22 percent rate, the first "new shipper's" rate calculated by the Department is probative of the behavior of Uddeholm. With respect to Avesta, the Department determines that a more recently calculated margin is probative of the behavior of Avesta if the finding were to be revoked.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturer/exporter	Margin (percent)
Avesta	24.67
Uddeholm	5.22
All Others	5.22

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32538 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–811]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Steel Wire Rope from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioner, the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, the Department of Commerce is conducting an administrative review of the antidumping duty order on steel wire rope from Korea. The review covers 16 manufacturers/exporters of the subject merchandise. The period of review is March 1, 1997, through February 28, 1998.

We have preliminarily found that, for certain producers/exporters, sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of this administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

EFFECTIVE DATE: December 8, 1998.

FOR FURTHER INFORMATION CONTACT: James Kemp, at (202) 482–1276, or John Brinkmann, at (202) 482–5288, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Case History

On March 26, 1993, the Department published in the **Federal Register** an antidumping duty order on steel wire rope from the Republic of Korea. *See* 58 FR 16397. On March 11, 1998, the Department published a notice providing an opportunity to request an administrative review of this antidumping duty order for the period March 1, 1997, through February 28, 1998 (POR). *See* 63 FR 11868. On March 31, 1998, the petitioner requested an administrative review of 19 manufacturers/exporters of steel wire rope from Korea. Since we had revoked the orders for three of the named companies (Chung Woo Rope Co. Ltd., Ssang Yong Cable Manufacturing Co. Ltd., and Sun Jin Company) in a prior segment of this proceeding, we excluded these three companies and initiated a review of the other 16 companies. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 63 FR 17986, 17990 (April 13, 1998) (*Steel Wire Rope Fourth Review Final*). We published a notice of initiation of this administrative review on April 24, 1998. *See* 63 FR 20378.

We initiated this administrative review for the following 16 producers and exporters of steel wire rope from Korea: Boo Kook, Dae Heung Industrial (Dae Heung), Dae Kyung Metal (Dae Kyung), Dong Il Steel (Dong Il), Dong Young, Hanboo Wire Rope (Hanboo), Jinyang Wire Rope (Jinyang), Korea Sangsa, Kumho Wire Rope (Kumho), Kwangshin Rope, Myung Jin, Seo Hae Industrial Co. Ltd. (Seo Hae), Seo Jin Wire Rope (Seo Jin), Sungsan Special Steel Processing (Sungsan), TSK Korea, and Yeonsin Metal (Yeonsin).

On May 15,1998, we issued an antidumping questionnaire to each of the respondents, except for Kwangshin Rope and Seo Hae (for whom we did not find addresses). After locating the mailing addresses of Kwangshin Rope and Seo Hae, we issued an antidumping questionnaire to them on May 26, 1998.

Between May 21 and July 7, 1998, we received letters from Korea Sangsa, Myung Jin, Dae Heung, Dae Kyung, and HI–LEX Corporation (on behalf of its Korean affiliate, TSK Korea) stating that they had no shipments of subject merchandise to the United States during the period of review (POR). On June 19, 1998, we received a letter from Sungsan stating that it had purchased steel wire rope in Korea and exported it to the United States during the POR. The Department received a questionnaire response from Kumho on June 22, 1998. A supplemental questionnaire was issued to Kumho on September 1, 1998, and a response was received on September 18, 1998.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTSUS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTSUS subheading 7312.10.6000. Although HTSUS subheadings are provided for convenience and the Customs Service purposes, the written description of the scope of this review is dispositive.

Non-Responding Companies

We did not receive responses from nine of the 16 companies to whom we sent questionnaires. For four respondents (Dong-Il, Jinyang, Yeonsin, and Dong Young), while we have confirmed that the questionnaires were delivered to the companies (Dong Young refused to accept the questionnaire), none responded. Accordingly, we are assigning to these companies a margin based on adverse facts available. *See Use of Facts Available* section of the notice below.

For four other respondents which the U.S. Embassy had indicated were closed (Boo Kook, Hanboo, Kwangshin Rope and Seo Jin), the questionnaires were undelivered and returned to the Department. As Customs Service data indicates that these companies, except for Kwangshin Rope, had no shipments during the POR, we are rescinding the review with respect to these companies, except for Kwangshin Rope. *See Partial Rescission* section of this notice below. With respect to Kwangshin Rope, since the Customs Service data indicates that the company had shipments of subject merchandise to the United States during the POR, we have assigned a margin based on the facts available. *See Use of Facts Available* section of this notice below.

For one respondent (Seo Hae) which the U.S. Embassy indicated had closed, although our records show that the questionnaire was in fact received and that Seo Hae did not respond, the Customs Service data confirms that this company did not have shipments during the POR. Accordingly, we are terminating the review for this company. *See Partial Rescission* section of this notice below.

Partial Rescission

As noted above, between April and August 1998, Dae Heung, Dae Kyung, Korea Sangsa, Myung Jin, and TSK Korea informed the Department that they had no shipments of the subject merchandise to the United States during the POR. In addition, information on the record shows that Boo Kook, Hanboo, Seo Hae and Seo Jin were no longer in operation and that we were unable to deliver our questionnaire (except for Seo Hae). Using information from the Customs Service, we have preliminarily confirmed that none of these companies had shipments of subject merchandise to the United States during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations and consistent with Departmental practice, we are rescinding preliminarily our review of Boo Kook, Dae Heung, Dae Kyung, Hanboo, Korea Sangsa, Myung Jin Co., Seo Hae, Seo Jin and TSK Korea. *See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35191 (June 29, 1998) (*Turkish Pipe and Tube*) and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997).

Use of Facts Available

We preliminarily find, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Dong-Il, Dong Young, Jinyang, Kwangshin Rope, Yeonsin, and Sungsan since they did not respond to our antidumping questionnaire. As noted above Dong-Il, Dong Young, Jinyang, and Yeonsin received, but did not respond to, the Department's questionnaire. Although the questionnaire to Kwangshin Rope was undeliverable, the record shows that the company did have shipments to the United States during the POR. With respect to Sungsan, on June 19, 1998, Sungsan submitted a letter to the Department stating that it had purchased subject merchandise in Korea and sold it in the United States during the POR. It also stated that the supplier did not have knowledge that the merchandise it sold to Sungsan was destined for the United States at the time of sale. Based on Sungsan's June 19, 1998, letter, we determined that Sungsan was the appropriate respondent and requested, in a July 1, 1998, letter, that the company complete the antidumping questionnaire. There was no further response from Sungsan.

Section 776(a) of the Act requires the Department to resort to facts available if necessary information is not available on the record or when an interested party or any other person "fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782." As provided in section 782(c)(1) of the Act, if an interested party "promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Because Dong-Il, Dong Young, Jinyang, Kwangshin Rope, Yeonsin, and Sungsan did not provide any notification or information to the Department, they have failed to comply with subsections (c)(1) and (e). Accordingly, we preliminarily find, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Dong-Il, Dong Young, Jinyang, Kwangshin Rope, Yeonsin, and Sungsan.

With respect to Kwangshin Rope, we preliminarily find that the use of facts available is appropriate. Although the U.S. Embassy in Seoul, Korea, confirmed that Kwangshin Rope is now closed, information from the Customs Service indicates that Kwangshin Rope had shipments of subject merchandise to the United States during the POR. Since Kwangshin Rope closed before it had an opportunity to respond to the antidumping questionnaire, as facts available, we are assigning Kwangshin Rope the "All Others" rate from the less than fair value (LTFV) investigation, 1.51 percent, which has been used in prior segments of this proceeding as facts available. *See Steel Wire Rope Fourth Review Final* at 17990.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. The failure of Dong-Il, Dong Young, Jinyang, Yeonsin, and Sungsan to respond to our antidumping questionnaire demonstrates that they have failed to act to the best of their ability to comply with requests for information. Accordingly, we have preliminarily determined that an adverse inference with respect to Dong-Il, Dong Young, Jinyang, Yeonsin, and Sungsan is warranted.

Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the antidumping investigation, a previous administrative review, or any other information placed on the record. We have preliminarily assigned Dong-Il, Dong Young, Jinyang, Yeonsin, and Sungsan the rate of 13.79 percent, which is a simple average of rates from the petition, as adverse facts available.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information has probative value. (*See* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, in an administrative review, the Department does not update the petition to reflect the prices and costs that are found during the current review. Rather, in corroborating petition figures, the Department determines whether the significant elements used to derive a margin in a petition are reliable. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

The adverse facts available rate being applied in this review, which is a simple average of rates from the petition, was established in the prior review. To corroborate the export prices in the petition, we examined the Customs Service import statistics from 1991 for the HTSUS subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090. However, we concluded that the Customs Service data were not comparable to the prices in the petition, because the Customs Service data encompass a wide range of steel wire rope products, while the sales in the petition consist of a small number of specific product types. With regard to the normal values used in the petition's margin calculation, we were provided with no useful information by interested parties, and are aware of no other independent sources of information, which would assist us in this aspect of the corroboration process. Notwithstanding the difficulties encountered in our attempts to corroborate the information from the petition, the Department has no evidence that suggests the petition does not continue to have probative value. Accordingly, we determine that the information from the petition is the most appropriate basis for adverse facts available.

Export Price

For sales to the United States, the Department used export price (EP) as defined in section 772(a) of the Act for Kumho, because the subject merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the use of constructed export price was not otherwise indicated by the facts of record.

We calculated EP based on packed, c.i.f. and c&f prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for domestic inland freight, brokerage and handling, ocean freight, marine insurance, terminal handling charges, wharfage expenses, bill of lading issuing fees, container taxes, and container freight station expenses, in accordance with section 772(c)(2)(A) of the Act.

The merchandise involved in certain U.S. and home market sales reported by Kumho was produced by unaffiliated suppliers. We included these sales by Kumho in our analysis because we determined that the suppliers did not know at the time of sale that the subject merchandise was to be exported to the United States. We compared these U.S. sales to the appropriate home market sales of merchandise produced by the same suppliers and sold by Kumho.

Kumho claimed a duty drawback adjustment based on a fixed rate amount per U.S. dollar exported. Consistent with our practice in previous reviews of steel wire rope from Korea, we did not allow the duty drawback adjustments claimed by Kumho because it did not demonstrate a connection between payment of import duties and receipt of duty drawback on exports of steel wire rope, and because they did not demonstrate that they had sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part*, 62 FR 64354, 64357 (December 5, 1997).

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of foreign like product Kumho sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States. *See* section 773(a) of the Act. Because Kumho had sales in its home market that were greater than five percent of its sales in the U.S. market, we based normal value (NV) on the prices at which the foreign like product was first sold for consumption in the exporting country. *See* section 773(a)(1)(B)(i) of the Act.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We compared EP sales to sales in the home market of identical merchandise.

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP, in accordance with section 773(a)(1)(B)(i) of the Act. We increased home market price by the amount of U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by the amount of home market packing costs in accordance with section 773(a)(6)(B) of the Act.

We calculated NV based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and section 353.56 of the Department's regulations, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses and, where appropriate, added U.S. postage fees, U.S. letter of credit fees, U.S. credit expenses, export recommendation fees, delayed payment charges, and document handling charges.

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary, drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, i.e., as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1 and December 31, 1997. For U.S. sales occurring between January 1 and February 28, 1998, we determined the exchange rates based upon our normal practice, with the exception of using the average of the January 1 through February 28, 1998, exchange rate as a benchmark. *See Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 63 FR 59514 (November 4, 1998). We invite the interested parties to comment on this issue.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period March 1, 1997, through February 28, 1998:

Manufacturer/exporter	Margin (percent)
Dong-Il Steel Manufacturing Co., Ltd.	*13.79
Dong Young	*13.79
Jinyang Wire Rope, Inc.	*13.79
Kumho Wire Rope Mfg. Co., Ltd.	0.25
Kwangshin Rope	1.51
Sungsan Special Steel Processing	*13.79
Yeonsin Metal	*13.79

*Adverse Facts Available Rate.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within thirty days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with each argument: (1) a statement of the issues, and (2) a brief summary of the arguments. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For Kumho, for duty assessment purposes, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. This specific rate calculated for each importer will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of steel wire rope from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review (except no cash deposit will be required for those companies whose weighted-average margin is zero or *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 1.51 percent, the "all others" rate established in the LTFV investigation (58 FR 16397, March 26, 1993).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32541 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–041]

Final Results of Expedited Sunset Review on Synthetic Methionine from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: synthetic methionine from Japan.

SUMMARY: On August 3, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping finding on synthetic methionine from Japan (63 FR 41227) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and a complete substantive

response filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Appendix to this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230: telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 8, 1998.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of the sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Order*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping finding is synthetic methionine other than synthetic L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and L methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under item 425.0420 of the Tariff Schedules of the United States Annotated and Harmonized Tariff Schedule item number 2930.40.00.

Background

On August 3, 1998, the Department initiated a sunset review of the antidumping finding on synthetic methionine from Japan (63 FR 41227) pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate from Degussa Corporation ("Degussa"), NOVUS International Inc., ("NOVUS"), and Rhone-Poulenc Animal Nutrition ("RPAN") (collectively, "petitioners") within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Each company claimed interested-party status under section 771(9)(C) of the Act as a U.S. manufacturer of synthetic methionine. We received a complete substantive response on September 2, 1998 from the petitioners. We did not receive a response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2)) of the *Sunset Regulations*, we determined to conduct an expedited review.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

The antidumping finding on synthetic methionine from Japan was published in the **Federal Register** as Treasury Decision 73–188 (38 FR 18382, July 10, 1973). In the 1980's, the Department conducted several administrative reviews.[1] The finding remains in effect for all imports of synthetic methionine from Japan.

The petitioners argue that revocation of the finding would result in the continuation or recurrence of dumping on the basis that (1) the imposition of the finding resulted in the departure of imports of Japanese synthetic methionine from the U.S. market, (2) Japanese producers would re-enter the U.S. market at dumped prices, and (3) Japanese producers could not sell in the U.S. market without dumping.

With respect to the cessation of imports of Japanese synthetic methionine, the petitioners provided statistics for imports of synthetic methionine (both DL- and L-methionine) for the period 1968 through 1997.[2] The petitioners stated that L-methionine is considerably more expensive than DL methionine and, based on the substantial decline in volume (from 2890 metric tons in 1978 to 86 metric tons in 1997) and the substantial increase in unit values (from $2.53/kg. in 1978 to $25.78/kg. in 1997), virtually all imports of synthetic methionine from Japan since 1978 consist of L-methionine. Therefore, the petitioners conclude that imports of DL-methionine have declined or ceased following the imposition of the finding.

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[1] *See Synthetic Methionine From Japan; Final Results of Administrative Review and Clarification of Antidumping Finding;* 47 FR 15622 (April 12, 1982); *Antidumping; Synthetic Methionine from Japan; Final Results of Administrative Review of Antidumping Finding;* 48 FR 20465 (May 6, 1983); *Final Results of Antidumping Administrative Review; Synthetic Methionine from Japan;* 52 FR 38953 (October 20, 1987); and *Synthetic Methionine From Japan; Final Results of Antidumping Duty Administrative Review;* 53 FR 15261 (April 28 1988).

[2] *See* Petitioners' September 2, 1998, Substantive Response to Notice of Initiation, Table 1, page 8. Complied from prepared testimony of Dale MacDonald before United States Tariff Commission for 1968–1972 and from Bureau of Census Data for TSUSA 425.0420 and HTS 2930.40.00 for 1985–1997.

In support of its assertion that Japanese producers would re-enter the U.S. market at dumped prices, the petitioners argue that, as demonstrated by the original finding, Japanese producers have a history of dumping excess production capacity in the U.S. market. Further, the petitioners contend that the circumstances that face the Japanese methionine industry today are remarkably similar to those existing at the time of the original investigation, particularly with respect to Japanese excess capacity and the need to export the vast majority of production. Based on statistics from the United Nations Statistical Division, Commodity Trade Statistics, the petitioners note that for the 1995 through 1997 period, Japan exported a significant volume of synthetic methionine, particularly to Asian countries. Petitioners add that, presumably in response to increased demand in recent years, particularly in Asia, the Japanese industry has completed a substantial addition to its production capacity. Petitioners argue, therefore, that the Asian financial crisis and recent additions to capacity have left Japanese producers again with substantial excess capacity and the need to find new markets.

Finally, in support of its assertion that the Japanese producers could not sell in the U.S. market without dumping if the antidumping finding were revoked, the petitioners state that the U.S. market for synthetic methionine is characterized by intense competition. The petitioners add that, as the largest consumers of methionine, the United States also has the largest customers and, consequently, prices in the United States are lower than in the rest of the world. Using proprietary information related to Japanese home market prices and U.S. sales prices during the 1995 to 1997, the petitioners claim that Japanese producers would have to dump their merchandise in order to make a sale in the U.S. market.

For the reasons stated above, the petitioners strongly support a determination that dumping of Japanese synthetic methionine is likely to continue or recur if the finding were revoked.

In the first administrative review conducted by the Department covering imports prior to June 30, 1980, the Department found that 11 of the 19 Japanese manufacturers and exporters either had no shipments or no longer existed.[3] In subsequent administrative reviews, the Department found no shipments from all but two non-responsive companies.[4] We find, therefore, that the cessation of imports and the existence of dumping margins after the issuance of the finding is highly probative of the likelihood of continuation or recurrence of dumping of synthetic methionine from Japan. Deposit rates above *de minimis* continue in effect for several manufacturers, exporters, and/or third country resellers (for example, Nippon Kayaku, Nippon Soda/Mitsui, Nippon Soda/Mitsui/Central Soya (Canada)).[5] As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if imports cease after the order is issued, we may reasonably assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. Therefore, given that shipments of the subject merchandise ceased soon after the issuance of the finding and that dumping margins continue after the issuance of the finding, and absent argument and evidence to the contrary, the Department, consistent with section II.A.3 of the *Sunset Policy Bulletin*, determines that dumping is likely to continue or recur if the finding were revoked.

Magnitude of Dumping

In the *Sunset Policy Bulletin*, the Department stated that, in a sunset review of an antidumping finding for which no company-specific margin or "all others" rate is included in the Treasury finding published in the **Federal Register**, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. Additionally, if the first final results do not contain a margin for a particular company, the Department normally will provide the Commission, as the margin for that company, the first "new shipper" rate established by the Department for that finding. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

Because Treasury did not publish weighted-average dumping margins in its finding, the margins determined in the original investigation are not available to the Department for use in this sunset review. Under these circumstances, the Department normally will select the margin from the first administrative review conducted by the Department as the magnitude of the margin of dumping likely to prevail if the finding is revoked.

In its substantive response, the petitioners propose three alternatives as the magnitude of the margin likely to prevail if the finding is revoked: (1) The original dumping margin, (2) the margin found in the most recent administrative review, or (3) a new margin established by using information on Japanese and U.S. prices. In support of their request that the Department select the original dumping margin of 48 percent, the petitioners state that although this rate was not included in the finding issued by the Treasury, this rate can be documented as the original fair value rate from several sources, including the Department's first final results of administrative review in which the Department used this rate as the "best information available."[6] The petitioners suggest that should the Department decline to select the original dumping margin of 48 percent, the Department should select the dumping margin of 79 percent found in the most recent administrative review that involved actual shipments.[7] Finally, the petitioners suggest that the Department could utilize current pricing information for the Japanese and U.S. market provided in its substantive response to determine a new margin.

In this case, although the petitioners submitted information identifying the margin determined by Treasury to be 48 percent (or 50 percent depending upon source),[8] and the Department, in its first administrative review identified the 48 percent "best information available" rate for non-responsive firms as being the "fair value rate,"[9] this rate was not published by Treasury in its July 10, 1973 finding.

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[3] *See Synthetic Methionine From Japan; Final Results of Administrative Review and Clarification of Antidumping Finding*; 47 FR 15622 (April 12, 1982).

[4] *See Antidumping; Synthetic Methionine from Japan; Final Results of Administrative Review of Antidumping Finding*; 48 FR 20465 (May 6, 1983); *Final Results of Antidumping Administrative Review; Synthetic Methionine from Japan*; 52 FR 38953 (October 20, 1987); and *Synthetic Methionine From Japan; Final Results of Antidumping Duty Administrative Review*; 53 FR 15261 (April 28, 1988).

[5] *See Final Results of Antidumping Administrative Review; Synthetic Methionine from Japan*; 52 FR 38953 (October 20, 1987); and *Synthetic Methionine From Japan; Final Results of Antidumping Duty Administrative Review*; 53 FR 15261 (April 28, 1988).

[6] *See Synthetic Methionine From Japan; Final Results of Administrative Review and Clarification of Antidumping Finding*, 47 FR 15622 (April 12, 1982).

[7] *See Final Results of Antidumping Duty Administrative Review; Synthetic Methionine from Japan*; 52 FR 38953 (October 20, 1987).

[8] *See* Petitioners' September 2, 1998, Substantive Response to Notice of Initiation, pp. 21–24.

With respect to petitioners' comment that the Department should use the margin established in the most recent review covering actual shipments for certain producers, petitioners have not provided an adequate basis for deviating from the Department's stated policy as set out above. Petitioners assert that this margin relates to a more recent period—July 1, 1985 through June 30, 1986—and is higher than the margins calculated in the first review conducted by the Department. In the *Sunset Policy Bulletin* the Department stated that "a company may choose to increase dumping in order to maintain or increase market share" and that "the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company, where, for that particular company, dumping margins increased after the issuance of the order." (*See* section II.B.2 of the *Sunset Policy Bulletin*.) The policy does not envision a general exception for any case in which a higher margin was found at some point during the life of the order. The Department's intent was to establish a policy of using the original investigation margin as the starting point, thus providing interested parties the opportunity and incentive to come forward with data which would support a different estimate. The petitioners, however, merely assert that "this is a large margin and is therefore indicative of how Japanese merchandise is likely to be priced in the absence of an order." (*See* Petitioners' September 2, 1998, Substantive Response, p. 25.) The petitioners did not, however, present arguments with respect to changes in margin levels as related to market share. The statistics provided by the petitioners, 1968–1997 annual volume, value, and unit value of imports of synthetic methionine (both DL and L), do not show an increase in imports concurrent with an increase in dumping, nor does it present the Department with a picture of the relative market shares held by Japanese manufacturers and exporters. Given the information available to the Department, it is not possible to discern whether any increases or decreases in margins reflect an effort to maintain or increase market share.

Similarly, petitioners request that the Department use existing information on Japanese and U.S. prices to calculate a margin does not provide an adequate basis for altering our approach. As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, only under the most extraordinary circumstances will the Department rely on a dumping margin other than those it calculated and published in its prior determination and, further, that it will consider other factors, such as prices and costs, in AD sunset reviews only where it determines that good cause to consider such other factors exists.[10] Petitioners did not make any "good cause" arguments. Further, petitioners have not offered any rationale suggesting that such a calculation would not be more speculative and, therefore, less probative than a calculated rate from an administrative review. Therefore, we are not persuaded that it is appropriate to deviate from the policy.

In conclusion, we are not persuaded that we should deviate from our the policy, as stated in the *Sunset Policy Bulletin*, of using the first rates calculated by the Department where published Treasury rates are not available. Rather, consistent with the *Sunset Policy Bulletin*, we determine that the original margins calculated by the Department are probative of the behavior of the Japanese manufacturers and exporters of synthetic methionine. The Department will report to the Commission the company-specific and "all others" rate contained in the Appendix to this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the margins listed in the Appendix to this notice.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with Section 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year "sunset" review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

APPENDIX

Manufacturers/exporters	Margin (percent)
Ajinimoto Co	5.54
Apls Pharmaceutical Co	22.54
Amano Pharmaceutical Co., Ltd	48.00
Chugai Boyeki Co	0
Daida Bussan Co	0
Helm Japan Ltd	11.14
Inuiu Yakuhin Kogyo	0
Isho Corportation	0
Iwaka & Co	1.69
Koyo Merchantile Co., Ltd	0
Kyowa Hakko Kogyo Co	30.68
Marubeni Corp	48.00
Nippon Kayaku	0
Nippon Soda Co., Ltd./Mitsui & Co	8.83
Nisso Raiho Kogyo & Co., Ltd	0
K Sakai & Co	0
Sakai Chemical	13.43
Sumitomo Chemical Industrial Co	0
Tetra Chemicals Co	8.40
All others	48.00
Third-Country Reseller (country)	
Atlantic Trading Co. (Canada)	0
H.J. Baker & Brothers (West Germany)	0
Chemical & Feeds Ltd. (England)	48.00
Chemo Dondorff (West Germany)	48.00
Deutsch-Norwegische GmbH (West Germany)	22.53
Fortamex Chemicals (Canada)	21.66
Karl O. Helm (West Germany)	1.31
Hoffman LaRoche (Canada)	0
Instel Corp. (France)	6.25
MAC Organization (Italy)	0
Mitsui & Co. (Belgium)	0
Mitsui & Co. (United Kingdom)	0
Nutrikem Limited (United Kingdom)	0
Seimsgluss & Shon (West Germany)	48.00
R.W. Unwin & Co (United Kingdom)	0

[FR Doc. 98–32545 Filed 12–7–98; 8:45 am]

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[9] *See Synthetic Methionine From Japan; Final Results of Administrative Review and Clarification of Antidumping Finding;* 47 FR 15622 (April 12 1982).

[10] *See* Section 351.218(e)(2) of the *Sunset Regulations* and Section II.C of the *Sunset Policy Bulletin.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092498A]

Small Takes of Marine Mammals Incidental to Specified Activities; Explosives Testing at Eglin Air Force Base, FL

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the U.S. Air Force to take small numbers of bottlenose dolphins, spotted dolphins, and possibly other cetacean species by harassment and non-serious injury incidental to explosive testing of obstacle and mine clearance systems at Eglin Air Force Base (Eglin), FL.

DATES: This authorization is effective from December 1, 1998, through March 31, 1999.

ADDRESSES: A copy of the application and draft environmental assessments (EAs) may be obtained by writing to the Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead 301–713–2055, or David Bernhart, 727–570–5312.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines "harassment" as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and a comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 20, 1998, NMFS received a complete application from the Air Force Development Test Center, Department of the Air Force, Eglin. The Air Force, in cooperation with the Naval Surface Warfare Center-Coastal Systems Station (NSWC-CSS), U.S. Navy, is requesting an authorization to take, by harassment and non-serious injury, bottlenose dolphins (*Tursiops truncatus*), spotted dolphins (*Stenella plagiodon*), and possibly other cetacean species incidental to explosive testing of obstacle and mine clearance systems at Eglin. Eglin is located in the Florida Panhandle, approximately midway between the cities of Pensacola and Panama City, FL. The location of the proposed action is on the beach areas on Santa Rosa Island (SRI), approximately 27 kilometers (km)(17 miles (mi)) west of Destin, FL.

The Navy's current capability to clear obstacles and mines in the surf zone is limited to the hand placement of explosive charges by Navy combat swimmers. The effectiveness of this capability is limited by the ability of swimmers to locate submerged targets and to carry sufficient explosives to destroy the targets. Such operations are considered highly hazardous, and the reliability of obstacle removal is considered to be poor. To facilitate U.S. Marine amphibious assaults, the U.S. Navy is committed to developing and testing methods to safely and effectively clear a path through such obstacles.

NWSC-CSS has requested permission from Eglin to test four anti-mine systems in the shallow surf zone along U.S. Air Force-controlled lands of SRI. The four test systems are the Shallow Water Assault Breaching (SABRE) system, the Distributed Explosive Technology (DET) system, the MK–82 general purpose bombs (GPBs), and the MK–5 Mine Clearance System (MCS).

The proposed action is to perform up to a total of 10 underwater detonation tests (2 tests using the SABRE system and up to 8 tests using the DET array); and a series of tests of explosive systems at Eglin.

In order to avoid impacting the endangered West Indian manatee (*Trichiechus manatus*)(which is more commonly found south of the region and during warmer months) and sea turtles, tests will be conducted in the fall and winter 1998/99. While a brief description of the four systems proposed for testing is included here, more detailed descriptions of the activity and the expected impact can be found in the application and in the two EAs on the activities. These documents are available upon request (see **ADDRESSES**).

SABRE System

An operational full-length SABRE-line charge consists of 130 10–pound (lb)(4.5 kg) net explosive weight (N.E.W.) charges on 3–ft (0.9 m) centers which is deployed from a Landing Craft Air-Cushion (LCAC) by an MK–22 Mod 4 rocket motor. Each charge consists of approximately 9.6 lb (4.3 kg) of PBXN–103 explosive and a W–11 booster, weighing approximately 0.4 lb (0.2 kg). A detonating cord runs through the centers of the booster and main charge.

For the two proposed tests, a total of 22 and 23 SABRE charges will be hand-laid on the sea bottom, perpendicular to the beach in 3 ft (.91 m) and 10 ft (3.0 m) of water, respectively. For both tests, the detonation sequence will be from the offshore end toward the beach. For these events, 27 to 31 inert mines will be placed perpendicular to the line charge and parallel to the shoreline. Total NE.W. of the SABRE tests will be 221 lb (100.2 kg) and 232 lb (105.2 kg), respectively.

DET-System

An operational, full-size DET array consists of parallel lines of detonating cord, whose overall footprint is 180 by 180 ft (54.9 m by 54.9 m). The array is packed in a container and launched from an LCAC by two MK–22 Mod 4 rocket motors for expansion and subsequent deployment.

Full-scale systems are not required for these tests. Previous tests have shown that partial-length SABRE segments and partial-size DET arrays are adequate for evaluations. The data acquired from small-scale tests can be scaled up in order to make predictions for military applications. Thus, for the DET system, the Navy is proposing to use an 11–ft by 60–ft (3.3 m by 18.3 m) DET array in 3 ft (0.9 m) of water. There will be eight separate DET events, spanning several days, with two to three arrays tested per day. The NE.W. of each array is 42 lb (19 kg), with arrays being detonated at the seaward end. Each array will be placed above a maximum of four live mines consisting of either 22 or 26.4 lb (10 or 12 kg) of explosive. Therefore, depending upon the mine type, total NE.W. of each test would be up to either 130 lb (59 kg) or 147.6 lb (67 kg). DET events will be hand-deployed from a boat and exploded electronically by trained personnel.

MK–82 GPBs

The proposed action is an evaluation of the MK–82 GPBs to clear anti-invasion beach obstacles and mines in the surf zone. The MK–82 GPBs to be tested consist of seven GPBs, each containing 192 lb (87.1 kg) of explosive for a total NE.W. of 1,344 lb (610 kg). The configuration for testing will be a linear arrangement of seven bombs spaced 24 ft (7.3 m) apart, located parallel to the shoreline in 6 ft (1.8 m) of water.

Two separate deployments and firings are required to test this configuration. All MK–82s will be buried vertically to approximately one-half length (about 3 ft (0.9 m)) by jetting. The MK–82s will be detonated using approximately 1/4 block of C–4 explosive paced into the aft fuse well. The MK–82s will be detonated simultaneously in 6 ft (1.8 m) of water using remote detonators to detonate the C–4. Beach obstacles (log posts, concrete cubes, and steel hedgehogs) and inert mines will be placed around the bombs to serve as targets for bomb fragments and blast.

MK–5 MCS

The MK–5 MCS consists of a 350–ft (106.7 m) continuous length charge of composition C–4 explosive (with a distribution of 5 lb (2.3 kg) per linear foot and a pair of detonating cords (totaling 11 lb (5 kg). Total NE.W. of the system is 1,750 lb (794 kg). The MK–5 MCS would be deployed in the surf zone about 550 ft (167.6 m) from shore by an LCAC. Once fully deployed, it will then be detonated. Testing will take place over a 3-day period. On the first day, there will be inert firings of four MK5 systems. The second day will consist of one inert firing and one live firing of a MK5 system. The third day will consist of three separate live firings.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on October 13, 1998 (63 FR 54676), and a 30-day public comment period was provided on the application and proposed authorization. During the 30-day comment period, comments were received from the Marine Mammal Commission (MMC), the Animal Protection Institute (API), the Animal Rights Foundation of Florida, and two private citizens.

Comment 1: Two commenters expressed concern that the underwater explosions would affect the sensory perceptions of wild dolphins and would inflict unnecessary stress and possible injury to the animals.

Response: While underwater explosions have the potential to harass, injure, or kill marine mammals, the notice of proposed authorization and the accompanying EAs provided information on mitigation measures that would be undertaken by the applicant to ensure that no mortality or serious injuries and few harassment takings would occur. These measures are repeated later in this document.

Comment 2: Two individuals recommended that the tests be conducted at an inland lake or pond on the Eglin property.

Response: As discussed in the draft EAs, while some testing can be conducted in ponds, test ponds are unable to replicate the sea and surf conditions, including wave action and berm formation, found in the nearshore coastal waters. These conditions are necessary for successful testing.

Comment 3: While recognizing that subsection 101(a)(5)(D) of the MMPA authorizes the incidental harassment of marine mammals, the API expressed concern over the numbers of dolphins that may be impacted by the activity. They believe that the number of dolphins proposed for a take by harassment should not be considered a small number.

Response: Interim regulations implementing subsection 101(a)(5)(D) of the MMPA were issued on April 10, 1996 (61 FR 15884). These regulations contain specific definitions to interpret Congressional meaning of the terms "small numbers" and "negligible impact." For the purposes of this part, "small numbers" means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock. "Negligible impact" is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. Because, due to mitigation measures required under IHA, no marine mammals are likely to be killed or seriously injured by the proposed activities, harassment takings are expected to be reduced to the lowest level practicable, the number of authorized takings is considered small, and the takings have no more than a negligible impact on the affected species and stocks of marine mammals.

Comment 4: The API also believes that, because explosives have a potential lethal impact on marine mammals, the application and authorization would not fall under MMPA subsection 101(a)(5)(D).

Response: Depending upon the distance between the explosive and the animal and the charge weight, explosives in the marine environment have the potential to seriously injure or kill marine mammals. However, if mitigating measures imposed on an applicant's activity through an IHA reduce the impacts of the activity such that it is unlikely that serious injury or mortality will result, then an IHA may be appropriate. If however, upon review, an activity's mitigation measures are not considered sufficient to eliminate mortality and serious injury, NMFS will deny the application request and recommend the applicant apply for a taking authorization under subsection 101(a)(5)(A) of the MMPA. An authorization under that section of the MMPA allows for lethal takings incidental to an activity.

Comment 5: The API recommends that NMFS deny an IHA to the Air Force to test underwater anti-mine devices in the waters off Eglin. One individual recommended denial, partly because it would open the door to future testing that could be harmful to marine life.

Response: NMFS would like to clarify that NMFS' responsibility in this action is limited to the issuance or denial of an authorization for the short-term, incidental harassment of a small number of marine mammals by the Air Force while conducting explosive testing of obstacle and mine clearance systems at Eglin. NMFS does not authorize the activity itself, as such authorization is provided by the U.S. Department of Defense and is not within the jurisdiction of the Secretary of

Commerce. As provided by subsection 101(a)(5)(D) of the MMPA, unless NMFS finds that the activity will result in a taking of marine mammals that is either not small or results in more than a negligible impact, the authorization is warranted. Authorizations to take marine mammals incidental to detonating explosives in the marine environment have been issued previously.

Comment 6: Concerned that there is the possibility that a manatee could be within the zone of influence of the detonations, the MMC recommended the Air Force consult with the U.S. Fish and Wildlife Service (USFWS) under section 7 of the Endangered Species Act (ESA).

Response: The Air Force consulted with the USFWS under section 7 of the ESA on this activity. This consultation was principally for the Gulf sturgeon, a listed fish species. Neither agency indicated that manatees inhabit the test area during the time of the year that tests are authorized.

Description of Habitat and Marine Mammals Affected by the Activity

A description of the project area ecosystem in the eastern Gulf of Mexico (GOM) can be found in the application and in the associated draft EAs and needs not be repeated here.

Marine Mammals

Although approximately 27 species of marine mammals (whales, dolphins, and porpoises) reside in or pass through the northeastern GOM, the only species of marine mammals that are likely to be impacted by the activities proposed for the shallow coastal waters off SRI are the bottlenose dolphin (*Tursiops truncatus*) and the Atlantic spotted dolphin (*Stenella frontalis*). Information on these two species may be found in the application and in the supporting EAs for these projects. Additional information on these and other species of marine mammals in the GOM can be found in Blaylock *et al.* (1995) and Waring *et al.* (1997). Please refer to those documents for information on the biology, distribution, and abundance of these species.

Potential Effects of Explosives on Marine Mammals

Potential impacts to those marine mammal species known to occur in the SRI area from explosives include both lethal and non-lethal injury, as well as incidental harassment. The pressure wave from the explosive can impact air cavities, such as lungs and intestines. Extensive hemorrhaging into the lungs due to underwater shock waves may cause death to a marine mammal through suffocation (Hill, 1978). Other common injuries which may result in mortality include circulatory failure, broncho-pneumonia in damaged lungs, or peritonitis resulting from perforations of the intestinal wall (Hill, 1978). Because impulse levels sufficient to cause lethal injury increase with increased mammal mass (Yelverton *et al.*, 1973), conservative criteria are based on the lowest possible affected mammalian weight (e.g., an infant dolphin). Extensive lung hemorrhage is an injury which would be debilitating, and not all animals would be expected to survive (1– percent mortality is predicted at the onset level). As the severity of extensive lung hemorrhage increases beyond the onset level, gastro-intestinal tract injuries can increase significantly. The expected mortality level associated with these combined severe injuries would be significantly higher than 1 percent (U.S. Navy, 1998).

Non-lethal injuries involve slight lung hemorrhage and tympanic membrane (TM) rupture from which the mammal is expected to recover (Yelverton *et al.*, 1973; Richmond *et al.*, 1973). Eardrum damage criteria are based upon a limited number of small charge tests (Yelverton *et al.*, 1973; Richmond *et al.*, 1973). Ranges for percent TM rupture incurred by underwater explosives can be calculated by a conservative TM damage model (U.S. Navy, 1996). General criteria for TM damage have been reported to occur at impulse levels down to 20 psi-msec (Yelverton *et al.*, 1973).

Because eardrum (e.g., TM) rupture, rather than slight lung hemorrhage, usually occurs at lower impulse levels, TM rupture is used by NMFS and others to conservatively define the non-lethal injury zone. A maximum impulse of 10 psi-msec is often considered to define the non-lethal injury zone, where a very low incidence of blast injuries are likely to occur (Yelverton *et al.*, 1973). A level of pressure impulse at which marine mammals are not expected to experience non-lethal injury (nor instantaneous mortality or lethal injury) is reported to be 5 psi-msec (Yelverton *et al.*, 1973). This is the impulse level adopted by the Air Force to designate no injurious takings by this activity.

In addition to lethal, serious, and non-serious injury, harassment of marine mammals may occur as a result of non-injurious physiological responses to an explosion-generated shockwave and its acoustic signature. Based upon information provided in the SEAWOLF shock trial final environmental impact statement (U.S. Navy, 1998), a dual criterion for marine mammal acoustic harassment has been developed for explosive-generated signals: (1) An energy-based temporary threshold shift (TTS) injury criterion of 182 dB re 1 uPa^2 -sec derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997), and (2) a 12– lbs/in^2 (psi) peak pressure cited by Ketten (1995) as associated with a "safe outer limit (for the 10,000 lb charge for minimal, recoverable auditory trauma" (i.e., TTS)). For this activity, noise levels that fall between the 5 psi-msec and out to a transmission distance where a noise level of 180 dB re 1 uPa^2 -sec (Air Force, 1998) will be considered to fall within the incidental harassment zone.

The potential impact to Atlantic bottlenose dolphins and the Atlantic spotted dolphins, the two species that may potentially be affected, was evaluated using modeling on the effects of underwater explosions resulting from each of the test systems described previously (see application). Based upon data provided in Tables 5.2 and 5.3 in the application, the maximum number of Atlantic bottlenose dolphins potentially injured from all tests ranges from 4 to 13. The maximum number of Atlantic spotted dolphins potentially injured from all tests combined is less than 1. These are the maximum injury levels without implementation of mitigation.

The estimated total numbers of bottlenose dolphins and spotted dolphins potentially exposed to takes by harassment are 33 and 1, respectively. The total number of bottlenose dolphins potentially exposed to noise from the source of the noise to 180 dB re 1 uPa^2 -sec ranges from 4 to 15 for the MK–82 GPB tests, 1 to 3 for the MK5 MCS tests, 1 to 2 for the combined SABRE tests, and 4 to 13 for all DET array tests combined. However, mitigation is expected to obviate any injury to marine mammals.

Mitigation

There are two forms of mitigation: (1) Natural, as provided by the environment and (2) human, designed to protect marine mammals to the greatest extent practicable.

Natural mitigation: Physical characteristics of the proposed test area and test methods will ameliorate the underwater shock wave. Tests will be conducted in approximately 3 to 10 ft (0.9 to 3.0 m) of water. At this shallow depth, some protection of the energy from the detonations will be directed through the surface of the water rather than transmitted through the water. Another consequence of the shallow, as opposed to the deep water detonation depth, is that bubble pulse is not significant and there will be far less energy in any oscillations. Additionally, these tests will be conducted inside the offshore bar at the SRI site. The offshore bar ameliorates the transmission of the underwater portion of the shock wave. Also, MK–82 GPBs will be buried in bottom sands to approximately their center of gravity (3 ft (0.9 m), a factor expected to mitigate the transmission of the shock wave as the detonations will be directed downwards.

Human mitigation: Eglin has established safety zones to prevent marine mammal injury for each test. These safety zones are: 0.75 km (0.47 mi) for SABRE–22, 1.0 km (0.62 mi) for SABRE–23, 1.0 km (0.62 mi) for DET, 6.0 km (3.73 mi) for MK–82 GPB, and 0.5 km (0.31 mi) for MK–5 MCS.

Eglin has proposed that base personnel conduct a 30–minute pre-detonation aerial monitoring survey immediately prior to each test to ensure no marine mammals are within each test area's designated safety zone. With water depths less than 18 m (59 ft), low turbidity, and white sand bottom, exceptional marine mammal visibility is ensured. Aerial surveys will be conducted at approximately 100 ft (30.5 m) elevation.

In order to ensure adequate visibility for locating marine mammals (and sea turtles), no tests will take place if sea state conditions are greater than category 3 and water clarity is not adequate for conducting surveys. No tests will take place if marine mammals or sea turtles are sighted within the safety zone.

Monitoring

In addition to pre-detonation monitoring mentioned previously, Eglin will conduct aerial surveys immediately following each detonation event. The post-test monitoring will be conducted in a similar manner to the pre-test monitoring, except that observation personnel will be focusing on locating any injured marine mammals. If any injured marine mammals are observed during post-test monitoring, subsequent detonations will be postponed, and the local stranding network notified. The project will be required to be reviewed by Air Force and NMFS personnel prior to conducting any additional tests.

Reporting

Any takes of marine mammals other than those authorized by the IHA will be reported to the Regional Administrator, NMFS, by the next working day. A draft final report of the entire test results and marine mammal observations for pre- and post-detonation monitoring will be submitted to NMFS within 90 days after completion of the last test. Unless notified by NMFS to the contrary, that draft final report will be considered the final report under the IHA.

National Environmental Policy Act (NEPA)

As part of its request for a small take authorization, the Air Force prepared two EAs, one for SABRE and DET and a second document for the MK–82/MK–5 systems. These EAs, which supplement information contained in the application, are necessary for determining whether the activities proposed for receiving small take authorizations are having a negligible impact on affected marine mammal stocks. NMFS has reviewed the EAs and concurs with the findings. As a result, NMFS finds that it is unnecessary to prepare its own NEPA documentation and hereby adopts the Air Force EAs as its own, as provided by 40 CFR 1506.3. NMFS finds that the issuance of an IHA to the Air Force will not result in a signficant environmental impact on the human environment and that it is unnecessary to either prepare its own NEPA documentation or to recirculate the Air Force EAs for additional comments.

Consultation

On October 15, 1998, NMFS completed consultation with the Air Force under section 7 of the ESA. The finding of that consultation was that the proposed testing activity is not likely to adversely affect endangered or threatened species of whales or sea turtles, if the conservation and mitigation measures specified in the Biological Assessment prepared by the Air Force are undertaken. NMFS concludes, therefore, that the issuance of an IHA to the Air Force to take small numbers of bottlenose dolphins, spotted dolphins and possibly other cetacean species by harassment incidental to explosive testing at Eglin is not likely to adversely affect endangered or threatened species of whales or sea turtles.

Conclusions

NMFS has determined that the short-term impact of incidentally taking small numbers of bottlenose dolphins, spotted dolphins, and possibly other cetacean species by harassment and non-serious injury incidental to explosive testing of obstacle and mine clearance systems at Eglin, as described previously in this document, will result, at worst, in the brief harassment of these species and possibly in a temporary behavioral modification. While behavioral modifications may be made by these species to avoid the resultant acoustic disturbance, this action is expected to have a negligible impact on both individual animals and the stocks of these mammals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA) of small numbers of bottlenose dolphins, spotted dolphins and possibly other cetacean species and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of subsection 101(a)(5)(D) have been met and the authorization can be issued.

Authorization

For the above reasons, NMFS has issued an IHA to the Air Force for the incidental harassment and non-serious injury of a small number of bottlenose dolphins, spotted dolphins, and possibly other cetacean species. NMFS has determined that, provided the mitigation, monitoring, and reporting requirements described in the authorization are undertaken the short-term impact of explosives testing for obstacle and mine clearance systems at Eglin has the potential to result in no more than a negligible impact on affected marine mammal stocks.

Dated: December 3, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–32534 Filed 12–7–98; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

1999 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Pub. L. 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 1999 in the amount of $7,000,000.00. All requests for information and applications for grants should be received by 31 December 1998 and addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, National Building Museum, Suite 312, 441 F Street, NW, Washington, DC 20001, Phone: 202–504–2200.

Deadlines for receipt of submission of grants applications is 1 March 1999.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 98–32531 Filed 12–7–98; 8:45 am]

BILLING CODE 6330–01–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 December 1998 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on reviewing designs for the $1 circulating coin.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., 30 November 1998.

Charles H. Atherton,

Secretary.

[FR Doc. 98–32528 Filed 12–7–98; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Tuesday, December 22, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–32586 Filed 12–3–98; 4:21 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0059]

Proposed Collection; Comment Request Entitled North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina Sales Tax Certification. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before February 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *424*; responses per respondent, *1*; total annual responses, *424*; preparation hours per response, *.17*; and total response burden hours, *72*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: December 3, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–32525 Filed 12–7–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056]

Proposed Collection; Comment Request Entitled Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Report of Shipment. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before February 8, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *250*; responses per respondent, *4*; total annual responses, *1,000*; preparation hours per response, *.167*; and total response burden hours, *167*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: December 3, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–32526 Filed 12–7–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 8, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Deputy Under Secretary of the Army (International Affairs), ATTN: SAUS–IA–DSA–A, 102 Army Pentagon, Washington, DC 20310–0102 (Larry E. Ogden). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: International Military Student Information, DD Form 2339, OMB Number 0702–0064.

Needs and Uses: The DD Form 2339 is required in support of international military students who are attending training in the United States with the Military Departments as part of the security assistance training program. The DD Form 2339 is utilized in gathering information on the international student prior to his/her arrival in the United States in order that civilian and military sponsors can be assigned to assist the student during his/her training.

Affected Public: Individual or households.

Annual Burden Hours: 90.

Number of Respondents: 3000.

Responses Per Respondent: 1.

Average Burden Per Response: 15.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The International Military Student Information (IMSI) is utilized by the military departments and pertains only to non U.S. citizens who are members of a foreign army that have been designated by their government to attend training at a military facility. The IMSI is utilized by the gaining organization to provide background information on the individual in order that a military and civilian sponsor may be assigned to assist the individual during his/her stay in the United States.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–32517 Filed 12–7–98; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare an Environmental Impact Statement (EIS) for the Murrieta Creek Feasibility Study; Riverside County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), DoD.

ACTION: Notice of intent.

SUMMARY: Murrieta Creek is located in western Riverside County and encompasses a drainage area of approximately 220 square miles. The creek flows in a southeasterly direction and receives inflows from Slaughterhouse Canyon on the southern side and Warm Springs and Santa Gertrudis Creeks on the northern side. The feasibility study covers an eleven mile reach of Murrieta Creek from the McVicar Street bridge in Wildomar, downstream through the Cities of Murrieta and Temecula to the U.S. Geological Survey gaging station, just

north of the confluence with Temecula Creek. Rapid development over the past two decades has resulted in concerns over flood protection and environmental degradation throughout the project reach. In response to these and other concerns raised by federal, state, and local interests during the 1997 Reconnaissance Study, the Corps of Engineers has initiated a Feasibility Study to determine if a feasible plan exists for flood control along Murrieta Creek with associated environmental restoration and recreation components.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California, 90053–2325.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. David Compas, phone (213) 452–3850; or E-mail: dcompas@spl.usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. *Authorization:* The study was authorized by U.S. Senate Resolution, dated 28 March 1996.

2. *Background:* The Reconnaissance Study concluded that there is a Federal interest in flood control and watershed management.

3. *Proposed Action:* The Feasibility Study is to determine if a plan can be formulated for flood control along Murrieta Creek and watershed management, with associated components for environmental restoration and recreation.

4. *Alternatives:* A full array of alternatives will be developed for further analyses. Preliminary alternatives to be considered include combinations of features such as creation of detention basins, wetland restoration, in-channel modifications, and side-slope protection. The proposed plan, viable project alternatives, and the no action plan will be carried forward for detailed analysis in the National Environmental Policy Act/California Environmental Quality Act documentation.

5. *Scoping Process:*

a. Potential impacts associated with the proposed action will be fully evaluated. Resource categories that will be analyzed are: biology, air quality, water quality, cultural resources, land use, geology, recreational, aesthetics, transportation, scoioeconomics, hazardous sites, and safety.

b. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the scoping meeting and/or submitting data, information, and comments identifying relevant environmental and scoioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, historical photos of the area, alternatives that should be addressed in the analysis, and potential environmental enhancement and restoration opportunities that exist along the creek. Individuals and agencies may offer information or data relevant to the proposed study and provide comments by attending the public scoping meeting, or by mailing the information to Mr. David Compas before 10 January 1999. Requests to be placed on the mailing list for announcements and the Draft EIS/R should also be sent to Mr. David Compas.

6. *Location and time:* The scoping meeting is scheduled on 14 January 1999 in the Temecula City Council chambers, at 43200 Business Park Drive, Temecula, California. The meeting will be held between 1 and 3 p.m.

Dated: November 30, 1998.

John P. Carroll,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 98–32516 Filed 12–7–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 30, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat_Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

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Dated: December 2, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Reinstatement.

Title: Application for Grants Under Emergency Immigrant Education Program.

Abstract: This application is used by State educational agencies to apply for formula grants authorized under the Emergency Immigrant Education Act (Title VI of P.L. 98–511 as amended by P.L. 103–382).

Additional Information: To assist Local Educational Agencies (LEAs) that experience unexpectedly large increases in their student population due to immigration.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.
Burden Hours: 9,177.

[FR Doc. 98–32482 Filed 12–7–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–194 and EA–196]

Applications to Export Electric Energy; Enserch Energy Services, Inc. and Minnesota Power

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Enserch Energy Services, Inc. (EES) and Minnesota Power have applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 7, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office), 202–586–9624, or Michael Skinker (Program Attorney), 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy to Canada:

Application	Application date	Docket No.
Enserch Energy Services, Inc.	10/13/98	EA–194
Minnesota Power, Inc.	11/18/98	EA–196

In Docket No. EA–194, EES proposes to transmit electric energy from the United States to Canada that it purchases from electric utilities and Federal power marketing agencies. EES is a wholly-owned subsidiary of Enserch Corporation. Texas Utilities Company, a holding company, owns all of the outstanding stock of the Enserch Corporation. EES is a power marketing company which does not own or control any facilities for the generation or transmission of electricity, nor does it have a franchised service area.

In Docket No. EA–196, Minnesota Power, a generation and transmission-owning public utility with its service territory in northern Minnesota, proposes to export electric energy to Canada that it purchases from other electric utilities, Federal power marketing agencies, and other entities authorized to sell power for resale.

Each of the above exporters proposes to arrange for the delivery of electric energy to Canada over transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault Incorporated, Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by these applicants, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protest to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the EES application to export electric energy to Canada should be clearly marked with Docket EA–194. Additional copies are to be filed directly with Thomas W. Pounds, Vice President—Legal Affairs, and Ms. Janet Dixon, Senior Attorney, Legal Department, Enserch Energy Services, Inc., 1301 Fannin, Suite 2300, Houston, TX 77002.

Comments on Minnesota Power's application to transmit electric energy to Canada should be marked with Docket EA–196. Additional copies are to be filed directly with Steven W. Tyacke, Esq., Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory" and then "Electricity" and "News" from the options menus.

Issued in Washington, D.C., on December 2, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 98–32554 Filed 12–7–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting:

Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site

DATES: Wednesday, January 6, 1999: 5:30 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.—Call to Order
5:40 p.m.—Presentations
7:00 p.m.—Public Comments/Questions
7:30 p.m.—Break
7:45 p.m.—Review Action Items
8:00 p.m.—Approve Meeting Minutes
8:10 p.m.—Committee Reports
8:45 p.m.—Public Comment
9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on December 2, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–32551 Filed 12–7–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting:

Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, January 21, 1999: 5:30 p.m.–10:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.—Call to Order
5:45 p.m.—Approve Meeting Minutes
6:00 p.m.—Public Comment/Questions
6:30 p.m.—Presentations
7:30 p.m.—Break
7:45 p.m.—Presentations
9:00 p.m.—Public Comment
9:30 p.m.—Administrative Issues
10:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on December 2, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–32552 Filed 12–7–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Electric and Magnetic Fields Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Monday, December 14, 1998: 8:30 a.m.–5:00 p.m.

ADDRESSES: Crowne Plaza Hotel, 14th & K Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Imre Gyuk, EMF Program Manager, EE–14, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–1482.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The National Electric and Magnetic Fields Advisory Committee (NEMFAC) advises the Department of Energy and the National Institute of Environmental Health Sciences (NIEHS) on the design and implementation of a five-year, National Electric and Magnetic Fields (EMF) Research and Public Information Dissemination (RAPID) Program. The Secretary of Energy, pursuant to Section 2118 of the Energy Policy Act of 1992, Pub. L. No.102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to assess and manage exposures, and dissemination of information.

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Tentative Agenda

Monday, December 14, 1998

8:30 a.m.—Welcome and opening remarks

9:00 a.m.—Letter of advice to Director of NIEHS

10:00 a.m.—Break

10:30 a.m.—Advice for Interagency Committee final report

11:30 a.m.—Discontinuation of DOE EMF program

12:00 noon—Lunch

1:30 p.m.—Accomplishments of RAPID program

3:00 p.m.—Break

3:30 p.m.—Concern for future EMF research in the U.S.

4:00 p.m.—Open time for public comments

5:00 p.m.—Adjourn

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Gyuk at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to the Thanksgiving holiday.

Transcript and Minutes: A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, D.C., on December 3, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–32553 Filed 12–7–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–87–000]

Southern Natural Gas Company; Notice of Application to Abandon

December 2, 1998.

Take notice that on November 24, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, 35202–2563, filed pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon by removal, two compressor units and related facilities comprising Southern's Pugh Compressor Station, in Noxubee County, Mississippi, all as more fully described in the application on file with the Commission and open to public inspection.

The Pugh Compressor Station is located at the Pugh interconnect, where Southern's 24-inch North Main Line crosses Tennessee's 30-inch Delta-Portland Line. Southern and Tennessee have abandoned the exchange agreement which made the compressor station necessary. Southern will either dispose of the compressor units for salvage or place the units in inventory for future use.

Any person desiring to be heard or make any protest with reference to said application should on or before December 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rule's.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32476 Filed 12–7–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER85–477–010, et al.]

Southwestern Public Service Company, et al. Electric Rate and Corporate Regulation Filings

December 1, 1998.

Take notice that the following filings have been made with the Commission:

1. Southwestern Public Service Company

[Docket No. ER85–477–010]

Take notice that on November 24, 1998, Southwestern Public Service Company (SPS or Southwestern) and Lyntegar Electric Cooperative, Inc. (Lyntegar) filed a Joint Offer of Settlement in the above-noted Commission dockets. The Joint Offer of Settlement resolves all issues between the parties in the case.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. K Power Company, Fina Energy Services Company, Keystone Energy Services, Inc., Mid-Power Service Corp.

[Docket Nos. ER95–792–012, ER95–792–013, ER97–2413–006, ER97–3053–004, and ER97–4257–007]

Take notice that on November 23, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. USGen New England, Inc.

[Docket No. ER98–6–005]

Take notice that on November 24, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. Northern Indiana Public Service Company

[Docket No. ER98–1632–001]

Take notice that on November 24, 1998, Northern Indiana Public Service Company filed its refund report in the above-captioned case.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counsel and all persons on the service list in this proceeding.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PowerSource Corp.

[Docket No. ER98–3052–000]

Take notice that on November 20, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. The Dayton Power and Light Company

[Docket No. ER99–695–000]

Take notice that on November 25, 1998, The Dayton Power and Light Company (Dayton), tendered for filing a service agreement for Non-Firm Transmission Service establishing Statoil Energy Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Statoil Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–696–000]

Take notice that on November 25, 1998, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Strategic Energy, Ltd. (SE).

Con Edison states that a copy of this filing has been served by mail upon SE.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–697–000]

Take notice that on November 25, 1998, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. American Electric Power Service Corporation

[Docket No. ER99–698–000]

Take notice that on November 25, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements and notices of assignment under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

A copy of the filing was served upon the parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER99–699–000]

Take notice that on November 25, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Fitzpatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system west of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of November 1, 1998.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Company

[Docket No. ER99–700–000]

Take notice that on November 25, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, executed Service Agreements under WWP's FERC Electric Tariff First Revised Volume No. 9, with NorAm Energy Services, Inc., which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER98–4693–000, SA No. 187 effective August 30, 1998 and with Los Angeles Department of Water & Power, which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER98–4554–000 SA No. 173 effective September 1, 1998.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER99–701–000]

Take notice that on November 25, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system East of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms

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and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of November 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Washington Water Power Company

[Docket No. ER99–702–000]

Take notice that on November 25, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with Puget Sound Energy, which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER97–1252–000 SA No. 52, effective December 15, 1996.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. The Dayton Power and Light Company

[Docket No. ER99–703–000]

Take notice that on November 25, 1998, The Dayton Power and Light Company (Dayton), tendered filing service agreements establishing Statoil Energy Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Statoil Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER99–704–000]

Take notice that on November 25, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and the City of Azusa (Azusa) for acceptance by the Commission.

The ISO states that this filing has been served on Azusa and the California Public Utilities Commission.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Golden Spread Electric Cooperative, Inc.

[Docket No. ER99–705–000]

Take notice that on November 25, 1998, Golden Spread Electric Cooperative, Inc. (Golden Spread), tendered for filing with the Federal Energy Regulatory Commission a petition for authority to sell power at market-based rates and for certain waivers pursuant to Section 35.12 of the Commission's Regulations.

Copies of this filing were served upon Southwestern Public Service Company and the Public Utility Commission of Texas.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER99–706–000]

Take notice that on November 25, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Ameren Services Company (Ameren).

Cinergy and Ameren are requesting an effective date of November 15, 1998.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Maine Public Service Company

[Docket No. ER99–707–000]

Take notice that on November 25, 1998, Maine Public Service Company tendered for filing a Power Sales Agreement for full requirements wholesale power with Houlton Water Company.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Maine Public Service Company

[Docket No. ER99–708–000]

Take notice that on November 25, 1998, Maine Public Service Company tendered for filing Amendments to Agreements for full requirements wholesale power with both Van Buren Light and Power Company, and with Eastern Maine Electric Cooperative, Inc.

In order to allow transactions under these lower rate, MPS requests that the amendments become effective as of February 1, 1999.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Pool

[Docket No. ER99–709–000]

Take notice that on November 25, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by Energy New England LLC (Energy New England). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Energy New England's signature page would permit NEPOOL to expand its membership to include Energy New England. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Energy New England a member in NEPOOL.

NEPOOL requests an effective date of December 1, 1998, for commencement of participation in NEPOOL by Energy New England.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Pool

[Docket No. ER99–710–000]

Take notice that on November 25, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by Horizon Energy Corporation d/b/a Exelon Energy (Exelon Energy). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Exelon Energy's signature page would permit NEPOOL to expand its membership to include Exelon Energy. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Exelon Energy a member in NEPOOL.

NEPOOL requests an effective date of January 1, 1999, for commencement of participation in NEPOOL by Exelon Energy.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER99–711–000]

Take notice that on November 25, 1998, Duquesne Light Company (DLC), tendered filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 23, 1998, with FPL Energy Services, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds FPL Energy Services, Inc., as a customer under the Tariff.

DLC requests an effective date of January 1, 1999, for the Service Agreement.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

[Docket No. ER99–712–000]

Take notice that on November 25, 1998, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 23, 1998, with PP&L EnergyPlus Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds PP&L EnergyPlus Company as a customer under the Tariff.

DLC requests an effective date of January 1, 1999, for the Service Agreement.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Pool

[Docket No. ER99–713–000]

Take notice that on November 25, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Columbia Energy Power Marketing Corporation (Columbia Energy). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Columbia Energy's signature page would permit NEPOOL to expand its membership to include Columbia Energy. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Columbia Energy a member in NEPOOL.

NEPOOL requests an effective date of December 1, 1998, for commencement of participation in NEPOOL by Columbia Energy.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. California Independent System Operator Corporation

[Docket No. ER99–714–000]

Take notice that on November 25, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and the City of Banning (Banning) for acceptance by the Commission.

The ISO states that this filing has been served on Banning and the California Public Utilities Commission.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the Meter Service Agreement to be made effective as of October 27, 1998.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. California Independent System Operator Corporation

[Docket No. ER99–715–000]

Take notice that on November 25, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and the City of Banning (Banning) for acceptance by the Commission.

The ISO states that this filing has been served on Banning and the California Public Utilities Commission.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of October 27, 1998.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. California Independent System Operator Corporation

[Docket No. ER99–716–000]

Take notice that on November 25, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and the City of Azusa (Azusa) for acceptance by the Commission.

The ISO states that this filing has been served on Azusa and the California Public Utilities Commission.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of October 27, 1998.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Maine Electric Power Company

[Docket No. ER99–717–000]

Take notice that on November 25, 1998, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service entered into with HQ Energy Services (U.S.) Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. New England Power Company

[Docket No. ER99–718–000]

Take notice that on November 25, 1998, New England Power Company (NEP), tendered for filing a Firm Local Generation Delivery Service Agreement with Tiverton Power Associates Limited Partnership.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Cinergy Services, Inc.

[Docket No. ER99–720–000]

Take notice that on November 25, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Ameren Services Company (Ameren).

Cinergy and Ameren are requesting an effective date of November 15, 1998.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Shared Energy, Inc.

[Docket No. ER99–721–000]

Take notice that on November 25, 1998, Shared Energy, Inc. (Shared Energy), petitioned the Commission for acceptance of Shared Energy's Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and the waiver of certain Commission Regulations.

Shared Energy intends to engage in wholesale electric power and energy purchases and sales as a marketer. Shared Energy is not in the business of generating or transmitting electric power. Shared Energy is not affiliated with any other company.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

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32. Wisconsin Public Service Corporation, Upper Peninsula Power Company,WPS Power Development, Inc., WPS Energy Services, Inc., and Mid-American Power LLC

[Docket No. ER99–722–000]

Take notice that on November 25, 1998, Wisconsin Public Service Corporation, WPS Power Development, Inc., WPS Energy Services, Inc., and Mid-American Power LLC filed revisions to their Codes of Conduct and Statements of Policy that were adopted in conjunction with their receipt of market-based rate authority; and Wisconsin Public Service and Upper Peninsula Power Company filed a supplement to their Coordination and Allocation Agreement. The filings reflect Upper Peninsula Power Company's status as a franchised public utility affiliate of each of the filing entities.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Florida Power & Light Company

[Docket No. ER99–723–000]

Take notice that on November 27, 1998, Florida Power & Light Company (FPL) tendered for filing the proposed Service Agreement For Network Integration Transmission Service Among Florida Power & Light Company (FPL), Seminole Electric Cooperative, Inc., Clay Electric Cooperative, Inc., Glades Electric Cooperative, Inc., Lee County Electric Cooperative, Inc., Peace River Electric Cooperative, Inc. and Suwannee Valley Electric Cooperative, Inc. for Network Transmission Service under FPL's Open Access Transmission Tariff, and related agreements.

FPL requests that the proposed agreements be permitted to become effective on January 1, 1998.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Canal Electric Company

[Docket No. ER99–724–000]

Take notice that on November 25, 1998, Canal Electric Company (Canal), tendered for filing a Notice Of Cancellation of Rate Schedules 1, 2, 3, and 4, and all supplements thereto, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35.15(a) of the Commission's Regulations, 18 CFR 35.15(a).

Canal states that the purpose of this filing is to cancel the wholesale sales rate schedules associated with its Canal Unit 1 electric generating facility, in conjunction with Canal's divestiture of that facility by sale to Southern Energy Canal L.L.C. (Southern Canal) and assignment to Southern of the four power sales agreements that comprise the specified FERC rate schedules. Canal further states that this filing is made in conjunction with the filing, by Southern Canal, of four new rate schedules that are the four power sales agreements to be assigned by Canal to Southern Canal. The effective date of Canal's cancellation of its four Unit 1 rate schedules is proposed to be the closing date of the Divestiture Transaction, as specified in that certain Asset Sale Agreement, dated May 15, 1998, by and between Canal and Southern Energy New England, L.L.C.

Copies of the filing were served on Canal's affected customers and state agencies.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. PECO Energy Company

[Docket No. ER99–747–000]

Take notice that on November 25, 1998, PECO Energy Company submitted an amendment to its Code of Conduct.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. The Detroit Edison Company

[Docket No. OA97–184–003]

Take notice that on November 25, 1998, The Detroit Edison Company filed revisions to its Standards of Conduct Implementation Procedures.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32477 Filed 12–7–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of October 26 Through October 30, 1998

During the Week of October 26 through October 30, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: November 25, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 26 through October 30, 1998]

Date	Name and location of applicant	Case No.	Type of submission
10/26/98	Chevron U.S.A. Production Co.	VEA–0010	Appeal. If granted: The final equity determination by the DOE Assistant Secretary for Fossil Energy regarding the Carneros Zone at Naval Petroleum Reserve No. 1 (Elk Hills) pursuant to section 3412 of the National Defense Authorization Act for Fiscal Year 1996 would be revised, and the respective equity shares of the DOE and Chevron in that property would be adjusted accordingly. OHA has a delegation of authority to consider this appeal under the terms of a 1997 agreement between DOE and Chevron

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of October 26 through October 30, 1998]

Date	Name and location of applicant	Case No.	Type of submission
10/26/98	Joseph P. Carson	VWA–0026	Other. If Granted: Pursuant to a settlement agreement between Joseph P. Carson and the DOE, the OHA will convene a special proceeding applying the caselaw developed under the Whistleblower Protection Act of 1989 ("the Act") to consider Carson's complaint that he was discriminated against by DOE in retaliation for activities protected under the Act.
10/27/98	Personnel Security Hearing.	VSO–0245	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
10/29/98	Personnel Security Hearing.	VSO–0246	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.

[FR Doc. 98–32555 Filed 12–7–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of September 21 Through September 25, 1998

During the Week of September 21 through September 25, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: November 25, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 21 through September 25, 1998]

Date	Name and location of applicant	Case No.	Type of submission
9/22/98	Personnel Security Hearing.	VSO–0234	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
9/25/98	Personnel Security Hearing.	VSO–0235	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.

[FR Doc. 98–32556 Filed 12–7–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of August 31 through September 4, 1998

During the Week of August 31 through September 4, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: November 25, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 31 through September 4, 1998]

Date	Name and location of applicant	Case No.	Type of submission
8/31/98	Russell Marler, New Orleans, LA.	VWA–0024	Request for Hearing under DOE Contractor Employee Protection Program. If granted: A hearing under 10 CFR Part 708 would be held on the complaint of Russell Marler that reprisals were taken against him by management officials of Dyn McDermott Petroleum Operations Co. as a consequence of his having testified in a previous hearing on a complaint under Part 708.
9/1/98	Lockwood Greene Technologies, Inc., Knoxville, TN.	VWA–0025	Request for Hearing under DOE Contractor Employee Protection Program. If granted: A hearing under 10 CFR Part 708 would be held at the request of Lockwood Greene Technologies, Inc., on the complaint of David Hill that reprisals were taken against him by management officials of Lockwood Greene Technologies, Inc.
9/4/98	Granite Island Group, Gloucester, MA.	VFA–0442	Appeal of an Information Request. If granted: The Freedom of Information Request Denial issued by the Department of Energy would be rescinded, and Granite Island Group would receive access to certain DOE information.
9/4/98	Natural Resources Defense Council, Washington, DC.	VFA–0441	Appeal of an Information Request Denial. If granted: The August 20, 1998 Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Natural Resources Defense Council would receive access to certain DOE information.

[FR Doc. 98–32557 Filed 12–7–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of September 14 through September 18, 1998

During the Week of September 14 through September 18, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: November 25, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 14 through September 18, 1998]

Date	Name and location of applicant	Case No.	Type of submission
9/14/98	Personnel Security Hearing	VSO–0232	Request for Hearing Under 10 C.F.R. Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
9/15/98	Personnel Security Hearing	VSO–0233	Request for Hearing Under 10 C.F.R. Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
9/15/98	State of Indiana, Dept. Of Commerce Indianapolis, IN	VEG–0005	Petition for Special Redress. If granted: The July 21, 1998 decision of the Director of the DOE Office of State and Community Programs, Energy Efficiency and Renewable Energy, that the proposed Indiana plan for the use of Stripper Well funds was inconsistent with terms of the Stripper Well Settlement Agreement, would be reversed.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of September 14 through September 18, 1998]

Date	Name and location of applicant	Case No.	Type of submission
9/18/98	City of Federal Way, Federal Way, WA	VFA–0445	Appeal of an Information Request Denial. If Granted: The July 29, 1998 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and City of Federal Way would receive access to certain DOE information.

[FR Doc. 98–32558 Filed 12–7–98; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 10, 1998, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open session

A. *Approval of Minutes*
  —November 12, 1998 (Open and Closed)
B. *Report*
  —Farm Credit System Building Association Quarterly Report
C. *New Business*
  Policy Statements
  1. Interest Rate Risk Management (Final)
  2. Young, Beginning, and Small Farmers and Ranchers (Final)
  Regulation
  —Customer Choice Rule (Proposed rule; comment period extension) [12 CFR Parts 611, 614, and 618]

* *Closed session*

C. *Report*
  —OSMO Report
  * Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: December 3, 1998.

Jeanette Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 98–32626 Filed 12–4–98; 11:03 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2386; Report No. AUC–99–24–A (Auction No. 24)]

Phase II 220 MHz Service Spectrum Auction Scheduled for June 8, 1999; Application Filing Deadline Set for May 10, 1999; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: This Public Notice announces an auction of 225 Phase II 220 MHz Service licenses set to begin on June 8, 1999 and seeks comment on procedural issues relating to this auction.

DATES: Comments are due on or before December 16, 1998, and reply comments are due on or before December 23, 1998.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room 239, 1919 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Christina Clearwater, Ruby Hough, or Bob Reagle, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Public Notice was released on November 24, 1998, and is available in its entirety, including the Attachment, for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, Room 5608, 20205 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Synopsis

1. By this Public Notice, the Wireless Telecommunications Bureau ("Bureau") announces an auction of 225 Phase II 220 MHz Service licenses set to begin on June 8, 1999 (Auction No. 24). A list of licenses is included as an Attachment. In addition, future public notices could include additional information about available spectrum in conjunction with Auction No. 24. Future public notices will include further details regarding application filing and payment deadlines, a seminar for potential bidders, and other pertinent information. In this Public Notice, the Commission seeks comment on procedural issues relating to Auction No. 24.

Key Dates

- Short Form Application (FCC Form 175), May 10, 1999; 5:30 p.m. ET.
- Upfront Payments (via wire transfer), May 24, 1999; 6:00 p.m. ET.
- Auction Start, June 8, 1999.

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I. Reserve Price or Minimum Opening Bid

2. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. The Bureau was directed to seek comment on the methodology to be employed in establishing each of these mechanisms. Among other factors the Bureau should consider are the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors that reasonably could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

3. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

4. In anticipation of this auction and in light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for the Phase II 220 MHz Service auction, and retain discretion to lower the minimum opening bids. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

5. Specifically, for Auction No. 24, the Commission proposes the following for minimum opening bids:

1. EAG Licenses, $0.0125 * 0.15 MHz * License Population (rounded up to the nearest dollar.)
2. EA Licenses, $500 per license.

Comment is sought on this proposal. If commenters believe that the formula proposed above for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the formula for minimum opening bids, the Commission particularly seeks comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the Phase II 220 MHz Service spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

II. Other Auction Procedures

6. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures. . ." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues.

a. Auction Sequence and License Groupings

7. Because it is most administratively appropriate, and allows bidders to take advantage of any synergies that exist among licenses, the Commission proposes to award these 225 Phase II 220 MHz Service licenses in a single, simultaneous multiple-round auction. The Bureau seeks comment on this proposal.

b. Upfront Payments and Initial Maximum Eligibility for Each Bidder

8. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. With these guidelines in mind, the Bureau proposes for the Phase II 220 MHz Service auction the following upfront payments:

1. EAG Licenses, $0.01 * 0.15 MHz * License Population (rounded up to the nearest dollar.)
2. EA Licenses, $500 per license.

The Bureau seeks comment on this proposal. For the Phase II 220 MHz Service auction, the Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Commission seeks comment on this proposal.

c. Structure of Bidding Rounds, Activity Requirements, and Criteria for Determining Reductions in Eligibility

9. The Commission proposes to divide the auction into three stages: Stage One, Stage Two and Stage Three. The auction will start in Stage One. The Commission proposes that the auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below ten percent for three consecutive rounds of bidding in each Stage. However, the Commission further proposes that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission seeks comment on these proposals.

10. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver.

11. For the Phase II 220 MHz Service auction, the Commission proposes that, in each round of Stage One of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In each round of the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on at least 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9). In each round of Stage Three, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty forty-ninths (50/49). The Commission seeks comment on these proposals.

d. Minimum Accepted Bids

12. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For the Phase II 220 MHz Service auction, the Commission proposes to use a smoothing methodology to calculate bid increments. This methodology will be designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. A similar methodology was used in previous auctions, including the original Phase II 220 MHz Service auction and LMDS auction. The Bureau proposes initial values for the maximum of 0.2 or 20% of the license value, and a minimum of 0.1 or 10% of the license value.

13. The Bureau retains the discretion to change these values if circumstances so dictate, such as raising the minimum increment toward the end of the auction to enable bids to reach their final values more quickly. The Bureau will do so by announcement in the Automated Auction System. Under its discretion the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau further seeks comment on the advantages and disadvantages of using the discretion to adjust the minimum bid increment without prior notice. As an alternative approach, the Bureau seeks comment on the advantages and disadvantages of adjusting the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment. The Bureau also retains the discretion to use alternate methodologies for the Phase II 220 MHz Service auction if circumstances warrant. The Commission seeks comment on these proposals.

e. Activity Rule Waivers and Reducing Eligibility

14. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

15. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

16. A bidder with insufficient activity that wants to reduce its bidding eligibility, rather than use an activity rule waiver, must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

17. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

18. The Bureau proposes that each bidder in the Phase II 220 MHz Service auction be provided with five activity rule waivers that may be used in any round during the course of the auction as set forth above. The Commission seeks comment on this proposal.

f. Information Regarding Bid Withdrawal and Bid Removal

19. For the Phase II 220 MHz Service auction, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

20. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. The Commission seeks comment on these bid removal and bid withdrawal procedures.

21. In the *Third Report and Order and Second Further Notice of Proposed Rule Making*, 63 FR 2315 (January 15, 1998), ("*Part 1 Third Report and Order*"), the Commission recently explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons, including to delay the close of the auction for strategic purposes. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the Bureau should assertively exercise its

discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

22. Applying this reasoning, the Bureau proposes to limit each bidder in the Phase II 220 MHz Service auction to withdrawals in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Commission seeks comment on this proposal.

g. Stopping Rule

23. For the Phase II 220 MHz Service auction, the Bureau proposes to employ a simultaneous stopping approach. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

24. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

25. The Commission proposes that the Bureau retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

26. Finally, the Commission proposes that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Commission seeks comment on these proposals.

h. Information Relating to Auction Delay, Suspension or Cancellation

27. For the Phase II 220 MHz Service auction, the Commission proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Commission emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Commission seeks comment on this proposal.

Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 98–32641 Filed 12–7–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 217–011540–002

Title: Blue Star/Fesco Space Charter Agreement

Parties: P&O Nedlloyd Limited, Fesco Ocean Management Limited d/b/a Fesco Australia, North American Line

Synposis: The proposed modification changes one of the parties to the agreement from Ocean Management, Inc. to Fesco Ocean Management Limited, both wholly owned subsidiaries of a common parent, Far Eastern Shipping Company.

Dated: December 2, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32484 Filed 12–7–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

National Freight Express, Inc., 10501 N.W. 7th Avenue, Miami, FL 33150, Officers: Zakay Sasson, President, Ezra Sasson, Vice President.

Dated: December 2, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32468 Filed 12–7–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation for Labor-Management Committees FY1999

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 1999 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern:

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, areawide, industry, or public sector labor-management committee. Directions for obtaining an application kit and an optional video tape may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate.

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels. A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1999, competition will be open to company/plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the

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committees's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 15, 1999, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging in labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-part private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to grantees who seek funds on behalf of an entirely different committee.

D. Allocations

The total FY 1999 appropriation for this program is $1.5 million, of which at least $1,000,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support industry-specific national-scope initiatives and/or regional industry models with high potential for widespread replication that have been solicited by the Director of the Service.

FMCS reserves the right to retain up to five percent of the FY99 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for period of 12 months. If all of the original funding is not obligated within 12 months, FMCS will consider grant period extensions for up to an additional six months. No continuation awards are anticipated. Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within 18 months, these grants may be extended for up to six months. No continuation awards are anticipated.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing company/plant or single department public sector applicants:

—Up to $50,000 over 18 months for new company/plant committee or single department public sector applicants;

—Up to $75,000 in FMCS funds per annum for existing area, industry and multi-departmental public sector committee applicants;

—Up to $100,000 per 18-month period for new area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objective of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be use for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY99 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applicantions should be signed by *both* a labor and management representative and be *postmarked no later than May 1, 1999.* No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Customer Grant Review Boards. The Board(s) will recommend selected applications for further funding consideration. The Director, Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY99 grant applicants will be notified of results and all grant awards will be made before September 15, 1999. Applications submitted after the May 1 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Program Services.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Washington, DC 20427; or by calling 202–606–8181.

Richard Barnes,

Acting Director, Federal Mediation and Conciliation Service.

[FR Doc. 98–32486 Filed 12–7–98; 8:45 am]

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-31977) published on page 66186 of the issue for Tuesday, December 1, 1998.

Under the Federal Reserve Bank of St. Louis heading, the entry for First Security Bancorp, Searcy, Arkansas, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *First Security Bancorp*, Searcy, Arkansas; to acquire 100 percent of the voting shares of Baxter County Bancshares, Inc., Mountain Home, Arkansas, and thereby indirectly acquire Peoples Bank & Trust Company, Mountain Home, Arkansas.

Comments on this application must be received by December 7, 1998.

Board of Governors of the Federal Reserve System, December 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32464 Filed 12–7–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Eggemeyer Advisory Corporation, Castle Creek Capital, LLC, California Castle Creek Capital Partners Fund I, LP*, all of Rancho Santa Fe, California; to acquire 15.8 percent of the voting shares of UB & T Holding Company, Abilene, Texas, and thereby indirectly acquire United Bank & Trust Company, Abilene, Texas.

2. *State National Bancshares, Inc.*, Lubbock, Texas; to acquire 100 percent of the voting shares of UB & T Holding Company, Abilene, Texas, and thereby indirectly acquire United Bank & Trust Company, Abilene, Texas.

Board of Governors of the Federal Reserve System, December 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32465 Filed 12–7–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *First National Bank of Clovis Employee Stock Ownership Trust*, Clovis, New Mexico; to acquire 30.31 percent of the voting shares of National Bancshares, Inc., Clovis, New Mexico, and thereby indirectly acquire First National Bank of Clovis, Clovis, New Mexico.

Board of Governors of the Federal Reserve System, December 3, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32549 Filed 12–7–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *First Security Corporation*, Salt Lake City, Utah; to acquire Van Kasper & Company, San Francisco, California, and thereby indirectly acquire Van Kasper Advisers, Inc., San Francisco, California; Van Kasper Capital, San Francisco, California; Van Kasper Ventures, San Francisco, California. Van Kasper & Company is the general partner of the following limited partnerships: Van Kasper Growth Fund, L.P., San Francisco, California; Van Kasper American Labor Short-term Fixed Income Fund, L.P., San Francisco, California. Van Kasper & Company also controls 24.5 percent of Redwood Securities Group, Inc., San Francisco, California.

Notificant proposes to engage in providing credit and credit related services, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y; providing investment and financial advisory services, pursuant to § 225.28(b)(6) of Regulation Y; providing brokerage services and investment advisory services, both separately and on a combined basis in connection with the purchase and sale of securities and related credit, custodial and other incidental services, pursuant to § 225.28(b)(7)(i) of Regulation Y; buying and selling all types of securities on a "riskless principal" basis, pursuant to § 225.28(b)(7)(ii) of Regulation Y; acting as agent in the private placement of all types of securities, pursuant to § 225.28(b)(7)(iii) of Regulation Y ; underwriting and dealing in obligations of the United States, general obligations of the states and their political subdivisions and other obligations, instruments and securities that member bank of the Federal Reserve System may underwrite or deal in, pursuant to § 225.28(b)(8)(i) of Regulation Y; engaging as principal in investing and trading activities, pursuant to § 225.28(b)(8)(ii) of Regulation Y; underwriting and dealing in the following securities (collectively "Tier II Securities"): all types of debt, equity, and other securities (other than ownership interests in open-end investment companies offered and sold to U.S. persons that a member bank may not underwrite or deal in) ("bank ineligible securities") as permissible by Board Orders, *See, Fifth Third Bancorp*, 84 Fed. Res. Bull. 677 (1998), and *J.P. Morgan & Co.*, 75 Fed. Res. Bull. 192 (1989); acting as agent in the sale of insurance and annuities, pursuant to § 225.28(b)(8)(iv) of Regulation Y; and serving as general partner of private investment limited partnerships as permissible by Board Order, *See, Dresdner Bank AC/Oeschle International Advisors, L.P.*, 84 Fed. Res. Bull. 361 (1998).

Board of Governors of the Federal Reserve System, December 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32463 Filed 12–7–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Istituto Bancario San Paolo di Torino-Istituto Mobiliare Italiano S.p.A.*, Turin, Italy; to acquire Mabon Securities Corp., New York, New York, and Cedar Street Securities Corp., New York, New York, and thereby engage in extending credit and servicing loans, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y; financial and investments advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; investment transactions as principal, pursuant to § 225.28(b)(8) of Regulation Y; and underwriting and dealing in all types of debt and equity securities (other than ownership interests in open-end investment companies) on a limited basis. *See, J.P. Morgan & Co. Incorporated, et al.*, 75 Fed. Res. Bull. 192 (1989) (these activities are to be performed by Mabon Securities Corp. only).

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *BankAmerica Corporation*, Charlotte, North Carolina; BancWest Corporation, Honolulu, Hawaii; BB&T Corporation, Winston-Salem, North Carolina; First Union Corporation, Charlotte, North Carolina; SunTrust Banks, Inc., Atlanta, Georgia; Wachovia Corporation, Winston-Salem, North Carolina; and Zions Bancorporation, Salt Lake City, Utah; to acquire H&S Holding Company, Wilimington, Delaware; and thereby indirectly acquire HONOR Technologies, Inc., Maitland, Florida, and STAR Systems, Inc., San Diego, California, and thereby engage in certain data processing and electronic funds transfer services, management consulting services, and check verification services, pursuant to §§ 225.28 (b)(2), (b)(9) and (b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, December 3, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32550 Filed 12–7–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, December 14, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

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CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 4, 1998.

Robert DeV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32735 Filed 12–4–98; 4:36 pm]

BILLING CODE 6210–0–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY

Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H

OMB control number: 7100-0196

Frequency:

development of policy statement: one-time

trust company report: quarterly

transactions recordkeeping: on occasion

disclosure: on occasion

Reporters: state member banks and trust companies

Annual reporting hours: 168,141

Estimated average hours per response:

development of policy statement: .50 hours;

trust company report: .25 hours;

transactions recordkeeping: .05 hours;

disclosure: .05 hours

Number of respondents:

development of policy statement: 77

trust company report: 376

transactions recordkeeping: 1,193

disclosure: 1,193

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: State-chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. These requirements are necessary for customer protection, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti-fraud and insider trading provisions of the Securities Exchange Act of 1934.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

2. Report title: Application for Employment with the Board of Governors of the Federal Reserve System

Agency form number: FR 28

OMB control number: 7100-0181

Frequency: on occasion

Reporters: employment applicants

Annual reporting hours: 8,500 hours

Estimated average hours per response 1 hour

Number of respondents: 8,500

Small businesses are not affected.

General description of report: This information collection is required to obtain a benefit (12 U.S.C. 244 and 248(1)). Individual respondent data are regarded as confidential and are given confidential treatment under (5 U.S.C 552(b)(2) and (b)(6)).

Abstract: The Application collects information to determine the qualifications, suitability, and availability of applicants for employment with the Board. The Application asks about education, training, employment, and other information covering the period since the applicant left high school. Due to the nature of the Board's business the Board has added a question on whether the applicant owns debt (bonds) or equity (stocks) interests in certain financial institutions, including banks and primary government securities dealers. This is to inform prospective employees that divestiture may be required upon employment with the Board. The Board also added a question regarding how the applicant learned about the position so that the staff can enhance the efficiency of its recruiting efforts.

Final approval under OMB delegated authority the implementation of the following report:

3. Report titles: Annual Salary Survey, ad hoc surveys, and Compensation Trend Survey

Agency form numbers: FR 29a, b, c

OMB control number: 7100-0291

Frequency:

FR 29a - once each year

FR 29b - on occasion

FR 29c - once each year

Reporters: employers who are competitors with the Federal Reserve

Annual reporting hours:

FR 29a - 280 hours

FR 29b - 20 hours

FR 29c - 1,000 hours

Estimated average hours per response:

FR 29a - 8 hours

FR 29b - 1 hour

FR 29c - 2 hours

Number of respondents:

FR 29a - 35 businesses

FR 29b - 20 businesses

FR 29c - 500 businesses

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C 552(b)(4) and (b)(6)).

Abstract: The surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors for Federal Reserve employees. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve employees.

Board of Governors of the Federal Reserve System, December 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–32462 Filed 12–7–98; 8:45AM]

Billing Code 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

State Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children Pre-application Workshop; Correction

SUMMARY: The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) published a notice in the **Federal Register**, Volume 63, Number 228, Page 65598, on November 27, 1998, announcing the State Childhood Lead Poisoning Prevention and Surveillance of Blood Levels in Children Pre-application Workshop. The meeting name was incorrect in the notice. Please note the correct meeting name, as follows:

NAME: State Childhood Lead Poisoning Prevention and Surveillance of Blood Levels in Children New and Competing-continuation Grantees Pre-application Workshop.

CONTACT PERSON FOR MORE INFORMATION: Claudette Grant-Joseph, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–42, Atlanta, Georgia 30341–3724, telephone 770/488–7330.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 2, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–32490 Filed 12–7–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1022]

COPA Distributors, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that COPA Distributors, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of pyrogallol and ferrous sulfate as a color additive in hair dyes.

FOR FURTHER INFORMATION CONTACT: Aydin Orstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 8C0263) has been filed by COPA Distributors, Inc., c/o Research It!, Inc., 116 Huckleberry Lane, Henderson, NV 89014. The petition proposes to amend the color additive regulations to provide for the safe use of pyrogallol and ferrous sulfate as a color additive in hair dyes.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 10, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–32507 Filed 12–7–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995.

Proposed Project: Ryan White CARE Act Dental Reimbursement Program—0915–0151—Revision

This is a request for approval of a revision of the application and instructions used by accredited dental schools and post-doctoral dental programs requesting reimbursement for documented uncompensated costs for providing oral health care for HIV infected individuals. Awards are authorized under section 776(b) of the PHS Act (42 U.S.C. 294n).

The HIV/AIDS Bureau needs to collect this information to determine the amount of the reimbursement award that is made to each institution. The information will also assist the Health Resources and Services Administration in understanding: (1) the extent to which dental programs are involved in the treatment of HIV infected individuals; (2) the type of individuals seeking care; (3) the scope and extent of HIV oral health services provided; (4) the time and costs involved in providing these services; and (5) how the funds used by the institutions are allocated.

The hourly burden estimate has increased substantially based upon the experience of the grantees in completing the information required. The burden estimate is as follows:

Type of information	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	105	1	17.5	1838

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 2, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–32514 Filed 12–7–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Licensing Opportunity and/or Cooperative Research and Development Agreement (CRADA) Opportunity to Develop a Hepatitis C virus (HCV) Vaccine Based Upon the Synthesis and Purification of Non-infectious HCV-like Particles Containing HCV Structural Proteins

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) is seeking licensees and/or capability statements from parties interested in entering into a Cooperative Research and Development Agreement (CRADA) to develop a hepatitis C virus (HCV) vaccine based on in the synthesis, large scale production and purification of non-infectious HCV-like particles containing HCV structural proteins (Baumert, TF et al. 1998, J. Virol. 72:3827–3836).

The invention claimed in DHHS Reference No. E–009–97/0, "Synthesis and Purification of Hepatitis C Virus-Like Particles In Vitro" (TJ Liang, TF Baumert), field 08 Nov 96, is available for licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under one or more CRADAs in the clinically important applications described below in the SUPPLEMENTARY INFORMATION section.

DATES: Only written CRADA capability statements received by the NIDDK on or before March 1, 1999 will be considered. There is no deadline by which license applications must be received.

ADDRESSES: Capability statements should be submitted to Dr. Michael W. Edwards, Office or Technology Development, National Institute Diabetes and Digestive and Kidney Diseases, National Institutes of Health, BSA Building, Suite 350 MSC 2690, 9190 Rockville Pike, Bethesda, MD 20814–3800; Tel: 301/496–7778, Fax: 301/402–0535; Electronic mail: mels@nih.gov.

Questions about the licensing opportunity, copies of the patent application, or requests for license applications should be addressed to Carol Salata, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Rockville, MD 20852–3804; Tel: 301/496–7057 ext. 232; Fax: 301/402–0220; Electronic mail: cs253n@nih.gov.

SUPPLEMENTARY INFORMATION: HCV is a major causative agent of post-transfusion and community-acquired non-A, non-B hepatitis world-wide. About 4 million people in the U.S. and probably more than 100 million worldwide are infected with HCV. The majority of HCV infected individuals become persistently infected and many develop chronic hepatitis which progresses eventually to liver cirrhosis and hepatocellular carcinoma.

HCV is a member of the flavivirus family. The HCV viron contains a positive-strand RNA genome of 9.5 kilobases including a highly conserved 5′ non-coding region followed by a long open reading frame of 9030 to 9099 nucleotides that is translated into a single polyprotein about 3,010 to 3030 amino acids long. Although the viral genomic organization has been characterized in detail, morphologic analysis of hepatitis C virus has been hampered by low levels of HCV particles in infected patients and the inability to propagate efficiently the virus in cultured cells. The levels of the viral particles present in infected patient plasma and/or liver tissues are very low, making it difficult to visualize the virus. Studies of HCV infection in chimpanzees, a reliable animal model for hepatitis C, have provided evidence that HCV is inactivated by chloroform, indicating that it contains lipids and therefore is probably enveloped. Filtration studies have estimated the viron particle size to be about 30–60 nm in diameter.

Under the CRADA the synthesis, large scale production, and purification of HCV virus-like particles will be optimized and the agent evaluated in a series of preclinical studies in animals as well as initial safety testing in humans. Positive outcomes of these studies will indicate continued clinical development aimed at supporting regulatory approval of a product to be labeled for use in humans.

NIDDK's principal investigator has extensive experience with recombinant technology as applied to the synthesis, purification and testing of HCV-like particles. The Collaborator in this endeavor is expected to assist NIDDK in evaluating its current system for producing HCV vaccine formulation and to develop and optimize adjuvants, if necessary, to manufacture sufficient quantities of the product for preclinical testing in animals and initial safety studies in humans. The Collaborator must have experience in the manufacture of vaccine formulations according to applicable FDA guidelines and Points to Consider documents to include Good Manufacturing Procedures (GMP). In addition, it is expected that the Collaborator would provide funds to supplement the NIDDK PI's research budget for the project and to support the preclinical and initial human testing.

The capability statement should include detailed descriptions of: (1) Collaborator's expertise in vaccine formulation and development, (2) Collaborator's ability to manufacture sufficient quantities of the product according to FDA guidelines and Points to Consider documents, (3) the technical expertise of the Collaborator's principal investigator and laboratory group in preclinical safety testing (e.g., expertise in in vitro and in vivo toxicity, efficacy and pharmacology studies) and initial human safety studies, and (4) Collaborator's ability to provide adequate funding to support preclinical and initial human safety studies required for marketing approval.

The Public Health Service (PHS) has filed patent applications both in the U.S. and internationally related to this technology. Notice of the availability of the patent applications for licensing was first published in the **Federal Register** on January 28, 1998 (63 FR 4274). Information about the patent applications and pertinent information not yet publicly described may be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA.

Dated: December 1, 1998.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–32491 Filed 12–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Biomedical Research Technology

Date: February 11–12, 1999

Time: February 11, 1999, 8:00 AM to Adjournment

Agenda: To review and evaluate grant applications

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814

Contact Person: John L. Meyer, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 1, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32493 Filed 12–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel

Date: December 11, 1998

Time: 3:00 PM to 5:00 PM

Agenda: To review and evaluate grant applications

Place: National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 609, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Ken D. Nakamura, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: December 1, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32494 Filed 12–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel

Date: December 15, 1998

Time: 2:00 PM to 4:00 PM

Agenda: To review and evaluate grant applications

Place: Parklawn Building—Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call)

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 1, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32492 Filed 12–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel Individual National Research Service Award Applications

Date: December 4, 1998

Time: 1:00 PM to 5:00 PM

Agenda: To review and evaluate grant applications

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research National Institutes of Health/PHS/DHHS, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 1, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32495 Filed 12–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 7, 1988

Time: 11:30 AM to 1:00 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: David Monsees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7816, Bethesda, MD 20892, (301) 435–0684

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 10, 1988

Time: 2:00 PM to 3:30 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Garrett V. Keefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 11, 1998

Time: 1:00 PM to 4:00 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 11, 1988

Time: 1:00 PM to 4:00 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Carol A. Campbell, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7848, Bethesda, MD 20892, (301) 435–1257

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 11, 1998

Time: 1:00 PM to 2:00 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 11, 1998

Time: 1:00 PM to 2:00 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 14, 1998

Time: 3:30 PM to 5:30 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Gloria B. Levin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–0692

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 14, 1998

Time: 12:30 PM to 3:00 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Cheri Wiggs, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7848, Bethesda, MD 20892, (301) 435–1261

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 2, 1998.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32496 Filed 12–7–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Kaiser Sand and Gravel Company Felton Sand Plant, Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability

SUMMARY: Kaiser Sand and Gravel Company of Pleasanton, California, has applied to the Fish and Wildlife Service for an incidental take permit pursuant to the Endangered Species Act of 1973, as amended. The Service proposes to issue an incidental take permit for the federally listed endangered Mount Hermon June beetle (*Polyphylla barbata*) and Zayante band-winged grasshopper (*Trimerotropis infantilis*) at Kaiser's Felton Sand Plant located near Felton in Santa Cruz County, California. This notice announces the availability of the permit application and the Environmental Assessment. The permit application includes the Habitat Conservation Plan for the Felton Sand Plant and an Implementing Agreement. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments should be received on or before January 7, 1999.

ADDRESSES: Comments should be addressed to Diane K. Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: David Pereksta, Fish and Wildlife Biologist, at the above address; telephone (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address or telephone. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background Information

The Felton Plant has been operating as a sand quarry since 1954, pursuant to the California Surface Mining and Reclamation Act and related authorization from the County of Santa Cruz. The Plant encompasses approximately 232 acres within Santa Cruz County, California, immediately north and west of the City of Scotts Valley. The sand plant property is generally bounded by Wirth Lane to the south, Mt. Hermon Road to the east and north, and undeveloped County lands to the west. Approximately 63 percent (approximately 146 acres) of the site is actively mined and is comprised of bare slopes, pits, a small quarry office and associated mining equipment. A portion of the quarry (approximately 37 acres; 17 percent) is currently being reclaimed; these completed mining areas are being revegetated with native plant species indicative of northern maritime chaparral and coast range ponderosa pine forest. The undisturbed portions of the quarry (approximately 47 acres; 20 percent) support two major plant community types: northern maritime chaparral and coast range ponderosa pine forest. The properties to the west, north, and east are predominately undeveloped and forested. Single-family residential development occurs south and east of the site within the City of Scotts Valley.

Of the 47 acres within the site that are undisturbed, 14 acres are scheduled for mining as per the quarry's approved mining plan. Mining within this 14-acre area would adversely affect the Zayante band-winged grasshopper and Mount Hermon June beetle. Kaiser Sand and Gravel Company has applied to the Service for an incidental take permit for these two species and has prepared a Habitat Conservation Plan which includes measures to minimize and mitigate the impacts of this mining on these species.

Other areas of the quarry support two federally-listed plant species, the Ben Lomond wallflower (*Erysimum teretifolium*) and the Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*). These two species are not known to occur within the 14-acre mining area and will not be adversely affected by mining activities or by this Habitat Conservation Plan.

Kaiser Sand and Gravel Company needs an incidental take permit from the Service because listed wildlife species are protected against "take" pursuant to section 9 of the Act. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service proposes to issue an 8-year permit to Kaiser Sand and Gravel Company for incidental take of an unquantifiable number of Mount Hermon June beetles and Zayante band-winged grasshoppers in the 14-acre mining area. The proposed action would result in the loss of habitat for, and individuals of, the Mount Hermon June beetle and Zayante band-winged grasshopper in the 14-acre mining area as the natural vegetation communities in which they are found are removed during mining operations.

Kaiser Sand and Gravel Company has developed a Habitat Conservation Plan which proposes measures to minimize and mitigate impacts to listed species. Under the Plan, the Kaiser Company will: (1) grant conservation easements in perpetuity to the County for a 16.2-acre West Perimeter Habitat Set Aside Area (an area of undisturbed ponderosa pine forest) and a 15.0-acre Revegetation Set Aside Area; (2) provide for protection and long-term management of the West Perimeter Habitat and Revegetation Set Aside Areas, including maintenance of protective perimeter fencing and signs to prevent illegal trespass; (3) avoid unnecessary disturbance of listed species in other portions of the mine; (4) continue to revegetate completed mining areas with native plant species; (5) enhance 2.4 acres of existing revegetation within the Revegetation Set Aside Area with the goal of establishing potential habitat for the listed species; (6) revegetate 2.1 acres of completed slopes and benches within the Revegetation Set Aside Area with the goal of establishing potential habitat for the listed species; (7) continue to provide funding for and implement long-term management of the designated set aside areas; and (8) revise the existing mine revegetation plan by adopting a planting mix more conducive to the Plan Species to increase the Revegetation Set Aside Area's value as potential habitat for the listed species. The Habitat Conservation Plan also defines measures to ensure that the elements of the Plan are implemented in a timely manner.

Environmental Assessment

The Environmental Assessment considers the environmental consequences of the proposed action and no action alternatives. A modified mining plan alternative was also considered to avoid take of the Mount Hermon June beetle and Zayante band-winged grasshopper, but was deemed unfeasible due to unavoidable impacts to the proposed 14-acre mining area from reclamation activities for adjacent areas that have been previously mined.

A no take alternative was not feasible due to the widespread distribution of potential habitat for the listed species in the 14-acre mining area.

Under the no action alternative, the Service would not issue an incidental take permit to the Kaiser Company, the Habitat Conservation Plan would not be implemented, and mining expansion would not occur at the Felton Sand Plant. The Plant could still operate for the next 10 years, but only within the confines of the existing mining operation areas. Reclamation of previously mined areas would occur pursuant to the California Surface Mining and Reclamation Act; however, this alternative would not include the permanent habitat protection and conservation within the facility provided through the Habitat Conservation Plan.

This notice is provided pursuant to section 10(a) of the Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of law. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the listed species. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: November 27, 1998.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operation Office, Region 1, Sacramento, California.

[FR Doc. 98–32489 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet December 9, 1998 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: December 9, 1998, Mexico–10:00 a.m.

ADDRESSES: The meeting will be held at the Hotel Finca Real, located at Victoria, Esquina Bustamante, Xalapa, Veracruz, Mexico. The North American Wetlands Conservation Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia, 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–223, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State, Federal, and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: December 1, 1998.

Paul R. Schmidt,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–32548 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1220–00]

Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA) for Possible Disposal of Public Land in Doña Ana County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare an RMPA/EA and opportunity for public participation.

SUMMARY: The Bureau of Land Management (BLM), Las Cruces Field Office, is initiating the preparation of an RMPA which will include an EA for the possible disposal by direct sale at fair market value of 320 acres of BLM-administered public land in Dona Ana County in south-central New Mexico. The land is located in T. 25 S., R. 3 E., Section 13, S½. The RMPA will allow for direct sale of the land if that is the alternative chosen by the BLM New Mexico State Director. The public is invited to participate in the scoping process to identify issues and planning criteria to be considered in the development of the RMPA/EA. The BLM will maintain a mailing list of parties and persons interested in being kept informed about the RMPA/EA.

DATES: Comments related to this action will be accepted through January 20 1999.

ADDRESSES: Comments should be sent to Dwayne Sykes, Team Leader, 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Tim Sanders, Acting Assistant Field Manager, at (505) 525–4393 or Dwayne Sykes at (505) 525–4400.

SUPPLEMENTARY INFORMATION: Our Lady's Youth Center of El Paso, Texas has proposed to acquire 320 acres of BLM-administered land within the Organ/Franklin Mountains Area of Critical Environmental Concern (ACEC) in Doña Ana County, New Mexico. The land would be used as part of the Lord's Ranch which the Center operates on adjacent private land. The Ranch is a retreat and working farm for disadvantaged youth.

All land within the ACEC was identified for retention in Federal ownership in the Mimbres RMP completed in 1993. In order to consider direct sale of the land, the RMP must be amended.

The RMPA/EA will be prepared by an interdisciplinary team of BLM resource specialists including realty, recreation, cultural, minerals, and hazardous materials specialists. Additional technical support will be provided by other specialists as needed.

Dated: December 1, 1998.

Margaret Wyatt,

Field Manager, Las Cruces.

[FR Doc. 98–32488 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability: Draft Comprehensive Design Plan for the White House and President's Park and Draft Environmental Impact Statement.

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Draft Comprehensive Design Plan for the White House and President's Park and Draft Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy

Act of 1969, the National Park Service (NPS) announces the availability of a draft Comprehensive Design Plan for the White House and President's Park and Draft Environmental Impact Statement (CDP–DEIS). This notice also announces the availability of a 24-page summary of the draft plan; the dates and location of public forums for the purpose of answering questions about the proposed plan; and the address to which comments are to be submitted.

DATES: There will be a 90-day public review period for the document. Comments on the CDP–DEIS should be received no later than March 11, 1999. An exhibit on the proposed plan will be available at the White House Visitor Center from December 2, 1998, until March 11, 1999.

There will be two public forums held on January 27 and 28, 1999, at the White House Visitor Center, 1450 Pennsylvania Avenue South, NW., Washington, DC. In addition to the exhibit, members of the planning team and staff will be available to answer questions about the proposed plan and the alternatives considered.

ADDRESSES: Comments on the CDP–DEIS should be sent to: Office of White House Liaison, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242. For those who prefer e-mail, comments should be sent to: white__house__liaison@nps.gov. A copy of the summary can be obtained from: http://www.nps.gov/planning, or by writing: Summary, Office of White House Liaison, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

Single copies of the 400-page CDP–DEIS can be obtained by writing: Draft Plan/DEIS, Office of White House Liaison, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The CDP–DEIS addresses the future management and use of the buildings, grounds and cultural resources of the White House and President's Park. The goal is to better serve the presidency and the people, while protecting the historic character of this national treasure. The CDP–DEIS proposes actions to meet needs in the areas of: support services for the home and office of the president, visitor use and services, cultural and natural resource protection, transportation, site character, official functions and special events. The CDP–DEIS contains the description and assessment of the proposed plan and four other alternatives considered, including the required no-change alternative.

Impacts are analyzed on the following topics: cultural resources, natural resources, home and office of the president, the visitor experience, special events, transportation, the socioeconomic environment, and site management and operations.

The NPS is the lead-planning agency and has responsibility for developing the plan in conjunction with other agencies. Congressionally chartered agencies with stewardship or oversight responsibilities at the site serve on an NPS-led Executive Committee. Serving on the committee are: Executive Office of the President, Executive Residence, White House Military Office, U.S. Department of the Treasury, U.S. Secret Service, General Services Administration, District of Columbia, Commission of Fine Arts, National Capital Planning Commission, Advisory Council on Historic Preservation and until 1995 the Pennsylvania Avenue Development Corporation.

The planning process to develop the Draft Comprehensive Design Plan for the White House and President's Park began in 1992 with data collection. Issue identification took place in 1993 through 27 workshops involving some 70 agencies and organizations. Visitor opinions were obtained through surveys and through a 4-day public involvement exhibit held on the Ellipse in the spring of 1993. Desired futures were developed in workshops during the fall of 1993. Interpretative themes were developed in March 1994. Working group meetings on the news media space occurred between March 1995 and January 1996. Alternatives were released for public review in the spring of 1995.

All review comments received on the CDP–DEIS will become part of the public record.

Terry R. Carlstrom,

Regional Director, National Capital Region, National Park Service.

[FR Doc. 98–32512 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 28, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by December 23, 1998.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Pulaski County

Democrat Printing & Lithograph Co. Building 114—122 E. Second St. Little Rock, 87001547

CONNECTICUT

Hartford County

West End Historic District, Roughly along Park Place, Vine, Forest, Lincoln, Liberty, Sunnyledge, Hart, Lexington, Murray, and Woodbine Sts., New Britain, 98001542

IOWA

Clinton County

Dierks, Peter, House, IA 136, 5 mi. W of Clinton, Clinton vicinity, 98001543

MISSOURI

Callaway County

Butler—Bell—Collier House, 207 E. Ninth St., Fulton, 98001545

Johnson County

Masonic Temple, 101–103 W. Market St., and 301–303 N. Holden St., Warrensburg, 98001544

NEW HAMPSHIRE

Sullivan County

Meriden Town Hall, 110 Main St., Plainfield vicinity, 98001548

NEW YORK

Broome County

Gates, Cyrus, Farmstead, 10–17 Old Nanticoke Rd., Maine vicinity, 98001549

St. Lawrence County

Methodist Episcopal Church of East DeKalb, 696 E. DeKalb Rd., DeKalb, 98001550

NORTH CAROLINA

Buncombe County

Rice—Cornell—Brown House, 29 Rice Branch Rd., Asheville, 98001546

Forsyth County

Union Station, 300 Martin Luther King, Jr., Dr., Winston-Salem, 98001547

[FR Doc. 98–32513 Filed 12–7–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

Emergency Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

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Room 101, 500 E Street SW., Washington, DC 20436.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: November 25, 1998, 63 FR 65222.

DATE OF MEETING: Monday, December 7, 1998.

CHANGE OF TIME:

Original Time: 2:00 p.m.
New Time: 3:00 p.m.

STATUS: Open to the public.

Notice is hereby given that a Commission meeting was scheduled for Monday, December 7, 1998 at 2:00 p.m., and in conformity with 19 C.F.R. § 201.37(a) and (b), and as required by 19 C.F.R. § 201.35, the Commission has determined to change the time for the meeting to December 7, 1998 at 3:00 p.m.

Commissioners Bragg, Miller, Crawford, Hillman, Koplan, and Askey determined by circulation of an action jacket that Commission business requires the change in time, and affirmed that no earlier notice of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR FURTHER INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: December 4, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32661 Filed 12–4–98; 1:32 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–36]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consultation Agreements, 29 CFR Part 1908

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed reinstatement of the information collection requirement contained in 29 CFR Part 1908. The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before February 8, 1999.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–36, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Francis Yebesi, Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 693–2213. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Francis Yebesi at (202) 693–2233, or Barbara Bielaski at (202) 693–1954.

SUPPLEMENTARY INFORMATION:

I. Background

Section 7(c)(1) of the Occupational Safety and Health (OSH) Act authorizes the Secretary of Labor to, "with the consent of any State or Political subdivision thereof, accept and use the services facilities, and personnel of any agency of such state or subdivision with reimbursement." Section 21(c) of the Act authorizes the Secretary of Labor to "consult with and advise employers and employees . . . as to effective means of preventing occupational illnesses and injuries." To satisfy the intent of these and other sections of the OSH Act, the Occupational Safety and Health Administration (OSHA) codified the terms that govern cooperative agreements between OSHA and State governments whereby State agencies provide consultation services to private employers to assist them in complying with the requirements of the Occupational Safety and Health (OSH) Act. The terms were codified as the Consultation Program regulations (29 CFR part 1908).

The consultation regulations specify services to be provided and practices and procedures to be followed by the state consultation programs. Information collection requirements set forth in the consultation regulations are in two categories: "State Responsibilities" and "Employer Responsibilities." Five regulatory provisions require information collection activities by the State. The Federal government provides 90 percent of funds for consultation services under the terms of the cooperative agreement. Three requirements apply to employers and specify conditions which the employer must meet before receiving consultation services.

The Compliance Assistant Authorization Act of 1998 (H.R. 2864), which amends section 21 of the OSH Act of 1970 by adding a new paragraph (d), authorizes the Secretary of Labor to enter into agreements with States to provide consultation services, and to establish rules under which employers may qualify for inspection exemption. OSHA plans to propose changes to 29 CFR part 1908 to achieve the intent of H.R. 2864. Program modification resulting from H.R. 2864 (as implemented through changes to 29 CFR part 1908) entail additional collection requirements.

II. Current Actions

This notice requests a reinstatement of the Office of Management and Budget (OMB) approval of the Consultation Agreements (formerly OMB Number 1218–0110).

Type of Review: Reinstatement.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Consultation Agreements.

OMB Number: 1218–0NEW (formerly 1218–0110).

Agency Number: Docket Number ICR–98–36.

Affected Public: State government designees and/or employers who use State consultation services.

Frequency: On occasion.

Average Time Per Response:

State Government designees:
- 40 hours to prepare cooperative agreement.
- 17.5 hours to prepare files for review.
- 30 minutes to report failure to correct hazards.
- 5 minutes to prepare list of serious hazards and correction due dates.

Employers using consultation service:
- 10 minutes to verify correction of hazards.
- 5 minutes to post list of serious hazards and correction due dates.
- 5 minutes to inform Compliance Safety and Health Officer (CSHO) of consultation visit in progress.
- 3 minutes to post notice of participation in the Safety and Health Achievement Recognition Program (SHARP).

Estimated Total Burden hours: 11,935.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, D.C., this 1st day of December 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–32535 Filed 12–7–98; 8:45 am]

BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 98–6]

Cable Compulsory License: Specialty Station List

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of final specialty station list.

SUMMARY: The Copyright Office is publishing a final list of stations listed in affidavits sent to the Copyright Office in which the owner or licensee of the station attests that the station qualifies as a specialty station in accordance with the Federal Communications Commission's (FCC) definition of specialty station in effect on June 24, 1981. The list shall be used to verify the specialty station status of those stations identified as such by cable systems on their semi-annual statements of account.

EFFECTIVE DATE: January 1, 1999.

FURTHER INFORMATION: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: Under the cable compulsory license, section 111 of title 17, United States Code, a cable operator may carry the signal of a television station classified as a specialty station at the base rate rather than at the higher 3.75% rate that is incurred for the carriage of a non-permitted signal. 37 CFR 256.2(c). Specialty station status is determined by reference to the former regulations of the Federal Communications Commission (FCC) which defined a specialty station as "a commercial television broadcast station that generally carries foreign-language, religious, and/or automated programming in one-third of the hours of an average broadcast week and one-third of the weekly prime-time hours." 47 CFR 76.5(kk) (1981). The FCC no longer determines whether a station qualifies as a specialty station; however, the Copyright Office updates the list periodically, because the list remains relevant to the cable compulsory license scheme.

The Copyright Office published its first specialty station list in 1990 under a procedure which allowed the owner of the station to file an affidavit with the Office attesting to the fact that the station's programming comports with the 1981 FCC definition, and hence, qualifies it as a specialty station. 55 FR 40021 (October 1, 1990). The Office agreed at that time to update the list approximately every three years.

Accordingly, on August 4, 1998, the Copyright Office published a notice asking the owner, or a valid agent of the owner, to file a sworn affidavit with the Copyright Office stating that the station's programming satisfies the FCC's former requirements for specialty station status. 63 FR 41599 (August 4, 1998).

On October 23, 1998, the Office published a notice listing the forty-nine broadcast stations for which the owner or licensee of the station had filed the requested affidavit. 63 FR 56948 (October 23, 1998). In the notice, the Office also requested that any party objecting to any claim to specialty station status submit comments to the Office stating his or her objections. No comments or objections were filed with the Office.

Since the publication of the initial list, the Office has received ten additional affidavits, attesting to the specialty station status of the identified stations. Because these stations were not listed in the earlier published list, these stations have been identified with an asterisk (*) in the final list. Any interested party may file an objection to a newly listed station or to any other late-filed affidavit, and the objection shall be filed together with the corresponding affidavit. All affidavits and related comments or objections shall be kept on file in the Licensing Division of the Copyright Office.

The final list of specialty stations, published herein, shall be effective January 1, 1999, for the accounting period 1999/1 and thereafter. Copyright Office licensing examiners shall refer to the final annotated list in examining a statement of account where a cable system operator claims specialty station status for a particular station. If a cable system operator claims specialty station status for a station not on the published final list, the examiner determines whether the owner of the station has filed an affidavit since publication of the list.

List of Specialty Stations: Call Letters and Cities of License

CBAFT	Moncton, New Brunswick, Canada
CBFT	Montreal, Quebec, Canada
CBKFT	Regina, Saskatchewan, Canada
CBOFT	Ottawa, Ontario, Canada
CBUFT	Vancouver, British Columbia, Canada
CBVT	Quebec City, Quebec, Canada
CBWFT	Winnipeg, Manitoba, Canada
CBXFT	Edmonton, Alberta, Canada
CFCM–TV	Quebec, Quebec, Canada
CFER–TV	Rimouski, Quebec, Canada
CFTM–TV	Montreal, Quebec, Canada
CHEM–TV	Trois-Rivieres, Quebec, Canada
CHLT–TV	Sherbrooke, Quebec, Canada
CJPM–TV	Chicoutimi, Quebec, Canada
CKSH–TV	Sherbrooke, Quebec, Canada
K30CE	Austin, TX
K48AM	Albuquerque, NM
K52AO	Tucson, AZ
KABE–LP	Bakersfield, CA
KCHF	Santa Fe, NM
KDRX–LP	Phoenix, AZ
KDTV–LP	Santa Rosa, CA
KDTV (TV)	San Francisco, CA
KFTV (TV)	Hanford, CA
KLUZ–TV	Albuquerque, NM
KMEX–TV	Los Angeles, CA
KSTS*	San Jose, CA

KTMD* Galveston, TX
KTSF (TV) San Francisco, CA
KTVW–TV Phoenix, AZ
KUVN–LP Fort Worth, TX
KUVN (TV) Garland, TX
KUVS (TV) Modesto, CA
KVDA* San Antonio, TX
KVEA (TV)* Corona, CA
KWEX–TV San Antonio, TX
KWHY–TV Los Angeles, CA
KXLN–TV Rosenberg, TX
W47AD Hartford, CT
W50BF–TV Sharon (Mercer County), PA
W63BF Aguadilla, Puerto Rico
WAQP–TV Saginaw, MI
WDMR–LP* Springfield, MA
WGBO–TV Joliet, IL
WINM–TV Angola, IN
WKAQ* San Juan, Puerto Rico
WKBS–TV Johnstown/Altoona, PA
WLTV(TV) Miami, FL
WLXI–TV Greensboro, NC
WNYB–TV Jamestown, NY
WNJU* Linden, NJ
WPCB–TV Greensburg/Pittsburgh, PA
WRDM–LP* Hartford, Connecticut
WSCV* Fort Lauderdale, FL
WSNS–TV* Chicago, IL
WTCT–TV Marion IL
WTLJ–TV Muskegon, MI
WXTV–LP Philadelphia, PA
WXTV (TV) Paterson, NJ

Dated: December 2, 1998.

David O. Carson,
General Counsel.

[FR Doc. 98–32536 Filed 12–7–98; 8:45 am]

BILLING CODE 1410–31–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Transfer of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of transfer of records subject to the Privacy Act to the National Archives.

SUMMARY: Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the **Federal Register**. NARA publishes a notice of the records newly transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Kurtz, Assistant Archivist for Records Services, Washington, DC, on (301) 713–7000.

SUPPLEMENTARY INFORMATION: In accordance with section (l)(1)(3) of the Privacy Act, archival records transferred from executive branch agencies to the National Archives of the United States are not subject to the provisions of the Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the **Federal Register** when executive branch systems of records retrievable by personal identifiers are transferred to the National Archives of the United States. After transfer of records retrievable by personal identifiers to the National Archives of the United States, NARA does not maintain these records as a separate system of records. NARA will attempt to locate specific records about an individual in any system of records described in a Privacy Act Notice as being part of the National Archives of the United States. Furthermore, records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment.

Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series.

In this notice, each system is identified by the system name used by the executive branch agency that accumulated the records. That system name is followed by information in parentheses about the National Archives Record Group to which records in the system have been allocated. In the section of the notice covering categories of records in the system, the specific segment of the system transferred to the National Archives of the United States is identified by the accession number assigned to the system segment when it was transferred to the National Archives and the series title associated with the system in the National Archives.

The following systems of records, or parts thereof, retrievable by personal identifiers have been transferred to the National Archives since the last notice published at 61 FR 36573, (July 11, 1996):

1. *System name:* General Personnel Records, OPM/GOVT–1 (part of National Archives Record Group 478, Records of the Office of Personnel Management).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover current and former Federal employees as defined in 5 U.S.C. 2105.

Categories of records in the system: Records in the National Archives covered by this notice include records contained in the Central Personnel Data File (CPDF), a definitive list of personal and employment related information on Federal employees, 1985. (NARA Accession NN3–478–096–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Retrieved by various combinations of name, birth date, social security numbers, or identification number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

2. *System name:* Clinical Research: Records of subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA, 09–25–0142 (part of National Archives Record Group 443, Records of the National Institutes of Health).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals whose physical, genetic, social, psychological, cultural, economic, environmental, behavioral, pharmacological, or nutritional conditions or habits are studied in relationship to the normal aging process and/or diseases and other normal or abnormal physical or psychological conditions of the aged; and normal volunteers who are participants in such studies.

Categories of records in the system: Records in the National Archives covered by this notice include Established Populations for Epidemiologic Studies of the Elderly (EPESE), Part III, follow-ups I through VI; and baseline mortality, 1982–1990. (NARA Accession NN3–443–096–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Retrieved by personal identifiers such as name, code number and/or social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

3. *System name:* Personnel Files, TVA–2 (part of National Archives Record Group 142, Records of the Tennessee Valley Authority).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover current and former TVA employees and applicants for employment.

Categories of records in the system: Records in the National Archives covered by this notice include Human Resources Information System (HRS)—formerly Employee Information System(EIS); HRS94/95R, unaltered copy to be restricted for 72 years; and HRS94/95S, public use version, 1994–1995. (NARA Accession NN3–142–097–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Retrieved by indexed name and social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

4. *System name:* Central Criminal Division Index File and Associated Records, JUSTICE/CRM–001 (part of National Archives Record Group 60, General Records of the Department of Justice).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover persons referred to in potential or actual cases and matters of concern to the Criminal Division and correspondents on subjects directed or referred to the Criminal Division.

Categories of records in the system: Records in the National Archives covered by this notice include class 67–102, bail bonds and forfeitures, policies and procedures, 1926–1966 (NARA Accession NN3–060–098–008); 146–13–7–2–0 WWII, Alien enemy, resettlement of Japanese Americans, 1941-1944 (NARA Accession NN3–060–098–009); and general name index cards arranged alphabetically, 1930-1979 (NARA Accession NN3–060–096–003).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

5. *System name:* Personality Index to the Central Foreign Policy Records, STATE–29 (part of National Archives Record Group 59, Records of the Department of State).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals who are involved in the establishment, discussion, or definition of foreign policy; individuals who utilize the services of the Department of State.

Categories of records in the system: Records in the NARA covered by this notice include indexes to central foreign policy files, 1967–1973. (NARA Accession NN3–059–097–001, and NN3–059–097–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in NARA of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers; and electronic database stored on magnetic tape.

b. Retrievability: Retrieved by individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

6. *System name:* Office of the Inspector General Record Index, JUSTICE/OIG–001 (part of National Archives Record Group 60, General Records of the Department of Justice).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals or entities who are or have been the subject of inquiries or investigations conducted by the OIG including current and former employees. Individuals who are witnesses, complainants, confidential, or nonconfidential informants, and parties who have been identified by the OIG as potential subjects of or parties to an investigation under the jurisdiction of the OIG.

Categories of records in the system: Records in the National Archives covered by this notice include Inspector General case file—Good Old Boy Roundup, 1980–1996. (NARA Accession NN3–060–098–001);

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers; and electronic database stored on magnetic tape.

b. Retrievability: Retrieved by individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

7. *System name:* General Files System of the Office of the Attorney General, JUSTICE/OIG–001 (part of National Archives Record Group 60, General Records of the Department of Justice).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals who relate to official federal investigations, policy decisions, and administrative matters of such significance that the Attorney General maintains information indexed to the name of that individual including, but not limited to, subjects of litigation, targets of investigations, members and staff members of Congress, upper-echelon Government officials, and individuals of national prominence or notoriety.

Categories of records in the system: Records in the National Archives covered by this notice include invitations maintained for Attorney General John N. Mitchell, 1969 (NARA Accession NN3–060–098–005); and records of Attorney General Edward Levi, and Counsellor to the Attorney General Douglas Marvin, 1974–1977 (NARA Accession NN3–060–098–007).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by subject title and individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquirics to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

8. *System name:* Freedom of Information/Privacy Acts File, JUSTICE/CIV–005 (part of National Archives Record Group 60, General Records of the Department of Justice).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals who request disclosure of Civil Division records pursuant to the Freedom of Information Act (FOIA).

Categories of records in the system: Records in the National Archives covered by this notice include Civil Division litigation case files related to the assassination of President John F. Kennedy, 1981–1996. (NARA Accession NN3–060–098–013.)

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by the date of final response.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

9. *System name:* The Immigration and Naturalization Service Index System, JUSTICE/INS–001 (part of National Archives Record Group 85, Records of the Immigration and Naturalization Service).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals covered by provisions of the immigration and nationality laws of the United States; individuals who have arrived or departed by aircraft or vessel at a United States port; or aliens lawfully admitted for permanent residence, commuters and other authorized frequent border crossings, and nonimmigrant persons other than transients.

Categories of records in the system: Records in the National Archives covered by this notice include microfilm masters of passenger and crew arrivals (approximately 44,200 reels) and related binders cataloguing ship arrival information, 1897–1982 (NARA Accession NN3–085–096–001); and Statistical/Reporting Systems: deportations, exclusions, required departures, lawful immigrants and naturalizations, FY 1993 (restricted) and legalization applicants data, collected on the I700 and I687 applications data forms, FY 1992 (public use); and documentation for deportations, required departures, and legalizations, FY 1992 (NARA Accession NN3–085–096–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers; and electronic database stored on magnetic tape.

b. Retrievability: Generally, records are indexed and retrievable by name and/or "A" or "C" file number.

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c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

10. *System name:* The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001A (part of National Archives Record Group 85, Records of the Immigration and Naturalization Service).

System location: 8601 Adelphi Road, College Park, MD 20740–6001; and National Archives and Records Administration-Northeast Region (Boston), 380 Trapelo Road, Waltham, MA 02154.

Categories of individuals covered by the system: Records in the National Archives cover individuals covered by provisions of the Immigration and Nationality Act of the United States. Individuals who are under investigation, were investigated in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, executive orders, and presidential proclamations administered by INS, and witnesses and informants having knowledge of such violations.

Categories of records in the system: Records in the National Archives covered by this notice include (in College Park, MD) Statistical/Reporting System: deportations, exclusions, required departures, lawful immigrants and naturalizations, FY 1993 (restricted) and legalization applications data, collected on the I700 and I687 applications data forms, FY 1992 (public use); and documentation for deportations, required departures, and legalizations, FY 1992 (NARA Accession NN3–085–096–002). Also, (in Waltham) Chinese Exclusion Case Files, 1911–1955 (NARA Accession 1NS–085–095–001); and Montreal Chinese Case Files, 1900–1952 (NARA Accession 1NS–085–096–001).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers; and electronic database stored on magnetic tape.

b. Retrievability: Generally, records are indexed and retrievable by name and/or "A" or "C" file number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW) (for records at College Park) and the Assistant Archivist for Regional Records Services (NR) (for records in Waltham), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the appropriate system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

11. *System name:* Current Research Information System (CRIS), USDA/CSRS–1 (part of National Archives Record Group 164, Records of the Cooperative State Research Service).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover scientists listed on research projects entered into the CRIS.

Categories of records in the system: Records in the National Archives covered by this notice include the Current Research Information (CRIS) database, 1996. (NARA Accession NN3–164–097–002.)

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Retrieved by name of project leader or co-investigator.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

12. *System name:* Personnel Security Clearance Information Files, A0380–67 DAMI (part of National Archives Record Group 319, Records of the Army Staff).

System location: 8601 Adelphi Road, College Park, MD, 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover any individual, civilian or military, affiliated with the U.S. Army by assignment, employment, contractual relationship, or as the result of an interservice support agreement on whom a personnel security clearance determination has been completed, is in process, or may be pending.

Categories of records in the system: Records in the National Archives covered by this notice include DOD affiliated personnel and incident investigations, 1965. (NARA Accession NN3–319–098–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by individual's surname or social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

13. *System name:* Counterintelligence/Security Files, A0381–20b DAMI (part of National Archives Record Group 319, Records of the Army Staff).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover military and civilian personnel associated with the U.S. Army; and industrial or contractor personnel working in private industry which have contracts involving classified Department of Defense (DOD) information.

Categories of records in the system: Records in the National Archives covered by this notice include DOD affiliated personnel and incident investigations, 1965. (NARA Accession NN3–319–098–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by name, aliases, or title in combination with social security number or regular dossier number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

14. *System name:* Correspondence Files and Correspondence Control Files—Treasury/IRS 00.001 (part of National Archives Record Group 58, Records of the Internal Revenue Service).

System location: 8601 Adelphi Road, College Park, MD, 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover initiators of the correspondence, persons upon whose behalf the correspondence was initiated, and subjects of the correspondence.

Categories of records in the system: Records in the National Archives covered by this notice include plan, response, and general correspondence, 1950–1965 (NARA Accession NN3–058–098–001); and strategic planning documentation, 1961–1982 (NARA Accession NN3–058–098–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD, 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

15. *System name:* Systems of Records Notice by the Office of Personnel Management and Applicable to the Panama Canal Commission, PCC/PR–8 (part of National Archives Record Group 185, Records of the Panama Canal).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover current and former employees of the Panama Canal Commission

Categories of records in the system: Records in the National Archives covered by this notice include Panama Canal Commission Employee folders, 1903–1920. (NARA Accession NN3–185–097–005).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by name or by an identification number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

16. *System name:* General Files of the Panama Canal Commission, PCC/AMRM–1 (part of National Archives Record Group 185, Records of the Panama Canal).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals who are the subject of correspondence or who correspond with the Office of the Administrator and staff offices on a variety of subjects related to the operation, maintenance, and protection of the Panama Canal.

Categories of records in the system: Records in the National Archives covered by this notice include declassified general correspondence accumulated in the former Internal Security Office, 1945–1979. (NARA Accession NN3–185–097–003).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by subject, or by name only.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set for in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

17. *System name:* Records of births, deaths, and marriages that occurred in the former Canal Zone, PCC/AMRM–7 (part of National Archives Record Group 185, Records of the Panama Canal).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals who were born and their parents, individuals who died, individuals who were married, parents who experienced fetal deaths, in the former Canal Zone, and/or in a U.S. Government hospital in the Republic of Panama, from 1904 to September 30, 1979.

Categories of records in the system: Records in the National Archives covered by this notice include Yellow Fever control record, 1949–1951. (NARA Accession Number NN3–185–098–001).

Routine uses of records maintained in the system, including categories of users *and the purpose of such uses:* Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by name, date of birth, death, or marriage, and number of certificate.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

18. *System name:* Injury Compensation Payroll Records, PCC/FMAP–3 (part of National Archives Record Group 185, Records of the Panama Canal).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover beneficiaries under the Federal Employees Compensation Act.

Categories of records in the system: Records in the National Archives covered by this notice include "Personal Injury Registry Books", 1905–1922. (NARA Accession NN3–185–098–004).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by identification number and name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

19. *System name:* Health, Medical, Dental, and Veterinary Records Systems, PCC–CZG/HL–1 (part of National Archives Record Group 185, Records of the Panama Canal).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover employees of the Canal agencies; individuals in the service of and sponsored by a U.S. Government agency (U.S. Armed Forces, State Department, Veterans Administration, U.S. Public Health Service, Federal Aviation Administration, Federal Highway Administration, and Smithsonian Institute).

Categories of records in the system: Records in the National Archives covered by this notice include New York Office personal injury and medical administrative files, 1920–1964. (NARA Accession NN3–185–098–006).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

20. *System name:* Injury Claims (FECA) Files, PCC/PRCL–1 (part of National Archives Record Group 185, Records of the Panama Canal).

System location: 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover employees or former employees making or filing claims against the former canal agencies and commissions.

Categories of records in the system: Records in the National Archives covered by this notice include New York Office personal injury and medical administrative files, 1920–1964. (NARA Accession NN3–185–098–006).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by name of claimant.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

21. *System name:* Directorate of Operations Records System, CIA–49 (part of National Archives Record Group 226, Records of the Office of Strategic Services).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individuals who are of foreign intelligence or foreign counterintelligence interest to the CIA.

Categories of records in the system: Records in the National Archives covered by this notice include miscellaneous field files of the Office of Strategic Services (OSS), 1929–1947. (NARA Accession Numbers NN3–226–097–001, NN3–226–097–002, and NN3–226–097–003).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

22. *System name:* Coal and Metal and Nonmetal Mine Accident and Injury, DOL/MSHA–1 (part of National Archives Record Group 433, Records of the Mine Safety and Health Administration).

System location: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

Categories of individuals covered by the system: Records in the National Archives cover individual workers in the coal and metal and nonmetal mining industries.

Categories of records in the system: Records in the National Archives covered by this notice include accident/employment, accident/injury, and statistical data tapes, 1972–1977. (NARA Accession NN3–433–096–002).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Retrieved by mine identification number and date of accident and injury occurrence or illness diagnosis.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

Notification procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered.

More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at NARA research facilities listed in 36 CFR part 1253.

Appendix—General Statement About Uses and Restrictions

A record from an accessioned system of records may be made available to any person who has applied for and received a researcher identification card. No special qualifications are required in order to use the records of the National Archives. Rule governing the use of records and procedures for applying for research cards are found in 36 CFR part 1254. However, the use of some of the records is subject to restrictions imposed by statute or Executive order, or by the restrictions specified in writing in accordance with 44 U.S.C. 2108 by the transferring agency. Restrictions currently in effect on access to particular records that have been specified by the transferring agency are known as "specific restrictions." Restrictions on access that may apply to more than one record group are termed "general restrictions." They are applicable to the kinds of information or classes of accessioned records designated regardless of the record group to which they have been allocated or the specific system of records in which they are contained. The restrictions are published in the "Guide to the National Archives of the United States" and supplemented by restriction statements approved by the Archivist of the United States and set forth in 36 CFR part 1256.

Dated: December 3, 1998.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 98–32521 Filed 12–7–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, December 15, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED: 7093—Brief of Accident–BK–117–B2 helicopter crash, N909CP, New York City, April 15, 1997; and Safety Recommendation to the Federal Aviation Administration about Blind Rivets.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–32662 Filed 12–4–98; 1:45 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement To Be Submitted:

1. *The title of the information collection:* 10 CFR Part 52, "Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants".
2. *Current OMB approval number:* 3150–0151.
3. *How often the collection is required:* On occasion and every 10 to 20 years for applications for renewal.
4. *Who is required or asked to report:* Designers of commercial nuclear power plants, electric power utilities, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.
5. *The number of annual respondents:* No applications expected during the next three years.
6. *The number of hours needed annually to complete the requirement or request:* 0.
7. *Abstract:* 10 CFR Part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit and an operating license with conditions (combined licenses). Part 52 also establishes requirements for renewal of these permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information form the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, and combined licenses for nuclear power plants.

Submit, by February 8, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 2nd day of December 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32504 Filed 12–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9027–MLA, ASLBP No. 99–757–01–MLA]

Cabot Performance Materials; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Cabot Performance Materials

(Request for Materials License Amendment)

The hearing, if granted, will be conducted pursuant to 10 CFR Subpart L of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by the Redevelopment Authority of the City of Reading and the City of Reading, Pennsylvania in response to a license amendment request by Cabot Performance Materials (Cabot). The proposed amendment would allow decommissioning of Cabot's contaminated sites located in Reading and Revere, Pennsylvania. A notice of the proposed amendment was published in the **Federal Register** at 63 Fed. Reg. 57715 (October 28, 1998).

The Presiding Officer designated for this proceeding is Administrative Judge Peter B. Bloch. Pursuant to the provisions of 10 CFR 2.722, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bloch and Judge Cole in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge Peter B. Bloch, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Rockville, Maryland, this 2nd day of December 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–32500 Filed 12–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Illinois Power Company (the licensee) to withdraw its December 14, 1995, application for proposed amendment to Facility Operating License No. NPF–62 for the Clinton Power Station, located in DeWitt County, Illinois.

The proposed amendment would have eliminated periodic response time testing of selected analog trip modules.

The Commission had previously issued a proposed no significant hazards consideration determination published in the **Federal Register** on January 31, 1996 (61 FR 3501). However, by letter dated November 23, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 14, 1995, as supplemented July 22, 1996, and the licensee's letter dated November 23, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 1st day of December 1998.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32501 Filed 12–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern California Edison Company (the licensee) to withdraw its May 9, 1996, as supplemented by letter dated June 27, 1996, application for proposed amendments to Facility Operating License Nos. NPF–10 and NPF–15 for the San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS), located in San Diego County, California.

The proposed amendment would have added a requirement to maintain a Barrier Control Program to Section 5 of the improved Technical Specifications.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 11, 1996 (61 FR 47981). However, by letter dated November 5, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 9, 1996, and supplemental letter dated June 27, 1996, and the licensee's letter dated November 5, 1998, which withdrew the application for license amendment. The above—2 -documents are available for public inspection at the Commission's Public Document Room, the Gelman Building 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland this 2nd day of December 1998.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32505 Filed 12–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company; Centerior Service Company; and the Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station, Unit No. 1); Order Approving Application Regarding the Transfer of Operating Authority

I

Toledo Edison Company and The Cleveland Electric Illuminating Company are the owners of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio. The owners, together with Centerior Service Company, are the licensees that hold Facility Operating License No. NPF–3 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50) on April 22, 1977. Under this license, Centerior Service Company and Toledo Edison Company act as agents for The Cleveland Electric Illuminating Company, and have exclusive responsibility for and control over the physical construction, operation, and maintenance of Davis-Besse.

II

By application dated June 29, 1998, as supplemented by submittals dated July 14, October 26, and November 30, 1998, the licensees requested approval of the transfer of operating authority under the license to a new company, FirstEnergy Nuclear Operating Company (FENOC), and issuance of a conforming amendment. The licensees proposed to transfer operating authority under the license to FENOC to allow it to use and operate Davis-Besse and to possess and use related licensed nuclear materials in accordance with the same conditions and authorizations in the current operating license. The licensees have also requested the issuance of a license amendment reflecting the transfer of operating authority. FENOC, a wholly-owned subsidiary of FirstEnergy Corporation, the parent of the owners, would become the licensed operator for Davis-Besse and would have exclusive control over the operation and maintenance of the facility. The present plant organization, the oversight organizations, and the engineering and support organizations would be transferred essentially intact from the operating licensees to FENOC. The technical qualifications of the FENOC organization, therefore, would be at least equivalent to those of the existing organization responsible for operating the plant. Centerior Service Company would be removed from the license.

Under the proposed arrangement, ownership of Davis-Besse would remain unchanged, with each owner retaining its current ownership interest. FENOC would not own any portion of Davis-Besse. Likewise, the owners' entitlement to capacity and energy from Davis-Besse would not be affected by the proposed transfer of operating responsibility for Davis-Besse to FENOC. The owners would continue to provide all funds for operation, maintenance, and decommissioning of Davis-Besse by FENOC. The owners' responsibility would include providing funding for any emergency situations that might arise at Davis-Besse.

The licensees requested the Commission's approval of the transfer of operating authority to FENOC and issuance of a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of this application for approval and an opportunity for a hearing was published in the **Federal Register** on August 4, 1998 (63 FR 41602), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on September 8, 1998 (63 FR 47531).

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information contained in the submittals of June 29, July 14, October 26, and November 30, 1998, and other information before the Commission, the NRC staff has determined that FENOC is qualified to hold the license to the extent and for the purposes described above, and that the transfer of the license as described above is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. These findings are supported by a Safety Evaluation dated December 1, 1998.

III

Accordingly, pursuant to Sections 105, 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2135, 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the Commission consents to the transfer of the license as described herein to FENOC, subject to the following conditions:

(1) FENOC shall not market or broker power or energy from the Davis-Besse Nuclear Power Station, Unit No. 1. The owners are responsible and accountable for the actions of FENOC to the extent that said actions affect the marketing or brokering of power or energy from the Davis-Besse Nuclear Power Station, Unit No. 1, and, in any way, contravene the antitrust license conditions contained in the license.

(2) Should the formation of FENOC and transfer of operating authority not be completed by December 31, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

Action on the proposed conforming license amendment will be taken upon implementation of the transfer approved by this Order.

For further details with respect to this Order, see the licensees' application dated June 29, 1998, as supplemented by submittals dated July 14, October 26, and November 30, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 1st day of December 1998.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32506 Filed 12–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment to Certificate of Compliance GDP–1 for The U.S. Enrichment Corporation Portsmouth Gaseous Diffusion Plant, Piketon, Ohio

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: August 24, 1998.

Brief description of amendment: The amendment corrects two improper unit conversions from pounds to kilograms in Technical Safety Requirement (TSR) 2.1.3.15, "Receiving Cylinder Fill Weights" and ensures that the approved shipping weight for 5-inch UF_6 cylinders is consistent with ANSI N14.1–1995, "Uranium Hexafluoride Packaging for Transport." Notably, the proposed amendment changes the UF_6 cylinder fill limits for 8A (8-inch diameter) cylinders from 255 pounds (lbs) (155.665 kilograms (kg)) to 255 lbs (115.665 kg), for 10-inch cylinders from 370 lbs (158.756 kg) to 350 lbs (158.756 kg), and for 5A and 5B (5-inch diameter) cylinders from 55.67 lbs (25,250 grams (g)) to 54.9 lbs (24,902 g).

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed revision to TSR 2.1.3.15 does not involve any process which would change or increase the amounts of any effluents that may be released offsite. Therefore, the proposed revision will not result in an increase in the amounts of effluents that may be released offsite or result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed revision to correct the improper conversions from lbs to kg and to ensure that the approved shipping weight for 5-inch cylinders is consistent with ANSI N14.1–1995 is an administrative change and does not involve any process or equipment which would affect radiation exposure; therefore, it will not increase individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed change will not result in any construction, nor will this change effect any planned or existing construction project, therefore, there will be no construction impact.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed revision to correct the improper conversions from lbs to kg and to ensure that the approved shipping weight for 5-inch cylinders is consistent with ANSI N14.1–1995 is an administrative change and will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed change is an administrative change; therefore, this change will not result in the possibility of a new or different kind of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed revision to TSR 2.1.3.15 to correct the improper conversions from lbs to kg and to ensure that the approved shipping weight for 5-inch cylinders is consistent with ANSI N14.1-1995 is an administrative change. Therefore, the proposed change does not represent a reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The staff has not identified any safety, safeguards or security related implications from the proposed correction to TSR 2.1.3.15. Therefore, the correction will not result in undue risk to the public health and safety, common defense and security, or the environment.

Effective date: The amendment to GDP–2 will become effective 60 days after issuance by NRC.

Certificate of Compliance No. GDP–2: This amendment will revise TSR 2.1.3.15.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 30th day of November 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32503 Filed 12–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, respectively, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the Oconee Facility Operating Licenses for Units 1, 2, and 3 to revise the Oconee Technical Specifications (TS) to be consistent with the Improved Standard Technical Specifications (ITS) conveyed by NUREG–1430, "Standard Technical Specifications Babcock and Wilcox Plants," Revision 1, dated April 1995.

The proposed action is in response to the licensee's application for amendments dated October 28, 1997, as supplemented by letters dated March 26, May 20, July 29, August 13, October 1, October 21, October 28, and November 23, 1998.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of the TS. The Commission's "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" (52 FR 3788, February 6, 1987), and later the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors" (Final Policy Statement) (58 FR 39132, July 22, 1993), formalized this need. To facilitate the development of individual improved TS, each reactor vendor owners' group (OG) and the NRC staff developed standard TS (STS). For Babcock and Wilcox plants, the STS are published as NUREG–1430, and this document was the basis for the new Oconee Units 1, 2, and 3, TS. The NRC Committee to Review Generic Requirements reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants.

Description of the Proposed Action

The proposed revision to the TS is based on NUREG–1430 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1430, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

1. Nontechnical (administrative) changes, which were intended to make the ITS easier to use. They are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Every section of the Oconee TS has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1430 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing Oconee TS. The TS that are being relocated to licensee-controlled documents are not required to be in the TS under 10 CFR 50.36 requirements. They are not needed to obviate the possibility that an abnormal situation or event will give rise to an immediate threat to public health and safety. The NRC staff has concluded that appropriate controls have been established for all of the current specifications, information, and requirements that are being moved to licensee-controlled documents. In general, the proposed relocation of items in the Oconee TS to the Updated Final Safety Analysis Report, appropriate plant-specific programs, procedures, and ITS Bases follows the guidance of NUREG–1430. Once these items have been relocated by removing them from the TS to licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms, which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed Oconee ITS items that are either more conservative than corresponding requirements in the current Oconee TS, or are additional restrictions that are not in the existing Oconee TS, but are contained in NUREG–1430. Examples of more restrictive requirements include: placing a limiting condition for operation on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing Oconee TS that provide little or no safety benefit and place unnecessary burdens on the licensee. These relaxations were the result of generic NRC actions or other analyses. They have been justified on a case-by-case basis for Oconee and will be described in the staff's Safety Evaluation to be issued in support of the license amendments.

In addition to the changes previously described, the licensee proposed certain changes to the existing TS that deviated from the STS in NUREG–1430. These additional proposed changes are described in the licensee's application and in the staff's Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing (62 FR 64405, dated December 5, 1997). Where these changes represent a change to the current licensing basis for Oconee, they have been justified on a case-by-case basis and will be described in the staff's Safety Evaluation to be issued in support of the license amendments.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. Details of the staff's evaluation are provided in the safety evaluation accompanying the license amendments for the conversion.

Changes that are administrative in nature have been found to have no effect on the technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1430 and the Final Policy Statement, and, therefore, are acceptable.

Changes involving more restrictive requirements have been found to be acceptable and are likely to enhance the safety of plant operations.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burdens on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action. Generic relaxations contained in NUREG–1430, as well as proposed deviations from NUREG–1430, have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided so that the health and safety of the public will be adequately protected.

The proposed revision to the TS will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves does not affect nonradiological plant effluents and has no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the application (i.e., the "no-action" alternative). Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Oconee Nuclear Station, Units 1, 2, and 3, dated March 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on November 30, 1998, the staff consulted with the South Carolina State official, Virgil R. Autry of the Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 28, 1997, as supplemented by letters dated March 26, May 20, July 29, August 13, October 1, October 21, October 28, and November 23, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 2nd Day of December 1998.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32502 Filed 12–7–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 7, 14, 21, and 28, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 7

Tuesday, December 8

10:00 a.m.
Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)
12:00 m.
Affirmation Session (Public Meeting) (if needed)

Week of December 14—Tentative

Tuesday, December 15

11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 21—Tentative

There are no meetings scheduled for the week of December 21, 1998.

Week of December 28—Tentative

There are no meetings scheduled for the week of December 28, 1998.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: December 4, 1998.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–32667 Filed 12–4–98; 2:06 p.m.

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

Time and Date: 3:00 p.m., December 9, 1998.

Place: OPM Conference Center, Room 1350, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The conference center is located on the first floor.

Status: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

Matters to be Considered: This National Partnership Council meeting will proceed with its regular order of business in line with its 1998 Strategic Plan and Calendar.

Contact Person for More Information: Andrew M. Wasilisin, Acting Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–2000, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–32651 Filed 12–4–98; 12:59 pm]

BILLING CODE 6325–01–P

DEPARTMENT OF STATE

[Public Notice #2940]

Shipping Coordinating Committee; Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 09:30 AM on Tuesday, December 15, 1998, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW, Washington DC 20593–0001. The primary purpose of the meeting is to prepare for the thirtieth session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held at IMO from January 25 to 29, 1999.

The primary matters to be considered include:

1. Review of IMO guidance on principles of safe manning (i.e., crew size);
2. Work emanating from the 1995 Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping (STCW), including consideration of training requirements for maritime pilots;
3. Medical standards for seafarers, particularly physical abilities for entry level seafarers;
4. Validation of an IMO model course on Electronic Chart Display and Information Systems (ECDIS); and
5. Guidance associated with the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW–F Convention, as adopted by the 1995 conference; not yet ratified or in force).

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U. S. Coast Guard (G–MSO–1), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: November 25, 1998.

Stephen M. Miller,

Secretary, Shipping Coordinating Committee.

[FR Doc. 98–32616 Filed 12–7–98; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 27, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4810.
Date Filed: November 24, 1998.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/403 dated October 28, 1998
Finally Adopted Resos r1–21
PAC/Meet/156 dated October 28, 1998—Minutes
Intended effective date: February 1, 1999

Docket Number: OST–98–4811.
Date Filed: November 24, 1998.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Mail Vote 975
Commission Paid In Malawi—Reso 016a
Intended effective date: December 1, 1998

Docket Number: OST–98–4812.
Date Filed: November 24, 1998.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/404 dated October 28, 1998
Mail Vote A100 (Reso 808-Sales Agency Rules in Latin America/Caribbean, except Brazil)
Intended effective date: January 1, 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–32508 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 27, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4808.

Date Filed: November 23, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 21, 1998.

Description: Application of Tower Air, Inc. pursuant to 49 U.S.C. 41108 and Subpart Q applies for the issuance of a new Certificate of Public Convenience and Necessity or Amendment of its existing Certificate for Route 401, to engage in foreign air transportation of persons, property and mail between New York, New York and Rome, Italy. Tower Air plans to utilize the authority herein requested to operate two 747 aircraft presently in its fleet, commencing May 1, 1999. Tower therefore requests that it be allocated two U.S.-Italy frequencies per week.

Docket Number: OST–98–4809.

Date Filed: November 23, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 25, 1998.

Description: Application of US Airways, Inc. pursuant to 49 U.S.C. Sections 41102 and 41108, Part 201, and Subpart Q, applies for a Certificate of

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Public Convenience and Necessity and allocation of seven weekly frequencies to engage in scheduled foreign air transportation of persons, property and mail between Philadelphia, Pennsylvania, and Milan, Italy, beginning April 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–32509 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4208; Notice 2]

MHT Luxury Alloys, Denial of Application for Decision of Inconsequential Noncompliance

MHT Luxury Alloys (MHT) of Torrance, California has determined that some of the rims it manufactured and marketed fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." MHT has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on August 5, 1998, in the **Federal Register** (63 FR 41890). NHTSA received four comments on this application during the 30-day comment period. All four commenters recommended the denial of the application.

Paragraph S5.2 of FMVSS No. 120 states that each rim, or at the option of the manufacturer in the case of a single-piece wheel, the wheel disc shall be marked with the information listed in paragraphs (a) through (e), in lettering not less than 3 millimeters high, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeter. These five paragraphs labeled (a) through (e) require the following labeling:

(a) A designation which indicates the source of the rim's published nominal dimensions;

(b) The rim size designation;

(c) The symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable motor vehicle safety standards;

(d) A designation that identifies the manufacturer of the rim by name, trademark, or symbol; and

(e) The month, day, and year or the month and year of manufacture.

From January 1, 1996 through November 13, 1997, MHT produced and sold approximately 13,000 rims which are not labeled with four of the five items required by the standard. However, MHT did permanently place on the center of the rim on the weather side a mark of "MHT," "NICHE," "NEEPER," or other registered trade name of MHT Luxury Alloys, which it believes is a sufficient designation of the rim's manufacturer.

MHT supported its application for inconsequential noncompliance with the following statements:

1. Although the symbol "DOT" [and other labeling requirements] did not appear on the described rims, each rim did comply with all applicable motor vehicle safety standards.

2. MHT has received no complaints from consumers that (i) the rims did not comply with all applicable motor vehicle safety standards, or (ii) the rims did not contain the required labeling.

3. The subject rims were initially designed and manufactured for application on passenger vehicles. MHT's management was not aware of the labeling requirements and believed that because the rims were originally designed and manufactured for passenger vehicles, they were exempt from the labeling requirements.

4. The names "MHT," "NICHE," "NEEPER," and other registered trade names of MHT are extremely well known in the industry and to the consumers of motor vehicle rims. MHT believes that a consumer could inquire at any store, distributor, warehouse, or manufacturer within the United States as (i) to the identity and general location of MHT, (ii) be advised that MHT is the manufacturer of rims that bear its name and its trademarks, and (iii) that MHT is located in Los Angeles County, California. MHT has consistently responded promptly and fully to any consumer inquires regarding its products.

5. Upon receipt of a National Highway Traffic Safety Administration (NHTSA) letter, dated October 6, 1997, MHT promptly ordered a marking machine to imprint each new and "in warehouse" rim with the required information. Since November 13, 1997, all rims distributed by MHT have been marked in compliance with S5.2.

NHTSA received comments from four individuals. One of the comments was received by NHTSA's Office of Safety Assurance, during the comment period, and was deemed relevant to the inconsequentiality decision and was placed in the docket.

The first commenter, Jesse Hsiao, urged the agency not to grant the application, because the commenter believes: (1) Without labeling, a consumer cannot determine whether the rims are to be used on a passenger car or a truck; (2) the MHT rims are specifically designed for a truck, not a passenger car; and (3) a cap marked with MHT is not sufficient, because the cap can easily pop off the wheel, or the cap may not even be placed on the wheel at the time of delivery to the customer.

The second commenter, a tire dealer located in Southern California, stated serious concerns about the future liability problems with MHT wheels and urged the agency to require MHT to recall the non-complying truck wheels. This commenter made the following statements: (1) MHT should be forced to provide evidence that its truck wheels comply with all safety standards. Truck and Sport Utility Vehicle (SUV) wheels require a much higher maximum load capacity than passenger vehicle wheels; (2) MHT's statement that it did not believe it had to mark the wheels, because the rims were originally designed for passenger cars, is dishonest and does not make sense; (3) MHT's statement that subject truck rims were initially designed for passenger vehicles is incorrect. Wheels for passenger vehicles have different offsets, different center bore, different center pad, different bolt patterns, and different load capacities, than the wheels designed for trucks and SUVs; (4) MHT's statement that their management was not aware of the labeling requirements is not true. MHT wheels are manufactured in Progressive Custom Wheels' foundry, where all wheels, except MHT's, are stamped with the appropriate labeling; (5) Many MHT truck wheels are sold without the MHT, Niche, or Neeper trade marks. MHT sells some wheels directly to new car dealers. In many cases, these wheel caps bear the car manufacturer's name (i.e. Ford, Toyota, etc.). Without the marking on the wheel, the consumers will be confused about the origin of their wheels. It will be very difficult, if not impossible, to trace the wheels to MHT; and (6) As of September 1998, MHT continued to distribute unmarked wheels.

The third commenter, Richard E. Rice, provided general comments regarding MHT's application. The commenter made the following statements: (1) Since the MHT wheels were manufactured initially for passenger vehicles—what testing was done to determine whether the wheels could be used for truck weight capacities?; (2) Since the MHT truck wheels have no markings, the tire retail stores installing the wheels would not know whether the wheels met the weight capacity for a certain application. All the wheels that we sell, except MHT wheels, have DOT markings that show the maximum weight capacity; (3) a cap marked with MHT is not sufficient, because the cap can easily pop off the wheel, or the cap may contain only the car manufacturer's name; (4) the MHT management has been in the wheel manufacturing business for decades. The owner and MHT management ran the American Racing Wheel Company, the largest wheel manufacturing company in the United States, with contracts to make original equipment wheels for Ford and General Motors. It is inconceivable that they did not know the laws pertaining to marking their wheels. Also it is unbelievable that they would try to make anyone believe they had simply redesigned car wheels, so that they would be exempt from governing laws. Truck wheels have different offsets and bolt patterns, so they require different molds; and (5) the commenter has seen MHT wheels that cracked and failed. Many MHT customers don't know from where their wheels came or how to contact the responsible party.

The fourth commenter, who submitted information to NHTSA's Office of Safety Assurance, stated that: (1) MHT claims that it permanently placed at the center of all of its non-complying wheels a logo bearing one of the MHT's trade names. However, a variety of MHT's non-complying wheels have been and continue to be sold with logos bearing the trade name of entities other than MHT. At times, MHT non-complying truck wheels have been sold by MHT directly to car dealers bearing the logos of Toyota, Lexus, Infiniti, and other car manufacturers. For example, MHT's Neeper N–7, Pyro, and Syncro truck wheels, and MHT's Niche Prima, Gefell, and Runner truck wheels have been sold bearing Toyota logos. The latest example is the Niche Bahn M–805 truck wheel for the Lexus LX470, which has been sold at times bearing a modified Lexus logo. The commenter provided a picture indicating this issue; (2) MHT claims that since November 13, 1997, all rims distributed by MHT have been marked in compliance with 49 CFR 571.120. On May 22, 1998, MHT wrote to DOT making this claim, and further claimed to have notified all of its distributors of the non-compliance and promised to correct all non-complying wheels stocked by its distributors by marking them as required. However, MHT did not stop selling non-complying wheels or even manufacturing brand new non-complying wheels when it claimed it did. Also, the MHT distributors did not stop. For example, in late March 1998, MHT manufactured a brand new wheel, the Niche Bahn M–805 for the Lexus RX470 vehicle, and in April 1998 shipped a number of such non-complying wheels from its warehouse to Lexus car dealers. Even at the beginning of August 1998, MHT distributors were selling wheels without any markings pursuant to 49 CFR 571.120. The commenter provided pictures indicating this issue; (3) MHT claims in its application that it has received no complaints that its rims did not contain the required labeling. However, MHT has received specific complaints about the problems raised by the non-compliance. The commenter provided a letter addressed to Mr. Palmer of MHT, dated September 30, 1996, in which it is noted that MHT wheels are lacking the appropriate and required labeling; (4) MHT claims in its application that its truck rims were initially designed and manufactured for passenger vehicles, and that subsequently "bolt patterns were modified so that the same rims that had been designed for passenger cars could be mounted on light trucks and sport utility vehicles* * *." However, MHT's truck wheels are specifically designed, manufactured, and marketed for trucks or sport utility vehicles. The only similarity between some of MHT's truck wheels and passenger wheels might be the ornamental design of the wheel face. Otherwise, at least the size, offset, center bore and mounting pad, and load capacity of the wheels, in addition to the bolt pattern, are significantly different between the two categories of wheels. The commenter provided pictures showing the N146 Syncro passenger car wheel and the N146 Syncro truck wheel in MHT's Concept Neeper catalog. The commenter states that it is clear that the six-lug truck wheel requires a larger center bore and mounting pad and was manufactured as a different rim and in a different mold than the corresponding passenger car wheel. If MHT indeed merely changes the bolt pattern of its passenger vehicle wheels and then sells them as truck wheels, then serious safety concerns arise; (5) Many of MHT's wheel styles are manufactured and marketed solely for trucks and sport utility vehicles. For example, MHT's Concept Neeper Style N141 Pyro and Niche Style M402 Treck wheels were designed and sold solely for trucks and sport utility vehicles. The commenter provided MHT Concept Neeper and Niche catalogs as examples; (6) MHT claims that it will be extremely difficult if not impossible to contact the great majority of consumers who have purchased or possess non-complying wheels. Many, and probably most, purchasers pay with cash and leave no record with the retail seller as to the consumer's identity. However, many purchasers acquire MHT wheels from car dealers who keep consummate and detailed records of all their transactions. A recall of a large portion of the wheels manufactured, at least those sold by car dealers, should not be difficult to implement; and (7) MHT's non-compliance results in an inability to trace rims back to MHT. The consuming public might be confused and deceived, and MHT's retailers and distributors, through no fault of their own, might be in the path of liability. The commenter urges DOT to investigate the matter further.

The purpose for the labeling requirements in FMVSS No. 120 is to provide the vehicle user with information for the safe operation of the vehicle by ensuring that the vehicle is equipped with rims of appropriate size and type designation. Without proper labeling, an individual cannot determine the rim's size and type designation. Therefore, the vehicle user cannot readily determine the proper size tire for the rim and the vehicle. Without this required information displayed on the rim, a tire too large for the rim could be mounted, resulting in a failure. If an oversize tire is not properly seated on the rim, the tire could separate from the rim on the vehicle while traveling down the highway. This presents a clear and distinct safety hazard. Also, without the knowledge of the load carrying capabilities of the wheel, the possibility of overloading exists. Overloading of a rim presents the possibility of a structural failure as the vehicle is traveling on the road. In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied.

(49 U.S.C. 30118, 30120, delegations of authority at 49 CFR 1.50 and 501.8).

Issued: December 1, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–32510 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Implementation of the Automated Drawback Selectivity Program

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document sets forth for the information of the general public the text of a document that was previously published in the *Customs Bulletin* on November 25, 1998, pursuant to section 622 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, to provide notice of the nationwide operational implementation of an automated drawback selectivity program. Publication of that notice in the *Customs Bulletin* was a prerequisite to application of the section 622 provisions that provide for the imposition of monetary penalties for filing false drawback claims and that provide for the establishment of a drawback compliance program.

FOR FURTHER INFORMATION CONTACT: Al Morawski, Office of Field Operations (202–927–1082).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (the Act, Pub. L. 103–182, 107 Stat. 2057). Title VI of the Act set forth Customs Modernization provisions that included, in section 622, provisions regarding penalties for false drawback claims. Paragraph (a) of section 622 amended the Tariff Act of 1930 by adding section 593A (codified at 19 U.S.C. 1593a) which prescribes the actions that Customs may take (including the assessment of monetary penalties) for the filing of false drawback claims, requires Customs to establish a voluntary drawback compliance program, and requires the Secretary of the Treasury to promulgate regulations and guidelines to implement the section 593A provisions. Under paragraph (b) of section 622, the section 593A provisions apply to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by Customs, and Customs was required to publish in the *Customs Bulletin* the effective date of that selectivity program. The notice mandated by paragraph (b) of section 622 was published in the *Customs Bulletin* on November 25, 1998, and is republished here for the information of the general public.

Dated: December 2, 1998.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

Accordingly, the document that provided notice of the nationwide operational implementation of the automated drawback selectivity program, as discussed above, is reproduced below:

Department of the Treasury

United States Customs Service

[T.D. 98–88]

Implementation of the Automated Drawback Selectivity Program

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 622 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, this document provides notice of the nationwide operational implementation of an automated drawback selectivity program. Publication of this notice is a prerequisite to application of the section 622 provisions that provide for the imposition of monetary penalties for filing false drawback claims and that provide for the establishment of a drawback compliance program.

DATES: The automated drawback selectivity program was implemented on August 29, 1998. The liability for monetary penalties for the filing of false drawback claims applies to drawback claims filed on and after November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Al Morawski, Office of Field Operations (202–927–1082).

SUPPLEMENTARY INFORMATION:

Background

The Customs Modernization provisions contained in Title VI of the North American Free Trade Agreement Implementation Act (the Act, Pub. L. 103–182, 107 Stat. 2057) included, in section 622, provisions regarding penalties for false drawback claims.

Paragraph (a) of section 622 amended the Tariff Act of 1930 by adding section 593A (codified at 19 U.S.C. 1593a) which (1) prescribes the actions that Customs may take, including the assessment of monetary penalties, for the filing of a false (fraudulent or negligent) drawback claim, (2) requires Customs to establish a voluntary drawback compliance program under which participants in certain circumstances may be afforded an alternative to the monetary penalty that would normally apply for filing a false drawback claim, and (3) requires the Secretary of the Treasury to promulgate regulations and guidelines to implement the section 593A provisions.

Under paragraph (b) of section 622, which concerns the effective date of the amendment made by paragraph (a), the section 593A provisions can apply only to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by Customs. Customs is required under paragraph (b) of section 622 to publish in the Customs Bulletin the effective date of the selectivity program.

Drawback Compliance Program

On March 5, 1998, Customs published in the **Federal Register** (63 FR 10970) as T.D. 98–16 a final rule document which revised the provisions within the Customs Regulations that pertain to drawback. The bulk of those drawback regulatory changes involved a revision of Part 191 of the Customs Regulations (19 CFR Part 191) in order to, among other things, reflect extensive changes to the drawback law made by section 632 of the Act. The Part 191 texts as so revised also include a Subpart S, §§ 191.191 through 191.195, which pertains to the drawback compliance program mandated by section 593A of the Tariff Act of 1930 as added by section 622 of the Act. Those Subpart S provisions are directed to procedural aspects of the drawback compliance program (such as program participation requirements, including application submission and approval standards) and therefore do not incorporate specific standards for the assessment or mitigation of penalties against program participants for filing false drawback claims. In view of the effective date limitation in paragraph (b) of section 622 of the Act, Customs has to date not accepted applications from prospective program participants or in any other way put those Subpart S provisions into operation.

Penalties and Mitigation Guidelines for False Drawback Claims

On September 29, 1998, Customs published in the **Federal Register** (63 FR 51868) a notice of proposed rulemaking which set forth proposed amendments to the Customs Regulations to set forth the procedures to be followed when false drawback claims are filed and penalties are thereby incurred. The proposed regulatory changes implement all penalty aspects of section 622 of the Act and thus include proposed mitigation guidelines that Customs would follow in arriving at a just and reasonable assessment and disposition of liabilities when false drawback claims are filed and penalties are incurred by drawback compliance program participants or by persons who are not participants in that program. The document also proposed an amendment to the regulatory texts adopted by T.D. 98–16 to provide more specificity regarding the grounds and procedures for removal of a participant from the drawback compliance program. The Background portion of the document also referred to paragraph (b) of section 622 of the Act, noting in this regard that the proposed regulatory amendments set forth in the document, if adopted as a final rule, will not be effective until Customs implements an automated drawback selectivity program.

Implementation of the Selectivity Program

Customs hereby gives notice that on August 29, 1998, Customs implemented, on a nationwide operational basis, an automated drawback selectivity program. This criteria-based selectivity program automates the previously manual, labor-intensive processing of drawback claims. This automation will result in more efficient processing of drawback data and will move Customs one step closer to paperless processing of drawback claims.

As a consequence of implementation of the drawback selectivity program, any person who files a false drawback claim on and after November 25, 1998, will become potentially liable for a monetary penalty under 19 U.S.C. 1593a. However, Customs does not intend to issue a penalty notice or take any other action authorized by 19 U.S.C. 1593a in respect of any such violation until such time as final regulations implementing the provisions of 19 U.S.C. 1593a are in effect.

Dated: November 4, 1998.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–32515 Filed 12–7–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Veterans' Advisory Committee on Education has been renewed for a 2-year period beginning November 13, 1998, through November 13, 2000.

Dated: November 24, 1998.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–32497 Filed 12–7–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on:

Monday, December 14, 1998: 10:00 a.m. to 5:00 p.m.

Tuesday, December 15, 1998: 9:00 a.m. to 12:00 p.m.

The location of the meeting will be 811 Vermont Avenue, NW, Washington, DC, in Room 438 on December 14, 1998, and Room 442 on December 15, 1998.

On Monday, December 14, 1998, the Committee will review the developments in the field of structural design, as they relate to seismic safety of buildings, and fire safety issues. On Tuesday, December 15, 1998, the Committee will vote on structural and fire safety issues for inclusion in VA's standards. Both days will be open to the public.

Those wishing to attend should contact Krishna K. Banga, Senior Structural Engineer, Standards Service, Facilities Quality Office, Office of Facilities Management, Department of Veterans Affairs Central Office (phone 202–565–9370) prior to the meeting.

Dated: December 1, 1998.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–32498 Filed 12–7–98; 8:45 am]

BILLING CODE 8320–01–M

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Corrections

Federal Register
Vol. 63, No. 235
Tuesday, December 8, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7–R]

RIN 0790–AG58

DoD Freedom of Information Act Program Regulation

Correction

In rule document 98–31103, beginning on page 65420, in the issue of Wednesday, November 25, 1998, make the following corrections:

§ 286.4 [Corrected]

1. On page 65423, in the first column, in §286.4(d)(3)(ii)(B), paragraph designation "(b)" should read "(B)".

§ 286.24 [Corrected]

2. On page 65436, in the second column, in §286.24(f)(2), in the seventh full paragraph, before "Tentative" add "(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-82-000]

Equitrans, L.P.; Notice of Application

Correction

In notice document 98–31986, appearing on page 66150, in the issue of Tuesday, December 1, 1998, the agency headings and the docket line are corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 244

[INS No. 1608–93]

RIN 1115–AC30

Temporary Protected Status, Exception to Registration Deadlines

Correction

In rule document 98–30408, beginning on page 63593, in the issue of Monday, November 16, 1998, make the following corrections:

§ 103.1 [Corrected]

1. On page 63595, in the second column, in amendatory instruction 2., in the third line, "part 244." should read "part 244".

§ 103.7 [Corrected]

2. On the same page, in the same column, in amendatory instruction 3., in the fifth line, "1997." should read "1997".

§ 244.9 [Corrected]

3. On page 63596, in the second column, in amendatory instruction 15 b., in the first and second lines, the phrases "*section 244A(c)(2)*" and "*section 244(c)(2)*" should be placed in quotation marks.

§ 2544.18 [Corrected]

4. On page 63597, in the first column, in amendatory instruction 25 a., in the first line, "§§ 240.3(c)" should have quotation marks preceding the section twists.

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Proclamation 7153 of December 1, 1998

World AIDS Day, 1998

Correction

In Proclamation 7153 of December 1, 1998, in the issue of December 4, 1998, on page 66978, the document filing line, which erroneously reads "Filed 12–4–98; 8:45 am]", should read "Filed 12–3–98; 8:45 am]".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40689; File No. SR–NASD–98–73]

Self–Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Fees for Subscribers Who Receive Nasdaq Level 1 and Last Sale Data Through Automated Voice Response Services

Correction

In notice document 98–31585, appearing on page 65626, in the issue of Friday, November 27, 1998, make the following correction:

On page 65626, in the third column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-53]

Modification of Class E Airspace; Valparaiso, IN

Correction

In rule document 98–30585, beginning on page 63601, in the issue of Monday, November 16, 1998, make the following correction:

§ 71.1 [Corrected]

On page 63602, in the second column, in § 71.1, the airspace designation is corrected to read as set forth below:

* * * * *

AGL IN E5 Valparaiso, IN [Revised]

Valparaiso, Porter County Municipal Airport, IN

(Lat. 41°27′15″N., long. 87°00′22″W.)

That airspace extending upward from 700 feet above the surface within an 7.7-mile radius of the Porter County Municipal Airport.

* * * * *

BILLING CODE 1505-01-D

federal register

Tuesday
December 8, 1998

Part II

Nuclear Regulatory Commission

48 CFR Chapter 20
Acquisition Regulation (NRCAR);
Proposed Rule

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NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150–AF52

Acquisition Regulation (NRCAR)

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the procurement of goods and services. The proposed rule is intended to meet the requirements of Public Law 103–355 (the Federal Acquisition Streamlining Act—FASA) and Public Law 104–106 (the Federal Acquisition Reform Act (FARA), and the Information Technology Management Reform Act (ITMRA.)) Both public laws modify and streamline Federal Acquisition Regulation (FAR) requirements. This proposed rule would eliminate obsolete coverage and make necessary technical and conforming amendments to the NRCAR. The NRCAR applies to all contracts including simplified acquisitions where specified and to modifications that require a justification for other than full and open competition.

DATES: Comments on the proposed rule must be received on or before February 22, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: *Submit written comments to*: The Secretary of the Commission: U.S. Nuclear Regulatory Commission; Attention: Rulemakings and Adjudications Staff; Washington, D.C. 20555. Copies of comments received may be examined or obtained for a fee at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, D.C. (telephone (202) 634–3273). You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5906; e-mail CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Timothy F. Hagan, Director, Division of Contracts and Property Management, Office of Administration, Nuclear Regulatory Commission, Washington, D.C. 20555. *Telephone:* (301) 415–7305.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Nuclear Regulatory Commission Acquisition Regulations (NRCAR) in 48 CFR Chapter 20 implement and supplement the government-wide Federal Acquisition Regulation (FAR) and ensure that the policies governing the procurement of goods and services within the NRC satisfy the needs of the agency. The NRCAR includes policies, procedures, solicitation provisions, and contract clauses needed to ensure effective and efficient evaluation, negotiation, and administration of procurements.

The NRCAR must now be updated to meet the requirements of Public Law 103–355 (the Federal Acquisition Streamlining Act—FASA) and Public Law 104–106 (the Federal Acquisition Reform Act (FARA), and the Information Technology Management Reform Act (ITMRA.)) Both public laws modify and streamline FAR requirements. In the process of updating the NRCAR to comply with FAR acquisition streamlining requirements, the NRC intends to eliminate obsolete coverage and make necessary technical and conforming amendments to its policies, procedures, solicitation provisions, and contract clauses. The NRC expects that any new reporting burden that would be incurred as a result of these changes would be offset by elimination of other reporting requirement burdens specific to this agency (e.g., pre-award proposal preparation requirements).

Summary of Changes

1. Part 2002—Definitions—This Part would be amended to add language designating Task and Delivery Order Ombudsman in accordance with FASA requirements.

2. Part 2003—Improper business practices and personal conflicts of interest—This Part would be amended to cite the Office of Government Ethics (OGE) regulations covering standards of conduct for federal employees rather than the NRC's regulation in this area. The OGE regulations were published at 61 FR 66830–66851 (December 18, 1996) and took effect on January 17, 1997. The OGE regulations supersede the NRC standards of conduct regulations which were previously found in 10 CFR Part 0. Standards of conduct and requirements for financial disclosure are now published in 5 CFR Parts 2635, 5801 and 2634 respectively. 10 CFR Part 0 has been eliminated.

3. Part 2009—Contractor Qualifications—This Part would be amended at § 2009.1 "Responsible prospective contractors". The language under § 2009.100 would be simplified to enhance understanding of the NRC's policy covering award of contracts to former NRC employees and award of contracts to firms which employ former NRC employees. The language would also clarify which procurement actions are considered noncompetitive for the purposes of this policy.

a. The NRC requires information provided under § 2052.209–70 "Current/Former Agency Employee Involvement" to ensure that conflict of interests are avoided and fairness is maintained during the selection process. Section 2052.209–71 "Contractor Organizational Conflicts of Interest (representation)" is required by statute (42 U.S.C. Sec. 2221, Sec. 170A of the Atomic Energy Act of 1954, as amended). The Certification requirement of both sections, which required a high level review within a contractor's organization, would be downgraded to a Representation requirement. This action is intended to lessen a contractor's reporting burden pursuant to Section 4301 of PL 109–106 (FARA).

4. Part 2009.5—Organizational Conflicts of Interest—This Part would be amended to bring the definition of "Subcontractor" found in § 2009.570–2 into conformance with Section 170A of the Atomic Energy Act.

5. Part 2010—Specifications, Standards, and Other Purchase Descriptions—This Part, as well as § 2010.004—Brand name products or equal, would be deleted in their entirety. FAR Part 10 is now devoted to Market Research. Guidance on the use of brand name products is now found under FAR Part 11. FAR Subpart 11.104 describes brand name product as "Items peculiar to one manufacturer." The FAR now allows some flexibility in acquiring brand name products which is not evident in the current NRCAR prescription and clause (§ 2052.210–70). Some restriction on ordering brand name products is evident in FAR 6.302–1 which requires a sole source justification for such purchases. Also, the basis for not providing for maximum practicable competition must now be documented in the file when the acquisition is awarded using simplified acquisition procedures.

6. Part 2015—Contracting By Negotiation—This Part would be amended in keeping with changes made under the NRC's Procurement Reinvention Laboratory. Sections 2015.209–70(b) and § 2052.215–75 encourage the contracting officer to ask Offerors to submit technical and management proposals either by an oral presentation or by a written document. Section 2015.209–70(b) further clarifies that proposal preparation instructions be tailored to assure that all sections of the instructions reflect a one-to-one relationship to the evaluation criteria. Section 2015.304 would allow the contracting officer flexibility in selection evaluation procedures/criteria (e.g., weighted criteria or evaluations based upon non-weighted narrative evaluations) which are appropriate to the type of solicitation and requirement. Section 2015.304 would also encourage the contracting officer to use a minimum number of evaluation factors by referencing FAR § 15.304(b). This section of the FAR emphasizes that evaluation factors and significant subfactors must represent key areas of importance and emphasis to be considered in the source selection decision.

7. Part 2016—Types of Contracts—This Part would be amended to allow the CO the flexibility to negotiate ceiling rates for indirect costs and to streamline the task order technical proposal language.

8. Part 2032—Contract Financing—§ 2032.4—This Part would be amended to bring its language in line with FAR Part 32.4 which covers advance payments for non-commercial items.

9. Part 2025—Foreign Acquisition—This Part would be deleted in its entirety due to a regulatory change in FAR Part 2025. The NRCAR previously required the contracting officer to approve a written determination not to acquire US-produced supplies for public use. The Head of the Contracting Activity (HCA) was required to approved such a determination for acquisitions which exeeded $1 million. FAR § 25.102 has since been revised to give the contracting officer some flexibility in making the nonavailability of US-produced supplies determination. FAR § 25.102 has done this by eliminating the requirement and dollar threshold for HCA approval of the contracting officer's determination, and stating that the HCA may (vice "must" under previous FAR language) make a nonavilability determination for any circumstance other than what was considered by the contracting officer. Due to this regulatory change, NRCAR coverage of foreign acquisitions is no longer needed.

10. Part 2033—Protests, Disputes and Appeals—This Part would be amended to clarify agency procedures for responding to agency protests and for handling disputes and appeals pursuant to the Contracts Dispute Act. This Part would be amended to update the address for the U.S. Department of Energy Board of Contract Appeals.

11. Part 2035 Research and Development Contracting—This Part would be amended to give the contracting officer flexibility to choose the evaluation criteria which will be used to select contractors under Broad Agency Announcements.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83–2 states that an agency must provide an opportunity for public comment before adopting procurement regulation if the regulation is "significant." "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The NRC has determined that this rule is not significant within the meaning of OFPP Policy Letter No. 83–2. This regulation is issued principally to combine previously cleared procedures into one document, to exercise delegations established by the FAR, and to adopt other procedures that will not have a cost or administrative impact on contractors.

While not required to do so under the terms of the OFPP Policy Letter 83–2, the NRC is issuing the revised NRC Acquisition Regulation (NRCAR) as a proposed rule. The NRC is accepting comments on this regulation for 75 days after the date of publication. The NRC will review all comments and will consider changes to the rule, as proposed, as a result of comments received.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c)(5). Therefore, neither an environmental impact statement nor an environmental assessment is required for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the proposed rule will reduce existing information collection requirements, the public burden for this information collection is expected to be decreased by 3.2 hours per potential contractor. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues.

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

Send comments on any aspect of this proposed information collection, including suggestions for further reducing the burden, to the Records Management Branch (T6 F–33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0169), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by January 7, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

This proposed rule would amend the procedures and requirements necessary to implement and supplement the FAR. The proposed rule presents

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amendments to the regulations necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfies the particular needs and requirements of the NRC. This proposed rule constitutes an administrative action governing the procurement activities of the NRC. These provisions would not have an adverse economic impact on any contractor or potential contractor because they merely supplement the requirements applicable to the acquisition of goods and services by the agency. By clearly and explicitly implementing the FAR and presenting those additional provisions necessary to reflect the needs of the NRC, the proposed rule would allow a contractor or potential contractor to understand more clearly the regulations to be used in soliciting, evaluating and awarding contracts for the provision of goods and services. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule would amend the procedures and requirements necessary to implement and supplement the FAR which govern the acquisition of goods and services by the NRC. To the extent that the proposed rule affects a small entity, it sets out provisions applicable to small business, disadvantaged business, and women-owned business concerns.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because it does not involve any provision which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

48 CFR Parts 2001, 2002, 2003, 2004, and 2005

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2009

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2011 and 2013

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Parts 2014 and 2015

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2016 and 2017

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2019

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2022 and 2024

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2027

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2030, 2031, 2032, 2033, and 2035

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2042

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Part 2045

Government procurement, Nuclear Regulatory Commission Acquisition Regulations Reporting and recordkeeping requirements.

48 CFR Part 2052

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and FAR Subpart 1.3, the NRC is proposing to revise Chapter 20 to Title 48 of the Code of Federal Regulations in its entirety to read as follows:

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

SUBCHAPTER A—GENERAL

PART 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

Subpart 2001.1—Purpose, Authority, Issuance

Sec.
2001.101 Purpose.
2001.102 Authority.
2001.103 Applicability.
2001.104 Issuance.
2001.104–1 Publication and code arrangement.
2001.104–2 Arrangement of the regulations.
2001.104–3 Copies.
2001.105 Information collection requirements: OMB approval.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.
2001.303 Public participation.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.
2001.403 Individual deviations.
2001.404 Class deviations.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.
2001.601 General.
2001.602–3 Ratification of unauthorized commitments.
2001.603 Selection, appointment, and termination of appointment.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C 418(b)).

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes Chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

2001.102 Authority.

The NRCAR and the amendments to it are issued by the Senior Procurement Executive under a delegation from the Executive Director for Operations dated May 16, 1997, in accordance with the authority of the Atomic Energy Act of 1954, as amended (42. U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949

(40 U.S.C. 486(c)), as amended, FAR Subpart 1.3, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from nonappropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104–1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the **Federal Register**; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

2001.104–2 Arrangement of the regulations.

(a) *General.* Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering.* The numbering system and part, subpart and section titles used in this Chapter 20 conform with those used in the FAR as follows:

(1) Where Chapter 20 implements the FAR or supplements a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section, or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104–1 is shown as 2001.104–1 and the NRC's implementation of FAR 24.1 is shown as 2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954, as amended, requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR requires no further implementation.

(c) *Citation.* The NRCAR will be cited in accordance with Federal Register Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as 2001.104–2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104–2(c)." Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104–2." In the NRCAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1–104.

2001.104–3 Copies.

Copies of the NRCAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0169.

(b) The information collection requirements contained in this part appear in sections 2009.570–3, 2009.570–5, 2009.570–8, 2014.201–670, 2027.305–3, 2042.570–1, 2042.803, 2045.371, 2052.204–70, 2052.204–71, 2052.209–70, 2052.209–71, 2052.209–72, 2052.211–70, 2052.211–71, 2052.211–72, 2052.211–72 Alternate 1, 2052.214–71, 2052.214–72, 2052.214–74, 2052.215–70, 2052.215–71, 2052.215–74, 2052.215–75, 2052.215–75 Alternate 1, 2052.215–75 Alternate 2, 2052.215–78, 2052.216–72, 2052.227–70, 2052.235–70, 2052.235–71, 2052.242–70, and 2052.242–71.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and control numbers under which they are approved are as follows:

(1) In 2052.215–77(a) and 2052.215–78(b), NRC Form 445 is approved under control number 3150 **to be assigned**.

(2) [Reserved]

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be promulgated through internal NRC issuances such as Management Directives or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.

(a) Deviations from the provisions of the FAR or NRCAR may be granted as specified in this subpart when necessary to meet the specific needs of the requesting office. The development and testing of new techniques and methods of acquisition should not be discouraged simply because such action would require a FAR or NRCAR deviation.

(b) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitted to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A description of the intended effect of the deviation;

(5) A statement of the period of time for which the deviation is needed; and

(6) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect only one contracting action or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Class deviations affect more than one contracting action. Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Deputy Executive Director for Management Services (DEDM). The DEDM has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and the Regional Offices. All of the above delegations are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602–3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications of procurement actions valued at $2,500 or less may be approved by the appropriate regional administrator or Headquarters contracting officer. For any such action, all other terms of Subpart 2001.6 are applicable. The Competition Advocate shall approve all ratification actions exceeding $2,500 subsequent to the review and approval recommendation by the Director, Division of Contracts and Property Management.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The Designating Official, responsible for the office request, shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A written statement consistent with the complexity and size of the action as to why the contracting office was not used including the name of the employee who made the commitment;

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work performed, or to be performed, or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review the written statement of facts for a determination of approval of all actions valued at $2,500 or less. For actions greater than $2,500, the contracting officer shall forward the written statement of facts to the Competition Advocate through the Director, Division of Contracts and Property Management with any comments or information that should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority are issued by memorandum which includes a clear statement of the delegated authority, including responsibilities and limitations in addition to the "Certificate of Appointment", SF 1402. The Director, Division of Contracts and Property Management, may delegate micro-purchase authority in accordance with agency procedures. Such delegation may be accomplished by written memorandum. (ref. FAR 1.603–3(b))

PART 2002—DEFINITIONS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841 and 41 U.S.C. 418(b).

Subpart 2002.1—Definitions

2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or *Head of the Agency* means the NRC Executive Director for Operations, for the purposes specified in this chapter and the FAR. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Pub. L. 98–369. The Director, Office of Administration, has been appointed the Competition Advocate for the NRC.

Head of the Contracting Activity means the Director, Division of Contracts and Property Management.

Senior Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Deputy Executive Director for Management Services, has been appointed the NRC Senior Procurement Executive.

Simplified acquisitions means those acquisition conducted using the methods, policies and procedures of FAR Part 13 for making purchases of supplies or services.

Task and Delivery Order Ombudsman means the Director, Office of Administration, or designee pursuant to Section 1004(a) of Pub. L. 103–355, the Federal Acquisition Streamlining Act.

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1—Safeguards

Sec.
2003.101–3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

Sec.
2003.203 Reporting of suspected violation of the gratuities clause.

Authority: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242, as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2003.1—Safeguards

2003.101–3 Agency regulations.

Standards of conduct for federal employees are published in 5 CFR Parts 2635 and 5801. Requirements for financial disclosure are published in 5 CFR Part 2634.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector General. A report must include all facts and circumstances related to the case. Refer to 5 CFR 2635 for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2004.4—Safeguarding Classified Information Within Industry

2004.404 Contract clauses.

(a) The contracting officer shall insert the clause at § 2052.204–70 Security, in all solicitations and contracts under which the contractor may have access to, or contact with, classified information, including National Security information, restricted data, formerly restricted data, and other classified data.

(b) The contracting officer shall insert the clause § 2052.204–71 Site Access Badge Requirements, in all solicitations and contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

Part 2005—PUBLICIZING CONTRACT ACTIONS

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 *et seq.*).

Subpart 2005.5—Paid Advertisements

2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, within each regional office for a regional procurement.

Part 2009—CONTRACTOR QUALIFICATIONS

Subpart 2009.1—Responsible Prospective Contractors

Sec.
2009.100 NRC policy.
2009.105–70 Contract provisions.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

Sec.
2009.403 Definitions.
2009.404 Consolidated lists of parties excluded from Federal procurement or non-procurement programs.
2009.405 Effect of listing.
2009.405–1 Continuation of current contracts.
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2009.406 Debarment.
2009.406–3 Procedures.
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Subpart 2009.5—Organizational Conflicts of Interest

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2009.500 Scope of subpart.
2009.570 NRC organizational conflicts of interest.
2009.570–1 Scope of policy.
2009.570–2 Definitions.
2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.
2009.570–4 Representation.
2009.570–5 Contract clauses.
2009.570–6 Evaluation, findings, and contract award.
2009.570–7 Conflicts identified after award.
2009.570–8 Subcontracts.
2009.570–9 Waiver.
2009.570–10 Remedies.

Authority: 42 U.S.C. 2201; Sec 201, 88 Stat. 1242; as amended; 42 U.S.C. 5841; and 41 U.S.C 418(b).

Subpart 2009.1—Responsible Prospective Contractors

2009.100 NRC policy.

(a) It is NRC policy that only competitively awarded contracts shall be placed with an individual who was employed by the NRC within two years from the date of the Request for Procurement Action. This policy also pertains to any firm in which the former NRC employee is a partner, principal officer, majority stockholder, principal investigator, project manager, principal under the contract, a person who performs more than a nominal amount of the work under the NRC Statement of Work, or the firm is otherwise controlled or predominately staffed by former NRC employees.

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(b) The following procurement actions are considered noncompetitive for the purposes of this policy:

(1) Contracts awarded noncompetitively under the Small Business Administration's 8(a) Program;

(2) Individual task orders if the former employee was not identified as "key personnel" in a proposal which was evaluated under competitive procedures;

(3) Unsolicited proposals;

(4) Subcontracts that require review for the purpose of granting consent under NRC prime contracts.

(c) The term *NRC employee* includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

(1) The contract arises directly out of the individual's activity as a special employee;

(2) The individual is in a position to influence the award of the contract; or

(3) The Contracting Officer determines that another conflict of interest exists.

(d) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraphs (a) and (b) of this section on a noncompetitive basis may be approved by the Senior Procurement Executive after consulting with the Executive Director for Operations. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(e) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches.

2009.105–70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) Section 2052.209–70 Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in 2009.4:

Debarring official means the Senior Procurement Executive.

Suspending official means the Senior Procurement Executive.

2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c)(1)–(6).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Senior Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted from the Head of the Contracting Activity, through the Director, Office of Administration, to the Senior Procurement Executive.

2009.405–1 Continuation of current contracts.

The Head of the Contracting Activity is authorized to make the determination to continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment in accordance with FAR 9.405–1.

2009.405–2 Restrictions on subcontracting.

The Head of the Contracting Activity is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

2009.406 Debarment.

2009.406–3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred from the Head of the Contracting Activity, through the Director, Office of Administration, to the Senior Procurement Executive immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the Head of the Contracting Activity who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the Head of the Contracting Activity of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.406–3(c)(4), the debarring official may notify the contractor in accordance with FAR 9.406–3(d) that the contractor is debarred.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407–3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred from the Head of the Contracting Activity, through the Director, Office of Administration, to the Senior Procurement Executive immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the Head of the Contracting Activity who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407–3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406–3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.407–3(c)(5), the suspending official may notify the contractor in accordance with FAR 9.407–3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570–1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations that might arise. However, examples are provided in this chapter to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other Government agencies, international organizations, or state, local, or foreign Governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570–2 Definitions.

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in § 2009.570–1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or *prospective contractor* means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term *potential conflict of interest* is used to signify those situations that—

(1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or

(2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding $10,000.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.* (1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information, that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement, being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

(i) Where the offeror or contractor provides advice and recommendations to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in § 2009.570–5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR Part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) *Guidance.* This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with 2009.570–9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570–3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209–72(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) *Example.* AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety and environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) *Guidance.* An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with 2009.570–9.

(7)(i) *Example.* The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) *Guidance.* Section 2052.290–72(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

(8)(i) *Example.* ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated value of $5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a $100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) *Guidance.* The Contracting Officer would allow the contractor to proceed with the solicitation because it is not in the same technical area as the NRC work; and the potential for technical bias by the contractor because of financial ties to the utility is slight due to the relative value of the two contracts.

(9)(i) *Example.* The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of $100 million. ABC Corp. has responded to an NRC Request For Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is $75K.

(ii) *Guidance.* An NRC contract would not normally be awarded to ABC Corp. since these factors create the potential for financial loyalty to the utility that may bias the technical judgment of the contractor.

(d) *Other considerations.* (1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570–4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflicts of interest representation provision at 2052.209–71 must be included in solicitations and contracts resulting from unsolicited proposals. The contracting officer must also include this provision for task orders and contract modifications for new work for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570–5 Contract clauses.

(a) *General contract clause.* All contracts and simplified acquisitions of the types set forth in 2009.570–4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in 2052.209–72.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570–9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570–6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of 2009.570–3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of 2009.570–9.

2009.570–7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the Government to terminate the contract, as provided in the clauses required by 2009.570–5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with 2009.570–9, neutralize the effects of the identified conflict.

2009.570–8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of $10,000 in accordance with 2009.570–4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570–5 in consultant agreements or subcontracts involving performance of work under a prime contract.

2009.570–9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards, with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Senior Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program.

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest.

(3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room.

2009.570–10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2011—DESCRIBING AGENCY NEEDS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2011.4—Delivery or Performance Schedules—Contract Clauses

2011.104–70 NRC Clauses.

(a) The contracting officer shall insert the clause at 2052.211–70 Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.211–71 Technical Progress Report, in all solicitations and contracts except—

(1) Firm fixed price; or

(2) Indefinite-delivery contracts to be awarded on a time-and-materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.211–72 Financial Status Report, in applicable cost reimbursement solicitations and contracts when detailed assessment of costs is warranted and a Contractor Spending Plan is required; use the clause at 2052.2211–72 Financial Status Report—Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter clauses 2052.211–70, 2052.211–71, and 2052.211–72 Alternate 1 prior to issuance of the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SIMPLIFIED ACQUISITION PROCEDURES [RESERVED]

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.
2014.201 Preparation of invitation for bids.
2014.201–670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.407 Mistakes in bids.
2014.407–3 Other mistakes disclosed before award.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2014.2—Solicitation of Bids

2014.201 Preparation of invitation for bids.

2014.201–670 Solicitation provisions.

(a) The contracting officer may insert the provision at 2052.214–70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit the circumstances of the procurement.

(b) The contracting officer may insert in IFBs the provision at 2052.214–71, Bidder Qualifications and Past Experience on an optional basis to fit the circumstances of the requirement;

(c) The contracting officer shall insert the provision at 2052.214–72 Bid Evaluation in all IFBs. Paragraph (f) of this provision is optional.

(d) The contracting officer shall insert the provision of 2052.214–73 Timely Receipt of Bids in all IFBs.

(e) The contracting officer shall insert the provision at 2052.214–74 Disposition of Bids in all IFBs.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.407 Mistakes in bids.

2014.407–3 Other mistakes disclosed before award.

The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

2014.407–4 Mistakes after award.

The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.407–4. These determinations will be concurred in by legal counsel prior to notification of the contractor.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.2—Solicitation and Receipt of Proposals and Information

Sec.
2015.209–70 Solicitation provisions and contract clause

Subpart 2015.3—Source Selection

2015.300 Scope of part.
2015.303 Responsibilities.
2015.304 Evaluation factors.
2015.305 Proposal evaluation.

Subpart 2015.6—Unsolicited Proposals

2015.606 Agency procedures.
2015.606–1 Receipt and initial review.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Supart 2015.2—Solicitation and Receipt of Proposals and Information

2015.209–70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in solicitations and contracts the following clauses as applicable to the requirement:

(1) Section 2052.215–70, Key Personnel in applicable solicitations and contracts;

(2)(i) Section 2052.215–71, Project Officer Authority in applicable solicitations and contracts for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost sharing, labor-hour or time-and-materials, including task order contracts. This clause and the following Alternate clauses are intended for experienced, trained project officers, and may be altered to delete duties where appropriate:

(ii) Section 2052.215–71 Alternate 1. For solicitations for issuance of delivery orders for specific products/services;

(iii) Section 2052.215–71 Alternate 2. For solicitations for firm fixed price contracts, with paragraph (b)(1) of Alternate 1 deleted and the remainder of the clause renumbered.

(3) The contracting officer shall insert the provision at 2052.215–72, Timely Receipt of Proposals in all solicitations;

(4) The contracting officer shall insert the provision at 2052.215–73, Award Notification and Commitment of Public Funds in all solicitations; and

(5) The contracting officer shall insert the provision at 2052.215–74, Disposition of Proposals in all solicitations.

(b) The contracting officer may insert in all solicitations the following provisions as applicable. These provisions may be altered to fit the circumstances of the requirement. These provisions shall be tailored to assure that all sections of the instructions for the Technical and Management Proposal, or Oral Presentation and Supporting Documentation, reflect a one-to-one relationship to the evaluation criteria:

(1) Section 2052.215–75, Proposal Presentation and Format for negotiated procurements for cost type contracts;

(2) Section 2052.215–75 Alternate 1 may be used for all solicitations for negotiated task order contracts;

(3) Section 2015.215–75 Alternate 2 may be used for all solicitations for negotiated fixed price, labor hour, or time and materials contracts:

(c) The contracting officer shall insert the provision at 2052.215–76, PreProposal Conference, in solicitations which include a PreProposal conference. This provision may be altered to fit the circumstances of the requirement.

(d) The contracting officer shall insert the following clauses in solicitations and contracts as applicable:

(1) Section 2052.215–77, Travel Approvals and Reimbursement, shall be inserted in cost reimbursement solicitations and contracts which require travel but do not set a specific ceiling amount on that travel. Note that requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

(2) Section 2052.215–78, Travel Approvals and Reimbursement—Alternate 1, shall be inserted in cost reimbursement solicitations and contracts which include a ceiling amount on travel. Note that requests for foreign travel must be submitted to the NRC 30 days in advance of the travel.

(e) The contracting officer shall include the following provisions in all solicitations for competitive procurements to describe the relationship of technical considerations to cost considerations. The contracting officer may make appropriate changes to these provisions to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and bench marking criteria for Information Technology (IT) procurements:

(1) Section 2052.215–79 Contract Award and Evaluation of Proposals, shall be included in all solicitations where technical merit is more important than cost,

(2) Section 2052.215–79 Alternate 1 shall be included when proposals are to be evaluated on a lowest price, technically acceptable basis.

(3) Section 2052.215–79 Alternate 2 shall be included where cost and technical merit are of equal significance.

Subpart 2015.3—Source Selection Processes and Techniques

2015.300 Scope of subpart.

This subpart applies to all contracts awarded on a competitive basis in accordance with FAR Part 15. This subpart does not apply to contracts awarded on a non-competitive basis to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.303 Responsibilities.

(a) The source selection authority is the contracting officer. The contracting officer, acting as the source selection authority, shall select an offer for award based upon review of the Source Evaluation Panel's recommendation as contained in the reports described in paragraph (c) of this section.

(b) Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

(c) For all proposed contracts with total estimated values in excess of the simplified acquisition threshold and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through establishment of a Source Evaluation Panel. A single technical member may be appointed to the Source Evaluation Panel to evaluate proposals with the contracting officer's approval. In such instances, the Designating Official may appoint technical advisors (non-voting members) to assist the single technical member. Except in unusual cases, the Source Evaluation Panel should not exceed five members including the Chairperson. The Source Evaluation Panel's proposal evaluation report(s) may include a Competitive Range Report and a Final Evaluation Report (to be used when award will be made after conducting discussions), or a Recommendation for Award Report (to be used when award will be made without discussions).

(d) The Designating Official (Office Director or designee) is responsible for appointing a Source Evaluation Panel to evaluate competitive technical proposals in accordance with the solicitation technical criteria. The Designating Official is also responsible for conducting an independent review and evaluation of the Source Evaluation Panel's proposal evaluation report(s) to the contracting officer.

2015.304 Evaluation factors

The evaluation factors included in the solicitation serve as the standard against which all proposals are evaluated and are the basis for the development of proposal preparation instructions, in accordance with FAR 15.304(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors may be accomplished by the assignment of a numerical weight to each. For those solicitations which use numerical weights, those weights shall be stated in the solicitation. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and "go/no go" evaluation factors.

2015.305 Proposal evaluation.

The contracting officer may provide offerors' cost proposals and supporting financial information to members of the Source Evaluation Panel at the same time technical proposals are distributed for evaluation. The Source Evaluation Panel shall use this information to perform an accurate integrated assessment of each offeror's proposal based on all the facts presented to them.

Subpart 2015.6—Unsolicited Proposals

2015.606 Agency procedures.

(a) The Division of Contracts and Property Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals.

(b) To ensure that the unsolicitated proposal is logged into the unsolicited proposal tracking system, it must be submitted in an original and two copies, and requests for additional information regarding their preparation, must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Mail Stop T–7–I–2, Washington, DC 20555.

2015.606–1 Receipt and initial review.

(a) The Division of Contracts and Property Management shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) The Division of Contracts and Property Management shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgment letter will be sent to the proposer by The Division of Contracts and Property Management, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.606–1(b) and FAR 15.606–1(c).

PART 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.

2016.307–70 Contract provisions and clauses.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2016.3—Cost Reimbursement Contracts

2016.307–70 Contract provisions and clauses.

(a) The contracting officer shall insert the provision at 2052.216–70, Level of Effort, in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award fee, cost-plus-fixed fee, time and materials, or labor hour basis.

(b) The contracting officer may insert the following provisions and clauses in cost reimbursement contracts as applicable:

(1) Section 2052.216–71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216–71, Indirect Cost Rates—Alternate 1 (where predetermined rates apply).

(3) Section 2052.216–71, Indirect Cost Rates (Ceiling)—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

The contracting officer shall insert the following clauses in all solicitations and contracts that contain task order procedures. These clauses may be altered by the contracting officer to fit the circumstances of the requirement.

(a) Section 2052.216–72, Task Order Procedures;

(b) Section 2052.216–73, Accelerated Task Order Procedures.

PART 2017—SPECIAL CONTRACTING METHODS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2017.2—Options

2017.204 Contracts.

(a) The contracting officer may approve non-competitive extensions, within the limits of his/her delegation, to five-year contracts up to a total of an additional 6 months for the purpose of completing the competitive process for a follow-on contract, provided that the request for procurement action for a follow-on or replacement contract was received in the Division of Contracts and Property Management not less than 6 months before the end of the fifth year.

(b) Other extensions beyond five years must be approved by the Competition Advocate.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2019—SMALL BUSINESS PROGRAMS

Subpart 2019.7—Subcontracting with small business, small disadvantaged business, and women-owned small business concerns

Sec.

2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2019.7—Subcontracting With Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns

2019–705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

(a) The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, only upon ensuring that the required information, goals and assurances are included in accordance with FAR 19.704.

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1—Basic Labor Policies.

Sec.
2022.101–1 General
2022.103–4 Approvals.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 4186 (b).

Subpart 2022.1—Basic Labor Policies

2022.101–1 General.

The Head of the Contracting Activity shall designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance. Contractor notification shall be made in accordance with FAR 52.222–1, "Notice to the Government of Labor Disputes."

2022.103–4 Approvals.

The agency approving official for contractor overtime shall be the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

The contracting officer shall insert the provision found at 2052.222–70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

Sec.
2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR Part 9, Subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR Part 9, Subpart A, Freedom of Information Act Regulations, are applicable to the availability of NRC records to the public.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contracts

Sec.
2027.305–3 Follow-up by Government.
2027.305–70 Solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305–3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report in writing any patents, copyrights, or royalties attained using any portion of the contract funds.

(b) If no activity is to be reported, the contractor shall provide the following written determination before final payment and closeout of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or owed directly to others.

(c) The contracting officer may waive any of the requirements in paragraphs (b)(1) through (b)(4) of this section, after documenting the file to indicate the—

(1) Impracticality of obtaining the document(s); and

(2) Steps taken to attempt to obtain them.

(d) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patent, copyright, or royalty activity, and shall document the official file with the resolution to protect the Government's rights prior to making any final payment and closing out the contract.

2027.305–70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 2052.227–70, Drawings, Designs, Specifications, and Data, in all solicitations and contracts in which drawings, designs, specifications, or other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409, Solicitation Provisions and Contract Clauses, are included in the solicitation/contract, this clause will not be used.

PART 2030—COST ACCOUNTING STANDARDS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2030.2—CAS Program Requirements

2030.201–5 Waiver.

Requests to waive Cost Accounting Standards (CAS) requirements must be submitted to the Chairman, CAS Board by the Competition Advocate. The requests for waiver must be forwarded through the Head of the Contracting Activity with supporting documentation and rationale in accordance with FAR 30.201–5.

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2031.1—Applicability

2031.109–70 Contract clauses.

The contracting officer shall insert the clause at 2052.231–70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

PART 2032—CONTRACT FINANCING

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2032.4—Advance Payments for Non-Commercial Items

2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements, except for subscriptions to publications, the contracting officer shall coordinate with the Office of the Chief Financial Officer, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

PART 2033—PROTESTS, DISPUTES, AND APPEALS

Subpart 2033.1—Protests

Sec.
2033.103 Protests to the agency.

Subpart 2033.2—Disputes and Appeals

Sec.
2033.204 Policy.
2033.211 Contract Claims—Contracting officer's decision.
2033.215 Contract clause.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2033.1—Protests

2033.103 Protests to the agency.

Protests to the agency shall first be considered by the contracting officer. In accordance with FAR 33.103(d)(4), the protestor may appeal the contracting officer's decision by delivering or providing a written request to the agency Director, Division of Contracts or Property Management, or designee, to conduct an independent review of the Contracting Officer's decision.

Subpart 2033.2—Disputes and Appeals

2033.204 Policy.

Final decisions of the NRC contracting officer on contract disputes and appeals issued pursuant to the Contracts Disputes Act will be heard by the Department of Energy Board of Contract Appeals (EBCA) pursuant to an interagency agreement between the NRC and the Department of Energy. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contract Claims—Contracting officer's decision.

The contracting officer shall alter the paragraph at FAR 33.211(a)(4)(v) to identify the Energy Board of Contract Appeals and include its address: U.S. Department of Energy, Board of Contract Appeals, HG–50, Building 950, 1000 Independence Ave., SW, Washington, DC 20585, when preparing a written decision.

2033.215 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I, where continued performance is vital to National Security, the public health and safety, critical and major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impractical.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

2035.70 Contract clauses.

(a) The contracting officer shall insert the following clause in all solicitations and contracts for research and development by private contractors and universities and for other technical services, as appropriate:

(1) Section 2052.235–70, Publication of Research Results;

(2) Section 2052.235–72 Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) Criteria for selecting contractors may include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art technology.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

Subpart 2042.570—Differing Professional Views (DPV)

Sec.
2042.570–1 Policy.
2042.570–2 Solicitation and contract clauses.

Subpart 2042.8—Disallowance of Costs

Sec.
2042.803 Disallowing costs after incurrence.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 418(b).

Subpart 2042.570—Differing Professional Views

2042.570–1 Policy.

The Nuclear Regulatory Commission's (NRC) policy is to support the contractor's expression of professional health and safety-related concerns associated with the contractor's work for NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor's personnel, or subcontractor personnel believes that a conscientious expression of a competent judgment is required to document such concerns on matters directly associated with its performance of the contract. The procedure described in 2052.242–71, Procedures for Resolving NRC Contractor Differing Professional Views, provide for the expression and resolution of DPVs of health and safety-related concerns associated with the mission of the agency by NRC contractors, contractor personnel or subcontractor personnel on matters directly associated with its performance of the contract. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under this contract and to all subcontractors who shall, in turn, provide a copy of the procedure to its employees. **Note:** The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

2042.570–2 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 2052.242–70, Resolving NRC Contractor Differing Professional Views, in the body of cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

(b) The contracting officer shall include the clause at 2052.242–71, Procedures for Resolving NRC Contractor Differing Professional Views, as an attachment to cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer or designee shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR Subpart 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted;

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs;

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall:

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision, including any disallowance of questioned costs; inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR Subpart 33.2; and provide a copy of the final decision to the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the Government by one or more of the following methods:

(A) Request that the contractor provide a credit adjustment (offset) and an adequate description/explanation of the adjustment against amounts billed the Government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deduct the disallowed costs from the next invoice submitted under the contract;

(C) Deduct the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advise the contractor that a refund is immediately payable to the Government (in situations where there are insufficient payments owed by the Government to effect recovery from the contract).

Part 2045—GOVERNMENT PROPERTY

Subpart 2045.3—Providing Government Property to Contractors

Sec.
2045.370 Providing government property (in general).
2045.371 Property accountability procedures.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing Government property (in general).

(a) Unless otherwise provided for in FAR 45.302–1(d), applicable to Government facilities with a unit cost of less than $10,000, a contractor may be provided Government property or allowed to purchase the property at Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

2045.371 Property accountability procedures.

(a) The threshold for detailed reporting of capitalized equipment by contractors is $50,000.

(b) The contractor shall send a copy of each Financial Status Report (NRCAR 2052.211–72, and 2052.211–72 Alternate 1) to the Chief, Property and Acquisition Oversight Branch, Division of Contracts and Property Management, which references the acquisition of, or change in status of, contractor-held property purchased with government funds valued at the time of purchase at $50,000 or more.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.
2052.200 Authority.
2052.204–70 Security.
2052.204–71 Site access badge requirements.
2052.209–70 Current/former agency employee involvement.
2052.209–71 Contractor organizational conflicts of interest (representation).
2052.209–72 Contractor organizational conflicts of interest.
2052.211–70 Preparation of technical reports.
2052.211–71 Technical progress report.
2052.211–72 Financial status report.
2052.214–70 Prebid conference.
2052.214–71 Bidder qualifications and past experience.
2052.214–72 Bid evaluation.
2052.214–73 Timely receipt of bids.
2052.214–74 Disposition of bids.
2052.215–70 Key personnel.
2052.215–71 Project officer authority.
2052.215–72 Timely receipt of proposals.
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2052.222–70 Nondiscrimination because of age.
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2052.235–71 Safety, health, and fire protection.
2052.242–70 Resolving NRC differing professional views.
2052.242–71 Procedures for resolving NRC differing professional views.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204–70 Security.

As prescribed at 2004.404(a), the contracting officer shall insert the following clause in solicitations and contracts during which the contractor may have access to, or contact with classified information, including National Security information, restricted data, formerly restricted data, and other classified data:

Security (Date)

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and the retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93–579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer. Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission which are subject to change as directed by the NRC Division of Facilities and Security and the Contracting Officer. These changes will be under the authority of the FAR Changes clause referenced in Section I of this document.

(e) Definition of National Security Information. The term National Security Information, as used in this clause, means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. The term Restricted Data, as used in this clause, means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. The term Formerly Restricted Data, as used in this clause, means all data removed from the Restricted Data category under Section 142–d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. It is understood that disclosure of National Security Information, Restricted Data, and Formerly Restricted Data relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794; and Executive Order 12958.)

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing the contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment must provide that the subcontractor or supplier assign classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

(End of Clause)

2052.204–71 Site access badge requirements.

As prescribed at 2004.404(b), the contracting shall insert the following clause in all solicitations and contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals:

Site Access Badge Requirements (Jan 1993)

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with.

(End of Clause)

2052.209–70 Current/former agency employee involvement.

As prescribed at 2009.105–70, the contracting officer shall insert the following provision in all solicitations:

Current/Former Agency Employee Involvement (Date)

(a) The following representation is required by the NRC Acquisition Regulation 2009.105–70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts and as set forth in the above cited provision, the use of such employees may, under certain conditions, adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) There ( ) are ( ) are no current/former NRC employees (including special Government employees performing services as experts, advisors, consultants, or members of advisory committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering, or performing any contract, consultant agreement, or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment, the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

2052.209–71 Contractor organizational conflicts of interest (representation).

As prescribed in 2009.570–4(b) and 2009.570–8, the contracting officer must insert the following provision in applicable solicitations and in contracts resulting from unsolicited proposals. The contracting officer must also include the following in task orders and contract modifications for new work.

Contractor Organizational Conflicts of Interest Representation (Date)

I represent to the best of my knowledge and belief that:

The award to ________ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 48 CFR 2009.570–3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 48 CFR 2009.570–3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts,

(2) Disqualify the offeror, or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 48 CFR 2009–570–9.

(b) The refusal to provide the representation required by 48 CFR 2009.570–4(b), or upon request of the contracting officer, the facts required by 48 CFR 2009.570–3(b), must result in disqualification of the offeror for award.

(End of Provision)

2052.209–72 Contractor organizational conflicts of interest.

As prescribed at 2009.570–5(a) and 2009.570–8, the contracting officer must insert the following clause in all applicable solicitations, contracts, and simplified acquisitions of the types described in 2009.570–4(b):

Contractor Organizational Conflicts of Interest (Jan 1993)

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor:

(1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract; and

(2) Does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described apply to performance or participation by the contractor, as defined in 48 CFR 2009.570–2 in the activities covered by this clause.

(c) Work for others.

(1) Notwithstanding any other provision of this contract, during the term of this contract the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer before the execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate), except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work (except work in the same or similar technical area) if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d) Disclosure after award.

(1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, that it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570–2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the Government.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to

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discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this clause.

(e) Access to and use of information.

(1) If in the performance of this contract, the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public; or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) Subject to patent and security provisions of this contract, the contractor shall have the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 48 CFR 2009.570–2, the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms *contract, contractor,* and *contracting officer*, must be appropriately modified to preserve the Government's rights.

(g) Remedies. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) Waiver. A request for waiver under this clause must be directed in writing to the contracting officer in accordance with the procedures outlined in 48 CFR 2009.570–9.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited), which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)

2052.211–70 Preparation of technical reports.

As prescribed at 2011.104–70(a) the contracting officer shall insert the following clause in solicitations and contracts when deliverables include a technical report. The contracting officer may alter this clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation, without solicitation amendment.

Preparation of Technical Reports (Jan 1993)

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See List of Attachments).

(End of Clause)

2052.211–71 Technical progress report.

As prescribed at 2011.104–70(b), the contracting officer shall insert the following clause in all solicitations and contracts except firm fixed price or indefinite delivery contracts to be awarded on a time-and-materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/serviced line items. The contracting officer may alter this clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation, without solicitation amendment.

Technical Progress Report (Jan 1993)

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, appropriate financial tracking code specified by the NRC Project Officer, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period, and milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution. If the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact.

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of Clause)

2052.211–72 Financial status report.

As prescribed at 2011.104–70(c), the contracting officer shall insert the following clause in applicable cost reimbursement solicitations and contracts when a detailed assessment of costs is warranted and a contractor spending plan is required. The contracting officer may alter this clause and Alternate 1 of this clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation, without solicitation amendment.

Financial Status Report (Date)

The contractor shall provide a monthly Financial Status Report (FSR) to the project officer and the contracting officer. The FSR shall include the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at $50,000 or more. Whenever such property changes occur, the contractor shall send a copy of the report to the Chief, Property and Acquisition Oversight Branch, Office of Administration. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, the appropriate financial tracking code (e.g., Job Code Number or JCN) specified by the NRC Project Officer, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

(a) Total estimated contract amount.

(b) Total funds obligated to date.

(c) Total costs incurred this reporting period.

(d) Total costs incurred to date.

(e) Detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(f) Balance of obligations remaining.

(g) Balance of funds required to complete contract/task order.

(h) Contractor Spending Plan (CSP) status: A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(1) Projected percentage of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(2) Indicate significant changes in the original CSP projection in either dollars or percentage of completion. Identify the change, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original NRC-approved CSP projections, a written statement to that effect is sufficient in lieu of submitting a detailed response to item "h".

(i) Property status:

(1) List property acquired for the project during the month with an acquisition cost between $500 and $49,999. Give the item number for the specific piece of equipment.

(2) Provide a separate list of property acquired for the project during the month with an acquisition cost of $50,000 or more. Provide the following information for each item of property: item description or nomenclature, manufacturer, model number, serial number, acquisition cost, and receipt date. If no property was acquired during the month, include a statement to that effect. Note: The same information shall be provided for any component or peripheral equipment which is part of a "system or system unit."

(3) For multi-year projects, in the September monthly financial status report provide a cumulative listing of property with an acquisition cost of $50,000 or more showing the above information.

(4) In the final financial status report provide a closeout property report containing the same elements as described above for the monthly financial status reports, for all property purchased with NRC funds regardless of value unless title has been vested in the contractor. If no property was acquired under the contract, provide a statement to that effect. The report should note any property requiring special handling for security, health, safety, or other reasons as part of the report.

(j) Travel status: List the starting and ending dates for each trip, the starting point and destination, and the traveler(s) for each trip.

(k) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of Clause)

Alternate 1 (Date)

As prescribed in 2011.104–70(c), the contracting officer shall insert the following clause in applicable cost reimbursement solicitations and contracts when no contractor spending plan is required:

Financial Status Report—Alternate 1 (Date)

The contractor shall provide a monthly Financial Status Report (FSR) to the Project Officer and the contracting officer. The FSR shall include the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at $50,000 or more. Whenever such changes occur, the contractor shall send a copy of the report to the Chief, Property and Acquisition Oversight Branch, Office of Administration. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report shall include the following for each discrete task:

(a) Total estimated contract amount.

(b) Total funds obligated to date.

(c) Total costs incurred this reporting period.

(d) Total costs incurred to date.

(e) Detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(f) Balance of obligations remaining.

(g) Balance of funds required to complete contract/task order.

(h) [Reserved]

(i) Property status:

(1) List property acquired for the project during the month with an acquisition cost between $500 and $49,999. Give the item number for the specific piece of equipment.

(2) Provide a separate list of property acquired for the project during the month with an acquisition cost of $50,000 or more. Provide the following information for each item of property: item description or nomenclature, manufacturer, model number, serial number, acquisition cost, and receipt date. If no property was acquired during the month, include a statement to that effect. Note: The same information shall be provided for any component or peripheral equipment which is part of a "system or system unit."

(3) For multi-year projects, in the September monthly financial status report provide a cumulative listing of property with an acquisition cost of $50,000 or more showing the above information.

(4) In the final financial status report provide a closeout property report containing the same elements as described above for the monthly financial status reports, for all property purchased with NRC funds regardless of value unless title has been vested in the contractor. If no property was acquired under the contract, provide a statement to that effect. The report should note any property requiring special handling for security, health, safety, or other reasons as part of the report.

(j) Travel status: List the starting and ending dates for each trip, the starting point and destination, and the traveler(s) for each trip.

(k) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of Clause)

2052.214–70 Prebid conference.

As prescribed at 2014.201–670(a), the contracting officer may insert the following provision in invitations for bids which require a prebid conference:

Prebid Conference (Jan 1993)

(a) A prebid conference is scheduled for:

Date: *

Location: *

Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential bidder is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: *, Mail Stop T–7–I–2, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. */Prebid Conference."

(e) A transcript of the conference will be furnished to all prospective bidders through the issuance of an amendment to the solicitation.

* To be incorporated into the solicitation.

(End of Provision)

2052.214–71 Bidder qualifications and past experiences.

As prescribed in 2014.201–670(b), the contracting officer may insert the following provision on an optional basis to fit the circumstances of the invitation for bid.

Bidder Qualifications and Past Experience (Date)

(a) The bidder shall list previous/current contracts performed within the past * years (with no omissions) in which the Bidder was the prime or principal subcontractor. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(b) The following information shall be provided for each previous/current contract listed:

(1) Contract No.:

(2) Contract performance dates:

(3) Estimated total value of the contract (base plus all option years):

(4) Brief description of work performed under the contract:

(5) Contract Standard Industrial Code:

(6) Name and address of Government agency or commercial entity:

(7) Technical Point of Contact and current telephone number:

(8) Contracting Officer name and current telephone number:

(c) The bidder shall also provide the name, title and full telephone number of its technical representative and contracts/business representative:

(1) Technical Representative name:
Title:
Telephone No. ( )

(2) Contracts/Business Representative name:
Title:
Telephone No. ( )

*To be incorporated into the solicitation.

(End of Provision)

2052.214–72 Bid evaluation.

As prescribed at 2014.201–670(c), the contracting officer shall insert the following provision in applicable invitations for bids (paragraph "(f)" of this provision is optional):

Bid Evaluation (Jan 1993)

(a) Award will be made to that responsive, responsible bidder within the meaning of FAR Subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this Invitation for Bid (IFB), constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount."

(b) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC, are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1, and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within * hours after receiving the request:

(1) Concerning their ability to meet any of the minimum standards set forth in FAR 9.104,

(2) Samples of work, and

(3) Names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this provision, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity, will cause the bid to be rejected as nonresponsive.

*To be inserted into solicitation.

(End of Provision)

2052.214–73 Timely receipt of bids.

As prescribed at § 2014.670(b), the contracting officer shall insert the following provision in all invitations for bids:

Timely Receipt of Bids (Date)

Sealed offers for furnishing the services or supplies in the schedule are due at the date and time stated in block 9 of Standard Form 33, Solicitation, Offer and Award. Offers sent through the U.S. Mail (including U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee) must be addressed to the place specified in the solicitation. All hand-carried offers including those made by private delivery services (e.g., Federal Express and Airborne Express) must be delivered to the NRC loading dock security station located at 11545 Rockville Pike, Rockville, Maryland 20852 and received in the depository located in Room T–7–I–2. All offerors should allow extra time for internal mail distribution or for pick up of hand-carried deliveries. NRC is a secure facility with perimeter access-control and NRC personnel are only available to receive hand-carried offers during normal working hours, 7:30 a.m.–3:30 p.m., Monday through Friday, excluding federal holidays.

(End of Provision)

2052.214–74 Disposition of bids.

As prescribed at 2014.670(b), the contracting officer shall insert the following provision in applicable invitation for bids:

Disposition of Bids (Jan 1993)

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

2052.215–70 Key personnel.

As prescribed at 2015.209–70(a)(1), the contracting officer shall insert in solicitations and contracts the following clause as applicable to the requirement:

Key Personnel (Jan 1993)

(a) The following individuals are considered to be essential to the successful performance of the work hereunder: *

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this clause.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer and the project officer shall evaluate the contractor's request and the contracting officer shall promptly notify the contractor of his or her decision in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the contract work is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss, or damage.

(End of Clause)

*To be incorporated into any resultant contract.

2052.215–71 Project officer authority.

As prescribed in 2015.209–70(a)(2)(i), the contracting officer shall insert the following clause in applicable solicitations and contracts for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost sharing, labor-hour or time-and-materials, including task order contracts. This clause and the following alternate clauses are intended for experienced, trained projects officers, and may be altered to delete duties where appropriate:

Project Officer Authority (Date)

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: *
Address: *
Telephone Number: *

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term *technical direction* is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, authorizes travel which was unanticipated in the Schedule (i.e., travel not contemplated in the Statement of Work or changes to specific travel identified in the Statement of Work), fills in details, or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way causes an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions, or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer. A copy of NRC Form 445, Request for Approval of Official Foreign Travel, which has received final approval from the NRC must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this clause, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the "Changes" clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto is subject to § 52.233–1—Disputes.

(i) In addition to providing technical direction as defined in paragraph (b) of this clause, the project officer shall:

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

(End of Clause)

Alternate 1 (Date)

As prescribed at 2015.209–70(a)(2)(ii), the contracting officer shall insert the following clause in solicitations and contracts which require issuance of delivery orders for specific products/services.

Project Officer Authority—Alternate 1 (Date)

(a) The contracting officer's authorized representative, hereinafter referred to as the project officer, for this contract is:

Name: *
Address: *
Telephone Number: *

(b) The project officer shall:

(1) Place delivery orders for items required under this contract up to the amount obligated on the contract award document.

(2) Monitor contractor performance and recommend to the contracting officer changes in requirements.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

* To be incorporated into any resultant contract.

(End of Clause)

Alternate 2 (Date)

As prescribed at 2015.209(a)(2)(iii), the contracting officer shall insert in solicitations for firm fixed price contracts, the clause at 2052.215–71 Project Officer Authority Alternate 1 which shall be used with paragraph (b)(1) deleted and the remainder of the clause renumbered.

2052.215–72 Timely receipt of proposals.

As prescribed in 2015.209–70(a)(3), the contracting officer shall insert the following provision in all solicitations:

Timely Receipt of Proposals (Date)

Sealed offers for furnishing the services or supplies in the schedule are due at the date and time stated in block 9 of Standard Form 33, Solicitation, Offer and Award. Offers sent through the U.S. Mail (including U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee) must be addressed to the place specified in the solicitation. All hand-carried offers including those made by private delivery services (e.g., Federal Express and Airborne Express) must be delivered to the NRC loading dock security station located at 11545 Rockville Pike, Rockville, Maryland 20852 and received in the depository located in Room T–7–I–2. All offerors should allow extra time for internal mail distribution or for pick up of hand-carried deliveries. NRC is a secure facility with perimeter access-control and NRC personnel are only available to receive hand-carried offers during normal working hours, 7:30 AM—3:30 PM, Monday through Friday, excluding federal holidays.

(End of Provision)

2052.215–73 Award notification and commitment of public funds.

As prescribed at 2015.209–70 (a)(4), the contracting officer shall insert the following clause in applicable solicitations:

Award Notification and Commitment of Public Funds (Date)

(a) All offerors will be notified of their exclusion from the competitive range in accordance with FAR 15.503(a)(1). Pursuant to the requirements of FAR 15.503(a)(2), preliminary notification will be provided before award for small business set-aside procurements on negotiated procurements. The contracting officer shall provide written postaward notice to each unsuccessful offeror in accordance with FAR 15.503(b).

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments, or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include:

(1) Encouraging a potential contractor to incur costs prior to receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

2052.215–74 Disposition of proposals.

As prescribed in 2015.209–70(a)(5), the contracting officer shall insert the following provision in all solicitations:

Disposition of Proposals (Jan 1993)

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the proposals is requested by the offeror upon submission of the proposals, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

2052.215–75 Proposal presentation and format.

As prescribed at 2015.209–70(b)(1), the contracting officer may insert the following provision in applicable negotiated procurements for cost type solicitations. This clause may be tailored to each procurement and solicitation evaluation criteria by the contracting officer to fit the circumstances of the procurement.

Proposal Presentation and Format (Date)

(a) Information submitted in response to this solicitation must be typed, printed, or reproduced on letter-size paper and each copy must be legible. Offerors are hereby notified that all information provided including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education, and employment history of its employees, subcontractor personnel, and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(b) The offeror must submit the following material which will constitute its offer, as defined by FAR 2.101, in two separate and distinct parts at the date and time specified in * of the solicitation for receipt of sealed offers.

(1) Part 1—Solicitation Package/Offer. Two (2) original signed copies of this solicitation package/offer. All applicable sections must be completed by the offeror.

(2) Part 2—Cost Proposal. One (1) original and * copies of the "Cost Proposal."

(i) The cost proposal shall be submitted separately from the Technical and Management Proposal or Oral Presentation and Supporting Documentation (as applicable).

(ii) The offeror's request for an exception to submitting cost or pricing data shall be made in accordance with FAR 52.215–20(a).

(iii) If the contracting officer does not grant the offeror an exception from the requirement to submit cost or pricing data, the offeror's cost proposal shall conform with the requirements of FAR 52.215–20(b). Cost information shall include pertinent details sufficient to show the elements of cost upon which the total cost is predicted in accordance with the requirement of FAR 52.215–20(b)(1).

(iv) When the offeror's estimated cost for the proposed work exceeds $100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(v) For any subcontract discussed under the Technical and Management Proposal, or Oral Presentation Material, provide supporting documentation on the selection process, i.e. competitive vs. noncompetitive, and the cost evaluation.

(c) "Written Technical and Management Proposal" or "Oral Presentation and Supporting Documentation" (as applicable). One (1) original and * copies.

(1) The written Technical and Management Proposal or Oral Presentation and Supporting Documentation may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit in the written Technical and Management Proposal or Oral Presentation and Supporting Documentation full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) The written Technical Proposal or Oral Presentation and Supporting Documentation must be tailored to assure that all information reflects a one-to-one relationship to the evaluation criteria.

(4) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror, or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(d) Written Technical or Oral Presentation and Supporting Documentation Requirements—Instructions. * To be incorporated into the solicitation

(End of Provision)

Alternate 1 (Date)

As prescribed at 2015.209–70(b)(2), this Alternate 1 may be used for solicitations for negotiated task orders. Include the following paragraph in place of paragraph (b)(2)(iv) of the basic provision:

(b)(2)(iv) The offeror's cost proposal shall be based on the NRC's estimated level of effort. The NRC's estimated level of effort for this procurement is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

Alternate 2 (Date)

As proposed at 2015.209–70(b)(3), Alternate 2 may be used for solicitations for negotiated fixed price, labor hour, or time and materials contracts. Substitute the following paragraph (b)(2)(ii) for the paragraph (b)(2)(ii) of the basic provision, delete paragraphs (b)(2)(iii) through (iv) of the basic provision, and renumber the remaining paragraphs.

(b)(2)(ii) Submittal of information other than cost or pricing data shall be made in accordance with FAR 52.215–20 Alternate IV

2052.215–76 Preproposal conference

As prescribed at 2015.407–70(c), the contracting officer may insert the following provision in applicable solicitations which include a preproposal conference:

Preproposal Conference (Jan 1993)

(a) A preproposal conference is scheduled for:

Date: *
Location: *
Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone * , no later than close of business * . Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential offeror is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: *, Mail Stop T–7–I–2, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. * /Preproposal Conference."

*To be incorporated into the solicitation.

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

(End of Provision)

2052.215–77 Travel approvals and reimbursement.

As prescribed at 2015.209–70(d), the contracting officer shall insert the following clause in cost reimbursement solicitations and contracts which require travel but do not set a specific ceiling amount on that travel. Note that requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

Travel Approvals and Reimbursement (Date)

(a) All foreign travel must be approved in advance by the NRC on NRC Form 445, Request for Approval of Official Foreign Travel, and must be in compliance with FAR 52.247–63 Preference for U.S. Flag Air Carriers. The contractor shall submit NRC Form 445 to the NRC no later than 30 days prior to the commencement of travel.

(b) The contractor must receive written approval from the NRC Project Officer prior to taking travel which was unanticipated in the Schedule (i.e., travel not contemplated in the Statement of Work, or changes to specific travel identified in the Statement of Work).

(c) The contractor will be reimbursed only for those travel costs incurred which are directly related to this contract and which are allowable subject to the limitations prescribed in FAR 31.205–46.

(d) It is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the estimated costs specified in the Schedule.

(e) Reasonable travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100–679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost Principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

(End of Clause)

2052.215–78 Travel approvals and reimbursement—Alternate 1.

As prescribed in 2015.209–70(d), the contracting officer shall insert the following clause in cost reimbursement solicitations and contracts which include a ceiling amount on travel. Note that requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

Travel Approvals and Reimbursement—Alternate 1 (Date)

(a) Total expenditure for travel may not exceed ____*____ without the prior approval of the contracting officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445, Request for Approval of Official Foreign Travel, and must be in compliance with FAR 52.247–63 Preference for U.S. Flag Air Carriers. The contractor shall submit NRC Form 445 to the NRC no later than 30 days prior to the commencement of travel.

(c) The contractor will be reimbursed only for those travel costs incurred which are directly related to this contract and which are allowable subject to the limitations prescribed in FAR 31.205–46.

(d) It is the responsibility of the contractor to notify the contracting officer in accordance with the FAR Limitations of Cost clause of this contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the travel ceiling amount identified in paragraph (a) of this clause.

(e) Reasonable travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100–679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost Principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

*To be incorporated into any resultant contract.

(End of Clause)

2052.215–79 Contract award and evaluation of proposals.

As prescribed in 2015.209(a)(1), insert the following provision in solicitations when technical merit is more important than cost:

Contract Award and Evaluation of Proposals (Date)

(a) By use of narrative and numerical (as appropriate) scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below. These factors are listed in their relative order of importance.

(b) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value, as defined in FAR 2.101, after evaluation in accordance with the factors and subfactors in the solicitation.

(c) The Government may:

(1) Reject any or all proposals if such action is in the Government's interest.

(2) Waive informalities and minor irregularities in proposals received.

(d) The Government intends to evaluate proposals and award a contract without discussions with offerors. The Government reserves the right to seek proposal clarifications (e.g., capability issues as described in FAR 15.306(a) or minor or clerical errors as described in FAR 14.407); and hold communications as described in FAR 15.306(b)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(e) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(f) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(g) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(h) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(i) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(j) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(k) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan

(CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

*To be incorporated into the solicitation.

(End of Provision)

Alternate 1 (Date)

As prescribed at 2015.209–70(e)(2), Alternate 1 may be used when proposals are to be evaluated on a lowest price, technically acceptable basis. Substitute the following paragraph for paragraph (b) in the clause at 2052.215–79:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors,

Alternate 2 (Date)

As prescribed at 2015.209–70(e)(2), Alternate 2 may be used when cost and technical merit are of equal significance. Substitute the following paragraph for paragraph (b) in the clause at 2052.215–79:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

2052.216–70 Level of effort.

As prescribed at 2016.307–70(a) the contracting officer shall insert the following provision in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award-fee, cost-plus-fixed-fee, time and materials, or labor hours basis.

Level of Effort (Jan 1993)

The NRC's estimate of the total effort for this project is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

*To be incorporated into any resultant contract.

(End of Provision)

2052.216–71 Indirect cost rates.

As prescribed at 2016.307–70(b), the contracting officer may insert the following clause in solicitations and contracts where provisional rates without ceiling apply.

Indirect Cost Rates (Jan 1993)

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows: *

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232–20, Limitation of Cost, or FAR 52.232–22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

*To be incorporated into any resultant contract.

(End of Clause)

Alternate 1

As prescribed at 2016.307–70(b)(2), the contracting officer may insert the following clause in applicable solicitations and contracts where predetermined rates apply:

Indirect Cost Rates—Alternate 1 (Jan 1993)

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined rates: *

*To be incorporated into any resultant contract.

(End of Clause)

Alternate 2 (Date)

As prescribed at 2016.307–70(b), the contracting officer may insert the following clause in applicable solicitations and contracts where provisional rates with ceilings apply:

Indirect Costs (Ceiling)—Alternate 2 (Date)

(a) For this contract, the ceiling amount reimbursable for indirect costs is as follows: *

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs result in a lower amount for indirect costs, the lower amount will be paid. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

*To be incorporated into any resultant contract.

(End of Clause)

2052.216–72 Task order procedures.

As prescribed at 2016.506–70(a), the contracting officer may insert the following clause in applicable solicitations and contracts that contain task order procedures. This clause may be altered to fit the circumstances of the requirement.

Task Order Procedures (Date)

(a) Task order request for proposal. When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORFP) which may include the following, as appropriate:

(1) Scope of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance—place of performance;

(4) Applicable special provisions;

(5) Technical skills required; and

(6) Estimated level of effort.

(b) Task order technical proposal. By the date specified in the TORFP, the contractor shall deliver to the contracting officer a written or verbal (as specified in the TORFP technical proposal submittal instructions) technical proposal that provides the technical information required by the TORFP.

(c) Cost proposal. The contractor's cost proposal for each task order must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds $100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(d) Task order award. The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following:

(1) Statement of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance;

(4) Key personnel;

(5) Applicable special provisions; and

(6) Total task order amount including any fixed fee.

(End of Clause)

2052.216–73 Accelerated task order procedures.

As prescribed at 2016.506–70(b), the contracting officer may insert the following clause in applicable solicitations and contracts which contain task order procedures. This clause may be altered to fit the circumstances of the requirement.

Accelerated Task Order Procedures (Jan 1993)

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to contractor appeal as provided in 52.233–1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

(End of Clause)

2052.222–70 Nondiscrimination because of age.

As prescribed at 2022.901–70, the contracting officer shall insert the following clause in all solicitations:

Nondiscrimination Because of Age (Jan 1993)

It is the policy of the Executive Branch of the Government that:

(a) Contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and

(b) That contractors and subcontractors, or persons acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

2052.227–70 Drawings, designs, specifications, and other data.

As prescribed at 2027.305–70, the contracting officer shall insert the following clause in all solicitations and contracts in which drawings, designs, specifications, in other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409 are included in the solicitation and contract, this clause will not be used.

Drawings, Designs, Specifications, and Other Data (Jan 1993)

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use, be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

2052.231–70 Precontract costs.

As prescribed in 2031.109–70, the following clause may be used in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

Precontract Costs (Jan 1993)

Allowable costs under this contract must include such costs incurred by the contractor in connection with the work covered by this contract during the period from * and including * to the effective date of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed * which is included in the estimated cost of this contract.

*To be incorporated into any resultant contract.

(End of Clause)

2052.235–70 Publication of research results.

As prescribed in 2035.70(a)(1), the contracting officer shall insert the following clause in applicable solicitations and contracts for research and development by private contractors and universities and for other technical services as appropriate.

Publication of Research Results (Date)

(a) The principal investigator(s)/contractor shall comply with the provisions of NRC Management Directive 3.8 (Vol. 3, Part 1) and NRC Handbook 3.8 (Parts I–IV) regarding publication in refereed scientific and engineering journals or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

(b) The principal investigator(s)/contractor may publish the results of this work in refereed scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to, the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published is subject to Commission approval, has not been ruled upon, or disapproved by the Commission, the NRC reserves the right to disapprove or delay the publication. Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of Clause)

2052.235–71 Safety, Health, and Fire Protection.

As prescribed in 2035.70(a)(2), the contracting officer shall insert the following clause in applicable solicitations and contracts for research and development by private contractors and universities and for other technical services as appropriate:

Safety, Health, and Fire Protection (Jan 1993)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start work order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

(End of Clause)

2052.242–70 Resolving differing professional views.

As prescribed in 2042.570–1, the contracting officer shall insert the following clause in the body of cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Resolving NRC Contractor Differing Professional Views (DPVs) (Date)

(a) The Nuclear Regulatory Commission's (NRC) policy is to support the contractor's expression of professional health and safety related concerns associated with the contractor's work for NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor's personnel, or subcontractor personnel believes that a conscientious expression of a competent judgment is required to document such concerns on matters directly associated with its performance of the contract. The NRC's policy is to support these instances as Differing Professional Views (DPVs).

(b) The procedure that will be used provides for the expression and resolution of differing professional views (DPVs) of health and safety related concerns associated with the mission of the agency by NRC contractors, contractor personnel or subcontractor personnel on matters directly associated with its performance of the contract. This procedure may be found in Attachments to this document. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under this contract and to all subcontractors who shall, in turn, provide a copy of the procedure to its employees. NOTE: The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

(End of Clause)

2052.242–71 Procedures for resolving differing professional views.

As prescribed in 2042.570–2(b), the contracting officer shall include the following clause as an attachment to cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Procedures for Resolving NRC Contractor Differing Professional Views (DPVs) (Date)

(a) The following procedure provides for the expression and resolution of differing professional views (DPVs) of health and safety related concerns of NRC contractors and contractor personnel on matters connected to the subject of the contract. Subcontractor DPVs shall be submitted through the prime contractor. The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

(b) The NRC may authorize up to eight reimbursable hours for the contractor to document in writing a DPV by the contractor the contractor's personnel, or subcontractor personnel. The contractor shall not be entitled to any compensation for effort on a DPV which exceeds the above-specified eight hour limit.

(c) Prior to incurring costs to document a DPV, the contractor shall first determine whether there are sufficient funds obligated under the contract which are available to cover the costs of writing a DPV. In the event that there are insufficient obligated funds under the contract, the contractor shall first request the NRC contracting officer for additional funding to cover the costs of preparing the DPV and authorization to proceed.

(d) Contract funds shall not be authorized to document an allegation where the use of this NRC contractor DPV process is inappropriate. Examples of such instances are: allegations of wrongdoing which should be addressed directly to the NRC Office of the Inspector General (OIG), issues submitted anonymously, or issues raised which have already been considered, addressed, or rejected, absent significant new information. Note that this procedure does not provide anonymity. Individuals desiring anonymity should contact the NRC OIG or submit the information under NRC's Allegation Program, as appropriate.

(e) When required, the contractor shall initiate the DPV process by submitting a written statement directly to the NRC Office Director or Regional Administrator responsible for the contract, with a copy to the Contracting Officer, Division of Contracts and Property Management, Office of Administration. Each DPV submitted will be evaluated on its own merits.

(f) The DPV, while being brief, shall contain the following as it relates to the subject matter of the contract:

(1) A summary of the prevailing NRC view, existing NRC decision or stated position, or the proposed or established NRC practice.

(2) A description of the submitter's views and how they differ from any of the above items.

(3) The rationale for the submitter's views, including an assessment based on risk, safety and cost benefit considerations of the consequences should the submitter's position not be adopted by NRC.

(g) The Office Director or Regional Administrator will immediately forward the submittal to the NRC DPV Review Panel and acknowledge receipt of the DPV, ordinarily within five (5) calendar days of receipt.

(h) The panel will normally review the DPV within seven calendar days of receipt to determine whether enough information has been supplied to undertake a detailed review of the issue. Typically, within 30 calendar days of receipt of the necessary information to begin a review, the panel will provide a written report of its findings to the Office Director or Regional Administrator and to the Contracting Officer, which includes a recommended course of action.

(i) The Office Director or Regional Administrator will consider the DPV Review Panel's report, make a decision on the DPV and provide a written decision to the contractor and the Contracting Officer normally within seven calendar days after receipt of the panel's recommendation.

(j) Subsequent to the decision made regarding the DPV Review Panel's report, a summary of the issue and its disposition will be included in the NRC Weekly Information Report submitted by the Office Director. The DPV file will be retained in the Office or Region for a minimum of one year thereafter. For purposes of the contract, the DPV shall be considered a deliverable under the contract. Based upon the Office Director or Regional Administrator's report, the matter will be closed.

(End of Clause)

Dated at Rockville, Maryland this 9th day of November, 1998.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 98–32253 Filed 12–7–98; 8:45 am]

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December 8, 1998

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 285
Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees; Final Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AA71

Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees

AGENCY: Financial Management Service Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA) mandated a new eligibility requirement for persons seeking Federal financial assistance, namely that delinquent Federal debtors are ineligible for Federal direct and indirect loan assistance (other than disaster loans). On April 22, 1998, the Financial Management Service issued a notice of proposed rulemaking proposing rules to define when a debt is in delinquent status and when a delinquency is resolved for purposes of determining whether the DCIA bars a person from receiving financial assistance. The notice of proposed rulemaking also proposed rules governing when the Secretary of the Treasury may exempt a class of delinquent debts from affecting a debtor's loan eligibility, and proposed factors for authorized agency officials to consider when deciding whether to waive the DCIA eligibility requirement. This final rule finalizes the proposed rule, with changes, and addresses issues raised in comments received on the notice of proposed rulemaking.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874–6859; Ellen Neubauer or Randall Lewis, Senior Attorneys, at (202) 874–6680. A copy of this final rule is being made available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov/debt.

SUPPLEMENTARY INFORMATION:

Background

Section 31001(j)(1) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720B (section 3720B), provides that a person owing a delinquent nontax debt to the Federal Government is ineligible for Federal financial assistance in the form of a loan (other than a disaster loan) or loan insurance or guarantee. The head of an agency that administers a Federal financial assistance program may waive this provision. The waiver authority may be delegated only to the agency's Chief Financial Officer or Deputy Chief Financial Officer. In addition, the Secretary of the Treasury may exempt any class of debts from affecting a person's eligibility for receiving financial assistance.

The DCIA requires the Secretary of the Treasury to prescribe standards under which agencies will determine whether a person has an outstanding delinquent debt that would trigger the DCIA bar to Federal financial assistance. As the lead agency for the collection of delinquent nontax debt in the Federal Government, the Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations governing this and other provisions of the DCIA. This final rule defines when a debt is in delinquent status and when the delinquency is resolved for purposes of determining whether the DCIA bars a person from receiving financial assistance. This final rule also prescribes standards under which a Treasury exemption may be granted and sets forth factors for an agency to consider when deciding whether an agency waiver is appropriate.

Summary of Comments

On April 22, 1998, FMS published a Notice of Proposed Rulemaking in the **Federal Register** (63 FR 20006) entitled "Barring Delinquent Debtors from Obtaining Federal Loans or Loan Insurance or Guarantees." FMS received written comments from three Federal agencies, two financial institutions, and one university.

Delinquency Standards

One commenter recommended that determinations of delinquency and resolutions of defaults be made based on existing eligibility criteria under applicable program specific statutes and regulations. Another commenter suggested that individual creditor agencies be allowed to determine when its debts are sufficiently delinquent for purposes of barring a debtor from obtaining additional Federal financial assistance. A third commenter recommended that the rule authorize credit-granting agencies to determine when debt reported as delinquent by a creditor agency is sufficiently delinquent to warrant ineligibility for assistance.

The DCIA created a new eligibility requirement applicable to all Federal financial assistance programs and directed the Secretary of the Treasury to issue government-wide standards for determining when a debt is delinquent for purposes of barring delinquent debtors from obtaining additional Federal financial assistance. Thus, as required by the DCIA, the final rule retains uniform government-wide guidelines. While government-wide standards apply to this particular eligibility criteria, nothing in this rule precludes an agency from setting its own standards with regard to other eligibility criteria applicable to a specific program. Paragraph 285.13(b)(3) specifically states that nothing in this rule requires an agency to grant Federal financial assistance if denial otherwise is authorized by statute, regulation or agency policies and procedures. For instance, if a delinquent debt is resolved in accordance with paragraph 285.13(e), an agency still may deny an application if the applicant fails to meet other requirements imposed under a specific program. Additionally, under the DCIA and in accordance with paragraph 285.13(g) of this rule, agencies also may waive the requirements of this section under appropriate circumstances.

Application of This Rule to Financial Institutions

One commenter requested clarification on whether the regulation applies to parties other than Federal agencies, such as financial institutions which issue loans which are federally insured or guaranteed. Another commenter suggested that the rule be clarified with regard to who has the responsibility for determining whether a prospective borrower is delinquent, and whether a delinquent debt has been resolved.

This rule applies to Federal loans, loan insurance and loan guarantees. The responsibilities of financial institutions that issue federally guaranteed or insured loans continue to be governed by program specific statutes, regulations, and agency policies and procedures, as well as individual agreements between agencies and lenders. Federal agencies will have to ensure that such regulations, policies and procedures, and agreements address the eligibility requirements of the DCIA and this regulation.

Application of the Equal Credit Opportunity Act

One commenter asked whether protected classes comprise a significant number of delinquent debtors impacted by this rule, and expressed concern that denial of credit under this rule might violate the Equal Credit Opportunity Act.

The Equal Credit Opportunity Act prohibits a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction. The fact that an applicant owes a delinquent debt to the United States is not a prohibited basis. *See* 12 CFR 202.2 (Regulation B). Even if the effect of the DCIA and this rule would be to disadvantage protected classes, as a general matter, a lender acting pursuant to a regulation or statute when denying credit would have a non-discriminatory business reason for doing so. Consequently, compliance with the DCIA and this rule does not, in and of itself, constitute a violation of the Equal Credit Opportunity Act.

Application of the Fair Credit Reporting Act

Another commenter expressed concern that, under the Fair Credit Reporting Act, 15 U.S.C. 1681, lenders would be unable to obtain credit reports relating to the status of loans for which an applicant is a guarantor. While the commenter is correct, for purposes of the bar imposed by the DCIA and this rule, the fact that an applicant is a guarantor on another loan is irrelevant unless the applicant/guarantor becomes responsible for repaying the loan and subsequently becomes delinquent. In the event the applicant/guarantor does become responsible for the loan, any delinquency should appear on the applicant's credit report.

Section 285.13(a) Definitions

One commenter requested that the definition of *Federal financial assistance* or *financial assistance* be revised to specifically include price support loans with non-recourse provisions issued by the Commodity Credit Corporation of the Department of Agriculture. The definition of "Federal financial assistance" or "financial assistance" includes all loans (other than disaster loans), including non-recourse loans. Therefore, because price support loans are a type of loan already covered by the definition, a specific reference to one type of loan is not necessary.

Section 285.13(b) Purpose and Scope

One commenter requested that the rule be revised to include guidance regarding whether a person, such as a corporation, would be barred from obtaining Federal financial assistance where the corporation seeking Federal financial assistance is not a delinquent debtor, but a person with a controlling interest in the corporation, such as an officer, director, or shareholder, is a delinquent debtor. In response, FMS has revised the rule to clarify that a person seeking Federal financial assistance may be ineligible for such financial assistance if that person either controls or is controlled by a person who owes a delinquent nontax debt to the United States. Whether or not a person controls or is controlled by a delinquent debtor and the extent to which such person is ineligible for Federal financial assistance is to be determined in accordance with standards and procedures established by the credit granting agency. *See* paragraph 285.13(c)(2).

Another commenter asked whether this rule applies to applicants for Federal grants. The DCIA defines Federal financial assistance as any loan (other than a disaster loan), loan insurance or loan guarantee. Thus this rule does not apply to applicants for grants.

Section 285.13(c) General Rule

FMS received several comments regarding the methods to determine whether an applicant has delinquent Federal debts that bar the applicant from obtaining new Federal financial assistance. Commenters suggested that the list of possible sources of information included in the preamble to the proposed rule be added to the text of the final rule. FMS has incorporated this suggestion. Commenters also suggested that the list be expanded to include FMS' delinquent debtor database. FMS is resolving legal and technical issues involved in making the information contained in FMS' delinquent debtor database available to Federal agencies. Thus, although not currently available, we anticipate that FMS' database will be available in the future as one of many sources of information concerning delinquent debtors. A commenter also suggested that the rule require applications for Federal financial assistance to include a self-certification, under penalty of perjury, by which applicants would be required to list outstanding obligations to the Federal government and whether such obligations were current. FMS agrees that a self-certification could assist in identifying delinquent debtors and recommends that agencies adopt this approach. A mandatory self-certification requirement is not included in this rule because loan application procedures are established by the credit-granting agency.

Two agencies requested clarification regarding the meaning of the term "guarantor" for purposes of this rule. The reference to "guarantor" in § 285.13(c)(1) of the final rule is intended to cover credit applicants who owe delinquent debt as a result of an obligation to pay under a guaranty. Once the guarantor's obligation to pay is triggered and the obligation is not paid in accordance with the terms and conditions of the guaranty, the defaulted obligation would be an outstanding debt in delinquent status.

The DCIA bar also applies if the entity seeking to guarantee a loan is a delinquent debtor since the entity seeking to guarantee a loan may ultimately become obligated for repayment of the loan. Therefore, a person owing a delinquent debt is ineligible for additional Federal financial assistance whether applying for such assistance as a direct borrower or as a guarantor.

As noted above, one commenter requested that the rule be revised to include guidance under circumstances where an applicant for Federal financial assistance controls or is controlled by a delinquent debtor. A new paragraph has been added to § 285.13(c) clarifying that an agency may, under standards issued by the agency, deny Federal financial assistance to persons who control or are controlled by a delinquent debtor.

Section 285.13(d) Delinquent Status

Several commenters objected to the proposed standards in § 285.13(d)(1) under which a debt would be in delinquent status if not paid by the payment due date. Commenters pointed out that under the standards contained in the proposed rule, a debt on which a payment was one day late would be considered a debt in delinquent status. Under such a standard agencies would have no practical way to determine if a debt was delinquent nor any way to distinguish between payments which are merely late (or timely payments which are posted late) and those which are seriously delinquent. Additionally, commenters noted that being a day late on a single payment was not a valid indication of credit worthiness.

In response to these comments, § 285.13(d)(1) of the final rule is revised to provide that a debt is delinquent for purposes of barring additional Federal financial assistance when the debt has not been paid within 90 days of the due date. FMS agrees that agencies may have no practical way of knowing about a debt which is less than 90 days past-due. Credit granting agencies will rely on credit reports as a way to determine that an applicant owes a delinquent debt to the United States. Federal agencies must give debtors at least 60 days notice before reporting a debt to a consumer credit bureau. Thus, providing that a debt is not in delinquent status for purposes of this

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rule until it is 90 days past-due allows sufficient time for the debt to be reported to a credit bureau.

Additionally, the 90-day period ensures that only those debtors owing debts in delinquent status, and not debtors whose payments are late or untimely posted, will be denied financial assistance as required by the DCIA. Consistent with standard lending practices which classify a loan as non-performing when the loan is 90 days past-due, the final rule classifies a debt as being in a delinquent status when the debt is 90 days past-due. *See, e.g.*, 12 CFR 933.1(u), 26 CFR 1.585–6(d)(iii)(A). The 90-day provision protects against an applicant being denied financial assistance merely because of a late payment or an untimely posting. At the same time the rule furthers the intent of the DCIA to reduce losses by screening potential borrowers.

As noted in the preamble to the proposed rule, nothing in this rule defines the term "delinquent" for any purpose other than the application of section 3720B of the DCIA and this rule. In addition, nothing in this rule precludes a credit-granting agency from denying loans if an applicant owes a delinquent debt which is less than 90 days past-due if otherwise authorized.

Section 285.13(e) Delinquency Resolution

One commenter suggested that the rule be revised to clarify the difference between portions of debt that have been written-off after a compromise, and debts that have been written-off because they were uncollectible. Under § 285.13(e)(2), a delinquent debt which has been written off is not considered resolved unless the provisions of paragraph (e)(1) apply. Under paragraph (e)(1), a debt is resolved if a compromise amount has been paid in full. Thus, where a debt has been compromised and the debtor pays the full compromised amount, the compromised portion of the debt which has been written-off is not in delinquent status. Clarifying language has been added to paragraph (e)(2) of the final rule.

Another commenter suggested that the rule be revised to include a requirement that a lender determine whether an applicant is in default on a repayment agreement before approving additional Federal financial assistance. The rule does not need to be revised because § 285.13(d)(1) addresses this concern. The definition of delinquent status in § 285.13(d)(1) of the final rule provides that a debt is delinquent if not paid within 90 days of the due date. Due date is defined in that paragraph as the date specified in, among other things, an applicable agreement, including a post-delinquency repayment agreement. Therefore, the rule does require that Federal financial assistance be denied if a repayment agreement is in a delinquent status.

Section 285.13(f) Exemptions by the Secretary

One commenter suggested that the language of the proposed rule be revised to clarify whether, under § 285.13(f), exemptions may be requested by both the credit-granting agency and/or the creditor agency. In response to this comment, paragraph 285.13(f) has been revised to clearly state that requests for exemptions may be made only by "creditor" agencies. Because the authority of the Secretary to grant exemptions in 31 U.S.C. 3720B(a) is limited to classes of debt, only the agency which holds the debt, i.e., the creditor agency, may request such exemptions. Section 285.13(g) governs the authority of credit-granting agencies to waive the ineligibility requirement contained in the DCIA on a person by person basis under appropriate circumstances.

Regulatory Analysis

This final rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the DCIA provides that entities owing delinquent debt to the Federal Government are ineligible for Federal direct and indirect loan assistance (other than disaster loans). This final rule provides definitions for purposes of determining whether the DCIA mandate applies. Therefore a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Credit, Debt, Loan programs.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

1. The authority citation for part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720B, 3720D; E.O 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.13 is added to subpart B to read as follows:

§ 285.13 Barring delinquent debtors from obtaining federal loans or loan insurance or guarantees.

(a) *Definitions.* For purposes of this section:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States or an agency thereof by a person, including debt administered by a third party as an agent for the Federal Government.

Federal financial assistance or *financial assistance* means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Nontax debt means any debt other than a debt under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Secretary means the Secretary of the Treasury.

(b) *Purpose and scope.* (1) This section prescribes standards for determining whether an outstanding nontax debt owed to the Federal Government is in delinquent status and whether such delinquency is resolved for the purpose of denying Federal financial assistance to a debtor. In addition, this section prescribes the circumstances under which the Secretary may exempt a class of debts from affecting a debtor's loan eligibility. This section also outlines the factors an agency should consider when determining whether waiver of the general rule in paragraph (c) of this section is appropriate.

(2) Additional guidance concerning debt collection and debt management is provided in "Managing Federal Receivables" and other FMS publications.

(3) Nothing in this section requires an agency to grant Federal financial assistance if denial otherwise is authorized by statute, regulation, or agency policies and procedures. For example, if an agency requires borrowers to have a satisfactory credit history, the agency may deny financial

assistance even if a delinquent debt has been resolved.

(4) This section does not confer any new rights or benefits on persons seeking Federal financial assistance.

(5) This section applies to any person owing delinquent nontax debt and to any agency that administers a program that grants Federal financial assistance.

(c) *General rule.* (1) As required by the provisions of 31 U.S.C. 3720B, a person owing an outstanding nontax debt that is in delinquent status shall not be eligible for Federal financial assistance. This eligibility requirement applies to all persons seeking Federal financial assistance and owing an outstanding nontax debt in delinquent status, including, but not limited to, guarantors. This eligibility requirement applies to all Federal financial assistance even if creditworthiness or credit history is not otherwise a factor for eligibility purposes, e.g., student loans. A person may be eligible for Federal financial assistance only after the delinquency is resolved in accordance with this section. An agency may waive this eligibility requirement in accordance with paragraph (g) of this section.

(2) An agency from which a person seeks Federal financial assistance may determine, under standards issued by the agency, that a person is ineligible for Federal financial assistance under this section if:

(i) The person is controlled by a person owing an outstanding nontax debt that is in delinquent status (e.g., a corporation is controlled by an officer, director, or shareholder who owes a debt); or

(ii) The person controls a person owing an outstanding nontax debt that is in delinquent status (e.g., a corporation controls a wholly-owned or partially-owned subsidiary which owes a debt).

(3) A creditor agency may obtain information concerning whether or not a person seeking Federal financial assistance owes a delinquent debt from, among other sources, credit reports, information contained on credit applications, and the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). For information about participating in the CAIVRS program, agencies should contact the Director of Information Resources Management, Policy and Management Division, Office of Information Technology, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410.

(d) *Delinquent status.* (1) Except as otherwise provided in paragraph (d)(2) of this section, a debt is in "delinquent status" for purposes of this section if the debt has not been paid within 90 days of the payment due date. The payment due date is the date specified in the creditor agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency repayment agreement).

(2) For purposes of this section, a debt is not in delinquent status if:

(i) The person seeking Federal financial assistance has been released by the creditor agency from any obligation to pay the debt, or there has been an adjudication or determination that such person does not owe or does not have to pay the debt;

(ii) The debtor is the subject of, or has been discharged in, a bankruptcy proceeding, and if applicable, the person seeking Federal financial assistance is current on any court authorized repayment plan; or

(iii) The existence of the debt or the agency's determination that the debt is delinquent is being challenged under an ongoing administrative appeal or contested judicial proceeding and the appeal was filed by the debtor in a timely manner. Unless otherwise prohibited, an agency may defer making a determination as to whether or not to extend credit until the appeal process is completed.

(3) Unless the provisions of paragraph (d)(2) apply, a debt is in delinquent status even if the creditor agency has suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) is in delinquent status for purposes of this section.

(4) Nothing in this section defines the terms "delinquent" or "delinquent status" for any purposes other than those described in this section.

(e) *Delinquency resolution.* (1) For purposes of this section, a person's delinquent debt is resolved only if the person:

(i) Pays or otherwise satisfies the delinquent debt in full;

(ii) Pays the delinquent debt in part if the creditor agency accepts such part payment as a compromise in lieu of payment in full;

(iii) Cures the delinquency under terms acceptable to the creditor agency in that the person pays any overdue payments, plus all interest, penalties, late charges, and administrative charges assessed by the creditor agency as a result of the delinquency; or

(iv) Enters into a written repayment agreement with the creditor agency to pay the debt, in whole or in part, under terms and conditions acceptable to the creditor agency.

(2) Unless the provisions of paragraph (e)(1) of this section apply, a delinquent debt is not resolved even if the creditor agency has suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) would not be "resolved." If the provisions of paragraph (e)(1) of this section do apply, a delinquent debt is considered resolved. For example, if a portion of a debt has been written off after the person has paid the debt in part where the creditor agency accepts such part payment as a compromise in lieu of payment in full, the entire debt would be deemed "resolved" for purposes of this section in accordance with paragraph (e)(1)(ii) of this section.

(f) *Exemptions by the Secretary.* (1) Upon the written request and recommendation of the head of the creditor agency to which a class of debts is owed, the Secretary may exempt any class of debts from affecting a debtor's eligibility for Federal financial assistance based on the provisions of 31 U.S.C. 3720B and this section.

(2) The creditor agency recommending an exemption for a class of debts will provide the Secretary with information about:

(i) The nature of the program under which the delinquencies have arisen;

(ii) The number, dollar amount, and age of the debts in the program for which exemption is recommended;

(iii) The reasons why an exemption is justified, including why the granting of financial assistance to persons owing the type of debt for which exemption is requested would not be contrary to the Government's goal to reduce losses by requiring proper screening of potential borrowers; and,

(iv) Other information the Secretary deems necessary to consider the exemption request.

(3) The Secretary may exempt a class of debts if exemption is in the best interests of the Federal Government.

(g) *Waivers by the agency.* (1) The head of an agency from which a person seeks to obtain Federal financial assistance may waive the eligibility requirement described in paragraph (c) of this section. Waivers shall be granted only on a person by person basis. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency. The Chief Financial Officer may redelegate the authority only to the Deputy Chief Financial Officer of the agency.

(2) The authorized agency official should balance the following factors when deciding whether to grant a waiver under paragraph (g)(1) of this section:

(i) Whether the denial of the financial assistance to the person would tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal Government; and

(ii) Whether the agency's granting of the financial assistance to the person is contrary to the Government's goal to reduce losses from debt management activities by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (d)(2) of this section, the authorized agency official should consider:

(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and

(ii) The amount of total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) Each agency shall retain a centralized record of the number and type of waivers granted under this section.

(h) *Effect of denial of Federal financial assistance.* Nothing contained in this section precludes a person who has been denied Federal financial assistance from obtaining such assistance after that person's delinquent debt has been resolved in accordance with paragraph (e)(1) of this section.

Dated: December 2, 1998.

Richard L. Gregg,

Commissioner.

[FR Doc. 98–32479 Filed 12–7–98; 8:45 am]

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federal register

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December 8, 1998

Part IV

The President

Proclamation 7154—To Terminate Temporary Duties on Imports of Broom Corn Brooms

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Presidential Documents

Title 3—

The President

Proclamation 7154 of December 3, 1998

To Terminate Temporary Duties on Imports of Broom Corn Brooms

By the President of the United States of America

A Proclamation

1. On July 2, 1996, the United States International Trade Commission ("USITC") made an affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2252), with respect to imports of broom corn brooms provided for in heading 9603 of the Harmonized Tariff Schedule of the United States ("HTS"). Under section 202 of the Trade Act, the USITC determined that such brooms were being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive article. Further, pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act ("the NAFTA Implementation Act") (19 U.S.C. 3371(a)), the USITC found that imports of such brooms produced in Mexico, considered individually, accounted for a substantial share of total imports of broom corn brooms and contributed importantly to the serious injury caused by imports, but that such brooms produced in Canada did not so account or contribute. The USITC's determination and its recommendations to address the serious injury were reported to me on August 1, 1996.

2. On November 28, 1996, pursuant to section 203 of the Trade Act (19 U.S.C. 2253), I issued Proclamation 6961, which temporarily increased or imposed duties on imported brooms (except whisk brooms), wholly or in part of broom corn and provided for in HTS subheading 9603.10.50 and, with respect to imports that exceeded certain specified annual levels, HTS subheading 9603.10.60. The increase in, or imposition of, duties was made effective for a three-year period for imports from all countries, except Canada and Israel and developing countries that account for less than three percent of the relevant imports over a recent representative period. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I determined that this action would facilitate efforts by the domestic industry to make a positive adjustment to import competition and would provide greater economic and social benefits than costs. On January 27, 1997, I issued Proclamation 6969, making certain technical corrections to the HTS provisions covered by Proclamation 6961.

3. On May 11, 1998, acting under my delegation of authority, and pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the United States Trade Representative asked the USITC to provide a report on developments with respect to the domestic broom corn broom industry since November 28, 1996, including the progress and specific efforts made by workers and firms in the industry to make a positive adjustment to import competition. The USITC report in Investigation Number 332–394, issued August 10, 1998, has been provided to me.

4. Following issuance of the USITC report, I received advice from the Secretary of Commerce and the Secretary of Labor, as well as from other interested agencies, regarding the effectiveness of efforts undertaken by the domestic broom corn broom industry to make a positive adjustment to import competition.

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5. Section 204(b)(1)(A) of the Trade Act (19 U.S.C. 2254(b)(1)(A)) authorizes the President to reduce, modify, or terminate a safeguard action if, after taking into account any report or advice submitted by the USITC and receiving advice from the Secretary of Commerce and the Secretary of Labor, the President determines that changed circumstances warrant the reduction, modification, or termination. The President's determination may be made, inter alia, on the basis that the domestic industry has not made adequate efforts to make a positive adjustment to import competition. Under section 201(b) of the Trade Act (19 U.S.C. 2251(b)), a positive adjustment occurs when the domestic industry is able to compete successfully with imports after the termination of the import relief or when the domestic industry experiences an orderly transfer of resources to other productive pursuits, and when dislocated workers in the industry experience an orderly transition to productive pursuits.

6. In view of the information provided in the USITC's report, and based on advice from the Secretary of Commerce and the Secretary of Labor, I find that the broom corn broom industry has not made adequate efforts to make a positive adjustment to import competition. Accordingly, I have determined pursuant to section 204(b)(1)(A) of the Trade Act that termination of the action I took under section 203 of that Act with respect to broom corn broom imports is warranted.

7. Section 604 of the Trade Act (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including, but not limited to, sections 204 and 604 of the Trade Act, do proclaim that:

(1) The HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date specified in the Annex hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of December, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J Clinton

Billing code 3195–01–P

Annex

Modifications to the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation, chapters 96 and 99 of the Harmonized Tariff Schedule of the United States are hereby modified as follows:

a. Subheading 9603.10.50 is modified by inserting in alphabetical sequence in the parenthetical expression in column 1-special the symbol ",MX".

b. Subheadings 9903.96.01 through 9903.96.19, inclusive, and any superior text related thereto are deleted.

c. Subheading 9906.96.02 is modified by striking "32.5%" from column 1-special and by inserting in lieu thereof "22.4%". The provisions of Presidential Proclamation 6961 suspending previously proclaimed concessions regarding brooms, wholly or in part of broom corn, that are goods of Mexico under the terms of general note 12 to the tariff schedule are terminated, and all such previously proclaimed concessions, under Proclamation 6641 of December 15, 1993, shall be implemented as scheduled in such Proclamation.

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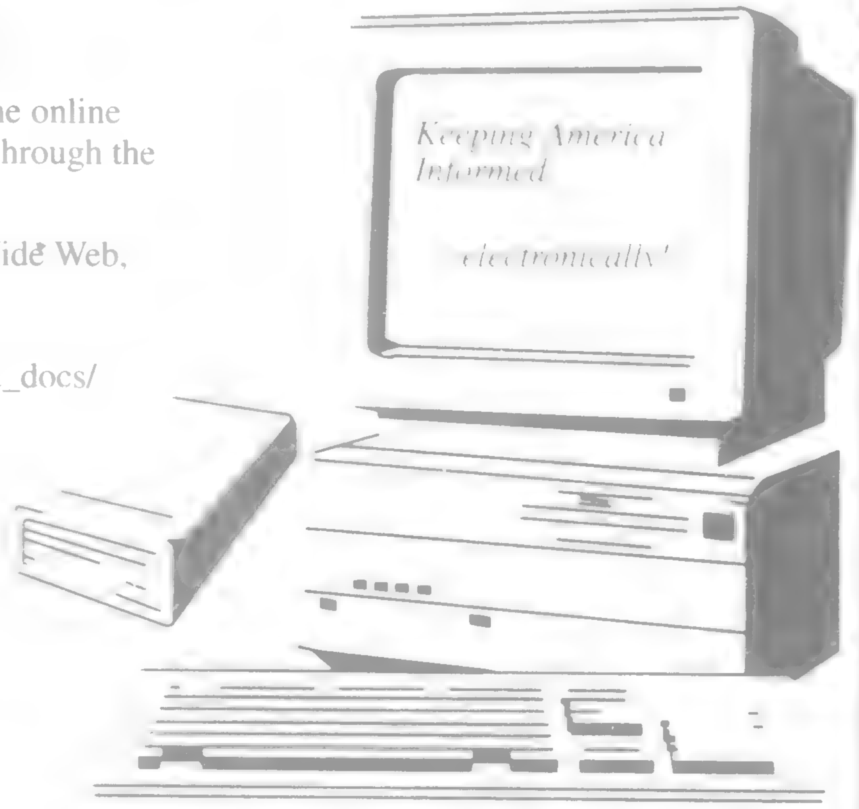

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Title 3—

The President

Proclamation 7155 of December 4, 1998

National Drunk and Drugged Driving Prevention Month, 1998

By the President of the United States of America

A Proclamation

For most Americans, driving an automobile has become a practical necessity. Whether in an urban, suburban, or rural setting, the daily routine of modern life requires that we have access to reliable and affordable transportation from our homes to our offices, schools, shopping, and elsewhere. But the right to drive a vehicle brings with it the responsibility to drive safely. A fundamental part of this responsibility is the need to stay free from alcohol and drugs when driving. Driving under the influence of alcohol or mind-altering drugs can turn an automobile into a lethal weapon.

The Department of Transportation released some encouraging data earlier this year regarding injuries and fatalities caused by drunk or drugged drivers. The number of Americans killed in alcohol-related crashes last year dropped to an all-time low, representing a decline of more than 30 percent since 1982. Drunk-driving deaths accounted for less than 40 percent of all traffic deaths, and alcohol-related fatalities among 15- to 20-year-olds dropped by 5 percent last year alone. We have achieved this progress because of stronger laws, tougher enforcement, and increased public awareness. These statistics also reflect the effectiveness of the legislation I fought for and signed into law 3 years ago to help ensure zero tolerance for underage drinking and driving.

But there is more we must do. Last year, more than 16,000 Americans lost their lives to impaired driving, and hundreds of thousands more were injured. Research shows that the risk of being involved in a fatal car crash is 11 times greater when drivers have a blood alcohol content (BAC) exceeding .08. By passing a tough national standard of impaired driving at .08 BAC—an important measure I continue to challenge the Congress to enact—we could save additional lives. At my direction, the Secretary of Transportation developed a plan to make .08 BAC the standard on Federal property, such as national parks and military bases, and included in his plan a strategy to raise public awareness of the risks associated with drinking and driving. Federal agencies currently are implementing the Secretary's recommendations.

In memory of the thousands who have lost their lives to drunk and drugged drivers, I ask all motorists to participate in "National Lights on for Life Day" on Friday, December 18, 1998, by driving with vehicle headlights illuminated. By doing so, we will call attention to this critical national problem and remind others on the road of the responsibility to drive free of the influence of drugs and alcohol.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1998 as National Drunk and Drugged Driving Prevention Month. I urge all Americans who drive to take responsibility for themselves, their loved ones, guests, and passengers; to stop anyone under the influence of alcohol or mind-altering drugs from getting behind the wheel; and to help teach our young people safe and alcohol- and drug-free driving behavior.

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IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J Clinton

[FR Doc. 98–32894
Filed 12–08–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7156 of December 4, 1998

National Pearl Harbor Remembrance Day, 1998

By the President of the United States of America

A Proclamation

Fifty-seven years ago, at 7:55 on Sunday morning, December 7, 1941, Imperial Japan launched a surprise attack on American forces at Pearl Harbor, thrusting the United States into the crucible of World War II. From the vantage point of history, we now know that the events of that day would transform our Nation and the course of world history.

Attacking in two waves, Japanese aircraft killed or wounded almost 3,600 Americans—over 1,000 of them aboard the battleship ARIZONA—sank or badly damaged most of our Pacific Fleet, and destroyed or damaged almost all U.S. aircraft in the area. In his historic speech to the Congress on the following day, President Franklin Roosevelt requested and the Congress approved a declaration of war against Japan. With characteristic optimism and confidence in the spirit of the American people, he predicted that "No matter how long it may take us . . . the American people in their righteous might will win through to absolute victory."

President Roosevelt proved to be right, although he would not live to see the ultimate triumph of freedom. After almost 4 long years of struggle and sacrifice by the men and women of our Armed Forces, sustained by the prayers of their families and the efforts of determined working men and women throughout our land who built our Nation into the "Arsenal of Democracy," the United States and our allies prevailed over the forces of fascism and oppression.

To understand and appreciate the magnitude of our victory in World War II, we have only to remember Pearl Harbor. We have only to remember the indomitable spirit of the American forces there who, despite the death and destruction engulfing them, individually and collectively responded with courage and selflessness. We remember the sailors who raced to their battle stations and opened fire on the attacking Japanese planes even as their ships were ablaze and sinking. We remember the small, valiant band of Army pilots who managed to take off during the second wave of bombing and, though hopelessly outnumbered, shot down several enemy aircraft. We remember the crew of the crippled OKLAHOMA cheering their comrades on the NEVADA as she made a desperate dash down the harbor channel to safety. These heroes of Pearl Harbor were an inspiration to our entire country—and they remain so today. It is fitting that each year, on this day, we remember them and give thanks for their courage, their sacrifice, and their refusal to be defeated. Because of them, and the millions of other Americans like them who have served our Nation in uniform, America is free, strong, and at peace.

To pay tribute to these heroes and to honor our solemn obligation to those who sacrificed their lives to defend our freedom that fateful Sunday morning, the Congress, by Public Law 103–308, has designated December 7, 1998, as "National Pearl Harbor Remembrance Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 1998, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served at Pearl Harbor. I also ask all Federal departments and agencies, organizations, and individuals to fly the flag of the United States at half-staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 98–32895
Filed 12–08–98; 8:45 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–291–AD; Amendment 39–10931; AD 98–25–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes. This action requires repetitive inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. This action also provides an optional terminating action for the repetitive inspection requirement of this AD. This amendment is prompted by reports indicating that fatigue cracks have been detected in the corners of the door frame and the cross beams of the aft cargo door on several in-service airplanes, and by another report indicating that rapid depressurization occurred during flight on one of those airplanes. The actions specified in this AD are intended to prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane.

DATES: Effective December 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 24, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–291–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that fatigue cracks have been detected in the corners of the door frame and the cross beams of the aft cargo door on several in-service Boeing Model 737–200, –200C, –300, and –400 series airplanes. Such fatigue cracking results from cabin pressurization cycles. The FAA also has received a report indicating that an incident of rapid depressurization occurred during flight on one of the affected Boeing Model 737–200 series airplanes. Investigation of that incident revealed fatigue cracks in the corners of the frame of the aft cargo door of the airplane. These conditions, if not corrected, could result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996. That service bulletin describes procedures for repetitive internal detailed visual inspections to detect cracking of the corners of the door frame and the upper and lower cross beams of the aft cargo door, and corrective actions, if necessary. Those corrective actions include repair, replacement of the damaged frame, and modification of the aft cargo door. The modification entails installation of a steel reinforcement angle at each corner of the door and installation of reinforcements on the upper and lower cross beams of the door. Accomplishment of such modification eliminates the need for the repetitive internal detailed visual inspections.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Other Relevant Rulemaking

The FAA previously has issued AD 90–06–02, amendment 39–6489 (55 FR 8372, March 7, 1990), applicable to certain Boeing Model 737 series airplanes. AD 90–06–02 requires accomplishment of certain structural modifications, which constitutes terminating action for the repetitive inspection requirements of this AD.

Differences Between Service Bulletin and This AD

Operators should note that, unlike the procedures described in the service bulletin, this AD does not permit further flight with stop-drilled cracks in the frame of the aft cargo door. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject aft cargo door frame that is found to be cracked must be permanently repaired and modified prior to further flight.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Explanation of Applicability

Operators should note that the effectivity listing of the service bulletin includes Boeing Model 737–200 and

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–200C series airplanes having line numbers 6 through 873 inclusive. The applicability of this AD includes not only those airplanes listed in the effectivity listing of the service bulletin, but also Boeing Model 737–200, –200C, –300, and –400 series airplanes; having line numbers 874 through 1642 inclusive; that have certain replacement doors installed and that have not been modified in accordance with Boeing Service Bulletin 737–52–1079.

Explanation of Compliance Threshold

Although the service bulletin recommends that the initial inspection be performed prior to the accumulation of 12,000 total flight cycles, this AD requires that the initial inspection be performed within 90 days or 700 flight cycles after the effective date of this AD, whichever occurs later. The FAA has determined that the number of total flight cycles for an airplane may not be a good indicator of the total cycle count for the subject aft cargo door, because a door may have been removed from an airplane with many total flight cycles and reinstalled on an airplane with relatively fewer total flight cycles. Also, the FAA finds that, in view of the reports indicating that rapid depressurization occurred on an airplane on which fatigue cracks were found in the frame of the aft cargo door, and because of the safety implications and consequences associated with such cracking, the initial compliance time specified in this AD is appropriate.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–291–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–06 Boeing: Amendment 39–10931. Docket 98–NM–291–AD.

Applicability: The following airplane models, certificated in any category:

- Model 737–200 and –200C series airplanes, line numbers 6 through 873 inclusive;
- Model 737–200, –200C, –300, and –400 series airplanes; line numbers 874 through 1642 inclusive; equipped with an aft cargo door having Boeing part number (P/N) 65–47952–1 or P/N 65–47952–524; except:

1. Those airplanes on which that door has been modified in accordance with Boeing Service Bulletin 737–52–1079; or,
2. Those airplanes on which the door assembly having P/N 65–47952–524 includes four straps (P/N's 65–47952–139, 65–47952–140, 65–47952–141, and 65–47952–142) and a thicker lower cross beam web (P/N 65–47952–157).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

(a) Within 90 days or 700 flight cycles after the effective date of this AD, whichever occurs later, perform an internal detailed visual inspection to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996.

(1) If no cracking is detected, accomplish the requirements of either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the internal visual inspection thereafter at intervals not to exceed 4,500 flight cycles. Or,

(ii) Prior to further flight, modify the corners of the door frame and the cross beams of the aft cargo door in accordance with the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD.

(2) If any cracking is detected in the upper or lower cross beams, prior to further flight, modify the cracked beam in accordance with paragraph III.C. of Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD for the repaired beam.

(3) If any cracking is detected in the forward or aft upper door frame, prior to further flight, repair the frame and modify the corners of the door frame of the aft cargo door, in accordance with paragraph III.E. of Part I of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD for the upper door frame.

Note 2: Cracks of the forward or aft upper door frame, regardless of length, must be repaired prior to further flight in accordance with paragraph III.E. of Part I of the Accomplishment Instructions of the service bulletin.

(4) If any cracking is detected in the forward or aft lower door frame, prior to further flight, replace the damaged frame with a new frame, and modify the corners of the door frame of the aft cargo door, in accordance with paragraph III.F. of Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD for the lower door frame.

(b) Where Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, specifies that certain repairs are to be accomplished in accordance with instructions received from Boeing, this AD requires that, prior to further flight, such repairs be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Modification of the corners of the door frame and the cross beams of the aft cargo door in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or in accordance with the requirements of AD 90–06–02, amendment 39–6489, constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Modification of the corners of the door frame and the cross beams of the aft cargo door accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–52–1079, dated December 16, 1983; Revision 1, dated December 15, 1988; Revision 2, dated July 20, 1989; Revision 3, dated May 17, 1990; or Revision 4, dated February 21, 1991; are considered acceptable for compliance with paragraph (c) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Except as provided by paragraph (b) of this AD, the inspections, repair, replacement, and modification (if accomplished), shall be done in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 24, 1998.

Issued in Renton, Washington, on November 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32361 Filed 12–8–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–319–AD; Amendment 39–10932; AD 98–23–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T98–23–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 727 series airplanes by individual telegrams. This AD requires modification of certain fuselage skin lap joints and, on certain airplanes, modification of the lap joint(s) in the door structure. This AD also requires repetitive internal detailed visual inspections to detect cracking, corrosion, or delamination of the fuselage skin lap joints, and repair, if necessary. This action is prompted by information that a modification required by an existing AD may not have been accomplished completely on as many as 160 airplanes. The actions specified by this AD are intended to prevent corrosion and subsequent fatigue cracking of the fuselage skin lap joints, which could result in rapid decompression of the airplane.

DATES: Effective December 14, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–23–51, issued on November 27, 1998, which contained the requirements of this amendment.

The incorporation by reference of Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, as listed in the regulations, is approved by the Director of the Federal Register as of December 14, 1998.

The incorporation by reference of Boeing Document D6–54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," Revision A, dated July 28, 1989, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 31, 1990 (55 FR 49258, November 27, 1990).

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven R. Edgar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2025; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On February 21, 1991, the FAA issued AD 91–06–06, amendment 39–6921 (56 FR 9612, March 7, 1991), which is applicable to certain Boeing Model 727 series airplanes. [The airplanes affected by that AD are those on which the body skin longitudinal lap joints were bonded together with a room temperature curing epoxy adhesive ("cold-bonded") in conjunction with flush riveting.] That AD superseded two existing AD's to require inspections to detect cracks, corrosion, and delamination of the fuselage skin lap joints, and repair, if necessary. That AD also requires modifications of certain lap joints. That action was prompted by reports of cracking in the lap joints. The actions required by that AD are intended to prevent rapid decompression of the airplane.

The compliance times for accomplishment of the modifications required by AD 91–06–06 were specified in that AD as follows:

- For airplanes that had accumulated 45,000 or more landings as of August 21, 1989 [the effective date of AD 89–15–06, amendment 39–6262 (54 FR 29530, July 13, 1989)]: Within 4 years after August 21, 1989.
- For airplanes that had accumulated less than 45,000 landings as of August 21, 1989: Within 6 years after August 21, 1989, or prior to the accumulation of 28,000 landings, whichever occurs later.

Actions Since Issuance of Previous Rule

The FAA recently received information that the modification required by AD 91–06–06 may not have been accomplished completely on as many as 160 airplanes that are included in the applicability of that AD and that are subject to the unsafe condition addressed in that AD. These airplanes were converted from a passenger-carrying to a cargo-carrying ("freighter") configuration, or to a passenger-and cargo-carrying ("combi") configuration. These conversions included installation of a main deck cargo door. Although these conversions were accomplished in accordance with several different Supplemental Type Certificates (STC), in each case, as part of the modification, a doubler (approximately 20 feet long) was installed over lap joints S–4L, S–10L, S–19L, and (sometimes) S–26L.

FAA personnel have recently examined five of these airplanes, operated by three operators, and determined that the lap joints had not been modified, as required, in the area covered by the doublers on any of the five airplanes. Preliminary inquiries indicate a substantial likelihood that very few of the freighters or combi airplanes have been so modified.

FAA's Determinations

The installation of doublers over the lap joints during the freighter or combi conversions did not correct the unsafe condition addressed by AD 91–06–06 because it is not effective in preventing delamination, corrosion, and cracking in the lap joint. In fact, in some cases, the unsafe condition may be aggravated because of load redistribution due to the installation of a main deck cargo door. This may accelerate crack growth along the lap joint under the doubler.

Because it is possible that these lap joints have been neither inspected nor modified as required by AD 91–06–06, the FAA considers that there is a significant risk that such cracking may have occurred on these airplanes. Because without special inspections such cracking cannot be detected until the crack emerges from under the doubler, such cracks could remain undetected until they approach or reach a length at which the fuselage can no longer sustain pressure loads sufficiently to prevent catastrophic rapid decompression.

Ordinarily, failure to comply with an AD may result in immediate grounding of the affected airplane(s) until compliance is achieved. However, given the size of the fleet affected by this AD, the length of time that will be necessary to modify the fleet using existing available maintenance facilities, and the interim inspections required by this AD, the FAA considers that immediate grounding would be unwarranted.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, which describes procedures for modification of the fuselage skin lap joints. Those procedures include separating and reworking the joint; performing a high frequency eddy current inspection of the holes to detect cracking; and oversizing the fastener holes; and installing certain fasteners.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T98–23–51 to prevent corrosion and subsequent fatigue cracking of the fuselage skin lap joints, which could result in rapid decompression of the airplane. The AD requires modification of certain fuselage skin lap joints. On certain airplanes, the fuselage structure that was removed to make the opening for the door is used to fabricate the door itself. For those airplanes, this AD also requires modification of the lap joint(s) in the door structure. This AD allows continued operation of these airplanes for a limited period to permit the required modification to be accomplished without undue disruption. The modification is required to be accomplished in accordance with the service bulletin described previously.

This AD also requires repetitive internal detailed visual inspections to detect cracking, corrosion, or delamination of the fuselage skin lap joints, and repair, if necessary. The AD requires that those inspections be accomplished repetitively at intervals not to exceed 60 landings until the modification is accomplished. The inspection is required to be accomplished in accordance with certain tasks specified in Boeing Document D6–54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," Revision A, dated July 28, 1989. Repair, if necessary, is required to be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

The FAA investigated several different non-destructive inspection methods that could be used to detect cracking in the upper row of the lap joints that have been covered by the doublers. The FAA (including representatives of the FAA Technical Center and a national resource specialist for non-destructive evaluation), in conjunction with Sandia Laboratories, The Boeing Company, and several designated engineering representatives, considered various inspection methods. Those methods included low frequency eddy current, high frequency eddy current, x-ray, sliding probe eddy current, and ultrasonic techniques. Some of these techniques hold potential for detecting cracking in the hidden upper row of the lap joint. However, those methods tend to be sensitive to configurational differences and require good accessibility to the joint. Due to variability of configurations within the fleet, a single procedure and standard could not be developed in sufficient time to accomplish the necessary inspections.

As a result of these discussions, the FAA deemed a detailed internal visual inspection the most useful short-term inspection. The FAA expects that this inspection is not likely to detect cracking unless the cracking has turned and run circumferentially. However, this inspection can be accomplished quickly and easily in the field, and is expected to yield some measure of security in the short term.

While these inspections will be effective in detecting some types of cracking, the FAA is not confident that all potentially catastrophic cracking can be detected by these inspections. Therefore, this AD requires accomplishment of the modification within 120 days or 250 landings after the effective date of the AD, whichever occurs later. In addition, paragraph (f) specifies that no airplane shall be returned to service following modification from a passenger-carrying to a "freighter" or a "combi" configuration, unless the modification required by paragraph (b) of this AD has been accomplished on that airplane.

It should be noted that, although this AD has the effect of staying the requirement of AD 91–06–06 to accomplish the modifications in the area of the main deck cargo door, for the period specified in this AD, this stay applies only once the AD becomes effective. For the period between the compliance deadline imposed by AD 91–06–06 and the effective date of this AD, the FAA has initiated investigations to determine the causes of the operators' failures to comply, and may initiate appropriate legal enforcement action to address those failures.

In most AD's, the compliance provision includes the phrase, "compliance required as indicated, unless accomplished previously." In this AD, the phrase "unless accomplished previously" is omitted because it is possible that operators' maintenance records may indicate that the requirements of AD 91–06–06, including the modification, have been accomplished. As indicated, however, these records are likely to be inaccurate for the subject airplanes. Therefore, this AD requires that the modification be accomplished regardless of the information contained in the maintenance records. If an operator can verify that the modification required by this AD has, in fact, been accomplished, it may request approval of an alternative method of compliance (AMOC), in accordance with the provisions of paragraph (g) of this AD, based on submission of data verifying such accomplishment.

Since the issuance of AD 91–06–06, the FAA has approved several AMOC's for that AD for freighter and combi airplanes. These AMOC's allow internal and external visual inspections in lieu of the repetitive visual and high frequency eddy current inspections. However, the approval of these alternative inspection methods did not affect the modification requirement of paragraph F. of AD 91–06–06, and were based on an assumption that the modification either had been or would be accomplished. In addition, these inspections are unreliable to detect cracking in the upper row of fasteners under the doubler.

The FAA also approved one AMOC, applicable to Supplemental Type Certificate (STC) SA1368SO, which approved the modification in accordance with the STC to be an acceptable alternative to the modification required by paragraph F. of AD 91–06–06. Preliminary information indicates that as many as 30 airplanes may have been modified in accordance with STC SA1368SO.

As explained previously, installation of the doubler in accordance with this STC is not likely to stop propagation of cracking that was present at the time the main deck cargo door was installed, nor will it prevent new cracks from initiating. Further, once initiated, such cracking is likely to grow undetected because it is hidden between the doubler and the inner skin. AMOC's approved previously in accordance with AD 91–06–06 are not considered to be valid as alternative methods of compliance with this AD unless those AMOC's are approved separately under the provisions of paragraph (g) of this AD.

Normally, the compliance time specified for the required modification would be sufficient for the FAA to provide notice and a brief public comment period before adopting such a requirement. However, in this case, because of the significant time required to accomplish the modification, the full compliance time is necessary to prevent unnecessarily disrupting operations. This compliance period will enable operators either to comply or to develop sufficient data to substantiate extension of the compliance time or approval of an AMOC. This compliance time does not reflect a lack of urgency for adopting the requirement.

On November 19, 1998, the FAA met with affected operators and STC holders to discuss the issues addressed in this AD. A joint FAA/industry team was formed to address the relevant technical issues and to develop data necessary to address the identified unsafe condition. It was agreed that the team's objective is either to provide means for operators to comply within the specified compliance time or to substantiate that an acceptable level of safety can be maintained for some longer period before the required modification is accomplished.

At this meeting, the FAA emphasized the necessity of correcting the unsafe condition by modifying the lap joints under the doublers. The FAA also emphasized the risk that AMOC requests would not be approvable if, as some suggested, industry focuses its efforts during the 120-day compliance time on attempting to develop alternatives to modifying the lap joints. For airplanes that are already scheduled to undergo heavy maintenance during the 120-day compliance time, operators have the opportunity to comply with this AD with the least possible disruption. Accomplishment of the modification on these airplanes also will provide important data on the condition of the lap joints under the doubler that will be very useful in assessing the appropriateness of AMOC requests for other airplanes. Therefore, if operators fail to avail themselves of this opportunity, the FAA will not be receptive to requests for AMOC's or compliance time extensions for those airplanes.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on November 27, 1998, to all known U.S. owners and operators of certain Boeing Model 727 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before

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the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–319–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–23–51 Boeing: Amendment 39–10932. Docket 98–NM–319–AD.

Applicability: Model 727 series airplanes, line positions 1 through 849 inclusive; that have been converted from a passenger-carrying to a cargo-carrying ("freighter") configuration, or to a passenger- and cargo-carrying ("combi") configuration; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated.

To prevent corrosion and subsequent fatigue cracking of the fuselage skin lap joints, which could result in rapid decompression of the airplane, accomplish the following:

(a) Within 60 landings after the effective date of this AD, perform a detailed internal visual inspection to detect cracking, corrosion, or delamination of the fuselage skin lap joints where those lap joints are covered by external doublers at stringers S–4L, S–10L, S–19L, and S–26L from body station 360 to 740; in accordance with task numbers C53–224–01 and C53–111–01 of Boeing Document D6–54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," Revision A, dated July 28, 1989. The lap joints must be completely exposed to perform the inspection.

(1) If no cracking, corrosion, or delamination is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 60 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack, corrosion, or delamination is found, prior to further flight, repair damaged structure in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 60 landings until the modification required by paragraph (b) of this AD is accomplished.

(b) Modify the fuselage skin lap joints where those lap joints are covered by external doublers at stringers S–4L, S–10L, S–19L, and S–26L from body station 360 to 740 by removing the external doublers; and by separating and reworking the joint in accordance with Part IV, Figure 4, of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, except that blind fasteners shall not be installed. Before oversizing the fastener holes as part of the modification, perform a high frequency eddy current inspection of the holes to detect cracking, in accordance with the service bulletin; and, prior to further flight, repair any cracking in accordance with a method approved by the Manager, Seattle ACO. When reassembling the lap joint, all three rows of fasteners must penetrate all layers of the lap joint, including the upper skin, lower skin, and the doublers; and the stringers and tripler, as applicable. Accomplish the modification at the latest of the times specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(1) Prior to the accumulation of 28,000 total landings.

(2) Within 250 landings after the effective date of this AD.

(3) Within 120 days after the effective date of this AD.

Note 2: Installation of protruding head fasteners in the upper row of fasteners of the lap joint in itself does not constitute accomplishment of the modification.

(c) For airplanes on which the cargo door itself was manufactured using the original fuselage skin, paragraphs (a) and (b) of this AD also apply to the lap joint(s) in the door structure.

(d) Accomplishment of the modification required by paragraph (b) of this AD constitutes terminating action for the inspections required by paragraph (a) of this AD, and constitutes an acceptable alternative method of compliance with paragraph F. of AD 91–06–06 for the affected area.

(e) Contrary provisions of AD 91–06–06 notwithstanding, this AD allows continued operation of the subject airplanes following the effective date of this AD in accordance with the terms of this AD, provided that the modification required by AD 91–06–06 has been accomplished on all lap joints other than those in the area of the main deck cargo door.

(f) For any airplane that, as of the effective date of this AD, is being, or will be converted from a passenger-carrying to a cargo-carrying ("freighter") configuration, or to a passenger- and cargo-carrying ("combi") configuration: After the effective date of this AD, no such airplane shall be returned to service following such conversion unless the modification required by paragraph (b) of this AD has been accomplished on that airplane.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Alternative methods of compliance, approved previously in accordance with AD 91–06–06, amendment 39–6921, are not considered to be approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989; and Boeing Document D6–54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," Revision A, dated July 28, 1989.

(1) The incorporation by reference of Boeing Service Bulletin 727–53–0072, Revision 5, dated June 1, 1989, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Document D6–54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," Revision A, dated July 28, 1989, was approved previously by the Director of the Federal Register as of December 31, 1990 (55 FR 49258, November 27, 1990).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 14, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–23–51, issued on November 27, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 1, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32472 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–33–AD; Amendment 39–10936; AD 98–25–10]

RIN 2120–AA64

Airworthiness Directives; Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH Seat Restraint Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems, installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft. This action requires an inspection to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. This amendment is prompted by the manufacturer reporting two failures of the seat restraint system in the field. The actions specified in this AD are intended to prevent failure of the seat restraint system due to the buckle assembly locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing.

DATES: Effective December 24, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Rob Romero, Aerospace Engineer, Airplane Certification Office, ASW–150, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5102, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft. This action requires, within 10 hours time-in-service (TIS), a one-time inspection to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. This amendment is prompted by manufacturer's reports of two failures of the seat restraint system that occurred in the field. The actions specified in this AD are intended to prevent failure of the seat restraint system due to the buckle assembly locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing.

The FAA has reviewed Aircraft Belts, Inc. Service Bulletin dated June 16, 1998, which describes procedures for inspecting the buckle assembly on certain restraint systems to ensure the locking mechanism engages properly.

Since an unsafe condition has been identified that is likely to exist or develop on other Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems of the same type design, this AD is being issued to prevent failure of the seat restraint system due to the buckle assembly locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing. This AD requires, within 10 hours TIS, a one-time inspection to ensure the seat restraint system locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the aircraft. Therefore, the one-time inspection and replacement, if necessary, is required within 10 hours TIS, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Cost Impact

The FAA estimates that 12,278 seat restraint systems will be affected by this proposed AD, that it will take approximately one-half work hour per seat restraint system to accomplish the inspection and replacement (if necessary), and that the average labor rate is $60 per work hour. Replacement parts will cost $10 per buckle half. However, the manufacturer has stated that it will provide the buckle half to owners/operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $368,340.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–33–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–25–10 Aircraft Belts, Inc.: Amendment 39–10936. Docket No. 98–SW–33–AD.

Applicability: Model CS, CT, FM, FN, GK GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft, certificated in any category.

Note 1: This AD applies to each seat restraint system identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For seat restraint systems that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any seat restraint system from the applicability of this AD.

Compliance: Required within 10 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent failure of the seat restraint system due to the buckle assembly (buckle) locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing, accomplish the following:

Note 2: The part number (P/N) of the seat restraint system is on the identification label located on each end of the seat restraint system near the anchor point (Example: P/N MD A2626–E010). The model is designated by the first two letters of the P/N.

(a) Visually inspect all affected seat restraint systems to determine if the locking mechanism is engaging properly in accordance with the following:

(1) Open the lift lever of the buckle fully until it will not open any further. This will cause the locking mechanism to pivot on the pivot pin.

(2) Allow the spring to close the lift lever slowly until the lift lever is back to its at-rest position.

(3) After the lever is completely closed, examine the slot in the bottom of the buckle. The locking mechanism should be firmly seated against the edge of the slot as shown in Figure 1.

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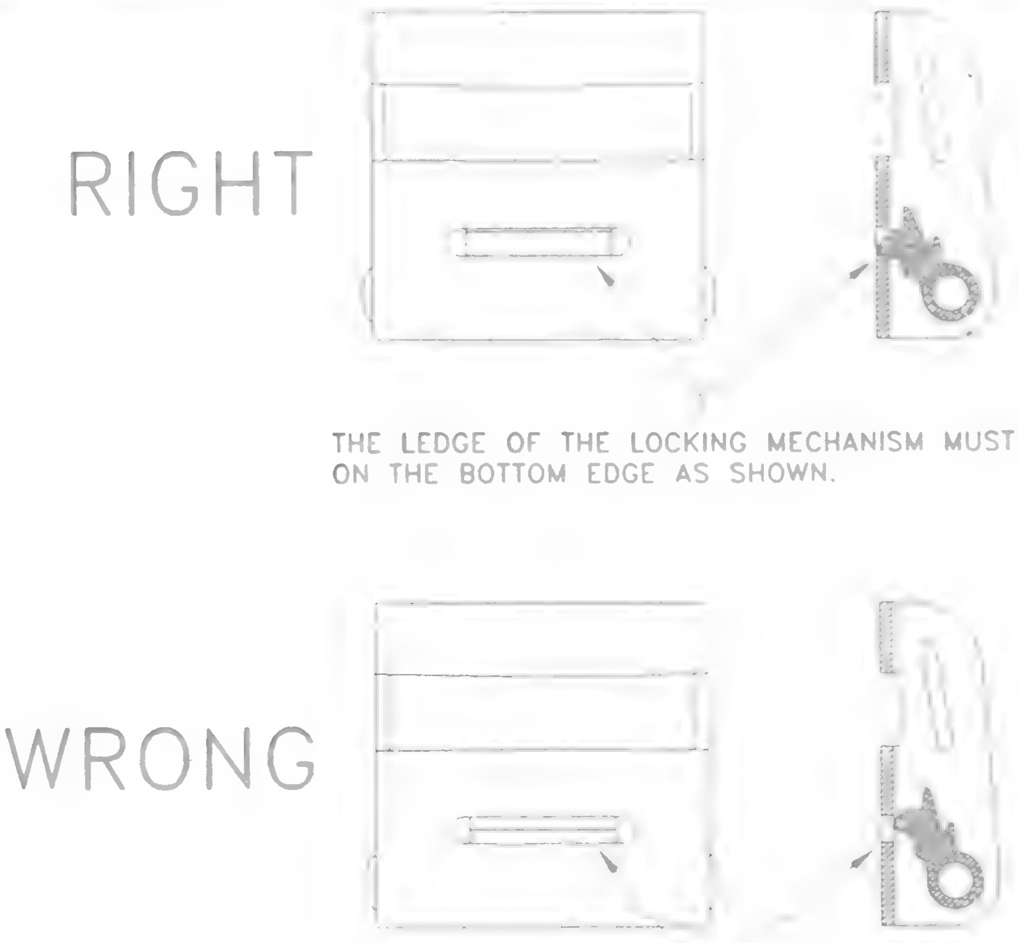

THE LEDGE OF THE LOCKING MECHANISM MUST BE FIRMLY SEATED ON THE BOTTOM EDGE AS SHOWN.

THE LEDGE OF THE LOCKING MECHANISM IS NOT FIRMLY SEATED ON THE BOTTOM EDGE.

Figure 1

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(b) If the locking mechanism does not seat properly, replace the buckle with an airworthy buckle.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Airplane Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Airplane Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on December 24, 1998.

Issued in Fort Worth, Texas, on December 3, 1998.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–32619 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ42

Dependents Education: Increase in Educational Assistance Rates

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: A provision of the Internal Revenue Service Restructuring and Reform Act of 1998 provides for an increase of approximately 20% in educational assistance rates payable under Survivors' and Dependents' Educational Assistance (DEA) effective October 1, 1998. The regulations governing those rates are changed to show the rates indicated in the Act.

DATES: Effective Dates: This final rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206) amended sections 3532, 3534, and 3542 of title 38, U.S. Code to provide an increase of approximately 20% in educational assistance rates payable under DEA effective October 1, 1998. Changes are made to the regulations governing rates payable under DEA to reflect the statutory changes.

Nonsubstantive changes also are made for the purpose of clarity.

Substantive changes made by this final rule merely reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612 and does not directly affect small entities. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.117.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 2, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subparts C is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

2. In § 21.3045, paragraph (h) is revised to read as follows:

§ 21.3045 Entitlement charges.

* * * * *

(h) *Entitlement charge for correspondence courses.* The charge against entitlement for pursuit of a course exclusively by correspondence will be 1 month for each:

(1) $404 paid after December 31, 1989, and before October 1, 1998, to a spouse or surviving spouse as an educational assistance allowance;

(2) $485 paid after September 30, 1998.

(Authority: 38 U.S.C. 3686(a))

* * * * *

3. In § 21.3131, paragraph (a) is revised to read as follows:

§ 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates effective October 1, 1998:

Type of course	Monthly rate
Institutional:	
Full-time	$485.
¾ time	$365.
½ time	$242.
Less than ½ but more than ¼ time [1]	$242.
¼ time or less [1]	$121.
Cooperative training (other than farm cooperative) (Full time only)	$485
Apprentice or on-job (full time only) [2]:	
First six months	$353.
Second six months	$264.
Third six months	$175.
Fourth six months and thereafter	$88.
Farm cooperative:	
Full time	$392.

Type of course	Monthly rate
¾ time	$294.
½ time	$196.
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3]

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $242 or $121, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State Approving agency or the actual cost to the eligible spouse of surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2))

* * * * *

§ 21.3300 [Amended]

4. In § 21.3300, paragraph (c) is amended by removing "$119" and adding, in its place, "$152".

§ 21.3333 [Amended]

5. In § 21.3333, paragraph (a) is amended by removing "$404" and adding, in its place, "$485", and by removing "$127" both places it appears and adding, in its place, "$152"; and paragraph (b)(1) is amended by removing "$13.46" and adding, in its place, "$16.16", and by removing "$404" and adding, in its place, "$485".

[FR Doc. 98–32646 Filed 12–8–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[FRL–6200–1]

Changes to Regulations Concerning Membership of EPA's Environmental Appeals Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA amends its regulations establishing the Environmental Appeals Board by increasing the limit on the number of Board members from three to four. The workload of the Environmental Appeals Board has increased since it was established. This action ensures that the Board can respond effectively to the growing workload.

EFFECTIVE DATE: These regulations are effective on December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald L. McCallum, Esq., Environmental Appeals Board, 401 M Street, SW., Washington, DC 20460, (202) 501–7060.

SUPPLEMENTARY INFORMATION: On February 13, 1992, EPA promulgated regulations establishing the Agency's Environmental Appeals Board. The regulations contemplated a three-member Board. In recognition of the Board's increasing workload, the Agency is through this rule increasing the limit on the number of Board members from three to four.

Reasons for Change

The past several years have seen a significant increase in the Environmental Appeals Board's workload. The cause of the workload increase has been two-fold. First, there has been an increase in the number of appeals to the Board pursuant to the authorities which were part of the original delegation to the Board in the 1992 regulations. For example, the number of appeals of Prevention of Significant Deterioration (PSD) permits issued under the Clean Air Act has increased dramatically. During FY 1995, only two PSD appeals were received by the Board. In sharp contrast, twenty-four PSD appeals were received during FY 1997, and twenty-nine such appeals were received during FY 1998. Second, the Board's jurisdiction has expanded over the past several years to encompass such matters as petitions for reimbursement filed under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), further increasing the Board's workload. Other areas in which the Board's jurisdiction has expanded include, for example, acid rain appeals under 40 CFR Part 78, Title V federal permit appeals under 40 CFR Part 71, and certain Safe Drinking Water Act penalty appeals. Notably, the Agency currently has underway a number of rulemakings which can be expected to further tax the Board as currently constituted.

Through this rule, the Agency is responding to this increasing workload by raising the limit on the number of Board members from three to four. The current regulations envision the Board sitting as a panel on cases pending before it. They provide that, while ordinarily all three members will sit as a panel, the Board can proceed with two members if all three are not available because of recusal or absence. In the event that a two-member panel results in a tie, the matter is referred to the Administrator to break the tie.

The changes made today envision the Board typically sitting in three-member panels drawn, on a rotating basis, from a four member Board. The "off" member will then be able to dedicate his/her energies to bringing other matters to conclusion. In addition to leaving the Board better positioned to respond to its workload, this change, while preserving the capacity of the Board to act with two members, will increase the probability of three-member panels notwithstanding absences and recusals, and will concomitantly decrease the probability of the Administrator's being required to break a tie.

Administrative Requirements

EPA has found that good cause exists under 5 U.S.C. 553 (b)(3) (A), (B) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and revocations. This rulemaking is related solely to EPA's organization, procedure, and practice. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as

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specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998)), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. EPA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because the regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 40 CFR Part 1

Environmental protection, Statement of Organization and General Information.

Dated: December 3, 1998.

Carol M. Browner,

Administrator, Environmental Protection Agency.

For the reasons set forth in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION:

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1.25 is amended by revising paragraph (e)(1) to read as follows:

§ 1.25 Staff Offices.

* * * * *

(e)(1) Environmental Appeals Board. The Environmental Appeals Board is a permanent body with continuing functions composed of no more than four Board Members designated by the Administrator. The Board shall decide each matter before it in accordance with applicable statutes and regulations. The Board typically shall sit on matters before it in three-Member panels, and shall decide each matter by a majority vote. In the event that absence or recusal prevents a three-Member panel, the Board shall sit on a matter as a panel of two Members, and two Members shall constitute a quorum under such circumstances. The Board in its sole discretion shall establish panels to consider matters before it. The Board's decisions regarding panel size and composition shall not be reviewable. In the case of a tie vote, the matter shall be referred to the Administrator to break the tie.

* * * * *

[FR Doc. 98–32684 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD055–3021; FRL–6199–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery Comparability Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision concerns a plan which demonstrates that the emissions reductions of volatile organic compounds (VOC) required in ozone attainment and marginal ozone nonattainment areas in Maryland are comparable to the reductions which would be achieved by Stage II vapor recovery (Stage II) in those same areas. EPA is approving the Stage II comparability plan in the State of Maryland in accordance with the Clean Air Act (the Act).

DATES: This rule is effective on February 8, 1999, without further notice unless EPA receives adverse written comment by January 8, 1999. Should EPA receive such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, or by e-mail at knapp.ruth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 5, 1997, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a demonstration of how control measures already being implemented are achieving comparable emission reductions as would be achieved by a Stage II vapor recovery program. Section 184(b) of the Act requires states in the Ozone Transport Region (OTR) to implement control measures that achieve emission reductions comparable to implementing Stage II, or to implement a Stage II program. This requirement applies in all areas not already required to implement Stage II based on their ozone nonattainment classification. All areas in Maryland that are classified as serious ozone nonattainment areas or above have already implemented the Stage II program. As the entire State of Maryland is within the OTR, the Stage II comparability requirement applies in all of its ozone attainment areas and marginal ozone nonattainment areas.

Summary of SIP Revision

On November 5, 1997, the State of Maryland submitted a formal revision to its SIP. The SIP revision consists of an explanation of the VOC emission reductions required by control measures comparable to Stage II vapor recovery in Maryland's marginal ozone nonattainment areas and ozone attainment areas. Therefore, the implementation of Stage II or comparable VOC measures are required in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester Counties.

Maryland projects that implementing Stage II in these areas would result in emission reductions of approximately 3.03 tons per day (Stage II Comparability Study for the Northeast Ozone Transport Region (EPA–452/R–94–011)). However, in a letter to EPA dated March 13, 1997, Maryland opted to satisfy the Act requirements for Stage II by adopting other control strategies to achieve emission reductions comparable to those from implementing Stage II. Maryland has implemented the following regulations to achieve comparable reductions:

1. COMAR 26.11.19.09 Cold and Vapor Degreasing, adopted effective June 5, 1995 (62 FR 41853, August 4, 1997).
2. COMAR 26.11.19.11 Lithographic Printing, adopted effective May 8, 1991 (62 FR 46199, September 2, 1997).
3. COMAR 26.11.19.18 Screen Printing, adopted effective November 7, 1994 (62 FR 53544, October 15, 1997).
4. COMAR 26.11.19.19 Expandable Polystyrene Operations, adopted effective July 3, 1995 (62 FR 53544, October 15, 1997).
5. COMAR 26.11.19.23 Vehicle Refinishing, adopted effective May 22, 1995 (62 FR 41853, August 4, 1997).

The projected VOC emissions reductions from these measures are listed below, and these reductions total more than Maryland's projection for emission reductions from Stage II.

Control strategy	1999 total projected emission reduction (tons/day)
Degreasing	2.08
Auto Refinishing	0.57
Lithographic and Screen Printing	0.47
Expandable Polystyrene Operations	0.27
Total	3.39

EPA is publishing this Stage II comparability plan without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 8, 1999 without further notice unless EPA receives adverse comments by January 8, 1999. If EPA receives adverse comment, EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Final Action

EPA is approving the Stage II vapor recovery comparability plan for the State of Maryland for Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester Counties.

III. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Approval of this Stage II vapor recovery comparability plan allows the State of Maryland to achieve comparable reductions in VOC emissions from control measures other than Stage II.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: November 30, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1076 is amended by revising the section heading, by designating the existing paragraph as (a), and adding a paragraph (b) to read as follows:

§ 52.1076 Control strategies: ozone

* * * * *

(b) EPA approves as a revision to the Maryland State Implementation Plan, the Stage II vapor recovery comparability plan for the counties of Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester Counties submitted by the Maryland Department of the Environment on November 5, 1997.

[FR Doc. 98–32577 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD076–3030a; FRL–6197–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland—General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct action on a State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision includes Maryland's regulation for general conformity, which sets forth policy, criteria and procedures for demonstrating and assuring conformity of non-transportation related Federal projects to all applicable air quality implementation plans. EPA is approving this general conformity regulation as a SIP revision in accordance with the Clean Air Act.

DATES: This direct final rule is effective on February 8, 1999 without further notice unless EPA receives adverse written comment by January 8, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Robert Kramer, Chief; Energy Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Larry Budney , (215) 814–2184, at the EPA Region III office or via e-mail at budney.larry@.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 15, 1995, the Maryland Department of the Environment submitted a formal revision to its State Implementation Plan (SIP) to EPA. The SIP revision consists of the State's General Conformity Regulation (COMAR 26.11.26.03), the purpose of which is to meet the requirements of 40 CFR 51.851, State Implementation Plans, found under 40 CFR Part 51, Subpart W, Determining Conformity of General Federal Actions to State and Federal Implementation Plans. Part 51, Subpart W is commonly referred to as the Federal General Conformity Rule. Maryland's SIP revision, which is the subject of this approval action, consists of the State's General Conformity Rule. This action to approve the State's General Conformity Rule as a SIP revision is being taken under Section 110 of the Clean Air Act (CAA).

II. Summary of SIP Revision

The State's General Conformity Rule establishes standards and procedures to follow when evaluating the conformity of non-transportation related Federal projects to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA.

At 40 CFR Part 51, Subpart W, EPA promulgated the Federal rule for General Conformity to implement section 176(c) of the CAA, as amended (42 U.S.C. 7401 *et seq.*) which requires that all Federal actions conform to applicable air quality implementation plans. This rule only applies to areas designated nonattainment or maintenance areas under the CAA, as amended. This Federal rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of Federal actions to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to Federal actions except:

(1) Those applicable under the transportation conformity rule (40 CFR Part 93, Subpart A);

(2) Actions with associated emissions below specified de minimis levels; and

(3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

At 40 CFR 51.851, State Implementation Plans, EPA promulgated the requirements that must be adopted by a State and submitted as a SIP revision to implement the General Conformity provisions. The provisions adopted by the State of Maryland for General Conformity are those contained in and required by the Federal rule. EPA has reviewed the State's General Conformity Rule and has determined that it satisfies the requirements of 40 CFR 51.851. A Technical Support Document (TSD) has been prepared which details the EPA's evaluation of the State's General Conformity Rule. Interested parties may obtain a copy of the TSD by contacting the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This rule will be effective February 8, 1999 without further notice unless the Agency receives adverse comments by January 8, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 8, 1999 and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving the State of Maryland's General Conformity Rule SIP revision submitted by the Maryland Department of the Environment on May 15, 1998.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the Maryland General Conformity Rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Dated: November 24, 1998.

Thomas Voltaggio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(136) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(136) Revisions to the Maryland State Implementation Plan submitted on May 15, 1995 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of May 15, 1995 from the Maryland Department of the Environment transmitting Maryland Regulation COMAR 26.11.26.03, regarding General Conformity, for approval as a SIP revision.

(B) Maryland Regulation COMAR 26.11.26.03, effective June 5, 1995.

(ii) Additional material—Remainder of the May 15, 1995 state submittal pertaining to General Conformity.

[FR Doc. 98–32572 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–198–0058; FRL–6195–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District, San Diego County Air Pollution Control District, and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which primarily concern the control of particulate matter (PM) emissions. The intended effect of these SIP revisions is principally to regulate PM emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final approval of these revisions incorporates them into the federally

approved SIP for the South Coast Air Quality Management District (SCAQMD), San Diego County Air Pollution Control District (SDCAPCD), and the Kern County Air Pollution Control District (KCAPCD). EPA has evaluated each of the revisions and is approving them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. EPA is granting simultaneous limited approval and limited disapproval of SCAQMD Rule 403 because, while it strengthens the SIP, it also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

EFFECTIVE DATE: This approval is effective on January 8, 1999.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA
Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1288.

SUPPLEMENTARY INFORMATION:

I. Background

A. SIP Revisions

EPA is finalizing approval of the following rules into the California SIP: SCAQMD Rule 403, *Fugitive Dust* (as amended on February 14, 1997); SCAQMD Rule 403.1, *Wind Entrainment of Fugitive Dust* (adopted on January 15, 1993); SCAQMD Rule 1186, *PM_{10} Emissions from Paved and Unpaved Roads, and Livestock Operations* (adopted on February 14, 1997); San Diego Rule 52, *Particulate Matter* (as amended on January 22, 1997); San Diego Rule 53, *Specific Air Contaminants* (as amended on January 22, 1997); San Diego Rule 54, *Dust and Fumes* (as amended on January 22, 1997); and KCAPCD Rule 405, *Particulate Matter—Emission Rate* (as amended on May 1, 1997). These new and amended rules were submitted to EPA as SIP revisions by the California Air Resources Board (CARB) on August 1, 1997, with the exception of SCAQMD Rule 403.1, which was submitted on November 18, 1993.

EPA is also approving into the California SIP the following local ordinances for the control of fugitive dust in the Coachella Valley Planning Area: City of Cathedral City Ordinance No. 377 (2/18/93), City of Coachella Ordinance No. 715 (10/6/93), City of Desert Hot Springs Ordinance No. 93–2 (5/18/93), City of Indian Wells Ordinance No. 313 (2/4/93), City of Indio Ordinance No. 1138 (3/17/93), City of La Quinta Ordinance No. 219 (12/15/92), City of Palm Desert Ordinance No. 701 (1/14/93), City of Palm Springs Ordinance No. 1439 (4/21/93), City of Rancho Mirage Ordinance No. 575 (8/5/93), and County of Riverside Ordinance No. 742 (1/4/94). These ordinances were submitted as SIP revisions on February 16, 1995.

This approval was proposed on August 11, 1998 (63 FR 42786–42792). The reader is referred to that notice for additional detail on the affected areas and the SIP submittals, as well as a summary of relevant CAA requirements and EPA interpretations of those requirements. EPA received no comments on the proposal.

B. Specific Approval Provisions Relating to SCAQMD Rule 403—Fugitive Dust, and SCAQMD Rule 403.1—Wind Entrainment of Fugitive Dust

As discussed in the notice of proposed rulemaking, EPA is not approving into the SIP section (i) of Rule 403, which establishes fees which are enforced locally only, and which are not integral to the rule requirements.

As requested by CARB and SCAQMD, EPA is approving the following sections of the "Rule 403 Implementation Handbook," which was included as part of the SIP revision and which is incorporated by reference:

(1) "Soil Moisture Testing Methods"—ASTM Standard Test Method D 2216 for Laboratory Determination of Water (Moisture) Content of Soil, Rock, and Soil-Aggregate Mixtures, and ASTM Standard Test Method 1557 for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lb/^{ft} (2,700 kN-m/m^3));

(2) "Storage Piles"—Surface-Area Calculations and ASTM Standard Method C–136 for Sieve Analysis of Fine and Coarse Aggregates;

(3) "Best Available Control Measures";

(4) "Reasonably Available Control Measures";

(5) "Guidance for Large Operations."

EPA's proposed approval notes that Rule 403 strengthens the SIP but also contains a deficiency, in allowing the SCAQMD Executive Officer and CARB the discretion to approve equivalent test methods for determining soil moisture content and soil compaction characteristics (Rule 403, Table 2, paragraphs (1a) and (1b)). This discretion could result in enforceability problems and is therefore not consistent with CAA section 172(c)(6). Because of this deficiency, EPA cannot grant full approval of Rule 403 under section 110(k)(3) and part D. Also, because the rule is not composed of separable parts that meet all the applicable CAA requirements, EPA cannot grant partial approval of Rule 403 under section 110(k)(3). However, EPA may grant a limited approval of Rule 403 under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

At the same time, EPA is also finalizing a limited disapproval of Rule 403 because it contains the "director's discretion" deficiency. The potential sanctions that might result from this disapproval are set forth in section II. However, as discussed below in section I.C., EPA expects that future revisions to Rule 403 will resolve this issue by requiring that equivalent test methods receive EPA approval.

It should be noted that Rule 403 has been adopted by SCAQMD and is currently in effect. EPA's final limited approval/limited disapproval action will not prevent SCAQMD or EPA from enforcing the rule.

As requested by CARB and SCAQMD, EPA is approving with Rule 403.1 the following sections of the "Rule 403.1 Implementation Handbook," which was included as part of the SIP revision and which is incorporated by reference:

(1) "Wind Monitoring"—performance standards for wind monitoring equipment; and

(2) "Storage Piles"—Surface-Area Calculations and ASTM Standard Method C–136 for Sieve Analysis of Fine and Coarse Aggregates.

C. Pending SCAQMD Amendments to Rules 403 and 1186

SCAQMD has recently issued for public review proposed revisions to Rules 403 and 1186. The proposed revisions to Rule 403 include a correction to the "director's discretion" provision (e.g., in Table 2, paragraphs (1a) and (1b)), to add a requirement for EPA approval of alternative test methods. If these corrections are adopted and submitted as a SIP revision, EPA intends to propose approval of the amended provision fully, thus superseding the limited disapproval.

SCAQMD has also proposed changes to Rule 403 to minimize the impact of the agricultural provisions in Rule 403 while continuing to meet the rule's air quality objectives. In order to allow time to implement an outreach program, the District also proposes to delay by 6 months the compliance date for agricultural operations. If adopted and submitted as a SIP revision and supported by SCAQMD showings that the changes will not interfere with attainment, progress, or any other applicable CAA requirements, EPA intends to propose approval of these amendments.

Because of the need for more time to complete specific technical street sweeper certification protocols, SCAQMD has proposed to amend Rule 1186 to delay by 1 year the effective date for procurement of PM_{10}-efficient sweepers. As in the case of the proposed revisions to Rule 403, EPA intends to propose to approve the revision to Rule 1186 if adopted and submitted as a SIP revision and supported by SCAQMD showing that the revisions will not interfere with attainment, progress, or any other applicable CAA requirements.

II. Final EPA Action

Except for the director's discretion provisions of SCAQMD Rule 403, discussed above, the submitted rules and ordinances clarify and strengthen the existing SIP. EPA takes final action to approve the rules and ordinances under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

As mentioned in section I.B., EPA proposes a limited approval of SCAQMD Rule 403 under CAA sections 110(k)(3) and 301(a), and a limited disapproval of Rule 403, because the rule contains enforceability deficiencies inconsistent with CAA section 172(c)(6). Under CAA section 179(a)(2), if EPA disapproves a submission under section 110(k) for an area designated as nonattainment, based on the submission's failure to meet CAA requirements, EPA must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve and disapprove requirements that the State is already imposing. Therefore, because the Federal SIP approval and disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval and disapproval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by references, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 13, 1998.

Laura Yoshii,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(H); (c)(248)(i)(A)(*3*); (c)(248)(i)(B)(*2*); and (c)(257) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(H) South Coast Air Quality Management District.

(*1*) Rule 403.1, adopted on January 15, 1993.

* * * * *

(248) * * *

(i) * * *

(A) * * *

(*3*) Rules 52, 53, 54, amended on January 27, 1997.

(B) * * *

(*2*) Rule 403, amended on February 14, 1997, and Rule 1186, adopted on February 14, 1997.

* * * * *

(257) Plan revisions for the Coachella Valley Planning Area were submitted on February 16, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Fugitive dust control ordinances for: City of Cathedral City Ordinance No. 377, adopted on February 18, 1993; City of Coachella Ordinance No. 715, adopted on October 6, 1993; City of Desert Hot Springs Ordinance No. 93–2, adopted on May 18, 1993; City of Indian Wells Ordinance No. 313, adopted on February 4, 1993; City of Indio Ordinance No. 1138, adopted on March 17, 1993; City of La Quinta Ordinance No. 219, adopted on December 15, 1992; City of Palm Desert Ordinance No. 701, adopted on January 14, 1993; City of Palm Springs Ordinance No. 1439, adopted on April 21, 1993; City of Rancho Mirage Ordinance No. 575, adopted on August 5, 1993; and County of Riverside Ordinance No. 742, adopted on January 4, 1994.

* * * * *

[FR Doc. 98–32563 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6197–8]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Rule Clarifications; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Correction.

SUMMARY: On January 17, 1997, the EPA amended certain portions of the "National Emission Standards for

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Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks." This rule is commonly known as the Hazardous Organic NESHAP or the HON. Among the changes made to the rule in that action, the EPA added a definition for "enhanced biological treatment systems or enhanced biological treatment processes" to the rule and made clarifying revisions to appendix C of part 63. On August 22, 1997, the EPA proposed corrections to this definition in order to clarify its meaning and proposed revisions to appendix C of part 63 to reflect the clarification of the definition for "enhanced biological treatment systems or enhanced biological treatment processes." The August 22, 1997 document also proposed to revise the compliance demonstration procedures for biological treatment units to remove restrictions on the use of the batch test procedure. Today's action takes final action on those proposed amendments.

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

EFFECTIVE DATE: December 9, 1998.

ADDRESSES: *Docket.* Docket No. A–90–23, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet S. Meyer, Coatings and Consumer Products Group, at (919) 541–5254 (meyer.jan@epamail.epa.gov). For technical questions on appendix C and wastewater provisions, contact Elaine Manning, Waste and Chemical Processes Group, telephone number (919) 541–5499 (manning.elaine@epamail.epa.gov). The mailing address for the contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information:

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry ..	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. This action is expected to be of interest to owners and operators subject to this rule who plan to use biological treatment to comply with control requirements for wastewater streams. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F and are located at facilities that are major sources as defined in section 112 of the Clean Air Act (the Act). Potentially regulated entities generally are companies that manufacture industrial organic chemicals and cyclic organic crude and intermediates. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background on the Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA published in the **Federal Register** the NESHAP for the SOCMI, and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 **Federal Register** publication, there have been several amendments to clarify various aspects of the rule. Readers should see the following **Federal Register** documents for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); August 26, 1996 (61 FR 43698); December 5, 1996 (61 FR 64571); January 17, 1997 (62 FR 2721); and August 22, 1997 (62 FR 44608).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company (Dow) filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association* v. *EPA*, 94–1463 and 94–1464 (D.C. Cir.) and *Dow Chemical Company* v. *EPA*, 94–1465 (D.C. Cir). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, the EPA proposed clarifying and correcting amendments to subparts F, G, H, and I of part 63 to address the issues raised by CMA and Dow on the April 1994 rule. On December 5, 1996 and January 17, 1997, the EPA took final action on the amendments proposed on August 26, 1996. Subsequently, the EPA determined that some revisions to the definition of "enhanced biological treatment systems or enhanced biological treatment processes" and to appendix C of part 63 might be appropriate. These revisions were proposed on August 22, 1997 at 62 FR 44608.

C. Public Comment on the August 22, 1997 Proposal

Three comment letters were received on the August 22, 1997 **Federal Register** document that proposed changes to the rule. All comment letters received were from industry representatives and trade associations. While the commenters were supportive of the proposed rule amendments, they also expressed concerns with the clarity of the examples used in the preamble to describe systems that do and systems that do not meet the intent of the definition. The EPA has considered these suggestions and, where appropriate, has provided clarification of these examples in this document. The EPA has also developed a technical support document to provide additional information for use in evaluating whether a biological treatment unit meets the definition of "enhanced biological treatment system or enhanced biological treatment process." This document may be obtained from the Air and Radiation Docket and Information Center. It may also be obtained over the Internet at "http://www.epa.gov/ttn/

oarpg/ramain.html." The Technology Transfer Network (TTN) provides information and technology exchange in various areas of air pollution control, including copies of rules and supporting documents. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

D. Judicial Review

Under Section 307(b)(1) of the Act, judicial review of this final action is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the Act, the requirements that are subject to today's publication may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Clarification of Definition of Enhanced Biological Treatment System or Enhanced Biological Treatment Process

The August 26, 1996 proposed changes to the wastewater treatment provisions of the HON included provisions that provided easier compliance demonstration options for well-mixed activated sludge systems that are used to control readily biodegraded compounds. In that proposed change to the April 1994 final rule, the compounds listed in table 9 of subpart G were divided into three lists; these lists were presented in table 36 of subpart G. In the proposal, a performance evaluation would not have been required for an activated sludge system if it met the definition of "enhanced biological treatment system or enhanced biological treatment process" and if the unit was controlling wastewater streams that contained only list 1 compounds. The August 1996 proposed revisions to the rule also required a performance demonstration for activated sludge systems used to treat a combination of list 1 and list 2 and/or list 3 compounds.

The August 1996 proposal defined an enhanced biological treatment system as

> an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation.

This definition of "enhanced biological treatment system or enhanced biological treatment process" was intended to reflect the basis for the simplified compliance approach for some systems. The three lists of compounds in table 36 of subpart G were developed by modeling performance of an activated sludge system that was a thoroughly mixed biological treatment unit. (A thoroughly mixed or completely mixed system is a biological treatment unit where biomass and wastewater entering the tank are dispersed quickly throughout the tank such that the system achieves or approaches uniform characteristics throughout the tank (Docket number A–90–23, item VII–B–8).) After the August 1996 proposal, the EPA learned that some were interpreting the proposed definition of "enhanced biological treatment system or biological treatment process" to apply more broadly than intended. In the January 17, 1997 final rule, the phrase "homogeneously distributed" was added to the second sentence of the definition to clarify the EPA's intent to define a well-mixed biological treatment unit. The EPA thought that this revision would better reflect the modeling and clarify the EPA's intent to limit the types of biological treatment units that could use the simplified compliance option to systems that were completely back mixed. The EPA also believed that this change did not alter the meaning of the term.

Following publication of the January 17, 1997 final rule, the EPA learned that industry representatives were concerned that the revised definition could be read to require absolute uniformity in the biomass concentration. These industry representatives pointed out that they believed that such a reading of the definition could preclude any system from using the simplified compliance approach and the performance evaluation exemption. It was not the EPA's intent that the phrase "homogeneously distributed" be interpreted this narrowly. Therefore, on August 22, 1997 the EPA proposed clarifying changes to the definition of "enhanced biological treatment system or enhanced biological treatment process" and proposed parallel conforming changes to appendix C to part 63.

Today's action promulgates without any changes, the definition, proposed in the August 22, 1997 document, of "enhanced biological treatment system or enhanced biological treatment process." That definition reads as follows:

> Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

The description of a "thoroughly mixed treatment unit" in the definition is intended to convey the concept of an activated sludge system that is designed and operated to approach or achieve the characteristics of a completely back mixed system. Because the EPA does not intend the definition to allow only systems with perfect uniformity in characteristics, a "thoroughly mixed treatment unit" is described as a unit that is "designed and operated to approach or achieve uniform biomass distribution and organic compound concentration." This description is intended to recognize that well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. This was the intended meaning of the definition promulgated on January 17, 1997 and is also the intended meaning of the definition promulgated in today's action.

The EPA received three comment letters in response to the August 22, 1997 **Federal Register** proposal. While all of the commenters agreed with the proposed definition of "enhanced biological treatment system or enhanced biological treatment process," they expressed a concern that the examples in the preamble did not fully reflect the intent of the definition. The objections to the first example in the August 22, 1997 preamble were that the discussion referred to the units as having "uniform" characteristics instead of "approaching or achieving uniform characteristics" as described in the proposed definition. In the example, the system that was described as meeting the enhanced biological treatment system definition was characterized as a well-designed, well-operated, and well-maintained activated sludge system that has uniform characteristics in the aeration unit. The EPA agrees with the commenters that this example only illustrates a hypothetical ideal system and it would have been more useful to have described the unit as one that "approaches uniformity throughout the aeration unit" instead of as one that is "uniform." The EPA recognizes that it is unrealistic to believe that aeration units will have completely uniform characteristics and also recognizes even well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. Other relevant aspects of this first example are that the biological treatment unit of this enhanced biological treatment system would be thoroughly mixed throughout the unit and biomass and wastewater entering the unit would be quickly dispersed throughout the unit. The design of the unit would be such that thorough mixing and quick dispersion of the biomass and wastewater entering the unit would occur. The design and operation of the biological treatment unit would also take into account mixing, quick dispersion of the biomass and wastewater entering the unit, and the location of the wastewater inlet with regards to intake suction of surface aerators and the opportunity for volatilization prior to biodegradation.

In the second example in the proposal preamble, the EPA's intent was to make a general statement concerning the relationship between system size and location of the inlet and the number of inlets. The following adjustment to the example clarifies the intent. In smaller size units that approach a complete back mixed system, thorough mixing and quick dispersion may be achieved with a round or square tank and only one influent. For larger scale systems that have more difficulty reaching the complete back mixed conditions, thorough mixing and quick dispersion could be achieved by having multiple influents of biomass and wastewater. In either case, the biological treatment unit would approach or achieve uniform distribution of organic concentration and mixed liquor volatile suspended solids (MLVSS) throughout the vessel where the biological reactions occur.

A plug-flow system is an example of a biological treatment system that does not meet the enhanced biological treatment system definition. Plug-flow systems typically occur in long tanks with a high length-to-width ratio in which longitudinal dispersion is minimal or absent (Docket number A–90–23, item VII–B–8). Plug-flow systems are not considered acceptable units for the performance test exemption because they tend to have higher air emissions at the front of the system where the concentration is higher. The modeling used to develop the simplified compliance approach for systems meeting the definition for an "enhanced biological treatment system or enhanced biological treatment process" did not address plug-flow systems. The EPA did not evaluate the performance of plug-flow systems in the development of the three lists for the simplified compliance approach due to the complexity of plug-flow systems. The wide range in characteristics of plug-flow systems led the EPA to conclude that these systems had to be modeled using site-specific characteristics. Consequently, these systems are required to demonstrate compliance through use of the procedures in appendix C. The exclusion of plug-flow biological treatment systems from the simplified compliance demonstration should not be interpreted as implying that a well designed and operated plug-flow biological treatment system would not achieve the required removal of a compound and, thus, not represent an acceptable means of compliance. If correctly evaluated through the applicable procedures in appendix C to part 63, they can be acceptable.

Examples of additional biological systems that would not meet the enhanced biological treatment system definition would be units that are not thoroughly mixed throughout the aeration unit and that have large concentration gradients between the inlet and the outlet of the aeration unit. Such biological units do not quickly disperse the biomass and wastewater entering the unit throughout the unit and tend to concentrate the volatile organics in a zone with relatively high air stripping rates.

Two commenters also objected to an example in which closeness of influent to the aerators was cited as a factor that would prevent a system from meeting the definition of enhanced biological treatment system. The commenters understood the example to be introducing the use of a criterion of the distance between the influent and an aerator as a de facto measure of poor mixing. The commenters pointed out that if the system achieves quick dispersion of the biomass and wastewater entering the unit, the spatial distance between any aerators or other mixing equipment and the influent is inconsequential. One of the commenters noted that simple spatial distance is not the important issue, rather the issue is whether the influent, recycle biomass, and basin contents are mixed such that the material which is aerated is a mixture of these materials rather than the raw influent. One of the two commenters requested that the EPA delete this example and address this issue through guidance. Both commenters also requested that the EPA state that the examples in the preamble are not intended to provide guidance regarding determinations of whether a system meets the definition of an "enhanced biological treatment system or enhanced biological treatment process."

As a result of these comments, the EPA realized that the example lacked sufficient specificity to explain the basis for the EPA's concern. The EPA is therefore correcting this example to read:

> Other examples of units that would not meet the definition include a unit where the influent is introduced close to the *intake suction of a surface aerator*, increasing the opportunity for volatilization prior to biodegradation, and a unit where the influent is introduced close to a discharge point such that channeling occurs.

Introduction of the influent close to the intake suction of a surface aerator is of concern because the more concentrated influent stream may be picked up and sprayed through the air thereby increasing losses due to volatilization. It is recommended that the influent be introduced in the return stream of the aerator to ensure mixing of the influent and destruction by the biomass before the material is sprayed through the air by the surface aerators.

The EPA agrees with the commenters' suggestion that the EPA should provide detailed technical guidance for determining whether a biological treatment unit meets the definition of "enhanced." This is important because the discussion in this document is limited to key factors and it is necessary to consider all factors that can influence mixing time and rate of volatilization before concluding that a system meets the criteria in the definition for enhanced biological treatment system. The EPA has developed additional information to assist in the determination of whether a biological treatment unit meets the enhanced biological treatment system definition. The additional information is available from the Air and Radiation Docket and Information Center and is also available through the Internet on the TTN website at "http://www.epa.gov/ttn." The EPA is presently working on additional information to assist in compliance demonstrations for biological treatment units that are not thoroughly mixed treatment units and, hence, do not meet the definition of enhanced biological treatment system. When this information is available, it will be available from the Air and Radiation Docket and Information Center and from the TTN.

III. Revisions to Requirements for Determining Site-Specific Fraction Biodegraded

All comments were supportive of the proposed amendments to revise the requirements in subpart G for determining site-specific fraction biodegraded (F_{bio}). Today's action issues the proposed revisions without change. Specifically, the EPA is revising § 63.145(h)(2) to allow use of the batch test procedure in appendix C for any type of biological treatment system. Today's action also revises table 36 by combining the list 2 and list 3 compounds into a new list 2 in table 36. These changes are being made to § 63.145(h) to provide more flexibility and to simplify this section of the rule.

IV. Revisions to Appendix C To Part 63

All comments were supportive of the proposed amendments to appendix C to part 63 to reflect the proposed revision of the definition for "enhanced biological treatment system or enhanced biological treatment process." Today's action issues those proposed revisions without change.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See the Act section 307(d)(7)(A).)

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.03) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460 or by calling (202) 260–2740.

These revisions to the rule do not change the information collection requirements of the rule, and the currently approved OMB ICRs are still in force for the amended rule. The changes consist of revised definitions, alternative test procedures, and clarifications of requirements. The changes are not additional requirements and do not increase the information collection burden. Consequently, the ICR has not been revised for these amendments to the rule.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

C. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the EPA has determined that this final rule is not a "significant regulatory action" within the meaning of the Executive Order. The amendments issued today clarify the rule and remove restrictions on use of an alternative test procedure. These amendments do not add any new control requirements. Therefore, this regulatory action is considered "not significant" and OMB review is not required.

D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis and coordinate with small entity stakeholders if the Agency determines that a rule will have a significant economic impact on a substantial number of small entities.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final amendment to the rule. The EPA has also determined that this amendment will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. See the April 22, 1994 **Federal Register** (59 FR 19449) for the basis for this determination. The changes to the rule merely clarify existing requirements and therefore, do not create any additional burden for any of the regulated entities.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. § 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). This rule will be effective December 9, 1998.

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under section 205, the EPA must select the least costly, most cost-effective, or least burdensome

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alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector in any one year. Therefore, the requirements of sections 202 and 205 of the Unfunded Mandates Act do not apply to this action. The EPA has likewise determined that the action promulgated today does not include any regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the Unfunded Mandates Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This regulatory action amends a definition and makes clarifying revisions to appendix C of part 63 to reflect the clarification of the definition. Thus, this action does not involve any technical standards that would require the EPA to consider voluntary consensus standards pursuant to section 12(d) of the NTTAA.

H. Executive Order 12875: Enhancing Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is considered not "economically significant" as defined under Executive Order 12866 and, therefore, is not subject to Executive Order 13045.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The amendments issued today clarify the rule and remove restrictions on use of an alternative test procedure and do not add any new requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 30, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.111 is amended by revising the definition of "enhanced biological treatment system or enhanced biological treatment process" to read as follows:

§ 63.111 Definitions.

* * * * *

Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

* * * * *

3. Section 63.145 is amended by revising paragraph (h) introductory text and paragraph (h)(2) to read as follows:

§ 63.145 Process wastewater provisions—test methods and procedures to determine compliance.

* * * * *

(h) *Site-specific fraction biodegraded (F_{bio}).* The compounds listed in table 9 of this subpart are divided into two sets for the purpose of determining whether F_{bio} must be determined, and if F_{bio} must be determined, which procedures may be used to determine compound-specific kinetic parameters. These sets are designated as lists 1 and 2 in table 36 of this subpart.

* * * * *

(2) *F_{bio} determination.* If a biological treatment process does not meet the requirement specified in paragraph (h)(1)(i) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(ii) of this section. If a biological treatment process meets the requirements of paragraph (h)(1)(i) of this section but does not meet the requirement specified in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(i) of this section.

(i) *Enhanced biological treatment processes.* If the biological treatment process meets the definition of "enhanced biological treatment process" in § 63.111 of this subpart and the wastewater streams include one or more compounds on list 2 of table 36 of this subpart that do not meet the criteria in paragraph (h)(1)(ii) of this section, the owner or operator shall determine f_{bio} for the list 2 compounds using any of the procedures specified in appendix C of 40 CFR part 63. (The symbol "f_{bio}" represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.) The owner or operator shall calculate f_{bio} for the list 1 compounds using the defaults for first order biodegradation rate constants (K_1) in table 37 of subpart G and follow the procedure explained in form III of appendix C, 40 CFR part 63, or any of the procedures specified in appendix C, 40 CFR part 63.

(ii) *Biological treatment processes that are not enhanced biological treatment processes.* For biological treatment processes that do not meet the definition for "enhanced biological treatment process" in § 63.111 of this subpart, the owner or operator shall determine the f_{bio} for the list 1 and 2 compounds using any of the procedures in appendix C to part 63, except procedure 3 (inlet and outlet concentration measurements). (The symbol "f_{bio}" represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.)

* * * * *

4. Table 36 of appendix to subpart G is revised to read as follows:

Appendix to Subpart G—Tables and Figures

* * * * *

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(h))

List 1	List 2
Acetonitrile	Acetaldehyde.
Acetophenone	Acrolein.
Acrylonitrile	Allyl Chloride.
Biphenyl	Benzene.
Chlorobenzene	Benzyl Chloride,
Dichloroethyl Ether	Bromoform.
Diethyl Sulfate	Bromomethane.
Dimethyl Sulfate	Butadiene 1,3.
Dimethyl Hydrazine 1,1	Carbon Disulfide.
Dinitrophenol 2,4	Carbon Tetrachloride
Dinitrotoluene 2,4	Chloroethane (ethyl chloride).
Dioxane 1,4	Chloroform.
Ethylene Glycol Monobutyl Ether Acetate	Chloroprene.
Ethylene Glycol Monomethyl Ether Acetate	Cumene (isopropylbenzene).
Ethylene Glycol Dimethyl Ether	Dibromoethane 1,2.
Hexachlorobenzene	Dichlorobenzene 1,4.
Isophorone	Dichloroethane 1,2.
Methanol	Dichloroethane 1,1 (ethylidene dichloride).
Methyl Methacrylate	Dichloroethene 1,1 (vinylidene chloride).
Nitrobenzene	Dichloropropane 1,2.
Toluidine	Dichloropropene 1,3.
Trichlorobenzene 1,2,4.	Dimethylaniline N,N.
Trichlorophenol 2,4,6	Epichlorohydrin.
Triethylamine	Ethyl Acrylate.
	Ethylbenzene.
	Ethylene Oxide
	Ethylene Dibromide.
	Hexachlorobutadiene.
	Hexachloroethane.
	Hexane-n.
	Methyl Isobutyl Ketone.
	Methyl Tertiary Butyl Ether.
	Methyl Ethyl Ketone, (2-butanone).
	Methyl Chloride.

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TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(h))—Continued

List 1	List 2
	Methylene Chloride (dichloromethane).
	Naphthalene.
	Nitropropane 2
	Phosgene.
	Propionaldehyde.
	Propylene Oxide.
	Styrene.
	Tetrachloroethane 1,1,2,2.
	TolueneTrichloroethane 1,1,1 (methyl chloroform).
	Trichloroethane 1,1,2.
	Trichloroethylene.
	Trimethylpentane 2,2,4.
	Vinyl Chloride.
	Vinyl Acetate.
	Xylene-m.
	Xylene-o.
	Xylene-p.

* * * * *

5. Section I of appendix C to part 63 is revised to read as follows:

Appendix C to Part 63—Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit

I. Purpose

The purpose of this appendix is to define the procedures for an owner or operator to use to calculate the site specific fraction of organic compounds biodegraded (F_{bio}) in a biological treatment unit. If an acceptable level of organic compounds is destroyed rather than emitted to the air or remaining in the effluent, the biological treatment unit may be used to comply with the applicable treatment requirements without the unit being covered and vented through a closed vent system to an air pollution control device.

The determination of F_{bio} shall be made on a system as it would exist under the rule. The owner or operator should anticipate changes that would occur to the wastewater flow and concentration of organics, to be treated by the biological treatment unit, as a result of enclosing the collection and treatment system as required by the rule.

The forms presented in this appendix are designed to be applied to thoroughly mixed treatment units. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit. Systems that are not thoroughly mixed treatment units should be subdivided into a series of zones that have uniform characteristics within each zone. The number of zones required to characterize a biological treatment system will depend on the design and operation of the treatment system. Each zone should then be modeled as a separate unit. The amount of air emissions and biodegradation from the modeling of these separate zones can then be added to reflect the entire system.

* * * * *

Appendix C [Amended]

6. Section III of appendix C of part 63, the second paragraph after (4) is revised to read as follows:

III. Procedures for Determination of f_{bio}

* * * * *

(4) * * *

* * * * *

Select one or more appropriate procedures from the four listed above based on the availability of site specific data. If the facility does not have site-specific data on the removal efficiency of its biological treatment unit, then Procedure 1 or Procedure 4 may be used. Procedure 1 allows the use of a bench top bioreactor to determine the first-order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 4 explains two types of batch tests which may be used to estimate the first order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 3 would be used if the facility has, or measures to determine, data on the inlet and outlet individual organic compound concentration for the biological treatment unit. Procedure 3 may only be used on a thoroughly mixed treatment unit. Procedure 2 is used if a facility has or obtains performance data on a biotreatment unit prior to and after addition of the microbial mass. An example where Procedure 2 could be used, is an activated sludge unit where measurements have been taken on inlet and exit concentration of organic compounds in the wastewater prior to seeding with the microbial mass and start-up of the unit. The flow chart in figure 1 outlines the steps to use for each of the procedures.

* * * * *

7. In appendix C of part 63, section III, in the second sentence of C. Inlet and Outlet Concentration Measurements (Procedure 3), the phrase "uniform well-mixed or completely mixed system" is revised to read "thoroughly mixed treatment unit."

[FR Doc. 98–32567 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300760; FRL 6046–1]

RIN 2070–AB78

Zinc phosphide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of phosphine in or on potatoes, sugar beet (roots), and sugar beet (tops). This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on potatoes and sugarbeets. This regulation establishes a maximum permissible level for residues of phosphine in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on May 1, 2000.

DATES: This regulation is effective December 9, 1998. Objections and requests for hearings must be received by EPA on or before February 8, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300760], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300760], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300760]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the rodenticide zinc phosphide, in or on potatoes and sugar beets at 0.05 part per million (ppm). These tolerances will expire and are revoked on May 1, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL 5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Zinc Phosphide on Potatoes and Sugar beets and FFDCA Tolerances

Potato and sugar beet growers in Idaho have experienced substantial losses in recent years due to vole and mouse damage. The only registered option available to sugar beet and potato growers in Idaho is to use zinc phosphide on non-crop land surrounding their fields. Where fields are surrounded by other crops or bare ground, there are no registered controls or other effective non-chemical methods. EPA has authorized under FIFRA section 18 the use of zinc phosphide on potatoes and sugar beets for control of voles and mice in Idaho. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of phosphine in or on potatoes and sugar beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on May 1, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on potatoes and sugar beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this

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pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether zinc phosphide meets EPA's registration requirements for use on potatoes and sugar beets or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of zinc phosphide by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for zinc phosphide, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL 5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of phosphine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of zinc phosphide on potatoes and sugar beet (roots) at 0.05 ppm and sugar beet (tops) at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by zinc phosphide are discussed below.

1. *Acute toxicity*. No toxicology studies were identified by EPA which demonstrated the need for an acute dietary risk assessment.

2. *Short - and intermediate - term non-dietary toxicity*. Based on the acute dermal LD_{50} study in rabbits, no appropriate toxic effects were identified for risk assessment. In that study no mortalities were observed at 5,000 milligram/kilogram mg/kg. At the lowest observed effect level (LOEL) of 2,000 mg/kg, there was a decrease in body weight. Based on the physical properties of the chemical, dermal absorption is expected to be very low, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal, exposure. As no endpoint of toxicological concern for dermal exposure has been identified, no dermal penetration data were required. The requirement for an acute inhalation study has been waived, thus zinc phosphide has been placed in Toxicity Category I for acute inhalation exposure.

3. *Chronic toxicity*. EPA has established the RfD for zinc phosphide at 0.001 (mg/kg/day). However, as indicated in the Reregistration Eligibility Document (RED), a chronic dietary risk assessment is not required because exposure from food sources is expected to be minimal to non-existent. There are no detectable residues in potatoes. Furthermore potatoes are often washed and cooked before they are eaten thereby further reducing any trace of residues. Residue studies showed there were detectable residues in sugar beet roots and tops; however, these commodities are not direct human foods and no dietary consumption is expected. Sugar beet tops are fed to livestock; however, there is no likelihood of residues of zinc phosphide being found through transfer of residues to meat and milk. Residues of zinc phosphide ingested by livestock would be immediately converted to phosphine and metabolized to naturally occurring phosphorus compounds. Furthermore, the Agency believes that the refining process for sugar beets will remove any unreacted zinc phosphide from refined sugar and the data requirements for a sugar beet processing study has been waived. Therefore the Agency has determined that there is no likelihood of residues of zinc phosphide occurring in any processed commodities and no chronic dietary exposure assessment is required.

4. *Carcinogenicity*. Zinc phosphide has not been classified as to its carcinogenic potential since cancer studies have been waived. Although this chemical has food uses, dietary exposure is expected to be minimal.

B. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.284) for the residues of zinc phosphide, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from zinc phosphide as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Acute dietary endpoints were not identified; thus an acute dietary risk assessment was not performed.

ii. *Chronic exposure and risk*. For the purpose of assessing chronic dietary exposure to zinc phosphide from food, EPA assumed tolerance level residues and 100% of crop treated for potatoes, sugarbeets and all other commodities having zinc phosphide tolerances. These conservative assumptions result in over estimation of human dietary exposures.

2. *From drinking water*. The EPA Safe Drinking Water Hotline has indicated (06/97) that there are no established maximum contaminant levels (MCL) for residues of zinc phosphide in drinking water. No health advisory levels for zinc phosphide in drinking water have been established. There is no entry for zinc phosphide in the "Pesticides in Groundwater Database" (EPA 734–12–92–001, September 1992). Furthermore as indicated in the RED, zinc phosphide and its degradation products appear to have a low potential for ground water or surface water contamination. Therefore, dietary exposure is not expected from either ground or surface water fed drinking water and a drinking water risk assessment was not performed in the RED. Since the issuance of the RED, drinking water levels of comparison (DWLOCs) for zinc phosphide were calculated in accordance with the current Standard Operating Procedures for Drinking Water Exposure and Risk Assessments. The Agency concludes with reasonable certainty that exposure to zinc phosphide in drinking water would not result in unacceptable levels of concern.

i. *Acute exposure and risk*. Acute dietary endpoints have not been identified; therefore, a DWLOC for acute dietary exposure was not determined.

ii. *Chronic exposure and risk*. Zinc phosphide degrades rapidly to Zn^{2+} and PH_3, which sorb strongly to soil and are common nutrients in soil. Zinc phosphide and its degradation products appear to have a low potential for ground water or surface water contamination. Therefore, EPA concludes with reasonable certainty that the residues of zinc phosphide in drinking water would not result in unacceptable levels of concern.

3. *From non-dietary exposure.* Zinc phosphide is currently registered for use on the following residential non-food sites: hand-applied bait to underground burrows in/on the following sites/settings: bulb crops, golf course turfgrass, lawns, ornamentals, nurseries, parks, homes, industrial, commercial, and agricultural buildings. Because of these residential uses, EPA has concerns about possible post-application exposures to children. A post-application exposure and risk assessment, using the method described in the draft Standard Operating Procedures (SOPs) for Residential Exposure Assessments was conducted. The margin of exposure (MOE) of 310 for post-application exposure to children at residential sites does not exceed EPA's level of concern (i.e., acceptable MOEs are ≥100). The dose estimates generated here are based on some central tendency (i.e., body weight) and some upper-percentile assumptions (i.e., ingestion rate of dry pesticide formulation, and maximum application rate) and are considered to be representative of high-end exposure. The uncertainties associated with this assessment stem from the use of an assumed ingestion rate of dry pesticide formulation. The dose estimates are considered to be reasonable high-end estimates based on professional judgement.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Although zinc phosphide may share a common mode of toxicity (the generation of phosphine gas) with other chemicals (aluminum and magnesium phosphide), the Agency has determined that any future cumulative risk determination involvling these chemicals will not include the current uses of zinc phosphide. This determination is based on the fact that exposures to phosphine from zinc phosphide in food or water are negligible due to zinc phosphide's rapid degradation and limited use patterns.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute dietary endpoints were not identified; thus an acute dietary risk assessment was not performed.

2. *Chronic risk.* A chronic dietary reference dose (RfD) was established for zinc phosphide at 0.0001 mg/kg/day (see Zinc Phosphide RED, 7/98). However, as indicated in the RED, a chronic dietary risk assessment is not required because exposure from food sources is expected to be minimal to non-existent. There are no detectable residues in potatoes. Furthermore potatoes are often washed and cooked before they are eaten thereby further reducing any trace of residues. Residue studies showed there were detectable residues in sugar beet (roots) and (tops); however, these commodities are not direct human foods and no dietary consumption is expected. Sugar beet (tops) are feed to livestock; however, there is no likelihood of residues of zinc phosphide being found through transfer of residues to meat and milk. Residues of zinc phosphide ingested by livestock would be immediately converted to phosphine and metabolized to naturally occurring phosphorus compounds. Furthermore, the Agency believes that the refining process or sugar beets will remove any unreacted zinc phosphide from refined sugar and the data requirements for a sugar beet processing study has been waived. Therefore the Agency has determined that there is no likelihood of residue of zinc phosphide occurring in any processed commodities and no chronic dietary exposure assessment is required.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. A short and intermediate term aggregate risk assessment is not required as a non-dietary endpoint was not identified.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zinc phosphide residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* — i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of zinc phosphide, EPA considered data from developmental toxicity studies in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal no observed adverse effect level (NOAEL) was 2.0 mg/kg/day, based on increased mortality at the LOEL of 4.0 mg/kg/day. The developmental (fetal) NOAEL was 4.0 mg/kg/day, the highest dose tested.

iii. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for zinc phosphide is not complete. EPA is not requiring these studies because exposure from food sources is expected to be insignificant. The rat developmental toxicity data provided no indication of increased sensitivity of fetal rats to *in utero* exposure to zinc phosphide. In that study, no developmental effects were observed at the highest dose tested which was shown to be maternally toxic. An additional uncertainty factor of 10 was applied to the reference dose calculation to account for the extrapolation from subchronic to chronic exposure, the lack of reproductive toxicity data, and the lack of chronic toxicity data in a non-rodent species, this additional uncertainty factor will accomodate the inability to assess the potential for increased sensitivity of infants and children, because of the lack of animal data.

2. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to zinc phosphide residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The residue of concern is zinc phosphide *per se*, measured as phosphine. There is no expectation of secondary residues in meat, milk, poultry, and eggs as a result of the registered zinc phosphide uses .

B. Analytical Enforcement Methodology

Adequate analytical methodology (spectrophotometric) is available in PAM II (Sec. 180.284, Method A) to enforce the tolerance expression. The method determines zinc phosphide residues as phosphine gas.

C. Magnitude of Residues

Residues of phosphine resulting from the proposed use of zinc phosphide are not expected to exceed 0.05 ppm in potatoes, 0.05 ppm in sugar beet (roots), and 0.1 ppm in sugar beet (tops). Concentration of residues in potato and sugar beet processing by-products is not expected. There is no reasonable expectation of secondary residues in meat, milk, poultry, or eggs.

D. International Residue Limits

No Codex, Canadian or Mexican Maximum Residue Levels have been established for zinc phosphide.

V. Conclusion

Therefore, the tolerances are established for residues of zinc phosphide in potatoes and sugar beet (roots) at 0.05 ppm and sugar beet (tops) at 0.1 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 8, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300760] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the

Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 24, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In §180.284, in paragraph (b), by alphabetically adding the following commodities to the table to read as follows:

§180.284 Zinc phosphide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* * * *	
Potatoes	0.05	5/1/00
* * *	* * * *	
Sugar beet (roots)	0.05	5/1/00
Sugar beet (tops)	0.1	5/1/00
* * *	* * * *	

* * * * *

[FR Doc. 98–32574 Filed 12–8–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6198–9]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Oklahoma Department of Environmental Quality's (ODEQ) application and determined that its Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received on this action, EPA's decision to approve Oklahoma's Hazardous Waste Program Revision will take effect as provided below in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA).

DATES: This immediate final rule is effective on February 8, 1999 without further notice, unless EPA receives adverse comments by January 8, 1999. Should the EPA receive such comments, it will publish a timely withdrawal of this Immediate Final Rule in the **Federal Register** and inform the public that the rule will not take effect.

Written comments, referring to Docket Number OK–98–3, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–8533.

ADDRESSES: Copies of the Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73117–1212, phone (405) 271–5338 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a Hazardous Waste Program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–264, 265, 266, 268, 270, 273 and 279.

B. Oklahoma

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362) to implement its base hazardous waste management program. Oklahoma received authorization for revisions to its program on June 18, 1990 (55 FR 14280), effective November 27, 1990 (55 FR 39274), effective June 3, 1991 (56 FR 13411), effective November 19, 1991 (56 FR 47675), effective December 21, 1994 (59 FR 51116–51122), effective April 27, 1995 (60 FR 2699–2702), effective October 9, 1996 (61 FR 52884–52886), and Technical Correction effective March 14, 1997 (62 FR 12100). The authorized Oklahoma RCRA program was incorporated by reference into the CFR effective December 13, 1993 and July 14, 1998. On July 31, 1998, Oklahoma submitted a final complete program revision application for additional program approvals. The State of Oklahoma has also adopted the regulations for Import and Export of Hazardous Waste. However, the requirements of the Import and Export regulations will be administered by the EPA and not the State because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the United States Constitution. Therefore, the State is not seeking authorization for this rule. Today, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Oklahoma statutes provide authority for a single State agency, the ODEQ, to administer the provisions of the State Hazardous Waste Management Program. These statutes are the Oklahoma Environmental Quality Act, 27 O.S. Supplement (Supp) 1997 sections 1–1–101 *et seq.* General provisions of the Oklahoma Environmental Quality Code which may affect the Hazardous Waste Program, 27A O.S. Supp. 1997 sections 2–1–101 through 2–3–507; and the Oklahoma Hazardous Waste Management Act (OHWMA), 27A O.S. Supp. 1997 sections 2–7–101 *et seq.* No amendments were made to the above statutory authorities during the 1997 legislative session which will substantially affect the State Hazardous Waste Management Program; however, 27A O.S. sections 2–14–305 has been added to allow for issuance of general permits.

On January 8, 1998, the Council voted to recommend amendments to Oklahoma Administrative Code (OAC) 252:200–3–1 and 252:200:3–2 to incorporate by reference, in accordance with Guidelines For State Adoption of Federal Regulations by Reference, the following EPA Hazardous Waste Management Regulations as amended through July 1, 1997: the provisions of 40 CFR part 124 which are required by 40 CFR 271.14 as well as 124.31, 124.32 and 124.33; 40 CFR parts 260–266, with the exception of 40 CFR 260.20 through 260.22, 40 CFR part 268, 40 CFR part 270, 40 CFR part 273 and 40 CFR part 279. The Board adopted these amendments on January 27, 1998 as permanent and emergency rules. The emergency rules amendments became effective as permanent rules on June 1, 1998. The ODEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 1997 sections 2–7–105(13) to cooperate with Federal agencies for the purposes of hazardous waste regulations. The OHWMA delegates authority to the ODEQ to administer the State Hazardous Waste Program, including the statutory and regulatory provisions necessary to administer the RCRA Cluster VI requirements.

The EPA reviewed ODEQ's application, and today is making an immediate final decision, subject to public review and comment, that ODEQ's Hazardous Waste Program revisions satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant final authorization for the additional program modifications to Oklahoma. The public may submit written comments on EPA's final decision until January 8, 1999. Copies of Oklahoma's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of ODEQ's program revision shall became effective 60 days from the date this document is published, unless an adverse written comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, the EPA will publish either, (1) a withdrawal of the immediate final decision, or (2) a document containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

The ODEQ's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–263, 264, 265, 266, 270, 273, and 279, that were published in the FR from July 1, 1995 through June 30, 1996. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Hazardous Waste Management; Liquids in Landfills, [60 FR 35703] July 11, 1995 (Checklist 145).	OAC 27A Oklahoma Statutes (O.S.), Supp. 1997, §2–2–104 laws added 1994, effective July 1, 1994; §§2–7–106, amended 1993, and 2–7–107(A)(10), effective July 1, 1993. OHWMA, as amended, 252:200–3–1, through 252:200–3–4, amended January 27, 1998, emergency rule effective March 23, 1998, permanent rule effective June 1, 1998.
2. RCRA Expanded Public Participation, [60 FR 63417] December 11, 1995 (Checklist 148).	OAC 27A O.S., Supp. 1997, §§2–7–104 added 1994, effective July 1, 1994; 27A O.S. Supp. 1996 §2–7–106, and §2–7–105(15), effective July 1, 1993; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended January 27, 1998, emergency effective date March 23,1998, permanent rule effective June 1, 1998.
3. Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste, [61 FR 13103], March 26, 1996. (Checklist 150).	OAC 27A O.S., Supp. 1997, §§2–7–106 amended 1993, effective July 1, 1993; and §2–7–104, added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended January 27, 1998, emergency effective date March 23, 1998, permanent effective June 1, 1998.
4. Land Disposal Restrictions Phase III-Deharacterized Wastewaters, Carbamate Waste, and Spent Potliners, [61 FR 15660] April 8, 1996, [61 FR 19117] April 30, 1996 [61FR 33680], June 28, 1996, [61 FR 36419], July 10, 1996, [61 FR 43924], April 26, 1996, and [62 FR 7502] February 19, 1997, (Checklist 151.1, 151.2, 151.3, 151.4, 151.5 and 151.6).	OAC 27A O.S., Supp. 1996, §§2–7–106 amended 1993, effective July 1, 1993; §2–7–104, Added by Laws 1994 and §2–7–106, effective July 1, 1994; OHWMA Rules 252:200–3–1 through 252:200–3–4, amended June 18, 1996, emergency effective date August 1, 1996, permanent effective June 1, 1997; 252:200–3–5, and 252:200–3–6, Finally adopted March 30, 1994, effective as permanent May 26, 1994.

Oklahoma is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that ODEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, ODEQ is granted Final Authorization to operate its hazardous waste program as revised. Upon effective final approval Oklahoma will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize ODEQ's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart LL until a later date.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law (Pub. L.) 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments already exist under the State of Oklahoma's program, and today's action does not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of sections 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate of hazardous waste, treatments, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by the EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

F. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by the EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because the EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U. S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Regulatory Review Under Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12866.

I. Protection of Children From Environmental Health Risk and Safety risks Under Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risk" applies to any rule that: (1) the OMB determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

J. Enhancing Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, the EPA may not issue regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1 (a) of Executive Order 12875 do not apply to this rule.

K. Consultation and Coordination With Indian Tribal Governments Under Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is not require by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires the EPA to provide the OMB , in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, summary of the nature of their concerns, and a statement supporting the need to issue the regulations. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

L. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

Paper Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the Paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the required community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 98–32575 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 206

[DFARS Case 97–D324]

Defense Federal Acquisition Regulation Supplement; Competition Exception for International Agreements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 841(b) of the National Defense Authorization Act for Fiscal Year 1998. Section 841(b) repeals the requirement for the competition advocate to approve documentation prepared by the head of the contracting activity, for use of other than competitive procedures, when the terms of an international agreement have the effect of requiring such procedures.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D324.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 206.302–4 to implement Section 841(b) of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 841(b) amends 10 U.S.C. 2304(f)(2)(E) to repeal the requirement for the competition advocate to approve documentation supporting the use of other than competitive procedures for an acquisition, when the use of such procedures is based upon the terms of an international agreement.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication of public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D324.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 206

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 206 is amended as follows:

1. The authority citation for 48 CFR Part 206 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.302–4 is revised to read as follows:

206.302–4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if the head of the contracting activity prepares a document that describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition.

[FR Doc. 98–32582 Filed 12–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 97–D319]

Defense Federal Acquisition Regulation Supplement; Waiver Authority to Support Humanitarian or Peacekeeping Operations

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 803 of the National Defense Authorization Act for Fiscal Year 1998. Section 803 permits the head of an agency to waive certain limitations on the use of undefinitized contract actions, if the waiver is necessary to support a humanitarian or peacekeeping operation.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D319.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 217.7404–5 to implement Section 803 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 803 amends the limitations at 10 U.S.C. 2326(b)(4) pertaining to the use of undefinitized contract actions. Editorial changes are made at 217.7404–3.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D319.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 217 is amended as follows:

1. The authority citation for 48 CFR Part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.7404–3 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

217.7404–3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a qualifying proposal); or

* * * * *

3. Section 217.7404–5 is amended by revising paragraph (b) to read as follows:

217.7404–5 Exceptions.

* * * * *

(b) The head of an agency may waive the limitations in 217.7404–2, 217.7404–3, and 217.7404–4 for UCAs if the head of the agency determines that the waiver is necessary to support—

(1) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(2) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7).

[FR Doc. 98–32583 Filed 12–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 223 and 252

[DFARS Case 98–D301]

Defense Federal Acquisition Regulation Supplement; Hazardous Waste Disposal

AGENCY: Department of Defense (DoD.)

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove guidance pertaining to contracts for the offsite treatment or disposal of hazardous waste from defense facilities. The statute upon which this guidance was based applies only to contracts entered into during fiscal years 1992 through 1996.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D301.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS Subpart 223.70 and the clause at DFARS 252.223–7005, which implemented 10 U.S.C. 2708, Contracts for handling hazardous waste from defense facilities. 10 U.S.C. 2708 applies only to contracts entered into during fiscal years 1992 through 1996.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D301.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 223 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 223 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 223 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 223.70—[Removed and Reserved]

2. Subpart 223.70 is removed and reserved.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.223–7005 [Removed and Reserved]

3. Section 252.223–7005 is removed and reserved.

[FR Doc. 98–32584 Filed 12–8–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 97–D328]

Defense Federal Acquisition Regulation Supplement; Service Contracts that Cross Fiscal Years

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete guidance pertaining to service contracts that cross fiscal years. Section 801 of the National Defense Authorization Act for Fiscal Year 1998 expanded the statutory authority to enter into such contracts. Federal Acquisition Circular 97–09, dated October 30, 1998, incorporated current guidance on this subject into the Federal Acquisition Regulation.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D328.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) amended 10 U.S.C. 2410a to expand the authority pertaining to service contracts that cross fiscal years. Item VIII of Federal Acquisition Circular 97–09 (63 FR 58600, October 30, 1998) amended the Federal Acquisition Regulation to implement Section 801. This final rule revises DFARS 237.106 to remove obsolete guidance pertaining to service contracts that cross fiscal years.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D328.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 237 is amended as follows:

1. The authority citation for 48 CFR Part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

2. Section 237.106 is revised to read as follows:

237.106 Funding and term of service contracts.

Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be—

(1) Temporary (not more than 1 year); or

(2) Intermittent (not cumulatively more than 130 days in 1 year).

[FR Doc. 98–32585 Filed 12–8–98; 8:45 am]

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Proposed Rules

Federal Register
Vol. 63, No. 236
Wednesday, December 9, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AF32

Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1998 (Pub. L. 105–86) and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277) made changes to the Upland Cotton User Marketing Certificate Program. Accordingly, the regulations are revised to conform to the statute and to indicate that, beginning October 1, 1998, payments will be offered under different circumstances from those in effect prior to that date. Obsolete and unnecessary language in the regulations also will be deleted.

DATES: Comments on the proposed rule, as well as comments on alternatives to this proposal, must be received on or before January 8, 1999 to be assured of consideration. Comments on the information collections in this rule must be received on or before February 8, 1999 to be assured of consideration.

ADDRESSES: Submit comments on the proposed rule to: Director of Fibers Analysis (FA), Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW, STOP 0515, Washington, DC 20250–0515. E-mail comments may be sent to wayne__bjorlie@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, Director, FA, FSA, USDA, Room 3758–S, STOP 0515, 1400 Independence Avenue, SW, Washington, DC 20250–0515 or call (202) 720–7954. A cost benefit assessment of this proposed rule is available on request. E-mail inquiries also are welcome. Please address them to: wayne__bjorlie@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs, as found in the catalog of Federal Domestic Assistance, to which this proposed rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of the rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1427 set forth in this proposed rule involve a change in the existing information collection requirements which were previously cleared by OMB under the provisions of 44 U.S.C. 35. In accordance with the Paperwork Reduction Act of 1995, CCC has submitted a request to OMB for a revision to an information collection currently approved in support of the upland cotton user marketing certificate program and related reporting and record keeping requirements.

Title: Upland Cotton Domestic User/Exporter Agreement and Payment Program.

OMB Control Number: 0560–0136.

Expiration Date of Approval: April 30, 2000.

Type of Request: Revision of a Currently-Approved Information Collection.

Abstract: Section 136 of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127 (1996 Act), authorizes payments to eligible U.S. domestic users and exporters under the upland cotton user marketing certificate program if, for 4 consecutive weeks, (1) the U.S. Northern Europe price exceeds the Northern Europe price by more than 1.25 cents per pound, and (2) the upland cotton adjusted world price is less than 130 percent of the current-crop base quality loan rate. The 1996 Act further specifies that the certificates will not be available in a week following a consecutive 10-week period in which the U.S. Northern Europe price, adjusted downward for any marketing certificate payment rate in effect, exceeds the Northern Europe price by more than 1.25 cents per pound.

Currently, to participate in the program, domestic users and exporters must sign the Upland Cotton Domestic User/Exporter Agreement (CCC–1045) with CCC. Domestic users must agree to report weekly to CCC their consumption of cotton. Exporters report to CCC their shipments of cotton only during weeks in which a payment is available. CCC provides a suggested format for the reports, but program participants may submit the same information to CCC in a format that is convenient for participants.

Pub. L. 105–86, enacted on November 18, 1997, changed the percentage in criterion (2) above from 130 percent to 134 percent, effective October 1, 1998. Pub. L. 105–86 also repealed the provision that stops certificate payments after the consecutive 10-week period referred to above.

Pub. L. 105–277, enacted on October 21, 1998, changed the threshold for the price triggers from 1.25 cents to 3.00 cents.

The operational implication of these changes is that the user marketing certificate payment program may operate more frequently and for longer periods of time. The payment rate will be 1.75 cents per pound less than the level without the change in the threshold. In claiming payments for cotton consumed or shipped, domestic users and exporters may face additional reporting requirements during periods in which, under the former rules, the program would not have operated. However, because the total of funds to be expended on the payments is fixed by law, no net addition to reporting requirements over the life of the program is anticipated for either domestic users or exporters as a result of this rule.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 12 minutes per response.

Respondents: U.S. cotton exporters and U.S. domestic users of cotton.

Estimated Number of Respondents: 240.

Estimated Number of Responses per Respondent: 36.

Estimated Total Annual Burden on Respondents: 1,940 hours.

Proposed topics for comment on the information collection include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of the information collection may be obtained from Steve Gill at the address below.

Submit comments on the information collection to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Steve Gill, Director, Warehouse and Inventory Division, FSA, USDA, Room 5968–S, STOP 0553, Washington, DC 20250–0553. Comments may be submitted by e-mail to: steve_gill@wdc.fsa.usda.gov. All comments regarding this information collection will be summarized and included in the request for OMB approval. All comments will also become public records.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Background

This proposed rule would amend the regulations to accomplish four distinct objectives with regard to the administration of the upland cotton user marketing certificate program.

1. Changes to the regulations for the user marketing certificate program are necessitated by statutory changes made by Section 731 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1998 (1998 Agriculture Appropriation Act, Pub. L. 105–86) and by Section 762 of the Omnibus Consolidated and Emergency Appropriations Act, 1999 (Pub. L. 105–277). Both the 1998 and 1999 Agriculture Appropriation Acts amended the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) to change the requisite conditions in the cotton market under which certificates must be made available. The 1996 Act requires that user marketing certificates be made available to domestic users and exporters for raw upland cotton grown in the United States and consumed or exported after four consecutive weeks during which the U.S. price quotation for upland cotton, including cost, insurance, and freight (C.I.F.), delivered in northern Europe, exceeds the average quotation for the five cheapest growths of upland-style cotton quoted for delivery, C.I.F. northern Europe, by 1.25 cents per pound.

If marketing certificates are being made available, the 1996 Act provides for two market circumstances under either of which the availability of such certificates is interrupted:

A. The adjusted world price (AWP) at which upland cotton marketing loan repayments are made rises to a level in excess of 130 percent of the current loan rate; or

B. A period of ten consecutive weeks passes in which the U.S. price quotation for upland cotton, delivered C.I.F. northern Europe, adjusted downward for any marketing certificate rate in effect, exceeds the average quotation for the five cheapest growths of upland-style cotton quoted for delivery C.I.F. northern Europe by 1.25 cents per pound.

Effective October 1, 1998, the 1998 Agriculture Appropriation Act changed these two circumstances. Effective October 23, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 changed the price trigger thresholds. Together, these two Acts provide that:

A. User marketing certificates will not be made available if the AWP exceeds 134 percent of the current loan rate; and

B. The Secretary will continue to issue user marketing certificates despite the passage of 10 consecutive weeks during which the U.S. price quotation for upland cotton, delivered C.I.F. northern Europe, adjusted downward for any marketing certificate rate in effect, exceeded the average quotation for the five cheapest growths of upland-style cotton quoted for delivery, C.I.F. northern Europe, by 3.00 cents per pound.

2. About mid-April, each year, price quotations for both the old- (current-) and new- (forward-) crop marketing years become available and are usually published concurrently until the end of the marketing year on August 1. Given the parallel sets of price data, administration of the user marketing certificate program requires a procedure to effect the transition from the old crop to the new crop.

On August 7, 1997, USDA established a transition procedure with respect to the weekly determination as to whether the requisite period of ten consecutive weeks has passed in which U.S. price quotations, C.I.F. northern Europe, have been non-competitive, as referred to above. Under this transition procedure, current-crop price quotations are considered for the 9-week period prior to the first Thursday after July 31 to determine whether each week's data should be counted toward the ten consecutive weeks the passage of which would make user marketing certificates unavailable or cause special import quotas to be opened. The proposed rule sets forth an end-of-year transition procedure for the determination of the 10-week period which is identical to the procedure USDA established on August 7, 1997.

3. Current regulations require, at the end-of-year transition period, that price quotations for the forward crop be considered for the 3 weeks prior to the first Thursday after July 31 to determine whether 4 consecutive qualifying weeks have passed that would require user

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marketing certificate payments to be made available. This procedure is inconsistent with the procedure being proposed for the determination regarding the 10-week period. Therefore, the proposed rule will attain consistency by proposing that current-crop price quotations from the weeks prior to the first Thursday after July 31 be used both for the 4-week and the 10-week determinations.

4. Current regulations contain language that was made obsolete by regulatory revisions on July 12, 1996, and applies only to situations which have passed and cannot recur. The language remained following the regulatory revisions so that prior existing claims under the user marketing certificate program could be handled. There is no further need for this language, so it is proposed to be deleted from the regulations.

The upland cotton user marketing certificate program is conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status or handicap.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Marketing certificate programs, Price support programs, Warehouses.

Accordingly, 7 CFR part 1427 is proposed to be amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7236 and 15 U.S.C. 714b and 714c.

2. Section 1427.100 is amended by revising the text of paragraphs (b)(1), (b)(2), and (b)(3) and by adding new paragraphs (b)(4) and (b)(5), to read as follows:

§ 1427.100 Applicability.

* * * * *

(b)(1) During the period beginning August 1, 1991, and ending September 30, 1998, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which—

(i) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1 3/32 inch") cotton, delivered C.I.F. (cost, insurance and freight) northern Europe, ("U.S. Northern Europe (USNE) price") exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe, ("Northern Europe (NE) price") by more than 1.25 cents per pound; and

(ii) The adjusted world price (AWP) for upland cotton, determined in accordance with § 1427.25, does not exceed 130 percent of the current crop loan level for the base quality of upland cotton.

(2) Beginning August 1, 1991, and ending September 30, 1998, notwithstanding the provisions of paragraph (b)(1) of this section, CCC shall not issue marketing certificates or cash payments if, for the immediately preceding consecutive 10-week period, the USNE price, adjusted for the value of any certificates or cash payments issued under paragraph (b)(1) of this section, exceeds the NE price by more than 1.25 cents per pound.

(3) Beginning October 1, 1998, and ending October 22, 1998, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which:

(i) The Friday through Thursday average USNE price exceeds the Friday through Thursday average NE price by more than 1.25 cents per pound; and

(ii) The AWP for upland cotton does not exceed 134 percent of the current crop loan level for the base quality of upland cotton.

(4) Beginning October 23, 1998, and ending July 31, 2003, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which:

(i) The Friday through Thursday average USNE price exceeds the Friday through Thursday average NE price by more than 3.00 cents per pound; and

(ii) The AWP for upland cotton does not exceed 134 percent of the current crop loan level for the base quality of upland cotton.

(5) Notwithstanding the provisions of this subpart, user marketing certificate program payments shall not exceed $701,000,000 during fiscal years 1996 through 2002. Any outstanding obligations incurred by CCC to exporters under this program before April 5, 1996, will not be subject to the $701,000,000 limitation. Obligations incurred by CCC under this program on or after April 5, 1996, will be charged against the $701,000,000.

* * * * *

3. Section 1427.102 is amended by removing the definition of "optional origin export contract."

4. Section 1427.103 is amended by revising paragraph (a) to read as follows:

§ 1427.103 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which bale is opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or exported by an eligible exporter on or after July 18, 1996, and on or before July 31, 2003, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect, and which meets the requirements of paragraphs (b) and (c) of this section.

* * * * *

5. Section 1427.105 is amended by revising paragraph (b) to read as follows:

§ 1427.105 Upland Cotton Domestic User/Export Agreement.

* * * * *

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205. Telephone requests for copies of the agreement will be accepted at (816) 926-6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward the original and two copies to KCCO.

6. Section 1427.107 is amended by removing paragraphs (f) through (g), by revising paragraphs (a)(1),(a)(2), and (b) through (e), and by adding paragraph (a)(3), to read as follows:

§ 1427.107 Payment rate.

(a) * * *

(1) Beginning August 1, 1991, and ending September 30, 1998, for exporters for cotton shipped on or after July 18, 1996, and for domestic users:

(i) Beginning the Friday following August 1 and ending the week in which the Northern Europe current (NEc) price and the Northern Europe forward (NEf) price first become available, the payment rate shall be the difference between the USNE price, minus 1.25 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent; and

(ii) Beginning the Friday through Thursday week after the week in which the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent. If either or both the USNEc price and the NEc price are not available, the payment rate may be the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price.

(2) Beginning October 1, 1998, and ending October 22, 1998, for exporters and for domestic users, the payment rate shall be the difference between the USNE price, minus 1.25 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent.

(3) Beginning October 23, 1998, and ending July 31, 2003, for exporters and for domestic users:

(i) Beginning the Friday following August 1 and ending the week in which the NEc price and the NEf price first become available, the payment rate shall be the difference between the USNE price, minus 3.00 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 3.00 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent; and

(ii) Beginning the Friday through Thursday week after the week in which the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 3.00 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 3.00 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent. If either or both the USNEc price and the NEc price are not available, the payment rate may be the difference between the USNEf price, minus 3.00 cents per pound, and the NEf price.

(b) Beginning August 1, 1991 and ending September 30, 1998, notwithstanding the provisions of paragraph (a) of this section, no payment rate shall be established in a week following a consecutive 10-week period in which the USNE price, adjusted for the value of any certificate or cash payment issued in accordance with paragraph (a) of this section, exceeds the NE price by more than 1.25 cents per pound.

(c) Whenever a 4-week period under paragraph (a) of this section or a 10-week period under paragraph (b) of this section contains a combination of NE prices only for 1 to 3 weeks, or for 1 to 9 weeks, and NEc prices and NEf prices only for 1 to 3 weeks, or for 1 to 9 weeks, such as occurs in the spring when the NE price is succeeded by the NEc price and the NEf price ("spring transition") and at the start of a new marketing year when the NEc price and the NEf price are succeeded by the NE price ("marketing year transition"), under paragraphs (a) and (b) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the NEc price and the USNEc price in combination with the NE price and the USNE price shall be taken into consideration during such 4-week periods and such 10-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both the USNEc price and the NEc price are not available, the USNEf price and the NEf price in combination with the USNE price and the NE price shall be taken into consideration during such 4-week periods and such 10-week periods to determine whether a payment is to be issued.

(d) For purposes of this subpart—

(1) With respect to the determination of the USNE price, the USNEc price, the USNEf price, the NE price, the NEc price, and the NEf price:

(i) If daily quotations are not available for one or any day of the 5-day period, the available quotations during the period will be used;

(ii) CCC will not take into consideration a week in which no daily quotes are available for the entire 5-day period for either or both the USNE price and the NE price during the period when only one daily price quotation is available for each growth quoted for M 1–3/32 inch cotton, delivered C.I.F. northern Europe, or the USNEc price and the NEc price, or the USNEf price and the NEf price. In that case, CCC may establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined in accordance with paragraph (a) of this section for the most recent available week; and

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc and the NEc price, the marketing year transition shall be implemented immediately as provided for in paragraph (c) of this section.

(2) With respect to the determination of the USNE price, the USNEc price, and the USNEf price, if a quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1–3/32 inch cotton, delivered C.I.F. northern Europe, is not available for each day or any day of the 5-day period, the available quotation(s) will be used.

(e) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

* * * * *

7. Section 1427.108 is amended by removing paragraph (c)(3) and by revising paragraph (c)(2), to read as follows:

§ 1427.108 Payment.

* * * * *

(c) * * *

(2) Through July 31, 2003, exported by the exporter on the date CCC determines is the date on which the cotton is shipped.

* * * * *

8. Section 1427.109 is removed.

Signed at Washington, D.C., on December 2, 1998.

James C. Kearney,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–32653 Filed 12–8–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–028–1]

Importation of Poultry Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for importing animal products to allow the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping. This action would remove some restrictions on the importation of poultry products from regions where END is considered to exist. We believe the proposed conditions for importation will continue to protect the United States from END.

DATES: Consideration will be given only to comments received on or before February 8, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–028–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–028–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals and Germplasm Programs, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–5034; or e-mail: michael.j.david@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 govern the importation of certain animals, birds, poultry, meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of communicable diseases of livestock and poultry. The regulations in 94.6 (referred to below as the regulations) govern, among other things, the importation of poultry carcasses, parts, and products from regions where exotic Newcastle disease (END) is considered to exist.

Under the regulations, poultry carcasses and parts or products of poultry carcasses may be imported into the United States from regions where END is considered to exist only under one of the following conditions:

1. If they are imported for consignment to a museum, educational institution, or other establishment that has been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA). Approval is based on the establishment providing the Administrator with evidence that it has the equipment, facilities, and capabilities to store, handle, process, or disinfect the articles to prevent the introduction or dissemination of END into the United States.
2. If they are packed in hermetically sealed containers and afterward cooked by a commercial method to produce articles that are shelf stable without refrigeration.
3. If they are thoroughly cooked, and, upon inspection by a representative of the United States Department of Agriculture at the port of arrival, have a thoroughly cooked appearance throughout.
4. If they are imported under permit granted by the Administrator of APHIS after he or she determines that the importation will not constitute a risk of introducing or disseminating END into the United States.

We are proposing to amend § 94.6 to also allow poultry carcasses and parts or products of poultry carcasses to be imported into the United States from regions where END is considered to exist if they originated in a region free of END and meet certain requirements with respect to processing and shipping. The primary purpose of this change is to allow poultry meat that originates in the United States to be shipped for processing to a country where END is considered to exist, and then returned to the United States. The proposal would also allow poultry meat that originates in another END-free region to be processed in a region where END is considered to exist and then be shipped to the United States. This action would remove some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist. We believe this action poses only a negligible risk of introducing END into the United States.

Shipment to Approved Establishments

Under this proposed rule, the poultry carcasses and parts or products of poultry carcasses that originate in a region free of END must be shipped for processing to the region where END is considered to exist in closed containers sealed with serially-numbered seals applied by an official of the national government of the region of origin. The shipments would have to be accompanied by a certificate that was signed by an official of the national government of the region of origin and that specifies the products' region of origin, the processing establishment to which the products are consigned, and the numbers of the seals applied to the shipping containers.

Upon arrival at the processing establishment, the poultry carcasses and parts or products of poultry carcasses could only be removed from the containers after an official of the foreign region's national government had determined that the seals were intact and free of any evidence of tampering. The official would have to attest to this fact by signing the certificate accompanying the shipment. The signed certificate would have to be kept on file at the processing establishment for at least 2 years after export of the processed products to the United States, and must be made available to USDA inspectors to demonstrate compliance with our regulations, if requested, during announced or unannounced inspections.

Handling at Approved Establishments

Under this proposed rule, the poultry carcasses and parts or products of poultry carcasses would be eligible for importation into the United States only if they were handled and processed in accordance with the following criteria:

1. Establishments in regions where END is considered to exist that process poultry carcasses and parts or products of poultry carcasses for export to the United States may not receive or process any live poultry since END is easily spread in environments where live birds are caged or slaughtered.
2. Processing establishments are not required to be facilities dedicated to processing poultry products from END-free regions. Poultry carcasses and parts or products of poultry carcasses that originate in regions where END is considered to exist may be processed at the same facility as poultry carcasses and parts or products of poultry carcasses from END-free regions provided the following conditions are met:

- All areas, utensils, and equipment liable to contact the poultry carcasses and parts or products of poultry carcasses to be processed, including areas, utensils, and equipment for skinning, deboning, cutting, and packing, must be cleaned and disinfected between processing poultry from regions where END is considered to exist and poultry from END-free regions in order to avoid contamination.

- Poultry carcasses and parts or products of poultry carcasses intended for export to the United States may not be handled, cut, or otherwise processed at the same time as poultry carcasses and parts or products of poultry carcasses not eligible for export to the United States in order to avoid contamination.
- Poultry carcasses and parts or products of poultry carcasses intended for export to the United States must be packed in clean, new packaging that is clearly distinguishable from that containing poultry carcasses and parts or products of poultry carcasses not eligible for export to the United States. Poultry carcasses and parts or products of poultry carcasses must be stored in a manner that ensures that no cross-contamination occurs.

3. Under the proposed rule, establishment operators would have to enter into a cooperative service agreement with APHIS to ensure that all expenses incurred by APHIS in inspecting the establishment would be paid by the operators of the processing establishment. APHIS anticipates that such inspections would occur once a year. The cooperative service account would be required to contain a balance at least equal to the cost of one inspection. APHIS would charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

Shipment to the United States

Poultry carcasses and parts or products of poultry carcasses to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially-numbered seals applied by an official of the national government of that region. The shipments would have to be accompanied by a certificate signed by an official of the national government of the region where the poultry carcasses and parts or products of poultry carcasses were processed. The certificate would have to state that all of the above conditions have been met and would also have to list the numbers of the seals applied. A copy of this certificate must also be kept on file at the processing establishment for at least 2 years after the products were shipped to the United States.

We believe the conditions described above would ensure that the poultry products present a negligible risk of introducing END into the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

This proposed rule would amend the regulations for importing animal products to allow the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping. This proposal would remove some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist.

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States, and the interstate dissemination within the United States, of communicable diseases of livestock and poultry.

This proposal would allow poultry carcasses and parts or products of poultry carcasses that originated in any END-free region to be processed in any region where END is considered to exist, and then be shipped to the United States. At this time, however, the most likely outcome of this proposal is that U.S.-origin poultry carcasses and parts or products of poultry carcasses would be shipped to Mexico for processing and then returned to the United States. It is unlikely that any poultry processed in countries other than Mexico would enter the United States as a result of this proposal. The high cost of shipping processed poultry from END-free countries in the eastern hemisphere to the United States makes it unlikely that such exports could compete in the U.S. market. Further, countries other than Mexico in the western hemisphere that could export processed poultry to the United States under this proposal generally do not produce enough poultry and poultry products to meet their own domestic demand. Western countries other than Mexico may also have difficulty competing in the U.S. market due to costs of shipping, unless the products exported were specialty items not otherwise produced domestically in the United States. Therefore, we anticipate that Mexico would be the only country to export any processed poultry to the United States under this proposal, and our analysis is based on this scenario. We welcome public comment on other potential sources of processed poultry which would be allowed importation into the United States if this proposal were adopted.

Poultry From Mexico

Poultry products to be imported into the United States from Mexico under the proposed regulations would be required to originate in an END-free region. Under § 94.6 of the regulations, the only END-free regions in the western hemisphere are Canada, Chile, Costa Rica, and the United States. Poultry carcasses and parts or products of poultry carcasses from Costa Rica could potentially be imported into Mexico for processing and export to the United States, but Costa Rica does not appear to produce enough poultry carcasses and parts or products of poultry carcasses domestically to make such exports feasible or profitable. It is unlikely that any Canadian poultry would be shipped to Mexico for processing under this rule since U.S. poultry is available for processing at lower cost. Further, the costs of shipping the poultry carcasses and parts or products of poultry carcasses to Mexico from Canada, Costa Rica, Chile, or any other END-free foreign region, and subsequent costs of shipping poultry products from Mexico to the United States, would likely be too high for the processed poultry to be competitive in the U.S. market.

Therefore, it is likely that any poultry carcasses and parts or products of poultry carcasses to be imported into Mexico for processing in accordance with our proposal would originate in the United States due to the United States' proximity to Mexico, its status as a net poultry exporter, and the low cost of its unprocessed poultry. Poultry carcasses and parts or products of poultry carcasses would likely be ground-shipped by southwestern and border State poultry producers to facilities in northern Mexico for processing and reexportation to the United States. Exactly how many U.S. poultry producers would take advantage of this proposal and ship poultry carcasses or products to Mexico to be processed and reexported to the United States is not known. It is possible that U.S. producers would ship poultry carcasses or products to Mexico for processing to take advantage of lower processing costs or to use Mexican processing plants as supplements to the existing U.S. workforce and facilities.

In 1997, the United States produced 33,115 million pounds of poultry products, valued at $17 billion, and exported poultry meat valued at over $2.2 billion (with 10 percent exported to Mexico). We anticipate that whatever volume of processed poultry may be imported as a result of this proposal would be minimal in relation to the overall volume of poultry products currently available in the United States.

In 1997, the United States imported poultry meat valued at $11.2 million. Less than 2 percent of that total ($247,000) was imported from Mexico, while over 93 percent ($10.5 million) was imported from Canada. We anticipate that whatever volume of processed poultry that is imported as a result of this proposal will be minimal in relation to the total volume of all processed poultry imported into the United States.

Trade Relations

This proposal would remove some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist and would encourage a positive trading environment between the United States and Mexico and other regions where END is considered to exist by stimulating economic activity and providing export opportunities to foreign poultry processing industries.

Effect on Small Entities

This proposal may have an effect on domestic poultry processors, who could potentially lose business to Mexican poultry processors as a result of the proposed rule. This proposal may also benefit U.S. truckers and haulers, wholesale traders, and poultry producers and packers, who stand to benefit from increased Mexican trade. However, the extent to which small entities may be affected by this proposal cannot be determined at this time.

Alternatives Considered

In developing this proposed rule, we considered: (1) Making no changes to the regulations governing the importation of poultry from regions where END is considered to exist; (2) proposing to allow the importation of poultry carcasses and parts or products of poultry carcasses that originated in a region free of END but that were processed in a region where END is considered to exist under conditions different from those proposed; or (3) proposing to allow the importation of poultry carcasses and parts or products of poultry carcasses that originated in a region free of END but that were processed in a region where END is considered to exist under the conditions proposed in this document.

We rejected the first alternative because the proposal appears to provide a way to remove trade restrictions while maintaining adequate safeguards against the introduction of END into the United States. Under these circumstances, making no changes to the regulations would be contrary to trade agreements entered into by the United States.

We also rejected the second alternative because it appeared that conditions less stringent than those proposed would increase the risk of the introduction of END into the United States to more than a negligible level and that more stringent conditions would be unnecessarily restrictive. We consider the proposed conditions to be both effective and necessary in keeping at a negligible level the risk of imported poultry products introducing END into the United States.

The proposed changes to the regulations would result in new information collection or recordkeeping requirements, as described below under the heading "Paperwork Reduction Act."

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–028–1. Please send a copy of your comments to: (1) Docket No. 98–028–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations to relieve certain restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping.

Implementing this proposed rule would necessitate the use of two paperwork collection activities: The completion of a foreign meat inspection certificate and the placing of seals on shipping containers.

We are asking OMB to approve our use of these information collections.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the proposed information collection on those who are to respond, (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this proposed collection of information is estimated to average 0.147 hours per response.

Respondents: Full-time, salaried veterinarians of the agency of the Government of Mexico responsible for animal health.

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 51.

Estimated annual number of responses: 204.

Estimated total annual burden on respondents: 30 hours.

Copies of this information collection can be obtained from Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry, and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS.

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 94.6, the section heading would be revised, paragraph (c)(5) would be redesignated as paragraph (c)(6), and a new paragraph (c)(5) would be added to read as follows:

94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease (END) or S. enteritidis is considered to exist.

* * * * *

(c) * * *

(5) Poultry carcasses and parts or products of poultry carcasses that originated in a region considered to be free of END and are processed (cut, packaged, and/or cooked) in a region where END is considered to exist may be imported under the following conditions:

(i) *Shipment to approved establishments.*

(A) The poultry carcasses or parts or products of poultry carcasses must be shipped from the END-free region where they originated in closed containers sealed with serially-numbered seals applied by an official of the national government of that region. They must be accompanied by a certificate that is signed by an official of that region's national government and specifies the products' region of origin, the processing establishment to which the poultry carcasses or parts or products of poultry carcasses are consigned, and the numbers of the seals applied to the shipping containers.

(B) The poultry carcasses or parts or products of poultry carcasses may be removed from containers at the processing establishment in the region where END is considered to exist only after an official of the foreign region's national government has determined that the seals are intact and free of any evidence of tampering. The official must attest to this fact by signing the certificate accompanying the shipment.

(ii) *Handling of poultry carcasses and parts or products of poultry carcasses.* Establishments [1] in regions where END is considered to exist that process poultry carcasses or parts or products of poultry carcasses for export to the United States:

(A) May not receive or handle any live poultry.

(B) Must keep any records required by this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections.

(C) May process poultry carcasses and parts or products of poultry carcasses that originate in both END-free regions and regions where END is considered to exist, provided that:

(*1*) All areas, utensils, and equipment liable to contact the poultry carcasses and parts or products of poultry carcasses to be processed, including skinning, deboning, cutting, and packing areas, are cleaned and disinfected between processing poultry from regions where END is considered to exist and poultry carcasses and parts or products of poultry carcasses from END-free regions.

(*2*) Poultry carcasses and parts or products of poultry carcasses intended for export to the United States are not handled, cut, or otherwise processed at the same time as any poultry not eligible for export to the United States.

(*3*) Poultry carcasses and parts or products of poultry carcasses intended for export to the United States are packed in clean new packaging that is clearly distinguishable from that containing any poultry not eligible for export to the United States.

(*4*) Poultry carcasses and parts or products of poultry carcasses are stored in a manner that ensures that no cross-contamination occurs.

(iii) *Cooperative service agreement.* Operators of processing establishments must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS in inspecting the establishment. APHIS anticipates that such inspections will occur once a year. The cooperative service account must always contain a balance that is at least equal to the cost of one inspection. APHIS will charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

(iv) *Shipment to the United States.* Poultry carcasses and parts or products of poultry carcasses to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially-numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where the poultry was processed that lists the numbers of the seals applied and states that all of the conditions of this section have been met. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

* * * * *

Done in Washington, DC, this 2nd day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32654 Filed 12–8–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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[1] As a condition of entry into the United States, poultry or poultry products must also meet all of the requirements of the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) and regulations thereunder (9 CFR part 381), including requirements that the poultry or poultry products be prepared only in approved establishments.

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SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes. This proposal would require replacement of the rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts. This proposal also would require, for certain airplanes, repetitive inspections to detect discrepancies of the rivets; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the rivets that attach the pressurized floor panel to gantries 4 and 5, which could result in the loss of the floor panel and consequent rapid decompression of the airplane.

DATES: Comments must be received by January 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–106–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 and A300–600 series airplanes. The DGAC advises that, during maintenance on a Model A300 series airplane, maintenance personnel discovered several rivets had been sheared off that attach the pressurized floor panel to gantry 5 between frames 47 and 48. Those rivets are also used to attach the pressurized floor panel to gantry 4. Investigation has revealed that alternate bending stress under the rivet heads caused the rivets to break. The cause of the stress has been attributed to an alternate shear load between the pressurized floor panel and gantries 4 and 5. Failure of the rivets, if not corrected, could result in the loss of the floor panel and consequent rapid decompression of the airplane.

The rivets that attach the pressurized floor panel to gantries 4 and 5 on certain Model A300–600 series airplanes are similar in design to those on Model A300 series airplanes; therefore, both models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–0331, dated March 18, 1997 (for Model A300 series airplanes), and A300–53–6107, dated March 18, 1997 (for Model A300–600 series airplanes), which describe procedures for replacement of the rivets between frames 47 and 48 at gantries 4 and 5 with new titanium alloy bolts.

For certain airplanes, these service bulletins also describe procedures for repetitive detailed visual inspections to detect discrepancies of the existing rivets; corrective actions, if necessary; and eventual replacement of the plain aluminum rivets or blind rivets with titanium alloy bolts.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–176–229(B), dated August 13, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the existing rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts. For certain airplanes, this proposal would require repetitive inspections to detect discrepancies of the existing rivets; corrective actions, if necessary; and eventual replacement of the plain aluminum rivets or blind rivets that attach the pressurized floor panel to gantries 4 and 5 with titanium alloy bolts.

Cost Impact

The FAA estimates that 24 Airbus Model A300 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 26 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost between $3,160 and $3,520 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators of Airbus Model A300 series airplanes is estimated to be as low as $4,720 per airplane or as high as $5,080 per airplane.

The FAA estimates that 61 Airbus Model A300–600 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 26 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost between $3,530 and $3,550 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators of Airbus Model A300–600 series airplanes is estimated to be as low as $5,090 per airplane or as high as $5,110 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the proposed inspection, it would take approximately 1 work hour to accomplish, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection proposed by this AD on U.S. operators of Airbus Model A300 and A300–600 series airplanes is estimated to be $60 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98–NM–106–AD.

Applicability: Model A300 and A300–600 series airplanes on which Airbus Modification 11523 (reference Airbus Service Bulletins A300–53–0331 and A300–53–6107, both dated March 18, 1997) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rivets that attach the pressurized floor panel to gantries 4 and 5, which could result in the loss of the floor panel and consequent rapid decompression of the airplane, accomplish the following:

(a) Accomplish paragraph (a)(1), or paragraphs (a)(2) and (a)(3), of this AD at the times specified in those paragraphs in accordance with Airbus Service Bulletin A300–53–0331, dated March 18, 1997 (for Airbus Model A300 series airplanes); or Airbus Service Bulletin A300–53–6107, dated March 18, 1997 (for Airbus Model A300–600 series airplanes); as applicable.

(1) Replace the rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts, at the applicable time specified in paragraph (a)(1)(i), (a)(1)(ii), (a)(1)(iii), or (a)(1)(iv) of this AD.

(i) For Airbus Model A300–600 series airplanes, replace the rivets prior to the accumulation of 7,150 total flight cycles.

(ii) For Airbus Model A300 B4–203 series airplanes, replace the rivets prior to the accumulation of 10,000 total flight cycles.

(iii) For Airbus Model A300 B4–2C and B4–103 series airplanes, replace the rivets prior to the accumulation of 12,300 total flight cycles.

(iv) For Airbus Model A300 B2–1C, B2–203, and B2K–3C series airplanes, replace the rivets prior to the accumulation of 14,600 total flight cycles.

(2) Perform a detailed visual inspection to detect any broken or discrepant rivets that attach the pressurized floor panel to gantries 4 and 5, at the applicable time specified in paragraph (a)(2)(i), (a)(2)(ii), (a)(2)(iii), or (a)(2)(iv) of this AD. Repeat the inspection thereafter at intervals not to exceed 350 flight cycles until accomplishment of the action required by paragraph (a)(3) of this AD.

(i) For Airbus Model A300–600 series airplanes, inspect the rivets prior to the accumulation of 7,500 total flight cycles, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For Airbus Model A300 B4–203 series airplanes, inspect the rivets prior to the accumulation of 10,350 total flight cycles, or within 350 flight cycles after the effective date of this AD, whichever occurs later

(iii) For Airbus Model A300 B4–2C and B4–103 series airplanes, inspect the rivets prior to the accumulation of 12,650 total flight cycles, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(iv) For Airbus Model A300 B2–1C, B2–203, and B2K–3C series airplanes, inspect the rivets prior to the accumulation of 14,950 total flight cycles, or within 350 flight cycles after the effective date of this AD, whichever occurs later.

(3) Within 3,000 flight cycles after the effective date of this AD, replace the rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts in accordance with the applicable service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections.

(b) If any discrepant or broken rivet is detected during any inspection specified in paragraph (a)(2) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Airbus Service Bulletin A300–53–0331, dated March 18, 1997 (for Airbus Model A300 series airplanes); or Airbus Service Bulletin A300–53–6107, dated March 18, 1997 (for Airbus Model A300–600 series airplanes).

(1) If less than 15 discrepant or broken rivets are detected, prior to further flight, replace the discrepant or broken rivets with serviceable rivets and continue the repetitive inspections, in accordance with the applicable service bulletin, until

accomplishment of the action required by paragraph (a)(3) of this AD.

(2) If 15 or more discrepant or broken rivets are detected, prior to further flight, replace all the rivets that attach the pressurized floor panel to gantries 4 and 5 with new titanium alloy bolts, in accordance with the applicable service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–176–229(B), dated August 13, 1997.

Issued in Renton, Washington, on December 2, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32620 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–63]

Proposed Establishment of Class E Airspace; Ada, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Ada, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 33 has been developed for Norman County Ada/Twin Valley Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace at Norman County Ada/Twin Valley Airport to accommodate the approach.

DATES: Comments must be received on or before January 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–63, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–63." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Ada, MN, to accommodate aircraft executing the proposed GPS Rwy 33 SIAP at Norman County Ada/Twin Valley Airport by creating controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Ada, MN [New]

Ada, Norman County Ada/Twin Valley Airport, MN

(Lat. 47°15′38″ N., long. 96°24′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Norman County Ada/Twin Valley Airport.

* * * * *

Issued in Des Plaines, Illinois on November 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–32730 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 334

[Docket No. 78N–036L]

RIN 0910–AA01

Laxative Drug Products for Over-the-Counter Human Use; Partial Withdrawal of Proposed Amendment to the Tentative Final Monograph; Intent to Repropose

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; withdrawal in part and intent to repropose.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing that part of the notice of proposed rulemaking that would have amended the tentative final monograph for over-the-counter (OTC) laxative drug products to include additional professional labeling for oral and rectal dibasic sodium phosphate/monobasic sodium phosphate (sodium phosphates) drug products. The agency intends to repropose the professional labeling for these products in a future issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gloria Chang, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 1998 (63 FR 27886), FDA published an amendment to the tentative final monograph for OTC laxative drug products proposing to include additional general labeling and expanded professional labeling for oral and rectal sodium phosphates drug products. The agency proposed to expand the professional labeling for products containing sodium phosphates in § 334.80(b)(2) of the tentative final monograph for OTC laxative drug products (50 FR 2124 at 2157, January 15, 1985). The agency also proposed a new format using specific headings to make the proposed professional labeling information clearer and more readable. Interested persons were invited to submit written comments or objections by August 19, 1998.

The agency plans to further expand the professional labeling in proposed § 334.80(b)(2). This notice is to inform interested persons that the agency is withdrawing the proposed amendment to the OTC laxative tentative final monograph for professional labeling for products containing sodium phosphates in § 334.80(b)(2) and will be reproposing the professional labeling in a future issue of the **Federal Register**. Further, this partial withdrawal of the proposed amendment to the OTC laxative tentative final monograph does not affect the current marketing status of sodium phosphates drug products.

The agency has determined under 21 CFR 25.31(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This withdrawal notice is issued under authority of 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32642 Filed 12–8–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD055–3021b; FRL–6199–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery Comparability Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action on the State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision concerns a plan which demonstrates that the emission reductions of volatile organic compounds (VOC) required in ozone attainment and marginal ozone nonattainment areas in Maryland are comparable to the reductions which would be achieved by Stage II vapor recovery (Stage II) in those same areas. EPA is proposing this revision to achieve reductions in the emissions of VOCs in the State of Maryland in accordance with the requirements of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. This Stage II comparability plan allows Maryland to achieve VOC reductions.

DATES: Comments must be received in writing by January 8, 1999.

ADDRESSES: Written comments should be addressed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, at the EPA Region III address above, or by e-mail at knapp.ruth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: November 30, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–32578 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD076–3030b; FRL–6197–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action on the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing a general conformity rule. The general conformity rule sets forth policy, criteria and procedures for demonstrating and assuring conformity of non-transportation related Federal projects to all applicable air quality implementation plans. EPA is proposing to approve Maryland's general conformity regulation as a SIP revision in accordance with the requirements of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the State submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect.

EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 8, 1999.

ADDRESSES: Written comments should be addressed to Robert Kramer, Chief; Energy, Radiation and Indoor Environment Branch; Mailcode 3AP23; U.S. Environmental Protection Agency, Region III; 1650 Arch Street; Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Larry Budney, (215) 814–2184, at the EPA Region III address above, or by e-mail at budney.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action to approve the Maryland General Conformity regulation, which is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: November 24, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–32573 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[FRL–6198–6]

RIN 2060–AH92

Air Quality Index Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to change the uniform air quality index used by States for daily air quality reporting to the general public in accordance with section 319 of the Clean Air Act (Act). These proposed changes include the addition of the following elements: a new category described as "unhealthy for sensitive groups," new breakpoints for the ozone (O_3) sub-index in terms of 8-hour average O_3 concentrations, a new sub-index for fine particulate matter ($PM_{2.5}$), and conforming changes to the sub-indices for inhalable particulate matter (PM_{10}), carbon monoxide (CO), and sulfur dioxide (SO_2). These proposed changes reflect the revisions to the health-based primary national ambient air quality standards (NAAQS) for O_3 and particulate matter (PM) published in the **Federal Register** on July 18, 1997. This document discusses the development of related informational materials on pollutant-specific health effects and sensitive groups and on precautionary actions that can be taken by individuals to reduce exposures of concern. This document also discusses the interrelationship between the uniform air quality index and other programs that provide air quality information and related health information to the general public, including State and local real-time air quality data mapping and community action programs.

DATES: Written comments on this proposed rule must be received by January 25, 1999.

ADDRESSES: Submit comments (in duplicate if possible) on the proposed rule to: Air and Radiation Docket and Information Center (6102), Attn: Docket No. A–98–20, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Terence Fitz-Simons, MD–14, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone (919) 541–0889, e-mail fitz-simons.terence@epamail.epa.gov. For health effects information contact Susan Lyon Stone, MD–15, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone (919) 541–1146, e-mail stone.susan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this package is written using plain language. Thus, the use of "we" or "us" in this package refers to EPA. The use of "you" refers to the reader and may include industry, State and local agencies, environmental groups and other interested individuals.

Docket

Docket No. A–98–20, containing information relating to the EPA's revision of the uniform air quality index, is available for public inspection in the Air and Radiation Docket and Information Center of the Environmental Protection Agency, 401 M St. SW, room M–1500, Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays. A reasonable fee may be charged for copying.

Availability of Related Information

Certain documents are available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Available documents include:

(1) The Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information ("Staff Paper")(EPA–452/R–96–007, June 1996, NTIS # PB–96–203435, $67.00 paper copy and $21.50 microfiche). (Add a $3.00 handling charge per order.)

(2) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information ("Staff Paper") (EPA–452/R–96–013, July 1996, NTIS #PB–97–115406, $47.00 paper copy and $19.50 microfiche). (Add a $3.00 handling charge per order.)

The following document will be available in January 1999 from the National Center for Environmental Publications and Information (NCEPI). Requests for this publication can be mailed to: U.S. Environmental Protection Agency, NCEPI, P.O. Box 42419, Cincinnati, OH, 45242. Your request may also be phoned in to NCEPI at 1–800–490–9198 or faxed to 513–489–8695.

(1) Community Action Programs: Blueprint for Program Design (EPA 420–R–98–003).

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I. Background

A. What Are the Legislative Requirements?

Section 319 of the Act governs the establishment of uniform air quality index for reporting of air quality. This section directs the Administrator to "promulgate regulations establishing an air quality monitoring system throughout the United States which utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index" and "provides for daily analysis and reporting of air quality based upon such uniform air quality index* * *".

B. What Is the History of the Air Quality Index?

In 1976, we established a nationally uniform air quality index (AQI), called the Pollutant Standard Index (PSI), for use by State and local agencies on a voluntary basis (41 FR 37660). This uniform index was established in light of a study conducted by EPA and the President's Council on Environmental Quality (CEQ, 1976). This study found that the 55 urban areas in the U.S. and Canada reporting an index of air quality used 14 different indices, in conjunction with different cautionary messages, such that in essence 55 different indices were being used to report air quality. This diversity of indices sent a confusing message about air quality to the public. Based in part on this study, we developed an index to meet the needs of State and local agencies that has the following advantages: it sends a clear and consistent message to the public by providing nationally uniform information on air quality; it is keyed to the NAAQS and the significant harm level (SHL)[1] which have a scientific basis relating air quality and public health; it is simple and easily understood by the public; it provides a basis for accommodating changes to the NAAQS; and it can be forecasted to provide advance information on air quality.

The PSI, which is also commonly referred to by some State and local agencies as the AQI, includes sub-indices for O_3, PM, CO, SO_2, and nitrogen oxide (NO_2), which relate ambient pollutant concentrations to index values on a scale from 0 through 500. This represents a very broad range of air quality, from pristine air to air pollution levels that present imminent and substantial endangerment to the public. The index is normalized across pollutants by defining an index value of 100 as the numerical level of the primary NAAQS for each pollutant and an index value of 500 as the SHL.[2] Such index values serve to divide the index into categories, with each category being identified by a simple informative descriptor. The descriptors are intended to convey to the public information about how air quality within each category relates to public health, with increasing public health concerns being conveyed as the categories range to the upper end of the scale. Additional information about the general health effects associated with each category, and precautions that sensitive groups and the general public should take to avoid exposures of concern, has been made available through an informational booklet, updated as appropriate, that also presents and explains the PSI (EPA, 1994).

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[1] Significant harm levels are those ambient concentrations of air pollutants that present an imminent and substantial endangerment to public health or welfare, or to the environment, as established in 40 CFR part 51.151.

[2] Intermediate index values of 200, 300, and 400 were defined and are the basis for the Alert, Warning, and Emergency episode levels included in 40 CFR part 51, appendix L, as part of the Prevention of Air Pollution Emergency Episodes program. This program requires specified areas to have contingency plans in place and to implement these plans during episodes when high levels of air pollution, approaching the SHL, are in danger of being reached. Changes to this emergency episode program will be proposed in the near future.

Below an index value of 100, an intermediate value of 50 was defined either as the level of the annual standard if an annual standard has been established (for PM_{10} and SO_2), or as a concentration equal to one-half the value of the short-term standard used to define an index value of 100 (for O_3 and CO). Inhalable particulate matter, PM_{10}, refers to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

In 1979, we made changes to the PSI, in part to reflect revisions to the NAAQS for O_3, and to establish requirements for PSI reporting (44 FR 27598). The requirement for State and local agencies to report the PSI appears in 40 CFR part 58.50, and the specific requirements (e.g., what to report, how to report, reporting frequency, calculations) are in appendix G to 40 CFR part 58.

C. What Programs Are Related to the PSI?

Historically, State and local agencies have used primarily the PSI, or other AQIs, to provide general information to the public about air quality and its relationship to public health. In recent years, many States and local agencies, as well as EPA, have been developing new and innovative programs and initiatives to provide more information to the public, in a more timely way. These initiatives, including real-time data reporting through the Ozone Mapping Project and community action programs, can serve to provide useful, up-to-date, and timely information to the public about air pollution and its effects. Such information will help individuals take actions to avoid or reduce exposures of concern and can encourage the public to take actions that will reduce air pollution on days when levels are projected to be in air quality categories of concern to local communities. Thus, these programs are significantly broadening the ways in which State and local agencies can meet the nationally uniform AQI reporting requirements, and are contributing to State and local efforts to provide community health protection and to attain or maintain compliance with the NAAQS. We and State and local agencies recognize that these programs are interrelated with AQI reporting and with the information on the effects of air pollution on public health that is generated through the periodic review, and revision when appropriate, of the NAAQS.

The most recent revisions to the O_3 and PM NAAQS, the Ozone Mapping Project, and community action programs are discussed briefly below. In light of the interrelationships among these programs, we have developed the revisions to the uniform AQI being proposed today with the goal of creating a revised AQI that can effectively serve as a nationally uniform link across these programs. In so doing, we intend to support and encourage State and local participation in real-time data reporting initiatives and the development and implementation of community action programs that serve public education and health protection goals.

1. Ozone and Particulate Matter NAAQS Revisions

On July 18, 1997, we revised the primary NAAQS for O_3 and PM based on a thorough review of the scientific evidence linking exposures to ambient concentrations of these pollutants to adverse health effects at levels allowed by the previous NAAQS. In particular, we replaced the 1-hour O_3 NAAQS with an 8-hour O_3 NAAQS and supplemented the PM NAAQS with 24-hour and annual standards for fine particulate matter (measured as $PM_{2.5}$[3]). These revisions provide the basis for changes to the PSI to maintain the relationship between an index value of 100 and the level of the NAAQS, as well as to establish the relationships between ambient concentrations of these pollutants and index values across the full scale of index values from 0 to 500.

In addition, as a result of the reviews of the scientific information upon which the O_3 and PM NAAQS are based, an expanded understanding emerged as to the nature of the relationships between exposure to ambient concentrations of these pollutants and the health effects likely to be experienced, especially near the level of the NAAQS. We and the Clean Air Scientific Advisory Committee (CASAC)[4] recognized that for these pollutants there are no discernible thresholds below which health effects are not likely to occur in the most sensitive individuals, but rather there is a continuum of effects potentially extending down to background levels. As ambient concentrations increase, the proportion of individuals likely to experience effects and the seriousness of the health effects increase. Thus, the standards are not risk free. While the standards protect public health with an adequate margin of safety, in accordance with sections 108 and 109 of the Act, including the health of sensitive groups, exposures to ambient concentrations just below the numerical level of the standards may result in exposures of concern for the most sensitive individuals. Conversely, exposures to ambient concentrations just above the numerical level of the standards are not likely to result in exposures of concern for most healthy people. This expanded understanding is reflected in the new forms of the standards, which allow for multiple days above the numerical level of the standards.

These understandings were reflected in CASAC's advice to the Administrator during the O_3 NAAQS review, urging expansion of the public health advisory system (i.e., a uniform AQI) and communication to the public of the nonthreshold nature of the health effects. More specifically, a number of CASAC panel members recommended "that an expanded air pollution warning system be initiated so that sensitive individuals can take appropriate 'exposure avoidance' behavior" (Wolff, 1995). Consistent with this advice, in the preamble to the proposed revisions to the O_3 NAAQS (61 FR 65733–4), the Administrator requested comment on the usefulness of providing specific health effects information when ambient concentrations are around the numerical level of the standard, the appropriateness of using the PSI to convey such information to the public, the possible addition of two new PSI categories (one just above and one just below the numerical level of the standard) and associated descriptors and levels, as well as related health effects and cautionary statements.

Broad support for modifying the PSI was received in public comments on this aspect of the O_3 NAAQS proposal, as discussed in the final rule establishing revisions to the O_3 NAAQS (62 FR 38873–4). Commenters overwhelmingly endorsed expanding the use of the PSI for various reasons, while many expressed concern with the possible category descriptors suggested in the proposal (i.e., "moderately good" and "moderately unhealthful"). Many commenters felt that an expanded PSI could help particularly sensitive people take action to minimize their exposures, and that the PSI could be combined with community action programs to reduce ambient concentrations when the numerical level of the standard was forecasted to be exceeded. Some commenters endorsed increasing the specificity of health and cautionary statements related to the PSI categories. Commenters from State and local agencies encouraged us to develop any approaches to revising the PSI in consultation with them, specifically in the areas of sharing real-time monitoring data, risk communication with the public, and coordination of a national program.

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[3] $PM_{2.5}$ refers to particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

[4] CASAC is a scientific advisory committee established under the Act to review the scientific criteria and standards and to advise the Administrator on revision of the NAAQS, as appropriate.

2. Real-time Data Reporting Initiative (Ozone Mapping Project)

The Ozone Mapping Project is part of EPA's Environmental Monitoring for Public Access and Community Tracking (EMPACT) initiative—a new approach to providing timely environmental information to communities. It is a cooperative effort of the EPA, State and local air pollution control agencies, and regional organizations including the Mid-Atlantic Regional Air Management Association (MARAMA), the Northeast States for Coordinated Air Use Management (NESCAUM), the northeast Ozone Transport Commission (OTC), and the Lake Michigan Air Directors Consortium (LADCO). During the summer of 1998, EPA's Office of Air Quality Planning and Standards assumed coordination of the project.

The Ozone Map provides simple and timely information about ground-level O_3. During the 1998 O_3 season it was available on EPA's AIRNOW web site (http://www.epa.gov/airnow) and on some local television and news reports. It is an animated contour map that shows concentrations of O_3, in categories ranging from good to moderate to varying degrees of unhealthy, based on PSI values, as it develops across the eastern U.S. It was created from real-time, hourly O_3 data provided by a network of more than 400 air monitoring stations from South Carolina to Wisconsin and Maine. When accessed on a computer, cautionary statements for each category could be displayed by running a cursor over the legend. Also available on the AIRNOW web site were still maps of maximum values and forecasted values, and archived animated maps.

Along with the Ozone Map, the AIRNOW web site contains information about O_3 health effects in the "Health Facts" section, and emission reduction activities in the "What You Can Do" section. It also provides links to real-time data, and community action program web sites, that are maintained by State and local agencies around the country. The goals of the web site are to: (1) Provide real-time air pollution data in an understandable, visual format, (2) provide information about the public health and environmental effects of air pollution, and (3) provide the public with information about ways in which they can protect their health and actions they can take to reduce pollution.

3. Community Action Programs

The implementation of community action programs (also referred to as episodic emission control programs) is becoming increasingly popular across the country as an innovative approach used to reduce emissions of O_3 precursors, CO, and PM. Motivation for implementation of this type of program often stems from local government and business concerns about the NAAQS attainment status of the area and the restrictions, additional controls, and costs associated with being classified as a nonattainment area. Many areas are also motivated by public health concerns and believe that increasing the amount of air quality information available to sensitive populations raises awareness and results in significant health benefits. Specific goals which are usually associated with community action programs include: (1) Educate the public and enhance protection of public health; (2) attain or maintain NAAQS attainment status and the associated economic benefits; (3) meet specific emission reduction targets; and (4) manage/reduce traffic congestion.

Community action programs are usually voluntary and generally provide multiple steps that the public, business, and industry can take to reduce emissions when higher levels of air pollution are forecast to occur, including in particular transportation-related measures such as trip reduction, postponement of certain activities such as vehicle refueling, and maintenance of cars. The programs emphasize educating the public about the impact of individual activities on local air quality and the basics of air pollution. The educational component of these programs also helps to create a strong link between environmental goals and associated public health benefits.

Most of these programs are based on the categories of the PSI and make use of the PSI descriptors and related health effects and cautionary statements on action days. By linking action days to the PSI, local control programs hope to alter individual behavior to reduce emissions and to reduce exposures to the population. In addition to reduced pollutant exposure of the general population due to improved air quality, there are other health benefits directly associated with community action programs that can be enhanced by linkage to the PSI. Different population groups are more sensitive to the harmful effects of the different air pollutants included in the PSI, and the revisions to the PSI proposed today, together with related informational materials, will significantly improve the effectiveness of communications with these groups. Public education or programs directly targeting these groups may provide the most significant benefits of a community action program. Forecasting days with elevated pollution levels, and then communicating effectively about air quality and associated health effects, may help these groups selectively limit their outdoor activities and, therefore, limit their potential for exposures of concern.

We are committed to providing States and local agencies with support in their efforts to meet air quality standards, to inform the public about air quality, and to educate the public about the impacts of air pollution. The revisions to the PSI being proposed today have as a goal the creation of a revised PSI that can effectively serve as a nationally uniform link across the range of programs (e.g., real-time data reporting initiatives, community action programs) that have these functions.

In support of community action programs, we have developed informational materials related to the PSI, including the health effects and cautionary statements associated with each category and more detailed health effects information (see section II.B.3), available on the AIRNOW web site, that State and local agencies may use to enhance their community action programs. Focusing on transportation measures that are often a major component of community action programs, EPA's Office of Mobile Sources (OMS) has developed a report entitled, "Community Action Programs: Blueprint for Program Design." This document describes the major steps needed to put together a successful episodic control program and provides criteria that State and local agencies can use to examine and evaluate their own programs. The report will be available in January 1999 from NCEPI (See Availability of Related Information).

II. Rationale for Proposed Revisions

In developing the revisions to the PSI that are being proposed today, we sought extensive input from State, local agencies, and from the public. As discussed below, we sponsored a workshop with State and local agencies, participated in numerous meetings, prepared and made available a staff draft revision to the PSI sub-index for O_3 for use during the 1998 O_3 season, and conducted several focus groups to obtain public input on the effectiveness of draft revisions to the PSI and related O_3 maps and informational materials.

A. What Was the Early Input From State/local Agencies?

In January 1998, we conducted a workshop for State and local air pollution control agencies on the PSI and related programs. The objectives of the Workshop were: (1) To give State/local agencies a preview and opportunity for input on anticipated revisions to the PSI, with particular focus on the O_3 sub-index; (2) to provide information and generate discussion regarding the expansion of the Ozone Mapping Project and air quality forecasting approaches; (3) to share information about State/local real-time data reporting and Ozone Action Day programs (community action programs); and (4) to explore cross-cutting issues focusing on how these tools to facilitate communication (i.e., the PSI, Ozone Maps, forecasting) can best be linked to State/local programs. The Workshop provided a forum for broad discussion of these topics, among the participants, with many different points of view expressed.

With regard to revisions to the PSI, broad consensus seemed to exist on the key issues of maintaining simplicity in the structure of the PSI and of providing up-to-date, consistent information relating air quality and public health. More specifically, it was the consensus view that the PSI should be kept as simple as possible, while being consistent with the expanded health information that emerged from the recently completed review of the O_3 and PM NAAQS. The creation of two possible new categories (i.e., one just above and one just below the numerical level of the standard), as described in the O_3 NAAQS proposal (61 FR 65733–4) and final decision (62 FR 38873–4) notices, seemed to evoke negative reactions from most participants for varying reasons (e.g., too complex, too much information, too difficult to forecast in the narrow ranges suggested). Most participants favored creation of a new category above the numerical level of the standard (i.e., dividing the current "unhealthful" category into two categories) considering both the expanded health information and linkages to community action programs. Creation of a new category below the level of the standard (i.e., dividing the current "moderate" category into two categories) was less generally supported—some felt that a new category just below the level of the standard was important for communicating risks and appropriate cautions, whereas many seemed to feel it was an unnecessary complication that could be confusing to the public.

The Workshop discussion also produced consensus among the participants that any revisions to the descriptors used for PSI categories above the numerical level of the NAAQS should maintain the root word "health" rather than more neutral air quality descriptors (e.g., unsatisfactory). The Workshop participants generally preferred the use of the plain English word "unhealthy" to the currently used word "unhealthful."

The Workshop participants generally encouraged us to revise the calculation methods for the PSI to be consistent with the conventions used in defining the NAAQS. More specifically, the participants supported changing the conventions for rounding numbers in calculating the PSI to be consistent with the rounding conventions used for the NAAQS. This revision would avoid situations where a health advisory could be issued that describes the air as unhealthy, when in fact the numerical level of the standard has not been exceeded.

With regard to forecasting air quality and associated PSI values, Workshop participants generally recognized that for standards that have an averaging period longer than 1 hour (e.g., the 8-hour O_3 NAAQS), forecasting becomes increasingly important. Such forecasts can help people plan to avoid exposures of concern and can provide a basis for providing advance public notice of community action programs. There was strong support for us to prepare guidance on air quality forecasting, especially on using hourly O_3 concentrations as predictors for 8-hour averages.

The Workshop participants expressed strong support in general for enhancements to the Ozone Mapping Project, including real-time data reporting and forecasting. The selection of colors to be associated with the PSI categories depicted on the maps was the subject of much discussion. While there was broad recognition of the importance of using colors with such air quality maps, different views were expressed as to which colors should be associated with specific categories. For example, some participants from areas that had already developed or were developing community action programs expressed the view that the use of the color red on the map should be used for the category that triggers their programs' "code red" days. However, different programs have or intend to use different PSI index values to trigger action days, depending on the general level of air quality in the area and the objectives of the action day program in that area.

In summary, Workshop participants encouraged us to develop revisions to the PSI with immediate emphasis on a revised sub-index for O_3, reflecting the 8-hour O_3 NAAQS. Many participants expressed an interest in using such a revised index during the 1998 O_3 season. The participants also encouraged us to prepare additional information, including appropriate cautionary statements that could be used in conjunction with reporting a revised O_3 sub-index and more in-depth information on O_3 health effects to help meet the educational goals of community action programs.

Following the Workshop, we continued coordination with State and local air agencies and associations as part of the process of developing draft revisions to the PSI, particularly the O_3 sub-index, and related informational materials. Some of the agencies and associations that participated in meetings and discussions with us were the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), the OTC, NESCAUM, MARAMA, the California Air Resources Board, the California Air Pollution Control Officers Association (CAPCOA), and the South Coast Air Quality Management District. While different points of view were expressed, all of these discussions reflected the importance of having a nationally uniform advisory system to present consistent health effects information that is related to air quality levels. These discussions helped shape the preparation of a staff draft PSI sub-index for O_3, related O_3-specific cautionary statements, and a draft booklet on O_3 health effects, "SMOG—Who Does It Hurt?".

B. Staff Draft Revisions to PSI Sub-index for Ozone

1. Availability for Use in the 1998 Ozone Season

Building on health effects information from the review of the O_3 and PM standards, comments received on the O_3 NAAQS proposal, and input from State, local agencies, and associations, EPA staff prepared draft revisions to the PSI sub-index for O_3. Recognizing that some State and local agencies wanted to use a sub-index based on the new 8-hour O_3 NAAQS for the 1998 O_3 season, in early March we made the draft revised O_3 sub-index available through our AIRNOW web site and through appropriate organizations across the nation. The availability of this revised

O_3 sub-index made possible uniform reporting of the PSI during the 1998 O_3 season based on the 8-hour O_3 NAAQS for those agencies that chose to do so.[5] The draft sub-index categories, descriptors, and related O_3 concentrations, together with related cautionary statements, were the basis for the 1998 O_3 maps produced by the Ozone Mapping Project. The draft O_3 sub-index also provided a link to the 8-hour O_3 standard for use in O_3 action programs around the country.

2. What Were the Staff Draft Revisions?

Draft revisions to the PSI and the O_3 sub-index, together with new O_3 specific cautionary statements, were based on the expanded understanding of O_3 health effects gained during the review of the O_3 NAAQS, comments received on the O_3 NAAQS proposal and subsequent input from State and local agencies, and consideration of the implications of the draft revisions for the pollutants other than O_3 that are included in the PSI.

The staff draft O_3 sub-index reflected general changes to the structure of the PSI as well as specific changes to reflect the new 8-hour O_3 NAAQS. In particular, the primary change to the structure of the PSI was to divide the "unhealthful" category (PSI values of 101 to 200) into two categories, "unhealthy for sensitive groups" and "generally unhealthy." The use of the descriptor "unhealthy for sensitive groups," for PSI values from 101 to 150, was intended to appropriately caution members of sensitive groups[6] without unduly alarming the general public. This revision recognized that the NAAQS are established to protect sensitive groups, such that at air quality concentrations just above the numerical level of NAAQS the general population is unlikely to experience exposures of concern. Secondly, while the "moderate" category (PSI values of 51 to 100) was not divided into two categories, allowance was made to create, in essence, a sub-category in the upper half of this range (PSI values of 76 to 100) for pollutants for which a limited health notice might be appropriate. Such a limited notice would recognize that the NAAQS are not risk free, and that even at concentrations below the numerical level of a NAAQS some extremely sensitive individuals may experience exposures of concern for some pollutants. The only other change made to the PSI was to replace the descriptor "very unhealthful" (PSI values from 201 to 300) with the descriptor "very unhealthy." The other categories of "good" (PSI values from 0 to 50) and "hazardous" (PSI values from 301 to 500) were left unchanged.

Consistent with these structural changes and with the new 8-hour O_3 NAAQS, the staff draft identified breakpoints for the O_3 sub-index in terms of 8-hour O_3 concentrations to the extent possible based on the available health effects information. A breakpoint between the good and moderate categories needed to be defined since there is no annual standard for O_3 to use as the breakpoint. An 8-hour O_3 concentration of 0.06 ppm was identified based in part on risk estimates done in conjunction with the review of the O_3 NAAQS which suggested that risk to healthy people likely becomes negligible at this level (Whitfield et al., 1996). This consideration was judged by staff to be a more appropriate basis for distinguishing between good and moderate categories than the historical approach of setting this breakpoint equal to one-half the numerical level of the short-term standard in the absence of an annual standard. Further, a breakpoint at this level would result in a sufficiently broad range of concentrations for the moderate category to facilitate forecasting and to make gradations in air quality more visually apparent in the Ozone Map. On the other hand, the concentration of 0.07 ppm, 8-hour average, was judged by staff as the appropriate breakpoint for starting to convey a limited health message for extremely sensitive individuals. Thus, this intermediate level of 0.07 ppm, associated with a PSI value of 75, resulted in essentially creating a sub-category in the upper half of the moderate category. Conveying such a limited health message for extremely sensitive individuals at concentrations just below the level of the NAAQS is consistent with the advice of CASAC during the review of the O_3 NAAQS (Wolff, 1995).

For PSI categories above the numerical level of the O_3 NAAQS, staff again drew in part upon the risk assessment (Whitfield et al., 1996) done in conjunction with the review of the NAAQS to provide a basis for selecting the breakpoint between the generally unhealthy and very unhealthy categories (corresponding to a PSI value of 200). Our risk assessment estimates that above a level of 0.12 ppm, 8-hour average, healthy individuals (adults and children) at prolonged, moderate exertion would likely experience the following risks: (1) Approximately 50 percent are estimated to experience temporary moderate lung function impairment, (2) approximately 20 percent are estimated to experience temporary large lung function impairments, and (3) approximately 10 to 15 percent are estimated to experience temporary moderate to severe respiratory symptoms (e.g., chest pain and aggravated cough). Individuals with asthma or other respiratory conditions would be more severely impacted than healthy individuals, leading some to increase medication usage and seek medical attention, such as increased doctor visits, increased emergency room and clinic visits, and increased hospital admissions. Staff judged that it was appropriate to characterize risks at these levels and above as being very unhealthy. The draft breakpoint between the two new categories (corresponding to a PSI value of 150) was set at 0.10 ppm, 8-hour average. This is the level at which staff judged that exposures are associated with an increase in the number of individuals who could potentially experience effects, including possible respiratory effects in the general population and a greater likelihood of respiratory symptoms and breathing difficulty in sensitive groups. For many locations across the country, this 8-hour average breakpoint of 0.10 ppm approximately corresponds to a 1-hour average concentration of 0.12 ppm, the level of the 1-hour O_3 standard.

Since no human health effects information was available for 8-hour average O_3 concentrations at significantly higher levels, the breakpoints at the upper end of the PSI scale (between the very unhealthy and hazardous categories and the SHL which corresponds to the top of the PSI scale of 500) were retained in terms of the existing 1-hour average concentrations.

3. Related Informational Materials

In April, 1998, we put on the AIRNOW Web site a draft booklet, called "SMOG—Who Does It Hurt? What You Need To Know About Ozone and Your Health," that provides information for the general public about O_3 health effects and is based on scientific information gained in the recent review of the O_3 standard. The impetus for the development of this booklet was the recognition that many members of the public would appreciate more detailed information about the health effects associated with different levels of air pollution, especially since better understanding of health effects empowers individuals to make personal decisions regarding exposure reduction. This recognition was encouraged by commenters on the O_3 NAAQS proposal who endorsed increasing the specificity of warnings with regard to health effects. Such commenters noted that citizens are capable of dealing with complex information and that individuals with respiratory disease and their families appreciate such information. "SMOG—Who Does It Hurt?" was designed to provide, in simple language, enough detail for individuals to understand who is at most risk from O_3 exposure and why, the nature of O_3 health effects, and a detailed explanation of how individuals can reduce the likelihood of exposure using common everyday activities as examples. This booklet was also intended to support programs such as the Ozone Mapping Project and State/local community action programs.

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[5] For the 1998 O_3 season, State and local air agencies could use either the staff draft revised O_3 sub-index based on the 8-hour O_3 standard, or the PSI based on the 1-hour O_3 standard.

[6] The staff draft recognized that groups may be "sensitive" or particularly at-risk to the effects of a pollutant due to inherent sensitivity, medical conditions and exposure conditions. More specifically, sensitive groups at increased risk to O_3 effects, include active children and outdoor workers who regularly engage in outdoor activities and people with preexisting respiratory disease (e.g., asthma, chronic obstructive lung disease). Some individuals within these groups are unusually responsive to O_3 and may experience much greater functional and symptomatic effects from exposure to O_3 than the average person in the group.

Currently, there are other materials available that provide information about O_3 and the PSI on the AIRNOW web site. Information about ground-level as contrasted to stratospheric O_3 may be found in EPA's publication "Ozone: Good Up High, Bad Nearby." The EPA's video "Ozone Double Trouble" also provides information about ground-level and stratospheric O_3 and the health effects associated with exposure to ground-level O_3, or smog. A short fact sheet, called the "Air Quality Guide," provides information about O_3 health effects and the sources of ground-level O_3. The brochure "The Pollutant Standards Index" (EPA 1994) will be updated to reflect final revisions to the PSI and will include as guidance pollutant-specific health effects and cautionary statements.

4. What Was the Feedback on the Staff Draft?

• *Focus Groups.* We sponsored eight focus groups to help evaluate how effectively the PSI descriptors and the colors used with the Ozone Map, the related cautionary statements, and the O_3 health effects booklet communicate air quality and health effects information. The focus groups were conducted by a contractor, including the selection of participants, securing meeting facilities, and producing necessary materials. The methods and materials used and the results from the focus groups are summarized below and presented in a final report, "Report of the Focus Groups on the Ozone Map, the Pollutant Standards Sub-Index for Ozone, and the Ozone Health Effects Booklet," (SAIC, 1998) available in the docket.

Background. From August to October, 1998, focus groups were held in eight locations around the country that have different air quality with respect to ozone. Five focus groups, held in Denver, CO; Atlanta, GA; Houston, TX; San Bernardino, CA; and St. Louis, MO; were comprised of members of the general public. A focus group held in Miami, FL was comprised of people over 50 years of age with chronic lung disease (asthma, chronic bronchitis, or emphysema). Another focus group, held in Chicago, IL was comprised of urban parents of children with asthma. Lastly, in October, a focus group was conducted in Los Angeles that was comprised of journalists. Twelve participants and three alternates were recruited for each of the eight focus groups. Participants in the general public focus groups were selected to fit a profile that matched the demographic characteristics of each city in terms of ethnicity, age, gender, and education level. The participants in the Miami and Chicago focus groups were selected to represent target audiences that EPA believes may benefit most from understanding and applying the information provided by the PSI, the Ozone Map, and the O_3 health effects booklet. Journalists were selected as a target audience because they use these informational materials to inform and educate the public.

At the focus groups, participants were asked about various versions of the Ozone Map, and the PSI descriptors presented in the legends of the maps, related informational materials such as the cautionary statements and O_3 health effects booklet, and the Index name. Four different versions of the Ozone Map were compared for effectiveness in conveying information about air quality and associated health effects. Each version of the map showed O_3 levels in the eastern third of the U.S. on a day with high O_3 concentrations. The first three maps differed only in the descriptors used in the legend (Maps 1 and 2) and in the addition of the definition of sensitive groups to the bottom of the map (Map 3). The fourth map used two shades of yellow in the moderate category to depict a subcategory that could be associated with a limited health message. The comparison of these maps evaluated the most basic configuration of information, the colors and descriptors associated with different PSI categories, which are used not only with the Ozone Map, but are also often used in newspaper reports. With a minimal introduction, the participants were asked questions about each map to determine if they understood what that map says about air quality and associated health effects. In addition, the four maps were displayed side-by-side and participants were asked: Which map does the best job of communicating whether air quality was good or bad for your health? Which map did you prefer?

Lastly, because comments received earlier from many State and local agencies indicated a preference for the name "Air Quality Index (AQI)," rather than the "PSI," participants in four of the seven focus groups (Atlanta, Houston, Miami and Chicago) were asked which of two names (Pollutant Standards Index or Air Quality Index) they preferred and why.

Participants also were shown the cautionary statements included with the staff draft (and used in conjunction with the Ozone Map) for the "moderate," "unhealthy for sensitive groups," and "generally unhealthy" categories, and were asked questions to evaluate the effectiveness of the statements in providing cautionary information. In addition, the O_3 health effects booklet, "SMOG—Who Does It Hurt?" was evaluated to assess how well it conveys information in an easily understandable form about three basic concepts, O_3 health effects, sensitive groups, and ways to minimize exposures of concern. The booklet was designed to communicate these three basic concepts that staff believe are important to enhance people's understanding of the PSI. Participants read the booklet and then answered questions to determine if they understood the three basic concepts.

Results. The results of the focus groups held across the nation were fairly consistent. Only the results pertaining to the maps and descriptors are discussed below, since these results were considered in the development of this proposal. Results pertaining to the cautionary statements and the O_3 health effects booklet have been considered in revising these related informational materials.

The messages of the maps were generally well understood. Comments indicated that the descriptor "unhealthy for sensitive groups" communicates the intended health effects information. Participants identified that at this level only members of sensitive groups, and not the general population, should be concerned about personal exposure.

Many participants in each group preferred the simpler descriptor "unhealthy" to "generally unhealthy."

Considering the first three maps, participants commented that the definition of sensitive groups, added in Map 3, provides information that they found useful. Whereas most participants expected the sensitive groups to include those with respiratory diseases, such as asthma, the inclusion of healthy active children and outdoor workers in the definition of sensitive group was a surprise to many participants. The majority of participants agreed that Map 3 communicated air quality and health effects information most effectively, and it was also the preferred Map. There were a couple of participants in each group who preferred a simpler map.

The responses from the focus groups about Map 4 reflected confusion on the part of many participants about the two shades of yellow used to depict the moderate category. This confusion was due in part because only one shade of yellow was apparent in the legend. Although many participants understood that the lighter shade of yellow represented better air quality, many felt this information was of questionable value since the legend did not explain what this meant in terms of a health message. Some noted that without an associated health message, it was not clear why different colors or shadings would be used to depict the "moderate" category. As part of further discussion on the cautionary statement associated with the "moderate" category, participants learned that there was, in essence, a subcategory at the upper end of this range for extremely sensitive individuals. Some participants then questioned why the lower end of the moderate range should not just be included in the good category if there was no associated health message.

Almost all of the participants preferred the name Air Quality Index to Pollutant Standards Index. In general, participants felt that the name Air Quality Index communicates what the index is about more effectively than the name Pollutant Standards Index. Participants noted, for example, that the name Pollutant Standards Index does not indicate that the index is about air quality rather than pollution in general.

b. State/local agencies. In the many meetings with State and local agencies and national and regional associations, one key issue that continued to be discussed in the context of the Ozone Map and community action programs was the issue of what colors to associate with the "unhealthy for sensitive groups" and "generally unhealthy" categories in particular. These discussions typically focused on which category should be associated with the color red. As at the January workshop, some have maintained that red should be used for the "unhealthy for sensitive groups" category. Others expressed the view that red should be used when air quality is in the "generally unhealthy" category and that orange should be used for the "unhealthy for sensitive groups" category. These commenters have argued that given the form of the standard, using red at the level of the standard could allow many days to be classified as "code red" days in community action programs, even when the standard is attained in that area and public health is being protected. One commenter from a State agency that used the categories and health advisories from the staff draft, together with the color orange when air quality was in the "unhealthy for sensitive groups" category and red when air quality was in the "generally unhealthy" category, indicated that their agency encouraged the same emissions reductions activities when air quality was in either category. The commenter reported that people appeared to understand the difference in the health advisories and to take both levels of air quality advisories seriously.

C. What Is the Basis for the Proposed Revisions?

The primary consideration that shaped these proposed revisions is the importance of providing nationally uniform health information associated with daily ambient levels of the air pollutants included in the index, consistent with the requirement of section 319 of the Act for an index to achieve national uniformity in daily air quality reporting. More specifically, the revisions to the O_3 and PM NAAQS provide the basis for the proposed specific changes to the PSI sub-indices for O_3 and PM to maintain the relationship between an index value of 100 and the level of the NAAQS, and to establish the relationships between ambient concentrations of these pollutants and index values across the full scale of index values from 0 to 500. The proposed general changes to the structure of the PSI and to related informational materials are based on the expanded understanding that emerged during these reviews as to the nature of the relationships between exposure to ambient concentrations of these pollutants and the health effects likely to be experienced, consideration of the implications of changes for the other pollutants, and the broad input from State and local agencies and the public discussed above. The proposed general changes to the PSI and related informational materials will expand the use of the PSI to provide more pollutant-specific health information, especially when ambient concentrations are close to the level of the primary NAAQS.

1. What Are the Proposed General Changes?

a. Categories and related descriptors, index values and colors. The PSI currently incorporates the pollutants O_3, PM, CO, SO_2, and NO_2. Index values range from 0 to 500,[7] and the index is segmented into five categories named by descriptor words that were chosen to characterize the relationship between daily air quality and public health. To reflect better the current understanding of the health effects associated with exposure to these air pollutants, we are proposing to revise the PSI index values, descriptors, and associated colors as shown below in Table 1.

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[7] For NO_2, the index ranges from 200 to 500, since there is no short-term NAAQS for this pollutant.

TABLE 1.—PROPOSED CATEGORY INDEX VALUES, DESCRIPTORS, AND COLORS

Index Values	Descriptor	Color	Purpose
0–50	Good	Green	Convey positive message about air quality.
51–100	Moderate	Yellow	Convey message that daily air quality is acceptable from public health perspective, but every day in this range could result in potential for chronic health effects; and for O_3, convey a limited health notice for extremely sensitive individuals.
101–150	Unhealthy for Sensitive Groups.	Orange	Health message for members of sensitive groups.
151–200	Unhealthy	Red	Health advisory of more serious effects for sensitive groups and notice of possible effects for general population when appropriate.
201–300	Very Unhealthy	Purple	Health alert of more serious effects for sensitive groups and the general population.
301–500	Hazardous	Maroon	Health warnings of emergency conditions.

These proposed changes reflect the addition of a new category above the level of the standard (above a PSI of 100), created by dividing the current "unhealthful" category into two categories. The "unhealthy for sensitive groups" category would start just above the level of the standard, and index values would range from 101 to 150. The "unhealthy" category would start at an index value of 151 and range to an index value of 200.

When air quality is in the "unhealthy for sensitive groups" range, people that are in the sensitive group, whether the sensitivity is due to medical conditions, exposure conditions, or inherent sensitivity, may experience exposures of concern. However, exposure to ambient concentrations in this range are not likely to result in exposures of concern for most healthy people. The descriptor "unhealthy for sensitive groups" was chosen to convey this message clearly. Participants in focus groups clearly understood that "sensitive groups" does not refer to the general public, indicating that this descriptor effectively communicates the intended health message. This category would include a caution that while perhaps of interest to all citizens, would be of particular interest to individuals and families of individuals who are members of sensitive groups.

As air quality moves into the "unhealthy" range, exposures are associated with an increase in the number of individuals who could potentially experience effects and includes a greater proportion of members of the general public. Based on input received on the staff draft revisions, the descriptor "unhealthy" appropriately characterizes air quality in this range and does not need to be modified further by the word "generally" as in the staff draft.

In addition to an increasing number of exposures of concern, when air quality moves into the "unhealthy" range and above, individuals who were affected at lower levels, typically members of sensitive groups, are likely to experience more serious health effects than members of the general public. To reflect this understanding, it is appropriate to convey two messages in the cautionary statements for both the "unhealthy" and "very unhealthy" categories. One message is directed to members of sensitive groups, and the other is directed to the general public. The use of a distinct cautionary message for members of sensitive groups is entirely consistent with an original goal that the index be based on the relationships between pollutant concentrations and adverse health effects within various groups, e.g., aggravation of disease in people with respiratory disease and incidence of respiratory effects in healthy people. Guidance on pollutant-specific cautionary statements related to the categories of the PSI is discussed below in section II.C.3.

We are not proposing to add a new category or subcategory below the numerical level of the standard to caution extremely sensitive individuals, as was previously contemplated or included in the staff draft. While commenters on the O_3 NAAQS proposal broadly endorsed expanding the use of the PSI to provide more specific health information around the level of the standard, many commenters did not support the addition of another category below the level of the standard to convey this message. Many commenters expressed the view that the addition of two new categories would unduly complicate the index. Further, we recognize that while such a category may be meaningful and appropriate for O_3, based on the expanded information from the most recent O_3 NAAQS review, it would not be an appropriate distinction for the other pollutants included in the index. Rather, this proposal addresses these issues by setting the breakpoint between good and moderate categories for O_3 at the concentration where a limited health message for extremely sensitive individuals could appropriately be conveyed and by providing guidance on pollutant-specific cautionary statements for use in conjunction with PSI reporting (discussed in section II.C.3 below and in a related guidance document). This approach is intended to retain simplicity in the index while allowing for more detailed cautionary information to be made available to the public when appropriate.

Consistent with the overarching goal of national uniformity in the reporting of air quality, we are proposing that the specific colors listed in Table 1 be associated with each category. While the PSI can be reported without the use of colors (through text and numbers alone), when the index is reported using colors, we propose to require that only these specified colors be used. Three examples of PSI reports that use color are the color bars that appear in many newspapers, the color scales on State and local agency web sites, and the color contours of the Ozone Map. We have participated in many discussions with State and local agencies and associations regarding which specific colors should be associated with the PSI categories, particularly above the level of the standard. These discussions typically have been in the context of either the Ozone Mapping Project or community action programs. It is clear that the color associated with a category can be part of the health effects and cautionary message being conveyed, and that different colors convey different messages to different people. Were various State and local agencies to use different colors to represent the same category, and thus the same level of air quality, it could well send a confusing message about air quality and associated health effects to the public. Because it is a fundamental goal of the PSI to provide nationally uniform information about daily air quality and the public health messages that are appropriately associated with various daily air quality levels, in a format that is timely and easily understood, we believe that requiring specified colors when the PSI categories are reported in color format is both necessary and appropriate.

Further, we believe that the specific colors being proposed are appropriate for the health messages being conveyed in each category. As discussed in the section above, the results of the focus groups indicate that, above the level of the standard, the combination of colors and descriptors proposed by us effectively communicates the intended health effects message. The comments of focus group participants (SAIC, 1998) support the generally accepted view that the color red sends a strong cautionary message. We believe that this color is most appropriate to use when effects are likely to occur in the general population, and when more serious effects are likely in members of sensitive groups. We believe that the combination of the use of orange and red for the two categories above the level of the standard appropriately conveys a gradation of concern that is consistent with our understanding of the likely public health effects associated with these categories. We note that the numerical levels of the 8-hour average O_3 NAAQS and the 24-hour average PM NAAQS were set in conjunction with specific forms of these standards which have the effect of allowing multiple days a year during which the level of the standard can be exceeded. These combinations of levels and forms provide the requisite degree of public health protection, even when some days reach air quality levels above the level of the standards. Thus, it is consistent with the selection and definition of these NAAQS that a gradation of colors be used, and that the color red be specified for the PSI category with a stronger cautionary message.

As an alternative to requiring the use of specified colors, we are soliciting comment on the option of recommending, rather than requiring, the use of these colors when reporting agencies choose to report the PSI in color format. In soliciting comment on this alternative, we are seeking to allow communities maximum flexibility in PSI reporting, while still preserving a nationally uniform air quality index. We therefore request that commenters addressing this issue discuss how this more flexible approach would satisfy the statutory language requiring a nationally uniform air quality index if different colors may be used across the nation to represent the same range of air quality.

b. Reporting requirements. We propose to change 40 CFR part 58.50 to require reporting of the PSI in all Metropolitan Statistical Areas (MSAs)[8] with a population over 350,000, instead of all urbanized areas with a population over 200,000. This change is being proposed for consistency with the other monitoring regulations in part 58, which are or will be based on MSAs. This change does not, however, have a significant impact on who is required to report, since virtually the same number of cities would be covered under the proposed reporting requirement as are covered under the existing requirement.

Consistent with early input from State and local agencies, we are proposing to change the rounding conventions used to calculate index values corresponding to pollutant concentrations at and above the numerical level of the NAAQS to be consistent with the rounding conventions used in defining the NAAQS for each pollutant. This will avoid situations where a health advisory could be issued that describes the air as unhealthy, when in fact the numerical level of the standard has not been exceeded. The revised rounding conventions are presented below in the proposed appendix G—Uniform Air Quality Index and Daily Reporting.

The proposed rule retains the requirements to identify the area for which the PSI is being reported, the time period covered by the report, the "critical" pollutant for which the reported PSI value was derived, the PSI value, and the associated category descriptor. The proposed rule adds two requirements, (1) to report the associated category color if a color format is used and, (2) to report all PSI values greater than 100. Because different sensitive groups are at-risk from different pollutants, issuing advisories for all sensitive groups who may be affected at PSI values greater than 100 clearly improves public health protection. The proposed rule continues to encourage, but does not require, that PSI reports include the PSI for sub-divisions of the MSA (if there are important differences in air quality across sub-divisions of the MSA), the actual pollutant concentrations, possible causes for high index values, and appropriate health effects and cautionary statements (based on the guidance discussed in section II.C.3 below). These topics are also discussed in our updated "Guideline for Public Reporting of Daily Air Quality—Pollutant Standards Index (PSI)" (EPA 1998b).

The proposed rule emphasizes the importance of forecasting the PSI by specifying that forecasted values should be reported, when possible, but does not require that forecasted values be reported. Given the importance of the O_3 sub-index in a large number of MSAs, and the use of an 8-hour averaging time for calculating the O_3 sub-index value, forecasting the O_3 index value is now more beneficial than before. For a health advisory system to be effective, people need to be notified as early as possible to be able to avoid exposures of concern. Because the proposed O_3 sub-index is based on the 8-hour O_3 NAAQS, forecasting O_3 concentrations clearly would have increased value in providing cautionary statements to the public. In the past, when a health advisory was issued because the PSI value of 100 had been exceeded for the 1-hour O_3 NAAQS, people potentially had time to avoid exposures of concern because O_3 levels tend to remain elevated for several hours during the day. With an 8-hour standard, however, this would not be the case, since by the time the level of the 8-hour NAAQS has been exceeded and a health advisory issued, the potential for exposures of concern would likely have passed for that day. Forecasting 8-hour maximum O_3 concentrations would facilitate the risk-reduction function of the PSI by giving people time to limit or avoid exposures of concern. We recognize that many State and local air agencies are already issuing health advisories based on forecasted O_3 concentrations. Since we have determined that forecasting would add much to the benefits of PSI reporting, we will be making available guidance on starting a forecasting program (EPA 1999) in an area or MSA where forecasting is not presently done. Included in the document will be guidance on using hourly O_3 concentrations as predictors for 8-hour averages.

c. Index name. Many State and local agencies have encouraged us to change the name of the PSI to the Air Quality Index, or AQI, since many agencies already use the name AQI when reporting the PSI value to the public. Most participants in the focus groups preferred the name AQI, commenting that it more clearly identified the index as relating to the quality of the air rather than to environmental pollution in general. On the other hand, we note that changing the name may result in confusion due to historical familiarity and usage, not only in the U.S. but internationally, since the PSI has been used by many countries throughout the world for many years. Based on these considerations, we are soliciting comment on changing the name of the Pollutant Standards Index (PSI) to the Air Quality Index (AQI).

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[8] A complete list of MSAs and their boundaries can be found in the Statistical Abstract of the United States (1998).

2. What Are the Proposed Changes to the Sub-Indices?

To conform to the proposed general changes to the PSI discussed above, and to reflect the recent revisions to the O_3 and PM NAAQS, we are proposing changes to the sub-indices for O_3, PM, CO, and SO_2; no conforming changes are necessary for the NO_2 sub-index. The proposed sub-indices are summarized below in Table 2, in terms of pollutant concentrations that correspond to breakpoints in the index, and are discussed in the following sections. These sub-indices are presented in more detail in the proposed appendix G to reflect the proposed changes to the numerical rounding conventions for calculating index values.

TABLE 2.—BREAKPOINTS FOR O_3, $PM_{2.5}$, PM_{10}, CO, AND SO_2 SUB-INDICES

PSI value	O_3		PM		CO, 8-hr (ppm)	SO_2, 24-hr (ppm)
	8-hr (ppm)	1-hr (ppm)	$PM_{2.5}$, 24-hr (μg/m³)	PM_{10}, 24-hr (μg/m³)		
50	0.07		15	50	4	0.03
100	0.08	0.12	65	150	9	0.14
150	0.10	0.16	100*	250	12	0.22
200	0.12	0.20	150*	350	15	0.30
300	0.40 (1-hr)	0.40	250*	420	30	0.60
400	0.50 (1-hr)	0.50	350*	500	40	0.80
500	0.60 (1-hr)	0.60	500*	600	50	1.00

*If a different SHL for $PM_{2.5}$ is promulgated, these numbers will change accordingly

a. Ozone sub-index. On July 18, 1997, we revised the O_3 primary NAAQS to replace the 1-hour standard with a new standard with an 8-hour average at a level of 0.08 ppm and a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area (62 FR 38856–38896). These revisions were based on findings from the most recent review of the NAAQS indicating that the new primary standard will provide increased protection to the public, especially children active outdoors and other sensitive groups, against a wide range of O_3-induced health effects, including decreased lung function; increased respiratory symptoms; hospital admissions and emergency room visits for respiratory causes, among children and adults with pre-existing respiratory disease such as asthma; inflammation of the lung; and possible long-term damage to the lungs. In setting this standard, we recognized that there is no discernible threshold below which health effects do not occur, that the standard is not risk free, and, thus, that exposures of concern are possible below the numerical level of the standard for some extremely sensitive individuals.

Based on feedback on the staff draft, above a PSI value of 100, we propose to adopt the revisions to the O_3 sub-index that were presented in the staff draft, and to make changes to the staff draft below that value. The proposed revisions to the O_3 sub-index above the level of the standard, and the rationale for these proposed revisions, are discussed above in section II.B.2. Below the level of the standard, at a PSI value of 50, we propose that 0.07 ppm, 8-hour average, be the breakpoint between the good and moderate categories. As in the staff draft, this concentration is judged by staff as an appropriate breakpoint for starting to convey a limited health message for extremely sensitive individuals. This breakpoint was adopted because comments received indicated that the draft subcategories within the moderate category created confusion, and that having a distinct subcategory within moderate with no health message was unnecessary. We recognize that this breakpoint defines a category with a somewhat narrower range of concentrations. However, we believe this breakpoint makes an important distinction to emphasize the limited health message for extremely sensitive individuals. The effect of this range on forecasting is addressed in the forecasting guidance. Beyond this issue, comments received on the staff draft O_3 sub-index, discussed in section II.B.4, have been generally positive and have focused on the presentation of the sub-index through the Ozone Mapping Project and on the wording of associated cautionary statements included as guidance. These proposed revisions are consistent with the proposed general changes to the PSI discussed above in section II.C.1.a.

These proposed revisions reflect the new 8-hour O_3 NAAQS and will in almost all areas result in a more health protective index than the current index based on the 1-hour O_3 standard. However, we recognize that a very small number of areas in the U.S. have atypical air quality patterns, with very high 1-hour daily peak O_3 concentrations relative to the associated 8-hour average concentrations. In such areas, the use of the current 1-hour sub-index may be more health protective on a given day than the proposed 8-hour sub-index. To allow for the reporting of the more health protective sub-index value, we also propose to retain the 1-hour sub-index at and above PSI values of 100 and to allow the reporting of the higher of the two O_3 sub-index values. Thus, both the new 8-hour and the current 1-hour sub-indices, as shown in Table 2, are included in the proposed appendix G. To conform to the proposed general changes to the PSI, a breakpoint of 0.16 ppm, 1-hour average, has been added to the 1-hour sub-index at a PSI value of 150. This value is the mid-point of the breakpoints at PSI values of 100 and 200. Since for the large majority of areas the 8-hour sub-index will be more health protective, we are not proposing to require all areas to calculate both sub-index values. Rather, we are proposing to allow areas the flexibility to calculate both sub-index values and, when both sub-index values are calculated, to require that the higher value be reported. We are specifically soliciting comment on this proposed approach.

b. PM sub-index. On July 18, 1997, we revised the PM NAAQS by adding a new set of standards for fine particles, or $PM_{2.5}$, set at levels of 15 $\mu g/m_3$ (annual) and 65 $\mu g/m_3$ (24-hour average) (62 FR 38652–38760). These revisions were based on findings from the most recent review of the PM NAAQS that recently published studies have indicated that serious health effects were more closely associated with the levels of the smaller particle subset of PM$_{10}$. These health effects include premature mortality and increased hospital admissions and emergency room visits, primarily in the elderly and individuals with cardiopulmonary disease; increased respiratory symptoms and disease in children and individuals with cardiopulmonary disease such as asthma; decreased lung function, particularly in children and individuals with asthma; and alterations in respiratory tract defense mechanisms. In addition, PM$_{10}$ standards were retained at the same levels of 50 $\mu g/m^3$ (annual) and 150 $\mu g/m^3$ (24-hour average) to continue to provide protection against health effects associated with the coarse particle subset of PM$_{10}$, including aggravation of asthma and respiratory infections. To reflect these revisions to the PM NAAQS, we are proposing to add a new sub-index for PM$_{2.5}$, and to make conforming changes to the sub-index for PM$_{10}$, consistent with the proposed general changes to the PSI described above in section II.C.1.a. These proposed sub-indices are summarized above in Table 2 and discussed below.

New PM$_{2.5}$ sub-index. Consistent with the basic structure of the PSI, an index value of 100 corresponds to the level of the 24-hour PM$_{2.5}$ NAAQS, 65 $\mu g/m^3$, and an index value of 50 corresponds to the level of the annual NAAQS, 15 $\mu g/m^3$. Also consistent with the basic structure of the PSI, the upper bound index value of 500 corresponds to the SHL, established in section 51.16 of the CFR under the Prevention of Air Pollution Emergency Episodes program. The SHL is set at a level that represents an imminent and substantial endangerment to public health. In mid-1999, we will propose revisions to the Prevention of Air Pollution Emergency Episodes program, which will include an SHL for PM$_{2.5}$. In advance of proposing an SHL for PM$_{2.5}$, we are now proposing to establish a PM$_{2.5}$ concentration[9] to be associated with a PM$_{2.5}$ index value of 500.

In proposing to establish this PM$_{2.5}$ concentration to be associated with a PM$_{2.5}$ index value of 500, the primary focus is on evidence linking mortality with increases in PM concentration. The current SHL for PM$_{10}$ (600 $\mu g/m^3$) was established on the basis of the increased mortality found during historical wintertime pollution episodes in London, where PM concentrations, measured as British Smoke, were in the range of 500 to 1000 $\mu g/m^3$ (52 FR 24687–24688). We believe that these studies still provide the best scientific support for significant harm levels for PM. British Smoke provides an approximate measurement of fine particles, since it is considered to measure PM with a cut-point of approximately 4.5 microns. While some coarse mode particles are included, it has been found that mainly fine mode particles are collected using the British Smoke method. In establishing the SHL for PM$_{10}$, we used an assumption that a concentration of PM$_{10}$ can be estimated by adding 100 to a concentration measured in terms of British Smoke (52 FR 24688). For the purposes of proposing to establish a PM$_{2.5}$ concentration to be associated with a PM$_{2.5}$ index value of 500, we are assuming that particle mass concentration measured by the British Smoke method is approximately equivalent to a PM$_{2.5}$ mass concentration.

For intermediate breakpoints in the PSI between values of 100 and 500, PM$_{2.5}$ concentrations are proposed that generally reflect a linear relationship between increasing index values and increasing PM$_{2.5}$ values. The available scientific evidence of health effects related to population exposures to PM$_{2.5}$ concentrations between the 24-hour NAAQS level and the proposed SHL suggest a continuum of effects in this range, with increasing PM$_{2.5}$ concentrations being associated with increasingly larger numbers of people likely experiencing serious health effects (62 FR 38675; Staff Paper, p. VII–27) The proposed generally linear relationship between PSI values and PM$_{2.5}$ concentrations in this range, rounded to increments of 50 $\mu g/m^3$ to reflect the approximate nature of such a relationship, is consistent with this evidence.

Conforming changes to the PM$_{10}$ sub-index. Consistent with the retention of the levels of the PM$_{10}$ NAAQS, we are proposing to retain the PM$_{10}$ sub-index generally and to add a new breakpoint at an index value of 150 to conform to the proposed additional PSI category. We propose that this breakpoint be set at a PM$_{10}$ 24-hour average concentration of 250 $\mu g/m^3$, the mid-point between the breakpoints associated with index values of 100 and 200. We believe that the PM$_{10}$ sub-index, with this conforming change, remains appropriate for the public health protection purposes of the PSI.

c. *Conforming changes to the CO and SO$_2$ sub-indices.* Since the current PSI sub-indices reflect the current NAAQS for CO and SO$_2$, the only change being proposed today for these sub-indices is to add a breakpoint to each sub-index at an index value of 150 to conform to the proposed additional PSI category. We propose that these breakpoints be set at concentrations at the mid-points between the breakpoints associated with index values of 100 and 200, consistent with the approach described above for conforming changes to both the 1-hour O$_3$ sub-index and the PM$_{10}$ sub-index. These proposed breakpoints are summarized in Table 2 and presented in more detail in appendix G to reflect the proposed changes to the numerical rounding conventions used to calculate index values. These sub-indices will be reviewed in conjunction with the future reviews of the CO and SO$_2$ NAAQS.

3. What are the Changes to Related Informational Materials?

We have edited related informational materials on O$_3$ prepared in conjunction with the staff draft O$_3$ sub-index, such as the cautionary statements, to reflect the input from the focus groups and from national, State and local agencies and associations. The edits include some of the wording changes suggested to the cautionary statements, as well as clarification of the health/air quality message associated with the moderate category. In the "unhealthy" and "very unhealthy" categories, there are distinct cautionary statements for members of sensitive groups and the general public. In addition, because different conditions make individuals and groups susceptible to the effects of different air pollutants, we have developed pollutant-specific health effects and cautionary statements for the other pollutants in the index, including PM$_{2.5}$, PM$_{10}$, CO, SO$_2$, and NO$_2$. The health effects and cautionary statements may be found on AIRLINKS (http://www.epa.gov/airlinks). Our draft guidance on PSI reporting, "Guideline for Public Reporting of Daily Air Quality—Pollutant Standards Index (PSI)" (EPA 1998b), which includes the health effects and cautionary statements, is available in the docket and on AIRLINKS.

The brochure "The Pollutant Standards Index" (EPA 1994), contains information about the general health effects associated with each category, and precautions that sensitive groups and the general public should take to avoid exposures of concern. Currently, it contains one set of health effects and cautionary statements that are generally applicable to all of the pollutants currently included in the PSI, and does not identify specific sensitive groups for each of the pollutants. In changes to this brochure, we will revise the categories and descriptors to be consistent with final revisions to the PSI, identify sensitive groups in the health effects statements for each of the pollutants, and will include the pollutant-specific health effects and cautionary statements discussed above.

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[9] Should the final SHL for PM$_{2.5}$, when promulgated, be different from this concentration, we will revise this PM$_{2.5}$ sub-index accordingly.

The booklet, "SMOG—Who Does It Hurt?," was developed using health effects information from the review of the standard and therefore already incorporates the concepts of sensitive groups and a continuum of effects to background levels of O_3. Revisions to this booklet will be based on final revisions to the PSI, information from the focus groups, and comments from national, State and local agencies and associations. Based on these comments, the distinction between stratospheric and ground-level O_3 will be made clearer, and the section "What does exertion have to do with O_3-related health effects?" will include clarification of the effect of individual conditioning on exertion levels. In addition, we are planning to develop a shorter, summary brochure about O_3 health effects to complement the "SMOG—Who Does It Hurt?" booklet, to translate both "SMOG—Who Does It Hurt?" and the shorter summary booklet into Spanish, and to develop informational materials about O_3 health effects for primary care providers. All of these documents will be made available when revisions to the PSI are final, including on the AIRNOW web site.

III. Regulatory and Environmental Impact Analyses

A. Executive Order 12866: OMB Review of "Significant Actions"

Under Executive Order 12866, the Agency must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The OMB has advised us this proposal should be construed as a "significant regulatory action" within the meaning of Executive Order 12866. Accordingly, this action was submitted to the OMB for review. Any changes made in response to OMB suggestions or recommendations will be documented in the public record and made available for public inspection at EPA's Air and Radiation Docket Information Center (Docket No. A–98–20).

B. Regulatory Flexibility Analysis/Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 6 U.S.C. 605(b), this requirement may be waived if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations less than 50,000 people.

Today's proposal to revise the PSI program modifies existing air quality reporting requirements for MSA's with populations over 350,000 people. Today's proposal, if promulgated, will not establish any new regulatory requirements affecting small entities. On the basis of the above considerations, EPA certifies that today's proposal will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Based on the same considerations, EPA also certifies that the new small-entity provisions in Section 244 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) do not apply.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

EPA has determined that today's proposal, if promulgated, would not include a Federal mandate that may result in estimated costs of $100 million in any 1 year to either State, local, or tribal governments, in the aggregate, or to the private sector. Accordingly, EPA has determined that the provisions of section 202 of the UMRA do not apply to this rulemaking.

D. Paperwork Reduction Act

Today's proposal does not establish any new information collection requirements beyond those which are currently required under the Ambient Air Quality Surveillance Regulations in 40 CFR part 58 (OMB #2060–0084, EPA ICR No. 0940.15). Therefore, the requirements of the Paperwork Reduction Act do not apply to today's action.

E. Executive Order 13045: Children's Health

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR19885, April 23, 1997), requires Federal agencies to ensure that their policies, programs, activities, and standards identify and assess environmental health and safety risks that may disproportionately affect children. In today's proposal, EPA identified children as one of the sensitive groups which may be at increased risk of experiencing the effects of concern following exposure to ozone. The proposed PSI categories, descriptors, and cautionary statements all take into consideration the increased health risk to children which may result from such exposures. Therefore, today's action does comply with the requirements of E.O. 13045.

F. Executive Order 12848: Environmental Justice

Executive Order 12848 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations in the United States.

The nature of today's action is to inform the general public, including minorities and low-income populations, about the nature of the air pollution in the areas they live. Today's action establishes a uniform tool for States to use to develop programs which will caution particularly sensitive people to minimize their exposures and educate the public about general health effects associated with exposure to different pollution levels. States may also use information established as part of the PSI to trigger programs designed to reduce emissions to avoid exceedances of the NAAQS. Therefore, today's action will help facilitate public participation, outreach, and communication in areas where environmental justice issues are present.

G. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or we will consult with those governments. If EPA complies by consulting, Executive Order 12875 requires us to provide to OMB a description of the extent of our prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires us to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule implements requirements specifically set forth by the Congress in section 319 of the Act without the exercise of any discretion by us. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA will consult with those governments. If EPA complies by consulting, Executive Order 13084 requires us to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule implements requirements specifically set forth by the Congress in section 319 of the Act without the exercise of any discretion by us. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IV. References

EPA, (1994) "Measuring Air Quality: The Pollutant Standards Index," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD–10), Research Triangle Park, NC, 27711, EPA 451/K–94–001.

EPA, (1997) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA–452/R–96–013.

EPA, (1998a) Community Action Programs: Blueprint for Program Design, U.S. Environmental Protection Agency, Office of Mobile Sources, Ann Arbor, MI, EPA 420–R–98–003.

EPA, (1998b) Guideline for Public Reporting of Daily Air Quality—Pollutant Standards Index (PSI), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, 27711, draft document.

EPA, (1999) Guideline for Starting an Air Pollution Forecasting Program, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, 27711, in preparation.

Science Applications International Corporation, (1998) Report of Eight Focus Groups on the Ozone Map, the Pollutant Standards Sub-Index for Ozone, and the Ozone Health Effects Booklet, Science Applications International Corporation, McLean, VA.

U.S. Department of Commerce, Statistical Abstract of the United States, 1998, U.S. Bureau of the Census.

Whitfield, R.G.; Biller, W.F.; Jusko, M.J.; Keisler, J.M. (1996) A probabilistic assessment of health risks associated with short-term exposure to tropospheric ozone . Report prepared for U.S. EPA, OAQPS. Argonne National Laboratory; Argonne, IL.

Wolff, G.T., (1995) Letter from Chairman of Clean Air Scientific Advisory Committee to the EPA Administrator, dated November 30, 1995. EPA–SAB–CASAC–LTR–96–002.

List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Air quality surveillance and data reporting, Ambient air quality monitoring network design and siting, Intergovernmental relations, pollutant standards index, Quality assurance program.

Dated: December 1, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal regulations is proposed to be amended as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

1. The authority citation of part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), and 7619.

2. Section 58.50 is revised to read as follows:

§ 58.50 Index reporting.

(a) The State shall report to the general public through prominent notice an air quality index in accordance with the requirements of appendix G to this part.

(b) Reporting is required by all Metropolitan Statistical Areas with a population exceeding 350,000.

(c) The population of a Metropolitan Statistical Area for purposes of index reporting is the most recent decennial U.S. census population.

3. Appendix G is revised to read as follows:

Appendix G—Uniform Air Quality Index and Daily Reporting

General Requirements

1. What is the PSI?
2. Why report the PSI?
3. Must I report the PSI?
4. What goes into my PSI report?
5. What colors do I use when I report the PSI?
6. Is my PSI report for my MSA only?
7. How do I get my PSI report to the public?
8. How often must I report the PSI?
9. May I make exceptions to these reporting requirements?

Calculation

10. How does the PSI relate to air pollution levels?
11. Where do I get the pollutant concentrations to calculate the PSI?
12. Do I have to forecast the PSI?
13. How do I calculate the PSI?
14. How do I use Table 2 and Equation 1 to calculate the PSI?

Background and Reference Materials

15. What additional information should I know?
16. References

General Requirements

1. What Is the PSI?

The Air Quality Index (PSI) is a tool that simplifies reporting air pollution to the general public. The PSI incorporates into a single index concentrations of 5 criteria pollutants: ozone (O_3), particulate matter (PM), carbon monoxide (CO), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2). The scale of the index is divided up into general categories that are associated with health messages.

2. Why Report the PSI?

The PSI offers various advantages:

a. It is simple to create and understand.

b. It conveys the health implications of air quality.

c. It promotes uniform use throughout the country.

3. Must I Report the PSI?

You must report the PSI daily if yours is a metropolitan statistical area (MSA) with a population over 350,000.

4. What Goes Into My PSI Report?

Your PSI report must contain the following:

a. The reporting area(s) (the MSA or subdivision of the MSA).

b. The reporting period (the day for which the PSI is reported).

c. The critical pollutant (the pollutant with the highest index value).

d. The PSI (the highest index value).

e. The category descriptor and index value associated with the PSI and, if reported in a color format, the associated color. Use only the following descriptors and colors for the six PSI categories:

PSI	Descriptor	Color
0 to 50	"Good"	Green.
51 to 100	"Moderate"	Yellow.
101 to 150	"Unhealthy for Sensitive Groups".	Orange.
151 to 200	"Unhealthy"	Red.
201 to 300	"Very Unhealthy".	Purple.
301 and above	"Hazardous"	Maroon.

When appropriate, your PSI report may also contain the following:

a. The name and index value for other pollutants, particularly those with an index value greater than 100.

b. The index values for sub-areas of the reporting area.

c. Actual pollutant concentrations.

d. Causes for unusual PSI values.

5. What Colors Do I Use When I Report the PSI?

If reporting in color format, you must use the colors listed above. More specifically the colors you must use are defined in the following table for both red, green, blue (RGB) and cyan, magenta, yellow, and black (CMYK) color formulas.[1]

TABLE 1.—COLOR FORMULATIONS FOR REPORTING THE PSI.[2]

Color	R	G	B	C	M	Y	K
Green	0	228	0	224	0	224	30
Yellow	255	255	0	0	0	255	0
Orange	255	126	0	0	132	255	0
Red	255	0	0	255	255	0	0
Purple	153	0	76	0	153	80	102
Maroon	76	0	38	0	76	38	179

[2] The color models are based on a 0–255 scale (e.g., 50 percent is 126)

6. Is My PSI Report for My MSA Only?

Generally, your PSI report applies to your MSA only. However, your report does not apply to just your MSA in two situations:

a. If a significant air quality problem exists (PSI greater than 100) in areas next to your MSA but not in it (for example O_3 concentrations are often highest downwind and outside an urban area), your PSI report should apply to these areas also.

b. If different PSI categories apply to different definable parts of your MSA, you should report a separate PSI for each part of your urban area.

7. How Do I Get My PSI Report to the Public?

You must furnish the daily report to the appropriate news media (radio, television, and newspapers). You may make the daily report publicly available at one or more places of public access, or you may disseminate it by a recorded phone message or a public Internet site.

8. How Often Must I Report the PSI?

You must report the PSI at least 5 days per week. Exceptions to this requirement are in Section 9 below.

9. May I Make Exceptions to These Reporting Requirements?

If the index for a particular pollutant remains below 50 for a season or year, then you may exclude the pollutant from your calculation of the PSI in Section 13.

If the PSI remains below 50 for a year, then you may report the PSI at your discretion.

Calculation

10. How Does the PSI Relate to Air Pollution Levels?

For each pollutant, the PSI transforms ambient concentrations to a scale from 0 to 500. The PSI is related to the National Ambient Air Quality Standard (NAAQS) for each pollutant. The index value of 100 is always associated with the numerical level of the standard for each pollutant. The index value of 50 is associated with annual standards (if they exist) for each pollutant. Higher categories of the index are based on increasingly serious health effects and increasing proportions of the population that are affected. The EPA relates the index to other air pollution concentrations through linear interpolation based on these levels. The PSI is equal to the highest of the numbers corresponding to each pollutant. The pollutant responsible for the highest number (the reported PSI) is called the "critical" pollutant.

11. Where Do I Get the Pollutant Concentrations To Calculate the PSI?

You must use concentration data for four of the five PSI criteria pollutants from the State/Local Air Monitoring Station (SLAMS) or parts of the SLAMS required under 40 CFR

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[1] The RGB model is traditionally used for TV or computer monitor colors while CMYK is traditionally used for color printers.

58.20. For PM, you need only calculate and report the PSI on days for which you have measured air quality data (e.g., particulate monitors often report values only every sixth day). You may use particulate measurements from monitors that are not reference or equivalent methods if you can relate these measurements by linear regression to reference or equivalent method measurements.

12. Do I Have to Forecast the PSI?

You should forecast the PSI at least 24-hours in advance using the most accurate and reasonable procedures considering meteorology, topography, availability of data, and forecasting expertise. Since ozone is a dominant pollutant in air pollution and the form of the ozone standard is an 8-hour average, the timing of how the public is informed is an important issue. In order for affected people to take advantage of this information, it is necessary to consider at least a short term forecast or prediction of 8-hour ozone levels for the purposes of reporting the PSI. Guidance to this appendix suggest ways to do this which require less resources than 24-hour advance forecasts (EPA 1999).

13. How Do I Calculate the PSI?

The PSI is the highest value calculated for each pollutant as follows:

a. Truncate the pollutant concentration from the monitor recording the highest concentration in the reporting area to one more than the significant digits used in the NAAQS for that pollutant. This is equivalent to the rounding conventions used in the NAAQS

b. Using Table 2, find the two breakpoints that contain the concentration.

c. Using Equation 1, calculate the index.

d. Round the index to the nearest integer.

TABLE 2.—BREAKPOINTS FOR THE PSI

These breakpoints—							Equal these PSIs	Category
O$_3$ (ppm) 8-hour	O$_3$ (ppm) 1-hour [1]	PM$_{10}$ (μg/m^3)	PM$_{2.5}$ (μg/m^3)	CO (ppm)	SO$_2$ (ppm)	NO$_2$ (ppm)		
0.000–0.069	-	0–54	0.0–15.4	0.0–4.4	0.000–0.034	(2)	0–50	Good.
0.070–0.084	-	55–154	15.5–65.4	4.5–9.4	0.035–0.144	(2)	51–100	Moderate.
0.085–0.104	0.125–0.164	155–254	65.5–100.4 [5]	9.5–12.4	0.145–0.224	(2)	101–150	Unhealthy for sensitive groups.
0.105–0.124	0.165–0.204	255–354	100.5 [5]–150.4 [5]	12.5–15.4	0.225–0.304	(2)	151–200	Unhealthy.
0.125–0.374 (0.155–0.404) [4]	0.205–0.404	355–424	150.5 [5]–250.4 [5]	15.5–30.4	0.305–0.604	0.65–1.24	201–300	Very unhealthy.
(3)	0.405–0.504	425–504	250.5 [5]–350.4 [5]	30.5–40.4	0.605–0.804	1.25–1.64	301–400	
(3)	0.505–0.604	505–604	350.5 [5]–500.4 [5]	40.5–50.4	0.805–1.004	1.65–2.04	401–500	Hazardous.

[1] Areas are required to report the PSI based on 8-hour ozone values. However, there are areas where a PSI based 1-hour ozone values would be more protective. In these cases, the index for both the 8-hour and the 1-hour ozone values may be calculated and the maximum PSI reported.

[2] NO$_2$ has no short-term NAAQS and can generate a PSI only above a PSI value of 200.

[3] 8-hour O$_3$ values do not define higher PSI values (≥301). PSI values of 301 or higher are calculated with 1-hour O$_3$ concentrations.

[4] The numbers in parentheses are associated 1-hour values to be used in this overlapping category only.

[5] If a different SHL for PM$_{2.5}$ is promulgated, these numbers will change accordingly.

If the concentration is equal to a breakpoint, then the index is equal to the corresponding index in Table 2. However, Equation 1 can still be used. The results will be equal. If the concentration is between two breakpoints, then calculate the index of that pollutant with Equation 1. You must also note that in some areas, the PSI based on 1-hour O$_3$ will be more protective than using 8-hour values (see footnote 1 to Table 2). In these cases you may use 1-hour values as well as 8-hour values to calculate the index and then use the maximum PSI value as the index for O$_3$.

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Equation 1

Where I_p = the index for pollutant $_p$

C_p = the truncated concentration of pollutant $_p$

BP_{Hi} = the breakpoint that is greater than or equal to C_p

BP_{Lo} = the breakpoint that is less than or equal to C_p

I_{Hi} = the PSI value corresponding to BP_{Hi}

I_{lo} = the PSI value corresponding to BP_{Lo}.

If the concentration is larger than the highest breakpoint in Table 2 then you may use the last two breakpoints in Table 2 when you apply Equation 1. If your O$_3$ values (1-hour and 8-hour) are in the overlapping category (very unhealthy, see footnote 4 to Table 2) then you must use Equation 1 for both values and use the larger index value for O$_3$.

14. How Do I Use Table 2 and Equation 1 To Calculate the PSI?

If you observe a 1-hour O$_3$ value of 0.156 ppm, an 8-hour O$_3$ value of 0.130 ppm, and a PM$_{10}$ value of 210 μg/m^3, then do this:

a. Find the breakpoints for PM$_{10}$ at 210 μg/m^3 as 205 μg/m^3 and 354 μg/m^3 corresponding to index values 151 and 200;

b. Find the breakpoints for 1-hour O$_3$ at 0.156 ppm as 0.155 ppm and 0.404 ppm corresponding to index values 201 and 300;

c. Find the breakpoints for 8-hour O$_3$ at 0.130 ppm as 0.125 ppm and 0.374 ppm corresponding to index values 201 and 300;

d. Apply Equation 1 for 210 μg/m^3, PM$_{10}$:

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e. Apply Equation 1 for 0.156 ppm, 1-hour O$_3$:

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f. Apply Equation 1 for 0.130 ppm, 8-hour O$_3$:

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g. Find the maximum, 203. This is the PSI.

Background and Reference Materials

15. What Additional Information Should I Know?

The EPA has developed a computer program to calculate the PSI for you. The program works with Windows 95, it prompts for inputs, and it displays all the pertinent information for the PSI (the index, color, category, health effects, and cautionary language). You can download the program at www.epa.gov/airnow. The EPA also publishes a brochure on the PSI that explains the index in detail (EPA 1999b), guidance that provides associated health effects and cautionary statements (EPA 1998), and guidance that explains the steps necessary to start an air pollution forecasting program (EPA 1999a).

16. References

EPA, (1998) Guideline for Public Reporting of Daily Air Quality-Pollutant Standards Index (PSI), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, 27711, draft document.

EPA, (1999a) Guideline for Starting an Air Pollution Forecasting Program, U.S. Environmental Protection Agency, Office of

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Air Quality Planning and Standards, Research Triangle Park, NC, 27711, in preparation.

EPA, (1999b) Measuring Air Quality: The Pollutant Standards Index, Printing Management Office, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in preparation.

[FR Doc. 98–32571 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 156

[OPP–250127; FRL–6042–8]

Antimicrobial Pesticide Products; Other Pesticide Regulatory Changes; Notification to the Secretaries of Agriculture and Health and Human Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretaries of Agriculture and Health and Human Services a proposed rule under sections 3 and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed rule would establish procedures for streamlining the pesticide antimicrobial program and make other changes to current pesticide regulatory and labeling provisions. This notification is required by FIFRA sections 21(a) and 25(a).

FOR FURTHER INFORMATION CONTACT: By mail: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1116C, Crystal Mall #2, Arlington, VA, 703–305–5944, e-mail: frane.jean@.epa.gov.

SUPPLEMENTARY INFORMATION: Sections 21(a) and 25(a) of FIFRA provide that the Administrator shall provide the Secretaries of Agriculture and Health and Human Services with a copy of any proposed regulation at least 60 days before signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime thereafter. As required by FIFRA section 25(a)(3), a copy of the proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

List of Subjects in Parts 152 and 156

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136s, 136w *et seq.*

Dated: December 2, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 98–32681 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6198–8]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Oklahoma Department of Environment Quality's (ODEQ) RCRA Cluster VI Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The RCRA Cluster VI rules are listed in the rules section of this **Federal Register** (FR). The EPA is approving the State's request as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to this action no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. The EPA will then respond to public comments in a later final rule based on this proposal. The EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 8, 1999.

ADDRESSES: Written comments referring to Docket Number OK98–2 may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address listed below. Copies of the materials submitted by ODEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, Wells Fargo Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444. Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma, 73117–1212, Phone number: (405) 271–5338.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 98–32576 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 39

RIN 1004–AC87

Wild and Scenic Rivers

AGENCY: Offie of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary publishes this proposed rule in response to comments received on a proposed rule published by the Bureau of Land Management (BLM), and to improve Departmental consistency among Wild and Scenic River-administering agencies. Consistent with President Clinton's Government-wide regulatory reform initiative, this proposed rule is written in a straightforward "Plain English" style. This rule would establish uniform standards and procedures by which the Department of the Interior, through its agencies which administer rivers in the National Wild and Scenic Rivers System (Bureau of Land Management, U.S. Fish and

Wildlife Service and National Park Service), will consider Federal licensing of, or assistance to, water resources projects affecting designated wild and Scenic Rivers or congressionally authorized Study Rivers.

This proposed rule also withdraws the proposed rulemaking published in the **Federal Register** by the BLM on September 10, 1996 (61 FR 47726). This proposed rule would harmonize Interior's procedures and standards with those of the U.S. Forest Service in order to streamline and improve the administration of the National Wild and Scenic Rivers System.

DATES: Submit comments on or before February 8, 1999. The Department of the Interior may not consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: Mail comments to John Haubert, Room 3230, 1849 C Street, NW, Washington, DC 20240. Commenters may transmit comments electronically via the Internet to: John__Haubert@nps.gov [For Internet, please include "Attn: Proposed DOI Wild and Scenic Rivers Rulemaking," your name and address in your message.]

FOR FURTHER INFORMATION CONTACT: John Haubert, NPS, 202–208–4290. E-mail: john__haubert@nps.gov

For a complete listing of designated Wild and Scenic Rivers, visit the DOI website at: http;//www.nps.gov/rivers.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written comments on the proposed rule should focus on issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal being addressed. The Secretary may not necessarily consider or include in the Administrative Record for the final rule comments received after the close of the comment period (see **DATES**) or delivered to an address other than the one listed above (see **ADDRESSES**).

II. Discussion of Proposed Rule

This proposed rule is a "follow-up" to the Proposed Rulemaking that the BLM published in the September 10, 1996, **Federal Register** (61 FR 47726). That publication notified the public of a similar rulemaking process (applicable only to BLM-administered rivers), and invited public comments for 30 days, ending on October 10, 1996. In response to several requests, BLM reopened the comment period in the November 4, 1996, **Federal Register** (61 FR 56651), for an additional 30 days, ending on December 4, 1996. Many respondents suggested that a single rule be adopted by the four Federal Wild and Scenic River administering and/or managing agencies (U.S. Forest Service, BLM, U.S. Fish and Wildlife Service, and National Park Service). This proposed rule responds to that and other comments received by the BLM in its earlier proposed rule. The proposed rule applies only to Department of the Interior agencies and does not apply to the Forest Service, which is an agency of the Department of Agriculture.

The Secretary of the Interior proposes to issue this rule under the authority of Section 7 of the Wild and Scenic Rivers Act, as amended (16 U.S.C 1278). Section 7(a) provides as follows:

> The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 1274 of this title as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the National Wild and Scenic Rivers System. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention to do so at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter.

Section 7(b), which applies to congressionally authorized study rivers, contains identical language except for the deletion of the word "unreasonably" before the word "diminish" in the second sentence.

The Wild and Scenic Rivers Act directs Federal agencies to protect the free-flowing condition and other values of designated rivers and congressionally authorized study rivers from the adverse effects of water resources projects. The proposed rule defines "water resource project" as any construction activity or project that would affect the free-flowing characteristics of a river. The term "free-flowing" is defined in the Act and means 'existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.' Thus, a "water resources project" is defined in this proposed rule as any construction or project within the bed or banks of a river which would modify the waterway and therefore affect the free-flowing characteristics of the river.

Section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1278), as amended, requires river administering agencies to review proposed authorization or federal assistance to water resources projects on or affecting any designated Wild and Scenic River or on any river congressionally authorized for study for possible inclusion in the Wild and Scenic Rivers System under Section 5(a) of the Act. This proposed rule provides procedures and standards for Department of the Interior river administering agencies to ensure compliance with the requirements of Section 7 of the Wild and Scenic Rivers Act for water resources projects.

The proposed rule sets forth applicable procedures that the Secretary of the Interior, through the applicable Wild and Scenic river administering agencies, i.e., BLM, U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS), would use for conducting analyses under Section 7 of the Wild and Scenic Rivers Act for proposed for proposed water resources projects to determine whether there would be an adverse effect on the designated Wild and Scenic River or congressionally authorized Study River. These regulations are consistent with those of the Forest Service, U.S. Department of Agriculture, at 36 CFR part 297.

III. Procedural Matters

National Environmental Policy Act of 1969

The Department of the Interior has prepared an environmental assessment (EA), in accordance with Section

102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(2)(C)). The Department of the Interior anticipates making a Finding of No Significant Impact (FONSI) for the final rule in accordance with the Department's procedures for implementing NEPA. The EA is on file in the Administrative Record at the address previously specified.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 et seq.

The Regulatory Flexibility Act

The Department of the Interior has determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The scope of the proposed rule is limited to those Federal departments or agencies charged with reviewing the proposed authorization of, or Federal assistance to, water resources projects affecting designated Wild and Scenic Rivers or congressional authorized Study Rivers. Therefore, no small entities are affected by the proposed rule.

Unfunded Mandates Reform Act of 1995

The Interior Department's operating procedures in 43 FR 39 will not result in any unfunded mandate to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The Department of the Interior has analyzed this rule under the principles and criteria in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

This proposed rule does not represent a government action capable of interference with constitutionally protected property rights. Since the primary functions of the rule is to establish uniform Department operating procedures regarding authorization of, or Federal assistance to, water resources projects affecting designated Wild and Scenic Rivers or congressionally authorized Study Rivers, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the proposed rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, the Department of the Interior has determined that this proposed rule is a significant regulatory action.

Authors

The principal authors of this rule are Gary G. Marsh and Frances Watson, Bureau of Land Management, John Haubert, National Park Service, and Craig Czarnecki, U.S. Fish and Wildlife Service.

List of Subjects in 43 CFR Part 39

Wild and scenic rivers.

Dated: September 29, 1998.

Bruce Babbitt,

Secretary of the Interior.

For the reason discussed in the preamble and under the authority of the Wild and Scenic Rivers Act (16 U.S.C. 1278), the Department of the Interior proposes to amend title 43 of the Code of Federal Regulations, as set forth below:

1. A new part 39 is added to Subtitle A to read as follows:

PART 39—WILD AND SCENIC RIVERS

Subpart A—Water Resources Projects

Sec.

39.1 What is the purpose of part 39?

39.2 How are key terms in this part defined?

39.3 What procedures must a Federal department or agency follow to receive consideration from the applicable Wild and Scenic River administering agency before providing Federal assistance, to or authorization of, a water resources project?

39.4 Under what conditions will the applicable Wild and Scenic River administering agency consent to Federal assistance to, or authorization of, a water resources project?

39.5 What is the estimated time for the applicable Wild and Scenic River administering agency to review a proposal to provide Federal assistance to, or authorization of, a water resources project?

Subpart B—[Reserved]

Authority: 16 U.S.C. 791a; 16 U.S.C. 1271–1287; 33 U.S.C. 401 et seq.; 33 U.S.C. 1344.

Subpart A—Water Resources Projects

§ 39.1 What is the purpose of this part?

This part specifies the Department of the Interior (DOI) policies and procedures for conducting analyses under Section 7 of the Wild and Scenic Rivers Act for proposed water resources projects affecting Wild and Scenic Rivers or congressionally authorized Study Rivers that the DOI administers.

§ 39.2 How are key terms in this part defined?

As used in this part:

Act means the Wild and Scenic Rivers Act (82 Stat. 906, as amended; 16 U.S.C. 1271–1287.

Applicable Wild and Scenic River administering agency means an agency of the DOI responsible for managing designated Wild and Scenic Rivers or congressionally authorized Study Rivers (i.e., Bureau of Land Management, National Park Service, and U.S. Fish and Wildlife Service).

Construction means any action carried on with Federal assistance affecting the free-flowing characteristics or the scenic or natural values of a Wild and Scenic River or Study River.

Federal assistance means any assistance associated with a water resources project provided by any Federal department or agency. Such assistance may include, but is not limited to, a license, permit, or authorization granted by the Federal Energy Regulatory Commission (FERC) under Sections 4(e) and (f) of the Federal Power Act (16 U.S.C. 797); a license, permit or other authorization granted by the Corps of Engineers, Department of the Army, under the Rivers and Harbors Act of 1899 (33 U.S.C 401 et seq.) and Section 404 of the Clean Water Act (33 U.S.C. 1344); or any other license, permit, grant, or loan provided, or other authorization required by a Federal department or agency.

Free-flowing means "existing or flowing in a natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway" (16 U.S.C. 1286(b)).

Study River means a river and the adjacent area within one quarter mile on each side of the river from the ordinary high water mark (unless otherwise provided for by law) which is designated for study as a potential addition to the National Wild and Scenic Rivers System pursuant to Section 5(a) of the Act.

Study period means the time required to complete a study authorized by Section 5(a) of the Wild and Scenic Rivers Act. The study period lasts for 3 years after the President sends a report with his recommendations to the Congress.

Water resources project means any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power

Act of 1995, as amended (41 Stat. 1063; 16 U.S.C 791a); or any project or construction activity that would affect free-flowing characteristics, as that term is defined in the Act, of a designated Wild and Scenic River or congressionally authorized Study River. Any project or construction located within the bed or banks of a designated Wild and Scenic River or congressionally authorized Study River, or located below, above, or on any stream tributary thereto is a water resources project. Examples of water resources projects include, but are not limited to, fisheries habitat and watershed restoration/enhancement projects: water diversion projects; transmission lines; bridge and other roadway construction/reconstruction projects; dams; water conduits; bank stabilization projects; channelization projects; powerhouses; levee construction; reservoirs; recreation facilities, such as boat ramps or fishing piers; or dredge and fill activity that requires a Federal permit, such as from the U.S. Army Corps of Engineers as required by Section 404 of the Clean Water Act (33 U.S.C. 1344).

Wild and Scenic River means a river designated as a component of the National Wild and Scenic Rivers System pursuant to section 3(a) and 2(a)(ii) of the Act.

§ 39.3 What procedures must a Federal department or agency follow to receive consideration from the applicable Wild and Scenic River administering agency before providing Federal assistance to, or authorization of, a water resources project?

(a) *Notice.* (1) As soon as practicable, but not less than 60 days before the date of the proposed Federal assistance, the Federal agency must provide a written notice of the agency's intent to construct, authorize or provide Federal assistance to a water resources project located on or affecting any portion of a DOI administered Wild and Scenic River or congressionally authorized Study River, or located below, above, or on any stream tributary thereto.

(2) Notice must be sent to the designated official of the applicable Wild and Scenic River administering agency, or his or her designee, as follows:

(i) BLM administered rivers: State Director, BLM, or his/her designee; or

(ii) NPS administered rivers: Director, NPS or his/her designee; or

(iii) FWS administered rivers: Director, FWS or his/her designee.

(b) *Contents of Notice.* The Federal agency must include the following information in the notice to facilitate the Section 7 determination of effects:

(1) Name and location of the affected designated River or Study River;

(2) Location of the project or construction;

(3) Nature of the permit, assistance, or other authorization proposed to be issued;

(4) Description of the proposed activity or construction; and

(5) Any relevant information, such as plans, maps, environmental studies, assessments, or environmental impact statements, alternatives, and mitigating measures.

§ 39.4 Under what conditions will the applicable Wild and Scenic River administering agency consent to Federal assistance to, or authorization of, a water resources project?

(a) The applicable Wild and Scenic River administering agency will consent to Federal assistance to, or authorization of, a water resources project if it determines based on the applicable standard below:

(1) The water resource project will not have a direct and adverse effect on the values for which a Wild and Scenic River was designated or Study River authorized by Congress, when any portion of the project or construction is within the boundaries of such river;

(2) The effects of the water resources project will neither invade nor unreasonably diminish the scenic, recreational, and fish and wildlife values of a designated Wild and Scenic River, when any portion of the project or construction is located below, above, or on any stream tributary thereto.

(3) The effects of the water resources project will neither invade not diminish the scenic, recreational, and fish and wildlife values of a congressionally authorized Study River when the project or construction is located below, above, or on any stream tributary thereto during the study period.

(b) If the project or construction would impermissibly affect wild and scenic river values, as described above, the designated official of the applicable Wild and Scenic River administering agency will advise the assisting or authorizing agencies the water resources project may not proceed as proposed. The applicable Wild and Scenic River administering agency may recommend measures to eliminate adverse effects, and the assisting or authorizing agencies may submit revised plans for consideration.

§ 39.5 What is the estimated time that the applicable Wild and Scenic River administering agency will take to review a proposal to provide Federal assistance to, or authorization of, a water resources project?

The designated official of applicable Wild and Scenic River administering agency, or designee, will attempt to make a determination for the proposed water resources project within 60 calendar days of receiving a Federal agency's notice. However, the designated official is authorized to make the determination sooner or later than 60 days depending on the simplicity or complexity of the project or construction being analyzed. Further, the designated official, to the extent possible, will expedite consideration of a notice for a project or construction needed to address any emergency.

Subpart B—[Reserved]

PART 8350—[REMOVED]

2. Remove 43 CFR part 8350.

[FR Doc. 98–32581 Filed 12–8–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 98J–7]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission

ACTION: Proposed rule; recommended decision.

SUMMARY: On November 24, 1998, the Federal-State Joint Board adopted a Second Recommended Decision regarding universal service. In this decision, the Joint Board made numerous recommendations on universal service issues. The Joint Board recommends a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable; that the Commission replace the 25/75 jurisdictional division of responsibility for high cost support; that the Commission compute federal high cost support for non-rural carriers through a two-step process; and that the mechanisms outlined be reviewed no later than three years from July 1, 1999. The Commission seeks comment on the Second Recommended Decision.

DATES: Comments should be filed on or before December 23, 1998 and Reply

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Comments on or before January 13, 1999.

ADDRESSES: All filings should reference: Comments on Joint Board *Second Recommended Decision*, CC Docket No. 96–45, and should include DA 98–2410. Interested parties must file an original and six copies of their comments with the Office of Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554. Parties should send one copy of their comments to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036. Copies of documents filed with the Commission, including the *Second Recommended Decision*, may be obtained from the International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. Documents are also available for review and copying at the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554, from 9:00 a.m. to 4:30 p.m.

Parties may also file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is CC Docket No. 96–45. Parties not submitting their comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd, Common Carrier Bureau, Federal Communications Commission, 2100 M. St, N.W., 8th Floor, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding (including the lead docket number in this case, Docket No. 96–45, type of pleading—comment or reply comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Chuck Keller, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY (202) 418–0484, or via e-mail: <ckeller@fcc.gov>.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on November 24, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Summary of Second Recommended Decision

I. Introduction

1. The Telecommunications Act of 1996 ("1996 Act") explicitly recognized the need for federal and state support to "preserve and advance universal service." In the 1996 Act, legislators recognized that existing support mechanisms could be threatened as effective competition materializes. Congress also made clear in the 1996 Act that federal and state regulators together must ensure that universal service is preserved and advanced as we move from a monopoly to a competitive market. Although never quantified or targeted in traditional rate designs, these mechanisms have included support flowing from urban to rural consumers implicit in rate averaging, and from interstate and intrastate access charges.

2. The Act requires that rates be "just, reasonable and affordable," and that rates in rural, insular and high cost areas be "reasonably comparable" to rates charged for similar services in urban areas. The Act also requires "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." Goals of reforming universal service include: (1) revising support mechanisms that do not currently meet new statutory mandates, such as the need for nationwide reasonably comparable rates; (2) ensuring that support mechanisms are not eroded as local competition develops; and (3) establishing universal service support mechanisms that are part of a new regulatory structure consistent with Congress's pro-competitive goals.

3. The Joint Board and the Federal Communications Commission ("Commission") determined previously that rates generally are affordable. While keeping in mind the need to ensure continued affordability, we focus to a greater degree in this *Second Recommended Decision* on the issue of reasonable comparability, and how to ensure the sufficiency of federal support to assure both of those important public interest goals. As effective competition develops for high-volume, urban customers, one consequence may be erosion of the implicit support system that protects consumers in rural, insular and high cost areas from unaffordable rates. The Joint Board recommends a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable and reasonably comparable, even as competition develops, but that is no larger than necessary to satisfy that statutory mandate. The Joint Board believes that sizing the fund correctly is essential to ensuring that all consumers across the country benefit from universal service. The transition to a competitive environment requires us to be mindful of two competing goals: (1) supporting high cost areas so that consumers there have affordable and reasonably comparable rates; and (2) maintaining a support system that does not, by its sheer size, over-burden consumers across the nation.

4. As an initial matter, we note and support the Commission's "hold harmless" commitment not to reduce the current levels of explicit high cost support to states. In this *Second Recommended Decision*, consistent with that commitment, we outline an initial methodology for directing sufficient federal support to non-rural carriers to offset high intrastate costs in states with insufficient internal resources to ensure affordable and reasonably comparable rates. We recognize that further changes may be necessary as competition develops to change certain amounts of current implicit support into explicit support. We recommend that the Commission replace the 25/75 jurisdictional division of responsibility for high cost universal service support, adopted in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), with the methodology for non-rural carriers outlined herein. Under this approach, the federal mechanism should instead provide the necessary support set by the methodology that we outline today.

5. We recommend that the Commission compute federal high cost support for non-rural carriers through a two-step process. First, the Commission should develop a total support amount necessary to reflect those areas considered to have high costs relative to other areas. Second, for areas that have high costs relative to other areas, the Commission should consider, in a consistent manner across all states, any particular state's ability to support high cost areas within the state. Federal support should be provided to the extent that the state would be unable to support its high cost areas through its own reasonable efforts. We also make

recommendations about the information that consumers should receive from carriers in connection with the recovery of universal service contributions. We recommend as well that the mechanisms outlined here be reviewed no later than three years from July 1, 1999. While we recommend a shared federal-state responsibility, we also conclude that, consistent with the statute, no state can or should be required by the Commission to establish an intrastate universal service fund.

6. The Act acknowledges and maintains the complementary roles that state and federal authorities have played in preserving and advancing universal service. Historically, both state and federal regulators have exercised their jurisdictional authority to ensure the availability of universal service. The ongoing cooperation throughout this proceeding between the federal and state staff and members of the Joint Board is a further example of the vitality of the federal-state partnership for ensuring universal service, and this referral proceeding represents the latest chapter in that cooperation. We look forward to continued collaboration with the Commission as universal service reform proceeds. In addition, we note that this proceeding involves the balancing of many difficult, competing interests. In resolving these issues in light of our guidance, therefore, the Commission has the difficult task of selecting a national solution that balances these competing interests.

7. This *Second Recommended Decision* is designed to take into account this dual federal and state responsibility in a manner that effectuates the principles and requirements of § 254. The federal mechanism should provide support in a manner that is designed to ensure that state universal service needs are fully met, consistent with the states' role with respect to universal service. We believe that this *Second Recommended Decision* establishes a framework for accomplishing that difficult mission.

II. The Purpose of Support

8. In mandating the reform of universal service support mechanisms, Congress clearly envisioned that the reform process would be conducted as a joint federal and state effort. The creation of this Joint Board is perhaps the plainest expression of this vision. Other provisions of § 254 reflect this shared responsibility. A primary aspect of the Joint Board's task in reforming universal service mechanisms is to ensure that consumers in high cost areas have access to telecommunications and information services that are affordable and reasonably comparable to those in urban areas, at rates reasonably comparable to those in urban areas. We believe that the demarcation of the respective responsibilities of state and federal regulators can be found in the mandate to ensure reasonably comparable rates. Regulators in the two jurisdictions have different tools available to them to meet universal service challenges. Issues of affordability and reasonable comparability can be dealt with through a combination of approaches, including: (1) through the rate design issues of a single local carrier, (2) through mechanisms that affect the rates of all carriers within a state, and (3) through mechanisms that affect rates across state lines. State commissions and the Commission each can use the first two tools with respect to rates in their respective jurisdictions. Only the Commission is able to employ the last. Our recommendations reflect both the availability of, and the relationship among, these approaches.

9. While the Act does not define reasonable comparability, we interpret that term to refer to a fair range of urban and rural rates both within a state's borders, and among states nationwide. We note that existing federal high cost loop support provides additional federal support to areas that have particularly high costs, and our recommendations herein continue that policy. It is proper to begin an inquiry by focusing on universal service issues closest to the consumer. Present rates are sufficient to cover the costs of serving most consumers across the nation. The costs of serving other consumers, however, are in excess of rates. To address these concerns, support mechanisms have been set up to offset these higher costs.

The Joint Board acknowledges that, absent reform to these mechanisms, the forces of competition could erode certain of these support mechanisms and potentially have a negative impact on the provision of universal service.

10. The first step in dealing with this potential impact concerns the rates currently being charged to consumers, and the ability of the state to respond to competitive entry through its own ratemaking methods. This responsibility falls within the state's jurisdiction. To the extent the Commission determines that the totality of reasonable state efforts would not be sufficient to address universal service funding without violating the principles of reasonable comparability and affordability, the federal universal support mechanism should complete the effort. With this framework in mind, then, the Joint Board will set forth the method it recommends that the Commission use to size, calculate, and distribute federal support among the nation's non-rural carriers.

11. In formulating this *Second Recommended Decision*, our goal has been to ensure that rates in rural and high cost areas served by non-rural carriers are affordable and reasonably comparable through specific, predictable, and sufficient support mechanisms that are, to the extent possible, explicit. To do this, commenters proposed three possible ways in which universal service support could be used: (1) To provide support for high cost areas to enable the comparability of rates; (2) to make existing interstate support explicit; and (3) to make existing intrastate support explicit. In this section, we will address each of these three possible uses of support.

A. Enabling 'Reasonably Comparable' Rates

12. The Act requires that consumers have access to rates and services "in rural, insular and high cost areas" that are "reasonably comparable" to rates and services in urban areas. While the Act does not define reasonable comparability, we interpret that term to refer to a fair range of urban/rural rates both within a state's borders, and among states nationwide. We note that existing federal high cost loop support provides additional federal support to areas that have particularly high costs, and we propose to continue that policy as we move to a forward-looking cost methodology for determining high cost support.

13. We recommend that federal support be available to non-rural carriers serving consumers in areas with costs significantly above the national average and whose average costs throughout its study area significantly exceed the national average. This support should be available where, considered in a consistent manner across all states, a state would find it particularly difficult to achieve reasonably comparable rates, absent such federal support. To the extent that additional federal high cost support to non-rural carriers, beyond the amount currently provided, is necessary to help meet the statutory goal of reasonably comparable rates, that additional federal support should be used to help ensure that intrastate rates are able to satisfy this statutory goal. The state commission has the authority to indicate which intrastate rates shall be affected to help ensure that the carrier does not double recover. Because rate setting methods and goals may vary

across jurisdictions, we recommend, for purposes of determining federal high cost support, that the Commission use the *cost* of providing all supported services, rather than local rates. These costs are used in the methodology we describe below to calculate the level of federal support that will be available to help achieve reasonable comparability in rates across all states.

B. Making Interstate Support Explicit

14. In the *Universal Service Order* and the *Access Reform Order*, the Commission made several changes to its access charge rules, with the goal of reforming the mechanisms for recovery of subscriber loop costs to move from implicit to explicit federal universal service support mechanisms. In summary, the Commission decided that: (1) Long term support (LTS) should be removed from interstate access charges and made part of explicit federal support mechanisms; and (2) incumbent LECs should use any universal service support from the new support mechanisms to reduce support implicit in access charges, pending further reform.

15. The Commission concluded that universal service support implicit in rates cannot be sustained if competition emerges in the marketplace, and that removing implicit universal service support from interstate rates and replacing such support either with improved revenue recovery mechanisms or with explicit support should remain a goal of federal telecommunications reform. The Commission also found that, unless implicit support is identified and eventually stripped from interstate access charges, those access charges could remain artificially high.

16. The Commission's efforts to remove implicit universal service support from interstate access charges will not affect intrastate rates directly. This issue is intertwined with the Commission's ongoing access reform proceeding, and the Commission should continue to synchronize the access reform and universal service proceedings with any action it takes to remove implicit universal service support from interstate access charges.

17. If the Commission determines that there is implicit universal service high cost support currently in interstate access rates, it is within the Commission's jurisdiction to determine what that implicit support is and what action the Commission should take to make that support explicit. Although we make no recommendation regarding whether the Commission should eliminate implicit support from interstate access rates, we recognize that it has the authority to do so. We do recommend, however, that, to the extent that the Commission determines that implicit support needs to be removed from interstate access charges and replaced with explicit universal service support, interstate access rates, such as the carrier common line charge (CCLC), presubscribed interexchange carrier charge (PICC), or subscriber line charge (SLC), be reduced dollar for dollar to reflect the corresponding explicit support. We further recommend that the Commission seek to ensure that any reductions in interstate access rates inure to the benefit of consumers. When considering such recommendations, the Commission should give due regard to the requirement that universal service shall bear no more than a reasonable share of joint and common costs. Moreover, the Commission should ensure that any efforts to replace implicit support in interstate access charges with explicit support do not jeopardize the reasonable comparability standard, or harm consumers generally, or any class of consumers in particular. Before taking any final action on removing this support from interstate access charges, the Commission should first consult with the Joint Board.

C. Making Intrastate Support Explicit

18. The Act requires that the Joint Board recommend changes to the Commission's rules that may be necessary to implement §§ 214(e) and 254, "including the definition of the services that are supported by Federal universal service support mechanisms." Section 254(b)(5) provides that there should be "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." Thus, the Act envisions that both states and the federal government have authority and responsibility to ensure that universal service needs are met. The Act further allows the states in § 254(f) to create state universal service support mechanisms. The Act clearly envisions the role of the Joint Board to be that of advising the Commission on matters related to federal support mechanisms, and preserves the ability of each state to design intrastate support mechanisms, although these state support mechanisms may not be inconsistent with the federal rules or burden the federal support mechanism. In this *Second Recommended Decision*, we recommend a shared responsibility, but we also conclude, consistent with the statute, that the Commission may not mandate that a state establish an intrastate universal service fund.

19. Historically, intrastate rate design has helped promote universal service. While techniques such as rate averaging have served states well in the past, the onset of competition in local markets is likely to erode the ability of states to fund universal service through implicit support mechanisms. States possess the jurisdiction and responsibility to address these implicit support issues through appropriate rate design and other mechanisms within a state.

20. The same competitive forces that Congress anticipated would require making interstate universal service support explicit may militate for making intrastate universal service support explicit as well. The Act, however, did not mandate such an outcome. States should bear the responsibility for the design of intrastate funding mechanisms. The federal support mechanism should not be contingent upon, nor should it require, any particular action by the state.

III. Proposed Method for Ensuring Sufficient Support for Affordable and Reasonably Comparable Rates

A. Basing Federal High Cost Support on Forward-Looking Economic Costs

21. In the *Universal Service Order*, the Commission adopted the Joint Board's recommendation that the revised universal service support mechanism would determine non-rural carriers' high cost support based on forward-looking economic costs, instead of the incumbent carrier's book costs, of providing supported services in order to "send the correct signals for entry, investment, and innovation in the long run." We continue to believe that federal high cost support should be based on forward-looking economic costs.

22. Without a complete forward-looking economic cost model, it is not possible for the Joint Board to make a final recommendation as to the most reasonable forward-looking methodology to be used in distributing federal high cost support to the states and/or carriers. We note, however, that the vast majority of proposals on the record in this proceeding would use a model to estimate the forward-looking cost of providing the supported services. No party has suggested that there is a method preferable to a model to determine support based on forward-looking costs. We recommend, therefore, that the Commission continue to work with the Joint Board to select the input values to complete a forward-looking cost model and to finalize the methodology for distributing federal high cost support. We do recommend a framework, discussed in more detail below, that relates federal support to

high average forward-looking costs and to states' ability to address their own universal service requirements.

23. Because the Commission's cost proxy model results are not complete, our recommendation on using a model to estimate forward-looking costs is a work in progress, and therefore tentative. We fully anticipate that the model results will furnish reasonable cost estimates for all regions of the country that can provide the basis for determining federal high cost support. Nevertheless, significant uncertainties need to be eliminated before a model can serve as the basis for federal support distributions. For example, a model must meet the openness criterion required of all model developers. At present the federal platform has been tested using geocoded customer location data that is treated as proprietary information by its supplier. We also understand that the Commission is seeking to identify alternative data sources at this time. We urge the Commission not to adopt those particular data as input values unless the Commission determines that such data are sufficiently open and available for testing and comment. Despite these uncertainties, we recommend that the states, the Commission, and the Joint Board continue their joint efforts to develop an accurate cost proxy model. In the event that the Commission has not defined all elements necessary to calculate support based on forward-looking costs in time for implementation by July 1, 1999, then the Joint Board recommends that the present method for determining support be continued for an interim period. In that event, we also recommend that the Commission make interim adjustments to the present rules to resolve any comparability issues in rural states primarily served by a large carrier, consistent with our general recommendation on comparability issues.

24. We emphasize, however, that, in recommending this framework for determining non-rural carriers' high cost support based on forward-looking cost, we do not intend for the Commission to create any precedent for any potential revisions to support mechanisms for rural carriers. The model platform that the Commission adopted in October was designed to estimate *non-rural carriers'* costs. Pursuant to the Joint Board's recommendation, the Commission has provided that the determination of the appropriate manner in which a model should be applied to rural carriers, if at all, will take into account the recommendation of this Joint Board, after the Joint Board receives a report from the Rural Task Force. The Joint Board intends to look closely at these issues to ensure that rural carriers' unique situations and challenges are addressed in the separate proceedings examining their high cost support mechanisms.

25. We further recommend that the Commission reconsider its decision to allow state cost studies to be used in place of the federal model for non-rural companies. We believe that it is more appropriate that the federal universal service support mechanisms be based upon a national yardstick for determining cost. Without such a national yardstick, it will be difficult to establish a consistent nationwide measurement of rate comparability. Although the Commission should fully evaluate any comments on this issue, we recommend that, absent a clear showing that basing federal support on a state cost study is necessary and appropriate to achieve statutory goals, the Commission base all federal support on a uniform methodology that derives from a single, national model. States may, of course, base any intrastate high cost support mechanisms on their own cost studies, rather than a federal model.

B. Size of Area Over Which Costs Are Averaged

26. In the *Universal Service Order,* the Commission adopted the Joint Board's recommendation that forward-looking economic costs be determined at the wire center level or below. While we acknowledge the value of a cost model that is capable of estimating costs at that level of granularity, we now recommend that federal support initially be determined by measuring costs at the study area scale, a scale considerably larger than the wire center. In general, a study area is an area served by a local exchange carrier in a single state. The existing high cost support program measures costs and distributes support at the study area level.

27. We recommend measuring costs at the study area level at this time because we believe that support calculated at this level will properly measure the support responsibility that ought to be borne by federal mechanisms given the current extent of local competition. We noted above that the primary purpose of federal support should be to ensure that rates remain affordable and reasonably comparable throughout the nation. By ensuring that cost disparities among study areas and among states are limited, we believe that federal support will be sufficient to maintain rate comparability and affordability.

28. We also recognize that, as competition develops within a study area, calculating costs using the aggregate characteristics of the study area may become less appropriate. Again, in light of the second goal of reforming universal service—ensuring that support mechanisms are not eroded as competition develops—we recommend that the Commission consider the possible impacts of competition on federal universal service support mechanisms.

29. We have considered the use of statewide average cost (as opposed to study area costs) to determine the need for universal service support. While we agree that the states can be expected to participate as full partners in preserving universal service, a statewide approach could require states to create mechanisms to transfer support among non-rural carriers. At present, however, some states may lack such a mechanism. Given the short time to implement the new mechanism, we find it prudent to average costs at the study area level.

C. State Responsibility for Reasonably Comparable Rates

30. In this section, we conclude that the law gives the Commission an important role in universal service, but that the federal role is not exclusive. The states also bear part of the shared responsibility for universal service. States are free under the Act to establish or refrain from establishing explicit universal service support mechanisms. As we noted above, furthermore, federal support may not be made contingent upon any actions taken, or not taken, by the states. Federal support should not rely on a state's actions with respect to universal service but depend only upon the total support amount generated by the methodology described herein for calculating the amount of federal support for each state. The Joint Board believes therefore, that the level of federal support should reflect, in a consistent manner, each state's ability to use its own resources to address its universal service needs, regardless of whether that or any other amount of support is explicitly provided by the state.

31. While there is no mandate that a state create such an explicit fund, the state should have in place "specific, predictable and sufficient" mechanisms to preserve and advance universal service. The federal support mechanism need not take into account the state's authority and ability actually to establish state universal service support mechanisms, since carriers may be required to recover more total support than the amount used exclusively for purposes of developing the federal fund. Such discretionary variations in support

at the state level are left intentionally independent of the standard determinations of federal support levels, precisely in order to allow states to set their own levels of corresponding affordability and funding requirements. In contrast, federal funding requirements should be those amounts necessary to establish a standard of reasonable comparability of rates across states. Any state is then able to supplement, as desired, any amount of federal funds it may receive under this standard.

32. While we recommend a shared responsibility, we also conclude that, consistent with the statute, no state can or should be required by the Commission to establish an intrastate universal service fund. Each state is uniquely qualified to determine, based upon its own costs, rates and other circumstances, when and if it needs an explicit universal service support mechanism.

33. Implicit support in state rates is a matter intimately related to each state's rate design. The success of these state efforts is demonstrated by the fact that rates today are generally affordable and subscribership is currently very high in most areas of the nation. This indicates a limited need for additional federal involvement. We believe it is consistent with the Act for the Commission to assume that the states will address issues regarding implicit intrastate support in a manner that is appropriate to local conditions. We also conclude that, under the Act, where states have the capacity today to accomplish this task, states are the most appropriate governmental level to address this issue.

34. Some states may face significant obstacles in maintaining reasonably comparable rates, and may find that solving this problem by state action alone is impossible or unreasonable in some instances. For this reason, we believe that additional federal support may be needed to ensure that rates are reasonably comparable, as required by § 254(b)(3).

D. Methodology for Federal Support of Reasonably Comparable Rates

35. We have considered numerous distribution options, including all those submitted by the parties. The methodology we propose incorporates elements from the various plans filed in this proceeding. Our methodology would average costs at a study area level. Our methodology incorporates a reasonable "hold harmless" component, and is grounded in the principle that additional federal high cost support should be targeted to areas with the greatest need. Our recommended methodology includes a cost-based benchmark. Finally, as advocated by a number of parties, our methodology takes into account each state's ability to support its universal service needs internally. The framework below addresses only the affordability and comparability goals of the Act. As indicated previously, we cannot at this time provide the details of a recommendation for a specific mechanism to distribute federal support to eligible carriers. We can, however, outline the basic elements that we believe should be considered in designing the distribution methodology.

36. We recommend that the distribution methodology contain two primary elements. First, study areas with average forward-looking per-line costs significantly in excess of the national average cost should be identified. Second, the state's ability to support its own universal service needs should be determined. Federal support should be provided only for costs that exceed both these thresholds.

37. In the first step of the process, identifying areas with high costs, we recommend that the Commission use the *cost* of providing supported services, rather than local rates, to evaluate rate comparability, because rate setting methods and goals may vary across jurisdictions. We recommend that federal support be available to non-rural carriers with average costs significantly above the national average. Specifically, we recommend that the Commission select a single national cost benchmark against which the forward-looking cost in a given study area would be compared to determine whether that study areas has costs that are significantly above the national average. We recommend that the Commission consider setting this national benchmark at a level somewhere between 115 and 150 percent of the national weighted average cost per line.

38. The second step in determining federal support should reflect that, for the reasons outlined above, federal support is only one portion of the shared federal-state responsibility established in § 254. Federal support should only be used to supplement a state's ability to address its own universal service needs. In order to accomplish this second step, it will be necessary to calculate a level of support that could equitably and reasonably be assumed to be provided by implicit or explicit state support. There are potentially several ways to estimate a state's ability to support its universal service needs. For example, the ratio of lines in a state with costs above a certain threshold could be determined, as a general indication of whether a state has a higher or lower percentage of high cost lines than other states. This ratio of high cost to low cost lines could then be factored into the support equation to reflect that states with a higher percentage of high cost lines will be less able to support their own universal service needs. Other approaches could set each state's presumed support responsibility at a given level, which might be expressed as a dollar value per line or as a percentage of intrastate revenue. The ratio of intrastate traffic volume to total traffic volume could also be used.

39. An example of how this system would work in practice would be an approach that calculated the state's ability to support its own universal service needs based on a percentage of intrastate revenues. Such a limit on a state's presumed responsibility, if adopted, could be between 3 and 6 percent of intrastate telecommunications revenues. Once the first step in the methodology has identified the amount by which costs in the study areas in the state exceed the cost benchmark, the percentage of intrastate revenues would be calculated that would be required to meet this high cost responsibility. If that amount exceeded the state revenue threshold, then the federal mechanism would provide support for the difference.

40. We urge the Commission to continue its deliberations with this Joint Board and to consult with Congress in order to specify further the proper parameters of these two variables as the study area costs are derived from the Commission's model and choice of inputs. It is our goal to recommend a plan that achieves the Act's goals of affordability and reasonable comparability without overburdening consumers across the nation.

IV. Size of the Federal Support Mechanism

41. We described above the general outlines of a method for calculating federal support to high cost areas. Finalization of that method will determine the overall size of federal support for reasonably comparable rates. So long as the fund is for the purposes established in the Act, the Commission has discretion in providing remedies that are designed to "preserve and advance" universal service. Nevertheless, for several reasons we conclude that the federal high cost support fund should be only as large as necessary, consistent with other requirements of the law. This will ensure that there is balance between consumers who directly receive the

benefits of universal service support and those consumers who must pay for the support through their rates.

42. Enabling reasonably comparable rates among states is a task that can likely be accomplished only with federal assistance. Federal support must be sufficient so that, when combined with a reasonable state effort, rates within service areas may be reasonably comparable both within and among states. Until we resolve several other pending policy decisions, as well as obtain more precise cost data, however, it is not possible to define, in dollars, the amount of support required by the comparability standard.

43. We do not believe, however, that current circumstances warrant a high cost support mechanism that results in a significantly larger federal support amount than exists today. We recognize that some states currently may not receive support sufficient to enable reasonably comparable rates, and thus we believe the support level may rise somewhat.

44. These principles can be implemented through a plan that, at least initially, calculates support on a study area basis and allocates a reasonable and equitable share of responsibility for support to state universal service efforts. The plan can enable reasonably comparable rates if the combination of state and federal support can keep the net cost differences (after receipt of universal service support) between high cost and low-cost areas within reasonable bounds. We recognize that competition may develop in unpredictable ways. As competition threatens rate comparability or affordability in high cost areas served by non-rural carriers, it may be necessary to re-evaluate the appropriate level of federal support. Incumbent LECs to date have not demonstrated that implicit support has eroded as a result of competition.

V. Hold Harmless

45. When a new federal support mechanism is implemented, some carriers could receive more or less support than in the past. If substantial reductions were to occur in a single year, some consumers could experience rate shock. Both significant, sudden increases in the fund size overall, and significant decreases in the support that goes to a particular carrier, could have a notable impact on consumers' rates.

46. Rural companies have been assured by the Commission that their support systems will not be altered until January 1, 2001, at the earliest, and in no event before the Joint Board has completed further deliberations on high cost support mechanisms for rural carriers, in light of the recommendations received from the Joint Board-appointed Rural Task Force. In addition, the Commission has stated to Congress that no state should receive less support than it currently receives. The Puerto Rico Telephone Company has asked, notwithstanding its non-rural status, to continue to receive support at present levels, until the transition to a forward-looking high cost support mechanism is implemented for rural companies.

47. We support the Commission's commitment to continue to hold states harmless, so that no non-rural carrier, including the Puerto Rico Telephone Company, will receive less federal high cost assistance than the amount it currently receives from explicit support mechanisms. We recommend, depending on the final amounts of support estimated on a forward-looking basis, that the Commission consider a gradual phase-in of any increase in federal universal service high cost support for non-rural carriers.

VI. Unserved Areas

48. The Arizona Corporation Commission (Arizona Commission) submitted a proposal to use a portion of federal support to address the problem of unserved areas and the inability of low-income residents to obtain telephone service because they cannot afford to pay the required line extension or construction charges. The Arizona Commission's proposal is not intended to be a comprehensive alternative to the high cost fund distribution model, but rather is intended to address a discrete concern related to low-income residents in remote areas.

49. The framework created in the Act was designed to accelerate deployment of services to all Americans, and the universal service program plays an important role in that framework. The issue raised by the Arizona Commission is of interest to the Joint Board, even though it was not among those specifically referred to the Joint Board for further recommendation. States have generally addressed the "unserved household" concern through intrastate proceedings that establish reasonable rates for line extension agreements and encourage carriers to minimize unserved regions of the state. We recognize that investments in line extensions have historically been an issue addressed by the states, and we believe they should continue to be dealt with by the states, to the extent that the states are able to do so. Unserved areas are not unique to Arizona; other states may also face this issue. Although historically a state issue, we recognize that there may be some circumstances which may warrant federal universal service support for line extensions to unserved areas. We recommend that the special needs of unserved areas be investigated and subject to a more comprehensive evaluation in a separate proceeding. The Commission should seek information on unserved areas throughout the nation and determine, in consultation with the Joint Board, whether such areas warrant any special federal universal service consideration.

VII. Mechanism for Distributing Support

A. Portability of Support

We recommend that the Commission continue with the policy established in the *Universal Service Order* of making high cost support available to all eligible telecommunications carriers, whether they be an incumbent LEC or a competitive carrier, including wireless carriers. We believe that portable support is consistent with the principle of competitive neutrality that we previously recommended and the Commission subsequently adopted in the *Universal Service Order*. We continue to support the use of competitive neutrality as a guiding principle of universal service reform and endorse the Commission's definition of this important principle in the *Universal Service Order*.

B. Use of Support

51. One issue raised in comments was whether the Commission should condition the receipt of federal high cost support to ensure that support is used in a manner consistent with § 254. We recommend that the Commission require carriers to certify that they will apply federal high cost universal service support in a manner consistent with § 254.

52. We recognize that some states may lack the authority or the desire to impose constraints or conditions on the use of federal high cost support. We do not recommend, therefore, that the Commission require that states provide any certification, or require any other state action, as a condition for carriers to receive high cost support. At the same time, parties may have a legitimate concern that federal support should be used by carriers to further the goals of § 254. We further recognize that, even if costs are calculated at the study area level, high cost support should be targeted to consumers living in the highest cost areas of the study area. We therefore recommend that the Commission permit, but not require,

states to certify that, in order to receive federal universal service high cost support, a carrier must use such funds in a manner consistent with § 254. For example, in order to provide efficient incentives for competitive entry, a state might require that federal support be targeted to those consumers living in the highest cost areas within a study area.

53. To the extent that the law permits, the Commission could reduce or eliminate federal high cost support if it finds that a carrier has not applied its federal universal service funds consistent with § 254, or if the state finds that the carrier has not adequately demonstrated that the federal support is being used in a manner consistent with § 254(e), which provides that carriers receiving universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." We also clarify that this decision is intended only to affect the amount that carriers receive from the federal universal service high cost support mechanism. We recommend that the Commission clarify procedures by which a party, including a state, may initiate action against a carrier that fails to apply federal universal service support in an appropriate manner.

54. We do not believe that conditioning support on a demonstration that funds are being used for the advancement of universal service places any restrictions on the determination of a carrier's status as an eligible telecommunications carrier. As the *Universal Service Order* notes, "section 214(e)(2) does not permit the Commission or the states to adopt additional criteria for the designation as an eligible carrier."

55. One proposal recommends that the Commission distribute universal service funding directly to state commissions rather than to carriers. We recognize that some state commissions may be able to ensure that high cost support is distributed to carriers and is used in a manner, consistent with federal rules, that best ensures that rates are just, reasonable, and affordable throughout that particular state. Nevertheless, we cannot recommend that the Commission adopt that mechanism, in light of the long-standing practice at the time that the 1996 Act became law of distributing federal universal service support to the carriers providing the supported services, and the absence of any affirmative evidence in the statute or legislative history that Congress intended such a fundamental shift to a state block grant distribution mechanism. In addition, distributing funding directly to state commissions is likely to create substantial administrative burdens for states currently lacking this ability, especially because there is very little time, prior to the July 1, 1999 implementation date, for the state to take the steps necessary to administer federal high cost support pursuant to the rules that Commission will be adopting in the spring.

VIII. Assessing Contributions from Carriers

56. In the *Universal Service Order*, the Commission determined that assessment of contributions for the interstate portion of the high cost and low-income support mechanisms shall be based solely on end-user interstate telecommunications revenues, and assessment of universal service support for eligible schools, libraries and rural health care providers shall be based on interstate and intrastate end-user telecommunications revenues. The Commission declined to assess both intrastate and interstate end-user revenues for the high cost and low-income support mechanisms because the states are currently reforming their own universal service programs, and it would have been premature to assess contributions on intrastate revenues before appropriate forward-looking mechanisms and revenue benchmarks are developed. The Commission also concluded that carriers shall be permitted to recover their contributions to universal service support mechanisms only through rates for interstate services.

57. Pending the decision of the Fifth Circuit, our recommendation on this issue is necessarily tentative. Continuing to assess contributions for high cost and low income support based solely on interstate revenues, as set forth in the *Universal Service Order*, could have certain benefits. Under this approach, state commissions would have the greatest flexibility to tap into their intrastate revenue bases to advance universal service at the state level. Assessing only interstate revenues for federal high cost support also has some significant disadvantages, however. For instance, many carriers that do not routinely have to separate intrastate and interstate revenues for regulatory or business purposes now must do so solely for federal universal service purposes. This creates additional burdens on these carriers, and may create incentives for carriers to misclassify revenues between jurisdictions based on different assessment rates. A jurisdictional assessment base also makes it difficult for carriers to allocate the revenues associated with packages, or bundles, of services that include both intrastate and interstate components. Finally, a non-jurisdictional assessment base would enable both the state and federal mechanisms to tap broader revenue bases, thereby lowering the assessment rates needed. Thus, if the Fifth Circuit determines that the Commission may properly assess all revenues for universal service contributions, the Commission may wish to consider using that assessment methodology for high cost support. If the Commission determines that it may assess universal service contributions based on all revenues, the Commission should find that states may do the same for their state universal service mechanisms. Alternatively, the Commission could consider assessing carriers high cost universal service contributions on a flat, per-line basis, which also addresses some of the difficulties of assessing only interstate revenues.

IX. Carrier Recovery of Universal Service Contributions from Consumers

58. In this section, we recommend that the Commission provide to telecommunications carriers that contribute to universal service strict guidance regarding the extent to which they recover their universal service contributions from consumers. We also recommend that the Commission provide such carriers with express instructions regarding the manner in which carriers may depict on bills charges used to recover universal service contributions. Specifically, we recommend that, to the extent permitted by law, the Commission prohibit carriers from depicting such charges as a "tax" or as mandated by the Commission or the federal government by terms or placement on the bill. We note that, in truly competitive markets, firms recover a wide variety of costs in a wide variety of ways with no itemized notification of similar increases or decreases to individual consumers.

1. Recovery of Universal Service Contributions from Consumers

59. We reiterate that the choice of whether to collect universal service assessments from end users via a line-item charge on their bills should remain with the carriers, and that carriers are free to tell consumers that the carrier is required to pay to support universal service. Specifically, we recommend, that the Commission give careful consideration to a rule that provides that, for carriers that choose to pass through a line item charge to consumers, the line item assessment be no greater than the carrier's universal

service assessment rate. This will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contribution. Such a rule will help prevent consumers or classes of consumers from being charged excessively for a carrier's universal service contributions. Some carriers may attempt to exercise market power and recover through universal service charges in a non-competitive fashion more than they are contributing to universal service, believing that they can describe those charges as mandated by the Commission or federal action. We are also concerned that some carriers may be allocating a disproportionate share of universal service costs to certain classes of consumers. Such practices might contravene § 201(b) of the Act. As noted above, consumers may be less likely to engage in comparative shopping for a carrier if they are led to believe that certain charges are fixed by the Commission or federal government.

2. Characterization of Universal Service Charges to Consumers

60. We believe that a carrier's billing and collection practices for communications services are subject to regulation as common carrier services under Title II of the Act. We believe that inaccurately identifying or describing charges on bills that recover universal service contributions may violate § 201(b) of the Act. For instance, it is important for consumers to understand that universal service support has long been implicit in the rates for various intrastate and interstate telecommunications services. We therefore recommend that the Commission take decisive action to ensure that consumers are not misled as to the nature of charges on bills identified as recovering universal service contributions. Specifically, we recommend that the Commission consider prohibiting carriers from identifying as a "tax" or as mandated by the Commission or federal government any charges to consumers used to recover universal service contributions. Similarly, we recommend that the Commission consider prohibiting carriers from incorrectly describing as mandatory or federally-approved any universal service line items on bills. This restriction would include both written descriptions of the charges and any oral descriptions from consumer service representatives as well as placement on the bill. While interstate telecommunications providers are required to contribute to the universal service support mechanisms, they are not required to impose such charges on consumer bills.

61. Cognizant of the First Amendment implications in regulating the manner in which carriers may convey information on consumers' bills, we note that the Supreme Court has held that the government may require a commercial message to "appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive." On the other hand, restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment. We believe that, pursuant to these Supreme Court rulings, it would not violate the First Amendment to specifically prohibit carriers from including on their bills untruthful or misleading statements regarding the nature of line items used to recover universal service contributions. We urge that the Commission carefully review the record in its proceeding before reaching any conclusion on these issues.

62. We also recommend that the Commission continue to explore, through its Truth-In-Billing proceeding, the possibility of establishing standard nomenclature that carriers could use on their bills to consumers regarding universal service charges. Such standardized language would represent the Commission's view of language that is accurate and not misleading. Standard nomenclature could benefit consumers by having common language across carriers so that consumers can easily identify the charge. We urge that the Commission consider using "Federal Carrier Universal Service Contribution" as standard nomenclature describing any universal service line item on consumer bills. The line item should be accompanied by an explanation that the carrier has chosen to separate its universal service contribution from its other costs of business, and to display the contribution as a line item on the consumer's bill.

63. Finally, we note that many state regulatory agencies either have in place or are considering establishing requirements that will curtail the practice of some carriers of mischaracterizing universal service line items on bills. In addition, other federal agencies, such as the Federal Trade Commission, may have jurisdiction that overlaps or is concurrent with that of the Commission or state regulatory agencies. We therefore recommend that the Commission work closely with these agencies to ensure that consumers are provided with complete and accurate information regarding the nature of universal service line items.

X. Periodic Review

64. The Act contemplates that universal service is an "evolving" level of service. The Act further contemplates that the Joint Board may periodically make recommendations to the Commission regarding modifications in the definition of services supported by the federal universal service support mechanism. Moreover, we recognize that the telecommunications industry is rapidly changing and that both competition and technological changes will affect universal service needs in rural, insular, and high cost areas of the nation. We therefore recommend that the Commission continue to consult with this Joint Board on matters addressed in this *Second Recommended Decision*. We also recommend that the Joint Board and the Commission broadly reexamine its high cost universal service mechanism no later than three years from July 1, 1999.

XI. Recommending Clauses

65. For the reasons discussed herein, this Federal-State Joint Board, pursuant to § 254(a)(1) and § 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 254(a)(1) and 410(c), recommends that the Federal Communications Commission adopt the proposals described above relating to high cost universal service support mechanisms for non-rural carriers.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32736 Filed 12–8–98; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1526 and 1552

[FRL–6196–6]

Acquisition Regulation: Contractor Proposal Evaluations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to include new regulations on Socioeconomic Programs, and to amend regulations regarding Solicitation Provisions and Contract Clauses. These amendments will allow contractors to receive technical points in the proposal evaluation process for their ability to utilize local employment and training while performing under EPA contracts. The use of the solicitation provision and contract clause will assist in decreasing the unemployment rate and support economic development (i.e., provide training to local employees) in geographical locations where contractual requirements will be performed.

DATES: Comments should be submitted not later than February 8, 1999.

ADDRESSES: Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street, SW, Washington, D.C. 20460. Comments will also be accepted on disks in WordPerfect 6.1 format or by electronic mail (E-mail) to smith.frances@epamail.epa.gov. E-mail comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. No Confidential Business Information (CBI) should be submitted through E-mail.

FOR FURTHER INFORMATION CONTACT: Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4368.

SUPPLEMENTARY INFORMATION:

A. Background

The EPA Office of Small and Disadvantaged Business Utilization initiated an effort to encourage local hiring and training in EPA Superfund contracts. The overall objective of the OSDBU initiative was to support economic development in areas where EPA contracts would be performed. As such, this proposed rule is intended to assist in decreasing the unemployment rate and providing training to local employees in geographical locations of contractor performance regarding any type of procurement above the simplified acquisition threshold ($100,000). The Agency has determined that competing offerors may be evaluated on the extent to which they employ and train citizens residing in the communities serviced by EPA contracts. Offerors may be evaluated in such a manner provided that the employment and training preference is based on geography.

The Department of Justice (DOJ) has recognized preferences based on geography as legitimate race-neutral alternatives to achieve agencies' contracting goals. The DOJ indicated that race-neutral alternatives may include preferences based on wealth, income, education, family, and geography. EPA is hereby establishing a preference based solely on geography (i.e., location of contract performance).

B. Executive Order 12866

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Comments regarding Paperwork Reduction Act concerns should be sent to OMB (Attn: EPA Desk Officer). OMB is required to make a decision concerning the collection of information contained in the proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to EPA on this proposed rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever EPA is required to publish notice of general rulemaking, EPA must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of the proposal on small entities, unless the Agency certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities." As defined in RFA/SBREFA, small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. After consideration of the economic impacts of today's proposed rule on small entities, the Agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Because it is anticipated that the proposed preference for local employment and training contemplated herein will be used primarily in the Agency's Superfund contracts, an impact on a substantial number of small entities is not expected. Historically, the Agency's Superfund contracts have been large enough in scope where small business participation at the prime contractor level has not been substantial. Furthermore, if there was any economic impact, it would not be significant. Any evaluation credit given to an offeror competing for an Agency contract for its proposed local employment and training would not be significant in comparison to other evaluation criteria used in determining the awardee of the contract.

The monthly status report identified in this proposed rule is a deliverable requirement. This deliverable requires contractors to specifically track the following throughout the duration of the contract: the number of local residents employed, the labor category for each local employee, the number of hours each local employee worked, the labor rate for each local employee, the date each local employee received specific training, the amount of training hours each local employee received, the start date for each local employee, and the date and reason for termination of employment by the contractor or local employee.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in one year. The rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks.

List of Subjects in 48 CFR Parts 1526 and 1552

Environmental protection, Government procurement.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

SUBCHAPTER D—[AMENDED]

1. Part 1526, Other Socioeconomic Programs, is added to Subchapter D of the EPAAR as follows:

PART 1526—OTHER SOCIOECONOMIC PROGRAMS

Subpart 1526.1—Preference for Local Employment and Training

1526.100 Scope of subpart.
1526.101 Definitions.
1526.102 Policy.
1526.103 Solicitation provision and contract clause.
1526.103–1 Solicitation provision.
1526.103–2 Contract clause.

Authority: Sec. 205(c), 63 stat. 390, as amended.

Subpart 1526.1—Preference for local employment and training.

1526.100 Scope of subpart.

This subpart provides a preference for prime contractors to employ, hire, and train local employees in geographical locations where contractual requirements will be performed. This preference is intended to assist in decreasing the unemployment rate and to provide training to local employees in geographical locations of contract performance. Offerors will receive technical points in the proposal evaluation process for their ability to employ and train citizens in the geographical location of contract performance.

1526.101 Definitions.

Local employment, as used in this subpart, refers to employment and new hiring of people who reside in the geographical location where contractual requirements will be performed.

Geographical location, as used in this subpart, refers to the state and county where contractual requirements will be performed.

Training, as used in this subpart, refers to skilled-based instructions provided to local residents (local employees) to perform specified contractual requirements.

1526.102 Policy.

(a) The preference to use local employment and training as an evaluation factor for award is optional in EPA acquisitions. Contracting officers may include the solicitation provision at 1552.226–70 and the contract clause at 1552.226–71 in solicitations and contracts to encourage contractors to employ, hire, and train local residents.

(b) Contracting officers, in consultation with the project officer, shall define the specific geographical location boundaries for local employment and training in each solicitation and contract. The designated geographical location must coincide with the "area type" indicator used to identify the unemployment rate for the geographical location (see paragraph (e) of this section). Offerors must ensure that employees reside within the stated geographical location boundaries throughout the duration of the contract.

(c) The Bureau of Labor Statistics shall be used to verify unemployment statistics in geographical areas. Contracting officers, in consultation with project officers, shall compare the National unemployment rate with the unemployment rate in the designated geographical area where contract performance will take place.

(1) If the unemployment rate in the designated geographical area is equivalent to or exceeds the National unemployment rate, this clause should be used to support economic development in that particular geographical area.

(2) If the unemployment rate in the designated geographical area is less than the National unemployment rate, this clause may also be used if deemed appropriate by the contracting officer. The contracting officer shall document the contract file with rationale to support use of this clause when the unemployment rate in the designated geographical area is less than the National unemployment rate.

(d) The contracting officer and the project officer may obtain the National unemployment rate by use of the Internet website as follows:

(1) http://stats.bls.gov/blshome.htm
(2) Click "Economy at a Glance"
(3) Review the "unemployment rate" pertaining to the most current month in which the solicitation will be issued.

(e) The contracting officer and the project officer shall verify the Bureau of Labor Statistics for unemployment rates in designated geographical areas by use of the Internet website as follows:

(1) http://stats.bls.gov/blshome.htm

(2) Click "Data"

(3) Click "Selective Access"

(4) Scroll down and click on "Local Area Unemployment Statistics"

(i) Check "not seasonally adjusted" and click "next form"

(ii) Select "unemployment rate" and click "next form"

(iii) Choose the "area type" that corresponds with the designated geographical location

(iv) Select the most current year, format "2. Table", "HTML Tables: Yes", "Catalog: Yes", "Delimiter: Space", and click retrieve data.

(f) Compare the National unemployment rate to the unemployment rate pertaining to the most current month in which the solicitation will be issued.

(g) The contractor's current employees who reside in the designated geographical area may be included toward the achievement of technical evaluation points when this clause is used.

(h) All local employees must provide proof of residency to the contractor (i.e., copy of employee's driver's license or confirm address on W–2 Form).

1526.103 Solicitation provisions and contract clause.

1526.103–1 Solicitation provision.

Contracting officers shall include the provision at 1552.226–70 in solicitations when the technical evaluation criteria will include technical points pertaining to the contractor's ability to employ, hire, and train local residents in the geographical location of contract performance.

1526.103–2 Contract clause.

Contracting officers shall include the contract clause at 1552.226–71 in contracts to require the contractor to deliver monthly status reports on local employment and training.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 1552 continues to read as follows:

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended.

3. Part 1552 is amended by adding 1552.226–70 and 1552.226–71 as follows:

1552.226–70 Preference for local employment and training certification.

As prescribed in 1526.103–1, insert the following provision in solicitations when applicable

Preference for Local Employment and Training Certification (Dec 19XX)

(a) The offeror hereby certifies that local employment and training [ ] will [ ] will not be used in the geographical location where contractual requirements will be performed.

(b) The offeror hereby certifies that procedures for local employment and training [ ] are [ ] are not stated in the offeror's proposal, and [ ] will [ ] will not be utilized in the event that the offeror is awarded this contract.

(c) The offeror [ ] has [ ] has not specified the labor category, labor hours, labor rate, and the amount of training hours for local employment in the offeror's proposal.

(d) The offeror [ ] is [ ] is not aware that the technical evaluation criteria concerning this award will include technical points for the offeror's ability to utilize local employment and training.

(End of provision)

1552.226–71 Preference for local employment and training.

As prescribed in 1526.103–2, insert the following clause in contracts when applicable.

Local Employment and Training (Dec 19XX)

(a) The contractor shall employ and train __ [contracting officer insert # of people] local residents in performance of this contract. A total of __ [contracting officer insert # of people] local residents must be employed and trained throughout the duration of this contract.

(b) Upon employing local residents, the contractor shall ensure that each local resident receives training associated with the required contractual performance.

(c) The contractor shall deliver monthly status reports consisting of the number of local residents employed, the labor category for each local employee, the number of hours each local employee worked, the labor rate for each local employee, the date each local employee received specific training, the amount of training hours each local employee received, the start date for each local employee, and the date and reason for termination of employment by the contractor or local employee.

(d) The contractor shall deliver the information identified in paragraph (c) of this clause, to the contracting officer and project officer as part of the standard monthly report specified in this contract.

(End of clause)

Dated: November 17, 1998.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 98–32683 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 63, No. 236
Wednesday, December 9, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 2, 1998.

The Department of Agriculture has submitted the following information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An emergency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Child Nutrition Database.

OMB control number: 0584–New.

Summary of collection: The Child Nutrition (CN) Database is a necessary component in implementation of USDA's Food and Nutrition Service (FNS) National School Lunch Program (NSLP) and School Breakfast (SBP): School Meals Initiative for Healthy Children final rule published in the June 13, 1995 Federal Register, Volume 60, No. 113. The overriding purpose in NSLP and SBP initiatives is to serve more nutritious and healthful meals to school children. FNS has updated the regulations which established the specific nutrition criteria for reimbursable school meals incorporating the Recommended Dietary Allowances (RDA) issued by the Food and Nutrition Board, Commission on Life Sciences, National Research Council for key nutrients, energy allowances for calories, and the most current nutritional standards as outlined in the Dietary Guidelines. FNS will collect information using a database that contains information on the nutritional composition of a variety of foods.

Need and use of the information: FNS will collect information on (1) USDA commodities; (2) USDA Nutrient Database for Standard Reference food items which are used in the SBP and NSLP; (3) quantity recipes for school food service developed by USDA; and (4) brand name commercially processed foods. The information gathered for the CN Database is required to be used in software programs approved by USDA for use in meeting the nutrient standards and nutrition goals of the Child Nutrition Program meal pattern. The information will be used by both the States and FNS program staffs.

Description of respondents: Business or other for-profit.

Number of respondents: 100.

Frequency of responses: Reporting: Other (as needed).

Total burden hours: 6,000.

National Agricultural Statistics Service

Title: 1998 Census of Aquaculture.

OMB control number: 0535–New.

Summary of collection: The primary objective of the 1998 Census of Aquaculture is to obtain a comprehensive and detailed picture of the aquaculture sector of the economy. The Census of Aquaculture will be the only source of data comparable and consistent at the national and state level. The Census of Aquaculture will cover all operations in each state that produced or sold $1,000 or more of aquaculture or aquaculture products during 1998. Data from the 1998 Census of Aquaculture will be tabulated to provide benchmark statistics at the U.S. and state levels. Authority to administer the Census of Aquaculture is covered by Public Law 105–113, the Census of Agriculture Act of 1997 (Title 7, United States Code). The National Agricultural Statistics Service (NASS) will collect information using survey questionnaires.

Need and use of the information: NASS will collect information on the numbers of operations, land and water acreage, method of production, total production, sales outlets and sales by aquaculture species. The Census of Aquaculture provides the only source of comparable, detailed state level data descriptive of the structure of the aquacultural production sector of the United States economy. Census data are used by the United States economy. Census data are used by the Administration, Federal agencies, and Congress to formulate and evaluate national aquaculture policies and programs. Without the Census of Aquaculture, there would be no reliable source of data consistent for all 50 states.

Description of respondents: Farms.

Number of respondents: 4,800.

Frequency of responses: Reporting: Other (One-time only).

Total burden hours: 2,400.

Emergency approval for this information collection has been requested by November 20, 1998.

Farm Service Agency

Title: Disaster Reserve Flood Compensation Program (7 CFR 1439).

OMB control number: 0560–New.

Summary of collection: Under Section 813 of the Agriculture Act of 1970 (7 U.S.C. 1427a) and S. Con. Res. 63, the Secretary of Agriculture is authorized to utilize the $12 million remaining from the sale of commodities held in the disaster reserve to compensate eligible producers affected by long-term flooding of agriculture land. The program will provide payments to livestock producers with land that is inaccessible or incapable of crop production, grazing, or haying at any time during the 1998 fiscal year due to flooding. The eligible land must be physically located in counties that have been declared a disaster under a Presidential Declaration or Secretarial Designation during the period January 1, 1997 through August 1, 1998. The Farm Service Agency (FSA) will collect information using form CCC–454, Flood Compensation Program.

Need and use of the information: FSA will collect information to determine eligible producers who are currently engaged in the production of livestock in any of the years 1992–1997; determine eligible livestock producers who are under obligation due to a binding lease to make a fair market value rental payment for crop year 1998; and determine eligible producers who have land that is inaccessible or incapable of crop production, haying or grazing due to flooding in FY 98. Eligible producers will be required to provide documents to support their reported disaster such as crop reports, disaster reports, photo copies and slides of the affected areas; form CCC–454 and a copy of lease agreement, if a leaseholder.

Description of respondents: Farms; Federal Government; State, Local or Tribal Government.

Number of respondents: 6,500.

Frequency of responses: Reporting: On occasion.

Total burden hours: 130.

Emergency approval for this information collection has been requested by November 23, 1998.

Forest Service

Title: Economic, Social, and Cultural Contributions of Livestock Ownership.

OMB control number: 0596—New.

Summary of collection: Management of federal lands is hampered in many cases because land managing agencies lack sufficient information to understand and monitor sociocultural values and changing attitudes toward land and resource use. Insufficient recent information of this type hampers efforts of the USDA Forest Service (FS) to work with small livestock operators who graze their cattle under permits on Forest Service-managed lands in northern New Mexico. Many of these permittees are descendants of Hispanic settlers who have farmed and ranched in the area for 400 years. Cultural differences and historical issues of land ownership and use contribute to disagreements and misunderstandings between the permittees and federal land managers. This pilot on the Espanola Ranger District of the Santa Fe National Forest and the Canjilon Ranger District of the Carson National Forest will provide baseline data on economic, social, and cultural contributions of livestock ownership to the permittees of northern New Mexico. The Forest Service (FS) will collect information in a pilot study using questionnaires and face-to-face interviews.

Need and use of the information: FS will collect information to assist managers of the forest to (1) work more effectively with the grazing permittees by facilitating increased intercultural understanding and (2) to develop and update grazing allotment plans, especially for the two targeted districts. This information is also valuable in public education programs concerning the Hispanic culture of northern New Mexico. The results of this pilot study will contribute to the development of a broader study of all permittees in the Santa Fe and Carson National Forests.

Description of respondents: Individuals or households; Business or other for-profit; Farms.

Number of respondents: 112.

Frequency of responses: Reporting: On occasion.

Total burden hours: 364.

National Agricultural Statistics Service

Title: Wildlife Damage.

OMB control number: 0535–0217.

Summary of collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue current official state and national estimates of crop and livestock production, disposition, and prices. Auxiliary services, such as statistical consultation, data collection, summary tabulation, and analysis are performed for other Federal and state agencies on a reimbursable basis as the need arises. NASS has entered into an agreement with the Animal and Plant Health Inspection Service (APHIS) to conduct nationwide sample surveys of selected fruits, nut, and berry producers for the purpose of assessing the true incidence, extent, specific cause, and monetary value of agricultural product and resource losses caused by vertebrate wildlife. APHIS and NASS have entered into this agreement in direct response to specific recommendations to APHSI by the National Animal Damage Control Advisory Committee (NADCAC) in recognition of the present lack of current information available to the APHIS' Wildlife Service for use in strategic planning. NASS will collect information using a sampling survey to evaluate wildlife damage to livestock.

Need and use of the information: NASS will collect information on the development of valid statistical data reflecting the percentage of fruit, nut, and berry growers experiencing losses of products or resources and the total dollar losses at the national level caused by vertebrate wildlife. Goals of the survey are to assess the agricultural community's use and name recognition of the Wildlife Service's program at a regional level, and provide accurate measurement of wildlife damage to agricultural products for use in long range planning and fund allocation.

Description of respondents: Farms.

Number of respondents: 10,400.

Frequency of responses: Reporting: Other (One time).

Total burden hours: 2,253.

Food and Nutrition Service

Title: Waiver Guidance for Food Stamp Time Limits.

OMB control number: 0584–0479.

Summary of collection: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (PRWORA) establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines "that the area in which the individual resides has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals." The Food and Nutrition Service (FNS) will collect information using waiver requests for state officials.

Need and use of the information: FNS will collect information on unemployment rates of over 10 percent; number of jobs to provide employment to individuals and areas in which they reside. FNS will use the information provided by State food stamp agencies to evaluate whether the statutory requirements for a waiver of the food stamp time limit have been met.

Description of respondents: State, Local, or Tribal Government; Federal.

Number of respondents: 44.

Frequency of responses: Reporting: On occasion.

Total burden hours: 2,000.

Forest Service

Title: Application for the Senior Community Service Employment Program.

OBM control number: 0596–0099.

Summary of collection: The Senior Community Service Employment Program (SCSEP) is designed to provide part-time employment opportunities and training to low-income and disadvantaged persons aged 55 or above.

In order for the Forest Service (FS) to establish the eligibility of each individual for enrollment into the program, it is necessary to collect income information and age data for each individual. The application document is the tool needed to collect this pertinent data and other relevant information required by the Department of Labor. The authority for this data collection is contained in the **Federal Register** Rules and Regulations, Section, 641.305, prepared by the Department of Labor, Employment and Training Administration. The Forest Service will collect information using applications submitted by individuals.

Need and use of the information: FS will collect identifying information from individuals as well as data on family income, age, and type of public assistance received. FS will use the information to determine eligibility for enrollment into the Senior Community Service Employment Program. If FS does not collect the personal income and age data from each person applying for the SCSEP, the FS will be unable to determine participant eligibility in this targeted program; will be in violation of the current law; and would not be able to continue as a sponsor of the program.

Description of respondents: Individuals or households.

Number of respondents: 6,500.

Frequency of responses: Reporting: Other (Initial Application).

Total burden hours: 1,083.

Office of the Secretary, White House Liaison

Title: Advisory Committee Membership Background Information.

OMB control number: 0505–0001.

Summary of collection: Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2281, et seq.) requires the Department to provide information concerning advisory committee members' principal place of residence, persons or companies by whom employed, and other major sources of income. Board members' under each program are appointed by the Secretary. Some of the information contained on Form AD–755 is used by the Department to conduct background clearances of prospective board members required by departmental regulations. This clearance is required by all committee members who are appointed by the Secretary. The Office of the Secretary, White House Liaison, in conjunction with agency personnel, will collect information using Form AD–755, Advisory Committee Membership Background Information.

Need and use of the information: The Office of the Secretary, White House Liaison will collect information on the background of the nominees to make sure there are no delinquent loans to the United States Department of Agriculture, USDA, as well as making sure they have no previous record that could be a negative reflection to the USDA. The information obtained from the form is also used in the compilation of an annual report to Congress. Failure of the Department to provide this information would require the Secretary to terminate the pertinent advisory committee.

Description of respondents: Individuals or households.

Number of respondents: 1,631.

Frequency of responses: Reporting: Monthly.

Total burden hours: 760.5.

Emergency approval for this information collection has been requested by December 30, 1998.

Forest Service

Title: Disposal of Mineral Materials.

OMB control number: 0596–0081.

Summary of collection: The Forest Service (FS) is responsible for overseeing the management of National Forest System land. The Multiple-Use Mining Act of 1955 (30 U.S.C. 601, 603, 611–615) gives the FS specific authority to manage the disposal of mineral materials mined from National Forest land. FS uses two separate forms, FS–2800–9 and R1–FS–2850–1, to collect detailed information on the planned mining and disposal operations as well as a contract for the sale of mineral materials.

Need and use of the information: FS will use information collected from the public to ensure that environmental impacts of mineral material disposal are minimized. A review of the operating plan provides the authorized officer the opportunity to determine if the proposed operation is appropriate and consistent with all applicable land management laws and regulations. The information also provides the means of documenting planned operations and the terms and conditions that the Forest Service deems necessary to protect surface resources.

Description of respondents: Business or other for-profit; Individuals or households.

Number of respondents: 3,000.

Frequency of responses: Reporting: On occasion.

Total burden hours: 7,500.

National Agricultural Statistics Service

Title: Year 2000 Survey.

OMB control number: 0535–New.

Summary of collection: There is widespread concern regarding the Year 2000 (Y2K) technology problem. Y2K is an unprecedented issue among all industries including agriculture. The USDA's Y2K Food Supply Working Group is leading an effort to evaluate the Y2K readiness of the agricultural industry. The National Agricultural Statistics Service (NASS) has been asked to assist by providing an assessment of the awareness and preparation by the agricultural production sector for the year 2000. NASS will collect information from farm operators about their Y2K awareness and readiness using a telephone survey.

Need and use of the information: NASS will collect information on the impact of the year 2000 problem on the food industry in general-from farm to fork; description of the Department's Year 2000 outreach program; and an assessment of the general preparedness of the food industry to continue uninterrupted business despite the century date change.

Description of respondents: Farms.

Number of respondents: 1,300.

Frequency of responses: Reporting: Other (One time only).

Total burden hours: 325.

Emergency approval for this information collection has been requested by December 8, 1998.

National Agricultural Statistics Service

Title: Census of Agriculture—American Samoa.

OMB control number: 0535–0226.

Summary of collection: The census of agriculture is the only source of agricultural data comparable and consistent at the national, state and country or county-equivalent levels for the United States and four territories/commonwealths. The census of agriculture, conducted on a 5-year cycle, covers all agricultural operations in each state, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands that meet the farm definition. Authority to administer the census of agriculture was transferred from the Bureau of Census to the USDA's National Agricultural Statistics Service (NASS). The information collection is being resubmitted as an emergency submission to obtain approval to conduct an agricultural census in American Samoa beginning in January 1999. In addition to the census of commercial agricultural operations, a sample of all American Samoa residences will be surveyed to determine the extent of subsistence farming on the island. Representatives of the U.S. Department of Interior and the Government of American Samoa

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recently approached NASS to request that an agriculture census and a survey of residences covering 1998 be conducted in American Samoa, and that subsequently, American Samoa be included in the 5-year agriculture census cycle. NASS will collect information using a survey of the American Samoa residences.

Need and use of the information: NASS will collect information on the number and type of farms, land use, crop acreage and production, livestock inventory and sales production expenses, farm-related income, and other characteristics. The data will be used by the Administration, Federal agencies, and Congress to formulate and evaluate national farm and rural policies and programs, and by the USDA and Bureau of Economic Analysis to compile the farm sector economic indicators and the national income accounts. Without the census of agriculture, there would be no reliable source of data consistent throughout the 50 states and over 3,000 counties in the United States.

Description of respondents: Farms, Individuals or households.

Number of respondents: 3,589,580.

Frequency of responses: Reporting: Other (One time only).

Total burden hours: 1,320,705.

Emergency approval for this information collection has been requested by December 11, 1998.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–32522 Filed 12–8–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Cedar Run Watershed, Fauquier County, Virginia

AGENCY: U.S. Department of Agriculture, Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that a Supplemental Environmental Impact Statement is not being prepared for the Cedar Run Watershed-Multiple Purpose Structure Site 6 in Fauquier County, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. M. Denise Doetzer, State Conservationist, USDA, Natural Resources Conservation Service, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, Virginia 23229–5014, telephone (804) 287–1691.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action provides evidence that the environmental effects associated with the proposed changes from the original EIS to the current project proposal, will not result in significant direct, indirect, or cumulative impacts on the environment. Therefore, Ms. M. Denise Doetzer, State Conservationist, has issued a Finding of No Significant Impact and determined that the preparation and review of a Supplemental Environmental Impact Statement are not needed for this project.

The project purposes are flood control and municipal and industrial water supply. The planned works of improvement include the installation of a combination roller compacted concrete and earth fill multiple purpose flood control and water supply structure approximately 1,000 feet upstream of the Auburn Bridge at Route 602 in Fauquier County, Virginia.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting Ms. M. Denise Doetzer, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Watershed and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

M. Denise Doetzer,

State Conservationist.

[FR Doc. 98–32674 Filed 12–8–98; 8:45 am]

BILLING CODE 3410–16–M

CENSUS MONITORING BOARD

U.S. Census Monitoring Board; Notice of Public Hearing on the Census 2000 Dress Rehearsal

Pursuant to P.L. 105–119, the enabling statute for the U.S. Census Monitoring Board, notice is hereby given that a meeting of the U.S. Census Monitoring Board will be held on Wednesday, December 16, 1998 from 8:00 a.m. to 12:30 p.m., in the City of Sacramento Council Chambers, 915 I Street, Sacramento, CA 95814–2684.

This meeting will be open to the public. The topic for discussion will be the Census 2000 Dress Rehearsal.

Eslela B. Mendoza,

Communications Director.

[FR Doc. 98–32685 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–07–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on January 14, 1999, at the Hyatt Hotel, Canal A Room, 500 Poydras Street, New Orleans, Louisiana 70140. The purpose of the meeting is to plan for future activities and receive civil rights monitoring issues from Committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 2, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–32608 Filed 12–8–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on January 26, 1999, at the Radisson Encore, 4300 Empire Place, Sioux Falls, South Dakota 57106. The purpose of the meeting is to review past Committee activities and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 2, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–32609 Filed 12–8–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1011]

Grant of Authority for Subzone Status: Meadowcraft, Inc. (Wrought Iron Patio Furniture), Yuma County, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ". . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Yuma County Airport Authority, grantee of Foreign-Trade Zone 219, has made application to the Board for authority to establish special-purpose subzone status at the wrought iron patio furniture finishing and distribution (non-manufacturing) facility of Meadowcraft, Inc., located in Yuma County, Arizona (FTZ Docket 83–97, filed 12/16/97);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 204, 1/5/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the wrought iron patio furniture finishing and distribution facility of Meadowcraft, Inc., located in Yuma County, Arizona, (Subzone 219A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the condition that privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone.

Signed at Washington, DC, this 1st day of December, 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–32725 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 54–98]

Foreign-Trade Zone 73—Baltimore/Washington International Airport, Maryland Application for Foreign-Trade Subzone Status: Northrop Grumman Corporation—Electronic Sensors and Systems Division (Electronic Sensoring, Processing, and Communications Technologies), Baltimore, MD, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Maryland Department of Transportation, grantee of FTZ 73, requesting special-purpose subzone status for the manufacturing facilities (telecommunication/information systems) of the Electronic Sensors and Systems Division (ESSD) of Northrop Grumman Corporation, located at sites in the Baltimore, Maryland, area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 1, 1998.

The Northrup Grumman ESSD facilities are located at eleven sites in the Baltimore, Maryland, area (404 acres, 3.6 million sq. ft.): *Site 1* (1 building/450,000 square feet on 43 acres)—Advanced Technology Labs, located at 1212 Winterson Road, Linthicum; *Site 2* (10 buildings/1.7 million sq. ft. on 129 acres)—main manufacturing site, located at 7323 Aviation Boulevard, BWI Airport, Linthicum; *Site 3* (4 buildings/14,000 sq. ft. on 86 acres)—test ranges located at 7141 Ridge Road, Hanover; *Site 4* (1 building/114,000 sq. ft. on 5 acres)—Material Acquisition Center, located at 7001 Aviation Boulevard, Glen Burnie; *Site 5* (5 buildings/274,000 sq. ft. on 49 acres)—located at 895 & 897 Oceanic Drive, Annapolis; *Site 6* (1 building/182,000 sq. ft. on 35 acres)—located at 7301 Sykesville Road, Sykesville; *Site 7* (6 buildings/120,000 sq. ft. on 5 acres)—warehouses located at Trident Court #6, Halethorpe; *Site 8A* (1 building/69,000 sq. ft. on 1.5 acres)—warehouse located at 7041 Troy Hill Drive, Elkridge; *Site 8B* (1 building/135,000 sq. ft. on 3 acres)—warehouse located at 7040 Troy Hill Drive, Elkridge; *Site 9* (2 buildings/105,000 sq. ft. on 5.6 acres)—repair center located in Hunt Valley; *Site 10* (1 building/143,000 sq. ft. on 11 acres)—located at 1745 W. Nursery Road, Linthicum; and *Site 11* (2 buildings/316,000 sq. ft. on 31 acres)—located at 1580B W. Nursery Road, Linthicum.

The facilities (7,021 employees) are used for the development and manufacture of telecommunication and information systems products and related software for defense, aerospace, and transportation. Product categories include: combat electronic systems (including airborne radar, air defense, electronic warfare, electro-optical sensors, shipboard radar, sonar and anti-submarine warfare), airborne surveillance and reconnaissance, air traffic control, marine propulsion and power generation, ground-based and satellite telecommunications, information services and data automation. Some of the components used in the manufacturing process are purchased from abroad (an estimated 10–15% of finished product value),

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including processed silicon carbides; bolts; nails; metal aircraft mountings; coated rods and cored wire for soldering; machinery for molding rubber or plastic; other machinery; electrical transformers; speed drive controllers for electric motors; static converters; electrical ignition starting system parts; single line telephone sets; carrier-current line system apparatuses; sound recording apparatuses; pickup cartridges for sound or video recording or reproducing apparatuses; citizens-band transceivers; radar apparatuses; radio navigational aid apparatuses; video monitors; antennas/antenna reflectors/parts; radar apparatus printed-circuit assemblies or subassemblies; other audio/video components; parts of printed circuit assemblies of radar; radio navigational aid or radio remote control apparatuses; assemblies and subassemblies of radar apparatuses; parts of radar apparatuses; electrical apparatuses for switching or protecting circuits; signal generators; other electrical machines and apparatuses; parts of other electrical machines and apparatuses; coaxial cable and other electrical conductors; ignition wiring sets and other wiring sets; other electric conductors fitted with connectors; other electric conductors; other electrical parts; aircraft launching gear/deck-arrestors/parts; gauges; measuring or checking equipment; parts of measuring or checking equipment; and process control instruments and apparatus (duty rates on these items range from 0.1% to 5.7%). The company also uses a number of foreign-sourced items that are duty free.

Zone procedures would exempt ESSD from Customs duty payments on foreign components used in export production. FTZ procedures will help ESSD to implement a more cost-effective system for handling Customs requirements (including reduced brokerage fees and Customs merchandise processing fees). On its domestic sales, ESSD also would be able to choose the lower duty rate that applies to the finished products (duty-free to 7.0%) for the foreign components noted above. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 8, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 22, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230
U.S. Department of Commerce Export Assistance Center, World Trade Center, Suite 2432, 401 East Pratt Street, Baltimore, Maryland 21202

Dated: December 1, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–32727 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1008]

Grant of Authority; Establishment of a Foreign-Trade Zone, Lakewood, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Township of Lakewood, New Jersey (the Grantee), has made application to the Board (FTZ Docket 81–97, filed 12/8/97), requesting the establishment of a foreign-trade zone at sites in Lakewood, New Jersey, adjacent to the Philadelphia Consolidated Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (62 FR 65655, 12/15/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 235, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 25th day of November, 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–32726 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–806]

Pure Magnesium From Ukraine: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On October 20, 1998, in *Gerald Metals, Inc.* v. *United States*, Court No. 95–06–00782, Slip Op. 98–148 (CIT), a lawsuit challenging the final affirmative determination of the U.S. International Trade Commission (the "Commission") that less-than-fair-value ("LTFV") imports of pure magnesium from Ukraine were causing material injury to the domestic industry, the U.S. Court of International Trade ("CIT") affirmed the Commission's remand determination, which found no material injury as well as no threat to material injury, and entered a judgment order dismissing the case. The issue of material retardation of the establishment of a U.S. industry was never raised before the Commission. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the U.S. Department of Commerce (the "Department") will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or

if it is affirmed on appeal, the Department will revoke the antidumping order covering the subject merchandise.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published notice of its final affirmative LTFV determination covering the subject merchandise, *i.e.*, imports of pure magnesium from Ukraine, on March 30, 1995, *Final Affirmative Determination of Sales at Less Than Fair Value; Pure Magnesium from Ukraine,* 60 FR 16432, and the Commission subsequently made its final affirmative determination that a U.S. industry was being materially injured by reason of imports of the subject merchandise. *See Magnesium from China, Russia, and Ukraine,* 60 FR 26456 (May 17, 1995). The Department published an antidumping order covering the subject merchandise on May 12, 1995. *See Antidumping Duty Orders; Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine,* 60 FR 25691.

Following publication of the antidumping duty order, Gerald Metals, Inc. ("Gerald Metals") an interested party in this case, filed a lawsuit with the CIT challenging the Commission's final affirmative determination of material injury. In its first decision, the CIT affirmed the Commission's final affirmative determination of material injury. However, the Federal Circuit subsequently directed the CIT to vacate its decision to affirm the Commission's final affirmative determination of material injury and to remand the case to the Commission. *See Gerald Metals, Inc.* v. *United States,* 132 F.3d 716 (Fed. Cir. 1997). On remand, the Commission determined that the U.S. industry was not being materially injured, and was not threatened with material injury, by reason of imports of the subject merchandise. The CIT affirmed the Commission's remand determination on October 20, 1998. *See Gerald Metals, Inc.* v. *United States,* Court No. 95–06–00782, Slip Op. 98–148 (CIT).

Suspension of Liquidation

In its decision in *Timken,* the Federal Circuit held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not "in harmony" with the Department's or the Commission's determination. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken,* the Department must suspend liquidation pending the expiration of the period to appeal the CIT's October 20, 1998 decision or, if that decision is appealed, pending a final decision by the Federal Circuit. However, because entries of pure magnesium and alloy magnesium from Ukraine already are being suspended pursuant to the antidumping duty orders in effect, the Department need not order the Customs Service to suspend liquidation. Furthermore, consistent with *Timken,* the Department will revoke the antidumping duty order covering the subject merchandise in the event that the CIT's ruling is not appealed or the Federal Circuit issues a final decision affirming the CIT's ruling.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32722 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On June 5, 1998, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. This review covers one manufacturer and exporter of the subject merchandise. The period of review ("POR") is June 1, 1996 through May 31, 1997. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Becky Hagen or Bob Bolling, AD/CVD Enforcement Group III—Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482–1102 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353.

Background

On June 5, 1998, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan (63 FR 30710). On September 30, 1998, the Department extended the time limit for the final results to December 2, 1998, in accordance with the Act. *See Butt-Weld Pipe Fittings from Taiwan; Extension of Time Limits for Antidumping Duty Administrative Review* (63 FR 54108, October 8, 1998). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products subject to this review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Certain stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows," "tees," "reducers," "stub ends," and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

The POR is June 1, 1996 through May 31, 1997. This review covers sales of certain stainless steel butt-weld pipe fittings from Taiwan by Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Ta Chen, exporters of the subject merchandise ("respondent") and rebuttal comments from petitioner, Flowline Division of Markovitz Enterprises Inc.

Comments

Comment 1: Ta Chen argues that the Department made a clerical programming error in the margin calculation program by setting cost of manufacture ("TOTCOMCV") equal to Ta Chen's total constructed value ("TOTCV"). Respondent argues that Ta Chen's cost of manufacture ("TOTCOMCV") should be set equal to Ta Chen's total cost of manufacture ("TOTCOM"). The petitioner did not comment on this argument.

Department's Position: We agree with respondent and have corrected this error for the final results. The final margin program now sets the cost of manufacture equal to total cost of manufacture. For a more specific discussion of the change that the Department has made in its final margin program, please see the Department's analysis memorandum and final antidumping duty margin calculation program.

Comment 2: Ta Chen argues that inventory carrying costs associated with time on the water should not be included in U.S. indirect selling expenses deducted from U.S. price. It asserts that only indirect selling expenses associated with economic activity occurring in the United States should be deducted from U.S. price pursuant to determining net price. Respondent states that the preliminary results added the ocean time in transit between Ta Chen's plant in Tainan, Taiwan and Ta Chen International's ("TCI") warehouses in Long Beach, California to Ta Chen's reported inventory carrying costs. It argues that that inventory carrying cost is not associated with economic activity in the United States, and therefore should not be included in U.S. indirect selling expenses.

Petitioner argues that, while it is true that the amendments to the dumping statute now only recognize those indirect selling expenses associated with economic activity occurring in the United States, it is not true that "time on the water" necessarily took place outside the United States. Additionally, petitioner argues, the Department's Antidumping Manual ("AD Manual") notes that foreign inventory carrying costs do not form part of the constructed export price ("CEP") deduction, and the AD Manual makes no mention of the costs incurred once a product leaves the foreign country. Petitioner asserts that Ta Chen revised its reported inventory carrying costs at verification to include "time on the water" in the calculations, which was accepted by the Department. They argue that the Department's inclusion of "time on the water" is consistent with its past practice, and does not constitute an unintentional error.

Department's Position: We agree with Ta Chen that the inventory carrying costs incurred for the time on the water between Taiwan and the United States should not be deducted from the price used to calculate CEP. The Department has addressed this issue in the past in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty administrative Reviews,* 63 FR 33320, 33344 (June 18, 1998) and *Color Picture Tubes From Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 34201, 34206 (June 25, 1997). In both instances, the Department stated that it is clear from the Statement of Administrative Action ("SAA") that under section 772(d) of the Act we should deduct from CEP only those expenses associated with commercial activity in the United States which relate to the resale to an unaffiliated purchaser. *In Color Picture Tubes From Japan,* we further explained that the SAA indicates CEP "is now calculated to be, as closely as possible, a price corresponding to a price between non-affiliated exporters and importers." 62 FR at 34207 (quoting SAA at 823). Section 351.402(b) of the Department's new regulations [1] codifies this principle, stating that we will make adjustments under section 772(d) for expenses associated with commercial activity in the United States, no matter where it was incurred. Therefore, consistent with section 772(d) and the SAA, we deduct only those expenses representing activities undertaken to make the sale to the unaffiliated customer in the United States. We ordinarily do not deduct indirect expenses incurred in selling to the affiliated U.S. importer. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825, 11834 (March 13, 1997); *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 17148, 17168 (April 9, 1997).

We do not consider the portion of Ta Chen's inventory carrying costs during the period of transit to be associated with commercial activity in the United States. These expenses were incurred from the date of exportation to the date the affiliated importer received the subject merchandise in the United States and, therefore, relate to the sale to Ta Chen's U.S. affiliate and not to the sale to the unaffiliated customer. *See Certain Stainless Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review (Steel Wire Rods),* 62 FR 25915, 25916 (May 12, 1997). Accordingly, for these final results we have not deducted such costs from the CEP.

Comment 3: Ta Chen argues that the CEP profit calculation erroneously imputes a profit on TCI's direct expenses and commission payments in the United States. It states that the CEP profit calculation should only be an imputed profit on Ta Chen's indirect selling expenses occurring in the United States, not on U.S. direct selling expenses and commissions.

Petitioner argues that it is the Department's policy to use total U.S. selling expenses, including direct selling expenses and commission, in the derivation of CEP profit.

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[1] Although this review was conducted under the Department's old regulations at 19 CFR part 353, section 351.701 of the new regulations states that the old regulations will apply to reviews requested before the new regulations take effect to the extent the old regulations "were not invalidated by the URAA." Here, the old regulations governing exporter sales price deductions are not in conformity with the requirements of the URAA, therefore the new regulations at 351.402(b) apply to this CEP deduction issue.

Department's Position: The Department agrees with petitioner. Ta Chen argues that the Department should not impute a CEP profit on Ta Chen's U.S. direct selling expenses and commissions. Instead, Ta Chen asserts that the Department should only impute CEP profit on Ta Chen's indirect selling expenses occurring in the United States. Respondent's proposed methodology is directly contrary to the plain language of Section 772(d)(3) of the Act. Section 772(d)(3) provides that the Department shall reduce the starting price used to establish CEP by the profit allocated to the expenses described in section 772(d)(1)&(2). Section 772(d)(1) lists the following expenses:

(A) Commissions for selling the subject merchandise in the United States;

(B) Expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) Any selling expenses that the seller pays on behalf of the purchaser; and

(D) Any selling expenses not deducted under * * * (A), (B), or (C) [above].

Further, for purposes of calculating the applicable percentage, section 772(f)(2)(B) defines total U.S. expenses as those expenses deducted under section 772(d)(1)&(2). Therefore, contrary to Ta Chen's argument, the plain language of the statute directs the Department to deduct from CEP the profit allocated to all U.S. expenses, including U.S. direct selling expenses and commissions. Thus, the Department has not changed the CEP profit methodology used in the *Preliminary Results.*

Final Results of Review

As a result of this review, we determine that the following margin exists for the period June 1, 1996 through May 31, 1997:

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen	0.34

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR. As a result of this review, we have determined that the importer-specific duty assessment rate is necessary.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain stainless steel butt-weld pipe fittings from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) No cash deposit will be required for the reviewed company because its rate, stated above, is *de minimis;* (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 51.03 percent, the "All Others" rate made effective by the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677(f)(i)(1)).

Dated: December 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32728 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–803]

Titanium Sponge From the Russian Federation: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 29, 1998, the Department of Commerce (the Department) initiated an administrative review of the antidumping finding on titanium sponge from the Russian Federation (Russia) for TMC Trading International, Ltd. (TMC), an exporter/reseller of subject merchandise. This review was requested by TMC and covers the period April 1, 1997, through March 31, 1998. The Department is rescinding the review after receiving a withdrawal of its request for review from TMC.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy Frankel, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3936 and 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 28, 1998, TMC requested that the Department conduct an administrative review of titanium sponge from Russia for the period April

1, 1997 through March 31, 1998. No other interested party requested that the Department conduct an administrative review.

On September 29, 1998, the Department published in the **Federal Register** (63 FR 51893) a notice of initiation of administrative review with respect to TMC, an exporter/reseller of subject merchandise. On November 12, 1998, TMC filed a letter with the Department withdrawing its request that the Department conduct an administrative review. This withdrawal complies with section 351.213(d) of the Department's regulations, which grants parties 90 days from the publication of the notice of initiation of review to withdraw a request for review. *See* 19 CFR 351.213(d). Therefore, the Department is rescinding this administrative review.

This notice is in accordance with section 751 of the Act and section 351.213(d) of the Department's regulations.

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32724 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–802]

Agreement Suspending the Antidumping Investigation on Uranium From Kazakhstan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amendment to the Agreement Between the United States Department of Commerce and the Republic of Kazakhstan Suspending the Antidumping Investigation on Uranium from Kazakhstan.

SUMMARY: The Department of Commerce ("Department") and the Republic of Kazakhstan ("Kazakhstan") have signed an Amendment ("Amendment") to the Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan ("Agreement").

EFFECTIVE DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Juanita H. Chen, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department and Kazakhstan signed the Agreement and, on October 20, 1992, the Agreement was published in the **Federal Register** (57 FR 49220, 49222). On August 11, 1998, the Department and Kazakhstan initialed an amendment to permit entry of certain uranium from Kazakhstan under the re-export provision of the Agreement ("Initialed Amendment"). The Department subsequently released the Initialed Amendment to interested parties for comment. After careful consideration by the Department of the comments submitted, and further consultations between the parties, the Department and Kazakhstan signed a final Amendment on September 29, 1998. The text of said final Amendment follows this notice. On October 2, 1998, to satisfy a condition subsequent, in compliance with the terms of the Amendment, Kazakhstan submitted a numerical chart to the record showing that the entire volume of Kazakhstan's imported enriched uranium and uranium received in consideration for Kazakhstan's uranium, both in terms of separative work units (SWU) and pounds U3O8 equivalent, would be re-exported.

Dated: November 27, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

Amendment to the Agreement Between the United States Department of Commerce and the Republic of Kazakhstan Suspending the Antidumping Investigation on Uranium From Kazakhstan

The United States Department of Commerce ("the Department") and the Government of the Republic of Kazakhstan ("Kazakhstan") hereby amend their Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan, signed October 16, 1992 ("the Agreement"), to permit entry, under Section IV.H of the Agreement, of uranium from Kazakhstan, identified in submissions to the Department dated December 30, 1997, January 22, 1998, February 2, 1998, March 3, 1998, April 30, 1998, and September 1, 1998. The Department and Kazakhstan acknowledge that they are also negotiating an amendment to this Agreement. As part of these negotiations, the parties shall seek to establish pre-shipment notification and approval procedures for shipments under Section IV.H.

Section IV.H of the Agreement is hereby amended by adding the following sentence:

The uranium identified as Kazakhstani uranium in submissions to the Department dated December 30, 1997, January 22, 1998, February 2, 1998, March 3, 1998, April 30, 1998, and September 1, 1998, may enter the United States pursuant to this provision, consistent with the transaction described in such submissions, notwithstanding whether such transaction involves a sale in the United States. In addition, the Government of Kazakhstan must provide, on the record, a full description of the disposition of all uranium to be delivered pursuant to this Amendment, including all relevant contracts. All documents submitted in connection with such transactions are subject to verification. This Amendment will become effective upon the filing of such submission. All other requirements of this Section apply in full.

Signed on this 29th day of September, 1998.

For the Government of Kazakhstan:

Bolat Nurgaliev,

Ambassador to the United States, Republic of Kazakhstan.

For the United States Department of Commerce:

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32723 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand

AGENCY: International Trade Administration, Import Administration, Department of Commerce

ACTION: Notice of amendment to final results of countervailing duty administrative review in accordance with decision upon remand.

SUMMARY: On September 29, 1998, in *Creswell Trading Co.* v. *United States*, Slip Op. No 98–139., the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) redetermination on remand regarding the administrative review covering the period January 1, 1985, through December 31, 1985. In accordance with the CIT's instructions, the Department has recalculated the countervailing duty rates. The final countervailing duty rates for this review period are listed below in the *Results of Remand* section.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Richard Herring, Office of AD/CVD Enforcement VI, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Room 4012, Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION: On December 10, 1990, the Department published in the **Federal Register** (55 FR 50747) the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1985, through December 1, 1985. Subsequently, respondents challenged the Department's final results before the Court of International Trade (CIT) regarding the Department's methodology for calculating program rates for the subsidies provided under India's International Price Reimbursement Scheme (IPRS).

The IPRS is a program through which the Government of India ("GOI") provided rebates to castings exporters that purchased domestically-produced pig iron at prices set by the GOI. According to the GOI, the amounts of these rebates were calculated to equal the differences between the higher prices actually paid for domestic pig iron and alternative prices of pig iron available from sources outside of India. In the 1985 administrative review of the countervailing duty order, the Department determined that the IPRS program was countervailable in its entirety because the rebates provided preferential prices for exporters which were not available to domestic purchasers of pig iron. Indian exporters appealed to the CIT, claiming that the Department should have examined whether the IPRS program met the criteria for non-countervailability under Item (d) of the Illustrative List of Export Subsidies. The CIT agreed and remanded the case to the Department. *Creswell Trading Co.* v. *United States*, 783 F. Supp. 1418 (CIT 1992) (*"Creswell I"*). The Department again determined that the program was countervailable in its entirety because the Indian exporters did not provide sufficient information to conduct an Item (d) analysis. The CIT upheld the Department's position on the first remand of the 1985 review. *Creswell Trading Co.* v. *United States*, 797 F. Supp. 1038 (CIT 1992) (*"Creswell II"*).

The Indian exporters appealed *Creswell II* to U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On February 2, 1994, in *Creswell Trading Co.*, v. *United States*, 15 F.3d 1054 (Fed. Cir. 1994) (*"Creswell III"*), the Federal Circuit held that the Indian exporters had met their burden of producing evidence regarding prices for pig iron on the world market. Consequently, the Federal Circuit instructed the CIT to remand the final results of the 1985 administrative review to the Department with instructions to conduct an Item (d) analysis of the IPRS program taking into consideration pig iron pricing information placed on the record by the Indian exporters. On April 25, 1994, pursuant to the opinion of the Federal Circuit in *Creswell III*, the CIT remanded the final results of the 1985 administrative review to the Department for the second time.

In the second remand, the Department found that the IPRS program fit within the general concept of the Item (d) exception in that the program attempted to rebate to Indian casting exporters the difference between the higher cost of Indian pig iron and the lower cost of foreign-sourced pig iron. The Department interpreted Item (d) to permit a comparison of delivered prices in order to give effect to the Item (d) language which required an analysis of "such terms and conditions" that made foreign-sourced pig iron "commercially available on world markets to [Indian] exporters." The Department determined that, because the payments to Indian exporters under the IPRS program enabled castings exporters to obtain pig iron on terms "more favorable than those available on world markets," the payments were excessive. Accordingly, the Department determined that the payments were countervailable to the extent they covered scrap used in the production of castings and to the extent ocean freight was excluded from the international benchmark price. In *Creswell Trading Co.* v. *United States*, 936 F. Supp. 1072 (CIT 1996) (*"Creswell IV"*), the CIT affirmed the Department's determination that the IPRS program fit within the ambit of the Item (d) exception. It also affirmed the Department's determination to countervail IPRS payments for scrap, but disapproved of the Department's determination that an Item (d) analysis requires comparing delivered prices to delivered prices, inclusive of ocean freight. On September 30, 1996, the Department submitted its third redetermination on remand, in which it excluded the cost of ocean freight from the international benchmark price for pig iron, and the CIT affirmed it in *Creswell Trading Co.* v. *United States*, 964 F. Supp. 409 (CIT 1997) (*"Creswell V"*). The Department then appealed *Creswell V* with respect to the exclusion of ocean freight from the world market price of pig iron. The Federal Circuit reversed, in part, the CIT's opinion in *Creswell V*, stating in relevant part that the CIT "erred in holding that the oceanic shipping costs did not constitute countervailable subsidies under Item (d)." *Creswell Trading Co.* v. *United States*, 141 F.3rd 1471, 1477 (1998) (*"Creswell VI"*). The Federal Circuit went on to state that:

> Item (d) specifies that delivery of products by a foreign government to exporters on terms or conditions more favorable than are "commercially available" to those exporters on the world markets constitutes a countervailable subsidy. Item (d) thus recognizes that foreign governments may subsidize their domestic industries to allow them to compete effectively on the world market as long as the extent of the subsidization is not more favorable to their exporters than if those exporters had to participate in the world market without assistance. If the amount of the subsidization exceeds this point, it is excessive and this excessive amount is countervailable under Item (d). Accordingly, Item (d) mandates a comparison between the terms and conditions under which product was supplied to exporters by their governments and the terms and conditions to which those exporters would have been subject had they instead participated in the world market.

Id. Further, the Federal Circuit explained that:

> A castings manufacturer procuring pig iron on the world market would have to pay the FOB price for the pig iron itself, plus the cost of shipping that iron to India. Accordingly, the world market price must include the cost of shipping. To the extent that the Indian government's world market price did not include oceanic shipping costs, its world market price was artificially low and its rebate artificially high by this amount. The price of pig iron that is not delivered to India cannot be fairly compared with the price of pig iron that is delivered. Thus, because of the omission of oceanic shipping costs from the calculation of the world market price, the IPRS program has in effect provided pig iron to India's castings manufacturers on terms and conditions more favorable than had those manufacturers actually procured pig iron on the world market.

Id. 141 F.3rd at 1478.

Results of Remand

In accordance with the CIT's order dated June 24, 1998, the Department prepared final results of redetermination on remand with respect to the final results of the 1985 countervailing duty administrative review of iron-metal castings from India. Pursuant to the CIT's remand instructions, which were issued as a result of *Creswell VI*, the Department, in recalculating the countervailable subsidy conferred under India's IPRS program, included ocean freight in the international benchmark price for pig iron. The Department has recalculated the subsidies provided under the IPRS program consistent with

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the opinion of the Federal Circuit in *Creswell VI.*

On September 29, 1998, the CIT affirmed the Department's redetermination. *Creswell Trading Co.* v. *United States*, Slip Op. No. 98–139. No comments were received by the CIT contesting the Department's redetermination. Therefore, in accordance with the results of remand affirmed by the CIT, we are amending the final results of administrative review. The final countervailing duty rates for the 1985 period of review are the following:

Carnation Enterprise Pvt. Ltd.—13.83%
Crescent Foundry Co. Pvt. Ltd.—30.09%
Govind Steel—51.39%
Kejriwal Iron & Steel Works—14.09%
R.B. Agarwalla & Co.—7.96%
R.S.I.—8.22%
Serampore Industries Pvt. Ltd.—22.09%
Uma Iron & Steel Co.—15.64%
Kajaria Castings Ltd.—44.84%
Super Castings Ltd.—29.40%
Country-wide Rate—22.09%

The Department will instruct the Customs Service to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to the Customs Service. The above rate will not affect the cash deposit requirements currently in effect, which will continue to be based on the rates found to exist in the most recently completed review.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675(a)(1)) and § 355.22 of the Department's regulations (19 CFR 355.22 (1989)).

Dated: December 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–32721 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in while or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899–2200; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 96–002US.

Title: True Time Delay Generation Utilizing Broadband Light Source With Fiber Chirp Grating Array and Acousto-Optic Beam Steering And 2–D Architecture.

Abstract: System and method for rapidly reconfigurable two-dimensional true time delay generation for phased array antennas is described. The system utilizes a broadband light source, an array of fiber chirp gratings in a single fiber, and an acousto-optic spectrometer to generate a time-delayed linear grating. The grating is subsequently rotated to the desired angle utilizing an acousto-optic device having no moving parts.

NIST Docket Number: 97–049US.

Title: Method And Apparatus For Compression Of A Polarized Gas.

Abstract: A polarized ^{3}He gas source has been developed which is capable of producing one standard liter of 10–15% polarized ^{3}He gas in 2–3 hours. The gas source comprises an apparatus which compresses ^{3}He gas produced by metastability-exchange optical pumping (at a pressure of a few mbar) to an output pressure of about 1 bar with up to 70% preservation of the polarization. By cooling the storage cell to liquid nitrogen temperature during filling by the compressor, a final room temperature pressure of 4 bar has been obtained. The invention is a compact and relatively inexpensive device which is the result of extensive modifications to a standard diaphragm pump and appears to be ideally suited for use in a clinical setting where space is at a premium. The use of the polarized gas allows MRI studies of lungs and other air spaces, using conventional MRI systems or much smaller magnetic field levels.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–32691 Filed 12–8–98; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for three-year extension of OMB control #3038–0013—Exemptions from Speculative Limits.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0013, Exemptions from Speculative Limits to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. The information collected pursuant to this rule is in the public interest and is necessary for market surveillance.

ADDRESSES: Persons wishing to comment on this information collection should contact the Desk Officer, CFTC, Office of Management and Budget, Room 3228, NEOB, Washington, D.C. 20502, (202) 395–3897. Copies of the submission are available from the CFTC Clearance Officer, (202) 418–5160.

Title: Exemptions from Speculative Limits.

Control Number: 3038–0013.

Action: Extension.

Respondents: Businesses (excluding small business).

Estimated Annual Burden: 36 total hours.

Respondents	Regulation (17 CFR)	Estimated No. of respondents	Annual responses	Est. Avg. hours per response
Businesses	1.47 & 1.48 and Part 150.	12	12	36

Issued in Washington, DC, on December 3, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–32672 Filed 12–10–98; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

All-Terrain Vehicles; Commission Resolution

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("Commission") hereby announces its issuance of a Resolution commending certain members of the all-terrain vehicle ("ATV") industry (Yamaha Motor Corp., U.S.A., Kawasaki Motors Corp., U.S.A., American Suzuki Motor Corp., Polaris Industries Inc., and Arctic Cat Inc.) for their ATV action plans consisting of new and continuing safety-related actions regarding these products. A notice, approved by the Commission and published in the **Federal Register** on September 9, 1998, included detailed historical and current information regarding the ATV matter and invited public comment on issuance of the Resolution. (63 FR 48199) After consideration of such public comments, the Commission has voted to approve the following Resolution:[1]

Resolution of the United States Consumer Product Safety Comission

The United States Consumer Product Safety Commission (the "Commission"), by vote on December 1, 1998, RESOLVES THAT:

Whereas, on April 28, 1988, the United States of America entered into Consent Decrees, filed in U.S. District Court, with American Honda Motor Co., Inc., Yamaha Motor Corp., U.S.A., Kawasaki Motors Corp., U.S.A., U.S. Suzuki Motor Corp. (nka American Suzuki Motor Corp.), and Polaris Industries, L.P. (nka Polaris Industries Inc.), which expired on April 28, 1998 (the "Consent Decrees");

Whereas, on September 27, 1996, the Commission entered into an Agreement and Action Plan with Arctic Cat Inc., which expired on April 28, 1998 (the "Arctic Cat Agreement"); and

Whereas, the Consent Decrees and Arctic Cat Agreement required the signatory companies to implement various measures designed to enhance consumer safety with respect to all-terrain vehicles ("ATVs"); and

Whereas, on April 24, 1998, the Commission released the results and analysis of its 1997 ATV injury and exposure surveys, and those surveys indicate that, among other things, (i) risk of injury is 2.5 times higher when children younger than 16 drive ATVs than for drivers 16 to 34 years of age and 4.5 times higher for such children than for drivers 35 to 54 years of age; and (ii) risk declines with experience, for which the Commission believes formal training is a partial surrogate; and

Whereas, the Commission remains concerned about the current level of deaths and injuries associated with ATVs, especially those involving children younger than 16, and believes enhanced safety efforts may achieve a further reduction in such deaths and injuries; and

Whereas, the staff of the Commission and Yamaha Motor Corp., U.S.A., Kawasaki Motors Corp., U.S.A., American Suzuki Motor Corp., Polaris Industries Inc., and Arctic Cat Inc. (collectively, the "Participating Companies") have actively consulted on actions that the companies will voluntarily undertake (the "ATV Action Plan"); and

Whereas, the ATV Action Plan is set forth in separate documents that the Participating Companies have submitted to the Commission's staff; and

Whereas, a description of the ATV Action Plan, together with a draft copy of this Resolution and other materials, was published in the **Federal Register** on September 9, 1998, and the public was invited to comment on this Resolution and the Commission has considered such comments in adopting this Resolution; and

Whereas, pursuant to the ATV Action Plan, the Participating Companies will (i) promote training, including through enhanced cash incentives to first-time ATV purchasers (or, in the case of Polaris, through requiring that previously untrained purchasers take training in order to receive a warranty on the vehicle), (ii) implement a multi-million dollar, multi-year information and education safety campaign emphasizing, among other things, the risks created when children younger than 16 operate or ride on adult-sized ATVs, (iii) not market, sell or offer to sell adult-size ATVs to or for use by children younger than 16, (iv) not market or sell three-wheel ATVs, (v) provide safety information on and with ATVs, including giving an ATV Safety Alert to each purchaser, (vi) retain the services of an independent organization to continue the undercover monitoring of the same number of randomly selected dealers as was done under previous monitoring programs, (vii) continue or undertake various other safety measures, and (viii) notify the Commission at least 60 days in advance of any material changes to the ATV Action Plan (Arctic Cat Inc. has agreed to continue with its actions under the ATV Action Plan for five years); and

Whereas, notwithstanding implementation of the ATV Action Plan, the Commission reserves all its statutory enforcement, regulatory and oversight powers with respect to ATVs.

Now, therefore:

1. The Commission commends the Participating Companies for the ATV Action Plan, which the Commission believes will provide safety benefits to consumers.

2. The Commission will actively monitor the ATV Action Plan by, among other things, increasing the undercover inspections it conducts of dealerships to ensure compliance with age recommendations; increasing its inspections to ensure proper use of labels and hangtags; and collecting and assessing information regarding the effectiveness of the new training incentives. Other activities are set forth in the **Federal Register** notice announcing this Resolution. The

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[1] Chairman Ann Brown voted to approve the Resolution. Commissioner Thomas H. Moore voted to approve the Resolution and issued a statement regarding his vote. Commissioner Mary Sheila Gall abstained from voting on the Resolution and issued a statement explaining the basis for her abstention. The ballot vote sheets and the statements of Commissioners Moore and Gall are available to the public through the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Commission will take appropriate action based on the results of this monitoring activity. The Commission also will continue to track the death and injury rate associated with ATVs and reserves its authority to take action based on this data.

FOR FURTHER INFORMATION: For further information about the Resolution, call or write Leonard H. Goldstein, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0980, Ext. 2202.

Dated: December 4, 1998.

Todd A. Stevenson,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 98–32676 Filed 12–8–98; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Space Debris Meeting with NASA in support of the HQ USAF Scientific Advisory Board will meet at NASA Headquarters, Washington, DC on January 6, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss Volume 3 of the Space Debris Report and get approval for release.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–32610 Filed 12–8–98; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat_Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 3, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Application for Bilingual Education: Field-Initiated Research Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 20.

Burden Hours: 2,900.

Abstract: The Department of Education needs and uses this information to award grants for Field-Initiated Research in bilingual education. The respondents are institutions of higher education (IHEs), nonprofit organizations (NPOs), and State and local educational agencies.

[FR Doc. 98–32611 Filed 12–8–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Renewal of the Advisory Committee on Appliance Energy Efficiency Standards

AGENCY: Department of Energy.

ACTION: Notice of Renewal.

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), and title 41, Code of Federal Regulations (CFR), Subpart 101–6, Final Rule on Federal Advisory Committee Management, I hereby certify the Advisory Committee on Appliance Energy Efficiency Standards is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This notice of intent follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101–6.10.

The purpose of the Committee is to provide the Secretary of Energy with advice, information, and recommendations on the appliance energy efficiency standards rulemaking process. The Committee will provide an organized forum for a diverse set of interested stakeholders and technically adept individuals to conduct an in-depth assessment of the Appliance Standards rulemaking process.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints, including representatives from manufacturer trade associations, energy conservation advocates, utilities, state energy offices, and others who may significantly contribute to the deliberations of the committee. All meetings of this Committee will be noticed ahead of time in the **Federal Register**

Further information regarding this Advisory Committee may be obtained from Michael J. McCabe, Director Office of Codes and Standards, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121 (telephone: 202–586–9127)

Issued in Washington, DC on December 2, 1998.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 98–32671 Filed 12–8–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–160–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective December 1, 1998:

Thirty-Fourth Revised Sheet No. 8
Thirty-Fourth Revised Sheet No. 9
Thirty-Third Revised Sheet No. 13
Fortieth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of $2,571,704 of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed recovery amount is virtually identical to the previous above market cost filing of $2,571,558, and therefore the resulting rates reflected on the above tariff sheets have not changed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32695 Filed 12–8–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–32–000]

Colorado Interstate Gas Company; Notice of GRI Filing

December 3, 1998.

Take notice on November 30, 1998, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Twenty-Fifth Revised Sheet No. 11, with an effective date of January 1, 1999.

CIG states the purpose of this filing is to permit CIG to correct its Gas Research Institute (GRI) filing made November 16, 1998.

CIG states that copies of the filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32705 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–4–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 3, 1998.

Take notice that on November 30, 1998, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, Tenth Revised Sheet No. 11A, reflecting an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.98% to 1.17% effective January 1, 1999.

CIG states that copies of the filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32707 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–169–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on December 1, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Thirty-second Revised Sheet No. 25
Thirty-second Revised Sheet No. 26
Thirty-second Revised Sheet No. 27
Thirteenth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Secton E, True-up Mechanism of the Settlement (Settlement) in Docket No. RP95–408 et al., approved by the Commission on April 17, 1997 (79 FERC ¶61,044 (1997)). Under the approved section of the Settlement, Columbia is required to true-up its collections pursuant to the Settlement Component for 12-month periods commencing November 1, 1996 and ending October 31, 2004. The second 12-month period (Period II) ended October 31, 1998. Columbia is making this true-up filing in compliance with the Settlement to return a net over-recovered amount of $1,190,111 for Period II, which includes interest and the true-up of the Period I Settlement Component adjustment, through an adjustment to the Settlement Component of the base rates for the period January 1, 1999 through October 31, 1999.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98–32700 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–719–000]

Commodore Electric; Notice of Filing

December 3, 1998.

Take notice that on November 25, 1998, Commodore Gas Company d/b/a Commodore Electric (Commodore), petitioned the Commission for acceptance of Commodore Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Commodore intends to engage in wholesale electric power and energy purchases and sales as a marketer. Commodore is not in the business of generating or transmitting electric power. Commodore is a wholly-owned division of Commodore Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before December 15, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98–32612 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–100–001]

Crossroads Pipeline Company; Notice of Compliance Filing

December 3, 1998.

Take notice that on December 1, 1998, Crossroads Pipeline Company (Crossroads) tendered for a filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Fifth Revised Sheet No. 39
First Revised Sheet No. 39A
Second Revised Sheet No. 40
Sixth Revised Sheet No. 76

Crossroads states that the purpose of this filing is to comply with a letter order issued in Docket No. RP99–100–000 on November 13, 1998.

Crossroads states that copies of the filing have been mailed to all affected customers and applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson. Jr.,
Acting Secretary.

[FR Doc. 98–32693 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–155–004 and TM98–4–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on December 1, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised

Volume No. 1, the revised tariff sheet listed below for effectiveness on July 1, 1998:

Third Substitute First Revised Sheet No. 334.

Granite State states that its tariff filing is submitted to replace an erroneous tariff sheet that was filed on July 8, 1998 and accepted and made effective on July 1, 1998 in a Letter Order issued August 8, 1998.

According to Granite State, Sheet No. 334 includes part of its Power Cost Adjustment (PCA) surcharge provision by which Granite State is reimbursed for certain electric power costs for which it is obligated under the terms of a lease of a pipeline component from Portland Pipe line Corporation. Granite State further states that it proposed a change in the quarterly calculation for the PCA in a filing on March 2, 1998 which was suspended pending a Technical Conference. Following the Technical Conference, Granite State says that it made alternate filings with the Commission proposing changes in the PCA surcharge calculation.

In a Letter Order issued June 25, 1998, the Commission accepted one of the alternates, subject to certain minor corrections, thus rendering the other alternative moot. Granite State says that in complying with the June 25th Letter Order, it filed the incorrect version of the PCA surcharge procedure which had been mooted by the Letter Order and the incorrect tariff sheet was accepted.

Third Substitute First Revised Sheet No. 334 is filed to correct the errors described in the filing and to establish the correct tariff procedures, effective July 1, 1998 as directed by the June 25, 1998 Letter order, according to Granite State.

Granite State further states that copies of its filing have been served on its firm transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32718 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–110–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-third Revised Sheet No. 4, with an effective date of January 1, 1999.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.1 of the General Terms and Conditions of its tariff, it is filing Twenty-third Revised Sheet No. 4 to reflect the GRI surcharge which the Commission approved in Docket No. RP97–149–003, et al. in an order issued on April 29, 1998.

Iroquois states that copies of its filing were served on all jurisdictional customers and intersted state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32706 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–14–001]

Kansas Pipeline Company; Notice of Filing

December 3, 1998.

Take notice that on November 18, 1998, Kansas Pipeline Company (KPC) filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

KPC states that it has served copies of its filing to each person designated on the official service list for this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before December 18, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. and Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. and Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. and Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. and Regs. 1991–1996 ¶ 30,934 (1991) *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 f.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. and Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. and Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. and Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. and Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32710 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–25–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice on November 30, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Thirty-Third Revised Sheet No. 5
Thirty-Third Revised Sheet No. 6
Thirtieth Revised Sheet No. 7

MRT states that pursuant to the GRI provisions of the settlement in Docket No. RP98–235, MRT is filing to adjust its annual GRI transportaion surcharge rates established in the GRI 1999 RD&D program.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32704 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–162–000]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

Take notice that on November 30, 1998, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with the proposed effective date of January 1, 1999:

Twelfth Revised Sheet No. 5
Eleventh Revised Sheet No. 6
Seventh Revised Sheet No. 14
Eighth Revised Sheet No. 32

South Georgia states that the purpose of this filing is to eliminate its FAS 106 surcharge as provided in the Stipulation and Agreement filed on June 10, 1996 in Docket No. RP96–64–000, et al., and approved by the Commission in its order issued on July 18, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32696 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 3, 1998.

Take notice that on November 30, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective January 1, 1999:

Twenty-Eighth Revised Sheet No. 14a
Thirty-Fourth Revised Sheet No. 15a
Twenty-Eighth Revised Sheet No. 16a
Thirty-Fourth Revised Sheet No. 17a
Fifteenth Revised Sheet No. 18a

Southern asserts that the purpose of this filing is to comply with the Commission's Order issued on September 29, 1995, which approved the Stipulation and Agreement (Settlement) filed by Southern on March 15, 1995 in Docket Nos. RP89–224–012, et al.

In accordance with Article VII of the Settlement, Southern has made this filing to recover a GSR volumetric surcharge based on an estimate of its 1999 GSR costs. Southern also indicates, based on estimated data, a GSR surcharge refund will be made on March 31, 1999 in the amount of approximately $900,000.

Paragraph 17 of Article VII of the Settlement provides for Southern to file by December 1 of each year to collect unrecovered gas supply realignment *GSR) costs through its GSR volumetric surcharge, to be effective for the parties supporting the Settlement beginning January 1 of the following year. The proposed GSR volmetric surcharge of $.0002/Dth reflects a reduction from the $.0018/Dth surcharge currently in effect.

Southern states that copies of the filing were served upon Southern's customers, intervening parties and interested state commissions.

Any person desiring to be heard or to protests said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32694 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–163–000]

Southern Natural Gas Company, Notice of Cost Recovery Filing

December 3, 1998.

Take notice that on November 30, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of Janaury 1, 1999.

Forty-Second Revised Sheet No. 14
Twenty-Seventh Revised Sheet No. 14a
Sixty-Third Revised Sheet No. 15
Thirty-Third Revised Sheet No. 15a
Forty-Second Revised Sheet No. 16
Twenty-Seventh Revised Sheet No. 16a
Sixty-Third Revised Sheet No. 17
Thirty-Third Revised Sheet No. 17a

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period August 1, 1998 through October 1, 1998. These costs have arisen as a direct result of restructuring under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NW, Washington, Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32697 Filed 12–8–98; 8:45 am]

BILLING CODE 6716–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–7–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, certain tariff sheets, with an effective date of January 1, 1999.

Southern states that the proposed tariff sheets implement the Gas Research Institute's (GRI) revised surcharges for 1999. The 1999 GRI Funding Formula consists of surcharges of (i) .75¢ per Dth applicable to the commodity/usage portion of firm service rates and to interruptible rates and (ii) either 23.0¢ per Dth for high load factor customers or 14.2¢ per Dth for low load factor customers on the demand/reservation component of firm service rates. The 1999 GRI Funding Formula provides for a surcharge of 1.8¢ per Dth on service rates for small customers. The Commission authorized these surcharges in Docket No. RP98–235–000 to be effective January 1, 1999. *Gas Research Institute*, 84 FERC ¶ 61,326 (1998).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32702 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on December 1, 1998, Stingray Pipeline Company (Stingray) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, to become effective January 1, 1999.

Stingray states that this filing is a general rate case under Section 4(e) of the Natural Gas Act and is consistent with the terms of Stingray's last rate case settlement at Docket No. RP94–301. The proposed rate changes would increase Stingray's cost of service by approximately $3.5 million from its last rate case. Stingray states that the increase in transportation rates is necessary to permit Stingray the opportunity to recover its revenue requirement.

Stingray requests whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective January 1, 1999.

Stingray states that copies of the filing are being mailed to Stingray's transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32698 Filed 12–8–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–167–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

December 3, 1998.

Take notice that on December 1, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing under Article XXV of the General Terms and Conditions of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 both (i) a revised accounting of Tennessee's take-or-pay transition costs and (ii) a request for waiver of the requirement to restate Tennessee's take-or-pay transition cost surcharges.

Tennessee's request for waiver is based on the fact that Tennessee has not incurred any new recoverable take-or-pay costs since the effectiveness of Tennessee's last take-or-pay filing under Article XXV in Docket No. RP98–237.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32699 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–3–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 25, 1998, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet, with an effective date of December 26, 1998:

Fifth Revised Sheet No. 647

Texas Eastern states that the above listed tariff sheet is being filed to simplify its tariff administration process by eliminating the listing of names of Texas Eastern's marketing affiliates in its Tariff. Texas Eastern also states that the name of Texas Eastern's marketing affiliates are now posted on Texas Eastern's Electronic Bulletin board and on its internet web site.

Texas Eastern states that copies of the filing were served on all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32711 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of Janaury 1, 1999.

Taxas Gas states that the revised tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect the 1999 General RD&D Funding Units authorized in the "Order Approving Settlement," issued by the Commission on April 29, 1998, in Docket No. RP97–149–003, et al., at 83 FERC 61,093.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 835.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriae action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32703 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–012]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets contained in Appendix A to the filing, to become effective on the dates indicated.

Texas Gas states that this filing is made to implement the provisions of the Stipulation and Agreement of settlement in Docket No. RP97–344 as approved by the Order Approving Offer of Settlement and Remanding Case for Hearing issued by the Commission on July 15, 1998 and the Order Denying Rehearing and Providing Guidance on Hearing Issues issued by the Commission on October 14, 1998.

Texas Gas state that copies of this filing have been served upon all of

Texas Gas's jurisdictional customers, all parties on the Commission's official service list in this proceeding, interested states commissions, and the FERC Staff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-32715 Filed 12-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-170-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on December 1, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 333 and First Revised Sheet No. 334. Such tariff sheets are proposed to be effective January 1, 1999.

On April 29, 1998, the Commission issued an Order (April 29 Order) in Docket Nos. RP97-149, RP97-391 and RM97 (not consolidated) approving the January 21, 1998 Stipulation and Agreement (S&A) filed by Gas Research Institute (GRI). As part of the S&A, signatory pipelines agreed to be fully voluntary collection agents for shippers who voluntarily choose to support GRI programs through a "check the box" approach on pipeline invoices. The invoice procedure, as stated in the S&A, will be described as a voluntary contribution mechanism in the General Terms and Conditions of the pipelines tariff and will allow customers to specify the level of contribution and the projects or project areas to be funded.

Transco states that the amounts collected pursuant to the "check the box" procedure will not be part of pipeline rates and the Commission will not review or approve any such amounts or projects. As a signatory party to the S&A, the purpose of the instant filing is to include a Voluntary Contribution Mechanism provision, regarding GRI funding, in Transco's FERC Gas Tariff.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissioners.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-32701 Filed 12-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97-71-013 and RP97-312-006]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

December 3, 1998.

Take notice that on November 30, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on October 30, 1998, Transco submitted refunds/surcharges (total principal and interest amount of $86,423,659.21) to all affected shippers in Docket Nos. RP97-71 and RP97-312.

Transco states that on June 12, 1998, the Commission issued its "Order Approving and Clarifying Contested Settlement" which approved the Stipulation and Agreement (Agreement) filed January 20, 1998 in Docket Nos. RP97-71 and RP97-312. The Agreement resolved, among other things, Transco's cost of service (excluding rate of return), overall throughput level, and mix of throughput and certain cost allocation and rate design issues for the Docket No. RP97-71 rate period commencing May 1, 1997. Therefore, pursuant to Article XII of the Agreement, the effective date of the Agreement is September 1, 1998, which is the date Transco began billing the settlement rates. Refunds must be made on or before October 30, 1998.

Transco further states that based on the settlement it has calculated storage and transportation refunds for the period May 1, 1997 (the beginning of the Docket No. RP97-71 rate period) through August 31, 1998 based on the difference between the amounts billed and amounts calculated utilizing settlement rates, subject to the refund floor.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-32714 Filed 12-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-394-002]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1998.

Take notice that on November 30, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective November 1, 1998.

On September 1, 1998, Transco filed in the referenced docket to implement new Rate Schedules WSS-Open Access and WSS Open Access-R to accommodate requests by several of its shippers to convert their Section 7(c) Rate Schedule WSS firm storage service to service under Transco's blanket

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certificate and Part 284 of the Commission's regulations. On October 28, 1998, the Commission issued an "Order Accepting Certain Tariff Sheets Subject to Conditions and Rejecting Other Tariff Sheet as Moot" (October 28 Order) and required Transco to file revised tariff sheets consistent with its discussion in the order.

In compliance with the October 28 Order, Transco is filing revised tariff sheets in the instant filing to (1) revise Section 9 (and remove Sections 9.2–9.5 as no longer necessary) of Rate Schedule WSS and Section 8 of Rate Schedule WSS-Open Access to include the base gas volume that each customer has the right to repurchase and clarify that new customers are not required to provide base gas; and (2) remove the words "by seller" from the last sentence in Section 7.1(a) of Rate Schedule WSS-Open Access. With regard to the correct WSS base gas volume, please refer to Appendix B attached to the filing which provides the amount of injected base gas in the Washington Storage Field as recorded in Transco's audited accounting records.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32719 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–76–001]

Viking Gas Transmission Company; Notice of Filing

December 3, 1998.

Take notice that on November 30, 1998, Viking Gas Transmission company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the folloiwing tariff sheet with a proposed effective date of November 2, 1998:

Substitute Eighth Revised Sheet No. 87

Viking states that the purpose of this filing is to comply with the October 30, 1998 Letter Order issued by the Office of Pipeline Regulation in Docket No. RP99–76–000 (October 30, 1998 Letter Order). The October 30, 1998 Letter Order directed Viking to incorporate Standard 1.3.2(vi) in its tariff and to indicate which part of Viking's tariff complies with the Commission's regulations and Order No. 587–G regarding waiver of penalties for bumped interruptible shippers. Accordingly, Viking has incorporated Standard 1.3.2(vi) by reference on Sheet No. 87. Viking submits that it is in compliance with Section 284.10(c)(1)(i)(A) and Order No. 587–G regarding waiver of penalties for bumped interruptible shippers since Viking's tariff does not impose daily penalties on shippers using interruptible contracts during non-critical periods.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for Public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32692 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–119–001]

Viking Gas Transmission Company; Notice of Filing

December 3, 1998.

Take notice that on November 30, 1998, Viking Gas Transmission Company (Viking) filed a report detailing Viking's compliance with the March 27, 1998 Letter Order issued by the Office of Pipeline Regulation, Rate Analysis Branch III, issued in docket No. RP98–119–000 (March 27, 1998 Letter Order).

The March 27, 1998 Letter Order accepted Viking's January 27, 1998 Report of Penalty Revenue Credits (January 27, 1998 Report) for the period November 1, 1996 through October 31, 1997 but directed Viking to credit interest amounts for that period to its shippers. Viking has calculated the interest and the resulting credits to Viking's shippers on the Exhibit attached to its November 30, 1998 Filing. Viking will credit this amount to its shippers in the November 1998 invoices that will be mailed December 1999.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers, persons on the official service list compiled by the Secretary, and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32717 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–104–004]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

December 3, 1998.

Take notice that on December 1, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 1999.

On September 18, 1998, the Commission issued its Letter Order in the above-referenced docket accepting the Settlement Agreement filed by

Williston Basin on July 24, 1998 and requiring that Williston Basin refile the pro forma tariff sheets as tariff sheets to be effective on the first day of the calendar month commencing no less than 90 days after a final Commission Order approving the Settlement Agreement. Williston Basin states that the tariff sheets listed above are in compliance with the Commission's September 18, 1998 Letter Order and represent Williston Basin's Pooling Service and Nomination Aggregation Service.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-32716 Filed 12-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99-11-000, et al.]

Jersey Central Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

December 2, 1998.

Take notice that the following filings have been made with the Commission:

1. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company and AmerGen Energy Company, LLC

[Docket Nos. EC99-11-000, EL99-13-000, and ER99-754-000]

Take notice that on November 25, 1998, pursuant to Sections 203 and 205 of the Federal Power Act, and Parts 33 and 35 of the Commission's regulations (18 CFR Parts 33 and 35), Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (doing business as and collectively referred to herein as GPU Energy), and AmerGen Energy Company, LLC (AmerGen), filed certain applications and rate schedules associated with the sale of the Three Mile Island Unit 1 Nuclear Generating Facility (TMI-1), located near Middletown, Pennsylvania, by GPU Energy and its affiliate, GPU Nuclear, Inc. (GPUN), to AmerGen pursuant to an Asset Purchase Agreement dated October 15, 1998 (the TMI-1 Asset Purchase Agreement).

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company and Somerset Power LLC

[Docket No. EC99-12-000]

Take notice that on November 30, 1998 Montaup Electric Company (Montaup) and Somerset Power LLC (Somerset Power) (collectively, Applicants) submitted for filing, pursuant to Sections 203 and 205 of the Federal Power Act and Parts 33 and 35 of the Commission's regulations, an application and interconnection agreement in connection with the proposed sale by Montaup to Somerset Power of facilities and other assets known as Somerset Station, pursuant to a series of agreements dated October 13, 1998.

Copies of the filing have been served on the regulatory agencies of the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut.

Comment date: December 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation, et al.

[Docket No. ER97-697-002]

Take notice that on November 14, 1997, Allegheny Power Service Corporation, Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, Southern Company Services, Inc., Virginia Electric & Power Company, and Ontario Hydro submitted a six-month report on the GAPP Experiment which was initiated on April 2, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Horizon Energy Company

[Docket No. ER98-380-006]

Take notice that on November 25, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. New England Power Pool

[Docket No. ER99-725-000]

Take notice that on November 27, 1998, the New England Power Pool (NEPOOL) Executive Committee filed a Service Agreement for Through or Out Service or In Transmission Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to Central Maine Power Company, in conjunction with Regional Network Service, in accordance with the provisions of the Restated NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

NEPOOL requests a retroactive effective date of November 1, 1998 for commencement of transmission service.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissions and all parties to the transaction.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER99-726-000]

Take notice that on November 27, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated December 1, 1998, between KCPL and Entergy Services, Inc. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94-1045.

KCPL proposes an effective date of December 1, 1998, and requests waiver of the Commission's notice requirement.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Company

[Docket No. ER99–727–000]

Take notice that on November 27, 1998, notice is hereby given that Service Agreement No. 84, previously filed with the Federal Energy Regulatory Commission by Washington Water Power, under the Commission's Docket No. ER97–1252–000 with Mock Energy Services, LP, is to be terminated December 31, 1998 by request of the power marketer, by letter dated September 15, 1998, because of its decision to exit the power marketing business.

Notice of the termination has been served on Coral Energy Resources, LP.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER99–728–000]

Take notice that on November 27, 1998, Arizona Public Service Company (APS) tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, Market rate Tariff No. 1, for service to the Merchant Energy Group of the Americas, Inc. (MEGA).

A copy of this filing has been served on the Arizona Corporation Commission and MEGA.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER99–729–000]

Take notice that on November 27, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated October 30, 1998, between KCPL and Constellation Power Source, Inc. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

KCPL proposes an effective date of November 5, 1998, and requests waiver of the Commission's notice requirement.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER99–730–000]

Take notice that on November 27, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated October 30, 1998, between KCPL and Constellation Power Source, Inc. This Agreement provides for the rates and charges for Short-Term Firm Point-To-Point Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888-A in Docket No. OA97–636-000.

KCPL proposes an effective date of November 5, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–731–000]

Take notice that on November 27, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Sempra Energy Trading Corp., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Sempra Energy Trading Corp.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Washington Water Power Company

[Docket No. ER99–732–000]

Take notice that on November 27, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 205(d) of the Federal Power Act, with 18 CFR Part 35 of the Commission Rules and regulations and Paragraph II. (D) of FERC Docket No. ER97–7–000, an executed Long Term Service Agreement and Amendment under WWP's FERC Electric Tariff First Revised Volume No. 9, with Montana Power Company, Puget Sound Energy, Portland General Electric (PGE) and PacifiCorp, whereby WWP will provide the energy to operate pumps at the Nichols Pumping Station for the Colstrip Project. Also included with this filing are previously filed Certificates of Concurrence for each party to the Agreement in the event a Party elects to make exchanges, with the exception of PGE. WWP is filing a Certificate of Concurrence by PGE dated November 25, 1998.

WWP requests waiver of the prior notice requirements and requests that this Service Agreement and Amendment be accepted for filing effective November 1, 1998.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER99–733–000]

Take notice that on November 27, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Merchant Energy Group of the Americas, Inc., and Potomac Electric Power Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER99–734–000]

Take notice that on November 27, 1998, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of December 1, 1998, of Delmarva Power & Light Company (Delmarva). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Delmarva. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of Delmarva with an effective date of December 1, 1998, would relieve this entity, at Delmarva's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Delmarva from membership in the Pool.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER99–735–000]

Take notice that on November 27, 1998, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with an effective date of December 1, 1998, of PacifiCorp Power Marketing, Inc., (PacifiCorp). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by PacifiCorp. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of PacifiCorp with an effective date of December 1, 1998, would relieve this entity, at PacifiCorp's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove PacifiCorp from membership in the Pool.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER99–736–000]

Take notice that on November 27, 1998, Virginia Electric and Power Company, tendered for filing effective January 1, 1998, the Service Agreement with Ohio Edison Company, filed under Docket No. ER97–2511, designated as Service Agreement No. 39, under FERC Electric Tariff Original Volume No. 5, filed with the Federal Energy Regulatory Commission by Virginia Electric and Power Company is to be assigned to FirstEnergy Corp.

Copies of the filing were served upon Ohio Edison Company, FirstEnergy Corp., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER99–737–000]

Take notice that on November 27, 1998, Virginia Electric and Power Company, tendered for filing a Service Agreement with Duke/Louis Dreyfus L.L.C., effective October 1, 1998, filed under Docket No. ER96–2920, designated as Service Agreement No. 5, under FERC Electric Tariff Original Volume No. 5, filed by Virginia Electric and Power Company is to be assigned to Duke Energy Trading and Marketing, L.L.C.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C., Duke Energy Trading and Marketing, L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Peco Energy Company

[Docket No. ER99–738–000]

Take notice that on November 27, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated November 20, 1998 with Northeast Energy Services, Inc. (NORESCO), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NORESCO as a customer under the Tariff.

PECO requests an effective date of November 20, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to NORESCO and to the Pennsylvania Public Utility Commission.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER99–739–000]

Take notice that on November 27, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Madison Gas & Electric Co., (MG&E). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to MG&E pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that the service Agreement be allowed to become effective October 27, 1998.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Indiana Gas and Electric Company

[Docket No. ER99–740–000]

Take notice that on November 27, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing two (2) service agreements for firm transmission service under Part II of its Transmission Services Tariff respectfully with TransAlta Energy Marketing, Inc., and Constellation Power Source, Inc., and two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff respectfully with TransAlta Energy Marketing, Inc., and Constellation Power Source, Inc.

Copies of the filing were served upon each of the parties to each service agreement.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corporation

[Docket No. ER99–743–000]

Take notice that on November 27, 1998, Central Vermont Public Service Corporation (CVPS), tendered for filing a letter stating that CVPS does not plan to file a Forecast 1999 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER99–744–000]

Take notice that on November 27, 1998, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1999 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc., (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989, order in Docket No. ER88–456–000.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Central Vermont Public Service Corporation

[Docket No. ER99–745–000]

Take notice that on November 27, 1998, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1999 Cost Report required under Article 2.3 on Second Revised Sheet No. 18, of FERC Electric Tariff, Original Volume No. 3, of CVPS under which CVPS provides transmission and distribution service to Vermont Electric Cooperative, Inc., Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department, Village of Hyde Park Water and Light Department, Rochester Electric Light and Power Company, and Woodsville Fire District Water and Light Department.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Automated Power Exchange, Inc.

[Docket No. ER99–746–000]

Take notice that on November 27, 1998, Automated Power Exchange, Inc., filed a revision to its rate schedule.

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Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Connecticut Valley Electric Company Inc.

[Docket No. ER99–748–000]

Take notice that on November 27, 1998, Connecticut Valley Electric Company Inc. (Connecticut Valley), tendered for filing the determination of the 1998 payment to Connecticut Valley as provided by the Transmission Service Agreement with Woodsville Water & Light Department (Woodsville) dated December 15, 1975. Such agreement was originally filed in Docket No. ER94–637–000 and designated at Rate Schedule FERC No. 12.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ES99–13–000]

Take notice that on November 23, 1998, Florida Keys Electric Cooperative Association, Inc. (FKEC) submitted for filing an application to issue securities pursuant to section 204 of the Federal Powers Act (FPA), 16 U.S.C. § 824c, and Part 34 of the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR Part 34). FKEC's filing is available for public inspection at its offices in Tavernier, Florida.

FKEC respectfully requests that the Commission (1) exempt FKEC from any requirement to use competitive bidding or negotiated placement in relation to the debt, (2) authorize long-term borrowing pursuant to a mortgage, and (3) authorize borrowing pursuant to two credit lines for the two-year period beginning January 4, 1999.

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Tampa Electric Company

[Docket No. OA97–642–000]

Take notice that on November 30, 1998, Tampa Electric Company (Tampa Electric) amended its pending filing in this docket by submitting revised tariff sheets for inclusion in the open access transmission tariff that Tampa Electric filed on July 14, 1997, in compliance with Order No. 888–A.

Tampa Electric states that the tendered tariff sheets: (1) update the tariff administrator's title and address information; (2) correct inadvertent errors and omissions in the text of the tariff; (3) conform the scheduling procedures to current regional practices; and (4) update the specified real power loss factor.

Tampa Electric proposes that the tariff sheets updating the real power loss factor be made effective on May 1, 1998, and that the other tariff sheets be made effective on May 3, 1997, or such other date that the Commission specifies as the effective date for the tariff.

Copies of the amendatory filing have been served on all persons on the official service list in this docket and the Florida Public Service Commission.

Comment date: December 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32613 Filed 12–8–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–800–000]

Eastern Shore Natural Gas Company; Revised Notice of Intent To Prepare an Environmental Assessment for the Proposed 1999 System Expansion Project and Request for Comments on Environmental Issues

December 3, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Eastern Shore Natural Gas Company's (Eastern Shore) proposal to construct about 4.5 miles of 16-inch-diameter pipeline in Chester County, Pennsylvania; 3.5 miles of 16-inch-diameter pipeline in New Castle County Delaware; and one 1,085 horsepower (hp) compressor unit in New Castle County proposed in the 1999 System Expansion Project.[1] The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Eastern Shore seeks authorization for the following:

- Install a 1,085 hp compressor unit at its existing Del City Compressor Station, 3 miles west of Delaware City, New Castle County, Delaware;
- Construct about 4.5 miles of 16-inch-diameter loop in Chester County, Pennsylvania;
- Construct about 3.5 miles of 16-inch-diameter loop in New Castle County, Delaware.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 56.1 acres of land. Following construction, about 36.1 acres would be maintained as new permanent right-of-way. The remaining 20.0 acres of land would be restored and allowed to revert to its former use.

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[1] Eastern Shore Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Land use.
- Cultural resources.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Air quality and noise.
- Hazardous Waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 4 and 5 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may be changed based on your comments and our analysis.

- One federally listed threatened species, the bog turtle, may occur in the proposed project area.
- Nineteen streams and thirteen wetlands would be crossed by the project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–800–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 4, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file later interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98–32709 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 3, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent license.

b. *Project No :* 1981–010.

c. *Date filed:* February 25, 1998.

d. *Applicant:* Oconto Electric Cooperative.

e. *Name of Project:* Stiles Project.

f. *Location:* On the Oconto River, near the City of Oconto Falls, Oconto County, Wisconsin. This project would not utiltze federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Tony Anderson, General Manager, Oconto Electric Cooperative, 7479 REA Road, P.O. Box 168, Oconto Falls, WI 54154–0168, (920) 846–2816.

i. *FERC Contact:* Any questions on this notice should be addressed to Patti Leppert-Slack, E-mail address patricia.leppertslack@ferc.fed.us or telephone (202) 219–2767.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: David P.

Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission, relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing project consists of: (1) a 20-foot-high earthen embankment and 463-acre impoundment; (2) a 66-foot-long powerhouse, containing two generating units with a total capacity of 1,000 kilowatts; (3) a substation; and other appurtenances.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference, located at 888 First Street N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address shown in item h above.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32712 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

December 3, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Projects:* Catawba-Wateree Project No. 2232–381; Ninety-Nine Islands Project No. 2331–014; Gaston Shoals Project No. 2332–021; Keowee & Jocassee Project No. 2503–048; Bad Creek Project No. 2740–041.

c. *Date Filed:* November 5, 1998.

d. *Applicant:* Duke Power Company.

e. *Location:* The five hydroelectric projects listed above are on the Catawba River in the general region of western North Carolina and northern South Carolina. The following Lakes are included in the above projects: James, Rhodhiss, Hickory, Lookout Shoals, Norman, Mountain Island, Wylie, Fishing Creek, Great Falls, Rocky Creek, Wateree, Bad Creek, Ninety-nine Islands, Gaston Shoals, Jocassee and Keowee.

f. *Filed Pursuant to:* 18 CFR 4.200.

g. *Applicant Contact:* Mr. Joe Hall, Duke Power, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–8576.

h. *FERC Contact:* Steve Hocking (202) 219–2656.

i. *Comment Date:* January 7, 1999.

j. *Description of Amendment:* Duke Power requests Commission approval of an Excavation programmatic Agreement (PA) for its five hydroelectric projects listed above. The PA would allow Duke to authorize, without Commission approval, applications to dredge or excavate less than 2,000 cubic yards of soil from the above lakes. The PA outlines those procedures Duke Power would use to review such applications including its permitting process, excavation criteria, consultation requirements, environmental requirements and other restrictions.

l. This notice also consists of the following standard paragraphs: B, C1 and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32713 Filed 12–8–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–17–000]

Landowner Notification, Residential Area Designation and Environmental Filing Requirements; Notice Organizing Staff Conference

December 3, 1998.

This notice provides the organizational format for the Federal Energy Regulatory Commission staff conference to be held on December 9, 1998. The purpose of this conference is to enable interested parties to discuss with staff, as well as each other, issues relating to the Commission's landowner notification policies and its environmental designation of residential areas.

On October 16, 1998, notice of the technical conference was published in the **Federal Register.**[1] The notice requested those who were intereted in making presentations at the conference to submit a request for time. Ten parties indicated an interest in participating at the conference.

The conference will begin with opening remarks by Commission staff and Commissioner Linda Breathitt. The opening remarks will be followed by the presentations. Each presentation will be limited to ten minutes. After the first five presentations, time will be allowed for questions to be asked of the presenters by the staff and those in the audience. There will then be a break followed by the remaining presentations and another discussion session.

The order of presentation will be:

Representative from Central Maine Power Company; Mary Hanna, Citizens Advocates for Pipeline Safety; Steven Horton, Duke Energy Pipelines; Joan Dreskin, INGAA; Anne Marie Mueser, GASP Coalition.

Suzanne Ryan or Sheila Bergeron, Newton Citizens Committee; Dave Sinclair, Enron Gas Pipeline Group; Gordon Busy, Ohio-Pa. Landowners Association; Representative from Pipeline Contractors Association; Floyd Ball, Transcontinental Gas Pipe line Company

We anticipate that presentations will be completed prior to lunch. If necessary, we will reconvene after lunch to continue discussion and take comments from the audience.

An overhead projector will be made available at the conference. If those making presentations require additional audiovisual services, they should contact John Leiss at (202) 208–1106 by December 7, 1998.

The conference will begin at 9:00 a.m. at the Commission's offices, 888 First Street, NE, Washington, DC in the Commission Meeting Room. The Capitol Connection patrons in the Washington, DC area will receive notices regarding the broadcast of the conference. It also will be available, for a fee, live over the Internet, via C-Band Satellite, and via telephone conferencing. Persons interested in receiving the broadcast, or who need further information, should contact Shirley Al-Jarani of Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection web site at http://www.capitolconnection.gmu.edu and click on "FERC."

Questions about the conference should be directed to: John S. Leiss, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1106.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32708 Filed12–8–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6199–7]

Final Notification of Health Effects Testing Requirements for Baseline Gasoline and Oxygenated Nonbaseline Gasolines and Approval of an Alternative Emissions Generator

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The purpose of this document is to announce that the Environmental Protection Agency (EPA) has notified the American Petroleum Institute (API) test group consortium (hereinafter 211(b) Research Group) for baseline gasoline and gasolines containing methyl tertiary butyl ether (MTBE) and other oxygenates, of the final Alternative Tier 2 health effects testing requirements under the fuel and fuel additive (F/FA) registration testing requirements of 40 CFR part 79. This document also announces that EPA has approved the API alternative evaporative emissions generator for use in animal toxicity testing under the F/FA registration health effects testing regulations at 40 CFR 79.57.

DATES: The Alternative Tier 2 health effects testing requirements are effective upon receipt by the 211(b) Research Group of the notification letter discussed in this document.

ADDRESSES: Written requests for information regarding this notification should be addressed to Public Docket No. A–96–16, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. Materials relevant to this notification have been placed in Docket A–96–16. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: John Brophy, Environmental Scientist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 564–9068.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture gasoline with or without the fuel additives MTBE, ethyl tertiary butyl ether (ETBE), ethyl alcohol (EtOH), tertiary amyl methyl ether (TAME), diisopropyl ether (DIPE), and tertiary butyl alcohol (TBA) and manufacturers

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[1] 63 FR 55715.

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of these oxygenates and other gasoline additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, oxygenate and fuel additive manufacturers.

This table is not intended to be exhaustive, but, rather, illustrates the types of entities that EPA is currently aware of that are likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether an entity not described by the examples listed in the table is subject to these requirements, refer to the applicability criteria in part 79 of title 40 of the Code of Federal Regulations. If questions remain regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

In accordance with 40 CFR 79.56(a), manufacturers of F/FAs may satisfy the Subpart F testing requirements on a group basis. Each individual manufacturer that is a member of such a group, however, continues to be individually subject to the testing and data submission requirements. Thus, this notice serves as a notice to all manufacturers of the subject F/FAs, that are not exempted from these requirements under the small business provisions of 40 CFR 79.58(d), that they are subject to these requirements.

I. Introduction

The Clean Air Act (CAA), as amended, required the Administrator of EPA to promulgate regulations requiring manufacturers of fuels and fuel additives to conduct tests to determine potential health effects of such products. The final rule, promulgated on May 27, 1994, established new health effects testing requirements for the registration of designated F/FAs as authorized by sections 211(b)(2) and 211(e) of the CAA.

The registration requirements are organized within a three-tier structure. Tier 1 requires F/FAs manufacturers to supply to EPA (1) the identity and concentration of certain emission products of designated F/FAs and an analysis of potential emission exposures, and (2) any available information regarding the health and welfare effects of the whole and speciated emissions. 40 CFR 79.52. Tier 2 requires that combustion emissions of each F/FA subject to the testing requirements be tested for subchronic systemic and organ toxicity, as well as the assessment of specific health effects endpoints. 40 CFR 79.53. Tier 3 testing may be required, at EPA's discretion, when remaining uncertainties as to the significance of observed health or welfare effects, or emissions exposures interfere with EPA's ability to reasonably assess the potential risks posed by emissions from a F/FA. 40 CFR 79.54. EPA's regulations permit submission of adequate existing test data in lieu of conducting new duplicative tests. 40 CFR 79.53(b). In addition, EPA's regulations permit the health effects testing requirements to be satisfied by participation in groups that are established in accordance with the grouping criteria set forth at 40 CFR 79.56. The regulations also include provisions for small businesses and certain types of products. 40 CFR 79.58.

At its discretion, EPA may modify the standard Tier 2 health effects testing requirements for a F/FA (or group thereof) by substituting, adding, or deleting testing requirements; or changing the underlying vehicle/engine specifications. 40 CFR 79.58(c). EPA will not, however, delete a testing requirement for a specific endpoint in the absence of existing adequate information, or an alternative testing requirement for that endpoint. 40 CFR 79.58(c). When EPA exercises its authority under this special provision, it will allow an appropriate time for completion of the prescribed alternative tests.

II. Alternative Tier 2 Testing Requirements

The Agency notified the 211(b) Research Group on August 20, 1997, of proposed health effects testing required under Alternative Tier 2 for baseline gasoline and oxygenated nonbaseline gasolines, and the proposed schedule for completion and submission of such tests. An associated **Federal Register** notice (62 FR 47400) initiated a 60-day public comment period which was extended an additional 60 days (62 FR 60675), to accommodate both the 211(b) Research Group's request for an extension, and to also allow the general public an additional period of time to comment. Copies of the documents associated with the extension and notification of the proposed tests and schedule under the Alternative Tier 2 provisions have been placed in the Docket.

This document announces that the EPA has notified the 211(b) Research Group of the final Alternative Tier 2 health effects testing requirements under 40 CFR 79.58(c).

The Agency notified API, by certified letter dated November 2, 1998, of the specific tests which the Agency is requiring under the Alternative Tier 2 provisions for baseline gasoline and oxygenated nonbaseline gasolines, and the schedule for completion and submission of such tests. A copy of the letter as well as the tests and schedule under the Alternative Tier 2 provisions have been placed in the Public Docket No. A–96–16, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, DC 20460. The notification letter is also available on the internet via the EPA's Mobile Sources home page at http://www.epa.gov/OMSWWW/.

III. Alternative Evaporative Emissions Generator

This document also announces that EPA has approved the 211(b) Research Group's alternative evaporation emissions generator for animal toxicity testing allowed under the F/FAs registration testing requirements of 40 CFR 79.57(f)(5).

Dr. Carol J. Henry, Director of the Health and Environmental Sciences Department, API, and head of the 211(b) Research Group, on July 1, 1997, sent a certified letter to EPA requesting approval of an alternative method for generating evaporative emissions (known as the stripper still method) for use in emissions characterization and animal health effects testing in accordance with the Alternative Tier 2 provisions.

Scientists from several EPA offices have reviewed the API submission for an alternative evaporative emissions generation method and concluded that it has met the necessary criteria under 40 CFR 79.57(f)(5). Therefore, the "stripper still" method has been approved for use in the Alternative Tier 2 animal toxicology tests.

In accordance with the requirements under 40 CFR 79.57(f)(5)(ii), all supporting procedural descriptions and justifications received from the 211(b) Research Group have been placed in the public record, along with the API request letter and EPA's evaluation of the methodology.

IV. Environmental Impact

EPA's health effects testing notification will result in no immediate environmental impact. Section 211(c) of the Clean Air Act, however, authorizes EPA to take regulatory action on fuels and fuel additives on the basis of information obtained from health effects testing conducted by manufacturers of F/FAs. Therefore, the information obtained as a result of the testing required by EPA's notification may provide a basis for further regulatory action.

V. Economic Impact

Although the total cost for the testing requirements is significant, the cost is being shared among many F/FA manufacturers. Therefore, the actual cost to an individual F/FA manufacturer is expected to be modest. The F/FAs regulations at 40 CFR 79.58(d) contain special provisions for those fuel or fuel additive manufacturers whose total annual sales are less than $50 million, exempting these parties from the requirements discussed in this document.

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Gasoline, Conventional gasoline, Oxygenates, Methyl tertiary butyl ether, Motor vehicle pollution.

Dated: November 17, 1998.

Robert Perciasepe,

Assistant Administrator.

[FR Doc. 98–32682 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6199–6]

Proposed Settlement; Polymers and Resins I and IV Emission Standard Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Partial Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed partial settlement of *Wellman, Inc. et al.* v. *EPA*, No. 96–1419 (D.C. Cir.) and *Union Carbide Corporation, et al.* v. *EPA*, No. 96–1413 (D.C. Cir.). For a period of thirty days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice is authorized under section 113(g) to withdraw its consent to the Settlement Agreement if appropriate in light of the public comments.

The cases involve challenges to the National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, published in the **Federal Register** at 61 FR 46906 on September 5, 1996, and National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins published in the **Federal Register** at 61 FR 48208 on September 12, 1996.

DATES: Written comments on the Settlement Agreement must be received by January 8, 1999.

ADDRESSES: Written comments should be sent to Mark Dyner, Office of General Counsel (2333), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–5085. Copies of the Settlement Agreement are available from Phyllis Cochran, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–7606.

SUPPLEMENTARY INFORMATION: There is a separate proposed partial settlement agreement ("agreement") for each case; however, the issues addressed in the agreements and the proposed resolution of those issues are in most relevant respects the same. The agreements are both between EPA and the petitioner, The Dow Chemical Company. For the convenience of interested parties, following is a brief summary of some of the key points of the agreements.

The agreements require EPA to conduct notice and comment rulemaking proposing (1) changes in the subject rules to resolve certain differences between the rules and the Hazardous Organic NESHAP ("HON"); (2) clarification of the applicability provisions regarding additions to plant sites; (3) revision of the applicability provisions that address primary product determinations to better address contract manufacturing practices; (4) simplification of the provisions applicable to batch process vents; and (5) revisions to certain reporting and recordkeeping requirements.

Section 113(g) of the Clean Air Act (42 U.S.C. 7413(g)) requires, with exceptions not pertinent here, that EPA publish notice of settlement agreements in the **Federal Register** and provide a reasonable opportunity for public comment. EPA or the Department of Justice may withhold consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, inadequate or inconsistent with the requirements of the Clean Air Act.

Dated: December 2, 1998.

Scott Fulton,

Acting General Counsel.

[FR Doc. 98–32568 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6199–5]

Proposed Settlement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree and settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree and settlement agreement in litigation instituted against the United States Environmental Protection Agency ("EPA") by the Coalition for Clean Air, Inc., National Resources Defense Council, Inc., and Communities for a Better Environment (collectively, "plaintiffs"). This lawsuit, originally filed in September 1997 and supplemented in October 1998, concerns EPA's January 8, 1997 approval under the Clean Air Act, 42 U.S.C. 7401 et seq., of the 1994 ozone California state implementation plan for the South Coast Air Basin ("1994 SIP") 62 FR 1150.

DATES: Written comments on the proposed consent decree and settlement agreement must be received by January 8, 1999.

ADDRESSES: Written comments should be sent to David Jesson, Air Division (AIR–2), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1288. Copies of the proposed consent decree and settlement agreement are available from Mr. Jesson. Copies of the proposed consent decree and settlement agreement have been lodged with the Clerk of the United States District Court for the Central District of California.

SUPPLEMENTARY INFORMATION: In *Coalition for Clean Air, et al.* v. *EPA*, No. 97–6916 (C.D. CA), plaintiff allege, among other things, that EPA failed to adopt certain mobile source measures that the State of California attempted to "assign" to EPA in the 1994 SIP and failed to conduct certain activities with respect to the public consultative process provided for in EPA's approval of the 1994 SIP.

In order to resolve this matter without protracted litigation, the plaintiffs and EPA have reached agreement on a proposed consent decree and settlement agreement that have been signed by the parties and lodged with the District Court on November 13, 1998. The proposed consent decree provides that EPA shall conclude the public consultative process in accordance with the schedule set forth therein. The accompanying proposed settlement agreement provides that EPA will undertake certain actions regarding Federal agencies and Federal mobile source ozone control measures in the South Coast Air Basin.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree and settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree and settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Dated: December 2, 1998.

Scott Fulton,

Acting General Counsel.

[FR Doc. 98–32569 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–4]

Request for Great Lakes Preproposals Through "FY1999–2000 Great Lakes Priorities and Funding Guidance"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of preproposals for GLNPO funding. This request is part of the *FY1999–2000 Great Lakes Priorities and Funding Guidance* (Funding Guidance). The Great Lakes Funding Guidance identifies Great Lakes priorities, solicits preproposals for assistance projects, and describes other Federal Great Lakes funding opportunities.

DATES: The deadline for submission of preproposals is January 15, 1999.

DOCUMENT AVAILABILITY: The Funding Guidance is available on the Internet at http://www.epa.gov/glnpo/fund/99guid.html. It is also available from Lawrence Brail (312–886–7474/brail.lawrence@epa.gov).

FOR FURTHER INFORMATION CONTACT: Mike Russ, EPA–GLNPO, G–17J, 77 West Jackson Blvd., Chicago, IL 60604 (312–886–4013/russ.michael@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: USEPA's Great Lakes National Program Office is requesting Preproposals for Great Lakes projects addressing: Contaminated Sediments ($1.4 million), Pollution Prevention and Reduction—Binational Toxics Strategy ($800 thousand); Habitat (Ecological) Protection and Restoration ($1 million); Exotic Species ($300 thousand); and Emerging Issues ($300 thousand). A total of $3.8 million is targeted for awards in the Summer and Fall of 1999. A "roadmap" section describes some of the other Great Lakes Federal funding available through USEPA, the Natural Resources Conservation Service, the Fish and Wildlife Service, the Army Corps of Engineers, and the Federal Highway Administration.

Dated: November 30, 1998.

Gary V. Gulezian,

Director, Great Lakes National Program Office, Region 5.

[FR Doc. 98–32566 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181065; FRL 6047–8]

Malathion and Diazinon; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the U.S. Department of Agriculture (hereinafter referred to as the "Applicant") to use the pesticides malathion (CAS No. 121–75–5), formulated as Fyfanon ULV (EPA Registration No. 4787–8 and 51036–104) and diazinon (CAS No. 333–41–5), formulated as Diazinon 4-E (EPA Registration No. 769–687) to treat areas within Florida where nonindigenous subtropical fruit flies (various species in the family *Tephritidae*) are found. This notice provides a 30–day period for public comment on the request.

Four geographically distinct infestations of the Mediterranean fruit fly (*Ceratitis capitata*) were discovered in Florida in 1998. In addition, a widespread outbreak of the Mediterranean fruit fly was discovered in central Florida in 1997. In order to ensure that this pest did not become established in Florida, the Applicant and the State of Florida used the pesticides identified above, along with the release of sterile Mediterranean fruit flies and other measures, to eradicate the outbreaks.

The pesticide use that takes place related to exotic fruit fly eradication is occurring under the authorities of FIFRA section 18. Because EPA is interested in engaging stakeholders affected by important programs undertaken under section 18, the Agency is invoking its discretionary authority under 40 CFR 166.24(a)(7) and, through the publication of this notice, is soliciting public comment with respect to the eradication scheme proposed by the Applicant.

This notice does not constitute a decision by EPA on the application itself. The regulations governing Section 18 cite that the Administrator may determine that it is appropriate to publish a notice of receipt of an application for a quarantine exemption request [40 CFR 166.24 (a)(7)]. Such notice provides for opportunity for public comment on the application.

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181065," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions under **SUPPLEMENTARY INFORMATION**. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The docket is available for public inspection at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel J. Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Crystal Mall #2, Rm. 280, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9375); e-mail: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a federal or state agency from any provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a quarantine exemption for the use of malathion and diazinon to control non-indigenous subtropical fruit flies in Florida. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant is responsible for operating quarantine programs in the United States to protect agriculture against the introduction and establishment of non-indigenous pest species. The establishment of a new exotic fruit fly species such as the Mediterranean fruit fly in the continental United States would be extremely costly for agricultural producers and related industries. The Applicant projects that the costs associated with the establishment of exotic fruit flies in the continental United States would be severe, dramatically curtailing interstate and international trade in numerous agricultural commodities, particularly citrus crops. In addition, the Applicant indicates that if nonindigenous exotic fruit flies become established such infestations will have significant negative biological and environmental consequences.

The Applicant maintains that exclusion and detection measures alone are not adequate to protect Florida from the introduction of nonindigenous and destructive fruit fly pests. Therefore, an emergency program capable of eradicating an outbreak once it is discovered is necessary. The Applicant's position is that the requested program is efficacious and, simultaneously, protective of public health and environment. The request describes several alternative approaches that were considered that appear to be less suitable or developed as compared to the proposed approach. For example, physical control measures, such as fruit stripping, cultural control measures through the modification of agricultural practices, biological controls such as the introduction of predator species, and several other alternative pesticides were considered by the Applicant.

The pesticidal approaches proposed for use under this program will be dictated by the magnitude of the pest infestation. For example, in the outbreak discovered in Dade County Florida in April 1998, a small number of localized ground-based applications of malathion bait were used, along with limited treatments of diazinon soil drench and sterile Mediterranean fruit fly releases. In the eradication program undertaken against the infestation of Mediterranean fruit flies centered in Lake County Florida in April 1998, 1,315 flies were trapped. An outbreak of this intensity required the use of both aerial and ground treatments of malathion bait in a 35.5 square mile area. Sterile Mediterranean fruit flies were also released in connection with this outbreak.

Under the exemption application now under consideration, the Applicant requested the use of malathion and diazinon to eradicate nonindigenous subtropical fruit flies. Following the identification of a quarantined fruit fly, malathion would be applied along with a protein bait attractant (at a rate of 2.4 ounces/acre of malathion with 9.6 ounces of protein hydrolysate/acre) through ground or aerial application equipment. Applications are proposed at 5 to 21 day intervals until eradication is achieved, as determined by an absence of detections in baited traps. The total number of applications includes sufficient time to extend through two fruit fly life cycles beyond the last fly find. Fruit fly life cycles are temperature dependent, and could range from approximately 26 to 90 days. The applicant referenced the general conditions in Florida and estimates that six to eight applications are typically needed in order to cover two life cycles. Because of these uncertainties, it is difficult to anticipate the total amount of pesticide required for a given infestation or time period.

The diazinon would be applied through soil drench technique directly within the drip line of trees determined to have been hosts to the pests. The proposed application rate for diazinon is 1.8 ounces pesticide per 1,000 square feet of soil surface within the drip line of host trees and to the soil around host nursery stock. A maximum of 10 pounds of diazinon was proposed.

A summary of the other major proposed measures and eradication program conditions include:

1. *Expansion of fruit fly detection and prevention activities.* The exotic fruit fly trapping and detection activities represent the initial defense against pest outbreaks. Given that fruit fly populations are capable of reproducing quickly, a comprehensive scouting and exclusion program is critical to preventing the establishment of these pests in the contiguous United States. In addition, prevention efforts are in line with the objective of risk reduction since it is likely that any eradication program that is undertaken would be smaller in scope if the outbreak is detected shortly after the introduction of the pest.

Given that background, the Applicant has indicated that more fruit fly traps will be placed in the field in the future. Further, the traps will be serviced by new personnel hired to expand the detection efforts in Florida. In addition, new or expanded exclusion measures will be used to increase the security of the Florida border from the accidental importation of contaminated produce. For example, screening tools such as canine detection teams and new x-ray equipment will be used in Florida ports.

2. *Sterile Insect Technique (SIT)* which involves the introduction of sterilized male flies into the infested area with the objective of fostering sterile flies to mate with feral female flies. The resultant eggs will be infertile. The Applicant is an advocate of SIT and believes it should be used when it is possible to over flood the wild population with sterile males. The Applicant also mentions that SIT can be used as a preventative measure and cited the ongoing release of SIT over Manatee County, Florida.

3. *Public notification and education* whereby residents in treated areas are to receive a minimum of 24 hours advance notice for a treatment planned around their homes. The notification measures include precautions that the public might take to protect their health, property, and pets. Further, the Applicant will establish a telephone hotline so that individuals in the treatment areas can obtain current information about the eradication program and report any suspected adverse effects connected with the treatments. The outreach program also includes special notification for individuals who are listed on state

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public health registries as hypersensitive to chemical exposure.

4. *Ecological and environmental protections* will be established. These include consultations with FWS concerning endangered and threatened species, notice to beekeepers and the establishment of buffer areas to protect sensitive environmental resources.

This notice is a summary of the information submitted by the Applicant. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 cite that the Administrator may determine that it is appropriate to publish a notice of receipt of an application for a quarantine exemption request 40 CFR 166.24 (a)(7). Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established under docket number [OPP–181065] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5/1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181065]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the U.S. Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: December 1, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–32680 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–7]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance request, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. Seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers of EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epamail.epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1153.06; HESHAP for Equipment Leaks (Fugitive Emission Sources); in 40 CFR Part 61, Subpart V; was approved 08/25/98; OMB No. 2060–0068; expires 08/31/2001.

EPA ICR No. 1125.02: NESHAP for Beryllium Rocket Motor Fuel Firing; in 40 CFR Part 63, Supart D; was approved 10/07/98; OMB No. 2060–0394; expires 10/31/2001.

EPA ICR No. 1446.06; PCBs; Notification and Manifesting of PCB Waste Activities and Records of PCB Storage and Disposal; in 40 CFR Part 761; was approved 10/07/98; OMB No. 2070–0112; expires 10/31/2001.

EPA ICR No. 0328.07; Spill Prevention Control Countermeasures (SPCC) Plans; in 40 CFR Part 112(3), Part 112(4), Part 112(5) and Part 112(7); was approved 10/08/98; OMB No. 2050-0021; expires 12/31/99.

EPA ICR No. 1855.02; Promulgation of Federal Implementation Plan for Arizon-Phoenix Moderate Area PM–10 (includes a Proposed Rule for Vacant Lots, Unpaved Parking Lots, and Unpaved Roads for the Phoenix Area); in 40 CFR Part 52; was approved 10/21/98; OMB No. 2060–0389; expires 10/31/2001.

EPA ICR No. 1708.02; 1999 Drinking Water Infrastructure Needs Survey; was approved 10/29/98; OMB No. 2040–0198; expires 10/31/2001.

EPA ICR No. 0270.39; Revisions to the Existing Variance and Exemptions Rule to Comply With the Safe Drinking Water Act; in 40 CFR Part 141 and 40 CFR Part 142; was approved 09/30/98; OMB No. 2040–0090; expires 09/30/2001.

EPA ICR No. 0959.10; Facility Groundwater Monitoring Requirements; in 40 CFR Part 264, Subpart F and 40 CFR Part 265, Subpart F; was approved 11/15/98; OMB No. 2050–0033; expires 11/30/2001.

EPA ICR No. 0270.40 (New Assigned No. is 1895.01); Final National Primary Drinking Water Regulations; Interim Enhanced Surface Water Treatment Rule; in 40 CFR Part 141; was approved 11/16/98; OMB No. 2040–0205; expires 11/30/2001.

EPA ICR No. 0270.41 (New Assigned No is 1896.01); Final National Primary Drinking Water Regulations; Stage 1 Disinfectants/Disinfection Byproducts Rule; in 40 CFR Part 141; was approved 11/16/98; OMB No. 2040–0204; expires 11/30/2001.

EPA ICR No. 1858.01; Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort; was approved 11/13/98; OMB No. 2060–0396; expires 06/30/2000.

Extensions of Expiration Dates

EPA ICR No. 1688.02; RCRA Expanded Public Participation; in 40 CFR Part 124 and Part 270; OMB No. 2050–0149; on 11/13/98 OMB extended the expiration date through 01/31/99.

EPA ICR No. 1755.02; Implementation of XL Projects-Regulatory Re-invention Pilot Projects; OMB No. 2010–0026; on 09/29/98 OMB extended the expiration date through 03/31/99.

Transfer Request

EPA ICR No. 1487.06; Cooperative Agreements and Superfund Contracts for Superfund Response Actions; in 40 CFR Part 35, Subpart O; on 11/10/98 OMB transferred this collection's OMB No. from 2010–0020 to OMB No. 2030–0038).

Dated: December 1, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–32564 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–3]

Proposed CERCLA Prospective Purchaser Agreement for the C&M Plating Company Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of CERCLA Prospective Purchaser Agreement for the C&M Plating Company Site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pubic Law 99–499, notice is hereby given that a proposed prospective purchaser agreement ("PPA") for the C&M Plating Company Site ("the Site") located in Roanoke, Indiana, has been executed by REDO, Inc., a local non-profit redevelopment organization. The proposed PPA has been submitted to the Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against REDO, Inc. The proposed PPA would require REDO, Inc., to pay the United States $2,000 to be applied toward outstanding response costs incurred by the United States in conducting federally funded removal activities at the Site. The Site is not on the NPL, and no further response activities at the Site are anticipated at this time.

DATES: Comments on the proposed PPA must be received by January 8, 1999.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Reginald A. Pallesen at (312) 886–0555, prior to visiting the Region 5 office. Comments on the proposed PPA should be addressed to Reginald A. Pallesen, Office of Regional Counsel (C–14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Reginald A. Pallesen, Associate Regional Counsel, at (312) 886–0555. A 30-day period, commencing on the date of publication of this document, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this document.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–32565 Filed 12–8–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

December 2, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0849.

Expiration Date: 10/31/2001.

Title: Commercial Availability of Navigation Devices—CS Docket No. 97–80.

Form No.: N/A.

Estimated Annual Burden: 200 responses; 3266 total annual hours; 0.2 to 40 hours per respondent.

Description: This information is required to ensure that consumers can make informed decisions about the purchase and proper installation of navigation devices.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32644 Filed 12–8–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Performance Review Board

As required by the Civil Service Reform Act of 1978 (Public Law 95–454), Chairman William E. Kennard appointed the following executives to the Performance Review Board: Richard D. Lee, Renee I. Licht, Mary Beth Richards, David H. Solomon, Thomas S. Tycz.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32645 Filed 12–8–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Submission for OMB Review: Comment Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Forms SF–424, SF–270 (LM–6), (LM–8), SF–269a (LM–7), (LM–9), and (LM–3) submitted for extension and review to the Office of Management and Budget.

SUMMARY: This notice announces that six information collection requests contained in the Federal Mediation and Conciliation Service (FMCS) agency forms are coming up for renewal. FMCS submitted to the Office of Management and Budget (OMB) a request for review of six FMCS forms: SF–424 Application for Federal Assistance, SF–270 (LM–6)—Request for Advance or Reimbursement, (LM–8)—Project Performance, SF–269a (LM–7)—Financial Status Report, (LM–9)—FMCS Grants Program Grantee Evaluation Questionnaire, and (LM–3)—Accounting System and Financial Capability Questionnaire. The request seeks OMB approval for a three-year expiration date of Forms SF–424, SF–270 (LM–6), (LM–8), SF–269a (LM–7), (LM-9) and (LM–3) until November 30, 2001. FMCS is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before January 8, 1999.

ADDRESSES: Submit written comments identified by the appropriate agency form number by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for the Federal Mediation and Conciliation Service, Room 10235, Washington, DC 20503. Copies of the complete agency forms may be obtained from the Labor Management Grants Program at Federal Mediation and Conciliation Service, the Labor Management Grants Program, 2100 K Street, NW, Washington, DC 20427 or by contacting the person whose name appears under the section headed, FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, Director of Program Services, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427. Telephone (202) 606–8181; Fax: (202) 606–4216.

I. Information Collection Requests

FMCS is seeking comments on the following information collection requests contained in FMCS agency forms.

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0006.

Type of Request: Reinstatement without change of a currently approved collection without any change in the substance or method of collection.

Affected Entities: Potential applicants/grantees who received our grant application kit. Also, applicants/grantees who have received a grant from FMCS.

Frequency: a. Three of the forms, the SF–424, LM–6, and LM–9 are submitted at the applicant/grantee's discretion.

b. To conduct the quarterly submissions, LM–7/LM–8 forms are used. Less than quarterly reports would deprive FMCS of the opportunity to provide prompt technical assistance to deal with those problems identified in the report.

c. Once per application. The LM–3 is the only form to which a "similar information" requirement could apply. That form takes the requirement into consideration by accepting recent audit reports in lieu of applicant completion of items C2 through 9 and items D1 through 3.

Burden: SF–424 Application for Federal Assistance, SF–270 (LM–6) Request for Advance or Reimbursement—30 minutes, (LM–8) Project Performance—60 minutes, SF–269a (LM–7) Financial Status Report—30 minutes, (LM–9) FMCS Grants Program Evaluation Questionnaire—60 minutes, and (LM–3) Accounting System and Financial Capability Questionnaire—60 minutes.

Abstract: Except for the FMCS Forms LM–3 and LM–9, the forms under consideration herein are either required or recommended on OMB Circulars. The two exceptions are non-recurring forms, the former a questionnaire sent only to non-governmental potential grantees and the latter a questionnaire sent only to former grantees for voluntary completion and submission.

The collected information is used by FMCS to determine annual applicant suitability, to monitor quarterly grant project status, and for on-going program evaluation. If the information were not collected, there could be no accounting for the activities of the program. Actual use has been the same as intended use.

II. Request for Comments

The OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, e.g. permitting electronic and fax submission of responses.

Dated: November 27, 1998.

Richard Barnes,

Acting Director, Federal Mediation and Conciliation Service.

[FR Doc. 98–32663 Filed 12–8–98; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
26–OCT–98	19990006	G	Carolina Mills, Incorporated.
		G	Burlington Industries, Incorporated.
		G	Burlington Industries, Incorporated.
	19990040	G	General Electric Company.
		G	Marquette Medical Systems, Inc..
		G	Marquette Medical Systems, Inc..
	19990056	G	Elan Corporation plc.
		G	Ligand Pharmaceuticals Incorporated.
		G	Ligand Pharmaceuticals Incorporated.
	19990057	G	Ligand Pharmaceuticals Incorporated.
		G	Elan Corporation plc.
		G	Elan International Services, Ltd.
	19990175	G	West Point Stevens, Inc.
		G	Voting Trust of Liebhardt Mills, Inc.
		G	Liebhardt Mills, Inc.
27–OCT–98	19984858	G	ITC Holding Company, Inc.
		G	William G. Jackson.
		G	Cable Alabama Corporation.
	19984864	G	Republic Industries, Inc.
		G	Richard-T. Bennett.
		G	Tousley Ford, Inc. & Vandnais Heights Development Company
	19990002	G	Norcal Mutual Insurance Company.
		G	Pennsylvania Medical Society.
		G	PennMed, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990009	G	Medical Mutual Liability Insurance Society of Maryland.
		G	Pennsylvania Medical Society.
		G	PennMed, Inc.
	19990044	G	SPI Holdings, Inc.
		G	Modtech, Inc.
		G	Modtech, Inc.
	19990106	G	Northwestern Corporation.
		G	Mr. Stephen J. Hellberg.
		G	Vision Communication Services, Inc. & Enhanced Communications.
	19990118	G	Robert Walters.
		G	StaffMark, Inc.
		G	StaffMark, Inc.
	19990119	G	Plum Creek Timber Company, L.P.
		G	Sappi Limited.
		G	SWD Timber II.
	19990137	G	Smiths Industries plc.
		G	Biochem International Inc.
		G	Biochem International Inc.
	19990142	G	Metro Vermogensverwaltungs-gesellschaft mbH & C KG.
		G	Metro Holding AG.
		G	Metro Holding AG.
	19990149	G	Philip F. Anschutz.
		G	Icom CMT Corp.
		G	Icom CMT Corp.
	19990164	G	Legal & General Group Plc.
		G	DORANA.
		G	DORANA.
	19990170	G	MCC Aerospace LLC.
		G	Alinabal Holdings Corporation.
		G	Lamsco.
	19990188	G	Health Care Capital Partners, L.P.
		G	Imagyn Medical Technologies, Inc.
		G	Imagyn Medical Technologies, Inc.
		G	Dacomed Corporation.
		G	Obson Medical Systems, Ltd.
19990202		G	Safeway, Inc.
		G	Dominick's Supermarkets, Inc.
		G	Dominick's Supermarkets, Inc.
28–OCT–98	19984095	G	Memorial Mission Medical Center, Inc.
		G	Sisters of Mercy of the Americas, Regional Comm. of N.C.
		G	St. Joseph's Hospital.
29–OCT–98	19990019	G	Paul G. Allen.
		G	Jeffrey A. and Nancy C. Marcus (husband and wife).
		G	Marcus Cable Properties, Inc.
	19990032	G	MCI WorldCom, Inc.
		G	World Access, Inc.
		G	World Access, Inc.
	19990110	G	Martin Marietta Materials, Inc.
		G	Lafarge S.A.
		G	Redland Stone Products Company.
	19990112	G	UGC Limited.
		G	Ford Motor Company Inc.
		G	Ford Motor Company Inc.
	19990120	G	The Hearst Trust.
		G	Jon S. Kelly.
		G	Kelly Broadcasting Co.
	19990124	G	Compaq Computer Corporation.
		G	General Electric Company.
		G	General Electric Capital Corporation.
	19990129	G	TPG Partners II L.P.
		G	GPA Group plc.
		G	GPA Group plc.
	19990130	G	ABRY Broadcast Partners III, L.P.
		G	Midwest Television Statutory Trust.
		G	WHAG–TV, WFFT–TV, KSVI–TV, KHMT–TV.
	19990145	G	Morgan Stanely Capital Partners III, L.P.
		G	Homeowners Direct Corporation.
		G	Homeowners Direct Corporation.
	19990147	G	Thomas & Betts Corp.
		G	Ilan Bender.
		G	Ocal, Inc.
	19990153	G	Penton Media, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Mecklermedia Corporation.
		G	Mecklermedia Corporation.
	19990163	G	SCI Systems, Inc.
		G	Intergraph Corporation.
		G	Intergraph Corporation.
	19990174	G	Tenet Healthcare Corporation.
		G	San Diego Hospital Association.
		G	Sharp Temecula Valley d/b/a Sharp Healthcare Murrieta.
	19990177	G	Republic Industries, Inc.
		G	Charles F. Latimer.
		G	Woodfield Ford Sales, Inc.
	19990184	G	Madison Dearborn Partners.
		G	Stone Container Corporation.
		G	Cameo Container Corporation.
30–OCT–98	19990083	G	V.F. Corporation.
		G	Washables, Inc.
		G	Washables, Inc.
	19990086	G	Community Newspaper Holdings, Inc.
		G	Mr. Kenneth R. Thomson, a Canadian citizen.
		G	Thomson Newspapers Inc.
	19990089	G	National Guardian Life Insurance Company.
		G	Kentucky Home Mutual Life Insurance Company.
		G	Kentucky Home Mutual Life Insurance Company.
	19990098	G	NOVA Corporation.
		G	First Union Corporation.
		G	First Union Corporation.
	19990095	G	The Jaguar Fund N.V.
		G	US Airways Group, Inc.
		G	US Airways Group, Inc.
	19990117	G	Prime 66 Partners, L.P.
		G	CD Radio, Inc.
		G	CD Radio, Inc.
	19990125	G	Vivendi, a French company.
		G	Philadelphia Suburban Corporation.
		G	Philadelphia Suburban Corporation.
	19990131	G	America Online, Inc.
		G	Time Warner Inc.
		G	Thrive Partners.
	19990134	G	International Network Services, Inc.
		G	VitalSigns Software, Inc.
		G	VitalSigns Software, Inc., a Delaware corporation.
	19990135	G	Turner Dairies, Inc.
		G	Earl Carter.
		G	Holland Dairies, Inc.
	19990136	G	Warner-Lambert Company.
		G	Glaxo Wellcome plc.
		G	Glaxo Wellcome plc.
	19990140	G	General Motors Corporation.
		G	Suzuki Motor Corporation.
		G	Suzuki Motor Corporation.
	19990183	G	Mr. Ramon Calderon Rivera.
		G	Seaboard Corporation.
		G	Seaboard Bakeries, Inc.
		G	Holsum Bakers of Puerto Rico.
		G	Harinas de Puerto Rico, Inc.
03–NOV–98	19982488	G	Apollo Investment Fund III, L.P.
		G	American Shared Hospital Services.
		G	CuraCare, Inc.
		G	American Shared-CuraCare.
	19990094	G	Evans Deakin Industries Limited.
		G	Australian National Industries Limited.
		G	Australian National Industries Limited.
	19990109	G	TSG Capital Fund II, L.P.
		G	James Hirshfield.
		G	Summit Cablevision, L.P.
	19990139	G	Staples, Inc.
		G	Ivan Allen Company.
		G	Ivan Allen Company.
	19990144	G	Allied Waste Industries, Inc.
		G	Raymond Esposito.
		G	McCauley Enterprises, Inc.
	19990146	G	The Fuji Bank, Limited.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Dana Corporation.
		G	Dana Commercial Credit Corporation.
	19990150	G	FPIC Insurance Group, Inc.
		G	The Tenere Group, Inc.
		G	The Tenere Group, Inc.
	19990154	G	Waste Management, Inc.
		G	Frank Perrotti, Jr.
		G	Northeast Waste Systems, Inc.
		G	Automated Salvage Transport, Inc.
	19990169	G	HRH Prince Alwaleed Bin Talal Bin Abdulaziz.
		G	Planet Hollywood International, Inc.
		G	Planet Hollywood International, Inc.
	19990176	G	Packaging Holdings, L.L.C.
		G	ARTRA Group Incorporated.
		G	Bagcraft Corporation of America.
	19990179	G	Kingway Financial Services Inc.
		G	Roberto Espin, Jr.
		G	Hamilton Investments, Inc.
	19990181	G	OmniSource Corporation.
		G	Herbert B. Gertler and Marilyn E. Gertler.
		G	Industrial Scrap Corporation.
	19990186	G	Micrel, Inc.
		G	Synergy Seniconductor Corporation.
		G	Synergy Seniconductor Corporation.
	19990187	G	Symatec Corporation.
		G	Quarterdeck Corporation.
		G	Quarterdeck Corporation.
	19990192	G	Thomas O. Hicks.
		G	Host Communications, Inc.
		G	Host Communications, Inc.
	19990193	G	Thomas O. Hicks.
		G	Universal Sports America, Inc.
		G	Universal Sports America, Inc.
	19990198	G	Marmon Holdings, Inc.
		G	Bushwick Iron & Steel Co., Inc.
		G	Bushwick Iron & Steel Co., Inc.
	19990199	G	Brandywine Senior Care, Inc.
		G	Lars Christensen.
		G	Blue Star Health Care Services, Inc.
	19990206	G	Markel Corporation.
		G	Gryphon Holdings Inc.
		G	Gryphon Holdings Inc.
	19990212	G	Centris Group, Inc. (The).
		G	Eureko, B.V.
		G	Seaboard Life Insurance Company, VASA North America, Inc.
	19990217	G	Paul G. Allen.
		G	Lester M. Smith.
		G	Alexander Broadcasting Company.
	19990226	G	General Motors Corporation.
		G	Burns Bros., Inc.
		G	Burns Bros., Inc.
	19990228	G	CGW Southeast Partners III, L.P.
		G	Interfilm Holdings, Inc.
		G	Center Street Capital Partners, L.P.
		G	Center Street Capital Mngt., L.C., Stephens Group, I.
	19990232	G	Citation Corporation.
		G	John C. Iverson.
		G	Custom Products Corporation.
	19990233	G	Harbour Group Investments III, L.P.
		G	John M. Bnlbeck.
		G	Southern Heat Exchanger Corporation.
	19990238	G	Aldo A. Croatti.
		G	Manfred Tidor.
		G	Standard Management Corp., Durawear Manufacturing Corp.
		G	Stable Manufacturing Corp.
	19990247	G	William Blair Mezzanine Capital Fund II, L.P.
		G	Donald J. and Patsy L. Williamson.
		G	The Colonel's, Inc.
	19990274	G	Perry Judd's Holdings, Inc.
		G	Thomas G. Colwell.
		G	Heartland Press, Inc.
04–NOV–98	19990065	G	ABC Rail Products Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	NACO, Inc.
		G	NACO, Inc.
	19990077	G	CMS Energy Corporation.
		G	Gilbert A. Bruciaga.
		G	Bradshaw Gathering System.
	19990078	G	Joseph A. Seher.
		G	ABC Rail Products Corporation.
		G	ABC Rail Products Corporation.
	19990088	G	GATX Corporation.
		G	Marubeni Corporation.
		G	Mieco Inc.
	19990100	G	CMS Energy Corporation.
		G	Dynegy Inc.
		G	Bradshaw Gathering System.
	19990101	G	General Electric Company.
		G	Gilat Satellite Networks, Ltd.
		G	Gilat Satellite Networks, Ltd.
	19990102	G	Gilat Satellite Networks Ltd.
		G	General Electric Company.
		G	GE Capital Spacenet Services, Inc.
	19990123	G	ChoicePoint, Inc.
		G	Thomas C. Lund.
		G	National Credit Audit Corporation.
		G	Customer Database Technologies, Inc.
		G	Customer Development Corporation.
		G	Optimum Graphics Printing, Inc.
		G	CDC Realty, LLC.
		G	Financial Database Services Company.
	19990133	G	CMS Energy Corporation.
		G	Heritage Gas Services, L.L.C.
		G	Heritage Gas Services, L.L.C.
	19990189	G	Canadian Pacific Limited.
		G	Brierley Investments Limited.
		G	ANZDL Management Services (North America) Inc.
		G	Plus jointly owned assets.
	19990190	G	Canadian Pacific Limited.
		G	Vincent Bolore.
		G	ANZDL Management Services (North America) Inc.
	19990252	G	Republic Industries, Inc.
		G	Edward John DeBoer.
		G	Arc Disposal Company, Inc. and E&P Investment Corporation.
	19990253	G	Republic Industries, Inc.
		G	Paul Alan DeBoer.
		G	Arc Disposal Company, Inc. and E&P Investment Corporation.
06–NOV–98	19984538	G	Liberty Financial Companies, Inc.
		G	Societe Generale.
		G	Societe Generale Asset Management Corp.
	19990105	G	General Dynamics Corporation.
		G	NASSCO Holdings Incorporated.
		G	NASSCO Holdings Incorporated.
	19990111	G	Glenn R. Jones.
		G	Tele-Communications, Inc.
		G	Bresnan Communications Company Limited Partnership.
	19990141	G	Harris Corporation.
		G	Intraplex, Inc.
		G	Intraplex, Inc.
	19990234	G	Madison Dearborn Capital Partners II, L.P.
		G	Reiman Publications, L.P.
		G	Reiman Publications, L.P.
	19990239	G	Frank M. Ward.
		G	Carousel Capital Partners, LLC.
		G	IllumElex Corporation.
	19990259	G	Rasminco Limited.
		G	Savage Resources Limited.
		G	Savage Resources Limited.
	19990267	G	Group Maintenance America Corp.
		G	Trinity Contractors, Inc.
		G	Trinity Contractors, Inc.
	19990268	G	Castle Harlan Partners III, L.P.
		G	Luther's Bar-B-Q, Inc.
		G	Luther's Bar-B-Q, Inc.
	19990276	G	Yellow Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	David Fulkerson.
		G	Action Express, Inc.
	19990277	G	Yellow Corporation.
		G	Daniel Fulkerson.
		G	Action Express, Inc.
	19990278	G	General Motors Corporation.
		G	Donald E. Massey.
		G	Saturn of Plymouth, Inc.
		G	Saturn of Okemos, Inc.
		G	Saturn of Farmington Hills, Inc.
	19990286	G	Bell Microproducts, Inc.
		G	Almo Corporation.
		G	Almo Corporation.
		G	Almo Distributing Pennsylvania, Inc.
		G	Almo Distributing Maryland, Inc.
		G	Almo Distributing Wisconsin, Inc.
		G	Almo Distributing, Inc.
		G	Almo Distributing Minnesota, Inc.
	19990287	G	Grupo Carso, S.A. de C.V.
		G	Continental Aktiengesellschaft.
		G	Continental General Tire, Inc.
	19990288	G	Weyerhaeuser Company.
		G	Mr. Thomas S. Connelly.
		G	Connelly Containers, Inc.
	19990293	G	Leonardo Del Vecchio.
		G	Mitani Corporation.
		G	Spectron, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, contact representatives, Federal Trade Commission, premerger notification office, Bureau of Competition, room 303, Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–32656 Filed 12–8–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
09–NOV–98	19983303	G	John J. Rigas.
		G	Tele-Media Company of Southeast Florida, Inc.
		G	Tele-Media Company of Southeast Florida, Inc.
	19990282	G	Odyssey Investment Partners Fund, LP.
		G	Celadon Group, Inc.
		G	Celadon Group, Inc.
	19990283	G	General American Mutual Holding Company.
		G	First Data Corporation.
		G	EPBLife Insurance Company.
	19990292	G	Cendant Corporation.
		G	Apollo Investment Fund III, L.P.
		G	NRT Incorporated.
	19990294	G	Allied Waste Industries, Inc.
		G	Geroge Rutigliano.
		G	Rutigliano Paper Stock, Inc.
	19990297	G	Cornerstone Propane Partners, L.P.
		G	Propane Continental, Inc.
		G	Propane Continental, Inc.
	19990301	G	Katy Industries, Inc.

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TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Limited Liability Company.
		G	Limited Liability Company.
	19990304	G	U.S. Foodservice.
		G	Joseph Webb Foods, Inc.
		G	Joseph Webb Foods, Inc.
	19990305	G	Platinum Software Corporation.
		G	DataWorks Corporation.
		G	DataWorks Corporation.
	19990306	G	VEBA AG.
		G	Michael C. Argyelan.
		G	Whittaker, Clark & Daniels, Inc.
	19990321	G	Spartan Stores, Inc.
		G	Ashcraft's Market, Inc.
		G	Ashcraft's Market, Inc.
	19990341	G	National Express Group PLC.
		G	Leon Robinson, Jr.
		G	Robinson Bus Service, Inc
		G	Maierhofer, Inc.
10–NOV–98	19990126	G	AT&T Corp.
		G	AT&T Corp.
		G	Houston Cellular Telephone Company, L.P.
	19990221	G	Odyssey Investment Partners Fund, LP
		G	Kelso Investment Associates IV, L.P.
		G	TransDigm Holding Company.
	19990251	G	Asif A. Sayeed.
		G	Coventry Health Care, Inc.
		G	Principal Health Care of Illinois, Inc.
	19990275	G	Health Risk Management, Inc.
		G	Oxford Health Plans, Inc.
		G	Oxford Health Plans of PA, Inc.
	19990310	G	Jack Henry & Associates, Inc.
		G	Peerless Group, Inc.
		G	Peerless Group, Inc.
	19990311	G	William Blair Capital Partners VI, L.P.
		G	Inland Steel Industries, Inc.
		G	Inland Engineered Materials Corporation.
	19990324	G	JH. Whitney III, L.P.
		G	Kjell Inge Rokke.
		G	Brooks Sports, Inc.
	19990325	G	American Express Company.
		G	Electronic Data Systems Corporation.
		G	Shamrock ATM Inc.
	19990338	G	Pioneer International Limited.
		G	Roy P. McNeil.
		G	Metro West Ready-Mix, Ind.
	19990339	G	Frank A. and Katherine Argenbright.
		G	Steven C. Kletijan.
		G	Unicco Security Service, Inc.
12–NOV–98	19990156	G	Time Warner Inc.
		G	Time Warner Inc.
		G	Paragon Communications.
	19990195	G	Cisco Systems, Inc.
		G	Lagardere SCA, a French company.
		G	Selsius Systems Inc.
	19990262	G	AT&T Corp.
		G	Vanguard Cellular Systems, Inc.
		G	Vanguard Cellular Systems, Inc.
	19990269	G	Blackstone CCI Capital Partners L.P.
		G	Blackstone CCI Capital Partners L.P.
		G	Sioux Falls Cellular Limited Partnership.
	19990280	G	MarketSpan Corporation d/b/a KeySpan Energy.
		G	Philip Fritze & Sons, Inc.
		G	Philip Fritze & Sons, Inc.
	19990302	G	Bessemer Securities LLC.
		G	Metapath Software International, Inc.
		G	Metapath Software International, Inc.
	19990316	G	ING Groep N.V.
		G	Federal Life Insurance Company.
		G	Life Insurance Company of Illinois.
	19990351	G	Southern Company (The).
		G	Commonwealth Energy System.
		G	Cambridge Electric Light Co., Commonwealth Electric Co.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990352	G	Southern Company (The)
		G	Eastern Utilities Associates.
		G	Montaup Electric Company.
13–NOV–98	19990005	G	Chancellor Media Corporation.
		G	Gregory W. Kunz.
		G	Kunz & Company.
	19990185	G	Naspers Limited.
		G	Hyundia Electronics Industries Co., Ltd., a Korean company.
		G	TV/COM International, Inc.
	19990248	G	Lucent Technologies Inc.
		G	Koninklijke Philips Electronics N.V.
		G	Phillips Consumer Communications L.P.
	19990249	G	Koninklijke Philips Electronic N.V.
		G	Koninklijke Philips Electronic N.V.
		G	Philips Consumer Communication L.P.
16–NOV–98	19990157	G	Deloro Stellite Group Limited.
		G	Conforma Clad Inc.
		G	Conforma Clad Inc.
	19990194	G	Wolseley plc.
		G	Milton Dannelly Law.
		G	Fields and Company of Lubbock, Inc.
	19990289	G	ING Groep N.V.
		G	Investors Financial Group, Inc.
		G	Investors Financial Group, Inc.
	19990296	G	General Motors Corporation.
		G	Jean W. Carlson.
		G	Eastern Massachusetts Real Estate, Inc.
	19990312	G	Jerald Kent.
		G	Charter Communications, Inc.
		G	Charter Communications Group.
	19990313	G	Howard Wood.
		G	Charter Communications Group.
		G	Charter Communications, Inc.
	19990314	G	Barry Babcock.
		G	Charter Communications Group.
		G	Charter Communications, Inc.
	19990332	G	Centennial HealthCare Corporation.
		G	Thomas J. Flatley.
		G	Flatley Rehabiliation & Nursing Centers.
	19990350	G	Louis Elias.
		G	Shoney's Inc.
		G	SHN Properties, LLC, TPI Properies, Inc.
		G	TPI Restaurants, Inc., Shoney's of Michigan, Inc.
	19990358	G	OCM Principal Opportunities, Fund, L.P.
		G	Forcenergy Inc.
		G	Forcenergy Inc.
	19990359	G	Madison Dearborn Capital Partners II, L.P.
		G	Forcenergy Inc.
		G	Forcenergy Inc.
	19990361	G	John H. MacBain and Louise T. Blouin MacBain.
		G	Cendant Corporation.
		G	3012013 Nova Scotia Co., Rapid Distribution Co.
	19990363	G	Estate of Charles A. Sammons.
		G	J. Brian Moran.
		G	Parkway Mortgage, Inc.
		G	Parkway Mortgage, Inc.
		G	Republic Mortgage of Cherry Hill, Inc.
	19990367	G	Chancellor Media Corporation.
		G	Hicks, Muse, Tate & Furst Equity Fund, III, L.P.
		G	Ranger Equity Holdings Corporation.
	19990369	G	International Technology Corporation.
		G	Fluor Corporation.
		G	Fluor Daniel GTI, Inc.
	19990370	G	Ford Motor Company.
		G	Larry Hilcher.
		G	Larry Hilcher Ford, Inc.
	19990371	G	Kroll-O'Gara Company (The).
		G	Laboratory Specialists of America, Inc.
		G	Laboratory Specialists of America, Inc., Oklahoma Corporation.
	19990373	G	NACCO, Inc.
		G	NationsRent, Inc.
		G	The Bode Finn Company.

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TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990374	G	Snyder Communications, Inc.
		G	Paul J. McMahon,
		G	National Sales Services, Inc.
	19990381	G	Warburg, Pincus Investors, L.P.
		G	Children's Broadcasting Corporation.
		G	Children's Radio of Dallas, Inc., Children's Radio of Phoeni.
		G	Children's Radio of New York, Inc.
	19990404	G	United Rentals, Inc.
		G	Michael Watts.
		G	Trench Safety Equipment Corporation.
	19990411	G	Irving Rubenstein.
		G	HA–LO Industries, Inc.
		G	HA–LO Industries, Inc.
	19990412	G	Ralph Rubenstein.
		G	HA–LO Industries, Inc.
		G	HA–LO Industries, Inc.
	19990417	G	HA–LO Industries, Inc.
		G	Ralph Rubenstein.
		G	Premier Promotions and Marketing, Inc.
	19990418	G	HA–LO Industries, Inc.
		G	Irving Rubenstein.
		G	Premier Promotions and Marketing, Inc.
17–NOV–98	19984549	G	MotivePower Industries, Inc.
		G	Fred M. Young, Jr.
		G	Young Radiator Company.
	19990197	G	Windward Capital Associates, L.P.
		G	AEC–Able Engineering Company, Inc.
		G	AEC–Able Engineering Company, Inc.
	19990256	G	Harbour Group Investment III, LP.
		G	Metapoint Partners, Fund–II, L.P.
		G	Wood Structures, Inc.
	19990300	G	Walt Disney Company (The)
		G	Silver Screen Partners IV, L.P.
		G	Disney-Silver Screen IV Joint Venture.
	19990308	G	Waste Connections, Inc.
		G	The Murrey Trust.
		G	American Disposal Company, Inc.
		G	Murrey's Disposal Company, Inc.
		G	Tocoma Recycling Company, Inc.
		G	D.M. Disposal Company, Inc.
	19990309	G	The Murrey Trust.
		G	Waste Connections, Inc.
		G	Waste Connections, Inc.
	19990323	G	Perstorp AB (a Swedish company)
		G	Nycomed Amersham plc
		G	Amersham Pharmacia Biotech Inc.
	19990333	G	Johnson & Johnson.
		G	Mitsubishi Chemical Corporation.
		G	Mitsubishi Chemical Corporation.
	19990365	G	Michael R. Krupp.
		G	Nortek, Inc.
		G	Allied Plywood Corporation.
	19990368	G	Hicks, Muse, Tate & Furst Equity Fund III, L.P.
		G	Chancellor Media Corporation.
		G	Chancellor Media Corporation.
	19990376	G	Gerald W. Schwartz.
		G	International Manufacturing Service, Inc.
		G	International Manufacturing Service, Inc.
	19990377	G	Stewart & Stevenson Services, Inc.
		G	Don L. Chapman.
	19990377	G	Tug Manufacturing Corporation.
	19990384	G	Level One Communications, Inc.
		G	Walter T. Thirion.
		G	Jato Technologies, Inc.
	19990385	G	Walter T. Thirion.
		G	Level One Communications, Inc.
		G	Level One Communications, Inc.
	19990386	G	Software Logistics Corporation dba Logistix.
		G	Massayoshi Son.
		G	SoftBank Content Services, Inc.
	19990393	G	GKN plc.
		G	The Dow Chemical Company.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Dow-United Technologies Composite Products, Inc.
	19990394	G	GKN plc.
		G	United Technologies Corporation.
		G	Dow-United Technologies Composite Products, Inc.
	19990425	G	Ford Motor Company.
		G	Garff Enterprises, Inc.
		G	Garff Wade, Inc., and Tri-City Motor Co., Inc.
	19990387	G	Elkem ASA.
		G	Airgas, Inc.
		G	American Carbide and Carbon Corporation.
	19990391	G	RWE AG.
		G	The Pearl of Kuwait Real Estate Company.
		G	Baumfolder Corporation.
19–NOV–98	19990266	G	Danisco A/S.
		G	Beck Vanilla Products Co.
		G	Beck Vanilla Products Co.
	19990271	G	OEI International, Inc.
		G	Paulus, Sokolowski and Sartor, Inc.
		G	Paulus, Sokolowski and Sartor, Inc.
	19990303	G	Ohio Casualty Corporation.
		G	American Financial Group, Inc.
		G	Great American Insurance Company.
	19990360	G	Lund International Holdings, Inc.
		G	John W. Jordan, II.
		G	Ventshade Holdings, Inc.
	19990372	G	Triton Cellular Partners, L.P.
		G	Kyle W. Mussman.
		G	BMCT, L.P.
	19990415	G	McLeod USA Incorporated.
		G	Dakota Telecommunications Group, Inc.
		G	Dakota Telecommunications Group, Inc.
	19990416	G	DLJ Merchant Banking Partners, II, L.P.
		G	Daniel D. Stokes,
		G	Eyelets for Industry, Inc.
	19990426	G	Family Golf Centers, Inc.
		G	Peter Munk.
		G	Skate Nation, Inc.
20–NOV–98	19990298	G	Scott A. Blum.
		G	David B. Ingram.
		G	SpeedServe, Inc.
	19990299	G	David B. Ingram.
		G	Scott A. Blum.
		G	Buy Corp.
	19990344	G	Fingerhut Companies, Inc.
		G	TPG Partners II, L.P.
		G	Popular Club Plan, Inc.
	19990392	G	Thyssen Aktiengesellschaft (a German company).
		G	Michael E. Mahoney.
		G	Access Industries, Inc.
	19990421	G	Citadel Communications Corporation.
		G	62nd Street Holdings, L.L.C.
		G	62nd Street Broadcasting of Saginaw. LLC (etal).
	19990430	G	PRIMEDIA Inc.
		G	Peter J. Callahan.
		G	The Sterling/Macfadden Partnership.
	19990431	G	PRIMEDIA, Inc.
		G	Morton Tuller.
		G	The Sterling/Macfadden Partnership.
	19990433	G	Zurich Allied AG.
		G	Superior National Insurance Group, Inc.
		G	Business Insurance Company.
	19990435	G	Rhone Capital LLC.
		G	The Beacon Group III–Focus Value Fund, L.P.
		G	Hollywood Theater Holdings, Inc.
	19990444	G	Insurance Services Office, Inc.
		G	James F. Beedle.
		G	IDR Holdings, Inc.
		G	Insurance Data Resources, Inc.
		G	IDR Statistical Services, Inc.
	19990449	G	CompuDyne Corporation.
		G	Apogee Enterprise, Inc.
		G	Norment Industries, Inc./Norshield Corporation.

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TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990456	G	Iowa Health System.
		G	Trinity Health Systems, Inc.
		G	Trinity Health Systems, Inc.
	19990460	G	Fannie May Holdings, Inc.
		G	Sweet Factory Group, Inc.
		G	Sweet Factory Group, Inc.
	19990469	G	Groupe Danone.
		G	AquaPenn Spring Water Company, Inc.
		G	AquaPenn Spring Water Company, Inc.
	19990478	G	The Seagram Company Ltd.
		G	Frederick W. Field.
		G	Interscope TVT JV
	19990481	G	VNU N.V.
		G	Peter J. Callahan.
		G	Macfadden Trade Publishing, LLC.
	19990504	G	Crestline Capital Corporation.
		G	Host Marriott Corporation.
		G	Host Marriott Corporation.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–32657 Filed 12–8–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
15–Oct–98	19984680	G	BWY Corporation.
		G	United States Can Company.
		G	United States Can Company.
	19984715	G	Johns Manville Corporation.
		G	Samuel J. Heyman.
		G	BMCA Insulation Products, Inc.
	19984758	G	CSR Limited.
		G	Standard Sand & Silica Company, a Florida Corporation.
		G	Standard Sand & Silica Company, a Florida Corporation.
	19984770	G	CH–CGH, Inc.
		G	CGH Health Services.
		G	CGH Health Services.
	19984827	G	USFreightways Corporation.
		G	Golden Eagle Group, Inc.
		G	Golden Eagle Group, Inc.
	19990004	G	Hartley D. Peavey.
		G	John Lee.
		G	Crest Audio, Inc.
	19990012	G	HNC Software, Inc.
		G	Open Solutions, Inc.
		G	Open Solutions, Inc.
	19990018	G	Frontenac VII Limited Partnership.
		G	Derlan Industries Limited.
		G	Brenton Engineering Company.
		G	Roberts Polypro, Inc.
	19990026	G	Warren E. Buffett and Susan T. Buffett.
		G	Berkshire Hathaway Inc./General Re Corporation.
		G	Berkshire Hathaway Inc./General Re Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	19990027	G	Malcolm G. Chace.
		G	Berkshire Hathaway Inc./General Re Corporation.
		G	Berkshire Hathaway Inc./General Re Corporation.
16–Oct–98	19984469	G	Marsh & McLennan Companies, Inc.
		G	Sedgwick Group plc.
		G	Sedgwick Group plc.
19–Oct–98	19984764	G	Stephen E. Myers.
		G	Providence Media Partners, L.P.
		G	Mark Twain Cablevision Limited Partnership.
	19984834	G	Cornerstone Properties Inc.
		G	William Wilson III.
		G	William Wilson & Associates
	19984835	G	Code, Hennessy & Simmons III, L.P.
		G	Mr. Randolph McCormick, Sr.
		G	Dixie Auto Glass Inc, Capital Glass Inc., Glass Depot Inc.
		G	Dixie Auto Glass Co., Inc.
		G	Dixie Glass Co. of Thibodaux, Inc.
	19984865	G	Allied Waste Industries, Inc.
		G	Gaspare Campo.
		G	Standard Disposal Services, Inc.
	19990007	G	The Manitowoc Company, Inc.
		G	Powerscreen International PLC.
		G	Powerscreen USC, Inc.
	19990023	G	Thayer Equity Investors III, L.P.
		G	Lewis O. Coley, III.
		G	Pacific Circuits, Inc.
	19990028	G	Gleming Companies, Inc.
		G	The Penn Traffic Company.
		G	The Penn Traffic Company.
	19990031	G	William J. Kidd.
		G	Paul A. Keany.
		G	W.F. Wood, Incorporated.
	19990034	G	Phillip Morris Companies, Inc.
		G	Starbucks Corporation.
		G	Starbucks Corporation.
	19990037	G	Minnesota Mining & Manufacturing Company.
		G	Lindsay Stevens.
		G	Ja-Leu, Inc.
	19990038	G	Minnesota Mining & Manufacturing Company.
		G	Christian Stevens.
		G	Ja-Leu, Inc.
	19990046	G	Florida Progress Corporation.
		G	Royce G. Kershaw, Jr.
	19990046	G	Kershaw Manufacturing Company, Inc.
	19990047	G	HydroChem Holding, Inc.
		G	Rollins Investment Fund.
		G	Valley Systems, Inc.
		G	Valley Systems of Ohio, Inc.
	19990048	G	GKN plc.
		G	Anthony Viglione.
		G	Alpine Pressed Metals, Inc.
20–Oct–98	19981697	G	Lafarge, S.A.
		G	Thomas Schmidheiny.
		G	Holnam, Inc.
	19984775	G	Cablevision Systems Corporation.
		G	Clearview Cinema Group, Inc.
		G	Clearview Cinema Group, Inc.
	19984780	G	MedQuist Inc.
		G	The MRC Group, Inc.
		G	The MRC Group, Inc.
	19984841	G	Giant Eagle, Inc.
		G	Reider's, Inc.
		G	Reider's, Inc.
	19984848	G	PartnerRe Ltd.
		G	Credit Suisse Group.
		G	Winterthur Reinsurance Corp. & Winterthur Life Reinsurance.
	19990014	G	Premier Parks Inc.
		G	United Services Automobile Association.
		G	Fiesta Texas Inc.
		G	San Antonio Theme Park, L.P.
	19990053	G	U.S. Foodservice.
		G	Geoffrey M. Haar.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	J.H. Haar & Sons, Inc.
	19990059	G	Isaac Saba Raffoul.
		G	Hoechst Aktiengesellschaft.
		G	Hoechst Aktiengesellschaft.
	19990060	G	Koch Industries, Inc.
		G	Hoechst Aktiengesellschaft.
		G	Hoechst Aktiengesellschaft.
	19990062	G	BCE Inc.
		G	SkyView Media Group Inc.
		G	SkyView Media Group Inc.
	19990063	G	Precision Industrial Automation, Inc.
		G	Robert Bosch Industrietreuhand KG.
		G	Robert Bosch Corporation.
	19990081	G	Leggett & Platt, Incorporated.
		G	Ronald D. Douglas.
		G	Technical Plastics Corporation.
	19990096	G	The Garfield Weston Charitable Foundation.
		G	Harrowston Inc.
		G	SPI Holding Company.
21–Oct–98	199984818	G	Alfred Lerner.
		G	The Browns Holding Trust.
		G	The Browns Holding Trust.
	19984838	G	Unilab Corporation.
		G	Meris Laboratories, Inc. (debtor-in-possession).
		G	Meris Laboratories, Inc. (debtor-in-possession).
	19990029	G	The Nomura Securities Co., Ltd.
		G	Global Interactive Technologies Corporation.
		G	Global Interactive Technologies Corporation.
	19990033	G	LodgeNet Entertainment Corporation.
		G	Global Interactive Technologies Corporation.
		G	Global Interactive Technologies Corporation.
	19990052	G	Jacor Communications, Inc.
		G	ML Media Partners, L.P.
		G	Anaheim Radio Associates.
	19990066	G	The Coastal Corporation.
		G	E.I. duPont de Nemours and Company.
		G	Conoco Inc.
	19990067	G	Rowe Furniture Corporation.
		G	Mitchell S. Gold.
		G	The Mitchell Gold Co.
	19990068	G	Rowe Furniture Corporation.
		G	Robert T. Williams, Jr.
		G	The Mitchell Gold Co.
	19990071	G	Pinnacle Healthcare.
		G	Putnam Center, Inc.
		G	Putnam Hospital Center.
	19990079	G	Griffon Corporation.
		G	Leonard C. Adams.
		G	Adams Bros. Interiors & Cabinets, Inc.
		G	Adams Bros, Interiors of Nevada, Inc.
		G	AB Installations, Inc.
	19990084	G	V.F. Corporation.
		G	Louis Lazarus.
		G	Penn State Textile Manufacturing, Inc.
	19990090	G	Trivest Fund II, Ltd.
		G	Dyno Holdings Corporation.
		G	Dyno Holdings Corporation.
	19990103	G	Gerald W. Schwartz.
		G	Raymond Aspiri.
		G	Tempress, Inc.
	19990104	G	Heinz Prechter.
		G	Raymond Aspiri.
		G	Tempress, Inc.
	19990064	G	Global Private Equity III Limited Partnership.
		G	Pinnacle Automation, Inc.
		G	McHugh Software International, Inc.
	19990108	G	Tyco International Ltd.
		G	William T. Brown.
		G	Midnight Burglar Alarm Systems, Inc.
	19990121	G	AFC Cable Systems, Inc.
		G	Jaako O. Uuranniemi.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Georgia Pipe Company.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–32658 Filed 12–8–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following technical review committee to meet during the month of December 1998:

Name: Technical Review Committee on the Agency for Health Care Policy and Research SBIR Topic 010—Tools to Assist Children/Parents Manage Their Chronic Health Needs.

Date and Time: December 14, 1998, 1:00 p.m.–5:00 p.m.

Place: Agency for Health Care Policy and Research Conference Center, 6010 Executive Boulevard, 4th Floor, Conference Room B, Rockville, Maryland, 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the AHCPR Research SBIR Topic 010,—Tools to Assist Children/Parents Manage Their Chronic Health Needs, that was published in the Commerce Business Daily on August 27, 1998.

The purpose of these contracts is to fulfill the Agency for Health Care Policy and Research's participation in the Small Business Innovation Research program (SBIR). The Small Business Research and Development Enhancement Act of 1992 requires the agencies of the Public Health Service (PHS), Department of Health and Human Services (HHS), and other federal agencies to reserve 2.5 percent of their current fiscal year extramural budgets for research or research and development for an SBIR program. This legislation is intended to expand and improve the SBIR program; emphasize increased private sector commercialization of technology development through federal SBIR research and development; increase small business participation in federal research and development; and, foster and encourage participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in the SBIR program.

In Phase I of the SBIR program the contractor will determine and report on the scientific, technical and commercial merit and feasibility of the proposed research or research and development efforts including its ability or capacity to carry out its research or R&D proposal, prior to the provision of further Federal support in Phase II.

The U.S. Department of Health and Human Services issued a Solicitation of the Public Health Service for Small Business Innovation Research Contract Proposals (PHS 99–1) for Topic No. 010 to develop "Tools to Assist Children/Parents Manage Their Chronic Health Needs." An estimated 3 to 30 percent of children (between 2.5 and 25 million children ages 0–21) suffer from one or more chronic conditions. In Phase 1, the contractor will determine the factors important to families caring for chronically ill and disabled children. Offerors should propose an approach or combination of approaches to identify the factors. Some approaches to be considered are literature review, focus groups, secondary data analysis and other techniques appropriate for Phase I contracts. Then, the contractor will develop a prototype decision support tool to assist in family care of a child's chronic illness or disease. Prototype tools could include games for children with chronic illness, technologies that link families with the health care system, workbooks, interactive videos, computer-based or Internet based tools. The prototype should focus on a limited group of chronic conditions requiring families to seek care or support.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above-referenced Request for Proposals.

The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during this meeting, and to protect the free exchange of views, and avoid undue interference with Committee and Department operations. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, implementing regulation, 41 CFR 101–6.1023 and procurement regulation, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Sandra Robinson, Center for Quality Measurements & Improvement, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 501, Rockville, Maryland, 20852, telephone (301) 594–1703.

Dated: December 2, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–32669 Filed 12–8–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following technical review committee to meet during the month of December 1998:

Name: Technical Review Committee on the Agency for Health Care Policy and Research SBIR Topic 011—"Internet-Based Decision Support for Health Related Quality of Life Instruments."

Date and Time: December 14, 1998, 9:00 a.m.–12:00 p.m.

Place: Agency for Health Care Policy and Research, Conference Center, Conference Room B, 6010, Executive Boulevard, 4th Floor, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the SBIR Topic 011, Internet-Based Decision Support for Health Related Quality of Life Instruments, that was published in the Commerce Business Daily on August 27, 1998.

One purpose of these contracts is to fulfill the Agency for Health Care Policy and Research's participation in the Small Business Innovation Research program (SBIR). The Small Business Research and Development Enhancement Act of 1992 requires the agencies of the Public Health Service (PHS), Department of Health and Human Services (HHS), and other federal agencies to reserve 2.5 percent of their current fiscal year extramural budgets for research or research and development for an SBIR program. The legislation is intended to

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expand and improve the SBIR program; emphasize increased private sector commercialization of technology developed through federal SBIR research and development; increase small business participation in federal research and development; and, foster and encourage participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in the SBIR program.

In Phase I of the SBIR program the contractor will address and report on the scientific, technical and commercial merit and feasibility of its proposed research or research and development efforts and its capacity to perform the proposed work prior to the provision of further Federal support in Phase II.

The U.S. Department of Health and Human Services issued a Solicitation of the Public Health Service for SBIR Contract Proposals (PHS 99–1) for Topic No. 011 to develop "Internet-Based Decision Support for Health Related Quality of Life Instruments". One of the most important achievements springing from outcomes and effectiveness research in the past two decades is the recognition by the scientific and clinical communities of the essential role of the patients' perspective in assessing their own health and functioning. This conceptual advance has stimulated a proliferation in the number and applications of patient-based "health-related quality of life" (HRQL) measures and assessments tools. The proposed projects are to produce a world wide web (WWW) based software program that functions as a decision support tool and provides scientific guidance to researchers and clinical decision-makers in the design, evaluation and implementation of HRQL assessments. Specifically, in the Phase I application, these projects will first design a front-end web-based query application capable of retrieving information, through a web server and a query server, from a back-end database engine. The query systems will perform interactive keyword searches against various categories of data elements with cross-linked information entries at various levels of specificity.

Further, these web client applications will be platform-independent, such as those written as Java applets, to facilitate access to the knowledge base from different computer operating systems. As a prerequisite, these projects will either have direct access to existing public or proprietary HRQL knowledge bases or will have to build new databases containing a systematic review of HRQL instruments and applications.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above-described Request for Proposals.

The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during this meeting, and to protect the free exchange of views, and avoid undue interference with Committee and Department operations. This is in accordance with section 10(d) of the Federal Advisory Committee Act 5, U.S.C., Appendix 2, implementing regulations, 41 CFR 101–6.1023 and procurement regulations, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Yen-Pin Chiang, Center for Outcomes and Effectiveness Research, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852, (301) 594–4035.

Dated: December 2, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–32670 Filed 12–8–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the 1999 meetings of the clinical hold review committee, which reviews the clinical holds that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meetings will be held on February 9, 1999; May 11, 1999; August 10, 1999; and November 9, 1999. Biological product companies may submit review requests for the February meeting by January 5, 1999; for the May meeting by March 30, 1999; for the August meeting by June 29, 1999; and for the November meeting by September 28, 1999.

ADDRESSES: Submit clinical hold review requests to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA's regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. Section 312.42 describes the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic, and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting an oversight committee to review clinical holds (see 61 FR 1033, January 11, 1996). CBER held its first clinical hold review committee meeting on May 17, 1995, and plans to conduct further quality assurance oversight of the IND process. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered "anonymously." The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review some of the clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the oversight committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

For each meeting, FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review. Submissions should be made by January 5, 1999, for the February meeting; by March 30, 1999, for the May meeting; by June 29, 1999, for the August meeting; and by September 28, 1999, for the November meeting to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman (address above).

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32643 Filed 12–8–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–9002–N]

RIN 0938–AI13

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Second Quarter, 1998

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during April, May, and June of 1998 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT:

Bridgett Wilhite, (410) 786–5248 (For Medicare instruction information).

Betty Stanton, (410) 786–3247 (For Medicaid instruction information).

Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information).

Kristy Nishimoto, (410) 786–8517 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I lists the publication dates of the most recent quarterly listings of program issuances.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III lists for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is HCFA's practice to announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http://www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. In addition, rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. (Updated titles of the Social Security Laws are available on the Internet at http://www.ssa.gov/OP__Home/ssact/comp-toc.htm.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future, and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Hospital Manual, (HCFA Pub. 10) transmittal entitled "Claims Processing Timeliness Requirements," use the Superintendent of Documents No. HE 22.8/2 and the HCFA transmittal number 729.

V. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, Telephone (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, S2–26–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage and Analysis Group, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Kristy Nishimoto, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–13–07, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–8517.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: November 24, 1998.

Pamela J. Gentry,

Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

November 3, 1997 (62 FR 59358)
November 21, 1997 (62 FR 62325)
June 4, 1998 (63 FR 30499)
August 11, 1998 (63 FR 42857)
September 16, 1998 (63 CFR 49598)

Addendum II

Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[April 1998 through June 1998]

Trans. No.	Manual/subject/publication No.
	Intermediary Manual **Part 2—Audits, Reimbursement Program Administration** **(HCFA Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–2)**
411	• List of MR Codes, Categories, and Conversion Factors.
	Intermediary Manual **Part 3—Claims Process** **(HCFA Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1737	• This transmittal number will not be used.
1738	• Provider Electronic Billing File and Records Formats. Alphabetic Listings of Data Elements.
1739	• Electronic Media Claims. ANSI ASC X12 837 Health Care Claim Transaction Set. Electronic UB–92 Change Request Procedures. Electronic UB–92 Change Request Forms. Millennium Ready Free Billing Software. Millennium Readiness. Paper Bills
1740	• Provider Access to Limited Eligibility Data. Eligibility Data Available.
1741	• Electronic Data Interchange Enrollment Form.
1742	• Payment for Blood Clotting Factor. Administered to Hemophilia Inpatients.
1743	• Provider Electronic Billing File and Record Formats.
1744	• Claims Processing Timeliness.
1745	• Corrective Actions. Withholding Payment for Payable Claims. Cases Referred to and Accepted by Office of Investigations. Law Enforcement Agrees There is Fraud, but Declines the Case Because it Does Not Meet Criteria. Overpayment Recoupment in Potential Fraud Cases. Model Suspension Letter.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1998 through June 1998]

Trans. No.	Manual/subject/publication No.
1746	• Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers
1747	• Review of Form HCFA–1450 for Inpatient and Outpatient Bills. Provider Electronic Billing File and Record Formats. Alphabetic Listings of Data Elements.
	Carriers Manual Part 2—Program Administration (HCFA Pub. 14–2) (Superintendent of Documents No. HE 22.8/7–3)
137	• Functional Standards for Claims Processing Operations.
138	• Functional Standards for Claims Processing Operations.
	Carriers Manual Part 3—Claims Process (HCFA Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1597	• Requirements for Processing Electronic Media Claims. Establishing a System to Process Electronic Media Claims. Standard Electronic Formats. 835 and National Standard Format Health Care Claim Payment/Advice Transactions Medicare Standard PC-Print-B Software. National Standard Format Maintenance Procedures. Paper Remittance Notice.
1598	• Jurisdiction of Requests for Payment. Area Carrier—Physician's Services.
1599	• Contractor Millennium Contingency Plan. Millennium Ready Free Billing Software.
1600	• Electronic Data Interchange Enrollment Form.
1601	• HCPCS Codes.
1602	• Medicare Physician Fee Schedule Database 1998 File Layout. Medicare Physician Fee Schedule Database Status Indicators.
1603	• Simplified Roster Bills.
1604	• Postpayment Review of Claims Denial of Payment. Suspension of Payment. Overpayment Recoupment. Referral to State Agencies or Other Organizations. Model Suspension of Payment Letters.
1605	• Who May Be Paid Benefits. Benefit Checks. Additional Benefits Payable Because Prior Determination Revised. Death of Enrollee or Assignee Before Claim is Settled.
1606	• Otologic Evaluations. Allergy Testing and Immunotherapy. Evaluation/Treatment of Speech Language, Voice, Communication, and/or Auditory Processing, Including Evaluating Aural Rehabilitation Status of Providing Aural Rehabilitation Services. Physical Therapy/Occupational Therapy Provided by Physicians and Physician Employees Method for Computing Fee Schedule Amount. Physicians' Services Furnished on Day of Dialysis. Inpatient Dialysis on Same Date As Evaluation and Management Consultation Versus Visit. 1998 Geographic Practice Cost Indices by Medicare Carrier and Locality.
1607	• This transmittal corrects pagination error in Transmittal 1597 dated April 1998
1608	• Integumentary System.
	Program Memorandum Intermediaries (HCFA Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–98–10	• Year 2000 Update Pages for the Accredited Standards Committee X12 837 Version 3051 Implementations 3A.01 and 1A.C1 Institutional Claim/Coordination of Benefits
A–98–11	• Extension of Due Date for Skilled Nursing Facility Providers Utilizing the HCFA Free Software to File Form HCFA–2540–96 Cost Reports.
A–98–12	• Interim Rate Changes Due to the Elimination of the Formula Driven Overpayment
A–98–13	• Review of Home Health Agency Related Businesses.
A–98–14	• Billing Requirements for Claims With Dates of Service on or After April 1, 1998, for Oral Anti-Nausea Drugs as Full Therapeutic Replacements for Intravenous Dosage Forms as Part of a Cancer Chemotherapeutic Regimen
A–98–15	• Policy Clarification: Provider-Based Designation.
A–98–16	• Coverage and Claims Processing for Prospective Payment for Skilled Nursing Facilities—The Balance Budget Act of 1997.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1998 through June 1998]

Trans. No.		Manual/subject/publication No.
A–98–17	•	Clarification of Provider Cost Report Filing Requirements.
A–98–18	•	Revised Medicare Bad Debt Treatment for Qualified Medicare Beneficiaries.
A–98–19	•	Managed Care Electronic Data Interchange Enrollment Form.
A–98–20	•	Claims Processing For Prospective Payment for Skilled Nursing Facilities—The Balanced Budget Act of 1997.
		Program Memorandum Carriers (HCFA Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–98–12	•	Private Contracts Between Beneficiaries and Physicians/Practitioners.
B–98–13	•	Temporary National HCPCS Code.
B–98–14	•	Year 2000 Update Changes to the Part B ASC X12N 270/271 Version 3051 Implementation for the Health Care Eligibility Benefit Inquiry and Response.
B–98–15	•	Billing for the Technical Component of a Laboratory Test.
B–98–16	•	Screening Pap Smear and Pelvic Examinations—The Balanced Budget Act of 1997.
B–98–17	•	Durable Medical Equipment Regional Carrier Instructions to Implement Balanced Budget Act of 1997 Provisions, § 4105, to Provide Expanded Coverage of Blood Glucose Monitors and Testing Strips for all Diabetics—Implement July 1, 1998.
B–98–18	•	Durable Medical Equipment Regional Carrier Instructions for Denying Claims and Recovering Overpayments for Prescription Drugs Billed and/or Paid to Suppliers Not Licensed to Dispense Prescription Drugs.
B–98–19	•	Change to Health Insurance Claim Form HCFA–1500 Instructions for Processing Physician Claims in Global Payment Systems.
B–98–20	•	Changes to the 1998 Medicare Physician Fee Schedule Database.
B–98–21	•	Notification of Updates to the X12 835 3051.4B and National Standard Format Version 2.01.
B–98–22	•	Change in Screening Mammography Coverage.
B–98–23	•	Health Professional Shortage Area Bonus Payment Clarification.
B–98–24	•	Carrier Updating of the International Classification of Diseases, Ninth Revision, Clinical Modification.
		Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–98–11	•	Contractor Codes for Processing Centers of Excellence Demonstration Claims.
AB–98–12	•	New Waived Tests.
AB–98–13	•	Payments for Physicians Services Affected by Global Payment Demonstrations.
AB–98–14	•	Claims Processing Instructions for the National Institutes of Health National Emphysema Treatment Trial.
AB–98–15	•	Increased Medicare Payment and Billing Requirements for Nurse Practitioners, Physician Assistants, and Clinical Nurse Specialists— Balanced Budget Act of 1997.
AB–98–16	•	Medicare Secondary Payer Denial Indicator and the Source Code Changes.
AB–98–17	•	Provider Notification of Millennium Instructions for Claims-Related Standards.
AB–98–18	•	Consolidated Billing for Skilled Nursing Facilities.
AB–98–19	•	Implementation of Court Order in National Medical Care v. Shalala.
AB–98–20	•	This transmittal number will not be used.
AB–98–21	•	This transmittal number will not be used.
AB–98–22	•	Temporary Codes Established for Screening Pap Smears by Automated Thin Layer Preparation Method.
AB–98–23	•	HCFA–1522, Monthly Contractor Financial Report, Reconciliation.
AB–98–24	•	Provider Overpayment Recovery/Physicians Supplier Overpayment Recovery Systems Overpayments Transferred to the Debt Collection Center for Cross Servicing.
AB–98–25	•	New Waived Tests.
AB–98–26	•	Current Status of Medicare Program Memoranda and Letters Issued Before Calendar Year 1998.
AB–98–27	•	Current Status of Medicare Program Memoranda and Letters Issued Before Calendar Year 1998.
AB–98–28	•	Grace Period for Deleted Automated Multi-Channel Tests—Clarification of Program Memorandum AB–97–17.
AB–98–29	•	Notice of New Interest Rate for Medicare Overpayments and Underpayments.
AB–98–30	•	Suppression of Notice of Utilization, Explanation of Medicare Benefits, and Medicare Summary Notices for Certain Claim Types—Implementation February 1998.
AB–98–31	•	Clarification of Program Memorandum A–97–8 (July 1997) and Program Memorandum B–98–4 (January 1998)—Medicare Summary Notice Instructions.
		State Operations Manual Provider Certification (HCFA Pub. 7) (Superintendent of Documents No. HE 22.8/12)
2	•	Background. Interpretative Guidelines and Investigative Procedures for Responsibilities of Medicare Participating Hospitals in Emergency Cases.

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ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1998 through June 1998]

Trans. No.	Manual/subject/publication No.
	Program Memorandum **Medicaid State Agencies** **(HCFA Pub. 17)** **(Superintendent of Documents No. HE 22.8/6.5)**
98–1	• Title XIX of the Social Security Act, Payment of Medicare Part B Premiums.
98–2	• Current Status of Medicaid Program Memoranda and Action Transmittals Issued Before Calendar Year 1988
	Peer Review Organization Manual **(HCFA Pub. 19)** **(Superintendent of Documents No. HE 22.8/8–15)**
65	• Interaction with Beneficiary Groups. Evaluation.
	Hospital Manual **(HCFA Pub. 10)** **(Superintendent of Documents No. HE 22.8/2)**
728	• Payment for Blood Clotting Factor Administered to Hemophilia Inpatients.
729	• Claims Processing Timeliness Requirements.
	Skilled Nursing Facility Manual **(HCFA Pub. 12)** **(Superintendent of Documents No. HE 22.8/3)**
353	• Billing for Mammography Screening.
	End Stage Renal Disease Network **Organizations Manual** **(HCFA Pub. 81)** **(Superintendent of Documents No. HE 22.9/4)**
6	• Authority. Network's Role Prior to Initiating Sanction Recommendation. Written Documentation Requirements for Sanction Recommendation. Forwarding Sanction Recommendation to Appropriate Regional Office. Project Officer's Role in Sanction Procedures. Regional Office Role in Notice and Appeal Rights. Duration and Removal of Alternative Sanction. Quality of Care Referrals.
	Outpatient Physical Therapy, Comprehensive Outpatient **Rehabilitation Facility, and Community Mental** **Health Center Manual** **(HCFA Pub. 9)** **(Superintendent of Documents No. HE 22.8/9)**
[illegible]	• Outpatient Physical Therapy, Comprehensive Outpatient Rehabilitation Facility, and Community Mental Health Center Manual—First Publication.
2	• Billing Instructions for Partial Hospitalization Services Provided in Community Mental Health Centers Pneumococcal Pneumonia Influenza Virus and Hepatitis B Vaccines.
	Coverage Issues Manual **(HCFA Pub. 6)** **(Superintendent of Documents No. HE 22.8/4)**
104	• Cochlear Implantation.
105	• Cytogenetic Studies.
	Provider Reimbursement Manual—Part 1 **(HCFA pub. 15–1)** **(Superintendent of Documents No. HE 22.8/4)**
403	• Principle. Prevailing Salary. Standard Travel Allowance. Optional Travel Allowance for Home Health Agencies and Other Providers Guideline Application. Application of Travel Allowance. Identification of Services Furnished By Outside Suppliers.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 1998 through June 1998]

Trans. No.	Manual/subject/publication No.
	Physical Therapy, Occupational Therapy, and Speech-Language Pathology Assistants and Aides, and Respiratory Therapy Aides and Trainees. Exception Because of Binding Contract. Exception Because of Unique Circumstances or Special Labor Market Conditions. Provider Recordkeeping and Reporting Requirements.
404	• Cost Not Related to Patient Care. Unallowable Costs Not Related to Patient Care.
	Provider Reimburse ment Manual—Part 2 Provider Cost Reporting Forms and Instructions Chapter 37 (HCFA Pub. 15–2–AK) (Superintendent of Documents No. HE 22.8/4)
1	• This transmittal introduces Chapter 37, Skilled Nursing Facility Cost Report Form.
	State Medicaid Manual—Part 3 Eligibility (HCFA Pub. 45–3) (Superintendent of Documents No. HE 22.8/10)
70	• Coverage of Qualifying Individuals for Medicare Part B Premiums.
71	• Medicaid Eligibility for Disabled Children Who Lose SSI Payment.
72	• Continuous Eligibility.
73	• Buy-In to Medicaid for the Working Disabled.
	State Medicaid Manual—Part 4 Services (HCFA Pub. 45–4) (Superintendent of Documents No. HE 22.8/10)
71	• Home and Community-Based Services—Basis, Scope, and Purpose. Definition of Services. Home and Community-Based Services—Model Waiver Request. Home and Community-Based Services—Amendments.
	Program Memorandum Regional Office—General (HCFA Pub. 51) (Superintendent of Documents No. HE 22.28/5:90–1)
98–3	• Home Health Agency Surety Bond Requirements.
	Program Memorandum Regional Offices—Standards and Certification (HCFA Pub. 54) (Superintendent of Documents No. HE 22.28/5:90–1)
98–1	• Civil Money Penalty Collection Procedures.
	Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
98–4	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—March 1998.
97–5	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—April 1998.
97–6	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—May 1998.

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ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR vol. 63 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
04/09/98	17429–17431		HCFA–2246–N	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1998 Continuance of Approval as an Accrediting Organization: the Joint Commission on Accreditation of Healthcare Organizations, the American Association of Blood Banks, and the American Osteopathic Association.		06/30/99 07/20/01
04/14/98	18124–18135	422	HCFA–1027–IFC	Medicare Program; Definition of Provider-Sponsored Organization and Related Requirements.	06/15/98	05/14/98
04/22/98	19926		HCFA–1040–N	Medicare Program; May 7, 1998, Meeting of the Competitive Pricing Advisory Committee.		04/22/98
04/23/98	20110–20131	410, 417, 424, 482	HCFA–3706–F	Medicare Program; Scope of Medicare Benefits and Application of the Outpatient Mental Health Treatment Limitation to Clinical Psychologist and Clinical Social Worker Services.		06/22/98
04/30/98	23790–23791		HCFA–2008–PN	Medicare and Medicaid Programs; Recognition of the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. for Ambulatory Surgical Centers Program.	06/01/98	04/30/98
05/07/98	25320–25357	142	HCFA–0045–P	National Standard Health Care Provider Identifier.	07/06/98	05/07/98
05/07/98	25272–25320	142	HCFA–0149–P	Health Insurance Reform: Standards for Electronic Transactions.	07/06/98	05/07/98
05/07/98	25360–25379	422	HCFA–1011–IFC	Medicare Program; Waiver Requirements and Solvency Standards for Provider-Sponsored Organizations.	07/06/98	06/08/98
05/08/98	25576–25715	405, 412, 413	HCFA–1003–P	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates.	07/07/98	05/08/98
05/12/98	26318–26360	410, 412, 413, 415, 485.	HCFA–1878–F	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates.		06/11/98
05/12/98	26252–26316	409, 410, 411, 413, 424, 483, 489.	HCFA–1913–IFC	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities.	07/13/98	07/01/98
05/13/98	26565–26566	405, 412, 413	HCFA–1003–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates; Corrections.		05/13/98
05/14/98	26722–26738	493	HCFA–2239–F	CLIA Program; Simplifying CLIA Regulations Relating to Accreditation, Exemption of Laboratories Under a State Licensure Program, Proficiency Testing, and Inspection.		06/15/98
05/14/98	26811–26812		HCFA–3888–NC	Medicare and Medicaid Programs; Request for Public Comments on the Quality Improvement System for Managed Care.	05/26/98	05/14/98
05/18/98	27251–27253	413	HCFA–1876–P	Medicare Program; Revision to Accrual Basis of Accounting Policy.	07/17/98	05/18/98
06/01/98	29648–2966	441, 489	HCFA–1152–1–F	Medicare and Medicaid Programs; Surety Bond Requirements for Home Health Agencies.		07/01/98

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR vol. 63 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
06/01/98	29743		HCFA–3782–NC	Medicare Program; Withdrawal of Proposed Notice and Request for Assessment on the Salitron System for the Treatment of Xerostomia (Dry Mouth) Secondary to Sjorgren's Syndrome.	07/31/98	06/01/98
06/03/98	30166–30173		HCFA–3250–NOI	Medicare Program; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Intent to Form Negotiated Rulemaking Committee.	07/06/98	06/03/98
06/04/98	30499–30506		HCFA–9152–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Third Quarter 1997.		06/04/98
06/08/98	31123–31129	420	HCFA–6144–FC	Medicare Program; Incentive Programs—Fraud and Abuse.	08/07/98	07/08/98
06/09/98	31513–31514		HCFA–1044–N	Medicare Program; June 22, 1998, Meeting of the Practicing Physicians Advisory Council.		06/09/98
06/11/98	32015–32018		HCFA–1104–N	Medicare Program; Notice for the Solicitation for Proposals for a Case Management Demonstration Project Focused on Congestive Heart Failure or Diabetes Mellitus.	07/13/98	06/11/98
06/11/98	32019		HCFA–1043–N	Medicare Program; June 24 and 25, 1998, Meeting of the Competitive Pricing Advisory Committee.		06/11/98
06/12/98	32290–32521	416, 488	HCFA–1885–P	Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Surgical Procedures for Ambulatory Surgical Centers Effective October 1, 1998.	08/11/98	06/12/98
06/15/98	32669	493	HCFA–2239–F	CLIA Program; Simplifying CLIA Regulations Relating to Accreditation, Exemption of Laboratories Under a State Licensure Program, Proficiency Testing, and Inspection; Correction.		06/15/98
06/16/98	32784–32798	142	HCFA–0047–P	Health Insurance Reform; National Standard Employer Identifier.	08/17/98	06/16/98
06/16/98	32889–32890		HCFA–2028–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February 1998 and March 1998.		06/16/98
06/22/98	33856–33875	482	HCFA–3005–F	Medicare and Medicaid Programs; Hospital Conditions of Participation; Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data.		08/21/98
06/22/98	33882–33890	410, 414	HCFA–1906–P	Medicare Program; Payment for Teleconsultations in Rural Health Professional Shortage Areas.	08/21/98	06/22/98
06/24/98	34320–34328	410	HCFA–3004–IFC	Medicare Program; Medicare Coverage of and Payment for Bone Mass Measurements.	08/24/98	07/01/98
06/26/98	34968–35116	400, 403, 410, 411, 417, 422.	HCFA–1030–IFC	Medicare Program; Establishment of the Medicare+Choice Program.	09/24/98	07/27/98

Addendum V—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G970312	A1
G980008	A2
G980046	A2
G980059	A2
G980077	A1
G980093	A1
G980094	A1
G980117	A2

The following information presents the device number, category (in this case, B), and criterion code.

G970168	B1
G970215	B3
G970249	B2
G970275	B2
G970287	B1
G970303	B4
G980013	B3
G980044	B4
G980048	B4
G980049	B4
G980050	B4
G980052	B4
G980053	B4
G980054	B2
G980055	B3
G980057	B2
G980058	B2
G980061	B2
G980062	B3
G980065	B4
G980066	B4
G980067	B2
G980068	B2
G980069	B4
G980070	B4
G980071	B3
G989072	B1
G980073	B1
G980075	B3
G980076	B1
G980079	B4
G980082	B4
G980086	B1
G980087	B4
G980089	B2
G980090	B4
G980092	B2
G980096	B4
G980097	B1
G980098	B3
G980099	B4
G980100	B4
G980101	B2
G980102	B2
G980103	B4
G980106	B5
G980114	B4
G980116	B3
G980120	B4
G980121	B2
G980122	B1
G980127	B1
G980137	B3

[FR Doc. 98–32590 Filed 12–8–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Health Care Financing Administration.

This notice announces and displays OMB control numbers for Health Care Financing Administration (HCFA) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501, each agency that proposes to collect information must submit its proposal for OMB review and approval in accordance with 5 CFR part 1320. Once OMB has approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be "provided in a manner that is reasonably calculated to inform the public." To meet this requirement an agency may display such information in the **Federal Register** by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement HCFA has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for HCFA's information collections that have been approved by OMB.

42 CFR	OMB control Nos.
403.210	0938–0640.
405.262	0938–0267.
405.376	0938–0270.
405.427	0938–0155.
405.465, 405.481	0938–0301.
405.711	0938–0045.
405.807	0938–0033.
405.821	0938–0034.
405.2100–.2171	0938–0386.
405.2110, 405.2112	0938–0657, & 0658.
405.2133	0938–0046, 0447, & 0448.
405.2135–.2171	0938–0360.
406.7	0938–0251.
406.13	0938–0080.
406.15	0938–0501.
406.28	0938–0025.
407.10, 407.11	0938–0245.
407.18	0938–0679.
407.27	0938–0025.

	OMB control Nos.
407.40	0938–0035.
408.6	0938–0041.
409.40–.50	0938–0357.
410.1	0938–0679.
410.32	0938–0685.
410.33	0938–0721.
410.36	0938–0357.
410.38	0938–0534.
410.40	0938–0042.
410.71	0938–0685.
410.170	0938–0357.
411.4–.15	0938–0357.
411.15	0938–0224.
411.20–411.206	0938–0565.
411.370–411.389	0938–0714.
411.404, 411.406	0938–0465.
411.408	0938–0566.
412.20–.32	0938–0358.
412.40–.62	0938–0359.
412.44, 412.46	0938–0445.
412.92	0938–0477.
412.105	0938–0456.
412.106	0938–0691.
412.116	0938–0269.
412.256	0938–0573.
413.13	0938–0463.
413.16	0938–0583.
413.17	0938–0202, & 0685.
413.20	0938–0202 & 0236.
413.20, 413.24	0938–0022, 0037, 0050, 0102, 0107, 0301, 0463, & 0511.
413.56	0938–0463.
413.64	0938–0269.
413.157	0938–0463.
413.170	0938–0296.
413.198	0938–0236.
413.343	0938–0739.
414.40	0938–0008.
414.330	0938–0372.
416.43	0938–0506.
416.47	0938–0266, & 0506.
417.124	0938–0472.
417.126	0938–0469, 0701, & 0732.
417.143	0938–0470.
417.162	0938–0469.
417.408	0938–0470.
417.436	0938–0610.
417.470	0938–0701, & 0732.
417.478	0938–0469.
417.479, 417.500	0938–0700.
417.801	0938–0610.
418.1–418.405	0938–0313.
418.22, 418.24, 418.28, 418.30, 418.56, 418.58, 418.70, 418.83, 418.96, 418.100	0938–0302.
420.200–.206	0938–0086.
421.100	0938–0357.
421.310, 421.312	0938–0723.
422.350–422.390	0938–0733.
422.370–422.378	0938–0722.
422.430	0938–0390.
424.5	0938–0534.
424.20	0938–0454.
424.22	0938–0357, & 0489.
424.32	0938–0008 & 0739.
424.57	0938–0685, & 0717.
424.73, 424.80	0938–0685.
424.123	0938–0484.
424.124	0938–0042.
426.102–426.104	0938–0526.
430.10	0938–0673.
430.10–.20	0938–0193.
430.12	0938–0610.
430.20	0938–0610.
430.30	0938–0[illegible]01.
431.1–431.865	0938–0062.
431.17	0938–0467.

	OMB control Nos.
431.110	0938–0390.
431.107	0938–0610
431.306	0938–0502
431.630	0938–0445.
431.800	0938–0094, & 0300.
431.800–.820	0938–0144
431.802–.822	0938–0246
431.814	0938–0146. & 0147
431.865	0938–0094, & 0246.
433.68, 433.74	0938–0618.
433.110–.131	0938–0487.
433.110, 433.112–433.114, 433.116, 433.117, 433.119, 433.121, 433.122, 433.127, 433.130, 433.131.	0938–0247.
433.138	0938–0502.
433.139	0938–0502.
434.28	0938–0610.
434.44, 434.67, 434.70	0938–0700.
435.1–435.1011	0938–0062.
435.217, 435.726, 435.735	0938–0449.
435.940–.965	0938–0467.
440.1–.270	0938–0062.
440.10	0938–0449.
440.30	0938–0685.
440.167	0938–0193.
440.180	0938–0272.
441.60	0938–0354.
441.250–.300	0938–0481.
441.300–.305	0938–0272.
441.302	0938–0449.
442.1–.119	0938–0062, & 0379.
447.31	0938–0287.
447.53	0938–0429.
447.253	0938–0523.
447.272	0938–0618.
447.280	0938–0624.
447.500–.542	0938–0676.
447.550	0938–0676.
455.100–.106	0938–0086.
456.650–.657	0938–0061, & 0282.
456.654	0938–0445.
456.700, 456.705, 456.709, 456.711, 456.712	0938–0659.
466.71, 466.73, 466.74, 466.78	0938–0445.
466.78	0938–0692.
473.18, 473.34, 473.36, 473.42	0938–0443.
476.104, 476.105, 476.116, 476.134	0938–0426.
482.1–.66	0938–0380.
482.2–.57	0938–0382.
482.12, 482.22	0938–0328.
482.27	0938–0328, & 0698.
482.41	0938–0242.
482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60–.62	0938–0328, & 0378.
482.66.	0938–0328, & 0624.
483.10.	0938–0610.
483.70.	0938–0242.
483.400–.480	0938–0062.
483.470	0938–0242.
484.1–.52	0938–0365.
484.10	0938–0610.
484.10–.52	0938–0355.
484.12	0938–0685.
484.18	0938–0357.
484.48	0938–0519.
484.52	0938–0687.
485.56, 485.58, 485.60, 485.64, 485.66	0938–0267.
485.701–.729	0938–0065, & 0273.
485.709, 485.711, 485.717, 485.719, 485.721, 487.723, 485.725, 485.727, 485.729.	0938–0336.
486.100–.110	0938–0338.
486.150–.163	0938–0071, & 0258.
486.155, 486.161, 486.163	0938–0336.
486.301–.325	0938–0512, & 0688.
488.4	0938–0690.
488.18	0938–0391, & 0667.
488.26	0938–0379, & 0391.

	OMB control Nos.
488.28	0938–0391
488.60	0938–0360
489.20	0938–0214, 0667, & 0692
489.21	0938–0357
489.24	0938–0667
489.27	0938–0692
489.40–.41	0938–0383.
489.102	0938–0610
491.1–.11	0938–0074.
491.9	0938–0334.
493.1–.2001	0938–0151, 0170, 0544, 0581, 0599, 0612, 0650, & 0653.
493.551–.557	0938–0686.
493.1840	0938–0655.
498.40–.95	0938–0486, & 0567.
1003.100, 1003.101, 1003.103	0938–0700.
1004.40, 1004.50, 1004.60, 1004.70	0938–0444.
45 CFR	
5b.1–.13	0938–0734.
96.70–.74	0938–0481.
146.111, .115, .117	0938–0703.
146.136	0938–0719.
146.150, .152, .160, .180	0938–0703.
148.120, .122, .124, .128	0938–0702.

Dated: December 2, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–32673 Filed 12–8–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 17, 1998.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Lawrence E. Chaitkin, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: December 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32686 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel MBRS Special Emphasis Panel.

Date: December 4, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Helen R. Sunshine, PHD, Chief, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

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Dated: December 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32687 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–C J2(P).

Date: January 24–26, 1999.

Time: January 24, 1999, 8:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5 Blossom Street, Boston, MA 02114.

Contact Person: Dan E. Matsumoto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32668 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personnel information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: February 12, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 2007.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–9787.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee.

Date: February 25–26, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8102 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32689 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–04, R01 Review.

Date: December 10, 1998.

Time: 10:00 AM to 11:45 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–20, R01 Review.

Date: December 10, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–14, K08, K23, R03 Review.

Date: December 14, 1998.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–22, Review R03s & K23.

Date: December 15, 1998.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–05, R01 Review.

Date: December 16, 1998.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 98–21, Review of F32, K23, R03s.

Date: December 18, 1998.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32690 Filed 12–8–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4355–N–06]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Notice of Funding Availability for the Lead Hazard and other household hazards grants programs will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 8, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dana Bres, Technical Assistance Specialist, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410, telephone number (202) 755–1785 extension 117 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Proposal: Notice of Funding Availability (NOFA) for the Lead-Based Paint Hazard Control in Privately-Owned Housing Grant Program and Interventions to Control Moisture and Mold Problems in Inner City Housing.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: This information collection is required in conjunction with the issuance of NOFAs announcing the availability of approximately $50,000,000 for grants for Lead-Based Paint Hazard Control activities in privately-owned housing and grants for Interventions to Control Moisture and Mold Problems in Inner City Housing. Grants are authorized under Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550, Section 1011(g) and other legislation.

Agency form numbers, if applicable: None.

Members of affected public: Potential applicants include states and local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

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Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	80	1	100	8,000
Award of Grant	23	1	24	552
Total Estimated Burden Hours: 8,552.				

Number of copies to be submitted to the Office of Lead Hazard Control for evaluation: Original and four (4) copies

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 2, 1998.

David. E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 98–32562 Filed 12–8–98; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Supplement to a Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: This notice advises the public that the Fish and Wildlife Service and National Marine Fisheries Service (Services) intend to prepare draft and final Supplemental Environmental Impact Statements (Supplement) pertaining to the Plum Creek Timber Company, Cascade Timberlands Habitat Conservation Plan (Plan). The Plan was accepted by the Services and an Incidental Take Permit (Permit) was originally issued in June 1996 for Plum Creek lands located in King and Kittitas Counties, Washington. The Supplement will address Plum Creek's request for HCP modification associated with a potential land exchange with the U.S. Forest Service (Forest Service). The Final Environmental Impact Statement (Statement) associated with the original Plan is not being re-opened or re-analyzed, and the decisions based on the original Statement are not being reconsidered.

The Services are furnishing this notice in order to advise other agencies and the public of our intentions. Formal public scoping will not be conducted, consistent with 40 CFR 1502.9(c)(4). However, public review and comment periods will be provided for the draft and final Supplement and their availability will be announced in the **Federal Register**.

ADDRESSES: Requests for information should be sent to William Vogel, Wildlife Biologist, Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 102, Lacey, Washington, 98503–1273, (telephone: 360/753–9440; facsimile: 360/534–9331); or Bob Turner, Habitat Conservation Plan Program Manager, National Marine Fisheries Service, 510 Desmond Drive, S.E., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–6054; facsimile: 360/753–9517).

SUPPLEMENTARY INFORMATION: The June 1996 Plum Creek Plan applied to a 169,177-acre Project Area located within a 418,690-acre Planning Area. The Planning Area is located within east King County and west Kittitas County, Washington, and is bisected by U.S. Interstate 90.

The potential land exchange would result in a transfer to the Forest Service of up to 54,000 acres of the 169,177-acre Project Area previously covered by Plum Creek's Permit and Plan, and the transfer of up to 12,000 acres of Forest Service lands within the 418,690-acre Planning Area to Plum Creek. If modified, the Plum Creek permit area would consist of approximately 127,000 acres.

The Permit allows Plum Creek to incidentally take threatened and endangered fish and wildlife and requires Plum Creek to implement a habitat-based, prescriptive management plan designed to minimize and mitigate such take. The 1996 Plan considered that Plum Creek lands managed under the Plan and Permit would likely change as a result of future land exchanges with the Forest Service. Consequently, the Plan and associated Implementation Agreement provide procedures and criteria to modify the Plan to accommodate the exchange of lands. The Plan describes two scenarios for land exchanges with the Forest Service whereby "the biological integrity of the Plan would be either maintained or improved."

The Supplemental Environmental Impact Statement will analyze Plum Creek's proposal in order to determine the environmental impact (beneficial or adverse) which would result from implementation of the Plan modification, as compared to the original federal action (approval and implementation of the original Plan and issuance of an Incidental Take Permit).

Questions concerning this proposed action and the environmental review should be directed to the Fish and Wildlife Service or National Marine Fisheries Service at the address or telephone number provided above.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 USC 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated: November 25, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–32054 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–1150–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Kelseyville, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, Jan. 21, and 22, 1999, at the Konocti Harbor Resort, Kelseyville, California.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Thursday, Jan. 21, in the Conference Room of the Konocti Harbor Resort. Agenda items include orientation matters, an update on BLM-California's Standards for Healthy Rangelands and Guidelines for Livestock Grazing, an update on development of the BLM-California Strategic Plan, a status report on Headwaters, and a report on implementation of the Knoxville Management Plan. Managers of the BLM Arcata, Redding and Ukiah field offices will also present reports. Time will be reserved at 4 p.m. for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

On Friday, Jan. 22, members will convene at 8 a.m. at the Konocti Harbor Resort lobby, and depart immediately for a tour of the Payne Ranch property which will be acquired for public use.

Members of the public are welcome on the tour, but they must provide their own transportation. The tour and meeting will conclude by noon.

FOR ADDITIONAL INFORMATION: Contact Joseph J. Fontana, public affairs officer, at (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 98–32675 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

TITLE: Solicitation for Comments: Royalty-in-Kind (RIK) Determination of Need.

SUMMARY: The Minerals Management Service (MMS), an agency of the U.S. Department of the Interior, is requesting written comments from interested parties—particularly from small and/or independent petroleum refiners—regarding their experiences in the crude oil marketplace. Specifically, we are interested in small and/or independent refiners' experiences in gaining access to adequate supplies of crude oil at equitable prices. This Determination of Need process will assist the Secretary of the Interior in deciding whether or not to conduct a sale(s) of Federal Government royalty oil under the Royalty-In-Kind (RIK) program.

DATES: Responses must be submitted on or before January 25, 1999.

ADDRESSES: Responses sent via the U.S. Postal Service should be sent to Tom Brozovich, Accounting and Reports Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3131, Denver, Colorado 80225–0165; courier address is Building 85, Room B513, Denver Federal Center, Denver, Colorado 80225; e-mail address is thomas.brozovich@mms.gov.

FOR FURTHER INFORMATION CONTACT: Tom Brozovich, Accounting and Reports Division, phone 303–231–3351, FAX 303–231–3711, e-mail thomas.brozovich@mms.gov.

Background Information

Under the provisions of the Mineral Leasing Act of 1920 (MLA), as amended (30 U.S.C. § 192), and the Outer Continental Shelf Lands Act (OCSLA) of August 7, 1953, as amended (43 U.S.C. § 1334, 1353), the Secretary of the Interior can take Federal royalty oil in kind, in lieu of royalty payment, and sell it to "eligible refiners" for use in their refineries. The oil RIK program is governed by the regulations at 30 CFR 208, effective December 1, 1987, (52 FR 41908, 10/30/1987).

An "eligible refiner," as defined at 30 CFR § 208.2, means a refiner of crude oil meeting the following criteria to purchase royalty oil:

(1) For the purchase of royalty oil from *onshore leases,* it means a refiner that has an operating refinery and qualifies as a small and independent refiner as those terms are defined in Sections 3(3) and 3(4) of the Emergency Petroleum Allocation Act, 15 U.S.C. 751 *et seq.* A refiner that, together with all persons controlled by, in control of, under common control with, or otherwise affiliated with the refiner, inputs domestic crude oil from its own production exceeding 30 percent of total refinery input is ineligible to participate in royalty sales under this part. (In other words, to be eligible under this part, the refiner must receive at least 70 percent of his feeder stock from unaffiliated sources.) Crude oil received in exchange for the refiner's own production is considered to be part of that refiner's own production for purposes of this section.

(2) For the purchase of royalty oil from *offshore leases,* it means a refiner that has an operating refinery and qualifies as a small business enterprise under the rules of the Small Business Administration (SBA) (13 CFR Part 121). The SBA standard for a small business within the Petroleum Refining Industry is less than or equal to 75,000 bbl per day, and less than or equal to 1,500 employees.

The regulation at 30 CFR § 208.4(a) governs the Determination of Need process and states that:

> The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis * * *.

Given that existing RIK contracts (involving Gulf of Mexico and Pacific Region offshore leases) expire May 1, 1999, MMS has concluded that a Determination of Need would be most beneficial in any decision to hold future royalty oil sales.

SUPPLEMENTARY INFORMATION: While the RIK program has been an important source of crude oil for many refiners over the years, it has not been without its problems. From its heyday in the late 1970's and early to mid 1980's, the program has declined from over 60 active contracts (both onshore and offshore) to the current total of only six offshore contracts. Many factors have contributed to the diminished participation, including the following:

- The surplus of crude oil supplies on both the international and domestic markets, which has made it easier for small refiners to purchase the oil they need to run their refineries without having to rely on Federal royalty oil; and
- Complexities of the current program, which has been characterized as having burdensome reporting and administrative requirements and valuation uncertainty.

MMS has completed a study of the oil RIK program and is conducting a pilot (Eligible Refiner Oil RIK Pilot, OMB Control Number 1010–0109) to check the results of that study. The pilot is reviewing reporting and delivery issues symptomatic of the current program. This effort should be completed by the end of calendar year 1998, with formal recommendations for streamlining the program to be submitted to the Director, MMS, in early 1999. While it's premature to predict the exact nature or scope of forthcoming program changes, it's not unreasonable to expect:

- Changes to current regulations affording greater clarity and logical business practice in the areas of administrative fees, transportation allowances, operator delivery requirements, resolution of delivery imbalances and gravity bank adjustments, etc.; and
- Greater specificity and certainty with regard to RIK contract language, especially with regard to provisions addressing the valuation of RIK oil for billing purposes.

Consequently, the current program could undergo dramatic changes in the near future as various pilot efforts reach maturity and resulting recommendations are implemented.

Potential respondents should also note that the mere conduct of a Determination of Need in no way presupposes that there will or will not be a subsequent RIK sale(s). A Determination of Need is a logical first step in identifying general marketplace conditions. However, any decision to conduct an RIK sale(s) will necessarily be predicated on the regulatory criteria of "access" and "equity"—i.e., whether a significant number of refiners have limited or no access to the marketplace and/or have experienced difficulty in negotiating a fair price for feeder stocks.

Information Requested

To assist MMS in completing a Determination of Need, please respond in writing or electronically to the following questions:

(1) How would you describe your business activity—small/independent refiner, other refiner, producer, transporter, etc.?

(2) For your immediate region or geographic area of operation, how would you characterize the general availability of crude oil?

(3) Do you currently own or lease an operating refinery? If so, where is it located?

(4) Is your refinery operating at full or near-full capacity? If not, why not?

(5) Do you meet the RIK program eligibility criteria previously noted for onshore or offshore leases, or both?

(6) What percentage of onshore versus offshore crude oil volumes are currently being run through your refinery?

(7) What type of crude is desired to sustain your mix of refined products—Wyoming Sweet, Wyoming Sour, Light Louisiana Sweet, etc.?

(8) Have you been denied access to crude oil supplies in the past 12 to 18 months? What was the basis for the denial? For example, was the denial attributable to unavailability of desired crude, a lack of access to the transportation pipeline, or other reasons? Please provide documentation supporting any claim of denial.

(9) Do you use exchange agreements? Why?

(10) Are the feeder stocks you purchase priced above market values for your geographic area? In other words, do you pay a bonus or premium because of your status as a small and/or independent refiner? Please identify, by crude oil type, what you pay on the average per barrel of oil.

(11) Have you previously participated in the Federal royalty oil program? If a prior program participant, why did you leave the program? How would you now benefit from receiving Federal royalty oil?

(12) Do you currently provide refined products (heating oil, jet fuel, etc.) to a U.S. military base or Federal installation? If so, identify the recipient facility and how long you have been supplying refined products.

(13) Do you anticipate any near term developments that would change your access to necessary supplies of crude oil at equitable prices?

All correspondence, records, or information received in response to this Notice, and specifically in response to the questions listed above, are subject to disclosure under the Freedom of Information Act. All information provided will be made public unless the respondent identifies which portions are proprietary. Please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data.

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected by MMS under an approved information collection titled Royalty-in-Kind (RIK) Determination of Need, OMB Control Number 1010–0119. We estimate the burden for responding to this information collection 4 hours. Comments on the accuracy of this burden estimate or suggestions on reducing this burden should be directed to the Information Collection Clearance Officer, MS–4230, MMS, 1849 C Street, N.W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U.S. Department of the Interior (OMB Control Number 1010–0119), Washington, DC 20503. Proprietary information is protected by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552 (b)(4), the Indian Minerals Development Act of 1982 (25 U.S.C. 2103) and Department regulations (43 CFR 2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: December 2, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–32580 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Proposed Land Exchange City of Alexandria and Arlington County, Virginia and Notice of Scheduled Environmental Review Process Workshop

AGENCY: Notice is hereby given that the National Park Service (NPS) is proposing to conduct an exchange of land interests with Commonwealth Atlantic Properties Inc., Commonwealth Atlantic Land Company, and Commonwealth Atlantic Land V Inc., hereinafter referred to collectively as Commonwealth. The proposed exchange of land interests concerns two distinct properties located in Alexandria, Virginia, and Arlington County, Virginia, respectively. The National Park Service has scheduled a public workshop as part of its environmental review process to identify and analyze the potential environmental impacts of the proposed exchange.

FOR FURTHER INFORMATION CONTACT: Associate Superintendent, Stewardship and Partnerships, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: By virtue of an Indenture land agreement dated February 12, 1938, the Richmond, Fredericksburg and Potomac Railroad Company (RF&P), predecessor in title to Commonwealth, conveyed to the United States certain land use restrictions over 29.1 acres of land in Arlington County, Virginia, currently owned by Commonwealth and hereinafter referenced as the "Indenture Land."

Commonwealth also owns 38.55 acres of land in Alexandria, Virginia, hereinafter referenced as "Potomac Greens." By virtue of a Deed of Easement dated August 13, 1984, and in accordance with the terms of a previous Exchange Agreement between the United States and RF&P, the United States conveyed to RF&P a perpetual easement on and across a portion of lands of the George Washington Memorial Parkway (Parkway) for access, including ingress and egress from the northbound and southbound lanes of the Parkway to and from Potomac Greens in return for RF&P's obligation to construct at no cost to the United States a center-piered bridge and all associated ramps and connections necessary for ingress and egress to and from Potomac Greens to the Parkway and other valuable consideration.

Commonwealth is desirous of the United States relinquishing its restrictions on the Indenture Land in order to allow Commonwealth to implement a proposed plan for the mixed use development of the property in exchange for certain restrictions to be conveyed by Commonwealth to the United States relative to building heights and setbacks. Commonwealth has also proposed implementing a plan for the residential development of Potomac Greens, including minimal support retail.

The National Park Service is desirous of acquiring Commonwealth's access rights to the Parkway and in return is willing to partially relinquish the United States' interests in restricting the use of the Indenture Land. In accordance with National Park Service land exchange authority, the National Park Service will conduct an independent appraisal to determine if the interests in land to be exchanged are approximately equal in value.

Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the presentation of the proposed exchange of land interests associated with two distinct properties located in Alexandria and Arlington County, Virginia, respectively, for public review. Public comment on the proposed land exchange is requested to assist the National Park Service in identifying and analyzing potential environmental impacts.

A public open house to review and comment on the proposed land exchange will be held on December 10, 1998, in the cafeteria of the Cora Kelly Magnet School located at 3600 Commonwealth Avenue, Alexandria, Virginia 22313, between the hours of 7:00 p.m. and 9:30 p.m. Officials of the National Park Service and representatives of Commonwealth will be in attendance to describe the terms of the proposed exchange, answer questions and receive comments.

Detailed information concerning this proposed exchange is available from the Office of Stewardship and Partnerships, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the National Park Service.

For further information please contact Mr. John Parsons, Associate Superintendent, Stewardship and Partnerships, National Capital Region at (202) 619–7025. Written comments may be addressed to Mr. Parsons at the above address.

Dated: November 30, 1998.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 98–32615 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Deleware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, December 11, 1998; 1:30–4:00 p.m.

ADDRESSES: Washington Crossing Visitors Center, 1112 River Road, Washington Crossing PA 18977.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commisin was established by Pub. L. 100–692, November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Gerald R. Bastoni, Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: November 30, 1998.

Gerald R. Bastoni,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 98–32614 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Canyon National Park, Coconino County, Arizona

AGENCY: National Park Service, Interior.

ACTION: Notice and Request For Comment.

SUMMARY: Notice is hereby given that a proposal for a cellular communication site at Grand Canyon National Park has been received. The project will be to construct and operate a telecommunications facility at Hopi Point on the South Rim of the park.

DATES: Written comments must be submitted on or before January 11, 1999.

ADDRESSES: Direct all written comments to Superintendent, Attn.: Barbara Nelson, Telecommunications Specialist, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

FOR FURTHER INFORMATION CONTACT: Paul Glazer, Chief, Branch Information/Telecommunications Management at telephone number 520–638–7738.

Dated: December 3, 1998.

Steven D. Bone,

Acting Deputy Superintendent.

[FR Doc. 98–32757 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 751–TA–21–27]

Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

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SUPPLEMENTARY INFORMATION: On July 28, 1998, the Commission published notice (63 FR 40314) of its institution of investigations pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. § 1675(b)) (the Act) to review its determinations in countervailing duty investigation No. 303–TA–23 (Final) concerning ferrosilicon from Venezuela, and antidumping investigations Nos. 731–TA–566–570 and 731–TA–641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela. In that notice, the Commission waived rule 207.45(c), delaying issuance of a schedule for the conduct of investigations Nos. 751–TA–21–27. On September 30, 1998, the Commission published notice (63 FR 52288) of a schedule in the subject investigations.

The Commission's new schedule for these investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 22, 1999; the prehearing staff report will be placed in the nonpublic record on March 31, 1999; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 1, 1999; the deadline for filing prehearing briefs is April 7, 1999; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 13, 1999; the deadline for filing posthearing briefs is April 20, 1999; the Commission will make its final release of information on May 14, 1999; and final party comments are due on May 18, 1999.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 3, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32677 Filed 12–8–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-fitted Film Packages; Notice of Commission Determination not to Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID), which amends the complaint and notice of investigation in the above-captioned investigation to withdraw allegations of infringement of claim 16 of U.S. Letters Patent 5,063,400 from the scope of the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (Fuji) of Tokyo, Japan. 63 FR 14474. On November 7, 1998, the sixth day of the evidentiary hearing, complainant Fuji orally moved to amend the complaint and notice of investigation to withdraw claim 16 of U.S. Letters Patent 5,0063,400 from the scope of the investigation. Respondents Achiever Industries Limited (Achiever) and P.S.I. Industries Inc. (P.S.I.) and the Commission investigative attorney supported Fuji's motion. No other respondent present at the hearing objected to Fuji's motion.

In view of the nature of the motion, the support of the IA, Achiever, and PSI, and the lack of objection by the other respondents present at the hearing, the presiding ALJ Luckern issued an ID (Order No. 47) on November 9, 1998, granting Fuji's oral motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.

Issued: September 4, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32679 Filed 12–8–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–376–379 (Final) and 731–TA–788–793 (Final)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, The Republic of Korea, South Africa, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701–TA–376, 377, and 379 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–788–793 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Belgium, Italy, and South Africa and by reason of less-than-fair-value imports from Belgium, Canada, Italy, the Republic of Korea (Korea), South Africa, and Taiwan of certain stainless steel plate in coils, provided for in subheadings 7219.11.00, 7219.12.00, 7219.31.00, 7219.90.00, 7220.11.00, 7220.20.10, 7220.20.60, and 7220.90.00 of the Harmonized Tariff Schedule of the United States.[1] Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling of the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of certain stainless steel plate in coils from Korea, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–378 (Final) under section 705(b) of the Act. The Commission is taking this action so that the final phases of the countervailing duty and antidumping investigations may proceed concurrently in the event that Commerce makes an affirmative final countervailing duty determination with respect to Korea. If Commerce makes a final negative countervailing duty determination with respect to Korea, the Commission will terminate its countervailing duty investigation under section 705(c)(2) of the Act (19 U.S.C. 1671d(c)(2)), and section 207.21(d) of the Commission's rules.

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[1] For purposes of these investigations, Commerce has defined the subject merchandise as certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.), provided that it maintains the specified dimensions of plate following such

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Belgium, Italy, and South Africa of certain stainless steel plate in coils, and that such imports from Belgium, Canada, Italy, Korea, South Africa, and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The final phase of the countervailing duty investigation with respect to Korea is being scheduled, under waiver of section 207.21(b), discussed above, for purposes of efficiency. The investigations were requested in petitions filed on March 31, 1998, by Armco, Inc., Pittsburgh, PA; J&L Specialty Steel, Inc., Pittsburgh, PA; Lukens, Inc., Coatesville, PA; North American Stainless, Ghent, KY; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 9, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 23, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 16, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 18, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 16, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 29, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the

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processing. Excluded from the scope of these investigations are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

investigations on or before March 29, 1999. On April 16, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 20, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 1, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–32678 Filed 12–8–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. General Electric Company and InnoServ Technologies, Inc., Civil Action No. 98–1744 (RCL)(D.D.C.); Response to Public Comments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that Public Comments and the Response of the United States have been filed with the United States District Court for the District of Columbia in *United States* v. *General Electric Company and InnoServ Technologies, Inc.*, Civil Action No. 98–1744 (RCL)(D.D.C., filed July 14, 1998). On July 14, 1998, the United States filed a Complaint alleging that the proposed acquisition of InnoServ Technologies by General Electric would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, permits General Electric to acquire InnoServ but requires that General Electric divest InnoServ's PREVU diagnostic software used in the maintenance and repair of diagnostic imaging machines (*e.g.*, CT Scanners, MRIs, x-ray machines).

Public comment was invited within the statutory 60-day comment period. Such Comments, and the Responses thereto, are hereby published in the Federal Register and have been filed with the Court. Copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and the Response of the United States are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

director of Operations & Merger Enforcement, Antitrust Division.

Response To Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) ("APPA" or "Tunney Act"), the United states hereby responds to the public comments received regarding the proposed Final Judgment in this case.

I. Background

On July 14, 1998, the United States filed the Complaint in this matter, alleging that the acquisition by General Electric Company ("GE") of InnoServ Technologies, Inc. ("InnoServ") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and Stipulation signed by all the parties allowing for entry of the Final Judgment following compliance with the Tunney Act. A Competitive Impact Statement ("CIS") was also filed with the Court and published in the **Federal Register**, along with the proposed Final Judgment, on July 24, 1998 (see 63 FR 39894).

As explained more fully in the Complaint and CIS, GE, through its wholly owned subsidiary, General Electric Medical Systems ("GEMS"), is the largest manufacturer of medical imaging equipment, such as CT scanners and magnetic resonance imagers ("MRIs"), and is the leading service provider of GE imaging equipment. InnoServ, despite struggling financially for the last two years, was one of the nation's largest independent service organizations ("ISOs") and had significant expertise and competed with GE in servicing certain GE imaging equipment. GE and InnoServ also competed in numerous local markets for comprehensive multi-vendor and asset-management services ("multi-vendor service"). GE's acquisition of InnoServ was therefore likely to reduce competition substantially in two markets: (i) the market for servicing certain models of GE imaging equipment on a discrete, machine-by-machine basis; and (ii) the multi-vendor service market.

The proposed Final Judgment permits GE to acquire InnoServ, which it did on September 16, but requires GE to divest promptly InnoServ's proprietary diagnostic software (called "PREVU"). Diagnostic software is used by service engineers to calibrate, maintain, and service imaging equipment more quickly. InnoServ is one of the very few companies other than GE that developed its own proprietary diagnostic software for GE imaging equipment, and the United States concluded that it was primarily PREVU that had made InnoServ a good competitor to GE.

The 60-day period for public comments expired on September 22, 1998. As of today, the United States has received comments from two persons—Independent Service Network International ("ISNI"), which filed Comments and Supplemental Comments, and Star Technologies.[1] The United States has carefully considered the views expressed in these comments, but nothing in these comments has altered the United States' conclusion that the proposed Final Judgment is in the public interest. Once these comments and this Response are published in the Federal Register, the United States will have fully complied with the Tunney Act and will then file a motion for entry of the proposed Final Judgment.

II. Response to Public Comments

A. Initial Comment of Independent Service Network International

ISNI, a trade association of 157 maintainers of high technology equipment, submitted two Comments. In its initial Comment, ISNI alleged that the CIS failed to comply with the APPA because it did not include certain information that ISNI believes necessary for it to evaluate whether entry of the proposed Final Judgment is in the public interest. Specifically, ISNI requests: (i) A technical and economic assessment of PREVU; (ii) a more detailed description of the relevant markets alleged in the Complaint and the effect of the proposed Final Judgment on those markets; (iii) information about other companies, if any, that expressed an interest in purchasing InnoServ; and (iv) information relating to the relationship between the settlement of this case and the simultaneous settlement of another Antitrust Division case against GE involving medical imaging equipment, *United States* v. *General Electric Co.*, No. CV–96–121–M–CCL (D. Mont., filed August 1, 1996) (the "Montana case"). ISNI also challenges the United States' assertion that there were no documents considered determinative in formulating the proposed Final Judgment (Appendix 1, ISNI Comment at 16), and requests that the Court order the production of numerous types of documents that ISNI believes "must exist" (*id.* at 17–18). ISNI requests that the Court allow it to intervene and argues that a special master should be appointed (*id.* at 18–19). "At the very least," ISNI asserts, the Court should hold a hearing in which ISNI may reply to this Response (*id.* at 19).

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[1] ISNI's initial Comments are attached as Appendix 1. The declaration of Claudia Betzner, ISNI's Executive Director, was submitted along with ISNI's initial Comments and is attached as Appendix 2. ISNI's Supplemental Comments are attached as Appendix 3. Star Technologies' Comment is attached as Appendix 4.

The United States responds to each of ISNI's specific requests in detail below. In order to put ISNI's Comments in context, however, we note initially that the essence of ISNI's concerns have nothing to do with either GE's acquisition of InnoServ or whether GE's divestiture of PREVU is in the public interest. Rather, ISNI's real aim is to convince this Court that GE has market power in various medical equipment and service markets, and that the United States should have challenged seven other transactions by GE in these markets dating back to 1994. (Appendix 1, ISNI Comment at 7–9). ISNI believes that the divestiture of PREVU will not resolve these competitive concerns, and therefore that GE should be compelled to license its own advanced diagnostic materials to ISNI's members and other service competitors (Appendix 1, ISNI Comment at 16).

Whether GE's prior transactions were anticompetitive, and whether it would be procompetitive to have GE license its own software, are not germane to an assessment of whether entry of the proposed Final Judgment serves the public interest. The proper focus of a Tunney Act proceeding is on the proposed final judgment, and the court should not look beyond the complaint in the case before it "to evaluate claims that the government did not make and to inquire as to why they were not made." *United States* v. *Microsoft*, 56 F.3d 1448, 1459 (D.C. Cir. 1995). Nor does the APPA give a court authority to impose different terms on the parties.[2]

In this case, the United States concluded that the divestiture of PREVU would adequately remedy the antitrust violation alleged in the Complaint because it is PREVU, not GE's software, that would otherwise be eliminated from the market by this merger. While ISNI might believe that more competition would be created if GE had to license its software to INSI's members, the Tunney Act does not empower a court to reject a proposed final judgment based on beliefs that "other remedies were preferable," Microsoft, 56 F.3d at 1460, or "because a third party claims it could be better treated," *id.* at 1461 n.9.

In making its public interest determination, "the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir. 1992) (emphasis added, internal quotation and citation omitted). The settlement embodied in the proposed Final Judgment is well within the reaches of this public interest standard.

1. InnoServ's PREVU Software

ISNI's first request for additional information seeks a "technical and economic evaluation" of PREVU in order to demonstrate that its divestiture can establish a viable competitor in the relevant markets alleged in the Complaint. Specifically, ISNI argues that the United States must: (1) Provide a detailed description of PREVU; (ii) state whether anyone has licensed or purchased PREVU from InnoServ; (iii) state whether anyone has expressed an interest in licensing or purchasing PREVU from InnoServ; (iv) state whether PREVU helps InnoServ and potentially others to compete with GEMS and, is so, how; (v) compare the effectiveness of PREVU and the effectiveness of GEMS' advanced diagnostic software; and (vi) explain why it is not anticompetitive for GEMS to retain a non-exclusive license to use PREVU despite the fact that GE is not required to license its own advanced diagnostic software to competing service providers. (Appendix 1, ISNI Comment at 12).

ISNI apparently believes that it needs this information to determine whether any potential purchaser of the PREVU package could in fact compete effectively with GE, given that InnoServ itself was struggling financially. ISNI asks, "how will the divestiture of PREVU create an effective competitor when it was not able to make InnoServ an effective competitor?" (*id.* at 11). Yet this argument is relevant not to whether the proposed Final Judgment is in the public interest but rather to whether the United States should have filed suit to challenge this acquisition at all. If, as ISNI seems to fear, InnoServ was unable to compete effectively with GE using PREVU, then GE's acquisition of InnoServ could not have substantially reduced competition. If, as the United States concluded, PREVU was regarded by some in the industry as an important competitive tool and that it made InnoServ a good alternative to GE for many customers, then the divestiture of PREVU will restore that competition and thus remedy the antitrust violation alleged in the Complaint.

The United States have been investigating markets for servicing medical imaging equipment for several years, both in connection with this transaction and in the Montana case.[3] Based on the evidence it has gathered in these matters, the United States determined that for more complicated types of imaging equipment, such as CT scanners and MRIs, diagnostic software such as GE's own software and InnoServ's PREVU allow service engineers to service and repair equipment much more quickly and efficiently. For that reason, ISOs that have access to diagnostic software for servicing imaging equipment have a competitive edge over those that do not. InnoServ was one of the very few ISOs that had developed advanced diagnostic software designed to be used to service GE imaging equipment. Although PREVU is not as fast or sophisticated as GE's own diagnostic software, it made

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[2] A court may decline to enter a proposed final judgment unless the parties accept certain conditions, *see, e.g., United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 225 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), but if the parties do not agree to those conditions, the court's only choices are to enter the final judgment the parties proposed or leave the parties to litigate the case.

[3] As explained in more detail in Section II(A)(4), the Montana case involved a challenge to restrictions GE had imposed on over 500 hospitals that had licensed its advanced diagnostic software used to maintain GE imaging equipment. These restrictions prevented the hospital licensees from competing with GE to service third-party medical equipment.

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InnoServ's engineers more efficient than they would have been without any software at all. Thus, the United States concluded that PREVU gave InnoServ a competitive advantage over other ISOs and made it an effective competitor to GE. The United States also concluded that PREVU was sufficiently important to InnoServ's competitiveness that GE's divestiture of PREVU would offset to a large extent the competitive harm flowing from the merger.

The fact that PREVU is not as sophisticated or efficient as GE's own software does not mean that InnoServ was not an effective competitor, that the proposed Final Judgment is not in the public interest, or that this Court must insist that GE license its own software. PREVU made InnoServ a closer competitor to GE than it would have been without any diagnostic software at all. InnoServ was able to compete with GE by, among other things, offering service at lower prices than GE offered. The proposed Final Judgment need only address the anticompetitive effects flowing from the merger. It does so by requiring GE to divest PREVU, which will enable its purchaser to compete as effectively as InnoServ did against GE.

Because the United States' conclusions concerning PREVU's competitive significance were based on its evaluation of customer demand for the services InnoServ offered, not a technical comparison between PREVU and GE's software, providing the "detailed description" of PREVU requested by ISNI would not facilitate evaluation of the proposed Final Judgment. To the extent ISNI seeks such a description to enable its members to determine whether they are interested in purchasing PREVU, they may obtain it directly from GE. The proposed Final Judgment obligates GE to provide the kind of information about PREVU "customarily provided in a due diligence process" to all bona fide prospective purchasers. (Proposed Final Judgment ¶ IV(C)).

ISNI also requests information about whether others have purchased or licensed PREVU from InnoServ, or have expressed an interest in doing so. Prior to this transaction, InnoServ offered to license PREVU, in conjunction with a parts contract, to hospitals and other equipment owners wishing to service their own equipment. At least 15 InnoServ customers elected to license PREVU in this way. Since GE's acquisition of InnoServ, more than a dozen entities have expressed to GE some interest in the possible purchase of PREVU pursuant to the proposed Final Judgment. GE is currently negotiating with some of these companies regarding such a purchase.

Finally, ISNI requests an explanation of why it is not anticompetitive for GEMS to retain a non-exclusive license to use PREVU. The proposed Final Judgment permits GE to retain a license to use PREVU under very limited conditions: (i) to fulfill InnoServ service contracts in effect on the date GE acquired InnoServ; (ii) in connection with fulfilling any service contracts resulting from written proposals made by InnoServ to prospective customers that were outstanding on that date, provided that any such contract is entered into within 90 days thereafter; and (iii) in connection with fulfilling any renewals of any service contracts described in (i) or (ii), so long as the renewal was entered into prior to any sale of PREVU by GE or a trustee. (Proposed Final Judgment ¶ IV(E)). GE's license to use PREVU under these limited conditions expires, for each such service contract, on the expiration date of the contract in effect on the date that PREVU is sold. (*Id.*). These provisions were included in the proposed Final Judgment solely for the convenience of any InnoServ customers who want to continue to have their equipment serviced with PREVU. Requiring GE to stop using PREVU before it is divested would deny those customers their preferred service option without promoting competition.

2. The Relevant Markets

ISNI contends that additional information must be provided about the relevant markets alleged in the Complaint in order to determine the effect of the proposed Final Judgment on those markets. It requests, at a minimum, information relating to how these markets were defined, the structure of these markets, the number of firms competing in them, the market share of each such firm, and an analysis of the effect of the proposed Final Judgment on price, output, consumer choice, and product quality (Appendix 1, ISNI Comment at 13).

The detailed information about market definition and structure that ISNI has requested will not assist the Court in evaluating whether GE's divestiture of PREVU will ameliorate the anticompetitive effects of its acquisition of InnoServ. The number of firms competing in each market, and each firm's market share, are relevant only to assessing the competitive effects of the acquisition itself. The issue of whether the United States should have filed a lawsuit in the first place is not before the court in a Tunney Act proceeding. Under the proposed Final Judgment, the acquirer of PREVU will be free to offer service throughout the United States, and the structure of each market is therefore not important to understanding how the proposed Final Judgment will affect competition in that market.

Moreover, the thirteen paragraphs in the Complaint devoted to market definition and anticompetitive effects (Complaint ¶¶ 9–19) provide sufficient information for industry participants such as ISNI to comment on the adequacy of the proposed Final Judgment. The Complaint alleges that the sale of service for each model of medical imaging equipment is a separate product market (*id.* ¶ 12) and that the geographic markets are local, with the precise boundaries differing depending on the type of equipment involved and other factors (*id.* ¶ 17). Prior to its acquisition by GE, InnoServ engineers were servicing approximately 13 different models of GE CT scanners and 6 models of GE MRIs, in addition to several other types of GE imaging equipment (for example, ultrasound, cath lab, and mammography machines). InnoServ offered service within a 100-mile radius of 36 metropolitan areas. Therefore, there are over 650 markets potentially affected by this acquisition. To answer each of ISNI's sweeping requests for each of these markets would be burdensome and effectively require the United States to do much of the work it would have had to do if it were litigating this case. One of the major benefits of antitrust consent judgments is that they enable the government "to reallocate necessarily limited (enforcement) resources," Microsoft, 56 F.3d at 1459, a benefit that would be lost if the United States were forced to compile and disclose this kind of information during a Tunney Act proceeding.

3. Alternative Purchasers of InnoServ

ISNI also requests information about companies other than GE, if any, that expressed an interest in acquiring InnoServ. Specifically, it asks the United States to identify any such companies, to state whether there was an appraisal conducted by a third party of the value of InnoServ or PREVU, and to state how long InnoServ was on the market. This information is necessary, in ISNI's view, to determine whether there was a serious suitor of InnoServ that would have been a preferable purchaser from the standpoint of the antitrust laws but that lost to GE in a bidding war (Appendix 1, ISNI Comment at 14–15).

ISNI fails to explain what relevance this information could have to an evaluation of whether the proposed Final Judgment is in the public interest. Such information could be relevant if the United States had elected not to challenge the transaction on the grounds that the parties had met the stringent criteria of the failing company defense.[4] But they did not, and the United States did not rely on such a defense in electing to file its Complaint and agreeing to the proposed Final Judgment. Thus, the information ISNI seeks is irrelevant to the issue before the Court.

4. The Montana Case

The United States noted in the CIS that, "[i]n conjunction with this settlement, GE has also agreed to consent to all of the relief that the government was seeking in (the Montana case)." ISNI requests additional information about the proposed Final Judgment reached in the Montana case. It cites GE's press release announcing the resolution of these two cases, in which it stated that "[t]o obtain clearance to complete the InnoServ transaction, G.E. Medical Systems agreed to settle (the Montana case)" (Appendix 1, ISNI Comment at 15). It asks for supporting evidence or explanation of statements in the CIS that "[t]he United States evaluated the merits of the settlement proposals in each case independently, concluding that the proposed settlement of this case is in the public interest for the reasons stated herein, and that the proposed settlement of the Montana case is in the public interest for the reasons stated in the Competitive Impact Statement filed in that case today" (*id.*). Finally, ISNI suggests that statements in the Montana CIS demonstrate that the relief in this case is not adequate and that the United States should have sought mandatory licensing of GE's own diagnostic software (*id.* at 16).

In the Montana case, filed in 1996, the United States challenged restrictions GE had imposed on over 500 hospitals that had licensed its advanced diagnostic software used to maintain and repair GE imaging equipment. These restrictions prevented hospital licensees from competing with GE to service any kind of medical equipment—whether manufactured by GE or another company—at other hospitals and clinics. Because GE's software was designed to be used on specific models of GE imaging equipment, the United States alleged that these anticompetitive restraints were not ancillary to GE's legitimate right to protect its intellectual property from misuse. As stated in the CIS in the Montana case, see 63 FR 40737 (July 30, 1998), the proposed Final Judgment in that case secures all of the relief that the United States was seeking by requiring GE to void the restrictive provisions in its existing licenses and commit not to impose such restrictions in the future. By eliminating these agreements not to compete from GE's licenses, the proposed Final Judgment in the Montana case will allow over 500 hospitals across the country to service third-party medical equipment if they so wish.

The United States evaluated the merits of this settlement and the Montana settlement independently and concluded that each was in the public interest. In the Montana case, the settlement provided all of the relief that the United States had been seeking from GE. In this case, the United States concluded that GE's divestiture of PREVU would adequately address the anticompetitive effects of its acquisition of InnoServ because it ensured that the PREVU software could remain in the marketplace. The simultaneous settlement of the two cases makes sense because the markets affected by the anticompetitive conduct challenged in the two cases overlap to some extent.[5] GE had been contesting the Montana action for more than two years. Its willingness to settle that litigation on the government's terms—regardless of GE's public explanation for doing so—advanced the public interest by allowing hospitals to service third-party medical equipment. That same relief also could help ameliorate some of the competitive effects of the InnoServ transaction. In these circumstances, the United States and GE agreed to settle both cases at the same time.

ISNI cites the Montana CIS to support its arguments that PREVU is inferior to GE's software, that a purchaser of PREVU will not be able to compete effectively with GE, and that the United States should have insisted that GE license its advanced diagnostic software to ISOs such as ISNI's members. PREVU is not as sophisticated or efficient as GE's own software, but hat fact is irrelevant to the issue of whether the proposed Final Judgment is in the public interest. The United States concluded that PREVU made InnoServ a more effective alternative to GE. The proposed Final Judgment need only address the anticompetitive effects flowing from the merger, and it does so by requiring GE to divest PREVU to a purchaser that, in the United States' judgment, has the "managerial, operational, and financial capability to compete effectively." (Proposed Final Judgment ¶ IV(B)). Requiring GE to license its own software might well create more competition than existed in the market prior to the InnoServ transaction. But the relief in this case need only address the anticompetitive effects flowing from the merger challenged in the Complaint; it need not create more competition than existed prior to GE's acquisition. The software that would otherwise be eliminated from the market by this merger is PREVU, not GE's software, so requiring GE to divest PREVU is clearly relief that is in the public interest.

The Complaint in this case challenged GE's acquisition of InnoServ, not its longstanding policy of not licensing its own software to ISOs. ISNI "would have it be otherwise, but [does not] have the power to force the government to make that claim. And since the claim is not made, a remedy directed to that claim is hardly appropriate." Microsoft, 56 F.3d at 1460.

5. There Are No "Determinative" Documents

ISNI characterizes as "incredible" the CIS's statement that there were no determinative materials or documents within the meaning of the APPA that were considered in formulating the proposed Final Judgment. It argues that the Court should order the United States to produce certain documents that ISNI believes "must exist": documents providing the good-faith basis for the filing of the Complaint; third-party analyses or evaluations of InnoServ and/or PREVU; documents relating to the efforts of others, if any, to acquire InnoServ; documents supporting conclusory statements in the CIS regarding how the divestiture of PREVU will increase competition; and documents comparing PREVU to GE's own advanced diagnostic materials. (Appendix 1, ISNI Comment at 16–18).

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[4] Under the failing company defense, an otherwise anticompetitive merger does not violate the antitrust laws if one party faces the "grave probability of business failure," would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act, has made unsuccessful good-faith efforts to elicit reasonable alternative offers from competitively-preferable purchasers, and absent the acquisition, the assets of the company would exit the relevant market. *United States* v. *Greater Buffalo Press, Inc.*, 402 U.S. 549, 555 (1971); *Citizen Publishing Co.* v. *United States*, 394 U.S. 131, 136–37 (1969); U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.1 (issued April 2, 1992), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,104 (1992) and 57 Fed. Reg. 41,552 (1992). During the course of its investigation, the United States did review InnoServ's finances and its attempts to sell the company, but ultimately the decision to accept the proposed Final Judgment was not based on issues relating to the failing firm defense.

[5] The agreements challenged in the Montana case had their greatest anticompetitive effects in more rural areas, where the licensee hospitals were likely to be among the few, if not only, potential competitors to GE. In contrast, InnoServ tended to compete mostly within a 100-mile radius of larger metropolitan areas (Complaint ¶ 18). Nevertheless, there was at least some overlap in the geographic markets affected by the two cases.

The Tunney Act requires, in pertinent part, that the United States make available to the public copies of the proposed Final Judgment "and any other materials and documents which the United States considered determinative in formulating such proposal." 15 U.S.C. § 16(b) (emphasis added). Thus, the United States is required to disclose only those documents that the United States considered determinative in its decision to settle the case on the terms set forth in the proposed Final Judgment. Documents that were determinative in the decision to file the case need not be disclosed. During Senate hearings on the Tunney Act, one witness specifically urged that "as a condition precedent to * * * the entry of a consent decree in a civil case * * * the Department of Justice be required to file and make a matter of public record a detailed statement of the evidentiary facts on which the complaint * * * was predicated."[6] Congress, however, rejected that recommendation. ISNI's broad request for the documents providing the good-faith basis for filing the Complaint is contrary to the plain language of the Tunney Act and its legislative history and should be denied.

ISNI's other requests similarly fall outside the scope of what courts have interpreted to be determinative documents. Just last year, the United States Court of Appeals for the District of Columbia Circuit, in a case brought by the Antitrust Division challenging certain portions of the American Bar Association's law school accreditation activities, held that a third party was not entitled to a wide range of documents in the government's files. *Massachusetts School of Law at Andover, Inc.* versus *United States ("MSL")*, 118 F.3d 776 (D.C. Cir. 1997). In that case, the United States asserted that the determinative documents provision referred "only to documents, such as reports to the government, 'that individually had a significant impact on the government's formulation of relief—i.e., on its decision to propose or accept a particular settlement.'" *Id.* at 784. The court held that both the statutory language and the legislative history supported this interpretation. Indeed, the court noted that during the Senate debate on the Tunney Act, Senator Tunney himself cited a report to the government by an outside expert analyzing the economic consequences of proposed relief in an earlier case as exemplifying a "determinative document." *Id.*[7] The Court also considered a broad disclosure requirement to be inappropriate because it would directly interfere with the United States' ability to negotiate settlement agreements. *Id.* at 784–85. Similarly, in another recent Antitrust Division case the Second Circuit held that "the range of materials that are 'determinative' under the Tunney Act is fairly narrow" and that only documents that were "a substantial inducement to the government to enter into the consent decree" should be subject to disclosure. *United States* versus *Bleznak, et al.*, 153 F.3d 16, 20–21 (2d Cir. 1998).[8]

ISNI has given no reason to doubt the United States' assertion that there are no determinative documents in this case. The United States did not receive any expert reports concerning the effects of requiring GE to divest PREVU, and there are no documents that constituted a substantial inducement to the United States to enter into the proposed Final Judgment. The decision to settle on these terms was based on an assessment of the importance of diagnostic software generally and of PREVU specifically, and there is no document that had a determinative impact on that assessment.

6. The Court Should Deny ISNI's Request To Intervene and To Appoint a Special Master

ISNI requests this Court to permit it to intervene to aid the Court in its public interest determination (Appendix 1, ISNI Comment at 3, 18–19). In order to intervene in this case, ISNI must first file a motion with this Court and upon each party to this action.[9] If it does so, the United States will respond fully to that motion. From its informal intervention request, however, it appears that ISNI should not be granted intervenor status.

"The general rule * * * has been that private parties will not be allowed to intervene in government antitrust litigation." 7C Wright, Miller and Kane, Federal Practice and Procedure 2d § 1908 at 266 (1986). In this District alone, applications for intervention have been denied in several Tunney Act cases. *United States* versus *The Thomson Corp., et al.*, 1996–2 Trade Cas. (CCH) ¶71,620, 78,386 (D.D.C. 1996); *United States* versus *Microsoft Corp.*, 159 F.R.D. 318, 328 (D.D.C.), rev'd on other grounds, 56 F.3d 1448 (D.C. Cir. 1995); *United States* versus *Airline Tariff Publ'g Co.*, 1993–1 Trade Cas. (CCH) ¶70,191, at 69,894 (D.D.C. 1993); *United States* versus *Stroh Brewery Co.*, 1982–2 Trade Cas. (CCH) ¶64.804, at 71,959–61 (D.D.C. 1982); *United States* versus *American Tel. & Tel. Co.*, 1982–2 Trade Cas. (CCH) ¶64,726, at 71,524–26 (D.D.C. 1982).

The eligibility requirements for intervention are the same in a Tunney Act proceeding as in any other case and are set forth in Rule 24 of the Federal Rules of Civil Procedure. 15 U.S.C. § 16(f)(3)(in making public interest determination, court may authorize "intervention as a party pursuant to the Federal Rules of civil Procedure"); MSL, 118 F.3d at 780 n.2 (11the Tunney Act looks entirely to Fed.R.Civ.P.24 to supply the legal standard for intervention"). A third party may be granted intervention either as "of right" under rule 24(a) or "permissive[ly]" under Rule 24(b). ISNI's request does not meet the standards under either provision.

To intervene as of right, ISNI must show that it has "an interest relating to the property or transaction which is the subject of the action and [that it] is so situated that the disposition of the action may as a practical matter impair or impede [its] ability to [protect that interest. Unless [it is] adequately represented by existing parties." Fed. R. Civ. P. 24(a)(2).[10] ISNI's primary "interest" in this proceeding seems to be in using a broad public interest inquiry to obtain for its members access to GE's advanced diagnostic software. (Appendix 1, ISNI Comment at 7, 16, 19). But the entry of the proposed Final Judgment will not impair or impede any interest ISNI or its members may have in obtaining a license to GE's software both because this case related solely to GE's acquisition of InnoServ, not its software licensing policies, *see* Sections II(A)(1), (4), and because even it this case did deal with GE's licensing policies, entry of the proposed Final Judgment would not affirmatively set back ISNI's pursuit of that interest. See MSL, 118 F.3d at 780 (movant "points to no case equating failure to promote an interest with its impairment"). Nor can ISNI use an appeal to protecting the "public interest" to support its request for intervention. Private parties "are not entitled to intervene simply to advance their own ideas of what the public interest requires. In federal antitrust litigation, it is the United States, not private parties, which 'must alone speak for the public interest.'" *United States* versus *G. Heileman Brewing Co.*, 563F. Supp. 642, 648 (D. Del. 1983) (*quoting Buckeye Coal & Ry. Co.* versus *Hocking Valley Ry. Co.*, 269 U.S. 42, 49 (1925)). Therefore, "[a] private party generally will not be permitted to intervene in government antitrust litigation absent some strong showing that the Government is not vigorously and faithfully representing the public interest." *United States* versus *Haftford-Empire Co.*, 573 F.2d 1, 2 (6th Cir. 1973), *quoted with approval in United States* versus *LTV Corp.*, 746 F.2d 51, 54 n.7 (D.C. Cir. 1984). thus, intervention of right in support of the public interest is allowed, if at all, only after a showing of bad faith or malfeasance on the part of the government. *United States* versus *Associated Milk Producers, Inc.*, 534 F.2d 113, 117 (8th Cir. 1976); G. Heileman Brewing, 563 F. Supp. at 649. While it is not evident that ISNI has even alleged bad faith or malfeasance, it is clear that it neither has made nor can make this necessary showing because the United States has acted properly and in good faith.

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[6] The Antitrust Procedures and Penalties Act: Hearings on S. 783 and S. 1088 Before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, 93d Congress., 1st Sess. 26, 57 (1973) (prepared statement of Maxwell M. Blecher, attorney).

[7] Congress enacted the Tunney Act in response to consent judgments entered in 1971 in three cases involving acquisitions by International Telephone and Telegraph Corporation ("ITT"), including that of the Hartford Fire Insurance Company. The consent judgments permitted ITT to retain Hartford. Subsequent Congressional hearings revealed that the Antitrust Division had employed Richard J. Ramsden, a financial consultant, to prepare a report analyzing the economic consequences of ITT's possible divestiture of Hartford. Ramsden concluded that requiring ITT to divest Hartford would have adverse consequences on ITT and on the stock market generally. Based in part on the Ramsden Report, the United States concluded that the need for the divestiture of Hartford was outweighed by the divestiture's projected diverse effects on the economy. In explaining the determinative documents provision, Senator Tunney stated, "I am thinking here of the so-called Ramsden memorandum which was important in the ITT case." 119 Cong. Rec. 24,605 (1973).

[8] The single case cited by INSI—*United States* versus *Central Contracting Co.*, 537 F. Supp. 571 (E.D. Va. 1982)—has not been followed by any other court. Moreover, even that opinion recognized that the Tunney Act "does not require full disclosure of Justice Department files, or grand jury files, or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of" those "material and documents that substantially contribute to the determination [by the government] to proceed by consent decree * * *." *Id.* at 577.

[9] Fed.R.Civ.P. 24(c) states that "[a] person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought."

ISNI also fails to meet the requirements for permissive intervention. Under Rule 24(b)(2), an applicant may intervene when its "claim or defense and the main action have a question of law or fact in common."[11] The words "claim or defense" refer to "the kinds of claims or defenses that can be raised in courts of law as part of an actual or impending law suit." *Diamond* v. *Charles*, 476 U.S. 54, 76 (1986). ISNI has made no showing that it has such a "claim or defense" here. In addition, a court "must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Fed R. Civ. P 24(b). As Judge Greene noted in the *AT&T* case, any rights granted to an intervenor in a Tunney Act proceeding are likely to impose burdens on the judicial process:

> It could be argued that these include the right to file counterclaims and cross-claims, to adduce witness testimony and other evidence, and to appeal from orders of the Court. Such parties might also be contended to have the implicit right to veto any settlement simply by withholding their consent—a result that would in practice void the instant settlement proposal (whatever its substantive merit) and that would eliminate consent decrees as an option in antitrust cases generally (since someone would always or almost always be dissatisfied).

AT&T, 1982–2 Trade Cas. (CCH ¶ 64,726 at 71,525 n.7. ISNI has already attempted to expand this Tunney Act proceeding far beyond its proper scope by suggesting that the United States should have challenged previous transactions by GE, by arguing that GE should be required to license its own diagnostic software to ISNI's members, and by requesting a wide-ranging public interest inquiry in which "fact gathering akin to discovery" will take place. (Appendix 1, ISNI Comment at 7–8, 16, 19). Therefore, there is a particularly high risk that its intervention as a party would unnecessarily delay and complicate this Court's public interest determination. See Thomson Corp. 1996–2 Trade Cas. (CCH) ¶ 71,620, at 78,386 (D.D.C. 1996) (court denies motion to intervene by Lexis-Nexis, which suggested possibility of taking third-party depositions).

ISNI has also not shown why its intervention is necessary given that it has already submitted its extensive Comments. Congress provided the 60-day notice and comment period as a means by which interested parties such as ISNI could express concerns about proposed antitrust settlements in cases brought by the United States. ISNI has done so, and its intervention will constitute an unnecessary delay. See Airline Tariff Publ'g Co., 1993–1 Trade Cas. (CCH) ¶ 70,191, at 69,894 (D.D.C. 1993) (motion to intervene denied when movant's comments "will enable [movant] to inform the Court and all parties of the effects of the proposed decree on its members"); Stroh Brewery Co., 1982–2 Trade Cas. (CCH ¶ 64,804, at 71,960 (D.D.C. 1982) (motion to intervene denied, in part, because movant "fully able to express its concerns utilizing the comment procedures of the Tunney Act").

In a few cases, courts have permitted third parties with greater interests than ISNI's to intervene on a very limited basis. For example, in the case challenging the merger of The Thomson Corporation and West Publishing Company, Hyper Law, Inc. (a small publisher) was permitted to intervene solely for the purpose of appealing entry of the final judgment after Judge Freidman concluded that it had "sufficiently demonstrated that it will suffer actual, concrete, particularized injury traceable to the entry of the Final Judgment * * *." Thompson Corp., 1997–1 Trade Cas. (CCH) ¶ 71,735, at 79,182 (D.D.C. 1997). Similarly, the D.C. Circuit in the MSL case permitted the Massachusetts School of Law, the plaintiff in a parallel treble-damage action against the American Bar Association, to intervene in the government's case solely for the purpose of appealing its claim of entitlement in a Tunney Act proceeding to certain documents that it might not be able to obtain through discovery in its own case, a claim which entry of the final judgment would decisively impair. MSL, 118 F.3d at 781–82. In the Antitrust Division's case against market-makers in NASDAQ securities, the district court permitted private plaintiffs in parallel actions to intervene in the Tunney Act proceeding for what the court described as "two very limited purposes": filing a motion for disclosure of a single document and the underlying evidence cited therein for use in the private litigation; and raising an objection to a single provision of the proposed consent judgment that could have restricted use of potential evidence. *United States* v. *Alex. Brown & Sons, Inc., et al.*, 169 F.R.D. 532, 539 (S.D.N.Y. 1996). The court limited the role of the intervenors to "submitting comments on the decree, engaging in oral argument, and filing appeals." *Id.* And, although ISNI itself was allowed to intervene in the case involving the modification of the 1956 consent judgment against IBM, its rights were limited to appealing the court's entry of the modified order (Appendix 1, ISNI Comment at 4; Appendix 2, Betzner Decl., Exh. C). In an earlier opinion, ISNI's attempt to intervene in the district court proceedings "to conduct discovery, present evidence, introduce new issues, and otherwise influence the pace and direction of the proceedings" was denied. *United States* v. *International Business Machines Corp.*, 1995–2 Trade Cas. (CCH) ¶ 71,135, at 75,459 (S.D.N.Y. 1995).[12]

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[10] Rule 24(a)(1) provides for intervention as of right when a statute confers an unconditional right to intervene, but the Tunney Act does not do so. *See* 15 U.S.C. § 16(f).

[11] Rule 24(b)(1) provides for intervention when a statute confers a conditional right to intervene. The Tunney Act provides for intervention, but expressly refers back to the Federal Rules of Civil Procedure. 15 U.S.C. § 16(f)(3); see MSL, 118 F.3d at 780 n.2.

These cases offer no support of ISNI's broad request to intervene in this case. ISNI has not made a showing that it will suffer injury from the entry of the proposed Final Judgment. It is not, as far as the United States is aware, involved in litigation against GE relating to the issues in this case. And, in contrast to the very limited rights afforded intervenors in the cases discussed above, ISNI apparently foresees a virtually unlimited role for itself, which will include engaging in "fact gathering akin to discovery" (Appendix 1, ISNI Comment at 19). ISNI intervention request falls far short of the requirements set forth in Rule 24 and should be denied.)

Finally, ISNI notes that the APPA permits a Court to appoint a special master to aid in its public interest determination (Appendix 1, ISNI Commend at 18–19). Under 15 U.S.C. § 16(f), the Court may, among other things, take testimony of Government officials and experts or appoint a special master to assist it in making its public interest determination. These procedures are discretionary, however, and the Court need not invoke any of them unless it believes that significant issues have been raised and that further proceedings would aid the court in resolving those issues. See S. Rep. No. 298, 93d Cong., 1st Sess. 6–7 (1973); H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8–9 (1974). The appointment of a special master in government antitrust cases is extremely rare. Indeed, the United States has been unable to locate any case in which a court has appointed a special master to assist it during a Tunney Act proceeding. ISNI's Comments do not raise any issues that would justify taking this extraordinary step.

7. The Court Need Not Hold a Hearing in Making Its Public Interest Determination

In the event the Court denies ISNI's requests for intervention and the appointment of a special master, ISNI requests that a hearing be held in which it can reply to the United States' Response to its Comments. (Appendix 1, ISNI Comment at 19). The Tunney Act does not provide third parties with a right to reply, however, and Congress "anticipated that the trial judge will adduce the necessary information [for making a public interest determination] through the least complicated and least time-consuming means possible." S. Rep. No. 298, 93d Cong., 1st Sess. 4 (1973). The United States believes that a hearing is unnecessary because ISNI has already adequately expressed its views through the public comment procedure. See G. Heileman Brewing Co., 563 F. Supp. at 650 (court denies request for evidentiary hearing when "those same issues have already been raised by movants through the APPA's third-party comment procedure); *United States* v. *Carrols Development Corp.*, 454 F. Supp. 1215, 1221–22 (N.D.N.Y. 1978) (request for limited participation denied when "the moving parties have set forth their views in considerable detail in briefs and affidavits filed with this Court as well as in written comments submitted to the Government under the APPA"). If, however, the Court determines that a hearing would be useful in making its public interest determination, the United States would not object to ISNI's appearance as an *amicus curiae*.

B. Supplemental Comment of ISNI

ISNI submitted a Supplemental Comment on September 16, 1998, the day that GE issued a press release announcing that it had completed its acquisition of InnoServ. ISNI contents that the fact that GE acquired InnoServ before the end of the 60-day notice and comment period under the APPA, and before the Court's approval of the proposed Final Judgment, "undermines and disrespects the processes of the APPA" and makes it more difficult for the United States to withdraw its consent to the entry of the proposed Final Judgment. (Appendix 3, ISNI Supplemental Comment at 2).

The vast majority of mergers challenged by the government are resolved by consent in the form of proposed final judgments that call for some form of divestiture. It is customary in such circumstances to permit the parties to merge at the time that the complaint and proposed final judgment are filed, subject to the parties' obligations under the proposed final judgment. For example, since October 1996 in this District alone, the United states has filed 13 cases challenging mergers that were settled on terms requiring a divestiture or some other relief. In each of these cases, the parties were allowed to merge prior to the close of the comment period and entry of the final judgment by the court. The parties in such cases understand that the proposed final judgment is subject to public comment, that the United States may revoke its consent at any time before the final judgment is entered, and that the final judgment will not be entered unless a court finds that it is in the public interest.

Parties are willing to assume this risk for legitimate business reasons. With many mergers, time is of the essence. Parties to mergers often designate a date certain on which either party may terminate the agreement if the merger has not been effected. The United States challenges numerous mergers because of competitive problems that can be fixed through a divestiture of assets rather than an injunction against the transaction as a whole. Often the parties to such mergers are willing to agree to such divestitures in exchange for the right to consummate their transaction in a timely manner. If the United States refuse to allow such mergers to proceed until after the 60-day notice and comment period plus any additional time the court required to make its public interest determination, many defendants might refuse to settle and force the government seek emergency injunctive relief from a court.[13]

The fact that GE might complete its acquisition of InnoServe before the entry of the proposed Final Judgment was disclosed in the Stipulation and Order, which was filed on the same day as the Complaint and other court papers. The Stipulation included a paragraph requiring the defendants to comply with the proposed Final Judgment once GE acquired InnoServ, even if that occurred prior to the Court's approval and entry of the judgment.[14]

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[12] See also *United States* v. *American Cyanamid Co.*, 556 F. Supp. 357, 359–61 (S.D.N.Y. 1982) (permissive intervention granted because "time consuming and expensive discovery demands often asserted by intervening parties will not be endured here. Applicants seek only to preserve their right to appeal * * * and participate in such further proceedings as this Court may direct on its own motion"), *aff'd.* 719 F.2d 558 (2d Cir. 1983); *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. at 219 (in case involving the dissolution of the world's largest corporation and the restructuring of the telecommunications industry, third parties allowed to intervene to appeal entry of the consent judgment, participate in post-judgment proceedings, and appeal from order approving AT&T's reorganization plan).

[13] In addition, permitting parties to merge quickly is precompetitive because it hastens the divestiture of the competitively important assets to a third party with the incentive and capability of competing vigorously against the acquiring party to the merger.

[14] "The defendants agree to comply with the proposed Final Judgment pending its approval by

Likewise, the proposed Final Judgment itself gives GE "180 calendar days from the filing of the Complaint in this action or five days after notice of entry of this Final Judgment by the Court, whichever is later, to sell InnoServ's PREVU diagnostic package * * *." (Proposed Final Judgment ¶IV(A)). Both of these provisions clearly envision that GE might acquire InnoServ, and thus begin its efforts to sell PREVU, before the Court's entry of the proposed Final Judgment.

Moreover, contrary to ISNI's assertion, GE's acquisition of InnoServ on September 16 does not make it more difficult for the United States to withdraw its consent to the proposed Final Judgment. Nor does it preclude this Court from evaluating whether entry of the proposed Final Judgment is in the public interest or declining to enter the order if it believes the settlement is unacceptable. By consummating its acquisition of InnoServ, GE has assumed the risk that the United States might withdraw its consent and proceed to trial or that this Court may decline to enter the proposed Final Judgment.[15]

C. Comment of Star Technologies

Star Technologies ("Star") of Potomac, Maryland also submitted a Comment expressing concerns about the potential sale or license of InnoServ's PREVU software. Star manufacturers array processors used in conjunction with certain models of GE's CT scanners. Star has also developed diagnostic software, called Star Maintenance Software ("SMS"), for testing its array processors and has licensed SMS to numerous customers for their own internal use. Although InnoServ is a customer of Star for the repair of certain circuit boards, Star does not believe that InnoServ has licensed SMS in the past. Based on recent discussions with InnoServ, however, Star believes that PREVU incorporates, or in some way, uses SMS. Star is therefore interested in identifying any purchasers or licensees of PREVU so that it can seek to enforce its intellectual property rights by requiring any such buyer or licensee to sign a SMS license. (Appendix 4, Star Technologies Comment at 1–2).

The United States has informed Star that GE, since its September 16 acquisition of InnoServ, is the current owner of PREVU. It has also advised GE of Star's claim of potential infringement. This dispute properly is between Star and GE, and the proposed Final Judgment does not affect the rights of anyone involved in this dispute. In any sale of assets, the seller discloses all such liens and claims against the assets being sold, and GE will presumably do so when selling PREVU. So, too, will the trustee, in selling or licensing PREVU, if GE fails to sell PREVU within the time prescribed by the proposed Final Judgment. The proposed Final Judgment does not affect Star's intellectual property rights in any way, and does not affect Star's ability to locate the owner or licensees of PREVU any more than if InnoServ has decided to sell PREVU on its own.

III. Legal Standard Governing the Court's Public Interest Determination

Pursuant to the APPA, the United States is submitting these public comments and this Response to the Federal Register for publication. 15 U.S.C. § 16(d). Upon their publication, the United States will have fully complied with the APPA and will file a motion requesting that this Court enter the proposed Final Judgment. After receiving that motion, the Court must determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e). In doing so, as our motion for entry of the proposed Final Judgment will explain, the Court must apply a deferential standard and should withhold its approval only under very limited conditions. In the MSL case, the D.C. Circuit stated that "constitutional questions would be raised if courts were to subject the government's exercise of its prosecutorial discretion to non-deferential review," and stated that a court should withhold approval of a proposed final judgment "only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes 'a mockery of judicial power.'" MSL, 118 F.3d at 783, quoting Microsoft, 56 F.3d at 1462. As Judge Greene observed in the AT&T case:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

AT&T, 552 F. Supp. at 151. As this Response makes clear, the relief mandated by the proposed Final Judgment is well within the reaches of this public interest standard.

IV. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. Once these comments and this Response are published in the Federal Register, the United States will move the Court to enter the proposed Final Judgment.

Dated: November 17, 1998.

Respectfully submitted,

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Appendix 1

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW, Suite 300, Washington, DC. 20530, *Plaintiff,* v. *General Electric Company,* 3135 Easton Turnpike, Fairfield, Connecticut 06431, and *InnoServ Technologies, Inc.,* 320 Westway, Suite 530, Arlington, Texas 76018, *Defendants.* Case Number 1:98CV01744. Judge: Royce C. Lamberth.

Public Comment of Independent Service Network International Pursuant to 15 U.S.C. § 16(b),(d)

Pursuant to 15 U.S.C. § 16(b),(d), of the Antitrust Procedures and Penalty Acts ("APPA") Independent Service Network International ("ISNI"), a trade association of 157 maintainers of high technology equipment, including medical equipment of the type at issue in this matter,[1] submits this public

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the Court, and shall, from the date of signing this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though it were in full force and effect as an order of the Court, provided, however, that defendants shall not be bound by the terms and provisions of the proposed Final Judgment unless and until the closing of any transaction in which General Electric Company directly or indirectly acquires all or any part of the assets or stock of InnoServ Technologies, Inc." (Stipulation and Order ¶3).

[15] The relief ISNI apparently prefers—the mandatory licensing of GE's diagnostic software to ISOs—also has nothing to do with the fact that GE has already acquired InnoServ. For the reasons stated above, the United States does not believe that this is an appropriate remedy for this acquisition. But if GE ultimately agreed to license it owns software, or was ordered to do so by this Court after a trial in this case, the fact that it has already acquired InnoServ would not make that licensing any more difficult.

[1] InnoServ Technologies, Inc., one of the defendants in the above-captioned case, is a member of ISNI, but, because of conflict of interest

Continued

comment to the Competitive Impact Statement ("CIS") published in the **Federal Register** at 63 FR 39894.

I. Introduction

The CIS does not comply with the APPA because it does not provide the Court or the public with sufficient information to evaluate this consent decree. Information necessary for that evaluation includes the following:

1. A technical and economic evaluation of the key component of this settlement—InnoServ's PREVU advanced diagnostic package ("PREVU")—to demonstrate that it can accomplish what the parties call "the essence" of this final judgment, *i.e.*, "* * * to establish a viable competitor in the sale of service for certain models of G.E. diagnostic imaging equipment * * *" 63 FR at 39894.
2. To define and describe the markets in which this "essence" of the consent decree is to be accomplished.
3. To provide information on other companies, if any, that expressed an interest in purchasing InnoServ and that would present less competitive problems than General Electric Medical Systems ("GEMS") as an acquirer.
4. To describe and provide, pursuant to APPA §§ (b) and (c), materials and documents which the United States considered determinative in formulating the consent decree so that there can be meaningful public comment (the assertion in the CIS that there are no such materials or documents is, as a District Court stated in a similar case, "incredible," *U.S.* v. *Central Contracting Co., Inc.*, 537 F. Supp. 571, 576 (1982)).
5. The relationship, if any, between this settlement and *United States* v. *General Electric Co.*, No. CV–96–121–M–CCL (D. Mont. filed August 1, 1996) ("Montana Case"), which GEMS stated it settled in order "to obtain clearance to complete the InnoServ acquisition * * *" *See*, Betzner Decl., Exhibit A.

Without the above information, it is not possible for the Court to make its public interest determination pursuant to § (e) of the APPA nor is it possible for the public to make meaningful comments on the CIS.

A public interest determination is particularly important in this case because it involves the cost of healthcare, a subject important to all Americans, because GEMS has a high market share in the relevant markets, which it has extended through recent aggressive transactions unopposed by the Government; and because there is no evidence that there is any legitimate reason for GEMS to acquire one of its few competitors, a company less than 1% its size. Therefore, pursuant to APPA § (f) and based on the showing detailed below, ISNI respectfully requests that the Court authorize ISNI to intervene as a party pursuant to the Federal Rules of Civil Procedure and that the Court appoint a special master to preside over the gathering of the information necessary to evaluate this CIS.

II. ISNI and Its Interest in This Proceeding

ISNI, an association of 157 independent service organizations, i.e., organizations servicing equipment manufactured by others (see Betzner Decl., Exhibit B for a list of members), is a nonprofit corporation incorporated in the District of Columbia. In competition with the service organizations of manufacturers, the members of ISNI service various types of high-technology equipment, including medical equipment of the type that is the subject of the CIS. ISNI's members account for over $1.5 billion in commerce.

The purpose of ISNI for the past fourteen years has been to promote and maintain a closer union and organization of independent service organizations. Specifically, ISNI develops educational methods to increase awareness about independent service organizations and studies economic and legal problems confronting them. ISNI also serves as a clearing house for information and data relating to its members' businesses and ISNI promotes better relations among providers, distributors and manufacturers of supplies and services.

ISNI has participated in various legal proceedings on behalf of its members. For example, ISNI, then known as Computer Service Network International, filed a friend-of-the-court brief which was cited by the United States Supreme Court in its landmark antitrust decision concerning service aftermarkets, *Eastman Kodak Co.* v. *Image Technical Services, Inc., et al.*, 504 U.S. 451, 462 n.6 (1992). Also, pursuant to the order of Chief Judge Thomas P. Griesa of the Southern District of New York (Betzner Decl., Exhibit C), ISNI has been granted the right to intervene for purposes of appeal in the proceeding concerning the termination of the IBM consent decree, *United States of America* v. *International Business Machines Corporation*, 52 CIV. 72–344 (TPG), currently pending the U.S. Court of Appeals for the Second Circuit. ISNI has filed a brief in that proceeding.

In his order, Judge Griesa found that "ISNI has a legitimate interest in appealing from the May ruling, and it is in the public interest to allow ISNI to appeal" (*Id.* at 2). Similarly, it is in the public interest for ISNI to intervene in this proceeding because a dwindling number of its members compete with GEMS in the markets alleged by the Justice Department in the complaint in this matter. The reasons that the number is dwindling are that GEMS has a large market share; it has aggressively extended that market share through the transactions described below, unopposed by the U.S. government; and its advanced diagnostics are an essential facility necessary to compete in the relevant markets.

The reasons that it is in the public interest for ISNI to intervene in this matter are cogently set forth in the Government's complaint in this matter (Betzner Decl., Exhibit J):

> Paragraph 3: "If G.E. acquires InnoServ, G.E. will increase its already high share in the markets for servicing certain models of G.E. imaging equipment on a discrete basis, particularly several models of CT scanners and MRI's, and it will eliminate an effective competitor in these markets. It will also substantially reduce competition in multi-vendor service markets. Unless blocked, this acquisition likely will result in higher prices for imaging equipment, maintenance and service."
>
> Paragraph 20: "In many of these markets, InnoServ is one of the few ISOs that has specialized in servicing G.E. imaging equipment * * * the competition between G.E. and InnoServ in these markets has resulted in significant price reductions for consumers. G.E.'s acquisition of the InnoServ would eliminate this competition and increase G.E.'s already high share in the markets for servicing certain models of G.E. imaging equipment, particularly several models of CT scanners and MRIs. It would also substantially reduce competition in multi-vendor service markets."
>
> Paragraph 21: "Successfully entry into the relative markets is difficult, time-consuming and costly. In general, customers prefer to purchase service from existing, reputable firms in the industry. Therefore, new entrants often find it difficult to enter on a scale necessary to succeed financially."
>
> Paragraph 23: "G.E.'s proposed acquisition of InnoServ is likely to lessen competition substantially and tend to create a monopoly in interstate trading commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18."
>
> Paragraph 24: "The transaction likely will have the following effects among others:
>
> a. Actual and future competition between G.E. and InnoServ will be eliminated in the markets for servicing certain models of G.E. imaging equipment under discrete, machine-by-machine basis in numerous local markets throughout the United States;

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considerations, has not been informed of or consulted about this public comment. Similarly, this comment is not intended to express any views of Serviscope, an ISNI member acquired by GEMS in August, 1998. See attached Declaration of Claudia Betzner, para 6.

b. Competition generally in the markets for servicing certain models of G.E. imaging equipment on a discrete, machine-by-machine basis in numerous local markets throughout the United States will be lessened substantially;

c. Actual and future competition between G.E. and InnoServ will be eliminated in the markets for multi-vendor service in numerous local markets throughout the United States; and

d. Competition generally in the markets for multi-vendor service in numerous local markets throughout the United States will be lessened substantially."

Despite these pernicious effects, the government has consented to this acquisition based essentially on the divestiture of PREVU. However, the parties have not provided this Court or the public with the fundamental information necessary to evaluate this settlement. ISNI, because of the expertise of its members and counsel, can aid the Court in obtaining and evaluating this information; ISNI respectfully requests that the Court grant ISNI the opportunity to do so pursuant to APPA § (f).

III. GEMS' Monopoly and Its Successful Efforts To Maintain and Extent It

According to its own press release, "G.E. Medical Systems, based in Milwaukee, WIS., is a $4.5 billion global provider of medical diagnostic imaging systems, services and solutions with 16,000 employees worldwide." (Betzner Decl., Exhibit A.) As indicated by the quotations from the Government's complaint in Section II above, GEMS has a monopoly market share in the markets alleged by the government in its complaint: (1) servicing certain models of G.E. imaging equipment on a discrete machine-by-machine basis in numerous local markets throughout the United States, and (2) multi-vendor service in numerous local markets throughout the United States.

What is more alarming is that G.E. has extended and maintained this monopolistic market share by a number of aggressive transactions in recent years unopposed by the U.S. government:

- August, 1994: strategic alliance with Advanced NMR Systems, Inc., regarding very high field magnetic resonance systems. (Betzner Decl., Exhibit D.)
- June, 1995: five-year agreement with Columbia/HCA Healthcare Corp. covering the service of all diagnostic imaging equipment in the hospital chain, which at that time consisted of 320 hospitals. (*Id.*, Exhibit E.)
- February, 1996; acquisition of National Medical Diagnostics, Inc., which at the time of acquisition provided medical equipment maintenance services to 220 hospitals in 23 states. (*Id.*, Exhibit F.)
- August, 1996: acquisition of Specialty Underwriters, a seller of maintenance insurance to the healthcare industry, and Maintenance Management, which provides service for medical equipment. (*Id.*, Exhibit G.)
- August, 1997: investment of $5.1 million in Advanced NMR Systems, Inc., an extension of the August 1994 alliance described above. (*Id.*, Exhibit H.)
- December, 1997: five-year marketing pact with INPHACT, a provider of on-line radiology services for radiologists (*Id.*, Exhibit I.)
- August, 1998: acquired Serviscope, a medical equipment maintenance and asset management company that was one of the few potential candidates to compete with GEMS to acquire Innoserv. (*Id.*, at para 6.)

With each of these transactions, GEMS got stronger both absolutely and also relative to its much smaller ISO competitors. Innoserv, with revenues of $37 million a year, is described in the CIS as "* * * one of the nation's largest independent service organizations ('ISOs')," 63 FR at 39898. That a $37 million a year company was considered of the largest competitors of a company 120 times its size in itself illustrates the weakness of GEMS' competitors.

Nonetheless, an ISO like Innoserv does provide customers with an alternative. This alternative keeps GEMS from having a 100% monopoly and also helps to keep prices down to a certain extent.

Eliminating that little spark of competition was the only logical motivation for GEMS to acquire InnoServ. This acquisition makes no sense except to eliminate one of the last vestiges of national competition for the service of GEMS imaging equipment. The fact that GEMS has since acquired one of the other remaining competitors—Serviscope—demonstrates that GEMS' goal is the lack of any meaningful service competition.

IV. Non-compliance With the APPA

Section (b)(3) of the APPA requires the CIS to recite "an explanation of the proposal for a consent judgment, including an explanation of * * * relief to be obtained thereby, and the anticipated effects on competition of such relief," and § (e) requires this Court to determine that the entry of such judgment is in the public interest by considering "the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment." As demonstrated below, the information required by § (b) has not been provided in the Competitive Impact Statement, and that fact disables the ISNI and other members of the public from making a "meaningful public comment" on its (APPA § (c)) and disables this Court from making its public interest determination pursuant to APPA § (e).

The following fundamental information is missing from the CIS: a technical and economic assessment of PREVU; a description of the markets involved in the settlement and the effect of the settlement on those markets; information about other firms, if any, that expressed interest in purchasing InnoServ; and information about the relationship of the simultaneous consent decree between the same two parties concerning a litigation in Montana that also involves GEMS' advanced diagnostics. The significance of the non-provision of these items of information will be discussed below.

A. The CIS Provides Nothing but Speculation About the Acknowledged Keystone of This Consent Decree, PREVU

The proposed stipulated final judgment of this litigation states that "The *essence* of this Final Judgment is the prompt and certain divestiture through sale or licensing of certain rights or assets by the defendants to establish a viable competitor in the sale of service for certain models of G.E. diagnostic imaging equipment, and the sale of comprehensive asset-management or multi-vendor services, or in the licensing of advanced diagnostic software for use in any such service." 63 FR at 39894 (emphasis added). These "rights or assets" are PREVU, which is defined at 63 FR 39895.

But the CIS does not make a showing—or even try to make a showing—that PREVU *can* establish a viable competitor. One of the few things that the CIS says about PREVU is the conclusory statement that PREVU gives "* * * InnoServ a competitive advantage in servicing certain models of imaging equipment and in multi-vendor service." *Id.* at 39898, and that "InnoServ is an effective competitor of G.E. in part because InnoServ is one of the very few companies that has developed proprietary diagnostic software for servicing certain models of G.E. imaging equipment." (*Id.* at 39898). But this information about so-called effective competition is contradicted by other information in the CIS:

> [InnoServ] has struggled financially for the past two years * * * losing over $1.5 million for the nine months ending January 31, 1998. In March 1998, InnoServ publicly expressed concern about its ability to continue to meet its working capital requirements.

This fact alone indicates that InnoServ is not providing effective competition to GEMS and that PREVU is not helping it to do so. It makes a significant difference in the antitrust analysis whether InnoServ is an effective or a struggling competitor. if it is effective, why is it losing money? If it is struggling, how will the divestiture of PREVU create an effective competitor when it was not able to make InnoServ an effective competitor? The contradictory statements on this subject in the CIS disable public commentators and the court from making this critical analysis.

The only other information about PREVU in the Competitive Impact Statement is as conclusory as that presented above. "The divestiture of the PREVU diagnostic package will allow one or more third parties to use the software, which in turn will enable them to service more efficiently certain models of imaging equipment and better compete in the markets for servicing individual pieces of imaging equipment and providing multi-vendor service." *Id.* at 39899. There is absolutely no evidence supporting these conclusions. The reader of the CIS does not know whether any entity has ever asked to license or purchase PREVU. Similarly, the reader of the CIS cannot know if or, if so, why, use of PREVU will enable these unnamed "third parties" "* * * to service more efficiently certain models of imaging equipment * * *." *Id.*

The CIS goes on to say, in a completely speculative manner, that "in addition to using the package in its service business, a buyer of PREVU could resell or license PREVU to other parties." *Id.* Again, the reader of the CIS does not know the names of any potential "other parties" to whom the unnamed "third parties" buying PREVU could resell or license PREVU.

The CIS adds. "The ability to improve upon PREVU * * * would further improve an entity's ability to compete with G.E." *Id.* Without having told the reader of the CIS in any detail what PREVU is, it is impossible to know whether it will improve anyone's ability to compete with GEMS or, *a fortiori*, "further improve" such ability.

At a minimum, the following information is needed for the public and the Court to evaluate this consent decree:

1. A detailed description of PREVU.
2. Whether anyone has licensed or purchased PREVU from InnoServ;
3. Whether anyone has expressed an interest to license or purchase PREVU from InnoServ;
4. Whether PREVU helps InnoServ and potentially others to compete with GEMS and, if so, how;
5. A comparison between the effectiveness of PREVU and the effectiveness of GEMS' advanced diagnostics;
6. Why it is not anticompetitive for GEMS to retain a non-exclusive non-assignable license to use PREVU (*Id.* at 39895) even though GEMS does not, and is not being required to, license its own advanced diagnostic software to competing service providers.

The CIS itself indicates doubt as to the value of PREVU by providing for the appointment of a trustee to sell PREVU if it is not sold within approximately 180 days. Advanced diagnostics allegedly capable of creating a viable competitor would not be on the market that long.

B. The CIS Does Not Provide Adequate Information About the Markets Involved and the Effect of the Consent Decree on Those Markets

The U.S. Supreme Court has held that anticompetitive restraints have to be considered "in light of the competitive situation in 'the product market as a whole' ", *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36, 45 (1977), and that "an antitrust policy divorced from market considerations would lack any objective benchmarks." *Id.* at 53, n. 21. At a minimum, such an analysis requires a definition of the relevant markets; the structure of such markets, including such factors as the number of firms and their respective market shares; and an analysis of the effect of the restraint and of the consent decree on price, output, consumer choice, and product quality.

As detailed below, *none* of this information appears in any useful way in the CIS.

The Government alleges the following markets in its Complaint (Betzner Decl., Exhibit J):

1. The markets for servicing certain models of G.E. imaging equipment on a discrete machine-by-machine basis in numerous local markets throughout the United States; and
2. the markets for multi-vendor service in numerous local markets throughout the United States.

See Complaint at paragraphs 2, 3, 12, 14, 16, 17, 19, and 24. However, nowhere have these markets been defined in the CIS.

Similarly, the complaint is bereft of information about market structure, in particular the number of firms in the alleged markets with their respective market shares. Indeed, *no* competitors in these markets are named except InnoServ and GEMS, and *no* markets shares are given.

Without market definitions and without a description of the structure of the market, it is impossible to describe the anticipated effects on competition of the consent decree as required by APPA § (b)(3). Without such information, the following assertion in the CIS is purely conclusory with no evidence at all backing it up: "The proposed Final Judgment would promote additional competition in servicing certain models of G.E. imaging equipment and in multi-vendor service by requiring G.E. to divest InnoServ's proprietary diagnostic service software and related materials to an acquirer acceptable to the United States." 63 FR at 39898. The combination of the total lack of market information with the total lack of substantive information about PREVU stymies public commenters like ISNI from providing meaningful comment and disables this Court completely from making the public interest determination required by APPA § e.

C. The CIS Does Not Provide Information About Other Companies Interested in Purchasing Innoserv

Given (1) the power, alleged in the Complaint, of GEMS to affect the market, (2) GEMS' size, (3) GEMS' recent transactions increasing that size and power (see Section II above), and (4) the low price of InnoServ ($16 million—see 63 FR at 39898) relative to GEMS' size, it is not surprising that GEMS has made the first offer for InnoServ. What the CIS does not state, however, is (1) what other companies, if any, expressed interest in InnoServ; (2) whether there was, as is likely, some appraisal done by a third party like an investment bank of the worth of InnoServ and/or PREVU, or (3) how long InnoServ was on the market. This information is essential for the court to make its public interest determination because, given the facts listed at the beginning of this paragraph, there may have been a serious suitor of InnoServ that would have had a much less anticompetitive effect than GEMS but that would not complete in a bidding war with GEMS. Indeed, it is difficult to imagine an acquiring company with more of an anti-competitive effect than GEMS.

D. The CIS Does Not Provide Adequate Information on the Related Montana Consent Decree

According to the CIS, "In conjunction with this settlement, GE has also agreed to consent to all of the relief that the government was seeking in another case, *United States* v. *General Electric Company,* No. CV–96–121–M–CCL (D.Mont. filed Aug. 1, 1996)," 63 FR at 39899. GEMS states this fact more emphatically in its press release about the Innoserv consent decree:

> *To obtain clearance to complete the Innoserv acquisition,* G.E. Medical Systems agreed to settle a civil lawsuit filed in Montana by the Antitrust Division of the Department of Justice. That lawsuit was filed in 1996 and challenged a G.E. Medical Systems practice under which health-care providers who were also in the business of performing third-party medical equipment service were not eligible to license G.E.'s proprietary advanced service materials. Betzner Decl., Exhibit A, emphasis added.

Even though the Montana consent decree involves GEMS' advanced diagnostics, the CIS gives no supporting evidence or explanation of the following assertions at CIS 39899: "The United States evaluated the merits of the settlement proposals in each case independently, concluding that the proposed settlement of this case is in the public interest for the reasons stated herein, and that the proposed settlement of the Montana case is in the public interest for reasons stated in the Competitive Impact Statement filed in that case today."

This dearth of evidence or explanation is problematic for public commenters like ISNI and for the Court because of the following assertion in the Montana CIS, 63 FR 40737, 40738: "GE has developed advanced service materials [diagnostics like PREVU] that enable service engineers to service certain GE imaging equipment much more quickly than otherwise possible." "Otherwise possible," of course, includes servicing with PREVU. Because of that fact the "essence" of the Innoserv Final Judgment, i.e., "to establish a viable competitor" to GEMS service, 63 FR 39894, does not appear to be possible because, by the U.S. Government's own cryptic evaluation, PREVU is inferior to the advanced service materials of GEMS.

The only way to accomplish this "essence" appears to be to require the licensing of GEMS' advanced diagnostics to competitors. Mandatory licensing of the intellectual property of a monopolist was used as a remedy in the *Kodak* case (*Image Technical Services, Inc.* v. *Eastman Kodak Co.,* 125 F.3d 1195, 1226, 1227 (9th Cir. 1997)) after a jury verdict. Such a remedy is *a fortiori,* appropriate here where GEMS seeks to extend its monopoly by a Government-approved and Court-approved acquisition.

The Government appears to have the remedy backwards in this case: it appears that the divestiture of PREVU will accomplish nothing whereas the mandatory licensing of GEMS advanced diagnostics could establish a viable competitor, which is the alleged "essence" of this consent decree.

E. The CIS Asserts, Incredibly, That There Were NO Materials Which the United States Considered Determinative in Formulating the Consent Decree

APPA § (b) requires the United States to publish with the CIS "* * * any other materials and documents which the United States considered determinative in formulating such proposal * * *." The CIS at 39900 states, incredibly, that "there are not determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment."

This Court can take judicial notice that antitrust cases are among the most complex, document-intensive cases in the Federal Courts. This Court should respond in the same way as another District Court Judge responded to the same incredible claim: with incredulity and with an order to produce documents required by law. *U.S.* v. *Central Contracting Co., Inc.,* 537 F. Supp. 571, 575, 577 (E.D. Va. 1982):

> The Act [APPA] clearly does not require a full airing of Justice Department files, but the Court cannot countenance plaintiff's claim that though Congress enacted sunshine legislation the courts may blandly (and blindly) accept government certification in case after case that no documents or materials, by themselves or in the aggregate, led to a determination by the government that it should enter into a consent decree.
>
> * * * * *
>
> This does not require full disclosure of Justice Department files * * * or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of those which meet the above [APPA] criterium.

Although no entity but the Government can know what these documents are, they should include at least the following:

—those documents providing the good-faith basis for the Government to file its complaint;

—third-party analyses or evaluations of Innoserv and/or PREVU;

—documents relating to the efforts of others, if any, to acquire Innoserv;

—documents supporting the conclusory statements in the CIS about how the divestiture of PREVU will increase competition; and,

—documents comparing PREVU and the advanced service materials of GEMS litigated in the Montana case.

These documents or documents like them must exist or else there is no reasoned basis for the consent decree. If they do not exist, then the Antitrust Division is not acting in a professional, competent manner.

V. This Court Should Authorize ISNI To Intervene and Should Appoint a Special Master

APPA § (f) authorizes this Court to "appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate" and to "authorize full or limited participation in proceeding before the court by interested persons or agencies, including * * * intervention as a party pursuant to the Federal Rules of Civil Procedure. * * *" The defects of the CIS described above amply justify such an appointment and such an authorization.

If the Government had unfettered prosecutorial discretion to settle antitrust cases, the APPA would not exist. Yet the Government is endowing itself with such unfettered discretion by not providing in the CIS information necessary for this Court to make its required public interest determination and for the public to meaningfully comment on the CIS.

Whatever the reason for this non-compliance with the APPA, the Court cannot permit it. Because the Government and GEMS have not complied with the law although they clearly had the knowledge and the resources to do so, it is appropriate for the Court to use the APPA provisions that permit compliance with the APPA to occur.

As mentioned in § II above, the ISNI has the interest, expertise and the experience to aid the Court and to aid a special master appointed by the Court. A special master would be an efficient use of the Court's resources because fact gathering akin to discovery will be involved. The gathering and marshalling of facts will place this matter in the position in which it should have been when the CIS was filed. At that point the Court should be in a position to make its public interest determination or to order further proceedings.

At the very least, the Court should order a hearing before making its public interest determination and should permit the ISNI to participate in that hearing. Otherwise, the Government's response to this comment will go unanswered, and there is no reason to believe that the quality of that response will be any better than the quality of the CIS.

VI. Conclusion

By keeping the public and the Court ignorant of information required by the APPA, the Government is endowing itself with the unfettered prosecutorial discretion contrary to the very purpose of the APPA. ISNI respectfully requests this Court to uphold both the letter and the spirit of that statute in this important sector of the economy affecting the healthcare costs of literally every American.

Respectfully submitted,

Dated: September 15, 1998.

Ronald S. Katz,

Esq. General Counsel, ISNI, Coudert Brothers, 4 Embarcadero Center, Ste. 3300, San Francisco CA 94111, Telephone 415–986–1300.

Appendix 2

United States of America, Department of Justice, Antitrust Division, 325 7th Street N.W., Suite 300, Washington, D.C. 20530, Plaintiff, v. General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431, and InnoServ Technologies, Inc., 320 Westway, Suite 530, Arlington, Texas 76018, Defendants. Case Number 1.98CV01744. Judge: Royce C. Lamberth.

Declaration of Claudia Betzner in Support of Public Comment of Independent Service Network International Pursuant to 15 U.S.C. § 16(b), (d)

1. I, Claudia Betzner, am the Executive Director of the Independent Service Network International ('ISNI''), a trade association of 157 maintainers of high technology equipment, including medical equipment of the type at issue in this matter. Independent service organizations service equipment manufactured by others.

2. ISNI is a nonprofit corporation incorporated in the District of Columbia. Its members compete with the service divisions of manufacturers like General Electric Medical Systems (''GEMS'').

3. ISNI has participated in various legal proceedings on behalf of its members, including *Eastman Kodak Co.* versus *Image Technical Services, Inc., et al.*, 504 U.S. 451, 462 and *United States of America* versus *International Business Machines Corporation*, 52 CIV 72–344 (TPG), Second Circuit, U.S. Court of Appeals (pending).

4. InnoServ is a current member of ISNI but has not been consulted about or advised of this public comment.

5. Serviscope is a member of ISNI but ISNI has been informed by Serviscope that it was acquired by GEMS in late August of 1998.

6. Attached hereto as Exhibit A is a true and correct copy of a press release from GEMS generated by a computer search.

7. Attached hereto as Exhibit B is a true and correct copy of a database listing of all current members of ISNI.

8. Attached hereto as Exhibit C is a true and correct copy of an Order issued by Chief Judge Thomas P. Griesa, Southern District of New York, in the case *United States of America* versus *International Business Machines Corporation, 52 CIV 72–344 (TPG).*

9. I have generated a computerized database search for articles on GEMS' acquisitions. That search has generated true and correct copies of the articles which appear as Exhibits D through I of this declaration.

17. Attached hereto as Exihibit J is a true and correct copy of the Complaint in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of September, 1998, at Atlanta, Georgia.

Claudia Betzner,

Executive Director, ISN International.

Exhibit A

Level 1–1 of 28 Stories

Copyright 1998 PR Newswire Association, Inc., PR Newswire

July 14, 1998, Tuesday.

Section: Financial News
Distribution: To Business Editor
Length: 514 words
Headline: GE Medical System Receives Clearance to Acquire InnoServ Technologies
Dateline: Milwaukee, July 14

Body: GE Medical System announced today that it has received Department of Justice clearance to complete its acquisition of InnoServ Technologies, Inc. (Nasdaq: ISER), a provider of asset management, repair and maintenance programs for imaging, biomedical and laboratory equipment to health-care providers.

''InnoServ is an important addition to GE Medical Systems that will enhance our capability to provide multi-vendor service solutions to help health-care providers become more productive,'' said Jeffery R. Immelt, GE Medical Systems' president and CEO.

''InnoServ brings dedicated and talented service personnel to our GE team as well as enhance GE's circuit board repair and X-Ray tube reloading capabilities—all of which will help us to be a better partner for our multi-vendor service customers,'' Mr. Immelt said.

To obtain clearance to complete the InnoServ acquisition, GE Medical Systems agreed to settle a civil lawsuit filed in Montana by the Antitrust Division of the Department of Justice. That lawsuit was filed in 1996 and challenged a GE Medical Systems paractice under which health-care providers who were also in the business of performing third-party medical service were not eligible to license GE's proprietary advanced service materials.

Under the revised policy announced today, health-care providers will be eligible to lincense GE Medical Systems' advanced service materials for use by their own employees to service their own GE medical imaging equipment, without regard to the scope of their third-party service activities.

Under both the challenged eligibility standards and the revised policy, GE will require that its customers not use GE proprietary information when they provide service to third parties.

The settlement strongly affirms GEMS' right to control key aspects of its intellectual property licensing: e.g., whether and what to license; which customers would receive licenses; what to charge for a license; and what restrictions to place on the use of licensed materials to protect against misues.

Under the settlement, there are no findings on admissions of any miscoduct by GE and GE is not liable for any damages, financial penalities or other monetary payment.

GE Medicare Systems also agreed to divest InnoServ' PREVU diaguostic service materals following completion of the InnoServ acquisition.

''The settlement agreement recognizes GE's fundamental right to protect its intellectual property from misues. The Department of Justice agree with that goal. GE's goal has always been the same: to allow customers to compete in the service field as they see fit but to ensure that they do not use GE's proprietary software to do so,'' Mr. Immelt said.

The InnoServ operations acquired by GE currently employ about 220 people, including more than 120 field engineers.

GE Medical Systems, based in Milwaukee, Wis., is a $4.5 billion global provider of medical diagnostic imaging systems, services and solutions with 16,000 employees worldwide.

Source: GE Medical Systems
Contact: Charles Young, Manager of Global Public Relations of GE Medical Systems, 414–544–3530, pager 888–864–3332, charles.young£med.ge.com
Language: English
Load-Date: July 15, 1998

Exhibit B

Contact Company

AAI Engineering Support, Inc. Hunt Valley, MD
Access Corporation, Cincinnati, OH
Accram, Inc., Phoenix, AZ
Advanced Vio-Med Electronics, Slidell, LA
Advanced Technology Lab., Bothell, WA
Allina Ces, Roseville, MN
AM Services Operation, Santa Ana, CA
AMCOR, Fairfield, NJ
American Teleprocessing Corp., Houston, TX
AMSCO International, Erie, PA
Arand Corporation, Spring City, PA

ASI Copier & Fax Solutions, Dallas, TX
Authorized Technical Services, Oakland, CA
B.C. Tel Sys Support, Burnaby, BC
Baldwin, Cleveland, OH
Bay State Anesthesia Service, North Andover, MA
Beckmen Coulter, Fulton, CA
Bio Medic Inc., Crestwood, IL
Bio-Medical Equipment Service, Lousville, KY
Biomedical Concepts, Inc., Mandeville, LA
Biomedical Eqpt Spec Inc., Sioux City, IA
BioTechnical Services, San Diego, CA
BMC Solutions, Inc., Kennesaw, GA
Brains II, Inc., Markham, ON
C. Hoelzle Associates, Irvine, CA
Centura, Inc., Cleveland, OH
CIC Warrentek, College Station, TX
COHR, Chatsworth, CA
Comdisco Healthcare Group, Inc., Rosemont, IL
Comdoc Inc., Uniontown, OH
Compuquip, Inc., Miami, FL
Computer Maintenance Interntl, Falls Church, VA
Computer Maintenance Corp., College Park, GA
Computer Mtnce of the Triad, Winston Salem, NC
Computer Products & Services, Boca Raton, FL
Copy Systems, Inc., Frederick, MD
CopyTech Business Systems, Inc., Harrison, OH
CPO, Limited, Santa Clara, CA
Crystal Computer, Winchester, MA
CT Solutions, Inc., Fairfield, CA
Ctronics, Stockton, CA
Cyber Resources, Mountainside, NJ
D.F. Blumberg Associates, Inc., Ft. Washington, PA
Data Exchange Corp., Camarillo, CA
Data General Corp., Westboro, MA
Dataprep (Malaysia) SDN.BHD
Deccaid Services, Inc., Deer Park, NY
DecisionOne, Menomonee Falls, WI
DecisionOne Corp Canada, Markham, ON
Dependable X-Ray Inc., Antioch, IL
Diagnostic Parts Exchange, Tallahassee, FL
Digidyne Inc., Lachine, Quebec
Digital Document Solutions, Orange, CT
Digital ES, Inc., Oklahoma City, OK
Docusource, Van Nuys, CA
DXR Imaging, Oakland, CA
EAD Systems Corp., Holbrook, MA
Edwards Business Machines, Inc., Bethlehem, PA
ESSC, Canada, Concord, ON
Express Copy & Tech, Indianapolis, IN
G.E. Walker, Inc., Tampa, FL
Galaxy Computer, St. Paul, MN
Garrett Med-Tech, Inc., Aurora, CO
GEAC Computers, Markham
Genicom Corp., Chantilly, VA
Getronics Service, 1092 AB Amsterdam
Graphic Corporation, Birmingham, AL
Great Eastern Technology, Cambridge, MA
GTE Services, Needham, MA
Hahn & Company, Portland, OR
Halifax Engineering, Inc., Alexandria, VA
HealthTech Pub. Co. Inc., E. Providence, RI
Hospital Shared Services, Denver, CO
BE Digital, Cerritos, CA
IET Intelligent Electronics, Burlington, MA
Imaging Diagnostics, Inc., Goodlettsville, TN
Imtek Office Solution, Inc., Pasadena, MD
Innoserv Technologies, Inc., Arlington, TX
Integration Technologies Gp., Inc., Falls Church, VA
International Bandwidth Services, San Juan Capistrano, CA
J&S Medical Assoc., Natick, MA
Kennsco, Inc., Plymouth, MN
Kinetic Biomedical, Erie, PA
Labcare Services, Sacramento, CA
LFC Capital, Inc., Chicago, IL
Lockhead Martin Comm Sys & Srv., Dearborn, MI
Maintech, Wallington, NJ
Maintenance Alternatives Corp., Petalund, CA
Maintenance Plus Inc., Roselle Park, NJ
Mararthan Services, Inc., Westlake Village, CA
Marcon Services Ltd., Wichita, KS
Matlock Medical Imaging, Inc., Durham, NC
Medelex, Inc., Sunnyvale, CA
Medical Imaging Service, Inc., Jefferson, LA
Medical Imaging Technologies Svcs., Inc., Ettalong Beach NSW
Medical Systems Engineering, San Francisco, CA
MEDTRON Inc., Free Port, NY
MTI Technology, Anaheim, CA
National Customer Engineering, San Diego, CA
National MD, Cleveland, OH
Nationwide Technologies, Inc., Lake Forest, IL
New England Systems, Inc., Middlebury, CT
Nexor System Service OY, Helsinki
North American Imaging, Camarillo, CA
Northrup Grumman GSS, Bohemia, NY
Novare Services, Inc., Cincinatti, OH
OneSource Services, Inc., Cleveland, OH
Picker, Lincolnshire, IL
Precision Medtech Services, Inc., Jessup, MD
Preferred CT Services, Palo Alto, CA
Preferred Diagnostic Equipment, Riverside, CA
Professional Copy Systems, Salt Lake City, UT
Qr Systems, Inc., San Antonio, TX
R.P. Kincheloe Company, Dallas, TX
Radiology Services, Inc., Georgetown, MA
Radiology Services of P.R., Cidra, Puerto Rico
Recognition Service Div., Irving, TX
Red Lion Medical Safety, Newark, DE
Remedpar, Goodlettesville, TN
Reprographic Systems, Inc., Urbandale, IA
Revacomp, Inc., Houston, TX
RPI Inc., Chatsworth, CA
S.O.M.A. Inc., Philadelphia, PA
Safety Anesthesia Eqpt Srvs Inc., Flora Park, NY
Safety Anesthesia Equipment Sv., Floral Park
Scantron FPD, Omaha, NE
Service Results Technology, Markham, ON
Service Technologies Inc., Atlanta, GA
Serviscope Corporation, Wallingford, CT
Shields Business Solutions, Cinnaminson, NJ
SMS System Maintenance Svcs, Inc., Littleton, MA
SoftTech Solutions, Waterford, MI
Southeast Imaging Systems, Inc., Apopka, FL
Sunton Industries, Inc., Hollywood, FL
Technical Duplicator Services, Inc., Anaheim, CA
Technical Dynamics, Annandale, VA
Technical Equipment Services, Inc. San Diago, CA
Tecspec, Inc., San Diego, CA
Telos Corporation, Bountiful, UT
The Exchange Corp., Atlanta, GA
The Thomas Group, Anaheim, CA
Thijssen Field Service B.V., Veenedaal
Toshiba America Medical, Tustin, CA
U.S. Computer Group, Farmingdale, NY
U.S. Medical, Cincinnati, OH
Unisys Canada, ON
Universal Financial, Elmhurst, IL
Vanstar, Atlanta, GA
Vision Medical Services, Ontario, CA
Vitronics, Inc., Eatontown, NJ
World Data Products, Minnetonta, MN
X-Tech Systems, Goleta, CA
Xerographic Copier Services, Inc., San Antonio, TX
Xeographic Corporation, Atlanta, GA

Exhibit C

United States District Court, Southern District of New York

United States of America, *Plaintiff*, against International Business Machines Corporation, *Defendant*. 52 Civ. 72–344 (TPG).

Order

On May 1, 1997 this Court approved an agreement between plaintiff and defendant providing for the termination of the remaining provisions of a 1956 consent decree in stages, with the final provisions ending in the year 2002.

Independent Service Network International ("ISNI") moves to intervene for purposes of appeal. The motion is granted.

ISNI is an organization of computer repair companies. Part of the business of these companies is to compete with IBM for the repair of IBM computers. At an earlier stage in the litigation, Judge Schwartz of this Court denied ISNI's motion to intervene. *United States* v. *International Business Machines Corp.*, No. 72–344, 1995 WL 366383 (S.D.N.Y. June 19, 1995). Later, when the termination agreement had been arrived at and was before the Court for approval, the undersigned, to whom the case had been reassigned, permitted ISNI to appear as amicus curiae. ISNI thereafter filed papers objecting to the termination agreement, and presented argument at the hearing. The Court's opinion of May 1 dealt in substantial part with ISNI's contentions. Although the Court rejected these contentions, they surely deserved the attention of the Court.

ISNI has a legitimate interest in appealing from the May ruling, and it is in the public interest to allow ISNI to appeal. Under these circumstances the Court has discretion to allow ISNI to intervene under Fed. R. Civ. P. 24(b)(2). *See United States* v. *American Cyanamid Co.*, 556 F. Supp. 357, 361 (S.D.N.Y. 1982), *aff'd*, 719 F.2d 558 (2d Cir. 1983).

Accordingly, the Court directs that ISNI is permitted to intervene. This is solely for the purpose of appealing the May 1 ruling. ISNI will be denominated an "Objector." There is no need to amend the caption of the case.

So Ordered.

Dated: New York, New York, June 26, 1997.

Thomas P. Griesa,

U.S.D.J.

Exhibit D

343rd Story of Level 2 Printed in Full Format

Copyright 1994 Business Wire, Inc., Business Wire

August 2, 1994, Tuesday.

Distribution: Business Editors/Medical Writers

Length: 356 words

Headline: ANMR and GE Medical Systems expand alliance to include very high field Magnetic Resonance Systems

Dateline: Wilmington, Mass.

Body:

August 2, 1994—Advanced NMR Systems Inc. (NASDAQ NM:ANMR) announced Tuesday that it had concluded an agreement that expands its strategic alliance with GE Medical Systems (GEMS).

Under the agreement ANMR will be the system integrator of very high field (3T and 4T) Magnetic Resonance Systems based on the GEMS Signa MR product. In addition to system integration, ANMR will also supply any special order design and manufacturing capability. The agreement covers a 3-year period through June 30, 1997.

Under the agreement, 3T and 4T MR Systems will be made available to research institutions as investigational devices for research purposes. Revenues from this agreement will contribute to satisfying the GEMS obligation under the 1993 contract covering the ANMR InstaScan product (currently marketed by GEMS as SR–100). GEMS exclusivity on the InstaScan product will expire at the end of 1994.

The companies further announced that they were continuing discussions on a series of other collaborations which could result in additional agreements.

"There have been inquiries from research sites requesting that we provide a very high field MR research system based on the Signa product with the option of adding the InstaScan EPI system. This eventuality was anticipated in the original agreement. It is a great example of two organizations, each with added value, working together," said Paul J. Mirabella, general manager, Global MR Business for GEMS.

Jack Nelson, chairman and chief executive officer of ANMR, said, "Our expanded alliance with GEMS allows us to provide the most sophisticated technology to the world's most prestigious research centers. This agreement recognizes our wish to exclusively manufacture higher field systems for GEMS while releasing ANMR to market InstaScan systems and/or retrofits via multiple OEM agreements after December 31, 1994."

Contact: South Coast Communications, Joseph Allen, 714/252–8440 or Advanced NMR Systems, Shareholders Relations, 201/592–8838.

Language: English.

Load-Date: August 3, 1994.

Exhibit E

320th Story of Level 2 Printed in Full Format

Copyright 1995 Information Access Company, a Thomson Corporation Company, IAC (SM) Newsletter Database (TM), The Business Word, Inc., Hospital Materials Management

June, 1995.

Section: No. 6, Vol. 20; ISSN: 0888–3068

Lenght: 182 words

Headline: Columbia/HCA Signs Five-Year Deal With GE Medical Systems

Body:

Columbia/HCA Healthcare Corp., Nashville, Tenn., signed a five-year agreement with General Electric Medical Systems, Waukesha, Wis., that covers the sales, service and utilization of all diagnostic imaging equipment in the 320-hospital chain. The deal may signal future partnerships between hospitals and equipment companies.

The contract also gives GE responsiblity for providing Columbia/HCA with recommendations on new equipment purchases. Columbia/HCA will provide GE with information on when and why equipment needs to be replaced for every piece of equipment the system owns.

It is extremely difficult to place a dollar value on the contract, and no one can say how it will affect the 200 to 250 independent service vendors that worked on Columbia/HCA's equipment prior to the agreement. Another question, not yet answered, is whether GE and Columbia will take the agreement beyond imaging equipment to other areas in the chain.

If the concept takes hold, the industry will likely see more manufacturers enter not this double role.

Copyright 1995 The Business Word, Inc.

Language: English

IAC–ACC–NO: 2805689 ND

Load-Date: October 25, 1995

Exhibit F

1st Story of Level 1 Printed in Full Format

Copyright 1996 Plain Dealer Publishing Co., The Plain Dealer

February 21, 1996 Wednesday, Final/All.

Section: Business; Pg. 2C

Length: 271 words

Headline: Medical Maintenance Firm Gains Scope With Purchase

Byline: By Marcus Gleisser; Plain Dealer Reporter

Body:

GE Medical Systems of Milwaukee acquired National Medical Diagnostics Inc. of Warrensville Heights yesterday.

With this move, GE grows from specializing in the maintenance of diagnostic equipment to the broader area of handling a wide variety of high-tech medical equipment.

National Medical was owned by group of venture capital investors including KeyCorp., Morgenthaler, Primus, PNC Bank of Pittsburgh, and Canaan Venture Partners of New Canaan, Conn.

It will become a wholly owned subsidiary of GE Medical, retaining its name, location and employee structure, said Ray Dalton, National MD chief executive.

"We expect to grow substantially as a result of this move and will be adding more jobs here," Dalton said.

Both parties declined to give the dollar value of the transaction.

National Medical began serving a single hospital in the Denver area four years ago. It took off wildly, said Dalton, until now it provides maintenance and repair services to some 220 hospitals in 23 states.

From a first engineering-service contract worth $250,000 the Cleveland company has grown to more than $22 million in annual revenues and more than 200 employees.

For a fixed price, the company provides maintenance, repair, testing, calibration and other services for a hospital's entire array of medical equipment, including X-ray machines, life-support systems, CT scanners, computers and related telecommunications equipment.

In many cases, the company replaces the need for separate service contracts involving many different outside vendors. The one-stop maintenance often saves hospitals a considerable amount.

Language: English

Load-Date: February 22, 1996

Exhibit G

227th Story of Level 2 Printed in Full Format

Copyright 1996 Medical Data International, Inc., Medical Industry Today

August 27, 1996, Tuesday.

Section: Mergers & Acquisitions
Length: 303 words
Headline: GE Medical Systems Acquires Assets of Two Companies
Body:

GE MEDICAL SYSTEMS (Milwaukee, WI), a business of General Electric Company, has agreed to acquire the U.S. healthcare assets of Specialty Underwriters (SU) and Maintenance Management (MMC), GE Medical Systems announced in a release Monday.

Terms of the agreement were not disclosed.

Specialty Underwriters, a private firm based in Oak Creek, WI, was founded in 1982. It sells equipment maintenance insurance to healthcare and other industries. Maintenance Management provides on-site maintenance services for hospitals' and clinics' medical and office equipment.

"The acquisition of Specialty Underwriters' healthcare operations will help bolster GE Medical Systems' efforts in the multivendor service business. Our multivendor service offerings provide healthcare providers with a more efficient solution for managing and servicing hundreds and often thousands of pieces of clinical and biomedical equipment across their departments," said Tom Dunham, vice president and general manager of GE Medical Systems-Americas Service. "As a one-stop-shop alternative, we reduce customers' overall maintenance costs while ensuring consistent, high quality."

Said Michael H. Polaski, founder and president of Specialty Underwriters and Maintenance Management, "The healthcare portion of our business has been very successful and should thrive as part of GE Medical Systems, whose entire focus is healthcare solutions. After the sale, we will continue to apply the successful formula we developed with SU and MMC to maintenance activities in other industries. Capital from this transaction will enable us to accelerate our plans to develop new products and enter new markets."

GE Medical Systems is a leading provider of diagnostic imaging systems and related services.

Contact: Laurie Bernardy (414/544–3530)
Language: English
Load-Date: September 02, 1997

Exhibit H

1st Story of Level 1 Printed in Full Format

Copyright 1997 Business Wire, Inc., Business Wire

August 19, 1997, Tuesday.

Distribution: Health/Medical Writers or Business Editors
Length: 356 words
Headline: GE Medical Systems Invests $5.1 Million for Acquisition of Securities of Advanced NMR Systems, Inc. and Advanced NMR Systems, Inc.'s 3T and 4T Whole Body Imaging Business
Dateline: Wilmington, Mass.
Body:

19, 1997—Advanced NMR Systems Inc. (NASDAQ:ANMR) and GE Medical Systems jointly announced today that GE has invested $5.1 million of the acquisition of $2.7 million of ANMR preferred stock, convertible at $0.233 per share, and for the acquisition of ANMR's 3-tesla and 4-tesla whole body magnetic resonance imaging business. The companies had previously collaborated in the development of these systems. GE Medical Systems will continue to develop, manufacture, sell and service the 3T and 4T whole body imaging systems, and will also acquire ANMR's business of servicing 1.5T systems.

In announcing the transaction, Jeffrey R. Immelt, president and chief executive officer of GE Medical Systems, said, "GE Medical Systems is excited about assuming sole responsibility for this 3T and 4T whole body imaging business, and we are committed to providing products and service to the developing market in 3T and 4T whole body imaging systems. We are also pleased with the opportunity to build upon our strategic relationship by becoming an ANMR shareholder."

Jack Nelson, chairman and chief executive officer of Advanced NMR Systems Inc. said, "This transaction further strengthens our balance sheet and positions us to concentrate on our future growth following our proposed merger with Advanced Mammography Systems. We are delighted to have GE as a significant investor in the company."

Advanced NMR Systems Inc. and Advanced Mammography Systems Inc. (NASDAQ:MAMO) have executed a definitive agreement to merge. Advanced NMR Systems Inc. is awaiting SEC clearance of proxy material and a related registration statement for subsequent approval of shareholders for the merger.

Contact: Advanced NMR Systems Inc., Beverly Tkaczenko, 800/476–0569 or GE Medical Systems, Charles Young, 414/544–3530.

Language: English
Load-Date: August 20, 1997

Exhibit I

82nd Story of Level 2 Printed in Full Format

Copyright 1997 Business Wire, Inc., Business Wire

December 1, 1997, Monday.

Distribution: Business Editors, Health/Medical Writers
Length: 549 words
Headline: GE Medical Systems and INPHACT Form Strategic Alliance; Five-Year Joint Marketing Pact Could Generate $100 Million In Revenues
Dateline: Nashville, Tenn.
Body:

Dec. 1, 1997—General Electric Medical Systems, the world's leading manufacturer of diagnostic imaging equipment, and INPHACT, a Nashville-based provider of on-line radiology services for radiologists and health care facilities, have forged a give-year "Strategic Alliance," The national agreement designates GE as an INPHACT preferred vendor and establishes joint marketing efforts that could generate more than $100 million in GE equipment and INPHACT service revenues during the contract period. INPHACT, which currently serves radiologists and health care facilities in seven states, will receive preferred purchase and service options on GE equipment for new client installations or upgrades for its existing clients. GE will help to jointly market INPHACT's 24/7 on-call image interpretation service, digital image transmission & archiving and physicians' practice management services to its current and new physician and facility clients, and INPHACT will help to jointly market GE's Integrated Imaging Services ("IIS") for networking (PACS) products and services.

'INPHACT has developed leading-edge services that can help radiologists and health care facilities deliver radiology services more efficiently and cost effectively," said Tony Lombardo, General Manager of Sales for GE IIS. "INPHACT has made our integrated imaging solutions (IIS) products and services an important element in its service platform, which results in reduction of duplicate studies, elimination of lost files, decreased maintenance costs and faster diagnoses for its clients," "GE has already played an integral part in helping INPHACT develop our state-of-the-art on-line radiology services," said Jeffrey A. Landman, M.D., chairman and chief executive officer of INPHACT. "GE's ongoing commitment to INPHACT and our clients assures that we will continue to be at the forefront of helping radiologists and health care facilities provide more in-depth service while reducing their costs." Founded in 1996, INPHACT (www.inphact.com) is a privately-held provider of on-line radiology and practice management services that currently serves radiologists and health care facilities in seven states. Earlier this year, the company introduced the Virtual Partner program, which offers a unique blend of 24/7 on-call image interpretation, practice management and equity partnership to radiologists. INPHACT also offers health care facilities 24-hour consulting, system design, digital image transmission and archival services. GE Medical Systems (GEMS), a business of General Electric Company, develops and produces diagnostic imaging equipment in several modalities, including X-ray, Mammography, Magnetic Resonance, Computed Tomography, Ultrasound, Nuclear Medicine Imaging and PET. GEMS also provides a variety of services—from networking to biomedical equipment maintenance. GE Medical Systems has annual sales of approximately $4 billion and employs more than 15,000 people worldwide.

Contact: Katcher Vaughn & Bailey Communications, Roy Vaughn, Lisa Achilles, 615/248–8202.

Today's News On The Net—Business Wire's full file on the Internet, with Hyperlinks to your home page.

URL: http://www.businesswire.com

Language: English
Load-Date: December 2, 1997

Exhibit J

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, N.W., Suite 300, Washington, D.C. 20530, *Plaintiff*, v. General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431, and InnoServ Technologies, Inc., 320 Westway, Suite 530, Arlington, Texas 76018, *Defendants*. Case Number 1:98CV01744. Judge: Royce C. Lamberth. Deck Type: Antitrust. Date Stamp: 07/14/98.

Complaint

The United States of America, acting under direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendants and alleges as follows:

1. The United States brings this antitrust case to block the proposed acquisition of InnoServ Technologies, Inc. ("InnoServ") by General Electric Company ("GE"). GE is the largest manufacturer of medical imaging equipment, such as CT scanners and magnetic resonance imagers (MRIs), and is the leading service provider of GE imaging equipment. InnoServ is one of the nation's largest independent service organizations ("ISOs") and has significant expertise and capabilities and competes with GE in servicing certain GE imaging equipment. GE and InnoServ also compete in numerous local markets for comprehensive multi-vendor and asset-management services ("multi-vendor service"), in which they contract to provide services relating to some or all of a hospital's capital equipment—including imaging and non-imaging medical equipment—regardless of manufacturer. The competition between GE and InnoServ in these markets has reduced prices significantly for imaging equipment service.

2. To help service its imaging equipment, GE has developed advanced diagnostic software that it uses to calibrate, maintain, and service more quickly a particular model of imaging equipment. InnoServ is one of very few companies that has developed its own proprietary diagnostic software (called "PREVU") for servicing certain GE imaging equipment. Although it is not as sophisticated or efficient as GE's own software, PREVU has made InnoServ an effective competitor to GE in the markets for servicing certain models of GE imaging equipment on a discrete, machine-by-machine basis, as well as in markets for providing multi-vendor service to hospitals that own GE equipment.

3. If GE acquires InnoServ, GE will increase its already high share in the markets for servicing certain models of GE imaging equipment on a discrete basis, particularly several models of CT scanners and MRIs, and it will eliminate an effective competitor in these markets. It will also substantially reduce competition in multi-vendor service markets. Unless blocked, this acquisition likely will result in higher prices for imaging equipment maintenance and service.

I. Jurisdiction and Venue

4. The United States files this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. Both GE and InnoServ service medical imaging equipment in interstate commerce, and the operations of their medical equipment service businesses affect and are in the flow of interstate commerce. This Court has subject matter jurisdiction over the action and the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

6. The defendants transact business and are found within the District of Columbia. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II. The Defendants

7. GE is a New York corporation headquartered in Fairfield, Connecticut. GE is a diversified technology, manufacturing, and services company. In 1997, GE's total revenues exceeded $90 billion. Its wholly owned subsidiary, General Electric Medical Systems ("GEMS"), located in Waukesha, Wisconsin, manufactures medical imaging equipment such as CT scanners, MRIs, x-ray equipment, and nuclear-medicine cameras. GEMS is the leading service provider of imaging equipment manufactured by GE. Since 1994, GEMS has also serviced imaging equipment manufactured by other companies through GE HealthCare Services, its multi-vendor service group.

8. InnoServ is a California corporation headquartered in Arlington, Texas. InnoServ provides various forms of multi-vendor service to radiology, cardiology, biomedical, and laboratory departments of hospitals and other healthcare providers. In fiscal year 1997, InnoServ's total service revenues exceeded $37 million.

III. Trade and Commerce

A. Relevant Product Markets

1. Service of GE Imaging Equipment on a Discrete Basis

9. Hospitals, physicians, and other health care providers use various types (sometimes referred to as "modalities") of medical imaging equipment, such as CT scanners, MRIs, and nuclear cameras, to create images of the body's internal structure. Each modality of imaging equipment employs different technologies and generally is not interchangeable with any other. For example, an MRI is better suited than a CT scanner for imaging soft tissue, and a CT scanner can disclose a tumor that less sophisticated x-ray equipment cannot detect.

10. GE is the largest manufacturer of imaging equipment and sells various modalities of such equipment throughout the United States. For each modality, GE often has sold multiple models, particularly as it improves upon the equipment. Since 1987, GE has sold at least the following CT scanner models: the CT Max; the 9800/Quick; the 9800 Hilight Advantage; and the Hispeed Advantage.

11. Imaging equipment requires regular service, including preventive maintenance, general repairs, and emergency service. Health care providers spend over $3 billion each year to service and repair imaging equipment.

12. The sale of service for each model of imaging equipment is a separate product market. A hospital or clinic that owns a GE 9800/Quick CT scanner requiring service does not have any reasonable substitute to purchasing service for that equipment. Purchasing service for another piece of imaging equipment—for example, an ultrasound machine, which is used for very different kinds of medical diagnoses—is not a alternative. If faced with a small but significant increase in the price of servicing the GE 9800/Quick, most hospitals would not forego purchasing service for that model. The same is true for other models of GE imaging equipment.

13. Historically, after the warranty on a piece of GE imaging equipment has expired, hospitals and other owners of the equipment have entered into discrete contracts with a service provider for that equipment. GE and InnoServ compete to sigh such discrete service contracts for several different models of GE imaging equipment. If faced with a small but significant increase in the price of servicing a GE 9800/Quick CT scanner, most hospitals

preferring discrete service contracts would not switch to a multi-vendor service contract covering all of their imaging equipment. The same is true for other models of GE imaging equipment.

14. The service for certain models of GE imaging equipment on a discrete, machine-by-machine basis is a line of commerce and a relevant product market within the meaning of the Clayton Act.

2. Multi-vendor Service

15. In recent years, rather than have numerous discrete service contracts with several different equipment manufacturers or ISOs, some hospitals have chosen to contract with a single provider to service most or all of the hospital's equipment. Such multi-vendor service contracts may include service for all of a hospital's imaging equipment—regardless of manufacturer, modality, or model. They may also include service for all of the hospital's non-imaging medical equipment, such as biomedical and laboratory equipment. In some cases, hospitals also contract with a single entity for all of the hospital's capital equipment needs, including advice on capital equipment replacement decisions ("asset management"). Corporations owning a large number of individual hospitals, in particular, find this "one-stop shopping" approach an efficient method of purchasing service for their imaging (and often non-imaging) equipment. Both GE and InnoServ compete with one another and with other service providers to obtain such multi-vendor and asset management (defined herein as "multi-vendor service") contracts. Hospitals preferring to purchase multi-vendor service do not have reasonable alternatives to such contracts. If faced with a small but significant increase in the price of multi-vendor service, most of those hospitals would not switch to purchasing service on a discrete basis.

16. Multi-vendor service is a line of commerce and a relevant product market within the meaning of the Clayton Act.

B. Relevant Geographic Markets

17. The geographic markets for imaging equipment service are local, with the precise contours of those markets differing depending on the type of equipment involved and other factors. Hospitals strongly prefer to contract with nearby service providers, where such providers are qualified and able to service the equipment involved. In general, service providers located closer to the hospital customer can respond to service emergencies more quickly, thereby minimizing the amount of time during which the hospital's imaging equipment is not working. A hospital can lose substantial revenue if its imaging equipment is broken; in some cases, patients may need to be transferred to other health care facilities due to equipment failure. Therefore, given the importance of timely service, service providers located relatively far away from a hospital are at a substantial disadvantage in competing to service that hospital. If faced with a small but significant increase in the price of service from its local service provider, most hospitals would not switch to using a service provider located relatively far away.

18. GE offers both service contracts for discrete pieces of GE imaging equipment and multi-vendor service contracts throughout the United States. InnoServ offers similar services within a radius of about 100 miles of several large metropolitan areas.

19. Each local area in which GE and InnoServ are both sufficiently close to a hospital customer to provide timely imaging equipment service is a section of the country and a relevant geographic market within the meaning of the Clayton Act.

C. Anticompetitive Effect and Entry

20. GE and InnoServ compete in numerous local markets for servicing certain models of GE imaging equipment on a discrete basis and for multi-vendor service. In many of these markets, InnoServ is one of the few ISOs that has specialized in servicing GE imaging equipment. Moreover, GE and Innoserv were among the first service providers to offer comprehensive multi-vendor service; each signed a contract to provide such service to a large customer in 1995. Particularly because InnoServ is one of very few companies that has developed its own proprietary diagnostic software for GE imaging equipment, consumers in both discrete service markets and multi-vendor service markets view InnoServ service as a good substitute for GE service. The competition between GE and InnoServ in these markets has resulted in significant price reductions for consumers. GE's acquisition of InnoServ would eliminate this competition and increase GE's already high share in the markets for servicing certain models of GE imaging equipment, particularly several models of CT scanners and MRIs. It would also substantially reduce competition in multi-vendor service markets.

21. Successful entry into the relevant markets is difficult, time consuming, and costly. In general, customers prefer to purchase service from existing, reputable firms in the industry. Therefore, new entrants often find it difficult to enter on a scale necessary to succeed financially.

IV. Violation Alleged

22. On May 19, 1998, GE and InnoServ signed an Agreement and Plan of Merger under which GE intends to acquire the common stock of InnoServ for a purchase price of $16 million.

23. GE's proposed acquisition of InnoServ is likely to lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

24. The transaction likely will have the following effects, among others:

a. Actual and future competition between GE and InnoServ will be eliminated in the markets for servicing certain models of GE imaging equipment on a discrete, machine-by-machine basis in numerous local markets throughout the United States;

b. Competition generally in the markets for servicing certain models of GE imaging equipment on a discrete, machine-by-machine basis in numerous local markets throughout the United States will be lessened substantially;

c. Actual and future competition between GE and InnoServ will be eliminated in the markets for multi-vendor service in numerous local markets throughout the United States; and

d. Competition generally in the markets for multi-vendor service in numerous local markets throughout the United States will be lessened substantially.

V. Requested Relief

The United States requests:

1. That the proposed acquisition by GE of InnoServ be adjudged to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

2. That GE and InnoServ be permanently enjoined from carrying out GE's intended acquisition of the common stock of InnoServ as expressed in the Agreement and Plan of Merger dated May 19, 1998, and from carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of GE and InnoServ;

3. That the United States be awarded its costs of this action; and

4. That the United States have such other relief as the Court may deem just and proper.

Dated: July 14, 1998.

Joel I. Klein,

Assistant Attorney General.

John M. Nannes,

Deputy Assistant Attorney General.

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Respectfully submitted,

Jon B. Jacobs (D.C. Bar #412249), Fred E. Haynes (D.C. Bar #165654), Joan H. Hogan (D.C. Bar #451240), Peter J. Mucchetti,

Attorneys, Antitrust Division, 325 7th Street, N.W., Suite 300, Washington, D.C. 20530, (202) 514–5012.

M.J. Moltenbrey,

Chief, Civil Task Force.

Susan L. Edelheit,

Assistant Chief, Civil Task Force.

Appendix 3

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, N.W., Suite 300, Washington, D.C. 20530, *Plaintiff*, v. General Electric Company, 3135 Easton Turnpike, Fairfield, Connecticut 06431, and InnoServ Technologies, Inc., 320 Westway, Suite 530, Arlington, Texas 76018, *Defendants*. Case Number 1:98CV01744. Judge: Royce C. Lamberth.

Supplemental Public Comment of Independent Service Network International Pursuant to 15 U.S.C. § 16(b),(d)

Because of an event that occurred after Independent Service Network International ("ISNI") submitted its public comment yesterday. ISNI submits this short supplemental comment pursuant to the Antitrust Procedures and Penalty Act ("APPA"), 15 U.S.C. § 16(b), (d). The new event, which occurred today, is GE Medical Systems' ("GEMS") issuance of the attached news release stating that "* * * it has completed its acquisition of InnoServ Technologies, Inc * * *."

This press release completely undermines and disrespects the processes of the APPA for several reasons. First, it makes a sham of the public comment period if the very act that the Government's complaint challenged occurs during that period.

Second, one of the purposes of the public comment period is to provide the United States with more information. Based on this information, the United States has the right to withdraw its consent from the decree, 63 FR 39894. The fact that the defendants have presented the United States with a *fait accompli* has the obvious purpose of making the withdrawal of consent more difficult.

Finally, this Court, not the parties, has the final authority to approve the proposed consent decree. For GEMS to say that it has "completed" its acquisition of InnoServ Technologies ignores that salient fact.

Dated: September 16, 1998.

Respectfully submitted,

Ronald S. Katz, Esq.,

General Counsel, ISNI, Coudert Brothers, 4 Embarcadero Center, Ste. 3300, San Francisco, CA 94111, Telephone: 415–986–1300.

Appendix 4

Star Technologies

Via Facsimile and First Class Mail
(202) 307–9952

September 16, 1998.

Ms. Mary Jean Moltenbrey,
Chief, Civil Task Force, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530

Dear Ms. Moltenbrey: This letter is in response to the request for public comments on the proposed settlement of the government's action blocking the acquisition of InnoServ Technologies, Inc. by General Electric Co. In accordance with the proposed settlement, GE is required to sell InnoServ's PREVU software to a third party approved by the Justice Department. The software's buyer could then use PREVU in its service business, or resell or license PREVU to other parties. Because Star Technologies believes that PREVU either contains software developed by it or that portions of PREVU were derived from such software, approval of the sale of PREVU must address the assignment of transfer of Star's underlying software.

By way of background, Star Technologies was founded in 1981 as a manufacturer of array processors, which are devices used in conjunction with general-purpose computers to accelerate the processing of large amounts of numerical data. While the earliest applications for Star's array processors were in oil exploration, other applications included molecular modeling, and signal and imaging processing. Beginning in 1984, Star began selling its array processors to General Electric Medical Systems for use in GE's CT scanners. Independently from its business relationship with GE, which constituted a substantial amount of Star's business for several years, Star developed various versions of diagnostic software for testing its array processors. The version of software of concern now is known as "Star Maintenance Software" or "SMS." Although developed primarily for internal use, Star has licensed SMS to numerous customers solely for their own internal use.

Among the customers to whom Star licensed SMS were several firms that perform third-party maintenance on GE's CT scanners. They use SMS to diagnose only the array processor elements designed and manufactured by Star that are a component of the GE CT scanners. While InnoServ is currently a customer of Star's for the repair of circuit boards used in Star's array processors. InnoServ has not licensed SMS from Star.

In recent discussions with Mr. Philip Cannon, Star's Vice President of Technology, Ms. Cathy Donovan, InnoServ's Manager of Technical Support, acknowledged that PREVU uses Star's diagnostic software, and also expressed her belief that such use was appropriately licensed by Star. Assuming that SMS was validly licensed from Star, any acquirer of PREVU would still need Star's consent to transfer or assign that license since SMS is an integral part of PREVU. Absent a valid existing license, the acquirer of PREVU must obtain a new license from Star for the SMS portion of the PREVU system.

With respect to the licensing of SMS, Star is willing to support the appointed trustee in establishing with a prospective acquirer of PREVU an appropriate license for the use of Star's diagnostic software. In any event, Star wishes to be apprised of attempts to sell the PREVU software so that it can ensure that its intellectual property is protected from misuse. If you have any questions or desire additional information in this regard, please contact the undersigned at (301) 315–0240.

Sincerely,

Star Technologies, Inc.

R.W. Tschippert,

Director of Contracts.

Certificate of Service

This certifies that on November 17, 1998, I caused copies of the foregoing Response to Public Comments to be served as indicated upon the parties to this action and courtesy copies to be served as indicated upon each commenter:

By Hand

Richard L. Rosen, Esquire,

Arnold & Porter, 555 12th Street, Washington, D.C. 2004, Counsel for General Electric Company.

Malcolm R. Pfunder, Esquire,

Gibson, Dunn & Crutcher, LLP, 1050 Connecticut Ave., N.W., Washington, D.C. 20036, Counsel for Innoserv Technologies, Inc.

By Facsimile (Without Appendices) and First-Class Mail

Robert Compton,

Star Technologies, 1151 Seven Locks Road, Building A, Potomac, MD 20854, (301) 315–0260 (facsimile).

Ronald S. Katz, Esquire,

Coudert Brothers, 4 Embarcadero Center, Suite 3300, San Francisco, CA 94111, Counsel for Independent Service Network International, (415) 986-0320 (facsimile).

Jon B. Jacobs

[FR Doc. 98–32147 Filed 12–8–98; 8:45 am]

BILLING CODE 4410–11–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and the price regulation and will hold election of its officers for the forthcoming year as provided under Article IV of the Commission's Bylaws.

DATES: The meeting is scheduled for Wednesday, December 16, 1998 to commence at the close of the Proposed Rulemaking Public Hearing beginning at 9:00 a.m. as previously noticed at 63 FR 65563, 65565 (November 27, 1998).

ADDRESSES: The meeting will be held at the Tuck Library Building, Chubb Auditorium, 30 Park Street, Concord, NH (exit 14 off I–93).

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and 7 U.S.C. 7256.)

Kenneth Becker,

Executive Director.

[FR Doc. 98–32618 Filed 12–8–98; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML; ASLBP No. 99–756–01–ML]

Advanced Medical Systems, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned Subpart L proceeding is hereby replaced by appointing Administrative Judge Charles Bechhoefer as Presiding Officer in place of Administrative Judge B. Paul Cotter, Jr.

All correspondence, documents and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203 (1997). The address of the new Presiding Officer is: Administrative Judge Charles Bechhoefer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 3rd day of December 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–32628 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML–REN; ASLBP No. 95–707–02–ML–REN]

Advanced Medical Systems, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned Subpart L proceeding is hereby replaced by appointing Administrative Judge Charles Bechhoefer as Presiding Officer in place of Administrative Judge B. Paul Cotter, Jr.

All correspondence, documents and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203 (1997). The address of the new Presiding Officer is: Administrative Judge Charles Bechhoefer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 3rd day of December 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–32629 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, Toledo Edison Company, Centerior Service Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Duquesne Light Company (Perry Nuclear Power Plant, Unit No. 1); Order Approving Application Regarding the Transfer of Operating Authority

I.

The Cleveland Electric Illuminating Company (CEI), Centerior Service Company (CSC), Duquesne Light Company, Ohio Edison Company (OE), OES Nuclear, Inc., Pennsylvania Power Company (Penn Power), and Toledo Edison Company (TE) are the licensees of the Perry Nuclear Power Plant, Unit No. 1 (PNPP). CEI and CSC act as agents for the other licensees and have exclusive responsibility for, and control over, the physical construction, operation, and maintenance of PNPP as reflected in Operating License No. NPF–58. The U.S. Nuclear Regulatory Commission (NRC) issued License No. NPF–58 on March 18, 1986, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located on the shore of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

II.

By application dated June 30, 1998, as supplemented by submittals dated October 27 and November 30, 1998, the licensees requested approval of the transfer of operating authority under the license to a new company, FirstEnergy Nuclear Operating Company (FENOC), and issuance of a conforming amendment. The licensees proposed to transfer operating authority under the license to FENOC to allow it to use and operate PNPP and to possess and use related licensed nuclear materials in accordance with the same conditions and authorizations in the current operating license. The licensees have also requested the issuance of a license amendment reflecting the transfer of operating authority. FENOC, a wholly-owned subsidiary of FirstEnergy Corporation, the direct or indirect parent of the owners of PNPP except for Duquesne Light Company, would become the licensed operator for PNPP and would have exclusive control over the operation and maintenance of the facility. The present plant organization, the oversight organizations, and the engineering and support organizations would be transferred essentially intact from the current operating licensees to FENOC. The technical qualifications of the FENOC organization, therefore, would be at least equivalent to those of the existing organization responsible for operating the plant. CSC, which has no ownership interest in PNPP, and is licensed only as an operator of PNPP, would be removed from the license.

Under the proposed arrangement, ownership of PNPP would remain unchanged; each owner would retain its current ownership interest. FENOC would not own any portion of PNPP. Likewise, the owners' entitlement to capacity and energy from PNPP would not be affected by the proposed transfer of operating responsibility for PNPP to FENOC. The owners would continue to provide all funds for FENOC to operate, maintain, and decommission PNPP. The owners' responsibilities would include providing funding for any emergency situations that might arise at PNPP.

The licensees requested the Commission's approval of the transfer of operating authority to FENOC and issuance of a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of this application for approval and an opportunity for a hearing were published in the **Federal Register** on August 4, 1998 (63 FR 41600), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on September 10, 1998 (63 FR 48531).

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information contained in the submittals of June 30, October 27, and November 30, 1998, and other information before the Commission, the NRC staff has determined that FENOC is qualified to hold the license to the extent and for the purposes described above, and that the transfer of the license as described above is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. These findings are supported by a Safety Evaluation dated December 2, 1998.

III.

Accordingly, pursuant to Sections 105, 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 USC §§ 2135, 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the Commission consents to the transfer of the license as described herein to FENOC, subject to the following conditions:

(1) FENOC shall not market or broker power or energy from the Perry Nuclear Power Plant, Unit No. 1. The owners are responsible and accountable for the actions of FENOC to the extent that said actions affect the marketing or brokering of power or energy from the Perry Nuclear Power Plant, Unit No. 1, and, in any way, contravene the antitrust license conditions contained in the license.

(2) Should the formation of FENOC and transfer of operating authority not be completed by December 31, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

Action on the proposed conforming license amendment will be taken upon implementation of the transfer approved by this Order.

For further details with respect to this Order, see the licensees' application dated June 30, 1998, as supplemented by submittals dated October 27 and November 30, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 2nd day of December.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32630 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–003]

Consolidated Edison Company; Indian Point Nuclear Generating Station, Unit 1; Notice of Public Meeting

The NRC will conduct a public meeting at the New York State Armory, 955 Washington Street, Peekskill, New York 10566–5815, on January 20, 1999, to discuss plans developed by Consolidated Edison Company (Con Edison) to decommission the Indian Point Nuclear Generating Station Unit 1. The Indian Point Station, located in Buchanan, New York, includes the permanently shutdown Unit 1 and two operating units. Unit 2 is operated by Consolidated Edison Company, and Unit 3 by New York Power Authority. The meeting is scheduled for 7:00—9:30 p.m., and will be chaired by Mr. Francis X. Cameron, Deputy Assistant General Counsel and Special Counsel for Public Liaison, NRC. The public meeting is being held pursuant to the NRC's regulations in Title 10 of the Code of Federal Regulations, Section 50.82(a)(4) regarding the requirements of a public meeting on the licensees plans for decommissioning the facility as described in the post-shutdown decommissioning activities report (PSDAR). Con Edison submitted a decommissioning plan, which was approved by the NRC in January 1996, prior to the rule change promulgated at 61 FR 39301 (July 29, 1996), requiring a PSDAR. Decommissioning plans approved prior to the revision are considered to meet the requirement for a PSDAR and are subject to the revised regulations, including the requirement for a public meeting. The meeting will include a presentation by the NRC staff on the decommissioning process and NRC programs for regulatory oversight of decommissioning activities. There will also be a presentation by Consolidated Edison Company on planned decommissioning activities. There will be an opportunity for members of the public to ask questions of NRC staff and Con Edison representatives and make comments related to decommissioning of Indian Point Unit 1. The meeting will be transcribed.

Con Edison's decommissioning plan provides a short discussion of the plant history, a description of the unit's radiological conditions, and a description and schedule of planned decommissioning activities. This decommissioning plan and the NRC's safety evaluation associated with the plan is available for public inspection at the White Plains Public Library, 100 Martine Avenue, White Plains, NY 10601. For more information contact John L. Minns, Non-Power Reactors and Decommissioning Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–3166.

Dated at Rockville, Maryland, this 3rd day of December 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate Division of Reactor Program Management, Office of Nuclear Regulatory Regulation.

[FR Doc. 98–32634 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company; Notice of Withdrawal of Application for Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its January 28, 1997, application for proposed amendment to Facility Operating Licenses Nos. NPF–76 and NPF–80 for the South Texas Project, Unit Nos. 1 and 2, located in Matagorda County, Texas.

The proposed amendment would have relocated the details of Technical Specification (TS) 6.2.3 on the Independent Safety Engineering Group from the Administrative Controls section of the TSs and placed these details in the Updated Final Safety Analysis Report.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 12, 1997 (62 FR 11495). However, by letter dated September 30, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 28, 1997, and the licensee's letter dated September 30, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 3rd day of December 1998.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32631 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation (Portsmouth Gaseous Diffusion Plant) Piketon, Ohio

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: October 14, 1998.

Brief description of amendment: The amendment involves extension of the PORTS Compliance Plan completion date related to the removal of residual quantities of highly enriched uranium (HEU) (uranium enriched to 10 percent by weight U–235 or more) from cylinders and the cleaning of the emptied HEU cylinders from December 31, 1998, to March 31, 2000. The amendment also involves extension of the PORTS Compliance Plan completion date, for transition of regulatory oversight responsibility from the Department of Energy (DOE) to the NRC, for the section of the X–705 decontamination building where HEU cylinder cleaning operations are ongoing, from January 31, 1999, to April 30, 2000. All Compliance Plan completion date changes require prior DOE approval. As such, USEC requested DOE approval for the above-mentioned date changes on September 25, 1998. On October 13, 1998, DOE approved the revision.

Basis for finding of no significance: 1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed amendment, which involves extensions of the PORTS Compliance Plan completion dates, does not involve any need for cleaning of additional HEU cylinders and therefore would not increase the amounts of any effluents that may be released offsite or result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment does not involve any need for cleaning of additional HEU cylinders. Therefore, it will not significantly increase individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed change will not result in any construction, nor will this change effect any planned or existing construction project, therefore, there will be no construction impact.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment does not involve any need for cleaning of additional HEU cylinders and will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendment only involves extensions of the PORTS Compliance Plan completion dates. Therefore, this change will not result in the possibility of a new or different kind of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed amendment only involves extensions of the PORTS Compliance Plan completion dates. Therefore, the proposed change does not represent a reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Currently, at PORTS, the X–705 West Annex is the only area leased by USEC from DOE which has not been certified by the NRC. Based on the agreement signed between DOE and USEC on October 11, 1995, the Regulatory Oversight Agreement between DOE and USEC is required to apply to all areas leased by USEC from DOE but not certified by the NRC. As such, operations in the X–705 West Annex will continue to be conducted under regulation of the ROA until the HEU cylinder cleaning operations have been completed and the X–705 West Annex is certified by the NRC. While the ROA is in effect, DOE staff has informed the NRC staff, that they will maintain regulatory staff in Oak Ridge, Tennessee, and a resident inspector at PORTS, to ensure that HEU cylinder cleaning is conducted in a safe and secure manner. In addition, the NRC staff has also reviewed the controls in place in the X–705 West Annex, which are relied upon by USEC to prevent it from exceeding the NRC-possession limits by accidentally transferring significant quantities of HEU from the X–705 West Annex to NRC-certified areas. The NRC staff has determined these controls, as well as DOE's regulatory oversight of the X–705 West Annex operations, to be sufficient for preventing USEC from exceeding its possession limits in NRC-certified areas at PORTS. Therefore, the Compliance Plan date extensions will not result in undue risk to the public health and safety, common defense and security, or the environment.

Effective date: The amendment to GDP–2 will become effective upon issuance by NRC.

Certificate of Compliance No. GDP–2: This amendment will revise Issue A.4 of the PORTS Compliance Plan.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662

Dated at Rockville, Maryland, this 2d day of December, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32637 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160]

Georgia Institute of Technology, Georgia Tech Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from the requirements of its regulations to Facility Operating License No. R–97, a license held by the Georgia Institute of Technology (Georgia Tech or the licensee). The exemption would apply to the Georgia Tech Research Reactor (GTRR), a shutdown and defueled facility located in Atlanta, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would eliminate emergency response plan requirements due to the shutdown and defueled status of the GTRR facility.

The proposed action is in accordance with the licensee's application dated August 20, 1998. The requested action would grant an exemption from the requirements of 10 CFR 50.54(q) for emergency planning.

The Need for the Proposed Action

The nuclear fuel was removed from the GTRR in February 1996. By NRC License Amendment No. 12, dated April 2, 1998, the authority to operate the reactor was removed and the licensee was authorized to possess the residual by-product material. The tritiated heavy water was removed from the facility in July 1998. In this shutdown and defueled condition, the facility poses a reduced risk to public health and safety. Because of this reduced risk, the requirements of 10 CFR 50.54(q) are no longer required. An exemption is required from 10 CFR 50.54(q) to allow the licensee to drop the requirement to maintain and implement the Emergency Plan for the GTRR.

Environmental Impact of the Proposed Action

Before issuing the proposed exemption, the Commission will have concluded that the granting of the exemption from certain portions of 10 CFR 50.54(q) is acceptable, as describe in the exemption. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Georgia Tech Research Reactor.

Agencies and Persons Consulted

In accordance with its stated policy, on November 25, 1998, the NRC staff has consulted with Mr. Thomas Hill of the State of Georgia, Radioactive Materials Program, Department of Natural Resources, regarding the environmental impacts of the proposed action. The State official had no comment regarding environmental impacts of the proposed action.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee letter dated August 20, 1998, which is available for public review at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC.

Dated at Rockville, Maryland, this 3rd day of December 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32638 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w) and 10 CFR 140.11(a)(4) regarding financial protection requirements to Facility Operating License No. DPR–36, a license held by the Maine Yankee Atomic Power Company (MYAPCo or the licensee). The exemption would apply to the Maine Yankee Atomic Power Station, a permanently shutdown plant located at the MYAPC site in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.54(w) regarding the amount of onsite property insurance required for the licensee and from the requirements of 140.11(a)(4) regarding the amount of offsite property insurance required for the licensee. The proposed action is in accordance with the licensee's application dated January 20, 1998. The requested action would allow MYAPCo to reduce onsite insurance coverage to $50 million and offsite coverage to $100 million. In addition, MYAPCo would be allowed to withdraw from the secondary liability coverage of requirements of 10 CFR 140.11(a)(4).

Need for the Proposed Action

Maine Yankee was shut down in December 1996. By letter dated August 7, 1997, the licensee informed the Commission that it had decided to permanently cease operations at Maine Yankee Atomic Power Station and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications in the letter of August 7, 1997, the facility operating license no longer authorizes MYAPCo to operate the reactor and to load fuel in the reactor vessel. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety.

The proposed exemption is needed because the licensee's required insurance coverage significantly exceeds the potential cost consequences of radiological incidents possible at a permanently shutdown and defueled nuclear power plant that has cooled more than 21 months. Since Maine Yankee no longer contributes as great a risk as does an operating plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of this request would allow a more equitable allocation of financial risk.

Environmental Impact of the Proposed Action

The NRC's evaluation of the proposed exemption from 10 CFR 50.54(w) and 10 CFR 140.11(a)(4) indicates that issuance of the proposed exemption is an administrative action that will not have any environmental impact. The licensee maintains and operates the plant in a configuration necessary to support the safe storage of spent fuel and to comply with the facility operating license and NRC's rules and regulations.

No changes are being made in the types or amounts of any radiological effluents that may be released off site. There is no significant increase in occupational or public radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other nonradiological environmental impact.

Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request, thereby requiring the licensee to maintain insurance coverage required of an operating plant (no-action alternative); such an action would not enhance the protection of the environment. Denial of the application would result in no change in current environmental impacts. The impacts of the proposed action and the alternative are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of Maine Yankee Atomic Power Station, (July 1972).

Agencies and Persons Consulted

In accordance with its stated policy, on October 1, 1998, the NRC staff consulted with Mr. Patrick Dostie of the State of Maine, Department of Human Services, regarding the environmental impact of the proposed action. He did not object to issuance of the exemption.

Finding of No Significant Impact

On the basis of the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

Accordingly, the Commission will not prepare an environmental impact statement for the proposed exemption.

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For further details with respect to this action, see the licensee's letters, dated January 20 and May 15, 1998, which are available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Wiscasset Public Library, High Street, Post Office Box 367, Wiscasset, Maine, 04578.

Dated at Rockville, Maryland, this 2nd day of December 1998.

For The Nuclear Regulatory Commission

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32639 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station, Unit No. 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–63, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 1, located in the town of Scriba, Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would exempt the licensee from the requirement of 10 CFR 70.24, that requires that the licensee maintain, in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clearly by audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon sounding of the alarm, to familiarize personnel with the evacuation plan, to designate responsible individuals for safety upon sounding of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency. The proposed action is in accordance with the licensee's application for an exemption dated November 6, 1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure, if a criticality were to occur during the handling of special nuclear material, personnel would be alert to the fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled in a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite at a given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent uranium-235, and because commercial nuclear plant licensees have procedures and features that are designed to prevent inadvertent criticality, the staff has determined that an inadvertent criticality would not likely occur due to the handling of special nuclear material at a commercial power reactor. Therefore, the requirements of 10 CFR 70.24 are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with Nine Mile Point Nuclear Station, Unit No. 1 Technical Specifications, the design of the fuel storage racks providing geometric spacing of the fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action, (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the operation of Nine Mile Point Nuclear Station, Unit No. 1, dated January 1974 (39 **Federal Register** 3309, dated January 25, 1974).

Agencies and Persons Consulted

In accordance with its stated policy, on November 19, 1998, the staff consulted with the New York State official, Jack Spath of the New York State Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 6, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 3rd day of December 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32625 Filed 12–8–98; 8:45 am]

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For the Nuclear

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NUCLEAR REGULATORY COMMISSION

State of Maine: Discontinuance of Certain Commission Regulatory Authority and Responsibility Within The State: Republication

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement with State of Maine: Republication.

SUMMARY: The Nuclear Regulatory Commission is publishing a **Federal Register** notice containing the Maine Agreement to correct a reference to the Maine revised statutes.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Brien, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–2308.

SUPPLEMENTARY INFORMATION:

The Nuclear Regulatory Commission (NRC) is publishing a **Federal Register** notice originally published on Thursday, April 16, 1992 (57 FR 13388). The NRC is republishing this document because of an incorrect reference made to "Maine Revised Statutes Annotated Section 284." The reference should read "Maine Revised Statutes Annotated Section 684." The Agreement is published in accordance with the requirements of Public Law 86–373 (Section 274 of the Atomic Energy Act of 1954, as amended). The exemptions from the Commission's licensing authority have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations. The complete version of the April 16, 1992, **Federal Register** notice is presented below with the corrected citation.

Dated at Rockville, Maryland, this 2nd day of December, 1998.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF MAINE FOR DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, The Governor of the State of Maine is authorized under Maine Revised Statutes Annotated Section 684 to enter into this Agreement with the Commission; and

Whereas, The Governor of the State of Maine certified on March 5, 1990, that the State of Maine (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Act, as amended;

Now therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in Section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and

F. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated herein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that

State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on April 1, 1992, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland in triplicate, this 16th day of March, 1992.

For the United States Nuclear Regulatory Commission, Ivan Selin, Chairman.

Done at Augusta, Maine, in triplicate, this 25th day of March, 1992.

For the State of Maine, John R. McKernan, Jr., Governor.

Dated at Rockville, this 9th day of April, 1992.

For the United States Nuclear Regulatory Commission.

Sheldon A. Schwartz,

Deputy Director, Office of State Programs.

[FR Doc. 98–32636 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Licenses of Broad Scope; Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of public comment period.

SUMMARY: On September 16, 1998, the Nuclear Regulatory Commission (NRC) announced the availability of and requested comment on draft NUREG–1556, Volume 11, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses of Broad Scope," dated August 1998 (63 FR 49615). The comment period for NUREG–1556, Volume 11, expired on December 7, 1998. A commenter noted that the original comment period was too short to thoroughly review, understand, and comment on the document. In response to this comment and to ensure that all interested parties have an opportunity to provide comments, the Commission has decided to reopen the comment period for NUREG–1556, Volume 11.

DATES: The comment period has been reopened and will now expire on December 31, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 11, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 11, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: *slm2@nrc.gov.*

Electronic Access

Draft NUREG–1556, Vol. 11 is available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 3rd day of December, 1998.

For the Nuclear Regulatory Commission.

Josephine M. Piccone,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32633 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Final Comments on Draft Nureg–1628 "Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Reactors"

The U.S. Nuclear Regulatory Commission is announcing that final comments on NUREG–1628, "Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Reactors," are due by January 30, 1999. NUREG–1628 was issued for public comment on April 21, 1998.

This document, through a question-and-answer format, provides general information on decommissioning to members of the public. As a result of comments received to date from members of the public, the final document will be updated.

The report contains information on the following topics as they relate to decommissioning: decommissioning alternatives, experience in the U.S. regulation of decommissioning, low-level waste storage and disposal of wastes associated with facility storage and decommissioning, high-level waste storage and disposal, license termination, and hazards associated with decommissioning.

Comments on NUREG–1628 should be sent to the Chief, Rules Review and Direction Branch, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or fax comments to 301–415–3313. For further information, contact John L. Minns, Non-Power Reactors and Decommissioning Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3166.

Dated at Rockville, Maryland, this 2nd day of December 1998.

For the Nuclear Regulatory Commission

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32632 Filed 12–8–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mark Reinhold, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, (202) 606–1882.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Janice R. Lachance,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

John U. Sepulveda, Deputy Director
Leigh Shein, Chief of Staff
William E. Flynn, Associate Director
Henry Romero, Associate Director
Richard A. Ferris, Associate Director
Mary Lou Lindholm, Associate Director
Carol J. Okin, Associate Director
Donna D. Beecher, Director of Human Resources and EEO

[FR Doc. 98–32652 Filed 12–8–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23581; 812–11408]

CCB Funds; Notice of Application

December 1, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant, CCB Funds (formerly, 111 Corcoran Funds) ("Trust"), on behalf of its portfolio CCB Equity Fund ("Fund"), seeks an order to permit an in-kind redemption of shares of the Fund by an affiliated person of the Fund.

FILING DATE: The application was filed on November 18, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 24, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Federated Investors Tower, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. no. 202–942–8090).

Applicant's Representations

1. The Trust, organized as a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Fund is a series of the Trust. Central Carolina Bank and Trust Company ("Adviser") serves as the Fund's investment adviser. The Adviser is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"). Franklin Street Advisors, Inc., registered under the Advisers Act, serves as the Fund's subadviser ("Sub-Adviser"). The Adviser and the Sub-Adviser are not affiliated.

2. North Carolina Employees State Retirement System ("Affiliated Shareholder") is a retirement trust for employees of the state of North Carolina. The Affiliated Shareholder owns approximately 83.7% of the outstanding shares of the Fund.

3. The Affiliated Shareholder has concluded that the assets invested in the Fund should be managed directly by the Sub-Adviser. The Affiliated Shareholder has notified the Fund that it intends to redeem all of its shares of the Fund. On November 17, 1998, the Fund's board of trustees, including all of the independent trustees, determined that it would be in the best interests of the Fund and its shareholders to redeem the shares of the Affiliated Shareholder in-kind.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, acting as principal, from knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines "affiliated person" of another person to include, among others, any person owning 5% or more of the outstanding voting securities of the other person and any person controlling, controlled by or under common control with the other person. Under section 2(a)(9) of the Act, a person that owns beneficially more than 25% of the voting securities of a

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company is presumed to control the company.

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant states that the Affiliated Shareholder is an affiliated person of the Fund because it owns beneficially in excess of 25% of the Fund's shares. To the extent that the proposed in-kind redemption would be considered to involve the "purchase" of the Fund's portfolio securities by the Affiliated Shareholder, applicant states that the proposed in-kind redemption would be prohibited by section 17(a)(2) of the Act.

4. Applicant submits that the terms of the proposed in-kind redemption meet the standards set forth in section 17(b) of the Act. Applicant asserts that neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Rather, the Affiliated Shareholder will receive a pro rata share of each portfolio security held by the Fund, except for odd lot securities, fractional shares and accrual on such securities. Applicant further states that the portfolio securities to be distributed to the Affiliated Shareholder will be valued according to an objective, verifiable standard and that the in-kind redemption is consistent with the investment policies of the Fund. Applicant also states that the proposed in-kind redemption is consistent with the general purposes of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The Fund will distribute to the Affiliated Shareholder pursuant to the in-kind redemption of pro rata share of each portfolio security held by the Fund ("In-Kind Securities"), provided that the Fund may distribute cash in lieu of odd lot securities, fractional shares and accruals on such securities.

2. The In-Kind Securities distributed to the Affiliated Shareholder will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of the rdemption setting forth a description of each security distributed in-kind, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32600 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23586; 812–11364]

Credit Suisse First Boston Corporation; Notice of Application

December 2, 1998.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Credit Suisse First Bost Corporation ("CSFB") requests an order with respect to the SAILS trusts ("SAILS Trusts") and future trusts that are substantially similar to the SAILS Trusts and for which CSFB will serve as a principal underwriter (collectively, the "Trusts") that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the "Securities") of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. government securities from CSFB at the time of a Trusts' initial issuance of Securities.

FILING DATE: The application was filed on October 19, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving CSFB with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1998, and should be accompanied by proof of service on CSFB, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Credit Suisse First Boston Corporation, Eleven Madison Avenue, New York, New York 10010–3629.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be limited-grantor trust registered under the Act as a non-diversified, closed-end management investment company. CSFB will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the "Contracts") with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the "Shares") of one specified issuer,[1] and (ii) in some cases, purchase certain U.S. Treasury securities ("Treasures"), which may include interest-only or principal-only securities maturing at or prior the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or CSFB. The investment objective of each Trust will be to provide to each holder of Securities ("Holder") (i) current cash distributions from the proceeds of any

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[1] Initially, no Trust will hold Contracts relating to the Shares of more than one issuer. However, if certain events specified in the Contracts occur, such as the issuer of Shares spinning-off securities of another issuer to the holders of the Shares, the Trust may receive shares of more than one issuer at the termination of the Contracts.

Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[2] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's pro rata interest in the Shares or amount received by the Trust under the Contracts.[3]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on The Nasdaq National Market System. Thus, the Securities will be "national market system" securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. CSFB currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have a separate investment adviser. The trustees will have limited or no power to vary the investments held by each Trust. A bank or banks qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodial for each Trust's assets and as administrator, paying agent, registrar, and transfer agent with respect to the Securities of each Trust. Any such bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by CSFB or by the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances or only upon the occurrence of certain events under a Contract. The Trusts will hold the Contracts until maturity or any earlier acceleration, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of certain other events provided for in the Contract, the obligations of the counterparty under the Contract may be accelerated and the available proceeds of the Contract will be distributed to the Holders.

7. The trustees of each Trust will be selected initially by CSFB, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a "majority of the Trust's outstanding Securities"[4] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by CFSB, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be CSFB).

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits (i) any registered investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any other investment company, and (ii) any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies form owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. CSFB states that, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. CSFB states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, CSFB asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted

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[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[3] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

[4] A "majority of the Trust's outstanding Securities" means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, CSFB argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). CSFB requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. CSFB states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. CSFB also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. CSFB asserts that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, CSFB argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. CSFB also states that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. CSFB states that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by CSFB or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. CSFB asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by CSFB, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. CSFB asserts that the investment product offered by the Trusts serves a valid business purpose. the Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, CSFB asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher current yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

8. CSFB believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a-3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a-3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. CSFB argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. CSFB believes that the make-up of each Trust's assets, therefore, will be "locked-in" for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. CSFB states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, CSFB states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. CSFB also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. CSFB requests that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). CSFB believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from the investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from CSFB.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. CSFB requests an exemption for sections 17(a)(1) and (2) to permit the Trusts to purchase Treasuries from CSFB.

3. CSFB states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment

company to purchase securities of poor quality from the affiliated person or to overpay for securities. CSFB argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasuries market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. CSFB argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. CSFB states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided peridically by the Treasuries to the Trust and distributed to Holders. CSFB also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. CSFB argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. CSFB believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

CSFB agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as are deemed necessary; and (iii) will determine that the transaction made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to the procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from CSFB, setting forth a description of the Treasuries purchased, the identify of the seller, the terms of the purchase, and the information or material upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by CSFB will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction are at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32598 Filed 12–8–98; 8:45am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (P.H. Glatfelter Company, Common Stock, $.01 Par Value) File No. 1–3560

December 3, 1998.

P.H. Glatfelter Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company's Security has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on October 23, 1998, the New York Stock Exchange, Inc. ("NYSE"). Trading in the Company's Security on the NYSE commenced at the opening of business on November 12, 1998, and concurrently therewith such Security was suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing and registration on the Amex and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company has concluded that after the recent acquisition of S&H Papier-Holding GmbH, the specialty paper division of the Schoeller & Hoesch Group, in Germany, a listing on the NYSE will enhance its international visibility and will foster its reputation as an international producer of fine printing and writing papers, as well as tobacco and other specialty papers.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

This application relates solely to the withdrawal from listing of the Company's Security from the Exchange and shall have no effect upon the continued listing of the Security on the NYSE.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before December 24, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32595 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Quebecor Inc., Class A Multiple Voting Shares) File No. 1–7103

December 3, 1998.

Quebecor Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified Security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Executive Committee of the Board of Directors of the Company authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw is Security from listing on the Amex, the Company considered the low volume of trading of the Security on the Exchange and the limited number of Security holders residing in the United States, which is decreasing to a level below 300. The Security is currently being traded on the Montreal Exchange and the Toronto Stock Exchange and the Company intends to maintain their listings on these exchanges.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Amex.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Amex.

Any interested person may, on or before December 24, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32596 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23582; 812–11330]

Select Advisors Trust A, et al.; Notice of Application

December 2, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under section 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit a reorganization involving certain registered investment companies.

APPLICANTS: Select Advisors Trust A ("Trust A"), Select Advisors Trust C ("Trust C"), Select Advisors Portfolio ("Advisors Trust"), The Western and Southern Life Insurance Company ("Western Southern Life"), and The Western and Southern Life Insurance Company Separate Account A ("SAA").

FILING DATES: The application was filed on September 28, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 400 Broadway, Cincinnati, Ohio, 45202.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. no. 202–942–8090).

Applicant's Representations

1. Trust A and Trust C are each an open-end management investment company registered under the Act. Trust A is comprised of eight series (each a "Trust A Fund").[1] Trust C is comprised of seven series (each a "Trust C Fund"). Trust A and Trust C are organized as Massachusetts business trusts. Each Trust A fund and Trust C Fund invests all of its investable assets in a corresponding series of Advisors Trust. Advisors Trust, organized as a New York trust, is registered under the Act as an open-end management investment company. Advisors Trust is comprised of nine series, seven of which will be involved in the proposed reorganization. Trust A, Trust C and Advisors Trust are referred to collectively as the "Trusts." Touchstone Advisors, Inc. ("Touchstone"), registered under the Investment Advisers Act of 1940, serves as the investment adviser to Advisors Trust. Touchstone is a wholly owned subsidiary of Western Southern Life. Western Southern Life owns more than 5%, and in some cases, more than 25% of each Trust A Fund and Trust C Fund.

2. SAA is a separate account of Western Southern Life. SAA holds the assets of the Western Southern Life defined benefit employee pension plan. SAA is exempt from registration under the Act.

3. On June 18, 1998, the board of trustees of each Trust (each a "Board"), including a majority of the trustees who are not interested persons of the Trusts (the "Independent Trustees"), considered and approved an agreement and plan of reorganization ("Plan"). Under the Plan, Trust A, Trust C and SAA will redeem in-kind all of their respective interests in Advisors Trust by distributing portfolio securities on a pro rata basis from Advisors Trust to Trust A, Trust C and SAA.

4. Each Trust A Fund will establish three classes of shares—Class A, Class C and Class Y. Existing shareholders of each Trust A Fund will own Class A shares. Trust A will exchange Class C shares for the assets of Trust C that it received from Advisors Trust, and Class Y shares for the assets of SAA that it received from Advisors Trust. Trust A shares delivered to the shareholders of Trust C will have an aggregate net asset value equal to the aggregate net asset value of Trust C shares held by the shareholders prior to the transaction. These transactions are collectively referred to as the "Reorganization."

5. On November 3, 1998, Trust A filed with the Commission Post-Effective Amendment No. 8 to its registration statement in which it added Class C and Class Y shares. Class C shares of Trust A will have an identical distribution arrangements structure to that of Trust C. No sales charge will be imposed in connection with the acquisition of Trust A shares by the shareholders of Trust C. Applicants state that the investment objectives, policies and restrictions of each Trust C Fund are identical to those of the acquiring Trust A Fund.

6. The Reorganization is presently expected to occur on or about December 31, 1998. The expenses of the proposed Reorganization will be borne by Touchstone.

7. The Boards, including a majority of the Independent Trustees, determined that the Reorganization is in the best interests of the shareholders of Trust A and Trust C and that the interests of the existing shareholders of Trust A and Trust C would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered, among other factors: (1) the business objectives and purposes of the Reorganization, (2) the terms and conditions of the Plan, including the allocation of expenses of the Reorganization, and (3) the tax-free nature of the Reorganization.

8. The Reorganization is subject to a number of conditions precedent, including that: (a) definitive proxy solicitation materials will have been filed with the Commission and distributed to shareholders of Trust C; (b) Trust C shareholders will have approved the Reorganization; (c) Trust A and Trust C will have received an opinion of tax counsel that the proposed Reorganization will be tax-free for each Trust A Fund and Trust C Fund and its shareholders; and (d) applicants will have received from the Commission an exemption from section 17(a) of the Act for the Reorganization. The Plan may be terminated and the Reorganization abandoned at any time by mutual consent of the respective Boards of the Trust A and Trust C. Applicants agree not to make any material changes to the Plan without prior Commission approval.

9. Definitive proxy solicitation materials were filed with the Commission on September 29, 1998 and mailed to the Trust C shareholders on October 2, 1998. A special meeting of Trust C shareholders was held on October 29, 1998, and November 19, 1998, and the Reorganization was approved.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Under section 2(a)(9) of the Act a person who owns 25% or more of the outstanding voting securities of a company is presumed to control the company.

2. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

3. Applicants state that the in-kind redemption of shares of Advisors Trust by Trust A, Trust C, and SAA may be prohibited by section 17(a) because Trust A, Trust C, and SAA each own more than 5% of Advisors Trust and Western Southern Life owns more than 5% of each of the Trusts and SAA. To the extent the redemption in-kind is deemed a purchase and sale of the portfolio securities of Advisors Trust, Applicants request an exemption under section 17(b). Applicants state that the standards of section 17(b) are met because the redemption will involve a pro rata distribution of the Advisors Trust portfolio, which will be valued in the same manner in which the net asset value of Advisors Trust is determined. Applicants further state that the transaction has been approved by the Boards of the Trusts and is consistent with the policies of each Trust.

4. Applicants also request an exemption under section 17(b) to permit the merger of Trust C into Trust A and the transfer of assets received by SAA from Advisors Trust to Trust A, in

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[1] One series of Trust A, Standby Income Fund, is not involved in the proposed reorganization. Applicants do not seek relief with respect to this series.

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exchange for shares of Trust A. Applicants submit that the terms of the proposed Reorganization meet the standards set forth in section 17(b). Applicants state that the Reorganization has been approved by the Boards and the shareholders of Trust C, that it will be effected on the basis of relative net asset values, and that it is consistent with the policies of the Trusts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32599 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23584; File No. 812–11228]

Western-Southern Life Assurance Company; et al.; Notice of Application

December 2, 1998.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of certain registered open-end investment companies for shares of certain registered investment companies currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

APPLICANTS: For purposes of the order requested pursuant to Section 26(b), Western-Southern Life Assurance Company, ("WSLAC"), Western-Southern Life Assurance Company Separate Account 1 ("Separate Account 1"), and Western-Southern Life Assurance Company Separate Account 2 ("Separate Account 2") (collectively, the "Section 26(b) Applicants"). For purposes of the order pursuant to Section 17(b), the Section 26(b) applicants, the Western and Southern Life Insurance Company ("WSLIC"), and The Western and Southern Life Insurance Company Separate Account A ("Separate Account A") (collectively, the "Section 17(b) Applicants").

FILING DATE: The application was filed on July 20, 1998, and amended and restated on October 2, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Donald J. Wuebbling, Esq., Western-Southern Life Assurance Company, The Western and Southern Life Insurance Company, 400 Broadway, Cincinnati, Ohio 45202. Copies to Mark H. Longenecker, Esq. and Karen M. McLaughlin, Esq., Frost & Jacobs LLP, 2500 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants Representations

1. WSLAC is an Ohio stock life insurance company. WSLAC is the depositor and sponsor of Separate Account 1 and Separate Account 2, separate investment accounts established under Ohio law (collectively, the "WSLAC Accounts").

2. WSLAC is a wholly owned subsidiary of WSLIC, a mutual life insurance company originally organized under Ohio law. WSLIC owns of record the assets of Separate Account A, a separate investment account established under Ohio law, which holds the assets of WSLIC's defined benefit employee pension plan.

3. Each of the WSLAC Accounts is registered with the Commission as a unit investment trust. The assets of the WSLAC Accounts support certain individual and group flexible premium deferred variable annuity contracts (collectively, the "Contracts"). Each of the WSLAC Accounts is divided into eight sub-accounts. Each sub-account invests exclusively in shares representing an interest in a separate corresponding portfolio (each, a "Portfolio") of one of two registered open-end diversified management investment companies, Select Advisors Portfolios ("SA Trust") and Select Advisors Variable Insurance Trust ("VIT"). Two new VIT Portfolios, Touchstone Growth and Income Portfolio and Touchstone Bond Portfolio (collectively, the "New Touchstone Portfolios") will be established in connection with the transactions described below.

4. Separate Account A also invests in shares representing an interest in certain Portfolios of the SA Trust. Separate Account A is not registered as an investment company under the 1940 Act pursuant to the exemption provided under Section 3(c)(11) of the 1940 Act.

5. SA Trust has proposed a reorganization in which the master-feeder structure currently employed by SA Trust and its spoke funds, Select Advisors Trust A ("Trust A") and Select Advisors Trust C, will be replaced with a multi-class structure within Trust A (the "Reorganization").

6. As a part of the Reorganization, the Board of Trustees of SA Trust has notified Separate Account 1, Separate Account 2 and Separate Account A (collectively, the "Accounts") that it intends to dissolve the SA Trust Growth & Income II Portfolio and the SA Trust Bond II Portfolio (collectively, the "SAT II Portfolios"). Therefore, the SAT II Portfolios will no longer be available as investment options for the Accounts. Currently, the Accounts are the only interest holders in the SAT II Portfolios.

7. All of the Contracts expressly reserve WSLAC's right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account.

8. In response to the Reorganization, WSLAC, on its own behalf and on behalf of Separate Account 1 and Separate Account 2, and WSLIC, on its own behalf and on behalf of Separate Account A, propose to substitute: (a) shares of VIT Touchstone Growth & Income Portfolio for shares of SA Trust Growth & Income II Portfolio currently held by corresponding sub-accounts of Separate Account 1 and Account 2 and

by Separate Account A; and (b) shares of VIT Touchstone Bond Portfolio for shares of SA Trust Bond II Portfolio currently held by corresponding sub-accounts of Separate Account 1 and Separate Account 2 and by Separate Account A (the "Substitution"). Applicants assert that the Substitution will benefit the Contract owners and Separate Account because it is designed to provide the affected Contract owners and Separate Account A with an opportunity to continue their investment programs without interruption. In addition, the Substitution will consolidate in VIT all of the investment options related to the sub-accounts of the WSLAC Accounts, thereby permitting WSLAC to present information to Contract owners in a simpler and more concise manner.

9. VIT Touchstone Growth & Income Portfolio will have a substantially identical investment objective, investment policies and investment risks as those of the SA Trust Growth & Income II Portfolio, and will have the same investment adviser and employ the same investment techniques. VIT Touchstone Bond Portfolio will have a substantially identical investment objective, investment policies and investment risks as those of the SA Trust Bond II Portfolio, and will have the same investment adviser and employ the same investment techniques.

10. The total expenses of the SA Trust Growth & Income II Portfolio currently are 0.85%. Likewise, the total expenses of the VIT Touchstone Growth & Income Portfolio are 0.85%. The total expenses of the SA Trust Bond II Portfolio are 0.70%. Likewise, the total expenses of the VIT Touchstone Bond Portfolio are 0.70%.

11. By supplements to the various prospectuses for the Contracts ("Supplements"), all Contract owners will be notified of WSLAC's intention to take the necessary actions, including seeking the order requested by the application, to carry out the Substitution. The Supplements will advise Contract owners that (a) from the date of the Supplement until the date of Substitution, owners will be permitted to make one transfer of all amounts under a Contract invested in the Growth & Income sub-account or the Bond sub-account to another sub-account (except the Bond sub-account or Growth & Income sub-account), (b) such transfer will not count as the one transfer permitted in any 30-day period and (c) such transfer may be in an amount less than the $250 normally required to effect a transfer. The Supplements will also inform Contract owners that WSLAC will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Substitution.

12. WSLAC, on behalf of itself and on behalf of Separate Account 1 and Separate Account 2, states that, within 5 days after the Substitution, it will send to any Contract owner who was affected by the Substitution a written notice informing him or her that the Substitution was carried out. The notice will repeat the information contained in the Supplement about the special rules for transfers from the Growth & Income sub-accounts and/or the Bond sub-accounts. The notice will repeat that WSLAC will not exercise any rights reserved by it under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the Substitution. The notice will explain how to obtain the current VIT prospectus.

13. The Substitution will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. The Section 26(b) Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protection for which Section 26(b) was designed. The Section 26(b) Applicants believe the Substitution will benefit Contract owners by: (a) minimizing the impact of the Reorganization on Contract owners; and (b) consolidating in VIT all of the investment options related to the sub-accounts of the WSLAC Accounts, thereby permitting WSLAC to present information to Contract owners in a simpler and more concise manner.

3. Contract owners who do not want their assets allocated to the New Touchstone Portfolios would be able to transfer assets to any one of the other sub-accounts available under their Contract without charge prior to or after the Substitution.

4. WSLAC, on behalf of itself and on behalf of Separate Account 1 and Separate Account 2, represents that the Substitution and related redemptions in kind and purchases by WSLAC will not change the dollar value of any Contract owner's investment in either Separate Account 1 or Separate Account 2, the value of any Contract, the accumulation value accredited to any Contract or the death benefit payable under any Contract. Contract owners will not incur any fees, expenses or charges as a result of the proposed transactions nor will their rights or WSLAC's obligations under the Contracts be altered in any way. In addition, Contract owners will not incur any adverse tax consequences because of the proposed substitutions. Furthermore, the proposed transactions will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

5. Section 17(a)(1) of the 1940 Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

6. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. The Section 17(b) Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to carry out the proposed redemptions in kind from the SAT II Portfolios and subsequent purchases of shares of the New Touchstone Portfolios (the "In Kind Transactions").

8. The Section 17(b) Applicants assert that the proposed In Kind Transactions, including the consideration to be paid

and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. As part of the In Kind Transactions, the purchase and sale of the shares of SA Trust and VIT will be effected at the respective net asset value. The In Kind Transactions will not have a material financial impact on the Contract owners or Separate Account A. The Section 17(b) Applicants also state that the transactions will conform substantially with the conditions enumerated in Rule 17a–7. To the extent that the In Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the Section 17(b) Applicants assert that the terms of the proposed In Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In Kind Transactions satisfied all of the conditions enumerated in Rule 17a–7. The Section 17(b) Applicants can also assert that the proposed In Kind Transactions by WSLAC and WSLIC do not involve overreaching on the part of any person concerned. Furthermore, the Section 17(b) Applicants represent that the proposed substitutions will be consistent with the policies of: (a) VIT and the New Touchstone Portfolios; and (b) SA Trust and the SAT II Portfolios, as is, or will be, stated in the registration statement or reports filed under the 1940 Act by each.

9. The Section 17(b) Applicants assert that the In Kind Transactions are consistent with the general purposes of the 1940 Act and that the In Kind Transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and In Kind Transactions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32597 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40732; File No. SR–CBOE–98–09]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Trade Match Delayed Submission Fees

December 1, 1998.

On March 4, 1998, the Chicago Board Options Exchange,Inc.("Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] to amend Exchange Rule 2.30, Trade Match Delayed Submission Fee, to reduce the amount of time permitted for trade submission before the imposition of fees and to include under the rule, all types of trades executed on the Exchange. The Exchange submitted Amendment No. 1 to its proposal on April 20, 1998.[3] Notice of the proposed rule change, as amended, was published on April 30, 1998 in the **Federal Register**, to solicit comment from interested persons.[4] On May 26, 1998, the Exchange withdrew the proposed rule change.[5]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32601 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Letter from Stephanie C. Mullins, Attorney, Exchange, to Ken Rosen, Attorney, Division of market Regulation ("Division"), Commission, dated April 13, 1998.

[4] Securities Exchange Act Release No. 39910 (April 24, 1994), 63 FR 23817.

[5] *See* Letter from Stephanie C. Mullins, Attorney, Exchange, to Ken Rosen, Attorney, Division, Commission, dated May 26, 1998.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40729; File No. SR–CBOE–98–47]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Trade Match Delayed Submission Fees

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change.[3] CBOE submitted to the Commission Amendment No. 1 to its proposal on November 10, 1998.[4] The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on the accelerated basis.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An earlier version of the proposed rule change was submitted on March 4, 1998, as CBOE–98–09. The Exchange subsequently submitted Amendment No. 1 to CBOE–98–09 on April 20, 1998. The proposed rule change was noticed in the **Federal Register** on April 30, 1998. *See* Exchange Act Release No. 29910 (April 24, 1994), 63 FR 23817. The Commission received no comments on the proposed rule change. Subsequently, the Exchange withdrew its proposed rule change. *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Ken Rosen, Attorney, Division of Market Regulation ("Division") Commission, dated May 26, 1998 ("Withdrawal Letter"). The current proposed rule change differs slightly from the original proposed rule change. Generally, in this proposal the Exchange delayed the implementation date of the proposed rule change by six months, made technical changes to its proposed rule language, defined the terms nominee-employee and out-trades, and provided a more detailed explanation of how a financial loss may arise from late trade submissions and an explanation for deleting Rule 2.30(d)(2).

[4] In Amendment No. 1, the Exchange, generally, made technical changes to its proposed rule language, defined the terms nominee-employee and out-trades, and provided a more detailed explanation of how a financial loss may arise from late trade submissions and an explanation for deleting Rule 2.30(d)(2) *See* letter from Stephanie C. Mullins, Attorney, CBOE, to Richard C. Strasser, Assistant Director, Division, Commission, dated November 6, 1998 ("Amendment No. 1").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 2.30, Trade Match Delayed Submission Fee, to reduce the amount of time permitted for trade submission before the imposition of fees and to include under the rule, all types of trades executed on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Purpose of the proposed rule change is to expand the scope of CBOE Rule 2.30 to include all types of executed trades and to reduce the amount of time under Rule 2.30 in which Exchange members and clearing firms are assessed fees for late trade submission. Currently, market-makers and clearing firms are assessed fees for delayed trade match submissions if eighty percent of market-maker in-person trades are not submitted in less than two hours. The Exchange proposes to amend this rule to include all types of trades not just market-maker inperson trades) and to require, starting on January 1, 1999, that the submission time for fee assessment be gradually reduced from two hours to one hour. The eighty percent formula will remain the same, as will the provisions for extenuating circumstances.[5]

Non-market-maker trades were not originally included under Rule 2.30 because virtually all non-market-maker activity at that time met the two hour time requirement. Within the revised time frames, ultimately one hour, the Exchange anticipates that a small but significant portion of non-market-maker trades will not be submitted on time. For this reason, all executed trades will be included, so that all parties in the trading process will be held to the same standards.

Under the proposal, the submission time reduction from two hours to one hour will be done gradually over a period of months, so that members and clearing firms will grow accustomed to the tighter time requirement and will be encouraged towards immediate submission of trades. The first time reduction will go into effect on January 1, 1999, and will require timely trade submission to be within ninety minutes of execution. The next reduction would go into effect on April 1, 1999, and will require timely trade submission to be within seventy-five minutes of execution. Finally, from July 1, 1999, forward, the Exchange will require that timely trade submission be within one hour of execution.

Presently, the average submission time for all market-maker trades is thirty-one minutes after execution, and eighty percent of all market-maker trades are submitted within one hour of execution. For non-market-makers, the average submission time is twenty-two minutes, and eighty-seven percent of trades are submitted within one hour of execution. Thus, it should not be a hardship for all members and clearing firms to abide by the proposed rule.

The purpose of this amendment is to increase the speed at which trades are received and matched by the trade match system. With the advent of a more automated trading environment, the current two hour requirement is not stringent enough and may cause the CBOE to be slower than other exchanges in matching trades. More timely trade submission should lead to quicker awareness of out-trades,[6] and consequently could limit financial loss, thereby allowing the Exchange to better compete with the other options exchanges for customer orders.

By making the time requirements for trade submission more stringent, this proposed rule should help members detect out-trades sooner. Once the mistake is discovered, one or both of the parties to the transaction may have to get out of a position or take on a new position to rectify the mistake. The more time that elapses before detection of an out-trade, the more likely it is that the market has shifted away from the market that existed when the trade was executed and the more likely that taking on a new position or getting out of an existing position will incur financial loss.[7] Thus, the potential benefits to members and clearing firms of comparing trades immediately after execution are significant.

Exchange Rule 2.30(c), which formerly was reserved, is proposed to address the situation where a nominee-employee[8] of a clearing member executes and submits trades for that clearing member. Under the proposed rule, if the nominee-employee is assessed a fee for late trade submissions, the clearing member will not be assessed a separate fee. The clearing member will, however, be responsible for the fee assessed against its employee.

Additionally, because of improvements to the Exchange's trade match system and the advances of clearing firms, several sections of Rule 2.30 have become obsolete and are proposed to be eliminated. The proposed rule change would delete Exchange Rule 2.30(d)(2). Since this Rule was last amended, computer processing time has decreased. Thus, the computer processing run performed at the end of the trading day ("First Pass")[9] may be finished prior to the new submission deadline, rendering the Rule obsolete. Second, trades that are transacted late in the trading day no longer will be late merely by being submitted after the First Pass. Under the original two hour submission requirement and the First Pass schedule, trades submitted after the First Pass would be deemed late because the First Pass always was completed more than two hours after the end of the trading day. Under the proposal, this situation will not always be the case. Additionally, the proposed rule is a more objective criteria and will be unaffected by any future changes in the First Past schedule. Thus, the Exchange proposes to delete Rule 2.30(d)(2).[10]

In addition, when rule 2.30 was initially implemented, a deficient clearing firm exception was included, 2.30(f)(1). This exception waived fifty percent of a market-maker's delayed submission fee if the clearing firm through which the market-maker submitted trades was severely deficient in submitting all of its trades on a particular day. This exception initially was applied infrequently and in the last

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[5] Telephone conversation between Stephanie C. Mullins, Attorney, CBOE, and Terri L. Evans, Attorney, Division, Commission, on November 6, 1998. *See also* Amendment No. 1, *supra* note 4.

[6] An out-trade is a transaction that has been executed between two parties where one or more of the terms of the trade do not match. For instance, the parties may have had a misunderstanding on the price, the quantity or the series. *See* Amendment No. 1, *supra* note 4.

[7] *See* Amendment No. 1, *supra* note 4.

[8] Under the Rule, a nominee-employee member is a member who is a clearing member employee. *See* Amendment No. 1, *supra* note 4.

[9] Telephone conversation between Stephanie C. Mullins, Attorney, CBOE, and Terri L. Evans, Attorney, Division, Commission, dated November 10, 1998

[10] *See* Amendment No. 1, *supra* note 4.

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two years has not been applied to a market-maker client of a clearing firm. Due to hand-held trade input terminals and general improvements in trade submission systems, it is nearly impossible for a clearing firm to fall below the deficient clearing firm level of fifty-five percent. Therefore, Exchange Rule 2.30(f)(1) has become obsolete and the Exchange proposes to delete it.

2. Statutory Basis

The Exchange proposes to reduce the amount of time in which trades are submitted, resulting in an improved trade comparison process, thereby serving to promote just and equitable principles of trade and to protect investors and the public interest in furtherance of the objectives of Section 6(b)(5) of the Act.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–47 and should be submitted by December 30, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission believes that the proposal is consistent with the requirements of Section 6(b) of the Act.[12] Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires an exchange to have rules designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and, in general, to protect investors and the public interest.[14] In particular, the Commission believes that the proposed rule change should encourage members to make timely submissions of trade information by reducing the maximum permitted time to submit trade information from two hours to one hour. As a result, the clearing of options transactions should become more efficient, with a reduction in the number of unmatched trades and quicker resolution of out-trades. The Exchange should also be able to monitor its members more effectively for any problems that might disrupt the clearance and settlement process. The Commission also believes that applying CBOE Rule 2.30 to all members and not just market-makers trading in-person should provide for greater integrity of the trade matching and clearing process. The Commission also believes that it is consistent with the Act to delete obsolete provisions of CBOE Rule 2.30.

The Commission also finds the proposed rule change regarding the assessment of a single fee if a delay is caused by a nominee-employee member of a clearing member is consistent with Section 6(b)(4) of the Act,[15] which states that the Exchange may provide for the equitable allocation of reasonable dues, fees, and other charges among its members. Under CBOE Rule 2.30, the timely submission of each individual member and clearing member is measured separately and a fee imposed only if the individual member or clearing member fails to submit at least eighty percent of its trades in a timely manner. Where a nominee-employee of a clearing member is acting on behalf of the clearing member and where the clearing member is ultimately responsible for the nominee-employee, the Commission believes that the proposed rule change equitably allocates the cost of incorporating late trade information by only imposing a single fee on clearing members.

The Exchange has requested that the Commission approve the proposal prior to the thirtieth day after the date of publication of notice of the proposal in the **Federal Register**. Because the Commission believes the proposal should expedite the clearing process, the Commission finds good cause for approving the proposed rule change (SR–CBOE–98–47) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32606 Filed 12–8–98; 8:45 am]

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[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(4).

[16] An earlier version of the proposed rule change was submitted on March 4, 1998, as CBOE–98–09. The proposed rule change, as amended, was noticed in the **Federal Register** on April 30, 1998. *See* Release No. 39910, *supra* note 3. The Commission received no comments on the proposed rule change Subsequently, the Exchange withdrew its proposed rule change. *See* Withdrawal Letter, *supra* note 3.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40730; File No. SR–CHX–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Listing Standards for Equity Linked Debt Securities

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed an amendment to the proposed rule change on November 4, 1998.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and simultaneously approving the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new Rule 26 to Article XXVIII of the Exchange's rules to adopt listing standards for Equity Linked Debt Securities ("ELDS"). The text of the proposed rule change follows. The text of the new rule is *italicized.*

ARTICLE XXVIII

Equity-Linked Debt Securities

RULE 26. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, equity-linked debt securities ("ELDS") that meet the criteria of this rule. ELDS are limited term non-convertible debt obligations of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

(a) ELDS Issuer Listing Standards

(1) If the ELDS issuer is a company listed on the Exchange, it must be a company in good standing (i.e., meet the Exchange's Tier I or Tier II general listing criteria). If the ELDS issuer is an affiliate of a company listed on the Exchange, the company listed on the Exchange must be a company in good standing. If the ELDS issuer is not listed on the Exchange, the ELDS issuer must meet the size and earnings requirements set forth in the Exchange's Tier I or Tier II Listing Rules. (Sovereign issuers will be evaluated on a case-by-case basis.)

(2) The ELDS issuer must, in all cases, have either

(i) A minimum tangible net worth of $250 million; or

(ii) A minimum tangible net worth of $150 million and the original issue price of the ELDS, combined with all of the issuer's other ELDS listed on a national securities exchange or otherwise publicly traded in the United States, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

(b) ELDS Listing Standards. The issue must have:

(1) At least 1 million ELDS outstanding.

(2) At least 400 holders.

(3) An aggregate market value of at least $4 million.

(4) A term of two to seven years, provided that if the issuer is a non-U.S. company, the issue may not have a term of more than three years.

(c) Linked Equity Listing Standards. An equity security on which the value of the debt is based must:

(1) Have either:

(i) A market capitalization of at least $3 billion and a trading volume of at least 2.5 million shares in the one-year period preceding the listing of the ELDS; or

(ii) A market capitalization of at least $1.5 billion and a trading volume of at least 10 million shares in the one-year period preceding the listing of the ELDS; or

(iii) A market capitalization of at least $500 million and trading volume of at least 15 million shares in the one-year preceding the listing of the ELDS.

(2) Be issued by a company that has a continuous reporting obligation under the Securities Exchange Act of 1934, as amended, and be listed on a national securities exchange or traded through the facilities of a national securities association and be subject to last sale reporting.

(3) Be issued either by:

(i) A U.S. company; or

(ii) A non-U.S. company (including a company that is traded in the United States through American Depositary Receipts ("ADRs")) if there are at least 2,000 holders of the security, and either

(A) The Exchange, or, if the ELDS is to be traded pursuant to unlisted trading privileges, any other national securities exchange that is the primary U.S. market for such security, has in place with the primary exchange in the country where the security is primarily traded (or, in the case of a sponsored ADR, the primary exchange in the home country where the security underlying the ADR is primarily traded) an effective comprehensive surveillance information sharing agreement,

(B) The "Relative U.S. Volume" is at least 50 percent (for purposes of this subsection, the term "Relative U.S. Volume" shall mean the ratio of (i) the combined trading volume, on a share-equivalent basis, of the security and related securities (including ADRs overlying such security) in the United States and in any other market with which the Exchange (for ELDS that are listed on the Exchange) or with which any other national securities exchange that is the primary U.S. market for such ELDS (if the ELDS is to be traded on the Exchange pursuant to unlisted trading privileges) has in place an effective, comprehensive surveillance information sharing agreement to (ii) the world-wide trading volume in such securities, or

(C) During the six months preceding the listing of the ELDS on the Exchange (or for ELDS traded on the Exchange pursuant to unlisted trading privileges, preceding the listing of the ELDS on the primary U.S. market for such security), the following trading volume standards were met:

(i) The combined trading volume of the security (including the security itself, any ADR overlying the security (adjusted on a share equivalent basis) and any other classes of stock related to the underlying security) in the United States is at least 20 percent of the combined world-wide trading volume in the security and in related securities.

(ii) The average daily trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) in the U.S. market is 100,000 or more shares, and

(iii) The trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) is at least 60,000 per day in the U.S. market on a majority of the trading days during the six-month period.

(d) Limits on Number of ELDS. The issuance of ELDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of ELDS relating to any underlying non-U.S. security or sponsored ADR may not exceed: (1) two percent of the total worldwide outstanding shares of such security if at least 20 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing occurs in the U.S. market; or (2) three percent of the total worldwide outstanding shares of such security if at least 50 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing occurs in the U.S. market; or (3) five percent of the total worldwide outstanding shares of such security if at least 70 percent of the worldwide trading volume in the security and related securities during the six-month period preceding the date of listing on the Exchange (for ELDS that are listed on the Exchange) or listing on the national securities exchange that is the primary U.S. market for such ELDS (if the ELDS is to be traded on the Exchange pursuant to unlisted trading privileges) occurs in the U.S. market.

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[3] Letter from Patricia L. Levy, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 3, 1998 ("Amendment No. 1"). Amendment No. 1 clarified the Additional Requirements for Non-U.S. Companies section of the proposed rule change so that it accurately reflected the rule language.

If an issuer proposed to issue ELDS that relate to more than the allowable percentages of the underlying security specified in this subsection (d), then the Exchange, in consultation with the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of ELDS that may be issued on a case-by-case basis.

. . . Interpretation and Policy

.01 Form of Circular to Membership

Prior to the commencement of trading of any new ELDS on the Exchange, the Exchange will issue a circular, substantially in the form set forth below:

Equity-Based Debt Security Membership Circular

Date:

Circular to Membership

Equity-linked debt securities ("ELDS") of ______________ Corporation have been approved for Exchange [listing or trading pursuant to unlisted trading privileges] and will commence trading on [date]. The ELDS are debt securities where the amount payable at maturity is based on the then-current price of [the linked security].

—The ELDS will trade with the ticker symbol ____________.

ELDS are securities that have certain unique characteristics, and investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, including:

—At maturity, holders of ELDS will receive [description of payment].

—Because the amount of principal returned when ELDS mature depends on the price of [the linked security], the possibility exists that an ELDS holder may lose some or all of the principal amount of his ELDS investment.

—ELDS will trade on the Equity Floor. ELDS will trade "Flat" (that is, without the payment of accrued interest) and in round lots of 100.

—ELDS are solely the obligation of [the issuer]. Holders of ELDS may look only to [the issuer] for payments of interest and principal, and not to [the issuer of the linked security].

—Both [the issuer and the issuer of the linked security] are listed on [insert appropriate markets] and are subject to the continuous reporting obligations of the Securities Exchange Act of 1934, as amended (the "1934 Act"). Interested persons may obtain copies of reports, proxy statements and other materials filed by [the two issuers] pursuant to the 1934 Act at the offices of the Securities and Exchange Commission.

Before a member, member organization, or person associated with such member organization undertakes to recommend a transaction in the ELDS, such member or member organization should make a determination that such ELDS are suitable for such customer and the person making the recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction.

Any questions regarding the suitably of customer accounts should be directed to ______________ at (312) 663– _____. Inquiries with respect to the ELDS themselves should be directed to ______________ at (312) 663–

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX is proposing listing criteria to allow the Exchange to list hybrid debt securities and to trade hybrid debt securities pursuant to unlisted trading privileges. The Exchange refers to such debt securities as "Equity Linked Debt Securities" or "ELDS." ELDS are the non-convertible debt of the issuing company where the value of the debt is based, at least in part, on the value of another company's common stock or other individual equity security. ELDS may pay periodic interest or may be issued as zero-coupon instruments. In addition, ELDS may or may not have a ceiling and/or floor on the amount of principal that may be returned at maturity of the instrument.

The Exchange believes that the proposed ELDS listing criteria are generally consistent with the "Other Securities" criteria currently found in Article XXVIII, Rule 13 of the CHX Rules and the Equity Linked Notes ("ELNs") listing criteria used by the American Stock Exchange, Inc. ("Amex"). The Exchange based its proposed rules on the ELDS listing criteria currently used by the New York Stock Exchange, Inc. ("NYSE").[4]

General ELDS Listing Requirements

The issuer of an ELDS proposed for listing on the Exchange must meet certain requirements. The issuer of the ELDS must either (a) meet general CHX listing standards; or, (b) be in good standing, if listed on the Exchange; or, (c) be an affiliate of a company listed on the Exchange whose listing status is in good standing.[5]

The ELDS issue itself is subject to a variety of listing requirements as well. The issue must: (1) consist of a least one million ELDS, (2) have at least 400 holders, (3) have an aggregate market value of at least $4 million, and (4) have a term of two to seven years (if the issuer is a non-U.S. company, the issue may not have a term of more than three years).

The proposal also includes criteria governing the equity security on which the value of the ELDS is based, several other miscellaneous requirements also imposed to ensure quality, and some further restrictions on ELDS whose underlying security is issued by a non-U.S. company. Specifically, with regard to value: (i) the issuer of each such security must be a reporting company with minimum market capitalizations and trading volumes, and (ii) each such security must be either listed on a national securities exchange or traded through the facility of a national securities association and be subject to last sale reporting.

The remaining quality assurance requirements ensure that: (a) the issuance of ELDS relating to any underlying U.S. security does not to exceed five percent of the total outstanding shares of the underlying security; and (b) the issuance of ELDS relating to any underlying non-U.S. security or sponsored American Depository Receipt ("ADR") does not exceed either two, three or five percent of the total worldwide outstanding shares of such security, depending on the amount of the worldwide trading volume in the security and related securities that occurs in the U.S. market during the six-month period preceding the date of (i) listing on the Exchange (for ELDS that are listed on the Exchange) or (ii) listing on the national securities exchange that is the primary U.S. market for such ELDS (if the ELDS are to be traded on the Exchange pursuant to unlisted trading privileges).

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[4] The only difference between the proposed rule change and the NYSE ELDS rules is that the rules proposed by CHX provide for unlisted trading privileges. Telephone call between Patricia L. Levy, Senior Vice President and General Counsel, CHX, and Kelly A. McCormick, Attorney, Division of Market Regulation, SEC, on November 30, 1998.

[5] If the ELDS issuer is not listed on the Exchange, the ELDS issuer must meet the size and earnings requirements set forth in the Exchange's tier I or Tier II Listing Rules. In addition, the ELDS issuer must either have a minimum tangible net worth of $250 million or $150 million. If the ELDS issuer uses the $150 million standard, the original issue price of the ELDS, combined with all of the issuer's other ELDS listed on a national securities exchange or other wise publicly traded in the United States, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

Additional Requirements for Non-U.S. Companies

Finally there are some additional requirements when the underlying security is a non-U.S. company (including a company that is traded in the United States through ADRs). First, there must be at least 2,000 holders of the security. In addition, one of the following three alternatives must apply: (1) the Exchange must have an effective comprehensive surveillance information sharing agreement with either (a) the primary exchange in the country where the security is primarily traded (for listed ELDS),[6] or, (b) the national securities exchange that is the primary U.S. market for such security (for ELDS traded pursuant to unlisted trading privileges); or (2) the Relative Trading Volume must be at least 50%;[7] or (3) during the six months preceding the listing of the ELDS on the Exchange (or for ELDS traded on the Exchange pursuant to unlisted trading privileges, preceding the listing of the ELDS on the primary U.S. market for such security), the underlying company must meet various trading volume standards. The trading volume standards require that (1) the combined trading volume of the security in the United States be at least 20 percent of the combined world-wide trading volume in the security and in related securities;[8] (2) the average daily trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) in the U.S. market be 100,000 or more shares; and (3) the trading volume for the security (or, if traded in the form of an ADR, the ADR overlying such security) be at least 60,000 shares per day in the U.S. market on a majority of the trading days during the six-month period.

Trading Issues

The Exchange will generally treat ELDS as equity securities. Thus, for example, ELDS will be subject to equity margin treatment.

In addition, due to the unique nature of ELDS, prior to the commencement of trading of each new ELDS, the Exchange will distribute a circular to its members and member organizations alerting them to be unique characteristics of ELDS and providing guidance regarding their compliance responsibilities with respect to such securities. A form of this circular is set out in Interpretation and Policy .01 to Rule 26 of Article XXVIII.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participating or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–26 and should be submitted by December 30, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the CHX's proposed rule change[10] and believes for reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5)[12] because the rule is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission believes that ELDS provide a new and innovative means of participating in the securities markets. In particular, the Commission believes that the increased availability of ELDS will permit investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.[13]

ELDS are not leveraged instruments, however, their price will still be derived from and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of an ELDS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, in considering the Amex's ELNs[14] proposal[15] and the NYSE's ELDS proposal,[16] the Commission had several specific concerns with this type of product (*i.e.*, (1) investor protection concerns, (2) dependence on the credit of the issuer of the instrument, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked security).[17] The Commission concluded, however, that the Amex and NYSE proposals adequately addressed each of these issues such that the Commission's regulatory concerns were adequately minimized.[18] Similarly, in this proposal, the CHX has proposed safeguards that address these concerns which the Commission finds to be equivalent to those approved for the trading of ELNs at the Amex and ELDS at the NYSE.

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[6] In the case of a sponsored ADR, the agreement must be the primary exchange in the home country where the security underlying the ADR is primarily traded.

[7] Relative Trading Volume is defined as the ratio of (i) the combined trading volume, on a share-equivalent basis, of the security and related securities (including ADRs overlying such security) in the United States and in any other market with which the Exchange (for ELDS that are listed on the Exchange), or with which any other national securities exchange that is the primary U.S. market for such ELDS (if the ELDS are to be traded on the Exchange pursuant to unlisted trading privileges) has in place an effective, comprehensive surveillance information sharing agreement to (ii) the world-wide trading volume in such securities.

[8] The securities considered in this regard include the security itself, any ADR overlying the security (adjusted on a share equivalent basis) and any other class of stock related to the underlying security.

[9] 15 U.S.C. 78f(b)(5).

[10] In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

The Commission notes that the CHX proposal also provides for unlisted trading privileges for ELDS listed on other exchanges. The Commission believes that unlisted trading privileges for ELDS is also consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market. Unlisted trading privileges allow for the trading of additional products at the CHX which are subject to listing standards that are equivalent to the CHX listing standards for ELDS. Accordingly, for the reasons stated herein, as well as in the Commission's ELNs approval for the Amex and the ELDS approval for the NYSE, the Commission finds that the CHX standards for listing and trading of ELDS are consistent with the Act and the listing and trading of ELDS is in the public interest.

Finally, the Exchange has requested, and the Commission agrees that, accelerated approval is appropriate in this instance. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. The Commission finds that the proposal closely conforms to the proposals already approved by the Commission with respect to the listing and trading of ELNs on the Amex[19] and ELDS on the NYSE.[20] Accordingly, the CHX proposal presents no new regulatory issues. Moreover, both the NYSE and Amex proposals were subject to the full 21-day period, yet no comments were received by the Commission. Therefore, the Commission believes it is consistent with Sections 6(b)(5)[21] and 19(b)(2)[22] of the Act to approve the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CSE–98–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32664 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40740; File No. SR–NSCC–98–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Authorizing the Modification of NSCC's Collateral Management Service

December 3, 1998.

On July 22, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–98–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on October 16, 1998.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's Collateral Management Service ("CMS") provides automated access to information on participants' clearing fund, margin, and other deposits at NSCC and other participating clearing entities.[3] The purpose of this rule change is to add an interactive messaging feature to CMS. Specifically, NSCC is modifying CMS to: (i) enable participating clearing entities and participants to send and receive messages regarding collateral on an automated basis through CMS; (ii) enable participants that elect to participate in CMS to request a withdrawal of excess collateral on a daily basis, including an intraday withdrawal of excess cash collateral; and (iii) address the movement of collateral based on CMS messages. The modifications primarily affect Rule 53 (Collateral Management Service) of NSCC's Rules and Procedures.

NSCC intends to implement the modifications to CMS upon approval of the proposed rule change. Other participating clearing entities will be able to make the CMS modifications relating to clearing fund and margin deposits available on a phased-in basis at a time determined by each clearing entity.[4]

CMS Message Processing

NSCC is modifying NSCC Rule 53 to enable NSCC, participating clearing entities, and participating participants to send and receive interactive messages regarding their respective CMS information ("CMS messages"). CMS messages include the following: (i) a request by NSCC or a participating clearing entity to a participant for additional collateral; (ii) a request by a participant to NSCC or to a participating clearing entity to return excess collateral; (iii) a request by a participant to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a settlement deficit at the entity where there is excess cash collateral; (iv) a request by a participant to NSCC or to a participating clearing entity to substitute collateral; and (v) a request by a participant to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a clearing fund or margin deficit at an entity other than where there is excess cash collateral.

NSCC, participating clearing entities, and participating participants will send and receive CMS messages on an automated basis by using CMS message screens. Generally, the CMS massage screens will contain fields to identify the requesting entity, the entity or entities receiving the CMS message, the type of request, the request amount, the type of collateral, and the date of the request. CMS will transmit the request to the entity or entities identified in the request. All requests by a participant to NSCC and to participating clearing entities will require approval of the clearing entity.

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[14] As noted earlier, ELNs, Equity Linked Term Notes are the same product, with the same terms and characteristics, as defined herein for ELDS.

[15] Exchange Act Release No. 32343 (May 20 1993).

[16] Exchange Act Release No. 33468 (January 13 1994).

[17] Release Nos. 34–32343 and 34–33468.

[18] Id.

[19] Release No. 34–32343.

[20] Release No. 34–33468.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40536 (October 8, 1998) 63 FR 55664.

[3] For a detailed description of CMS, refer to Securities Exchange Act Release No. 36091 (August 10, 1995) 60 FR 42931 [File No. SR–NSCC–95–06].

[4] Each participating clearing entity will need to review its rules and to file any necessary proposed rule changes under Section 19(b) before making available to its participants the ability to move and withdraw collateral.

NSCC is adding Procedure XVI to its rules and procedures to set forth the procedures for processing each of the five basic types of CMS messages. First, Procedure XVI provides that NSCC and participating clearing entities may submit a request for additional collateral to a participant through CMS.[5] The request will be transmitted to the participant identified in the request. Second, Procedure XVI provides that a participant may submit a request for the return of excess collateral to NSCC or to a participating clearing entity through CMS.[6] The requesting participant will receive a message from the clearing entity indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection. Third, Procedure XVI provides that a participant may submit a request to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a settlement deficit at the clearing entity where there is excess cash collateral.[7] The request will be transmitted to the clearing entity identified in the request for approval or rejection. The requesting participant will receive a message indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Fourth, Procedure XVI provides that a participant may submit a request to NSCC or to a participating clearing entity to substitute collateral.[8] The request will be transmitted to the clearing entity identified in the request for approval or rejection. The requesting participant will receive a message indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Fifth, Procedure XVI provides that a participant may submit a request to use excess cash collateral at one participating clearing entity or NSCC to satisfy a clearing fund or margin deficit at another participating clearing entity or NSCC.[9] The request will be transmitted to both clearing entities identified in the request for approval or rejection. The requesting participant will receive a message from each clearing entity indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Procedure XVI also provides that requests must be submitted by such times on each processing day as may be established by NSCC and participating clearing entities. A request by a participant to NSCC or to a participating clearing entity that is not fully approved on the day that it is submitted will not be carried forward to the next processing day. However, CMS provides for "today for tomorrow" requests that will pend and will be incorporated into the next day's processing if so designated.

Withdrawal of Excess Collateral on a Daily Basis

The rule change also modifies Rule 53 and makes conforming changes to other rules and procedures to allow participating participants to request a withdrawal of excess collateral on a daily basis, including an intraday withdrawal of excess cash collateral. This modification is an exception to NSCC's general rule that permits a participant to request the return of excess collateral no more frequently than monthly and is also an exception to the general rule that permits certain participants on surveillance status to request the return of excess collateral no more frequently than quarterly. Although the rule change allows participants to make daily requests for return of excess collateral, NSCC still has discretion to deny such requests.

Movement of Collateral Based on CMS Messages

The rule change modifies Rule 53 to address the movement of collateral based on CMS messages. The actual movement of collateral based on a CMS message and will be made between the appropriate clearing entity and the participant pursuant to the rules and procedures of the appropriate clearing entity. However, under the rule change the movement of collateral based on a participant's request to use excess cash collateral at one clearing entity to satisfy a clearing fund or margin deficit at another clearing entity will be made directly between the clearing entities daily on a bilateral net basis or as otherwise may be determined by the clearing entities.

Currently, an agreement authorizing use of data for CMS ("CMS Agreement") addresses NSCC's authorization from participating clearing entities to collect and provide clearing fund and margin requirement and deposit information. Under an amendment to the CMS Agreement, NSCC and participating clearing entities will agree to make payments in accordance with their respective rules and procedures based on approved participant requests to use excess cash collateral at one clearing entity to satisfy a clearing fund or margin deficit at another clearing entity daily on a bilateral net basis or as otherwise may be determined by the clearing entities.[10] From the perspective of a participant, excess cash collateral will be treated as moved at the time both clearing entities approve the participant's request or at such other time as the clearing entities may mutually agree.

The movement of excess cash collateral from NSCC to an NSCC participant based on a CMS message will be included in NSCC's money settlement process unless the participant requests an intraday wire transfer of funds. The rule change also makes a technical modification to Section 6 of Rule 53 to add references to CMS messages.

II. Discussion

Section 17A(b)(3)(F)[11] of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes the NSCC's new interactive messaging feature should increase the efficiency of collateral movements in and among clearing entities by establishing a standardized and automated system to request the movement or withdrawal of collateral. Further, the CMS modifications will give NSCC and participants information regarding participants' requests for movement or withdrawal of collateral which should help participating clearing entities to better monitor their participants' collateral positions. Therefore, the Commission believes that the change is consistent with NSCC's obligations under Section 17A(b)(3)(F).

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[5] The request must include the identity of the requesting clearing entity, the identity of the participant, the total amount of the request, the type of collateral (*i.e.*, cash, securities, and/or letters of credit), the date of the request, and such other information as may be required or permitted.

[6] The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount of the request, the type of collateral (*i.e.*, cash, securities, and/or letters of credit), the date of the request, and such other information as may be required or permitted.

[7] The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount of the request, the date of the request, and such other information as may be required or permitted.

[8] The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount and type of the collateral (*i.e.*, cash, securities, and/or letters of credit) to be returned to the participant, the total amount and type of collateral (*i.e.*, cash, securities, and/or letters of credit) to be substituted by the participant, the date of the request, and such other information as may be required or permitted.

[9] The request must include the identity of the requesting participant, the identity of the clearing entity from which the excess cash collateral is to be sent, the identity of the clearing entity to which the excess cash collateral is to be sent, the total amount of the request, the date of the request, and such other information as may be required or permitted.

[10] Participating clearing entities other than NSCC will be required to execute the amendment to the CMS Agreement when they begin to phase in the CMS modifications. Participating clearing entities may also need to file proposed rule changes in connection with executing the amendment to the CMS Agreement.

[11] 15 U.S.C. 78q–1(b) (3) (F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–98–10) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32668 Filed 12–8–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40731; File No. SR–NYSE–98–39]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., To Increase the Administration Fee Charged for the Supervisory Analyst Examination (Series 16)

December 1, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to increase the fee for the Supervisory Analyst Examination (Series 16) from $60 to $200 per administration effective December 1, 1998.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 472(b) ("Communications With The Public") requires that research reports be prepared or approved by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344 ("Supervisory Analysts"). The Supervisory Analyst Examination ("Series 16") is the qualification examination that a person must pass before he or she can work as a Supervisory Analyst for a member or member organization. The Exam previously was administered in paper and pencil format and the fee charged has been $60 per candidate. Recently, the Exchange began administration of this examination in electronic format at Sylvan Test Centers. These test centers also administer other industry examinations.

The Exchange proposes to increase the administration fee for the Series 16 Examination to $200 per exam administration effective December 1, 1998. The increased fee is necessary to offset expenses incurred in developing, updating and administering the exam. Additionally, the fee will be consistent with the fees charged for other exams.

2. Statutory Basis

The proposed rule change is consistent with the requirement under Section 6(b)(4) of the Act[3] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and subparagraph (e)(2) of Rule 19b-4 thereunder.[5] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–39 and should be submitted by December 30, 1998.

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[12] 17 CFR 200.30–3(a) (12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(e)(2).

[6] In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 98–32602 Filed 12–8–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40721; File No. SR–NYSE–98–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Specifications and Content Outline for the Trading Assistant Qualification Examination (Series 25)

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed the Content Outline and Specifications for the Trading Assistant Qualification Examination ("Series 25 Content Outline").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Currently, the registration process for Floor employees *i.e.*, Post Clerks and Booth Clerks, also known as Trading Assistants, consists of submission of a completed Form U–4 ("Uniform Application for Securities Industry Registration or Transfer") and fingerprints. The Exchange has proposed amendments to Rule 35 to require Trading Assistants to, in addition to the current requirements, take and pass appropriate qualification examinations and meet appropriate training requirement.[3]

The Series 25 and Series 25 Content Outline were developed by the Exchange, in conjunction with a Committee of Exchange Members and Trading Assistants, in order to qualify Floor Trading Assistants pursuant to proposed amendments to Rule 35[4] The Series 25 will ensure that Trading Assistants have the basic knowledge, skills, and abilities necessary to perform the functions and carry out the responsibilities of a Trading Assistant. The Series 25 Content Outline, which may be examined at the places specified in Item IV below, details the coverage of the examination.

The requirement to take and pass the Series 25 examination in order to qualify as a Trading Assistant will apply to all current and prospective Trading Assistants. A proposed new interpretation to Rule 35 will established that new Trading Assistants will be required to undergo three months of training (including on-the-job and classroom instruction) prior to taking the examination.[5] New Trading Assistants will not be permitted to perform their functions without supervision until passing the examination. Current Trading Assistants would have one year from implementation of the qualification requirement to pass the examination.

2. Statutory Basis

The Exchange believes the statutory basis for the Series 25 Examination lies in Section 6(c)(3)(B) of the Act.[6] Under that Section, the Exchange has the responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

In addition, pursuant to Section 6(c)(3)(B) of the Act,[7] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange believes it has developed an examination that will be administered to confirm that Trading Assistants have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On October 22, 1998, the Exchange filed with the Commission SR–NYSE–98–36 which proposes to amend Rule 35 to provide for the additional registration requirements for Trading Assistants. Securities Exchange Act Release No. 40720 (November 30, 1998).

[4] Id.

[5] Id.

[6] 15 U.S.C. 78f(c)(3)(B).

[7] Id.

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. NYSE–98–35 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32603 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40722; File No. SR–NYSE–97–09]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Specialists' Handling of Percentage Orders

November 30, 1998.

I. Introduction

On March 25, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 123A.30, relating to specialists' handling of percentage orders.

The proposed rule change was published for comment in the **Federal Register** on May 21, 1997.[3] No comments were received on the proposal. On June 15, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and approves Amendment No. 1 to the proposed rule change on an accelerated basis.

II. Background and Description of the Proposal

A. Background

A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a "live" order capable of execution in one of two ways: (i) all or part of the order can be "elected" as a limit order on the specialist's book based on trades in the market; or (ii) all or part of the order can be "converted" into a limit order to make a bid or offer or to participate directly in a trade.

1. The Election Process

Under the election process, as trades occur at the percentage order's limit price or better, an equal number of shares of the percentage order are "elected" and become a limit order on the specialist's book. This limit order takes its place behind other limit orders on the specialist's book at the same price. The percentage order then is reduced by the number of elected shares until the entire order has been satisfied.

Currently, there are four types of percentage orders; last sale percentage orders, straight limit percentage orders,[5] buy minus-sell percentage orders,[6] and immediate execution or cancel election percentage orders.[7] The Exchange has indicated that most percentage orders are entered as last sale percentage orders, meaning that they are elected to the book at the price of the electing sale and may be executed at that price, or at a better price.[8]

2. The Conversion Process

The second way that a percentage order can be activated into a limit order is through the conversion process. Most percentage orders contain the additional instruction, "CAP–D." "CAP" is an acronym meaning "convert and parity," which instructs the specialist that he or she may convert all or a portion of the order into a limit order, and allows the specialist to be on parity with the converted percentage order, either to participate directly in a trade or to make a bid or offer ("bettering the market"). The "D" notation instructs the specialist that, under certain circumstances, the order may be converted to participate in destabilizing transactions, as well as stabilizing transactions.

The Exchange has stated that, as a practical matter, it views CAP–D orders as a necessary adjunct to the standard election procedures because they allow the specialist greater flexibility to match the order with other buying and selling interest in the market. CAP–D orders are subject to a number of restrictions intended to minimize the specialist's discretion in handling such orders.[9] Specifically, under the conversion process, the specialist may convert a percentage order into a "live" limit order on a destabilizing tick only where: (i) the transaction for which the order is being converted is for 10,000 shares or more; and (ii) the price at which the converted percentage order is to be executed is no more than $\frac{1}{4}$ point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.[10]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38630 (May 13, 1997), 62 FR 27822.

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated June 12, 1998 ("Amendment No. 1"). In Amendment No. 1, the NYSE clarifies that its proposal to add the phrase "or converted" to the last paragraph of NYSE Rule 123A.30 would not change the existing rules governing the conversion of percentage orders. Instead, the Exchange believes that the issue of whether an executed percentage order was "elected" or "converted" to a limit order is irrelevant to its proposal to allow such execution to trigger the election of another percentage order on the opposite side of the market.

[5] A straight limit percentage order carries a limit price equal to the percentage order limit price.

[6] A buy minus-sell plus percentage order operates in the same fashion as a straight limit percentage order, except that it places the additional requirement that elected portions of buy (sell) percentage orders be elected at a price on minus or zero-minus ticks (plus or zero plus ticks) from the previous sale.

[7] An immediate execution or cancel election percentage order instructs the specialist to execute the elected portion of the percentage order immediately in whole or in part at the price of the electing transactions. The remaining unexecuted elected portion of the percentage order, if any, reverts back to an unelected percentage order, subject to subsequent election or conversion. *See* Securities Exchange Act Release No. 39837 (April 8, 1998) 63 FR 18244 (April 14, 1998) (order approving File No. SR–NYSE–97–38).

[8] The various types of percentage orders differ only in terms of execution, and not the process by which they are elected. *See* notes 5–7 *supra*.

[9] *See* NYSE Rule 123A.30; Securities Exchange Act Release No. 24505 (May 22, 1987) 52 FR 20484 (June 1, 1987) (order approving File No. SR–NYSE–85–1 to permit conversion of percentage orders on destabilizing ticks under certain circumstances).

B. Description of the Proposal

Currently, NYSE Rule 123A.30 provides that percentage orders shall not be elected by any portion of volume which results from the execution of a previously elected portion of a percentage order. According to the Exchange, the intent of this restriction is to prevent "chain reaction" executions of percentage orders whereby executions of elected portions of percentage orders trigger additional elections. This result would be contrary to the objectives of most investors entering percentage orders, who generally want to "go along" with the overall trend of the market as reflected by other market interest, without necessarily leading that trend.

As currently interpreted, NYSE Rule 123A.30 does not distinguish between the election or conversion of percentage orders on the same side of the market and the election or conversion of percentage orders on opposite sides of the market. The Exchange believes that the restriction should be applied only to percentage orders on the same side of the market, as "same side" orders are the ones to be executed along with the market trend.[11]

The Exchange is proposing to amend NYSE Rule 123A.30 to provide that percentage orders held by a specialist may be elected by the execution of a previously elected or converted[12] portion of a percentage order that is on the opposite side of the market.[13]

The Exchange also is proposing to amend NYSE Rule 123A.30 to permit the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of $500,000 or more (whichever is less). The Exchange notes that this amendment will conform the size of permitted transactions to the definition of a "block" in NYSE Rule 97.

III. Discussion

The Commission has considered carefully whether the NYSE's proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission has considered whether the proposal is consistent with the requirements set forth in Sections 6(b) and 11(b) of the Act.[15] In reviewing previous proposals involving percentage orders, the Commission has been concerned whether such orders provide the specialist with "discretion" in violation of Section 11(b) of the Act.[16] Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of a specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist book and their handling of discretionary agency orders.[17] The Commission has interpreted this section to mean that all orders other than market or limit orders are discretionary and therefore cannot be accepted by a specialist.[18]

The Commission previously has determined that it is appropriate to treat percentage orders as equivalent to limit orders.[19] With regard to the conversion process in particular, while acknowledging that it permits specialists to employ their judgment to a certain extent, the Commission believed that the requirements imposed on the specialist when converting a percentage order for execution or quotation purposes provided sufficiently stringent guidelines to ensure that the specialist only will implement the conversion provisions in a manner consistent with his or her market making obligations and Section 11(b).[20]

Furthermore, the Commission previously has determined that the NYSE's percentage order rules are consistent with the standards set forth under Section 6(b)(5) of the Act.[21] This section requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices. The Commission determined that the NYSE's percentage order rules contain various limiting and protective provisions, to ensure that such rules will not increase the possibility of specialist abuse of the market.

As discussed in greater detail below, the Commission finds that the proposed rule change, in allowing a specialist to elect a percentage order based on the execution of a previously elected or converted percentage order on the opposite side of the market and modifying the restrictions pertaining to the conversion of a percentage order on a destabilizing tick, does not adversely impact the protective scheme that has been incorporated into the percentage order rules. Accordingly, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) and 11(b) of the Act[22] in that it neither greatly increases specialists' ability to engage in fraudulent and manipulative practices nor allots discretion to specialists in their handling of percentage orders.

A. Proposed Modification to the Election Process

Currently, a percentage order may not be elected based on the execution of a previously elected or converted percentage order. For purposes of this prohibition, the current rules do not distinguish between percentage orders on the same side of the market and those on opposite sides of the market. The Exchange's proposal provides that percentage orders held by a specialist may be elected by the execution of a previously elected or converted portion of a percentage order that is on the opposite side of the market.

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[10] For a more detailed description of the procedures under which a percentage order may be converted on a destabilizing tick, *see* Securities Exchange Act Release No. 24505, *supra* note 9.

[11] For example, buy percentage orders would be elected and executed along with other buying interest, and sell percentage orders would be elected and executed along with other selling interest.

[12] *See* Amendment No. 1, *supra* note 4.

[13] For example, assume that the market is 20 to $20\frac{1}{4}$, 2,000 by 2,000, with the 2,000 share offer representing 2,000 "elected" or "converted" shares of a percentage order to sell 10,000 shares. The specialist then receives a last sale percentage order to buy 10,000 shares at a limit price of $20\frac{5}{8}$ after which he receives through SuperDOT an order to buy 1,000 shares at the market. After bidding $20\frac{1}{16}$ on behalf of the SuperDOT order, the specialist executes that order against the 2,000 share offer at $20\frac{1}{4}$. Under the current rule, no portion of the buy percentage order would be elected, and no additional portion of the sell percentage order would be elected. Under the proposed rule change, 1,000 shares of the buy percentage order would be elected at $20\frac{1}{4}$, and would then trade the remaining 1,000 share balance of the offer at $20\frac{1}{4}$. No portion of the sell percentage order would be elected since the execution of the remaining 1,000 share sell balance would result from the execution of a previously elected or converted percentage order on the same side of the market.

[14] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b) and 78k(b).

[16] 15 U.S.C. 78k(b).

[17] *See* H. Rep. No. 1383, 73d Cong., 2d Sess. 22; S. Rep. 792, 73d Cong., 2d Sess. 18 (1934).

[18] *See, e.g.*, SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., Part 2, 72 (1963) ("Special Study") (noting that "Section 11(b) . . . prohibits, without exception, a specialist's effecting any transaction except upon a market or limit order").

[19] *See* Securities Exchange Act Release No. 24505, *supra* note 9.

[20] 15 U.S.C. 78k(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(5) and 78k(b).

The Commission believes that it is consistent with the Act to allow the election of a percentage order based on the execution of a percentage order on the opposite side of the market. The Commission believes that the proposed rule change is consistent with the underlying rationale for the percentage order rule; namely, to allow larger-sized orders to trade along with the trend of the market, rather than lead that trend. For example, a percentage order cannot elect itself by its execution. Instead, independent interest on the same side of the market is needed to trigger an election. In addition, the Commission anticipates that by allowing the execution of percentage orders to trigger the election of percentage orders on the opposite side of the market, the proposal should increase the likelihood that percentage orders held by the specialist will be elected as limit orders and ultimately, executed.

Moreover, the Commission finds that permitting the election of a percentage order based on the execution of a previously elected or converted percentage order on the other side of the market is consistent with the Act in that it does not provide discretion to specialists in the handling of percentage orders. Instead, the Commission notes that previously executed percentage orders, regardless of whether initially elected or converted, will trigger the election of percentage orders on the other side of the market. The specialist is not provided any discretion over the process of electing percentage orders on the other side of the market, once a previously elected or converted percentage order has been executed, in accordance with the Exchange's rules.

Finally, the Commission notes that the Exchange's rules will continue to prohibit the election of percentage orders based on the execution of percentage orders on the same side of the market. The Commission believes that this continued prohibition, which will prevent same side percentage orders held by the specialist from being elected by the execution of percentage orders, is appropriate.

B. Proposed Modification to the Conversion Process

The Exchange's proposal also permits the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of $500,000 or more (whichever is less). NYSE Rule 123A.30 currently provides that the specialist may convert a percentage order on a destabilizing tick only where: (i) the transaction for which the order is being converted is for 10,000 shares or more; and (ii) the price at which the converted percentage order is to be executed is no more than ¼ point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.

The Commission notes that by allowing a specialist to convert an order on a destabilizing tick when the transaction being converted is for 10,000 shares or more or represents a quantity of stock having a market value of $500,000 or more, whichever is less, the proposed change will make the size of permitted transactions consistent with the definition of a "block" transaction in NYSE Rule 97. The Commission agrees that the proposed amendment, which will liberalize the requirements of NYSE Rule 123A.30, should facilitate conversion of percentage orders in stocks where the size of the trade has the appropriate market value to qualify as a block transaction, but may not have a share size of 10,000 or more. The Commission notes that the conversion procedures were intended to allow percentage orders to participate immediately with large-sized contra-side orders entering the market.[23] Previously, percentage orders were not eligible for execution until an electing transaction had occurred. As a result, all or part of a large percentage order was elected for execution in a large-size trade's "after-market," where execution of the elected portion could disrupt price continuity.[24] Therefore, the Commission believes that amending the conversion rules to parallel the definition of a block transaction in NYSE Rule 97 will align the rules more closely with the original intent of the conversion procedures.

While the proposal will afford specialists greater opportunity to convert percentage orders on a destabilizing tick, the Commission believes that existing requirements imposed on the specialist when converting percentage orders for execution or quotation purposes are sufficiently restrictive to ensure that the specialist will act in a manner consistent with his market making obligations and Section 11(b) of the Act.[25] In addition, the Commission believes that the limiting and protective provisions incorporated into the Exchange's conversion procedures should ensure that the proposal will not increase the likelihood of fraudulent and manipulative activities by specialists. Therefore, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act.[26]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the NYSE attempts to clarify its proposal, with respect to the effect of the execution of percentage orders previously converted, in response to questions raised by Commission staff. As the NYSE's clarification does not in any way modify its original proposal, the Commission believes that Amendment No. 1 raises no novel issues of regulatory concern. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act[27] to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of all such filings also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–09 and should be submitted by December 30, 1998.

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[23] *See* Securities Exchange Act Release No. 21704 (February 1, 1985) 50 FR 5834 (February 12, 1985) (noticing File No. SR–NYSE–85–1).

[24] For example, if the sale of a block of stock results in a price decline, the subsequent execution of a large percentage buy order elected by the execution of that block transaction could drive the price up again. *Id.*

[25] 15 U.S.C. 78k(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(5).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSE–97–09), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32604 Filed 12–8–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40720; File No. SR–NYSE–98–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Rule 35 ("Floor Employees To Be Registered") and Adopt a New Interpretation to Rule 35

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] ("Act") and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to Exchange Rule 35 ("Floor Employees to be Registered") and a new interpretation with respect to the administration of proposed amended Rule 35. The text of the proposed rule is as follows. Additions are *italicized;* deletions are [bracketed].

Proposed Amendments to Rule 35

Floor Employees To Be Registered

Rule 35. No employee of a member or member organization shall be admitted to the Floor unless he is registered with, *qualified by* and approved by the Exchange, and upon compliance of both the employer and employee with such requirements as the Exchange may determine.

* * * Supplementary Material

.10–.50 No Change

.60 Qualifications for Registration—Unless otherwise determined by the Exchange, each candidate for registration shall qualify by meeting the training requirements and by passing applicable qualification examination(s) as prescribed by the Exchange.

[.60] *.70* No Change in Text

Proposed New Interpretation to Rule 35

Rule 35—Floor Employees to be Registered

/01 Unless otherwise determined by the Exchange, all Floor employees of members or member organizations (i.e., Trading Assistants) shall pass the Trading Assistant Qualification Examination ("Series 25").

New Trading Assistant candidates must complete three months of training, including on-the-job and classroom training, as prescribed by the Exchange, prior to taking the Series 25 Examination. During the three month training period, the Trading Assistant candidate may perform the functions and duties of a Trading Assistant provided that the candidate is properly supervised. However, a new Trading Assistant candidate must complete required training and pass the Series 25 Examination before functioning as an "unsupervised" Trading Assistant (i.e., functioning without the specialized supervision required during the training period).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Prosed Rule Change

1. Purpose

The purpose of the rule change is to revise Rule 35 to require Floor employees of members and member organizations to satisfy prescribed training and qualification examination requirements before being admitted to the Exchange Trading Floor. The proposed rule change will also adopt a new interpretation to Rule 35 to implement the qualification examination requirements for Floor Employees.

Exchange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Currently, the registration process for such Floor employees *i.e.,* Post Clerks and Booth Clerks, also known as Trading Assistants, consists of submission to the Exchange of a completed Form U–4 ("Uniform Application for Securities Industry Registration or Transfer") and the candidate's fingerprints. Under the proposed amendments to Rule 35, these Trading Assistants, will have to be qualified by taking and passing appropriate qualification examination(s) and by meeting prescribed training requirements.

In order to qualify Trading Assistants, the Exchange, in conjunction with a committee of Exchange Members and Trading Assistants, developed a new qualification examination, the Trading Assistant Qualification Examination ("Series 25 Examination"). The Series 25 Examination will ensue that Trading Assistants have the basic knowledge, skills and abilities necessary to perform the functions and carry out the responsibilities of a Trading Assistant. The Series 25 Examination itself is the subject of a separate filing.[3]

The requirement to take and pass the Series 25 examination in order to qualify as a Trading Assistant will apply to all current and prospective Trading Assistants. The proposed new interpretation to Rule 35 will establish that new Trading Assistants will be required to undergo three months of training (including on-the-job and prescribed classroom instruction provided by the Exchange) prior to taking the examination. New Trading Assistants will not be permitted to perform their functions without appropriate supervision until passing the examination. Current Trading Assistants would have one year from implementation of the qualification requirement to pass the examination and do not have to complete classroom training. If a current Trading Assistant fails the Series 25 examination twice, however, he or she must complete classroom training before retaking the examination. The NYSE intends to publish the new interpretation as an Interpretation Memorandum for inclusion in the Exchange's *Interpretation Handbook.*

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[4] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

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[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40721 (November 30, 1998).

[4] 15 U.S.C. 78f(c)(3)(B).

In addition, under Section 6(c)(3)(B) of the Act,[5] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Trading Assistants have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–98–36 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[6]

Margater H. McFarland,

Deputy Secretary.

[FR Doc. 98–32605 Filed 12–8–98; 8:45 am]

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[5] Id.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40739; File No. SR–PCX–98–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to ASAP Members' Access to OptiMark

December 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on November 6, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to change PCX Rule 1.14(a) to reflect that Members with Automated System Access Privileges ("ASAP") shall be entitled to access OptiMark.[3] Below is the text of the proposed rule change. Proposed new language is in *italics*.

* * * * *

Electronic Access Membership

¶ 3085 "Automated System Access Privileges (ASAP)"

Rule 1.14(a). No Change.

(1)–(2) No Change.

(3) The ASAP Member shall be entitled to access to P/COAST, POETS, *OptiMark,* and any other systems approved by the Board of Governors;

(4)–(7) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PCX proposes to amend PCX Rule 1.14(a)(3) to add OptiMark to the list of systems approved for ASAP Members' access. The Exchange proposes to make this change to Rule 1.14(a)(3) to codify that ASAP Members are entitled to access OptiMark.

2. Statutory Basis

PCX believes the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, because it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

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[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 was received on November 27, 1998, the substance of which is incorporated into this notice. Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Michael Walinskas, Deputy Director, Division of Market Regulation, Commission, dated November 25, 1998.

[3] The OptiMark System is a computerized screen-based trading service intended for use by PCX members and their customers to provide automatic order formulation, matching, and execution capabilities in the equity securities listed or traded on the Exchange. The OptiMark System is intended to be used in addition to the Exchange's traditional floor facilities to buy and sell securities on the PCX by allowing PCX members and their customers to submit ranges of trading interest anonymously from their computer terminals. The OptiMark System would then identify specific orders capable of execution and all orders matched by the system would be automatically executed on the Exchange. *See* Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and subparagraph (e)(6) of Rule 19b–4 thereunder.[7] Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until January 2, 1998, more than 30 days from November 6, 1998, the date on which it was filed, the Commission waived the Rule 19b–4(e)(6)(iii) written notice requirement, upon the request of PCX.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX.

All submissions should refer to File No. SR–PCX–98–56 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32665 Filed 12–8–98; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(e)(6).

[8] *See* Amendment No. 1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40734; File No. SR–PCX–98–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Crossed Markets Adjustments

December 1, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 1998, the Pacific Exchange, Inc. "PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 30, 1998, the PCX submitted to the Commission an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to clarify its rules on the automatic execution of option orders when the PCX market and the market of a competing exchange are crossed or locked (*i.e.*, the bid disseminated through the facilities of one exchange is higher than or equal to the offer disseminated through the facilities of another exchange). The change is intended to make consistent the Exchange's rules on the handling of electronic orders in such circumstances. The text of the proposed rule change follows. Additions to the proposed rule are in *italics;* deletions are in [brackets].

Text of the Proposed Rule Change

¶ 5231 Automatic Execution System

Rule 6.87(a)–(c)—No Change.

(d) Auto-Ex NBBO. The Options Floor Trading *C*[c]ommittee ("OFTC") may designate electronic orders in an option issue to receive automatic executions at prices reflecting the national best bid or offer ("NBBO"), provided that the OFTC may designate, for an option issue, that an order will default for manual representation in the trading crowd if[: (1)] the order would be executed at a price that is more than one trading increment away from the PCX market price[; or (2) the NBBO is crossed or locked].

(e) Crossed or Locked Markets. The OFTC may designate, for an option issue, that an order will default for manual representation in the trading crowd if the NBBO is crossed or locked.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 8, 1998, the Commission approved a PCX rule change regarding the automatic execution of option orders.[4] The rule change provides that the Exchange's Options Floor Trading Committee ("OFTC") may designate electronic orders in an option issue to receive automatic executions at prices reflecting the National Best Bid or Offer

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was originally filed pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated November 27, 1998 ("Amendment No. 1").

[4] Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (SR–PCX–98–27).

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("NBBO").[5] It further provides that the OFTC may designate, for an option issue, that if the NBBO is crossed (*e.g.*, 6⅛ bid, 6 asked) or locked (*e.g.*, 6 bid, 6 asked), then customer orders would exit the automatic execution system of the Exchange and default for Floor Broker representation in the trading crowd.[6]

After the Commission approved File No. SR–PCX–98–27, the PCX has become aware that PCX Rule 6.87(d), the rule that the proposal changed, could imply that the OFTC can designate an option issue for Floor Broker representation in crossed and locked markets only if the issue is eligible to receive automatic execution at the NBBO. The Exchange, however, intended to allow the OFTC to designate any issue for Floor Broker representation in crossed and locked markets. Accordingly, the Exchange is now proposing to modify Rule 6.87 to clarify that the OFTC may designate, for any option issue, that if the NBBO is crossed or locked, then customer orders will default for Floor Broker representation in the trading crowd regardless of whether the Exchange's Auto-Ex system is set to execute orders at prices reflecting the NBBO.

The Exchange is planning to implement a systems change to cover the potential for Floor Broker representation of option orders during crossed or locked markets. However, before effecting that change, the Exchange has determined to file this proposal to clarify the Exchange's procedure on the handling of option orders when the NBBO is crossed or locked. Accordingly, upon approval of this proposal, the Exchange will be in a position to effect the appropriate systems changes as quickly as possible.

As with PCX–98–27, the Exchange believes that its proposal, if implemented, will serve to protect public customers from receiving inferior prices on their orders in situations where the NBBO is crossed or locked. For example, if the PCX's market is 5 bid, 5¼ asked, and Exchange B's market is 4 bid, 4¼ asked, the NBBO will be 5 bid, 4¼ asked. If the 5 bid is based on a public customer order for 10 contracts, and that order is automatically executed, the customer would be deprived of an opportunity to cancel the order at 5 and buy 10 contracts at Exchange B at 4¼. This could occur regardless of whether the PCX Auto-Ex is using the NBBO or PCX quotes. Moreover, during the time that the market is crossed, it is not immediately clear whether the crossed markets arise from errors resulting from communication or system problems, keystroke errors, quotation dissemination delays, or are in fact true markets. The default mechanism will give Floor Brokers in the trading crowd an opportunity to ascertain whether the markets are erroneous and to assure that customers receive the best possible price.

While these situations occur very infrequently, the Exchange believes that investors should be protected through the use of human intervention. During these times (if so designated by the OFTC for a particular option issue), public customer orders will be manually represented in the trading crowd by Floor Brokers and handled in a manner that is consistent with the Floor Brokers' best execution obligations.[7]

2. Basis

The proposal is consistent with Section 6(b)(5)[8] of the Act because it is designed to facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–55 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32666 Filed 12–8–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40728; File No. SR–PHLX–98–37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Rule 220 Regarding Stopping Stock

November 30, 1998.

I. Introduction

On September 28, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Rule 220, which concerns stopping stock.

The proposed rule change was published for comment in the **Federal**

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[5] *Id.*

[6] *Id.*

[7] *See* PCX Rule 6.46 ("Responsibilities of Floor Brokers").

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Register on October 29, 1998.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Phlx proposes to adopt Rule 220 regarding stopping stock.[4] This rule codifies and enhances the procedures for stopping stock on the Exchange floor outlined in Phlx Advice A–2.[5]

Under the proposed rule change, an agreement by a Phlx specialist to "stop" securities at a specified price will constitute a guarantee by a member or member organization of the purchase or sale of the securities at the specified price or better.[6] Further, the specialist will be permitted to stop stock upon the unsolicited request of another member when the member is acting on behalf of either a public customer account or an account in which the member or another member has an interest. After granting the stop, the specialist must display the order in his or her quote, including representative size, and reduce the spread by bidding (offering) at a price higher (lower) than the prevailing bid or offer if not executed immediately after being stopped.[7] This procedure applies in other than minimum variation markets, that is, where the spread in the quotation is greater than twice the minimum variation.

Proposed Rule 220(b)(2) will prohibit the specialist from trading for his own account with any order he stopped while he is in possession of an order at an equal or better price than the price of the stopped order. The specialist must exercise due diligence to match the stopped order with such other order in his possession in accordance with Exchange Rules 119 and 120.

Proposed Rule 220(c) will provide that the member or member organization which agreed to stop the securities in order to obtain a favorable price will either provide price improvement or guarantee the stop price. If the order is executed at a less favorable price, then the member will be liable for the adjustment of the difference between the two prices.

Under proposed Rule 220(d), stopping orders in minimum variation markets will occur primarily when the bid (offer) is at a price higher (lower) than the primary market for the day. Specifically, the rule will provide that in minimum variation markets, the specialist must change his or her quoted bid (offer) in order to reflect the size of the order being stopped. In cases of minimum variation markets, a stopped order to buy (sell) will be filled: (1) after a transaction takes place on the primary market at the stop price or higher (lower) or (2) when the share volume on the Exchange at the bid (offer) is exhausted. All orders stopped in minimum variation markets shall be executed by the end of the trading day on which the order was stopped at no worse than the stopped price. In granting a stop in a minimum variation market, a specialist should change the quoted bid (offer) size in order to reflect the size of the order being stopped.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[8] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.[10]

In approving Phlx Advice A–2, the Commission urged the Phlx to submit a proposed rule which would ensure the proper handling of stopped stock.[11] The Commission suggested that any such rule should include, *inter alia,* the obligations of the member who agrees to grant the stop, a policy for determining the price at which the order should be executed and procedures for minimum variation markets that are consistent with the rules of priority, parity and precedence. The proposed rule change is fully responsive to the Commission's suggestions.

The practice of stopping stock enables exchange specialists to offer primary market price protection, an important price improvement function of specialists, by executing orders at better prices away from the primary market. Further, the practice of stopping stock provides the opportunity for the specialist to improve upon the market and narrow the bid/offer spread. The Commission believes the requirements of Rule 220, in particular, should increase the likelihood that a customer whose order is stopped will receive price improvement. The stop order procedures codified in Rule 220 provide that where "the spread in the quotation is greater than the minimum variation of trading in the stock, the specialist is required to reduce the spread by bidding (offering) at a price higher (lower) than the prevailing bid or offer. Specifically each order on the book which has been stopped by the Specialist must be displayed, including a representative size, at its price or better if not executed immediately after being stopped."[12] Accordingly, the Commission believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PHLX–98–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32607 Filed 12–8–98; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-European Union Transatlantic Economic Partnership

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and Request for Comments.

SUMMARY: Under the Transatlantic Economic Partnership (TEP) initiative, the Governments of the United States and the European Union (EU) have agreed to explore and identify possible sectors in which the potential to extend

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[3] Securities Exchange Act Release No. 40593 (October 22, 1998), 63 FR 58083 (File No. SR–PHLX–98–37).

[4] The proposed stopping stock rule is substantially similar to the stopping stock rules adopted by the Boston Stock Exchange ("BSE") and the Chicago Stock Exchange ("CHX"). *See* BSE Chapter II, Section 38 and CHX Article XX, Rule 28.

[5] *See* Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994).

[6] See Proposed Rule 220(a).

[7] See Proposed Rule 220(b)(1).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994).

[12] *See* Proposed Rule 220(b)(1).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

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the U.S.–EU mutual recognition agreement (MRA) appears feasible and desirable. The United States is considering proposing to the EU that initially at least three new sectors be added to the U.S.–EU MRA: road safety equipment, marine safety equipment and calibration services. Such a proposal may be made as early as December 15, 1998, in preparation for the U.S.–EU Summit to be held on December 18, 1998. The Office of the United States Trade Representative (USTR) seeks public comment on the desirability and feasibility of negotiating mutual recognition agreements in these sectors.

DATES: Any initial comments should be submitted no later than December 15, 1998, in light of the possibility that the issues might arise in the context of the U.S.–EU Summit meeting on December 18, 1998. Additional comments should be submitted no later than January 15, 1999.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Ralph Ives, Deputy Assistant U.S. Trade Representative for Europe and the Mediterranean, (202) 395–4620; or James Sanford, Director for European Affairs and Technical Barriers, (202) 395–3320.

SUPPLEMENTARY INFORMATION: On May 18, 1998, President Clinton and his EU counterparts issued a joint statement announcing the TEP. [**Federal Register** notice, June 9, 1998, describes the TEP.] On November 9, 1998, the United States and the EU reached agreement on a joint "Action Plan," as called for in the May 18 TEP statement. A copy of the Action Plan is available on USTR's website (www.ustr.gov) or upon request from Ms. Gloria Blue.

The U.S.–EU MRA was negotiated over a four year period. The MRA was signed on May 18, 1998. On October 30, 1998, the United States and the EU exchanged letters notifying the completion of their respective internal procedures, thereby allowing the MRA to enter into force on December 1, 1998.

An MRA generally allows conformity assessment—e.g., testing, inspecting, certifying—to be performed in the United States to standards and regulations of the other country, and vice versa, which reduces cost and saves resources. Under an MRA, the United States will maintain its current high level of health, safety, and environmental standards. The existing sectoral annexes of the U.S.–EU MRA cover the following products and associated conformity assessment procedures: (1) telecommunications and information technology equipment; (2) network and electromagnetic compatibility (EMC) for electrical products; (3) electrical safety for electrical products; (4) good manufacturing practices (GMP) for pharmaceutical products; (5) GMP and product assessment for certain medical devices; (6) and safety of recreational craft. Each sectoral annex contains specific provisions with respect to the products and associated conformity assessment procedures covered in the annex.

An *initial* tranche of additional sectors to propose to the European Commission of the EU might include the following:

Marine Safety Equipment

The U.S. Coast Guard of the Department of Transportation administers conformity assessment requirements for marine safety equipment used on merchant ships, which includes survival craft and other lifesaving equipment, as well as fire protection equipment and systems. The EU has similar conformity assessment requirements. Both conformity assessment systems are based on the same standards under the International Convention for the Safety of Life at Sea (SOLAS).

Road Safety Equipment

The U.S. Federal Highway Administration (FHWA), in the Department of Transportation, administers an acceptance program for equipment purchased by U.S. authorities with federal or other highway funds. The road safety equipment sector includes such devices as guardrails, bridge rails, median barriers, crash cushions, breakaway supports, work zone devices as well as other devices used on highways to ensure safety of errant motorists. The FHWA accepts test and evaluation procedures by which all manufacturers can qualify to sell in the U.S. market. The EU maintain similar requirements under its Construction Products Directive. Both systems involve third-party tests and acceptance (certifications).

Calibration Services

As the national metrological authority for the United States, the National Institute for Standards and Technology (NIST) generates measurement criteria used by U.S. regulatory agencies and the marketplace for such products as avionics and other electronic equipment. A mutual recognition agreement would recognize the equivalence of NIST's generated measures with those developed by EU national laboratories.

Public Comments

All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW, Room 122, Washington, DC 20508.

The Chairman of the TPSC invites written comments from interested persons on the feasibility and desirability of negotiating MRAs in each of the sectors identified above. Comments are invited in particular on: (a) the benefits for pursuing an MRA in each of the sectors; and (b) any specific concerns regarding an MRA in any of the sectors, particularly any concerns regarding public safety considerations.

All submissions must be in English and should conform to the information requirements of 15 CFR Part 2003. Interested persons should submit initial written comments, particularly any objections to a proposed sector, in five (5) typed copies, as soon as possible, and by no later than December 15, 1998. All additional comments should be submitted by no later than January 15, 1999. Comments should state clearly the position taken and should describe the specific information (including data, if possible) supporting that position.

If the submission contains business confidential information, 5 copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection at the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 Seventeenth Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The reading room is open to the public by appointment only from

9:30 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–32627 Filed 12–8–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at General Mitchell International Airport, Milwaukee, Wisconsin

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to C. Barry Bateman, Airport Director of the General Mitchell International Airport, Milwaukee, Wisconsin at the following address: 5300 S. Howell Ave., Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Milwaukee under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 9, 1998, the FAA determined that the application to use the revenue from a PFC submitted by County of Milwaukee was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 12, 1999.

The following is a brief overview of the application.

PFC application number: 99–04–U–00–MKE.

Level of the PFC: $3.00.

Actual charge effective date: May 1, 1995.

Proposed charge expiration date: June 1, 2005.

Total estimated PFC revenue: $2,665,000.00.

Brief description of proposed project(s): Storm water and de-icing system design and construction; Runway 7L/25R extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 air taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Milwaukee.

Issued in Des Plaines, Illinois, on December 2, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–32732 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rochester International Airport, Rochester, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rochester International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Steven W. Leqve, Airport Manager of the City of Rochester, Rochester, MN at the following address: Helgerson Drive Southwest, Rochester, MN 55902.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Rochester under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4350. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rochester International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 24, 1998 the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Rochester was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 25, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

PFC application number: 99–02–C–00–RST.

Proposed charge effective date: April 1, 1999.

Proposed charge expiration date: November 30, 2009.

Total estimated PFC revenue: $3,912,987.00.

Brief description of proposed projects: Terminal.

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Improvements; Extend Runway 2/20; Acquire Snow removal Equipment; Update storm water protection plan; PFC Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rochester.

Issued in Des Plaines, Illinois, on December 2, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–32733 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 21, Notice No. 1]

Northwestern Pacific Railroad; Emergency Order to Prevent Operation of Trains on Northwestern Pacific Railroad's Trackage From Arcata, California, to Mile Post 63.4 Between Schellville and Napa Junction, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Northwestern Pacific Railroad (NWP) of Eureka, California, to discontinue operation by anyone of trains on the NWP rail line from mile post 295.5 at Arcata, California to mile post 63.4 between Schellville, California and Napa Junction, California until the NWP inspects and properly repairs its track and grade crossing signals, and it trains its employees how to properly maintain the safety of its track and grade crossing signals.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may impose such "restrictions and prohibitions . . . that may be necessary to abate the situation." (*Ibid.*)

Background

The NWP operates on a 286-mile line between mile post 295.5 near Arcata, California and mile post 63.4 between Schellville, California and Napa Junction, California. The North Coast Railroad Authority, a California public agency formed pursuant to California Government Code Section 93000 *et seq.*, owns and operates that portion of the NWP between Healdsburg, mile post 68, and Arcata. Another portion over which the NWP operates and for which it is responsible for maintenance, Healdsburg to mile post 63.4 near Napa Junction, is owned by the Northwestern Pacific Railroad Authority, a joint powers agency representing the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and the North Coast Railroad Authority. Operations are currently being conducted under contract by Rail-Ways, Inc.

The majority of NWP's operations involve the transportation of freight; however, in the past, the railroad also has conducted passenger operations between Willits and Healdsburg. The NWP connects to the California Northern Railroad, another freight railroad, at Schellville. It also connects to the California Western Railroad, which operates both freight and passenger trains, at Willits. The California Western operates over about one mile of NWP trackage in order to interchange freight operations with the NWP at Willits and to reach its passenger terminal in Willits.

The NWP traditionally hauls mostly timber and wood products, but it also hauls some hazardous materials, especially over the portion of the line south of Willits. Maximum authorized train speed on the line is 30 m.p.h., although train speed over that portion of the line affected by Emergency Order No. 14 is restricted to 10 m.p.h.

The NWP is subject to the jurisdiction of FRA. Portions of its operations currently are subject to Emergency Order No. 14 issued on June 7, 1990, when the line of railroad was known as the Eureka Southern Railroad. Emergency Order No. 14 remains in effect from mile post 145.5 near Willits to Ft. Seward, mile post 216.6 It prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. Concurrent with this emergency order, FRA is amending Emergency Order No. 14 to prohibit the transportation of hazardous materials until the track complies with class 1 track standards.

Northern Portion, Willits to Arcata

In 1990, FRA became concerned about the track conditions on the NWP, then known as the Eureka Southern Railroad, between Willits and Eureka. At the time, the railroad hauled over the line passengers and liquified petroleum gas, a regulated hazardous material. FRA found that the track between Willits and Eureka did not meet class 1 track standards and posed an immediate threat of death or injury to persons. FRA issued Emergency Order No. 14 under which the Eureka Southern Railroad was prohibited from hauling passengers until the track met class 1 track standards and from hauling hazardous materials until the track either met class 1 standards or was designated by the railroad as excepted. The excepted track provision, found at 49 CFR 213.4, limits the hauling of hazardous materials to five cars per train and places other restrictions on the designated track.

On October 1, 1990, because of improved conditions, FRA lifted Emergency Order No. 14 between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka. Since 1990, the NWP has complied with the terms of the emergency order for the remainder of the affected area by discontinuing hauling passengers and hazardous materials between Fort Seward and Willits.

The northern portion of the NWP has been subject to flooding for the past several years. Due to flooding which occurred within the last year, the NWP has discontinued operations on the northern portion from Nashmead (mile post 175.5) to Arcata. The railroad continues to operate on the northern portion between Willits and Nashmead. The NWP has applied to the Federal Emergency Management Agency (FEMA) for funding for repair of flood damage that occurred in 1995, 1997 and 1998. As a result of the application, FEMA, with FRA's assistance, recently conducted a survey of track conditions between Willits and Eureka. FEMA has agreed to provide $1 million to NWP for repair of flood damage.

Southern Portion, Willits to Mile Post 63.4

In 1997, FRA, in partnership with the California Public Utilities Commission

(CPUC), reviewed NWP's compliance with Federal safety statutes and regulations on the portion of the line south of Willits. The review revealed widespread noncompliance similar to noncompliance that FRA and the CPUC previously had discovered on this line in the past several years. In conducting numerous inspections of the NWP in the previous years, FRA and CPUC inspectors identified hundreds of defective track conditions, many of which became the basis for recommendations for civil penalty assessments against the railroad. The railroad frequently failed to make corrections even after defective conditions were identified by FRA or the CPUC.

The review conducted by FRA and CPUC also revealed that the NWP was not performing required periodic tests of its locomotive air brake equipment, and that all of the railroad's locomotives exhibited defective conditions which posed a hazard to the personal safety of NWP personnel operating the equipment. FRA and the CPUC concluded that the NWP was in need of a system-wide program to train its employees to recognize safety violations and to perform necessary repairs promptly and correctly.

On June 11, 1997, representatives of FRA and the CPUC met with NWP's executive director, Dan Hauser, and its general manager, Jack Tremain, as well as two members of the railroad's Board of Directors. The group agreed to and signed a Safety Compliance Agreement under which the NWP would perform specified repairs and employee training by determined deadlines. However, one year after the agreement was executed, the NWP had performed only three of the 11 action items identified by the Compliance Agreement. On June 28, 1998, the Federal Railroad Administrator issued a Compliance Order based mostly upon the terms of the prior Agreement. In summary, the Compliance Order, which remains in effect, directs the NWP to:

1. Cease passenger operations between Willits and Schellville until the track is repaired to class 1 track standards;
2. Limit hauling of hazardous materials between Willits and Schellville to two cars per train, and prohibit hauling of any hazardous materials over trackage that is within 100 feet of a bridge or public road and which does not meet class 1 track standards;
3. Develop and furnish to FRA and the CPUC a track maintenance plan and program;
4. Establish a program of employee training on the Federal Track Standards;
5. Certify abilities of each individual conducting track inspections;
6. Establish a program of employee training regarding inspections of locomotive power and equipment;
7. Certify abilities of each individual conducting inspections of locomotive power and equipment;
8. Certify inspection reports of locomotive power and equipment inspections;
9. Certify that proper repairs have been made of all defects found as a result of locomotive power and equipment inspections;
10. Perform testing on passenger and freight cars relative to single car tests and repair tests.

FRA reviewed NWP's compliance with the Compliance Order in September and October, 1998, and found that the railroad is not following many of the Order's directives. Track inspections conducted by FRA and the CPUC discovered that the trackage within 100 feet of bridges and public road between Willits and mile post 63.4, over which hazardous material are hauled, does not meet class 1 track standards. The railroad has failed to develop a track maintenance program, and it dropped its training of track inspection personnel after only two classes of a 24-class training program. Furthermore, the NWP has an inadequate number of employees who are qualified to inspect track.

Recent Safety Surveys

In light of the NWP's failure to comply with the Compliance Order after several months, FRA and the CPUC surveyed operations on the southern portion of the railroad in September and October, 1998, to assess its overall safety. In October and November, 1998, FRA inspectors accompanied inspectors from the FEMA on surveys of track damage caused by past flooding on the northern portion. In both portions, the inspectors found numerous defects that pose an immediate hazard of death or injury to persons.

Grade Crossing Signals

FRA's regulations addressing grade crossing signal system safety, found at 49 CFR part 234, require railroads to repair, "without undue delay," any essential component of a grade crossing signal that fails to perform its intended function, and until the repair is made, the railroad is to provide alternative measures of safeguarding the crossing. *See* 49 CFR 234.207. These temporary measures, delineated in 49 CFR 234.105, provide for manual flagging by railroad personnel whenever a train must occupy a grade crossing where the signals are not properly functioning. Properly functioning grade crossing signals, and temporary flagging in the event of a signal failure, are absolutely essential to the safety of the grade crossing. Trains traveling through a grade crossing, even at very slow speeds, are not able to stop suddenly to avoid a car in the crossing. Therefore, motorists attempting to cross a grade crossing must be adequately warned about a train's approach so that a potentially deadly accident can be averted.

In recent inspections of grade crossings on the NWP and from information provided by the railroad itself, FRA and CPUC inspectors found that 32 of the railroad's 127 grade crossing signals are not operational. While the railroad has instructed train crews to stop and flag each crossing where the signal is out of service, FRA and CPUC inspectors found one instance when a train crew did not perform this safety duty. Furthermore, many of the grade crossing signals have been out of service for several months, in violation of the Federal regulations' requirement to repair the signals "without undue delay."

Many of the grade crossings where the signals are out of service are situated in towns along the NWP line. In Petaluma, one grade crossing serves 22,000 vehicles per day, while another serves 13,000 every day. The NWP operates four to six train movements through these crossings each day, Monday through Friday. At other crossings where the grade crossing signals are out of service, the daily vehicle count ranges from 200 to 6,000. Vehicles in these counts include trucks carrying hazardous materials, including flammable substances.

FRA and CPUC inspectors also found that NWP employees generally lack the supervision, knowledge, test equipment, and supplies necessary to adequately maintain the grade crossing signals. The railroad's two signal maintainers have no signal standards or instructions, nor are they knowledgeable about all necessary signal maintenance. They do not have proper test equipment, such as meters, meggers, relay testers, and shunts. Tests required by FRA's grade crossing safety regulations are past due at all 127 grade crossings, including relay, insulation resistance, and warning tests. In addition, the NWP lacks sufficient parts and materials to adequately maintain the warning system. Numerous NWP circuit plans are out-dated, illegible, or simply non-existent. They need to be corrected, redrawn , and in some cases, redesigned, yet the railroad lacks procedures to correct or redraw circuit plans.

Track Safety

FRA's track safety regulations, found at 49 CFR part 213, prescribe minimum safety requirements for railroad track. There are six classes of track defining maximum speed and minimum maintenance requirements. By designating track as a certain class, a railroad commits to maintaining that track to the standards established by the track safety regulations for that class. Much of the NWP's trackage from Willits to Schellville is designated as class 2 track. However, the numerous track defects found by FRA and the CPUC, as well as the NWP's apparent lack of commitment to properly repair the track, indicate that much of the track does not meet even the standards for class 1, the lowest class of track.

FRA and the CPUC conducted track inspections on the southern portion of the NWP between September 28 and October 15, 1998. A total of six inspections covered the line from mile post 63.4 between Schellville and Napa Junction to Willits at mile post 139.5. Inspectors identified 298 defective conditions in 148 miles of track. The majority of the defects (254) were defective crosstie conditions, including defective joint ties and ties not effectively distributed to support 39 feet of track. In many places, the ties were broken, split, or impaired to the extent that they allowed the ballast to work through. They could not hold spikes and they were allowing the tie plates or the base of the rail to move laterally more than a half inch.

These defects pose particularly serious threats to safety. Effective ballast and crossties provide the lateral and vertical support of the rail to prevent trains from derailing. Without this support, the track gage, the distance between the inside faces of the rail heads, may become too wide or too tight. Gage that is either wider or narrower than allowed by FRA regulation greatly increases the possibility of derailment due to car or locomotive wheels dropping off the rails.

The FRA and CPUC track inspectors also found 12 areas where water carrying facilities associated with the track were inadequate to perform proper drainage. Two of these drainage facilities are associated with railroad bridges. At one location, a wooden box culvert has collapsed. Under the regulations (49 CFR § 213.33) each drainage facility associated with a track structure must be kept free of obstruction to accommodate expected water flow for the area it serves. If drainage surrounding the track is not adequate, the condition can lead to wash-outs which will disturb the lateral and vertical support of the rail causing wide or tight gage and possible derailments. Adequate drainage is especially important for the NWP during the winter months when rainfall typically is greater.

Finally, the track safety regulations require that vegetation immediately adjacent to the track bed must be controlled so that it does not pose a fire hazard, obstruct visibility of signs and signals, interfere with railroad employees' trackside duties, prevent proper functioning of signals, or prevent employees from inspecting moving equipment. See 49 CFR 213.37. FRA and CPUC inspectors report that in many areas along the NWP trackage they inspected, the vegetation obstructs any view of the track structure. Some vegetation creates a fire hazard to timber bridges, trestles, and wooden box culverts. Other vegetation obstructs the visibility of signs and signals along the right-of-way and at grade crossings. While vegetation naturally occurs and re-occurs along any railroad track, it cannot be allowed to flourish to the extent that it inhibits the safe operation of the railroad. Vegetation that has been allowed to grow to the point where signals cannot operate properly or cannot be seen, or where it prevents railroad personnel from inspecting the track, or where it becomes conducive to setting fire to bridges and other wooden track structures, poses an imminent threat to the safety to railroad employees and to the traveling public.

Between November 4 and November 13, 1998, FRA and FEMA inspectors surveyed 262 separate locations on the northern portion of the railroad that the NWP identified as storm damaged. The inspectors found numerous locations where proper drainage is not possible because the drainage facilities are plugged or in disrepair or because ditches are plugged, overgrown or inadequate. The area between Willits and Arcata is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate the flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install the culverts at the correct depth or angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is quickly crushed by the weight of work trains. It is not likely that the drainage facilities in place will be adequate to withstand the next rainy season this winter.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. The FRA and FEMA inspectors found numerous locations where the track surface, alignment, and crossties were unacceptable for class 1 track standards. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations, the vegetation poses a fire hazard to track carrying structures.

Finding and Order

The results of the surveys by FRA, CPUC, and FEMA inspectors of tracks and signals along the NWP line have led FRA to conclude that continued use of this rail line poses an imminent and unacceptable threat to public safety. Furthermore, a past pattern of failure by the NWP to comply with Federal railroad safety laws and regulations persuades FRA that reliance upon the cooperation of the NWP to make the necessary repairs to the track and to the signals on any part of its rail line is inadequate to protect public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of 49 U.S.C. § 20104, delegated to me by the Secretary of Transportation (49 CFR § 1.49), it is ordered that the Northwestern Pacific Railroad shall discontinue, and shall not permit, the operation of trains over its trackage between mile post 295.5 near Arcata and mile post 63.4 between Schellville and Napa Junction while this Emergency Order remains in effect. This Emergency Order is not meant to prohibit the operation of work trains operated for the specific and sole purpose of effecting repairs on the railroad. Maximum speed of such train movements shall be 10 m.p.h.

Relief

The NWP may obtain full relief from this Emergency Order by performing the following requirements:

(1) Properly repair and inspect all grade crossing signals and certify to the Federal Railroad Administrator that all necessary repairs and inspections have been performed and that all required tests are up-to-date.

(2) Adopt a set of grade crossing signal standards and instructions acceptable by FRA. The standards and instructions should be submitted in writing to the Regional Administrator

for Region 7 who will notify the NWP within 14 days of the submission whether or not the standards and instructions are approved. If they are not approved, the Regional Administrator will describe what additional measures must be taken to secure approval.

(3) Update, correct and/or redraw circuit plans for each grade crossing signal system to meet compliance with 49 CFR §§ 234.201 and 234.203. A list of locations of the updated, corrected or redrawn circuit plans should be submitted to the Regional Administrator for Region 7.

(4) Provide proper and adequate test equipment for signal maintainers.

(5) Repair all track not subject to Emergency Order No. 14 to class 1 track standards as detailed in 49 CFR Part 213. [Note: Emergency Order No. 14 already requires the Northwestern Pacific Railroad to repair all track subject to that order to class 1 track standards or designate the track as excepted track in accordance with 49 CFR 213.4. By separate notice, Emergency Order No. 14 is being amended to require repair to class 1 track standards for the hauling of passengers and all hazardous materials. Otherwise, the railroad may designate the track still subject to that order as excepted.]

(6) Clear all vegetation from drainage facilities and away from signs and signals and track bed so that the track meets the requirements of 49 CFR 213.37;

(7) Furnish FRA with a 12-month track maintenance plan that includes, at a minimum the number and location (mile by mile) of crossties to be installed, location and extent of rail surfacing, location and nature of drainage facility maintenance, location and nature of vegetation control, extent of rail replacement, schedule for accomplishing programs, and criteria used to determine the location and extent of tie renewal and replacement (e.g., traffic density, track inspection data, and accident history).

(8) Establish a program of employee training on the Federal Track Standards to ensure that employees performing inspection, maintenance, and restoration work are qualified in accordance with 49 CFR 213.7. The training program shall ensure that track inspectors, track foremen, and first level track supervisors can assure compliance with the requirements of 49 CFR part 213. FRA is to be furnished a copy of the training program.

(9) Certify in writing that each individual conducting track inspections has sufficient knowledge, skills, and ability to successfully conduct the types of inspections which will be performed by that individual. Records of that certification are to be maintained by the railroad.

(10) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met. Within 30 days of the notification, FRA will conduct inspections of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Partial Relief

In order for FRA to consider granting partial relief from this Emergency Order, the NWP must first meet all of the system-wide requirements, i.e., requirements 2, 4, 7, 8, and 9. The NWP may then obtain partial relief for any portion of the line for which all of the requirements of this Emergency Order are met. NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of this Emergency Order have been met for a specified section of the railroad's line. Within 30 days of the notification, FRA will conduct inspections of that specified portion of the line, and within seven days of the inspections, will inform the railroad in writing whether this Emergency Order is lifted for that specified portion. If FRA does not lift the order for the specified portion, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 6:01 p.m. (PST) on November 27, 1998, and apply to all operations of trains on or after that time. Notice of this Emergency Order will be provided by publishing it in the **Federal Register**. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, D.C. on November 25, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–32649 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 14, Notice No. 5]

Northwestern Pacific Railroad; Amendment to Prohibit the Transportation of Hazardous Materials between Willits, California and Ft. Seward, California

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this amendment to Emergency Order No. 14 prohibiting the Northwestern Pacific Railroad (NWP) of Eureka, California, from transporting, or permitting anyone to transport, hazardous materials over any track from mile post 145.5 near Willits, California to mile post 216.6 near Ft. Seward, California.

Background

FRA issued Emergency Order No. 14 on June 7, 1990, when the railroad was known as the Eureka Southern Railroad. The Emergency Order prohibits transportation of passengers until the track complies with class 1 track standards and prohibits transportation of hazardous materials until the track complies with class 1 track standards or is designated by the railroad as excepted track. The Emergency Order originally covered the rail line from Willits to

Eureka, mile post 284.1. However, because of improved conditions, FRA lifted the Emergency Order between mile posts 142.5 and 145.5, near Willits, and between mile posts 216.6 and 284.1, Fort Seward to Eureka on October 1, 1990. The Emergency Order remains in effect from mile post 145.5 near Willits to mile post 216.6, Ft. Seward. FRA granted further partial relief in January, 1997, by allowing the NWP to haul hazardous materials over track not designated as excepted when the materials hauled were for construction, maintenance, and operation of the railroad.

In conjunction with the California Public Utilities Commission (CPUC) and the Federal Emergency Management Agency (FEMA), FRA conducted in September, October, and November 1998, safety surveys of the entire NWP line from mile post 295.5 near Arcata to milepost 63.4 between Schellville and Napa Junction. The surveys revealed unsafe conditions and practices which, in FRA's judgment, pose an emergency situation involving a hazard of death or personal injury. FRA found that 32 of the railroad's 127 grade crossing signals are not operational, endangering any motorist attempting to cross a grade crossing without adequate warning about a train's approach. The surveys also showed widespread track safety defects including numerous defective crossties, improper drainage, and overgrown vegetation posing a fire hazard and obstructing visibility of signs and signals. Most important, FRA found locations where the conditions for movement over excepted track were not being met.

The area between Willits and Eureka, which encompasses the area affected by Emergency Order No. 14, is noted for its constant earth movement, mud flows, sinks and heaves. Most of the repairs that have been made by the NWP to alleviate flooding problems have been temporary in nature. At some locations, the railroad inserted new culverts to drain water from ponded areas but failed to install culverts at the correct depth and angle. In numerous locations, the NWP has used plastic and rubber pipe, rather than metal pipe, which is crushed quickly by the weight of work trains.

Because of inadequate drainage and poor subgrade, the railroad has difficulty maintaining proper surface and alignment of track. In addition, overgrown vegetation at many locations brushes rolling stock and prevents railroad personnel from inspecting the track. In some locations the vegetation poses a fire hazard to track carrying structures.

In response to these findings, FRA is issuing, concurrent with this amendment, Emergency Order No. 21, which prohibits the NWP from operating, or permitting operations, over its rail line until the railroad inspects and repairs all of its grade crossing signals and repairs the track to class 1 track standards. The requirements of Emergency Order No. 21 apply to the entire railroad, including the portion of the line still governed by Emergency Order No. 14, with the exception of the requirement that the track be repaired to class 1 track standards for all rail traffic.

Until now, Emergency Order No. 14 has permitted movement of hazardous materials over excepted track, consistent with the conditions of 49 CFR § 213.4. However, the same conditions that have caused FRA to prohibit hazardous materials traffic on excepted track elsewhere on the line also exist on the portion of the line still covered by Emergency Order No. 14. Therefore, we are amending Emergency Order No. 14 to prohibit movement of hazardous materials, except in work trains, until the track is brought to class 1 standards. Emergency Order No. 14, as amended here, remains in effect, which allows the NWP to haul non-hazardous freight between Willits and Ft. Seward over excepted track, without repairing the track to class 1 track standards. With Emergency Order No. 14 still in place, NWP is allowed to operate with slightly fewer restrictions than in other parts of the railroad over a portion of its line where the general population is smaller and rail traffic is less extensive.

Amendment to the Order

I find that the unsafe conditions described above compel me to address the hazards presented by hauling hazardous materials over excepted track. Accordingly, I order that the NWP may not haul materials required by 49 CFR Parts 171–179 to be placarded as hazardous over the portion of its line still covered by Emergency Order No. 14 until such trackage meets class 1 standards. The railroad may continue to haul non-hazardous freight over the track once the track is designated as excepted. This amendment is not meant to prohibit the hauling of hazardous materials in work trains for the specific and sole purpose of effecting repairs on the railroad.

Relief

The NWP may obtain full relief from this amendment and all of Emergency Order 14 by fulfilling the following requirements:

1. Repair the track to class 1 track standards.
2. Obtain approval from the Federal Railroad Administrator that all of the requirements of Emergency Order No. 14 have been met and properly performed. To obtain relief, NWP should inform in writing the Federal Railroad Administrator, with a copy to the Regional Administrator of FRA's Region 7, that it believes all of the requirements of Emergency Order No. 14 have been met. Within 30 days of notification, FRA will conduct inspections of the line and within seven days of the inspections, will inform the railroad in writing whether Emergency Order No. 14 is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of Emergency Order No. 14.

Penalties

Any violation of Emergency Order No. 14, as amended, shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C § 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C § 20112.

Effective Date

This amendment shall take effect at 12:01 (PST) on November 27, 1998, and apply to all operations of trains on or after that time. Copies of this amendment Order will be sent by mail or facsimile prior to publication to: Northwestern Pacific Railroad Authority through the North Coast Railroad Authority Board of Directors, the Golden Gate Bridge, Highway and Transportation District, and Marin County. A copy will also be sent to Rail-Ways, Inc.

Review

Opportunity for formal review of this amendment will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211.

Issued in Washington, D.C. on November 25, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–32650 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4803]

Notice of Receipt of Petition for Decision that Nonconforming 1988–1989 Volkswagen Transporter Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1988–1989 Volkswagen Transporter multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1988–1989 Volkswagen Transporter MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 8, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1988–1989 Volkswagen Transporter MPVs are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1988–1989 Volkswagen Vanagon MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Volkswagenwerke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1988–1989 Volkswagen Transporters to 1988–1989 Volkswagen Vanagons, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that 1988–1989 Volkswagen Transporters, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1988–1989 Volkswagen Vanagons, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1988–1989 Volkswagen Transporters are identical to 1988–1989 Volkswagen Vanagons with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Motor Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32591 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4801]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1991 BMW 320I Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1991 BMW 320I passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1991 BMW 320I passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 8, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1990–1991 BMW 320I passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1990–1991 BMW 325IS passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1990–1991 BMW 320I passenger cars to the 1990–1991 BMW 325IS, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1990–1991 BMW 320I, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1990–1991 BMW 325IS, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1990–1991 BMW 320I is identical to the 1990–1991 BMW 325IS with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1990–1991 BMW 320I complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that non-U.S. certified 1990–1991 BMW 320I passenger cars will be marked prior to importation to comply with the Theft Prevention Standard found in 49 CFR Part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32592 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4802]

Notice of Receipt of Petition for Decision that Nonconforming 1995 Mercedes-Benz SL320 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Mercedes-Benz SL320 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1995 Mercedes-Benz SL320 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 8, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995 Mercedes-Benz SL320 passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1995 Mercedes-Benz SL320 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Mercedes-Benz SL320 passenger cars to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Mercedes-Benz SL320, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Mercedes-Benz SL320 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * **, 103 *Defrosting and Defogging Systems,* 104 *Windshield*

Wiping and Washing Systems, 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 Accelerator Control Systems, 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1995 Mercedes-Benz SL320 complies with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32593 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4800]

Notice of Receipt of Petition for Decision That Nonconforming 1984–1992 BMW K100 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1984–1992 BMW K100 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1984–1992 BMW K100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 8, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania

("Champagne")(Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1984–1992 BMW K100 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1984–1992 BMW K100 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1984–1992 BMW K100 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1984–1992 BMW K100 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1984–1992 BMW K100 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model head lamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 2, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32594 Filed 12–8–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 5X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in Burleigh, Kidder and Stutsman Counties, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 59.70 miles of rail line from milepost 21.55, west of Woodworth, to milepost 81.25, in Regan, in Burleigh, Kidder and Stutsman Counties, ND. The line traverses United States Postal Service Zip Codes 58475, 58478, 58488, 58412, 58494 and 58477.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 8, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 21, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 29, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Rose-Michele Weinryb, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

RRVW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 14, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board,

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by December 9, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 1, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–32412 Filed 12–8–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 3, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 8, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0575.

Form Number: IRS Form 5330.

Type of Review: Extension.

Title: Return of Excise Taxes Related to Employee Benefit Plans.

Description: Code sections 4971, 4972, 4973(a)(3), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A, and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.

Respondents: Business and other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 8,403.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Recordkeeping	18 hr., 39 min.
Learning about the law or the form.	8 hr., 50 min.
Preparing and sending the form to the IRS.	9 hr., 32 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 310,995 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–32647 Filed 12–8–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 3, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 8, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1594.

Regulation Project Number: REG–251520–96 Final.

Type of Review: Extension.

Title: Classification of Certain Transactions Involving Computer Programs.

Description: The information requested in regulation Section 1.861–18(k) is necessary for the Commissioner to determine whether a taxpayer properly is requesting to change its method of accounting.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–32648 Filed 12–8–98; 8:45 am]

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Wednesday
December 9, 1998

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions From the Synthetic Organic Chemical Manufacturing Industry Wastewater; Supplement; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6172–9]

RIN 2060–AE94

Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions From the Synthetic Organic Chemical Manufacturing Industry Wastewater; Supplement to Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental to proposed rule and notice of public hearing.

SUMMARY: On September 12, 1994, the EPA proposed Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions from the Synthetic Organic Chemical Manufacturing Industry Wastewater. On October 11, 1995, the EPA issued a supplement to the proposal. The action proposed today clarifies and revises the previously proposed rule and proposes to add Appendix J to part 60.

Volatile organic compounds (VOC), when emitted into the ambient air, are precursors to the formation of tropospheric ozone. A wide variety of acute and chronic respiratory health effects and welfare (e.g., agricultural, ecosystem) effects have been attributed to concentrations of ozone commonly measured in the ambient air throughout the U.S.

Appendix J to part 60, How to Determine Henry's Law Constants, Fm Values, Fr Values, and Fe Values for Organic Compounds, is being proposed today. This appendix provides the methodology for determining Henry's law constants, fraction measured (Fm) values, fraction removed values (Fr), and fraction emitted (Fe) values.

DATES: *Comments.* Comments must be received on or before February 8, 1999. Requests for a hearing must be received on or before December 24, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than December 24, 1998. If a hearing is held, it will take place on January 8, 1999, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–94–32 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671 or by electronic mail (e-mail) to collins.jolynn@epamail.epa.gov.

Docket. Docket No. A–94–32, containing the supporting information for the proposed NSPS, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

Portions of the HON wastewater docket, Docket No. A–90–23, specifically sections II–A, II–B, II–I, III–B, IV–A, IV–B, IV–J, and VII–B, are incorporated by reference into Docket No. A–94–32 and are available at the Air and Radiation Docket and Information Center as well.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed rule, contact Ms. Mary Tom Kissell, Waste and Chemical Processes Group, telephone (919) 541–4516 or e-mail to kissell.mary@epamail.epa.gov. Her mailing address is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. For questions about Fm, Fr, Fe, Henry's law constants, or WATER8, contact the Air Emissions Models Hotline, telephone (919) 541–5610. For questions about applicability, contact the appropriate EPA regional office or Ms. Marcia Mia, Office of Enforcement and Compliance Assurance, telephone (202) 564–7042.

SUPPLEMENTARY INFORMATION: Comments on the revisions to the proposal may also be submitted electronically by sending e-mail to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 6.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–94–32. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities affected by this action are included in Table 1 of this preamble.

TABLE 1.—EXAMPLES OF REGULATED ENTITIES

Category	Examples of regulated entities
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 60, subpart YYY.

Table 1 is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the SOCMI wastewater NSPS are those which produce as primary products any of the chemicals listed in table 1 of 40 CFR part 60, subpart YYY. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in § 60.770. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Health and Welfare Effects of VOC

VOC, when emitted into the ambient air, are precursors to the formation of ozone at ground-level, where it can be harmful to breathe. It is the prime component of smog in cities. Exposure to ozone is associated with health effects and damage to vegetation. Ozone impairs normal functioning of the lungs and reduces the ability to perform physical exercise; the effects are more severe in individuals with sensitive respiratory systems. Symptoms associated with ozone exposure include cough, chest pain, and throat irritation. Emerging health effects information suggests some healthy adults engaged in moderate exercise for 6 to 8 hours may experience symptoms and reduction in lung function even at exposure levels below the current ozone health standard. Of perhaps greater concern are the potential chronic health effects that may result from repeated exposure to ozone over many seasons or a lifetime, such as inflammation of lung tissue, which precedes permanent scarring of lung tissue. Animal studies have shown that chronic ozone exposures of months to years do indeed cause permanent

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II. Overview o
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Children are at a higher risk from ozone exposure than adults. They breathe more air per pound of body weight than adults and they spend more time outdoors, especially in the summer, when exposure to ozone is more prevalent. Because children's respiratory systems are still developing, they are more susceptible than adults to environmental threats.

Studies of the major cash crops in the U.S. indicate that ozone is responsible for several billion dollars in agricultural crop yield loss each year. Ozone also causes noticeable foliar damage in many crops which reduces marketability and value. Finally, it appears that ozone is responsible for forest and ecosystem damage, which may be exhibited as foliar damage, reduced growth rate, and increased susceptibility to insects and disease.

Some VOC that would be regulated by this rule, including benzene, hexane, methyl ethyl ketone, toluene, and naphthalene, are also organic hazardous air pollutants. These organic hazardous air pollutants are known to cause a range of adverse health effects such as: increased risk of cancer, aplastic anemia, pancytopenia, chromosomal breakages, weakening of bone marrow, polyneuropathy (muscle weakness and numbness), and cataracts and anemia in infants.

C. Background on the Rule

On September 12, 1994 (59 FR 46780), the EPA proposed the NSPS for SOCMI wastewater in the **Federal Register**. On October 11, 1995 (60 FR 52889), the EPA published a supplement to the proposed NSPS for SOCMI wastewater in the **Federal Register**. Both of these notices are also available on EPA's Technology Transfer Network (TTN) via the Internet. The Internet address is http://www.epa.gov/ttn/. Select the CHIEF Bulletin Board once you access the TTN and then select the menu item Title I. The file names are socmireg.zip and suplprop.zip, respectively.

II. Overview of Changes to the Proposed Rule

Today the Agency is proposing revisions that are designed to clarify provisions of the proposed 40 CFR, part 60, subpart YYY. These proposed revisions address some of the public comments received in response to the September 1994 and October 1995 notices and incorporate some of the provisions promulgated in the HON, published on January 17, 1997 (62 FR 2721). If promulgated, the proposed revisions retain the same basic control requirements and best demonstrated technology as the proposed rule. Best demonstrated technology for this rule was discussed in the September 12, 1994 preamble, 59 FR 46733. A summary of the revisions is provided in the following paragraphs.

The applicability and date of compliance section (§ 60.770) has been revised to improve clarity and incorporate certain concepts relevant to applicability of the rule. Concepts such as designated chemical process unit and primary product have been added. The requirement that an affected facility must generate a wastewater stream has been removed. Modified facilities will have to be in compliance by initial startup or promulgation, whichever is later. In addition, provisions have been added to § 60.772 to clarify how to determine whether an affected facility has been modified.

Seven sections have been substantially revised in today's amendments to improve clarity and to incorporate the new "point of determination" concept discussed in section VI. of this preamble. The seven sections address the following topics: criteria for determining the Group 1 and Group 2 wastewater streams (§ 60.773); compliance options for wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators (§ 60.774); performance standards for process wastewater (§ 60.779); procedures for determining Group 1 and Group 2 wastewater streams (§ 60.782); procedures for demonstrating compliance (§ 60.783); alternative monitoring and recordkeeping systems, one excursion per control device per day, excused excursions, clarification of monitoring parameter value violations, and Notification of Compliance Status (§ 60.784); and recordkeeping provisions (§ 60.785). Also, sections addressing aqueous in-process streams (§ 60.775); maintenance wastewater (§ 60.776); and, start-up, shutdown, and other provisions (§ 60.787) have been added.

Changes are also proposed to the sections governing control devices, delay of repair, monitoring, recordkeeping, and reporting, and the proposed rule's relationship to other rules. The list of SOCMI chemicals that trigger the rule's applicability was previously in § 60.788; it is now in Table 1 to subpart YYY. Other tables have been added to the subpart, and all the tables have been renumbered.

As a result, today's provisions are being proposed in §§ 60.770 through 60.789, in Tables 1 through 14, and in appendix J to part 60. This preamble is organized in the order of the proposed rule sections.

III. Revisions to Requirements for Determining Applicability and Date of Compliance (§ 60.770)

A. Applicability and Affected Facility Determination

1. Overview of Applicability and Affected Facility Determination

The application of the NSPS to SOCMI wastewater facilities under both the September 1994 proposal and today's revisions is predicated on a chemical process unit (CPU) that produces a chemical on the list of SOCMI chemicals in Table 1, and that commences construction or reconstruction, or is modified after September 12, 1994. However, today's revisions add the designated CPU concept, remove the requirement that an affected facility must generate a wastewater, add the primary product concept, provide a list of processes which are not considered SOCMI processes, clarify how storage vessels are assigned to a CPU, and include other clarifying edits.

2. Chemical Process Unit and Designated Chemical Process Unit

The term "chemical process unit" is used instead of "process unit," which was used in the September 1994 proposal. These two terms and the term "chemical manufacturing process unit" used in the HON have essentially the same meaning. The difference is that the definition of chemical process unit does not include transfer racks. Transfer racks were removed from the definition because the amount of wastewater they generate is insignificant and more difficult to control as compared to individual drain systems and storage vessels.

The chemical process unit (CPU) is the basis for determining whether the process equipment is SOCMI as it was for the original proposal. As explained in section IV.D. of the September 12, 1994 preamble, using the CPU as the basis for the applicability determination has several advantages including maintaining consistency with the HON and reflecting industry construction practices.

While the CPU is the basis for determining SOCMI, today's revisions propose using the "designated CPU" as the basis for determining whether construction, reconstruction, or modification has occurred. The designated CPU is either the entire CPU, a process line within the CPU, or a combination of process lines within the CPU. The owner or operator may assign either a process line, or combination of process lines, within the CPU as a designated CPU. However, once the assignment of process lines and associated storage vessels has been made, it is irrevocable.

EPA believes incorporating the designated CPU concept would add flexibility for industry while supporting EPA's long-term goals of protecting human health and the environment. Industry commented that the cost of compliance with the rule would, in some cases, be many times greater than the cost of the change. This could result in unintended consequences, such as reluctance to make process improvements, that would be damaging to industry's ability to compete in the world market. In addition, EPA believes that changes in SOCMI are on-going and that most designated CPU's would meet the applicability criteria of the rule over time.

The proposed rule excludes certain processes from the definition of CPU because they are not SOCMI processes, but are sometimes associated with SOCMI. Other SOCMI rules have also excluded these processes. The processes excluded are as follows: (1) research and development facilities; (2) petroleum refining processes (but not CPU located at petroleum refinery plant sites); (3) chemical process units located in coke by-product recovery plants; (4) solvent reclamation, recovery, or recycling operations at hazardous waste treatment, storage, and disposal facilities (TSDF) requiring a permit under 40 CFR 270 that are not part of a CPU; and, (5) organic chemicals extracted from natural sources or totally produced from biological synthesis such as pinene and beverage alcohol. Determinations for excluding processes must be based on the designation for the process unit, in contrast to the plant site.

3. CPU Must Manufacture a SOCMI Product as its Primary Product

Today's action incorporates the concept of "primary product" into the rule's applicability determination. The primary product determination is made for a CPU. If the product(s) of the CPU, on a mass basis, are comprised of 50 percent or more of the SOCMI chemicals listed in Table 1 of the rule, the CPU's primary product is SOCMI. For purposes of this rule, "product" includes products, co-products, and by-products manufactured by the CPU. "Product" does not include isolated intermediates, impurities, wastes, and trace contaminants.

The primary product determination is dependent upon the quantity of each chemical produced by the CPU and whether expected use of the CPU is known. The primary product provisions address both cases: (1) the expected use of the CPU is known for a 12-month period and (2) the expected use of the CPU is unknown for a 12-month period. When owners or operators know the expected use of the CPU, the primary product determination is based on the mass of product produced. If a CPU produces 50 percent or more, by mass, of the chemicals listed in Table 1, the primary product is SOCMI.

For some contract manufacturing units, the owner or operator may not be able to predict production sufficiently to make a primary product determination. In these cases, the primary product of the CPU is SOCMI once the facility begins producing a SOCMI chemical or has a contract to produce a SOCMI chemical.

EPA adopted the primary product approach to simplify applicability determinations, to limit the applicability of the rule to those CPU that produce mostly the chemicals listed in Table 1 of the rule, and to make the proposed rule more like the HON.

The revised proposed rule simplifies the determination of SOCMI in two ways. First, together with the definition of "product," it clarifies the meaning of the terms "product" and "to produce" and the correct way to decide whether a source "produces" a listed chemical. Second, the primary product concept provides clear criteria for making a determination.

The primary product concept also limits the applicability of the rule to CPU that produce mostly SOCMI products. In the September 1994 proposal, by-products, co-products, and intermediates produced by the CPU and listed in Table 1 of the rule, in any amount, made the CPU a SOCMI unit. This could have resulted in numerous non-SOCMI process units, such as pharmaceutical units, being designated SOCMI and being subject to the SOCMI Wastewater NSPS. The proposal addresses this by establishing the 50 percent threshold. Although this change will reduce the number of CPU affected by the rule, it more accurately reflects the SOCMI source category.

EPA believes that making the SOCMI Wastewater NSPS as much like the HON as possible will facilitate implementation of the rule. The HON and the SOCMI Wastewater NSPS will regulate the same types of process units and treatment processes, and in some cases, the same process units and treatment processes. Thus, the primary product concept was adopted for the proposal.

Today's revisions use expected annual production as the basis for determining the mass for each product. Expected annual production is proposed instead of annual design capacity to accommodate CPU designed and operated to manufacture more than one chemical. Typically these facilities are contract manufacturing facilities, also known as tolling or multi-purpose facilities or flexible operations facilities. Using expected annual production allows a facility to more closely represent actual production rather than basing the primary product decisions for each chemical on annual design capacity. The facility would also have to report the CPU's annual design capacity. However, EPA is concerned whether this approach creates potential burden for regulating agencies and requests comment on whether expected production or design capacity should be used.

4. Designated CPU Must Have Been Constructed, Reconstructed or Modified After September 12, 1994

To be subject to this proposed rule, a designated CPU must have been constructed, reconstructed, or modified after September 12, 1994.

5. Affected Facility Must Generate a Process Wastewater, a Maintenance Wastewater, and/or an Aqueous In-Process Stream for Control Requirements To Apply

In the original proposal, an affected facility had to be a process unit that generated wastewater. "Wastewater" included process wastewater and maintenance wastewater. Today's revised proposal removes "generating wastewater" as a criteria for determining applicability.

This change to the applicability determination was done for two reasons. First, to remove maintenance wastewater from triggering applicability of the rule to a designated CPU. Maintenance wastewater is generally more difficult to quantify and EPA believes is a less significant source of VOC emissions than process wastewater for this source category. Second, in the September 1994 proposal, "wastewater" was defined as "an organic containing water . . .," without regard to the concentration of VOC in the wastewater. Today's revised proposal, adds a concentration of 50 part per million, by weight, (ppmw) into the wastewater definition. Thus, low concentration wastewater streams that would have triggered applicability in the original proposal would not do so with the revised wastewater definition. EPA intends that a designated CPU that is new or reconstructed or modified after September 12, 1994 and that is part of a CPU that produces SOCMI as its primary product control process wastewater streams, maintenance wastewater streams, and aqueous in-process streams when the streams are generated.

EPA recognizes that affected facilities that do not generate wastewater or aqueous in-process streams should not be subject to all the reporting and recordkeeping requirements. Therefore, EPA has specified that affected facilities that do not generate process wastewater streams, maintenance wastewater streams, or aqueous in-process streams are exempt from most of the provisions of the subpart. If the affected facility began generating a process wastewater stream, a maintenance wastewater stream, or aqueous in-process stream, it would have to comply with all applicable provisions of the subpart at the time of the change.

6. Applicability of Part 60 and Part 63 General Provisions

Today's proposal adds table 2 and table 2A, which clarify the 40 CFR part 60 and part 63 general provisions that apply to this rule. There was a need for selected part 63 general provisions to apply to this part 60 rule because the part 60 general provisions do not contain certain provisions that were used by the HON and are necessary for compliance with this rule. The applicable part 63 general provisions pertain to the start-up, shutdown, and malfunction plan, performance testing requirements, control device requirements, and delegated authority.

B. Date of Compliance

In October 1995 the Agency proposed to allow modified sources undergoing significant capital improvements an additional three years to come into compliance with the SOCMI Wastewater NSPS. The additional time would have been subject to the Administrator's approval and would have required documentation of the need for more time.

Today's revised proposal would require that all affected facilities be in compliance with the NSPS no later than initial start-up of an affected facility or promulgation of the rule, whichever is later.

In response to the September 1994 proposal, several commenters wrote that the applicability and compliance provisions were unclear making it difficult for them to implement any requirements. In addition, EPA recognizes that some facilities may require several months or years lead time to complete large capital projects such as retrofitting sewers and designing and installing steam strippers. Facilities need time to determine whether the rule applies to them, familiarize themselves with the rule, choose a compliance option, design the necessary equipment, and construct and renovate as needed.

To provide time for facilities that commenced construction, reconstruction, or modification between September 12, 1994 and the promulgation date, EPA is proposing to promulgate this rule no earlier than spring 2000. Appendix J to part 60 may be promulgated earlier.

Facilities commencing construction, reconstruction, or modification after the promulgation date will be required to be in compliance upon initial start-up. As is the case under all other NSPS, facilities will have to plan ahead to complete any necessary construction at a facility so as to be in compliance with the NSPS upon start-up of operations.

Today's revised proposed rule would limit modifications to changes costing 12.5 percent or more of the cost of the existing facility. This is discussed in section V. of this preamble. Because the cost test precludes relatively smaller changes from triggering the NSPS, only larger projects will be modifications. The larger projects take more time to plan and implement, giving the facility time to plan for compliance. Therefore, the facilities that become modified after the promulgation date will have adequate notice of the requirements and sufficient time to plan for compliance.

IV. Revisions to the Definitions (§ 60.771)

A. Overview of Changes to the Definitions

1. Definitions Added

Significant changes were made to the definition section of the rule. The following definitions were added to § 60.771: aqueous in-process stream; automated monitoring and recording system; chemical process unit; closed biological treatment process; designated chemical process unit or designated CPU; enhanced biological treatment system or enhanced biological treatment process; flexible operation unit; Fbio; Fe; Fr;, Fr; fuel gas; fuel gas system; incinerator; initial start-up; modification; non-automated monitoring and recording system; on-site or onsite; open biological treatment process; petroleum refining process or petroleum refining process unit; plant site; point of determination; product; recapture device; recovery device; research and development facility; shutdown; specific gravity monitoring device; start-up; start-up, shutdown, and malfunction plan; steam jet ejector; storage vessel; tank drawdown; unit operation; volatile organic compound or VOC; and wastewater tank.

2. Definitions Removed

The following definitions were removed from § 60.771: mass flow rate, operating parameter value, point of generation, process unit, process unit shutdown, tank, and volatile organic concentration.

3. Definitions Changed

The following definitions were changed: annual average concentration, annual average flow rate, boiler, closed-vent system, container, continuous record, continuous recorder, continuous seal, control device, cover, duct work, flame zone, flow indicator, hard-piping, individual drain system, oil-water separator or organic water separator, process wastewater, residual, sewer line, temperature monitoring device, treatment process, waste management unit, wastewater, and wastewater seal controls. Most of these revisions were to make the definitions in today's proposed rule consistent with those in the HON.

B. Significant Definitional Changes

Significant definitional changes proposed are as follows: revisions to the "wastewater" definition; revisions to the "product" definition; replacement of the "point of generation" (POG) definition with "point of determination" (POD) definition; addition of "closed" and "open biological treatment process" definitions; addition of the "enhanced biological treatment system" definition; revisions to the "individual drain system" definition; and, revisions to the "VOC" definition.

The definitions of "wastewater," "recovery device," and "point of generation" were revised to clarify EPA's intent concerning which VOC-containing waters are in-process fluids regulated by the provisions in § 60.775 and which are wastewater and regulated by the provisions in § 60.773 and § 60.779 through § 60.783.

1. Revised Wastewater Definition

The most significant change proposed today to the "wastewater" definition is the addition of the concept of "discard." This concept is fundamental to distinguishing which fluids exiting the CPU are subject to the SOCMI Wastewater NSPS provisions in § 60.773. Adding "discard" to the definitions provides a clear demarcation between those fluids no longer useful to that production process, i.e., discarded, and those fluids that add value to that production process. Together with the point of determination and aqueous in-process stream concepts, the revised definition of wastewater makes it easier for facilities and regulatory authorities to implement the rule.

2. Replaced Point of Generation With Point of Determination

Today's revised proposal changes the definition of "point of generation" to "point of determination." The change is to reflect a conceptual difference. "Point of generation" was defined in the September 1994 proposed rule as "the location where process wastewater exits the process unit equipment." In today's revised proposal, it has been replaced by "point of determination", which is defined as "each point where the process wastewater exits the chemical process unit," often the last recovery device. The need for and significance of this change is discussed in more detail in section VI.B. of this preamble.

3. Recovery Device

Today's revised proposed rule includes a revised definition of "recovery device." The proposed definition of "recovery device" differs from the existing definition in order to reflect the revised approach to the definition of "wastewater" and to reflect the fact that deviations from normal operations do occur. This was discussed in the HON preamble of August 26, 1996 (61 FR 43710).

The revised definition of "recovery device" is intended to eliminate the potential for sham transactions involving the "sale" of wastewater by limiting the concept of sales to sales for the same general purposes for which chemicals may be recovered and used within the facility (i.e., use, reuse, or burning as fuel). The EPA believes that the revised definition is broad enough to encompass any sale that is not a sham since "use" and "reuse" are very general concepts. The definition also differs from the existing definition in that the word "normally" now modifies the phrase "used for the purpose of recovering. . . ." This change was made to recognize that occasional exceptions to normal usage can and will arise.

4. Added Definitions for Closed Biological Treatment Process, Open Biological Treatment Process, and Enhanced Biological Unit

Definitions for closed biological treatment process, open biological treatment process, and enhanced biological treatment system were added to the definitions in § 60.771. The new definitions are necessary to make distinctions among biological treatment processes which allow the incorporation of more flexible and less burdensome compliance demonstrations for some facilities. This is discussed in more detail in the discussion of changes to § 60.783 in section XI. of this preamble.

5. Modified Individual Drain System Definition

The definition for individual drain system would be modified to clarify three key concepts and incorporate minor wording changes. The definition in today's proposal would clarify that only stationary systems are included in the definition; that individual drain systems are used to convey residuals as well as wastewater streams; and that the individual drain system does not include in-process equipment as described in § 60.775.

6. Modified VOC Definition

VOC, for the purposes of this subpart, are defined to be those substances already defined as volatile organic compounds in 40 CFR section 51.100(s) and that are not excluded or exempted by that section, except that any substance with a Henry's law constant less than or equal to 0.1 y/x atmosphere per mole fraction as determined according to Appendix J of this subpart is not a VOC for the purposes of this subpart.

This definition of VOC reflects EPA's belief that chemicals with lower Henry's law constants are not a significant source of VOC emissions from wastewater. A Henry's law constant of 0.1 y/x at 25°C is similar to the lowest Fe value for the HAP controlled by the HON. In selecting which compounds to control, EPA also considered a compound's biodegradability and Fr value. In general, lower volatility compounds are already significantly biodegraded and are not removed to a significant extent by steam stripping.

V. Revisions to Requirements for Determining Modification (§ 60.772)

1. Modification

Today's proposed rule revises § 60.772 to clarify how to determine whether a designated CPU has been modified such that it is subject to the SOCMI Wastewater rule. The revisions add a definition of "modification" in § 60.771; clarify that the designated CPU is used as the basis of modification determinations; provide exclusions to modification; and, provide procedures to determine increases from process wastewater and aqueous in-process streams.

Modification, as defined in § 60.771, means "any physical change in, or change in the method of operation of, an existing designated CPU which increases or creates emissions to the atmosphere of VOC from process wastewater and/or aqueous in-process streams generated by the designated CPU, except as provided in § 60.772(c)." This definition supersedes for the purposes of subpart YYY the definition in § 60.2 of the General Provisions to 40 CFR, part 60. The proposed definition incorporates the concept that only process wastewater and aqueous in-process streams are considered for modification determinations; maintenance wastewater is not considered. It also states that the basis of the modification is the designated CPU, making the modification provisions consistent with the applicability provisions for subpart YYY.

Today's revisions also replace the exclusions to what constitutes a modification in § 60.14(e) of the general provisions with four exclusions. Three of these are similar to exclusions provided by § 60.14(e)—maintenance, repair, and replacement, including replacement of spent catalyst with the same catalyst; increase in hours of operation; and, relocation or change in ownership of an existing facility.

The fourth exclusion is for changes that cost less than 12.5 percent of the cost of the existing designated CPU. This concept is also used in the SOCMI rule for equipment leaks, subpart VV to part 60. It is meant to encompass any change, including, an increase of production rate, environmental control, and bottleneck removal. One reason a percent cost exclusion was added is in recognition that SOCMI equipment routinely undergoes small changes and that EPA does not intend small changes to constitute a modification for this rule. Another reason is that this exclusion provides a clear and simple statement of what is not a modification. EPA chose 12.5 percent because 12.5 percent was used in the SOCMI rule for equipment leaks, subpart VV to part 60. In addition, the General provisions to part 60 use the 12.5 percent level in an exclusion for an increase in production rate (see § 60.14(e)(2), § 60.14(2), definition of "capital expenditure, and Internal Revenue Service Publication 534). When two or more physical or operational changes are reasonably viewed as a project, the cost of the entire project should be considered when determining the 12.5 percent.

Today's proposed revisions add provisions for determining whether an increase in VOC emissions from process wastewater or aqueous in-process streams has occurred or will occur. The proposed provisions make a distinction between flexible operations units and non-flexible operations units. The flexible operations units, which manufacture more than one product, choose one product as a baseline against which to compare emissions that occur due to changes. This approach was outlined in a memo entitled "Clarification of Methodology for Calculating Potential to Emit (PTE) for Batch Chemical Production Operations' which was issued by John S. Seitz, the director of EPA's Office of Air Quality Planning and Standards, to the 10 EPA Regional Offices on August 29, 1996.

For both flexible operation units and non-flexible operation units, the owner or operator would calculate VOC emissions before and after a physical or operational change. The owner or operator may elect to determine the amount of VOC emissions by calculating VOC mass flow rate in the wastewater as a surrogate for VOC emissions or by calculating VOC emissions using a fraction emitted, Fe, value. The Fe value may be either a default Fe value or a site-specific Fe value. The default Fe values are listed in Table 2 of the proposed appendix J to this part. The site-specific Fe values are determined according to the procedures and forms specified in the proposed appendix J to this part.

Once the VOC mass flow rate or VOC emissions have been determined both before and after the change, they must be compared to determine whether the change caused an increase in VOC emissions to the atmosphere. When emissions are determined using mass flow rate as a surrogate for emissions, the VOC mass flow rate before the change for all process wastewater streams affected by the change are compared to the VOC mass flow rate after the change for all process wastewater streams affected by the change. The same comparison is done for aqueous in-process streams. If either comparison, i.e., the process wastewater comparison or the aqueous in-process streams comparison, demonstrates that VOC mass flow rate has increased after the change, the designated CPU is modified and becomes an affected facility. In contrast, when emissions are determined using Fe values, the sum of all affected process wastewater streams and all affected aqueous in-process streams before the change are compared to the sum of all affected aqueous in-process streams and all affected process wastewater streams after the change.

2. Reconstruction

Today's revisions clarify when costs begin accumulating for purposes of reconstruction, clarify the accumulation period, and add a requirement for documentation. The reconstruction of an affected facility subjects it to the NSPS because the replacement of the components of an existing facility eventually results in a new facility. The general provisions to 40 CFR, part 60 sets the level of replacement that constitutes reconstruction at 50 percent or greater of the cost of constructing a comparable new facility. EPA is proposing that the first day replacement costs for actual work, i.e., dismantling of equipment or construction, on the facility are incurred, the costs are "charged" to the designated CPU for the purpose of determining reconstruction. When replacement of components is reasonably viewed as a project, the cost of the entire project would be charged to the first day expenses were incurred. All replacement costs must be counted toward the reconstruction cost, regardless of whether costs arise from different projects.

The September 12, 1994 proposal set a time period of two years as the period that project costs should be aggregated and counted toward reconstruction. Today's notice clarifies that the two year period is a rolling two year period. A rolling two year period is not based on a specific set of dates. A rolling two year period allows any day to be used as the beginning point for the two year period. Thus, the two year period can be considered to any 730 consecutive days. The rolling two year period should be examined to see if all combined replacements to the facility cost 50 percent or more of the cost of constructing a new facility that would be comparable in cost to the existing facility. The cost of all projects incurred within a two year period would be added together.

VI. Revisions to the General Requirements for Process Wastewater (§ 60.773)

The EPA is proposing changes to the general process wastewater provisions in § 60.773. These provisions provide instructions on how to determine if a process wastewater stream requires control and the general outline of requirements for process wastewater streams. These changes are consistent with the changes made to the wastewater provisions in the HON rule. Significant changes proposed include the following: requirements for determining whether wastewater streams require control by determining Group 1 or Group 2 status, replacement of point of generation with point of determination, addition of prohibition of discarding certain organic material into water or wastewater, and the addition of off-site treatment requirements. The off-site treatment provisions require that an owner or operator may only ship to a facility that has certified that it will treat the wastewater to the standard required by the rule.

A. Group 1/Group 2 Status Determination

The EPA is proposing using Group 1 and Group 2 terminology to determine whether a process wastewater stream requires control for VOC. Determination of whether a process wastewater stream is Group 1 or Group 2 is based on annual average concentration and flow rate criteria. Control requirements for Group 1 wastewater streams require that VOC emissions be controlled until the VOC are either removed from the wastewater or destroyed. Group 2 wastewater streams are required to comply with certain recordkeeping and reporting requirements. The proposed control criteria of 500 ppmw at a flow rate of 1 liter per minute (lpm) or 10,000 ppmw at any flow rate have not changed.

B. Change From Point of Generation to Point of Determination

Today's revised proposed rule predicates the determination of the applicability of control requirements to a wastewater stream on its characteristics at the point where the wastewater stream exits the last piece of processing equipment. The new location for determining the characteristics of a wastewater stream is being called the point of determination (POD) to distinguish it from the POG concept used in other air rules for waste and wastewater such as the Benzene Waste NESHAP. In instances where the wastewater stream exits the process equipment and is not sent to a recovery device that recovers chemicals for fuel value, use, reuse, or for sale (for fuel value, use, or reuse) the POD would be the same as the POG location. The POD concept proposed for this rule is the same as used in the HON.

The EPA's intent in developing the POD approach is to have a clear decision criterion that specifies the location for evaluation of a wastewater stream for the purposes of control. The POD encompasses each point where process wastewater exits the last piece of process equipment, often the last recovery device. There can be multiple POD associated with a CPU or designated CPU. This proposed definition of POD would allow a facility to recover chemicals for fuel value, use, reuse or for sale (for fuel value, use, or reuse). As with the POG, under the POD approach owners and operators would not be allowed to mix streams together for the purpose of escaping compliance by the diluting of wastewater streams. Under the POD approach, process units conveying process fluids in the chemical process unit are subject to the requirements established in Table 6 of the rule. Table 6 is consistent with the suppression requirements for a wastewater stream requiring control. Again, the intent is to allow process fluids that have recovery potential to be sent to recovery devices; however, these fluids are required to be managed to limit VOC emissions to the atmosphere. Process fluids that do not have recovery potential are considered wastewater streams at the point where the stream exits the process equipment. A more detailed discussion is available in section IV.D. of the HON preamble published on August 26, 1996 (61 FR 43698).

C. Prohibition of Discarding Certain Organic Materials into Water or Wastewater

Language that prohibits discarding of certain organic material into water or wastewater has been added to § 60.773. Specifically, liquid or solid organic materials containing greater than 10,000 parts per million of VOC may not be discarded into water or wastewater unless the receiving stream is managed and treated as a Group 1 wastewater stream. The prohibition would exclude equipment leaks; activities included in maintenance or start-up/shutdown/malfunction plans; spills; and samples. This paragraph was added to ensure that high concentration organic streams, such as off-specification product, are discarded only to individual drain systems and treatment processes meeting the requirements for Group 1 wastewater streams.

D. Addition of Off-Site or Third-Party Treatment Requirements

Today's proposed rule would allow owners and operators to transfer Group 1 wastewater streams or residuals off-site for treatment provided the transferee certifies to EPA (and provides a copy to the owner or operator) that it will manage and treat the wastewater streams or residuals in accordance with this rule's provisions. These provisions were revised to provide a means to allow transfers of treatment responsibility without holding the owner or operator responsible for the actions of another and are consistent with the HON provisions.

VII. Revisions to Requirements for Wastewater Tanks, Surface Impoundments, Containers, Individual Drain Systems, and Oil-Water Separators (§ 60.774)

Today's revised proposed rule adds additional compliance options for wastewater tanks, surface impoundment, containers, individual drain systems, and oil-water separators. The six compliance options that may be selected are as follows: HON, part 63, subparts F and G; Standard-standards, part 63, subparts QQ, PP, RR, and VV; Petroleum Refinery, part 60, subpart QQQ; RCRA, part 264, subpart CC; RCRA, part 265, subpart CC; and Benzene Waste, part 61, subpart FF.

Table 3 was added to today's revised proposed rule in order to indicate which of the six compliance options may be used as a control option for wastewater tanks, surface impoundment, containers, individual drain systems, and oil-water separators. Table 5 was added to today's revised proposed rule in order to identify the control requirements, monitoring provisions, recordkeeping provisions, reporting provisions, control device provisions, leak detection provisions, and delay of repair provisions for each of the six compliance options.

As shown in Table 3, the owner or operator must comply with the control requirements for one of the six compliance options. If an owner or operator has a waste management unit that is subject to any of the six compliance options, then the owner or operator may choose to comply with the delay of repair provisions, monitoring provisions, recordkeeping provisions, reporting provisions, control device provisions, and leak detection provisions in the selected compliance option or in this subpart. If an owner or operator was not subject to the control requirements for any of the six compliance options, then the owner or operator must comply with the delay of repair provisions, monitoring provisions, recordkeeping provisions, reporting provisions, control device provisions, and leak detection provisions of this subpart.

VIII. Addition of Requirements for Control of Certain Aqueous In-Process Streams (§ 60.775)

The revisions adding a new § 60.775 and Table 6 are an outgrowth of the change from the point of generation (POG) concept of the September 1994 rule to the point of determination (POD) concept in these revisions. As discussed in Section XI. of this preamble, the point of the determination concept is replacing the point of generation concept. The purpose of this new section is to ensure that VOC-containing fluids are properly managed in closed systems. Table 6 lists the applicable requirements for a drain or drain hub, manhole, lift station, trench, oil-water separator, and a tank.

In developing the point of determination approach, the EPA assumed that fluids containing organic compounds within the process would be managed in closed systems to minimize losses of a recoverable material. The provisions in Table 6 and the new § 60.775 were designed to ensure that conveyance and handling of process fluids containing volatile organic compounds would be handled in a manner consistent with the requirements for wastewater streams subject to control.

IX. Addition of Requirements for Maintenance Wastewater (§ 60.776)

The EPA is proposing changes to the maintenance wastewater requirements in the proposed rule. In the September 1994 proposal, maintenance wastewater and process wastewater were subject to the same provisions in § 60.773 and § 60.779. The maintenance wastewater provisions, which can now be found in § 60.776 of the rule, were changed to be consistent with the HON maintenance wastewater provisions. The provisions require the owner or operator to provide a description of their procedures for managing wastewater generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair and during non-shutdown periods such as routine maintenance. A description of these procedures will be included in a facility's start-up, shutdown, and malfunction plan.

X. Addition of Requirements for Determining Stream-Specific List of VOC (§ 60.778)

Today's revised proposed rule provides a procedure that would allow a facility to develop a stream-specific list of VOC. The stream-specific list of VOC could be used to estimate changes in emissions for modification determinations, to make Group 1 and Group 2 determinations, and to make compliance demonstrations. EPA believes adding these provisions provides flexibility without sacrificing compliance assurance. EPA is proposing to add these requirements as § 60.778.

A. Group 1 and Group 2 Determinations and Modification Determinations

When a stream-specific list of VOC is needed to make a Group 1 determination, the owner or operator must identify up to 75 chemicals (those with the greatest mass). The chemicals on the stream-specific list must represent at least 90 percent of the total VOC in the process wastewater stream. Chemicals with a concentration less than 1 ppmw can be excluded from the list. Method 25 D in appendix A to part 60 must be used when at least 90 percent of the total VOC in the wastewater stream cannot be identified. The same procedures are used when a stream-specific list of VOC is needed to estimate changes for modification determinations.

B. Compliance Determinations

When a stream-specific list is needed to make a compliance determination, three cases exist. The first case is when an owner or operator knows at least 90 percent of the total VOC in the wastewater stream. In this case, each chemical that has a mass of 5 percent or greater, must be included on the list. If less than half of the total VOC in the wastewater stream are represented by chemicals with a mass of 5 percent or greater, each chemical, up to 75 chemicals, must be on the stream-specific list. The second case is when an owner or operator knows at least 50 percent of the total VOC in the wastewater stream. In this case, the chemicals with the greatest mass that can be identified up to 75 chemicals are required to be included on the stream-specific list. For both of these cases, the owner or operator must: (1) ensure the stream-specific list of VOC is adequate to demonstrate compliance, and (2) document the method used to determine concentration and total VOC in the wastewater stream.

The third case is for all other streams. An owner or operator who cannot identifiy at least 50 percent of the total VOC in the wastewater stream must choose a compliance option that does not require speciation. Three compliance options do not require speciation: (1) the design steam stripper option (§ 60.779(d)); the 95 percent and outlet reduction of 50 ppmw mass removal/destruction option for nonbiological treatment process (§ 60.779(e)(2)); and, the steam stripper three compound option (§ 60.779(e)(3)).

XI. Revisions to Requirements for—Performance Standards for Process Wastewater (§ 60.779)—Procedures for Determining Which Process Wastewater Streams Require Control (§ 60.782)—Procedures for Determining Compliance (§ 60.783)

A. General

Three sections of today's proposed rule, §§ 60.779, 60.782, and 60.783, were revised to incorporate the point of determination concept and to add flexibility in the compliance demonstration for facilities using biological treatment processes to meet the requirements of subpart YYY. These revisions are based mostly on the HON. Revisions to § 60.782 include the addition of methods and an alternative validation procedure. The three sections referenced above are discussed together because a change made to one has generally also been made to the other sections. A specific change will be discussed where it first appears or has the most impact.

B. Changes to § 60.779, Process Wastewater Provisions—Performance Standards for Treatment Processes Managing Group 1 Wastewater Streams and/or Residuals Removed From Group 1 Wastewater Streams

Section 60.779 contains provisions for control of Group 1 wastewater streams and residuals from Group 1 wastewater streams. The most significant changes proposed to § 60.779 are: adoption of the Group 1/Group 2 terminology from the HON; deletion of the recycling control options; clarification on how to use speciated options within the existing compliance option framework; technical corrections to the design steam stripper specifications and removal of unnecessary specification of steam quality; clarification of compliance demonstration procedures that may be used for biological treatment processes; clarification that treatment in series is allowed; addition of provisions for a 1 megagram facility-wide exemption; and clarification of when design evaluations may be used to demonstrate compliance instead of performance tests.

1. Deletion of Recycling Options From § 60.779

The recycling option is unnecessary under the POD concept which replaces the POG concept. The recycling option allowed an owner or operator to achieve compliance by recycling a process stream to a process unit. The recycling provisions in paragraph (d) of the September 1994 proposed rule would have required that the wastewater or residual not be exposed to the atmosphere and that waste management units in contact with the wastewater streams or residual comply with control and inspection and monitoring requirements. With the proposed point of determination concept, the recycling option would become redundant because as long as a fluid stays in the process, it would not be a wastewater subject to the provisions of § 60.779; instead, it would be an aqueous in-process stream subject to the provisions of § 60.775.

2. Addition of Simplified Compliance Demonstration for Steam Strippers

Today's revisions include a compliance option for steam strippers that bases compliance on three VOC—methanol, ethylene glycol monobutyl ether acetate, and methyl ethyl ketone. This compliance option requires that the Fr value, expressed as a percentage, be achieved for each of the three compounds. This simplifies compliance demonstration by requiring a demonstration for three compounds instead of up to 75 compounds. This option could be used by a facility without identifying the compounds in the wastewater stream that are going to the steam stripper.

The EPA has defined design and operating specifications for a steam stripper, called the design steam stripper. The design steam stripper is the basis of the wastewater control requirements. Other steam strippers may provide equivalent or superior performance to the design steam stripper. Equivalent performance to the design steam stripper can be demonstrated based on compounds not present in the wastewater stream.

EPA chose methanol, ethylene glycol monobutyl ether acetate, and methyl ethyl ketone because they cover a range of volatilities. Methanol is only partially removed by the design steam stripper, and methyl ethyl ketone is removed at levels greater than 95 percent. The methanol removal is used to verify the steam rate. The methyl ethyl ketone removal is used to verify the separation performance of the steam stripper. The Henry's law constant of ethylene glycol monobutyl ether acetate is in between the Henry's law constant of methanol and methyl ethyl ketone. Consequently, the percent of ethylene glycol monobutyl ether acetate removed by the steam stripper should be in between the percents removed for the other two compounds. This helps provide verification of steam stripper performance.

When design evaluations are used to demonstrate compliance, the design evaluation is based on the three compounds. The proposal specifies Henry's law constants at a 100 °C, expressed in atmosphere per mole fraction, that must be used in the design evaluation. These Henry's law constants and the Fr values for each compound are listed in Table 2 of this preamble.

Any computer model that can be used for accurate prediction of the steam stripper system of concern can be used. Depending on the complexity of the steam stripper system, some computer models may not be appropriate. Some examples of computer model failures include particulate buildup in the column, lack of ability to predict liquid phase separation, inability to partition compounds into oil and emulsified oil, and inadequate thermodynamic properties for the system of interest.

TABLE 2.—THREE COMPOUNDS USED FOR NEW COMPLIANCE OPTION AND ASSOCIATED HENRY'S LAW CONSTANTS AND FR VALUES

Compound	Fraction removed (Fr value)	Henry's law constant at 100° C (atm per mole fraction)
Methanol	0.31	7.73
Ethylene glycol monobutyl ether	0.76	24.96
Methyl ethyl ketone ...	0.95	59.2

When performance tests are used to demonstrate compliance, if the wastewater stream entering the steam stripper does not contain all three compounds, the wastewater stream must be spiked so that the percent removal of the compounds can be determined.

Today's revisions include two other compliance options that do not require speciation. They are the 95 percent mass removal with an outlet VOC concentration of 50 ppmw option and the design steam stripper option. EPA is aware that some in the regulated community are working to develop a nonspeciated method to demonstrate compliance with biological treatment units. If this procedure is demonstrated to be effective, EPA will consider adding it to these provisions.

3. Clarification That Treatment in Series is Allowed

The September 1994 proposed rule intended that more than one treatment process could be used to comply with the rule. Today's revised proposed rule explicitly provides for treatment in series in §§ 60.779 and 60.783 and clarifies EPA's intent on this issue. Although all Group 1 wastewater streams or residuals must be conveyed in controlled individual drain systems, treatment in series may be used whether or not treatment processes are connected by hard-piping. However, inlet and outlet mass flow rate determination for compliance demonstration differ, depending on whether hard-piping is used to connect treatment processes and whether a biological treatment process is part of the series.

4. Revised Provisions for the One Megagram Source-wide Exemption

The provisions for the 1 megagram option were clarified and revised and were moved from § 60.770 into § 60.779. In the September 1994 proposed rule, the 1 megagram exception could have been applied to each affected process at the plant site. The 1 megagram exemption in today's revised proposed rule is a source-wide exemption that is to be shared among affected facilities at the plant site. This change makes the rule more consistent with the HON.

C. Alternative Methods to Method 25D Used in § 60.782

Today's revised proposed rule would allow use of alternative methods for Group 1 or Group 2 determinations for process wastewater streams in lieu of Method 25D for all compliance options. The EPA reviewed Methods 624, 625, 1624, and 1625 and has determined that these methods may be used with certain additional requirements. These requirements are specified in § 60.782(b) of today's proposed rule. Other methods may be used if they are validated by the Method 301 validation procedure. EPA's review of these methods was discussed in section IV.F. of the HON preamble of 26 August 1996 (61 FR 43698).

D. Changes to § 60.783, Process Wastewater—Test Methods and Procedures To Determine Compliance

Section 60.783 indicates how to demonstrate compliance with the performance standards in § 60.779. Several significant changes are proposed to this section.

1. Reorganization of § 60.783

In today's proposal, three clarifications to § 60.783 are of particular note: (1) conditions under which a performance test or design evaluation is allowed or under which neither is required are specified in paragraphs (a)(1) and (a)(2); (2) new paragraphs (a)(3)–(a)(7) specify the following performance test and compliance determination guidance: performance tests and compliance determinations are to be conducted according to 63.7(a) of subpart A of 40 CFR part 63 and this subpart, the Administrator should be notified of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled, certain operating conditions apply when conducting tests, data should be reduced and validated, and how to apply for a performance test waiver; and (3) "representative operating conditions" for treatment processes and control devices are specified in paragraphs (a)(8) and (a)(9) of § 60.783. The reorganized section would also make provisions for measuring concentration and flow rate consistent throughout the section.

2. Demonstrating Compliance for Biological Treatment Processes and Addition of "Enhanced Biological Treatment Process" Concept

Today's revised proposed rule would add paragraph (h) which (1) describes how to determine the site-specific fraction of VOC biodegradated (Fbio); (2) clarify that biological treatment processes must use one of the required mass removal options to comply with the rule; (3) add flexibility in demonstrating compliance for biological treatment processes; and (4) add provisions that allow a subset of VOC to be used to demonstrate compliance.

Paragraph (h)—how to determine Fbio—is added to make the provisions easier to locate. In addition, § 60.783(h), together with appendix C to part 63, provide more flexibility to the owner or operator to demonstrate compliance for biological treatment processes. The September 1994 proposed rule required owners and operators using biological treatment processes to demonstrate compliance using appendix C to part 63 to determine Fbio. Today's revisions recognize that for some biological treatment processes, those EPA has designated "enhanced biological treatment processes," a less rigorous determination of Fbio is sufficient to demonstrate compliance. This concept is discussed below.

When a biological treatment process is used, one of the required mass removal options, § 60.779(f) or (g), must be chosen as the compliance option. The provisions that may be used to demonstrate compliance depend on whether the biological treatment process is open or closed. In each case, the proposed rule specifies which compliance demonstration provisions may be used.

For open biological treatment processes, volatilization is an important concern. Therefore, to demonstrate compliance, the owner or operator must determine the mass of VOC that are removed due to biodegradation rather than volatilization. If the open biological treatment process is an enhanced biological treatment process, the source would have more flexibility in demonstrating compliance.

3. Performance Requirements for Open Biological Treatment Processes

Today's revised proposed rule lists 24 compounds in Table 14. This list of compounds would be used together with other provisions to specify how the source may demonstrate compliance. Table 14 may only be used for wastewater streams treated in an enhanced biological treatment system as defined by the proposed revisions to the rule. The basis of the list is discussed in detail in the HON preamble of 26 August 1996 (61 FR 43698), in the HON preamble of January 17, 1997 (62 FR 2722), in the HON preamble of August 22, 1997 (62 FR 44608), and in Docket A–90–23.

A performance demonstration would not be required for enhanced biological treatment systems that receive wastewater streams that require control and that contain only Table 14 compounds. An example would be an activated sludge unit that meets the proposed enhanced biological treatment system definition and treats Group 1 wastewater streams that contain only methanol and nitrobenzene (proposed Table 14 compounds). For enhanced biological treatment systems treating wastewater containing compounds other than those on proposed Table 14, a performance demonstration is required.

Today's revisions offer several techniques for demonstrating compliance for an open biological treatment unit meeting the proposed definition of an enhanced biological treatment system. The demonstration is performed by estimating the Fbio for the system using the first order biodegradation constant (K1) and the forms in appendix C to part 63. The owner or operator may use any of the procedures specified in 40 CFR part 63, appendix C to calculate the site-specific K1s for VOC. The owner or operator may elect not to calculate site-specific biodegradation rate constants but instead to calculate Fbio for the Table 14 compounds using the defaults for K1s in Table 14 and to follow the procedure explained in Form IIA of appendix C. For all other VOC treated in a unit meeting the definition of "enhanced biological treatment system," the owner or operator is allowed to use any of the procedures specified in 40 CFR part 63, appendix C, to calculate the site-specific K1. Biological treatment units not meeting the definition of an enhanced biological treatment system are allowed to determine the Fbio using the site-specific K1 values determined by any of the procedures in appendix C to part 63 except procedure 3 (inlet and outlet concentration measurements).

The EPA believes that today's proposed revisions to the biological treatment option adds additional flexibility without sacrificing reduction of emissions. By separating VOC into the proposed Table 14 compounds and all other VOC and allowing different performance requirements depending on the properties of the compounds on proposed Table 14, additional options have been made available to the owner/operator. The flexibility allowed by not requiring that the site-specific fraction biodegraded be determined for all VOC in the wastewater stream is predicated on the underlying assumption that the wastewater is treated in an enhanced biological treatment system.

4. Meaning of Enhanced Biological Treatment Unit

The definition of "enhanced biological treatment system or enhanced biological treatment process" is intended to reflect the basis for the simplified compliance approach for some systems. The list of compounds in Table 14 were developed by modeling performance of an activated sludge system that was a thoroughly mixed biological treatment unit (Docket number A–90–23, item VII–B–8). The definition of enhanced biological treatment process includes a description of a "thoroughly mixed treatment unit." "Thoroughly mixed treatment unit" is intended to convey the concept of an activated sludge system that is designed and operated to approach or achieve the characteristics of a completely back mixed system. Because the EPA does not intend the definition to only allow systems with perfect uniformity in characteristics, a "thoroughly mixed treatment unit" would be described as a unit that is "designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit." This description is intended to recognize that well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. The meaning of enhanced biological treatment system in this subpart is meant to be exactly the same as its meaning in the HON.

The EPA realizes that many units have varying degrees of uniformity in biomass distribution and organic compound concentration throughout the biological unit. The EPA is developing additional information to assist in determining whether a biological treatment unit is thoroughly mixed and meets the enhanced biological treatment system definition. When finished, the additional information will be available from the Air and Radiation Docket and Information Center and on the EPA's Technology Transfer Network (TTN).

5. Equations in § 60.783

Many of the equations in § 60.783 were revised to make mathematical corrections or to make the equations consistent with the rest of the rule and with the HON. The terms in the equations were changed to make them consistent as well.

6. Compounds not Required To Be Considered in Performance Tests

Today's revised proposed rule adds § 60.783(a)(6) which specifies when compounds can be excluded from in a performance test. These provisions were added because EPA recognizes that not all VOC are present in a wastewater stream; and not all compounds need to be measured to demonstrate compliance, i.e., measuring a predominant compound may be enough to show the mass removal necessary to achieve compliance. These provisions would also provide that compounds present at concentrations less than 1 ppmw at the POD or compounds present at the POD at concentrations less than the lower detection limit where the lower detection limit is greater than 1 ppmw may be excluded from the performance test. This provision was added to avoid imposing an unnecessary analytical burden.

XII. Revisions to Requirements for Delay of Repair (§ 60.777) and Control Devices (§ 60.780)

Today's revised proposed rule changes the control device provisions in § 60.780. The delay of repair provisions previously included in this section have been moved to § 60.777. The delay of repair provisions in § 60.777 reflect changes and clarifications made to the HON delay of repair provisions for process wastewater in the January 17, 1997 HON rule amendments. The revised provisions allow delay of repair for any of the following situations: (1) the repair is technically infeasible without a shutdown, or the emissions of purged material from immediate repair

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would be greater than emissions likely to result from delay of repair, (2) the equipment has been emptied or is no longer used to treat or manage Group 1 wastewater streams, and (3) additional time is necessary to obtain parts.

XIII. Revisions to Requirements for Inspections and Monitoring (§ 60.781)

Today's revised proposed rule changes the inspection and monitoring provisions in § 60.781. The changes clarify that for each excursion, except for excused excursions, the owner or operator has failed to apply control in a manner that achieves the required operating conditions. Failure to achieve the required operating conditions is a violation of the standard.

XIV. Revisions to Reporting Requirements (§ 60.784)

Today's revised proposed rule changes the reporting provisions in § 60.784. These changes are consistent with the reporting provisions in the HON rule. Significant changes proposed include: allowing alternative monitoring and recordkeeping systems, including non-automated systems and data compression systems; clarifying that only one excursion per control device per day can occur; the addition of one excused excursion per control device per semiannual period; clarification of monitoring parameter value violations; and the addition of a report name, the Notification of Compliance Status, to describe compliance demonstration information that must be reported.

A. Alternative Monitoring and Recordkeeping Systems

Today's revised proposed rule would allow owners or operators the option to request approval to use alternative monitoring and recordkeeping systems. This change will allow owners or operators to use existing systems. Alternative monitoring systems specifically discussed in the rule include non-automated systems and data compression systems. These systems will be allowed on a site-specific basis and requests for approval of alternative monitoring must be submitted prior to the implementation of the alternative monitoring system for which approval is being requested.

Another type of alternative monitoring system allows reduced recordkeeping. Under this alternative, the owner or operator may use a monitoring system capable of detecting unrealistic or impossible data. The monitoring system must be equipped with an alarm or other means for alerting the owner or operator when unrealistic or impossible data is generated. Use of such a monitoring system allows the owner or operator to retain only the daily average value and would not require retention of more frequent monitored operating parameter values. Additional monitoring system requirements and recordkeeping requirements for this program are specified in § 60.785.

If after 6 months no excursions have occurred, the owner or operator is no longer required to record the daily average value for any operating day when the daily average value is less than the maximum or greater than the minimum established limit. If an excursion occurs after the owner or operator has ceased recording daily average values, the owner or operator must resume retaining the daily average value for each operating day until another period of 6 consecutive months has passed without an excursion.

B. One Excursion per Control Device

Commenters requested that the rule specifically state that not more than one excursion per control device per operating day is possible. The rule was clarified to say that if one parameter meets the excursion criteria of the rule, then that is considered a single excursion for the control device. If the control device has multiple parameters that are monitored, and more than one of the parameters meets the excursion criteria, it is still considered a single excursion for the control device.

C. Excused Excursions

Commenters stated that excused excursions were necessary to account for the inevitable and unanticipated operating parameter fluctuations that occur during normal operation of control devices. The commenters stated that a certain number of excursions could be expected even with properly operated pollution control devices. The proposed rule requires the owner or operator to record a daily average for each control device with continuously monitored parameters. The EPA is proposing to allow one excused excursion per control device per six month reporting period. Excused excursions may be appropriate when a technology standard, such as the standard mandated in section 111 of the CAA, is predicated on the best demonstrated control. EPA has determined that even properly operated and maintained control equipment may not perform perfectly over time and that this may be taken into account when determining best demonstrated control.

The proposed one excused excursion per semiannual reporting period equates to roughly one-half percent of the days in the reporting period. As discussed in the HON preamble, the time allowed as excused excursions was selected based on information about the types of events that cause parameter excursions; the duration of the typical excursions; and, the frequency of the events that create excursions. In addition, the proposed approach to excused excursions would provide consistency with the HON.

Examples of events that could cause excursions that would count toward the number of excused excursions are as follows: a thermocouple failure in an incinerator; water contamination in a condenser; off-specification feedstocks; electrical problems; control valve problems such as leaky pneumatic drivers; and extreme environmental conditions. Events that are considered malfunctions under the Start-up, Shutdown, and Malfunction Plan required by this subpart are to be handled separately and would not be counted toward the allowed number of excused excursions. In addition, the provisions for excused excursions are not meant to allow actions that are specifically disallowed by other sections of the NSPS or the General Provisions, such as bypass of a control device.

D. Monitoring Parameter Value Violations

Under earlier NSPS and NESHAP programs, parameter monitoring has traditionally been used as a tool in determining whether control devices are being maintained and operated properly. However, section 114(a)(3) of the Act and § 70.6(c) of the operating permit rule (57 FR 32251, July 21, 1992) require the submissions of "compliance certifications" from sources subject to the operating permit program. Affected facilities would be subject to the operating permit program. Sources must certify whether compliance was continuous or intermittent, as well as their compliance status at the end of the reporting period. In light of these requirements, the Agency has considered how sources subject to this rule would demonstrate compliance.

EPA has considered several approaches for monitoring requirements and has determined that one or more continuous monitoring systems provide the best compliance assurance. EPA has developed a hierarchy for selecting monitoring requirements. The hierarchy is: (1) continuous emissions monitoring; (2) continuous emissions monitoring for surrogate emissions; (3) operating parameters monitoring; and, (4) work practice requirements. The choice of monitoring system selected should be based on availability, cost, and effectiveness.

For many waste management units, today's revisions specify good work practices, including periodic inspections. For control devices and treatment processes, today's revisions either specify, or require the owner or operator to establish appropriate monitoring parameter values.

Today's revisions specify that operating above the approved maximum value or below the approved minimum value for monitoring parameter values is a violation of the standard.

E. Notification of Compliance Status

The term "Notification of Compliance Status" has been added to the rule to provide a report name for compliance demonstration information that must be submitted to the EPA. Most of the information required to be submitted in the Notification of Compliance Status was already required under the September 1994 proposed rule. Types of information that would be included in the Notification of Compliance Status include results of emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance tests, and other information used to demonstrate compliance. The Notification of Compliance Status is a one time report submitted for each affected facility. The term "Notification of Compliance Status" was chosen because it is also used in the HON.

In addition, the rule was revised to clarify that when performance tests and group determinations based on measurements are performed, only one complete test report is necessary for each test method used for a particular kind of emission point. Results and other required information still must be submitted.

A time frame for submittal of the Notification of Compliance Status was added to the rule. The rule was revised to say that the Notification of Compliance Status is due within 150 days after the compliance dates for the rule. This time frame is consistent with the time frame for the Notification of Compliance Status in the HON.

Tables 9 through 12 were also revised to reflect changes made to the HON tables and to require that the information in the tables be submitted as part of the Notification of Compliance Status. Tables 5, 7, 8, and 13 were also revised to reflect HON table changes.

XV. Revisions to Recordkeeping Requirements (§ 60.785)

Today's revised proposed rule changes the recordkeeping provisions in § 60.785. The changes clarify the periods during which monitoring data should not be included in the daily average: monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments; start-ups; shutdowns; malfunctions; periods of non-operation of the chemical process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

The EPA also added data retention provisions. Under these provisions, records and reports required by the rule must be kept and must be accessible for 5 years.

Provisions for keeping continuous records and calculating daily averages have been clarified in the proposed rule. Provisions were added to clarify the frequency with which monitoring systems should record data and which of this data are necessary to demonstrate continuous compliance. The provisions require the monitoring system to measure data values at least once every 15 minutes. Each measured data value or block average values for 15-minute or shorter periods are used to calculate hourly average data values. The hourly average values are used to calculate daily average values. For days when all recorded values for a monitored parameter are below the minimum or above the maximum established value, the owner or operator may record that all values were below the maximum or above the minimum established operating parameter value. The 15-minute value must be retained for operating days when the daily average value of the monitored parameter is above the maximum or below the minimum established value. These provisions are consistent with the continuous record provisions in the HON.

XVI. Revisions to Additional Requirements—Start-up, Shutdown, Malfunction, and Non-Operation, and Alternative Means of Emission Limitation, and Permits (§ 60.787)

Today's revised proposed rule adds provisions for proper operation and maintenance of the affected facility during periods of start-up, shutdown, malfunction, and non-operation. The provisions require that the owner or operator of each affected facility develop a written start-up, shutdown, and malfunction plan, to be kept on-site, which would describe procedures for operating and maintaining the affected facility during periods of start-up, shutdown, and malfunction, and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. Appropriate reporting and recordkeeping of periods of start-up, shutdown, and malfunction are specified in this section. This change makes the rule more consistent with the HON.

New provisions have also been added for approval of an alternative means of emission limitation if the alternative achieves a reduction in VOC emissions at least equivalent to the reduction achieved under this subpart. Approved alternatives are published in the **Federal Register**. This change makes the rule more consistent with the HON.

Provisions directing owners or operators to obtain a permit under the operating permit program are also included in this section.

XVII. Revisions to Leak Inspection Requirements (§ 60.786)

Today's revised proposed rule changes the leak inspection provisions in § 60.786. These changes mirror the changes made to § 63.148, Leak inspection provisions, of the HON rule in the January 17, 1997 amendments (62 FR 2775).

XVIII. Revisions to List of SOCMI Chemicals (Table 1)

EPA reviewed the list of proposed SOCMI chemicals on Table 1 of the rule and made spelling corrections and removed some duplicate compounds. EPA is considering removing other chemicals from Table 1 and requests comment on whether any chemicals should be added to or deleted from Table 1.

XIX. Addition of Appendix J to Part 60

Today's revised proposed rule adds Appendix J to part 60, How to Determine Henry's Law Constants, Fm Values, Fr Values, and Fe Values for Organic Compounds. This appendix provides the methodology for determining Henry's law constants, fraction measured (Fm) values, fraction removed values (Fr), and fraction emitted (Fe) values.

The development of these values is discussed in "Correction to the report dated February 2, 1994 "Estimation of Air Emissions from model wastewater collection and treatment plants" and "Estimation of Compound Properties: Correlations for Fm, Fr, Fe, and Fet." (Docket item A–90–23, IV–B–4 and Docket item A–94–32, IV–A–1)

The proposed appendix has four sections. Section 2 contains the procedures for determining Henry's law constants, Fm values, Fr values, and Fe values. Section 3 describes how to locate certain resources. Section 4 contains five tables and thirteen forms.

The appendix would be used to:

1. Determine whether a chemical has a Henry's law constant at 25° C that is less than 0.1 y/x atmosphere per mole fraction.
2. Determine a fraction measured (Fm) value for a chemical.
3. Subtract the concentration of a chemical from a Method 25D concentration.
4. Determine the fraction removed (Fr) value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x atmosphere per mole fraction.
5. Determine the fraction emitted (Fe) value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x atmosphere per mole fraction.
6. Calculate a Henry's law constant at a specific temperature using a Henry's law constant at a different temperature for the same chemical.

XX. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1697.02) and a copy may be obtained from Sandy Farmer, Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460 or by calling (202) 260–2740.

Information will be collected as required in the General Provisions to part 60 and the requirements in the reporting and recordkeeping sections of the proposed rule. The information will be used to ensure compliance with the standard.

The changes included in today's revised proposed rule do not affect the information collection burden estimates prepared for the September 1994 proposal. The changes consist of revised definitions, alternative test procedures, and clarifications of requirements. The proposed changes do not include new or additional requirements. Consequently, the ICR has not been revised for this rule, although it has been resubmitted to OMB.

The estimated annual cost and hour burden per respondent is about $4,830 and 150 hours, per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The Agency requests comments on the need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing the respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [insert date of publication in **Federal Register**], a comment to OMB is best assured of having its full effect if OMB receives it by [insert date 30 days after publication in the **Federal Register**]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The September 1994 proposal was considered "not significant" under Executive Order 12866. The revisions proposed today clarify the September 1994 proposed rule. As revised the proposed rule does not add any new control requirements. Therefore, this regulatory action is considered "not significant" and was not reviewed by OMB.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a proposed rule under 5 U.S.C. § 553, an agency must prepare an initial regulatory flexibility analysis unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The EPA has evaluated the impact of this proposed regulation on small entities. Based upon the analysis, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), I certify that this rule will not have a significant impact on a substantial number of small entities.

The SOCMI Wastewater NSPS applies to new and modified sources. Existing sources may be subject to the NSPS in the event these facilities are modified. Since the regulation is applicable to new sources or existing sources that modify facilities, the actual entities impacted by the regulation are not known precisely. This is particularly true with regard to new sources. Due to the difficulties in predicting those facilities that will be subject to the rule, the EPA looked at two data sources for information: the regulatory flexibility analysis performed for the HON and the SOCMI wastewater database.

The EPA analyzed SOCMI for impacts on small business when the HON was developed. Since the HON and the SOCMI wastewater NSPS will affect the same and similar facilities and the emission control requirements are similar, the EPA believes that the analysis done for the HON is valid for this rule as well. The HON analysis, which was based on 66 firms, concluded that fewer than 15 percent of the firms were small firms and that they do not constitute a substantial number. Furthermore, the economic analysis for the HON projected generally small impacts (87 percent of the analyzed sample were projected to have output changes of less than 2 percent). Therefore, the HON was not expected to have a significant economic impact on a substantial number of small firms. The regulatory flexibility analysis for the HON is discussed in 59 FR 19449 (April 22, 1994).

The EPA next considered a database created from surveys sent to industry under the authority of section 114 of the Act. This database, called the SOCMI 114 database, includes information on SOCMI-generated wastewater streams. The EPA used the database as another way to assess potential impacts on small entities.

The 25 facilities in the SOCMI 114 database used to make this assessment are owned by 9 companies. All of these facilities produce chemicals in either Standard Industrial Classification (SIC) 2869 (Industrial Chemicals, N.E.C.) or SIC 2821 (Plastic Materials, Synthetic Resins, and Nonvulcanizable Elastomers). The Small Business Administration (SBA) defines a small business for SIC 2869 and SIC 2821 to be companies with less than 1000 and 750 employees, respectively. Each of the 9 companies in the SOCMI 114 database are not small businesses within the SBA definition. Based upon this database, no small businesses are expected to be directly impacted by the SOCMI Wastewater NSPS. The economic impacts of this regulation for the facilities in the SOCMI 114 database are also anticipated to be minimal with price and quantity impacts of less than 1 percent.

The small business analysis conducted for this regulation indicates that companies potentially affected by the NSPS are large companies (SOCMI 114 database) or are not anticipated to be significantly impacted by the regulation (HON regulatory flexibility analysis). Thus, the EPA concludes that this regulation will not have a significant impact on a substantial number of small entities as specified in the RFA.

D. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate or to the private sector, of $100 million or more in any one year. Under Section 205, the EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. The EPA has determined that today's proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

The EPA has determined that today's proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Executive Orders 12875 and 13084

Today's action does not impose any unfunded mandate upon any State, local, or tribal government; therefore, Executive Orders 12875 and 13084 do not apply to this rulemaking.

Under E.O. 12875 and E.O. 13084, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government unless the Federal Government provides the necessary funds to pay the direct costs incurred by the State, local or Tribal government or EPA provides to the Office of Management and Budget a description of the extent of the prior consultation and written communications with representatives of affected State, local and Tribal governments and an Agency statement supporting the need to issue the regulation. In addition, E.O. 12875 and E.O. 13084 require EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104–113, sec. 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking includes technical standards and requirements for taking measurements. Consequently, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Institute (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

EPA searched for methods and tests required by this proposed rule, all of which are methods or tests previously promulgated. The proposed rule includes methods that measure: (1) Volatile organic compound concentration in wastewater (EPA Methods 25D, 305, 624, 625, 1624, or 1625); (2) biodegradation rates (EPA Methods 304A and B, aerated reactor test (i.e., BOX test) serum bottle test, performance data with and without biodegradation, or inlet and outlet concentration measurements); (3) vapor leak detection (EPA Method 21); (4) volatile organic compound concentration in vented gas stream (EPA Method 18); (5) volumetric flow rate of the vented gas stream (EPA Methods 2, 2A, 2C, or 2D); (6) sampling site location (Method 1 or 1A); (7) validation of chemical methods (EPA Method 301); (8) determination of actual oxygen concentration (percent O2d) (EPA Method 3B); and (9) visible emissions (EPA Method 22). These EPA methods are found in Appendix A to parts 60, 63, and 136. The biodegradation tests are found in Appendix C to part 63.

Except for EPA Methods 2 and 2C (Appendix A to part 60), no other potentially equivalent methods for the methods and tests in the proposal were found in the NSSN database search. EPA identified one Chinese (Taiwanese) National Standard (CNS) which may potentially be an equivalent method to EPA Methods 2 and 2C. The CNS method is CNS K9019 for measuring velocity and flow rates in stack gases.

However, EPA does not believe that CNS K9019 is a voluntary consensus method. It is unlikely that CNS K9019 was considered by industry groups or national setting standards organizations because it was not developed in the United States (U.S.) and there is no available information about it in the U.S.

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To confirm EPA's belief, EPA is asking for comment on whether any U.S. industry has adopted CNS K9019 as a voluntary consensus method. EPA is also asking for comment on whether any potential voluntary consensus methods exist that could be allowed in addition to the methods in the proposal. Methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

G. Executive Order 13045

This proposed rule is not subject to Executive Order 13045 (E.O. 13045), entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866 (E.O. 12866).

The E.O. 13045 applies to any rule that EPA determines (1) "economically significant" as defined under E.O. 12866, and (2) the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: September 29, 1998.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601 and 7602.

2. Part 60 is amended by adding subpart YYY to read as follows:

Subpart YYY—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Wastewater

Sec.
60.770 Applicability and date of compliance.
60.771 Definitions.
60.772 Modification and reconstruction.
60.773 Process wastewater provisions—General.
60.774 Wastewater tank, surface impoundment, container, individual drain system, and oil-water separator provisions.
60.775 Control requirements for aqueous in process streams.
60.776 Maintenance wastewater requirements.
60.777 Delay of repair.
60.778 Stream-specific list of VOC determination.
60.779 Process wastewater provisions—Performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams.
60.780 Standards—Control devices.
60.781 Monitoring of operations.
60.782 Process wastewater provisions—Test methods and procedures for determining applicability and Group 1 and Group 2 determinations (determining which process wastewater streams require control).
60.783 Process wastewater provisions—Test methods and procedures to determine compliance.
60.784 Reporting requirements.
60.785 Recordkeeping requirements.
60.786 Leak inspection provisions.
60.787 Additional requirements—Start-up, shutdown, malfunction, or nonoperation; Alternative means of emission limitation; and permits.
60.788 [Reserved]
60.789 Relationship to other regulations.
Table 1 to subpart YYY—List of SOCMI chemicals
Table 2 to subpart YYY—Applicability of 40 CFR part 60 general provisions to subpart YYY
Table 2A to subpart YYY—Applicability of 40 CFR part 63 general provisions to subpart YYY
Table 3 to subpart YYY—Control requirement options for wastewater tanks, surface impoundment, containers, individual drain systems, and oil-water separators
Table 4 to subpart YYY—Wastewater tanks requiring controls and control requirements
Table 5 to subpart YYY—Compliance options for wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators
Table 6 to subpart YYY—Control requirements for items of equipment that meet the criteria of § 60.775
Table 7 to subpart YYY—Monitoring requirements for treatment processes
Table 8 to subpart YYY—Monitoring requirements for control devices
Table 9 to subpart YYY—Information on process wastewater streams to be submitted with notification of compliance status
Table 10 to subpart YYY—Information for treatment processes to be submitted with Notification of Compliance Status
Table 11 to subpart YYY—Information for waste management units to be submitted with Notification of Compliance Status
Table 12 to subpart YYY—Information on residuals to be submitted with Notification of Compliance Status
Table 13 to subpart YYY—Semiannual reporting requirements for control devices [§ 60.784(f)]
Table 14 to subpart YYY—Compound and default biorates used for compliance demonstrations for enhanced biological treatment processes (see § 60.783(h))

Subpart YYY—Standards of Performance for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Wastewater

§ 60.770 Applicability and date of compliance.

(a) The provisions of this subpart apply to each affected facility and any devices or systems required by this subpart. An affected facility is a designated chemical process unit (CPU) in the synthetic organic chemical manufacturing industry which commences or commenced construction, reconstruction or modification after September 12, 1994. An affected facility that does not generate a process wastewater stream, a maintenance wastewater stream, or an aqueous in-process stream, is not subject to the control requirements of this subpart.

(1) *Initial determination of applicability.* Determine applicability to this subpart as specified in paragraphs (b) through (g) of this section. For an affected facility, determine if the affected facility generates a process wastewater stream, maintenance wastewater stream, or aqueous in-process stream as specified in paragraph (h) of this section. The owner or operator of an affected facility that generates a process wastewater stream, a maintenance wastewater stream, or an aqueous in-process stream shall comply with requirements of this subpart. The owner or operator of an affected facility that does not generate a process wastewater stream, a maintenance wastewater stream, or an aqueous in-process stream is exempt from the requirements specified in this subpart, except for the requirements specified in § 60.770(a)(2), § 60.770(h)(2), § 60.784(d)(12), and § 60.785(c)(8) of this subpart.

(2) *Reevaluation of applicability criteria.* When one or both of the applicability criteria in paragraph (a)(2)(i) or (a)(2)(ii) of this section changes, the owner or operator shall reevaluate the applicability as specified in this paragraph (a). A CPU or designated CPU shall not be evaluated more than once every 12 months. If the

designated CPU is an affected facility and subject to the provisions of this subpart, the owner or operator may elect not to reevaluate applicability.

(i) *Produces SOCMI as a primary product.* If a CPU begins manufacturing chemicals not used in the primary product determination or ceases manufacturing chemicals listed in the primary product determination, the primary product determination is no longer in effect and shall be reevaluated as specified in paragraph (f) of this section.

(ii) *Is Modified or Reconstructed.* If a designated CPU that is not an affected facility is modified or reconstructed after September 12, 1994, then the applicability determination shall be evaluated as specified in § 60.772 of this subpart.

(3) Each affected facility shall be in compliance with the provisions of this subpart no later than initial start-up or [DATE OF PUBLICATION OF FINAL RULE], whichever is later.

(b) The designated CPU is in the synthetic organic chemical manufacturing industry (SOCMI) if the conditions of either paragraph (b)(1) or (b)(2) of this section are met.

(1) The designated CPU is a combination of all process lines within a CPU, i.e., an entire CPU, and the primary product of the designated CPU is a SOCMI chemical; or

(2) The designated CPU is a process line, or combination of process lines within a CPU, and the primary product of the CPU is a SOCMI chemical.

(3) The primary product of a CPU shall be determined as provided in paragraph (f) of this section.

(4) The SOCMI chemicals are listed in Table 1 of this subpart.

(5) Each storage vessel that is part of the CPU shall be assigned to one designated CPU that it services. Storage vessels shall be assigned to the CPU as specified in paragraph (g) of this section.

(c) The designated CPU shall be an entire CPU except as otherwise provided in this paragraph (c).

(1) The owner or operator may designate each process line or combination of process lines within a CPU to be a designated CPU for purposes of this subpart, at any time before commencing construction, reconstruction or modification.

(i) If the owner or operator designates each process line, or combination of process lines, within a CPU to be a designated CPU, the installation of an additional process line may constitute construction of a designated CPU, but shall not in itself be considered modification or reconstruction of the existing process lines.

(ii) If the entire CPU is the designated CPU, the installation of an additional process line may constitute modification or reconstruction of the designated CPU, but shall not in itself be considered construction of a designated CPU.

(2) The owner or operator shall assign all equipment that is part of the CPU to one or more designated CPU.

(3) Any designation under paragraph (c)(1) of this section shall be reported to the Administrator as provided in § 60.784 of this subpart and shall be irrevocable.

(d) *General Provisions applicability.* The owner or operator shall comply with the provisions of subpart A of this part and subpart A of 40 CFR part 63 as specified in Table 2 and 2A of this subpart.

(e) The provisions of this subpart do not apply to the processes listed in paragraphs (e)(1) through (e)(5) of this section. This subpart does not require these processes to comply with the provisions of subpart A of this part.

(1) Research and development facilities.

(2) Petroleum refining process units, regardless of whether the units supply feedstocks that include chemicals listed in Table 1 of this subpart to chemical process units that are subject to the provisions of this subpart.

(3) Chemical process units that are located in coke by-product recovery plants.

(4) Solvent reclamation, recovery, or recycling operations at a hazardous waste treatment, storage, and disposal facility (TSDF) requiring a permit under 40 CFR part 270 that are not part of a SOCMI chemical process unit.

(5) Organic chemicals extracted from natural sources or totally produced from biological synthesis, such as pinene, coconut oil acids, sodium salt, fatty acids, tall oil, tallow acids, potassium salt, and beverage alcohol.

(f) *Primary product determinations.* The primary product of a CPU is determined according to the procedures specified in paragraphs (f)(1) and (f)(2) of this section. With respect to CPU for which the expected use is known, the owner or operator shall use paragraph (f)(1) of this section. With respect to CPU for which the expected use is unknown, the owner or operator shall use paragraph (f)(2) of this section.

(1) *Expected use is known.* The primary product determination for a CPU, where the expected use is known for the 12 months following initial startup shall be determined according to the procedures in paragraphs (f)(1)(i) through (f)(1)(iii) of this section.

(i) If a chemical process unit produces none of the chemical products listed in Table 1 of this subpart, the primary product is not a SOCMI product.

(ii) If a chemical process unit produces only chemical products listed in Table 1 of this subpart, the primary product is a SOCMI product.

(iii) If a chemical process unit produces one or more chemical products listed in Table 1 of this subpart and one or more chemical products not listed in Table 1 of this subpart, the owner or operator shall sum the expected annual production, on a mass basis, for the chemical products listed in Table 1 of this subpart and sum the expected annual production, on a mass basis, for the chemical products not listed in Table 1 of this subpart. If the sum of the chemical products listed in Table 1 of this subpart is greater than or equal the sum of the chemical products not listed in Table 1 of this subpart, the primary product is a SOCMI product. If not, the primary product is not a SOCMI product.

(2) *Expected use is unknown.* Where the expected use of the CPU is unknown for the 12 months following initial startup and the CPU will manufacture one or more of the chemical products listed in Table 1 of this subpart, the primary product of the CPU is a SOCMI product.

(g) *Storage vessel assignment.* The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(4) of this section to determine whether a storage vessel is part of the CPU to which this subpart applies, either in part or in whole.

(1) Where a storage vessel is dedicated to a chemical process unit, the storage vessel shall be considered part of that chemical process unit.

(2) If a storage vessel is not dedicated to a single chemical process unit, then the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(2)(i) through (g)(2)(iii) of this section.

(i) If a storage vessel is shared among chemical process units and one of the process units has the predominant use, as determined by paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this section, then the storage vessel is part of that chemical process unit.

(A) If the greatest input into the storage vessel is from a chemical process unit that is located on the same plant site, then that chemical process unit has the predominant use.

(B) If the greatest input into the storage vessel is provided from a chemical process unit that is not located on the same plant site, then the predominant use is the chemical process unit on the same plant site that receives the greatest amount of material from the storage vessel.

(ii) If a storage vessel is shared among chemical process units so that there is no single predominant use, and at least one of those chemical process units is subject to this subpart, in part or whole, the storage vessel shall be considered to be part of the chemical process unit that is subject to this subpart, in part or whole. If more than one chemical process unit is subject to this subpart, in part or whole, the owner or operator may assign the storage vessel to any of the chemical process units subject to this subpart.

(iii) If the predominant use of a storage vessel varies from year to year, then the applicability of this subpart shall be determined based on the use that occurred during the year preceding [date final rule is published]. This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(3) Where a storage vessel is located at a plant site that includes one or more chemical process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(3)(i) through (g)(3)(iv) of this section.

(i) The storage vessel may only be assigned to a chemical process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any chemical process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the chemical process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the chemical process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no chemical process unit at the plant site that meets the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one chemical process unit at the plant site that meets the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that chemical process unit.

(iv) If there are two or more chemical process units at the plant site that meet the criteria of paragraph (g)(3)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those chemical process units according to the provisions of paragraph (g)(2) of this section. The predominant use shall be determined among only those chemical process units that meet the criteria of paragraph (g)(3)(i) of this section.

(4) If the storage vessel begins receiving material from (or sending material to) another chemical process unit, or ceasing to receive material from (or send material to) a chemical process unit, or if there is a significant change in the use of a storage vessel whose predominant use was determined according to paragraph (g)(2)(i) of this section that could reasonably change the predominant use, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(h) *Process Wastewater, maintenance wastewater, and aqueous in-process stream determination.*

(1) The owner or operator shall determined whether an affected facility generates a process wastewater stream, a maintenance wastewater stream, or an aqueous in-process stream. The owner or operator of an affected facility that generates a process wastewater stream, maintenance wastewater stream, or aqueous in-process stream shall comply with the provisions of this subpart. The owner or operator of an affected facility that does not generate a process wastewater stream, maintenance wastewater stream, or aqueous in-process stream is exempt from the requirements specified in this subpart, except for the requirements specified in §§ 60.770(a)(2), 60.770(h)(2), 60.784(d)(12), and 60.785(c)(8) of this subpart.

(2) If an affected facility begins to or ceases to generate a process wastewater stream, maintenance wastewater stream, or aqueous in-process stream, the owner or operator shall reevaluate the applicability of this subpart to the affected facility. If an affected facility is subject to the provisions of this subpart, the owner or operator may elect not to reevaluate applicability.

(3) The affected facility includes the water and wastewater streams listed in paragraphs (h)(3)(i) through (h)(3)(vi) of this section, but they are not subject to the requirements of this subpart or the provisions of subpart A of this part.

(i) Stormwater managed in segregated sewers.

(ii) Water from fire-fighting and deluge systems in segregated sewers.

(iii) Spills.

(iv) Water from safety showers.

(v) Water from testing of deluge systems.

(vi) Water from testing of firefighting systems.

§ 60.771 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of this part. The following terms shall have the specific meanings given them in this section.

Annual average concentration means the flow-weighted annual average concentration, as determined according to the procedures specified in § 60.782(b) of this subpart.

Annual average flow rate means the annual average flow rate, as determined according to the procedures specified in § 60.782(c) of this subpart.

Aqueous in-process stream means a stream comprised of water and VOC within a CPU and prior to the point of determination that is conveyed, or otherwise handled, in equipment controlled less stringently than required in Table 6 to this subpart. An aqueous in-process stream has a concentration of at least 500 part per million by weight (ppmw)and a flowrate of at least 1 liter per minute.

Automated monitoring and recording system means any means of measuring values of monitored parameters and creating a hard copy or computer record of the measured values that does not require manual reading of monitoring instruments and manual transcription of data values. Automated monitoring and recording systems include, but are not limited to, computerized systems and strip charts.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Chemical process unit or CPU means the equipment assembled and connected by hard-piping or ductwork to process raw materials and to manufacture a product. A chemical process unit consists of more than one unit operation. For the purpose of this subpart, chemical process unit includes air oxidation reactors and their associated product separators and recovery devices; reactors and their associated product separators and recovery devices; distillation units and their associated distillate receivers and recovery devices; associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, and connected ductwork and hard-piping. A chemical process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems. A chemical process unit is identified by its primary product.

Closed biological treatment process means a tank or surface impoundment where biological treatment occurs and VOC emissions from the treatment process are routed either to a control device by means of a closed vent system or to a fuel gas system by means of hard-piping. The tank or surface impoundment has a fixed roof, as defined in this section, or a floating flexible membrane cover that meets the requirements specified in 40 CFR 63.134.

Closed-vent system means a system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of volatile organic compound emissions.

Container means any portable waste management unit that has a capacity greater than or equal to 0.1 m^3 in which a material is stored, transported, treated, or otherwise handled. Examples of containers are drums, barrels, tank trucks, barges, dumpsters, tank cars, dump trucks, and ships.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 60.785 of this subpart.

Continuous recorder means a data recording device recording an instantaneous data value or an average data value at least once every hour.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Control device means any combustion device, recovery device for vapor vents, or recapture device. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For a steam stripper, a primary condenser is not considered a control device.

Cover means a device or system which is placed on or over a waste management unit containing wastewater or residuals so that the entire surface area is enclosed to minimize air VOC emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed when not in use. Examples of covers include a fixed roof installed on a wastewater tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

Designated chemical process unit or designated CPU means an individual process line within a CPU or a combination of some or all of the process lines within a CPU.

Ductwork means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

External floating roof means a pontoon-type or double-deck-type cover that rests on the liquid surface in a storage vessel or waste management unit with no fixed roof.

Fill or *filling* means the introduction of a wastewater stream or residual into a waste management unit (e.g., storage tank), but not necessarily to complete capacity.

Fixed roof means a cover that is mounted on a waste management unit or storage vessel in a stationary manner and that does not move with fluctuations in liquid level.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Flexible operation unit means a chemical process unit that manufactures different chemical products periodically by alternating raw materials or operating conditions. These units are also referred to as multi-purpose units, multiple product units, campaign plants, or blocked operations.

Floating roof means a cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and waste management unit or storage vessel wall.

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

Fbio means site-specific fraction of VOC biodegraded, unitless.

Fe means fraction emitted value, unitless.

Fm means compound-specific fraction measured factor, unitless.

Fr means fraction removed value for VOC, unitless.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in in-process combustion equipment such as furnaces and gas turbines, either singly or in combination.

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgment and standards, such as ANSI B31–3.

HON means the National Emissions Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks, 40 CFR part 63, subparts F and G.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Individual drain system means the stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge or disposal. The term includes hard-piping, all process drains and junction boxes, together with their associated sewer lines and other junction boxes, manholes, sumps, and lift stations, conveying wastewater streams or residuals. A segregated storm water sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall-runoff at a facility, and which is segregated from all other individual drain systems, is excluded from this definition.

Initial start-up means the first time a new or reconstructed affected facility begins production, or the first time a modified affected facility is put into production. Initial start-up does not include operation solely for testing equipment. For purposes of this subpart, initial start-up does not include subsequent start-ups (as defined in this section) of chemical process units following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel or waste management unit that has a fixed roof.

Junction box means a manhole or a lift station, or access point to a wastewater sewer line.

Liquid-mounted seal means a foam-or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel or waste management unit and the floating roof. The seal is mounted continuously around the circumference of the vessel or unit.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the chemical process unit into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, and draining of portions of the chemical process unit for repair.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the organics in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Bulletin 2517, Evaporation Loss From External Floating Roof Tanks; or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83; or

(4) Any other method approved by the Administrator.

Metallic shoe seal or *mechanical shoe seal* means metal sheets that are held vertically against the wall of the storage vessel by springs, weighted levers, or other mechanisms and connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Modification means any physical change in, or change in the method of operation of, an existing designated CPU which increases or creates emissions to the atmosphere of VOC from process wastewater and/or aqueous in-process streams generated by the designated CPU, except as provided in § 60.772(c) of this subpart.

Non-automated monitoring and recording system means manual reading of values measured by monitoring instruments and manual transcription of those values to create a record. Non-automated systems do not include strip charts.

Oil-water separator or *organic-water separator* means a waste management unit, used to separate oil or organics from water. An oil-water or organic-water separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to additional treatment units such as an air flotation unit, clarifier, or biological treatment unit. Examples of an oil-water or organic-water separator include, but are not limited to, an American Petroleum Institute separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

On-site or onsite means, with respect to records required to be maintained by this subpart, that the records are stored at a location within a major source which encompasses the affected facility. On-site includes, but is not limited to, storage at the designated chemical process unit to which the records pertain, or storage in central files elsewhere at the major source.

Open biological treatment process means a biological treatment process that is not a closed biological treatment process as defined in this section.

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds exiting a recovery device based on a detection principle such as infra-red, photo ionization, or thermal conductivity.

Petroleum refining process, also referred to as a *petroleum refining process unit,* means a process that for the purpose of producing transportation fuels (such as gasoline and diesel fuels), heating fuels (such as fuel gas, distillate, and residual fuel oils), or lubricants; separates petroleum; or separates, cracks, or reforms unfinished derivatives. Examples of such units include, but are not limited to, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, and thermal processes.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Point of determination means each point where process wastewater exits the chemical process unit.

Note to Definition: This subpart allows determination of the characteristics of a wastewater stream: (1) At the point of determination or (2) downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of VOC as determined in § 60.783 of this subpart. Such changes include losses by air VOC emissions; reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy VOC.

Primary fuel means the fuel that provides the principal heat input to the device. To be considered primary, the fuel shall be able to sustain operation without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Process line means a group of unit operations and other equipment assembled and connected by hard-piping or ductwork to process raw materials and to manufacture a product, and that can operate independently of other unit operations in the CPU if supplied with sufficient raw materials and if equipped with sufficient product storage capacity. Two or more process lines may share recovery and ancillary equipment such as utilities. A process line is either an entire CPU, or one of multiple process lines which, together, are an entire CPU. All CPU have at least one process line, and some CPU have more than one process line.

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; water used to wash equipment between batches; and condensed steam from jet ejector systems pulling vacuum on vessels containing VOC.

Process wastewater stream means a stream that contains process wastewater as defined in this section.

Product means a compound or chemical which is manufactured by the chemical process unit. Isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Relief valve means a valve used only to release an unplanned, non-routine discharge. A relief valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Residual means any liquid or solid material containing VOC that is removed from a wastewater stream by a waste management unit or treatment process that does not destroy organic compounds (nondestructive unit). Examples of residuals from nondestructive wastewater management units are: the organic layer and bottom residue removed by a decanter or organic-water separator and the overheads from a steam stripper or air stripper. Examples of materials which are not residuals are: silt; mud; leaves; bottoms from a steam stripper or air stripper; and sludges, ash, or other materials removed from wastewater being treated by destructive devices such as biological treatment units and incinerators.

Secondary fuel means a fuel fired through a burner other than the primary fuel burner that provides supplementary heat in addition to the heat provided by the primary fuel.

Sewer line means a lateral, trunk line, branch line, or other conduit including, but not limited to, grates, trenches, etc., used to convey wastewater streams or residuals to a downstream waste management unit.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of a chemical process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, equipment required or used to comply with this subpart, or emptying and degassing of a storage vessel. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

Single-seal system means a floating roof having one continuous seal that completely covers the space between the wall of the storage vessel and the edge of the floating roof. This seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ±0.02 specific gravity units.

Start-up means the setting into operation of a chemical process unit or a reactor, air oxidation reactor, distillation unit, waste management unit, or equipment required or used to comply with this subpart or a storage vessel after emptying and degassing. Start-up includes initial start-up, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

Start-up, shutdown, and malfunction plan means the plan required under § 60.787 of this subpart. This plan details the procedures for operation and maintenance of the affected facility during periods of start-up, shutdown, and malfunction.

Steam jet ejector means a steam nozzle which discharges a high-velocity jet across a suction chamber that is connected to the equipment to be evacuated.

Storage vessel means a tank or other vessel that is used to store organic liquids that contain one or more of VOC and that has been assigned, according to the procedures in § 60.770(f) of this subpart, to a chemical process unit that is subject to this subpart. Storage vessel does not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess on 204.9 kilopascals and without VOC emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels storing organic liquids that contain VOC only as impurities;

(5) Bottom receivers tanks;

(6) Surge control vessels; or

(7) Wastewater storage tanks.

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Surface impoundment means a waste management unit which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or waste containing free liquids. A surface impoundment is used for the purpose of treating, storing, or disposing of wastewater or residuals, and is not an injection well. Examples of surface impoundments are equalization, settling, and aeration pits, ponds, and lagoons.

Tank drawdown means any material or mixture of materials discharged from a product tank, feed tank, or intermediate tank for the purpose of removing water or other contaminants from the tank.

Temperature monitoring device means a unit of equipment used to monitor temperature and having a minimum accuracy of (a) ±1 percent of the temperature being monitored expressed in degrees Celsius or (b) ±0.5 degrees Celsius (°C), whichever number is greater (i.e., has the highest absolute value).

Treatment process means a specific technique that removes or destroys the organics in a wastewater or residual stream such as a steam stripping unit, thin-film evaporation unit, waste incinerator, biological treatment unit, or any other process applied to wastewater streams or residuals to comply with § 60.779 of this subpart. Most treatment processes are conducted in tanks. Treatment processes are a subset of waste management units.

Unit operation means one or more pieces of process equipment used to make a single change to the physical or chemical characteristics of one or more process streams. Unit operations include, but are not limited to, reactors, distillation units, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor-mounted seal means a continuous seal that completely covers the annular space between the wall of the storage vessel or waste management unit and the edge of the floating roof and is mounted such that there is a vapor space between the stored liquid and the bottom of the seal.

Volatile organic compound, volatile organic compounds, VOC means substances defined as volatile organic compounds in 40 CFR 51.100(s) and not excluded or exempted by that section, except that any substance with a Henry's law constant less than or equal to 0.1 y/x atmosphere per mole fraction as determined according to appendix J of this subpart is not a VOC for purposes of this subpart.

Waste management unit means the equipment, structure(s), or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include: wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. If such equipment is used for recovery then it is part of a chemical process unit and is not a waste management unit.

Wastewater is either a process wastewater or a maintenance wastewater and means water that:

(1) Contains either:

(i) An annual average concentration of VOC of at least 50 parts per million by weight at the point of determination and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of VOC of at least 10,000 parts per million by weight at the point of determination at any flow rate, and that

(2) Is discarded from a chemical process unit as defined in this section.

Wastewater stream means a stream that contains wastewater as defined in this subpart.

Wastewater tank means a stationary waste management unit that is designed to contain an accumulation of wastewater or residuals and is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. Wastewater tanks used for flow equalization are included in this definition.

Water seal controls means a seal pot, p-leg trap, or other type of trap filled with water (e.g, flooded sewers that maintain water levels adequate to prevent air flow through the system) that creates a water barrier between the sewer line and the atmosphere. The water level of the seal shall be maintained in the vertical leg of a drain in order to be considered a water seal.

§ 60.772 Modification and reconstruction.

(a) *General.* The owner or operator shall follow the procedures specified in paragraphs (b), (c), (d), (f), (g), (h) and (j) of this section to determine whether a designated CPU that is neither a flexible operating unit or part of a flexible operating unit has been or will be modified. The owner or operator shall follow the procedures specified in paragraphs (b), (c), (e), (f), (g), (h) and (j) of this section to determine whether a designated CPU that is a flexible operating unit or part of a flexible operating unit has been or will be modified. The owner or operator shall follow the procedures specified in paragraph (k) of this section to determine whether a designated CPU has been or will be reconstructed.

(b) *Determining modification* Modification determinations are based on the designated CPU. To determine whether a modification has occurred or will occur, the owner or operator shall follow the procedures in either paragraph (b)(1) or (b)(2) of this section.

(1) Designate the physical or operational change as a modification.

(2) Determine whether the physical or operational change constitutes a modification by evaluating whether VOC emissions from process wastewater and aqueous in-process streams increased as a result of the physical or operational change. To make this determination, the owner or operator shall follow the procedures specified in paragraph (d) or (e), and in paragraphs (f), (g), (h) and (j) of this section, as appropriate. Physical and operational changes that are not, by themselves, considered modifications under this subpart are listed in paragraph (c) of this section.

(c) *Physical or operational changes that are not modifications.* The changes listed in this paragraph (c) shall not, by themselves, be considered modifications under this subpart. Section 60.14(e) does not apply for the purposes of this subpart.

(1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category, subject to the provisions of § 60.15 of this part. Replacement of spent catalyst with like catalyst is not a modification.

(2) An increase in the hours of operation.

(3) Physical or operational changes that cost less than 12.5 percent of the original cost of the existing designated CPU as adjusted to reflect capital improvements, casualty losses, and defunct equipment. Neither account depreciation or deflation is an allowable adjustment. The owner or operator shall keep a record or shall provide documentation on demand documenting that the cost was less than 12.5 percent.

(4) The relocation or change in ownership of an existing facility.

(d) *Determining VOC emissions generated by a designated CPU that is neither a flexible operation unit or part of a flexible operation unit.* For a designated CPU that is neither a flexible operation unit or part of a flexible operation unit, the owner or operator shall follow the procedures specified in paragraphs (d)(1) through (d)(4) of this section to determine whether VOC emissions from process wastewater and aqueous in-process streams have increased or will increase after a physical or operational change has occurred. The owner or operator is required to evaluate only those process wastewater and aqueous in-process streams that are affected (i.e., changed or created) by the physical or operational change. For the purposes of this section, "affected process wastewater stream" and "affected aqueous in-process stream" mean process wastewater streams and aqueous in-process streams changed or created by a physical or operational change. The owner or operator shall keep a record or shall provide documentation on demand showing how it was determined that a process wastewater or aqueous in-process stream was not affected by a physical or operational change. At a minimum this documentation shall document concentration and flow rate of affected process wastewater and aqueous in-process streams both before and after a physical or operational change.

(1) *Identify the designated CPU.* Identify the designated CPU that has undergone or will undergo a physical or operational change.

(2) *Determine VOC emissions before a physical or operational change.* For each affected process wastewater and aqueous in-process stream, the owner or operator shall determine VOC emissions before a physical or operational change, i.e., baseline emissions, using VOC emissions or VOC mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be determined as specified in paragraph (f) of this section. The baseline VOC emissions or baseline VOC mass flow rate for process wastewater and aqueous in-process streams shall be summed as specified in paragraph (j) of this section.

(3) *Determine VOC emissions after a physical or operational change.* For each affected process wastewater or aqueous in-process stream, the owner or operator shall determine VOC emissions after a physical or operational change, using VOC emissions or VOC mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be determined as specified in paragraph (f) of this section. The VOC emissions or VOC mass flow rate for process wastewater and aqueous in-process streams shall be summed as specified in paragraph (j) of this section.

(4) *Compare the sum of baseline VOC emissions and the sum of VOC emissions after a physical or operational change.*

(i) *VOC emissions.* The owner or operator shall compare the sum of baseline VOC emissions to the sum of VOC emissions after the physical or operational change. If the sum of VOC emissions from process wastewater and aqueous in-process streams after the physical or operational change are greater than the sum of baseline VOC emissions from process wastewater and aqueous in-process streams, the VOC emissions from process wastewater and aqueous in-process streams have increased for the designated CPU.

(ii) *VOC mass flow rate as a surrogate for VOC emissions.* For process wastewater streams, the owner or operator shall compare the sum of baseline VOC mass flow rate at the point of determination to the sum of VOC mass flow rate at the point of determination after the physical or operational change. The owner or operator shall compare the sum of baseline VOC mass flow rate for aqueous in-process streams to the sum of VOC mass flow rate for aqueous in-process streams after the physical or operational change. If the sum of VOC mass flow rate at the point of determination after the physical or operational change is greater than the sum of baseline VOC mass flow rate at the point of determination, the VOC mass flow rate has increased and the VOC emissions have increased for the designated CPU. If the sum of VOC mass flow rate for aqueous in-process streams after the physical or operational change is greater than the sum of baseline VOC mass flow rate of aqueous in-process streams, the VOC mass flow rate has increased and the VOC emissions increased for the designated CPU. Once a determination has been made that VOC mass flow rate has increased, either at the point of determination or for aqueous in-process streams, the owner or operator may elect not to make the other comparison.

(e) *Determining VOC emissions generated by a designated CPU that is a flexible operation unit or part of a flexible operation unit.* For a designated CPU that is a flexible operation unit or part of a flexible operation unit, the owner or operator shall follow the procedures specified in paragraphs (e)(1) through (e)(5) of this section to determine whether VOC emissions from process wastewater and aqueous in-process streams have increased or will increase after a physical or operational change has occurred. The owner or operator is required to evaluate only those process wastewater and aqueous in-process streams that are affected (i.e., changed or created) by the physical or operational change.

(1) Identify the designated CPU that has undergone or will undergo a physical or operational change.

(2) *Select the baseline product.* The owner or operator shall select a baseline product from those products that the designated CPU is capable of producing without a change in physical or operational design. The owner or operator shall use best engineering judgement and consider the information specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(D) of this section in identifying these products. Products the owner or operator shall not consider are specified in paragraphs (e)(2)(ii)(A) through (e)(2)(ii)(C) of this section.

(i) *Products that could be produced by the designated CPU.*

(A) Products the designated CPU currently produces.

(B) Products that the designated CPU has produced in the past, provided that a change in physical or operational design has not occurred since the product was last produced.

(C) Products that the designated CPU reasonably can produce without having to change the physical or operational design.

(D) Products that similar designated CPU have produced.

(ii) *Products that could not be produced by the CPU.*

(A) Products that would require a change in the physical or operational design of the designated CPU.

(B) Products which cannot reasonably be produced, including products which cannot be reasonably produced in commercially viable quantities, products which are not sold in commerce, and products for which no commercial market is reasonably foreseeable or for which there is no known use in commerce.

(C) Products for which the designated CPU may have the theoretical physical capacity to produce, but for which the owner or operator does not have the technical knowledge necessary to produce that product and cannot, through exercise of reasonable due diligence, obtain the requisite technical knowledge.

(3) *Determine VOC emissions before a physical or operational change.* For each affected process wastewater and aqueous in-process stream, the owner or operator shall determine VOC emissions before a physical or operational change, i.e., baseline emissions, using VOC emissions or VOC mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be

determined as specified in paragraph (f) of this section. Baseline VOC emissions shall be based on production of the baseline product. The VOC emissions or VOC mass flow rate for each process wastewater or aqueous in-process stream shall be summed as specified in paragraph (j) of this section.

(4) *Determine VOC emissions after a physical or operational change.* For each process wastewater and aqueous in-process stream, the owner or operator shall determine the sum of VOC emissions after a physical or operational change using VOC emissions or VOC mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be determined as specified in paragraph (f) of this section. The VOC emissions or VOC mass flow rate for each process wastewater or aqueous in-process stream shall be summed as specified in paragraph (j) of this section. VOC emissions after the physical or operational change shall be based on the production of the product or products that are produced after the physical or operational change. The owner or operator may consider only the new product(s).

(5) *Compare baseline VOC emissions and VOC emissions after a physical or operational change.*

(i) *VOC emissions.* The owner or operator shall compare the sum of baseline VOC emissions to the sum of VOC emissions after the physical or operational change. If the sum of VOC emissions from process wastewater and aqueous in-process streams after the physical or operational change are greater than the sum of baseline VOC emissions from process wastewater and aqueous in-process streams, the VOC emissions from process wastewater and aqueous in-process streams have increased for the designated CPU.

(ii) *VOC mass flow rate as a surrogate for VOC emissions.* The owner or operator shall compare baseline VOC mass flow rate at the point of determination to VOC mass flow rate at the point of determination after the physical or operational change. The owner or operator shall compare baseline VOC mass flow rate for aqueous in-process streams to VOC mass flow rate for aqueous in-process streams after the physical or operational change. If the VOC mass flow rate at the point of determination after the physical or operational change is greater than the baseline VOC mass flow rate at the point of determination, the VOC mass flow rate has increased and the VOC emissions have increased for the designated CPU. If the VOC mass flow rate for aqueous in-process streams after the physical or operational change is greater than the baseline VOC mass flow rate of aqueous in-process streams, the VOC mass flow rate has increased and the VOC emissions have increased for the designated CPU. Once a determination has been made that VOC mass flow rate has increased, either at the point of determination or for aqueous in-process streams, the owner or operator may elect not to make the other comparison.

(f) *Determining VOC emissions.* VOC emissions shall be determined using either VOC emissions or mass flow rate as a surrogate for VOC emissions. VOC emissions and mass flow rate shall be determined on an annual average basis. To determine VOC emissions using the default fraction emitted value, Fe, for the individual drain system and the treatment process, the owner or operator shall use the procedures specified in paragraph (f)(1) of this section. To determine VOC emissions using site-specific modeling for the individual drain system and either the default Fe values for the treatment process or VOC emissions for the treatment process, the owner or operator shall use the procedures specified in paragraph (f)(2) of this section. To determine VOC emissions using annual average mass flow rate as a surrogate for emissions, the owner or operator shall follow the procedures specified in paragraph (f)(3) of this section.

(1) *Calculate VOC emissions using the default fraction emitted value, Fe, for the individual drain system and the treatment process.* For each process wastewater stream and aqueous in-process stream, the owner or operator shall calculate VOC emissions using the default Fe values for the individual drain system and the treatment process and use equation 1 in this paragraph (f)(1). The default Fe values for the individual drain system and the treatment process are listed in table 2 in appendix J of this part. Annual average concentration shall be determined using the procedures specified in paragraph (g)(1) of this section. Annual average flow rate shall be determined using the procedures specified in paragraph (h) of this section. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process. The owner or operator is required to consider only VOC included on the stream-specific list of VOC when measuring VOC concentrations. The stream-specific list of VOC shall be as determined as specified in § 60.778 of this subpart.

$$\text{VOC emissions} = \left(6.0 * 10^{-8}\right) * AQ * H \sum^{n} AC_i * Fe_i \qquad \text{(Eqn 1)}$$

Where:

VOC emissions=Annual average emissions of VOC, for a process wastewater or aqueous in-process stream, megagrams per year.

AQ=Annual average flow rate of the process wastewater stream or aqueous in-process stream, liters per minute.

H=Number of hours during the designated 12-month period that the process wastewater stream or aqueous in-process stream was generated, hours per year.

AC_i=Annual average concentration of VOC i of the process wastewater stream or aqueous in-process stream, parts per million by weight.

Fe_i=Fraction emitted of VOC i for the individual drain system and the treatment process, dimensionless. Fe values for the individual drain system and the treatment process are listed in table 2 in appendix J to this part.

n=Total number of VOC in process wastewater stream or aqueous in-process stream.

$6.0 * 10^{-8}$=Conversion factor, 1000 kilograms per cubic meter, 60 minutes per hour, 10^{-3} cubic meters per liter, 10^{-3} megagrams per kilogram, and 10^{-6} from the parts per million by weight factor (i.e., AC_i)

(2) *Calculate VOC emissions using site-specific modeling for the individual drain system.* For each process wastewater stream and aqueous in-process stream, the owner or operator shall calculate VOC emissions using site-specific modeling for the individual drain system as determined using the procedures specified in appendix J to this part. In addition, for each process wastewater stream and aqueous in-process stream, the owner or operator shall use either the default Fe values for the treatment process or VOC emissions

for the treatment process as specified in this paragraph (f)(2), and use either equation 2 or equation 3 in this paragraph (f)(2). Annual average concentration shall be determined using the procedures specified in paragraph (g)(1) of this section. Annual average flow rate shall be determined using the procedures specified in paragraph (h) of this section. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process. The owner or operator is required to consider only VOC included on the stream-specific list of VOC when measuring VOC concentrations. The stream-specific list of VOC shall be determined as specified in § 60.778 of this subpart.

(i) *Determining the Fe value for the treatment process or VOC emissions for the treatment process.* If the treatment process is a biological treatment process, the owner or operator shall use the default Fe values for the treatment process that are listed in table 2 in appendix J of this part. If the treatment process is a non-biological treatment process, the owner or operator shall use performance test data or design evaluations to determine the VOC emissions for all VOC emissions generated by the treatment process as specified in § 60.779(j)(1) of this subpart.

(ii) *Equation 2.* Use equation 2 when the treatment process is a biological treatment process and the default Fe for the treatment process is used. The default Fe values for the treatment process are listed in table 2 in appendix J of this part.

$$\text{VOC emissions} = \text{IDS} + \left(6.0 * 10^{-8}\right) * \text{AQ} * \text{H} \sum_{i=1} \text{AC}_i * \text{Fet}_i \qquad \text{(Eqn 2)}$$

Where:

VOC emissions=Annual average emissions of VOC for a process wastewater or aqueous in-process stream, megagrams per year.

IDS=VOC emissions from the individual drain system determined as specified in appendix J to part 60, megagram per year.

AQ=Annual average flow rate of the process wastewater stream or aqueous in-process stream, liters per minute.

H=Number of hours during the designated 12-month period that the process wastewater stream or aqueous in-process stream was generated, hours per year.

AC_i=Annual average concentration of VOC i of the process wastewater stream or aqueous in-process stream, parts per million by weight.

Fet_i=Fraction emitted of VOC i for the treatment process, dimensionless. Fe values for the treatment process shall be determined as specified in paragraph (f)(2)(i) of this section.

n=Total number of VOC in process wastewater stream or aqueous in-process stream.

$6.0 * 10^{-8}$=Conversion factor, 1000 kilograms per cubic meter, 60 minutes per hour, 10^{-3} cubic meters per liter, 10^{-3} megagrams per kilogram, and 10^{-6} from the parts per million by weight factor (i.e., Ac_i)

(ii) *Equation 3.* Use equation 3 when the treatment process is a non-biological treatment process and VOC emissions for the treatment process is determined using performance test data or design evaluations.

$$\text{VOC emissions} = \text{IDS} + \text{TP} \qquad \text{(Eqn 3)}$$

Where:

VOC emissions=Annual average emissions of VOC for a process wastewater or aqueous in-process stream, megagrams per year.

IDS=VOC emissions from the individual drain system determined as specified in appendix J to part 60, megagram per year.

TP=VOC emissions from the treatment process determined as specified in paragraph (f)(2)(iii) of this section, megagrams per year.

(3) *Determining annual average VOC mass flow rate as a surrogate for VOC emissions.*

(i) Annual average concentration shall be determined using the procedures specified in paragraph (g)(2) of this section. Method 25D of 40 CFR part 60, appendix A, shall be used to determine annual average concentration.

(ii) Annual average flow rate shall be determined using the procedures specified in paragraph (h) of this section. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process. The owner or operator is required to consider only VOC included on the stream-specific list of VOC when measuring VOC concentrations. The stream-specific list of VOC shall be as determined as specified in § 60.778 of this subpart.

(iii) Determine the annual average VOC mass flow rate using equation 2 in paragraph (f)(2) of this section for each individual process wastewater stream at the point of determination and for each aqueous in-process stream.

$$\text{QMW} = \left(6.0 * 10^{-5}\right) * \text{AQ} * \sum_{i=1}^{n} \text{AC}_i \qquad \text{(Eqn 4)}$$

Where:

QMW=Mass flow rate of VOC, for a process wastewater or aqueous in-process stream, kilograms per hour.

AQ=Annual average flow rate of the process wastewater stream or aqueous in-process stream, liters per minute.

AC_i=Annual average concentration of VOC i of the process wastewater stream or aqueous in-process stream, parts per million by weight.

n=Total number of VOC in process wastewater stream or aqueous in-process stream.

p=Density of a process wastewater stream or aqueous in-process stream, kilograms per cubic meter.

$6.0 * 10^{-5}$=Conversion factor, 1000 kilograms per cubic meter, 60 minutes per hour, 10^{-3} cubic meters per liter, and 10^{-6} from the parts per million by weight factor (i.e., AC_i).

(g) *Determining annual average concentration for a process wastewater stream or aqueous in-process stream.* The annual average concentration shall be a flow-weighted average representative of actual or anticipated operation of the designated CPU generating the process wastewater or aqueous in-process stream generated by the designated CPU over the designated 12-month period. Flow-weighted annual average concentration for VOC shall be calculated as the total mass of VOC occurring in the process wastewater stream or aqueous in-process stream during the designated 12-month period divided by the total mass of the process wastewater stream or aqueous in-process stream during the same designated 12-month period. The owner or operator shall determine the annual average concentration using the procedures specified in paragraphs (g)(1)(i) through (g)(1)(iv) of this section. The owner or operator is required to consider only VOC included on the stream-specific list of VOC when measuring VOC concentrations. The stream-specific list of VOC shall be as determined as specified in § 60.778 of this subpart.

(1) *VOC emissions.* When an owner or operator is determining concentration as part of determining annual average VOC emissions under paragraph (f)(1) or paragraph (f)(2) of this section, the procedures in paragraphs (g)(1)(i) through (g)(1)(iv) of this section shall be used.

(i) For process wastewater streams, the annual average concentration shall be determined either at the point of determination or downstream of the point of determination, with adjustment for concentration changes made according to § 60.782(b)(6) of this subpart if a point downstream of the point of determination is used. For aqueous in-process streams, the annual average concentration shall be determined before the point of determination and shall be adjusted for any losses of VOC to the atmosphere and for dilution.

(ii) The procedures specified in § 60.782(b), except for paragraph (b)(5)(i)(A), of this subpart shall be used for determining the annual average concentration. The procedures specified in § 60.782(b) of this subpart may be used in combination, and no one procedure shall take precedence over another.

(iii) A minimum of three wastewater samples from each process wastewater stream or aqueous in-process stream shall be taken. Samples may be grab samples or composite samples.

(iv) Concentration values that are not determined using Method 25D may be adjusted with the chemical's Fm value. Chemical-specific Fm factors shall be determined as specified in appendix J of this part. When Fm adjustments are made, they shall be used for all compounds and in all instances for the purpose of this section.

(2) *VOC mass flow rate.* When an owner or operator is determining concentration as part of determining annual average VOC mass flow rate under paragraph (f)(3) of this section, the procedures specified in paragraph (g)(2)(i) and (g)(2)(ii) of this section shall be used. Measurements shall be taken at the point of determination.

(i) If an owner or operator is measuring concentration as part of determining annual average VOC mass flow rate under paragraph (f)(3) of this section, Method 25D of 40 CFR part 60, appendix A shall be used to determine annual average concentration.

(ii) A minimum of three wastewater samples from each process wastewater stream or aqueous in-process stream shall be taken. Samples may be grab samples or composite samples.

(h) *Determining annual average flow rate for a process wastewater stream or aqueous in-process stream.* The annual average flow rate shall be representative of the process wastewater stream or aqueous in-process stream generated by the designated CPU over the designated 12-month period. The owner or operator shall consider the total annual average wastewater volume generated by the designated CPU. The owner or operator shall determine the annual average flow rate using the procedures specified in paragraphs (h)(1) and (h)(2) of this section.

(1) For process wastewater streams, the annual average flow rate shall be determined either at the point of determination or downstream of the point of determination, with adjustment for flow rate changes made according to § 60.782(c)(4) of this subpart if a point downstream of the point of determination is used. For aqueous in-process streams, the annual average flow rate shall be determined before the point of determination, and the owner or operator shall make corrections if streams are mixed or treated before being measured.

(2) The procedures in § 60.782(c)(1) through (c)(3) of this subpart are considered acceptable procedures for determining flow rate. The procedures in § 60.782(c)(1) through (c)(3) of this subpart may be used in combination, and no one procedure shall take precedence over another.

(i) [Reserved]

(j) *Sum VOC emissions generated by the designated CPU.*—(i) *VOC emissions.* Sum the annual average VOC emissions, as calculated in paragraph (f)(1) or (f)(2) of this section, for each process wastewater stream and each aqueous in-process stream affected by the physical or operational change to determine the annual average VOC emissions for the designated CPU.

(2) *VOC mass flow rate.* Sum the annual average VOC mass flow rate, as calculated in paragraph (f)(3) of this section, for each process wastewater stream affected by the physical or operational change to determine the annual average VOC mass flow rate for the designated CPU. Sum the annual average VOC mass flow rate, as calculated in paragraph (f)(3) of this section, for each aqueous in-process stream affected by the physical or operational change to determine the annual average VOC mass flow rate for the designated CPU. Once a determination has been made that VOC emissions have increased, the owner or operator can elect not to make the other comparison.

(k) *Reconstruction.* (1) For the purposes of this subpart "fixed capital cost of the new components," as used in § 60.15 of this part, includes the fixed capital cost of all depreciable components which are replaced within any 2-year rolling period following September 12, 1994. Replacement costs shall be charged to the first day the owner or operator incurred any expenses involving the actual work of replacement, i.e., the designated CPU has had either components removed in preparation of the replacements or components added as replacements. When replacement of components, e.g., replacing a distillation column, is reasonably viewed as a project, the cost of the entire project shall be charged to the first day the owner or operator incurred any expenses involving the actual work of replacement.

(2) The owner or operator shall either keep a record for the purposes of this subpart or provide on demand documentation kept for financial or tax purposes that documents when costs for replacements were first incurred and the costs of the replacements.

§ 60.773 Process wastewater provisions—General.

(a) *Process wastewater—general.* This paragraph (a) specifies the requirements applicable to process wastewater streams located at affected facilities. The owner or operator shall comply with the requirements in paragraphs (a)(1) through (a)(3) of this section, no later than the applicable dates specified in § 60.770 of this subpart.

(1) *Determine wastewater streams to be controlled.* Determine whether each wastewater stream requires control for VOC by following the requirements in either paragraph (b) of this section, determining Group 1 or Group 2, or paragraph (c) of this section, designating Group 1, and comply with the requirements in paragraph (d) of this section.

(2) *Requirements for Group 1 wastewater streams.* For wastewater streams that are Group 1, comply with paragraphs (a)(2)(i) through (a)(2)(ix) of this section.

(i) Comply with the applicable requirements for wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators as specified in § 60.774 of this subpart.

(ii) Comply with the applicable requirements for control of VOC for treatment processes and the test methods and procedures to determine compliance as specified in §§ 60.779 and 60.783 of this subpart. Alternatively, the owner or operator may elect to comply with the treatment provisions specified in paragraph (e) of this section.

(iii) Comply with the applicable control device, leak inspection, and delay of repair provisions as specified in §§ 60.780, 60.786, and 60.777 of this subpart, unless otherwise specified in this subpart.

(iv) Comply with the applicable monitoring requirements specified in § 60.781 of this subpart, unless otherwise specified in this subpart.

(v) Comply with the applicable reporting and recordkeeping requirements specified in §§ 60.784 and 60.785 of this subpart, unless otherwise specified in this subpart.

(3) *Requirements for Group 2 wastewater streams.* For wastewater streams that are Group 2, comply with the applicable reporting and recordkeeping requirements specified in §§ 60.784 and 60.785 of this subpart.

(b) *How to determine Group 1 or Group 2 status.* This paragraph (b) provides instructions for determining whether a process wastewater stream is Group 1 or Group 2. Annual average concentration shall be determined according to the procedures specified in § 60.782(b) of this subpart. Annual average flow rate shall be determined according to the procedures specified in § 60.782(c) of this subpart.

(1) A wastewater stream is a Group 1 wastewater stream if:

(i) The annual average concentration of VOC is greater than or equal to 10,000 parts per million by weight at any flow rate; or

(ii) The annual average concentration of VOC is greater than or equal to 500 parts per million by weight and the annual average flow rate is greater than or equal to 1 liter per minute.

(2) A wastewater stream is a Group 2 wastewater stream if it is not a Group 1 wastewater stream by the criteria in paragraph (b)(1) of this section.

(c) *How to designate a Group 1 wastewater stream.* The owner or operator may elect to designate a wastewater stream as a Group 1 wastewater stream in order to comply with paragraph (a)(1) of this section. To designate a wastewater stream or a mixture of wastewater streams as a Group 1 wastewater stream, the procedures specified in paragraphs (c)(1) and (c)(2) of this section and § 60.782(a)(2) of this subpart shall be followed.

(1) From the point of determination for each wastewater stream that is included in the Group 1 designation to the location where the owner or operator elects to designate such wastewater stream(s) as a Group 1 wastewater stream, the owner or operator shall comply with all applicable emission suppression requirements specified in § 60.774 of this subpart.

(2) From the location where the owner or operator designates a wastewater stream or mixture of wastewater streams to be a Group 1 wastewater stream, such Group 1 wastewater stream shall be managed in accordance with all applicable emission suppression requirements specified in § 60.774 of this subpart and with the treatment requirements in § 60.779 of this subpart.

(d) Owners or operators shall not discard liquid or solid organic materials containing greater than 10,000 parts per million VOC (as determined by analysis of the stream composition, engineering calculations, or process knowledge) from a chemical process unit to water or wastewater, unless the receiving stream is managed and treated as a Group 1 wastewater stream. This prohibition does not apply to materials from the activities listed in paragraphs (d)(1) through (d)(4) of this section.

(1) Equipment leaks;

(2) Activities included in maintenance or startup/shutdown/malfunction plans;

(3) Spills; or

(4) Samples.

(e) *Off-site or third-party treatment.* The owner or operator may elect to transfer a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream to an on-site treatment operation not owned or operated by the owner or operator of the affected facility generating the wastewater stream or residual, or to an off-site treatment operation.

(1) The owner or operator transferring the wastewater stream or residual shall:

(i) Comply with the provisions specified in § 60.774 of this subpart for each waste management unit that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream prior to shipment or transport.

(ii) Include a notice with the shipment or transport of each Group 1 wastewater stream or residual removed from a Group 1 wastewater stream. The notice shall state that the wastewater stream or residual contains VOC that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly-owned treatment works), the notice shall be submitted to the treatment operator initially and whenever there is a change in the required treatment. These notices shall be retained by the owner or operator as specified in § 60.785(c) of this subpart.

(2) The owner or operator may not transfer the wastewater stream or residual unless the transferee has submitted to EPA a written certification that the transferee will manage and treat any Group 1 wastewater stream or residual removed from a Group 1 wastewater stream received from a affected facility subject to the requirements of this subpart in accordance with the requirements of either §§ 60.774 through 60.786 of this subpart or § 60.787(b) of this subpart if alternative emission limitations have been granted the transferor in accordance with those provisions. The certifying entity may revoke the written certification by sending a written statement to EPA and the owner or operator giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph (e)(2). Upon expiration of the notice period, the owner or operator may not transfer the wastewater stream or residual to the treatment operation.

(3) By providing this written certification to EPA the certifying entity accepts responsibility for compliance with the regulatory provisions listed in paragraph (e)(2) of this section with respect to any shipment of wastewater or residual covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of these provisions by owners or operators of affected facilities.

(4) Written certifications and revocation statements, to EPA from the transferees of wastewater or residuals shall be signed by a responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office. Such written certifications are not transferable by the treater.

§ 60.774 Wastewater tank, surface impoundment, container, individual drain system, and oil-water separator provisions.

(a) *Purpose of this section.* (1) This section specifies control requirements for the following waste management units: wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators.

(2) For each waste management unit that receives, manages, treats, or otherwise handles a Group 1 wastewater stream or a residual taken from a Group 1 wastewater stream, the owner or operator shall comply with one of the compliance option paragraphs in this section, as appropriate. Paragraphs (a)(2)(i) through (a)(2)(v) of this section list the compliance options and waste management units to which they apply. A waste management unit shall be in compliance with one of the compliance options specified in this section. The same compliance option does not have to be used for all waste management units of the same or different types. A summary of the compliance options available for each waste management unit is provided in Table 3 of this subpart.

(i) *HON.* The provisions of the "National Emissions Standard for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry," also known as the "HON," may be used to comply for all types of waste management units as specified in paragraph (c) of this section. The HON is located in 40 CFR part 63, subparts F and G.

(ii) *Standard-standards.* The provisions of the "National Emission Standards for Containers," the "National Emission Standards for Surface Impoundments," the "National Emission Standards for Individual Drain Systems," and the "National Emission Standards for Oil-Water Separators and Organic-Water Separators," also known as the standard-standards, may be used as a compliance option as specified in paragraph (d) of this section. These standard-standards are located in 40 CFR, part 63, subparts PP, QQ, RR, and VV, respectively.

(iii) *Petroleum Refinery NSPS.* The provisions of the "Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems" may be used to comply for individual drain systems as specified in paragraph (e) of this section. The Petroleum Refinery NSPS is located in 40 CFR, part 60, subpart QQQ.

(iv) *RCRA, subpart CC.* The provisions of "Air Emission Standards for Tanks, Surface Impoundments, and Containers" may be used to comply for wastewater tanks, surface impoundments, and containers as specified in paragraphs (f) and (g), respectively, of this section. The RCRA, subpart CC rules are located in 40 CFR part 264, subpart CC and 40 CFR, part 265, subpart CC.

(v) *Benzene Waste.* The provisions of the "National Emission Standard for Benzene Waste Operations" may be used to comply for all types of waste management units as specified in paragraph (h) of this section. The Benzene Waste rule is located in 40 CFR part 61, subpart FF.

(b) *General requirements.* (1) For each wastewater tank that receives, manages, treats, or otherwise handles a Group 1 wastewater stream or a residual taken from a Group 1 wastewater stream that meets the vapor pressure and capacity cutoffs presented in Table 4 of this subpart. The owner or operator shall choose an appropriate control requirement for wastewater tanks as specified in Table 4 of this subpart.

(2) Table 5 of this subpart provides a summary of the requirements of each compliance option.

(3) *Inspection requirements.* When complying with one of the six control requirement options for waste management units, listed in Table 3 of this subpart, the owner or operator shall comply with the applicable inspection provisions corresponding to the selected control requirement option.

(4) *Definition requirements.* When definitions differ between this subpart and one of the six compliance options, the definitions in this subpart shall apply, unless the specified term in the selected compliance option is not defined in this subpart. In such cases, the definitions from the selected compliance option shall apply.

(5) Owners or operators shall specify the control option used for each waste management unit as specified in § 60.784(c) of this subpart.

(c) *Requirements for Hazardous Organic NESHAP (HON) compliance option.* Owners or operators selecting the HON compliance option shall comply with paragraph (c)(1) of this section and with paragraph (c)(2) or (c)(3) of this section.

(1) The owner or operator of a waste management unit that is subject to both 40 CFR part 63, subparts F and G (HON) and this subpart shall comply with either paragraph (c)(2) or (c)(3) of this section. The owner or operator of a waste management unit that is subject to this subpart but not subject to the HON shall comply with paragraph (c)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 63.133 through 63.137, except as specified in paragraphs (c)(2)(i)(A) through (c)(2)(i)(H) of this section. Comply with the control device provisions, delay of repair provisions, and leak inspection provisions specified in 40 CFR 63.139, 63.140, and 63.148 and with the monitoring, reporting, and recordkeeping provisions specified in 40 CFR 63.143, 63.146, and 63.147, except as specified in paragraphs (c)(2)(ii) through (c)(2)(vii) of this section.

(i) The following exceptions apply to the provisions of 40 CFR 63.133 through 63.137:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the term "organic HAP emissions" or "organic hazardous air pollutants emissions" is used in 40 CFR 63.133, the term "VOC emissions" shall apply for the purposes of this subpart.

(D) When the term "organic HAP vapors" or "organic hazardous air pollutants vapors" is used in 40 CFR 63.133, 63.135, and 63.137, the term "VOC vapors" shall apply for the purposes of this subpart.

(E) When the terms "Group 1 wastewater stream" or "Group 2 wastewater stream" are used in 40 CFR

63.133, the definitions of these terms contained in § 60.773(b) shall apply for the purposes of this subpart.

(F) When the determination of equivalence criteria in 40 CFR 63.102(b) of subpart F is referred to in 40 CFR 63.133 and 63.137, the provisions in § 60.787(b) of this subpart shall apply for the purposes of this subpart.

(G) When the Notification of Compliance Status requirements in 40 CFR 63.152(b) are referred to in 40 CFR 63.133 and 63.137, the provisions in § 60.784(c) of this subpart shall apply for the purposes of this subpart. In addition, when information is required to be reported according to 40 CFR 63.152(b) in the Notification of Compliance Status, the information shall be reported in the Notification of Compliance Status required by § 60.784(c) of this subpart for the purposes of this subpart.

(H) When the inspection requirements for waste management units in table 11 of the appendix to subpart G of 40 CFR part 63 are referred to in 40 CFR 63.136, table 11 of the appendix to subpart G of 40 CFR part 63 shall apply for the purposes of this subpart.

(ii) The following exceptions apply to the provisions of 40 CFR 63.139:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the term "organic HAP emissions" or "organic hazardous air pollutants emissions" is used in 40 CFR 63.139, the term "VOC emissions" shall apply for the purposes of this subpart.

(D) When the term "organic HAP concentration" or "organic hazardous air pollutants concentration" is used in 40 CFR 63.139, the term "VOC concentration" shall apply for the purposes of this subpart.

(E) When the performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams provisions in 40 CFR 63.138 are referred to in 40 CFR 63.139, the provisions in § 60.779 shall apply for the purposes of this subpart.

(F) When the test methods and procedures to determine compliance requirements in 40 CFR 63.145(i) are referred to in 40 CFR 63.139, the provisions in § 60.783(i) of this subpart shall apply for the purposes of this subpart.

(G) When the compliance demonstration for flares requirements in 40 CFR 63.145(j) are referred to in 40 CFR 63.139, the provisions in § 60.783(j) of this subpart shall apply for the purposes of this subpart.

(iii) The following exceptions apply to the provisions of 40 CFR 63.140:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(iv) The following exceptions apply to the provisions of 40 CFR 63.143:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the definitions in 40 CFR 63.101 of subpart F or in 40 CFR 63.111 are referred to in 40 CFR 63.143, the provisions in § 60.771 of this subpart shall apply for the purposes of this subpart.

(D) When the performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams provisions in 40 CFR 63.138 are referred to in 40 CFR 63.143, the provisions in § 60.779 shall apply for the purposes of this subpart.

(E) When the request for approval to monitor alternative parameters requirements in 40 CFR 63.151(f) are referred to in 40 CFR 63.143 the provisions in § 60.784(b)(6) of this subpart shall apply for the purposes of this subpart.

(v) The following exceptions apply to the provisions of 40 CFR 63.146:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the Notification of Compliance Status requirements in 40 CFR 63.152(b) are referred to in 40 CFR 63.146, the provisions in § 60.784(c) of this subpart shall apply for the purposes of this subpart. In addition, when information is required to be reported according to 40 CFR 63.152(b) in the Notification of Compliance Status, the information shall be reported in the Notification of Compliance Status required by § 60.784(c) for the purposes of this subpart.

(D) When the inspection requirements for waste management units in table 11 of the appendix to subpart G of 40 CFR part 63 are referred to in 40 CFR 63.146, table 11 of the appendix to subpart G of 40 CFR part 63 shall apply for the purposes of this subpart.

(E) When the performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams provisions in 40 CFR 63.138 are referred to in 40 CFR 63.146, the provisions in § 60.779 shall apply for the purposes of this subpart.

(F) When the request for approval to monitor alternative parameters requirements in 40 CFR 63.151(f) are referred to in 40 CFR 63.146, the provisions in § 60.784(b)(6) of this subpart shall apply for the purposes of this subpart.

(G) When the Periodic Report requirements in 40 CFR 63.152(c) are referred to in 40 CFR 63.146, the provisions in 40 CFR 63.152(c) of this subpart that are applicable to waste management units shall apply for the purposes of submitting semiannual reports in this subpart. In addition, when information is required to be reported according to 40 CFR 63.152(c) in the Periodic Report, the information shall be reported in the semiannual report required by 40 CFR 63.152(c) for the purposes of this subpart.

(vi) The following exceptions apply to the provisions of 40 CFR 63.147:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(C) When the term "organic hazardous air pollutants" is used in 40 CFR 63.147, the term "VOC" shall apply for the purposes of this subpart.

(D) When the third-party treatment requirements in 40 CFR 63.132(g) are referred to in 40 CFR 63.147, the provisions in § 60.773(e) shall apply for the purposes of this subpart.

(E) When the process knowledge of the wastewater requirements in 40 CFR 63.144(b)(3) or (c)(1) are referred to in 40 CFR 63.147, the provisions in § 60.782(b)(3) or (c)(1) shall apply for the purposes of this subpart.

(F) When the continuous records requirements in 40 CFR 63.152(f) are referred to in 40 CFR 63.147, the provisions in § 60.785(e) of this subpart shall apply for the purposes of this subpart.

(vii) The following exceptions apply to the provisions of 40 CFR 63.148:

(A) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(B) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(3) Comply with the applicable requirements specified in 40 CFR 63.133 through 63.137, except as specified in paragraphs (c)(3)(i) and (c)(3)(xiii) of this section. Comply with the control device provisions, delay of repair provisions, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) Waste management units may be equipped with pressure relief devices that vent directly to the atmosphere, provided the pressure relief device is not used for planned or routine venting of VOC emissions.

(ii) All pressure relief devices shall remain in a closed position at all times except when it is necessary for the pressure relief device to open for the purpose of preventing physical damage or permanent deformation of the waste management unit in accordance with good engineering and safety practices.

(iii) When the term "organic HAP emissions" or "organic hazardous air pollutants emissions" is used in 40 CFR 63.133, the term "VOC emissions" shall apply for the purposes of this subpart.

(iv) When the term "organic HAP vapors" or "organic hazardous air pollutants vapors" is used in 40 CFR 63.133, 63.135, and 63.137, the term "VOC vapors" shall apply for the purposes of this subpart.

(v) When the terms "Group 1 wastewater stream" or "Group 2 wastewater stream" are used in 40 CFR 63.133, the definitions of these terms contained in § 60.773(b) shall apply for the purposes of this subpart.

(vi) When the determination of equivalence criteria in 40 CFR 63.102(b) of subpart F is referred to in 40 CFR 63.133 and 63.137, the provisions in § 60.787(b) of this subpart shall apply for the purposes of this subpart.

(vii) When the control device provisions for process wastewater in 40 CFR 63.139 are referred to in 40 CFR 63.133, 63.134, 63.135, 63.136, 63.137, the provisions in § 60.780 shall apply for the purposes of this subpart.

(viii) When the delay of repair provisions in 40 CFR 63.140 are referred to in 40 CFR 63.133, 63.134, 63.135, 63.136, 63.137, the provisions in § 60.777 shall apply for the purposes of this subpart.

(ix) When the inspection and monitoring of operations provisions in 40 CFR 63.143 are referred to in 40 CFR 63.133, 63.134, 63.135, 63.137, the provisions in § 60.781 shall apply for the purposes of this subpart.

(x) When the leak inspection provisions in 40 CFR 63.148 are referred to in 40 CFR 63.133, 63.134, 63.135, 63.136, and 63.137, the provisions in § 60.786 shall apply for the purposes of this subpart.

(xi) When the Notification of Compliance Status requirements in 40 CFR 63.152(b) are referred to in 40 CFR 63.133 and 63.137, the provisions in § 60.784(c) of this subpart shall apply for the purposes of this subpart. In addition, when information is required to be reported according to 40 CFR 63.152(b) in the Notification of Compliance Status, the information shall be reported in the Notification of Compliance Status required by § 60.784(c) for the purposes of this subpart.

(xii) When the compliance options for wastewater tanks requirements in table 10 of the appendix to subpart G of 40 CFR part 63 are referred to in 40 CFR 63.133, table 4 of this subpart shall apply for the purposes of this subpart.

(xiii) When the inspection requirements for waste management units in table 11 of the appendix to subpart G of 40 CFR part 63 are referred to in 40 CFR 63.136, table 11 of the appendix to subpart G of 40 CFR part 63 shall apply for the purposes of this subpart.

(d) *Requirements for Standard-standards compliance option.* Owners or operators selecting the Standard-standards compliance option shall comply with paragraph (d)(1) or (d)(2) of this section. The Standard-standards compliance option includes requirements for surface impoundments specified in 40 CFR part 63, subpart QQ, containers specified in 40 CFR part 63, subpart PP, individual drain systems specified in 40 CFR part 63, subpart RR, and oil-water separators specified in 40 CFR part 63, subpart VV.

(1) Comply with the applicable requirements specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, as applicable.

(i) *Surface impoundments.* Comply with the surface impoundment requirements specified in 40 CFR 63.942 and 63.943, except as specified in paragraph (d)(1)(i)(A) of this section. Comply with the inspection provisions specified in 40 CFR 63.946, the test methods and procedures (i.e., leak inspection provisions) specified in 40 CFR 63.945, the delay of repair provisions specified in 40 CFR 63.946(c), and with the monitoring, reporting, and recordkeeping provisions specified in 40 CFR 63.946, 63.948, and 63.947, except as specified in paragraphs (d)(1)(i)(B) through (d)(1)(i)(E) of this section.

(A) The following exceptions apply to the provisions of 40 CFR 63.942 and 63.943:

(*1*) When the term "air emissions" is used in 40 CFR 63.942 and 63.943, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "organic vapor permeability" is used in 40 CFR 63.942 and 63.943, the term "VOC permeability" shall apply for purposes of this subpart.

(*3*) For purposes of this subpart, when the provisions of 40 CFR 63.941 are referred to in 40 CFR 63.942 and 63.943, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.942 and 63.943 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.941 shall apply.

(*4*) When the closed-vent system and control device design and operation requirements in 40 CFR 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.943(b)(4), the provisions in

§§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*5*) When the term "air emission control equipment" is used in 40 CFR 63.942 and 63.943, the term "VOC emission control equipment" shall apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.945:

(*1*) When the term "organic HAP concentration" is used in 40 CFR 63.945, the term "VOC concentration" shall apply for purposes of this subpart.

(*2*) When the term "organic constituents" or "individual organic constituent" is used in 40 CFR 63.945, the term "VOC constituents" or "individual VOC constituents" shall apply for purposes of this subpart.

(*3*) When the term "maximum organic concentration" is used in 40 CFR 63.945, the term "maximum VOC concentration" shall apply for purposes of this subpart.

(C) The following exceptions apply to the provisions of 40 CFR 63.946:

(*1*) When the term "air emissions" is used in 40 CFR 63.946, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "air emissions control equipment" is used in 40 CFR 63.946, the term "VOC emissions control equipment" shall apply for purposes of this subpart.

(*3*) When the closed-vent system and control device design and operation requirements in 40 CFR 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.946, the inspection and monitoring requirements in § 60.781 shall apply for purposes of this subpart.

(D) The following exception applies to the provisions of 40 CFR 63.947: When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.947, the recordkeeping requirements for closed-vent systems and control devices specified in 40 CFR 63.785 shall apply for purposes of this subpart.

(E) The following exception applies to the provisions of 40 CFR 63.948: When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.948, the reporting requirements for closed-vent systems and control devices specified in 40 CFR 63.784 shall apply.

(ii) *Containers.* Comply with the container requirements for Level 1 and Level 2 containers specified in 40 CFR 63.922 and 63.923, except as specified in paragraph (d)(1)(ii)(A) of this section. Containers with a design capacity greater than 0.42 m^3 shall be Level 2 containers. Containers with a design capacity greater than or equal to 0.1 m^3 and less than or equal to 0.42 m^3 shall be Level 1 containers. Other storage units with capacities less than 0.1 m^3 are not containers for the purpose of this subpart. The requirements for Level 3 containers do not apply for the purposes of this subpart. Comply with the inspection requirements specified in 40 CFR 63.926, the test methods and procedures (i.e., leak inspection provisions and the procedures for determining a container to be vapor tight) specified in 40 CFR 63.925, the delay of repair provisions specified in 40 CFR 63.926(a)(3), and with the monitoring provisions specified in 40 CFR 63.926, except as specified in paragraph (d)(1)(ii)(B) and (d)(1)(ii)(C) of this section. Comply with the reporting and recordkeeping provisions specified in §§ 60.784 and 60.785 of this subpart.

(A) The following exceptions apply to the provisions of 40 CFR 63.922 and 63.923:

(*1*) When the term "air emissions" is used in 40 CFR 63.922 and 63.923, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "organic vapor-suppressing barrier" or "organic vapor-suppressing foam" is used in 40 CFR 63.922 and 63.923, the term "VOC vapor-suppressing barrier" or "VOC vapor-suppressing foam" shall apply for purposes of this subpart.

(*3*) When the term "organic vapor permeability" is used in 40 CFR 63.922 and 63.923, the term "VOC vapor permeability" shall apply for purposes of this subpart.

(*4*) For purposes of this subpart, when the provisions of 40 CFR 63.921 are referred to in 40 CFR 63.922 and 63.923, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.922 and 63.923 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.921 shall apply.

(B) The following exceptions apply to the provisions of 40 CFR 63.925:

(*1*) When the term "no detectable organic emissions" is used in 40 CFR 63.925, the term "no detectable VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "organic vapor leakage" is used in 40 CFR 63.925, the term "VOC leakage" shall apply for purposes of this subpart.

(*3*) When the term "organic HAP concentration" is used in 40 CFR 63.925, the term "VOC concentration" shall apply for purposes of this subpart.

(*4*) When the term "organic constituents" or "organic constituent" is used in 40 CFR 63.925, the term "VOC constituents" or "VOC constituent" shall apply for purposes of this subpart.

(*5*) When the term "maximum organic concentration" is used in 40 CFR 63.925, the term "maximum VOC concentration" shall apply for the purposes of this subpart.

(C) The following exception applies to the provisions of 40 CFR 63.926: When the Container Level 3 controls in 40 CFR 63.924 are referred to in 40 CFR 63.926, these provisions do not apply for purposes of this subpart.

(iii) *Individual drain systems.* Comply with the individual drain system requirements specified in 40 CFR 63.962, except as specified in paragraph (d)(1)(iv)(A) of this section. Comply with the inspection provisions in 40 CFR 63.964, the leak inspection provisions in § 60.786 of this subpart, the delay of repair provisions specified in 40 CFR 63.964(b), and with the monitoring, reporting, and recordkeeping provisions specified in 40 CFR 63.964, 63.966, and 63.965, except as specified in paragraph (d)(1)(iv)(B) of this section.

(A) The following exceptions apply to the provisions of 40 CFR 63.962:

(*1*) When the term "air emissions" is used in 40 CFR 63.962 , the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "air emission control equipment" is used in 40 CFR 63.962, the term "VOC emission control equipment" shall apply for purposes of this subpart.

(*3*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.962, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*4*) When the term "organic vapors" is used in 40 CFR 63.962, the term "VOC" shall apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.964:

(*1*) When the term "air emissions" is used in 40 CFR 63.964 , the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.964, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(iv) *Oil-water separators.* Comply with the oil-water separator requirements specified in 40 CFR 63.1042, 63.1043, and 63.1044, except as specified in paragraph (d)(1)(iv)(A) of this section. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, the owner or

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operator shall comply with 40 CFR 63.1044. Comply with the inspection provisions specified in 40 CFR 63.1047, test methods and procedures (i.e., leak inspection provisions and floating roof gap seal measurements) specified in 40 CFR 63.1046, the delay of repair provisions specified in 40 CFR 63.1047(d), and with the monitoring, reporting, and recordkeeping provisions specified in 40 CFR 63.1047, 63.1049, and 63.1048, except as specified in paragraphs (d)(1)(iv)(B) through (d)(1)(iv)(E) of this section.

(A) The following exceptions apply to the provisions of 40 CFR 63.1042 through 63.1044:

(*1*) When the term "air emissions" is used in 40 CFR 63.1042 through 63.1044, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "organic vapor permeability" is used in 40 CFR 63.942 and 63.943, the term "VOC permeability" shall apply for purposes of this subpart.

(*3*) For purposes of this subpart, when the provisions of 40 CFR 63.1041 are referred to in 40 CFR 63.1042 through 63.1044, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.1042 through 63.1044 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.1041 shall apply.

(*4*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1044(b)(4), the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.1046:

(*1*) When the term "organic HAP concentration" is used in 40 CFR 63.1046, the term "VOC concentration" shall apply for purposes of this subpart.

(*2*) When the term "organic emissions" is used in 40 CFR 63.1046, the term "VOC emissions" shall apply for purposes of this subpart.

(*3*) When the term "organic vapor leakage" is used in 40 CFR 63.1046, the term "VOC leakage" shall apply for purposes of this subpart.

(C) The following exceptions apply to the provisions of 40 CFR 63.1047:

(*1*) When the term "air emissions" is used in 40 CFR 63.1042 through 63.1044, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1044(b)(4), the provisions in §§ 60.780 and 60.786 shall apply for the purposes of this subpart.

(D) The following exception applies to the provisions of 40 CFR 63.1048: When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1048(c), the recordkeeping requirements for closed-vent systems and control devices specified in 40 CFR 63.785 shall apply for purposes of this subpart.

(E) The following exception applies to the provisions of 40 CFR 63.1049: When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1049(b), the reporting requirements for closed-vent systems and control devices specified in 40 CFR 63.784 shall apply.

(2) Comply with the applicable requirements specified in paragraphs (d)(2)(i) through (d)(2)(iv) of this section, as applicable.

(i) *Surface impoundments.* Comply with the surface impoundment requirements specified in 40 CFR 63.942 and 63.943, except as specified in paragraph (d)(2)(i)(A) of this section. Comply with the inspection provisions specified in 40 CFR 63.946, except as specified in paragraph (d)(2)(i)(B) of this section. Comply with the control device, delay of repair, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart, and the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785.

(A) The following exceptions apply to the provisions of 40 CFR 63.942 and 63.943:

(*1*) When the term "air emissions" is used in 40 CFR 63.942 and 63.943, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "organic vapor permeability" is used in 40 CFR 63.942 and 63.943, the term "VOC permeability" shall apply for purposes of this subpart.

(*3*) For purposes of this subpart, when the provisions of 40 CFR 63.941 are referred to in 40 CFR 63.942 and 63.943, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.942 and 63.943 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.941 shall apply.

(*4*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.943(b)(4), the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*5*) When the term "air emission control equipment" is used in 40 CFR 63.942 and 63.943, the term "VOC emission control equipment" shall apply for purposes of this subpart.

(*6*) When the requirements for no detectable emissions in 40 CFR 63.945(a) are referred to in 40 CFR 63.943, the provisions in § 60.786 shall apply for purposes of this subpart.

(*7*) When the inspection provisions specified in 40 CFR 63.946(a) are referred to in 40 CFR 63.942, the requirements of 40 CFR 63.946(a)(3) and (a)(4) do not apply for purposes of this subpart.

(*8*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.942, the provisions in §§ 60.780 and 60.786 shall apply for the purposes of this subpart.

(*9*) When the inspection provisions specified in 40 CFR 63.946(b) are referred to in 40 CFR 63.943, the requirements of 40 CFR 63.946(b)(1)(iii), (b)(1)(iv), and (b)(2) do not apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.946:

(*1*) When the term "air emissions" is used in 40 CFR 63.946, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the recordkeeping provisions of 40 CFR 63.947(a)(2) are referred to in § 63.946, the provisions of § 60.785 shall apply.

(*3*) When the term "air emissions control equipment" is used in 40 CFR 63.946, the term "VOC emissions control equipment" shall apply for purposes of this subpart.

(*4*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.946, the inspection and monitoring requirements in § 60.781 shall apply for purposes of this subpart.

(*5*) When the inspection record specified in 40 CFR 63.947(a)(2) is referred to in 40 CFR 63.946, the applicable provisions in § 60.785 shall apply for the purposes of this subpart.

(ii) *Containers.* Comply with the container requirements specified in 40 CFR 63.922 and 63.923, except as specified in paragraph (d)(2)(ii)(A) of this section. Comply with the inspection provisions specified in 40 CFR 63.926, except as specified in paragraph (d)(2)(ii)(B) of this section. Comply with the control device, delay of repair, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart, and the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785.

(A) The following exceptions apply to the provisions of 40 CFR 63.922 and 63.923:

(*1*) When the term "air emissions" is used in 40 CFR 63.922 and 63.923, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "organic vapor-suppressing barrier" or "organic vapor-suppressing foam" is used in 40 CFR 63.922 and 63.923, the term "VOC vapor-suppressing barrier" or "VOC vapor-suppressing foam" shall apply for purposes of this subpart.

(*3*) When the term "organic vapor permeability" is used in 40 CFR 63.922 and 63.923, the term "VOC vapor permeability" shall apply for purposes of this subpart.

(*4*) For purposes of this subpart, when the provisions of 40 CFR 63.921 are referred to in 40 CFR 63.922 and 63.923, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.922 and 63.923 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.921 shall apply.

(*5*) When the requirements for no detectable organic emissions in 40 CFR 63.926(a) are referred to in 40 CFR 63.922, the requirements in § 60.786 shall apply for purposes of this subpart.

(B) The following exception applies to the provisions of 40 CFR 63.926: When the Container Level 3 controls in 40 CFR 63.924 are referred to in 40 CFR 63.926, these provisions do not apply for purposes of this subpart.

(iii) *Individual drain systems.* Comply with the individual drain system requirements specified in 40 CFR 63.962, except as specified in paragraph (d)(2)(iii)(A) of this section. Comply with the inspection provisions specified in 40 CFR 63.964, except as specified in paragraph (d)(2)(iii)(B) of this section. Comply with the control device, delay of repair, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart, and the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785.

(A) The following exceptions apply to the provisions of 40 CFR 63.962:

(*1*) When the term "air emissions" is used in 40 CFR 63.962, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the term "air emission control equipment" is used in 40 CFR 63.962, the term "VOC emission control equipment" shall apply for purposes of this subpart.

(*3*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.962, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*4*) When the term "organic vapors" is used in 40 CFR 63.962, the term "VOC" shall apply for purposes of this subpart.

(B) The following exceptions apply to the provisions of 40 CFR 63.964:

(*1*) When the term "air emissions" is used in 40 CFR 63.964, the term "VOC emissions" shall apply for purposes of this subpart.

(*2*) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.964, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(*3*) When the record of inspection specified in 40 CFR 63.965(a) or (a)(3) is referred to in 40 CFR 63.964, the applicable provisions in § 60.785 shall apply for purposes of this subpart.

(iv) *Oil-water separators.* Comply with the oil-water separator requirements specified in 40 CFR 63.1042, 63.1043, and 63.1044, except as specified in paragraphs (d)(2)(iv)(A) through (d)(2)(iv)(H) of this section. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, the owner or operator shall comply with 40 CFR 63.1044. Comply with the control device, delay of repair, and leak inspection provisions specified in §§ 60.780, 60.777, and 60.786 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785.

(A) When the term "air emissions" is used in 40 CFR 63.1042 through 63.1044, the term "VOC emissions" shall apply for purposes of this subpart.

(B) When the term "organic vapor permeability" is used in 40 CFR 63.942 and 63.943, the term "VOC permeability" shall apply for purposes of this subpart.

(C) For purposes of this subpart, when the provisions of 40 CFR 63.1041 are referred to in 40 CFR 63.1042 through 63.1044, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 63.1042 through 63.1044 is not defined in § 60.771, in such cases the provisions of 40 CFR 63.1041 shall apply.

(D) When the requirements for no detectable organic emissions in 40 CFR 63.1046(a) are referred to in 40 CFR 63.1042 and 63.1044, the provisions in § 60.786 shall apply for purposes of this subpart.

(E) When the inspection provisions specified in 40 CFR 63.1047(a) are referred to in 40 CFR 63.1042(d), the requirements of 40 CFR 63.1047(a)(3) and (a)(4) do not apply for purposes of this subpart.

(F) When the inspection provisions specified in 40 CFR 63.1047(b) are referred to in 40 CFR 63.1043(d), the requirements of 40 CFR 63.1047(b)(1)(iv), (b)(1)(v), (b)(2)(iii), and (b)(2)(iv) do not apply for purposes of this subpart.

(G) When the inspection and monitoring provisions specified in 40 CFR 63.1047(c) are referred to in 40 CFR 63.1044(d), the requirements of 40 CFR 63.1047(c)(1)(iii), (c)(1)(iv), and (c)(2) do not apply for purposes of this subpart.

(H) When the closed-vent system and control device design and operation requirements in § 63.693 of 40 CFR part 63, subpart DD, are referred to in 40 CFR 63.1044(b)(4), the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(e) *Requirements for Petroleum Refinery Wastewater Systems NSPS compliance option.* Owners or operators selecting the Petroleum Refinery compliance option shall comply with paragraph (e)(1) of this section and with paragraph (e)(2) or (e)(3) of this section.

(1) The owner or operator of an individual drain system that is subject to both 40 CFR part 60, subpart QQQ and this subpart shall comply with either paragraph (e)(2) or (e)(3) of this section. The owner or operator of an individual drain system that is subject to this subpart but not subject to 40 CFR part 60, subpart QQQ shall comply with paragraph (e)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 60.693–1(b) and (e). Comply with the closed-vent system and control device provisions, leak inspection provisions, and delay of repair provisions specified in 40 CFR 60.692–5, 60.696(b), and 60.692–6 and with the monitoring, recordkeeping, and reporting provisions specified in 40 CFR 60.695, 60.697, and 60.698, except as specified in paragraphs (e)(2)(i) through (e)(2)(iii) of this section.

(i) The following exceptions apply to the provisions of § 60.692–5:

(A) When the provisions of 40 CFR 60.18 are referred to in 40 CFR 60.692–5(c), owners or operators shall comply with the provisions of Table 2 of this subpart for purposes of this subpart.

(B) When the procedures for acquiring approval to use alternative monitoring provisions are discussed in 40 CFR 60.695 (a) and (c), the provisions of § 60.784(b) shall apply for purposes of this subpart.

(C) When the provisions of 40 CFR 60.18(f)(2) are referred to in 40 CFR 60.695(a)(4), owners or operators shall comply with the provisions of § 60.783(j) for purposes of this subpart.

(ii) The following exceptions apply to the provisions of § 60.697:

(A) When complying with the recordkeeping provisions specified in 40 CFR 60.697, the provisions of paragraphs (a), (b)(1), (b)(2), (c), (g), (h), (i), and (j) of 40 CFR 60.697 shall not apply because the provisions of these paragraphs are not related to individual drain systems or closed vent systems and control devices.

(B) When complying with § 60.697(f)(3)(iv), owners or operators shall use the procedures specified in § 60.787 for purposes of this subpart.

(iii) The following exceptions apply to the provisions of § 60.698:

(A) When complying with the reporting provisions specified in 40 CFR 60.698, the provisions of paragraphs (a) of 40 CFR 60.698 shall not apply because complying with 40 CFR 60.693 is not an alternative standard for purposes of this subpart.

(B) When complying with the reporting provisions specified in 40 CFR 60.698, the provisions of paragraphs (b) of 40 CFR 60.698 shall not apply because paragraph (b) of 40 CFR 60.698 relates to compliance demonstration information that is required to be submitted under 60.784.

(C) When complying with the reporting provisions specified in 40 CFR 60.698, the provisions of paragraphs (e) of 40 CFR 60.698 shall not apply because owners or operators are not subject to 40 CFR 60.692–7.

(3) Comply with the applicable requirements specified in 40 CFR 60.693–1(b) and (e), except as specified in paragraphs (e)(3)(i) through (e)(3)(ii) of this section. Comply with the control device, leak inspection, and delay of repair provisions specified in §§ 60.780, 60.786, and 60.777 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) When the standards for closed-vent systems and control devices in § 60.692–5 are referred to in § 60.693–1(b), the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(ii) When the delay of repair provisions in § 60.692–6 are referred to in § 60.693–1(e), the provisions in § 60.777 shall apply for purposes of this subpart.

(f) *Requirements for RCRA 40 CFR part 264, subpart CC compliance option.* Owners or operators selecting the RCRA 40 CFR part 264, subpart CC compliance option shall comply with paragraph (f)(1) of this section and with paragraph (f)(2) or (f)(3) of this section.

(1) The owner or operator of a wastewater tank, surface impoundment, or container that is subject to both 40 CFR part 264, subpart CC and this subpart shall comply with either paragraph (f)(2) or (f)(3) of this section. The owner or operator of a wastewater tank, surface impoundment, or container that is subject to this subpart but not subject to 40 CFR part 264, subpart CC shall comply with paragraph (f)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 264.1084 through 264.1086, except as specified in paragraph (f)(2)(i) of this section. Comply with the closed-vent system and control device provisions in 40 CFR 264.1087, with the delay of repair provisions in 40 CFR 264.1084(k), 264.1085(f), and 264.1086(c)(4)(iii) and (d)(4)(iii), and with the inspection and monitoring, recordkeeping, and reporting provisions specified in 40 CFR 264.1088, 264.1089, and 264.1090, except as specified in paragraphs (f)(2)(ii) through (f)(2)(v) of this section.

(i) The following exceptions apply to the provisions of 40 CFR 264.1084 through 264.1086:

(A) For purposes of this subpart, 40 CFR 264.1084(a) and (j), 264.1085(a) and (e), and 264.1086(a) and (d)(2) do not apply.

(B) For purposes of this subpart, when the provisions of 40 CFR 264.1081 are referred to in 40 CFR 264.1084 through 264.1086, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 264.1084 through 264.1086 is not defined in § 60.771, in such cases the provisions of 40 CFR 264.1081 shall apply.

(C) When the term "hazardous waste" is used in 40 CFR 264.1084 through 264.1086, the term "wastewater or residual" shall apply for purposes of this subpart.

(D) When the term "tank" is used in 40 CFR 264.1084 through 264.1086, the term "wastewater tank" shall apply for purposes of this subpart.

(E) When the terms "air pollutant emissions" or "organic emissions" are used in 40 CFR 264.1084 through 264.1086, the term "VOC emissions" shall apply for purposes of this subpart.

(F) When the term "maximum organic vapor pressure" is used in 40 CFR 264.1084, the term "maximum true vapor pressure" shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(ii) The following exceptions apply to the provisions of 40 CFR 264.1087:

(A) When the provisions of 40 CFR 264.1033(e) are referred to in 40 CFR 264.1087(c)(5)(ii), the provisions of § 60.783(j) shall apply for purposes of this subpart.

(B) When the provisions of 40 CFR 264.1034(c)(1) through (c)(4) are referred to in 40 CFR 265.1087(c)(5)(iii), the provisions of § 60.783 shall apply for purposes of this subpart.

(C) When the terms "organic" or "organics" are used in 40 CFR 264.1087, the term "VOC" shall apply for purposes of this subpart.

(iii) The following exception applies to the provisions of 40 CFR 264.1088: When 40 CFR 264.1088(b) requires that "the owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 CFR 264.15," the written plan and schedule required by this paragraph 40 CFR 264.1088(b) shall be submitted as part of the Notification of Compliance Status required by § 60.784(c) for purposes of this subpart.

(iv) The following exceptions apply to the provisions of 40 CFR 264.1089:

(A) When complying with the recordkeeping provisions specified in 40 CFR 264.1089, the provisions of paragraphs (a), (e)(1)(iii), (f), (h), (i), and (j) of 40 CFR 264.1089 shall not apply because the provisions of these paragraphs are not related to waste management units or closed vent systems and control devices.

(B) When the term "hazardous waste" is used in 40 CFR 264.1089, the term "wastewater or residual" shall apply for purposes of this subpart.

(C) When the term "maximum organic vapor pressure" is used in 40 CFR 264.1089, the term "maximum true vapor pressure" shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(v) The following exceptions apply to the provisions of 40 CFR 264.1090:

(A) When complying with the reporting provisions specified in 40 CFR 264.1090, the provisions of paragraph (a) of 40 CFR 264.1090 shall not apply because the provisions of this paragraph are not related to waste management units or closed vent systems and control devices.

(B) [Reserved]

(3) Comply with the applicable requirements specified in 40 CFR 264.1084 through 264.1086, except as specified in paragraphs (f)(3)(i) through (f)(3)(xi) of this section. Comply with the control device, leak detection, and delay of repair provisions specified in §§ 60.780, 60.786, and 60.777 of this subpart and with the monitoring,

reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) For purposes of this subpart, 40 CFR 264.1084(a) and (j), 264.1085(a) and (e), and 264.1086(a) and (d)(2) do not apply.

(ii) For purposes of this subpart, when the provisions of 40 CFR 264.1081 are referred to in 40 CFR 264.1084 through 264.1086, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 264.1084 through 264.1086 is not defined in § 60.771, in such cases the provisions of 40 CFR 264.1081 shall apply.

(iii) When the term "hazardous waste" is used in 40 CFR 264.1084 through 264.1086, the term "wastewater or residual" shall apply for purposes of this subpart.

(iv) When the term "tank" is used in 40 CFR 264.1084 through 264.1086, the term "wastewater tank" shall apply for purposes of this subpart.

(v) When the terms "air pollutant emissions" or "organic emissions" are used in 40 CFR 264.1084 through 264.1086, the term "VOC emissions" shall apply for purposes of this subpart.

(vi) When the term "maximum organic vapor pressure" is used in 40 CFR 264.1084, the term "maximum true vapor pressure" shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(vii) When the closed-vent systems and control devices provisions in 40 CFR 264.1087 are referred to in 40 CFR 264.1084 through 264.1086, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(viii) For purposes of this subpart, the delay of repair provisions in 40 CFR 264.1084(k), 264.1085(f), and 264.1086(c)(4)(iii) and (d)(4)(iii) shall not apply, and the provisions in § 60.777 shall apply.

(ix) When the inspection and monitoring requirements are referred to in 40 CFR 264.1088, the provisions in § 60.781 shall apply for purposes of this subpart.

(x) When the recordkeeping provisions in 40 CFR 264.1089 are referred in 40 CFR 264.1084 through 264.1086, the provisions in § 60.785 shall apply for purposes of this subpart.

(xi) When the leak inspection provisions of 40 CFR 264.1083(d) are referred to in 40 CFR 264.1084(h)(2), 264.1085(d)(1)(ii), and 264.1086(g), the provisions in § 60.786 shall apply for purposes of this subpart.

(g) *Requirements for RCRA 40 CFR part 265, subpart CC compliance option.* Owners or operators selecting the RCRA 40 CFR part 265, subpart CC compliance option shall comply with paragraph (g)(1) of this section and with paragraph (g)(2) or (g)(3) of this section.

(1) The owner or operator of a wastewater tank, surface impoundment, or container that is subject to both 40 CFR part 265, subpart CC and this subpart shall comply with either paragraph (g)(2) or (g)(3) of this section. The owner or operator of a wastewater tank, surface impoundment, or container that is subject to this subpart but not subject to 40 CFR part 265, subpart CC shall comply with paragraph (g)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 265.1085 through 265.1087, except as specified in paragraph (g)(2)(i) of this section. Comply with the closed-vent system and control device provisions in 40 CFR 265.1088, with the delay of repair provisions in 40 CFR 265.1085(k), 265.1086(f), and 265.1087(d)(4)(iii), and with the inspection and monitoring and recordkeeping provisions specified in 40 CFR 265.1089 and 265.1090, except as specified in paragraphs (g)(2)(ii) through (g)(2)(iv) of this section. Comply with the reporting provisions specified in § 60.784 of this subpart.

(i) The following exceptions apply to the provisions of 40 CFR 265.1085 through 265.1087:

(A) For purposes of this subpart, 40 CFR 265.1085(a) and (j), 265.1086(a) and (e), and 265.1087(a) and (d)(2) do not apply.

(B) For purposes of this subpart, when the provisions of 40 CFR 265.1081 are referred to in 40 CFR 265.1085 through 265.1087, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 265.1085 through 265.1087 is not defined in § 60.771, in such cases the provisions of 40 CFR 265.1081 shall apply.

(C) When the term "hazardous waste" is used in 40 CFR 265.1085 through 265.1087, the term "wastewater or residual" shall apply for purposes of this subpart.

(D) When the term "tank" is used in 40 CFR 265.1085 through 265.1087, the term "wastewater tank" shall apply for purposes of this subpart.

(E) When the terms "air pollutant emissions" or "organic emissions" are used in 40 CFR 265.1085 through 265.1087, the term "VOC emissions" shall apply for purposes of this subpart.

(F) When the term "maximum organic vapor pressure" is used in 40 CFR 265.1085, the term "maximum true vapor pressure" shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(ii) The following exceptions apply to the provisions of 40 CFR 265.1088:

(A) When the provisions of 40 CFR 265.1033(e) are referred to in 40 CFR 265.1088(c)(5)(ii), the provisions of § 60.783(j) shall apply for purposes of this subpart.

(B) When the provisions of 40 CFR 265.1034(c)(1) through (c)(4) are referred to in 40 CFR 265.1088(c)(5)(iii), the provisions of § 60.783 shall apply for purposes of this subpart.

(C) When the terms "organic" or "organics" are used in 40 CFR 265.1088, the term "VOC" shall apply for purposes of this subpart.

(iii) The following exception applies to the provisions of 40 CFR 265.1089: When 40 CFR 265.1089(b) requires that "the owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 CFR 265.15," the written plan and schedule required by this paragraph 40 CFR 265.1089(b) shall be submitted as part of the Notification of Compliance Status required by § 60.784(c) for purposes of this subpart.

(iv) The following exceptions apply to the provisions of 40 CFR 265.1090:

(A) When complying with the recordkeeping provisions specified in 40 CFR 265.1090, the provisions of paragraphs (a), (e)(1)(iii), (f), (h), (i), and (j) of 40 CFR 265.1090 shall not apply because the provisions of these paragraphs are not related to waste management units or closed vent systems and control devices.

(B) When the term "hazardous waste" is used in 40 CFR 265.1090, the term "wastewater or residual" shall apply for purposes of this subpart.

(C) When the term "maximum organic vapor pressure" is used in 40 CFR 265.1090, the term "maximum true vapor pressure" shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(3) Comply with the applicable requirements specified in 40 CFR 265.1085 through 265.1087, except as specified in paragraphs (g)(3)(i) through (g)(3)(ix) of this section. Comply with the control device, leak detection, and delay of repair provisions specified in §§ 60.780, 60.786, and 60.777 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) For purposes of this subpart, 40 CFR 265.1085(a) and (j), 265.1086(a) and (e), and 265.1087(a) and (d)(2) do not apply.

(ii) For purposes of this subpart, when the provisions of 40 CFR 265.1081 are referred to in 40 CFR 265.1085 through 265.1087, the provisions of § 60.771 shall apply, unless the specified term in 40 CFR 265.1085 through 265.1087 is not defined in § 60.771, in such cases the provisions of 40 CFR 265.1081 shall apply.

(iii) When the term "hazardous waste" is used in 40 CFR 265.1085 through 265.1087, the term "wastewater or residual" shall apply for purposes of this subpart.

(iv) When the term "tank" is used in 40 CFR 265.1085 through 265.1087, the term "wastewater tank" shall apply for purposes of this subpart.

(v) When the terms "air pollutant emissions" or "organic emissions" are used in 40 CFR 265.1085 through 265.1087, the term "VOC emissions" shall apply for purposes of this subpart.

(vi) When the term "maximum organic vapor pressure" is used in 40 CFR 265.1085, the term "maximum true vapor pressure" shall apply for purposes of this subpart, and the maximum true vapor pressure shall be determined as specified in § 60.771 for purposes of this subpart.

(vii) When the closed-vent systems and control devices provisions in 40 CFR 265.1088 are referred to in 40 CFR 265.1085 through 265.1087, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(viii) For purposes of this subpart, the delay of repair provisions in 40 CFR 265.1085(k), 265.1086(f), and 265.1087 (d)(4)(iii) shall not apply, and the provisions in § 60.777 shall apply.

(ix) When the inspection and monitoring requirements are referred to in 40 CFR 265.1089, the provisions in § 60.781 shall apply for purposes of this subpart.

(x) When the recordkeeping provisions in 40 CFR 265.1090 are referred to in 40 CFR 265.1085 through 265.1087, the provisions in § 60.785 shall apply for purposes of this subpart.

(xi) When the leak inspection provisions of 40 CFR 265.1084(d) are referred to in 40 CFR 265.1085(h)(2), 265.1086(d)(1)(ii), and 265.1087(g), the provisions in § 60.786 shall apply for purposes of this subpart.

(h) *Requirements for benzene waste option.* Owners or operators selecting the Benzene Waste compliance option shall comply with paragraph (h)(1) of this section and with paragraph (h)(2) or (h)(3) of this section.

(1) The owner or operator of a waste management unit that is subject to both 40 CFR part 61, subpart FF and this subpart shall comply with either paragraph (h)(2) or (h)(3) of this section. The owner or operator of a waste management unit that is subject to this subpart but not subject to 40 CFR part 61, subpart FF shall comply with paragraph (h)(3) of this section.

(2) Comply with the applicable requirements specified in 40 CFR 61.343 through 61.347, except as specified in paragraphs (h)(2)(i) of this section. Comply with the closed-vent system and control device provisions, leak inspection provisions, and delay of repair provisions in 40 CFR 61.349, 61.355(h), and 61.350 and with the monitoring provisions, recordkeeping, and reporting provisions specified in 40 CFR 61.354, 61.356, and 61.357, except as specified in paragraphs (h)(2)(ii) through (h)(2)(v) of this section.

(i) The following exceptions apply to the provisions of 40 CFR 61.343 through 61.347:

(A) When the term "waste stream" is used in 40 CFR 61.343 through 61.347, the term "wastewater or residual" shall apply for purposes of this subpart.

(B) When the term "maximum organic vapor pressure" is used in 40 CFR 61.343, the term "maximum true vapor pressure" shall apply for purposes of this subpart.

(C) The provisions of 40 CFR 61.342(c)(1)(ii), as cited in the phrase "in which the waste stream is placed in accordance with 40 CFR 61.342(c)(1)(ii)" in 40 CFR 61.343 through 61.347, shall not apply for purposes of this subpart.

(ii) The following exceptions apply to the provisions of 40 CFR 61.349:

(A) When the term "waste" is used in 40 CFR 61.349(b), the term "wastewater or residual" shall apply for purposes of this subpart.

(B) When the term "total organic compound concentration" is used in 40 CFR 61.349, the term "total VOC concentration" shall apply for purposes of this subpart.

(C) When the term "organic emissions" is used in 40 CFR 61.349, the term "VOC emissions" shall apply for purposes of this subpart.

(D) When 40 CFR 61.349(a)(2)(i)(B) cites the use of Method 18, the test methods specified in § 60.783 shall apply for purposes of this subpart.

(E) When the provisions of 40 CFR 60.18 are referred to in 40 CFR 61.349(a)(2)(iii), owners or operators shall comply with the provisions of § 60.783(j) for purposes of this subpart.

(F) When cited in 40 CFR 61.349(a)(iv)(A), the phrase "or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater" shall not apply for purposes of this subpart.

(G) When cited in 40 CFR 61.349(a)(iv)(B), the phrase "or 98 percent or greater for benzene" shall not apply for purposes of this subpart.

(H) When complying with 40 CFR 61.349(c)(ii), owners or operators shall use the procedures specified in § 60.783 for purposes of this subpart.

(I) When the test methods and compliance procedures specified in 40 CFR 61.355 are referred to in 40 CFR 61.349, the provisions of § 60.783 shall apply for purposes of this subpart.

(iii) The following exceptions apply to the provisions of 40 CFR 61.354:

(A) When complying with the monitoring provisions specified in 40 CFR 61.354, the provisions of paragraphs (a) and (b) of 40 CFR 61.354 shall not apply because the provisions of these paragraphs are related to the monitoring of treatment processes, and treatment process monitoring shall be conducted following the procedures specified in § 60.781.

(B) When the provisions of 40 CFR 60.18 are referred to in 40 CFR 61.354(c)(3), owners or operators shall comply with the provisions of § 60.783(j) for purposes of this subpart.

(C) When the terms "organic compounds," "organic", or "benzene" are used in 40 CFR 61.354(c) or (d), the term "VOC" shall apply for purposes of this subpart.

(iv) The following exceptions apply to the provisions of 40 CFR 61.356:

(A) When complying with the recordkeeping provisions specified in 40 CFR 61.356, the provisions of paragraphs (a), (b), (c), (e), (f), (i), (k), and (l) of 40 CFR 61.356 shall not apply because the provisions of these paragraphs are not related to waste management units or closed vent systems and control devices.

(B) When the term "organics" or the term "benzene" is used in 40 CFR 61.356(j)(8) or (j)(9), the term "VOC" shall apply for purposes of this subpart.

(C) When the term "benzene emissions" is used in 40 CFR 61.356(g), the term "VOC emissions" shall apply for purposes of this subpart.

(v) The following exceptions apply to the provisions of § 61.356:

(A) When complying with the reporting provisions specified in 40 CFR 61.357, the provisions of paragraphs (a), (b), (c), (d)(1) through (d)(5), (d)(7)(i) through (d)(7)(iii), (e), (f), and (g) of 40 CFR 61.357 shall not apply because the provisions of these paragraphs are not related to waste management units or closed vent systems and control devices.

(B) When the term "organics" or the term "benzene" is used in § 61.357(d)(7)(iv)(D), the term "VOC" shall apply for purposes of this subpart.

(C) When the term "benzene emissions" is used in § 61.357(d)(8), the term "VOC emissions" shall apply for purposes of this subpart.

(3) Comply with the applicable requirements specified in 40 CFR 61.343 through 61.347, except as specified in paragraphs (h)(3)(i) through (h)(3)(viii) of this section. Comply with the control device, leak detection, and delay of repair provisions specified in §§ 60.780, 60.786, and 60.777 of this subpart and with the monitoring, reporting, and recordkeeping provisions specified in §§ 60.781, 60.784, and 60.785 of this subpart.

(i) When the term "waste stream" is used in §§ 61.343 through 61.347, the term "wastewater or residual" shall apply for purposes of this subpart.

(ii) When the term "maximum organic vapor pressure" is used in § 61.343, the term "maximum true vapor pressure" shall apply for purposes of this subpart.

(iii) When the closed-vent systems and control devices provisions in § 61.349 are referred to in § 61.343 through 61.347, the provisions in §§ 60.780 and 60.786 shall apply for purposes of this subpart.

(iv) When the delay of repair provisions in § 61.350 are referred to in §§ 61.343 through 61.347, the provisions in § 60.777 shall apply for purposes of this subpart.

(v) When the leak inspection provisions specified in § 61.355(h) are referred to in §§ 61.343 through 61.347, the provisions of § 60.786 shall apply for purposes of this subpart.

(vi) The provisions of § 61.342(c)(1)(ii), as cited in the phrase "in which the waste stream is placed in accordance with § 61.342(c)(1)(ii)" in §§ 61.343 through 61.347, shall not apply for purposes of this subpart.

§ 60.775 Control requirements for aqueous in-process streams.

(a) The owner or operator shall comply with the provisions of Table 6 of this subpart, for each item of equipment meeting all the criteria specified in paragraphs (b) through (d) of this section and either paragraphs (e)(1) or (e)(2) of this section.

(b) The item of equipment is of a type identified in Table 6 of this subpart;

(c) The item of equipment is part of an affected facility subject to this subpart;

(d) The item of equipment is controlled less stringently than in Table 6 and is not listed in § 60.770(h) of this subpart, and the item of equipment is not otherwise exempt from controls by the provisions of this subpart or subpart A of this part; and

(e) The item of equipment:

(1) Is a drain, drain hub, manhole, lift station, trench, pipe, or oil/water separator that conveys water with an annual average concentration greater than or equal to 10,000 parts per million by weight of VOC at any flowrate; or an annual average concentration greater than or equal to 500 parts per million by weight of VOC at an annual average flow rate greater than or equal to 1 liter per minute; or

(2) Is a tank that receives one or more streams that contain water with an annual average concentration greater than or equal to 500 parts per million by weight of VOC at an annual average flowrate greater than or equal to 1 liter per minute. The owner or operator of the affected facility shall determine the characteristics of the stream as specified in paragraphs (e)(2)(i) and (ii) of this section.

(i) The characteristics of the stream being received shall be determined at the inlet to the tank.

(ii) The characteristics shall be determined according to the procedures in § 60.782(b) and (c) of this subpart.

§ 60.776 Maintenance wastewater requirements.

(a) Each owner or operator of an affected facility subject to this subpart shall comply with the requirements of paragraphs (b) through (e) of this section for maintenance wastewaters containing VOC.

(b) The owner or operator shall prepare a description of maintenance procedures for management of maintenance wastewaters generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair (i.e., a maintenance-turnaround) and during periods which are not shutdowns (i.e., routine maintenance). The descriptions shall be as follows:

(1) Specify the process equipment or maintenance tasks that are anticipated to create wastewater during maintenance activities.

(2) Specify the procedures that will be followed to properly manage the wastewater and control VOC emissions to the atmosphere; and

(3) Specify the procedures to be followed when clearing materials from process equipment.

(c) The owner or operator shall modify and update the information required by paragraph (b) of this section as needed to reflect new or revised equipment or procedures.

(d) The owner or operator shall implement the procedures described in paragraphs (b) and (c) of this section as part of the start-up, shutdown, and malfunction plan required in § 60.787 of this subpart.

(e) The owner or operator shall maintain a record of the information required by paragraphs (b) and (c) of this section as part of the start-up, shutdown, and malfunction plan required in § 60.787 of this subpart.

§ 60.777 Delay of repair.

(a) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified, is allowed if the repair is technically infeasible without a shutdown, as defined in § 60.771 of this subpart, or if the owner or operator determines that VOC emissions of purged material from immediate repair would be greater than the VOC emissions likely to result from delay of repair. Repair of this equipment shall occur by the end of the next shutdown.

(b) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified, is allowed if the equipment is emptied or is no longer used to treat or manage Group 1 wastewater streams or residuals removed from Group 1 wastewater streams.

(c) Delay of repair of equipment for which a control equipment failure or a gap, crack, tear, or hole has been identified is also allowed if additional time is necessary due to the unavailability of parts beyond the control of the owner or operator. Repair shall be completed as soon as practical. The owner or operator who uses this provision shall comply with the requirements of § 60.785(b)(7) of this subpart to document the reasons that the delay of repair was necessary.

§ 60.778 Stream-specific list of VOC determination.

(a) *General.* This section specifies how to determine a stream-specific list of VOC for a process wastewater stream or in-process aqueous stream. A stream-specific list of VOC is required when speciation is used for compliance demonstration (i.e., performance tests, design evaluations, and ranges of parameters set for monitoring and for determining if VOC emissions increase has occurred for modification determinations. A stream-specific list may also be used for Group 1 and Group 2 determinations.

(b) *Test methods for determining VOC concentration.* The owner or operator shall use one of the test methods that speciates compounds and is specified in § 60.782(b)(5) of this subpart to determine concentration. For process wastewater streams, the annual average concentration shall be determined either at the point of determination or downstream of the point of determination, with adjustment for concentration changes made according to § 60.782(b)(6) of this subpart if a point downstream of the point of determination is used. For aqueous in-process streams, the annual average concentration shall be determined before the point of determination and shall be adjusted for any losses of VOC to the atmosphere and for dilution.

(c) *Compounds that may be excluded from the site-specific list of VOC.* Compounds that meet the requirements specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section are not required to be included in the stream-specific list of VOC. The owner or operator shall use one of the methods specified in § 60.782(b)(5) of this subpart to determine concentration.

(1) Compounds not used or produced by the chemical process unit.

(2) Compounds with concentrations at the point of determination that are below 1 part per million by weight.

(3) Compounds with concentrations at the point of determination that are below the lower detection limit where the lower detection limit is greater than 1 part per million by weight. The method used for determining concentration shall be an analytical method for wastewater which has the compound of interest as a target analyte.

(d) *Create stream-specific list of VOC for Group 1 and Group 2 determination.* The owner or operator shall include those individual VOC with the greatest mass on the stream-specific list of VOC until 75 compounds or every compound, whichever is fewer, is included on the list, except as provided by paragraph (c) of this section. The stream-specific list of VOC must represent at least 90 percent of the total VOC in the process wastewater stream. If the compounds on the stream-specific list of VOC do not represent at least 90 percent of total VOC, Method 25D to appendix A of this part shall be used to make the Group 1 determination for that process wastewater stream. The owner or operator shall document how the percent of VOC in the process wastewater stream was determined.

(e) *Create stream-specific list of VOC for estimating VOC emission changes for modification determinations.* The owner or operator shall include those individual VOC with the greatest mass on the stream-specific list of VOC until 75 compounds or every compound, whichever is fewer, is included on the list, except as provided by paragraph (c) of this section. The stream-specific list of VOC must represent at least 90 percent of the total VOC in the process wastewater stream or aqueous in-process stream. If the compounds on the stream-specific list of VOC do not represent at least 90 percent of total VOC, the owner or operator shall use the mass flow rate procedure specified in § 60.772 of this subpart to estimate VOC emissions for modification determinations. The owner or operator shall document how the percent of VOC in the process wastewater stream or aqueous in-process stream was determined.

(f) *Create stream-specific list of VOC for compliance demonstrations.* The owner or operator shall determine the percent of total VOC in the process wastewater stream. The owner or operator shall document how the percent of VOC in the process wastewater stream was determined.

(i) For the owner or operator that can identify at least 90 percent, by mass, of the VOC in the wastewater stream or aqueous in-process stream, the individual VOC that are 5 percent, by mass, or greater, are required to be included on the list. If less than half of the total VOC in the wastewater are represented by the compounds with a mass of 5 percent or greater, the owner or operator shall include those individual VOC with the greatest mass on the stream-specific list of VOC until 75 compounds or every compound, whichever is fewer, is included on the list, except as provided by paragraph (c) of this section. The owner or operator shall document that the site-specific list of VOC is representative of the process wastewater stream and forms the basis of a good compliance demonstration.

(ii) For the owner or operator that can identify at least 50 percent, by mass, of the VOC in the wastewater stream, the individual VOC with the greatest mass on the stream-specific list of VOC up to 75 compounds or every compound, whichever is fewer, are to be included on the list, except as provided by paragraph (c) of this section. The owner or operator shall document that the site-specific list of VOC is representative of the process wastewater stream and forms the basis of a good compliance demonstration.

(iii) For the owner or operator that cannot identify at least 50 percent, by mass, of the VOC in the process wastewater stream, one of the following compliance options shall be used to treat the process wastewater stream:

(A) The design steam stripper option in § 60.779(d) of this subpart; or

(B) The 95 percent mass removal with outlet concentration of 50 ppmw option in § 60.779(e)(2) of this subpart; or

(C) The steam stripper option in § 60.779(e)(3) of this subpart.

§ 60.779 Process wastewater provisions—Performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams.

(a) This section specifies the performance standards for treating process wastewater streams that are Group 1 wastewater streams. The owner or operator shall comply with the requirements as specified in paragraphs (a)(1) through (a)(8) of this section. Where multiple compliance options are provided, the options may be used in combination for different wastewater streams and/or for different compounds in the same wastewater streams, except where otherwise provided in this section. Once a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream has been treated in accordance with this subpart, it is no longer subject to the requirements of this subpart.

(1) *Control options: Group 1 wastewater streams.* The owner or operator shall comply with the requirements specified in any one of paragraphs (d), (e), (f), (g), (h), or (m) of this section, except as provided in § 60.789 of this subpart for relationship with other rules.

(2) [Reserved]

(3) *Biological treatment processes.* Biological treatment processes in compliance with this section may be either open or closed biological treatment processes as defined in § 60.771 of this subpart. An open biological treatment process in compliance with this section need not be covered and vented to a control device as required in § 60.774 of this subpart. An open or a closed biological treatment process in compliance with this section and using §§ 60.783(f) or 60.783(g) of this subpart to demonstrate compliance is not subject to the requirements of § 60.774 of this subpart. A closed biological treatment process in compliance with this section and using § 60.783(e) of this subpart to demonstrate compliance shall comply with the requirements of § 60.774 of this subpart. Waste management units upstream of an open or closed biological treatment process shall meet the requirements of § 60.774 of this subpart, as applicable.

(4) *Performance tests and design evaluations.* If the design steam stripper option (paragraph (d) of this section) or the Resource Conservation and Recovery Act (RCRA) option (paragraph (h) of this section) is selected to comply with this section, neither a design evaluation nor a performance test is required. If § 60.789(d) of this subpart (Relationship to the HON) is selected to

comply with this section, the performance test or design evaluation used to demonstrate compliance for the HON also demonstrates compliance with this section. For any other non-biological treatment process, and for closed biological treatment processes as defined in § 60.771 of this subpart, the owner or operator shall conduct either a design evaluation as specified in paragraph (j) of this section, or a performance test as specified in § 60.783 of this subpart. For each open biological treatment process as defined in § 60.771 of this subpart, the owner or operator shall conduct a performance test as specified in § 60.783 of this subpart.

Note to paragraph (a)(4) of this section: Some open biological treatment processes may not require a performance test. Refer to § 60.783(h) of this subpart and table 36 of the appendix to subpart G of 40 CFR part 63 to determine whether the biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.)

(5) *Control device requirements.* When gases are vented from the treatment process, the owner or operator shall comply with the applicable control device requirements specified in §§ 60.780 and 60.783(i) and (j) of this subpart, and the applicable leak inspection provisions specified in § 60.786 of this subpart. This requirement does not apply to any open biological treatment process that meets the mass removal requirements. Vents from anaerobic biological treatment processes may be routed through hard-piping to a fuel gas system.

(6) *Residuals: general.* When residuals result from treating Group 1 wastewater streams, the owner or operator shall comply with the requirements for residuals specified in paragraph (k) of this section.

(7) *Treatment using a series of treatment processes.* In all cases where the wastewater provisions in this subpart allow or require the use of a treatment process or control device to comply with emissions limitations, the owner or operator may use multiple treatment processes or control devices, respectively. For combinations of treatment processes where the wastewater stream is conveyed by hard-piping, the owner or operator shall comply with either the requirements of paragraph (a)(7)(i) or (a)(7)(ii) of this section. For combinations of treatment processes where the wastewater stream is not conveyed by hard-piping, the owner or operator shall comply with the requirements of paragraph (a)(7)(ii) of this section. For combinations of control devices, the owner or operator shall comply with the requirements of paragraph (a)(7)(i) of this section.

(i)(A) For combinations of treatment processes, the wastewater stream shall be conveyed by hard-piping between the treatment processes. For combinations of control devices, the vented gas stream shall be conveyed by hard-piping between the control devices.

(B) For combinations of treatment processes, each treatment process shall meet the applicable requirements of § 60.774 of this subpart except as provided in paragraph (a)(3) of this section.

(C) The owner or operator shall identify, and keep a record of, the combination of treatment processes or of control devices, including identification of the first and last treatment process or control device.

(D) The performance test or design evaluation shall determine compliance across the combination of treatment processes or control devices. If a performance test is conducted, the "inlet" shall be the point at which the wastewater stream or residual enters the first treatment process, or the vented gas stream enters the first control device. The "outlet" shall be the point at which the treated wastewater stream exits the last treatment process, or the vented gas stream exits the last control device.

(ii)(A) For combinations of treatment processes, each treatment process shall meet the applicable requirements of § 60.774 of this subpart except as provided in paragraph (a)(3) of this section.

(B) The owner or operator shall identify, and keep a record of, the combination of treatment processes, including identification of the first and last treatment process.

(C) The owner or operator shall determine the mass removed or destroyed by each treatment process. The performance test or design evaluation shall determine compliance for the combination of treatment processes by adding together the mass removed or destroyed by each treatment process.

(8) *Prohibition against double counting.* The removal of VOC must be in addition to the reduction and destruction required by other rules, unless the removal of VOC is from the same stream.

(b) [Reserved]

(c) [Reserved]

(d) *Design steam stripper option.* The owner or operator shall operate and maintain a steam stripper that meets the requirements of paragraphs (d)(1) through (d)(6) of this section.

(1) Minimum active column height of 5 meters;

(2) Countercurrent flow configuration with a minimum of 10 actual trays;

(3) Minimum steam flow rate of 0.04 kilograms of steam per liter of wastewater feed within the column;

(4) Minimum wastewater feed temperature to the steam stripper of 95° C, or minimum column operating temperature of 95° C;

(5) Maximum liquid loading of 67,100 liters per hour per square meter; and

(6) Operate at nominal atmospheric pressure.

(e) *Percent mass removal/destruction option, for nonbiological treatment process.* For wastewater streams that are Group 1 and treated in a nonbiological treatment process, the owner or operator shall comply with either paragraph (e)(1) or (e)(2) of this section for a noncombustion treatment process and paragraph (e)(1) of this section for a combustion treatment process. For wastewater streams that are Group 1 and treated in a steam stripper, the owner or operator shall comply with either paragraph (e)(1), (e)(2), or (e)(3) of this section. This paragraph (e) shall not be used for biological treatment processes.

(1) *Reduce mass flow rate of VOC by the appropriate Fr values.* For wastewater streams that are Group 1, the owner or operator shall reduce, by removal or destruction, the mass flow rate of VOC by the required removal or destruction efficiency, i.e., the flow-weighted average Fr value. To use this compliance option, the owner or operator shall develop a stream-specific list of VOC upon which to base the compliance demonstration and shall calculate a flow-weighted average Fr. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values for individual compounds. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(c) of this subpart, for noncombustion treatment processes, and in § 60.783(d) of this subpart, for combustion treatment processes.

(2) *Reduce mass flow rate of VOC by 95 percent and reduce outlet concentration of VOC to less than 50 ppmw, for noncombustion treatment process.* For wastewater streams that are Group 1, the owner or operator shall reduce, by removal or destruction, the mass flow rate of VOC by 95 percent and reduce the outlet concentration of VOC to less than 50 ppmw. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in

paragraph (j) of this section. Performance test requirements are specified in § 60.783(c) of this subpart.

(3) *Demonstrate a steam stripper reduces mass flow rate of methanol, ethylene glycol monobutyl ether acetate, and methyl ethyl ketone by the appropriate Fr value.* For wastewater steams that are Group 1 and treated in a steam stripper, the owner or operator shall demonstrate that the mass flow rate of methanol is reduced by 31 percent; that the mass flow rate of ethylene glycol monobutyl ether acetate is reduced by 76 percent; and that the mass flow rate of methyl ethyl ketone is reduced by 95 percent. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(c) of this subpart. When design evaluations are used to demonstrate compliance, the Henry's law constant at 25° C (expressed as y/x atmosphere per mole fraction) used in the evaluation shall be: 7.73 for methanol; 24.96 for ethylene glycol monobutyl ether acetate; and 59.2 for methyl ethyl ketone.

(f) *Required mass removal (RMR) option, for noncombustion treatment process.* For wastewater streams that are Group 1, the owner or operator shall reduce, by removal or destruction, the mass flow rate of VOC by the required mass removal, i.e, the flow-weighted average Fr. To use this compliance option, the owner or operator shall develop a list of VOC upon which to base the compliance demonstration and shall calculate a flow-weighted average Fr. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values. The owner or operator shall conduct a compliance demonstration as specified in paragraphs (f)(1), (f)(2), and (f)(3) of this section.

(1) *Nonbiological, noncombustion treatment process.* The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(e) of this subpart.

(2) *Aerobic biological treatment process—open and closed biological treatment processes.* Closed biological treatment process means a tank or surface impoundment where biological treatment occurs and air VOC emissions from the treatment process are routed to either a control device by means of a closed vent system or to a fuel gas system by means of hard-piping. The tank or surface impoundment has a fixed roof, as defined in § 60.771 of this subpart, or a floating flexible membrane cover that meets the requirements specified in 40 CFR § 63.134. Open biological treatment process is not a closed biological treatment process. Open biological treatment processes have additional requirements for compliance demonstration because they have more potential for VOC emissions.

(i) *Closed biological treatment process.* The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in both § 60.783(e) or (f) of this subpart.

(ii) *Open biological treatment process.* The owner or operator shall conduct a performance test as specified in § 60.783(f) of this subpart, except as provided in § 60.783(h) of this subpart.

(3) *Anaerobic biological treatment process.* An anaerobic biological treatment process shall also be a closed biological treatment process. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(e) of this subpart.

(g) *95-percent RMR option, for biological treatment processes.* The owner or operator shall reduce, by removal or destruction, the mass flow rate of VOC by 95 percent for all wastewater entering the biological treatment process. To use this compliance option, the owner or operator shall develop a stream-specific list of VOC as specified in § 60.778 of this subpart upon which to base the compliance demonstration. The owner or operator shall conduct a compliance demonstration as specified in paragraphs (g)(1) and (g)(2) of this section. The owner or operator shall also comply with paragraphs (g)(3) and (g)(4) of this section.

(1) *Aerobic biological treatment process—open and closed biological treatment processes.*

(i) *Closed biological treatment process.* The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in both § 60.783(e) and (g) of this subpart.

(ii) *Open biological treatment process.* The owner or operator shall conduct a performance test as specified in § 60.783(g) of this subpart, except as provided in § 60.783(h) of this subpart.

(2) *Anaerobic biological treatment process.* An anaerobic biological treatment process shall also be a closed biological treatment process. The owner or operator shall conduct either a design evaluation or a performance test. Design evaluation requirements are specified in paragraph (j) of this section. Performance test requirements are specified in § 60.783(e) of this subpart.

(3) For each treatment process or waste management unit that receives, manages, or treats wastewater streams subject to this paragraph (g)(3), from the point of determination of each Group 1 or Group 2 wastewater stream to the biological treatment unit, the owner or operator shall comply with § 60.774 of this subpart for control of air VOC emissions.

(4) If a wastewater stream is in compliance with the requirements in paragraph (d), (e), (f), (h), or (m) of this section before entering the biological treatment unit, the VOC mass of that wastewater is not required to be included in the total mass flow rate entering the biological treatment unit for the purpose of demonstrating compliance.

(h) *Treatment in a RCRA unit option.* The owner or operator shall treat the wastewater stream or residual in a unit identified in, and complying with, paragraphs (h)(1), (h)(2), or (h)(3) of this section. These units are exempt from the design evaluation or performance tests requirements specified in paragraphs (a)(4) and (j) of this section, and from the monitoring requirements specified in § 60.781 of this subpart, as well as recordkeeping and reporting requirements associated with monitoring and performance tests.

(1) The wastewater stream or residual is discharged to a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O;

(2) The wastewater stream or residual is discharged to a process heater or boiler burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) The wastewater stream or residual is discharged to an underground injection well for which the owner or operator has been issued a final permit

under 40 CFR part 270 or 40 CFR part 144 and complies with the requirements of 40 CFR part 122. The owner or operator shall comply with all applicable requirements of this subpart prior to the point where the wastewater enters the underground portion of the injection well.

(i) [Reserved]

(j) *Design evaluations or performance tests for treatment processes.* Except as provided in paragraph (j)(3), (h), or (m) of this section, the owner or operator shall demonstrate by the procedures in either paragraph (j)(1) or (j)(2) of this section that each nonbiological treatment process used to comply with paragraphs (e), and/or (f) of this section achieves the conditions specified for compliance. The owner or operator shall demonstrate by the procedures in either paragraph (j)(1) or (j)(2) of this section that each closed biological treatment process used to comply with paragraphs (f) or (g) of this section achieves the conditions specified for compliance. If an open biological treatment unit is used to comply with paragraph (f) or (g) of this section, the owner or operator shall comply with § 60.783(f) or § 60.783(g), respectively, of this subpart. Some open biological treatment processes may not require a performance test. Refer to § 60.783(h) of this subpart to determine whether the open biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(1) This paragraph (j)(1) may be used to demonstrate compliance with paragraphs (e), (f), or (g) of this section, except when the treatment process is an open biological treatment process. A design evaluation and supporting documentation that addresses the operating characteristics of the treatment process and that is based on operation at a representative wastewater stream flow rate and a representative concentration under which it would be most difficult to demonstrate compliance. For closed biological treatment processes, the actual mass removal shall be determined by a mass balance over the unit. The mass flow rate of VOC exiting the treatment process shall be the sum of the mass flow rate of VOC in the wastewater stream exiting the biological treatment process and the mass flow rate of the vented gas stream exiting the control device. The mass flow rate entering the treatment process minus the mass flow rate exiting the process determines the actual mass removal.

(2) This paragraph (j)(2) may be used to demonstrate compliance with paragraphs (e), (f), or (g) of this section. Performance tests conducted using test methods and procedures that meet the applicable requirements specified in § 60.783 of this subpart.

(3) The provisions of paragraphs (j)(1) and (j)(2) of this section do not apply to design stream strippers which meet the requirements of paragraph (d) of this section.

(k) *Residuals.* For each residual removed from a Group 1 wastewater stream, the owner or operator shall control for air VOC emissions by complying with § 60.774 of this subpart and by complying with one of the provisions in paragraphs (k)(1) through (k)(4) of this section.

(1) Recycle the residual to a production process or sell the residual for the purpose of recycling. Once a residual is returned to a production process, the residual is no longer subject to this section.

(2) Return the residual to the treatment process.

(3) Treat the residual to destroy the total combined mass flow rate of VOC by 99 percent or more, as determined by the procedures specified in § 60.783(c) or (d) of this subpart.

(4) Comply with the requirements for RCRA treatment options specified in paragraph (h) of this section.

(l) [Reserved]

(m) *1 Mg exemption.* For each plant site, up to 1 Mg of VOC per year may be excluded from control. The 1 Mg shall be based on an annual average and calculated according to procedures in paragraphs (m)(1) and (m)(2) of this section.

(1) *Annual average concentration.* The annual average concentration shall be a flow-weighted average representative of actual or anticipated operation of the CPU generating the process wastewater over a designated 12-month period. For flexible operation units, the owner or operator shall consider the anticipated production over the designated 12-month period and include all process wastewater streams generated by the process equipment during this period. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process. Concentration values that are not determined using Method 25D may be adjusted with the chemical's Fm value. Compound-specific Fm factors shall be determined as specified in appendix J of this part. Flow-weighted annual average concentrations for VOC means the total mass of VOC occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. The annual average concentration shall be determined for each process wastewater stream either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to § 60.782 of this subpart. The procedures specified in § 60.782(b)(5)(i) through (b)(5)(iv) and (b)(6) of this subpart are considered acceptable for determining the annual average concentration. They may be used in combination, and no one procedure shall take precedence over another. A minimum of three wastewater samples from each process wastewater stream shall be taken. Samples may be grab samples or composite samples.

(2) *Annual average flow rate.* The owner or operator shall determine the annual average flow rate by measuring flow rate either at the point of determination for each process wastewater stream, or downstream of the point of determination with adjustment for flow rate changes made according to § 60.782(c)(4) of this subpart. The annual average flow rate for the process wastewater stream shall be representative of the actual or anticipated operation of the CPU generating the wastewater over the designated 12-month period.

§ 60.780 Standards—Control devices.

(a) For each control device used to comply with the provisions in §§ 60.774, 60.775, and 60.779 of this subpart, the owner or operator shall operate and maintain the control device or combination of control devices in accordance with the requirements of paragraphs (b) through (g) of this section, unless otherwise specified in this subpart.

(b) Whenever organic VOC emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(c) The control device shall be designed and operated in accordance with paragraph (c)(1), (c)(2), (c)(3), (c)(4), or (c)(5) of this section.

(1) An enclosed combustion device (including but not limited to a vapor incinerator, boiler, or process heater) shall meet the conditions in paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, alone or in combination with other control devices. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(i) Reduce the total organic compound emissions, less methane and ethane, or total VOC emissions vented to the

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control device by 95 percent by weight or greater;

(ii) Achieve an outlet total organic compound concentration, less methane and ethane, or total VOC concentration of 20 parts per million by volume on a dry basis corrected to 3 percent oxygen. The owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A; or

(iii) Provide a minimum residence time of 0.5 seconds at a minimum temperature of 760° C.

(2) A vapor recovery system (including but not limited to a carbon adsorption system or condenser), alone or in combination with other control devices, shall reduce the total organic compound emissions, less methane and ethane, or total VOC emissions vented to the control device by 95 percent by weight, or greater, or achieve an outlet total organic compound concentration, less methane and ethane, or total VOC concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 60.774 of this subpart for surface impoundments or containers.

(3) A flare shall comply with the requirements of 40 CFR 63.11, as specified in table 2A of this subpart, and § 60.783(j) of this subpart.

(4) A scrubber, alone or in combination with other control devices, shall reduce the total organic compound emissions, less methane and ethane, or total VOC emissions in such a manner that 95 weight percent is either removed, or destroyed by chemical reaction with the scrubbing liquid or achieve an outlet total organic compound concentration, less methane and ethane, or total VOC concentration of 20 parts per million by volume, whichever is less stringent. The 20 parts per million by volume performance standard is not applicable to compliance with the provisions of § 60.774 of this subpart for surface impoundments or containers.

(5) Any other control device used shall reduce the total organic compound emissions, less methane and ethane, or total VOC emissions vented to the control device by 95 percent by weight or greater.

(d) Except as provided in paragraph (d)(4) of this section, an owner or operator shall demonstrate that each control device or combination of control devices achieves the appropriate conditions specified in paragraph (c) of this section by using one or more of the methods specified in paragraphs (d)(1), (d)(2), or (d)(3) of this section.

(1) Performance tests conducted using the test methods and procedures specified in § 60.783(i) of this subpart for control devices other than flares; or

(2) A design analysis that addresses the vent stream characteristics and control device operating parameters specified in paragraphs (d)(2)(i) through (d)(2)(vii) of this section.

(i) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(ii) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(iii) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(iv) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(v) For a carbon adsorption system that regenerates the carbon bed directly on-site in the control device such as a fixed-bed absorber, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(vi) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device such as a carbon canister, the design analysis shall consider the vent stream composition, constituent concentrations, mass or volumetric flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and affected facility operating schedule.

(vii) For a scrubber, the design analysis shall consider the vent stream composition; constituent concentrations; liquid-to-vapor ratio; scrubbing liquid flow rate and concentrations; temperature; and the reaction kinetics of the constituents with the scrubbing liquid. The design analysis shall establish the design exhaust vent stream organic compound concentration level and will include the additional information in paragraphs (d)(2)(vii)(A) and (d)(2)(vii)(B) of this section for trays and a packed column scrubber.

(A) Type and total number of theoretical and actual trays;

(B) Type and total surface area of packing for entire column, and for individual packed sections if column contains more than one packed section.

(3) For flares, the compliance determination is specified in § 60.783(j) of this subpart.

(4) An owner or operator using any control device specified in paragraphs (d)(4)(i) through (d)(4)(iv) of this section is exempt from the requirements in paragraphs (d)(1) through (d)(3) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater into which the emission stream is introduced with the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266 subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iv) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(e) The owner or operator of a control device that is used to comply with the provisions of this section shall monitor the control device in accordance with § 60.781 of this subpart.

(f) Each control device shall be visually inspected initially and annually thereafter, and at other times as requested by the Administrator. Except as provided in § 60.777 of this subpart, if gaps, cracks, tears, or holes are observed in ductwork, piping, or connections to covers and control devices during an inspection, a first effort to repair shall be made as soon as practical but no later than 5 calendar days after identification. Repair shall be completed no later than 15 calendar days after identification or discovery of the defect.

(g) The owner or operator using a carbon adsorption system shall operate and maintain the control device in accordance with the following requirements:

(1) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, pre-determined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(2) All carbon removed from the control device shall be managed in accordance with one of the following:

(i) Regenerated or reactivated in a thermal treatment unit that is permitted under subpart X of this part or 40 CFR part 265, subpart P of this chapter;

(ii) Incinerated by a process that is permitted under subpart 0 of this part; or

(iii) Burned in a boiler or industrial furnace that is permitted under 40 CFR part 266, subpart H of this chapter.

§ 60.781 Monitoring of operations.

(a) For each design steam stripper or biological treatment unit used to comply with § 60.779 of this subpart, the owner or operator shall comply with the monitoring requirements specified in Table 7 of this subpart.

(b) If the owner or operator elects to comply using biological treatment processes, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the biological treatment unit. The request shall be submitted according to the procedures specified in § 60.784(b) of this subpart and shall include a description of planned reporting and recordkeeping procedures. The owner or operator shall include as part of the submittal the basis for the selected monitoring frequencies and the methods that will be used. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means. Table 7 of this subpart summarizes the provisions specified in this paragraph (b).

(c) If the owner or operator elects to comply with Item 3 in Table 7 of this subpart, the owner or operator shall request approval to monitor appropriate parameters that demonstrate proper operation of the selected treatment process. The request shall be submitted according to the procedures specified in § 60.784(b) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or by other appropriate means.

(d) Except as provided in paragraphs (d)(4) and (d)(5) of this section, for each control device used to comply with the requirements of §§ 60.774, 60.775, 60.779, and 60.780 of this subpart, the owner or operator shall comply with the requirements in § 60.780(d) of this subpart, and with the requirements specified in paragraph (d)(1), (d)(2), or (d)(3) of this section, unless otherwise specified in this subpart.

(1) The owner or operator shall comply with the monitoring requirements specified in Table 8 of this subpart; or

(2) The owner or operator shall use an organic monitoring device installed at the outlet of the control device and equipped with a continuous recorder. Continuous recorder is defined in § 60.771 of this subpart; or

(3) The owner or operator shall request approval to monitor parameters other than those specified in paragraphs (d)(1) and (d)(2) of this section. The request shall be submitted according to the procedures specified in § 60.784(b) of this subpart, and shall include a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application or other appropriate means.

(4) For a boiler or process heater in which all vent streams are introduced with primary fuel, the owner or operator shall comply with the requirements in § 60.780(d) of this subpart but the owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(1) through (d)(3) of this section.

(5) For a boiler or process heater with a design heat input capacity of 44 megawatts or greater, the owner or operator shall comply with the requirements in § 60.780(d) of this subpart but the owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(1) through (d)(3) of this section.

(e) For each parameter monitored in accordance with paragraph (b), (c), or (d) of this section, the owner or operator shall establish a value that indicates proper operation of the treatment process or control device. In order to establish the value, the owner or operator shall comply with the requirements specified in §§ 60.784(c)(6)(ii)(A) and 60.784(c)(7)(ii) of this subpart.

(f) Monitoring equipment shall be installed, calibrated, and maintained according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(g) Each owner or operator of a treatment process or control device subject to the monitoring provisions of this subpart shall operate the treatment process or control device such that monitored parameters are below the maximum or above the minimum established value required to be monitored under paragraphs (b), (c), or (d) of this section and established under paragraph (e) of this section.

(h) Monitoring data under this subpart is directly enforceable when determining compliance with the required operating limits for the monitored control devices. For each excursion, except for excused excursions as defined in § 60.784(d)(3), the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating limits. Failure to achieve the required operating limits is a violation of this standard.

§ 60.782 Process wastewater provisions—test methods and procedures for determining applicability and Group 1 and Group 2 determinations (determining which process wastewater streams require control).

(a) *Procedures to determine applicability.* An owner or operator shall comply with paragraph (a)(1) or (a)(2) of this section for each wastewater stream to determine which wastewater streams require control for VOC. The owner or operator may use a combination of the approaches in paragraphs (a)(1) and (a)(2) of this section for different wastewater streams generated at the affected facility.

(1) *Determine Group 1 or Group 2 status.* Determine whether a wastewater stream is a Group 1 or Group 2 wastewater stream in accordance with paragraphs (b) and (c) of this section.

(2) *Designate as Group 1.* An owner or operator may designate as a Group 1 wastewater stream a single wastewater stream or a mixture of wastewater streams. The owner or operator is not required to determine the concentration or flow rate for each designated Group 1 wastewater stream for the purposes of this section.

(b) *Procedures to establish concentrations, when determining Group status under paragraph (a)(1) of this section.* An owner or operator who elects to comply with the requirements of paragraph (a)(1) of this section shall determine the annual average concentration for VOC according to paragraph (b)(1) of this section. The annual average concentration shall be a flow-weighted average representative of actual or anticipated operation of the designated CPU generating the wastewater over a designated 12-month period. For flexible operation units, the owner or operator shall consider the anticipated production over the designated 12-month period and include all wastewater streams generated by the process equipment during this period. The owner or operator is not required to determine the concentration of VOC that are not reasonably expected to be in the process or in the resulting wastewater stream.

(1) *General.* An owner or operator who elects to comply with the requirements of paragraph (a)(1) of this section shall determine the flow-weighted annual average concentration for VOC and the range of concentrations represented by the flow-weighted annual average concentration. For the purposes of this section, the term concentration, whether concentration is used alone or with other terms, may be adjusted by the compound-specific fraction measured (Fm) factors. Compound-specific Fm factors shall be determined as specified in appendix J of this part. Flow-weighted annual average concentration for VOC means the total mass of VOC occurring in the wastewater stream during the designated 12-month period divided by the total mass of the wastewater stream during the same designated 12-month period. The annual average concentration shall be determined for each wastewater stream either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to paragraph (b)(6) of this section. The procedures specified in paragraphs (b)(3), (b)(4), and (b)(5) of this section are considered acceptable procedures for determining the annual average concentration. They may be used in combination, and no one procedure shall take precedence over another.

(2) [Reserved]

(3) *Process knowledge of the wastewater.* Where process knowledge is used to determine the annual average concentration, the owner or operator shall provide sufficient information to document the annual average concentration for wastewater streams determined to be Group 2 wastewater streams as specified in § 60.785(g) of this subpart. Documentation to determine the annual average concentration is not required for Group 1 streams. Examples of acceptable documentation include material balances, records of chemical purchases, process stoichiometry, or previous test results. If test data are used, the owner or operator shall provide documentation describing the testing protocol and the means by which any losses of volatile compounds during sampling, and the bias and accuracy of the analytical method, were accounted for in the determination.

(4) *Bench-scale or pilot-scale test data.* Where bench-scale or pilot-scale test data are used to determine the annual average concentration, the owner or operator shall provide sufficient information to document that the data are representative of the actual annual average concentration, or are reliably indicative of another relevant characteristic of the wastewater stream that could be used to predict the annual average concentration. For concentration data, the owner or operator shall also provide documentation describing the testing protocol, and the means by which any losses of volatile compounds during sampling, and the bias and accuracy of the analytical method, were accounted for in the determination of annual average concentration.

(5) *Test data from sampling at the point of determination or at a location downstream of the point of determination.* Where an owner or operator elects to comply with paragraph (a)(1) of this section by measuring the concentration for VOC, the owner or operator shall comply with the requirements of this paragraph (b)(5). For each wastewater stream, measurements shall be made either at the point of determination, or downstream of the point of determination with adjustment for concentration changes made according to paragraph (b)(6) of this section. A minimum of three samples from each wastewater stream shall be taken. Samples may be grab samples or composite samples.

(i) *Methods.* The owner or operator shall use any of the methods specified in paragraphs (b)(5)(i)(A) through (b)(5)(i)(F) of this section.

(A) *Method 25D.* Use procedures specified in Method 25D, 40 CFR part 60, appendix A.

(B) *Method 305.* Use procedures specified in Method 305, 40 CFR part 63, appendix A .

(C) *Methods 624 and 625.* Use procedures specified in Methods 624 and 625, 40 CFR part 136, appendix A and comply with the sampling protocol requirements specified in paragraph (b)(5)(ii) of this section. If these methods are used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR part 136.4 and 136.5 shall be followed. For Method 625, make corrections to the compounds for which the analysis is being conducted. The corrections shall be based on the accuracy as recovery factors in Table 7 of the method.

(D) *Method 1624 and Method 1625.* Use procedures specified in Method 1624 and Method 1625, 40 CFR part 136, appendix A and comply with the requirements specified in paragraph (b)(5)(ii) of this section. If these methods are used to analyze one or more compounds that are not on the method's published list of approved compounds, the Alternative Test Procedure specified in 40 CFR part 136.4 and 136.5 shall be followed.

(E) *Other EPA method(s).* Use procedures specified in the method and comply with the requirements specified in paragraphs (b)(5)(ii) and either paragraph (b)(5)(iii)(A) or (b)(5)(iii)(B) of this section.

(F) *Method(s) other than EPA method.* Use procedures specified in the method and comply with the requirements specified in paragraphs (b)(5)(ii) and (b)(5)(iii)(A) of this section.

(ii) *Sampling plan.* The owner or operator who is expressly referred to this paragraph (b)(5)(ii) by provisions of this subpart shall prepare a sampling plan. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity. The sample plan shall include procedures for determining recovery efficiency of the relevant VOC. An example of an acceptable sampling plan would be one that incorporates similar sampling and sample handling requirements to those of Method 25D, 40 CFR part 60, appendix A. The sampling plan shall be maintained at the facility.

(iii) *Validation of methods.* The owner or operator shall validate EPA methods other than Methods 25D, 305, 624, 625, 1624, and 1625 using the procedures specified in paragraph (b)(5)(iii)(A) or (b)(5)(iii)(B) of this section. The owner or operator shall validate other methods as specified in paragraph (b)(5)(iii)(A) of this section.

(A) *Validation of EPA methods and other methods.* The method used to measure VOC concentrations in the wastewater shall be validated according to section 5.1 or 5.3, and the corresponding calculations in section 6.1 or 6.3, of Method 301 of appendix A of this part. The data are acceptable if they meet the criteria specified in section 6.1.5 or 6.3.3 of Method 301 of appendix A of this part. If correction is required under section 6.3.3 of Method 301 of appendix A of this part, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 of appendix A of this part are not required. The concentrations of the individual VOC measured in the water may be corrected to their concentrations had they been measured by Method 25D of appendix A of this part, by multiplying each concentration by the compound-specific fraction measured (Fm) factor. Compound-specific Fm factors shall be determined as specified in appendix J of this part.

(B) *Validation for EPA methods.* Follow the procedures as specified in "Alternative Validation Procedure for EPA Waste Methods" 40 CFR part 63, appendix D.

(iv) *Calculations of average concentration.* For methods that speciate, the average concentration of VOC shall be calculated by first summing the concentration of the individual compounds to obtain a total VOC concentration for the sample, adding the sample totals, and then dividing by the number of samples in the run to obtain the sample average for the run. If the method used does not speciate the compounds, the sample results should be added and this total divided by the number of samples in the run to obtain the sample average for the run.

(6) *Adjustment for concentrations determined downstream of the point of determination.* The owner or operator shall make corrections to the annual average concentration when the concentration is determined downstream of the point of determination at a location where: two or more wastewater streams have been mixed; one or more wastewater streams have been treated; or, losses to the atmosphere have occurred. The owner or operator shall make the adjustments either to the individual data points or to the final annual average concentration.

(c) *Procedures to determine flow rate, when evaluating Group status under paragraph (a)(1) of this section.* An owner or operator who elects to comply with paragraph (a)(1) of this section shall determine the annual average flow rate of the wastewater stream and the range of flow rates represented by the annual average flow rate. The annual average flow rate shall be determined either at the point of determination for each wastewater stream, or downstream of the point of determination with adjustment for flow rate changes made according to paragraph (c)(4) of this section. These procedures may be used in combination for different wastewater streams at the affected facility. The annual average flow rate for the wastewater stream shall be representative of actual or anticipated operation of the designated CPU generating the wastewater over a designated 12-month period. The owner or operator shall consider the annual wastewater volume generated by the designated CPU. If the designated CPU is a flexible operation unit, the owner or operator shall consider all anticipated production in the process equipment over the designated 12-month period. The procedures specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section are considered acceptable procedures for determining the flow rate. They may be used in combination, and no one procedure shall take precedence over another.

(1) *Process knowledge of the wastewater.* The owner or operator may use process knowledge of the wastewater stream and/or the process to determine the annual average flow rate. The owner or operator shall use the maximum expected annual average production capacity of the process unit, knowledge of the process, and/or mass balance information to either estimate the annual average wastewater flow rate directly or estimate the total annual wastewater volume and then divide total volume by 525,600 minutes in a year. Where process knowledge is used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams as specified in § 60.785(g) of this subpart. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(2) *Historical records.* The owner or operator may use historical records to determine the annual average flow rate. Derive the highest annual average flow rate of wastewater from historical records representing the most recent 5 years of operation or, if the process unit has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the process unit. Where historical records are used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(3) *Measurements of flow rate.* Where an owner or operator elects to comply with paragraph (a)(1) of this section by measuring the flow rate, the owner or operator shall comply with the requirements of this paragraph (c)(3). Measurements shall be made at the point of determination, or at a location downstream of the point of determination with adjustments for flow rate changes made according to paragraph (c)(4) of this section. Where measurement data are used to determine the annual average flow rate, the owner or operator shall provide sufficient information to document the flow rate for wastewater streams determined to be Group 2 wastewater streams. Documentation to determine the annual average flow rate is not required for Group 1 streams.

(4) *Adjustment for flow rates determined downstream of the point of determination.* The owner or operator shall make corrections to the annual average flow rate of a wastewater stream when it is determined downstream of the point of determination at a location where two or more wastewater streams have been mixed or one or more wastewater streams have been treated. The owner or operator shall make corrections for such changes in the annual average flow rate.

§ 60.783 Process wastewater provisions—test methods and procedures to determine compliance.

(a) *General.* This section specifies the procedures for performance tests that are conducted to demonstrate compliance of a treatment process or a control device with the control requirements specified in § 60.779 of this subpart. Owners or operators conducting a design evaluation shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section. Owners or operators conducting a performance test shall comply with the applicable requirements in paragraphs (a) through (i) of this section.

(1) *Performance tests and design evaluations for treatment processes.* If design steam stripper option (§ 60.779(d) of this subpart) or RCRA option (§ 60.779(h)of this subpart) is selected to comply with § 60.779 of this subpart, neither a design evaluation nor a performance test is required. For any other non-biological treatment process, the owner or operator shall conduct either a design evaluation as specified in § 60.779(j) of this subpart, or a performance test as specified in this section. For closed biological treatment processes, the owner or operator shall conduct either a design evaluation as specified in § 60.779(j) of this subpart, or a performance test as specified in this section. For each open biological treatment process, the owner or operator shall conduct a performance test as specified in this section.

Note to paragraph (a)(1): Some open biological treatment processes may not require a performance test. Refer to paragraph (h) of this section to determine whether the biological treatment process meets the criteria that exempt the owner or operator from conducting a performance test.

(2) *Performance tests and design evaluations for control devices.* The owner or operator shall conduct either a design evaluation as specified in § 60.780(d) of this subpart, or a performance test as specified in paragraph (i) of this section for control devices other than flares and paragraph (j) of this section for flares.

(3) Performance tests and compliance determinations shall be conducted according to the schedule and procedures in 40 CFR 63.7(a) and table 2A of this subpart, and the applicable sections of this subpart.

(4) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present during the test.

(5) Performance tests shall be conducted according to the provisions of 40 CFR 63.7(e)(1) through (e)(2) and (e)(4) and table 2A of this subpart, except that performance tests shall be conducted at maximum representative operating conditions for the process. During the performance test, an owner or operator may operate the control or recovery device at maximum or minimum representative operating conditions for monitored control or recovery device parameters, whichever results in lower emission reduction.

(6) Data shall be reduced in accordance with the EPA-approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301 of appendix A of 40 CFR part 63.

(7) Performance tests may be waived with approval of the Administrator as specified in 40 CFR 63.7(h)(2) and table 2A of this subpart. Owners or operators who apply for a waiver of a performance test shall submit the application by the dates specified in paragraph (b)(7)(i) of this section.

(i) The application for a waiver of an initial performance test shall be submitted not later than 90 calendar days before the Notification of Compliance Status required in § 60.784(c) of this subpart is due to be submitted.

(ii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected facility performing the required test.

(8) *Representative process unit operating conditions.* Compliance shall be demonstrated for representative operating conditions. Operations during periods of start-up, shutdown, or malfunction and periods of non-operation shall not constitute representative conditions. The owner or operator shall record the process information that is necessary to document operating conditions during the test.

(9) *Representative treatment process or control device operating conditions.* Performance tests shall be conducted when the treatment process or control device is operating at a representative inlet flow rate and concentration. If the treatment process or control device will be operating at several different sets of representative operating conditions, the owner or operator shall comply with paragraphs (a)(9)(i) and (a)(9)(ii) of this section. The owner or operator shall record information that is necessary to document treatment process or control device operating conditions during the test.

(i) *Range of operating conditions.* If the treatment process or control device will be operated at several different sets of representative operating conditions, performance testing over the entire range is not required. In such cases, the performance test results shall be supplemented with modeling and/or engineering assessments to demonstrate performance over the operating range.

(ii) *Consideration of residence time.* If concentration and/or flow rate to the treatment process or control device are not relatively constant (i.e., comparison of inlet and outlet data will not be representative of performance), the owner or operator shall consider residence time, when determining concentration and flow rate.

(10) *Testing equipment.* All testing equipment shall be prepared and installed as specified in the applicable test methods, or as approved by the Administrator.

(11) *Compounds not required to be considered in performance tests or design evaluations.* This paragraph (a)(11) applies only when test methods that speciate compounds are used. Compounds that meet the requirements specified in paragraphs (a)(11)(i), (a)(11)(ii), or (a)(11)(iii) of this section are not required to be included in the performance test.

(i) Compounds not used or produced by the chemical process unit; or

(ii) Compounds with concentrations at the point of determination that are below 1 part per million by weight; or

(iii) Compounds with concentrations at the point of determination that are below the lower detection limit where the lower detection limit is greater than 1 part per million by weight. The method shall be an analytical method for wastewater which has that compound as a target analyte.

(12) *Treatment using a series of treatment processes.* In all cases where the wastewater provisions in this subpart allow or require the use of a treatment process to comply with emission limitations, the owner or operator may use multiple treatment processes. The owner or operator complying with the requirements of § 60.779(a)(12)(i) of this subpart, when wastewater is conveyed by hard-piping, shall comply with either paragraph (a)(12)(i) or (a)(12)(ii) of this section. The owner or operator complying with the requirements of § 60.779(a)(12)(ii) of this subpart shall comply with the requirements of paragraph (a)(12)(ii) of this section.

(i) The owner or operator shall conduct the performance test across each series of treatment processes. For each series of treatment processes, inlet concentration and flow rate shall be measured either where the wastewater stream enters the first treatment process in a series of treatment processes, or prior to the first treatment process as specified in paragraph (a)(14) of this section. For each series of treatment processes, outlet concentration and flow rate shall be measured where the wastewater stream exits the last treatment process in the series of treatment processes, except when the last treatment process is an open or a closed aerobic biological treatment process demonstrating compliance by using the procedures in paragraphs (f) or (g) of this section. When the last treatment process is either an open or a closed aerobic biological treatment process demonstrating compliance by using the procedures in paragraphs (f) or (g) of this section, inlet and outlet concentrations and flow rates shall be measured as provided in paragraphs (a)(12)(i)(A) and (a)(12)(i)(B) of this section. The mass flow rates removed or destroyed by the series of treatment processes and by the biological treatment process are all used to calculate actual mass removal (AMR) as specified in paragraph (f)(5)(ii) of this section.

(A) The inlet and outlet to the series of treatment processes prior to the biological treatment process are the points at which the wastewater enters the first treatment process and exits the last treatment process in the series, respectively, except as provided in paragraph (a)(14)(ii) of this section.

(B) The inlet to the biological treatment process shall be the point at which the wastewater enters the biological treatment process or the outlet from the series of treatment processes identified in paragraph (a)(12)(i)(A) of this section, except as provided in paragraph (a)(14)(ii) of this section.

(ii) The owner or operator shall conduct the performance test across each treatment process in the series of treatment processes. The mass flow rate removed or destroyed by each treatment process shall be added together to determine whether compliance has been demonstrated using paragraphs (c), (d), (e), (f), and (g) of this section, as applicable. If a biological treatment process is one of the treatment processes in the series of treatment processes, the inlet to the biological treatment process shall be the point at which the wastewater enters the biological treatment process or the inlet to the equalization tank if all the criteria of paragraph (a)(14)(ii) of this section are met.

(13) When using a biological treatment process to comply with § 60.779 of this subpart, the owner or operator may elect to calculate the AMR using a subset of VOC determined at the point of determination or downstream of the point of determination with adjustment for concentration and flowrate changes made according to § 60.782(b)(6) and (c)(4), respectively, of this subpart. All VOC measured to determine the RMR, except as provided by paragraph (a)(11) of this section, shall be included in the RMR calculation.

(14) The owner or operator determining the inlet for purposes of demonstrating compliance with paragraphs (e), (f), or (g) of this section may elect to comply with paragraph (a)(14)(i) or (a)(14)(ii) of the section.

(i) When wastewater is conveyed exclusively by hard-piping from the point of determination to a treatment process that is either the only treatment process or the first in a series of treatment processes (i.e., no treatment processes or other waste management units are used upstream of this treatment process to store, handle, or convey the wastewater), the inlet to the treatment process shall be at any location from the point of determination to where the wastewater stream enters the treatment process. When samples are taken upstream of the treatment process and before wastewater streams have converged, the owner or operator shall ensure that the mass flow rate of all Group 1 wastewater streams is accounted for when using § 60.779(e) or (f) of this subpart to comply and that the mass flow rate of all Group 1 and Group 2 wastewater streams is accounted for when using § 60.779(g) of this subpart to comply, except as provided in § 60.779(a)(6) of this subpart.

(ii) The owner or operator may consider the inlet to the equalization tank as the inlet to the biological treatment process if all the criteria in paragraphs (a)(14)(ii)(A) through (a)(14)(ii)(C) of this section are met. The outlet from the series of treatment processes prior to the biological treatment process is the point at which the wastewater exits the last treatment process in the series prior to the equalization tank, if the equalization tank and biological treatment process are part of a series of treatment processes. The owner or operator shall ensure that the mass flow rate of all Group 1 wastewater streams is accounted for when using § 60.779(e) or (f) of this subpart to comply and that the mass flow rate of all Group 1 and Group 2 wastewater streams is accounted for when using § 60.779(g) of this subpart to comply, except as provided in paragraph (a)(11) of this section.

(A) The wastewater is conveyed by hard-piping from either the last previous treatment process or the point of determination to the equalization tank.

(B) The wastewater is conveyed from the equalization tank exclusively by hard-piping to the biological treatment process and no treatment processes or other waste management units are used to store, handle, or convey the wastewater between the equalization tank and the biological treatment process.

(C) The equalization tank is equipped with a fixed roof and a closed vent system that routes VOC emissions to a control device that meets the requirements of 40 CFR 63.133(a)(2)(i) and (b)(1) through (b)(4).

(b) [Reserved]

(c) *Non-combustion, non-biological treatment process: percent mass removal/destruction option.* This paragraph (c) applies to performance tests that are conducted to demonstrate compliance of a noncombustion, non-biological treatment process with the percent mass removal limits specified in § 60.779(e)(1), (e)(2), and (e)(3) of this subpart for VOC. When demonstrating compliance with § 60.779(e)(1) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(1) through (c)(6) of this section. When demonstrating compliance with § 60.779(e)(2) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(6) of this section. When demonstrating compliance with § 60.779(e)(3) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(6) of this section for each of the following VOC: methanol, ethylene glycol monobutyl ether acetate, and, methyl ethyl ketone.

(1) *Concentration.* The concentration of VOC entering and exiting the treatment process shall be determined as provided in this paragraph (c)(1). Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 60.782(b)(5)(ii) of this subpart. The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(2) *Flow rate.* The flow rate of the entering and exiting wastewater streams shall be determined using inlet and outlet flow meters, respectively. Where the outlet flow is not greater than the inlet flow, a flow meter shall be used,

and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of mass flow rate—for noncombustion, nonbiological treatment processes.*

(i) When complying with either § 60.779(e)(1) or (e)(2)of this subpart, use this paragraph (c)(3)(i), to calculate the mass flow rate of VOC entering and exiting the treatment process.

$$QMW_a = \frac{\rho}{p * 10^6}\left[\sum_k Q_{a,k} C_{T,a,k}\right] \quad \text{(Eqn WW1)}$$

$$QMW_b = \frac{\rho}{p * 10^6}\left[\sum_k Q_{b,k} C_{T,b,k}\right] \quad \text{(Eqn WW2)}$$

Where:

QMW_a, QMW_b = Mass flow rate of VOC, average of all runs, in wastewater entering (QMW_a) or exiting (QMW_b) the treatment process, kilograms per hour.

ρ = Density of the wastewater, kilograms per cubic meter.

$Q_{a,k}$, $Q_{b,k}$ = Volumetric flow rate of wastewater entering ($Q_{a,k}$) or exiting ($Q_{b,k}$) the treatment process during each run k, cubic meters per hour.

$C_{T,a,k}$, $C_{T,b,k}$ = Total concentration of VOC in wastewater entering ($C_{T,a,k}$) or exiting ($C_{T,b,k}$) the treatment process during each run k, parts per million by weight. Total concentration shall be based on speciated method(s) if using § 60.779(e)(1) of this subpart to comply and shall be based on either speciated or non-speciated methods if using § 60.779(e)(2) of this subpart to comply.

p = Number of runs.

k = Identifier for a run.

10^6 = conversion factor, mg/kg

(ii) When complying with § 60.779(e)(3) of this subpart, use this paragraph (c)(3)(ii) to calculate the mass flow rate of each compound, i.e., methanol, ethylene glycol monobutyl ether acetate, and methyl ethyl ketone, entering and exiting the treatment process.

$$QMW_a = \frac{\rho}{p * 10^6} Q_{a,k} + C_{T,a,k} \quad \text{(Eqn WW1-1)}$$

$$QMW_b = \frac{\rho}{p * 10^6} Q_{b,k} + C_{T,b,k} \quad \text{(Eqn WW2-1)}$$

Where:

QMW_a, QMW_b = Mass flow rate of a compound average of all runs, in wastewater entering (QMW_a) or existing (QMW_b) the treatment process, kilograms per hour.

ρ = Density of the wastewater, kilograms per cubic meter.

$Q_{a,k}$, $Q_{b,k}$ = Volumetric flow rate of wastewater entering ($Q_{a,k}$) or exiting ($Q_{b,k}$) the treatment process during each run k, cubic meters per hour.

$C_{a,k}$, $C_{b,k}$ = Concentration of a compound in wastewater entering ($C_{a,k}$) or existing ($C_{b,k}$) the treatment process during each run k, parts per million by weight. Concentration shall be based on speciated method(s).

p = Number of runs.

k = Identifier for a run.

10^6 = conversion factor, mg/kg

(4) *Percent removal calculation for mass flow rate.* The percent mass removal across the treatment process shall be calculated as follows if complying with § 60.779(e)(1) of this subpart:

$$E = \frac{QMW_a - QMW_b}{QMW_a} * 100 \quad \text{(Eqn WW3)}$$

Where:

E = Removal or destruction efficiency of the treatment process, percent.

QMW_a, QMW_b = Mass flow rate of VOC in wastewater entering (QMW_a) and exiting (QMW_b) the treatment process, kilograms per hour (as calculated using Equations WW1 and WW2, or Equations WW1–2 and WW2–2).

(5) *Calculation of flow-weighted average of Fr values.* If complying with § 60.779(e)(1) of this subpart, use Equation WW8 in paragraph (d)(8) of this section to calculate the flow-weighted average of the Fr values. When the term "combustion" is used in Equation WW8, the term "treatment process" shall be used for the purposes of this paragraph. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values.

(6) *Compare mass removal efficiency to required efficiency.* Compare the mass removal efficiency (calculated in Equation WW3) to the required efficiency as specified in § 60.779(e) of this subpart. If complying with § 60.779(e)(1) of this subpart, compliance is demonstrated if the mass removal efficiency is greater than or equal to the flow-weighted average of the Fr values calculated in Equation WW8. If complying with § 60.779(e)(2) of this subpart, compliance is demonstrated if the mass removal efficiency is 95 percent or greater and outlet concentration is less than 50 ppmw. If complying with § 60.779(e)(3) of this subpart, compliance is demonstrated if the mass removal for methanol is greater than or equal to 31 percent, and the mass removal for ethylene glycol monobutyl ether acetate, and methyl ethyl ketone is greater than or equal to 76 percent, and the mass

removal for methyl ethyl ketone is greater than or equal to 95 percent.

(d) *Combustion treatment processes: percent mass removal/destruction option.* This paragraph (d) applies to performance tests that are conducted to demonstrate compliance of a combustion treatment process with the percent mass destruction limits specified in § 60.779(e)(1) of this subpart for VOC. The owner or operator shall comply with the requirements specified in paragraphs (d)(1) through (d)(9) of this section.

(1) *Concentration in wastewater stream entering the combustion treatment process.* The concentration of VOC entering the treatment process shall be determined as provided in this paragraph (d)(1). Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 60.782(b)(5)(ii) of this subpart. The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(2) *Flow rate of wastewater entering the combustion treatment process.* The flow rate of the wastewater stream entering the combustion treatment process shall be determined using an inlet flow meter. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of mass flow rate in wastewater stream entering combustion treatment processes.* The mass flow rate of VOC entering the treatment process is calculated as follows:

$$QMW_a = \frac{\rho}{p * 10^6}\left(\sum_{k=1}^{p} Q_{a,k} * C_{T,a,k}\right) \qquad \text{(Eqn WW4)}$$

Where:

QMW_a=Mass flow rate of VOC entering the combustion unit, kilograms per hour.

ρ = Density of the wastewater stream, kilograms per cubic meter.

$Q_{a,k}$=Volumetric flow rate of wastewater entering the combustion unit during run k, cubic meters per hour.

$C_{T,a,k}$=Total concentration of VOC in the wastewater stream entering the combustion unit during run k, parts per million by weight.

p=Number of runs.

k=Identifier for a run.

(4) *Concentration in vented gas stream exiting the combustion treatment process.* The concentretion of VOC exiting the combustion treatment process in any vented gas stream shall be determined as provided in this paragraph (d)(4). Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements shall be determined using Method 18, 40 CFR part 60, appendix A. Alternatively, any other test method validated according to the procedures in Method 301, 40 CFR part 60, appendix A may be used.

(5) *Volumetric flow rate of vented gas stream exiting the combustion treatment process.* The volumetric flow rate of the vented gas stream exiting the combustion treatment process shall be determined using Method 2, 2A, 2C, or 2D, CFR part 60, appendix A, as appropriate. Volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(6) *Calculation of mass flow rate of vented gas stream exiting combustion treatment processes.* The mass flow rate VOC in a vented gas stream exiting the combustion treatment process shall be calculated as follows:

[Reserved] (Eqn WW5)

$$QMG_b = K_2 \left(\sum_{i=1}^{n} CG_{b,i} MW_i\right) QG_b \qquad \text{(Eqn WW6)}$$

Where:

$CG_{b,i}$=Concentration of (TOC) (minus methane and ethane) or total VOC, in vented gas stream, exiting ($CG_{b,i}$) the control device, dry basis, parts per million by volume.

QMG_b=Mass rate of TOC (minus methane and ethane) or total VOC in vented gas stream, exiting (QMG_b) the control device, dry basis, kilograms per hour.

MW_i=Molecular weight of a component, kilogram/kilogram-mole.

QG_b=Flow rate of gas stream exiting (QG_b) the control device, dry standard cubic meters per hour.

K_2=Constant, 41.57×10^{-9} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram), where standard temperature (gram-mole per standard cubic meter) is 20° Celsius.

i=Identifier for a compound.

n=Number of components in the sample.

(7) *Destruction efficiency calculation.* The destruction efficiency of the combustion unit for VOC shall be calculated as follows:

$$E = \frac{QMW_a - QMG_b}{QMW_a} * 100 \qquad \text{(Eqn WW7)}$$

Where:

E=Destruction efficiency of VOC for the combustion unit, percent.

QMW_a=Mass flow rate of VOC entering the combustion unit, kilograms per hour.

QMG_b=Mass flow rate VOC in vented gas stream exiting the combustion treatment process, kilograms per hour.

(8) *Calculation of flow-weighted average of Fr values.* Use Equation WW8 to calculate the flow-weighted average of the Fr values. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine the Fr values.

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$$\text{avg} = \left(\frac{\sum_{i=1}^{n}\sum_{k=1}^{p} Fr_i * C_{i,a,k} * Q_{a,k}}{\sum_{k=1}^{p}\sum_{i=1}^{n} C_{i,a,k} * Q_{a,k}}\right) * 1 \qquad \text{(Eqn WW8)}$$

Where:

Fr_{avg}=Flow-weighted average of the Fr values.

$C_{i,a,k}$=Concentration of VOC in wastewater stream entering the combustion unit, during run k, parts per million by weight.

$Q_{a,k}$=Volumetric flow rate of wastewater entering the combustion unit during run k, cubic meters per hour.

Fr_i=Compound-specific Fr value as determined by the procedures in appendix J of this part.

(9) *Calculate flow-weighted average of Fr values and compare to mass destruction efficiency.* Compare the mass destruction efficiency (calculated in Equation WW7) to the required efficiency as specified in § 60.779(e)(2) of this subpart. Compliance is demonstrated if the mass destruction efficiency is greater than or equal to the flow-weighted average of the Fr value calculated in Equation WW8.

(e) *Non-combustion treatment processes including closed biological treatment processes: RMR option.* This paragraph (e) applies to performance tests for non-combustion treatment processes other than open biological treatment processes to demonstrate compliance with the mass removal provisions for VOC. Compliance options for noncombustion nonbiological treatment processes are specified in § 60.779(f)(1) of this subpart. Compliance options for closed aerobic and anaerobic biological treatment processes are specified in § 60.779(f)(2)(i) and (g)(1)(i), and § 60.779(f)(3), and (g)(2) of this subpart. When complying with § 60.779(f)(2)(i) or (f)(3) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (e)(1) through (e)(6) of this section. When complying with § 60.779(g)(1)(i) or (g)(2) of this subpart, the owner or operator shall comply with the requirements specified in paragraphs (e)(1) through (e)(6) of this section.

(1) *Concentration in wastewater stream.* The concentration of VOC shall be determined as provided in this paragraph (e)(1). Concentration measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for concentration change made according to § 60.782(b)(6) of this subpart. Concentration measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in paragraph (a)(7) of this section for a series of treatment processes. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 60.782(b)(5)(ii) of this subpart. The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(2) *Flow rate.* Flow rate measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for flow rate change made according to § 60.782(c)(4) of this subpart. Flow rate measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in paragraph (a)(7) of this section for a series of treatment processes. Flow rate shall be determined using inlet and outlet flow measurement devices. Where the outlet flow is not greater than the inlet flow, a flow measurement device shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of RMR for non-combustion treatment processes including closed biological treatment processes.* When using §§ 60.779(f)(2)(i) or (f)(3) of this subpart to comply, the required mass removal of VOC for each Group 1 wastewater stream shall be calculated as specified in paragraph (e)(3)(i) of this section. When using § 60.779(g)(1)(i) or (g)(2) of this subpart to comply, the required mass removal shall be calculated as specified in paragraph (e)(3)(ii) of this section.

(i) When using § 60.779(f)(2)(i) or (f)(3) of this subpart to comply, the required mass removal of VOC for each Group 1 wastewater stream shall be calculated using Equation WW9.

$$RMR = \frac{\rho}{10^9} Q \sum_{i=1}^{n} (C_i * Fr_i) \qquad \text{(Eqn WW9)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of VOC in stream.

C_i=Concentration of VOC at the point of determination, parts per million by weight.

Fr_i=Fraction removal value of a VOC. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values.

10^9=Conversion factor, mg/kg * l/m^3.

(ii) When using § 60.779(g)(1)(i) or (g)(2) of this subpart to comply, the required mass removal is 95 percent of the mass flow rate for all wastewater streams combined for treatment. The required mass removal of VOC wastewater streams combined for treatment when complying with 40 CFR 63.138(g) shall be calculated using the following equation:

$$RWR = \frac{0.95\rho}{10^9} Q \sum_{i=1}^{n} (C_i) \qquad \text{(Eqn WW9a)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of VOC in stream.

C_i=Concentration of VOC at the point of determination, parts per million by weight.

10^9=Conversion factor, mg/kg * l/m^3

(4)(i) The required mass removal is calculated by summing the required mass removal for each Group 1 wastewater stream to be combined for treatment when complying with § 60.779(f)(2)(i) or (f)(3) of this subpart.

(ii) The required mass removal is calculated by summing the required mass removal for all wastewater streams combined for treatment when complying with § 60.779(g)(1)(i) or (g)(2) of this subpart.

(5) *The AMR calculation procedure for non-combustion treatment processes including closed biological treatment processes.* The AMR shall be calculated as follows:

$$AMR = \left(QMW_a - QMW_b\right) \quad \text{(Eqn WW10)}$$

Where:

AMR=Actual mass removal of VOC achieved by treatment process or series of treatment processes, kilograms per hour.

QMW_a=Mass flow rate of VOC in wastewater entering the treatment process or first treatment process in a series of treatment processes, kilograms per hour.

QMW_b=Mass flow rate of VOC in wastewater exiting the last treatment process in a series of treatment processes, kilograms per hour.

(6) *Compare RMR to AMR.* When complying with § 60.779(f)(2)(i) or (f)(3) of this subpart, compare the RMR calculated in Equation WW9 to the AMR calculated in Equation WW10. Compliance is demonstrated if the AMR is greater than or equal to the RMR. When complying with § 60.779(g)(1)(i) or (g)(2) of this subpart, compare the RMR calculated in Equation WW9a to the AMR calculated in Equation WW10. Compliance is demonstrated if the AMR is greater than or equal to 95-percent mass removal.

(f) *Open or closed aerobic biological treatment processes: Required mass removal (RMR) option.* This paragraph (f) applies to the use of performance tests that are conducted for open or closed aerobic biological treatment processes to demonstrate compliance with the mass removal provisions for VOC. These compliance options are specified in § 60.779(f)(2)(i) and (f)(2)(ii) of this subpart. The owner or operator shall comply with the requirements specified in paragraphs (f)(1) through (f)(6) of this section. Some compounds may not require a performance test. Refer to paragraph (h) of this section and Table 14 of this subpart to determine which compounds may be exempt from the requirements of this paragraph (f).

(1) *Concentration in wastewater stream.* The concentration of VOC shall be determined as provided in this paragraph (f)(1). Concentration measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for concentration change made according to § 60.782(b)(6) of this subpart. Concentration measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in paragraph (a)(7) of this section for a series of treatment processes. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity per § 60.782(b)(5)(ii) of this subpart. The method shall be an analytical method for wastewater which has that compound as a target analyte. Samples may be grab samples or composite samples. Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs.

(2) *Flow rate.* Flow rate measurements to determine RMR shall be taken at the point of determination or downstream of the point of determination with adjustment for flow rate change made according to § 60.782(c)(4) of this subpart. Flow rate measurements to determine AMR shall be taken at the inlet and outlet to the treatment process and as provided in paragraph (a)(7) of this section for a series of treatment processes. Flow rate shall be determined using inlet and outlet flow measurement devices. Where the outlet flow is not greater than the inlet flow, a flow measurement device shall be used, and may be used at either the inlet or outlet. Flow rate measurements shall be taken at the same time as the concentration measurements.

(3) *Calculation of RMR for open or closed aerobic biological treatment processes.* The required mass removal of VOC for each Group 1 wastewater stream shall be calculated using the following equation:

$$RMR = \frac{\rho}{10^9} Q \sum_{i=1}^{n} \left(C_i * Fr_i\right) \quad \text{(Eqn WW11)}$$

Where:

RMR=Required mass removal for treatment process or series of treatment processes, kilograms per hour.

ρ=Density of the Group 1 wastewater stream, kilograms per cubic meter.

Q=Volumetric flow rate of wastewater stream at the point of determination, liters per hour.

i=Identifier for a compound.

n=Number of VOC in stream.

C_i=Concentration of VOC at the point of determination, parts per million by weight.

Fr_i=Fraction removal value of a VOC. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC. Follow the procedures in appendix J of this part to determine Fr values.

10^9=Conversion factor, mg/kg * l/m ^{3}.

(4) The required mass removal is calculated by adding together the required mass removal for each Group 1 wastewater stream to be combined for treatment.

(5) *Actual mass removal calculation procedure for open or closed aerobic biological treatment processes.* The actual mass removal (AMR) shall be calculated using Equation WW12 as specified in paragraph (f)(5)(i) of this section when the performance test is performed across the open or closed aerobic biological treatment process only. If compliance is being demonstrated in accordance with paragraph (a)(7)(i) of this section, the AMR for the series shall be calculated using Equation WW13 in paragraph (f)(5)(ii) of this section. (This equation is for situations where treatment is performed in a series of treatment processes connected by hard-piping.) If compliance is being demonstrated in accordance with paragraph (a)(7)(ii) of this section, the AMR for the biological treatment process shall be calculated using Equation WW12 in paragraph (f)(5)(i) of this section. The AMR for the biological treatment process used in a series of treatment processes calculated using Equation WW12 shall be added to the AMR determined for each of the other individual treatment processes in the series of treatment processes.

(i) Calculate AMR for the open or closed aerobic biological treatment process as follows:

$$AMR = QMW_a * F_{bio} \quad \text{(Eqn WW12)}$$

Where:

AMR=Actual mass removal of VOC achieved by open or closed biological treatment process, kilograms per hour.

QMW_a=Mass flow rate of VOC in wastewater entering the treatment process, kilograms per hour.

F_{bio}=Site-specific fraction of VOC biodegraded. F_{bio} shall be determined as specified in paragraph (h) of this section and 40 CFR part 63, appendix C. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC.

(ii) Calculate AMR across a series of treatment units where the last treatment

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unit is an open or closed aerobic biological treatment process as follows:

$$AMR = QMW_a - (QMW_b)(1 - F_{bio}) \quad \text{(Eqn WW13)}$$

Where:

AMR=Actual mass removal of VOC achieved by a series of treatment processes, kilograms per hour.

QMW_a=Mass flow rate of VOC in wastewater entering the first treatment process in a series of treatment processes, kilograms per hour.

QMW_b=Mass flow rate of VOC in wastewater exiting the last treatment process in a series of treatment processes prior to the biological treatment process, kilograms per hour.

F_{bio}=Site-specific fraction of VOC biodegraded. F_{bio} shall be determined as specified in paragraph (h) of this section and 40 CFR part 63, appendix C. Follow the procedures in § 60.778 of this subpart to develop a stream-specific list of VOC.

(6) *Compare RMR to AMR.* Compare the RMR calculated in Equation WW11 to the AMR calculated in either Equation WW12 or WW13, as applicable. Compliance is demonstrated if the AMR is greater than or equal to the RMR.

(g) *Open or closed aerobic biological treatment processes: 95-percent mass removal option.* This paragraph (g) applies to performance tests that are conducted for open or closed aerobic biological treatment processes to demonstrate compliance with the 95-percent mass removal provisions for VOC. This compliance option is specified in § 60.779(g) of this subpart. The RMR for this option is 95-percent mass removal. The owner or operator shall comply with the requirements specified in paragraphs (g)(1) of this section to determine AMR, paragraphs (e)(3)(ii) and (e)(4)(ii) of this section to determine RMR, and paragraph (g)(2) of this section to determine whether compliance has been demonstrated. Some compounds may not require a performance test. Refer to paragraph (h) of this section and Table 14 of this subpart to determine which compounds may be exempt from the requirements of this paragraph (g).

(1) The owner or operator shall comply with the requirements specified in paragraphs (f)(1), (f)(2), and (f)(5) of this section to determine AMR. References to Group 1 wastewater streams shall be deemed all wastewater streams combined for treatment for the purposes of this paragraph (g)(1).

(2) *Compare RMR to AMR.* Compliance is demonstrated if the AMR is greater than or equal to RMR.

(h) *Site-specific fraction biodegraded (F_{bio}).* The VOC are divided into two sets for the purposes of determining whether F_{bio} must be determined, and if F_{bio} must be determined, which procedures may be used to determine compound-specific kinetic parameters. These sets are VOC in Table 14 of this subpart, and all other VOC.

(1) *Performance test exemption.* If a biological treatment process meets the requirements specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this section, the owner or operator is not required to determine F_{bio} and is exempt from the applicable performance test requirements specified in § 60.779 of this subpart.

(i) The biological treatment process meets the definition of "enhanced biological treatment process" in § 60.771 of this subpart.

(ii) At least 99 percent by weight of all VOC that are present in the aggregate of all wastewater streams using the biological treatment process to comply with § 60.779 of this subpart are compounds on Table 14 of this subpart.

(2) *F_{bio} determination.* If a biological treatment process does not meet the requirement specified in paragraph (h)(1)(i) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in 40 CFR part 63, appendix C, and paragraph (h)(2)(ii) of this section. If a biological treatment process meets the requirements of paragraph (h)(1)(i) of this section but does not meet the requirement specified in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in 40 CFR part 63, appendix C, and paragraph (h)(2)(i) of this section.

(i) *Enhanced biological treatment processes.* If the biological treatment process meets the definition of "enhanced biological treatment process" in § 60.771 of this subpart and the wastewater streams include one or more compounds not on Table 14 of this subpart that do not meet the criteria in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for VOC not on Table 14 of this subpart using any of the procedures specified in 40 CFR part 63, appendix C. (stream-specific list) (The symbol F_{bio} represents the site specific fraction of an individual VOC that is biodegraded.) The owner or operator shall calculate F_{bio} for the VOC on Table 14 of this subpart using the defaults provided for first order biodegradation rate constants (K1) of this subpart and follow the procedure explained in Form III of 40 CFR part 63, appendix C, or any of the procedures specified in 40 CFR part 63, appendix C.

(ii) *Biological treatment processes that are not enhanced biological treatment processes.* For biological treatment processes that do not meet the definition for "enhanced biological treatment process" in § 60.771 of this subpart, the owner or operator shall determine the F_{bio} for VOC on Table 14 of this subpart and all other VOC using any of the procedures in 40 CFR part 63, appendix C, except procedure 3 (inlet and outlet concentration measurements).

(i) *Performance tests for control devices other than flares.* This paragraph (i) applies to performance tests that are conducted to demonstrate compliance of a control device with the efficiency limits specified in § 60.780(c) of this subpart. If complying with the 95-percent reduction efficiency requirement, comply with the requirements specified in paragraphs (i)(1) through (i)(9) of this section. If complying with the 20 ppm by volume requirement, comply with the requirements specified in paragraphs (i)(1) through (i)(6) and (i)(9) of this section. The 20 ppm by volume limit or 95 percent reduction efficiency requirement shall be measured as either total VOC or as TOC minus methane and ethane.

(1) *Sampling sites.* Sampling sites shall be selected using Method 1 or 1A of appendix A of this part, as appropriate. For determination of compliance with the 95 percent reduction requirement, sampling sites shall be located at the inlet and the outlet of the control device. For determination of compliance with the 20 parts per million by volume limit, the sampling site shall be located at the outlet of the control device.

(2) *Concentration in gas stream entering or exiting the control device.* The concentration of total VOC or TOC

in a gas stream shall be determined as provided in this paragraph (i)(2). Samples may be grab samples or composite samples (i.e., integrated samples). Samples shall be taken at approximately equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs. Concentration measurements shall be determined using Method 18, 40 CFR part 60, appendix A. Alternatively, any other test method validated according to the procedures in Method 301, 40 CFR part 60, appendix A may be used.

(3) *Volumetric flow rate of gas stream entering or exiting the control device.* The volumetric flow rate of the gas stream shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate. Volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(4) *Calculation of TOC concentration.* The TOC concentration (CGT) is the sum of the concentrations of the individual components. If compliance is being determined based on TOC, the owner or operator shall compute TOC for each run using the following equation:

$$CG_T = \frac{1}{m}\sum_{j=1}^{m}\left(\sum_{i=1}^{n} CGS_{i,j}\right) \qquad \text{(Eqn WW14)}$$

Where:

CG_T=Total concentration of TOC (minus methane and ethane) in vented gas stream, average of samples, dry basis, parts per million by volume.

$CGS_{i,j}$=Concentration of sample components in vented gas stream for sample j, dry basis, parts per million by volume.

i=Identifier for a compound.

n=Number of components in the sample.

j=Identifier for a sample.

m=Number of samples in the sample run.

(5) *Calculation of total VOC concentration.* The owner or operator determining compliance based on total VOC concentration (CVOC) shall compute C VOC according to the Equation WW14.

(6) *Percent oxygen correction for combustion control devices.* If the control device is a combustion device, comply with the requirements specified in paragraph (i)(6)(i) of this section to determine oxygen concentration, and in paragraph (i)(6)(ii) of this section to calculate the percent oxygen correction.

(i) *Oxygen concentration.* The concentration of TOC or total VOC shall be corrected to 3 percent oxygen if the control device is a combustion device. The emission rate correction factor for excess air, composite sampling (i.e., integrated sampling) and analysis procedures of Method 3B, 40 CFR part 60, appendix A shall be used to determine the actual oxygen concentration (%02d). The samples shall be taken during the same time that the TOC (minus methane or ethane) or total VOC samples are taken.

(ii) *3 percent oxygen calculation.* The concentration corrected to 3 percent oxygen (CGc), when required, shall be computed using the following equation:

$$CG_c = CG_T\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{(Eqn WW15)}$$

Where:

CG_c=Concentration of TOC or VOC corrected to 3 percent oxygen, dry basis, parts per million by volume.

CG_T=Total concentration of TOC (minus methane and ethane) in vented gas stream, average of samples, dry basis, parts per million by volume.

$\%0_{2d}$=Concentration of oxygen measured in vented gas stream, dry basis, percent by volume.

(7) *Mass rate calculation.* The mass rate of either TOC (minus methane and ethane) or total VOC shall be calculated using the following equations. Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by methods specified in paragraph (i)(2) of this section are summed using Equations WW16 and WW17.

$$OMG_a = K_2\left(\sum_{i=1}^{n} CG_{a,i}MW_i\right)QG_a \qquad \text{(Eqn WW16)}$$

$$OMG_b = K_2\left(\sum^{n} CG_{b,i}MW_i\right)QG_b \qquad \text{(Eqn WW17)}$$

Where:

$CG_{a,i}$, $CG_{b,i}$=Concentration of TOC (minus methane and ethane) or total VOC, in vented gas stream, entering ($CG_{a,i}$) and exiting ($CG_{b,i}$) the control device, dry basis, parts per million by volume.

QMG_a, QMG_b=Mass rate of TOC (minus methane and ethane) or total VOC, in vented gas stream, entering (QMG_a) and exiting (QMG_b) the control device, dry basis, kilograms per hour.

Mw_i=Molecular weight of a component, kilogram/kilogram-mole.

QG_a,QG_b=Flow rate of gas stream entering (QG_a) and exiting (QG_b) the control device, dry standard cubic meters per hour.

K_2=Constant, 41.57×10^{-9} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram), where standard temperature (gram-mole per standard cubic meter) is 20° Celsius.

i=Identifier for a compound.

n=Number of components in the sample.

(8) *Percent reduction calculation.* The percent reduction in TOC (minus methane and ethane) or total VOC shall be calculated as follows:

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$$E = \frac{QMG_a - QMG_b}{QMG_a} \times 100 \qquad \text{(Eqn WW18)}$$

Where:

E=Destruction efficiency of control device, percent.

QMG_a,QMG_b=Mass rate of TOC (minus methane and ethane) or total VOC, in vented gas stream entering and exiting (QMG_b) the control device, dry basis, kilograms per hour.

(9) *Compare mass destruction efficiency to required efficiency.* If complying with the 95 percent reduction efficiency requirement, compliance is demonstrated if the mass destruction efficiency (calculated in Equation WW18) is 95 percent or greater. If complying with the 20 parts per million by volume limit in § 60.780(c) of this subpart, compliance is demonstrated if the outlet total organic compound concentration, less methane and ethane, or total VOC concentration is 20 parts per million by volume, or less. For combustion control devices, the concentration shall be calculated on a dry basis, corrected to 3 percent oxygen.

(j) *Compliance demonstration for flares.* When a flare is used to comply with § 60.780(c) of this subpart, the owner or operator shall comply with the flare provisions in 40 CFR 63.11(b) and table 2A of this subpart, and with paragraphs (j)(1), (j)(2), and (j)(3) of this section. An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet VOC or TOC concentration when a flare is used. If a compliance demonstration has been conducted previously for a flare, using the techniques specified in paragraphs (h)(1) through (h)(3) of this section, that compliance demonstration may be used to satisfy the requirements of this paragraph (j) if either no deliberate process changes have been made since the compliance demonstration, or the results of the compliance demonstration reliably demonstrate compliance despite process changes.

(1) The compliance determination shall be conducted as specified in 40 CFR 63.11(b)(4) and table 2A of this subpart, to determine visible emissions.

(2) Determine the net heating value of the gas being combusted, using the techniques specified in 40 CFR 63.11(b)(6) and table 2A of this subpart; and

(3) Determine the exit velocity using the techniques specified in either 40 CFR 63.11(b)(7)(i) (and 40 CFR 63.11(b)(7)(iii), where applicable) or 40 CFR 63.11(b)(8), and table 2A of this subpart, as appropriate.

§ 60.784 Reporting requirements.

(a) Owners or operators requesting approval to use alternative monitoring, recordkeeping, or reporting shall comply with the provisions in paragraph (b) of this section. Each owner or operator shall submit the reports specified in paragraphs (a)(1) through (a)(4) of this section, as applicable:

(1) Reports required by subpart A of part 60 of this part, as specified in table 2 of this subpart,

(2) Reports of certain subpart A provisions of 40 CFR part 63, as required by table 2A of this subpart,

(3) Reports required in paragraphs (c) through (g) of this section, and

(4) Start-up, shutdown, and malfunction reports specified in § 60.787 of this subpart.

(b) *Alternative monitoring and recordkeeping.* An owner or operator may request approval to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions of this subpart.

(1) Requests for approval to use alternatives to the continuous monitoring and recordkeeping provisions shall be submitted prior to the implementation of the alternative monitoring system for which approval is being requested if not already included in the operating permit application. The request shall contain the information specified in paragraphs (b)(3) and (b)(4) of this section, as applicable.

(2) [Reserved]

(3) An owner or operator of an affected facility that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and generating continuous records may request approval to use a non-automated system with less frequent monitoring.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average values shall be calculated from these hourly values and recorded.

(ii) The request shall contain:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the affected facility does not have an automated monitoring and recording system;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control device operating conditions considering typical variability of the specific process and control device operating parameter being monitored.

(4) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example once every 15 minutes) but records all values that meet set criteria for variation from previously recorded values.

(i) The requested system shall be designed to:

(A) Measure the operating parameter value at least once every 15 minutes.

(B) Record at least four values each hour during periods of operation.

(C) Record the date and time when monitors are turned off or on.

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident.

(E) Compute daily average values of the monitored operating parameter based on recorded data.

(F) If the daily average is not an excursion, as defined in paragraphs (d)(3)(i) through (d)(3)(iii) of this section, the data for that operating day may be converted to hourly average values and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain a description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained, the method for calculating daily averages, and a demonstration that the system meets all criteria in paragraph (b)(4)(i) of this section.

(5) [Reserved]

(6) For each waste management unit, treatment process, or control device used to comply with §§ 60.774 through 60.775 of this subpart for which the owner or operator seeks to monitor a parameter other than those specified in Table 5, Table 7, and Table 8 of this subpart, the owner or operator shall submit a request for approval to monitor alternative parameters. The owner or operator who requests approval to

monitor a different parameter than those listed in Table 5, Table 7, and Table 8 of this subpart shall submit the information specified in paragraphs (b)(6)(i), (ii), and (iii) of this section.

(i) A description of the parameter(s) to be monitored to ensure the waste management unit, treatment process, or control device measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(ii) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the waste management unit, treatment process, or control device, the schedule for this demonstration, and a statement that the owner or operator will establish, as part of the demonstration, an operating parameter value for the monitored parameter that indicates proper operation and maintenance of the unit, process, or device.

(iii) The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if semiannual reports required under paragraph (d) of this section will not include reports of daily average values when the monitored operating parameter is not above or below (as appropriate) the operating parameter value established in paragraph (c)(7)(ii) of this section. The rationale for the proposed monitoring, recording, and reporting system shall be included.

(c) *Notification of Compliance Status.* Each owner or operator subject to this subpart shall submit a Notification of Compliance Status within 150 days after the compliance dates specified in § 60.770(a) of this subpart. The Notification of Compliance Status shall include the results of any emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance tests, and any other information specified in paragraphs (c)(1) through (c)(14) of this section used to demonstrate compliance or required to be included in the Notification of Compliance Status.

(1) The owner or operator shall identify each designated CPU and list the components in the designated CPU. The owner or operator shall identify each affected facility and describe the process wastewater, maintenance wastewater, and aqueous in-process streams generated by the affected facility. The information shall clearly link all applicable CPU, designated CPU, and affected facilities and demonstrate that all components of a CPU were assigned to a designated CPU.

(2) For each affected facility, the owner or operator shall submit the information specified in Table 9 of this subpart for each wastewater stream generated.

(3) For each treatment process identified in Table 9 of this subpart that receives, manages, or treats a wastewater stream (i.e., Group 1 wastewater stream or Group 2 wastewater stream selected by the owner or operator for control) or residual removed from a wastewater stream, the owner or operator shall submit the information specified in Table 10 of this subpart.

(4) For each waste management unit identified in Table 9 of this subpart that receives or manages a wastewater stream (i.e., Group 1 wastewater stream or Group 2 wastewater stream selected by the owner or operator for control) or residual removed from a wastewater stream, the owner or operator shall submit the information specified in Table 11 of this subpart.

(5) For each waste management unit identified in table 9 of this subpart, the owner or operator shall include in the Notification of Compliance Status the compliance option that will be used to comply with § 60.774 of this subpart, and the applicable provisions of other subparts that the owner or operator will use to comply with the compliance option, as allowed in § 60.774 of this subpart.

(6) For each residual removed from a wastewater stream (i.e., Group 1 wastewater stream or Group 2 wastewater stream selected by the owner or operator for control), the owner or operator shall submit the information specified in Table 12 of this subpart.

(7) For each control device used to comply with §§ 60.774, 60.775, and 60.779 of this subpart, the owner or operator shall submit the information specified in paragraphs (c)(7)(i) and (c)(7)(ii) of this section.

(i) For each flare, the owner or operator shall submit the information specified in paragraphs (c)(7)(i)(A) through (c)(7)(i)(C) of this section.

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(B) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination as specified by § 60.780(c)(3) of this subpart; and

(C) Reports of the times and durations of all periods during the compliance determination when the pilot flame is absent or the monitor is not operating.

(ii) For each control device other than a flare, the owner or operator shall submit the information specified in paragraph (c)(7)(ii)(A) of this section and in either paragraph (c)(7)(ii)(B) or (c)(7)(ii)(C) of this section.

(A) The information in paragraphs (c)(7)(ii)(A)(*1*), (*2*), and (*3*) of this section on operating parameter values required to be established under § 60.781(f) of this subpart for the applicable parameters specified in Table 8 of this subpart, unless the operating parameter value has already been established in the operating permit.

(*1*) The specific operating parameter value of the monitored parameter(s) for each emission point;

(*2*) The rationale for the specific operating parameter value for each parameter for each emission point, including any data and calculations used to develop the value and a description of why the value indicates proper operation of the control device.

(*i*) If a performance test is conducted for a control device, the operating parameter value shall be based on the parameter values measured during the performance test supplemented by engineering analyses and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of permitted parameter values.

(*ii*) If a performance test is not conducted for a control device, the operating parameter value may be based solely on engineering analyses and/or manufacturer's recommendations.

(*3*) A definition of the affected facility's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(B) The design evaluation specified in § 60.780(d)(2) of this subpart; or

(C) Results of the performance test specified in § 60.780(d)(1) of this subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value, averaged over the period of the performance test, of each parameter identified in the operating permit as being monitored in accordance with § 60.781 of this subpart; and applicable supporting calculations.

(8) For each treatment process used to comply with this subpart, the owner or operator shall submit the information specified in paragraphs (c)(8)(i) and (c)(8)(ii) of this section.

(i) For Items 1 and 2 in Table 7 of this subpart, the owner or operator shall submit the information specified in paragraphs (c)(8)(i)(A) and (c)(8)(i)(B) of this section.

(A) The information specified in paragraph (c)(6)(ii)(A) of this section for the operating parameter value required to be established under § 60.781(f) of this subpart for the monitoring parameters approved by the Administrator, unless the operating parameter value has already been established in the operating permit.

(B) Results of the initial measurements of the parameters approved by the Administrator and any applicable supporting calculations.

(ii) For Item 3 in Table 7 of this subpart, the owner or operator shall submit the information specified in paragraph (c)(7)(ii)(A) of this section for the monitored operating parameter values required to be established under § 60.781(f) of this subpart, unless the operating parameter value has already been established in the operating permit.

(9) Except as provided in paragraph (c)(9)(iii) of this section, for each waste management unit or treatment process used to comply with this subpart, the owner or operator shall submit the information specified in either paragraph (c)(9)(i) or (c)(9)(ii) of this section.

(i) The design evaluation and supporting documentation specified in § 60.779(j)(1) of this subpart.

(ii) Results of the performance test specified in § 60.779(j)(2) of this subpart. Performance test results shall include operating ranges of key process and control parameters during the performance test; the value, averaged over the period of the performance test, of each parameter identified in the operating permit as being monitored in accordance with § 60.781(f) of this subpart; and applicable supporting calculations.

(iii) If the owner or operator elects to use one of the options for treatment in a RCRA unit specified in § 60.779(h) of this subpart, the owner or operator is exempt from the requirements specified in paragraphs (c)(9)(i) and (c)(9)(ii) of this section.

(10) For performance tests and group determinations that are based on measurements, and for estimates of VOC emissions, the Notification of Compliance Status shall include one complete test report for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other information required shall be submitted, but a complete test report is not required. A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(11) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 60.773(e) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual removed from a Group 1 wastewater stream sent to the treatment facility.

(12) The owner or operator who chooses to comply with the provisions in § 60.789 of this subpart shall include in the Notification of Compliance Status a statement specifying which regulation(s) is being used to comply with this subpart.

(13) Notification that the owner or operator has elected to comply with the reduced recordkeeping program in 60.785(j) of this subpart.

(14) Notification of the waste management unit compliance option used to comply with the provisions of this subpart, as specified in § 60.774 of this subpart, shall be submitted in the Notification of Compliance Status. If the owner or operator is complying with the recordkeeping and reporting provisions of a rule other than this subpart, as specified in § 60.774 of this subpart, a statement containing this information shall be submitted.

(d) *Semiannual reports.* Each owner or operator subject to the provisions of this subpart shall submit to the Administrator semiannual reports. The reports shall be submitted semiannually no later than 60 calendar days after the end of each 6-month period. The first report shall be submitted no later than 8 months after the due date of the notification of initial start-up required by § 60.7(a)(3) of this part and shall cover the 6-month period beginning on the due date of the notification of initial start-up.

(1) [Reserved]

(2) The semiannual report shall include reports of all excursions and all periods when monitoring parameters are above the maximum or below the minimum established value.

(3) The semiannual report shall include the daily average values of monitored parameters for all excursions, as defined by paragraphs (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section. For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be reported. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section, this is considered a single excursion for the control device.

(i) When the daily average value of one or more monitored parameters is above the maximum or below the minimum (as appropriate) established operating parameter value.

(ii) When the period of control device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iv) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (d)(3)(ii) and (d)(3)(iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under paragraph (b)(4) of this section, monitoring data are insufficient to calculate a valid hour of data if there are less than 4 data values recorded during the hour.

(4) Each control device is allowed one excused excursion per semiannual period. The first semiannual period is the 6-month period covered by the first semiannual report.

(5)(i) Paragraphs (d)(5)(i)(A) through (d)(5)(i)(D) of this section specify when an excursion is not a violation. In cases where continuous monitoring is required, the excursion does not count toward the number of excused excursions for determining compliance.

(A) If a monitored parameter is below the minimum established value and the affected facility is operated during such period in accordance with the affected facility's start-up, shutdown, and malfunction plan,

(B) If a monitored parameter is above the maximum established value and the affected facility is operated during such period in accordance with the affected facility's start-up, shutdown, and malfunction plan,

(C) If monitoring data are not collected during periods of start-up, shutdown, or malfunction and the affected facility is operated during such period in accordance with the affected facility's start-up, shutdown, and malfunction plan, or

(D) If cessation of the emissions to which the monitoring applies occurs during periods of non-operation of the chemical process unit or portion thereof.

(ii) Nothing in paragraphs (d)(3) through (d)(5) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart.

(iii) Paragraphs (d)(3) through (d)(5) of this section, except paragraph (d)(5)(i) of this section, shall apply only to emission points and control devices for which continuous monitoring is required by this subpart.

(6) The semiannual report shall include results of any performance tests conducted during the reporting period including one complete report for each test method used for a particular kind of emission point tested. For additional tests performed for a similar emission point using the same method, results and any other information required shall be submitted, but a complete test report is not required. A complete test report shall contain a brief process description, sampling site data, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(7) The semiannual report shall include notification that the owner or operator has elected to comply with the reduced recordkeeping program in § 60.785(j) of this subpart.

(8) The semiannual report shall include notification that the owner or operator has elected not to retain the daily average values, as specified in § 60.785(j)(2)(i) of this subpart.

(9) The semiannual report shall include periods recorded under § 60.785(f)(10) of this subpart when the vent is diverted from the control device through a bypass line, with the next semiannual report.

(10) The semiannual report shall include notification of all occurrences recorded under § 60.785(f)(11) of this subpart in which the seal mechanism is broken, the bypass line damper or valve position has changed, or the key to unlock the bypass line damper or valve was checked out, with the next semiannual report.

(11) The semiannual report shall include notification that semiannual report information for waste management units will be submitted with semiannual reports required by another rule that is one of the compliance options for waste management units as specified in § 60.784 of this subpart.

(12) The semiannual report shall include notification of each affected facility that ceases to generate at least one process wastewater stream or aqueous in-process stream or no longer produces a primary product that is a SOCMI product.

(e) *Semiannual reporting for treatment processes.* Except as provided in paragraph (g) of this section, for each treatment process used to comply with this subpart, the owner or operator shall submit as part of the next semiannual report required by paragraph (d) of this section the information specified in paragraphs (e)(1) and (e)(2) of this section.

(1) For Item 1 in Table 7 of this subpart, the owner or operator shall submit the results of measurements that indicate that the biological treatment unit is outside the parameters established in the Notification of Compliance Status or operating permit.

(2) For Item 2 in Table 7 of this subpart, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of any monitored parameter was above the maximum or below the minimum operating parameter value established in the Notification of Compliance Status or operating permit.

(3) For Item 3 in Table 7 of this subpart, the owner or operator shall submit the monitoring results for each operating day during which the daily average value of any monitored parameter specified in Item 3 of Table 7 of this subpart was above the maximum or below the minimum (as appropriate) operating parameter value established in the Notification of Compliance Status or operating permit.

(f) *Semiannual reporting for control devices.* Except as provided in paragraph (g) of this section, for each control device used to comply with §§ 60.774 through 60.780 of this subpart, the owner or operator shall submit as part of the next semiannual report required by paragraph (d) of this section the information specified in either paragraph (f)(1) or (f)(2) of this section.

(1) The information specified in Table 13 of this subpart, or

(2) If the owner or operator elects to comply with § 60.781(e)(2) of this subpart, i.e., an organic monitoring device installed at the outlet of the control device, the owner or operator shall submit the monitoring results for each operating day during which the daily average concentration level or reading is above the maximum or below the minimum (as appropriate) operating parameter value established as a requirement of § 60.781(f) of this subpart or established in the facility's operating permit.

(g) Where the owner or operator obtains approval to use a treatment process or control device other than one for which monitoring requirements are specified in § 60.781 of this subpart, or to monitor parameters other than those specified in Table 7 or 8 of this subpart, the owner or operator shall comply with the appropriate reporting requirements established by the Administrator.

§ 60.785 Recordkeeping requirements.

(a) Data retention requirements are specified in paragraph (b) of this section. Each owner or operator shall keep the records specified in paragraphs (a)(1) through (a)(4) of this section, as applicable:

(1) Records required by subpart A of part 60 of this part, as specified in table 2 of this subpart,

(2) Records of certain subpart A provisions of 40 CFR part 63, as required by table 2A of this subpart,

(3) Records required in paragraphs (c) through (j) of this section, and

(4) Start-up, shutdown, and malfunction records specified in § 60.787 of this subpart.

(b) *Data retention.* Unless otherwise specified in this subpart, each owner or operator of an affected facility shall keep copies of all applicable records and reports required by this subpart for at least 5 years. All applicable records shall be maintained in such a manner that they can be readily accessed. Records of the most recent 2 years shall be retained onsite or shall be accessible to an inspector while onsite. The records of the remaining 3 years may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(c) *Miscellaneous records.* The owner or operator shall keep the records specified in paragraphs (c)(1) through (c)(8) of this section.

(1) A record that each waste management unit inspection required by § 60.774 of this subpart was performed.

(2) A record that each inspection for control devices required by § 60.780(f) of this subpart was performed.

(3) For Item 1 and Item 2 of Table 7 of this subpart, the owner or operator shall keep the records approved by the Administrator.

(4) Except as provided in paragraph (c)(5) of this section, continuous records of the monitored parameters specified in Item 3 of Table 7, in Table 8, or in § 60.781(e)(2) of this subpart, as appropriate.

(5) Where the owner or operator obtains approval to use a treatment process or control device other than one for which monitoring requirements are specified in § 60.781 of this subpart, or to monitor parameters other than those specified in Table 7 or Table 8 of this subpart, the owner or operator shall comply with the recordkeeping requirements established by the Administrator as part of the review of the permit application or other appropriate means.

(6) The owner or operator who is complying with the provisions in § 60.789(c)(1) of this subpart shall keep a record of the information used to determine which control, testing, monitoring, recordkeeping, and reporting requirements are the most stringent.

(7) Documentation of a decision to use a delay of repair due to unavailability of parts, as specified in § 60.777(c) of this subpart, shall include a description of the failure, the reason additional time was necessary (including a statement of why replacement parts were not kept on site and when the manufacturer promised delivery), the date when repair would have been completed if parts had been available, and the date when repair was completed.

(8) The owner or operator shall keep a record of each affected facility that ceases to generate at least one process wastewater stream or aqueous in-process stream or no longer produces a primary product that is a SOCMI product.

(d) *Record of notice sent to treatment operator.* The owner or operator transferring a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream in accordance with § 60.773(e) of this subpart shall keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains VOC which are required to be managed and treated in accordance with the provisions of this subpart.

(e) *Control device records.* For each control device used to comply with this subpart, the owner or operator shall keep a record of the information specified in paragraphs (e)(1) through (e)(3) of this section.

(1) Identification of all parts of the control device that are designated as unsafe to inspect, as specified in § 60.786(g) of this subpart, an explanation stating why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(2) Identification of all parts of the control device that are designated as difficult to inspect, as specified in § 60.786(h) of this subpart, an explanation stating why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(3) For each boiler or process heater used to comply with this subpart, the owner or operator shall keep a record of any changes in the location at which the vent stream is introduced into the flame zone.

(f) *Continuous records.* Owners or operators required to keep continuous records by any section of this subpart shall keep records as specified in paragraphs (f)(1) through (f)(11) of this section, unless an alternative recordkeeping system has been requested and approved under § 60.784(b) of this subpart, except as provided in § 60.784(d)(5)(i) of this subpart.

(1) The monitoring system shall measure data values at least once every 15 minutes.

(2) The owner or operator shall record either:

(i) Each measured data value; or

(ii) Block average values for 15-minute or shorter periods calculated from all measured data values during each period or at least one measured data value per minute if measured more frequently than once per minute.

(3) If the daily average value of a monitored parameter for a given operating day is below the maximum or above the minimum established value in the report required by § 60.784(c) of this subpart or the operating permit, the owner or operator shall either:

(i) Retain block hourly average values for that operating day for 5 years and discard, at or after the end of that operating day, the 15-minute or more frequent average values and readings recorded under paragraph (f)(2) of this section; or

(ii) Retain the data recorded in paragraph (f)(2) of this section for 5 years.

(4) If the daily average value of a monitored parameter for a given operating day is above the maximum or below the minimum established value in the report required by § 60.784(c) of this subpart or operating permit, the owner or operator shall retain the data recorded that operating day under paragraph (f)(2) of this section for 5 years.

(5) Daily average values of each continuously monitored parameter shall be calculated for each operating day, and retained for 5 years, except as specified in paragraphs (f)(6) and (f)(7) of this section.

(i) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the period defined in the operating permit or the report required by § 60.784(c) of this subpart. It may be from midnight to midnight or another daily period.

(6) If all recorded values for a monitored parameter during an operating day are below the maximum or above the minimum established value in the report required by § 60.784(c) of this subpart or operating permit, the owner or operator may record this fact and retain this record for 5 years rather than calculating and recording a daily average for that operating day. For these operating days, the records required in paragraph (f)(3) of this section shall also be retained for 5 years.

(7) Monitoring data recorded during periods identified in paragraphs (f)(7)(i) through (f)(7)(v) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments:

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions;

(v) Periods of non-operation of the chemical process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(8) For flares, records of the times and duration of all periods during which all pilot flames are simultaneously absent shall be kept rather than daily averages.

(9) For carbon adsorbers, the owner or operator shall keep the records specified in paragraphs (e)(9)(i) and (e)(9)(ii) of this section instead of daily averages.

(i) Records of the total regeneration stream mass flow for each carbon bed regeneration cycle.

(ii) Records of the temperature of the carbon bed after each regeneration cycle.

(10) Hourly records of whether the flow indicator for bypass lines specified in § 60.786(f)(1) of this subpart was operating and whether a diversion was detected at any time during the hour. Also, records of the times of all periods when the vent is diverted from the control device or the flow indicator specified in § 60.786(f)(1) of this subpart is not operating.

(11) Where a seal or closure mechanism is used to comply with § 60.786(f)(2) of this subpart, hourly records of whether a diversion was detected at any time are not required. The owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line damper or valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(g) *Process knowledge records.* If the owner or operator determines that a wastewater stream is not a Group 1 wastewater stream by using process knowledge to determine the annual average concentration of a wastewater stream as specified in § 60.782(b)(3) of this subpart and/or uses process knowledge to determine the annual average flow rate as specified in § 60.782(c)(1) of this subpart, the owner or operator shall keep the documentation of how process knowledge was used to determine the annual average concentration and/or the annual average flow rate of the wastewater stream as specified in § 60.782(b)(3) or (c)(1) of this subpart, as appropriate.

(h) *Continuous monitoring system records.* For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks, and records documenting the maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or that are specified in other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(i) [Reserved]

(j) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements specified in paragraph (j)(1) or (j)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions specified in this subpart. The owner or operator shall retain for a period of 5 years each record required by paragraph (j)(1) or (j)(2) of this section.

(1) The owner or operator may retain only the daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (j)(1)(i) through (j)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (j)(1) of this section shall notify the Administrator in the Notification of Compliance Status as specified in § 60.784(c)(13) of this subpart or, if the Notification of Compliance Status has already been submitted, in the semiannual report immediately preceding implementation of the requirements of paragraph (j)(1) of this section as specified in § 60.784(d)(7) of this subpart.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than start-ups, shutdowns, or malfunctions (e.g., a temperature reading of −200°C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (j)(1)(ii)(A) through (j)(1)(ii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour average values; and

(C) The running average reflects a period of operation other than a start-up, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than start-ups, shutdowns, or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm or other means, if the running average parameter value calculated under paragraph (j)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (j)(1) of this section, at the times specified in paragraphs (j)(1)(v)(A) through (j)(1)(v)(C). The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (j)(1)(vi)(A) through (j)(1)(vi)(D) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (j) of this section.

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraphs (j)(1)(i) through (j)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description, as provided in paragraph (a) of this section, except as provided in paragraph (j)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to impair its ability to comply with the requirements of paragraph (j)(1) of this section.

(D) Owners and operators subject to paragraph (j)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall, at all times, be retained on-site or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain all superseded descriptions for at least 5 years after the date of their creation. Superseded descriptions shall be retained on-site (or accessible from a central location by computer or other means that provides access within 2 hours after a request) for at least 6 months after their creation. Thereafter, superseded descriptions may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (j)(1) of this section for a monitored parameter with respect to an item of equipment and a period of 6 consecutive months has passed without an excursion as defined in paragraph (j)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value for any operating day when the daily average value is less than the maximum or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring accomplished during the period prior to the compliance date was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next semiannual report as specified in § 60.784(d)(8) of this subpart. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily average values as provided in paragraph (j)(2) of this section, there is an excursion as defined in paragraph (j)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average value for each operating day and shall notify the Administrator in the next semiannual report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (j)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraphs (j)(1)(i) through (j)(1)(iv) of this section, for the duration specified in paragraph (j) of this section. For any calendar week, if compliance with paragraphs (j)(1)(i) through (j)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(iv) For purposes of paragraph (j) of this section, an excursion means that the daily average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except that the daily average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (j)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by § 60.787 of this subpart. An excused excursion, as described in § 60.784(d)(4) of this subpart, shall not be considered an excursion for purposes of this paragraph (j)(2).

§ 60.786 Leak inspection provisions.

(a) For each vapor collection system, closed-vent system, fixed roof, cover, or enclosure required to comply with this section, the owner or operator shall comply with the requirements of paragraphs (b) through (i) of this section, unless otherwise specified in this subpart.

(b) Except as provided in paragraphs (g) and (h) of this section, each vapor collection system and closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (b)(1) and (b)(2) of this section and each fixed roof, cover, and enclosure shall be inspected according to the procedures and schedule specified in paragraph (b)(3) of this section.

(1) If the vapor collection system or closed vent system is constructed of hard-piping, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(ii) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(2) If the vapor collection system or closed vent system is constructed of duct work, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in paragraph (c) of this section, and

(ii) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(2) If the vapor collection system or closed vent system is constructed of duct work, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(ii) Conduct annual inspections according to the procedures in paragraph (c) of this section.

(iii) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(3) For each fixed roof, cover, and enclosure, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(ii) Conduct semi-annual visual inspections for visible, audible, or olfactory indications of leaks.

(c) Each vapor collection system, closed vent system, fixed roof, cover, and enclosure shall be inspected according to the procedures specified in paragraphs (c)(1) through (c)(6) of this section.

(1) Inspections shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A, and with the exceptions and modifications specified in this subpart.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A except the instrument response factor criteria in Section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream.

(i) Except as provided in paragraph (c)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic hazardous air pollutants or VOCs, the average stream response factor shall be calculated on an inert-free basis.

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (c)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (c)(2)(i) of this section.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million hydrocarbon in air); and

(ii) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (c)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in the air.

(5) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects to not adjust readings for background, all such instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in 40 CFR 63.180(b) and (c). The owner or operator shall subtract background reading from the maximum concentration indicated by the instrument.

(6) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining compliance.

(d) Leaks, as indicated by an instrument reading greater than 500 parts per million above background or by visual inspections, shall be repaired as soon as practical, except as provided in paragraph (e) of this section.

(1) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(2) Repair shall be completed no later than 15 calendar days after the leak is detected.

(e) Delay of repair of a vapor collection system, closed vent system, fixed roof, cover, or enclosure for which leaks have been detected is allowed if the repair is technically infeasible without a shutdown or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next shutdown.

(f) For each vapor collection system or closed vent system that contains bypass lines that could divert emissions away from a control device, the owner or operator shall comply with the provisions of either paragraph (f)(1) or (f)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph (f).

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 60.785(f)(10) of this subpart. The flow indicator shall be installed at the entrance to any bypass line that could divert emissions away from the control device and to the atmosphere; or

(2) Secure the bypass line damper or valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the damper or valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 60.785(e)(11) of this subpart.

(g) Any parts of the vapor collection system, closed vent system, fixed roof, cover, or enclosure that are designated, as described in paragraph (i)(1) of this section, as unsafe to inspect are exempt from the inspection requirements of paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section if:

(1) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (b)(1), (b)(2), or (b)(3)(i) of this section; and

(2) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(h) Any parts of the vapor collection system, closed vent system, fixed roof, cover, or enclosure that are designated, as described in paragraph (i)(2) of this section, as difficult to inspect are exempt from the inspection requirements of paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section if:

(1) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(2) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(i) The owner or operator shall record the information specified in paragraphs (i)(1) through (i)(5) of this section.

(1) Identification of all parts of the vapor collection system, closed vent system, fixed roof, cover, or enclosure that are designated as unsafe to inspect, an explanation of why the equipment is unsafe to inspect, and the plan for inspecting the equipment.

(2) Identification of all parts of the vapor collection system, closed vent system, fixed roof, cover, or enclosure that are designated as difficult to inspect, an explanation of why the equipment is difficult to inspect, and the plan for inspecting the equipment.

(3) For each vapor collection system or closed vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (i)(3)(i) or (i)(3)(ii) of this section.

(i) Hourly records of whether the flow indicator specified under paragraph (f)(1) of this section was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the monitor is not operating.

(ii) Where a seal mechanism is used to comply with paragraph (f)(2) of this section, hourly records of flow are not required. In such cases, the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(4) For each inspection during which a leak is detected, a record of the information specified in paragraphs (i)(4)(i) through (i)(4)(viii) of this section.

(i) The instrument identification numbers; the name or initials of the person conducting the inspection; and identification of the equipment.

(ii) The date the leak was detected and the date of the first attempt to repair the leak.

(iii) Maximum instrument reading measured by the method specified in paragraph (d) of this section after the leak is successfully repaired or determined to be nonrepairable.

(iv) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(v) The name, initials, or other form of identification of the owner or operator (or designee) whose decision it was that repair could not be effected without a shutdown.

(vi) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(vii) Dates of shutdowns that occur while the equipment is unrepaired.

(viii) The date of successful repair of the leak.

(5) For each inspection conducted in accordance with paragraph (c) of this section during which no leaks are detected, a record that the inspection was performed, the date of the

inspection, and a statement that no leaks were detected.

(6) For each visual inspection conducted in accordance with paragraph (b)(1)(ii) or (b)(3)(ii) of this section during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

§ 60.787 Additional Requirements—Start-up, Shutdown, Malfunction, or Nonoperation; Alternative Means of Emission Limitation; and Permits

(a) *Applicability of this subpart during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (a)(1) through (a)(4) of this section shall be followed during periods of start-up, shutdown, malfunction, or non-operation of the affected facility or any part thereof.

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected facility (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The emission limitations of this subpart and the emission limitations referred to in this subpart shall not apply during periods of start-up, shutdown, or malfunction. During periods of start-up, shutdown, or malfunction, the owner or operator shall follow the applicable provisions of the start-up, shutdown, and malfunction plan as specified in 40 CFR 63.6(e)(3) and table 2A of this subpart. However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected facility does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this subpart during the start-up, shutdown, malfunction, or period of non-operation.

(2) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during periods of start-up, shutdown, or malfunction during times when emissions, wastewater streams, or residuals are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph (a)(2) does not apply if the item of equipment is malfunctioning. This paragraph (a)(2) also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous start-up, shutdown, or malfunction of the affected facility or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous start-up, shutdown, or malfunction of the affected facility or portion thereof, the owner or operator shall provide documentation to the Administrator, as soon as possible, supporting such a claim. Once approved by the Administrator, the provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the start-up, shutdown, malfunction plan for that affected facility.

(3) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (a)(1) and (a)(2) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions. For purposes of this paragraph (a)(3), the term "excess emissions" means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected facility. Back-up control devices are not required, but may be used if available.

(b) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected facility shall develop and implement a written start-up, shutdown, and malfunction plan as specified in 40 CFR 63.6(e)(3) and table 2A of this subpart. This plan shall describe, in detail, procedures for operating and maintaining the affected facility during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. A provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart may be included in the start-up, shutdown, and malfunction plan only if the owner or operator has demonstrated to the Administrator that the monitoring system would be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. The affected facility shall keep the start-up, shutdown, and malfunction plan on-site.

(1) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or control devices or recovery devices or continuous monitoring systems used to comply with this subpart during which excess emissions (as defined in paragraph (a)(3) of this section) occur.

(ii) For each start-up, shutdown, or malfunction during which excess emissions (as defined in paragraph (a)(3) of this section) occur, records reflecting whether the procedures specified in the affected facility's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a control device to a backup control device, records shall be kept of whether the plan was followed. These records may take the form of a "checklist," or other form of recordkeeping that confirms conformance with the start-up shutdown, and malfunction plan for the event.

(2) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the semiannual reports required under § 60.784(d) of this subpart. Said reports shall include the information specified in paragraphs (b)(1)(i) and (b)(1)(ii)of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(b) *Alternative means of emission limitation.* If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC achieved under any design, equipment, work practice, or operational standards in this subpart, the Administrator will publish a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(1) The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(2) Any notice under paragraph (b) of this section shall be published only after public notice and an opportunity for a hearing.

(3) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions.

(c) *Permit.* Each owner or operator of an affected facility subject to this subpart shall obtain a permit under 40 CFR part 70 or part 71 from the appropriate permitting authority. If EPA has approved a State operating permit program under 40 CFR part 71, the permit shall be obtained from the State authority. If the State operating permit program has not been approved, the owner or operator shall apply to the EPA regional office pursuant to 40 CFR part 70.

§ 60.788 [Reserved]

§ 60.789 Relationship to other regulations.

(a) The owner or operator who is subject to the provisions of this section shall include in the Notification of Compliance Status a statement specifying the options being used to comply with the provisions of this section.

(b) *Relationship to benzene waste.* After the compliance dates specified in § 60.770 of this subpart, the owner or operator of a Group 1 or Group 2 wastewater stream that is also subject to the provisions of 40 CFR part 61, subpart FF is required to comply with the provisions of both this subpart and 40 CFR part 61, subpart FF. Alternatively, the owner or operator may elect to comply with the provisions of paragraphs (b)(1) and (b)(2) of this section, which shall constitute compliance with the provisions of 40 CFR part 61, subpart FF.

(1) Comply with the provisions of this subpart; and

(2) For any Group 2 wastewater stream or organic stream whose benzene emissions are subject to control through the use of one or more treatment processes or waste management units under the provisions of 40 CFR part 61, subpart FF on or after September 12, 1994, comply with the requirements of this subpart for Group 1 wastewater streams.

(c) *Relationship to RCRA.* After the compliance dates specified in § 60.770 of this subpart, the owner or operator of any Group 1 or Group 2 wastewater stream that is also subject to provisions in 40 CFR parts 260 and 272 shall comply with the requirements of either paragraph (c)(1) or (c)(2) of this section.

(1) For each Group 1 or Group 2 wastewater stream, the owner or operator shall comply with the more stringent control requirements (e.g., waste management units, numerical treatment standards, etc.) and the more stringent testing, monitoring, recordkeeping, and reporting requirements that overlap between the provisions of this subpart and the provisions of 40 CFR parts 260 through 272. The owner or operator shall keep a record of the information used to determine which requirements were the most stringent and shall submit this information if requested by the Administrator; or

(2) The owner or operator shall submit, no later than four months before the applicable compliance date specified in § 60.770 of this subpart, a request for a case-by-case determination of requirements. The request shall include the information specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(i) Identification of the wastewater streams that are subject to this subpart and to the provisions in 40 CFR parts 260 through 272, determination of the Group 1/Group 2 status of those streams using the provisions specified in this subpart, determination of whether or not those streams are listed or exhibit a characteristic as specified in 40 CFR part 261, and determination of whether the waste management unit is subject to permitting under 40 CFR part 270.

(ii) Identification of the specific control requirements (e.g., waste management units, numerical treatment standards, etc.) and testing, monitoring, recordkeeping, and reporting requirements that overlap between the provisions of this subpart and the provisions of 40 CFR parts 260 through 272.

(d) *Overlap with the Vinyl Chloride NESHAP.* After the compliance dates specified in § 60.770 of this subpart, the owner or operator of a Group 1 and Group 2 wastewater stream that is also subject to the provisions of 40 CFR part 61 subpart F shall comply with the provisions of either paragraph (d)(1) or (d)(2) of this section.

(1) The owner or operator shall comply with the provisions of both this subpart and 40 CFR part 61 subpart F or

(2) The owner or operator may submit, no later than four months before the applicable compliance date specified in § 60.770 of this subpart, information demonstrating how compliance with 40 CFR Part 61, subpart F, will also ensure compliance with this subpart. The information shall include a description of the testing, monitoring, reporting, and recordkeeping that will be performed.

(e) *Overlap with the HON.* After the compliance dates specified in § 60.770 of this subpart, the owner or operator of any Group 1 or Group 2 process wastewater stream that is also subject to and controlled according to the provisions in 40 CFR, subpart G shall comply with either 40 CFR, subpart G or this subpart.

(f) *Overlap with other regulations for monitoring, recordkeeping, or reporting with respect to combustion devices, recovery devices, or recapture devices.* After compliance dates specified in § 60.770 of this subpart, if any combustion device, recovery device, or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA or CC and other owner or operator complies with the periodic reporting requirements under 40 CFR part 264, subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply with the monitoring, recordkeeping, and reporting requirements of this subpart, or with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph (f), which shall constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart.

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS

Chemical name[a]	CAS No.[b]
(1,1,2-) Trichloro (1,2,2-) trifluoroethane	76131
(2-Ethylhexyl) amine	104756
1,4-Dichlorobutene	110576
1-Butene	106989

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TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name[a]	CAS No.[b]
1-Methyl-2-pyrrolidone	872504
1-Naphthyl-N-methylcarbamate	
1-Phenyl ethyl hydroperoxide	3071327
2-Butene	25167673
2-Butyne-1,4-diol	110656
2-Chloro-1,3-butadiene (Chloroprene)	126998
2-Chloro-4-(ethylamino)-6-(isopropylamino)-S-triazine	1912249
2-Ethylhexanol (2-ethyl-1-hexanol)	104767
2-Hexenedinitrile	13042029
3,4-Dichloro-1-butene	64037543
3-Hexenedinitrile	1119853
3-Pentenenitrile	4635874
6-Ethyl-1,2,3,4-tetrahydro-9,10-antracenedione	15547178
Acenaphthene	83329
Acetal (1,1-diethoxy-ethane)	105577
Acetaldehyde	75070
Acetaldol (3-hydroxy-butanal)	107891
Acetamide	60355
Acetanilide	103844
Acetic anhydride	108247
Acetic acid	64197
Acetoacetanilide	102012
Acetone cyanohydrin	75865
Acetone	67641
Acetonitrile	75058
Acetophenone	98862
Acetyl chloride	75365
Acetylene tetrabromide (1,1,2,2-tetrabromoethane)	79276
Acetylene	74862
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Adipic acid	124049
Adiponitrile	111693
Alcohols, C–11 or higher, mixtures	
Alcohols, C–11 or lower, mixtures	
Alizarin	72480
Alkyl naphthalenes	
Alkyl naphthalene sulfonates	
Alkyl anthraquinones	
Allyl cyanide	109751
Allyl chloride	107051
Allyl bromide	106956
Allyl alcohol	107186
Aluminum acetate	7360443
Aluminum formates	
Aminobenzoic acid (p-)	1321115
Aminoethylethanolamine	111411
Aminophenol sulfonic acid	
Aminophenol (p-)	123308
Ammonium acetate	631618
Ammonium thiocyanate	1762954
Amyl acetates	628637 123922
Amyl chloride (n-)	543599
Amyl phenol	1322061
Amyl chlorides (mixed)	
Amyl mercaptans	110667
Amyl alcohols (mixed)	30899195
Amyl alcohol (tert-)	75854
Amyl alcohol (n-) (1-pentanol)	71410
Amyl ether	693652
Amylamines	110587
Amylene	513359
Amylenes, mixed	
Aniline	62533
Aniline hydrochloride	142041
Anisidine (p-)	29191524
Anisidine (o-)	90040
Anisole (methoxy benzene)	100663
Anthracene	120127

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Anthranilic acid	118923
Anthraquinone	84651
ar-Methylbenzenediamine	25376458
Azobenzene	103333
Barium acetate	543806
Benzaldehyde	100527
Benzamide	55210
Benzene	71432
Benzenedisulfonic acid	98486
Benzenesulfonic acid	98113
Benzenesulfonic acid C_{10-16}-alkyl derivatives, sodium salts	68081812
Benzidine	
Benzil	134816
Benzilic acid	76937
Benzoguanamine	
Benzoic acid	65850
Benzoin	119539
Benzonitrile	100470
Benzophenone	119619
Benzotrichloride	98077
Benzoyl chloride	98884
Benzoyl peroxide	94360
Benzyl acetate	140114
Benzyl chloride	100447
Benzyl alcohol	100516
Benzyl dichloride	98873
Benzyl benzoate	120514
Benzylamine	100469
Benzylideneacetone	1896624
Biphenyl	92524
Bis(Chloromethyl)Ether	542881
Bisphenol A	80057
Brometone	
Bromobenzene	108861
Bromoform	75252
Bromonaphthalene	27497514
Butadiene and butene fractions	
Butadiene (1,3-)	106990
Butane	106978
Butanediol (1,4-)	110634
Butanes, mixed	
Butenes, mixed	
Butyl hydroperoxide (tert-)	75912
Butyl acetate (sec-)	105464
Butyl chloride (tert-)	507200
Butyl alcohol (tert-)	75650
Butyl benzoate	136607
Butyl mercaptan (n-)	109795
Butyl acrylate (n-)	141322
Butyl mercaptan (tert-)	75661
Butyl methacrylate (n-)	97881
Butyl alcohol (sec-)	78922
Butyl acetate (tert-)	540885
Butyl acetate (n-)	123864
Butyl methacrylate (tert-)	
Butyl toluene (tert-)	98511
Butyl phenol (tert-)	88186
Butyl alcohol (n-)	71363
Butylamine (t-)	75649
Butylamine (s-)	13952846
Butylamine (n-)	109739
Butylbenzene (tert-)	98066
Butylbenzoic acid (p-tert-)	98737
Butylbenzyl phthalate	85867
Butylene glycol (1,3-)	107880
Butylenes (n-)	
Butyraldehyde (n-)	123728
Butyric acid (n-)	107926
Butyric anhydride (n-)	106310
Butyrolacetone	96480
Butyronitrile	109740
Calcium acetate	62544

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Calcium propionate	4075814
Caproic acid	142621
Caprolactam	105602
Carbaryl	63252
Carbazole	86748
Carbon tetrabromide	558134
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbon tetrafluoride	75730
Cellulose acetate	9004357
Chloral	75876
Chloranil (o-chloranil)	2435532
Chloranil (p-chloranil)	118752
Chloroacetic acid	79118
Chloroacetophenone (2-)	532274
Chloroaniline (o-)	95512
Chloroaniline (p-)	106478
Chloroaniline (m-)	108429
Chlorobenzaldehyde (4-)	104881
Chlorobenzaldehyde (2-)	89985
Chlorobenzaldehyde (3-)	587042
Chlorobenzene	108907
Chlorobenzoic acid	118912 535808 74113
Chlorobenzotrichloride (p-)	5216251
Chlorobenzotrichloride (o-)	2136892
Chlorobenzoyl chloride (p-)	122010
Chlorobenzoyl chloride (o-)	609654
Chlorodifluoroethane	25497294
Chlorodifluoromethane	75456
Chlorofluorocarbons	
Chloroform	67663
Chlorohydrin	
Chloronaphthalene	25586430
Chloronitrobenzene (o-)	88733
Chloronitrobenzene (m-)	121733
Chloronitrobenzene (p-)	100005
Chlorophenol (o-)	95578
Chlorophenol (m-)	108430
Chlorophenol (p-)	106489
Chlorosulfonic acid	7790945
Chlorotoluene (m-)	108418
Chlorotoluene (o-)	95498
Chlorotoluene (p-)	106434
Chlorotrifluoroethylene	79389
Chlorotrifluoromethane	75729
Choline chloride	67481
Chrysene	218019
Cinnamic acid	140103
Citric acid	77929
Cobalt acetate	
Copper acetate	142712
Cresol and cresylic acid (o-)	95487
Cresol and cresylic acid (p-)	106445
Cresol and cresylic acid (m-)	108394
Cresols and cresylic acids (mixed)	1319773
Crotonaldehyde	4170300
Crotonic acid	3724650
Cumene hydroperoxide	80159
Cumene	98828
Cyanamide	420042
Cyanoacetic acid	372098
Cyanoformamide	
Cyanogen chloride	506774
Cyanuric acid	108805
Cyanuric chloride	108770
Cyclohexane, oxidized	68512152
Cyclohexane	110827
Cyclohexanol	108930
Cyclohexanone oxime	100641
Cyclohexanone	108941

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name[a]	CAS No.[b]
Cyclohexene	110838
Cyclohexylamine	108918
Cyclooctadiene	29965977
Cyclooctadiene (1,3-)	3806595
Cyclooctadiene (1,5-)	111784
Cyclopentadiene (1,3-)	
Cyclopropane	75194
Decahydronaphthalene	91178
Decanol	112301
Decyl alcohol (1-decanol)	112301
Di-o-tolyguanidine	97392
Di(2-methoxyethyl) phthalate	
Di-n-heptyl-n-nonyl undecyl phthalate	
Diacetone alcohol	123422
Diacetoxy-2-Butene (1,4-)	
Diallyl phthalate	131179
Diallyl isophthalate	
Diaminobenzoic acids	27576041
Diaminophenol hydrochloride	137097
Dibromomethane	74953
Dibutanized aromatic concentrate	
Dibutoxyethyl phthalate	
Dichloro-1-butene (3,4-)	760236
Dichloro-2-butene (1,4-)	764410
Dichloro-2-butenes	
Dichloroaniline (mixed isomers)	27134276
Dichlorobenzene (p-)	106467
Dichlorobenzene (m-)	541731
Dichlorobenzene (o-)	95501
Dichlorobenzidine (3,3′-)	91941
Dichlorodifluoromethane	75718
Dichlorodimethylsilane	75785
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107062
Dichloroethyl ether (bis(2-chloroethyl)ether)	111444
Dichloroethylene (1,2-)	540590
Dichlorofluoromethane	75434
Dichlorohydrin (a-)	96231
Dichloromethyl ether	
Dichloronitrobenzenes	
Dichloropentanes	
Dichlorophenol (2,4-)	120832
Dichloropropane (1,1-)	78999
Dichloropropene (1,3-)	542756
Dichloropropene/dichloropropane (mixed)	
Dichlorotetrafluoroethane	1320372
Dicyandiamide	461585
Dicyclohexylamine	101837
Dicyclopentadiene	77736
Diethanolamine (2,2′-Iminodiethanol)	111422
Diethyl phthalate	84662
Diethyl sulfate	64675
Diethylamine	109897
Diethylaniline (N,N-)	91667
Diethylaniline (2,6-)	579668
Diethylbenzene	25340174
Diethylene glycol monoethyl ether	111900
Diethylene glycol dimethyl ether	111966
Diethylene glycol	111466
Diethylene glycol monobutyl ether acetate	124174
Diethylene glycol monomethyl ether	111773
Diethylene glycol diethyl ether	112367
Diethylene glycol monomethyl ether acetate	629389
Diethylene glycol monoethyl ether acetate	112152
Diethylene glycol monohexyl ether	112594
Diethylene glycol monobutyl ether	112345
Diethylene glycol dibutyl ether	112732
Difluoroethane (1,1-)	75376
Dihydroxybenzoic acid (Resorcylic acid)	27138574
Diisobutylene	25167708
Diisodecyl phthalate	26761400
Diisononyl phthalate	28553120
Diisooctyl phthalate	27554263

CAS No.[b]
4075814
142621
105602
63252
86748
558134
75150
56235
75730
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106489
7790945
108418
95498
106434
79389
75729
67481
218019
140103
77929
142712
95487
106445
108394
1319773
4170300
3724650
80159
98828
420042
372098
506774
108805
108770
68512152
110827
108930
100641
108941

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name[a]	CAS No.[b]
Diisopropylamine	108189
Diketene (4-methylene-2-oxetanone)	674828
Dimethyl sulfate	77781
Dimethyl ether	115106
Dimethyl sulfide	75183
Dimethyl phthalate	131113
Dimethyl sulfoxide	67685
Dimethyl terephthalate	120616
Dimethylacetamide (N,N-)	127195
Dimethylamine	124403
Dimethylaminoethanol (2-)	108010
Dimethylaniline (N,N)	121697
Dimethylbenzidine (3,3′-)	119937
Dimethylformamide (N,N-)	68122
Dimethylhydrazine (1,1-)	57147
Dimethylphenol (2,5-) Xylenol (2, 5-)	95874
Dimethylphenol (2,6-) Xylenol (2, 6-)	576261
Dimethylphenol (3,5-) Xylenol (3, 5-)	108689
Dimethylphenol (2,4-) Xylenol (2, 4-)	105679
Dimethylphenol (2,3-) Xylenol (2, 3-)	526750
Dimethylphenol (3,4-) Xylenol (3, 4-)	95658
Dinitrobenzenes (NOS)[c]	25154545
Dinitrobenzoic acid (3,5-)	99343
Dinitrophenol (2,4-)	51285
Dinitrotoluene (3,4-)	610399
Dinitrotoluene (2,6-)	606202
Dinitrotoluene (2,3-)	602017
Dinitrotoluene (2,4-)	121142
Dioctyl phthalate	117817
Dioxane (1,4-) (1,4-Diethyleneoxide)	123911
Dioxolane (1,3-)	646060
Diphenyl oxide	101848
Diphenyl thiourea (N,N′-)	102089
Diphenyl methane	101815
Diphenylamine	122394
Dipropylene glycol	110985
Dodecandedioic acid	693232
Dodecene (branched)	112414
Dodecene (n-)	25378227
Dodecyl phenol (branched)	121158585
Dodecyl benzene (branched)	123013
Dodecylaniline	28675174
Dodecylbenzene sulfonic acid	27176870
Dodecylbenzene, nonlinear	
Dodecylbenzene (n-)	121013
Dodecylbenzene sulfonic acid, sodium salt	25155300
Dodecylmercaptan (branched)	25103586
Dodecylphenol	27193868
Epichlorohydrin (1-chloro-2,3-epoxypropane)	106898
Ethane	74840
Ethanol	64175
Ethanolamine	141435
Ethyl ether	60297
Ethyl oxalate	95921
Ethyl orthoformate	122510
Ethyl acetate	141786
Ethyl bromide	74964
Ethyl chloride (Chloroethane)	75003
Ethyl cyanide	107120
Ethyl acrylate	140885
Ethyl sodium oxalacetate	41892711
Ethyl acetoacetate	141979
Ethyl chloroacetate	105395
Ethyl mercaptan (ethanethiol)	75081
Ethylamine	75047
Ethylaniline (o-)	578541
Ethylaniline (n-)	103695
Ethylbenzene	100414
Ethylcellulose	9004573
Ethylcyanoacetate	105566
Ethylene glycol dibutyl ether	112481
Ethylene dibromide (Dibromoethane)	106934

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Ethylene oxide	75218
Ethylene glycol monoethyl ether	110805
Ethylene glycol monoethyl ether acetate	111159
Ethylene glycol monomethyl ether	109864
Ethylene dichloride	107062
Ethylene glycol monobutyl ether acetate	112072
Ethylene glycol dimethyl ether	110714
Ethylene	74851
Ethylene glycol monophenyl ether	122996
Ethylene glycol monoacetate	542596
Ethylene carbonate	96491
Ethylene glycol monooctyl ether	
Ethylene glycol diacetate	111557
Ethylene glycol diethyl ether (1,2-diethoxyethane)	629141
Ethylene glycol monopropyl ether	2807309
Ethylene glycol monohexyl ether	112254
Ethylene glycol monomethyl ether acetate	110496
Ethylene glycol monobutyl ether	111762
Ethylene chlorohydrin	107073
Ethylene glycol	107211
Ethylenediamine	107153
Ethylenediamine tetraacetic acid	60004
Ethylenimine (Aziridine)	151564
Ethylhexanoic acid (2-)	149575
Ethylhexyl succinate (2-)	
Ethylhexyl acrylate (2-isomer)	103117
Ethylmethylbenzene	25550145
Fluoranthene	206440
Formaldehyde	50000
Formamide	75127
Formic acid	64186
Fumaric acid	110178
Furfural (2-furan carboxaldehyde)	98011
Glutaraldehyde	111308
Glyceraldehyde	367475
Glycerol dichlorohydrin	26545737
Glycerol tri(polyoxypropylene)ether	25791962
Glycerol	56815
Glycidol	556525
Glycine	56406
Glycol ethers	
Glyoxal (ethane dial)	107222
Guanidine	
Guanidine nitrate	506934
Heptenes	
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachlorocyclopentadiene	77474
Hexachloroethane	67721
Hexadecyl chloride	
Hexadecyl alcohol (1-hexadecanol)	36653824
Hexadiene (1,4-)	592450
Hexamethylene glycol	629118
Hexamethylene diamine adipate	3323533
Hexamethylenediamine	124094
Hexamethylenetetramine	100970
Hexane	110543
Hexanetriol (1,2,6-)	106694
Hexyl alcohol	111273
Hexylene glycol	107415
Higher glycols	
Hydrogen cyanide	74908
Hydroquinone	123319
Hydroxyadipaldehyde	141311
Hydroxybenzoic acid (p-)	99967
Iminodiethanol (2,2-) (diethanolamine)	111422
Isoamyl alcohol	123513
Isoamyl chloride (mixed)	
Isoamylene	26760645
Isobutane	75285
Isobutanol	78831
Isobutyl methacrylate	97869

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Isobutyl acetate	110190
Isobutyl acrylate	106638
Isobutyl vinyl ether	109535
Isobutyl alcohol	78831
Isobutylene	115117
Isobutyraldehyde (2-methyl-propanal)	78842
Isobutyric acid	79312
Isodecanol	25339177
Isohexyldecyl alcohol	
Isononyl alcohol	
Isooctyl alcohol	26952216
Isopentane	78784
Isophorone nitrile	
Isophorone	78591
Isophthalic acid	121915
Isoprene	78795
Isopropanol	67630
Isopropyl acetate	108214
Isopropyl ether	108203
Isopropyl chloride	75296
Isopropylamine	75310
Isopropylphenol	25168063
Ketene	463514
Lactic acid	79334
Lauryl dimethylamine oxide	
Lead subacetate	1335326
Lead phthalate	
Lead acetate	6080564
Linear alcohols, ethoxylated and sulfated, sodium salt, mixed	
Linear alcohols, ethoxylated, mixed	
Linear alkyl sulfonate	
Linear alcohols, sulfated, sodium salt, mixed	
Magnesium acetate	142723
Maleic anhydride	108316
Maleic hydrazide	123331
Maleic acid	110167
Malic acid	6915157
Manganese acetate	638380
Melamine (1,3,5-triazine-2,4,6-triamine)	108781
Mercuric acetate	1600277
Mesityl oxide	141797
Metanilic acid	121471
Methacrylic acid	79414
Methacrylonitrile	126987
Methallyl chloride	563473
Methallyl alcohol	513428
Methane	74828
Methanol	67561
Methionine	63683
Methyl mercaptan	74931
Methyl iodide	74884
Methyl ethyl ketone (2-butanone)	78933
Methyl isobutyl carbinol	108112
Methyl acetate	79209
Methyl chloride (Chloromethane)	74873
Methyl salicylate	119368
Methyl acetoacetate	105453
Methyl bromide (Bromomethane)	74839
Methyl formate	107313
Methyl phenyl carbinol	98851
Methyl methacrylate	80626
Methyl tert-butyl ether	1634044
Methyl isocyanate	624839
Methyl butynol	37365712
Methyl hydrazine	60344
Methyl isobutyl ketone (Hexone)	108101
Methyl acrylate	96333
Methyl butenols	
Methyl anthranilate	134203
Methylamine	74895
Methylaniline (N-)	100618
Methylbutanol (2-)	137326

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name [a]	CAS No. [b]
Methylcyclohexane	108872
Methylcyclohexanol	25639423
Methylcyclohexanone	1331222
Methylene chloride (Dichloromethane)	75092
Methylene dianiline (4,4′)	101779
Methylene diphenyl diisocyanate (4,4′-) (MDI)	101688
Methylionones (a-)	79696
Methylnaphthalene (2-)	91576
Methylnaphthalene (1-)	90120
Methylpentane (2-)	107835
Methylpentynol	77758
Methylstyrene (a-)	98839
Monomethylhydrazine	
Morpholine	110918
n-Heptane	142825
n-Propanol	71238
N-Vinyl-2-pyrrolidine	
Naphthalene sulfonic acid (a-)	85472
Naphthalene	91203
Naphthalene sulfonic acid (b-)	120183
Naphthenic acids	
Naphthol (a-)	90153
Naphthol (b-)	135193
Naphtholsulfonic acid (1-)	567180
Naphthylamine sulfonic acid (1,4-)	84866
Naphthylamine (1-)	134327
Naphthylamine (2-)	91598
Naphthylamine sulfonic acid (2,1-)	81163
Neohexane	75832
Neopentanoic acid	75989
Neopentyl glycol	126307
Nickel formate	
Nitriloacetic acid	
Nitrilotriacetic acid	139139
Nitroaniline (m-)	99092
Nitroaniline (p-)	100016
Nitroaniline (o-)	88744
Nitroanisole (p-)	100174
Nitroanisole (o-)	91236
Nitrobenzene	98953
Nitrobenzoic acid (m-)	121926
Nitrobenzoic acid (o-)	552169
Nitrobenzoic acid (p-)	62237
Nitrobenzoyl chloride (p-)	
Nitroethane	79243
Nitroguanidine	556887
Nitromethane	75525
Nitronaphthalene (1-)	86577
Nitrophenol (p-)	100027
Nitrophenol (o-)	88755
Nitropropane (1-)	25322014
Nitropropane (2-)	79469
Nitrotoluene (p-)	99990
Nitrotoluene (o-)	88722
Nitrotoluene (m-)	99081
Nitrotoluene (all isomers)	1321126
Nitroxylene	25168041
Nonene	27215958
Nonyl alcohol	1430808
Nonylbenzene (branched)	1081772
Nonylphenol	25154523
Nonylphenol, ethoxylated	9016459
Nonylphenol (branched)	25154523
Octane	111659
Octene-1	111660
Octylamine (tert-)	107459
Octylphenol	27193288
Oil-soluble petroleum sulfonate sodium salt	
Oil-soluble petroleum sulfonate calcium salt	
Oxalic acid	144627
Oxamide	471465
Oxo chemicals	

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TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name[a]	CAS No.[b]
p-tert-Butyl toluene	98511
Paraformaldehyde	30525894
Paraldehyde	123637
Pentachlorophenol	87865
Pentaerythritol tetranitrate	
Pentane	109660
Pentanethiol	115775
Pentanol (3-)	584021
Pentanol (2-)	6032297
Pentene (1-)	109671
Pentene (2-)	109682
Peracetic acid	79210
Perchloromethyl mercaptan	594423
Phenacetin	62442
Phenanthrene	85018
Phenetidine (p-)	156434
Phenetidine (o-)	94702
Phenol	108952
Phenolphthalein	77098
Phenolsulfonic acids (all isomers)	1333397
Phenyl anthranilic acid (all isomers)	91407
Phenylenediamine (m-)	108452
Phenylenediamine (p-)	106503
Phenylenediamine (o-)	95545
Phenylmethylpyrazolone	
Phenylpropane	103651
Phloroglucinol (1,3,5-benzenetriol)	108736
Phosgene	75445
Phthalic acid	88993
Phthalic anhydride	85449
Phthalimide	85416
Phthalonitrile	91156
Picoline (b-)	108996
Picoline (a-)	
Picramic acid	
Picric acid	88891
Piperazine	110850
Piperidine	110894
Piperylene	504609
Polybutenes	9003296
Polyethylene glycol	25322683
Polypropylene glycol	25322694
Potassium acetate	127082
Propane	74986
Propiolactone (beta-) (2-Oxetanone)	57578
Propionaldehyde	123386
Propionic acid	79094
Propyl acetate (n-)	109604
Propyl chloride	540545
Propyl alcohol (n-)	71238
Propylamine	107108
Propylene chlorohydrin	127004
Propylene glycol	57556
Propylene	115071
Propylene oxide	75569
Propylene carbonate	108327
Propylene glycol monomethyl ether	107982
1,2-dichloropropane	78875
Pseudocumene	95636
Pseudocumidine	
Pyrene	129000
Pyridine	110861
Pyrrolidone (2-)	616455
Quinone	106514
Resorcinol (1,3-benzenediol)	108463
Salicylic acid	69727
Sebacic acid	111206
Sodium benzoate	532321
Sodium phenate	139026
Sodium acetate	127093
Sodium formate	141537
Sodium methoxide	124414

CAS No.ᵇ
98511
30525894
123637
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109682
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85018
156434
94702
108952
77098
1333397
91407
108452
106503
95545
103651
108736
75445
88993
85449
85416
91156
108996
88891
110850
110894
504609
9003296
25322683
25322694
127082
74986
57578
123386
79094
109604
540545
71238
107108
127004
57556
115071
75569
108327
107982
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95636
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616455
106514
108463
69727
111206
532321
139026
127093
141537
124414

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name[a]	CAS No.[b]
Sodium cyanide	143339
Sodium propionate	137406
Sodium chloroacetate	3926623
Sodium carboxymethyl cellulose	9004324
Sodium oxalate	62760
Sodium dodecyl benzene sulfonate	
Sorbic acid	110441
Sorbitol (D-Glucitol)	50704
Stilbene	588590
Styrene	100425
Succinic acid	110156
Succinonitrile	110612
Sulfanilic acid	121573
Sulfolane	126330
Synthesis gas	
Tannic acid	1401554
Tartaric acid	526830
Terephthalic acid	100210
Terephthaloyl chloride	100209
Tetra (methyl-ethyl) lead	
Tetrabromophthalic anhydride	632791
Tetrachlorobenzene (1,2,3,5-)	
Tetrachlorobenzene (1,2,4,5-)	95943
Tetrachloroethane (1,1,2,2-)	79345
Tetrachloroethylene (Perchloroethylene)	127184
Tetrachlorophthalic anhydride	117088
Tetraethyl lead	78002
Tetraethylene glycol	112607
Tetraethylenepentamine	112572
Tetrafluoroethylene	
Tetrahydrofuran	109999
Tetrahydronapthalene	119642
Tetrahydrophthalic anhydride	85438
Tetramethylenediamine	110601
Tetramethylethylenediamine	110189
Tetramethyllead	75741
Thiourea	62566
Tolidines	
Toluene sulfonic acids	104154
Toluene diisocyanate (2,4-)	584849
Toluene	108883
Toluene diamine (2,4-)	95807
Toluene diisocyanates (mixture)	26471625
Toluene sulfonamides (o- and p-)	1333079
Toluenesulfonyl chloride	98599
Toluidine (o-)	95534
Trichloroacetic acid	76039
Trichloroaniline (2,4,6-)	634935
Trichlorobenzene (1,2,4-)	120821
Trichlorobenzene (1,2,3-)	87616
Trichlorobenzene (1,3,5-)	108703
Trichloroethane (1,1,2-)	79005
Trichloroethane (1,1,1-)	71556
Trichloroethylene	79016
Trichlorofluoromethane	75694
Trichlorophenol (2,4,5-)	95954
Trichloropropane (1,2,3-)	96184
Tricresyl phosphate	1330785
Tridecyl alcohol	112709
Tridecyl mercaptan	
Triethanolamine	102716
Triethylamine	121448
Triethylene glycol monoethyl ether	112505
Triethylene glycol	112276
Triethylene glycol dimethyl ether	112492
Triethylene glycol monomethyl ether	112356
Triisobutylene	7756947
Trimellitic anhydride	552307
Trimethyl-1,3-pentanediol (2,2,4-)	144194
Trimethyl-1-pentanol (2,4,4-)	16325636
Trimethylamine	75503
Trimethylcyclohexanol	933482

TABLE 1 TO SUBPART YYY—LIST OF SOCMI CHEMICALS—Continued

Chemical name[a]	CAS No.[b]
Trimethylcyclohexanone	2408379
Trimethylcyclohexylamine	34216347
Trimethylolpropane	77996
Trimethylpentane (2,2,4-)	540841
Tripropylene glycol	24800440
Urea	57136
Vinyl chloride (Chloroethylene)	75014
Vinyl acetate	108054
Vinyl toluene	25013154
Vinyl (N-)-pyrrolidone (2-)	88120
Vinylcyclohexene (4-)	100403
Vinylidene chloride (1,1-dichloroethylene)	75354
Vinylpyridine (2-)	100696
Xanthates	140896
Xylene sulfonic acid	25321419
Xylene (m-)	108383
Xylene (o-)	95476
Xylene (p-)	106423
Xylenes (NOS)[c]	1330207
Xylenols (Mixed)	1300716
Xylidene (dimethylbenzene diamine)	1300738
Xylidene (2,3-)	1300738
Xylidene (2,6-)	1300738
Xylidene (2,5-)	1300738
Xylidene (3,5-)	1300738
Xylidene (2,4-)	1300738
Xylidene (3,4-)	1300738
Zinc acetate	5970456

[a] Isomer means all structural arrangements for the same number of atoms of each element and does not mean salts, esters, or derivatives.

[b] CAS Number = Chemical Abstract Service number.

TABLE 2 TO SUBPART YYY—APPLICABILITY OF 40 CFR PART 60 GENERAL PROVISIONS TO SUBPART YYY

Reference	Applies to subpart YYY	Subject/comment
60.1	Yes	Applicability.
60.2	Yes	Definitions. If a term is defined in both the General Provisions and subpart YYY, the definition in YYY shall override the definition in the General provisions.
60.3	Yes	Units and abbreviations.
60.4	Yes	Address.
60.5	Yes	Determination of construction or modification.
60.6	Yes	Review of plans.
60.7(a)(1)	Yes	Submit a notification of the date construction or reconstruction commences.
60.7(a)(2)	Yes	Submit a notification of anticipated date of initial startup.
60.7(a)(3)	Yes	Submit a notification of actual date of initial startup.
60.7(a)(4)	Yes	Submit a notification of any physical or operational change to an existing facility which increases the emission rate of any air pollutant.
60.7(a)(5)	No	Continuous monitoring requirements and associated reporting and recordkeeping are specified in §§ 60.781, 60.784, and 60.785 of subpart YYY.
60.7(a)(6)–160.7(a)(7)	No	Subpart YYY is not an opacity standard.
60.7(b)	No	§ 60.785(f)(7) of subpart YYY specify which records to maintain to document periods of startup, shutdown, or malfunction; and periods when a continuous monitoring system is inoperative.
60.7(c), (d), and (e)	No	The semiannual report required in § 60.784(d) includes reports of all excursions and all periods when monitoring parameters are above the maximum or below the minimum established value. § 60.784(e) specifies semiannual reporting for treatment processes. Excess emissions are discussed and defined in § 60.787(a)(3) and must be recorded in the startup, shutdown, and malfunction plan as specified in § 60.787.
60.7(f)	No	§ 60.785 specifies data retention and the types of records that must be maintained.
60.7(g)–(h)	Yes	
60.8	No	The performance testing requirements in 40 CFR 63.7 apply to subpart YYY as specified in Table 2A of this subpart.
60.9	Yes	Availability of information.
60.10	Yes	State authority.
60.11	No	Subpart YYY is not an opacity standard. Operation and maintenance requirements are specified throughout subpart YYY.
60.12	Yes	Circumvention.
60.13(a)	No	Continuous monitoring requirements are specified in § 60.781.
60.13(b)	Yes	Except use 40 CFR part 63.11 in place of the § 60.8 reference to performance tests.

Table 2 To Subpart YYY—Applicability of 40 CFR Part 60 General Provisions to Subpart YYY—Continued

Reference	Applies to subpart YYY	Subject/comment
60.13(c)–(d)	No	Opacity and continuous emission monitoring not required in subpart YYY.
60.13(e)	No	Monitoring frequency is specified in § 60.781.
60.13(f)	Yes	Except § 60.781(g), which pertains to installation, calibration, and maintenance of monitoring equipment, applies, also.
60.13(g)	No	The locations to install CMS are specified in § 60.781.
60.13(h)	No	Provisions explaining how to calculate continuous parameter monitoring values are specified in § 60.785.
60.13(i)(1)–(i)(7), (i)(9)	Yes	Alternatives to monitoring methods or procedures must be approved by the Administrator.
60.13(i)(8)	No	Opacity monitoring not required in subpart YYY.
60.13(j)	No	Continuous emission monitoring not required in subpart YYY.
60.14(a)	No	A modification is determined as specified in § 60.772(b).
60.14(b)	No	VOC emissions are determined as specified in § 60.772(f).
60.14(c)	No	
60.14(d)	No	Reserved.
60.14(e)	No	Types of physical and operational changes that are not modifications are specified in § 60.772(c).
60.14(f)–(g)	Yes	
60.14(h)–60.14(l)	Yes	List of changes and projects that are exempt from modification provisions.
60.15	Yes	Except 60.772(g) specifies additional requirements for "fixed capital cost of the new components."
60.16	Yes	Prioritized major source categories.
60.17	Yes	Incorporations by reference.
60.18	No	Control device requirements are specified in 40 CFR part 63.11, as specified in Table 2A of this subpart.
60.19	Yes	General notification and reporting requirements.

Table 2A to Subpart YYY—Applicability of 40 CFR Part 63 General Provisions to Subpart YYY

Reference	Applies to subpart YYY	Subject/comment
63.6(e)(3)(i)	Yes	The startup, shutdown, malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(B)	Yes	
63.6(e)(3)(i)(C)	Yes	
63.6(e)(3)(ii)	Yes	
63.6(e)(3)(v)	Yes	
63.6(e)(3)(vi)	Yes	
63.6(e)(3)(vii)	Yes	
63.6(e)(3)(vii)(A)	Yes	
63.6(e)(3)(vii)(B)	Yes	Except the plan shall provide for operation in compliance with § 60.787(a)(3).
63.6(e)(3)(vii)(C)	Yes	
63.6(e)(3)(viii)	Yes	
63.7(a)(3)	Yes	
63.7(d)	Yes	
63.7(e)(1)–(e)(2)	Yes	Except § 60.783(a)(8), representative process unit operating conditions, and (a)(9), representative treatment process or control device operating conditions, also address this issue.
63.7(e)(4)	Yes	
63.7(h)(1)–(h)(2)	Yes	
63.7(h)(5)	Yes	
63.9(a)(4)	Yes	
63.9(b)(5)	Yes	
63.11	Yes	

Table 3 to Subpart YYY—Control Requirement Options for Wastewater Tanks, Surface Impoundment, Containers, Individual Drain Systems, and Oil-Water Separators

Unit operation	Part 63, subpart G (HON)	Part 63 (standard-standards)	Part 60, subpart QQQ (petroleum refinery)	Part 264, subpart CC (RCRA CC)	Part 265, subpart CC (RCRA CC)	Part 61, subpart FF (benzene waste)
Wastewater Tanks	§ 63.133			§ 264.1084	§ 265.1085	§ 61.343
Surface Impoundments	§ 63.134	§§ 63.942 and 63.943 of Subpart QQ.		§ 264.1085	§ 265.1086	§ 61.344

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TABLE 3 TO SUBPART YYY—CONTROL REQUIREMENT OPTIONS FOR WASTEWATER TANKS, SURFACE IMPOUNDMENT, CONTAINERS, INDIVIDUAL DRAIN SYSTEMS, AND OIL-WATER SEPARATORS—Continued

Unit operation	Part 63, subpart G (HON)	Part 63 (standard-standards)	Part 60, subpart QQQ (petroleum refinery)	Part 264, subpart CC (RCRA CC)	Part 265, subpart CC (RCRA CC)	Part 61, subpart FF (benzene waste)
Containers	§ 63.135	§§ 63.922 and 63.923 of Subpart PP.		§ 264.1086	§ 265.1087	§ 61.345
Individual Drain System	§ 63.136	§ 63.962 of Subpart RR.	§ 60.693–1			§ 61.346
Oil-water separators	§ 63.137	§§ 63.1042, 63.1043, and 63.1044 of Subpart VV.				§ 61.347

TABLE 4 TO SUBPART YYY—WASTEWATER TANKS REQUIRING CONTROLS AND CONTROL REQUIREMENTS

Capacity (m³)	Vapor pressure (kPa)	Control requirements
<75		FR, IFR, EFR, or CVS and CD.
≥75 and <151	<13.1	FR, IFR, EFR, or CVS and CD.
	≥13.1	IFR, EFR, or CVS and CD.
≥151	<5.2	FR, IFR, EFR, or CVS and CD.
	≥5.2	IFR, EFR, or CVS and CD.

FR means fixed roof requirements in the applicable compliance option.
IFR means internal floating roof requirements in the applicable compliance option.
EFR means external floating roof requirements in the applicable compliance option.
CVS and CD means closed vent system routed to a control device requirements in the applicable compliance option.

TABLE 5 TO SUBPART YYY—COMPLIANCE OPTIONS FOR WASTEWATER TANKS, SURFACE IMPOUNDMENTS, CONTAINERS, INDIVIDUAL DRAIN SYSTEMS, AND OIL-WATER SEPARATORS

Headings within § 60.774	Part 63, subpart G (HON)	Part 63 (standard-standards)	Part 60, subpart QQQ (petroleum refinery)	Part 264, subpart CC (RCRA CC)	Part 265, subpart CC (RCRA CC)	Part 61, subpart FF (benzene waste)
Control Requirements.	If WMU subject to YYY or HON, then comply with HON control requirements.	Comply with subpart QQ, PP, RR, or VV control requirements, as applicable.	If WMU subject to YYY or Petroleum Refinery for individual drain systems, then comply with Petroleum Refinery control requirements.	If WMU subject to YYY and RCRA, part 264, then comply with RCRA, part 264 control requirements.	If WMU subject to YYY and RCRA, part 265, then comply with RCRA, part 265 control requirements.	If WMU subject to YYY and Benzene Waste, then comply with Benzene Waste control requirements.
Monitoring	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to part RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.
Reporting	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions *.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions **.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.

TABLE 5 TO SUBPART YYY—COMPLIANCE OPTIONS FOR WASTEWATER TANKS, SURFACE IMPOUNDMENTS, CONTAINERS, INDIVIDUAL DRAIN SYSTEMS, AND OIL-WATER SEPARATORS—Continued

Headings within §60.774	Part 63, subpart G (HON)	Part 63 (standard-standards)	Part 60, subpart QQQ (petroleum refinery)	Part 264, subpart CC (RCRA CC)	Part 265, subpart CC (RCRA CC)	Part 61, subpart FF (benzene waste)
Recordkeeping	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions[*].	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.
Leak Detection	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.
Delay of repair	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with std-stds provisions or YYY provisions.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to RCRA, part 264, then can comply with either RCRA, part 264 or YYY provisions; if WMU not subject to RCRA, part 264, comply with YYY provisions	If WMU subject to RCRA, part 265, then can comply with either RCRA, part 265 or YYY provisions; if WMU not subject to RCRA, part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.
Control device	If WMU subject to HON, can comply with either HON or YYY provisions; if WMU not subject to HON, comply with YYY provisions.	Comply with YYY provisions.	If WMU subject to Petroleum Refinery, then can comply with either Petroleum Refinery or YYY provisions; if WMU not subject to Petroleum Refinery, comply with YYY provisions.	If WMU subject to part RCRA 264, then can comply with either RCRA part 264 or YYY provisions; if WMU not subject to RCRA part 264, comply with YYY provisions.	If WMU subject to RCRA, part 265, then can comply with either RCRA part 265 or YYY provisions; if WMU not subject to RCRA part 265, comply with YYY provisions.	If WMU subject to Benzene Waste, then can comply with either Benzene Waste or YYY provisions; if WMU not subject to Benzene Waste, comply with YYY provisions.

[*] The owner or operator shall comply with the recordkeeping and reporting provisions in §§60.784 and 60.785 of this subpart when complying with the provisions for containers in subpart PP.

[**] The owner or operator shall comply with the reporting provisions in §60.784 of this subpart when complying with the provisions of RCRA, 40 CFR part 265.

TABLE 6 TO SUBPART YYY—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF §60.775

Item of equipment	Control requirement[a]
Drain or drain hub	(a) Tight fitting solid cover (TFSC); or (b) TFSC with a vent to either a fuel gas system or to a control device meeting the requirements of §60.780; or (c) Water seal with submerged discharge or barrier to protect discharge from wind.
Manhole[b]	(a) TFSC; or (b) TFSC with a vent to a control device meeting the requirements of §60.780; or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in diameter.
Lift station	(a) TFSC; or (b) TFSC with a vent to a control device meeting the requirements of §60.780; or

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TABLE 6 TO SUBPART YYY—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 60.775—Continued

Item of equipment	Control requirement[a]
	(c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level
Trench	(a) TFSC; or (b) TSFC with a vent to a control device meeting the requirements of § 60.780; or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
Oil/Water separator	(a) Equip with a fixed roof and closed vent system that routes vapors to a control device meeting the requirements of § 60.780; or (b) Equip with a floating roof that meets the equipment specifications of § 60.693 (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).
Tank[c]	Maintain a fixed roof[d]. If the tank is sparged[e] or used for heating or treating by means of an exothermic reaction, a fixed roof and a closed vent system shall be maintained that routes the VOC vapors to a control device that meets the requirements of § 60.780.

[a] Where a tight fitting solid cover (TFSC) is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.

[b] Manhole includes sumps and other points of access to a conveyance system

[c] Applies to tanks with capacities of 38 m^3 or greater.

[d] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.

[e] The liquid in the tank is agitated by injecting compressed air or gas.

TABLE 7 TO SUBPART YYY—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES

To comply with	Parameters to be monitored	Frequency	Methods
1. Required mass removal of each organic treated in a properly operated biological treatment unit § 60.779.	Appropriate parameters as specified in § 60.781(c) and approved by the permitting authority.	Appropriate frequency as specified in § 60.781(c) and as approved by permitting authority.	Appropriate methods as specified in § 60.781(c) and as approved by permitting authority.
2. Design steam stripper § 60.779(d).	Steam flow rate	Continuously	Integrating steam flow monitoring device equipped with a continuous recorder.
	Wastewater feed mass flow rate	Continuously	Liquid flow meter installed at stripper influent and equipped with a continuous recorder.
	Wastewater feed temperature	Continuously	Liquid temperature monitoring device installed at stripper influent and equipped with a continuous recorder.
3. Alternative monitoring parameters.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements specified in § 60.781(d).		

TABLE 8 TO SUBPART YYY—MONITORING REQUIREMENTS FOR CONTROL DEVICES

Control device	Monitoring equipment required	Parameters to be monitored	Frequency
All control devices	1. Flow indicator installed at all bypass lines to the atmosphere and equipped with continuous recorder[b] *or.*	1. Diversion to the atmosphere from the control device *or.*	Hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during each hour. Record and report the times of all periods when emissions are diverted through a bypass line or the flow indicator is not operating.
	2. Valves sealed closed with car-seal or lock-and-key configuration.	2. Monthly inspections of sealed valves	Monthly.
Thermal Incinerator	Temperature monitoring device installed in firebox or in ductwork immediately downstream of firebox[a] and equipped with a continuous recorder[b].	Firebox temperature	Continuous.

TABLE 8 TO SUBPART YYY—MONITORING REQUIREMENTS FOR CONTROL DEVICES—Continued

Control device	Monitoring equipment required	Parameters to be monitored	Frequency
Catalytic Incinerator	Temperature monitoring device installed in gas stream immediately before and after catalyst bed and equipped with a continuous recorder[b].	1. Temperature upstream and downstream of catalyst bed. 2. Temperature difference across catalyst bed.	Continuous.
Flare	Heat sensing device installed at the pilot light and equipped with a continuous recorder[b].	Presence of a flame at the pilot light ...	Hourly records of whether the monitor was continuously operating and whether the pilot flame was continuously present during each hour.
Boiler or process heater <44 megawatts and vent stream is not mixed with the primary fuel.	Temperature monitoring device installed in firebox[a] and equipped with continuous recorder[b].	Combustion temperature	Continuous.
Condenser	Temperature monitoring device installed at condenser exit and equipped with continuous recorder[b].	Condenser exit (product side) temperature.	Continuous.
Carbon Adsorber (Regenerative).	Integrating regeneration stream flow monitoring device having an accuracy of ±10 percent, *and*. Carbon bed temperature monitoring device.	1. Total regeneration stream mass or volumetric flow during carbon bed regeneration cycle(s). 2. Temperature of carbon bed after regeneration [and within 15 minutes of completing any cooling cycle(s)].	For each regeneration cycle, record the total regeneration stream mass or volumetric flow. For each regeneration cycle and within 15 minutes of completing any cooling cycle, record the carbon bed temperature.
Carbon Adsorber (Non-regenerative).	Organic compound concentration monitoring device[c].	Organic compound concentration of adsorber exhaust.	Daily or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater.
Alternative monitoring parameters.	Other parameters may be monitored upon approval from the Administrator in accordance with the requirements in § 60.781(e)(3).		

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.

[b] "Continuous recorder" is defined in § 60.771 of this subpart.

[c] As an alternative to conducting this monitoring, an owner or operator may replace the carbon in the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system.

TABLE 9 TO SUBPART YYY—INFORMATION ON PROCESS WASTEWATER STREAMS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS[a, b]

Process unit identification code[c]	Stream identification code	VOC concentration (ppmw)[d, e]	Flow rate (lpm)[e, f]	Group 1 or Group 2[g]	Compliance approach[h]	Treatment process(es) identification[i]	Waste management unit(s) identification	Intended control device

[a] The information specified in this table 9 must be submitted; however, it may be submitted in any format. This table 9 presents an example format.

[b] Other requirements for the Notification of Compliance Status are specified in § 60.784(c).

[c] Also include a description of the process unit (e.g., benzene process unit).

[d] Except when § 60.773(c) is used, annual average concentration as specified in § 60.773(b) and § 60.782.

[e] When § 60.773(c) is used, indicate the wastewater stream is a designated Group 1 wastewater stream.

[f] Except when § 60.773(c) is used, annual average flowrate as specified in § 60.773(b) and § 60.782.

[g] Indicate whether stream is Group 1 or Group 2.

[h] Cite § 60.779 compliance option used.

[i] Identification codes should correspond to those listed in Table 10 of this subpart.

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TABLE 10 TO SUBPART YYY—INFORMATION FOR TREATMENT PROCESSES TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a,b]

Treatment process identification [c]	Description [d]	Wastewater stream(s) treated [e]	Monitoring parameters [f]

[a] The information specified in this table 10 must be submitted; however, it may be submitted in any format. This table 10 presents an example format.

[b] Other requirements for the Notification of Compliance Status are specified in § 60.784(c) of this subpart.

[c] Identification codes should correspond to those listed in Table 9 of this subpart.

[d] Description of treatment process (e.g., steam stripper).

[e] Stream identification code for each wastewater stream treated by each treatment unit. Identification codes should correspond to entries listed in Table 9 of this subpart.

[f] Parameter(s) to be monitored or measured in accordance with Table 7 and § 60.781 of this subpart.

TABLE 11 TO SUBPART YYY—INFORMATION FOR WASTE MANAGEMENT UNITS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a, b]

Waste management unit Identification	Description [d]	Wastewater stream(s) received or managed [e]

[a] The information specified in this table 11 must be submitted; however, it may be submitted in any format. This table 11 presents an example format.

[b] Other requirements for the Notification of Compliance Status are specified in § 60.784(c) of this subpart.

[c] Identification codes should correspond to those listed in Table 9 of this subpart.

[d] Description of waste management unit.

[e] Stream identification code for each wastewater stream received or managed by each waste management unit. Identification codes should correspond to entries listed in Table 9 of this subpart.

TABLE 12 TO SUBPART YYY—INFORMATION ON RESIDUALS TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a, b]

Residual identification [c]	Residual description [d]	Wastewater stream identification [e]	Treatment process [f]	Fate [g]	Control device identification code	Control device description [h]	Control device efficiency [i]

[a] The information specified in this table 12 must be submitted; however, it may be submitted in any format. This table 12 presents an example format.

[b] Other requirements for the Notification of Compliance Status are specified in § 60.784(c) of this subpart

[c] Name or identification code of residual removed from Group 1 wastewater stream.

[d] Description of residual (e.g., steam stripper A–13 overhead condensates)

[e] Identification of stream from which residual is removed.

[f] Treatment process from which residual originates

[g] Indicate whether residual is sold, returned to production process, or returned to waste management unit or treatment process, or whether VOC mass of residual is destroyed by 99 percent.

[h] If the fate of the residual is such that the VOC mass is destroyed by 99 percent, give description of device used for VOC destruction.

[i] If the fate of the residual is such that the VOC mass is destroyed by 99 percent, provide an estimate of control device efficiency and attach substantiation in accordance with § 60.784(c)(5) of this subpart.

TABLE 13 TO SUBPART YYY—SEMIANNUAL REPORTING REQUIREMENTS FOR CONTROL DEVICES [§ 60.784(F)]

Control Device	Reporting Requirements
Thermal Incinerator	1. Report all daily average [a] temperatures that are above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected
Catalytic Incinerator	1. Report all daily average [a] upstream temperatures that are above the maximum or below the minimum operating parameter value established in the NCS [b] or operating permit.

TABLE 13 TO SUBPART YYY—SEMIANNUAL REPORTING REQUIREMENTS FOR CONTROL DEVICES [§ 60.784(F)]—Continued

Control Device	Reporting Requirements
	2. Report all daily average[a] temperature differences across the catalyst bed that are above the maximum or below the minimum operating parameter value established in the NCS[b] or operating permit. 3. Report all operating days when insufficient monitoring data are collected.[c]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and vent stream is not mixed with the primary fuel.	1. Report all daily average[a] firebox temperatures that are above the maximum or below the minimum operating parameter value established in the NCS[b] or operating permit and all operating days when insufficient monitoring data are collected.[c]
Flare	1. Report the duration of all periods when all pilot flames are absent.
Condenser	1. Report all daily average[a] exit temperatures that are above the maximum or below the minimum operating parameter value established in the NCS[b] or operating permit and all operating days when insufficient monitoring data are collected.[c]
Carbon Adsorber	1. Report all carbon bed regeneration cycles when the total regeneration stream mass or volumetric flow is above the maximum or below the minimum operating parameter value established in the NCS[b] or operating permit. 2. Report all carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is above the maximum or below the minimum operating parameter value established in the NCS[b] or operating permit. 3. Report all operating days when insufficient monitoring data are collected.[c]
All Control Devices	1. Report the times and durations of all periods when the vent stream is diverted through a bypass line or the monitor is not operating, or 2. Report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed.

[a] The daily average is the average of all values recorded during the operating day, as specified in § 60.785(e) of this subpart.

[b] NCS = Notification of Compliance Status described in § 60.784(c) of this subpart.

[c] The semiannual reports shall include the duration of periods when monitoring data are not collected for each excursion as defined in § 60.784(d)(3) of this subpart.

TABLE 14 TO SUBPART YYY—COMPOUND AND DEFAULT BIORATES USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 60.783(H))

Compound name	Biorate, K1 L/g MLVSS-hr
Acetonitrile	0.100
Acetophenone	0.538
Acrylonitrile	0.750
Biphenyl	5.643
Chlorobenzene	10.000
Dichloroethyl Ether (bis (2-chloroethyl ether)	0.246
Diethyl Sulfate	.0105
Dimethyl Hydrazine (1,1-)	0.227
Dimethyl Sulfate	0.178
Dinitrophenol (2,4-)	0.620
Dinitrotoluene (2,4-)	0.784
Dioxane (1,4-) (1,4-diethylene oxide)	0.393
Ethylene Glycol Dimethyl Ether	0.364
Ethylene Glycol Monobutyl Ether Acetate	0.496
Ethylene Glycol Monomethyl Ether Acetate	0.159
Hexachlorobenzene	16.179
Isophorone	0.598
Methanol	0.200
Methyl Methacrylate	4.300
Nitrobenzene	2.300
Toluidine (-o)	0.859
Trichlorobenzene (1,2,4-)	4.393
Trichlorophenol (2,4,5-)	4.477
Triethylamine	1.064

3. Part 60 is amended by adding appendix J to read as follows:

Appendix J to Part 60—How to Determine Henry's Law Constants, Fm Values, Fr Values, and Fe Values for Organic Compounds

1. *Use of Appendix and General Information.* This appendix has four sections. Section 2 contains the procedures for determining Henry's law constants, fraction measured (Fm) values, fraction removed values (Fr), and fraction emitted (Fe) values for an individual chemical. Section 3 describes how to locate certain resources. Section 4 contains five tables and thirteen forms.

1.1 You should use this appendix if you need to:

1. Determine whether a chemical has a Henry's law constant at 25° C that is less than 0.1 y/x atmosphere per mole fraction (see section 2.1).

2. Determine a fraction measured (Fm) value for a chemical (see section 2.2).

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3. Subtract the concentration of a chemical from a Method 25D concentration (see section 2.3).

4. Determine the fraction removed (Fr) value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x atmosphere per mole fraction (see section 2.4).

5. Determine the fraction emitted (Fe) value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x atmosphere per mole fraction (see section 2.5).

6. Calculate a Henry's law constant at a specific temperature using a Henry's law constant at a different temperature for the same chemical (see section 2.6).

1.2 This appendix requires documentation for some procedures. The referencing subpart, i.e., the rule to which you are complying, may require additional recordkeeping and may specify records concerning this appendix that are to be included in reports.

1.3 When the term "WATER8" is used in this appendix, the term "WATER8, or updates to WATER8" must be used for the purposes of this appendix. When the term "CHEM9" is used in this appendix, the term "CHEM9, or updates to CHEM9" must be used for the purposes of this appendix. When the terms "waste" or "wastewater" are used in this appendix, the term "waste or wastewater, as applicable to the referencing subpart" must be used for the purposes of this appendix. When the terms "Henry's law constant" or "Henry's law constants" are used in this appendix, the terms "Henry's law constant(s) with units of atmosphere per mole fraction" must be used for the purposes of this subpart.

2. *Procedures.*

2.1 *How to determine whether a chemical has a Henry's law constant at 25° C that is less than 0.1 y/x.* You must use one of the following to determine whether a chemical has a Henry's law constant that is less than 0.1 y/x atmosphere per mole fraction.

2.1.1 *Use Table 1.* The chemicals listed in Table 1 have a Henry's law constant at 25° C that is less than 0.1 y/x atmosphere per mole fraction.

2.1.2 *Use CHEM9 or WATER8.* Use CHEM9 or WATER8 to determine the Henry's law constant at 25° C. You must know compound properties, such as solubility in water and vapor pressure, and the structure of the compound to estimate a Henry's law constant using CHEM9 or WATER8.

2.1.3 *Determine experimentally.* The Henry's law constant may be measured by several laboratory techniques. These techniques can be categorized as either two phase closed systems techniques or open system techniques.

2.1.3.1 *Two phase closed systems.* For two phase closed system techniques, the volume of each phase and two concentration measurements are needed. The concentration measurements are: (1) concentration in one of the phases, and (2) either the concentration in the other phase or the total concentration in both phases. Use Form 1 to calculate the Henry's law constant for two phase closed systems.

2.1.3.2 *Open systems.* For open systems, gas is passed through a liquid volume containing the compound. The Henry's law constant is calculated from the rate of stripping of the compound from the water. Use Form 2 to calculate the Henry's law constant for open systems.

2.1.4 *Calculate a Henry's law constant at 25° C from a Henry's law constant at a different temperature for the same chemical* Use the procedures specified in section 2.6 to calculate a Henry's law constant at 25° C from a Henry's law constant at a different temperature for the same chemical.

2.2. *How to determine a Fm value for a chemical.* Fm means compound-specific fraction measured factor, and it has the units of mass measured by Method 25D divided by the total mass in the wastewater. You must use one of the following to determine the Fm value for a chemical.

2.2.1 *Use Table 1 or Table 2.* To determine the Fm value for a chemical with a Henry's law constant at 25° C that is less than 0.1 y/x atmosphere per mole fraction, use the Fm value listed for the chemical in Table 1. To determine the Fm value for a chemical with a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x, use the Fm value listed for the chemical in Table 2.

Note to section 2.2.1: Table 1 and Table 2 include Fm values for Method 25D and for Method 305. Unless otherwise specified in this appendix or the referencing subpart, use the Fm values for Method 25D.

2.2.2 *Use CHEM9.* Use CHEM9 to determine an Fm value. You must know the structure of the chemical and certain other compound properties, e.g., boiling point, Antoine's coefficients, vapor pressure, and solubility in water, to estimate an fm value using CHEM9. The accuracy of the computer estimation procedure depends on the nature of the compound and the quality of the available data. The procedure is flexible in that the method can be used with a variety of different types of compound data. You must confirm and document the compound properties used as inputs for CHEM9 and the lack of availability for missing compound properties. In some cases, this method is not accurate, especially with missing compound properties. Before accepting the estimation values of CHEM9 in these cases, you must document the consistency of the predicted values with other related experimental data.

2.2.3 *Measure the Fm value.* Spike a sample of waste with a known amount of the compound of interest. Measure the concentration of the sample using Method 25D. The Fm value for the recovery of a specific chemical is the ratio of the Method 25D concentration to the actual concentration in the waste sample. You must minimize loss of organic compounds during sample collection and analysis, and maintain sample integrity. An example of acceptable sampling and handling procedures are the sampling and handling requirements in Method 25D.

2.2.4 *Extrapolating a Method 25D Fm Value from a Method 305 Fm value.* Method 305 measures the recovered concentration, not the actual concentration in the wastewater. The Method 25D correction value may be obtained from the Method 305 value and the ratio of the Method 25D value to the Method 305 value for that compound. This ratio for a compound is independent of the wastewater and may be determined once for each compound.

2.3 *How to subtract a chemical from a Method 25D concentration.* You must follow the procedures specified in sections 2.3.1 through 2.3.5 to subtract a chemical's concentration from the total concentration measured by Method 25D. You may only subtract from the total Method 25D concentration compounds for which you have a measured concentration (i.e., you must not subtract compounds for which test results are below the quantification limit.) If an Fm value cannot be determined for a chemical, the concentration of the chemical cannot be subtracted from the Method 25D results. You must follow the procedures in Form 3 to subtract a chemical from a Method 25D concentration. Form 4 provides an example.

2.3.2 *Determine the concentration for each chemical in the wastewater stream that will be subtracted from the Method 25D concentration.* The concentration for each chemical must be determined using a method and sampling procedure specified in the referencing subpart. Methods other than Method 25D and Method 305 are considered alternative methods for the purposes of this appendix.

2.3.3 *Determine the correct Fm value.* If an Fm value is needed, use the procedures in section 2.2 of this appendix to determine the correct Fm value.

2.3.4 *Adjust the concentration of chemicals which may be subtracted from the Method 25D concentration.* You must multiply the concentration of the chemical measured by the alternative method (i.e., a method that is not Method 25D or Method 305 and that is specified in the referencing subpart) by the Method 25D Fm. The product will be the adjusted concentration for that chemical. This adjustment must be done for each chemical you subtract from the concentration measured by Method 25D.

2.3.5 *Subtract.* Subtract the product(s) you calculated from the Method 25D concentration.

2.4 *How to determine an Fr value for a chemical with a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x.* Fr means fraction removal value and is unitless. You must use one of the following to determine a Fr value.

2.4.1 *Use Table 2.* Use the Fr value listed for the chemical in Table 2. The chemicals listed in table 2 have a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x.

2.4.2 *Use 0.99.* Assign an Fr value of 0.99 to any chemical. This is the highest Fr value that is assigned to a chemical.

2.4.3 *Use CHEM9.* Use CHEM9 to determine the Fr value of a chemical. You must know the compound structure and the Henry's law constant at 100° C to estimate an Fr value using CHEM9. The Henry's law constant at 100° C for a chemical must be determined as specified in either section 2.4.3.1, 2.4.3.2, or 2.4.3.3. The method used to determine the Henry's law constant at 100° C for a chemical must be documented.

2.4.3.1 *Determine Henry's law at 100° C experimentally.* The Henry's law constant may be measured by several laboratory techniques. These techniques can be categorized as either two phase closed systems techniques or open system techniques.

2.4.3.1.1 *Two phase closed systems.* For two phase closed system techniques, the volume of each phase and two concentration measurements are needed. The concentration measurements are: (1) concentration in one of the phases, and (2) either the concentration in the other phase or the total concentration in both phases. Use Form 1 to calculate the Henry's law constant for two phase closed systems.

2.4.3.1.2 *Open systems.* For open systems, gas is passed through a liquid volume containing the compound. The Henry's law constant is calculated from the rate of stripping of the compound from the water. Use Form 2 to calculate the Henry's law constant for open systems.

2.4.3.2 *Calculate a Henry's law constant at 100° C from a Henry's law constant at a different temperature for the same chemical.* Use the procedures in section 2.6 to calculate a Henry's law constant at 100° C from a Henry's law constant at a different temperature for the same chemical.

2.4.3.3 *Literature Value.* Experimental values of Henry's law constants at a 100° C for some chemicals are available in data bases or reported in the literature. You must provide the reference for and description of any database or literature you used.

2.5 *How to determine an Fe value for a chemical that has a Henry's law constant at 25° C that is greater than or equal to 0.1 y/x.* Use the appropriate Fe value as specified in the referencing subpart.

2.5.1 *Default Fe values for emissions from both the individual drain system and the treatment process.* You must measure the temperature of the wastewater stream at the point of determination, unless another location is specified by the referencing subpart. If the temperature of the wastewater stream is less than or equal to 35° C, you may use the default Fe values listed in either Table 2 or Table 3. If the temperature of the wastewater stream is greater than 35° C, you must use the default Fe values listed in Table 3.

2.5.1.1 *Use Table 2.* To use Table 2, use the default Fe value listed for the chemical in Table 2.

2.5.1.2 *Use Table 3.* You must either use a default Fe listed in Table 3 or use Table 3 to interpolate an Fe value. To use Table 3, you must determine the chemical's Henry's law constant at the temperature you measured for the wastewater stream. You must find this Henry's law constant in the table and select an Fe value greater than or equal to the Fe value that corresponds to the Henry's law constant.

2.5.2 *Site-specific Fe values for emissions from the individual drain system.* Use WATER8 and Forms 6 and 7 for each type of waste management unit modeled and Forms 8 through 13, as appropriate for the different types of waste management units. (Note that this Fe value does not include Fe values for the treatment process.)

2.5.3 *Default Fe values for emissions from the biological treatment process (Fet).* The default Fe values in Table 4 and Table 5 are Fe values for the biological treatment system (i.e., the wastewater treatment plant) and have been assigned the abbreviation "Fet." You must measure the temperature of the wastewater stream(s) treated in the biological treatment system at the inlet to the biological treatment system (e.g., at the bar screen). If the temperature of the wastewater stream(s) is less than or equal to 35° C, you must use either Table 4 or Table 5 to determine the Fet value. If the temperature of the wastewater stream is greater than 35° C, you must use Table 5 to determine the Fet value.

2.5.3.1 *Use Table 4.* To use Table 4, use the default Fet value listed for the chemical in Table 4.

2.5.3.2 *Use Table 5.* To use Table 5, you must either use a default Fet listed in Table 5 or use Table 5 to interpolate an Fet value. You must determine the chemical's Henry's law constant at the temperature you measured for the wastewater stream. You must find this Henry's law constant in the table and select an Fet value greater than or equal to the Fet value that corresponds to the Henry's law constant.

2.6 *How to calculate a Henry's law constant from a Henry's law constant at a different temperature for the same chemical.* Use WATER8 and Form 5 to estimate a Henry's law constant from a Henry's law constant at a different temperature for the same chemical.

3. *Location of resources.*

3.1 *Where to find information on CHEM9 and WATER8.*

3.1.1 *CHEM9 and WATER8 access via Internet.* You can find CHEM9 and WATER8 on the Internet by accessing EPA's Technology Transfer Network (TTN) via the Internet. The Internet address is: http://www.epa.gov/ttn/chief/software.html. If you need more information on the TTN, contact the systems operator at (919) 541–5384.

3.1.2 *Procedures used in CHEM9.* Reports describing the CHEM9 procedures for estimating Fm, Fr, and Fe values are in Docket Number A–94–32, Item IV–A–1. The database for CHEM9 is not available as a hard copy.

Docket No. A–94–32 is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

3.2 *Methods.*

Method 25D can be found in 40 CFR part 60, Appendix A.

Method 305 can be found in 40 CFR part 63, Appendix A.

4. *Tables and Forms.* This section contains 5 tables and 13 forms.

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
1H IMIDAZOLE	0.000004	0.001	0.001
2,4 D	0.000000	0.151	0.167
2,4,5 BENZOIC ACID	0.000007	0.000	0.000
2-HYDROXYETHANAL	0.001400	0.031	0.059
3,4-DIMETHYLPHENOL xylenol	0.004200	0.018	0.017
3,5-DIBROMO-4HYDROXYBENZONITRILE	0.011700	0.021	0.033
3-OXOPROPANOIC ACID	0.007900	0.002	0.004
4-OXOBUTANOIC ACID	0.011100	0.004	0.006
5-OXOPENTANOIC ACID	0.013900	0.005	0.007
ACETALDOL	0.001900	0.011	0.016
ACETAMIDE	0.000100	0.305	0.463
ACETYL-2-THIOUREA, 1-	0.001600	0.034	0.053
ACETYL-5-HYDROXYPIPERIDINE 3	0.038900	0.001	0.001
ACETYLAMINOFLUORENE, 2-	0.074400	0.020	0.018
ACETYLPIPERIDINE 3	0.006900	0.151	0.175
ACRIDINE ORANGE*	0.013300	0.050	0.049
ACRIDINE YELLOW*	0.000400	0.001	0.001
ACRYLAMIDE	0.000015	0.003	0.003
ACRYLIC ACID	0.011000	0.431	0.643
ADAMANTANE DICARBOXYLIC ACID	0.002600	0.001	0.001

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION—Continued

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
ADENINE	0.000005	0.001	0.002
ADIPIC ACID	0.000003	0.001	0.001
ADIPONITRILE	0.000700	0.004	0.004
ALACHLOR (M)	0.001800	0.090	0.090
alpha-PICOLINE	0.025900	0.870	0.842
AMETRYN	0.000001	0.001	0.001
AMINOBIPHENYL, 4-	0.017200	0.012	0.011
AMINOETHYLPIPERAZINE	0.000021	0.001	0.001
AMINOPHENOL, 3-	0.003400	0.035	0.040
AMINOPYRIDINE, 4-	0.000005	0.000	0.001
ANILINE	0.097800	0.142	0.138
ANISIDINE, o-	0.097200	0.011	0.013
ANTHRAQUINONE	0.000200	0.001	0.001
ATRAZINE (M)	0.000200	0.117	0.117
BENZENE ACETIC ACID	0.025500	0.014	0.015
BENZENE ARSONIC ACID (M)	0.000006	0.124	0.124
BENZENE DICARBOXYLIC ACID	0.000900	0.001	0.001
BENZENE SULFONIC ACID (M)	0.043900	0.146	0.146
BENZIDINE	0.000001	0.000	0.000
BENZO (A) ANTHRACENE	0.000077	0.121	0.095
BENZO(A) PYRENE	0.000077	1.267	1.000
BENZO (ghi) PERYLENE	0.002800	0.006	0.005
BENZO (k) FLUORANTHENE	0.000059	0.001	0.001
BENZOIC ACID	0.001000	0.003	0.003
BENZOTHIAZOLONE 2 (2H)-*	0.065600	0.121	0.123
BENZYL ALCOHOL	0.033900	0.069	0.067
BHC, gamma-	0.027400	1.035	0.973
BIS (2-ETHYLHEXYL) PHTHALATE	0.016700	0.317	0.327
BROMOCHLOROMETHYL ACETATE	0.010400	0.342	0.541
BUTYL CELLOSOLVE	0.014600	0.095	0.120
BUTYL-m-CRESOL MONO T	0.052100	0.042	0.039
BUTYL-p-CRESOL MONO T	0.052100	0.042	0.039
BUTYRIC ACID	0.096100	0.089	0.124
CAPROLACTAM	0.000200	0.002	0.003
CAPROLACTONE	0.071100	0.205	0.248
CATECHOL	0.000002	0.000	0.000
CHLORACETOPHENONE, 2-	0.048400	0.161	0.152
CHLORO (-p) CRESOL (-m)	0.009100	0.029	0.028
CHLORO-1, 2-ETHANE DIOL (M)	0.005400	0.999	0.999
CHLORO-2, 5-DIKETOPYRROLIDINE 3 (M)	0.003700	0.430	0.430
CHLOROACETIC ACID	0.003600	0.020	0.028
CHLOROANILINE, p-	0.014700	0.069	0.067
CHLOROBENZOPHENONE (PARA)	0.000200	0.313	0.283
CHLOROBENZYLATE	0.000028	0.000	0.000
CHLOROHYDRIN, a 3 CHLORO 1, 2 PROPAN	0.000300	0.003	0.004
CHLOROPHENOL POLYMERS (M)	0.005600	0.000	0.000
CHLOROPHENOL-4	0.062200	0.032	0.031
CHOLINE CHLORIDE	0.000600	0.012	0.015
CHRYSENE	0.000066	0.006	0.004
CITRIC ACID	0.000000	0.000	0.000
CREOSOTE (M)	0.004400	0.025	0.025
CRESOL	0.090000	0.049	0.047
CRESOL (-m)	0.039400	0.035	0.033
CRESOL (-o)	0.091200	0.057	0.055
CRESOL (-p)	0.039700	0.028	0.027
CUMYLPHENOL-4	0.093300	0.002	0.002
CYANIDE methyl	0.001500	0.328	0.417
CYANOMETHYL BENZOATE 4 (M)	0.000700	0.128	0.128
DIAZINON	0.001200	0.001	0.001
DIBENZO (a,h) ANTHRACENE	0.002100	0.001	0.001
DIBUTYLPHTHALATE	0.015600	0.002	0.002
DICHLORO—(2,6)-NITROANILINE (4) (M)	0.000400	0.122	0.122
DICHLOROANILINE 2, 3	0.029900	0.049	0.047
DICHLOROBENZONITRILE,2 ,6-	0.064400	0.338	0.322
DICHLOROPHENOL 2, 5	0.086100	0.151	0.148
DICHLOROTETRAHYDROFURAN 3, 4 (M)	0.007800	0.303	0.303
DICHLORVOS	0.019000	0.008	0.011
DIETHANOLAMINE	0.000000	0.000	0.000
DIETHYL (N, N) ANILINE	0.003200	0.964	0.907

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION—Continued

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
DIETHYL PROPIONAMIDE, 2aN (M)	0.001100	0.089	0.089
DIETHYLENE GLYCOL	0.077800	0.000	0.000
DIETHYLENE GLYCOL DIMETHYL ETHER	0.083800	0.105	0.150
DIETHYLENE GLYCOL MONOBUTYL ETHER	0.001200	0.003	0.003
DIETHYLENE GLYCOL MONOETHYL ETHER	0.002700	0.005	0.007
DIETHYLENE GLYCOL MONOETHYL ETHER A	0.035800	0.007	0.010
DIETHYLENE GLYCOL MONOMETHYL ETHER	0.003200	0.004	0.007
DIETHYLENETRIAMINE	0.000001	0.000	0.000
DIETHYLHYDRAZINE N, N	0.019000	0.184	0.253
DIETHYLTHIOPHOSPHATEBENZO M ETHYL P	0.001200	0.000	0.000
DIMETHOATE (M)	0.050900	0.110	0.110
DIMETHYL CARBAMOYL CHLORIDE	0.024700	0.116	0.151
DIMETHYL DISULFIDE	0.083300	0.455	1.000
DIMETHYL FORMAMIDE	0.010600	0.009	0.013
DIMETHYL HYDRAZINE (1, 1)	0.091100	0.277	0.382
DIMETHYL PHTHALATE	0.054800	0.006	0.007
DIMETHYLAMINOAZOBENZENE,4-	0.004100	0.022	0.023
DIMETHYLBENZ (A) ANTHRACENE (7, 12)	0.000015	0.008	0.006
DIMETHYLBENZIDINE 3,3	0.000075	0.000	0.000
DIMETHYLSULFONE	0.001300	0.002	0.003
DIMETHYLSULFOXIDE	0.026900	0.037	0.057
DINITRO-o-CRESOL (4, 6)	0.078000	0.009	0.016
DIPHENYLHYDRAZINE (1, 2)	0.013600	0.462	0.448
DIPROPYLENE GLYCOL	0.000900	0.002	0.003
ENDRIN	0.084400	0.005	0.004
EPINEPHRINE (M)	0.020300	0.133	0.133
ETHANOLAMINE (mono-)	0.017800	0.004	0.007
ETHYL CARBAMATE	0.000600	0.004	0.008
ETHYL MORPHOLINE, ethyl diethylene	0.011300	0.048	0.059
ETHYLENE GLYCOL	0.000100	0.002	0.005
ETHYLENE GLYCOL MONOBUTYL ETHER	0.029200	0.056	0.071
ETHYLENE GLYCOL MONOETHYL ETHER	0.061700	0.111	0.144
ETHYLENE GLYCOL MONOETHYL ETHER AC	0.098600	0.057	0.089
ETHYLENE GLYCOL MONOMETHYL ETHER	0.045800	0.101	0.163
ETHYLENE GLYCOL MONOPHENYL ETHER	0.003800	0.005	0.005
ETHYLENE GLYCOL MONOPROPYL ETHER	0.047400	0.182	0.242
ETHYLENE THIOUREA	0.000008	0.001	0.002
ETHYLPHENOL, 3-	0.005600	0.021	0.020
FLUOROACETIC ACID, SODIUM SALT*	0.000300	0.750	1.000
FORMALDEHYDE	0.018700	0.533	1.000
FORMAMIDE	0.065600	0.092	0.170
FORMIC ACID	0.038900	0.078	0.225
FUMARIC ACID	0.092200	0.000	0.000
GLUTARIC ACID	0.001100	0.000	0.000
GLYCERIN (GLYCEROL)	0.000700	0.000	0.000
GLYCINAMIDE	0.008200	0.019	0.089
GLYOXYLIC ACID	0.006200	0.001	0.002
GLYPHOSATE	0.000400	0.005	0.009
GUANIDINE, NITROSO*	0.048900	0.000	0.001
GUTHION	0.000093	0.001	0.001
GYLCIDOL	0.050100	0.024	0.032
HEXAMETHYLENE 1, 6 DIISOCYANATE	0.014800	0.005	0.007
HEXAMETHYLPHOSPHORAMIDE	0.000000	0.000	0.000
HEXANOIC ACID	0.058900	0.061	0.075
HYDRAZINE	0.037000	0.190	0.332
HYDROCYANIC ACID (M)	0.025800	0.999	0.999
HYDROQUINONE	0.000080	0.000	0.000
HYDROXY-(2)-PROPIONITRILE	0.004200	0.003	0.004
HYDROXYPROPIONALDEHYDE	0.013200	0.066	0.102
INDENO(1,2,3-cd)-PYRENE	0.000000	0.000	0.000
LEAD ACETATE (M)	0.000041	0.062	0.062
LEAD SUBACTEATE (M)	0.000800	0.000	0.000
LEUCINE (M)	0.030000	0.469	0.469
MALATHION (M)	0.006700	0.060	0.060
MALEIC ACID	0.000800	0.000	0.000
MALEIC ANHYDRIDE	0.012200	0.027	0.043
MALIC ACID (hydroxybutaneoic)	0.000000	0.000	0.000
MESITYL OXIDE (M)	0.019500	0.999	0.999
METHANE SULFONIC ACID*	0.026700	0.000	0.001

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION—Continued

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
METHOMYL	0.045100	0.008	0.013
METHOXYPHENOL P	0.017200	0.003	0.003
METHYL HYDRAZINE	0.024800	0.082	0.155
METHYL METHANESULFONATE	0.000039	0.001	0.001
METHYL PARATHION	0.000007	0.012	0.020
METHYL SULFURIC ACID (M)	0.031200	0.794	0.794
METHYL THIOPHENOL 4	0.024400	0.885	1.000
METHYL-2-METHOXYAZIRIDINE 1	0.024200	0.727	0.998
METHYLENE DIPHENYL DIISOCYANATE	0.002700	0.010	0.011
METHYLENE DIPHENYLAMINE (MDA)	0.001600	0.002	0.002
METHYLENE-BIS (2-CHLOROANILINE), 4, 4	0.018700	0.008	0.008
METHYLENEDIANILINE 4, 4	0.028500	0.001	0.001
METHYLETHYLIDENE BISPHENOL, 4, 4'	0.000001	0.000	0.000
METHYLFURFURAL 5	0.012200	0.859	1.000
METHYLIMINOACETIC ACID	0.055600	0.002	0.004
MONOMETHYL FORMANIDE	0.000054	0.003	0.005
NABAM	0.000000	0.000	0.000
NAPHTHOL, alpha-	0.001400	0.004	0.004
NAPHTHOL, beta-	0.000800	0.003	0.003
NAPHTHYLAMINE, alpha-	0.002800	0.005	0.005
NAPHTHYLAMINE, beta-	0.002000	0.004	0.004
NEOPENTYL GLYCOL	0.000900	0.004	0.005
NIACIN (M)	0.034200	0.606	0.606
NIACINAMIDE(M)	0.067800	0.623	0.623
NITROANILINE (-o) (M)	0.027800	0.351	0.351
NITROGLYCERIN	0.000000	0.013	0.047
NITROPHENOL, 2-	0.006500	0.011	0.016
NITROPHENOL, 4-	0.000073	0.001	0.001
NITROSODIMETHYLAMINE N	0.048800	0.103	0.285
NITROSODI-n-PROPYLAMINE N	0.025200	0.088	0.105
NITROSODIPHENYLAMINE N*	0.046000	0.026	0.025
NITROSOMORPHOLINE	0.004700	0.011	0.019
NITROSO-N-METHYLUREA N	0.001400	0.015	0.037
OODIETH . O2ETH . THIOETH . PHOSPHORATE (M)	0.000000	0.096	0.096
OXALIC ACID	0.000200	0.010	0.028
PARATHION	0.034000	0.001	0.001
PENTAERYTHRITOL	0.000021	0.000	0.000
PHENACETIN (M)	0.012400	0.135	0.135
PHENOL	0.072200	0.036	0.035
PHENYL MERCURIC ACETATE (M)	0.000700	0.057	0.057
PHENYLACETIC ACID (M)	0.045600	0.385	0.385
PHENYLENE DIAMINE (-m)	0.000600	0.000	0.000
PHENYLENE DIAMINE (-o)	0.000600	0.001	0.002
PHENYLENE DIAMINE (-p)	0.000070	0.001	0.001
PHORATE (M)	0.024300	0.095	0.095
PHTHALIC ANHYDRIDE	0.044100	0.016	0.019
PROPANE SULTONE, 1, 3-	0.000500	0.001	0.002
PROPANONAL (methylglyoxal)	0.001700	0.161	0.242
PROPIOLACTONE b	0.006400	0.199	0.304
PROPORUR (Baygon)	0.003200	0.004	0.004
PROPYLENE GLYCOL	0.083300	0.005	0.008
PYRIDINIUM BROMIDE (M)	0.091700	0.060	0.060
PYRUVIC ACID	0.000200	0.003	0.005
QUINOLINE	0.015000	0.002	0.002
QUINONE	0.057700	0.868	1.000
RESORCINOL	0.001000	0.000	0.000
SIMAZINE (M)	0.000045	0.124	0.124
SODIUM ACETATE	0.000200	0.042	0.079
SODIUM ACRYLATE	0.076100	0.073	0.108
SODIUM FORMATE	0.000094	0.356	0.988
STRYCHNIDIN-10-ONE, 2, 3-DIMETHOXY(M)	0.000800	0.028	0.028
STRYCHNINE (M)	0.000002	0.058	0.058
SUCCINIC ACID	0.000097	0.000	0.001
SUCCINIMIDE*	0.001800	0.000	0.001
SULFANILIC ACID (M)	0.088900	0.138	0.138
TEREPHTHALIC ACID	0.000600	0.001	0.001
TETRAETHYLDITHIOPYROPHOSPHATE	0.00040		
TETRAETHYLENE GLYCOL MONOMETHYL ETH	0.000200	0.000	0.001
TETRAETHYLENE PENTAMINE	0.000000	0.000	0.000

TABLE 1 OF APPENDIX J.—FM VALUES FOR HENRY'S LAW CONSTANTS AT 25°C LESS THAN 0.1 (Y/X) ATMOSPHERES PER MOLE FRACTION—Continued

[Use with Section 2.1]

Compound	Y/X	Fm 25D	Fm 305
TETRAETHYLENE PENTAMINE	0.000000	0.000	0.000
TETRAHYDRO 3-FURANOL	0.034400	0.095	0.134
THIOFANOX (M)	0.000500	0.116	0.116
THIOSEMICARBAZIDE*	0.003300	0.000	0.000
THIOUREA, 1- (o-CHLOROPHENYL)-	0.000001	0.000	0.001
TOLUENE DIAMINE (2, 4)	0.000070	0.001	0.001
TOLUENE DIISOCYANATE (2, 4)	0.009200	0.000	0.000
TOLUENEDIAMINE (2, 6)	0.000001	0.000	0.000
TOLUENEDIAMINE (3, 4)	0.000200	0.002	0.002
TOLUIC ACID (para-)	0.000300	0.011	0.012
TOLUIDINE m	0.089400	0.123	0.118
TRICHLORO (1, 1, 2) TRIFLUOROETHANE	0.000008	1.042	1.000
TRIETHANOLAMINE	0.000008	0.000	0.000
TRIETHYLENE GLYCOL DIMETHYL ETHER	0.002600	0.017	0.025
TRIETHYLENE GLYCOL MONOMETHYL ETHER	0.001900	0.004	0.005
TRIETHYLENE TETRAMINE	0.000000	0.000	0.000
TRIPROPYLENE GLYCOL	0.005300	0.004	0.005
WARFARIN	0.000000	0.000	0.000

*Molecular structure only approximate.
(M) fraction measured (fm) estimated from Mwt correlation.

TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
1 BROMO 2 CHLORO 2 BUTENE	0.990	0.786	1.000	0.761	
1 BUTYENE	0.990	1.172	1.000	0.872	
1 ETHYL 4 METHYLBENZENE	0.990	1.219	1.000	0.748	
1 HEPTANOL	0.946	0.525	0.564	0.186	
1 HEPTYNE	0.990	1.138	1.000	0.980	
1 HEXYNE	0.990	1.145	1.000	0.924	
1 ISOCYANO 3-METHYLBENZENE	0.990	0.870	0.913	0.210	
1 ISOPROPYL 4 METHYLBENZENE	0.990	1.193	1.000	0.804	
1 METHYLCYCLOHEXENE	0.990	1.138	1.000	0.980	
1 METHYLNAPHTHALENE	0.990	1.237	1.000	0.384	
1 NONYNE	0.990	1.128	1.000	0.980	
1 OCTENE	0.990	1.112	1.000	0.980	
1 OCTYNE	0.990	1.132	1.000	0.980	
1 PENTYNE	0.990	1.156	1.000	0.885	
1,1 DIETHOXYETHANE	0.985	0.810	0.996	0.320	
1,1,3 TRIMETHYLCYCLOPENTANE	0.990	1.124	1.000	0.980	
1,1-DIFLUOROETHANE	0.990	1.077	1.000	0.876	
1,2 DIETHOXYETHANE	0.932	0.762	0.999	0.309	
1,2,4,5 TETRAMETHYLBENZENE	0.990	1.194	1.000	0.887	
1,3-DIOXOLANE	0.642	0.764	1.000	0.232	646–06–0
1,4 PENTADIENE	0.990	1.176	1.000	0.980	
1,5 HEXADIENE	0.990	1.155	1.000	0.980	
1-NITROPROPANE	0.966	0.522	0.982	0.374	
1-PENTANOL	0.990	0.708	0.807	0.579	
1-PENTENE	0.990	1.124	1.000	0.980	
1-PROPOXY 2-PROPANOL	0.430	0.134	0.167	0.070	
2 BUTEN 1 OL	0.207	0.703	0.801	0.095	
2 HEPTANONE	0.990	0.955	0.991	0.356	
2 METHYL 1 BUTANOL	0.797	0.721	0.807	0.201	
2 METHYL 2 BUTENE	0.990	1.143	1.000	0.980	
2 METHYL 2 PENTANOL	0.959	0.806	0.869	0.257	
2 METHYL 3 PENTANOL	0.989	0.539	0.565	0.241	
2 METHYLHEXANE C7H16	0.990	1.099	1.000	0.980	
2 METHYLNAPHTHALENE	0.990	1.237	1.000	0.449	
2 NONANONE	0.990	0.959	0.970	0.441	
2 OCTANONE	0.990	0.961	0.983	0.350	
2 PENTANONE	0.942	0.919	0.998	0.350	
2 PENTENE	0.990	1.131	1.000	0.980	
2 PROPYLBENZENE	0.990	1.198	1.000	0.582	
2 UNDECANONE	0.990	0.927	0.922	0.495	
2-(1-METHOXY)-1-PROPANOL	0.648	0.202	0.251	0.093	
2,2 DIMETHYL PROPANOIC ACID	0.131	0.296	0.376	0.074	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
2,2 DIMETHYLBUTANE C6H14	0.990	1.108	1.000	0.901	
2,2 DIMETHYLPENTANE	0.990	1.106	1.000	0.980	
2,2,5 TRIMETHYLHEXANE C9H20	0.990	1.114	1.000	0.980	
2,3 DIMETHYL 1,3 BUTADIENE	0.990	1.168	1.000	0.942	
2,3 DIMETHYLBUTANE C6H14	0.990	1.115	1.000	0.980	
2,3 DIMETHYLBUTANOL	0.978	0.648	0.694	0.259	
2,3 DIMETHYLPENTANE C7H16	0.990	1.112	1.000	0.980	
2,3,4 TRIMETHYLPENTANE C8H18	0.990	1.121	1.000	0.980	
2,3-DIMETHYLPYRIDINE	0.048	1.048	1.000	0.110	
2,4 DIMETHYLPENTANE C7H16	0.990	1.112	1.000	0.980	
2,4,5 T.		0.024	0.028	0.000	93–76–5
2,4-DIMETHYLPYRIDINE	0.044	1.048	1.000	0.105	
2,5-DIMETHYLPYRIDINE	0.055	1.048	1.000	0.122	
2,6,DIMETHYL2,5-HEPTADIEN4-ONE	0.990	0.906	0.882	0.354	
2,6-DIMETHYL2,5-HEPTADIEN 4-ONE	0.990	0.682	0.649	0.278	
2,6-DIMETHYLPYRIDINE	0.067	1.048	1.000	0.137	
2-CHLORO 2-METHYLBUTANE	0.990	1.078	1.000	0.726	
2-ETHYL 3-METHOXYPYRAZINE	0.990	0.039	0.050	0.151	
2-ETHYLPYRAZINE	0.746	0.452	0.527	0.070	
2-ETHYLPYRIDINE	0.080	1.041	1.000	0.141	
2-FLUOROPROPANE	0.990	1.099	1.000	0.980	
2-ISOBUTYL 3-METHOXYPYRAZINE	0.990	0.044	0.057	0.256	
2-ISOBUTYLPYRAZINE	0.969	0.362	0.395	0.096	
2-METHYL PENTANE C6H14	0.990	1.100	1.000	0.899	
2-METHYLPYRAZINE	0.626	0.505	0.613	0.068	
2-PENTANOL	0.810	0.721	0.807	0.205	
3 METHYL 1 BUTENE	0.990	1.143	1.000	0.980	
3 METHYL PYRIDINE	0.630	0.685	0.663	0.131	
3 METHYLHEPTANE C8H18	0.990	1.098	1.000	0.980	
3 METHYLHEXANE C7H16	0.990	1.099	1.000	0.980	
3,3 DIMETHYLPENTANE C7H16	0.990	1.106	1.000	0.980	
3,4-DIMETHYLPRYIDINE	0.025	1.048	1.000	0.083	
3,5-DIMETHYLPYRIDINE	0.044	1.048	1.000	0.105	
3-ETHYLPRYIDINE	0.080	1.041	1.000	0.141	
3-HEXANOL	0.990	0.638	0.694	0.294	
3-PENTEN-2-OL	0.860	0.610	0.656	0.230	
4 METHYL 1 PENTENE	0.990	1.134	1.000	0.980	
4 METHYL 2 PENTANOL	0.990	0.539	0.565	0.264	
4 METHYL 2 PENTANONE	0.385	0.923	0.968	0.145	
4 METHYLOCTANE C9H20	0.990	1.098	1.000	0.980	
4-ETHYLPYRIDINE	0.064	1.041	1.000	0.123	
4-METHYLPYRIDINE	0.990	1.033	1.000	0.109	
5 METHOXY 2 PENTANONE	0.798	0.327	0.382	0.142	
ACENAPHTHENE	0.990	1.111	0.899	0.804	83–32–9
ACENAPHTHYLENE	0.990	1.094	0.868	0.312	208–96–8
ACETAL	0.990	0.813	1.000	0.432	
ACETALDEHYDE	0.953	0.724	1.000	0.485	75–07–0
ACETATE (M)	0.990	0.558	0.558	0.794	
ACETIC ACID	0.066	0.101	0.189	0.120	64–19–7
ACETIC ANHYDRIDE	0.524	0.165	0.262	0.214	108–24–7
ACETONE	0.843	0.827	0.997	0.261	67–64–1
ACETONITRILE	0.641	0.778	0.989	0.359	75–05–8
ACETOPHENONE	0.735	0.334	0.314	0.137	96–86–2
ACETYL CHLORIDE	0.990	0.923	1.000	0.531	79–36–5
ACETYL DIETHYLMALONATE	0.978	0.018	0.025	0.156	
ACETYLENE	0.990	1.280	1.000	0.711	74–86–2
ACETYLFURAN 2 *	0.990	0.365	0.423	0.382	1192–62–7
ACETYLMETHYLPHTHALATE 4	0.990	0.036	0.048	0.127	
ACETYLPYRIDINE 3	0.990	0.927	1.000	0.980	1122–54–9
ACIFLUORFEN	0.990	0.198	0.223	0.601	
ACROLEIN	0.968	0.855	1.000	0.427	107–02–8
ACRYLONITRILE	0.969	0.876	0.999	0.429	107–13–1
ADAMANTANE DICHLORIDE	0.990	1.097	0.986	0.562	
AFLATOXINS (M)	0.990	0.063	0.063	0.406	1402–68–2
ALDICARB	0.027	0.002	0.002	0.007	116–06–3
ALDRIN	0.990	0.056	0.051	0.469	509–00–2
ALKYLIMINE CARBOXYLIC ACID N,SUB(M)	0.848	0.125	0.125	0.111	
ALLYL ALCOHOL	0.783	0.538	0.659	0.276	107–18–6
ALLYL CHLORIDE	0.990	1.092	1.000	0.887	107–05–1
ALLYL ETHER, diallyl ether	0.990	0.974	1.000	0.663	
ALPHA METHYL STYRENE	0.990	1.217	1.000	0.767	98–83–9

TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
ALPHA METHYL STYRENE DIMERS	0.990	1.186	0.975	0.855	
alpha-CHLORO-beta-METHYLNAPHTHALENE	0.990	1.197	1.000	0.828	86–52–2
ALPHA-HYDROXYACETALDEHYDE	0.990	0.031	0.059	0.515	
ALPHA-HYDROXYADIPIMIDE (M)	0.925	0.144	0.144	0.135	
AMINO-2-CHLOROTOLUENE 4	0.990	0.020	0.020	0.790	
AMINO-3-CHLORO-5-PHENYLCYCLOHEXA(M)	0.622	0.143	0.143	0.086	
AMINO-4-CHLORO-6-CYANOPYRIDINE 2(M)	0.990	0.148	0.148	0.411	
AMINO-4′-CHLOROBIPHENYL 4(M)	0.990	0.123	0.123	0.980	
AMINO-4-CHLOROPYRIDINE 2 (M)	0.990	0.514	0.514	0.710	1072–98–6
AMINO-4-NITROBENZYL ALCOHOL 2 (M)	0.742	0.149	0.149	0.102	
AMINO-4-NITROTOLUENE 2	0.990	0.000	0.001	0.802	99–55–8
AMINO-5-CHLOROPYRIDINE 2 (M)	0.990	0.514	0.514	0.384	1072–98–6
AMINOBENZOIC ACID (-p) (M)	0.624	0.368	0.368	0.086	150–13–0
AMINOCYCLOHEXANE	0.934	0.929	0.996	0.416	108–91–8
AMINOMETHYL-3-ISOXAZOLOL 5 (M)	0.990	0.760	0.760	0.287	2763–96–4
AMINOPHENOL(-o)	0.641	0.034	0.039	0.083	95–55–6
AMINOPHENOL(-p)	0.265	0.001	0.001	0.180	101–80–4
AMINO-p′-METHYLAZOBENZENE P (M)	0.990	0.119	0.119	0.852	
AMINOPROPIONITRILE 3 (M)	0.834	0.999	0.999	0.163	151–18–8
AMITROLE (M)	0.618	0.999	0.999	0.085	61–82–5
AMMONIA	0.990	0.520	1.000	0.732	7664–41–7
AMPHETAMINE(M)	0.990	0.401	0.401	0.323	60–15–1
AMYL ACETATE(-n)	0.990	0.426	0.504	0.462	628–63–7
ANETHOLE (M)	0.990	0.180	0.180	0.406	104–46–1
ANISOLE	0.990	1.036	1.000	0.731	100–66–3
ANTHRACENE	0.990	0.109	0.087	0.513	120–12–7
ARAMITE (M)	0.990	0.058	0.058	0.406	140–57–8
AURAMINE (M)	0.990	0.091	0.091	0.980	492–80–8
AZASERINE (M)	0.986	0.138	0.138	0.206	115–02–6
AZEPINE (M)	0.990	0.058	0.058	0.817	111–49–9
AZIRIDINE ethyleneimine	0.990	0.628	0.867	0.685	151–56–4
BENXENEDICARBOXYLIC ACID DIHEPTYL	0.990	0.113	0.119	0.667	
BENZ(c)ACRIDINE (M)	0.990	0.110	0.110	0.853	225–51–4
BENZAL CHLORIDE	0.990	1.159	0.996	0.798	98–87–3
BENZALDEHYDE	0.980	0.516	0.490	0.283	100–52–7
BENZALKONIUM CHLORIDE (M)	0.408	0.129	0.129	0.065	
BENZEN SULFONATE (M)	0.990	0.642	0.642	0.894	
BENZENE	0.990	1.227	1.000	0.797	71–43–2
BENZETHONIUM CHLORIDE (M)	0.956	0.001	0.001	0.140	121–54–0
BENZIDINE DIHYDROCHLORIDE(M)	0.990	0.096	0.096	0.980	531–85–1
BENZO(B)FLUORANTHENE	0.990	1.219	0.962	0.135	205–99–2
BENZO(j)FLUORANTHENE (M)	0.990	0.099	0.099	0.853	205–82–3
BENZODIOXANE-1,3 (M)	0.668	0.108	0.108	0.093	
BENZOFLUORANTHENE,3,4-(M)	0.990	0.099	0.099	0.853	205–99–2
BENZOFURAN 2,3	0.990	1.061	0.988	0.374	
BENZOIC ACID, 4 METHYL	0.642	0.102	0.108	0.103	
BENZONITRILE	0.990	0.397	0.373	0.170	100–47–0
BENZOPHENONE	0.990	0.052	0.046	0.834	119–61–9
BENZOPYRENE 3,4 (M)	0.990	0.099	0.099	0.318	50–32–8
BENZOQUINONE,p-(M)	0.990	0.862	0.862	0.794	106–51–4
BENZOTHIAZOLE *	0.990	0.059	0.060	0.341	95–16–9
BENZOTRICHLORIDE	0.990	1.069	0.958	0.558	98–07–7
BENZOYL CHLORIDE	0.990	1.132	0.979	0.468	98–88–4
BENZYL CHLORIDE	0.990	1.164	1.000	0.415	100–44–7
BENZYL METHYL ETHER	0.990	1.047	1.000	0.587	538–86–3
BHC,alpha-	0.990	1.063	1.000	0.729	319–84–6
BHC,beta-	0.990	1.063	1.000	0.854	319–85–7
BHC,delta-	0.990	1.063	1.000	0.588	319–86–8
BICYCLO(4,2,0) OCTA 1.3.5 TRIENE	0.990	1.222	1.000	0.759	
BICYCLO[2.2.1]-2,5-HEPTADIENE DI(M)	0.990	0.146	0.146	0.980	
BIPHENYL	0.990	1.074	0.864	0.445	92–52–4
BIS (2-CHLOROETHOXY) METHANE	0.282	0.170	0.196	0.067	111–91–1
BIS(1,1,2,2-TETRACHLOROPROPYL) ETHE	0.990	0.960	1.000	0.980	
BIS(2-CHLOROETHYL)ETHER	0.656	0.806	0.858	0.162	111–44–4
BIS(2-CHLOROISOPROPYL)ETHER	0.990	0.948	0.972	0.310	108–60–1
BIS(CHLOROMETHYL)ETHER	0.975	0.888	0.999	0.459	542–88–1
BISPHENOL(A)	0.990	0.011	0.011	0.665	80–05–7
BROMACIL	0.990	0.582	1.000	0.980	
BROMO-(1)-CHLOROETHANE-2	0.990	0.711	1.000	0.995	107–04–0
BROMO-3-CHLOROBUTADIENE 2	0.990	0.803	1.000	0.820	
BROMO-4-CHLORO-6-CYANOBENZYL ALC(M)	0.941	0.131	0.131	0.136	

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TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
BROMO-4-CHLOROCYCLOHEXANE 1	0.990	0.819	0.986	0.980	
BROMO-4-CYANOMETHYL BENZOATE 2 (M)	0.990	0.105	0.105	0.980	
BROMO-4-CYANOMETHYL BENZOATE 3 (M)	0.990	0.105	0.105	0.885	
BROMOACETONE	0.520	0.356	0.590	0.145	598–31–2
BROMOBENZENE	0.990	1.182	1.000	0.745	108–86–1
BROMOBENZYL ALCOHOL-(m)	0.371	0.012	0.015	0.083	15852–73–
BROMOBENZYL ALCOHOL-(o)	0.371	0.012	0.015	0.083	18982–34–
BROMOBENZYL ALCOHOL-(p)	0.371	0.012	0.015	0.083	873–75–6
BROMOCHLOROBENZENE P	0.990	0.870	1.000	0.980	106–39–8
BROMOCHLOROBENZYL ALCOHOL	0.420	0.007	0.009	0.107	
BROMOCHLOROMETHANE	0.990	1.017	1.000	0.992	74–97–5
BROMODICHLOROMETHANE	0.990	0.735	1.000	0.980	75–27–4
BROMOETHYL ACETATE	0.911	0.470	0.801	0.458	927–68–4
BROMOETHYLENE	0.990	0.629	1.000	0.990	543–60–2
BROMOFORM	0.990	0.480	0.998	0.494	75–25–2
BROMOMETHANE	0.990	0.539	1.000	0.852	74–83–9
BROMOPHENYL PHENYL ETHER.4-	0.990	0.240	0.265	0.269	101–55–3
BROMOPROPIONITRILE 3 (M)	0.990	0.422	0.422	0.856	2417–90–5
BROMOTOLUENE 4	0.990	1.164	1.000	0.676	106–38–7
BROMOURACIL,5-(M)	0.990	0.130	0.130	0.980	51–20–7
BUTADIENE-(1,3)	0.990	1.187	1.000	0.979	106–99–0
BUTANE	0.990	1.080	1.000	0.980	106–97–8
BUTANEDINITRILE	0.990	0.007	0.009	0.182	110–61–2
BUTANENITRILE (M)	0.521	0.999	0.999	0.266	109–74–0
BUTANOL ISO	0.821	0.647	0.756	0.068	78–83–1
BUTANOL(S)	0.846	0.502	0.600	0.253	78–92–2
BUTANOL-1	0.818	0.502	0.600	0.177	71–36–3
BUTENE	0.990	1.131	1.000	0.980	
BUTYL ACETATE(-n)	0.990	0.808	0.995	0.368	123–86–4
BUTYL ACRYLATE	0.990	0.781	0.910	0.492	141–32–2
BUTYL BENZENE	0.990	1.181	1.000	0.980	104–51–8
BUTYL BENZYL PHTHALATE	0.990	0.052	0.053	0.852	85–68–7
BUTYL CARBITOL	0.990	0.006	0.008	0.980	112–34–5
BUTYL MERCAPTAN	0.990	0.692	1.000	0.980	
BUTYL-3-METHOXY PYRAZINE, 2-ISO (M)	0.990	0.142	0.142	0.980	24683–00-
BUTYLAMINE	0.904	0.813	0.948	0.241	109–73–9
BUTYLBUTOXY PROPIONATE	0.990	0.263	0.276	0.266	
BUTYLENE GLYCOL-(1,3)	0.780	0.003	0.004	0.096	107–88–0
BUTYLISOBUTYRATE	0.990	0.873	1.000	0.794	
BUTYRALDEHYDE	0.989	0.861	0.992	0.490	123–72–8
BUTYRALDEHYDE ISO	0.989	0.886	1.000	0.438	78–84–2
c10 linear	0.990	1.088	1.000	0.980	
c11 linear	0.990	1.088	1.000	0.980	
CACODYLIC ACID (M)	0.983	0.354	0.354	0.219	75–60–5
CAMPHENE (M)	0.990	0.383	0.383	0.588	79–92–5
CAPTAN	0.990	0.007	0.008	0.196	
CARBARYL sevin	0.990	0.015	0.016	0.202	63–25–2
CARBAZOLE (M)	0.990	0.141	0.141	0.980	86–74–8
CARBENDAZIM	0.957	0.023	0.038	0.070	
CARBON DIOXIDE (M)	0.990	0.999	0.999	0.896	
CARBON DISULFIDE	0.990	0.213	1.000	0.918	75–15–0
CARBON OXYFLUORIDE*	0.990	0.884	1.000	0.993	353–50–4
CARBON TETRACHLORIDE	0.990	1.027	1.000	0.900	56–23–5
CARBONYL FLUORIDE *	0.658	0.884	1.000	0.358	
CARBONYL SULFIDE	0.886	0.547	1.000	0.500	
CHLORAL	0.990	0.938	1.000	0.556	302–17–0
CHLORAMBEN	0.962	0.545	0.633	0.229	
CHLORAMBUCIL	0.957	0.031	0.031	0.101	305–03–3
CHLORDANE	0.990	0.438	0.407	0.151	57–74–9
CHLORENDIC ANHYDRIDE (M)	0.990	0.558	0.558	0.794	115–27–5
CHLORINATED TARS (M)	0.990	0.050	0.050	0.343	
CHLORNAPHAZINE	0.990	0.422	0.385	0.158	
CHLORO 2 BUTENE,1 trans	0.990	1.098	1.000	0.632	
CHLORO(-p)PHENYLHYDRAZINE(M)	0.990	0.286	0.286	0.398	
CHLORO-1,3-CYCLOPENTADIENE 5	0.990	1.148	1.000	0.948	
CHLORO-2,2-DIBROMOETHANE 1	0.990	0.569	0.919	0.526	
CHLORO-2,3-EPOXYPROPANE,1-(M)	0.977	0.999	0.999	0.321	106–89–8
CHLORO-2-METHOXYBENZOIC ACID 4 (M)	0.990	0.132	0.132	0.722	57479–70–
CHLORO-2-NITROBENZYL ALCOHOL 4 (M)	0.601	0.132	0.132	0.083	22996–18–
CHLORO-3-NITRO-5-PHENYLCYCLOHEXA (M)	0.631	0.131	0.131	0.087	
CHLORO-3-NITROANILINE 4 (M)	0.990	0.139	0.139	0.342	635–22–3

TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
CHLORO-4AMINOCOUMARAN-6 CARBOXYLI(M)	0.990	0.118	0.118	0.980	
CHLORO-4-CYANOBENZYL ALCOHOL 2 (M)	0.743	0.149	0.149	0.102	
CHLORO-4-HYDROXYBIPHENYL 3 (M)	0.990	0.123	0.123	0.980	92–04–6
CHLORO-4-METHOXY-6-AMINOBENZOIC(M)	0.990	0.125	0.125	0.449	
CHLORO-4-METHYL-N-METHYLBENZAMID(M)	0.832	0.134	0.134	0.109	
CHLORO-4-NITROANISOLE 2 (M)	0.990	0.131	0.131	0.980	
CHLORO-4-PHENYLPYRIDINE 2(M)	0.839	0.130	0.130	0.110	
CHLORO-5AMINO3PYRIDINE CARB.ACID (M)	0.990	0.134	0.134	0.439	
CHLORO-5-CYANOPHTHALIC ACID 4 (M)	0.990	0.112	0.112	0.980	
CHLORO-5-CYANOTOLUENE 3 (M)	0.990	0.150	0.150	0.601	
CHLORO-5-FLUOROTOLUENE 3	0.990	1.150	1.000	0.400	443–83–4
CHLORO-5-PHENOXYDIMETHYL PHTHALA(M)	0.990	0.065	0.065	0.980	
CHLOROACETALDEHYDE	0.762	0.855	0.997	0.324	107–20–0
CHLOROALLYL ALCOHOL 2	0.926	0.270	0.291	0.244	5976–47–6
CHLOROANILINE(2)	0.990	0.245	0.238	0.867	95–51–2
CHLOROANILINE(3)	0.990	0.108	0.105	0.867	108–42–9
CHLOROAZOBENZENE	0.990	1.204	1.000	0.852	
CHLOROBENZENE	0.990	1.157	1.000	0.728	108–90–7
CHLOROBENZENESULFONIC ACID (-p)(M)	0.826	0.137	0.137	0.108	100–03–8
CHLOROBENZILATE	0.876	0.000	0.000	0.030	510–15–6
CHLOROBENZOIC ACID,2	0.629	0.083	0.089	0.105	118–91–2
CHLOROBENZOIC ACID,3-	0.535	0.083	0.089	0.092	535–80–8
CHLOROBENZOIC ACID,4-	0.535	0.083	0.089	0.092	74–11–3
CHLOROBENZOTRICHLORIDE P	0.990	1.103	1.000	0.980	5216–25–1
CHLOROBENZOTRIFLUORIDE, P	0.990	1.131	1.000	0.980	
CHLOROBENZYL ALCOHOL-(m)	0.852	0.035	0.033	0.074	873–63–2
CHLOROBENZYL ALCOHOL-(o)	0.275	0.058	0.056	0.074	17849–38–
CHLOROBENZYL ALCOHOL-(p)	0.251	0.040	0.039	0.074	873–76–7
CHLOROBIPHENYL (-p)	0.990	1.204	1.000	0.840	2051–62–9
CHLOROBUTADIENE,1	0.990	1.124	1.000	0.850	
CHLOROCOUMARAN 2 (M)	0.990	0.135	0.135	0.832	2051–59–4
CHLOROCYANOBENZENE (1,4) (M)	0.990	0.362	0.362	0.980	873–32–5
CHLOROCYCLOHEXANE	0.990	1.081	1.000	0.980	542–18–7
CHLOROCYCLOHEXANOL 2	0.990	0.102	0.107	0.428	1561–86–0
CHLOROCYCLOHEXANOL 4	0.990	0.102	0.107	0.587	
CHLORODIACETYL (M)	0.990	0.651	0.651	0.980	
CHLORODIMETHYL PHTHALATE 3 (M)	0.990	0.111	0.111	0.980	
CHLORODIPHENYL THIOETHER P (M)	0.990	0.123	0.123	0.851	7005–72–3
CHLOROETHANE (ethyl chloride)	0.990	1.046	1.000	0.901	75–00–3
CHLOROETHANOL (ETHYLENE CHLOROHYDRI	0.480	0.256	0.309	0.221	107–07–3
CHLOROETHYL(2-) VINYL ETHER	0.990	0.934	1.000	0.910	110–75–8
CHLOROETHYLENE	0.990	1.064	1.000	0.757	
CHLOROFLUOROBENZENE P	0.990	1.152	1.000	0.980	352–33–0
CHLOROFLUOROMETHANE *	0.355	1.075	1.000	0.980	593–70–4
CHLOROFORM	0.990	1.023	1.000	0.775	67–66–3
CHLOROHYDROXYPHENYL4 METHYLBENZ(M)	0.990	0.094	0.094	0.980	
CHLOROMETHYL ACETYLENE *	0.990	1.121	1.000	0.980	
CHLOROMETHYL BENZOATE P (M)	0.990	0.140	0.140	0.980	1126–46–1
CHLOROMETHYL ETHYL KETONE	0.990	0.873	0.935	0.697	
CHLOROMETHYL METHYL ETHER	0.937	0.840	1.000	0.494	107–30–2
CHLOROMETHYL PHENYL KETONE	0.290	0.715	0.673	0.077	532–27–4
CHLOROMETHYL PHENYLHYDRAZINE P (M)	0.990	0.147	0.147	0.413	
CHLOROMETHYLAMINOIMINE (M)	0.990	0.999	0.999	0.913	
CHLORONAPHTHALENE,2–	0.990	1.177	0.980	0.870	91–58–7
CHLORONITROALKOXYIMINE (M)	0.958	0.110	0.110	0.142	
CHLORONITROBENZENE(-o)	0.990	0.519	0.625	0.808	88–73–3
CHLORONITROBENZENE, p	0.990	0.591	0.713	0.301	
CHLORO-N-METHYLBENZAMIDE P (M)	0.818	0.140	0.140	0.107	
CHLOROPHENOL-2	0.323	0.245	0.240	0.107	95–97–8
CHLOROPHENOL-3	0.635	0.057	0.057	0.078	108–43–0
CHLOROPHENYL PHENYL ETHER,4-*	0.990	0.861	0.775	0.389	7005–72–3
CHLOROPHENYLETHANOL 1,1	0.990	0.057	0.054	0.807	
CHLOROPHTHALIC ANHYDRIDE 4 (M)	0.595	0.133	0.133	0.083	
CHLORO-p'-METHYLBIPHENYL P (M)	0.990	0.124	0.124	0.850	1667–11–4
CHLOROPRENE	0.990	1.124	1.000	0.677	126–99–8
CHLOROPROPANE-1	0.990	1.055	1.000	0.858	540–54–5
CHLOROPROPANE-2	0.990	1.050	1.000	0.867	75–29–6
CHLOROPROPENE 3	0.990	1.092	1.000	0.980	557–98–2
CHLOROPROPIONITRILE,3–	0.359	0.580	0.622	0.111	542–76–7
CHLOROPROPYLENE-2	0.990	1.090	1.000	0.980	557–98–2
CHLORO-p-XYLENE	0.987	1.163	1.000	0.592	104–82–5

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
CHLOROPYRIDINE 2 (M)	0.990	0.769	0.769	0.599	109–09–1
CHLOROSTYRENE (-4)	0.990	1.179	1.000	0.788	1331–28–8
CHLOROTETRAHYDROFURAN 3 (M)	0.990	0.642	0.642	0.407	
CHLOROTHIOPHENOL P *	0.990	0.893	1.000	0.980	106–54–7
CHLOROTOLUENE-4	0.990	1.164	1.000	0.741	106–43–4
CHLOROURACIL,5-(M)	0.990	0.138	0.138	0.980	1820–81–1
cis 1,2 DIMETHYLCYCLOHEXANE	0.990	1.117	1.000	0.980	
CITRUS RED #2 (M)	0.990	0.071	0.071	0.853	6358–53–8
COPPER PHTHALOCYANINE (M)	0.990	0.000	0.000	0.764	147–14–8
COUMARAN (M)	0.990	0.215	0.215	0.980	91–64–5
CROTONALDEHYDE	0.578	0.887	0.974	0.212	470–30–3
CROTONYLENE (2-BUTYNE)	0.990	1.185	1.000	0.980	503–17–3
CUMENE (isopropylbenzene)	0.990	1.197	1.000	0.876	98–82–8
CUMENE HYDROPEROXIDE	0.987	0.478	0.464	0.204	
CYANOBENZYL ALCOHOL P *	0.147	0.002	0.002	0.070	
CYANOGEN	0.990	0.800	1.000	0.747	460–19–5
CYANOGEN BROMIDE *	0.990	0.558	1.000	0.462	506–68–3
CYANOGEN CHLORIDE(M)	0.990	0.999	0.999	0.704	506–77–4
CYANOGUANIDINE (M)	0.990	0.999	0.999	0.648	461–58–5
CYANOMETHYLPHTHALATE 4 (M)	0.990	0.071	0.071	0.980	
CYANOPYRIDINE (-4) *	0.990	0.118	0.124	0.980	100–48–1
CYANOPYRIDINE 3 *	0.990	0.113	0.119	0.980	100–54–9
CYANOTOLUENE 4	0.990	0.450	0.419	0.980	
CYANURIC ACID (M)	0.491	0.505	0.505	0.072	108–80–5
CYCASIN (M)	0.990	0.099	0.099	0.794	14901–08-
CYCLOHEXADIENE1,4DIONE2,6BIS11DIMET	0.753	0.027	0.026	0.072	
CYCLOHEXANE	0.990	1.093	1.000	0.859	110–82–7
CYCLOHEXANOL	0.851	0.456	0.493	0.159	
CYCLOHEXANOL	0.925	0.243	0.262	0.136	108–93–0
CYCLOHEXANONE	0.198	0.703	0.740	0.088	108–94–1
CYCLOHEXENE	0.990	1.136	1.000	0.980	110–83–8
CYCLOHEXENE 1 ONE, 2	0.759	0.498	0.507	0.183	
CYCLOHEXYL ACETATE	0.990	0.846	0.963	0.273	622–45–7
CYCLOHEXYL-2,2-DIPHENYLETHYLAMIN(M)	0.990	0.097	0.097	0.384	
CYCLOHEXYL-4,6-DINITROPHENOL,2-(M)	0.990	0.092	0.092	0.980	131–89–5
CYCLOHEXYLAMINE	0.978	0.878	0.940	0.280	108–91–8
CYCLOHEXYLCYCLOHEXANONE 4	0.990	0.732	0.707	0.727	56025–96-
CYCLOPENTADIENE	0.990	1.198	1.000	0.980	
CYCLOPENTADIENE 1,3	0.990	1.198	1.000	0.713	
CYCLOPENTANE	0.990	1.093	1.000	0.980	
CYCLOPENTENE	0.990	1.144	1.000	0.979	
CYCLOPHOSPHAMIDE (M)	0.990	0.094	0.094	0.610	50–18–0
CYCLOPROPANE C3H6	0.990	1.093	1.000	0.980	
CYCLOHEXYL o,o-DIMETHYL PHOS.DIT(M)	0.99	0.105	0.980	0.980	
CYMENE,para	0.990	1.193	1.000	0.871	
CYTOSINE (M)	0.990	0.811	0.811	0.831	71–30–7
DAUNOMYCIN(M)	0.990	0.000	0.000	0.853	20830–81-
DAZOMET	0.900	0.085	0.153	0.066	
DDD,p,p'-	0.950	1.150	1.000	0.394	72–54–8
DDE,p,p'-	0.990	1.138	0.990	0.621	72–55–9
DDT	0.990	1.131	1.000	0.980	50–29–3
DECANAL	0.990	0.918	0.928	0.612	
DECENE, 8 METHYL 1-	0.990	1.116	1.000	0.980	
DIACETYL (M)	0.990	0.999	0.999	0.318	431–03–8
DIAMINO-5-SULFONYL BENZYL 2,4 (M)	0.990	0.133	0.133	0.628	
DIAMINODIPHENYLMETHANE P,P' (M)	0.990	0.126	0.126	0.980	101–77–9
DIAZOMETHANE	0.575	0.573	1.000	0.356	
DIBENZOFURANS	0.990	1.112	0.967	0.740	
DIBENZOPYRENE 1,2,7,8	0.990	0.803	0.633	0.720	
DIBROMO-3-CHLOROPROPANE,1,2	0.709	1.048	1.000	0.185	96–12–8
DIBROMOCHLOROMETHANE	0.990	0.585	1.000	0.643	124–48–1
DIBROMOETHANE–1,2	0.990	1.114	1.000	0.852	106–93–4
DIBROMOMETHANE	0.990	0.493	1.000	0.558	74–95–3
DIBUTYL ETHER	0.990	0.958	1.000	0.727	142–96–1
DIBUTYLAMINE	0.990	0.949	0.984	0.300	
DICHLORO 2-PROPANOL 1,3	0.990	0.237	0.257	0.570	96–23–1
DICHLORO PROPANOL 2,3	0.507	0.119	0.130	0.255	616–23–9
DICHLORO-1,3-CYCLOPENTADIENE 5,5(M)	0.990	0.413	0.413	0.980	
DICHLORO-2-BUTENE 1,2	0.990	1.079	1.000	0.562	
DICHLORO-2-BUTENE(1,4)	0.990	1.079	1.000	0.453	764–41–0
DICHLORO-2-BUTENE, 1,4	0.990	1.079	1.000	0.612	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
DICHLOROANILINE(2,3)	0.527	0.121	0.117	0.064	
DICHLOROBENZENE(1,2) (-o)	0.990	1.134	1.000	0.637	95–50–1
DICHLOROBENZENE(1,3) (-m)	0.990	1.134	1.000	0.719	541–73–1
DICHLOROBENZENE(1,4) (-p)	0.990	1.134	1.000	0.724	106–46–7
DICHLOROBENZIDINE,3,3'-	0.001	0.055	0.053	0.026	91–94–1
DICHLOROBENZOPHENONE P,P	0.978	0.366	0.332	0.093	90–98–2
DICHLOROBIPHENYL (PARA)	0.990	1.177	1.000	0.914	213029–08
DICHLOROBUTANE (1,4)	0.990	1.052	1.000	0.980	110–56–5
DICHLORODIPHENYLMETHANE (M)	0.990	0.107	0.107	0.855	2051–90–3
DICHLOROETHANE(1,1)	0.990	1.024	1.000	0.792	75–34–3
DICHLOROETHANE(1,2)	0.990	1.040	1.000	0.640	107–06–2
DICHLOROETHENE 1,2 trans	0.990	1.061	1.000	0.981	156–60–5
DICHLOROETHENE(1,1)	0.990	1.061	1.000	0.937	75–35–4
DICHLOROETHYL ETHER	0.872	0.711	0.757	0.212	
DICHLOROETHYLENE(1,2) cis	0.990	1.061	1.000	0.904	156–54–2
DICHLOROIODOMETHANE	0.990	0.553	0.975	0.362	
DICHLOROMONOFLUOROMETHANE	0.990	1.023	1.000	0.989	75–43–4
DICHLOROPHENOL	0.990	0.940	0.920	0.227	
DICHLOROPHENOL(2,4)	0.945	0.158	0.154	0.094	120–83–2
DICHLOROPHENOL(2,6)	0.846	0.213	0.209	0.094	87–65–0
DICHLOROPHENOXYACETIC ACID(2,4)	0.990	0.922	1.000	0.978	94–75–7
DICHLOROPROPANE 1,2	0.990	1.054	1.000	0.720	78–87–5
DICHLOROPROPENE(1,3)	0.990	1.071	1.000	0.759	542–75–6
DICHLOROPROPYLENE,1,2-(cis)	0.990	1.062	1.000	0.831	
DICHLOROPROPYLENE,1,2-(trans)	0.990	1.072	1.000	0.853	563–54–2
DICHLOROPROPYLENE-2,3	0.990	1.071	1.000	0.857	78–88–6
DICHLOROSTYRENE 2,6	0.990	1.149	1.000	0.823	
DICHLORO-TRANS-ETHYLENE(1,2)	0.990	1.061	1.000	0.980	540–59–0
DIELDRIN	0.990	0.259	0.235	0.225	60–57–1
DIETHYL AMINE	0.828	0.865	1.000	0.286	109–89–7
DIETHYL ETHER	0.990	0.856	1.000	0.423	602–97–6
DIETHYL ETHER ACID CHLORIDE (M)	0.990	0.379	0.379	0.980	
DIETHYL PHTHALATE	0.990	0.054	0.063	0.853	84–66–2
DIETHYL SULFATE	0.909	0.001	0.002	0.107	
DIETHYL THIOETHER (M)	0.990	0.999	0.999	0.980	352–93–2
DIETHYLBENZENE P	0.990	1.191	1.000	0.784	105–05–5
DIETHYLDIPHENYL UREA SYM(M)	0.990	0.091	0.091	0.859	85–98–3
DIETHYLENE GLYCOL DIETHYL ETHER	0.316	0.168	0.217	0.033	
DIETHYLUREA 1,1 (M)	0.729	0.726	0.726	0.101	634–95–7
DIHYDRO-5-OXAZALONE (DIHYDROAZLA (M)	0.990	0.982	0.982	0.722	
DIISOBUTYLENE	0.990	1.127	1.000	0.980	
DIISODECYL PHTHALATE	0.990	0.007	0.007	0.451	
DIISOPROPYL BENZENE (PARA)	0.990	1.184	1.000	0.980	100–18–5
DIISOPROPYL KETONE	0.990	0.973	1.000	0.483	
DIISOPROPYLAMINE	0.990	0.939	1.000	0.409	
DIMETHOXY METHANE	0.878	0.594	0.950	0.442	109–87–5
DIMETHOXY-(3,3')-BENZIDINE	0.990	0.000	0.000	0.660	119–90–4
DIMETHYL AMINE	0.321	0.709	0.996	0.198	124–40–3
DIMETHYL BENZ(A)ANT 7,12	0.990	1.214	0.973	0.857	
DIMETHYL BENZOIC ACID, 2,4	0.854	0.101	0.105	0.115	
DIMETHYL BENZOIC ACID, 3,5	0.854	0.101	0.105	0.115	
DIMETHYL BENZYLAMINE N,N	0.990	0.003	0.003	0.587	103–83–3
DIMETHYL METHYLTHIOCARBAMATE N,N(M)	0.990	0.676	0.676	0.863	
DIMETHYL NITROISOPROPYLAMINE N,N(M)	0.990	0.439	0.439	0.389	
DIMETHYL NITROSAMINE (M)	0.990	0.999	0.999	0.980	
DIMETHYL SULFATE	0.549	0.034	0.086	0.079	77–78–1
DIMETHYL SULFIDE	0.990	0.508	1.000	0.829	75–18–3
DIMETHYL TRISULFIDE	0.990	0.354	1.000	0.980	
DIMETHYL-1-NITROBENZENE 2,4	0.990	0.564	0.669	0.801	25168–04–
DIMETHYLACETAMIDE	0.547	0.707	0.994	0.284	
dimethylaniline N,N	0.990	0.000	0.001	0.342	57–14–7
DIMETHYLBENZYL HYDROPEROXIDE (M)	0.990	0.149	0.149	0.466	80–15–9
DIMETHYLETHYLAMINE	0.990	0.865	1.000	0.523	75–64–9
DIMETHYLGLYCOL	0.990	0.102	0.136	0.483	
DIMETHYLHYDANTOIN,5,5-(M)	0.990	0.521	0.521	0.980	77–71–4
DIMETHYLPHENOL (2,4)	0.990	0.050	0.047	0.552	105–67–9
DIMETHYLPHENYLCARBINOL (M)	0.990	0.385	0.385	0.794	617–94–7
DIMETHYLSULFOXIDE	0.854	0.821	0.990	0.419	
DINITROBENZENE M	0.023	0.564	1.000	0.285	99–65–0
DINITROPHENOL 2,4	0.990	0.004	0.008	0.059	51–28–5
DINITROTOLUENE 2,6	0.990			0.109	606–20–2

TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
DINITROTOLUENE (2,4)	0.390	0.052	0.085	0.178	121–14–2
DINOCAP (M)	0.990	0.043	0.043	0.980	39300–45–
DI-n-OCTYL PHTHALATE	0.990	0.000	0.000	0.980	117–84–0
DINOSEB (M)	0.990	0.105	0.105	0.575	88–85–7
DIOXANE (1,4)	0.387	0.618	0.869	0.181	123–91–1
DIOXIN (M)	0.990	0.064	0.064	0.279	828–00–2
DIPHENYL ETHER (M)	0.990	0.140	0.140	0.662	101–84–8
DIPHENYL THIOETHER (M)	0.990	0.132	0.132	0.838	139–66–2
DIPHENYLAMINE (M)	0.513	0.140	0.140	0.074	122–39–4
DIPHENYLBUTADIENE 1,3 (M)	0.990	0.122	0.122	0.647	886–65–7
DIPHENYLCHLOROMETHANE (M)	0.990	0.124	0.124	0.850	90–99–3
DIPHENYLDIKETONE (M)	0.990	0.120	0.120	0.851	134–81–6
DIPHENYLETHANE 1,1 (M)	0.990	0.134	0.134	0.551	
DIPHENYLETHANOL 1,1 (M)	0.416	0.126	0.126	0.066	599–67–7
DIPHENYLHYDRAZINE,1,1-(M)	0.990	0.133	0.133	0.796	530–50–7
DIPHENYLMETHANE	0.990	0.628	0.509	0.195	101–81–5
DIPROPYLAMINE	0.979	0.927	0.998	0.411	142–84–7
DIPROPYLBUTRAL	0.990	0.622	0.618	0.292	
DIPROPYLFORMAMIDE (M)	0.990	0.503	0.503	0.980	6282–00–4
DI-tert-BUTYL-p-CRESOL	0.990	0.031	0.028	0.072	128–37–0
DIVINYL KETONE (M)	0.990	0.999	0.999	0.457	
dodecane	0.990	1.089	1.000	0.980	
EDTA (M)	0.990	0.999	0.999	0.412	60–00–4
ENDOSULFAN	0.900	0.020	0.018	0.102	115–29–7
ENDOSULFAN SULFATE (M)	0.990	0.014	0.014	0.980	1031–07–8
ENDRIN ALDEHYDE (M)	0.990	0.999	0.999	0.412	
EPICHLOROHYDRIN	0.915	0.847	0.939	0.350	106–89–8
EPOXYBUTANE 1,2	0.990	0.879	1.000	0.582	
ETHANE	0.990	1.067	1.000	0.946	
ETHANOL	0.322	0.586	0.860	0.126	64–17–5
ETHENE	0.990	1.187	1.000	0.980	
ETHENYL 2 METHYL BENZENE, 1-	0.990	1.240	1.000	0.710	
ETHOXYETHANOL-2	0.545	0.144	0.207	0.134	110–80–5
ETHYL 2 METHYL BENZENE, 1-	0.990	1.198	1.000	0.731	
ETHYL ACETATE PEROXIDE (M)	0.990	0.659	0.659	0.706	
ETHYL ACRYLATE	0.990	0.788	1.000	0.483	140–88–5
ETHYL BUTANOATE	0.990	0.775	1.000	0.457	
ETHYL CYANIDE (PROPIONITRILE) (M)	0.990	0.999	0.999	0.580	107–12–0
ETHYL ETHER	0.990	0.856	1.000	0.506	60–29–7
ETHYL HEPTANOATE	0.990	0.868	1.000	0.470	
ETHYL ISOPROPYL PEROXIDE (M)	0.990	0.931	0.931	0.386	
ETHYL METHANOATE	0.990	0.537	1.000	0.566	
ETHYL PENTANOATE	0.990	0.813	1.000	0.428	
ETHYL PEROXIDE	0.341	0.146	0.283	0.112	
ETHYL PROPYL ETHER	0.990	0.894	1.000	0.571	
ETHYL S,S-DIPHENYL PHOSPHORODITH (M)	0.990	0.070	0.070	0.333	1709–49–8
ETHYL TOLUENE, 4	0.990	1.198	1.000	0.857	
ETHYL VINYL ETHER	0.990	0.890	1.000	0.652	
ETHYL(2) HEXANOL	0.990	0.256	0.268	0.266	104–76–7
ETHYL-(2)-PROPYL-(3) ACROLEIN (M)	0.977	0.999	0.999	0.257	645–62–5
ETHYLACETATE	0.987	0.722	1.000	0.404	141–78–6
ETHYLAMINE	0.358	0.711	0.999	0.280	75–04–7
ETHYLBENZENE	0.990	1.204	1.000	0.828	100–41–4
ETHYLENE	0.990	1.187	1.000	0.980	74–85–1
ETHYLENE DIAMINE	0.963	0.012	0.022	0.241	107–15–3
ETHYLENE DIBROMIDE	0.990	0.537	0.999	0.565	106–93–4
ETHYLENE GLYCOL DIMETHYL ETHER	0.905	0.601	0.860	0.316	110–71–4
ETHYLENE GLYCOL MONOBUTYL ETHER ACETATE	0.772	0.031	0.043	0.067	
ETHYLENE GLYCOL MONOMETHYL ETHER ACETATE	0.285	0.055	0.093	0.048	110–49–6
ETHYLENE OXIDE	0.986	0.712	1.000	0.503	75–21–8
ETHYLETHOXY PROPIONATE	0.940	0.491	0.577	0.213	
ETHYLHEXYL HEXANOL 2	0.990	0.065	0.064	0.125	
ETHYLHEXYLACRYLATE,2-	0.990	0.925	0.992	0.705	103–11–7
FENCHONE,d- (M)	0.990	0.149	0.149	0.406	4695–62–9
FLUORANTHENE	0.990	0.049	0.039	0.656	206–44–0
FLUORENE	0.990	0.965	0.774	0.314	86–73–7
FLUOROMETHANE	0.990	1.130	1.000	0.873	
FLUOROURACIL,5- (M)	0.990	0.999	0.999	0.412	51–21–8
FORMYL FLUORIDE	0.990	0.848	1.000	0.577	
FREON 11, fluorotrichloromethane	0.990	1.053	1.000	0.954	
FREON 12 DICHLORODIFLUOROMETHANE	0.990	1.059	1.000	0.980	75–71–8

TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
FREON 12, dichlorodifluoromethane	0.990	1.059	1.000	0.980	
FREONS (M)	0.990	0.644	0.644	0.980	
FURAN	0.990	0.983	1.000	0.755	110–00–9
FURFURAL	0.990	0.288	0.334	0.354	98–01–1
FUROIC ACID (M)	0.990	0.794	0.794	0.480	88–14–2
GEOSMIN (M)	0.990	0.134	0.134	0.406	19700–21–
GLYOXAL	0.502	0.490	0.888	0.297	
GUANINE (M)	0.990	0.149	0.149	0.980	73–40–5
HEPTACHLOR	0.990	0.619	0.566	0.647	76–44–8
HEPTACHLOR EPOXIDE (M)	0.976	0.030	0.030	0.162	1024–57–3
HEPTANAL	0.990	0.942	0.991	0.407	
HEPTANE ISO	0.990	1.099	1.000	0.980	31394–54–
HEPTANE(-n)	0.990	1.085	1.000	0.980	142–82–5
HEXACHLOROBENZENE	0.990	1.047	0.966	0.643	118–74–1
HEXACHLOROBUTADIENE	0.990	0.937	0.883	0.855	87–68–3
HEXACHLOROCYCLOHEXANE (GAMMA ISOMER)	0.990	0.141	0.132	0.106	58–89–9
HEXACHLOROCYCLOPENTADIE NE	0.990	0.886	0.826	0.803	77–47–4
HEXACHLOROETHANE	0.990	0.515	0.499	0.852	67–72–1
HEXACHLOROPENTADIENE (M)	0.990	0.088	0.088	0.860	
HEXADECANE N (M)	0.990	0.112	0.112	0.980	544–76–3
HEXAFLUOROACETONE	0.990	0.968	1.000	0.980	
HEXAFLUOROPROPENE	0.990	1.080	1.000	0.980	116–15–4
HEXAMETHYLENEDIAMINE (M)	0.971	0.724	0.724	0.213	124–09–4
HEXAMETHYLENIMINE	0.520	0.923	0.989	0.109	
HEXANAL	0.990	0.928	0.997	0.400	
HEXANE(-n)	0.990	1.084	1.000	1.000	110–54–3
HEXANOL 2 ETHYL	0.942	0.256	0.268	0.134	104–76–7
HEXANOL-1	0.963	0.322	0.355	0.180	111–27–3
HEXEN-2-ONE 5	0.979	0.885	0.915	0.347	
HEXENE	0.990	1.119	1.000	0.980	
HEXYL ETHANOATE	0.990	0.865	0.998	0.475	
HEXYLAMINE	0.948	0.803	0.870	0.239	
HYDROFLUORIC ACID (M)	0.990	0.558	0.558	0.537	7664–39–3
HYDROGEN SULFIDE	0.990	0.333	1.000	0.882	
HYDROXY DIMETHYL ETHER (M)	0.990	0.999	0.999	0.874	
HYDROXY–1,3-CYCLOPENTADIENE 5 (M)	0.990	0.999	0.999	0.728	
HYDROXY–4-METHYLTETRAHYDROFURAN(M)	0.990	0.948	0.948	0.385	
HYDROXY–5-METHYLDIMETHYL PHTHALA (M)	0.990	0.113	0.113	0.980	
HYDROXY6METHYLPYRIDINE3 CARBOXYLI (M)	0.990	0.148	0.148	0.409	38116–61–
HYDROXYACETIC ACID	0.760	0.000	0.001	0.570	79–14–1
HYDROXYCYCLOHEXANONE 4 (M)	0.631	0.761	0.761	0.087	
HYDROXYDIMETHYL PHTHALATE 4 (M)	0.990	0.120	0.120	0.980	
HYDROXYMETHYL ACETYLENE (M)	0.990	0.999	0.999	0.980	
HYDROXYMETHYL ISOPROPYL KETONE (M)	0.990	0.999	0.999	0.662	
HYDROXYMETHYL, N-METHYLETHYL AMI (M)	0.990	0.999	0.999	0.980	
HYDROXYMETHYL-N-CHLOROMETHYLETHY (M)	0.990	0.838	0.838	0.980	
HYDROXYMETHYLPHENYL CARBAMATE N (M)	0.920	0.147	0.147	0.137	
HYDROXYMETHYLTHIOBENZENE (M)	0.990	0.320	0.320	0.790	
HYDROXYMETHYLVINYL ETHER (M)	0.990	0.490	0.490	0.905	
HYDROXYPENTANE 3 (M)	0.990	0.999	0.999	0.450	
INDANOL,5-(M)	0.990	0.128	0.128	0.980	1470–94–6
INDOLE (M)	0.990	0.708	0.708	0.980	120–72–9
IODOCOUMARAN 2 (M)	0.990	0.102	0.102	0.980	
ISOBUTANE	0.990	1.103	1.000	0.963	
ISOBUTYL ETHANOATE	0.990	0.786	1.000	0.486	
ISOBUTYLBENZENE	0.990	1.191	1.000	0.905	
ISOBUTYLENE	0.990	1.141	1.000	0.916	
ISOCYANO 4 METHYL BENZENE*	0.980	0.422	0.384	0.198	
ISODECANOL	0.932	0.165	0.158	0.099	
ISODECYL OCTYL ESTER	0.990	1.033	1.000	0.906	
ISOPENTANE	0.990	1.101	1.000	0.954	
ISOPENTYL ETHANOATE	0.990	0.852	0.999	0.487	
ISOPENTYL METHANOATE	0.990	0.941	0.997	0.503	
ISOPHORONE	0.616	0.525	0.506	0.108	78–59–1
ISOPROPYL AMINE	0.990	0.811	1.000	0.538	75–31–0
ISOPROPYL ETHER	0.019	0.939	1.000	0.730	108–20–3
ISOPROPYL METHANOATE	0.990	0.886	1.000	0.578	
ISOPROPYL METHANOATE	0.990	0.865	1.000	0.547	
ISOPROPYL PROPANOATE	0.990	0.825	1.000	0.487	
ISOXAZOLOL,5-(AMINOMETHYL)-3-(M)	0.990	0.760	0.760	0.980	2763–96–4
LINDANE hexachlorocyclohexane	0.990	1.063	1.000	0.703	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
MELAMINE (M)	0.990	0.554	0.554	0.980	108–78–1
MERCAPTOBENZOTHIAZOLE,2	0.990	0.844	1.000	0.641	
MERCURY (M)	0.990	0.125	0.125	0.854	7439–97–6
METHACRYLIC ACID	0.990	0.068	0.091	0.194	79–41–4
METHANE	0.990	1.067	1.000	0.980	74–82–8
METHANETHIOL (M)	0.990	0.999	0.999	0.731	74–93–1
METHANOL	0.317	0.433	0.855	0.168	67–56–1
METHAPYRILENE (M)	0.990	0.094	0.094	0.980	91–80–5
METHOXYACETIC ACID	0.593	0.005	0.010	0.064	625–45–6
METHOXYACETONITRILE (M)	0.990	0.999	0.999	0.382	1738–36–9
METHOXYCHLOR	0.990	0.085	0.081	0.333	72–43–5
METHYL 1-PENTENE 2	0.990	1.125	1.000	0.980	763–29–1
METHYL 2-PROPYL ETHER	0.990	0.976	1.000	0.537	
METHYL ACETATE	0.989	0.590	0.906	0.454	79–20–9
METHYL ACRYLATE	0.990	0.748	1.000	0.478	96–33–3
METHYL ACRYLONITRILE (M)	0.990	0.999	0.999	0.980	126–98–7
METHYL AMINE	0.990	0.516	0.992	0.877	74–89–5
METHYL AMINOACETYLENE (M)	0.990	0.999	0.999	0.980	
METHYL AZIRIDINE 2	0.900	0.838	1.000	0.360	
METHYL BENZOATE	0.692	0.924	0.981	0.168	
METHYL BENZYL ALCOHOL 4	0.917	0.058	0.056	0.154	
METHYL BIPHENYL (-p) (M)	0.990	0.141	0.141	0.819	644–08–6
METHYL BUTANOATE	0.990	0.775	1.000	0.413	
METHYL CHLORIDE	0.990	1.040	1.000	0.840	74–87–3
METHYL CHLOROACETAMIDE N (M)	0.863	0.872	0.872	0.137	
METHYL CHLOROCARBONATE (M)	0.990	0.999	0.999	0.980	79–22–1
METHYL CHOLANTHRENE 3	0.990	1.234	0.990	0.322	56–49–5
METHYL COUMARAN 2 (M)	0.990	0.145	0.145	0.811	607–71–6
METHYL CYCLOHEXANE	0.990	1.107	1.000	0.980	108–87–2
METHYL ETHER dimethyl ether	0.990	0.698	1.000	0.730	115–10–6
METHYL ETHYL ETHER	0.990	0.791	1.000	0.617	
METHYL ETHYL KETONE, 2 butanone	0.958	0.872	0.990	0.477	78–93–3
METHYL FORMATE	0.590	0.535	0.997	0.548	107–31–3
METHYL HEXANOATE	0.990	0.843	1.000	0.441	
METHYL IODIDE	0.990	0.354	1.000	0.711	74–88–4
METHYL ISOAMYL KETONE (M)	0.990	0.761	0.761	0.318	110–12–3
METHYL ISOBUTYL KETONE	0.990	0.933	0.979	0.529	108–10–1
METHYL ISOCYANATE	0.990	0.272	1.000	0.870	624–83–9
METHYL ISOPROPYL KETONE	0.986	0.922	0.991	0.523	563–80–4
METHYL MERCAPTAN	0.990	0.333	1.000	0.719	
METHYL METHACRYLATE	0.986	0.801	0.999	0.366	80–62–6
METHYL MORPHOLINE	0.435	0.365	0.475	0.078	
METHYL NAPTHALENE (1-)	0.990	1.204	0.973	0.512	90–12–0
METHYL NAPTHALENE (-12)	0.990	1.219	0.986	0.246	91–57–6
METHYL OCTANOATE	0.990	0.888	1.000	0.524	
METHYL PENTANOATE	0.990	0.813	1.000	0.417	
METHYL PEROXIDE	0.587	0.024	0.070	0.159	
METHYL PROPANOATE	0.985	0.724	1.000	0.431	
METHYL PROPENE 2 (M)	0.990	0.999	0.999	0.980	115–11–7
METHYL PROPYL ETHER	0.990	0.848	1.000	0.598	
METHYL TERTIARY-BUTYL ETHER	0.990	0.911	1.000	0.573	1634–04–4
METHYL TETRAHYDROFURAN 2	0.990	0.914	1.000	0.357	
METHYL THIOURACIL (M)	0.990	0.283	0.283	0.753	56–04–2
METHYL-1,3-CYCLOPENTADIENE 5 (M)	0.990	0.999	0.999	0.924	26519–91–
METHYL-2,3,4-TRIHYDROQUINOLINE N (M)	0.912	0.218	0.218	0.137	
METHYL-2-AMINOETHYLAMINE (M)	0.990	0.999	0.999	0.871	109–81–9
METHYL-2-HYDROXYETHYLAMINE (M)	0.578	0.999	0.999	0.081	109–83–1
METHYL-3-ACETYLCYCLOPENTADIENE 1 (M)	0.990	0.897	0.897	0.754	
METHYL-3-NITROBENZYL ALCOHOL 4 (M)	0.767	0.141	0.141	0.103	40870–59–
METHYL-4-NITROBENZYL ALCOHOL 2 (M)	0.568	0.141	0.141	0.079	23876–13–
METHYL-5-THIOACETYLDIHYDRO1,3THI (M)	0.994	0.146	0.146	0.980	
METHYLACETONITRILE (M)	0.990	0.999	0.999	0.980	75–86–5
METHYLBUTADIENE (isoprene)	0.990	1.176	1.000	0.980	
METHYLBUTYLAMINE	0.809	0.791	0.883	0.178	
METHYLCYCLOPENTANE	0.990	1.109	1.000	0.980	
METHYLENE CHLORIDE, dichloromethane	0.990	1.017	1.000	0.770	75–09–2
METHYLFURAN 2 (M)	0.509	0.999	0.999	0.073	534–22–5
METHYLISOBORNEOL,2-(M)	0.990	0.141	0.141	0.794	NA
METHYLPHENYL CARBAMATE N (M)	0.906	0.320	0.320	0.137	
METHYL-PHENYLETHYLAMINE N (M)	0.990	0.401	0.401	0.587	589–08–2
METHYL-p'-METHYLTRIPHENYL PHOSPH (M)	0.990	0.079	0.079	0.862	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
METHYLSTYRENE (-4)	0.990	1.217	1.000	0.767	98–93–9
METHYLTIN TRICHLORIDE (M)	0.470	0.105	0.105	0.070	993–16–8
METHYL-TRIHYDRO-1,3-THIAZOLE 4 (M)	0.990	0.914	0.914	0.316	
MITOMYCIN C (M)	0.990	0.058	0.058	0.980	50–07–7
MNNG (M)	0.990	0.199	0.199	0.980	70–25–7
MONOCHLORODIFLUOROMETHANE	0.990	1.023	1.000	0.990	75–45–6
MORPHOLINE	0.990	0.148	0.207	0.437	110–91–8
MUSTARD GAS (M)	0.990	0.146	0.146	0.406	505–60–2
NAPHTHALENE	0.990	1.239	0.994	0.506	
NAPHTHALENE ACETIC ACID 2 METHYL,	10.99	0.863	0.830	0.567	
NAPHTHOQUINONE-1,4 (M)	0.958	0.146	0.146	0.164	130–15–4
NICKEL CYANIDE (M)	0.990	0.817	0.817	0.284	557–19–7
NITRO m XYLENE, 2	0.990	0.779	0.923	0.455	
NITRO-4-METHYLBENZOATE 3 (M)	0.990	0.128	0.128	0.980	
NITROANILINE P	0.990	0.000	0.000	0.411	100–01–6
NITROBENZENE	0.808	0.305	0.394	0.228	98–95–3
NITROBENZENESULFONYL CHLORIDE P (M)	0.990	0.114	0.114	0.458	98–74–8
NITROBENZYL ALCOHOL P (M)	0.990	0.149	0.149	0.356	619–73–8
NITROBIPHENYL,4-	0.976	0.044	0.046	0.075	92–93–3
NITROCELLULOSE (M)	0.990	0.000	0.000	0.558	9004–70–0
NITROETHANE	0.225	0.412	0.964	0.161	
NITROGEN MUSTARD N-OXIDE (M)	0.990	0.139	0.139	0.794	126–85–2
NITROMETHANE	0.990	0.255	0.954	0.883	75–52–5
NITROMETHYLBENZENE	0.990	0.463	0.570	0.270	
NITROPROPANE 2	0.985	0.531	0.989	0.437	79–46–9
NITROSOBENZYL ALCOHOL 4 (M)	0.901	0.405	0.405	0.136	
NITROSOPYRROLIDINE N (M)	0.990	0.997	0.997	0.980	930–55–2
NITROTOLUENE (-p)	0.990	0.339	0.417	0.45199–	99–0
NITROTOLUENE, m	0.990	0.475	0.585	0.279	
NITROTOLUENE, o	0.990	0.534	0.657	0.296	
NITROTOLUENE, o	0.988	0.534	0.657	0.266	
NONANAL	0.990	0.938	0.959	0.558	
NONANOL, n	0.856	0.099	0.103	0.091	
NONYLPHENOL(M)	0.990	0.115	0.115	0.794	25154–52
OCTAMETHYLPYROPHOSPHORAMIDE (M)	0.990	0.082	0.082	0.980	152–16–9
OCTANAL	0.990	0.946	0.979	0.465	
OCTANE	0.990	1.086	1.000	0.980	111–65–9
OCTANOL 1	0.990	0.184	0.195	0.240	111–87–5
OCTANOL 2	0.983	0.381	0.398	0.136	
OCTANOL 3	0.990	0.514	0.536	0.104	
OCTANOL 4	0.990	0.446	0.466	0.118	
OIL (decane)	0.990	1.088	1.000	0.951	
OXAMIC ACID (M)	0.990	0.999	0.999	0.317	471–47–6
PARABROMOPHENOL (M)	0.925	0.139	0.139	0.135	106–41–2
PARAFORMALDEHYDE (M)	0.990	0.000	0.000	0.558	30525–89-
PARALDEHYDE	0.795	0.717	0.991	0.232	123–63–7
PCB 1016 (monochlorobiphenyl)	0.990	1.204	1.000	0.345	12674–11-
PCB 1221 (monochlorobiphenyl)	0.990	1.204	1.000	0.418	11104–28-
PCB 1232 (dichlorobiphenyl)	0.990	1.177	1.000	0.543	11141–16-
PCB 1242 (trichlorobiphenyl)	0.990	1.075	0.929	0.488	53469–21-
PCB 1248 (quatrochlorobiphenyl)	0.990	1.142	1.000	0.640	12672–29-
PCB 1254(pentachlorobipheny l	0.990	0.698	0.618	0.813	11097–69-
PCB 1260 (hexachlorobiphenyl)	0.990	0.504	0.450	0.791	11096–82-
PCB'S (Aroclors)	0.990	1.142	1.000	0.507	
PENTACHLOROBENZENE	0.990	1.091	1.000	0.796	608–93–5
PENTACHLOROETHANE	0.990	0.991	0.966	0.877	76–01–7
PENTACHLORONITROBENZENE	0.990	0.774	0.839	0.405	
PENTACHLOROPHENOL	0.990	0.092	0.090	0.298	87–86–5
PENTADIENE 1,2	0.990	1.191	1.000	0.855	
PENTAERYTHRITOL TETRANITRATE (M)	0.976	0.067	0.067	0.162	78–11–5
PENTANAL	0.990	0.904	0.999	0.406	
PENTANE	0.990	1.082	1.000	0.925	
PENTYL PROPANOATE	0.990	0.868	1.000	0.537	
PENTYLAMINE	0.903	0.822	0.917	0.254	
PENTYLBENZENE	0.990	1.173	1.000	0.766	
PENTYLCYCLOPENTANE	0.990	1.103	1.000	0.980	
PERCHLOROMETHYL MERCAPTAN (M)	0.990	0.132	0.132	0.980	594–42–3
PERYLENE (M)	0.990	0.099	0.099	0.853	198–55–0
PHENANTHRENE	0.990	0.279	0.222	0.193	85–01–8
PHENOL,3-(1,1-DIMETHYLETHYL)-(M)	0.990	0.558	0.558	0.794	585–34–2
PHENOTHIAZINE (M)	0.990	0.125	0.125	0.874	92–84–2

S AT 25° C

CAS

108–78–1

7439–97–6

79–41–4

74–82–8

74–93–1

67–56–1

91–80–5

625–45–6

1738–36–9

72–43–5

763–29–1

79–20–9

96–33–3

126–98–7

74–89–5

644–08–6

74–87–3

79–22–1

56–49–5

607–71–6

108–87–2

115–10–6

78–93–3

107–31–3

74–88–4

110–12–3

108–10–1

624–83–9

563–80–4

80–62–6

90–12–0

91–57–6

115–11–7

1634–04–4

56–04–2

26519–91–

109–81–9

109–83–1

40870–59–

23876–13–

75–86–5

75–09–2

534–22–5

NA

589–08–2

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TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
PHENYL ISOCYANATE (M)	0.990	0.674	0.674	0.855	103–71–9
PHENYLACETIC PEROXIDE (M)	0.917	0.149	0.149	0.137	
PHENYLCYCLOHEXANONE 4	0.990	1.029	0.914	0.826	4894–75–1
PHENYLHYDRAZINE (M)	0.990	0.860	0.860	0.314	100–63–0
PHENYLPHENOL P	0.990	0.001	0.001	0.710	92–69–3
PHENYLTHIOUREA (M)	0.990	0.149	0.149	0.863	103–85–5
PHOSGENE (decomposes)	0.990	0.868	1.000	0.872	75–44–5
PHOSPHINE	0.990	0.213	1.000	0.996	7803–51–2
PHTHALATE, DI N BUTYL–	0.971	0.006	0.006	0.095	
PHTHALATE, DI N OCTYL	0.990	0.042	0.044	0.574	
PHTHALIC ACID	0.990	0.714	0.924	0.858	88–99–3
PHTHALIMIDE	0.990	0.850	0.957	0.854	85–41–6
PICOLINE(2-) (M)	0.990	0.999	0.999	0.398	109–06–8
PINENE(alpha-)	0.990	1.165	1.000	0.890	80–56–8
PIPERAZINE	0.990	0.031	0.042	0.339	110–85–0
POLYCYCLIC KETONE O (M)	0.990	0.000	0.000	0.948	
PROPANAL	0.902	0.813	1.000	0.436	
PROPANE	0.990	1.075	1.000	0.880	74–98–6
PROPANE), 2,2'-OXYBIS(2-CHLORO-(M)	0.990	0.138	0.138	0.980	39638–32
PROPANOIC ACID	0.104	0.105	0.163	0.064	79–09–4
PROPANOL	0.595	0.305	0.421	0.185	
PROPANOL ISO	0.451	0.740	0.926	0.190	67–63–0
PROPENAL	0.943	0.855	1.000	0.487	
PROPENE	0.990	1.144	1.000	0.980	
PROPENYL BENZENE	0.990	1.217	1.000	0.860	
PROPIONALDEHYDE	0.990	0.813	0.999	0.406	123–38–6
PROPIONIC ACID	0.990	0.066	0.102	0.381	79–09–4
PROPIONITRILE (M)	0.990	0.999	0.999	0.580	107–12–0
PROPYL ACETATE ISO	0.990	0.786	1.000	0.453	108–21–4
PROPYL BUTANOATE	0.990	0.843	1.000	0.475	
PROPYL ETHER	0.990	0.921	1.000	0.716	111–43–3
PROPYL METHANOATE	0.990	0.714	1.000	0.506	
PROPYL PROPANOATE	0.990	0.813	1.000	0.446	
PROPYL THIOURACIL (M)	0.990	0.140	0.140	0.921	51–52–5
PROPYL(-n) ACETATE	0.990	0.773	0.999	0.448	109–60–4
PROPYL(-n) BENZENE	0.990	1.191	1.000	0.781	103–65–1
PROPYL-3-METHOXY PYRAZINE,2-ISO(M)	0.990	0.149	0.149	0.980	25773–40-
PROPYLAMINE	0.563	0.778	0.971	0.249	107–10–8
PROPYLCYCLOPENTANE	0.990	1.105	1.000	0.980	
PROPYLENE	0.990	1.144	1.000	0.980	115–07–1
PROPYLENE CHLOROHYDRIN	0.274	0.338	0.383	0.069	
PROPYLENE OXIDE	0.990	0.841	1.000	0.600	75–56–9
PROPYLENIMINE 1,2 2 methyl aziri	0.609	0.792	0.944	0.239	75–55–8
PROPYN-1-OL 2(PROPARLGYL)	0.550	0.271	0.321	0.225	107–19–7
PROPYNE	0.990	1.200	1.000	0.853	
PYRENE	0.990	0.046	0.036	0.113	129–00–0
PYRIDINE	0.956	0.608	0.600	0.255	110–86–1
PYRROLIDINE	0.198	0.814	0.936	0.072	
QUINALDINE (M)	0.990	0.999	0.999	0.853	91–63–4
RESERPINE (M)	0.990	0.000	0.000	0.648	50–55–5
s ACETYLMERCAPTOSUCCINIC ACID	0.318	0.030	0.050	0.069	
S4CHL.CYCLOHEX.00DIMETH .PHOS.DIT(M)	0.990	0.052	0.052	0.342	
SACCHARIN (M)	0.990	0.133	0.133	0.850	81–07–2
SAFROLE (M)	0.990	0.144	0.144	0.406	94–59–7
sec BUTYLBENZENE	0.990	1.187	1.000	0.860	
SILVEX	0.990	1.106	1.000	0.774	93–72–1
SODIUM DODECYL SULFATE (M)	0.988	0.081	0.081	0.195	151–21–3
SODIUM DODECYLBENZENE SULFONATE (M)	0.908	0.083	0.083	0.121	25155–30-
STREPTOZOTOCIN (M)	0.990	0.092	0.092	0.980	18883–66-
STYRENE	0.990	1.229	1.000	0.800	100–42–5
STYRENE OXIDE	0.990	0.883	0.830	0.341	
SULFIDE (M)	0.990	0.999	0.999	0.649	
TAMARON (METHAMIDIPHOS)	0.306	0.430	0.672	0.091	
TARS(M)	0.990	0.025	0.025	0.642	
t-BUTYL HYDROPEROXIDE	0.497	0.289	0.404	0.199	75–91–2
TERPINEOL, ALPHA	0.990	1.008	0.984	0.473	
tert BUTANOL	0.630	0.856	0.989	0.231	
tert-AMYLBENZENE	0.990	1.173	1.000	0.870	
tert-BUTYLBENZENE	0.990	1.192	1.000	0.855	
TETRACHLOROAQUINONE (M)	0.990	0.102	0.102	0.980	
TETRACHLOROBENZENE(1,2,3,4)	0.990	1.101	1.000	0.700	634–66–2

TABLE 2 OF APPENDIX J.—FR, FM, AND FE[1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe[1]	CAS
TETRACHLOROBENZENE(1,2,3,5)	0.990	1.101	1.000	0.732	634–90–2
TETRACHLOROBENZENE(1,2,4,5)	0.990	1.101	1.000	0.732	95–94–3
TETRACHLORODIBENZOFURAN (2,3,7,8) (M)	0.990	0.072	0.072	0.332	51207–31-
TETRACHLORODIBENZO-p-DIOXIN(2,3,7,8)	0.990	0.109	0.101	0.173	1746–01–6
TETRACHLOROETHANE(1,1,1,2) (M)	0.990	0.141	0.141	0.459	630–20–6
TETRACHLOROETHANE(1,1,2,2)	0.990	1.015	0.999	0.397	79–34–5
TETRACHLOROETHENE	0.990	1.048	1.000	0.917	127–18–4
TETRACHLOROPHENOL(2,3,4,6)	0.447	1.024	1.000	0.091	58–90–2
TETRACHLOROPHENOL(2,3,5,6)	0.990	0.010	0.010	0.980	935–95–5
TETRACHLOROPROPENE(1,1,2,3) (M)	0.990	0.135	0.135	0.831	10436–39-
TETRADECANE	0.990	1.089	1.000	0.896	629–59–4
TETRAETHYL LEAD	0.990	0.958	0.889	0.980	78–00–2
TETRAETHYLENE GLYCOL (M)	0.892	0.128	0.128	0.117	112–60–7
TETRAETHYLENE PENTANE	0.990	1.183	1.000	0.881	
TETRAETHYLPYROPHOSPHATE (M)	0.990	0.080	0.080	0.980	107–49–3
TETRAFLUOROETHENE	0.990	1.080	1.000	0.980	
TETRAFLUOROMETHANE	0.990	1.037	1.000	0.980	
TETRAHYDROBENZALDEHYDE	0.912	0.635	0.641	0.213	
TETRAHYDROFURAN	0.830	0.860	1.000	0.322	109–99–9
TETRAHYDRONAPHTHALENE,1,2,3,4-(M)	0.887	0.452	0.452	0.794	119–64–2
TETRAHYDROPYRAN	0.980	0.898	1.000	0.381	142–68–7
TETRAHYDROTHIOPHENE	0.990	0.692	1.000	0.566	
TETRALIN	0.990	1.189	1.000	0.632	
TETRANITROMETHANE	0.990	0.267	1.000	0.852	509–14–8
THIOACETAMIDE (M)	0.990	0.999	0.999	0.375	62–55–5
THIOBENZYL ALCOHOL P (M)	0.887	0.588	0.588	0.136	100–53–8
THIOBISETHANE, 1,1'	0.990	0.692	1.000	0.763	
THIOCYANATE (TOTAL AS SCN-) (M)	0.990	0.642	0.642	0.894	NA
THIOMETHANOL (M)	0.990	0.999	0.999	0.499	74–93–1
THIOPHENOL (M)	0.659	0.826	0.826	0.933	108–98–5
THIOPROPIONAMIDE 2 (M)	0.696	0.948	0.948	0.097	
THIOUREA	0.892	0.011	0.024	0.472	62–56–6
THIRAM (M)	0.990	0.105	0.105	0.980	137–26–8
THYMINE (M)	0.990	0.556	0.556	0.806	65–71–4
TOLUENE	0.990	1.215	1.000	0.804	108–88–3
TOLUENE24DIAZOBIS-METATOLUENEDIA(M)	0.986	0.011	0.011	0.188	
TOLUENESULFONYL CHLORIDE	0.604	0.046	0.047	0.068	
TOLUIC ALDEHYDE	0.990	0.513	0.478	0.382	122–78–1
TOLUIDINE (-0)	0.459	0.159	0.152	0.052	95–53–4
TOLUIDINE HYDROCHLORIDE,o-(M)	0.990	0.258	0.258	0.980	636–21–5
TOLUIDINE P	0.850	0.274	0.262	0.208	106–49–0
TOXAPHENE	0.990	0.054	0.050	0.735	8001–35–2
trans 1,4 DIMETHYLCYCLOHEXANE	0.990	1.117	1.000	0.980	
trans 2 BUTENAL	0.387	0.911	1.000	0.267	
trans 2 HEPTENE	0.990	1.121	1.000	0.980	
trans 2 HEXENAL	0.856	0.963	1.000	0.295	
trans 2 OCTENAL	0.990	0.985	0.993	0.381	
trans, trans 2,4 HEXADIENAL	0.233	0.996	1.000	0.151	
TRIBROMOMETHYLPHOSPHATE (M)	0.980	0.052	0.052	0.169	
TRIBUTYL PHOSPHOROTRITHIOATE SSS	0.990			0.334	78–48–8
TRIBUTYL TIN ACETATE	0.990	0.929	0.980	0.789	
TRIBUTYL PHOSPHATE	0.990	1.073	0.988	0.980	126–73–8
TRICHLORO(1,1,2)TRIFLUO ROETHANE(M)	0.990	0.131	0.131	0.980	76–13–1
TRICHLORO–1,2,2-TRIFLUOROETHANE,1,1	0.990	1.033	1.000	0.980	76–13–1
TRICHLORO-1,3,5-TRIAZINE 2,4,6 (M)	0.990	0.133	0.133	0.552	108–77–0
TRICHLOROANISOLE 2,3,6 (M)	0.990	0.119	0.119	0.980	50375–10-
TRICHLOROBENZENE 1,2,3	0.990	1.114	1.000	0.808	87–61–6
TRICHLOROBENZENE 1,2,4	0.990	1.114	1.000	0.637	120–82–1
TRICHLOROBENZENE 1,3,5	0.990	1.114	1.000	0.877	108–70–3
TRICHLOROBUTANE 1,2,3 (M)	0.990	0.144	0.144	0.980	18338–40-
TRICHLOROETHANE 1,1,1	0.990	1.037	1.000	0.913	71–55–6
TRICHLOROETHANE 1,1,2	0.990	1.025	1.000	0.597	79–00–5
TRICHLOROETHYLENE	0.990	1.053	1.000	0.866	79–01–6
TRICHLOROFLUOROMETHANE	0.990	1.027	1.000	0.968	75–69–4
TRICHLOROPHENOL 2,4,5	0.964	0.111	0.108	0.086	95–95–4
TRICHLOROPHENOL 2,4,6	0.990	0.135	0.132	0.167	88–06–2
TRICHLOROPROPANE 1,1,1	0.990	1.048	1.000	0.897	7789–89–1
TRICHLOROPROPANE(1,1,2)	0.990	1.037	1.000	0.897	598–77–6
TRICHLOROPROPANE(1,2,2)	0.990	1.047	1.000	0.897	3175–23–3
TRICHLOROPROPANE(1,2,3)	0.990	1.048	1.000	0.894	96–18–4
TRICHLOROPROPENE (1,1,2)(M)	0.990	0.228	0.228	0.795	

TABLE 2 OF APPENDIX J.—FR, FM, AND FE [1] VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25° C GREATER THAN OR EQUAL TO 0.1 Y/X ATMOSPHERE PER MOLE FRACTION—Continued

Compound	FR	Fm25D	Fm305	Fe [1]	CAS
TRICOSANE N(M)	0.990	0.133	0.133	0.301	629–50–5
TRIETHYLAMINE	0.990	0.937	1.000	0.379	121–44–8
TRIETHYLENE GLYCOL(M)	0.846	0.150	0.150	0.111	112–27–6
TRIETHYLPHOSPHOROTHIOAT E,o,o,o-(M)	0.989	0.126	0.126	0.794	126–68–1
TRIFLUOROETHANE(1,1,1)	0.990	1.059	1.000	0.980	
TRIFLUOROMETHANE	0.990	1.057	1.000	0.980	
TRIFLURALIN	0.990	0.086	0.116	0.291	
TRIISOBUTYLENE	0.990	1.117	1.000	0.980	
TRIISOPROPYLAMINE	0.990	1.026	1.000	0.715	
TRIMELLITIC ANHYDRIDE (M)	0.629	0.129	0.129	0.087	552–30–7
TRIMETHYL BENZENE, 123	0.990	1.200	1.000	0.713	
TRIMETHYL-4-NITROANILINE 2,3,5 (M)	0.990	0.135	0.135	0.831	
TRIMETHYLAMINE	0.990	0.811	1.000	0.464	75–50–3
TRIMETHYLBENZENE (1,3,5)	0.990	1.200	1.000	0.766	108–67–3
TRIMETHYLPENTANE 2,2,4	0.990	1.116	1.000	1.000	540–84–1
TRIMETHYLSILANOL	0.990	0.533	1.000	0.980	
TRINITROBENZENE,sym-(M)	0.990	0.118	0.118	0.712	99–35–4
TRINITROTOLUENE(2,4,6)	0.223	0.004	0.009	0.120	118–96–7
TRIPHENYL PHOSPHINE (M)	0.990	0.094	0.094	0.321	603–35–0
TRIPHENYLMETHANE (M)	0.990	0.103	0.103	0.980	516–73–3
TRIPHENYLPHOSPHINE NICKEL CARBONM)	0.990	0.037	0.037	0.722	
TRIS (1-AZIRIDINYL) PHOSPHINESU(M)	0.990	0.130	0.130	0.379	52–24–4
TRIS (2,3-DIBROMOPROPYL)PHOSPHA(M)	0.990	0.000	0.000	0.980	126–72–7
TRISODIUM NITRILOTRIACETATE (M)	0.990	0.128	0.128	0.980	5064–31–3
TRYPAN BLUE(M)	0.990	0.000	0.000	0.853	72–57–1
URACIL (M)	0.990	0.794	0.794	0.857	66–22–8
URACIL MUSTARD (M)	0.990	0.099	0.099	0.853	66–75–1
UREA	0.990	0.016	0.030	0.582	57–13–6
URETHANE	0.990	0.024	0.039	0.370	51–79–6
VALERIC ACID (M)	0.990	0.963	0.963	0.287	109–52–4
VINYL ACETATE	0.990	0.748	1.000	0.592	108–05–4
VINYL ACETYLENE	0.990	1.232	1.000	0.890	
VINYL BROMIDE	0.990	0.629	1.000	0.849	
VINYL CHLORIDE	0.990	1.081	1.000	0.971	75–01–4
VINYL DIHYDROPYRAN	0.990	0.935	1.000	0.554	
VINYL METHYL ETHER	0.990	0.831	1.000	0.590	
VINYLCYCLOHEXENE 4(M)	0.990	0.860	0.860	0.980	100–40–3
VINYLIDENE CHLORIDE	0.990	1.061	1.000	0.889	75–35–4
XYLENE	0.990	1.206	1.000	0.788	1330–20–7
XYLENE(-m)	0.990	1.206	1.000	0.821	108–38–3
XYLENE(-o)	0.990	1.206	1.000	0.787	95–47–6
XYLENE(-p)	0.990	1.206	1.000	0.824	106–67–9
XYLIDINE dimethylaniline	0.606	0.131	0.124	0.074	
XYLYL CHLORIDE M (M)	0.990	0.310	0.310	0.592	620–19–9
XYLYL CHLORIDE O (M)	0.990	0.310	0.310	0.592	552–45–4

* Molecular structure only approximate.

(M) fraction measured (fm) estimated from Mwt correlation.

[1] The Fe values listed in Table 2 are Fe values for emissions from both the individual drain system and the treatment process. Use these Fe values with Section 2.5.1).

TABLE 3 OF APPENDIX J—FE VALUES FOR EMISSIONS FROM BOTH THE INDIVIDUAL DRAIN SYSTEM AND THE TREATMENT PROCESS

[Use with section 2.5.1]

Henry's Law Constant	Fe Value
0.00025	0.001
0.00051	0.002
0.00076	0.003
0.00127	0.005
0.00178	0.007
0.00254	0.010
0.00381	0.015
0.00508	0.020
0.00635	0.25
0.00762	0.030
0.00890	0.035
0.01017	0.040
0.01144	0.045
0.02327	0.050

TABLE 3 OF APPENDIX J—FE VALUES FOR EMISSIONS FROM BOTH THE INDIVIDUAL DRAIN SYSTEM AND THE TREATMENT PROCESS—Continued

[Use with section 2.5.1]

Henry's Law Constant	Fe Value
0.07862	0.060
0.13396	0.070
0.18931	0.080
0.24465	0.090
0.30	0.10
0.54	0.11
0.77	0.12
01.005	0.13
1.24	0.14
1.48	0.15
1.71	0.16
1.94	0.17
2.18	0.18
2.42	0.19
2.65	0.20
2.88	0.21
3.12	0.22
3.36	0.23
3.59	0.24
3.82	0.25
4.06	0.26
4.30	0.27
4.53	0.27
4.53	0.28
4.76	0.29
5	0.30
6.1	0.31
8.3	0.31
10.5	0.35
12.7	0.37
14.9	0.39
17.1	0.41
19.3	0.43
22.4	0.45
27.9	0.47
33.4	0.49
39	0.51
44.5	0.53
50	0.55
83.3	0.57
116.7	0.59
150	0.61
183.3	0.63
216.7	0.65
250	0.67
283.3	0.69
316.7	0.71
350	0.73
383.3	0.75
416.7	0.77
450	0.79
483.3	0.81
516.7	0.83
550	0.85
1003.8	0.87
1457.5	0.89
1911.5	0.91
2365.4	0.93
2819.2	0.95
3273.1	0.97
3500	0.98

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
1 BROMO 2 CHLORO 2 BUTENE	311.66	0.544	
1 BUTYENE	1048.21	0.733	
1 ETHYL 4 METHYLBENZENE	277.78	0.511	
1 HEPTANOL	1.03	0.186	
1 HEPTYNE	3703.67	0.654	
1 HEXYNE	2222.20	0.675	
1 ISOCYANO 3-METHYLBENZENE	1.54	0.210	
1 ISOPROPYL 4 METHYLBENZENE	427.35	0.495	
1 METHYLCYCLOHEXENE	4273.46	0.664	
1 METHYLNAPHTHALENE	14.25	0.325	
1 NONYNE	8051.45	0.603	
1 OCTENE	50505.00	0.729	
1 OCTYNE	4629.58	0.624	
1 PENTYNE	1355.00	0.699	
1,1 DIETHOXYETHANE	5.56	0.320	
1,1,3 TRIMETHYLCYCLOPENTANE	86805.00	0.802	
1,1-DIFLUOROETHANE	1133.78	0.699	
1,2 DIETHOXYETHANE	3.47	0.309	
1,2,4,5 TETRAMETHYLBENZENE	1388.88	0.512	
1,3-DIOXOLANE	1.36	0.232	646–06–0
1,4 PENTADIENE	6613.69	0.742	
1,5 HEXADIENE	7507.43	0.702	
1-NITROPROPANE	4.63	0.374	
1-PENTANOL	69.44	0.576	
1-PENTENE	22222.00	0.812	
1-PROPOXY 2-PROPANOL	0.13	0.046	
2 BUTEN 1 0L	0.19	0.095	
2 HEPTANONE	8.05	0.356	
2 METHYL 1 BUTANOL	0.78	0.201	
2 METHYL 2 BUTENE	12346.00	0.782	
2 METHYL 2 PENTANOL	1.79	0.257	
2 METHYL 3 PENTANOL	1.92	0.241	
2 METHYLHEXANE C7H16	29239.00	0.737	
2 METHYLNAPHTHALENE	22.22	0.344	
2 NONANONE	20.58	0.366	
2 OCTANONE	10.48	0.348	
2 PENTANONE	3.47	0.350	
2 PENTENE	12920.00	0.779	
2 PROPYLBENZENE	71.22	0.435	
2 UNDECANONE	34.72	0.353	
2-(1-METHOXY))-1-PROPANOL	0.26	0.080	
2,2 DIMETHYL PROPANOIC ACID	0.16	0.062	
2,2 DIMETHYLBUTANE C6H14	1700.00	0.654	
2,2 DIMETHYLPENTANE	173610.00	0.881	
2,2,5 TRIMETHYLHEXANE C9H20	191570.00	0.795	
2,3 DIMETHYL 1,3 BUTADIENE	2645.48	0.671	
2,3 DIMETHYLBUTANE C6H14	71224.00	0.856	
2,3 DIMETHYLBUTANOL	1.85	0.259	
2,3 DIMETHYLPENTANE C7H16	95784.00	0.835	
2,3,4 TRIMETHYLPENTANE C8H18	104820.00	0.793	
2,3-DIMETHYLPYRIDINE	0.40	0.110	
2,4 DIMETHYLPENTANE C7H16	163400.00	0.875	
2,4,5 T	1.00	0.000	93–76–5
2,4-DIMETHYLPYRIDINE	0.37	0.105	
2,5-DIMETHYLPYRIDINE	0.46	0.122	
2,6, DIMETHYL 2,5-HEPTADIEN 4-ONE	11.00	0.336	
2,6-DIMETHYL 2,5-HEPTADIEN 4-ONE *	4.17	0.278	
2,6-DIMETHYLPYRIDINE	0.56	0.137	
2-CHLORO 2-METHYLBUTANE	220.00	0.589	
2-ETHYL 3-METHOXYPYRAZINE	0.82	0.151	
2-ETHYLPYRAZINE	0.14	0.049	
2-ETHYLPYRIDINE	0.58	0.141	
2-FLUOROPROPANE	13423.00	0.818	
2-ISOBUTYL 3-METHOXYPYRAZINE	2.78	0.256	
2-ISOBUTYLPYRAZINE	0.28	0.071	
2-METHYL PENTANE C6H14	1670.00	0.651	
2-METHYLPYRAZINE	0.12	0.052	
2-PENTANOL	0.82	0.205	
3 METHYL 1 BUTENE	29239.00	0.832	

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
3 METHYL PYRIDINE	0.43	0.131	
3 METHYLHEPTANE C8H18	205760.00	0.848	
3 METHYLHEXANE C7H16	132270.00	0.860	
3,3 DIMETHYLPENTANE C7H16	102880.00	0.844	
3,4-DIMETHYLPRYIDINE	0.21	0.068	
3,5-DIMETHYLPYRIDINE	0.37	0.105	
3-ETHYLPRYIDINE	0.58	0.141	
3-HEXANOL	2.78	0.294	
3-PENTEN-2-OL	1.01	0.230	
4 METHYL 1 PENTENE	34722.00	0.800	
4 METHYL 2 PENTANOL	2.53	0.264	
4 METHYL 2 PENTANONE	0.51	0.145	
4 METHYLOCTANE C9H20	555550.00	0.868	
4-ETHYLPYRIDINE	0.46	0.123	
4-METHYLPYRIDINE	0.33	0.109	
5 METHOXY 2 PENTANONE	0.67	0.142	
ACENAPHTHENE	428.33	0.498	83–32–9
ACENAPHTHYLENE	6.33	0.286	208–96–8
ACETAL	19.61	0.398	
ACETALDEHYDE	4.87	0.449	75–07–0
ACETATE (M)	400.00	0.504	
ACETIC ACID	0.31	0.120	64–19–7
ACETIC ANHYDRIDE	0.33	0.214	108–24–7
ACETONE	1.39	0.261	67–64–1
ACETONITRILE	1.11	0.333	75–05–8
ACETOPHENONE	0.51	0.127	96–86–2
ACETYL CHLORIDE	11.00	0.531	79–36–5
ACETYL DIETHYLMALONATE	1.08	0.156	
ACETYLENE	70.00	0.711	74–86–2
ACETYLFURAN 2*	6.11	0.3821	1192–62–7
ACETYLMETHYLPHTHALATE 4	0.94	0.114	
ACETYLPYRIDINE 3	16833.00	0.882	1122–54–9
ACIFLUORFEN	83.89	0.300	
ACROLEIN	4.57	0.393	107–02–8
ACRYLONITRILE	5.44	0.393	107–13–1
ADAMANTANE DICHLORIDE	57.78	0.392	
AFLATOXINS (M)	16.67	0.295	1402–68–2
ALDICARB	16.67	0.000	116–06–3
ALDRIN	27.56	0.269	509–00–2
ALKYLIMINE CARBOXYLIC ACID N, SUB (M)	0.56	0.089	
ALLYL ALCOHOL	1.00	0.276	107–18–6
ALLYL CHLORIDE	515.00	0.728	107–05–1
ALLYL ETHER, diallyl ether	125.55	0.535	
ALPHA METHYL STYRENE	328.33	0.588	98–83–9
ALPHA METHYL STYRENE DIMERS	655.55	0.370	
alpha-CHLORO-beta-METHYLNAPHTHALENE	490.55	0.441	86–52–2
ALPHA-HYDROXYACETALDEHYDE	5.28	0.515	
ALPHA-HYDROXYADIPIMIDE (M)	0.90	0.135	
AMINO-2-CHLOROTOLUENE 4	388.89	0.563	
AMINO-3-CHLORO-5-PHENYLCYCLOHEXA (M)	0.22	0.049	
AMINO-4-CHLORO-6-CYANOPYRIDINE 2 (M)	17.22	0.332	
AMINO-4′-CHLOROBIPHENYL 4 (M)	1398300.00	0.887	
AMINO-4-CHLOROPYRIDINE 2 (M)	176.68	0.463	1072–98–6
AMINO-4-NITROBENZYL ALCOHOL 2 (M)	0.34	0.072	
AMINO-4-NITROTOLUENE 2	422.77	0.621	99–55–8
AMINO-5-CHLOROPYRIDINE 2 (M)	14.28	0.342	1072–98–6
AMINOBENZOIC ACID (-p) (M)	0.22	0.058	150–13–0
AMINOCYCLOHEXANE	13.78	0.416	108–91–8
AMINOMETHYL-3-ISOXAZOLOL 5 (M)	4.17	0.287	2763–96–4
AMINOPHENOL (-o)	0.20	0.082	95–55–6
AMINOPHENOL (-p)	1.09	0.180	101–80–4
AMINO-p′-METHYLAZOBENZENE P (M)	588.88	0.476	
AMINOPROPIONITRILE 3 (M)	0.51	0.163	151–18–8
AMITROLE (M)	0.22	0.081	61–82–5
AMMONIA	18.22	0.732	7664–41–7
AMPHETAMINE (M)	7.50	0.305	60–15–1
AMYL ACETATE (-n)	25.78	0.313	628–63–7
ANETHOLE (M)	16.67	0.371	104–46–1
ANISOLE	231.48	0.584	100–66–3

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[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
ANTHRACENE	39.68	0.384	120–12–7
ARAMITE (M)	16.67	0.292	140–57–8
AURAMINE (M)	10739.00	0.547	492–80–8
AZASERINE (M)	2.38	0.206	115–02–6
AZEPINE (M)	462.77	0.534	111–49–9
AZIRIDINE ethylene imine	25.22	0.630	151–56–4
BENXENEDICARBOXYLIC ACID DIHEPTYL E	128.33	0.296	
BENZ (c) ACRIDINE (M)	611.11	0.533	225–51–4
BENZAL CHLORIDE	411.66	0.616	98–87–3
BENZALDEHYDE	2.35	0.283	100–52–7
BENZALKONIUM CHLORIDE (M)	0.11	0.022	
BENZEN SULFONATE (M)	1555.54	0.602	
BENZENE	308.34	0.592	71–43–2
BENZETHONIUM CHLORIDE (M)	1.24	0.089	121–54–0
BENZIDINE DIHYDROCHLORIDE (M)	588880.00	0.936	531–85–1
BENZO (B) FLUORANTHENE	1.12	0.117	205–99–2
BENZO (j) FLUORANTHENE (M)	611.11	0.525	205–82–3
BENZODIOXANE-1,3 (M)	0.26	0.046	
BENZOFLUORANTHENE,3,4- (M)	611.11	0.368	205–99–2
BENZOFURAN 2,3	13.17	0.370	
BENZOIC ACID, 4 METHYL	0.38	0.093	
BENZONITRILE	0.76	0.170	100–47–0
BENZOPHENONE	506.11	0.454	119–61–9
BENZOPYRENE 3,4 (M)	7.00	0.250	50–32–8
BENZOQUINONE,p- (M)	400.00	0.750	106–51–4
BENZOTHIAZOLE*	7.50	0.341	95–16–9
BENZOTRICHLORIDE	54.50	0.409	98–07–7
BENZOYL CHLORIDE	10.44	0.391	98–88–4
BENZYL CHLORIDE	17.72	0.395	100–44–7
BENZYL METHYL ETHER	75.00	0.469	538–86–3
BHC,alpha-	227.22	0.412	319–84–6
BHC,beta-	638.88	0.472	319–85–7
BHC,delta-	75.56	0.340	319–86–8
BICYCLO(4,2,0) OCTA 1.3.5 TRIENE	307.22	0.561	
BICYCLO[2.2.1]-2,5-HEPTADIENE DI(M)	4388.85	0.681	
BIPHENYL	22.67	0.345	92–52–4
BIS (2-CHLOROETHOXY) METHANE	0.12	0.028	111–91–1
BIS(1,1,2,2-TETRACHLOROPROPYL) ETHE	2416600.00	0.872	
BIS(2-CHLOROETHYL)ETHER	0.72	0.162	111–44–4
BIS(2-CHLOROISOPROPYL)ETHER	6.11	0.295	108–60–1
BIS(CHLOROMETHYL)ETHER	5.02	0.421	542–88–1
BISPHENOL(A)	126.67	0.362	80–05–7
BROMACIL	7609700.00	0.631	
BROMO-(1)-CHLOROETHANE–2	9944300.00	0.995	107–04–0
BROMO-3-CHLOROBUTADIENE 2	469.44	0.590	
BROMO-4-CHLORO–6-CYANOBENZYL ALC(M)	1.05	0.136	
BROMO-4-CHLOROCYCLOHEXANE 1	5544.39	0.692	
BROMO-4-CYANOMETHYL BENZOATE 2 (M)	6666.60	0.646	
BROMO-4-CYANOMETHYL BENZOATE 3 (M)	1338.88	0.584	
BROMOACETONE	0.54	0.145	598–31–2
BROMOBENZENE	270.00	0.524	108–86–1
BROMOBENZYL ALCOHOL -(m)	0.21	0.046	15852–73–
BROMOBENZYL ALCOHOL -(o)	0.21	0.046	18982–34–
BROMOBENZYL ALCOHOL -(p)	0.21	0.046	873–75–6
BROMOCHLOROBENZENE P	13278000.00	0.963	106–39–8
BROMOCHLOROBENZYL ALCOHOL	0.46	0.069	
BROMOCHLOROMETHANE	1438900.00	0.992	74–97–5
BROMODICHLOROMETHANE	11389.00	0.796	75–27–4
BROMOETHYL ACETATE	23.22	0.458	927–68–4
BROMOETHYLENE	744440.00	0.990	543–60–2
BROMOFORM	29.56	0.397	75–25–2
BROMOMETHANE	381.06	0.698	74–83–9
BROMOPHENYL PHENYL ETHER,4–	4.27	0.217	101–55–3
BROMOPROPIONITRILE 3 (M)	678.71	0.605	2417–90–5
BROMOTOLUENE 4	133.89	0.454	106–38–7
BROMOURACIL,5-(M)	588880.00	0.942	51–20–7
BUTADIENE-(1,3)	3961.07	0.745	106–99–0
BUTANE	16167.00	0.826	106–97–8
BUTANEDINITRILE	0.50	0.182	110–61–2

TABLE 4 O

BUTANENITR
BUTANOL IS
BUTANOL(S)
BUTANOL-1
BUTENE .....
BUTYL ACET
BUTYL ACRY
BUTYL BENZ
BUTYL BENZ
BUTYL CARE
BUTYL MERC
BUTYL-3-ME
BUTYLAMINE
BUTYLBUTO
BUTYLENE C
BUTYLISOBU
BUTYRALDE
BUTYRALDE
c10 linear ....
c11 linear ....
CACODYLIC
CAMPHENE
CAPTAN .....
CARBARYL s
CARBAZOLE
CARBENDAZ
CARBON DIC
CARBON DIS
CARBON OX
CARBON TE
CARBONYL
CARBONYL S
CHLORAL ...
CHLORAMBE
CHLORAMBU
CHLORDANE
CHLORENDIC
CHLORINATE
CHLORNAPH
CHLORO 2 B
CHLORO(-p)
CHLORO-1,3
CHLORO-2,2
CHLORO-2,3
CHLORO-2-M
CHLORO-2-N
CHLORO-3-N
CHLORO-3-N
CHLORO-4AM
CHLORO-4-C
CHLORO-4-H
CHLORO-4-M
CHLORO-4-M
CHLORO-4-N
CHLORO-4-P
CHLORO-5AM
CHLORO-5-C
CHLORO-5-C
CHLORO-5-F
CHLORO-5-P
CHLOROACE
CHLOROALL
CHLOROANI
CHLOROANI
CHLOROAZO
CHLOROBEN
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TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
BUTANENITRILE (M)	1.53	0.266	109–74–0
BUTANOL ISO	0.12	0.065	78–83–1
BUTANOL(S)	0.71	0.253	78–92–2
BUTANOL-1	0.49	0.177	71–36–3
BUTENE	39682.00	0.884	
BUTYL ACETATE(-n)	9.11	0.368	123–86–4
BUTYL ACRYLATE	33.94	0.442	141–32–2
BUTYL BENZENE	4905.51	0.573	104–51–8
BUTYL BENZYL PHTHALATE	599.99	0.495	85–68–7
BUTYL CARBITOL	4505.51	0.687	112–34–5
BUTYL MERCAPTAN	12500.00	0.758	
BUTYL-3-METHOXY PYRAZINE,2-ISO (M)	10739.00	0.579	24683–00–
BUTYLAMINE	0.84	0.241	109–73–9
BUTYLBUTOXY PROPIONATE	4.20	0.224	
BUTYLENE GLYCOL-(1,3)	0.20	0.096	107–88–0
BUTYLISOBUTYRATE	399.44	0.597	
BUTYRALDEHYDE	14.33	0.490	123–72–8
BUTYRALDEHYDE ISO	8.17	0.438	78–84–2
c10 linear	396820.00	0.784	
c11 linear	1010100.00	0.799	
CACODYLIC ACID (M)	2.14	0.219	75–60–5
CAMPHENE (M)	75.56	0.483	79–92–5
CAPTAN	2.60	0.170	
CARBARYL sevin	1.80	0.180	63–25–2
CARBAZOLE (M)	2444400.00	0.973	86–74–8
CARBENDAZIM	0.14	0.029	
CARBON DIOXIDE (M)	1587.29	0.668	
CARBON DISULFIDE	1063.99	0.669	75–15–0
CARBON OXYFLUORIDE *	3527.74	0.993	353–50–4
CARBON TETRACHLORIDE	1677.80	0.634	56–23–5
CARBONYL FLUORIDE *	2.78	0.358	
CARBONYL SULFIDE	5.49	0.500	
CHLORAL	53.89	0.514	302–17–0
CHLORAMBEN	1.89	0.209	
CHLORAMBUCIL	0.31	0.039	305–03–3
CHLORDANE	2.04	0.130	57–74–9
CHLORENDIC ANHYDRIDE (M)	400.00	0.504	115–27–5
CHLORINATED TARS (M)	9.72	0.252	
CHLORNAPHAZINE	1.67	0.141	
CHLORO 2 BUTENE, 1 trans	104.44	0.598	
CHLORO(-p)PHENYLHYDRAZINE (M)	15.78	0.367	
CHLORO-1,3-CYCLOPENTADIENE 5	2777.75	0.740	
CHLORO-2,2-DIBROMOETHANE 1	43.50	0.502	
CHLORO-2,3-EPOXYPROPANE,1-(M)	1.79	0.321	106–89–8
CHLORO-2-METHOXYBENZOIC ACID 4 (M)	207.78	0.507	57479–70–
CHLORO-2-NITROBENZYL ALCOHOL 4 (M)	0.21	0.041	22996–18–
CHLORO-3-NITRO-5-PHENYLCYCLOHEXA (M)	0.23	0.044	
CHLORO-3-NITROANILINE 4 (M)	9.61	0.317	635–22–3
CHLORO-4AMINOCOUMARAN-6CARBOXYLI (M)	5407.73	0.643	
CHLORO-4-CYANOBENZYL ALCOHOL 2 (M)	0.34	0.071	
CHLORO-4-HYDROXYBIPHENYL 3 (M)	29944.00	0.751	92–04–6
CHLORO-4-METHOXY–6-AMINOBENZOIC (M)	22 22	0.353	
CHLORO-4-METHYL-N-METHYLBENZAMID (M)	0.51	0.085	
CHLORO-4-NITROANISOLE 2 (M)	4749200.00	0.965	
CHLORO-4-PHENYLPYRIDINE 2 (M)	0.53	0.085	
CHLORO-5AMINO3PYRIDINE CARB.ACID (M)	20.33	0.357	
CHLORO-5-CYANOPHTHALIC ACID 4 (M)	11423.00	0.677	
CHLORO-5-CYANOTOLUENE 3 (M)	83.89	0.467	
CHLORO-5-FLUOROTOLUENE 3	16.06	0.339	443–83–4
CHLORO-5-PHENOXYDIMETHYL PHTHALA (M)	8888.80	0.645	
CHLOROACETALDEHYDE	1.44	0.324	107–20–0
CHLOROALLYL ALCOHOL 2	1.02	0.244	5976–47–6
CHLOROANILINE (2)	933.32	0.658	95–51–2
CHLOROANILINE (3)	933.32	0.653	108–42–9
CHLOROAZOBENZENE	599.99	0.444	
CHLOROBENZENE	209.00	0.446	108–90–7
CHLOROBENZENESULFONIC ACID (-p) (M)	0.49	0.085	100–03–8
CHLOROBENZILATE	0.21	0.026	510–15–6
CHLOROBENZOIC ACID,2	0.41	0.091	118–91–2

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[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
CHLOROBENZOIC ACID,3-	0.26	0.061	535–80–8
CHLOROBENZOIC ACID,4-	0.26	0.061	74–11–3
CHLOROBENZOTRICHLORIDE P	6388.83	0.523	5216–25–1
CHLOROBENZOTRIFLUORIDE, P	31415.00	0.544	
CHLOROBENZYL ALCOHOL -(m)	0.16	0.040	873–63–2
CHLOROBENZYL ALCOHOL -(o)	0.16	0.040	17849–38–
CHLOROBENZYL ALCOHOL -(p)	0.16	0.040	873–76–7
CHLOROBIPHENYL (-p)	522.22	0.452	2051–62–9
CHLOROBUTADIENE,1	561.11	0.629	
CHLOROCOUMARAN 2 (M)	501.66	0.562	2051–59–4
CHLOROCYANOBENZENE (1,4) (M)	955550.00	0.956	873–32–5
CHLOROCYCLOHEXANE	822210.00	0.973	542–18–7
CHLOROCYCLOHEXANOL 2	14.94	0.428	1561–86–0
CHLOROCYCLOHEXANOL 4	75.00	0.554	
CHLORODIACETYL (M)	588880.00	0.949	
CHLORODIMETHYL PHTHALATE 3 (M)	6388.83	0.646	
CHLORODIPHENYL THIOETHER P (M)	566.66	0.558	7005–72–3
CHLOROETHANE (ethyl chloride)	672.00	0.723	75–00–3
CHLOROETHANOL (ETHYLENE CHLOROHYDRI	0.59	0.221	107–07–3
CHLOROETHYL(2-) VINYL ETHER	1922.20	0.758	110–75–8
CHLOROETHYLENE	301.66	0.747	
CHLOROFLUOROBENZENE P	9055500.00	0.971	352–33–0
CHLOROFLUOROMETHANE *	94999.00	0.972	593–70–4
CHLOROFORM	221.33	0.612	67–66–3
CHLOROHYDROXYPHENYL4 METHYL BENZ (M)	6648.85	0.641	
CHLOROMETHYL ACETYLENE *	6917.51	0.789	
CHLOROMETHYL BENZOATE P (M)	4738.84	0.650	1126–46–1
CHLOROMETHYL ETHYL KETONE	147.78	0.679	
CHLOROMETHYL METHYL ETHER	4.79	0.458	107–30–2
CHLOROMETHYL PHENYL KETONE	0.17	0.042	532–27–4
CHLOROMETHYL PHENYLHYDRAZINE P (M)	17.44	0.363	
CHLOROMETHYLAMINOIMINE (M)	1988.32	0.670	
CHLORONAPHTHALENE,2-	1011.10	0.533	91–58–7
CHLORONITROALKOXYIMINE (M)	1.28	0.136	
CHLORONITROBENZENE(-o)	437.77	0.585	88–73–3
CHLORONITROBENZENE, p	5.08	0.289	
CHLORO-N-METHYLBENZAMIDE P (M)	0.47	0.085	
CHLOROPHENOL-2	0.46	0 106	95–97–8
CHLOROPHENOL-3	0.18	0.054	108–43–0
CHLOROPHENYL PHENYL ETHER,4-*	14.78	0.310	7005–72–3
CHLOROPHENYLETHANOL 1,1	435.00	0.617	
CHLOROPHTHALIC ANHYDRIDE 4 (M)	0.20	0.040	
CHLORO-p'-METHYLBIPHENYL P (M)	561.11	0.558	1667–11–4
CHLOROPRENE	51.63	0.597	126–99–8
CHLOROPROPANE-1	722.22	0.742	540–54–5
CHLOROPROPANE-2	944.44	0.745	75–29–6
CHLOROPROPENE 3	19944.00	0.913	557–98–2
CHLOROPROPIONITRILE,3-	0.28	0.111	542–76–7
CHLOROPROPYLENE-2	19944.00	0.839	557–98–2
CHLORO-p-XYLENE	78.33	0.421	104–82–5
CHLOROPYRIDINE 2 (M)	82.78	0.496	109–09–1
CHLOROSTYRENE (-4)	385.00	0.522	1331–28–8
CHLOROTETRAHYDROFURAN 3 (M)	16.83	0.387	
CHLOROTHIOPHENOL P *	4016.63	0.604	106–54–7
CHLOROTOLUENE-4	258.89	0.511	106–43–4
CHLOROURACIL,5-(M)	588880.00	0.943	1820–81–1
cis 1,2 DIMETHYLCYCLOHEXANE	19841.00	0.682	
CITRUS RED #2 (M)	611.11	0.509	6358–53–8
COPPER PHTHALOCYANINE (M)	320.00	0.353	147–14–8
COUMARAN (M)	5344.39	0.694	91–64–5
CROTONALDEHYDE	0.86	0.212	470–30–3
CROTONYLENE (2-BUTYNE)	375550.00	0.977	503–17–3
CUMENE (isopropylbenzene)	727.77	0.545	98–82–8
CUMENE HYDROPEROXIDE	1.73	0.204	
CYANOBENZYL ALCOHOL P*	0.13	0.040	
CYANOGEN	275.55	0.734	460–19–5
CYANOGEN BROMIDE*	11.33	0.462	506–68–3
CYANOGEN CHLORIDE(M)	149.78	0.704	506–77–4
CYANOGUANIDINE (M)	115.55	0.484	461–58–5

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
CYANOMETHYLPHTHALATE 4 (M)	2116400.00	0.882	
CYANOPYRIDINE (-4)*	14444.00	0.800	100–48–1
CYANOPYRIDINE 3*	14444.00	0.807	100–54–9
CYANOTOLUENE 4	816660.00	0.955	
CYANURIC ACID (M)	0.14	0.042	108–80–5
CYCASIN (M)	400.00	0.439	14901–08–
CYCLOHEXADIENE 1,4DIONE2,6BIS11D IMET	0.14	0.028	
CYCLOHEXANE	761.10	0.626	110–82–7
CYCLOHEXANOL	0.61	0.159	
CYCLOHEXANOL	0.25	0.136	108–93–0
CYCLOHEXANONE	0.23	0.088	108–94–1
CYCLOHEXENE	572220.00	0.960	110–83–8
CYCLOHEXENE 1 ONE, 2	0.73	0.183	
CYCLOHEXYL ACETATE	3.95	0.273	622–45–7
CYCLOHEXYL-2,2-DIPHENYLETHYLAMIN(M)	14.28	0.279	
CYCLOHEXYL-4,6-DINITROPHENOL,2-(M)	245550000.00	0.943	131–89–5
CYCLOHEXYLAMINE	2.35	0.280	108–91–8
CYCLOHEXYLCYCLOHEXANONE 4	223.33	0.436	56025–96-
CYCLOPENTADIENE	1072200.00	0.980	
CYCLOPENTADIENE 1,3	183.89	0.615	
CYCLOPENTANE	8417.42	0.767	
CYCLOPENTENE	3472.19	0.731	
CYCLOPHOSPHAMIDE (M)	89.71	0.544	50–18–0
CYCLOPROPANE C3H6	5050.46	0.833	
CYLCOHEXYL o,o-DIMETHYL PHOS.DIT(M)	87719.00	0.778	
CYMENE,para	1016.66	0.519	
CYTOSINE (M)	198.29	0.831	71–30–7
DAUNOMYCIN(M)	611.11	0.466	20830–81-
DAZOMET	0.11	0.029	
DDD,p,p′-	15.33	0.258	72–54–8
DDE,p,p′-	97.78	0.328	72–55–9
DDT	6333.27	0.398	50–29–3
DECANAL	91.07	0.415	
DECENE, 8 METHYL 1-	4461.07	0.507	
DIACETYL (M)	4.78	0.318	431–03–8
DIAMINO-5-SULFONYL BENZYL 2,4 (M)	101.70	0.396	
DIAMINODIPHENYLMETHANE P,P′ (M)	27246.00	0.606	101–77–9
DIAZOMETHANE	0.72	0.329	
DIBENZOFURANS	221.66	0.365	
DIBENZOPYRENE 1,2,7,8	202.22	0.318	
DIBROMO-3-CHLOROPROPANE,1,2	1.31	0.173	96–12–8
DIBROMOCHLOROMETHANE	43.50	0.643	124–48–1
DIBROMOETHANE-1,2	605.55	0.675	106–93–4
DIBROMOMETHANE	55.44	0.542	74–95–3
DIBUTYL ETHER	222.22	0.499	142–96–1
DIBUTYLAMINE	5.05	0.293	
DICHLORO 2-PROPANOL 1,3	25.56	0.570	96–23–1
DICHLORO PROPANOL 2,3	1.30	0.255	616–23–9
DICHLORO-1,3-CYCLOPENTADIENE 5,5(M)	3738.85	0.655	
DICHLORO-2-BUTENE 1,2	55.17	0.562	
DICHLORO-2-BUTENE(1,4)	14.39	0.453	764–41–0
DICHLORO-2-BUTENE, 1,4	91.67	0.594	
DICHLOROANILINE(2,3)	0.10	0.026	
DICHLOROBENZENE(1,2) (-o)	107.78	0.559	95–50–1
DICHLOROBENZENE(1,3) (-m)	200.55	0.510	541–73–1
DICHLOROBENZENE(1,4) (-p)	176.11	0.502	106–46–7
DICHLOROBENZIDINE,3,3′-	0.15	0.023	91–94–1
DICHLOROBENZOPHENONE P,P	0.26	0.038	90–98–2
DICHLOROBIPHENYL (PARA)	1999.98	0.425	213029–08
DICHLOROBUTANE (1,4)	176660.00	0.978	110–56–5
DICHLORODIPHENYLMETHANE (M)	661.11	0.554	2051–90–3
DICHLOROETHANE(1,1)	312.23	0.562	75–34–3
DICHLOROETHANE(1,2)	65.38	0.524	107–06–2
DICHLOROETHENE 1,2 trans	3582.00	0.775	156–60–5
DICHLOROETHENE(1,1)	1438.90	0.680	75–35–4
DICHLOROETHYL ETHER	1.14	0.197	
DICHLOROETHYLENE(1,2) cis	861.00	0.664	156–54–2
DICHLOROIODOMETHANE	11.89	0.350	
DICHLOROMONOFLUOROMETHANE	51166000.00	0.989	75–43–4

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TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
DICHLOROPHENOL	2.78	0.227	
DICHLOROPHENOL(2,4)	0.27	0.055	120–83–2
DICHLOROPHENOL(2,6)	0.27	0.055	87–65–0
DICHLOROPHENOXYACETIC ACID(2,4)	3449.97	0.626	94–75–7
DICHLOROPROPANE 1,2	159.00	0.540	78–87–5
DICHLOROPROPENE(1,3)	197.22	0.594	542–75–6
DICHLOROPROPYLENE,1,2-(cis)	498.88	0.608	
DICHLOROPROPYLENE,1,2-(trans)	611.11	0.625	563–54–2
DICHLOROPROPYLENE–2,3	716.66	0.694	78–88–6
DICHLOROSTYRENE 2,6	477.77	0.467	
DICHLORO-TRANS-ETHYLENE(1,2)	4722.18	0.725	540–59–0
DIELDRIN	3.24	0.160	60–57–1
DIETHYL AMINE	1.42	0.286	109–89–7
DIETHYL ETHER	14.72	0.423	602–97–6
DIETHYL ETHER ACID CHLORIDE (M)	69148.00	0.836	
DIETHYL PHTHALATE	616.66	0.514	84–66–2
DIETHYL SULFATE	0.34	0.101	
DIETHYL THIOETHER(M)	25000.00	0.719	352–93–2
DIETHYLBENZENE P	372.77	0.481	105–05–5
DIETHYLDIPHENYL UREA SYM(M)	744.44	0.466	85–98–3
DIETHYLENE GLYCOL DIETHYL ETHER	0.12	0.031	
DIETHYLUREA 1,1 (M)	0.32	0.085	634–95–7
DIHYDRO-5-OXAZALONE (DIHYDROAZLA(M)	209.68	0.493	
DIISOBUTYLENE	6531.46	0.594	
DIISODECYL PHTHALATE	22.67	0.238	
DIISOPROPYL BENZENE (PARA)	5944.39	0.507	100–18–5
DIISOPROPYL KETONE	31.56	0.441	
DIISOPROPYLAMINE	17.06	0.403	
DIMETHOXY METHANE	6.72	0.442	109–87–5
DIMETHOXY-(3,3')-BENZIDINE	135.55	0.422	119–90–4
DIMETHYL AMINE	0.29	0.198	124–40–3
DIMETHYL BENZ(A)ANT 7,12	705.55	0.373	
DIMETHYL BENZOIC ACID, 2,4	0.59	0.115	
DIMETHYL BENZOIC ACID, 3,5	0.59	0.115	
DIMETHYL BENZYLAMINE N,N	75.00	0.481	103–83–3
DIMETHYL METHYLTHIOCARBAMATE N,N(M)	835.09	0.585	
DIMETHYL NITROISOPROPYLAMINE N,N(M)	14.78	0.340	
DIMETHYL NITROSAMINE (M)	10739.00	0.952	
DIMETHYL SULFATE	0.22	0.074	77–78–1
DIMETHYL SULFIDE	302.78	0.679	75–18–3
DIMETHYL TRISULFIDE	168470.00	0.568	
DIMETHYL-1-NITROBENZENE 2,4	420.00	0.550	25168–04–
DIMETHYLACETAMIDE	0.57	0.284	
Dimethylaniline N,N	0.77	0.316	57–14–7
DIMETHYLBENZYL HYDROPEROXIDE (M)	26.72	0.391	80–15–9
DIMETHYLETHYLAMINE	21.39	0.523	75–64–9
DIMETHYLGLYCOL	5.05	0.483	
DIMETHYLHYDANTOIN,5,5-(M)	10739.00	0.596	77–71–4
DIMETHYLPHENOL(2,4)	51.17	0.400	105–67–9
DIMETHYLPHENYLCARBINOL (M)	400.00	0.497	617–94–7
DIMETHYLSULFOXIDE	2.59	0.419	
DINITROBENZENE M	1.22	0.285	99–65–0
DINITROPHENOL 2,4	0.28	0.055	51–28–5
DINITROTOLUENE 2,6	0.51	0.091	606–20–2
DINITROTOLUENE(2,4)	0.40	0.165	121–14–2
DINOCAP (M)	>10000	0.935	39300–45–
DI-n-OCTYL PHTHALATE	7611.04	0.318	117–84–0
DINOSEB (M)	66.67	0.375	88–85–7
DIOXANE(1,4)	0.31	0.168	123–91–1
DIOXIN (M)	4.51	0.279	828–00–2
DIPHENYL ETHER (M)	124.44	0.509	101–84–8
DIPHENYL THIOETHER(M)	517.22	0.593	139–66–2
DIPHENYLAMINE (M)	0.15	0.046	122–39–4
DIPHENYLBUTADIENE 1,3 (M)	114.44	0.488	886–65–7
DIPHENYLCHLOROMETHANE (M)	561.11	0.591	90–99–3
DIPHENYLDIKETONE (M)	583.33	0.590	134–81–6
DIPHENYLETHANE 1,1(M)	50.56	0.439	
DIPHENYLETHANOL 1,1 (M)	0.11	0.023	599–67–7
DIPHENYLHYDRAZINE,1,1-(M)	405.55	0.580	530–50–7

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
DIPHENYLMETHANE	2.02	0.195	101–81–5
DIPROPYLAMINE	14.06	0.411	142–84–7
DIPROPYLBUTRAL	4.82	0.264	
DIPROPYLFORMAMIDE(M)	10739.00	0.595	6282–00–4
DI-tert-BUTYL-p-CRESOL	0.14	0.027	128–37–0
DIVINYL KETONE (M)	24.33	0.419	
Dodecane	396820.00	0.663	
EDTA(M)	16.67	0.412	60–00–4
ENDOSULFAN	0.35	0.036	115–29–7
ENDOSULFAN SULFATE(M)	2642200.00	0.906	1031–07–8
ENDRIN ALDEHYDE (M)	16.67	0.412	
EPICHLOROHYDRIN	1.86	0.325	106–89–8
EPOXYBUTANE 1,2	25.61	0.513	
ETHANE	2738.86	0.833	
ETHANOL	0.31	0.126	64–17–5
ETHENE	11820.00	0.905	
ETHENYL 2 METHYL BENZENE, 1-	176.67	0.494	
ETHOXYETHANOL–2	0.35	0.134	110–80–5
ETHYL 2 METHYL BENZENE, 1-	231.48	0.488	
ETHYL ACETATE PEROXIDE (M)	166.67	0.463	
ETHYL ACRYLATE	14.11	0.425	140–88–5
ETHYL BUTANOATE	19.84	0.457	
ETHYL CYANIDE (PROPIONITRILE) (M)	15.28	0.580	107–12–0
ETHYL ETHER	37.78	0.500	60–29–7
ETHYL HEPTANOATE	27.78	0.385	
ETHYL ISOPROPYL PEROXIDE (M)	14.44	0.356	
ETHYL METHANOATE	15.43	0.566	
ETHYL PENTANOATE	19.16	0.419	
ETHYL PEROXIDE	0.16	0.112	
ETHYL PROPYL ETHER	63.86	0.532	
ETHYL S,S-DIPHENYL PHOSPHORODITH (M).	8.61	0.246	1709–49–8
ETHYL TOLUENE, 4	711.10	0.538	
ETHYL VINYL ETHER	118.33	0.603	
ETHYL(2) HEXANOL	3.43	0.266	104–76–7
ETHYL-(2)–PROPYL-(3) ACROLEIN (M)	1.79	0.257	645–62–5
ETHYLACETATE	7.11	0.404	141–78–6
ETHYLAMINE	0.57	0.280	75–04–7
ETHYLBENZENE	437.81	0.557	100–41–4
ETHYLENE	24555.00	0.931	74–85–1
ETHYLENE DIAMINE	0.47	0.241	107–15–3
ETHYLENE DIBROMIDE	36.11	0.471	106–93–4
ETHYLENE GLYCOL DIMETHYL ETHER	1.95	0.292	110–71–4
ETHYLENE GLYCOL MONOBUTYL ETHER ACET.	0.27	0.062	
ETHYLENE GLYCOL MONOMETHYL ETHER ACET.	0.12	0.046	110–49–6
ETHYLENE OXIDE	13.23	0.450	75–21–8
ETHYLETHOXY PROPIONATE	1.50	0.213	
ETHYLHEXYL HEXANOL 2	0.88	0.113	
ETHYLHEXYLACRYLATE,2-	163.33	0.425	103–11–7
FENCHONE, d- (M)	16.67	0.368	4695–62–9
FLUORANTHENE	120.77	0.457	206–44–0
FLUORENE	6.50	0.282	86–73–7
FLUOROMETHANE	1068.37	0.824	
FLUOROURACIL, 5- (M)	16.67	0.412	51–21–8
FORMYL FLUORIDE	18.52	0.577	
FREON 11, fluorotrichloromethane	2911.08	0.669	
FREON 12 DICHLORODIFLUOROMETHANE	22278.00	0.818	75–71–8
FREON 12, dichlorodifluoromethane	43386.00	0.839	
FREONS (M)	22278.00	0.746	
FURAN	296.66	0.650	110–00–9
FURFURAL	4.51	0.354	98–01–1
FUROIC ACID(M)	30.62	0.382	88–14–2
GEOSMIN (M)	16.67	0.350	19700–21–
GLYOXAL	0.61	0.297	
GUANINE (M)	10739.00	0.962	73–40–5
HEPTACHLOR	127.78	0.337	76–44–8
HEPTACHLOR EPOXIDE (M)	1.76	0.118	1024–57–3
HEPTANAL	16.84	0.394	
HEPTANE ISO	241660.00	0.887	31394–54–

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
HEPTANE(-n)	112220.00	0.836	142–82–5
HEXACHLOROBENZENE	94.45	0.351	118–74–1
HEXACHLOROBUTADIENE	572.23	0.505	87–68–3
HEXACHLOROCYCLOHEXANE (GAMMA ISOMER	0.43	0.058	58–89–9
HEXACHLOROCYCLOPENTADIENE	369.44	0.456	77–47–4
HEXACHLOROETHANE	463.89	0.440	67–72–1
HEXACHLOROPENTADIENE (M)	766.66	0.550	
HEXADECANE N (M)	1400000.00	0.963	544–76–3
HEXAFLUOROACETONE	9017200.00	0.912	
HEXAFLUOROPROPENE	191570.00	0.710	116–15–4
HEXAMETHYLENEDIAMINE (M)	1.60	0.213	124–09–4
HEXAMETHYLENIMINE	0.35	0.109	
HEXANAL	11.82	0.400	
HEXANE(-n)	42667.00	0.801	110–54–3
HEXANOL 2 ETHYL	0.64	0.134	104–76–7
HEXANOL-1	1.01	0.180	111–27–3
HEXEN-2-ONE 5	4.44	0.347	
HEXENE	23148.00	0.769	
HEXYL ETHANOATE	29.24	0.396	
HEXYLAMINE	1.50	0.239	
HYDROFLUORIC ACID (M)	13.17	0.537	7664–39–3
HYDROGEN SULFIDE	1277.77	0.785	
HYDROXY DIMETHYL ETHER (M)	1083.32	0.580	
HYDROXY-1, 3-CYCLOPENTADIENE 5 (M)	225.00	0.519	
HYDROXY-4 METHYLTETRAHYDROFURAN (M)	14.33	0.356	
HYDROXY-5 METHYLDIMETHYL PHTHALA (M)	6277.72	0.543	
HYDROXY 6 METHYLPYRIDINE 3 CARBOXYL I (M)	17.00	0.326	38116–61–
HYDROXYACETIC ACID	10.56	0.570	79–14–1
HYDROXYCYCLOHEXANONE 4 (M)	0.23	0.069	
HYDROXYDIMETHYL PHTHALATE 4 (M)	5833.28	0.545	
HYDROXYMETHYL ACETYLENE (M)	58129.00	0.730	
HYDROXYMETHYL ISOPROPYL KETONE (M)	125.00	0.477	
HYDROXYMETHYL, N-METHYLETHYL AMI (M)	24722.00	0.650	
HYDROXYMETHYL-N-CHLOROMETHYLETHY (M)	22732.00	0.634	
HYDROXYMETHYLPHENYL CARBAMATE N (M)	0.87	0.137	
HYDROXYMETHYLTHIOBENZENE (M)	388.89	0.493	
HYDROXYMETHYLVINYL ETHER (M)	1805.54	0.553	
HYDROXYPENTANE 3 (M)	22.39	0.391	
INDANOL,5-(M)	10739.00	0.568	1470–94–6
INDOLE (M)	10739.00	0.763	120–72–9
IODOCOUMARAN 2 (M)	107890.00	0.898	
ISOBUTANE	3105.53	0.728	
ISOBUTYL ETHANOATE	25.25	0.486	
ISOBUTYLBENZENE	1792.10	0.550	
ISOBUTYLENE	2038.87	0.722	
ISOCYANO 4 METHYL BENZENE*	1.49	0.198	
ISODECANOL	0.30	0.069	
ISODECYL OCTYL ESTER	1827.76	0.364	
ISOPENTANE	2905.53	0.684	
ISOPENTYL ETHANOATE	32.68	0.435	
ISOPENTYL METHANOATE	37.04	0.484	
ISOPHORONE	0.37	0.100	78–59–1
ISOPROPYL AMINE	19.89	0.538	75–31–0
ISOPROPYL ETHER	231.00	0.487	108–20–3
ISOPROPYL METHANOATE	46.30	0.578	
ISOPROPYL METHANOATE	32.68	0.547	
ISOPROPYL PROPANOATE	32.68	0.459	
ISOXAZOLOL,5-(AMINOMETHYL)-3-(M)	10739.00	0.603	2763–96–4
LINDANE hexachlorocyclohexane	116.67	0.541	
MELAMINE (M)	4611.07	0.577	108–78–1
MERCAPTOBENZOTHIAZOLE, 2	110.55	0.450	
MERCURY (M)	633.33	0.587	7439–97–6
METHACRYLIC ACID	0.63	0.194	79–41–4
METHANE	74444.00	0.980	74–82–8
METHANETHIOL (M)	232.22	0.611	74–93–1
METHANOL	0.29	0.155	67–56–1
METHAPYRILENE (M)	10739.00	0.549	91–80–5
METHOXYACETIC ACID	0.10	0.053	625–45–6
METHOXYACETONITRILE (M)	9.89	0.382	1738–36–9

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
METHOXYCHLOR	14.39	0.241	72–43–5
METHYL 1-PENTENE 2	583330.00	0.954	763–29–1
METHYL 2-PROPYL ETHER	46.30	0.400	
METHYL ACETATE	5.67	0.454	79–20–9
METHYL ACRYLATE	30.17	0.408	96–33–3
METHYL ACRYLONITRILE (M)	21778.00	0.661	126–98–7
METHYL AMINE	298.89	0.877	74–89–5
METHYL AMINOACETYLENE (M)	7499.93	0.644	
METHYL AZIRIDINE 2	1.76	0.360	
METHYL BENZOATE	0.99	0.168	
METHYL BENZYL ALCOHOL 4	0.77	0.154	
METHYL BIPHENYL (-p) (M)	467.77	0.595	644–08–6
METHYL BUTANOATE	11.34	0.413	
METHYL CHLORIDE	490.00	0.626	74–87–3
METHYL CHLOROACETAMIDE N (M)	0.60	0.137	
METHYL CHLOROCARBONATE (M)	13111.00	0.726	79–22–1
METHYL CHOLANTHRENE 3	7.44	0.234	56–49–5
METHYL COUMARAN 2 (M)	445.00	0.587	607–71–6
METHYL CYCLOHEXANE	54388.00	0.802	108–87–2
METHYL ETHER dimethyl ether	176.67	0.730	115–10–6
METHYL ETHYL ETHER	61.73	0.617	
METHYL ETHYL KETONE, 2 butanone	7.22	0.435	78–93–3
METHYL FORMATE	12.35	0.548	107–31–3
METHYL HEXANOATE	20.58	0.393	
METHYL IODIDE	140.55	0.563	74–88–4
METHYL ISOAMYL KETONE (M)	7.00	0.304	110–12–3
METHYL ISOBUTYL KETONE	21.67	0.457	108–10–1
METHYL ISOCYANATE	583.33	0.650	624–83–9
METHYL ISOPROPYL KETONE	25.44	0.523	563–80–4
METHYL MERCAPTAN	200.00	0.700	
METHYL METHACRYLATE	7.83	0.322	80–62–6
METHYL MORPHOLINE	0.18	0.069	
METHYL NAPTHALENE(1-)	39.44	0.370	90–12–0
METHYL NAPTHALENE(2-)	3.22	0.246	91–57–6
METHYL OCTANOATE	42.74	0.387	
METHYL PENTANOATE	17.92	0.414	
METHYL PEROXIDE	0.18	0.159	
METHYL PROPANOATE	8.96	0.431	
METHYL PROPENE 2 (M)	388890.00	0.963	115–11–7
METHYL PROPYL ETHER	81.70	0.594	
METHYL TERTIARY-BUTYL ETHER	30.84	0.494	1634–04–4
METHYL TETRAHYDROFURAN 2	5.05	0.357	
METHYL THIOURACIL(M)	291.63	0.479	56–04–2
METHYL-1,3-CYCLOPENTADIENE 5 (M)	2227.76	0.679	26519–91–
METHYL-2,3,4-TRIHYDROQUINOLINE N(M)	0.81	0.137	
METHYL-2-AMINOETHYLAMINE(M)	1027.77	0.635	109–81–9
METHYL-2-HYDROXYETHYLAMINE (M)	0.19	0.080	109–83–1
METHYL-3-ACETYLCYCLOPENTADIENE 1(M)	294.44	0.588	
METHYL-3-NITROBENZYL ALCOHOL 4 (M)	0.37	0.073	40870–59–
METHYL-4-NITROBENZYL ALCOHOL 2 (M)	0.19	0.041	23876–13–
METHYL-5-THIOACETYLDIHYDRO1, 3THI (M)	43427.00	0.648	
METHYLACETONITRILE (M)	19944.00	0.643	75–86–5
METHYLBUTADIENE (isoprene)	4273.46	0.726	
METHYLBUTYLAMINE	0.62	0.178	
METHYLCYCLOPENTANE	19841.00	0.776	
METHYLENE CHLORIDE, dichloromethane	164.45	0.647	75–09–2
METHYLFURAN 2 (M)	0.15	0.064	534–22–5
METHYLISOBORNEOL,2-(M)	400.00	0.477	NA
METHYLPHENYL CARBAMATE N(M)	0.78	0.137	
METHYL-PHENYLETHYLAMINE N(M)	75.00	0.412	589–08–2
METHYL-p′-METHYLTRIPHENYL PHOSPH(M)	811.10	0.584	
METHYLSTYRENE (-4)	328.33	0.532	98–93–9
METHYLTIN TRICHLORIDE (M)	0.13	0.022	993–16–8
METHYL-TRIHYDRO–1,3-THIAZOLE 4 (M)	5.83	0.316	
MITOMYCIN C(M)	10739.00	0.532	50–07–7
MNNG(M)	10739.00	0.587	70–25–7
MONOCHLORODIFLUOROMETHANE	23666000.00	0.990	75–45–6
MORPHOLINE	3.18	0.437	110–91–8
MUSTARD GAS(M)	16.67	0.364	505–60–2

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TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
NAPHTHALENE	26.84	0.413	
NAPHTHALENE ACETIC ACID 2 METHYL, 1	61.11	0.357	
NAPHTHOQUINONE–1,4(M)	128	0.164	130–15–4
NICKEL CYANIDE (M)	3.08	0.284	557–19–7
NITRO m XYLENE, 2	23.72	0.370	
NITRO-4-METHYLBENZOATE 3(M)	133990.00	0.733	
NITROANILINE P	12.61	0.411	100–01–6
NITROBENZENE	1.33	0.210	98–95–3
NITROBENZENESULFONYL CHLORIDE P(M)	24.61	0.316	98–74–8
NITROBENZYL ALCOHOL P (M)	11.17	0.314	619–73–8
NITROBIPHENYL,4-	0.40	0.068	92–93–3
NITROCELLULOSE (M)	55.56	0.109	9004–70–0
NITROETHANE	0.40	0.161	
NITROGEN MUSTARD N-OXIDE(M)	400.00	0.475	126–85–2
NITROMETHANE	1305.54	0.859	75–52–5
NITRO METHYLBENZENE	3.59	0.270	
NITROPROPANE 2	6.61	0.396	79–46–9
NITROSOBENZYL ALCOHOL 4 (M)	0.75	0.136	
NITROSOPYRROLIDINE N (M)	694440.00	0.884	930–55–2
NITROTOLUENE (-p)	22.67	0.399	99–99–0
NITROTOLUENE, m	3.97	0.279	
NITROTOLUENE, o	4.88	0.296	
NITROTOLUENE, o	3.27	0.266	
NONANAL	55.56	0.413	
NONANOL, n	0.25	0.065	
NONYLPHENOL(M)	400.00	0.452	25154–52–
OCTAMETHYLPYROPHOSPHORAMIDE (M)	>10000	0.941	152–16–9
OCTANAL	26.46	0.394	
OCTANE	215000.00	0.839	111–65–9
OCTANOL 1	2.41	0.240	111–87–5
OCTANOL 2	0.66	0.136	
OCTANOL 3	0.39	0.098	
OCTANOL 4	0.52	0.118	
OIL (decane)	2844.42	0.513	
OXAMIC ACID(M)	4.94	0.317	471–47–6
PARABROMOPHENOL (M)	0.90	0.135	106–41–2
PARAFORMALDEHYDE (M)	55.56	0.225	30525–89–
PARALDEHYDE	2.04	0.232	123–63–7
PCB 1016 (monochlorobiphenyl)	10.00	0.289	12674–11–
PCB 1221 (monochlorobiphenyl)	18.00	0.342	11104–28–
PCB 1232 (dichlorobiphenyl)	48.00	0.370	11141–16–
PCB 1242 (trichlorobiphenyl)	33.00	0.317	53469–21–
PCB 1248 (quatrochlorobiphenyl)	110.00	0.326	12672–29–
PCB 1254 (pentachlorobiphenyl	450.00	0.539	11097–69–
PCB 1260 (hexachlorobiphenyl)	394.00	0.333	11096–82–
PCB'S (Aroclors)	48.00	0.338	
PENTACHLOROBENZENE	405.55	0.396	608–93–5
PENTACHLOROETHANE	1166.66	0.608	76–01–7
PENTACHLORONITROBENZENE	21.39	0.286	
PENTACHLOROPHENOL	4.90	0.261	87–86–5
PENTADIENE 1,2	661.11	0.666	
PENTAERYTHRITOL TETRANITRATE (M)	1.76	0.133	78–11–5
PENTANAL	8.17	0.406	
PENTANE	2244.42	0.676	
PENTYL PROPANOATE	46.30	0.418	
PENTYLAMINE	1.36	0.254	
PENTYLBENZENE	326.79	0.458	
PENTYLCYCLOPENTANE	101010.00	0.700	
PERCHLOROMETHYL MERCAPTAN (M)	588880.00	0.942	594–42–3
PERYLENE (M)	611.11	0.525	198–55–0
PHENANTHRENE	1.98	0.193	85–01–8
PHENOL,3-(1,1-DIMETHYLETHYL)-(M)	400.00	0.504	585–34–2
PHENOTHIAZINE (M)	1105.54	0.613	92–84–2
PHENYL ISOCYANATE (M)	661.11	0.533	103–71–9
PHENYLACETIC PEROXIDE (M)	0.84	0.137	
PHENYLCYCLOHEXANONE 4	486.11	0.501	4894–75–1
PHENYLHYDRAZINE (M)	6.00	0.314	100–63–0
PHENYLPHENOL P	177.78	0.440	92–69–3
PHENYLTHIOUREA (M)	854.57	0.738	103–85–5

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
PHOSGENE (decomposes)	780.00	0.584	75–44–5
PHOSPHINE	12611.00	0.799	7803–51–2
PHTHALATE, DI N BUTYL-	0.27	0.039	
PHTHALATE, DI N OCTYL	66.11	0.273	
PHTHALIC ACID	733.33	0.716	88–99–3
PHTHALIMIDE	633.33	0.710	85–41–6
PICOLINE(2-) (M)	7.06	0.398	109–06–8
PINENE (alpha-)	1455.54	0.540	80–56–8
PIPERAZINE	2.34	0.339	110–85–0
POLYCYCLIC KETONE O (M)	2777.75	0.415	
PROPANAL	4.27	0.436	
PROPANE	1222.21	0.755	74–98–6
PROPANE),2,2′-OXYBIS(2-CHLORO-(M)	588880.00	0.943	39638–32–
PROPANOIC ACID	0.10	0.062	79–09–4
PROPANOL	0.37	0.185	
PROPANOL ISO	0.43	0.190	67–63–0
PROPENAL	7.51	0.487	
PROPENE	11574.00	0.843	
PROPENYL BENZENE	767.99	0.567	
PROPIONALDEHYDE	3.32	0.375	123–38–6
PROPIONIC ACID	2.71	0.381	79–09–4
PROPIONITRILE (M)	15.28	0.580	107–12–0
PROPYL ACETATE ISO	17.61	0.453	108–21–4
PROPYL BUTANOATE	29.24	0.417	
PROPYL ETHER	191.57	0.565	111–43–3
PROPYL METHANOATE	20.58	0.506	
PROPYL PROPANOATE	21.37	0.427	
PROPYL THIOURACIL(M)	2171.99	0.588	51–52–5
PROPYL(-n) ACETATE	16.33	0.448	109–60–4
PROPYL(-n) BENZENE	366.11	0.520	103–65–1
PROPYL-3-METHOXY PYRAZINE,2-ISO(M)	10739.00	0.584	25773–40–
PROPYLAMINE	0.68	0.249	107–10–8
PROPYLCYCLOPENTANE	50505.00	0.752	
PROPYLENE	117220.00	0.962	115–07–1
PROPYLENE CHLOROHYDRIN	0.13	0.064	
PROPYLENE OXIDE	19.77	0.544	75–56–9
PROPYLENIMINE 1,2 2 METHYL aziri	0.52	0.222	75–55–8
PROPYN-1-OL 2(PROPARLGYL)	0.48	0.225	107–19–7
PROPYNE	610.50	0.763	
PYRENE	0.60	0.089	129–00–0
PYRIDINE	1.31	0.255	110–86–1
PYRROLIDINE	0.13	0.072	
QUINALDINE (M)	611.11	0.597	91–63–4
RESERPINE (M)	115.55	0.384	50–55–5
s ACETYLMERCAPTOSUCCINIC ACID	0.13	0.035	
S4CHL.CYCLOHEX.00DIMETH.PHOS.DI T(M)	9.61	0.243	
SACCHARIN (M)	559.24	0.679	81–07–2
SAFROLE (M)	16.67	0.362	94–59–7
sec BUTYLBENZENE	771.60	0.528	
SILVEX	346.11	0.431	93–72–1
SODIUM DODECYL SULFATE (M)	2.53	0.187	151–21–3
SODIUM DODECYLBENZENE SULFONATE(M)	0.79	0.094	25155–30–
STREPTOZOTOCIN (M)	10739.00	0.969	18883–66–
STYRENE	144.71	0.702	100–42–5
STYRENE OXIDE	4.96	0.305	
SULFIDE (M)	115.75	0.613	
TAMARON (METHAMIDIPHOS)	0.25	0.075	
TARS(M)	111.11	0.370	
t-BUTYL HYDROPEROXIDE	0.72	0.199	75–91–2
TERPINEOL, ALPHA	28.67	0.370	
tert BUTANOL	0.79	0.231	
tert-AMYLBENZENE	1010.09	0.503	
tert-BUTYLBENZENE	661.37	0.527	
TETRACHLOROAQUINONE (M)	6230900.00	0.961	
TETRACHLOROBENZENE(1,2,3,4)	150.00	0.383	634–66–2
TETRACHLOROBENZENE(1,2,3,5)	236.66	0.401	634–90–2
TETRACHLOROBENZENE(1,2,4,5)	236.66	0.438	95–94–3
TETRACHLORODIBENZOFURAN(2,3,7,8) (M)	8.50	0.255	51207–31–
TETRACHLORODIBENZO-p-DIOXIN(2,3,7,8)	2.21	0.145	1746–01–6

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TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
TETRACHLOROETHANE(1,1,1,2) (M)	111.11	0.493	630–20–6
TETRACHLOROETHANE(1,1,2,2)	13.86	0.397	79–34–5
TETRACHLOROETHENE	983.34	0.667	127–18–4
TETRACHLOROPHENOL(2,3,4,6)	0.25	0.039	58–90–2
TETRACHLOROPHENOL(2,3,5,6)	6166600.00	0.879	935–95–5
TETRACHLOROPROPENE(1,1,2,3) (M)	499.44	0.562	10436–39–
TETRADECANE	1594.43	0.395	629–59–4
TETRAETHYL LEAD	4494.40	0.659	78–00–2
TETRAETHYLENE GLYCOL (M)	0.71	0.107	112–60–7
TETRAETHYLENE PENTANE	1249.99	0.707	
TETRAETHYLPYROPHOSPHATE (M)	>100000	0.940	107–49–3
TETRAFLUOROETHENE	34722.00	0.761	
TETRAFLUOROMETHANE	264550.00	0.920	
TETRAHYDROBENZALDEHYDE	1.29	0.213	
TETRAHYDROFURAN	2.72	0.322	109–99–9
TETRAHYDRONAPHTHALENE,1,2,3,4-(M)	400.00	0.500	119–64–2
TETRAHYDROPYRAN	6.94	0.381	142–68–7
TETRAHYDROTHIOPHENE	60.56	0.514	
TETRALIN	104.44	0.439	
TETRANITROMETHANE	605.55	0.718	509–14–8
THIOACETAMIDE (M)	7.53	0.375	62–55–5
THIOBENZYL ALCOHOL P (M)	0.69	0.136	100–53–8
THIOBISETHANE, 1,1′	317.78	0.593	
THIOCYANATE (TOTAL AS SCN-) (M)	1555.54	0.602	NA
NATHIOMETHANOL (M)	28.98	0.499	74–93–1
THIOPHENOL(M)	2433.14	0.660	108–98–5
THIOPROPIONAMIDE 2(M)	0.29	0.085	
THIOUREA	8.89	0.472	62–56–6
THIRAM (M)	11716.00	0.621	137–26–8
THYMINE (M)	433.31	0.802	65–71–4
TOLUENE	356.67	0.551	108–88–3
TOLUENE24DIAZOBIS-METATOLUENEDIA(M)	2.38	0.133	
TOLUENESULFONYL CHLORIDE	0.12	0.028	
TOLUIC ALDEHYDE	14.06	0.382	122–78–1
TOLUIDINE (-0)	0.13	0.049	95–53–4
TOLUIDINE HYDROCHLORIDE,o-(M)	588880.00	0.947	636–21–5
TOLUIDINE P	1.06	0.208	106–49–0
TOXAPHENE	271.66	0.416	8001–35–2
trans 1,4 DIMETHYLCYCLOHEXANE	50505.00	0.752	
trans 2 BUTENAL	1.09	0.267	
trans 2 HEPTENE	23148.00	0.724	
trans 2 HEXENAL	2.78	0.295	
trans 2 OCTENAL	13.89	0.358	
trans, trans 2,4 HEXADIENAL	0.56	0.151	
TRIBROMOMETHYLPHOSPHATE (M)	1.93	0.136	
TRIBUTYL PHOSPHOROTRITHIOATE SSS	8.72	0.230	78–48–8
TRIBUTYL TIN ACETATE	386.66	0.386	
TRIBUTYLPHOSPHATE	2193900.00	0.778	126–73–8
TRICHLORO(1,1,2)TRIFLUOROETHANE ((M)	24166.00	0.739	76–13–1
TRICHLORO-1,2,2-TRIFLUOROETHANE,1,1	28996.00	0.693	76–13–1
TRICHLORO-1,3,5-TRIAZINE 2,4,6 (M)	51.22	0.413	108–77–0
TRICHLOROANISOLE 2,3,6 (M)	588880.00	0.940	50375–10–
TRICHLOROBENZENE 1,2,3	437.22	0.472	87–61–6
TRICHLOROBENZENE 1,2,4	106.67	0.417	120–82–1
TRICHLOROBENZENE 1,3,5	1161.10	0.512	108–70–3
TRICHLOROBUTANE 1,2,3 (M)	258890.00	0.910	18338–40–
TRICHLOROETHANE 1,1,1	966.67	0.666	71–55–6
TRICHLOROETHANE 1,1,2	45.77	0.495	79–00–5
TRICHLOROETHYLENE	566.67	0.636	79–01–6
TRICHLOROFLUOROMETHANE	3238.86	0.677	75–69–4
TRICHLOROPHENOL 2,4,5	0.48	0.079	95–95–4
TRICHLOROPHENOL 2,4,6	0.98	0.154	88–06–2
TRICHLOROPROPANE 1,1,1	1611.10	0.819	7789–89–1
TRICHLOROPROPANE(1,1,2)	1611.10	0.703	598–77–6
TRICHLOROPROPANE(1,2,2)	1611.10	0.721	3175–23–3
TRICHLOROPROPANE(1,2,3)	1555.54	0.817	96–18–4
TRICHLOROPROPENE (1,1,2)(M)	403.89	0.569	
TRICOSANE N(M)	5.12	0.270	629–50–5
TRIETHYLAMINE	6.94	0.339	121–44–8

TABLE 4 OF APPENDIX J—FET VALUES FOR COMPOUNDS WITH HENRY'S LAW CONSTANTS AT 25 °C GREATER THAN OR EQUAL TO 0.1 (Y/X) ATMOSPHERE PER MOLE FRACTION—Continued

[Use with section 2.5.3]

Compound	Y/X	Fet	CAS
TRIETHYLENE GLYCOL(M)	0.55	0.106	112–27–6
TRIETHYLPHOSPHOROTHIOATE,o,o,o-(M)	400.00	0.462	126–68–1
TRIFLUOROETHANE(1,1,1)	4666600.00	0.979	
TRIFLUOROMETHANE	4273.46	0.730	
TRIFLURALIN	8.89	0.230	
TRIISOBUTYLENE	5094.39	0.479	
TRIISOPROPYLAMINE	190.55	0.392	
TRIMELLITIC ANHYDRIDE (M)	0.23	0.046	552–30–7
TRIMETHYL BENZENE, 123	184.57	0.465	
TRIMETHYL-4-NITROANILINE 2,3,5 (M)	500.00	0.484	
TRIMETHYLAMINE	5.79	0.464	75–50–3
TRIMETHYLBENZENE (1,3,5)	326.79	0.502	108–67–3
TRIMETHYLPENTANE 2,2,4	185450.00	0.834	540–84–1
TRIMETHYLSILANOL	8716.44	0.752	
TRINITROBENZENE,sym- (M)	182.49	0.466	99–35–4
TRINITROTOLUENE(2,4,6)	0.76	0.105	118–96–7
TRIPHENYL PHOSPHINE (M)	7.28	0.249	603–35–0
TRIPHENYLMETHANE (M)	194440.00	0.922	516–73–3
TRIPHENYLPHOSPHINE NICKEL CARBON(M)	209.44	0.365	
TRIS (1-AZIRIDINYL) PHOSPHINE SU(M)	13.69	0.304	52–24–4
TRIS (2,3-DIBROMOPROPYL) PHOSPHA(M)	4417800.00	0.939	126–72–7
TRISODIUM NITRILOTRIACETATE (M)	10739.00	0.568	5064–31–3
TRYPAN BLUE(M)	611.11	0.417	72–57–1
URACIL (M)	427.89	0.857	66–22–8
URACIL MUSTARD (M)	611.11	0.525	66–75–1
UREA	14.67	0.582	57–13–6
URETHANE	3.26	0.370	51–79–6
VALERIC ACID (M)	3.73	0.287	109–52–4
VINYL ACETATE	28.21	0.521	108–05–4
VINYL ACETYLENE	1461.97	0.746	
VINYL BROMIDE	375.55	0.693	
VINYL CHLORIDE	1472.00	0.854	75–01–4
VINYL DIHYDROPYRAN	52.89	0.536	
VINYL METHYL ETHER	39.61	0.590	
VINYLCYCLOHEXENE 4(M)	102220.00	0.905	100–40–3
VINYLIDENE CHLORIDE	1438.90	0.680	75–35–4
XYLENE	291.66	0.562	1330–20–7
XYLENE(-m)	413.00	0.549	108–38–3
XYLENE(-o)	271.00	0.569	95–47–6
XYLENE(-p)	413.34	0.561	106–67–9
XYLIDINE dimethylaniline	0.15	0.048	
XYLYL CHLORIDE M (M)	78.33	0.470	620–19–9
XYLYL CHLORIDE O (M)	78.33	0.470	552–45–4

*Molecular structure only approximate.

(M) fraction measured (fm) estimated from Mwt correlation.

TABLE 5 OF APPENDIX J—FE VALUES FOR EMISSIONS FROM BIOLOGICAL TREATMENT SYSTEMS (FET VALUES)

[Use with section 2.5.3]

Henry's Law Constant	Fet Value
0.002	0.001
0.004	0.002
0.006	0.003
0.01	0.005
0.014	0.007
0.02	0.010
0.03	0.015
0.04	0.020
0.05	0.25
0.06	0.030
0.07	0.035
0.08	0.040
0.09	0.045
0.1	0.050
0.158	0.060
0.22	0.070
0.27	0.080

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TABLE 5 OF APPENDIX J—FE VALUES FOR EMISSIONS FROM BIOLOGICAL TREATMENT SYSTEMS (FET VALUES)—Continued

[Use with section 2.5.3]

Henry's Law Constant	Fet Value
0.28	0.090
0.285	0.10
0.288	0.11
0.354	0.12
0.45	0.13
0.5	0.14
0.55	0.15
0.628	0.16
0.71	0.17
0.85	0.18
1.01	0.19
1.10	0.20
1.2	0.21
1.3	0.22
1.75	0.23
1.93	0.24
2.03	0.25
2.3	0.26
2.6	0.27
2.8	0.28
2.9	0.29
3	0.30
3.3	0.31
4.17	0.33
4.6	0.35
8	0.37
9.6	0.39
11	0.40
13	0.41
15	0.43
16	0.44
17	0.45
75	0.47
144	0.50
206	0.52
411	0.54
500	0.56
615	0.58
716	0.60
811	0.62
1000	0.64
4000	0.66
8000	0.68
9000	0.70
11000	0.72
12000	0.74
20000	0.76
30000	0.78
50000	0.80
210000	0.82

BILLING CODE 6560–50–P

FORM 1 OF APPENDIX J--CALCULATION OF THE HENRY'S LAW CONSTANT AT 25°C FOR A COMPOUND IN A SEALED BATCH TEST

(i.e., Two Phase Closed System) (use with Section 2.1.3.1 and 2.4.3.1.1)

NAME OF THE FACILITY ______
WASTE STREAM IDENTIFICATION ______
COMPOUND ______
REACTOR HEADSPACE VOLUME, (L) 1 ______
REACTOR LIQUID VOLUME (L) 2 ______
TEMPERATURE of the liquid in the unit (deg.C) 3 ______

A	B	C	D	E
Data set	Time (hr)	Liquid Conc. (mg/L)	Gas Conc. (mg/L)	Keq D/C
1	______	______	______	______
2	______	______	______	______
3	______	______	______	______
4	______	______	______	______
5	______	______	______	______

Temperature in degrees Kelvin.
Add 273.16 to the number on line 3. 4 ______
Molar ratio. Multiply the number on line 4 by 4.555. 5 ______
Henry's law value (mg/L gas per mg/L liquid).
The average value in column E. 6 ______
Henry's law value (mole fract. gas per mole fract. liquid)
Multiply line 6 by line 5. 7 ______

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FORM 2 OF APPENDIX J--DATA FORM FOR THE CALCULATION OF THE HENRY'S LAW CONSTANT AT 25°C FROM THE STRIPPING IN AN AERATED BATCH TEST (i.e., open system) (use with Section 2.1.3.2 and 2.4.3.1.2).

NAME OF THE FACILITY ______
WASTE STREAM IDENTIFICATION ______
COMPOUND ______
Concentration basis (liquid or gas) ______

TEMPERATURE of the liquid in the unit (deg.C) 1 ______
GAS FLOW RATE (L/hr) 2 ______
LIQUID VOLUME (L) 3 ______
Co concentration measurement at time=0 (mg/L) 4 ______

A data point	B time (hr)	C Concentration, C (mg/L)	D C/Co	E -ln(C/Co)
1	______	______	______	______
2	______	______	______	______
3	______	______	______	______
4	______	______	______	______
5	______	______	______	______
6	______	______	______	______

CALCULATIONS. Use additional lines as needed in an expansion of the above table. Plot the values in column E (y axis) vs the data in column B (x axis). Reject outliers. Curve fit with a straight line. Calculate the slope and enter the slope on line 7.

Temperature in degrees Kelvin.
Add 273.16 to the number on line 1. 5 ______
MOLAR RATIO. Multiply the number on line 5 by 4.555. 6 ______
Slope of the plot of -ln(C/Co) vs time (per hour) 7 ______

Calculated Keq value (mg/L gas per mg/L liquid). Divide the number on line 7 by the number on line 2 and multiply the results by the number on line 3.
Enter the results on line 8. 8 ______

Henry's law value (mole fract. gas per mole fract. liquid)
Multiply the number on line 8 by the number on line 6. 9 ______

FORM 3 OF APPENDIX J--HOW TO SUBTRACT A CHEMICAL FROM A METHOD 25D CONCENTRATION
(use with Section 2.3)

NAME OF THE FACILITY ______________
STREAM IDENTIFICATION ______________

1. Report the average value of the Method 25D samples. You must take at least the minimum number of samples required by the referencing subpart. Report the results for each sample taken (ppmw). If you include any samples, you must explain why the samples should not be included in the average.

Measurements of volatile content with EPA Method 25D
Enter each result on lines 1-5 (ppmw)

1______________
2______________
3______________
4______________
5______________

2. Report average value of Method 25D results.

Average value of Method 25D - results (ppmw) | 1. | |

3. Subtract from average value of Method 25D samples.

No.	Chemical (A)	Concentration (ppmw) (B)	FM M25D (C)	FM Adjusted Concentration (ppmw) (D) = (B)*(C)
1				
2				
3				
4				
5				
6				
7				
8				
9				

10				
11				
12				
13				
14				
15				
16				
17				
18				
19				

Sum of adjusted concentrations.	2.	
Total Method 25D concentration adjusted to subtract chemicals Subtract Line 2 from Line 1 (Do not enter less than zero)	3.	

FORM 4 OF APPENDIX J--EXAMPLE OF HOW TO SUBTRACT A CHEMICAL FROM A METHOD 25D CONCENTRATION (use with Section 2.3)

NAME OF THE FACILITY Plant A
STREAM IDENTIFICATION Waste 3A

1. Report the average value of the Method 25D samples. You must take at least the minimum number of samples required by the referencing subpart. Report the results for each sample taken (ppmw). If you include any samples, you must explain why the samples should not be included in the average.

Measurements of volatile content with EPA Method 25D 100

Enter each result on lines 1-5 (ppmw) 2 57
3 88
4 110
5 __________

2. Report average value of Method 25D results.

Average value of Method 25D - results (ppmw) 1. 88.75

3. Subtract from average value of Method 25D samples.

No.	Chemical (A)	Concentration (ppmw) (B)	FM M25D (C)	FM Adjusted Concentration (ppmw) (D) = (B)*(C)
1	Dichlorophenol 2,5	150	0.151	22.65

Sum of adjusted concentrations. 2. 22.65

Total Method 25D concentration adjusted to subtract chemicals. Subtract Line 2 from Line 1 (Do not enter less than zero.)	3.	66.1

FORM 5 OF APPENDIX J--HOW TO CALCULATE A HENRY'S LAW CONSTANT FROM A HENRY'S LAW CONSTANT AT A DIFFERENT TEMPERATURE FOR THE SAME CHEMICAL

(use with Sections 2.1.4, 2.4.3.2, and 2.6)

NAME OF THE FACILITY		
CHEMICAL FOR EVALUATION		
MEASURED HENRY'S LAW CONSTANT (atm/mol fraction)	1	
MEASUREMENT TEMPERATURE (deg.C)	2	
ADJUSTMENT TEMPERATURE FOR HENRY'S LAW CONSTANT (deg.C)	3	
WATER8 PREDICTED HENRY'S LAW CONSTANT AT THE MEASUREMENT TEMPERATURE	4	
WATER8 PREDICTED HENRY'S LAW CONSTANT AT THE ADJUSTMENT TEMPERATURE	5	
RATIO OF HENRY'S LAW CONSTANTS. DIVIDE THE NUMBER ON LINE 5 BY THE NUMBER ON LINE 4.	6	
ADJUSTED HENRY'S LAW CONSTANT. MULTIPLY THE NUMBER ON LINE 6 BY THE NUMBER ON LINE 1.	7	

Discuss the assumptions and data inputs used for WATER8

BILLING CODE 6560-50-C

FORM 6 OF APPENDIX J—GENERAL SYSTEM SPECIFICATIONS (use with Section 2.5.2)

You must use site-specific values for parameters 5, 6, and 10.

5 Humidity of inlet air (%) ....
6 Temperature of air (°C) ....
10 Wind velocity (cm/s at 10 m) ....

For the rest of items, you may use the default values in WATER8 or site-specific values. You should document the methods used. You only have to report site-specific data on this form; you do not have to report the WATER8 default values.

1 Total water added at the unit (l/s) ....
2 Area of openings at unit (cm²) ....
3 Radius of drop pipe (cm) ....
4 Drop length to conduit (cm) ....
7 Drain air velocity (ft/min) ....
8 Manhole air velocity (ft/min) ....
9 Conduit air velocity (ft/min) ....
11 Distance to next unit (cm) ....
12 Slope of underflow conduit ....
13 Friction factor liquid ....
14 Friction factor gas ....
15 Radius of underflow conduit (cm) ....
16 Underflow Temperature (°C) ....
17 Oscillation cycle time (min) ....
18 Design collection velocities (ft/s) ....
19 Design branch line fraction full ....
20 Fraction of wind speed on open drains ....
21 Number of iterations for calculations ....
22 Specified line vent rates, =1 ....
23 Iterations in vent convergence pass ....
24 Number of passes in vent conv. ....
25 Allowable vent error ....
26 Acceleration factor for vent convergence ....
27 Change in pressure ....
28 Oil molecular weight ....
29 Oil density (g/cc) ....

FORM 7 OF APPENDIX J—DESCRIPTION OF GENERAL COLLECTION ELEMENTS (use with Section 2.5.2)

Applicable units include closed trenches, open hub drains, covered drains, openings in a conduit, and manhole covers. Waste may be added either at the unit or through a drop pipe. Each unit has a potential vent or waste addition, followed by an enclosed conduit that ends at the next downstream unit.

1 Description of unit ....
2 Underflow Temperature (°C) ....
3 Total water added at the unit (l/s) ....

The following three specifications refer to the potential vent or waste drop pipe.

4 Area of openings at unit (cm²) ....
5 Radius of drop pipe (cm) ....
6 Drop length to conduit (cm) ....

The term open surface refers to the surface near the vent or waste addition.

7 Open surface=1 ....
8 Subsurface entrance=1 ....
9 Subsurface exit =1 ....

The following three specifications refer to the enclosed conduit downstream of the unit.

10 Radius of underflow conduit (cm) ....
11 Distance to next unit (cm) ....
12 Slope of underflow conduit ....

The specified air velocity is only used if Form 6 general system specification 22 equals 1.

16 Velocity air at opening (ft/min) ....
17 Municipal waste in conduit =1 ....
18 Assume equilibrium in unit, =1 ....

If waste is added at the unit, specify the waste number. The waste composition is described elsewhere.

19 Waste 1 added to system at unit number ....
20 Waste 2 added to system at unit number ....
21 Waste 3 added to system at unit number ....

FORM 8 OF APPENDIX J—THE DESCRIPTION OF OPEN TRENCHES (use with Section 2.5.2)

1 Description of unit ....
2 Underflow T (°C) ....
3 Total water added at the unit (l/s) ....
8 Subsurface entrance=1 ....
9 Subsurface exit=1 ....
10 Width of underflow conduit (cm) ....
11 Distance to next unit (cm) ....

12 Slope of underflow conduit
19 Waste 1 added to system at unit number
20 Waste 2 added to system at unit number
21 Waste 3 added to system at unit number

FORM 9 OF APPENDIX J—THE DESCRIPTION OF AN OPEN SUMP (use with Section 2.5.2)

1. Description of unit
2. Underflow Temperature (°C)
3. Total water added at the unit (l/s)
4. Area of openings at unit (cm²)
5. Radius of drop pipe (cm)
6. Drop length to conduit (cm)
7. Open surface=1
8. Subsurface entrance=1
9. Subsurface exit =1
10. Radius of underflow conduit (cm)
11. Distance to next unit (cm)
12. Slope of underflow conduit
13. Area of surface(cm²)
14. Flow entrance depth under surface (cm)
15. Depth of liquid in sump (cm)
16. Velocity air at opening (ft/min)
17. Municipal waste in conduit =1
18. Assume equilibrium in unit, =1
19. Waste 1 added to system at unit number
20. Waste 2 added to system at unit number
21. Waste 3 added to system at unit number

FORM 10 OF APPENDIX J—THE DESCRIPTION OF AN OPEN J DRAIN (use with Section 2.5.2)

1. Description of unit
2. Underflow Temperature (°C)
3. Total water added at the unit (l/s)
4. Distance to trap liquid surface (cm)
5. Radius of drop pipe (cm)
6. Drop length to conduit (cm)
7. Open surface=1
8. Subsurface entrance=1
9. Subsurface exit =1
10. Radius of underflow conduit (cm)
11. Distance to next unit (cm)
12. Slope of underflow conduit
13. Depth of water level (cm)
14. Displacement in oscillation (cm)
17. Municipal waste in conduit =1
18. Assume equilibrium in unit, =1
19. Waste 1 added to system at unit number
20. Waste 2 added to system at unit number
21. Waste 3 added to system at unit number

FORM 11 OF APPENDIX J—THE DESCRIPTION OF SEALED COLLECTION ELEMENTS (use with Section 2.5.2)

1. Description of unit
2. Underflow Temperature ©
3. Total water added at the unit (l/s)
4. Area of openings at unit (cm2)
5. Radius of drop pipe (cm)
6. Drop length to conduit (cm)
7. Open surface=1
8. Subsurface entrance=1
9. Subsurface exit =1
10. Radius of underflow conduit (cm)
11. Distance to next unit (cm)
12. Slope of underflow conduit
17. Municipal waste in conduit =1
18. Assume equilibrium in unit, =1
19. Waste 1 added to system at unit number
20. Waste 2 added to system at unit number
21. Waste 3 added to system at unit number

FORM 12 OF APPENDIX J—THE DESCRIPTION OF WEIRS AND WATERFALLS (use with Section 2.5.2)

1. Description of unit
2. Underflow Temperature (°C)
3. Total water added at the unit (l/s)
4. Waterfall width at surface (m)
5. Waterfall drop height (cm)
6. Tailwater depth (m)
7. Open surface=1
8. Subsurface entrance=1

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9. Subsurface exit =1
10. Radius of underflow conduit (cm)
11. Distance to next unit (cm)
12. Slope of underflow conduit
19. Waste 1 added to system at unit number
20. Waste 2 added to system at unit number
21. Waste 3 added to system at unit number

FORM 13 OF APPENDIX J—THE DESCRIPTION OF LIFT STATIONS (use with Section 2.5.2)

1. Description of unit
2. Underflow Temperature (°C)
3. Total water added at the unit (l/s)
4. Area of openings at unit (cm²)
5. Radius of drop pipe (cm)
6. Drop length to conduit (cm)
7. Open surface=1
8. Subsurface entrance=1
9. Ssubsurface exit =1
10. Radius of underflow conduit (cm)
11. Distance to next unit (cm)
12. Slope of underflow conduit
13. Fractional approach to equilibrium
14. If covered, then enter 1
19. Waste 1 added to system at unit number
20. Waste 2 added to system at unit number
21. Waste 3 added to system at unit number

Definitions of Terms

Area of openings at unit (cm²) The area that can vent headspace gas or permit outside air to enter the collection system. This area is generally less than or equal to the area of the drop pipe opening.

Area of surface (cm²) (sump) The area of the surface exposed to the wind or to the headspace in a sump. This area generally corresponds to the physical area of the sump exposed surface horizontal cross-section.

Assume equilibrium in unit, =1 If condition are present in the unit such that equilibrium is expected (agitated surface, sealed waterfall, splash loading, low gas and liquid flow, or other factors) enter a 1 as a computer flag.

Cover An enclosure that prevents the exchange of ambient air and the headspace air. If there are openings in the cover, then air may be exchanged with the headspace air. The openings in the cover are specified as *area of openings at unit.*

Covered, then enter 1 The input value is a computer program flag that specifies that the unit is sealed and outside wind will not blow across the surface of the liquid in the unit. If the unit is covered, this does not indicate that the surface of the liquid is not exposed to headspace gas.

Depth of liquid in sump (cm) The depth in centimeters from the top of the liquid surface in the sump to the base of the sump. The depth is always positive.

Depth of water level (cm) (J trap) The depth in centimeters from the top of the liquid surface in the water seal to the base of the water seal. This depth is always positive and would correspond to the wet distance on a dip-stick. This variable may be used for periodically active hubs.

Description of unit This is a general description that identifies the unit that is being specified. Examples can include "Tank A45", "Drain E–17", "Sewer WW4", or other description. This description will appear on some of the reports.

Displacement in oscillation (cm) (J trap) Distance of surface level fluctuation in the J trap. The value of the displacement is used in an air emission model to estimate air exchange.

Distance to next unit (cm) The distance of the run of the underflow conduit that connects the unit to the next unit downstream.

Distance to trap liquid surface (cm) (J trap) The depth in centimeters from the top of the open hub top to the liquid surface within the J trap. The depth is always positive and would correspond to the dry distance on a dip-stick.

Drop length to conduit (cm) The length in centimeters from the top of the hub in the drop pipe to the typical liquid surface in the underflow conduit. The length is always positive.

Drop length to conduit (cm) (J trap) The length in centimeters from the water seal in the J trap to the typical liquid surface in the underflow conduit. The length is always positive.

Flow entrance depth under surface (cm) The length between the surface of the liquid in the sump and the base of the inlet conduit. This length is always positive and represents the effective depth of flow for the mass transfer model.

Fractional approach to equilibrium The fraction of equilibrium between the liquid and the headspace in the lift station unit. The lift station model uses this value as an input parameter because analysis of laboratory data indicated that the vent gas in an enclosed unit with a waterfall was approximately 50% of the equilibrium value. For water falling in a more open unit, consider using the waterfall unit instead of the lift station model.

Headspace The headspace is the air over the wastewater in the enclosed underflow conduit.

Municipal waste in conduit=1 The input value is a computer program flag which identifies which mass transfer model is used for the calculations. A value of zero is the default value and the mass transfer is calculated using the trench model correlation derived from Owens. A value of 1 would calculate mass transfer through the Parkhurst-Pomeroy correlation for municipal sewers. Additional options for mass transfer options may be added in the future.

Open surface=1 The input value is a computer program flag which indicates that the surface of the unit receiving the waste is open to the atmosphere. Zero is the default value (closed unit). Many of the collection system units have this option for flexibility. This flag does not refer to the underflow conduit, only to the units. The flow of headspace in the drop pipe will be of less importance if the drop pipe connects to a unit that is open.

Open surface=1 (J trap) The input value is a computer program flag which indicates that the surface of the unit receiving the waste is open to the atmosphere. Zero is the default value, and it is considered very unusual to use an open J trap for discharge into a unit with an exposed surface.

Open surface=1 (sump) The input value is a computer program flag which indicates that the surface of the unit receiving the waste is open to the atmosphere. Zero is the default value, and a value of 1 indicates that there are potential air emissions from wind blowing across the surface. Grates and perforated covers are considered characteristic of an open surface.

Oscillation cycle time (min) The cycle time or period of the water level rise and drop in an open water trap. Variations in the internal headspace pressure will cause water level oscillations.

Radius of drop pipe (cm) The radius in centimeters in the drop pipe that connects the hub to the unit. There is no water seal on the drop pipe (see J trap).

Radius of drop pipe (cm) (J trap) The radius in centimeters in the drop pipe forming a water seal in the J trap. The drop pipe connects the hub to the water seal in the J trap.

Radius of underflow conduit (cm) One half the diameter of a circular exiting pipe that connects the unit to the next unit downstream. This pipe is considered closed and not exposed to leaks and air exchange with the environment during the run of the pipe. If the conduit is not closed, consider the trench model.

Rise The difference in elevation in an underflow conduit that connects collection system units.

Run The path in an underflow conduit that connects collection system units.

Slope of underflow conduit The ratio of the rise to the run in the underflow conduit. The slope is always positive and measured from downstream to upstream in each run.

Subsurface entrance=1 This input value is a computer program flag which indicates that the headspace is blocked from flowing into or out of the upstream underflow conduits. A value of zero indicates that there is no headspace blockage.

Subsurface exit=1 This input value is a computer program flag which indicates that the headspace is blocked from flowing into or out of the underflow conduit downstream. A value of zero indicates that there is no headspace blockage.

Total water added at the unit (l/s) This is an optional specification of the total amount of water added to the collection system at the unit. This specification is only used if water is added to the specified wastewater streams at the unit. This optional specification could be used if the total wastewater flow at the unit differed from the sum of the flows of the wastes upstream of the unit.

Underflow conduit The exiting pipe or trench that connects the unit to the next unit downstream. This conduit may be (1) closed and not exposed to leaks and air exchange with the environment during the run of the pipe or (2) exposed to leaks and air exchange with the environment.

Underflow Temperature (C) The entrance temperature of the liquid into the unit. The temperature of the waste stream is specified separately.

Velocity air at opening (ft/min) The velocity of flow into the unit at the specified unit openings (see area of openings at unit). This value is only used if a special flag is set. (See Form 6 general specifications 22. Specified line vent rates, =1)

Waste added to system at unit number The input information of waste streams into the collection system units is accomplished by specifying the waste number. The waste number refers to a data base element that includes the drop distance into the hub, the flow rate, the temperature, concentrations, the oil content and other information.

Waterfall drop height (cm) The distance from the top of the waterfall to the tailwater surface level (unit liquid underflow level). This value is always positive.

Waterfall: Open surface=1 The input value is a computer program flag which indicates that the waterfall is open to the atmosphere. Zero is the default value (waterfall is enclosed).

Waterfall: tailwater depth (m) The depth of flow in the underflow conduit under the waterfall.

Waterfall width at surface (m) The width of the waterfall across the at the upper liquid level. The flow rate is used with the width to estimate the thickness of the falling water film.

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Part III

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas, and Supplemental Designation of Qualified Census Tracts, for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4401–N–01]

Statutorily Mandated Designation of Difficult Development Areas, and Supplemental Designation of Qualified Census Tracts, for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates "Difficult Development Areas" and supplemental "Qualified Census Tracts" for purposes of the Low-Income Housing Tax Credit ("LIHTC") under section 42 of the Internal Revenue Code of 1986. The United States Department of Housing and Urban Development ("HUD") makes new Difficult Development Area designations annually and makes supplemental designations of Qualified Census Tracts at this time because of recent legislation. The corrected designations of "Qualified Census Tracts" under section 42 of the Internal Revenue Code published May 1, 1995 (60 FR 21246), as amended by the supplemental designations of "Qualified Census Tracts" under section 42 of the Internal Revenue Code published June 25, 1998 (63 FR 34748), are not affected by this Notice.

FOR FURTHER INFORMATION CONTACT: With questions on how areas are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–0426, e-mail Kurt_G._Usowski@hud.gov. With specific legal questions pertaining to section 42 and this notice, Chris Wilson, Attorney, Office of the Chief Counsel, Pass Throughs and Special Industries Branch 5, Internal Revenue Service, 1111 Constitution Ave, N.W., Washington, DC, 20244, telephone (202) 622–3040, fax (202) 622–4779; or Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–3260, e-mail JERRY_GROSS@hud.gov. For questions about the "HUBZones" program, Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416, telephone (202) 205–6731, fax (202) 205–7324, e-mail michael.mchale@sba.gov. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs.

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SUPPLEMENTARY INFORMATION:

This Document

The designations of Difficult Development Areas in this document are based on FY 1998 Fair Market Rents ("FMRs"), FY 1998 income limits and 1990 census population counts as explained below. Section 508(c) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) requires HUD to treat certain areas differently in making Difficult Development Area designations than they had been treated in past designations. The designations of Qualified Census Tracts in newly designated metropolitan areas and the nonmetropolitan parts of States affected by the most recent metropolitan area designation and for the U.S. Territories of the Virgin Islands, American Samoa, Guam, Northern Marianas Islands, and Palau, are made necessary by the recently enacted "HUBZones" provisions of the Small Business Reauthorization Act of 1997, which incorporate section 42 Qualified Census Tracts by reference. These designations are made based on 1990 Census data.

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the "Code"), including the Low-Income Housing Tax Credit ("LIHTC") found at section 42 of the Code (26 U.S.C. 42) as amended. The Secretary of HUD is required to designate Difficult Development Areas and Qualified Census Tracts by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the "credit ceiling") is limited by population. Each state is allocated credit based on $1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income ("AMGI"), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the acquisition of existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,900 at the 39.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the "applicable fraction" of the building and the "eligible basis" of the building. The applicable fraction is based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI. There is a limit on the amount of Qualified Census Tracts in any Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area.

Section 42 defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. Again, limits apply. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

In the last general designation of Qualified Census Tracts published May 1, 1995 (60 FR 21246), no tract designations were made in the U.S. Territories of the Virgin Islands, American Samoa, Guam, Northern Marianas Islands, and Palau, because they were all designated "Difficult Development Areas" under section 42 of the Internal Revenue Code—making the designation of Qualified Census Tract superfluous. HUD is again designating the U.S. Territories of the Virgin Islands, American Samoa, Guam, Northern Marianas Islands, and Palau, as Difficult Development Areas and expects them to maintain their eligibility for designation for the foreseeable future. However, the recently enacted "HUBZones" provisions of the Small Business Reauthorization Act of 1997 (111 Stat. 2627) incorporate section 42 Qualified Census Tracts by reference, making it necessary to revise the designation of Qualified Census Tracts to ensure legal compliance with this new program. The following changes in MSA/PMSA definitions were made after HUD's last designation of Qualified Census Tracts.

New MSA (MSA No.)	Component counties
Missoula, MT MSA (5140)	Missoula County, MT.

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this revised list of LIHTC Qualified Census Tracts, HUD used 1990 Census data and the MSA/PMSA definitions established by the Office of Management and Budget ("OMB") in OMB Bulletin No. 98–06 on June 23, 1998. Beginning with the 1990 census, tract-level data are available for the entire country. Generally, in metropolitan areas these geographic divisions are called census tracts while in most non-metropolitan areas the equivalent nomenclature is Block Numbering Area ("BNA"). BNAs are treated as census tracts for the purposes of this Notice.

The LIHTC Qualified Census Tracts were determined as follows:

1. A census tract must have 50% of its households with incomes below 60% of the AMGI to be eligible. HUD has defined 60% of AMGI as 120% of HUD's Very Low Income Limits (VLILs), which are based on 50% of area median family income, adjusted for high cost and low income areas. The 1994 income estimates were then deflated to 1989 dollars, so they would match the 1990 Census income data.

2. For each census tract, the percentage of households below the 60% income standard was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. Qualified Census Tracts are those in which 50% or more of the households are income eligible and the population of all census tracts that satisfy this criterion does not exceed 20% of the total population of the respective area.

4. In areas where more than 20% of the population qualifies, census tracts are ordered from the highest percentage of eligible households to the lowest. Starting with the highest percentage, census tracts are included until the 20% limit is exceeded. If a census tract is excluded because it raises the percentage above 20%, then subsequent census tracts are considered to determine if a census tract with a smaller population could be included without exceeding the 20% limit.

B. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 1990 Census data and the MSA/PMSA definitions as published by the Office of Management and Budget in OMB Bulletin No. 98–06 on June 23, 1998, *with the exceptions described in section C., below.* The basis for these comparisons was the fiscal year ("FY") 1998 HUD income limits for Very Low Income Households and Fair Market Rents ("FMRs") used for the section 8 Housing Assistance Payments Program. The procedure used in making these calculations follows:

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 1998 two-bedroom FMR and the FY 1998 four-person VLIL. The numerator of the ratio was the area's FY 1998 FMR. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120

percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 1990 population of all metropolitan areas and of all non-metropolitan counties.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas and Qualified Census Tracts, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

For Qualified Census Tracts, section 42(d)(5)(C)(ii)(II) of the Code specifies that the population of designated census tracts within a metropolitan area cannot exceed 20% of the population of that metropolitan area. Similarly, for census tracts/block numbering areas (BNAs) located outside metropolitan areas, the population of designated census tracts/BNAs cannot exceed 20% of the population of the non-metropolitan counties in a State or equivalent area.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and nonmetropolitan Difficult Development Areas there are minimal overruns of the caps. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 98–06 defining metropolitan areas:

> OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy, and Kendall Counties.

Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.

Dallas, TX: Henderson County.

Flagstaff, AZ–UT: Kane County, Utah.

New Orleans, LA: St. James Parish.

Washington, DC–MD–VA–WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator "(part)" in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

Finally, in the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions ("MCDs") rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Affected counties are assigned the indicator "(part)" in the list of Nonmetropolitan Difficult Development Areas.

For the convenience of readers of this notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in Nonmetropolitan Difficult Development Areas in the New England states are included in the list of Difficult Development Areas.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until data from the 2000 census become available unless changes in MSA/PMSA definitions are made by OMB in the interim.

Effective Date

The list of Difficult Development Areas and the supplemental list of Qualified Census Tracts is effective for allocations of credit made after December 31, 1998. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1998. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246, as amended by the supplemental designation of Qualified Census tracts published June 25, 1998, at 63 FR 34748, are not affected by this Notice.

Interpretive Examples for Effective Date

For the convenience of readers of this Notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in Internal Revenue Code section 42(h)(4)(B). The examples are equally applicable to Qualified Census Tract designations.

(Case A) Project "A" is located in a newly-designated 1999 Difficult Development Area. Bonds are issued for Project "A" on November 1, 1998, but Project "A" is placed in service March

1, 1999. Project "A" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued BEFORE December 31, 1999.

(Case B) Project "B" is located in a newly-designated 1999 Difficult Development Area. Project "B" is placed in service November 15, 1998. The bonds which will support the permanent financing of Project "B" are issued January 15, 1999. Project "B" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service BEFORE December 31, 1998.

(Case C) Project "C" is located in an area which is a Difficult Development Area in 1998, but IS NOT a Difficult Development Area in 1999. Bonds are issued for Project "C" on October 30, 1998, but Project "C" is not placed in service until March 30, 1999. Project "C" is eligible for the increase in basis available to projects located in 1998 Difficult Development Areas because both events (bonds issued and project placed in service) have occurred AFTER December 31, 1997.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no FONSI is required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of "Difficult Development Areas" and "Qualified Census Tracts" as required by section 42 of the Code, as amended, for use by political subdivisions of the States in allocating the LIHTC. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates "Difficult Development Areas" as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the States in allocating the LIHTC. The notice also details the technical methodology used in making such designations.

Dated: October 29, 1998.

Andrew M. Cuomo,

Secretary.

BILLING CODE 4210-32-P

1999 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
AK	BETHEL CENSUS AREA	DILLINGHAM CENSUS AREA	FAIRBANKS NORTH STAR BOROUGH	HAINES BOROUGH
	JUNEAU BOROUGH	KETCHIKAN GATEWAY BOROUGH	KODIAK ISLAND BOROUGH	LAKE AND PENINSULA BOROUGH
	NOME CENSUS AREA	NORTH SLOPE BOROUGH	NORTHWEST ARCTIC BOROUGH	PRINCE OF WALES-OUTER KETCHIKAN CENSUS AREA
	SITKA BOROUGH	WADE HAMPTON CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
AR	BAXTER COUNTY	DREW COUNTY		
AZ	APACHE COUNTY	COCHISE COUNTY	GILA COUNTY	GRAHAM COUNTY
	LA PAZ COUNTY	NAVAJO COUNTY	SANTA CRUZ COUNTY	YAVAPAI COUNTY
CA	ALPINE COUNTY	AMADOR COUNTY	CALAVERAS COUNTY	COLUSA COUNTY
	DEL NORTE COUNTY	GLENN COUNTY	HUMBOLDT COUNTY	IMPERIAL COUNTY
	INYO COUNTY	KINGS COUNTY	LAKE COUNTY	MARIPOSA COUNTY
	MENDOCINO COUNTY	MODOC COUNTY	MONO COUNTY	NEVADA COUNTY
	PLUMAS COUNTY	SAN BENITO COUNTY	SIERRA COUNTY	SISKIYOU COUNTY
	TEHAMA COUNTY	TRINITY COUNTY	TUOLUMNE COUNTY	
CO	ARCHULETA COUNTY	GARFIELD COUNTY	LA PLATA COUNTY	PARK COUNTY
	PITKIN COUNTY	SAN MIGUEL COUNTY	SUMMIT COUNTY	
CT	LITCHFIELD COUNTY (part) Canaan town Colebrook town Cornwall town Goshen town Kent town Litchfield town Morris town	Norfolk town North Canaan town Salisbury town Sharon town Torrington town Warren town	MIDDLESEX COUNTY (part) Chester town Deep River town Essex town Westbrook town	NEW LONDON COUNTY (part) Lyme town Voluntown town
DE	SUSSEX COUNTY			
FL	BAKER COUNTY	CALHOUN COUNTY	CITRUS COUNTY	COLUMBIA COUNTY
	DESOTO COUNTY	DIXIE COUNTY	FRANKLIN COUNTY	GILCHRIST COUNTY
	GLADES COUNTY	GULF COUNTY	HAMILTON COUNTY	HARDEE COUNTY
	HENDRY COUNTY	HIGHLANDS COUNTY	HOLMES COU	INDIAN RIVER COUNTY
	JACKSON COUNTY	JEFFERSON COUNTY	LAFAYETTE COUNTY	LEVY COUNTY
	LIBERTY COUNTY	MADISON COUNTY	MONROE COUNTY	OKEECHOBEE COUNTY
	PUTNAM COUNTY	SUMTER COUNTY	SUWANNEE COUNTY	TAYLOR COUNTY
	UNION COUNTY	WAKULLA COUNTY	WALTON COUNTY	WASHINGTON COUNTY
GA	BUTTS COUNTY	DAWSON COUNTY		
HI	HAWAII COUNTY	KAUAI COUNTY	MAUI COUNTY	
ID	BONNER COUNTY	KOOTENAI COUNTY		
KY	HARLAN COUNTY	KNOX COUNTY	LAUREL COUNTY	
LA	NATCHITOCHES PARISH	ST. MARY PARISH	VERNON PARISH	WEST FELICIANA PARISH

1999 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
ME	ANDROSCOGGIN COUNTY (part) Durham town Leeds town Livermore town Livermore Falls town Minot town	AROOSTOOK COUNTY	CUMBERLAND COUNTY (part) Baldwin town Bridgton town Brunswick town Harpswell town Harrison town Naples town New Gloucester town Pownal town Sebago town	FRANKLIN COUNTY
	HANCOCK COUNTY	KNOX COUNTY	LINCOLN COUNTY	OXFORD COUNTY
	PISCATAQUIS COUNTY	SAGADAHOC COUNTY	SOMERSET COUNTY	WASHINGTON COUNTY
	PENOBSCOT COUNTY (part) Alton town Argyle unorg Bradford town Bradley town Burlington town Carmel town Carroll plantation Charleston town Chester town Clifton town Corinna town Corinth town Dexter town Dixmont town Drew plantation East Central Penobscot unorg East Millinocket town Edinburg town Enfield town Etna town Exeter town Garland town Greenbush town Greenfield town Howland town Hudson town Kingman unorg	Lagrange town Lakeville town Lee town Levant town Lincoln town Lowell town Mattawamkeag town Maxfield town Medway town Millinocket town Mount Chase town Newburgh town North Penobscot unorg Newport town Passadumkeag town Patten town Plymouth town Prentiss plantation Seboeis plantation Springfield town Stacyville town Stetson town Twombly unorg Webster plantation Whitney unorg. Winn town Woodville town	WALDO COUNTY (part) Belfast city Belmont town Brooks town Burnham town Frankfort town Freedom town Islesboro town Jackson town Knox town Liberty town Lincolnville town Monroe town Montville town Morrill town Northport town Palermo town Prospect town Searsmont town Searsport town Stockton Springs town Swanville town Thorndike town Troy town Unity town Waldo town	YORK COUNTY (part) Acton town Alfred town Arundel town Biddeford city Cornish town Dayton town Kennebunk town Kennebunkport town Lebanon town Limerick town Lyman town Newfield town North Berwick town Ogunquit town Parsonsfield town Saco city Sanford town Shapleigh town Waterboro town Wells town
MA	BARNSTABLE COUNTY (part) Bourne town Falmouth town Provincetown town Truro town Wellfleet town	DUKES COUNTY	FRANKLIN COUNTY (part) Ashfield town Bernardston town Buckland town Charlemont town Colrain town Conway town Deerfield town Erving town Gill town Greenfield town Hawley town Heath town Leverett town	Leyden town Monroe town Montague town New Salem town Northfield town Orange town Rowe town Shelburne town Shutesbury town Warwick town Wendell town Whately town
	HAMPDEN COUNTY (part) Blandford town Brimfield town Chester town Granville town Tolland town Wales town	HAMPSHIRE COUNTY (part) Chesterfield town Cummington town Goshen town Middlefield town Pelham town Plainfield town Westhampton town Worthington town	NANTUCKET COUNTY	WORCESTER COUNTY (part) Athol town Hardwick town Hubbardston town Petersham town New Braintree town Phillipston town Royalston town Warren town
MS	COAHOMA COUNTY	ISSAQUENA COUNTY	LAFAYETTE COUNTY	WASHINGTON COUNTY
MT	GALLATIN COUNTY			
NV	DOUGLAS COUNTY			
NH	BELKNAP COUNTY	CARROLL COUNTY	CHESHIRE COUNTY	GRAFTON COUNTY
	HILLSBOROUGH COUNTY (part) Antrim town Bennington town Deering town Francestown town Greenfield town Hancock town Hillsborough town Lyndeborough town New Boston town Peterborough town Sharon town Temple town Windsor town	MERRIMACK COUNTY (part) Andover town Boscawen town Bow town Bradford town Canterbury town Chichester town Concord city Danbury town Dunbarton town Epsom town Franklin city Henniker town Hill town	Hopkinton town Loudon town Newbury town New London town Northfield town Pembroke town Pittsfield town Salisbury town Sutton town Warner town Webster town Wilmot town	ROCKINGHAM COUNTY (part) Deerfield town Northwood town Nottingham town
	STRAFFORD COUNTY (part) Middleton town New Durham town Strafford town	SULLIVAN COUNTY		

1999 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
NM	CATRON COUNTY	CHAVES COUNTY	CIBOLA COUNTY	DEBACA COUNTY
	GRANT COUNTY	GUADALUPE COUNTY	HARDING COUNTY	LINCOLN COUNTY
	LUNA COUNTY	MCKINLEY COUNTY	MORA COUNTY	QUAY COUNTY
	RIO ARRIBA COUNTY	SAN MIGUEL COUNTY	SIERRA COUNTY	TAOS COUNTY
	UNION COUNTY			
NY	ALLEGANY COUNTY	CATTARAUGUS COUNTY	CHENANGO COUNTY	CLINTON COUNTY
	COLUMBIA COUNTY	CORTLAND COUNTY	DELAWARE COUNTY	ESSEX COUNTY
	FRANKLIN COUNTY	FULTON COUNTY	GREENE COUNTY	HAMILTON COUNTY
	JEFFERSON COUNTY	LEWIS COUNTY	SCHUYLER COUNTY	ST. LAWRENCE COUNTY
	STEUBEN COUNTY	SULLIVAN COUNTY	TOMPKINS COUNTY	ULSTER COUNTY
	YATES COUNTY			
NC	CAMDEN COUNTY	DARE COUNTY	WATAUGA COUNTY	
OR	BAKER COUNTY	CLATSOP COUNTY	COOS COUNTY	CROOK COUNTY
	CURRY COUNTY	DESCHUTES COUNTY	DOUGLAS COUNTY	GRANT COUNTY
	HARNEY COUNTY	HOOD RIVER COUNTY	JEFFERSON COUNTY	JOSEPHINE COUNTY
	KLAMATH COUNTY	LAKE COUNTY	LINCOLN COUNTY	LINN COUNTY
	MALHEUR COUNTY	SHERMAN COUNTY	TILLAMOOK COUNTY	UMATILLA COUNTY
	UNION COUNTY	WALLOWA COUNTY	WASCO COUNTY	WHEELER COUNTY
PA	MONROE COUNTY	NORTHUMBERLAND COUNTY	UNION COUNTY	WAYNE COUNTY
PI	PACIFIC ISLANDS			
PR	All			
RI	NEWPORT COUNTY (part) Middleton town Portsmouth town Newport city	WASHINGTON COUNTY (part) New Shoreham town		
SD	BUTTE COUNTY	LAWRENCE COUNTY	MEADE COUNTY	
TX	ARANSAS COUNTY	CAMP COUNTY	HUDSPETH COUNTY	KIMBLE COUNTY
	LLANO COUNTY	REAGAN COUNTY	VAL VERDE COUNTY	WALKER COUNTY
UT	DAGGETT COUNTY	IRON COUNTY	WASHINGTON COUNTY	
VT	ADDISON COUNTY	BENNINGTON COUNTY	CHITTENDEN COUNTY (part) Bolton town Underhill town Buels gore Westford town Huntington town	LAMOILLE COUNTY
	ORANGE COUNTY	RUTLAND COUNTY	WASHINGTON COUNTY	WINDHAM COUNTY
	WINDSOR COUNTY			
VI	ST. CROIX	ST. JOHN/ST. THOMAS		
VA	CAROLINE COUNTY	WESTMORELAND COUNTY		

1999 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
WA	ADAMS COUNTY	CHELAN COUNTY	CLALLAM COUNTY	COLUMBIA COUNTY
	FERRY COUNTY	GARFIELD COUNTY	GRANT COUNTY	GRAYS HARBOR COUNTY
	JEFFERSON COUNTY	KITTITAS COUNTY	KLICKITAT COUNTY	LEWIS COUNTY
	LINCOLN COUNTY	MASON COUNTY	OKANOGAN COUNTY	PACIFIC COUNTY
	PEND OREILLE COUNTY	SAN JUAN COUNTY	SKAGIT COUNTY	SKAMANIA COUNTY
	STEVENS COUNTY	WAHKIAKUM COUNTY		
WV	BARBOUR COUNTY	BOONE COUNTY	BRAXTON COUNTY	CALHOUN COUNTY
	CLAY COUNTY	DODDRIDGE COUNTY	FAYETTE COUNTY	GILMER COUNTY
	LINCOLN COUNTY	LOGAN COUNTY	MCDOWELL COUNTY	MINGO COUNTY
	MONROE COUNTY	NICHOLAS COUNTY	POCAHONTAS COUNTY	PRESTON COUNTY
	RANDOLPH COUNTY	ROANE COUNTY	SUMMERS COUNTY	TUCKER COUNTY
	UPSHUR COUNTY	WEBSTER COUNTY	WIRT COUNTY	WYOMING COUNTY

1999 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
AZ	Yuma, AZ Yuma County			
CA	Chico-Paradise, CA Butte County	Fresno, CA Fresno County Madera County	Los Angeles-Long Beach, CA Los Angeles County	Merced, CA Merced County
	Salinas, CA Monterey County	San Francisco, CA San Francisco County Marin County San Mateo County	San Luis Obispo-Atascadero-Paso Robles, CA San Luis Obispo County	Santa Barbara-Santa Maria-Lompoc, CA Santa Barbara County
	Santa Cruz-Watsonville, CA Santa Cruz County	Santa Rosa, CA Sonoma County		
FL	Daytona Beach, FL Flagler County Volusia County	Fort Pierce-Port Lucie, FL Martin County St. Lucie County	Miami, FL Dade County	Sarasota-Bradenton, FL Manatee County Sarasota County
	Orlando, FL Lake County Osceola County Orange County Seminole County	Punta Gorda, FL Charlotte County		
HI	Honolulu, HI Honolulu County			
MA	Barnstable-Yarmouth, MA Barnstable city Brewster town Chatham town Dennis town Eastham town Harwich town Mashpee town Orleans town Sandwich town Yarmouth town	Boston, MA-NH Berkley town Dighton town Mansfield town Norton town Taunton city Amesbury town Beverly city Danvers town Essex town Gloucester city Hamilton town Ipswich town Lynn city Lynnfield town Manchester-by-the-Sea Marblehead town Middleton town Nahant town Newbury town Newburyport city Peabody city Rockport town Rowley town Salem city Salisbury town Saugus town Swampscott town Topsfield town Wenham town Acton town Arlington town Ashland town Ayer town Bedford town Belmont town Boxborough town Burlington town Cambridge city Carlisle town Concord town Everett city Framingham town Holliston town Hopkinton town	Hudson town Lexington town Lincoln town Littleton town Malden city Marlborough city Maynard town Medford city Melrose city Natick town Newton city North Reading town Reading town Sherborn town Shirley town Somerville city Stoneham town Stow town Sudbury town Townsend town Wakefield town Waltham city Watertown city Wayland town Weston town Wilmington town Winchester town Woburn city Bellingham town Braintree town Brookline town Canton town Cohasset town Dedham town Dover town Foxborough town Franklin city Holbrook town Medfield town Medway town Millis town Milton town Needham town	Norfolk town Norwood town Plainville town Quincy city Randolph town Sharon town Stoughton town Walpole town Wellesley town Westwood town Weymouth town Wrentham town Carver town Duxbury town Hanover town Hingham town Hull town Kingston town Marshfield town Norwell town Pembroke town Plymouth town Rockland town Scituate town Wareham town Boston city Chelsea city Revere city Winthrop town Berlin town Blackstone town Bolton town Harvard town Hopedale town Lancaster town Mendon town Milford town Millville town Southborough town Upton town Seabrook town, NH South Hampton town, NH
NC	Wilmington, NC Brunswick County New Hanover County			
NJ	Atlantic-Cape May, NJ Atlantic County Cape May County	Jersey City, NJ Hudson County	Monmouth-Ocean, NJ Monmouth County Ocean County	Vineland-Millville-Bridgeton, NJ Cumberland County

1999 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
NY	Dutchess County, NY Duchess County	Nassau-Suffolk, NY Nassau County Suffolk County	New York, NY Bronx County Kings County New York County Putnam County Queens County Richmond County Rockland County Westchester County	Newburgh, NY-PA Orange County, NY Pike County, PA
OR	Eugene-Springfield, OR Lane County	Medford Ashland, OR Jackson County		
PA	State College, PA Centre County			
PR	Aguadilla, PR Aguada Municipio Moca Municipio Aguadilla Municipio	Caguas, PR Caguas Municipio Cayey Municipio Cidra Municipio Gurabo Municipio San Lorenzo Mun	Mayaguez, PR Anasco Municipio Cabo Rojo Mun Hormigueros Mun Mayaguez Municipio Sabana Grande Mu San German Mun	San Juan-Bayamon, PR Aguas Buenas Mu Barceloneta Mun Bayamon Mun Canovanas Mun Carolina Municipio San Juan Mun Toa Alta Municipio Toa Baja Mun Trujillo Alto Mun Vega Alta Mun Vega Baja Mun Yabucoa Municipio Catano Municipio Ceiba Municipio Comerio Municipio Corozal Municipio Dorado Municipio Fajardo Municipio Florida Municipio Guaynabo Municipio Humacao Municipio Juncos Municipio Las Piedras Mun Loiza Municipio Luquillo Municipio Manati Municipio Morovis Municipio Naguabo Municipio Naranjito Municipio
SC	Myrtle Beach, SC Horry County			
TX	Brownsville-Harlingen-San Benito, TX Cameron County	Corpus Christi, TX Nueces County San Patricio County	El Paso, TX El Paso County	Laredo, TX Webb County
WA	Bellingham, WA Whatcom County	Yakima, WA Yakima County		

IRS SECTION 42(D)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 23 1998)

METROPOLITAN AREA Missoula MT

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Missoula County	2.01	3.00										

IRS SECTION 42(D)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 23 1998)

STATE: MONTANA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Big Horn County	9642.00											
Blaine County	9725.00											
Flathead County	10.00											
Gallatin County	9866.00											
Glacier County	9762.00											
Hill County	9737.00											
Lewis and Clark County	9789.00	9796.00										
Rosebud County	9627.00											
Silver Bow County	1.00											

VIRGIN ISLANDS

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
St. Croix Island	9703.00	9709.00	9711.00	9713.00	9714.00							

PACIFIC ISLANDS AMERICAN SAMOA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Eastern District	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00					
Manu'A District	9517.00	9518.00										
Swains Island	9520.00											
Western District	9510.00	9511.00	9513.00	9515.00								

PACIFIC ISLANDS GUAM

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Guam	9512.00											

PACIFIC ISLANDS NORTHERN MARIANA ISLANDS

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Northern Islands Municipality	9501.00											
Saipan Municipality	9514.00	9515.00										

IRS SECTION 42(D)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 23, 1998)

PACIFIC ISLANDS PALAU

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aimeliik State	9501.98											
Airai State	9701.98											
Angaur State	9501.00											
Hatobohei State	9501.00											
Kayangel State	9501.00											
Koror State	9501.00	9502.00	9503.00	9504.00	9505.00	9506.98						
Melekeok State	9601.98	9602.97										
Ngaraard State	9701.98											
Ngarchelong State	9501.98											
Ngardmau State	9601.98											
Ngatpang State	9601.98											
Ngchesar State	9501.98											
Ngeremlengui State	9701.98											
Ngiwal State	9501.98											
Peleliu State	9601.00	9602.98										
Sonsorol State	9501.00											

[FR Doc. 98–32561 Filed 12–8–98; 8:45 am]

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Part IV

Department of Housing and Urban Development

Privacy Act of 1974; Computer Matching Program; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4357–N–01]

Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of Administration, HUD.

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Social Security Administration (SSA) and the Internal Revenue Service (IRS).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's Guidance on the statute, HUD is updating its notice of a matching program involving comparisons between income data provided by applicants or participants in HUD's assisted housing programs and independent sources of income information. The matching program will be carried out to detect excessive housing assistance under the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965 and the Native American Housing Assistance and Self-Determination Act of 1996. The program provides for the verification of the matching results and the initiation of appropriate administrative or legal actions, primarily through public housing agencies, Indian Tribes and Tribally Designated Housing Entities (these three types of entities subsequently are referenced as housing agencies [HAs]), and private owners/management agents for subsidized multifamily projects.

This notice provides an overview of computer matching for HUD's assisted housing programs. Specifically, this notice describes HUD's program for computer matching its tenant data to: (a) The Social Security Administration's (SSA) earned income and the Internal Revenue Service's (IRS) unearned income data, (b) SSA's wage and social security and supplemental security income data, (c) State Wage Information Collection Agencies' (SWICAs') wage and unemployment benefit claim information, and (d) the Office of Personnel Management's personnel data.

Changes to this notice recognize: (a) A recent statutory change providing permanent authority for SSA and IRS disclosures of Federal tax return information to HUD, (b) an additional HUD matching program objective, i.e., to develop nationwide estimates of excessive housing assistance to satisfy a financial reporting requirement, (c) the assignment of certain income verification functions to Federal employees in HUD's Chicago and Seattle Offices, and (d) HUD's current and planned use of a secure electronic facility for transmitting social security and supplemental security income data to entities that administer HUD's rental assistance programs.

EFFECTIVE DATES: HUD considers this as a continuous matching program. The computer matching described in this notice may begin after compliance with the reporting requirements cited in section 4 of Appendix I to OMB Circular No. A–130—Federal Agency Responsibilities for Maintaining Records About Individuals (Transmittal Memorandum No. 3; February 8, 1996). That section requires that Federal agencies provide the Chair of the House Committee on Government Reforms and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget with notice of the matching program and computer matching agreements 40 days before operating the program.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: *For Privacy Act:* Jeanette Smith, Departmental Privacy Act Officer, Room 4178, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–2374. A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service). *For further information from recipient agency:* David L. Decker, Director, Computer Matching Activities, Office of the Public and Indian Housing Comptroller, Room 5156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–0099, TTY—(202) 708–0850.

Director, Asset Recovery Center, Room 2207, Department of Housing and Urban Development, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number (312) 353–6236, ext. 2007. Gordon L. Brandhagan, Director Asset Recovery Center, Suite 200, Department of Housing and Urban Development, 909 First Avenue, Seattle, Washington 98104, telephone number (206) 220–5313. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on May 2, 1995 (60 FR 21548).

The Computer Matching and Privacy Protection Act of 1988, as amended (5 U.S.C. 552a) (the CMPP Act), the Office of Management and Budget's (OMB's) guidance on this statute entitled "Final Guidance Interpreting the Provisions of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988" (OMB Guidance), and OMB Circular No. A–130 require publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, "Transmittal 2, Management of Federal Information Resources," prescribes Federal agency responsibilities for maintaining records about individuals. In accordance with the CMPP Act and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform and Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

During Fiscal Year 1998 Federal employees located in HUD's Chicago Office have been assigned to: (1) Obtain copies from HAs, private owners/management agents' records as needed to verify the incomes of tenants who receive rental assistance, (2) compare those records with computer matching results, (3) estimate excessive housing assistance for the tenants, (4) send letters to tenants and notices to HAs, private owners/management agents, and (5) to follow up as necessary on the resolution of the income discrepancies.

I. Authority

This matching program is being conducted pursuant to sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993); section 542(b) of the 1998 Appropriations Act (Pub. L. 106–25); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937

(42 U.S.C. 1437–1437o); section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); and the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

The Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act) authorizes HUD to request from the SSA and the IRS Federal tax return data as prescribed in section 6103(l)(7) of title 26 of the United States Code (Internal Revenue Code). The Federal tax return data that HUD receives includes income data that individuals receive from employers and financial institutions (e.g., income data that would be shown on IRS Form W–2's and Form 1099's) for use in preparing tax returns. The Budget Reconciliation Act limits HUD's access to tax return data and prohibits HUD's redisclosure of tax return data to HAs, and private owners/management agents for subsidized multifamily projects. However, it allows HUD to disclose the fact that discrepancies exist between information provided by tenants and other sources, and to request that HAs, private owners and agents reverify tenant incomes when income comparisons indicate uncertain eligibility benefits or an excessive level of benefits.

Section 542(b) of HUD's 1998 Appropriation Act (Pub. L. 105–65; October 27, 1997) eliminated a September 30, 1998 sunset provision to 26 U.S.C. 610(l)(7)(D)(ix) of the Internal Revenue Code effectively making permanent the authority for SSA and IRS disclosures of Federal tax return information to HUD.

Section 3003 of the Budget Reconciliation Act requires that applicants and participants in assisted housing programs sign a consent form authorizing the Secretary of HUD to request that the Commissioner of Social Security and the Secretary of the Treasury release the Federal tax return data. The final rule regarding participants' consent to the release of information was published by HUD in the **Federal Register** on March 20, 1995 (61 FR 11112).

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 authorizes HUD and HAs (but not private owners/management agents for subsidized multifamily projects) to request wage and claim information from State Wage Information Collection Agencies (SWICAs) responsible for administering State unemployment laws in order to undertake computer matching. This Act authorizes HUD to require applicants and participants to sign a consent form authorizing HUD or the HA to request wage and claim information from the SWICAs.

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their households six years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs.

II. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to increase the availability of housing assistance to individuals who meet the requirements of the housing assistance programs. Other objectives include determining the appropriate level of housing assistance, identifying and recovering excessive housing assistance received by tenants, and deterring future abuses of assisted housing programs. Using Federal tax return data, HUD now conducts computer matching and income verification program annually for a random sample of households that received rental assistance. HUD also conducts computer matching involving selected housing agencies, owners and agents. HUD plans to start implementing larger-scale computer matching in Fiscal Year 1999.

Based on the computer matching and subsequent HUD analysis of tenant-provided information, HUD develops nationwide estimates of the extent of excess rental assistance attributable to unreported income. HUD uses the estimates for financial statement reporting purposes. In addition, HUD sends letters to tenants and notices to HAs and private owners/management agents so that these parties may resolve the income discrepancies and appropriate administrative or legal actions may be taken.

HUD's various assisted housing programs, available through HAs or subsidized multifamily project owners/management agents, require that applicants meet certain income and other criteria to be eligible for housing assistance. In addition, tenants are required to report the amounts and sources of their income on at least an annual basis. The matching program identifies tenants receiving excessive housing assistance resulting from unreported or underreported family income. When the excessive housing assistance is identified, some tenants move out of assisted housing units while others agree to repay excessive housing assistance. Both these actions increase funds or units available to serve other beneficiaries of HUD programs. When tenants continue to be eligible for housing assistance, but at a reduced level, the tenants will be required to increase their contributions toward rent.

III. Program Description

In this computer matching program, tenant-provided information included in HUD's automated files will be compared to data from the SSA and the IRS, as well as from SWICAs and the Office of Personnel Management (OPM). HUD intends the SSA and IRS matching to be a continuing program for assisted housing programs nationwide. HUD will normally request that the SSA conduct matching of earned income information, and that the IRS conduct matching of unearned income information, several times annually. HUD will request SSA matching of social security and supplemental security income information monthly. In the future, HUD may request this data more frequently for some rental assistance programs.

HUD anticipates that it will conduct SWICA matching in selected States. Furthermore, HUD anticipates that SWICA and OPM matching will be used only occasionally to supplement SSA and IRS matching and income verification. HAs may also request SWICA matching.

HUD will disclose to the SSA, IRS, and SWICAs only tenant personal identifiers, i.e., SSNs, surnames, dates of birth, and sexes. The SSA, IRS, and SWICAs will conduct the matching of the HUD-provided personal identifiers to personal identifiers included in their automated files. Those agencies will provide income data to HUD only for individuals with matching personal identifiers.

The process of income matching between HUD and the OPM varies from the above. The OPM will disclose its data to HUD, and HUD will conduct the computer matching to OPM data.

HUD will then compare the SSA, IRS, OPM, and SWICA income data to tenant-reported income data included in HUD's system of records known as the Tenant Housing Assistance and Contract Verification Data (HUD H–11), published at 62 FR 11909; March 13, 1997. This comparison will identify, based on criteria established by HUD, tenants whose incomes require further verification.

A. Income Verification

HUD will normally request that HAs or private owners/management agents verify matching results as described below. However, under certain limited circumstances, HUD may verify tenant incomes with independent income sources. For example, such circumstances may include: (a) When HUD declares an HA in breach of an annual contributions contract; or (b) when tenants fail to disclose SSA and IRS data, or the tenants commit other serious violations, and HUD's analysis of the data could support legal actions. HUD may send letters to employers to request income data, but HUD will not disclose tax return data to HAs, private owners/management agents, employers, or payers.

(1) *Verification of SSA and IRS Data Referenced in Section 6103(l)(7) of the Internal Revenue Code*

Since HUD cannot redisclose tax return data directly to HAs or private owners/management agents, HUD plans to notify tenants of discrepancies between the tenant-reported income and the SSA and IRS data. HUD will supply the tenants with their income information taken directly from SSA and IRS data and request that the tenants provide this information to the HA or private owner/management agent. Concurrently, HUD will notify the HA or the private owner/management agent that a discrepancy exists between information provided by the tenants and other sources and will request reverification of the tenants' incomes. The notifications to the HAs and private owners/management agents will not include any tax return information.

Income information that tenants disclose to the HA or private owners/management agents will be verified directly with the income source or with other tenant-provided information. Tenants who fail to report to the HA or private owner/management agent after HUD's initial notice will receive a second notice sent by the HA or private owner/management agent. If the tenants still fail to provide the information to the HA or private owner/management agent, the HA or private owner/management agent may then terminate housing assistance, after providing the tenants an opportunity to challenge any adverse action.

The SSA and the IRS have advised HUD that the process described in the preceding paragraph is consistent with the intent of section 6103(l)(7) of the Internal Revenue Code, as the intent of the matching is to create a dialogue between the benefit recipient and the benefit provider.

(2) *Verification of Social Security and Supplemental Security Income Data*

Unlike the income information supplied by the SSA and the IRS for tax purposes, SSA's social security and supplemental security income data may be disclosed to HAs and private owners/management agents. Therefore, after receiving this data from the SSA and comparing it to tenant-reported income, HUD will disclose the SSA social security and supplemental security income data to HAs and private owners/management agents. These disclosures will include information on monthly social security and supplemental security income data and, where applicable, income discrepancy information between previous tenant-reported data and the income amounts provided by the SSA. HAs and private owners/management agents will use this information in periodic verifications of tenant incomes that are required to determine program eligibility and rental assistance amounts.

HUD has implemented a secure electronic facility for transmitting social security and supplemental security income data to all HAs. HUD plans to expand this facility to provide the same type of data to private owners/management agents, who previously received the information from the SSA.

(3) *Verification of SWICA Data*

HUD will disclose matching results for SWICA wage and unemployment claim data directly to HAs, but not to private owners/management agents. The comparison of SWICA wage information and the tenant-reported data will reveal whether income verification is necessary. HAs must then obtain wage information directly from the tenants' employers, including information from prior years, when appropriate. The SWICA unemployment claim data must be verified with the tenants. Verification with the SWICA would only be required if tenants dispute the SWICA claim data.

(4) *Verification of OPM Data*

HUD will disclose matching results for OPM data to HAs and private owners/management agents. The OPM data, when compared to the tenant-reported data, provides an indicator that income verification is necessary. The HAs and private owners/management agents may then obtain wage information directly from employers, including information from prior years when appropriate.

B. Administrative or Legal Actions

Regarding all the matching described in this notice, HUD anticipates that HAs and private owners/management agents will take appropriate actions in consultation with tenants to: (1) Resolve prior income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining rental assistance.

After verifying that the tenants had access to income that the tenants did not report, the HAs or private owners/management agents will:

(1) Notify the tenants in writing of any findings;

(2) Calculate the unreported income and excessive housing assistance received by the family;

(3) Offer the tenants an opportunity to contest any findings;

(4) Provide a grievance hearing or a right to contest to the tenants, if requested; and

(5) Initiate, as appropriate, administrative or legal actions to resolve the tenants' underpayments of rent, using guidelines in HUD regulations and handbooks.

The HAs and private owners/management agents may not suspend, terminate, reduce, or make a final denial of any housing assistance to any individual as the result of information produced by this matching program until: (a) The individual has received notice from the HA or private owner/management agent of its findings and informing the individual of the opportunity to contest such findings and (b) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. In most cases, HAs and private owners/management agents will resolve income discrepancies in consultation with tenants.

In legal actions, HAs and private owners/management agents may refer cases to local law enforcement entities or HUD's Office of Inspector General (OIG) for possible investigation and prosecution, either criminal or civil. Referrals to the OIG should involve only egregious cases.

C. Public Reporting Burden on Computer Matching/Income Verification Results

The information collection requirements contained in §§ 5.609 and 5.617 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

HUD plans to use automated approaches for monitoring use of social security and supplemental security income data. Further, HUD plans to request feedback from HAs, and private owners/management agents concerning the use of Federal tax return data that tenants disclose to entities that administer HUD's rental assistance programs. In developing the methodology, HUD will avoid imposing any unnecessary burden on HAs and private owners/management agents.

IV. Records To Be Matched

SSA and IRS will conduct the matching of tenant SSNs and additional identifiers (such as surnames and dates of birth) to tenant data that HUD supplies from its system of records known as the Tenant Housing Assistance and Contract Verification Data (HUD H–11). Within HUD, this system of records includes two automated systems known as the Multifamily Tenant Characteristics System (a system for programs under the Office of the Assistant Secretary for Public and Indian Housing) and the Tenant Rental Assistance Certification System (a system for programs under the Office of the Assistant Secretary for Housing—Federal Housing Commissioner). HAs and private owners/management agents for subsidized multifamily projects provide HUD with the tenant data that is included in HUD H–11.

The SSA will match the HUD H–11 records to the SSA's Earnings Recording and Self-Employment Income System (HHS/SSA/OSR, 09–60–0059) (Earnings Record); Master Beneficiary Record (HHS/SSA/OSR, 09–60–0090) (MBR); and Supplemental Security Income Record (HHS/SSA/OSR, 09–60–0103) (SSR). The IRS will match the HUD H–11 records to its Wage and Information Returns (IRP) Master File (Treas/IRS 22.061). The IRS also refers to this file as the Information Return Master File (IRMF).

HUD will place matching data into its Tenant Eligibility Verification Files (HUD/PIH–1), described at 60 FR 21545 (May 2, 1995.) The HUD/PIH–1 files are specifically exempt from certain provisions of the Privacy Act, as described in a notice published on February 28, 1994 (59 FR 9406) and a notice published on March 30, 1994 (59 FR 14869).

HUD may also coordinate SWICA income computer matches for its rental assistance programs using tenants' SSNs and surnames. SWICAs will match tenant records to machine-readable files of quarterly wage data and unemployment insurance benefit data. Results from this matching will be provided to HUD or HAs, which will then determine whether tenants have unreported or underreported income. The matching will be done in accordance with a written agreement between the SWICA and HUD.

In addition, tenants' SSNs may be matched to the OPM's General Personnel Records (OPM/GOVT–1), the Civil Service Retirement and Insurance Records System (OPM/Central-1), and the Department of Defense's Defense Manpower Data Center Data Base (S322.10.DMDC). Tenant data may be matched to the SSA's Master Files of Social Security Number Holders (HHS/SSA/OSR, 09–60–0058) and Death Master Files for the purpose of validating SSNs contained in tenant records. These records will also be used to validate SSNs for all applicants, tenants, and household members who are six (6) years of age and over to identify noncompliance with program eligibility requirements. HUD will compare tenant SSNs provided by HAs or private owners/management agents to reveal duplicate SSNs and potential duplicate housing assistance.

V. Period of the Match

The computer matching program will be conducted according to agreements between HUD and the SSA, IRS, OPM, and SWICAs. The computer matching agreements for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first.

The agreements may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within 3 months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and

(2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: November 25, 1998.

Joseph F. Smith,

Acting Assistant Secretary for Administration.

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Part V

General Services Administration

41 CFR Parts 101–42 and 101–43
Donation of Certain Federal Surplus Firearms to State or Local Law Enforcement Activities; Proposed Rule

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–42 and 101–43

[FPMR Amendment H–]

RIN 3090–AG80

Donation of Certain Federal Surplus Firearms to State or Local Law Enforcement Activities

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the Federal Property Management Regulations (FPMR) to remove the prohibition on donation of surplus Federal firearms to allow donations to State and local law enforcement activities. This change, the result of interagency meetings with Federal law enforcement agencies in conjunction with the Department of Justice, will enable certain usable firearms acquired for Federal law enforcement purposes to continue serving a law enforcement role. This proposed rule establishes a centralized activity within GSA to coordinate all firearms transfers under the FPMR and specifies that donated firearms are restricted in perpetuity and may not be transferred except in accordance with this rule.

DATES: Comments must be submitted by January 8, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Written comments should be sent to: Ms. Sharon Kiser, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration 1800 F Street, NW., Washington, DC 20405.

E-mail comments may be sent to RIN.3090–AG80@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Caswell, Director, Personal Property Management Policy Division (MTP), telephone (202) 501–3846.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the regulation does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.*

D. Small Business Reform Act

This rule is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–42 and 101–43

Government property management, Hazardous materials, Reporting and recordkeeping requirements, Surplus Government property.

For the reasons set forth in the preamble, 41 CFR Parts 101–42 and 101–43 are proposed to be amended as follows:

1. The authority citation for Parts 101–42 and 101–43 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

PART 101–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

2. Section 101–42.1102–10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–42.1102–10 Firearms.

(a) *Utilization requirements.* (1) Reports of excess firearms and requests for their transfer must be submitted to the: General Services Administration (7FP–8), Denver, CO 80225–0506.

(2) Firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. Such transfers must be executed under § 101–43.309–5 and, when applicable, § 101–42.1102–8(b). Additional written justification from the requesting agency may be required.

(b) *Donation requirements.* (1) Only hand guns, rifles, shotguns, individual light automatic weapons, and rifle and shoulder fired grenade launchers in "used—poor" or better condition, as defined in § 101–43.4801(e), may be offered by GSA (7FP–8) to State agencies for donation to State and local public agencies for law enforcement purposes only. Donations are limited to only those law enforcement activities whose primary function is the enforcement of applicable Federal, State, and/or local laws, and whose compensated law enforcement officers have powers to apprehend and arrest.

(2) Each SF 123 submitted to GSA must be accompanied by a conditional transfer document, signed by both the intended donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA.

(3) The restrictions on donated firearms shall be in perpetuity, and they may not be released by the State agency without prior written approval from GSA. All firearms must be destroyed by either the donee or the State agency when they are no longer needed. Destruction must be such that the firearms are rendered completely inoperable and incapable of being made operable for any purpose except for the recovery of basic material content in accordance with paragraph (c) of this section. The donee or the State agency, as applicable, must state in writing that the firearms were so destroyed.

(4) Surplus firearms approved for donation must be shipped or transported directly from the holding Federal agency to the donee and may not be stored in the State agency warehouse; or, arrangements may be made by the State agency for the designated donee to make a direct pickup at the holding agency.

(5) Firearm ammunition may not be donated.

* * * * *

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

3. Section 101–43.304–2 is amended by revising paragraph (b) to read as follows:

§ 101–43.304–2 Form and distribution of reports.

* * * * *

(b) The SF 120 and SF 120A must be submitted in an original and three copies. Electronic reporting must be as specified and approved by GSA. Reports must be directed to the GSA regional office for the region in which the property is located (see § 101–43.4802). However, reports of fixed-wing and rotary-wing aircraft must be submitted to the General Services Administration (9FB), San Francisco, CA 94015, and reports of excess firearms must be submitted to the General Services Administration (7FP–8), Denver, CO 80225–0506.

4. Section 101–43.305 is amended by revising paragraph (b)(2) to read as follows:

§ 101–43.305 Property not required to be formally reported.

* * * * *

(b) * * *

(2) Property dangerous to public health and safety, except firearms;

* * * * *

5. Section 101–43.4801 is revised to read as follows:

§ 101–43.4801 Excess personal property reporting requirements.

(a) The table shown in paragraph (d) of this section shows the excess personal property Federal supply groups (FSG) and classes (FSC) comprising reportable property. Property in these groups and classes must be reported to GSA when the following disposal condition code and dollar threshold criteria are met:

(1) With the exception of aircraft and firearms, the disposal condition code as defined in paragraph (e) of this section is "salvage" or better. In accordance with § 101–43.304–2, fixed-wing and rotary-wing aircraft, airframe structural components, and aircraft engines, as specified in paragraph (b) of this section, are reportable regardless of condition; and firearms, as specified in paragraph (c) of this section, in "repairs required— poor" or better condition, are reportable.

(2) The unit cost, measured in acquisition dollars, is $5,000 or more.

(b) With respect to aircraft and aircraft components and accessories:

(1) As indicated in the table in paragraph (d) of this section, line items in Federal supply classes 1510, 1520, 1560, 2810, 2840, or any class in FSG 16 must be reported. In agencies other than the Department of Defense (DOD), all line items in these classes must be reported regardless of condition code when dollar criteria are met. For the DOD, aircraft in FSC 1510 which are in the Cargo/Transport, Observation, Anti-sub, Trainer, or Utility series, all aircraft in FSC 1520, and line items in other classes which are components of these aircraft must be reported regardless of condition code when dollar criteria are met.

(2) Items in Federal supply classes 1510 and 1520 held by DOD or other agencies must be reported to the: General Services Administration (9FB), San Francisco, California 94102.

(c) Executive agencies must report the following firearms in "used—poor" or better condition, as defined in § 101–43.4801(e), regardless of unit cost, to the: General Services Administration (7FP–8), Denver, CO 80225–0506.

(1) Handguns, rifles, shotguns, and individual light automatic weapons less than 50 caliber in FSC 1005, and

(2) Rifle and shoulder fired grenade launchers in FSC 1010.

(d) The following table shows Federal supply groups and classes which comprise reportable property:

FSG	FSC	Noun name
10	1005	Guns, through 30mm.
	1010	Guns, over 30 mm up to 75 mm.
15	1510	Aircraft, fixed wing.
	1520	Aircraft, rotary wing.
	1560	Airframe structural components.
16	All	Aircraft component and accessories.
18	All	Space vehicles.
19	All	Ships, small craft, pontoons, and floating docks (All but vessels 1500 gross tons and over).
22	All	Railway equipment.
23	All	Ground effect vehicles, motor vehicles, trailers, and cycles.
24	All	Tractors.
28	2805	Gasoline reciprocating engines, except aircraft; & components.
	2810	Gasoline reciprocating engines, aircraft prime mover; and components.
	2815	Diesel engines and components.
	2840	Gas turbines and jet engines, aircraft, prime moving; and components.
32	All	Woodworking machinery and equipment.
34	All	Metalworking machinery
35	All	Service and trade equipment.
36	All	Special industry machinery (All but 3690 Specialized ammunition and ordnance machinery and related equipment).
37	All	Agricultural machinery and equipment.
38	All	Construction, mining, excavating, and highway maintenance equipment.
39	All	Materials handling equipment.
42	All	Fire fighting, rescue, and safety equipment; and environmental protection equipment and materials.
43	All	Pumps and compressors.
49	4910	Motor vehicle maintenance and repair shop specialized equipment.
	4920	Aircraft maintenance and repair shop specialized equipment.
	4930	Lubrication and fuel dispensing equipment.
	4935	Guided missile maintenance, repair, and checkout specialized equipment.
	4940	Miscellaneous maintenance and repair shop specialized equipment.
	4960	Space vehicle maintenance, repair, and checkout specialized equipment.
54	All	Prefabricated structures and scaffolding.
61	All	Electric wire, and power and distribution equipment.
70	All	Automatic Data Processing Equipment (including firmware), software, supplies, and support equipment.
71	All	Furniture.
73	All	Food preparation and serving equipment.

(e) The appropriate disposal condition code from the table below must be assigned to each item record, report, or listing of excess personal property:

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Disposal condition code	Brief definition	Expanded definition
1	Unused—good	Unused property that is usable without repairs and identical or interchangeable with new items from normal supply sources.
2	Unused—fair	Unused property that is usable without repairs, but is deteriorated or damaged to the extent that utility is somewhat impaired.
3	Unused—poor	Unused property that is usable without repairs, but is considerably deteriorated or damaged. Enough utility remains to classify the property better than salvage.
4	Used—good	Used property that is usable without repairs and most of its useful life remains.
5	Used—fair	Used property that is usable without repairs, but is somewhat worn or deteriorated and may soon require repairs.
6	Used—poor	Used property that may be used without repairs, but is considerably worn or deteriorated to the degree that remaining utility is limited or major repairs will soon be required.
7	Repairs required—good	Required repairs are minor and should not exceed 15 percent of original acquisition cost.
8	Repairs required—fair	Required repairs are considerable and are estimated to range from 16 percent to 40 percent of original acquisition cost.
9	Repairs required—poor	Required repairs are major because property is badly damaged, worn, or deteriorated, and are estimated to range from 41 percent to 65 percent of original acquisition cost.
X	Salvage	Property has some value in excess of its basic material content, but repair or rehabilitation to use for the originally intended purpose is clearly impractical. Repair for any use would exceed 65 percent of the original acquisition cost.
S	Scrap	Material that has no value except for its basic material content.

Dated: December 3, 1998.

Donald J. Suda,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 98–32588 Filed 12–8–98; 8:45 am]

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Part VI

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 334

Naval Restricted Area. Naval Station Annapolis, Maryland; Final Rule

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DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Naval Restricted Area, Naval Station Annapolis, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is establishing a new restricted area in the waters of the small boat basin off the Severn River, in Annapolis, Maryland to prohibit public entry into the area. The restricted area is needed for the security of U.S. Navy facilities and watercraft and navigational safety for U.S. Naval Academy training vessels in that area. The water area in the small boat basin has always been closed to the public, however, as a result of the closure of the adjacent Naval Surface Warfare Center and the planned future public ownership of that facility, the water area may become accessible by the public.

EFFECTIVE DATE: January 8, 1999.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, at (202) 761–1787, or Mr. Steve Elinsky, Corps Baltimore District, at (410) 962–4503.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334 by adding a new § 334.155 which establishes a naval restricted area at the Naval Station Annapolis small boat basin, off the Severn River at Annapolis, Maryland. The Commanding Officer of the Naval Station Annapolis, has requested that the Corps establish the restricted area for reasons of security and navigational safety. The small boat basin plays an integral role in the training of midshipmen of the U.S. Naval Academy. The basin is used continuously by the Naval Academy as a training area for maneuvering and seamanship exercises. Over the past 40 years, the small boat basin has been surrounded by restricted U.S. Navy property of the Naval Station Annapolis and the Naval Surface Warfare Center (NSWC), and accordingly, access to the basin was limited to Naval personnel. In 1995, the Congress approved the Department of Defense Base Realignment and Closure Commission's recommendation to close the NSWC at that location. The NSWC property is slated to become the property of Anne Arundel County and presumably that area and the shoreline of the basin could become accessible to the public. Public access to the basin from the NSWC property by non-U.S. Navy/Department of Defense personnel would pose an unacceptable security risk to the Naval Station. Navigational safety would also be a problem if non-Naval vessels are allowed to operate in the basin and because 260 feet of the NSWC seawall is located at the entrance to the basin, which is only 170 feet wide, any mooring by vessels along the seawall would further restrict the entrance and present a hazard to boats entering and leaving the basin.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of EXECUTIVE ORDER 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

E. Submission to Congress and the GAO

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

For the reasons set out in the preamble, the Corps amends 33 CFR Part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add new § 334.155, to read as follows:

§ 334.155 Severn River, Naval Station Annapolis, Small Boat Basin, Annapolis, MD; naval restricted area.

(a) *The area.* The waters within the Naval Station Annapolis small boat basin and adjacent waters of the Severn River enclosed by a line beginning at the southeast corner of the U.S. Navy Marine Engineering Laboratory; thence to latitude 38°58′56.5″, longitude 76°28′11.5″; thence to latitude 38°58′50.5″, longitude 76°27′52″; thence to the southeast corner of the Naval Station's seawall.

(b) *The regulations.* No person, vessel or other craft shall enter or remain in the restricted area at any time except as authorized by the enforcing agency.

(c) *Enforcement.* The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, in Annapolis, Maryland, and such agencies as he/she may designate.

Dated: October 13, 1998.

Approved:

Eric R. Potts,

Colonel, Corps of Engineers Executive Director of Civil Works.

[FR Doc. 98–32720 Filed 12–8–98; 8:45 am]

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Part VII

The President

Presidential Determination No. 99–5 of November 25, 1998—Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

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Presidential Documents

Title 3—

The President

Presidential Determination 98–5 of November 25, 1998

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me under section 540(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, Public Law 105–277, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, through May 24, 1999.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J Clinton

THE WHITE HOUSE,
Washington, November 25, 1998.

[FR Doc. 98–32941
Filed 12–8–98; 8:48 am]
Billing code 4710–10–M

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Part VIII

The President

Proclamation 7157—Death of Albert Gore, Sr.

Executive Order 13106—Adjustments of Certain Rates of Pay and Delegation of a Federal Pay Administration Authority

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Presidential Documents

Title 3—

The President

Proclamation 7157 of December 7, 1998

Death of Albert Gore, Sr.

By the President of the United States of America

A Proclamation

Albert Gore, Sr., was the embodiment of everything public service ought to be. The Nation has lost a great patriot and a true role model for young people everywhere.

As a mark of respect for the memory of Albert Gore, Sr., former Senator from the State of Tennessee, I hereby order, by the authority vested in me as President by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions on Tuesday, December 8, 1998. I also direct that the flag shall be flown at half-staff on that day at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of December, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 98–32952
Filed 12–8–98; 10:54 am]
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Presidential Documents

Title 3—

The President

Executive Order 13106 of December 7, 1998

Adjustments of Certain Rates of Pay and Delegation of a Federal Pay Administration Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), in accordance with section 647(a) of the Treasury and General Government Appropriations Act, 1999, as incorporated in Division A, section 101(h) of Public Law 105–277, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) atSchedule 2; and

(c) The schedules for the Veterans Health Administrationof the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions, which remain unchanged pursuant to section 621 of the Treasury and General Government Appropriations Act, 1999, as incorporated in Division A, section 101(h) of Public Law 105–277, are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to sections 601 and 604 of Public Law 105–85, the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, and in accordance with section 647(a) of the Treasury and General Government Appropriations Act, 1999, as incorporated in Division A, section 101(h) of Public Law 105–277, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register.**

Sec. 6. *Effective Dates.* Schedule 8 is effective on January 1, 1999. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1999.

Sec. 7. *Prior Order Superseded.* Executive Order 13071 of December 29, 1997, is superseded.

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Sec. 8. *Delegation of a Federal Pay Administration Authority.* Executive Order 12748, as amended, is further amended in section 2(c) by deleting "5304(h)" and inserting "5304(g)–(h)" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
December 7, 1998.

Billing Code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

	1	2	3	4	5	6	7	8	9	10
GS-1	$13,362	$13,807	$14,252	$14,694	$15,140	$15,401	$15,838	$16,281	$16,299	$16,718
2	15,023	15,380	15,878	16,299	16,482	16,967	17,452	17,937	18,422	18,907
3	16,392	16,938	17,484	18,030	18,576	19,122	19,668	20,214	20,760	21,306
4	18,401	19,014	19,627	20,240	20,853	21,466	22,079	22,692	23,305	23,918
5	20,588	21,274	21,960	22,646	23,332	24,018	24,704	25,390	26,076	26,762
6	22,948	23,713	24,478	25,243	26,008	26,773	27,538	28,303	29,068	29,833
7	25,501	26,351	27,201	28,051	28,901	29,751	30,601	31,451	32,301	33,151
8	28,242	29,183	30,124	31,065	32,006	32,947	33,888	34,829	35,770	36,711
9	31,195	32,235	33,275	34,315	35,355	36,395	37,435	38,475	39,515	40,555
10	34,353	35,498	36,643	37,788	38,933	40,078	41,223	42,368	43,513	44,658
11	37,744	39,002	40,260	41,518	42,776	44,034	45,292	46,550	47,808	49,066
12	45,236	46,744	48,252	49,760	51,268	52,776	54,284	55,792	57,300	58,808
13	53,793	55,586	57,379	59,172	60,965	62,758	64,551	66,344	68,137	69,930
14	63,567	65,686	67,805	69,924	72,043	74,162	76,281	78,400	80,519	82,638
15	74,773	77,265	79,757	82,249	84,741	87,233	89,725	92,217	94,709	97,201

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$74,773	$60,589	$49,095	$39,782	$32,235	$28,817	$25,761	$23,030	$20,588
2	77,016	62,407	50,568	40,975	33,202	29,682	26,534	23,721	21,206
3	79,327	64,279	52,085	42,205	34,198	30,572	27,330	24,433	21,842
4	81,706	66,207	53,647	43,471	35,224	31,489	28,150	25,166	22,497
5	84,158	68,193	55,257	44,775	36,281	32,434	28,994	25,920	23,172
6	86,682	70,239	56,915	46,118	37,369	33,407	29,864	26,698	23,867
7	89,283	72,346	58,622	47,502	38,490	34,409	30,760	27,499	24,583
8	91,961	74,517	60,381	48,927	39,645	35,441	31,683	28,324	25,321
9	94,720	76,752	62,192	50,395	40,834	36,505	32,633	29,174	26,080
10	97,201	79,055	64,058	51,906	42,059	37,600	33,612	30,049	26,863
11	97,201	81,427	65,980	53,464	43,321	38,728	34,621	30,950	27,669
12	97,201	83,869	67,959	55,068	44,621	39,889	35,659	31,879	28,499
13	97,201	86,385	69,998	56,720	45,959	41,086	36,729	32,835	29,354
14	97,201	88,977	72,098	58,421	47,338	42,319	37,831	33,820	30,234

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1999)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Deputy Under Secretary for Health	$126,986 **
Associate Deputy Under Secretary for Health	121,628 ***
Assistant Under Secretaries for Health	118,043 ***

	Minimum	Maximum
Medical Directors	$100,715	$114,146 ***
Service Directors	87,696	108,911
Director, National Center for Preventive Health	74,773	108,911

Physician and Dentist Schedule

Director Grade	$87,696	$108,911
Executive Grade	80,978	103,203
Chief Grade	74,773	97,201
Senior Grade	63,567	82,638
Intermediate Grade	53,793	69,930
Full Grade	45,236	58,808
Associate Grade	37,744	49,066

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$74,773	$97,201
Senior Grade	63,567	82,638
Intermediate Grade	53,793	69,930
Full Grade	45,236	58,808
Associate Grade	37,744	49,066

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$74,773	$97,201
Assistant Director Grade	63,567	82,638
Chief Grade	53,793	69,930
Senior Grade	45,236	58,808
Intermediate Grade	37,744	49,066
Full Grade	31,195	40,555
Associate Grade	26,844	34,899
Junior Grade	22,948	29,833

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* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $118,400.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $110,700.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

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SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1999)

ES-1	$102,300
ES-2	107,100
ES-3	112,000
ES-4	118,000
ES-5	118,400
ES-6	118,400

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1999)

level I	$151,800
level II	136,700
level III	125,900
level IV	118,400
level V	110,700

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1999)

Vice President	$175,400
Senators	136,700
Members of the House of Representatives	136,700
Delegates to the House of Representatives	136,700
Resident Commissioner from Puerto Rico	136,700
President pro tempore of the Senate	151,800
Majority leader and minority leader of the Senate	151,800
Majority leader and minority leader of the House of Representatives	151,800
Speaker of the House of Representatives	175,400

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 1999)

Chief Justice of the United States	$175,400
Associate Justices of the Supreme Court	167,900
Circuit Judges	145,000
District Judges	136,700
Judges of the Court of International Trade	136,700

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 1999)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U S C 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10 **	$7,838.70	$8,114.40	$8,114.40	$8,114.40	$8,114.40	$8,425.80	$8,425.80	$8,892.60	$8,892.60	$9,528.90*	$9,528.90*	$10,167.00*	$10,167.00*	$10,167.00*	$10,800.00*
O-9	6,947.10	7,129.20	7,281.00	7,281.00	7,281.00	7,466.10	7,466.10	7,776.90	7,776.90	8,425.80	8,425.80	8,892.60	8,892.60	8,892.60	9,528.90*
O-8	6,292.20	6,481.20	6,634.50	6,634.50	6,634.50	7,129.20	7,129.20	7,466.10	7,466.10	7,776.90	8,114.40	8,425.80	8,633.70	8,633.70	8,633.70
O-7	5,228.40	5,583.90	5,583.90	5,583.90	5,834.40	5,834.40	6,172.50	6,172.50	6,481.20	7,129.20	7,619.70	7,619.70	7,619.70	7,619.70	7,619.70
O-6	3,875.10	4,257.30	4,536.60	4,536.60	4,536.60	4,536.60	4,536.60	4,536.60	4,690.80	5,432.40	5,709.60	5,834.40	6,172.50	6,381.00	6,694.20
O-5	3,099.60	3,639.30	3,891.00	3,891.00	3,891.00	3,891.00	4,008.00	4,224.30	4,507.50	4,845.60	5,122.20	5,277.90	5,462.40	5,462.40	5,462.40
O-4	2,612.40	3,181.20	3,393.30	3,393.30	3,456.30	3,608.70	3,855.30	4,071.90	4,257.30	4,444.80	4,566.60	4,566.60	4,566.60	4,566.60	4,566.60
O-3 ***	2,427.60	2,714.10	2,901.90	3,210.60	3,364.50	3,484.80	3,673.80	3,855.30	3,949.50	3,949.50	3,949.50	3,949.50	3,949.50	3,949.50	3,949.50
O-2 ***	2,117.10	2,312.10	2,777.70	2,871.60	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40	2,930.40
O-1 ***	1,838.10	1,913.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10	2,312.10
COMMISSIONED OFFICERS WITH OVER 4 YEARS OF ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E				3,210.60	3,364.50	3,484.80	3,673.80	3,855.30	4,008.00	4,008.00	4,008.00	4,008.00	4,008.00	4,008.00	4,008.00
O-2E	—	—		2,871.60	2,930.40	3,023.40	3,181.20	3,303.00	3,393.30	3,393.30	3,393.30	3,393.30	3,393.30	3,393.30	3,393.30
O-1E				2,312.10	2,469.90	2,560.80	2,653.80	2,745.90	2,871.60	2,871.60	2,871.60	2,871.60	2,871.60	2,871.60	2,871.60

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* Basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule which is $9,225.00 per month

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $11,616.60 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,225.00 per month

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer

SCHEDULE 8—PAY OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
							WARRANT OFFICERS								
W-5	-	-	-	-					-		-	$4 2[illegible] 30	$4 [illegible]80	$4 507	$4 [illegible]0
W-4	$2,473 20	$2,653 80	$2 653	$2,714	2 838	$2 962	$3 087	$3 303	$3 456	$3,577	$3 673	3 [illegible]9[illegible] 00	3 [illegible]18.	4 041	4 [illegible]0
W-3	2,247 90	2,438 40	2 438	2 469	2 498	2 681	2 838	2 930	3 023	3,114	3 210	3 [illegible]3[illegible] 70	3 456.	3 456	3 [illegible] 80
W-2	1,968 90	2,130 30	2 130	2 192	2 312	2 438	2 531	2 623	2 714	2,809	2 901	2 [illegible]9[illegible] 10	3 [illegible]14.	3 114	3 [illegible]0
W-1	1,640 40	1,880 70	1,880	2 037	2 130	2 221	2 312	2 407	2 498	2,591	2 681	2 [illegible]7 70	2 [illegible]77.	2 777	2 [illegible]0
							ENLISTED MEMBERS								
E-9 *		-			-		[illegible]877 [illegible]0	2 [illegible]42 10	$3 008 40	3,078 [illegible]0	$3 [illegible]47 [illegible]0	3 [illegible]0 [illegible]0	[illegible] 90	[illegible]	[illegible]7[illegible] 0
E-8						2 [illegible]2 60	2 482 50	2 5[illegible]7 30	2 613 [illegible]0	2,682 [illegible]0	[illegible]43 [illegible]0	2 [illegible]1[illegible] [illegible]0	[illegible] 60	[illegible]	[illegible]3[illegible] 40
E-7	[illegible]684 80	[illegible]818	[illegible]885 50	[illegible]952 [illegible]0	2 0[illegible]8 70	2 082 90	2 [illegible]4[illegible] 50	2 2[illegible] [illegible]0	2,316 [illegible]0	2,382 60	[illegible]448 [illegible]0	2 480 40	2 [illegible]47 [illegible]0	2,[illegible]	[illegible]9[illegible] [illegible]0
E-6	[illegible]449 [illegible]0	1 [illegible]79	1 645 50	[illegible]715 40	1 7[illegible] [illegible]0	1 8[illegible] [illegible]0	1 9[illegible] [illegible]0	2 0[illegible]0 00	2 073 [illegible]0	2,140 20	[illegible]1[illegible]2 [illegible]0	2 1[illegible]2 60	2 1[illegible] [illegible]0	2 [illegible]	[illegible]1[illegible] 60
E-5	[illegible]271 70	1 [illegible]84	[illegible]451 40	[illegible]514 70	1 6[illegible] [illegible]0	1 [illegible]80 [illegible]0	1 [illegible]4[illegible] [illegible]0	1 8[illegible] [illegible]0	[illegible]844 [illegible]0	1,844 10	1,8[illegible] [illegible]0	1 844 10	1 8[illegible] [illegible]0	1,[illegible]44 [illegible]	[illegible]844 [illegible]0
E-4	[illegible]185 90	1 252	[illegible]326 60	[illegible]428 [illegible]0	1 [illegible]8[illegible] [illegible]0	1 [illegible]85 [illegible]0	1 [illegible]85 [illegible]0	1 [illegible]48[illegible] [illegible]0	1,485 [illegible]0	1,485 30	1,[illegible]5 30	1 48[illegible] [illegible]0	1 48[illegible] [illegible]0	1,4[illegible]	[illegible]4[illegible] [illegible]0
E-3	[illegible]117 80	1 [illegible]79	[illegible]225 80	[illegible]274 [illegible]0	1 2[illegible] [illegible]0	1 2[illegible] 70	1 2[illegible]4 70	1 274 [illegible]0	1 274 [illegible]0	1,274 70	1,27[illegible] 70	1 [illegible] 70	1 2[illegible]4 [illegible]0	1 [illegible]4	[illegible]2[illegible]4 [illegible]0
E-2	[illegible]075 80	1 075	[illegible]075 80	[illegible]075 [illegible]0	1 075 80	1 075 80	1 0[illegible]5 80	1 075 80	[illegible]075 [illegible]0	1,075 80	[illegible]0[illegible] 80	1 075 80	1 075 [illegible]0	1[illegible]	[illegible]0[illegible] 80
E-1 **	959 40	959 4[illegible]	959 40	959 40	95[illegible] [illegible]0	95[illegible] [illegible]0	[illegible] 40	95[illegible] 40	959 40	959 [illegible]0	9[illegible] 40	959 40	959 40	[illegible]5[illegible] 4	9[illegible] 40
E-1 ***	887 70														

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* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy, or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is [illegible] 50.00 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $600.00.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1999)

Locality Pay Area[1]	Rate
Atlanta, GA	6.67%
Boston-Worcester-Lawrence, MA-NH,ME,CT	9.32%
Chicago-Gary-Kenosha, IL-IN-WI	9.98%
Cincinnati-Hamilton, OH-KY-IN	8.31%
Cleveland-Akron, OH	6.92%
Columbus, OH	7.46%
Dallas-Fort Worth, TX	7.47%
Dayton-Springfield, OH	6.67%
Denver-Boulder-Greeley, CO	9.16%
Detroit-Ann Arbor-Flint, MI	10.13%
Hartford, CT	9.85%
Houston-Galveston-Brazoria, TX	12.92%
Huntsville, AL	6.31%
Indianapolis, IN	6.08%
Kansas City, MO-KS	6.51%
Los Angeles-Riverside-Orange County, CA	11.14%
Miami-Fort Lauderdale, FL	8.51%
Milwaukee-Racine, WI	6.74%
Minneapolis-St. Paul, MN-WI	7.92%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	10.55%
Orlando, FL	5.87%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	8.30%
Pittsburgh, PA	6.68%
Portland-Salem, OR-WA	7.80%
Richmond-Petersburg, VA	6.61%
Sacramento-Yolo, CA	8.27%
St. Louis, MO-IL	6.17%
San Diego, CA	8.62%
San Francisco-Oakland-San Jose, CA	13.06%
Seattle-Tacoma-Bremerton, WA	7.96%
Washington-Baltimore, DC-MD-VA-WV	7.87%
Rest of U.S.	5.87%

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[1] Locality Pay Areas are defined in 5 CFR 531.603.

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[Docket No.

High-Temp
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Rules and Regulations

Federal Register
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Thursday, December 10, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 301

[Docket No. 96–069–2]

High-Temperature Forced-Air Treatments for Citrus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adding new treatments to the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, for certain citrus. We are adding treatments involving high-temperature forced air for tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States that are infested with plant pests in the genus *Anastrepha,* which includes *A. ludens,* the Mexican fruit fly. This action provides an additional option for treating these fruits.

DATES: This regulation is effective December 10, 1998. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Campbell, Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236, (301) 734–6799; or e-mail RonaldCCampbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

To prevent the spread of plant pests into or within the United States, the U.S. Department of Agriculture (USDA) restricts the importation and interstate movement of many articles, including fruits. As a condition of movement, some fruits are required to be treated for plant pests in accordance with title 7 of the Code of Federal Regulations (CFR). The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual) of the USDA's Animal and Plant Health Inspection Service (APHIS) contains approved treatment schedules and is incorporated by reference into the CFR at 7 CFR 300.1.

Pursuant to 7 CFR 319.56–2x, USDA allows tangerines, oranges, and grapefruit from Mexico to be imported into the United States if treated in accordance with the PPQ Treatment Manual. In addition, because the Mexican fruit fly infests parts of the United States (currently, parts of Texas and California), USDA regulates the interstate movement of certain articles from those areas under the Mexican Fruit Fly Quarantine and Regulations, found at 7 CFR 301.64 through 301.64–10. Acceptable treatments for the regulated articles are listed in § 301.64–10. Treatments for the regulated articles themselves include a cold treatment, fumigation with methyl bromide, and a high-temperature forced-air treatment for grapefruit of a certain size; treatments for the fields or groves in which the regulated articles are grown include a soil drench with diazinon and a malathion bait spray.

On December 30, 1997, we published in the **Federal Register** (62 FR 67761–67763, Docket No. 96–069–1) a proposed rule to amend § 301.64–10 and the PPQ Treatment Manual to include the high-temperature forced-air treatments described below for tangerines, oranges (except navel oranges), and grapefruit from Mexico and areas of the United States affected with pests in the genus *Anastrepha,* which includes *A. ludens,* the Mexican fruit fly. We proposed to amend 7 CFR 300.1 to show that the PPQ Treatment Manual had been so changed and to amend § 301.64–10(e) of the Mexican fruit fly regulations to indicate that treatments for movement of domestic grapefruit, oranges (except navel oranges), and tangerines from areas of the United States infested with the Mexican fruit fly are included in the PPQ Treatment Manual. We also proposed to remove from § 301.64–10 paragraphs (a), (d), and (e) the specific requirements for the cold treatment, the methyl bromide treatment, and the high-temperature forced-air treatment. Because all of these treatments are listed in the PPQ Treatment Manual, there appeared to be no reason for them also to be listed in the CFR. Finally, we proposed to amend 301.64–10(b) to make some minor grammatical and punctuation changes.

The high-temperature forced-air treatments we proposed were developed by the USDA's Agricultural Research Service (ARS) in conjunction with APHIS–PPQ Methods Development. As proposed, the treatments must be administered in sealed, insulated chambers; the air may be heated in the chambers, or hot air may be introduced into the chambers.

Proposed Treatment for Tangerines

The tangerines must be commercial size 125 or smaller. (Commercial size is an index based on the approximate number of fruit that fit into a commercial shipping box [40 lb or 18.14 kg].) Each tangerine must weigh no more than 8.6 oz (245 g).

Place the tangerines in the chamber and seal it. Raise the air temperature in the chamber to 113 °F (45 °C) or higher for 210 minutes. (Treatment time begins when the coldest air temperature sensor reaches 113 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 113 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

Proposed Treatment for Oranges (Except Navel Oranges)

The oranges must be commercial size 100 or smaller. Each orange must weigh no more than 16.5 oz (468 g).

Place the oranges in the chamber and seal it. Raise the air temperature in the chamber to 114.8 °F (46 °C) or higher for 250 minutes. (Treatment time begins when the coldest air temperature sensor reaches 114.8 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 114.8 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

Proposed Treatment for Grapefruit

The grapefruit must be commercial size 70 or smaller. Each grapefruit must weigh no more than 18.8 oz (532 g).

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Place the grapefruit in the chamber and seal it. Raise the air temperature in the chamber to 114.8 °F (46 °C) or higher for 300 minutes. (Treatment time begins when the coldest air temperature sensor reaches 114.8 °F.) Record the temperature of each sensor at least once every 2 minutes throughout the treatment. Any temperature reading below 114.8 °F will invalidate the entire treatment. If any low temperature readings occur, repeat (do not simply extend) the treatment.

Comments

We solicited comments concerning our proposal for 60 days ending March 2, 1998. We received 28 comments by that date. They were from Mexican citrus producers, USDA employees, a State government, and a citrus industry association. The commenters generally supported the adoption of the proposed high-temperature forced-air treatments; several commenters stated that the proposed treatments were an environmentally sound and feasible alternative to methyl bromide treatments. However, some of the commenters suggested changes or clarifications to the proposed treatments. These comments are discussed below.

One commenter had several questions regarding administration of the proposed treatments: (1) Would the location of the temperature probes make any difference to the efficacy of the treatments (i.e., does it matter if the probes are in the air in the open space in the chamber or if they are attached to a fruit in the fruit container)? (2) Fruits cooled at room temperature have an extended treatment effect, whereas fruits that are hydrocooled or cooled in some other manner following treatment do not. Will there be a requirement addressing the cool-down of the fruits following treatment? (3) Would climatic conditions at the packing plant make any difference in the prescribed length of the proposed treatments? (In the commenter's experience, it takes longer during cold and damp conditions for the internal temperature of fruits treated in high-temperature forced-air or vapor-heat chambers to reach the required final treatment temperature than during hot and dry conditions.) (4) Would it make any difference if the fruits were treated in lugs (fruits arranged in single layers stacked one on top of another) or in bulk bins (fruits compiled in containers that measure about 2′h × 4′l × 4′w)? (5) Would the ratio of air space and fruit volume in a chamber affect the prescribed length and efficacy of the treatment? (6) Would not the monitoring of the treatments be more precise and safer if the protocol prescribed the measurement of the internal temperature of the citrus fruits and duration needed at that temperature to ensure larvae mortality rather than the temperature and time of the air in the chamber?

A comment provided by the ARS researchers who did the research upon which the proposed high-temperature forced-air treatments were based suggested the inclusion of a high-temperature forced-air treatment for navel oranges. The commenters stated that research proving the quarantine security of the treatment for navel oranges was performed shortly after the completion of the research on the treatments for oranges other than navel oranges, tangerines, and grapefruit. The researchers also suggested changes to clarify the prescribed fruit sizes. Finally, the researchers suggested adding information to the proposed treatments about fruit tolerance, i.e., the maximum temperatures to which the fruit could be subjected and still maintain market quality.

After carefully considering the six procedural questions and the suggestions for clarifying and expanding the proposed treatments, we have decided to change the proposed treatment procedures to a single treatment procedure for tangerines, oranges (except navel oranges), and grapefruit. We believe that this procedure will be an effective treatment for these fruits and will better ensure efficacy and consistency in administration of the high-temperature forced-air treatment. We have reviewed the completed data concerning the inclusion of a high-temperature forced-air treatment for navel oranges provided by ARS and have determined that the treatment would be effective for navel oranges as well. Accordingly, in the near future we will publish a direct final rule to allow its use on navel oranges. We are amending the PPQ Treatment Manual to include the treatment spelled out below. We are also amending 7 CFR 300.1 to show that there has been a revision to the PPQ Treatment Manual. We are also amending § 301.64–10(e) to indicate that grapefruit, oranges (except navel oranges), and tangerines may be treated with high-temperature forced air as specified in the PPQ Treatment Manual.

New Treatment Procedure

The treatment must be administered in sealed, insulated chambers; the air may be heated in the chambers, or hot air may be introduced into the chambers. The number of temperature probes must be approved in advance during the chamber certification procedure.

Place the temperature probes into the centers of the largest fruit in the load. Place the fruit inside the chamber, seal it, and begin the treatment.

The target temperature is 44 °C (111.2 °F). Throughout the treatment, record the fruit center temperatures at least once every 2 minutes. If it takes less than 90 minutes for the fruit to reach the target temperature, the fruit must remain at the target temperature for any additional time needed to reach 90 minutes, plus another 100 minutes. If the fruit takes 90 minutes or more to reach the target temperature, the fruit must remain at the target temperature for an additional 100 minutes only.

Hydrocooling after treatment is optional.

The treatment is for fruit of the following sizes:

Fruit Variety	Standard Pack Count [1]	Container Size (bu)	Maximum Weight (g)	Maximum Diameter (in)
Tangerines	120	4/5	245 (8.6 oz)	Not specified.
Oranges (except navel oranges	100	1 2/5	468 (16.4 oz)	3 13/16
Grapefruit	70	1 2/5	536 (18.8 oz)	4 5/16

[1] Standard pack count is an index based on the approximate number of fruit of uniform diameter that fit into a bushel container of the size indicated.

Examples of Treatment Administration

1. If the center temperature of fruit located in the coolest location inside a forced-air chamber required 112 minutes to reach 44 °C, then the total treatment time for the fruit load would be 212 minutes (112 minutes approach time to target temperature +100 minutes treatment time at target temperature).

2. If the center temperature of fruit located in the coolest location inside a forced-air chamber required 80 minutes to reach 44 °C, then the total treatment time for the fruit load would be 190 minutes (80 minutes approach time to target temperature + 10 additional minutes so that approach time is the required 90 minutes in duration + 100 minutes treatment time at target temperature).

Note: Tolerance data may be obtained from the USDA–ARS Subtropical Research Center, Crop Quality & Fruit Insects, 2301 S. International Blvd., Weslaco, TX 78596, or the USDA–APHIS–PPQ Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565.

We developed the changes in treatment procedure in consultation with the ARS researchers who performed the research upon which the proposed procedures were based. The new procedure is based upon the same research. As discussed below, we and ARS believe the modifications address the comments concerning placement of the temperature probes, measurement of internal fruit temperature, fruit cool-down following treatment, variable climatic conditions at the treatment facilities, arrangement of the fruit during treatment, and ratio of air space and fruit volume in the treatment chamber.

We agree that placing the temperature probes in the centers of the largest fruit in the load to measure the internal temperatures of the fruit instead of placing the temperature probes in the open space of the chamber to measure the air temperature in the chamber is a better method of monitoring the treatment to ensure larvae mortality. Variable climatic conditions at the treatment facilities (which could cause differences in the amount of time needed for fruit centers to reach the target temperature) are of no consequence now because the new procedure allows for a variable approach time to the target temperature but requires a minimum approach time of 90 minutes. Fruit cool-down is irrelevant under the new procedure because treating the fruit at the temperature and for the time prescribed ensures larvae mortality, so any extended treatment effect resulting from cooling the fruit at room temperature would be unnecessary. Fruit placement in the treatment chamber and the ratio of air space and fruit volume does not matter because, by measuring the center temperatures of the largest fruit in the load as required in the new procedure, treatment administrators will know that the fruit in the load has been raised to the target temperature. (Using the procedure specified in the proposed rule, treatment administrators might not know whether fruit in the center of a bulk bin had reached the required temperature because the proposed treatments called for measuring the temperature of the air in the chamber.)

The new procedure better describes the required sizes of the fruit undergoing treatment, as requested by the ARS researchers who did the research on the high-temperature forced-air treatments. We are not including the fruit tolerance information suggested by the researchers because the data submitted was for fruit of different sizes than those specified in this rule. However, we have provided two sources that treatment administrators may consult for information on fruit tolerance. We are also not allowing the treatment to be used for navel oranges at this time. However, as stated previously, we have reviewed the data provided by the ARS researchers and have determined that the treatment would be effective for use on navel oranges. In the near future, we will publish a direct final rule to allow the treatment to be used on navel oranges.

One commenter expressed concern that, by removing from the CFR certain treatments that are also listed in the PPQ Treatment Manual, we might gain flexibility by eliminating the need to publish treatment changes in the **Federal Register**, but the result would be less industry input.

This commenter has misunderstood the effect of incorporation by reference. Because the PPQ Treatment Manual is incorporated by reference into the CFR, any changes made to the Manual must be made in accordance with the procedures for making changes to the CFR. Therefore, before we make any changes to the treatments listed in either the PPQ Treatment Manual or in title 7 of the CFR, we must publish the changes as a proposed rule in the **Federal Register** for public comment.

We are making the proposed nonsubstantive changes to paragraphs (a) and (e) of § 301.64–10 to avoid redundancies with the PPQ Treatment Manual. We are also making some nonsubstantive changes to paragraphs (b) and (c) of § 301.64–10 to correct some punctuation and formatting errors.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for citrus from Mexico, Texas, and California is under way. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule, which allows the use of a process involving high-temperature forced air for treating tangerines, oranges (except navel oranges), and grapefruit from areas of Mexico and the United States infested with plant pests of the genus *Anastrepha* (which includes *A. ludens*, the Mexican fruit fly), could affect producers and treatment administrators in areas in Texas and California regulated for the Mexican fruit fly and U.S. citrus imports from Mexico.

Regulated areas in Texas comprise a major citrus-growing region of the United States. Four of the five regulated production areas in Texas were infested in fiscal year (FY) 1996 and FY 1997. Methyl bromide fumigation is the method used to treat fruit for export and for shipment to other U.S. citrus-growing areas, although other treatments (including an [illegible] temperature forced-air alt[illegible] grapefruit) and a bait-spray program are options available to produce[illegible] than 90 percent of the fru[illegible] grapefruit; the rest are orange[illegible] 1996, 5.4 million pounds of citrus from regulated areas of Texas were fumigated, and this amount increased to 19.2 million pounds in FY 1997. Ninety

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percent of the treated fruit is shipped to California, and 10 percent, to Mexico.

Eight fumigation companies treat citrus shipped from the regulated areas of Texas. The fumigation facilities are located in the packing sheds of major packing houses. Some are private companies; others operate as cooperatives. All of the fumigation companies can be considered small entities by Small Business Administration standards (annual revenue less than $5 million, averaged over 3 years).

The use of high-temperature forced air as an alternative treatment could lead to a reduction in revenue for the fumigation companies, if the new treatment is found by the growers to be financially preferable. At growers' meetings in the area, the possibility of building and operating one or two high-temperature forced-air treatment facilities as cooperative ventures has been discussed. However, the consensus has been that more information is needed before the sizable expenditures such facilities would require are made. Major doubts remain in the minds of producers concerning the speed with which the fruit could be treated and the risk of fruit being damaged by the high temperatures. Producers are unlikely to replace fumigation with the proposed high-temperature forced-air process until these issues are resolved to their satisfaction.

The area in California currently infested with the Mexican fruit fly is in San Diego County. Avocados are the major crop in the regulated area. Because this outbreak occurred recently, there is little history of treatment for movement of restricted articles from the area.

Mexico is a major supplier of oranges to the United States, providing one-third or more of all oranges imported. Tangerine imports from Mexico are less significant, while grapefruit shipments from Mexico have been minor or nonexistent. In 1996, Mexico exported 7,633 metric tons of oranges (worth about $3.7 million), 2,596 metric tons of tangerines ($1.2 million), and 109 metric tons of grapefruit ($88,000) to the United States; the combined import value of the three fruits was about $5 million. In 1997, Mexico exported 10,461 metric tons of oranges ($4.9 million), 4,198 metric tons of tangerines ($1.6 million), and no grapefruit to the United States; the combined import value was about $6.5 million. This pattern has continued in the 1998 export season, with about 9,100 metric tons of oranges and about 3,100 metric tons of tangerines entering the United States from Mexico.

Citrus imports from Mexico that originate in certain areas of the State of Sonora considered to be free of the Mexican fruit fly require only certification. Citrus imports from the rest of Mexico are treated for *Anastrepha* species using methyl bromide fumigation. Outside the designated areas in Sonora, tangerines are the most commonly exported fruit to the United States because they are not as susceptible to damage from methyl bromide fumigation as are oranges. Conversely, only oranges are exported to the United States from the designated areas of Sonora.

The use of high-temperature forced air as an alternative treatment will provide an incentive for citrus producers outside of Sonora to broaden their citrus exports to the United States to include oranges because the phytotoxicity of oranges to methyl bromide will no longer be an issue. A facility capable of treating citrus with high-temperature forced air has been built in Mexico. Its use is expected to widen the citrus export season for producers outside of Sonora: The export season for tangerines from Mexico is from November to February; the export season for all citrus from Mexico is from October to May or June.

Citrus producers in the regulated areas in Texas are expected to monitor the experiences of Mexican producers with the new treatment and reassess its future adoption. Effects of this rule on fumigation companies in the regulated areas of Texas (and on any fumigation companies that may serve producers in the newly regulated area in California) are expected to be negligible to nonexistent. The proposed treatment will provide another alternative for producers and fumigation companies.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR parts 300 and 301 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, the section heading and paragraph (a) introductory text are revised to read as follow:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through January 1, 1999 has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

4. Section 301.64–10 is revised to read as follows:

§ 301.64–10 Treatments.

Treatments for regulated articles must be one of the following:

(a) *Apple, grapefruit, orange, pear, plum, pomegranate, quince, and tangerine.* Cold treatment in accordance with the PPQ Treatment Manual. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference".

(b) *Soil within the dripline of plants that are producing or that have produced fruits listed in § 301.64–2(a).* Remove host fruits from host plants prior to treatment. Using ground equipment, drench the soil under the host plants with 5 lb a.i. diazinon per acre (0.12 lb or 2 oz avdp per 1,000 ft ^{2}) mixed with 130 gal of water per acre (3 gal per 1,000 ft ^{2}). Apply at 14- to 16-day intervals as needed. Repeat applications if infestations become established. In addition to the above, follow all label directions for diazinon.

(c) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mexican fruit fly. Determination of the time period must be based on the day degrees model for Mexican fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre.

(d) *Grapefruit and oranges.* Methyl bromide in accordance with the PPQ Treatment Manual.

(e) *Grapefruit, oranges (except navel oranges), and tangerines.* High-temperature forced air in accordance with the PPQ Treatment Manual.

Done in Washington, DC, this 2nd day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32589 Filed 12–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–263–AD; Amendment 39–10930; AD 98–13–12 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 747, 757, 767, and 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737, 747, 757, 767, and 777 series airplanes, that currently requires a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. That AD was prompted by reports of loose and missing fasteners due to incorrect installation. The actions specified by that AD are intended to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies. This amendment clarifies certain procedures for the required inspection and expands the applicability to include additional airplanes, which are not currently on the U.S. Register.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations, is approved by the Director of the Federal Register as of December 28, 1998.

The incorporation by reference of certain other publications was approved previously by the Director of the Federal Register as of July 6, 1998 (63 FR 33246, June 18, 1998).

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On June 11, 1998, the FAA issued AD 98–13–12, amendment 39–10600 (63 FR 33246, June 18, 1998), applicable to certain Boeing Model 737, 747, 757, 767, and 777 series airplanes. That AD requires a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. That action was prompted by reports of loose and missing fasteners due to incorrect installation. The requirements of that AD are intended to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies.

Actions Since Issuance of the AD

Since the issuance of that AD, the FAA has become aware that paragraph (a) of the rule misidentifies the area to be inspected. Currently, that AD specifies that operators are to inspect the fasteners that connect the "forward" ends of the pushrods to the rudder pedal assemblies. However, the FAA intended to omit any reference to either the forward ends or the rear ends of the pushrods. (For certain models, the forward end of the pushrod is the subject inspection area; for other models, the rear end of the pushrod is the subject inspection area.) Therefore, the FAA has revised paragraph (a) of the rule to identify "the ends" of the pushrods as the appropriate area for the required inspection.

New Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2368, Revision 1, dated May 7, 1998, and Revision 2, dated May 28, 1998 (for Boeing Model 747 series airplanes). Revision 1 adds part numbers and respective torque value specifications for the nuts for the rudder pedal pushrods; these specifications had been inadvertently omitted from the original version of that alert service bulletin. Revision 2 identifies three Model 747 series airplanes that had been incorrectly omitted from the effectivity listing in Boeing Alert Service Bulletin 747–27A2368, dated March 26, 1998 (which is cited in the existing AD as the appropriate source of service information for affected Model 747 series airplanes). The inspection procedures described in Revisions 1 and 2 are identical to those described in the original version of the alert service bulletin. The only change made by

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Revision 1 is to add specifications for certain parts. The only change made by Revision 2 is to expand the effectivity to include additional airplanes.

In addition, the FAA has reviewed and approved Boeing Alert Service Bulletin 777–27A0029, Revision 1, dated October 1, 1998 (for Model 777 series airplanes), which deletes a reference to the Boeing Standard Overhaul Practices Manual. The torque range in the manual was higher than required for the nut in this application; however, the low-end torque specified in that alert service bulletin has not changed. Revision 1 also expands the effectivity to include additional airplanes.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies. This AD revises AD 98–13–12 to continue to require a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. In addition, this action clarifies the inspection procedures and expands the applicability to include additional airplanes, which are not currently on the U.S. Register. The actions are required to be accomplished in accordance with the applicable alert service bulletin.

In accordance with various bilateral airworthiness agreements with countries around the world, the FAA is obligated to advise foreign airworthiness authorities of unsafe conditions identified in products manufactured in the United States; the issuance of AD's is the means by which the FAA satisfies this obligation.

Cost Impact

There are approximately 5,572 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,477 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $88,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Operators should note that none of the airplanes added by this action is on the U.S. Register. The airplanes added to the applicability by this revised AD currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this revised rule is necessary to ensure that the unsafe condition is addressed in the event that any of the three subject airplanes are imported and placed on the U.S. Register in the future.

Determination of Rule's Effective Date

Because none of the airplanes added by this action is on the U.S. Registry, this revision will not increase the burden on U.S. operators beyond the requirements of the existing AD. For this reason, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–263–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10600 (63 FR 33246, June 18, 1998), and by adding a new airworthiness directive (AD),

amendment 39–10930, to read as follows:

98–13–12 R1 Boeing: Amendment 39–10930. Docket 98–NM–263–AD. Revises AD 98–13–12, Amendment 39–10600.

Applicability: Model 737, 747, 757, 767, and 777 series airplanes; as listed in the following Boeing alert service bulletins; certificated in any category.

Alert Service Bulletin	Date
737–27A1212	Mar. 26, 1998
747–27A2368, Revision 2	May 28, 1998.
757–27A0128	Mar. 26, 1998.
767–27A0156	Mar. 26, 1998.
777–27A0029, Revision 1	Oct. 1, 1998.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies, accomplish the following:

(a) Within 90 days after July 6, 1998 (the effective date of AD 98–13–12, amendment 39–10600), perform a one-time inspection to detect discrepancies of the fasteners that connect the ends of the pushrods to the rudder pedal assemblies; in accordance with Boeing Alert Service Bulletin 737–27A1212, dated March 26, 1998; 747–27A2368, dated March 26, 1998, Revision 1, dated May 7, 1998, or Revision 2, dated May 28, 1998; 757–27A0128, dated March 26, 1998; 767–27A0156, dated March 26, 1998; or 777–27A0029, Revision 1, dated October 1, 1998; as applicable.

(1) If no discrepancy is detected, no further action is required by this AD.

(2) If any discrepancy is detected, prior to further flight, perform the applicable corrective action in accordance with the applicable alert service bulletin.

Note 2: For Boeing Model 777 series airplanes, inspection and corrective action performed prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–27A0029, dated March 26, 1998, are considered acceptable for compliance with the applicable requirements of paragraph (a) of this AD.

(b) Submit a report of inspection findings (discrepant findings only) to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181; and to the Boeing Commercial Airplane Group, Attention: Manager, Airline Support, P.O. Box 3707, Seattle, Washington 98124–2207; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include a description of any discrepancy found, the airplane serial number, and the total number of landings and flight hours accumulated on the airplane. Discrepant findings include, but are not limited to, loose or missing fasteners, inadequately torqued fasteners, and fasteners incorrectly installed on the pedal assemblies or pushrod bearing surfaces. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after July 6, 1998: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to July 6, 1998: Submit the report within 10 days after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with:

- Boeing Alert Service Bulletin 737–27A1212, dated March 26, 1998;
- Boeing Alert Service Bulletin 757–27A0128, dated March 26, 1998;
- Boeing Alert Service Bulletin 767–27A0156, dated March 26, 1998;
- Boeing Alert Service Bulletin 777–27A0029, Revision 1, dated October 1, 1998;
- Boeing Alert Service Bulletin 747–27A2368, dated March 26, 1998;
- Boeing Alert Service Bulletin 747–27A2368, Revision 1, dated May 7, 1998; or
- Boeing Alert Service Bulletin 747–27A2368, Revision 2, dated May 28, 1998.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747–27A2368, Revision 1, dated May 7, 1998; Boeing Alert Service Bulletin 747–27A2368, Revision 2, dated May 28, 1998; and Boeing Alert Service Bulletin 777–27A0029, Revision 1, dated October 1, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–27A1212, dated March 26, 1998; Boeing Alert Service Bulletin 757–27A0128, dated March 26, 1998; Boeing Alert Service Bulletin 767–27A0156, dated March 26, 1998; and Boeing Alert Service Bulletin 747–27A2368, dated March 26, 1998; was approved previously by the Director of the Federal Register as of July 6, 1998 (63 FR 33246, June 18, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 28, 1998.

Issued in Renton, Washington, on November 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32360 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–153–AD; Amendment 39–10933; AD 98–25–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires repetitive inspections to detect cracks in the angle fitting at frame 40 of the center wing box, and corrective actions, if necessary; and eventual modification of that angle fitting, which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane.

DATES: Effective January 14, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1999.

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ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 14, 1998 (63 FR 55063). That action proposed to require repetitive inspections to detect cracks in the angle fitting at frame 40 of the center wing box, and corrective actions, if necessary; and eventual modification of that angle fitting, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 54 Model A300–600 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 36 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $116,640, or $2,160 per airplane, per inspection cycle.

It will take approximately 754 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $11,605 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $3,069,630, or $56,845 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–07 Airbus: Amendment 39–10933. Docket 97–NM–153–AD.

Applicability: Model A300–600 series airplanes on which Airbus Modification 10453 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of the threshold specified in Table 1 of this AD, as applicable, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed visual, eddy current, or liquid penetrant inspection to detect cracking in the angle fitting of frame 40 (both left and right), with the nut removed, in accordance with Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996. Thereafter, repeat the inspections at the interval specified in Table 1 of this AD, as applicable, until the actions required by paragraph (c) of this AD have been accomplished.

TABLE 1

Average flight time (AFT): flight hours/flight cycles	Threshold (flight cycles)	Visual inspection interval (flight cycles)	Eddy current/liquid penetrant inspection interval (flight cycles)
2.10–2.49	5,900	4,700	5,300
2.50–2.99	5,600	4,400	4,900
3.00–3.49	5,200	4,100	4,600
3.50–3.99	4,800	3,800	4,200
4.00–4.49	4,400	3,500	3,900
4.50–4.99	4,000	3,200	3,500
5.00–5.49	3,600	2,800	3,200
5.50–5.99	3,200	2,500	2,800
6.00–6.50	2,800	2,200	2,500

(b) Except as provided by paragraph (d) of this AD, if any crack is found during an inspection required by paragraph (a) of this AD, prior to further flight, accomplish follow-on corrective actions in accordance with the procedures specified in Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996.

(c) Within 4 years after the effective date of this AD, modify the angle fitting at frame 40 (both left and right) in accordance with Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(d) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996; and Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 7–9, 11–15, 19–24, 35, 36, 41, 42, 45–47	1	October 31, 1995.
2–6, 10, 16–18, 25–34, 37–40, 43, 44	Original	February 21, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 95–111–181(B) R1, dated October 23, 1996.

(h) This amendment becomes effective on January 14, 1999.

Issued in Renton, Washington, on December 2, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32623 Filed 12–9–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–237–AD; Amendment 39–10935; AD 98–25–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 and DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–7 and DHC–8 series airplanes, that requires a one-time visual inspection to determine the serial number of the brake shuttle valves of the main landing gear (MLG); and replacement of the filter fittings with new filter fittings, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure that proper filter fittings are installed. Installation of improper filter fittings could result in failure of the brake shuttle valves, and consequent loss of brake effectiveness, which could reduce controllability of the airplane during taxi, takeoff, and landing roll.

DATES: Effective January 14, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be

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examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anthony E. Gallo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7510; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–7 and DHC–8 series airplanes was published in the **Federal Register** on October 2, 1998 (63 FR 52994). That action proposed to require a one-time visual inspection to determine the serial number of the brake shuttle valves of the main landing gear (MLG); and replacement of the filter fittings with new filter fittings, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 260 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,600, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–09 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–10935. Docket 98–NM–237–AD.

Applicability: Model DHC–7–1, –100, –101, –102, and –103 series airplanes, having serial numbers (S/N) 003 through 113 inclusive; and Model DHC–8–100, –200, and –300 series airplanes, having S/N's 003 through 498 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the brake shuttle valves, and consequent loss of the brake effectiveness, due to installation of improper filter fittings, which could reduce controllability of the airplane during taxi, takeoff, and landing roll, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a one-time visual inspection to determine the serial numbers of the brake shuttle valves of the main landing gear (MLG), in accordance with Bombardier Alert Service Bulletin S.B. A7–32–102, Revision 'A,' dated November 26, 1997 (for Model DHC–7 series airplanes), or S.B. A8–32–139, Revision 'A,' dated December 19, 1997 (for Model DHC–8 series airplanes), as applicable. If any brake shuttle valve having S/N 2162A through 2244A inclusive is installed, prior to further flight, replace the filter fittings with new filter fittings, in accordance with the applicable alert service bulletin.

(b) As of the effective date of this AD, no person shall install a brake shuttle valve having part number 5084–1 on any airplane, unless it has been inspected and any defective filter fitting replaced, in accordance with the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Bombardier Alert Service Bulletin S.B. A7–32–102, Revision 'A,' dated November 26, 1997, or Bombardier Alert Service Bulletin S.B. A8–32–139, Revision 'A,' dated December 19, 1997, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–05, dated March 2, 1998.

(f) This amendment becomes effective on January 14, 1999.

Issued in Renton, Washington, on December 2, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32622 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–216–AD; Amendment 39–10934; AD 98–25–08]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes. This amendment requires repetitive inspections to detect wear damage on the nosewheel steering control cables located in the nosewheel bay of the nose landing gear (NLG); repetitive testing of the cable pulleys to detect seizing; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the nosewheel steering control cables, which could result in loss of the nosewheel steering or collapse of the NLG, and possible injury to the flightcrew and passengers.

DATES: Effective January 14, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on October 15, 1998 (63 FR 55350). That action proposed to require repetitive inspections to detect wear damage on the nosewheel steering control cables located in the nosewheel bay of the nose landing gear (NLG); repetitive testing of the cable pulleys to detect seizing; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

It will take approximately 4 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $775 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $10,150, or $1,015 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–08 British Aerospace Regional Aircraft (Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited): Amendment 39–10934. Docket 98–NM–216–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the nosewheel steering control cables, which could result in loss of the nosewheel steering or collapse of the nose landing gear (NLG), and possible injury to the flightcrew and passengers, accomplish the following:

(a) Perform a visual and tactile inspection of the nosewheel steering control cables located in the nosewheel bay of the NLG to detect excessive wear, and test the cable pulleys for seizing, in accordance with British Aerospace Service Bulletin ATP–32–91, dated May 19, 1998; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD. Thereafter, repeat the inspection and test at intervals not to exceed 1,800 flight hours, or 2,400 landings, whichever occurs first.

(1) For airplanes on which the nosewheel steering control cables have accumulated 6,000 or more total flight hours, or 8,000 or more total landings as of the effective date of this AD, and for airplanes on which the time-in-service of the nosewheel steering control cables is unknown: Inspect and test within 600 flight hours or 800 landings after the effective date of this AD, whichever occurs first.

(2) For airplanes on which the nosewheel steering control cables have accumulated less than 6,000 total flight hours or 8,000 total landings as of the effective date of this AD: Inspect and test within 900 flight hours or 1,200 landings after the effective date of this AD, whichever occurs first.

(b) If any cable wear is outside the limits specified in British Aerospace Service Bulletin ATP–32–91, dated May 19, 1998, or if any discrepant pulley is detected during any inspection or test required by paragraph (a) of this AD, prior to further flight, replace the discrepant cable or pulley with a new component in accordance with the service bulletin. Thereafter, continue accomplishment of the actions required by paragraphs (a) and (c) of this AD at the intervals specified in those paragraphs.

(c) Replace the nosewheel steering control cables with new cables at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD in accordance with British Aerospace Service Bulletin ATP–32–91, dated May 19, 1998. Thereafter, repeat the replacement at intervals not to exceed 6,000 total flight hours or 8,000 total landings on the nosewheel steering cables, whichever occurs first.

(1) Within 900 flight hours or 1,200 landings after the effective date of this AD, whichever occurs first.

(2) Prior to the accumulation of 6,000 total flight hours or 8,000 total landings on the nosewheel steering cables, whichever occurs first.

Note 2: Accomplishment of the initial inspection or initial replacement of the nosewheel steering control cables prior to the effective date of this AD in accordance with British Aerospace Alert Service Bulletin ATP–A32–90, dated March 21, 1998, is considered acceptable for compliance with the initial inspection or initial replacement required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with British Aerospace Service Bulletin ATP–32–91, dated May 19, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 004–05–98.

(g) This amendment becomes effective on January 14, 1999.

Issued in Renton, Washington, on December 2, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32621 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–348–AD; Amendment 39–10937; AD 98–25–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–11 series airplanes. This action requires a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. This amendment is prompted by a report indicating that damaged electrical wires were found above the forward passenger doors due to flapper panels moving inboard and chafing the electrical wire assemblies of this area. The actions specified in this AD are intended to prevent such chafing, which could result in an electrical fire in the passenger compartment.

DATES: Effective December 28, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–348–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5347; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware that damaged electrical wires were found above the forward left- and right-hand passenger doors on a McDonnell Douglas Model MD–11 series airplane during a regularly scheduled heavy maintenance visit. Investigation revealed that, when the passenger doors are raised to the open position, the flapper panels above the passenger doors move inboard and chafe the electrical wire assemblies of this area. This condition, if not corrected, could lead to an electrical fire in the passenger compartment.

This incident is not considered to be related to a recent accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent chafing of the electrical wires above the forward passenger doors, which could result in an electrical fire in the passenger compartment. This AD requires a one-time visual inspection to detect discrepancies (including, but not limited to, frayed, chafed, or nicked wires and wire insulation) in the areas listed below; and repair, if necessary:

1. At the area around the entry light connector of the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5; and

2. At the area above the forward right passenger door (1R) at station location x = −30, y = 430, and z = 70 in the area of bracket part number 4225419–1.

This AD also requires operators to submit a report of the inspection results to the FAA.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–348–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–11 McDonnell Douglas: Amendment 39–10937. Docket 98–NM–348–AD.

Applicability: All Model MD–11 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of certain electrical wires above the forward passenger doors, which could result in an electrical fire in the passenger compartment, accomplish the following:

(a) Within 10 days after the effective date of this AD, perform a visual inspection to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) At the area around the entry light connector of the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5; and

(2) At the area above the forward right passenger door (1R) at station location x = -30, y = 430, and z = 70 in the area of bracket part number 4225419–1.

(b) If any discrepancy is detected during the visual inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated January 1, 1998.

(c) Within 10 days after accomplishing the visual inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on December 28, 1998.

Issued in Renton, Washington, on December 3, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32791 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–17]

Establishment of Class E2 Airspace; Atlanta Dekalb-Peachtree Airport, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E2 airspace at Atlanta, GA, for the Dekalb-Peachtree Airport. An automated weather observing system transmits the required weather observations continuously to The William B. Hartsfield, Atlanta International Airport Traffic Control Tower, the controlling facility for the airport, when the Dekalb-Peachtree Airport Traffic Control Tower is closed. Therefore, the airport now meets the criteria for Class E2 surface area airspace. The Class E airspace will consist of that airspace extending upward from the surface to but not including 700 feet within a 4-mile radius of Dekalb-Peachtree Airport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 15, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E2 airspace at Atlanta, GA, (63 FR 55354). This action provides adequate Class E airspace for IFR operations at Dekalb-Peachtree Airport. Designations for Class E2 airspace extending upward from the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comment objecting to the proposal was received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace at Atlanta, GA for the Dekalb-Peachtree Airport. An automated weather observing system transmits the required weather observations continuously to The William B. Hartsfield, Atlanta International Airport Traffic Control Tower, the controlling facility for the airport, when the Dekalb-Peachtree Airport Traffic Control Tower is closed. Therefore, the airport now meets the criteria for Class E2 surface area airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO GA E2 Atlanta Dekalb-Peachtree Airport, GA [New]

Atlanta Dekalb-Peachtree Airport

(Lat. 33°52'30"N, long. 84°18'08"W)

Within a 4-mile radius of the Dekalb-Peachtree Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will therefore be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 25, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division Southern Region.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 121

General Operating and Flight Rules

CFR Correction

In Title 14 of the Code of Federal Regulations, parts 60 to 139, revised as of Jan. 1, 1998, make the following corrections:

1. On page 173, left column, the date in Sec. 9 of the effective date note for SFAR No. 50-2 is corrected to read "January 31, 1999".

2. On page 261, in Appendix G to part 91, right column, under *Section 2. Aircraft Approval,* in paragraphs (c)(2)(i), (ii), (3)(i) and (ii) the symbol "#" is corrected to read "±".

3. On page 452, § 121.402, paragraph (a), add the word "flight" between the words "provide" and "training" in the sixth line.

4. On page 520, § 121.713, paragraph (b)(2), "§ 119.35" is corrected to read "§ 119.36".

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 141

Pilot Schools

CFR Correction

In Title 14 of the Code of Federal Regulations, parts 140 to 199, revised as of Jan. 1, 1998, page 22, Appendix A to part 141, paragraph 4(a) is corrected by removing the words "as provided in section No. 5 of this appendix" beginning in the third line, and moving them to line 6 after the word "training".

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Requests for Exemptive, No-Action and Interpretative Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is adopting Rule 140.99, which establishes procedures for the filing of requests for the issuance of exemptive, no-action and interpretative letters from the Commission's staff. The Commission believes that implementation of these procedures will significantly assist the Commission, its staff and requesters by assuring a focused presentation of the guidance sought, the issues raised thereby, and the relevant legal authorities.

DATES: Effective January 11, 1999.

FOR FURTHER INFORMATION CONTACT: David M. Battan, Chief Counsel, Christopher W. Cummings, Special Counsel, or Helene D. Schroeder, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Requests for Exemptive, No-Action and Interpretative Letters

In the course of administering the Commodity Exchange Act ("Act")[1] and the rules, regulations and orders promulgated thereunder by the Commission,[2] Commission staff receives written requests for advice on, or interpretation of, particular provisions of the Act or Commission rules and the application of those provisions to proposed transactions or activities. Where appropriate, Commission staff provides the relief, advice or guidance sought through the issuance of exemptive, no-action or interpretative letters ("Letters"), respectively.[3]

On January 22, 1998, the Commission published for comment Proposed Rule 140.99 (the "Proposal")[4] to establish procedures for requesting Letters. As stated in the Proposal, although a procedural rule such as Rule 140.99 is not required to be published for comment, the Commission decided to seek comment in the belief that input from interested persons would assist it in fashioning a final rule.[5] The comment period on the Proposal originally was due to expire on March 22, 1998. To maximize public participation in this rulemaking process, the Commission extended the comment period for an additional thirty days,[6] and the comment period closed on April 22, 1998. The input received was very helpful, and a number of changes were made to the Proposal following consideration of the comments.[7]

While the commenters generally were supportive of the Commission's intention to establish uniform procedures for persons requesting Letters, they expressed various concerns of which the most significant are discussed below. Before addressing the comments received and the final rules the Commission is issuing hereby, the Commission wishes to emphasize that under the new rules Commission staff will continue to be receptive to informal inquiries and to engage in discussions with industry participants, counsel, members of the public, and others, by telephone, in face-to-face meetings or otherwise, regarding the application of the provisions of the Act and the Commission's rules, with the *caveat* that any advice given in the context of those discussions does not bind the Commission or its staff.[8] The Commission's goal in adopting new Rule 140.99 is to ensure that, where an issue has been framed and defined sufficiently that a request for a Letter is appropriate, proper procedures exist for submitting that request.

II. Section-By-Section Analysis

A. Definitions—Section 140.99(a)

The Proposal defined "exemptive letter," "no-action letter," and "interpretative letter" for purposes of Rule 140.99. Briefly stated, the Proposal defined: (1) an exemptive letter as involving a grant of exemptive relief by the staff of the Division of Trading and Markets or the Division of Economic

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[1] 7 U.S.C. 1 *et seq.* (1994).

[2] Commission regulations are found at 17 CFR Ch. I. *et seq.* (1998).

[3] These types of letters are proposed to be defined in Rules 140.99(a)(1), (a)(2) and (a)(3), respectively, and each is discussed in Part II, below.

[4] *Requests for Exemptive, No-Action and Interpretative Letters,* 63 FR 3285.

[5] *See* 63 FR 3287

[6] *Requests for Exemptive, No-Action and Interpretative Letters,* 63 FR 14866 (March 27, 1998).

[7] The Commission received eight comment letters in response to the Proposal: two from registered futures commission merchants; two from commodity industry associations; one from a securities industry association; two from bar associations; and one from a law firm.

[8] *See* Rule 140.99(e), which provides that no response to a request for a Letter is effective unless it is in writing, signed by appropriate Commission staff and transmitted in final form to the requester.

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Analysis (each a "Division") pursuant to authority delegated to staff by the Commission; (2) a no-action letter as denoting the determination by staff of the Division of Trading and Markets or the Division of Economic Analysis not to recommend commencement of enforcement action if a proposed activity or transaction was conducted; and (3) an interpretative letter as conveying the advice or guidance of staff of the Division of Trading and Markets, the Division of Economic Analysis or the Office of the General Counsel concerning the application of provisions of the Act or Commission rules in the context of specific activities or transactions.

In response to the comments, the Commission has modified the definitions somewhat. "Exemptive letter" is now defined to make clear that only the person on whose behalf an exemptive letter is sought may rely upon it and that an exemptive letter binds the Commission and its staff with respect to the relief provided. "No-action letter" is now defined to clarify that only the person on whose behalf a no-action letter is sought may rely upon the Letter and that a no-action letter binds only the staff of the Division (or the Office of the General Counsel)[9] that issues the Letter. Finally, interpretative letter has been redefined to clarify that an interpretative letter binds only the Division that issues it (or the Office of General Counsel, is issued thereby). The definition of interpretative letter also now expressly provides that an interpretative letter generally may be relied upon by persons in addition to the person on whose behalf the interpretative letter was sought.[10]

The Commission is not adopting the recommendation of some commenters that no-action letters be accorded precedential value such that third parties may rely upon them without requesting their own Letters. The Commission likewise is declining to expand the class of persons who may rely on an exemptive letter to include persons not exempted by name in the Letter. The Commission continues to believe that, where a situation not covered by a rule is encountered on a repeated basis, the appropriate remedy is rulemaking. Letters generally address particular, fact-specific issues either not clearly addressed by relevant rules or otherwise requiring individualized review by Commission staff. It would not be appropriate to allow uninvolved third parties to rely on staff positions taken on the basis of different sets of facts. Of course, counsel may wish to consider Letters issued by Commission staff in advising their clients about particular courses of conduct. Moreover, if an industry participant or its counsel determines to seek its own Letter from Commission staff, prior Letters on similar issues are relevant and should be cited to staff.

Some comments indicated that the commenters did not understand that Rule 140.99 does not apply to requests for exemption submitted pursuant to Section 4(c) of the Act.[11] To make clear that exemption requests under Section 4(c) must be made directly to the Commission—and must comply with the requirements set forth in Section 4(c)—paragraph (i)(B) of Rule 140.99 provides that the rule "shall not affect the requirements of, or otherwise be applicable to" requests for exemption pursuant to Section 4(c) of the Act.

B. General Requirements—Section 140.99(b)

Paragraph (b)(1) of the Proposal stated that the issuance of Letters is entirely within the staff's discretion and that the staff could deny or refuse to consider or respond to a request without explanation. While it was clearly not the intent of the Commission, commenters were concerned that this provision would allow staff to ignore requests. In response to these comments, the rule as adopted simply provides that issuance of Letters is within the Commission staff's discretion. While the Commission recognizes the importance of Letters to industry participants and their counsel, nothing in the Act or the Commission's rules requires Commission staff to issue Letters. Because the staff exercises its discretion to issue Letters within the constraints of its limited staffing and other resources, certain circumstances may arise in which as prompt a reply to a request as counsel would like becomes difficult or impossible. Moreover, in some limited instances the issuance of a Letter may not be justified from a legal or regulatory standpoint, or it may not be an appropriate resolution from a policy standpoint.

Paragraph (b)(2), which sets forth the staff's right to reject or decline to respond to a request that does not comply with Rule 140.99, was adopted as proposed. In this connection, Commission staff will not issue a Letter in response to an oral request, and a Letter will not be issued in response to a tentative or "draft" request.

As proposed and as adopted, paragraph (b)(3) states that a request must relate to a proposed transaction or activity and that, absent extraordinary circumstances, Letters will not be issued based upon past transactions or activities. This stricture is consistent with longstanding Commission staff policy. Commenters expressed concern that persons who become aware that ongoing activities raise issues under the Act or Commission rules would have no recourse under this provision. The Commission disagrees. In the absence of extraordinary circumstances, a Letter issued with regard to ongoing activities will be prospective in terms of its coverage (and will not cover past activities or transactions).[12] Thus, a Letter will not ordinarily relieve the person for whose benefit it is issued from the consequences of non-compliance that pre-dates the Letter. Nevertheless, persons (or their counsel) who become aware that their activities are not in compliance with the Act or Commission rules are urged to contact the staff as soon as possible. Although the staff generally reserves the right to refer prior violations for enforcement action in appropriate situations, the good faith demonstrated by efforts to regularize non-complying activities on a "going forward" basis will be carefully considered.

As proposed, paragraph (b)(4) states that a request must be made by the person seeking a Letter (or an authorized representative) and that Commission staff will not respond to requests made by or on behalf of unidentified persons. As adopted, the request is required to be made by or on behalf of the person on whose behalf a Letter is sought. Proposed paragraph

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[9] The Commission also has modified the definition of no-action letter to reflect that the Office of the General Counsel may issue no-action letters in certain circumstances. Similarly, the Commission has modified the definition of interpretative letter to reflect the practice of the Divisions of Trading and Markets and Economic Analysis of issuing interpretations of statutory provisions when related to regulatory matters under their review.

[10] In the Proposal, the preamble, but not the text of the rule, stated that persons other than the recipient could rely on an interpretative letter.

[11] 7 U.S.C. 6(c) (1994). *See* footnote 5 of the Proposal (63 FR 3285, n.5), in which the Commission stated that the proposed rule would govern requests submitted to and processed by Commission staff and would not apply to those circumstances under which requests must be submitted to and processed by the Commission itself (*e.g.*, requests pursuant to Section 4(c) of the Act and any other instance in which exemptive authority has not been delegated to the Staff) The Commission went on to state that paragraphs (b), (c), (f) and (h) nevertheless provide some helpful guidance for persons making requests not within the scope of Rule 140.99.

[12] One commenter pointed out that Section 4(c) of the Act expressly provides for retroactive relief and asserted that Rule 140.99(b)(3) is inconsistent with Section 4(c) in this respect. As noted earlier, the provisions of Rule 140.99 do not apply to requests for exemptions under Section 4(c). *See* also 63 FR 3285, n.5.

(b)(5)(i) would have required the request to set forth as completely as possible "the particular facts and circumstances giving rise to the request. As adopted, this paragraph now requires the request to set forth as completely as possible "all material facts and circumstances giving rise to the request." Proposed paragraph (b)(5)(ii) stated that Commission staff would not respond to a request based upon a hypothetical situation. In proposing this paragraph, the Commission did not intend to discourage requesters from presenting reasonably realistic alternatives.[13] To make this clear, the rule as adopted has been modified to permit the request to include one or more alternative structures or fact situations, provided that the request complies with Rule 140.99 with respect to each alternative structure or fact situation.

C. Information Requirements—Section 140.99(c)

Paragraph 140.99(c)(1) as proposed and as adopted sets forth the required identifying information concerning the person on whose behalf a request is made and, where applicable, concerning the authorized representative if the requester is not making the request on his or her own behalf. Paragraph (c)(2) as proposed and as adopted requires that the requester indicate in the upper right-hand corner of the request the provision(s) of the Act and/or Commission rules to which the request relates.

Proposed paragraph (c)(3)(i) would have required a person with knowledge of the facts to certify that the representations in the request are accurate and complete. Commission staff too often has found, after modest scrutiny of representations made in support of a request for a Letter, that those representations were substantially inaccurate. Moreover, during recent market volatility events, it appears that the actual facts in certain instances proved to be substantially different from those the registrant had previously represented in their filings and other communications with the Commission. The Commission hopes that the certification requirement will encourage requesters to use proper care in making factual representations relating to their requests, thus saving time and resources (of staff and of requesters) that otherwise would be expended making and responding to successive requests for additional or corrected information. Upon consideration of the comments, however, the Commission has modified the proposed text to make clear that the certification applies only to material statements *of fact* that are set forth in the request. While requesters have a responsibility accurately to analyze the legal issues surrounding their request, the certification requirement in paragraph (c)(3)(i) is limited to factual representations.[14]

Proposed paragraph (c)(3)(ii) would have required an undertaking by the person making the certification required by paragraph (c)(3)(i) that the person for whose benefit the request is made will promptly supplement the request in writing at such time as a material representation relating to the request ceases to be accurate and complete. Comments indicated uncertainty as to who would be bound by the undertaking and whether the obligation to update information material to a request would continue after issuance of a Letter. The Commission has modified paragraph (c)(3)(ii) to clarify that the undertaking must be made by the person on whose behalf the Letter is sought, or that person's authorized representative, and that it requires only that the person who made the undertaking will ensure that someone informs Commission staff of changed circumstances (without specifying who should actually submit any supplement). The Commission has modified paragraph (c)(3)(ii) to clarify that the duty to update pursuant to the undertaking required by paragraph (c)(3)(ii) applies only from the time of the submission of the request until the issuance of the Letter.

With respect to material changes of circumstances after issuance of a Letter, paragraph (c)(3)(ii) has been revised to make clear that the person on whose behalf the Letter is sought, or its authorized representative at the time, must notify Commission staff of the occurrence of such changes. The Commission notes that staff typically concludes Letters with a statement to the following effect:

> "This letter is based upon the representations made to us. Any different, changed or omitted material facts or circumstances might render this letter void. You must notify us immediately in the event that the operations or activities of [the party on whose behalf the Letter was requested] change in any material respect from those as represented to us."

The comments addressing the next three paragraphs of the proposed rules overlapped significantly. Proposed paragraph (c)(4) would have required the request to indicate the type of Letter sought, to state why a Letter is needed, to identify the relevant legal and factual issues surrounding the request and to discuss the bases for issuance of the Letter. Proposed paragraph (c)(5) would have required the request to reference all relevant statutory, decisional and administrative authorities (favorable and otherwise). Proposed paragraph (c)(6) would have required identification of prior Letters issued by Commission staff in circumstances similar to the request (and any conditions imposed in those Letters).[15] Some commenters expressed concern that a requirement of comprehensive exposition and discussion of issues, bases and authorities would result in excessive labor and expense on the part of the staff as well as the requesters. Commenters also stated that not all persons seeking Letters can afford experienced counsel or can afford to research relevant law and precedent, and they expressed concern that not all past Letters may be readily accessible.[16]

The Commission notes that it does not intend to impose a requirement, express or implied, that requests be submitted by counsel. Individuals and firms are invited to prepare and submit requests directly, or to engage counsel for that purpose, at their own option. The Commission intends that the staff will take into account the level of legal sophistication of the person submitting a request (including whether that person is represented by counsel) in determining whether the requirements of paragraphs (c)(4) through (c)(6) have been met.

Likewise, in adopting Rule 140.99 the Commission does not intend to require excessively lengthy briefing of the relevant issues. However, the request is required to contain a full statement of the material facts, a concise and clear statement of the issues and a thorough examination of any law that would be applicable to those issues, with citations to the relevant authorities. Requesters

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[13] Moreover, paragraph (c)(7), discussed below, permits requesters to ask for alternative modes of response.

[14] Legal arguments must nevertheless be supported by the facts and warranted by law.

[15] Letters are published from 1975 forward in the *Commodity Futures Law Reporter*, published by CCH Incorporated. Letters also are available from 1987 onward from the Westlaw research database of West Publishing Corporation and from 1989 onward from the Lexis database service of Mead Data Central, Inc.

[16] The Commission adopted Rule 140.98 in December 1992 (effective January 25, 1993). That rule requires that all Letters be made available for inspection and copying (subject to confidentiality safeguards). Prior to the effectiveness of Rule 140.98, in the absence of any specific requirements, the decision whether to make a Letter available for publication was subject to the discretion and policies of the various Commission staff. For example, the Division of Trading and Markets generally made available for publication only those Letters that it considered significant.

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are not required to cite more than a representative selection of authorities on any issue to the extent that those authorities are cumulative.

While paragraph (c)(4) has adopted essentially as proposed, paragraph (c)(5) as adopted makes clear that it seeks reference to "applicable provisions" of the Act, Commission rules, and other authorities, and paragraph (c)(6) as adopted requires identification of prior Letters that are "publicly available."[17]

Moreover, the requirements of paragraphs (c)(5) and (c)(6) should not be understood to require exhaustive citation and analysis where, for example, an issue raised by the request has been the subject of several substantially similar Letters. Rule 140.99(c)(6) as adopted states that citation of a representative sample of prior Letters is sufficient where a comprehensive recitation of prior Letters on a given topic would be repetitious or would not assist Commission staff in considering the request. A requester should exercise good judgment in presenting the request in the context of both the legal and regulatory requirements and the authorities that speak to the merits of the request.

D. Filing Requirements—Section 140.99(d)

Proposed paragraph (d) called for requests to be written, signed and filed with the Director of the Division of Trading and Markets for routing to appropriate Commission staff. Several commenters asked the Commission to accept electronically filed requests, with one commenter including a proposed caveat that a separate manually signed request be required in the absence of an electronic signature mechanism. Other commenters urged that the Commission agree to accept draft requests and urged the Commission to make clear that it welcomes informal discussions and meetings in advance of (or even in the absence of) the submission of a formal request.

As adopted, paragraph (d) differs from the Proposal only insofar as it permits submission of requests to the Director of the Division of Trading and Markets by electronic mail (as well as by post), provided a "hard copy" is submitted shortly after an electronic mail submission in order to permit authentication. As stated above, in adopting Rule 140.99 the Commission does not intend to discourage informal discussions, whether by telephone, by face-to-face meeting or otherwise. As further stated above, however, Commission staff will *not* issue a Letter in response to an oral request, and a Letter will *not* be issued in response to a tentative or "draft" request.

E. Form of Staff Response—Section 140.99(e)

Proposed paragraph (e) stated that the grant of any request for a Letter is not effective unless the response has been signed and transmitted in final form to the requester and that inaction on the part of Commission staff does not constitute approval of the request. The paragraph further permitted the staff to respond by endorsing the request or by another abbreviated written form of response. Several commenters encouraged the Commission to allow abbreviated responses to requests in appropriate cases, such as where the staff has no objection to the request and where no special conditions or additional precautions are warranted.

Paragraph (e) has been adopted essentially as proposed, with minor word changes.[18] To the extent that requests are adequately developed, articulated and complete, the Commission intends to encourage the use by the staff of abbreviated responses to requests where possible.[19]

F. Withdrawal of Requests—Section 140.99(f)

As proposed, paragraph (f) would have permitted withdrawal of a request prior to issuance of a Letter only under specific circumstances: (1) where a written withdrawal request is submitted with a certification that the person seeking a Letter has determined not to proceed with the contemplated transaction or activity or that intervening events have rendered the request for a Letter moot; or 92) where confidential treatment has been sought under Rule 140.98 in connection with the request for a Letter and Commission staff has notified the requester that confidential treatment will be denied. Several commenters claimed that the proposed restrictions were unnecessary and were likely to cause more harm than benefit. They argued that withdrawal should always be permitted.

Some were concerned that the proposed restrictions would severely discourage requests for Letters because a person seeking a Letter who changed his or her mind could neither withdraw the request nor proceed with the proposed transaction or activity while the request was pending. Other commenters suggested that the provision could effectively block lawful activity, either where the response to a request is delayed or where a requester and Commission staff disagree concerning a change in facts or whether an issue has become moot.

Upon consideration of the comments, the Commission has determined to modify the proposed language of paragraph (f). As adopted, paragraph (f) now permits withdrawal of a request for a Letter by filing with Commission staff a signed written request for withdrawal that states whether the person on whose behalf the Letter was requested will proceed with the transaction or activity described in the request for a Letter. This change is designed to allow withdrawal of requests for Letters in appropriate circumstances beyond those enumerated in the Proposal. Paragraph (f) as adopted also now provides for the withdrawal from representation of the authorized representative of the person on whose behalf a Letter has been sought. The only requirement in such as event is that Commission staff be notified promptly of the change in representation. The requirement in the Proposal that requests for withdrawal of a Letter be accompanied by a certification has been eliminated in the final rule.

G. Failure To Pursue a Request—Section 140.99(g)

Paragraph (g) as proposed and as adopted provides that, where a requester fails to respond within 30 days to a Commission staff request for additional information or analysis, the staff generally will issue a denial of the request for a Letter unless an extension of time has been granted. Two commenters suggested that the 30-day period should be tolled as soon as a requester timely asks for an extension of time or that the rule should provide for an automatic 30-day extension if timely requested. Because the Commission believes that it is within the discretion of the staff to grant extensions of time in appropriate circumstances, it has modified paragraph (g) to make clear that any extensions of time are within the staff's discretion.

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[17] If a letter is not generally available publicly (*i.e.*, it has not been published by a third-party service), it need not be cited *unless* the requester was the recipient of that prior Letter.

[18] The reference to "responsible staff" was changed to "appropriate staff."

[19] In response to commenters' concerns, the Commission confirms that, when a Letter is issued by abbreviated or endorsed response to the request, a redacted version of the request letter will be made available for publication together with the Commission staff response unless the requester has sought confidential treatment under Rule 140.98(b) and confidential treatment has been granted for the period specified in that rule.

H. Confidential Treatment—Section 140.99(h)

Paragraph (h) as proposed and as adopted requires that, where confidential treatment is sought for a request, a separate request for such treatment must be submitted in accordance with Rule 140.98 or Rule 145.9, as applicable.

I. Applicability to Other Sections—Section 140.99(i)

As proposed and as adopted, paragraph (i) states that Rule 140.99 does not affect the requirements of, or otherwise apply to, notice filings submitted where relief is claimed under Rules 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8). As noted above, several commenters expressed perceived inconsistencies or conflicts between the provisions of proposed Rule 140.99 and the provisions for requesting exemption under Section 4(c) of the Act. In order to dispel such confusion, paragraph (i) as adopted also expressly excludes from Rule 140.99 requests made pursuant to Section 4(c).

III. Related Matters

A. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

1. Introduction

The Regulatory Flexibility Act ("RFA")[20] requires each federal agency that proposes and adopts rules to consider the impact of those rules on small entities[21] that are subject to the agency's regulations. Pursuant to the provisions of the RFA, a federal agency is required to prepare an initial regulatory flexibility analysis to accompany any proposed rule that requires a general Notice of Proposed Rulemaking.[22] A similar regulatory flexibility analysis must accompany the promulgation of the final rule.[23] An agency is not required to prepare a regulatory flexibility analysis if the agency publishes in the **Federal Register** a certification that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[24]

In the preamble accompanying the Proposal, the Chairperson certified that Rule 140.99 would not have a significant economic impact on a substantial number of small entities.[25] In support of this certification, the Commission stated that Rule 140.99 would remove a burden on all persons by whom (or on whose behalf) Letters are sought, regardless of size, by providing greater certainty to requesters as to the procedures to follow in seeking relief and advice. In proposed Rule 140.99, the Commission also stated that the rule would provide Commission staff with the flexibility to accommodate requesters who lacked the financial resources to prepare a conforming request by accepting for consideration non-conforming requests, by providing guidance to the requester, or by other means. Because this certification was made, the Commission was not required to prepare an initial regulatory flexibility analysis.

While none of the commenters directly addressed the RFA, five of the comment letters raised issues within the scope of the RFA. Accordingly, the Commission has prepared this regulatory flexibility analysis to address these comments.

2. Analysis

(a) Small Entities That May Be Subject to the Rule. Requests for Letters may be submitted by any person, including those persons who are subject to or potentially subject to the Commission's oversight. Some of these persons may be considered to be small entities within the meaning of the RFA. In this regard, the Commission has established a definition of "small entities" to be used in evaluating the impact of its Rules on such small entities in accordance with the RFA.[26] In accordance with this definition, registered futures commission merchants, commodity pool operators ("CPOs"), leverage transaction merchants, large traders, and contract markets have been determined not to be small entities under the RFA.[27] Agricultural trade option merchants similarly have been found not to be small entities under the RFA.[28] With respect to persons registered as commodity trading advisors,[29] introducing brokers[30] and floor brokers,[31] the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some of such registrants would be considered to be small entities, and, if so, the economic impact on them of the particular rule. Floor traders[32] and CPOs exempt from registration[33] also may be considered small entities under the RFA.

In fiscal year 1997, the Office of Chief Counsel of the Division of Trading and Markets[34] received 303 inquiries from registrants, persons exempt from registration, unregistered persons and members of the general public. Written responses were issued or other dispositions were made with respect to 277 of these inquiries.[35] Many, but not all, of the responses took the form of Letters within the meaning of Rule 140.99. More than 55%, or 158, of these responses were provided to persons that are not small entities. The remaining responses were provided to persons that could, in the context of Rule 140.99, be classified as small entities as recognized by the Commission.

Rule 140.99 requires all requesters, including both small and large entities, to follow uniform procedures when requesting Letters. Based upon past experience, it is expected, though not required, that most requests will be prepared by the legal counsel of the person on whose behalf a Letter is sought.[36] In this regard, the type of skills required to submit a request for a Letter will not change under Rule 140.99. No other compliance or reporting requirements are imposed by Rule 140.99.

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[20] 5 U.S.C. 601 *et seq.* (1994).

[21] A small entity includes a "small business" as defined by an agency in consultation with the Office of Advocacy of the Small Business Administration. *Id.* at § 601(6).

[22] The initial analysis must contain a description of the proposed rule's impact on small entities and any significant alternatives to the action "which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." *Id.* at § 603.

[23] *Id.* at § 604.

[24] *Id.* at § 605(b).

[25] 63 FR 3287.

[26] *Policy Statement and Establishment of Definitions of "Small Entities" for purposes of the Regulatory Flexibility Act*, 47 FR 18618 (April 30, 1982).

[27] *Id.*

[28] *Trade Options on the Enumerated Agricultural Commodities*, 63 FR 18821 (April 16, 1998).

[29] 47 FR at 18620. *See also Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors for Delivery of Disclosure Documents and Other Materials*, 62 FR 39104, 39114 (July 22, 1997); and *Exemption for Commodity Pool Operators with Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors with Respect to Qualified Eligible Clients*, 57 FR 34853, 34860 (Aug. 7, 1992).

[30] *See e.g., Financial Reporting Requirements for Futures Commission Merchants and Introducing Brokers*, 53 FR 4606, 4610 (Feb. 17, 1988)

[31] 47 FR at 18620. *See also Adverse Registration Actions and Other Registration Matters*, 57 FR 23136, 23142 (June 2, 1992).

[32] *See e.g., Registration of Floor Traders, Mandatory Ethics Training for Registrants, Suspension of Registrants Charged with Felonies*, 58 FR 19575, 19588 (April 15, 1993).

[33] *See, e.g., Commodity Pool Operators, Exclusion for Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"; Other Regulatory Requirements*, 50 FR 15868, 15881 (April 23, 1985).

[34] Historically, this Office has received and responded to the largest number of requests for Letters of any Office or Division of the Commission.

[35] Some of the responses were issued in fiscal year 1998.

[36] As the Commission noted above, "it does not intend to impose a requirement . . . that requests be submitted by counsel."

(b) Summary of the Issues Affecting Small Entities Raised by the Comments. Commenters argued that Rule 140.99 essentially would require that requests be exhaustively researched and contain a lengthy recitation of all relevant legal and factual issues and all legal authority, including all prior Letters on a given topic. Commenters claimed that such requirements are unnecessary for routine or basic requests and would entail significant costs to persons on whose behalf Letters are sought, including small entities, which may lack the library or staffing resources to prepare a conforming request. They added that persons seeking Letters would be required to hire specialized legal counsel to prepare their requests. Some commenters further claimed that the requirements would discourage requests for Letters because relief could be denied simply because the request did not conform to the requirements of Rule 140.99.

Two commenters recommended that Rule 140.99 be modeled after comparable procedures adopted under Federal securities laws and regulations that provide that the writer should indicate why he thinks a problem exists, his own opinion in the matter and the basis for such opinion.[37] With respect to Rule 140.99's requirements that all prior Letters and all relevant legal authority be identified, some commenters recommended that the Commission clarify that requesters would be required to identify only relevant precedent or only those relevant authorities of which they are aware through the exercise of reasonable diligence.

Some of the commenters also expressed concerns about the availability of prior Letters, especially older ones, and the burden on persons seeking Letters, including small entities, arising from a requirement to locate and identify prior Letters. In this regard, the commenters pointed out that the Commission was not required to make its Letters available for public inspection and copying before 1993, the effective date of Rule 140.98.[38] They further claimed that Letters issued prior to 1987 are not available on any online database service and that it would be particularly onerous on all persons, including small entities, to conduct a manual search for such Letters. To address these concerns, one commenter recommended that the Rule be modified to permit requesters to affirm the scope of any prior research or to note in their requests the practical limitations placed on the scope of their research. Another commenter suggested that the Commission commit to publish widely its prior Letters and to publish promptly all Letters issued in the future. The same commenter also recommended that the Commission post all of its Letters on its Internet web site.

(c) Alternatives Proposed and Adopted. The Commission has considered the concerns expressed by commenters and, as stated above, has clarified that requesters are not required to provide an excessively lengthy recitation of all relevant legal authority (including prior Letters) in support of a request for a Letter. It is sufficient that requests contain a full statement of the material facts, a concise and clear statement of the issues and a thorough examination of any law that would be applicable to those issues, with citations to the relevant authorities. Similarly, and as also stated above, the Commission has clarified that requesters are not required to cite more than a representative selection of authorities on any issue, to the extent that those authorities are cumulative.

To minimize the potential compliance burden on small entities, including those entities that are not represented by counsel, the Commission is reiterating that staff may accommodate persons who lack the financial resources to prepare a conforming request by accepting for consideration the non-conforming request as submitted, by providing guidance to the requesters, or by other means.

To address commenters' concerns about the lack of public availability of relevant authorities, including prior Letters, the Commission intends that the staff take this fact into account when reviewing requests, particularly those that are submitted by small entities. The Commission also has undertaken a review of the feasibility of making the full text of Letters available at the Commission's Internet web site as one commenter has suggested.[39]

Other than these specific comments, commenters proposed no other alternatives short of abandonment of the Proposal. Given the goals sought to be achieved by Rule 140.99, including decreasing the burden on all persons seeking Letters, regardless of size, this alternative would not be feasible.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1989 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act, this **Federal Register** release informs the public of: (1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission previously submitted Rule 140.99 in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on March 30, 1998, and assigned OMB control number 3038–0049 to the rule. The burden associated with this specific final rule is as follows:

Average burden hours per response: 7.
Number of Respondents: 215.
Frequency of response: On occasion.

Persons wishing to comment on the information required by this final rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581 (202) 418-5160.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular section 8(a)(5) of the Act, as amended, 7 U.S.C. 12(a)(5), the

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[37] Securities Act Release No. 5127, 36 FR 2600 (Jan. 25, 1971), and Securities Act Release No. 6269 (Dec. 5, 1980).

[38] *See supra* note 16.

[39] The Commission's web site (http://www.cftc.gov) currently contains a summary, but not the full text, of all Letters that were issued and made publicly available pursuant to Rule 140.98 commencing December 24, 1994.

Commission hereby proposes to amend Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 7a(j) and 12a.

2. Section 140.99 is added to read as follows:

§ 140.99 Requests for exemptive, no-action and interpretative letters.

(a) *Definitions.* For the purpose of this section:

(1) *Exemptive letter* means a written grant of relief issued by the staff of a Division of the Commission from the applicability of a specific provision of the Act or of a rule, regulation or order issued thereunder by the Commission. An exemptive letter may only be issued by staff of a Division when the Commission itself has exemptive authority and that authority has been delegated by the Commission to the Division in question. An exemptive letter binds the Commission and its staff with respect to the relief provided therein. Only the Beneficiary may rely upon the exemptive letter.

(2) *No-action letter* means a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the Beneficiary. A no-action letter represents the position only of the Division that issued it, or the Office of the General Counsel if issued thereby. A no-action letter binds only the issuing Division or the Office of the General Counsel, as applicable, and not the Commission or other Commission staff. Only the Beneficiary may rely upon the no-action letter.

(3) *Interpretative letter* means written advice or guidance issued by the staff of a Division of the Commission or the Office of the General Counsel. An interpretative letter binds only the issuing Division or the Office of the General Counsel, as applicable, and does not bind the Commission or other Commission staff. An interpretative letter may be relied upon by persons in addition to the Beneficiary.

(4) *Letter* means an exemptive, no-action or interpretative letter.

(5) *Division* means the Division of Trading and Markets or the Division of Economic Analysis.

(b) *General Requirements.* (1) Issuance of a Letter is entirely within the discretion of Commission staff.

(2) Each request for a Letter must comply with the requirements of this section. Commission staff may reject or decline to respond to a request that does not comply with the requirements of this section.

(3) The request must relate to a proposed transaction or a proposed activity. Absent extraordinary circumstances, Commission staff will not issue a Letter based upon transactions or activities that have been completed or activities that have been conducted prior to the date upon which the request is filed with the Commission.

(4) The request must be made by or on behalf of the person whose activities or transactions are the subject of the request. Commission staff will not respond to a request for a Letter that is made by or on behalf of an unidentified person.

(5)(i) The request must set forth as completely as possible all material facts and circumstances giving rise to the request.

(ii) Commission staff will not respond to a request based on a hypothetical situation. However, a requester may set forth one or more alternative structures or fact situations for a proposed transaction or activity; *Provided,* That the request complies with this section with respect to each alternative structure or fact situation.

(c) *Information Requirements.* Each request for a Letter must comply with the following information requirements:

(1)(i) A request made by the person on whose behalf the Letter is sought must contain:

(A) The name, main business address, main telephone number and, if applicable, the National Futures Association registration identification number of such person; and

(B) The name and, if applicable, the National Futures Association registration identification number of each other person for whose benefit the person is seeking the Letter.

(ii) When made by a requester other than the person on whose behalf the Letter is sought, the request must contain:

(A) The name, main business address and main business telephone number of the requester;

(B) The name and, if applicable, the National Futures Association registration identification number of the person on whose behalf the Letter is sought; and

(C) The name and, if applicable, the National Futures Association registration identification number of each other person for whose benefit the requester is seeking the Letter.

(iii) The request must provide the name, address and telephone number of a contact person from whom Commission staff may obtain additional information if necessary.

(2) The section number of the particular provision of the Act and/or Commission rules, regulations or orders to which the request relates must be set forth in the upper right-hand corner of the first page of the request.

(3) The request must be accompanied by:

(i) A certification by a person with knowledge of the facts that the material facts as represented in the request are true and complete. The following form of certification is sufficient for this purpose:

I hereby certify that the mat[illegible] forth in the attached letter dated [illegible] are true and complete to the best of my knowledge.

(name and title) ____________________

and,

(ii) An undertaking made by the person on whose behalf the Letter is sought or by that person's authorized representative that, if at any time prior to issuance of a Letter, any material representation made in the request ceases to be true and complete, the person who made the undertaking will ensure that Commission staff is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a Letter, the person on whose behalf the Letter is sought (or that person's authorized representative at the time of the change) must promptly so inform Commission staff.

(4) The request must identify the type of relief requested and Letter sought and must clearly state why a Letter is needed. The request must identify all relevant legal and factual issues and discuss the legal and public policy bases supporting issuance of the Letter.

(5) The request must contain references to all relevant authorities, including applicable provisions of the Act, Commission rules, regulations and orders, judicial decisions, administrative decisions, relevant statutory interpretations and policy statements. Adverse authority must be cited and discussed.

(6) The request must identify prior publicly available Letters issued by

Commission staff in response to circumstances similar to those surrounding the request (including adverse Letters), and must identify any conditions imposed by prior Letters as prerequisites for the issuance of those Letters. Citation of a representative sample of prior Letters is sufficient where a comprehensive recitation of prior Letters on a given topic would be repetitious or would not assist the staff in considering the request.

(7) Requests may ask that, if the requested exemptive relief, no-action position or interpretative guidance is denied, the staff consider granting alternative relief or adopting an alternative position.

(d) *Filing Requirements.* Each request for a Letter must comply with the following filing requirements:

(1) The request must be in writing and signed.

(2) The request must be filed with the Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Request must be submitted electronically using the e-mail address tmletters@cftc.gov; *Provided,* That a properly signed paper copy of the request is provided to the Division of Trading and Markets within ten days for purposes of verification of the electronic transmission. The Director will route the request to the appropriate Division or the Office of the General Counsel.

(e) *Form of Staff Response.* No response to any request governed by this section is effective unless it is in writing, signed by appropriate Commission staff, and transmitted in final form to the recipient. Failure by Commission staff to respond to a request for a Letter does not constitute approval of the request. Nothing in this section shall preclude Commission staff from responding to a request for a Letter by way of endorsement or any other abbreviated, written form of response.

(f) *Withdrawal of Requests.* (1) A request for a Letter may be withdrawn by filing with Commission staff a written request for withdrawal, signed by the person on whose behalf the Letter was sought or by that person's authorized representative, that states whether the person on whose behalf the Letter was sought will proceed with the proposed transaction or activity.

(2) Where a request has been submitted by an authorized representative of the person on whose behalf a Letter is sought, the authorized representative may withdraw from representation at any time without explanation, *Provided,* That Commission staff is promptly so notified.

(g) *Failure to Pursue a Request.* In the event that Commission staff requests additional information or analysis from a requester and the requester does not provide that information or analysis within thirty calendar days, Commission staff generally will issue a denial of the request; *Provided, however,* that Commission staff in its discretion may issue an extension of time to provide the information and or analysis.

(h) *Confidential Treatment.* Confidential treatment of a request for a Letter must be requested separately in accordance with § 140.98 or § 145.9 of this chapter, as applicable.

(i) *Applicability to Other Sections.* The provisions of this section shall not affect the requirements of, or otherwise be applicable to:

(A) Notice filings required to be made to claim relief from the Act or from a Commission rule, regulation or order including, without limitations, §§ 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter; or

(B) Requests for exemption pursuant to Section 4(c) of the Act.

Issued in Washington, DC on December 2, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–32587 Filed 12–9–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Gentamicin Sulfate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for use of gentamicin sulfate injection in the neck of 1 to 3-day-old turkey poults for prevention of early mortality due to susceptible *Arizona paracolon* infections.

EFFECTIVE DATE: December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077, filed supplemental NADA 200–147 that provides for subcutaneous use of Genta-Ject® (gentamicin sulfate) injectable solution in the neck of 1 to 3-day-old turkey poults as an aid in the prevention of early mortality due to *A. paracolon* infections susceptible to gentamicin. The supplemental NADA is approved as of October 30, 1998, and the regulations are amended in 21 CFR 522.1044(b)(4) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.1044 is amended by revising paragraph (b)(4) to read as follows:

§ 522.1044 Gentamicin sulfate injection.

* * * * *

(b) * * *

(4) See No. 050604 for use of 100 milligram-per-milliliter solution in turkeys as in paragraph (d)(2) of this section and in chickens as in paragraph (d)(3) of this section.

* * * * *

Dated: December 2, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–32741 Filed 12–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522, 524, and 556

Animal Drugs, Feeds, and Related Products; Doramectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Pfizer, Inc. The supplemental NADA's provide for added use of doramectin in cattle for injectable use for additional persistent efficacy for treatment and control of certain gastrointestinal roundworms and lungworms and for topical use for treatment and control of horn flies.

EFFECTIVE DATE: December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7575.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed supplemental NADA 141–061 that provides for subcutaneous and intramuscular use of Dectomax® (doramectin) 1 percent injectable solution in cattle to control infections and to protect from reinfection with *Cooperia oncophora* for 14 days and *Oesophagostomum radiatum* for 28 days after treatment. The new persistent use is in addition to the currently approved use in cattle for treatment and control of various gastrointestinal roundworms, lungworms, eyeworms, grubs, sucking lice, and mange mites, and to control infections and to protect from reinfection with *Ostertagia ostertagi* for 21 days and *C. punctata* and *Dictyocaulus viviparus* for 28 days after treatment.

Pfizer, Inc., also filed supplemental NADA 141–095 that provides for topical use of Dectomax® (doramectin) 0.5 percent pour-on in beef and nonlactating dairy cattle to treat and control horn flies (*Haematobia irritans*) in addition to its use for treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, biting and sucking lice, and mange mites, and to control infections and to protect from reinfection with *C. oncophora* and *Dictyocaulus viviparus* for 21 days, and *O. ostertagi*, *C. punctata*, and *O. radiatum* for 28 days after treatment.

The supplemental NADA's are approved as of October 25, 1998, and the regulations are amended in 21 CFR 522.770(d)(1)(ii) and 524.770(d)(2) to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In addition, a tolerance for doramectin and its residues in cattle muscle has not been previously established. Also, the acceptable daily intake (ADI) for doramectin has not been previously codified. At this time, the regulations are amended in 21 CFR 556.225 to provide for a tolerance for doramectin residues in cattle muscle and an ADI.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these supplemental approvals for food-producing animals qualify for 3 years of marketing exclusivity beginning October 25, 1998, because the supplements contain substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplemental applications and conducted or sponsored by the applicant. Exclusivity applies only to the added indication for use of doramectin injection to control infections and to protect cattle from reinfection with *C. oncophora* for 14 days and *O. radiatum* for 28 days after treatment, and for doramectin topical for the treatment and control of horn flies (*H. irritans*).

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Parts 522 and 524

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522, 524, and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.770 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 522.770 Doramectin.

* * * * *

(d) * * *

(1) * * *

(ii) *Indications for use.* For treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, sucking lice, and mange mites. To control infections and to protect from reinfection with *Cooperia oncophora* for 14 days, *Ostertagia ostertagi* for 21 days, and *C. punctata*, *Oesophagostomum radiatum*, and *Dictyocaulus viviparus* for 28 days after treatment.

* * * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 524.770 is amended by revising paragraph (d)(2) to read as follows:

§ 524.770 Doramectin.

* * * * *

(d) * * *

(2) *Indications for use.* For treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, biting and sucking lice, horn flies, and mange mites, and to control infections and to protect from reinfection with *Cooperia oncophora* and *Dictyocaulus viviparus* for 21 days, and *Ostertagia ostertagia*, *C. punctata*, and *Oesophagostomum radiatum* for 28 days after treatment.

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PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

5. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

6. Section 556.225 is revised to read as follows:

§ 556.225 Doramectin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of doramectin is 0.75 microgram per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle.* A tolerance of 100 parts per billion is established for parent doramectin (marker residue) in liver (target tissue) and of 30 parts per billion for parent doramectin in muscle.

(2) *Swine.* A tolerance is established for parent doramectin (marker residue) in liver (target tissue) of 160 parts per billion.

Dated: December 2, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–32740 Filed 12-9-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8792]

RIN 1545–AV56

Qualified Long-Term Care Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to consumer protection with respect to qualified long-term care insurance contracts and relating to events that will result in the loss of grandfathered status for long-term care insurance contracts issued prior to January 1, 1997. Changes to the applicable law were made by the Health Insurance Portability and Accountability Act of 1996. The regulations affect issuers of long-term care insurance contracts and individuals entitled to receive payments under these contracts. The regulations are necessary to provide these taxpayers with guidance needed to comply with these changes.

DATES: *Effective date.* These regulations are effective December 10, 1998.

Applicability date. Section 1.7702B–1 (concerning consumer protection provisions) of the regulations applies with respect to contracts issued after December 10, 1999. Section 1.7702B–2 (concerning special rules for pre-1997 contracts) of the regulations is applicable January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky, (202) 622–3477 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to provide rules relating to consumer protection with respect to qualified long-term care insurance contracts and relating to events that will result in the loss of grandfathered status for long-term care insurance contracts issued prior to January 1, 1997.

A notice of proposed rulemaking (REG–109333–97) under section 7702B of the Code was published in the **Federal Register** on January 2, 1998 (63 FR 35). Written comments were received from the public, and a public hearing was held on May 13, 1998. After consideration of all the comments, the regulations proposed by REG–109333–97 are adopted as revised by this Treasury decision.

Explanation of Statutory Provisions

The Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191, 110 Stat. 1936, 2054 and 2063) (HIPAA) added section 7702B to the Internal Revenue Code of 1986 (the Code). Section 7702B establishes the tax treatment for qualified long-term care insurance contracts. Section 7702B(a)(1) and (3) of the Code provide that a qualified long-term care insurance contract is treated as an accident and health insurance contract and that any employer plan providing coverage under a qualified long-term care insurance contract is treated as an accident or health plan with respect to that coverage.

Section 7702B(a)(2) of the Code provides that amounts (other than policyholder dividends and premium refunds) received under a qualified long-term care insurance contract are generally excludable from gross income as amounts received for personal injuries and sickness.

Section 213(d)(1)(D) of the Code was amended by section 322 of HIPAA to provide that eligible long-term care insurance premiums, as defined in section 213(d)(10) of the Code, are medical care expenses.

Under section 7702B(b)(1)(F) of the Code, a qualified long-term care insurance contract must meet the consumer protection provisions of section 7702B(g) of the Code. In addition, section 4980C of the Code imposes an excise tax on issuers of qualified long-term care insurance contracts that do not provide further consumer protections.

Section 7702B of the Code applies to contracts issued after December 31, 1996. Section 321(f)(2) of HIPAA treats a contract issued before January 1, 1997, as a qualified long-term care insurance contract under section 7702B(b) of the Code, and services provided or reimbursed under such a contract as qualified long-term care services under section 7702B(c) of the Code, provided the contract met the long-term care insurance requirements of the State in which the contract was sitused at the time the contract was issued. Section 321(f)(2) of HIPAA also provides that in the case of an individual covered on December 31, 1996, by a State long-term care plan under section 7702B(f) of the Code, the terms of the plan on that date are treated as a contract meeting the long-term care insurance requirements of that State.

Section 321(f)(4) of HIPAA provides that for purposes of applying sections 101(f), 7702, and 7702A of the Code, neither the issuance of a rider that is treated as a qualified long-term care insurance contract nor the addition of any provision required to conform any other long-term care rider to the requirements applicable to a qualified long-term care insurance contract is treated as a modification or material change of the contract.

Explanation of Provisions

The final regulations provide guidance concerning

- The consumer protection requirements that apply to qualified long-term care insurance contracts under sections 7702B(g), 7702B(b)(1)(F), and 4980C of the Code; and
- The grandfather provisions of section 321(f)(2) of HIPAA under which pre-1997 contracts are treated as qualified long-term care insurance contracts if certain conditions are met.

The standards in the final regulations are based on safe harbors that were originally set forth in Notice 97–31 (1997–1 C.B. 417), and in the regulations proposed in REG–109333–97.

Notice 97–31

Notice 97–31 was issued to provide interim standards for taxpayers to use in interpreting the new long-term care provisions and to facilitate operation of the insurance market by avoiding the need to amend contracts. For example, Notice 97–31 includes interim guidance on the determination of whether an individual is a chronically ill individual, including safe harbor definitions of the terms *substantial assistance, hands-on assistance, standby assistance, severe cognitive impairment*, and *substantial supervision*. The standards contained in Notice 97–31 include interim guidance on both the consumer protection provisions and the scope of the statutory grandfather provisions that apply to long-term care insurance contracts issued before 1997.

Consumer Protection Requirements

Under sections 7702B(b)(1)(F), 7702B(g), and 4980C of the Code, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC) for long-term care insurance as of January 1993. The requirements relate to guaranteed renewability, unintentional lapse, disclosure, prohibitions against post-claims underwriting, inflation protection, and prohibitions against pre-existing conditions exclusions and probationary periods. Section 4980C imposes an excise tax on an issuer of a qualified long-term care insurance contract if, after 1996, the issuer fails to satisfy certain requirements, including requirements relating to application forms, reporting, marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, and incontestability. Most of these requirements are based on the NAIC Model Act and Regulation.

The final regulations reflect the standards that were set forth in Notice 97–31 and in the regulations proposed in REG–109333–97. For example, the consumer protection requirements will be considered satisfied if a contract complies with State law in a State that has adopted the related NAIC model or a more stringent version of the model.

Commentators generally approved of the consumer protection provisions of the proposed regulations. Some commentators suggested that the provisions should be applied on a prospective basis, such as for long-term care insurance contracts issued more than one year after publication of the final regulations. Consistent with this suggestion, the final regulations apply to contracts issued after December 10, 1999.

Commentators suggested that if any State has adopted a Model Act or Model Regulation requirement, such State's interpretation of that requirement should be considered probative but not controlling of the meaning of the analogous requirements for purposes of applying sections 7702B(g) and 4980C of the Code to a contract sitused in another State. This suggestion was not adopted. If a particular State has adopted a Model Act or Model Regulation requirement, that State's interpretation should apply to determine whether the contract meets that State's requirement. If a State has not adopted a particular requirement, the determination of what interpretation should apply for purposes of section 7702B(g) and 4980C of the Code is more appropriately made on a case-by-case basis.

Pre-1997 Long-Term Care Insurance Contracts

Section 321(f)(2) of HIPAA provides that a contract issued before January 1, 1997, is treated as a qualified long-term care insurance contract if the contract met the "long-term care insurance requirements of the State" in which the contract was sitused at the time it was issued. Under the final regulations, the date on which a long-term care insurance contract other than a group long-term care insurance contract is issued is generally the date assigned to the contract by the insurance company. In no event is the issue date earlier than the date on which the policyholder submitted a signed application for coverage to the insurance company. In addition, if the period between the date of application and the date on which the long-term care insurance contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is generally the date the contract becomes effective. For purposes of applying the grandfather rule of section 321(f)(2) of HIPAA to a group long-term care insurance contract, the issue date of the contract is the date the group contract was issued. As a result, coverage for an individual who joins a grandfathered group long-term care insurance contract on or after January 1, 1997, is accorded the same treatment under section 321(f)(2) as is accorded coverage for those who joined the group before that date.

Notice 97–31 and the proposed regulations use the term *material change* to identify those changes to pre-1997 long-term care insurance contracts that are treated as the issuance of a new contract and, therefore, result in the loss of grandfathered status under section 7702B. The use of the term *material* may have caused some confusion in light of the bright line standards that the regulations are generally intended to provide. For this reason, the final regulations do not use the term *material* in this context. No substantive change is intended by this modification.

The final regulations generally adopt the standards set forth in the proposed regulations for purposes of determining whether a change to a pre-1997 long-term care insurance contract is considered the issuance of a new contract.[1] For example, the final regulations provide that the exercise of any right provided to a policyholder or the addition of any right that is required by State law to be provided to the policyholder will not be treated as the issuance of a new contract. Thus, as illustrated in an example in the regulations, the exercise of a right set forth in a pre-1997 contract, without underwriting, does not result in the loss of grandfathered status.

The final regulations also provide that the following practices will not be treated as the issuance of a new contract for purposes of the grandfathering provision of section 321(f)(2) of HIPAA: (1) A change in the mode of premium payment, such as a change from paying premiums monthly to quarterly; (2) a classwide increase or decrease in premiums for contracts that have been issued on a guaranteed renewable basis; (3) a reduction in premiums due to the purchase of a long-term care insurance policy by a member of the policyholder's family; (4) a reduction in coverage (with correspondingly lower premiums) made at the request of a policyholder; (5) a reduction in premiums that occurs because the policyholder becomes entitled to a discount under the issuer's pre-1997 premium rate structure (such as when a policyholder becomes a member of a group entitled to a group discount, or changes from smoker to nonsmoker status); (6) the addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder; (7) the addition of a rider to increase benefits under a pre-1997 contract if the rider would constitute a qualified long-term care insurance contract if it were a separate contract; (8) the deletion of a rider or provision of a contract (called an HHS (Health and Human Services) rider) that prohibited coordination of benefits with Medicare; (9) the effectuation of a continuation or conversion of coverage right under a group contract following an individual's ineligibility for continued coverage under the group contract; and (10) the substitution of one insurer for another in an assumption reinsurance transaction. These exceptions are generally similar to those listed in the proposed regulations. In response to comments, however, the exceptions have been broadened to permit certain premium reductions and to clarify that a change in insurer pursuant to an assumption reinsurance transaction is not treated as the issuance of a new contract (assuming that the contract would not otherwise be treated as newly issued, such as by reason of a change in the amount or timing of benefits or premiums).

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[1] These standards are different from those that apply for purposes of determining the grandfathered status of other types of insurance contracts under the Code (including sections 7702, 7702A, 101(f), and 264). Those other provisions limit the tax benefits associated with the purchase of insurance products that, unlike pre-1997 long-term care insurance contracts, have a substantial investment orientation.

Some commentators suggested that the regulations include a parenthetical to the effect that some changes in the amount or timing of items (such as de minimis changes in premiums) are not treated as the issuance of a new contract, even if no specific exception applies under the regulation. An important purpose of these regulations is to provide certainty as to the qualification of pre-1997 long-term care insurance contracts, and the exceptions enumerated in the proposed regulations provide broad relief from treatment as the issuance of a new contract resulting in the loss of grandfathered status. Accordingly, the final regulations do not contain this additional parenthetical.

Some commentators identified additional circumstances under which expansion of coverage under a group long-term care insurance contract should not be treated as the issuance of a new contract. For example, some requested that the addition of a spouse, dependent children, or others should not be treated as the issuance of a new contract. Other commentators suggested that no loss of grandfathering should result from the expansion of coverage under a group contract by reason of a corporate merger or acquisition, or the extension of coverage to collectively bargained employees, or the addition of former employees. The final regulations clarify that such expansion is not treated as the issuance of a new contract, provided that the addition is without underwriting and is pursuant to the terms of the contract and the plan under which the contract was issued as in effect on December 31, 1996. Thus, the addition of a business's assets and related employees by a company with a pre-1997 group contract is not treated as the issuance of a new contract if, as of December 31, 1996, the contract and the plan under which it was issued provided that new employees automatically are eligible to participate in the group contract. If, however, a new subsidiary is acquired by the company and the company's pre-1997 group contract or plan requires that a subsidiary be designated by the company in order for its employees to be eligible to participate, then the designation of the new subsidiary would be a change in the terms of the contract or in the plan relating to eligibility. Although the final regulations were not modified to accommodate further expansion, a new qualified long-term care insurance contract could be entered into to expand coverage under these circumstances. Alternatively, the final regulations permit coverage under the pre-1997 contract to be expanded by a rider to the pre-1997 contract if the rider would constitute a qualified long-term care insurance contract if it were issued as a separate contract.[2]

Finally, it was suggested that the grandfather provisions of the final regulations should be effective immediately. The final regulations with respect to contracts issued before 1997 are effective January 1, 1999.

Standards Before the Effective Date of the Final Regulations

The consumer protection provisions in the final regulations apply with respect to contracts issued after December 10, 1999. Taxpayers may continue to rely on Notice 97–31 with respect to contracts issued on or before that date. In addition, a contract issued on or before December 10, 1999 will not be treated as failing to satisfy the consumer protection requirements of section 7702B(g) or 4980C of the Code if the contract satisfies the requirements of the final regulations. Taxpayers may not rely on Notice 97–31 with respect to contracts issued after December 10, 1999.

The final regulations are effective January 1, 1999, with respect to pre-1997 long-term care insurance contracts. Taxpayers may continue to rely on Notice 97–31 for the purpose of determining whether a change made before January 1, 1999, to a pre-1997 contract is treated as the issuance of a new contract. In addition, a change made before that date to a pre-1997 contract will not be treated as the issuance of a new contract if the change is not treated as the issuance of a new contract under the final regulations. Taxpayers may not rely on Notice 97–31 with respect to changes made on or after January 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Katherine A. Hossofsky, Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.7702B–1 and 1.7702B–2 are added to read as follows:

§ 1.7702B–1 Consumer protection provisions.

(a) *In general.* Under sections 7702B(b)(1)(F), 7702B(g), and 4980C, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC), as adopted as of January 1993. The requirements for qualified long-term care insurance contracts under section 7702B(b)(1)(F) and (g) relate to guaranteed renewal or noncancellability, prohibitions on limitations and exclusions, extension of benefits, continuation or conversion of coverage, discontinuance and replacement of policies, unintentional lapse, disclosure, prohibitions against post-claims underwriting, minimum standards, inflation protection, prohibitions against pre-existing conditions exclusions and probationary periods, and prior hospitalization. The requirements for qualified long-term care insurance contracts under section 4980C relate to application forms and replacement coverage, reporting requirements, filing requirements for marketing, standards for marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, certificates under group plans, policy summary, monthly reports on accelerated death benefits, and incontestability period.

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[2] As was indicated in the preamble to the proposed regulations, certain of the consumer protection requirements would not apply to such a rider. Specifically, sections 7702B(g)(2)(A)(i)(III), 7702B(g)(2)(A)(i)(V), 7702B(g)(2)(A)(i)(VII) (other than section 9B of the NAIC Model regulation), 7702B(g)(2)(A)(i)(X), 7702B(g)(3), 7702B(g)(4), 4980C(c)(1)(A)(I), and 4980C(c)(2) of the Internal Revenue Code would apply only the first time a contract is purchased, and would not apply to the purchase of a rider.

(b) *Coordination with State requirements*—(1) *Contracts issued in a State that imposes more stringent requirements.* If a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then, under section 4980C(f), compliance with the more stringent requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C. The principles of paragraph (b)(3) of this section apply to any case in which a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C (as described in this paragraph (b)(1)), but in which there has been a failure to comply with that State requirement.

(2) *Contracts issued in a State that has adopted the model provisions.* If a State imposes a requirement that is the same as the parallel requirement imposed by section 7702B(g) or 4980C, compliance with that requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C, and failure to comply with that requirement of State law is considered failure to comply with the parallel requirement of section 7702B(g) or 4980C.

(3) *Contracts issued in a State that has not adopted the model provisions or more stringent requirements.* If a State has not adopted the Model Act, the Model Regulation, or a requirement that is the same as or more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then the language, caption, format, and content requirements imposed by sections 7702B(g) and 4980C with respect to contracts, applications, outlines of coverage, policy summaries, and notices will be considered satisfied for a contract subject to the law of that State if the language, caption, format, and content are substantially similar to those required under the parallel provision of the Model Act or Model Regulation. Only nonsubstantive deviations are permitted in order for language, caption, format, and content to be considered substantially similar to the requirements of the Model Act or Model Regulation.

(c) *Effective date.* This section applies with respect to contracts issued after December 10, 1999.

§ 1.7702B–2 Special rules for pre-1997 long-term care insurance contracts.

(a) *Scope.* The definitions and special provisions of this section apply solely for purposes of determining whether an insurance contract (other than a qualified long-term care insurance contract described in section 7702B(b) and any regulations issued thereunder) is treated as a qualified long-term care insurance contract for purposes of the Internal Revenue Code under section 321(f)(2) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

(b) *Pre-1997 long-term care insurance contracts*—(1) *In general.* A pre-1997 long-term care insurance contract is treated as a qualified long-term care insurance contract, regardless of whether the contract satisfies section 7702B(b) and any regulations issued thereunder.

(2) *Pre-1997 long-term care insurance contract defined.* A pre-1997 long-term care insurance contract is any insurance contract with an issue date before January 1, 1997, that met the long-term care insurance requirements of the State in which the contract was sitused on the issue date. For this purpose, the long-term care insurance requirements of the State are the State laws (including statutory and administrative law) that are intended to regulate insurance coverage that constitutes "long-term care insurance" (as defined in section 4 of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act, as in effect on August 21, 1996), regardless of the terminology used by the State in describing the insurance coverage.

(3) *Issue date of a contract*—(i) *In general.* Except as otherwise provided in this paragraph (b)(3), the issue date of a contract is the issue date assigned to the contract by the insurance company. In no event is the issue date earlier than the date the policyholder submitted a signed application for coverage to the insurance company. If the period between the date the signed application is submitted to the insurance company and the date coverage under which the contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is the later of the date coverage under which the contract becomes effective or the issue date assigned to the contract by the insurance company. A policyl [illegible] right to return a contract withi [illegible] look period following delivery for refund of any premiums paid is not taken into account in determining the contract's issue date.

(ii) *Special rule for group contracts.* The issue date of a group contract (including any certificate issued thereunder) is the date on which coverage under the group [illegible] becomes effective.

(iii) *Exchange of contract or certain changes in a contract treated as a new issuance.* For purposes of this paragraph (b)(3)—

(A) A contract issued in exchange for an existing contract after December 31, 1996, is considered a contract issued after that date;

(B) Any change described in paragraph (b)(4) of this section is treated as the issuance of a new contract with an issue date no earlier than the date the change goes into effect; and

(C) If a change described in paragraph (b)(4) of this section occurs with regard to one or more, but fewer than all, of the certificates evidencing coverage under a group contract, then the insurance coverage under the changed certificates is treated as coverage under a newly issued group contract (and the insurance coverage provided by any unchanged certificate continues to be treated as coverage under the original group contract).

(4) *Changes treated as the issuance of a new contract*—(i) *In general.* For purposes of paragraph (b)(3) of this section, except as provided in paragraph (b)(4)(ii) of this section, the following changes are treated as the issuance of a new contract—

(A) A change in the terms of a contract that alters the amount or timing of an item payable by either the policyholder (or certificate holder), the insured, or the insurance company;

(B) A substitution of the insured under an individual contract; or

(C) A change (other than an immaterial change) in the contractual terms, or in the plan under which the contract was issued, relating to eligibility for membership in the group covered under a group contract.

(ii) *Exceptions.* For purposes of this paragraph (b)(4), the following changes are not treated as the issuance of a new contract—

(A) A policyholder's exercise of any right provided under the terms of the contract as in effect on December 31, 1996, or a right required by applicable State law to be provided to the policyholder;

(B) A change in the mode of premium payment (for example, a change from monthly to quarterly premiums);

(C) In the case of a policy that is guaranteed renewable or noncancellable, a classwide increase or decrease in premiums;

(D) A reduction in premiums due to the purchase of a long-term care insurance contract by a family member of the policyholder;

(E) A reduction in coverage (with a corresponding reduction in premiums) made at the request of a policyholder;

(F) A reduction in premiums as a result of extending to an individual policyholder a discount applicable to similar categories of individuals pursuant to a premium rate structure that was in effect on December 31, 1996, for the issuer's pre-1997 long-term care insurance contracts of the same type;

(G) The addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder;

(H) The addition of a rider (including any similarly identifiable amendment) to a pre-1997 long-term care insurance contract in any case in which the rider, if issued as a separate contract of insurance, would itself be a qualified long-term care insurance contract under section 7702B and any regulations issued thereunder (including the consumer protection provisions in section 7702B(g) to the extent applicable to the addition of a rider);

(I) The deletion of a rider or provision of a contract that prohibited coordination of benefits with Medicare (often referred to as an HHS (Health and Human Services) rider);

(J) The effectuation of a continuation or conversion of coverage right that is provided under a pre-1997 group contract and that, in accordance with the terms of the contract as in effect on December 31, 1996, provides for coverage under an individual contract following an individual's ineligibility for continued coverage under the group contract; and

(K) The substitution of one insurer for another insurer in an assumption reinsurance transaction.

(5) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. (i) On December 3, 1996, A, an individual, submits a signed application to an insurance company to purchase a nursing home contract that meets the long-term care insurance requirements of the State in which the contract is sitused. The insurance company decides on December 20, 1996, that it will issue the contract, and assigns December 20, 1996, as the issue date for the contract. Under the terms of the contract, A's insurance coverage becomes effective on January 1, 1997. The company delivers the contract to A on January 3, 1997. A has the right to return the contract within 15 days following delivery for a refund of all premiums paid.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is December 20, 1996. Thus, the contract is a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

Example 2. (i) The facts are the same as in *Example 1*, except that the insurance coverage under the contract does not become effective until March 1, 1997. Under the insurance company's usual business practice, the period between the date of the application and the date the contract becomes effective is 30 days or less.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is March 1, 1997. Thus, the contract is not a pre-1997 long-term care insurance contract, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder to be a qualified long-term care insurance contract.

Example 3. (i) B, an individual, is the policyholder under a long-term care insurance contract purchased in 1995. On June 15, 2000, the insurance coverage and premiums under the contract are increased by agreement between B and the insurance company.

(ii) Under paragraph (b)(4)(i)(A) of this section, a change in the terms of a contract that alters the amount or timing of an item payable by the policyholder or the insurance company is treated as the issuance of a new contract. Thus, B's coverage is treated as coverage under a contract issued on June 15, 2000, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder in order to be a qualified long-term care insurance contract.

Example 4. (i) C, an individual, is the policyholder under a long-term care insurance contract purchased in 1994. At that time and through December 31, 1996, the contract met the long-term care insurance requirements of the State in which the contract was sitused. In 1996, the policy was amended to add a provision requiring the policyholder to be offered the right to increase dollar limits for inflation every three years (without the policyholder being required to pass a physical or satisfy any other underwriting requirements). During 2002, C elects to increase the amount of insurance coverage (with a resulting premium increase) pursuant to the inflation provision.

(ii) Under paragraph (b)(4)(ii)(A) of this section, an increase in the amount of insurance coverage at the election of the policyholder (without the insurance company's consent and without underwriting or other limitations on the policyholder's rights) pursuant to a pre-1997 inflation provision is not treated as the issuance of a new contract. Thus, C's contract continues to be a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

(c) *Effective date.* This section is applicable January 1, 1999.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: November 24, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–32759 Filed 12–9–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, and 602

[TD 8791]

RIN 1545–AU25

Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests in Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to charitable remainder trusts and to special valuation rules for transfers of interests in trusts. The final regulations provide additional guidance regarding charitable remainder trusts. The final regulations affect charitable remainder trusts and their beneficiaries.

DATES: *Effective date:* These regulations are effective December 10, 1998.

Applicability dates: For dates of applicability of these regulations, see the explanations under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Mary Beth Collins or Jeff Erickson, (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1536. Responses to this collection of information are required to allow taxpayers alternative means of valuing a charitable remainder trust's unmarketable assets.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from .25 to .75 hours, depending on individual circumstances, with an estimated average of .5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On April 18, 1997, the IRS published in the **Federal Register** (62 FR 19072) a notice of proposed rulemaking (REG–209823–96) regarding sections 664 and 2702. Comments responding to the proposed regulations were received, and a public hearing was held on November 18, 1997. After considering the comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

This document amends 26 CFR parts 1 and 25 to provide additional rules under sections 664 and 2702. Section 664 contains the rules for charitable remainder trusts (CRTs). In general, a CRT provides for a specified periodic distribution to one or more beneficiaries (at least one of whom is a noncharitable beneficiary) for life or for a term of years with an irrevocable remainder interest held for the benefit of charity.

There are two types of CRTs: a charitable remainder annuity trust (CRAT) and a charitable remainder unitrust (CRUT). A CRAT pays a sum certain at least annually to the beneficiaries (the annuity amount). A CRUT pays a unitrust amount at least annually to the beneficiaries. Generally, the unitrust amount is a fixed percentage of the net fair market value of the CRUT's assets valued annually (fixed percentage CRUT). The unitrust amount can instead be calculated under one of two income exception methods (income exception CRUT). Under the first method, the unitrust amount is the lesser of the fixed percentage amount or the trust's annual net income (net income method). Under the second method, the unitrust amount is determined under the net income method plus any amount of income that exceeds the current year's fixed percentage amount to make up for any shortfall in payments from prior years when the trust income was less than the fixed percentage amount (NIMCRUT method). The shortfall in payments from prior years is commonly referred to as the "make-up amount."

The revisions to the proposed regulations are discussed below.

I. Flip Unitrusts

A. Triggering Events

The proposed regulations provide specific rules for when a trust may convert from one of the income exception methods of computing the unitrust amount to the fixed percentage method (flip unitrust). The proposed rule was designed for taxpayers who ultimately wanted the unitrust amount to be computed on the fixed percentage method but funded the trust with unmarketable assets that generate little annual income. A number of commentators agreed with the policy underlying the proposed rule. Some commentators requested that we permit flip unitrusts for all income exception CRUTs regardless of the marketability of the trust assets. Other commentators suggested that the final regulations clarify whether the proposed rule was a safe harbor or the exclusive circumstance for which a flip unitrust would be permitted.

In response, the final regulations expand the availability of the flip unitrust to certain other situations that the IRS and Treasury believe are consistent with the legislative history indicating that a trustee should not have discretion to change the method used to calculate the unitrust amount. H.R. Conf. Rep. No. 782, 91st Cong., 1st Sess. 296 (1969), 1969–3 C.B. 644, 655.

The final regulations allow the governing instrument of a CRUT to provide that the CRUT will convert once from one of the income exception methods to the fixed percentage method for calculating the unitrust amount if the date or event triggering the conversion is outside the control of the trustees or any other persons. The final regulations include examples of permissible and impermissible triggering events. For example, permissible triggering events with respect to any individual include marriage, divorce, death, or birth of a child. Also, the sale of an unmarketable asset such as real estate is a permissible triggering event. Examples of impermissible triggering events include the sale of marketable assets and a request from the unitrust recipient or the unitrust recipient's financial advisor that the trust convert to the fixed percentage method.

The final regulations also provide that the conversion to the fixed percentage method occurs at the beginning of the taxable year that immediately follows the taxable year in which the triggering date or event occurs. Any make-up amount described in section 664(d)(3)(B) is forfeited when the trust converts to the fixed percentage method.

The proposed regulations define unmarketable assets as assets other than cash, cash equivalents, or marketable securities (within the meaning of section 731(c)). Commentators asked for clarification of the term *unmarketable assets* and recommended changing the scope of this class of assets. In response, the final regulations define unmarketable assets as assets other than cash, cash equivalents, or assets that can be readily sold or exchanged for cash or cash equivalents. For example, unmarketable assets include real property, closely-held stock, and unregistered securities for which there is no available exemption permitting public sale.

Commentators requested that the final regulations permit conversions from the fixed percentage method to one of the income exception methods and conversions from a CRAT to a CRUT. The flip unitrust allowed in the final regulations is the only type of permissible conversion. Thus, a CRAT cannot convert to a CRUT without losing its status as a CRT. Similarly, a CRUT using the fixed percentage method cannot convert to an income exception method without losing its status as a CRT.

B. Effective Date and Transitional Rules

The rules for flip unitrusts are effective for CRUTs created on or after December 10, 1998. The proposed regulations allowed reformations in limited circumstances. In response to comments, the final regulations expand the circumstances in which reformation is available. The final regulations allow income exception CRUTs to be reformed to add provisions allowing a conversion to the fixed percentage method provided the triggering event does not occur in a year prior to the year in which the court issues the order reforming the trust. Adding the conversion provisions will not cause the CRUT to fail to function exclusively as a CRT and will not be an act of self-dealing under section 4941 if the trustee initiates legal proceedings to reform the trust by June 8, 1999.

II. Time for Paying the Annuity Amount or the Unitrust Amount

The proposed regulations provide that the payment of the annuity amount or the unitrust amount determined under the fixed percentage method must be made by the close of the taxable year in which it is due. The rules were proposed in response to abuses associated with the use of accelerated CRTs described in Notice 94–78 (1994–2 C.B. 555). After receiving a significant number of comments on the proposed rules, the IRS issued Notice 97–68 (1997–48 I.R.B. 11), which provided guidance on complying with the proposed rules for the 1997 taxable year.

One commentator recommended applying the proposed rules only to trusts created after the date the final regulations are published. Another commentator suggested adopting the rules in Notice 97–68 for all trusts created after a certain date. Although recent legislative changes have reduced the potential tax benefits of accelerated CRTs, the IRS and Treasury continue to be concerned about the potential abuse of the post-year-end grace period to produce a tax-free return of appreciation in the assets contributed to a CRAT or a fixed percentage CRUT. Therefore, the final regulations adopt rules similar to those in Notice 97–68 with certain modifications. The rules are effective for taxable years ending after April 18, 1997.

For CRATs and fixed percentage CRUTs, the annuity or unitrust amount may be paid within a reasonable time after the close of the year for which it is due if (a) the character of the annuity or unitrust amount in the recipient's hands is income under section 664(b)(1), (2), or (3); and/or (b) the trust distributes property (other than cash) that it owned as of the close of the taxable year to pay the annuity or unitrust amount and the trustee elects on Form 5227, "Split-Interest Trust Information Return," to treat any income generated by the distribution as occurring on the last day of the taxable year for which the amount is due. In addition, for CRATs and fixed percentage CRUTs that were created before December 10, 1998, the annuity or unitrust amount may be paid within a reasonable time after the close of the taxable year for which it is due if the percentage used to calculate the annuity or unitrust amount is 15 percent or less.

III. Appraising Unmarketable Assets

Under section 664(d)(2)(A), a CRUT must value its assets annually. The proposed regulations provide that, if a CRT holds unmarketable assets and the only trustee is the grantor, a noncharitable beneficiary, or a related or subordinate party to the grantor or the noncharitable beneficiary within the meaning of section 672(c) and the applicable regulations, the trustee must value those assets using a *current qualified appraisal*, as defined in § 1.170A–13(c)(3), from a *qualified appraiser*, as defined in § 1.170A–13(c)(5).

The final regulations follow the proposed regulations and provide that the trust's unmarketable assets must be valued by an independent trustee, or by a qualified appraisal from a qualified appraiser. The proposed regulations define an independent trustee as a person who is not the grantor, a noncharitable beneficiary or a related or subordinate party to the grantor, or the noncharitable beneficiary within the meaning of section 672(c) and the applicable regulations. The final regulations add the grantor's spouse to the list of persons to whom an independent trustee cannot be related or subordinate. A co-trustee who is an independent trustee may value the trust's unmarketable assets.

Finally, in response to comments, the final regulations define unmarketable assets as assets other than cash, cash equivalents, or assets that can be readily sold or exchanged for cash or cash equivalents. For example, unmarketable assets include real property, closely-held stock, and unregistered securities for which there is no available exemption permitting public sale.

The rules for valuing unmarketable assets are effective for trusts created on or after December 10, 1998.

IV. Application of Section 2702 to Certain CRUTs

Under the proposed regulations, unitrust interests in an income exception CRUT that are retained by the donor or any applicable family member will be valued at zero when a noncharitable beneficiary of the trust is someone other than (1) the donor, (2) the donor's U.S. citizen spouse, or (3) both the donor and the donor's U.S. citizen spouse. Commentators stated that income exception CRUTs without a make-up provision should be exempt from section 2702. The IRS and Treasury believe that, in addition to the NIMCRUT method, the net income method can be used to circumvent the intent of section 2702. Therefore, the final regulations do not exempt from section 2702 CRUTs that use only the net income method.

Commentators also stated that the proposed rule encompassed other transfers that section 2702 was not intended to include. A commentator noted that the proposed rule would value a transferor's interest at zero even though the transferor merely retained a secondary life estate. The final regulations clarify that section 2702 will not apply when there are only two consecutive noncharitable beneficial interests and the transferor holds the second of the two interests.

Commentators also asked whether section 2702 may apply to flip unitrusts. The potential abuse associated with income exception CRUTs also exists with flip unitrusts. Therefore, under the final regulations, section 2702 applies to a flip unitrust if the CRUT does not fall within one of the exemptions.

V. Prohibition on Allocating Precontribution Gain to Trust Income and Make-up Amount as a Liability

The proposed regulations clarify that the proceeds from the sale of an income exception CRUT's assets, at least to the extent of the fair market value of the assets when contributed to the trust, must be allocated to trust principal. Some commentators stated that the rule is inconsistent with the rule concerning income under section 643(b). Other commentators questioned whether the make-up amount under the NIMCRUT method should be treated as a liability when valuing the trust's assets.

The final regulations maintain the prohibition on allocating precontribution gain to trust income for an income exception CRUT. However, the governing instrument, if permitted under applicable local law, may allow the allocation of post-contribution capital gains to trust income. Taxpayers do not have to treat the make-up amount as a liability when valuing the assets of a NIMCRUT.

VI. Example Illustrating Rule for Characterizing Distributions From CRUTs

The proposed regulations contain an example of how the ordering rule under section 664(b) operates when the unitrust amount is computed under an income exception method. No comments were received on this example. Thus, the final regulations adopt the example without any changes.

Effect on Other Documents

Notice 97–68 (1997–48 I.R.B. 11) is obsolete as of December 10, 1998.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal authors of these regulations are Mary Beth Collins and Jeff Erickson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, CFR parts 1, 25, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.664–1, paragraphs (a)(7) and (d)(1)(iii) are added and paragraph (f)(4) is added following the concluding text of paragraph (f)(3) to read as follows:

§ 1.664–1 Charitable remainder trusts.

(a) * * *

(7) *Valuation of unmarketable assets*—(i) *In general.* If unmarketable assets are transferred to or held by a trust, the trust will not be a trust with respect to which a deduction is available under section 170, 2055, 2106, or 2522, or will be treated as failing to function exclusively as a charitable remainder trust unless, whenever the trust is required to value such assets, the valuation is—

(*a*) Performed exclusively by an independent trustee; or

(*b*) Determined by a *current qualified appraisal,* as defined in § 1.170A–13(c)(3), from a *qualified appraiser,* as defined in § 1.170A–13(c)(5).

(ii) *Unmarketable assets.* Unmarketable assets are assets that are not cash, cash equivalents, or other assets that can be readily sold or exchanged for cash or cash equivalents. For example, unmarketable assets include real property, closely-held stock, and an unregistered security for which there is no available exemption permitting public sale.

(iii) *Independent trustee.* An independent trustee is a person who is not the grantor of the trust, a noncharitable beneficiary, or a related or subordinate party to the grantor, the grantor's spouse, or a noncharitable beneficiary (within the meaning of section 672(c) and the applicable regulations).

* * * * *

(d) * * * (1) * * *

(iii) *Example.* The following example illustrates the application of this paragraph (d)(1):

Example. (i) *X* is a charitable remainder unitrust described in section 664(d)(2) and (3). The annual unitrust amount is the lesser of the amount of trust income, as defined in § 1.664–3(a)(1)(i)(*b*), or six percent of the net fair market value of the trust assets valued annually. The net fair market value of the trust assets on the valuation date in 1996 is $150,000. During 1996, *X* has $7,500 of income after allocating all expenses. All of *X*'s income for 1996 is tax-exempt income. At the end of 1996, *X*'s ordinary income for the current taxable year and undistributed ordinary income for prior years are both zero; *X*'s capital gain for the current taxable year is zero and undistributed capital gain for prior years is $30,000; and *X*'s tax-exempt income for the current year is $7,500 and undistributed tax-exempt income for prior years is $2,500.

(ii) Because the trust income of $7,500 is less than the fixed percentage amount of $9,000, the unitrust amount for 1996 is $7,500. The character of that amount in the hands of the recipient of the unitrust amount is determined under section 664(b). Because the unitrust amount is less than *X*'s undistributed capital gain income, the recipient of the unitrust amount treats the distribution of $7,500 as capital gain. At the beginning of 1997, *X*'s undistributed capital gain for prior years is reduced to $22,500, and *X*'s undistributed tax-exempt income is increased to $10,000.

* * * * *

(f) * * *

(4) *Valuation of unmarketable assets.* The rules contained in paragraph (a)(7) of this section are applicable for trusts created on or after December 10, 1998. A trust in existence as of December 10, 1998 whose governing instrument requires that an independent trustee value the trust's unmarketable assets may be amended or reformed to permit a valuation method that satisfies the requirements of paragraph (a)(7) of this section for taxable years beginning on or after December 10, 1998.

* * * * *

Par. 3. In § 1.664–2, paragraph (a)(1)(i) is revised to read as follows:

§ 1.664–2 Charitable remainder annuity trust.

(a) * * *

(1) * * * (i) *Payment of sum certain at least annually.* The governing instrument provides that the trust will pay a sum certain not less often than annually to a person or persons described in paragraph (a)(3) of this section for each taxable year of the period specified in paragraph (a)(5) of this section.

(*a*) *General rule applicable to all trusts.* A trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because the annuity amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the entire annuity amount in the hands of the recipient is characterized only as income from the categories described in section 664(b)(1), (2), or (3), except to the extent it is characterized as corpus described in section 664(b)(4) because—

(*1*) The trust distributes property (other than cash) that it owned at the close of the taxable year to pay the annuity amount; and

(*2*) The trustee elects to treat any income generated by the distribution as occurring on the last day of the taxable year in which the annuity amount is due.

(*b*) *Special rule for trusts created before* December 10, 1998. In addition to the circumstances described in paragraph (a)(1)(i)(*a*) of this section, a trust created before December 10, 1998 will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because the annuity amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the sum certain to be paid each year as the annuity amount is 15 percent or less of the initial net fair market value of the property irrevocably passing in trust as determined for federal tax purposes.

(*c*) *Reasonable time.* For this paragraph (a)(1)(i), a reasonable time will not ordinarily extend beyond the date by which the trustee is required to file Form 5227, "Split-Interest Trust Information Return," (including extensions) for the taxable year.

(*d*) *Example.* The following example illustrates the rules in paragraph (a)(1)(i)(*a*) of this section:

Example. X is a charitable remainder annuity trust described in section 664(d)(1) that was created after December 10, 1998. The prorated annuity amount payable from *X* for Year 1 is $100. The trustee does not pay the annuity amount to the recipient by the close of Year 1. At the end of Year 1, *X* has only $95 in the ordinary income category under section 664(b)(1) and no income in the capital gain or tax-exempt income categories under section 664(b)(2) or (3), respectively. By April 15 of Year 2, in addition to $95 in cash, the trustee distributes to the recipient of the annuity a capital asset with a $5 fair market value and a $2 adjusted basis to pay the $100 annuity amount due for Year 1. The trust owned the asset at the end of Year 1. Under § 1.664–1(d)(5), the distribution is treated as a sale by *X*, resulting in *X* recognizing a $3 capital gain. The trustee elects to treat the capital gain as occurring on the last day of Year 1. Under § 1.664–1(d)(1), the character of the annuity amount for Year 1 in the recipient's hands is $95 of ordinary income, $3 of capital gain income, and $2 of trust corpus. For Year 1, *X* satisfied paragraph (a)(1)(i)(*a*) of this section.

(*e*) *Effective date.* This paragraph (a)(1)(i) is applicable for taxable years ending after April 18, 1997.

* * * * *

Par. 4. Section 1.664–3 is amended as follows:

1. Paragraphs (a)(1)(i)(*a*), (a)(1)(i)(*b*)(*1*), and (a)(1)(i)(*b*)(*2*) are revised.

2. Paragraphs (a)(1)(i)(*b*)(*3*), (a)(1)(i)(*b*)(*4*), (a)(1)(i)(*b*)(*5*), and (a)(1)(i)(*c*) through (a)(1)(i)(*l*) are added.

3. The third sentence of paragraph (a)(1)(iv) is revised.

The added and revised provisions read as follows:

§ 1.664–3 Charitable remainder unitrust.

(a) * * *

(1) * * * (i) * * * (*a*) *General rule.* The governing instrument provides that the trust will pay not less often than annually a fixed percentage of the net fair market value of the trust assets determined annually to a person or persons described in paragraph (a)(3) of this section for each taxable year of the period specified in paragraph (a)(5) of this section. This paragraph (a)(1)(i)(*a*) is applicable for taxable years ending after April 18, 1997.

(*b*) * * *

(*1*) The amount of trust income for a taxable year to the extent that such amount is not more than the amount required to be distributed under paragraph (a)(1)(i)(*a*) of this section.

(*2*) An amount of trust income for a taxable year that is in excess of the amount required to be distributed under paragraph (a)(1)(i)(*a*) of this section for such year to the extent that (by reason of paragraph (a)(1)(i)(*b*)(*1*) of this section) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

(*3*) For this paragraph (a)(1)(i)(*b*), trust income means income as defined under section 643(b) and the applicable regulations.

(*4*) For this paragraph (a)(1)(i)(*b*), proceeds from the sale or exchange of any assets contributed to the trust by the donor must be allocated to principal and not to trust income at least to the extent of the fair market value of those assets on the date of contribution.

(*5*) The rules in paragraphs (a)(1)(i)(*b*)(*1*), (*2*), and (*3*) of this section are applicable for taxable years ending after April 18, 1997, and the rule in paragraph (a)(1)(i)(*b*)(*4*) is applicable for sales or exchanges that occur after April 18, 1997.

(*c*) *Combination of methods.* Instead of the amount described in paragraph (a)(1)(i)(*a*) or (*b*) of this section, the governing instrument may provide that the trust will pay not less often than annually the amount described in paragraph (a)(1)(i)(*b*) of this section for an initial period and then pay the amount described in paragraph (a)(1)(i)(*a*) of this section (calculated using the same fixed percentage) for the remaining years of the trust only if the governing instrument provides that—

(*1*) The change from the method prescribed in paragraph (a)(1)(i)(*b*) to the method prescribed in paragraph (a)(1)(i)(*a*) is triggered on a specific date or by a single event whose occurrence is not discretionary with, or within the control of, the trustees or any other persons;

(*2*) The change from the method prescribed in paragraph (a)(1)(i)(*b*) of this section to the method prescribed in paragraph (a)(1)(i)(*a*) of this section occurs at the beginning of the taxable year that immediately follows the taxable year during which the date or event specified under paragraph (a)(1)(i)(*c*)(*1*) of this section occurs; and

(*3*) Following the trust's conversion to the method described in paragraph (a)(1)(i)(*a*) of this section, the trust will pay at least annually to the permissible recipients the amount described only in paragraph (a)(1)(i)(*a*) of this section and not any amount described in paragraph (a)(1)(i)(*b*) of this section.

(*d*) *Triggering event.* For purposes of paragraph (a)(1)(i)(*c*)(*1*) of this section, a triggering event based on the sale of unmarketable assets as defined in § 1.664–1(a)(7)(ii), or the marriage, divorce, death, or birth of a child with respect to any individual will not be considered discretionary with, or within the control of, the trustees or any other persons.

(*e*) *Examples.* The following examples illustrate the rules in paragraph (a)(1)(i)(*c*) of this section. For each example, assume that the governing instrument of charitable remainder unitrust *Y* provides that *Y* will initially pay not less often than annually the amount described in paragraph (a)(1)(i)(*b*) of this section and then pay the amount described in paragraph (a)(1)(i)(*a*) of this section (calculated using the same fixed percentage) for the remaining years of the trust and that the requirements of paragraphs (a)(1)(i)(*c*)(*2*) and (*3*) of this section are satisfied. The examples are as follows:

Example 1. Y is funded with the donor's former personal residence. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the trust sells the residence. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

Example 2. Y is funded with cash and an unregistered security for which there is no available exemption permitting public sale under the Securities and Exchange Commission rules. The governing instrument of *Y* provides that the change in method for computing the annual unitrust amount is triggered on the earlier of the date when the stock is sold or at the time the restrictions on its public sale lapse or are otherwise lifted. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

Example 3. *Y* is funded with cash and with a security that may be publicly traded under the Securities and Exchange Commission rules. The governing instrument of *Y* provides that the change in method for computing the annual unitrust amount is triggered when the stock is sold. *Y* does not provide for a combination of methods that satisfies the requirements of paragraph (a)(1)(i)(*c*) of this section because the sale of the publicly-traded stock is within the discretion of the trustee.

Example 4. *S* establishes *Y* for her granddaughter, *G*, when *G* is 10 years old. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which *G* turns 18 years old. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

Example 5. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the donor is married. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

Example 6. The governing instrument of *Y* provides that if the donor divorces, the change in method for computing the annual unitrust amount will occur as of the first day of the year following the year of the divorce. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

Example 7. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's first child is born. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

Example 8. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's father dies. *Y* provides for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

Example 9. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary's financial advisor determines that the beneficiary should begin receiving payments under the second prescribed payment method. Because the change in methods for paying the unitrust amount is triggered by an event that is within a person's control, *Y* does not provide for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

Example 10. The governing instrument of *Y* provides for the change in method for computing the annual unitrust amount as of the first day of the year following the year in which the noncharitable beneficiary submits a request to the trustee that the trust convert to the second prescribed payment method. Because the change in methods for paying the unitrust amount is triggered by an event that is within a person's control, *Y* does not provide for a combination of methods that satisfies paragraph (a)(1)(i)(*c*) of this section.

(*f*) *Effective date*—(*1*) *General rule.* Paragraphs (a)(1)(i)(*c*), (*d*), and (*e*) of this section are applicable for charitable remainder trusts created on or after December 10, 1998.

(*2*) *General rule regarding reformations of combination of method unitrusts.* If a trust is created on or after December 10, 1998 and contains a provision allowing a change in calculating the unitrust amount that does not comply with the provisions of paragraph (a)(1)(i)(*c*) of this section, the trust will qualify as a charitable remainder unitrust only if it is amended or reformed to use the initial method for computing the unitrust amount throughout the term of the trust, or is reformed in accordance with paragraph (a)(1)(i)(*f*)(*3*) of this section. If a trust was created before December 10, 1998 and contains a provision allowing a change in calculating the unitrust amount that does not comply with the provisions of paragraph (a)(1)(i)(*c*) of this section, the trust may be reformed to use the initial method for computing the unitrust amount throughout the term of the trust without causing the trust to fail to function exclusively as a charitable remainder unitrust under § 1.664–1(a)(4), or may be reformed in accordance with paragraph (a)(1)(i)(*f*)(*3*) of this section. Except as provided in paragraph (a)(1)(i)(*f*)(*3*) of this section, a qualified charitable remainder unitrust will not continue to qualify as a charitable remainder unitrust if it is amended or reformed to add a provision allowing a change in the method for calculating the unitrust amount.

(*3*) *Special rule for reformations of trusts that begin by June 8, 1999.* Notwithstanding paragraph (a)(1)(i)(*f*)(*2*) of this section, if a trust either provides for payment of the unitrust amount under a combination of methods that is not permitted under paragraph (a)(1)(i)(*c*) of this section, or provides for payment of the unitrust amount under only the method prescribed in paragraph (a)(1)(i)(*b*) of this section, then the trust may be reformed to allow for a combination of methods permitted under paragraph (a)(1)(i)(*c*) of this section without causing the trust to fail to function exclusively as a charitable remainder unitrust under § 1.664–1(a)(4) or to engage in an act of self-dealing under section 4941 if the trustee begins legal proceedings to reform by June 8, 1999. The triggering event under the reformed governing instrument may not occur in a year prior to the year in which the court issues the order reforming the trust, except for situations in which the governing instrument prior to reformation already provided for payment of the unitrust amount under a combination of methods that is not permitted under paragraph (a)(1)(i)(*c*) of this section and the triggering event occurred prior to the reformation.

(*g*) *Payment under general rule for fixed percentage trusts.* When the unitrust amount is computed under paragraph (a)(1)(i)(*a*) of this section, a trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because the unitrust amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the entire unitrust amount in the hands of the recipient is characterized only as income from the categories described in section 664(b)(1), (2), or (3), except to the extent it is characterized as corpus described in section 664(b)(4) because—

(*1*) The trust distributes property (other than cash) that it owned at the close of the taxable year to pay the unitrust amount; and

(*2*) The trustee elects to treat any income generated by the distribution as occurring on the last day of the taxable year for which the unitrust amount is due.

(*h*) *Special rule for fixed percentage trusts created before December 10, 1998.* When the unitrust amount is computed under paragraph (a)(1)(i)(*a*) of this section, a trust created before December 10, 1998 will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because the unitrust amount is paid after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year and the fixed percentage to be paid each year as the unitrust amount is 15 percent or less of the net fair market value of the trust assets as determined under paragraph (a)(1)(iv) of this section.

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(*i*) *Example.* The following example illustrates the rules in paragraph (a)(1)(i)(*g*) of this section:

Example. X is a charitable remainder unitrust that calculates the unitrust amount under paragraph (a)(1)(i)(*a*) of this section. *X* was created after December 10, 1998. The prorated unitrust amount payable from *X* for Year 1 is $100. The trustee does not pay the unitrust amount to the recipient by the end of the Year 1. At the end of Year 1, *X* has only $95 in the ordinary income category under section 664(b)(1) and no income in the capital gain or tax-exempt income categories under section 664(b) (2) or (3), respectively. By April 15 of Year 2, in addition to $95 in cash, the trustee distributes to the unitrust recipient a capital asset with a $5 fair market value and a $2 adjusted basis to pay the $100 unitrust amount due for Year 1. The trust owned the asset at the end of Year 1. Under § 1.664–1(d)(5), the distribution is treated as a sale by *X*, resulting in *X* recognizing a $3 capital gain. The trustee elects to treat the capital gain as occurring on the last day of Year 1. Under § 1.664–1(d)(1), the character of the unitrust amount for Year 1 in the recipient's hands is $95 of ordinary income, $3 of capital gain income, and $2 of trust corpus. For Year 1, *X* satisfied paragraph (a)(1)(i)(*g*) of this section.

(*j*) *Payment under income exception.* When the unitrust amount is computed under paragraph (a)(1)(i)(*b*) of this section, a trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664–1(a)(4)) merely because payment of the unitrust amount is made after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year.

(*k*) *Reasonable time.* For paragraphs (a)(1)(i) (*g*), (*h*), and (*j*) of this section, a reasonable time will not ordinarily extend beyond the date by which the trustee is required to file Form 5227, "Split-Interest Trust Information Return," (including extensions) for the taxable year.

(*l*) *Effective date.* Paragraphs (a)(1)(i) (*g*), (*h*), (*i*), (*j*), and (*k*) of this section are applicable for taxable years ending after April 18, 1997.

* * * * *

(iv) * * * If the governing instrument does not specify the valuation date or dates, the trustee must select such date or dates and indicate the selection on the first return on Form 5227, "Split-Interest Trust Information Return," that the trust must file. * * *

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 6. In § 25.2702–1, paragraph (c)(3) is revised to read as follows:

§ 25.2702–1 Special valuation rules in the case of transfers of interests in trust.

* * * * *

(c) * * *

(3) *Charitable remainder trust.* (i) For transfers made on or after May 19, 1997, a transfer to a pooled income fund described in section 642(c)(5); a transfer to a charitable remainder annuity trust described in section 664(d)(1); a transfer to a charitable remainder unitrust described in section 664(d)(2) if under the terms of the governing instrument the unitrust amount can be computed only under section 664(d)(2)(A); and a transfer to a charitable remainder unitrust if under the terms of the governing instrument the unitrust amount can be computed under section 664(d)(2) and (3) and either there are only two consecutive noncharitable beneficial interests and the transferor holds the second of the two interests, or the only permissible recipients of the unitrust amount are the transferor, the transferor's U.S. citizen spouse, or both the transferor and the transferor's U.S. citizen spouse.

(ii) For transfers made before May 19, 1997, a transfer in trust if the remainder interest in the trust qualifies for a deduction under section 2522.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended by adding a new entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.664–1(a)(7)	1545–1536
* * * * *	

Approved: December 1, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 98–32559 Filed 12–9–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 270

RIN 0790–AG67

Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam

AGENCY: Office of Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Interim final rule.

SUMMARY: This rule amends part 270 to reflect changes necessary as a result of new language in Section 658 of the FY99 National Defense Authorization Act. Section 658 expands the field of beneficiaries of the Vietnamese Commandos Compensation Commission to parents and siblings of deceased Commandos. It also adds words "notwithstanding any agreement (including a power of attorney) to the contrary, the actual disbursement" must be made directly to the person who is eligible for the payment. This rule also amends part 270 to reflect necessary technical changes to accommodate the new language.

EFFECTIVE DATE: This rule is effective October 17, 1998. Comments are requested by February 8, 1999.

ADDRESSES: Forward comments to Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Witschonke, (703) 693–1059 or LTC Frank Hudson, (703) 588–6570.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities because it affects only a limited number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party.

The specific exemption from the Paperwork Reduction Act is found in 5 CFR Part 1320. The information collection in this interim final rule is exempt from OMB approval under Sec. 1320 4(a)(2), "Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act".

Public Law 104–4, "Unfunded Mandates Report Act of 1995 (UMRA)"

It has been determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

List of Subjects in 32 CFR Part 270

Military personnel, Payments, Prisoners of war, Vietnam.

Accordingly, 32 CFR part 270 is amended to read as follows:

PART 270—[AMENDED]

1. The authority citation for 32 CFR part 270 continues to read as follows:

Authority: Sec. 657, Pub. L. 104–201, 110 Stat. 2422.

2. Section 270.2, "Definitions," is amended by redesignating paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) as paragraphs (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively, and by adding paragraphs (c) and (d) to read as follows:

§ 270.2 Definitions.

* * * * *

(c) *Parents of an eligible person.* Natural parents, adoptive parents, or step parents of a deceased person described in Part A of appendix A to this part. (Step parents must show that they established a parent-child relationship with the deceased person described in Part A of appendix A to this part.)

(d) *Siblings by blood of an eligible person.* Siblings related by blood to a deceased person described in Part A of appendix A to this part, including half-brothers and half-sisters.

* * * * *

3. Section 270.6, "Standards of eligibility," is amended by removing the period and adding "; or" at the end of paragraph (b)(2), and adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 270.6 Standards of eligibility.

* * * * *

(b) * * *

(3) If there is no surviving spouse of an eligible person and no surviving children of an eligible person, to the surviving parents of an eligible person, in equal shares (step parents take equal shares the same as natural parents); or

(4) If there is no surviving spouse of an eligible person, no surviving children of an eligible person, and no surviving parents of an eligible person, to the surviving siblings of an eligible person, in equal shares. (Half siblings take equal shares in the same manner as full siblings.)

* * * * *

4. Section 270.8, "Authorization of payment," second sentence, is amended by revising the words "spouse or children" to read "spouse, children, parents, or siblings".

5. Section 270.11, "Limitation on disbursements," is revised to read as follows:

§ 270.11 Limitation on disbursement.

Notwithstanding any agreement (including a power of attorney) to the contrary, the Commission must disburse a payment under this part only to the person who is eligible for the payment, i.e., the commando, his surviving spouse, children, parents, or siblings. The Commission may, in its discretion, require the person who is eligible for the payment to appear at any designated Defense Finance Accounting Service disbursement office in the United States to receive payment. The Commission may, in its discretion, coordinate with other U.S. governmental agencies to facilitate disbursement of payments to persons eligible for payments who reside outside the United States. If an eligible person makes a written request that payment be made at an alternate location or in an alternate manner, the Commission may, in its discretion, grant such request, provided that the actual disbursement of the payment (i.e., the physical delivery of the payment) is made only to the eligible person. The Commission will not disburse payment to any person other than an eligible person, notwithstanding any written request, assignment of rights, power of attorney, or other agreement. In the case of an application authorized for payment but not disbursed as a result of the foregoing, the Secretary will hold the funds in trust for the person authorized to receive payment in an interest bearing account until such time as the person complies with the conditions for disbursement set out in this part.

6. Appendix A to Part 270—Application for Compensation of Vietnamese Commandos, is amended as follows:

a. The Privacy Act Statement Principal Purpose, is revised to read as follows:

Appendix A to Part 270—Application for Compensation of Vietnamese Commandos

Principal Purpose: To evaluate applications for cash payments for those individuals, or their surviving spouse children, parents, or siblings, who were [illegible] ted by North Vietnam [illegible] ing in specified joint [illegible] ates-South Vietnamese operations [illegible]

b. The [illegible] the Privacy Act Stat [illegible] s follows:

* * * This application shall be executed by the person applying for eligibility, or his surviving spouse, children, parents, or siblings, or designated representatives of such persons.

* * * * *

c. The introductory text to Part B is revised to read as follows:

* * * * *

Part B—In addition to PART A above, any applicant who is a surviving spouse, child, parent, or sibling by blood of a deceased commando must complete Part B, below, with information on themselves.

* * * * *

d. Paragraphs (10) and (11) of Part B are redesignated as (12) and (13), respectively.

e. Part B is amended to add paragraphs (10) and (11), to read as follows:

* * * * *

(10) If you are a surviving parent, the deceased person described in PART A has no surviving spouse or children, list the name and address of the other parent of the deceased person.

(11) If you are a surviving sibling, the deceased person described in Part A has no surviving spouse, children, or parents, list the names and addresses of all other siblings of the deceased person, including half-brothers or half-sisters. Provide the date of death for any who are deceased.

* * * * *

f. The heading "For Surviving Spouse or Child of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam)" is

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revised to read "For Surviving Spouse, Child, Parent, or Sibling of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam)."

g. The heading "For Surviving Spouse or Child of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border)" is revised to read "For Surviving Spouse, Child, Parent, or Sibling of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border)."

h. The heading "For a Spouse or Surviving Child of a Deceased Person Described in Part A, Above" is revised to read "For a Surviving Spouse, Child, Parent, or Sibling of a Deceased Person Described in Part A, Above."

i. Add new sections "For the Surviving Parent" and "For the Surviving Sibling by Blood" after "For the Surviving Children," paragraph (12)(d), as follows:

* * * * *

For the Surviving Parent

In addition to documents described in Part C items (1) through (8), above, each surviving parent should submit the following:

(13) An affidavit certifying that the deceased individual described in Part A, above, has no surviving spouse.

(a) In addition to the above affidavit, if the individual described in Part A, above, was divorced at the time of his death, a copy of the divorce decree from his spouse shall be submitted as additional proof that he has no surviving spouse.

(b) In addition to the above affidavit, if the individual described in Part A, above, had been married at some point prior to his death, and his spouse pre-deceased him, one of the following documents as evidence of the death of the spouse of the individual described in Part A, above, shall be submitted as additional proof that he has no surviving spouse:

(i) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(ii) A certificate by the custodian of the public record of death;

(iii) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(iv) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(v) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(vi) If you cannot obtain any of the above evidence of death of the spouse of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(14) One of the following documents as evidence of the death of all of the children (if any), of the deceased individual described in Part A, above:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director are attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred o8tside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of death of all of the children of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(15) One document as evidence of your relationship to your child (the deceased person described in Part A, above), as follows:

If a Natural Parent:

(a) Birth certificate showing that the deceased person was your child.

(b) If the birth certificate does not show the deceased person as your child, a certified copy of:

(i) An acknowledgement in writing signed by the deceased person;

(ii) The public record of birth or a religious record showing that the deceased person was named as your child.

(iii) Public records, such as records of school or welfare agencies, which show that the deceased individual was named as your child; or

(iv) Other convincing evidence, such as signed, sworn statements of two or more persons who know that the deceased person was your child.

If An Adoptive Parent:

An adoptive parent must submit a certified copy of the decree of adoption. If the adoption took place outside of the United States and there is no decree of adoption, other convincing evidence must be submitted, such as signed, sworn statements of two or more persons with personal knowledge of the adoptive relationship, or a government official who can attest to the adoptive relationship.

If a Step-Parent:

Submit all three of the following documents as evidence of the step-parent relationship:

(a) One document as evidence of birth of the deceased person to the natural parent, or other convincing evidence that reasonably supports the existence of a parent-child relationship between the deceased person and the natural parent (see "If a Natural Parent," above).

(b) One document as evidence that you had established a parent-child relationship with the deceased person; and

(c) One of the following documents as evidence that you were married to the natural parent of the deceased person:

(i) A copy of the public records of marriage, certified or attested, or an abstract of the public records, containing sufficient information to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(ii) An official report from a public agency as to a marriage which occurred while either parent was employed by such agency;

(iii) An affidavit of the clergyman or magistrate who officiated;

(iv) The certified copy of a certificate of marriage attested to by the custodian of the records;

(v) The affidavits of two or more eyewitnesses to the ceremony; or

(vi) In jurisdictions where "common law" marriages are recognized, an affidavit by the parent setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits from two or more persons who know as a result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

(vii) If you cannot obtain any of the above evidence of your marriage to the natural parent, you must submit any other evidence that would reasonably support a belief that a valid marriage actually existed.

(16) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving parent of the deceased person described in Part A, above, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the parent and the extent to which you are responsible for the care of the parent, or your position as an officer of the institution in which the parent is institutionalized.

For the Surviving Sibling by Blood

In addition to documents described in Part C items (1) through (8), above, each surviving sibling by blood should submit the following:

(17) An affidavit certifying that the deceased individual described in Part A, above, has no surviving spouse.

(a) In addition to the above affidavit, If the individual described in Part A, above, was divorced at the time of his death, a copy of the divorce decree from his spouse shall be submitted as additional proof that he has no surviving spouse.

(b) In addition to the above affidavit, If the individual described in Part A, above, had been married at some point prior to his death, and his spouse pre-deceased him, one of the following documents as evidence of the death of the spouse of the deceased individual described in Part A, above, shall be submitted as additional proof that he has no surviving spouse:

(i) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(ii) A certificate by the custodian of the public record of death;

(iii) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(iv) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(v) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(vi) If you cannot obtain any of the above evidence of death of the spouse of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(18) One of the following documents as evidence of the death of all of the children (if any), of the deceased individual described in Part A, above:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of death of the children of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(19) One of the following documents as evidence of the death of the parents of the deceased in individual described in Part A, above:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of death of the parents of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

Each surviving sibling should submit the following:

(20) One document as evidence of your relationship to your sibling (the deceased individual described in Part A, above), as follows:

(a) Birth certificate showing that at least one of your deceased parents was also the natural parent of the deceased person described in Part A, above;

(b) If the birth certificate does not show the deceased individual described in Part A, above, as your sibling, a certified copy of:

(i) An acknowledgement in writing signed by the deceased person;

(ii) The public record of birth or a religious record showing that the deceased person was named as your sibling.

(iii) Affidavit of a person who knows that the deceased person was your sibling; or

(iv) Public records, such as records of school or welfare agencies, which show that the deceased individual was named as your sibling.

(v) If you cannot obtain any of the above evidence of your sibling relationship to the deceased individual described in Part A, above, you must submit any other evidence that would reasonably support a belief that a valid sibling relationship actually existed.

(21) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address):

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving sibling by blood of the deceased individual described in Part A, above, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the sibling and the extent to which you are responsible for the care of the sibling, or your position as an officer of the institution in which the sibling is institutionalized.

Dated: December 1, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 98–32755 Filed 12–9–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 98–275]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses database issues, location portability, 500 and 900 number portability, and wireless issues, all of which were raised in petitions for reconsideration of the *First Report and Order* in this proceeding, and not addressed in the *First Order on Reconsideration*. We address these because their resolution will foster deployment of number portability and promote competition in the local telecommunications marketplace.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Askin, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580, or via the Internet at jaskin@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted October 15, 1998, and released October 20, 1998. The full text of this

Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW, Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98275.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Analysis on Reconsideration which is set forth in the Order on Reconsideration. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) a succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

Synopsis of Second Memorandum Opinion and Order

I. Introduction

On June 27, 1996, the Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking*, 61 FR 38605, July 25, 1996 (*First Report and Order*) in this docket, which implemented the provisions of section 251 of the Communications Act of 1934, as amended, that relate to telephone number portability. Specifically, section 251(b)(2) requires that all local exchange carriers (LECs) provide, "to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Section 251(e)(2) provides that "the costs of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." The Act defines "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." In the *First Report and Order*, the Commission determined, among other things, that the Commission has authority under section 251 to promulgate rules regarding long-term and currently available number portability, as well as to establish cost recovery methods for each.

2. Twenty-two parties filed petitions for reconsideration or clarification of the *First Report and Order*; 19 parties filed oppositions or comments on the petitions; and 16 parties filed reply comments. On March 6, 1997, the Commission adopted a *First Memorandum Opinion and Order on Reconsideration*, 62 FR 18280, April 15, 1997 *(First Order on Reconsideration)* in this proceeding, addressing a number of issues. In this *Second Memorandum Opinion and Order on Reconsideration*, we address all remaining issues raised by the petitioners, except issues relating to cost recovery for currently available number portability, which will be addressed in a future order. We also address American Mobile Telecommunications' (AMTA) petition for reconsideration of the *First Order on Reconsideration*, which raises similar issues to those raised by AMTA in its petition for reconsideration of the *First Report and Order*.

II. Background

3. In the *First Report and Order*, the Commission required all LECs to begin implementing a long-term service provider portability solution that meets the Commission's performance criteria in the 100 largest Metropolitan Statistical Areas (MSAs) no later than October 1, 1997, and to complete deployment in those MSAs by December 31, 1998, in accordance with a phased implementation schedule. In the *First Order on Reconsideration*, the Commission modified this schedule, extending the completion dates for the first two phases of the implementation schedule and clarifying that, within the 100 largest MSAs, LECs need only provide number portability in switches for which another carrier has made a specific request for the provision of portability.

4. In the *First Report and Order*, the Commission also required all cellular, broadband personal communications services (PCS) and covered specialized mobile radio (SMR) providers to have the capability of delivering calls from their networks to ported numbers anywhere in the country by December 31, 1998, and to offer service provider portability, including the ability to support roaming, throughout their networks by June 30, 1999. In the *First Order on Reconsideration*, the Commission concluded that these commercial mobile radio service (CMRS) providers need only deploy local number portability by the June 30, 1999, deadline in switches in the 100 largest MSAs for which they receive a request at least nine months prior to the deadline. On September 1, 1998, the Wireless Telecommunications Bureau extended the deadline for implementation of number portability by CMRS providers to March 31, 2000.

5. In the *First Report and Order*, the Commission concluded, *inter alia*, that a system of regional number portability databases, managed by independent local number portability administrator(s) (LNPA(s)) would serve the public interest. The Commission directed the North American Numbering Council (NANC), an advisory committee established pursuant to the Federal Advisory Committee Act, to recommend as local number portability administrators one or more independent, non-governmental entities that are not aligned with any particular telecommunications industry segment within seven months of the initial meeting of the NANC. The Commission also directed the NANC to make recommendations regarding, *inter alia*, the duties of local number portability administrator(s), the location of regional databases, and technical specifications for the regional databases. In the *Second Report and Order*, 62 FR 48774, September 17, 1997, the Commission adopted, with minor modifications, the *NANC LNPA Working Group Report*, containing the recommendations of the NANC regarding the selection of LNPAs, the duties of LNPAs, the locations of regional databases, and technical specifications for the regional databases.

III. Reconsideration Issues

A. Database Issues

1. Treatment of Industry Efforts to Implement Regional Databases Prior to Issuance of NANC's Recommendations

a. Discussion

6. The Commission has adopted the *NANC LNPA Working Group Report*, which contains NANC's recommendations with respect to regional database implementation, in a separate order. In particular, in that order, the Commission adopted the NANC's recommendation that Lockheed Martin serve as local number portability database administrator for the Northeast, Mid-Atlantic, Midwest and Southwest regions, and that Perot Systems serve as the local number portability database administrator for the Southeast, Western and West Coast regions.

7. On February 20, 1998, the Chief of the Common Carrier Bureau received a letter from the Chairman of the NANC informing him that the Limited Liability Corporations (LLCs) for the Southeast, Western, and West Coast regions reported to the NANC on local number portability implementation. The LLCs for the Southeast, Western, and West Coast regions reported that it was necessary to terminate their contracts with Perot Systems, with whom they had experienced repeated performance problems, and to enter into contracts with Lockheed Martin to serve as the LNPA to expedite implementation of local number portability. The NANC members supported unanimously the decision to change vendors as "essential in successfully implementing [number portability] in these regions."

8. We adopt the *NANC Perot Recommendation* to replace Perot Systems with Lockheed Martin as the LNPA in the Southeast, Western and West Coast regions. The record indicates that the NPAC database and associated facilities needed for long-term number portability in the regions where Perot Systems was the database administrator were not ready for intercompany testing as late as January 23, 1998, putting in jeopardy the dates for which number portability was required to be made commercially available in these regions. The record indicates that this delay was specifically due to the failure of the designated LNPA, Perot Systems, to provide a stable software and hardware platform. We find that *NANC Perot Recommendation* supports timely implementation of local number portability.

9. We find it unnecessary to authorize expressly or approve automatically carriers' actions implementing regional database solutions that were taken prior to the issuance of the *NANC LNPA Working Group Report* or the Commission's order acting on the *NANC LNPA Working Group Report*. We conclude that the concerns raised by BellSouth and U S WEST in this area have become moot in light of subsequent industry actions to implement local number portability. Carriers, both on their own and through the regionally-based LLCs, have successfully worked with the NANC to implement regional SMS database solutions.

2. Scope of the NANC's Responsibilities

a. Discussion

10. We find moot BellSouth's request that the NANC should address only SMS database administration. The recommendations contained in the *NANC LNPA Working Group Report*, adopted by the Commission in the *Second Report and Order*, address technical specifications related to SMS database administration only and do not address SMS/SCP pairs.

11. In addition, we find moot BellSouth's request that carriers, and not the NANC, propose standards for interfaces between regional SMS and downstream SCP databases. In the *Second Report and Order*, the Commission adopted the NANC's recommended standards for interfaces between regional SMS and downstream SCP databases. The carriers sharing in the costs of developing, establishing and maintaining the regional databases had ample opportunity, through the NANC, to participate in the development of interface recommendations.

12. Finally, we find moot Pacific's request that we direct an industry group other than the NANC to address operational and technical issues that will arise as number portability is implemented. In the *Second Report and Order*, the Commission found that the NANC represents a broad cross-section of the industry, has developed substantial expertise in number portability issues, and provides a valuable forum in which carriers are able to consider, at the national level, possible ways to resolve the issues that arise as number portability is deployed within each number portability region. As a result, the Commission charged the NANC with the task of addressing technical and operational issues related to local number portability that may arise in the future.

3. Effect of Implementation of Long-Term Number Portability on Interim Number Portability Methods

a. Discussion

13. We clarify that all LECs must discontinue using transitional number portability methods in areas where a long-term number portability method has been implemented. In the *First Report and Order*, the Commission concluded that the Act "contemplates a dynamic, not static, definition of technically feasible number portability methods." Based on this finding, the Commission required LECs to offer number portability, as soon as reasonably possible upon receipt of a specific request, through remote call forwarding (RCF), direct inward dialing (DID) and other comparable methods, because these are the only methods that currently are technically feasible. Because transitional number portability methods do not meet the performance criteria established for long-term number portability, LECs may not continue to utilize such measures once long-term solutions have been implemented. This conclusion is consistent with the Commission's finding in the *First Report and Order* that the Act "clearly contemplates that [currently available] methods should serve as only temporary measures until long-term portability is implemented."

14. We also wish to clarify that, under the rules adopted in the *First Report and Order*, RCF and DID are not the *exclusive* methods of providing number portability that LECs are obligated to provide today. As the Commission stated in the *First Report and Order*, "LECs are required to offer number portability through RCF, DID, and other *comparable* methods because they are the only methods that currently are technically feasible." In specifically identifying RCF and DID as technically feasible number portability methods, the Commission did not imply that RCF and DID are the *only* methods through which LECs must port numbers until a permanent number portability solution is implemented. Clearly, the references to RCF and DID were illustrative of the types of measures that LECs must provide on a transitional basis. The Commission's rules require that LECs must provide, on a transitional basis, any technically feasible method of number portability comparable to RCF and DID.

15. In the two years since adoption of the *First Report and Order*, a number of state commissions have ordered carriers to provide Route Indexing—Portability Hub (RI–PH) and Directory Number Route Indexing (DNRI), based on

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findings of technical feasibility. To date, LECs in more than half the states have either agreed or been ordered to provide RI–PH and DNRI as technically feasible methods of providing number portability prior to deployment of a database method. We therefore conclude, consistent with the Commission's prior findings in this docket and with the rules and policies established in the Commission's *Local Competition Order*, 61 FR 45476, August 29, 1996, that RCF, DID, DNRI and RI–PH are comparable and technically feasible transitional methods of providing number portability. We conclude that state commissions may determine that additional methods are comparable and technically feasible, as well.

16. In adopting the requirements for transitional number portability in the *First Report and Order*, the Commission relied on the fact that no network modifications would be necessary in order to provide number portability on a transitional basis, prior to implementation of a long-term database solution. In particular, in adopting section 52.27, the Commission concluded that it is not unduly burdensome for LECs to provide number portability through RCF and DID because these methods are offered as retail services in a number of states today.

17. Since adoption of the *First Report and Order*, certain new entrants have sought other transitional methods of number portability that are better suited, in their view, to their particular business needs. A number of carriers make available other transitional methods of number portability, such as RI–PH and DNRI, only if requested by a competing carrier. We conclude that it is not *per se* unreasonable for a LEC to make available transitional number portability methods only upon request, provided that the LEC does not deliberately use the request process to delay competitive entry. We would expect a LEC to respond expeditiously to a request for a particular method of transitional number portability.

18. The *First Report and Order* did not address the issue of which carrier has the right to select the particular transitional method of number portability to be provided when there is more than one technically feasible method. We amend the Commission's rules, on our own motion, to clarify that a LEC is required to furnish the specific method of currently available number portability that a competing carrier requests, provided that provision of the requested method is not unduly burdensome. We believe that the burden of fulfilling a competing carrier's request for a specific method of providing number portability will be minimal if the functionality described by a requested currently available method already exists in the network. As the Commission noted in the *First Report and Order*, the capability to provide number portability through currently available methods, such as RCF and DID, already exists in most networks, and no additional network upgrades should be necessary in order to provide number portability in this manner. We clarify this finding by adding that, to the extent no network upgrades are necessary in order to provide number portability through methods other than RCF or DID, a LEC must make such methods available upon request as well.

19. Given that a number of states have ordered LECs to provide RI–PH and DNRI, we presume that RI–PH and DNRI are not unduly burdensome to provide. We conclude that the burden should be on the LEC providing number portability to overcome this presumption. In particular, consistent with the pro-competitive goals of the Act, we conclude that the LEC shall bear the burden of demonstrating that a particular requested transitional number portability method is unduly burdensome, and therefore should not be provided to a requesting carrier. In determining whether a specific method is unduly burdensome, relevant factors are the extent of network upgrades needed to provide the requested method, the cost of such upgrades, the business needs of the requesting carrier, and the timetable for deployment of a long-term number portability method in that particular geographic location.

4. Issues Related to Performance Criteria

a. Discussion

20. We reject Nextel's request that the Commission establish an industry committee to develop a single, nationwide number portability methodology. As a threshold matter, we disagree with Nextel's underlying premise that number portability methodology decisions will be made on a state-by-state basis. In the *First Report and Order*, the Commission specifically concluded that regionally deployed databases best serve the public interest. Because the harm that Nextel raised in its petition (*i.e.*, the deployment of a different number portability plan in each state resulting in dramatically increased costs for multi-state providers) has not occurred and is not likely to occur, we conclude that it is unnecessary to grant Nextel's request.

21. In addition, we note that, to a great extent, the NANC already has served the function that Nextel asserts is necessary. The NANC was charged with developing recommendations regarding the implementation of number portability, in large part, "to ensure consistency and to provide a national perspective on number portability issues, as well as to reduce the costs of implementing a national number portability plan." Further, the NANC includes representatives from each of the constituencies that Nextel identifies: state and federal officials, service providers, and equipment manufacturers. Moreover, we point out that, to date, the industry and state/regional workshops have chosen the Location Routing Number (LRN) methodology as the preferred method of number portability, and carriers have proceeded to implement LRN. As such, it would appear that states have chosen the same number portability method, rather than several incompatible methods, as Nextel feared.

22. We grant AirTouch's request for clarification that carriers may arrange with other carriers to perform database dips and other routing functions. Contrary to AirTouch's claims, we have not assumed, nor do we require, that all carriers must satisfy their number portability obligations by upgrading their networks to perform database dips. In the *Second Report and Order*, the Commission concluded that, although the carrier in the call routing process immediately preceding the terminating carrier shall be responsible for ensuring that number portability database dips are performed, that carrier can meet this obligation by either querying the number portability database itself or by arranging with another entity to perform database dips on its behalf.

B. Location Portability

1. Discussion

23. We decline to adopt SBC's proposal that the Commission decide now that we will not consider location portability until service provider number portability is successfully deployed in the 100 largest MSAs. The Commission concluded in the *First Report and Order* that the requirement that all LECs provide local number portability (*i.e.*, service provider portability) pursuant to section 251(b)(2) does not include location portability because the Act's number portability mandate is limited to situations when users remain "at the same location" when switching from one telecommunications carrier to another. Although we did not require LECs to

provide location portability when the *First Report and Order* was issued, we nevertheless concluded that nothing in the Act would preclude us from mandating location portability if, in the future, we determine that location portability is in the public interest.

24. The Commission has no current plans to address location portability at this time. We need not and do not address the issue of whether it may be in the public interest to require the implementation of location portability at some point in the future.

C. 500 and 900 Number Portability

25. In the *First Report and Order*, the Commission concluded there was insufficient evidence in the record to determine whether it is technically feasible for LECs to make their assigned 500 and 900 numbers portable. The Commission directed the Industry Numbering Committee (INC) to examine this issue and to file a report of its findings with the Commission within twelve months of the effective date of the *First Report and Order*. The Commission stated that "[u]pon receipt of this report, we will take appropriate action under the * * * Act." The INC released its report on July 2, 1997.

1. Provision of 500 and 900 Number Portability By Carriers Other Than LECs

a. Discussion

26. The number portability requirements of section 251(b)(2) apply only to LECs. Specifically, section 251(b)(2) imposes a duty on "each local exchange carrier * * * to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Thus, we cannot rely on section 251 for authority to require IXCs or other non-LECs to provide number portability for 500 and/or 900 number service. We therefore affirm the Commission's conclusion in the *First Report and Order* that IXCs are not required under section 251(b)(2) to make their assigned 500 and 900 numbers portable to any other carrier offering 500 and 900 number service.

27. We, however, may possess independent authority under sections 1, 2 and 4(i) of the Act to require other carriers to provide number portability for 500 and/or 900 number service to the extent that such portability is in the public interest. Section 1 requires the Commission to make available to all people of the United States "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service." Section 1 of the Act thus gives the Commission jurisdiction to ensure that the portability of *all* telephone numbers within the United States, including 500 and 900 numbers, is handled efficiently and fairly. 500 and 900 number portability would promote this mandate. 500 and 900 number portability also would promote the efficient and uniform treatment of numbering that is essential to the efficient delivery of interstate and international telecommunications. Section 2 gives the Commission authority to regulate interstate common carriers, including those that provide 500 and 900 number services. Section 4(i) grants the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions." The conclusion that we may possess independent authority to require all carriers to provide number portability for their assigned 500 and 900 numbers would be similar to the Commission's decision in the *First Report and Order* to rely on its general rulemaking authority to order number portability for CMRS providers, and to reserve the Commission's authority to require service and location portability, even though the Commission concluded that these types of number portability are not specifically required by section 251(b)(2). This result would also be consistent with our exercise of authority under sections 1, 2 and 4(i) to require the Bell Operating Companies and GTE to provide number portability for 800 numbers even prior to enactment of the 1996 Act.

28. As the Commission noted in the *First Report and Order*, most users of 500 and 900 number services today have obtained their numbers from IXCs. Thus, "as a practical matter, portability for the vast majority of 500 and 900 numbers can occur only if the IXC releases to the new carrier management of the 500 or 900 number that is to be ported." If only LECs were required to make their 500 and 900 numbers portable, the vast majority of 500 and 900 numbers would not be portable, and competing 500 and 900 service providers would face a significant impediment in persuading customers to switch carriers. Imposing portability obligations on all 500 and 900 service providers would make it possible for all customers of 500 and 900 services to switch providers without changing their numbers. This, in turn, would promote competition in the 500 and 900 services markets.

29. We decline to rule at this time, however, on our authority to require all carriers to offer 500 and 900 number portability. We will first determine whether 500 and/or 900 number portability by all carriers is technically feasible. In the event that it is determined that 500 and 900 number portability by all carriers is technically feasible, we will address our authority to impose the same number portability requirements on all carriers that provide 500 and 900 services.

2. Implementation of 500 and 900 Number Portability

a. Discussion

We decline to determine at this time whether we have independent rulemaking authority to require number portability for 500 and 900 numbers assigned to all carriers, if that would serve the public interest. In its report, the INC expressly limited its analysis to the technical feasibility of porting numbers assigned to LECs between LECs; it did not address the technical feasibility of LEC-to-non-LEC, non-LEC-to-LEC, or non-LEC-to-non-LEC portability for 500 or 900 numbers. In order to evaluate whether the public interest would be served by mandating 500 and 900 number portability for all carriers, we must first determine whether number portability for the entire 500 and 900 number resource is technically feasible. We therefore conclude that we should expand the scope of the inquiry that the Commission previously delegated to the INC. We direct the NANC, which may refer the issues to the INC, to examine the following questions:

1. Is it technically feasible for all 500 number service providers to implement 500 number portability using existing network and administrative database capabilities?

2. If the answer to Question #1 is "No," is technology available to develop the appropriate network and administrative database capabilities to deploy 500 number portability in the future?

3. If the answer to Question #2 is "Yes," how long would it take to develop and deploy the necessary network infrastructure for 500 number portability, upon receipt of a regulatory directive?

4. Is it technically feasible for all 900 number service providers to implement 900 number portability using existing network and administrative database capabilities?

5. If the answer to Question #4 is "No," is technology available to develop the appropriate network and administrative database capabilities to deploy 900 number portability in the future?

6. If the answer to Question #5 is "Yes," how long would it take to

develop and deploy the necessary network infrastructure for 900 number portability, upon receipt of a regulatory directive?

31. The NANC is directed to file a report addressing the questions referred to it in this *Second Memorandum Opinion and Order on Reconsideration* within twelve months of the effective date of this order. Upon receipt of the NANC's report, we will take appropriate action.

32. We decline to rule at this time on SBC's request that we consider economic feasibility, as well as technical feasibility, in evaluating the provision of 500 and 900 number portability. As a practical matter, we believe that it is premature to determine what factors may be appropriate to consider with respect to the possible implementation of portability for such numbers, if we ultimately conclude we have jurisdiction to order portability of those numbers for all carriers.

D. Wireless Issues

33. In the *First Report and Order,* the Commission concluded that number portability must be provided by cellular, broadband PCS, and covered SMR providers.

34. With respect to wireless carriers, the Commission concluded that number portability will facilitate the entry of new service providers, such as broadband PCS and covered SMR, into CMRS markets currently dominated by cellular providers, and competition from these new entrants will provide incentives for incumbent cellular providers to lower prices and increase service choice and quality. The Commission also noted that number portability will promote competition between CMRS and wireline service providers as CMRS providers offer comparable local exchange and fixed commercial radio services. The Commission determined that it would not adopt a number portability schedule for other categories of CMRS providers (including SMR operators that do not fit the definition of "covered SMR") because these other providers offer services that "currently will have little competitive impact on competition between providers of wireless telephony service or between wireless and wireline carriers."

1. Definition of "Covered SMR"

b. Discussion

35. The term "covered SMR" was intended to include SMR licensees that offer services that compete, or potentially compete, with services offered by cellular and broadband PCS licensees. The Commission concluded that because cellular, broadband PCS, and certain SMR providers will compete directly with one another, and potentially will compete in the future with wireline carriers, number portability was sufficiently important to the development of competition that it should be required for these carriers. Within the SMR service, however, it was clear that some providers would be offering mass market, two-way, real-time, interconnected voice services that compete with the offerings of traditional cellular and broadband PCS providers, and others would not. The definition of covered SMR is intended to distinguish between these two groups of SMR providers.

36. We agree with the petitioners that the existing definition of "covered SMR" imperfectly accomplishes its intended purpose.

37. We note also that it may be infeasible, from a technical standpoint, to require SMR providers whose systems lack an in-network switching capability to provide number portability.

38. For the foregoing reasons, we adopt, with some modification, the definition suggested by the petitioners:

"Covered CMRS systems offer real-time, two-way switched voice service that are interconnected with the public switched network, and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls."

With this change, number portability must be provided by "covered CMRS" providers, which may hold licenses in cellular, PCS, SMR or any other services.

39. We also clarify, in response to Nextel's petition, that the definition of covered CMRS should be applied on a system-by-system basis. That is, an entity may hold more than one CMRS license, but the entity is required to provide number portability only with respect to licenses that satisfy the definition of covered CMRS.

40. In addition, we reject AMTA's proposal that the covered SMR definition apply only to systems serving 20,000 or more subscribers nationwide. The approach we adopt above is a functional one, which is based on whether the provider offers a certain type of service. We find that determining whether an SMR system is required to provide number portability based on how many subscribers it serves would be arbitrary, and could discourage SMR providers from expanding their systems.

41. Further, we dismiss SBT's petition for reconsideration as untimely. Public notice in this case was given on July 26, 1996, the date on which the *First Report and Order* was published in the **Federal Register**. Therefore, petitions to reconsider that decision were due on or before August 26, 1996. Because the time period for filing petitions for reconsideration is prescribed by statute, the Commission may not, except in extraordinary cases, waive or extend the filing period. SBT has not demonstrated that its late-filed petition fits into this narrow exception; indeed, SBT has not even moved for leave to file its petition. As such, we dismiss SBT's petition.

42. Finally, we dismiss AMTA's petition for reconsideration of the *First Order on Reconsideration* as moot. By amending, in this Order, the Commission's rules to ensure that only those CMRS carriers that compete in the market for two-way, interconnected, real-time voice services are subject to the Commission's number portability requirements, we grant the relief that AMTA requests. Moreover, because we have clarified that CMRS licensees providing primarily dispatch service with a non-cellular type of system are exempt from the Commission's number portability requirements, there is no need to extend the implementation period for such licensees.

2. Geographic Scope of Number Portability for Wireless Carriers

a. Discussion

43. Requiring service provider portability in a wireless environment, without imposing any geographic boundaries, could theoretically result in *de facto* nationwide location portability, which the Commission explicitly declined to adopt in the First *Report and Order*. Conversely, limiting number portability in a wireless environment to those carriers already serving the NPA of the ported wireless number may thwart the pro-competitive goals of the Act. A single geographic area may now have multiple NPAs due to area code overlays. Typically, wireless carriers provide their customers with the choice of NPAs when they have more than one switch in the geographic market, but some new entrants may only have one or two switches with all numbers coming out of the same NPA. Limiting number portability in a wireless environment to those carriers already serving the NPA of the ported wireless number may discourage customers from switching wireless carriers if they cannot port their number to a different NPA even though the number continues to be used in the same geographic

market. As noted, wireless carriers are not obligated to port numbers until March 31, 2000. Furthermore, the NANC is currently examining the myriad of complex issues surrounding wireless number portability. Consequently, we defer a decision on this matter pending further analysis by the NANC. We encourage AirTouch to participate in the NANC's standards development process to ensure consideration of AirTouch's concerns.

3. Preemption of State Number Portability Requirements for CMRS Providers

a. Discussion

44. We reject the request for preemption of state number portability requirements for CMRS carriers. While, under certain circumstances, the Commission has authority to preempt state law, the record is devoid of any evidence that such action is warranted at this time. Pursuant to the Supremacy Clause of the U.S. Constitution, Congress has the power to preempt state laws or regulations.

45. The petitioners have failed to identify any specific state number portability requirements that apply to CMRS carriers that conflict with federal number portability mandates or objectives. Nor is there a basis in the current record for concluding that it will be impossible for carriers to comply with federal and state CMRS number portability requirements. Thus, we decline to consider the preemption of state number portability requirements for CMRS carriers based on the record before us.

46. In addition, despite the conclusory assertions of the petitioners to the contrary, the record does not indicate that there are, or will be, state number portability requirements applicable to CMRS carriers that will conflict with the requirements of any other state, such that CMRS carriers will be required to accommodate multiple portability architectures and/or service requirements. Indeed, the framework for implementing number portability is designed, in part, to minimize such burdens. For example, in the *First Report and Order,* the Commission directed one entity—the NANC—to develop recommendations for technical and operational standards with respect to regional number portability databases. Accordingly, we expect there will be a high degree of national uniformity in this regard. Moreover, as discussed above, the industry and state/regional workshops chose a single method as the preferred method for number portability. In short, it is unlikely that CMRS systems that span state lines will be required to accommodate multiple portability architectures that differ significantly from one another.

IV. Ordering Clauses

47. *It is ordered that,* pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 218, 251, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251 and 332, and 47 CFR 52 is amended.

48. *It is further ordered* that the Petitions for Reconsideration and/or Clarification are granted to the extent indicated herein and otherwise are denied.

49. *It is further ordered* that the policies, rules, and requirements set forth herein are adopted, effective 30 days after publication of a summary of this *Second Reconsideration Order* in the **Federal Register**.

50. *It is further ordered* that the Petition for Reconsideration of Small Business in Telecommunications is hereby dismissed.

51. *It is further ordered* that the Petition for Reconsideration filed by the Ameritech Mobile Telecommunications Association, Inc. on May 15, 1997, is dismissed as moot.

52. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Second Memorandum Opinion and Order on Reconsideration, including the Second Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Part 52 of Title 47 of the Code of Federal Regulations (CFR) is amended as follows:

PART 52—NUMBERING

1.The authority citation for Part 52 continues to read as follows:

Authority: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

2. Section 52.21 is amended by revising paragraphs (c) and (q) to read as follows:

§ 52.21 Definitions.

* * * * *

(c) The term *covered CMRS* means broadband PCS, cellular, and 800/900 MHz SMR licensees that hold geographic area licenses or are incumbent SMR wide area licensees, and offer real-time, two-way switched voice service, are interconnected with the public switched network, and utilize an in-network switching facility that enables such CMRS systems to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

* * * * *

(q) The term *transitional number portability measure* means a method that allows one local exchange carrier to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with the performance criteria set forth in 52.3(a). Transitional number portability measures are technically feasible methods of providing number portability including Remote Call Forwarding (RCF), Direct Inward Dialing (DID), Route Indexing—Portability Hub (RI–PH), Directory Number Route Indexing (DNRI) and other comparable methods.

3. Section 52.27 is revised to read as follows:

§ 52.27 Deployment of transitional measures for number portability.

(a) All LECs shall provide transitional number portability measures, as defined in section 52.21(q) of this chapter, 47 CFR 52.21(q), as soon as reasonably possible upon receipt of a specific request from another telecommunications carrier, until such time as the LEC implements a long-term database method for number portability in that area.

(b) A LEC must provide the particular transitional number portability measure requested by a telecommunications carrier, except as set forth in paragraph (c) of this section.

(c) A LEC that does not provide a requested transitional number portability measure must demonstrate that provision of the requested transitional number portability measure either is not technically feasible or if technically feasible, is unduly burdensome.

(1) Previous successful provision of a particular transitional number portability measure by any LEC constitutes substantial evidence that the particular method is technically feasible.

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(2) In determining whether provision of a transitional number portability measure is unduly burdensome, relevant factors to consider are the extent of network upgrades needed to provide that particular method, the cost of such upgrades, the business needs of the requesting carrier, and the timetable for deployment of a long-term number portability method in that particular geographic location.

(d) LECs must discontinue using transitional number portability measures in areas where a long-term number portability method has been implemented.

4. Section 52.31 is amended by revising paragraphs (a), (b), and (e) as follows:

§ 52.31 Deployment of long-term database methods for number portability by CMRS providers.

(a) By March 31, 2000, all covered CMRS providers must provide a long-term database method for number portability, including the ability to support roaming, in compliance with the performance criteria set forth in section 52.23(a) of this chapter, 47 CFR 52.23. A licensee may have more than one CMRS system, but only the systems that satisfy the definition of covered CMRS are required to provide number portability.

(b) By December 31, 1998, all covered CMRS providers must have the capability to obtain routing information, either by querying the appropriate database themselves or by making arrangements with other carriers that are capable of performing database queries, so that they can deliver calls from their networks to any party that has retained its number after switching from one telecommunications carrier to another.

* * * * *

(e) The Chief, Wireless Telecommunications Bureau, may establish reporting requirements in order to monitor the progress of covered CMRS providers implementing number portability, and may direct such carriers to take any actions necessary to ensure compliance with this deployment schedule.

Second Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* in this docket (*NPRM*). The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The comments received on the IRFA were discussed in the *First Report and Order's* Final Regulatory Flexibility Analysis (FRFA-First Report and Order), which was incorporated as Appendix C to the *First Report and Order* in this docket. The FRFA-First Report and Order conforms to the RFA. On reconsideration of the *First Report and Order*, parties commented on the FRFA-First Report and Order. The comments received on the FRFA-First Report and Order were discussed in the Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) incorporated into the *First Order on Reconsideration* in this docket. The Supplemental FRFA conforms to the RFA. This Second Supplemental Final Regulatory Flexibility Analysis (Second Supplemental FRFA) is incorporated as an appendix to the *Second Order on Reconsideration* in this docket. This Second Supplemental FRFA also conforms to the RFA.

A. Need for and Objectives of Second Order on Reconsideration

2. The need for and objectives of the requirements adopted in this *Second Order on Reconsideration* are the same as those discussed in the Final Regulatory Flexibility Analysis in the *First Report and Order*. The Commission, in compliance with sections 251(b)(2) and 251(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), adopts requirements and procedures intended to ensure the prompt implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. These requirements are necessary to implement the provision in the Act requiring local exchange carriers (LECs) to offer number portability, if technically feasible. In implementing the statute, the Commission has the responsibility to adopt requirements that will implement most quickly and effectively the national telecommunications policy embodied in the Act and to promote the pro-competitive, deregulatory markets envisioned by Congress. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace.

B. Summary of Significant Issues Raised By Public Comments in Response to the IRFA, FRFA-First Report and Order, and Supplemental FRFA

3. The comments received on the IRFA were discussed in the FRFA-First Report and Order incorporated into the *First Report and Order*. The comments received on the FRFA-First Report and Order were discussed in the Supplemental FRFA incorporated into the *First Order on Reconsideration*. No additional comments were sought or received for purposes of this Second Supplemental FRFA.

C. Summary of the FRFA-First Report and Order

4. In the FRFA-First Report and Order, we concluded that incumbent LECs do not qualify as small businesses because they are dominant in their field of operation, and, accordingly, we did not address the impact of the Commission's requirements on incumbent LECs. We noted that the RFA generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). According to the SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

5. We did recognize that the Commission's requirements may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs, including competitive LECs, as well as cellular, broadband personal communications services (PCS), and covered specialized mobile radio (SMR) providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimated that 2,100 carriers could be affected. We also discussed the reporting requirements imposed by the *First Report and Order*.

6. Finally, we discussed the steps we had taken to minimize the impact on small entities, consistent with the Commission's stated objectives. We concluded that our actions in the *First Report and Order* would benefit small entities by facilitating their entry into the local exchange market. We found that the record in this proceeding indicated that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find

it easier to enter the market as a result of number portability, which will eliminate this barrier to entry. We noted that, in general, we attempted to keep burdens on local exchange carriers to a minimum. For example, we adopted a phased deployment schedule for implementation in the 100 largest MSAs, and then elsewhere upon a carrier's request; we conditioned the provision of currently available measures upon request only; we did not require cellular, broadband PCS, and covered SMR providers, which may be small businesses, to offer currently available number portability measures; and we did not require paging and messaging service providers, which may be small entities, to provide any number portability.

D. Summary of the Supplemental FRFA

7. *Implementation Schedule.* In the *First Report and Order,* we required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding by December 31, 1998, set forth in Appendix F of the *First Report and Order.* In the *First Order on Reconsideration,* we extended the end dates for Phase I of our deployment schedule by three months, and for Phase II by 45 days. Thus, deployment will now take place in Phase I from October 1, 1997, through March 31, 1998, and in Phase II from January 1, 1998, through May 15, 1998. We also clarified that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. LECs must make available lists of their switches for which deployment has and has not been requested. The parties involved in such requests identifying preferred switches may need to use legal, accounting, economic and/or engineering services.

8. In the *First Order on Reconsideration,* we reduced the burdens on rural and smaller LECs by establishing a procedure whereby, within as well as outside the 100 largest MSAs, portability need only be implemented in the switches for which another carrier has made a specific request for the provision of portability. If competition is not imminent in the areas covered by rural/small LEC switches, then the rural or smaller LEC should not receive requests from competing carriers to implement portability, and thus need not expend its resources until competition does develop. By that time, extensive non-carrier-specific testing will likely have been done, and rural and small LECs need not expend their resources on such testing. We noted that the majority of parties representing small or rural LECs seeking relief asked that we only impose implementation requirements where competing carriers have shown interest in portability. Moreover, our extension of Phases I and II of our deployment schedule may permit smaller LECs to reduce their testing costs by allowing time for larger LECs to test and resolve the problems of this new technology.

9. In the *First Order on Reconsideration,* we rejected several alternatives put forth by parties that might impose greater burdens on small entities and small incumbent LECs. We rejected requests to accelerate the deployment schedule for areas both within and outside the 100 largest MSAs. We also rejected the procedures proposed by some parties that would require LECs to file waiver requests for their specific switches if they believe there is no competitive interest in those switches, instead of requiring LECs to identify in which switches of other LECs they wish portability capabilities. The suggested waiver procedures would burden the LEC from whom portability is requested with preparing and filing the petition for waiver. In addition, a competing carrier that opposes the waiver petition would be burdened with challenging the waiver. In contrast, under the procedure we establish, the only reporting burden on requesting carriers is to identify and request their preferred switches. Carriers from which portability is being requested, which may be small incumbent LECs, only incur a reporting burden if they wish to lessen their burdens further by requesting more time in which to deploy portability. Finally, we clarified that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs.

E. Description and Estimates of the Number of Small Entities Affected by This Second Order on Reconsideration

10. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this Second Supplemental FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." Nevertheless, we include small incumbent LECs in our Second Supplemental FRFA. We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

11. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order on Reconsideration.

12. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules

adopted in this *Order on Reconsideration.*

13. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS) Worksheet. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Order on Reconsideration.*

14. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules adopted in this *Order on Reconsideration.*

15. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems cert[illegible] that some of these carriers are [illegible]pendently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*

16. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of [illegible]n regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet* According to our most recent data, 25 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules adopted in this *Order on Reconsideration.*

17. *Pay Telephone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted in this *Order on Reconsideration.*

18. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this *Order on Reconsideration.*

19. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet.* According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate

that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

20. *Mobile Service Carriers*. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 138 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 138 small entity mobile service carriers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

21. *Broadband Personal Communications Service (PCS)*. The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small businesses" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

22. *SMR Licensees*. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this *Order on Reconsideration*. may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this Supplemental FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

23. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Order on Reconsideration* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Order on *Reconsideration*.

24. *Resellers*. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

F. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. There are no significant reporting, recordkeeping or other compliance requirements imposed on small entities by this *Second Order on Reconsideration* on other entities.

G. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

26. The Commission's actions in this *Second Order on Reconsideration* will benefit small entities by facilitating their entry into the local exchange market. The record in this proceeding indicates that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability which will eliminate this barrier to entry.

27. In general in this docket, we have attempted to keep burdens on local exchange carriers to a minimum. The regulatory burdens we have imposed are necessary to ensure that the public receives the benefit of the expeditious provision of service provider number portability in accordance with the statutory requirements. We believe that the *Second Order on Reconsideration* furthers our commitment to minimizing regulatory burdens on small entities. Based on the record before us, we do not find that any of the recommendations we adopt in the *Second Order on Reconsideration* will have a

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disproportionate impact on small entities.

28. *Report to Congress:* The Commission will send a copy of the *Second Order on Reconsideration*, including the Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Fairness Act of 1996. A copy of the *Second Order on Reconsideration* and this Second Supplemental FRFA (or summary thereof) will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

[FR Doc. 98–32808 Filed 12–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 98–278]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; interim guidelines.

SUMMARY: On July 18, 1997, the Commission released a draft copy of the Universal Service Worksheet (Worksheet) which requires contributors to list their revenues by certain categories. In response to the release of the draft Worksheet, several wireless telecommunications providers requested clarification on how, for purposes of completing the Worksheet, entities that cannot derive various revenue data directly from their books of account should calculate the requested revenue information. In this document, the Commission addressed the concerns of wireless telecommunications providers with regard to certain aspects of universal service administration.

DATES: Effective: December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Lori Wright, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on October 26, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554.

I. Introduction

1. In this Memorandum Opinion and Order (Order), we provide wireless telecommunications providers with interim guidelines for reporting on FCC Form 457, the Universal Service Worksheet (Worksheet) their percentage of interstate wireless telecommunications revenues. Specifically, until we issue final rules regarding the mechanisms that wireless telecommunications providers should use in allocating their wireless telecommunications revenues between the interstate and intrastate jurisdictions, we establish "safe-harbor" percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. These percentages can be used for purposes of calculating these providers' federal universal service contribution obligations. We conclude that wireless telecommunications providers that report on the Worksheet a percentage of interstate wireless telecommunications revenues that is less than the "safe harbor" percentage established for that category of provider should continue to document how they arrived at their reported percentage and make such information available to the Commission or the universal service Administrator upon request.

Interim Guidelines for Separating Interstate and Intrastate Revenues

2. In this Order, we provide wireless telecommunications providers with additional interim guidance on reporting their wireless interstate telecommunications revenues for purposes of universal service contributions. We share the concern expressed by Comcast and Vanguard that some CMRS carriers presently may have an unreasonable advantage in the market as a result of either unintentional or purposeful under-reporting of their end-user interstate telecommunications revenues. To illustrate, some CMRS providers reported seven percent of their CMRS revenues as interstate, while others reported 28 percent as interstate. We anticipate that the interim safe harbor, in combination with our willingness to inquire about individual carriers' methods for calculating interstate revenues, will address this matter until we develop final rules.

3. The *NECA II Order*, 62 FR 47369 (September 9, 1997), permitted contributors that cannot readily derive interstate revenues from their books of account to provide on the Worksheet good faith estimates of these figures pending final Commission resolution of this issue. The *NECA II Order* also directed such contributors to document how they calculated their estimates and to make such information available to the Commission or Administrator upon request. In this Order, we identify, on an interim basis, suggested, or "safe harbor," percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. We identify the safe harbor percentages set forth below in response to the requests of wireless telecommunications providers for specific guidance beyond that provided in the *NECA II Order* and for expeditious resolution of the issues raised by these providers. The safe harbor percentage suggested for each category of provider is set forth below. Wireless telecommunications providers that choose to avail themselves of these suggested percentages may assume that the Commission will not find it necessary to review or question the data underlying their reported percentages. Conversely, a provider that elects to report a percentage of interstate telecommunications revenues that is less than the "safe harbor" percentage established for that category of provider should document the method used to calculate its percentage and make that information available to the Commission or Administrator upon request. The Commission retains its authority to require carriers that report interstate revenues below the safe harbors to document, perhaps through traffic studies, the method by which they arrived at their reported percentage of interstate telecommunications revenues.

4. We emphasize that these percentages are intended only to provide guidance to carriers in reporting on the Worksheet their percentage of interstate wireless telecommunications revenues and are not prescriptive in nature. The Commission may elect to adopt final prospective rules that deviate from the interim guidance provided here. Accordingly, we note that our guidance here is an interim measure pending final Commission resolution of these issues.

5. *Cellular, broadband PCS, and digital SMR providers.* We establish a safe harbor percentage of interstate revenues for cellular and broadband PCS providers of 15 percent of their total cellular and broadband PCS telecommunications revenues. The Commission, therefore, will not seek supporting data from cellular and broadband PCS providers regarding their reported percentage of interstate telecommunications revenues if they report at least 15 percent of their

cellular and broadband PCS telecommunications revenues as interstate. We reach this determination based on the level of interstate traffic experienced by wireline providers. Several wireless telecommunications providers have suggested that the Commission consider establishing for cellular and broadband PCS providers a safe harbor percentage of interstate cellular and broadband PCS revenues based on the percentage of interstate wireline traffic reported for purposes of the Dial Equipment Minutes (DEM) weighting program, i.e., approximately 15 percent. Current Commission statistics indicate that the nationwide average percentage of interstate wireline traffic reported for purposes of the DEM weighting program is approximately 15 percent. We believe it is reasonable to use this percentage as a proxy for the percentage of interstate wireline traffic as whole. Furthermore, we note that we do not have evidence before us to indicate that the level of interstate wireless traffic experienced by cellular and broadband PCS providers is less than the level experienced by wireline providers. We find that establishing a safe harbor that assumes that wireless carriers receive interstate and intrastate revenues in similar proportions to wireline carriers represents a conservative estimate, and that such a conservative approach is reasonable as an interim safe harbor. Moreover, unlike paging and analog SMR providers, cellular and broadband PCS providers have not, as a group, reported on the Worksheet sufficiently similar percentages of interstate cellular and broadband PCS revenues.

6. *Paging providers.* We establish a safe harbor percentage of interstate revenues for paging providers of 12 percent of their total paging revenues. Therefore, paging providers that report at least 12 percent of their paging revenues as interstate will not be asked by the Commission to provide documentation supporting their reported level of interstate telecommunications revenues. Our determination is based on the fact that paging providers, as a group, reported on the Worksheets due on March 31 that approximately 12 percent of their paging revenues generated in the 1997 calendar year was interstate. We realize that the percentage of interstate telecommunications revenues derived from the provision of paging service may vary according to the amount of local service versus nationwide service that a paging carrier provides. Therefore, with regard to a paging carrier that reports less than 12 percent of their revenues as interstate, we will consider the amount of local service versus nationwide service that such a carrier provides. We believe that, until the Commission issues final rules regarding the mechanisms that paging providers should use to allocate their revenues between the interstate and intrastate jurisdictions, it is reasonable to establish a safe harbor based on the average percentage of interstate paging revenues reported by paging providers for 1997.

7. *SMR providers.* We establish a safe harbor percentage for analog Specialized Mobile Radio (SMR) providers of one percent of their total revenues derived from the provision of analog SMR service. Therefore, if analog SMR providers report at least one percent of their analog SMR revenues as interstate, the Commission will not seek supporting documentation from those analog SMR providers that indicate in Block 4 of the Worksheet that their principal communications business is "SMR/dispatch." We reach this determination based on the fact that these analog SMR providers, as a group, reported on the Worksheets due on March 31 that approximately one percent of their analog SMR revenues generated in the 1997 calendar year was interstate. As with the safe harbor percentage we establish for paging providers, we believe that it is reasonable to establish an interim safe harbor percentage based on the average interstate revenues percentage reported by analog SMR providers for 1997.

II. Procedural Matters and Ordering Clauses

A. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Order. In addition, the Order and IRFA (or summaries thereof) will be published in the **Federal Register**.

9. *Description of Projected Reporting, Record keeping, and Other Compliance Requirements.* Section 254(d) states "that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions" toward the preservation and advancement of universal service. Under the Commission's rules, all telecommunications carriers that provide interstate telecommunications services and some providers of interstate telecommunications are required to contribute to the universal service support mechanisms. Contributions for support for programs for high cost areas and low-income consumers are assessed on the basis of interstate and international end-user telecommunications revenues. Contributions for support for programs for schools, libraries, and rural health care providers are assessed on the basis of interstate, intrastate, and international end-user telecommunications revenues. Contributors are required to submit information on the Universal Service Worksheet regarding their end-user telecommunications revenues. Contributors are required to distinguish between their interstate and intrastate revenues. In this Order, we provide interim safe harbor percentages that carriers may use in reporting their interstate telecommunications revenues. Under our interim guidance, those carriers that choose not to report the safe harbor percentage may be required to perform reporting and record keeping assignments in order to use a different percentage. This task may require some administrative, accounting, and legal skills.

10. It is furthered ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Memorandum Opinion and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Ordering Clauses

It is ordered, pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254, and 403 that this Memorandum Opinion and Order is hereby adopted.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32802 Filed 12–9–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 120498A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod for Vessels Using Hook-and-line and Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod for vessels using hook-and-line and pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1998 total allowable catch (TAC) of Pacific cod allocated to vessels using hook-and-line and pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with § 679.20(c)(3)(iii), the TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI was established by the Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) as 99,068 metric tons (mt) and subsequent reserve releases as 110,568 mt (63 FR 47218, September 4, 1998), (63 FR 63801, November 17, 1998).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 110,468 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific cod for vessels using hook-and-line and pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the amount of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing allowance established for vessels using hook-and-line and pot gear will soon be reached. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 4, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32880 Filed 12–7–98; 4:26 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 237
Thursday, December 10, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM151; Notice No. 25–98–04–SC]

Special Conditions: Boeing Model 757–300 Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 757–300 airplane. This airplane will have a novel or unusual design feature associated with sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, Attn: Rules Docket (ANM–7), Docket No. NM151, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: NM151. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2011; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to NM151." The postcard will be date stamped and returned to the commenter.

Background

On February 21, 1996, Boeing applied for an amendment to Type Certificate No. A2NM to include the new Model 757–300 airplane, a derivative of the Model 757–200 currently approved under Type Certificate No. A2NM. The Model 757–300 airplane is a swept wing, conventional tail, twin engine, turbofan powered transport. Each engine will be capable of delivering 43,100 pounds of thrust. The airframe has been strengthened to accommodate the increased design loads and weights. The airplane has a seating capacity of up to 295, and a maximum takeoff weight of 270,000 pounds (122,470 Kg).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 757–300 airplane meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change to the Model 757–300. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A2NM include part 25, as amended by Amendments 25–1 through 25–45, and certain other later amended sections of part 25 that are not relevant to these proposed special conditions. In addition, Boeing has chosen to comply with the applicable regulations in effect on February 21, 1996; specifically part 25 as amended by Amendments 25–1 through 25–85 and certain other earlier amended sections of part 25 that are not relevant to these proposed special conditions. Three exemptions have been granted. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 757–300 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 757–300 airplane must comply with the fuel vent and exhaust emission requirements of part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The engine proposed for the Boeing Model 757–300 airplane is a high-bypass ratio fan jet engine that will not seize and produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) related to "sudden engine stoppage."

Discussion

For the engine proposed for the Model 757–300 airplanes, the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines has changed considerably from those envisioned in 14 CFR 25.361(b) when the engine seizure requirement was first adopted. Engines have grown much larger and are now designed with large bypass fans capable of producing much higher torque loads if they become jammed.

Relative to the engine configuration that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards. The latest generation of jet engines are capable of producing engine seizure torque loads that are significantly higher than previous generations of engines.

The FAA is developing a new regulation and a new advisory circular that will provide more comprehensive criteria for treating engine torque loads resulting from sudden engine stoppage. In the meantime, a special condition is needed to establish appropriate criteria for the Boeing Model 757–300 airplane.

Limit Engine Torque Loads for Sudden Engine Stoppage

In order to maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. These proposed special conditions would distinguish between the more common seizure events and those rare seizure events resulting from structural failures in the engine. For these more rare but severe seizure events, the proposed criteria would allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by applying a higher factor of safety to the maximum torque load imposed by sudden engine stoppage due to a structural failure.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 757–300. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 757–300 airplanes.

1. *Engine Torque Loads.* In lieu of compliance with § 25.361(b), compliance with the following special condition is proposed:

(a) For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load, considered as limit, imposed by:

(i) sudden deceleration of the engine due to a malfunction that could result in a temporary loss of power or thrust capability, and that could cause a shutdown due to vibrations; and

(ii) the maximum acceleration of the engine.

(2)The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure, including fan blade failure.

(3) The load condition defined in paragraph (a)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the adjacent wing and fuselage supporting structure.

Issued in Renton, Washington, on December 3, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–32821 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 207, 807, and 1271

[Docket No. 97N–484R]

RIN 0910-AB05

Establishment Registration and Listing for Manufacturers of Human Cellular and Tissue–Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the proposed rule concerning establishment registration and listing for manufacturers of human cellular and tissue-based products that was published in the **Federal Register** of May 14, 1998 (63 FR 26744). FDA is taking this action in response to a request for an extension and to allow interested parties additional time for review and to submit comments.

DATES: Submit written comments on the proposed rule by February 8, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 14, 1998 (63 FR 26744), FDA published a proposed rule to require manufacturers of certain human cellular and tissue-based products to register with the agency and list their products. In addition, the agency proposed to amend the registration and listing regulations that currently apply to human cellular and tissue-based products regulated as drugs, devices, and/or biological products. Interested persons were given until August 12, 1998, to submit written comments on the proposed rule.

On August 6, 1998, a comment was submitted to the docket requesting that the agency extend the comment period on the proposed rule 60 days. The comment noted that certain information relevant to the rulemaking was not included in the public docket. Because the docket was scheduled to close on August 12, 1998, there was insufficient time to prepare and submit a letter of extension to the docket. However, the agency agrees that an additional period will provide time for interested parties to review the proposed rule and information now placed in the public docket and submit written comments. Therefore, the agency is reopening the comment period for an additional 60 days, until February 8, 1999.

Interested persons may, on or before February 8, 1999 submit to the Dockets Management Branch (address above) written comments on the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The proposed rule and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32744 Filed 12-9-98; 8:45 am]

BILLING CODE 4160–01–F

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Parts 706 and 713

RIN 3420–AA02

Production of Nonpublic Records and Testimony of OPIC Employees in Legal Proceedings

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: OPIC proposes to establish rules regarding subpoenas seeking nonpublic records or the testimony of OPIC employees in legal proceedings. The proposed rule facilitates access to records in OPIC's custody by centralizing agency decision-making with respect to demands for records or testimony in such legal proceedings. The proposed rule provides procedures, requirements and information on how OPIC will handle these matters and expressly prohibits any disclosure or testimony except as provided by the proposed rule. The effect of the rule will be, among other benefits, to ensure an efficient use of OPIC resources, promote uniformity in decisions, protect confidential information, maintain agency control over the release of official information, protect the interests of the United States, and provide guidance to parties. The proposed rule will also amend the current rule regarding release of OPIC records which are exempt from disclosure under the Freedom of Information Act, to conform with the procedures provided in this proposed rule.

DATES: Submit comments on or before February 8, 1999.

ADDRESSES: Direct comments to Mitchel Neurock, Counsel for Administrative Affairs. Mail or hand-deliver comments to: Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527. Fax comments to (202) 408–0297. E-mail comments to mneur@opic.gov. Please send comments via one method only.

FOR FURTHER INFORMATION CONTACT: Mitchel Neurock, Counsel for Administrative Affairs, at (202) 336–8400.

SUPPLEMENTARY INFORMATION:

Background

OPIC receives subpoenas and requests for OPIC employees to provide evidence in legal proceedings. Typically, subpoenas are for OPIC records which are not available to the public under the Freedom of Information Act (FOIA). Also, OPIC receives subpoenas and requests for OPIC employees to appear as witnesses in legal proceedings in conjunction with requests for nonpublic records or to provide testimony.

In recent years, the number of requests has averaged 3 to 4 per year. Often, these subpoenas and requests relate to litigation involving projects financed and/or insured in whole or in part by OPIC, where one or more parties want to use nonpublic records, such as OPIC financing documents, in the case. In addition, parties to litigation frequently wish to have an OPIC employee, often a finance or insurance officer, testify to establish the authenticity of the records or to explain the information contained in those records. If OPIC provides these records and an OPIC employee appears as a witness, this will cause a significant disruption in the employee's work schedule. In many cases, parties want to use the OPIC employee as an expert witness on matters such as the fundamentals of project finance or other issues involving opinion evidence. OPIC's experience has been that, in practically all cases, the parties can address these issues by eliciting the testimony of other witnesses, including the testimony of their own independent expert witnesses. They may also use their own records.

OPIC's current regulations fail to inform parties about any matter concerning submission of subpoenas. There is no guidance for parties seeking to submit subpoenas addressing when parties should submit a request for nonpublic documents or testimony, the time period for OPIC's review of such a request, potential fees, or, if a request is granted, any restrictions which OPIC might place upon the disclosure of records or the appearance of an OPIC employee as a witness. There is also no guidance for parties about the factors OPIC will consider in making its determination in response to such requests.

The proposed rule fills in these gaps in OPIC's current regulations. OPIC has tried to write the proposed rule in an easy-to-read, question-and-answer format, to promote straightforward English. The proposed rule, in brief: prohibits disclosure of nonpublic records or testimony by OPIC employees absent compliance with the rule; lets the public know what information to submit and what factors OPIC will consider; and sets out filing fees, deadlines and potential restrictions on disclosure of nonpublic documents and testimony of OPIC employees. The proposed charges for witnesses are the same as those provided by the federal courts, and the fees relating to the production of records are the same as those charged under FOIA.

A few simple definitions clarify that the proposed rule applies to a broad range of cases (not just matters before courts). The proposed rule applies to former as well as to current OPIC employees. Former OPIC employees remain prohibited from testifying about specific matters for which they had responsibility during their OPIC employment, unless permitted to testify as provided in the proposed rule. They would not, however, be barred from appearing on general matters or otherwise employing their expertise (as expert witnesses, for example).

The proposed rule solves some problems which have arisen in the past. It should eliminate or reduce eleventh hour requests for nonpublic documents or testimony of OPIC employees. The procedures and criteria will ensure a more efficient use of OPIC resources, will minimize the possibility of involving OPIC in issues unrelated to its responsibilities, will promote

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uniformity in responding to such requests, and subpoenas, and will maintain the necessary impartiality of OPIC in matters between private litigants. The proposed rule will serve OPIC's interest in protecting sensitive, confidential and privileged information and records generated by its work.

The proposed rule is procedural, not substantive. It does not confer a benefit upon anyone. It does not create a right to obtain OPIC records or the testimony of any OPIC employee, past or present, nor does it create any additional right or privilege not already available to OPIC to deny such a request. OPIC makes no waiver of its sovereign immunity by proposing or implementing this rule. Failure to comply with the rule, however, constitutes grounds for OPIC's denial of any request.

OPIC is most interested in receiving comments on the application of the proposed regulation to former as well as to current employees, including its application to proceedings to which OPIC is a party, the exception from coverage for expert testimony by former OPIC employees, and any other factors which commentors believe OPIC should consider in addition to those set out in § 713.7 in reaching a final decision.

Legal Authority

More than 60 government agencies and departments have promulgated regulations governing the circumstances and manner in which an employee may respond to demands for testimony or production of documents. These regulations, issued under the authority of 5 U.S.C. 301, the so-called "housekeeping statute," are separate from FOIA regulations. In addition, OPIC has statutory authority to "take such actions as may be necessary or appropriate to carry out the powers" granted it by Congress. 22 U.S.C. 2199(d).

The housekeeping statute expressly states that it does not provide a basis for withholding information or limiting the availability of records, but authorizes a head of an executive agency to issue "regulations for the government of his department, the conduct of its employees, the distribution and performance of its business and the custody, use and preservation of its records, papers, and property." 5 U.S.C. 301. These regulations are known as "Touhy regulations," thanks to a landmark Supreme Court decision, *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Touhy was the first in a long line of cases which have upheld regulations restricting the rights of private litigants to require testimony or production of documents from employees of federal agencies. In *Touhy*, the Supreme Court held that a Department of Justice (DoJ) official, acting on order of the Attorney General, could not be held in contempt for declining to produce records in response to a subpoena. The Court reasoned that the variety of information contained in the files of any government agency, as well as the possibilities of harm from unrestricted disclosure in court, justify centralized determinations as to whether to obey or challenge a subpoena. The Court stated that it was appropriate for the Attorney General to prescribe regulations for the preservation of DoJ records.

Federal circuit and district courts have consistently held that a person seeking testimony or records from an agency must comply with that agency's Touhy regulations prior to seeking judicial enforcement of a subpoena. *Davis* v. *Braswell Motor Freight Lines, Inc.*, 363 F.2d 600 (5th Cir. 1966); *Colonial Savings and Loan Assoc.* v. *St. Paul Fire and Marine Ins. Co.*, 89 F.R.D. 481, 484 (D. Kan. 1980); *Marcoux* v. *Mid-States Livestock*, 66 F.R.D. 573, 575 n.1 (W.D. Mo. 1975)

Generally speaking, courts cannot compel an agency employee who is the subject of a subpoena to testify or produce records in violation of the agency's Touhy regulations *Touhy*, 340 U.S. at 467–70; *United States Steel* v. *Mattingly*, 663 F.2d 68 (10th Cir. 1980). Courts have also upheld regulations which limit federal employees' testifying about purely factual information. *Southeastern Pa. Transp. Auth.* v. *General Motors Corp.*, 103 F.R.D. 12 (E.D. Pa. 1984); *Kline* v. *Martin*, 345 F. Supp. 31 (E.D. Va. 1972). Consequently, a limited or conditional authorization to testify or produce records does not waive an employee's immunity from contempt or compulsion with regard to releasing records or testifying on unauthorized matters. *Swett* v. *Schenk*, 792 F.2d 1447, 1451–52 (9th Cir. 1986).

There is also precedent suggesting that agencies may also restrict the testimony of former employees. *Fowkes* v. *Dravo Corporation*, 5 F.R.D. 51 (E.D. Pa. 1945). In *Fowkes*, a former employee and a current employee of the Treasury Department refused to testify or produce documents pursuant to subpoenas, in accordance with instructions from the Deputy Commissioner of Internal Revenue. Because the employees obtained the information while in their official positions, disclosure could not be permitted unless in accordance with a Treasury regulation and a Treasury Department circular. The *Fowkes* court upheld the Treasury Department's refusal to allow the testimony, at least until the procedures in the Department's circular were followed. The court based its decision on the nature of the information. Thus, it is generally understood that, so long as a former employee acquired the information in an official capacity, persons seeking the former employee's testimony are still required to comply with an agency regulation limiting disclosure or testimony. As noted previously, OPIC's proposed rule will not bar former OPIC employees from serving as expert witnesses; however, former OPIC employees are prohibited from testifying about specific matters for which they had responsibility during their employment, unless permission is granted pursuant to the proposed rule.

With respect to the cost of processing and responding to requests for records and testimony, an agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. 31 U.S.C 9701.

The proposed rule is not intended to restrict access to records under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), or any other authority. At the same time, nothing in this proposed rule would permit disclosure of information by OPIC or its employees except as provided by statute or other applicable law.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires OPIC to prepare an analysis to describe any significant economic impact any proposed regulation may have on any small business or other small entity. 5 U.S.C. 602, 603. OPIC has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on any entity. The reasons for this determination are that the copying and witness fees to be charged to persons and entities submitting requests under the regulation are not large, and will not create a financial burden. The proposed rule will not create any significant demand for legal, accounting or consulting expenditures. Accordingly, OPIC has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

OPIC has determined that this rulemaking is not subject to the Paperwork Reduction Act, because OPIC averages less than 10 requests per year, and expects this level of activity to remain below this threshold. 5 CFR 1320.3(c).

Executive Order 12612

OPIC has determined that the proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects in 22 CFR Part 713

Administrative practice and procedure, Confidential business information, Freedom of Information Act, Government employees, Reporting and recordkeeping requirements, Subpoenas.

For the reasons set forth in the preamble, OPIC proposes to amend 22 CFR part 706 and add part 713 as set forth below:

PART 706—[AMENDED]

1. The authority citation for part 706 is revised to read as follows:

Authority: The Freedom of Information Act, as amended, 5 U.S.C. 552; 5 U.S.C. 301; 22 U.S.C. 2199(d).

2. Amend § 706.22, to redesignate the existing test as paragraph (a). In redesignated paragraph (a), further redesignate paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6). Add paragraph (b) to read as follows:

§ 706.22 Information and records not generally available to the public.

* * * * *

(b) *Prohibition against disclosure.* Except as provided in part 713 of this chapter, no officer, employee or agent of OPIC shall disclose or permit the disclosure of any exempt records of OPIC or of any information described in paragraph (a) of this section to any person other than those OPIC officers, employees or agents properly entitled to such information for the performance of their official duties.

3. Add Part 713 to read as follows:

PART 713—PRODUCTION OF NONPUBLIC RECORDS AND TESTIMONY OF OPIC EMPLOYEES IN LEGAL PROCEEDINGS

Sec.
713.1 What does this part prohibit?
713.2 When does this part apply?
713.3 How do I request nonpublic records or testimony?
713.4 What must my written request contain?
713.5 When should I make my request?
713.6 Where should I send my request?
713.7 What will OPIC do with my request?
713.8 If my request is granted, what fees apply?
713.9 If my request is granted, what restrictions may apply?
713.10 Definitions.

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 702; 18 U.S.C. 207; 18 U.S.C. 641; 22 U.S.C. 2199(d); 28 U.S.C. 1821.

§ 713.1 What does this part prohibit?

This part prohibits the release of nonpublic records or the appearance of an OPIC employee to testify in legal proceedings except as provided in this part. Any person possessing nonpublic records may release them or permit their disclosure only as provided in this part.

(a) *Duty of OPIC employees.* (1) If you are an OPIC employee and you are served with a subpoena requiring you to appear as a witness or to produce records, you must promptly notify the Vice-President/General Counsel in the Department of Legal Affairs. The Vice-President/General Counsel has the authority to instruct OPIC employees to refuse to appear as a witness or to withhold nonpublic records. The Vice-President/General Counsel may let an OPIC employee provide testimony, including expert or opinion testimony, if the Vice-President/General Counsel determines that the need for the testimony clearly outweighs contrary considerations.

(2) If a court or other appropriate authority orders or demands from you expert or opinion testimony or testimony beyond authorized subjects contrary to the Vice-President/General Counsel's instructions, you must immediately notify the Vice-President/General Counsel of the order an then respectfully decline to comply with the order. You must decline to answer questions on the grounds that this part forbids such disclosure. You should produce a copy of this part, request an opportunity to consult with the Vice-President/General Counsel, and explain that providing such testimony without approval may expose you to disciplinary or other adverse action.

(b) *Duty of persons who are not OPIC employees.* (1) If you are not an OPIC employee but have custody of nonpublic records and are served with a subpoena requiring you to appear as a witness or produce records, you must promptly notify OPIC of the subpoena. Also, you must notify the issuing court or authority and the person or entity for whom the subpoena was issued of the content of this part. Provide notice to OPIC by sending a copy of the subpoena to the Vice-President/General Counsel, OPIC, 1100 New York Avenue, NW, Washington, DC 20527. After receiving notice, OPIC may advise the issuing court or authority and the person or entity for whom the subpoena was issued that this part applies and, in addition, may intervene, attempt to have the subpoena quashed or withdrawn, or register appropriate objections.

(2) After notifying the Vice-President/General Counsel, respond to a subpoena by appearing at the time and place stated in the subpoena. Unless otherwise authorized by the Vice-President/General Counsel, decline to produce any records or give any testimony, basing your refusal on this part. If the issuing court or authority orders the disclosure of records or orders you to testify, decline to produce records or testify and advise the Vice-President/General Counsel.

(c) *Penalties.* Anyone who discloses nonpublic records or gives testimony related to those records, except as expressly authorized by OPIC or as ordered by a federal court after OPIC has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Also, former OPIC employees, in addition to the prohibition contained in this part, are subject to the restrictions and penalties of 18 U.S.C. 207.

§ 713.2 When does this part apply?

This part applies if you want to obtain nonpublic records or testimony of an OPIC employee for a legal proceeding. It does not apply to records that OPIC is required to release under the Freedom of Information Act (FOIA), records that OPIC releases to federal or state investigatory agencies, or records that OPIC is required to release pursuant to the Privacy Act, 5 U.S.C. 552a.

§ 713.3 How do I request nonpublic records or testimony?

To request nonpublic records or the testimony of an OPIC employee, you must submit a written request to the Vice-President/General Counsel of OPIC. If you serve a subpoena on OPIC or an OPIC employee before submitting a written request and receiving a final determination, OPIC will oppose the subpoena on the grounds that you failed to follow the requirements of this part. You may serve a subpoena as long as it is accompanied by a written request that complies with this part.

§ 713.4 What must my written request contain?

Your written request for records or testimony must include:

(a) The caption of the legal procedure, docket number, and name of the court or other authority involved.

(b) A copy of the complaint or equivalent document setting forth the assertions in the case and any other

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pleading or document necessary to show relevance.

(c) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought.

(d) A statement as to how the need for the information outweighs the need to maintain the confidentiality of the information and outweighs the burden on OPIC to produce the records or provide testimony.

(e) A statement indicating that the information sought is not available from another source, such as the requestor's own books and records, other persons or entities, or the testimony of someone other than an OPIC employee, such as retained experts.

(f) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the records or testimony you want.

(g) The name, address, and telephone number of counsel to each party in the case.

(h) An estimate of the amount of time you anticipate that you and other parties will need with each OPIC employee for interviews, depositions, and/or testimony.

§ 713.5 When should I make a request?

Submit your request at least 45 days before the date you need the records or testimony. If you want your request processed in a shorter time, you must explain why you could not submit the request earlier and why you need such expedited processing. If you are requesting the testimony of an OPIC employee, OPIC expects you to anticipate your need for the testimony in sufficient time to obtain it by deposition. The Vice-President/General Counsel may well deny a request for testimony at a legal proceeding unless you explain why you could not have used deposition testimony instead. The Vice-President/General Counsel will determine the location of a deposition, taking into consideration OPIC's interest in minimizing the disruption for an OPIC employee's work schedule and the costs and convenience of other persons attending the deposition.

§ 713.6 Where should I send my request?

Send your request or subpoena for records or testimony to the attention of the Vice-President/General Counsel, OPIC, 1100 New York Avenue NW, Washington, DC 20527.

§ 713.7 What will OPIC do with my request?

(a) *Factors OPIC will consider.* OPIC may consider various factors in reviewing a request for nonpublic records or testimony of OPIC employees, including:

Whether disclosure would assist or hinder OPIC in performing its statutory duties or use OPIC resources unreasonably, including whether responding to the request will interfere with OPIC employees' ability to do their work.

(2) Whether disclosure is necessary to prevent the perpetration of a fraud or other injustice in the matter or if you can get the records or testimony you want from sources other than OPIC.

(3) Whether the request is unduly burdensome.

(4) Whether disclosure would violate a statute, executive order, or regulation, such as the Privacy Act, 5 U.S.C. 552a.

(5) Whether disclosure would reveal confidential, sensitive or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release and, if so, whether a confidentiality agreement or protective order as provided in § 713.9(a) can adequately limit the disclosure.

(6) Whether the disclosure would interfere with law enforcement proceedings, compromise constitutional rights, or hamper OPIC programs or other OPIC operations.

(7) Whether the disclosure could result in OPIC's appearing to favor one litigant over another.

(8) Any other factors OPIC determines to be relevant to the interests of OPIC.

(b) *Review of your request.* OPIC will process your request in the order it is received. OPIC will try to respond to your request within 45 days, but this may vary, depending on the scope of your request.

(c) *Final determination.* The Vice-President/General Counsel makes the final determination on requests for nonpublic records or OPIC employee testimony. All final determinations are in the sole discretion of the Vice President/General Counsel. The Vice-President/General Counsel will notify you and the court or other authority of the final determination of your request. In considering your request, the Vice-President/General Counsel may contact you to inform you of the requirements of this part, ask that the request or subpoena be modified or withdrawn, or may try to resolve the request or subpoena informally without issuing a final determination. You may seek judicial review of the final determination under the Administrative Procedure Act, 5 U.S.C. 702.

§ 713.8 If my request is granted, what fees apply?

(a) *Generally.* You must pay any fees associated with complying with your request, including copying fees for records and witness fees for testimony. The Vice-President/General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the fees.

(b) *Fees for records.* You must pay all fees for searching, reviewing and duplicating records produced in response to your request. The fees will be the same as those charged by OPIC under its Freedom of Information Act regulations, § 706.26 of this chapter.

(c) *Witness fees.* You must pay the fees, expenses, and allowances prescribed by the court's rules for attendance by a witness. If no such fees are prescribed, the local federal district court rule concerning witness fees, for the federal district court closest to where the witness appears, will apply. For testimony by current OPIC employees, you must pay witness fees, allowances, and expenses to the Vice-President/General Counsel by check made payable to the "Overseas Private Investment Corporation" within 30 days from receipt of OPIC's billing statement. For the testimony of a former OPIC employee, you must pay witness fees, allowances, and expenses directly to the former employee, in accordance with 28 U.S.C. 1821 or other applicable statutes.

(d) *Certification of records.* OPIC may authenticate or certify records to facilitate their use as evidence. If you require authenticated records, you must request certified copies at least 45 days before the date they will be needed. Send your request to the Vice-President/General Counsel. OPIC will charge you a certification fee of $5.00 per document.

(e) *Waiver of fees.* A waiver or reduction of any fees in connection with the testimony, production, or certification or authentication of records may be granted in the discretion of the Vice-President/General Counsel. Waivers will not be granted routinely. If you request a waiver, your request for records or testimony must state the reasons why a waiver should be granted.

§ 713.9 If my request is granted, what restrictions may apply?

(a) *Records.* The Vice-President/General Counsel may impose conditions or restrictions on the release of nonpublic records, including a requirement that you obtain a protective order or execute a confidentiality agreement with the other parties in the legal proceeding that limits access to and any further disclosure of the nonpublic records. The terms of a confidentiality agreement or protective order must be acceptable to the Vice-President/General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OPIC may condition the release of nonpublic records on an amendment to the existing protective order or confidentiality agreement.

(b) *Testimony.* The Vice-President/General Counsel may impose conditions or restrictions on the testimony of OPIC employees, including, for example, limiting the areas of testimony or requiring you and the other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which you requested the testimony. The Vice-President/General Counsel may also require you to provide a copy of the transcript of the testimony to OPIC at your expense.

§ 713.10 Definitions.

For purposes of this part:

Legal proceedings means any matter before any federal, state or foreign administrative or judicial authority, including courts, agencies, commissions, boards or other tribunals, involving such proceedings as lawsuits, licensing matters, hearings, trials, discovery, investigations, mediation or arbitration. When OPIC is a party to a legal proceeding, it will be subject to the applicable rules of civil procedure governing production of documents and witnesses; however, this part will still apply to the testimony of former OPIC employees.

Nonpublic records means any OPIC records which are exempt from disclosure by statute or under part 706 of this chapter, OPIC's regulations implementing the provisions of the Freedom of Information Act. For example, this means records created in connection with OPIC's receipt, evaluation and action on actual and proposed OPIC finance projects and insurance policies (whether such projects or policies were canceled or not), including all reports, internal memoranda, opinions, interpretations, and correspondence, whether prepared by OPIC employees or by persons under contract, as well as confidential business information submitted by parties seeking to do business with OPIC. Whether OPIC has actually chosen in practice to apply any exemption to specific documents is irrelevant to the question of whether they are "nonpublic" for the purposes of this part.

OPIC employee means current and former officials, members of the Board of Directors, officers, directors, employees and agents of the Overseas Private Investment Corporation, including contract employees, consultants and their employees. This definition does not include persons who are no longer employed by OPIC and are retained or hired as expert witnesses or agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment.

Subpoena means any order, subpoena for records or other tangible things or for testimony, summons, notice or legal process issued in a legal proceeding.

Testimony means any written or oral statements made by an individual in connection with a legal proceeding, including personal appearances in court or at depositions, interviews in person or by telephone, responses to written interrogatories or other written statements such as reports, declarations, affidavits, or certifications or any response involving more than the delivery of records.

Dated: December 4, 1998.

Michael C. Cushing,

Managing Director for Administration.

[FR Doc. 98-32810 Filed 12-9-98; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 157-98]

Exemption of Records System Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system of records is the "Freedom of Information/Privacy Acts (FOI/PA) Records, (JUSTICE/OPR-002)." Records in this system may contain information which relates to official Federal investigations and matters of law enforcement of the Office of Professional Responsibility (OPR). Accordingly, where applicable, the exemptions are necessary to avoid interference with the law enforcement functions of OPR. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process; preclude the disclosure of investigative techniques; protect the identities and physical safety of confidential sources and of law enforcement personnel; ensure OPR's ability to obtain information from information sources; protect the privacy of third parties; and safeguard classified information as required by Executive Order 12958.

DATE: Submit any comments by January 11, 1998.

ADDRESS: Address all comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850 WCTR Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202) 616-0178.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "Freedom of Information/Privacy Acts (FOI/PA) Records (JUSTICE/OPR-002)."

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: November 20, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553, 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.80 by adding paragraphs (c) and (d) to read as follows:

§ 16.80 Exemption of Office of Professional Responsibility (OPR) System—limited access.

* * * * *

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Freedom of Information/Privacy Act (FOI/PA) Records (JUSTICE/OPR-002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by OPR.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personnel privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

[FR Doc. 98–32866 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–28–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–096–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposes revisions to and additions of regulations concerning definitions, hydrologic and subsidence control plan permit application requirements for underground mining operations, and hydrologic balance protection and subsidence control performance standards for underground mining operations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Illinois program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., e.s.t., January 11, 1999. If requested, we will hold a public hearing on the amendment on January 4, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on December 28, 1998.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois 62701–1787, Telephone (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated November 24, 1998 (Administrative Record No. IL–5028), Illinois sent us an amendment to its program under SMCRA. Illinois sent the amendment in response to our letter dated May 20, 1996 (Administrative Record No. IL–1900), that we sent to Illinois under 30 CFR 732.17(c). The amendment also includes changes made at Illinois' own initiative. Illinois proposes to amend its regulations at Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for your inspection at the locations listed above under "**ADDRESSES.**"

1. 62 IAC 1701.Appendix A Definition of Drinking, Domestic or Residential Water Supply

Illinois proposes to add the following definition for "drinking, domestic or residential water supply":

> 'Drinking, domestic or residential water supply' means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

2. 62 IAC 1701.Appendix A Definition of Material Damage

Illinois proposes the following definition for "material damage":

'Material damage,' in the context of Sections 1784.20 and 1817.121 of this Part, means:

Any functional impairment of surface lands, features, structures or facilities;

Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

3. 62 IAC 1701.Appendix A Definition of Replacement of Water Supply

Illinois proposes to define "replacement of water supply" as follows:

'Replacement of water supply' means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

Upon agreement by the operator and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner. In conjunction with this requirement, the applicant shall provide a plan for determining an appropriate present worth amount and describe how to resolve disputes between the land owner and the applicant over this amount.

If the affected water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

4. 62 IAC 1784.14 Hydrologic Information

At 62 IAC 1784.14(e)(3)(D), Illinois proposes to require that the determination of the probable hydrologic consequences include the following finding:

Whether the underground mining activities conducted after January 19, 1996 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

5. 62 IAC 1784.20 Subsidence Control Plan

Illinois is removing the existing language and proposing to add the following provisions at 62 IAC 1784.20:

a. Section 1784.20(a)(1) requires the pre-subsidence survey to include a map of the permit, shadow and adjacent areas at a scale of 1:12,000 or larger if determined necessary. The map must show the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence. It must also show the location and type of drinking, domestic and residential water supplies that could be contaminated, diminished or interrupted by subsidence.

b. Section 1784.20(a)(2) requires the pre-subsidence survey to include a narrative addressing the potential impacts of subsidence on the protected structures or renewable resource lands and protected water supplies.

c. Section 1784.20(a)(3) requires the pre-subsidence survey to include identification of the premining condition of all protected structures and facilities within the area of the applicable angle of draw and a survey of the quantity and quality of all protected water supplies. Section 1784.20(a)(3) also requires that if the applicant cannot make this survey because the owner will not allow access to the site, the applicant must notify the owner, in writing, of the effect that denial of access will have as described in Section 1817.121(c)(3)(C). The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of the protected structures and facilities and the protected water supplies. Copies of the survey and any technical assessment or engineering evaluation must be provided to the property owner. The survey of structures and facilities must be maintained at the mine office and provided upon request. The survey of water must be provided to the Illinois Department of Natural Resources, Office of Mines and Minerals (Department).

d. At section 1784.20(b), if the survey shows that no protected structures, renewable resource lands, or water supplies would be impacted as a result of mine subsidence, and if the Department agrees, no further information need be provided. If the survey shows that structures, renewable resource lands or water supplies exist and that subsidence could impact them, the application must include a subsidence control plan.

e. Section 1784.20(b)(1) requires the subsidence control plan to contain a description of the method of coal removal.

f. Section 1784.20(b)(2) requires a map of the underground workings that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where measures will be taken to prevent or minimize subsidence and subsidence-related damage and, when applicable, to correct subsidence-related material damage.

g. Section 1784.20(b)(3) requires the pre-subsidence survey to include a description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying and underlying strata.

h. Section 1784.20(b)(4) requires a description of the monitoring, if any, needed to determine the commencement and degree of subsidence.

i. For those areas where planned subsidence is not projected, section 1784.20(b)(5) requires the subsidence control plan to include a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage. A list of possible measures to be taken is contained in subsection (b)(5) (A) through (E).

j. Section 1784.20(b)(6) requires the subsidence control plan to include a description of the anticipated effects of planned subsidence, if any.

k. For those areas where planned subsidence is projected to be used, section 1784.20(b)(7) requires the subsidence control plan to include a description of methods to be employed to minimize damage to structures and facilities; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair.

l. Section 1784.20(b)(8) requires the subsidence control plan to include a description of the measures to be taken to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures. The applicant must provide a description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface and structures potentially impacted and the impact on water quality or quantity. The applicant must also provide a plan for resolving disputes between the landowner and the operator over the amount, level or degree of damage.

m. Section 1784.20(b)(9) requires other information specified by the Department.

6. 62 IAC 1817.41 Hydrologic Balance Protection

Illinois proposes to add the following new provision at 62 IAC 1817.41(j):

> Drinking, domestic or residential water supply. The operator must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after January 19, 1996, if the affected well or spring was in existence before the date the Department received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in Sections 1780.21 and 1784.14 of this Part and the geologic information concerning baseline hydrologic conditions required in Sections 1781.21 and 1784.22 of this Part will be used to determine the impact of mining activities upon the water supply.

7. 62 IAC 1817.121 Subsidence Control

Illinois proposes the following revisions to 62 IAC 1817.121:

a. At section 1817.121(a), Illinois added the heading "Measures to prevent or minimize damage"; numbered the existing language in the first sentence as subsection (a)(1); and removed the last sentence.

b. At new subsection (a)(2), if an operator employs mining technology that provides for planned subsidence, Illinois requires the operator to take necessary and prudent measures to minimize material damage to the extent technologically and economically feasible to structures and facilities. Measures to minimize material damage are not required if the operator has the written consent of the owners; or unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair. Written consent or cost analysis must be provided to the Department 60 days prior to performing planned subsidence operations under a structure or prior to extraction occurring within 1000 feet of a protected structure. A lesser time period or distance may be employed if approved in writing.

c. Section 1817.121(a)(3) provides that nothing in this Part prohibits the standard method of room-and-pillar mining.

d. At section 1817.121(c), Illinois added the heading "Repair of damage."

e. At subsection (c)(1), Illinois added the heading "Repair of damage to surface lands."

f. At subsection (c)(2), Illinois added the heading "Repair or compensation for damage to structures and facilities." Illinois also revised subsection (c)(2) to require the operator to promptly repair or compensate the owner for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. If the repair option is selected, the operator must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the operator must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The operator may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. These requirements apply only to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983.

g. At section 1817.121(c)(3), Illinois added the heading "Rebuttable presumption of causation by subsidence" and removed the existing language.

h. New subsection (c)(3)(A) requires that if damage to any structure or facility occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the operator caused the damage. The presumption will apply to a 30-degree angle of draw.

i. At new subsection (c)(3)(B), Illinois allows an operator to request that the presumption apply to a different angle of draw. The Department may approve application of the presumption to a site-specific angle of draw based on a site-specific analysis submitted by the applicant. To establish a site-specific angle of draw, an operator must demonstrate that the proposed angle of draw has a more reasonable basis than the standard. It must be based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

j. Subsection (c)(3)(C) provides that if the operator was denied access to the land or property for the purpose of conducting the pre-subsidence survey, no rebuttable presumption will exist.

k. At subsection (c)(3)(D), Illinois provides some examples of a rebuttal of presumption. The presumption will be rebutted if the evidence establishes that the damage predated the mining in question; the damage was proximately caused by some other factor or factors; or the damage occurred outside the surface areas within which subsidence was actually caused by the mining in question.

l. Subsection (c)(3)(E) provides that all relevant and reasonably available information will be considered by the Department in any determination of whether damage to protected structures was caused by subsidence from underground mining.

m. New subsection (c)(4) provides requirements for adjustment of the performance bond amount when subsidence-related material damage to protected land, structures or facilities occur or when contamination, diminution, or interruption to a water supply occurs. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. This time frame may be extended, but not to exceed one year, if the operator demonstrates that subsidence is not complete, that not all probable subsidence-related material damage has occurred, or that not all reasonable anticipated changes have occurred. The operator may also use appropriate terms and conditions for liability insurance to assure that the financial responsibility to comply with subsection (c) is in place.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Illinois program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under DATES or at locations other than the Indianapolis Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., e.s.t. on December 28, 1998. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under FOR FURTHER INFORMATION

CONTACT. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare responses and appropriate questions. The public hearing will continue until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under ADDRESSES. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1998.

Charles Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–32745 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–077–FOR]

West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on part of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted on April 28, 1997 (with revisions submitted on May 14, 1997) and amends both the West Virginia Surface Mining Reclamation Regulations and the West Virginia Surface Mining Code. The comment period is being reopened specifically on an amendment to allow fish and wildlife habitat and recreation lands as a postmining land use for mountaintop removal operations. The amendment is intended to improve the effectiveness of the West Virginia program.

DATES: Written comments must be received on or before 4:00 p.m. on January 15, 1999.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the West Virginia program, the program amendment, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed changes by contacting the OSM Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515.

In addition, copies of the amendment that is the subject of this notice are available for inspection during regular

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business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated April 28, 1997 (Administrative Record Number WV–1056), the West Virginia Division of Environmental Protection (WVDEP) submitted amendments to its approved permanent regulatory program pursuant to 30 CFR 732.17. Some revisions to the original amendment were submitted by letter dated May 14, 1997 (Administrative Record Number WV–1057). The amendments revise the West Virginia Surface Mining Reclamation Regulations (CSR Section 38–2 *et seq.*), and Section 22–3 of the West Virginia Surface Mining Code. The amendments concern changes to implement the standards of the Federal Energy Policy Act of 1992, and other changes desired by the State.

Concurrent with the Director's review of the proposed amendments, OSM's Charleston Field Office conducted an evaluation and prepared an oversight report on portions of the West Virginia surface mining program. The oversight report is focused, in part, on postmining land uses pertaining to mountaintop removal operations. OSM will be requesting public comment on the oversight report, and expects that some of the comments received concerning the oversight report will address a proposed amendment at section 22–3–13(c)(3) of the West Virginia Surface Mining Code, concerning mountaintop removal operations. Therefore, OSM is reopening the public comment period on the specific proposed amendment identified below.

Section 22–3–13(c)(3) of the West Virginia Surface Mining Code. This provision is amended to allow the approval of permits involving a variance from restoring approximate original contour (AOC) for mountaintop removal operations when the postmining land use includes fish and wildlife habitat and recreation lands.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendment identified above. Comments should address whether the amendment identified above satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this notice and include explanations in support of the commenter's recommendations.

Comments received after the time indicated under "DATES" or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–32746 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 8, 1999.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–31–N, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–31–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Federal or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Federal or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution. As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Federal and State health care programs, would not be treated as criminal offenses under the anti-kickback statute (section 1128B(b) of the Act; 42 U.S.C. 1320a–7b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act; 42 U.S.C. 1320a–7(b)(7). The OIG safe harbor provisions have been developed "to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements" (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or program exclusion authority.

To date, the OIG has developed and codified in 42 CFR 1001.952 a total of 13 final safe harbors that describe practices that are sheltered from liability. The OIG is also currently drafting a comprehensive safe harbor rule that intends to finalize certain proposals for new and clarified safe harbors that were published in the **Federal Register** in 1993 and 1994 (58 FR 49008, September 21, 1993 and 59 FR 37202, July 21, 1994). The OIG is also developing an interim final rule for the shared-risk exception to the anti-kickback statute (section 216 of HIPAA). This rule, which will set forth two new safe harbors, is being developed through the negotiated rulemaking process in accordance with the requirements of HIPAA and the Federal Advisory Committee Act.

B. OIG Special Fraud Alerts

In addition, the OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG regards as unlawful. These Special Fraud Alerts serve to notify the health care industry that the OIG has become aware of certain abusive practices that the OIG plans to pursue and prosecute, or to bring civil and administrative action, as appropriate. The Special Fraud Alerts also serve as a tool to encourage industry compliance by giving providers an opportunity to examine their own practices. The OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs.

In developing these Special Fraud Alerts, the OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry. To date, nine individual Special Fraud Alerts have been issued by the OIG and subsequently reprinted in the **Federal Register** on December 19, 1994 (59 FR 65372), August 10, 1995 (60 FR 40847), June 17, 1996 (61 FR 30623) and April 24, 1998 (63 FR 20415).

C. Section 205 of Public Law 104–191

In accordance with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191), the Department is now required to provide additional formal guidance regarding the application of the anti-kickback statute and the safe harbor provisions, as well as other OIG health care fraud and abuse sanctions. In addition to accepting and responding to requests for advisory opinions from outside parties regarding the interpretation and applicability of certain statutes relating to the Federal and State health care programs, section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts. In accordance with this requirement, the OIG has published notices in the **Federal Register** on December 31, 1996 (61 FR 69060) and on December 10, 1997 (62 FR 65049) soliciting such proposals.

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In developing safe harbors for a criminal statute, the OIG is compelled to engage in a complete and thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover all potential opportunities for fraud and abuse. Only then can the OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, the OIG is continuing to study safe harbor and Special Fraud Alert proposals submitted in response to the annual solicitations concerning subject areas other than those to be addressed in the safe harbor rulemakings under development. In response to the 2 previously-issued **Federal Register** solicitation notices, the OIG received 32 timely-filed responses to the 1996 notice and 17 responses to the 1997 notice. A status report of these public comments for new and modified safe harbors is contained in Appendix G of the OIG's Semiannual Report for the period April 1, 1998 through September 30, 1998.[1] The OIG is currently taking these recommendations under advisement and is not seeking additional public comment on those proposals at this time. Rather, this notice seeks additional recommendations from affected provider, practitioner, supplier and beneficiary representatives regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix G of the OIG Semiannual Report.

Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with the statute, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, those practices that would be identified in new Special Fraud Alerts may result in any of the consequences set forth above, and the volume and frequency of the conduct that would be identified in these Special Fraud Alerts.

A detailed explanation of justifications or empirical data supporting the suggestion, and sent to the address indicated above, would prove helpful in our considering and drafting new or modified safe harbor regulations and Special Fraud Alerts.

Dated: December 4, 1998.

June Gibbs Brown,

Inspector General.

[FR Doc. 98–32806 Filed 12–6–98; 8:45 am]

BILLING CODE 4150–04–P

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[1] The OIG Semiannual Report can be accessed through the OIG web site at http://www.dhhs.gov/progorg/oig/semann/index.htm.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 98–278]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Between September, 1997 and March, 1998, the Commission's Wireless Telecommunications Bureau and Common Carrier Bureau hosted a series of *ex parte* meetings with representatives of the wireless telecommunications industry. The Bureau's primary objective in hosting those meetings was to solicit proposals on methods by which wireless telecommunications providers might allocate between the intrastate and interstate jurisdictions their end-user telecommunications revenues for purposes of the universal service reporting requirements. In this document, the Commission seeks comment on what amount of local usage, if any, eligible telecommunications carriers should be required to provide.

DATES: Comments are due on or before January 11, 1999 and reply comments are due on or before January 25, 1999.

Written comments by the public on the proposed information collections are due January 11, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before February 8, 1999.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lori Wright, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400. For additional information concerning the information collections contained in this Further Notice of Proposed Rulemaking contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on October 26, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554.

Initial Paperwork Reduction Act Analysis

1. This Further Notice of Proposed Rulemaking (Further Notice) contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections

contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB notification of action is due February 8, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

OMB Approval Number: None.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or Other for Profit.

Title: Data to Determine Percentage of Interstate Telecommunications Revenues from Wireless Carriers and Submission of Data to Determine Eligibility.

	Number of respondents	Estimate time per response (hours)	Total annual burden (hours)
Data to Determine Percentage of Interstate Telecommunications Revenue by Wireless Carriers	900	10	9000
Submission of Data to Determine Eligibility	3400	.25	850

Total Annual Burden: 9,850 hours.

Estimated costs per respondent: $0.

Needs and Uses: The Commission seeks comment on various mechanisms for allocating between the intrastate and interstate jurisdictions the end-user telecommunications revenues of universal service contributors that cannot derive this information readily from their books of account. The Commission seeks comment on its proposals for wireless carriers to conduct traffic studies and extrapolate from the data the percentage of their revenues that should be attributed to the interstate jurisdiction. This allocation will be used for purposes of calculating the federal universal service reporting and contribution obligations. The Commission also seeks comment on whether to require eligible telecommunications carriers to include some fixed number of minutes of use per month as part of the basic universal service package or whether we should require some number of calls. This information would be reported by the carriers to their state utility commission when they seek designation as an eligible telecommunications carriers.

I. Introduction

2. Between September, 1997 and March, 1998, the Commission's Wireless Telecommunications Bureau and Common Carrier Bureau hosted a series of *ex parte* meetings with representatives of the wireless telecommunications industry. The Bureau's primary objective in hosting those meeting was to solicit proposals on methods by which wireless telecommunications providers might allocate between the intrastate and interstate jurisdictions their end-user telecommunications revenues for purposes of the universal service reporting requirements. In this Further Notice, we propose and seek comment on various mechanisms for allocating between the intrastate and interstate jurisdictions the end-user telecommunications revenues of universal service contributions that cannot derive this information readily from their books of account. This allocation will be used for purposes of calculating the federal universal service reporting and contribution obligation. On March 8, 1996, the Commission adopted an initial *Notice of Proposed Rulemaking and Order Establishing Joint Board,* 61 FR 10499 (March 14, 1996) seeking comments on recommended changes to our regulations to implement the universal service directives of the Telecommunications Act of 1996.

A. Proposed Mechanisms for Separating Interstate and Intrastate Revenues

a. Good Faith Estimates

3. We tentatively conclude that we should provide specific guidance to wireless telecommunications providers in identifying their interstate revenues, as required on the Universal Service Worksheet (Worksheet). Certain parties initially proposed that we adopt on a permanent basis the revenue reporting approach relied upon for purposes of the Telecommunications Relay Services (TRS) Fund Worksheet. The Commission's TRS rules permit carriers that are not subject to the Uniform System of Accounts (USOA) in Part 32, such as CMRS providers, to rely on a special study to estimate their percentages of interstate and international traffic. Under this approach, contributors must document how they calculated their estimates and make such information available to the Commission or TRS Administrator upon request. Although the *NECA II Order,* 62 FR 47369 (September 9, 1997), permitted certain universal service contributors, on an interim basis, to make good faith estimates of their interstate revenues along the lines of the special study method used for TRS, we tentatively conclude that we should not adopt this approach on a permanent basis. Given the greater impact universal service contributions have on carriers, we tentatively agree with CTIA and Comcast that allowing carriers to rely on good faith estimates on a permanent basis as a means of distinguishing contributors' interstate and intrastate revenues will not provide contributors with sufficient certainty as to the appropriate amount of their payment obligations and may result in inequities in payment obligations. Comcast contends that the Commission should provide specific guidance on this issue to minimize the "potential for systematic underreporting or underestimating of revenues, or, in some cases, overestimation of revenues." Specifically, Comcast suggests that, without establishing relevant markets according to which carriers report their percentage of interstate telecommunications revenues, larger wireless carriers will "average down their interstate percentages by including [revenue information from] distant markets." We seek comment on the merits of our tentative conclusions and on how we might amend our rules in a manner that would provide certainty and avoid substantial inequities in payment obligations.

b. Percentage of Interstate Revenues Estimates

4. We tentatively conclude that, as proposed by Comcast, the Commission should establish a fixed percentage of interstate end-user wireless telecommunications revenues that a wireless telecommunications provider

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must report on the Worksheet. It appears that such an approach would eliminate competitive inequities that may be associated with the use of differing allocation assumptions and methodologies. We invite parties to comment on the use of such an approach for determining the interstate wireless telecommunications revenues for wireless telecommunications providers.

5. Given that various categories of wireless providers may have substantially differing levels of interstate traffic, we also tentatively conclude that we should establish different percentages according to the type of provider (*e.g.*, cellular, broadband PCS, paging, and SMR). We adopt a similar approach for our interim guidelines for wireless providers' reporting on the Worksheet of their interstate wireless telecommunications revenues. Although this approach recognizes that interstate traffic levels may differ among differing classes of wireless providers, it assumes that such levels are generally similar among competing carriers with similar systems and operations. We seek comment on whether this is a reasonable assumption.

6. With regard to broadband PCS and cellular services, we seek comment on whether the fixed percentage of interstate telecommunications revenues that must be reported on the Worksheet should be based on the level of interstate traffic experienced by wireline providers. We seek comment on whether the similarities between broadband PCS, cellular, and traditional wireline services are sufficient to warrant such an outcome. For wireline services, current Commission statistics indicate that the nationwide average percentage of interstate wireline traffic reported for the DEM weighting program is approximately 15 percent. We seek comment on whether cellular and broadband PCS providers should report 15 percent of their cellular and PCS revenues as interstate. We note that members of the wireless telecommunications industry have suggested that 15 percent represents a reasonable approximation of the percentage of cellular and PCS traffic that is interstate. We are not aware of evidence that cellular and broadband PCS providers experience substantially more or less interstate traffic than wireline providers, nor do we have evidence before us to indicate that the level of interstate traffic for wireline carriers reporting under the DEM weighting program differs substantially from wireline carriers as a whole. At the same time, we are cognizant that, due to the difference in pricing structures between wireline service and wireless service, the level of interstate telecommunications revenues generated by each type of service may vary from one to another. Moreover, some cellular and PCS carriers have reported as much as 28 percent of their revenues as interstate, which may represent a more accurate accounting given that carriers have incentives to underreport their interstate revenues for universal service reporting purposes. We therefore invite parties to comment on the appropriateness of using data submitted for purposes of the DEM weighting program to approximate the percentage of interstate cellular and PCS revenues generated by wireless telecommunications providers.

7. We recognize that analog SMR and paging services do not as closely resemble broadband PCS, cellular, or traditional wireline services, and therefore seek comment on an appropriate estimation of these providers' interstate analog SMR and paging revenues. We adopt interim guidelines for paging and analog SMR providers, based on the average interstate revenues percentage reported by those carriers in 1998. Paging providers and analog SMR providers reported, on average, interstate paging and analog SMR revenue levels at approximately 12 percent and one percent, respectively. Unlike our estimate for the interstate portion of cellular and PCS revenues, however, the DEM weighting reports do not provide the Commission with an independent source for estimating the portion of paging and analog SMR revenues that is interstate. We also note that these carriers may have incentives to underreport their interstate revenues for universal service reporting purposes. We seek comment on whether the 12 percent average reported by paging carriers and one percent reported by analog SMR providers should form the basis for the final fixed percentages, and, if not, what would be an appropriate allocation. We are interested in knowing of any other mechanisms that, like DEM weighting, could provide an independent basis for a permanent rule for analog SMR and paging carriers. Parties are encouraged to provide alternative estimations of the percentage of interstate traffic experienced by analog SMR and paging providers and a detailed basis for the estimation.

8. According to the American Mobile Telecommunications Association (AMTA), SMR providers, with the possible exception of NEXTEL, generate relatively low levels of interstate traffic. We seek comment on this assertion and on whether any other categories of provider, such as paging providers, generate similarly low levels of interstate telecommunications traffic relative to other categories of providers. We also seek comment on how to treat providers, like NEXTEL, that may generate atypical levels of interstate traffic. Likewise, we seek comment on whether any category of provider experiences higher levels of interstate telecommunications traffic relative to other categories of providers.

9. We note that traffic studies may represent one possible mechanism wireless telecommunications carriers could use to determine their percentage of interstate telecommunications revenues. We believe that it would be reasonably simple for most wireless carriers to conduct traffic studies and extrapolate from the data the percentage of their revenues that should be attributed to the interstate jurisdiction. Some wireless carriers could conduct joint traffic studies, the results of which could be used by all similarly situated companies. We seek comment on these proposals. Furthermore, if the Commission elects not to use the data submitted for purposes of the DEM weighting program to estimate the percentage of broadband PCS and cellular revenues generated by broadband PCS and cellular providers (*i.e.*, 15 percent), as discussed above, one alternative would be to derive a fixed percentage for each category of provider based upon data reported on the 1997 TRS Fund Worksheets. Given the impact that universal service contributions have on carriers, however, we believe that we should establish a percentage of interstate wireless telecommunications revenues that is based on data more certain and accurate than what may be obtained from TRS worksheets. Therefore, we tentatively conclude that we should not use the allocations made for the TRS Fund Worksheet to determine the proper portion of revenues derived from interstate calls. We seek comment on this tentative conclusion.

10. We also seek comment on whether the Commission should establish different percentages within each category of provider, rather than establishing a single percentage for each category of provider. For example, because the service areas of some wireless telecommunications providers may consist of many smaller states (*i.e.*, in the northeastern part of the United States) and thus experience a higher level of interstate traffic than service areas in, for example, the midwestern and western parts of the United States, the Commission could establish various

percentages within each category of provider that take into consideration the area of the country being served. Comcast asserts that, in order to estimate accurately the percentage of broadband PCS providers' interstate broadband PCS revenues, the Commission must first establish an appropriate market size. Comcast recommends that the level of interstate telecommunications revenues reported by wireless telecommunications providers whose license territories are established on the basis of Major Trading Areas (MTAs) should be determined on an MTA-by-MTA basis. Comcast, which serves markets in the northeastern part of the United States where there may be a relatively high number of interstate calls, contends that reporting the level of interstate revenues on an MTA-by-MTA basis would ensure consistent reporting of interstate revenues among wireless telecommunications providers. Comcast contends that this approach would minimize the possibility that larger carriers, that are likely to have a relatively larger proportion of interstate traffic, would report their interstate revenues on the basis of an average that includes markets with relatively low levels of interstate traffic. Comcast maintains, therefore, that carriers in a single market would be less likely to impose widely varying charges on bills to recover their universal service contributions. We seek comment on Comcast's proposal. If the Commission elects to establish a market-by-market approach, we seek comment on the appropriate market size for wireless telecommunications providers that are not licensed on the basis of MTAs. We also seek comment on whether the Commission should establish different percentages within each category of provider according to other criteria.

11. We seek comment on whether wireless telecommunications providers should be given the option of using a Commission-established percentage of interstate wireless telecommunications revenues, as discussed above, or using their own data-collection procedures to demonstrate to the Commission the percentage of their wireless telecommunications revenues derived from interstate calls. Allowing carriers to choose between these two options, rather than requiring all wireless providers to use the Commission-established percentage, may be preferable for wireless providers that are able, without substantial difficulty, to distinguish their interstate revenues. We note that this approach may encourage providers that can derive accurate estimates of their revenues from their books of account nevertheless to use the Commission-established percentage if they determine that using the Commission established percentage provides a financial advantage. We seek comment on whether wireless telecommunications providers that wish to use their own data collection procedures to identify the percentage of their end-user wireless telecommunications revenues that is derived from interstate calls should be required to obtain a waiver from the Commission.

12. We also seek comment on whether we should adopt for wireless telecommunications providers a universal service contribution methodology that does not require these carriers to allocate their revenues as either interstate or intrastate. We seek comment on whether it would be competitively neutral, equitable, and economically efficient to require wireless telecommunications providers to contribute to the universal service support mechanisms on the basis of a flat fee per voice grade access line or voice grade equivalent, rather than as a percentage of their revenues. We note that parties have generally sought reconsideration of the Commission's decision to assess carriers based on a percentage of their telecommunications revenues, and we seek further comment on this issue with regard to wireless carriers. We seek comment on how we would determine the amount of such a flat charge. We are cognizant that the amount of a flat charge may need to vary according to the type of carrier on which it is assessed. If we were to assess different types of carriers differently, we seek comment on how to accomplish this in a fair and equitable manner. In connection with this issue, we seek comment on how to establish for paging carriers a voice grade equivalent on which to assess a flat charge, *e.g.*, capacity level. We also seek comment on whether we should assess wireless carriers different amounts for business and residential subscribers. We also seek comment on whether a flat charge would be consistent with our prior determination that contributions to the federal high cost and low-income support mechanisms should be assessed only on interstate revenues. We also invite parties to comment on other methodologies that the Commission could adopt to assess universal service contribution obligations on wireless providers or other providers that generally do not operate with regard to state boundaries.

c. Simplifying Assumptions

13. In this section, we seek comment on a number of proposed simplifying assumptions that either the Commission or wireless telecommunications providers could use to determine the appropriate percentage of interstate wireless telecommunications revenues that should be reported on the Worksheet. These simplifying assumptions could be used in the event that the Commission declines to establish the percentage of interstate wireless telecommunications revenues that some or all categories of wireless telecommunications providers should report on the Worksheet. Additionally, in the event that the Commission decides to provide wireless telecommunications providers with the option of using either a Commission-established percentage or their own data-collection procedures to determine their percentage of interstate wireless telecommunications revenues, wireless telecommunications providers selecting the latter option could use these simplifying assumptions.

14. We seek comment on whether it would be appropriate for the Commission to adopt the following assumptions in light of the manner and extent to which wireless telecommunications providers maintain revenue data. These simplifying assumptions are set forth below according to various categories of wireless telecommunications providers. We note that certain simplifying assumptions may be relevant to more than one category of wireless telecommunications provider. Therefore, we invite comment on these simplifying assumptions as they may apply to any category of wireless telecommunications provider.

i. Cellular and Broadband PCS Providers

15. *Originating point of a call.* CTIA proposes that, in determining the jurisdictional nature of a call, cellular and broadband PCS providers should consider the originating point of a call to be the location of the antenna that first receives the call. We understand that some wireless telecommunications providers use this approach for purposes of reporting their revenues on the TRS Fund Worksheet and recommend doing so for purposes of universal service reporting. We seek comment on this proposal. To account for the situation in which an antenna serves a region encompassing more than one state, a call would be considered to originate in the state in which the antenna that originally received the call is located, even though the customer

may be located in a different state than the antenna and even if, during the course of a call, the customer enters another cell area served by an antenna located in another state. We seek comment on whether this would systematically understate the amount of revenues derived from interstate wireless telecommunications. We also seek comment on whether wireless telecommunications providers experience difficulty in determining the jurisdictional nature of revenues derived from calls that originate as wireline and terminate as wireless.

16. An assumption that a call originates in the state in which the antenna that first receives the call is located would address CTIA's concern that the billing systems of CMRS providers generally do not record the location of the antenna to which the call is transferred when the mobile customer enters a new cell area. This proposed assumption also would address the situation described by CTIA in which calls originating and terminating in the same state are transported, during the course of the call, to a switch in another state. We note that, in the *Local Competition Order*, 61 FR 45476 (August 29, 1996), the Commission determined that, "[f]or administrative convenience, the location of the initial cell cite when a call begins shall be used as the determinant of the geographic location of the mobile customer." We seek comment on whether the originating call assumption discussed above adequately addresses the concerns identified by CTIA.

17. *Terminating point of a call.* In addition to the originating point of a call, the terminating point of a call must be identified in order to determine the jurisdictional nature of the call. We seek comment on whether a cellular or broadband PCS provider should assume that a call terminates in the state that corresponds to the area code to which the call was placed. Because we have received no evidence indicating otherwise, we assume that this would be a reasonable approach for determining the terminating point of a call. We seek comment on our assumption that determining the terminating point of a cellular or broadband PCS call in this manner is reasonable and does not pose substantial difficulties for providers.

18. *Calls originating and terminating in a Major Trading Area.* Because many wireless telecommunications providers operate without regard to state boundaries, we seek comment on whether the Commission should consider using MTA boundaries as the basis on which CMRS providers might estimate the level of interstate wireless traffic for universal service reporting purposes. Specifically, we seek comment on whether CMRS traffic that originates and terminates within an MTA should be classified as intrastate and all other calls classified as interstate for purposes of the Worksheet. Because a single MTA can occupy more than one state, this approach would result in some calls that cross state boundaries being classified as intrastate. At the same time, because some states have more than one MTA, a call could be classified as interstate under this approach, even though the call originates and terminates in the same state. We seek comment on the significance of these observations. Because different types of wireless telecommunications providers use different Commission-authorized licensed territories, we also seek comment on whether we should use the boundaries of other types of wireless licensed territories (*e.g.*, Metropolitan Statistical Areas or Rural Service Areas) to differentiate between interstate and intrastate traffic.

19. *Roaming revenues.* We seek comment on how "roaming" revenues obtained by broadband PCS and cellular providers should be classified. "Roaming" occurs when customers located outside the scope of their provider's network use a different provider's network to place and receive calls. CTIA and AirTouch assert that when a customer is "roaming" on the system of another provider (the "serving provider"), the customer's principal provider, which is responsible for billing the customer, receives limited information about the calls made by the customer. In determining how a principal provider should account for revenues generated while its customer "roams" on a serving provider's system, AirTouch suggests that the principal provider apply an established percentage to such revenues to approximate the level of interstate usage by "roaming" customers. We seek comment on AirTouch's proposal, and, assuming we adopt AirTouch's proposal, the appropriate fixed percentage that should be applied to such revenues. AirTouch explains that this option would eliminate the need for extensive information exchanges between the customer's principal provider and the serving provider. AirTouch further notes that this approach would address the situation in which, because CMRS providers price air-time usage differently, the identical levels of usage do not generate uniform levels of revenues. We seek comment on these assertions.

20. With regard to how "roaming" traffic should be treated for purposes of distinguishing interstate and intrastate revenues, CTIA notes that, some of its members have concluded that the principal provider should treat all roaming traffic as interstate. CTIA further states that some of its members have taken the position that calls forwarded from the customer's principal provider to a serving provider in the area where the customer is located should be treated as interstate calls. We seek comment on these proposed simplifying assumptions.

ii. Paging Providers

21. Due to the technical design of a paging system, AirTouch claims that the information necessary to assess the jurisdictional nature of a paging call is unavailable. AirTouch explains that a paging network terminates communications simultaneously at all locations in its service area, because the paging network cannot identify the location of the paging unit. Thus, the paging network cannot identify the area code of the location where the customer actually receives the page. In light of these difficulties, we seek comment on any simplifying assumptions that paging carriers may adopt in determining the percentage of interstate paging revenues that they should report on the Worksheet. For example, we seek comment on whether paging providers should estimate their level of interstate traffic based, at least in part, on the percentage of customers whose service package includes toll-free number capabilities (*e.g.*, 888–, 800–, and 877– numbers), with the assumption that these customers are more likely to receive interstate pages. If a paging provider is capable of distinguishing between the paging revenues derived from its customers who subscribe to local service and those who subscribe to nationwide service, we seek comment on whether paging carriers should assume that its nationwide customers generate more interstate traffic than the local customers. If we were to direct wireless carriers to use a Commission-established percentage of interstate wireless telecommunications revenues, we seek comment on whether we should establish two percentages, one for traffic to local paging customers and one for traffic to national paging customers.

iii. SMR Providers

22. Analog SMR service provides land mobile communications and consists of at least one base station transmitter and antenna, as well as a mobile radio unit. Analog SMR service may be

interconnected with the public switched telephone network, which allows mobile radio units to function essentially as a mobile telephone, or through a dispatch system, which allows two-way, over-the-air, voice communications only between two mobile radio units. We seek comment on an appropriate estimation of the percentage of interstate telecommunications revenues generated by analog SMR providers and on whether there are appropriate simplifying assumptions to estimate the percentage of analog SMR providers' interstate analog SMR revenues. AMTA states that some of the dispatch systems provide service exclusively within a state and others provide service across state boundaries. AMTA states that, in a recent survey of its members, 63 percent of the respondents reported that their coverage areas are intrastate, while the remaining 37 percent reported the use of systems crossing state boundaries. AMTA also reports that 90 percent of the survey respondents claimed to derive between zero and two percent of their revenues from interstate service. AMTA further notes that 97 percent of the respondents maintain that they are exempt under the *de minimis* standard from contributing to the universal service support mechanisms. AMTA contends that "the survey results to date certainly indicate that SMR and related services bear little resemblance to mass-market mobile telephony such as broadband PCS and cellular." We seek comment on whether, and how, AMTA's survey results may be used to help determine an appropriate percentage of analog SMR providers' interstate analog SMR revenues. We also seek comment on other ways to arrive at such an estimation.

iv. Point-to-point Wireless Providers

23. Unlike mobile service, which transmits a signal that may be received by any of the mobile units within a certain area, the signal that is transmitted as part of fixed, point-to-point wireless service is sent directly to a fixed location. We seek comment on whether any point-to-point wireless providers experience difficulty in reporting their percentage of interstate telecommunications revenues. If so, we seek comment on ways to estimate such carriers' level of interstate telecommunications revenues derived from the provision of fixed, point-to-point service and on whether any simplifying assumptions should be applied to this type of provider. Because the service offered by entities that provide wireless telecommunications on a fixed, point-to-point basis is not mobile in nature, such entities' contribution compliance concerns may differ from those of broadband PCS and cellular providers.

d. AirTouch's Methodology

24. AirTouch states that its jurisdictional tracking system is able to determine, with a reasonable degree of accuracy, whether a particular cellular call is interstate or intrastate. AirTouch explains that its tracking system initially was developed for state tax purposes. According to AirTouch, this tracking system forwards data received from the originating switch to databases used for billing. The databases compiled from this data enable AirTouch to compare the originating switch location with the terminating area code. AirTouch uses this capability to estimate the percentage of interstate airtime usage and then applies this percentage to an estimated level of total end-user revenues, which yields the amount of interstate revenues. AirTouch explains that the total-revenues estimate includes charges for airtime revenues and monthly access charges, less non-telecommunications revenues. Revenues from long-distance resale, AirTouch further explains, are then included for purposes of determining the total interstate revenues figure reported on the Worksheet. We seek comment on the extent to which wireless telecommunications and other providers are capable of distinguishing their interstate and intrastate revenues using the method employed by AirTouch or could, without substantial difficulty, adopt such a method. We seek comment on whether wireless telecommunications carriers that use a method similar to that described by AirTouch to identify their interstate revenues should be allowed to do so, in the event that the Commission adopts, for universal service reporting purposes, a Commission-established percentage. In addition, we seek comment on whether, for purposes of assessing certain charges, such as state universal service charges or state taxes, wireless providers are already required to distinguish their revenues in a way that could be applied to their federal universal service reporting obligations.

25. AirTouch notes that its tracking system may yield inaccurate information to the extent that the interstate portion of a call is not recorded when the call originates as intrastate but terminates as interstate due to the customer crossing a state boundary. Similarly, we note that a tracking system like the one employed by AirTouch also may yield inaccurate results when a call originates as interstate and terminates as intrastate due to the customer crossing a state boundary. We seek comment on whether the potential inaccuracies that may arise from these two scenarios would, when taken together, tend to cancel each other out and thus have no measurable effect.

e. Other Issues Surrounding Universal Service Reporting Requirements

26. We seek comment on whether wireless telecommunications providers experience difficulty in complying with any universal service reporting requirements other than identifying their interstate and intrastate revenues, as described above. We also seek comment on any other actions that the Commission might take to ensure that wireless telecommunications providers are treated in an equitable and nondiscriminatory manner with respect to the universal service reporting and contribution obligations.

f. Providers Other Than Wireless Telecommunications Providers

27. In the previous sections, we discuss possible mechanisms that wireless telecommunications providers could use in allocating their wireless telecommunications revenues between the interstate and intrastate jurisdictions for universal service reporting purposes. We also seek comment whether there are other types of providers, such as satellite providers, that may not be able to derive easily from their books of account their percentage of interstate and intrastate telecommunications revenues. Parties are invited to address whether the proposals discussed in this Further Notice, such as the simplifying assumptions discussed, might benefit other telecommunications providers that cannot readily distinguish their interstate and intrastate revenues for universal service reporting purposes.

B. Competitive Neutrality

28. In the *Universal Service Order*, 62 FR 32862 (June 17, 1997), the Commission sought to adopt rules that would facilitate the entry of new providers and promote competition in the context of universal service. The Commission also sought to establish universal service rules that are competitively and technologically neutral. We seek comment here on the success of that goal. Specifically, we seek comment on the extent to which our rules, in application, are accomplishing that goal. We seek comment on the extent to which our rules facilitate the provision of services eligible for universal service support by providers, such as wireless

telecommunications providers and cable operators, that historically have not supplied such services. We also seek comment on the extent to which such providers are supplying the services supported by the federal universal service support mechanisms to eligible beneficiaries. For example, we seek comment on the extent to which wireless service providers are supplying supported services to eligible schools and libraries. Similarly, we seek comment on the extent to which cable and other service providers are supplying supported services to entities eligible for universal service support.

29. We also seek comment on whether, in practice, any of our universal service rules discourage wireless service providers or cable service providers from offering supported services to low-income subscribers and rural, insular, and high cost subscribers. We also seek comment on whether, in practice, our universal service rules may favor unfairly one technology over another. If parties answer these statements affirmatively, we seek specific suggestions on how those rules could be amended, consistent with the Act, to facilitate the provision of services eligible for universal service support by all eligible providers.

C. Definition of Basic Service Packages To Be Provided by Eligible Telecommunications Carriers

30. We seek comment on whether some amount of minimum local usage should be included in the basic service packages, and if so, how to determine that local usage requirement. In light of the cost characteristics of mobile wireless service, we seek comment on how to define a basic service package with a local usage requirement that presents a realistic option to wireless customers. For example, the obligation to provide some local usage would be rendered meaningless if a wireless carrier could satisfy that obligation by offering, among other service options, a basic service package containing local usage that was priced hundreds of dollars higher than options offered by that wireless carrier or competing carriers, so that no one selected it. Thus we seek comment on how to ensure that a local usage requirement is included as part of an option that represents a viable choice for consumers. We seek comment on whether carriers should only be eligible to receive universal service support with respect to subscribers who select a basic service package that includes a certain amount of local usage without additional charge. Alternatively, we seek comment on whether carriers should only be eligible to receive universal service support if a certain percentage of their subscribers subscribe to a basic service package that includes a certain amount of flat-rated local usage, because that would indicate that such package presented a viable option to customers.

31. We also seek comment on whether we should require eligible telecommunications carriers to include some fixed number of minutes of use per month as part of the basic universal service package, or whether we should require some minimum number of calls. We note that the cost of a call for wireless carriers may vary depending on its duration and on whether it is made during peak calling hours. These factors may be less significant for wireline carriers. Therefore, we seek comment on whether we should establish different requirements for different types of carriers, and whether we should give carriers the option of offering either a minimum number of minutes or a minimum number of calls in their basic service package.

32. We seek comment on how much, if any, local usage to require carriers to offer in such a basic service package in order to be eligible for universal service support. According to the Statistics of Common Carriers, telephone customers make, on average, 135 local calls per month per access line. This average varies from 52 local calls per month in Maine to 210 local calls per month in Louisiana. Other sources report that cellular customers average 150 minutes of use per month, and broadband PCS customers average 250 minutes of use per month. The cellular and broadband PCS numbers are expected to increase in the future. We seek comment on whether we should base the amount of local usage that a carrier must offer, at least in part, on average usage rates. Commenters that argue that no level of local usage should be required should explain why such a requirement would not be necessary to meet the goals of universal service. We encourage such commenters to suggest alternative approaches that will promote universal service goals.

33. We also seek comment on how we should determine what constitutes local usage. We note that wireless and wireline carriers may treat different sets of calls as "local." The boundaries of the local calling areas for wireline carriers and service areas for eligible telecommunications carriers are set by the states, and the value of a particular local usage requirement will depend in part on the size of the area encompassed by the local calling area, which may vary from state to state. We seek comment on whether, and how, to account for differences in the size of local calling areas. We seek comment on whether we should vary the amount of local usage that carriers must offer depending on the size of their local calling areas. We note that the California PUC suggested in the initial rulemaking that we include a minimum of three dollars worth of local usage. We seek guidance from the states on the level of local usage that we should require from eligible carriers serving their residents, given the size of the local calling areas and the basic service packages that they have established, recognizing that local calling areas may be different for customers of wireline and wireless carriers. We further seek comment on whether the local usage requirement we establish should be the same for business and residential users.

II. Procedural Matters and Ordering Clauses

A. Ex Parte Presentations

34. This is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

B. Initial Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of this Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. See 5 U.S.C. 603(a).

36. *Need for and Objectives of the Proposed Rules.* In light of the concerns raised by wireless telecommunications providers regarding the difficulties associated with distinguishing their interstate and intrastate revenues for universal service reporting purposes, the Commission tentatively concludes that it should provide such providers with specific guidance on how to separate their interstate and intrastate revenues. Therefore, the Commission seeks comment in this Further Notice on

how wireless telecommunications providers should separate their interstate and intrastate revenues for purposes of universal service reporting. The Commission sets forth and seeks comment on proposed methodologies and simplifying assumptions that could be used by wireless telecommunications providers to distinguish between their interstate and intrastate revenues. Until we issue final rules regarding the mechanisms that wireless telecommunications providers should use in allocating their revenues between the interstate and intrastate jurisdictions, we provide such providers with interim guidelines for reporting on the Worksheet their percentage of interstate telecommunications revenues. The Commission also seeks comment on whether, from the perspective of wireless providers, which historically have not supplied services eligible for universal service support, our universal service rules are competitively neutral, especially with regard to the schools and libraries program. Finally, we seek comment on the definition of the basic service packages that carriers must offer in order to be eligible to receive universal service support.

37. *Legal Basis.* The proposed action is supported by §§ 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

38. *Description and Estimate of the Number of Small Entities to which the Further Notice will Apply.*

39. *Radiotelephone (Wireless) Carriers.* The SBA has developed a definition of small entities for radiotelephone (wireless) companies. According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. We do not have information on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the proposals included in this Further Notice.

40. *Cellular Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware is the data that the Commission collects annually in connection with the *TRS Worksheet.* According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services. We have no information on the number of carriers that are not independently owned and operated, nor on those that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the proposals included in this Further Notice.

41. *Paging Providers.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 "paging and other mobile" carriers reporting that they engage in these services. Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

42. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This definition of "small entity" in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

43. *Narrowband PCS Licensees.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the MTA and BTA narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

44. *220 MHz radio services.* Since the Commission has not yet defined a small business with respect to 220 MHz radio services, it will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years; and (2) for regional and nationwide

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licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this IRFA the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

45. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules. A subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA's definition of a small business.

46. *Specialized Mobile Radio (SMR) Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The proposals included in this Further Notice may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million.

47. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted includes these 60 small entities. In the 800 MHz SMR auction, there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

48. *Wireless Communications Services (WCS).* WCS is a wireless service, which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. There were seven winning bidders who qualified as very small business entities and one small business entity in the WCS auction. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected include these eight entities.

49. *Description of Projected Reporting, Record keeping, and Other Compliance Requirements.* Section 254(d) states "that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions" toward the preservation and advancement of universal service. Under the Commission's rules, all telecommunications carriers that provide interstate telecommunications services and some providers of interstate telecommunications are required to contribute to the universal service support mechanisms. Contributions for support for programs for high cost areas and low-income consumers are assessed on the basis of interstate and international end-user telecommunications revenues. Contributions for support for programs for schools, libraries, and rural health care providers are assessed on the basis of interstate, intrastate, and international end-user telecommunications revenues. Contributors are required to submit information on the Universal Service Worksheet regarding their end-user telecommunications revenues. Contributors are required to distinguish between their interstate and intrastate revenues.

50. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* Throughout this Further Notice, we seek comment on alternatives that will reduce the impact on entities affected by these proposals. We tentatively conclude that we should adopt a surrogate percentage that would represent the percentage of interstate telecommunications revenues reported by certain carriers. We believe that this tentative conclusion greatly minimizes the administrative burden on those small carriers that experience difficulty in identifying their interstate and intrastate revenues. We also seek comment on a number of other simplifying assumptions that certain carriers would apply in estimating their percentage of interstate telecommunications revenues. Some of these proposals may impose more administrative burdens on certain carriers than others. We therefore seek comment on the level of administrative burden that these proposals would impose and, in the event that such proposals were adopted, on ways in which to reduce the level of administrative burden that they may impose. We particularly encourage parties to submit proposals that will reduce the administrative burden on carriers in separating their interstate and intrastate revenues.

51. *Federal Rules That May Overlap, Duplicate or Conflict with the Proposed Rule.* None.

52. It is furthered ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Instructions for Filing Comments

53. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to : Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 2100 M St., NW., Room 8611, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case, Docket No. 96–45), type of

pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

D. Ordering Clauses

54. It is ordered, pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254, and 403 that this Further Notice of Proposed Rulemaking is hereby adopted and comments are requested as described above.

55. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32803 Filed 12–9–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–4813; Notice 1]

RIN 2127–AF75

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplementary notice of proposed rulemaking.

SUMMARY: This document proposes amendments to Standard No. 108, the Federal motor vehicle safety standard on lighting, which are intended to harmonize the geometric visibility requirements of the United States for signal lamps and reflectors with those of the Economic Commission for Europe (ECE). Harmonization of motor vehicle safety regulations worldwide, without reducing safety, would allow manufacturers to produce products in compliance with a single world vehicle standard rather than several, thus reducing costs and improving the flow of trade.

The amendments proposed would adopt either the ECE geometric visibility specifications or those of the Society of Automotive Engineers (SAE), as an option to the present requirements. One of these specifications would be chosen for inclusion in the final rule. Mandatory compliance with the chosen specification would be required approximately five years after issuance of the final rule.

This action responds to comments to a notice of proposed rulemaking published on this subject in 1995, which implemented the grant of a petition for rulemaking submitted by the Groupe de Travail Bruxelles 1952.

DATES: Comments are due March 10, 1999.

ADDRESSES: Comments should refer to the docket number indicated above and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 10:00 a.m. to 5:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Rich Van Iderstine, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5275; FAX: 202–366–4329).

SUPPLEMENTARY INFORMATION: This supplementary notice of proposed rulemaking is based upon a notice of proposed rulemaking (NPRM) published on October 26, 1995 (60 FR 54833, Docket No. 95–72; Notice 1). The reader is referred to that notice for further background on this rulemaking action.

Harmonization of Geometric Visibility Requirements

As the NPRM explained, the Groupe de Travail Bruxelles 1952 ("GTB") is composed of vehicle and lamp manufacturers from Europe, Japan, and the United States. GTB is an advisory group for the two organizations operating under the United Nations' Economic Commission for Europe (ECE) that are involved in establishing motor vehicle lighting standards: the Meeting of Experts on Lighting and Light Signalling (GRE) and the Working Party on the Construction of Motor Vehicles (WP29).

GTB is seeking to "harmonize" the geometric visibility requirements of the United States and Europe through petitioning NHTSA for an amendment to Standard No. 108, and petitioning GRE and WP29 for amendments to ECE Regulation No. 48 *Uniform Provisions Concerning the Approval of Vehicles With Regard to the Installation of Lighting and Light-Signalling Devices* ("ECE R48"), specifically ECE R48.01. Under present lighting regulations, motor vehicle manufacturers must produce four different lighting packages for the same vehicle in order for it to be sold in the United States, the United Kingdom, continental Europe, and Japan. Harmonizing these lighting requirements, without reducing safety, would reduce costs to manufacturers and purchasers, and improve the flow of trade.

In its petition of June 15, 1994, GTB asked NHTSA to amend or introduce geometric visibility requirements for the following lamps and reflectors: backup lamps, front and rear turn signal lamps, stop lamps including the center high-mounted stop lamp, parking lamps, taillamps, rear fog lamps, reflectors (front, intermediate, side, and rear), marker lamps (front, intermediate, and side), and daytime running lamps. The petition noted that rear fog lamps are not presently included in Standard No. 108, and that many items of lighting equipment are not presently subject to geometric visibility requirements.

The NPRM explained that "geometric visibility" is not a defined term in Standard No. 108. It refers to the visibility of a lamp or reflector mounted on a vehicle through a range of viewing angles from left to right, and from up to down, with reference to the lens centerpoint (e.g., from 45 degrees left to 45 degrees right). With the exception of the center high-mounted stop lamp (S5.1.1.27), the geometric visibility requirements for motor vehicle lamps are not set out in full in the text of Standard No. 108, but are contained in related SAE Standards that have been incorporated by reference in Standard No. 108. SAE requirements are not uniform and were adopted on an ad hoc basis.

The changes that GTB requested would affect passenger cars only, and would expand the range of visibility requirements for many lamps, especially turn signal lamps and parking lamps. GTB believed that a majority of vehicles being sold in the United States in 1994 already met the requirements. For those that do not, the petitioner suggested that "the necessary design changes should not be difficult to implement, assuming that adequate lead time is provided."

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The Amendments That NHTSA Proposed in 1995

The NPRM proposed a new paragraph S5.1.1.30, applicable to the vehicles covered by Tables III and IV (i.e., those less than 2032 mm (80 inches) in overall width). Proposed S5.1.1.30 would allow continued conformance to any visibility requirements existing in Standard No. 108 or a requirement for the "geometric visibility of at least 12.5 square centimeters for the light-emitting surface through a field of view as indicated in Table V, except for side marker lamps and reflex reflectors which have no area requirement." Although the petitioner did not request a phaseout of the existing requirements, the agency proposed that the existing requirements be phased out in favor of the harmonized requirements after two years, as part of its effort to promote the compatibility of standards worldwide. The definition of "Light-emitting Surface" that appears in SAE Standard J387 "Terminology, Motor Vehicle Lighting" would be added and defined to mean "that part of the exterior surface of the lens that encloses the light source and is required for conformance with photometric and colorimetric requirements." This definition was deemed necessary because the term appeared in the proposed requirement.

The NPRM would have added new Table V to cover 15 items of lighting equipment (lamps and reflectors), including rear fog lamps. While a rear fog lamp is not required by Standard No. 108; if a manufacturer chooses to provide one, the lamp would be required to meet the geometric visibility requirements (but no other requirements would apply at the present time).

The visibility requirements were expressed with relation to the Horizontal (H) and Vertical (V) axes of the lamp or reflector. As an example, the geometric visibility requirement for a front turn signal lamp would be that it should be seen through a range from minus 45 degrees to plus 45 degrees at Horizontal, and minus 15 degrees to plus 15 degrees at Vertical.

NHTSA, however, did not propose to adopt ECE's backup lamp geometric visibility requirements because of a possibly adverse effect on safety. Standard No. 108 requires that the center of the backup lamp lens be seen from anywhere on a vertical transverse plane located 3 feet behind the vehicle and extending 3 feet on either side of the vehicle, starting from 2 feet and ending at 6 feet above the road surface. For a minivan whose backup lamps are about 33 inches above the road surface, Standard No. 108's requirements creates upward visibility angles greater than 45 degrees. For passenger cars with lower lamp heights, the angles are even larger. Allowing these angles to be as small as ECE's 15 degrees upward would allow a significant reduction in the ability of a pedestrian to see the lamp's signal.

In its efforts to promote worldwide compatibility of standards, NHTSA also proposed to allow amber as an optional color for rear side marker lamps and reflectors, in addition to the red which has been required for vehicles sold in the United States.

Another aspect of motor vehicle lighting that NHTSA thought could be appropriate for harmonization was the regulation of front and rear fog lamps. These are not items of motor vehicle equipment mandated by Standard No. 108. They are regulated by the States as each jurisdiction deems appropriate. NHTSA had no information as to the extent that European and Japanese manufacturers must modify the fog lamps and their installations on their vehicles in order to meet the regulations of the States. The NPRM asked whether NHTSA should assert its jurisdiction over that aspect of motor vehicle equipment performance and specify performance requirements (in addition to geometric visibility) for front and rear fog lamps as optional equipment, that would preempt State regulations and could afford windows of harmonization with the ECE standards. The performance requirements that appeared appropriate to NHTSA were those of SAE Standard J583 JUN93 "Front Fog Lamps" and SAE Standard J1319 JUN93 "Fog Tail Lamp".

Responses to the 1995 Proposal; the 1998 SNPRM

There were 25 commenters to the notice: GTB (the petitioner), Truck Safety Equipment Institute (TSEI), Nissan N.A., Osram-Sylvania (O–S), David Cameron of Embry-Riddle Aero. Univ. (Cameron), Chrysler Corporation (Chrysler), Advocates for Auto and Highway Safety (Advocates), Mercedes-Benz of N.A. (MBNA), GE Lighting (GE), Koito Mfg. Co. (Koito), Fiat Auto R&D U.S.A. (Fiat), Porsche Cars North America (Porsche), American Honda Motor Co. (Honda), Ichikoh Industries (Ichikoh), Wisconsin DOT (WDOT), United States Motorcycle Manufacturers Association (USMMA), Sierra Products (Sierra), Hella Inc. (Hella), Volvo Cars of N.A. (Volvo), Volkswagen (VW), G.J.M. Meekel (Chairman, GRE), and the American Automobile Manufacturers Association (AAMA).

Front and rear fog lamps: On the issue of federal regulation of front and rear fog lamps, those who commented were unanimous in their support for regulation. This issue has been addressed separately by a termination notice to assure NHTSA the freedom to pursue efforts with industry to achieve internationally harmonized performance that can be adopted in the future in the lighting standard (62 FR 8883, February 27, 1997).

Amber color for rear side marker and reflex reflectors: There was significantly mixed opinion on whether amber should be an alternative to red as a color for rear side marker and reflex reflectors. TSEI strongly opposed allowing amber for side-mounted devices at the rear, especially for large trucks. It argued that at night the only true indicator of the end of the vehicle is a red lamp at the end of a string of amber lamps down the side of the vehicle. The agency agrees that this is an important point and that it ought to be especially cautious in permitting a color change for rear side markers and reflex reflectors on large vehicles or trailers.

Cameron did not specifically comment for or against this proposal. However, he argued that the only red lamps on a vehicle should be stop lamps and that all other lamps could be white or amber. This infers he would support amber for the rear side marker lamps and reflectors.

AAMA agreed with amber as a rear marker color for light duty vehicles and saw no safety issues involved with the change.

Advocates strongly opposed allowing amber, stating that there are no data on which to make such a monumental change to safety policy, and suggested a supplemental NPRM that would discuss the issue in depth. The agency does not agree that there were no data presented supporting the proposal. There is a research report titled "Side Marker Lamps for Passenger Cars", TNO Defense Research, TM 1994 C–14, by Jan Theeuwes and J.W.A.M. Alferdink. The report supports the use of a system of front and rear amber side marker lamps. It studied the likelihood of vehicles with amber markers being recognized earlier than non-amber-equipped vehicles, and concluded that there would be a safety benefit.

Notwithstanding this report, NHTSA believes that a significant change in the standardized signals used by vehicles in the United States for many years should be accompanied by additional supportive data. The study cited above does not contain data indicating whether it is important for drivers to know which end of a vehicle is about to emerge into their path. That is the key issue here.

Additionally, the European system of all-amber side marker lamps and reflex reflectors is very different from the U.S. system of amber at the front (and at intermediate positions on long vehicles) and red at the rear. Only vehicles longer than 6 meters (19.5 ft.) in Europe are required to have side marker lamps and reflex reflectors. For all other vehicles, these devices are optional. Because of this, the European vehicle fleet has virtually no light duty vehicles with side marker lamps and reflectors. Even when fitted, the mounting location is appreciably different than in the U.S. In Europe, the devices must be located in the first third of the vehicle on the side and in the last third of the vehicle on the side. This contrasts significantly with the requirement of Standard No. 108 that the devices be located as far forward or as far rearward as practicable.

Given these major differences and the lack of data noted above, NHTSA has decided to terminate rulemaking that would allow an option of providing amber rear side marker lamps and reflectors.

Geometric Visibility

The NPRM proposed to add most of the harmonized geometric visibility requirements requested by GTB. However, the agency did not propose to incorporate the intensity measurement method for determining geometric visibility that is currently used in ECE Regulation 48. Instead, NHTSA proposed to determine geometric visibility based on a projected lens area measurement method, which is the approach long used in Standard No. 108. As noted above, the agency had decided not to reference Regulation 48 in its proposal.

All but one of the commenters agreed that the proposed GTB alternative geometric visibility requirements would be acceptable as an alternative. However, many commented that NHTSA should have proposed to have the ECE intensity measurement method as an alternative method to the proposed area measurement method as a way of determining geometric visibility. Others noted that the current SAE standards have different and smaller angles of geometric visibility for turn signal and parking lamps, and for reflex reflectors. Advocates did not agree with the proposal and asked for a supplemental NPRM that would discuss the issues in depth.

Mercedes, Koito, Fiat, Honda, Ichikoh, Sierra, GTB, Volvo, Volkswagen, Meekel, and AAMA all asked the agency to include the ECE intensity measurement method as an alternative method of determining geometric visibility. Essentially, this method determines the geometric visibility of a lamp by measuring the intensity of the lamp's illumination throughout the range of the defined geometric visibility angles. To determine compliance, a test of intensity is performed with the test lamp installed in the vehicle or an appropriate part thereof to assure that the intensity is available at the pertinent locations, irrespective of the remainder of the vehicle body design and its potential for blocking the signal. In Europe, this typically entails having a working prototype or production lamp and testing it on a real or simulated vehicle body. Testing cannot be conducted until after significant development and prototyping of both the lamp and vehicle are completed.

The intensity measurement method contrasts with the area measurement method, long used in Standard No. 108. This method specifies a minimum projected luminous lens area of the lamp as installed on the vehicle which must be seen throughout the prescribed visibility angles. While testing can be performed on a prototype vehicle as in the European method, the advantage of the American method is that compliance can be judged by the manufacturer by using only computer-generated engineering drawings at a time in the vehicle development stage long before any actual hardware is produced. This helps achieve a greater certainty of production compliance and fewer running changes than the use of the intensity measurement method.

TSEI recommended that NHTSA adopt the contemporary SAE standards for geometric visibility performance, instead of a version of the ECE requirements. The SAE standard permits the manufacturer to choose a geometric visibility either based on area or on intensity, but specifies an inboard (toward the center of the vehicle) angle for turn signals and parking lamps of 20 degrees and not 45 degrees as in the European standard and GTB's requested table (the comments of Nissan and O–S agreed). TSEI also recommended deletion of reflex reflectors from the proposal because it considers the 45 degree horizontal angle to be too large.

The issue of adopting contemporary standards is timely, because the agency intends to incorporate the latest versions of all currently referenced and subreferenced SAE standards in a comprehensive revision of Standard No. 108 to be proposed late in 1998. Consequently, the agency will need to decide whether to require the SAE angles or the GTB/ECE angles and whether or when they should become mandatory. It is not necessary for this supplemental NPRM to decide this issue, but only to propose that the SAE values be considered as well as the GTB/ECE values. The SAE values are similar to the GTB/ECE values except for the turn signal lamps, parking lamps, and reflex reflectors as mentioned above. With adequate lead time either the SAE values or the GTB/ECE values could become mandatory, with the GTB/ECE values for those lamps slightly more difficult to meet because of aerodynamically shaped front-ends of vehicles, but offering greater visibility to vehicles at intersections.

TSEI's comment that the reflex reflector angle of 45 degrees is too large is based upon the fact that Standard No. 108 requires reflex reflector performance only to angles of 20 degrees left and right. Thus requiring these devices to be seen at 45 degrees would, in TSEI's view, make the angle too large for visibility needs. However, current reflex reflectors provide light return at angles larger than 20 degrees, often out to 30 degrees. Thus, logic would suggest that geometric visibility should be something greater than just the photometric performance of the reflector. Also, it should be noted that the contemporary SAE Standard J2041 *Reflex Reflectors for use on Vehicles 2032 mm or More in Width*, specifies reflective performance to the left and right of 45 degrees. It would appear that the geometric visibility of reflex reflectors on wider vehicles would of necessity also be at least 45 degrees or larger to the left and right. While these J2041 devices are not yet specified for all wide vehicles, Standard No. 108 requires all trailers over 10,000 pounds GVWR to be equipped with conspicuity treatment that replaces normally required reflex reflectors and that provides retroreflective performance out to 45 degrees on the side and rear. In summary, geometric visibility angles larger than required for the specified photometric performance are appropriate for improving vehicle conspicuity. The ECE values are reasonable for all vehicles and TSEI's objection is not persuasive.

Nissan commented that 45 degree inboard geometric visibility for parking and front turn signal lamps is too large to be practicable and too costly. The fronts of vehicles are becoming more rounded and may present difficulty in meeting inboard (toward the vehicle center) visibility angles, especially if the design incorporates recessed lens faces for front park and turn lamps. The front fascia toward the center of the vehicle can become obstructive to a lamp's light emission, and impair its geometric visibility. The 45-degree inboard requirement for parking lamps and front and rear turn signal lamps has existed in the ECE regulations for many years with the requirement being a minimum of 0.05 and 0.3 candela respectively. Only recently as a result of GTB action did the ECE regulation accept the area measurement method for the narrower geometric visibility angles typical of SAE standards. When the ECE regulations changed, the inboard angles became 45 degrees at a time when the SAE angles were zero inboard. More recently, the SAE changed inboard angles to 20 degrees. This is the angle in the current SAE standards and the angle that Nissan, and the other commenters on this issue, TSEI and O–S, prefer. Permitting the inboard angle to be 20 degrees would make the requirement less costly. However, the argument about practicability appears not well taken, since millions of cars are produced annually in Europe that meet the 45 degrees inboard requirement.

The GTB, Koito, Fiat and Ichikoh commented that for the rear turn signal lamps, there appeared to be an error in that the proposed values were −15 to +45 degrees instead of the more typical −45 to +45 degrees range. This has been corrected in the proposed tables.

The NPRM proposed a new definition of "light-emitting surface." This is refined in the supplementary NPRM. NHTSA now proposes slightly different definitions of lens area and uses those definitions in the proposed specifications for geometric visibility. NHTSA also intends to use these definitions in its anticipated forthcoming administrative revision of Standard No. 108.

With respect to the first term, NHTSA proposes a redefinition of "effective projected luminous lens area." This is currently defined as:

> that area of the projection on a plane perpendicular to the lamp axis of that portion of the light-emitting surface that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas ½ deg. radius around the test point).

Under the proposal, "effective projected luminous lens area" would be redefined as:

> the area of the projection of the effective light-emitting surface of a lamp on a plane specified to define the functional lighted lens area or the geometric visibility of the lamp.

This requires a definition of the term "effective light-emitting surface." Under the proposal, this term would be defined to mean:

> that portion of the light-emitting surface of a lamp that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from an area of ½ degree radius around a test point.

These two definitions are taken directly from the existing definition of "effective projected luminous lens area" quoted above. The revision is considered necessary to clarify what lamp parts constitute the measurable surface of a lamp lens and how the area of that surface is specified. Essentially, there is no substantive change.

The NPRM had proposed that any changes to geometric visibility be applied to vehicles of overall width less than 2032 mm (80 in.). This was in response to GTB which had asked that the changes apply to passenger cars. In the U.S., the present geometric visibility requirements apply to all motor vehicles. NHTSA decided to extend GTB's request to cover all vehicles that are like passenger cars in terms of required lighting (i.e., those covered by Tables III and IV of Standard No. 108, except for motorcycles). However, doing so would leave wider vehicles (those covered by Tables I and II of Standard No. 108) subject to the present requirement after the 5-year phase-in period. NHTSA views it as inconsistent and illogical to have different visibility requirements based on whether a vehicle's overall width is less or greater than 2032 mm (80 in.). Motorcycles and wider vehicles should be afforded the same safety and harmonization benefits that passenger car-like vehicles will have upon completion of this rulemaking. Having a single requirement for the geometric visibility of lighting devices installed on all vehicles, one that is more objective than the present requirement, should enhance safety and simplify the compliance responsibility of manufacturers. Consequently, the proposals in this notice cover wider vehicles as well as narrower ones.

In summary, the agency is requesting comments on two proposals for geometric visibility, but will adopt only one. The first proposal would amend Standard No. 108 to add S5.1.1.30 and Tables V and VI (the GTB/ECE specifications for lens area and luminous intensity). Alternatively, Standard No. 108 would be amended to add a different S5.1.1.31 and different Tables VII and VIII (the specifications of the SAE for lens area and luminous intensity). This nomenclature (S5.1.1.30, Tables V and VI or the alternative S5.1.1.31 and Tables VII and VIII) has been chosen for the NPRM to distinguish one proposal from the other. The final rule, of course, will adopt the new paragraph and Tables in the sequence that exists at the time of the final rule. For five years after adoption of the final rule, a manufacturer would be allowed to comply with either the lens area or luminous intensity geometric visibility specifications of the alternative adopted, or the visibility requirements that currently exist in Standard No. 108. The agency is proposing that the new requirements become mandatory approximately 5 years after the final rule is published, and that compliance with the current requirements would no longer be permitted after that date. Thus, after that 5-year period, manufacturers would be required to meet the geometric visibility requirements specified in the final rule for either lens area or luminous intensity of the alternative adopted.

The agency wishes to give notice that, once a manufacturer has chosen a visibility option and certifies compliance to it, the agency will regard that choice as irrevocable. Failure to comply with the option selected will constitute a noncompliance warranting notification and remedy as required by statute. However, if the manufacturer complies when its lamps are tested to another visibility option, that fact would afford a basis for seeking an inconsequentiality determination which, if granted, would relieve it from its obligation to notify and remedy.

Lead Time

Many did not comment on the issue of lead time. Of those who did, AAMA did not want a mandatory requirement, Chrysler asked for lead time enough for vehicle production life cycles. O-S and GTB requested at least four years; Nissan and Ichikoh wanted five years and TSEI asked for ten. Choosing to have alternatives added to the existing requirements would do little to improve the visibility of signals, unless it were in the best interest of manufacturers to build a single vehicle for the world market. The fact that some commenters do not want the newly harmonized requirements to be mandatory implies that they are not so much interested in harmonization as they are in being able to pick whatever requirement suits their needs. NHTSA believes that this rulemaking action presents an opportunity to provide better performance while helping to reduce costs through harmonization. For the reasons discussed above, NHTSA has decided to issue this supplemental NPRM which proposes to allow a manufacturer to choose one of two methods to be used for determining compliance with the proposed geometric visibility requirements. Either method would achieve a lamp whose signal is visible at the requisite angles.

Proposed Effective Date

The amendments would be effective 30 days after publication of the final rule in the **Federal Register**. At that time, manufacturers would have the option until the fifth September 1st following the issuance of the final rule to conform to either the present or the harmonized geometric visibility requirements. On and after the fifth September 1st, manufacturers would have to comply with the harmonized specifications. As noted previously, it is likely that many of the proposed requirements are already being met by manufacturers selling in world markets.

However, when compliance with the final rule becomes mandatory, it will affect U.S. vehicle lines that are not sold in world markets. NHTSA therefore seeks comments on the appropriateness of a 5-year leadtime for mandatory compliance with the final rule, and a discussion of related costs or other impacts upon the commenter.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to clarify an existing requirement and to harmonize regulations. It is anticipated that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation. Vehicles presently selling in world markets are presumed to comply with the proposed rule. NHTSA has asked for comments on the costs and other impacts associated with a 5-year leadtime for mandatory compliance of those vehicles not presently complying. This could involve relocation of certain lamps and reflectors and associated sheet metal changes, or redesign of lamps or reflectors. These could be easily accommodated within the present or next design cycle. If the comments received indicate that the impacts are more than minimal, NHTSA will prepare a full regulatory evaluation before issuing a final rule.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. The composition of lighting equipment would not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 et seq). I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The proposed amendment would primarily affect manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Because each manufacturer serves a niche market, often specializing in replicas of "classic" cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 1998, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles ought not to change as the result of a final rule based upon this supplemental NPRM.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, for the first time, Standard No. 108 would impose an affirmative compliance obligation upon fog lamps, that of geometric visibility. This means that, under 49 U.S.C. 30103(b), states would be preempted from having geometric visibility requirements for fog lamps that differ from those of Standard No. 108 under a final rule. Heretofore, regulation of fog lamps has been entirely a matter of state law (unless they impaired the effectiveness of lighting equipment required by Standard No. 108, in which event they were not allowed (S5.1.3, 49 CFR 571.108)).

Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Unfunded Mandates Reform Act of 1995.

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this proposed rule would not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

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If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 would be amended by:

a. adding to paragraph S4, in alphabetical order, a new definition of "Effective light-emitting surface," and revising the definition of "Effective projected luminous lens area," and

b. adding new paragraph S5.1.1.30 and new Tables V and VI, the new Tables to follow Table IV and to precede the Note to the standard, or

c. adding new paragraph S5.1.1.31 and new Tables VII and VIII, the new Tables to follow Table IV and to precede the Note to the standard, to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4 *Definitions.*

* * * * *

Effective light-emitting surface means that portion of the light-emitting surface of a lamp that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from an area of ½ degree radius around a test point.

Effective projected luminous lens area means the area of the projection of the effective light-emitting surface of a lamp on a plane specified to define the functional lighted lens area or the geometric visibility of the lamp.

* * * * *

S5.1.1.30. This paragraph specifies geometric visibility requirements that apply to each passenger car, multipurpose passenger vehicle, truck, trailer, bus, and motorcycle.

(a) Each vehicle to which this section applies shall have each lamp or reflex reflector installed in a location such that each lamp or reflex reflector complies with its individual photometric intensity requirements.

(b) Each vehicle to which this section applies that is manufactured on or after [the fifth September 1 following publication of the final rule] shall comply with the requirements of either paragraph (d) or of paragraph (e) of this section.

(c) Each vehicle to which this section applies that is manufactured before [the fifth September 1 following publication of the final rule] shall comply with the requirements of paragraph (d), paragraph (e) or with the requirements of S5.3.1.1 and S5.3.1.1.1 for geometric visibility.

(d) When a vehicle to which this section applies is equipped with any lamp listed in Table V, other than a side-marker lamp, not less than 12.5 square centimeters of the lamp's effective projected luminous lens area shall be visible when viewed from any point in the field of view indicated in Table V for each such lamp. Some portion of side marker lamps and reflex reflectors shall be visible when viewed from any point in the field of view indicated in Table V for each such side marker lamp and reflex reflector.

(e) When a vehicle to which this section applies is equipped with any lamp or reflector listed in Table VI, each such lamp or reflector shall provide, in accordance with Table VI, the minimum luminous intensity in candela through the field of view specified for it.

(f) The manufacturer of a vehicle shall certify to only one of the compliance options specified in paragraphs (a) through (e), and it may not thereafter choose a different option for that vehicle.

S5.1.1.31 This section specifies geometric visibility requirements that apply to each passenger car, multipurpose passenger vehicle, truck, trailer, bus, and motorcycle.

(a) Each motor vehicle to which this section applies shall have each lamp or reflex reflector installed in a location such that each lamp or reflex reflector complies with its individual photometric intensity requirements.

(b) Each vehicle to which this section applies that is manufactured on or after [the fifth September 1 following publication of the final rule] shall comply with the requirements of either paragraph (d) or of paragraph (e) of this section.

(c) Each vehicle to which this section applies that is manufactured before [the fifth September 1 following publication of the final rule] shall comply with the requirements of paragraph (d), paragraph (e), or with the requirements of S5.3.1.1 and S5.3.1.1.1 for geometric visibility.

(d) When a vehicle to which this section applies is equipped with any lamp listed in Table VII, other than a side-marker lamp, not less than 13 square centimeters of the lamp's effective projected luminous lens area shall be visible when viewed from any point in the field of view indicated in Table VII for each such lamp. Some portion of side marker lamps and reflex reflectors shall be visible when viewed from any point in the field of view indicated in Table VII for each such side marker lamp and reflex reflector.

(e) When a vehicle to which this section applies is equipped with any lamp or reflector listed in Table VIII, each such lamp or reflector shall provide, in accordance with Table VIII, the minimum luminous intensity in candela through the field of view specified for it.

(f) The manufacturer of a vehicle shall certify to only one of the compliance options specified in paragraphs (a) through (e), and it may not thereafter choose a different option for that vehicle.

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TABLE V

Requirements for Geometric Visibility of Installed Lighting Devices
Area Measurement Method
(GTB/ECE derived)

LIGHTING DEVICE	AXIS	GEOMETRIC VISIBILITY REQUIREMENT
Front Turn Signal Lamp	H V	-45° TO +45° -15° TO +15°[1]
Rear Turn Signal Lamp	H V	-45° TO +45° -15° TO +15°[1]
Stop Lamp	H V	-45° TO +45° -15° TO +15°[1]
Front Parking Lamp	H V	-45° TO +45° -15° TO +15°[1]
Tail Lamp	H V	-45° TO +45° -15° TO +15°[1]
Rear Fog Lamp	H V	-10° TO +10° -5° TO +5°
Rear Reflex Reflector	H V	-30° TO +30° -10° TO +10°[1]
Front Side Reflex Reflector	H V	-45° TO +45° -10° TO +10°[1]
Intermediate Side Reflex Reflector	H V	-45° TO +45° -10° TO +10°[1]
Rear Side Reflex Reflector	H V	-45° TO +45° -10° TO +10°[1]
Front Side Marker Lamp	H V	-45° TO +45° -10° TO +10°[1]
Intermediate Side Marker Lamp	H V	-45° TO +45° -10° TO +10°[1]
Rear Side Marker Lamp	H V	-45° TO +45° -10° TO +10°[1]
High Mounted Stop Lamp	H V	-10° TO +10° -5° TO +10°
Daytime Running Lamp	H V	-20° TO +20° -10° TO +10°

[1] Angle below horizontal may be reduces to 5° if the lamp is less than 750 mm. above the ground.

TABLE VI

Requirements for Geometric Visibility of Installed Lighting Devices
Intensity Measurement Method
(GTB/ECE derived)

LIGHTING DEVICE	AXIS	GEOMETRIC VISIBILITY REQUIREMENT	MINIMUM LUMINOUS INTENSITY (candela)
Front Turn Signal Lamp	H V	-45° TO +80° -15° TO +15°[1]	0.3
Rear Turn Signal Lamp	H V	-45° TO +80° -15° TO +15°[1]	0.3
Stop Lamp	H V	-45° TO +45° -15° TO +15°[1]	0.3
Front Parking Lamp	H V	-45° TO +80° -15° TO +15°[1]	0.05
Tail Lamp	H V	-45° TO +80° -15° TO +15°[1]	0.05
Rear Fog Lamp	H V	-25° TO +25° -5° TO +5°	75 in the diamond shaped area contained by H,5U; V,10R; H,5D; and V,10L
Rear Reflex Reflector	H V	none	Must comply with photometric intensity requirements as installed
Front Side Reflex Reflector	H V	none	Must comply with photometric intensity requirements as installed
Intermediate Side Reflex Reflector	H V	none	Must comply with photometric intensity requirements as installed
Rear Side Reflex Reflector	H V	none	Must comply with photometric intensity requirements as installed
Front Side Marker Lamp	H V	-45° TO +45° -10° TO +10°[1]	0.6
Intermediate Side Marker Lamp	H V	none	Must comply with photometric intensity requirements as installed
Rear Side Marker Lamp	H V	-45° TO +45° -10° TO +10°[1]	0.6 (amber) 0.25 (red)
High Mounted Stop Lamp	H V	none	Must comply with photometric intensity requirements as installed
Daytime Running Lamp	H V	none	Must comply with photometric intensity requirements as installed

[1] Angle below horizontal may be reduces to 5° if the lamp is less than 750 mm. above the ground.

TABLE VII

Requirements for Geometric Visibility of Installed Lighting Devices
Area Measurement Method
(SAE derived)

LIGHTING DEVICE	AXIS	GEOMETRIC VISIBILITY REQUIREMENT
Front Turn Signal Lamp	H V	-20° TO +45° -15° TO +15°[1]
Rear Turn Signal Lamp	H V	-20° TO +45° -15° TO +15°[1]
Stop Lamp	H V	-45° TO +45° -15° TO +15°[1]
Front Parking Lamp	H V	-20° TO +45° -15° TO +15°[1]
Tail Lamp	H V	-45° TO +45° -15° TO +15°[1]
Rear Fog Lamp	H V	signal from lamp be visible -45° TO +45°
Rear Reflex Reflector	H V	Must comply with photometric intensity requirements as installed
Front Side Reflex Reflector	H V	Must comply with photometric intensity requirements as installed
Intermediate Side Reflex Reflector	H V	Must comply with photometric intensity requirements as installed
Rear Side Reflex Reflector	H V	Must comply with photometric intensity requirements as installed
Front Side Marker Lamp	H V	Must comply with photometric intensity requirements as installed
Intermediate Side Marker Lamp	H V	Must comply with photometric intensity requirements as installed
Rear Side Marker Lamp	H V	Must comply with photometric intensity requirements as installed
High Mounted Stop Lamp	H V	signal from lamp be visible -45° TO +45°
Daytime Running Lamp	H V	Must comply with photometric intensity requirements as installed

[1] Angle below horizontal may be reduces to 5° if the lamp is less than 750 mm. above the ground.

TABLE VIII
Requirements for Geometric Visibility of Installed Lighting Devices
Intensity Measurement Method
(SAE derived)

LIGHTING DEVICE	AXIS	GEOMETRIC VISIBILITY REQUIREMENT	MINIMUM LUMINOUS INTENSITY (candela)
Front Turn Signal Lamp	H V	-45° TO +80° -15° TO +15°[1]	0.3
Rear Turn Signal Lamp	H V	-45° TO +80° -15° TO +15°[1]	0.3
Stop Lamp	H V	-45° TO +45° -15° TO +15°[1]	0.3
Front Parking Lamp	H V	-45° TO +80° -15° TO +15°[1]	0.05
Tail Lamp	H V	-45° TO +80° -15° TO +15°[1]	0.05
Rear Fog Lamp	H V	-45° TO +45°	signal must be visible
Rear Reflex Reflector	H V	none	Must comply with photometric intensity requirements as installed
Front Side Reflex Reflector	H V	none	Must comply with photometric intensity requirements as installed
Intermediate Side Reflex Reflector	H V	none	Must comply with photometric intensity requirements as installed
Rear Side Reflex Reflector	H V	none	Must comply with photometric intensity requirements as installed
Front Side Marker Lamp	H V	none	Must comply with photometric intensity requirements as installed
Intermediate Side Marker Lamp	H V	none	Must comply with photometric intensity requirements as installed
Rear Side Marker Lamp	H V	none	Must comply with photometric intensity requirements as installed
High Mounted Stop Lamp	H V	-45° TO +45°	signal must be visible
Daytime Running Lamp	H V	none	Must comply with photometric intensity requirements as installed

[1] Angle below horizontal may be reduces to 5° if the lamp is less than 750 mm. above the ground.

Issued on: November 24, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–32655 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–59–C

Notices

Federal Register
Vol. 63, No. 237
Thursday, December 10, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting; Board of Directors Meeting

TIME: 9:00 a.m.–12:00 noon.

PLACE: ADF Headquarters.

DATE: Monday, 14 December 1998.

STATUS: Open.

Agenda

9:00 a.m. Chairman's Report
9:15 a.m. President's Report; New Business
11:00 a.m. Executive Session
12:00 noon Adjournment

If you have any questions or comments, please direct them to Paul Magid, General Counsel, who can be reached at (202) 673–3916.

William R. Ford,
President.

[FR Doc. 98–32943 Filed 12–8–98; 10:55 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plans for Some National Forest System Lands in Nebraska, North Dakota, South Dakota, and Wyoming

AGENCY: USDA Forest Service.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement in conjunction with the revision of land and resource management plans and modifications to existing oil and gas leasing decisions for several National Grasslands (NG) and Forests (NF) on the Northern Great Plains.

The planning area includes these National Forest System lands:

Administering unit	National Grassland/ Forest	State	County
Dakota Prairie Grasslands (formerly known as Custer NF).	Little Missouri NG	ND	Billings, Dunn, Golden Valley, McHenry, McKenzie, Slope.
	Cedar River NG	ND	Grant, Sioux.
	Sheyenne NG	ND	Ransom, Richland.
	Grand River NG	SD	Corson, Perkins.
Nebraska NF	Oglala NG	NE	Dawes, Sioux.
	Nebraska NF	NE	Blaine, Dawes, Sioux, Thomas.
	Samuel R. McKelvie NF.	NE	Cherry.
	Buffalo Gap NG	SD	Custer, Fall River, Jackson, Pennington.
	Fort Pierre NG	SD	Jones, Lyman, Stanley.
Medicine Bowe-Routt NF	Thunder Basin NG	WY	Campbell, Converse, Crook, Niobrara, Weston.

SUMMARY: This planning effort is called the "Northern Great Plains Management Plans Revision." Land and Resource Management Plans (hereafter referred to as Management Plan or Plans) will be prepared for each participating administrative unit, while one environmental impact statement for all affected units will be issued. In conjunction with the Plan revisions, existing oil and gas leasing decisions will be modified based on the analysis in the environmental impact statement.

DATES: Comments concerning the scope of the analysis were requested to be received in writing by July 31, 1997. The agency expects to file a draft environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public comment in February 1999. The agency expects to file the final environmental impact statement in May 2000.

ADDRESSES: Send written comments to: Dave Cawrse, Team Leader, Northern Great Plains Planning Team, USDA Forest Service, 125 North Main, Chadron NE 69337.

FOR FURTHER INFORMATION CONTACT: Dave Cawrse, Planning Team Leader, (308) 432–0300.

RESPONSIBLE OFFICIALS: Dale Bosworth, Northern Regional Forester at 200 East Broadway, Missoula, MT 59807; and Lyle Laverty, Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

COOPERATING AGENCIES: Bureau of Land Management and National Park Service.

SUPPLEMENTARY INFORMATION: This is a revised Notice of Intent for the prior notice promulgated in the **Federal Register,** Vol. 62, No. 38, on Wednesday, February 25, 1997. The Notice of Intent is being revised for the following reasons:

(1) The draft EIS has been delayed more than six months. The original expected release date was June 1998; the new expected date is February 1999. The final EIS is expected to be published May 2000.

(2) Two cooperating agencies have been added. Bureau of Land Management (State offices in Montana and Wyoming) will cooperate on the preparation of the EIS and decisions regarding mineral leasing, and the National Park Service (Theodore Roosevelt National Park) will cooperate on the preparation of the EIS and decisions regarding federally designated Wild and Scenic Rivers (specifically the Little Missouri River).

(3) The Custer National Forest Management Plan will now be referred

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to as the Dakota Prairie Grasslands Management Plan.

Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Foresters for the Northern and Rocky Mountain Regions give notice of the agency's intent to prepare an environmental impact statement for the revision effort described above. According to 36 CFR 219.10(g), land and resource management plans are ordinarily revised on a 10- to 15-year cycle. The existing Management Plans were approved as follows:

Custer National Forest—June 10, 1987;

Medicine Bow-Routt National Forest—November 20, 1985;

Nebraska National Forest—December 14, 1984.

The Regional Foresters give notice that they are completing an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analyses and contribute to the final decisions. One environmental impact statement will be prepared. Separate decisions, documented in Records of Decision, will be issued for each administrative unit. The combined revision effort makes sense because of common issues and concerns, and similar ecological landscapes. This effort will enable the administrative units to share assessments, plan-related analyses, and resource expertise, and will reduce costs.

Management plans describe the intended management of National Grasslands and Forests. Agency decisions in these plans will do the following things:

- Establish multiple-use goals and objectives (36 CFR 219.11);
- Establish grasslandwide and forestwide management requirements (standards and guidelines) to fulfill the requirements of 16 U.S.C. 1604 applying to future activities (resource integration requirements, 36 CFR 219.13 to 219.27);
- Establish management areas and management area direction (management area prescriptions) applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11(c);
- Establish monitoring and evaluation requirements (36 CFR 219.11(d));
- Determine suitability and potential capability of lands for producing forage for grazing animals and for providing habitat for management indicator species (36 CFR 219.20), designate lands not suited for timber production, and, where applicable, establish allowable timber sale quantity (36 CFR 219.14, 219.15, and 219.21);
- Where applicable to oil and gas resources, determine the planning area leasing decision (lands administratively available for leasing) and the leasing decision for specific lands (36 CFR 228.102(4)(d) & (e)). Where applicable, BLM will issue a decision document on leasing for federal minerals, both under Forest Service administered surface and under private surface.
- Where applicable, recommend Wild and Scenic River designations, in cooperating with the National Park Service, in accordance with 16 U.S.C. 1274; and
- Where applicable, recommend non-Wilderness allocations or Wilderness recommendations for roadless areas (36 CFR 219.17).

The authorization of project level activities within the planning area occurs through project decision-making, the second stage of forest and grassland planning. Project-level decisions must comply with National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Management Plan.

RELEASE AND REVIEW OF THE EIS: The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by February 1999. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**.

The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register.**

Reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Com.* v. *NRDC.* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and Wisconsin.

Heritages, Inc., v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the three-month comment period so that substantive comments and objects are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DIES should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DIES, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in May 2000. The responsible officials will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations and policies in making decisions regarding these revisions. The responsible officials will document their decisions and reasons for their decisions in the separate Record of Decision for each Management Plan. Each decision will be subject to appeal in accordance with 36 CFR 217.

The responsible official for each of the Management Plans is the appropriate Regional Forester.

Dated: November 19, 1998.

Dale Bosworth,

Regional Forester, Northern Region.

Dated: November 9, 1998.

Lyle Laverty,

Regional Forester, Rocky Mountain Region.

[FR Doc. 98–32860 Filed 12–9–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Vessel-Marking Requirements in Antarctic Fisheries.

Agency Form Number(s): None.

OMB Approval Number: None (previously cleared under 0648–0306).

Type of Request: New collection.

Burden: 1.

Number of Respondents: 1.

Avg. Hours Per Response: One hour.

Needs and Uses: Vessels participating in Antarctic fisheries must display the vessel's official identification number or international radio call sign in three locations. The information is used for enforcement purposes.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: Other—this is a marking requirement.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: December 4, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32795 Filed 12–9–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gear-Marking Requirements in Antarctic Fisheries.

Agency Form Number(s): None.

OMB Approval Number: None (previously cleared under 0648–0305).

Type of Request: Existing collection in use without an OMB control number.

Burden: 10.

Number of Respondents: 1.

Avg. Hours Per Response: 10 hours.

Needs and Uses: Vessels participating in Antarctic fisheries must mark the vessel's fishing gear with the official vessel identification number, Federal permit or tag number, or some other specified form of identification. The requirement assists law enforcement officials in monitoring fishing and other activities and to ascertain whether the vessel is participating in activities authorized for that vessel.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: Other—this is a marking requirement.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: December 4, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32796 Filed 12–9–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112398H]

Marine Mammals; File No. 881–1443

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 881–1443, issued to the Alaska SeaLife Center, P.O. Box 1329, Seward, AK 99664, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 881–1443, Project No. I authorizes the Alaska SeaLife Center to assess nutritional physiology, metabolic development, and clinical health under captive conditions of six harbor seals (*Phoca vitulina*) and three Steller sea lions (*Eumetopias jubatus*). Project II authorizes you to conduct stable isotope and lipid metabolism studies on the harbor seals.

Condition A.2.i. currently authorizes controlled dietary studies. As a component of this condition, this amendment (Project No. III) now authorizes the Holder to: (1) conduct a two-week fasting study on the Steller sea lions; (2) increase the frequency of blood-sampling during this period from one to three per week (previously authorized in Condition A.2.d.); and (3) inject D_2O two times during this two-week period (previously authorized in A.2.g.).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 25, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–32900 Filed 12–9–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in India and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997. Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	15,759,634 square meters.
219	72,024,490 square meters.
313	42,166,947 square meters.
314	8,574,344 square meters.
315	14,401,463 square meters.
317	42,323,197 square meters.
326	9,618,909 square meters.
334/634	153,260 dozen.
335/635	682,313 dozen.
336/636	962,758 dozen.
338/339	4,168,194 dozen
340/640	2,140,156 dozen
341	4,473,861 dozen of which not more than 2,684,315 dozen shall be in Category 341–Y[1].
342/642	1,381,686 dozen.
345	210,686 dozen.
347/348	677,845 dozen.
351/651	292,062 dozen.
363	49,249,693 numbers.
369–D[2]	1,429,609 kilograms.
369–S[3]	779,787 kilograms.
641	1,608,636 dozen.
647/648	934,120 dozen.
Group II	
200, 201, 220–227, 237, 239pt.[4], 300, 301, 331–333, 350, 352, 359pt.[5], 360–362, 600–604, 606[6], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt.[7], 666, 669pt.[8], 670, 831, 833–838, 840–858 and 859pt.[9], as a group.	123,462,255 square meters equivalent.

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[9] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32797 Filed 12–9–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Suspension of Group II Restriction for Certain Man-Made Fiber Textile Products Produced or Manufactured in India

December 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending suspension of the Group II restriction for certain products from India.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A document published in the **Federal Register** on November 13, 1997 (62 FR 60826) announced the extension of the suspension of the Group II restriction for rayon filament yarn in HTS number 5403.31.0040 in Category 606 from India for the period January 1, 1998 through December 31, 1998.

The Committee for the Implementation of Textile Agreements has decided to extend the suspension for an additional twelve-month period beginning on January 1, 1999 and extending through December 31, 1999. A visa is still required for this product.

Anyone wishing to comment or provide data or information regarding the treatment of imports in HTS number 5403.31.0040 from India or to comment on domestic production or availability of products included in HTS number 5403.31.0040 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on January 1, 1999, man-made fiber textile products in HTS 5403.31.0040 in Category 606, in Group II, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, shall not be subject to the Group II quota established for the 1999 period. A visa is still required for this product.

For U.S. Customs' administrative purposes, the remaining HTS numbers in Category 606 shall be designated Category 606(1)[1].

To facilitate implementation of the Uruguay Round Agreement on Textiles and Clothing, effective on January 1, 1999, entry/entry summary procedures shall be required, and you shall continue to count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2)[2], produced or manufactured in India and exported during the period January 1, 1998 through December 31, 1998.

Also effective on January 1, 1999, entry/entry summary procedures shall be required, and you shall count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2), produced or manufactured in India and exported during the period January 1, 1999 through December 31, 1999.

Inasmuch as these imports may later be charged against the Group II level, it is important that an accurate count be taken.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32798 Filed 12-9-98; 8:45 am]

BILLING CODE 3510–DR–F

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[1] Category 606(1): all HTS numbers except 5403.31.0040 (Category 606(2)).

[2] Category 606(2): only HTS number 5403.31.0040.

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

Action: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Waiver/Remission of Indebtedness Application; DD Form 2789; OMB Number 0730—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 11,500.

Responses Per Respondent: 1.

Annual Responses: 11,500.

Average Burden Per Response: 2 hours.

Annual Burden Hours: 23,000.

Needs and Uses: Used by current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through this form is used in adjudicating the request for waiver or remission. Remissions apply only to active duty military members, and thus are not covered under the Paperwork Reduction Act of 1995. Criteria for waiver of a debt includes a determination that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the individual owing the debt or any other person interested in obtaining a waiver. Information obtained through the proposed collection is needed in order to adjudicate the waiver request under the law.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

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Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 1, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–32753 Filed 12–9–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

Action: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Child Annuitant's School Certification; DD Form 2788; OMB Number 0730–0001.

Type of Request: Reinstatement.

Number of Respondents: 3,600.

Responses Per Respondent: 1.

Annual Responses: 3,600.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 720.

Needs and Uses: In accordance with 10 USC 1435 and 10 USC 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided. The Child Annuitant's School Certification form is submitted to the child for completion and return to the Defense Finance and Accounting Service. The child will certify as to his or her intent for future enrollment and a school official must certify on the past or present school enrollment of the child. If information is not received after the end of each school enrollment, over-disbursements of an annuity would be made to a child who elected not to continue further training or study.

Affected Public: Individuals or households.

Frequency: Semi-Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 1, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–32754 Filed 12–9–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–04]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–04, with attached transmittal, policy justification, sensitivity of technology, and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: December 2, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON DC 20301-2800

16 NOV 1998
In reply refer to:
I-75112/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-04, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $205 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MSDavison

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

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Transmittal No. 99-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 133 million
Other	$ 72 million
TOTAL	$ 205 million

(iii) Description of Articles or Services Offered: Three FFG-7 PERRY class frigates and eight currently leased FF 1052 KNOX class frigates for service with the Turkish Navy. Also included are: 20,000 rounds of 20mm cartridges, other ammunition items, "cold ship" transfer reactivations, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) Military Department: Navy (AHL, AHM, BIN, GHS, JBY, JKN, SCP, and SCQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 16 NOV 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - FFG-7 PERRY and FF-1052 KNOX Class Frigates

The Government of Turkey has requested a possible sale of three FFG-7 PERRY class frigates and eight currently leased FF 1052 KNOX class frigates for service with the Turkish Navy. Also included are: 20,000 rounds of 20mm cartridges, other ammunition items, "cold ship" transfer reactivations, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $205 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey, while enhancing weapon system standardization and interoperability.

Turkey already has three U.S. Navy PERRY class frigates in its Navy fleet. Turkey needs these frigates to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The frigates will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The PERRY vessels will be transferred on a "cold ship" basis because the decommissioning has occurred prior to approval of the enacting legislation. The primary efforts for transfer will be completed through the Naval Sea Systems Command by a contract crew. There are no prime contractors for provision of the weapon systems applicable to these platforms. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of contractor representatives for the purpose of providing engineering technical support to Turkey.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

2. The guidance and control system and the Target Detecting Device represent technology which if compromised could reveal areas of missile performance and potentially result in the development of countermeasures or equivalent systems capable of reducing weapon system effectiveness. This information could also be used in the development of a system with similar or advanced capabilities.

3. AN/SLQ-32A(V)3 Improved ECM Set: Secret hardware. Due to USN requirements, this system must be removed and replaced with the basic AN/SLQ-32(V)2 system. Removal includes hardware, software, and technical manuals. When replaced with the basic AN/SLQ-32(V)2, the following release considerations apply: (1) hardware is Secret, (2) software is Confidential, (3) U.S. threat libraries are Secret and will not be released, and (4) technical manuals are Confidential and need to be sanitized.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities. For this reason, the U.S. threat libraries will not be released.

5. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

November 16, 1998

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Turkey of three FFG-7 PERRY-class frigates and eight currently leased FF-1052 KNOX-class frigates for service with the Turkish Navy is consistent with the principles contained in section 620C(b) of the Act. Also included as part of the transfer are: 50 SM-1 BLOCK VI STANDARD missiles, 20,000 rounds of 20mm cartridges, other ammunition items, "cold ship" transfer reactivations, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment publications and technical data/drawings, training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapons systems operational at an estimated cost of $205 million.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John Holum

John D. Holum
Acting Under Secretary
for Arms Control and
International Security
Affairs and Director,
U.S. Arms Control and
Disarmament Agency

[FR Doc. 98-32750 Filed 12-9-98; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATE: 16 December 1998 (900 a.m. to 1600 p.m.).

ADDRESS: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: December 2, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–32751 Filed 12–9–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting

AGENCY: Defense Intelligence Agency, Joint Military Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, 12 January 1999, 0800 to 1800; and Wednesday, 13 January 1999, 0800 to 1200.

ADDRESS: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: December 2, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–32752 Filed 12–9–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Tactical Battlefield Communications

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Tactical Battlefield Communications will meet in closed session on December 17–18, 1998, January 11–12, February 18–19, March 18–19, April 22–23, May 20–21, June 24–25, July 22–23, and August 5–6, 1999 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, the meeting to be held on December 17–18, 1998, is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will determine U.S. needs for wireless communications on future battlefields and the adequacy of communication architecture plans to fulfill those needs. The Task Force will specifically address the ability of digital and analog communications below the Corps-level to support predicted demands of joint tactical, intelligence, logistics and medical actions while assuring combatants' effectiveness and safety. In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 4, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–32748 Filed 12–9–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 11, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 24, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 4, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DGC 19

SYSTEM NAME:

DoD Final Personnel and General Claims and Waiver Files.

SYSTEM LOCATION:

Defense Office of Hearings and Appeals, Defense Legal Services Agency, Department of Defense, 4015 Wilson Boulevard, Suite 300, Arlington, VA 22203-1995.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Pay and Travel Claims: Uniformed service members of DoD, the Coast Guard, National Oceanic and Atmospheric Administration, and the Public Health Service or their dependents, beneficiaries, agents, attorneys or other individuals who may benefit from the member's tenure and who have an unresolved dispute related to a claim for pay, allowances, travel, transportation, retired pay, or survivor benefits.

Waiver Authority: DoD civilian employees, uniformed service members of DoD, the Coast Guard, National Oceanic and Atmospheric Administration, and the Public Health Service or their dependents, beneficiaries, agents, attorneys or other individuals who may benefit from the member's tenure and who have an unresolved dispute related to a request for waiver of erroneous payments of pay and allowances.

General Claims: Any individuals with other general claims arising from activities within DoD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files include administrative reports from DoD military and civilian employees, the Coast Guard, the National Oceanic and Atmospheric Administration, and the Public Health Service; claims, waiver applications, and all pertinent or supporting materials related to a claim or waiver application; written decisions of this Office, the Agency concerned, and the Deputy General Counsel (Fiscal); and such other matter as the claims adjudicators and attorneys may include in the record, including copies of precedents relied on in resolving a case.

Automated case status records for current cases and inactive cases are used to provide location and status and internal identification of cases, to prepare listings and internal statistical reports, and to monitor work flow and case handling actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5584; 10 U.S.C. 140; 10 U.S.C. 2575; 10 U.S.C. 2771; 10 U.S.C. 2774; 24 U.S.C. 420; 31 U.S.C. 3529; 31 U.S.C. 3702; 32 U.S.C. 714; 32 U.S.C. 716; 37 U.S.C. 554; and E.O. 9397 (SSN).

PURPOSE(S):

Records are collected and maintained to support the resolution of a claim or waiver application and to provide decisions to those parties involved in:

a. Claims related to uniform services members' pay, allowances, travel, transportation, retired pay, and survivor benefits;

b. Claims by transportation carriers for amounts collected from them for loss and damage incurred to property incident to shipment at Government expense;

c. Claims for proceeds of sale of unclaimed property coming into the custody or control of the Army, Navy, Air Force or Coast Guard;

d. Final settlements of accounts of members of the Armed Forces, including the National Guard;

e. Reports on disposition of the effects of deceased members of the Army and Air Force for settlement under 10 U.S.C. 2771, 10 U.S.C. 4712 and 9712;

f. Claims for the proceeds of the sale of motor vehicles and items of household goods and personal property of members of the Uniformed Services reported dead, injured, ill or absent for a period of more than 29 days in a missing status;

g. Claims for the proceeds from the disposition of effects of deceased residents of the Armed Forces Retirement Home;

h. Claims arising from DoD activities cognizable under 31 U.S.C. 3702, not otherwise delegated by the Director, OMB.

i. Waivers of payment submitted by individuals who seek final adjudication of their requests for waiver of erroneous payments of pay and allowances. Waivers are submitted by:

(1) Uniformed service members of DoD, the Coast Guard, National Oceanic and Atmospheric Administration, and the Public Health Service, of individuals who may derive any benefit on account of such tenure who have an unresolved dispute relating to a claim for pay, allowances, travel, transportation, retired pay, or survivor benefits.

(2) DoD civilian employees who have an unresolved dispute related to a request for waiver of erroneous payments of pay.

Records also are collected and maintained to record processing steps taken and processing time; to prepare statistical listings and summaries; to monitor and control adjudicative actions and processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Coast Guard, the National Oceanic and Atmospheric Administration, and the Public Health Service for the purpose of obtaining and providing information relating to claims and waivers.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders and electronic records are stored on magnetic or optical media.

RETRIEVABILITY:

Paper records are retrieved by case number. Computer data is retrieved by name, address, and Social Security Number, case number, or a combination of other personal identifying data.

SAFEGUARDS:

Records are stored in a secure area accessible only to DOHA authorized personnel. All records are stored, processed, transmitted and protected as the equivalent of For Official Use Only information. Records are accessed by the custodian of the record system and by persons responsible for using or servicing the system, who are properly screened and have a need-to-know. Computer hardware is located in controlled areas with access limited to authorized personnel. Computer access is via dedicated data circuits with password control. Individual passwords are changed periodically and upon departure of personnel. The dedicated data feature prevents access from standard dial-up telephones. Only DOHA personnel are given the security level on the computer system needed to amend, add, alter, change, or delete Claims and Waiver records.

RETENTION AND DISPOSAL:

Records are destroyed 6 years and 3 months after date of last DOHA action.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203-1995.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203-1995.

Request should include the individual's full name, address, telephone number, Social Security Number and other information identifiable from the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Director, Defense Office of Hearings and Appeals, PO Box 3656, Arlington, VA 22203-1995.

Request should include the individual's full name, address, telephone number, Social Security Number and other information identifiable from the record. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

Records may be made available for review at DOHA Headquarters upon appointment made with the Director. Individual must be able to provide picture identification, such as a valid driver's license.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from agency claims and waiver application files; from subject individuals, their attorneys or authorized representatives; or other documentary evidence made part of the record by the individual or the agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–32749 Filed 12–9–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Closed Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Friday, December 11, 1998 from 8:30 a.m. to 2:30 p.m. The closed Executive Session will be from 11:30 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the U.S. Naval Academy, Annapolis, MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerral K. David, U.S. Navy, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone number: (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and Internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S. Code. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: December 1, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–32978 Filed 12–9–98; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 4, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Transfer of Reading Skills from Spanish to English: A Study of Young Learners.

Frequency: One time.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 366.

Burden Hours: 584.

Abstract: The Agency needs the information to help inform national policies and practices related to reading instruction for English-language learners. Respondents will be 180 English-language learners in 4–6 schools in El Paso, Chicago, and Boston.

[FR Doc. 98–32790 Filed 12–9–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request.

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfel d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherril@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 4, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Distance Education Demonstration Program Application and Annual Evaluation.

Frequency: One time.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 200.

Burden Hours: 6,000.

Abstract: Applications necessary to determine which entities are interested and eligible to participate in the Distance Education Demonstration Program. Annual evaluations of the Distance Education Demonstration Programs are required to statute.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Office of Educational Research and Improvement

Type of Review: New.

Title: Evaluation of the National Star Schools Program.

Frequency: One time.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 535.

Burden Hours: 201.

Abstract: The Star Schools program has the purpose of encouraging improvement in instruction in mathematics, science, and foreign languages as well as other subjects through modern telecommunications technology. The purpose of this evaluation is to independently examine the implementation and administration of the program as a whole and of individual projects, as well as the program's outcomes and impact on schools, teachers, and students. Clearance is requested for two data collection efforts (1) a site teacher survey of 500 respondents and (2) a production teacher survey of 35 respondents.

[FR Doc. 98–32789 Filed 12–9–98; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A–1]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must—(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); (b) have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); (c) be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725(b) and (c) of the Act and Subparts F and G of 34 CFR Part 366; and (d) either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under AVAILABLE FUNDS.

Deadline for Transmittal of Applications: February 26, 1999.

Deadline for Intergovernmental Review: April 27, 1999.

Applications Available: December 11, 1998.

Available Funds: $456,736 as distributed in the following manner:

Georgia	$86,226
New York	104,652
American Samoa	154,046
Guam	55,906
Commonwealth of N. Marianas	55,906

Estimated Average Size of Awards: $55,906–$154,046.

Estimated Number of Awards: 1 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 364 and 366.

FOR FURTHER INFORMATION CONTACT: Merri Pearson, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3316, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–8484 (voice) and (202) 205–8243 (TDD).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

FOR APPLICATIONS CONTACT: The Grants and Contracts Services Team (GCST), U.S. Department of Education, 400 Maryland Avenue, SW, Room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at any of the following sites:

http://www.ed.gov/offices/OSERS/RSA/rsakits.html
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at http://www.adobe.com/prodindex/acrobat/readstep.html. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 721(c) and (e) and 796(f).

Dated: December 4, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–32814 Filed 12–9–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. PP–195, EA–195]

Application for Presidential Permit and Electricity Export Authorization Wilson-7 Energy Systems, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Wilson-7 Energy Systems, Inc. (Wilson-7) has applied for a Presidential permit to construct, connect, operate and maintain electric transmission facilities across the U.S. border with Mexico. The proposed facility is a direct current (DC) transmission with an operating voltage of between 600 kilovolts (600 kV) and 1,200 kV. The facilities would originate at a new electric powerplant to be constructed in Hudspeth County, Texas, and cross the U.S.-Mexico border in the vicinity of either Fort Hancock, Arcala, or Indian Hot Springs, Texas. The proposed facilities would be used to supply electric energy to Mexico and unnamed countries south of Mexico. In addition, Wilson-7 seeks authorization to export 6,000 megawatts (MW) of electric power from the United States to Mexico.

DATES: Comments, protests, or requests to intervene must be submitted on or before January 11, 1999.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. In addition, exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On October 14, 1998, Wilson-7 filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit and an electricity export authorization. The application was supplemented by another application filed on November 18, 1998. Wilson-7 proposes to construct a DC transmission line of either 600 kV, 800 kV, 1,000 kV, or 1,200 kV DC from a location in the vicinity of Fort Hancock, Hudspeth County, Texas, adjacent to the United States border with Mexico, to Mexico and to other unspecified countries located south of Mexico. The electric energy to be transmitted to Mexico and/or other countries will be generated by three (3) 2,000-MW gas-fired electric powerplants to be constructed by Wilson-7 in Hudspeth County, Texas.

The Wilson-7 application notes that there are no firm contracts in place for the sale of power to any foreign government or foreign private concerns.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with section 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Mr. Frank H. Wilson, 62 Thicket Street, Irvine, California 92614.

Before a Presidential permit or electricity export authorization may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA). DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Notice of upcoming NEPA activities and information on how the public can participate in those activities will appear in the **Federal Register**. Additional announcements will appear in local newspapers and public libraries and/or reading rooms in the vicinity of the proposed transmission line.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory" and then "Electricity" from the options menu.

Issued in Washington, D.C., on December 4, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Fossil Energy.

[FR Doc. 98–32904 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 98–2 of the Defense Nuclear Facilities Safety Board, Safety Management at the Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 98–2, concerning safety management at the Pantex plant, on October 7, 1998 (63 FR 53884). Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) required the Department of Energy to transmit a response to the Defense Nuclear Facilities Safety Board by November 20, 1998. The Secretary's response follows.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before January 11, 1999.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC, 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Ives, Deputy Assistant Secretary for Military Application and Stockpile Management, Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585.

Issued in Washington, DC, on December 3, 1998.

Theodore Wyka,

Deputy to the Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy,

Washington, DC 20585

November 20, 1998.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

Dear Mr. Chairman: This letter acknowledges receipt of your Recommendation 98–2, issued on September 30, 1998, and published in the **Federal Register** on October 7, 1998, dealing with Safety Management at the Pantex Plant. The Department accepts Recommendation 98–2 and will develop an Implementation Plan to the following approach:

(1) The activities undertaken in the Implementation Plan will be aimed at simplifying and standardizing activity level safety management processes for all work involving nuclear explosives at the Pantex Plant. Implementation Plan activities involving Nuclear Explosive Safety Studies will also be focused on simplification and standardization of practices and processes. Overall, the objective of the Implementation Plan will be to ensure practical and timely implementation of safety improvements and will better allow for tailoring of SS–21 principles.

(2) The Department recognizes the need to modify the existing change control process in order to improve process efficiency and consistency. An efficient process to tailor the amount of rigor involved in implementing changes while maintaining an adequate safety margin will be pursued.

(3) Roles, responsibilities and authorities will be clarified so that the Pantex contractor is accountable for the adequacy of nuclear explosive operations and safety documentation at the Pantex Plant. In doing so, the Pantex contractor will have the ability to call on the technical expertise of the National Laboratories.

(4) The Department recognizes the need to clarify the independent role of the Nuclear Explosive Safety Studies Groups. The Nuclear Explosive Safety Studies should focus on a scope of work established by line management and approved by the

appropriate Department of Energy Authorization Official.

(5) The Department will develop and implement options necessary to sustain a technically competent Nuclear Explosive Safety Study Group talent pool.

(6) The Department recognizes the need to pursue the safety management enhancement sought in Recommendation 98–2 consistent with the development of the Pantex Integrated Safety Management System as part of the Implementation Plan for Recommendation 95–2.

The Deputy Assistant Secretary for Military Application and Stockpile Management, Defense Programs, is the Responsible Manager for the preparation of the Implementation Plan. He will work with you to develop an acceptable plan, meeting our mutual expectations.

Yours sincerely,

Bill Richardson.

[FR Doc. 98–32902 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 98–1 of the Defense Nuclear Facilities Safety Board, Integrated Safety Management and the Department of Energy (DOE) Facilities.

AGENCY: Department of Energy

ACTION: Notice

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 98–1, concerning integrated safety management and the Department of Energy (DOE) facilities, on October 6, 1998 (63 FR 53646). Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) required the Department of Energy to transmit a response to the Defense Nuclear Facilities Safety Board by November 20, 1998. The Secretary's response follows.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before January 11, 1999.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C., 20004.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Livingston-Behan, Senior Program Advisor to the Secretary of Energy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C., 20585.

Issued in Washington, DC on December 2, 1998.

Theodore Wyka,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

November 20, 1998.

The Honorable John T. Conway, Chairman,
Defense Nuclear Facilities Safety Board 625
Indiana Avenue, NW., Suite 700,
Washington, D.C. 20004

Dear Mr. Chairman: Defense Nuclear Facilities Safety Board (Board) Recommendation 98–1, issued on September 28, 1998, recommends improvements to the Department's program for resolving the findings of its independent internal safety oversight organization. I agree that such improvements will enhance our ability to ensure safety. Thus, the Department accepts Board recommendation 98–1.

The Department is committed to having an effective internal, independent oversight function as part of an overall safety assurance approach that also includes line management self-assessments. The Department's policy on line environment, safety and health oversight clearly establishes our expectations that robust, rigorous and credible contractor self-assessments together with Department line management oversight provide the primary basis for ensuring safety. Concurrently, the Department's Office of Oversight is responsible for independent safety oversight. Its findings are communicated to line management through inspection reports (such as safety management evaluations), topical and issue reviews, special studies, and accident investigations. Adequate and timely resolution of safety findings is the responsibility of line management, which has overall responsibility for performing work safely, gathering and considering safety feedback, and making necessary improvements. By acting on the Board's recommendation, we expect to further clarify these roles and responsibilities, and promote effective communication between line management and the independent oversight organization. Both are essential to the effective resolution of identified oversight findings.

The Department has completed a preliminary analysis of the issues raised in the Board's recommendation, and has identified the following as the foundation and focus of our implementation plan.

- The plan will describe a consistent, disciplined framework for developing and implementing corrective action plans in response to oversight findings, tracking and reporting status of corrective actions, verifying the completion of corrective actions, and resolving differences or issues that may arise relative to corrective actions. Department directives will be revised to implement the necessary framework.
- The role of the Office of the Secretary in resolving differences or issues that may arise in response to independent oversight findings will be clarified through enhancements to existing Department directives.

I have asked Ms. Ellen Livingston-Behan, Senior Program Advisor to the Office of the Secretary, to serve as the responsible manager for this recommendation. As the principal point of contact with the Board for this recommendation, she will work with you and your staff to develop an acceptable implementation plan that meets our mutual expectations. If you have questions, please contact her at (202) 586–9500.

Yours sincerely,

Bill Richardson

[FR Doc. 98–32903 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 99–04: Human Genome Program—Technological Advances

AGENCY: U.S. Department of Energy (DOE).

ACTION: Correction.

In notice document 98–31367 beginning on page 64944, in the issue of Tuesday, November 24, 1998, make the following correction:

On page 64945, in the third column, under the heading "Program Funding", in the second line the dollar amount should read "$5,000,000".

Issued in Washington, DC, on December 3, 1998.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 98–32901 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

RIN 1904–AA67

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Office of Codes and Standards (OCS) in the Office of Energy Efficiency and Renewable Energy (EE) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget (OMB) for review and approval.

DATES: Consideration will be given to comments submitted by January 11, 1999.

ADDRESSES: Written comments may be submitted to: Office of Management and Budget, Attn: OMB Energy Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503. A copy of the comments should also be submitted to: Department of Energy, Attn: Bryan Berringer, Office of Codes and Standards (EE–43), Room 1J–018/FORS, 1000 Independence Ave., SW, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@HQ.DOE.GOV; Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507; or the OMB Energy Desk Officer, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, (202) 395–3087.

SUPPLEMENTARY INFORMATION:

Collection title: Proposed Clothes Washer Consumer Impact Analysis.

Form(s) submitted: OMB 83–I.

OMB Number: None.

Expiration date of current OMB clearance: N/A.

Type of request: Approval of new collection.

Respondents: Individuals or households.

Estimated annual number of respondents: 600.

Estimated burden hours per respondent: 2 hours.

Frequency of response: One time.

Total annual reporting hours: 1,200.

Estimate cost burden to respondents: No monetary burden.

Collection description: OCS is collecting consumer data to determine the value consumers' place on clothes washer attributes, such as rinse and wash cycle temperature, annual electricity and water bill savings, price of clothes washer, top or front loading, etc. Legislation requires that "the Secretary consider, among other factors, * * * if any lessening of the utility or performance of the products is likely to result from the imposition of the standard" (42 U.S.C. Sec. 6295(o)(2)(B)(I)(3)). OSC will analyze the data to determine if the new efficiency standard negatively impacts any of the attributes highly valued by consumers.

ADDITIONAL INFORMATION: Copies of the form and supporting documents can be obtained from: Bryan Berringer, Office of Codes and Standards (EE–43), Room 1J–018/FORS, 1000 Independence Ave., SW, Washington, DC 20585–0121.

Issued in Washington, DC, on December 7, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–32864 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed by January 11, 1999. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–846(A), (B), and (C), "Manufacturing Energy Consumption Survey" (MECS).
2. Energy Information Administration; OMB No. 1905–0169; Reinstatement, with change, of a previously approved collection for which approval has expired; Mandatory.
3. EIA–846(A), (B), and (C) will be used to collect data on energy consumption and related subjects for the manufacturing sector of the U.S. economy. In addition to being used for the National Energy Modeling System, the MECS is used to augment a data base on the manufacturing sector. Respondents are manufacturing establishments.
4. Business or other for-profit.
5. 49,447 hours (18,000 respondents x 1 response per year x 8.24 hours per response) (The 148,340 hour burden is being prorated over a three-year period since the survey will be conducted only one time during this period.)

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., December 4, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–32905 Filed 12–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG99–7–000; MG99–6–000; MG99–9–000; and MG99–8–000]

Algonquin Gas Transmission Company, Algonquin LNG, Inc., Maritimes & Northeast Pipeline, L.L.C., Texas Eastern Transmission Corporation; Notice of Filing

December 4, 1998.

Take notice on that on November 25, 1998, Algonquin Gas Transmission Company, Algonquin LNG, Inc., Maritimes & Northeast Pipeline, L.L.C. and Texas Eastern Transmission Corporation each filed revised standards of conduct under Order Nos. 497 *et seq.*[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Each company states that it has served copies of its filing to each of its affected customers and state commissions.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest in each proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 21, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32781 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. and Regs. 1986–1990 ¶30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. and Regs. 1986–1990 ¶30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. and Regs. 1986–1990 ¶30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. and Regs. 1991–1996 ¶30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. and Regs. 1991–1996 ¶30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. and Regs. 1991–1996 ¶30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. and Regs. 1991–1996 ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. and Regs. 1991–1996 ¶30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. and Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–20–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 1999.

Algonquin states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 1999 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh g, 83 FERC ¶ 61,331 (1998). Specifically, Algonquin states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a GRI volumetric surcharge of 0.75¢ per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.8¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to small customers qualifying for service under Algonquin's Rate Schedules AFT–1S and AFT–ES; (3) a reservation surcharge of 23.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; and (4) a reservation surcharge of 14.2¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32837 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–48–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on November 30, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective Janaury 1, 1999:

Twenty-Fourth Revised Sheet No. 17

ANR states that the purpose of this filing is to establish the revised Gas Research Institute surcharges approved in the Commission's September 29, 1998 order at Docket No. RP98–235–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32768 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–7–000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Washington County Replacement Project and Request for Comments on Environmental Issues

December 4, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the replacement of about 0.55 mile of 20-inch-diameter pipeline, proposed in the Washington County Replacement Project.[1] The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

ANR Pipeline Company (ANR) seeks authority to:

- Abandoned and remove 0.6 mile of 20-inch-diameter pipeline (Line 1–301);
- Install in the same trench about 0.6 mile of 20-inch-diameter replacement pipeline, using the existing right-of-way (ROW) plus 25 feet on the western edge as part of the construction work area;
- Use, as temporary staging areas, 1.1 acres of land located outside the existing ROW;
- Extend Ash Road about 100 feet in an easterly direction for ROW access; and
- Use about 2.5 acres of its Germantown Compressor Station site as a contractor yard.

Line 1–301 was installed in 1956 as a loop to Line 301, a 14-inch-diameter pipeline. The recent and ongoing construction of Brookstone Crossing, a residential development, has increased the population density along a segment of Line 1–301. Consequently, ANR must upgrade this segment from a Class 2 to Class 3 pipeline to maintain compliance with the U.S. Department of Transportation (USDOT) regulations.

The location of the project facilities is shown in appendix 2. The proposed construction area would start about 820 feet south of Sherman Road and extend northward to Ash Drive. If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require about 9.4 acres of land. In addition, a 2.5-acre pipeyard would be used. No new permanent ROW would be acquired. All temporary construction areas would be allowed to revert to their former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Public Safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 4 of this notice.

Currently Identified Environmental Issues

We have already identified some issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

- The crossing of Cedar Creek could potentially impact rare fish and mussel species.
- Construction may affect a residential area.

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[1] ANR Pipeline Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2
- Reference Docket No. CP99–007–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 4, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

David P. Boergers,

Secretary.

[FR Doc. 98–32778 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–10–000]

Burk Royalty Company; Notice of Petition for Adjustment

December 4, 1998.

Take notice that on December 2, 1998, Burk Royalty Company (Burk), filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978, for relief from paying Northern Natural Gas Company (Northern) the Kansas ad valorem tax refunds attributable to Melvin J. Smith (Smith), the only royalty interest owner in the lease for which refunds are now due under the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.* [80 FERC ¶ 61,264 (1997); rehearing denied, 82 FERC ¶ 61,058 (1998)]. The Commission's September 10 order directed First Sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. Burk's petition is on file with the Commission and open to public inspection.

Northern served Burk with a Kansas ad valorem tax refund claim. With interest compounded through June 30, 1998, Northern's refund claim totals $15,811.32. Burk seeks to be relieved from having to pay the $667.00 in principal, plus the interest, that is attributable to Smith's royalty interest. Burk states that Smith is deceased, and that Smith owned all of the minerals on the lease, making Smith the only royalty interest owner, with a 12.5 percent royalty interest in the lease.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the Federal Register of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 98–32784 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–165–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on November 30, 1998, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-fifth Revised Sheet No. 11, with an effective date of January 1, 1999.

CIG states that the filing was made pursuant to CIG's FERC Gas Tariff, First Revised Volume No. 1, General Terms and Conditions, Article 21.5 (Account No. 858 Stranded Costs).

CIG states that copies of the filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32785 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–107–000 and CP98–109–000]

Continental Natural Gas, Inc.; Notice of Corporate Name Change

December 4, 1998.

Take notice that on December 2, 1998, Continental Natural Gas, Inc. (Continental), tendered for filing in the above-docketed proceedings a notice concerning a change in its corporate name.

Continental informs the Commission that effective October 16, 1998, the name of Continental Natural Gas, Inc. has been changed to CMS Continental Natural Gas, Inc. Continental requests that the Commission modify its records in the above-docketed proceedings, including the certificates granted to Continental to reflect the new name. Continental states that its corporate name change is a change in name only and does not reflect any substantive change in operation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions must be filed on or before December 21, 1998, as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32777 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–2–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifteenth Revised Sheet No. 4, with an effective date of January 1, 1999.

East Tennessee states that it is submitting the revised tariff sheet pursuant to Section 33 of the General Terms and Conditions of its Tariff, the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998, and the Commission's "Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five-Year Plan" issued in Docket No. RP98–235. See Gas Research Institute, 83 FERC 61,093 (1998); Gas Research Institute, 84 FERC 61,326 (1998). East Tennessee further states that tariff sheet revises the Gas Research Institute surcharges for 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32834 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket bear a proposed effective date of November 1, 1998.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS, respectively.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32844 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–168–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective January 1, 1999:

Second Revised Volume No. 1–A

Fifteenth Revised Sheet No. 20
Ninth Revised Sheet No. 22
Fifteenth Revised Sheet No. 23
Nineteenth Revised Sheet No. 24
Fifteenth Revised Sheet No. 26
Fifteenth Revised Sheet No. 27

Third Revised Volume No. 2

Forth-Fourth Revised Sheet No. 1–D.2

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Thirty-Eighth Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its rates for inflation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32786 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Granite State Gas Transmission, Inc.. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for the effectiveness on January 1, 1999.

Sixteenth Revised Sheet No. 21
Seventeenth Revised Sheet No. 22
Twelfth Revised Sheet No. 23

According to Granite State the purpose of its filing is to revise the Gas Research Institute (GRI) surcharges in its firm and interruptible transportation rates to conform with the reduced surcharges to be effective during 1999 proposed by GRI in the settlement in Docket No. RP98–235–000 which was approved by the Commission in an order issued September 29, 1998.

Granite State further states that copies of its filing have been served on its firm and interruptible transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32775 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on January 1, 1999:

Substitute Sixteenth Revised Sheet No. 21
Substitute Seventeenth Revised Sheet No. 22

According to Granite State, the foregoing tariff sheets propose a revised Power Cost Adjustment (PCA) surcharge applicable to its firm transportation services during the first quarter of 1999 to reimburse Granite State for certain electric power costs that it is obligated to pay Portland Pipe Line Corporation pursuant to the terms of a lease of a pipeline from Portland Pipe Line.

Granite State further states that the total surcharge of $0.5787 consists of the sum of two components: the Quarterly Forecast PCA factor of $0.7948 which is based on projected incremental electric power costs to be billed to Granite State during the first quarter of 1999 and the Reconcilable PCA factor of $<0.2161> which reconciles the accumulated over/under past surcharge collections in the Deferred Account on a quarterly basis. The method for developing the surcharge in the foregoing manner was approved by the Commission in orders issued in Docket Nos. RP98–155–003 and TM98–4–4–001, according to Granite State.

Granite State further states that copies of its filing have been served on its firm transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32842 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11597–000, AK]

Ketchikan Public Utilities; Notice of Ketchikan Public Utilities Request To Use Alternative Procedures in Filing a License Application

December 4, 1998.

The preliminary permit holder, Ketchikan Public Utilities (KPU), has asked to use an alternative procedure in filing an application for original license for the proposed Whitman Lake Hydroelectric Project No. 11597.[1] KPU has demonstrated that they have made an effort to contact all resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by their proposal, and that a consensus exists that the use of an alternative procedure is appropriate in this case. KPU has also submitted a communication protocol that is supported by most interested entities.

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[1] The 4,500-kilowatt project would be located on Whitman Creek, in Ketchikan Gateway Borough Alaska, partially within the Tongass National Forest.

The purpose of this notice is to invite any additional comments on KPU's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Applicant Prepared EA Process and Whitman Lake Project Schedule

On November 14, 1998, KPU distributed a schedule for the proposed project to state and federal resource agencies, Indian tribes, and NGOs. KPU scheduled a consultation meeting and site visit for all interested parties in early January 1999. Notices announcing the meeting and site visit would be published locally, as required by Commission regulations.

Public scoping meetings are planned for Spring 1999. Based on study requests from the January meetings, study plans would be developed early in 1999. Studies would be conducted during spring, summer, and fall 1999, as needed. The application, including the applicant-prepared EA, would be filed with the Commission on or before May 2000, the expiration date of KPU's preliminary permit is June 05, 2000.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on KPU's proposal to use the alternative procedures to file an application for the Whitman Lake Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading "Comments on the Alternative Procedure," and include the project name and number (Whitman Lake Hydroelectric Project, No. 11597).

For further information, call Gaylord Hoisington of the Federal Energy Regulatory Commission at (202) 219–2756, or E-mail Gaylord.Hoisington@FERC.FED.US. Information is also available on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 98–32832 Filed 12–9–95; 8:45 am]

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[2] 81 FERC ¶61,103 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11599–000, AK]

Ketchikan Public Utilities; Notice of Ketchikan Public Utilities Request To Use Alternative Procedures in Filing a License Application

December 4, 1998.

The preliminary permit holder, Ketchikan Public Utilities (KPU), has asked to use an alternative procedure in filing an application for original license for the proposed Connell Lake Hydroelectric Project No. 11599.[1] KPU has demonstrated that they have made an effort to contact all resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by their proposal, and that a consensus exists that the use of an alternative procedure is appropriate in this case. KPU has also submitted a communication protocol that is supported by most interested entities.

The purpose of this notice is to invite any additional comments on KPU's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian Tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Applicant Prepared EA Process and Connell Lake Project Schedule

On November 12, 1998, KPU distributed a schedule for the proposed project to state and federal resource agencies, Indian tribes, and NGOs. KPU scheduled a consultation meeting and site visit for all interested parties in early January 1999. Notices announcing the meeting and site visit would be published locally, as required by Commission regulations.

Public scoping meetings are planned for Spring 1999. Based on study requests from the January meetings, study plans would be developed early in 1999. Studies would be conducted during spring, summer, and fall 1999, as needed. The application, including the applicant-prepared EA, would be filed with the Commission on or before June 2000, the expiration date of KPU's preliminary permit is July 25, 2000.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on KPU's proposal to use the alternative procedures to file an application for the Connell Lake Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

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[1] The 1,700-kilowatt project would be located on Connell Lake, owned by the Ketchikan Pulp Company, on Ward Creek, near the City of Ketchikan within the Tongass National Forest.

[2] 81 FERC ¶61,103 (1997).

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All comment filings must bear the heading "Comments on the Alternative Procedure," and include the project name and number (Connell Lake Hydroelectric Project, No. 11599).

For further information, call Gaylord Hoisington of the Federal Energy Regulatory Commission at (202) 219–2756, or E-mail Gaylord.Hoisington@FERC. FED.US. Information is also available on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

David P. Boergers,
Secretary.
[FR Doc. 98–32833 Filed 12–9–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–53–000]

KN Interstate Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, KN Interstate Gas Transmission Co. (KNI) tendered for filing to become a part of KNI's FERC Gas Tariff, the following revised tariff sheet(s) to be effective January 1, 1999:

Third Revised Volume No. 1–A
Sixth Revised Sheet No. 4–D
First Revised Volume No. 1–C
Eleventh Revised Sheet No. 4

KNI states that this filing is being submitted in compliance with the Gas Research Institute's (GRI) application seeking approval of its 1999 RD&D program recently approved by the Commission in Docket No. RP98–235.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Secretary.
[FR Doc. 98–32769 Filed 12–9–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–117–000]

KN Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, KN Wattenberg Transmission Limited Liability Co. (KNW) tendered for filing to become a part of KNW's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet(s) to be effective January 1, 1999:

First Revised Sheet No. 6

KNW states that this filing is being submitted in compliance with the Gas Research Institute's application seeking approval of its 1999 RD&D program recently approved by the Commission in Docket No. RP98–235.

KNW states that copies of the filing were served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Secretary.
[FR Doc. 98–32773 Filed 12–9–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–5–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Ninth Revised Sheet No. 5, with an effective date of January 1, 1999.

Midwestern states that it is submitting the revised tariff sheet pursuant to Article XVII of the General Terms and Conditions of its Tariff, the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998, and the Commission's "Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five-Year Plan" issued in Docket No. RP98–235. See Gas Research Institute, 83 FERC 61,093 (1998); Gas Research Institute, 84 FERC 61,326 (1998). Midwestern further states that tariff sheet revises the Gas Research Institute surcharges for 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Secretary.
[FR Doc. 98–32835 Filed 12–9–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–177–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninth Revised Sheet No. 8, with a proposed effective date of January 1, 1999.

National states that the proposed tariff sheets reflect an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32764 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–16–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, National Gas Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective January 1, 1999:

8th Revised Sheet No. 8
13th Revised Sheet No. 9
3rd Revised Sheet No. 10
2nd Revised Sheet No. 11

National asserts that the purpose of this filing is to reflect the 1999 Gas Research Institute (GRI) unit surcharges approved by the Commission on April 29, 1998, at Docket No. RP97–149–003, et al.

The proposed tariff sheets reflect demand/reservation surcharges of 23.0 cents and 14.2 cents per Dth for "high load factor and low load factor" customers respectively, and a commodity/usage surcharge of .75 cents on firm service and one-part interruptible rates.

National further states that copies of this filing are being were served upon National's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32776 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–91–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

December 4, 1998.

Take notice that on November 24, 1998, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–91–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon, certain facilities located in Clarion County, Pennsylvania. National Fuel makes such request under its blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Specifically, National Fuel requests authorization to abandon in place approximately 4,053 feet of a 2-inch and 3-inch sales lateral designated Line M–W3202(T), because of its age and deteriorated condition. National Fuel also requests authorization to remove and abandon Station No. P–2796, located on Line M–W3202(T), and one point of delivery which previously provided service to one residential customer of National Fuel Gas Distribution Corporation (Distribution).

It is stated that Distribution has received approval from the Pennsylvania Public Utility Commission for the abandonment of the one residential customer affected by National Fuel's proposed abandonment. It is averred that the one residential customer has converted to an alternate fuel.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

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authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–32780 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fourteenth Sheet No. 9 and Second Revised Sheet No. 43 to its FERC Gas Tariff, Fourth Revised Volume No. 1, with a proposed effective date of January 1, 1999.

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) the changes in the FG reservation determinants based on the FG throughout for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (c) the costs resulting from operation of Sections 2 and 3 of Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of-Service based on the maximum IG rate in effect each month during the prior 12 months ended October 31 times the IG throughput for the same period. The recalculation produced an FG rate of $7.9343 per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32843 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective Janaury 1, 1999.

Natural states that the purpose of this filing is to implement a negotiated rate provision in its tariff consistent with the Federal Energy Regulatory Commission's (Commission): (1) "Statement of Policy and Request for Comments" issued January 31, 1996 in Docket Nos. RM95–6 and RM96–7, and (2) Order issued August 31, 1998, in Docket No. RP98–362.

Natural requested waiver of the Commission's Regulations to the extent neecessary to permit the tariff sheets submitted to become effective Janaury 1. 1999.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32763 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97–237–000, ER97–1079–000 and ER97–3574–000]

New England Power Pool; Notice of Informal Settlement Conference

December 4, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Thursday, December 10, 1998, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Joseph H. Long at (202) 208–2149 or Hyun S. Kim at (202) 208–2960.

David P. Boergers,

Secretary.

[FR Doc. 98–32782 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–59–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective January 1, 1999:

Fifth Revised Volume No. 1

48 Revised Sheet No. 50
48 Revised Sheet No. 51
18 Revised Sheet No. 52
44 Revised Sheet No. 53

Original Volume No. 2

156 Revised Sheet No. 1C
31 Revised Sheet No. 1C.a

Northern states that the above sheets are being filed to reflect the Gas Research Institute (GRI) funding surcharges for the 1999 calendar year.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32770 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–172–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, proposed to be effective January 1, 1999:

47 Revised Sheet No. 50
47 Revised Sheet No. 51
43 Revised Sheet No. 53

Northern states that this filing establishes the 1998–1999 system Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 1999.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32787 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–173–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 Surcharge which is designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed 46 Revised Sheet No. 50 and 51 and the 42 Revised Sheet No. 53 to be effective January 1, 1999.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32847 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–175–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective January 1, 1999.

Panhandle states that this filing removes from its currently effective rates the Miscellaneous Stranded Cost Reservation Volumetric Surcharge applicable to Rate Schedules IT and EIT for the reconciliation recovery period established in Docket No. RP98–75–000. The current volumetric surcharge was approved by a Commission letter order issued December 24, 1997. The reconciliation recovery period will terminate on December 31, 1998. Accordingly, Panhandle proposes to remove the 0.80¢ per Dt. Section 18.14 Miscellaneous Stranded Cost Volumetric Surcharge.

Panhandle further states that this filing reinstates the Carryover Second GSR Settlement Interruptible Rate Component applicable to interruptible transportation service provided under Rate Schedules IT and EIT. The Second GSR Settlement Interruptible Rate Component was established in a April 18, 1996 Stipulation and Agreement in Docket No. RP95–411–000 (April 18, 1996 Settlement). Accordingly, pursuant to Article I, Section 3(f)(ii) of the April 18, 1996 Settlement, Panhandle is proposing to implement a 1.11¢ per Dt. Carryover Second GSR Settlement Interruptible Rate Component to be in effect during the twelve month Second GSR Settlement Carryover Period commencing January 1, 1999.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32762 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–28–000]

Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999:

Fifty-First Revised Sheet No. 4
Fifty-First Revised Sheet No. 5
Fifty-First Revised Sheet No. 6
Forty-Ninth Revised Sheet No. 7
Forty-Ninth Revised Sheet No. 8
Thirtieth Revised Sheet No. 15

Panhandle states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 1999 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, Panhandle's filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a reservation surcharge of 23.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; (2) a reservation surcharge of 14.2¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.75¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 1.8¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Panhandle's Rate Schedule SCT.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32838 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–86–000]

PG&E Gas Transmission, Northwest; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Twenty-first Revised Sheet No. 5. PG&E GT–NW requests that the above-referenced tariff sheet become effective January 1, 1999.

PG&E GT–NW asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." These tariff changes reflect that PG&E GT–NW's fuel and line loss surcharge percentage will increase to 0.0009% per Dth per pipeline-mile for the six-month period beginning January 1, 1999. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pbulic inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32772 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–86–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following revised tariffs sheets: Twenty-Fifth Revised Sheet No. 4, Thirteenth Revised Sheet No. 4A and Tenth Revised Sheet No. 6C, with an effective date of January 1, 1999.

PG&E GT–NW states that these tariff sheets establish PG&E GT–NW's Gas Research Institute (GRI) surcharge for calendar year 1999. PG&E GT–NW proposes that these sheets be made effective January 1, 1999.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32841 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–98–000]

Southern Natural Gas Company, Texas Gas Transmission Corporation; Notice of Application To Abandon

December 4, 1998.

Take notice that on December 2, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, 35202–2563, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304 (jointly referred to as Applicants) filed under Section 7(b) of the Natural Gas Act, for authority to abandon, an interruptible transportation service which Applicants provided for Mississippi Valley Gas Company (MVG). The service was provided under Southern's Rate Schedule X–42 and Texas Gas' Rate Schedule X–76, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that this transportation service is no longer needed and has been terminated by mutual agreement between Applicants and MVG.

Any person desiring to be heard or make any protest with reference to said application should on or before December 28, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–32831 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–164–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets

December 3, 1998.

Take notice that on November 30, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1999:

Forty-Third Revised Sheet No. 14
Twenty-Ninth Revised Sheet No. 14a
Sixty-Fourth Revised Sheet No. 15
Thirty-Fifth Revised Sheet No. 15a
Forty-Third Revised Sheet No. 16
Twenty-Ninth Revised Sheet No. 16a
Sixty-Fourth Revised Sheet No. 17
Thirty-Fifth Revised Sheet No. 17a
Thirty-Fourth Revised Sheet No. 18
Sixteenth Revised Sheet No. 18a

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of is rates under Rate Schedules FT, FT–NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–32846 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–122–000]

TCP Gathering Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, TCP Gathering Co. (TCP) tendered for filing to become a part of TCP's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet(s) to be effective January 1, 1999.

Third Revised Sheet No. 6

TCP states that this filing is being submitted in compliance with the Gas Research Institute's (GRI) application seeking approval of its 1999 RD&D program recently approved by the Commission in Docket No. RP98–235.

TCP states that copies of the filing were served upon all affected firm cutomers of TCP and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32774 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–171–000 and TM99–1–9–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets identified in Appendix A to the filing, in Original Volume No. 2 and Fifth Revised Volume No. 1. Tennessee requests an effective date of January 1, 1999.

Tennessee states that it is filing the revised tariff sheets pursuant to Article XXXV of the General Terms and Conditions of its FERC Gas Tariff and Article VI of the February 18, 1997 Stipulation and Agreement filed in Docket No. RP93–151, et al., and approved by the Commission on April 16, 1997 (the GSR Settlement). See Tennessee Gas Pipeline Company, 79 FERC 61,031 (1997). Tennessee is tendering the revised tariff sheets to eliminate the Firm Settlement Surcharges as specified in Article VI of the GSR Settlement.

In addition, Tennessee is tendering the revised tariff sheets identified above to revise the Gas Research Institute surcharges for 1999. Tennessee is revising these surcharges pursuant to Article XXII of the General Terms and Conditions of its Tariff, the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998, and the Commission's "Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five-Year Plan" issued in Docket No. RP98–235. See Gas Research Institute, 83 FERC 61,093 (1998); Gas Research Institute, 84 FERC 61,326 (1998).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32766 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–17–000]

Texas Eastern Transmission Corporation; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 1999.

Texas Eastern states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 1999 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh g, 83 FERC ¶ 61,331 (1998).

Specifically, Texas Eastern states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a GRI volumetric surcharge of 0.75¢ per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.8¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Texas Eastern s Rate Schedule SCT; (3) a reservation surcharge of 23.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; and (4) a reservation surcharge of 14.2¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32767 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–178–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 1, 1999.

In June 1997, El Paso TransColorado Company withdrew as a partner in TransColorado Gas Transmission Company, leaving K N TransColorado, Inc. and Questar TransColorado, Inc. as the two remaining partners. Effective January 1, 1999, El Paso will end its duties as operator and K N Energy, Inc. will become the operator of TransColorado. As a result, certain tariff provisions have been modified to fit the operating requirements of KN's Direct Access Request and Tracking System, which replaces the Electronic Bulletin Board provisions presently being used to operate the TransColorado pipeline system.

TransColorado states that a copy of this filing has been served upon its customers and the Colorado Public Utilities Commission and New Mexico Public Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32765 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective January 1, 1999.

Transco states that the purpose of the instant filing is to reflect the 1999 GRI surcharges approved by the Commission's Order issued on September 29, 1998, in Docket No. RP98–235–000. Also, in accordance with GRI's 1993 settlement, Transco has calculated the firm transportation service load factors on the actual volumes transported during the 12 month period October 1997 through September 1998. The only changes resulting are the reclassification of Baltimore Gas & Electric Company, PG Energy, Inc., South Jersey Gas Company and UGI Utilities, Inc. from the high load factor catagory to the low load factor category.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to interevene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32839 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–42–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets, to be effective January 1, 1999:

121 Revised Sheet No. 5
26 Revised Sheet No. 5A
18 Revised Sheet No. 5A.02
18 Revised Sheet No. 5A.03
23 Revised Sheet No. 5B

Transwestern states that the purpose of this filing is to set forth the approved 1999 GRI demand surcharges to be effective January 1, 1999 in accordance with the Offer of Settlement dated January 21, 1998.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32836 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–30–000]

Trunkline Gas Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999:

Twenty-Eighth Revised Sheet No. 6
Twenty-Seventh Revised Sheet No. 7
Twenty-Eighth Revised Sheet No. 8
Twenty-Eighth Revised Sheet No. 9
Tenth Revised Sheet No. 9A
Twenty-Seventh Revised Sheet No. 10
Thirteenth Revised Sheet No. 10A

Trunkline states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharge to be effective January 1, 1999 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶61,331 (1998). Specifically, Trunkline's filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a reservation surcharge of 23.0¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; (2) a reservation surcharge of 14.2¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.75¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 1.8¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Trunkline's Rate Schedule SST.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Secretary.

[FR Doc. 98–32845 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–82–000]

Viking Gas Transmission Company; Notice of Tariff Filing

December 4, 1998.

Take notice that on December 1, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirteenth Revised Sheet No. 6, and Seventh Revised Sheet No. 6A, to become effective January 1, 1999.

Viking states that the purpose of this filing is to change Viking's Gas Research Institute Adjustment (GRI Adjustment) as permitted by Sections 154.204 and 154.401 of the Commission's Rules and Regulations (18 CFR 154.204, 154.401), and in accordance with the Commission's September 29, 1998 "Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five Year Plan," issued in Docket No. RP98–235–000, 84 FERC ¶ 61,326 (September 29, 1998 Order). Viking's authority to make this filing is set forth in Article XVIII of the General Terms and Conditions of Viking's FERC Gas Tariff, First Revised Volume No. 1.

Accordingly, Viking's GRI Adjustment has been changed to reflect the Commission's September 29, 1998 Order as follows: a demand/reservation surcharge of 23 cents per Dth per month for "high load factor customers;" a demand/reservation surcharge of 14.2 cents per Dth per month for "low load factor customers;" and a volumetric commodity/usage surcharge of .75 cents per Dth.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Secretary.

[FR Doc. 98–32771 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–89–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

December 4, 1998.

Take notice that on November 23, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–89–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place by sale to Texaco Exploration and Production, Inc. (Texaco), approximately 7.4 miles of the Lindsay 16-inch pipeline (Line VOA), related service and facilities located in Garvin County, Oklahoma, under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williams proposes to abandon in place by sale to Texaco approximately 7.4 miles of the Lindsay 16-inch lateral pipeline, consisting of 8-inch, 10-inch, and 16-inch pipeline, and equipment related to or used in connection with the operation of the pipeline, beginning in Section 1, Township 4 North, Range 4 West Garvin, County, Oklahoma, and extending to Section 5, Township 4 North, Range 2 West, Garvin County, Oklahoma.

Williams states that the Lindsay 16-inch pipeline was constructed to attach gas supplies in the Golden Trend area of central Oklahoma for further transmission on Williams' general system. Williams declares that in addition to providing a new source of major supplies of natural gas for Williams' system, the facilities enabled them to maintain gas inputs on the Blackwell-Oklahoma City portion of its system. Williams asserts it has determined that the Lindsay 16-inch pipeline is no longer required by Williams and will serve a more useful purpose as a part of the Texaco pipeline system. With the abandonment proposed herein, Williams declares that Texaco will own and operate the entire Lindsay 16-inch lateral pipeline.

Williams states that the sales price of the line is $450,000 and associated reclaim costs are $45,241.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–32779 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–174–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, William Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of January 1, 1999:

First Revised Sheet No. 38

Original Sheet Nos. 39 and 40

Williams states that this filing is being made pursuant to Article 14.2 (g) and (h) of the General Terms and Conditions of its FERC Gas Tariff. Article 14.2(g) provides that Williams may file to recover through an alternate mechanism any GSR costs not recovered through the mechanism set forth in Article 14.2. Williams proposes herein to recover approximately $735,000 of GSR costs allocated to interruptible transportation service in Docket Nos. RP96–173 and RP96–303 but not recovered during the 24 months following the effective date of increased interruptible transportation rates reflecting such costs.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32788 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–43–000]

Williams Gas Pipelines Central, Inc., Notice of Proposed Changes in FERC Gas Tariff

December 4, 1998.

Take notice that on December 1, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of January 1, 1999:

First Revised Sheet No. 6B

WNG states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1998.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32840 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–741–000, et al.]

Peco Energy Company, et al.; Electric Rate and Corporate Regulation Filings

December 3, 1998.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket ER99–741–000]

Take notice that on November 27, 1998, PECO Energy Company (PECO), tendered for filing a Notice of Termination for all of the individual Retail Transmission Service Agency Agreements (Agency Agreements) that PECO executed with Electric Generation Suppliers (EGSs) participating in PECO's state-approved Retail Access Pilot Program. PECO is requesting that such agreements terminate as of 12:01 a.m. February 2, 1999, in order to accommodate the transitional process by which EGSs will stop taking service

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under the Agency Agreements for their retail pilot load and start taking service directly under the PJM Open Access Transmission Tariff for said load as customer meter readings are completed.

A list of Agency Agreements being terminated, listed in accordance with their official FERC tariff designations and customer names, is attached to the filing and can be accessed through the Commission's Records Information Management System (RIMS).

Copies of this filing are being served on the Pennsylvania Public Utility Commission, the PJM Interconnection, L.L.C., and on all EGSs with whom PECO has executed an Agency Agreement.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket ER99–742–000]

Take notice that on November 27, 1998, PECO Energy Company (PECO), tendered for filing a Notice of Termination for all of the individual Installed Capacity Obligation Allocation Agreements that PECO executed with Electric Generation Suppliers (EGSs) participating in PECO's state-approved Retail Access Pilot Program. Given the termination of PECO's Pilot Program on December 31, 1998 and the PJM Interconnection, LLC's assumption as of January 1, 1999, of full responsibility for administering and/or overseeing such EGSs' load serving requirements and obligations, including installed capacity, PECO is requesting a December 31, 1998 termination date.

A list of the Installed Capacity Obligation Allocation Agreements being terminated, listed in accordance with their official FERC tariff designations and customer names, is attached to the filing and can be accessed through the Commission's Records Information Management System (RIMS).

Copies of this filing are being served on the Pennsylvania Public Utility Commission, the PJM Interconnection, L.L.C., and on all EGSs with whom PECO has executed an Installed Capacity Obligation Allocation Agreement.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–749–000]

Take notice that on November 30, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively and each doing business as GPU Energy) filed amendments to the GPU Energy Market-Based Sales Tariff.

GPU Energy requests an effective date of December 1, 1998 for the amendments.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Ameren Services Company

[Docket No. ER99–750–000]

Take notice that on November 30, 1998, Ameren Services Company (ASC) tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Services between ASC and Cargill-Alliant, LLC (Cargill). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Cargill pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Ameren Services Company

[Docket No. ER99–751–000]

Take notice that on November 30, 1998, Ameren Services Company (Ameren), tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and Cargill-Alliant, LLC, Columbia Energy Power Marketing Corporation, Merchant Energy Group of the Americas, Inc., Strategic Energy, Ltd., and Tractebel Energy Marketing, Inc. Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Services Company

[Docket No. ER99–752–000]

Take notice that on November 30, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Southwestern Public Service Company (SPS). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to SPS pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER99–753–000]

Take notice that on November 30, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Southwestern Public Service Company (SPS). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to SPS pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER99–756–000]

Take notice that on November 30, 1998, New England Power Company (NEP), tendered for filing a Second Amendment to Amended and Restated Distribution Agreement between NEP's affiliate, Massachusetts Electric Company and the Massachusetts Bay Transportation Authority.

NEP requests an effective date of December 1, 1998, for the filing.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER99–757–000]

Take notice that on November 30, 1998, Boston Edison Company (Boston Edison), tendered for filing two service agreements between Boston Edison as the transmission provider and TransAlta Energy Marketing (U.S.) Inc., as the transmission customer. One service agreement provides for non-firm point-to-point transmission service; the other provides for firm point-to-point transmission service. Both services are to be provided under Boston Edison's Open-Access Transmission Tariff, FERC Volume No. 8.

Boston Edison requests an effective date of February 1, 1999.

Boston Edison states that copies of the filing have been served upon the affected customer and the Massachusetts Department of Telecommunications and Energy.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Texas Utilities Electric Company

[Docket No. ER99–758–000]

Take notice that on November 30, 1998, Texas Utilities Electric Company

(TU Electric), tendered for filing a Notice of Termination concerning an unexecuted Transmission Service Agreement with Destec Power Services, Inc., for certain transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections accepted for filing by FERC on February 20, 1998 in Docket No. ER98–1202–000.

TU Electric requests an effective date for the Notice of Termination effective October 31, 1998. Accordingly, TU Electric seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Destec Power Services, Inc., as well as the Public Utility Commission of Texas.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER99–759–000]

Take notice that on November 30, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Potomac Electric Power Company (PEPCO).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to PEPCO pursuant to the Open-Access Transmission Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service company will provide general purpose energy and negotiated capacity to PEPCO pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000, as amended by the Commission's order in Docket No. ER97–458–000, and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of November 30, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Nevada Power Company

[Docket No. ER99–760–000]

Take notice that on November 30, 1998, Nevada Power Company (Nevada Power), tendered for filing a Modification to an Agreement between Nevada Power and the United States Department of the Air Force, Nellis Air Force Base, Nevada (Nellis), Docket No. ER94–402–000. The Modification extends the term of the original agreement beyond its December 1, 1998, termination date. It also sets forth the terms under which Nevada Power will accept future, additional firm allocations of power that Nellis may obtain from Western Area Power Administration.

Nevada Power respectfully requests that the Commission waive all notice requirements for this Modification and approve an effective date of December 1, 1998.

In addition to the Parties to this Modification, copies of this filing have also been served on the Public Utilities Commission of Nevada and the Utility Consumer's Advocate.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER99–761–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective the January 31, 1999, Rate Schedule FERC No. 101, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Blakely and the Pennsylvania Public Utilities Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PP&L, Inc.

[Docket No. ER99–762–000]

Take notice that on November 30, 1998, PP&L Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 79, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Kutztown and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER99–763–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 69, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Hatfield and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PP&L, Inc.

[Docket No. ER99–764–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 28, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Watsontown and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PP&L, Inc.

[Docket No. ER99–765–000]

Take notice that on November 30, 1998, that effective January 31, 1999, Rate Schedule FERC No. 50, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Weatherly and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PP&L, Inc.

[Docket No. ER99–766–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 518, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Borough of Schuylkill Haven and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. PP&L, Inc.

[Docket No. ER99–767–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 86, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Olyphant and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER99–768–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice effective January 31, 1999, Rate Schedule FERC No. 56, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of St. Clair and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. PP&L, Inc.

[Docket No. ER99–769–000]

Take notice that on November 30, 1999, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 54, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Perkasie and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. PP&L, Inc.

[Docket No. ER99–770–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 71, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Pennsylvania Public Utility Commission and the Borough of Quakertown.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L, Inc.

[Docket No. ER99–771–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 70, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Pennsylvania Public Utility Commission, and the Borough of Mifflinburg.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. PP&L, Inc.

[Docket No. ER99–772–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 32, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Duncannon and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER99–773–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 63, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Lehighton and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. PP&L, Inc.

[Docket No. ER99–774–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 88, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Lansdale and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. PP&L, Inc.

[Docket No. ER99–775–000]

Take notice that on November 30, 1998, PP&L, Inc., tendered for filing notice that effective January 31, 1999, Rate Schedule FERC No. 57, effective date February 1, 1994 and filed with the Federal Energy Regulatory Commission by PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon the Borough of Catawissa and the Pennsylvania Public Utility Commission.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers

Secretary.

[FR Doc. 98–32848 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

December 4, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–1218–014.

c. *Date filed:* November 25, 1998.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Flint River Hydroelectric Project.

f. *Location:* The project is located on the Flint River near the City of Albany, in Lee and Dougherty Counties, Georgia.

The project would not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Phillips, Georgia Power Company, Bin 10151, 241 Ralph McGill Boulevard, NE, Atlanta, GA 30308–3374.

i. *FERC Contact:* Any questions on this notice should be addressed to Allan E. Creamer, E-mail address allan.creamer@ferc.fed.us, or telephone (202) 219–0365.

j. *Description of Project:* The project consists of the following facilities: (1) The Muckafoonee Creek diversion dam, having (a) a 67-foot non-overflow section, (b) a 22-foot sluice section with two 6- by 8-foot sluices, and (c) a 133-foot gated spillway section with six 21- by 6-foot vertical lift gates; (2) a 500-foot-long reinforced concrete, free-crested auxiliary spillway and a 2,600-foot-long earthen dike; (3) the Flint River dam, having (a) a concrete intake structure, (b) a powerhouse (integral with the dam) containing three 1.8-megawatt (MW) generating units, for a total installed capacity of 5.4 MW, (c) a 464-foot-long spillway with 16 Taintor gates, and (d) a 1,700-foot-long earthen dike; (4) a 1,250-acre impoundment, impounding 10 miles of the mainstem Flint River and the lower reaches of the Kinchafoonee and Muckalee Creeks, at a water surface elevation of 181.8 feet plant datum, with a total storage capacity of 7,800 acre-feet; and (5) appurtenant facilities. The average annual generation is about 34.428 Gigawatt-hours.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 98–32783 Filed 12–9–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140275; FRL–6048–9]

Access to Confidential Business Information by Optimus Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Optimus Corporation (Optimus), of Silver Spring, Maryland, and its subcontractor Garcia Consulting, Incorporated (GCI) access to information which has been submitted to EPA under sections 4, 5, 6, 7 and 12 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data by Optimus and GCI occurred as a result of an approved waiver dated November 12, 1998, which requested granting Optimus and GCI immediate access to TSCA CBI. This waiver was necessary to allow Optimus and GCI to process 12(b) export notices submitted under sections 4, 5, 6, 7 and 12 of TSCA; and to issue notification letters to foreign governments.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W–98–232, contractor Optimus Corporation of 8601 Georgia Avenue, Suite 700, Silver Spring, MD and subcontractor Garcia Consulting Incorporated of 7927 Jones Branch Drive, Suite 400, McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in processing 12(b) export notices submitted under sections 4, 5, 6, 7 and 12 of TSCA; and issuing notification letters to foreign governments.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–98–232, Optimus and GCI will require access to CBI submitted to EPA under sections 4, 5, 6, 7 and 12 of TSCA to perform successfully the duties specified under the contract. Optimus and GCI personnel will be given access to information submitted to EPA under sections 4, 5, 6, 7 and 12 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 7 and 12 of TSCA that EPA may provide Optimus and GCI access to these CBI materials on a need-to-know basis only.

All access to TSCA CBI under this contract will take place at U.S. EPA Headquarters and at Optimus and GCI's Technical Assistance Information Service (TAIS) office, located at Waterside Mall, Garage Level, Room G0102, 401 M St., SW., Washington, DC 20460.

Optimus and GCI will be authorized access to TSCA CBI at their office under the EPA *TSCA Confidential Business Information Security Manual*. Before access to TSCA CBI is authorized at Optimus and GCI's office site, EPA will perform the required inspection of its facility and ensure that the facility is in compliance with the Manual. Upon completing review of the CBI materials, Optimus and GCI will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract may continue until March 31, 2003.

Optimus and GCI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 28, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution and Prevention and Toxics.

[FR Doc. 98–32885 Filed 12–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140277; FRL–6049–1]

Access to Confidential Business Information by Premier Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Premier Incorporated (Premier) of 6551 Loisdale Court, Springfield, Virginia, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI). Premier will assist the Office of Pollution Prevention and Toxics in operating the TSCA Confidential Business Information Center's computer system.

DATES: Access to the confidential data by Premier occurred as a result of an approved waiver dated November 13, 1998, which granted Premier immediate access to TSCA CBI. This waiver was necessary to allow Premier to operate the TSCA Confidential Business Information Center's computer system.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W–98–045, Premier, Incorporated of 6551 Loisdale Court, Springfield, VA, will assist OPPT in managing and operating the TSCA Nonconfidential and Confidential Business Information Centers.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–98–045, Premier will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Contract personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Premier access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters. Premier will be authorized access to TSCA CBI at EPA Headquarters only, under the terms and provisions of the EPA *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until January 31, 2003. Premier personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: December 2, 1998.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution and Prevention and Toxics.

[FR Doc. 98–32886 Filed 12–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6198–5]

Notice of Final Decision to Grant Waste Management of Ohio, Inc. a Modification of an Exemption from the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on a request to modify an exemption from the Hazardous and Solid Waste Amendments of the Resource Conservation and Recovery Act.

SUMMARY: Notice is hereby given by the Environmental Protection Agency (EPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Waste Management of Ohio, Inc. (WMO) of Oakbrook, Illinois. This modification allows WMO to continue to inject four (4) RCRA-regulated hazardous wastes which will be banned from land disposal on February 8, 1999, as a result of regulations promulgated in the **Federal Register** (FR) on August 6, 1998 (63 FR 42110), into four Class I injection wells at the Vickery, Ohio facility. As required by 40 CFR part 148, WMO has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by WMO's waste disposal facility located near Vickery, Ohio, for as long as the newly exempted waste remains hazardous. This decision constitutes a final Agency action for which there is no administrative appeal.

DATES: This action is effective as of February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish, Lead Petition Reviewer, USEPA, Region 5, telephone (312) 886–2939. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative record.

SUPPLEMENTARY INFORMATION:

I. Background

Chemical Waste Management (CWM), the predecessor of WMO, submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, CWM submitted a petition to modify the exemption to include wastes bearing 23 additional RCRA wastes codes. Region 5 reviewed documents supporting the request and granted the modification of the exemption on May 16, 1995. A notice of the modification appeared on June 5, 1995, at 60 FR 29592 *et seq.* On April 9, 1996, CWM submitted a petition to again modify the exemption to allow 91 additional RCRA waste codes. Region 5 reviewed documents supporting the request and granted the modification on the exemption on June 24, 1996. A notice of the modification appeared on July 15, 1996, at 61 FR 36880 *et seq.* Again on May 13, 1997, CWM submitted a request to add 11 waste codes to the list. Region 5 reviewed the evidence submitted by CWM and granted the request. Notice of the approval appeared on August 12, 1997 (63 FR 43109). On August 28, 1998, WMO requested that two additional wastes codes be approved for injection. This proposed approval of this request is pending as a result of need for public comment on the decision.

The rule promulgated on August 6, 1998, bans K169, K170, K171, and K172 from injection after February 8, 1999, unless WMO's exemption is modified to allow injection of those wastes. After review of the material submitted, the EPA has determined, as required by 40 CFR 148.20(f), that there is a reasonable degree of certainty that the hazardous constituents contained in the wastes bearing the codes to be banned will behave hydraulically and chemically like wastes for which WMO was granted its original exemption and will not migrate from the injection zone in hazardous concentrations within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations.

LIST OF RCRA WASTE CODES APPROVED FOR INJECTION

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II. Conditions

General conditions of this exemption are found at 40 CFR part 148. The exemption granted to WMO on August 7, 1990, included a number of specific conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Monitoring under condition 5, which called for construction and operation of a deep monitoring well, will continue through the life of the facility. Conditions numbered (5), (6), (7), and (8) have been satisfied. The results of the work carried out under these conditions confirms that the model used to simulate fluid movement within the injection zone for the next 10,000 years is valid and results of the simulation bound the region of the injection zone within which the waste will be contained.

Timothy C. Henry,

Acting Director, Water Division, Region 5.

[FR Doc. 98–32890 Filed 12–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6200–3]

Integrated Risk Information System (IRIS); Announcement of 1999 Program; Request for Information

AGENCY: Environmental Protection Agency.

ACTION: Notice; Announcement of IRIS 1999 Program and request for scientific information on chronic health effects of chemical substances.

SUMMARY: The Integrated Risk Information System (IRIS) is an EPA data base that contains EPA scientific consensus positions on potential human health effects from environmental contaminants. On January 2, 1998 EPA announced the 1998 IRIS agenda and solicited scientific information from the public for consideration in assessing the chronic health effects of a list of chemical substances (63 FR 75). Most of the assessments listed are complete or near completion, and EPA is preparing a new set of chemical health assessments for IRIS. This Notice describes the Agency's plans, and solicits scientific data and evaluations for consideration in EPA's new assessments.

DATES: Please submit information in response to this Notice by February 12, 1999.

ADDRESSES: Please send relevant scientific information to the IRIS Submission Desk in accordance with the instructions provided under "Submission of Information" in this Notice.

FOR FURTHER INFORMATION: For information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment (mail code 8601D), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to mills.amy@epa.gov. For general questions about access to IRIS, the content of IRIS, or how to submit information in response to this Notice, please call the Risk Information Hotline at (513) 569–7254.

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to environmental contaminants. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. IRIS information includes the reference dose for non-cancer health effects resulting from oral exposure, the reference concentration for non-cancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

The IRIS Program

EPA completed the IRIS Pilot Program, which focused on improving the scientific consensus and review process that precedes IRIS data base entries. A set of chemical assessments were developed (or updated, for existing entries) for IRIS utilizing the pilot process. This process has been adopted for the post-Pilot program and consists of, (1) an annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessments and draft IRIS summaries, (4) peer review within EPA, (5) peer review outside EPA, (6) EPA consensus review and management approval, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS data base.

Assessments Completed in FY 1998

The following assessments were completed and entered into IRIS in FY 1998 and early FY 1999. These assessments were announced in the **Federal Register** notice of January 2, 1998. All health endpoints, cancer and non-cancer, were assessed unless otherwise noted. Where information was available, oral reference doses, inhalation reference concentrations, and cancer unit risks and slope factors were developed.

Name	CAS No.
Arsenic [text added in carcinogenicity section].	7440–38–2
Barium	7440–39–3
Bentazon	25057–89–0
Benzene [inhalation cancer assessment].	71–43–2
Beryllium	7440–41–7
Chlordane	12789–03–6
Chromium (III)	16065–83–1
Chromium (VI)	18540–29–9
Methyl methacrylate	80–62–6
Methylene diphenyl diisocyanate.	101–68–8
Naphthalene	91–20–3

Assessments in Progress—Completion Planned for FY 1999 or FY 2000

The following assessments are underway or generally complete, and are planned for entry into IRIS in FY 1999 or FY 2000. These assessments were announced in the January 2, 1998 **Federal Register** notice. All health endpoints, cancer and non-cancer, are being assessed unless otherwise noted. Where information is available, oral reference doses, inhalation reference concentrations, cancer unit risks and slope factors are being developed.

Name	CAS No.
Acetonitrile	75–05–8
Benzene [non-cancer; oral cancer endpoints].	71–43–2
Boron	7440–42–8
Bromate	7758–01–2
1,3-Butadiene	106–99–0
Cadmium	7440–43–9
Chloral hydrate	75–87–6
Chloroethane	75–00–3
Chloroform	67–66–3
Dichloroacetic acid	79–43–6
1,3-Dichloropropene	542–75–6
Diesel emissions	[N.A.]
Ethylene glycol butyl ether	111–76–2
Formaldehyde	50–00–0
Nitrobenzene	98–95–3
Pentachlorophenol	87–86–5
Polychlorinated biphenyls (PCBs)—[noncancer endpoints].	1336–36–3
Styrene	100–42–5
Tetrachloroethylene ["perc"]	127–18–4
Tetrahydrofuran	109–99–9
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Vinyl acetate	108–05–4
Vinyl chloride	75–01–4

The reassessment of Lindane [CAS No. 58–89–9] announced in the January 2, 1998 **Federal Register** notice has been postponed to begin in FY 2000 pending results from an ongoing cancer study.

The IRIS summaries and support documents for the substances listed above will be provided on the IRIS web site at www.epa.gov/iris. This publicly-available web site is EPA's primary location for IRIS documents.

Information Requested on New Assessments for FY 1999

EPA will continue building and updating the IRIS data base. The Agency recognizes that many of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, EPA developed a list of priority substances for attention beginning in FY 1999. The following list of substances are priorities for IRIS due to one or more of the following reasons: (1) Agency statutory, regulatory, or program implementation need; (2) new scientific information or methodology is available that might significantly change current IRIS information, (3) interest to other levels of government or the public, (4) most of the scientific assessment work has been completed while meeting other Agency requirements, and only a modest additional effort will be needed to complete the review and documentation for IRIS.

The following IRIS health assessments have recently begun or will be started in FY 1999, with completion expected between FY 2000 and FY 2001. It is for these substances that the Agency is primarily requesting information from the public for consideration in the assessment. Unless otherwise noted, noncancer and cancer endpoints will be assessed for each substance. Where information is available, oral reference doses, inhalation reference concentrations, and cancer unit risks and slope factors will be developed.

Name	CAS No.
Acetaldehyde	75–07–0
Acetone	67–64–1
Ammonium perchlorate [and associated salts].	7790–98–9
Benzo[a]pyrene	50–32–8
Chlorine dioxide	10049–04–4
Chlorite (sodium salts)	7758–19–2
Chloroprene	126–99–8
Copper	7440–50–8
Cyclohexane	110–82–7
Di(2-ethylhexyl)phthalate	117–81–7
Diflubenzuron	35367–38–5
Ethylbenzene	100–41–4
Ethylene oxide	75–21–8
Hexachlorocyclopentadiene	77–47–4
Isopropanol	67–63–0
Methyl chloride	74–87–3
Methyl isobutyl ketone (MIBK)	108–10–1
Methyl tert-butyl ether (MTBE)	1634–04–4
Nickel (various)	7440–02–0
Pendimethalin	40487–42–1
Phenol	108–95–2
Quinoline	91–22–5
Silica (quartz)	14808–60–7
Trichlopyr	55335–06–3
Uranium (natural)	7440–61–1
Xylenes	1330–20–7
Zinc and compounds	7440–66–6

In addition to Benzo[a]pyrene, EPA will also be initiating in FY 1999 a literature review on health effects of other polynuclear aromatic hydrocarbons (PAHs). EPA welcomes scientific information from the public on health effects of PAHs. Additional health assessments on this class of chemicals will commence in FY 2000.

Follow-up annual **Federal Register** notices will address new starts for subsequent fiscal years. In the future, these notices will include chemical substances selected for assessment or reassessment under EPA's new guidelines for carcinogen risk assessment that are also planned for inclusion in IRIS (64 FR 32799, June 25, 1996).

Submission of Information

The IRIS program is providing an opportunity for public involvement on new assessments starting in FY 1999. While EPA conducts a thorough literature search for each chemical substance, there may be other articles or unpublished studies we are not aware of. We would greatly appreciate receiving scientific information from the public during the information gathering stage for the list of "new assessments" listed above. Interested persons should provide scientific comments, analyses, studies, and other pertinent scientific information. The most useful documents for EPA are unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. Also note that if you have submitted certain information previously then there is no need to resubmit that information. Information from the public is being solicited for 60 days via this notice.

Similar to the process described in the January 2, 1998 **Federal Register** notice, submissions will be handled in a three-step process:

1. First, you should simply provide a list (submission inventory), briefly identifying all the information you wish to submit to the IRIS Submission Desk. The list should specify by name and CAS (Chemical Abstract Service) registry number the chemical substance(s) to which the information pertains, state the type of assessment that is being addressed (e.g., carcinogenicity), and describe briefly the information being submitted for consideration. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Your cover letter should state that the correspondence is an IRIS Submission, describe in general terms the purpose of the submission, and include names, addresses, and telephone numbers of persons to contact for additional information on the submission. Mail three copies of the submittal to the IRIS Submission Desk, NCEA (MS–105), U.S. Environmental Protection Agency, 26 Martin Luther King Drive, Cincinnati, OH 45268.

Alternatively, you may submit the submission inventory and cover letter electronically to IRIS.comments@epa.gov. Electronic information must be submitted in WordPerfect or as an ASCII file. Information will also be accepted on 3.5" floppy disks. All information in electronic form must be identified as an IRIS Submission.

2. In the second step, EPA will compare the submission inventory to existing files and identify the information that should be submitted. This step will help prevent an influx of duplicative information. You will receive notification requesting full submission of the selected material.

3. In the third step, you should send in the information requested by EPA within 30 days to ensure that EPA can consider it in the assessment. Submittals should include a cover letter addressing all of the points in item 1 above. In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how and why the study results could change the information in IRIS.

Please send three copies, at least one of which should be unbound, to the IRIS Submission Desk, NCEA (MS–105), U.S. Environmental Protection Agency, 26 Martin Luther King Drive, Cincinnati, OH 45268. The IRIS Submission Desk will acknowledge receipt of your information.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI must be submitted to the appropriate EPA Office via established procedures for submission of CBI (see 40 CFR, Part 2, Subpart B). If you believe that a CBI submission contains information with implications for IRIS, please note that in the cover letter accompanying the submission to the appropriate office.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Manager (ADDRESSEES).

Dated: December 3, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–32892 Filed 12–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 62006]

San Fernando Valley—Burbank Operable Unit Superfund Site, Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Prospective Purchaser Agreement associated with the San Fernando Valley North Hollywood Superfund Site—Burbank Operable Unit was executed by the United States Environmental Protection Agency ("EPA") on June 30, 1998. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607; and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against Howard L.L.C. (the "Purchaser"). The Purchaser plans to acquire a 12.72 acre parcel located within the Burbank Operable Unit in Burbank, California for the building of a multiple building development that would be suitable for commercial leasing to a motion picture production company. The proposed settlement would require the Purchaser to pay EPA a one-time payment of $150,000.

For thirty (30) calender days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before January 11, 1999.

AVAILABILITY: The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 74 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Marie M. Rongone, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "Howard L.L.C. Prospective Purchaser Agreement, San Fernando Valley Superfund Site, Burbank Operable Unit," and "Docket No. 98–10" and should be addressed to Marie M. Rongone at the above address.

FOR FURTHER INFORMATION CONTACT: Marie M. Rongone, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: rongone.marie@epamail.epa.gov; Phone: (415) 744–1313.

Keith Takata,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 98–32896 Filed 12–9–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2415]

En Bancs Regarding Telecom Mergers

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has released a Public Notice which announces two additional En Bancs to discuss recent consolidation activities in the telecommunications industry. The purpose of the merger En Banc series is to assist the Commission in determining whether certain proposed mergers are consistent with the goals of the 1996 Telecommunications Act, which include promoting competition in telecommunications markets and protecting the public interest.

DATES: Two En Bancs will take place on Monday, December 14, 1998. The first En Banc will take place from 9:30 a.m. to 12 noon. The second En Banc will take place from 1 p.m. to 2 p.m.

FOR FURTHER INFORMATION CONTACT: Florence Grasso, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1579.

SUPPLEMENTARY INFORMATION: In the first En Banc, from 9:30 a.m. to 12 noon, interested parties, including state, consumer, community and industry representatives, will discuss the impact on telecommunications markets of the proposed mergers between incumbent local exchange carriers SBC and Ameritech (CC Docket No. 98–141), and Bell Atlantic and GTE (CC Docket No. 98–184). In the second En Banc, from 1 p.m. to 2 p.m., interested parties, including consumer, community and industry representatives will discuss the impact on telecommunications markets of the proposed merger between AT&T and Tele-Communications, Inc. (CS Docket No. 98–178).

The En Bancs are open to the public, and seating will be available on a first come, first served basis. The En Bancs will also be carried live on the Internet. Internet users may listen to the real-time audio feed of the En Bancs by accessing the FCC Internet Audio Broadcast Home Page. Step-by-step instructions on how to listen to the audio broadcast, as well as information regarding the equipment and software needed, are available on the FCC Internet Audio Broadcast Home Page. The URL address for this home page is http://www.fcc.gov/realaudio/. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770.

A transcript of the En Bancs will be available 10 days after the event on the FCC's Internet site. The URL address for the FCC's Internet Home Page is http://www.fcc.gov. Transcripts may also be obtained from the FCC's duplicating contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036, by calling ITS at (202) 857–3800 or faxing ITS at (202) 857–3805. Audio and video tapes of the En Banc may be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, by calling Infocus at (703) 834–0100 or by faxing Infocus at (703) 834–0111.

Federal Communications Commission.

Lawrence E. Strickling,

Chief, Common Carrier Bureau.

[FR Doc. 98–32942 Filed 12–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Citizens Bancshares ESOP, Farmington, New Mexico; to become a bank holding company by acquiring 30 percent of the voting shares of Citizens Bancshares, Inc., Farmington, New Mexico; and thereby indirectly acquire Citizens Bank, Farmington, New Mexico.

Board of Governors of the Federal Reserve System, December 4, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32747 Filed 12–9–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guidelines for HIV Case Surveillance, Including Monitoring HIV Infection and Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the availability for public comment of a document entitled "Draft Guidelines for HIV Case Surveillance, Including Monitoring HIV Infection and Acquired Immunodeficiency Syndrome (AIDS)".

DATES: Comments must be submitted in writing on or before January 11, 1999. Comments should be submitted to the Technical Information and Communications Branch, Mailstop E–49, Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333; Fax: 404–639–2007; E-mail: hivmail@cdc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Draft HIV Case Surveillance Guidelines should be submitted to the CDC National Prevention Information Network, P.O. Box 6003, Rockville, Maryland 20849–6003; telephone (800) 458–5231; or copies can be obtained from the CDC website at http://www.cdc.gov/nchstp/hiv__aids/dhap.htm.

SUPPLEMENTARY INFORMATION: From 1995 to 1996, the incidence of both deaths and opportunistic infections (OIs) due to AIDS declined in the United States for the first time in the history of the epidemic (6 percent for OIs; 23 percent for deaths) as reported in the September 19, 1997, Morbidity and Mortality Weekly Report (MMWR) (Volume 46, pp. 861–867). These declines reflect recent advances in treatment of HIV infection and the provision of care and services that have slowed the progression of AIDS for HIV-infected persons on therapy and the success of HIV prevention and education efforts that have encouraged early diagnosis and have helped to reduce the number of Americans becoming infected with HIV.

In response to these changes in HIV treatment practices and new information needs of public health programs, CDC, the Council of State and Territorial Epidemiologists (CSTE), and most other public health and AIDS organizations have recommended that all States and territories conduct HIV case surveillance in addition to AIDS surveillance. In this manner, the AIDS/HIV epidemic can be tracked more accurately, and appropriate information about HIV/AIDS can be made available to policymakers. As of July 1998, a total of 32 States were conducting HIV case surveillance using the same methods as surveillance for AIDS. Because some States (many with large numbers of AIDS cases) do not report HIV case numbers, interpretations of available HIV data are difficult. To gain more reliable information about the prevalence, incidence, and future directions of HIV infection and the impact on specific populations such as racial and ethnic minorities and women, CDC is proposing that the current surveillance system be expanded to include HIV case reporting for all States and is publishing guidelines that States can use to implement HIV surveillance.

Dated: December 3, 1998.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–32617 Filed 12–9–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78G–0133]

Procter & Gamble Co.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP MF–3710) proposing affirmation that cellulose fines used as a feedstuff for livestock are generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Sharon A. Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6657.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 19, 1978 (43 FR 21727), FDA announced that a petition (GRASP MF–3710) had been filed by the Procter & Gamble Co., 6100 Center Hill Rd., Cincinnati, OH 45224. The petition proposed to amend the GRAS regulations in 21 CFR part 582 to affirm that cellulose fines used as a feedstuff for livestock are GRAS.

Procter & Gamble Co. has now withdrawn the petition without prejudice to a future filing.

Dated: December 4, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–32812 Filed 12–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0221]

Zeneca, Inc.; Withdrawal of Approval of Portion of a New Drug Application Providing for a Formulation of Diprivan Injectable Emulsion Not Containing Disodium Edetate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those portions of a new drug application (NDA) held by Zeneca, Inc., (Zeneca) for Diprivan (propofol) Injectable Emulsion that provide for a formulation not containing the antimicrobial additive disodium edetate.

EFFECTIVE DATE: December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Virginia G. Beakes, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: By citizen petition dated April 7, 1998 (Docket No. 98P–0221/CP1), Zeneca, 1800 Concord Pike, Wilmington, DE 19850, requested that FDA withdraw approval of those portions of NDA 19–627 that provide for a formulation of Diprivan Injectable Emulsion that does not contain the antimicrobial additive disodium edetate, stating that the company discontinued marketing the product because of potential contamination problems observed after approval of the NDA. Zeneca waived its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of those portions of NDA 19–627 that provide for a formulation of Diprivan Injectable Emulsion that does not contain the antimicrobial additive disodium edetate is hereby withdrawn effective December 10, 1998.

Dated: November 16, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–32742 Filed 12–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Product, Establishment, and Biologics License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the 1999 meetings of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's), establishment license applications (ELA's), and biologics license applications (BLA's). CBER's RTF oversight committee examines all RTF decisions that occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The meetings will be held on February, 9, 1999; May 11, 1999; August 10, 1999; and November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee meetings continue CBER's effort to promote the timely, efficient, and consistent review of PLA's, ELA's, and BLA's.

FDA's regulations on filing PLA's, ELA's, and BLA's are found in 21 CFR 601.2 and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings, ordinarily, will be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions. If there are no RTF decisions to review, however, the meeting may be cancelled. FDA intends to post any meeting cancellation on the CBER home page at "http://www.fda.gov/cber/confmeet.htm".

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division will notify the sponsor.

Dated: November 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32743 Filed 12–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Medicine Advisory Committee; Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Veterinary Medicine Advisory Committee scheduled for December 10 and 11, 1998. The meeting was announced in the **Federal Register** of November 16, 1998 (63 FR 63740). FDA Center for Veterinary Medicine officials hope to reschedule the Committee meeting for early next year. The meeting will be announced in the **Federal Register** and on the Center for Veterinary Medicine Internet Home Page.

FOR FURTHER INFORMATION CONTACT: Jacquelyn L. Pace, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6650, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12546.

Additional information about the new time and dates for the meeting will be provided on the Center for Veterinary Medicine Internet Home Page (http://www.fda.gov/cvm) as soon as they are set.

Dated: December 8, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–33006 Filed 12–8–98; 2:56 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2088, and HCFA–2540]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Outpatient Rehabilitation Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24 *Form No.:* HCFA–2088 (0938–0037); *Use:* This form is used by Outpatient Rehabilitation Facilities to report their health care costs to determine the amount reimbursable for services furnished to Medicare beneficiaries. In addition, the fiscal intermediary uses the cost report to make settlement with the provider for the cost reporting period. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 4,298; *Total Annual Responses:* 4,298; *Total Annual Hours:* 429,800.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility (SNF) and Skilled Nursing Facility Health Care Complex Cost Report, 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2540 (0938–0463); *Use:* The Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report is used by freestanding SNFs to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. In addition, the fiscal intermediary uses the cost report to make settlement with the provider for the fiscal year. *Frequency:* Annually; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local, or Tribal government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 1,372,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 3, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–32852 Filed 12–9–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–005314

Applicant: Cornell University, Ithaca, NY

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of insects previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

PRT–005629

Applicant: The Elephant Sanctuary, Hohenwald, TN

The applicant requests a permit to buy one female Asian elephant (*Elephas maximus*) in interstate commerce for the purpose of enhancement of the survival of the species.

PRT–005532

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE

The applicant requests a permit to export Western Lowland gorilla (*Gorilla gorilla gorilla*) semen to Johannesburg Zoo, South Africa for the purpose of captive propagation for the enhancement of the survival of the species.

PRT–004720

Applicant: American Museum of Natural History, New York, NY

The applicant requests a permit to import brown lemur subspecies (*Eulemur fulvus albocollaris, collaris, rufus, albifrons, and sanfordi*) blood samples from Madagascar for the purpose of enhancement of the survival of the species.

PRT–005708

Applicant: Praveen Karanth, Albany, NY

The applicant requests a permit to export samples taken from a captive-born gray langur (*Semnopithecus entellus*) for the purpose of scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 4, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–32816 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance

On November 26, 1998, the Fish and Wildlife Service (Service) issued a permit (PRT–005319) to Wildlife Conservation Society, Bronx, New York to import 33 angulated/plowshare tortoises (*Geochelone ynipora*) into the United States at the request of the Management Authority of the Netherlands. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the survival of these tortoises existed and that no reasonable alternative was available to the applicant. The seized animals were at risk because of the immediate need for disease screening and health evaluation which could best be preformed in the United States and overcrowding in the Netherlands quarantine facility.

Dated: December 4, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–32817 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 26, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 165, Page 45511–12, that an application had been filed with the Fish and Wildlife Service by Joseph Crawley for a permit (PRT–001978) to import one polar bear *(Ursus maritimus)* trophy taken from the Lancaster Sound population, Canada prior to April 30, 1994 for personal use.

Notice is hereby given that on October 23, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 26, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 165, Page 45512, that an application had been filed with the Fish and Wildlife Service by Kurt von Besser for a permit (PRT–001631) to import one polar bear *(Ursus maritimus)* trophy taken from the Viscount Melville population, Canada, taken prior to April 30, 1994, for personal use.

Notice is hereby given that on November 4, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 11, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 176, Page 48751, that an application had been filed with the Fish and Wildlife Service by Ricardo E. Longoria for a permit (PRT–002446) to import one polar bear *(Ursus maritimus)* trophy taken from the McClintock Channel population, Canada, for personal use.

Notice is hereby given that on November 4, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 17, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 180, Page 49707, that an application had been filed with the Fish and Wildlife Service by George Gard for a permit (PRT–002693) to import one polar bear *(Ursus maritimus)* trophy taken from the Foxe Basin population, Canada prior to April 30, 1994 for personal use.

Notice is hereby given that on November 10, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 23, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 184, Page 50922, that an application had been filed with the Fish and Wildlife Service by Robert B. Ashton, Hanover, NH, for a permit (PRT–002869) to import a sport-hunted polar bear *(Ursus maritimus)* trophy, from the Southern Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on November 18, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: December 4, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–32815 Filed 12–9–98; 8:45 am]

BILLING CODE [4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–09–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on January 21 and 22, 1999 at the Doubletree Hotel, 3347 Cerrillos Road, Santa Fe, NM.

The meeting on Thursday January 21 starts at 8:30 a.m., and the meeting on Friday January 22 starts at 8 a.m. The draft agenda for the RAC meeting includes presentations and discussions on the following: agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting on November 19 and 20, 1998 at Las Cruces, NM, check in with RAC members, the Rio Puerco watershed study, two different times for the public to address the RAC, Culp Canyon Wilderness Study Area and the NM/BLM Wilderness Study Area program, RAC recommendations follow up, Rio Grande Corridor Proposed Plan and Final EIS, Quivira Coalition, McGregor Range Withdrawal update, Standards and Guidelines RMPA/EIS update, BLM Field Office Managers presentations and discussion, selection of next RAC meeting location and development of draft agenda items for the next RAC meeting, and a RAC assessment on the meeting. Specific agenda items, dates and times may be adjusted with approval of the RAC.

The time for the public to address the RAC is on Thursday, January 21, from 10:00 a.m. to 12:00 noon and from 4:30 p.m. to 5:00 p.m. The RAC may reduce or extend the end time for public comment of 12:00 noon and of 5:00 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its agenda items. The meeting on January 22, 1999, will be

from 8:00 a.m. to 4:00 p.m. The end time of 4:00 p.m. for the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: December 4, 1998.

Gary A. Stephens,

Acting Deputy State Director.

[FR Doc. 98–32799 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW139826]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW139826 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16$\frac{2}{3}$ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW139826 effective September 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: November 30, 1998.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc 98–32853 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW139749]

Proposed Reinstatement of Terminated Oil and Gas Lease

November 30, 1998.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW139749 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16$\frac{2}{3}$ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW139749 effective September 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 98–32854 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW137207]

Proposed Reinstatement of Terminated Oil and Gas Lease

November 30, 1998.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW137207 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16$\frac{2}{3}$ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW137207 effective September 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 98–32855 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–5410–00–E029; MTM 88573]

Application for Conveyance of Mineral Interest; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that, pursuant to section 209b of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)), Ms. Anne M. Moreland and Mr. John L. Mayer have applied to purchase the mineral estate described as follows:

Principal Meridian, Montana

T. 5 S., R. 17 E., sec. 30, lots 3 and 4.
Containing 81.55 acres, more or less.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface mineral ownership where there are no known mineral values or in those instances where the United States mineral reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Tami Lorenz, Legal Instruments Examiner, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2846.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests within the legal description given above will be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon issuance of a conveyance document, final rejection of the application, or 2 years from the date of filing of the application, July 31, 1998, whichever occurs first.

Dated: December 2, 1998.

Randy D. Heuscher,

Acting Deputy State Director, Division of Resources.

[FR Doc. 98–32861 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–040–1610–00]

Availability of the Challis Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976, section102(2)(C) of the National Environmental Policy Act of 1969, and BLM Planning Regulations (43 CFR part 1600), the Bureau of Land Management (BLM), Upper Columbia—Salmon Clearwater Districts has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (Proposed RMP/Final EIS) for the Challis Resource Area. The Challis Proposed RMP/Final EIS has been published and is available for public review by requesting a copy from the address indicated in the **ADDRESSES** section below.

The Challis Proposed RMP/Final EIS describes and analyzes the BLM's proposed plan for managing approximately 792,657 acres of BLM public lands in the Challis Resource Area, located in Custer and Lemhi counties of east-central Idaho. When implemented, the Challis RMP would replace the three Management Framework Plans currently used by the Challis Resource Area. The Challis RMP would also amend the Little Lost-Birch Creek Management Framework Plan (BLM 1981) by designating the Donkey Hills Area of Critical Environmental Concern (ACEC), which includes 4,714 acres managed by the Upper Snake River District—BLM in Butte County, Idaho.

DATES: Written comments on the Final EIS for the Challis Proposed RMP must be submitted or postmarked no later than Tuesday, January 19, 1999. Written protests on the Challis Proposed RMP must also be submitted or postmarked no later than Tuesday, January 19, 1999.

ADDRESSES: Copies of the Challis Proposed RMP/Final EIS may be obtained upon request by contacting the Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5400. Written comments on the Final EIS should be addressed to Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467. Protests of the Challis Proposed RMP must be filed with the Director, Bureau of Land Management; Attention: Ms. Brenda Williams, Protests Coordinator; WO–210/LS–1075; Department of the Interior; Washington, DC 20240. A description of protest procedures may be obtained from Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5440.

FOR FURTHER INFORMATION CONTACT: Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5440. Documents relevant to the Challis Proposed RMP/Final EIS planning process are available for public viewing at the Salmon BLM office on Highway 93 South, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: The Challis Proposed RMP/Final EIS describes and analyzes the BLM's proposed plan for addressing the planning issues and management concerns identified through public involvement and BLM input. The Proposed RMP proposes resource condition objectives, land use allocations, and management actions and direction to guide resource management of the Challis Resource Area on a long term, sustainable basis during the next 15 to 20 years.

The Proposed RMP/Final EIS describes changes from and corrections to the Challis Draft RMP/EIS (BLM, May 1996), updates the discussion of the affected environment, provides an analysis of environmental consequences for the Proposed RMP, records public comments on the Draft RMP/EIS, and documents the BLM's responses to those comments. The Proposed RMP is based on the Preferred Alternative (Alternative 2) described in the Challis Draft RMP/EIS, as modified in response to public and tribal comments and internal BLM recommendations. When compared with the Preferred Alternative, the Proposed RMP increases the level of protection to aquatic, riparian, and upland resources by limiting off-highway vehicle use to exisitng roads, vehicle ways, and trails thorughout the Resource Area. The Proposed RMP also clarifies numerous decisions, and thereby improves the BLM's ability to implement effective management in order to address resource concerns and improve resource conditions. Finally, the Proposed RMP includes an emphasis on integrated resource activity planning and watershed assessment, in order to ensure that individual project proposals are considered within the context of broader landscape issues.

The Proposed RMP includes decisions related to two types of designations: (a) The Proposed RMP describes the BLM's Wild and Scenic River suitability findings for rivers within the Challis Resource Area; and (b) the Proposed RMP designates public lands as Areas of Critical Environmental Concern (ACECs). The Proposed RMP would continue to designate approximately 13,968 acres within existing ACECs, in order to highlight unique plant communities, paleontological resources, fragile soils and a bighorn sheep population for management and protection; these existing ACECs include 5,975 acres of existing Research Natural Areas (RNAs). The Proposed RMP would expand one existing ACEC by 322 acres. The Proposed RMP would also designate approximately 73,916 acres within seven additional ACECs, in order to highlight the following resources for management and protection: unique plant communities; fragile soils; a geologic area of interest; unique riparian habitats; fisheries habitats; roadless primitive and scenic values; crucial bighorn sheep and elk habitats; and unique cultural resources. Approximately 3,871 acres of Research Natural Areas would be designated within these seven additional ACECs.

Following a 30-day public review period, a concurrent 30-day protest period, a concurrent 60-day Governor's review, and resolution of written protests or concerns raised during these protest and review periods, the BLM will prepare a Record of Decision for the approved RMP. The public will be notified in the **Federal Register** when the Record of Decision for the Challis RMP becomes available.

Comments on the protests of the Challis Proposed RMP/Final EIS, including the names and street addresses of respondents, will be available for public review at the Salmon BLM Office on Highway 93 South in Salmon, Idaho during regular business hours (7:30 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment or protest. Such request will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made avaialble for public inspection in their entirety.

Dated: December 4, 1998.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 98–32807 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

National Park Service

Alcatraz Island Historic Structure Preservation-Construction Program; Golden Gate National Recreation Area, San Francisco County; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accord with § 102(2)(C) of the National Environmental Policy Act, Golden Gate National Recreation Area is undertaking a conservation planning and impact analysis process to identify alternatives for (and assess potential impacts of) construction activities necessary to rehabilitate and preserve structures and sites which contribute to the island's National Historic Landmark status. Enhancing visitor and employee safety is also an objective. Notice is hereby given that the National Park Service will prepare an Environmental Impact Statement (EIS) to aid planning for and implementation of this program.

Background

Alcatraz Island is within the boundary of Golden Gate National Recreation Area, a unit of the National Park System comprised of coastal lands in Marin, San Francisco, and San Mateo counties, California. Alcatraz Island, prominently located in San Francisco Bay, is a National Historic Landmark and an important breeding site for several waterbird species and western gulls in San Francisco Bay. Facilities and recreational opportunities on Alcatraz Island attract more than 1.4 million visitors annually.

Recent management and use of Alcatraz Island has been guided by a Development Concept Plan (DCP) which was completed in 1993. An Environmental Assessment (EA) was prepared to evaluate forseeable effects of carrying out the DCP (among other considerations, potential impacts to historic resources, biological resources, human health and safety, and park visitation were addressed). A Finding of No Significant Impact was approved on August 3, 1993 by the Acting Regional Director, Western Region. Prescribed mitigations to safeguard breeding bird populations included timing and location restrictions for proposed construction activities foreseen at that time.

Although originally many elements of construction addressed in the DCP fit within the seasonal restrictions that were identified, several historic rehabilitation and related projects have recently been deemed necessary. These may require construction schedules which would extend beyond the seasonal restrictions. Also, the breeding and nesting seasons for Alcatraz avifauna have been found to fluctuate, sometimes extending as much as 2 months beyond previously known periods. Moreover, visitation has increased, and has the potential for further growth. The constrained construction periods, recently identified rehabilitation needs, possibility of undocumented archeological resources and artifacts, new information about avifaunal activity, and other factors necessitate undertaking a new conservation planning and impact analysis effort.

Alternatives Identified to Date

Proposed construction that would be outside the scope of the existing DCP will be detailed and evaluated. At this time its anticipated that the impact analysis would focus primarily on the effects of proposed construction activities on the island's breeding bird populations. The construction required to rehabilitate National Landmark contributing structures and features is envisioned to be phased over a 3–5 year period. To date, 12 projects are foreseen that could necessitate some degree of activity outside the currently prescribed seasonal restrictions—these include rehabilitation of the cellhouse, water tower and guard tower from the federal prison era, two civil war era structures, and the dock. Installation of photovoltaic electrical panels on the roof of a prison era building, stabilization of a failing slope, and reconstruction of a former greenhouse are also proposed.

In addition to the above construction needs, other alternatives currently envisioned include: no action; and adherence to existing mitigations and seasonal restrictions.

Scoping/Decision Process

The existing DCP/EA provides a useful baseline which must be corroborated or updated. The NPS encourages local and regional agencies, park partners, visitors, and other interested parties to assist in this effort. Anyone wishing to be incorporated on a mailing list may respond to: Alcatraz Preservation Construction Program EIS; Attn: Olivia Shinomoto; Golden Gate National Recreation Area; Building 201 Fort Mason; San Francisco, CA 94123.

As already highlighted in local and regional news media, a public scoping meeting will be held at park headquarters (Building 201 Fort Mason) on December 11 at 8:00 am; also on that date an information open house meeting will be held at the same location from 3–6 pm. For details about these meetings, contact Olivia Shinomoto at (415) 561–4821. Written comments conveying information or sharing issues and concerns are welcomed; these should be addressed to the Superintendent (address as above) and must be postmarked no later than January 9, 1999.

Availability of the Draft EIS (DEIS) for review and written comment will be announced by **Federal Register** notice, as well as via local and regional news media and direct mailing. At this time the DEIS is anticipated to be available for public review during winter 1999. In addition to written responses, a formal comment opportunity will be provided via public hearing held under the auspices of the GGNRA Advisory Commission (full details will be available after January 9, 1999 and may be obtained from the project contact noted above). If the focus of the EIS is substantiated through the public involvement and agency consultation process, then it is anticipated that a Final EIS (FEIS) could be released during summer 1999. Subsequently, Notice of any Record of Decision would be published in the **Federal Register** no sooner than thirty (30) days after the FEIS is distributed. The official responsible for the final decision is the Regional Director, Pacific West Region, National Park Service.

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Dated: December 3, 1998.

James R. Shevock,

Acting Regional Director, Pacific West.

[FR Doc. 98–32756 Filed 12–9–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed consent decree in *United States* v. *AES/Ntron, Inc.*, Civil Action No. 98–1983, was lodged on November 20, 1998 with the United States District Court for the Eastern District of Pennsylvania. The United States filed this action pursuant to the Clean Water Act to obtain penalties and injunctive relief for AES/Ntron, Inc.'s violations of the National Recycling and Emissions Reduction Program contained in 42 U.S.C. 7671g and 40 CFR part 82, Subpart F, and the requirements to provide information to the U.S. Environmental Agency in accordance with 42 U.S.C. 7614.

The Consent Decree requires AES-Ntron, Inc. to pay $80,000 in civil penalties for its violations. In addition, the Consent Decree requires AES-Ntron, Inc. to notify customers that the machines it sold were not certified as required by federal regulations and to test certain machines to determine whether they meet regulatory standards.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *AES/Ntron*, Inc., DOJ Ref. #90–5–2–1–2091.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street Twelfth Floor, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 98–32858 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *ARCO*, Civil Action No. 89–039–BU–PGH (D. Mont.) and *Montana* v. *ARCO*, Civil Action No. 83–317–HLN–PGH (D. Mont.), was lodged on November 16, 1998 with the United States District Court for the District of Montana. The United States filed its action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred and to be incurred in cleaning up three Superfund Sites in southwestern Montana. The State of Montana filed its action pursuant to CERCLA and State law to recover natural resource damages arising from the injury or destruction of natural resources within the same area. The Confederated Salish and Kootenai Tribes of the Flathead Reservation intervened in *Montana* v. *ARCO*, asserting claims for the recovery of natural resource damages as well.

The Consent Decree provides for the following: (1) ARCO's payment of $80 million toward the ongoing remediation of one operable unit ("the SST OU"), which represents 100% of the total projected costs of that work, with provisions for the payment of cost overruns by ARCO, the State of Montana, and EPA; (2) ARCO's payment of $3.9 million towards the United States' $14.7 million in past costs related to the SST OU; (3) ARCO's payment of a $1.8 million civil penalty for its failure or refusal to comply with the Administrative Order requiring it to perform the remedy at the SST OU; (4) payment of $2 million to the Superfund to settle ARCO's counterclaims against the United States related to the SST OU; (5) ARCO's commitment to a schedule to settle the rest of the United States' cost recovery claims for the three Sites, together with an "earnest money" deposit of $15 million towards past cost if settlement is not reached on the remainder of the case; (6) ARCO's payment of $1.7 million in cash and ARCO's creation of 400 acres of replacement wetlands in settlement of the U.S. Fish and Wildlife Service's claims for natural resource damages (work valued at approximately $3.3 million); (7) the creation of an additional 1,200 acres of wetlands by the State of Montana and the Confederated Salish and Kootenai Tribes of the Flathead Reservation to further compensate the U.S. Fish and Wildlife Service; (8) commitments by the State and the Tribes to perform restoration work related to the creation of bull trout habitat within the Clark Fork River Basin; and (9) ARCO's payment of $18.3 million to the Tribes in compensation for their natural resource damages claims. The proposed Consent Decree also provides that the United States covenants not to sue or take administrative action against ARCO, its officers, directors and employees to the extent such officers', directors', and employees' liability arises solely from their status as officers, directors, or employees, pursuant to Sections 106, 107(a) of CERCLA, 42 U.S.C. 9606, 9607(a) and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973 at the SST OU, except as specifically provided in the consent decree. This settlement is contingent upon entry of a State Consent Decree that was lodged on June 19, 1998 and settles the claims of the State of Montana for natural resource damages at certain locations within the Basin. The State Consent Decree provides for the recovery of $133 million in cash and $2 million in land. Together, therefore, the two settlements result in recovery of at least $100.9 million in response costs and $158.2 million in natural resource damages.

The Department of Justice will provide a RCRA public meeting in the affected area if requested and will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments and/or a request for a RCRA public meeting should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *ARCO*, DOJ Ref. #90–11–2–430.

The proposed consent decree may be examined at the office of the United States Attorney, Western Federal Savings and Loan Building, 2929 3rd Avenue, North, Suite 400, Billings, Montana 59101, the Montana Field Office, Environmental Protection Agency, Federal Building 301 South Park, Drawer 10096 Helena, MT 59626–0096, and at the Consent Decree Library 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $31.00 for the consent decree and $47.50 for the attachments (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32822 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 U.S.C. 50.7, notice is hereby given that a proposed Amendment to Consent Decree for Neal's Dump Remedial Action (the "Amendment") in *United States et al.* v. *CBS Corp.*, Civil Action Nos. IP 83–9–C and IP 81–448–C, was lodged on December 1, 1998, in the United States District Court for the Southern District of Indiana. The Amendment represents a change in the remedial action CBS Corp. is to perform at the Neal's Dump Superfund Site in Owen County, Indiana. Under this Amendment and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, CBS will excavate materials at the Site contaminated with polychlorinated biphenyls ("PCBs") and dispose of such materials by off-site incineration or at a landfill in accordance with the Toxic Substances Controls Act, 15 U.S.C. 2601 *et seq.*

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CBS Corp.*, DOJ Ref. #90–7–1–212A.

The proposed Amendment may be examined at the office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, 46 East Ohio Street, Fifth Floor Indianapolis, Indiana 46204; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd, Chicago, Illinois, 60604, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. In requesting a copy of the proposed Amendment, please enclose a check payable to the Consent Decree Library in the amount of $6.00 (25 cents per page reproduction cost) for a copy of the proposed Amendment.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32823 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *CDMG Realty Co, et al.*, Case No. 89 Civ. 4246 (NHP), was lodged on *November 30*, 1998, in the United States District Court for New Jersey.

The Consent Decree resolves the United States' claims, pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, for response costs incurred, or to be incurred by the United States at the Sharkey Landfill Superfund Site (the "Site"), located in the Townships of Parsippany-Troy Hills and East Hanover, Morris County, New Jersey. Under the Consent Decree, CDMG Realty Co., a limited partnership that owns a portion of the Site, and the Estate of Helen Ringlieb, representing a former owner of a portion of the Site, will pay the United States $60,000, plus interest on this amount deposited in escrow. Together with a previous settlement entered on December 2, 1994, with forty-four defendants who agreed to perform the remediation of the Site, or who cashed-out as de minimis parties, the United States will have recovered $44.360 of the $45.220 million of the total costs associated with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *CDMG Realty Co., et al.*, DOJ Ref. #90–11–2–470.

The proposed Consent Decree may be examined at the Office of the United States Attorney in Newark, New Jersey; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $7.25 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 98–32857 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 C.F.R. § 50.7, notice is hereby given that on November 24, 1998, a third round of settlements according to the terms of a partial Consent Decree ("Decree") previously lodged in *United States v. Keystone Sanitation Company, Inc., et al.*, Civil Action No. 1:CV–93–1482, was lodged with the United States District Court for the Middle District of Pennsylvania.

On September 27, 1993, the United States filed a complaint pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a) against the owners and operator of, and certain parties who arranged for the disposal or treatment of hazardous substances at the Keystone Landfill Superfund Site (the "Site") in Union Township, Adams County, PA. Several of the defendants sued approximately 180 third-party defendants, who in turn sued approximately 600 fourth party defendants, including the third and fourth-party defendants proposed for addition to the de micromis Consent Decrees lodged previously in this action.

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The proposed settlement of an additional 34 parties is based upon the same Decree previously lodged with the United States District Court for the Middle District of Pennsylvania for public comment on April 5, 1996. 61 Fed. Reg. 18411 (April 25, 1996). Settlement of an additional 73 parties, based upon the same Decree, was lodged with the United States District Court. This proposed Decree, entered into under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g) resolves the liability of parties determined by EPA to be "de micromis", which for purposes of this Site means that they contributed less than 1800 cubic yards of municipal solid waste, and within such amount, less than 55 gallons or 100 pounds of materials contain hazardous substances. The defendants will pay $1 each. With the April 5, 1996 and May 5, 1996 lodgings, the United States solicited public comment upon the proposed Decree's resolution of a total of 168 third and fourth party Defendant's liability for response costs incurred and to be incurred at the Site. With today's notice, the United States seeks comment on its settlement according to the terms of this Decree with an additional 34 more parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement with an additional 34 parties according to the terms of the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States v. Keystone Sanitation Company, Inc. et al.*, DOJ No. 90-11-2-656A.

The Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, Federal Building and Courthouse, 228 Walnut Street, Room 217, Harrisburg, Pennsylvania, 17108; Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $10.00 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library." In requesting a copy exclusive of defendants' signatures, please enclose a check in the amount of $1.50 payable to the Consent Decree Library.

In addition, copies of the Decree, as well as the record supporting EPA's eligibility determinations regarding the present 34 defendants proposed for addition to the Decree, are available at the following record repositories established by EPA near the Site pursuant to Section 117(d) of CERCLA, 42 U.S.C. § 9617(d):

U.S. EPA, Region III (address above)
Contact: Anna Butch, 215–814–3157
Hanover Public Library, 2 Library Place, Hanover, PA 17331, Contact: Raymond Van de Castle, 717–632–5183
St. Mary's United Church of Christ, 1441 East Mayberry Road, Westminster, MD 21158, Contact: Jeanne Bechtel, 410–848–3862

The Decree and record are also available at Filias & McLucas, 4309 Linglestown Road, Harrisburg, PA 17112, the repository created to house documents produced during discovery in the present litigation. Persons wishing to view documents at Filias & McLucas should call 717–845–6418 to arrange an appointment.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 98–32865 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Kingsford Manufacturing Company*, Civil Action No. 2:98–CV–22 (N.D.W. Va.) was lodged with the court on November 24, 1998.

The proposed decree resolves the claims of the United States against Kingsford Manufacturing Company under the Clean Air Act, 42 U.S.C. 7401, *et seq.*, for civil penalties and injunctive relief to redress violations occurring at Kingsford's Beryl, West Virginia char manufacturing facility. Under the decree, Kingsford is required to pay a civil penalty of $900,000 and is subjected to injunctive relief designed to ensure future compliance.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kingsford Manufacturing Company*, Civil Action No. 2:98–CV–22 (N.D.W. Va.), DOJ Ref. #90–5–2–1–2209.

The proposed amendment to consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–32824 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(d), and the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on November 24, 1998, a proposed Consent Decree in *United States* v. *North Carolina State University at Raleigh*, Civ. No. 5:98–CV–893–BO2, was lodged with the United States District Court for the Eastern District of North Carolina. This Consent Decree concerns the North Carolina State University Lot 86 Superfund Site in west Raleigh, North Carolina. Pursuant to Sections 106, 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. 9606, 9607(a) and 9613(g)(2), the Complaint in this action seeks recovery of response costs incurred and to be incurred by the United States at and in connection with the Site, and injunctive relief to remedy contaminated soil and groundwater at the Site.

Defendant has agreed in the proposed Consent Decree to: (1) perform the remedy selected by EPA for the Site, namely, remediation of contaminated soils and contaminated groundwater; (2) pay $248,213.63 to the United States for its previously unreimbursed past response costs incurred at the Site; and (3) reimburse EPA for its future response costs incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC, 20044, and should refer to *United States v. North Carolina State University at Raleigh*, D.J. Ref. 90–11–2–1207.

The proposed Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney for the Eastern District of North Carolina, 310 New Bern Ave., Ste. 800, Fed. Bldg., Raleigh, North Carolina; (2) the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005 (telephone (202) 624–0892).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. Please refer to the referenced case. There is a photocopying charge of $0.25 per page. For a copy of the Consent Decree without attachments (the ROD and Statements of Work), please enclose a check for $26.75 made payable to "Consent Decree Library." For a copy of the Consent Decree with all attachments, please enclose a check for $60.75 made payable to "Consent Decree Library."

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 98–32859 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 156–98]

Privacy Act of 1974; Modified System of Records and New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Office of Professional Responsibility (OPR), proposes to revise the following system of records last published in the **Federal Register** on December 11, 1987 (52 FR 47280):

"Office of Professional Responsibility Record Index, JUSTICE/OPR–001"

and proposes to establish the following new system of records:

"Freedom of Information/Privacy Acts (FOI/PA) Records, JUSTICE/OPR–002."

The JUSTICE/OPR–001 system is maintained to provide for the resolution of allegations of misconduct made against Department of Justice employees and to advise complainants of the status of investigations and the results. OPR is revising this system to add two new routine use disclosures identified as routine uses (9) and (10); to modify routine use (1); and to make certain other non-substantive, editorial and clarifying changes to the system description. The proposed changes have been italicized for public convenience.

The new system of records, JUSTICE/OPR–002, will enable OPR to process requests for access to its records under the Freedom of Information and Privacy Acts.

Title 5 U.S.C. 552(e) (4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures for both of these systems. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that OMB and Congress be given a 40-day period in which to conduct its review. Therefore, please submit written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850 WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification of the existing system and the establishment of a new system of records.

Dated: November 20, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/OPR–001

SYSTEM NAME:

Office of Professional Responsibility Record Index.

SYSTEM LOCATION:

Office of Professional Responsibility (OPR), U.S. Department of Justice *(DOJ), 950 Pennsylvania Avenue* NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) DOJ employees who are the subjects of complaints directed to, or inquiries or investigations conducted by, OPR; (2) individuals (complainants) who write to OPR; (3) individuals (complainants) who write to the Attorney General and other officials of the Department and whose correspondence is referred to OPR; and (4) employees of agencies of the Federal Government, other than DOJ, about whom information indicating possible criminal or administrative misconduct has been developed during the course of routine investigation by components of DOJ, when such information is furnished to OPR for referral—if warranted—to an appropriate investigative component of DOJ, or another government agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of complaints filed against DOJ employees, the results of investigations into those complaints, and actions taken after completion of the investigations. This system also includes all records developed pursuant to special assignments given to OPR by the Attorney General or the Deputy Attorney General as well as records containing information indicating possible misconduct by employees of the Federal Government other than DOJ, which have been furnished to OPR for referral, if warranted, to the appropriate investigative authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 et seq., 28 CFR 0.39 et seq., and Attorney General Order No. 833–79.

PURPOSE(S):

Information in this system is maintained to provide for the resolution of allegations of misconduct made against Department of Justice employees and to advise complainants of the status of investigations and the results.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A relevant record may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or a potential violation of law, *either on its face or in connection with other information,* whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the record may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violations, a record may be disseminated to a Federal, State, local or foreign agency, or to an individual or organization if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter may be disseminated in an appropriate Federal, State, local or foreign court or grand jury proceeding in accordance with established constitutional, substantive or procedural law or practice; (4) a record relating to a case or matter may be disseminated to a Federal, State, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) a record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of security clearance or the reporting of an investigation of an employee; (6) information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (7) information not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests information on behalf of and at the request of the individual who is the subject of the record; (8) a record may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906; *(9) information may be furnished to complainants to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained; and (10) information may be furnished to professional organizations or associations with which individuals covered by this system of records may be affiliated, such as state bar disciplinary authorities, to meet their responsibilities in connection with the administration and maintenance of standards of conduct and discipline.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Information is retrieved *in most instances by the name of the employee who is the subject of the complaint and in some instances by the name of the complainant.*

SAFEGUARDS:

The information is stored in safes, locked filing cabinets and office automation equipment in a limited access area and is maintained according to applicable departmental security regulations.

RETENTION AND DISPOSAL:

Records in the system are retained and disposed of in accordance with NARA *Job* #NCI–60–77–6.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel on Professional Responsibility, Department of Justice, *950 Pennsylvania Avenue* NW, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address any inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURE:

The major part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), or (k)(5). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." *The request shall include the full name of the individual involved, his or her current address, date and place of birth, notarized signature, together with any other identifying information which may be of assistance* in locating the record. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Department officers and employees, and other Federal, State, local and foreign law enforcement and non-law enforcement agencies, private persons, witnesses, and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). *In addition, the Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f) pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5).* Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/OPR–002

SYSTEM NAME:

Freedom of Information/Privacy Acts (FOI/PA) Records.

SYSTEM LOCATION:

Office of Professional Responsibility (OPR), U.S. Department of Justice (DOJ), 950 Pennsylvania Avenue NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of records pursuant to the Freedom of Information Act, and persons who request access to or correction of records pertaining to themselves contained in OPR systems of records pursuant to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records contains copies of (1) FIO/PA requests received by OPR; (2) copies of OPR responses to requesters; (3) copies of the documents responsive to the requests; (4) copies of documents withheld; (5) internal memoranda and correspondence related to the requests; (6) records relating to appeals and/or litigation; and (7) disclosure accounting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3103 et seq., 28 CFR 0.39 et seq., and Attorney General Order No. 833–79.

PURPOSE:

This system has been established to enable OPR to receive, process and respond to FOI/PA requests for its records. Employees of OPR may access the system to preform various receipt and response functions with regard to FIO/PA requests; to determine the status and content of responses to correspondence; to respond to inquiries for OPR personnel, the Department's Office of Legislative Affairs, and from Congressional offices regarding the status of correspondence; and to carry out any other similar or related duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed (1) to a Federal agency, which has furnished that record to the Department, to permit that agency to make a decision as to access or correction or to consult with that agency as to the propriety of access or correction; (2) to any appropriate Federal, State, local, or foreign agency to verify the accuracy of information submitted by an individual who has requested amendment or correction of records; (3) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (4) as necessary to respond to inquiries by congressional offices on behalf of individual constituents who are subjects of OPR records; and (5) to the National Archives and Records Administration (NARA) and to the General Services Administration during a records management inspection conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Entries are arranged numerically and are retrieved from office automation equipment with reference both to the surnames of the individuals covered by this system of records and by an assigned number. Information may also be retrieved from file jackets by an assigned number.

SAFEGUARDS:

The information is stored in safes, locked filing cabinets and office automation equipment in a limited access area and is maintained according to applicable departmental security regulations.

RETENTION AND DISPOSAL:

Records in the system are retained and disposed of in accordance with the NARA General Records Schedule 14, items 11 and 21.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel on Professional Responsibility, Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address any inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURE:

Part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." The request shall include the full name of the individual involved, his or her current address, date and place of birth, notarized signature, together with any other identifying number or information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Part of this system is exempted from the requirement pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system include (1) the individual covered by the system and (2) records responsive to the FOI/PA requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). This exemption applies only to the extent that information in a record pertaining to an individual relates to official Federal investigations and matters of law enforcement. All other records are not being exempted. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) have been published in the **Federal Register**.

[FR Doc. 98–32867 Filed 12–9–98; 8:45 am]

BILLING CODE 4410–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,993]

Alcoa Fujikura Ltd., Electro-Mechanical Products Owosso, Michigan; Notice of Revised Determination on Reopening

On October 20, 1998 the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Alcoa Fujikura Ltd., Owosso, Michigan. The notice was published in the **Federal Register** on November 10, 1998 (62 FR 63078).

By letter of November 16, 1998, the company requested administrative reconsideration regarding the Department's denial. New information provided by Alcoa Fujikura shows that company imports of radio frequency interference units increased during the time period relevant to the investigation.

Workers at the subject firm are engaged in employment related to the production of radio frequency interference units. The workers are not separately identifiable by product line.

Sales, production and employment at the Owosso, Michigan production facility declined during the relevant time period. The plant will close by the end of December, 1998.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with radio frequency interference units contributed importantly to the declines in sales or production and to the total or partial separation of workers of Alcoa Fujikura Ltd., Electro-Mechanical Products, Owosso, Michigan. In accordance with the provisions of the Act, I make the following certification:

"All workers of Alcoa Fujikura, Electro-Mechanical Products, Owosso, Michigan, who became totally or partially separated from employment on or after August 27, 1997

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are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC this 23rd day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32870 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,849]

Coats North America, Denver, Pennsylvania; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice of Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance applicable to TA–W–34,849 which was published in the **Federal Register** on August 28, 1998 (63 FR 46076) in FR Document 98–23256.

This revises the subject firm location for TA–W–34,849 on the nineteenth line in the appendix table on page 46076. On the nineteenth line in the third column, the subject firm (location) should read Denver, Pennsylvania.

Signed in Washington, DC, this 9th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32877 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 16th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 11/16/98]

TA–W	Subject Firm (Petitioners)	Location	Date of Petition	Product(s)
35,203	Dan River, Inc (Wrks)	Spindale, NC	11/05/98	Woven Apparel Fabrics.
35,204	B.J. Services (Wrks)	Odessa, TX	10/29/98	Oilfield Services.
35,205	Northwest Alloys, Inc (Wrks)	Addy, WA	10/30/98	Pure Metal Magnesium.
35,206	Darby Lumber, Inc (Wrks)	Darby, MT	10/27/98	Lumber.
35,207	Saldan Bindery, Inc (Comp)	Brooklyn, NY	11/03/98	Filing Supplies—Expanding Envelopes.
35,208	A and J Design Corp (Wrks)	West New York, NJ	11/02/98	Ladies' Wool Coats.
35,209	J.E. Morgan Knitting (Wrks)	New Market, VA	10/02/98	Thermal Underwear.
35,210	Royal Brands Int'l (Wrks)	Los Angeles, CA	05/10/98	Yogurt, Sour Cream, Ice Cream.
35,211	Wilkins, Kaiser, Olsen (Comp)	Carson, WA	11/04/98	Dimension Lumber.
35,212	Herald Handbag Mfg Co (Wrks)	New York, NY	11/02/98	Ladies' Handbags.
35,213	Duryea Industries (UNITE)	Duryea, PA	10/23/98	Ladies' Dresses.
35,214	Owens-BriGam Medical Co (Comp)	Newland, NC	11/02/98	Stand-alone Anesthesia Circuits.
35,215	Irving Tanning Co (Comp)	Hartland, ME	11/03/98	Finished Leather.
35,216	Camp Hill Corp (USWA)	McKeesport, PA	10/30/98	Steel Pipe.
35,217	Technical Logging Systems (Wrks)	Houma, LA	10/27/98	Oilfield Services.
35,218	Hooper Trucking Co (Wrks)	Odessa, TX	10/30/98	Oilfield Services.
35,219	Precision Fabric Group (Wrks)	Vinton, VA	10/22/98	Weaving Yarn into Thread.
35,220	AMETEK—US Gauge Div (IAMAW)	Sellersville, PA	10/27/98	Gauges—Pressure, Temperature.
35,221	Spinnerin, Inc (Wrks)	S. Hackensack, NJ	10/25/98	Dyeing Garments.
35,222	Arrow/Ace Die Cutting Co (UPIU)	Bronx, NY	10/27/98	Molded Casings, Shirt Stays.
35,223	LTV Steel Co (USWA)	Aliquippa, PA	10/29/98	Flat Rolled Coated Products.
35,224	Betzdearborn (Comp)	Lake Zurich, IL	09/22/98	Industrial Water & Process Treatments.
35,225	Providence Metallizing Co (Wrks)	Pawtucket, RI	10/30/98	Vacuum Metallizing.
35,226	United Defense LP (GMPW)	Anniston, AL	11/03/98	Steel Castings.
35,227	Malone Manufacturing Inc (Wrks)	Champlain, NY	11/04/98	Distribution—Offshore Garments.
35,228	Crusader Engines (Comp)	Sterling Hgts, MI	11/09/98	Marine and Industrial Engines.
35,229	Getinge/Castle (Wrks)	Rochester, NY	10/27/98	Scientific and Laboratory Sterilizers.
35,230	Avery Dennision (Wrks)	Quakertown, PA	11/03/98	Pressure Sensitive Products.
35,231	Cyprus Thompson Creek (Comp)	Englewood, CO	10/20/98	Molybdenum Sulfide Concentrates.
35,232	Romart, Inc (UNITE)	Scranton, PA	11/04/98	Men's Suits, Sport, Dress Jackets.

APPENDIX—Continued

[Petitions Instituted on 11/16/98]

TA–W	Subject Firm (Petitioners)	Location	Date of Petition	Product(s)
35,233	Harbison-Walker (USWA)	Fulton, MO	11/05/98	Refractories Products.
35,234	P.D.N. Apparel, Inc (Wrks)	Garfield, NJ	10/08/98	Men's Apparel.
35,235	Dunn It (Comp)	Odessa, TX	11/10/98	Oil and Gas Exploration & Production.
35,236	US Label/Artistic Weaving (Wrks)	Clinton, NC	11/02/98	Woven Labels.
35,237	J.M. Huber Corp (Comp)	Houston, TX	11/09/98	Crude Oil, Natural Gas.

[FR. Doc. 98–32873 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 23rd day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/23/98]

TA–W	Subject Firm (Petitioners)	Location	Date of Petition	Products(s)
35,238	Houston Atlas, Inc. (Co.)	Kingwood, TX	11/12/98	On-Line Analytical Instrumentation.
35,239	Bull HN Worldwide (Wkrs)	Phoenix, AZ	11/12/98	Large Computer Systems.
35,240	Siemens Energy (Wkrs)	Little Rock, AR	11/10/98	Integral Horsepower Motors.
35,241	L and D Dress Co., Inc. (UNITE)	Ridgewood, NY	11/08/98	Ladies' Dresses.
35,242	National Garment Co. (Co.)	Chanute, KS	11/16/98	Girl's and Boy's Playwear.
35,243	Carthage Company (The) (Wkrs)	Carthage, MS	11/03/98	Ladies' Slacks and Jeans.
35,244	Olin Brass Corp. (USWA)	Indianapolis, IN	11/13/98	Rod-Wire and Tube.
35,245	PL Industries, Inc (Co.)	Mayaguez, PR	10/21/98	Jeans.
35,246	Active Quilting (UNITE)	Plains, PA	11/09/98	Quilted Fabric.
35,247	Cooper Turbocompressor (IAMAW)	Buffalo, NY	11/06/98	Turbocompressors.
35,248	Kinross Delamar Mining (Co.)	Jordan Valley, OR	11/05/98	Gold Mining.
35,249	Fresenius Medical Care (Co.)	McAllen, TX	11/06/98	Venous & Arterial Bloodlines.
35,250	Stewart Well Service (Wkrs)	Hays, KS	11/07/98	Oilfield Services.
35,251	Apparel Mark (Co.)	El Paso, TX	11/09/98	Garment Patterns and Markers.
35,252	Newmont Gold Co. (OEU)	Carlin, NV	11/06/98	Gold Mining.
35,253	Hubbell Lighting, Inc. (Co.)	Christiansburg, VA	11/09/98	Lighting Fixtures.
35,254	Pastar, Inc. (Wkrs)	El Paso, TX	11/11/98	Denim Jeans.
35,255	U.S. Steel (USWA)	Dravosburg, PA	11/10/98	Carbon Steel Coils.
35,256	U.S. Steel Mining (Wkrs)	Pineville, WV	11/04/98	Coal Mining.
35,257	Georgia Pacific, CNS (Co.)	Baileyville, ME	11/10/98	Lumber Studs.
35,258	Habersham Metal Products (Wkrs)	Cornelia, GA	11/02/98	Hollow Metal Doors.
35,259	Pittsfield Woolen Mill (Wkrs)	Pittsfield, ME	11/10/98	Woolen Products.
35,260	Belden Wire and Cable (USWA)	Franklin, NC	11/13/98	Electrical Power Cords, Cable.
35,261	Crane Valves (Wkrs)	Rogers, AR	11/10/98	Steel Gate Valves.
35,262	Inter-National Childrens (Co.)	Ohatchess, AL	11/13/98	Children's Knit T-Shirts.
35,263	Wallet Works (The) (Co.)	West Bend, WI	11/11/98	Retail Store—Wallets.
35,264	Anvil Knitwear (Wkrs)	Whiteville, NC	11/11/98	Knit Tops.
35,265	Kentucky Apparel (Wkrs)	Jamestown, TN	11/04/98	Denim Jeans.
35,266	Perry Manufacturing Co. (Wkrs)	Mt. Airy, NC	11/10/98	Ladies' Outerwear.
35,267	Delta Apparel (Co.)	Decatur, TN	10/28/98	Fleece Apparel.
35,268	Nine West Group, Inc. (Co.)	Osgood, IN	11/17/98	Ladies' Shoes.

APPENDIX—Continued

[Petitions Instituted On 11/23/98]

TA–W	Subject Firm (Petitioners)	Location	Date of Petition	Products(s)
35,269	Walls Industries, Inc. (Co.)	Ashville, AL	11/17/98	Overalls.

[FR Doc. 98–32874 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,746]

Seagate Technology, Incorporated, Bloomington, Minnesota; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Seagate Technology, Incorporated, Bloomington, Minnesota. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34,746; Seagate Technology, Incorporated, Bloomington, Minnesota (November 27, 1998)

Signed at Washington, DC this 1st day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32872 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,035]

Smith Corona Corporation, Cortland, New York; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Smith Corona Corporation, Cortland, New York. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,035; Smith Corona Corporation, Cortland, New York, (November 23, 1998)

Signed at Washington, DC this 24th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32876 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02720]

Clarion Manufacturing Corporation of America, Division of Clarion Corporation of America, Walton, Kentucky; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 30, 1998 in response to a petition filed on behalf of workers at Clarion Manufacturing Corporation of America, Walton, Kentucky.

Currently, there is a petition investigation (NAFTA–2713) in progress for the workers at the subject plant. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 20th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32875 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,744 and NAFTA–02482]

Lucas Varity North American Light Vehicle Braking Systems, Mount Vernon, Ohio; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 22, 1998, the petitioners requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–34,744, and NAFTA transitional adjustment assistance, petition NAFTA–02482. The denial notices were signed on August 28, 1998 and published in the **Federal Register** on September 28, 1998 (63 FR 51605–06).

The petitioners allege that the subject firm shifted production of certain brake systems and that such systems are currently being manufactured in Mexico and imported into the U.S.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 19th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32869 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02749]

Mead Paper, Rumford Mill, Rumford, Maine; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–QUITTAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on November 17, 1998 in response to a petition filed on behalf of workers at Mead Paper, Rumford Mill, Rumford, Maine.

Currently, there is a petition investigation (NAFTA–2745) in progress for the workers at the subject plant. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32868 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Acting Director of OTTA not later than December 21, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than December 21, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 1st day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Westinghouse Air Brake (Wkrs)	Foster City, CA	11/16/1998	NAFTA–2,734.	Pipe fittings.
Olin Brass (USWA)	Indianapolis, IN	11/13/1998	NAFTA–2,735.	Brass, copper, sheet, rod, tube and wire.
Pastar (Co.)	El Paso, TX	11/17/1998	NAFTA–2,736.	Denim jeans.
ApparelMark (Co.)	El Paso, TX	11/16/1998	NAFTA–2,737.	Garment patterns.
Talon (Co.)	Stanley, NC	11/17/1998	NAFTA–2,738.	Zipper equipment.
Pittsfield Woolen (Wkrs)	Pittsfield, ME	11/17/1998	NAFTA–2,739.	Wool.
Active Quilting—Rockville Fabrics (UNITE).	Plains, PA	11/18/1998	NAFTA–2,740.	Quilted fabric.
Compaq Computer (Wkrs)	Houston, TX	11/17/1998	NAFTA-2,741.	Computer.
Eaton Corporation (UAW)	Winamac, IN	11/18/1998	NAFTA–2,742.	Automotive switches, door lock, brakes.
Crane Valve (Wkrs)	Rogers, AR	11/17/1998	NAFTA–2,743.	Coat steel gate valves.
Rockwell Automation—Allen Bradley (UE)	Milwaukee, MI	11/16/1998	NAFTA–2,744.	Industrial controls, starters contractors.
Mead Paper (Wkrs)	Rumford, ME	11/17/1998	NAFTA–2,745.	Publishing & specialty paper.
Georgia Pacific (Co.)	Baileyville, ME	11/17/1998	NAFTA–2,746.	Studs.
Aeroquip—Vickers (Co.)	Clinton Township, MI	11/04/1998	NAFTA–2,747.	Air conditioning connectors.
Thermo Power (UAW)	Sterling Heights, MI	01/04/1998	NAFTA–2,748.	Marine & industrial engines.
Mead Paper (Wrks)	Rumford, ME	11/17/1998	NAFTA–2,749.	Publishing Specialty Paper.

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APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
National Garment Co (Comp)	St. Louis, MO	11/20/1998	NAFTA–2,750.	Children's Clothing.
AR Accessories Group, Inc (Wrks)	West Bend, WI	11/20/1998	NAFTA–2,751.	Retail Selling of Wallets.
Asarco, Inc ()	Omaha, NE	11/20/1998	NAFTA–2,752.	Refined Lead, Bismuth.
Nortel (Wrks)	Nashville, TN	11/20/1998	NAFTA–2,753.	Repair Telephones.
AG-Chem Equipment Co (Wrks)	Jackson, MN	11/17/1998	NAFTA–2,754.	Farming Spray Equipment.
J.M. Huber Corp (Comp.)	Houston, TX	11/23/1998	NAFTA–2,755.	Oil and Gas Exploration and Production.
Anvil Knitwear, Inc (Wrks)	Whiteville, NC	11/24/1998	NAFTA–2,756.	T-Shirts.
Wundles (Wrks)	Williamsport, PA	11/30/1998	NAFTA–2,757.	Daywear, vests, camisoles, underpants.
Siebe (Co.)	Kendallville, IN	11/30/1998	NAFTA–2,758.	Infinite switches and pressure switches.
Tokyo Electron Oregon (Wrks)	Hillsboro, OR	11/20/1998	NAFTA–2,759.	Silicon wafers.
International Paper (AWPPW)	Gardiner, OR	11/24/1998	NAFTA–2,760.	Linerboard.
Bend Door (Wrks)	Bend, OR	11/24/1998	NAFTA–2,761.	Door parts.
Tycom (Wrks)	Adden Hills, MN	12/01/1998	NAFTA–2,762.	Drill bits.

[FR Doc. 98–32871 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–98]

National Technical Systems, Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of National Technical Systems for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on December 10, 1998 and will be valid until December 10, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of National Technical Systems (NTS) as a Nationally Recognized Testing Laboratory, for testing and certification of the equipment or materials, and use of the site and the supplemental programs, listed below. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

NTS applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** (63 FR 46079, 8/28/98) to announce the application. The notice included a preliminary finding that NTS could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 27, 1998. OSHA received no comments concerning this application for recognition.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–1–98, the permanent record of public information on the NTS recognition.

The address of the testing facility (site) that OSHA recognizes for NTS is: National Technical Systems, 533 Main Street, Acton, Massachusetts 01720.

Background on the Applicant and the Application

National Technical Systems, according to its application, is headquartered in Calabasas, California, and became established in 1963. Also, NTS became a public company in 1968 and is listed in the NASDAQ exchange. The applicant asserts it is an independent testing, engineering, research, and support services organization, with more than 30 years of product testing experience. NTS also states that it has provided testing services to the military/aerospace, commercial, and power industry, and has conducted qualification testing for the nuclear power industry for more than 20 years. The engineering services that NTS provides include design of instrumentation and specialized hardware, and electrical and mechanical engineering.

NTS submitted an application for recognition, dated September 30, 1994 (see Exhibit 2A). It separately submitted a Quality Manual (QM), dated June 24, 1997, and Quality Assurance Procedures (QAPs), dated December 22, 1997, specifically for the activities it plans to undertake as an NRTL (see Exhibits 2C and 2E). In this notice, these two documents are referred to as "NRTL QM" and "NRTL QAPs," respectively. The NRTL QM replaced the Quality Manual submitted by NTS in the original application. The QAPs were marked confidential by the applicant. The applicant originally requested recognition for a facility in Acton and for another facility in Boxborough, both in Massachusetts. The applicant also originally requested recognition to test and certify to more than 90 test standards.

OSHA performed an on-site assessment (review) of the Acton and Boxborough facilities, on January 23–26, 1995. The review determined that NTS did not meet all the requirements for recognition under 29 CFR 1910.7, and the applicant was so informed. After OSHA completed the review, NTS eliminated the Boxborough facility from consideration. In response to the findings of the review, the applicant also submitted amendments to OSHA, dated April 10, and September 22, 1997 (see Exhibits 2B and 2D). Through these amendments, NTS reduced the number of test standards it requested for recognition to 13. Also, it developed and submitted the previously mentioned NRTL QM and NRTL QAPs.

In the submittal covering the NRTL QM, NTS also applied to OSHA for recognition to use the supplemental programs, under which an NRTL may use outside parties to perform some of the activities involved in testing and certification of products. OSHA's approval to use any of these programs is based on criteria first detailed in a March 9, 1995 **Federal Register** notice (60 FR 12980). Finally, in response to OSHA's request for clarification, dated March 18, 1998 (see Exhibit 2F), NTS submitted amendments to its NRTL QAPs and to its NRTL QM, dated April 8, 1998 (see Exhibit 2G). It also eliminated one test standard since the standards organization had withdrawn it. As a result, the recognition covers 12 test standards.

According to the applicant, the NRTL QM is the first tier document that will direct its NRTL activities. The NRTL QAPs provide more detailed policies, processes, and steps for those activities. In addition, the on-site review report references other procedures and practices that NTS uses for the parts of its operations that can be designated "non-NRTL" activities. However, the recognition will not apply to any aspect of the non-NRTL activities, except to those product testing or certification procedures and practices that are incorporated in the NRTL QM and NRTL QAPs, and are in conformance with the requirements of 29 CFR 1910.7.

The requirements for recognition are presented below, along with examples that illustrate how NTS has met each of these requirements.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

According to the on-site review report, NTS has adequate space and utilities to perform the testing required. It has security measures in place to restrict or control access to its facility. The report also indicates that NTS has, available in the laboratory, all general test equipment required to perform testing to the test standards requested, and that it maintains records of repair, routine maintenance, and calibrations. The NRTL QAPs cover the general processes and practices NTS will use for its equipment calibrations, and NTS has detailed procedures for the calibration of specific items of equipment.

The application and revisions address personnel qualifications and training, and identify NTS staff involved with product testing, along with a summary of their education and experience. Also, the on-site review report indicates that NTS personnel have the necessary education, training, technical knowledge, and experience specified by their position descriptions.

According to the review report, the NRTL QM and NRTL QAPs, and NTS' Internal Audit Program are the primary means of quality assurance. Other aspects of quality assurance will be the individual testing procedures and standard operating procedures. Also, the report indicates that the engineer assigned to handle the testing for a customer writes a unique procedure for each product that NTS tests in its "non-NRTL" activities, and that this approach may be used for the NTS operations as an NRTL. Such an approach would not meet the requirement in 29 CFR 1910.7 (b)(1) for "written testing procedures," which, like any other procedure, are intended to be a general set of instructions that are applicable to each test. These procedures must cover the steps and methods that recur in examining and testing products.

The review report indicates that NTS has done only partial testing to portions of the test standards, as required for compliance of nuclear facility products and other testing programs. The applicant submitted samples of written testing procedures in its original application. These procedures illustrate how some requirements of the standard will be verified, but did not address all the requirements of the standard in all cases. NTS will need to develop and/or identify written testing procedures that will be applicable over the broad range of products that it plans to test and certify as an NRTL. These procedures will need to be in place when OSHA performs its first review of NTS after it has been recognized. Therefore, OSHA has not yet evaluated the testing and reporting procedures that NTS will utilize for purposes of certifying to a complete test standard, and OSHA needs to investigate this aspect of NTS operations when these procedures are in use.

Control Programs

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

According to the onsite review report, NTS currently applies a mark to components used in the nuclear power industry. The report also mentions that NTS has applied for a registered certification mark that it will use in its operations as an NRTL. NTS must obtain approval from the U.S. Patent and Trademark Office for this mark before it can issue any certifications in its capacity as an NRTL. NTS has not listed or labeled any products under the NRTL Program. Therefore, OSHA has not evaluated the actual listing and labeling procedures NTS will use as an NRTL.

The NRTL QM and NRTL QAPs contain general descriptions of the certification processes that NTS will utilize. They also contain policies for the contents of the legal agreements, and outline the processes that will define and control the way NTS implements its certification schemes. These documents also include a description of the process for selecting products for evaluation, which may include NTS purchasing a commercial sample. NTS also submitted a draft of a sample certification agreement.

For the certification schemes that NTS proposes to use, it will conduct follow-up inspections of products at the manufacturing facilities at least once every three months. The NRTL QAPs also contain more detailed descriptions of the processes to qualify and then audit a manufacturer. According to the review report, NTS plans to utilize the approach it currently uses for its vendor surveillance and audits to perform manufacturer site inspections. The report further indicates that the process reviewed during the onsite review was similar to an NRTL follow-up program. However, NTS has just developed its NRTL follow-up program and OSHA needs to investigate this new program when it is in use. Therefore, OSHA has been unable to evaluate the actual use of the NTS follow-up program.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

In its original application, NTS states that it performs all testing and certification activities independently of all NTS clients, and that no clients have any significant ownership position in NTS, or any influence on NTS activities. The application further states that NTS employees are not under the influence or control of manufacturers or suppliers, and that NTS is not under the influence of any manufacturer or producer of hardware items. NTS also submitted a detailed listing of "beneficial owners" of 5% or more of NTS common stock.

NTS could conceivably perform its design and engineering services, previously mentioned, for manufacturers or vendors of the products it may test and certify as an NRTL. Financial considerations could give these outside parties significant influence on the results of the NTS testing and certification activities. For example, assume that NTS sells design services for products to a manufacturer, and certifies the same or different products for that manufacturer. Such a relationship would violate the requirement for complete independence of an NRTL.

Since NTS is a public company, it is also conceivable that manufacturers or vendors could acquire ownership of NTS. If such an acquisition were to control or influence NTS in its NRTL testing and certification activities, it would no longer be "completely independent" with respect to those manufacturers or vendors.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The NRTL QAPs contain the steps that the laboratory will use to set up and inspect test apparatus, and record test data. Regarding the handling of complaints and disputes, the NRTL QAPs describes some of the process steps to handle a complaint either from a manufacturer or user of the products NTS certifies.

Supplemental Programs

As previously mentioned, National Technical Systems applied for recognition to use the supplemental programs, based upon the criteria first detailed in a March 9, 1995 **Federal Register** notice (60 FR 12980). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition automatically includes the first, or basic, program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product.

Based on the recommendation of the staff of the NRTL Program, the programs that OSHA recognizes for NTS are limited to the three listed under Final Decision and Order.

The on-site review report and the application indicate that NTS meet the criteria for use of three supplemental programs. At this time, OSHA does not intend to recognize NTS for the other programs it requested. NTS must have documented procedures and practices in place providing much greater detail, before OSHA can approve the use of the remaining programs. The NRTL QAPs that are applicable to these programs are, in many cases, minimal in nature, some of which just restate the criteria in the March 9, 1995 notice that must be met. As such, they constitute more policies than procedures. In addition, NTS needs to develop certain experience to obtain recognition to use the programs involving use of manufacturers to perform tests or evaluations (Programs 5, 6, and 7). The March 9 notice specifies the need for a confidence-building period with the manufacturer that can only result after NTS has gained experience as an NRTL in certifying products for those manufacturers. An additional consideration is that NTS does not have experience in testing and certification to a complete standard, and may have less opportunity to develop the required experience if it uses others to do these activities. This experience is essential for its continued recognition as an NRTL. Finally, OSHA will need to review the actual implementation of certain key aspects of NTS" operations as an NRTL, which, as already noted, were not formally evaluated since they were not yet in place at the time OSHA performed its on-site reviews of NTS.

Additional Conditions

As described above, OSHA has concerns about NTS because it has not had the opportunity to evaluate the actual testing and reporting procedures, and use of the follow-up program, since these have not yet been implemented. OSHA has also identified issues related to the ownership and commercial relationships that could affect the independence of NTS. Unless NTS meets certain conditions imposed by OSHA, it cannot retain its recognition as an NRTL under 29 CFR 1910.7.

OSHA's approach in imposing conditions is consistent with past recognition of other organizations as NRTLs who, like NTS, were mainly experienced in testing products to specific customer or partial test standard requirements. OSHA indicated in the **Federal Register** notice for those recognitions that the procedures to be used were new to the organization (for example, see 56 FR 28581, 6/21/91; and 58 FR 15511, 3/23/93). OSHA will require NTS to take steps to correct any deficiencies that OSHA may find during its initial audit of the NRTL. If deficiencies are not corrected, then OSHA will commence its process to revoke the recognition of the NRTL.

Many procedures and practices for its NRTL testing and certification processes will be new to NTS. Those that exist or are incorporated in the NRTL QAPs may need to be supplemented by more detailed specific instructions on the many activities involved in testing and certifying products to a complete test standard. Also, the proposed NTS approach of developing a unique test procedure for each test makes it difficult for OSHA to evaluate its testing capabilities. OSHA will therefore need to evaluate NTS when it implements the detailed procedures and practices it plans to use to test and certify products as an NRTL, and will conditionally recognize NTS subject to a later assessment of the process once it is in place.

Regarding independence, NTS has or could potentially have relationships that eliminate its complete independence, and OSHA intends to impose conditions to assure this will not occur. Such relationships may be the normal result of the NTS ownership structure, and its financial and commercial transactions. However, as an NRTL, those relationships could adversely influence the results of its testing and certification processes, such that NTS may no longer be, intentionally or not, impartial and objective. As a result, NTS would no longer be completely independent, which is a requirement fundamental to assuring that the products tested and certified are safe for use by workers and employers.

Therefore, OSHA has included appropriate conditions below to address its concerns. These conditions apply solely to the NTS operations as an NRTL, and are in addition to the other conditions listed below, which OSHA normally imposes in its recognition of an organization as an NRTL.

Final Decision and Order

The NRTL Program staff has examined the complete application, the amendments to the application, the supporting documentation, and the OSHA staff finding including the on-site review report, dated December 22, 1997 (see Exhibit 3). Based upon this examination, OSHA finds that National Technical System has met the requirements of 29 CFR 1910.7 to be recognized as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, National Technical System is hereby recognized as a Nationally Recognized Testing Laboratory, subject to the limitations and conditions listed below.

Limitations

This recognition is limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. OSHA's recognition is further limited to the site listed above, and to the use of the following 12 test standards for the testing and certification of products included within the scope of these standards. OSHA has determined these standards are appropriate, within the meaning of 29 CFR 1910.7(c).

ANSI/UL 465 Central Cooling Air Conditioners
ANSI/UL 484 Room Air Conditioners
ANSI/UL 489 Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 1012 Power Supplies
ANSI/UL 1459 Telephone Equipment
ANSI/UL 1778 Uninterruptible Power Supply
UL 1863 Communication Circuit Accessories
ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

This recognition is also limited to the use of the following 3 supplemental programs. Recognition of these programs is contingent on continued adherence to the criteria for their use.

Program 4: Acceptance of witnessed testing data
Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

Conditions

National Technical Systems must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, NTS will notify the OSHA NRTL Program Director so that OSHA may review NTS' adoption and implementation of its NRTL Quality Manual, NRTL Quality Assurance Procedures, and other procedures from other NTS Program areas for use in the NRTL Program;

NTS must not test and certify products for a client to whom it primarily sells design or similar services;

NTS must not test and certify products for a client if an owner of NTS also owns more than two percent (2%) of that client's stock;

OSHA must be allowed access to NTS' facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NTS has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NTS must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NTS agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NTS must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

NTS will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

NTS will continue to meet the requirements for recognition in all areas where it has been recognized; and

NTS will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC, this 2d day of December 1998.

Charles N. Jeffress,
Assistant Secretary.

[FR Doc. 98–32879 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–98]

NSF International, Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of NSF International for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on December 10, 1998 and will be valid until December 10, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of NSF International (NSF) as a Nationally Recognized Testing Laboratory (NRTL), for testing and certification of the equipment or materials, and use of the site and the supplemental programs, listed below. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of its final decision on an application.

NSF applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** (63 FR 46082, 8/28/98) to announce the application. The notice included a preliminary finding that NSF could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 27, 1998. OSHA received no comments concerning this application for recognition.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–2–98, the permanent record of public information on the NSF recognition.

The address of the testing facility (site) that OSHA recognizes for NSF is: NSF International, 3475 Plymouth Road, Ann Arbor, Michigan 48105.

Background on the Applicant and the Application

According to its application, NSF International (NSF) has its headquarters in Ann Arbor, Michigan, and was incorporated in that state in 1990. The applicant asserts it has been a not-for-profit developer of test standards and a third party certifier for more than fifty years. The Bylaws of NSF state that it "shall be operated exclusively for charitable, educational, and scientific purposes and for the purpose of testing for public safety . . . as a nonprofit corporation." The Bylaws and other documentation submitted by NSF indicate that NSF develops "third-party consensus standards" covering the areas of safety, health, sanitation, and environment. The application documents that NSF currently engages in conformity assessment activities connected with several certification programs that it operates in those areas.

NSF submitted an application for recognition, dated July 6, 1997 (see Exhibit 2A), and later submitted three amendments. On July 29, 1997, NSF amended its application to add two additional test standards to the proposed scope of recognition (see Exhibit 2B). On December 9 and 16, 1997, NSF amended its application to replace one test standard it previously requested and to request recognition to use certain supplemental programs (see Exhibits 2C and 2D). Under these programs, an NRTL may use outside parties to perform some of the activities involved in testing and certification of products.

The applicant submitted several documents in support of its application. These documents include its Corporate Quality Assurance Manual (CQAM) and its Laboratories Quality Assurance Manual (LQAM). The CQAM describes the overall quality system used at NSF, and includes an explanation and reference to the Standard Operating Procedures (SOPs), which "detail the actions necessary to accomplish a particular task." The LQAM provides detailed policies, processes, and steps for the activities performed by NSF's laboratories. The LQAM also references the more specific SOPs. The CQAM and LQAM provide part of the overall framework that will govern many of the activities NSF would have to perform as an NRTL. NSF also submitted an example of an application and contract for its certification services, and the detailed Certification Policies that form part of this contract (see Exhibit 2E). These items are applicable to all products certified by NSF, and will be applicable to the certification of products for electrical safety.

The requirements for recognition are presented below, along with examples that illustrate how NSF has met each of these requirements.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The LQAM provides overall descriptions of NSF's laboratories, and details facilities and equipment available in each of these laboratories. According to the application, NSF has security measures in place to restrict or control access to its facility, to sections within its facility, and to confidential information. The LQAM contains a listing or references to listings of equipment available for each laboratory. It also addresses the maintenance program for equipment, the calibration procedures and frequency, and the types of records maintained for or supportive of many laboratory activities. NSF addresses testing, sample handling, sampling, and test methods in its CQAM or its LQAM. It also has documented the specific equipment it plans to use for testing to the standards it has requested for recognition.

In addition, NSF has submitted for OSHA review samples of the test and evaluation procedures it plans to use. However, the test standard information that NSF provided in its application indicates many test procedures it plans to use are not yet in place. As a result, OSHA has not performed an actual evaluation of the specific testing, evaluation and reporting methods that NSF will utilize in certifying to any of the requested test standards. OSHA needs to investigate how these methods will work when NSF implements them.

The CQAM and LQAM cover personnel qualifications and training; other materials identify NSF staff that will be involved with the NRTL operations, along with a summary of their education and experience. According to OSHA's on-site review report, NSF has sufficient personnel with education, training, technical knowledge, and experience to undertake the functions needed as an NRTL. Also, the report indicates NSF's quality control, partially embodied in the CQAM and LQAM, is adequate.

Control Programs

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The CQAM addresses the conformity assessment operations of NSF, including the steps involved in the listing and certification of products. NSF has submitted documentation showing it has a registered certification mark. In addition, the NSF's certification policies provide further details regarding the authorization of certifications, and audits of facilities. The audits apply to both the initial assessment and the follow-up inspection of manufacturers' facilities. NSF provided further details regarding the procedures for authorizing the use of the NSF mark, and the listings that NSF issues or revises in connection with its current certification programs.

According to the on-site review report, NSF will perform follow-up inspections at manufacturing sites four times a year. The certification policies, and corresponding detailed procedures, contain many elements that NSF will adapt for use in its NRTL operations. NSF has not yet certified or listed any products for which it requests recognition, and the follow-up inspection program it will use as an NRTL is a new program for NSF. Therefore, OSHA will need to evaluate this new program, and the actual certification and listing procedures when NSF uses them for its NRTL operations.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

As previously mentioned, NSF's Bylaws indicate it is a "nonprofit corporation." The Bylaws also state that NSF is a "nonstock, directorship basis" corporation and that "the Board of Directors shall establish policies and oversee management of the Corporation," and "elect Directors [and] . . . officers." In addition, the "Conflicts of Interest" section of the Bylaws contains self-disclosure and disqualification requirements for directors and officers in matters involving contracts and transactions in which they are "interested."

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

The LQAM references the test data sheets and other documents used to record test data, and indicates that results from tests are recorded in an information management system. The information in this system is then used to generate preliminary test reports that NSF personnel review and check before completing them. Specific referenced procedures are used for the direct measurement of data, and for the review and authorization of preliminary and final test reports. As for the handling of complaints and disputes, the CQAM and LQAM describe aspects of the NSF customer feedback systems, and contain references to the specific procedures that apply. In addition, the certification policies specifically address customer complaints, which could apply either to a user or a manufacturer of the products NSF certifies.

Supplemental Programs

NSF applied for recognition to use three (3) supplemental programs, based upon the criteria first detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition automatically includes the first, or basic, program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that NSF appears to meet the requirements for use of the supplemental programs for which it has applied.

Additional Condition

As described above, OSHA has concerns about NSF because it has not had the opportunity to evaluate the actual testing and reporting procedures, and use of the follow-up program, since NSF has not yet implemented them. OSHA will therefore need to evaluate NSF when it implements the detailed procedures and practices it plans to use to test and certify products as an NRTL, and will conditionally recognize NSF subject to a later assessment of the process once it is in place.

Therefore, OSHA has included an appropriate condition below to address its concerns. This condition applies solely to the NSF operations as an NRTL, and is in addition to the other conditions listed below, which OSHA normally imposes in its recognition of an organization as an NRTL.

Final Decision and Order

The NRTL Program staff has examined the complete application, the amendments to the application, the supporting documentation, and the OSHA staff finding including the on-site review report, dated December 22, 1997 (see Exhibit 3). Based upon this examination, OSHA finds that NSF International has met the requirements of 29 CFR 1910.7 to be recognized as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, NSF International is hereby recognized as a Nationally Recognized Testing Laboratory, subject to the limitations and conditions listed below.

Limitations

This recognition is limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. OSHA's recognition is further limited to the site listed above, and to the use of the following 3 test standards for the testing and certification of products included within the scope of these standards. OSHA has determined these standards are appropriate, within the meaning of 29 CFR 1910.7(c).

ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 921 Commercial Electric Dishwashers

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

This recognition is also limited to the use of the following 3 supplemental programs. Recognition of these programs is contingent on continued adherence to the criteria for their use.

Program 4: Acceptance of witnessed testing data
Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents

Conditions

NSF International must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, NSF will notify the OSHA NRTL Program Director so that OSHA may review NSF's implementation of procedures for

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testing and follow-up inspections of products covered within the scope of the above-listed test standards;

OSHA must be allowed access to NSF's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NSF has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NSF must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NSF agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NSF must inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

NSF will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

NSF will continue to meet the requirements for recognition in all areas where it has been recognized; and

NSF will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC this 2nd day of December, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–32878 Filed 12–9–98; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet Wednesday, January 13, 1999, from 9 a.m. to 4 p.m. in lecture room B of the National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740–6001.

The agenda for the meeting will be the Charters of Freedom re-encasement design.

This meeting will be open to the public. For further information, contact Alan Calmes at (301) 713–7403.

Dated: December 7, 1998.

Mary Ann Hadyka,

NARA Committee Management Officer.

[FR Doc. 98–32809 Filed 12–9–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposed Data Collection: Public's Views and Comments; Title of Proposed Collection: Public Attitudes About Technology

The National Science Foundation, an independent federal agency, is interested in obtaining the public's views and attitudes toward year 2000 computer readiness.

Specifically, we are seeking input and comments from all interested persons on their views of the value of computer technology in their lives, and in their familiarity with and level of comfort when using computers and their familiarity with problems that may result from year 2000 computer conversion issues.

In an effort to obtain the public's input and useful information, the National Science Foundation has developed the questions that follow. Responses from the public will be used only in the aggregate, and only to help NSF in its efforts to better explain itself and its activities to the American public.

We hope you will provide us with your thoughts on the following questions. Detailed comments are also welcome and greatly appreciated.

Responses and comments can be mailed to Public Attitudes about Year 2000 Conversion, c/o Office of Legislative and Public Affairs, National Science Foundation, 4201 Wilson Blvd., Room 1245, Arlington, VA 22230. Comments can also be sent via email to *nstw@nsf.gov*, or faxed to (703) 306–1057.

All comments should be received by Monday, December 21, 1998.

Dated: December 4, 1998.

Julia Moore,

Director, Office of Legislative and Public Affairs.

Y2K Millennium Readiness Poll

December 9–13, 1998

1. As you may know, most computer systems around the world have to be reprogrammed so that they can accurately recognize the date once we reach the Year 2000. Do you think that computer mistakes due to the Year-2000 issue will cause major problems, minor problems, or no problems at all?

1 Major problems
2 Minor problems
3 No problems at all
4 CATASTROPHE/REALLY BIG PROBLEMS (vol.)
5 DON'T KNOW/REFUSED

2. Do you think that computer mistakes due to the Year-2000 issue will cause major problems, minor problems or no problems at all for you personally?

1 Major problems
2 Minor problems
3 No problems at all
4 CATASTROPHE/REALLY BIG PROBLEMS (vol.)
5 DON'T KNOW/REFUSED

3. How much have you seen or heard about the Year 2000 computer bug problem, sometimes called the Millennium Bug or the Y–2–K bug, before now— a great deal, some, not much, or nothing at all?

1 A great deal
2 Some
3 Not much
4 Nothing at all
5 DON'T KNOW/REFUSED

The rest of the questions on this survey will deal with Year 2000 computer issue. For convenience we will refer to it throughout the survey as the "Y2K" computer bug.

4. Overall, how concerned are you about the Y2K computer bug problem—[READ 1–4]?

1 Very concerned
2 Somewhat concerned
3 Not too concerned
4 Not at all concerned
5 DON'T KNOW/REFUSED

5. To the extent Y2K computer problems occur, how long do you think they will last—[FORM A: READ 1–4; FORM B: READ 4–1]?

1 For only a few days around January 1, 2000
2 For several weeks (or)
3 For several months to a year (or)
4 For more than a year
5 DON'T KNOW/REFUSED

6. For each of the following, please say whether that is something you probably will or will not do in order to protect yourself against problems associated with the Y2K computer bug. How about... READ AND ROTATE A–F

1 Yes
2 No
3 DON'T KNOW/REFUSED

a. Obtain special confirmation or documentation of your bank account balances, retirement funds, or other financial records
b. Stockpile food and water

c. Buy a generator or wood stove
d. Withdraw all your money from the bank
e. Withdraw and set aside a large amount of cash
f. Avoid travelling on airplanes on or around January 1, 2000

7. Thinking about the U.S. economy, which of the following statements best describes the possible effect you think the Y2K bug will have on the economy—[FORM A: READ 1–4; FORM B: READ 4–1]?

1 It will cause a total economic breakdown or catastrophe
2 It will cause serious problems in the economy such as slowing production or creating a recession (or)
3 It will cause only minor problems in the economy (or)
4 It will have no negative impact on the economy
5 OTHER (vol.)
6 DON'T KNOW/REFUSED

8. Thinking more generally about the kind of problems which could possibly be created by the Y2K computer bug, which of the following best describes how serious these problems will be in the United States—[FORM A: READ 1–4; FORM B: READ 4–1]?

1 Y2K will result in disasters which could cause the loss of human life
2 Y2K will cause economic and social disruptions, but will not be life threatening
3 Y2K will cause only minor disruptions and inconveniences
4 Y2K will have no negative impact on people's lives
5 OTHER (vol.)
6 DON'T KNOW/REFUSED

9. Next I'm going to read some specific problems. As I read each one, please say whether you think it likely or unlikely to occur as a result of Y2K. First, ... Next, ... READ AND ROTATE A–H:

1 Likely
2 Unlikely
3 DON'T KNOW/REFUSED

a. Air traffic control systems will fail, putting air travel in jeopardy
b. Banking and accounting systems will fail, possibly causing errors in employee paychecks, government payments, and other automated financial transactions
c. Food and retail distribution systems will fail, possibly causing grocery and other store shortages
d. Household appliances such as VCR's, video cameras and air conditioning systems will fail to turn on or work properly
e. Hospital equipment and services will fail, putting patients at risk
f. City or county emergency "911" communication systems will fail, putting citizens at risk
g. Passenger cars and trucks will fail to work properly, possibly causing social and economic disruption
h. Nuclear power or defense systems could fail, causing a major accident

10. As you may know, efforts are currently underway throughout the country to upgrade computer systems in order to correct the Y2K computer problem. We'd like to know whether you are generally confident or NOT confident that each of the following levels of government and business will have upgraded their computer systems before any Y2K problems can occur. = How about... READ AND ROTATE A–G:

1 Yes, confident they will have upgraded
2 No, not confident
3 DON'T KNOW/REFUSED

a. The U.S. government, including all federal offices and agencies
b. Your state government
c. Your local government
d. U.S. corporations and large businesses
e. Small U.S. businesses
f. Foreign governments of other developed and industrialized countries
g. Foreign governments of Third World and other less developed countries

11. Do you have a personal computer in your household, or not?

1 Yes continue
2 No skip to q. 13
3 DON'T KNOW/REFUSED

12. If have computer in household (Q. 11 '1'): Do you, personally, use your home computer to connect to the Internet or an online service such as Prodigy or America Online?

1 Yes
2 No
3 DON'T KNOW/REFUSED

13. Do you use a computer at work or school?

1 Yes continue
2 No
3 DON'T WORK/GO TO SCHOOL skip to note before q. 15
4 DON'T KNOW/REFUSED

14. If use computer at work or school (Q. 13 '1'): Do you, personally, use the Internet or other computer on-line service at your place of work or school?

1 Yes
2 No
3 DON'T KNOW/REFUSED

If Q. 11 '1' continue; all others skip to Q. 17

15. Do you know for sure whether your home computer or computers are programmed to comprehend the Year 2000 date field correctly, or are you unsure?

1 Yes, programmed correctly skip to q. 17
2 No, unsure continue
3 DON'T KNOW/REFUSED

16. If not sure about home computer (Q. 15 '2,3'): Do you plan to take steps to make sure your computer is programmed correctly or are you going to wait and see what happens?

1 Yes, going to take steps
2 No, wait and see what happens
3 DON'T KNOW/REFUSED

17. Which of the following currently applies to you—Are you READ 1–5:

1 Employed for pay continue
2 Unemployed
3 Retired
4 A Homemaker, or skip to demographics
5 A Student
6 NONE/OTHER (vol.)
7 DON'T KNOW/REFUSED

18. Is your employer or place of business taking sufficient steps to correct any problems it might face because of Y2K problems, is it NOT taking sufficient steps, or are you unsure?

1 Yes, taking sufficient steps
2 No, not taking sufficient steps
3 Unsure
4 REFUSED

(DEMOGRAPHICS START HERE)

That completes the interview. I'd just like to ask you a few questions for background and statistical purposes only.this is the same

PLEASE RECORD AND VERIFY PHONE NUMBER: +______+ +______+
+______+ =A632=A633=A634=A6 -
=A635=A636=A637=A6 -
=A638=A639=A640=A641=A6
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AREA CODE EXCHANGE NUMBER

D1. CHECK RESPONDENT'S SEX:

1 Male=20
2 Female

D2. What is your age? =20

1 1 =20
2 2
3 3
4 4
5 5
6 6
7 7
8 8
9 9
0=3D Don't know

D3. What is the last grade or class that you completed in school?=09

1 None, or grade 1–4
2 Grades 5, 6 or 7=20
3 Grade 8

4 High school incomplete (Grades 9–11)
5 High school graduate, Grade 12
6 Technical, trade, or business after high school
7 College/university incomplete
8 College/university graduate or more
9 DON'T KNOW/REFUSED

D3a. If College grad (D3 '8') Do you have any post-graduate education beyond a 4-year bachelors degree?

1 Yes (includes masters degree, doctorate, law degree, etc.)
2 No
3 DON'T KNOW/REFUSED

D4. Are you, yourself of Hispanic origin or descent, such as Mexican, Puerto Rican, Cuban, or other Spanish background?

1 Yes
2 No
3 DON'T KNOW
4 REFUSED

D4a. What is your race? Are you white, African-American, or some other race?

01 Other (list)
02 (DK)
03 (Refused)
04 HOLD
05 HOLD
06 White
07 African-American/Black
08 (Hispanic)—(Continue)

D4b. (If code "08" in D4a, ask:) Do you consider yourself to be white-Hispanic, or black-Hispanic?

01 Other (list)
02 (DK)
03 (Refused)
04 HOLD
05 HOLD
06 White-Hispanic
07 Black-Hispanic
08 (Hispanic/Respondent refuses to discriminate)

D5. Is your total annual household income before taxes $20,000 or more or is it less than $20,000?

(IF "UNDER" ASK:) Is it over or under $15,000?
(IF "UNDER" ASK:) Is it over or under $10,000?
(IF "OVER" ASK:) Is it over or under $30,000?
(IF "OVER" ASK:) Is it over or under $50,000?
(IF "OVER" ASK:) Is it over or under $75,000?

01 Less than $10,000 05 $30,000–49,999
02 $10,000–14,999 06 $50,000–74,999
03 $15,000–19,999 07 $75,000 and over
04 $20,000–29,999 08 DON'T KNOW/REFUSED

D6. How important would you say religion is in your own life—extremely important, very important, fairly important, or not very important?

1 Extremely important
2 Very important
3 Fairly important
4 Not very important
5 DON'T KNOW/REFUSED

D7. Next, we need to record how many different residential phone lines you have in your household—that is, the number of different phone numbers that are used by adult members of your household. Please do not count phone lines that are used primarily for business purposes, for children, or for electronic equipment—such as computers and fax machines. How many residential phone numbers are there in your household?

1 One
2 Two
3 Three
4 Four
5 Five or more
6 DON'T KNOW
7 REFUSED

Programmer Note: Collect 50 Names

D8. This completes the interview, however, Gallup is working with USA Today on this poll and they would like to talk further with a few survey participants about the topics we've discussed. So that reporters can choose from a cross-section of people, Gallup would provide them with background information which may include any or all of the answers you've given in this poll. Would you be willing to talk with a reporter at a later date?

1 Yes
2 No/(Ref)

IF YES TO BE RE-INTERVIEWED READ:

So that a reporter might reach you more easily, may I please have your name?

[FR Doc. 98–32863 Filed 12–9–98; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by January 4, 1999. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows.

[Permit Application No. 99–017]

1. *Applicant:* Charles R. Stearns, Department of Atmospheric and Oceanic Sciences, University of Wisconsin, 1225 West Dayton Street, Madison, Wisconsin 52706.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Areas.

The applicant proposes to install an Antarctic Weather Station (AWS) at Cape Bird, Ross Island. Studies of weather in the vicinity of McMurdo indicate an AWS at this location will help provide valuable data for forecasting weather in the Ross Island region. The applicant intends to install the AWS outside Antarctic Specially Protected Area #116, New College Valley, however, due to unfamiliarity with the terrain it may be necessary to place the AWS within site. The applicant also proposes to return to the site on occasion to service the AWS.

Location: ASPA #116—New College Valley, Caughley Beach, Cape Bird, Ross Island.

Dates: January 1, 1999–February 15, 2001.

[Permit Application No. 99–018]

2. *Applicant:* Gary Klinkhammer, College of Atmospheric Sciences, Oregon State University, 104 Ocean Administration Building, Corvallis, Oregon 97331–5503.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Areas.

The applicant proposes to visit several hydrothermal sites at Deception Island and in the Bransfield Strait for purposes of collecting sediment and rock samples. These samples will be gathered by TV grab, dredging and gravity coring. Some of the hydrothermal sites exist in Antarctic Specially Protected Area (ASPA) #145, Port Foster, Deception Island, and in ASPA #152, the Western Bransfield Strait, off Low Island. The applicant proposes to collect any biological specimens that are accidentally retrieved during the sediment and rock sampling and return them to the university for use in scientific studies.

Location: ASPA #145—Port Foster, Deception Island, and *ASPA* #152—Western Bransfield Strait, off Low Island.

Dates: April 14, 1999–May 10, 1999.

[Permit Application No. 99–019]

3. *Applicant:* Lars Wikander, President, Quark Expeditions, Inc., 980 Post Road, Darien, Connecticut 06820.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area.

The applicant conduct educational visits, for passengers, staff and crew of the icebreaker, Kapitan Khlebnikov, to the following Ross Island areas: Cape Evans Historic Site (ASPA #154), Hut and associated artifacts, Backdoor Bay, Cape Royds (ASPA #156), Discovery Hut, Hut Point (ASPA #157), and Huts and associated artifacts, Cape Adare (ASPA #158). Visits will be conducted in accordance with the relevant Management Plans for each site. Access to the sites may be by zodiac or helicopter as appropriate.

Location:

ASPA #154—Evans Historic Site

ASPA #156—Hut and associated artifacts, Backdoor Bay, Cape Royds, Ross Island

ASPA #157—Discovery Hut, Hut Point, Ross Island

ASPA #158—Huts and associated artifacts, Cape Adare

Dates: January 1, 1999–March 31, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 98–32739 Filed 12–9–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DPR–64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated September 24, 1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the Indian Point Unit No. 3 Technical Specifications, through the design of the fuel storage racks, and through administrative controls imposed on fuel handling procedures.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other nonradiological environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed exemption, the staff considered denial of the proposed action (i.e., the no action alternative). Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

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Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Indian Point Unit 3, dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on October 28, 1998, the staff consulted with the New York State Official, Jack Spath, of the New York State Research and Development Authority regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 24, 1998, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the 100 Martine Avenue, White Plains Public Library, White Plains, New York, 10601.

Dated at Rockville, Maryland, this 8th day of December, 1998.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-32945 Filed 12-9-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 070-3085]

Notice of Consideration of Amendment Request for the Babcock and Wilcox Shallow Land Disposal Area in Parks Township, Pennsylvania, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Materials License SNM-2001(SNM-2001) issued to the Babcock and Wilcox Company (B&W) establishing the date that B&W will submit a decommissioning plan for the Shallow Land Disposal Area (SLDA) to NRC. This amendment does not pertain to NRC's substantive review of the decommissioning plan itself or the merits of any decommissioning alternative that has been proposed for the site in past. Once B&W has submitted a decommissioning plan for NRC review, NRC will publish a separate notice and opportunity for a hearing on the decommissioning plan itself. In addition, the amendment, and opportunity for a hearing, does not pertain to the adjacent Parks Operating facility, which is administered under a separate license (SNM-414).

The SLDA is located in Armstrong County, PA, approximately 23 miles east-northeast of Pittsburgh. The SLDA consists of ten waste disposal trenches comprising approximately 1.2 acres surrounded by a 40-acre fenced buffer area. The SLDA was formerly owned by Nuclear Materials and Equipment Corporation (NUMEC) which also operated the nearby Apollo Nuclear Fuel Fabrication Facility. In the 1960s and 1970s, the SLDA was used by NUMEC to dispose of radioactively contaminated (primarily uranium and thorium) and non-radioactive wastes in accordance with NRC regulations at 10 CFR 20.304. NRC rescinded 10 CFR 20.304 in 1981. In 1967, Atlantic Richfield Company (ARCO) purchased stock in NUMEC and then sold it to B&W in 1971. In September 1994, B&W submitted several remediation alternatives for the SLDA to NRC. B&W's preferred alternative was to stabilize the waste in place by covering the buried waste with a soil and synthetic cover and isolating the waste from the groundwater with slurry walls, grout curtains and other engineered barriers. Based on B&W's proposed alternative for decommissioning the SLDA, NRC published a notice in the **Federal Register** announcing NRC's intent to develop an Environmental Impact Statement (EIS) for the decommissioning of the site. In August 1997, NRC completed development of a draft EIS (DEIS) and published a Notice of Availability in the **Federal Register** on September 4, 1997. NRC withdrew the DEIS on September 24, 1997, so that NRC staff could develop additional information regarding the alternatives presented in the DEIS.

On July 9, 1998, B&W submitted a request to NRC to amend its license, SNM-2001, to require that B&W submit a decommissioning plan for the SLDA to NRC by December 6, 2000. On August 3, 1998, NRC staff informed B&W that it would need to provide NRC with justification for this date. On October 13, 1998, B&W provided this justification. Therefore, NRC has determined that B&W's July 9 1998, and October 13, 1998, constitute a complete request to amend SNM-2001. However, NRC has not made a final determination on whether the request is acceptable and NRC will continue to review the request in accordance with the criteria in NRC regulations at 10 CFR 70.38(g)(2).

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738 between 7:45 am and 4:15 pm Federal workdays; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, BWX Technologies, P.O. Box 11165, Lynchburg, Va. 24506-1165 Attention: Mr. Philip Rosenthal; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail,

addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the license amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–6749.

Dated at Rockville, Maryland, this 4th day of December, 1998.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–32813 Filed 12–9–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Notice of Public Meeting; Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on December 16, 1998, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

(1) Semiannual Report on the Status of Consolidation as Required by Office of Management and Budget Bulletin 96–02, Consolidation of Agency Data Centers.

(2) Report on the White House Conference on Social Security.

(3) Surviving Divorced Spouses.

(4) Year 2000 Issues.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: December 7, 1998.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–32944 Filed 12–8–98; 11:00 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23587; File No. 812–11338]

UNUM Life Insurance Company of America, et al.; Notice of Application

December 3, 1998.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of Fidelity Variable Insurance Products Fund II Asset Manager Portfolio and Fidelity Variable Insurance Products Fund Growth Portfolio for shares of Calvert Social Balanced Portfolio of Calvert Variable Series and shares of American Century VP Capital Appreciation of American Century Variable Portfolios Inc. currently held by those unit investment trusts.

APPLICANTS: UNUM Life Insurance Company of America ("UNUM"), UNUM's VA–I Separate Account (the "UNUM Account"), First UNUM Life Insurance Company ("First UNUM"), and First UNUM's VA–I Separate Account (the "First UNUM Account") (the UNUM Account, together with the First UNUM Account, the "Accounts").

FILING DATE: The application was filed on October 2, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Rosemary Moore, Esq., UNUM Life Insurance Company of America, 2211 Congress Street, Portland, Maine 04122. Copies to William R. Galeota, Esq., Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036 and Kimberly J. Smith, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. UNUM is a life insurance company originally chartered under Maine law in 1966. UNUM is a subsidiary of UNUM Holding Company and its wholly-owned parent company, UNUM Corporation. UNUM is the depositor and sponsor of the UNUM Account.

2. First UNUM is stock life insurance company organized under New York law in 1978. First UNUM is a subsidiary of UNUM Holding Company and its wholly-owned parent company, UNUM Corporation. First UNUM is the depositor and sponsor of the First UNUM Account.

3. On October 1, 1996, UNUM completed the sale of its tax-sheltered annuity business to the Lincoln National Life Insurance Company ("Lincoln National"), pursuant to an acquisition agreement with Lincoln National (the "Acquisition Agreement"). Under the Acquisition Agreement, Lincoln National assumed UNUM's obligations under contracts previously issued through the UNUM Account, and Lincoln Life & Annuity Company of New York ("LLANY") assumed First UNUM's obligations under contracts previously issued through the First UNUM Account, other than in each case those obligations under contracts held by contractowners and/or participants who neither consented nor were

deemed to have consented to the assumption ("Unassumed Contracts").

4. Separate account assets relating to the Unassumed Contracts continue to be maintained in the UNUM Account or the First UNUM Account, respectively. Unassumed Contracts are administered by Lincoln National (if issued by UNUM) or LLANY (if issued by First UNUM).

5. The Unassumed Contracts are group flexible premium deferred variable annuity contracts issued by UNUM (for the UNUM Account) or First UNUM (for the First UNUM Account). Currently, transfers of cash value can be made in unlimited amounts each contract year among and between the sub-accounts available as investment options under the Contracts without the imposition of a transfer charge. All of the Unassumed Contracts reserve to UNUM or First UNUM, as applicable, the right to restrict transfer privileges.

6. The UNUM Account is registered under the 1940 Act as a unit investment trust (File No. 811–5803). The UNUM Account currently consists of nine sub-accounts. Each sub-account currently invests its assets exclusively in shares of the following series of the following open-end management investment companies ("Portfolios"): Dreyfus Stock Index Fund; Calvert Social Balanced Portfolio of Calvert Variable Series; Small Cap Portfolio of Dreyfus Variable Investment Fund; Fidelity Variable Money Market Portfolio; Fidelity Variable Insurance Products Fund II ("VIP II") Asset Manager Portfolio, American Century VP Capital Appreciation and American Century VP Balanced of American Century Variable Portfolios Inc.; and International Stock Portfolio of T. Rowe Price International Series.

7. The First UNUM Account is registered under the 1940 Act as a unit investment trust (File No. 811–6455). The First UNUM Account currently consists of nine sub-accounts. Since inception, each sub-account of the First UNUM Account has invested in the same Portfolios as those available under the UNUM Account.

8. The investment objective of the Calvert Social Balanced Portfolio, a non-diversified fund, is to achieve a total return greater than the rate of inflation through an actively managed, non-diversified portfolio of common and preferred stocks, bonds, and money market instruments which offer income and capital growth opportunity and which satisfy the social concern criteria established for the Portfolio. The Portfolio invests in enterprises that make a significant contribution to society through their products and services and through the way they do business. The Calvert Social Balanced Portfolio's investment objective is not fundamental and may be changed at any time with 60 days notice to shareholders. The Calvert Asset Management Company, Inc. serves as the Fund's investment adviser.

9. The investment objective of the VIP II Asset Manager Portfolio, a diversified fund, is to achieve high total return with reduced risk over the long term. It seeks to achieve this objective by diversifying its investments across stocks, bonds, and short-term and money market instruments, both in the U.S. and abroad. It may invest in all types of equity securities and short-term and money market instruments, and all types of fixed income securities with maturities greater than one year. Fidelity Management & Research Company ("FMR") is the manager of the VIP II Asset Manager Portfolio.

10. The investment objective of American Century VP Capital Appreciation is to seek capital growth. It seeks to achieve its investment objective by investing in common stocks (including securities and convertibles into common stocks and other equity equivalents) and other securities that meet certain fundamental and technical standards of selection and have, in the opinion of its investment manager, better than average potential for appreciation. It seeks to stay fully invested in such securities, regardless of the movement of stock prices generally. American Century Investment Management, Inc. manages American Century VP Capital Appreciation.

11. The investment objective of the VIP Growth Portfolio is capital appreciation. It pursues its objective by investing primarily in common stocks. It is not restricted to any one type of security and may pursue capital appreciation through the purchase of bonds and preferred stocks. FMR is the manager of the VIP Growth Portfolio.

12. Applicants assert that the performance of the VIP II Asset Manager Portfolio and the VIP Growth Portfolio (collectively, the "Substitute Funds") has been better than the performance of the Calvert Social Balanced Portfolio and the American Century VP Capital Appreciation (collectively, the "Replaced Funds") on a historical basis. Applicants also assert that the expenses of the Substitute Funds have been lower than those of the Replaced Funds.

13. The following chart shows the standard average annualized total returns for the Replaced Funds for the past two years as well as the total return for each Replaced Funds since its date of inception.

Replaced funds	Standard total return		
	Inception of portfolio through 12/31/97 (percent)	1997 (percent)	1996 (percent)
Calvert Social Balanced: (Inception date: September 27, 1982)	11.20	20.08	12.62
American Century VP Capital: Appreciation (Inception date: November 20, 1987)	4.34	−3.26	−4.32

14. The chart below provides the average annual total returns for the Substitute Funds for the past two years as well as standard total return since date of inception. Each Substitute Fund has outperformed the corresponding Replaced Fund during each period shown.

Substitute funds	Total return of substitute portfolios		
	Inception of fund through 12/31/97 (percent)	1997 (percent)	1996 (percent)
VIP II Asset Manager Portfolio:			
(Inception date: September 6, 1989)	12.73	20.65	14.60
VIP Growth Portfolio:			
(Inception date: October 9, 1986)	17.55	23.48	14.71

15. The chart below shows the approximate size and expense ratios for each of the Replaced Funds for the past two years. Expense ratios include management fees and operating expenses. Each Fund currently pays a monthly management fee based on its average daily net assets at the following annual rates: Calvert Social Balanced Portfolio, 0.70% (plus or minus a fee adjustment of 0.05% to 0.15%) and American Century VP Capital Appreciation, 1.00%. As of October 1, 1998, the management fee for the American Century VP Capital Appreciation will be: 1.00% of the first $500 million, 0.95% of the next $500 million, and 0.90% of the excess over $500 million.

Replaced funds	Net assets at December 31 (in thousands)	Expense ratio (percent)
Calvert Social Balanced:		
1996	$161,473	0.81
1997	227,834	0.80
June 30, 1998 (inception date: September 27, 1982)	275,385	0.77
American Century VP Capital Appreciation:		
1996	$1,313,865	1.00
1997	593,698	1.00
June 30, 1998 (inception date: November 20, 1987)	515,262	1.00

16. The next chart provides the approximate size and expense ratios for each of the Substitute Funds for the past two and one-half years. Expense ratios include management fees and operating expenses. Each Substitute Fund currently pays a monthly management fee. The management fee for each Substitute Fund is calculated by adding a group fee rate to an individual fund fee rate, multiplying the result by the Fund's monthly average net assets, and dividing by twelve. The group fee rate is based on the average net assets of all the mutual funds advised by FMR, and cannot rise above 0.52%. For December 1997, the group fee rate for each of the VIP II Asset Manager Portfolio and the VIP Growth Portfolio was 0.29%. The individual fund fee rate for the VIP II Asset Manager Portfolio is 0.25% and for the VIP Growth Portfolio is 0.30%. The management fee for each Substitute Fund for the fiscal year ended December 31, 1997 was as follows: VIP II Asset Manager Portfolio—0.55%; and VIP Growth Portfolio—0.60%. Each Substitute Fund has lower expense ratios, and is significantly larger in size than the corresponding Replaced Fund for the periods shown.

Substitute funds	Net assets at December 31 (in thousands)	Expense ratio[1] (percent)
VIP II Asset Manager Portfolio:		
1996	$3,641,194	0.74
1997	4,399,948	0.65
June 30, 1998 (inception date: September 6, 1982)	4,965,445	0.65
VIP Growth Portfolio:		
1996	$6,086,424	0.69
1997	7,729,147	0.69
June 30, 1998 (inception date: October 9, 1986)	9,398,758	0.69

[1] FMR, the VIP II Asset Manager Portfolio or the VIP Growth Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Funds' expenses. With these arrangements, the VIP II Asset Manager Portfolio's expense ratio for 1996 and 1997 was 0.73% and 0.64%, respectively, and the VIP Growth Portfolio's expense ratio for each of the 1996 and 1997 was 0.67%.

17. The charts below show a comparison of the Replaced Funds' and the Substitute Funds' total return, standard deviation and expense ratios for the three years ended June 20, 1998.

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Replaced funds	3-year total return (percent)	3-year standard deviation (percent)	Expense ratio for 3 years ending 6/30/98 (percent)
Calvert Social Balanced	16.7	14.9	0.77
American Century VP Capital Appreciation	−0.4	20.3	1.00

Substitute Funds	3-year total return (percent)	3-year standard deviation (percent)	Expense ratio for 3 years ending 6/30/98 (percent)
VIP II Asset Manager Portfolio	17.4	7.7	0.65
VIP Growth Portfolio	21.5	14.4	0.69

18. The Calvert Social Balanced Portfolio is restricted in the investments it may make by its social concern criteria. While the VIP II Asset Manager Portfolio does not duplicate these criteria, the Applicants assert that the VIP II Asset Manager Portfolio offers an investment program sufficiently similar to that of the Calvert Social Balanced Portfolio so that Unassumed Contract Owners will be able to pursue the same long-term investment objectives (albeit without social criteria) through the VIP II Asset Manager Portfolio, with lower fees and expenses and lower volatility.

19. The Calvert Social Balanced Portfolio's investment objective (total return above the rate of inflation) and the VIP II Asset Manager Portfolio's investment objective (high total return with reduced risk over the long-term) are substantially similar. While the policies that they follow to achieve their objectives are not identical, they are both domestic hybrid funds that invest in the same types of instruments. Applicants assert that an investor in the Calvert Social Balanced Portfolio is attempting to achieve the same long term goals as those sought by the VIP II Asset Manager Portfolio.

20. The investment objectives of the American Century VP Capital Appreciation (capital growth) and the VIP Growth Portfolio (capital appreciation) are substantially similar. While each of these Funds seeks to achieve its objective through somewhat different investment strategies, Applicants assert that an investor in the American Century VP Capital Appreciation is attempting to achieve the same long-term goals as those sought by the VIP Growth Portfolio, and through the same type of investments (equity securities).

21. As part of an overall business plan of Lincoln National and LLANY to make the Unassumed Contracts more competitive and more efficient to administer and oversee, Lincoln National and LLANY have proposed to replace the Replaced Funds with the Substitute Funds. The proposed substitutions are consistent with this business plan, involve Portfolios with compatible investment objectives, and after the substitution, Unassumed Contracts will be invested in Portfolios whose performance has been better on a historical basis.

22. UNUM and First UNUM have concurred with the determination by Lincoln National and LLANY that the Replaced Funds are good candidates for substitution. Applicants propose that UNUM and First UNUM replace: (a) shares of the Calvert Social Balanced Portfolio with shares of the VIP II Asset Manager Portfolio; and (b) shares of the American Century VP Capital Appreciation with shares of the VIP Growth Portfolio (the "Proposed Substitution"). Applicants propose to have UNUM and First UNUM redeem shares of each Removed Fund in cash and purchase with the proceeds shares of the Substitute Fund identified above.

23. All owners and prospective owners of the Unassumed Contracts will be notified of UNUM's and First UNUM's intention to take the necessary actions, including seeking the requested order, to substitute portfolios. The supplements will advise owners and prospective owners that they will be unable to allocate net purchase payments to, or transfer cash values to, the sub-accounts of the Accounts corresponding to each of the Replaced Funds after April 30, 1999, and that on the date of the proposed substitution (on or about April 30, 1999, after the relief requested has been obtained and all necessary systems support changes have been made), the Substitute Funds will replace the Replaced Funds as the underlying investments for such sub-accounts. In addition, the supplements will apprise owners and prospective owners that neither UNUM nor First UNUM will exercise any rights reserved by it under any of the Unassumed Contracts to impose restrictions or fees on transfers until at least thirty days after the proposed substitutions.

24. At least sixty days before the date of the proposed substitutions, affected owners will also be provided with a prospectus for each Substitute Fund which includes complete current information concerning the Substitute Funds. Thus, any owner affected by the substitutions will have received current prospectus disclosure for each Substitute Fund at least 60 days or more in advance of the proposed substitutions.

25. The proposed substitutions will take place at relative net asset value with no change in the amount of any Unassumed Contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Unassumed Contract owners will not incur any additional fees or charges as a result of the proposed substitutions nor will their rights or UNUM's and First UNUM's obligations under the Unassumed Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by UNUM and First UNUM or Lincoln National and LLANY. In addition, the proposed substitutions will not impose any tax liability on Unassumed Contract owners. The proposed substitutions will not cause the Unassumed Contract fees and charges currently paid by existing Unassumed Contract owners to be greater after the proposed substitutions than before the proposed substitutions. Neither UNUM nor First UNUM currently impose any restrictions or fees on transfers under the Unassumed Contracts, and neither will exercise any right it may have under the Unassumed Contracts to impose restrictions on transfers under any of the Unassumed Contracts for a period of at least thirty days following the proposed substitutions.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the Proposed Substitution appears to involve a substitution of securities within the meaning of Section 26(b) of the 1940 Act and request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act approving the Proposed Substitution.

3. The Contracts all provide to UNUM or First UNUM the right, subject to Commission approval, to substitute shared of another open-end management investment company for shares of an open-end management investment company held by a subaccount of the relevant Account. Applicants assert that the prospectuses for the Unassumed Contracts contain appropriate disclosure of this right.

4. Applicants assert that, although there are differences in the objectives and policies of the Replaced Funds and the Substitute Funds, their objectives and policies are sufficiently consistent to assure that, following the Proposed Substitution, the achievement of the core investment goals of the affected owners invested in the Replaced Funds will not be frustrated.

5. Applicants assert that the performance of the Calvert Social Balanced Portfolio was lower than that of a comparable securities index that had lower volatility (or risk), and was lower than the median of its peer group (domestic hybrid funds) over the three year period ending June 30, 1998. Applicants assert that the VIP II Asset Manager Portfolio has, however, performed better than its comparable securities index and ranks in the top decile of a similar peer group (large blend equities) over the three-year period ending June 30, 1998.

6. Applicants assert that the performance of American Century VP Capital Appreciation was lower than that of a comparable securities index that had lower volatility (or risk), and was lower than the median of its peer group (mid-cap growth equities) over the three-year period ending June 30, 1998. Applicants assert that while the VIP Growth Portfolio performed below the comparable securities index and the median of its peer group (large cap equities) over the same time period, its performance was better than that of the comparable securities index and the median of its peer group for the one and five year periods ending June 30, 1998, and has substantially outperformed American Century VP Capital Appreciation in 1996, 1997 and since the inception of the VIP Growth Portfolio.

7. Each Substitute Fund has performed favorably over the past two years in comparison to the Replaced Fund. While past performance is not necessarily indicative of future performance, applicants assert that the Proposed Substitution is appropriate in light of the performance of the Replaced Funds.

8. Applicants assert that the Proposed Substitution would effectively consolidate the UNUM and First UNUM assets of each Substitute Fund with those of the corresponding Replaced Fund, with the goal of each Substitute Fund having lower future expense ratios than the past expense ratios of the Replaced Fund. The VIP II Asset Manager Portfolio is a larger Fund and has a lower expense ratio than the Calvert Social Balanced Portfolio. Moreover, the Calvert Social Balanced Portfolio is a small Fund, which has not grown significantly, and, Applicants assert, likely does not have prospects of significant growth. Based on these trends, the Applicants believe that the VIP II Asset Manager Portfolio is likelier to achieve economics of scale in the near and long term.

9. The VIP Growth Portfolio is a larger fund and has a lower expense ratio than American Century VP Capital Appreciation. Moreover, Applicants assert that American Century VP Capital Appreciation has diminished in size over the past two and one-half years, while the VIP Growth Portfolio has gained in size over the past two and one-half years. Based on these trends, the Applicants believe that the VIP Growth Portfolio is likelier to achieve economies of scale in the near and long term. With the addition of the UNUM and First UNUM assets, the size of each Substitute Fund is expected to further increase.

Conclusion

Applicants assert that, for the reasons summarized above, the Proposed Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32826 Filed 12–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40737; File No. SR–CBOE–98–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Evaluation of Trading Crowd Performance

December 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to modify CBOE Rule 8.60, *Evaluation of Trading Crowd Performance,* to provide limited remedial actions for members, individually or collectively as trading crowds, who have failed to meet minimum performance standards. The proposed rule also modifies procedures relating to the administration and enforcement of the Rule.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to modify CBOE Rule 8.60 to clarify and improve the market performance evaluation of members and trading crowds on the Exchange. The proposed rule change accomplishes this by giving the appropriate Market Performance Committee[3] ("appropriate Committee") greater procedural flexibility to address the issue of member performance, while at the same time providing a clearer description of the due process safeguards that apply to the exercise of the appropriate Committee's authority.

1. Generally

The purpose of CBOE Rule 8.60 is to provide the appropriate Committee with a means to work with trading crowds and individual members to improve market quality and competition among members. The crowd evaluation process has significantly assisted the appropriate Committee in working with trading crowds and members to improve performance. The proposed changes will allow the appropriate Committee to take certain remedial actions after an informal meeting with members or crowds who have been identified through the evaluations. Currently, under CBOE Rule 8.60, the appropriate Committee must hold a formal hearing to impose more serious sanctions such as (i) suspension, (ii) termination or (iii) restriction of a market-maker's registration, appointments to option classes or right to trade at a particular trading station, but does not explicitly have the right to take limited remedial actions.

2. The Proposed Changes

One of the proposed amendments to CBOE Rule 8.60(a) is to identify the Exchange rather than the appropriate Committee as the entity that prepares, administers and distributes the results of the member evaluation. The results of the member evaluation are provided by the Exchange's Market Procedures and Planning staff to the appropriate Committee for their review. Paragraph (a) of CBOE Rule 8.60 is being amended to provide that the appropriate Committee, in connection with its evaluation of member performance, may take into consideration factors other than the four factors currently enumerated in the Rule.[4] To assist the Exchange in gathering market performance data in a timely manner, the proposed rule change moves language from paragraph (c) to paragraph (a). This language requires that members, persons associated with a member, or member firms answer market performance survey questions by the date specified and to the best of their ability and knowledge. In addition, the term market-maker is being replaced with the terms member or trading crowd to provide the appropriate Committee with more discretion in enforcing market performance standards.

The Exchange is rewording paragraph (b) of CBOE Rule 8.60 to enable the appropriate Committee to determine whether there has been a failure to meet minimum performance standards based on the totality of factors considered, including whether a member or trading crowd is ranked in the bottom 10% of trading crowds.

The language in paragraph (c) of CBOE Rule 8.60 as to the distribution of a Questionnaire on a six month periodic basis is being deleted. The Evaluation will be done as needed. Paragraph (c) of CBOE Rule 8.60 also will incorporate the existing language from paragraph (d). This incorporated language gives the appropriate Committee discretion to have an informal meeting with one or more members to discuss their performance.

Paragraph (d) of CBOE Rule 8.60 is being amended to clarify that the appropriate Committee is authorized to take certain remedial actions against a member or trading crowd if the appropriate Committee believes that certain performance standards are not being met. These remedial actions are of a less serious nature than those provided for in paragraph (a). Paragraph (d) of CBOE Rule 8.60 is intended to provide the appropriate Committee with greater flexibility to take limited actions to improve overall market performance in those cases where more severe actions are not warranted, and without incurring the expense and delay associated with a formal evidentiary-type hearing which is required in cases where more severe actions are taken. The following measures are proposed as limited remedial actions that the appropriate Committee may take:

(1) require that the trading crowd submit a business plan to the Committee detailing those steps that the crowd intends to take to improve its performance;

(2) require that one or more members execute 100% of their opening transactions in that crowd in person;

(3) restrict crowd members' ability to participate on the Retail Automatic Execution System;

(4) restrict the eligibility of the crowd to be allocated new option classes or other securities;

(5) require that one or more members attend a meeting or series of meetings as the Committee shall require for the purpose of education or improving the performance of the members;

(6) require that all bookable orders be booked if not executed immediately upon presentation in the crowd; or

(7) take any other limited remedial action which is comparable to the foregoing.

Paragraph (d) would provide members an opportunity to be heard by the appropriate Committee, prior to the appropriate Committee taking remedial action.

Paragraph (e) of CBOE Rule 8.60 clarifies and expands on the due process requirements to be fulfilled if the appropriate Committee deems that the actions listed in paragraph (a) are to be imposed. It will also be made clear that all affected members will be provided a written decision.

The Exchange is also amending Paragraph (f) to provide the appropriate Committee with the authority to impose the proposed limited remedial sanctions of paragraph (d) for members who fail to appear before the committee when asked to do so under paragraph (c), without reasonable justification. The amended language also states that the appropriate Committee may refer any member's failure to appear to the Business Conduct Committee.

Finally, the Exchange is amending Paragraph (g) to provide that any actions taken by the appropriate Committee, whether under paragraph (a) or (d), may be appealed according to the procedures of Chapter XIX of Exchange Rules. This change would have a member's appeal go directly to the Appeals Committee rather than the Board of Directors. This change would make the appeal procedure consistent with the appeal rights of most other Exchange committee decisions. Members would retain the right to appeal the Appeals Committee decision to the Board.

Interpretation and Policy .01 under CBOE Rule 8.60 would be amended to provide some flexibility as to how the appropriate Committee defines whether a market-maker is a member of a trading crowd. The proposed rule change also makes certain editorial changes to clarify CBOE Rule 8.60 without affecting its substance.

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[3] The appropriate Committee is the Market Performance Committee, the Index Market Performance Committee or the Modified Trading System Appointments Committee.

[4] The four factors are (i) quality of markets; (ii) competition among market-makers; (iii) observance of ethical standards, and (iv) administrative factors.

The Exchange believes the proposed rule change is consistent with and promotes the objectives of Section 6(b)(5) of the Act[5] in that it is designed to enhance the ability of the appropriate Market Performance Committee to regulate standards of member performance on the Exchange, while providing due process standards to members who appear before the appropriate Committee, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–46 and should be submitted by December 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32827 Filed 12–9–98; 8:45 am]

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[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40736; File No. SR–CBOE–98–37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change To Allow the Chairman of the Equity Floor Procedure Committee, or the Chairman's Designee, To Increase the Eligible Order Size for Entry into RAES

December 1, 1998.

On August 21, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change to permit the Chairman of the appropriate Floor Procedure Committee ("Committee"), or the Chairman's designee, to exercise the authority of the Committee to increase the size of orders eligible for entry into CBOE's Retail Automatic Execution System ("RAES") in certain circumstances.[2] The Exchange amended the proposed rule change on October 5, 1998.[3]

The proposed rule change was published for comment in the **Federal Register** on October 30, 1998.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

Description of the Proposal

The Exchange is proposing to amend Exchange Rule 6.8, by adding Interpretation and Policy .05, to permit the Chairman of the Committee, or the Chairman's designee, to exercise the authority of the Committee to increase the size of orders eligible for entry into RAES when the Chairman or his or her designee believes that the action could alleviate a potential backlog of unexecuted orders where an options class is experiencing a large influx of orders. This decision may not extend for longer than one trading day. If the situation extends into a second day, the Chairman or his or her designee would have to make an independent decision to increase the RAES eligible order size for that subsequent day. The Equity Floor Procedure Committee ("EFPC") will review any decision to approve an increase for consecutive days. Pursuant to its discretion under Exchange Rule 6.8, the EFPC has established an eligible RAES order size of ten contracts for most equity options traded on the floor.

The EFPC has discovered through experience in overseeing the operation of RAES in equity options, however, that it is often beneficial to temporarily raise the eligible order size to the allowable limit of twenty contracts in situations where a particular class of equity options is experiencing a large influx of orders. By increasing the eligible order size, a large percentage of the order flow can be filled immediately at the Exchange's quotes or at the National Best Bid or Offer ("NBBO").[5] The Exchange notes that such increase will allow the trading crowd to concentrate on filling the non-RAES eligible orders in a more expeditious manner.

Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder.[7] Section 6(b) of the Act states that the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that permitting the Exchange to allow the Chairman of the Committee, or the Chairman's designee, to exercise the authority of the Committee to determine the size of orders eligible for entry into RAES will help to expedite the execution of orders for more than 10 contracts, which should free market makers to handle more complex or larger orders that are not RAES eligible. The Commission believes that EFPC review of decisions to increase the size of orders eligible for entry into RAES for consecutive days will help to ensure that the Chairman or his or her designee only uses the discretion in those limited circumstances set forth in the Interpretation.

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[1] 15 U.S.C. 78s(b)(1).

[2] RAES accepts, through the Exchange's Order Routing System, small public customer market or marketable limit orders for automatic execution. An Exchange marketmaker on RAES is assigned as the contraparty to these trades.

[3] Letter from Timothy H. Thompson, Director, Regulatory Affairs, CBOE, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated September 15, 1998 ("Amendment No. 1").

[4] *See* Exchange Act Release No. 40596 (Oct. 23, 1998), 63 FR 58434 (Oct. 30, 1998).

[5] The Commission recently approved a proposed rule change that provides that in classes designated by the EFPC, RAES orders will be executed at the NBBO to the extent the NBBO is no more than one tick better than the CBOE quote. Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (approving SR–CBOE–98–13).

[6] 15 U.S.C. 78f(b).

Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–98–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32828 Filed 12–9–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40745; File No. SR–NASD–09–75]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Requiring Certain NASD Member Firms To Participate in the Integrated, Industry-Wide, Year 2000 Tests

December 3, 1998.

On December 3, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] Amendment No. 1 to a proposed rule change described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal and Amendment No. 1 thereto.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to add a new rule, NASD Rule 3410, to the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to require certain NASD members to conduct or participate in computer tests designed to address the Year 2000 problem. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3400. COMPUTER SYSTEMS

3410. Mandatory Year 2000 Testing

[This rule will expire automatically on January 1, 2001]

(a) Members of the Association that determine their minimum net capital requirement according to paragraphs (a)(2)(i) and/or (a)(4) of Securities Exchange Act Rule 15c3–1, or are registered with the Securities and Exchange Commission as government securities brokers or dealers under Section 15C of the Securities Exchange Act of 1934 must conduct or participate in such testing of computer systems as the Association may prescribe.

(b) Every member required by the Association to conduct or participate in testing of computer systems shall provide to the Association such reports relating to the testing as the Association may prescribe.

(c) Every member of the Association that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The NASD is proposing to adopt a rule that would establish with NASD's specific authority to require certain members to participate in Year 2000 tests and to require reporting on the tests.[4] The NASD is proposing that the rule will expire in the year 2001 so that the NASD will have specific authority to mandate testing and reporting, as necessary, to correct problems that are not resolved prior to January 1, 2000, or to collect problems that arise after January 1, 2000.

On January 1, 2000, the internal date in computers should roll-over from "12/31/99" to "01/01/00." At that moment, if corrective measures have not been taken, the program logic in the vast majority of these computer systems will begin to produce erroneous results because the systems will read the date as beginning in the year 1900 rather than 2000. This problem, known as the "Year 2000 Problem," could cause significant disruption in the securities industry. There are several stages involved in correcting the Year 2000 Problem, including: assessing the problem; implementing corrective measures; conducting internal, point-to-point, and integrated or industry-wide testing; and establishing contingency plans.

The testing stage of correcting the Year 2000 Problem will be critical to ensuring that the markets will operate with minimal disruption after January 1, 2000. To facilitate testing on an integrated, industry-wide basis, the Securities Industry Association ("SIA") has undertaken the task of coordinating such a test. Test participants will include, among others, Nasdaq, the exchanges, registered clearing corporations and depositories, data processors, and broker-dealers. The first day of the integrated, industry-wide test is scheduled for March 6, 1999.[5]

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[7] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The initial filing, which was received on October 5, 1998, was not noticed in the **Federal Register**.

[4] The proposed rule is not intended to limit the NASD's existing authority by rule, contract, or otherwise, to mandate testing or require reports from members. For example, the Nasdaq Workstation II® Subscriber Agreement, Section 1 states that Nasdaq agrees to provide services to a subscriber on the terms and conditions set forth in the agreement, which could include testing.

The NASD believes it is essential that the firms that could cause the most disruption in the market, if these firms have not corrected the Year 2000 problem, conduct tests of all of their critical computer systems that relate to their different types of businesses (*e.g.*, equities, options, government securities, mortgage-backed securities). Consequently, the NASD is proposing to require all market makers and clearing firms to conduct tests to address the Year 2000 Problem. The proposed rule also would require government securities brokers or dealers that are not subject to the SEC's net capital rule, but are NASD members, to conduct Year 2000 tests.

Some firms will be able to satisfy at least part of their testing obligations by participating in the SIA-coordinated test or by tests sponsored by self-regulatory organizations ("SROs"). The Government Securities Clearing Corporation ("GSCC") will test for government securities. In addition, the Participants Trust Company ("PTC") and the MBS Clearing Corporation ("MBSCC") will test for mortgage-backed securities. Therefore, portions of the members' testing obligations will be satisfied by participation in the tests offered by GSCC, PTC, or MBSCC.

The proposed rule would provide specific authority to require participation in organized, industry-sponsored tests, and require "point-to-point" testing between member firms and the NASD or other systems, or internal tests of member systems. These other tests may be particularly significant for smaller market makers and clearing firms that may not be able to participate in the industry-sponsored tests.

Some members may be able to satisfy their testing obligation without actually conducting tests themselves. For example, it is likely that market makers that are not clearing firms and that only use Nasdaq Workstation II® (NWII) terminals for their market-making activity will not be required to participate in mandatory testing because the NASD has completed testing of the NWII system. Also, members that use computer systems provided by service bureaus are not likely to have to perform any additional tests of the systems provided by the service bureaus if the service bureaus participate in the SIA coordinated test, the members have conducted point-to-point testing with their service bureaus, the service bureaus have conducted point-to-point testing with the NASD, and the tests do not indicate any problems. In the circumstances described above, the NASD and service bureaus will act as proxies for the members for purposes of compliance with the rule. Following approval of this rule proposal and Amendment No. 1 thereto, the NASD will issue a Notice to Members describing the types of tests that will be required for different types of market makers and clearing firms, and the types of situations in which members will be able to satisfy the testing requirement by proxy.

The NASD also believes that test results should be reported to the Association. These reports will enable the NASD to identify those members that have not adequately prepared for the Year 2000 so that appropriate action can be taken to address these members' deficiencies, including, for example, providing assistance to or easing the transition of business to other firms. Accordingly, the proposal would require members to file reports with the NASD about the tests. To simplify the reporting requirement, the NASD will design a standardized format firms will use to report to the NASD. In addition, to avoid duplicative and burdensome reporting, the NASD will coordinate its reporting requirements with other SROs as much as possible. For example, the NASD may exclude from its reporting requirement those firms for which the NASD is not the designated examining authority.

The NASD will issue Notices to Members specifying members' reporting and testing obligations sufficiently in advance of specific events, such as SIA-coordinated industry-wide tests, that members will reasonably be able to comply. Regardless of when such Notices are issued, nothing in this rule relieves member firms of their obligation to take all necessary steps so that they may function properly—both their internal systems and their ability to communicate and transact business with other firms—on and after January 1, 2000.

Further, although the NASD is not proposing to require all members of the Association (*e.g.*, introducing firms that do not make markets) to conduct external testing, such testing is a key element of Year 2000 compliance for all firms.[6] Specifically, the NASD still wants all member firms to test their computer systems and take whatever remedial measures are necessary to deal with Year 2000 issues. NASD Regulation staff has held 35 Year 2000 seminars in 14 cities and has been told by introducing firms that their computer systems are dependent upon, and in some cases provided by, their clearing firms and that cooperation by and coordination with the clearing firms is necessary. Based on these comments, the NASD is proposing that clearing firms must take reasonable measures to ensure that their introducing firms test with them. The NASD expects that "reasonable measures" in this context would include providing reasonable notice of the existence of tests that are scheduled as well as such access to the systems and personnel of the clearing firm as may be necessary. The NASD wants clearing firms to give it the results of the tests conducted with the introducing firms.

Finally, there is no more significant issue confronting the financial industry than the Year 2000 Problem, and the NASD thus will respond decisively to members' failure to respond to initiatives designed to determine their readiness. The NASD informed members that failure to respond to the NASD Year 2000 survey could result in disciplinary action. Similarly, disciplinary actions have been and will be instituted against members that fail to file SEC Form BD–Y2K. In addition, members will be subject to disciplinary action if they fail to conduct the required tests, fail to report the results of the tests to the NASD, or fail to take reasonable measures to ensure that their introducing firms have an opportunity to test with them.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASD Regulation believes the proposed rule is necessary to protect investors and the public interest. The NASD rule requiring certain members to conduct or participate in Year 2000 tests, and to file reports about the tests, will enable NASD Regulation, those participating in the tests, and others to evaluate the readiness of securities industry for the Year 2000. The firms that would be required to conduct testing perform critical functions in the markets and these firms' inability to perform these functions beyond January 1, 2000 could cause disruptions in the markets and cause harm to investors.

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[5] The exact number of firms that will be able to participate in the SIA test has not been conclusively determined.

[6] Member firms that choose—or are required—to participate in external testing should recognize that internal testing is a prerequisite for external testing and participation in SIA-coordinated tests and should act accordingly.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 15A(b)(6)[7] of the Exchange Act. Section 15A(b)(6) of the Exchange Act requires that the NASD's rules be designed, among other things, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will facilitate the NASD's efforts to ensure the securities markets' continued smooth operation on and after January 1, 2000.

The Commission finds good cause for approving the proposal and Amendment No. 1 thereto prior to the 30th day after the date of publication of notice of the filing in the **Federal Register.** It is vital that SROs have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 information) to their SRO's. The proposed rule change will help the NASD participate in coordinating industry-wide and other testing. This, in turn, will help ensure that the SIA's tests and the NASD's Year 2000 efforts are successful. The proposed rule change will also help the NASD work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 31, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[8] that the proposal, SR–NASD–98–75, including Amendment No. 1 thereto, be and hereby is approved on an accelerated basis.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32825 Filed 12–9–98; 8:45 am]

BILLING CODE 8010–01–M

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[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Supplemental Loan Guarantee Agreement".

Type of Request: New Collection.

Form No.: SBA Form 1918.

Description of Respondents: SBA Express Lenders.

Annual Responses: 200.

Annual Burden: 50.

Title: "SBA Express Borrower Information".

Type of Request: New Collection.

Form No.: SBA Form 1919.

Description of Respondents: Proprietor, Partner, Holder with 20% or more voting stock of a corporate.

Annual Responses: 12,000.

Annual Burden: 1,000.

Title: "Request for SBA Express Loan Number".

Type of Request: New Collection.

Form No.: SBA Form 1920.

Description of Respondents: SBA Express Lenders.

Annual Responses: 10,000.

Annual Burden: 833.

Title: "Lender Checklist for PLP/SBA Express, Notification and Request".

Type of Request: New Collection.

Form No.: SBA Form 2091.

Description of Respondents: SBA Express Lenders.

Annual Responses: 10,000.

Annual Burden: 833.

Title: "Eligibility Information Required for SBA Express Submission".

Type of Request: New Collection.

Form No.: SBA Form 2092.

Description of Respondents: SBA Express Lenders.

Annual Responses: 10,000.

Annual Burden: 2,500.

Title: "Supplemental Information for PLP/SBA, Express Processing".

Type of Request: New Collection.

Form No: SBA Form 2093.

Description of Respondents: SBA Express Lenders.

Annual Responses: 10,000.

Annual Burden: 2,500.

Comments: Send all comments regarding these information collections to, Charles Thomas, Financial Analyst, Pilot Operations Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Suite 8300, Washington, DC 20416. Phone No.: 202–205–6656.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimates, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 98–32761 Filed 12–9–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3146]

State of Kansas; Amendment #3

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include the Counties of Johnson, Leavenworth, Marion, and Wyandotte in the State of Kansas as a disaster area due to damages caused by severe storms and flooding beginning on October 30, 1998 and continuing through November 15, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Atchison, Dickinson, and Saline Counties in the State of Kansas, and Cass, Clay, Jackson, and Platte Counties in the State of Missouri. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The number for economic injury in the State of Missouri is 9A5800.

All other information remains the same, i.e., the deadline for filing applications for physical damage is January 4, 1999 and for economic injury the termination date is August 5, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 2, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–32760 Filed 12–9–98; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

World Trade Organization (WTO)

AGENCY: Office of the United States Trade Representative.

ACTION: Solicitation of Public Comment Regarding U.S. Preparations for Multilateral Negotiations on Government Procurement Issues.

SUMMARY: The Trade Policy Staff Committee (TPSC) is providing notice of the U.S. intention to develop proposals and positions related to negotiations on government procurement issues under the auspices of the World Trade Organization (WTO). The Committee of Participants of the WTO Government Procurement Agreement (GPA) are engaged in negotiations on the potential improvement of that Agreement, as provided for in Article XXIV.7(b) of that Agreement. The current text of the GPA is available on the WTO world wide web site, at www.wto.org/wto/govt/agreem.htm. Currently, there are 26 participants in the GPA (see the supplementary information, below).

As previously noted in section IV of the TPSC's August 19, 1998 notice of preparations for the third Ministerial Conference of the WTO (**Federal Register**, Volume 63, number 160, pages 44500–44502), the TPSC is also developing proposals and positions related to WTO consultations and negotiations on transparency in government procurement under the ongoing WTO work program agreed at the December 1996 WTO Ministerial Conference in Singapore.

The TPSC invites public comment regarding the development of the agenda, scope, content and timetables for these negotiations. The Administration seeks views on the broadest possible range of issues for consideration, including the content of international rules relating to government procurement and specific U.S. market access interests. The deadline for written comments is Friday, January 15, 1999.

Decisions on the potential improvement of the GPA will be based on consensus among the 26 participants to the Agreement. Decisions related to the development of a potential WTO Agreement on Transparency in Government Procurement will be based on consensus among WTO Members. This solicitation is intended to facilitate the Administration's preparation of U.S. proposals and positions for these negotiations, and acceptance of such proposals by participants.

FOR FURTHER INFORMATION CONTACT: For procedural questions on the provision of public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475. For questions relating to the substance of WTO negotiations on transparency in government procurement or of negotiations on the improvement of the GPA, contact John Ellis, Director for Government Procurement, at 202/395–3063.

SUPPLEMENTARY INFORMATION:

I. The WTO Working Group on Transparency in Government Procurement

At the December 1996 WTO Ministerial Conference in Singapore, WTO members agreed to "establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement." Taking into account the significant progress that has been made to date in the study phase of the Working Group's mandate, the trade ministers of the United States, the European Union, Japan, and Canada have called for the conclusion of a WTO agreement on transparency in government by the time of the Third WTO Ministerial Conference, scheduled for late 1999 in the United States.

II. The WTO Government Procurement Agreement (GPA)

The GPA, which entered into force on January 1, 1996, is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO "single undertaking" and its Membership is limited to WTO Members that specifically signed it in Marrakesh or that subsequently accede to it. The GPA's current Membership include the United States, the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), the Kingdom of the Netherlands with respect to Aruba, Canada, Hong Kong China, Israel, Japan, the Republic of Korea, Norway, Singapore, and Switzerland. Iceland,

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Panama and Chinese Taipei are in the process of negotiating accession. Under their protocols of accession to the WTO, Bulgaria, Mongolia and Slovenia have committed to join the GPA.

The GPA is the successor to the first international Agreement on Government Procurement, also known as the Government Procurement Code, which was negotiated during the 1975–1979 Tokyo Round and entered into effect on January 1, 1981. the GPA made important improvements to the Code, including prohibition on the use of offsets (unless specifically provided for in the GPA annex) and a requirement that each Party establish independent review bodies to rule on bid challenges. The GPA also provided significantly greater market access coverage, including the addition of commitments relating to a wide range of service sectors and the inclusion of sub-central (i.e., state) governments and government-owned enterprises. State procurement entities of 37 U.S. states are currently covered by the GPA.

The WTO Secretariat estimates that the value of government procurement opportunities covered under the GPA exceeds $400 billion annually. The export opportunities for U.S. products and services are immense, ranging from basic agricultural and other commodities to sophisticated services and manufactured goods and technologies.

To ensure that the rules of GPA remain up to date and to maintain progress in creating new trade opportunities in this area, Article XXIV.7 of the GPA specifically called for renewed negotiations within three years of the entry into force of the Agreement, i.e., by January 1, 1999. Many current GPA participants view these negotiations as an opportunity to simplify the Agreement in a way that will make it more accessible to a wider range of international participants.

A. Modalities for Negotiations

At its June 1998 meeting, the Committee of GPA Participants agreed to proceed with the negotiations called for under Article XXIV.7 on the following basis:

(1) The Committee will aim to complete negotiations on the simplification and improvement of the Agreement by the third WTO Ministerial at the end of 1999, with a view, in particular, to increasing the attractiveness of the Agreement to new members; and

(2) The Committee will, in parallel, continue work on the removal of discriminatory measures and practices incorporated in the individual members' annexes to the Agreement and on the expansion of the market access coverage.

The Committee agreed that Participants' formal proposals on the simplification and improvement of the Agreement should be submitted to the Committee no later than April 1999.

B. Substantive Issues

Issues for the review process that have been highlighted to date by GPA participants, and on which public comment is solicited, include:

(1) Whether the text of the GPA should be re-organized or simplified in order to make the Agreement more understandable to officials responsible for its implementation, while maintaining its effectiveness in ensuring open and competitive procurement procedures;

(2) Whether the Agreement should be updated to accommodate electronic communications and other emerging technologies used in modern procurement systems, while ensuring equitable access for potential suppliers with different technological capabilities;

(3) Whether the use of electronic communications and other emerging technologies allows for greater flexibility in the minimum time periods for submission of bids established under the Agreement, while ensuring that all international bidders have adequate time to participate;

(4) Whether the GPA's statistical reporting requirements can be simplified, while preserving participants' ability to effectively monitor implementation of the Agreement;

(5) Whether there should be greater flexibility for developing country participants in implementing GPA requirements and whether GPA participants' procuring entities should be more flexible in assessing developing country suppliers' bids on covered procurements;

(6) Whether specific conditions and exceptions to GPA participants' current market access commitments (in Appendix 1 to the Agreement) should be removed in order to provide more uniform and understandable GPA market access coverage; and

(7) Whether GPA participants' market access commitments should be expanded to cover additional goods and service sectors and additional central and sub-central government entities.

In the context of the GPA review process, the TPSC also seeks public comments on:

(1) Any specific GPA-participant procurement entities or markets not currently covered by the Agreement which, if covered, might be expected to offer significant new trade opportunities for U.S. suppliers and workers; and

(2) Any policies or practices of GPA participants or covered procuring entities which unfairly restrict U.S. suppliers' ability to participate in procurements covered by the Agreement, including discriminatory technical requirements and offset measures such as those listed in the footnote to Article XVI of the GPA.

Public Comments Requested

The TPSC invites written comments on U.S. objectives with respect to the various categories of issues identified above, including the agenda, scope, content and timetables for work and negotiations. Comments submitted should clearly indicate the category or categories of issues outlined in the submission.

Submission of Written Comments

Those persons wishing to submit written comments should provide ten (10) copies (in English) no later than January 15, 1999, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 122, 600 17th Street Northwest, Washington, D.C., 20508. Comments should state clearly the position taken and should describe the specific information supporting that information.

If the submission contains business confidential information, ten copies of a confidential version, and ten copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–32862 Filed 12–9–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–98–072]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Transportation has renewed the charter for the Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) to remain in effect for a period of two years from October 1, 1998, until October 1, 2000. HOGANSAC is a federal advisory committee constituted under 5 U.S.C. App. 1. Its purpose is to provide consultation and advice on matters relating to the transit of vessels and products to and from Galveston Bay, Texas, and the ports of Galveston, Texas City and Houston.

FOR FURTHER INFORMATION CONTACT: Captain Wayne D. Gusman, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Paula Carroll, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

Dated: November 19, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 98–32819 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Baltimore County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Baltimore County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. George K. Frick, Jr. Assistant Division Administrator, Federal Highway Administration, The Rotunda Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4342.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration, will prepare an environmental impact statement (EIS) for a proposal to provide improved highway access to the Middle River Employment Center (MREC) in Baltimore County, Maryland. The Middle River Employment Center is a designated growth area within Baltimore County intended for industrial and commercial development. The undeveloped portions of the MREC are not accessible at present. A roadway to access these properties is needed in order for the planned development of these properties to occur. The proposed roadway will provide more direct access to interstate commerce routes, promoting the economic growth of the existing businesses within the MREC.

A full range of alternates, which address the need to improve access to the MREC while minimizing impacts to environmental resources, are being considered. The project limits are from existing MD 43 and US 40 to MD 150, a distance of approximately three miles. Alternatives which have been retained for detailed study include a no-build alternative, as well as several build alternatives, all proposing a four-lane, partially access controlled roadway on new location. Modifications and improvements to the existing roadway network were initially considered. However, these improvements were unable to provide the access necessary to adequately promote the development of the MREC without extensive residential relocations and impacts to community facilities.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens and citizen groups who have previously expressed or are known to have an interest in this proposal. It is anticipated that a Public Hearing will be held in the Spring of 1999. The draft EIS will be available for public and agency review and comment prior to a Public Hearing. Public notice will be given of the availability of the Draft EIS for review and of the time and place of this hearing. An Alternates Public Workshop was held in June 1998.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Issued on: December 4, 1998.

George K. Frick, Jr.,

Assistant Division Administrator, Baltimore, Maryland.

[FR Doc. 98–32856 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Bernalillo County, NM

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of a revision to the project boundaries of the Gibson East Transportation Corridor Study. The western terminus of this project has been changed from Interstate 25 to Louisiana Boulevard and the eastern terminus has been changed from Interstate 40 to Central Avenue. The original corridor was 12.9 kilometers or 8.0 miles in length. The revised corridor is 6.1 kilometers or 3.8 miles in length. This revision represents logical termini for the proposed improvements since it basically connects the existing segment from Interstate 25 to Louisiana Boulevard with the existing segment from Central Avenue to Interstate 40. An Environmental Impact Statement will be prepared for the proposed transportation project in Bernalillo County.

FOR FURTHER INFORMATION CONTACT: Gregory D. Rawlings, Environmental Specialist, Federal Highway Administration, 604 W. San Mateo Road, Santa Fe, New Mexico 87505, Telephone: (505) 820–2027.

SUPPLEMENTARY INFORMATION:

Electronic Access: An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www/nara/gov./fedreg* and the Government Printing Offices database at: *http//www.access.gpo.gov/nara*

Background: On March 5, 1997, at 63 FR 10109, the FHWA issued a notice of intent that an environmental impact statement would be prepared for proposed improvements to Gibson Boulevard in Bernalillo County, New Mexico. The project termini were identified as Interstate 25 on the west and Interstate 40 on the east, a corridor of 12.9 kilometers or 8.0 miles in length.

The notice published today revises the 1997 notice of intent by revising the project termini. The western terminus of the project has been changed from Interstate 25 to Louisiana Boulevard. The eastern terminus has been changed from Interstate 40 to Central Avenue. The revised corridor is 6.1 kilometers or 3.8 miles in length. This revision represents logical termini for the proposed improvements since it basically connects the existing segment from Interstate 25 to Louisiana Boulevard with the existing segment from Central Avenue to Interstate 40.

A corridor Analysis Report which constitutes the major investment study for the corridor was prepared by the City of Albuquerque. Based on that report and extensive agency and public input received through numerous outreach efforts, the Urban Transportation Planning Policy Board of the Middle Rio Grande Council of Governments (UTPPB), the designated Metropolitan Planning Organization for the Albuquerque, New Mexico urban area concluded by resolution that the preferred transportation investment strategy for the Gibson Boulevard corridor from Interstate 25 to Interstate 40 will include: An access controlled arterial roadway that will have provision for automobiles, bus transit, and bicycles; Off-street bicycle transit, and pedestrian facilities; and Other as yet unidentified high capacity transit strategies such as light rail, dedicated busways, or expressbus service for the portion of the corridor between I–25 and Eubank Boulevard. In addition, the UTPPB recommended that only the portion of the Gibson Corridor between Louisiana Boulevard and Central Avenue be advanced for detailed analysis and environmental clearance. The FHWA, in cooperation with the Department of the Air Force, New Mexico State Highway and Transportation Department and the City of Albuquerque is preparing an Environmental Impact Statement for proposed improvements in the Gibson Corridor between Louisiana Boulevard and Central Avenue.

The draft EIA will consider the preferred transportation investment strategy and the No-Build Alternative. The draft EIS will be available for public and agency review, and a public hearing will be held to receive comments. Public notice will be given as to the time and place of the public hearing. Comments and/or suggestions from all interested parties are requested to ensure that the full range of all issues are identified and reviewed. Comments or questions concerning this proposed action and/or its EIS should be directed to the FHWA at the address listed previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities and 23 U.S.C. 315; 49 CFR 1.48 apply to this program)

Issued on: November 30, 1998.

Gregory D. Rawlings,

Environmental Specialist, Santa Fe, New Mexico.

[FR Doc. 98–32850 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

FTA Fiscal Year 1999 Apportionments, Allocations and Program Information; Notice of Correction

AGENCY: Federal Transit Administration, DOT.

ACTION: Correction.

SUMMARY: This notice corrects the Department of Transportation, Federal Transit Administration Notice entitled 1999 Apportionments, Allocations and Program Information, printed in the **Federal Register** on November 6, 1998:

On page 60058, third column, *Section F. Fiscal Year 1999 Operating Assistance,* the last paragraph should read: "The Omnibus Appropriations Act amended Section 3027 of TEA–21 (which in turn amended 49 U.S.C. 5336 regarding use of operating assistance in large urbanized areas) to allow transit providers of services to the elderly and disabled that operate 20 or fewer vehicles and are located in urbanized areas with a population of a least 200,000 to use Federal funds to finance the operating costs of equipment and facilities used by the transit provider in providing mass transit services to elderly persons and persons with disabilities, providing that such assistance to all entities should not exceed $1,000,000 annually." The November 6, 1998, notice mistakenly read $1,000,000,000 rather than $1,000,000 in the last line.

Issued on: December 7, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–32899 Filed 12–9–98; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Commission To Study Capital Budgeting (Advisory Commission to the President of the United States)

ACTION: Notice of meeting.

SUMMARY: The agenda for the next meeting on Friday, December 18, 1998, of the Commission to Study Capital Budgeting includes the review and discussion of the third draft of its final report. The final report on capital budgeting is scheduled for release in January 1999. Meetings are open to the public. Limited seating capacity is available.

Date, Time and Place of the Next Commission Meeting

December 18, 1998, 9:00 a.m. to 5:00 p.m.

White House Conference Center,
Truman Room (9:00 a.m. to Noon),
Lincoln Room (Noon to 5:00 p.m.),
726 Jackson Place, NW, Washington, DC 20503

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to:

Dick Emery, Executive Director,
President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258),
Washington, DC 20503

Voice: (202) 395–4630
Fax: (202) 395–6170
E-Mail: capital_budget@omb.eop.gov
Website: http://www.whitehouse.gov/WH/EOP/OMB/PCSCB/

Please check the Commission-Website for notice to cancel or change the date of the Commission meeting, time of meeting, or venue.

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Ph.D., Designated Federal Official, Room 4456, Main Treasury, Washington, DC 20220

Voice: (202) 622–1285
Fax: (202) 622–1294
E-Mail:
william.dinkelacker@treas.sprint.com

Angel E. Ray,

Committee Management Officer.

[FR Doc. 98–32805 Filed 12–9–98; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Training Programs in Central and Eastern Europe; Notice: Request for Proposals

SUMMARY: The Office of Citizen Exchange of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. U.S. public and private non-profit organizations meeting the provision described in IRS regulation 26 CFR 1.501(C) may submit proposals to develop training programs. Grants are submit to the availability of funds.

Program Information

Overview

USIA is interested in proposals that encourage the growth of democratic institutions in Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, and Slovenia. Exchanges and training programs supported by Office of Citizen Exchanges institutional grants should operate at two levels: they should enhance institutional relationships, and they should offer practical information to individuals to assist them with their professional responsibility. Strong proposals usually have the following characteristics: an existing partner relationship between an American organization and an in-country institution in one of the countries targeted in this announcement; a proven track record of conducting program activity; cost-sharing from American or in-country sources, including donations of air fares, hotel and/or housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results and continuing activity will be implemented as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective American and Central/Eastern European grantee institutions, as well as funding from third party sources.

Unless otherwise specified below, project activities may include: internships; study tours; short-term training; consultations; and extended, intensive workshops taking place as a two-way exchange in the United States and in Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, and Slovenia. Proposals should reflect the applicants' understanding of the political, economic, and social environment in which the program activity will take place. Program designs based on a one-way exchange will be considered under circumstances where the proposal outlines an exceptional program.

USIA is interested in proposals whose designs take into account the need for ongoing sharing of information, training and concrete plans for self-sustainability. Examples include: support for training centers in the target countries; plans to create professional networks or professional associations to share information; establishing ongoing Internet communication; and/or "train the trainers" models.

USIA recommends that programs with a U.S. component include letters of commitment from host institutions, even if tentative. Letters of commitment from any in-country partners should also be provided. Applicants are strongly encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post(s) throughout the grant period.

USIA will consider proposals that respond to the following country-specific topics for the countries listed below. Themes have been developed in consultation with the Central and Eastern European USIS offices and USIA's Office of Eastern European and NIS Affairs.

For the following project, priority will be given to single country proposals; however, proposals for projects in both Bosnia and Serbia will also be considered. A total of $500,000 has been set aside for both countries. $200,000 is for Bosnia. $300,000 is for Serbia, out of which $100,000 is designated for activities in Kosovo.

1. For Bosnia and Serbia

INTERNET training for journalists.

The goal of this project is to create Internet access in newsrooms of major media outlets (both print and broadcast) and to provide training from a U.S. expert or experts on how to include Internet-based information in local reporting. The program should include training on how to set up Web sites for newspapers and broadcast outlets. The U.S. team could also work with interested broadcasters to develop public-service programs on the Internet. The project budget may include costs to cover equipment purchases and Internet access, if necessary.

For the following project, priority will be given to proposals in the range of $160,000 to $210,000.

1. For Bosnia, Bulgaria, Macedonia, and Serbia Media Internships. Applicants must submit proposals that include all of the countries listed above.

The development of a free and open media has been described as fundamental in the development of democratic societies in Central and Eastern Europe. USIA is looking for proposals that will provide media training for journalists and media managers. The program should include a week-long orientation, an internship program of approximately six weeks in small to medium-sized media organizations, and a three-day debriefing. Participants should be from print, radio and television. USIS posts reserve the right to nominate participants for the media internships. Please note the following requirements for individual posts:

BOSNIA: 6 participants
BULGARIA: 1 participant
MACEDONIA: 10 10 12 participants
SERBIA: 2 participants

For the following six projects, priority will be given to proposals in the range of $80,000 to $120,000.

1. For Czech Republic, Hungary, Romania, Slovakia and Slovenia

Reform of Court Administration. Applicants must submit proposals that include all of the countries listed above.

Judicial reform has become increasingly important throughout Central Europe as governments, legal professionals, and concerned citizens recognize the need for a modern, efficient court system to keep pace with the social, economic, and political changes in their countries. Legal experts note that courts throughout the region are overburdened, inefficient, and unresponsive to citizens. This exchange should focus on promoting an independent judiciary in Central Europe by exposing judicial and legal practitioners from the five Central European countries listed above to U.S. court structures, to functions, practices and characteristics of the American judiciary, and to U.S. court management and administration practices. Two participants from each country—one lawyer and one judge, both fluent English speakers—should spend approximately two weeks in the U.S. The first week should consist of training and the second week should be in a U.S. city other than Washington, where participants would visit courts at all levels, bar associations and prisons. In phase two of the program American experts would visit the five countries to address in more detail topics identified by the participants. Rather than expecting all members of the U.S. group to visit all five countries, we recommend that the American participants split up according to their expertise and the requests of the Central European hosts.

2. For Poland

Strategic planning for universities.

The concept of strategic planning for universities is just now developing in Poland. USIA welcomes proposals on how to use more effectively the universities' resources (financial, human, and physical) to implement their mission and reach their long-term goals. Project activities could include a country-wide workshop for Polish university rectors, vice rectors and deans on how to implement strategic planning. A second phase could consist of a U.S. program for a selected number of participants. The program should be geared to non-English speakers. Priority will be given to proposals from U.S. institutions with existing links with Poland.

3. For Slovenia and Bosnia

Intellectual Property Rights. Single and multi-country projects are eligible.

Although some Central and Eastern European countries have made strides in upholding intellectual property rights, there remain significant problems regarding software piracy, illegal cable retransmission of satellite broadcasts, illegal photocopying of protected works, illegal reproduction of protected works for direct commercial gain, and intellectual property and the Internet. Proposals should focus on intellectual property rights (IPR), with a special concentration on copyright protection for films/videos, music recordings, computer software, and similar products subject to piracy. USIA is interested in proposals that help local organizations develop advocacy skills for intellectual property rights issues through training and consultations by American experts. Proposals might also provide expertise and training in how to set up indigenous NGOs in the field of Intellectual Property Rights that would have as their goal that of promoting the awareness and respect of Intellectual Property Rights. Participants should include: (1) government officials responsible both for drafting and enforcing laws and regulations; (2) lawyers, judges and distributors or licensing organizations involved with presenting and deciding infringement cases; and (3) press and media, to engage them in raising public consciousness about IPR protection.

4. For Bosnia, Poland and Lithuania

Media Training for Government Spokespersons. Single and multi-country projects are eligible.

As governments in Central and Eastern Europe begin to communicate more openly with their citizens, the role of the government spokesperson takes on greater importance. USIA is interested in proposals that focus on public affairs and public information as they are handled by government institutions. Program activities should cover such topics as spokesperson skills and the government's responsibility to provide accurate, timely information to the public, especially to journalists. For the Polish participants, the emphasis should be on spokespersons for local government institutions.

5. For Slovakia

Fundraising for universities.

Universities in Slovakia are entirely funded by the national budget. Because any fees the universities may receive are taken by the central government, there is little to no incentive for universities to make money selling services. At the same time the government is under great pressure to provide a college education to more young people without increased budget resources for education. USIA is interested, therefore, in proposals that will assist Slovakian universities in developing a healthier funding base. Proposals should examine various strategies for universities to gain financial autonomy. Public-private financing of higher education and its legislative underpinning might also be discussed. Proposals should engage Slovak institutions with an interest in higher education. Participants might include university administrators; members of the national association of rectors, the Slovak Academic Information Agency, or other education-focused organizations; the Ministry of Education; and/or relevant members of parliament.

6. For Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, and Slovenia

Fundraising for NGOs. Single and multi-country projects are eligible.

Non-governmental organizations in Central and Eastern Europe have lessened their dependency on foreign donors and are beginning to raise money from in-country sources. USIA is interested in proposals that encourage local businesses to support community development. Proposals should demonstrate the benefits of corporate giving not only to worthy causes but to the businesses themselves. Proposals should offer fundraising training such as grant writing to non-governmental organizations. The reform of tax codes to encourage charitable donations by businesses and individuals could also be addressed.

For the following project, priority will be given to proposals in the range of $60,000 to $100,000.

1. For Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia

Women's Leadership Training Programs. Proposals for single and multi-country projects are eligible.

Proposals should offer leadership training skills to representatives of women's organizations who are active in their own communities. The focus of the training programs should be on how to identify priorities, organize and form coalitions and conduct advocacy training regarding specific issues important to local communities and regions. Media and public relations training could also be included. Proposals are not limited to a one-country focus but may address how to build networks among women's organizations in several countries. Prospective grantee institutions should identify the Central and Eastern European local organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative programming and contacts. Program activity may take place in Central and Eastern Europe or in the United States. Applicants should consider developing action plans during the project so that activities may be continued after the expiration of the grant. USIA welcomes projects for non-English speakers and for participants outside of the capital cities.

Selection of Participants

Successful applications should include a description of how participants will be recruited and selected. In the selection of foreign participants, USIA and USIS posts abroad retain the right to nominate participants and to approve or reject participants recommended by the grantee institution. Priority will be given to foreign participants who have not traveled to the United States.

Visa Regulations

Foreign participants on programs sponsored by the Office of Citizen Exchanges are granted J–1 Exchange Visitor visas by the U.S. Embassy in the spending country. All programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program components, phase, location, or activity in order to facilitate USIA decisions on funding. While a comprehensive line item budget based on the model in the Solicitation Package must be submitted, separate component budgets are optional.

Allowable costs for the program include the following:

1. International and domestic air fares; foreign visa fees for outbound Americans; transit costs; ground transportation costs.

2. Per diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual U.S. cities. For activities outside of the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be a part of the applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental. Room rental should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–$8 for a lunch and $14–$20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 may be provided to each participant to be used for incidental expenditures during international travel.

10. All USIA-funded delegates will be covered under the terms of the USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Administrative Costs. Other costs necessary for the effective administration of the program including salaries for grant organization employees, benefits and other direct and indirect costs as described in the detailed instructions in the application package. While this announcement does not proscribe a rigid ratio of administrative to program costs, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) percent of the total requested from USIA. Proposals should show cost-sharing, including both contributions from the applicant and from other sources.

Please refer to the Application Package for complete budget guidelines.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number E/P–99–20.

FOR FURTHER INFORMATION, CONTACT: The Office of Citizen Exchanges, E/PE, Room 220, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, attn: Christina Miner, tel.: (202) 401–7342, fax: (202) 619–4350, or Internet address: cminer@usia.gov, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Christina Miner on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/401–7616. The "Table of Contents" listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Tuesday, February 23, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and twelve copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–99–20, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provide that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide

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opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 1000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of NIS and Eastern European Affairs and the USIA posts overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning and Ability to Achieve Objectives

Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the included countries. Objectives should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved, including a timetable for completion of major tasks and activities and an outline of the selection process. The substance of the seminars, presentations, workshops, consulting, internships and itineraries should be spelled out in detail. Responsibilities of in-country partners should be clearly described. A plan for the recruitment and selection of participants should also be included.

2. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selections of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposals should reflect the institution's expertise in the subject area and knowledge of the conditions in the targeted country of counties.

5. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA supported programs are not isolated events.

6. Project Evaluation

Proposals should include a plan to evaluate the program's success, both as activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives.

7. Cost-Effectiveness and Cost Sharing

Overhead and administrative costs in the proposal, including salaries, subcontracts for services and honoraria, should be kept low. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Fulbright-Hays Act and Support for Eastern European Democracy Act (SEED).

Notice

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 28, 1998.

William B. Bader,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–32640 Filed 12–9–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

NIS Secondary School Partnership Program; Notice: Request for Proposals

SUMMARY: The Office of Citizen Exchange, Youth Programs Division, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the NIS Secondary School Partnership Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501© may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, or Ukraine. All submissions must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component. The maximum grant award will be $200,000.

Program Information

The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a minimum of two U.S. secondary schools to form the U.S. network; strengthening an existing working relationship with an organization or agency of government in the NIS responsible for a network of at least two schools there: and linking the two networks through a thematic project and substantive exchange activities.

Overview: The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and NIS schools featuring collaborative substantive projects and student and educator exchanges. Grant-funded exchanges must have a thematic focus and have tangible outcomes, such as the development of educational materials.

The long-term goals are to: (1) advance mutual understanding between the U.S. and the NIS; (2) develop lasting institutional ties between U.S. and NIS schools and communities; and (3) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that hold promise for a sustainable program beyond the grant term and serve the needs and interests of the schools.

The linked network of secondary schools in the United States and network of schools in the NIS must establish or expand ties between the schools in the network through joint project activity and two sets of exchange programs: 1) the exchange of secondary school students, from 14 to 18 years of age, between the U.S. and participating NIS countries, and 2) the exchange of secondary school educators (teachers and/or administrators) between the U.S. and NIS countries.

Guidelines: A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this intitative; that is, there should be an inherent reason for their linkage apart from the availability of grant funds.

In general, USIA seeks school partnerships that target under-served countries or regions. For programs with Russia, priority will be given to partnerships with schools located outside of the Moscow and St. Petersburg regions. Proposals that feature networks in the cities and regions noted below will be given priority consideration. These cities are former nuclear and/or chemical weapon manufacturing locations in Russia: Gorny, Kambarka, Kizner, Leonidovka, Lesnoy, Maradykovsky, Novouralisk, Ozersk, Pochep, Sarov, Seversk, Shchuchye, Snezhninsk, Trekhgnornyy, Zarechnyy, Zelenogorsk, Zheleznogorsk.

Russian Regional Investment Initiative sites: Novgorod, Samara, and the Russian Far East (Khabarovsk and Sakhalin).

Organizers and school networks in the U.S. and NIS should collaborate in planning and preparation. Applicants must have an NIS organizational partner that has its base of operation in the partner country and not in another country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project. The proposal should specify up front what the measurable goals and objectives of the program will be. Each school partnership must also provide a statement of goals and objectives for their exchange.

USIA funding may not be used to supplant existing private sector funding. Applicants must indicate how activities have been funded in the past and how the activities will be expanded with assistance from USIA. Competitive proposals must demonstrate a solid and comprehensive follow-on plan to continue after the grant has expired.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Applicants should present a program that succeeds in linking the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include but are not limited to the following: civic education, health education, environmental issues, youth leadership training, volunteerism/community service, conflict resolution, computer technology, multicultural education, agriculture, and business management.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, "shadowing" of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools, teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive. Although educators can certainly travel with student groups, a group of educators could travel separately if an organization developed such a program.

The U.S. recipient of the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep USIA/USIS informed of its progress; (4) manage all travel arrangements, logistics, passports, visas, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of the assistance award are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants from the U.S. and the NIS in the exchange components of the program must be merit-based; the proposal should describe the mechanisms used for participant selection. Participants (both Educators and Students) from the U.S. and the NIS countries should represent a diversity of backgrounds

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(racial, geographic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Because the ultimate goal of this program is self-sufficiency, school partnerships that have received USIA funding under the NIS Secondary School Initiative for a total of three years are only eligible to receive up to $20,000 for NIS participant travel costs, per diem, and allowances.

Significant cost-sharing is mandatory in all proposals and those that show more generous and creative cost-sharing will be more favorably viewed. Proposals that contain non-USIA funded items such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, state/national capital civics programs, and other significant items will be more competitive proposals than those that do not. However, NIS participants may not be charged to participate in the program, aside from paying for in-country costs (such as transportation to the point of departure), the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Programs must comply with J–1 visa regulations. The Agency will process the IAP–66 forms for travel to the United States. Applicant organizations are required to use the USIA Accident and Sickness Program for Exchanges (ASPE) for participants in USIA-funded exchanges. Applicants who choose not to use the USIA plan must demonstrate that an alternative plan (1) provides comparable or better coverage, and (2) costs less. Please refer to the Program Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $200,000. The Agency has set country allocations for this competition and all proposals must adhere to these maximum amounts per country.

Only partnerships between secondary schools in the United States and these countries are eligible for this competition.

These amounts are approximate: Armenia $100,000; Azerbaijan $150,000; Belarus $200,000; Georgia $100,000; Moldova $100,000; Russia $350,000; Ukraine $250,000.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S. or NIS participants. The cost per NIS student, NIS educator, U.S. student, and U.S. educator should be listed separately. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement title and number: All correspondence with USIA concerning this RFP should reference the above title and number E/PY–99–26.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 619–6299; fax: (202) 619–5311; E-mail: clantz@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To download a solicitation package via internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a solicitation package via fax on demand: The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling (202) 401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for proposals: All proposal copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, DC time on Friday, February 12, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/PY–99–26, Office of Grants Management, Room 568, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, USIA shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA posts overseas. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Programmatic planning, objectives, and quality:* The program should demonstrate originality, substance, precision and relevance to the Agency's mission. Applicant organizations should demonstrate sound judgment in all aspects of the program design and a thorough understanding of the NIS. A detailed agenda and relevant work plan should adhere to the program overview and guidelines described. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should also include creative ways to involve project participants in their host schools and communities.

3. *Institutional Capacity and Record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants. An organization's track record will be evaluated based on the achievement of stated goals and impact on schools in the U.S. and NIS.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants and host families, program venue, and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Cost-effectiveness/cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Overall per-participant costs will be a factor in the review of the proposal. Proposals should maximize cost-sharing through U.S. participant contributions and other private sector support as well as institutional direct funding contributions. Applicants should indicate sources of funds for cost-sharing.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) ensuring that USIA supported programs are not isolated events.

7. *Project Evaluation:* Proposals must include a plan to evaluate the project, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus a description of a methodology to use in linking outcomes to original project objectives for each school partnership. Successful applicants will be expected to submit reports on each partnership.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 5, 1998.

William B. Bader,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–32829 Filed 12–9–98; 8:45 am]

BILLING CODE 8230-01-M

UNITED STATES INFORMATION AGENCY

Summer Institute in Social Science Research and Public Policy for Ukrainian Social Scientists; Notice: Request for Proposals (RFP)

SUMMARY: The Branch for the Study of the United States of the U.S. Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(C) may apply to develop and implement a post-graduate level academic institute and related programs

for a group of 18 Ukrainian social scientists.

The U.S. Information Agency proposes to assist Ukraine through a joint initiative with the European Union (EU) to train young Ukrainian social scientists through an intensive six-week academic Summer Institute in the United States and through joint follow-on activities in Ukraine. Additionally, the EU plans to award a grant to a European "partner" organization that will implement a parallel academic institute in Europe. The program is intended to provide participants with a deeper understanding of contemporary social science theory and research methods, together with an understanding of how theoretical and empirical research informs the development and implementation of public policy in the United States in the fields of economics, political science and public administration. USIA-funded activities will include a U.S.-based academic institute in the Summer of 1999; joint follow-on workshops in Ukraine during the 1999–2000 academic year; and, a wrap-up conference in Ukraine in Fall of 2000. The EU-funded academic institute will be held in the Summer of 2000 at a European site yet to be determined.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: public policy, public administration, political science, economics, and/or other disciplines or sub-disciplines related to the program theme. Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and *must have a minimum of four years experience in conducting international exchange programs.* The project director of one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the USIA cooperative agreement must have demonstrated qualifications for this service.

Programs must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA programs are subject to the availability of funds.

Program Information

Overview: The U.S. Information Agency, in cooperation with the European Union, proposes to assist Ukraine through a joint initiative aimed at Ukrainian social scientists. Envisioned is a program on social science research methods and public policy that will offer Ukrainian faculty in the early stages of their careers the opportunity for an intensive program on how contemporary social science theory and methods in the fields of political science, economics and public administration are brought to bear on public policy issues.

The program will proceed in five separate phases. Proposals for USIA funding should present a program plan and tentative budget for each of the activities below:

(1) In the first phase, a representative from the U.S. grantee institution will travel to Ukraine with a colleague from the European grantee institution that will be designated as the "partner" organization (to be identified by the EU). These individuals will survey the current status of social science research at Ukrainian universities and make a preliminary identification of candidates for the Summer Institute programs in the U.S. and Europe. The proposal for USIA funding should estimate the travel and subsistence costs of U.S. staff for this trip.

(2) In the second phase, the U.S. grantee institution will conduct an intensive U.S.-based academic Summer Institute of six weeks' duration, the elements of which are outlined in detail below. From the perspective of the U.S. grantee institution, this second phase will be the central activity of the grant award, and a detailed program proposal and comprehensive budget should be submitted.

(3) In the third phase, to be implemented during the 1999–2000 academic year, the U.S. grantee institution and European partner organization will conduct approximately five days of joint follow-on workshops in Ukraine. The exact focus of these workshops will be determined at a later date, based on issues and interests identified during the U.S.-based Summer Institute, and on consultations with the European partner organization. The proposal for USIA funding should estimate all of the costs associated with these workshops, including local administrative and venue costs, as well as travel and subsistence for U.S. staff and 18 Ukrainian participants. However, costs for participation of staff from the European partner organization need not be included.

(4) In the fourth phase, which will take place in the Summer of 2000, the European partner organization will plan and implement an academic institute in Europe for a separate group of 18 Ukrainian social scientists. This Institute will be fully funded by the European Union, and the U.S. grantee organization will not be directly involved. However, a representative of the U.S. grantee institution should plan to travel to Europe to observe at least one week of this activity, and estimated travel and subsistence costs associated with this trip should be included in the budget submission.

(5) The fifth phase of the project will take place in the Fall of 2000, and will consist of a joint U.S.-European Union wrap-up conference in Ukraine, approximately three days in length. The proposal for USIA funding should estimate all of the costs associated with the conference, including local administrative costs and venue costs, and travel and subsistence for U.S. staff and a total of 36 Ukrainian participants. However, costs for participation of staff from the European partner organization need not be included.

Objectives: In the United States, public policy issues are debated within an institutional framework that is informed by the theoretical and empirical findings of social science scholarship—in economics, political science and public administration—thus impacting the daily work of officials in the public policy arena, be they elected officials, government managers, or public policy professionals, who are required to make decisions and implement concrete courses of action on a range of issues.

Public policy issues often resist easy solution—partly because of the difficulty in bringing scholarly research (whether theoretical or empirical) to bear on daily institutional practice; partly because of the complex nature of the issues themselves, which frequently involve political, economic and management elements that overlap in complex and often unexpected ways; and, partly by the constraints inherent in democratic decision-making.

The purpose of the six-week Summer Institute is to offer 18 Ukrainian social scientists the opportunity to explore current theory in the social sciences and to examine how the available theoretical models and empirical methodologies can be brought to bear on contemporary public policy issues. In so doing, the program should illuminate how social science scholarship influences the way in which public policy issues are framed, addressed, debated, and resolved.

The program should proceed thematically by examining selected concrete problems, or case studies, in public policy at various levels of government. Among the possible areas that might be examined through the case studies presented are Education, Labor, Banking and Financial markets, Economic Development, Trade, Macroeconomic Policy, the Environment, Security and Public Safety, Health and Welfare, and Media and Communications. For each case studied, attention should be given to current models used by researchers in political science, economics, and public administration.

The Summer Institute program must be at least six weeks in length, and must include an academic residency segment of at least five weeks at a U.S. college or university campus (or other appropriate location). In addition, a study tour segment of up to one week in length may be added at the discretion of organizers. If so, the study tour segment should, directly and substantively complement the academic program and should, ideally, entail a visit to at least one other region of the United States. Alternately, the program might include shorter, occasional site visits throughout the program.

The Summer Institute should be designed as an intensive, academically rigorous program that is organized through an integrated series of lectures, readings, seminar discussions, research and independent study opportunities, faculty consultations, site visits and, if appropriate, regional travel.

Institutions submitting proposals are encouraged to design thematically coherent programs in ways that draw upon the particular strengths and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of the program's organizing framework, the grantee institution should:

A. Ensure that the program's introductory sessions, as well as any pre-departure materials sent to grantees, provide a broad historical and intellectual context for the program that will follow. In addition, opening lectures should provide an overview of the program in its entirety, delineating the Institute's overarching theme as well as the way in which the program's various topics will be integrated into the program and explicitly illuminate that theme;

B. Provide participants with a survey of current scholarship and scholarly trends within the social sciences, with particular attention to current research methods and models in political science, economics, and public administration;

C. Bring an interdisciplinary or multi-disciplinary perspectives to bear on each case study undertaken;

D. Give participants a multi-dimensional view of U.S. social science and the complexity of public policy issues by reflecting a broad range of academic perspectives as well as a broad range of views from experts outside the university, such as government officials, public intellectuals, think tank representatives, and other professionals in the public policy arena; and,

E. Ensure access to extensive bibliographic and material resources that will enable grantees to continue their research and study after returning to their home institutions. In addition, the bibliography for the program as a whole must include at least one major survey text for each of the Summer Institute's governing disciplines as well as a number of broad interpretive works directly related to the program's central theme.

Program Dates: The initial trip to Ukraine to survey social science research at local universities (phase one) should be tentatively planned to take place during April-May of 1999. Tentative program dates for the U.S.-based academic Summer Institute program (phase two) are any six-week period between June 1 and August 15, 1999. USIA is willing to consider adjustment of these programs dates, based on the needs of the host institution. However, the Institute must be a minimum of 42 program days in length, and a major portion of the program should take place within the above period. The follow-on workshops in Ukraine should be planned to take place during the 1999–2000 academic year, and the wrap-up conference in Ukraine should take place in the Fall of 2000.

Participants: Program activities should be designed for a total of 18 highly-motivated and experienced Ukrainian social scientists who are interested in acquiring knowledge about how public policy issues are studied and addressed in the U.S. Participants will use the knowledge gained from the Institute to assist them with their own professional research and development, to improve social science instruction in universities in the Ukraine, and to advise government officials at various levels of government on public policy issues.

Most participants can be expected to come from educational institutions where the social sciences are not well-developed. Most will be younger faculty members who are eager to participate in an intensive program on how social science research can be applied to pressing problems and issues in the public policy arena. Most will have had limited study or travel experience in the United States. Participants will be fluent in English.

Participants will be nominated by U.S. Information Service in Kiev. USIA will cover all international travel costs for Ukrainian participants directly.

Program Guidelines: The conception, structure and content of the program is entirely the responsibility of the organizers. However, given the multiple possibilities for the successful design of such a program, potential grant recipients are expected to submit proposals that articulate in concrete and specific detail how they intend to organize and implement it.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines: Unless special circumstances warrant, based on a group of 18 participants, the total USIA-funded budget (program and administrative) should not exceed $264,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $80,000.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please note that these figures do not include costs for international travel of the Ukrainian grantees in Phase Two of the program (the U.S.-based Summer Institute). However, they do include costs for domestic and international travel and subsistence of U.S. personnel for all phases of the program. They also include all administrative and program costs associated with the Phase Three workshops and the Phase Five conference in Ukraine, including the subsistence and estimated in-country travel costs for Ukrainian participants.

Please refer to the "POGI" in the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement name and number: All communications with USIA concerning this announcement should refer to the following title and reference number: Summer Institute in Social Science Research (E/AES–99–13).

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AES—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, Attention: William Bate; Telephone number: (202) 619–4557; Fax number: (202) 619–6790; Internet address: wbate@usia.gov.

Please specify USIA Program Officer William Bate on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To download a solicitation package via internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a solicitation package via fax on demand: The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/401–7616. The "Table of Contents" listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, D.C. time on Monday, February 22, 1999. Faxed documents will not be accepted, nor will documents postmarked February 22, 1999 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Reference: E/AES–99–13, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants should also submit the "Executive Summary" and Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program-specific requirements, including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Geographic Area Offices. Eligible proposals will then be forwarded to panels of senior USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of the institute. Program should reflect an overall design whose various elements are coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of U.S. scholarship as well as its leading edge.

2. *Program Planning:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component, if included, should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment.

3. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. This can be accomplished through

documentation, such as a written statement, summarizing past and/or ongoing activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators. Experience in working in the Ukraine or conducting Ukrainian exchanges is a positive factor.

6. *Evaluation and Follow-up:* The proposal should include a plan for evaluating activities during the Summer Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Administration and Management:* The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. *Cost Effectiveness:* The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries. * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: December 5, 1998.

William Bader,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–32830 Filed 12–9–98; 8:45 am]

BILLING CODE 8230-01-M

Corrections

Federal Register
Vol. 63, No. 237
Thursday, December 10, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–80–000]

Natural Gas Pipeline Company of America; Notice of Application

Correction

In notice document 98–32162, appearing on page 66792, in the issue of Thursday, December 3, 1998, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–399]

General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by African Trading Partners

Correction

In notice document 98–30886, beginning on page 64274, in the issue of Thursday, November 19, 1998, make the following correction:

On page 64275, in the second column, in the eighth line from the bottom; after "business on", remove "4".

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federal register

Thursday
December 10, 1998

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 11 and 52
Federal Acquisition Regulation; OMB Circular A–119; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAR Case 98–004]

RIN 9000–AI12

Federal Acquisition Regulation; OMB Circular A–119

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A–119.

DATES: Comments should be submitted on or before February 8, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Ms. Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–004@gsa.gov. Please cite FAR case 98–004 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 98–004.

SUPPLEMENTARY INFORMATION:

A. Background

On February 19, 1998, a newly revised OMB Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," was published in the **Federal Register** at 63 FR 8545, February 19, 1998. This proposed rule amends FAR Subparts 11.1 and 11.2, and provides a new solicitation provision at 52.211–XX to implement the revised OMB circular.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely amends the FAR to reflect the Government's preference for the use of voluntary consensus standards in accordance with OMB Circular A–119, and permits, but does not require, offerors to propose alternatives to Government-unique standards when responding to Government solicitations. An Initial Regulatory Flexibility Analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98–004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for review of a new information collection requirement concerning OMB Circular A–119 will be submitted to OMB under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: *Respondents:* 100; *Responses per respondent:* 1; *Total annual responses:* 100; *Preparation hours per response:* 1; and *Total response burden hours:* 100.

D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW. Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under **ADDRESSES**. Please cite FAR Case 98–004 in all correspondence.

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Victoria Moss,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 11 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 11 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Section 11.101 is amended by adding paragraph (c) to read as follows:

11.101 Order of precedence for requirements documents.

* * * * *

(c) In accordance with OMB Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," agencies shall use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. Voluntary consensus standards are developed and administered by the private sector and are not mandated by law (*e.g.* industry standards such as ISO 9000).

3. Section 11.10X is added to read as follows:

11.10X Solicitation provision.

The contracting officer shall insert the provision at 52.211–XX, Alternatives to Government-Unique Standards, in solicitations that use Government-unique standards instead of voluntary consensus standards, when the agency uses the transaction-based reporting method to report their use of voluntary consensus standards to the National Institute of Standards and Technology (see OMB Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"). Agencies that report their use of voluntary consensus standards to the National Institute of Standards and Technology using the categorical reporting method do not need to include the provision at 52.211–XX. The transaction based method of reporting is used by agencies that manage their specifications on a contract-by-contract basis. The categorical method of reporting is used by agencies that manage their specifications centrally. Agency regulations regarding specification management describe which method is used.

4. Section 11.201 is amended by revising paragraph (e) to read as follows:

11.201 Identification and availability of specifications.

* * * * *

(e) DoD activities may obtain from the DoDSSP those nongovernment standards, including voluntary consensus standards, adopted for use by defense activities. Other activities may obtain nongovernment standards from the National Institute of Standards and Technology, Government libraries, activities subscribing to document handling services or the organization responsible for the preparation, publication or maintenance of the standard.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.211–XX is added to read as follows:

52.211–XX Alternatives to Government-Unique Standards.

As prescribed in 11.10X, insert the following provision:

Alternatives to Government—Unique Standards [Date]

(a) Offerors are responsible for reviewing all requirements of this solicitation, including all standards.

(b) Offerors may propose alternatives to Government-unique standards that meet the Government's requirements. If an alternative is proposed, the offeror must furnish data and/or information regarding the alternative standard in sufficient detail for the Government to determine if the alternative meets the Government's requirements. The Contracting Officer will have sole discretion to determine whether it is in the Government's best interest to apply any proposed alternative to this acquisition.

(End of clause)

[FR Doc. 98–32794 Filed 12–9–98; 8:45 am]

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December 10, 1998

Part III

Department of Transportation

Request for Participation in the Bus Rapid Transit Demonstration Program; Notice

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DEPARTMENT OF TRANSPORTATION

Request for Participation in the Bus Rapid Transit Demonstration Program

AGENCY: Federal Transit Administration (FTA).

ACTION: Notice.

SUMMARY: In this Notice, FTA announces it is soliciting Requests for Participation in its Bus Rapid Transit Demonstration Program. This solicitation is extended to public agencies responsible for developing, implementing, operating and maintaining public transportation in the U.S. The Federal Transit Administration encourages partnerships with other local and state stakeholders and private companies involved in public transportation.

DATES: Responses to this solicitation must be submitted by 4 p.m., Eastern Time, on or before February 8, 1999. Requests for Participation shall not exceed thirty (30) pages in length, including title, index, tables, maps, and exclusive of appendices, abstracts, resumes and other supporting materials. A page is defined as one side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font 12 pt. The transmittal letter shall include the name, address and telephone number of the individual to whom correspondence and questions may be directed.

A conference for prospective participants in the Bus Rapid Transit Demonstration Program will be held on January 8, 1999 from 1:00 PM to 5:00 PM at the Federal Transit Administration, 400 7th Street, SW, Washington, DC 20590. The purpose of this conference is to answer questions about the Federal Transit Administration's Bus Rapid Transit Demonstration Program and the statement of participation in the program. Persons and organizations planning to attend this conference should register their intentions with Joseph Goodman, Office of Mobility Innovations at (202) 366–0240 or *joseph.goodman@fta.dot.gov*. Teleconference capabilities will be available for those unable to attend in person. Please indicate your desire to participate by telephone to Joseph Goodman.

ADDRESSES: Three copies of the Requests for Participation shall be submitted to the appropriate FTA Regional Office listed below, and five copies shall be submitted to Edward L. Thomas, Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration, 400 7th Street SW, Room 9401, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bert Arrillagea, Chief, Service Innovation Division, Office of Mobility Innovation (TRI–12) at (202) 366–0240 and e-mail address at bert.arrillaga@fta.dot.gov.

SUPPLEMANTARY INFORMATION:

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VI. Planning and Project Development
VII. Funding
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I. Introduction

The Federal Transit Administration (FTA) announces a Request for Participation in the Bus Rapid Transit (BRT) Demonstration Program. Today, advancements in bus vehilce technology, simulation systems, traffic engineering, intelligent transportation systems (ITS) [fleet management, electronic fare payment and passenger information systems] and other customer service innovations provide major opportunities to improve bus transit service across the United States similar to model bus systems in Curitiba, Brazil; Adelaide, Australia; and Ottawa, Canada. Bus service is now, more than ever, capable of performing like rapid tranist. Some communities are considering BRT as an incremental improvement to rail transit. Given these opportunities, the primary goal of a BRT Program is to work with a group of localities in demonstrating approaches for increasing the level and quality of bus service in major investment corridors comparable to rapid tranist.

The program is designed to encourage transit agencies, local and State governments and metropolitan planning organizations engaged in coordinating infrastructure improvements, technology deployment and operations to consider the benefits of BRT. Consistent with the Department of Transportation and FTA Strategic Plans, the outcome of the BRT Program is to improve mobility and accessibility, advance econmic growth and trade, and enhance environmental quality. Bus Rapid Transit promises to improve travel time, service reliability and customer convenience, foster livable communities and introduce cost-effective, environmentally friendly technology. Regarding the mobility goal, for example, research already shows that expediting the movement of transit vehicles on local arterials can produce improved traffic flow for all vehicles.

The FTA will select multiple projects to participate in a multi-year national demonstration program to be completed within the six year life of the Transportation Equity Act for the 21st Century (TEA–21). The sponsors of selected projects will form a consortium of transit agencies and other local and State partners to share experiences and to receive expert assistance in expediting project implementation in areas such as design technology, vehicle technology, ITS architecture, procurement, project financing, and operating strategies. A demonstration project would highlight the situations, problems, and opportunities that might occur while implementing the BRT concept in the United States (U.S.).

II. Background

Bus systems provide a versatile form of public transportation with the flexibility to serve a variety of access needs and an unlimited range of locations throughout an area. Bus service can be implemented cost-effectively on routes where ridership may not be sufficient or where the capital investment may not be available to implement rail transit systems.

Traffic congestion, urban sprawl, central city decline, and air pollution are all problems associated with excessive dependence on automobiles. Increasing recognition of the need for high-quality transit service to alleviate these conditions has fueled growing demand for new rail services throughout the U.S. However, in numerous cities buses also provide an attractive and effective alternative to automobiles, reaching into central cities, local neighborhoods, suburbs and rural areas to meet the mobility needs of millions of people.

Despite the inherent advantages of bus service, the traveling public frequently finds the quality of bus service provided in urban centers to be wanting. Conventional urban bus operations often are characterized by sluggish vehicles inching their way through congested streets, delayed not only by other vehicles and traffic signals, but also by frequent and time-consuming stops to pick up and discharge passengers. Buses travel on average at only around 60 percent of the speeds of automobiles and other private vehicles using the same streets due to the cummulative effects of traffic congestion, traffic signals, and passenger boarding. Moreover, the advantageous flexibility and decentralization of bus operations also result in a lack of system visibility and permanence that contributes to public perceptions of unreliability and disorganization.

Low-cost investments in infrastructure, equipment, operational improvements, advanced bus technologies, and ITS can provide the foundation for Bus Rapid Transit systems that substantially upgrade bus system performance. Conceived as an integrated, well-defined system, Bus Rapid Transit would provide for significantly lower bus travel time, greater service reliability, and increased convenience, matching the quality of rail transit when implemented in appropriate settings. A decrease of bus travel time would reduce operating costs and improve bus operating efficiency by allowing more trips per platform hour. Advanced bus technologies and other intelligent technologies could further reduce operating and maintenance costs, improve safety, and enhance intermodal transfers.

III. Goals and Objectives

The goals for the Bus Rapid Transit Demonstration Program are designed to achieve the strategic goals of the DOT and FTA Strategic Plans addressing safety and security, mobility and accessibility, economic growth and trade, and the human and natural environment. The specific goals are as follows:

1. Increase intermodal physical, informational and service connectivity.
2. Ensure that all transit systems are accessible.
3. Reduce bus travel times through deployment of new technology and other innovations.
4. Improve the reliability of the delivery of people, goods, and services to their destinations.
5. Encourage regional and local economic development through joint development.
6. Build professional capacity and promote the education of individuals in transportation related fields.
7. Expand opportunities and promote economic growth for all businesses.
8. Improve the sustainability and livability of communities.
9. Reduce the amount of transportation-related pollutants released into the environment.
10. Integrate consideration of BRT and advanced bus systems in corridor analysis for major transportation investments.

There are four primary objectives of the demonstration program. They are to: (1) identify and address the issues involved in implementing a Bus Rapid Transit system; (2) show how the integration of advanced bus technologies, ITS and services can contribute to a bus rapid transit system; (3) provide data on derived benefits and costs, particularly whether improved service and increased visibility due to Bus Rapid Transit can increase transit ridership, and (4) transfer lessons learned to other areas evaluating major investment options or implementing bus rapid transit projects.

IV. Definitions

Bus Rapid Transit refers to coordinated improvements in a transit system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on urban roadways. The intention of Bus Rapid Transit is to reduce bus travel time, improve service reliability, increase the convenience of users, and ultimately, increase bus ridership. BRT typically contains the following features:

☐ *Exclusivity:* Exclusivity occurs when buses and stations are physically separated from non-exclusive traffic lanes or where the level and quality of service are comparable to that achieved on a wholly exclusive facility.

☐ *Advanced Bus Technology:* A variety of vehicle technologies available for improving access, maneuverability, operating efficiency of transit buses, and reduces the emissions and the weight of transit buses. These technologies include clean fuels propulsion systems powered by natural gas, batteries, hybrid electricity, alcohol fuels, and fuel cells; highly durable light weight composite materials; low-floor configurations; on-board vehicle computer management systems and advanced communication systems.

☐ *Fleet management improvements:* Comprises infrastructure and ITS technology elements to improve travel time and reliability of bus service. Some of these elements may also improve traffic flow for other vehicles. These measures may include: (1) bus turnouts or curb realignments; (2) use of automated vehicle location systems for improved real time management and dispatching; and (3) traffic signal priority for preferential treatment of buses at signalized intersections.

☐ *Faster fare collection and boarding:* The objective is to speed the boarding process through the use of (1) fare collection innovations, such as prepayment methods and smart cards; and (2) changes in bus and platform design for easier and faster access by the elderly, persons with disabilities, shoppers, parents with children in strollers or passengers with baggage

☐ *Integration of transit development with land use policy:* Bus Rapid Transit and high density Transit-oriented development (TOD) can be mutually reinforcing. TODs may include areas or corridors developed with building site and street designs favoring transit and pedestrian usage.

☐ *Intelligent Transportation Systems (ITS) technologies* refers to hardware and software systems, such as, computer-assisted dispatching software, wireless communications, mobile data terminals, map displays, transit fleet management, maintenance management software, geographical information displays, computerized voice recognition, automated voice response, emergency management, freeway management systems, electronic fare payment systems, automated traveler information, reservation and billing systems. TEA–21 requires conformity with the ITS National Architecture and Critical Standards, and FTA and FHWA have issued Interim Guidance on these requirements. The ITS National Architecture is a framework for integrating various user service systems and for ensuring interoperability between systems. Critical standards ensure inter-operability or "plug and play" between hardware and software systems. ITS technologies are designed to improve customer service and the operating efficiency and safety of the transportation infrastructure and vehicle systems.

☐ *Project Delivery Methods* refers to various innovative approaches for procuring, designing, constructing, operating, and maintaining transit systems. These approaches might include various types of turnkey approaches or methods including: design/build, design-build-operate-maintain, or super turnkey, where the contractor participates in project financing.

A paper entitled "Issues in Bus Rapid Transit" gives further insight into the Bus Rapid Transit concept and its implementation. It can be obtained from Bert Arrillaga, the FTA information source identified above.

V. Program Elements

The FTA will select multiple projects to participate in a multi-year national demonstration program to be completed within the six years of the Transportation Equity Act for the 21st Century (TEA–21). The selected project sponsors will form a consortium of transit agencies and other local and State partners to share experiences and to receive expert assistance in expediting project implementation. This assistance may occur in such areas as virtual reality simulation technology for system design and operations planning, vehicle technology, ITS architecture, procurement, project financing, and operating strategies. A demonstration project would highlight the situations, problems, and opportunities that might occur while implementing the BRT concept in the United States. With the assistance of an evaluation contractor, the FTA plans to assess the effects of the demonstration project through a scientific evaluation of the project. A carefully constructed evaluation accomplishes a number of purposes: (1) to document what happened and why; (2) to measure benefits, costs, and impacts of the demonstration on affected populations; (3) to reveal both successful and unsuccessful aspects of the demonstration; (4) to determine if the demonstration met the goals of its sponsors; and (5) to assess the applicability of the demonstration to other sites. An evaluation not only helps others learn from the demonstration, but also helps the involved parties to improve their own systems.

In order to help expedite demonstration project implementation, FTA will consider requests to waive administrative requirements that are not regulatory. The demonstration program is designed to provide the rest of the nation with information for considering BRT in the planning process and for engineering, designing, and implementing bus rapid transit projects. The program will:

1. Assess technology of common interest to the demonstration consortium members;
2. Provide expert assistance in design and operations, perhaps using simulation systems; ITS integration and interoperability; advanced bus technology; financing strategy; or project delivery methods;
3. Fund local demonstration project administration including project monitoring, data collection, progress reporting and other logistical support;
4. Evaluate and report on best practices; and
5. Support technology transfer involving a variety of lessons-learned workshops and an internet website.

A. Technology Assessments

FTA will assess the state-of-the-art and best practices in transit operations, infrastructure design, vehicle technology, system integration, or other areas of interest to the demonstration consortium.

B. Expert Assistance

FTA will provide industry peers or other experts to advise consortium members on such considerations as the choice of appropriate vehicle and ITS technologies, concurrent engineering, exclusive bus lane design issues, traffic engineering issues, bus operations and planning issues, bus stop and terminal design, innovative financing strategies, transit-oriented development, and innovations in project delivery such as turnkey procurement. Expert panels will be organized at the request of consortium members.

C. Demonstration Project Administration

The demonstration program will support a project administrator for each of the projects. This administrator will coordinate with the FTA demonstration program office, provide logistical support for the demonstration project sponsors, and conduct quarterly demonstration project reviews. A key objective of this position is to permit the implementation of the project to proceed unencumbered by the requirements of the demonstration program.

D. Documentation and Evaluation

With the assistance of an evaluation contractor, the FTA plans to assess Bus Rapid Transit through an evaluation of the Bus Rapid Transit demonstrations. A carefully constructed evaluation accomplishes a number of purposes: (1) to document what happened and why; (2) to measure benefits, costs, and impacts of the demonstration on affected populations; (3) to reveal both successful and unsuccessful aspects of the demonstration; (4) to determine if the demonstration met the goals and objectives of its sponsors; and (5) to assess the applicability of the demonstration to other sites. An evaluation not only helps others learn from the demonstration, but also helps the involved parties to improve their own systems. Specifically, FTA would like to examine the:

☐ Degree to which bus travel time, schedule adherence and service integration improve;

☐ Degree to which transit efficiency and productivity improve;

☐ Degree to which ridership increases due to improved bus travel time, transfers, schedule adherence, and service coverage;

☐ Effect on other traffic;

☐ Effect on each of the components of Bus Rapid Transit on bus speed and other traffic

☐ Benefits of integrated vehicle and ITS technologies to the demonstration; and

☐ Effect of Bus Rapid Transit on land use.

E. Technology Transfer

FTA will arrange "scanning tours," where local officials and designers visit operational bus rapid transit sites. Periodic workshops and seminars will be organized for presentations or discussion about technical issues of interest to each of the demonstration project sponsors. FTA and consortium members will participate in conferences and other meetings sponsored by interested professional organizations for mutual sharing of information and ideas. Demonstration results and other research technical reports will be produced and made available on World Wide Web sites.

The roles of the demonstration program participants are outlined below:

☐ The Federal Transit Administration will:

■ Provide overall guidance on the conduct of the demonstration program.

■ Monitor the demonstration program.

■ Organize and conduct the expert assistance panels, technology transfer workshops, and conference sessions.

■ Provide guidance to demonstration sponsors regarding resources from other programs listed under Section II General Authority.

■ Publish and communicate information on the demonstration projects.

■ Secure and manage contractors conducting the project evaluations, and provide program support.

■ Provide guidance on the planning and project development process.

☐ The Project Sponsor will:

■ Implement project as proposed.

■ Monitor demonstration projects and keep FTA appraised of events, issues, and problems.

■ Conduct quarterly reviews of the demonstration project.

■ Collect data according to evaluation plan and schedule.

■ Participate in the technology transfer activities of the demonstration program.

☐ The Contractors will:

■ Develop the evaluation plan and the data collection schedule.

■ Guide data collection.

■ Analyze evaluation data.

■ Write final evaluation reports.

■ Provide overall program support.

VI. Planning and Project Development Process

Bus rapid transit projects selected for participation in this Bus Rapid Transit Demonstration Program are expected to be a product of the metropolitan planning and programming process. A proposed bus rapid transit project should be compatible with existing transportation plans or exist in a corridor where extensive planning has been performed and a recommendation for a major transit capital investment made. If the project proposals contain ITS elements of regional significance, the conformity requirements of the National ITS Architecture apply. The architecture defines the functions that must be performed to implement a given user service, the physical entities or subsystems where these functions reside, the interfaces and information flows between the physical subsystems, and the communication requirements for the information flows. Interim Guidance on ITS Architecture is available from the FTA Regional Offices or the Headquarters Office of Research, Demonstration and Innovation.

Bus Rapid Transit projects are developed in several ways. First, transit service planning efforts may produce low-cost operational improvements like advanced technology vehicles and ITS user services. Such strategies must be consistent with the regional transportation plans and are included in a transportation improvement program. In this instance, a project may proceed into the design and implementation phase. Second, bus rapid transit projects may emerge from the multi-modal metropolitan transportation planning process as a major capital investment. Where FTA New Starts funding is sought, such projects are subject to the New Starts and environmental documentation requirements. These requirements involve project ratings for a FTA decision to advance a project into preliminary engineering. Subsequent to completion of preliminary engineering and the environmental process, a project receives a rating for a FTA decision on final design and construction. Additional information on these requirements is available from the FTA Regional Offices or Headquarters Office of Planning at (202) 366–2360.

VII. Funding

The FTA is supporting the Bus Rapid Transit Demonstration Program with approximately $2 million in Fiscal Year 1999. A similar level of annual funding is planned over the life of the demonstration program. Demonstration project sponsors may seek implementation funding from the FTA Capital Investment (Section 5309), Urbanized Area Formula (Section 5307), Clean Fuels Formula Grant (Section 5308), Federal-Aid Highway flexible funding programs in accordance with the requirements of those programs, and other funding programs identified in the General Authority Section such as Title I, Subtitle E, Chapter 1, Transportation Infrastructure Finance and Innovation and Chapter 2, State Infrastructure Bank Pilot Program.

VIII. Requests for Participation Contents

A Request for Participation (proposal) shall not exceed thirty (30) pages in length including title, index, tables, maps, and exclusive of appendices, abstracts, resumes and other supporting materials. A page is defined as one (1) side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font of 12 pt. Three (3) copies of the Request fore Participation (proposal) should be sent to the respective Regional Office listed in Section XII of this Notice. Five (5) copies of the Request for Participation (proposal) plus an unbound reproducible copy of the proposal shall be forwarded to Edward Thomas, Associate Administrator for Research, Demonstration and Innovation, FTA, 400 7th Street, S.W., Room 9401, Washington, DC 20590. The transmittal letter shall include the name, address and phone number of an individual to whom correspondence and questions about the application may be directed. The proposals shall include Technical, Management and Financial Plans as described below.

A. Technical Plan

General Requirements

1. Describe the proposed Bus Rapid Transit corridor, including such things as cost, location, service frequency and ridership, roadways, bus stops and terminals, traffic management practices, vehicles, dispatching and operating systems, and use of ITS technologies.

2. Describe the land use policies and any transit-oriented development that exist in the proposed corridor, and plans to change them to capitalize on Bus Rapid Transit.

3. Describe the proposed project's service area including its size, population density, demographics, and regional transportation environment.

4. Also describe what "problems" the Bus Rapid Transit project will address, prior and ongoing planning in support of BRT, and consistency with the regional transportation plan.

Technical Approach

1. Describe measurable performance goals of the Bus Rapid Transit project. These should at a minimum address the FTA outcome goals. Some examples are improved customer service, improved bus travel time, and improved operating efficiency.

2. Describe the Bus Rapid Transit project, its physical systems and operational features including designs, service types, service levels, fare collection methods, fare transfer policy, and hours of operation.

3. Describe the anticipated effects, efficiencies, and impacts of the proposed project including ridership, service levels, traffic impacts, environmental impacts, and land use impacts.

4. Describe implementation of the Bus Rapid Transit project including engineering and design activities, procurement strategy, and phasing approach if incremental development is specified.

5. Describe the approach by which any advanced technologies involved in the demonstration project will be refined, tested, and documented before deployment.

6. Document assumptions and technical uncertainties, and propose specific approaches to resolve any uncertainties.

B. Management Plan

1. Identify key management responsibilities for the demonstration project sponsor and other participating organizations. Describe all necessary arrangements and institutional agreements to support the project, and include evidence of agreement among participating agencies.

2. The demonstration project administrator would be expected to have full responsibility for the demonstration project throughout its duration and to serve as the point of contact for interactions with FTA and the rest of the transit industry.

3. Provide a schedule of work including a time line, key milestones, and deliverables for the project.

4. Provide a preliminary staffing plan. For the staffing plan, FTA encourages proposing agencies to work with Universities and Colleges under the University Transportation Centers Program (Section 5110 of TEA–21) to provide opportunities for student professional development and to exchange information on new technology, human factors issues, land use planning, travel demand modeling, or simulation of operations.

C. Financial plan

1. The proposal shall provide a description of the total cost and finances for implementing, operating, and maintaining the Bus Rapid Transit project. The implementation costs would include the costs for system design, project management, vehicle and system acquisition and facility

construction. Provide cost estimates by phase as defined in the Technical Plan.

2. The Financial Plan should break down funding sources by the following categories: (1) Local; (2) State; (3) Private; and (4) Federal. All financial commitments to the project from both public and private sectors should be documented and included in the proposal.

IX. Demonstration Project Selection

The FTA will select several projects for participation in the demonstration program. The evaluation criteria are:

☐ The significance of the project in terms of the expected improvement in bus travel times and reliability due to Bus Rapid Transit;

☐ The comprehensiveness of the project—the range of features included in the demonstration and the inclusion of plans for congestion, signals, boarding and fare collection, delay reduction, and land use considerations;

☐ The readiness of the applicant to implement the demonstration—greater consideration will be given to those agencies closer to implementation of Bus Rapid Transit, who have gone through the local planning and approval process, and have funds committed;

☐ Evidence that adequate planning has been completed, and there is local commitment involving the partnering of the transit agency, city, county or state governments, and the private sector, if appropriate;

☐ The identification and commitment of funds for capital-intensive elements. Significant consideration will be given to those projects with greater levels of non-Federal funding; and

☐ Degree to which innovation is reflected in the project—including vehicle technology, ITS technologies, procurement strategy, and professional capacity building involving students as reflected in the Department of Transportation Garrett A. Morgan Technology and Transportation Futures Program.

Proposals should be forwarded to the appropriate FTA Regional Office. Regional offices will screen the proposals and recommend a subset for further review by an FTA headquarters' interoffice Working Group. The Working Group will recommend projects to the FTA Administrator.

X. Schedule

The Bus Rapid Transit Demonstration Program will last over the six-year life of TEA–21. The selected demonstration projects are expected to be implemented and in operation within this period. Project review meetings will be conducted along with quarterly progress review meetings held by the FTA regional offices. Expert assistance panels will occur as requested by the project sponsors. Scanning tours, lessons learned workshops and participation in conferences are anticipated each year. The evaluation effort will start with data collection from three to six months prior to the demonstration period and will continue for a minimum of twelve (12) months from the time that the project is put into operation. After a six (6) month period of analysis, a Best Practices Report will be completed.

XI. Y2K Compliance

Any technology containing computer system capabilities, purchased with grant program funds and expected to be used for a period of time that goes beyond December 31, 1999 must be year 2000 compliant. Applicants' Technical Proposal, Management Plan, and Financial Plan must provide sound evidence that this requirement can be met.

XII. FTA Regional Offices

Region I: 55 Broadway, Kendall Square, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055

Region II: 26 Federal Plaza, Suite 2940, New York, NY 10278–0194, (212) 264–8162

Region III: 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV: 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303–8917, (404) 562–3500

Region V: 200 West Adams Street, 24th Floor, Chicago, IL 60606, (312) 353–2789

Region VI: 819 Taylor Street, Room 8A36, Fort Worth, TX 76102, (817) 978–0550

Region VII: 6301 Rockhill Road, Suite 303, Kansas City, MO 64131–1117, (816) 523–0204

Region VIII: 216 Sixteenth Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242

Region IX: 201 Mission Street, Suite 2210, San Francisco, CA 94105–1831, (415) 744–3133

Region X: 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954

Issued on December 7, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–32898 Filed 12–9–98; 8:45 am]

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Part IV

Environmental Protection Agency

National Recommended Water Quality Criteria; Notice; Republication

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–6186–6a]

National Recommended Water Quality Criteria; Republication

Editorial Note: FR Doc. 98-30272 was originally published as Part IV (63 FR 67548-67558) in the issue of Monday, December 7, 1998. At the request of the agency, due to incorrect footnote identifiers in the tables, the corrected document is being republished in its entirety.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Compilation of recommended water quality criteria and notice of process for new and revised criteria.

SUMMARY: EPA is publishing a compilation of its national recommended water quality criteria for 157 pollutants, developed pursuant to section 304(a) of the Clean Water Act (CWA or the Act). These recommended criteria provide guidance for States and Tribes in adopting water quality standards under section 303(c) of the CWA. Such standards are used in implementing a number of environmental programs, including setting discharge limits in National Pollutant Discharge Elimination System (NPDES) permits. These water quality criteria are not regulations, and do not impose legally binding requirements on EPA, States, Tribes or the public.

This document also describes changes in EPA's process for deriving new and revised 304(a) criteria. Comments provided to the Agency about the content of this Notice will be considered in future publications of water quality criteria and in carrying out the process for deriving water quality criteria. With this improved process the public will have more opportunity to provide data and views for consideration by EPA. The public may send any comments or observations regarding the compilation format or the process for deriving new or revised water quality criteria to the Agency now, or anytime while the process is being implemented.

ADDRESSES: A copy of the document, "National Recommended Water Quality Criteria" is available from the U.S. EPA, National Center for Environmental Publications and Information, 11029 Kenwood Road, Cincinnati, Ohio 45242, phone (513) 489–8190. The publication is also available electronically at: http://www.epa.gov/ost. Send an original and 3 copies of written comments to W–98–24 Comment Clerk, Water Docket, MC 4104, US EPA, 401 M Street, S.W., Washington, D.C. 20460. Comments may also be submitted electronically to OW-Docket@epamail.epa.gov. Comments should be submitted as a WP5.1, 6.1 or an ASCII file with no form of encryption. The documents cited in the compilation of recommended criteria are available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB57, East Tower Basement, USEPA, 401 M St., S.W., Washington, D.C. 20460. For access to these materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Cindy A. Roberts, Health and Ecological Criteria Division (4304), U.S. EPA, 401 M. Street, S.W., Washington, D.C. 20460; (202) 260–2787; roberts.cindy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Are Water Quality Criteria?

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating federal regulations under section 303(c) when such action is necessary.

II. What is in the Compilation Published Today?

EPA is today publishing a compilation of its national recommended water quality criteria for 157 pollutants. This compilation is also available in hard copy at the address given above.

The compilation is presented as a summary table containing EPA's water quality criteria for 147 pollutants, and for an additional 10 pollutants, criteria solely for organoleptic effects. For each set of criteria, EPA lists a **Federal Register** citation, EPA document number or Integrated Risk Information System (IRIS) entry (www.epa.gov/ngispgm3/iris/irisdat). Specific information pertinent to the derivation of individual criteria may be found in cited references. If no criteria are listed for a pollutant, EPA does not have any national recommended water quality criteria.

These water quality criteria are the Agency's current recommended 304(a) criteria, reflecting the latest scientific knowledge. They are generally applicable to the waters of the United States. EPA recommends that States and Tribes use these water quality criteria as guidance in adopting water quality standards pursuant to section 303(c) of the Act and the implementing of federal regulations at 40 CFR part 131. Water quality criteria derived to address site-specific situations are not included; EPA recommends that States and Tribes follow EPA's technical guidance in the "Water Quality Standards Handbook—2nd Edition," EPA, August 1994, in deriving such site-specific criteria. EPA recognizes that in limited circumstances there may be regulatory voids in the absence of State or Tribal water quality standards for specific pollutants. However, States and Tribes should utilize the existing State and Tribal narrative criteria to address such situations; States and Tribes may consult EPA criteria documents and cites in the summary table for additional information.

The national recommended water quality criteria include: previously published criteria that are unchanged; criteria that have been recalculated from earlier criteria; and newly calculated criteria, based on peer-reviewed assessments, methodologies and data, that have not been previously published.

The information used to calculate the water quality criteria is not included in the summary table. Most information has been previously published by the Agency in a variety of sources, and the summary table cites those sources.

When using these 304(a) criteria as guidance in adopting water quality standards, EPA recommends States and Tribes consult the citations referenced in the summary table for additional information regarding the derivation of individual criteria.

The Agency intends to revise the compilation of national recommended water quality criteria from time to time to keep States and Tribes informed as to the most current recommended water quality criteria.

III. How Are National Recommended Water Quality Criteria Used?

Once new or revised 304(a) criteria are published by EPA, the Agency expects States and Tribes to adopt promptly new or revised numeric water quality criteria into their standards consistent with one of the three options in 40 CFR 131.11. These options are: (1) Adopt the recommended section 304(a) criteria; (2) adopt section 304(a) criteria modified to reflect site-specific conditions; or, (3) adopt criteria derived using other scientifically defensible methods. In adopting criteria under option (2) or (3), States and Tribes must adopt water quality criteria sufficient to protect the designated uses of their waters. When establishing a numerical value based on 304(a) criteria, States and Tribes may reflect site specific conditions or use other scientifically defensible methods. However, States and Tribes should not selectively apply data or selectively use endpoints, species, risk levels, or exposure parameters in deriving criteria; this would not accurately characterize risk and would not result in criteria protective of designated uses.

EPA emphasizes that, in the course of carrying out its responsibilities under section 303(c), it reviews State and Tribal water quality standards to assess the need for new or revised water quality criteria. EPA generally believes that five years from the date of EPA's publication of new or revised water quality criteria is a reasonable time by which States and Tribes should take action to adopt new or revised water quality criteria necessary to protect the designated uses of their waters. This period is intended to accommodate those States and Tribes that have begun a triennial review and wish to complete the actions they have underway, deferring initiating adoption of new or revised section 304(a) criteria until the next triennial review.

IV. What is the Status of Existing Criteria While They Are Under Revision?

The question of the status of the existing section 304(a) criteria often arises when EPA announces that it is beginning a reassessment of existing criteria. The general answer is that water quality criteria published by EPA remain the Agency's recommended water quality criteria until EPA revises or withdraws the criteria. For example, while undertaking recent reassessments of dioxin, PCBs, and other chemicals, EPA has consistently upheld the use of the current section 304(a) criteria for these chemicals and considers them to be scientifically sound until new, peer reviewed, scientific assessments indicate changes are needed. Therefore, the criteria in today's notice are and will continue to be the Agency's national recommended water quality criteria for States and Tribes to use in adopting or revising their water quality standards until superseded by the publication of revised criteria, or withdrawn by notice in the **Federal Register**.

V. What is the Process for Developing New or Revised Criteria?

Section 304(a)(1) of the CWA requires the Agency to develop and publish, and from time to time revise, criteria for water quality accurately reflecting the latest scientific knowledge. The Agency has developed an improved process that it intends to use when deriving new criteria or conducting a major reassessment of existing criteria. The purpose of the improved process is to provide expanded opportunities for public input, and to make the process more efficient.

When deriving new criteria, or when initiating a major reassessment of existing criteria, EPA will take the following steps.

1. EPA will first undertake a comprehensive review of available data and information.

2. EPA will publish a notice in the **Federal Register** and on the Internet announcing its assessment or reassessment of the pollutant. The notice will describe the data available to the Agency, and will solicit any additional pertinent data or views that may be useful in deriving new or revised criteria. EPA is especially interested in hearing from the public regarding new data or information that was unavailable to the Agency, and scientific views as to the application of the relevant Agency methodology for deriving water quality criteria.

3. After public input is received and evaluated, EPA will then utilize information obtained from both the Agency's literature review and the public to develop draft recommended water quality criteria.

4. EPA will initiate a peer review of the draft criteria. Agency peer review consists of a documented critical review by qualified independent experts. Information about EPA peer review practices may be found in the Science Policy Council's Peer Review Handbook (EPA 100–B–98–001, www.epa.gov).

5. Concurrent with the peer review in step four, EPA will publish a notice in the **Federal Register** and on the Internet, of the availability of the draft water quality criteria and solicit views from the public on issues of science pertaining to the information used in deriving the draft criteria. The Agency believes it is important to provide the public with the opportunity to provide scientific views on the draft criteria even though we are not required to invite and respond to written comments.

6. EPA will evaluate the results of the peer review, and prepare a response document for the record in accordance with EPA's Peer Review Handbook. EPA at the same time will consider views provided by the public on issues of science. Major scientific issues will be addressed in the record whether from the peer review or the public.

7. EPA will then revise the draft criteria as necessary, and announce the availability of the final water quality criteria in the **Federal Register** and on the Internet.

VI. What is the Process for Minor Revisions to Criteria?

In addition to developing new criteria, and conducting major reassessments of existing criteria, EPA also from time to time recalculates criteria based on new information pertaining to individual components of the criteria. For example, in today's notice, EPA has recalculated a number of criteria based on new, peer-reviewed data contained in EPA's IRIS. Because such recalculations normally result in only minor changes to the criteria, do not ordinarily involve a change in the underlying scientific methodologies, and reflect peer-reviewed data, EPA will typically publish such recalculated criteria directly as the Agency's recommended water quality criteria. If it appears that a recalculation results in a significant change EPA will follow the process of peer review and public input outlined above. Further, when EPA recalculates national water quality criteria in the course of proposing or promulgating state-specific federal water quality standards pursuant to section 303(c), EPA will offer an opportunity for national public input on the recalculated criteria.

VII. How Does the Process Outlined Above Improve Public Input and Efficiency?

In the past, EPA developed draft criteria documents and announced their availability for public comment in the **Federal Register**. This led to new data and views coming to EPA's attention after draft criteria had already been developed. Responding to new data would sometimes lead to extensive revisions.

The steps outlined above improve the criteria development process in the following ways.

1. The new process is Internet-based which is in line with EPA policy for public access and dissemination of information gathered by EPA. Use of the Internet will allow the public to be more engaged in the criteria development process than previously and to more

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knowledgeably follow criteria development. For new criteria or major revisions, EPA will announce its intentions to derive the new or revised criteria on the Internet and include a list of the available literature. This will give the public an opportunity to provide additional data that might not otherwise be identified by the Agency.

2. The public now has two opportunities to contribute data and views, before development and during development, instead of a single opportunity after development.

3. EPA has instituted broader and more formal peer review procedures. This independent scientific review is a more rigorous disciplinary practice to ensure technical improvements in Agency decision making. Previously, EPA used the public comment process outlined above to obtain peer review. The new process allows for both public input and a formal peer review, resulting in a more thorough and complete evaluation of the criteria.

4. Announcing the availability of the draft water quality criteria on the Internet will give the public an opportunity to provide input on issues of science in a more timely manner.

VIII. Where Can I Find More Information About Water Quality Criteria and Water Quality Standards?

For more information about water quality criteria and Water Quality Standards refer to the following: Water Quality Standards Handbook (EPA 823–B94–005a); Advanced Notice of Proposed Rule Making (ANPRM), (63 FR 36742); Water Quality Criteria and Standards Plan—Priorities for the Future (EPA 822–R–98–003); Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents (45 FR 79347); Draft Water Quality Criteria Methodology Revisions: Human Health (63 FR 43755, EPA 822–Z–98–001); and Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (EPA 822/R–85–100); National Strategy for the Development of Regional Nutrient Criteria (EPA 822–R–98–002).

These publications may also be accessed through EPA's National Center for Environmental Publications and Information (NCEPI) or on the Office of Science and Technology's Home-page (www.epa.gov/OST).

IX. What Are the National Recommended Water Quality Criteria?

The following compilation and its associated footnotes and notes presents the national recommended water quality criteria.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS

Priority pollutant	CAS No	Freshwater		Saltwater		Human health for consumption of		FR cite/source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
1 Antimony	7440360					14 ^{B,Z}	4300 ^{B}	57 FR 60848
2 Arsenic	7440382	340 ^{A,D,K}	150 ^{A,D,K}	69 ^{A,D,bb}	36 ^{A,D,bb}	0.018 ^{C,M,S}	0.14 ^{C,M,S}	62 FR 42160 57 FR 60848
3 Beryllium	7440417					^{J,Z}	^{J}	62 FR 42160
4 Cadmium	7440439	4.3 ^{D,E,K}	2.2 ^{D,E,K}	42 ^{D,bb}	9.3 ^{D,bb}	^{J,Z}	^{J}	62 FR 42160
5a Chromium III	16065831	570 ^{D,E,K}	74 ^{D,E,K}			^{J,Z} Total	^{J}	EPA 820/B-96-001 62 FR 42160
5b Chromium VI	18540299	16 ^{D,K}	11 ^{D,K}	1,100 ^{D,bb}	50 ^{D,bb}	^{J,Z} Total	^{J}	62 FR 42160
6 Copper	7440508	13 ^{D,E,K,cc}	9.0 ^{D,E,K,cc}	4.8 ^{D,cc,ff}	3.1 ^{D,cc,ff}	1,300 ^{U}		62 FR 42160
7 Lead	7439921	65 ^{D,E,bb,gg}	2.5 ^{D,E,bb,gg}	210 ^{D,bb}	8.1 ^{D,bb}	^{J}	^{J}	62 FR 42160
8 Mercury	7439976	1.4 ^{D,K,hh}	0.77 ^{D,K,hh}	1.8 ^{D,ee,hh}	0.94 ^{D,ee,hh}	0.050 ^{B}	0.051 ^{B}	62 FR 42160
9 Nickel	7440020	470 ^{D,E,K}	52 ^{D,E,K}	74 ^{D,bb}	8.2 ^{D,bb}	610 ^{B}	4,600 ^{B}	62 FR 42160
10 Selenium	7782492	^{L,R,T}	5.0 ^{T}	290 ^{D,bb,dd}	71 ^{D,bb,dd}	170 ^{Z}	11,000	62 FR 42160 IRIS 09/01/91
11 Silver	7440224	3.4 ^{D,E,G}		1.9 ^{D,G}				62 FR 42160
12 Thallium	7440280					1.7 ^{B}	6.3 ^{B}	57 FR 60848
13 Zinc	7440666	120 ^{D,E,K}	120 ^{D,E,K}	90 ^{D,bb}	81 ^{D,bb}	9,100 ^{U}	69,000 ^{U}	62 FR 42160 IRIS 10/01/92
14 Cyanide	57125	22 ^{K,Q}	5.2 ^{K,Q}	1 ^{Q,bb}	1 ^{Q,bb}	700 ^{B,Z}	220,000 ^{B,H}	EPA 820/B-96-001 57 FR 60848
15 Asbestos	1332214					7 million fibers/L ^{I}		57 FR 60848
16 2, 3, 7, 8 TCDD Dioxin	1746016					1.3E-8 ^{C}	1.4E-8 ^{C}	62 FR 42160
17 Acrolein	107028					320	780	57 FR 60848
18 Acrylonitrile	107131					0.059 ^{B,C}	0.66 ^{B,C}	57 FR 60848
19 Benzene	71432					1.2 ^{B,C}	71 ^{B,C}	62 FR 42160
20 Bromoform	75252					4.3 ^{B,C}	360 ^{B,C}	62 FR 42160
21 Carbon Tetrachloride	56235					0.25 ^{B,C}	4.4 ^{B,C}	57 FR 60848
22 Chlorobenzene	108907					680 ^{B,Z}	21,000 ^{B,H}	57 FR 60848
23 Chlorodibromomethane	124481					0.41 ^{B,C}	34 ^{B,C}	62 FR 42160
24 Chloroethane	75003							
25 2-Chloroethylvinyl Ether	110758							
26 Chloroform	67663					5.7 ^{B,C}	470 ^{B,C}	62 FR 42160
27 Dichlorobromomethane	75274					0.56 ^{B,C}	46 ^{B,C}	62 FR 42160
28 1,1-Dichloroethane	75343							
29 1,2-Dichloroethane	107062					0.38 ^{B,C}	99 ^{B,C}	57 FR 60848
30 1,1-Dichloroethylene	75354					0.057 ^{B,C}	3.2 ^{B,C}	57 FR 60848
31 1,2-Dichloropropane	78875					0.52 ^{B,C}	39 ^{B,C}	62 FR 42160
32 1,3-Dichloropropene	542756					10 ^{B}	1,700 ^{B}	57 FR 60848
33 Ethylbenzene	100414					3,100 ^{B,Z}	29,000 ^{B}	62 FR 42160
34 Methyl Bromide	74839					48 ^{B}	4000 ^{B}	62 FR 42160
35 Methyl Chloride	74873					^{J}	^{J}	62 FR 42160
36 Methylene Chloride	75092					4.7 ^{B,C}	1600 ^{B,C}	62 FR 42160
37 1,1,2,2-Tetrachloroethane	79345					0.17 ^{B,C}	11 ^{B,C}	57 FR 60848
38 Tetrachloroethylene	127184					0.8 ^{C}	8.85 ^{C}	57 FR 60848
39 Toluene	108883					6,800 ^{B,Z}	200,000 ^{B}	62 FR 42160
40 1,2-Trans-Dichloroethylene	156605					700 ^{B,Z}	140,000 ^{B}	62 FR 42160
41 1,1,1-Trichloroethane	71556					^{J,Z}	^{J}	62 FR 42160
42 1,1,2-Trichloroethane	79005					0.60 ^{B,C}	42 ^{B,C}	57 FR 60848
43 Trichloroethylene	79016					2.7 ^{C}	81 ^{C}	57 FR 60848
44 Vinyl Chloride	75014					2.0 ^{C}	525 ^{C}	57 FR 60848
45 2-Chlorophenol	95578					120 ^{B,U}	400 ^{B,U}	62 FR 42160
46 2,4-Dichlorophenol	120832					93 ^{B,U}	790 ^{B,U}	57 FR 60848
47 2,4-Dimethylphenol	105679					540 ^{B,U}	2,300 ^{B,U}	62 FR 42160
48 2-Methyl-4,6-Dinitrophenol	534521					13.4	765	57 FR 60848
49 2,4-Dinitrophenol	51285					70 ^{B}	14,000 ^{B}	57 FR 60848
50 2-Nitrophenol	88755							
51 4-Nitrophenol	100027							
52 3-Methyl-4-Chlorophenol	59507							

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR PRIORITY TOXIC POLLUTANTS—Continued

Priority pollutant	CAS No	Freshwater		Saltwater		Human health for consumption of		FR cite/source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
53 Pentachlorophenol	87865	19[F,K]	15[F,K]	13[bb]	7.9[bb]	0.28[B,C]	8.2[B,C,H]	62 FR 42160
54 Phenol	108952					21,000[B,H]	 4,600,000[B,H,U]	62 FR 42160 57 FR 60848
55 2,4,6-Trichlorophenol	88062					2.1[B,C]	6.5[B,C]	62 FR 42160
56 Acenaphthene	83329					1,200[B]	2,700[B,U]	62 FR 42160
57 Acenaphthylene	208968							
58 Anthracene	120127					9,600[B]	110,000[B]	62 FR 42160
59 Benzidine	92875					0.00012[B,C]	0.00054[B,C]	57 FR 60848
60 BenzoaAnthracene	56553					0.0044[B,C]	0.049[B,C]	62 FR 42160
61 BenzoaPyrene	50328					0.0044[B,C]	0.049[B,C]	62 FR 42160
62 BenzobFluoranthene	205992					0.0044[B,C]	0.049[B,C]	62 FR 42160
63 BenzoghiPerylene	191242							
64 BenzokFluoranthene	207089					0.0044[B,C]	0.049[B,C]	62 FR 42160
65 Bis2-ChloroethoxyMethane	111911							
66 Bis2-ChloroethylEther	111444					0.031[B,C]	1.4[B,C]	57 FR 60848
67 Bis2-ChloroisopropylEther	39638329					1,400[B]	 170,000[B]	62 FR 42160 57 FR 60848
68 Bis2-EthylhexylPhthalate[X]	117817					1.8[B,C]	5.9[B,C]	57 FR 60848
69 4-Bromophenyl Phenyl Ether	101553							
70 Butylbenzyl Phthalate[W]	85687					3,000[B]	5,200[B]	62 FR 42160
71 2-Chloronaphthalene	91587					1,700[B]	4,300[B]	62 FR 42160
72 4-Chlorophenyl Phenyl Ether	7005723							
73 Chrysene	218019					0.0044[B,C]	0.049[B,C]	62 FR 42160
74 Dibenzoa,hAnthracene	53703					0.0044[B,C]	0.049[B,C]	62 FR 42160
75 1,2 Dichlorobenzene	95501					2,700[B,Z]	17,000[B]	62 FR 42160
76 1,3 Dichlorobenzene	541731					400	2,600	62 FR 42160
77 1,4 Dichlorobenzene	106467					400[Z]	2,600	62 FR 42160
78 3,3-Dichlorobenzidine	91941					0.04[B,C]	0.077[B,C]	57 FR 60848
79 Diethyl Phthalate[W]	84662					23,000[B]	120,000[B]	57 FR 60848
80 Dimethyl Phthalate[W]	131113					313,000	2,900,000	57 FR 60848
81 Di-n-Butyl Phthalate[W]	84742					2,700[B]	12,000[B]	57 FR 60848
82 2,4-Dinitrotoluene	121142					0.11[C]	9.1[C]	57 FR 60848
83 2,6-Dinitrotoluene	606202							
84 Di-n-Octyl Phthalate	117840							
85 1,2-Diphenylhydrazine	122667					0.040[B,C]	0.54[B,C]	57 FR 60848
86 Fluoranthene	206440					300[B]	370[B]	62 FR 42160
87 Fluorene	86737					1,300[B]	14,000[B]	62 FR 42160
88 Hexachlorobenzene	118741					0.00075[B,C]	0.00077[B,C]	62 FR 42160
89 Hexachlorobutadiene	87683					0.44[B,C]	50[B,C]	57 FR 60848
90 Hexachlorocyclopentadiene	77474					240[B,U,Z]	17,000[B,H,U]	57 FR 60848
91 Hexachloroethane	67721					1.9[B,C]	8.9[B,C]	57 FR 60848
92 Ideno 1,2,3-cdPyrene	193395					0.0044[B,C]	0.049[B,C]	62 FR 42160
93 Isophorone	78591					36[B,C]	2,600[B,C]	IRIS 11/01/97
94 Naphthalene	91203							
95 Nitrobenzene	98953					17[B]	1,900[B,H,U]	57 FR 60848
96 N-Nitrosodimethylamine	62759					0.00069[B,C]	8.1[B,C]	57 FR 60848
97 N-Nitrosodi-n-Propylamine	621647					0.005[B,C]	1.4[B,C]	62 FR 42160
98 N-Nitrosodiphenylamine	86306					5.0[B,C]	16[B,C]	57 FR 60848
99 Phenanthrene	85018							
100 Pyrene	129000					960[B]	11,000[B]	62 FR 42160
101 1,2,4-Trichlorobenzene	120821					260[Z]	940	IRIS 11/01/96
102 Aldrin	309002	3.0[G]		1.3[G]		0.00013[B,C]	0.00014[B,C]	62 FR 42160
103 alpha BHC	319846					0.0039[B,C]	0.013[B,C]	62 FR 42160
104 beta BHC	319857					0.014[B,C]	0.046[B,C]	62 FR 42160
105 gamma BHC (Lindane)	58899	0.95[K]		0.16[G]		0.019[C]	0.063[C]	62 FR 42160
106 delta BHC	319868							
107 Chlordane	57749	2.4[G]	0.0043[G,aa]	0.09[G]	0.004[G,aa]	 0.0021[B,C]	 0.0022[B,C]	62 FR 42160 IRIS 02/07/98

108	4,4-DDT	50293	1.1^{G}	0.001^{G,aa}	0.13^{G}	0.001^{G,aa}	0.00059^{B,C}	0.00059^{B,C}	62 FR 42160
109	4,4-DDE	72559					0.00059^{B,C}	0.00059^{B,C}	62 FR 42160
110	4,4-DDD	72548					0.00083^{B,C}	0.00084^{B,C}	62 FR 42160
111	Dieldrin	60571	0.24^{K}	0.056^{K,O}	0.71^{G}	0.0019^{G,aa}	0.00014^{B,C}	0.00014^{B,C}	62 FR 42160
112	alpha-Endosulfan	959988	0.22^{G,Y}	0.056^{G,Y}	0.034^{G,Y}	0.0087^{G,Y}	110^{B}	240^{B}	62 FR 42160
113	beta-Endosulfan	33213659	0.22^{G,Y}	0.056^{G,Y}	0.034^{G,Y}	0.0087^{G,Y}	110^{B}	240^{B}	62 FR 42160
114	Endosulfan Sulfate	1031078					110^{B}	240^{B}	62 FR 42160
115	Endrin	72208	0.086^{K}	0.036^{K,O}	0.037^{G}	0.0023^{G,aa}	0.76^{B}	0.81^{B,H}	62 FR 42160
116	Endrin Aldehyde	7421934					0.76^{B}	0.81^{B,H}	62 FR 42160
117	Heptachlor	76448	0.52^{G}	0.0038^{G,aa}	0.053^{G}	0.0036^{G,aa}	0.00021^{B,C}	0.00021^{B,C}	62 FR 42160
118	Heptachlor Epoxide	1024573	0.52^{G,V}	0.0038^{G,V,aa}	0.053^{G,V}	0.0036^{G,V,aa}	0.00010^{B,C}	0.00011^{B,C}	62 FR 42160
119	Polychlorinated Biphenyls PCBs			0.014^{N,aa}		0.03^{N,aa}	0.00017^{B,C,P}	0.00017^{B,C,P}	62 FR 42160 63 FR 16182
120	Toxaphene	8001352	0.73	0.0002^{aa}	0.21	0.0002^{aa}	0.00073^{B,C}	0.00075^{B,C}	62 FR 42160

Footnotes:

[A] This recommended water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic, which might imply that arsenic (III) and arsenic (V) are equally toxic to aquatic life and that their toxicities are additive. In the arsenic criteria document (EPA 440/5–84–033, January 1985), Species Mean Acute Values are given for both arsenic (III) and arsenic (V) for five species and the ratios of the SMAVs for each species range from 0.6 to 1.7. Chronic values are available for both arsenic (III) and arsenic (V) for one species; for the fathead minnow, the chronic value for arsenic (V) is 0.29 times the chronic value for arsenic (III). No data are known to be available concerning whether the toxicities of the forms of arsenic to aquatic organisms are additive.

[B] This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

[C] This criterion is based on carcinogenicity of 10^{-6} risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10^{-5}, move the decimal point in the recommended criterion one place to the right).

[D] Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. The recommended water quality criteria value was calculated by using the previous 304(a) aquatic life criteria expressed in terms of total recoverable metal, and multiplying it by a conversion factor (CF). The term "Conversion Factor" (CF) represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. (Conversion Factors for saltwater CCCs are not currently available. Conversion factors derived for saltwater CMCs have been used for both saltwater CMCs and CCCs.) See "Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria," October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource center, USEPA, 401 M St., SW, mail code RC4100, Washington, DC 20460; and 40 CFR § 131.36(b)(1). Conversion Factors applied in the table can be found in Appendix A to the Preamble—Conversion Factors for Dissolved Metals.

[E] The freshwater criterion for this metal is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 100 mg/l. Criteria values for other hardness may be calculated from the following: CMC (dissolved) = exp {m_A [ln(hardness)]+b_A} (CF), or CCC (dissolved) = exp {m_C [ln (hardness)]+b_C} (CF) and the parameters specified in Appendix B to the Preamble—Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent.

[F] Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH, and are calculated as follows: CMD=exp(1.005(pH)−4.869); CCC=exp(1.005 (pH)−5.134). Values displayed in table correspond to a pH of 7.8.

[G] This Criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5–80–019), Chlordane (EPA 440/5–80–027), DDT (EPA 440/5–80–038), Endosulfan (EPA 440/5–80–046), Endrin (EPA 440/5–80–047), Heptachlor (440/5–80–052), Hexachlorocyclohexane (EPA 440/5–80–054), Silver (EPA 440/5–80–071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a "CMC" derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

[H] No criterion for protection of human health from consumption of aquatic organisms excluding water was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow the calculation of a criterion, even though the results of such a calculation were not shown in the document.

[I] This criterion for asbestos is the Maximum Contaminant Level (MCL) developed under the Safe Drinking Water Act (SDWA).

[J] EPA has not calculated human health criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics.

[K] This recommended criterion is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, (EPA–820–B–96–001, September 1996). This value was derived using the GLI Guidelines (60 FR 15393–15399, March 23, 1995; 40 CFR 132 Appendix A); the differences between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.

[L] The CMC=1/[(f1/CMC1)+(f2/CMC2)] where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate, respectively, and CMC1 and CMC2 are 185.9 µg/l and 12.83 µg/l, respectively.

[M] EPA is currently reassessing the criteria for arsenic. Upon completion of the reassessment the Agency will publish revised criteria as appropriate.

[N] PCBs are a class of chemicals which include aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.

[O] The derivation of the CCC for this pollutant did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.

[P] This criterion applies to total pcbs, i.e., the sum of all congener or all isomer analyses.

[Q] This recommended water quality criterion is expressed as µg free cyanide (as CN)/L.

[R] This value was announced (61 FR 58444–58449, November 14, 1996) as a proposed GLI 303(c) aquatic life criterion. EPA is currently working on this criterion and so this value might change substantially in the near future.

[S] This recommended water quality criterion refers to the inorganic form only.

[T] This recommended water quality criterion is expressed in terms of total recoverable metal in the water column. It is scientifically acceptable to use the conversion factor of 0.922 that was used in the GLI to convert this to a value that is expressed in terms of dissolved metal.

[U] The organoleptic effect criterion is more stringent than the value for priority toxic pollutants.

[V] This value was derived from data for heptachlor and the criteria document provides insufficient data to estimate the relative toxicities of heptachlor and heptachlor epoxide.

[W] Although EPA has not published a final criteria document for this compound it is EPA's understanding that sufficient data exist to allow calculation of aquatic criteria. It is anticipated that industry intends to publish in the peer reviewed literature draft aquatic life criteria generated in accordance with EPA Guidelines. EPA will review such criteria for possible issuance as national WQC.

[X] There is a full set of aquatic life toxicity data that show that DEHP is not toxic to aquatic organisms at or below its solubility limit.

[Y] This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

[Z] A more stringent MCL has been issued by EPA. Refer to drinking water regulations (40 CFR 141) or Safe Drinking Water Hotline (1-800-426-4791) for values.

[aa] This CCC is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR 15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[bb] This water quality criterion is based on 304(a) aquatic life criterion that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85-227049, January 1985) and was issued in one of the following criteria documents: Arsenic (EPA 440/5-84-033); Cadmium (EPA 440/5-84-032); Chromium (EPA 440/5-84-029); Copper (EPA 440/5-84-031); Cyanide (EPA 440/5-84-028); Lead (EPA 440/5-84-027); Nickel (EPA 440/5-86-004); Pentachlorophenol (EPA 440/5-86-009); Toxaphene (EPA 440/5-86-006); Zinc (EPA 440/5-87-003).

[cc] When the concentration of dissolved organic carbon is elevated, copper is substantially less toxic and use of Water-Effect Ratios might be appropriate.

[dd] The selenium criteria document (EPA 440/5-87-006, September 1987) provides that if selenium is as toxic to saltwater fishes in the field as it is to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 µg/L in salt water because the saltwater CCC does not take into account uptake via the food chain.

[ee] This recommended water quality criterion was derived on page 43 of the mercury criteria document (EPA 440/5-84-026, January 1985). The saltwater CCC of 0.025 µg/L given on page 23 of the criteria document is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[ff] This recommended water quality criterion was derived in Ambient Water Quality Criteria Saltwater Copper Addendum (Draft, April 14, 1995) and was promulgated in the Interim Final National Toxics Rule (60 FR 22228–22237, May 4, 1995).

[gg] EPA is actively working on this criterion and so this recommended water quality criterion may change substantially in the near future.

[hh] This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criteria was derived.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR NON PRIORITY POLLUTANTS

Non priority pollutant	CAS No	Freshwater		Saltwater		Human health for consumption of		FR cite/source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	Water + organism (µg/L)	Organism only (µg/L)	
1 Alkalinity			20000[F]					Gold Book
2 Aluminum pH 6.5–9.0	7429905	750[G,I]	87[G,I]					53 FR 33178
3 Ammonia	7664417	FRESHWATER CRITERIA ARE pH DEPENDENT—SEE DOCUMENT SALTWATER CRITERIA ARE pH AND TEMPERATURE DEPENDENT[D]						EPA822-R-98-008 EPA440/5-88-004
4 Aesthetic Qualities		NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
5 Bacteria		FOR PRIMARY RECREATION AND SHELLFISH USES—SEE DOCUMENT						Gold Book
6 Barium	7440393					1,000[A]		Gold Book
7 Boron		NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
8 Chloride	16887006	860000[G]	230000[G]					53 FR 19028
9 Chlorine	7782505	19	11	13	7.5	C		Gold Book
10 Chlorophenoxy Herbicide 2,4,5, TP	93721					10[A]		Gold Book
11 Chlorophenoxy Herbicide 2,4 D	94757					100[A,C]		Gold Book
12 Chloropyrifos	2921882	0.083[G]	0.041[G]	0.011[G]	0.0056[G]			Gold Book
13 Color		NARRATIVE STATEMENT—SEE DOCUMENT[F]						Gold Book
14 Demeton	8065483		0.1[F,H]		0.1[F,H]			Gold Book
15 Ether, Bis Chloromethyl	542881					0.00013[E]	0.00078[E]	IRIS 01/01/91
16 Gases, Total Dissolved		NARRATIVE STATEMENT—SEE DOCUMENT[F]						Gold Book
17 Guthion	86500		0.01[F,H]		0.01[F,H]			Gold Book
18 Hardness		NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
19 Hexachlorocyclo-hexane-Technical	319868					0.0123	0.0414	Gold Book
20 Iron	7439896		1000[F]			300[A]		Gold Book
21 Malathion	121755		0.1[F,H]					Gold Book
22 Manganese	7439965					50[A]	100[A]	Gold Book
23 Methoxychlor	72435		0.03[F,H]		0.03[F,H]	100[A,C]		Gold Book
24 Mirex	2385855		0.001[F,H]		0.001[F,H]			Gold Book
25 Nitrates	14797558					10,000[A]		Gold Book
26 Nitrosamines						0.0008	1.24	

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27 Dinitrophenols	25550587					70	14,000	Gold Book
28 Nitrosodibutylamine,N	924163					0.0064[A]	0.587[A]	Gold Book
29 Nitrosodiethylamine,N	55185					0.0008[A]	1.24[A]	Gold Book
30 Nitrosopyrrolidine,N	930552					0.016	91.9	Gold Book
31 Oil and Grease		NARRATIVE STATEMENT—SEE DOCUMENT[F]						Gold Book
32 Oxygen, Dissolved	7782447	WARMWATER AND COLDWATER MATRIX—SEE DOCUMENT[O]						Gold Book

27	Dinitrophenols	25550587					70	14 000	Gold Book
28	Nitrosodibutylamine,N	924163					0.0064 [A]	0.587 [A]	Gold Book
29	Nitrosodiethylamine,N	55185					0.0008 [A]	1.24 [A]	Gold Book
30	Nitrosopyrrolidine,N	930552					0.016	91.9	Gold Book
31	Oil and Grease	....	NARRATIVE STATEMENT—SEE DOCUMENT [F]						Gold Book
32	Oxygen, Dissolved	7782447	WARMWATER AND COLDWATER MATRIX—SEE DOCUMENT [O]						Gold Book
33	Parathion	56382	0.065 [I]	0.013 [J]					Gold Book
34	Pentachlorobenzene	608935					3.5 [E]	4.1 [E]	IRIS 03/01/88
35	pH			6.5-9 [F]		6.5–8.5 [F,K]	5-9		Gold Book
36	Phosphorus Elemental	7723140				0.1 [F,K]			Gold Book
37	Phosphate Phosphorus		NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
38	Solids Dissolved and Salinity						250 000 [A]		Gold Book
39	Solids Suspended and Turbidity		NARRATIVE STATEMENT—SEE DOCUMENT [L]						Gold Book
40	Sulfide-Hydrogen Sulfide	7783064		2.0 [F,H]		2.0 [F,H]			Gold Book
41	Tainting Substances	....	NARRATIVE STATEMENT—SEE DOCUMENT						Gold Book
42	Temperature		SPECIES DEPENDENT CRITERIA—SEE DOCUMENT [M]						Gold Book
43	Tetrachlorobenzene 1,2,4,5	95943					2.3 [E]	2.9 [E]	IRIS03/01/91
44	Tributyltin TBT		0.46 [N]	0.063 [N]	0.37 [N]	0.010 [N]			62 FR 42554
45	Trichlorophenol,2,4,5	95954					2600 [B,E]	9 800 [B,E]	IRIS 03/01/88

Footnotes:

[A] This human health criterion is the same as originally published in the Red Book which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is now published in the Gold Book.

[B] The organoleptic effect criterion is more stringent than the value presented in the non priority pollutants table.

[C] A more stringent Maximum Contaminant Level (MCL) has been issued by EPA under the Safe Drinking Water Act. Refer to drinking water regulations 40 CFR 141 or Safe Drinking Water Hotline (1–800–426–4791) for values.

[D] According to the procedures described in the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, except possibly where a very sensitive species is important at a site, freshwater aquatic life should be protected if both conditions specified in Appendix C to the Preamble—Calculation of Freshwater Ammonia Criterion are satisfied.

[E] This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) used to derive the original criterion was retained in each case.

[F] The derivation of this value is presented in the Red Book (EPA 440/9–76–023, July, 1976).

[G] This value is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85–227049, January 1985) and was issued in one of the following criteria documents: Aluminum (EPA 440/5–86–008); Chloride (EPA 440/5–88–001); Chlorpyrifos (EPA 440/5–86–005).

[H] This CCC is based on the Final Residue Value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60 FR 15393–15399, March 23, 1995), the Agency no longer uses the Final Residue Value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.

[I] This value is expressed in terms of total recoverable metal in the water column.

[J] This value is based on a 304(a) aquatic life criterion that was issued in the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water (EPA–820–B–96–001). This value was derived using the GLI Guidelines (60 FR 15393–15399, March 23, 1995; 40 CFR 132 Appendix A); the differences between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. No decision concerning this criterion was affected by any considerations that are specific to the Great Lakes.

[K] According to page 181 of the Red Book: For open ocean waters where the depth is substantially greater than the euphotic zone, the pH should not be changed more than 0.2 units from the naturally occurring variation or any case outside the range of 6.5 to 8.5. For shallow, highly productive coastal and estuarine areas where naturally occurring pH variations approach the lethal limits of some species, changes in pH should be avoided but in any case should not exceed the limits established for fresh water, i.e., 6.5–9.0.

[L] There are three major reasons why the use of Water-Effect Ratios might be appropriate. (1) The value of 87 µg/l is based on a toxicity test with the striped bass in water with pH=6.5–6.6 and hardness <10 mg/L. Data in "Aluminum Water-Effect Ratio for the 3M Plant Effluent Discharge, Middleway, West Virginia" (May 1994) indicate that aluminum is substantially less toxic at higher pH and hardness, but the effects of pH and hardness are not well quantified at this time. (2) In tests with the brook trout at low pH and hardness, effects increased with increasing concentrations of total aluminum even though the concentration of dissolved aluminum was constant, indicating that total recoverable is a more appropriate measurement than dissolved, at least when particulate aluminum is primarily aluminum hydroxide particles. In surface waters, however, the total recoverable procedure might measure aluminum associated with clay particles, which might be less toxic than aluminum associated with aluminum hydroxide. (3) EPA is aware of field data indicating that many high quality waters in the U.S. contain more than 87 µg aluminum/L, when either total recoverable or dissolved is measured.

[M] U.S. EPA. 1973. Water Quality Criteria 1972. EPA–R3–73–033. National Technical Information Service, Springfield, VA.; U.S. EPA. 1977. Temperature Criteria for Freshwater Fish: Protocol and Procedures. EPA–600/3–77–061. National Technical Information Service, Springfield, VA.

[N] This value was announced (62 FR 42554, August 7, 1997) as a proposed criterion. Although EPA has not responded to public comment, EPA is publishing this as a 304(a) criterion in today's notice as guidance for States and Tribes to consider when adopting water quality criteria.

[O] U.S. EPA. 1986. Ambient Water Quality Criteria for Dissolved Oxygen. EPA 440/5–86–003. National Technical Information Service, Springfield, VA.

NATIONAL RECOMMENDED WATER QUALITY CRITERIA FOR ORGANOLEPTIC EFFECTS

Pollutant	CAS No.	Organoleptic effect criteria (µg/L)	FR cite/source
1 Acenaphthene	208968	20	Gold Book
2 Monochlorobenzene	108907	20	Gold Book
3 3-Chlorophenol		0.1	Gold Book
4 4-Chlorophenol	106489	0.1	Gold Book
5 2,3-Dichlorophenol		0.04	Gold Book
6 2,5-Dichlorophenol		0.5	Gold Book
7 2,6-Dichlorophenol		0.2	Gold Book
8 3,4-Dichlorophenol		0.3	Gold Book
9 2,4,5-Trichlorophenol	95954	1	Gold Book
10 2,4,6-Trichlorophenol	88062	2	Gold Book
11 2,3,4,6-Tetrachlorophenol		1	Gold Book
12 2-Methyl-4-Chlorophenol		1800	Gold Book
13 3-Methyl-4-Chlorophenol	59507	3000	Gold Book
14 3-Methyl-6-Chlorophenol		20	Gold Book
15 2-Chlorophenol	95578	0.1	Gold Book
16 Copper	744058	1000	Gold Book
17 2,4-Dichlorophenol	120832	0.3	Gold Book
18 2,4-Dimethylphenol	105679	400	Gold Book
19 Hexachlorocyclopentadiene	77474	1	Gold Book
20 Nitrobenzene	98953	30	Gold Book
21 Pentachlorophenol	87865	30	Gold Book
22 Phenol	108952	300	Gold Book
23 Zinc	7440666	5000	45 FR 79341

General Notes:

1. These criteria are based on organoleptic (taste and odor) effects. Because of variations in chemical nomenclature systems, this listing of pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. Also listed are the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

National Recommended Water Quality Criteria

Additional Notes

1. Criteria Maximum Concentration and Criterion Continuous Concentration

The Criteria Maximum Concentration (CMC) is an estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed briefly without resulting in an unacceptable effect. The Criterion Continuous Concentration (CCC) is an estimate of the highest concentration of a material in surface water to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect. The CMC and CCC are just two of the six parts of a aquatic life criterion; the other four parts are the acute averaging period, chronic averaging period, acute frequency of allowed exceedence, and chronic frequency of allowed exceedence. Because 304(a) aquatic life criteria are national guidance, they are intended to be protective of the vast majority of the aquatic communities in the United States.

2. Criteria Recommendations for Priority Pollutants, Non Priority Pollutants and Organoleptic Effects

This compilation lists all priority toxic pollutants and some non priority toxic pollutants, and both human health effect and organoleptic effect criteria issued pursuant to CWA § 304(a). Blank spaces indicate that EPA has no CWA § 304(a) criteria recommendations. For a number of non-priority toxic pollutants not listed, CWA § 304(a) "water + organism" human health criteria are not available, but, EPA has published MCLs under the SDWA that may be used in establishing water quality standards to protect water supply designated uses. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. Also listed are the Chemical Abstracts Service CAS registry numbers, which provide a unique identification for each chemical.

3. Human Health Risk

The human health criteria for the priority and non priority pollutants are based on carcinogenicity of 10^{-6} risk. Alternate risk levels may be obtained by moving the decimal point (e.g., for a risk level of 10–5, move the decimal point in the recommended criterion one place to the right).

4. Water Quality Criteria Published Pursuant to Section 304(a) or Section 303(c) of the CWA

Many of the values in the compilation were published in the proposed California Toxics Rule (CTR, 62 FR 42160). Although such values were published pursuant to Section 303(c) of the CWA, they represent the Agency's most recent calculation of water quality criteria and thus are published today as the Agency's 304(a) criteria. Water quality criteria published in the proposed CTR may be revised when EPA takes final action on the CTR.

5. Calculation of Dissolved Metals Criteria

The 304(a) criteria for metals, shown as dissolved metals, are calculated in one of two ways. For freshwater metals criteria that are hardness-dependent, the dissolved metal criteria were calculated using a hardness of 100 mg/l as $CaCO_3$ for illustrative purposes only. Saltwater and freshwater metals' criteria that are not hardness-dependent are calculated by multiplying the total recoverable criteria before rounding by the appropriate conversion factors. The final dissolved metals' criteria in the table are rounded to two significant figures. Information regarding the calculation of hardness dependent conversion factors are included in the footnotes.

6. Correction of Chemical Abstract Services Number

The Chemical Abstract Services number (CAS) for Bis(2-Chloroisopropyl) Ether, has been corrected in the table. The correct CAS number for this chemical is 39638–32–9. Previous publications listed 108–60–1 as the CAS number for this chemical.

7. Maximum Contaminant Levels

The compilation includes footnotes for pollutants with Maximum Contaminant Levels (MCLs) more stringent than the recommended water quality criteria in the compilation. MCLs for these pollutants are not included in the compilation, but can be found in the appropriate drinking water regulations (40 CFR 141.11–16 and 141.60–63), or can be accessed through the Safe Drinking Water Hotline (800–426–4791) or the Internet (http://www.epa.gov/ost/tools/dwstds-s.html).

8. Organoleptic Effects

The compilation contains 304(a) criteria for pollutants with toxicity-based criteria as well as non-toxicity based criteria. The basis for the non-toxicity based criteria are organoleptic effects (e.g., taste and odor) which would make water and edible aquatic life unpalatable but not toxic to humans. The table includes criteria for organoleptic effects for 23 pollutants. Pollutants with organoleptic effect criteria more stringent than the criteria based on toxicity (e.g., included in both the priority and non-priority pollutant tables) are footnoted as such.

9. Category Criteria

In the 1980 criteria documents, certain recommended water quality criteria were published for categories of pollutants rather than for individual pollutants within that category. Subsequently, in a series of separate actions, the Agency derived criteria for specific pollutants within a category. Therefore, in this compilation EPA is replacing criteria representing categories with individual pollutant criteria (e.g., 1,3-dichlorobenzene, 1,4-dichlorobenzene and 1,2-dichlorobenzene).

10. Specific Chemical Calculations

A. Selenium

(1) Human Health

In the 1980 Selenium document, a criterion for the protection of human health from consumption of water and organisms was calculated based on a BCF of 6.0 L/kg and a maximum water-related contribution of 35 µg Se/day. Subsequently, the EPA Office of Health and Environmental Assessment issued an errata notice (February 23, 1982), revising the BCF for selenium to 4.8 L/kg. In 1988, EPA issued an addendum (ECAO–CIN–668) revising the human health criteria for selenium. Later in the final National Toxic Rule (NTR, 57 FR 60848), EPA withdrew previously published selenium human health criteria, pending Agency review of new epidemiological data.

This compilation includes human health criteria for selenium, calculated using a BCF of 4.8 L/kg along with the current IRIS RfD of 0.005 mg/kg/day. EPA included these recommended water quality criteria in the compilation because the data necessary for calculating a criteria in accordance with EPA's 1980 human health methodology are available.

(2) Aquatic Life

This compilation contains aquatic life criteria for selenium that are the same as those published in the proposed CTR. In the CTR, EPA proposed an acute criterion for selenium based on the criterion proposed for selenium in the Water Quality Guidance for the Great Lakes System (61 FR 58444). The GLI and CTR proposals take into account data showing that selenium's two most prevalent oxidation states, selenite and selenate, present differing potentials for aquatic toxicity, as well as new data indicating that various forms of selenium are additive. The new approach produces a different selenium acute criterion concentration, or CMC, depending upon the relative proportions of selenite, selenate, and other forms of selenium that are present.

EPA notes it is currently undertaking a reassessment of selenium, and expects the 304(a) criteria for selenium will be revised based on the final reassessment (63 FR 26186). However, until such time as revised water quality criteria for selenium are published by the Agency, the recommended water quality criteria in this compilation are EPA's current 304(a) criteria.

B. 1,2,4-Trichlorobenzene and Zinc

Human health criteria for 1,2,4-trichlorobenzene and zinc have not been previously published. Sufficient information is now available for calculating water quality criteria for the protection of human health from the consumption of aquatic organisms and the consumption of aquatic organisms and water for both these compounds. Therefore, EPA is publishing criteria for these pollutants in this compilation.

C. Chromium (III)

The recommended aquatic life water quality criteria for chromium (III) included in the compilation are based on the values presented in the document titled: 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, however, this document contains criteria based on the total recoverable fraction. The chromium (III) criteria in this compilation were calculated by applying the conversion factors used in the Final Water Quality Guidance for the Great Lakes System (60 FR 15366) to the 1995 Update document values.

D. Ether, Bis (Chloromethyl), Pentachlorobenzene, Tetrachlorobenzene 1,2,4,5- Trichlorophenol

Human health criteria for these pollutants were last published in EPA's Quality Criteria for Water 1986 or "Gold Book". Some of these criteria were calculated using Acceptable Daily Intake (ADIs) rather than RfDs. Updated q1*s and RfDs are now available in IRIS for ether, bis (chloromethyl), pentachlorobenzene, tetrachlorobenzene 1,2,4,5-, and trichlorophenol, and were used to revise the water quality criteria for these compounds. The recommended water quality criteria for ether, bis (chloromethyl) were revised using an updated q1*, while criteria for pentachlorobenzene, and tetrachlorobenzene 1,2,4,5-, and trichlorophenol were derived using an updated RfD value.

E. PCBs

In this compilation EPA is publishing aquatic life and human health criteria based on total PCBs rather than individual arochlors. These criteria replace the previous criteria for the seven individual arochlors. Thus, there are criteria for a total of 102 of the 126 priority pollutants.

Dated: October 26, 1998.

J. Charles Fox,

Assistant Administrator, Office of Water.

Appendix A—Conversion Factors for Dissolved Metals

Metal	Conversion factor freshwater CMC	Conversion factor freshwater CCC	Conversion factor saltwater CMC	Conversion factor saltwater CCC
Arsenic	1.000	1.000	1.000	1.000
Cadmium	1.138672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]	0.994	0.994
Chromium III	0.316	0.860		
Chromium VI	0.982	0.962	0.993	0.993
Copper	0.960	0.960	0.83	0.83
Lead	1.46203-[(ln hardness)(0.145712)]	1.46203-[(ln hardness)(0.145712)]	0.951	0.951
Mercury	0.85	0.85	0.85	0.85
Nickel	0.998	0.997	0.990	0.990
Selenium	—	—	0.998	0.998
Silver	0.85	—	0.85	
Zinc	0.978	0.986	0.946	0.946

Appendix B—Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent

Chemical	m_A	b_A	m_C	b_C	Freshwater conversion factors (CF)	
					Acute	Chronic
Cadmium	1.128	−3.6867	0.7852	−2.715	1.136672-[ln (hardness)(0.041838)]	1.101672-[ln (hardness)(0.041838)]
Chromium III	0.8190	3.7256	0.8190	0.6848	0.316	0.860
Copper	0.9422	−1.700	0.8545	−1.702	0.960	0.960
Lead	1.273	−1.460	1.273	−4.705	1.46203-[ln (hardness)(0.145712)]	1.46203-[ln (hardness)(0.145712)]
Nickel	0.8460	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	−6.52	—	—	0.85	
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Appendix C—Calculation of Freshwater Ammonia Criterion

1. The one-hour average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CMC calculated using the following equation:

$$CMC = \frac{0.275}{1+10^{7.204-pH}} + \frac{39.0}{1+10^{pH-7.204}}$$

In situations where salmonids do not occur, the CMC may be calculated using the following equation:

$$CMC = \frac{0.411}{1+10^{7.204-pH}} + \frac{58.4}{1+10^{pH-7.204}}$$

2. The thirty-day average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CCC calculated using the following equation:

$$CCC = \frac{0.0858}{1+10^{7.688-pH}} + \frac{3.70}{1+10^{pH-7.688}}$$

Editorial Note: FR Doc. 98-30272 was originally published as Part IV (63 FR 67548-67558) in the issue of Monday, December 7, 1998. At the request of the agency, due to incorrect footnote identifiers in the tables, the corrected document is being republished in its entirety.

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Part V

Department of Transportation

Federal Transit Administration

49 CFR Part 639
Capital Leases; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 639

[Docket No. FTA–98–4407]

RIN 2132–AA65

Capital Leases

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule

SUMMARY: This final rule implements the Transportation Equity Act for the 21st Century, Public Law 105–178 (TEA–21), which allows all Federal Transit Administration (FTA) capital grant funds to be used for leasing facilities and equipment if a lease is more cost effective than purchase or construction. Before the enactment of TEA–21, recipients were permitted to lease assets only with funds received under 49 U.S.C. 5307. This rule amends FTA's leasing regulation to extend this option to all FTA funds, to the extent a recipient meets all other regulatory requirements.

EFFECTIVE DATE: This rule is effective January 11, 1999.

SUPPLEMENTARY INFORMATION:

A. Background

Under 49 U.S.C. 5307, Federal funds are provided to urbanized areas on the basis of a statutory formula. These funds are available for the acquisition or construction of mass transportation facilities and equipment ("capital assistance grants"), as well as, beginning in fiscal year 1999, for the payment of a portion of the net operating cost of mass transportation facilities and equipment ("operating assistance grants") in areas of less than 200,000 in population.

Historically, few Federal Transit Administration (FTA) grantees leased capital assets, because under Office of Management and Budget cost principles (OMB Circular A–87, "Cost Principles for Grants to State and Local Governments") a significant portion of lease costs (as much as forty percent) representing imputed interest was ineligible for reimbursement.

In 1987, section 308 of the Surface Transportation and Uniform Relocation Assistance Act, Public Law 100–17 (STURAA), expressly authorized the use of section 5307 capital assistance funds to acquire facilities and equipment by lease where leasing is more cost effective than purchase or construction. As explained in the accompanying Senate Report, section 308

> Permits grantees to use [section 5307] grant funds to lease major capital cost items such as computers, maintenance of way and other heavy equipment, maintenance of effort rail equipment, radio equipment, bus garages, property or structures for park and ride, and other buildings or facilities used for mass transit purposes. The Committee recognizes that it is often more cost effective for grantees to lease rather than purchase major capital items. Leasing arrangements can also provide transit authorities with flexibility that is needed, for example, to maintain their communications and computing equipment or to adapt buildings and other facilities to changing needs. By including this section, the Committee intends to help grantees better manage their operations and conduct long-term and short-term planning. S. Rep. No. 3, 100th Cong., 1st Sess. 6 (1987).

On October 15, 1991, FTA issued 49 CFR Part 639 (56 F.R. 51786), which implements section 308. The rule sets out the factors for determining whether leasing is more cost effective than purchase or construction of such items. In accordance with section 308, sections 639.1, 639.3, 639.5, and 639.13(a) of the regulation limit eligibility for the award of capital leasing funds to requests for assistance under section 5307.

B. Section 3003 of TEA–21

Section 3003 of the Transportation Equity Act for the 21st Century, Public Law 105–178 (TEA–21), amends 49 U.S.C. 5302(a)(1) by adding, *inter alia,* the following subsection to the definition of "capital project":

> (F) Leasing equipment or a facility for use in mass transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost effective than purchase or construction.

Section 3003 therefore makes all leasing arrangements for mass transit projects that meet FTA's cost-effectiveness criteria eligible for capital funding. Moreover, section 3003 does not limit eligibility for capital lease funding to requests for assistance under section 5307, but allows all categories of FTA funds to be used for leasing purposes, to the extent that they meet the regulatory requirements. FTA is thus amending 49 CFR Part 639 to reflect this expansion of its capital leasing authority.

C. FTA's Final Action

In keeping with section 3003 of TEA–21, FTA is amending 49 CFR 639.1, 639.3, 639.5 and 639.13(a) to recognize that all categories of FTA funds, and not merely section 5307 block grant formula funds, may be used to acquire equipment and facilities under leases that meet FTA's cost-effectiveness criteria.

Regulatory Impacts

A. Regulatory Analyses and Notices

FTA has determined that this action is not significant under Executive Order 12866 or the Department of Transportation regulatory policies and procedures. Because this rule merely expands the categories of FTA grant funds eligible for capital leasing and does not make substantive changes in evaluation criteria, it is anticipated that the impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act, because it gives section 5311 recipients an option not currently extended to them, which is to lease mass transit equipment or facilities when it is more cost effective than purchasing them.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

List of Subjects in 49 CFR Part 639

Government contracts, Grant programs—transportation, Mass transportation. Accordingly, for the reasons described in the Preamble of this document, FTA is proposing to amend Title 49, Code of Federal Regulations, Part 639 as follows:

PART 639—[AMENDED]

1. The authority citation of Part 639 is revised to read as follows:

Authority: 49 U.S.C. 5302; 49 CFR 1.51.

2. Section 639.1 is revised to read as follows:

§ 639.1 General overview of this part.

This part contains the requirements to qualify for capital assistance when leasing facilities or equipment under the Federal transit laws. This part is set out in four subparts, with subpart A containing general information on scope and definitions. Subpart B contains the principal requirements of this part, including eligibility requirements, the self-certification system used, and identification of the various forms of leases and grants that are eligible under the program. Subpart B also contains a section on other Federal requirements that may apply. Subpart C includes the actual calculations that each recipient should undertake before certifying that a lease is cost-effective. Finally, subpart D contains requirements on early lease termination and project management in general.

3. Section 639.3 is revised to read as follows:

§ 639.3 Purpose of this part.

This rule implements section 3003 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178). Section 3003 amended section 5302 of Chapter 53 of Title 49 of the United States Code to allow a recipient to use capital funds to finance the leasing of facilities and equipment on the condition that the leasing arrangements are more cost effective than purchase or construction.

4. Section 639.5 is revised to read as follows:

§ 639.5 Scope of this part.

This part applies to all requests for capital assistance under Chapter 53 of Title 49 of the United States Code where the proposed method of obtaining a capital asset is by lease rather than purchase or construction.

5. Section 639.13(a) is revised to read as follows:

§ 639.13 Eligible types of leases.

(a) General. Any leasing arrangement, the terms of which provide for the recipient's use of a capital asset, potentially is eligible as a capital project under Chapter 53 of Title 49 of the United States Code, regardless of the classification of the leasing arrangement for tax purposes.

* * * * *

Issued on: December 7, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–32897 Filed 12–9–98; 8:45 am]

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Part VI

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2520

Proposed Revisions to Certain Regulations Regarding Annual Reporting and Disclosure Requirements; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA52

Proposed Revisions to Certain Regulations Regarding Annual Reporting and Disclosure Requirements

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed rulemaking

SUMMARY: This document contains proposed amendments to Department of Labor (Department) regulations relating to the annual reporting and disclosure requirements under part 1 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act). In part, the amendments contained in this document are necessary to conform the regulations to the previously published revisions to the annual return/report forms (Form 5500 Series) filed by administrators of employee pension and welfare benefit plans under part 1 of Title I of ERISA. The regulatory amendments, in conjunction with the revisions to the Form 5500 Series, are intended to reduce the annual reporting burdens on employee benefit plans while ensuring that the Department has access to the information it needs to carry out its administrative and enforcement responsibilities under ERISA and that participants and beneficiaries have access to the information they need to protect their rights and benefits under ERISA. Other proposed amendments contained in this document would modify the reporting requirements for certain group insurance arrangements. The remaining amendments are technical in nature and are designed to either simplify or clarify the existing reporting regulations. If adopted, the amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing Form 5500 Series reports under part 1 of Title I of ERISA.

DATES: Written comments on the proposed regulations must be received by the Department on or before February 8, 1999.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, ATTENTION: Proposed Amendments to Annual Reporting Regulations. All written comments should clearly reference the relevant proposed amendment(s). All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 219–8515 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Under Titles I and IV of ERISA, and the Internal Revenue Code, as amended, pension and other employee benefit plans are generally required to file annual return/reports concerning, among other things, the financial condition and operations of the plan. These annual reporting requirements can be satisfied by filing the Form 5500 Series in accordance with its instructions and related regulations. The Form 5500 Series is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Series is a compliance and research tool for the Department, and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

During the last two years, the Department's Pension and Welfare Benefits Administration (PWBA), the Internal Revenue Service and the Pension Benefit Guaranty Corporation (the Agencies) have conducted an extensive review of the Form 5500 Series in an effort to streamline the information required to be reported and the methods by which the information is filed and processed. A Notice of Proposed Forms Revisions soliciting public comments on proposed revision of the Form 5500 Series was published in the **Federal Register** on September 3, 1997 (62 FR 46556). The Agencies' proposal replaced the Form 5500, Form 5500–C and Form 5500–R with one Form 5500 intended to streamline the report and the methods by which it is filed. Concurrent with the development of the new forms, the Agencies are also developing a new computerized system to process the Form 5500 (the ERISA Filing Acceptance System or "EFAST"). The new computerized processing system is designed to simplify and expedite the receipt and processing of the new Form 5500 by relying on computer scannable forms and electronic filing technologies. The overall proposal is intended to streamline and improve the Form 5500 Series and lower the administrative burdens and costs incurred by the more than 800,000 employee benefit plans that file the Form 5500 Series each year. A public hearing on the proposed forms revisions was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. The Agencies received over 60 public comments and received oral testimony from employer groups, employee representatives, financial institutions, service organizations and others on the form streamlining proposal. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year.

Public reaction to the September 3, 1997 Notice of Proposed Forms Revisions was generally supportive of the new streamlined structure of the Form 5500 Series. The Agencies, accordingly, decided to adopt the new reporting structure largely as proposed. In response to public comments, the Agencies made various adjustments to the proposed forms and instructions where consistent with the purposes of the Form 5500 and the objectives of the streamlining project. A revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act and a Notice was published in the **Federal Register** on June 24, 1998 (63 FR 34493) which provided a 30-day opportunity to submit comments to OMB on the new Form 5500 submission. The new Form 5500 was also made available on PWBA's internet site (http://www.dol.gov/dol/pwba) as part of the Agencies' commitment to make information about the new forms available to plans and their service providers at the earliest opportunity. Following its Paperwork Reduction Act review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. The approval is conditioned on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor technical adjustments to the form.[1] After the computer scannable versions of the new forms and electronic filing options are developed as part of the EFAST project, the Agencies intend to publish a **Federal Register** notice soliciting public comments. The final computer scannable version of the forms which will be required to be used for 1999 plan year filings will be published in the **Federal Register** following the Agencies' evaluation of public comments.

The proposed amendments published herein to the Department's annual reporting regulations (Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations) are intended, in major part, to make the technical and conforming changes to the regulations necessary to implement the new Form 5500 Series. As stated in the September 3, 1997 Notice of Proposed Forms Revisions, the new Form 5500 Series will not become effective as an alternative method of compliance and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA until these regulations are issued in final form.

B. Request for Comments

Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, Attention: Proposed Amendments To Annual Reporting Regulations. All written comments should clearly reference the relevant proposed amendment(s). All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C.

The regulatory amendments proposed herein do not involve revisions to the Form 5500 Series itself and generally do not announce changes to the annual reporting requirements for employee benefit plans in addition to those described in the previously published forms revisions. The Agencies in developing the revisions to the Form 5500 Series previously considered the comments submitted in response to the September 3, 1997 Notice of Proposed Forms Revisions and the June 24, 1998 Notice. Those comments will be treated as part of the public record for this Notice of Proposed Rulemaking, and, to the extent those comments include information relevant to the regulatory amendments proposed herein, the Department will treat those comments as comments on this Notice of Proposed Rulemaking to avoid the need to submit duplicate public comments.

C. Discussion of the Proposal

1. Section 2520.103–1

Section 2520.103–1 generally describes the content of the Form 5500 Series as a limited exemption and alternative method of compliance. One of the central changes announced in the Notice of Proposed Forms Revisions for improving the Form 5500 Series and reducing the reporting burden on filers was the development of one Form 5500 for use by both "large plan" filers (plans that previously filed the Form 5500) and "small plan" filers (plans that previously were eligible to file the Form 5500-C/R) that was structured along the lines of tax returns familiar to individual and corporate taxpayers " a simple one-page main form with basic information necessary to identify the plan for which the report is filed that guides each filer to those schedules applicable to the filer's specific type of plan. The Form 5500-C/R is being eliminated, but limited financial reporting options for small plans are being maintained.[2] To accommodate these form changes, the proposed regulatory amendments would update the references in § 2520.103–1 to the annual report to reflect the new structure of the Form 5500.[3]

2. Section 2520.103–2

Welfare plans participating in a group insurance arrangement (GIA) are exempt from filing individual annual reports under § 2520.104–43 provided that the trust, trade association, or other entity which holds the insurance contracts and acts as a conduit for the payment of insurance premiums files an annual report for the entire arrangement. Section 2520.103–2 prescribes the contents of the annual report for GIAs in order for the participating plans to be eligible for the exemption described in § 2520.104–43. The annual report required to be filed under § 2520.103–2 must contain a completed Form 5500, including any required schedules, a report by an independent qualified public accountant (IQPA), and separate financial statements if prepared by the IQPA in order to form the opinion required by § 2520.103–2(b)(5). The Department is proposing amendments to § 2520.103–2 that are consistent with the changes proposed for § 2520.103–1, as applicable, and §§ 2520.104–21 and 2520.104–43 (described in section C.7 of this preamble). Of particular note for GIAs is the addition of a new Schedule D (DFE/Participating Plan Information) to the Form 5500. The Schedule D is intended to serve as a multipurpose schedule for reporting certain information on relationships between plans and entities that are classified as "Direct Filing Entities" or DFEs, including investment entities covered under § 2520.103–12, master trust investment accounts, common or collective trusts (CCTs), pooled separate accounts (PSAs), and GIAs. In the case of GIAs, the new Schedule D would be a standardized form that GIAs would be required to use to satisfy the current requirement to file a list of participating plans. (See discussions below of CCTs, PSAs, master trusts and 103–12 investment entities for more information on applicable requirements for plans and entities required to file the new Schedule D).

3. Sections 2520.103–3, 2520.103–4, 2520.103–9, 2520.103–12 and 2520.103–1(e)

(a) Common/Collective Trusts and Pooled Separate Accounts

Section 2520.103–3 provides an exemption from certain annual reporting requirements for plan assets held in a CCT maintained by a bank, trust company or similar institution. Section 2520.103–4 provides a similar exemption for plan assets held in a PSA maintained by an insurance carrier. Pursuant to §§ 2520.103–3 and 2520.103–4, a plan investing in these entities generally need not include information regarding the individual transactions of the entity in the plan's annual report. Rather, the plan must include in its annual report certain information regarding: (i) the current value of the plan's units of participation in the CCT or PSA, (ii) transactions involving the acquisition and disposition of units of participation in the CCT or PSA, and (iii) a statement of the assets and liabilities of the CCT or PSA. Further, the Department, pursuant to § 2520.103–9, exempts plans from including a statement of the assets and liabilities of the CCT and/or PSA with their annual report if the bank, trust company or insurance carrier sponsoring the CCT or PSA, respectively, files its statement of assets and liabilities directly with the Department and certain other conditions are met. The statement of assets and liabilities of a CCT and PSA is not required to be reported in a standardized format. The absence of standardized reporting for CCTs and PSAs has made it virtually impossible for the Department to correlate and effectively use the data regarding the approximately 226.2 billion dollars in plan assets held by CCTs and PSAs. The Department has concluded that a change in the current reporting rules is needed to enable it to continue to satisfy its research and enforcement responsibilities.

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[1] The conditions regarding form changes involved (i) consolidating the separate reporting of long-term and short-term corporate debt instruments into one line item for all corporate debt instruments on the Schedule H (Income and Expense Statement), (ii) adding a clarifying instructional statement to the text on line 5 of Schedule R, (iii) bolding instructional text on line 3 of Schedule T, (iv) adding a statement to the Schedule C instructions that trades and businesses (whether or not incorporated) are "persons" required to be reported as service providers, and (v) clarifying the instructions for line 3b(2) of Schedule H regarding the inapplicability of the "short plan year" provisions of 29 CFR 2520.104–50 to Direct Filing Entity Form 5500s filed for group insurance arrangements and investment entities described in 29 CFR 2520.103–12 (103–12 IEs) .

[2] For example, plans eligible to file as small plans that take advantage of the simplified reporting rules would continue to be exempt from the annual audit requirements contained in ERISA § 103 and would continue to be relieved of the obligation to file certain schedules required for large plan filers (e.g., Schedule C —Service Provider Information).

[3] The proposal also would delete the cross-reference to obsolete § 2520.103–7. This provision was removed from the Code of Federal Regulations on July 1, 1996 (61 FR 33847).

Under the proposed forms revisions, as under the current Form 5500 Series, CCTs and PSAs may elect to file information on behalf of their participating plans. As noted above, the revisions to the Form 5500 Series include a new Schedule D (DFE/Participating Plan Information). The Schedule D is a standardized schedule for filing certain information on relationships between plans and CCTs and PSAs (as well as other entities that are classified as "Direct Filing Entities" or DFEs, including investment entities covered under § 2520.103–12, master trust investment accounts, and GIAs). In the case of a CCT or PSA that elects to file as a DFE, the CCT or PSA would be required to complete: (1) applicable items on the revised Form 5500; (2) one or more Schedules D (to list all participating plans at any time during the year and all CCTs, PSAs, or investment entities described in § 2520.103–12 (103–12 IEs) that the CCT or PSA invested in during the year; and (3) a Schedule H (Financial Information) (formerly referred to as the Schedule FIN in the September 3, 1997 **Federal Register** Notice of Proposed Forms Revisions).

A large plan investing in one or more CCTs or PSAs which file as a DFE would report the value of its respective interests in each of these entities as a single entry on the appropriate lines in the plan's asset and liability statement as of the beginning and end of the plan year. A large plan investing in a CCT or PSA which files as a DFE also would report on the plan's Schedule H income and expense statement the net investment gain/loss for the DFE as part of a single entry for each class of DFE. As indicated previously, the new Schedule D (DFE/Participating Plan Information) would be added to the Form 5500. The Schedule D would be required to be attached to the plan's Form 5500 to report information about the plan's participation in CCTs and PSAs.

In the case of small plans with CCT or PSA investments, regardless of whether the CCT or PSA files directly with the Department, the small plan would file a Schedule D, but would report total assets and total income, respectively, on single line items of the small plan Schedule I financial statements without separate Schedule I financial statement reporting on CCT or PSA investments.

Thus, the reporting for large plans investing in CCTs and PSAs that elect to file as DFEs and for small plan filers would not change significantly from the current reporting requirements. Similarly, except for the addition of Schedule H (Part II), generally the information that would be filed by a CCT or PSA that elects to file as a DFE would be substantially the same as the current reporting requirements with the major change being that the information would be required to be filed on the Form 5500 as the standard reporting format for all filers.

If a CCT or PSA does not file a Form 5500 as a DFE, large employee benefit plans would be required to break out their percentage interest in the underlying assets of the CCT or PSA and report that interest as a dollar value in the appropriate categories on the asset and liability statement contained in Schedule H (Financial Information). The failure by a large plan to break out its allocated interest in a CCT or PSA on the asset and liability statement contained in Schedule H when the CCT or PSA does not file as a DFE would be considered a failure by the plan administrator to file a complete Form 5500. The Department does not envision this as imposing a substantial additional burden on large plan filers because there is only a small number of other general investment categories on the Schedule H, such as: interest bearing cash; U.S. government securities; corporate debt instruments; corporate stock; partnership/joint venture interests; real estate; loans; registered investment companies, other assets; and employer securities. Further, the currently required asset and liability statement of the CCT or PSA should provide for many filers most of the detail needed to break the assets and liabilities into these categories. Furthermore, large plan filers investing in CCTs and PSAs that do not file as DFEs would still report the net investment gain/loss with respect to their participation in a CCT or PSA as part of single entries on Part II of the Schedule H (income and expense statement) and would continue to report their interest in a CCT or PSA on the Form 5500 financial schedules (other than Part I of Schedule H) in the same general manner as under current rules (e.g., current value of the units of participation in CCTs and PSAs would be reported on the schedule of assets held for investment and the Schedule D).

The Department believes that changing the reporting requirements for plans investing in CCTs and PSAs is the only viable alternative for capturing the information needed to carry out its oversight responsibilities about plan assets and ensuring that there is adequate disclosure of plan investment information to plan participants and beneficiaries. The Department, therefore, is exercising its regulatory authority under sections 103(b)(4), 104(a)(3), 110 and 505 to modify the reporting requirements with respect to plans that participate in CCTs and PSAs. The Department views the proposed changes as important and necessary in light of the dramatic growth in the value of plan assets held by CCTs and PSAs. For example, the value of plan assets invested in CCTs and PSAs increased between 1990 and 1995, the latest year for which information is available, from $113.9 billion to $226.2 billion. In order to minimize the costs and paperwork burdens on CCTs and PSAs associated with this proposal, it is anticipated that processing improvements would be implemented in the near future so this information could be filed with the Department either via magnetic media (magnetic tapes, floppy diskettes) or other electronic means.

(b) 103–12 Investment Entities and Master Trusts

Section 2520.103–1(e) provides for special reporting rules for plans that participate in a master trust. In general, a master trust is a trust maintained by a bank or similar institution to hold the assets of several plans that are all sponsored by a single employer or by several employers which are under common control. Such plans must report the value of their interest in the master trust as a single asset category in the plan's statement of assets and liabilities. The plan's share of earnings, realized and unrealized gains and losses of the master trust is reported in the plan's statement of income, expenses and changes in net assets for the plan year. A separate annual report for the master trust is required under current rules. The proposed amendments to § 2520.103–1(e) do not change the information required to be reported regarding the master trust, but rather establish the Form 5500 Series as the standard reporting format for master trusts.

Similarly, section 2520.103–12 provides an exemption and alternative method of reporting for plans investing in certain investment entities the assets of which are deemed to include plan assets under section 2510.3–101. Under the alternative method, the plan administrator need not include in the plan's annual report any information regarding the underlying assets and individual transactions of the 103–12 investment entity. Instead, the administrator is required to report only the value of the plan's investment or units of participation in the investment entity. As a condition to using this alternative, however, certain information must be filed by the 103–12 investment entity directly with the Department. The proposed amendments to § 2520.103–12(b) do not change the information required to be reported by the 103–12 investment entity, but rather establish the Form 5500 Series as the standard reporting format.

4. Section 2520.103–5

Section 2520.103–5 implements section 103(a)(2) of the Act. Section 103(a)(2) of the Act requires insurance carriers or other organizations which provides some or all of the benefits under a plan or holds plan assets, banks or similar institutions which holds plan assets, and plan sponsors to transmit and certify to the accuracy and completeness of such information as is needed by the plan administrator to comply with the requirements of Title I of the Act. Because the filing requirements for a plan participating in a CCT or PSA generally will be affected by whether such CCT or PSA directly files with the Department, section 2520.103–5 is proposed to be modified to conform to the new direct filing entity (DFE) reporting regime and ensure that administrators have adequate advance knowledge about their reporting responsibilities.

In the case of a CCT or PSA, the proposed amendments would require that such CCT or PSA notify its participating plans of whether or not it intends to file a Form 5500 as a DFE, and to furnish the plan administrator with the information about the assets held by such CCT or PSA, respectively, needed by the plan administrator to satisfy its obligations under Title I of ERISA. These notifications must be made within the same period of time for transmitting information already required by existing § 2520.103–5 (i.e., 120 days after the close of each participating plan's plan year). The proposal does not contain any detailed rules relating to the manner of the exchange of information between the plan and the CCT or PSA. The Department has decided to let the plan administrator develop with the sponsor of the CCT or PSA a suitable procedure whereby the plan administrator can establish to his or her satisfaction that the administrator and the Department will receive all of the required information in a timely fashion. This does not, of course, relieve the plan administrator of the responsibility to monitor the conduct of the CCT or PSA sponsor and to obtain whatever financial information concerning the CCT or PSA that is necessary for the administrator to satisfy his or her obligations under ERISA.

The proposed forms revisions did not affect the information required from plan sponsors and the Department is not proposing any amendment to the plan sponsors' obligations described in § 2520.103–5.

5. Section 2520.103–6 and Section 2520.103–11

Section 2520.103–6 sets forth the definition of reportable (5%) transactions for the Form 5500. Section 2520.103–11 provides rules for preparing the schedule of assets held for investment purposes and the schedule of assets held for investment purposes that were both acquired and disposed of within the same plan year (hereinafter collectively referred to as the schedules of assets held for investment). The new Form 5500 as proposed would have eliminated for large plan filers the requirement to file with their annual report a schedule of reportable (5%) transactions (line 27d of the current Form 5500) and schedules of assets held for investment (line 27a of the current Form 5500). Although the Department proposed in September 1997 to remove the requirement to submit the line 27a and line 27d schedules as part of the annual report, the proposal attempted to preserve affected participants' access to the information by providing them with the right to request and receive reportable transaction information and a detailed list of investments. In developing the proposed forms revisions, the Department estimated that fewer than 60,000 plans out of the over 800,000 pension and welfare benefit plans that file an annual report would be affected by this aspect of the proposal. Because the 60,000 affected plans are larger plans, the filing of schedules detailing plan investments often involves substantial amounts of paper. As proposed, the new Form 5500 would still have required a financial statement reflecting assets on an aggregate rather than individual basis, and the affected plans would have still have been subject to an annual audit by an IQPA. Finally, there did not seem to be a substantial need for the schedules to be on file at the Department's public disclosure room because the Department receives only a small number of requests per year for copies, and the Department could make a request for copies from the plan administrator on behalf of any plan participants or beneficiaries.

The Department, however, received public comments on the proposal that raised serious concerns about adverse consequences of eliminating these schedules from the annual report. In light of those comments and testimony received at the November 17, 1997 hearing on the proposed forms revisions, the Department has decided not to adopt this change. The Department nonetheless believes that it is possible to make a number of modifications to these schedules to eliminate certain burdens associated with the production of information that is already available to participants and beneficiaries. Accordingly, the proposal amends the reportable transactions rules to no longer require that transactions effected at the affirmative direction of participants or beneficiaries under an individual account plan be taken into account when completing the schedule of reportable transactions. Because of the administrative burdens and recordkeeping complexity associated with compiling aggregate cost of assets for which investment decisions are directed by participants and beneficiaries, the proposal also eliminates for such participant directed assets the requirement to prepare the "historical cost" entry on the schedules of assets held for investment. The proposal would not relieve the administrator from including in the schedules of assets held for investment descriptions and current values for assets held at a participant's or beneficiary's direction. Finally, the IQPA's opinion must cover the schedule

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of reportable transactions and schedules of assets held for investment.

The proposed regulation would also provide that, solely for purposes of this reporting relief, a transaction will be considered "directed" by a participant or beneficiary to the extent that the individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account. This reporting relief is broader than the fiduciary liability relief prescribed by § 2550.404c–1 that applies to a narrower class of transactions in which participants and beneficiaries exercise control over the assets involved in the transaction.

Because the proposal retains the schedule of reportable transactions and schedules of assets held for investment as part of the annual report primarily to meet participant disclosure concerns, not to satisfy research and enforcement needs, the Department is not requiring use of a standardized computer scannable form for the schedule of reportable transactions or schedules of assets held for investment (unlike the Schedule G which will be mandatory for the other financial transaction schedules). Rather, administrators would be allowed to use any format for preparing the schedule of reportable transactions and schedules of assets held for investment as long as the content requirements of §§ 2520.103–6 and 2520.103–11 are met and the same size paper as the Form 5500 is used (electronic filing requirements for these schedules will be developed as part of the, previously described, EFAST project).

The Department is also proposing to amend section 2520.103–6 to include a special rule for the reportable transaction schedule for initial plan years. Section 2520.103–6(b)(1)(i) currently requires that the 5% thresholds for reportable transactions be calculated using current value of assets as of the beginning of the initial plan year. Concerns have been expressed by filers that in most cases the current rule results in virtually all investment transactions during the initial plan year being reportable transactions under section 2520.103–6. The Department does not believe that this result was intended under ERISA inasmuch as the purpose of the reportable transaction rules was to identify transactions relating to a significant portion of the plan's assets because these transactions may pose the greatest financial risk to a plan. Accordingly, the Department is proposing that the current value of plan assets for purposes of preparing the schedule of reportable transactions for the initial plan year would be the current value of plan assets at the end of the initial plan year.

6. Section 2520.103–10

Section 2520.103–10 identifies the financial schedules that are required to be included with the filing of the Form 5500. The Department is proposing to amend § 2520.103–10 to conform it to the new Form 5500 and other regulatory amendments described elsewhere in this preamble. Accordingly, as proposed, § 2520.103–10 would be amended to update references to the annual report financial schedules to conform the references to the schedules associated with the new Form 5500.

Further, under the proposal, the use of the revised Schedule G will be mandatory for the schedule of party in interest transactions, schedule of obligations in default, and schedule of leases in default. These schedules are now required by lines 27b, 27c, 27e and 27f of the current Form 5500 and may be filed using a similar format and using the same size paper as the current Schedule G. Because the Department will be developing and implementing a new system to simplify and expedite the receipt and processing of the Form 5500 Series by using optical scanning technology and optical character recognition, it would not be possible for the Department to process Schedule G information and include such information in our data base unless the use of Schedule G is mandatory. The proposed Schedule G would have to be attached to the Form 5500 of a large plan, master trust investment account or 103–12 IE to report loans or fixed income obligations in default or determined to be uncollectible as of the close of the reporting year (Part I of Schedule G), leases in default or classified as uncollectible during the plan year (Part II of the Schedule G) and nonexempt transactions (Part III of the Schedule G).

The proposed changes to the schedule of reportable transactions and the schedules of assets held for investment (which are not included on the new Schedule G) are discussed in paragraph C.5 of this preamble.

7. Section 2520.104–21 and Section 2520.104–43

Section 2520.104–21 provides an exemption from certain Title I reporting and disclosure requirements for welfare plans that are part of a group insurance arrangement (GIA) as defined in paragraph (b) of that regulation.[4] The exemption is available for welfare plans which have fewer than 100 participants and which are part of a GIA, if the arrangement, among other things, uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and the conduit for payment of premiums to an insurance company. See § 2520.104–21(b)(3). Section 2520.104–43 provides plans (regardless of whether such plans have 100 or more participants) with relief from filing the annual report in cases where the GIA described in § 2520.104–21 files a Form 5500 report on behalf of all the participating plans. The Department is proposing to amend §§ 2520.104–21 and 2520.104–43 to provide that the exemptions would only be available in those cases in which the GIA utilizes a trust as the conduit for the payment of the premiums. The proposal also would modify the examples in paragraph (d) of § 2520.104–21 to reflect these changes. The Department believes that interpreting the reporting exemption as providing GIAs with an exemption from the substantive requirement to hold plan assets in trust is not in the interest of participants and beneficiaries, and needs correction. Indeed, adoption of the proposed amendment would conform the reporting regulations for GIAs with ERISA § 403 and § 2550.403a–1, which do not provide a trust exception for GIAs. The Department does not envision that the proposed amendment will create administrative burdens for GIAs or result in increased costs for participating plans because the plan assets collected and held by the intermediary entity must be separately accounted for under current law.[5] The Department is also proposing that this change, if adopted, would be effective for plan years beginning after Dec. 31, 1998, to coincide with the 1999 plan year implementation of the new Form 5500.

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[4] For example, section 2520.104–21 provides relief to certain welfare plans from the requirement to file a copy of the summary plan description and descriptions of material modifications in the terms of a plan or changes in the information required to be included in the summary plan description. Section 1503 of The Taxpayer Relief Act of 1997 (TRA 97), Pub. L. 105–34 (enacted August 5, 1997), amended ERISA by repealing the requirement to file the aforementioned documents with the Department. A separate notice of proposed rulemaking will be published by the Department to conform these regulations to TRA 97.

[5] The proposed amendment, if adopted, also would be consistent with the enforcement policy in ERISA Technical Release 92–01 (TR 92–01) (57 FR 23272 and 58 FR 45359). TR 92–01 announced interim relief from the trust and certain reporting requirements of ERISA for certain contributory welfare plans. TR 92–01, however, does not apply to § 2520.104–21 GIAs or to participant contributions after they have been segregated from an employer's general assets and transmitted to an intermediary account. Thus, if the proposed amendment is adopted as a final rule, participating cafeteria plans may continue to rely on the enforcement policy contained in TR 92–01 until participant contributions are transmitted to the GIA, but the GIA would be required to hold plan assets in trust.

8. Sections 2520.104–41 and 2520.104–46

Section 2520.104–41 provides a simplified method of annual reporting for plans with fewer than 100 participants and § 2520.104–46 waives the IQPA requirement for such small plans. In general, small plans eligible to file simplified reports are required to file the Form 5500–C every third plan year and the Form 5500–R (an abbreviated version of the Form 5500–C) for the two intervening plan years. As indicated previously, the Agencies have proposed to replace the Form 5500 and the Form 5500–C/R with an improved single Form 5500 for use by both large and small plan filers, with simplified reporting options for small plans incorporated into the new restructured forms. This proposal would amend §§ 2520.104–41 and 2520.104–46 to conform the terms in the regulations to the new Form 5500 Series.

9. Section 2520.104–44

Section 2520.104–44 contains a limited exemption and alternative method of compliance for annual reporting by certain unfunded and insured plans. The Department has received inquiries from the public about the reporting requirements for pension plans exclusively using a tax deferred annuity arrangement under Internal Revenue Code section 403(b)(1) and/or a custodial account for regulated investment company stock under Internal Revenue Code section 403(b)(7). The current Form 5500 Series instructions provide for limited reporting for these types of pension plans. The Department has previously expressed its view that such plans are not subject to the IQPA audit requirements as part of their annual reporting obligations under Title I of ERISA. See the Department's Information Letter issued to Gary H. Friedman (dated November 15, 1996). The Department, therefore, is proposing to make conforming technical amendments to § 2520.104–44 to clarify the annual reporting obligations of such plans.

10. Section 2520.104b–10

Section 2520.104b–10 sets forth the requirements for the summary annual report (SAR) and prescribes the formats for such reports. The proposed amendments to section 2520.104b–10 would make the SAR requirements conform to the new Form 5500 Series (e.g., by referring to the modified list of the attached statements and schedules to the Form 5500). The proposed amendments also would address the elimination of the Form 5500–R. Under current SAR rules, administrators of small plans are not required to prepare and furnish a SAR for those plan years in which a Form 5500–R is filed if one of the two following methods of compliance is met. Under the first method of compliance, plans must furnish participants (and beneficiaries receiving benefits under a pension plan) with a copy of the filed Form 5500–R as a substitute for furnishing the SAR. Under the second method, plans are required to notify participants and such beneficiaries in writing of their right upon written request to receive free-of-charge a copy of the Form 5500–R filed by the plan. Under the second method of compliance, § 2520.104b–10(b)(2)(ii) permits active participants to be notified by posting the notice at worksite locations in a manner reasonably calculated to ensure disclosure of the information. The Form 5500–R furnished under either method of compliance must be accompanied by a prescribed notice. Because the Form 5500–R is proposed to be eliminated, small plans will be required to furnish a SAR every year rather than every third year. Although the reporting statistics indicate that approximately 50 percent of small filers file the Form 5500–C every year and, therefore, would not be eligible for the alternative method of compliance, the Department seeks comments as to the burdens associated of complying with proposed § 2520.104b–10, if any, for small plan filers who would no longer be able to file a Form 5500–R. The proposed amendments to §§ 2520.104b–10(d)(3) and 2520.104b–10(d)(4) also restate the information available to participants and beneficiaries under the heading "Your Rights to Additional Information" so that it is consistent with the new Form 5500 Series. These proposed changes are expected to improve the process by which information is disclosed to participants and beneficiaries of small plans which currently file the Form 5500–R.

The existing regulations contain a cross-reference guide as an appendix. The purpose of this guide is to correspond the line items of the SAR to the line items on the Form 5500 and Form 5500–C. The Department intends to publish as part of the final regulation a revised appendix to conform it to the final version of the new Form 5500 and associated schedules.

D. Findings Regarding the New Form 5500 as a Limited Exemption and Alternative Method of Compliance

Section 104(a)(2)(A) of the Act authorizes the Secretary to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure, if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) the use of the alternative method is consistent with the purposes of ERISA and it provides adequate disclosure to plan participants and beneficiaries and to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including any required statements, schedules, and IQPA report) generally constitutes compliance with the limited exemption and alternative method of compliance in 29 CFR 2520.103–1(b). As indicated in the preamble to the notice of proposed forms revisions, the Department stated that the findings required under ERISA sections 104(a)(3) and 110 relating to the use of the Form 5500, as revised, as an alternative method of compliance and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA would be separately addressed as part of the rulemaking that would amend the reporting regulations necessary to implement the new Form 5500 Series.

1. General Findings

As reflected in the revisions to the Form 5500 Series and the amendments proposed herein, a number of changes are being proposed which affect the information required to be reported and disclosed on the Form 5500 Series. The Department, in the proposed amendments, has attempted to balance the needs of participants, beneficiaries and the Department to obtain

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information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government. In view of these changes, the Department proposes to make the following findings under sections 104(a)(3) and 110 of the Act with regard to the utilization of the revised Form 5500 (and revised statements and schedules required to be attached to the Form 5500) as an alternative method of compliance and limited exemption pursuant to 29 CFR 2520.103–1(b).

The use of the revised Form 5500 as an alternative method of compliance is consistent with the purposes of Title I of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary. While the information required to be reported on or in connection with the revised Form 5500 deviates, in some respects, from that delineated in section 103 of the Act, the information essential to ensuring adequate disclosure and reporting under Title I of ERISA is required to be included on or as part of the Form 5500, as revised.

The use of Form 5500 as an alternative method of compliance relieves plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The Form 5500, as revised, is intended to further reduce the administrative burdens and costs attributable to compliance with the annual reporting requirements.

Taking into account the above, the Department has determined that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 would be adverse to the interests of participants in the aggregate. The revised Form 5500 provides for the reporting and disclosure of basic financial and other plan information described in section 103 in a uniform, efficient, and understandable manner, thereby facilitating the disclosure of such information to plan participants.

Finally, the Department has determined under section 104(a)(3) that a strict application of the statutory reporting requirements, without taking into account the proposed revisions to the Form 5500, would be inappropriate in the context of welfare plans for the reasons discussed in this preamble and the preamble to the notice announcing the proposed forms revisions.

2. Special Findings

(a) Schedule A (Insurance Information)

Schedule A must be attached to the annual report if any pension or welfare benefits under any ERISA covered plan are provided by, or if the plan holds any investment contracts with, an insurance company or other similar organization. Although most of the Schedule A data has been retained substantially unchanged, certain changes were made to the Schedule A to more closely conform the Schedule A to recent accounting industry changes on "current value" financial reporting of investment-type contracts with insurance companies,[6] and to collect: (i) better identifying information on the type of insurance contracts and type of insured benefits being reported and (ii) the insurer's employer identification number and National Association of Insurance Commissioners' (NAIC) code. In general, under the current Form 5500 Series, the financial reporting required for insurance products is not identical to the reporting for other financial products.[7] In the interest of the efficient administration of ERISA, the Department has attempted to align the reporting and disclosure requirements, where possible and to the extent consistent with the best interests of plan participants, with generally accepted accounting principles (GAAP). The Schedule A changes proposed by the Department are intended to be consistent with the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 110 (FAS 110) and No. 126 (FAS 126) and American Institute of Certified Public Accountants Statement of Position 94–4 (SOP 94–4), which generally require the disclosure of the fair value of investment contracts with insurance companies (except for certain investment contracts held by defined benefit pension plans and "fully benefit responsive" contracts held by defined contribution pension and welfare plans with assets of $100 million or less). Because it is the Department's view that the Schedule A reporting requirements are equally important for small as well as large plans, the proposal would not provide different Schedule A reporting standards depending on the size of the plan. The Department also believes that the additional information being required to identify the type of insurance product purchased and NAIC code and EIN of the insurance company (or similar organization) from which the product was sold are helpful to the Department being able to accomplish its oversight responsibilities, and will not be burdensome to plans inasmuch as this information should be readily available.

(b) Schedule C (Service Provider Information)

Schedule C must be attached to the Form 5500 filed by large plan filers if any person who rendered services to the plan received directly or indirectly $5,000 or more in compensation from the plan during the plan year. The major changes to the Schedule C involve eliminating the requirement to annually identify plan trustees, limiting the current requirement to explain service provider terminations to terminations of accountants and enrolled actuaries, and limiting the number of plan service providers required to be reported to the forty top paid service providers at or above the $5,000 threshold. The Department notes that trustee and plan administrator information already must be disclosed in the summary plan description (SPD), and changes in trustees and plan administrators must be disclosed in a summary of material modification (SMM). SPDs and SMMs must be furnished automatically, whereas the Form 5500 is required to be disclosed only on request. Further, to the extent a service provider receives $5,000 or more in compensation from the plan, comparing the list of service providers on Schedule Cs from year to year will allow a participant or beneficiary to determine whether a particular service provider (such as an investment manager, trustee, or custodian) was terminated. Similarly, comparing annual Schedule A filings will provide information on changes in insurers. With respect to limiting of Schedule C list of service providers to the forty top paid providers receiving $5,000 or more in compensation, only approximately 100 employee benefit plans filing the 1994 Form 5500 listed more than 40 service providers on their Schedule Cs. Those 100 filings constituted less than one percent of the Form 5500 filings received. These Schedule C changes will not, in the Department's view, result in inadequate disclosure to participants and beneficiaries in large plans. Because Schedule C is not required to be filed by small plans, the Schedule C changes described herein would not affect the annual reports of those plans.

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[6] ERISA § 3(26) defines "current value" as fair market value where available and otherwise fair value as determined in good faith by a trustee or named fiduciary pursuant to the terms of the plan and in accordance with the regulations of the Secretary, assuming an orderly liquidation at the time of such determination.

[7] See, for example, the instructions for line 31c(16) of the 1997 Form 5500.

(c) Schedule D (Direct Filing Entity/Participating Plan Schedule)

As indicated previously, the new DFE reporting rules were developed in an effort to improve the reporting requirements for plans participating in CCTs, PSAs, master trusts, 103–12 IEs and GIAs. With the exception for small plans of the Schedule D requirement to report year-end dollar value of interests in CCTs, PSAs, master trusts and 103–12 IEs, substantially all of the information that would be required to be reported by employee benefit plans under the new DFE reporting regime is currently required to be reported. Compare the new Form 5500 Series with the 1997 Form 5500 and Form 5500–C/R instructions for line 6e and page 4 instructions for additional information that must be reported for plans participating in CCTs, PSAs, master trusts, 103–12 IEs, and group insurance arrangements. Similarly, substantially all of the information that would be required to be reported by DFEs is currently required to be filed by CCTs, PSAs, MTIAs, 103–12IEs and GIAs. Compare the new Form 5500 Series with the 1997 Form 5500 and Form 5500–C/R page 6 instructions on filing requirements for CCTs, PSAs, master trusts and 103–12 IEs, and the Form 5500 line 1 instructions for GIAs.[8] Thus, the Department believes that the major change in reporting with respect to DFEs is that information must be reported in a standardized format using the Form 5500 and associated schedules. The Department does not believe the proposed new DFE rules should result in material cost increases or administrative burdens for plans. Further, direct reporting by CCTs, PSAs, 103–12 IEs and GIAs continues to be optional. To the extent there are cost or burden increases being passed through to the plan by the entity, plans can evaluate those annual reporting implications when deciding whether to participate in a CCT, PSA, 103–12 IE or GIA. The information that is available to be disclosed to participants and beneficiaries under the current annual reporting regime would not be reduced under the proposed forms revision. Finally, as indicated previously, continuation of the current rules would result in inadequate reporting to the Department, would mean that the Department would continue to be unable to correlate and effectively use the data regarding the more than $1 trillion in plan assets invested by plans in DFEs, and, therefore, would be adverse to the interests of participants and beneficiaries in the aggregate.

(d) Schedule of Reportable Transactions and Schedules of Assets Held For Investment

With regard to exclusion of certain participant directed transactions under an individual account plan from the schedule of reportable transactions, and the deletion of the requirement to include historical cost information in the schedules of assets held for investment on those transactions, the Department believes, on the basis of its enforcement experience, that the revised schedules will still result in adequate reporting to the Department and will not hamper its ability to identify fiduciary violations. The underlying purpose for the schedule of reportable transactions is to identify significant transactions that may reveal fiduciary misconduct. In general, individualized information on participant directed transactions is not especially relevant to that purpose. Similarly, historical cost on the schedules of assets held for investment is intended to provide individualized information on the investment gain/loss performance of the specific assets or classes of assets. The plan's aggregate gain or loss on a class of assets does not provide meaningful information on the gain or loss to a particular participant's account resulting from individually directed transactions. For those reasons, the Department does not believe having this information on the annual report is useful in targeting its enforcement cases, but including this participant directed transaction information in these schedules will result in additional costs and administrative burdens to plans. In light of the purposes underlying the reportable transaction schedule and the historical cost requirement, the Department believes that these schedules will still provide adequate disclosure to plan participants and beneficiaries.

Other Supplementary Information

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed rule is likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities, and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover less than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of ERISA section 104(a)(3), the Department has previously issued at §§ 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general, most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). PWBA, therefore, requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities. PWBA has consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes. See 13 CFR § 121.902(b)(4).

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[8] In the case of GIAs, the current rules require use of a Form 5500. For master trusts and 103–12 IEs, the Form 5500 instructions already require the filer either use the Form 5500 and schedules or report information in the same format using the same categories as those specified in the Form 5500. In the case of CCTs and PSAs, the Department does not believe imposing similar formatting requirements should involve any significant additional burden. The Department also believes that there will be minimal additional burden in requiring CCTs and PSAs that elect to file as a DFE to report income and expenses on Schedule H (Part II).

On this basis, however, PWBA has preliminarily determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, although not required, PWBA considers the elements of an initial regulatory flexibility analysis to be as follows:

(1) The Department is promulgating this proposed rule to amend the regulations relating to the annual reporting and disclosure requirements of section 103 of ERISA to conform existing regulations to revisions to the annual return/report forms (Form 5500 Series).

(2) Section 103 of ERISA requires every employee benefit plan covered under part 1 of Title I of ERISA to publish and file an annual report concerning, among other things, the financial conditions and operations of the plan. Section 109 of ERISA authorizes the Secretary to prescribe forms for the reporting of information that is required to be submitted as part of the annual report.

The Secretary may also prescribe alternative methods of complying with reporting and disclosure requirements if the Secretary finds that: the use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to participants and beneficiaries and the Secretary, application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan, and the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

The Department proposes to find that use of the Form 5500 as revised constitutes an alternative method of compliance which is consistent with these conditions. Generally, the Department believes that use of the revised Form 5500 would relieve plans of all sizes from increased costs and unreasonable burdens by providing a standard format which facilitates reporting required by the statute, eliminates duplicative reporting requirements, and streamlines the content of the annual report.

(3) The Department, in conjunction with the IRS and PBGC, proposed a number of changes to the existing Form 5500 Series in an effort to reduce paperwork burdens and costs and enhance the utility of the annual report forms generally. The regulatory amendments proposed herein are designed to ease the burden of plans, both large and small, in complying with the reporting and disclosure requirements of ERISA. The regulatory amendments proposed do not directly affect the number of small plans required to comply with the annual reporting requirements or change existing small plan limited exemptions from reporting requirements. Thus, for example, under the proposal small plans would continue to be exempt from reporting service provider information and supplying the report of an independent qualified public accountant. In addition, the conforming rules as proposed generally preserve the more limited reporting for small plans which is presently in effect.

(4) Based on information available from 1993 Form 5500 filings, the Department estimates that there are approximately 6.7 million small pension and welfare benefit plans that are covered under Title I of ERISA. About 6 million of these plans with fewer than 100 participants are insured or unfunded welfare benefit plans, which are currently exempt from Form 5500 filing requirements and will continue to be exempt under the proposed revisions to the Form 5500 Series. The proposed rules therefore, will have no impact on these small plans. Thus, approximately 700,000 small plans, or about 9% of all small plans, are required to file the existing Form 5500 Series, and will be impacted by the proposed rules conforming existing regulations to the revised Form 5500 Series.

(5) The revisions to the Form 5500 Series are estimated to impose no additional filing burden on small plans than that of the current forms over the existing three-year filing cycle. In fact, a comparison of the burden associated with the existing reporting requirements with the revisions to the Form 5500 Series indicates an overall reduction in the burden for small plans based on the number of data elements required to be reported for each.

Under current filing requirements, small plans must file a Form 5500–C at least once every three years and file the less detailed Form 5500–R in the two intervening years. While the ratio of Form 5500–R to Form 5500–C filings varies from year-to-year, on average about 55% of all annual small plan filings are on the Form 5500–R and 45% are on the Form 5500–C because many small plans annually file the Form 5500–C.

The burden associated with completion of the Form 5500 Series can be divided into two steps: reading the instructions and completing the individual line items. The revised Form 5500 Series requires small plans to provide more line item information than the Form 5500–R, but less information than the Form 5500–C. The burden associated with completion of all required items on the revised form is estimated to be 5% greater than the Form 5500–R and 32% less than the Form 5500–C. Based on a ratio of the Form 5500–R to Form 5500–C filings of 55% to 45%, the proposed revisions to the Form 5500 Series are estimated to result in an average reduction of 15% in the burden associated with completion of the revised form items.

The more efficient format of the revisions to the Form 5500 Series, with most of the information broken out into separate schedules, should also reduce the time required to read the instructions because filers will be able to skip over the instructions for schedules that do not apply to them. It is, however, expected that all filers will require additional time in the initial year of filing to thoroughly read the instructions and to familiarize themselves with the revised Form 5500 Series. It is, therefore, assumed in the initial year of filing the revised Form 5500 Series that additional time required for instruction reading will result in an overall burden (including the reduction for line items) that on average will be 26% greater than the annual burden for completion of the Form 5500–C/R. It is assumed that most filers will not require this additional time in subsequent years, and that the average reduction will be the 15% based on the reduction in the number of line items.

When the higher burden associated with instruction reading is pro-rated over a three-year period (corresponding with the existing three-year cycle of Form 5500–C and Form 5500–R filings) the annual burden imposed by the proposed revisions to the Form 5500 Series for the typical filer is estimated to be 2% less than that of the Form 5500–C/R. When the initial year burden is pro-rated over a 10-year period, the proposed revision to the Form 5500 Series is estimated to result in an 11% reduction in the annual burden for small plans.

Entry of the information required by the Form 5500–C/R is made from financial and other records maintained by plans. Sound accounting and general business practices would generally dictate that all or most of these records be maintained even in the absence of a reporting requirement. To the extent that specific records are kept only for reporting purposes it is assumed that small plans currently maintain on an annual basis all records necessary to complete the Form 5500–C because of the existing requirement that a Form 5500–C (which requires both beginning and ending year financial data) must be filed at least once every three years. The reduced reporting requirements of the proposed revisions to the Form 5500 Series compared to the current Form 5500–C, therefore, should not increase and may potentially reduce the overall recordkeeping burden for small plans.

Completion of the Form 5500–C/R requires a mixture of professional and clerical skills. It is assumed that this mixture will not change as a result of the revisions to the Form 5500 Series. The cost savings, therefore, should correspond to the savings in burden hours. For sponsors using third-party administrators (TPAs) to complete all or part of the Form 5500 Series, additional costs attributable to instruction reading and understanding the revisions of the Form 5500 Series are expected to be negligible. However, any savings in this area for plan sponsors are expected to be offset by additional costs charged by TPAs to modify automated system software to accommodate the proposed revisions to the Form 5500 Series. The elimination of the Form 5500–R may increase burdens for these small filers because under the proposal they will be required to furnish SARs on an annual basis and without the accommodations found in the existing regulations at § 2520.104b–10(b). The Department solicits comments from interested parties on this aspect of the proposal.

(6) No Federal rules have been identified that duplicate, overlap or conflict with the proposed rule.

(7) No significant alternatives to the proposed rule which would minimize the impact on small entities have been identified, although the review and proposed revision of the Form 5500 Series were undertaken to reduce paperwork burden for all filers while maintaining the more limited reporting for small plans. The Department believes it has minimized the economic impact of the forms revision and conforming rules on small plans to the extent possible while recognizing plan participants' and the Department's need for information to protect participant rights under Title I of ERISA, and needs of other interested parties for timely statistical information on employee benefit plans.

The Department invites interested persons to submit comments regarding its preliminary determination that the proposal will not have a significant economic impact on a substantial number of small entities. The Department also requests comments from small entities regarding what, if any, special problems they might encounter if the proposal were to be adopted, and what changes, if any, could be made to minimize those problems. To avoid duplication of comments, comments submitted in response to the September 3, 1997 Notice of Proposed Revision of Annual Information Return/Report (62 FR 46556) and the June 24, 1998 request for comments will be treated as comments on this Notice of Proposed Rulemaking.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action creates a novel method of statutory compliance consistent with the President's priorities that will reduce paperwork and regulatory compliance burdens on businesses, including small businesses and organizations, and make better use of scarce federal resources, in accord with the mandates of the Paperwork Reduction Act and the President's priorities. Therefore, this notice is "significant" and subject to OMB review under Executive Order 12866(3)(f)(4).

Under Part 1 of Title I ERISA, administrators of pension and welfare benefit plans (collectively referred to as employee benefit plans) are required to file annual returns/reports concerning their financial condition and operations. ERISA section 104(a)(2)(A) authorizes the Secretary of Labor to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes that Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I or to provide simplified reporting and disclosure if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) the use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to plan participants and beneficiaries and to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including any required statements, schedules, and report of an independent qualified public accountant) generally constitutes compliance with the limited exemption and alternative method of compliance set forth by regulation in § 2520.103–1(b). As stated in this preamble, the Department is proposing to make the determination that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 as revised would be adverse to the interests of participants in the aggregate. The use of the new Form 5500 as an alternative method of compliance would relieve plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general.

The Form 5500 Series serves as the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. The Form 5500 is not only an important disclosure

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document for participants and beneficiaries, but also a compliance and research tool for the Department and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

The Pension and Welfare Benefits Administration, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation have conducted an extensive review of the Form 5500 Series in an effort to streamline the information required to be reported and the methods by which the information is filed and processed. A proposed revision of the Form 5500 Series was published in the **Federal Register** on September 3, 1997 (62 FR 46556). The proposal was designed to lower the administrative burdens and costs incurred by the more than 900,000 employee benefit plans that annually file the Form 5500 Series. A public hearing on the proposed revision was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year. A revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act and a Notice was published in the **Federal Register** on June 24, 1998 (63 FR 34493) which provided a 30-day opportunity to submit comments to OMB on the new Form 5500 submission. The new Form 5500 was also made available on PWBA's internet site (http://www.dol.gov/dol/pwba) as part of the Agencies' commitment to make information about the new forms available to plans and their service providers at the earliest opportunity. Following its Paperwork Reduction Act review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. As discussed in paragraph A (Background) of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. The final computer scannable version of the forms, which must be used for 1999 plan years, will be published in the **Federal Register** following the Agencies' evaluation of public comments. The amendments proposed in this Notice of Proposed Rulemaking are intended to make technical changes to the Department's reporting regulations, and conform them to requirements of the Form 5500 Series, as revised.

Because information reported to the Department is also subject to ERISA's disclosure provisions, the Department in this proposal has attempted to balance the needs of participants, beneficiaries and the Department to obtain information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government.

Costs

The cost and burden associated with the annual reporting requirement for any given plan will vary according to a limited number of factors, including whether and to what extent underlying records are maintained electronically or manually, whether and to what extent the Form 5500 is reproduced electronically or completed manually, and whether and to what extent these activities are performed in-house by the plan sponsor or purchased from service providers. However, little information is available with respect to the actual distribution of plans within these ranges. Consideration of the potential cost impact of the proposed revisions to the Form 5500 Series results, therefore, in estimates which are based on a number of assumptions concerning the costs of automated systems and system modifications, the numbers and types of users of automated systems, and the numbers and types of users of the services of third-party administrators.

The Department believes that the revisions to the Form 5500 will generally impose the greatest additional cost on plan administrators whose systems for storing and producing Form 5500 data are most completely automated, and the least additional cost on those least automated. For this reason, a distinction is made here between "full-service automated systems" and "basic automated systems." A full-service automated system is considered to be a sophisticated system which stores and manipulates the data needed for completion of the form, and which also summarizes and prints the data in the Form 5500 format. A basic automated system generally stores financial data, flags the types of transactions required to be reported on the Form 5500, and facilitates completion of the form, but does not configure output in Form 5500 format.

Both types of systems are expected to require certain modifications in their data storage features, due to the proposed changes in the groupings of financial data on the form. However, while the output of basic systems may be expected to require some revision to facilitate efficient completion of the form, reconfiguration of the existing output of full-service systems to conform with the revised Form 5500 format is considered likely to require substantial system modifications.

For purposes of this discussion of potential costs, it has been assumed that the Form 5500 reproduction capability represents one-half of the cost of the complete system, and that basic automated systems sell for approximately one-half of the cost of full-service automated systems. Modification (in contrast to initial purchase) of the output capability of a full-service system is assumed to equal one-third of the cost of the original system. On this basis, the full-service system cost can be adjusted by a factor of .165 to arrive at the cost increase attributable to modifying output capability. Several other assumptions underlying the costs estimated here are specifically identified where applicable.

The Department believes that the primary purchasers of full-service automated systems are third-party administrators (TPAs) serving substantial numbers of clients, and banks and trust companies managing master trust investment accounts (MTIAs). Such full-service systems have been developed by only a small number of vendors. The known cost of one such system consists of an initial fee of $11,000 and an additional annual fee of $2,000. Given the stated assumptions concerning the costs for the output capability and the modification of output capability as percentages of original cost, the cost of system redesign passed along from vendors to TPA purchasers is estimated to amount to an initial fee of $1,815 plus an increased annual fee of $333. Assuming a ten-year redesign cycle, and ten-year depreciation of the initial fee increase, the annual increase would amount to $182 plus the $333 annual fee, or $515.

This annual increase may be multiplied by the number of TPA purchasers which are assumed to be of sufficient size to warrant the purchase and modification of these systems to arrive at a total annual cost. Fifty-five TPAs with at least 50 client plans were identified for this purpose by tabulating the number of unique employer identification numbers for plan administrators among 1993 annual reports in which the plan administrator was different from the plan sponsor. The resulting estimate of the annual cost of system modifications for TPAs using full-service systems is $28,325.

Banks and trust companies providing master trust services to plans are also assumed to purchase or develop in-house automated systems to both complete Direct Filing Entity (DFE) reports filed with the Department and to provide plan financial data to plan sponsors filing Form 5500 reports. Data from 1993 Form 5500 filings indicate a total of 160 such banks and trust companies managing MTIAs for approximately 24,000 plans filing Form 5500 reports completed by the plan sponsor. Assuming the same $515 annual cost increase for managers of MTIAs, their modification cost is estimated at $82,400.

Users of basic automated systems are believed to include smaller TPAs and large plan sponsors that complete Form 5500 in-house. It is assumed that the TPAs and plan sponsors using these systems would either purchase redesigned software from vendors or incur direct costs to modify software developed in-house. Modification costs would likely vary, but are expected to be roughly equivalent to the cost to the Department of modifying the internal system which configures balance sheet and income statement data in Form 5500 format. This cost is estimated to be equal to 2.7% of the initial cost of the system.

Based on the known cost of a full-service automated system, and the assumption that basic systems are available for one-half the cost of full-service systems, the basic system might be purchased for $5,500 plus a $1,000 annual fee. A 2.7% increase in the cost attributable to changes in the financial schedule would result in a fee increase of $148.50 plus $27 per year. Depreciation of the initial fee over a ten-year period would result in an annual cost of about $42.

Because the number of plan sponsors which rely, either directly or indirectly, on a basic automated system is unknown, certain assumptions are made for the purpose of estimating a cost of modifying basic automated systems. It is assumed that two principal types of filers will either purchase such systems from vendors or pay an equivalent cost for modifying systems developed in-house: small TPAs completing Form 5500 in their clients' behalf, and sponsors of self-insured or partially insured, partially self-insured plans with at least 100 participants which complete the forms in-house. Small plan filers which complete the forms in-house and large fully-insured filers are excluded from this estimate because it is believed that these filers will not rely on automated systems.

The number of plans which have Form 5500 completed by a TPA is derived from the review of 1993 Form 5500 data where the plan administrator differs from the plan sponsor. The total count of such plans in 1993 was 28,900. Subtracting the 18,300 plans previously considered as clients of large TPAs leaves 10,600 plans serviced by small TPAs. Assuming an average client base of 20 plans for these smaller TPAs results in an estimate of approximately 530 TPAs. Given the assumption of $42 for the annual increase in costs, these TPAs would incur an estimated cost increase of $22,180 for system modifications.

The number of 1993 plan filings which did not show a different plan sponsor and plan administrator, which have at least 100 participants, and which are not fully-insured was 45,500. Of these, 37,000 plans were sponsored by sponsors of single plans; 8,500 sponsored multiple plans, totaling 30,000 plans. It is assumed that sponsors of multiple plans require systems which handle multiple records, and that systems which do not require multiple records will be less costly to modify. The 8,500 sponsors are expected to incur a $42 annual cost for modifying multiple-plan systems, for a total of $357,000. The 37,000 plans which do not require multiple-record capability are expected to incur one-half of the annual cost of multiple-record system modification, or $21 per plan, for a total of $777,000.

As summarized below, the annual cost estimated on the basis of the stated assumptions to be incurred as a result of modification of automated systems to produce or complete Form 5500 is $1.3 million.

ESTIMATED NUMBER OF FORM 5500 SERIES FILINGS COMPLETED WITH ASSISTANCE OF AUTOMATED SYSTEMS

	Number of plans	Annual per plan costs	Total annual costs	Ten-year cost per plan	Total ten-year costs
Large TPAs (full service systems)	18,300	$1.55	$28,325	$15.50	$283,250
MTIAs (full service systems)	24,000	3.43	82,400	34.30	823,200
Small TPAs (basic systems)	10,600	2.09	22,180	20.90	221,800
Large Plans Administered In-House—One Plan	37,000	21.00	777,000	210.00	7,770,000
Large Plans Administered In-House—Multiple Plans	30,000	11.90	357,000	119.00	3,570,000
Total	119,900	10.12	1,266,905	101.20	12,668,250

Further, it is estimated that other resources will be required in the initial year of implementation of the revised forms. As a result of the change in information required to be reported by plans with fewer than 100 participants, average time for small plans to complete the Department's data elements is assumed to increase from 51.4 minutes for existing Form 5500–C filers and 33.6 minutes for Form 5500–R filers (an annual average of 41.6 minutes over the existing three-year filing cycle for plans with fewer than 100 participants which are not otherwise exempt from filing requirements) to 52.4 minutes for the revised form. This increase in the initial year is based on the assumption that filers will require additional time for reviewing instructions to the revised form. The time required for small plan filers to complete the Form 5500 is estimated to be 35.2 minutes in subsequent years.

Additional time will also be required in the year of implementation of the revised form for DFEs such as common/collective trusts, pooled separate accounts, master trusts, 103–12 investment entities, and group insurance arrangements to complete the Form 5500 Series in the standardized format. Existing rules specify the types of information to be filed by DFEs or reported to plan sponsors, but do not require the use of a standard format for reporting purposes. It is estimated that DFEs will expend approximately 8,429 hours per year in preparing and filing plan and asset information in the standardized format and providing certifications to participating plans concerning whether or not they will file directly with the Department. Corresponding costs may be passed on to plans which participate in a DFE in the form of increased fees.

Benefits

The revision of the Form 5500 Series was undertaken in an effort to simplify and streamline the annual return/report and reduce the reporting burden on filers. The new form is intended to reduce the total amount of information to be reported by many plans by eliminating information that is not useful for enforcement, research, or other statutorily mandated missions. The revisions are also designed to eliminate redundant items and revise questions that have historically produced filing errors. The revisions also generally require welfare plans to complete fewer items than pension plans, and small plans to complete fewer items than large plans.

The revisions eliminate the Form 5500–C/R, but maintain limited financial reporting similar to the existing Form 5500–R for small plans. Plans currently exempt from filing a return/report (such as certain small unfunded/insured welfare plans and certain SEPs), or those eligible for limited reporting options (such as certain Code section 403(b) plans) will continue to be eligible for that annual reporting relief.

The revisions restructure the Form 5500 along the lines familiar to individual and corporate taxpayers—a simple one-page main form with basic information necessary to identify the plan for which the report is filed, along with a checklist of the schedules being filed which are applicable to the filer's plan type. The structure should aid filers by allowing them to assemble and file a return that is customized to their plan. Instructions to the form have been reorganized with the intention that they be easier to use due to grouping on the basis of the schedules to be attached. The revised instructions will allow filers to go directly to the instructions which apply to them, and avoid those which do not apply.

Based on the elimination of certain information and reformatting of the Form 5500 Series, the burden of preparing and distributing the form is estimated to be reduced by between 12% and 13% per year over the ten-year life of the form. Assuming an hourly cost ranging from $20 to $25 per hour for preparation of the form, the burden hour reduction is expected to result in a reduction in filer costs which ranges from $1.7 million to $2.1 million per year over the life of the form.

The revisions also establish the Form 5500 as the standardized reporting format for DFEs. The DFE reporting rules were intended to simplify the annual reporting requirements for participating plans and eliminate confusion regarding the reporting obligations of plans which participate in DFEs. Standardization of the information reported by DFEs is expected to allow the Department to correlate and effectively use the data for enforcement and research purposes with respect to the over $1 trillion in plan assets held by DFEs.

The revisions are also designed to support and facilitate the processing system currently in developmental stages to simplify and expedite the processing of the Form 5500 Series. This new system is planned to rely on electronic filing with automatic error detection, and optical scanning technology and optical character recognition to computerize the paper forms, resulting in reductions in government processing costs. Implementation of the single form with multiple schedules is also expected to reduce the government's costs to process the forms, due to an overall reduction in the number of pages on which the information will be submitted.

The Department believes that the current action conforming rules related to annual reporting obligations for employee benefit plan administrators to the new Form 5500 Series is consistent with the principles set forth in the Executive Order in that it will reduce costs and paperwork burden over the life of the forms while enhancing the ability to protect benefits with timely and accurate information.

Paperwork Reduction Act Statement

The Agencies, as part of their continuing efforts to reduce paperwork and respondent burden, invite the general public and Federal agencies to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data are provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. The Agencies solicited comments on the information collection request (ICR) included in this proposed regulatory action as part of the proposed revision of the Form 5500 Series published in the **Federal Register** on September 3, 1997 (62 FR 46556). A public hearing on the proposed revision was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. The Agencies received public comments stating that, although acknowledging that the forms revisions will reduce plan administration costs, estimates of the time required to collect the information and prepare the forms and related schedules were low resulting in underestimated burden calculations. The Agencies are currently exploring approaches to developing a revised burden estimation methodology in an effort to respond to those concerns. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year. A new and revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act which was made available on PWBA's internet site. A Comment Request published in the **Federal Register** on June 24, 1998, 63 FR 34493, provided the public with a 30-day opportunity to submit comments to OMB on the new Form 5500 submission. Following OMB's review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. As discussed in paragraph A (Background) of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. The final computer scannable version of the forms, which will be required to be used for 1999 plan years, will be published in the **Federal Register** following the Agencies' evaluation of public comments. In order to avoid unnecessary duplication of public comments, the supplementary PRA 95 information published in the September 3, 1997 Notice of Proposed Forms Revisions and the June 24, 1998 Comment Request is incorporated herein by this reference in its entirety, and comments submitted in response to these **Federal Register** publications will be treated as comments on this Notice of Proposed Rulemaking. A copy of the ICR may be obtained by contacting the office listed under the heading "Addressee For PRA 95 Comments."

The Department has submitted a copy of the proposed information collection to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. § 3507(d) of the PRA 95 for its review of its information collections. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through February 8, 1999, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

Addressee for PRA 95 Comments: Written comments regarding only PRA 95 and the ICR should be sent to Gerald B. Lindrew, U.S. Department of Labor, PWBA/OPR, Room N–5647, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone 202–219–4784 (this is not a toll-free number). Written comments must be submitted on or before February 8, 1999, to be assured of consideration.

I. PRA 95 Background: The Department is proposing to amend its annual reporting regulations to conform them to the Agencies' revision of the Form 5500 Series in a effort to streamline and simplify this annual report.

II. PRA 95 Current Actions: The amendments contained in this document are necessary to conform the Department's annual reporting regulations to the new Form 5500 Series for which OMB gave conditional Paperwork Reduction Act approval on August 26, 1998. As described in paragraph A of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. See the Notice of Proposed Forms Revisions published in the **Federal Register** on September 3, 1997 (62 FR 46556), the Comment Request published in the **Federal Register** on June 24, 1998 (63 FR 34493) and PWBA's internet site for the new Form 5500 that was submitted to OMB for approval under the Paperwork Reduction Act.

As indicated in paragraphs C.3 and C.4 of this preamble, the proposed amendments would modify the reporting rules for plans investing in CCTs and PSAs, and add a new information collection item with a small additional burden to existing requirements for CCTs and PSAs. Under existing rules, CCTs and PSAs must provide certain information to each participating plan's administrator including (i) a copy of the annual statement of assets and liabilities for its fiscal year that ends with or within the plan year of such plan and (ii) the value of the plan's units of participation. This information must be certified as accurate and complete and must be provided by the CCT and PSA within 120 days after the close of the plan year for each participating plan. A participating plan is required to include with their annual report a copy of the CCT's or PSA's statement of assets and liabilities unless such CCT or PSA files it directly with the Department and certain other conditions are met. In such a case, the CCT or PSA must certify to the plan administrator that a copy of its statement of assets and liabilities has been filed with the Department. A PSA's and CCT's statement of assets and liabilities is not required to be reported in a uniform format or manner. In addition, under the existing rules a participating plan must report the current value of its interest in a CCT or PSA at the beginning and end of its plan year regardless of whether the CCT or PSA files directly with the Department.

Under the proposal, CCTs and PSAs which elect to file directly with the Department, like other DFEs, must use a standardized form. In the case of a CCT or PSA that intends to file as a DFE, the proposed amendments would require that such CCT or PSA notify its participating plans of its intention to do so. In the case of a CCT or PSA that does not file as a DFE, the proposed amendments would require that such CCT or PSA notify its participating plans of this fact and furnish the information needed about its assets (i.e., break out their interest in the CCT or PSA into general asset categories such as stocks, debt, real estate, etc.) so the participating plan can satisfy its own annual reporting obligations. These notifications must be made within the same time period for transmitting information already required under the existing rules (i.e., 120 days after the close of the plan year for each participating plan).

The impact of these proposed changes with respect to CCTs and PSAs and plans which participate in these entities has been estimated and included in the total estimated burden for this ICR under PRA 95. The total additional burden imposed by standardization of reporting and modification of the certification requirement for CCTs and PSAs is estimated at 2,725 hours per year. This includes only a nominal adjustment for the change in the certification requirement. The Department believes that the certification will be based on a decision made once per year for each CCT or PSA. CCTs or PSAs that file as a DFE are under current rules required to certify essentially the same substantive information as would be required under the new DFE rules. The requirement to certify that the entity is filing as a DFE within 120 days after the end of the participating plans year-ends should be a brief statement that should not impose any measurable burden in addition to that resulting from the current requirements. In the case of CCTs and PSAs that do not file as a DFE, the entities under current rules already must certify various substantive information to their participating plans within 120 days after the plans' year-ends. Adding to the certification a brief statement that the entity is not filing as a DFE should not impose any measurable burden in addition to that resulting from the current requirements. In this regard, the Department anticipates that the requirement to certify information sufficient to enable the participating plans' to report beginning and end of year values for their interests in the underlying assets of such CCTs or PSAs should not be a burden inasmuch as plans participating in CCTs and PSAs already are required to report the current value of their units of participation in CCTs and PSAs as of the beginning and end of the plan year. The proposed rulemaking would also explicitly require an information collection item in §§ 2520.103–1(f), 2520.103–2(c), 2520.103–9(d) and 2520.103–12(f) for entities filing electronically by requiring that such entities maintain an original copy of the filing with all required signatures as part of the entity's records. The Department believes that no additional burden associated with such record maintenance will arise inasmuch as plans and direct filers routinely maintain copies of all such filings to satisfy other statutory obligations.

Finally, the proposed amendments to § 2520.104b-10 may add a burden that is associated with the elimination of the Form 5500–R filing. Specifically, such plans will be required to provide SARs on an annual basis and may not use the alternative method of compliance currently provided in § 2520.104b–10(b).

Type of Review: Revision of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

OMB Number: Currently approved under OMB No.1210–0016; A new number will be assigned to the revised Form 5500 and schedules which will be published on the form and schedules used by DOL, IRS and PBGC.

Title: Form 5500 Series.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Form Number: DOL/IRS/PBGC Form 5500 and Schedules.

Total Respondents: 801,934.

Total Responses: 801,934.

Frequency of Response: Annually.

Estimated Time per Response, Estimated Burden Hours, Total Annual Burden: PWBA and IRS burden estimates are based on different estimation methodologies resulting in total burden estimate ranges from 1.71 million burden hours (using the PWBA methodology) to 8.46 million burden hours (using the IRS methodology) for preparing the Form 5500 Series report and sending it to the government. See the Notice of Proposed Forms Revisions published in the **Federal Register** on September 3, 1997 (62 FR 46556) for detailed information on the burden estimates.

Small Business Regulatory Enforcement Fairness Act

This notice of proposed rulemaking, when finalized, will be subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et. seq.*) and will be transmitted to Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this notice of proposed rulemaking, if finalized, would not include any Federal mandate that may result in expenditures by State, local or tribal governments, and would not impose an annual burden exceeding $100 million on the private sector.

Statutory Authority

This regulation is proposed pursuant to the authority in sections 101, 103, 104, 109, 110, 111, 504 and 505 of ERISA and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2520

Accountants, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Pension plans, Pension and welfare plans, Reporting and recordkeeping requirements, and Welfare benefit plans.

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for Part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b-1 and 2520.104b-3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Section 2520.103–1 is amended by revising paragraphs (b) introductory text, (b)(1), the first sentence of (b)(2)(i), paragraphs, (b)(4), (c), (d) and the first sentence of paragraph (e) as follows:

§ 2520.103–1 Contents of the annual report.

* * * * *

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.* Except as provided in paragraph (d) of this section and in §§ 2520.103–2 and 2520.104–44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

(1) A Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule C (Service Provider Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule G (Financial Transactions Schedule), Schedule H (Financial Information), Schedule R (Retirement Plan Information), and the other financial schedules described in § 2520.103–10. See the instructions for this form.

(2) * * *

(i) A statement of assets and liabilities at current value presented in comparative form for the beginning and end of the year. * * *

* * * * *

(4) In the case of a plan, some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required to be furnished to the administrator by such account or trust under § 2520.103–5(c). Although the statement of assets and liabilities referred to in § 2520.103–5(c) shall be considered part of the plan's annual report, such statement of assets and liabilities need not be filed with the plan's annual report. See §§ 2520.103–3 and 2520.103–4 for the reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution.

* * * * *

(c) *Contents of the annual report for plans with fewer than 100 participants.* Except as provided in paragraph (d) of this section and in §§ 2520.104–43 and 2520.104a-6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information).

(d) *Special rule.* If a plan has between 80 and 120 participants (inclusive) as of the beginning of the plan year, the plan administrator may elect to file the same category of annual report (i.e., the annual report for plans with 100 or more participants under paragraph (b) of this section or the annual report for plans with fewer than 100 participants under paragraph (c) of this section) that it filed for the previous plan year.

(e) *Plans which participate in a master trust.* The plan administrator of a plan which participates in a master trust shall file an annual report on Form 5500 in accordance with the instructions for the form relating to master trusts. * * *

3. Section 2520.103–1 is further amended by adding a new paragraph (f) as follows:

§ 2520.103–1 [Amended]

* * * * *

(f) *Electronic filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the plan administrator maintains an original copy, with all required signatures, as part of the plan's records.

4. Section 2520.103–2 is amended by revising paragraph (b)(1), the first sentence of (b)(2)(i) and paragraph (b)(4) as follows:

§ 2520.103–2 Contents of the annual report for a group insurance arrangement.

* * * * *

(b) * * *

(1) A Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule G (Financial Transactions Schedule), Schedule H (Financial Information), and the other financial schedules described in § 2520.103–10.

(2) * * *

(i) A statement of all trust assets and liabilities at current value presented in comparative form for the beginning and end of the year. * * *

* * * * *

(b)(4) In the case of a Form 5500 annual report filed under this section for a group insurance arrangement some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or a common or collective trust maintained by a bank, trust company or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required to be furnished by such account or trust under § 2520.103–5(c). Although the statement of assets and liabilities referred to in § 2520.103–5(c) shall be considered part of the group insurance arrangement's annual report, such statement of assets and liabilities need not be filed with its annual report. See §§ 2520.103–3 and 2520.103–4 for the reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, and see § 2520.104–43(b)(2) for when the terms "group insurance arrangement" and "trust" shall be, respectively, used in place of the terms "plan" and "plan administrator."

* * * * *

5. Section 2520.103–2 is further amended by adding a new paragraph (c) as follows:

§ 2520.103–2 [Amended]

* * * * *

(c) *Electronic filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the trust maintains an original copy, with all required signatures, as part of the trust's records.

6. Section 2520.103–3 is amended by revising paragraphs (a) and (c) as follows:

§ 2520.103–3 Exemption from certain annual reporting requirements for assets held in a common or collective trust.

(a) *General.* Under the authority of sections 103(b)(3)(G), 103(b)(4), 104(a)(2)(B), 104(a)(3), and 110 of the Act, a plan whose assets are held in whole or in part in a common or collective trust maintained by a bank, trust company, or similar institution which meets the requirements of paragraph (b) of this section shall include as part of the annual report to be filed under §§ 2520.104a-5 or 2520.104a-6 the information described in paragraph (c) of this section. Such plan is not required to include in its annual report information concerning the individual transactions of the common or collective trust. This exemption has no application to assets not held in such trusts.

* * * * *

(c) *Contents.* (1) A plan which meets the requirements of paragraph (b) of this section, and which invests in a common or collective trust that files a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) about the current value of and net investment gain or loss relating to the units of participation in the common or collective trust held by the plan; identifying information about the common or collective trust including its name, employer identification number, and any other information required by the instructions to the Schedule D (Direct Filing Entity/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the common or collective trust and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust.

(2) A plan which meets the requirements of paragraph (b) of this section, and which invests in a common or collective trust that does not file a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) about the current value of the plan's allocable portion of the underlying assets and liabilities of the common or collective trust and the net investment gain or loss relating to the units of participation in the common or collective trust held by the plan; identifying information about the common or collective trust including its name, employer identification number, and any other information required by the instructions to the Schedule D (Direct Filing Entity/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the common or collective trust and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust.

7. Section 2520.103–4 is amended by revising paragraphs (a) and (c) as follows:

§ 2520.103–4 Exemption from certain annual reporting requirements for assets held in an insurance company pooled separate account.

(a) *General.* Under the authority of sections 103(b)(3)(G), 103(b)(4), 104(a)(2)(B), 104(a)(3), and 110 of the Act, a plan whose assets are held in whole or in part in a pooled separate account of an insurance carrier which meets the requirements of paragraph (b) of this section shall include as part of the annual report to be filed under § 2520.104a-5 or § 2520.104a-6 the information described in paragraph (c)

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of this section. Such plan is not required to include in its annual report information concerning the individual transactions of the pooled separate account. This exemption has no application to assets not held in such a pooled separate account.

* * * * *

(c) *Contents.* (1) A plan which meets the requirements of paragraph (b) of this section, and which invests in a pooled separate account that files a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) about the current value of, and net investment gain or loss relating to, the units of participation in the pooled separate account held by the plan; identifying information about the pooled separate account including its name, employer identification number, and any other information required by the instructions to the Schedule D (Direct Filing Entity/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the pooled separate accounts and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account.

(2) A plan which meets the requirements of paragraph (b) of this section, and which invests in a pooled separate account that does not file a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) about the current value of the plan's allocable portion of the underlying assets and liabilities of the pooled separate account and the net investment gain or loss relating to the units of participation in the pooled separate account held by the plan; identifying information about the pooled separate account including its name, employer identification number, and any other information required by the instructions to the Schedule D (Direct Filing Entity/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the pooled separate account and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account.

8. Section 2520.103–5 is amended by redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv), redesignating paragraph (c)(2)(iii) as (c)(2)(iv), redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii), revising paragraphs (c)(1)(ii) and (c)(2)(i) and adding new paragraphs (c)(1)(iii), and (c)(2)(ii) as follows:

§ 2520.103–5 Transmittal and certification of information to plan administrator for annual reporting purposes.

* * * * *

(c) * * *

(1) * * *

(ii) Holds assets of a plan in a pooled separate account and files the Form 5500 report pursuant to § 2520.103–9 for a plan year—

(A) A copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account ending with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the separate account,

(C) The EIN of the separate account, entity number required for purposes of completing the Form 5500, and any other identifying number assigned by the insurance carrier to the separate account,

(D) A statement that a filing pursuant to § 2520.103–9(c) will be made for the separate account (for its fiscal year ending with or within the participating plan's plan year) on or before the date upon which such plan's annual report is required to be filed in accordance with §§ 2520.104a-5 or 2520.104a-6, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the insurance carrier and that is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a-5 or § 2520.104a-6.

(iii) Holds assets of a plan in a pooled separate account and does not file the Form 5500 report pursuant to § 2520.103–9, for a plan year—

(A) A copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account that ends with or within the plan year for which the annual report is made,

(B) A statement of the value of the plan's units of participation in the separate account,

(C) The EIN of the separate account and any other identifying number assigned by the insurance carrier to the separate account,

(D) A statement that a filing pursuant to § 2520.103–9(c) will not be made for the separate account for its fiscal year ending with or within the participating plan's plan year, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the insurance carrier and that is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a-5 or § 2520.104a-6.

* * * * *

(2) * * *

(i) In a common or collective trust that files the Form 5500 report pursuant to § 2520.103–9, for a plan year—

(A) A copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such trust ending with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the common or collective trust,

(C) The EIN of the common or collective trust, entity number assigned for purposes of completing the Form 5500, any other identifying number assigned by the bank, trust company, or other institution to the common or collective trust,

(D) A statement that a filing pursuant to § 2520.103–9(c) will be made for the common or collective trust (for its fiscal year ending with or within the participating plan's plan year) on or before the date upon which the annual report for such plan is required to be filed in accordance with §§ 2520.104a-5 or 2520.104a-6, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the bank, trust company or similar institution and that is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and §§ 2520.104a-5 or 2520.104a-6.

(ii) In a common or collective trust that does not file the Form 5500 "Annual Return/Report of Employee Benefit Plan", pursuant to § 2520.103–9, for a plan year—

(A) A copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such account that ends with or within the plan year for which the annual report is made,

(B) A statement of the value of the plan's units of participation in the common or collective trust,

(C) The EIN of the common or collective trust, and any other identifying number assigned by bank, trust company or similar institution to the common or collective trust,

(D) A statement that a filing pursuant to § 2520.103–9(c) will not be made for the common or collective trust for its fiscal year ending with or within the participating plan's plan year, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the bank, trust company or similar institution and that is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and §§ 2520.104a–5 or 2520.104a–6.

* * * * *

9. Section 2520.103–6 is amended by revising paragraphs (a) and (b)(1)(ii), and adding paragraph (f) as follows:

§ 2520.103–6 Definition of reportable transaction for Annual Return/Report.

(a) *General.* For purposes of preparing the schedule of reportable transactions described in § 2520.103–10(b)(6), and subject to the exceptions provided in §§ 2520.103–3, 2520.103–4 and 2520.103–12, with respect to individual transactions by a common or collective trust, pooled separate account, or a 103–12 investment entity, a reportable transaction includes any transaction or series of transactions described in paragraph (c) of this section.

(b) * * *

(1) * * *

(ii) With respect to schedules of reportable transactions for the initial plan year of a plan, the term "current value" shall mean the current value, as defined in section 3(26) of the Act, of plan assets at the end of a plan's initial plan year.

* * * * *

(f) *Special rule for certain participant-directed transactions.* Participant or beneficiary directed transactions under an individual account plan shall not be taken into account under paragraph (c)(1) of this section for purposes of preparing the schedule of reportable transactions described in this section. For purposes of this section only, a transaction will be considered directed by a participant or beneficiary only to the extent that such individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account.

10. Section 2520.103–9 is revised as follows:

§ 2520.103–9 Direct filing for bank or insurance carrier trusts and accounts.

(a) *General.* Under the authority of sections 103(b)(4), 104(a)(3), 110 and 505 of the Act, an employee benefit plan, some or all of the assets of which are held in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 2520.103–4, is relieved from including in its annual report information about the current value of the plan's allocable portion of assets and liabilities of the common or collective trust or pooled separate account and information concerning the individual transactions of the common or collective trust or pooled separate account, provided that the plan meets the requirements of paragraph (b) of this section, and, provided further, that the bank or insurance carrier which holds the plan's assets meets the requirements of paragraph (c) of this section.

(b) *Application.* A plan whose assets are held in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 2520.103–4, provided the plan administrator, on or before the end of the plan year, provides the bank or insurance carrier which maintains the common or collective trust or pooled separate account with the plan number, and name and EIN of the plan sponsor as it will be indicated on the plan's annual report.

(c) *Separate filing by common or collective trusts and pooled separate accounts.* The bank or insurance carrier which maintains the common or collective trust or pooled separate account in which assets of the plan are held shall file, in accordance with the instructions for the form, a completed Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form for the common or collective trust or pooled separate account, including Schedule D (Direct Filing Entity/Participating Plan Information) and Schedule H (Financial Information). See the instructions for this form. The information reported shall be for the fiscal year of such trust or account ending with or within the plan year for which the annual report of the plan is made.

(d) *Method of filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the common or collective trust or pooled separate account maintains an original copy, with all required signatures, as part of its records.

11. Section 2520.103–10 is revised to read as follows:

§ 2520.103–10 Annual report financial schedules.

(a) *General.* The administrator of a plan filing an annual report pursuant to § 2520.103–1(a)(2) or the report for a group insurance arrangement pursuant to § 2520.103–2 shall, as provided in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan," include as part of the annual report the separate financial schedules described in paragraph (b) of this section.

(b) *Schedules.* (1) *Assets held for investment.* (i) A schedule of all assets held for investment purposes at the end of the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, issuer or similar party;

(B) Description of investment including maturity date, rate of interest, collateral, par or maturity value;

(C) Cost; and

(D) Current value, and, in the case of a loan, the payment schedule (e.g., fully amortized, partly amortized with a final lump sum payment).

(ii) In the case of assets or investment interests of two or more plans maintained in one trust, all entries on the schedule of assets held for investment purposes that relate to the trust shall be completed by including the plan's allocable portion of the trust.

(2) *Assets acquired and disposed within the plan year.* (i) A schedule of all assets acquired and disposed of within the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, issuer or similar party;

(B) Descriptions of investment including maturity date, rate of interest, collateral, par or maturity value;

(C) Cost of acquisitions; and

(D) Proceeds of dispositions.

(ii) In the case of assets or investment interests of two or more plans are maintained in one trust, all entries on the schedule of assets held for investment purposes that relate to the trust shall be completed by including the plan's allocable portion of the trust.

(3) *Party in interest transactions.* A schedule of each transaction involving a person known to be a party in interest except do not include:

(i) A transaction to which a statutory exemption under part 4 of title I applies;

(ii) A transaction to which an administrative exemption under section 408(a) of the Act applies; or

(iii) A transaction to which the exemptions of section 4975(c) or 4975(d) of the Internal Revenue Code (Title 26 of the United States Code), applies.

(4) *Obligations in default.* A schedule of all loans or fixed income obligations

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which were in default as of the end of the plan year or were classified during the year as uncollectible.

(5) *Leases in default.* A schedule of all leases which were in default or were classified during the year as uncollectible.

(6) *Reportable transactions.* A schedule of all reportable transactions as defined in § 2520.103–6.

(c) *Format requirements for certain schedules.* (1) There is no specific format requirement for the schedules described in paragraphs (b)(1), (b)(2) or (b)(6) of this section provided such schedules are filed with the required information using the same size paper as the Form 5500.

(2) Except as provided in paragraph (c)(1) of this section, such paragraph shall not apply to the Form 5500 and the statements and schedules required to be filed with such form.

12. Section 2520.103–11 is amended by revising paragraph (a) and adding paragraphs (d) as follows:

§ 2520.103–11 Assets held for investment purposes.

(a) *General.* For purposes of preparing the schedule of assets held for investment purposes described in § 2520.103–10(b)(1) and (2), assets held for investment purposes include those assets described in paragraph (b) of this section.

* * * * *

(d) *Special rule for certain participant-directed transactions.* Cost information may be omitted from the schedule of assets held for investment, for assets described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, only with respect to participant or beneficiary directed transactions under an individual account plan. For purposes of this section only, a transaction will be considered directed by a participant or beneficiary only to the extent that such individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account.

13. Section 2520.103–12 is amended by revising the last sentence of paragraph (a), revising paragraph (b), and also adding a new paragraph (f) as follows:

§ 2520.103–12 Limited exemption and alternative method of compliance for annual reporting of investments in certain entities.

(a) * * * The information described in paragraph (b), however, shall be considered as part of the annual report for purposes of the requirements of section 104(a)(1) of the Act and §§ 2520.104a–5 and 2520.104a–6.

(b) The entity described in paragraph (c) of this section shall file, in accordance with the instructions for the form:

(1) A Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form for such entity, completed in accordance with the instructions for the form, including Schedule A (Insurance information), Schedule C (Service Provider Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule G (Financial Transactions Schedule), Schedule H (Financial Information), and the financial schedules described in § 2520.103–10(b)(1) and (b)(2). See the instructions for this form. The information reported shall be for the fiscal year of such entity ending with or within the plan year for which the annual report of the plan is made.

(2) A report of an independent qualified public accountant, regarding the financial statements and schedules described in paragraph (b)(1) of this section which meets the requirements of § 2520.103–1(b).

(c) * * *

* * * * *

(f) *Method of filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form provided the entity described in paragraph (c) of this section maintains an original copy, with all required signatures, as part of its records.

14. Section 2520.104–21 is amended by revising paragraphs (b)(3) and (d) as follows:

§ 2520.104–21 Limited exemption for certain group insurance arrangements.

* * * * *

(b) * * *

(2) * * *

(3) Uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and uses a trust as the conduit for payment of premiums to the insurance company.

* * * * *

(d) *Examples.* (1) A welfare plan has 25 participants at the beginning of the plan year. It is part of a group insurance arrangement of a trade association and provides benefits to employees of two or more unaffiliated employers, but not in connection with a multiemployer plan as defined in the Act. Plan benefits are fully insured pursuant to insurance contracts purchased with premium payments derived half from employee contributions (which the employer forwards within three months of receipt) and half from the general assets of each participating employer. Refunds to the plan are paid to participating employees within three months of receipt as provided in the plan and as described to each participant upon entering the plan. A trust acts as a conduit for payments, receiving premium payments from participating employers and paying the insurance company. The plan appoints the trade association as its plan administrator. The association, as plan administrator, provides summary plan descriptions to participants and beneficiaries, enlisting the help of participating employers in carrying out this distribution, and also holds the insurance contracts. The plan administrator also makes copies of certain plan documents available to the plan's principal office and such other places as necessary to give participants reasonable access to them. The plan administrator files with the Secretary an annual report covering activities of the plan, as required by the Act and such regulations as the Secretary may issue. The exemption provided by this section applies because the conditions of paragraph (b) have been satisfied.

(2) Assume the same facts as paragraph (d)(1) of this section except that the premium payments for the insurance company are paid from the trust through an independent insurance brokerage firm. The trade association is the holder of the insurance contract. The plan appoints an officer of the participating employer as the plan administrator. The officer, as plan administrator, performs the same reporting and disclosure functions as the administrator in paragraph (d)(1) of this section, enlisting the help of the association in providing summary plan descriptions and necessary information. The exemption provided by this section applies.

(3) The facts are the same as paragraph (d)(1), except the welfare plan has 125 participants at the beginning of the plan year. The exemption provided by this section does not apply because the plan had 100 or more participants at the beginning of the plan year. See, however, § 2520.104–43.

(4) The facts are the same as paragraph (d)(2), except the welfare plan has 125 participants. The exemption provided by this section does not apply because the plan had 100 or more participants at the beginning of the plan year. See, however, § 2520.104–43.

15. Section 2520.104–41 is amended by revising paragraphs (b) and (c) as follows:

§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.

* * * * *

(b) *Application.* The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and the administrator of an employee pension or welfare benefit plan described in § 2520.103–1(d) may file the simplified annual report described in paragraph (c) of this section in lieu of the annual report required to be filed pursuant to section 104(a)(1)(A) of the Act and § 2520.104a–5.

(c) *Contents.* The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section shall file, in accordance with the instructions for the form, a completed Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, including Schedule A (Insurance information), Schedule B (Actuarial Information), Schedule D (Direct Filing Entity/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

16. Section 2520.104–43 is amended by revising paragraphs (b)(1)(ii) and (b)(2) as follows:

§ 2520.104–43 Exemption from annual reporting requirement for certain group insurance arrangements.

* * * * *

(b) * * *

(1) * * *

(ii) an annual report containing the items set forth in § 2520.103–2 has been filed with the Secretary of Labor in accordance with §§ 2520.104a–6 by the trust or other entity which is the holder of the group insurance contracts by which plan benefits are provided.

(2) For purposes of this section, the terms "group insurance arrangement" and "trust" shall be used in place of the terms "plan" or "plan administrator," as applicable, in §§ 2520.103–3, 2520.103–4, 2520.103–6, 2520.103–8, 2520.103–9 and 2520.103–10.

* * * * *

17. Section 2520.104–44 is amended by revising the second sentence of paragraph (a)(2), removing the word "and" at the end of paragraph (b)(1)(iii), substituting a semi-colon for the period at the end of paragraph (b)(2), adding paragraph (b)(3), and revising paragraph (c)(1) as follows:

§ 2520.104–44 Limited exemption and alternative method of compliance for annual reporting by unfunded plans and by certain insured plans.

(a) * * *

(2) * * * An employee pension benefit plan which meets the requirements of paragraph (b)(2) or (b)(3) of this section is not required to comply with the annual reporting requirements described in paragraph (c) of this section.

(b) * * *

(3) A pension plan using a tax deferred annuity arrangement under section 403(b)(1) of the Internal Revenue Code (Title 26 of the United States Code) and/or a custodial account for regulated investment company stock established under Code section 403(b)(7) as the sole funding vehicle for providing pension benefits.

(c) * * *

(1) Completing certain items of the annual report as prescribed by the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan" and accompanying schedules;

* * * * *

18. Section 2520.104–46 is amended by revising paragraph (d)(1) as follows:

§ 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.

* * * * *

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of the plan described in paragraph (b)(1) or (b)(2) of this section to file the Form 5500 "Annual Return/Report of Employee Benefit Plan" and all applicable financial schedules and statements as prescribed by the instructions to the form. See § 2520.104–41.

* * * * *

19. Section 2520.104b–10 is amended as follows.

a. In the first sentence of paragraph (a), the phrase "paragraphs (b) and (g)" is revised to read "paragraph (g)".

b. Remove and reserve paragraph (b).

20. Paragraph (c) introductory text and the first sentence of paragraph (f) of section 2520.104b–10 are revised as follows:

§ 2520.104b–10 Summary Annual Report.

* * * * *

(c) *When to furnish.* Except as otherwise provided in this paragraph (c), the summary annual report required by paragraph (a) of this section shall be furnished within nine months after the close of the plan year.

* * * * *

(f) *Furnishing of additional documents to participants and beneficiaries.* A plan administrator shall promptly comply with any request by a participant or beneficiary for additional documents made in accordance with the procedures or rights described in paragraph (d) of this section.

* * * * *

21. Section 2520.104b–10 is further amended as follows.

a. The following sentence from paragraph (d)(3) under the heading "Basic Financial Statement" is removed: [For plans filing form 5500K, omit separate entries for employer contributions and employee contributions and insert instead "contributions by the employer and employees of ($)"].

b. In paragraph (d)(3), the list under the heading "Your Rights to Additional Information" (after the introductory text but before the language "To obtain a copy of the full annual report * * *") is revised to read as follows:

* * * * *

1. an accountant's report;
2. financial information and information on payments to service providers;
3. assets held for investment;
4. fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);
5. loans or other obligations in default or classified as uncollectible;
6. leases in default;
7. transactions in excess of 5 percent of the plan assets;
8. insurance information including sales commissions paid by insurance carriers;
9. information regarding any common or collective trusts, pooled separate accounts, master trusts or 103–12 investment entities in which the plan participates, and
10. actuarial information regarding the funding of the plan.

* * * * *

c. In paragraph (d)(4), the list under the heading "Your Rights to Additional Information" (after the introductory text but before the language "To obtain a copy of the full annual report * * *") is revised as follows:

* * * * *

1. an accountant's report;
2. financial information and information on payments to service providers;
3. assets held for investment;
4. fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);
5. loans or other obligations in default or classified as uncollectible;
6. leases in default;
7. transactions in excess of 5 percent of the plan assets;

8. insurance information including sales commissions paid by insurance carriers; and

9. information regarding any common or collective trusts, pooled separate accounts, master trusts or 103–12 investment entities in which the plan participates.

* * * * *

d. The last sentence of both paragraphs (d)(3) and (d)(4) under the heading "Your Rights to Additional Information" are revised as follows:

"Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210."

e. The last sentence of the undesignated paragraph following paragraph (e)(2) is removed.

Signed at Washington, DC, this 4th day of December, 1998.

Meredith Miller,

Deputy Assistant Secretary for Policy Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–32659 Filed 12–9–98; 8:45 am]

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A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.

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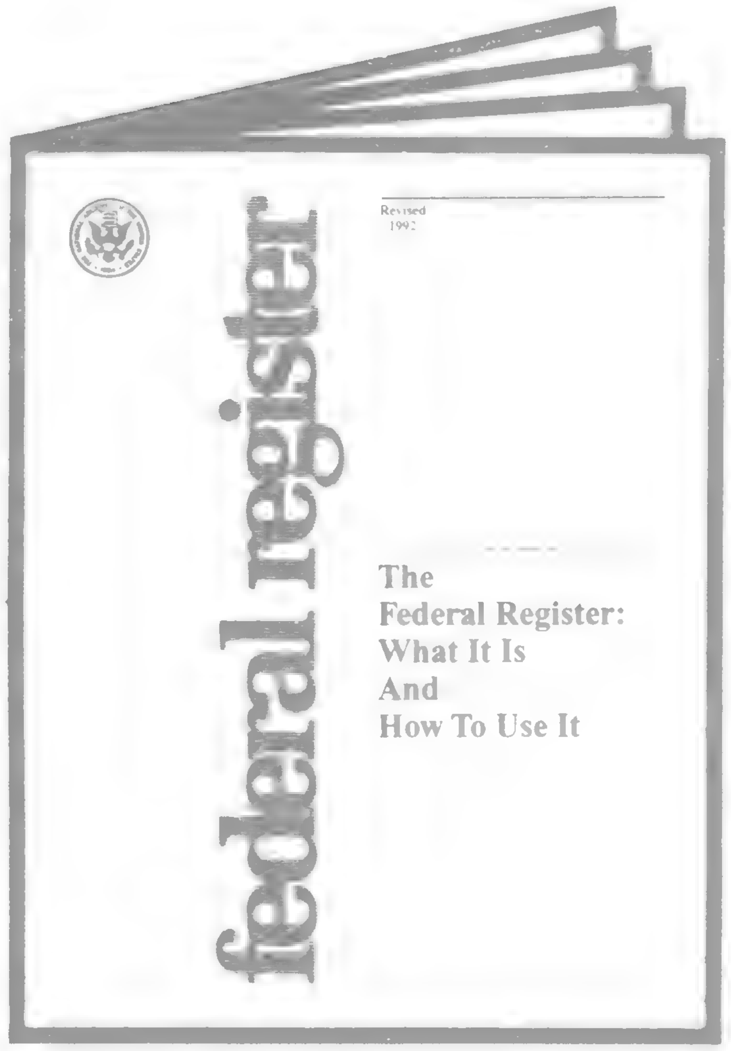

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Rules and Regulations

Federal Register
Vol. 63, No. 238
Friday, December 11, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 98–AGL–53]

Modification of Class E Airspace; Valparaiso, IN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects one error in the legal description of a final rule that was published in the **Federal Register** on Monday, November 16, 1998 (63 FR 63601), Airspace Docket No. 98–AGL–53. The final rule modified Class E Airspace at Valparaiso, IN.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–30585, Airspace Docket No. 98–AGL–53, published on November 16, 1998 (63 FR 63601), modified Class E Airspace at Valparaiso, IN. One error was discovered in the legal description for the Class E airspace for Valparaiso, IN. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace Valparaiso, IN, as published in the **Federal Register** November 16, 1998 (63 FR 63601), (FR Doc. 98–30585), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

AGL IN E5 Valparaiso, IN [Corrected]

On page 62302, Column 2, in the Class E airspace designation for Valparaiso, IN, incorporated by reference in Sec. 71.1, change the coordinates for the Valparaiso, Porter County Municipal Airport, IN to "(lat. 41°27′15″ N, long. 87°00′21″ W)".

Issued in Des Plaines, IL on November 24, 1998.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 98–32731 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–6]

RIN 2120–AA66

Modification of VOR Federal Airway V–485; San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on September 15, 1998 (Airspace Docket No. 95–AWP–6). In that rule, the airway legal description contained an inadvertent error. This action corrects that error.

EFFECTIVE DATE: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: Federal Register Document 98–24710, Airspace Docket No. 95–AWP–6, published on September 15, 1998 (63 FR 49284), modified a portion of V–485 by relocating the airway approximately 1 NM northeast from its previous routing. However, in the rule, the coordinates in the legal description were published as magnetic instead of true. Legal description coordinates for final rules must be published as true. This action corrects the legal description coordinates from magnetic to true.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for VOR Federal Airway V–204, published in the **Federal Register** on September 15, 1998 (63 FR 49284); **Federal Register** Document 98–24710, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 49284, in the third column, near the middle of the column, beginning on the second line of the description of V–485, correct "INT Priest 306° and San Jose 121° radials" to read: "INT Priest 323° and San Jose 131° radials;"

Issued in Washington, DC, on December 2, 1998.

Reginald C. Matthews,
Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–32729 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0291]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in olefin polymers intended for use in contact with food. This action is in response to a petition filed by Asahi Denka Kogyo K.K.

DATES: The regulation is effective December 11, 1998; written objections and requests for a hearing by January 11, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 7, 1998 (63 FR 25212), FDA announced that a food additive petition (FAP 8B4592) had been filed by Asahi Denka Kogyo K.K., 5–2–13, Shirahata, Urawa City, Saitama 336, Japan. The petition proposed to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the expanded safe use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in olefin polymers intended for use in contact with food (21 CFR 177.1520).

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.3295 should be amended as set forth below.

FDA's review of this petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years, formaldehyde has been known to be a carcinogen by the inhalation route, but the Committee concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til et al. (1989), conducted in The Netherlands (Ref. 2). The Committee reviewed both studies and concluded, concerning the Soffritti study, "* * * that data reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde" (Ref. 3). This conclusion is based on a lack of critical detail in the study, questionable histopathological conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4592 (63 FR 25212). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 11, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m and 4 p.m., Monday through Friday.

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biaggi, "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, vol. 5, No. 5, pp. 699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, "Two–Year Drinking Water Study of Formaldehyde in Rats," *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of Conference concerning "Formaldehyde;" Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3295 is amended in the table in the entry for "Sodium 2,2′-methylenebis (4,6-di-*tert*-butylphenyl)phosphate" by revising entry "2." under the heading "Limitations" to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
* * *	* * *
Sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate (CAS Reg. No. 85209–91–2).	For use only: 1. * * * 2. As a clarifying agent at levels not exceeding 0.10 percent by weight of polypropylene complying with § 177.1520(c) of this chapter, items 1.1(a) or 1.1(b) and of olefin polymers complying with § 177.1520(c) of this chapter, items 3.1(a), 3.1(b), 3.1(c), 3.2(a), or 3.2(b) (where the copolymers contain not less than 85 weight percent of the polymer units derived from polypropylene.) The finished polymers shall be used in contact with foods only under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.
* * *	* * *

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32907 Filed 12–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 2935]

Documentation of Immigrants Under the Immigration and Nationality Act—International Organization and NATO Civilian Employee Special Immigrants

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations to comply with new statutory authority. The rule extends fourth preference special immigrant classification to civilian employees of the North Atlantic Treaty Organization (NATO) provided they meet certain qualifying criteria.

EFFECTIVE DATE: The rule was effective as of October 21, 1998.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: Section 421 of Subtitle B of the American Competitiveness and Workforce Improvement Act of 1998 in the Omnibus Appropriations Act of 1998 (Pub. L. 105–277) enacted on October 21, 1998 amends the Immigration and Nationality Act (INA) by adding a new section (L) under section 101(a)(27). This new section entitles civilian NATO employees, who meet certain requirements, to apply for special immigrant status under INA 203(b)(4) as defined under INA 101(a)(27)(L). Subsection (L) extends special immigrant status to NATO civilian employees who meet the same criteria as that required by international organization employees under subsection (I). The Department regulation at 22 CFR 42.32(d)(5) permits international organization employees who are beneficiaries of a petition approved by the Immigration and Naturalization Service to be classified as a fourth preference special immigrant under INA 203(b)(4). The Department is, therefore, amending the regulation to include civilian NATO employees who have approved special immigrant petitions granting status under INA 101(a)(27)(L).

Final Rule

The implementation of this rule as a final rule, is based upon the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The provision of law being implemented became effective on October 21, 1998, the date of the enactment of the Omnibus Appropriation Act of 1998. Consular officers have been complying with it based on guidance essentially akin to that in this final rule but not yet codified in regulations. It is essential that a formal regulatory order undergird their actions at the earliest possible date. Promulgation of this rule without opportunity for public comment would not be contrary to public interest since it expands the special immigrant category to benefit additional qualified aliens as intended by the Congress.

It has been determined that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

List of Subjects in 22 CFR Part 42

Aliens, Immigration, Passports and visas.

The Rule

In view of the foregoing, the Department of State amends 22 CFR part 42 as follows:

1. The authority citation for Part 42 continues to read:

Authority: 8 U.S.C. 1104

2. Amend § 42.32(d)(5) by revising paragraph (d)(5) to read as follows:

§ 42.32 Employment-based preference immigrants.

* * * * *

(d) * * *

(5) Certain international organization and NATO civilian employees—(i) Entitlement to status. An alien is classifiable under INA 203(b)(4) as a special immigrant defined in INA 101(a)(27)(I) or (L) if the consular officer has received a petition approved by the INS to accord such classification, or official notification of such approval, and the consular officer is satisfied from the evidence presented that the alien is within one of the classes described therein.

(ii) Timeliness of application.

An alien accorded status under INA 203(b)(4) because of qualification under

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INA 101(a)(27)(I) or (L) must appear for the final visa interview and issuance of the immigrant visa within six months of establishing entitlement to status.

* * * * *

Dated: December 12, 1998.

Donna J. Hamilton,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 98–32758 Filed 12–10–98; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket# ME–057–01–7006a; FRL–6201–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Maine; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves the sections 111(d)/129 State Plan submitted by the Maine Department of Environmental Protection on April 15, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

DATES: This direct final rule is effective on February 9, 1999 without further notice unless EPA receives adverse comment by January 11, 1999. If adverse comment is received by the above date, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: John Courcier, Office of Ecosystem Protection (CAP), U.S. EPA-New England, Region 1, JFK Federal Building, Boston, Massachusetts 02203–2211.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of materials submitted to EPA relative to this action may be examined during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency-New England, Region 1, Air Permits Unit, Office of Ecosystem Protection, 11th floor, One Congress Street, Boston, Massachusetts 02203.

Maine Department of Environmental Protection, Bureau of Air Quality, Ray Building, Hospital Street, Augusta, Maine 04333.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 565–9462.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), the EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxin and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with its opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires States to submit to the EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414. This action approves the State Plan submitted by Maine to implement and enforce subpart Cb, as it applies to large MWC units only.

II. Discussion

The Maine Department of Environmental Protection (DEP) submitted to EPA on April 15, 1998 the following sections 111(d)/129 State Plan components for implementing and enforcing the emission guidelines for existing MWCs in the State: Legal Authority; Emission Standards and Limitations; Compliance Schedule; MWC Emissions and MWC Plant/Unit Inventories; Procedures for Testing and Monitoring Sources of Air Pollutants; Source Surveillance, Compliance Assurance and Enforcement; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments and Public Hearing Summary; and applicable State regulations (DEP regulations Chapter 121). DEP submitted its Plan after the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, the Maine State Plan covers only large MWC units. Small units are not subject to the requirements of subpart Cb and not subject to this approval.

The approval of DEP's State Plan is based on EPA's finding that: (1) DEP provided adequate public notice of public hearings for the proposed rulemaking which allows Maine to implement and enforce provisions that are at least as protective as the EG for large MWCs, and (2) DEP also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In section 1.1 and appendix D of Maine's Plan, the DEP cites the following in support of its demonstration of legal authority: State of Maine Attorney General's Demonstration of the Legal Authority to Implement and Enforce MWC NSPS and Emissions Guidelines; Attorney General's Legal Opinion to Operate the Title V Operating Permit Program; 38 MRSA section 344; 38 MRSA section 585, Establishment of Emission Standards; 38 MRSA section 585–B, Hazardous Air Pollutant Standards; 38 MRSA section 590, Licensing. In appendix A of the State Plan, DEP cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards are in DEP's Air Bureau Regulations Chapter 121, Emission Limitation and Emission Testing of Resource Recovery Facilities. On the basis of the Attorney General's Opinion and Demonstration, the statutes, and the rules of the State of Maine, these standards and limitations under Chapter 121 are approved as being at least as protective as the Federal requirements contained in subpart Cb for existing large MWC units.

In its State Plan and Chapter 121 MWC Regulations, DEP established a compliance schedule and legally enforceable increments of progress for each large MWC. This portion of the State Plan and Rule has been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

In section 1.4 of Maine's Plan, the DEP submitted an emissions inventory of all designated pollutants for each of its three large MWCs. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing large MWC units.

In section 1.7, Maine's Plan describes its legal authority to require owners and operators of designated facilities to maintain records and report to the State the nature and amount of emissions and any other information that may be necessary to enable the State to judge the compliance status of the affected facilities in section 1.3 of the Plan. Maine also cites its legal authority to provide periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with applicable emission standards, available to the general public. Maine incorporated by reference into Chapter 121 the testing, monitoring, reporting and record keeping requirements under 40 CFR part 60. All of these State rules have been reviewed and approved as being at least as protective as the Federal requirements for existing large MWC units.

As stated in section 1.9 of the State Plan, Maine is committed to provide annual progress reports of Plan implementation. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B and appendix D. This portion of the Plan has been reviewed and approved as meeting the minimum Federal requirement for State Plan reporting.

Final Action

EPA is approving the above referenced State Plan. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If no significant, material, and adverse comments are received by January 11, 1999, this action will be effective February 9, 1999.

If the EPA receives significant, material, and adverse comments by the above date, this action will be withdrawn before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. All public comments received will be addressed in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 9, 1999.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued E. O. 12875 on October 26, 1993, entitled "Enhancing the Intergovernmental Partnership." Under E. O. 12875, EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the promulgated standards and emission guidelines.

In developing the MWC emission guidelines and standards, EPA consulted with affected State, local, and tribal governments, and kept those parties informed about the MWC standards and guidelines. EPA prepared a written statement pursuant to E. O. 12875 which it published in the 1995 promulgation notice (*see* 60 FR 65412 to 65413). The EPA has determined that this State Plan does not include any new Federal mandates or additional Federal requirements beyond those previously considered during promulgation of the 1995 MWC guidelines. Therefore, E.O. 12875 does not require further consultation or information. To the extent that the State Plan contains requirements that differ from, but that are at least as protective as, the Federal MWC guidelines, EPA notes that it has consulted with State government representatives during the State's development of the Plan, and that affected local and tribal governments have been provided with information and afforded opportunities to comment through Maine's public hearing and comment procedures.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E. O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal

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governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not create any new requirements on any entity affected by this State Plan. Thus, the action will not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111(d) and section 129(b)(2) of the Clean Air Act do not create any new requirements on any entity affected by this rule, including small entities. They simply approve requirements that the state is already imposing. Furthermore, in developing the MWC emission guidelines and standards, EPA prepared a written statement pursuant to the Regulatory Flexibility Act which it published in the 1995 promulgation notice (*see* 60 FR 65413). In accordance with EPA's determination in issuing the 1995 MWC emission guidelines, this State Plan does not include any new requirements that will have a significant economic impact on a substantial number of small entities. Therefore, because the Federal 111(d) Plan approval does not impose any new requirements and pursuant to section 605(b) of the Regulatory Flexibility Act, the Regional Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

In developing the MWC emission guidelines and standards, EPA prepared a written statement pursuant to section 202 of the Unfunded Mandates Act which it published in the 1995 promulgation notice (*see* 60 FR 65405 to 65412). The EPA has determined that this State Plan does not include any new Federal mandates above those previously considered during promulgation of the 1995 MWC guidelines. The State Plan does include an emission limitation for mercury that in some circumstances will be more stringent than the limit required by the EG. However, that limit is not the result of a Federal mandate. In approving the State Plan, EPA is approving pre-existing requirements under State law and imposing no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from EPA's approval of State Plan provisions that may be more stringent than the EG requirements, nor will EPA's approval of the State Plan significantly or uniquely affect small governments. Thus, this action is not subject to the requirements of sections 202, 203, 204, and 205 of the Unfunded Mandates Act.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In approving or disapproving state plans under section 129 of the Clean Air Act, EPA does not have the authority to revise or rewrite the State's rule, so the Agency does not have authority to require the use of particular voluntary consensus standards. Accordingly, EPA has not sought to identify or require the State to use voluntary consensus standards. Furthermore, Maine's Plan incorporates by reference test methods and sampling procedures for existing MWC units already established by the emissions guidelines for MWCs at 40 CFR part 60, subpart Cb, and does not establish new technical standards for MWCs. Therefore, the requirements of the NTTAA are not applicable to this final rule.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal Waste Combustors, Reporting and recordkeeping requirements.

Dated: November 24, 1998.

John P. DeVillars,

Regional Administrator, Region 1.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart U—Maine

2. Part 62.4845 is amended by adding paragraphs (b)(4) and (c)(3) to read as follows:

§ 62.4845 Identification of plan.

* * * * *

(b) * * *

(4) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors, submitted on April 15, 1998.

(c) * * *

(3) Existing municipal waste combustors.

3. Part 62 is amended by adding a new § 62.4975 and a new undesignated center heading to Subpart U to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.4975 Identification of sources.

The plan applies to the following existing municipal waste combustor facilities:

(a) Penobscot Energy Recovery Company, Orrington, Maine.

(b) Maine Energy Recovery Company, Biddeford, Maine.

(c) Regional Waste Systems, Inc., Portland, Maine.

[FR Doc. 98–32986 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6201–2]

RIN 2060–AI04

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; compliance extension.

SUMMARY: On December 2, 1994, the EPA issued the "National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning" (59 FR 61801). On May 5, 1998, the EPA announced an immediate 3-month stay of the effectiveness of that standard for continuous web cleaning machines using halogenated hazardous air pollutant (HAP) solvents for good cause pursuant to section 553(b)(3)(B) of the Administrative Procedures Act (63 FR 24768). In that same document, the EPA proposed a temporary extension of the applicable compliance date beyond the 3 months of the stay for up to 1 year to complete analysis of equivalent methods of control for continuous web cleaning machines using halogenated HAP solvents.

This document promulgates that compliance extension, and for reasons discussed in this notice, extends the compliance extension until December 2, 1999. This document also discusses the three comment letters received on the May 5, 1998 proposal notice.

DATES: The regulation is effective on December 11, 1998.

ADDRESSES: *Docket.* Interested parties may review items used to support this notice at: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–92–39, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0283. For information regarding the applicability of this action to a particular entity, contact Ms. Tracy Back, Manufacturing Branch, Office of Compliance (2223A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–7076.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners or operators of individual continuous web cleaning machines using any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents in a concentration greater than 5 percent by weight, as a cleaning or drying agent.

Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities engaging in cleaning operations using halogenated solvent cleaning machines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that the EPA is now aware potentially could be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in § 63.460 of the national emission standards for hazardous air pollutants (NESHAP) for halogenated solvent cleaning operations that was promulgated in the **Federal Register** on December 2, 1994 (59 FR 61801) and codified at 40 CFR part 63, subpart T. If you have questions regarding the applicability of this action to a particular entity, consult Mrs. Tracy Back at the address listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented below is organized as follows:

I. Background
II. Comments Received on Proposed Compliance Changes and EPA Response to Comments
III. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866 Review
  D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996
  E. Submission to Congress and the General Accounting Office
  F. Unfunded Mandates Reform Act
  G. National Technology Transfer and Advancement Act
  H. Executive Order 12875: Enhancing the Intergovernmental Partnership
  I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  J. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

I. Background

On December 2, 1994 (59 FR 61801), the EPA promulgated the NESHAP for halogenated solvent cleaning operations. These standards were codified as subpart T in 40 CFR part 63. These standards established equipment and work practice standards for individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines using any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents in a concentration greater than 5 percent by weight, as a cleaning or drying agent.

Under § 63.469 of the halogenated solvent cleaning NESHAP, the Administrator may approve the use of equipment or procedures that have been demonstrated to be equivalent in terms of reducing emissions of methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform to the atmosphere, to those prescribed for compliance within a specified paragraph of the NESHAP.

After the rule was promulgated, two owners and operators of affected halogenated solvent cleaning machines requested approval for equivalent methods of control determinations for their continuous web cleaning machines because the final rule did not address their situation. In addition, the EPA has become aware of several other continuous web cleaning machines experiencing difficulties in determining how to comply with the NESHAP. In each case, the emission control requirements specified by the NESHAP would be difficult or impossible to implement due to the operating and emission characteristics of these machines. Without any action by the EPA to the contrary, individual case-by-case equivalency determinations would be required to ensure that each machine is applying alternative control measures that achieve the same or better emission reductions as the NESHAP-required controls. Such a case-by-case approach would be unduly burdensome for both the affected sources and the EPA. Therefore, the EPA is conducting an evaluation of methods of control for all continuous web cleaning machines to determine which emission control measures would be equivalent to the NESHAP.

As discussed below, the compliance extension promulgated today will allow sufficient time for the EPA to complete the evaluation of equivalent control technologies for continuous web cleaning machines, as well as time for industry to implement any required changes.

II. Comments Received on Proposed Compliance Changes and EPA Response to Comments

Three comment letters were received on the proposed extension of the compliance date for continuous web cleaning machines. All of these comments were from industrial facilities who believed that their operations fit the definition of "continuous web cleaning." These comments have been included in the docket to the Halogenated Solvent Cleaning NESHAP (Docket No. A–92–39) as Items VI–D–01 through VI–D–03.

Each of these facilities commented on the proposed compliance extension, as well as provided additional information for consideration by the EPA during the review and analysis of continuous web cleaning machines. Because there were only three comment letters, no separate response to comment document has been prepared. This preamble serves as the only summary of the comments received on the proposed compliance extension.

The data provided by the commenters supported the EPA's conclusion that the continuous web cleaning machines warrant further evaluation. The design and operation, and, therefore, the emissions characteristics of these machines are different from the solvent cleaning machines (e.g., batch cold cleaning machines, in-line cleaning machines) that the EPA evaluated during the NESHAP development process. The types of units discussed in the comment letters as potentially fitting the definition of continuous web cleaners include web crawlers, wire drawers, thin strip cleaning machines, and photographic film cleaning equipment. According to the commenters, none of these units can unambiguously be classified as either a "batch cold cleaning machine" or as an "in-line cold cleaning machine."

All of the commenters supported the EPA's proposal to extend the comment period by 1 year. One commenter stated that a 1 year extension would not be sufficient to achieve compliance. As an alternative, the commenter recommended a minimum of 18 months after the promulgation of final standards applicable to continuous web cleaning machines. The commenter stated that the additional time would allow for the retrofit of existing equipment or the installation of new equipment if required by the revised rule.

The EPA shares the concern of the commenter that a 1 year extension to August 3, 1999 may not be sufficient time to allow both the EPA's analysis and a facility's compliance with the new requirements for these type of solvent cleaning machines. However, the EPA does not believe at this time that 18 months after the promulgated equivalency determination will be required. The time required for compliance with the new requirements will largely depend on the types of modification or enhancements required by the affected sources. Since the EPA agrees that some additional time will be necessary, the EPA is promulgating a small extension to the proposed August 3, 1999 date. The EPA will review this date during development of requirements for continuous web cleaning machines and may revise the date, if warranted. In today's action, the EPA is extending the compliance extension until December 2, 1999. The EPA currently believes that this will allow sufficient time for the EPA to conduct the technical analysis, propose and promulgate the equivalency determination for continuous web cleaners, and for industry to comply with such requirements. This date is also linked to the original compliance date of December 2, 1997, which should help to provide consistent dates for ongoing reports to the regulating agencies.

III. Administrative Requirements

A. Docket

Docket A–92–39 is an organized and complete file of all of the information submitted to, or otherwise considered by, the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to readily identify and locate documents to enable them to participate effectively in the rulemaking process. The contents of the docket serves as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

There are no additional information collection requirements contained in this final action. Therefore, approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is not required.

C. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the EPA has determined that this final rule is not a "significant regulatory action" within the meaning of the Executive Order. The amendments issued today extend the compliance date for continuous web cleaning machines. These amendments do not add any new control requirements. Therefore, this regulatory action is considered "not significant" and OMB review is not required.

D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis and coordinate with small entity stakeholders if the Agency determines that a rule will have a significant economic impact on a substantial number of small entities.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final amendment to the rule because the compliance extension for continuous web cleaning machines will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. See the April 22, 1994 **Federal Register** (59 FR 19449) for the basis for this determination. The changes to the rule merely extend the compliance date for continuous web cleaning machines and, therefore, do not create any additional burden for any of the regulated entities.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 11, 1998.

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under section 205, the EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector in any one year. Therefore, the requirements of sections 202 and 205 of the Unfunded Mandates Act do not apply to this action. The EPA has likewise determined that the action promulgated today does not include any regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the Unfunded Mandates Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (the NTTAA) of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This regulatory action extends the compliance date for continuous web cleaning machines. Thus, this action does not involve any technical standards that would require the EPA to consider voluntary consensus standards pursuant to section 12(d) of the NTTAA.

H. Executive Order 12875: Enhancing Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's amendments to the rule do not create a mandate on State, local, or tribal governments. The amendments do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is considered not "economically significant" as defined under Executive Order 12866 and, therefore, is not subject to Executive Order 13045.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's amendments to the rule do not significantly or uniquely affect the communities of Indian tribal governments. The amendments issued today extend the compliance date for continuous web cleaning machines, and do not add any new requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Continuous web cleaning machines, Halogenated solvent cleaning machines, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 4, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart T—National Emission Standards for Halogenated Solvent Cleaning

2. Section 63.460 is amended by revising paragraphs (c) and (d), and adding paragraph (g) to read as follows:

§ 63.460 Applicability and designation of source.

* * * * *

(c) Except as provided in paragraph (g) of this section, each solvent cleaning machine subject to this subpart that commences construction or reconstruction after November 29, 1993 shall achieve compliance with the provisions of this subpart immediately upon start-up or by December 2, 1994, whichever is later.

(d) Except as provided in paragraph (g) of this section, each solvent cleaning machine subject to this subpart that commenced construction or reconstruction on or before November 29, 1993 shall achieve compliance with the provisions of this subpart no later than December 2, 1997.

* * * * *

(g) Each continuous web cleaning machine subject to this subpart shall achieve compliance with the provisions of this subpart no later than December 2, 1999.

* * * * *

§ 63.470 [Removed and reserved].

3. Part 63 is amended by removing and reserving section 63.470.

[FR Doc. 98–32991 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL–6201–3]

RIN 2060–AH60

Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act: Allowance Transfer Deadline and Signature Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic particles and deposition and their serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health.

The allowance trading component of the Acid Rain Program allows utilities to achieve sulfur dioxide emissions reductions in the most cost-effective way. Allowances are traded among utilities and recorded in EPA's Allowance Tracking System for use in determining compliance at the end of each year. The Acid Rain Program's permitting and allowance trading, and emissions monitoring requirements are set forth in the "core" rules initially promulgated on January 11, 1993. This action amends certain provisions in the permitting and allowance trading rules for the purpose of improving the operation of the Allowance Tracking System and the allowance market, while still preserving the Act's environmental goals. The entities affected by this change fall under Standard Industrial Code 49 (Electric, Gas and Sanitary Services).

EFFECTIVE DATE: January 11, 1999.

ADDRESSES: *Docket.* Docket No. A–98–15, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Permits and Allowance Market Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (202–564–9089).

SUPPLEMENTARY INFORMATION: This preamble contains all of the responses to public comments received on the revisions finalized in today's action. There is no additional background information document.

The information in this preamble is organized as follows:

I. Affected Entities
II. Background
III. Public Participation
IV. Summary of Major Comments and Responses
  A. Allowance Transfer Deadline
  B. Signature Requirement for Transfer Requests
  C. Impacts of Revisions on Acid Rain Permits
V. Administrative Requirements
  A. Docket

B. Executive Order 12866
C. Executive Order 12875: Enhancing Intergovernmental Partnerships
D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Act
F. Paperwork Reduction Act
G. Regulatory Flexibility
H. Applicability of Executive Order 13045: Children's Health Protection
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Affected Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity, generate steam, or cogenerate electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry SIC 49—Electric, Gas and Sanitary Services.	Electric service providers, boilers from a wide range of industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 72.6 and § 74.2 and the exemptions in §§ 72.7, 72.8, and 72.14 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

On January 11, 1993, EPA promulgated the "core" regulations that implemented the major provisions of title IV of the Clean Air Act (CAA or the Act), as amended on November 15, 1990, including the Permits rule (40 CFR part 72) and the Sulfur Dioxide Allowance System rule (40 CFR part 73). Since promulgation, these rules have applied to three compliance years, 1995, 1996, and 1997, for which affected units were required to meet the annual allowance holding requirements established by the rules. During this time, the Agency gained experience in implementing the requirements and also discovered ways that the operation of the Allowance Tracking System and the allowance market could be improved. On August 3, 1998, EPA proposed changes to certain provisions in 40 CFR parts 72 and 73 to make these improvements. (63 FR 41358 (1998)). These proposed changes were related to the allowance transfer deadline, compliance determinations, and the signature requirements for allowance transfer requests.[1]

The Agency received seven comment letters on the proposed revisions. All of the commenters strongly supported the revision to the allowance transfer deadline and the clarification of the signature requirements for allowance transfer requests. Today's action, therefore, finalizes these two revisions as proposed. EPA is not taking action at this time on the third proposed revision, which would allow deduction of allowances from other unit accounts after the allowance transfer deadline and on which EPA received adverse comment.

III. Public Participation

Revisions to 40 CFR parts 72 and 73 were proposed on August 3, 1998. (63 FR 41358). The notice invited public comments, and copies of the proposed rule were made available to interested parties.

EPA offered to hold a public hearing upon request, but no such request was made and no hearing was held. EPA did, however, receive a request to extend the comment period 15 days from September 2, 1998 to September 17, 1998. A notice granting the request was published on August 24, 1998. 63 FR 45037 (1998).

IV. Summary of Major Comments and Responses

EPA received seven comment letters regarding the proposed changes to the regulations. All of the commenters were representatives of utility companies or groups of utility companies. A copy of each comment letter received is included in the rulemaking docket.

All of the commenters supported the 30 day extension to the allowance transfer deadline and the clarification of the signature requirements on transfer forms. A summary of the comments received on these two revisions and the Agency responses are set forth in the following two sections.

A. Allowance Transfer Deadline

The "allowance transfer deadline" is the last day on which allowance transfers may be submitted to EPA for recordation in a compliance subaccount for use in meeting a unit's sulfur dioxide (SO_2) emissions limitation requirements for the year. 40 CFR 72.2 (definition of "allowance transfer deadline"). EPA proposed to extend the allowance transfer deadline from the current date of January 30 to March 1 (or February 29 in any leap year) to reflect the Agency's experience in operating the Allowance Tracking System and the technological advances that have been made regarding the submission of continuous emissions monitoring system (CEMS) data.

Comments: All seven commenters strongly supported the proposed extension of the allowance transfer deadline to March 1 (or February 29 in any leap year). Five of the commenters reiterated the arguments EPA made in the proposal for extending the date, while the other two commenters simply acknowledged support of the change.

Response: Because EPA received only supportive comments on its proposed change to the allowance transfer deadline, EPA is extending the allowance transfer deadline to the proposed date of March 1 (or February 29 in any leap year) in today's final rule. The reasons for extending the deadline are more fully explained in the preamble to the proposed rule. 63 FR 41358.

B. Signature Requirement for Transfer Requests

Under the core rules, § 73.50(b)(1) required authorized account representatives seeking recordation of an allowance transfer to submit a request for the transfer that contains, among other things, signatures of the authorized account representatives for both the transferor and the transferee accounts. In its August 3, 1998 proposed rulemaking, the Agency proposed to add § 73.50(b)(2) to clarify that the authorized account representative for a transferee account can meet the signature requirement by submitting, along with or in advance of a transfer request from the authorized account representative for any transferor account, a signed statement identifying the accounts into which any transfer of allowances is authorized, on or after the date of EPA's receipt of the statement. Receipt by EPA of the signed statement satisfies the transferee signature requirement for all contemporaneous or subsequent transfers into accounts identified in the statement. The specific language for the statement was set forth in proposed § 73.50(b)(2).

Comments: All seven commenters strongly supported the clarification of the signature requirements for transfer forms. One commenter noted that the

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[1] In addition, the proposal revised § 73.34(c)(4) to eliminate the reference to the direct sales provisions, which were previously removed from part 73. 61 FR 28761, 28762 (1996).

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Agency's proposal would simplify and streamline the allowance transfer process. The same commenter and one other stated that advance approval of allowance transfers would make more feasible the electronic submission of electronic transfers. The other five commenters simply acknowledged support of the revision.

Response: Because EPA received only supportive comments on its proposed revision to the signature requirements for allowance transfer requests, EPA is finalizing this rule revision (with the correction of a minor citation error in § 73.50(b)(2)(i)). The reasons for this revision are more fully explained in the preamble to the proposed rule. 63 FR 41363.

C. Impacts of Revisions on Acid Rain Permits

Today's revisions are designed so that the contents of existing acid rain permits and the State regulations required to issue acid rain permits do not have to be changed in order for the revisions to become effective. With the exception of a change in the definition of "allowance transfer deadline," all of today's revisions are made in 40 CFR part 73. As explained in the preamble to the proposed rule (63 FR 41364), it is unnecessary for State permitting authorities to revise the acid rain permits they have issued or regulations they have adopted to reflect today's final revisions to 40 CFR part 73.

Similarly, the revisions can go into effect without State permitting authorities revising acid rain permits or regulations to reflect the revised definition of "allowance transfer deadline" in 40 CFR part 72. Even if a State issued an acid rain permit before today's revision of the allowance transfer deadline becomes effective, the Agency will apply the revised deadline to the units covered by the permit in determining end-of-year compliance for all calendar years beginning with 1998. *See* 63 FR 41364.

While EPA will apply the revised allowance transfer deadline in § 72.2, State permitting authorities should revise their own regulations to reflect the new deadline after it is finalized. This will avoid any potential confusion on the part of regulated entities and the public as to when EPA determines end-of-year compliance.

IV. Administrative Requirements

A. Docket

A docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the preambles of the proposed and final rule (which include EPA responses to significant comments), the contents of the docket will serve as the record in case of judicial review to the extent provided in section 307(d)(7)(A) of the Act.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that today's rule is not a "significant regulatory action."

C. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or unless EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a new mandate on State, local or tribal governments. It modifies an existing mandate in a way that imposes no additional duties and no additional costs on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or unless EPA consults with those governments. If EPA complies by consulting, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely effect, or impose any substantial direct compliance costs on, the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA must identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because today's rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

Today's final revisions to parts 72 and 73 will potentially reduce the burden on regulated entities by streamlining the allowance transfer process and extending the allowance transfer deadline. The revisions will not otherwise have any significant impact on State, local, and tribal governments.

F. Paperwork Reduction Act

Today's final revisions to parts 72 and 73 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The extension of the allowance transfer deadline does not result in any new information requirements and the revisions made to the signature requirement simply clarify EPA's existing practice of accepting the signature of the authorized account representative for a transferee account in advance of an allowance transfer form. OMB has previously approved the relevant information collection requirements contained in parts 72 and 73 under the provisions of the Paperwork Reduction Act and has assigned OMB control number 2060–0258. 58 FR 3590, 3650 (1993).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the previously approved ICR may be obtained from the Director, Regulatory Information Division; EPA; 401 M St. SW (mail code 2137); Washington, DC 20460 or by calling (202) 564-2740. Include the ICR and/or OMB number in any correspondence.

G. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

As discussed above, today's final revisions will reduce the burden on regulated entities by streamlining and adding flexibility to the regulations. For these reasons, EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

H. Applicability of Executive Order 13045: Children's Health Protection

Executive Order 13045 (62 FR 19885, April 29, 1997) applies to any rule if EPA determines (1) that the rule is economically significant as defined under Executive Order 12866, and (2) that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final action is not subject to Executive Order 13045, because the action is not economically significant as defined by Executive Order 12866 and does not address an environmental health or safety risk having a disproportionate effect on children.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, or business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the NTTAA.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after publication in the **Federal Register**.

List of Subjects in 40 CFR Parts 72 and 73

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Compliance plans, Electric utilities, Penalties, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 4, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by removing from the definition of "Allowance transfer deadline" the words "January 30 or, if January 30" and adding, in their place, the words "March 1 (or February 29 in any leap year) or, if such day."

PART 73—[AMENDED]

3. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

4. Section 73.34 is amended by removing from paragraph (c)(4) the words "or direct sale pursuant to subpart E of this part".

5. Section 73.50 is amended by redesignating paragraph (b)(2) as (b)(3) and adding new paragraph (b)(2) as follows:

§ 73.50 Scope and submission of transfers.

* * * * *

(b) * * *

(2)(i) The authorized account representative for the transferee account can meet the requirements in paragraphs (b)(1)(iii) and (iv) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement in a format prescribed by the Administrator and signed by the authorized account representative retracting the authorization for the account.

(ii) The statement under paragraph (b)(2)(i) of this section shall include the following: "By this signature, I authorize any transfer of allowances into each Allowance Tracking System account listed herein, except that I do not waive any remedies under 40 CFR part 73, or any other remedies under State or federal law, to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any authorized account representative for such account unless and until a statement signed by the authorized account representative retracting this authorization for the account is received by the Administrator."

* * * * *

[FR Doc. 98–32990 Filed 12–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 120798A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the Commonwealth of Virginia has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Virginia for the remainder of calendar year 1998, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the Commonwealth of Virginia that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Virginia.

DATES: Effective 0001 hours, December 9, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in Virginia is 21.31676 percent, or 2,368,569 lb (1,074,365 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1997, a total of 2,305,985 lb (1,045,977 kg) were landed in Virginia, creating a 11,192 lb (5,077 kg) overage that was deducted from the amount allocated for landings in the state during 1998 (63 FR 23227, April 28, 1998). The resulting quota for Virginia is 2,357,377 lb (1,069,288 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Virginia has attained its quota for 1998.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 9, 1998, further landings of summer flounder in Virginia by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective December 9, 1998, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Virginia for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–32996 Filed 12–8–98; 2:56 pm]

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Proposed Rules

Federal Register
Vol. 63, No. 238
Friday, December 11, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Form 545, Central Office Equipment Contract (Not Including Installation)

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction to add a RUS Form 545 Central Office Equipment Contract (Not Including Installation) and to rescind REA Form 545, Central Office Equipment Contract (Not Including Installation). RUS is proposing this new contract form in order to incorporate contractual and technological changes.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than February 9, 1999.

ADDRESSES: Comments should be mailed to Orren E. Cameron, III, Director, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Ave., SW, Washington, DC, 20250–1598. RUS requests an original and three copies of all comments (7 CFR part 1700). All comments received will be available for public inspection at Room 2835 (address as above) during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Ave., SW, Washington DC, 20250–1598, telephone number (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. A Final Rule related Notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) exempts RUS loans and loan guarantees from coverage under this Order.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with § 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(c)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 35, as amended) under control number 0572–0059.

Send questions or comment regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034-South Building, Washington, D.C. 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees; and number 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Unfunded Mandates

This rule contains no Federal mandates for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

The last revision to the REA Form 545 Contract was September 1966. Since that date, divestiture and competition legislation and regulation have brought about many changes in the conduct of telecommunications business. Notable advances of central office equipment technology such as Signaling System No. (SS7), Advanced Intelligent Network (AIN), and Integrated Services Digital Network, have made many new services available. In order to address the above, significant changes have been made in the way business is conducted in the telecommunications industry.

The proposed RUS Form 545 Contract incorporates those changes into the Central Office Equipment Contract. The main changes to the Contract are new requirements that: (1) Provide for a software license, (2) provide for patent, copyright, and trademark infringement protection, (3) provide a cap on consequential damages, and (4) provide Equal Employment Opportunity requirements. In addition, it revises and updates provisions for (1) delivery of equipment, (2) inspection and testing of the completed installations, (3) payments to the contractor, (4) insurance, (5) liquidated damages, and (6) completion of the project. The above actions will make it possible for RUS telecommunications borrowers to continue to provide their subscribers with the most modern and efficient telecommunications service, implemented in a predictable and orderly fashion.

RUS has issued a series of 7 CFR chapter XVII parts, which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments that provide for and secure RUS financing. The revision to 7 CFR part 1755 codifies RUS Form 545, Central Office Equipment Contract (Not Including Installation). The 7 CFR part 1755 also describes where copies of the contract may be obtained. RUS telecommunications borrowers are required to use the RUS Form 545 Contract where major central office facilities are being procured but not installed under this contract. The present RUS Form 545 has become outdated due to technological advancements and other reasons. Advanced technology and equipment concepts have introduced new issues. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues addressed in this proposed RUS Form 545 contract are: expansion of patent infringement protection to include copyrights, trademarks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; insurance; independent contractor provisions; and support of discontinued products. All these additions and changes have been made so that RUS telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Following the existing practice of the RUS, this proposed rule contemplates publication of the complete text of standard contract Form 545 in the CFR. However, interested parties are advised that RUS is considering and anticipates publishing a proposed rule providing for an alternative procedure for the publication of standard forms of contracts pursuant to which the full text of the contract form will not be set forth as codified text in the CFR. Should such alternative procedure be adopted pursuant to applicable rulemaking procedures, the full text of this contract, as promulgated through final rulemaking, may not be codified in the CFR.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, Chapter XVII of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 7941 *et seq.*

2. Section 1755.93 is amended by revising the entry for Form 545 in the table and footnote 1 at the end of the table to read as follows:

§ 1755.93 List of standard forms of telecommunications contracts.

* * * * *

RUS form No.	Issue date	Title	Purpose	Source of copies
*	*	*	*	*
545	[TBD]	Central Office Equipment Contract (Not Including Installation).	Purchase and deliver Central office equipment	RUS.
*	*	*	*	*

[1] A limited number of copies of the publication will be furnished by RUS upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to Program Development and Regulatory Analysis United States Department of Agriculture, Rural Utilities Service, Washington, DC 20250–1522. The telephone number is (202) 720–8674.

* * * * *

3. Section 1755.545 is added to read as follows:

§ 1755. 545, Form 545, central office equipment contract (not including installation.)

RUS Form 545, Central Office Equipment Contract (Not Including Installation), as contained in this section shall be used for all purchases of central office equipment (other than such purchases of special equipment using Form 397) using RUS financial assistance when the equipment is supplied but not installed by the seller as explained in 7 CFR part 1753, subparts E and H. RUS Form 545 Central Office Equipment Contract follows:

Central Office Equipment Contract (Not Including Installation)

Notice and Instructions to Bidders;

Central Office Equipment Project (Not Including Installation)

1. Sealed proposals for the engineering, furnishing, and delivery, of central office equipment, materials, and software for the

____

____

(hereinafter called the "Owner") which is to be part of the system known as

____

____

to be financed pursuant to a loan contract between the Owner and the United States of America (hereinafter called the "Government") by the Administrator (hereinafter called the "Administrator") of the Rural Utilities Service (hereafter called "RUS") will be received by the Owner on or before ______ o'clock, ________.M.,

____

at __________________________

____

at which time and place the proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

2. The Bid Documents (composed of plans, specifications, and drawings), together with

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all necessary forms and other documents for bidders, may be obtained from the Owner or from the Owner's Engineer, (hereinafter called the "Engineer") at the latter's office at

______

______

The Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract between the Owner and the Government may be examined at the office of the Owner.

Each set of Bid Documents will have a serial number, assigned by the Engineer, and the number with the name of the bidder will be recorded by the Engineer. Bids will be accepted only from original bidders, or other qualified bidder to whom such a set has been transferred by the original bidder with the approval of the Engineer prior to the pre-bid technical session.

3. A pre-bid technical session will be held with each bidder during the week of ______, (year), at

______

for the purpose of receiving the bidder's technical proposal, discussing details of the Project, and considering suggestions from bidders. The Owner shall attach to this Notice a list of the information required in the bidder's technical proposal. Each bidder will be given a specific time period for the pre-bid technical session. At the pre-bid technical session, the bidder shall fully describe to the Owner any exceptions to the Specifications the bidder may request. In addition, the bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner decides to incorporate any changes into the Specifications, the Owner shall furnish all prospective bidders a copy of the Specifications containing such revisions (the "Revised Specifications") and all bids shall be made on the basis of the Revised Specifications. At this session, the bidder shall identify all documentation and materials that it claims constitute agreed excluded documentation under Section (2)(xi) of the Software License. The bidder shall claim only those items it may be unable to provide to the Owner as required by said (2)(xi). The Engineer shall immediately provide a list of all items so identified to the [appropriate RUS Area office]. The Engineer shall inform the bidder at least ______ days before the scheduled bid opening whether either the Engineer or [RUS] will reject the bid because of items so identified. Licensor agrees that certain Licensed Software cannot be excluded from the requirements of section (2)(xi), including but not limited to, software, the absence or improper operation of which would significantly impair the operation of the system, would significantly impair the ability of the Owner to generate revenue, or would pose a risk to RUS loan security. If allowed, the agreed excluded documentation shall be individually identified in an attachment to the bid. No bid shall be accepted from a bidder who fails to attend the pre-bid technical session or fails to demonstrate to the Owner that its equipment meets the requirements of the Plans and Specifications.

4. Proposals shall be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the bidder, its license number, if a license is required for bidding on a project by the State, and the date and hour of the opening of bids must appear on the envelope in which the proposal is submitted. Proposals must be in ink or typewritten. No alterations or interlineations will be permitted, unless made, initialed, and dated before submission.

5. Prior to the submission of the proposal, the bidder shall make and shall be deemed to have made a careful examination of the Specifications, forms of bidder's proposal and acceptance, and shall become informed as to the location and characteristics of the proposed central office and remote terminal features and services, the transportation facilities, the kind of facilities required before and during the delivery of the equipment and materials, the general local conditions and all other matters that may affect the cost. Bidders will be required to comply with all applicable statutes, codes, and regulations, including those pertaining to the licensing of contractors and the "Anti Kick-Back Acts," as amended, (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001.

6. If requested by the Owner or the Administrator, the bidder shall furnish evidence, satisfactory to the Owner and the Administrator, that the bidder has the necessary facilities, ability, and financial resources to perform the Contract.

7. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto and neither party shall claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the other or by any other person.

8. The Owner reserves the right to waive minor irregularities or minor errors in any proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the proposal in which they occur prior to the execution of any Contract, which may be awarded thereon.

9. The Owner reserves the right to reject any or all proposals.

10. The equipment to be furnished for all central offices and remote switching terminals included in the proposal is to be of the same basic design. A proposal submitted on any other basis will not be considered.

11. Equal Opportunity and Employment.

(a) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" contained herein.

(b) The goals and timetables for minority and female participation are available from the Office of Federal Contract Compliance Programs (OFCCP) which has the sole responsibility for enforcing Executive Order 11246, as amended.

The goals set forth in Executive Order 11246, as amended, are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with Executive Order 11246, as amended, and the implementing regulations at 41 CFR Part 60–4 shall be based on its implementation of the Equal Opportunity Clause.

(c) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and, the geographical area in which the subcontract is to be performed.

Bidder's proposal to Engineer, Furnish, and Deliver Equipment, Materials and Software

(Proposal shall be submitted in ink or typewritten)

To: ______

(HEREINAFTER CALLED THE "OWNER")

The undersigned (hereinafter called the "Bidder") hereby proposes to engineer, furnish, and deliver, and install the equipment, materials and software for each Project listed under Column 1, "Project," in Article I, 1, and described in the plans, specifications and drawings (hereinafter called the "Specifications") prepared by the Owner and attached hereto and made a part hereof, financed by a loan to the Owner made or guaranteed by the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, and designated

______

The Bidder has become informed as to the location and characteristics of the proposed Project, has become informed as to the kind of facilities required before and during the delivery and installation of the equipment, material, and software and has become acquainted with all other matters that may affect the cost and time of delivery of the Project.

The Bidder agrees that if its bid is accepted the following terms and conditions shall govern.

If, in submitting this proposal, the Bidder has taken any exception to the form of proposal furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit and they may exclude the proposal from consideration in determining the award of the Contract.

ARTICLE I.—Section 1. Bid Price. The Bidder Will Engineer, Furnish, and Deliver to the Delivery Points Specified Below the Equipment Described in the Specifications for the Following Sums

Project (see notes 1, 2 and 3)	Base bid	Delivery point	Delivery (see note 4)	Completion of the project (see note 5)	Spare parts	Item	Maintenance tools
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	$				$	a	$
	$				$	b	$
	$				$	c	$
	$				$	d	$
	$				$	e	$
	$				$	f	$
Totals	$	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	$	XXXXXX-XX	$
Total Base Bid	$	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXX-XXX
Alternate 1	$				$	g	$
Alternate 2	$				$	h	$
Alternate 3	$				$		$
Alternate 4	$				$	j	$

Note 1: If a remote switching terminal, so designate and list after host office.
Note 2: All items included in a Project shall have the same completion schedule.
Note 3: Each Project shall be separated by a blank line.
Note 4: Delivery time in calendar days.
Note 5: Time in calendar days for Completion of the Project shall be no later than 90 days after the time established for Delivery.

Section 2. Acceptable Equipment. Unless otherwise specified by the Owner (and with advance written agreement by RUS), the Bidder agrees to furnish under this proposal only equipment which is currently listed in RUS Information Publication 344–2 or covered by a letter of technical acceptance issued by the Chairman, Technical Standards Committee "A" (Telecommunications). The Bidder agrees also to furnish only materials, equipment, and software which are new and of most recent issue and manufacture, as of the date of the bid opening, or of near future release for which the Bidder can assure timely delivery.

Section 3. Changes in Project. The Owner, with the approval of the Administrator, may from time to time prior to the delivery of equipment or software under this Contract effected by the acceptance of this proposal, make reasonable changes, additions to or subtractions from the Specifications which are part of the proposal as conditions may warrant. However, if substantial changes in the Project shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within thirty (30) days after any such change is made. Further, if the cost to the Bidder shall be increased or decreased by any such change or addition, the Contract price shall be increased or decreased by a reasonable amount in accordance with a contract amendment signed by the Owner and the Bidder and approved by the Administrator. No claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition. The delivery times specified under Column 4, "Delivery", in Article I, Section 1, can only be changed by a Contract amendment approved by the Bidder, the Owner and RUS.

Section 4. Taxes. The bid prices herein set forth do not include any amounts payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase, or use of materials, supplies, equipment, or software to be incorporated in the Project(s). If any such tax is applicable to the sale, purchase, or use of materials, supplies, equipment, or software hereunder, the amount thereof shall be stated separately on all invoices and paid by the Owner.

Article II

Delivery

Section 1. Time of delivery. The time of delivery of materials, equipment, and software is of the essence in this Contract. The Bidder shall deliver the materials, equipment, and software required hereunder for each Project upon the time intervals established under Column 4, "Delivery," in Article I, 1, after the Administrator shall have approved this Contract in writing. The times for such delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. However, no such extension of time shall be granted the Bidder unless within thirty (30) days after Bidder becomes aware of the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner. Further, no delay in such time for delivery of materials, equipment, and software shall result in any liability on the part of the Owner, except that the Owner shall be responsible for and shall pay the Bidder on demand all additional, supportable costs, and expenses incurred by the Bidder due to delays to the extent such delays are caused by the Owner's failure to perform its obligations under this Contract unless the Owner's failure to perform is caused by forces beyond its control.

Section 2. Sequence of Delivery. All Projects shall be delivered in the sequence in which they are listed under Column 1, "Project," in Article I, Section 1.

Section 3. Inspection and Tests. All materials, equipment, and software used therein shall be subject to the inspection, test, and approval of the Owner and Administrator, in accordance with the Specifications. The Bidder shall furnish all pertinent information required concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect pertinent records (other than manufacturing cost information) of the Bidder and of any subcontractor relevant to this Project(s). The Bidder shall provide all reasonable facilities necessary for such inspection and tests, except that the Bidder is not required to provide test equipment for the Owner's tests unless specifically required in the Specifications. Failure of the Owner to make inspections shall not release the Bidder from performance required hereunder.

The Owner shall make inspections and tests of each Project for compliance with the Specifications and provide the Bidder the results of such inspections and tests in writing. If the Owner has not completed its inspections and tests and provided the

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Bidder the results within thirty sixty (60) days after the date of delivery as set forth under Column 4," delivery" in Article I, 1, the Owner shall (1) pay to the Bidder the costs incurred by the Bidder as a result of this delay, and (2) grant an extension of time for the Completion of the Project equal to the number of days from the date of the end of the sixty (60) day period until the date the Owner provides such results to the Bidder. A longer period of time for inspection and tests can be allowed if agreed to in writing by the Bidder and the Owner.

Within thirty (30) days of receipt of the results of the inspections and tests from the Owner, the Bidder shall correct all deficiencies, if any, listed on the test results summary and notify the Owner in writing of such corrections, at which time a final Owner's inspection and test of each Project shall be conducted. If tests subsequent to this are made necessary by the Bidder's failure to satisfactorily resolve all such deficiencies as previously listed, the Bidder shall pay the Owner for the cost incurred by the Owner for all such subsequent tests.

Section 4. Defective Workmanship, Materials Equipment, or Software. Throughout the warranty period defined below the Bidder shall, within thirty (30) days of written notice from the Owner, and without charge to the Owner, at the Bidder's option, either remedy or replace any materials, equipment, or software found to be defective in material, or workmanship, or not in conformity with the Specification. This is subject to the following definitions and conditions:

(a) The warranty start date for a Project is the scheduled date of Completion of the Project as set forth under Column 5, "Completion of the Project," in Article I, 1, or such earlier date that such Project is certified complete. The warranty period is twelve (12) months from the warranty start date. If circumstances or events under the control of the Bidder cause a delay beyond the scheduled date of Completion of the Project, the warranty period is twelve (12) months from the actual date of Completion of the Project, as defined in Article VII, 1. The warranty period shall not be extended due to delays caused by the Owner.

(b) Without regard to the expiration of the warranty period set forth above, the Bidder warrants to the Owner that any Software furnished under this Contract shall function, for a period of five (5) years from the warranty start date defined in subsection (a) above, in accordance with the specifications and any written or printed technical material provided by the Bidder to explain the operation of the Software and aid in its use. The Bidder shall correct all deficiencies within thirty (30) days from the date of receipt by the Bidder of written notice of such deficiencies from the Owner. An extension of this thirty (30) day period may be allowed only if agreed upon by the Owner. It shall be the Bidder's obligation to insert and thoroughly test, at no charge to the Owner, any software amendment or alteration provided to satisfy the obligations of this 6. If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be extended to a date ninety (90) days after the deficiency has been corrected.

(c) The Owner shall pay the Bidder for any use of the Bidder's technical assistance center except for usage to diagnose defects as provided in this 4.

(d) The warranty continues in full force and effect whether or not the Owner has accepted the materials, equipment, or software, or by the issuing of any certificate with respect to Completion of the Project.

(e) The warranty does not cover defects in materials, equipment, or software that are caused by modifications to or abuse of materials, equipment, or software by the Owner or the Owner's agents, including but not limited to, the Firm contracted by the Owner to install the materials, equipment, and software.

(f) The Owner shall bear the cost and risk of shipping defective components to the Bidder's designated repair center. The Bidder shall bear the cost and risk of shipping new or repaired replacement components to the Owner.

Article III

Payments

Section 1. Payment of 90 percent.

The Bidder shall provide the Owner with written estimates, including the prices, of the materials, equipment, and software delivered to the site of each Project listed under column 2, in Article I, section 1. If the Owner approves these estimates, the Owner will pay the Bidder 90 percent of the estimates when all materials, equipment, and software required to put each Project into operation have been delivered to the site of such Project.

Section 2. Payment of balance. Upon completion of installation (by others) of the equipment, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Owner shall make a final inspection of the materials, equipment, and software provided hereunder as set forth under Article II, 3, Inspections and Tests. If the materials, equipment, and software shall be found to be in accordance with the Specifications and all provisions hereunder, the owner shall certify such fact to the Administrator for approval and as to the amount of the balance found to be due to the bidder. When such approval has been given, the Owner shall pay to the Bidder all unpaid amounts to which the Bidder shall be entitled hereunder. However, such final payments shall be made not later than one hundred twenty (120) days after delivery as set forth under Column 4, "Delivery" in Article I, section 1, unless approval by the Administrator shall be withheld or delayed due to Bidder's actions or failure to act.

Section 3. Interest on unpaid amounts. Payment on undisputed invoices submitted by the Bidder shall be due thirty (30) days after receipt. Any amounts of these invoices not paid when due shall accrue interest at a rate one and one-half percent (1 1/2%) per year higher than the "Prime Rate" published in the Wall Street Journal in its first issue of the month in which payment becomes due and changing each subsequent month with the first issue published in the respective month.

Section 4. Acceptance not waiver. Acceptance by the Owner of equipment, materials, or software while the Bidder is in default under any provision of this Contract shall not be construed as a waiver by the Owner of any right hereunder including, without limitation, any right to liquidated damages the Owner may have by virtue of Article V, section 2.

Article IV

Particular Undertakings of the Bidder

Section 1. Possession and Control. The equipment, materials, and software purchased under this Contract, until such date or dates when the Owner may take possession and control, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith, and in connection with the equipment, materials, and software to be used therein, shall be borne by the Bidder. The Bidder shall make good and fully repair all damages to the equipment, materials, and software under the control of the Bidder by reasons of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

Section 2. Termination of Bidder's Risks and Obligations. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of delivery. Upon such delivery of possession and control of any Project the Bidder's risks and obligations as set forth above pertaining to such Project shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of its obligation for full performance under the Specifications, or its liability with respect to defective materials, equipment, or software as specified in Article II, section 4, hereof. The equipment shall not be installed until delivery of possession and control to the Owner has been accomplished, as set forth above.

Section 3. Purchase of Materials. The Bidder shall purchase all materials and supplies except software outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title, or interest therein. Materials and supplies other than software shall become the property of the Owner as the Owner makes payments therefor to the Bidder in accordance with Article III, section 1(a).

Section 4. Software License. If the Bidder requires a software license agreement covering the rights, terms, and conditions of the use and assignability of all software integral to the operation of the Project, the license shall be in the form of Addendum 1 to this Contract (See 7 CFR 1753.38(c)).

Section 5. Assignment of Guarantees. All guarantees of materials, equipment, workmanship, and software running in favor of the Bidder shall be transferred and assigned to the Owner upon Completion of the Project and at such time as the Bidder receives final payment. Any such guarantees shall be in addition to the Bidder's warranty defined in Article II, section 4. This provision may be modified with respect to a particular warranty if the Bidder demonstrates to the satisfaction of RUS and the Owner that a transfer is not possible.

Section 6. Patent, Copyright, Trademark, and Trade Secret Infringement. The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent, copyright, trademark, or violation of trade secrets covering any equipment or software used in the work, except for items of the Owner's design or selection. If the Owner's use of equipment or software is enjoined, the Bidder shall promptly, at its own expense, modify or replace the infringing equipment or software so that it no longer infringes but remains functionally equivalent, or obtain for the Owner a license or other right to use the equipment or software. This shall be in addition to any other rights or claims, which the Owner may have. The Bidder shall, at its own expense, (and the Owner agrees to permit Bidder to do so,) defend any suits which may be instituted by any party against the Owner for alleged infringement of patents, copyright, trademark, or violation of trade secrets relative to the Bidder's performance hereunder. Either party shall notify the other promptly of any such claims, and the Owner shall give to the Bidder full authority and opportunity to settle such claims, and shall reasonably cooperate with the Bidder in obtaining information relative to such claims.

Section 7. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable laws, statutes, ordinances, rules, and regulations. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Anti-Kickback Acts, as amended (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*), and any rules and regulations issued pursuant thereto, and 18 U.S.C. 201, 286, 287, 641, 666, 874, 1001, 1361 and 1366, as amended.

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985–1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101–121, section 319, 103 Stat. 701, 750–765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

Article V

Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder in the material, equipment, or software furnished hereunder, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within thirty (30) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall have been made by the Bidder, the Owner may take over the performance of the Bidder's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder shall be liable to the Owner for any supportable cost or expense in excess of the bid price occasioned thereby. The Owner, in such contingency, may exercise any rights, claims, or demands which the Bidder may have against third persons in connection herewith and for such purpose the Bidder does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

Section 2. Liquidated Damages. Should the Bidder fail to complete any Project as shown under Column 5, "Completion of the Project," in Article I, section 1, due to circumstances or events under control of the Bidder, within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall, so long as the subject Project shall not have been placed in service, have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder, the sum of:

______________ dollars ($__________) for

______________________________ (Project)

______________ dollars ($__________) for

______________________________ (Project)

______________ dollars ($__________) for

______________________________ (Project)

per day for each and every day that such completion is delayed beyond the scheduled time for Completion of the Project, as liquidated damages and not as a penalty, up to the amount of the respective Base Bid plus accepted alternates for the affected Project: provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount claimed as liquidated damages was computed. The Bidder shall pay to the Owner the amount necessary to effect such payment in full. Such payment is not to be reduced by the value of any partial performance by the Bidder.

At the technical sessions, each Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner allows these features to be bid as separate Projects, then they are to be individually listed under Columns 1 through 8, in Article I, section 1. These unproven features and capabilities are to be individually listed in this section 2 also, with liquidated damages amounts determined by the Owner and stated for each. If a Bidder neglects to identify any such feature at the technical session, delay in providing the feature is considered a delay in completing the associated Project and the Owner may assess liquidated damages listed for that Project regardless of whether the Project is placed in service.

Section 3. Consequential Damages. In no event shall the Bidder's liability for incidental or consequential loss or damage, except for personal injury or tangible property damage, exceed the amount of 10 times the total contract price, as amended.

Section 4. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Owner exercise any right or enforce any remedy, which the Owner may exercise or enforce hereunder.

Section 5. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election; provided, however, that the provisions of section 2 of this Article V shall be the exclusive measure of damages for failure by the Bidder to have effected the Completion of Project within the time herein agreed upon.

Article VI

Equal Employment

Section 1. The Bidder.

(a) The Bidder represents that:

(1) It has, ____________ does not have ____________, 100 or more employees, and if it has, that

(2) It has ____________, has not ____________ furnished the Equal Employment Opportunity Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246, as amended, and Title VII of the Civil Rights Act of 1964.

(b) The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

(c) The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this proposal.

(d) The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal

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Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 2. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which the Bidder has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Contractor's books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in the said Executive Order 11246 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including actions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 3. Equal Employment Opportunity Specifications.

(a) As used in these specifications:

"Covered area" means the geographical area described in the solicitation from which this contract resulted;

"Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

"Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941; and

"Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) The Contractor shall implement the specific affirmative action standards provided in paragraphs (g) (i) through (xvi) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the **Federal Register** in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g)(ii) above.

(vi) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60–3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(xiv) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xv) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(xvi) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (g)(i) through (xvi). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g)(i) through (xvi) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of Executive Order 11246 if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246 and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246.

(m) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of these specifications, so as to achieve maximum

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results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60–4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 4. In this Article VI.

(a) The term "Contractor" shall also mean "Bidder" or "Subcontractor" as applicable.

(b) The provisions of sections 2 & 3 are applicable to the extent required by law. In determining whether these sections are applicable, reference should be made to Office of Federal Contract Compliance Programs regulations (41 CFR Part 60).

Article VII

Miscellaneous

Section 1. Definitions.

The term "Completion of the Contract" shall mean accomplishment of completion of the Project for all central offices (and associated remote switching terminals), features and services listed under Column 1, "Project," in Article I, section 1, and all alternates accepted by the Owner, on the Owner's acceptance.

The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations herein set out and all amendments and revisions thereof for a central office (and all associated remote switching terminals), feature or service. The scheduled date for completion of the Project is ninety (90) days after delivery as specified under Column 4, "Delivery," in Article I, section 1, as amended or adjusted under Article II, section 1, and section 3. The scheduled date for Completion of the Project is the date from which liquidated damages are computed. The actual date of completion of the Project shall be the date of the receipt by the Owner from the Bidder of written notification that all deficiencies listed on the results of acceptance tests have been corrected; provided, that the final inspection and tests by the Owner finds the deficiencies satisfactorily resolved. If the deficiencies have not been satisfactorily resolved, the actual date of completion of the Project shall be the date that the deficiencies are fully and satisfactorily resolved as determined by subsequent Owner's tests. The Certificate of Completion approved and signed by the Owner and approved in writing by the Administrator shall be conclusive evidence as to the fact of Completion of the Project and the date thereof. Full compliance with the procedure for "Completion of the Project" and an individual Certificate of Completion is required for each Project listed under Column 1, "Project," in Article I, section 1.

The "Contract" shall consist of the Notice and Instructions to Bidders, the Bidder's proposal and the Owner's acceptance, and the Specifications.

The term "days" shall mean calendar days.

The term "minor errors or irregularities" shall mean a defect or variation in a Bidder's bid that is a matter of form and not of substance. Errors or irregularities are 'minor" if they can be corrected or waived without being prejudicial to other Bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the Owner determines whether an error or irregularity is "minor."

The term "placed in service" shall mean used by the Owner to earn revenue.

The term "Project" shall mean a central office and all associated remote switching terminals (if any), a remote switching terminal if purchased without a supporting central office, a feature (or group of features), or a service (or group of services), which is listed under Column 1, "Project," in Article I, section 1. The only instance in which a remote switching terminal can constitute a separate Project is where such remote switching terminal is purchased with associated modifications to its supporting host switch but no other modifications to the host switch are specified. A Project will have a single completion schedule listed under Column 5 "Completion of the Project," in Article I, section 1, and a single liquidated damages amount shown in Article V, section 2. The Contract may consist of one or more Projects.

The term "Software" shall mean computer programs contained on a tape, disc, semiconductor device or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the central processor, control and perform input/output operations, perform error diagnostic and recovery routines, control call processing, and perform peripheral control, and administrative and maintenance functions; as well as associated documentation, excluding source code, used to describe, maintain, and use the programs provided under the Contract.

The term "Specifications" shall mean the minimum performance requirements of the Owner as contained in the documents listed below, and attached to this agreement:

RUS Form ____________________

dated ____________________

RUS Form ____________________

dated ____________________

RUS Form ____________________

dated ____________________

RUS Form ____________________

dated ____________________

requirements may have been amended by specific written exceptions in the Bidder's proposal which have been agreed to by the Owner and accepted by the Administrator.

Section 2. Continuing Equipment Support—Parts, Service, and Software. In addition to warranty repairs and replacement, the Bidder shall offer repair service and repair parts to the Owner in accordance with the Bidder's practices and terms then in effect, for the Bidder's manufactured equipment furnished pursuant to this Agreement. Such repair service or repair parts shall be available for as long as the Bidder is manufacturing or stocking such equipment, or for no less than eight (8) years after the Bidder has ceased manufacturing or offering such equipment for sale. The Bidder shall also offer software support services to the Owner in accordance with the Bidder's practices, terms, and charges then in effect, but in any event for no less than five (5) years after the Bidder has ceased manufacturing or offering for sale such software.

Section 3. Materials and Supplies. The Bidder shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, or in any eligible country, substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, or in any eligible country, provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly authorize in writing such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificate or certificates, signed by the Bidder and all subcontractors, with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Confidentiality. All information supplied by the Bidder to the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Owner, shall be treated by the Owner as confidential information, and the Owner shall not reproduce any such information except for its own internal use and as authorized by this Contract, and shall use any information only for archival backup, in-house training, operating, maintenance, and administrative purposes and in conjunction with its use of the equipment, materials, and software furnished hereunder. All information supplied to the Bidder by the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Bidder, shall be treated by the Bidder as confidential information, and shall not be used by the Bidder for any purpose adverse to the interests of the Owner, and shall not be reproduced or distributed by the Bidder except for the Bidder's use in its performance under this Contract. The foregoing confidentiality obligations do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction. If the Bidder has failed to provide continuing equipment support as described in Article VII, section 2, the Owner is released from this obligation. This provision does not restrict release of information by the United States of America pursuant to the Freedom of Information Act or other legal process.

Section 5. Entire Agreement. The terms and conditions of this Contract as approved by RUS supersede all prior oral or written understandings between the parties. There are no understandings or representations, expressed or implied, not expressly set forth herein.

Section 6. Survival of Obligations. The rights and obligations of the parties, which by their nature, would continue beyond the termination, cancellation, or expiration of this Contract, shall survive such termination or expiration.

Section 7. Non-Waiver. No waiver of any terms or conditions of this Contract, or the failure of either party to enforce strictly any such term or condition on one or more occasions, shall be construed as a waiver of the same or of any other terms or conditions of this Contract on any other occasion.

Section 8. Releases Void. Neither party shall require releases or waivers of any personal rights from representatives or employees of the other in connection with visits to its premises, nor shall such parties plead such releases or waivers in any action or proceeding.

Section 9. Nonassignment of Contract. The Bidder shall not assign the Contract, effected by acceptance of this proposal, or any part hereof, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof, without the approval in writing of the Owner, the Surety, and the Administrator.

Section 10. Choice of Law. The rights and obligations of the parties and all interpretations and performance of this Contract shall be governed in all respects by the laws of the State of ________________ except for its rules with respect to the conflict of laws.

Section 11. Approval of the Administrator. The acceptance of this proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date hereof:

By ____________________________

(Signature of Bidder)

____

(Name—Type or Print)

____

(Title)

____

(Company Name of Bidder)

____

____

(Address of Bidder)

Attest:

____

(Secretary)

____

(Date)

The proposal must be signed with the full name of the Bidder. In the case of a partnership, the proposal must be signed in the firm name by each partner. In the case of a corporation, the proposal must be signed in the corporate name by a duly authorized officer and the Corporate seal affixed and attested by the Secretary of the Corporation. (If executed by other than the President, a Vice-President, the partners or the individual owner, a power of attorney or other legally acceptable document authorizing execution shall accompany this contract, unless such power of attorney is on file with RUS.)

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the proposal of

____

____

for the Project(s) herein described for the Total Base Bid of $______________ and

Alternate For

Spare Parts, Item(s) .... $
Maintenance Tools, Item(s) .... $
Alternate No. 1 add (deduct) .... $
Alternate No. 2 add (deduct) .... $
Alternate No. 3 add (deduct) .... $
Alternate No. 4 add (deduct) .... $
Alternate No. 5 add (deduct) .... $
Alternate No. 6 add (deduct) .... $
The total contract price is ..... $

By ____________________________

Owner

____

President

Attest:

____

Secretary

____

Date Of Acceptance

Dated: December, 7, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–32883 Filed 12–10–98; 8:45 am]

BILLING CODE 3410–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–034–0113; FRL–6200–7]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Nevada State Implementation Plan (SIP). This action specifically includes proposed approval of revisions to Clark County Health District's wintertime oxygenated fuels program. The intended effect of this SIP revision is principally to regulate CO emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposal will incorporate it into the federally approved SIP for the Clark County nonattainment area. EPA has evaluated this revision and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Comments may be mailed to: Air Planning Office [AIR–2], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP revision and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted SIP revision are also available for inspection at the following locations:

Nevada Division of Environmental Protection, Bureau of Air Quality, 123 W. Nye Lane, Carson City, NV
Clark County Health District, PO Box 3902, 625 Shadow Lane, Las Vegas, NV

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1225.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revision being proposed for approval into the Nevada SIP includes:

Clark County District Board of Health, (CCDBH), Air Pollution Control (APC) Section 53, *Oxygenated Gasoline Program* (as amended and approved on September 25, 1997). This SIP revision was submitted by the Nevada Division of Environmental Protection to EPA on August 7, 1998.

II. Background

Section 211(m) of the CAA requires states with CO nonattainment areas with design values of 9.5 parts per million (ppm) or more to submit revisions to their SIPs for those areas, and implement an oxygenated gasoline program, requiring gasoline to meet a minimum oxygen content of 2.7% by weight.

The Clark County nonattainment area design value was based on data for the required two year period of 1988 and 1989. The design value was greater than 12.7 ppm (i.e., 14.4 ppm using 1988 data); therefore the area was classified as moderate CO nonattainment under section 186 of the Act. Because the nonattainment area did not attain the CO standard by the required attainment date of December 31, 1996[1], the nonattainment area of Clark County was reclassified to serious for CO. As a serious area, Clark County now has until December 31, 2000 to meet the national CO standard.

CO remains the greatest air quality challenge in Clark County, especially in the Las Vegas Valley. While a number of programs have helped reduce CO levels each year since 1976, CO levels are directly affected by the ever-increasing number of car miles traveled each year. Nearly all CO in the Valley comes from gasoline powered vehicles. Especially challenging are winter months which bring weather inversions which trap cold air under warm air, preventing the CO emitted from motor vehicles from escaping the Valley. This phenomenon causes several nights of high CO levels each winter. Overall, the District continues to have a good experience with implementing its oxygenated fuels program as a cost effective method of reducing CO emissions in the Valley.

The oxygenated gasoline program was initially adopted on November 17, 1988. The initial program included: a 2.5% oxygen level for the first wintertime season, a 2.6% oxygen level for the next wintertime season, and a choice of methyl tertiary butyl ether (MTBE) or ethanol as oxygenates. The regulation was amended in June 1990 to increase the time period of each succeeding wintertime season and again in July 1991 to increase the oxygen level from 2.6% to 2.7% oxygen by weight.

The District's new submittal requires wintertime oxygenated gasoline from October 1 through March 31. The minimum oxygen level is 3.5% by weight.

The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of this SIP revision, EPA must evaluate the revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

(a) 3.5% oxygenated fuels program. The Clark County area of applicability is the hydrographic basins containing the Las Vegas Valley, the Eldorado Valley, the Ivanpah Valley, the Boulder City limits, and any area within 3 miles of any such hydrographic basins and which is within Clark County, Nevada.

In 1995, the Board of Health adopted a resolution committing to the adoption in 1998 of a regulation that would mandate 3.5% oxygen commencing October 2001. In March 1997, the Clark County Commission adopted a resolution requesting that the Board of Health adopt such a program for implementation for the fall of 1997. The program was adopted by the Board on September 25, 1997 and requires that the minimum oxygen content of wintertime gasoline shall be 3.5% oxygen by weight, starting October 1, 1997.

The District calculated the CO emission reduction benefit for a 3.5% oxygen program in the Valley, compared to no oxygen. The calculation showed approximately a 38% emission benefit. The District's oxygenated gasoline program remains the more cost effective CO control measure when compared to its smog check/repair, traffic flow improvements, winter RVP limit, transit pass program, and the federal motor vehicle emission control program.

The Clark County oxygenated fuels SIP revision included all the EPA required information (under appendix V, 40 CFR part 51) including: A letter from the designated state official requesting that the revision be incorporated into the SIP; evidence that the District has legal authority to adopt, implement and enforce the adopted revision; evidence of the public notice listing the rule or plan revision; evidence that a public hearing was held; and copies of public comments generated during the public comment period.

The SIP revision also included the required technical support information which included: Identification of regulated pollutants affected by the revision; and identification of the locations of the affected major areas.

(b) Analysis of Las Vegas oxygenated gasoline preemption issues.

In response to concerns raised by the Western States Petroleum Association during the District's rule adoption process, the District requested EPA's opinion regarding whether the 3.5% oxygen requirement is preempted under the CAA. EPA's analysis was provided to the District and WSPA by letter dated May 26, 1998, from Margo T. Oge, Director, U.S. EPA Office of Mobile Sources, and is summarized below. The full analysis is contained in the docket for this action.

EPA does not believe that Clark County's requirement is preempted under the Clean Air Act. State requirements like Clark County's are governed by the following provisions in the Act: (1) Section 211(m), which requires certain states with areas exceeding the National Ambient Air Quality Standard for carbon monoxide (CO) to establish wintertime oxygenated gasoline programs, (2) section 211(c)(4), which prohibits certain state fuel regulations adopted for purposes of control of pollution from motor vehicles; and (3) section 116 and other provisions in Title I of the CAA, which give the states primary responsibility for meeting the NAAQS and reserve authority to the states to establish more stringent air pollution control limitations than those established by EPA. State provisions can also potentially be preempted based on conflict with the CAA and federal fuel specifications of the oxygen content of gasoline.

Clark County's 3.5% fuel oxygen content requirement is neither barred by section 211(m) of the CAA, nor preempted by the CAA, either explicitly under section 211(c)(4)(A) or implicitly based on the judicial doctrines of conflict preemption or field preemption.

Section 211(m) requires that certain states adopt a requirement that gasoline be blended to contain not less than 2.7 % oxygen by weight. EPA believes that a state may satisfy this requirement by requiring gasoline to contain 2.7% oxygen or by setting a content requirement higher than 2.7%. This is consistent with the text of the section 211(m), the structure of the Act, and the legislative history of this provision.

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[1] Clark County was granted a one-year extension of the December 31, 1995 attainment date. 61 FR 575407 (November 6, 1996).

Clark County's requirement that gasoline contain 3.5% oxygen by weight is not prohibited by section 211(m)(2).

Clark County's 3.5% oxygen requirement also is not preempted by section 211(c)(4)(A) of the Act. Congress required states to adopt the elements of an oxygenated gasoline program specified in section 211(m) and to submit them as a SIP revision, which would be approved by EPA. Congress' specification of the necessary elements of an approvable SIP revision in section 211(m) indicates Congress' intent that this provision take precedence over the more general provisions of section 211(c)(4)(A) and that EPA approve a SIP revision that includes the program elements specified under section 211(m) without a further showing of necessity under section 211(c)(4)(C). A state requirement of greater than 2.7% oxygen content is within the range of oxygen content requirements that Congress authorized and envisioned under section 211(m) and is not subject to section 211(c)(4).

Clark County's requirement of 3.5% oxygen content is also not preempted by the Clean Air Act based on conflict. Conflict occurs when it is impossible for a private party to comply with both state and federal requirements, or where state law is an obstacle to the accomplishment of Congressional purpose. Such conflict does not exist in this instance. It is practically and legally possible to blend and supply gasoline that meets the federal conventional gasoline requirements and has an oxygen content of 3.5%. Clark County's program is not an obstacle to accomplishing Congressional purpose; rather it is consistent with the requirements of sections 211(m) and 211(C)(4).

Clark County's requirement of 3.5% oxygen content is also not preempted by the Clean Air Act based on field preemption because federal regulation in this area is not so pervasive as to preclude supplementation by the states, nor is the federal interest in the field sufficiently dominant to preempt state action.

In summary, EPA has evaluated the submitted oxygenated gasoline program revision and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, Clark County Health District, Air Pollution Control (APC) Section 53, *Oxygenated Gasoline Program* is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the

Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 1, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–32891 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. ME–057–01–7006b; FRL–6200–9]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Maine; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to approve the sections 111(d)/129 State Plan submitted by Maine Department of Environmental Protection on April 15, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb. The Plan was submitted by the Maine DEP to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of the **Federal Register**, EPA is approving the Maine State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by January 11, 1999.

ADDRESSES: Written comments should be addressed to: John Courcier, Office of Ecosystem Protection (CAP), U.S. EPA, JFK Federal Building, Boston, Massachusetts 02203–2211. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits Unit, Office of Ecosystem Protection, 10th Floor, One Congress Street, Boston, Massachusetts 02203.

Maine Department of Environmental Protection, Bureau of Air Quality, Ray Building, Hospital Street, Augusta, Maine 04333, (207) 287–2437.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 565–9462.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

Dated: November 24, 1998.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 98–32987 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 65

[CC Docket No. 98–177; FCC 98–238]

1998 Biennial Regulatory Review—Petition for Section 11 Biennial Review.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 8, 1998, SBC Communications ("SBC") filed a petition for rulemaking in which SBC presents a number of proposals designed to reduce or eliminate Commission regulations as part of the 1998 biennial review. The attached Notice of Proposed Rulemaking ("NPRM") commences a biennial review proceeding to seek comment on SBC's proposals to reduce or eliminate regulations pertaining to incumbent local exchange carriers ("LECs"). Specifically, the NPRM seeks comments on SBC's proposals to revise the Commission's rate of return represcription rules, to eliminate the requirement to use the lead lag study methodology for calculating the cash working capital of large incumbent LECs, to detariff certain services subject to competition, to further streamline the cost allocation manual filing procedures, and to simplify the Commission's wireless radio rules. The NPRM declines to seek comment on the remaining SBC proposals because such proposals either involve rules promulgated as a result of the 1996 Act of the proposals or involve rules or

proposals that are already the subject of biennial review or other proceedings.

DATES: Submit comments on or before January 11, 1999.

Submit reply comments on or before January 25, 1999.

ADDRESSES: Federal Communications Commission, 445–12th Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anthony Dale, Common Carrier Bureau, Accounting Safeguards Division, (202) 418–2260, or via E-mail to "adale@fcc.gov".

SUPPLEMENTARY INFORMATION:

Released: November 24, 1998

1. In this NPRM we sought comments on several proposals submitted by SBC Communications, Inc. (SBC) in a recently filed Petition for Section 11 Biennial Review. Section 11 of the Communications Act of 1934, as amended (the Act), instructs the Commission, in every even-numbered year beginning in 1998, to "review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service" and to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." (*See* 47 U.S.C. 161(a)). Section 11 further instructs the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest." (*See* 47 U.S.C. 161(b)). In addition, section 202(h) of the Telecommunications Act of 1996 (the 1996 Act) requires the Commission to review its broadcast ownership rules biennially as part of the review conducted pursuant to section 11. (*See* Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996)). Specifically, section 202(h) of the Act provides that the Commission "shall review . . . all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest." (*See* Section 202(h)) of the Telecommunications Act of 1996.

2. On November 18, 1997, the Chairman announced that the Commission was commencing the 1998 biennial regulatory review of telecommunications regulations and broadcast ownership regulations, earlier than required. In addition, the announcement indicated that the scope of the first biennial regulatory review would be broader than statutorily required. Specifically, the announcement indicated that the first biennial review presented a key opportunity for serious "top-to-bottom" examination of the Commission's rules and procedures to determine which of them need to be revised or eliminated. (*See* FCC News Release, "1998 Biennial Review of FCC Regulations Begun Early" (Nov. 18, 1997)). Commission staff then undertook a broad review of Commission regulations. A two-fold approach was followed: (1) each of the operating Bureaus and the Office of Engineering and Technology (OET) conducted a review of rules under its jurisdiction; and (2) a team made up of representatives of the Office of Plans and Policy (OPP), the Chief Economist and his staff and the Competition Division of the Office of General Counsel (OGC) conducted a parallel review of Commission rules on a cross-cutting basis. In order to maximize the universe of rules that might be candidates for modification or elimination, the staff did not focus simply on the statutory standard of whether "meaningful economic competition" justified changes in the rules. Thus, for example, despite the lack of the development of such competition in the local exchange market, the staff nevertheless included rules relating to local exchange carriers as within the scope of the review.

As part of this process, the staff sought and received substantial public input. Specifically, beginning on December 17, 1997 and continuing through January 30, 1998, each of the five operating bureaus, together with OGC, hosted a series of public forums to receive ideas from the public regarding Commission regulations that are potential candidates for repeal or modification during the first biennial regulatory review conducted pursuant to section 11 of the Act. In addition, staff from the Bureaus and OGC attended a series of five meetings held by practice groups of the Federal Communications Bar Association (FCBA), also to receive ideas about biennial review candidates. The staff also sought input from the Commissioners. Following this broad review of Commission regulations, on February 5, 1998, the Commission staff released a list of 31 proceedings it proposed the Commission initiate as part of the 1998 biennial regulatory review. (*See* February 5 News Release)). The list of proposed rulemaking and notice of inquiry proceedings proposed examining a wide variety of subsets of Commission's rules. Nearly two-thirds of the proposed proceedings involved common carriers, and the proceedings covered hundreds of individual rules. The staff also noted that the Commission had many ongoing proceedings consistent with the deregulatory and streamlining goals of section 11.

3. As the News Release specifically noted, the list of proposed biennial review proceedings was a working document that reflected the Commission staff's plans. The staff established an electronic mailbox <biennial@fcc.gov> specifically for the purpose of soliciting ongoing deregulatory input from the public. In this regard, the process of determining which rules are likely candidates for modification or streamlining has been ongoing, and consequently the list of 31 proceedings proposed by the Commission staff was neither exhaustive nor static. We disagree with SBC that this process, including the proceedings that we have initiated and will initiate, does not comply with the statutory requirements. It appears that SBC may be suggesting that the Commission should instead have initiated a single mega-rulemaking proceeding to review every rule relating to common carriers (including wireline, wireless and international). We believe such a mega-proceeding is not required by statute, would be unworkable, and would result in less meaningful deregulation and streamlining than the approach the Commission is taking. The statute does not require a rulemaking determination by the Commission with respect to every rule that continues to serve the public interest and such an approach would inevitably fall under its own weight, thereby undermining the goal of section 11—to identify rules that no longer serve the public interest and modify or eliminate them.

We ask for comment on the following SBC proposals:

4. *Rate-of-Return Prescription (47 CFR 65.101).* SBC argues that section 65.101 *et seq.* of our regulations, which trigger an inquiry into whether a revised rate-of-return prescription is needed once certain financial triggers are met, are a "vestige of rate of return regulation which is no longer needed under price cap regulation." We seek comment on SBC's statement and whether these rules continue to serve any purpose for carriers subject to price cap regulation.

5. *Cash Working Capital Studies (47 CFR 65.820(d)).* SBC asserts that the lead-lag study method required for Class A carriers to calculate the working capital element of the interstate rate base is an overly burdensome endeavor for calculating what "traditionally

makes up far less than 1% of the total rate base." As detailed in Exhibit A of the SBC Petition, SBC recommends that carriers be given the option of including a cash working capital allowance in the rate base or else foregoing recovery. SBC further proposes that to the extent carriers elect an allowance for cash working capital, carriers should be allowed to freeze the amount of cash working capital or else choose from three methods of calculating the cash working capital allowance: the lead-lag study method currently required by Commission regulations; the balance sheet method; or the 45-day formula method detailed in Exhibit A to the SBC petition. We seek comment on SBC proposals to reduce the burdens currently imposed on Class A carriers by the lead-lag studies.

6. *Detariffing of Services Subject to Competition.* SBC states that certain local exchange carrier (LEC) services are competitive and that the Commission should detariff these services. Specifically, SBC indicates its belief that special access services, direct trunked transport, operator services, directory assistance and interexchange services are competitive and should be detariffed for all carriers. We seek comment on SBC's conclusions about competition for these services and whether detariffing would be appropriate as an exercise of our section 10 forbearance authority. (*See* 47 U.S.C. 160). Commenters supporting detariffing should indicate whether they favor permissive detariffing or complete detariffing.

7. *Part 64 Cost Allocation Manual (CAM) Simplification.* SBC asserts that the Part 64 CAM requirements are too complex. SBC further argues that price cap regulation adequately guards against ratepayer subsidization of nonregulated activities, which the CAM requirements originally were designed to protect against. Exhibit D to the SBC Petition contains detailed suggestions for how many of the current CAM requirements could be simplified. We seek comment on these recommendations to simplify the CAM process in a manner consistent with its underlying purposes of discouraging, and facilitating detection of, improper cost allocations and cross-subsidization. (*See Accounting Safeguards Under the Telecommunications Act of 1996,* Report and Order, 12 FCC Rcd 2993, paras. 13, 24, 50 (1996) (*Accounting Safeguards Order*), *recon. pending.*

8. We note that some of SBC's CAM simplification proposals are already the subject of pending biennial review proceedings or other Commission proceedings. In the *Accounting Reductions NPRM,* we proposed streamlining certain CAM filing and CAM audit requirements, particularly with respect to mid-size incumbent local exchange carriers. In the *Accounting Reductions NPRM,* we proposed to establish less burdensome CAM procedures for the mid-sized incumbent LECs and to reduce the frequency with which independent audits of the cost allocations based upon CAMs are required. In addition, we note that the Accounting Safeguards Division of the Common Carrier Bureau recently streamlined certain CAM filing procedures with respect to an incumbent local exchange carrier's affiliate transactions. Finally, we note that SBC's proposal regarding cost allocation procedures for incidental interLATA services is an issue raised by SBC in its Petition for Reconsideration of the *Accounting Safeguards Order.* Because we plan to address the resolution of these proposals in existing proceedings, commenters should avoid submitting redundant comments in this docket.

9. *Affiliate Transaction Rules.* SBC suggests that, like the Part 64 CAM process, the Commission should be able to simplify its affiliate transactions rules. We note that the two issues raised by SBC are issues raised by either SBC or other parties in Petitions for Reconsideration of the *Accounting Safeguards Order.* Without seeking comment on the two issues raised by SBC, we seek general comments on other ways the affiliate transactions rules might be simplified in a manner consistent with the underlying purposes of discouraging, and facilitating detection of, improper cost allocations and cross-subsidization.

10. *Wireless Radio Rules.* SBC states that process and procedure rules for wireless radio services are located in various rule parts. It suggests that "[t]o ensure consistent application and understanding of the rules related to the provision of wireless services, the rules must be streamlined and/or eliminated as appropriate to remove duplication." The Commission has already initiated a proceeding to substantially streamline and consolidate these regulations to facilitate conversion to the universal licensing system. The goals of that proceeding are "to establish a simplified set of rules that (1) minimizes filing requirements as much as possible; (2) eliminates redundant, inconsistent, or unnecessary submission requirements; and (3) assures ongoing collection of reliable licensing and ownership data." We believe that the universal licensing system proceeding addresses many of the issues that SBC raises in its petition. We also note that the Commission has recently requested comments on whether there are any regulations of wireless telecommunications carriers from which we should forbear under section 10 of the 1996 Act. Because we want to ensure that we receive as full a record as possible, and as many suggestions as possible, we therefore seek comment on SBC's general proposals that may go beyond the proposed changes set out in these proceedings, including specific suggestions for rule changes.

11. Many additional SBC proposals mirror the staff's list of proposed biennial review proceedings. The Commission has already initiated proceedings on these matters, or will do so in the near future. Accordingly, we do not seek comment on those matters here. The proposals contained in the SBC Petition that track the staff's proposals have been incorporated by reference into each of the recently released notices. Other biennial review proposals advocated by SBC involve regulations only recently adopted as part of the Commission's implementation of the Telecommunications Act of 1996. With implementation just recently underway, and in some instances appellate review still pending, we believe it premature to modify or eliminate these rules as part of the 1998 biennial review. Yet another subset of biennial review proposals included in the SBC Petition involves issues that are already the subject of ongoing proceedings, either before the Commission or the courts. We think it more appropriate to handle these proposals in the context of such existing proceedings. These various proposals may be further considered at an appropriate time in the future. Finally, we do not request comment on SBC's suggestion that we reduce our enforcement efforts with respect to those rules that do remain on the books and on its request that we use the biennial review to increase regulation of others. We believe neither of these proposals is consistent with the thrust of section 11. Specifically, we do not believe it is appropriate that section 11 be used as a shield for carriers to avoid the consequences of violations of the Communications Act or Commission rules, or as a sword to impose new regulatory burdens on others.

12. By this NPRM, we solicit comment on those proposals submitted by SBC so identified above. Commenters should frame their discussion and analysis in a manner consistent with the analytical framework set forth by Congress in section 11 of the Act. In addition to our more specific requests for comment above, we invite

commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of our proposed modifications. We also ask commenters to provide data and evidence to support their positions so as to facilitate objective analysis of the issues raised.

13. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's revised ex parte rules, which became effective June 2, 1997. *See Amendment of 47 CFR 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings,* GC Docket No. 95–21, Report and Order, 12 FCC Rcd 7348, 7356–57, ¶ 27 (citing 47 CFR 1.1204(b)(1)). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

14. This Notice of Proposed Rulemaking contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 114–13. Public and agency comments are due at the same times as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this *NPRM* in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

15. The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA defines the term "small entity" as having the same meaning as "small business concern" under the Small Business Act (SBA), which defines "small business concern" as "one which is independently owned and operated and which is not dominant in its field of operation." Section 121.201 of the SBA regulations defines small telecommunications entities in SIC Code 4813 (Telephone Communications, Except Radiotelephone) as any entity with fewer than 1,500 employees at the holding company level. Some entities employing fewer than 1,500 employees at the holding company level may be affected by SBC's proposals. We, however, do not consider such entities to be "small entities" under the RFA because they are either affiliates of large corporations or dominant in their field of operations. Therefore, we do not believe that the proposed rules will affect a substantial number of small entities that are incumbent local exchange carriers.

16. The rule changes proposed in the NPRM, if adopted, will affect all small businesses filing new wireless license applications or modifying or renewing an existing wireless license. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide estimates of the number of small entities who will be affected by the rules proposed in this *NPRM.* The Commission estimates the following number of small entities that provide wireless telecommunications service may be affected by the proposed rule changes.

(a) Cellular Radiotelephone Service

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1000 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes this IRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November, 1997, there are 804 companies reporting that they engage in cellular or PCS service. It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

(b) Broadband and Narrowband PCS

Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. (*See* 47 CFR 24.720(b)(1)). This definition of "small entity" in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

(c) 220 MHz Radio Services

Since the Commission has not yet defined a small business with respect to 220 MHz radio services, it will utilize the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this IRFA the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

(d) Paging

The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 "paging and other mobile" carriers reporting that they engage in these services. Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

(e) Air-Ground Radiotelephone Service

The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

(f) Specialized Mobile Radio (SMR)

The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. This regulation defining "small entity" in the context of 900 MHz SMR has been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

(g) Private Land Mobile Radio Services (PLMR)

PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. The Commission has not developed a definition of small entities specifically applicable to PLMR licensees due to the vast array of PLMR users. 23. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Any entity engaged in a commercial activity is eligible to hold a PLMR license, therefore these proposed rules could potentially impact every small business in the United States.

(h) Aviation and Marine Radio Service

Small entities in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of the evaluations and conclusions in this IRFA, the Commission estimates that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA.

(i) Offshore Radiotelephone Service

This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.

At present, there are approximately 55 licensees in this service. The

Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

(j) General Wireless Communication Service

This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission has scheduled the GWCS auction for May 27, 1998. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

(k) Fixed Microwave Services

Microwave services includes common carrier fixed, private operational fixed, and broadcast auxiliary radio services. At present, there are 22,015 common carrier fixed licensees and approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity with less than 1,500 persons. The Commission estimates that for purposes of this IRFA all of the Fixed Microwave licensees (excluding broadcast auxiliary radio licensees) would qualify as small entities under the SBA definition for radiotelephone communications.

(l) Commercial Radio Operators (restricted and commercial)

There are several types of commercial radio operator licenses. Individual licensees are tested by Commercial Operator License Examination managers (COLEMs). COLEMs file the applications on behalf of the licensee. The Commission has not developed a definition for a small business or small organization that is applicable for COLEMs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *" (*See* 5 U.S.C. 601(4)). The Commission's rules do not specify the nature of the entity that may act as a COLEM. However, all of the COLEM organizations would appear to meet the RFA definition for small organizations.

(m) Amateur Radio Services

Amateur Radio service licensees are coordinated by Volunteer Examiner Coordinators (VECs). The Commission has not developed a definition for a small business or small organization that is applicable for VECs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *" (*See* 5 U.S.C. 601(4)). The Commission's rules do not specify the nature of the entity that may act as a VEC. All of the sixteen VEC organizations would appear to meet the RFA definition for small organizations.

(n) Personal Radio Services

Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS). Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition.

(o) Public Safety Radio Services and Governmental Entities

Public Safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small business. (*See* 5 U.S.C. 601(5)). There are approximately 37,566 governmental entities with populations of less than 50,000. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. The definition of a small governmental entity is one with a population of less than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000; however, this number includes 38,978 counties, cities, and towns and of those, 37,566 or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 96 percent or 81,600 are small entities that may be affected by our rules.

(p) Rural Radiotelephone Service

The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

(q) Marine Coast Service

The Commission has not adopted a definition of small business specific to the Marine Coast Service. The Commission will use the SBA definition applicable to radiotelephone companies; *i.e*, an entity employing no more than 1,500 persons. There are approximately 10,500 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

(r) Wireless Communications Services (WCS)

WCS is a wireless service, which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. There were seven winning bidders who qualified as very small business entities and one small business entity in the WCS auction. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected include these eight entities. In addition to the above estimates, new applicants in the wireless radio services will be affected by these rules, if adopted. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide information regarding how many small business entities will be affected by the proposed rules. Comments relating to the number

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of small business entities affected are due by the deadlines contained in the NPRM.

17. In this NPRM, we seek comment on proposals to revise the Commission's rate-of-return prescription regulations, the methodologies used for calculating cash working capital, the detariffing of certain telecommunications services, streamlining cost allocation manual filing procedures, and consolidating the Commission's wireless radio rules. These proposals are specifically designed to streamline regulations that apply to incumbent local exchange carriers (LECs), including the Bell operating companies (BOCs) and GTE, and to wireless telecommunications providers. We therefore expect that the potential impact of the proposals, if adopted, is beneficial and does not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments.

18. We therefore certify, pursuant to section 605(b) of the RFA, that the rules proposed in this NPRM will not have a significant economic impact on a substantial number of small entities. The Commission will publish this certification in the **Federal Register** and will provide a copy of the certification to the Chief Counsel for Advocacy of the SBA. The Commission will also include this certification in the report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act. (*See* 5 U.S.C. 801(a)(1)(A)).

19. Pursuant to applicable procedures set forth in section 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. 1.415, 1.419, interested parties may file comments on or before January 11, 1999 and reply comments on or before January 25, 1999. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Anthony Dale, Legal Branch, Accounting Safeguards Division, FCC, Suite 201, Room 200D, 2000 L Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

20. Written comments by the public on the proposed and/or modified information collections are due January 11, 1999 and reply comments on or before January 25, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

21. Parties are also asked to submit comments and reply comments on diskette. Such diskette submission would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Anthony Dale, Legal Branch, Accounting Safeguards Division, FCC, Suite 201, Room 200D, 2000 L Street, N.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS Dos 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

22. Parties also may file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97–113, Report and Order, FCC 98–56 (rel. April 6, 1998). Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is CC Docket No. 98–177. Parties may also file informal comments or an exact copy of your formal comments electronically via the Internet at <http://www.fcc.gov/e-file/> or via e-mail at <biennial@fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the subject line if you are using e-mail (CC Docket No. 98–177), or in the body of the text if by Internet. Parties must note whether an electronic submission is an exact copy of formal comments on the subject line. Parties also must include their full name and Postal Service mailing address in their submission.

List of subjects in 47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32910 Filed 12–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–207, RM–9408]

Radio Broadcasting Services; Wellsville, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by RP Communications to allot Channel 246A to Wellsville, NY, as the community's second local FM service. Channel 246A can be allotted to Wellsville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42–07–12 North Latitude and 77–56–54 West Longitude. Canadian concurrence in the allotment is required since Wellsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert N. Felgar, Fletcher, Heald & Hildreth, P.L.C., 11th Floor, 1300 North 17th Street, Arlington, VA 22209–3801 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–207, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32912 Filed 12–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–211, RM–9349]

Radio Broadcasting Services; Logan, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by L. Topaz Enterprises, Inc., proposing the allotment of Channel 252C3 to Logan, Utah. The channel can be allotted to Logan with a site restriction 4.3 kilometers (2.6 miles) south of the community at coordinates 41–42–08 and 111–50–12.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 10, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dale A. Ganske, President, L. Topaz Enterprises, Inc. 5546–3 Century Avenue, Middleton, Wisconsin 53562.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–211, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32911 Filed 12–10–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 238
Friday, December 11, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Anthony Lakes Mountain Resort Master Development Plan Wallowa-Whitman National Forest—Union, Baker and Grant Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service, will prepare an environmental impact statement (EIS) for Anthony Lakes Mountain Resort's (ALMR) proposed Master Development Plan (MDP). The proposed development includes construction of one new chairlift, relocation of the existing handle tow and replacement with a short chairlift, and construction of one new surface lift. In addition, the proposed MDP includes the addition of approximately 1.2 acres of ski terrain, renovation of the day lodge, construction of a small on-mountain food services facility, enlargement of parking areas by 2.4 acres, an addition to the maintenance shop, construction of a snowmobile rental and staging area, and other utilities and infrastructure required to support resort upgrades.

The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received by January 11, 1999.

ADDRESSES: Send written comments concerning this proposal to Charles L. Ernst, District Ranger, 3165 10th Street, Baker City, Oregon 97814. Fax: 5(41) 523–1965.

FOR FURTHER INFORMATION: Direct questions about the proposed action and EIS to Charles L. Ernst, District Ranger, 3165 10th Street, Baker city, Oregon 97814. Phone (541) 523–4476.

SUPPLEMENTARY INFORMATION: The proposed action would increase the year-round recreational opportunities within the existing Special Use Permit Boundary (2,046 acres). Implementation of the proposed MDP would increase the Comfortable Carrying Capacity (CCC) from 600 Skiers-At-One-Time (SAOT) to 1,200 SAOT.

Presently, alpine skiing/snowboarding and other resort activities are provided to the public through a Special Use Permit (SUP) issued by the Forest Service and administered by the Wallowa-Whitman National Forest (WWNF).

Purpose and Need: To resolve existing operational deficiencies at ALMR. To meet public expectations for quality recreational experiences through the improvements proposed at ALMR in the MDP.

The purpose of the proposed action and alternatives considered is to equip ALMR with the necessary base area and on-mountain amenities to meet current and anticipated future demand for alpine recreation and the expectations of the skiing public on the WWNF at ALMR. The specific proposed improvements are oriented toward the rehabilitation of the resort by rectifying existing deficiencies and providing a resort-wide balance of capacities. In addition, the proposed action would provide financial stability and growth potential to ALMR, while respecting natural resources and other issues of importance to the Forest Service and the public, thereby insuring that ALMR provides the public with a quality recreational experience with the implementation of the MDP and into the future.

Review and analysis of the relevant national and local market data indicate there is an ever-increasing level of customer awareness of quality, service, and value in the ski experience. Progressive ski areas have catered to the changing demands of the skier population by providing quality accommodations, a heightened service orientation, a refined, and technologically improved ski experience, and other recreational amenities. Ski areas that have invested in faster and more comfortable ski lifts, snowmaking capabilities, terrain expansion, and increased trail grooming have created higher expectation of quality and service among the skiing public. ALMR competes with other ski areas in the local and regional marketplace, the majority of which have recently made or are in the process of undertaking substantial facilities improvements. Conversely, declines in capital investment for facilities upgrades at ALMR have led to erosion of market share and may eventually lead to a decline in skier visitation. The need for the proposed action is generally demonstrated by the stagnation of skier visitation to ALMR over the past decade and evidence of significant export of skier visits to other ski resorts, particularly outside the local market. Stagnant visitation has occurred despite population growth in the local market area. On this basis, actions proposed under the MDP are necessary for ALMR to remain competitive, and to provide the level of customer service expected by the skiing public and the Agency.

The Proposed Action: The proposed action would increase recreational opportunities within the existing SUP area (2,046 acres). Implementation of the proposed MDP would increase the CCC from 600 SAOT to 1,200 SAOT. The proposed development includes: construction of one new chairlift; replacement of the handle tow with a short chairlift; construction of one new surface lift; addition of approximately 1.2 acres of ski terrain; expansion of the existing day lodge; construction of a small on mountain food service facility; seasonal use of a yurt (circular tent); snowmobile rental and staging facility to support ongoing public use of National Forest System lands to the north of the resort; a 2.4 acre expansion of parking areas; expansion of the maintenance facility and other utilities and infrastructure required to support the proposed MDP.

Management Direction: The proposed MDP tiers to the *Wallowa-Whitman National Forest Land and Resource Management Plan* (Forest Plan) as amended. The ALMR SUP area is located within Management Area 16—Administrative and Recreation Site Retention. Although alpine and downhill skiing are not directly addressed in the Forest Plan, pertinent direction is presented on pages 4–92 and 4–93. For a more detailed description of Management Area 16, refer to the Forest Plan.

Public Involvement: Public Involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, tribes and other individuals or organizations who may be interested in, or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comments.
7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protest trade secrets. The Forest Service will inform the requestor of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without names and addresses within thirty (30) days.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) in October 1999 and will be available for public review at that time. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. The final EIS is scheduled for completion in April of 2000.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after the completion of the final EIS. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The responsible official is Karyn L. Wood, Forest Supervisor for the Wallowa-Whitman National Forest. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 215 or part 251.

Dated: December 2, 1998.

Kurt R. Wiedenmann,

Acting Forest Supervisor, Wallowa-Whitman National Forest.

[FR Doc. 98–32951 Filed 12–10–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 11, 1999.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 9, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (63 FR 54436) of proposed addition to the Procurement List.

The Following Comments Pertain to Janitorial/Custodial, U.S. Couthouse and Annex, Tallahassee, Florida

Comments were received from the current contractor for this janitorial service. The contractor noted that a number of its Federal janitorial projects had been lost to the Committee's Javits-Wagner-O'Day (JWOD) Program or the Small Business Administration's 8(a) Program over the past several years. The contractor also noted changes in its gross revenues over the past five years as evidence of the impact of these project losses.

Those projects lost by the contractor which were added to the JWOD Program, with the exception of the instant one and two others, were added between October 1989 and January 1992. In assessing the severity of impact on a contractor of the addition of a project to the JWOD Program, the Committee concentrates on the cumulative impact of its actions over the most recent three years unless there is compelling evidence of the continuing effects of prior impacts. The reason for this is that contractors which are still in existence are generally assumed to have recovered from previous impacts. This contractor's sales increased throughout the period of the earlier previous impacts. While the contractor's estimated revenues for the current fiscal year are below those of five years ago, it should be noted that

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the contractor's revenues by its own figures continued to increase until last year. Consequently, the Committee has concluded that these earlier impacts, each of which represented a very small percentage of the contractor's sales, do not have a continuing impact on the contractor.

The project currently being added to the JWOD Program, along with another added this year and a project which was added in 1997, in combination represent a very small percentage of the contractor's estimated total revenues for this year. This percentage is well below the level which the Committee considers possible severe adverse impact. Considering the way the contractor's total sales have moved over the past few years, the Committee does not believe that adding in the contractor's alleged losses to the 8(a) Program would result in a finding of severe adverse impact on this contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, U.S. Courthouse and Annex, Tallahassee, Floridia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 98–33000 Filed 12–10–98; 8:45 am]

BILLING CODE 6353–01–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 11, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Strap, Webbing
5340–00–753–3740
5340–00–543–3271
5340–00–543–3398
5340–00–052–9481
5340–00–664–0364
5340–00–534–7110
5340–00–543–3173
5340–00–479–2949
5340–00–751–9013
5340–00–543–3557
5340–00–403–7674
5340–00–664–0365
5340–00–001–4837
5340–00–854–6737
5340–00–020–5067
5340–00–034–4835
5340–00–454–5967
5340–00–454–5969
NPA: The Charles Lea Center for Rehabilitation & Special Education, Inc. Spartanburg, South Carolina

Services

Grounds Maintenance, U.S. Geological Survey, Wildlife Research Center, Patuxent, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland
Janitorial/Custodial, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, Florida
NPA: Goodwill Industries of South Florida, Inc. Miami, Florida
Janitorial/Custodial, Various U.S. Army Reserve Centers, Fort Indiantown Gap, Pennsylvania,
NPA: United Cerebral Palsy of Schuylkill, Carbon and Northumberland Counties Pottsville, Pennsylvania
Operation of Individual Equipment Element Store, Vandenberg Air Force Base, California, NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Beverly L. Milkman,
Executive Director.

[FR Doc. 98–33001 Filed 12–10–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 1998, the Department of Commerce published the preliminary results of its first administrative review of the antidumping duty order on certain pasta from Turkey. The review covers three exporters of the subject merchandise. The period of review is January 19, 1996, through June 30, 1997.

For our final results, we have found that, for one exporter, sales of the subject merchandise have been made below normal value. We will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

We find that, for the one company that had shipments during the review period and participated in the review, sales have not been made below normal value. We will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

EFFECTIVE DATE: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or John Brinkmann, Office of AD/CVD Enforcement, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3530 and (202) 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Case History

This review covers three manufacturers/exporters of merchandise subject to the antidumping duty order on certain pasta from Turkey: Pastavilla Kartal Makarnacilik Sanayi ve Ticaret A.S. (Pastavilla), Filiz Gida Sanayi ve Ticaret (Filiz), and Nuh Ticaret ve Sanayi A.S. (Nuh Ticaret). Since the publication of the preliminary results of this review on August 7, 1998, (*see Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey,* 63 FR 42373 (*Preliminary Results*)), the following events have occurred. From August 10 through 14, 1998, we verified the cost information submitted by Pastavilla. From August 17 through 21, 1998, we verified the sales information submitted by Pastavilla and its affiliated sales agent Duzey Pazarlama A.S. (Duzey). On September 2 and 3, 1998, we verified Pastavilla's sales information at its affiliated sales agent Vitelli Foods, Inc. (Vitelli Foods), in the United States. On September 24 and 25, 1998, respectively, we received case briefs from Pastavilla and the petitioners (Borden Foods Corp., Hershey Pasta and Grocery Group, Inc., and Gooch Foods, Inc.). We received rebuttal briefs from both parties on October 1, 1998.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Scope Ruling

On October 26, 1998, we self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On November 18, 1998, the Department received comments from interested parties regarding this scope inquiry. The Department received rebuttal comments on November 30, 1998. In accordance with 19 CFR 351.225(f)(iii)(5), the Department will issue a scope ruling within 120 days of initiation of the inquiry.

Partial Rescission

We originally initiated a review of three companies: Pastavilla, Filiz, and Nuh Ticaret (*see Notice of Initiation of Antidumping Duty Administrative Review,* 62 FR 45621 (August 28, 1997)). However, as noted in the preliminary results, Nuh Ticaret notified us that it had no shipments of subject merchandise during the period of review (POR). We have confirmed this with information from the Customs Service. We received no comments concerning Nuh Ticaret for the final results. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with Department practice, we are rescinding our review of Nuh Ticaret (*see, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review,* 63 FR 35191 (June 29, 1998) and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53288 (October 14, 1997)).

Use of Facts Available

Filiz did not respond to the Department's antidumping questionnaire. We have confirmed that the questionnaire was received by Filiz (*see* Memorandum to the File dated March 4, 1998) and, accordingly, for the reasons described below, we are assigning to Filiz a margin based on adverse facts available for these final results.

Section 776(a) of the Act requires the Department to resort to facts available if necessary information is not available on the record or when an interested party or any other person "fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782." As provided in section 782(c)(1) of the Act, if an interested party "promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Since Filiz did not provide any notification or information to the Department, subsections (c)(1) and (e) do not apply in this situation. Accordingly, we find, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Filiz for these final results.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. Filiz's failure to respond to our antidumping questionnaire demonstrates that it has failed to act to the best of its ability to comply with requests for information. Accordingly, we have determined that an adverse inference with respect to Filiz is warranted.

Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the antidumping investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means simply that the Department will satisfy itself that the secondary information has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

In this instance, we have no reason to believe that the application of the highest petition margin for Turkish pasta, as revised by Commerce, is inappropriate. Therefore, we have assigned Filiz the rate of 63.29 percent as adverse facts available. This margin is the same margin derived from the petition that was corroborated and assigned to Filiz during the investigation (*see, Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309 (June 14, 1996)). For purposes of these final results, we find that this margin continues to be of probative value. We note that the SAA, at 870, states that "the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.* * *" In addition, the SAA at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

Price Comparisons

For Pastavilla, we calculated constructed export price (CEP) and normal value based on the same methodology used in the *Preliminary Results*, with the following exceptions:

1. We applied the domestic inland freight expense, exclusive of value added tax (VAT), to Pastavilla's U.S. sale (*see* Comment 2).
2. We revised Pastavilla's freight expense for home market sales based upon our verification findings (*see* Comment 4).
3. We calculated an inventory carrying cost for the period of time between when the merchandise entered the United States and when it was shipped to the U.S. customer (*see* Comment 5).
4. We have recalculated the free pasta discount (*see* Comment 6).

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Pastavilla made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We calculated the COP following the same methodology as in the preliminary results, with the following exceptions:

1. We adjusted Pastavilla's monthly per-unit semolina and vitamin costs by dividing the monthly cost of each material by the monthly quantity of "packed pasta" (*see* Comment 9).
2. We included Pastavilla's severance reserve in the calculation of COP and constructed value (CV) to reflect the fully absorbed cost of producing the pasta (*see* Comment 11).
3. To calculate the general and administrative (G&A) expense ratio, we have excluded packing costs from the cost of sales figure used in the calculation (*see* Comment 12).
4. We indexed Pastavilla's monthly G&A expenses and cost of sales figures using the wholesale price index, published by the International Monetary Fund, in order to compute a constant currency G&A expense ratio (*see* Comment 13).
5. We have computed Pastavilla's interest expense rate on an unconsolidated basis and included the foreign exchange losses in Pastavilla's interest expense calculation (*see* Comment 15).

Analysis of Comments Received

We gave interested parties an opportunity to comment on these preliminary results. As noted above, we received case briefs and rebuttal comments from the petitioners and Pastavilla.

Sales Comments

Comment 1: Application of Facts Available

The petitioners argue that the Department should apply total adverse facts available because Pastavilla did not report its U.S. sales of 5 lb. 1 oz. packages of pasta. The petitioners contend that Pastavilla's sales of 5 lb. 1 oz. packages of pasta to the United States are subject to this review because: (1) the questionnaire instructed Pastavilla to report products sold that contained between 2251 and 2500 grams of pasta; (2) several of the U.S. sales documents, including the customer's purchase order and Pastavilla's U.S. affiliates invoice to the customer, described the pasta as "5lb" pasta; (3) the pasta in 5 pound and 5 lb. 1 oz. packages are identical, except that the label is changed to avoid paying antidumping duties; and (4) the pasta was sold to distributors and retailers for sale in the retail market.

The petitioners further contend that, because it is the industry standard to overfill packages, packages containing slightly over five pounds (*i.e.*, 5 lb. 1 oz.) are within the scope of the order. Finally, the petitioners argue that total adverse facts available is warranted because the Department allowed Pastavilla to truncate its reporting period based on its assertion that Pastavilla made no sales to the United States prior to January 1997, and, at verification, it was revealed that Pastavilla made U.S. sales in 1996. The petitioners contend that Pastavilla should be assigned the adverse facts available rate of 63.29 percent, in accordance with sections 776(a) and 782(d) of the Act.

Alternatively, the petitioners request that the Department use the facts available margin of 63.29 percent for the U.S. sales that Pastavilla did not report.

Pastavilla argues that the scope of the order includes only pasta in packages of five pounds or less and that the Department's questionnaire did not require Pastavilla to report sales of 5 lb. 1 oz. packages. It states that the Department confirmed at verification that the 5 lb. 1 oz. packages weighed in excess of the 5 lb. 1 oz. weight and that packaging was specifically printed for this production. Pastavilla further asserts that the petitioners erred in their claim that, because Pastavilla's 5 lb. 1 oz. packages may be within the packaging tolerance for five-pound pasta, they are subject merchandise. Pastavilla points out that while the scope has a numerical upper limit of five pounds, it makes no mention of manufacturing tolerances, and asserts that when a numerical measure is stated in a scope notice, that the numerical measure governs (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Notices Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10899, 10958 (February 28, 1995) (*Antifriction Bearings*)).

Pastavilla contends that it imported a negligible quantity of 5 lb. 1 oz. packages, and the importation of these 5 lb. 1 oz. packages does not warrant total facts available. Concerning the petitioners claim that the pasta was sold to distributors and retailers for sale in the retail market, Pastavilla argues that the 5 lb. 1 oz. packages are not "typically sold in the retail market" as the scope language states, but rather are sold to distributors and as bulk products in "price clubs." Pastavilla acknowledged that Vitelli Foods' invoice to the customer stated "five pound" pasta rather than 5 lb. 1 oz. pasta because the company had not changed its product descriptors in its computer system, but maintains that the sales were of 5 lb. 1 oz. packages and are therefore excluded from the scope of the order. Finally, Pastavilla states that while the pasta in five pound packages can be identical to the pasta in 5 lb. 1 oz. packages, it does not imply that the quantity in the two packages are the same.

DOC Position

We disagree with the petitioners that the Department should apply total adverse facts available to Pastavilla or facts available to Pastavilla's U.S. sales of 5 lb. 1 oz. packages. The scope of the orders states, that "[i]mports covered by this review are shipments of certain non-egg dry pasta packages of five pounds (or 2.27 kilograms) or less . . ." In its questionnaire, the Department instructed Pastavilla to report pasta sold in packages of five pounds or less. We broke out the packing size ranges into 250 gram increments for uniformity in reporting, and while the largest range (2,251 to 2,500 grams) would include packages greater than five pounds, those reporting instructions do not constitute a scope ruling.

Our normal basis for determining whether a product is included within the scope of the order is the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission (*see* 19 CFR 351.225(k)(1)). If these descriptions are not dispositive, the Department may conduct a scope inquiry in accordance with 19 CFR 351.225(k)(2), and examine the following criteria: (i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; and (iv) the channels of trade in which the product is sold. On October 26, 1998, the Department initiated a scope inquiry to determine whether a package weighing over five pounds may be within the scope of the order (*see* October 26, 1998 memorandum to Richard W. Moreland). It would be inappropriate to conclude that Pastavilla failed to report certain sales until the scope inquiry is finished.

Concerning the petitioners' argument that total adverse facts available is warranted because Pastavilla did not report sales to the United States that were made prior to January 1997, at verification we confirmed that these were sales of 5 lb. 1 oz. packages.

Comment 2: Calculation of Inland Freight Expenses for the U.S. Sale

Pastavilla alleges that the Department erred in adding VAT to its reported domestic inland freight expense when calculating U.S. price. Pastavilla contends that the Department did not adjust its other expenses for VAT and that, if this adjustment is to be applied, to achieve parity, it should be applied on the home market side as well as the U.S. side. Pastavilla cites the SAA concerning tax neutrality in support of its argument (*see* SAA, H.R. Doc. No. 103–316, 103d Cong., 2d Sess. at 157 (1994)).

The petitioners argue that the Department was correct in revising Pastavilla's reported inland freight expenses in the preliminary results to include the taxes shown on the freight invoice. They contend that it is Department practice to exclude taxes from the prices of the merchandise, but that this tax exclusion does not extend to movement charges because adjustments for movement charges should reflect the actual costs incurred to transport the merchandise. Concerning Pastavilla's reference to achieving parity, the petitioners state that notes on the sample home market freight invoice submitted by Pastavilla indicated that taxes were included in Pastavilla's reported home market freight expenses.

DOC Position

We agree with Pastavilla that the VAT should be excluded from the calculation of domestic inland freight expenses for the U.S. sale. However, we must note that our decision is not based on the "tax neutrality" argument Pastavilla presents, but is based solely on our requirement to achieve parity in our calculations. In other words, if home market expenses are reported exclusive of the VAT, U.S. expenses should also be reported exclusive of the VAT. As Pastavilla suggests, if this VAT adjustment were to be applied to the inland freight expense on the U.S. side it should be applied to Pastavilla's home market expenses as well. We find no basis for the petitioners' claim that Pastavilla included VAT expenses in its reported home market expenses. Therefore, for these final results we have revised our calculations from the preliminary results by excluding VAT from inland freight expenses.

Comment 3: Elimination of Sales Failing Arm's-Length Test

Pastavilla argues that the Department should include in its calculation of normal value sales by its affiliated reseller, Sok, which failed the Department's arm's-length test. Pastavilla contends that sales to Sok failed the arm's-length test because of Sok's status as a "hard-discount retailer," not because of its affiliation with Pastavilla.

The petitioners assert that the Department was correct in applying its standard arm's-length test to sales to Sok because Pastavilla failed to provide Sok's sales to its unaffiliated customers and, at the same time, has not provided any suggestions concerning an alternate method for determining whether these sales were at arm's-length prices. Furthermore, the petitioners cite the preamble to the Department's regulations stating that the Department will continue to apply the current 99.5 percent test unless, and until, it develops a new method (*see*

Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27355 (May 19, 1998)).

DOC Position

We agree with the petitioners that the Department should continue to apply its standard arm's-length test to Pastavilla's sales to Sok for the final results. We conducted the arm's-length analysis of Pastavilla's sales to Sok, because Pastavilla stated, and we agreed, that it was unable to report Sok's sales to the first unaffiliated customer. The arm's-length test is based on the affiliation between Sok and Pastavilla, irrespective of Sok's status as an alleged "hard-discount retailer."

In conducting the arm's-length analysis, we followed our standard practice and compared sales prices to unaffiliated customers to sales prices to affiliated customers at the same level of trade and, where prices to affiliated customers were, on average, less than 99.5 percent of prices to unaffiliated customers, we rejected the sales to affiliated parties as not representing arm's-length prices (*see Certain Pasta from Italy; Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 30326, 30332 (June 14, 1996)).

Comment 4: Overstatement of Home Market Freight Expenses

The petitioners argue that the Department should correct Pastavilla's overstatement of its home market freight expenses noted in the Department's September 16, 1998, *Sales Verification Report (SVR)*.

Pastavilla argues that the adjustment is negligible and may be ignored (*see* 19 CFR 351.413).

DOC Position

We agree with the petitioners and have corrected Pastavilla's home market freight expenses to reflect verification findings.

Comment 5: U.S. Inventory Carrying Cost

The petitioners argue that the Department should calculate imputed U.S. inventory carrying costs for the period of time between when the merchandise entered the United States and when it was shipped to the customer. They assert that the Department should calculate these costs based on the cost of manufacturing, the interest rate used to calculate imputed credit expenses, and the inventory period noted by the Department in the *SVR*.

Pastavilla argues that it should not be subjected to U.S. inventory carrying costs for this period of time because: (1) its importer did not take the pasta into inventory, but rather shipped the merchandise to the customer directly from the port of entry; and (2) shipment was not made until 16 days after entry because of delays in Customs.

DOC Position

We agree with the petitioners that U.S. inventory carrying costs should be calculated for Pastavilla. In accordance with section 772(d)(1) of the Act, we made deductions from CEP, where appropriate, for those indirect selling expenses that related to economic activity in the United States, including U.S. inventory carrying costs (*see Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12754 (March 16, 1998)). Pastavilla was instructed specifically to report U.S. inventory carrying costs for the period of time between when the merchandise entered the United States and when it was shipped to the U.S. customer both in the Department's original and supplemental questionnaires. Pastavilla reported that the merchandise was not held in inventory in the United States. However, at verification we noted that Pastavilla's shipment remained at the port of entry for 16 days before being shipped to the customer.

Concerning Pastavilla's argument that we should not apply inventory carrying cost due to the delay in Customs, we maintain that regardless of the cause of the delay, inventory carrying costs are meant to capture the opportunity cost of Pastavilla for having the merchandise in inventory.

For these final results, we calculated Pastavilla's U.S. inventory carrying expenses based on net price, the interest expense used in calculating credit, and the inventory period verified by the Department. We did not base our calculations on cost of manufacturing, as the petitioners suggest, because to do so would have been inconsistent with Pastavilla's other inventory carrying cost calculations. Pastavilla calculated its other inventory carrying expenses based on net price and explained in its questionnaire responses that to have based its calculations on cost of manufacture would have been a significant burden.

Comment 6: Valuation of Discounted Pasta

The petitioners argue that the Department should not accept the free pasta discount claimed by Pastavilla because Pastavilla's method of calculating the discount based on the list price and quantity on the invoice (1) does not reflect the actual cost of the discount to Pastavilla and (2) overstates the actual value of the discount. Alternatively, if the Department does allow the merchandise discount, the petitioners contend that the Department should recalculate the discount based on the cost of manufacture because the discount amounts, as reported by Pastavilla, are overstated.

Pastavilla argues that it was correct in valuing its free pasta discount based on the price of the free goods rather than the cost of the free goods. According to Pastavilla, this methodology is consistent with how the discount is entered into Pastavilla's accounting records and how it is reflected on the invoice. From an opportunity cost perspective, Pastavilla contends that what is given up in providing the free goods is the revenue of the sale, not the cost of production. Finally, Pastavilla claims that the cost data necessary to re-value the discount at cost is not easily available. According to Pastavilla, this task is particularly complex in a case such as this that involves indexing for inflation and averaging of the cost data by the Department.

Pastavilla agrees with the petitioners that the free goods discount should be recalculated using the total quantity on the invoice and a net unit price.

DOC Position

We disagree with the petitioners that Pastavilla's claimed free pasta discount should be denied. We verified that Pastavilla's free merchandise discount is a legitimate discount that must be taken into account in our calculations. However, we agree with the petitioners that Pastavilla's methodology overstated the actual value of the discount. We have recalculated the free pasta discount based on the total quantity of merchandise the customer received, including the free pasta. Additionally, we used the invoice price, net of any other discounts, in our calculation (*See* December 7, 1998, *Final Results Analysis Memorandum*).

We disagree with the petitioners' claim that the free goods discount should be based on the cost of manufacture. To value the free goods discount on the net invoice value of the merchandise is consistent with Pastavilla's normal accounting practices, which are in accordance with Turkish standards and International Accounting Standards (*see* Comment 7 below), and it is a reasonable representation of Pastavilla's costs of providing the free goods discount to its customers.

Comment 7: Valuation of Home Market Warranty Expense

The petitioners claim that Pastavilla overstated its home market warranty expenses because these expenses were calculated based on the sale price of the returned pasta rather than on the cost of manufacture of the returned pasta. In addition, the petitioners allege that Pastavilla should have reduced its claimed warranty expenses by the amount of revenue obtained from any resales of the returned pasta. The petitioners argue that the Department should deny these warranty expenses entirely or, at a minimum, they should be recalculated based on the cost of manufacture.

Pastavilla argues that it properly calculated its home market warranty expenses based on the invoice value of the damaged pasta. It claims that this methodology is consistent with its normal accounting practices, as warranty claims are entered into the accounting system at the invoice value and it has no accounting record of the quantity of goods to which the warranty claim applies. Pastavilla contends that its accounting system does not record information to calculate warranty expenses based on cost, and, since its accounting system is in accordance with Turkish standards and International Accounting Standards, the Department should accept it.

DOC Position

We agree with Pastavilla and have accepted its calculation of home market warranty expenses. To base the calculations on the invoice value of the merchandise is consistent with Pastavilla's normal accounting practices, which are in accordance with Turkish standards and International Accounting Standards, and it is a reasonable representation of Pastavilla's warranty expenses. Further, Pastavilla is unable to calculate warranty expenses as the petitioners suggest because its warranty claims are entered into the accounting system at the invoice value and Pastavilla has no accounting record of the revenue obtained from resales of the returned pasta or the quantity of goods to which the warranty claim applies.

Comment 8: Direct Warranty Expenses for U.S. Sales

The petitioners contend that Pastavilla's claims are incorrect that it did not incur warranty expenses in connection with its U.S. sale and that the loss from the damaged pasta is reflected in the invoice. They argue that the loss from the damaged pasta was directly related to the U.S. sale and should be treated as a direct warranty expense. The petitioners allege that the Department should calculate direct warranty expenses for the final results based on the cost of manufacture of the damaged pasta. Alternatively, the petitioners contend that the Department should calculate direct warranty expenses for Pastavilla's U.S. sale based on the invoice price of the damaged pasta.

Pastavilla argues that it did not incur warranty expenses on its U.S. sale. Pastavilla explains that of the 1,300 cases of pasta shipped to the United States, only three were damaged. Pastavilla contends that because its U.S. affiliate only invoiced and received payment for 1,297 cases, the damaged cases were already adjusted for in the sales response. Pastavilla argues that it would have been necessary to account for the damaged goods in the sales response only if Pastavilla had received payment for the three cases and had later issued a credit. According to Pastavilla, its sales response reflects the lack of revenue from the damaged cases and to calculate a U.S. warranty expense as the petitioners suggest would double-count the loss to Pastavilla.

DOC Position

We agree with Pastavilla that the loss from the damaged cases is already reflected in the U.S. sales response. The invoice to the customer reflects a quantity net of the damaged cases and, at verification, we confirmed that Pastavilla's U.S. affiliate did not receive payment for the damaged cases. Warranty expenses typically involve replacing the defective merchandise or crediting a customer for the defective merchandise. In this instance, the damaged cases were not part of the sale and, therefore, it would be inappropriate to make an adjustment for warranty expenses.

Cost Comments

Comment 9: Yield Loss

Pastavilla claims that the methodology used to calculate COP and CV fully captures all yield losses. It argues that in its ordinary cost accounting system, a theoretical production amount (*i.e.*, naked pasta), which includes scrap, is used to calculate COM. However, because this was a theoretical amount, Pastavilla used finished goods (*i.e.*, packed pasta) quantities to calculate the per-unit COM for the antidumping review.

The petitioners argue that the Department should revise Pastavilla's reported semolina costs to account for yield losses occurring during the production of pasta. Because the methodology used by Pastavilla does not account for the semolina that was lost during the production of pasta, the petitioners contend that Pastavilla's reported per-unit cost of semolina are understated.

DOC Position

While we agree with Pastavilla that it adequately accounted for yield loss related to its reported conversion costs, we disagree that its methodology used to calculate the monthly materials costs included in COP and CV captures the impact of yield loss associated with the production of pasta. Pastavilla used finished "packed pasta" quantities to calculate its per-unit conversion costs (*i.e.*, direct labor, variable overhead, and fixed overhead). By using "packed pasta" quantities, Pastavilla's reported conversion costs reasonably capture the yield loss incurred during the manufacturing process (*e.g.*, waste, moisture evaporation). To calculate its reported per-unit material costs (*i.e.*, semolina and vitamins), however, Pastavilla did not rely on its "packed pasta" quantities. Instead, the company relied on the monthly quantities of semolina consumed during the production process. Thus, Pastavilla understated its cost of materials because it used the cost per unit of semolina consumed rather than the cost per unit of "packed pasta." In other words, Pastavilla's material costs do not reflect the yield loss associated with the manufacturing process. To capture the cost associated with its material yield losses, Pastavilla should have calculated its per-unit material cost using the same "packed pasta" quantities that it used to calculate its per-unit conversion costs. Thus, for the final results, we adjusted Pastavilla's monthly per-unit semolina and vitamin costs by dividing the monthly cost of each material by the monthly quantity of "packed pasta."

Comment 10: Vitamin Replacement Costs and First Day Corrections

The petitioners assert that the Department should not accept the minor correction made to the vitamin costs submitted at verification. They state that Pastavilla's revised methodology calculates per-unit vitamin costs by dividing by the quantity of semolina used in the production of pasta, rather than by the quantity of packed pasta. Thus, the petitioners contend that the per-unit cost of vitamins are understated. In addition, according to the petitioners, Pastavilla's vitamin costs are not based on the replacement cost methodology.

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Pastavilla states that the Department should use the verified vitamin costs as reported in the clerical error submission. As for making the other corrections asserted by the petitioners, Pastavilla disagrees.

DOC Position

For the final results, we revised Pastavilla's per-unit vitamin costs using the replacement cost methodology. The replacement cost methodology values the vitamins used in production at the vitamins' monthly purchase price within each respective month. Adopting this methodology accounts for the monthly fluctuations in costs for inventories, due to the high inflation experienced during the POR. To calculate Pastavilla's per-unit vitamin cost, we relied on packed pasta quantities and not the quantity of vitamins input into the production process (*see* Comment 9 for more details). As for the concerns about accepting Pastavilla's vitamin costs reported in its clerical error submission, they are moot because we did not rely on the information for the reasons discussed above.

Comment 11: Severance Reserve Benefits

Pastavilla argues that the Department should not adjust its reported COP and CV figures to include its severance reserve. Instead, Pastavilla claims that the reserve should be treated differently than the actual severance expense paid to employees which it included in the calculation of COP and CV. According to the company, the reserve merely represents a possible liability that may never have to be paid. If an employee quits or is fired for cause, there is no severance obligation due to the employee. Thus, the severance reserve is not a reserve for actual expenses incurred, but only for the maximum possible expense that might be incurred. Moreover, the reserve is never actually funded by the company. Therefore, Pastavilla contends that it is inappropriate to classify the reserve as an element of cost, and cites as support for its position the Department's decision in *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 58 FR 15467, 15479 (March 23, 1993) (*DRAMs from Korea*). In that case, the Department found that "it would not be reasonable to make an adjustment for royalty expenses which were not actually incurred, and may not be incurred."

The petitioners argue that the Department should include the reserve for severance benefits in the COP and CV calculation. According to the petitioners, the severance expense is a normal operating cost which is recorded on Pastavilla's income statement. Moreover, even if the expense was recorded as a reserve account, the amount still represents a liability that was incurred by Pastavilla as a result of operations during the POR. Therefore, the Department should include the severance reserve in the calculation of COP and CV.

DOC Position

We agree with the petitioners that Pastavilla's reserve for severance benefits should be included in the calculation of COP and CV. Under Turkish law, an employer is required to establish a reserve for severance benefits. The employer then pays these severance benefits to an employee who is terminated after a minimum period of service. In its normal course of business, Pastavilla accrues the monthly cost of this liability in accordance with Turkish GAAP, and the accrual is reflected as an expense on the monthly income statement. Hence, Pastavilla recognizes the accrual as an expense in accordance with Turkish GAAP even though it requires no cash funding. Our established practice is to include this type of cost in the calculation of COP and CV, because this severance reserve represents an expense recognized within the POR and should be reflected in the product cost, in accordance with full absorption costing principle (*see Certain Cut-to-Length Carbon Steel Plate From Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 61 FR 13834, 13838 (March 28, 1996)). As a result, we included Pastavilla's severance reserve in the calculation of COP and CV to reflect the fully absorbed cost of producing the pasta.

We disagree that *DRAMS from Korea* supports Pastavilla's claim that severance expenses should not be included in the calculation of COP and CV. In that proceeding, the Department was asked to include an estimated royalty expense which was not recorded in the company's financial statements, nor was the company under any legal or accounting obligation to pay or record the expense. In the instant review, the reserve for severance benefits is a recognized expense which is regularly accounted for in Pastavilla's books.

Comment 12: Calculation of G&A Expense Ratio

Pastavilla contends that it correctly computed its G&A expense ratio by including packing costs in the denominator. Pastavilla argues that G&A expenses benefit the entire company (including the packing activities of the company) and therefore the cost of the packing must be included in the denominator. To support its position, Pastavilla cites the decision made in *Notice of Final Determination of Sales at Less Than Fair Value: Steel Reinforcing Bars from Turkey*, 62 FR 9737, 9748 (March 4, 1997) (*Steel Reinforcing Bars from Turkey*). In that proceeding, the Department stated that G&A expenses must be allocated over all activities if they support such activities.

The petitioners argue that packing costs should be excluded from the cost of sales (COS) when calculating the G&A and financial expense rates. The petitioners claim that when calculating these rates, COS is used as the denominator. The calculated rates should then be applied to a COM which is on the same basis. According to the petitioners, packing costs should be excluded from the COS because it is not included in the COM.

DOC Position

We disagree with Pastavilla that packing cost should be included in the denominator (*i.e.*, COS figure) used to calculate the G&A expense ratio. If the Department calculated the G&A expense ratio as Pastavilla suggests, the result would be distortive because we would be applying a ratio which includes packing cost in the denominator to a base which does not include packing cost. In order to correctly reflect the G&A expenses incurred by Pastavilla, the G&A ratio must be calculated using a COS figure that excludes packing costs and applied to a COM that excludes packing costs. This is consistent with methodology used in the *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 63 FR 32833, 32837 (June 16, 1998) and the *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8910, 8933 (February 23, 1998).

As to the respondent's citation to *Steel Reinforcing Bars from Turkey*, we disagree that this case supports the company's claim that packing should be included in the cost of sales figure. In that proceeding, the petitioners argued that the Department should exclude specific non-manufacturing activities (*i.e.*, cost associated with a port and a cafeteria) from the COS figure. We denied the exclusion because we found these costs related to a separate line of business and, thus, the company should allocate a portion of the G&A expense to those activities. To calculate the G&A expense ratio for the final results, we have excluded packing costs from the cost of sales figure used in the calculation.

Comment 13: Indexing Monthly G&A Expenses and Cost of Sales Figures

The petitioners argue that the Department should index Pastavilla's monthly G&A expenses to account for the high inflation that incurred in Turkey during the POR. According to the petitioners, the Department's practice is to index G&A expenses in cases involving inflationary economies.

Pastavilla contends that G&A should not be indexed and recalculated. Pastavilla states that G&A expenses are period costs, and it is distortive to calculate a monthly G&A and then index it for constant currency. Pastavilla claims that since both the numerator and denominator of the G&A calculation are equally affected by the high inflation, the ratio between them for an annual period is an appropriate measure of G&A expense, without further adjustment. In addition, Pastavilla claims that G&A expenses are not affected by inventory valuation practices which distort costs in an inflationary economy, and a constant-currency restatement is not necessary for the calculation of the G&A expense rate.

DOC Position

We agree with the petitioners that Pastavilla's monthly G&A expenses and cost of sales figures should be indexed when calculating the G&A expense ratio. During Pastavilla's accounting year, the Turkish currency lost its purchasing power at such a rate that comparisons of unadjusted general expenses and cost of sales occurring at different times are not comparable to the same expenses incurred at the beginning of the year. That is, the ratio of G&A to cost of sales is not necessarily constant for each month throughout the year. Without indexation, the calculation of a general expense ratio produces a potentially meaningless result because the ratio is applied to an indexed COM. The two figures have to be on the same basis. To calculate a meaningful general expense ratio, it is necessary to restate each month's general expenses and cost of sales figures in equivalent terms, that is, the currency value at a given point in time. For the final results, we indexed Pastavilla's monthly G&A expenses and cost of sales figures using the wholesale price index, published by the International Monetary Fund, in order to compute a constant currency G&A expense ratio.

Comment 14: Omission of Year-end Adjustments and Production Quantities

The petitioners argue that the Department should include Pastavilla's 1997 year-end adjustments in the COP and CV calculations. The petitioners state that year-end adjustments represent actual costs which were incurred during the POR, and therefore, the adjustments should be included in the calculations of COP and CV.

Further, the petitioners state that the Department should adjust Pastavilla's conversion costs for the final results to correct the error in the per-unit costs resulting from an overstatement of the production quantities of approximately ten tons.

Pastavilla argues that the Department determined at verification that the year-end adjustments had no impact on their costs, and there is no reason to make an adjustment to its reported costs. With respect to the ten ton production quantity discrepancy, Pastavilla states that it has reported the production quantity correctly. In addition, according to Pastavilla, even if the adjustment was reflected in the calculation of COP and CV it would have no impact.

DOC Position

We agree with the petitioners that the year-end adjustments and the corrected production quantities should be included in the calculation of COP and CV. However, we reviewed the information on the record and note that adjusting for the excluded year-end adjustments and the corrected production quantities would have no impact on the margin for the final results (*see Final Results of Antidumping Administrative Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, FR 61 51406, 51408 (October 2, 1996) and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany*, FR 61 38185, 38166 (July 23, 1996)). Therefore, for the final results we are not revising the reported costs to reflect the year-end adjustments and ten additional tons of pasta produced.

Comment 15: Financial Expense Ratio

Pastavilla argues that the Department should continue to use its parent company's (Koc Group) consolidated financial statements to calculate interest expense. It asserts that the Department's practice has been that where a respondent is a member of a group of companies; use of the parent company's consolidated financial expense ratio is appropriate. Citing *Dupont* v. *United States*, Slip Op. 98–7 at 12 (Ct. Int'l Trade, January 29, 1998), the court stated that where (i) the group controls the held company, (ii) there are consolidated financial statements, and (iii) there are inter-company financing agreements, the consolidated financial statements should be used to calculate the financial expense rate. Pastavilla states that they have met all three of those criteria. Thus, the Department should remain consistent with its normal methodology and use Pastavilla's group-wide interest expense.

Further, Pastavilla contends that the reclassification of the interest expense was due to the capitalization of interest, for an investment project, which is in conformity with Turkish law. Pastavilla states that they did not reclassify interest expense and the foreign exchange loss to depreciation expense as a directive from the parent company.

In addition, Pastavilla argues that there is no reason to assume that any other subsidiary within the Koc Group capitalized interest or foreign expenses. Pastavilla states that capitalization of interest is permitted under International Accounting Standard (IAS) 23, and must be disclosed in the audited financial statements. According to Pastavilla, since the Koc Group's financials are in accordance with the IAS, capitalization would be noted in the financial statements, and the lack of any reference in the audited consolidated financial statements indicates that no company in the Koc Group capitalizes interest to a degree of having a material effect on the financial statements. Therefore, the Department has no reason to assume capitalization of interest is occurring among Koc Group members.

Finally, Pastavilla argues that the reported short-term interest income used to offset the interest expense at the consolidated level is a reasonable estimation. It states that even if half of the Koc Group's financial income were from long-term sources, which is unlikely in Turkey's high inflationary environment, the income from short-term sources would exceed the total interest expense.

The petitioners contend that the Department should use Pastavilla's company-specific financial data to calculate the financial expense rate. According to the petitioners, although the Department's practice is to use consolidated financial statements to calculate financial expenses, when errors are discovered in the consolidated data the Department should deviate from its normal practice.

In addition, the petitioners assert that the interest expense and foreign exchange losses which were reclassified as depreciation expense, and not included in the reported COP and CV, should be included in the financial and G&A expense rate calculation, respectively. According to the petitioners, the interest expense should have been included in Pastavilla's reported financial expenses because the expenses were incurred during the period of review. The foreign exchange losses are normally included in the COP and CV when a respondent realized these losses on the purchases of inputs needed to produce subject merchandise. Pastavilla did not provide information to show that these losses were not incurred for purchases of inputs. Therefore, the interest expense and foreign exchange losses should be included in the calculation of the financial and G&A expense rates.

DOC Position

We agree with Pastavilla that the Department's general practice is to use a company's consolidated financial statements to calculate the financial expense ratio. Pastavilla's reported consolidated interest expense computation, however, is critically flawed, thus making it unusable for the final results. Specifically, Pastavilla did not provide monthly interest expenses and cost of goods sold amounts for the consolidated Koc Group entity. This information was requested in both our supplemental section D questionnaire and in the cost verification agenda in order for us to have the necessary information to calculate an indexed financial expense ratio. In both instances, company officials asserted that the Koc Group's monthly interest expense and cost of goods sold amounts was too difficult to obtain and calculate. Consequently, they did not provide the information. As a result, we do not have the necessary information to calculate an indexed consolidated financial expense ratio. Consequently, we are forced to use facts available, pursuant to section 776(a) of the Act. Pastavilla did, however, submit POR monthly interest expense and cost of sales amounts for the unconsolidated entity, thus, enabling us to compute an indexed interest expense rate. Because it does not appear that Pastavilla's consolidated interest expense rate would be higher than its indexed unconsolidated rate, we used its unconsolidated interest expense rate as facts available for the final results.

The issues concerning Pastavilla's capitalization of interest expense are moot because we have computed Pastavilla's interest expense rate on an unconsolidated basis as facts available.

Finally, we note that because we have calculated Pastavilla's interest expense rate at the unconsolidated level as facts available, it does not matter whether we treat its foreign exchange losses as G&A or interest expense. The same amount of costs related to these items are captured either way. For the final results, we included the foreign exchange losses in Pastavilla's interest expense calculation.

Final Results of Review

As a result of our review, we find that the following margins exist for the period January 19, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Pastavilla Kartal Makarnacilik Sanayi Ticaret A.S.	0.00
Filiz Gida	63.29

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. As determined by the zero margin in these final results, we will instruct the Customs Service not to assess antidumping duties on Pastavilla's entries of the merchandise subject to the review. We will direct the Customs Service to assess antidumping duties on Filiz's entries of the merchandise subject to review by applying the assessment rate listed above to the entered value of the merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) the cash deposit rate for Pastavilla will be zero and the cash deposit rate for Filiz will be 63.29 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 60.87 percent, the "all others" rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–33003 Filed 12–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Revision to MTMC Freight Traffic Rules Publication No. 10, Item 350, "Mileage Allowances"

AGENCY: Military Traffic management Command, DOD.

ACTION: Notice (Request for comments).

SUMMARY: The Military Traffic Management Command (MTMC) as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services (DTR vol. 1, pg. 101–113), intends to replace the entire text of the existing rule entitled "Mileage Allowances" in MFTRP No. 10, Item 350, with the proposed text herein. The purpose of the change is to ensure appropriate reimbursement to DOD for the use of its freight cars by commercial rail carriers.

DATES: Comments must be submitted on or before February 9, 1999.

ADDRESSES: Comments may be mailed to: Headquarters, Military Traffic Management Command, ATTN: MTOP–TS, Room 608, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. George Gounley at (201) 823–6283 or Mr. Jerome Colton at (703) 681–1417.

SUPPLEMENTARY INFORMATION: The proposed effective date for the change will be March 1, 1999 and will affect the reimbursement paid by commercial rail carriers for the use of DOD's freight cars (except tank cars). The purpose of the change is to ensure that DOD's maintenance costs for its freight cars are adequately reimbursed by their users.

The current regulation reads: Mileage Allowances: The mileage allowances set forth in Railroad Publication Services, Agent Tariff ICC RPS 6007–series (PHJ Series) will be the minimum allowances accepted by the Government from the railroads for use of Government owned rail cars, except that mileage allowances for other than tank cars published in Tariff ICC CR 9337 will apply for account Consolidated Rail Corporation.

The proposed regulation will replace the current regulation in its entirety with the following:

Item 350—Mileage Allowances

1. This item applies to all freight cars bearing the reporting marks of the Department of Defense or of any of its services, including but not limited to DODX, USAX, USA, USNX, USN, DAFX, USAF, hereinafter "DOD freight cars."

2. Whenever DOD freight cars are used by a carrier for a revenue movement, such movement shall be considered a loaded movement (except empty tank cars subject to excess empty tank car mileage computations in accordance with the provisions of Agent's Freight Tariff, RPS 6007, Item 187) and a mileage allowance shall be payable by the carrier to DOD.

3. The mileage allowances specified in this item are based on actual mileage. If specified in advance of the movement, the carrier may choose to pay the mileage allowances based on short-line rail mileage. In such cases, the minimum amount payable to DOD shall be the relevant allowance shown in the table in paragraph 6 plus 30 percent.

4. The allowances specified in this item apply only to movements for which the freight transportation rate specifies the use of DOD freight cars. In all other cases, such as when the freight transportation rate:

a. Specifies use of railroad-supplied cars, or

b. Specifies use of either railroad-supplied cars or DOD freight cars, or

c. Fails to specify the ownership of the car to be used; and DOD freight cars are actually used for the movement, the minimum allowances payable shall be the time and mileage payments that would have applied had non-deprescribed cars of the same type bearing railroad reporting marks been used.

5. The mileage allowances specified in this item are to be calculated on the basis of US dollars per mile, regardless of where the mileage accumulated. Allowances not paid in US dollars will be paid based on the exchange rate in effect at the close of the service month. For example, the minimum allowance for a movement of DODX freight car 36000 traveling 200 miles in Canada shall be 200 US dollars, or 300 Canadian dollars assuming an exchange rate of US $1.00=$1.50 Canadian dollars.

6. The minimum mileage allowances for DOD freight cars shall be as follows:

For DOD freight cars	Minimum mileage allowance (US dollars per actual mile) For short-line miles, add 30%
DODX 900–905 (Caboose)	$0.50
DODX 29500–29508 (Refrigerator Cars)	$1.00
DODX 36000–36006 (Two-platform container flat car)	$1.00
DODX 40000–40573 (Six-axle flat car)	$0.376
Tanks Cars (as defined in Agent's Freight Tariff, RPS 6007, Item 187)	As listed in Agent's Freight Tariff, RPS 6007, Item 187
All other DOD freight cars	$0.065 per axle, Examples: ____ (4-axle $0.26) (6-axle $0.39) (8-axle $0.52) (12-axle $0.78)

7. Detailed car hire reports, as defined in the Railway Equipment Register, Rule 3.B.1, in the format specified by the Code of Car Hire Rules, Appendices G and I, shall be sent to: Military Traffic Management Command, Deployment Support Command, ATTN: MTDC–RF, Fort Eustis, VA 23604–5000.

8. Mileage allowances shall be paid by check payable to "DFAS–OM/ACT" and sent to: DFAS–OM/ACT, ATTN: DBOF–T, PO Box 7050, Bellevue, NE 68005–1950.

(If a carrier's preferred practice is to mail the check and the car hire report in the same envelope, the MTMC address in paragraph 7 should be used for the combined mailing.)

Francis A. Galluzzo,

ADCOPS, Transportation Services.

[FR Doc. 98–32948 Filed 12–10–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Draft Environmental Impact Statement, Water Allocation for the Alabama-Coosa-Tallapoosa (ACT) River Basin, Alabama and Georgia (Extension of Comment Period)

AGENCY: U.S. Army Corps of Engineers, Mobile District, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District, Alabama, is announcing today the extension of the comment period for the Draft Environmental Impact Statement (EIS)

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on the Water Allocation for the Alabama-Coosa-Tallapoosa (ACT) River Basin, Alabama and Georgia.

DATES: The public comment period for the Draft EIS has been extended through February 26, 1999.

ADDRESSES: To receive a copy of the Draft EIS, or to submit comments, contact: U.S. Army Corps of Engineers, Mobile District, Inland Environment Section, Post Office Box 2288, Mobile, AL 36628–0001 or call 1–800–421–7637. Copies are available in hard copy or CD–ROM format. A copy of the full document may also be viewed at 61 libraries in the major cities and universities within the States of Alabama, Florida, and Georgia, or the Main Report can be viewed on the Mobile District Web Page (http://www.sam.usace.army.mil/sam/pd/actacfeis).

FOR FURTHER INFORMATION CONTACT: Michael J. Eubanks, ACT Basin EIS Project Manager, (334) 694–3861, facsimile number (334) 694–3815, e-mail address michael.j.eubanks@sam.usace.army.mil.

SUPPLEMENTARY INFORMATION: A previous Notice of Availability was published in the **Federal Register**, Vol. 63, No. 191, pages 53022–53023, Friday, October 2, 1998, for public comment. The original comment period was to close on December 18, 1998. The comment period has been extended through February 26, 1999. Extension of the public comment period has been based on requests from several agencies, organizations, and individuals, as well as the likely extension of the water allocation formula development deadline by the ACT Compact Commission.

Dated: December 3, 1998.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. 98–32946 Filed 12–10–98; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Draft Environmental Impact Statement, Water Allocation for the Apalachicola-Chattahoochee-Flint (ACF) River Basin, Alabama, Florida and Georgia (Extension of Comment Period)

AGENCY: U.S. Army Corps of Engineers, Mobile District, DoD.

ACTION: Noticed.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District, Alabama, is announcing today the extension of the comment period for the Draft Environmental Impact Statement (EIS) on the Water Allocation for the Apalachicola-Chattahoochee-Flint (ACF) River Basin, Alabama, Florida and Georgia.

DATES: The public comment period for the Draft EIS has been extended through February 26, 1999.

ADDRESSES: To receive a copy of the Draft EIS, or to submit comments, contact: U.S. Army Corps of Engineers, Mobile District, Inland Environment Section, Post Office Box 2288, Mobile, AL 36628–0001 or call 1–800–421–7637. Copies are available in hard copy or CD–ROM format. A copy of the full document may also be viewed at 61 libraries in the major cities and universities within the States of Alabama, Florida, and Georgia, or the Main Report can be viewed on the Mobile District Web Page (http://www.sam.usace.army.mil/sam/pd/actacfeis).

FOR FURTHER INFORMATION CONTACT: Joanne Brandt, ACF Basin EIS Project Manager, (334) 690–3260, facsimile number (334) 694–3815, e-mail address joanne.u.brandt@sam.usace.army.mil.

SUPPLEMENTARY INFORMATION: A previous Notice of Availability was published in the **Federal Register**, Vol. 63, No. 191, pages 53023–53024, Friday, October 2, 1998, for public comment. The original comment period was to close on December 18, 1998. The comment period has been extended through February 26, 1999. Extension of the public comment period has been based on requests from several agencies, organizations, and individuals, as well as the likely extension of the water allocation formula development deadline by the ACF Compact Commission.

Dated: December 3, 1998.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. 98–32947 Filed 12–10–98; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel*_d@al.eop.gov.

The Department of Education wants very much to make the final application packages for these programs available to the public as soon as possible. Therefore, it would appreciate receiving directly from the public a copy of any comments addressed to the Office of Management and Budget. Any copy of these written comments should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651 and Louis J. Venuto, Higher Education Programs, Office of Postsecondary Education, 1280 Maryland Ave. S.W., Cy–80, Portals Building, Washington, D.C. 20202–5329. A copy of comments also may be electronically mailed to the internet address *Pat*_Sherrill@ed.gov and *Louis*_Venuto@ed.gov, or faxed to Patrick J. Sherrill at 202–708–9346 and Louis J. Venuto at 202–708–9046. In addition, the Department of Education and the Office of Management and Budget will carefully review all written comments received within 30 days of publication of this notice. However, as a courtesy to those working to prepare the final application packages for these programs, the Department respectfully requests receipt of written comment as early as possible, preferably on or before December 28, 1998.

Requests for copies of the proposed information collection requests should be addressed to: Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address, *Pat*_Sherrill@ed.gov or faxed to (202) 708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

The Department anticipates that application packages for the State Grants Program, Partnership Grants for Teacher Education Program, and the Teacher Recruitment Program will be available in late January of 1999. It is proposing that the Department receive all applications under each of these programs by April 16, 1999, so that grant awards may be made by mid to late July. However, because of the particular complexity of the Partnership Grants for Teacher Education Program, the Department is considering use of a pre-application procedure for this program. Under this procedure, all applicants first would submit synopses of their proposals. Reviewers would assess the quality of these synopses, and invite applicants whose synopses are found to be of highest quality to submit full applications. Grant awards issues under the Partnership Grants for Teacher Education Program might not be issued until early September, 1999. By law, the Department must award these grants no later than September 30, 1999.

The Department is considering this option out of concern that partnerships choosing to apply for grants under this program (1) may need a significant period of time to plan their working relationships and activities, and (2) should only need to spend the time and resources preparing the full program application if their proposals are deemed to be of sufficiently high quality. In addition, a pre-application process might enable peer reviewers to better focus their attention on those applications that most warrant it.

The Department specifically requests written comment from potential applicants on (1) whether the Department should adopt this proposal for a pre-application procedure even though doing so will delay grant awards and (2), if so, how the Department should address key issues such as: the information the pre-applications should contain; the criteria reviewers should use to select those applicants who they would recommend be invited to submit full applications, the length of the pre-applications; and the length of time that applicants will need to prepare pre-applications and, if requested to do so, the final program applications. In considering these issues, the public may find it useful to review the proposed selection criteria for the Partnership Grants for Teacher Education Program that are contained in the program's application package. In addition, the public should be aware that if a pre-application procedure is used, the Department estimates it may need over three and one half months to process, peer-review, and select applicants for both phases of the application process.

Written comments on these and other matters should be sent as early as possible to the addresses identified at the beginning of this notice.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Louis Venuto at the address specified above.

Dated: December 7, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Applications under the Teacher Quality Enhancement Grants.

Frequency: Annually.

Affected Public: State, Local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:
Responses: 100
Burden Hours: 4,000

Abstract: This application package is essential for Governors, State and Local agencies, and institutions of higher education to apply for new awards under the Teacher Quality Enhancement Grants fiscal year 1999 competition.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–32940 Filed 12–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation Entitled Reservoir Class Field Demonstration Program—Class Revisit

AGENCY: National Petroleum Technology Office (NPTO) through the Federal Energy Technology Center (FETC), DOE.

ACTION: Notice of Issuance of Financial Assistance Solicitation.

SUMMARY: The U. S. Department of Energy's National Petroleum Technology Office (NPTO) in conjunction with the Federal Energy Technology Center (FETC) announces that it intends to issue a competitive Program Opportunity Notice (PON), DE–PS26–99BC15144, and to award financial assistance (Cooperative Agreements) to qualified recipients. Through the issuance of this PON, the DOE is presenting the next round of solicitations which addresses U.S. vulnerability to supply disruptions by expanding the domestic supply of oil production from the domestic resource. Proposals will be subjected to a comparative merit review by DOE technical panel, and awards will be made to a limited number of proposers on the basis of the scientific merit of the proposals, application of relevant program policy factors, and the availability of funds.

DATES: The Program Solicitation is expected to be ready for release on or about December 18, 1998. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Opportunity Notice and must be received by the DOE by April 1, 1999. Prior to submitting your application to the solicitation, check for any changes (i.e. closing date of solicitation) and/or amendments, if any.

FOR FURTHER INFORMATION CONTACT: Mr. Keith R. Miles, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 10940 (MS 921–143), Pittsburgh, PA 15236–0940; (Telephone: 412–892–5984; Facsimile: 412–892–6216; E-Mail: miles@fetc.doe.gov).

ADDRESSES: The solicitation will be available through the Internet at FETC's Home Page (http://www.fetc.doe.gov/business). TELEPHONE REQUESTS WILL NOT BE ACCEPTED FOR ANY

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FORMAT VERSION OF THE SOLICITATION:

SUPPLEMENTARY INFORMATION: This solicitation supports two of the 1998 Comprehensive National Energy Strategy (CNES) goals, which are (1) to ensure against energy disruptions and (2) to promote energy production and use in ways that reflect human health and environmental values. The focus is to reduce U. S. vulnerability to supply disruptions by expanding the domestic oil supply. Petroleum reservoirs have been classified based on the geology of the reserve and the environment of deposition. Depositional environments of the fluvial dominated deltaic type (Class I), shallow shelf carbonates (Class II), and slope and basin clastics (Class III), support these goals because they contain 50% of the domestic remaining oil in place. Further background material is given in the DOE Oil and Gas R & D Programs (DOE/FE–0359, March 1997) document. The strategy targets three groups of depositionally similar reservoirs based on the premise that demonstrated methodologies and technologies that overcome specific producibility problems in representative reservoirs have a higher probability of being applicable to other members of that same class than to non-class reservoirs. This solicitation addresses program goals of preserving access to reservoirs with high potential for increased productivity. These goals will be accomplished by conducting technology transfer activities that motivate operators to identify producibility problems and apply underutilized technologies to overcome these problems.

These reservoirs represent the higher priority reservoir classes. An assessment of about 2000 domestic reservoirs in the Total Oil Recovery Information System (TORIS) showed these classes to have a large volume of remaining oil, a large potential for additional recovery using conventional recovery technologies, and a high risk of abandonment of the resource in the next five years.

Advanced recovery technologies represent a significant improvement in process effectiveness (i.e., greater sweep efficiencies, improved economics, or evaluation techniques) or applicability over currently available technologies or represent a new or innovative technology not successfully demonstrated in the field.

Advanced technologies, as defined in this PON, include advanced reservoir characterization techniques, advanced recovery technologies and advanced reservoir management techniques. The understanding of the interaction of the reservoir architecture is essential to these advanced technologies. These technologies should not have been previously addressed in the same region and reservoir class. DOE discourages repeating the same suite of technologies in the same plays as the previous class programs.

Some examples of advanced technologies or some combination of technologies are:

Advanced Reservoir Characterization Technologies or Tools:

- New geophysical imaging or interpretation techniques.
- Three-dimensional simulation.
- Advanced or high resolution 3–D seismic.
- Geochemical techniques.
- Advanced well and tracer tests.
- Advanced logging techniques such as borehole imaging or permeability logging.

Advanced Recovery Technologies:

- Mobility control agents.
- Steam processes.
- Gas processes.
- Horizontal & lateral(s) (radial) wells.
- Miscible solvents.
- Chemical processes.
- In-situ combustion.

Advanced Reservoir Management Techniques

- Reservoir modeling/simulation.
- Fracture stimulation.
- New geostatistical methodologies.
- Novel or innovative recompletions.
- Injection strategies and pressure maintenance.
- Material balance decline curve techniques.

Note: Pure tool development is excluded under this solicitation.

DOE currently has available $8.3 million for this Program Opportunity Notice (PON) and intends to bring total DOE support to $18 million for this solicitation. Projects must include: reservoir characterization (Budget Period 1), demonstration/field activities (Budget Period 2), continued project monitoring activities (Budget Period 3); moreover, technology transfer should be a major component of all Budget Period activities and should aim to motivate operators toward broader application of cost-effective technologies/methodologies. It is anticipated that between 10–20 cost-shared awards, with a *total* project value estimated at $1.5 million to $10.0 million each (i.e., DOE share of project costs estimated at between $500K–$3,000K), will be made under this solicitation. The proposer must cost share at least 55 percent of the total allowable cost of Budget Period 1 for reservoir characterization, at least 65 percent of the total allowable cost of Budget Period 2 for the demonstration phase, and at least 90 percent of the total allowable cost of Budget Period 3 for continued project monitoring activities. Each project is expected to have a period of performance of approximately five (5) to six (6) years.

Issued in Pittsburgh, Pennsylvania on December 2, 1998.

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 98–32994 Filed 12–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice of Restricted Eligibility.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (cooperative agreements) to small independent oil production operators, operating on shore in the lower contiguous 48 states. Small independent oil-producing operators are defined as companies employing less than 50 full time employees; and those having no affiliation with a major oil or gas producer (domestic or foreign). The program seeks solutions to oil production problems. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a limited number of applicants based on a scientific and engineering evaluation of the responses received to determine the relative merit of the approach taken in response to this offering by the DOE, and funding availability.

FOR FURTHER INFORMATION CONTACT: Mary Beth Pearse, U.S. Departement of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsubrgh PA 15236–0940, Telephone: (412) 892–4949, FAX: (412) 892–6216, E-mail: pearse@fetc.doe.gov. The solicitation (available in both Word 97 and Portable Document Format (PDF)) will be released on DOE's FETC World Wide Web Server Internet System (http://www.fetc.doe.gov/business/solicit) on or about December 15, 1998.

SUPPLEMENTAL INFORMATION:

Title of Solicitation: "Research and Development with Small Independent Oil Operators".

Objectives: Through Program Solicitation No. DE–PSS26–99FT15146, The Department of Energy seeks applications from small independent oil producing operators for research and development, advocating solutions for production problems experienced by small independent oil producers.

Eligibility: Eligibility for participation in this Program Solicitation is restricted to small independent oil producing operators. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor.

Areas of Interest: The Department is interested in innovative field technologies which increase production, reduce operating costs, reduce environmental concerns, or combinations thereof.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year and the first quarter of fiscal year 2000. Approximately $600,000 is planned for this solicitation. The estimated funding or cost sharing by the DOE is $75,000 per award, or less. Cost sharing by the applicant is to be not less than 50% of the total proposed amount, which may consist of in-kind contributions.

Solicitation Release Date: The Program Solicitation is expected to be ready for release on or about December 15, 1998. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation. To be eligible, the designated DOE office must RECEIVE applications by the closing time and date specified in the Program Solicitation (anticipated to be on or about December 31, 1999, at 5:00 PM Eastern Standard Time).

Richard D. Rogus,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 98–32995 Filed 12–10–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Planning Guidance for Contractor Work Force Restructuring

AGENCY: Department of Energy.

ACTION: Notice of final planning guidance.

SUMMARY: The Department of Energy publishes Final Planning Guidance that it has issued to its field organizations, which are responsible for planning and implementing contractor work force restructuring at defense nuclear facilities and other Department of Energy facilities. The Final Planning Guidance supercedes interim guidance published for comment in the **Federal Register** on March 5, 1996.

DATES: The changes made by the Final Planning Guidance will take effect January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Terence L. Freese, U.S. Department of Energy, Office of Worker and Community Transition, WT–1, 1000 Independence Avenue, S.W., Washington, D.C. 20585; phone: 202–586–5907.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Atomic Energy Act of 1954 (AEA), the Department of Energy (DOE) owns defense nuclear facilities in various locations in the United States. These facilities are operated for DOE by management and operating contractors. As a result of the end of the Cold War, many DOE defense nuclear facilities are undergoing work force downsizing and restructuring as the result of changes in the activities at these facilities.

Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, requires DOE to develop a site-specific plan for restructuring the work force at any defense nuclear facility where DOE determines that a change in the work force is necessary. Defense nuclear facilities within the meaning of section 3161 include (1) facilities conducting atomic energy defense activities involving the production or utilization of special nuclear material, (2) nuclear waste storage or disposal facilities, (3) testing and assembly facilities, and (4) atomic weapons research facilities. The actual execution of any work force restructuring plan is subject to the availability of funds for that purpose.

On March 5, 1996, DOE published a notice of Interim Planning Guidance in the **Federal Register** and invited comments from stakeholders and the general public (61 FR 8593). The Interim Planning Guidance set forth procedures and policies for coordinating work force restructuring activities by DOE field organizations, pursuant to section 3161 and the DOE's broad authority under the AEA (42 U.S.C. 161(i)(3) and 2201(p)) to develop generally applicable policies covering all aspects of defense nuclear facilities. The Interim Planning Guidance was preceded by use of preliminary guidance and extensive consultation with various stakeholders, including DOE and DOE contractor employees, representatives of bargaining units of employees, interested Federal, State and local government agencies, educational institutions, and groups in the communities that would be affected by restructuring at DOE defense nuclear facilities.

DOE received written comments covering fifty issues from twelve commenters on the Interim Planning Guidance. These commenters included DOE employees, DOE contractors and contractor unions. DOE also sought comments on the Interim Planning Guidance at a national stakeholder meeting held in Atlanta, Georgia, on March 13–15, 1996. In response to concerns raised with respect to the process for reviewing and approving work force restructuring plans from DOE field organizations and other stakeholders, a team of DOE Headquarters and field organization representatives developed recommendations for streamlining the process for plan review and providing additional flexibility for development of such plans. Comments on subsequent revised drafts of the guidance based on these comments and recommendations were sought at national stakeholder meetings in Oakland, California, on April 9–11, 1997, and Alexandria, Virginia, on June 17–18, 1998.

II. Discussion of Stakeholder Comments and Final Planning Guidance

The Final Planning Guidance is intended to streamline the process for review and approval of work force restructuring plans, and to provide increased flexibility for defense sites to meet the objectives of section 3161 consistent with changing missions, new contract mechanisms and business efficiencies. In addition, this document also reflects revised Congressional direction with respect to funding limitations for enhanced benefits under section 3161. Separate guidance on implementing this Congressional direction was provided to field organizations by the Office of Worker and Community Transition on March 2, 1998.

The Final Planning Guidance calls on each defense nuclear facility to develop a work force restructuring plan that will establish general strategies for work force restructuring as it may occur at a given site. This new emphasis on a general strategy instead of a detailed

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blueprint recognizes a shift in the nature of restructuring activities from large episodic reductions primarily driven by changes in the budget to restructuring that occurs on a smaller, but more frequent, scale and is more directly related to project completion, changes in skill mix requirements and improved business efficiency. In such an environment, many stakeholders, including DOE Field Managers and DOE contractors, commented that specific thresholds to trigger separate, detailed plans were unworkable.

Many stakeholders perceived the itemized description of benefits set out for consideration in the Interim Planning Guidance as prescriptive rather than as suggestions for consideration by each facility. In light of Congressional direction limiting the funding for enhanced separation benefits under section 3161 to the Worker and Community Transition appropriation, and recognizing the increasingly varied requirements among facilities slated for early closure, those implementing new contracting mechanisms, and those continuing to utilize traditional management and operating contracts, it seemed more appropriate for DOE to limit discussion in the Final Planning Guidance to only those specific benefits that were prescriptive. Information on best practices, including model legal documentation, in restructuring will be provided through direct consultation between the Office of Worker and Community Transition and stakeholders, as well as through other published sources including the DOE's Annual Report on Contractor Work Force Restructuring, the Office of Worker and Community Transition web page at http://www.wct.doe.gov, and a handbook that the Office of Worker and Community Transition is preparing.

III. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, DOE will submit to Congress a report regarding the issuance of this notice of Final Planning Guidance prior to the effective date. The report will note that the Office of Management and Budget has determined that this notice of Final Planning Guidance does not constitute a "major rule" under that Act 5 U.S.C. 804(2).

IV. Review Under the National Environmental Policy Act

This guidance establishes procedures for work force planning. The planning guidance is intended to increase consistency and streamline reporting throughout the Department of plans for work force restructuring. Implementation of the guidance will not result in environmental impacts. The Department has reviewed this guidance in accordance with its procedures for implementing the National Environmental Policy Act, 10 CFR Part 1021 and has determined that this guidance is covered under the Categorical Exclusions found at paragraph A–13 of Appendix A to Subpart D of those regulations, which applies to administrative, organizational or procedural guidelines. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

Issued in Washington, D.C. on December 2, 1998.

Robert W. DeGrasse, Jr.,

Director, Office of Worker and Community Transition.

Final Planning Guidance for Contractor Work Force Restructuring

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Planning Guidance for Contractor Work Force Restructuring

I. Introduction

The Department of Energy's Office of Worker and Community Transition (the Office) has prepared this planning guidance to assist Department of Energy (DOE or Department) field organizations to plan for, and mitigate the impacts of, changes in the Department's contractor work force.

This guidance supercedes the earlier interim guidance issued by the Office on February 1, 1996, and published in the **Federal Register** on March 5, 1996. This document is a product of the Department's experience over the past two years—an extensive process of employee and public stakeholder involvement in shaping our worker and community transition policies.

This guidance provides common objectives for work force restructuring while emphasizing the importance of a tailored approach at each site to meet these objectives. This revision also addresses: (1) formal comments received in response to the publication of earlier guidance in the **Federal Register**; (2) steps to streamline and make more efficient the process for development, review and approval of work force restructuring actions; and (3) changes in Departmental contracting approaches and development of long-range strategic plans.

Except as otherwise noted, this guidance is not intended to be prescriptive. Cognizant field organizations have primary responsibility for assuring planning and overseeing implementation of work force restructuring. The Department's field organizations are in the best position to consult with affected stakeholders on these plans, to understand the unique needs of work force restructuring at field facilities, and to develop work force restructuring strategies best suited to each individual facility. The Office will develop a Handbook for Contractor Work Force Restructuring that provides information on experiences at DOE sites for consideration by field organizations.

II. Legislative Provisions

Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (the Act) requires the Secretary of Energy to develop a plan for restructuring the work force for a defense nuclear facility when there is a determination that a change in the work force is necessary. The plan is to be developed in consultation with local, state, and national stakeholders, and submitted to the Congress 90 days after notice of a planned work force restructuring has been given to the affected employees and communities.

Section 3161 of the Act provides specific objectives to guide the preparation of the plan to minimize worker and community impacts. Relevant sections of the Act are included as Appendix A. DOE facilities that have been determined to be defense nuclear facilities for the purposes of section 3161 are listed in Appendix B. For reasons of fairness, the Secretary directed that the objectives set forth in section 3161 should be applied to the extent practicable whenever work force restructuring takes place in the Department.

III. General Guidance

The Office encourages field organizations to utilize the combination of work force restructuring strategies that will most effectively accomplish a site's restructuring objectives. In developing these strategies, field organizations are expected to consider best practices in the public and private sectors. The cognizant field organization should administer work force changes consistent with the DOE Order 350.1 covering Reductions in Contractor Employment or any subsequent applicable DOE Order. A work force restructuring plan developed by the field organization should be consistent with program objectives, budget constraints, contractual provisions, collective-bargaining agreements, and other legal obligations. The plan should be developed in consultation with the stakeholders at the affected facility and other appropriate stakeholders to ensure, among other things, the most effective expenditure of public funds.

IV. Work Force Planning

The primary objective of work force planning and restructuring is to retain employees with the skills, knowledge and abilities necessary to effectively and safely meet assigned and future missions within budget constraints. Restructuring strategies must be closely integrated with planning based on identified work force requirements. Effective work force planning should consider both short-term requirements for immediate tasks, as well as long-term requirements for skills based on missions identified in strategic plans for the site. Improvements in organizational and operational efficiency should also be considered, including changes in internal organizational structure and contracting mechanisms.

V. Contractor Roles and Responsibilities

The Department will of necessity seek the assistance of its contractors in developing work force restructuring plans. Nevertheless, the plans are Department of Energy products. In addition, it is generally the Department's policy to make information available to the public that has bearing on the plans and is available to the operating contractors, unless such information is protected by law or regulation. Contractors will have responsibility for implementing the provisions of the work force restructuring plan subject to oversight from the appropriate DOE field organization.

VI. Developing Work Force Restructuring Plans

A. When Plans Are Needed

In order to provide appropriate long-term planning of site operations, and to allow potentially affected workers to know how their situations may be accommodated, work force restructuring plans should be developed that are not limited to a single episode of restructuring but will apply for any restructuring that may occur at a particular site. This planning differs from past practice where a new plan was developed with each restructuring action over a certain threshold. Plans may identify options that may be utilized in a particular restructuring action, subject to the availability of funds.

The cognizant field organization for a non-defense site should consider whether a work force restructuring plan is appropriate based on the contracting arrangements at the site, the prospect for significant work force change, the potential impact on the community, and the extent to which provision of separation benefits beyond contract requirements would be consistent with best business practices and fair treatment of workers.

B. Amendments to Established Plans

When modifications of established site work force restructuring plans are necessary due to changing circumstances, stakeholder input or implementation experience, proposed changes in the established plan shall be submitted to the Office for expeditious Headquarters review and approval.

VII. Elements of Work Force Restructuring Plans

A. Long-Term Strategic Plan and Work Force Implications

Ongoing plans should identify a site's long-term strategic plan, including anticipated closure and the anticipated work force implications of that plan.

B. Stakeholder Input to Plans

Consultation with local, state, and national stakeholders is an essential element of the work force restructuring process. Special attention should be given to consultation with the existing work force, their representatives, and local communities. Input should be solicited and considered at appropriate points throughout the development of plans for implementing work force restructuring. In order to facilitate participation by stakeholders, the Office has made this Final Planning Guidance available through the **Federal Register** and through electronic means.

C. Work Force Planning

A description of the objectives and processes used to plan for short-and long-term work force requirements should be included in the plan. Plans should incorporate flexible work force planning and retraining to minimize layoffs in the work force.

D. Define Application of the Plan

Each site has a unique mix of contractors and subcontractors performing work for the Department. Work force restructuring plans should identify the conditions under which categories of employees may be eligible for particular benefits.

E. Departmental Policy on Benefits

It is the Department's policy that preference in hiring and displaced worker medical benefits, are to be offered to all eligible separating employees. Appendix C provides guidance that has been developed for implementing preference in hiring. The guidelines for displaced workers medical benefits are set out in DOE Order 350.1 and Department of Energy Acquisition Letter No. 93–4, as modified by memorandum on August 12, and December 2, 1993. These documents are included as Appendix D.

Additional programs that may be provided to affected workers and any applicable eligibility requirements should be fully described in the plan. Plans should clearly state that enhanced benefits are subject to availability of funds from the Worker and Community Transition Appropriation. Plans should set out the considerations that will be used to determine when requests to seek funds to implement enhanced benefits programs will be considered, consistent with Congressional direction. Prior to implementing or announcing any program which anticipates providing enhanced benefits, field organizations shall submit to the Office an estimate of the number of participants and costs associated with a proposed benefit offering.

In implementing the objectives of section 3161 of the Act, the Department recognizes a special responsibility to minimize the impact of work force restructuring on employees who participated in efforts to maintain the Nation's nuclear deterrent during the

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Cold War. September 27, 1991, the day President Bush announced the first unilateral reduction of the Nation's nuclear weapons stockpile, has generally been recognized by this Department as the end of the Cold War. In developing a work force restructuring plan, the following are among the potential benefits that may be considered for affected workers.

1. Programs to Minimize Layoffs

After work force planning has identified the classifications of workers at risk, consideration should be given to strategies that minimize involuntary separations while also retaining appropriate job skills. Strategies should be selected based upon prior work force planning and restructuring experience at the site and best practices in the public and private sectors, and may include early retirement programs, voluntary separation incentives, and retraining for new missions, including cleanup.

2. Involuntary Separation

Each affected individual should be provided as much individual notice as practicable of his or her termination. In some cases, a minimum amount of specific notice is required by contract or collective-bargaining agreement. Involuntarily separated employees shall be fully advised of any benefits or services for which they are eligible. Appropriate notification to workers, labor representatives, and local, county and state governments shall be provided in accordance with DOE Order 350.1, or subsequent Order, and the Worker Adjustment and Retraining Notification Act (WARN), if applicable.

3. Programs to Assist Separating Workers

Requests for funding educational, relocation, and outplacement assistance should be considered to minimize the social and economic impact of work force changes, as well as a one-time construction worker benefit.

F. Local Impact Assistance to Communities

The work force restructuring plan should be developed in coordination with, and in support of, the regional development objectives of communities significantly impacted by the Department's downsizing. The local Community Reuse Organization should be contacted in the development of the plan to address anticipated economic and social impacts resulting from the Department's actions.

VIII. Departmental Review and Approval

A. Approval of Plans

By law, the Secretary submits work force restructuring plans subject to the provisions of section 3161 to Congress, and thus, is the official responsible for final approval. In order to reduce the number of involuntary layoffs, and pending Secretarial transmittal of the plan to Congress, enhanced benefits may be provided after receipt of written approval by the Office. The Office will seek concurrence from the affected program office or offices, the Office of General Counsel, and the Office of Congressional Affairs prior to providing such approval. It is the policy of the Department to obtain from employees who separate under voluntary separation programs, including early retirement incentives, a release of claims related to their employment and separation. A sample release is available on the Office's web page at http://www.wct.doe.gov. The cognizant field organization should consult with the Office prior to approving enhanced benefits at non-defense nuclear facilities. Draft plans should be submitted to the Office for Headquarters concurrence prior to their release to stakeholders.

B. Notification and Approval of Plan Implementation

Advance notification of intent to implement work force restructuring actions should be provided as early as possible, to maximize notification to the work force and the community, with an objective of 90 days advance notice to Congress. This reflects the need to be able to respond to changing business requirements and budget uncertainties. Headquarters review of work force restructuring plan implementation will take into consideration the time sensitivity of actions to meet business requirements.

IX. Performance Evaluation

The Office of Worker and Community Transition, in consultation with various stakeholders, has developed a set of performance objectives to determine the effectiveness of work force planning and restructuring activities. Those objectives—which are available upon request to the Office—are used to evaluate the effectiveness of those activities.

Appendix A—Section 3161 and 3163 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484, October 23, 1992)

The Department of Energy is making the text available at *http://www.wct.doe.gov/owct/Documentation/sec.3161.html.*

Appendix B—Listing of Defense Nuclear Facilities

The list below reflects facilities receiving funding for Atomic Energy Defense activities of the Department of Energy, with the exception of activities under Naval Reactor Propulsion. It is recognized that these facilities have varying degrees of defense activities, ranging from a total defense dedication to a small portion of their overall activity. This may cause certain difficulties in implementing the intent of the section 3161 legislation. Regardless, this listing will be used by the Office for possible application of funding received for defense worker assistance and community transition purposes.

Kansas City Plant
Pinellas Plant
Mound Facility
Fernald Environmental Management Project Site
Pantex Plant
Rocky Flats Environmental Technology Site, including the Oxnard Facility
Savannah River Site
Los Alamos National Laboratory
Sandia National Laboratory
Lawrence Livermore National Laboratory
Oak Ridge National Laboratory
Nevada Test Site
Y–12 Plant
East Tennessee Technology Park
Hanford Site
Idaho National Environmental Engineering Laboratory
Waste Isolation Pilot Project
Portsmouth Gaseous Diffusion Plant
Paducah Gaseous Diffusion Plant

Appendix C—Preference in Hiring

Section 3161 provides that, to the extent practicable, terminated employees at a defense nuclear facility should receive preference in filling vacancies in the work force of the Department of Energy and its contractors and subcontractors. The Department has determined that employees must be identified as having helped maintain the Nation's nuclear deterrent in order to qualify for this preference. The preference should be honored by all prime contractors, and subcontractors whose contracts with the Department equal or exceed $500,000 in value.

The Department has established the following criteria for determining eligibility for the hiring preference. The individual must be a former employee who (1) was involuntarily terminated (except if terminated for cause); (2) meets the eligibility standards described below; and (3) is qualified for the job at the time the work is to begin. Where qualifications are approximately equal, eligible individuals will be given preference in hiring. However, the preference will be administered consistent with applicable law, regulation, or executive order, and collective-bargaining agreements. This preference is not immediately applicable through an outsourcing action or follow-on contract in which the current employees are first offered their same or similar jobs with the replacement contractor in order to avoid a layoff.

An individual's hiring preference continues until termination by the action (or inaction) of that individual. Initially, and on an annual basis thereafter, eligible individuals must certify their desire to retain their hiring preference. Actions that would terminate an individual's hiring preference include: voluntary termination or termination for cause from a position that was obtained through the exercise of the preference, or failure to comply with the annual certification requirement.

Each field organization should develop procedures to ensure that the hiring preference is being honored by all prime contractors and designated subcontractors. Field organization procedures should also describe how the Job Opportunity Bulletin Board System is to be utilized by affected contractors and eligible individuals.

Eligibility Criteria

A. Regular Employees

1. Must have been working at a defense nuclear facility on September 27, 1991;
2. Must have worked full-time (or regular part time) at a facility from that date through the date of the restructuring notification; and
3. Must have been involuntarily separated other than for cause.

B. Intermittent Workers, Including Construction Workers

1. Must have worked at a defense nuclear facility on or before September 27, 1991;
2. Must have worked at a facility within 180 days preceding the work force restructuring notification;
3. Must have worked at a facility a total time, including time worked prior to September 27, 1991, equivalent to an employee having worked full-time from September 27, 1991, to the date of the restructuring notification, or have actually worked the industry standard of full-time from September 27, 1991, through the date of the restructuring notification; and
4. Must have been affected by the announced restructuring within a reasonable period of time (one year is suggested). For an intermittent worker, this includes the interruption of a project before its anticipated completion, or the completion of the assignment or project without prospect for a follow-on assignment at the site where the employee had a reasonable expectation of a follow-on assignment.

Appendix D—Department of Energy Order 350.1

Contractor Human Resource Management Programs, September 30, 1996

Chapter 1—Labor Relations

Chapter 2—Labor Standards

Chapter 3—Reduction in Contractor Employment

The Department of Energy is making the text available at http://www.wct.doe.gov/owct/Documentation/350order.html.

Department of Energy Acquisition Letter No. 93–4

The Department of Energy is making the text available at http://www.wct.doe.gov/owct/Documentation/acq93.html.

[FR Doc. 98–32906 Filed 12–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–180–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1998.

Take notice that on December 2, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of January 1, 1999.

National Fuel states that the purpose of this filing is to (i) revise its storage transfer tariff provisions to allow cross-contract storage balance transfers and to prevent ISS shippers from avoiding injection charges under the ISS Rate Schedule by a transfer of storage balances from a firm storage agreement, (ii) provide for additional notice and a return schedule under the IAS Rate Schedule, (iii) provide for the cash-out of imbalances for inactive in-kind shippers, (iv) exclude automatically balanced EFT receipts from balancing fee and cash-out calculations, and (v) make various corrections.

National Fuel states that it is serving copies of this filing with its firm customers and interested state commissions. National Fuel also states that copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.244 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32923 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–90–000]

Tennessee Gas Pipeline Company; Notice of Application To Abandon

December 7, 1998.

Take notice that on November 24, 1998, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application in Docket No. CP99–90–000 pursuant to Section 7(b) of the Natural Gas Act for authority to abandon 7,000 Dth/day of firm transportation service for New England Power Company (NEPCO) under Tennessee's Rate Schedule NET and Part 157 of the Commission's regulations. Tennessee further requests that the Commission grant such abandonment authorization retroactively effective April 1, 1996. Tennessee's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that on April 1, 1996, Tennessee and NEPCO amended the Rate Schedule NET contract to reduce the transportation, quantity from 60,000 Dth/day to 53,000 Dth/day. In addition, Tennessee and NEPCO entered into a new contract which provided that 7,000 Dth/day would be transported pursuant to Tennessee's Rate Schedule NET–284 and Part 284 of the Commission's regulations.

Tennessee explains that 7,000 Dth/day of NEPCO's part 157 service was converted to Part 284 service after posting, from March 14, 1996 through December 31, 1996, on Tennessee's EBB of an offer to waive the deadline for

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notice by a Rate Schedule NET shipper of its election to convert, contained in Section 1(b) of Rate Schedule NET–284. Tennessee states that the wavier was made pursuant to Article XXXIII (formerly Article XXXI) of the General Terms and Conditions of Volume No. 1 of Tennessee's FERC gas tariff which provides that Tennessee may waive such provisions without seeking the Commission's approval if the waiver is uniformly applicable to all affected customers. Tennessee further states that all Rate Schedule NET shippers were given the opportunity to elect to convert all or a portion of their NET transportation quantity to service under Rate Schedule NET–284.

On August 21, 1998, Tennessee filed an application in Docket No. CP98–739–000 requesting authorization to abandon 53,000 Dth/day of service to NEPCO under the amended NET contract and to permit USGen New England, Inc. to assume NEPCO's service entitlement pursuant to a new firm transportation agreement under Rate Schedule NET. By letter dated November 6, 1998, in Docket No. CP98–739–000, the Director of the Commission's Office of Pipeline Regulation informed Tennessee that it must file an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon part of NEPCO's Part 157 service earlier converted to Part 284 service.

Any person desiring to be heard or make any protest with reference to said application should on or before December 28, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

David P. Boergers,
Secretary.

[FR Doc. 98–32919 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–179–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1998.

Take notice that on December 2, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain new and revised tariff sheets listed on Appendix A attached to the filing. The proposed effective date of such tariff sheets is January 1, 1999.

Transco states that the purpose of this filing is to modify the General Terms and Conditions of Transco's tariff to specify the types of rate discounts that are permissible and, as such, would not constitute a material deviation from the pro forma service agreement. These proposed tariff provisions would be applicable to Transco's Rate Schedules FT, IT, FT–G, FTN, WSS, ESS, and ISS. Transco has made corresponding changes in the provisions of each applicable Rate Schedule to reference the new provisions in Section 40 of the General Terms and Conditions of its tariff.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Secretary.

[FR Doc. 98–32924 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–13–000, et al.]

Upper Peninsula Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 4, 1998.

Take notice that the following filings have been made with the Commission:

1. Upper Peninsula Power Company

[Docket No. EC99–13–000]

Take notice that on November 30, 1998, Upper Peninsula Power Company (UPPCo) tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b, for authority to sell certain transmission facilities, consisting primarily of a tie line between the Presque Isle Power Plant and the City of Marquette, to the Marquette Board of Light and Power.

A copy of this Application was served on the Michigan Public Service Commission.

Comment date: December 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Light Company

[Docket No. EC99–14–000]

Take notice that on November 30, 1998, Central Illinois Light Company (CILCO) filed an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b, to transfer operational control over substantial portions of its transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

CILCO states that this filing is intended to reflect the fact it has joined the Midwest ISO, and to allow for the transfer of control of the identified facilities to the Midwest ISO.

Comment date: December 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Laguna Irrigation District

[Docket No. EL98–46–002]

Take notice that on December 1, 1998, Pacific Gas and Electric Company (PG&E) tendered for filing a form of Interconnection Agreement Between Pacific Gas and Electric Company and Laguna Irrigation District (Agreement), along with a letter explaining the Agreement and other matters. PG&E's filing was made pursuant to a "Proposed Order Directing Interconnection and Establishing Further Procedures," issued in this case on September 16, 1998 (Proposed Order).

Citing ongoing settlement discussions among the parties, PG&E and Laguna also jointly request that the Commission: (1) defer briefing on matters still in dispute, as directed in the Proposed Order; and (2) take no further action in this docket pending the outcome of the settlement discussions.

Copies of PG&E's filing have been served upon Laguna and all other parties to this proceeding.

Comment date: December 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. EL98–62–002]

Take notice that on November 12, 1998, Southern California Edison Company (SCE) submitted a filing in compliance with the Commission's order dated October 28, 1998 in Docket Nos. ER98–2843–004, *et al.*

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER97–4573–001]

Take notice that on December 1, 1998, Florida Power Corporation tendered for filing a compliance filing in the above-captioned proceeding.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Rocky Mountain Reserve Group, Public Service Company of Colorado, Black Hills Corporation, UtiliCorp United Inc.

[Docket No. ER98–498–001; ER98–3347–000; ER98–3351–000; ER98–3358–000]

Take notice that on December 1, 1998, Public Service Company of Colorado (PS Colorado), on behalf of itself and the other two jurisdictional members of the Rocky Mountain Reserve Group (RMRG), namely Black Hills Corporation and UtiliCorp United Inc., filed revised versions of Policies B and C of the RMRG bylaws and policies. PS Colorado states that the purpose of the revisions is to reflect the conditions of the Commission's August 3, 1998, order in this docket conditionally approving the RMRG by-laws and policies.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. USGen New England, Inc.

[Docket No. ER99–776–000]

Take notice that on November 25, 1998, USGen New England, Inc. tendered for filing its quarterly report regarding transactions entered into pursuant to the tariffs identified in the Commission's February 25, 1998 order in Docket No. ER98–6–000.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Light Company

[Docket No. ER99–777–000]

Take notice that on December 1, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement for one new customer, Strategic Energy Limited.

CILCO requested an effective date of November 20, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER99–778–000]

Take notice that on December 1, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and three service agreements for three new customers, Amoco Energy Trading Corporation; Madison Gas & Electric Company and Strategic Energy Limited.

CILCO requested an effective date of November 20, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER99–779–000]

Take notice that on December 1, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 30, 1998, Pepco Services, Inc., d/b/a Power Choice under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Pepco Services, Inc., d/b/a Power Choice as a customer under the Tariff.

DLC requests an effective date of November 30, 1998, for the Service Agreement.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER99–780–000]

Take notice that on December 1, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Kansas City Power & Light Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–781–000]

Take notice that on December 1, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed an Amendment No. 8, to the APS Power Agreement with a requested effective date of January 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

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Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER99–782–000]

Take notice that on December 1, 1998, Tampa Electric Company (Tampa Electric), tendered for filing a letter agreement that amends an existing letter of commitment providing for the sale of capacity and energy to the Utilities Commission, City of New Smyrna Beach (New Smyrna).

Tampa Electric proposes that the letter agreement be made effective on March 1, 1999.

Copies of the filing have been served on New Smyrna and the Florida Public Service Commission.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Southwest Power Pool

[Docket No. ER99–783–000]

Take notice that on December 1, 1998, Southwest Power Pool (SPP), as agent for its participating member public utilities, and on behalf of all its members, tendered for filing a revised Regional Open Access Transmission Tariff (Tariff), to be effective on April 1, 1999.

SPP states that it files the revised Tariff to add long-term firm point-to-point transmission service as a service under the Tariff and to make a few other changes.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER99–784–000]

Take notice that on December 1, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Tractebel Energy Marketing, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 30, 1998.

Copies of this filing were served upon Customer.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER99–785–000]

Take notice that on December 1, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with New Energy Ventures, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 30, 1998.

Copies of this filing were served upon Customer.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Citizens Utilities Company

[Docket No. ES99–15–000]

Take notice that on December 3, 1998, Citizens Utilities Company (Applicant), tendered for filing an application in the above-referenced docket with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act, requesting authorization for the issuance by Applicant of shares of Common Stock proposed to be issued on or before January 18, 1999 as interest payments on outstanding debentures for a two-year period (which will require up to $21,175,605) or such longer time as the Commission deems appropriate.

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32918 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention/Declaratory Order

December 7, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Declaratory Order.

b. *Project No.:* DI99–1–000 (P–1952).

c. *Date Filed:* November 3, 1998.

d. *Applicant:* Maverick County Water Control And Improvement District No. 1.

e. *Name of Project:* Maverick County Project.

f. *Location:* On the Rio Grande River in Maverick and Kinney Counties, Texas.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

h. *Applicant Contact:* Jim Harbison, Interim General Manager, Maverick County Water Control And Improvement District No. 1, 2252 East Garrison Street, Eagle Pass, Texas 78852, (830) 773–5129.

i. *FERC Contact:* Etta Foster, (202) 219–2679.

j. *Comment Date:* January 15, 1999.

k. *Description of Project:* The existing project consists of: (1) A diversion dam, 11.5 feet high, 440 feet long; (2) an intake canal, with a 1,500 cfs capacity; (3) a 32-mile long main canal; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or waterpower from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* This project diverts water for hydroelectric and irrigation purposes.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–32920 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

December 7, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Amendment of license.

b. *Project No*: 2530–021.

c. *Dated Filed*: September 14, 1998.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project*: Hiram.

f. *Location*: On the Saco River, in Cumberland and Oxford Counties, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 792(a)–825(r).

h. *Applicant Contact*: F. Allen Wiley, Managing Director of Generation, Central Maine Power Company, 41 Anthony Avenue, Augusta, ME 04330, Tel: (207) 621–4412.

i. *FERC Contact*: John K. Novak, (202) 219–2828.

j. *Comment date*: January 22, 1999.

k. *Description of Amendment*: Licensee is requesting an amendment to Article 35 of the existing license to incorporate minimum flow requirements of the Instream Flow Agreement for Hydroelectric Projects on the Saco River dated April 30, 1997, as it pertains to the Hiram Project. For the period from November 16 through September 30, a minimum flow of 300 cubic feet per second (cfs) would be released from the project, with reservoir drawdown limited to 2 feet or less from full pond elevation during normal operation or from the spillway crest when the flashboards are down. From October 1 through November 15, the project would operate run-of-river, with reservoir drawdown limited to 1 foot or less from full pond elevation or from the spillway crest when the flashboards are down. The timing of the 6-week fall flow period would be determined as further described in the agreement. Run-of-river operation is defined as outflow equal to inflow, with pond elevation limited to 1 foot or less during normal operation.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–32921 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Comments

December 7, 1998

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11622–000.

c. *Date filed:* October 26, 1998.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* White Tank Mountain.

f. *Location:* Beardsley Canal, in Maricopa County, Arizona. Would Utilize Bureau of Land Management lands in the White Tank Mountain Regional Park.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. *Applicant Contact:* Mr. Frank L. Mazzone, President, Arizona Independent Power, Inc., 746 Fifth Street East, Sonoma, CA 95476, (707) 996–2573.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell, E-mail address, robert.bell@ferc.fed.us, or telephone 202–219–2806.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) a proposed 250-foot-high, 1,300-foot-long upper reservoir dam; (2) a proposed reservoir having a surface area of 270 acres, with a storage capacity of 30,000 acre-feet, and normal water surface elevation of 2,480 feet mean sea level; (3) a proposed 250-foot-high, 2,500-foot-long lower reservoir dam; (4) a proposed reservoir having a surface area of 240 acres, with a storage capacity of 36,000 acre-feet; (5) proposed underground penstocks; (6) a proposed powerhouse containing 5 generating units having a total installed capacity of 1,250 megawatts; (7) two 40-mile-long, 500-kilovolt transmission lines; and (8) appurtenant facilities. The lower reservoir would be filled by running a pipeline from Beardsley Canal.

The project would have an annual generation of 1,682 GWh and would be sold to a local utility.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional coy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–32922 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–7]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed November 30, 1998

Through December 04, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980488, FINAL SUPPLEMENT, EPA, LA, Atchafalaya River Bar Channel Ocean Dredged Material Disposal Site Designation, Updated Information, St. Mary Parish, LA , Due: January 11, 1999, Contact: Joe Swick (214) 665–7456

EIS No. 980489, DRAFT EIS, IBR, CA, Groundwater Replenishment System, Implementation to Repurifying Water from Orange County Water District (OCWD) Orange County Sanitation District (OCSD), Funding and COE Section 404 Permit, Orange County, CA, Due: February 01, 1999, Contact: Del Kidd (702) 293–8698

EIS No. 980490, FINAL EIS, TVA, TN, GA, MS, VA, AL, KY, NC, Shoreline Management Initiative: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley, Mainstream Tennessee River and Tributary Reservoirs in AL, KY, NC, TN, GA, MS and VA, Due: January 11, 1999, Contact: Harold M. Draper (423) 632–6889

EIS No. 980491, FINAL EIS, STA, NM, TX, Programmatic EIS—International Bridge Crossing Project, Construction and Operation, Along the United States-Mexico Border from EL Paso to Brownsville, TX, Presidential Permit, NM and TX, Due: January 11, 1999, Contact: Eric Verwers (817) 978–0202.

EIS No. 980492, FINAL SUPPLEMENT, JUS, CA, Service Processing Center (SPC) for Detainees, Construction and Operation, Possible Sites, Stockton and Tracy Sites, San Joaquin Counties, CA, Due: January 11, 1999, Contact: William A. Kopitz (202) 307–1877

EIS No. 980493, DRAFT EIS, AFS, MT, Swamp Timber Sales Project, Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT, Due: January 25, 1999, Contact: Robert G. Carlin (406) 882–4451.

EIS No. 980494, FINAL EIS, COE, MN, WI, Duluth-Superior Harbor Phase II, Dredge Material Management Plan, Cities of Duluth, St. Louis County, MN and Douglas County, WI, January 11, 1999, Contact: Mr. Terry A. Long (313) 226–6758.

EIS No. 980495, DRAFT EIS, FHW, IN, IN–641 Terre Haute Bypass, Improve access between US 41 South to I–70 East of Terre Haute, Funding and COE Section 404 Permit, Vigo County, IN, Due: March 01, 1999, Contact: Douglas N. Head (317) 226–7487.

EIS No. 980496, DRAFT EIS, NPS, DC, The White House and President's Park, Comprehensive Design Plan, Implementation of a Framework for Future Management, Washington, D.C., Due: March 11, 1999, Contact: James I. McDaniel (202) 619–6344.

EIS No. 980497, DRAFT EIS, FTA, WA, Central Link Light Rail Transit Project, (Sound Transit), Construct and Operate an Electric Rail Transit System, Funding and COE Section 10 and 404 Permit, In the Cities of Seattle, Sea Tac and Tukwila, King County, WA, Due: February 05, 1998, Contact: Helen Knoll (206) 220–4464.

EIS No. 980498, DRAFT EIS, AFS, UT, Brighton Ski Resort Master Development Plan Updated, Implementation, Wasatch-Cache National Forest, Salt Lake City, UT, Due: January 26, 1999, Contact: Steve Scheid (801) 943–9483.

Amended Notices

EIS No. 980396, DRAFT EIS, COE, AL, GA, FL, Apalachicola-Chattahochee-Flint (AFC) River Basin Water Allocation, Allocation Formula Approval, AL, FL and GA, Due: February 26, 1999, Contact: Joanne Brandt (334) 690–3260. Published FR 10–09–98—Review Period extended.

EIS No. 980401, DRAFT EIS, COE, AL, GA, Alabama-Coosa-Tallapoosa (ACT) River Basin Compact, Water Allocation, several counties, AL and GA, Due: February 26, 1999, Contact: Michael L. Eubank (334) 694–3861. Published FR 10–09–98 Review Period Extended.

EIS No. 980435, DRAFT EIS, USA, GA, U.S.

Army/Fort Benning and The Consolidated Government of Columbus Proposed Land Exchange, Muscogee and Chattahoochee Counties, GA, Due: December 14, 1998, Contact: John Brent (706) 545–4766. Published FR–10–30–98 EIS Status. Correction. Changed from Preliminary DEIS to DEIS.

EIS No. 980453, DRAFT EIS, NPS, TX, Lyndon B. Johnson National Historical Park, Package 227, General Management Plan, Implementation, Blanco and Gillespie Counties, TX, Due: December 28, 1998, Contact: Leslie Starhart (830) 868–7128 ext. 226. Published FR 11–13–98 Correction to Telephone Number.

EIS No. 980460, DRAFT EIS, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Implementation, Helene National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT, Due: February 01, 1999, Contact: Dave Turner (406) 449–5490.

Published FR–11–13–98—Review Period Extended.

Dated: December 8, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–33004 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 23, 1998 through November 27, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7153. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–COE–G39031–AR Rating EC2, Grand Prairie Area Demonstration Project, Implementation, Water Conservation, Groundwater Management and Irrigation Water Supply, Prairie, Arkansas, Monroe and Lonoke Counties, AR.

Summary: EPA expressed environmental concerns regarding water quality, wetlands, environmental justice, land use, noise, visual and asethetic impact, and historic preservation.

ERP No. D–COE–K39052–CA Rating LO, Hamilton Wetland Restoration Project, Tidal Salt Marsh Habitat, Alameda County, CA.

Summary: EPA expressed a lack of objections with the DEIS and the proposed wetland restoration project.

ERP No. D–IBR–K39048–CA Rating EC2, Truckee River Operating Agreement (TROA, Modify Operation and Selected Non-Federal Reservoirs, Implementation, Truckee River Basin, EL Dorado, Nevada, Placer and Sierra Counties, CA and Douglas, Lyon, Storey and Washoe Counties, NV.

Summary: EPA expressed environmnetal concern that the proposed agreement does not significantly improve Lahontan cutthroat trout (LCT) habitat and recommended that the negotiating parties take this opportunity to better improve LCT habitat. EPA also requested additional information in the

EIS regarding water quality, water quantity and conservation, biological resources, groundwater effects, air quality, and population growth.

ERP No. D–IBR–K39050–CA Rating LO, Programmatic—CALFED Bay-Delta Program, Long-Term Comprehensive Plan to Restore Ecosystem Health and Improve Water Management, Implementation, San Francisco Bay—Sacramento/San Joaquin River Bay-Delta, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. DS–AFS–K65273–AZ Rating LO, Grand Canyon/Tusayan Growth Area Improvements, Updated Information on three New Alternatives, General Management Plan (GMP), Special-Use-Permit, Land Exchange Options, Approval and Licenses Issuance, Coconino County, AZ.

Summary: EPA expressed lack of objections and that the final EIS examine a mix of water supply sources which would limit reliance and dependence on any one water source and minimize adverse effects to the scarce and susceptible water supply sources.

Final EISs

ERP No. F–COE–K36108–CA, Santa Rosa Subregional Long-Term Wastewater Project, Implementation, Reclaimed Water Disposal from the Laguna Wastewater Treatment Plant, COE Section 10 and 404 Permits, Sonoma County, CA.

Summary: EPA recommended support for the Santa Rosa City Council's preferred alternative, Modified Geyers Recharge, because it concentrates on maximizing reuse of reclaimed water while minimizing adverse effects on wetlands, sensitive habitats, water quality, drinking water wells, air quality, and existing resource such as aggregate material. EPA reiterated concerns with the West County Reclamation, South County Reclamation, and Discharge alternatives due to potential adverse impacts to surface and groundwater quality and potential conversion of sensitive wetland habitats. EPA urged continued aggressive efforts toward maximum reduction of effluent volume and maximum reuse of treated water.

ERP No. F–COE–K36116–CA, San Pedro Creek Section 205 Flood Control Project, Construction, Flood Protection, COE Section 10 and 404 Permits and Permits Approval, San Mateo County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K36123–CA, South Sacramento County Streams Investigation, Proposed to Increase Flood Protection, Non-Federal Sponsor, Sacramento Waste Water Treatment Plant and along portions of Morrison, Elder, Unionhouse and Florin Creeks, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K36124–CA, Yuba River Basin Investigation Study, Flood Protection, Also Portions of the Feather River Basin below Oroville Dam, City of Maryville Yuba County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K36125–CA, Hansen Dam Water Conservation and Supply Study, Flood Protection, Implementation, Los Angeles County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–IBR–K34010–AZ, Tucson Aqueduct System Reliability Investigation (TASRI), Central Arizona Project, Surface Storage Reservoir Construction, COE Section 404 Permit, Gila River, City of Tucson, Pima County, AZ.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F1–COE–K35012–CA, Sacramento River Bank Protection Project, Implementation of Streambank Protection for the Lower American River between RM–0 and 13.7, Updated Information, City of Sacramento, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: December 8, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–33005 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6201–6]

Notice of Stakeholder Meetings on the Implementation of the Interim Enhanced Surface Water Treatment Rule and the Stage I Disinfectants/Disinfection Byproducts Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of stakeholder meetings.

SUMMARY: The Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage I Disinfectants/Disinfection Byproducts Rule (Stage I DBPR), were signed by the EPA Administrator on November 30, 1998, as the first of a series of rules referred to as the "Microbial-Disinfectants/Disinfection Byproducts Rule Cluster." These two new rules are intended to increase control of microbial pathogens while simultaneously broadening regulatory coverage for, and minimizing the public health risks from, disinfectants and disinfection byproducts. At this time, the EPA would like to obtain stakeholder comments on the implementation of these rules and will hold two public meetings to solicit comments and suggestions from parties who will be affected by or are otherwise interested in the implementation of the IESWTR and the Stage I DBPR. To facilitate participation by interested stakeholders, meetings will be held in Denver, Colorado, on January 13, 1999, and in Washington, D.C., on January 22, 1999. Conference call-in lines will be available to be reserved by interested parties who are unable to attend in person. The meetings will begin at 9:00 am local time with an hour for public comment following the morning presentation on the IESWTR. A presentation on the Stage I DBPR will follow the IESWTR public comment period. Another public comment period will begin immediately following the Stage I DBPR presentation and will close when all public comments have been received. EPA will consider the comments and views expressed at the meetings in the implementation of these rules. EPA encourages the full participation of all stakeholders throughout this process.

DATES: The stakeholder meetings regarding the implementation of the IESWTR and the Stage I DBPR will be held as follows:

(1) In Denver, Colorado, on Wednesday, January 13, 1999, at 9:00 am MT until all public comments have been received.

(2) In Washington, DC, on Friday, January 22, 1999, at 9:00 am ET until all public comments have been received.

ADDRESSES: The January 13, 1999 stakeholder meeting will be held at the Loews Giorgio Hotel (1–800–243–1166 or 303–782–9300), 4150 E Mississippi Avenue, Denver, Colorado. The January 22, 1999 stakeholder meeting will be held at the Renaissance Washington Plaza Hotel (202–898–9000), 999 9th Street, NW, Washington, DC.

To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800-426–4791, or Jennifer Melch of EPA's Office of Ground Water and Drinking Water at (202) 260–7035. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines are limited and will be allocated on the basis of first-reserved, first-served.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on activities related to the IESWTR and the Stage I DBPR, contact: Jennifer Melch, U.S. EPA at (202) 260–7035 or e-mail at melch.jennifer@epamail.epa.gov.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–32988 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6201–5]

1999 National Resource Conservation and Recovery Act Program Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public invitation to Plenary Sessions of National Meeting.

SUMMARY: Notice is hereby given of public invitation to the plenary sessions of the forthcoming regular meeting of the National Resource Conservation and Recovery Act (RCRA) Program, "RCRA 99—Partnerships for a Cleaner Environment." This meeting brings together representatives from the U.S. Environmental Protection Agency (EPA), States and Tribes involved in the RCRA program. It promotes new EPA Headquarters initiatives, and fosters discussion and education concerning Regional and State issues.

DATES: The plenary sessions will be held in Washington, DC, on January 12, 1999, from 9:00 a.m. until noon and on January 14, 1999, from 8:00 a.m. to 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, (703–308–8761), or Timothy Elder, (703–308–6081), Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460.

STATUS: The plenary sessions of this meeting will be open to the public. At the plenary sessions Federal, State, and Tribal Officials will discuss current topics related to the RCRA program and latest agency initiatives. The rest of the meeting will be closed to the public.

SUPPLEMENTARY INFORMATION: Pre-registration is required to attend the plenary sessions. There will be no registration at the door on the day of the sessions. Seating is limited, so early pre-registration is recommended. EPA, State, and Tribal representatives who have pre-registered to attend the 1999 National RCRA Program Meeting do not need to register for the plenary sessions. To pre-register, contact HAZMED at, (301) 577–9700 ext. 245, Hazmed, 10001 Derekwood Lane Suite 115, Lanham, MD 20706. Information on the location of the plenary session will be provided upon pre-registration.

Dated: December 1, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–32992 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6195–5]

Salt River Pima-Maricopa Indian Community; Final Approval of an Alternative Liner System Design and Use of Alternative Daily Cover Material for the Salt River Municipal Solid Waste Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency approves two requests by the Salt River Pima-Maricopa Indian Community ("Community") for approval to use flexible standards at the Salt River Municipal Solid Waste Landfill. The first approval allows the Community to install a geosynthetic clay liner in place of a composite liner. The second allows the Community to use a tarp system as cover in place of earthen material.

Subtitle D of the Resource Conservation and Recovery Act (RCRA), requires EPA to establish minimum federal criteria to ensure that municipal solid waste landfills are designed and operated in a manner that protects human health and the environment. Generally, these criteria are technical standards that are "self-implementing," meaning that the criteria are in effect as soon as they are published. For many of these criteria, the regulations also establish a flexible performance-based standard as an alternative to the self-implementing regulations. Without EPA's approval, the flexible standards could not be used at the Salt River Municipal Solid Waste Landfill. EPA's approvals will allow the Salt River Municipal Solid Waste Landfill to install a geosynthetic clay liner and to use a tarp system as cover at the Landfill. This approval applies solely to the Salt River Municipal Solid Waste Landfill located on Salt River Pima-Maricopa Indian Reservation in Arizona.

DATES: Effective December 11, 1998.

FOR FURTHER INFORMATION CONTACT: US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Susanna Trujillo, Mail Code WST–7 telephone (415) 744–2099.

SUPPLEMENTARY INFORMATION:

A. Regulatory Background

Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6941–6949a, governs the disposal of nonhazardous solid waste and of small-quantity hazardous waste not regulated under Subtitle C of RCRA. Subtitle D prohibits "open dumping" and EPA established criteria for determining which solid waste facilities should be classified as "municipal solid waste landfills" and which as "open dumps." Pursuant to HSWA, EPA added revised criteria to establish minimum federal standards to ensure that municipal solid waste landfills (MSWLF) are designed and operated in a manner that protects human health and the environment. The Federal revised criteria are codified at 40 CFR part 258. RCRA also requires states to implement permit programs to ensure that MSWLF facilities comply with the revised criteria (40 U.S.C. 6945(c)). EPA determines whether each state has developed an adequate solid waste permitting program and "approves" those states. In states that do not develop an adequate program, the regulations set forth in part 258 are self-implementing and apply to owners and

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operators of MSWLF units without additional EPA approval or review (40 CFR 258.1).

For many of the criteria, part 258 establishes a flexible performance standard as an alternative to the self-implementing regulation. The flexibility provided in the MSWLF criteria allows for the consideration of site-specific conditions in designing and operating a MSWLF at the lowest cost possible while ensuring protection of human health and the environment. The flexible standard is not self-implementing, and use of the alternative standard is generally approved by the Director of an approved state. Part 258 does not currently provide owners and operators of MSWLF units located in Indian Country with a mechanism for obtaining approval of the flexible performance standards.

Indian tribes are defined as "municipalities" under RCRA section 1004(13), 42 U.S.C. 6903. As a "municipality," the tribe would seek approval of design flexibility from the appropriate approved state. However, states are generally precluded from enforcing their civil regulatory programs in Indian Country absent an explicit Congressional authorization. *California* v. *Cabazon Band of Mission Indians*, 480 US 202 (1987). Including tribes as part of section 1004(13) was a definitional expedient, to avoid adding the phrase "and Indian tribes or tribal organizations or Alaska Native villages or organizations" wherever the term "municipality" appeared. By this definition, Congress did not intend to change the sovereign status of tribes for purposes of RCRA. In *Backcountry Against Dumps* v. *EPA*, 100 F.3d 147, 151 (D.C. Cir. 1996), the District of Columbia Circuit Court determined that the inclusion of Indian Tribes as "municipalities" "does not strip the tribe of its sovereign authority to govern its own affairs * * * [the tribe has the authority] to create and enforce its own solid waste management plan." RCRA does not grant this kind of regulatory authority to municipalities.

Owners and operators of MSWLF units in Indian Country are not subject to state authority and cannot obtain approval from the state for the performance standards included in part 258. Yet, the Federal revised criteria are silent as to the process by which MSWLF units in Indian Country can apply for the alternate standards.

This site-specific provision allows the Salt River Pima-Maricopa Indian Community ("Community"), an owner/operator of an MSWLF in Indian Country, the same flexibility as owners and operators of MSWLF units in approved states. EPA derives its authority to promulgate this document from sections 4004, 4005, and 4010 of RCRA, 42 U.S.C. 6944, 6945, and 6949a. These sections provide the basis on which EPA developed the criteria distinguishing open dumps from landfills and the revised criteria in part 258. Nothing in these provisions limits EPA's ability to issue site-specific criteria. In this instance, where the existing part 258 regulations do not contain a process for approval of the flexible performance standards for MSWLF units in Indian Country, it is appropriate to issue a site-specific provision to supplement Part 258 and address this unique situation. The US District Court in the District of South Dakota reviewed this issue directly and upheld EPA's authority to issue a site-specific provision to provide design flexibility under subtitle D of RCRA. (*Yankton Sioux Tribe* v. *US EPA*), 950 F. Supp. 1471 (D.S.D. 1996). The *Yankton* court determined that EPA appropriately created an "alternative mechanism" to provide flexibility to the relevant MSWLF in Indian Country. The US Court of Appeals for the D.C. Circuit also supports EPA's authority to issue such a site-specific provision under RCRA Subtitle D. (See *Backcountry Against Dumps* v. *EPA*, 100 F.3d at 152 (1996)). For a description of the suggested process used to apply for and approve flexibility requests in Indian Country, see EPA draft guidance entitled "Submitting Site-Specific Rulemaking Requests for 40 CFR part 258."

Prior to making this Final Determination, EPA provided opportunity for public participation through a public comment period and a public hearing. A document was published on May 8, 1998, (amended on May 27, 1998) describing EPA's tentative determination to approve the two flexibility requests and announcing the public comment period and public hearing. Notice was also published in two newspapers of general circulation as well as the tribal newspaper. In addition, EPA sent information on the tentative determination and public participation opportunities directly to interested parties. August 5, 1998, was the final date to submit public comments. EPA has not received either written or verbal comments on the Tentative Determinations.

B. EPA's Final Determinations

1. Alternative Liner System Design (40 CFR 258.40)

The Salt River Landfill (Landfill) is located on 200 acres of property east of Phoenix, Arizona. It is operated by the Salt River Pima-Maricopa Indian Community and serves as a sanitary landfill for the tri-city area of Mesa, Tempe, and Scottsdale, Arizona. Landfill operations began in October 1993, and are expected to continue until at least the year 2003. The landfill currently consists of three lined cells and three undeveloped cells. The three operational cells are lined with the composite liner prescribed by 40 CFR 258.40(b). On May 23, 1997, the Community submitted an application to the EPA requesting approval to use a geosynthetic clay liner (GCL) in place of a composite liner for the undeveloped cells of the Landfill.

The regulations at 40 CFR 258.40(b) require that the composite liner have the following components: (1) A two-foot thick soil layer with a maximum permeability of 1×10^{-7} cm/sec; (2) a geomembrane layer with a minimum thickness of 60-mil if constructed out of high density polyethylene, or 30-mil for other materials; and (3) ensure protection of ground water.

The federal revised criteria do not specifically include a procedure for EPA's tentative determination. However, EPA relied on the requirements set forth in § 258.40 as a guideline for analyzing the Community's application.

Generally, §§ 258.40(a)(1), (c), and (d) require the following:

- The alternative liner design ensures that constituent concentrations of the chemicals listed in Table 1 of the criteria will not be exceeded in the uppermost aquifer at the relevant point of compliance; and
- The alternative liner design addresses the hydrogeologic characteristics of the landfill site, climate, volume, and physical and chemical characteristics of the leachate, and models potential contaminant migration.

The reinforced GCL to be used at the Landfill consists of a layer of pure sodium bentonite fixed between two layers of geotextiles. The GCL is used to replace the two-foot thick soil layer required by 40 CFR 258.40(b) and forms a composite liner using a geomembrane. A geomembrane is a polymeric material that cannot be penetrated by liquid as long as it maintains its integrity. The bentonite used in the GCL is an extremely absorbent, granular clay formed from volcanic ash. It rapidly hydrates when exposed to liquid, such as water or leachate. As the bentonite hydrates, it swells, providing a strong barrier layer. Hydration of the bentonite is critical. Laboratory tests demonstrate that dry, unconfined bentonite's permeability is only approximately 1×10^{-6} cm/sec. When saturated, the permeability of the GCL used at the Landfill is less than 5×10^{-9}. The GCL approved for the Landfill is therefore less permeable than the prescriptive liner, provided that the bentonite is well hydrated when it is installed. While the GCL is thinner than a compacted soil liner at this level of permeability, the alternative liner design ensures that the performance standards are met. In addition to its low permeability, the GCL has many advantages over the composite liner. The GCL is rolled out like carpet and is quick and easy to install. It is cost effective, particularly in areas where clay is not available. Because bentonite swells readily when hydrated, it can repair itself if rips or holes occur. It is also more resistant to cracking than compacted clay. The GCL is thin, yet strong. It allows the Landfill to maximize its capacity while continuing to protect ground water, but can also absorb a large amount of stress without losing structural integrity.

The Salt River Pima-Maricopa Indian Community submitted site-specific demonstration to the US EPA Solid Waste Program, showing that its alternative liner design proposal meets the environmental performance criteria set forth in 40 CFR part 258. 40. EPA staff reviewed the Community's site-specific demonstration to determine if the proposed alternative design meets the environmental performance requirements and does not allow for degredation of the groundwater. EPA's review determined that concentration values for parameters listed in Table 1 of 40 CFR 258.40(a)(1) will not be exceeded in the uppermost aquifer.

EPA's review also determined that groundwater models used in the evaluation were appropriate and appropriately used and that results of the computer modelling presented in the evaluation likely provide a reasonable worst case estimate of the concentration of chemicals in the groundwater.

EPA approves use of the GCL at the Landfill. Based on the information submitted by the Community and as discussed above, EPA determined that the alternative liner meets or exceeds the performance standards set forth in § 258.40(a)(1), (c), and (d).

2. Alternative Daily Cover Material (40 CFR 258.21)

The federal revised criteria requires that MSWLF units must use six inches of earthen material to cover disposed solid waste each day. Section 258.21(b) provides flexibility by allowing use of alternative materials and an alternative thickness if control of disease carrying insects and animals, fires, odours, blowing litter, and scavenging is provided without presenting a threat to human health and the environment.

On June 2, 1997, the Community submitted an application to the EPA requesting approval to use any alternative daily cover material that Arizona has approved for that state. These materials consist of tarps, foams, chipped green waste, drinking water treatment residues, and chipped tires. The Community subsequently restricted their current application to the use of tarps as an alternative daily cover material.

The federal revised criteria does not specifically include a procedure for EPA's tentative determination. However, EPA relied on the requirements set forth in § 258.21 as a guideline for analyzing the Community's application. The Community proposes to use the Tarpomatic tarping operation, consisting of a polypropylene tarp rolled over the landfill material at the end of each business day and retrieved at the beginning of the next business day. The Tarpomatic is a polypropylene tarp that is automatically deployed and retrieved by machine. It is fast, easy, and eliminates direct employee contact with waste. Field tests and industry usage show that tarps meet the requirements of § 258.21. In addition, use of the tarping system rather than earthen material extends the life of the landfill, reduces labor in covering the waste, and saves landfill space. However, tarps cannot be used during wind storms as the winds will pick up the tarp and the landfill will not remain covered.

EPA approves use of a tarp at the Landfill. Based on the information submitted by the Community and as discussed above, the proposed alternative daily cover meets or exceeds the performance standards set forth in § 258.21(b).

Authority: This notice is issued under the authority of sections 2002, 4004, 4005, and 4010 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912, 6944, 6945, and 6949a. The Regional Administrator is making this decision in accordance with EPA Delegations Manual No. 8–47 (October 8, 1993).

EPA approves the applications by the Salt River Pima-Maricopa Indian Community to use an alternative liner system design and an alternative daily cover material for the Salt River Municipal Solid Waste Landfill.

Dated: November 20, 1998.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 98–32579 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–844; FRL 6043–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–844, must be received on or before January 11, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Daniel Kenny	Rm. 227, CM #2, 703–305–7546; e-mail: kenny.daniel@epamail.epa.gov.	1921 Jefferson Davis Hwy., Arlington, VA
Cynthia Giles-Parker	Rm. 247, CM #2, 703–305–7740; e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number PF–844 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number PF–844 and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 25, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim with minor, non-substantive editorial changes. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Industry Task Force II

PP 4E3060

EPA has received a pesticide petition (PP) 4E3060 from Industry Task Force II, on 2,4-D Research Data, McKenna & Cuneo, 1900 K St., NW., Washington, DC 20006–1108, proposing pursuant to section 408(d) of the (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending for 3 years, until December 31, 2001, the existing time-limited tolerance for residues of 2,4-dichlorophenoxyacetic acid (2,4-D) in or on the raw agricultural commodity soybeans at 0.02 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant and animal metabolism*. The nature of the residue in plants is adequately understood. Acceptable wheat, lemon, and potato metabolism studies have been submitted. The nature of the residue in animals is adequately understood based upon acceptable ruminant and poultry metabolism studies submitted.

2. *Analytical method*. The residue field tests on soybeans used as gas chromatography (GC) method with electron capture detection (ECD), EN-CAS Method ENC–2/93. This GC/ECD method is adequate for determining residues in or on soybeans with a limit of quantitation (LOQ) of 0.01 ppm.

3. *Magnitude of residues*. In 27 tests on soybeans conducted in Arkansas, Illinois, Louisiana, Missouri, and Tennessee, residues of 2,4-D were non-detectable (< 0.01 ppm) in/on all samples of forage and seeds from soybeans treated with a preplant application of 2,4-D (acid, ester, or amine) at 0.5, 1.25, and 2.75 lb active ingredient per acre at lx, 2.5x, and 5.5x rates. Residues of 2,4-D were also non-detectable (< 0.01 ppm) in/on 21 of 27 hay samples from the same tests. Hay samples with detectable residues of 0.01–0.04 ppm only came from 2.5x and 5.5x applications of the 2,4-D 2-ethylhexyl ester (2-EHE). Since the label restriction against feeding/grazing, soybean forage and hay is not proposed for deletion at this time, no tolerances are necessary for these feed items. Since data from the 5.5x application demonstrate that 2,4-D residues on soybean seeds are non-detectable or (<0.05 ppm), a soybean processing study is not required. Based on the residue data for seeds from soybeans, a tolerance of 0.02 ppm in or on the raw agricultural commodity soybeans is more appropriate than the current time-limited tolerance of 0.1 ppm.

B. Toxicological Profile

1. *Acute toxicity*. The oral LD_{50} of 2,4-D acid is 699 milligram/kilogram (mg/kg) in the rat. The dermal LD_{50} in the rabbit is > 2,000 mg/kg. The acute inhalation LC_{50} in the rat is > 1.8 mg/liter. A primary eye irritation study in the rabbit showed severe irritation. A dermal irritation study in the rabbit showed moderate irritation. A dermal sensitization study in the guinea pig showed no skin sensitization. An acute neurotoxicity study in the rat produced a no observed adverse effect (NOAEL) of 227 mg/kg for systemic toxicity and a neurobehavioral NOAEL of 67 mg/kg with a lowest observed effect level (LOEL) of 227 mg/kg.

2. *Genotoxicity*. Mutagenicity studies including gene mutation, chromosomal aberrations, and direct DNA damage tests were negative for mutagenic effects.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study was conducted in rats with NOAELs for parental and developmental toxicity of 5 mg/kg/day. The LOELs for this study are established at 20 mg/kg/day based on reductions in body weight gain in F_0 and F_{2b} pups, and reduction in pup weight at birth and during lactation. A teratology study in rabbits given gavage doses at 0, 10, 30, and 90 mg/kg on days 6 through 18 of gestation was negative for developmental toxicity at all doses tested. A teratology study in rats given gavage doses at 0, 8, 25, and 75 mg/kg on days 6 through 15 of gestation was negative for developmental toxicity at all doses tested. A NOAEL for fetotoxicity was established at 25 mg/kg/day based on delayed ossification at the 75 mg/kg dose level. The effects on pups occurred in the presence of parental toxicity.

4. *Subchronic toxicity.* A subchronic dietary study was conducted with mice fed diets containing 0, 1, 15, 100, and 300 mg/kg/day with a NOAEL of 15 mg/kg/day. The LOEL was established at 100 mg/kg/day based on decreased glucose and thyroxine levels, increases in absolute and relative kidney weights, and histopathological lesions in the liver and kidneys. A 90–day dietary study in rats fed diets containing 0, 1, 15, 100, or 300 mg/kg/day resulted in a NOAEL of 15 mg/kg/day and an LOEL of 100 mg/kg/day. The LOEL was based on decreases in body weight and food consumption, alteration in clinical pathology, changes in organ weights, and histopathological lesions in the kidney, liver, and adrenal glands of both sexes of rats. A 90–day feeding study was conducted in dogs fed diets containing 0, 0.3, 1, 3, and 10 mg/kg/day with a NOAEL of 1 mg/kg/day. The LOEL was established at 3 mg/kg/day based on histopathological changes in the kidneys of male dogs.

5. *Chronic toxicity.* A 1–year dietary study was conducted in the dog using doses of 0, 1, 5, and 7.5 mg/kg/day. The NOAEL was 1 mg/kg/day and the LOEL was 5 mg/kg/day based on clinical chemistry changes and histopathological lesions in the liver and kidney. A 2–year feeding/carcinogenicity study was conducted in mice fed diets containing 0, 1, 15, and 45 mg/kg/day with a NOAEL of 1 mg/kg/day. The systemic LOEL was established at 15 mg/kg/day based on increased kidney and adrenal weights and homogeneity of renal tubular epithelium due to cytoplasmic vacuoles. No carcinogenic effects were observed under the conditions of the study at any dosage level tested. A second 2–year oncogenicity study was conducted in mice fed diets containing 0, 5, 62.5, and 125 mg/kg/day (males) and 0, 5, 150, and 300 mg/kg/day (females). No treatment-related oncogenicity was observed. A 2–year feeding/carcinogenicity study was conducted in rats fed diets containing 0, 1, 15, and 45 mg/kg/day with a NOAEL of 1 mg/kg/day. Although there appeared to be a slight treatment-related incidence of benign brain tumors (astrocytomas) in male rats fed diets containing 45 mg/kg/day, two different statistical evaluations found no strong statistical evidence of carcinogenicity in male rats. There were no carcinogenic effects observed in female rats. A second 2–year feeding/carcinogenicity study was conducted in rats fed diets containing 0, 5, 75, and 150 mg/kg/day. The NOAEL was 5 mg/kg/day and the LOEL was 75 mg/kg/day based on decreased body weight, body weight gain and food consumption; clinical chemistry changes; organ weight changes and histopathological lesions. No treatment-related carcinogenic effects or increased incidences of astrocytomas were observed.

6. *Animal metabolism.* The metabolism of phenyl ring labeled ^{14}C-2,4-D was studied in the rat following a single intravenous or oral dose of approximately 1 mg/kg/day. At 48 hours after treatment, recovery of radioactivity in urine was in excess of 98%. Parent 2,4-D was the major metabolite (72.9% to 90.5%) found in the urine.

7. *Metabolite toxicology.* Because 2,4-D is rapidly excreted without significant metabolism, the toxicology data on the parent compound adequately represents metabolite toxicology.

8. *Endocrine disruption.* Although tests explicitly designed to evaluate the potential endocrine effects of 2,4-D have not been conducted, a large and diverse battery of toxicology studies is available including acute, subchronic, chronic, reproductive and developmental toxicity tests. The results of these studies do not provide a pattern of effects suggestive of endocrine modulated toxicity.

C. Aggregate Exposure

1. *Dietary exposure.* Residues are below the limit of quantification (LOQ = 0.01 ppm) in soybeans. Tolerances have been established (40 CFR 180.142) for residues of 2,4-D as the acid or various of its salts and esters, in or on a variety of raw agricultural commodities. In addition, there are also tolerances for 2,4-D for meat, milk, and eggs.

2. *Drinking water.* 2,4-D is soluble in water. The average field half-life is 10 days. The chemical is potentially mobile, but rapid degradation in soil and removal by plant uptake minimizes leaching. A maximum contaminant level (MCL) of 0.07 mg/liter has been established. In addition, the following Health Advisories have been established: for a 10–kg child, a range of 1 mg/liter from 1–day exposure to 0.1 mg/liter for longer-term exposure up to 7 years; for a 70 kg adult, a range of 0.4 mg/liter for longer-term exposure to 0.07 mg/liter for lifetime exposure.

3. *Non-dietary exposure.* 2,4-D is currently registered for use on the following residential non-food sites: ornamental turf, lawns, and grasses, golf course turf, recreational areas, and several other indoor and outdoor uses. 2,4-D is a commonly-used pesticide in non-agricultural settings. No data exist upon which to base calculation of non-dietary exposure of 2,4-D for purposes of inclusion in an aggregate risk assessment. However, there are several characteristics of 2,4-D which suggest the chemical presents a low risk from non-dietary, non-occupational exposure, particularly the chemical's high acute toxicity NOAEL, the short half life in soil, low dermal penetration, and high acute dietary MOE. Further, EPA has concluded that for the purposes of short- and intermediate-term risk, the inhalation route was of no health concern.

D. Cumulative Effects

There are no available data to determine whether 2,4-D has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, 2,4-D does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination

1. *U.S. population.* For chronic dietary exposure, EPA has established the RfD for 2,4-D at 0.01 mg/kg/day. This RfD is based on a 1–year oral toxicity study in dogs with a NOAEL of 1 mg/kg/day and an uncertainty factor of 100. In the most recent final rule establishing tolerances for 2,4-D (time-limited tolerance in wild rice associated with EPA's granting of an emergency exemption under section 18 of the FIFRA (62 FR 46900; September 5, 1997), EPA calculated aggregate risks for the existing uses of 2,4-D at that time (including soybeans and all other existing uses). Since those uses have not changed in the interim, it is appropriate to utilize the same calculations to

support removal of the expiration date for tolerances in or on soybeans. Using anticipated residue contributions for existing uses and the high-end residue value of 57.1 mg/liter in drinking water, the aggregate exposure to 2,4-D from food and water utilizes 47% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

For acute dietary exposure, the NOAEL of 67 mg/kg/day from the rat acute neurotoxicity study should be used for risk assessment. As neurotoxicity is the effect of concern, the acute dietary risk assessment should evaluate acute dietary risk to all population subgroups. Again, relying upon the EPA calculations underlying the most recent final rule establishing tolerances for 2,4-D cited above, which included soybeans and all other existing uses, EPA calculated acute aggregate risk taking into account MOEs from food and MOEs from water. For the U.S. population, the MOE for food is 223, the MOE for water is 42,000, and together the aggregate MOE is 222. This figure does not exceed EPA's level of concern for acute dietary exposure.

Regarding dietary cancer risk assessment, EPA's Cancer Peer Review Committee has classified 2,4-D as a Group D chemical "not classifiable as to human carcinogenicity" on the basis that, "the evidence is inadequate and cannot be interpreted as showing either the presence or absence of a carcinogenic effect."

2. *Infants and children.* The database on 2,4-D relative to pre-and post-natal toxicity is complete with respect to current data requirements. Since the developmental NOAELs for rats and rabbits are 25-fold greater and 90-fold greater, respectively, than the RfD NOAEL of 1 mg/kg/day in the 1–year oral toxicity study in dogs, an additional uncertainty factor to protect infants and children is not warranted.

Using conservative EPA calculations underlying the most recent final rule establishing tolerances for 2,4-D cited above, which included soybeans and all other existing uses, aggregate acute MOEs for exposure to 2,4-D from food and water are 111 for infants less than 1 year old, 147 for children 1–6 years old, and 556 for females 13 and older.

Also using these same conservative assumptions to estimate chronic risk to aggregate chronic exposure to 2,4-D from food and water, 87% of the RfD is utilized for nursing infants, 115% for non-nursing infants, 114% for children 1–6 years old, and 100% for children 7–12 years old.

Further refinement using additional anticipated residue values in crops and percent crop-treated information, and well water monitoring data would result in lower chronic dietary (food) and chronic dietary (water) exposure estimates, thus reducing the aggregate risk estimate.

F. International Tolerances

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for use of 2,4-D on soybeans. FAO review in September 1998 has preliminarily proposed an MRL of 0.01 mg/kg for soybeans. (Dan Kenny)

2. Zeneca Ag Products

PP 8F4995

EPA has received a pesticide petition (PP 8F4995) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing permanent tolerances for residues of azoxystrobin (methyl (*E*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and the Z isomer of azoxystrobin (methyl (*Z*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) in or on the raw agricultural commodities bananas at 2.0 parts per million (ppm), canola at 1.0 ppm, potatoes at 0.03 ppm, stone fruit at 1.5 ppm, and wheat aspirated grain fractions at 15.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of azoxystrobin as well as the nature of the residues is adequately understood for purposes of the tolerances. Plant metabolism has been evaluated in three diverse crops, grapes, wheat and peanuts, which should serve to define the similar metabolism of azoxystrobin in a wide range of crops. Parent azoxystrobin is the major component found in crops. Azoxystrobin does not accumulate in crop seeds or fruits. Metabolism of azoxystrobin in plants is complex, with more than 15 metabolites identified. These metabolites are present at low levels, typically much less than 5% of the total recoverable residue (TRR).

2. *Analytical method.* An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The Analytical Chemistry Section of the EPA concluded that the method(s) are adequate for enforcement. Analytical methods are also available for analyzing meat, milk, poultry and eggs which also underwent successful independent laboratory validations.

3. *Magnitude of residues.* Six banana trials were carried out in Central America (Mexico - 2, Guatemala - 2, and Costa Rica - 2) during 1998 in typical commercial banana growing areas in each designated country. Maximum residues of 1.15 ppm in whole bananas resulted from post-harvest treatments. Residue trials on canola were conducted in Canada and the United States in 1996 and 1997 in 12 locations. Maximum residues of 0.8 ppm in canola resulted from multiple foliar applications. No concentration of residues was observed in processing the canola to oil. Sixteen potato trials were carried out in the United States in 1997. Maximum resides of 0.03 ppm in potatoes resulted from multiple foliar applications. No concentration of residues was observed on processing of the potatoes. Over 27 trials were carried out on stone fruits (cherries, peaches and plums) in 1997. Maximum residues of 1.5 ppm on peaches resulted from multiple foliar applications. No concentration of residues were observed in processing of plums to prunes.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral toxicity study in rats of technical azoxystrobin resulted in an LD_{50} of >5,000 milligrams/kilogram (mg/kg) (limit test) for both males and females. The acute dermal toxicity study in rats of technical azoxystrobin resulted in an LD_{50} of >2,000 mg/kg (limit dose). The acute inhalation study of technical azoxystrobin in rats resulted in an LC_{50} of 0.962 milligrams/liter in males and 0.698 milligrams/liter in females. In an acute oral neurotoxicity study in rats dosed once by gavage with 0, 200, 600, or 2,000 mg/kg azoxystrobin, the systemic toxicity no observed adverse effect level (NOAEL) was <200 mg/kg and the systemic toxicity NOAEL was 200 mg/kg, based on the occurrence of transient diarrhea in both sexes. There

was no indication of neurotoxicity at the doses tested.

2. *Genotoxicity.* Azoxystrobin was negative for mutagenicity in the *salmonella/mammalian* activation gene mutation assay, the mouse micronucleus test, and the unscheduled DNA synthesis in rat hepatocytes/ mammalian cells (*in vivo/in vitro* procedure) study. In the forward mutation study using L5178 mouse lymphoma cells in culture, azoxystrobin tested positive for forward gene mutation at the TK locus. In the *in vitro* human lymphocytes cytogenetics assay of azoxystrobin, there was evidence of a concentration related induction of chromosomal aberrations over background in the presence of moderate to severe cytotoxicity.

3. *Reproductive and developmental toxicity.* In a prenatal development study in rats gavaged with azoxystrobin at dose levels of 0, 25, 100, or 300 mg/ kg/day during days 7–16 of gestation, lethality at the highest dose caused the discontinuation of dosing at that level. The developmental NOAEL was greater than or equal to 100 mg/kg/day and the developmental lowest observed adverse effect level (LOAEL) was >100 mg/kg/ day because no significant adverse developmental effects were observed. In this same study, the maternal NOAEL was not established; the maternal LOAEL was 25 mg/kg/day, based on increased salivation.

In a prenatal developmental study in rabbits gavaged with 0, 50, 150, or 500 mg/kg/day during days 8–20 of gestation, the developmental NOAEL was 500 mg/kg/day and the developmental LOAEL was >500 mg/kg/ day because no treatment-related adverse effects on development were seen. The maternal NOAEL was 150 mg/ kg/day and the maternal LOAEL was 500 mg/kg/day, based on decreased body weight gain.

In a 2-generation reproduction study, rats were fed 0, 60, 300, or 1,500 ppm of azoxystrobin. The reproductive NOAEL was 32.2 mg/kg/day. The reproductive LOAEL was 165.4 mg/kg/ day; reproductive toxicity was demonstrated as treatment-related reductions in adjusted pup body weights as observed in the F_{1a} and F_2 pups dosed at 1,500 ppm (165.4 mg/kg/ day).

4. *Subchronic toxicity.* In a 90–day rat feeding study the NOAEL was 20.4 mg/ kg/day for males and females. The LOAEL was 211.0 mg/kg/day based on decreased weight gain in both sexes, clinical observations of distended abdomens and reduced body size, and clinical pathology findings attributable to reduced nutritional status.

In a subchronic toxicity study in which azoxystrobin was administered to dogs by capsule for 92 or 93 days, the NOAEL for both males and females was 50 mg/kg/day. The LOAEL was 250 mg/ kg/day, based on treatment-related clinical observations and clinical chemistry alterations at this dose.

In a 21–day repeated-dose dermal rat study using azoxystrobin, the NOAEL for both males and females was greater than or equal to 1,000 mg/kg/day (the highest dosing regimen); a LOAEL was therefore not determined.

5. *Chronic toxicity.* In a 2–year feeding study in rats fed diets containing 0, 60, 300, and 750/1,500 ppm (males/females), the systemic toxicity NOAEL was 18.2 mg/kg/day for males and 22.3 mg/kg/day for females. The systemic toxicity LOAEL for males was 34 mg/kg/day, based on reduced body weights, food consumption, and food efficiency; and bile duct lesions. The systemic toxicity LOAEL for females was 117.1 mg/kg/day, based on reduced body weights. There was no evidence of carcinogenic activity in this study.

In a 1–year feeding study in dogs to which azoxystrobin was fed by capsule at doses of 0, 3, 25, or 200 mg/kg/day, the NOAEL for both males and females was 25 mg/kg/day and the LOAEL was 200 mg/kg/day for both sexes, based on clinical observations, clinical chemistry changes, and liver weight increases that were observed in both sexes.

In a 2–year carcinogenicity feeding study in mice using dosing concentrations of 0, 50, 300, or 2,000 ppm, the systemic toxicity NOAEL was 37.5 mg/kg/day for both males and females. The systemic toxicity LOAEL was 272.4 mg/kg/day for both sexes, based on reduced body weights in both at this dose. There was no evidence of carcinogenicity at the dose levels tested.

According to the new proposed guidelines for Carcinogen Risk Assessment (April, 1996), the appropriate descriptor for human carcinogenic potential of azoxystrobin is therefore "Not Likely." The appropriate subdescriptor is "has been evaluated in at least two well conducted studies in two appropriate species without demonstrating carcinogenic effects."

6. *Animal metabolism.* In this study, azoxystrobin, unlabeled or with a pyrimidinyl, phenylacrylate, or cyanophenyl label, was administered to rats by gavage as a single or 14–day repeated doses. Less than 0.5% of the administered dose was detected in the tissues and carcass up to 7–days post-dosing and most of it was in excretion-related organs. There was no evidence of potential for bioaccumulation. The primary route of excretion was via the feces, though 9 to 18% was detected in the urine of the various dose groups. Absorbed azoxystrobin appeared to be extensively metabolized. A metabolic pathway was proposed showing hydrolysis and subsequent glucuronide conjugation as the major biotransformation process.

7. *Endocrine disruption.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry, and research scientists, to develop a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3–years from the passage of the Food Quality Protection Act (FQPA) (until August 3, 1999) to implement this program. When this program is implemented, EPA may require further testing of azoxystrobin and end-use product formulations for endocrine disrupter effects. There are currently no data or information suggesting azoxystrobin has any endocrine effects.

C. Aggregate Exposure

1. *Food.* Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm on pecans to 1.0 ppm on grapes. In addition, time-limited tolerances have been established (40 CFR 180.507(b)) at levels ranging from 0.006 ppm in milk to 20 ppm in rice hulls. The following risk assessments have been conducted to assess dietary exposure and risks from azoxystrobin as follows:

i. *Acute exposure and risk.* The Agency has concluded that there is no toxicological end-point of concern from the review of available data for this scenario. Therefore an acute dietary risk assessment is not necessary.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment Zeneca has made the conservative assumption that 100% of all commodities having azoxystrobin tolerances or proposed tolerances will contain azoxystrobin residues at the level of the tolerance. This assumption is termed the Theoretical Maximum Residue Concentration (TMRC). Zeneca's chronic dietary exposure analysis was performed (for combined years 1989 – 1992 of the U. S. Department of Agriculture's Nationwide Food Consumption Survey) using the Novigen DEEM89N Software.

Population Sub-Group	TMRC (mg/kg/day)	% RfD
U.S. population (48 States)	0.0027	1.8
All infants (<1 year)	0.0087	5.8
Nursing infants (<1 year old)	0.0025	1.7
Non-nursing infants (<1 year old)	0.0113	7.6
Children (1–6 years old)	0.0065	4.3
Children (7–12 years old)	0.0036	2.4
Hispanics	0.0036	2.4
Non-Hispanics Others	0.0047	3.1
U.S. Population (summer season)	0.0032	2.1
Northeast region	0.0031	2.0
Western	0.0030	2.0
Pacific	0.0033	2.2
Females (13–19, non-pregnant or nursing)	0.0020	1.3
Females (13+/nursing)	0.0031	2.0

The subgroups listed above are those for infants and children, females 13–19 not pregnant or nursing and other subgroups for which the percentage of the Reference Dose (RfD) occupied is greater than that occupied by the U.S. population (48 States).

2. *Drinking water.* There is no established Maximum Concentration Level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established.

i. *Acute exposure and risk.* An assessment is not appropriate since no toxicological end-point of concern was identified by the Agency for this scenario during review of the available data.

ii. *Chronic exposure and risk.* Based on the chronic dietary (food) exposure estimated, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and summarized in the following table. EPA has estimated that the highest estimated environmental concentration (EEC) of azoxystrobin in surface water is from the application of azoxystrobin on grapes (39µg/L) and is substantially lower than the DWLOC's calculated.

Sub-group	RfD (mg/kg/day)	TMRC (Food) (mg/kg/day)	Max Water Exposure (mg/kg/day)	DWLOC (µg/L)
U.S. Population	0.18	0.0027	0.177	6195
Females (13+ not pregnant or nursing)	0.18	0.0020	0.178	5300
Non-nursing infants (<1 year old)	0.18	0.0113	0.169	1690

iii. *Non-dietary exposure.* The Agency evaluated the existing toxicological database for azoxystrobin and assessed appropriate toxicological end-points and dose levels of concern that should be assessed for risk assessment purposes. Dermal absorption data indicate that absorption is less than or equal to 4%. No appropriate end-points were identified for acute dietary or short term, intermediate term, and chronic term (noncancer) dermal and inhalation occupational exposure. Therefore, risk assessments are not required for these exposure scenarios. Azoxystrobin is currently registered for use on residential non-food sites, only on turf.

D. Cumulative Effects

Azoxystrobin is related to the naturally occurring strobilurins. One other strobilurin-type pesticide has recently been registered with the EPA. Zeneca has concluded that further consideration of a common mechanism of toxicity is not appropriate at this time since there are no data to establish whether a common mechanism exists with any other substance.

E. Safety Determination

1. *Acute risk.* This safety determination is not applicable since no toxicological end-point of concern was identified for this scenario during Agency review of the available data.

2. *Chronic risk.* The RfD for azoxystrobin is 0.18 mg/kg/day, based on the NOAEL of 18.2 mg/kg/day from the rat chronic toxicity/carcinogenicity feeding study in which decreased body weight and bile duct lesions were observed in male rats at the LOAEL of 34 mg/kg/day. This NOAEL was divided by an uncertainty factor of 100, to allow for interspecies sensitivity and intraspecies variability.

The chronic dietary exposure analysis showed that exposure from the proposed new tolerances in or on bananas, canola, potatoes, stone fruit, and wheat aspirated grain fractions for non-nursing infants (the subgroup with the highest exposure) would be 7.6% of the RfD. The exposure for the general U.S. population would be 1.8% of the RfD.

3. *Short- and intermediate-term risk.* This risk assessment has not previously been performed since no dermal or systemic effects were seen in the repeated dose dermal study at the limit dose. Also, the only indoor or outdoor residential exposure use currently registered for azoxystrobin is residential turf.

F. Additional Safety Factor for Infants and Children

Federal Food, Drug, and Cosmetic Act (FFDCA) section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOAEL in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/MOE is designed to account for combined inter- and intra-species variability. EPA believes that reliable data support using the standard hundredfold margin/factor but not the additional tenfold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor.

The Agency ad hoc FQPA Safety Factor Committee removed the additional 10x safety factor to account for sensitivity of infants and children.

Zeneca has considered the potential aggregate exposure from food, water and non-occupational exposure routes and concludes that aggregate exposure is not expected to exceed 100% of the RfD and that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to azoxystrobin residues.

G. International Tolerances

There are no Codex Maximum Residue Levels established for azoxystrobin. (Cynthia Giles-Parker)

[FR Doc. 98–32884 Filed 12–11–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6200–2]

Proposed CERCLA Administrative Cost Recovery Partial Settlement, Leavenworth Auto Parts Site, Leavenworth, Kansas

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement with the following parties, and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), notice is hereby given of a proposed Superfund administrative cost recovery settlement between EPA and Jack and Bess Sokolov and Leavenworth Auto Parts and Supply Co., Inc. The proposed settlement, pursuant to CERCLA section 122(h), would recover a portion of the federal government's past response costs at the Leavenworth Auto Parts Site, 777 Cherokee St., Leavenworth, Kansas. Mr. and Mrs. Sokolov would pay to the Hazardous Substance Superfund $100,000 plus 65% of gross revenues from any sale or rental of the property. Leavenworth Auto Parts and Supply Co., Inc. would pay $5,000. The settlement provides a covenant not to sue to the settling parties.

The Agency will receive written comments relating to the settlement until January 11, 1999. The agency will consider all comments received during this period, and may modify or withdraw its consent to the settlement if comments disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Region VII office at 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Hearing Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7630. Comments should reference the "Leavenworth Auto Parts Site Ability-to-Pay Settlement" and EPA Docket No. VII–95–F–0029 and should be addressed to Ms. Cobbs at the above address.

FOR FURTHER INFORMATION CONTACT: Jonathan Kahn, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7252.

Dated: December 2, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–32893 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Emergency Management Institute Resident Course Evaluation Form.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0237.

Abstract: Students attending the Emergency Management Institute residential program courses at FEMA's National Emergency Training Center will be asked to complete a course evaluation form. EMI staff will use the information and management to identify problems with course materials, evaluate the quality of the course delivery, facilities, and instructors. The data received will enable them to recommend changes in course materials, student selection criteria, training experience and classroom environment.

Affected Public: State, Local or Tribal Government, Individuals or Households, and Federal Government.

Number of Respondents: 4,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 667.

Frequency of Response: The form is completed at the end of each course.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: December 8, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–32971 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–01–P

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1258–DR), dated November 5, 1998, and related determinations.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 1998:

Johnson, Leavenworth, Marion, and Wyandotte Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers CCFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants, 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32975 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1258–DR), dated November 5, 1998, and related determinations.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 1998:

Chase, Coffey, Franklin, Harvey, Lyon, and Marion Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers CCFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32976 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1247–DR]

Commonwealth of Puerto Rico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–1247–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 20, 1998, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

> I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from Hurricane Georges on September 20, 1998, through and including October 27, 1998, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act") for the Public Assistance program.
>
> Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs. This 90 percent reimbursement applies to all eligible Public Assistance costs.
>
> This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for Individual and Family Grant and Hazard Mitigation programs. These funds will continue to be reimbursed at 75 percent of total eligible costs.
>
> Please notify the Governor of the Commonwealth of Puerto Rico and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 98–32972 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1247–DR]

Puerto Rico; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico, (FEMA–1247–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: In a letter dated November 20, 1998, the President amended his initial declaration letter to reflect the incident period for this disaster as September 20, 1998, through and including October 27, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32973 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

San Patricio County for Public Assistance (already designated Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32974 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011624–002
Title: Lykes/MLL Space Charter Agreement
Parties:
Mexican Line Limited ("MLL")
Lykes Lines Limited, LLC ("Lykes")
Synopsis: The proposed amendment would add United States North Atlantic ports to the geographic scope of the Agreement and outline the amount of space Lykes will make available to MLL under the Agreement. The amendment would also permit MLL to make available to Lykes space MLL has access to in other space chartering agreements under which MLL serves North Atlantic ports.

Agreement No.: 224–201006–001
Title: Ceres Gulf, Inc./Port of New Orleans Lease
Parties:
Ceres Gulf, Inc.
The Board of Commissioners of the Port of New Orleans
Synopsis: The proposed amendment revises the leased premises under the basic lease and the schedule of rental rates applied to the number of loaded containers moved through the leased premises.

Agreement No.: 224–201065
Title: New Orleans Marine Contractors, Inc./Port of New Orleans Lease
Parties:
New Orleans Marine Contractors, Inc.
The Board of Commissioners of the Port of New Orleans
Synopsis: Under the proposed agreement, the port will lease certain premises to the lessee for an initial period of three years.

Agreement No.: 224–201066
Title: Maritrend, Inc./Port of New Orleans Lease
Parties:
Maritrend, Inc.
The Board of Commissioners of the Port of New Orleans
Synopsis: Under the proposed agreement, the port will lease certain premises to the lessee for an initial period of one year.

By Order of the Federal Maritime Commission.

Dated: December 8, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32984 Filed 12–10–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

LICENSE NUMBER: 2264
NAME: Elizabeth Ann Lumpkin and Jimmy Franklin Lumpkin, Partners, d/b/a J.F. Lumpkin, CHB
ADDRESS: 190 Lime Quarry Road, Suite 110, Madison, AL 35758
DATE REVOKED: October 22, 1998
REASON: Failed to maintain a valid surety bond

LICENSE NUMBER: 1877
NAME: John F. Mahoney d/b/a Mahoney Export Services
ADDRESS: 400 Valley Drive, Brisbane, CA 94005
DATE REVOKED: October 30, 1998
REASON: Failed to maintain a valid surety bond

LICENSE NUMBER: 4017
NAME: William J. Siemens, III
ADDRESS: 2209 Tilden Way, Bakersfield, CA 93309
DATE REVOKED: October 29, 1998
REASON: Surrendered license voluntarily

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 98–32909 Filed 12–10–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

World Shipping America Inc., 333 Sylvan Avenue, Suite 209, Englewood Cliffs, NJ 07632, Officers: Kun Zhang, President, Joseph Chin Aleong, Vice President.

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Drake International, Inc., 1590 Phoenix Blvd., Suite 260, College Park, GA 30349–5462, Officer: Augustine E. Clarke, III, President.

Dated: December 8, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32985 Filed 12–10–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, December 16, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Proposed 1999 Federal Reserve Bank budgets.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 9, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33031 Filed 12–2–98; 12:30 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: Approximately 10:30 a.m., Wednesday, December 16, 1998, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 9, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33032 Filed 12–9–98; 12:30 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–4002–GNC]

RIN 0938–AJ15

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance: Millennium Compliance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice with comment period.

SUMMARY: This notice revises the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program. This revision establishes a performance standard requiring these contractors to meet requirements for millennium compliance. We require contractors to certify that they have made all necessary system(s) changes and have tested those systems in accordance with HCFA guidelines.

DATES: *Effective date:* This notice is effective December 11, 1998.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 9, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration,
Department of Health and Human Services, Attention: HCFA–4002–GNC, P.O. Box 31850, Baltimore, MD 21207–8850

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or
Room C5–09–26, 7500 Security Blvd, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA4002GNC@hcfa.gov. E-mail comments must include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–4002–GNC–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: Sue Lathroum, (410) 786–7409; Rich Morrison, (410) 786–7142.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1816 of the Social Security Act (the Act) authorizes us to enter into agreements with fiscal intermediaries to determine whether medical services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the health care providers on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement.

Section 1842 of the Act authorizes us to enter into contracts with carriers for the payment of Part B claims for Medicare-covered services. Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. We refer to these fiscal intermediaries and carriers as Medicare "contractors".

On September 7, 1994, we published in the **Federal Register** (59 FR 46258) the criteria and standards to be used to evaluate the performance of our contractors under their agreements or contracts with us.

The criteria and standards we published help us determine if a contractor's performance measures up to the expectations that we have for the activities being evaluated to ensure that our beneficiaries and providers are being properly served. We announced that we would use the results of the performance evaluations in our contract management activities, which might result in the initiation of administrative actions. These actions could include entering into, renewing/extending, or terminating contracts or contract amendments with our contractors. We also announced that we would consider revising the criteria and standards if changes were required as a result of administrative mandate or congressional action. If changes are necessary, we are required to issue a **Federal Register** notice before implementing a change.

II. Provisions of This Notice

With the approach of the year 2000, we have been focusing on our readiness to move into the next century and taking all appropriate steps to ensure that Medicare claims are processed without interruption. Millennium compliance of all claims processing and related systems is our highest priority. We believe it is appropriate to add a requirement to our contracts and agreements with our Medicare contractors to ensure that all Medicare contractors are making the commitment and taking necessary action to meet our requirements in that regard. In addition, we are requiring each contractor to certify, under the normal penalties that apply to false certifications, that it has made all necessary systems changes and has tested its systems in accordance with the guidelines we have established. The normal penalties for false certification include criminal and/or civil prosecution as well as appropriate administrative action, not limited to suspension of the contractor from the Medicare program, as well as the termination or nonrenewal of a contract or agreement.

Listed below are the revisions to the "Administrative Activities" criterion and section VII. "Action Based on Performance Evaluations" to incorporate the addition of the certification requirements for the contractors' systems changes.

Under the "Administrative Activities" criterion in sections IV and V for fiscal intermediaries and carriers, respectively, the following introductory paragraph is added:

"A contractor must efficiently and effectively manage its operations to ensure constant improvement in the way it does business. Proper systems security, ADP maintenance, and disaster recovery plans must be in place. It must also ensure that all necessary actions and system changes have been made and tested so that it is meeting established milestones along the critical path of HCFA's requirements for millennium compliance." Year 2000 compliant means information technology that accurately processes date and time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the nineteenth, twentieth, and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore, Year 2000 compliant information technology, when used in combination with other information technology, must accurately process date and time data if the other information technology properly exchanges date and time data with it. [adapted from: FAR 39.002 Definitions]

The remaining section of the criterion is unchanged, except for the reference to implementation reviews of "Task management plans". This reference should be to implementation reviews of "Change management plans" to conform with our recent implementation of the "Change management system" for issuing instructions to our contractors.

We are also adding the following requirement to section VII. "Action Based on Performance Evaluations" after the existing requirements:

"A contractor must certify that it has made all necessary systems changes and has tested its systems in accordance with the guidelines HCFA has established."

Authority: Section 1816(f) and 1842(b)(2) of the Social Security Act (42 U.S.C. 1395h and 1395u).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 24, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–32977 Filed 12–10–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C. The purpose of this meeting is to write the Annual Report to the President and to plan the 1999 meeting agenda. Premature disclosure of the specific details of these discussions and recommendations would be likely to significantly frustrate the subsequent implementation of proposed recommendations made by the Panel.

Name of Committee: President's Cancer Panel.

Date: December 7, 1998.

Time: 11:00 am to 5:00 pm

Agenda: Preparation of the 1998 Annual Report to the President and 1999 panel meeting agenda planning.

Place: NOVA Research Company, 4600 East-West Highway, Suite 700, Bethesda, MD 20892.

Contact Person: Maureen O. Wilson, PhD. Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 4, 1998

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32934 Filed 12–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

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amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee A—Cancer Centers.

Date: December 3–4, 1998.

Time: 7:30 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—EPN 643A, Bethesda, MD 20892–7405, 301/496–2330.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32936 Filed 12–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 17–18, 1998.

Time: 8:00 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: December 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32937 Filed 12–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 7, 1998.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, PhD, DDS, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 1:00 pm to 2:45 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7816, Bethesda, MD 20892, (301) 435–0684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anthony C. Chung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 4:00 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Garrett V. Keefer, PhD, Scientific Review Administrator, Center for Scientific Review, national Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 12:00 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–BDCN–1 (06).

Date: December 16, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joe Marwah, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1998.

Time: 10:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1998.

Time: 10:00 a.m. to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1998.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1998.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, ev__sinnettnih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32935 Filed 12–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.C.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of

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applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *ENERGY:* Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6G–058, Washington, DC 20585; (202) 586–0426: *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *NAVY:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: December 4, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/11/98

Suitable/Available Properties

Buildings (by State)

Maryland

Waldorf Housing
Country Lane and Spruce Street
Waldorf Co: Charles, MD
Landholding Agency: GSA
Property Number: 549840012
Status: Excess
Comment: 12 unit townhouse complex = 5 two bedroom, 1 bath; 5 three bedroom, 1 bath; 2 three bedroom, 2 bath; need rehab
GSA Number: 4–N–MD–0546.

Rhode Island

Facility 700
Naval Station
Newport, RI 02841–
Landholding Agency: Navy
Property Number: 779840029
Status: Unutilized
Comment: 6230 sq. ft., most recent use—wastewater treatment plant, off-site use only.

Facility 994
Naval Station
Newport, RI 02841–
Landholding Agency: Navy
Property Number: 779840030
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only.

Facility 449
Naval Station
Newport, RI 02841–
Landholding Agency: Navy
Property Number: 779840031
Status: Unutilized
Comment: 140 sq. ft., most recent use—chlorination shed, off-site use only.

Facility 1324
Naval Station
Newport, RI 02841–
Landholding Agency: Navy
Property Number: 779840032
Status: Unutilized
Comment: 107 sq. ft., most recent use—lift station controls shed, off-site use only.

Virginia

Bldg. SP–70
Naval Air Station
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 779840026
Status: Excess
Comment: 8926 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. SP–71
Naval Air Station
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 779840027
Status: Excess
Comment: 8926 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. U106
Naval Air Station
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 779840028
Status: Excess
Comment: 950 sq. ft., most recent use—repair shop, off-site use only.

Bldg. SC424
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number: 779840033
Status: Excess
Comment: 1323 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. SC425
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840034
Status: Excess
Comment: 696 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. SC426
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840035
Status: Excess
Comment: 1173 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. SC427
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840036
Status: Excess
Comment: 646 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. SC428
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840037
Status: Excess
Comment: 2058 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. SC429
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840038
Status: Excess
Comment: 646 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. SC430
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840039
Status: Excess
Comment: 2058 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. SC431
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840040
Status: Excess
Comment: 782 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. SC100
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840041
Status: Excess
Comment: 3160 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Land (by State)

North Carolina

Greenville Relay Station
Site C
Greenville Co: Pitt, NC
Landholding Agency: GSA
Property Number 549840013
Status: Excess
Comment: 589 acres w/27,830 sq. ft., concrete block bldg., (2 acre chemical waste storage site located on SE portion of property)
GSA Number: 4–GR–NC–0721–B.

Unsuitable Properties

Buildings (by State)

Hawaii

Facility S–721
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840042
Status: Excess
Reason: Secured Area.

Facility S–897
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840043
Status: Excess
Reason: Secured Area.

Facility S–937
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840044
Status: excess
Reason: Secured Area.

Facility 19
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840045
Status: Excess
Reason: Secured Area.

Facility 173
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840046
Status: Excess
Reason: Secured Area.

Ohio

Bldg. 77
Fernald Environmental Management Project
Fernald Co: Hamilton, OH 45013–
Landholding Agency: Energy
Property Number: 419840003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

[FR Doc. 98–32624 Filed 12–10–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the City of Seattle Habitat Conservation Plan, King County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises the public that the City of Seattle has applied to the Fish and Wildlife Service and the National Marine Fisheries Service (together, the Services) for an Incidental Take Permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize the take of the following endangered or threatened species incidental to otherwise lawful management activities in the Cedar River Municipal Watershed and within the Cedar River in King County, Washington: northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), bald eagle (*Haliaeetus leucocephalus*), grizzly bear (*Ursus arctos*), gray wolf (*Canis lupus*), and peregrine falcon (*Falco peregrinus*). The proposed permit also would authorize future incidental take of 77 currently unlisted fish (anadromous and resident) and wildlife species, including the chinook salmon (*Oncorhynchus tshawytscha*) and the Coastal Puget Sound distinct population segment of the bull trout (*Salvelinus confluentus*), which are proposed for listing under the Act, should they become listed in the future. The permit would be in effect for 50 years.

The application includes: (1) the proposed Habitat Conservation Plan (Plan), which fully describes the proposed projects and mitigation, and details a strategy for minimizing and mitigating all anticipated incidental take, as required in Section 10(a)(2)(B) of the Act; and (2) the proposed Implementing Agreement. Activities covered by the requested Permit and addressed by the proposed Plan include: (1) drinking water supply operations; (2) management of land and forest resources (timber and other forest resources); (3) hydroelectric power generation; and, (4) fishery mitigation. The Services also announce the availability of an Environmental Assessment for the Permit application.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations. The Services are furnishing this notice in order to announce the availability of these documents and allow other agencies and the public an opportunity to review and comment upon these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments on the permit application, Environmental Assessment, Plan, and Implementing Agreement must be received from interested parties no later than February 9, 1999.

ADDRESSES: Requests for documents should be made by calling the City of Seattle at (206) 684–4144. Copies are also available for viewing, or partial or complete duplication, at all King County and City of Seattle libraries, and at four University of Washington main campus libraries, including the Fisheries and Oceanography Library, Forest Resources Library, Engineering Library, and at the Federal Publications desk of the Suzzallo Library. Comments should be mailed to Seattle Public Utilities, P.O. Box 21105, Seattle, Washington 98111–3105. Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling (206) 684–4144. Requests for information on the draft Plan should be directed to Jim Erckmann, Project Manager. Requests for information on the draft Environmental Assessment and a draft Environmental Impact Statement, prepared pursuant to the State of Washington's Environmental Policy Act, should be directed to Jim Freeman, Senior Watershed Planner. Both can be contacted at Seattle Public Utilities, 19901 Cedar Falls Road S.E., North Bend, Washington, 98045 (telephone: 206/233–1512; facsimile: 206/233–1527).

FURTHER INFORMATION: Contact Brian Bogaczyk, Project Biologist, Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 102, Lacey, Washington, 98503–1273, (telephone: 360/753–5824; facsimile: 360/534–9331), and Matt Longenbaugh, Project Biologist, National Marine Fisheries Service, 510 Desmond Drive, S.E., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–7761; facsimile: 360/753–9517). The Plan, Implementing Agreement, and the Environmental Assessment are also available for inspection at the above Service offices.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Services, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22; regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

Background

The Cedar River Municipal Watershed (Watershed) is located about 30 miles southeast of the City of Seattle (City), just south of the Interstate 90 corridor. The City has prepared the proposed Plan to comply with the Act and to address a variety of related natural resource issues. The Plan will cover the City's 90,546-acre Watershed and the City's water supply and hydroelectric operations on the Cedar River, which discharges into Lake Washington. The proposed Plan is a set of mitigation and conservation commitments related to ongoing water supply, hydroelectric power supply, fishery mitigation, and watershed management activities.

The draft Plan is based on a decade of studies and the results of over 4 years of analysis and negotiations with five State and Federal agencies as documented in an Agreement in Principle, dated March 14, 1997. The Agreement in Principle addresses not only issues under the Act but also related issues under state law and issues with the U.S. Army Corps of Engineers (Corps). The Corps manages lake levels in Lake Washington, and navigational traffic between Lake Washington and Puget Sound, through operation of the Hiram Chittenden Locks (Ballard Locks) and Lake Washington Ship Canal.

Covered lands in the proposed action include the City-owned lands upon which the Permit would authorize incidental take of covered species. This includes the Watershed, totaling about 90,546 acres. The Cedar River discharges into Lake Washington at the city of Renton. City operations in the municipal watershed influence the Cedar River between the Landsburg Diversion Dam, where the City diverts water for municipal and industrial use, and Lake Washington, which is 21.8 mi in length. The City owns essentially all of the Watershed. Most of the watershed is forested, primarily with conifers.

Proposed covered activities include City operations on the Cedar River in conjunction with its water supply, hydroelectric power generation, land management activities, and fishery mitigation. Water supply and hydroelectric generation activities include management of the reservoir complex, including an overflow dike, which impounds Chester Morse Lake, and the Masonry Dam, which impounds the Masonry Pool to the west of the lake. These activities also include instream flow management for fish for 12.4 mi above and 21.8 mi downstream of the Landsburg Diversion Dam. Covered activities downstream of Landsburg are restricted specifically to the impacts of City operations and facilities on species using those waters and covered by this Plan, and does not apply to the impacts of activities by other public agencies or private parties. In general, covered activities downstream of Landsburg include mitigation, conservation, research, and monitoring activities carried out under the Plan and two related agreements, an Instream Flow Agreement and a Landsburg Mitigation Agreement.

Municipal watershed management activities include forest practices as described in the Washington State Forest Practices Act (RCW 76.09) and Forest Practices Rules and Regulations (WAC 222–08), including timber harvest, thinning, reforestation, and mechanical brush control; construction, repair, reengineering, decommissioning, and maintenance of forest roads, including use of gravel pits and other rock sources, as well as maintenance and replacement of culverts and bridges; and sale of forest products.

Fishery mitigation activities include provision of streamflows for chinook, coho (*Oncorhynchus kisutch*), and sockeye (*Oncorhynchus nerka*) salmon and steelhead trout (*Oncorhynchus mykiss*), and expansion of a pilot hatchery for sockeye salmon; construction of fish passage facilities (both upstream and downstream) for chinook and coho salmon, and steelhead and cutthroat trout (*Oncorhynchus clarki*) at Landsburg Dam; and funding salmon habitat restoration in the lower Cedar River.

Other covered watershed activities include actions to protect and restore watershed habitats, both aquatic and upland; cultural resource management and educational programs within the municipal watershed, including a public tour and field trip program and construction of educational and cultural facilities, such as the planned educational resource center at Cedar Falls; scientific research, both by City staff and outside scientists; and other activities or facilities as identified in the Plan.

The Plan includes habitat-based conservation and mitigation strategies for all species addressed in the Plan, and species-specific conservation and mitigation strategies for the 14 species of greatest concern, which include all currently listed species. The species addressed in the Plan include resident and anadromous salmonid fishes, and a variety of amphibians, birds, mammals, and invertebrates.

The Federal action of issuing an Incidental Take Permit has the potential to affect the human environment. The Services' decision of whether to issue the proposed Permit, is an action subject to review under the National Environmental Policy Act (40 CFR 1506.6). In addition to the National Environmental Policy Act requirements, the City's proposed actions are subject to review under the Washington State Environmental Policy Act. The Services' Environmental Assessment and the City's Environmental Impact Statement are combined into one document. Following public review of the proposed Plan and Environmental Assessment/Environmental Impact Statement, the Services and the City must review any comments received and respond to those comments in writing or in changes to the documents, where appropriate.

The Environmental Assessment/Environmental Impact Statement will analyze the proposed action as well as a full range of reasonable alternatives, and the associated impacts of each. The proposed action contains three components, including: (1) Watershed Management; (2) Anadromous Fish Mitigation; and (3) Instream Flows. Alternatives have been developed through public and internal scoping for each of these three components, and are compared and analyzed in the Environmental Assessment/Environmental Impact Statement.

Watershed management alternatives include: (1) No Action (continue current harvest practices, with 58 percent of the lands in a no-commercial harvest reserve); (2) Proposed Action (including conservation strategies for habitats and wildlife, with 64 percent of the lands in a no-commercial harvest reserve); (3) Long-term Sustainable Thinning Alternative (including conservation strategies for habitats and wildlife, with 64 percent of the lands in a no-commercial harvest reserve); (4) Thinning Alternative with phased out commercial harvest over the 50-year life of the Permit (including conservation strategies for habitats and wildlife, with 68 percent of the lands initially in a no-commercial harvest reserve and increasing over the life of the Permit);

and (5) No Commercial Timber Harvest Alternative (including conservation strategies for habitats and wildlife, with 100 percent of the lands in a no-commercial harvest reserve). Alternatives 3, 4, and 5 include essentially the same conservation strategies for streams, riparian areas, upland habitat, and special habitat areas, as Alternative 2, the Proposed Action.

Anadromous fish mitigation alternatives include: (1) No Action (continued operation of a pilot sockeye salmon hatchery with no guarantee of mitigation for chinook salmon, coho salmon, or steelhead trout); (2) Proposed Action (conservation strategies for chinook salmon, coho salmon, sockeye salmon, and steelhead trout, including upstream and downstream passage facilities, and habitat restoration and protection measures, with expansion of the sockeye hatchery to produce 34 million fry annually); (3) Down-sized Sockeye Hatchery Alternative with savings going towards downstream habitat restoration (with expansion of the sockeye hatchery to produce 17 million fry annually); (4) Deferred Hatchery Construction Alternative contingent on further studies; and (5) All Downstream Habitat Restoration and Protection Alternative (all funding would be used for habitat restoration and protection, and none for sockeye hatchery expansion).

Instream flow alternatives include: (1) No Action (continue current flow management practices); and (2) Proposed Action, with primary features including guaranteed flows and supplemental flows for salmon and steelhead trout spawning and fry outmigration for sockeye salmon in the lower Cedar River; adaptive management of flows for protection of salmon and steelhead redds (egg clusters); funding for improvements at Ballard Locks for juvenile outmigration, establishment of minimum flows necessary for anadromous and resident fish in bypass reach below Masonry Dam; established downramping rates, maintain existing annual municipal water yield; public service announcements promoting water conservation for fish; Lower Cedar River monitoring study of tributary and subsurface inflows; and establishment of a multi-agency commission to advise the City with respect to managing flows for fish.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations, and the Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act and National Environmental Policy Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of listed species. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: December 4, 1998.

Anne Badgley,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–32950 Filed 12–10–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–01; N–56784]

Notice of Realty Action for Proposed Agricultural Lease of Public Lands, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: The conversion of an existing Agricultural Land Use Permit to an Agricultural Lease.

The proposed action is in conformance with the Paradise-Denio Management Framework Plan, dated July 9, 1982.

The public lands proposed for leasing under provisions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920 are described as follows:

Mount Diablo Meridian, Nevada

T. 36 N., R. 34 E.,
  Sec. 20: W½W½, S½SE¼;
  Sec. 28: W½W½, S½SE¼SW¼,
    S½SE¼SE¼;
  Sec. 30: Lot 1, N½N½NE¼,
    N½NE¼NW¼;
  Sec. 32: Lots 2 and 3;
  Sec. 34: W½NW¼.

The proposal would encumber 123± acres of public land.

The public lands affected by the proposed lease are adjacent to Crawford Farms, north of Jungo Road, approximately 25 miles west of Winnemucca, Nevada on the west side of Blue Mountain. The lands are currently under cultivation, so no additional surface disturbance of the area would occur as a result of this lease.

No other proposals will be accepted. The affected parcels are currently being farmed by the applicant. The proposed lease would be issued in order to convert an existing Agricultural Land Use Permit to an Agricultural Lease. The original land use permit was issued to resolve an unintentional trespass, that was discovered when a dependent resurvey of township was completed. Use of the parcels by the applicant has been permitted since 1993. The proposed lease would be in effect until a determination is made by the Bureau of Land Management on whether it is in the public's interests to sell the lands to the applicant for agricultural purposes, or terminate the agricultural use of the public lands. Therefore, no other proposals would be acceptable.

The proposal would be authorized by a lease for a term of 10 years. The lease could be renewed at the discretion of the authorized officer.

Fair annual rental has been determined to be $1,200.00 per year. The rental determination was made, by appraisal completed on October 9, 1998, and approved by the BLM Nevada Chief, State Appraiser on October 15, 1998. The rental will be subject to review and adjustment every five (5) years to reflect the current fair market value.

The United States shall reserve the right to issue compatible rights-of-way or use permits over the leased lands. Such uses, however, shall not unduly impair the use of the lands for authorized purposes nor damage authorized improvements therein. The United States shall also reserve all of the coal, oil, gas, and other mineral deposits in the leased land together with the right to enter upon and prospect for, mine, and remove such minerals. The proposed lease would be issued subject to valid existing rights, easements, and rights-of-way of record.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445. In the absence of adverse comments, an application for the proposed use will be processed in accordance with proper application procedures.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445, or call (702) 623–1500.

Dated: December 2, 1998.

Michael R. Holbert,

Acting Field Manager, Winnemucca, Nevada.

[FR Doc. 98–32917 Filed 12–10–98; 8:45 am]

BILLING CODE 4310–HC–P

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of Information Collection Solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Net Profit Share Leases (OMB Control Number 1010–0073), which expires on May 31, 1999.

FORM: None.

DATES: Written comments should be received on or before February 9, 1999.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information which expires May 31, 1999. We are requesting OMB approval for a three year extension of this existing collection authority. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

To encourage exploration and development of oil and gas leases on submerged lands of the Outer Continental Shelf (OCS), regulations were promulgated at 30 CFR 260.110(4) implementing a net profit share bidding system. The Net Profit Share Lease (NPSL) bidding system was established to properly balance a fair market return to the Federal Government for the lease of its lands, with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development, and provides for a sharing of the risks by the lessee and the Government. The bidding system incorporates a fixed capital recovery system as the means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

The Government does not receive a profit share payment from an NPSL until the lessee shows a credit balance in its capital account; that is, cumulative revenues and other credits exceed cumulative costs. The credit balance is multiplied by the net profit share rate (usually 50%), resulting in the amount of profit share (royalty) due. The lessee is able to recover exploration and development expenses, plus a reasonable return on its investment, prior to payment of any royalty to the Government.

Lessees are required (30 CFR 220.010) to maintain an NPSL capital account and to provide annual and monthly reports using data taken from the capital account (30 CFR 220.031). This collection of information is necessary in order to determine when royalty payments are due, and to determine the proper amount of payment.

The Department of the Interior (DOI) is the department within the Federal Government responsible for matters relevant to mineral resource development on the OCS. The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Minerals Management Service (MMS) performs the royalty management functions for the Secretary.

Under the NPSL bidding system, a notice of OCS lease sale is published in the **Federal Register** with a net profit share rate and a capital recovery factor (CRF) established for each tract within the sale. The CRF allows the lessee to inflate certain allowable costs by multiplying costs by the CRF. This additional allowance results in a type of risk-sharing arrangement with the Government. Tracts within the same sale may have different profit share rates and different CRF's. The last OCS lease sale involving NPSL's was in August 1983.

After entering into a lease agreement, the lessee is required to maintain an NPSL capital account (30 CFR 220.010). The capital account balance represents the cumulative total of all costs and credits received over the life of the lease. Once the account balance reaches zero, or the lease becomes profitable, royalty payments are due.

When companies enter into NPSL agreements, they agree to submit the reports required by 30 CFR 220.031. There are no reporting forms required, but the lessees must submit updates containing specific information. Before production begins, reports are required on an annual basis. These reports must document costs incurred, credits received, and the balance in the NPSL capital account. Once production begins, monthly reports are required that include the amount and disposition of oil and gas saved, removed, or sold; the amount of production revenue; the amount and description of costs and credits to the NPSL capital account; the balance in the capital account; the net profit share base and net profit share payment due the Government; and the lessee's monthly profit share. All information submitted is taken directly from the lessee's own records. No unique information is required by MMS.

Royalty payments are made based on the individual lease's net profit share rate, multiplied by the quantity (revenues and other credits, less costs). MMS uses the data submitted in the annual and monthly reports to verify costs claimed, revenues earned, and royalty payments due. No royalties are paid until the lessee recovers exploration and development expenses. Information provided in the reports is used by MMS auditors. Failure of the respondent to submit the information results in noncompliance with the requirements of 30 CFR 220 and could result in loss of royalty payments to the Government.

We estimate that about 16 hours are required to prepare each annual and monthly lease report in order to extract from company records the data required by 30 CFR 220.031. Information required to complete these reports comes from records maintained by the companies for their own use. One additional hour for recordkeeping may be required as companies set up files for each lease.

Dated: December 3, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–32949 Filed 12–10–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 13, 1998, Cauldron Inc., DBA Cauldron Process Chemistry, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture amphetamine for the purpose of performing bioequivalency studies.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuances of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 9, 1999.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32979 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 20, 1998, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the manufacture of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 11, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32980 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 18, 1998, Glaxo Welcome Inc., Attn: Jeffrey A. Weiss, 1011 North Arendell Avenue, P.O. Box 1217, Zebulon, North Carolina 27597–2309, made application by renewal to the Drug Enforcement Administration to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The remifentanil is being imported for the production of Ultiva dosage forms and for research and new product development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 11, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32981 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 18, 1998, Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture the listed controlled substance for product development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 9, 1999.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32982 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on September 18, 1998, Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 11, 1999.

This procedure is to be conducted simultaneously with and independent of the procedure described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32983 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Violence Against Women Grants Office; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Reinstatement, without change, of a previously approved collection for which approval has expired. STOP Violence Against Women Formula Grants 28 C.F.R. Part 90 Certification.

The Department of Justice, Office of Justice Programs, Violence Against Women Grants Office has submitted the following information collection request to the office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by December 23, 1998. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Alex Hunt, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Preet Kang, Information Specialist, OJP Violence Against Women Grants Office, 810 Seventh Street, NW, Sixth Floor, Washington, DC 20531, or facsimile at (202) 305–2589.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) Type of Information Collection: Reinstatement of collection for which OMB Clearance has expired.

(2) Title of the Form/Collection: Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. Violence Against Women Grants Office, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be as or required to respond, as well as a brief abstract: Primary: State Governments. Other: None.

The STOP Violence Against Women Formula Grants were authorized through the Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, to make funds available to States to combat domestic violence, sexual assault, and stalking crimes against women.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: The time burden of the 56 respondents to complete the certification form is estimated to be 15 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual burden to complete the certification form is 14 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: December 1, 1998.

Robert B. Briggs,

Clearance Officer, United States Department of Justice.

[FR Doc. 98–32913 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
  NY980002 (Feb.13, 1998)
  NY980003 (Feb.13, 1998)
  NY980007 (Feb.13, 1998)
  NY980008 (Feb.13, 1998)
  NY980013 (Feb.13, 1998)
  NY980018 (Feb.13, 1998)
  NY980021 (Feb.13, 1998)
  NY980022 (Feb.13, 1998)
  NY980026 (Feb.13, 1998)
  NY980060 (Feb.13, 1998)

Volume II

Virginia
  VA980066 (Feb. 13, 1998)
  VA980100 (Feb. 13, 1998)
  VA980104 (Feb. 13, 1998)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 4th day of December 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–32660 Filed 10–12–98; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and continued approval of information collection requirements currently approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: IAEA Form N–71—Design Information Questionnaire.
2. Current OMB approval number: 3150–0056.
3. How often the collection is required: Once.
4. Who is required or asked to report: Licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.
5. The number of annual respondents: One.
6. The number of hours needed annually to complete the requirement or request: 360.
7. Abstract: Licensees of facilities that appear on the U.S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71, to provide information concerning their installation for use of the International Atomic Energy Agency.

Submit comments that address the following by February 9, 1999.

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 4th day of December 1998.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of Chief Information Officer.

[FR Doc. 98–32956 Filed 12–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and continued approval of information collection requirements currently approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 75—Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.

2. Current OMB approval number: 3150–0055.

3. How often the collection is required: Installation information is submitted upon written notification from the Commission. Changes are submitted as they occur. Nuclear Material accounting and control information is submitted in accordance with specified instructions.

4. Who is required or asked to report: All persons licensed or certified by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the U. S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and persons who intend to receive source material.

5. The number of annual respondents: One reporting and recordkeeping and five others recordkeeping only. The NRC-licensed facility selected for inspection will be reporting design information. This facility and the five facilities selected pursuant to a separate protocol will maintain transfer and material balance records, but reporting to the IAEA will be through the U.S. State system (Nuclear Materials Management and Safeguards System).

6. The number of hours needed annually to complete the requirement or request: 4,848 (48 hours for reporting and 800 hours each for 6 recordkeepers).

7. Abstract: 10 CFR Part 75 establishes a system of nuclear material accounting and control to implement the agreement between the United States and the International Atomic Energy Agency (IAEA). Under that agreement, NRC is required to collect the information and make it available to the IAEA. Currently, the IAEA has selected and is inspecting one NRC-licensed facility pursuant to 10 CFR 75.41.

Submit comments that address the following by February 9, 1999:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS@NRC.GOV.

Dated at Rockville, Maryland, this 4th day of December 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Chief Information Officer.

[FR Doc. 98–32957 Filed 12–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission: Revision.

2. The title of the information collection: 48 CFR 20, U.S. Nuclear Regulatory Commission Acquisition Regulation (NRCAR).

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion; one time.

5. Who will be required or asked to report: Offerors responding to NRC solicitations and contractors receiving awards from NRC.

6. An estimate of the number of responses: 3,624.

7. The estimated number of annual respondents: 355.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 26,710 hours (7.4 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: The mandatory requirements of the NRCAR implement and supplement the government-wide Federal Acquisition Regulation, and ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency.

Submit, by January 1, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. The proposed rule indicated in (insert the title of the information collection) is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package of the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by January 11, 1999:

Erik Godwin,

Office of Information and Regulatory Affairs (3150–0169), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 1st day of December, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32958 Filed 12–10–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Wolf Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Nuclear Generating Station located in Coffey County, Kansas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Wolf Creek Generating Station (WCGS) technical specifications to allow an increase in the WCGS spent fuel pool (SFP) storage capacity and to allow an increase in the maximum nominal fuel enrichment to 5.0 nominal weight percent U–235.

The proposed action is in accordance with the licensee's application for amendment dated March 20, 1998, as supplemented by letters dated May 28, 1998, June 30, 1998, August 28, 1998, and September 4, 1998.

The Need for the Proposed Action

WCGS received its low power operating license on March 11, 1985. At that time, the SFP was authorized to store no more than 1340 fuel assemblies. Current projection, based on expected future spent fuel discharges, indicate that loss of full-core discharge capability will occur at the end of Cycle 14 in 2005. Operation of WCGS beyond loss of full-core discharge capability is possible for Cycles 15 and 16 to provide an additional three to four years of operation until 2008. Wolf Creek has evaluated spent fuel storage alternatives that have been licensed by the NRC and which are currently feasible for use at the WCGS site. The evaluation concludes that re-racking is currently the most cost-effective alternative. Re-racking would provide an increase in storage capacity to 2642 fuel assemblies, which would maintain the plant's capability to accommodate a full-core discharge, through the end of the current plant license in 2025.

The proposed action to increase the maximum nominal fuel enrichment to 5.0 nominal weight percent U–235 is needed so that the licensee can use higher fuel enrichment to provide additional flexibility in the licensee's reload design efforts and to increase the efficiency of fuel storage cell use in the spent fuel pool.

Environmental Impacts of the Proposed Action

Radiological Impacts

The Wolf Creek Nuclear Generating Station uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated June 1982. The proposed spent fuel pool (SFP) expansion will not involve any change in the waste treatment systems described in the FES.

Radiological Material Released to the Atmosphere

The storage of additional spent fuel assemblies in the SFP is not expected to affect the releases of radioactive gases from the SFP. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases is released to the reactor coolant from the small number of fuel assemblies which are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the SFP and are subsequently released into the air. Since the frequency of refuelings (and therefore the number of freshly offloaded spent fuel assemblies stored in the SFP at any one time) will not increase, there will be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased SFP fuel storage capacity.

The increased heat load on the SFP from the storage of additional spent fuel assemblies could potentially result in an increase in the SFP evaporation rate, which may result in a slight increase in the amount of gaseous tritium released from the pool. However, the overall release of radioactive gases from Wolf Creek will remain a small fraction of the limits of 10 CFR 20.1301.

Solid Radioactive Wastes

Spent resins, which are generated by the processing of SFP water through the SFP purification system, are changed about once a year at Wolf Creek. These spent resins are disposed of as solid radioactive waste. The water turbulence caused by the SFP reracking may result in some resuspension of particulate matter in the SFP. This could result in a temporary increase in the resin changeout frequency of the SFP purification system during the SFP reracking operation. The licensee will use a Tri-Nuke underwater filtration unit to clean the floor of the SFP following removal of the old SFP rack modules. Vacuuming of the SFP floor will remove any extraneous debris and crud and ensure visual clarity in the SFP (to facilitate diving operations). Debris and crud will be filtered and stored underwater in special handling baskets purchased for this operation. Additional solid radwaste will consist of the old SFP rack modules themselves as well as any interferences or SFP hardware that may have to be removed from the SFP to permit installation of the new SFP rack modules. Other than the radwaste generated during the actual raracking operation, the staff does not expect that the additional fuel storage made possible by the increased SFP storage capacity will result in a significant change in the generation of solid radwaste at Wolf Creek.

Liquid Radioactive Waste

The release of radioactive liquids will not be affected directly as a result of the SFP modifications. The SFP ion exchanger resins remove soluble radioactive materials from the SFP water. When the resins are changed out, the small amount of resin sluice water that is released is processed by the radwaste system. As stated above, the frequency of resin changeout may increase slightly during the installation of the new racks. However, the amount of liquid radioactivity released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Occupational Doses

Radiation protection personnel will constantly monitor the doses to the workers during the SFP expansion operation. If it becomes necessary to utilize divers for the SFP reracking operation, the licensee will equip each diver with electronic dosimeters with remote, above surface, readouts, which will be continuously monitored by Health Physics personnel. The total occupational dose to plant workers as a result of the SFP expansion operation is estimated to be between 6 and 12 person-rem. This dose estimate is comparable to doses for similar SFP modifications performed at other plants. The upcoming SFP rack installation will follow detailed procedures prepared with full consideration of as low as is reasonably achievable (ALARA) principles.

On the basis of the review of the Wolf Creek proposal, the staff concludes that the Wolf Creek SFP rack installation can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The estimated dose of 6 to 12 person-rem to perform the proposed SFP rack installation is a small fraction of the annual collective dose accrued at Wolf Creek.

Accident Considerations

In its application, the licensee evaluated the possible consequences of a fuel handling accident to determine the thyroid and whole-body doses at the exclusion area boundary (EAB), low population zone (LPZ), and control room. The proposed SFP rack installation at the Wolf Creek Nuclear Generating Station will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and therefore will not result in an increase in the doses from a postulated fuel handling accident.

Uranium Fuel Cycle and Transportation

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322), in connection with Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

Details of the radiological consequences of the proposed action will be discussed in the staff's safety evaluation for the proposed changes.

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Shipment of Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. In October 1996, the Administration did commit DOE to begin storing wastes at a centralized location by January 31, 1998. However, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping spent fuel to the DOE repository is not considered an alternative to increased onsite spent fuel storage capacity at this time.

Shipment of Fuel to a Reprocessing Facility

Reprocessing of spent fuel from the Wolf Creek Nuclear Generating Station is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipment of Fuel to Another Utility or Site for Storage

The shipment of fuel to another utility for storage would provide short-term relief from the storage problem at the Wolf Creek Nuclear Generating Station. The Nuclear Waste Policy Act and 10 CFR Part 53, however, clearly place the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The shipment of fuel to another source is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

Reduction of Spent Fuel Generation

Improved usage of fuel and/or operation at a reduced power level would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capacity is lost. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer offloads would be necessary. The licensee is planning on operation of an 18-month refueling cycle, and, as part of this proposed amendment, the licensee plans to increase the enrichment to 5 percent. Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on Wolf Creek Nuclear Operating Corporation and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The staff also considered denial of the proposed action (no-action alternative). Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources:

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Wolf Creek Nuclear Generating Station dated June 1982.

Agencies and Persons Consulted:

In accordance with its stated policy, on December 4, 1998, the staff consulted with the Kansas State official, Mr. Vick Cooper of the Kansas Department of Health and Environment, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 20, 1998, as supplemented by letters dated May 28, 1998, June 30, 1998, August 28, 1998, and September 4, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 7th day of December 1998.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV-2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98-32955 Filed 12-10-98; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23589; File No. 812-10996]

Cova Financial Services Life Insurance Company, et al.; Notice of Application

December 4, 1998.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order pursuant to Sections 17(b) and 26(b) of the Investment Company Act of 1940 (the "1940 Act").

SUMMARY OF APPLICATION: Applicants request an order pursuant to 26(b) of the 1940 Act, approving the proposed substitution of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

APPLICANTS: Cova Financial Services Life Insurance Company ("Cova Life"), First Cova Life Insurance Company ("First Cova Life"), Cova Financial Life Insurance Company ("Cova Financial Life) (collectively, the "Life Companies"), Cova Variable Annuity Account One ("Cova Account One"), Cova Variable Life Account One ("Cova Life Account One"), First Cova Variable Annuity Account One ("First Cova Account One"), Cova Variable Annuity Account Five ("Cova Account Five") (collectively, the "Accounts"), Cova Series Trust ("Cova Trust"), Lord Abbett Series Fund, Inc. ("Lord Abbett Fund"), and General American Capital Company ("General American Fund") (collectively, the "Management Companies").

FILING DATE: The application was filed on February 5, 1998, and amended and restated on November 4, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 29, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, Westport, CT 06880, Attn: Raymond A. O'Hara III, Esq.

FOR FURTHER INFORMATION CONTACT: Megan L Dunphy, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

Applicants' Representations

1. The Life Companies are affiliated stock life insurance companies, whose parent is General American Life Insurance Company ("General American"). Cova Life is incorporated in Missouri and does business in the District of Columbia and in all states except California, Maine, New Hampshire, New York and Vermont. First Cova is incorporated in and licensed to do business only in the state of New York. Cova Financial Life is incorporated in and licensed to do business only in the state of California.

2. Each of the Accounts is registered with the Commission as a unit investment trust. The assets of each Account support variable annuity contracts and, with respect to Cova Life Account One, variable life insurance policies (the "Contracts"). Interests under the Contracts have been registered under the Securities Act of 1933 (File Nos. 33-39100; 33-14979; and 333-34741).

3. The Accounts are divided into subaccounts, each of which reflects the investment performance of corresponding portfolios of Cova Trust, Lord Abbett Fund, and the General American Fund.

4. Cova Trust is registered under the 1940 Act as an open-end management investment company and is currently comprised of twenty portfolios, nine of which are involved in the proposed substitution; Stock Index Portfolio, Large Cap Stock Portfolio, Quality Income Portfolio, Quality Bond Portfolio, High Yield Portfolio, Bond Debenture Portfolio, Money Market Portfolio, VKAC Growth and Income Portfolio and the Lord Abbett Growth and Income Portfolio.

5. Cova Investment Advisory Corporation ("Cova Advisory"), an indirect wholly owned subsidiary of General American, is the investment adviser for Cova Trust. Cova Advisory has engaged sub-advisers for each of the portfolios of Cova Trust. The sub-adviser for the Large Cap Stock and Quality Bond Portfolios is J.P. Morgan Investment Management, Inc. ("JPM"). The sub-adviser for the Stock Index, Quality Income, High Yield, Money Market and VKAC Growth and Income Portfolios is Van Kampen American Capital Investment Advisory Corp. ("VKAC"). Lord Abbett is the sub-adviser for the Lord Abbett Growth and Income Portfolio and the Bond Debenture Portfolio of Cova Trust.

6. Lord Abbett Fund is registered under the 1940 Act as an open end management investment company and is currently comprised of two portfolios, one of which—the Growth and Income Portfolio—is relevant to the proposed substitution. Lord Abbett & Co. ("Lord Abbett") is the investment manager of the Lord Abbett Fund.

7. General American Fund is registered under the 1940 Act as an open-end management investment company and is comprised of eight series, one of which—the Money Market Fund—is relevant to the proposed substitution. Conning Asset Management Company, an affiliate of General American, is the investment adviser to the Money Market Fund.

8. Applicants propose to substitute shares of certain portfolios of Cova Trust and the General American Fund ("Substitute Funds") for shares of certain other portfolios of Cova Trust, the General American Fund, and the Lord Abbett Fund (the "Replaced Funds") as follows:

Substitute fund	Replaced fund
Cova Trust	Cova Trust
1. Large Cap Stock Portfolio	1. Stock Index Portfolio.
2. Quality Bond Portfolio	2. Quality Income Portfolio.
3. Bond Debenture Portfolio	3. High Yield Portfolio.
4. Lord Abbett Growth and Income Portfolio	4. VKAC Growth and Income Portfolio.
Cova Trust	Lord Abbett Fund
5. Lord Abbett Growth and Income Portfolio	5. Growth and Income Portfolio.
General American Fund	Cova Trust
6. Money Market Portfolio	6. Money Market Portfolio.

9. Applicants represent that the Substitute Funds have investment objectives that are the same as, similar to, or consistent with those of the Replaced Funds. For each of the substitutions numbered 1–4 in Table 1, above, Applicants state that the Replaced Fund and Substitute Fund are not the same, but are substantially similar. For the substitution numbered 5 above, Applicants state that the Replaced Fund and Substitute Fund are "clone" funds with identical investment objectives and policies, and the investment adviser of the Replaced Fund will continue to provide investment advice to the Substitute Fund as a sub-adviser to the fund. Applicants state that the substitution numbered 6 involves two money market funds with substantially identical investment objectives.

10. Applicants state that five of the six proposed substitutions involve Replaced Funds that are sub-advised by VKAC which is no longer an affiliated entity of the Life Companies. These five Portfolios are: the Stock Index Portfolio, the Quality Income Portfolio, the High Yield Portfolio, the VKAC Growth and Income Portfolio and the Money Market Portfolio. The Life Companies examined the historical investment performance records of the proposed sub-advisers/advisers for the Substitute Funds and determined that such records compared favorably, or were better than, those of VKAC, the sub-adviser for five Replaced Funds. Applicants also maintain that the expense ratios of these Replaced Funds is likely to increase over time as assets decline and therefore, the performance of these funds will be hurt. Applicants state that, given the desire of the Life Companies to improve performance, the Life Companies have determined that it is in their best interest and in the best interest of the Contract owners to pursue the proposed substitutions.

11. The Lord Abbett Growth and Income Portfolio of Cova Trust is a newly created investment portfolio that will not begin operations until the proposed substitution takes place and therefore does not have an operating history. Applicants state that the Substitute Fund's investment objectives and policies are a "clone" of the Replaced fund, and therefore, the Applicants expect the Substitute Fund to have portfolio characteristics that are substantially the same as the Replaced Fund.

12. Applicants state that certain of the Substitute Funds are substantially larger than the Replaced Funds. Applicants maintain that other Substitute Funds, although smaller than the Replaced Funds, are growing at a much faster rate than the Replaced Funds. Applicants assert that the increased asset size of the Substitute Funds is more likely to result in economies of scale and in lower operating expenses which inure to the benefit of Contract owners.

13. Applicants state that certain of the Replaced Funds of Cova Trust have experienced more favorable expense ratios than the Substitute Funds. Applicants state, however, that the Cova Trust Replaced Funds are no longer offered for sale and therefore their assets are likely to decrease over time given normal levels of transfers and redemptions. Accordingly, Applicants maintain that the expense ratios of these Replaced Funds will rise given the declining assets and the resulting loss of economies of scale.

14. Furthermore, Applicants state that Life Companies have been voluntarily subsidizing the Cova Trust Replaced Funds for all operating expenses exclusive of investment advisory fees. Applicants maintain that the Life Companies have already expended considerable amounts of money voluntarily subsidizing these portfolios, and it is likely that the Life Companies will cease any future expense reimbursements. Without expense reimbursements, Applicants maintain that the expense ratios of the Cova Trust Replaced Funds will likely exceed their Substitute Fund counterparts over time.

15. Applicants state that the proposed substitution will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or in the dollar value of their investment in the Accounts. The substitutions will be effected by redeeming shares of the Replaced Funds on the date of substitution at net asset value and using the proceeds to purchase shares of the Substitute Funds at net asset value on the same date. At all times, the Contract values will remain unchanged and fully invested. Contract owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by the Life Companies. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

16. Applicants state that it is expected that certain of the substitutions will be effected by redeeming the shares of the Replaced Fund partly in cash and partly in-kind. Those assets will then be contributed to the Substitute Fund to purchase shares of that fund. Redemptions and contributions in-kind will reduce the brokerage costs that would otherwise be incurred in connection with the redemption. The use of in-kind redemptions and contributions will be done in a manner consistent with the investment objectives and policies and diversification requirements of the applicable Substitute Fund, and the adviser and each Substitute Fund's sub-adviser will review the in-kind redemptions to assure that the assets proposed for the fund are suitable for the Substitute Fund. The assets subject to in-kind redemption and purchase will be valued based on the normal valuation procedures of the redeeming and purchasing funds. Applicants state that any inconsistencies in valuation

procedures between the Replaced Fund and the Substitute Fund will be reconciled so that the redeeming and purchasing values are the same.

17. Applicants state that after the substitutions have been completed there will be one instance where more than one sub-account of an Account will hold shares of a single Substitute Fund. The Life Companies intend to consolidate those sub-accounts. Specifically, Applicants state the subaccounts currently investing in the VKAC Growth and Income Portfolio and the Growth and Income Portfolio of the Lord Abbet Fund will be merged in to new sub-accounts which will invest in the Lord Abbett Growth and Income Portfolio of Cova Trust. Shares held by the existing sub-accounts will be transferred to the new sub-accounts at net asset value so there will be no financial impact to the Contract owner.

18. Applicants state that the Life Companies have supplemented the Contract prospectuses to reflect the proposed substitutions. The supplements identify which funds are being replaced and advise Contract owners that they may transfer assets from any subaccount involved in the proposed substitution to any other subaccount available under a Contract without any limitation or charge prior to the date of the substitution and for a period of 30 days after the substitution. Contract owners who are affected by the substitution will be sent notice of the substitutions within five days following the substitution date confirming that the substitutions have been completed and reiterating their right to make transfers to any other subaccount for a period of 30 days from the date of the notice without any limitation or charge being imposed.

19. Applicants state that following the substitutions, Contract owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts, as they currently have.

Applicant's Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part, that '[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such a security unless the Commission shall have approved such substitution.'' Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purpose fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to 26(b) of the 1940 Act approving the proposed substitutions by the Life Companies. Applicants assert that the purposes, terms, and conditions of the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the proposed substitutions will not result in the type of costly forced redemption that Section 26(b) of the 1940 Act was intended to guard against.

3. Applicants state that the Contracts reserve the Life Companies' right, subject to Commission approval, to substitute shares of one management investment company for another in situations where it could benefit the Life Companies and the Contract owners. Applicants also state that the Contract prospectuses disclose this right. Applicants maintain that each of the Substitute Funds is a suitable and appropriate investment vehicle for Contract owners and each of the Substitute Funds has either a substantially identical investment objective or an investment objective that is similar to or comparable with the Replaced Fund.

4. Applicants submit that the proposed substitutions meet the following standards that have been applied to substitutions in the past in that:

a. The investment objectives of the Substitute Funds are substantially identical to, similar to, or comparable with those of the Replaced Funds;

b. The substitutions, in all cases, will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge;

c. The Life Companies have undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commission, relating to the substitutions;

d. The substitutions in no way will alter the insurance benefits to Contract owners or the contractual obligations of the Life Companies;

e. The substitutions in no way will alter tax benefits to Contract owners; and

f. Contract owners may choose simply to withdraw amounts credited to them following the substitutions under the conditions that currently exist without incurring any charges (other than any applicable withdrawal charges).

5. Section 17(a)(1) of the 1940 Act prohibits an affiliated person, or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person from purchasing any security or other property from such registered investment company.

6. Applicants state that certain portfolios of the Management companies may be affiliated persons of each other or affiliated persons of affiliated persons of each other. In addition, Applicants state that the proposed substitutions by the Life Companies, which may entail the indirect purchase of shares of the Substitute Funds with portfolio securities of the Replaced Funds and the indirect sale of portfolio securities of the Replaced Funds for shares of the Substitute Funds, may also entail the purchase or sale of such securities by each of the portfolios of the Management Companies involved, acting as principal, to one of the other portfolios of the Management Companies and therefore may be in contravention of Section 17(a) of the 1940 Act.

7. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the in-kind redemptions and purchases from the provisions of Section 17(a). Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants represent that the terms of the proposed substitution, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Contract owners will not be diluted. The in-kind redemptions and purchases will take place at relative net asset value with no change in the amount of any Contract owner's Contract or accumulation value or death benefit or in the dollar value of his or her investment in any of the Accounts. Both the investment advisers/and or

sub-advisers will examine the portfolios securities being offered to each Portfolio and accept only those securities as consideration that they would have acquired directly in a cash transaction. The Applicants represent that the transactions are consistent with the policies of each investment company and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitution and related transactions involving in-kind redemptions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32933 Filed 12–10–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40749; File No. SR–Amex–98–29]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change Relating to the Listing Under Rules 1000A et seq. of Select Sector SPDRs ^{SM} and Technology 100 Index Fund Shares

December 4, 1998.

I. Introduction

On July 17, 1998, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under AMEX Rules 1000A et seq. ("Index Fund Shares") the following securities: (1) nine series of Select Sector SPDRs ^{SM}.; and (2) one series of the Technology 100 Index Fund (collectively, the "Funds").

Notice of the proposed rule change, together with substance of the proposal, was published for comment in Securities Exchange Act Release No. 40391 (September 1, 1998), 63 FR 48280 (September 9, 1998). On November 12, 1998, the Exchange filed Amendment No. 2.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to list and trade under Rules 1000A et seq.[4] the following securities issued by an open-end management investment company: (1) nine series of Select Sector SPDRs ^{SM}, as described herein;[5] and (2) one series of the Technology 100 Index Fund.[6]

(a) Select Sector SPDRs

The Exchange proposes to list and trade nine investment series of Select Sector SPDRs to be offered by the Select Sector SPDR Trust, an open-ended investment company and a Massachusetts business trust. The Select Sector SPDRs offered by the Trust are: The Basic Industries Select Sector SPDR; The Consumer Services Select Sector SPDR; The Consumer Staples Select Sector SPDR; The Cyclical/Transportation Select Sector SPDR; The Energy Select Sector SPDR; The Financial Select Sector SPDR; The Industrial Select Sector SPDR; The Technology Select Sector SPDR; and The Utilities Select Sector SPDR.[7]

Each Select Sector SPDR offers and issues Select Sector SPDR shares at their net asset value only in aggregations of a specified number of shares ("Creation Unit"), generally in exchange for a basket of common stocks consisting of some or all of the component securities ("Fund Securities") of a specified market sector index ("Select Sector Index"), together with the deposit of a specified small cash payment known as the "cash component" and reflecting, for example, net accrued dividends. It is anticipated that the deposit of Fund Securities and the specified cash payment, in exchange for Select Sector SPDRs will be made primarily by institutional investors, arbitrageurs and the Exchange specialist. Creation Units are separable upon issue into identical shares which are listed and traded on the AMEX. Similarly, shares are also redeemable only in Creation Unit size aggregations and usually in exchange for Fund Securities and a specified cash payment. It is anticipated that a Creation Unit will consist of 50,000 shares of the relevant series of Select Sector SPDRs. The Select Sector SPDR Trust reserves the right to offer a "cash" option for creations and redemptions of Select Sector SPDRs, although it has no current intention of doing so. For each Select Sector, SPDR, the Administrator (State Street Bank and Trust Company) makes available through the National Securities Clearing Corporation ("NSCC"), immediately prior to the opening of business on the AMEX, the list of names and the required number of share of stocks of each relevant Select Sector Index to be included in the securities deposit required in connection with the creation of Select Sector SPDRs in Creation Unit size aggregations.[8]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 changes the name of the Sector SPDRs to Select Sector SPDRs; clarifies the duties and identity of the lending agent; changes and explains the method of the dissemination of product information by the Exchange; delineates the construction and maintenance standards for the Select Sector Indices and the Technology 100 Index; and clarifies that in the event of market wide circuit breakers trading in the Select Sector SPDRs and the Technology 100 Index Fund would be suspended pursuant to Amex Rule 117. The substance of this amendment is incorporated into this order. *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Heather Seidel, Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 11, 1998 ("Amendment No. 2").

[4] Amex Rules 1000A et seq. provide for the listing and trading of Index Fund Shares, which are shares issued by an open-end management investment company that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 63 FR 2348 (March 14, 1996). The Exchange currently lists under Rules 1000A et seq. seventeen series of World Equity Benchmark Shares™ ("WEBS™") based on Morgan Stanley Capital International foreign stock indices. "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc.

[5] "S&P"®, "Standard & Poor's 500"®, "Standard & Poor's Depository Receipts"® and "SPDRs"® are trademarks of The McGraw-Hill Companies, Inc., and "Select Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc.

[6] The Select Sector SPDR Trust (with respect to Select Sector SPDRs) and The Index Exchange Listed Securities Trust (with respect to the series of the Technology 100 Index Fund) filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting Select Sector SPDRs and the series of the Technology 100 Index Fund from Sections 2(a)(32), 5(a)(1), 22(d), 17(a)(1) and (a)(2), and Rule 22c–1 under the 1940 Act. *See* Investment Company Act Release No. 23492 (October 20, 1998), 63 FR 57332 (October 27, 1998).

[7] Information on the component stocks of the Select Sector Indices and the Technology 100 Index is available in the public file.

[8] The procedures for the creation and redemption of Select Sector SPDRs and Technology 100 Index Fund shares are similar to those applicable for SPDRs, for utilize processes of the National Securities Clearing Corporation in connection with the transmittal of trade instructions, the transfer of component securities and the cash component, and the transfer of Select Sector SPDRs or Technology 100 Index Fund shares and component securities on creation or redemption. This contrasts with procedures for the creation and redemption of other Index Fund Shares currently listed on the Amex (i.e., WEBS™), which, while similar in certain respects to SPDR procedures, do not utilize such National Securities Clearing Corporation processes.

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Each of the nine Select Sector Indices, which is the benchmark for a Select Sector SPDR, is intended to give investors an efficient way to track the movement of baskets of the equity securities of public companies that are components of the Standard & Poor's 500 Composite Stock Index ("S&P 500") and are involved in specific sectors.[9] Each stock included in a Select Sector Index (the "Component Stocks") will be selected from companies represented in the S&P 500.[10] The nine Select Sector Indices together will include all of the companies represented in the S&P 500 and all of the stocks in the S&P 500 will be allocated to one and only one of the Select Sector Indices. Each Select Sector Index will be calculated by the AMEX's Index Services Group ("AMEX ISG") using the "market capitalization" methodology (the same method used in calculating the S&P 500). This design ensures that each of the component stocks within a Select Sector Index is represented in a proportion consistent with its percentage with respect to the total market capitalization of the Select Sector Index. Under certain conditions, the number of shares of a component stock may be adjusted to conform to requirements of Subchapter M under the Internal Revenue Code.[11]

The stocks included in a Select Sector Index have been assigned to a Select Sector Index by Merrill Lunch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or "the Index Compilation Agent"). The Index Compilation Agent, after consultation with Standard & Poor's, assigns Component stocks to a particular Select Sector Index with the aim of categorizing a company's fundamental businesses on the basis of the company's sales and earnings composition and its predominant source of revenue among the company's business lines. In addition, such assignment is based on the sensitivity of the company's stock price and business results to the common factors that affect other companies in the specific Select Sector Index.[12] Standard & Poor's has sole control over the removal of stocks from the S&P 500 and the selection of replacement stocks to be added to the S&P 500, but only plays a consulting role in the assignment of the S&P 500 component securities to any Select Sector Index. The assignment of component stocks to a Select Sector Index is the sole responsibility of the Index Compilation Agent. If Standard & Poor's removes a stock from the S&P 500, Merrill Lynch will remove the same stock from whichever Select Sector Index it is in. When Standard & Poor's assign a replacement stock to the S&P 500, Merrill Lynch will assign the same stock to whichever Select Sector Index it deems appropriate.

Each Select Sector Index is weighted based on the market capitalization of each of the Component Stocks, subject to the following asset diversification requirements: (i) the market capitalization-based weighted value of any single Component Stock measured on the last day of a calendar quarter may not exceed 24.99% of the total value of its respective Select Sector Index; and (ii) with respect to 50% of the total value of the Select Sector Index, the market capitalization-based weighted value of the Component Stock must be diversified so that no single Component Stock measured on the last day of a calendar quarter represents more that 4.99% of the total value of its respective Select Sector Index, or in other words, the sum of the weight of all of the component stocks that each represent less than 5% of the Index must be equal to at least 50% of the Index weight.

Rebalancing the Select Sector Indices to meet the asset diversification requirements will be the responsibility of the AMEX ISG. If shortly prior to the last business day of any calendar quarter (a "Quarterly Qualification Date"), a Component Stock(s) approaches the maximum allowable value limits set forth above (the "Asset Diversification Limits"), the percentage that such Component Stock (or Component Stocks) represents in the Select Sector Index will be reduced and the market capitalization-based weighted value of such Component Stock (or Component Stocks) will be redistributed across the Component Stocks that do not closely approach the Asset Diversification Limits in accordance with the methodology set forth in the prospectus and Statement of Additional Information for the Select Sector SPDR Trust. The Select Sector Indices are calculated and disseminated by the AMEX ISG.

Periodically, the Index Compilation Agent will supply the AMEX ISG with sector designations for a number of stocks deemed likely candidates for replacement selection by the Standard & Poor's 500 Index Committee. If a replacement not on the current list is selected by the Standard & Poor's 500 Index Committee, the AMEX ISG will ask the Index Compilation Agent to assign the stock to one of the nine sectors promptly. AMEX will disseminate information on this assignment and on consequent changes in the Select Sector Index(es). The AMEX does not expect the timing of dissemination of such information to be materially affected by whether a replacement stock had been included among the candidates for replacement supplied by the Index Compilation Agent.

The Index Compilation Agent at any time may determine that a Component Stock which has been assigned to one Select Sector Index has undergone such a transformation in the composition of its business that is should be removed from that Select Sector Index and assigned to a different Select Sector Index. In the event that the Index Compilation Agency notifies the AMEX ISG that a Component Stocks Select Sector Index assignment should be changed the AMEX will disseminate notice of the change by using an information circular to their membership within one business day of receipt of such notice and will implement the change in the affected Select Sector Indices on a date no less than one week after the initial dissemination of information on the sector change to the maximum extent practicable.[13] It is not anticipated that Component Stocks will change sectors frequently.

Component Stocks removed from and added to the S&P 500 will be deleted from and added to the appropriate Select Sector Index consistent with the timing of the announcement and

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Unlike the WEBS series, which do not hold all of the applicable index stocks but instead utilize a representative "portfolio sampling" technique, Select Sector SPDRs and the Technology 100 Index Fund generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus.

[9] The S&P 500 Index consists of 500 stocks chosen by Standard & Poor's for market size, liquidity, and industry group representation. It is a market-value weighted index (stock price times number of shares outstanding), with each stock's weight in the Index proportionate to its market value.

[10] The Select Sector Indices underlying the Select Sector SPDRs are not the same as S&P indices based on specific industry sectors, although the component stocks of the Select Sector Indices may be comparable to, and overlap with, the S&P sector indices to some degree.

[11] Each Select Sector SPDR Fund (as well as the Technology 100 Index Fund) intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M. To qualify for such treatment, a company must annually distribute at least 90% of its net investment company taxable income (which includes dividends, interest and net short-term capital gains) and meet several other requirements, including certain diversification tests.

[12] For example, Amex states that a common factor that could affect the prices for the Component Stocks in the Financial Select Sector Index or the Utilities Select Sector Index is interest rate variations. *See* Amendment No. 2, *supra* note 3.

[13] Telephone Conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 24, 1998.

effectiveness of additions and deletions from the S&P 500 insofar as practicable. The AMEX will announce a change to a Select Sector Index promptly following an announcement by Standard & Poor's of an addition to and deletion from the S&P 500.[14] Generally, changes in the applicable component stock for the relevant Select Sector SPDR Index will be made concurrently with Standard & Poor's change to the S&P 500.[15]

Standard & Poor's will advise the AMEX ISG regarding the handling of nonroutine corporate actions which may arise from time to time and which may have an impact on the calculation of the S&P 500, and, consequently, on the calculation of the Select Sector Indices. Corporate Actions such as a merger or acquisition, stock splits, and routine spin-offs, which require adjustments in the Select Sector Index calculation, will be handled by the AMEX staff. Index Divisor adjustments will be calculated, when necessary, in the same manner they are handled by Standard & Poor's in its maintenance of the S&P 500. In the event a merger or acquisition changes a company's fundamental business and source of revenues, the Select Sector Index assignment of the stock may change. In any event, a new Index Divisor for affected Select Sector Indices will be disseminated to the public promptly by the AMEX ISG.

Each Select Sector SPDR will normally invest at least 95% of its total assets in stocks that comprise the relevant Select Sector Index or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks.[16]

(b) Technology 100 Index Fund Shares

The Exchange also proposes to list and trade Technology 100 Index Fund shares issued by the Index Exchange Listed Security Trust, an open-ended investment company and a Massachusetts business trust. Such trust is an "index fund" presently consisting of a single investment portfolio, the Technology 100 Index Fund. Fund shares may be created and redeemed in a manner similar to that described above for Select Sector SPDRs.[17] The Fund Administrator (State Street Bank and Trust Company) makes available through NSCC, immediately prior to the opening of business on the AMEX, the list of names and the required number of shares of stocks to be included in the securities deposit required in connection with creation of Fund shares in Creation Unit size aggregations. Creation Units are separable upon issuance into identical shares which are listed and traded on the AMEX. Similarly, shares are also redeemable only in Creation Unit size aggregations and usually in exchange for Fund Securities and a specified cash payment. It is anticipated that one Creation Unit will consist of 50,000 Fund shares.

The Fund's investment objective is to provide investment results that correspond generally to the price and yield performance of publicly traded equity securities of technology companies as represented by an index (the "Technology 100 Index") compiled by Merrill Lynch. The Technology 100 Index, which is constructed in accordance with specified selection criteria, is intended to give investors an efficient, equal-dollar weighted way to track movements of certain technology stocks and American Depositary Receipts ("ADRs") traded within the United States. According to the AMEX, the Technology 100 Index provides a diversified representation of technology stocks and ADRs traded in the United States. The majority of the Technology 100 Index components are involved in the following industries: computer software, data processing, computer services, semiconductors, and telecommunications equipment.

The Technology 100 Index is constructed by Merrill Lynch based on two criteria: market capitalization and trading volume. First, to assure that stocks in the Index are highly liquid, stocks with daily trading volume of less than $12.5 million (shares traded times trade price) are eliminated from the selection universe of all U.S. traded technology stocks and ADRs. The median 63 day trading volume calculation, using the most recent 63 trading days, is used for this screening; the data for the initial index construction is from January 30, 1998. Second, the top 100 stocks from the liquidity-screened universe of technology names are chosen by market capitalization. The price used to calculate market capitalization in connection with the initial index construction is the primary exchange closing price as of January 30, 1998.

The Technology 100 Index is calculated and maintained by the AMEX ISG in consultation with Merrill Lynch, which may suggest changes in the industry categories represented in the Index or changes in the number of component stocks in an industry category to properly reflect the changing conditions in the technology sector. The Technology 100 Index is calculated using an equal dollar weighting methodology designed to ensure that each security is represented in an approximately equal dollar amount. In addition, Merrill Lynch may advise the Exchange regarding the handling of unusual corporate actions. Routine corporate actions (e.g. stock splits) that require straightforward index divisor adjustments are handled by the Exchange staff without consulting Merrill Lynch.

Whenever possible, all stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events such as dissolution, merger, bankruptcy, non-routine spin-offs, or extraordinary dividends will be made by the Exchange in consultation with Merrill Lynch. In the case of replacements, the largest non-index constituent in terms of market capitalization from the list of U.S.-traded technology stocks and ADRs will be chosen.

In selecting replacement stocks, the market capitalization and trading volume is calculated using the primary exchange closing price one day prior to potential replacements being considered. There is no fixed period between the consideration and change dates, but in most instances the period between the consideration and the change dates will be no more than a month.[18] The chosen stock must have a median daily trading volume over the previous 63 days that is greater than that of the 75th percentile rank of the existing Index stocks. If the liquidity level is insufficient, the next largest stock will be considered. In the event that no stock meets the liquidity criteria, the largest stock in terms of market capitalization will be added.

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[14] Standard & Poor's generally announces S&P 500 changes five business days before they take effect.

[15] Telephone Conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 20, 1998.

[16] As noted above, *supra* note 8, Select Sector SPDRs generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus.

[17] As noted above, *supra* note 8, the Technology 100 Index Fund generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus. The Fund reserves the right to offer a "cash" option for creations and redemptions of Fund shares, although it has no current intention of doing so. The Fund will normally invest at least 95% of its total assets in stocks that comprise the benchmark index or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks.

[18] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on December 3, 1998

Merrill Lynch will reconstitute the Index annually after the close of the third Friday of December. The reconstitution will take two steps: first, determination of Index constituents, and second, share calculations to ensure equal weighting. Index constituents will be replaced if; 1) a stock is no longer deemed a representative "technology" stock; or 2) the stock's market capitalization declines below that of the 125th market cut-off to reduce unnecessary turnover. The shares and volume figures are calculated using data as the second Friday of December.

(c) Dissemination of Information by the Exchange[19]

The value of the Select Sector Indices and the Technology 100 Index will be calculated continuously by AMEX and disseminated every 15 seconds on Network B of the Consolidated Tape Association ("CTA"). The major electronic financial data vendors, including Bloomberg, Quotron, Reuters, and Bridge Information Systems, are expected to publish information on the Select Sector and Technology 100 Indices for their subscribers.

In order to provide up to date pricing information for the Funds' shares, the Exchange will calculate and disseminate every 15 seconds through CTA Network B an amount representing on a per share basis the sum of the "Dividend Equivalent Payment" effective through and including the previous business day, plus the current value of the "Deposit Securities" (the sum of the Dividend Equivalent Payment plus the current value of the Deposit Securities is the "Value"). The Dividend Equivalent Payment is an amount intended to enable a Fund to make a distribution of dividends on the next payment date as if all the portfolio securities of the Fund had been held for the entire dividend period. The "Deposit Securities" consist of a designated portfolio of securities constituting a substantial replication, or a representation, of the stocks included in the relevant Fund index.

(d) Other Characteristics of Select Sector SPDRs and Technology 100 Index Fund

For each of the nine series of Select Sector SPDRs and the Technology 100 Index Fund, it is anticipated that a minimum of three Creation Units will be outstanding at the commencement of trading on the Exchange.[20] Based on market prices as of November 12, 1998, it is anticipated that the initial trading price of a Select Sector SPDR will range from approximately $21 to $28, and that the initial trading price of a Technology 100 index Fund share will be approximately $25.[21]

The Funds will pass along dividends and interest, net of expenses, to fund shareholders as "income dividend distributions." Net capital gains will be distributed to shareholders as "capital gain distributions."

The net asset value for the Funds is calculated by the Administrator, State Street Bank and Trust Company ("State Street"), which is also the Adviser and Custodian for the Funds. State Street will also act as the lending agent for the Select Sector SPDR.[22] The lending agent for the Technology 100 Index Fund will be determined.[23] ALPS Mutual Funds Services, Inc. serves as the principal underwriter and distributor for the Funds.

Select Sector SPDRs and Technology 100 Index Fund shares are registered in book-entry form through the Depository Trust Company. Trading in Select Sector SPDRs and Technology 100 Index Fund shares on the Exchange is effected until 400 p.m. each business day. The minimum trading increment under Rule 127 for Select Sector SPDRs and Technology 100 Index Fund shares will be 1/64 of $1.00.

(e) Stop and Stop Limit Orders

AMEX Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by AMEX Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including Select Sector SPDRs and shares of the Technology 100 Index Fund, as eligible for this treatment.[24]

(f) Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in AMEX Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including Select Sector SPDRs and Technology 100 Index Fund shares. These factors would include (1) the current calculation of the numerical index value derived from the current market prices of the underlying stocks in such stock index group is not available; (2) trading in one or more of the underlying stocks comprising such stock index group has been halted in the primary market(s) under circumstances which indicate that such stock or stocks will likely re-open at a price or prices significantly different than the price or prices at which such stocks or stocks last traded prior to the halt; (3) the extent to which trading is not occurring in stocks underlying the index; (4) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[25]

(g) Disclosure

Member firms will be informed by an information circular, prior to the commencement of trading, that investors purchasing Select Sector SPDRs or Technology 100 Index Fund shares will be required to receive a fund prospectus prior to, or concurrently with, the confirmation of a transaction within. The information circular will address Exchange members' responsibilities under AMEX Rule 411 ("know your customer rule") regarding transactions in such Fund Shares. AMEX Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[26] The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the characteristics of purchases in the Funds.

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[19] The Exchange will not disseminate the Indicative Per Share Portfolio Value described in the initial Rule 19b–4 filing, but will instead disseminate information as described herein. *See* Amendment No. 2, *supra* note 3.

[20] Based on the estimated initial trading prices for the Select Sector SPDRs and the Technology 100 Index Fund shares, the value of the one creation unit should be between $1 million and $1.5 million. Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 20, 1998.

[21] *See* Amendment No. 2, *supra* note 3.

[22] The lending agents for the Funds will cause the delivery of loaned securities from each Fund to borrowers, arrange for the return of loaned securities to the Fund at the termination of the loans, request deposit of collateral when required by the loan arrangements, and provide recordkeeping and accounting services. *See* Amendment No. 2, *supra* note 3.

[23] Merrill Lynch will not be the lending agent for the Technology 100 Index Fund as indicated in the original filing. Telephone Conversation Between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 23, 1998.

[24] *See* Securities Exchange Act Release No. 29063, n. 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) (order approving File No. SR–Amex–90–31 regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c)).

[25] In the event of market wide circuit breakers trading in the Select Sector SPDRs and the Technology 100 Index Fund would be suspended pursuant to Amex Rule 117. *See* Amendment No. 2, *supra* note 3.

[26] *See* Amex Rule 411.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[27] The Commission believes that the Exchange's proposal to list and trade nine Select Sector SPDRs and one series of Technology 100 Index Fund Shares will provide investors with a convenient and efficient way of participating in the securities markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low cost security replicating the performance of a portfolio of stocks at negotiated prices throughout the business day.[28] The Commission also believes that Fund Shares in general, and Select Sector SPDRs and the Technology 100 Index Fund shares in particular, will benefit investors by allowing them to trade securities based on a portfolio of stocks in secondary market transactions.[29] Accordingly, as discussed below, the proposed rule change is consistent with Section 6(b)(5) of the Act[30] which requires Exchange rules to facilitate transactions in securities while continuing to further investor protection and the public interest.[31]

As the Commission noted in previous orders approving other products (SPDRs and MidCap SPDRs) for listing and trading on AMEX,[32] the Commission believes that the trading of a security like the Select Sector SPDRs and the Technology 100 Index Fund shares, which replicate the performance of a portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as Select Sector SPDRs and the Technology 100 Index Fund shares, trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[33] Accordingly, the Commission believes that trading shares of the Funds will provide retail investors with a cost efficient means to make investment decisions based on the direction of certain sectors the market, and may provide market participants several advantages over existing methods of effecting program or other trades involving stocks.

Based on market prices as of November 12, 1998, it is anticipated that the initial trading price of a Select Sector SPDR will range from approximately $21 to $28, and the initial trading price of the Technology 100 Index Fund share will be approximately $25. The estimated cost of an individual Select Sector SPDR or the Technology 100 Index Fund should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of stocks representing a particular sector of the marketplace.[34] Accordingly, the Commission believes that trading of Select Sector SPDRs and the Technology 100 Index Fund shares will provide retail investors with a cost efficient means to make investment decisions based on the direction of various segments of the market and may provide market participants several advantages over existing methods of effecting program or other trades involving stocks.

Moreover, the Commission believes that Select Sector SPDRs and the Technology 100 Index Fund shares will provide investors with several advantages over standard open-end mutual fund shares specializing in such stocks. In particular, investors will be able to trade the Funds continuously throughout the business day in secondary market transactions at negotiated prices.[35] In contrast, Investment Company Rule 22c–1[36] limits holders and prospective holders of open-end investment company shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the funds as designated by the board of directors. Accordingly, the Select Sector SPDRs and the Technology 100 Index Fund shares should allow investors to: (1) respond quickly to market changes; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although the Funds are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, the Funds are equity securities that are priced off a portfolio of stocks based on the nine Select Sector SPDR Indices and the Technology 100 Index. Accordingly, the level of risk involved in the purchase or sale of these Funds is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the Funds is based on a basket of stocks. Based on these factors, the Commission believes that it is appropriate to regulate the Funds in a manner similar to other equity securities. Nevertheless, the Commission believes that the nature of the Funds raise, certain product design, disclosure, trading, market impact and other issues that must be addressed adequately. As discussed in more detail below, the Commission believes AMEX has adequately addressed these concerns.

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[27] 15 U.S.C. 78f(b)(5).

[28] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[29] The Commission notes, however, that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in Select Sector SPDRs and the Technology 100 Index Fund can redeem them in Creation Unit size aggregations only. Nevertheless, Select Sector SPDRs and the Technology 100 Index Fund shares would have the added benefit of liquidity from the secondary market and fund holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[30] 15 U.S.C. 78f(b).

[31] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] *See* Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) ("SPDRs Order"), and 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) ("MidCAP SPDRs Order").

[33] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of fifteen or more stocks having a total market value of $1 million or more.

[34] For example, an investor wishing to hold securities tracking technology stocks could purchase in a single transaction the Technology Select Sector SPDR or the Technology 100 Index Fund.

[35] Because of potential arbitrage opportunities, the Commission believes that the Funds will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of the Funds comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trusts will track the underlying index more closely than an open-end index fund because the Trusts will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trusts will generally redeem only in kind, thereby enabling the Trusts to invest virtually all of its assets in securities comprising the underlying index.

[36] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted the Select Sector SPDRs and the Technology 100 Fund an exemption from this provision in order to allow them to trade at negotiated prices in the secondary market. *See supra* note 6.

(a) The Funds Generally

The Commission believes that the proposed Funds are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon, and, in turn, the performance of: (1) public companies that are components of the S&P 500 and are involved in a specific Select Sector Index as designed by Merrill Lynch, and (2) publicly traded equity securities of technology companies as represented by an index compiled by Merrill Lynch. The components of the nine individual Select Sector SPDRs, collectively, comprise all of the components in the S&P 500, a broad-based, capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. Thus, although Merrill Lynch is primarily responsible for the assignment of stocks into Select Sector Indices, the nature of the S&P 500 provides a liquidity screen that should insure that the Select Sector Indices are comprised of highly liquid securities. Merrill Lynch also imposes specific criteria in its selection of the Technology 100 Index components. In selecting components for the Technology 100 Index, Merrill Lynch evaluates the market capitalization and trading volume of the components to assure that the stocks within the Index are liquid and highly capitalized.

The aim of these component selection processes is to make Fund Index components highly representative of the over-all economic sector make-up and market capitalization of a given market. At the same time, securities that are illiquid or that have a small capitalization are avoided. The Commission believes that these criteria should serve to ensure that the underlying securities of these Indices are well capitalized and actively traded.

Additionally, the Funds generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus. The Commission also notes that the Funds will normally invest at least 95% of their total assets in stocks that comprise the relevant Sector Index, the Technology 100 Index, or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks. The Commission believes that taken together, the foregoing are adequate to characterize the Funds as bona fide index funds. Furthermore, the Commission believes that the component selection and replacement procedures for the Funds should help to ensure that the component securities generally remain highly capitalized and actively traded, and that the components continue to reflect their corresponding indices.

(b) Disclosure

The Commission believes that the Exchange's proposal should ensure that investors are adequately apprised of the terms, characteristics, and risks of trading the Funds.[37] As noted above, all Fund Share investors will receive a prospectus regarding the product. Because the Funds will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors, and to all investors purchasing such securities in secondary market transactions on the AMEX. The prospectus will address the special characteristics of the Select Sector SPDRs or the Technology 100 Index Fund shares, including a statement regarding its redeemability and method of creation.

The Commission notes that the Exchange will issue an information circular to its members explaining the unique characteristics of this type of security prior to the commencement of trading in shares of the Funds. The Commission also notes the circular will address Exchange members' responsibilities under AMEX Rule 411 regarding transactions in such Fund Shares. AMEX Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[38] The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the charactistics of purchases in the Fund Shares.

(c) Trading of the Index Fund Shares

The Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares. The Fund shares will be deemed equity securities subject to all AMEX rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, market volatitly related trading halt provisions pursuant to Rule 117, and responsibilities of specialist. The Commission also notes that the AMEX may consider halting trading in any series of Index Funds Shares under certain other circumstances, including those set forth in AMEX Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

The Commission is satisfied with the AMEX's development of specific listing and delisting criteria for Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares. These criteria should help to ensure that a minimum level of liquidity will exist in the Funds and allow for the maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider the suspension of trading and the delisting of a Select Sector SPDR or the Technology 100 Index Fund, if an event were to occur that made further dealings in such securities inadvisable. Thus, the Exchange has flexibility to delist any of the Funds if circumstances warrant such action.[39] Accordingly, the Commission believes that the rules governing the trading of Index Fund Shares, including the Select Sector SPDRs and the Technology 100 Index Fund, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Under AMEX's proposal, there will be no special account opening or customer suitability rules applicable to the trading of the Fund shares.[40] Nevertheless, as noted above, AMEX Rule 411, which provides in pertinent part that "[e]very member or member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted," will apply.

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[37] The Amex will be required to file a proposed rule change if an exemption from the prospectus delivery requirement with respect to any of the Funds is sought in the future.

[38] *See* Amex Rule 411.

[39] The Commission believes that any restrictions that change the fund shares fundamental characteristics should raise concerns under the delisting criteria. In such a case, the Amex should determine whether continued listing as a fund share is appropriate.

[40] This reflects the fact that the Fund shares are equity products and not an options product, and, therefore, do not necessitate the imposition of options-like rules.

(d) Market Impact

The Commission believes AMEX has adequately addressed the potential market impact concerns raised by the proposal. First, AMEX's proposal permits listing and trading of specific Index Fund Share only after review by the Commission. Second, AMEX has developed policies regarding trading halts in Index Fund Shares. Specifically, the Exchange would halt Index Fund Share trading in the Funds if the circuit breaker parameters under AMEX Rule 117 were reached. In addition, in deciding whether to halt trading or conduct a delayed opening in Index Fund Shares, in general, and the Select Sector SPDRs and the Technology 100 Index Fund Shares, in particular, AMEX represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. These rules would permit AMEX to halt or suspend trading, based on certain factors, whenever two floor governors and a senior executive officer of the Exchange deemed such action appropriate and in the interest of a fair and orderly market or to protect investors.[41]

The Commission believes that the trading of Index Fund Shares in general, and Select Sector SPDRs and the Technology 100 Index Fund, in particular, on AMEX should not adversely impact U.S. securities markets. As to the trading of the Fund Shares, the Commission notes that the corpus of the Trusts portfolios of stock are actively traded and liquid. In fact, as described above, the Commission believes the Funds may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[42] Accordingly, the Commission believes that the Select Sector SPDRs and the Technology 100 Index Fund shares do not contain features that will make them likely to impact adversely the U.S. securities markets.

(e) Dissemination of Portfolio Information

The Commission believes that the Values the Exchange proposes to disseminate for the Funds will provide investors with timely and useful information concerning the value of the Select Sector SPDRs and the Technology 100 Index Fund shares on a per Fund basis. The Exchange represents that the information will be disseminated through the facilities of the CTA and will reflect currently-available information concerning the value of the assets comprising the Deposit Securities. This information will be disseminated every 15 seconds during regular AMEX trading hours of 9:30 a.m. to 4:00 p.m., New York time. In addition, since it is expected that the Value will closely track the applicable Fund, the Commission believes that the Values will provide investors with adequate information to determine the intra-day value of the given Select Sector SPDR or the Technology 100 Index Fund.[43] The Commission expects that the AMEX will monitor the disseminated Value, and if the AMEX were to determine that the Value does not closely track the applicable Fund, it would arrange to disseminate an adequate alternative value.

(f) Surveillance

The Commission notes that the AMEX has submitted surveillance procedures for the trading of Select Sector SPDRs and the Technology 100 Index Fund shares. These procedures incorporate the Fund Shares into the existing AMEX surveillance procedures to address concerns associated with the listing and trading of such securities.

The Commission also notes that certain concerns are raised when a broker dealer, such as Merrill Lynch, is involved in the development and maintenance of a stock index, upon which a product such as the Fund shares is based. The Commission notes that Merrill Lynch has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in a Select Sector Index or the Technology 100 Index to assuage such concerns. The Commission believes that the "Fire Wall" procedures put in place by Merrill Lynch to segregate and survey their trading desk and research department should help address concerns raised by Merrill Lynch's involvement in the management of the Select SPDR Indices and the Technology 100 Fund Index.

(g) Stop and Stop Limit Orders

As noted above, AMEX Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by AMEX Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including Select Sector SPDRs and shares of the Technology 100 Index Fund, as eligible for this treatment. The Commission believes that to allow stop and stop limit orders in Index Fund Shares to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, Index Fund Shares are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.

(h) Accelerated Approval of Amendment No. 2

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the day of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 strengthens the proposed rule change by clarifying the duties and identity of the lending agents, the construction and maintenance standards for the Select Sector Indices and the Technology 100 Index, and trading halt procedures for the Funds. Amendment No. 2 also strengthens the proposal by providing for a method of disseminating information on the value of the Fund Shares that more closely tracks the actual value of Funds. Additionally, Amendment No. 2 concerns issues that have been raised in prior Exchange proposals that have been the subject of a full comment period pursuant to Section 19(b) of the Act.[44] Accordingly, the Commission believes that there is good cause, consistent with Section

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[41] *See* Amex Rule 918C(b).

[42] Even though Index Fund Share transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create Index Fund Shares could conceivably have an impact on price levels in the cash market. In particular, if a Index Fund Share is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of Index Fund Shares likely will not exacerbate a price movement because Index Fund Shares will be subject to the equity margin requirements of 50% and Index Fund Shares are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although Select Sector SPDRs and the Technology 100 Index Fund Shares, like any other Index Fund Share, could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[43] *Supra*, note 8.

[44] 15 U.S.C. 78s(b).

6(b)(5) and 19(b) of the Act,[45] to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–98–29 and should be submitted by January 4, 1999.

IV. Conclusion

It is therefore ordered, pusuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–AMEX–98–29), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32962 Filed 12–10–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40748; File No. SR–BSE–98–7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

December 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on November 13, 1998.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the depth measure calculations in its Specialist Performance Evaluation Program pilot program ("SPEP") and to seek permanent approval of the program at the expiration of the pilot on December 31, 1998.[4] The text of the proposed rule change is as follows: new text is italicized and deleted text is bracketed.

Chapter XV

Specialists

Specialist Performance Evaluation Program

* * * * *

Sec. 17(c)(iii) Exceptions. Where Specialists have threshold scores in each measure at the following levels (subject to change pursuant to Commission approval), they will be deemed to have adequately performed:

Overall Evaluation Score—at or above weighted score of [5.00] *7.00*

Turnaround Time—below 21.0 seconds (5 points)(5%)

Holding Orders Without Action—below 21.0% (5 points)(5%)

Price Improvement in <8th Markets—at or above 2.0% (5 points)(20%)

Price Improvement in 8th Markets—at or above 15.0% (5 points)(15%)

Price Improvement in>8th Markets—at or above 25.0% (5 points)(15%)

Combined Depth (10 points) (40%)

(a) Depth—at or above 75.0% [(5 points)(20%)]

(b) Added Depth—at or above 1.0% [(5 points)(20%)]

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend its SPEP pilot by modifying the two depth measure calculations and the overall program score. All other aspects of the pilot program will remain the same. In addition, the Exchange is requesting permanent approval of the program, which has been in effect since 1992[5] with periodic modification over the years.[6] The Exchange believes that the SPEP is an effective tool for measuring specialist performance if continuously monitored and modified to meet the changing needs of the industry and the types of business sent to the Exchange, as well as changes in technology. The current pilot program will expire on December 31, 1998.

The Exchange has two depth measure calculations, which are Depth and Added Depth. The Depth measure (which measures the percentage of shares exceeding the displayed NBBO size that are executed at or better than the displayed NBBO price, for those orders that at the time of receipt exceed the displayed NBBO size) is currently weighted at 20% of the overall total score with a minimum threshold of 75%, *i.e.*, no points for any executions below 75% of the NBBO size.[7] The

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[45] 15 U.S.C. 78f(b) and 78s(b).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 299.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange seeks permanent approval of the Specialist Performance Evaluation Program and deletes its request for accelerated approval and retroactive implementation of the proposed rule change. *See* Rule 19b–4 filing, SR–BSE–98–07 (Am. 1), dated November 6, 1998 ("Amendment No. 1").

[4] *Id.*

[5] The Commission initially approved the SPEP in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (Feb. 19, 1993), 58 FR 11647 (Feb. 26, 1993), at which point the initial pilot program ceased to exist as a separate program.

[6] *See* Amendment No. 1, *supra* note 3.

[7] For example, assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares. If the specialist executes 600 shares at the NBBO price, the specialist would receive credit for 600 shares out of 1200 shares, or 50%. *See* Securities Exchange Act Release No. 39730 (March 6, 1998); 63 FR 12847 (March 16,

Added Depth measure (which measures the relative percentage of overall BSE depth attributable to each specialist at the displayed NBBO price and in excess of the displayed NBBO size at the time the order is received) is currently weighted at 20% of the overall total score with a minimum threshold of 1%, *i.e.*, no points for contributions less than 1% to the added depth of all BSE specialists.[8]

After reviewing two quarters of performance statistics, the Exchange has determined that four firms on the floor cannot meet the 1% Added Depth threshold, even if they were to achieve a Depth measure of 100%, because their volume of business is de minimus in comparison to some of the larger firms. However, the Exchange believes that the combination of the Added Depth and Depth measures balances out the performance results: where small firms tend to score extremely high relative to the larger firms on the Depth measure, firms with a significant amount of business tend to score higher relative to the smaller firms on the Added Depth measure.

Rather than eliminate the Added Depth measure in its entirety, the Exchange is proposing to combine the range points of the two depth measures and weight the overall combined score at 40%, as opposed to the current calculation which separately weights the range points of each measure at 20% each. This will result in the inclusion of both measures in the performance program, but will eliminate the requirement that a specialist appear before the Market Performance Committee for failure of a single measure that is mathematically impossible for that specialist to attain a passing score on. Under the proposed change, a specialist who failed the Added Depth category, but performed at some level above the range covered by the minimum threshold of 75%–79.9% for the Depth measure would end up over the minimum threshold for the combined score.

The current range point scales and weighted scores for each of the depth measures are as follows:

Depth			Added Depth		
Percentage of orders	Points	Weighted score (20%)	Percentage of orders	Points	Weighted score (20%)
<75.0	0	0	<1.0	0	0
75.0–79.9	5	1	1.0–1.9	5	1
80.0–84.9	10	2	2.0–3.9	10	2
85.0–89.9	15	3	4.0–5.9	15	3
>=90.0	20	4	>=6.0	20	4

The proposed range point scales for each of the depth measures and the combined weighted score are as follows:

Depth		Added Depth		Combined depth	
Percentage of orders	Points	Percentage of orders	Points	Total points	Weighted score (40%)
<75.0	0	<1.0	0	0	0
75.0–79.9	5	1.0–1.9	5	5	2
80.0–84.9	10	2.0–3.9	10	10	4
85.0–89.9	15	4.0–5.9	15	15	6
>=90.0	20	>=6.0	20	20	8
				25	10
				30	12
				35	14
				40	16

The following results occur under the current and proposed depth measure calculations for (1) a specialist who scores 82% on the Depth measure and 0.7% on the Added Depth measure and (2) a specialist who scores 76% on the Depth measure and 4% on the Added Depth measure:

Specialist (1)	Specialist (2)
Current Calculation	
Depth 82% (10 pts) ... Added Depth 0.7% (0 pts).	Depth 76% (5 pts). Added Depth 4% (15 pts).
Weighted Scores total 2.	Weighted Scores total 4.
Proposed Calculation	
Depth 82% (10 pts) ...	Depth 76% (5 pts)

1998) ("March 1998 Order"). Points are allocated based on the specialist's raw score. In this example, the specialist would not receive any points for the Depth measure, because the specialist's Depth percentage is below 75%. The points for each measure are weighted to obtain an overall weighted score for all the measures.

[8] For example, assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares, and that the specialist executes 600 shares at the displayed NBBO price. The number of shares over the NBBO size the specialist executed is calculated by subtracting 500 from 600. The specialist has 100 shares of "added depth." Then calculate the added depth for each qualifying order for each specialist, add the added depth for each specialist for each qualifying order, and total the added depth for all specialists combined. Next compare each specialist's added depth to the overall added depth for the floor to arrive at the percentage for each specialist relative to the other specialists. For example, 100 added depth for Specialist A / 10,000 added depth for all specialists = 10% added depth for specialists A. *See* March 1998 Order, *supra* note 7. Points are allocated based on the specialist's raw score. In this example, the specialist would receive points for the Added Depth measure, because the specialist's Added Depth percentage is equal to or greater than 1%. After points have been assigned for each measure under the SPEP, the points for each measure are assigned a weight to obtain an overall weighted score for all the measures.

Specialist (1)	Specialist (2)
Added Depth 0.7% (0 pts). Combined Depth (10 pts). Weighted Score totals 4.	Added Depth 4% (15 pts). Combined Depth (20 pts). Weighted Score totals 8.

In addition, the minimum threshold level for the Overall Program weighted score, which is currently set at "at or above 5.00", is being changed to compensate for the change in the depth calculations and will be set at "at or above 7.00."

Under the pilot, assuming that a specialist performed at the minimum threshold level for each measure, the breakdown of weighted points would be as follows:

Measure	Weight percent	Points	Weighted points
Turnaround Time	5	5	0.25
Holding Orders Without Action	5	5	0.25
Price Improvement (<⅛)	20	5	1.00
Price Improvement (⅛)	15	5	0.75
Price Improvement (>⅛)	15	5	0.75
Depth	20	5	1.00
Added Depth	20	5	1.00
Overall Weighted Score			5.00

Under the proposed rule change, assuming that a specialist performed at the minimum threshold level for each measure, the breakdown of weighted points would be as follows:

Measure	Weight percent	Points	Weighted points
Turnaround Time	5	5	0.25
Holding Orders Without Action	5	5	0.25
Price Improvement (<⅛)	20	5	1.00
Price Improvement (⅛)	15	5	0.75
Price Improvement (>⅛)	15	5	0.75
Depth and Added Depth	40	10	4.00
Overall Weighted Score			7.00

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.[9] Specifically, the Exchange believes that the proposal is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C.Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–98–7 and should be submitted by January 4, 1999.

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[9] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulations, pursuant to delegated.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32963 Filed 12–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40752; File No. SR–DTC–98–23]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 16, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends DTC's service fee schedule to establish a fee for transactions processed through DTC's two-way link with Deutsche Borse Clearing AG ("DBC").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change, which became effective for services provided on or after November 17, 1998, is to establish a new surcharge designed to recover DTC's costs to implement an enhanced two-way link with DBC from DTC participants whose transactions are processed through the link. DTC proposes to make the following revision to its service fee schedule:

Service	Present fee	Proposed fee
IX. Automated Deliver Orders:		
• A surcharge for each item delivered or received through the DTC/DBC link facility	None	$3.65

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because fees will more equitably be allocated among DTC participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and pursuant to Rule 19b–4(e)(2)[6] thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–23 and should be submitted by January 4, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32959 Filed 12–10–98; 8:45 am]

BILLING CODE 8010–01–M

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] See Exchange Act Release No. 40660 (November 10, 1998), 63 FR 64135 (order approving DTC's proposal to establish a two-way link with DBC).

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40753; File No. SR–DTC–98–24]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PTS Pending Transaction Inquiry Function

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 19, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify DTC's PTS Pending Transaction Inquiry ("PEND") function to allow DTC participants to temporarily and selectively "hold" (exclude from processing) and "uphold" (release) deliver orders and pledge transactions that are recycled for insufficient position.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of an basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide DTC participants with additional flexibility in their use of the PEND function. Under the proposal, DTC participants will be permitted to hold pending deliver orders and pledge transactions. Held transactions will not be processed by DTC until the hold is released by the holding participant. Only the initiator (*i.e.*, the deliverer or pledgor) of a transaction will be permitted to hold or release a pending transaction. Furthermore, only transactions that pend for insufficient position may be held. DTC will charge forty-five cents ($.45) for each hold and hold release transaction processed, which is the same fee that DTC currently charges for the cancellation of pending deliver orders.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder since the proposed rule change will give DTC participants greater flexibility in handling transactions that pend for insufficient position. According to DTC, the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of the PEND function, as modified by the proposed rule change, will be similar to the current operation of the function.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was developed through discussions with several DTC participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and pursuant to Rule 19b–4(e)(4)[6] thereunder because the proposal effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–24 and should be submitted by January 4, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32960 Filed 12–10–98; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).

[2] An Important Notice to DTC participants which provides a detailed description of the modification to the PEND function is attached as an exhibit to DTC's filing, which is available for inspection and copying at the Commission's public reference room and through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40751; File No. SR–DTC–98–22]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on

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[1] 15 U.S.C. 78s(b)(1).

November 16, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes the fees charged by DTC for various services provided.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for use of DTC's withhold and cancellation feature (known as "hold and bust") of the Direct-Mail-by-the-Depository service. The fees are designed to recover DTC's estimated service costs and will be established under the heading "A. Registered Securities, II. Withdrawals-by-Transfer".

DTC is adding the following to its service fee schedule:

Service	Present fee	Proposed fee
For each assignment initially withheld at request of participant and thereafter directly mailed.	NONE	$.53 per item withheld.
For each assignment canceled at request of participant where assignment was not withheld prior to direct mail.	NONE	$1.49 per item canceled.
For each assignment canceled at request of participant after being withheld at request of participant.	NONE	$1.82 per item canceled.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and pursuant to Rule 19b–4(e)(2)[4] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–22 and should be submitted by January 4, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32961 Filed 12–10–98; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(e)(2).

[5] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The Information Collection(s) Listed Below Require(s) Extension(s) of the Current OMB Approval(s) or are Proposed New Collection(s)

1. Disability Report—0960–0573. The information collected on Form SSA–3368–F6 is needed for the determination of disability by the State Disability Determination Services. The information will be used to develop medical evidence and to assess the alleged disability. The respondents are applicants for disability benefits.

Number of Respondents: 85,280.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 63,960 hours.

2. Vocational Report—0960–0572. The information collected on the SSA–3369–F6 is needed for the determination of disability by the State Disability Determination Services. The respondents are applicants for disability benefits. The information will be used

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to document an individual's past work history.

Number of Respondents: 42,640.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 14,213 hours.

3. Medical History and Disability Report, Disabled Child—0960–0574. The information collected on Form SSA–3820–F4 is needed for the determination of disability by the State Disability Determination Services. The SSA–3820 will be used to obtain various types of information about a child's condition, his/her treating sources and/or other medical sources of evidence. The respondents are applicants for disability benefits.

Number of Respondents: 18,720.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 6,240 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The Information Collection(s) Listed Below Have Been Submitted to OMB

1. Employer Report of Special Wage Payments—0960–0565. The Social Security Administration (SSA) gathers the information on Form SSA–131 to prevent earnings related overpayments to employees and to avoid erroneous withholding. The respondents are employers who provide special wage payment verification.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 20–22 minutes.

Estimated Annual Burden: 33,367 hours.

2. Railroad Employment Questionnaire—0960–0078. Form SSA–671 is used by SSA to secure sufficient information to coordinate Social Security claims processing with the Railroad Retirement Board. The form is completed whenever claimants indicate having been employed in the Railroad Industry. The respondents are retired employees of the Railroad Industry or their dependents.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 10,417 hours.

3. Concise Notice Survey—0960–NEW. SSA will conduct a survey of Supplemental Security Income (SSI) awardees to determine customer opinions and preferences on the format and clarity of existing and proposed SSI award notices. The information will be used to determine whether a new concise notice format would improve comprehension of the information thus improving service to SSI customers. The respondents will be a random sample of new SSI awardees.

Number of respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 250 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget,
OIRA, Attn: Lori Schack, New
Executive Office Building, Room
10230, 725 17th St., NW, Washington,
DC 20503.

(SSA)

Social Security Administration,
DCFAM, Attn: Frederick W.
Brickenkamp, 1–A–21 Operations
Bldg., 6401 Security Blvd., Baltimore,
MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: December 3, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–32804 Filed 12–10–98; 8:45 am]

BILLING CODE 4190–01–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2948]

Countries Providing Sanctuary to Indicted War Criminals; Determinations: Serbia, et al.

Subject: Determination with respect to Countries Providing Sanctuary to Indicted War Criminals.

Pursuant to the authority vested in me by Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, as enacted in Pub. L. 105–277, I hereby determine that Serbia and the Republika Srpska Entity of Bosnia and Herzegovina have failed to take necessary and significant steps to apprehend and transfer to the International Criminal Tribunal for the former Yugoslavia (the "Tribunal") all persons who have been publicly indicted by the Tribunal.

This determination shall be provided to the Congress and published in the **Federal Register.**

Dated: November 30, 1998.

Madeleine Albright,

Secretary of State.

[FR Doc. 98–32916 Filed 12–10–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice 2942]

International Joint Commission, Boundary Waters Treaty of 1909

The United States and Canadian federal governments have asked the International Joint Commission (IJC) to further examine the international watershed approach as a mechanism to anticipate and respond to the range of water-related and other environmental challenges that are expected to occur as we enter the 21st century.

In its report to Governments, The IJC and the 21st century, the IJC proposed the international watershed board concept to build on cooperative efforts and successes achieved in the Great Lakes by offering to provide similar opportunities to other major transboundary basins through the establishment of permanent IJC international watershed boards. These boards would provide a much improved mechanism for avoiding and resolving transboundary disputes by building a capacity at the watershed level to anticipate and respond to the full range of water-related and other environmental challenges that may be foreseen for the 21st century.

Specifically, governments have asked the IJC to:

- Define the general framework under which watershed boards would operate, which includes the definition of the scope of activities of the watershed boards and the definition of the operating principles of such boards;
- Recommend the location of the first watershed board;
- Recommend the structure, composition and terms of reference of the first international watershed board, including the priority issues that it would address;
- Develop cost projections and possible sources of funding, including innovative funding mechanisms, for the formation and operation of the first international watershed board and for special studies that would be projected for its first few years of operation;
- Consult provinces, states and both federal governments on the identification of locations and the development, planning and establishment of additional international watershed boards at appropriate times.

The International Joint Commission is a binational Canada-U.S. organization established by the Boundary Waters Treaty of 1909. It assists the governments in managing waters along the border for the benefit of both countries in a variety of ways including examining issues referred to it by the two federal governments.

The IJC will undertake broad consultations with all interested parties as part of its examination of the watershed approach. The IJC would invite all interested parties to notify the Commission of their interest in this matter at either one of the following addresses:

International Joint Commission, United States Section, 1250 23rd Street, NW, Suite 100, Washington, DC 20440, Telephone: (202) 736–9000, Fax: (202) 736–9015, Email: commission@washington.ijc.org

International Joint Commission, Canadian Section, 100 Metcalfe Street, 18th Floor, Ottawa, ON K1P 5M1, Telephone: (613) 995–2984, Fax: (613) 993–5583, commission@ottawa.ijc.org

Dated: November 30, 1998.

Gerald E. Galloway,

Secretary, United States Section.

[FR Doc. 98–32915 Filed 12–10–98; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF STATE

[Public Notice 2941]

International Joint Commission, Boundary Waters Treaty of 1909

An Invitation to Comment on the 1998 Progress Report of the Air Quality Committee under the Canada-United States Air Quality Agreement.

The International Joint Commission invites public comment on progress by the United States and Canada in reducing transboundary air pollution under the 1991 Agreement on Air Quality. The Commission will provide a synthesis of the comments to the two governments and the public as directed by the Agreement.

The Governments of the United States and Canada signed an Agreement on Air Quality on March 13, 1991. The purpose of the Agreement was to establish a practical and effective instrument to address shared concerns on transboundary air pollution. The 1998 Progress Report reviews acid rain control programs, monitoring, prevention of air quality deterioration and visibility protection, notification of significant transboundary air pollution, cooperation on ground-level ozone and particulate matter, and scientific and technical cooperation.

Under the terms of the Agreement, the Governments established a bilateral Air Quality Committee. This Committee is responsible for reviewing progress made in the implementation of the Agreement, preparing and submitting periodic progress reports to the Governments, referring each progress report to the International Joint Commission, and releasing those reports to the public. The 1998 Progress Report of the Committee is now available and may be obtained from:

Acid Rain Division, U.S. Environmental Protection Agency, Mail Code: 6204J, 401 M Street, SW, Washington, DC 20460, Acid Rain Hotline: (202) 564–9620.

Environment Canada, Inquiry Centre, 351 St. Joseph Blvd., Hull, Quebec, K1A 0H3, (819) 997–2800.

The full report is also available at the following sites on the World Wide Web:

http://www.epa.gov/acidrain/lawsregs/airus.pdf

http://www.ec.gc.ca/special/airqual.html

Under the Agreement, the Governments assigned the International Joint Commission the responsibility of inviting comments on each progress report of the Air Quality Committee. The International Joint Commission invites comment on any aspect of the 1998 Progress Report. Please send comments in writing by February 26, 1999, to either address below, or contact us if you have any questions about the comment process.

International Joint Commission, United States Section, 1250 23rd Street, NW, Suite 100, Washington, DC 20440, Telephone: (202) 736–9000, Fax: (202) 736–9015, Email: commission@washington.ijc.org

International Joint Commission, Canadian Section, 100 Metcalfe Street, 18th Floor, Ottawa, ON K1P 5M1, Telephone: (613) 995–2984, Fax: (613) 993–5583, Email: commission@ottawa.ijc.org

Dated: November 30, 1998.

Gerald E. Galloway,

Secretary, United States Section.

[FR Doc. 98–32914 Filed 12–10–98; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25–XX, Certification of Transport Airplane Mechanical Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25–XX and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides methods acceptable to the Administrator for showing compliance with the provisions of subparts D and F of 14 CFR part 25 regarding the type certification requirements for transport airplane mechanical systems. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before April 12, 1999.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Mahinder Wahi, Propulsion/Mechanical Systems/Crashworthiness/Noise Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Toni Jackson, Transport Standards Staff, at the address above, telephone (425) 227–2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25–XX, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

This AC contains guidance for the latest amendment of the regulations and applies to all transport category airplanes for which a new, amended, or supplemental type certificate is required. This guidance should be applied to any portion of the airplane mechanical systems that has been modified. In the past, advisory and guidance information applicable to transport airplane mechanical systems has been formally published as AC's. Advisory circulars have not been developed for all of the regulatory requirements applicable to transport airplane mechanical systems, however. In many instances, certification of new technology airplanes resulted in the need to interpret the existing regulations and to apply new regulations. Issue papers and special conditions were generated to document the compliance method agreed upon between the applicant and the FAA. In other instances, applicants, FAA Aircraft Certification Office (ACO) managers, and foreign regulatory authorities have requested interpretation of the intent of specific regulations. This guidance was documented in the form of policy memorandums that were distributed to all ACOs, letters to applicants and foreign airworthiness authorities, and issue papers. In many instances, this information was not organized in a manner that allowed easy access, and applicants were not aware of revised policy. This AC formalizes existing policy so that the public and FAA personnel have access to this information. The methods and procedures described in this AC have evolved after many years and represents current certification practice.

Issued in Renton, Washington, on November 30, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–32967 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 99–02–C–00–MCI To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kansas City International Airport, Kansas City, MO.

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kansas City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond D. Anderson, AAE, Director of Aviation, Kansas City International Airport, at the following address: 601 Brasilia Avenue, Kansas City, Missouri 64153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kansas City International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Kansas City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 27, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Kansas City International Airport, Kansas City, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 27, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January, 2002.

Proposed charge expiration date: November, 2006.

Total estimated use revenue: $48,047,139.

Total estimated impose revenue: $28,723,139.

Brief description of proposed project(s): Overlay Runway 9/27 and Taxiway C (between C1–C9); Expand General Aviation Apron; Construct Federal Inspection Service Facility; Taxiway B Rehabilitation; Terminal Improvement; Airfield Storm Drainage; Construction of Hold apron West of Terminal B; Automated Access Control System; Reconstruct Taxiway D; Passenger Facility Charge Development and Administration.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kansas City International Airport.

Issued in Kansas City, Missouri on November 27, 1998.

Michael J. Faltermeier,

Acting Manager, Airports Division Central Region.

[FR Doc. 98–32968 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dubuque County, IA/Jo Daviess County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway capacity improvement project in Dubuque County, Iowa and Jo Daviess County, Illinois.

FOR FURTHER INFORMATION CONTACT: Rebecca Hiatt, Environmental Coordinator, Federal Highway Administration, 105 Sixth Street, Ames, Iowa 50010–6337, Telephone (515) 233–7300. Roger Larsen, Project Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone (515) 239–1791.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve the capacity of U.S. Route 20 (U.S. 20) in Dubuque County, Iowa and Jo Daviess County, Illinois. The proposed improvement would involve upgrading or re-routing existing U.S. 20 between Iowa and Illinois for a distance up to seven miles.

Improvements to U.S. 20 are considered necessary to provide for the existing and projected traffic demand and safety considerations. This proposal will also include a connection of U.S. 20 across the Mississippi River. Alternatives under consideration include: (1) taking no action; (2) using alternative travel improvements; (3) widening the existing two-lane highway to four lanes; and (4) constructing a four-lane highway on a new location. Variations of facility type, grade, and alignment will be incorporated into and studied with various build alternatives.

An informal scoping process will be initiated as part of this project. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Dubuque and East Dubuque. In addition, a public hearing will be held upon completion of the draft EIS. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or Iowa DOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 24, 1998.

Bruce E. Mazke,

Assistant Division Administrator, Federal Highway Administration, Ames, Iowa.

[FR Doc. 98–32849 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Highway Administration

[FRA Docket No. FRA–1998–4759]

Financial Assistance To Eliminate Highway-Railroad Grade Crossing Hazards on Designated High-Speed Rail Corridors

AGENCIES: Federal Railroad Administration (FRA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of designation of high-speed corridors; solicitation of applications for: (1) the designation of additional high-speed corridors, and (2) for Fiscal Year (FY) 1999 funding assistance.

SUMMARY: Section 1103(c) of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) modifies the program established in 23 U.S.C. 104(d)(2) to eliminate highway-railroad grade crossing hazards in designated high-speed rail corridors. The program funding out of the Highway Trust Fund would be increased from $5 million a year to $5.25 million a year for FYs 1998–2003; eligible corridors are increased from 5 to 11 with the addition of the Gulf Coast, Keystone and Empire State Corridors and the addition of up to 3 corridors to be selected by the Secretary of Transportation (Secretary); not less than $250,000 of available funding is for the Minneapolis/St. Paul-Chicago segment of the Midwest Corridor; and a general fund authorization of $15 million per year for FYs 1999–2003 is provided for the same purpose, namely elimination of highway-railroad grade crossing hazards in designated high-speed rail corridors. (Funding of the general fund authorization is subject to the appropriations process; no such appropriations have been made for FY 1999.)

In this notice, the FRA is soliciting applications from States for designation of up to three new corridors, and applications from States for FY 1999 funding under this program in all designated corridors. The FRA is actively coordinating with the FHWA, which is also substantively involved in this program and in all decisions pertaining to it.

DATES: Signed, written comments on this notice must be received by the FRA on or before February 9, 1999. Completed applications for additional corridor designations must be received by the FRA on or before March 11, 1999. Completed applications for FY 1999 funding assistance must be received by the FRA on or before March 11, 1999 or, for any additional designated corridors, within two months following publication of the designation in the **Federal Register**.

ADDRESSES: The public is invited to submit written comments on this notice. Written comments should refer to the docket number appearing at the top of this notice and be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address. Docket hours at the Nassif Building are Monday through Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

Applications for corridor designation and applications for FY 1999 funding assistance should be submitted to: The Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, ATTN: Section 104(d)(2) Program, RDV–11, Mail Stop 20, 1120 Vermont Avenue, NW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: *For FRA:* Mr. John F. Cikota, Senior Transportation Analyst, Program Development Division, Office of Railroad Development (telephone: 202–493–6364; E-mail address: John.Cikota@fra.dot.gov), or Gareth Rosenau, Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mailstop 10, Washington, DC 20590 (telephone 202–493–6054; E-mail address: Gareth.Rosenau@fra.dot.gov). For FHWA: Mr. Lee Chimini, Intermodal Transportation Engineer, Intermodal and Statewide Programs Division, Office of Environment and

Planning (telephone: 202–366–4068; E-mail address: Leroy.Chimini@fhwa.dot.gov) or Mr. Joseph Solomey, Attorney, Office of Chief Counsel, FHWA (telephone: 202–366-1374; E-mail address: Joseph.Solomey@fhwa.dot.gov), 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Purpose

The purpose of this notice is to provide general information about the 23 U.S.C. 104(d)(2) program to eliminate highway-railroad grade crossing hazards in designated high-speed rail corridors (Section 104(d)(2) Program), and the FRA's plans for implementing the program. The notice identifies the five corridors which have previously been designated by DOT and the three corridors designated in TEA–21, and invites any State, either singly or in conjunction with other States, to submit an application for the designation of one of up to three new corridors. In addition, the notice invites State governments housing a high-speed rail corridor identified in this notice, or a high-speed corridor designated subsequent to the issuance of this notice, to make applications for FY 1999 funding. The FRA and the FHWA will review the applications for corridor designation and funding, and will make joint decisions regarding such applications. The public is invited to submit comments on this notice.

Section 104(d)(2) Program

The section 104(d)(2) Program provides Federal funding to eliminate highway-railroad grade crossing hazards in designated high-speed rail corridors. Section 1103(c) of TEA–21 modifies the program by setting aside from the Highway Trust Fund $5.25 million per year for FYs 1998–2003; increasing the eligible corridors from 5 to 11 with the addition of the Gulf Coast, Keystone, and Empire State corridors and the addition of up to 3 new corridors to be selected by the Secretary; specifying that not less than $250,000 of available annual funding is for the Minneapolis/St Paul-Chicago segment of the Midwest Corridor; and providing a general fund authorization of $15 million per year for FYs 1999–2003. Funding of this general fund authorization is subject to the appropriations process; no such appropriations have been made for FY 1999.

Rules for Application Submissions

Applications for the designation of new high-speed rail corridors under the Section 104(d)(2) Program, and applications for FY 1999 funding under the program shall be submitted to the address cited in this notice, and electronically in either WordPerfect or MS Word format. Electronic versions are to be submitted either on 3½ inch floppy disks to the address above, or by electronic mail to John.Cikota@fra.dot.gov. Applications shall be submitted by the dates indicated in this notice, and shall comply with the requirements specified in this notice.

Amount of Funding

To fund the section 104(d)(2) Program, TEA–21 authorized for allocation $5.25 million annually from the Highway Trust Fund. This allocation is subject to a reduction by operation of Section 1102(f) of TEA–21. For FY 1998, the reduction amounted to 10.9 percent of the authorized funding; FY 1999 funding will be reduced by approximately 12 percent. Taking into account available carryover and the section 1102(f) reductions, which are being calculated as this notice goes to press, the FRA and the FHWA project that a total of approximately $6½ to $7 million will be made available for States' use during FY 1999. Of that amount, section 1103(c) of TEA–21 requires that at least $500,000 be allocated to the segment of the Chicago Hub Corridor linking Chicago, Milwaukee, and the Twin Cities ($250,000 in each of FYs 1998 and 1999).

The FRA anticipates that these funds will be allocated as early as possible, based on a review of applications submitted under this notice.

Designation of Eight of the Eleven High-Speed Rail Corridors

As previously noted, the Secretary is authorized to designate eleven high-speed rail corridors under the Section 104(d)(2) Program. To date the DOT has designated the following five corridors:

(1) California Corridor (San Francisco Bay Area to Los Angeles and San Diego);

(2) Pacific Northwest Corridor (Eugene, OR via Portland, OR and Seattle, WA to Vancouver, BC);

(3) Chicago Hub Corridor, extending from Chicago to St. Louis, Detroit, and Milwaukee;

(4) Florida Corridor (Miami—Orlando—Tampa); and

(5) Southeast Corridor (Washington, DC—Richmond, VA (with an extension to Newport News, VA)—Raleigh, NC—Greensboro, NC—Charlotte, NC).

By this notice, the FRA is recognizing the following additional corridor designations made in section 104(d)(2):

(6) Gulf Coast Corridor, designated as extending easterly and westerly from New Orleans, LA, on routes to be determined by the Secretary in consultation with the participating States;

(7) Keystone Corridor, between Philadelphia and Harrisburg, PA, via Paoli and Lancaster, PA, over the route of the former Pennsylvania Railroad; and

(8) Empire State Corridor, between New York City, Albany, and Buffalo, NY, over the route of the former New York Central Railroad.

In addition, the Chicago Hub Corridor (Corridor number (3) above) is expanded to include the Twin Cities of Minneapolis/St. Paul, MN, as set forth in section 104(d)(2).

Applications From States for Designation of Up To Three New Corridors

Any State, either singly or in conjunction with other States, may request the FRA to designate a corridor under section 104(d)(2). As previously noted, applications for designation must be received by the FRA by March 11, 1999.

Section 104(d)(2) requires that corridors selected include rail lines where railroad speeds of 90 miles or more per hour are occurring or can reasonably be expected to occur in the future, and that the Secretary consider the following:

(1) The projected ridership associated with the proposed corridor;

(2) The percentage of the corridor over which trains will be able to operate at maximum cruise speed, taking into account such factors as topography and other traffic on the line;

(3) The projected benefits to nonriders, such as congestion relief on other modes of transportation servicing the corridor (including congestion in heavily traveled air passenger corridors);

(4) The amount of State and local financial support that can reasonably be anticipated for the improvement of the line and related facilities; and

(5) The cooperation of the owner of the right-of-way that can reasonably be expected in the operation of the high-speed rail passenger service in the corridor.

Applications from States for designation of high-speed rail corridors shall include all information which is required for the Secretary to make a determination with reference to the statutory considerations for corridor selection. Applications shall also include information demonstrating compliance with the speed requirement set forth above.

Applications for FY 1999 Funding Under the Section 104(d)(2) Program

Eligible Applicants. Only State governments housing a designated high-speed rail corridor are eligible to file applications for FY 1999 funding. Applications must be received by the FRA by March 11, 1999 with respect to the eight designated corridors identified in this notice, or within two months following the date of publication of the designation in the **Federal Register**.

Eligible Crossings. All highway/rail grade crossings, whether public or private, on designated high-speed corridors are eligible for funding.

Eligible Improvements and Allowable Costs. Work eligible for funding includes any of the following to reduce the hazards of highway-rail grade crossings in the designated corridors: (1) Installation or improvement of warning devices; (2) improvement of track circuitry which activates warning devices; (3) other crossing improvements, such as improved crossing surfaces, improved sight distances, and crossing illumination; (4) closure of crossings with or without attendant highway relocations; (5) grade separation construction or reconstruction; (6) combining crossing warning systems with advanced train control and/or intelligent highway traffic control systems; (7) conducting analyses to identify specific rail routes, inventorying grade crossings, and developing crossing improvement plans; (8) project development and engineering; (9) evaluating the safety effects, benefits, and costs of activities funded under this program; and (10) any combination of the above.

Matching. The Federal share of the costs of improvements funded under section 104(d)(2) may be up to 100 percent of the costs of engineering and construction. However, in allocating funds, consideration will be given to the extent to which other funds are being committed to corridor improvements in conjunction with the section 104(d)(2) funds.

Contents of applications. Applications for FY 1999 funding shall contain all the following items:

(1) *Identifying Data.*

(a) The name of the corridor for which funding is sought.

(b) The name, address, responsible party, telephone, fax number, and e-mail address of the State agency submitting the application.

(c) The railroad route and relevant milepost locations on which the crossings to be improved or eliminated are located.

(2) *Work Description.* A description of the proposed work, and related information, in sufficient detail to provide the staff of the FRA, working with the FHWA, with a basis for approving an allocation of Section 104(d)(2) Program funding.

(**Authority:** 23 U.S.C. 315; 49 U.S.C. 20103; section 1103(c), Pub. L. 105–178, 112 Stat. 107, 122 (1998).)

Issued in Washington, DC on December 3, 1998.

Jolene M. Molitoris,

Federal Railroad Administrator.

Anthony R. Kane,

Executive Director, Federal Highway Administration.

[FR Doc. 98–32881 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4861]

Decision That Certain Nonconforming Motor Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This notice announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATE: These decisions are effective as of December 11, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry

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the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 7, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided To be Eligible for Importation

1. Docket No. NHTSA–98–4073
   Nonconforming Vehicle: 1995–1996 Ford Bronco manufactured for sale in Venezuela
   Substantially similar U.S.-certified vehicle: 1995–1996 Ford Bronco
   Notice of Petition published at: 63 FR 38876 (July 20, 1998)
   Vehicle Eligibility Number: VSP–265
2. Docket No. NHTSA–98–4078
   Nonconforming Vehicles: 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS
   Substantially similar U.S.-certified vehicles: 1996–1999 Moto Guzzi Daytona RS
   Notice of Petition published at: 63 FR 39359 (July 22, 1998)
   Vehicle Eligibility Number: VSP–264
3. Docket No. NHTSA–98–4080
   Nonconforming Vehicles: 1976 Triumph Bonneville
   Substantially similar U.S.-certified vehicles: 1976 Triumph Bonneville
   Notice of Petition published at: 63 FR 41617 (August 4, 1998)
   Vehicle Eligibility Number: VSP–263
4. Docket No. NHTSA–98–4103
   Nonconforming Vehicles: 1994–1997 Mercedes-Benz S420
   Substantially similar U.S.-certified vehicles: 1994–1997 Mercedes-Benz S420
   Notice of Petition published at: 63 FR 42658 (August 10, 1998)
   Vehicle Eligibility Number: VSP–267
5. Docket No. NHTSA–98–4104
   Nonconforming Vehicles: 1992–1995 Hyundai Elantra
   Substantially similar U.S.-certified vehicles: 1992–1995 Hyundai Elantra
   Notice of Petition published at: 63 FR 42659 (August 10, 1998)
   Vehicle Eligibility Number: VSP–269
6. Docket No. NHTSA–98–4165
   Nonconforming Vehicles: 1991–1998 Ford Explorer manufactured for sale in Venezuela
   Substantially similar U.S.-certified vehicles: 1991–1998 Ford Explorer
   Notice of Petition published at: 63 FR 42096 (August 6, 1998)
   Vehicle Eligibility Number: VSP–268
7. Docket No. NHTSA–98–4166
   Nonconforming Vehicles: 1991–1996 Porsche 928
   Substantially similar U.S.-certified vehicles: 1991–1996 Porsche 928
   Notice of Petition published at: 63 FR 42097 (August 6, 1998)
   Vehicle Eligibility Number: VSP–266
8. Docket No. NHTSA–98–4335
   Nonconforming Vehicles: 1993 Chrysler Town and Country
   Substantially similar U.S.-certified vehicles: 1993 Chrysler Town and Country
   Notice of Petition published at: 63 FR 45107 (August 24, 1998)
   Vehicle Eligibility Number: VSP–273
9. Docket No. NHTSA–98–4336
   Nonconforming Vehicles: 1993–1998 Porsche 928
   Substantially similar U.S.-certified vehicles: 1993–1998 Porsche 928
   Notice of Petition published at: 63 FR 45281 (August 25, 1998)
   Vehicle Eligibility Number: VSP–272
10. Docket No. NHTSA–98–4381
    Nonconforming Vehicles: 1993–1998 Mercedes-Benz 600 SEL
    Substantially similar U.S.-certified vehicles: 1993–1998 Mercedes-Benz 600 SEL
    Notice of Petition published at: 63 FR 46825 (September 2, 1998)
    Vehicle Eligibility Number: VSP–271
11. Docket No. NHTSA–98–4546
    Nonconforming Vehicles: 1986–1998 Suzuki GSXR 750
    Substantially similar U.S.-certified vehicles: 1986–1998 Suzuki GSXR 750
    Notice of Petition published at: 63 FR 56063 (October 20, 1998)
    Vehicle Eligibility Number: VSP–275

[FR Doc. 98–32969 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4863]

Notice of Receipt of Petition for Decision that Nonconforming 1995–1998 Volvo 850 Turbo Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1998 Volvo 850 Turbo passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1998 Volvo 850 Turbo passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 11, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995–1998 Volvo 850 Turbo passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1998 Volvo 850 Turbo Sedans that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1998 Volvo 850 Turbo passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1998 Volvo 850 Turbo passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1998 Volvo 850 Turbo passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1995–1998 Volvo 850 Turbo complies with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 7, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32970 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT)

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of General Motors Corporation (GM) for an exemption of a high-theft line, the Pontiac Grand Am, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the

line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. GM requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to GM dated [awaiting letter granting confidentiality], the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA , 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In a petition dated August 27, 1998, General Motors Corporation (GM), requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Pontiac Grand Am car line. The petition is pursuant to 49 CFR Part 543, Exemption From Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire line.

GM's submittal is considered a complete petition, as required by 49 CFR part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. GM will install its "Passlock" antitheft device as standard equipment on its MY 2000 Pontiac Grand Am car line. GM stated that the "Passlock" device provides the same kind of functionality as the "VATS", "PASS-Key" and "PASS-Key II'devices but features an electronically-coded lock cylinder rather than an electrically-coded ignition key. Specifically, when the sensor detects proper lock rotation, it sends a code to the body function controller. If the correct code is received, fuel is enabled. If an incorrect code is received, fuel will be disabled for a ten-minute lockout period during which any attempts to start the vehicle will be unsuccessful.

In order to ensure the reliability and durability of the device, GM conducted tests, based on its own specified standards. GM provided a detailed list of the tests conducted. GM states its belief that the device is reliable and durable since it complied with its specified requirements for each test. GM also stated that the "Passlock" device is designed to provide protection against any attempts to defeat it by overriding its lock assembly with an external magnet, forcibly removing the ignition lock cylinder, forcibly rotating the lock, applying a torque to the lock cylinder or its keyway, bypassing the vehicle's lock assembly electronics, or by removing its battery power.

GM compared the "Passlock" device proposed for the Pontiac Grand Am line with its first generation "PASS-Key" device, which the agency has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM stated that its "Passlock" device is activated when the owner/operator turns off the ignition of the vehicle and removes the key. According to GM, no other intentional action is necessary to achieve protection of the vehicle other than removing the key from the ignition. The "PASS-Key" devices are activated in the same manner. GM believes that its "Passlock" antitheft device will be at least as effective as its "PASS-Key" and "VATS" devices.

The following GM car lines have the "Passlock" device as standard equipment and have been granted a full exemption from the parts-marking requirements: The Chevrolet Cavalier, beginning with MY 1997 (see 61 FR 12132, March 25, 1996), the Pontiac Sunfire, beginning with MY 1998 (see 62 FR 20240, April 25, 1997), and the Oldsmobile Alero, beginning with MY 1999 (see 63 FR 24587). GM stated that the theft rates, as reported by the National Crime Information Center, are lower for GM models equipped with "PASS-Key'-like devices which have been granted exemptions from the parts-marking requirements than theft rates for similar, earlier models that have been parts-marked. Therefore, GM concludes that the "PASS-Key'-like devices are more effective in deterring motor vehicle theft than the parts-marking requirements of 49 CFR Part 541. GM also concluded that based on the system performance of "PASS-Key'-like devices on other GM models, and the similarity of design and functionality of the "Passlock" device on the Pontiac Grand Am to the "PASS-Key" device, it believes that the agency should determine that the proposed device will be at least as effective in deterring theft as the parts-marking requirements of 49 CFR part 541.

Based on comparison of the reduction in theft rates of Chevrolet Corvettes using a passive antitheft device and audible/visible alarm with the reduction in theft rates for the Chevrolet Camaro and Pontiac Firebird models equipped with a passive antitheft device without an alarm, GM believes that an alarm or similar attention attracting device is not necessary and does not compromise the antitheft performance of these systems.

The agency notes that the reason that the vehicle lines whose theft data GM cites in support of its petition received only a partial exemption from parts-marking was that the agency did not believe that the antitheft device on these vehicles ("PASS-Key" and "PASS-Key II") by itself would be as effective as parts-marking in deterring theft because it lacked an alarm system. On that basis, it decided to require GM to mark the vehicle's most interchangeable parts (the engine and transmission), as a supplement to the antitheft device. Like those earlier antitheft devices GM used, the new "Passlock" device on which this petition is based also lacks an alarm system. Accordingly, it cannot perform one of the functions listed in 49 CFR part 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle.

Since deciding those petitions, however, the agency became aware that theft data shows declining theft rates for GM vehicles equipped with either version of the "PASS-Key" system. Based on that data, it concluded that the lack of a visible or audible alarm had not prevented the antitheft device from being effective protection against theft and granted three GM petitions for full exemptions for car lines equipped with "PASS-Key II". See 60 FR 25939 (May 15, 1995) granting in full the petition for the Chevrolet Lumina and Buick Regal car lines equipped with "PASS-Key II'; 58 FR 44874 (August 25, 1993), granting in full the petition for exemption of the Buick Riviera and Oldsmobile Aurora car lines equipped with "PASS-Key II'; and 62 FR 20058 (April 24, 1997), granting in full the petition for exemption of the Cadillac Seville car line equipped with "PASS-Key II". In all three of those instances, the agency concluded that a full exemption was warranted because "PASS-Key II" had shown itself as likely as parts-marking to be effective protection against theft despite the absence of a visible or audible alarm.

The agency concludes that, given the similarities between the "Passlock" device and the "PASS-Key" and "PASS-Key II" systems, it is reasonable to assume that "Passlock", like those systems, will be as effective as parts-marking in deterring theft. The agency believes that the device will provide the other types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its antitheft device. This confidential information included a description of reliability and functional tests conducted by GM for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the MY 2000 Pontiac Grand Am car line from the parts-marking requirements of 49 CFR Part 541.

If GM decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 7, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–32964 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33679]

SierraPine—Lease and Operation Exemption—Sierra Pacific Industries

SierraPine, a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to lease and operate approximately 12 miles of rail line known as the Amador Branch, which is owned by Sierra Pacific Industries (Sierra Pacific),[1] between milepost 0.0 at Ione and milepost 12.0 at Martell,[2] in Amador County, CA.

Although there was another planned and approved transaction involving the sale of this same rail line to Sierra Railroad Company (Sierra),[3] SierraPine indicates in its notice that Sierra Pacific and Sierra have mutually agreed not to complete this sale. Therefore, Sierra Pacific retains control and ownership of the above-described rail line.

The transaction was scheduled to be consummated on or shortly after November 25, 1998.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33679, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on James F. Flint, Grove, Jaskiewicz and Cobert, 1730 M Street, NW, Suite 400, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 4, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–32999 Filed 12–10–98; 8:45 am]

BILLING CODE 4915–00–P

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[1] *See Sierra Pacific Industries—Acquisition and Operation Exemption—Amador Central Railroad Company,* STB Finance Docket No. 33378 (STB served Apr. 9, 1997).

[2] The Amador Branch includes a yard and repair shops at Martell as well as additional spur trackage at the Sierra Pacific mill and particle board plant located at milepost 11.6.

[3] *See Sierra Railroad Company—Acquisition and Operation Exemption—Sierra Pacific Industries,* STB Finance Docket No. 33525 (STB served Dec. 2, 1997).

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

December 3, 1998.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Number: 1550–0096.

Form Number: OTS Form 1661.

Type of Review: Extension of an already approved collection.

Title: Minority Thrift Certification.

Description: This information is needed to help OTS remain a reliable source of information regarding the universe of minority-owned thrifts, in accordance with our responsibilities under Section 308 of FIRREA.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 34.

Estimated Burden Hours Per Respondents: .5 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 17 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Celia Winter,

Director, Dissemination Branch.

[FR Doc. 98–33002 Filed 12–10–98; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 94
Control of Emissions of Air Pollution From New CI Marine Engines at or Above 37 kW; Proposed Rule

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PART II

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 94

[AMS–FRL–6196–3]

RIN 2060–AI17

Control of Emissions of Air Pollution From New CI Marine Engines at or Above 37 kW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this action, EPA is proposing an emission control program for new compression-ignition marine engines rated at or above 37 kilowatts. The affected engines are used for propulsion and auxiliary purposes in a wide variety of marine applications. The standards proposed for these engines would require substantial reductions in oxides of nitrogen and particulate matter emissions to correspond with the next round of emission standards for comparable land-based engines. The proposed standards are expected to provide a significant reduction in oxides of nitrogen and particulate matter emissions from this source. When combined with other mobile source emission control programs, the program described in this action will help provide long-term improvements in air quality in many port cities and other coastal areas. Overall, the proposed program would provide much-needed assistance to states facing ozone and particulate air quality problems, which can cause a range of adverse health effects for their citizens, especially in terms of respiratory impairment and related illnesses.

The persons potentially affected by this action are those who manufacture new compression-ignition marine engines or marine vessels or other equipment using such engines. Additional requirements apply to companies that rebuild or maintain these engines.

DATES: EPA will hold a hearing on the proposed rulemaking on January 19, 1999. EPA requests comments on the proposed rulemaking by February 26, 1999. More information about commenting on this action and on the public hearing and meeting may be found under Public Participation in **SUPPLEMENTARY INFORMATION**, below.

ADDRESSES: Materials relevant to this proposal, including the Draft Regulatory Impact Analysis, are contained in Public Docket A–97–50. Additional materials relevant to EPA's earlier proposal, which was published in 1994 and supplemented in 1996 but not finalized, can be found in Public Docket A–92–28 (Control of Air Pollution; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines). Both of these dockets are located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

Comments on this proposal should be sent to Public Docket A–97–50 at the above address. EPA requests that a copy of comments also be sent to Jean Marie Revelt, U.S. EPA, Engine Programs and Compliance Division, 2000 Traverwood Dr., Ann Arbor, MI 48105.

The public hearing will be held at the National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Drive, Ann Arbor, Michigan. The public hearing will begin at 10 a.m. and will continue until all testimony has been presented. People who wish to testify will be requested to register on the day of the hearing. Time limits may be imposed for each speaker, depending on the number of people who request to testify. A transcript of the hearing will be placed in the docket. Arrangements for copies may also be made directly with the court reporter, on the day of the hearing. The court reporter may charge a fee for this service.

For further information on electronic availability of this proposal, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, Engine Programs and Compliance Division, (734) 214–4334; Borushko.Margaret@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated entities

Persons or companies potentially regulated by this action are those that manufacture or introduce into commerce new compression-ignition marine engines and those that make vessels or other equipment using such engines. Further requirements apply to companies that rebuild or maintain marine engines. Regulated categories and entities include:

Category	Examples of regulated entities	NAICS code	SIC code
Industry	Manufacturers of new marine diesel engines	333618	3519
Industry	Manufacturers of marine vessels	3366	3731 3732
Industry	Engine repair and maintenance	811310	7699

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, the reader should carefully examine the proposed regulations, especially the applicability criteria in § 94.1. Questions regarding the applicability of this action to a particular entity may be directed to the person listed in **FOR FURTHER INFORMATION CONTACT.**

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language and Draft Regulatory Impact Analysis are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for internet connectivity. The electronic version of this proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes Federal Register notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Introduction

Air pollution is a serious threat to the health and well-being of millions of Americans, and imposes a large burden on the U.S. economy. As discussed below, ground-level ozone and PM have been linked to potentially serious respiratory health problems and environmental degradation. Over the past two decades, emission control programs established at the state and federal levels have significantly reduced emissions from individual sources, and many of these sources now pollute at only a fraction of their precontrol rates. These programs have concentrated on reducing ground-level ozone levels, with a focus on its main precursors, oxides of nitrogen (NO$_X$) and volatile organic compounds (VOCs).[1] In addition, steps have been taken to reduce airborne particulate matter (PM), which is also a major air quality concern in many regions.

However, continued industrial growth and expansion of motor vehicle usage threaten to reverse these past achievements. Today, many states are finding it increasingly difficult to meet the current ozone and particulate matter National Ambient Air Quality Standards (NAAQS) by the deadlines established in the Clean Air Act (the "Act").[2] In addition, even those states that are approaching or have reached attainment of the current ozone and PM NAAQS are likely to see these gains lost if current trends persist.

National mobile source emission control programs have been successful in reducing NO$_X$, HC, and PM emissions from new regulated engines. These programs have resulted in reductions of more than 90 percent on a per-vehicle basis for new gasoline-fueled passenger cars. Emissions from light-duty trucks have also been reduced to very low levels. The more recent diesel engine programs, as supplemented by new, more stringent requirements for highway and nonroad diesel engines, will significantly reduce emissions from that category as well. As a result of these programs, emission reductions on a per-vehicle or per-engine basis have greatly offset emission increases due to the rising mobile source population and usage rates.

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[1] VOCs consist mostly of hydrocarbons (HC), including nonmethane hydrocarbons (NMHC).

[2] See 42 U.S.C. 7401, et seq.

Until now, EPA's effort to control emissions from marine sources has been limited to outboard and personal watercraft engines and marine diesel engines rated under 37 kW. EPA's analysis of national NO_X and PM levels suggests that marine diesel engines are a considerable source of these pollutants. The inventory contribution of marine diesel engines is presented under Background (Section II.A.4.), and is described in greater detail in the Draft Regulatory Impact Analysis. Consequently, emission controls for these engines may yield important reductions in national NO_X and PM inventories. At the same time, designing an emission control program for marine diesel engines at or above 37 kW poses certain challenges. The tremendous range of engine sizes in this category, from small generators used on board fishing or recreational vessels to large propulsion engines used on board ocean-going vessels, suggests a need to set different requirements for different groups of engines. In addition, technological challenges inherent to nonroad diesel-cycle engine design must be addressed.[3] Traditional NO_X control approaches tend to increase PM emissions, and vice versa. However, methods to achieve simultaneous NO_X and PM control are being developed for land-based diesel engines, and EPA believes similar solutions can be applied to marine diesel engines due to similarities among the engines. A more complete discussion of technology issues is presented under Technological Feasibility (Section VII). Finally, the large number of ship and boat builders and their relative inexperience with emission control requirements suggest a need for a flexible implementation process. A more detailed discussion of the characteristics of this industry is included under Industry Characterization (Section II.C.).

In this document, EPA is proposing to extend the federal emission control program to the marine segment of the nonroad industry by proposing an emission control program for all new marine diesel engines rated over 37 kW.[4] The program described in this action follows EPA's Supplemental Advance Notice of Proposed Rulemaking (Supplemental ANPRM), published on May 22, 1998 (63 FR 28309), and the comments received on that notice and other new information provide the framework for its provisions.

II. Background

A. Air Quality Problems Addressed in the Proposed Rule

The emission standards proposed in this document will provide important reductions of ground-level ozone and particulate matter (PM) nationally, as well as carbon monoxide (CO) control. This section summarizes the air quality rationale for these new emission standards and their anticipated impact on marine diesel engines.

1. Ozone

Ground-level ozone is formed by complex photochemical reactions involving HC and NO_X in the presence of sunlight.[5] According to a growing body of research, ground-level ozone can have harmful physical effects on humans. It severely irritates the mucous membranes of the nose and throat, which can lead to coughing and even choking. It also impairs normal functioning of the lungs, and chronic exposure may cause permanent lung damage. The risk of suffering these effects is particularly high for children and for people with compromised respiratory systems. Ground-level ozone has also been shown to injure plants and building materials.

Diesel engines contribute to ground-level ozone levels primarily through their NO_X emissions, which are a much higher portion of total NO_X+HC emissions than for most gasoline engines. This is of significant concern not only because of ozone impacts but also because NO_X has important independent effects on human health and general environmental conditions. NO_X includes several gaseous compounds that are lung irritants and can increase susceptibility to respiratory illness and pulmonary infection. NO_X also contributes to the secondary formation of PM (nitrates), acid deposition, and the overgrowth of algae in coastal estuaries. Additional information on these environmental and health effects may be found in EPA staff papers and air quality criteria documents for ozone and nitrogen oxides.[6, 7, 8, 9]

Acceptable levels of ground-level ozone have been set by EPA pursuant to the Act. States are divided into areas for air quality planning purposes, and these areas are categorized as to whether they meet the current National Ambient Air Quality Standard for ozone by the deadlines established in the Act.[10] As of October, 1997 there are 59 areas designated as in "nonattainment" for ozone.

The state and local governmental organizations charged with designing and implementing emission control programs to bring these areas into attainment have mounted significant efforts in recent years to reduce ozone concentrations. Their state implementation plans, combined with federal mobile source emission control programs, have yielded encouraging signs of success. The main precursors of ozone, NO_X and VOCs (including HC), have been reduced in many areas, and average ozone levels are beginning to decrease. However, this progress is in jeopardy. EPA projects that emission increases that accompany economic expansion will eventually outpace per-source reductions in ozone precursors. Increases in the number of sources, as well as increased use of existing sources, mean that even full implementation of current emission control programs will fall short of what will be needed to achieve and maintain ozone attainment. By the middle of the next decade, the Agency expects that, without additional controls, the downward trends in overall ground-level ozone will be reversed. Consequently, it is important to develop new strategies that improve, or at least maintain, the progress in ozone reductions that have been achieved to date.

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[3] References to diesel-cycle engines, also referred to as "diesel engines" in this document, are intended to cover a particular kind of engine technology, i.e., compression ignition combustion. Compression-ignition engines are typically operated on diesel fuel, although other fuels, such as compressed natural gas, may also be used. This contrasts with otto-cycle engines (also called spark-ignition or SI engines), which typically operate on gasoline. The requirements set out in this notice are intended to apply to all combustion-ignition engines.

[4] This proposal is based on metric units. To convert to English units, one kilowatt equals 1.341 horsepower.

[5] Ground-level ozone should not be confused with stratospheric ozone, a protective layer of the upper atmosphere that filters the sun's harmful ultraviolet rays.

[6] U.S. EPA, "Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information," OAQPS Staff Paper, EPA–452/R–96–007, 1996 (Air docket A–95–58).

[7] U.S. EPA, "Air Quality Criteria for Ozone and Related Photochemical Oxidants," EPA/600/P–93/004aF, 1996 (Air Docket A–95–58).

[8] U.S. EPA, "Review of National Ambient Air Quality Standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information," OAQPS Staff Paper," EPA–452/R–95–005, 1995 (Air Docket A–93–06).

[9] U.S. EPA, "Air Quality Criteria for Oxides of Nitrogen," EPA/600/8–91/049aF, 1993 (Air Docket A–93–06).

[10] See 42 U.S.C. 7401, *et seq.*

[11] U.S. EPA, "Review of National Ambient Air Quality Standards for Particulate Matter, Assessment of Scientific and Technical Information," OAQPS Staff Paper, EPA–452/R–96–013, 196 (Air Docket A–95–54).

[12] U.S. EPA, "Air Quality Criteria for Particulate Matter," EPA/60/P–95/001aF, 1996 (Air Docket A–95–54).

[13] The largest fraction of ambient PM is attributed

2. Particulate Matter

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Particulate matter is a collection of small particles emitted by diesel engines. Many different organic pollutants are adsorbed on these particles. The size and chemical composition of particulate matter are the main reasons for concern about the effects of PM on human health. Their small size increases the likelihood that the particles will reach and lodge in the deepest and most sensitive areas of human lungs. This can lead to severe lung problems and increases susceptibility to respiratory infection, such as pneumonia, aggravation of acute and chronic bronchitis, and asthma. It can also lead to decreased lung function (particularly in children and individuals with asthma) and alterations in lung tissue and structure and in respiratory tract defense mechanisms. Additional information on these effects may be found in an EPA staff paper and an air quality criteria document for particulate matter.[11, 12]

Acceptable levels of PM have also been set by EPA. Currently, there are 80 PM–10 nonattainment areas across the U.S. (PM–10 refers to particles smaller than 10 microns in diameter.) As is the case with NO_X, levels of PM caused by stationary and mobile sources are expected to rise in the future, not only because of the increase in number of sources and activity levels of these sources, but also because elevated NO_X levels can lead to increased PM levels. This is because NO_X from diesel engines and other sources is transformed in the atmosphere into fine secondary nitrate particles. Secondary nitrate PM, consisting mostly of ammonium nitrate, accounts for a substantial fraction of the airborne particulate in some areas of the country. EPA believes that mobile sources contribute substantially to the fraction of ambient PM that is generally considered controllable.[13] Consequently, EPA has been developing new mobile source strategies to control PM emissions.

3. Carbon Monoxide

Along with NO_X, HC, and PM, carbon monoxide (CO) is another mobile source pollutant that is addressed by the program proposed in this document. CO has long been known to have substantial adverse effects on human health and welfare, including toxic effects on blood and tissues, and effects on organ functions. CO has been linked to fetal brain damage, reduced visual perception, cognitive functions and aerobic capacity, and increased risk of heart problems for people with heart disease. There are currently approximately 20 serious or moderate CO nonattainment areas in the United States.

4. Contribution of Marine Diesel Engines to NO_X, HC, PM and CO Levels

EPA's inventory analysis suggests that marine diesel engines are a significant source of NO_X and PM emissions. This inventory analysis, presented in more detail in the Draft Regulatory Impact Analysis prepared for this action, suggests that marine diesel engines currently contribute approximately one million tons of NO_X per year, representing 8.1 percent of mobile source NO_X and 4.8 percent of total NO_X emissions. Marine diesel engines also contribute approximately 42,000 tons of PM per year, representing 4.4 percent of the directly emitted PM from mobile sources and 1.0 percent of total directly emitted PM emissions.[14] In addition to directly emitted PM, EPA estimates that, as a national average, marine diesel engines contribute approximately 40,000 tons of PM in the form of secondary nitrate particles, based on the estimated one million tons of NO_X emitted by these engines. In addition, emissions from marine diesel engines tend to be concentrated in specific areas of the country (ports, coastal areas, and rivers), and so local levels of these pollutants can be much higher. Consequently an emission control program that addresses NO_X and PM emissions from marine diesel engines can be an important tool toward the goal of reducing the health and environmental hazards associated with these and other pollutants.

The contribution of marine diesel engines to national HC and CO levels is much less than for NO_X and PM. EPA estimates that marine diesel engines contribute less than two-tenths of one percent of the national levels of these pollutants. Nevertheless, the program being proposed in this rule includes limits for HC and CO emissions. These limits will provide a small, positive, air quality benefit.

B. Legislative and Regulatory History

1. Statutory Authority

Section 213(a)(1) of the Clean Air Act directed the Agency to study emissions from nonroad engines and vehicles to determine, among other things, whether these emissions "cause, or significantly contribute to, air pollution that may reasonably be anticipated to endanger public health or welfare." Section 213(a)(2) further required EPA to determine whether the emissions of CO, VOC, and NO_X found in the above study significantly contribute to ozone or CO emissions in more than one nonattainment area. With an affirmative determination of significance, section 213(a)(3) requires the Agency to establish emission standards regulating CO, VOC, and NO_X emissions from new nonroad engines and vehicles. EPA may also promulgate emission standards under section 213(a)(4) regulating any other emissions from nonroad engines that EPA finds contribute significantly to air pollution.

The Nonroad Engine and Vehicle Emission Study required by section 213(a)(1) was completed in November 1991.[15] On June 17, 1994, EPA made an affirmative determination under section 213(a)(2) that nonroad emissions are significant contributors to ozone or CO in more than one nonattainment area.[16] In the same document, EPA set a first phase of emission standards ("Tier 1 standards") for land-based nonroad diesel engines rated at or above 37 kW.[17] These requirements were recently augmented by a new rulemaking that sets more stringent Tier 2 emission levels for new land-based nonroad diesel engines at or above 37 kW as well as Tier 1 standards for nonroad diesel engines less than 37 kW.[18] EPA has also initiated additional rulemakings to set

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[11] U.S. EPA, "Review of National Ambient Air Quality Standards for Particulate Matter, Assessment of Scientific and Technical Information," OAQPS Staff Paper, EPA–452/R–96–013, 196 (Air Docket A–95–54).

[12] U.S. EPA, "Air Quality Criteria for Particulate Matter," EPA/60/P–95/001aF, 1996 (Air Docket A–95–54).

[13] The largest fraction of ambient PM is attributed to "miscellaneous" and "natural" sources, including wind erosion, wildfires, and fugitive dust, which are difficult or impossible to control.

[14] Excluding erosion or fugitive dust.

[15] This study is available in docket A–92–28.

[16] *See* 59 FR 31306, June 17, 1994

[17] Ibid.

[18] *See* 63 FR 56967, October 23, 1998.

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emission standards for other subgroups of nonroad engines, including spark-ignition (SI, typically gasoline) engines less than 19 kW,[19] spark-ignition (SI, typically gasoline) marine engines (outboards and personal watercraft),[20] and locomotives.[21] This action takes another step toward the comprehensive nonroad engine emission control strategy envisioned in the Act by proposing an emission control program for marine diesel engines at or above 37 kW.

2. Regulatory History

Numerical emission standards for marine diesel engines were originally proposed in 1994, as part of a proposed rule for control of emissions from both spark-ignition and compression-ignition marine engines.[22] At that time, EPA had a limited understanding of the marine diesel industry and, relying on the similarities between land-based nonroad and marine diesel engines, proposed to apply the same emission levels as those in the then just-finalized land-based nonroad rule. The nonroad Tier 1 standards are set out in Table 1. EPA proposed that these standards for marine diesel engines take effect January 1, 1999 for engines less than 560 kW, and January 1, 2000, for engines 560 KW and above. Although no upper limit on engine size was proposed for application of these standards to marine diesel engines, EPA requested comment on whether an upper limit should be established above which the emission control program being developed concurrently under the auspices of the International Maritime Organization (IMO) should apply. The IMO is the Secretariat for the International Convention on the Prevention of Pollution from Ships (that convention is also referred to as MARPOL 73/78). Annex VI to that Convention, adopted on September 27, 1997 (but not yet in force) contains, among other provisions, requirements to limit NO_X emissions from marine diesel engines, but sets no limits for other engine pollutants (i.e., HC, CO, PM).[23] A more detailed discussion of the MARPOL 73/78 Annex VI NO_X requirements is included in Section II.B.3. below. Table 1 also contains the Annex VI NO_X limits, which would apply to new engines greater than 130 kW installed on vessels constructed on or after January 1, 2000, or which undergo a major conversion after that date.

TABLE 1.—COMPARISON OF NUMERICAL EMISSION LIMITS: EPA'S NONROAD TIER 1 LEVELS AND MARPOL ANNEX VI LEVELS

Agency	Engine speed	HC (g/kW-hr)	CO (g/kW-hr)	NO_X (g/kW-hr)	PM (g/kW-hr)
EPA (Proposed)	All	1.3	11.4	9.2	0.54
MARPOL Annex VI (n =engine speed, rpm).	=130 rpm	None	None	17.0	None
	130 rpm≤n≥2000 rpm	None	None	$45*n^{(-0.2)}$	None
	n ≥ 2000	None	None	9.8	None

In response to the 1994 NPRM, several commenters requested that EPA harmonize domestic emission standards for marine diesel engines to the levels being then considered at the IMO, in effect, applying the draft Annex VI limits domestically. Because the draft Annex VI standards (which are the same as those finalized in 1997) were not as stringent as the proposed domestic standards, this was a significant issue. On February 7, 1996, EPA published a Supplemental NPRM to address this and other concerns in more detail.[24] Specifically, EPA identified and requested comment on three alternative harmonization approaches: (1) Adopt the draft Annex VI NO_X emission standard instead of the standard proposed in the NPRM; (2) retain the average NO_X emission standard of 9.2 g/kW-hr proposed by EPA and also adopt the MARPOL Annex VI NO_X limit as a cap that no engine could exceed; or (3) determine an appropriate engine speed or engine power output cutoff point such that engines of high horsepower and low and medium speeds would be subject to the draft Annex VI NO_X emission limits and engines of low horsepower and high speed would be subject to the 9.2 g/kW-hr average standard proposed by EPA with the 9.8 g/kW-hr Annex VI level as a cap that no engine could exceed. EPA also sought comment on harmonizing the numerical emission limits for other pollutants. Options considered were to drop, retain, or alter the proposed standards for HC, CO, PM, and smoke.

While the development of the national marine rule and the negotiations at the International Maritime Organization continued, EPA began a new action for land-based nonroad diesel engines as part of a new Agency initiative to reduce national NO_X and PM emissions from mobile sources. This action, subsequently finalized September 27, 1998, sets more stringent standards for land-based nonroad engines, known as Tier 2 standards (see Section V.A., below).[25] These Tier 2 standards will come into effect as early as 2001 for some engine categories. The rule also includes more stringent Tier 3 standards, which will go into effect subject to a review to be conducted in 2001. That review will be conducted through the normal public rulemaking process. Finally, marine diesel engines less than 37 kW were included with their land-based counterparts in this diesel land-based nonroad rule, with standards to come into effect as early as 1999 for Tier 1 and 2004 for Tier 2.

Also during this time, EPA finalized a rule setting emission standards for new locomotive engines.[26] The locomotive program consists of three separate sets of standards, with applicability of the standards dependent on the date a locomotive is first manufactured. The first set of standards (Tier 0) applies to locomotives and locomotive engines originally manufactured from 1973 through 2001.

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[19] *See* 60 FR 34582 (July 3, 1995) for the final rule establishing Tier 1 standards and 62 FR 14740 (March 27, 1997) for the ANPRM discussing Tier 2 standards.

[20] *See* 61 FR 52087 (October 4, 1996) for the final rule. EPA did not set numerical emission standards for sterndrive and inboard gasoline marine engines in this rule.

[21] *See* 62 FR 6365 (February 11, 1997); the final rule was signed December 17, 1997 and is available electronically (see Section VI below).

[22] See 59 FR 55929 (November 9, 1994).

[23] Other provisions of Annex VI include requirements for ozone-depleting substances, sulfur content of fuel, incineration, VOCs from refueling, and fuel quality. The United States has signed Annex VI, but the Annex has not yet been forwarded to the Senate for its advice and consent.

[24] *See* 61 FR 4600 (February 7, 1996).

[25] *See* 62 FR 50152 (September 24, 1997).

[26] *See* 62 FR 6365 (February 11, 1997); the final rule was signed December 17, 1997 and is available electronically (see Section VI below).

The Tier 0 standards will be phased in over a two-year period beginning in 2000, and will apply at the time of each remanufacture (as well as at the time of original manufacture for locomotives originally manufactured in 2000 and 2001). The next set of standards (Tier 1) apply to locomotives and locomotive engines originally manufactured from 2002 through 2004. Such locomotives and locomotive engines will be required to meet the Tier 1 standards at the time of original manufacture and at each subsequent remanufacture. The final set of standards (Tier 2) apply to locomotives and locomotive engines originally manufactured in 2005 and later. Such locomotives and locomotive engines will be required to meet the Tier 2 locomotive standards at the time of original manufacture and at each subsequent remanufacture. The numerical standards are contained in Table 2.

TABLE 2.—LOCOMOTIVE STANDARDS

[Line-haul only]

Tier	HC (g/kW-hr)	CO (g/kW-hr)	NO_X (g/kW-hr)	PM (g/kW-hr)
Tier 0	1.3	6.7	12.7	0.80
Tier 1	0.7	2.9	9.9	0.6
Tier 2	0.4	2.0	7.4	0.27

The land-based nonroad diesel engine and locomotive rules led EPA to reconsider its approach to the control of emissions from marine diesel engines at or above 37 kW. Because of the similarities among land-based nonroad, locomotive, and marine diesel engines, EPA began to consider an alternative program for marine diesel engines based on the technologies that will be used to meet the land-based requirements. As a result, EPA did not take final action on marine diesel engines when it finalized the original marine rule.[27] Instead, EPA published an Advance Notice of Proposed Rulemaking advising interested parties of the change in approach for marine diesel engine emission controls and asking for comment on various aspects of the program under consideration. The program proposed in this action follows from the approach described in the ANPRM, the comments submitted by interested parties, and information gathered by EPA in the meantime.

3. MARPOL Annex VI

In response to growing international concern about air pollution and in recognition of the highly international nature of maritime transportation, the parties to the International Maritime Organization called upon the organization, in 1990, to develop a program to reduce emissions from marine vessels. The IMO's Marine Environmental Protection Committee (MEPC) was instructed to design a program, to become a new Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), that would achieve a 30 percent reduction in NO_X and a 50 percent reduction in SO_X emissions when fully phased in. Requirements for ozone-depleting substances, VOCs from cargo compartments on oil tankers, shipboard incinerators, and fuel oil quality rounded out the scope of the program. From the beginning, the engine-specific provisions of proposed Annex VI covered only NO_X emissions. No restrictions on PM, HC, or CO emissions were considered. Reductions in SO_X emissions were to be pursued through limiting the sulfur content of fuel.

After several years of negotiation, a final version of Annex VI was adopted by the Member States of the IMO at a diplomatic conference on September 26, 1997. However, pursuant to Article 6 of the Annex, it will not go into force until fifteen States, the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant shipping, have ratified it. The Annex in its entirety will acquire the force of law in the United States only after the Senate (by a vote of two-thirds) concurs in the treaty and the United States deposits its instrument of ratification. Nevertheless, it is expected that ship owners will begin installing compliant engines on relevant ships to comply with the dates set forth in the Annex. Specifically, the NO_X provisions contained in Regulation 13 provide that each diesel engine with a power output of more than 130 kW installed on a ship constructed on or after January 1, 2000, or that undergoes a major conversion on or after January 1, 2000, must meet the NO_X emission limits described in Table 1, above. This specification of an effective date in Regulation 13 means that, once the Annex goes into effect, Member States will be able to require compliance by any ship constructed on or after January 1, 2000 or by any engine that undergoes a major conversion on or after that date. In other words, once the Annex goes into effect, it will be enforceable back to the dates specified in Regulation 13.

Two other features of Annex VI NO_X requirements are noteworthy. First, while the requirements set out in Regulation 13 are expected to extend to all vessels used in the marine environment, a special provision has been included in paragraph 1(b)(ii) to allow Member States to set different standards for engines installed on ships used domestically. EPA intends in this action to take advantage of this provision by setting more stringent national requirements. Second, Regulation 13 is augmented with a separate document, called the NO_X Technical Code, which sets out some compliance requirements and test procedures. Through reference in the Annex, the provisions of this Code are made mandatory on Parties to the Annex. A more detailed discussion of the NO_X curve and the NO_X Technical Code are included in the Draft Regulatory Impact Analysis.

4. State Activities

Section 209 of the Act allows EPA to authorize California to regulate emissions from new motor vehicles and new motor vehicle engines, as well as nonroad engines with the exception of new engines used in locomotives and new engines used in farm and construction equipment rated under 130 kW.[28] So far, the California Air Resources Board (California ARB) has adopted requirements for three groups of nonroad engines: (1) Diesel-and otto-cycle small off-road engines rated under 19 kW; (2) new land-based nonroad diesel engines rated over 130 kW; and (3) land-based nonroad recreational engines, including all-terrain vehicles, snowmobiles, off-road motorcycles, go-carts, and other similar vehicles. New requirements that apply to new nonroad SI engines rated over 19 kW were completed by CARB in October 1998. California ARB has also approved a voluntary registration and control program for existing portable equipment, and is currently considering an emission program for recreational gasoline marine engines that may be more stringent than the program finalized by EPA in 1996.

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[27] *See* 61 FR 52087 (October 4, 1996).

[28] The Clean Air Act limits the role states may play in regulating emissions from new motor vehicles and nonroad engines. California is permitted to establish emission standards for new motor vehicles and most nonroad engines; other states may adopt California's programs (sections 209 and 177 of the Act).

EPA has been in consultation with California state officials and various interest groups to pursue operational measures that would reduce marine engine emissions without setting emission standards. Under investigation are defined traffic lanes, restrictions on engine operation while in port, and other measures that could be tailored to the situation at each port.

5. European Commission Action

The European Commission has proposed emission limits for recreational marine engines, including diesel engines. These requirements would apply to all new engines sold in member countries. The numerical emission limits, shown in Table 3, consist of the Annex VI NO_X limit for small marine diesel engines and the rough equivalent of Tier 1 nonroad emission levels for HC and CO. The PM limits, however, are more stringent than Tier 1 nonroad levels, reflecting Europe's greater concern for the visual impacts of diesel emissions. Emission testing is to be conducted using the ISO D2 duty cycle for constant-speed engines and the ISO E5 duty cycle for all other engines. At the current time, the EU has not initiated a separate action for commercial marine diesel engines.

TABLE 3.—PROPOSED EUROPEAN EMISSION LIMITS FOR RECREATIONAL MARINE DIESEL ENGINES

Pollutant	Emission limit (g/kW-hr)
NO_X	9.8
PM	0.14
HC	*1.5
CO	5.0

*Increases slightly with increasing engine power rating.

C. Industry Characterization

The two groups of companies most likely to be affected by the proposed emission control program are engine manufacturers and vessel manufacturers. This section contains a brief discussion of these entities. A more complete discussion is included in the Draft Regulatory Impact Assessment, which can be found in its entirety in EPA Air Docket A–97–50.

1. Marine Diesel Engine Manufacturers

As discussed in Section IV, the proposed emission control program applies to three categories of marine diesel engines. This discussion reflects those categories.

Category 1 and Category 2 marine diesel engines are often derived from land-based engines. Their production is often referred to as marinization, meaning the land-based engine is modified for use in the marine environment. Marinization can be a very complex process or may be relatively simple. Depending on the degree of change to the base engine, marinization can significantly affect the emission characteristics of an engine. Some of the more complex changes associated with marinization are performed by large engine manufacturers. For these companies, marinization may involve a significant redesign of their land-based product. A less intensive type of marinization is performed by post-manufacturer marinizers. These companies purchase a complete or semi-complete land-based engine from an engine manufacturer and finish or modify it using specially designed parts. The most basic type of marinization is performed by companies that purchase a completed engine from an engine manufacturer and modify it to make it compatible for installation on a marine vessel, without changing the underlying design characteristics or engine calibration. These companies are referred to in this rulemaking as engine dressers. In contrast to the other marinization processes, these changes do not typically affect the emission characteristics of the engine.

Category 3 engines have no land-based mobile source equivalents. These engines are typically designed exclusively for marine purposes. They are often designed for unique applications or unique vessels.

(a) Category 1 Engine Manufacturers. Total annual production of Category 1 marine diesel engines in the U.S. is about 15,000 units per year. Of these, commercial propulsion and auxiliary marine engines make up about 30 percent and 10 percent, respectively, of the total production. The remaining engines are used for propulsion in recreational vessels. While the recreational engines are produced in greater quantities, commercial propulsion and auxiliary engines contribute more to air pollution on account of their much greater use.

Commercial applications for these engines are widely varied. Most of these boats are relatively small and operate near the home port. Primary examples of such vessels include fishing boats, crew boats, tour boats, and small tugboats and ferries. Recreational vessels are usually either yachts or are used for recreational fishing. These recreational vessels may in some cases be used for commercial purposes.

Engine manufacturers produce the large majority of marine diesel engines, with the remaining engines being produced by post-manufacture marinizers. About a dozen engine manufacturers offer Category 1 engines, though Caterpillar, Cummins, and Detroit Diesel together sell about 80 percent of all marine diesel engines. Fifteen or more companies are either post-manufacture marinizers or engine dressers. Most of these are small businesses with very low sales volumes.

Due to the wide range of companies and their operations, engine maintenance and rebuild practices are far from uniform. Some are serviced regularly by authorized distributors, others are maintained by local for-hire mechanics. Some companies that operate vessels choose to reduce expenses by keeping a staff of mechanics to conduct preventive and routine engine maintenance and, in some cases, complete engine rebuilds. Depending on the size of an operator's fleet, which may run from one to several dozen vessels, and on the strength of the company, there may or may not be an adequate ongoing investment in maintaining engines to maximize long-term engine performance.

(b) Category 2 Engine Manufacturers. Large tugboats and fishing boats are the principal applications for Category 2 marine engines. These high-powered engines are used for carrying greater loads, a greater degree of off-shore use and, in many cases, more intensive operations. It is common for companies to own and operate small fleets of these vessels. In addition, multiple Category 2 engines are commonly used for auxiliary power on an ocean-going vessel.

Category 2 engines are derived from or use the same technology as locomotive engines. Not surprisingly, Category 2 engines are produced by the same companies that make locomotive engines, and the segment is characterized by a very small number of manufacturers. General Motors Electromotive Division (EMD) sells the greatest number of Category 2 engines, with additional sales from Caterpillar and a few other companies (mostly from foreign manufacturers).

Post-manufacture marinizers play a role in producing Category 2 marine engines. For example, three authorized EMD distributors take on the responsibility of marinizing engines, overseeing sales distribution, and managing installation and service as needed. Unlike post-manufacture marinizers for Category 1 engines, these companies have sufficient volumes and diversified operations to the point that they are not small businesses.

With prices approaching $1 million for a new engine, there is a strong motivation to maintain and remanufacture engines in the field. Preventive maintenance programs are common, often including extensive ongoing diagnostics for oil quality, fuel consumption, and other engine performance parameters. Engines are often completely remanufactured every five years. Procedures have improved to the point that engine durability on remanufactured engines is no different than on new engines. Since engine remanufacturing costs only 20 to 30 percent as much as buying a new engine, even twenty- or thirty-year-old engines are frequently overhauled to provide dependable power.

(c) Category 3 Engine Manufacturers. Category 3 marine diesel engines are the largest mobile source engines addressed by EPA. They are similar in size to land-based power plant generators, and are used primarily for propulsion of ocean-going vessels. There are currently no U.S. manufacturers of Category 3 marine engines. The Agency, however, has identified 22 foreign manufacturers of these engines, a large fraction of which are located in Germany and Japan. In addition, of the Category 3 engine manufacturers identified, only 12 produce engines of their own design. The remainder of the manufacturers produce engines under licensing agreements with other companies that control engine design.

2. Commercial Vessel Builders

The industry characterization for the commercial marine vessel industry was developed by ICF, Incorporated under contract with EPA. A summary of their findings can be found in the Chapter 2 of the Draft RIA. The full report is available from EPA Air Docket A–97–50. The report makes a distinction between two broad groups of commercial vessels, "ships" and "boats," based on a vessel's basic dimensions, mission, and area of operation.

(a) Commercial Ships. This category is comprised of large merchant vessels, usually exceeding 120 meters (400 feet) in length, that engage in waterborne trade or passenger transport. These ships tend to operate in Great Lakes, coastwise, inter-coastal, noncontiguous, or transoceanic routes. Principal commercial ship types are dry cargo ships, tankers, bulk carriers and passenger ships. Passenger ships include cruise ships and larger ferries. The large majority of commercial ships are foreign-built. There are currently 18 major shipbuilding facilities in the United States, most of which focus on military construction.

(b) Commercial Boats. This category is comprised of smaller service and industrial vessels that provide service to commercial ships, industrial vessels, or barges or that perform specialized marine functions. Commercial boats are found mainly in inland or coastal waters. Principal commercial boat types are tugboats, towboats, offshore supply boats, fishing and fisheries vessels, passenger boats, and industrial boats. Passenger boats include crewboats, excursion boats, and smaller ferries. The vast majority of boats used in the United States are also built in the United States. In contrast to the highly concentrated shipbuilding industry, there are several hundred yards that build many different types of boats.

3. Recreational Vessel Builders

While not as numerous as commercial boat builders, there is still a considerable number of recreational boat builders. EPA identified approximately 75 boat builders, not including those that build sailboats. Most of these companies also produce vessels that use gasoline engines. In fact, diesel engines represent a small portion of the overall product offerings for these companies. A small number of recreational boat builders concentrate on diesel engine products. Most companies, however, sell as few as one per month or even one per year. The analysis shows that recreational boat building is concentrated in coastal states with the largest presence in the state of Florida.

Recreational boat building relies more on serial production than does commercial boat building. Users have little, if any, choice in the mechanical features of the vessel and the engine specifically. This is in part due to the way in which these boats are built. Recreational boats are typically made of fiberglass to minimize vessel weight and to facilitate planing. Fiberglass construction has the disadvantage of not offering much flexibility for installing a different engine than that which the vessel was designed to take. Also, planing requires a precise match between the engine and its location in the vessel. Engines are usually purchased from factory authorized distribution centers. The boat builder provides the specifications to the distributor, which helps match an engine for a particular application.

III. Engines Covered

A. General Scope of Application

The scope of application of the proposed emission control program is broadly set by § 213(a)(3) of the CAA, which instructs EPA to promulgate regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles that are found to cause or contribute to ozone or carbon monoxide concentrations in more than one nonattainment area. Generally speaking, then, the proposed rule is intended to cover all new marine diesel engines and new marine vessels that use those engines.

For the purpose of interpreting this scope of application for both engines and vessels, EPA is proposing to generally extend the definition of "new" contained in 40 CFR 89.2 to marine diesel engines at or above 37 kW. Under that definition, an engine is considered new until its legal or equitable title has been transferred and the engine has been placed into service. Because the definition of new in 40 CFR 89.2 applies to both engines and equipment, its extension to the marine sector would extend as well to vessels which, starting with the implementation dates of the proposed emission limits, would be considered new until their equitable or legal title has been transferred to an ultimate purchaser.

EPA seeks comment on whether to augment this definition of "new" by following the approach used in the recently finalized locomotive rule. That rule expands the definition of "new" to also include "a locomotives or locomotive engine which has been remanufactured, but has not been placed back into service."[29] This approach was designed to respond to the very long useful lives of locomotives. Because locomotive engines remain in service for as long as 40 or 50 years, with periodic rebuilds, it was deemed advisable to require remanufactured locomotives to meet a special set of emission standards, depending on the date of their original manufacture. Because marine diesel engines are also kept in service for very long periods of time, such an approach would also lead to additional emission benefits through the application of emission standards on engines that have been put into service but that have subsequently been remanufactured. In fact, this approach may be technologically easier to apply to marine diesel engines than locomotives because of their greater cooling potential. In addition, while not identical, the MARPOL Annex VI provisions contain a similar requirement, which requires engines to meet the NO_X emission limits when the engine undergoes a major conversion after January 1, 2000.

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[29] *See* 40 CFR 92.2.

At the same time, important obstacles may prevent application of this approach to marine diesel engines. Setting emission limits for remanufactured existing engines may be very disruptive to a large number of small businesses. Also, unlike the railroad industry, companies operating Category 2 marine diesel engines do not rely on a small number of engine remanufacturers to work on their engines. In fact, many of these operators employ their own mechanics to do all maintenance and remanufacturing work. There is accordingly little uniformity in remanufacturing practices across the industry. EPA would need to conduct a major outreach effort to educate the industry about the implications of such a requirement on their business. EPA seeks comment on the feasibility and potential costs and benefits of remanufacturing provisions for existing marine diesel engines. EPA also seeks comment on its authority to establish such programs for each marine engine category, including comment regarding whether marine engines are ever remanufactured to "as new" condition, like locomotive engines.

For the purpose of further clarifying the definition of "new," 40 CFR 89.2 specifies that a nonroad engine, vehicle, or equipment is placed into service when it is used for its functional purposes. For the purpose of applying this criteria to marine diesel engine and new vessels, EPA is proposing that a marine diesel engine is used for its functional purpose when it is installed on a marine vessel. This clarification is needed because some marine diesel engines are made by modifying a highway or nonroad engine that has already been installed on a vehicle or other equipment. In other words, the engine has been transferred to an ultimate purchaser after it is used for its functional purpose as a land-based nonroad engine (for example, on a truck or a backhoe) and is therefore no longer new, but it is later removed for marinization and installation on a marine vessel. While the 40 CFR part 89 requirements for land-based nonroad diesel engines do not contain such a requirement, EPA believes it is reasonable to treat these engines as new marine engines when they are installed on a vessel. While the practice of marinizing used highway or nonroad engines may be infrequent, it could become more common if these engines are not subject to the standards in this proposal.

New marine engines are either made in the United States or imported here. It should be noted that not all engines produced in the United States will be subject to the proposed emission limits. Consistent with other mobile source emission control programs, engines intended for sale abroad would be exempt from the requirements.

Engines imported for use in the United States would be covered by the proposed program whether they are imported as loose engines or already installed on a vessel constructed elsewhere. All imported engines would be required to have a certificate of conformity issued by EPA before they could be entered into commerce in the United States, subject to limited exemptions. In addition, EPA proposes to apply the approach contained in its other on-highway and nonroad engine programs, according to which any engine or vessel that is imported into the United States that does not have a currently valid, unexpired certificate of conformity and that was built after the effective date of the applicable standards, would be considered to be new at the time it is imported into the United States and would have to comply with the relevant emission limits in effect at that time. Thus, for example, a marine vessel manufactured in a foreign country in 2004 that is imported into the United States in 2007 would be considered to be new, and its engine would have to comply with the proposed emission limits that would be in effect for MY2007. This provision is important to prevent manufacturers from avoiding the emission requirements by building vessels abroad, transferring their title, and then importing them as used vessels.

Finally, while engines that are intended for export will not be subject to the requirements of the proposed emission control program, marine engines that are exported but that are subsequently re-imported into the United States are intended to be covered. This would be the case when a foreign company purchases marine engines manufactured in the United States for installation on a vessel that will be subsequently exported to the United States. It would also be the case when a foreign company purchases marine engines manufactured in the United States for dressing and subsequent re-exportation to the United States. Engines that are intended for export but that will be re-imported into the United States are intended to be subject to the proposed rule at the time of manufacture, unless the vessel manufacturer, engine dresser, or marinizer intends to re-certify the engines as complying with the proposed emission limits before they enter the United States. Consequently, foreign purchasers who do not wish to recertify the engines will need to make sure they purchase complying engines for those marine vessels or engines they intend to subsequently offer for sale in the United States. Engines intended for export and sale in a foreign country should be easily distinguishable from complying engines because complying engines are required to be labeled as such. Any person who introduces into commerce in the United States a noncomplying engine that is intended for export and use in a foreign country would be subject to civil penalties.

To determine when an engine or vessel will be considered "imported" for the purposes of determining compliance with the proposed emission control program, EPA proposes to follow the approach contained in the Harmonized Tariff Schedule of the United States (HTSUS). According to HTSUS, vessels used in international trade or commerce or vessels brought into the territory of the United States by nonresidents for their own use in pleasure cruising are admitted without formal customs consumption entry or payment of duty.[30] This approach is consistent with the Treasury Department's ruling, which concluded that vessels coming into the United States temporarily as carriers of passengers or merchandise are not subject to customs entry or duty, but if brought into the United States permanently they are to be considered and treated as imported merchandise.

Practically, the above discussion means that engines installed on vessels flagged in another country that come into the United States temporarily will not be subject to the proposed emission limits. This approach is consistent with typical international practices, whereby countries do not generally impose restrictions on the flag vessels of other countries. In recognition of this practice, the numerous Member States of the IMO recently concluded an international agreement stipulating limits for the emission of nitrogen oxides applicable to ships engaged in international voyages. The above discussion also means that engines installed on vessels that are brought into the United States permanently would be subject to the proposed emission control program. EPA seeks comment on this implication and seeks information concerning the frequency with which this situation would occur.

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[30] HTSUS (1994), Additional U.S. Note 1. In particular, cruise ships, ferry boats, cargo ships, barges and "similar vessels for the transportation of persons or goods" are duty free. HTSUS (1994) 8901.

B. Propulsion and Auxiliary Engines

The proposed scope of application is intended to cover all new marine diesel engines at or above 37 kW. This universe of engines includes both propulsion and auxiliary marine diesel engines. Consistent with the definitions in 40 CFR 89, a propulsion engine is intended to be one that moves a vessel through the water or assists in guiding the direction of the vessel (for example, bow thrusters). Auxiliary engines are intended to be all other marine engines.

In the final land-based nonroad rule, EPA determined that a portable auxiliary engine that is used onboard a marine vessel would not be considered to be a marine engine.[31] Instead, a portable auxiliary engine is considered to be a land-based auxiliary engine and is subject to the requirements of 40 CFR 89. To distinguish a marine auxiliary engine installed on a marine vessel from a land-based portable auxiliary engine used on a marine vessel, EPA specified in that rulemaking that an auxiliary engine is installed on a marine vessel if its fuel, cooling, or exhaust system are an integral part of the vessel or require special mounting hardware. All other auxiliary engines are considered to be portable and therefore land-based.

It has become clearer that the differences between marine auxiliary engines and their land-based counterparts may be so small as to suggest that these engines should not be treated differently at all. An alternative approach is to consider all auxiliary engines to be the same and subject them to the land-based nonroad diesel emission requirements and implementation dates (40 CFR Part 89). These two groups of engines are often technologically similar, if not identical, and are dressed for their applications in the same way. The main advantage of this alternative approach is that engine manufacturers would not have to certify these engines twice, once for land-based applications and once for marine applications. A consequence of treating these auxiliary engines as land-based nonroad diesel engines is that there would be some adjustments in emission limits, implementation date, and other provisions. EPA seeks comment on whether the land-based and marine distinctions are necessary for auxiliary engines and on whether EPA should adopt the alternative approach described above.

C. Exemptions

1. Recreational Engines

Marine diesel engines used in recreational and commercial applications are different in several respects. Commercial vessels are designed primarily to efficiently move cargo, either in their own hold or by pushing or pulling other vessels. Consequently, they are typically displacement vessels, which means the vessel is pushed through the water. Optimal operations are more a function of hull characteristics, which are designed to reduce drag, than engine size, and these vessels can be powered by engines with power ratings analogous to land-based applications. Commercial vessels are also often heavily used, and their engines are designed to operate for as many as 2,000 to 5,000 hours a year at the higher engine loads needed to push the vessel and its cargo through the water. In addition, these vessels are often designed for specific purposes, and many characteristics, including the choice of engine, are set by the purchaser.

Recreational vessels, in contrast, are designed primarily for speed. To reach high speeds, it is necessary to reduce the surface contact between the vessel and the water, and consequently these vessels typically operate in a planing mode. Planing, in turn, imposes two requirements on vessel design. First, the vessel needs to have a very high power, but lightweight engine to achieve the speeds necessary to push the vessel onto the surface of the water. Consequently, recreational engine manufacturers have focused on achieving higher power output with lighter engines (this is also referred to as high power density). The tradeoff is less durability, and recreational engines are warranted for fewer hours of operation than commercial marine engines. The shorter warranty period is not a great concern, however, since recreational vessels, and therefore their engines, are typically used for fewer hours per year than commercial engines, and spend much less time operating at higher engine loads.

Second, the vessel needs to be as light as possible, with vertical and horizontal centers of gravity precisely located to allow the hull of the vessel to be lifted onto the surface of the water. Consequently, recreational vessel manufacturers have focused on designing very lightweight hulls. They are typically made out of fiberglass, using precisely designed molds. The tradeoff is a reduced ability to accommodate any changes to the standard design. In other words, purchasers are not given much choice as to the design of the vessel and, more particularly, the engine that will be used to power it. Recreational vessels are typically designed around a specific engine or group of engines, and engines that are heavier or that are physically larger cannot be used without jeopardizing the vessel's planing abilities.

EPA has learned that many recreational engines already use the types of technologies that will be necessary to reach the proposed standards. These technologies are typically used to increase the power density of recreational engines. EPA is concerned that redirecting the impact of these technologies toward emission reduction may reduce engine power density. This, in turn, means that recreational vessel builders may have to resort to larger, heavier engines to achieve the same engine power. They may also have to redesign their hulls, and fiberglass molds, to accommodate larger, heavier engines. This can be a costly requirement, since most vessel manufacturers destroy their master hulls once the fiberglass molds are produced.

To allow more time to evaluate the potential impact of the proposed emission limits on the recreational vessel industry, EPA is not proposing to include recreational propulsion marine diesel engines in the proposed emission control program. Instead, EPA intends to consider requirements for those engines in a separate rulemaking. The Notice of Proposed Rulemaking for that recreational marine diesel rule is expected to be signed by November 23, 1999, and the Final Rule is expected to be signed in October, 2000.

EPA considered various methods to distinguish commercial and recreational marine diesel engines for the purpose of this exemption, including relying on physical differences between recreational and commercial engines or their warranty periods. These methods were found to be unsatisfactory. Relying on physical differences between recreational and commercial engines would be difficult, especially since these engines are likely to become more similar as Tier 2 technologies are applied to commercial engines. Relying

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[31] *See* 63 FR 56967, October 23, 1998.

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on warranty periods would be difficult because not all engine manufacturers have the same product ratings with the same warranty periods. Imposing such requirements would unnecessarily impose a degree of uniformity across the industry that may hinder engine design or marketing strategies.

Consequently, EPA is proposing to take a more flexible approach and is proposing to define a recreational marine engine as a marine propulsion engine intended by the engine manufacturer to be installed on a recreational vessel. In other words, a recreational engine would be defined by the engine manufacturer. EPA is also proposing that installation of a new recreational engine on a new nonrecreational vessel would be prohibited, and that all recreational engines be clearly labeled with language that specifies the engine is intended for use only on recreational vessels. Specifically, EPA is proposing the following label language:

> THIS RECREATIONAL ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS FOR NONRECREATIONAL VESSELS. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

Thus, EPA intends that recreational engines can be used only in recreational vessels. It should be noted that the converse of this provision is not true, and that EPA does not intend to prohibit the use of a certified engine on a recreational vessel. In fact, EPA encourages recreational vessel manufacturers to use certified engines due to the beneficial impact it would have on the environment. It should also be noted that this prohibition does not prevent someone from installing an old marine engine in an old vessel.

EPA seeks comment on using a labeling requirement to distinguish recreational engines from commercial engines for the purpose of the exemption, and on whether this approach will be sufficient for preventing the installation of noncertified recreational engines on commercial vessels. EPA also seeks comment on whether a power or displacement cutoff should be also specified, above which engines could no longer be designated as recreational. For example, a power cutoff of 560 kW may be appropriate because larger engines are installed on custom-built recreational vessels that are not subject to the same design constraints as smaller serially-built fiberglass vessels.

For the purpose of the exemption, EPA is proposing to adopt the definition of recreational vessel as that term is defined in 46 U.S.C. 2101. According to that definition, a recreational vessel is a vessel (A) being manufactured or operated primarily for pleasure; or (B) leased, rented or chartered to another for the latter's pleasure. EPA further proposes that, for the purposes of part (B) of this definition, the vessel cannot be leased, rented, or chartered for more than six passengers. EPA is proposing that vessels for hire that can carry more than six passengers, whether or not they ever actually do, be deemed nonrecreational vessels. This is consistent with the definition of recreational vessel for certain Coast Guard safety requirements (See 33 CFR 183.3, 33 CFR 175.3). At the same time, EPA is concerned that including vessels used for hire in the definition of recreational vessel may be inappropriate, since vessels used for hire may be used far more extensively than recreational vessels owned by individuals solely for their own pleasure. Therefore, EPA seeks comment on whether the definition of recreational engine should be extended to vessels for hire.

In addition, to avoid any ambiguities inherent in the term "pleasure," vessels used solely for competition or used at any time in any other way to generate income or revenue in any way not associated with the hiring out of the vessel to other people for their pleasure will not be considered recreational. In other words, if a boat is used for both recreational and commercial purposes, it will be considered a commercial vessel. Thus, for example, a vessel that is used for several weeks a year for lobster fishing and at other times of the year used for recreational purposes will not be considered to be a recreational vessel for the purpose of the proposed program.

2. Modified New Land-Based Engines

A small segment of the marine diesel engine market consists of companies that take a new, land-based engine and modify it for installation on a marine vessel. However, unlike post-manufacture marinizers (described in Section V.L.1., below), some of the companies that modify an engine for installation on a marine vessel do not change it in ways that may affect emissions. Instead, the modifications may consist of adding mounting hardware and a generator or propeller gears. It can also involve installing a new marine cooling system that meets original manufacturer specifications and duplicates the cooling characteristics of the land-based engine, but with a different cooling medium (i.e., water). In many ways, these manufacturers are similar to nonroad equipment manufacturers that purchase certified nonroad engines to make auxiliary engines. This simplified approach of producing an engine can more accurately be described as dressing an engine for a particular application. Because the modified land-based engines are subsequently used on a marine vessel, however, these modified engines would be considered marine diesel engines, which would then fall under the requirements proposed in this document.

To clarify the responsibilities of engine dressers under this rule, EPA is proposing to exempt them from the requirement to certify engines to the proposed standards, provided the following conditions are met.

(i) The engine being dressed, (the "base" engine) must be a highway, land-based nonroad, or locomotive engine, certified pursuant to 40 CFR 86, 40 CFR 89, or 40 CFR 92, respectively, or a marine diesel engine certified pursuant to this part.

(ii) The base engine's emissions, for all pollutants, must be at least as good as the otherwise applicable marine diesel emission limits. In other words, starting in 2004, a dressed nonroad Tier 1 engine will not qualify for this exemption, since the more stringent standards for marine diesel engines go into effect at that time.

(iii) The dressing process must not involve any modifications that can change engine emissions.

(iv) All components added to the engine, including cooling systems, must follow base engine manufacturer specifications.

(v) The original emissions-related label must remain clearly visible on the engine.

(vi) The engine dresser must notify purchasers that the marine engine is a dressed highway, nonroad, or locomotive engine and is exempt from the requirements of 40 CFR 94.

(vii) The engine dresser must report annually to EPA the models that are exempt pursuant to this provision and such other information as EPA deems necessary to ensure appropriate use of the exemption.

EPA is proposing to consider any engine dresser that does not meet these conditions to be an engine manufacturer, and the engine to be a new marine diesel engine, and require their engines to be certified to comply with the provisions of this proposed rule.

It should be noted that an engine dresser that violates the above criteria could be liable under anti-tampering provisions for any change made to the land-based engine that affects emissions. The dresser could also be subject to a compliance action, for selling new marine engines that are not certified to the required emission standards. In addition, the base engine manufacturer could be subject to a compliance action if the engine is found to be out of compliance.

EPA seeks comments on three aspects of this proposed exemption. First, EPA seeks comment on whether highway engines should be included in the set of base engines that can be modified by an engine dresser for marine application without needing further certification. EPA made a previous decision not to allow certified highway engines to be used in nonroad applications without recertifying. This decision was in response to claims that highway engines may not be able to meet applicable emission requirements on the steady-state test cycles applicable to nonroad engines. EPA is nevertheless proposing to allow engine dressers to modify certified highway engines without recertifying them as marine engines, because EPA believes that engine dressers would be unfairly penalized by the constraint that was originally intended for manufacturers selling two versions of their own engines. EPA requests comment on whether it is appropriate to include highway base engines in this exemption.

Second, EPA seeks comment on how to ensure that exempted dressed engines comply with the not-to-exceed requirements described in Section V.F. of this proposal. The base engines certified under 40 CFR 86, 40 CFR 89, or 40 CFR 92 are not subject to these provisions at the present time. Engines that are not subject to the off-cycle emission program may not have test data demonstrating compliance with this requirement.

Finally, EPA seeks comment on whether land-based engines that are credit users (those which have an FEL higher than the standard) should be allowed to benefit from the exemption. According to the above proposed criteria, the base engine's emissions must be at least as good as the otherwise applicable marine diesel emission limits. However, it may be the case that the base engine is a credit user, and that in fact its emissions are not as good as the otherwise applicable marine diesel emission limits, even though it is certified to the same or more stringent emission limits. This is of concern because engine dressers often prepare engines for marine vessels that are used in a particular area of the country. This means that high-emitting dressed engines may be concentrated in just a few port areas. In addition, it is unlikely that enough credit generators will be dressed for marine purposes that will offset the higher emitting credit users. The obvious solution to this problem is to specify that land-based nonroad or locomotive engines whose certification relied on the use of credits cannot benefit from this exemption. However, it is not clear that engine dressers will be able to identify these engines, or to modify their production practices if they happen to rely heavily on them for their own production. EPA seeks comment on this, as well as on any other solutions that will ensure that engines dressed for marine applications do not exceed the marine diesel emission limits.

3. Other Exemptions

EPA is proposing to extend other basic nonroad exemptions to marine diesel engines. These include the testing exemption, the manufacturer-owned exemption, the precertification exemption, the display exemption, the national security exemption, and the export exemption described in 40 CFR 89 Subpart J. In addition, EPA seeks comment on an additional exemption for racing and on the scope of the national security exemption. It should be remembered that these exemptions are not necessarily automatic, and that the engine or vessel manufacturer, or ultimate engine owner, may need to apply for them. As part of its approval, EPA may require exempted engines to be labeled.

With regard to the national security exemption, EPA is proposing to apply the approach used in the Agency's existing land-based nonroad and gasoline marine programs (40 CFR 89.908 and 40 CFR 91.1008). According to this exemption, only marine engines used in vessels that exhibit substantial features ordinarily associated with military combat, such as armor and/or permanently affixed weaponry, and which will be owned and/or used by an agency of the federal government with responsibility for national defense, will be considered exempt from the proposed emission control program. No request for an exemption would be necessary for these engines. Thus, according to this approach, engines used on vessels such as aircraft carriers, destroyers, and submarines would automatically be exempt from the proposed program. EPA believes extending the nonroad national security exemption to diesel marine engines is appropriate because the vessels on which these engines are used are designed for specific national security missions, and the exemption will ensure that emission controls do not compromise the ability of these vessels to achieve their military missions. However, it is EPA's understanding that the Department of Defense, and the Navy in particular, adopt emission control technology to the extent it is practical and feasible.

It is EPA's understanding that other public vessels, such as some vessels operated by the Coast Guard or Maritime Administration or vessels used for general cargo purposes by the Navy or other armed service branches, may not have features ordinarily associated with military combat. Such vessels would not qualify for the automatic exemption under the proposed national security exemption. EPA seeks comment on the nature and uses of vessels in such fleets and on the appropriate delineation of the national security exemption. EPA does not believe that application of the emission control technology that will be used to achieve the diesel marine Tier 2 emission limits will hinder the design and use of these vessels. Nevertheless, there may be situations in which an exemption from the emission controls may be necessary. To address this possibility, manufacturers can request a special national security exemption. A manufacturer requesting such an exemption would be required to explain why the exemption is required, and the request would need to be endorsed by an agency of the federal government charged with responsibilities for national defense. EPA requests comment on applying the land-based nonroad and gasoline marine military exemption approach to diesel marine engines or whether these engines are sufficiently different in application from land-based military equipment as to require a different approach. If another approach is more appropriate, EPA requests comment on what that approach should be.

With regard to racing engines, EPA is proposing to allow an exemption for marine diesel engines that are installed on vessels used solely in competition. To limit the application of this requirement to professional racing, EPA is also proposing that the racing exemption may not be given to any vessel that is used for recreational purposes. In other words, high-powered recreational vessels that are not used solely in competition will not be eligible for the racing exemption. The proposed approach is different from the approach used by EPA for SI marine engines (40 CFR Part 91) and land-based nonroad diesel engines (40 CFR Part 89). In those regulations, EPA defined "used solely for competition" based on physical features of the vessel. However, EPA does not believe that marine diesel vessels used solely for competition will necessarily have physical features that are not found on other high performance marine vessels. Thus, in this rulemaking, EPA is proposing to interpret "used solely for competition" literally, such that the exemption would apply only to engines that are, in fact, used solely for competition. The Agency requests comment regarding whether it should also use this literal approach for SI marine engines or land-based nonroad engines.

IV. Engine Categories

The engines that are the subject of this action are very diverse in terms of physical size, emission technology, control hardware, and costs associated with reducing emissions. These differences make it difficult to design one set of emission requirements for all marine diesel engines. For example, numerical emission limits that may be reasonable and feasible for a 37 kW engine used on an 5.5-meter (18-foot) boat may not be reasonable or feasible for a 1,500 kW engine installed on a tug or a 20,000 kW engine installed on an ocean-going container ship. Similarly, numerical emission limits appropriate for very large engines may be not be appropriately stringent for smaller engines, requiring little or no emission reduction.

Consequently, it is necessary to divide marine diesel engines into categories for the purposes of applying emission limits and duty cycles. In developing these categories, EPA had two criteria. First, the categories should allow EPA to take advantage of existing control programs that apply to the base engines from which marine engines are derived. Second, the categories should minimize category straddlers. In choosing how to distinguish between groups of marine diesel engines, EPA considered using rated power, rated speed, total displacement, and several other factors. However, after reviewing the engine parameters of the range of diesel engine models currently being produced, EPA concluded that per-cylinder displacement was the best way to distinguish engine groupings. Per-cylinder displacement is an engine characteristic that is not easily changed and is constant for a given engine model or series of engine models. More specifically, EPA is considering the following categorization scheme, which is summarized in Table 4. EPA requests comment on this categorization scheme.

TABLE 4.—ENGINE CATEGORY DEFINITIONS

Category	Displacement per cylinder	Basic engine type
1	Disp. < 5 liters (and power ≥ 37 kW)	Land-based Nonroad Diesel.
2	5 ≤ disp. < 20 liters	Locomotive.
3	Disp. ≥ 20 liters	Unique, "Cathedral."

EPA proposes to define Category 1 engines as those marine diesel engines that are rated above 37 kW, but have a per-cylinder displacement of less than 5 liters. This definition is intended to break out the class of marine engines that are serially produced and generally derived from land-based nonroad configurations or use the same emission control technologies. These engines are typically used as propulsion engines on recreational vessels as well as small commercial vessels (fishing vessels, tugboats, towboats, dredgers, etc.) They are also used as auxiliary engines on vessels of all sizes and applications.

EPA proposes to define Category 2 engines as those marine diesel engines with per-cylinder displacement at or above 5 liters and up to 20 liters. This category is intended to include engines that are of similar size and configurations as locomotive engines and use the same or similar emission control technologies. These engines are widely used as propulsion engines in harbor and coastal vessels, and can be used as auxiliary engines on ocean-going vessels and larger tugs.

EPA proposes to define Category 3 engines as those marine diesel engines with a displacement at or above 20 liters per cylinder. These are very large high-power engines that are used almost exclusively for propulsion on vessels engaged in Great Lakes or trans-oceanic trade.

EPA is further proposing to divide Category 1 engines into several subgroups. These subgroups are similar to the land-based nonroad diesel engine subgroups, with one significant change: EPA is proposing to base the marine subgroups on engine displacement rather than engine power. EPA believes this is a more appropriate scheme for two reasons. First, manufacturers sometimes offer different engine models that are the same except for the number of cylinders. These engines may fall into different power groupings by virtue of the added power from adding cylinders. Second, marine engines are often available in a wider range of power than their land-based counterparts. While it may be possible to define wider power bands for marine diesel engine subgroups, it may not be possible to do so without creating phase-in disadvantages for particular companies, especially in comparison to their land-based phase-in schedule. A displacement scheme should minimize these inequities. Consequently, EPA is proposing a displacement approach to defining engine groups, as described in Table 5.

TABLE 5.—CATEGORY 1 ENGINE GROUPS

Displacement (liters/cylinder)	Approximate corresponding power band from land-based nonroad rulemaking	
	kW	hp
Displ.<0.9	37≤kW<75	50≤hp<100
0.9≤displ.<1.2	75≤kW<130	100≤hp<175
1.2≤displ.<1.5	130≤kW<225	175≤hp<300
1.5≤displ.<2	225≤kW<450	300≤hp<600
2.0≤displ.<2.5	450≤kW<560	600≤hp<750

TABLE 5.—CATEGORY 1 ENGINE GROUPS—Continued

Displacement (liters/cylinder)	Approximate corresponding power band from land-based nonroad rulemaking	
	kW	hp
2.5≤displ.<5.0	kW≤560	hp≤750

In selecting the displacement values corresponding with the nonroad power ranges, EPA examined the engine displacement and power characteristics of a wide range of existing engines. The listed displacement values were selected to provide the greatest degree of consistency with the established land-based nonroad engine power groups. The wide range in power ratings for engines with a given per-cylinder displacement, however, led to a high degree of overlap in the attempted correlation between displacement and power rating. As a result, some nonroad engine models that were spread across different power groupings are brought together under a single displacement grouping. This has the potential to move an engine model into a group with somewhat more or less stringent requirements, but in almost all cases there was sufficient overlap to avoid moving a family of engines into an entirely new grouping. The observed overlap highlights the benefit of relying on displacement for a simplified approach. This should give manufacturers opportunity to more sensibly plan an R&D effort to a family of engines that must meet a single set of requirements with a common implementation date.

The most important aspect of defining sub-groups relates to which engines are treated like nonroad diesel engines rated above 560 kW. Emission limits and implementation dates for smaller marine engines are relatively uniform; however, the biggest group of Category 1 engines are subject to less stringent emission limits (for Tier 3) and have more lead time, which makes it especially important to properly separate engines. Investigation of engine models led to three key observations. First, of the engines lines with per-cylinder displacement between 2.5 and 5.0 liter, all had configurations with available power ratings above 560 kW; several of these were much greater than 560 kW. Second, except for one instance, all engines with displacements less than 2.5 liter had configurations with available power ratings below 560 kW; this means that the manufacturers of these engines would have to meet the more aggressive requirements for some of those engines. The only exception is the DDC 149 series engines, which is being replaced with a new engine model. Third, the common practice of bolting two marine engines together would often place the combined engine artificially into the less stringent regime. For example, with respect to emissions and performance, two six-cylinder 300 kW engines bolted together would operate the same as each individual engine. Yet, by doubling the power at the crankshaft, the engine would be subject to less challenging requirements.

The net effect of changing to a displacement-based grouping is hard to quantify. Somewhat greater emission reductions would likely result for the reasons described above, though it is difficult to identify the relative sales volumes of engines that would fall above and below the threshold under both scenarios. The effect on costs is expected to be small. As described above, no engines would be subject to the more stringent standards that would not have a subset of the engine line already subject to those same standards under a power-based grouping arrangement. As a result, there should be no increase in R&D expenses. Variable costs would be incurred for a greater number of engines, but the costs analysis in the Draft RIA makes clear that variable costs play a relatively small role in the overall cost impact of emission requirements. The Draft RIA lists various engine models with their displacement groups. EPA requests comment on this approach to defining Category 1 engine groups. Also, EPA requests comment on whether it would be appropriate to pursue redefinition of the nonroad diesel emission standards into these displacement-based groupings as part of a separate, future rulemaking.

V. Description of Proposed Standards and Related Provisions

In developing this proposal, EPA has developed a comprehensive program to reduce emissions from marine diesel engines. This section describes the proposed emission limits for Category 1 and Category 2 engines. It also sets out provisions that will ensure that engines comply with the emission limits across all engine speed and load combinations, as well as throughout their useful life. Proposed requirements related to test procedures and fuel specifications are also discussed, as well as several certification and compliance provisions. Standards and related provisions for Category 3 engines are described in Section VI, below.

A. Standards and Dates

1. Marine Tier 2 Emission Limits

The Agency's general goal in designing emission control requirements for Category 1 and Category 2 marine diesel engines is to develop a long-term program that will achieve significant emission reductions. In developing such a program, the Agency is guided by § 213(a)(3) of the CAA, which instructs EPA to set standards for nonroad engines that "achieve the greatest degree of emission reduction achievable through application of technology the Administrator deems will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology." The Act also instructs EPA to first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under § 202, taking into consideration technological feasibility, costs, and other factors.

The relevant engines regulated under § 202 are on-highway truck engines, both light-duty and heavy-duty. The most recent NO_X emission limits set by EPA for these engines range from approximately 2.5 g/kW-hr for heavy-duty trucks to less than 2.0 g/kW-hr for light-duty trucks. After consideration, EPA determined that it is not appropriate to extend the on-highway limits to diesel marine engines for three reasons. First, these emission limits reflect a history of emission control that is not shared by marine diesel engines, which are currently uncontrolled, and it is not clear that marine diesel engines can achieve such stringent emission

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limits. In comparison, EPA estimates the baseline emission rates of marine diesel engines to be approximately 10.5 g/kW-hr for the smaller marine diesel engines. Second, the duty cycle demands for marine engines are considerably different than those for on-highway trucks, which must be reflected in any choice of emission limits for marine engines. Finally, engines used in marine applications cover a much broader power range. As described elsewhere in this preamble, the marine engines covered by this rule vary in size from 37 kW to in excess of 90,000 kW—much larger than any on-highway engines, which vary from approximately 50 kW to 500 kW. It may not be possible for the larger marine diesel engines to achieve the limits that were set for a smaller universe of on-highway engines.

Instead of basing the proposed emission limits on on-highway engines, EPA believes it is more appropriate to consider the standards for land-based nonroad diesel engines already promulgated pursuant to § 213. This approach is favorable because the vast majority of marine diesel engines are derived from or use the same technologies as land-based engines. As described in the Draft Regulatory Impact Assessment, manufacturers of marine diesel engines typically start with a partially- or fully-completed land-based nonroad diesel engine or, in some cases, a highway diesel engine, and adapt it for use in the marine environment (this process is typically called "marinization").

EPA initially considered extending the land-based nonroad diesel Tier 1 emission limits, as described in the NPRM for new gasoline spark-ignition and diesel compression-ignition engines.[32] These limits are contained in Table 1, above. However, after further consideration, EPA has concluded that those emission limits do not meet the § 213 criteria. Available data suggests that marine diesel engines already perform at or near the NO_X emission limits (9.2 g/kW–hr). This is not surprising, given that the Tier 1 levels required the application of very simple emission control technology, primarily timing retard and better cooling. In addition, engine manufacturers have been exploring better engine cooling for quite some time in an effort to boost engine power.

Tier 2 nonroad technologies have been applied to marine diesel engines with good results. As described in the Draft Regulatory Impact Analysis, engine manufacturers participating in several California demonstration programs experimented with applying Tier 2 technologies, including electronic controls, better turbocharging, and raw-water aftercooling, to various commercially used engines. These programs have shown that NO_X emissions can be reduced by 40 to 60 percent. These results suggest that application of the land-based nonroad Tier 1 emission limits will not achieve the greatest degree of emission reduction achievable, taking into account technological feasibility, costs and other factors, as required by the Clean Air Act. Therefore, EPA is not proposing to extend the land-based nonroad Tier 1 emission limits to marine diesel engines.

At the same time, EPA is concerned about directly applying the land-based nonroad Tier 2 emission limits to marine diesel engines, for at least three reasons. First, the results obtained in the demonstration projects may be better than could be expected over a more general application of these Tier 2 technologies. Specifically, the demonstration projects were carefully controlled programs, and the engines were specially adapted for the participating vessels. These engines may have seen better maintenance or fewer extremes in use than typical marine diesel engines.

Second, manufacturers have indicated that there may be some hardware problems that would have to be worked out before land-based nonroad Tier 2 technologies can be applied to marine diesel engines. For example, achieving Tier 2 emission limits will require a higher use of raw-water aftercooling, which may present some problems for commercial marine engines. As currently designed, these systems can require more frequent maintenance, and may pose some reliability problems. In addition, it is not clear whether split-housing turbochargers can be used extensively with raw-water aftercooling, since the temperature differences between the interior and exterior of the turbocharger can cause material failure.

Finally, and perhaps most importantly, the demonstration projects gathered emissions data primarily for NO_X. It is not clear what effect application of these technologies had on PM emissions. This is an important concern because of the NO_X/PM tradeoff (as NO_X emissions are decreased, PM emissions tend to rise due to the change in combustion temperatures).

To address these concerns while still encouraging the use of land-based nonroad technologies on marine diesel engines, EPA is proposing a two-step approach for Category 1 and 2 marine diesel emission limits. Reflecting the above-described concerns, this approach assumes less than optimal transfer of land-based nonroad technologies to marine engines in the short run. In the long run, however, this approach assumes engine manufacturers will develop ways to fully optimize the transfer of land-based nonroad Tier 2 and Tier 3 emission control technologies to marine diesel engines. This two step approach will also give engine manufacturers more time to resolve mechanical barriers that prevent marine engines from more completely exploiting the water cooling potential of the environment in which they operate (water). Specifically, as described in the technological feasibility section below and the Draft Regulatory Impact Assessment, greater use of raw water and separate system aftercooling will permit marine engines to greatly reduce NO_X emissions. Taken as a whole, the proposed emission limits are expected to yield the greatest degree of emission reduction achievable through the application of technology that is expected to be readily available during the time frame covered by the proposal taking into account technological feasibility, costs and other factors, as required by the Clean Air Act.

Table 6 contains the proposed emission limits for marine diesel Category 1 and Category 2 engines. In the first step, which EPA is calling Tier 2 due to the similarity to land-based Tier 2 emission limits, EPA proposes a 7.2 g/kW-hr NO_X+HC limit, to apply to both categories of engines. Again, this limit is intended to result in short-term NO_X reductions while not requiring manufacturers to completely resolve the transfer of land-based Tier 2 technologies to marine engines. These marine Tier 2 emission limits are proposed to apply beginning in 2004 for engines up to 5 liters per cylinder and 2006 for engines up to 20 liters per cylinder. The staggered dates reflect the added complexities of applying these limits to larger engines. The MARPOL Annex VI NO_X limits are also provided in this table for comparison.

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[32] See, 59 FR 55929, November 9, 1994.

TABLE 6.—PROPOSED TIER 2 MARINE DIESEL EMISSION LIMITS AND IMPLEMENTATION DATES

Subcategory	HC+NO$_X$ g/kW–hr	PM g/kW–hr	CO g/kW–hr	Implementation date
Power ≥ 37 kW 0.5 ≤ disp < 0.9	7.2	0.40	5.0	2004
0.9 ≤ disp < 1.2	7.2	0.30	5.0	2004
1.2 ≤ disp < 1.5	7.2	0.20	3.5	2004
1.5 ≤ disp < 2.0	7.2	0.20	3.5	2004
2.0 ≤ disp < 2.5	7.2	0.20	3.5	2004
2.5 ≤ disp < 5.0	7.2	0.20	3.5	2006
5.0 ≤ disp < 20.0	7.2	0.27	2.0	2006
MARPOL Annex VI, for comparison purposes (NO$_X$ only)				
n ≥ 2000 rpm	9.8	None	None	1/1/2000
130 rpm≤n<2000 rpm	$45*n^{(-0.2)}$	None		1/1/2000
n <130 rpm	17.0	None	None	1/1/2000

It is expected that marine diesel engines can achieve this emission limit through the application of electronic controls and better cooling, perhaps supplemented by some degree of timing retard. EPA is also proposing emission controls for PM and CO, that are equal to the land-based nonroad and locomotive limits for these pollutants, depending on the size of the engine. EPA does not believe it is necessary to relax these limits relative to the land-based programs. Due to the NO$_X$/PM tradeoff, the higher NO$_X$ emission limit should ensure the feasibility of achieving the PM limits as well. Diesel engines inherently have low CO emissions, and the proposed limits are intended to serve as a cap.

EPA is proposing new requirements designed to ensure that the standards are met during real world operation as well as under laboratory tests (see Section V.F. "Not-to-Exceed Requirements"). According to these requirements, marine engines may not exceed the applicable emission limits by more than 25 percent while the engine is operated in any load/speed combination contained in a specified not-to-exceed (NTE) zone. EPA believes that the technology listed above that will be used to meet the proposed standards will be sufficient to meet the combined emission limits and NTE requirements. While the NTE transient operation requirements have an effect on PM emissions, this is not expected to pose any design difficulties. Marine operations typically have only limited transience and the NTE requirements are designed so that a short transience can be averaged into a minimum operating period.

EPA believes the proposed marine diesel emission limits set out in Table 6 strike the appropriate balance, taking into consideration the recently finalized Tier 2 emission limits that apply to the land-based nonroad engines from which many if not most diesel marine engines are derived and the special characteristics of marine diesel engines that may make achievement of those limits difficult. EPA requests comments on these proposed marine diesel Tier 2 limits. Specifically, it may be the case that the barriers to applying land-based technologies to marine diesel engines, including recreational engines, are smaller than expected, and that the land-based nonroad emission control program is, in fact, technologically feasible. In that case, extension of the land-based programs would be the appropriate approach according to the criteria set out in the Clean Air Act. The land-based Tier 2 emission limits are contained in Table 7. EPA also seeks comment on whether the superior cooling potential of marine diesel engines would permit even lower emission standards for NO$_X$ and PM at an acceptable cost.

TABLE 7.—LAND-BASED NONROAD TIER 2 EMISSION LIMITS AND IMPLEMENTATION DATES

Subcategory	HC+NO$_X$ g/kW–hr	PM g/kW–hr	CO g/kW–hr	Implementation date
Power ≥ 37 kW 0.5 ≤ disp < 0.9	7.5	0.4	5.0	2004
0.9 ≤ disp < 1.2	6.6	0.3	5.0	2003
1.2 ≤ disp < 1.5	6.6	0.2	3.5	2003
1.5 ≤ disp < 2.0	6.4	0.2	3.5	2001
2.0 ≤ disp < 2.5	6.4	0.2	3.5	2002
2.5 ≤ disp < 5.0	6.4	0.2	3.5	2006
5.0 ≤ disp < 20.0	0.4, 7.4	0.27	2.0	2005

2. Marine Tier 3 Emission Limits

In the long run, it is anticipated that greater experience with emission controls and the transfer of land-based technologies to marine engines will make more stringent emission limits feasible. For this second step, which EPA is calling Tier 3 due to the similarity to land-based Tier 3 emission limits, EPA proposes a 3.0 g/kW–hr NO$_X$+HC limit, to apply to marine diesel engines up to 2.5 l/cyl beginning in 2008. EPA believes this emission limit should be achievable within the time available through more aggressive engine cooling and use of electronic engine controls. At the same time, and similar to the Tier 2 limits, there are uncertainties regarding the transferability of land-based Tier 3 technologies to these marine diesel engines. Because more complete information on the technologies that will be used to achieve these limits for land-based engines will not be available for several years, EPA intends to reconsider these marine Tier 3 limits as part of a feasibility review, to take place in 2003. At that time, EPA will examine the extent to which the proposed Tier 3 standards are technologically feasible and otherwise appropriate under the

Clean Air Act. The marine diesel Tier 3 NO_X+HC limits are set out in Table 8.

TABLE 8.—PROPOSED TIER 3 MARINE DIESEL HC+NO_X Emission Limits and Implementation Dates*

Subcategory	HC+NO_X g/kW–hr	Implementation date
Power ≥ 37 kW 0.5 ≤ disp < 0.9	4.0	2008
0.9 ≤ disp < 1.2	4.0	2008
1.2 ≤ disp < 1.5	4.0	2008
1.5 ≤ disp < 2.0	4.0	2008
2.0 ≤ disp < 2.5	4.0	2008
2.5 ≤ disp < 5.0	5.0	2010
5.0 ≤ disp < 20.0	5.0	2010

*Note: These limits are subject to a 2003 Feasibility Review.

EPA also seeks comment on whether the marine diesel Tier 3 limits should follow the land-based nonroad limits, set out in Table 9. As discussed under the Tier 2 limits, above, it could be the case that transferring land-based nonroad Tier 3 technologies will be easier than anticipated. This, in combination with the superior cooling potential of marine engines, may make achievement of the land-based Tier 3 standards feasible. If adopted, these land-based limits would be subject to review in the 2003 feasibility study.

TABLE 9.—LAND-BASED NONROAD TIER 3 EMISSION LIMITS AND IMPLEMENTATION DATES*

Subcategory	HC+NO_X g/kW-hr	Implementation date
Power ≥ 37 kW 0.5 ≤ disp < 0.9	4.7	2008
0.9 ≤ disp < 1.2	4.0	2007
1.2 ≤ disp < 1.5	4.0	2006
1.5 ≤ disp < 2.0	4.0	2006
2.0 ≤ disp < 2.5	4.0	2006

*Note: These limits are subject to a 2003 Feasibility Review.

As noted in Table 8, EPA is also proposing Tier 3 emission limits for Category 1 marine diesel engines at or above 2.5 l/cyl. and Category 2 marine diesel engines. Tier 3 emission controls are necessary for these engines because of the importance of their emissions to local ozone inventories. Marine diesel engines at or above 2.5 l/cyl are an important part of the emission inventory of many cities with commercial ports.[33]

While the population of engines in these areas may be smaller than land-based nonroad equipment or locomotives, it is also the case that their use is much more concentrated, being limited to port areas. In addition, many cities with commercial ports are in nonattainment areas, and the second phase emission limits will be an important tool to help them reduce local ozone levels.

EPA did not set Tier 3 emission limits for land-based nonroad engines at or above 560 kW or for locomotives, due to the limited cooling potential of those engines. These engines are typically installed in relatively restrictive spaces, and are unable to take full advantage of air-to-air cooling systems. However, EPA believes that marine diesel engines at or above 2.5 l/cyl should be able to meet more stringent Tier 3 emission limits because they can take advantage of the medium in which they operate, water, to achieve better engine cooling and additional NO_X reductions. At the same time, the ability of these larger engines to take full advantage of raw water aftercooling or separate system aftercooling is complicated by the same constraints that must be overcome for the smaller engines. To accommodate concerns about overcoming this constraint, as well as uncertainty over the transferability of more efficient cooling technology from the smaller to the larger marine diesel engines, EPA intends to review the Tier 3 emission limits for engines at or above 2.5 liters per cylinder as part of the 2003 Feasibility Review. EPA seeks comment on the proposed Tier 3 limits for these engines, concerning both their stringency and implementation dates.

Finally, EPA will also examine the need to set more stringent PM limits as part of the 2003 Feasibility Review. Consideration of more stringent PM standards will be a function of, but not depend exclusively on, the ease with which engines are expected to reach the NO_X+HC limits, the extent to which the higher sulfur content of marine diesel fuel can be accommodated, whether the land-based nonroad diesel engine PM limits are revised as part of that category's 2001 feasibility review, and the cost of such limits.

Before making a final decision in the 2003 review, EPA intends to issue a proposal and offer an opportunity for public comment on whether the Tier 3 standards continue to be consistent with the requirements of the Act and continue to be technologically feasible for implementation according to the proposed schedule. Any Tier 3 PM standards would also be proposed in such a notice. Following the close of the comment period, EPA intends to issue a final Agency decision.

If by 2003 EPA finds the emission standards are not feasible according to the proposed schedule, or are otherwise not appropriate under the Act, EPA will propose changes to the program, possibly including adjustments to the levels of the standards. The adjusted standards may be more or less stringent than those already established, including the possibility of a new emission standard for particulate matter. The standards finalized in the rulemaking initiated by this proposal would stay in effect unless revised by the subsequent rulemaking procedure.

3. Interim Emission Limits

As noted above, EPA considered but rejected proposing land-based nonroad Tier 1 emission limits to marine diesel engines. Such emission limits would not be cost-effective because marine diesel engines often already meet the Tier 1 emission limits, and a Tier 1 program would simply impose a certification burden for minimal emission benefits.

At the same time, however, EPA is concerned about leaving these engines uncontrolled until the implementation dates of the marine Tier 2 standards (2004 for engines up to 2.5 l/cyl and 2006 for engines between 2.5 and 20 l/cyl). As noted above, these engines can be a considerable source of NO_X and PM emissions in port and coastal areas, many of which are in nonattainment zones.

This problem may be alleviated, however, by the MARPOL Annex VI emission control program. Regulation 13 of Annex VI to the International Convention on the Prevention of Pollution from Ships calls for engines installed on ships constructed on or after January 1, 2000, to meet emission limits similar in stringency to the land-based nonroad Tier 1 limits. Although the Annex VI emission limits are not enforceable until the Annex goes into effect (12 months after it is ratified by 15 countries representing at least 50 percent of the gross tonnage of the world's merchant shipping), it is expected that ship owners will begin to comply with these emission limits in 2000 to avoid future enforcement actions. According to Regulation 13(1)(b)(ii), the Annex requirements will apply even to ships operated in domestic waters unless a country takes action to the contrary. It is expected that the MARPOL Annex VI program will act as a cap on NO_X emissions, since engine manufacturers will have to make compliant engines available for installation on ships beginning January 1, 2000. At the same time, however, there is some concern about compliance with these limits because they will not be enforceable until the Annex goes into effect. In addition, the international inspection program, when it goes into effect, will cover only engines installed on ships at or above 400 gross tons.[34]

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[33] Category 1 and 2 marine diesel engines make up approximately 6 percent of the NO_X emission inventory for San Diego, 5 percent for San Francisco and 2 percent for Los Angeles-South Coast, Baltimore, and Chicago. *See* Commercial Marine Vessel Contributions to Emission Inventories, Final Report, Submitted by Booz-Allen & Hamilton, Inc., October 7, 1991.

EPA seeks comment on whether it is appropriate to rely on the MARPOL Annex VI program as an interim cap on NO_X emissions, with no formal emission limits or certification program set by EPA. Also, EPA seeks comment on how to verify that engine manufacturers are, in fact, complying with the MARPOL Annex VI program prior to the implementation date of Annex VI.

4. Total Hydrocarbons

EPA proposes to use total hydrocarbons (HC) rather than nonmethane hydrocarbons in its emission standards for marine diesel engines. This is consistent with locomotive standards but inconsistent with land-based nonroad standards. Methane was considered to be removed from the regulated pollutants since it is significantly less reactive than other hydrocarbons in the formation of ozone. However, for diesel engines, methane only makes up about two percent of the total hydrocarbons. In addition, HC generally makes up less than five percent of the combined $HC+NO_X$ from a marine diesel engine. The combination of these two factors renders the methane fraction of the exhaust insignificant when compared to the significant digits in the proposed $HC+NO_X$ standard.

The advantage of using total hydrocarbons rather than nonmethane hydrocarbons in the proposed standard is that it simplifies the emission measurement. To determine NMHC, both HC and methane must be measured. Methane is generally measured by speciating total hydrocarbons using a gas chromatograph, which can be time consuming and costly. In addition, by using total hydrocarbons for the standard for all marine diesel engines, the standards are consistent for Category 1 and Category 2.

B. Crankcase Emissions

EPA is proposing to require that all marine diesel engines either have closed crankcases (where blowby gases are routed into the engine intake air stream), or route all blowby gases into the engine exhaust stream for inclusion in all exhaust emission measurements. Manufacturers would be allowed flexibility for routed blowby gases in in-use configurations, provided that the blowby gases could be readily routed into the exhaust for any in-use test. This approach is similar to the approach used by EPA for locomotives. The purpose of this proposed requirement is to provide manufacturers the incentive to reduce crankcase emissions to the maximum extent possible, or to eliminate them all together.

C. Smoke Requirements

EPA is not proposing smoke requirements for marine diesel engines. Marine diesel engine manufacturers have stated that many marine diesel engines, even though currently unregulated, are manufactured with smoke limiting controls at the request of the engine purchasers. Users seek low smoke emissions both because they dislike the residue smoke emissions leave on decks and because they can be subject to penalties in ports that have smoke emission requirements. In many cases, marine engine exhaust gases are mixed with water prior to being released. This practice reduces the significance of smoke emissions since smoke becomes significantly less visible. Moreover, the Agency believes that the PM standards being proposed here will have the effect of limiting smoke emissions as well. EPA requests comment on these views and, specifically, on whether there is a need at this time for additional control of smoke emissions from Category 1 marine engines, and if so, what the appropriate limits should be.

If a smoke limit is desirable, EPA also requests comment on what the test procedure should be. There is currently no test procedure that can be used to measure compliance with a smoke limit. Most propulsion marine engines operate over a torque curve governed by the propellor. Consequently, a vessel with an engine operating at a given speed will have a narrow range of torque levels. Some large propulsion marine engines have variable-pitch propellers, in which case the engine operates much like constant-speed engines. It should be noted, however, that ISO is working on a proposal for marine diesel engine smoke test procedures. A copy of a recent draft is being placed in the docket for this rulemaking. As this procedure is finalized by ISO, and emission data become available, EPA may review the issue of smoke requirements for all marine diesel engines. EPA requests comment on this overall approach to smoke emissions from marine diesel engines, as well as comment on the draft ISO procedures.

D. Alternative Fuels

EPA has determined that the proposed standards should apply to marine diesel engines, without regard to the type of fuel that they use. This is consistent with nonroad diesel engine regulations of 40 CFR part 89. It is also generally consistent with the locomotive regulations; however, the locomotive regulations apply even more broadly because they also include spark-ignited engines. EPA recognizes that few, if any, alternative-fueled marine engines are currently being manufactured, but believes that it is appropriate to make clear to manufacturers what standards will apply to such engines should they be produced.

The broad applicability of the proposed standards raises two potential issues. The first issue is related to the form of the HC standards. In its regulation of highway vehicles and engines (59 FR 48472, September 21, 1994), the Agency determined that it is not appropriate to apply total hydrocarbon standards to engines fueled with natural gas (which is comprised primarily of methane), but rather that nonmethane hydrocarbon (NMHC) standards should be used. Thus, EPA is setting $NMHC+NO_X$ standards for compression-ignition natural gas-fueled marine engines. These $NMHC+NO_X$ standards are numerically equivalent to the $HC+NO_X$ standards proposed for diesel engines. Similarly, EPA has determined that alcohol-fueled engines should be subject to HC-equivalent (HCE) standards instead of HC standards (54 FR 14426, April 11, 1989). HC-equivalent emissions are calculated from the oxygenated organic components and non-oxygenated organic components of the exhaust, summed together based on the amount of organic carbon present in the exhaust. (The reader is referred to the April 11, 1989 final rule for more information regarding the determination of HC-equivalence.) EPA is proposing these approaches because it has previously determined that these approaches will result in the most equivalent stringency for all fuel types.

The second issue raised by the regulation is related to the need for slightly different test procedures for alternative-fueled engines. This issue is being resolved in this rulemaking by referencing the test procedures found in 40 CFR Parts 89 and 92, both of which include flexibility for testing alternative-fueled engines. EPA requests comment on whether more specific regulation is needed for marine engines.

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[34] *See* Regulation 5, Surveys and Inspections, of the Annex.

E. Test Procedures

For this marine regulation, EPA is proposing to use previously established test procedures for diesel nonroad engines. Specifically, EPA is proposing that Category 1 marine engines be tested using the land-based nonroad test procedures of 40 CFR Part 89, and that Category 2 marine engines be tested using the locomotive test procedures of 40 CFR Part 92. There are two reasons for using this approach. First, most manufacturers of marine compression-ignition engines also manufacture land-based engines and will be equipped to test engines using these test procedures. Second, marine compression-ignition engines are fundamentally similar to their land-based counterparts, and it is therefore appropriate to measure their emissions in the same way. At the same time, some changes are necessary. EPA is proposing the modifications to these test procedures described below.

1. Duty cycles

The duty cycle used to measure emissions is intended to simulate operation in the field. Testing an engine for emissions consists of exercising it over a prescribed duty cycle of speeds and loads, typically using an engine dynamometer. The nature of the duty cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emissions performance of engines designed to those standards.

To address operational differences between engines, EPA is proposing different duty cycles for different types of compression-ignition marine propulsion engines. EPA is proposing that propulsion engines that operate on a fixed-pitch propeller curve be certified using the International Standards Organization (ISO) E3 duty cycle. This is a four-mode steady-state cycle developed to represent in-use operation of marine diesel engines on vessels 24 meters in length and larger. The four modes lie on an average propeller curve based on the vessels surveyed in the development of this duty cycle. Another duty cycle, ISO E5, was developed to represent in-use operation of smaller marine diesel engines; this cycle is similar to the E3 except that an idle mode is added and the cycle is more heavily weighted towards lower power modes. The E3 is designed for engines used to propel vessels greater than 24 meters in length while the E5 is designed for engines used to propel vessels less than 24 meters in length. The attractiveness of the E3 duty cycle is that, according to EPA's inventory analysis, the majority of $HC+NO_X$ emissions from marine diesel engines are generated by engines on vessels more than 24 meters in length. By choosing a single cycle to represent all propeller-curve marine diesel engines, EPA hopes to reduce certification burdens for marine engines that are used in vessels both over and under 24 meters in length.

EPA is proposing that fixed-speed marine propulsion engines with variable-pitch propellers be certified on the ISO E2 duty cycle. This duty cycle is also a four-mode steady-state cycle. It uses the same power and weighting factors as the E3 cycle, but the engine is operated in each mode at rated speed.

EPA is also proposing that variable-speed marine propulsion engines with variable-pitch propellers be certified on the ISO E2 duty cycle. These engines are designed to operate near their power curve to maximize fuel efficiency. In general, these engines will operate at a constant speed except when maneuvering in port. Because of the expense of the system, variable-speed engines are rarely used with variable-pitch propellers. ISO does not have a test duty cycle specifically designed for these engines. However, because most of their operation is at constant speed, EPA is proposing that these engines certify using the E2 duty cycle. EPA proposes that the speed setting for testing should coincide with the speed setting at which the engine would spend most of its time in use.

For auxiliary engines, EPA is proposing that constant-speed auxiliary engines be certified to the ISO D2 duty cycle and that variable-speed auxiliary engines be certified to the ISO C1 duty cycle. These duty cycles are consistent with the requirements for land-based nonroad diesel engines. More detail on the proposed duty cycles is contained in the Draft Regulatory Impact Analysis (Draft RIA) associated with this proposal. EPA requests comment on the appropriateness of the proposed duty cycles.

Under the provisions of the land-based nonroad rule, engine manufacturers have the option to petition for their marine engines to be included in land-based engine families. EPA is not proposing this flexibility for propulsion marine engines because the "not-to-exceed" provisions described below require the use of the marine duty cycles.

For larger marine engines, conventional emission testing on a dynamometer becomes more difficult because of the size of the engine. Often engine mock ups are used for the development of these engines where a single block is used for many years and only the power assembly is changed out. EPA proposes that for Category 2 engines, certification tests may be performed on these engine mock ups provided that their configuration is the same as that of the production engines. In addition, for larger Category 2 marine engines, EPA requests comment on whether or not single-cylinder tests should be allowed for certification testing. Assuming that each cylinder in an engine is equivalent, a single-cylinder test should give the same brake-specific emission results as a full engine test.

2. In-Use Testing

As with its other federal mobile source programs, EPA retains the authority to perform in-use testing on marine engines to ensure compliance in use. This testing may include taking in use marine diesel engines out of the vessel and testing them in a laboratory, as well as field testing of in use engines in the vessel, in a marine environment. EPA's proposal specifies the equipment and related procedures for use in laboratory based testing. EPA is not at this time, however, specifying similar provisions for field testing. EPA expects that the capabilities of field testing equipment will increase over time, and it is better to allow this to occur without attempting to pick testing technologies at this time, or interfere with this development process.

Field testing data will be used by EPA in two ways. First, it may be used as a screening tool, with follow up laboratory testing where appropriate. Second, it may be used directly as a basis for compliance determinations, when the field testing itself provides reliable information from which conclusions can be drawn regarding what laboratory based emissions levels would be. The probative value of field test data is expected to increase over time, as the capabilities of field testing equipment are developed. The flexibility in testing that these approaches provide will allow EPA to most efficiently conduct in use testing, and will also address those situations where it is physically or otherwise impossible to remove an engine from a marine vessel for testing in a laboratory.

For compression-ignition marine engines that expel exhaust gases under water or mix their exhaust with water, EPA proposes to require that the engines be equipped with an exhaust sample port where a probe can be inserted for in-use exhaust emission testing. It is important that the location of this port allow a well mixed and representative sample of the exhaust. The purpose of this proposed provision is to simplify in-use testing. EPA requests comment on the proposed in-use testing provisions.

3. Test Fuel

Section 206(h) of the Clean Air Act requires EPA to ensure that the test procedure, including the test fuel, adequately represent in-use operation. To facilitate the testing process, EPA specifies a test fuel that is intended to be representative of in-use fuels. Engines would have to meet the standard on any fuel that meets the proposed test fuel specifications, with one modification as described later. This section describes the test fuel EPA is proposing for Category 1 and Category 2 engines. This test fuel is to be used for all testing associated with the regulations proposed in this document, to include certification, production line and in-use testing, as well as any NTE testing.

EPA is proposing that the recently finalized test fuel specifications for nonroad diesel engines be applied, with a modification to the sulfur specification as described later, to both Category 1 and 2 marine diesel engines. EPA believes that largely adopting the nonroad fuel will simplify development and certification burdens for marine engines that are developed from land-based counterparts. The proposed test fuel for marine diesel engine testing has a sulfur specification range of 0.03 to 0.80 weight-percent (wt%), which covers the range of sulfur levels observed for most in-use fuels. Manufacturers are generally responsible for ensuring compliance with the emission standards using any fuel within this range. Thus, they will be able to harmonize their marine test fuel with U.S. highway (<0.05 wt%), nonroad (0.03 to 0.40 wt%), locomotive (0.2 to 0.4 wt%) and European testing (0.1 to 0.2 wt%). The full range of proposed test fuel specifications are presented in Chapter 3 of the Draft RIA.

EPA is proposing a higher upper limit for the marine diesel engine sulfur specification (0.8 wt%) than was recently finalized for land-based nonroad engines (0.4 wt%) because there is some information available that suggests that marine fuels may have higher sulfur contents than land-based diesel fuels.[35] Using ASTM specification D 2069 as a guide, EPA considered choosing an upper limit of 1.5 wt% sulfur. Although 1.5 wt% may be appropriate based on the ASTM specification, EPA is proposing that this upper limit on sulfur content be 0.8 wt% because PM can not accurately be measured using the proposed testing procedures using fuels with a sulfur content higher than 0.8 wt%.[36] EPA requests comment on whether it is appropriate to limit the test fuel specification in this way due to this testing constraint.

The proposed PM standards were largely determined to be feasible based on the feasibility of the corresponding standards for land-based nonroad and locomotive applications, which have a 0.4 wt% sulfur upper limit for the test fuel. Since PM emissions are somewhat fuel sulfur-dependent, EPA does not believe that it is appropriate to require compliance with the PM standards using fuel with a sulfur content above 0.4 wt%. It is for this reason that EPA is proposing to allow a correction of PM emissions for tests that are run using fuel with a sulfur content greater than 0.4 wt%. Thus, the measured PM emissions for any test performed using fuel with a sulfur content of greater than 0.4 wt% would be corrected to the level that would have been measured if the fuel had a sulfur content of 0.4 wt%. The proposed correction method is that used for land-based nonroad engine testing. EPA requests comment on whether this correction method is accurate and appropriate for this application.

It is EPA's intent that engines be designed for the whole range of in-use fuels and that any testing conducted by EPA would use test fuels typical of in-use fuels. Unfortunately, the test procedure currently limits the Agency from reaching this objective for marine diesel engines if in-use fuels do in fact have sulfur levels as high as the current ASTM specifications allow. EPA requests comment on whether currently available marine fuel has a sulfur content significantly higher than land-based nonroad fuel. EPA will be investigating marine fuel further and is requesting information on the specifications that are used in use. It is EPA's intent to develop test procedures that will allow for the accurate measurement of PM emission over the entire range of in-use fuel characteristics. If successful, the Agency would intend to broaden the range of certification fuel to reflect the full range of in-use fuels. Any efforts to do so would consider the impacts on the appropriateness and feasibility of the PM standards and would likely be undertaken in the planned 2003 technology review for the Tier 3 standards.

EPA requests comment on all aspects of its proposed test fuel provisions. EPA is also interested in obtaining more information on the specifications of marine fuel used in Category 2 marine engines. Essentially, this proposal assumes that Category 2 marine engines are operating on a distillate fuel. The Agency requests comments on this approach and on how often residual fuels or residual fuel blends are burned in Category 2 engines.

4. Adjustable Parameters

Marine diesel engines are often designed with adjustable components, to allow the engine to be adjusted for maximum efficiency when used in a particular application. This practice simplifies marine diesel engine production, since the same basic engine can be used in many applications. While EPA recognizes the need for this practice, EPA is also concerned that the engine meet the proposed emission limits throughout the range of adjustment. Therefore, and consistent with the locomotive rule, the Agency is proposing that manufacturers specify in their applications for certification the range of adjustment for these components across which the engine is certified to comply with the applicable emission standards, and demonstrate compliance across that range.

Practically, this requirement means that a manufacturer would specify a range of fuel injection timing, for example, over which the engine would comply with the emission standards. This range could be designed to account for differences in fuel quality. Operators would then be prohibited by the anti-tampering provisions from adjusting engines outside of this range.

Ideally, to ensure that engines are always operated within the specified range of adjustment, marine diesel engine manufacturers should be required to design their engines to prevent adjustments outside the specified range. However, EPA recognizes that it may be necessary to adjust injection timing or other adjustable parameters outside the originally specified control range during engine remanufacture to accommodate engine wear. There are at least two alternative solutions to this problem. First, engine manufacturers could be required to set a range of adjustments that would accommodate changes necessary at the time the engine will be remanufactured. Alternatively, compliance with the range of adjustments could be ensured through anti-tampering provisions, with the requirement that the new range of adjustments be specified at the time of remanufacture. EPA seeks comments on these and other approaches to ensure that engines with adjustable parameters meet the proposed emission requirements.

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[35] "Final Report: 1996 American Petroleum Institute/National Petroleum Refiners Association Survey of Refining Operations and Product Quality" suggests that actual marine diesel fuels may have sulfur contents somewhat higher than general nonroad diesel fuels. ASTM specification D 2069 includes a specification for general purpose marine distillate fuel with a maximum sulfur content of 1.5 wt%.

[36] "Exhaust Gas Emission Measurements: A Contribution to a Realistic Approach," D. Bastenhof, dieselMAC, May, 1995.

5. Definition of Rated Speed

The definition of rated speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm) is an important aspect of the test cycles and "not-to-exceed" (NTE) zones proposed in this document. In the past, EPA has expected engine manufacturers to declare reasonable rated speeds for their engines; however, EPA is concerned that some manufacturers may have declared rated speeds that are not really representative of the operating characteristics of a particular engine in order to influence the parameters under which their engines could be certified. Under EPA's highway transient duty cycle, manufacturers would likely receive a NO_X emission benefit if they declared a rated speed that was higher than the actual rated speed of the engine. Under EPA's nonroad and proposed marine steady-state duty cycles, manufacturers would likely receive a NO_X emission benefit if they declared a lower rated speed. In addition, a low declared rated speed would shrink a marine engine's NTE zone.

Currently, U.S. highway and nonroad diesel engine regulations specify two slightly different ways to determine rated speed. EPA's highway heavy-duty diesel regulation defines rated speed as the manufacturer's specified rated speed, as defined at 40 CFR 86.082–2, or calculated speed, whichever yields the higher speed. The calculated speed in the highway rule is determined by averaging the minimum and maximum speeds at which 98% of maximum power is generated. This calculation can yield unreasonable speeds in some high-torque-rise engines. EPA's nonroad rule defines rated speed as the maximum full-load governed speed for governed engines and the speed of maximum horsepower for ungoverned engines. The International Standards Organization (ISO–8178) defines a diesel engine's rated speed as the speed at which, according to the statement of the engine manufacturer, rated power is delivered. This is similar to the International Maritime Organization's definition; the crankshaft revolutions per minute at which the rated power occurs as specified on the nameplate and in the Technical File of the marine diesel engine.

To determine a single rated speed definition that encompasses the complete range of engine operation, EPA analyzed the maximum-power versus speed curves from eleven highway and nonroad engines. These engines were all similar to marine engines and they may be used in marine applications. EPA observed that most mechanically governed engines had distinct governor droops at speeds slightly higher than the speed at maximum power. High-torque-rise engines, however, had gradual decreases in power beyond the maximum-power speed, followed by a steep rate of governor droop. Furthermore, some electronically governed engines had multiple rates of power decrease between the maximum-power speed and the onset of governor droop. See Figure 1 for an illustration of four different maximum-power versus speed curves.

Based on this analysis, EPA proposes that the rated speed of any engine shall be defined at the single point on an engine's maximum-power versus speed curve that lies farthest away from the zero-power, zero-speed point on a normalized maximum-power versus speed plot. In other words, consider straight lines drawn between the origin (speed = 0, load = 0) and each point on an engine's maximum-power versus speed curve (see Figure 1). Note that the maximum-power versus speed curve is normalized so that 100% power and 100% speed are set at the maximum power and maximum-power speed point. Under this proposal, rated speed would be defined at that point where the magnitude (length) of this line reaches its maximum value. The magnitude of this line, called $\text{Rated\_Speed}_{\text{factor}}$ in this rule, is calculated by using the following equation:

$$\text{Rated\_Speed}_{\text{factor}} = \sqrt{(\%\ \text{Maximum\_Power\_Speed})^2 + (\%\ \text{Maximum Power})^2}$$

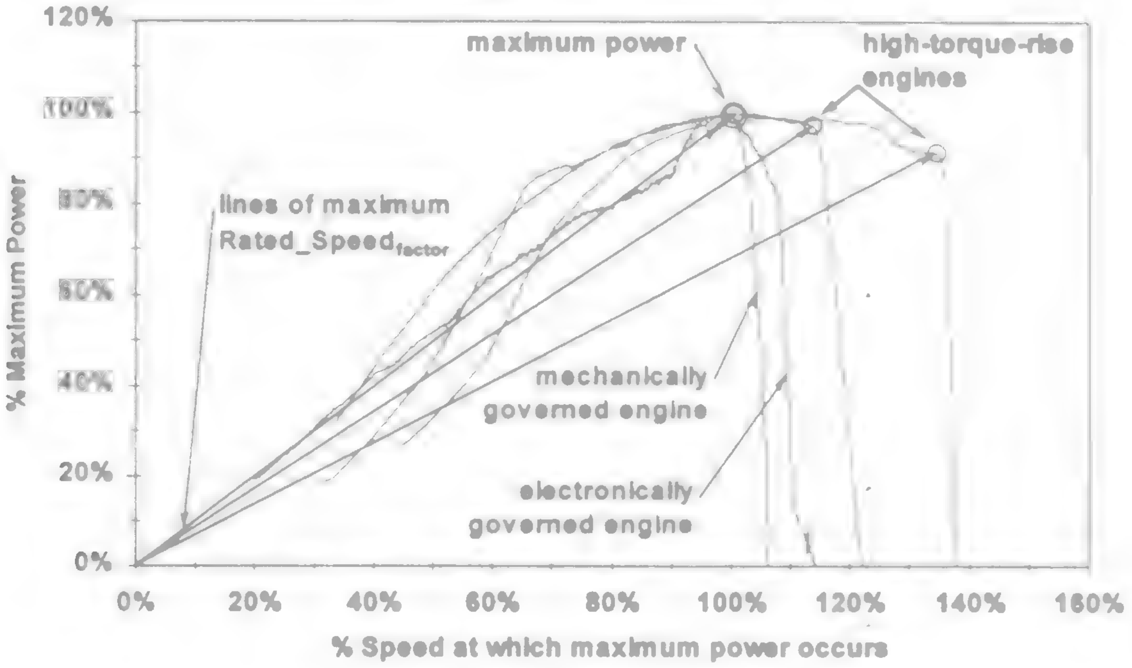
Rated speed shall be the speed value of the data point that returns the maximum value of $\text{Rated\_\_Speed}_{\text{factor}}$.

EPA proposes the following procedure to determine rated speed:

1. Generate maximum-power versus speed data points by using the appropriate method defined in 40 CFR 86.1332–90. EPA recognizes that 40 CFR 86.1332–90 does not address the issue of electronic engines that vary injection timing, rate shaping, exhaust gas recirculation, and variable-nozzle turbocharging with respect to their operating conditions. These engines' maximum-power versus speed curves can vary as a function of the method in which the curves are determined (i.e., transient curve generation versus steady-state curve generation). EPA proposes that the engine operation generating the maximum $\text{Rated\_\_Speed}_{\text{factor}}$ shall be the operation under which rated speed is determined. EPA seeks comment on this proposal.
2. Compare power values to determine the point where power is a maximum.
3. Normalize power values with respect to maximum power.
4. Normalize speed with respect to the speed at which maximum power is generated.
5. Calculate the $\text{Rated\_\_Speed}_{\text{factor}}$ for each normalized data point.
6. Compare all $\text{Rated\_\_Speed}_{\text{factor}}$ values to determine the maximum value of $\text{Rated—Speed}_{\text{factor}}$.
7. The speed at which maximum $\text{Rated\_\_Speed}_{\text{factor}}$ occurs shall be the rated speed for certification and NTE zone testing.

Examples of results from this calculation are illustrated by circles superimposed on four maximum-power versus speed curves in Figure 1. EPA seeks comment on this proposal.

Figure 1: Maximum-power versus speed curves (normalized). Rated speed points are circled.



F. Not-to-Exceed Requirements

EPA's goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur on a vessel so that real-world emission control is achieved, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. Historically, EPA's approach has been to set a numerical standard on a specified test procedure and rely on the prohibition of defeat devices to ensure in-use control over a broad range of operation not included in the test procedure.

No single test procedure can cover all real world applications, operations, or conditions. Yet to ensure that emission standards are providing the intended benefits in use, the Agency must have a reasonable expectation that emissions under real world conditions reflect those measured on the test procedure. The defeat device prohibition is designed to ensure that emissions controls are employed during real world operation and not just under laboratory or test procedure conditions. However, the defeat device prohibition is not a quantified standard and does not have an associated test procedure, so it does not have the clear objectivity and ready enforceability of a numerical standard and test procedure. As a result, the current focus on a standardized test procedure makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell.

Because the E3 duty cycle uses only four modes on an average propeller curve to characterize marine diesel engine operation, EPA is concerned that an engine designed to the duty cycle would not necessarily perform the same way over the range of speed and load combinations seen on a vessel. The E3 duty cycle is based on an average propeller curve, but a propulsion marine engine may never be fitted with an "average propeller." For instance, a light vessel with a planing hull may operate at lower torques than average while the same engine operated on a heavy vessel with a deep displacement hull may operate at higher torques than average. This can largely be a function of how well the propeller is matched to the engine and vessel. A planing hull vessel can operate at high torques at low speed prior to planning. In addition, the E3 duty cycle only includes steady-state operation while some transience is seen in use.

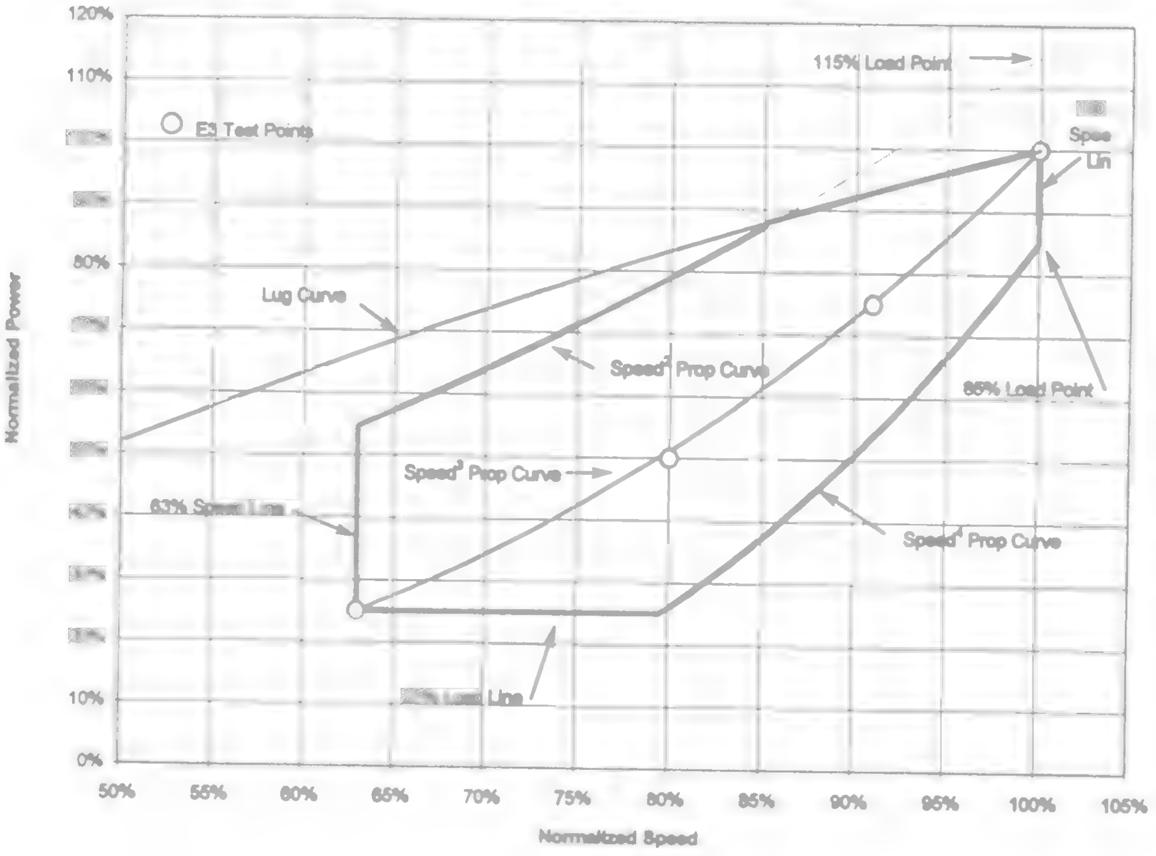
To ensure that propulsion emissions are controlled from marine diesel engines over the full range of speed and load combinations seen on vessels, EPA proposes to establish a zone under the engine's power curve where the engine may not exceed a specified emissions limit, for any of the regulated pollutants, under any operation that could reasonably be expected to be seen in the real world. In addition, EPA proposes that the whole range of real ambient conditions be included in this "not-to-exceed" (NTE) zone testing. The NTE zone, limit, and ambient conditions are described below.

EPA believes that there are significant advantages to taking this sort of approach. The test procedure is very flexible so it can represent any and all in-use conditions (ambient and operation). Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, laboratory testing makes it harder to perform in-use testing since either the engines would have to be removed from the vessel or care would have to be taken that laboratory-type conditions can be achieved on the vessel. With the NTE approach, in-use testing and compliance become much easier since emissions may be sampled during normal vessel use. Because this approach is objective, it makes enforcement easier and provides more certainty to the industry of what is expected in use versus over a fixed laboratory test procedure.

Even with the NTE requirements, EPA believes that it is still important to retain standards based on the steady-state duty cycles. This is the standard that EPA expects the certified marine diesel engines to meet on average in use. The NTE testing is more focused on maximum emissions for segments of operation and should not require additional technology beyond what is used to meet the proposed standards. EPA believes that basing the emissions standards on a distinct cycle and using the NTE zone to ensure in-use control creates a comprehensive program. In addition, the steady-state duty cycles give a basis for calculating credits for use in the averaging, banking, and trading program.

The proposed NTE zone for marine diesel engines that would certify using the E3 duty cycle is illustrated in Figure 1 and is defined by the power curve of the engine up to rated speed. This zone is based on the range of conditions that a marine diesel propulsion engine could typically see in use. EPA is proposing a similar approach for engines certified using the constant-speed E2 duty cycle. In this case, the "not-to-exceed" zone is at the speed for which the engine is designed to operate for loads ranging from 25 to 100 percent of maximum load at that speed. More detail on the development of the boundaries and conditions associated with the proposed NTE zones may be found in Chapter 3 of the Draft RIA. EPA requests comment on the NTE zones.

Figure 2: Illustration of "Not to Exceed" Zone



EPA proposes the limit on emissions within the NTE zones to be 1.25 times the standard (or FEL if ABT is used) for all of the regulated pollutants (HC, NO_X, CO, PM). The standard itself is intended to represent the average emissions under steady-state conditions. Since it is an average, some points can be higher, some lower, and the manufacturer will design to maximize performance and still meet the engine standard. The NTE limit is on top of this. It is designed to make sure that no part of the engine operation and that no application goes too far from the average level of control. Data presented in Chapter 3 of the Draft RIA shows that the proposed limit of 1.25 times the standard is feasible for marine diesel engines, yet challenging because of variations in emissions at high versus low speeds and loads for some engines. The proposed limit is consistent with the enforcement policy currently in place for the highway heavy-duty diesel program.[37] However, the proposed marine NTE zones are much smaller than for highway heavy-duty diesel engines due to the smaller range of operation typically seen in use.

Although transient operation would be included in the NTE testing, only operation that would reasonably be expected to be seen in use would be included. Therefore, engine testing may include transient speed and load operation. Examples of this type of transience would be bringing a vessel to plane or changing speeds. Because the majority of marine operation is fairly steady, EPA believes that the NTE testing should allow for short emissions spikes under transience. Engine testing may not include transient operation that cannot be replicated by similar engines as installed on actual vessels in use, since those are operations that the engine is not designed for and is not expected to see in-use. Therefore, there would be no in-use emission impact from such operations. To ensure that a short transience does not unfairly give high results, EPA proposes that the emissions sampling must be at least over a 30 second time period. This 30 second sampling period should be long enough to allow an emissions spike to be averaged out while still retaining a short enough period to look at a specific type of operation. EPA proposes that an acceleration associated with bringing a vessel to plane be eligible for inclusion in any NTE type testing regardless of whether it falls within the NTE zone shown in Figure 1.

The NTE standards are proposed to apply under any ambient air conditions. Within the following air temperature and humidity ranges, no corrections will be allowed to account for the effects of temperature or humidity on emissions: 13–35°C for ambient air temperature and 7.1–10.7 grams water per kilogram of dry air for humidity. Ambient water temperature must be in the range of 5–32°C during NTE testing. In addition, the engines must comply with the standards for the full range of test fuel specifications.

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[37] "Heavy-duty Diesel Engines Controlled by Onboard Computers: Guidance on Reporting and Evaluating Auxiliary Emission Control Devices and the Defeat Device Prohibition of the Clean Air Act," U.S. EPA, October 15, 1998.

The defeat device provisions established for highway and nonroad engines are proposed to apply to marine diesel engines in addition to the NTE requirements. A design in which an engine met the standard at the steady-state test points but was intentionally designed to approach the NTE limit everywhere else would be considered to be defeating the standard. Electronic controls that recognize when the engine is being tested for emissions and adjust the emissions from the engine would be another example of a defeat device, regardless of the emissions performance of the engine.

EPA is aware that marine diesel engines may not be able to meet the emissions limit under all conditions. Specifically, there are times when emissions control must be compromised for startability or safety. EPA is not proposing that engine starting be included in the NTE testing. In addition, EPA manufacturers would have the option of petitioning the Administrator to allow emissions to increase under engine protection strategies such as when an engine overheats.

EPA proposes to allow manufacturers to petition to adjust the size and shape of the NTE zone for certain engines if they can certify to the Agency that the engine will not see operation outside of the revised NTE zone in use. This way, manufacturers could avoid having to test their engines under operation that they would never see in use. However, manufacturers would still be responsible for all operation of an engine on a vessel that would reasonably be expected to be seen in-use and would be responsible for ensuring that their specified operation is indicative of real-world operation. In addition, if a manufacturer designs an engine for operation at speeds and loads outside of the proposed NTE zone (i.e., variable-speed engines used with variable-pitch propellers), the manufacturer would be responsible for notifying EPA so that their NTE zone can be modified appropriately to include this operation.

EPA is interested in refining the NTE concept for marine diesel engines prior to the final rule where appropriate. One concern may exist for mechanically controlled engines that are only capable of a fixed injection timing. It may be difficult for these engines to achieve a flat emissions profile, especially at low speeds and loads where brake-specific emissions are often higher. One potential option for addressing this problem would be to split the NTE zone into two subzones with a relaxed cap at lower speeds and loads. EPA requests comment on this option and on any other technical options and improvements to the off-cycle provisions as proposed.

The Engine Manufacturers Association has presented an off-cycle concept to EPA in response to concerns and concepts raised by the Agency. This concept is in a briefing format and may be found in the docket.[38] In the EMA concept, the NTE zone emissions limit is based on the emissions at individual steady-state test modes with limits on the interpolated values between the modes rather than a flat cap. In the highway policy, EPA uses a concept similar to this but it is in addition to a flat emissions limit. The NTE zone described by EMA is smaller than the proposed zone, and the emissions limit is higher on average. EPA requests comment on this approach and on whether or not it is needed in addition to the proposed approach as in the on-highway program.

EPA is not proposing an NTE limit, at this time, for engines certified using the D2 or C1 test duty cycles. EPA does not yet have enough data on the operating characteristics of auxiliary engines to determine NTE zones and associated limits for these engines. However, EPA is gathering data and intents to evaluate the NTE concept for auxiliary engines. This effort will likely be combined with the efforts begun to evaluate off-cycle emission for land-based nonroad engines. EPA requests comment on appropriate NTE zones and limits for auxiliary engines.

G. Voluntary Low-Emitting Engine Program

Officials representing certain cities, states, or regions in the U.S. have expressed interest in developing incentive programs to encourage the use of engine technologies that go beyond federal emission standards. Some of these technologies have already undergone significant development. In the final rule for land-based nonroad diesel engines, EPA included a program of voluntary standards for low-emitting engines, referring to these as "Blue Sky Series" engines (63 FR 56967, October 23, 1998). EPA is proposing similar voluntary standards as part of this rulemaking. The program, if successful, will lead to the introduction and more widespread use of these low-emission technologies.

Ongoing research has led to much improved prospects for a variety of low-emitting diesel engine technologies. Technology developments to meet upcoming emission requirements for highway diesel engines are expected to substantially reduce emissions without relying on exhaust aftertreatment. Much of this technology development forms the basis for setting the emission limits described in this proposal, but EPA believes that manufacturers may be prepared to more aggressively transfer some of these advanced technologies to marine engines. The motivation to exceed emission requirements could either be to gain early experience with certain technologies as a strategy to ensure long-term control of quality, or as a response to external incentives.

In addition, alternative fuels and exhaust aftertreatment options continue to expand as companies further develop technologies for reaching very low emission levels. For example, some particulate traps are now designed for regeneration without an active control system, sometimes using fuel-based catalyst materials to reduce regeneration temperature requirements. Selective catalytic reduction, long used very effectively in stationary source applications, is now in several demonstration marine vessels. Plasma and thermoelectric techniques are also under consideration for large particulate and NO_X reductions. EPA is very interested in seeing a demonstration of the emission-control potential for these engines in marine applications, especially related to the capability of maintaining low emission levels over extended in-use operation.

As with the land-based rule, EPA proposes that Tier 3 emission levels, where applicable, are the appropriate level for defining Blue Sky Series engines. For PM emissions, a calculated level corresponding to a 40 percent reduction beyond Tier 2 levels is proposed as a qualifying level for Blue Sky Series engines (see Table 10). While the Blue Sky Series emission limits are voluntary, a manufacturer choosing to certify an engine under this program would be required to meet all the provisions established to demonstrate compliance with these limits, including allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions.

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[38] Engine Manufacturers Association, "EMA Alternative Proposal for Controlling 'Off-Cycle' Emissions from Marine Engines," September 25, 1998.

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TABLE 10.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated Brake Power (kW)	$HC+NO_x$	PM
power ≥ 37 kW		
displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.<5.0	5.0	0.12
5.0≤displ.<20	5.0	0.16

The Blue Sky Series program would begin immediately upon promulgation and would continue through the 2007 model year. EPA would evaluate the program to determine if it should be continued for 2008 and later engines, and if so, whether any changes are needed. This evaluation will be considered as part of the 2003 Feasibility Review.

Creating a program of voluntary standards for low-emitting engines, including testing and durability provisions to help ensure adequate in-use performance, will be a major step forward in advancing innovative emission control technologies, because EPA certification will provide protection against false claims of environmentally beneficial products. For the program to be most effective, however, incentives for the production of these engines must be created as well.

The Agency is concerned that such incentive programs not lead to a net detriment to the environment through the double-counting of benefits. EPA has therefore concluded that manufacturers choosing to sell an engine with the Blue Sky Series designation should not generate averaging, banking, and trading credits for demonstrating compliance with EPA programs. Other groups would then be free to design credit programs without concern for any double-counting or other unintended effect of overlapping programs. EPA solicits comment on the Blue Sky Series approach for marine diesel engines generally and on its interaction with the ABT program.

In addition to credit-based programs, the Agency sees substantial potential for users and state and local governments to establish incentive programs. For example, state or local governments or individual ports may be able to add incentives for introducing low-emitting engine technologies in harbor and other coastal vessels. The Agency solicits ideas that could encourage the creation of these incentive programs by users and state and local governments. EPA also solicits comment on additional measures that could be taken at a federal level to encourage development and introduction of these engines.

H. Durability

To achieve the full benefit of the emissions standards, manufacturers must design and build engines with durable emission controls. This means that manufacturers are responsible for the emission results for the engines they produce throughout their useful life.[39] It is also necessary to encourage the proper maintenance and repair of engines throughout their lifetime. The goal is for engines to maintain good emission performance throughout their in-use operation. Therefore, EPA believes it is necessary to adopt measures to address concerns about possible in-use emission performance degradation. The proposed durability provisions, described below, are intended to help ensure that engines are still meeting applicable standards in use. The specific areas of the durability program focused on here are useful life, warranty periods, deterioration factors, allowable maintenance intervals, and rebuilding requirements. Most of these provisions are carried over from the land-based or locomotive programs. EPA seeks comments on all aspects of this durability program.

1. Useful Life

Useful life is the period during which the marine engine is required to meet the emission standards. For Category 1 engines, EPA is proposing a useful life of 10 years or 10,000 hours of operation. This proposal is slightly different from the 10 years or 8,000 hours of operation finalized for land-based nonroad engines, to reflect the different usage pattern for marine engines. Specifically, the 10,000-hour requirement is based on an expected five-year period until the first time the engine is rebuilt, and an expected usage rate of 2,000 hours per year. EPA requests comment on this proposed useful life for Category 1 engines.

For Category 2 engines, EPA is proposing a useful life of 10 years or 20,000 hours of operation. This proposal differs from the 10 years or 7.5 MW-hours per horsepower useful life recently finalized for locomotive engines to reflect the hours of operation instead of MW-per-horsepower requirement for locomotive engines. This is because marine engine operation is typically monitored using hour meters rather than MW-hour meters. In this case, the 20,000-hour requirement for marine engines is calculated based on an operating rate of 4,000 hours of use per year, with five years between rebuilds. This hour value is less than would be obtained from 7.5 MW-hrs per horsepower and an average duty cycle for a locomotive. Using these values would result in a useful life value of about 30,000 hours. This is nevertheless appropriate, since locomotives typically receive significantly more maintenance in use, and are operated for longer periods between rebuilds. EPA requests comment on the proposed useful life for Category 2 engines.

TABLE 11.—PROPOSED USEFUL LIFE AND WARRANTY PERIODS

Category	Useful life		Warranty period	
	Hours	Years	Hours	Years
Category 1	10,000	10	5,000	5
Category 2	20,000	10	10,000	5

The above approach of basing useful life on time to first rebuild was chosen because it is difficult to justify holding the engine manufacturer responsible for an engine's emissions after the engine is rebuilt. The original engine manufacturer has little, if any, control over the rebuild process, and the rebuilding process often includes changes to the engine that may have an effect on emissions. At the same time, however, these engines are often kept in service much longer than the proposed useful life. Median values for service lives are 15 years for Category 1 propulsion engines and 23 years for Category 2 engines. These longer service lives mean that the engine may be exempt from in-use testing for more than half its service life. EPA therefore believes it is important to be able to conduct recall testing on these engines throughout the established useful life period. Also, EPA requests comment on whether useful life should be based on the average time to first rebuild, or whether EPA should attempt to regulate emissions beyond the anticipated point of first rebuild, either through an extended useful life specification or some other means.

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[39] This is different from the approach used in MARPOL Annex VI, according to which manufacturers must ensure their engines meet the emission limits at the time of certification but ship owners become responsible for their continued compliance with the limits. Under that program, compliance is verified during flag-state and port-state inspections.

2. Warranty Periods

Tied to the useful life is the minimum warranty period imposed under the Clean Air Act. The proposed warranty periods for marine diesel engines are based on the ratio of useful life and warranty periods established for land-based nonroad engines. Specifically, EPA is proposing a warranty period of 5,000 hours or 5 years for Category 1 engines, and 10,000 hours or 5 years for Category 2 engines. EPA requests comment on this approach, or whether the locomotive approach based on one-third of the engine's useful life should be used.

EPA is also proposing defect reporting requirements. Consistent with the provisions that apply to highway and land-based nonroad engines, these provisions require Category 1 engine manufacturers to report to EPA whenever a manufacturer identifies a specific emission-related defect in 25 or more engines. However, EPA is proposing to specify a lower threshold of 10 engines for Category 2 marine engines, which is the same limit as applies to locomotives.

3. Deterioration Factors

To further ensure that the proposed emission limits are met in use, EPA proposes to require the application of a deterioration factor (DF) to Category 1 and Category 2 marine diesel engines in evaluating emission control performance during the certification and production-line testing process. The emissions from new engines are adjusted using the DF to account for potential deterioration in emissions over the life of the engine due to aging of emission control technologies or devices. The resulting emission level is intended to represent the expected emissions at the end of the useful life period. Specifically, EPA believes that the ability of new emission control technologies, such as aftertreatment, sophisticated fuel delivery controls, and some cooling systems, to reduce emissions declines as these systems age. The DF is applied to the certification emission test data to represent emissions at the end of the useful life of the engine. Currently, DFs are required for highway heavy-duty engines, nonroad land-based engines, and locomotive engines. EPA is proposing to extend this approach to marine diesel engines as well. EPA requests comment on all aspects of the proposed DF provisions, described below.

EPA is proposing that marine diesel engine DFs be determined by the engine manufacturers in accordance with good engineering practices. Consistent with the land-based nonroad and locomotive programs, EPA is not proposing a specified procedure. The DFs, however, would be subject to EPA approval, and must be consistent with in-use test data. Additionally, the DF should be calculated for the worst-case engine calibration offered within the engine family.[40]

It is not EPA's intent to require a great deal of data gathering on engines that use established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. However, EPA is proposing to apply the DF requirement to all engines so that EPA can be sure that reasonable methods are being used to ascertain the capability of engines to meet standards throughout their useful lives.

Consistent with the land-based engine programs, EPA proposes to allow marine diesel engine manufacturers the flexibility of using carryover and carryacross of durability emission data from a single engine that has been certified to the same or more stringent standard for which all of the data applicable for certification has been submitted. In addition, EPA seeks comment on whether this flexibility should be extended to allow deterioration data from highway or nonroad engines to be used for similar marine diesel engines. EPA is concerned that DFs calculated for land-based engines may not be the same as for marine engines, due to their different operating environments and duty cycles.

Finally, EPA is proposing that DFs be calculated as an additive value (i.e., the arithmetic difference between emission level at full useful life and the emission level at the test point) for engines without exhaust aftertreatment devices. In contrast, DFs should be calculated as a multiplicative value (i.e., the ratio of the emission level at full useful life to the emission level at the test point) for engines using exhaust aftertreatment devices. This is consistent with the DF requirements applicable to other diesel engines, based on observed patterns of emission deterioration.

4. Allowable Maintenance Intervals

In the highway, land-based, and locomotive rules, EPA requires manufacturers to furnish the ultimate purchaser of each new nonroad engine with written instructions for the maintenance needed to ensure proper functioning of the emission control system. Generally, manufacturers require the owners to perform this maintenance as a condition of their emission warranties. If such required maintenance is more than the engine owner is likely to perform due to cost or inconvenience, then in-use emissions deterioration can result. Consequently, in both the nonroad and highway rules, EPA imposes limits on the frequency of maintenance that can be required of the engine owners for emission-related components; these limits also apply to the engine manufacturer during engine certification and durability testing. Further, the performance of maintenance would be considered during any in-use recall testing conducted by the Agency.

Consistent with the land-based nonroad rule, EPA is proposing minimum allowable maintenance intervals for Category 1 and Category 2 marine diesel engines, to ensure that their emission control technologies are practical in use. The proposed minimum intervals are very similar to those required for nonroad and highway diesel engines (40 CFR 89.109; 40 CFR 86.094–25). Alternatively, EPA could adopt the locomotive approach of not precisely defining minimum intervals for adjustment, cleaning, repair, or replacement of various components but, instead, merely requiring engine manufacturers to specify these minimum maintenance intervals at the time of certification, subject to EPA approval. EPA is not, however, proposing the locomotive approach in which locomotive owners who fail to properly maintain a locomotive will be subject to civil penalties for tampering. EPA requests comment on these approaches for allowable maintenance intervals and the appropriateness of extending the land-based intervals to marine diesel engines.

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[40] The worst case would be the engine calibration expected to generate the highest level of emmission deterioration over the useful life, using good engineering judgment.

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5. Rebuilt Engines

It is common for marine diesel engines to be rebuilt several times during the course of their lifetimes. Similar to land-based nonroad engines, EPA has two concerns regarding the rebuilding of marine diesel engines. First, EPA is concerned that during engine rebuilding, there may not be an incentive to check and repair emission controls that do not affect engine performance. Second, EPA is concerned that there may be an incentive to rebuild engines to an older configuration due to real or perceived performance penalties associated with technologies that would be used to meet the standards proposed in this notice. Such practices would likely result in increased emissions.

To address these concerns, EPA is proposing to extend the land-based nonroad rebuild requirements to marine diesel engines. Specifically, EPA proposes that the parties involved in the process of rebuilding or remanufacturing engines must follow specific provisions to avoid tampering with the engine and emission controls. Like the nonroad requirements, the applicability of these provisions is based on the build date of the engine. The rebuild requirements would apply to any engine built on or after the date that new standards apply to that engine's specific category or group, regardless of the emission levels that the individual engine is designed to achieve. The proposed provisions for rebuilding are as follows:

(1) EPA proposes that, during engine rebuilding, parties involved must have a reasonable technical basis for knowing that the rebuilt engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, and specifications).

(2) When an engine is being rebuilt and remains installed or is reinstalled in the same vessel, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a configuration of the same or later model year as the original engine.

(3) At the time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes. Diagnostic systems must be free of all such codes when the rebuilt engines are returned to service. Further, such signals may not be rendered inoperative during the rebuilding process.

(4) When conducting an in-frame rebuild or the installation of a rebuilt engine, all emission-related components not otherwise addressed by the above provisions must be checked and cleaned, repaired, or replaced where necessary, following manufacturer recommended practices.

Under this proposal, any person or entity engaged in the process, in whole or part, of rebuilding engines who fails to comply with the above provisions may be liable for tampering. Parties would be responsible for the activities over which they have control, so there may be more than one responsible party for a single engine in cases where different parties perform different tasks during the engine rebuilding process (e.g., engine rebuild, full engine assembly, installation). EPA is not proposing any certification or in-use emissions requirements for the rebuilder or engine owner. EPA requests comment on the appropriateness of applying this rebuild program to marine diesel engines.

EPA is proposing to adopt modest record keeping requirements that EPA believes are in line with customary business practices. The records would be kept by persons involved in the process of marine diesel engine rebuilding or remanufacturing and would include the hours of use accumulated on the engine at time of rebuild and a list of the work performed on the engine and related emission control systems, including a list of replacement parts used, engine parameter adjustments, design element changes, and work performed as described in item (4) of the rebuild provisions above. EPA proposes that such records be kept for two years after the engine is rebuilt.

Under this proposal, parties would be required to keep the information for two years but would be allowed to use whatever format or system they choose, provided that the information can be readily understood by an EPA enforcement officer. EPA proposes that parties would not be required to keep information that they do not have access to as part of normal business practice. In cases where it is customary practice to keep records for engine families rather than specific engines, where the engines within that family are being rebuilt or remanufactured to an identical configuration, such record keeping practices are proposed to be satisfactory. Rebuilders would be able to use records such as build lists, parts lists, and engineering parameters that they keep of the engine families being rebuilt rather than on individual engines, provided that each engine is rebuilt in the same way to those specifications. EPA requests comments on the appropriateness of the proposed record keeping requirements, including whether the records should be kept for a longer period of time, such as for five years.

6. Replacement Engines

As noted elsewhere in this discussion, an important constraint on the ability to replace a marine diesel engine concerns the ability to remove the engine from the vessel. In many cases, the vessel is built around the engine and removal is difficult if not impossible. Nevertheless, there may be situations in which a marine diesel can or must be removed from a vessel, to be replaced with a different engine. Under these requirements, whenever a compliant engine is removed from a vessel, the replacement engine must meet the emission requirements that were in effect at the time the vessel was built. For example, any engine installed on a vessel built in 2008 must comply with the requirements proposed in this action, regardless of whether it is installed in 2008 or any year thereafter. The intent of this requirement is to ensure that vessel owners cannot evade the proposed emission requirements by installing a noncomplying engine on their vessel after the vessel is placed into service. These provisions also allow, in some cases, engine manufacturers to produce new replacement engines of an older model that do not comply with the otherwise applicable standards, provided that the new engines meet the emission standards that applied to the engines being replaced. However, manufacturers would only be allowed to produce such engines in cases where it was necessary for reasons such as space constraints. Consistent with replacement engine provisions in other programs, some additional constraints ensure that companies do not circumvent the regulations (see 40 CFR 89, Subpart J). EPA seeks comment on the necessity of such a provision.

I. Certification

As discussed previously, EPA expects technology to be shared between land-based engines and marine engines. EPA expects some engine manufacturers to produce engines of the same basic design for sale in both areas. Specifically, Category 1 marine engines are expected to share the technology developed for land-based nonroad engines, and Category 2 engines are expected to share technology developed for locomotive engines. To account for this product overlap, EPA is proposing to base certification data and administration requirements for Category 1 on the existing program for land-based nonroad engines, and for Category 2 marine engines on the existing program for locomotive engines.[41], [42] Specific certification provisions are discussed more fully in the following sections.

1. Engine Family Definition

EPA is proposing that engine grouping for the purpose of certification be accomplished through the application of an "engine family" definition. Engines expected to have similar emission characteristics throughout the useful life are proposed to be classified in the same engine family. Separate engine family classification is also required for each marine engine category (i.e., Categories 1, 2, and 3 will be in separate engine families).

EPA is proposing specific parameters to define engine family for each category of marine engine. To provide for administrative flexibility in the proposal, the Administrator will have the authority to separate engines normally grouped together or to combine engines normally grouped separately based upon a manufacturer's request substantiated with an evaluation of emission characteristics over the engine's useful life.

For Category 1, EPA is proposing to use the engine family definition for land-based nonroad engines with the addition of the fuel system type and fuel injection control used (mechanical versus electrical).[43] For Category 2, EPA is proposing to use the engine family definition for locomotive engines.[44]

These definitions are proposed to provide consistency between land-based and marine engines of the same basic type. The fuel system type and control type were added to the land-based nonroad engine family definition to reduce the variability of emissions within an engine family. This change will aid manufacturers in selecting the "worst-case" engine for emission testing. It will lessen the chance of noncompliance in use by ensuring that the highest emitting engine is tested during certification.

The engine family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. As proposed, manufacturers would be required to estimate the rate of deterioration for each engine family (see the discussion of deterioration factors in Section V.G.3. for further details). Compliance with the emission standard will also be demonstrated for each engine family based upon required testing and the application of the deterioration factor. Separate certificates of conformity would be required for each engine family.

2. Emission Data Engine Selection

EPA is proposing that manufacturers select the highest emitting engine (i.e., "worst-case" engine) in a family for certification testing. In making that determination, the manufacturer shall use good engineering judgement (considering, for example, all engine configurations and power ratings within the engine family and the range of installation options allowed). By requiring the worst-case engine to be tested, EPA is assured that all engines within the engine family are complying with emission standards for the least cost in test engines run. If manufacturers feel that the engine family is grouped too broadly or that the worst-case emission data engine would underestimate the emission credits available under the ABT provisions, they may request the separation of the dissimilar calibrations (based on an evaluation of emission characteristics over the engine's useful life) into separate engine families.

J. SEA, Production Line Testing

One of the challenges of serial engine production is ensuring that each engine produced has the same emission characteristics as the original certification engine. The more traditional approach used for ensuring that the engines are produced as designed is called Selective Enforcement Auditing (SEA). In the SEA program, EPA audits the emissions of new production engines by requiring manufacturers to test engines pulled off the production line on short notice. This spot checking approach relies largely on a deterrence strategy. Manufacturers prefer to design their engines and production processes and take other steps necessary to make sure their engines are produced as designed in order to avoid the penalties associated with failing SEA tests.

However, EPA does not believe that an SEA-type approach is practical for the marine diesel engine industry, primarily because of the low production volumes. The small production volumes mean that on any given day that EPA would choose to do an SEA there may be no marine engines being produced, or there may not be enough to provide a representative sample of production.

Therefore, to ensure compliance of production engines, EPA is proposing an alternative approach, called Production Line Testing (PLT). The general object of a PLT program is the same as an SEA-based program, which is to enable manufacturers and EPA to determine, with reasonable certainty, whether certification designs have been translated into production engines that meet applicable standards (or FELs) at the time of production, before excess emissions are generated in use. The main difference between the two approaches is that PLT is performed on a regular basis during the year by the engine manufacturer according to criteria set by the Agency, while SEA is performed through periodic unannounced spot checks by EPA.

Under the proposed marine diesel engine PLT, a manufacturer would select engines from its production line for confirmatory testing. In general, one percent of a manufacturer's total projected annual U.S. marine diesel engine sales (propulsion and auxiliary) for each category would be required to be tested each year. EPA believes that a one percent sampling rate is appropriate for the marine diesel engine industry because of its low production volumes, and that a higher sampling rate would be unduly burdensome for this industry. EPA is not proposing a minimum number of tests for Category 1 engines and is proposing that if a manufacturer sells fewer than 100 units in the United States in a given year, it would not be required to do any PLT testing for its Category 1 engines that year. EPA requests comment on whether it would be more appropriate, in light of its proposed one percent sampling rate, to adopt a production trigger for Category 1 PLT testing of 50 engines per year, rather than 100 engines per year as proposed. EPA also requests comment on an approach whereby a manufacturer's cumulative production over time would be used to determine when PLT testing would be required for these Category 1 manufacturers. Under such an approach a test would be required under the PLT program when a manufacturer's cumulative Category 1 production over more than one model year reached 100 units. For Category 2 engines, EPA is proposing a minimum of one PLT test per year. Thus, for manufacturers with sales of less than

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[41] See 40 CFR 89 Supart B for the provison of the land-based nonroad engine program.

[42] See 40 CFR 92 Supart C for the provison of the locomotive program.

[43] See 40 CFR 89.116 for the engine family definition used for land-based nonroad engines.

[44] See 40 CFR 92.204 for the engine family definition for locomotives.

[45] It may be necessary to reconsider the stringency of the land-based nonroad engine emission

100 Category 2 engines a year, one test would be required. For purposes of calculating the number of tests required, EPA is proposing that Category 1 and Category 2 annual engine sales be considered separately.

EPA proposes that the choice of the engines to be tested pursuant to this program will be left to the manufacturer, but should be a random sample that is representative of annual production. EPA reserves the right to reject any engines selected by the manufacturers if it determines that such engines are not representative of actual production. Engines selected should cover the broadest range of production possible, and from year to year should be varied to cover all engine families if possible. Tests should also be distributed evenly throughout the model year, to the extent possible.

EPA proposes that emission testing of the PLT engines be conducted in accordance with the applicable federal testing procedures, and compliance with the proposed NTE provisions must be demonstrated as part of PLT testing. The results would be reported to EPA in periodic reports that would summarize emissions results, test procedures, and events such as the date, time, and location of each test. These reports will allow EPA to monitor continually the PLT data. If no testing is performed during the period, no report would be required. EPA is proposing that reports be submitted each quarter. EPA requests comment on whether quarterly reporting is too frequent, given the low production volumes of these engines, and whether a semester or trimester approach is more appropriate.

Under this testing scheme, if an engine fails a production line test, the manufacturer would test two additional engines out of either the next two days' production or the next fifteen engines produced in that engine family in accordance with the applicable federal testing procedures. EPA is proposing the dual approach to testing additional engines to account for variations in production volumes. If production volumes are high, then EPA believes that the two-day provision will allow for the orderly selection of additional test engines. Likewise, if production volumes are low, then the provision allowing the engines to be selected from the next fifteen produced will allow for orderly selection. When the average of the three test results, for any pollutant, are greater than the applicable standard or FEL for any pollutant, the manufacturer fails the PLT for that engine family. Such failures must be reported to EPA within two working days of the determination of a failure. It should be noted that, as proposed, compliance with the standards would be required of every covered engine. Thus, every engine that failed a PLT test would be considered in noncompliance with the standards and must be brought into compliance. EPA's proposal to use the average of three tests to determine compliance with the PLT program is intended only as a tool to decide when it is appropriate to suspend or revoke the certificate of conformity for that engine family, and is not meant to imply that not all engines have to comply with the standards.

In the proposed PLT program, the Administrator could suspend or revoke the manufacturer's certificate of conformity in whole or in part fifteen days after an EPA noncompliance determination for an engine family that fails the PLT, or if the engine manufacturer's submittal reveals that the PLT tests were not performed in accordance with the applicable testing procedure. During the fifteen day period following a determination of noncompliance, EPA would coordinate with the manufacturer to facilitate the approval of the required production line remedy in order to eliminate the need to halt production, to the greatest extent possible. The manufacturer must then address (i.e., bring into compliance, remove from service, etc.) the engines produced prior to the suspension or revocation of the certificate of conformity. EPA could reinstate the certificate of conformity subsequent to a suspension, or reissue one subsequent to a revocation, after the manufacturer demonstrates (through its PLT program) that improvements, modifications, or replacement have brought the engine family into compliance. The proposed regulations include hearing provisions that provide a mechanism to resolve disputes between EPA and manufacturers regarding a suspension or revocation decision based on noncompliance with the PLT. It is important to point out that the Agency would retain the legal authority to inspect and test engines should problems arise in the PLT program. It is also important to note that the definition of "failure" of the PLT is limited to the PLT program, and does not define failure or noncompliance for other purposes. It is based in part on the severity of the result of a failure (suspension or revocation of a certificate) and is not meant to limit in any way the overall obligation of the manufacturer to produce engines that meet the standard.

EPA recognizes the need to develop a PLT scheme that does not impose an unreasonable burden on the manufacturers. Therefore, consistent with the requirement that testing be required on one percent of total marine diesel engine production for each category, EPA is proposing that no PLT be required for manufacturers whose Category 1 marine diesel engines sales are less than 100 per year. This is because companies with such low sales are unlikely to have in-house testing facilities, and requiring such companies to send an engine to an independent test facility for PLT purposes may be too burdensome. EPA seeks comment on whether to extend this exemption to companies with fewer than 500 employees across all operations. It should be noted that companies that are exempt from the PLT program are not exempt from the other certification and compliance provisions described in this proposal. Engines exempt from the PLT program will still be required to meet the emission limits as produced and in use, and EPA reserves the right to conduct an SEA on any diesel engine manufacturer. In addition, EPA is not proposing to extend this flexibility provision to the Category 2 marine diesel engine PLT program, since those engines are typically produced in very small volumes.

Finally, while EPA believes that it has developed a PLT program that takes into account the circumstances of this industry, it also understands that alternative plans may be developed that better account for the individual needs of a manufacturer. Thus, provisions are proposed to allow a manufacturer to submit an alternative plan for a PLT program, subject to approval of the Administrator. A manufacturer's petition to use an alternative plan should address the need for the alternative, and should include justifications for the number and representativeness of engines tested, as well as having specific provisions regarding what constitutes a PLT failure for an engine family.

The Agency requests comment on all aspects of this proposed PLT program. Specifically, EPA requests comment on whether it should select the individual engines to be tested, or whether this should be done by the manufacturer, subject to EPA approval.

K. Miscellaneous Compliance Issues

EPA is proposing to extend the general compliance provisions for land-based nonroad engines to Category 1 and Category 2 marine diesel engines. These include the tampering, defeat device, imported engines and vessels, and general prohibition provisions. EPA seeks comment on extending these provisions to marine diesel engines, and on any modifications that should be made to these provisions to accommodate special features of these engines.

L. Averaging, Banking, and Trading Program

Along with the proposed standards, EPA is proposing a marine averaging, banking, and trading (ABT) program. An ABT program allows the Agency to propose and finalize a more stringent set of marine diesel engine emission standards than might otherwise be appropriate under section 213 of the Clean Air Act. ABT reduces the cost and improves the technological feasibility of achieving the standards, helping to ensure the attainment of the proposed standards earlier than would otherwise be possible. Manufacturers gain flexibility in product planning and the opportunity for a more cost-effective introduction of product lines meeting a new standard. ABT also creates an incentive for the early introduction of new technology, which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology before manufacturers need apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies. EPA views the effect of the ABT program itself as environmentally neutral because the use of credits by some engines is offset by the generation of credits by other engines. However, when coupled with the new standards, the ABT program would be environmentally beneficial because it would allow the new standards to be implemented earlier than would otherwise be appropriate under that Act. In addition, to the extent that any credits are not used, then there is an additional environmental benefit.

The voluntary ABT program allows the certification of one or more engine families within a given manufacturer's product line at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more families certified below the emission standards. The average of all emissions for a particular manufacturer's production (weighted by sales-weighted average power, production volume and useful life) must be at or below the level of the applicable emission standards. In addition to the averaging program just described, the proposed ABT program contains a banking and trading provision, which allows a manufacturer to generate emission credits and bank them for future use in its own averaging program or sell them to another entity. Compliance is determined on a total mass emissions basis to account for differences in production volume, power and useful life among engine families.

The ABT program EPA is proposing for marine diesel engines over 37 kW is based on the corresponding ABT programs recently adopted for land-based nonroad engines (63 FR 56967, October 23, 1998) and locomotives (63 FR 18978, April 16, 1998), which roughly correspond to the proposed Categories 1 and 2, respectively. When a manufacturer chooses to participate in the ABT program, it would be required to certify each participating engine family to a family emission limit (FEL) determined by the manufacturer during certification testing. A separate FEL would need to be determined for each pollutant the manufacturer is including in the ABT program. EPA is proposing that the ABT program be limited to $HC+NO_X$ and PM emissions. Thus, only two different FELs could be generated for a given engine family.

Consistent with the recently finalized land-based nonroad engine program, marine engine credits are proposed to be calculated based on the difference between the applicable standard(s) and FEL(s). However, credit calculation for marine engines is somewhat different than that for land-based nonroad engines, in that a load factor is inserted in the equation. This term is necessary because, contrary to land-based nonroad case, not all marine engines are expected to operate at the same load. EPA seeks comment on the credit calculation equation, which is as follows:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{UL}) \times (\text{Production}) \times (\text{AvgPR}) \times (10^{-6}) \times (\text{LF})$$

Where:

- Std = the applicable cycle-weighted marine engine $THC+NO_X$ and/or PM emission standard in grams per kilowatt-hour.
- (ii) FEL = the family emission limit for the engine family in grams per kilowatt-hour. (The FEL may not exceed the limit established in § 94.304(m) for each pollutant.)
- UL = the useful life in hours.
- Production = the number of engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.
- AvgPR = average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.
- LF = the load factor, dependent on whether the engine is intended for propulsion or auxiliary applications, as follows:

A. 0.69 for propulsion engines
B. 0.51 for auxiliary engines.

Consistent with EPA's recently finalized land-based nonroad diesel engine rule, and because of the inherent trade-off between NO_X and PM emissions in diesel engines, EPA is proposing to adopt for marine diesel engines the provision in the land-based nonroad ABT program prohibiting the generation of credits for one pollutant and the simultaneous use of credits for the other pollutant within the same engine family. In other words, a manufacturer would not be allowed to simultaneously generate $HC+NO_X$ credits and use PM credits on the same engine family, and vice versa. EPA requests comment on whether an engine should be allowed to generate credits on one pollutant while using credits on another, and whether allowing such an additional flexibility would necessitate a reconsideration of the stringency of the emission limits.

EPA is proposing FEL upper limits in the same manner as those in the comparable land-based ABT programs to ensure that the emissions from any given family certified under this ABT program not be significantly higher than the applicable emission standards. In general, these FEL upper limits correspond to the existing previous tier of standards for the various classes. In other words, the FEL upper limits are generally the Tier 1 standards for engines certifying according to the ABT provisions relative to the Tier 2 standards, and the Tier 2 standards for engines certifying according to the ABT provisions relative to the Tier 3 standards. Since EPA is not including any Tier 1 standards for marine engines in this proposal, it is proposing to use the land-based Tier 1 standards as FEL upper limits for the proposed Tier 2 marine engine standards. When the ABT provisions for land-based nonroad engines were recently revised there were no Tier 1 standards in place for some land-based categories and pollutants. These cases correspond to some Category 1 marine engines. In those cases EPA chose FEL upper limits based on typical in-use emission levels of precontrol engines, or existing California Air Resources Board emission standards. For a more complete discussion of the rationale for the Tier 2 FEL upper limits for Category 1 engines the reader is directed to the recent final rule concerning land-based nonroad engine emission standards. As an alternative to using the Tier 1 land-based emission standards as FEL upper limits under the proposed Tier 2 standards, EPA is requesting comment on whether it should consider using the MARPOL Annex VI $\mathrm{NO_X}$ standard as the appropriate $\mathrm{NO_X}$ FEL upper limit. Under this approach EPA would continue to use the land-based Tier 1 PM standard as the Tier 2 FEL upper limit. As part of this approach EPA would have to accommodate the fact that the MARPOL Annex VI standard is for $\mathrm{NO_X}$ only and the proposed Tier 2 standards are $\mathrm{HC{+}NO_X}$. EPA requests comment under this approach as to how best to deal with this inconsistency.

Consistent with the land-based ABT programs from which this proposed program is derived, EPA is proposing that ABT credits generated under this program have an infinite life, with no discounting applied. Also consistent with the recently finalized land-based nonroad diesel rule, EPA is proposing that credits generated on land-based engines not be allowed to be used for demonstrating compliance for marine diesel engines. EPA is concerned that manufacturers who produce engines used in both marine and land-based applications could effectively trade out of the marine portion of the program, thereby potentially obtaining a competitive advantage over small marinizers who sell only marine engines. For similar reasons, EPA is proposing that credit exchanges not be permitted between Categories 1 and 2 engines. EPA seeks comment on the need for these restrictions and on the degree to which imposing them may create barriers to low-cost emission reductions.

EPA is also proposing that credits generated relative to the Tier 2 standards not be allowed to be used toward Tier 3 compliance for either Category 1 or Category 2 engines based on concerns about the possibility of using such credits to "trade out" of compliance with the Tier 3 standards.

EPA is proposing that the ABT program begin with the implementation of the Tier 2 standards, with no option for the early generation of credits. While the Agency believes that, on a total sales average basis, the Tier 2 standards as proposed will result in significant emission reductions from uncontrolled levels, it is aware of some engine configurations whose emissions are currently at or near the levels of the Tier 2 standards. EPA is concerned that the emissions from such engine families could be reduced below the proposed Tier 2 standards without much effort and that easy credits could be generated if early banking were allowed. Such credits could then be used to significantly delay implementation of the Tier 2 standards for other engine families. EPA requests comment on whether it should consider an early credit banking option and what types of restrictions it should place on such early credits in order to address this concern. Commenters are requested to consider, among other options, restrictions such as early credits being calculated relative to levels more stringent than the Tier 2 standards, discounting of early credits (possibly only if above a set threshold level), and limited credit life for early credits.

In the recent rule cited above which set emission standards for land-based nonroad diesel engines, EPA also set emission standards for marine diesel engines below 37 kW. These engines were also included in the land-based ABT program in that rule, with some restrictions. EPA is not proposing any changes to the way under 37 kW marine diesel engines are treated in this ABT program. EPA is not proposing to integrate the ABT program in that rule for under 37 kW marine engines with this proposed program. Thus, EPA is proposing that no trading be allowed for engines above and below 37 kW. EPA requests comment on whether it should allow trading between engine families above and below 37 kW. Comments in favor of removing this proposed restriction should address that fact that the stringency of the standards for marine diesel engines below 37 kW was determined in the absence of this ABT flexibility. Comments should address whether allowing trading between engine families above and below 37 kW would appropriately require EPA to reexamine the stringency of the standards for engines under 37 kW.

EPA is proposing not to allow the exchange of credits between Category 1 marine engine families and land-based nonroad engine families. This restriction is proposed for the same reason that EPA is proposing to restrict credit exchanges between engine families above and below 37 kW (i.e., that the stringency of the land-based standards was determined in the absence of the availability of credit exchange between marine and land-based engines). In addition, there are differences in the way that marine and land-based credits are calculated that are implicit in the calculation and that make the credits somewhat incompatible. The first is that the difference in test duty cycles means there is an implicit difference in load factor between the two. The second is that there are provisions in this proposal for varying useful lives, which are not included in the land-based nonroad regulations. In addition, as discussed above, the actual credit calculation equations for the two programs are different. EPA requests comment on whether it should allow credit exchanges between marine and land-based nonroad engine families and, if so, whether credits traded from one program would need to be adjusted to account for the different credit calculation equations. EPA also seeks comment on whether it would be necessary to reconsider the stringency of the land-based nonroad emission limits were such cross-program trading allowed.[45]

EPA is also proposing to prohibit all trading between Category 2 engines and locomotive engines because locomotive credits are calculated based on expected remaining service life (which could be many useful life periods, due to the inclusion of the remanufacturing provisions for locomotives), whereas Category 2 marine engine credits are only calculated on a single useful life basis.

As discussed in the section on the recreational engine exemption earlier in this preamble, EPA is proposing to allow the use of certified engines in recreational applications. This allowance raises an issue with respect to credit generation in the ABT program. Engines used in recreational applications tend to have significantly lower usage rates than engines used in commercial applications. EPA is concerned that if an engine is certified as a credit generating configuration then it could, if used in a recreational application, generate credits on paper that will not have corresponding actual emission reductions in use. EPA requests comment on the likely frequency of certified engines being used in recreational applications. EPA also requests comment on whether it should take steps to prevent such

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[45] It may be necessary to reconsider the stringency of the land-based nonroad engine emission standards because those limits were set based on an ABT program that is confined to land-based engines. Extending the universe of credits to include those generated by marine engines could increase the credits available to the land-based program, thus reducing the overall stringency of that program.

"false" credits from being generated, such as by not allowing certified engines used in recreational applications from participating in the ABT program, or by prorating ABT credits according to expected usage rates.

Participation in the proposed marine diesel ABT program would be voluntary. For those manufacturers that choose to utilize the program, compliance for participating engine families would be evaluated in two ways. First, compliance of individual engine families with their FELs would be determined and enforced in the same manner as compliance with the emission standards in the absence of an averaging, banking and trading program. Each engine family must certify to the FEL (or FELs, as applicable), and the FEL would be treated as the emission limit for certification, production-line and in-use testing (as well as for any other testing done for other enforcement purposes) for each engine in the family. Second, the final number of credits available to the manufacturer at the end of a model year after considering the manufacturer's use of credits from averaging, banking and trading must be greater than or equal to zero.

When credits are generated and traded in the same model year, EPA proposes to make both buyers and sellers of credits potentially liable for any credit shortfalls, except in cases where fraud is involved. This provision is consistent with other mobile source ABT programs. The marine diesel engine certificates of both parties involved in the violating trading transaction could be voided ab initio (i.e. back to date of issue) if the engine family or families exceed emission standards as a result of a credit shortfall. Where cases involve a manufacturer being defrauded into purchasing non-existent credits, that manufacturer would only be expected to make up the credit shortfall that resulted from the lack of real credits.

The integrity of the proposed marine diesel averaging, banking and trading program depends on accurate recordkeeping and reporting by manufacturers, and effective tracking and auditing by EPA. Failure of a manufacturer to maintain the required records would result in the certificates for the affected engine family or families being voided retroactively. Violations of reporting requirements could result in a manufacturer being subject to civil penalties as authorized by sections 213 and 205 of the Clean Air Act. EPA proposes to allow positive reporting errors (i.e., those errors that result in an underestimation of the manufacturer's positive credit balance) to be corrected provided that the errors are identified within 180 days of EPA's receipt of the manufacturer's annual report.

EPA requests comment on all aspects of the proposed ABT program. Specifically, the Agency requests comment on the various restrictions (averaging sets, etc.) proposed for the program and the lack of an early credit banking program, and the time limit for correcting reporting errors.

M. Special Provisions

In general, EPA sets engine emission standards that take full effect at a set point in time, concurrently precluding the installation of engines not certified to the new standards in vehicles or equipment. The rigidity of this approach is lessened to some extent through averaging, banking, and trading programs, which allow engine manufacturers to produce engines that exceed the emission limits as long as the added emissions can be offset by engines that emit below the required levels. While this approach generally works well, additional flexibility provisions to help relieve compliance burdens may be needed in special cases. Consequently, EPA is proposing the following set of flexibility provisions. EPA seeks comment on all aspects of these flexibility provisions.

1. Post Manufacturer Marinizers Provisions

Category 1 and Category 2 marine diesel engines are produced using one of three basic manufacturing methods. In the first, least common, method, marine engines are designed and built exclusively for marine applications. This is typically the case for very large Category 3 engines as well as some smaller engines that are produced for special niche markets. In the second, more common, method, an engine manufacturer produces a marine diesel engine using a land-based nonroad or highway engine that was built by that same manufacturer. In the third method, an unrelated company, referred to as a "post-manufacture marinizer" produces a marine diesel engine by purchasing a completed or partially completed land-based nonroad or highway engine from an engine manufacturer and modifying it for use in the marine environment according to that manufacturer's own processes. Post-manufacturer marinizers (PMM) tend to be small companies, and their output is often designed for niche markets. PMMs often have only limited resources for engine certification, and several have indicated to EPA that burdensome certification requirements would put them out of business.

To address the concerns of these companies, EPA is proposing several provisions that are intended to streamline the certification process for PMMs.

(a) Application of Flexibility Provisions. The following flexibility provisions will be available only to PMMs. EPA has previously defined the term "post-manufacture marinizer" in 40 CFR 89.2 as "a person who produces a marine diesel engine by substantially modifying a certified or uncertified complete or partially complete engine; and is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine." That definition goes on to clarify that "substantially modify means changing an engine in a way that could change engine emission characteristics."

EPA has become aware that the above definition may be too narrow. It implies that only those persons who substantially modify an engine will be considered PMM; those who do not modify the engine in ways that would change the engine's emission characteristics (i.e, the modifications are not "substantial") would not trigger the PMM designation. This was not meant to be the case. EPA intended that a person who modifies in any way an engine certified to a previous tier or who modifies in any way an uncertified engine would be considered a PMM and would have to recertify the engine to the marine emission limits in place at the time the engine is marinized. Therefore, EPA is proposing to revise the definition of PMM, to clarify that a PMM is a person who substantially modifies a land-based engine previously certified to the same or more stringent emission limits as the currently applicable marine emission limits, or a person who modifies in any way an uncertified engine or an engine certified to a previous tier of emission limits.

This modification of the PMM definition will not affect the engine dresser exemption described in Section III.B.2 above, since one of those criteria is a requirement that the dressed engine be certified to emission limits at least as stringent as those applicable to marine diesel engines a the time the engine is dressed.

Finally, EPA intends that a vessel manufacturer that substantially modifies a certified engine or that modifies an uncertified engine or an engine certified to a previous tier of emission limits would be considered a PMM and would have to comply with the certification and compliance provisions proposed in this document. This clarification is necessary because it is not uncommon for vessel manufacturers to modify marine engines. This is often done to increase the power of an engine, to respond to the needs of a particular user. By considering such vessel manufacturers as PMM, EPA will ensure that the engine modifications do not also increase the emissions of an otherwise certified engine.

(b) *Broader Engine Families.* EPA is proposing to allow PMMs to use a broader engine family definition. Under this provision a PMM may include any engines that have similar emission deterioration characteristics in one engine family. Thus, a PMM could conceivably group all marine engines into one marine engine family. The only restriction is that the engines are all in the same category. Separate engine families will be required for each category of marine engines.

Note that all other provisions of the proposal shall apply to this broad engine family including, but not limited to, selection and testing of an emission data engine, application of a deterioration factor (DF), and compliance with the standards.

(c) *Carryover Provisions.* This proposal makes provision for carryover of engine data, which allows engine manufacturers to use data generated in a previous model year's certification to certify for the current year. This provision will also apply to the broader PMM engine families, with the constraint that new data will need to be generated if any model in the broad family is modified in any way that will make it the highest emitter in the family.

(d) *Streamlined Certification for Subsequent Years.* EPA is proposing a streamlined certification process for PMMs. This process would be applicable beginning with the year after the relevant implementation dates and continuing until engine design changes cause a different engine model to be the highest emitter in the broad PMM family. Recertification would be required at that point. Under this streamlined certification process, the manufacturer would submit its annual certification application stating that there have been no changes in the design or production of the engine models that make up the engine family. If there have been changes, the PMM could still avoid a complete certification submission with test data by demonstrating that there is no change in the identity of the highest emitter or its emissions. EPA requests comment on such a streamlined certification program for PMM.

(e) *NTE Flexibility.* As noted above, EPA is including an off-cycle emission requirement whereby engine manufacturers would be required to demonstrate that marine diesel engine emissions do not exceed a specified cap at any point in a specified zone of operation (see Section V.E.2., above). EPA expects that demonstrating compliance with the NTE will call for additional R&D and testing to measure and control emissions under any speed and load combination that can occur on a vessel. These costs are included in EPA's analysis of economic impacts, but EPA believes that the costs would be disproportionately difficult for a PMM to bear. EPA therefore requests comment on alternative approaches to address in-use emissions for these small manufacturers to ensure in-use performance while minimizing the testing burden for PMMs.

(f) *Additional Compliance Time.* Because of the nature of their business, marinizing partially or fully completed engines manufactured by another company, the ability of PMM to certify their engines as complying with the proposed emission limits may be affected by circumstances that are beyond their control. Consequently, there may be situations in which, despite its best efforts, a PMM cannot meet the implementation dates, even with the flexibility provisions described above. Such a situation may occur if an engine supplier without a major business interest in a PMM were to change or drop an engine model very late in the implementation process, or was not able to supply the PMM with an engine in sufficient time for the PMM to recertify the engine. Based on this concern, EPA is proposing to allow a one-year delay in the implementation dates for PMMs. EPA requests comment on the necessity of such a provision, whether its application should be limited only to small companies, and on whether the one-year delay should be automatic or subject to approval by EPA.

(g) *Special Hardship Provision.* As a relief mechanism of last resort, EPA is also proposing to extend to PMM the hardship relief provisions contained in the recently finalized land-based nonroad rule (40 CFR 89.102(f)). Under this provision, PMM can petition EPA for additional time to demonstrate compliance with the emission limits. Under this hardship relief provision, appeals must be made in writing, be submitted before the earliest date of noncompliance, be limited to firms that fit the small business criteria established by the Small Business Administration (fewer than 500 employees), include evidence that failure to comply was not the fault of the PMM (such as a supply contract broken by the engine supplier, and include evidence that the inability to sell the subject engines will have a major impact on the company's solvency. The Agency would work with the applicant to ensure that all other remedies available under the flexibility provisions are exhausted before granting additional relief, and would limit the period of relief to no more than one year. Furthermore, the Agency proposes that applications for hardship relief only be accepted during the first year after the effective date of an applicable new emission standard. To avoid the creation of a self-fulfilling prophesy, by which the very existence of this provision prompts engine manufacturers to delay engine developments, EPA expects that this provision will be used only rarely. Each granting of relief would be treated as a separate agreement, with no prior guarantee of success, and with the inclusion of measures, agreed to in writing by the PMM, for recovering the lost environmental benefit. Comment is requested on all aspects of this proposal.

2. Vessel Builder Flexibilities

As part of the land-based nonroad rule, EPA proposed a set of flexibility provisions for equipment manufacturers. These provisions were intended to give equipment manufacturers more time to comply with the requirement that they use only certified engines beginning with the implementation dates the engine standards. The additional time was necessary because the engine compartment on land-based nonroad equipment is relatively restricted, and changes to the physical characteristics of a nonroad engine could require extensive equipment redesign. However, equipment manufacturers may be unable to obtain a certified Tier 2 or Tier 3 engine before the implementation dates for those engines. The flexibility provisions were designed to give extra time for product redesign to equipment manufacturers that need it without postponing the emission benefits of the entire program.

While recognizing the importance of such a transition program for land-based nonroad equipment manufacturers, EPA is not proposing a similar proposal for marine vessels. There are three reasons for this. First, EPA has learned that the commercial vessel production process is actually a very flexible process. Commercial marine vessels are generally designed for a specific purchaser, to meet specific operational requirements. This means that a vessel purchaser will typically tell a manufacturer what kind of load the vessel is intended to carry, and what kind of engine to use. The vessel manufacturer then designs the vessel, or adapts an existing design, based on these requirements. EPA believes that this kind of design process can easily accommodate any changes to an engine that may occur as a result of the proposed program, regarding its physical dimensions or weight. Second, commercial marine vessels are not serially produced in the same way as land-based nonroad equipment. Sales volume by manufacturer is much smaller in the commercial marine industry. Therefore, marine vessel manufacturers do not need extra time to accommodate engine changes across a wide range of equipment offerings. Third, it typically takes a significant amount of time to design and build a commercial marine vessel. EPA believes that any design changes required as a result of engine changes can be accommodated in the normal vessel construction period. Nevertheless, there may be special situations in which vessel manufacturers may have difficulties producing vessels that use compliant engines. EPA seeks comment on any such circumstances, and the types of flexibility provisions that would be needed to address those concerns.

N. Application of Provisions to Marine Diesel Engines Less Than 37 kW

Marine diesel engines less than 37 kW were included in the rulemaking for nonroad diesel engines and are subject to the emission control program contained in 40 CFR Part 89. That program has two tiers of emission limits, phased in from 1999 to 2000 for Tier 1 and 2004 to 2005 for Tier 2. In general, marine diesel engines less than 37 kW are subject to the same certification and compliance program as land-based nonroad diesel engines. Exceptions to this general approach include the duty cycle (E3, but with a C1 option), ABT program restrictions (land-based credits cannot be used to offset marine diesel emissions), and implementation flexibility provisions that would allow post-manufacture marinizers to phase in compliance with Tier 1 emission limits according to the schedule extended to nonroad equipment manufacturers.

EPA is aware that some companies manufacture marine diesel engines above and below the 37 kW threshold. Most of these companies are small businesses with limited ability to devote staff to managing compliance with emission control requirements. One possible administrative change that may lessen this burden would be to move the provisions for marine diesel engines rated below 37 kW currently contained in 40 CFR Part 89 to 40 CFR Part 94. Transferring the provisions for marine diesel engines rated below 37 kW in this way would ensure that engine manufacturers, vessel manufacturers, and the general public need consult only one area of the Code of Federal Regulations to identify the emission control programs applicable to all marine diesel engines.

An important goal of any such change should be to avoid changing the level of stringency of the requirements for marine diesel engines less than 37 kW. EPA therefore does not intend to change the level or timing of emission limits or other provisions that may affect the emissions from these engines.

EPA is, however, seeking comment on the extent to which the administrative portions of the certification and compliance requirements for marine diesel engines less than 37 kW should be harmonized with those proposed in this document. Commenters are encouraged to specify which provisions should be harmonized for these engines and to explain why this would be helpful. EPA believes that such harmonization would be appropriate for several reasons. First, harmonization of these provisions will ensure that engine manufacturers have only one set of administrative requirements to follow instead of two, thus simplifying the certification and approval process for both the manufacturers and EPA. Second, harmonization would formally extend the special compliance flexibility provisions of this proposal to post-manufacture marinizers that modify smaller diesel engines, including the more relaxed definition of engine family and streamlined certification renewals. Third, this would clarify the requirements for engine dressers.

VI. Category 3 Engine Provisions

A. Emission Limits

Category 3 engines are very large marine diesel engines, typically used for propulsion purposes on ocean-going vessels. Although these engines can achieve power ratings in excess of 75,000 kW, they are diesel engines and, with certain limitations, can benefit from the emission control technologies that are used on other diesel engines. Perhaps the most important of these limitations is the fuel on which they are operated, called residual fuel. This fuel is the by-product of distilling crude oil to produce lighter petroleum products such as gasoline, DM-grade diesel fuel (used in on-highway, land-based nonroad and smaller diesel marine engines), and kerosene. It possesses a high viscosity and density, which affects ignition quality, and it typically has high ash, sulfur and nitrogen content in comparison to marine distillate fuels. Furthermore, residual fuel parameters are highly variable because its content is not regulated. It is this high variability that makes it difficult to apply timing retard as a control strategy. Ship engineers will generally optimize engine timing to achieve peak pressures for each fuel blend and would not likely have the expertise or incentive to optimize for emissions. Residual fuel can increase engine NO_X emissions from 20–50% and PM from 750% to 1250% when compared to distillate fuel.[46]

In determining the appropriate emission limits for Category 3 engines, EPA considered the application of existing diesel emission technologies. These engines are, for the most part, already employing Tier 1 and Tier 2 technologies, including turbocharging, injection improvements, electronics, and more efficient cooling. Application of these technologies has already been extremely optimized, with engines being supercharged as well as turbocharged, and with two-stage seawater aftercooling to reduce engine temperatures. The application of these technologies results in very high fuel efficiency and optimal engine operation.

Because of the extensive use of Tier 2 technologies on Category 3 engines, the opportunities for emission reductions are not as extensive as they are for smaller engines. The most likely set of next-generation technologies that could potentially be applied to these engines include EGR, SCR, and water injection. However, as discussed in the Draft Regulatory Impact Assessment, these technologies are still under development for marine diesel engines of this size and thus the Agency does not believe it is appropriate to set emission limits that would require their use at this time. In addition, their application to Category 3 engines is complicated by the quality of the fuel used in these engines.

EPA believes it is appropriate to consider an emission limit that would rely largely on the use of injection rate shaping, with some retarded timing. By optimizing a variable fuel injection rate, a small amount of fuel can be delivered early to initiate combustion. Once combustion begins, the rest of the fuel can be injected. Through this strategy, the peak temperature in the cylinder can be reduced by reducing the amount of fuel that is mixed with air prior to the start of combustion. This premixed fuel results in a large thermal spike when it burns when compared to diffusion burning. By reducing the peak temperatures, it is more difficult for NO_X to form.

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[46] D. Bastenhof. Exhaust Gas Emission Measurements: A Contribution to a Realistic Approach, 1995 (Air Docket A–97–50).

EPA analysis indicates that the appropriate emission limits for Category 3 engines, that would require injection rate shaping but not extensive timing retard, are the limits that were recently adopted in MARPOL Annex VI. These NO_X limits also take into account the special fuel used by these engines. Those limits are contained in Table 1, above. EPA also believes that these emission limits would be the appropriate standards under the Clean Air Act, under the current circumstances. With respect to emission reductions, while MARPOL Annex VI targeted a 30% NO_X emission decrease, EPA analysis indicated that a 17% NO_X decrease could be expected. However, implementation of these NO_X limits will prevent further increases in NO_X resulting from further developments in Category 3 engine design. Because of Category 3 engines' characteristic design and operation for minimum BSFC (see the Draft RIA), further improvements in materials and engine design will only increase specific NO_X emissions in the absence of these limits.

Because the MARPOL Annex VI NO_X limits would likely be implemented independently of any Clean Air Act requirement, assuming ratification by the United States of Annex VI, EPA believes it would be unnecessary and redundant to adopt the same program under the Clean Air Act. Therefore, EPA is not proposing to adopt emission limits for Category 3 engines as part of this rule. Instead, EPA expects U.S. vessel owners to begin installing engines certified to the MARPOL Annex VI limits beginning with the effective date set in Annex VI (January 1, 2000), following the procedures otherwise applicable to that Annex. EPA requests comment on this approach, as well as the rationale behind its adoption. EPA seeks comment on how to ensure that U.S. vessel owners begin installing Category 3 engines beginning with ships constructed on or after January 1, 2000. EPA also seeks comment as to whether EPA should be required to examine implementation of the Annex domestically as part of the 2003 Feasibility Review, described in Section V.A.3., above.

EPA seeks comment on the proposed approach to Category 3 engines. EPA also seeks comment on whether EPA should consider a longer terms strategy as well and, if so, what those long-term NO_X emission limits should be. Finally EPA seeks comment on the need to adopt a PM limit for these engines. MARPOL Annex VI does not set a PM limit, presumably because of the fuel variability issue and the lack of an appropriate PM test method for residual fuels (see the Draft RIA). EPA seeks comment on the desirability to go beyond the Annex VI requirement by setting a PM standard for Category 3 engines and, if so, what that PM limit should be and how it shall be tested.

Category 3 engines can switch between fuels, and, as stated above, residual fuel can increase NO_X emissions by 20%–50% and PM emissions by 1000% (±250%) compared to marine distillate fuel. Foreign vessels with Category 3 engines currently account for 45% of the NO_X emissions from Category 3 engines (see the Draft Regulatory Impact Assessment). One mechanism to reduce NO_X emissions from these engines would be restricting the use of residual fuel in or near port regions, perhaps utilizing remote CO_2, SO_X, and PM sensing technologies to non-intrusively discriminate the fuel burned by a ship. If such a technology can be demonstrated, enforcement could become as straightforward as determining automobile speed on a highway. EPA seeks comment on whether ports and states could effectively employ such a strategy, for example as a condition on use of ports. Comments provided on this question will assist EPA in assessing the extent to which such a locally-imposed emission control strategy would be practical. These comments, in turn, will also help EPA determine whether it would be useful to issue guidance on how to establish such programs, both for California's South Coast ports and ports located in other areas of the country.

B. Category 1 and 2 Engines Aboard Vessels Engaged in Foreign Trade

EPA proposes an additional provision for Category 1 and 2 engines that are installed on U.S.-flagged vessels engaged in foreign trade that meet the criteria described below. This provision will allow these engines to be certified to the MARPOL Annex VI NO_X curve instead of the EPA proposed limits provided certain conditions are met. This provision would go into effect at the same time as the implementation of the proposed domestic emission requirements for these engines. In other words, waivers would not be needed until 2004 for engines with a per cylinder displacement below 2.5 liters and until 2006 for engines with a per cylinder displacement at or above 2.5 liters but below 20 liters. Prior to these dates, it is assumed that engines installed on these vessels will be compliant with the MARPOL NO_X limits.

This special provision is intended to address the different circumstances in which these engines will be used, rather than any differences in their operation. Specifically, Category 1 and Category 2 engines installed on foreign trade vessels are typically used for auxiliary purposes. These engines are often essential for the smooth functioning of the vessel, since they are used to generate electricity for navigational equipment (radar, gyrocompass, and telecommunications), maneuvering equipment (steering gear, bow thrusters), and crew services (lighting in the engine room, cooking in the galley). If these engines were to fail, a ship would be stranded and would most likely require a tow into port. Repairing engines to EPA requirements may be difficult in a foreign port because of availability of replacement parts. This may cause a ship owner to incur significant downtime costs to have the replacement part or a new engine delivered to a foreign port. Alternatively the ship owner may have to buy a noncomplying engine while overseas, only to replace it when the vessel returns to the United States. Allowing Category 1 and Category 2 engines to meet the MARPOL Annex VI limits instead of the EPA's requirements will reduce if not eliminate any difficulties associated with the maintenance and repair of these engines while at sea, since vessels worldwide are expected to comply with those limits beginning in 2000.

EPA believes that this special provision for Category 1 and Category 2 engines will have minimal impact on U.S. air quality if it is limited to those vessels that engage in foreign trade. EPA proposes to define a U.S.-flagged vessel engaged in foreign trade as one that has solely a registry endorsement pursuant to Coast Guard regulations at 46 CFR 67.17. Vessels with multiple endorsements (e.g., foreign and coastwise) will need to demonstrate to the Administrator's satisfaction that the vessel will spend less than 25% of its operating time within 320 nautical kilometers (200 nautical miles) of U.S. territory. This determination would need to be made during the ship's construction, based on the business plans of the ship owner. EPA does not believe application for this determination will be burdensome because the vessel owner will have built the ship with a specific trade in mind.

To ensure that only the appropriate vessels use this provision, EPA proposes that Category 1 and 2 engines be labeled to indicate that they have been certified only to the MARPOL Annex VI NOC$_X$ curve limits, and that they are not intended for use on domestic vessels. In addition, EPA proposes that any vessel owner who seeks this exemption obtain a waiver from EPA. Such a waiver would be issued upon satisfactory demonstration that the vessel will be used for foreign trade. EPA proposes that a vessel will be considered to be used for foreign trade if it spends less than 25 percent of its operating time within 200 nautical miles of the United States, and it does not operate solely between the United States, Canada, Mexico, Bermuda, or the Bahamas. Without this additional limit, EPA is concerned that ships whose engines do, in fact, have a significant impact on U.S. air quality would be exempt from the proposed domestic program. Also, because they operate in closer proximity to the United States these vessels are unlikely to experience problems with maintaining engines certified to EPA standards.

EPA seeks comment on whether this special provision for Category 1 and Category 2 engines installed on U.S.-flagged foreign trade vessels is necessary. EPA also requests comment on how best to define the group of vessels that should benefit from the provision while ensuring that those vessels operating in the United States meet the emission requirements proposed in this document. EPA requests comment on whether ships that operate solely between the United States, Mexico, the Bahamas, and Canada should be able to benefit from this provision.

VI. Technological Feasibility

The emissions standards proposed in this action would apply to a large variety of marine diesel engine sizes and applications. Section 213(a)(3) of the Clean Air Act calls for EPA to establish standards that provide for the "greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology."

This section describes EPA's understanding of the range of technologies that will be available to manufacturers to comply with the proposed standards for Category 1 and 2 marine diesel engines and the technological approach anticipated for Category 3 marine engines. EPA believes that the technology discussed below will be sufficient for both the proposed standards and the NTE requirements. The costs associated with these technologies will be discussed in Section VII. EPA has concluded, as described in the Draft RIA, that the proposed standards will have no significant negative effect on noise, energy, or safety. The technological feasibility of the proposed standards is discussed below for each category.

A. Category 1 Engines

EPA believes that the emission reduction strategies that are expected to be used on land-based nonroad diesel engines to meet the nonroad Tier 2 and Tier 3 standards can also be applied to Category 1 marine diesel engines. This is because marine diesel engines are generally derivatives of land-based nonroad and highway engines. Marine engine manufacturers and marinizers make modifications to the engine to make it ready for use in a vessel. These modifications can range from basic engine mounting and cooling changes to a restructuring of the power assembly and fuel management system. The Draft RIA discusses this process in more detail.

1. Development of Implementation Schedule

For Category 1 engines with specific displacements below 2.5 liters per cylinder, the proposed implementation dates for Tier 2 essentially represent a four year lead time beyond the scheduled implementation date of the MARPOL Annex VI NO$_X$ standard. Another four years of lead time is proposed for Tier 3. Having a single implementation date for several subcategories has an advantage for marine engines because it removes concerns associated with engine families that fall into several subcategories. This is important since marine engines may not fall into the same categories as their land-based nonroad counterparts. In some cases, using the same staggered approach for marine as for land-based nonroad engines could require the marine version to be certified before the land-based version of an engine. However, it is EPA's intent that marine engine designs have the benefit of being able to make use of the emission controls developed for land-based nonroad engines.

The proposed implementation schedule allows up to a three-year delay in standards for Category 1 marine engines relative to the implementation dates of the land-based nonroad standards. This should make this proposed regulatory scheme more cost-effective by allowing time for the carryover of technology from land-based nonroad to marine engines.

For engines with specific displacements greater than or equal to 2.5 liters per cylinder, EPA proposes an additional two years of lead time. This additional lead time would make the implementation date for the proposed marine Tier 2 standards consistent with the land-based nonroad Tier 2 implementation date for these engines. Therefore, the marine engines would be able to use technology developed for land-based applications. In addition, there are currently no Tier 3 standards for land-based nonroad engines of this size; therefore, the extra lead time may be necessary for the larger Category 1 marine engines to achieve Tier 3 levels. EPA requests comment on the proposed implementation dates.

2. Development of Numerical Standards

Marine diesel engines are typically derived from or use the same technology as land-based nonroad diesel engines and should therefore be able to effectively use the same emission control strategies. In fact, marine engines can make use of the water they operate in as a cooling medium, which can help them reduce charge air intake temperatures more easily than land-based nonroad engines. By cooling the intake charge, formation of NO$_X$ emissions can be reduced. Also, as discussed in Chapter 3 of the Draft RIA, data on five marine engines show that emissions measured on the proposed ISO E3 marine duty cycle are roughly equivalent to those measured on the land-based nonroad ISO C1 duty cycle. Finally, several demonstration marine diesel engines have been in service for a couple years in California with emission levels that are very close to meeting the standards proposed in this document. These demonstration engines are all using established technology that EPA anticipates will be used to comply with this proposed rule. The Draft RIA provides more detail on the emissions levels achieved and the technology applied to these engines.

Because of the lead time needed to transfer land-based technology to the marine environment, EPA believes that it is reasonable to propose near-term standards that are somewhat less stringent compared to land-based nonroad in the Tier 2 time frame. EPA believes that more stringent Tier 3 standards are feasible in the long term especially given the technology being developed for land-based nonroad engines and the long lead time. Proposing a slightly less stringent numerical NO_X emissions limit for Tier 2 marine than for Tier 2 land-based nonroad engines should allow marine engine manufacturers the flexibility to focus on Tier 3 technology and still reduce emissions in the interim without spending excessive resources on Tier 2.

3. Technological Approaches

EPA anticipates that the proposed standards for marine engines will be met primarily with technology that will be applied to land-based nonroad engines to meet the proposed Tier 2 and Tier 3 emission standards. Much of this technology already has been established in highway applications and is already being used in limited land-based nonroad and marine applications. EPA's analysis of this technology is described in detail in Chapter 3 of the Draft RIA for this proposed rule and is summarized below.

By proposing multiple levels of standards that extend well into the next decade, EPA is providing engine manufacturers with substantial lead time for developing, testing, and implementing emission control technologies. This lead time and the coordination of standards with those for land-based nonroad engines allows time for a comprehensive program to integrate the most effective emission control approaches into the manufacturers' overall design goals related to durability, reliability, and fuel consumption.

Engine manufacturers have already shown some initiative in producing limited numbers of low NO_X marine diesel engines. More than 80 of these engines have been placed into service in California through demonstration programs. The Draft RIA discusses, in detail, these engines and their emission results. Through the demonstration programs, EPA has been able to gain some insight into what technologies can be used to meet the proposed emission standards.

Highway engines have been the leaders in developing new emission control technology for diesel engines. Because of the similar engine designs in land-based nonroad and marine diesel engines, it is clear that much of the technological development that has led to lower emitting highway engines can be transferred or adapted for use on land-based nonroad and marine engines. Much of the improvement in emissions from these engines comes from "internal" engine changes such as variation in fuel injection variables (injection timing, injection pressure, spray pattern, rate shaping), modified piston bowl geometry for better air-fuel mixing, and improvements intended to reduce oil consumption. Introduction and ongoing improvement of electronic controls have played a vital role in facilitating many of these improvements.

Other technological developments that are expected to be used on nonroad engines will require a greater degree of development before they can be applied to marine diesel engines. Turbocharging is widely used now in marine applications, especially in larger engines, because it improves power and efficiency by compressing the intake air. Turbocharging may also be used to decrease particulate emissions in the exhaust. Today, marine engine manufacturers generally have to rematch the turbocharger to the engine characteristics of the marine version of a nonroad engine and often will add water jacketing around the turbo housing to keep surface temperatures low. Once the Tier 2 nonroad engines are available to the marine industry, matching the turbochargers for the engines will be an important step in achieving low emissions.

Aftercooling is a well established technology that can be used to reduce NO_X by reducing the temperature of the charge air after it has been heated during compression. Reducing the charge air temperature directly reduces the peak cylinder temperature during combustion, which is the primary cause of NO_X formation. Air-to-water and water-to-water aftercoolers are well established for land-based applications. For engines in marine vessels, there are two different types of aftercooling used: jacket-water and raw-water aftercooling. With jacket-water aftercooling, the coolant to the aftercooler is cooled through a heat exchanger by ambient water. This cooling circuit may be either the same circuit used to cool the engine or a separate circuit. By moving to a separate circuit, marine engine manufacturers would be able to achieve further reductions in the intake charge temperature. This separate circuit could result in even lower temperatures by using raw water as the coolant. This means that ambient water is pumped directly to the aftercooler. Raw-water aftercooling is currently being used widely in recreational applications. Because of the access that marine engines have to a large ambient water cooling medium, EPA anticipates that marine engine manufacturers will largely achieve the reductions in NO_X emissions for this proposal through the use of aftercooling.

To meet the proposed standards, Category 1 marine diesel engine manufacturers are expected to use many of the strategies discussed above. Electronic controls offer great potential for improved control of engine parameters for better performance and lower emissions. Unit pumps or injectors would allow higher-pressure fuel injection with rate shaping to carefully time the delivery of the whole volume of injected fuel into the cylinder. Marine engine manufacturers should be able to take advantage of modifications to the routing of the intake air and the shape of the combustion chamber of nonroad engines for improved mixing of the fuel-air charge. Separate circuit jacket- and raw-water aftercooling will likely gain widespread use in turbocharged engines to increase performance and lower NO_X.

To meet the proposed Tier 3 standards, EPA believes that two technologies would be especially useful. Common rail injection systems provide greater overall control of the fuel injection strategy by maintaining a constant supply of high-pressure fuel at the injectors. Also, exhaust gas recirculation is anticipated to be applied to land-based nonroad diesel engines, which will provide valuable experience in applying this control strategy to marine engines. These technologies are not anticipated to be developed for land-based nonroad engines with specific displacements greater than or equal to 2.5 liters per cylinder. However, EPA believes that the concepts can be adapted from smaller land-based nonroad and highway engines. To account for difficulties of adapting common rail fuel injection and EGR to these larger engines, EPA is proposing a higher marine Tier 3 $HC+NO_X$ standard than for engines with specific displacements less than 2.5 liters per cylinder. A more detailed treatment of the feasibility of these engines meeting the proposed standards is included in the Draft RIA.

4. Conclusions Regarding Technological Feasibility

The standards in this proposal are the most challenging that can be set in this time frame. Category 1 marine diesel engine manufacturers will need to use the available lead time to develop the necessary emission control strategies, including transfer of technology from land-based nonroad diesel engines. This development effort will require not only achieving the targeted emission levels, but also ensuring that each engine will meet all performance and emission requirements over its useful life. The proposed standards clearly represent significant reductions compared with baseline emission levels.

Emission control technology for diesel engines is in a period of rapid development in response to the range of emission standards in place and anticipated for highway and land-based nonroad engines in the years ahead. This development effort will automatically transfer to some extent to marine engines, since marine engines are often derivatives of highway and land-based nonroad engines. Regardless, this development effort will need to expand to marine diesel engines as a result of this proposal. Because the technology development for highway and land-based nonroad engines will to a large extent constitute basic research of diesel engine combustion, the results should be applicable to marine engines.

Based on information currently available, EPA believes that it is feasible for Category 1 marine diesel engine manufacturers to meet the proposed standards using combinations of technological approaches discussed above and in the Draft RIA. To the extent that the technologies described above may not yield the full degree of emission reduction anticipated, manufacturers could still rely on a modest degree of fuel injection timing retard as a strategy for complying with the proposed emission standards. As described under Economic Impacts below, injection timing retard may be associated with some decrease in fuel efficiency.

In addition, EPA believes that the flexibilities incorporated into this proposal will permit marinizers and vessel builders to respond to engine changes in an orderly way. For these industries, EPA expects that meeting these requirements will pose a significant challenge, but one that is feasible taking into consideration the availability and cost of technology, time, noise, energy, and safety.

B. Category 2 Engines

EPA believes that the emission reduction strategies that are expected to be used on locomotive diesel engines to meet the recently finalized standards can also be applied to Category 2 marine diesel engines. This is because the majority of Category 2 marine diesel engines are derivatives of locomotive engines. Similar to Category 1, marine engine manufacturers and marinizers then make modifications to the engine to make it ready for use in a vessel.

1. Development of Implementation Schedule

EPA is proposing a similar approach as proposed for Category 1 engines. Because of the marinization process, marine engine manufacturers will likely need some time to respond to changes in locomotive engine designs associated with their standards. This is why EPA is proposing that there be a one year delay between the implementation of the locomotive Tier 2 and the marine Tier 2 standards. EPA believes that a four year additional lead time is sufficient for Category 2 marine engine manufacturers to achieve the additional reductions associated with the proposed Tier 3 standards. In any case, the Tier 3 standards are proposed to be subject to a feasibility review in 2003.

2. Development of Numerical Standards

EPA proposes the marine Tier 2 emissions standards for Category 2 marine diesel engines to be the same level as the locomotive line-haul Tier 2 emissions standards. The Draft RIA compares baseline marine emissions on the E2 and E3 cycles to baseline locomotive emissions on the line-haul cycle and shows that the baseline emissions for marine are about the same or slightly lower than for locomotives. Thus, EPA believes that no change in the standards is required due to the duty cycle. Although locomotives are required to meet standards for a line-haul and a switch duty cycle, the line-haul standard was chosen for this comparison because it is more similar to the proposed marine duty cycles than the switch cycle.

EPA believes that further reductions are possible from Category 2 marine engines than are required for locomotive engines. This is why EPA is proposing Tier 3 standards for Category 2 marine engines. Technologically, marine engines do not have nearly the cooling constraints that locomotive engines have and they do not need to be designed for operation at high altitudes. In addition, under the lead time associated with the proposed Tier 3 standards, EPA believes that further emission control technology can be applied to these engines.

3. Technical Approach

Most of the emission control strategies anticipated to be used on locomotive engine to meet the locomotive Tier 2 standards are similar to those expected to be used on nonroad engines to meet the land-based nonroad Tier 2 standards. These technologies include combustion chamber modifications, better oil control, improvements in fuel injector design (i.e., rate shaping, higher pressures, nozzle geometry), electronic engine management controls, and separate circuit aftercooling. In addition, the older two-stroke engine designs are already being replaced by four-stroke engine designs. EPA believes that these technological improvements can be directly applied to Category 2 marine diesel engines. Most likely, the marine engine manufacturers will need to rematch the turbochargers and cooling circuits to respond to the new locomotive engine designs.

EPA believes that marine engines have two advantages over locomotive engines for reducing NO_X. Marine engines have access to ambient water, which gives them the ability to achieve very low charge air temperatures with an aftercooler. Locomotives, on the other hand, have extreme packaging constraints, which minimize their ability to cool the charge air. Locomotive engines must also be designed to meet their standards at high altitudes while Category 2 marine diesel engine operate at or near sea level. Because marine engines do not operate at high altitude, they have less of a concern for design tradeoffs between maintaining low NO_X and low smoke levels.

Similar to Category 1, EPA believes that the key technologies needed for Category 2 marine engines to meet the proposed marine Tier 3 emissions standards are common rail fuel injection and exhaust gas recirculation. These technologies are not anticipated to be developed for locomotive engines for Tier 2. However, EPA believes that the concepts can be adapted from land-based nonroad and highway engines. As an alternative strategy, manufacturers may choose to rely on injection timing retard as a way of trimming NO_X emissions. However, this may be associated with a fuel efficiency penalty. To account for difficulties of adapting common rail fuel injection and EGR to these larger engines, EPA is proposing the same marine Tier 3 $HC+NO_X$ standard proposed for Category 1 engines with specific displacements greater than 2.5 liters per cylinder. This proposed standard is somewhat relaxed compared to the land-based nonroad Tier 3 standards.

4. Conclusions Regarding Technological Feasibility

Based on information currently available, EPA believes that it is feasible for Category 2 marine diesel engine manufacturers to meet the proposed standards using combinations of technological approaches discussed above and in the Draft RIA. In addition, EPA believes that the implementation schedule and the flexibilities incorporated into this proposal will permit marinizers and vessel builders to respond to engine changes in an orderly way. For these industries, EPA expects that meeting these requirements will pose a significant challenge, but one that is feasible taking into consideration technology, time, noise, energy, and safety.

C. Category 3 Engines

EPA is not proposing national standards for Category 3 marine engines. However, emissions reductions are expected to be gained through the international NO_X requirements adopted in MARPOL Annex VI.

1. Rationale for Relying on MARPOL Annex VI Requirements

Because of the competitive nature of international maritime transport, ship owners and ship builders have been working for years on techniques to improve diesel engine fuel efficiency. These research efforts have been very successful, and the thermal efficiencies of new Category 3 marine diesel engines are very high, approaching 45 to 50 percent. System efficiencies (i.e., the thermal efficiency for the ship as a whole) can be as high as 85 percent, for example, because of the use of engine heat to generate steam power. The competitive nature of the shipping industry continues to provide incentives for gaining further reductions in fuel consumption since fuel is the largest variable cost associated with shipping.

Category 3 engines have two characteristics that require discussion. First, the same strategies that have been used over time to achieve these high thermal efficiencies have generally resulted in an increase in NO_X emissions. Reducing NO_X with the technology used today basically means calibrating the engines with a focus on emissions as well as fuel consumption. For instance, timing could be retarded to reduce NO_X by reducing peak cylinder temperatures associated with the burning of fuel that is premixed with air prior to the start of combustion. Any resulting adverse impact on fuel consumption could be minimized through fuel injection strategies and charge air charging and cooling strategies. Consequently, EPA does not expect any significant increase in fuel consumption rates. Added emission control could be achieved using EGR, water in fuel emulsion, or SCR. The benefits and drawbacks of these technologies are discussed below.

Second, Category 3 engines operate on bunker fuel. This fuel is also called residual fuel because it is the fuel left in a refinery after the lighter ends have been distilled. Although some distillate may be blended into this residual fuel, the resulting bunker fuel is considerably different than the fuel burned by any other diesel engines. For instance, the viscosity is so high, that the fuel must be melted before it can flow to the engine. The warmed fuel also needs to be passed through centrifuges to remove water, sludge, and other contaminants. Sulfur levels in this fuel may be as high as 5 percent by weight. Specifications even exist for the amount of cat bottoms (worn metal and catalyst from a hydrocracker) in the fuel. The special characteristics and handling needs of bunker fuel make the application of new emission control technologies challenging.

Because of the special fuels used by these engines and their international use, EPA is not proposing to set national emission limits for Category 3 engines beyond the MARPOL Annex VI requirements based on the types of technologies that are already used for fuel efficiency reasons on these engines today. EPA believes that this approach is reasonable given the Clean Air Act requirements that direct EPA to promulgate regulations that achieve the greatest degree of emission reduction achievable through the application of available technology giving appropriate consideration to cost, lead time, noise, energy, and safety concerns. Applicable technology for Category 3 engines is discussed below. EPA believes that the proposed limits will not only prevent future increases in NO_X associated with historical design improvements, but actually reduce NO_X from new engines by about 17 percent as discussed in the Draft RIA.

EPA's main focus across all of its diesel engine emission control programs is to reduce NO_X and PM emissions. HC and CO limits are of less importance because the contribution of diesel engines to the inventory of these pollutants is relatively low. With regard to Category 3 engines, high PM emissions are largely a result of the fuel used in these engines, as opposed to the technical characteristics of these engines. As discussed in the Draft RIA, the use of residual fuel or residual fuel blends in these engines can lead to PM emissions that are an order of magnitude higher than when distillate fuel is used. In addition, current established PM test methods show unacceptable variability when sulfur levels exceed 0.8 weight percent sulfur, and no PM test has been developed for these engines that corrects that variability. For these reasons, EPA is not proposing a PM standard for Category 3 engines. Similarly, EPA is not proposing HC or CO standards for these engines, but requests comment on whether adding such additional standards on top of the MARPOL Annex VI NO_X standard is necessary, and if so at what levels.

2. Technological Approaches

A number of technical designs and engine modifications are capable of reducing NO_X emissions from compression-ignition engines and have the potential to be technologically feasible for Category 3 marine engines. These technologies include retarded injection timing, engine fine tuning, exhaust gas recirculation, water emulsified fuel, and selective catalytic reduction. Benefits and challenges associated with these technologies are discussed below and were derived from CARB Mail-Out #91–42 and information gathered by the NO_X working group of the Bulk Chemical Handling Subcommittee of the IMO.

A feasible and simple means of reducing NO_X from diesel engines is by retarding injection timing. This method lowers the peak combustion temperature and pressure in the cylinder, resulting in 10–30 percent lower NO_X. However, the disadvantages include higher specific fuel consumption, lower power, harder startability, and higher levels of HC, CO, PM, and smoke. In addition, injection timing generally has to be tailored to fuel quality for Category 3 engines operating on residual fuel. To recover the lost fuel economy and performance or to reduce the amount of injection timing retard, additional technologies that improve fuel atomization have been employed on other mobile source engines. Fuel atomization can be improved by increasing fuel pump pressure and advance strategies, and through nozzle geometry. Another fuel injection technique for reducing NO_X is rate shaping. By injecting a small amount of fuel to begin combustion before injecting the majority of the fuel, high temperatures associated with the burning of premixed fuel can be reduced.

Engine fine tuning includes modification of essential engine components and could result in a 20–40 percent reduction in NO_X emissions. More specifically, engine fine tuning could include modifications in the injection system, charge air system, and combustion chamber design. Such changes on new highway engines have already achieved more than 50 percent NO_X reductions.

Exhaust gas recirculation (EGR) involves recirculating some of the exhaust gas back into the intake manifold. This lowers the combustion temperature and therefore can lower NO_X emissions by as much as 20–50 percent. For marine engines, the applicability of EGR is complicated by the quality of the fuel. Sulfur and soot from combustion gases can cause increased wear of piston rings, valves, and other components. Therefore, EGR is more likely to be useful for engines running on cleaner distillate fuels.

Water emulsification of the fuel is another technique that lowers maximum combustion temperature, reducing NO_X 20–50 percent without an increase in fuel consumption. There are at least two ways to accomplish the emulsification during combustion: in the combustion chamber or in the fuel tank. Combining water and fuel for the first time in the chamber requires significant changes to the cylinder head to add an injector. Combining water with fuel in the tank may introduce combustion problems due to unstable emulsion. Also, this technique requires a significantly redesigned fuel handling system to overcome the potential risk of corrosion and to maintain power output. In any event, extra liquid storage availability is necessary to retain similar range.

Selective catalytic reduction (SCR) is one of the most effective, but also most complex and expensive, means of reducing NO_X from large diesel engines. Emission reductions in excess of 90 percent can be achieved using SCR. In SCR systems, a reducing agent, such as ammonia, is injected into the exhaust and both are channeled through a catalyst where NO_X emissions are reduced. These systems are being successfully used for large stationary source applications, which operate under constant, high-load conditions.

A number of disadvantages are apparent for the use of current technology SCR systems on ships. The SCR system is effective only over a narrow range of exhaust temperatures. The effectiveness of the system is decreased at reduced temperatures exhibited during engine operation at partial loads. Most of the engine operation near port cities is likely to be at these partial loads. This sort of a system would require an additional tank to store ammonium (or urea to form ammonia). Also, excess ammonia in the exhaust can occur during transient operation, where control of optimum ammonia injection is difficult. However, Category 3 marine engines generally operate under steady-state conditions.

3. Conclusions Regarding Technological Feasibility

Given the available emissions control technology for Category 3 engines and the fuel quality issues, EPA believes that the MARPOL Annex VI standards for NO_X are appropriate and sufficient for Category 3 marine diesel engines. EPA's main concern is that the range of adjustable parameters be set so that the engine will meet the proposed standards in this range. EPA proposes to use, and seeks comment on, the MARPOL Annex VI provisions designed to prevent tampering with the engine settings in such a way as will increase emissions. EPA believes that it may be appropriate to investigate PM standards and more stringent NO_X standards for Category 3 engines in the context of the MARPOL Convention in the future.

VIII. Projected Impacts

A. Environmental Impacts

In Chapter 5 of the Draft Regulatory Impact Analysis, EPA provides a detailed explanation of the methodology used to determine the environmental benefits from marine diesel engines associated with this proposal. EPA requests comment on all aspects of the emissions inventory analysis. The following discussion gives a general overview of the methodology and the results.

1. Category 1 Engines

For the purposes of the inventory analysis, Category 1 was divided into recreational, commercial, and auxiliary marine diesel engines. Although no standards are proposed in this document for recreational engines, uncontrolled emissions from these engines are included in the inventory analysis. Annual emissions were then calculated using engine populations, load factors, annual hours of use, rated power, emission factors, turnover, and growth rates. The sources for and the values of these factors are provided in the Draft RIA. It should be noted that EPA has received some indication that the annual use for recreational engines may be lower than assumed in the inventory analysis and calculations (Table 5–2 of the Draft Regulatory Impact Analysis). EPA seeks comment on annual usage rates for recreational, as well as commercial and auxiliary, engines.

Table 12 presents the projected emissions inventory from Category 1 marine engines with and without the proposed standards. Table 12 also presents the anticipated effects of the MARPOL Annex VI standards on the Category 1 NO_X inventory. The proposed CO standard is intended as a cap, so no benefits are claimed here.

Table 12 presents the projected emissions inventory from Category 1 marine engines with and without the proposed standards. Table 12 also presents the anticipated effects of the MARPOL Annex VI standards on the Category 1 NO_X inventory. The proposed CO standard is intended as a cap, so no benefits are claimed here.

TABLE 12.—CATEGORY 1 EMISSIONS INVENTORY

[Thousand short tons]

Year	HC		NO_X			PM		CO
	Base	Control	Base	MARPOL Annex VI	Control	Base	Control	Base
2000	12.1	12.1	465	464	464	14.9	14.9	73
2005	12.8	12.5	492	484	470	15.8	15.2	78
2010	13.6	12.1	521	507	420	16.8	14.1	82
2020	15.3	12.0	586	565	303	18.9	13.0	92
2030	17.3	13.4	663	640	310	21.4	13.0	105

2. Category 2 Engines

Baseline emissions inventories for Category 2 marine engines were developed for the EPA under contract with Carnegie Mellon University.[47] For the purposes of this analysis, emissions are included from all Category 2 engines operated in the Great Lakes, inland waterways, and coastal waters up to 320 kilometers (200 miles) offshore. Emissions from U.S. flagged vessels were determined using ship registry data, fuel consumption, rated power, operation assumptions, and fuel specific emission factors. Emissions from foreign flagged vessels were developed based on cargo movements and waterways data, vessel speeds, average dead weight tonnage per ship, and assumed cargo capacity factors.

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[47] Corbett, J., Fischbeck, P., "Commercial Marine Emissions Inventory and Analysis for United States Continental and Inland Waterways," Carnegie Mellon University, Order No. 8A–0516–NATX, September 1998.

To model the benefits of the proposed standards, EPA applied an engine replacement schedule and new engine standards to the baseline inventory. In this case, no emission reductions are expected beyond the already low levels of HC. Table 13 shows the projected emissions for Category 2 vessels with and without the proposed standards. The anticipated NO_X impacts for the application of MARPOL Annex VI standards to U.S. flagged vessels are also included.

TABLE 13.—CATEGORY 2 EMISSIONS INVENTORY

[Thousand short tons]

Year	HC	NO_X			PM		CO	
	Base	Base	MARPOL Annex VI	Control	Base	Control	Base	Control
2000	11.1	267	265	265	6.1	6.1	34.1	34.1
2010	12.3	295	275	255	6.8	6.6	37.7	36.3
2020	13.6	325	387	206	7.5	6.9	41.7	37.0
2030	15.0	360	309	167	8.3	7.3	46.0	38.3
2040	16.5	397	339	162	9.1	7.9	50.8	41.5

3. Category 3 Engines

The emissions inventory for Category 3 was calculated using the same methodology as for Category 2. EPA believes that some NO_X benefits may be achieved by adopting the MARPOL Annex VI NO_X standard for engines used in U.S. flagged vessels. Table 14 presents projected emissions from Category 3 engines operated in U.S. waters. Note that the reductions here present both the impacts, in the U.S., of U.S. flagged vessels meeting the MARPOL Annex VI NO_X standard and the potential impacts if foreign flagged vessels were to meet the MARPOL Annex VI standard.

TABLE 14.—CATEGORY 3 BASELINE AND PROJECTED EMISSIONS INVENTORY UNDER VARYING IMPLEMENTATION OF MARPOL ANNEX VI CONTROLS

[Thousand short tons]

Year	NO_X			HC	PM	CO
	base	Annex VI applied to U.S.-flag vessels only	Annex VI applied to all vessels	base	base	base
2000	273	272	271	8.1	21.2	25.0
2010	301	290	279	9.0	23.4	27.6
2020	333	310	289	9.9	25.8	30.5
2030	368	338	309	10.9	28.6	33.7
2040	406	372	338	12.1	31.5	37.2

4. Total Impacts

Table 15 contains the baseline annual emissions from marine diesel engines as a whole as well as projections of the annual emissions with the MARPOL Annex VI requirements and proposed standards in place. According to this analysis, the proposed emission limits would result in reductions, beyond the MARPOL Annex VI limits, of 10 percent HC, 28 percent NO_X, 12 percent PM, and 3 percent CO from marine diesel engines in 2020. Nationally, these reductions represents reductions of 1.3 percent NO_X and 0.1 percent PM. Obviously, the percent reduction would be much higher for port areas. This is especially true for San Diego, Beaumont-Port Arthur, San Francisco and similar ports where marine diesel engines account for a large fraction of the NO_X emissions.[48]

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[48] Marine diesel engines make up about approximately 17% of the NO_X on a summer day for San Diego, 15% for Beaumont-Port Arthur, and 12% for San Francisco. *See*, Commercial Marine Vessel Contributions to Emission Inventories, Final Report, Submitted by Booz-Allen & Hamilton, Inc., October 7, 1991.

TABLE 15.—EMISSION INVENTORY IMPACTS OF THE PROPOSED RULE

		2000	2010	2020	2030
HC 10^3 short tons	Baseline	31.3	34.8	38.7	43.2
	Controlled	31.3	33.3	35.4	39.3
	Reduction	0%	4%	9%	9%
NO_X 10^3 short tons	Baseline	1,005	1,117	1,244	1,390
	IMO	1,001	1,072	1,162	1,287
	Controlled	1,001	965	819	815
	Reduction	0%	10%	28%	34%
PM 10^3 short tons	Baseline	42.3	46.9	52.2	58.2
	Controlled	42.3	44.1	45.7	50.2
	Reduction	0%	6%	12%	14%
CO 10^3 short tons	Baseline	133	147	165	184
	Controlled	133	146	160	177
	Reduction	0%	1%	3%	4%

In addition to the effect of the proposed standards on direct PM emissions noted above, the proposed standards are expected to reduce the concentrations of secondary PM. Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield ammonium nitrate particulate. As described in Chapter 5 of the Draft RIA, each 100 tons of NO_X reduction results in about a 4-ton reduction in secondary PM. This conversion rate varies from region to region, and is greatest in the West. EPA estimates that the 425,000 tons per year total NO_X reduction projected for marine engines in 2020 would result in about a 17,000 tons per year reduction in secondary PM. This secondary PM reduction is more than double the direct PM reductions for 2020 projected for this proposed rule.

EPA also believes the proposed regulations will tend to reduce noise. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of fuel and air ignites, the very rapid combustion leads to a sharp increase in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of NO_X formation. Fuel injection changes and other NO_X control strategies therefore typically reduce engine noise, sometimes dramatically.

EPA does not anticipate any negative impacts on energy or safety as a result of this proposed rule. The impact of the proposed standards on energy is measured by the effect on fuel consumption from complying engines. Although it is not expected to be a primary compliance strategy, marine engine manufacturers could retard engine timing to comply with emission limits. This could lead to an increase in fuel consumption in the absence of other changes to the engines. Most of the technology changes anticipated in response to the proposed standards, however, have the potential to reduce fuel consumption as well as emissions. Therefore, on balance, no increase in energy consumption is expected. As far as safety is concerned, EPA believes that marine engine manufacturers will use only proven technology that is currently used in other engines such as nonroad land-based diesel applications, locomotives, and diesel trucks.

B. Economic Impacts

EPA expects that in almost all cases, manufacturers will produce a complying marine engine by adapting an engine that has been designed and certified to meet highway or nonroad emission standards. This analysis considers the cost of these upgrades to the base engines as part of the impact of new marine emission standards; variable costs are applied directly, with an additional fixed cost added to apply the technologies to marine engines. The analysis arrives at the full cost impact by considering changes to turbocharging and aftercooling applicable to marine engines. Full details of EPA's cost analysis can be found in Chapter 4 of the Draft RIA.

1. Methodology

In assessing the economic impact of setting emission standards, EPA has made a best estimate of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. In some cases, however, it is difficult to make a distinction between technologies needed to reduce emissions for compliance with emission standards and those technologies that offer other benefits for improved fuel economy, power density, and other aspects of engine performance. EPA believes that without new emission standards, manufacturers would continue research on and eventually deploy many technological upgrades to improve engine performance or more cost-effectively control emissions. Modifications to fuel injection systems and the introduction of electronic controls are expected to continue, regardless of any change in emission standards, to improve engine performance. This is especially true for marine engines, which generally benefit from the transfer of highway and land-based engine technology improvements. Some further development with a focus on NO_X, HC, and PM emissions will nevertheless play an important role in achieving emission reduction targets.

Because several technology upgrades have benefits that go beyond reducing emissions, a difficulty in assessing the impact of new emission standards is establishing the appropriate technology baseline from which to make projections. Ideally, the analysis would establish the mix of technologies that manufacturers would have introduced absent the changes in emission standards, then make a projection for any additional changes in hardware or calibration required to comply with those standards. This is especially important for marine engines, since technology improvements are often carried over from counterpart land-based engines. The costs of those projected technology and calibration changes would then most accurately quantify the impact of setting new emission standards. While it is difficult to take into account the effect of ongoing technology development, EPA is concerned that assessing the full cost of the anticipated technologies as an impact of the new emission standards would inappropriately exclude from consideration the observed benefits for engine performance, fuel consumption, and durability.[49] Short of having sufficient data to predict the future with a reasonable degree of confidence, EPA faces the need to devise an alternate approach to quantifying the true impact of the new emission standards. EPA requests comment on the most appropriate way of accounting for these non-emission benefits.

A variety of technological improvements are projected for complying with the new emission standards. Selecting these technology packages requires extensive engineering analysis and judgment. The fact that manufacturers will be applying extensive effort to improve diesel engine technologies across programs ensures that these technologies will develop significantly before reaching production. This ongoing research and development will lead to reduced costs in three ways. First, research will lead to enhanced effectiveness for individual technologies, allowing manufacturers to use simpler packages of emission control technologies than would otherwise be predicted given the current state of development. Similarly, the continuing effort to improve the emission control technologies will include innovations that allow lower-cost production. Finally, manufacturers will focus research efforts on any potential drawbacks, such as increased fuel consumption or maintenance costs, attempting to minimize or overcome any negative effects.

Estimated cost increases are presented as incremental changes in purchase price. The incremental change in purchase price for new engines and equipment is comprised of variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). Total operating costs, including maintenance and fuel consumption, are considered as well. Cost estimates based on these projected technology packages represent an expected incremental cost of engines as they begin to comply with new emission standards. Costs in subsequent years are projected to decrease due to several factors, as described below. Separate projected costs were derived for engines used in five different ranges of rated power; costs were developed for engines near the middle of the listed ranges. All costs are presented in 1998 dollars.

While the following analysis projects a relatively uniform emission control strategy for designing the different categories of engines, this should not suggest that EPA expects a single combination of technologies will be used by all manufacturers. In fact, depending on basic engine emission characteristics, EPA expects that control technology packages will gradually be fine-tuned to different applications. Furthermore, EPA expects manufacturers to use averaging, banking, and trading programs as a means to deploy varying degrees of emission control technologies on different engines. EPA nevertheless believes that the projections presented here provide a cost estimate representative of the different approaches manufacturers may ultimately take.

2. Engine Technologies

The land-based engines that serve as the base engines for marine diesel applications will be changing as a result of new emission standards adopted for nonroad and locomotive engines. Most new land-based nonroad and locomotive engines rated over 37 kW will be subject to two new tiers of standards spanning the next ten years. These engines will be designed, manufactured, and certified to have reduced emissions. The technological challenge for developing compliant marine engines is therefore to make the necessary engine modifications for marine applications without substantially increasing emission levels, while ensuring that these emission levels are maintained over the range of potential marine operation.

Manufacturers of Category 1 engines are expected to comply with the proposed Tier 2 emission limits by conducting basic engine modifications, upgrading fuel systems, adding some degree of electronic controls, or improving aftercooling systems. Manufacturers of Category 2 engines are expected to redesign combustion chambers, improve high-pressure electronic fuel injection systems, and upgrade or add turbocharging and aftercooling. For Tier 3 emission limits, all manufacturers are expected to rely on some form of electronically controlled common rail fuel system with separate-circuit aftercooling and exhaust gas recirculation.

Except for the aftercooling changes, hardware improvements for nonroad and locomotive engines should be transferrable to marine engines, in many cases with some degree of adaptation. The analysis includes a substantial amount of development time to make adjustments for turbocharger matching, reprogramming electronic control software, optimizing for emission performance over the not-to-exceed zone, and other changes that may be needed to prepare an engine for marine applications. Also, because manufacturers will in many cases be producing a new engine design outside of the normal product development cycle, extensive development costs are included to design a marine version of a base engine, taking into account not only direct expenses for controlling emissions, but also considering some need for re-optimizing performance. Finally, since marine engines rely on seawater, not the ambient air, for rejecting heat from the engine and aftercooler, the cost of adding these systems are considered separately.

3. Estimated Costs

The projected costs of these new technologies for meeting the new emission limits are itemized in the Draft RIA and summarized in Table 16. Anticipated incremental cost impacts of the Tier 2 emission limits for the first years of production range from $2,600 to $54,000 per engine, in general with proportionally higher projected costs for larger engines. Estimated costs for Tier 3 emission limits, which are calculated incremental to the Tier 2 projections, are similar, with first-year costs ranging from $5,300 to $45,000. Long-term impacts on engine costs are expected to be much lower, dropping to levels between $1,100 and $11,000 for Tier 3 engines. Most of this cost reduction is accounted for by the fact that development time and other fixed costs dominate the cost analysis, but disappear after the projected five-year amortization period.

The cost analysis also includes an estimated burden resulting from the need to do additional maintenance work during periodic rebuilds. Complying engines will be equipped with technologies that will require replacement of hardware that is either more expensive than from earlier models, or that is only used because of emission standards. Using typical rebuild schedules, the analysis projects incremental costs for multiple rebuilds, resulting in net-present-value costs that range from $700 to $12,000. In addition to rebuild cost impacts, Table 16 includes an estimated cost burden for conducting production line testing of 1 percent of total industry-wide production.

Ship and boat builders are not expected to face any increase in costs as a result of the new emission standards. Commercial vessels are built to accommodate a wide range of engines. Customers are therefore able to order a vessel by choosing from a broad selection of engine models. Because there is a degree of customizing in the construction of commercial vessels, EPA does not expect that future production will be sensitive to the anticipated changes in engine design resulting from the new emission standards. EPA requests comment on the extent to which commercial vessel construction may be affected by new emission standards.

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[49] While EPA does not anticipate widespread, marked improvements in fuel consumption, small improvements on some engines may occur.

TABLE 16.—PROJECTED INCREMENTAL COSTS BY POWER RATING (KW)

Power rating (kW)	Tier	Incremental engine cost*	Incremental operating cost per engine (npv)
37–225	Tier 2	$2,577	$737
	Tier 3 (years 1–5)	5,303	829
	Tier 3 (year 6 and later)	1,112	829
225–560	Tier 2	4,249	1,128
	Tier 3 (years 1–5)	6,210	1,119
	Tier 3 (year 6 and later)	1,829	1,119
560–1000	Tier 2	25,319	207
	Tier 3 (years 1–5)	25,507	2,647
	Tier 3 (year 6 and later)	5,601	2,647
1000–2000	Tier 2	22,725	635
	Tier 3 (years 1–5)	26,537	4,519
	Tier 3 (year 6 and later)	10,659	4,519
2000–5000	Tier 2	54,103	12,430
	Tier 3 (years 1–5)	44,583	2,874
	Tier 3 (year 6 and later)	3,169	2,874

*Tier 3 costs are calculated incremental to Tier 2 estimates.

Characterizing these estimated costs in the context of their fraction of the total purchase price and life-cycle operating costs is helpful in gauging the economic impact of the new standards. Although the incremental cost projections in Table 16 increase dramatically with increasing power rating, they in fact represent a comparable price change relative to the total price of the engine. The estimated first-year cost increases are all at most 3 percent of estimated vessel prices, with even lower long-term effects, as described above.

Since vessel owners also decide between replacing and rebuilding existing engines, the cost impact relative to engine price is also relevant. EPA estimates that Tier 3 cost impacts will approach 10 or 15 percent of total engine prices. Once fixed costs are amortized, the cost impact drops to a range between 1 and 5 percent of total engine prices. EPA requests comment on the likelihood that these costs will affect normal rates of turnover to new engines.

4. Aggregate Costs to Society

The above analysis presents unit cost estimates for each power category. These costs represent the total set of costs borne by engine manufacturers to comply with emission standards. With current data for engine and vessel sales for each category and projections for the future, these costs can be translated into projected direct costs to the nation for the new emission standards in any year. Aggregate costs are estimated at about $19 million in the first year the new standards apply, increasing to a peak of about $57 million in 2008 as increasing numbers of engines become subject to the new standards. The following years show a drop in aggregate costs as the per-unit cost of compliance decreases, resulting in aggregate costs of about $14 million in 2015, followed by slowly growing costs due to increasing sales over time.

5. Sensitivity Analysis

There has been some concern expressed that the technologies used to meet emission requirements for land-based engines will be less effective at controlling emissions from marine engines. Some of the reasons suggested for needing a more aggressive approach include the change in duty cycle, the effects of "marinizing" an engine, and the need to comply with emission limits across not-to-exceed zones. Manufacturers could rely on injection timing retard as a technology option for achieving an additional measure of NO_X control. Also, manufacturers may choose, for example, to avoid the high R&D costs of implementing a new technology for an engine family with low sales volume by relying on timing retard as a lower-cost alternative. In addition, manufacturers using EGR may need to add exhaust gases during medium-and high-load operation to the point that there would be an increase in fuel consumption that cannot be offset by improvements such as better control of fuel injection. EPA therefore conducted a sensitivity analysis to show the costs associated with a fuel penalty resulting from relying on retarded timing or EGR.

Because the requirement to control emissions throughout an engine's operating range poses the greatest challenge at low speeds and loads, EPA calculated the costs of increasing fuel consumption by one percent at modes 2 and 3 and by three percent at mode 4 (lightest load operation). Using the weightings for the composite duty cycle, increased life-cycle fuel consumption from this net 1.0 percent fuel penalty can be calculated and then discounted to the present at a 7 percent rate. The resulting estimated net-present-value cost increase ranges from $400 for a 100 kW engine to $19,000 for a 3000 kW engine. Considering the established effectiveness of timing retard as a strategy to control NO_X emissions, this may be considered a viable approach, either as a substitute or a supplemental technology.

C. Cost-effectiveness

EPA has estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed marine standards for the same nominal power ratings of marine engines and vessels highlighted earlier in this section. This analysis has been performed only for Category 1 and Category 2 marine engines, since the proposed regulation would not apply to Category 3 engines. Chapter 6 of the Draft RIA contains a more detailed discussion of the cost-effectiveness analysis.

As described in the Draft RIA, neither costs nor emission benefits were attributed to the not-to-exceed provisions included in this proposal. The calculated cost-effectiveness of the proposed emission limits presented here therefore includes all the anticipated effects on costs and emission reductions.

1. Tier 2

For determining the cost-effectiveness of the Tier 2 portion of this proposal, only benefits beyond those achieved by the MARPOL Annex VI standard are considered. EPA believes this is a conservative estimate because EPA attributed all of the costs of the technology associated with the Tier 2 levels to this action and did not attribute any of these costs to the MARPOL Annex VI standard. For the sake of this analysis, EPA assumed that all of the increased costs were incurred to achieve $HC+NO_X$ benefits. NO_X reductions represent approximately 98 percent of the total $HC+NO_X$ emission reductions expected from the proposed standards. Table 17 presents the cost-effectiveness of the Tier 2 standards.

TABLE 17.—COST-EFFECTIVENESS OF THE PROPOSED MARINE TIER 2 STANDARDS FOR HC AND NO_X

Nominal power (kW)	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness	Cost-effectiveness without non-emission benefits
100	$1,938	4.3	$449	$738
400	3,016	26	116	201
750	22,713	80	283	317
1500	20,386	267	76	86
3000	47,754	829	58	76

Weighting the projected cost and emission benefit numbers presented above by the populations of the individual power categories, EPA calculated the cost-effectiveness of the proposed $HC+NO_X$ standards for Category 1 and 2 both separately and combined. Table 18 contains the resulting aggregate cost-effectiveness results for the proposed Tier 2 standards.

TABLE 18.—AGGREGATE COST-EFFECTIVENESS FOR THE PROPOSED MARINE TIER 2 STANDARDS FOR HC AND NO_X

	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness
Category 1	$3,669	24	$156
Category 2	47,754	829	58
Combined	4,617	41	113

While the cost estimates described under the Economic Impacts do not take into account the observed value of performance improvements in the field, these non-emission benefits should be taken into account in the calculation of cost-effectiveness. EPA believes that an equal weighting of emission and non-emission benefits is justified for those technologies which clearly have substantial non-emission benefits, namely electronic controls, fuel injection changes, turbocharging, and engine modifications. For some or all of these technologies, a greater value for the non-emission benefits could likely be justified. This has the effect of halving the cost for those technologies in the cost-effectiveness calculation. The cost-effectiveness values in this document are based on this calculation methodology. Cost-effectiveness values are shown without adjustment for non-emission benefits in Tables 17 and 19 for comparison purposes. EPA requests comment on this approach.

2. Tier 3

As described above in the preceding section, the projected costs of complying with the proposed standards will vary by the rated power and model year (i.e., year 1 versus year 6). Therefore, the cost-effectiveness will also vary from model year to model year. For comparison purposes, the discounted costs, emission reductions, and cost-effectiveness of the marine Tier 3 $HC+NO_X$ standards are shown in Table 19 for the same model years discussed in the preceding section. The cost-effectiveness of the proposed Tier 3 standards has been calculated incrementally to the costs and benefits associated with the proposed Tier 2 standards. This analysis was performed similarly to the Tier 2 analysis. According to this analysis, the cost-effectiveness of the proposed Tier 3 program is roughly equivalent to that of the proposed Tier 2 program. Table 19 presents the cost-effectiveness results for the five nominal power ratings.

TABLE 19.—COST-EFFECTIVENESS OF THE PROPOSED MARINE TIER 3 STANDARDS FOR HC AND NO_X

Nominal power (kW)	Model year grouping	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness	Cost-effectiveness without non-emission benefits
100	1 to 5	$4,831	4.2	$1,155	$1,407
	6+	1,166		279	451
400	1 to 5	5,804	30	196	236
	6+	1,726		58	99
750	1 to 5	23,834	77	308	351
	6+	4,831		62	103
1500	1 to 5	24,279	136	178	216
	6+	8,402		62	112

TABLE 19.—COST-EFFECTIVENESS OF THE PROPOSED MARINE TIER 3 STANDARDS FOR HC AND NO_X—Continued

Nominal power (kW)	Model year grouping	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness	Cost-effectiveness without non-emission benefits
3000	1 to 5	36,652	290	127	163
	6+	4,553		16	20

As with Tier 2, EPA calculated the cost-effectiveness of the proposed Tier 3 $HC+NO_X$ standards for Category 1 and 2 both separately and combined by weighting the projected cost and emission benefits by the populations of the individual power categories. Table 20 contains the resulting aggregate cost-effectiveness results for the proposed Tier 3 standards.

TABLE 20.—AGGREGATE COST-EFFECTIVENESS FOR THE PROPOSED MARINE TIER 3 STANDARDS FOR HC AND NO_X

	Model year grouping	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness
Category 1	1 to 5	$6,503	20	$327
	6+	1,709		87
Category 2	1 to 5	36,652	290	127
	6+	4,553		16
Combined	1 to 5	7,151	26	278
	6+	1,799		70

3. Comparison to Other Programs

In an effort to evaluate the cost-effectiveness of the $HC+NO_X$ controls for marine engines, EPA has summarized the cost-effectiveness results for five other recent EPA mobile source rulemakings that required reductions in NO_X (or $NMHC+NO_X$) emissions. The heavy-duty vehicle portion of the Clean Fuel Fleet Vehicle Program yielded a cost-effectiveness of approximately $1,500 per ton of NO_X. The most recent $NMHC+NO_X$ standards for highway heavy-duty diesel engines yielded a cost-effectiveness of $100–$600 per ton of $NMHC+NO_X$. The newly adopted standards for locomotive engines yielded a cost-effectiveness of $160–$250 per ton of NO_X. Finally, the recent standards for nonroad engines reported a cost-effectiveness of $410–$600 per ton. The cost-effectiveness of the new $HC+NO_X$ standards for marine diesel engines presented above is more favorable than the cost-effectiveness than any of the other recent programs.

EPA has also summarized the cost-effectiveness results for three other recent EPA mobile source rulemakings that required reductions in PM emissions. The cost-effectiveness of the most recent urban bus engine PM standard was estimated to be $10,000–$16,000 per ton, and the cost-effectiveness of the urban bus retrofit/rebuild program was estimated to be approximately $25,000 per ton. The nonroad FRM reported a cost-effectiveness for PM, using the same conservative method used here for marine, of $2,300 per ton. The PM cost-effectiveness of the new emission standards presented above is more favorable than that of either of the urban bus programs and is comparable to the nonroad rule.

For comparison to other PM control strategies, EPA has also analyzed the PM cost-effectiveness of the new standards if any of the costs were attributed to PM. EPA conservatively made these calculations as if half of the increased costs were attributable to PM control. This approach effectively double-counts these costs, since the full cost of the program is assessed in the calculation of cost-effectiveness for NO_X+HC. This aggregate discounted lifetime cost-effectiveness represents the highest figure that could be expected for cost-effectiveness of the new standards and was calculated to provide an indication of the upper bound of PM cost-effectiveness values. The resulting fleet-wide discounted lifetime cost-effectiveness of the proposed PM standards is approximately $600–$2,600 per ton. This cost-effectiveness is much better than for the urban bus PM standard and the urban bus retrofit/rebuild program and is comparable to the nonroad Tier 2 standards.

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new standards are expected to have beneficial impacts with respect to crop damage, secondary particulate formation, acid deposition, eutrophication, visibility, and forests, as described earlier. Because of the difficulty of quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits. However, based on an analysis of existing studies that have estimated the value of such benefits in the past, the Agency believes that the actual monetary value of the multiple environmental and public health benefits produced by large NO_X reductions similar to those projected under this final rule will likely be greater than the estimated compliance costs.

IX. Public Participation

A. Comments and the Public Docket

Publication of this document opens a formal comment period for this proposal. EPA will accept comments for the period indicated under **DATES** above. The Agency encourages all parties that have an interest in the program described in this document to offer comment on all aspects of this rulemaking. Throughout this proposal are requests for specific comment on various topics.

EPA attempted to incorporate all the comments received in response to the ANPRM, though not all comments are addressed directly in this document. Anyone who has submitted comments on the ANPRM, or any of EPA's previous publications related to marine diesel engines, and feels that those comments have not been adequately addressed is encouraged to resubmit comments as appropriate.

The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. The Agency also encourages commenters that disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–97–50 before the date specified above.

Commenters wishing to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see FOR FURTHER INFORMATION CONTACT) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

B. Public Hearing

The Agency will hold a public hearing as noted under DATES above. Any person desiring to present testimony at the public hearing is asked to notify the contact person listed above at least five business days prior to the date of the hearing. This notification should include an estimate of the time required for the presentation of the testimony and any need for audio/visual equipment. EPA suggests that sufficient copies of the statement or material to be presented be available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material prior to the hearing.

The hearing will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearing for scheduling the order of testimony. A written transcript of the hearing will be prepared. The official record of the hearing will be kept open for 30 days after the hearing to allow submittal of supplementary information.

X. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposal is a "significant regulatory action." If implemented as proposed, EPA's estimates show total societal costs for most years between $15 million and $20 million, with peak costs reaching about $57 million in 2008. This action was submitted to the Office of Management and Budget for review and a Draft RIA has been prepared and is available in the docket associated with this rulemaking. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this proposal.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For the reasons set out below, this proposed rule would not have a significant impact on a substantial number of small entities.

EPA has identified five types of entities that may be affected by the proposed rule: engine manufacturers, engine dressers, post-manufacture marinizers, commercial vessel builders, and commercial boat builders. A sixth group of entities, recreational vessel builders, is not considered in this analysis because, as described in Section III.B.1, above, EPA is proposing to exempt these engines from the proposed emission control program.

Using the Small Business Administration definition of small for this industry sector (fewer than 500 employees), one group of entities, marine engine manufacturers, presents no small business impacts concerns because all of the manufacturers are large.

There are numerous entities with fewer than 500 employees that manufacture commercial vessels and commercial boats.[50] However, the proposed emission control program is expected to impose very little additional cost on these entities. This is because, according to discussions with several of these vessel and boat builders as well as with one of their trade associations, the production of commercial vessels is flexible enough to accommodate physical changes to the engine without vessel redesign.

As described in Section III.C.2 above, engine dressers are companies that adapt a land-based diesel engine for use in the marine environment by adding mounting hardware, a marine cooling system, a generator, or propeller gears, but without changing the engine in ways that may affect emissions (see Section III.B.2, above). These companies are typically small, regional companies, with few employees and relatively small annual sales in terms of both dollars and units. Because these companies are proposed to be exempt from the certification and compliance programs set out in today's action, EPA believes that they will incur very minor costs as a result of the proposed program. Their only compliance burden consists of an annual report that must be submitted to

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[50] Commercial vessels are larger merchant vessels, typically exceeding 400 feet in length and generally used in waterborne trade and/or passenger transport. Commercial boats are smaller service, industrial, and fishing vessels generally used in inland and coastal waters. A more in-depth description of these industry sectors in contained in "Industry Characterization: Commercial Marine Vessel Manufacturers" prepared by ICF Incorporated for US Environmental Protection Agency, Contract No. 68–C5–0010, Work Assignment 211, September 1998 (Docket No. A–97–50).

EPA to demonstrate that they meet the criteria for the engine dresser exemption described in Section III.B.2. This reporting requirement is expected to impose very little additional cost on these companies.

The group of small entities likely to be affected by the proposed rule are post-manufacture marinizers (PMM). Unlike engine dressers, PMM modify a land-based engine for use in the marine environment by changing it in ways that may affect emissions. This includes, but is not limited to, changes to the fuel or cooling systems. The following discussion of the impacts on small post-manufacture marinizers is derived from an impact assessment prepared for this rulemaking by ICF Incorporated and discussions with small PMM.[51]

Through conversations with engine manufacturers and vessel builders, EPA initially identified twelve small post-manufacture marinizers. Four of these were subsequently eliminated from the Agency's PMM impact analysis (two were eliminated because there were subsidiary companies of other companies on the list; two others were eliminated because they do not produce Category 1 marine engines). The eight remaining companies were used to develop a model small company, for purposes of exploring the impact of this rulemaking. Using this model small company as a guide, it was estimated that average compliance costs would range from 1.3 percent to 3.9 percent, depending on the compliance cost scenario used.[52] EPA thus concludes that, provided the compliance burdens of these companies can be reduced, an impact of approximately 1.3 percent can be anticipated. As discussed above, this proposal contains many flexibility provisions for small post-manufacture marinizers, including an expanded definition of engine family, which is expected to reduce the number of certification tests these companies will be required to do; a streamlined certification process, beginning the year after the implementation of the emissions limits provided the emissions of their highest emitting engine has not changed; an extra year for compliance; and special hardship provisions.

Because the number of companies examined is so small, EPA also performed an analysis using company-specific data instead of the model company. According to this data, in the least costly compliance scenario, four small PMM may be affected by more than 3 percent of sales, 2 companies by 1–3 percent of sales, and 2 companies less than 1 percent of sales,. Of the four companies originally projected to be affected by more than 3 percent of sales, two were eliminated because they are, in fact, engine dressers; hence, the original estimate of 3 percent is an overstatement of costs for these companies. As discussed above, engine dressers would only be subject to a reporting requirement, which is expected to impose very little additional cost. Consequently, it is expected that two small companies may be affected by more than 3 percent of annual sales. However, it may be possible for these companies to reduce the impacts of this rule further. For example, these companies could marinize a cleaner engine, thus reducing the design and development costs associated with bringing a previous tier engine to the proposed emission limits. Alternatively, they may be able to work more closely with the base engine manufacturer to reduce the need for extensive redesign of their marinization process.

Subsequent to completion of the ICF impact assessment, EPA identified several other small PMM (see the Draft Regulatory Assessment for a complete list of small PMM). However, analysis of their financial data does not change the above conclusion that most small PMM could avoid high compliance costs by applying the proposed small PMM flexibility provisions. Therefore, EPA believes it is appropriate to certify this rulemaking as not having a significant economic impact on a substantial number of small companies.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts. The Agency is continuing its efforts to notify other small business engine and equipment manufacturers of this rule and inform them of their opportunities for providing feedback to the Agency.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request has been prepared by EPA, and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

The information being collected is to be used by EPA to ensure that new marine diesel engines comply with applicable emissions standards through certification requirements and various subsequent compliance provisions.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 589 hours per response, with collection required annually. The estimated number of respondents is 32. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 11, 1998, a comment to OMB is best ensured of having its full effect if OMB receives it by January 11, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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[51] Characterization and Small Business Impact Assessment for Small and Large Marine Compression Ignition Engine Manufacturers/Marinizers, prepared by ICF Incorporated for U.S. Environmental Protection Agency, Contract Number 68–C5–0010, Work Assignment Number 211, September 1998 (Air Docket A–97–50).

[52] Three cost scenarios were explored: $100,000, $200,000, and $300,000 per engine family.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L.104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The rule does not impose any enforceable duties on State, local, or tribal governments, i.e., they manufacture no engines and are therefore not required to comply with the requirements of this rule. For the same reason, EPA has determined that this rule also contains no regulatory requirements that might significantly or uniquely affect small governments. EPA projects that annual economic effects will be far less than $100 million. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. As described in Section V.E. above, ISO standards are a potentially applicable voluntary consensus standard. The Agency has decided, however, not to propose ISO procedures in this rulemaking. The Agency has determined that these procedures would be impractical because they rely too heavily on reference testing conditions. Because the test procedures in these regulations need to represent in-use operation typical of operation in the field, they must be based on a range of ambient conditions. EPA has determined that the ISO procedures are not broadly usable in their current form, and therefore cannot be adopted by reference. EPA has instead chosen to rely on the procedures outlined in 40 CFR Part 89, Subparts D and E. EPA is hopeful that future ISO test procedures will be developed that are usable for the broad range of testing needed, and that such procedures could then be adopted by reference. EPA also expects that any development of revised test procedures will be done in accordance with ISO procedures and in a balanced manner and thus include the opportunity for involvement of a range of interested parties (potentially including parties such as industry, EPA, state governments, and environmental groups) so that the resulting procedures can represent these different interests.

F. Protection of Children

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to a rule that is determined to be "economically significant," as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. Moreover, this rule is determined not to be economically significant under Executive Order 12866.

G. Enhancing the Intergovernmental Partnership under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule would not create a mandate on State, local or tribal governments. The rule would not impose any enforceable duties on these entities, because they do not manufacture any engines that are subject to this rule. This rule would be implemented at the federal level and impose compliance obligations only on private industry. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule would not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule would be implemented at the federal level and impose compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XI. Statutory Authority

In accordance with section 213(a) of the Clean Air Act, 42 U.S.C. 7547(a), EPA conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991. Based on the results of that study, EPA determined that emissions of NO_X, VOCs (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires EPA to promulgate (and from time to time revise) emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in EPA's judgment cause or contribute to such air pollution. EPA has determined that marine diesel engines rated over 37 kW "cause or contribute" to such air pollution. (See the June 1994 final rule and Section II.A. above).

Where EPA determines that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that EPA determines cause or contribute to such air pollution. In the June 1994 final rule, EPA made this determination for emissions of PM and smoke from nonroad engines in general and for diesel nonroad engines rated over 37 kW. With this document, EPA is making the same findings for marine diesel engines. (See Section II.A. above).

List of Subjects in 40 CFR Part 94

Environmental protection, Administrative practice and procedure, Confidential business information, Diesel fuel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: November 24, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended by adding part 94 as set forth below.

PART 94—CONTROL OF AIR POLLUTION FROM MARINE COMPRESSION-IGNITION ENGINES

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Appendix I to Part 94—Emission-Related Engine Parameters and Specifications

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—General Provisions for Emission Regulations for Compression-ignition Marine Engines

§ 94.1 Applicability.

(a) Except as noted in paragraphs (b) and (c) of this section, the provisions of this part apply to manufacturers, rebuilders, owners and operators of:

(1) Marine compression-ignition propulsion engines manufactured on or after January 1, 2004;

(2) Marine compression-ignition auxiliary engines manufactured on or after January 1, 2004; and

(3) Marine vessels manufactured on or after January 1, 2004 and which include a compression ignition engine.

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply with respect to the engines identified in paragraphs (a)(1) through (3) of this section where such engines are:

(1) Category 3 marine engines;

(2) Engines rated below 37 kW; or

(3) Engines on foreign vessels.

(c) The provisions of subpart L of this part apply to all persons with respect to the engines identified in paragraphs (a)(1) through (3) of this section.

(d) The provisions of this part do not apply to any persons with respect to the engines not identified in paragraphs (a)(1) through (3) of this section.

(e) The prohibition specified in § 94.1103(a)(6) applies to all persons with respect to recreational marine engines. Notwithstanding the provision of paragraph (c) of this section, requirements or prohibitions other than the prohibition specified in § 94.1103(a)(6) of this part do not apply with respect to recreational marine engines.

§ 94.2 Definitions.

(a) The definitions of this section apply to this subpart. They also apply to all subparts of this part, except where noted otherwise.

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act:

Act means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Adjustable Parameter means any device, system, or element of design which is physically or electronically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing.

Administrator means the Administrator of the Environmental Protection Agency or his/her authorized representative.

Aftertreatment system or *aftertreatment component* or *aftertreatment technology* means any system or component or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Applicable standard means a standard to which an engine is subject; or, where an engine is certified to another standard or FEL, applicable standard means the other standard or FEL to which the engine is certified, as allowed by § 94.8. This definition does not apply to subpart D of this part.

Auxiliary means relating to a marine engine that is not a propulsion engine.

Auxiliary emission control device (AECD) means any element of design which senses temperature, vessel speed, engine RPM, atmospheric pressure, manifold pressure or vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system (including, but not limited to injection timing); or any other feature that causes in-use emissions to be higher than those measured under test conditions.

Averaging means the exchange of emission credits among engine families within a given manufacturer's product line.

Banking means the retention of emission credits by a credit holder for use in future calendar year averaging or trading as permitted by the regulations in this part.

Base engine means a land-based engine to be marinized, as configured prior to marinization.

Blue Sky Series engine means an engine meeting the requirements of § 94.7(e).

Calibration means the set of specifications, including tolerances, specific to a particular design, version, or application of a component, or components, or assembly capable of functionally describing its operation over its working range. This definition does apply to subpart B of this part.

Category 1 means relating to a marine engine with a rated power greater than or equal to 37 kilowatts and a specific engine displacement less than 5.0 liters per cylinder.

Category 2 means relating to a marine engine with a specific engine displacement greater than or equal to 5.0 liters per cylinder but less than 20 liters per cylinder.

Category 3 means relating to a marine engine with a specific engine displacement greater than or equal to 20 liters per cylinder.

Commercial marine engine means a marine engine that is not a recreational marine engine.

Compression-ignition means relating to a type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle to regulate intake air flow for controlling power during normal operation is indicative of a compression-ignition engine.

Configuration means any subclassification of an engine family which can be described on the basis of gross power, emission control system, governed speed, injector size, engine calibration, and other parameters as designated by the Administrator.

Constant-speed engine means an engine that is governed to operate only at a single rated speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or engine lubrication system.

Defeat device means an AECD or other control feature that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal engine operation and use, unless the AECD or other control feature has been identified by the manufacturer in the application for certification, and:

(1) Such conditions are substantially represented by the portion of the applicable test cycle of § 94.105 during which the applicable emission rates are measured;

(2) The need for the AECD or other control feature is justified in terms of protecting the engine or vessel against damage or accident; or

(3) The AECD or other control feature does not go beyond the requirements of engine starting.

Deterioration factor means the difference between exhaust emissions at the end of useful life and exhaust emissions at the low hour test point expressed as either: the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low mileage test point (for multiplicative deterioration factors); or the difference between exhaust emissions at the end of useful life and exhaust emissions at the low hour test point (for additive deterioration factors).

Diesel fuel means any fuel suitable for use in diesel engines which is commonly or commercially known or sold as diesel fuel.

Dress means to modify a land-based engine for use in a marine vessel, where such modification would not reasonably be expected to potentially affect emissions. This definition does not apply for engines that are not certified to Tier 2 or later standards.

Dresser means any entity that dresses an engine.

Emission control system means those devices, systems or elements of design which control or reduce the emission of substances from an engine. This includes, but is not limited to, mechanical and electronic components and controls, and computer software.

Emission credits means the amount of emission reduction or exceedance, by an engine family, below or above the emission standard, respectively, as calculated under subpart D of this part. Emission reductions below the standard are considered as "positive credits," while emission exceedances above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production/sales volume of the engine family. "Reserved credits" are emission credits generated within a calendar year waiting to be reported to EPA at the end of the calendar year. "Actual credits" refer to emission credits based on actual applicable production/sales volume as contained in the end-of-year reports submitted to EPA.

Emission-data engine means an engine which is tested for purposes of emission certification or production line testing.

Emission-related defect means a defect in design, materials, or workmanship in a device, system, or assembly which affects any parameter or specification enumerated in Appendix I of this part.

Emission-related maintenance means that maintenance which substantially affects emissions or which is likely to affect the deterioration of the engine or vessel with respect to emissions.

Engine family means a group of engine configurations that are expected to have similar emission characteristics throughout the useful lives of the engines (see § 94.204), and that are (or were) covered (or requested to be covered) by a specific certificate of conformity.

Engineering analysis means a summary of scientific and/or engineering principles and facts that support a conclusion made by a manufacturer, with respect to compliance with the provisions of this part.

EPA Enforcement Officer means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator or his/her designee.

Exhaust emissions means substances (i.e., gases and particles) emitted to the atmosphere from any opening downstream from the exhaust port or exhaust valve of an engine.

Exhaust gas recirculation means an emission control technology that reduces emissions by routing gases that had been exhausted from the combustion chamber(s) back into the engine to be mixed with incoming air prior to or during combustion. The use of valve timing to increase the amount of residual exhaust gas in the combustion chamber(s) that is mixed with incoming air prior to or during combustion is not considered to be exhaust gas recirculation for the purposes of this part.

Family Emission Limit (FEL) means an emission level declared by the certifying manufacturer to serve in lieu of an otherwise applicable emission standard for certification and compliance purposes in the averaging, banking and trading program. FELs are expressed to the same number of decimal places as the applicable emission standard.

Foreign trade vessel means a vessel that spends less than 25 percent of its operating time within 320 nautical kilometers of U.S. territory, and which does not operate solely between the United States, Canada, Mexico, Bermuda, or the Bahamas.

Foreign vessel means a vessel of foreign registry or a vessel operated under the authority of a country other than the United States.

Fuel system means the combination of fuel tank(s), fuel pump(s), fuel lines and filters, pressure regulator(s), and fuel injection components, fuel system vents, and any other component involved in the delivery of fuel to the engine.

Green Engine Factor means a factor that is applied to emission measurements from an engine that has had little or no service accumulation. The Green Engine Factor adjusts emission measurements to be equivalent to emission measurements from an engine that has had approximately 300 hours of use.

Identification number means a specification (for example, model number/serial number combination) which allows a particular engine to be distinguished from other similar engines.

IMO NO$_X$ Technical Code means the "Technical Code on Control of Emission of Nitrogen Oxides From Marine Diesel Engines", as adopted on September 26, 1997 by the International Maritime Organization in conference Resolution 2, Conference of the Parties to the International Convention for the Prevention of Pollution from Ship, 1973 as modified by the protocol of 1978 relating thereto (reported in MP/Conf. 3/35, 22 October 1997). The IMO NO$_X$ Technical Code has been incorporated by reference at § 94.5 of this part.

Importer means an entity or person who imports engines from a foreign country into the United States (including its territories).

Intermediate Speed means peak torque speed if peak torque speed occurs from 60 to 75 percent of rated speed. If peak torque speed is less than 60 percent of rated speed, intermediate speed means 60 percent of rated speed.

If peak torque speed is greater than 75 percent of rated speed, intermediate speed means 75 percent of rated speed.

Low hour engine means an engine during the interval between the time that normal assembly operations and adjustments are completed and the time that 300 additional operating hours have been accumulated (including hours accumulated during emission testing, if performed).

Malfunction means a condition in which the operation of a component in an engine occurs in a manner other than that specified by the certifying manufacturer (e.g., as specified in the application for certification); or the operation of engine in that condition.

Manufacturer means any person engaged in the manufacturing or assembling of new engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines. The term manufacturer includes post-manufacturer marinizers, but does not include any dealer with respect to new engines received by such person in commerce.

Marine means relating to a vessel or an engine that is installed or intended to be installed on a vessel.

Marine engine means a diesel engine that is installed or intended to be installed on a vessel. This definition does not include portable auxiliary engines for which the fueling, cooling and exhaust systems are not integral parts of the vessel.

Marine vessel has the meaning specified in the General Provisions of the United States Code, 1 U.S.C. 3.

Maximum rated power means the maximum brake power output of an engine.

Method of aspiration means the method whereby air for fuel combustion enters the engine (e.g., naturally aspirated or turbocharged).

Model year means the manufacturer's annual new model production period which includes January 1 of the calendar year, ends no later than December 31 of the calendar year, and does not begin earlier than January 2 of the previous calendar year. Where a manufacturer has no annual new model production period, model year means calendar year.

New marine engine means:

(1)(i) An engine, the equitable or legal title to which has never been transferred to an ultimate purchaser;

(ii) An engine placed in a vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(iii) An engine that has not been placed into service on a vessel.

(2) Where the equitable or legal title to an engine or vessel is not transferred to an ultimate purchaser prior to its being placed into service, the engine ceases to be new after it is placed into service.

(3) With respect to imported engines, the term "new marine engine" means a engine that is not covered by a certificate of conformity under this part at the time of importation, and that was manufactured after the compliance date of the emission standards in this part which is applicable to such engine (or which would be applicable to such engine had it been manufactured for importation into the United States).

New vessel means a vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, the vessel ceases to be new when it is placed into service.

Nonconforming marine engine means a marine engine which is not covered by a certificate of conformity prior to importation or being offered for importation (or for which such coverage has not been adequately demonstrated to EPA); or a marine engine which was originally covered by a certificate of conformity, but which is not in a certified configuration, or otherwise does not comply with the conditions of that certificate of conformity. (Note: Domestic marine engines which are not covered by a certificate of conformity prior to their introduction into U.S. commerce are considered to be noncomplying marine engines.)

Oxides of nitrogen means nitric oxide and nitrogen dioxide. Oxides of nitrogen are expressed quantitatively as if the nitric oxide were in the form of nitrogen dioxide (oxides of nitrogen are assumed to have a molecular weight equivalent to nitrogen dioxide).

Post-manufacture marinizer means a person who produces a marine engine by substantially modifying an engine, whether certified or uncertified, complete or partially complete, and is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine. For the purpose of this definition, "substantially modify" means changing a Tier 2 or later engine in a way that could reasonably be expected to potentially change engine emission characteristics, or changing an uncertified or Tier 1 in any way. Vessel manufacturers that substantially modify engines are post-manufacturer marinizers.

Power assembly means the components of an engine in which combustion of fuel occurs, and consists of the cylinder, piston and piston rings, valves and ports for admission of charge air and discharge of exhaust gases, fuel injection components and controls, cylinder head and associated components.

Presentation of credentials means the display of the document designating a person as an EPA enforcement officer.

Primary fuel means that type of fuel (e.g., petroleum distillate diesel fuel) that is expected to be consumed in the greatest quantity (volume basis) when the engine is operated in use.

Propulsion means relating to an engine that moves a vessel through the water or directs the movement of a vessel.

Rated power means the maximum brakepower output of an engine.

Rated speed is the maximum test speed defined in § 94.107.

Rebuilder means any person that rebuilds or remanufactures an engine.

Recreational marine engine means a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel, and which is permanently labeled as follows:

"THIS RECREATIONAL ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS FOR NONRECREATIONAL VESSELS INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."

Recreational vessel means a vessel being manufactured or operated primarily for pleasure, or being leased, rented or chartered to another for the latter's pleasure (except where the vessel is leased, rented, or chartered for more than six passengers). Vessels for hire which can carry more than six passengers, whether or not they ever actually do, are not recreational vessels. For this definition the term "operated primarily for pleasure," does not include vessels used solely for competition or used at any time in any other way to generate income or revenue in any way not associated with the hiring out of the vessel to other people for their pleasure.

Service life means the total life of an engine. Service life begins when the engine is originally manufactured and continues until the engine is permanently removed from service.

Small manufacturer means a manufacturer that is classified as a small business by the Small Business Administration.

Specific emissions means emissions expressed on the basis of observed brake power, using units of g/kW-hr. Observed brake power measurement includes accessories on the engine if these accessories are required for running an emission test (except for the cooling fan). When it is not possible to test the engine in the gross conditions, for example if the engine and transmission form a single integral unit, the engine may be tested in the net condition. Power corrections from net to gross conditions will be allowed with prior approval of the Administrator.

Specified by a certificate of conformity or *specified in a certificate of conformity* means stated or otherwise specified in a certificate of conformity or an approved application for certification.

Test engine means an engine in a test sample.

Test sample means the collection of engines or vessels selected from the population of an engine family for emission testing.

Tier 2 means relating to an engine subject to the Tier 2 emission standards listed in § 94.8.

Tier 3 means relating to an engine subject to the Tier 3 emission standards listed in § 94.8.

Total hydrocarbon equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Trading means the exchange of engine emission credits between credit holders.

Ultimate purchaser means, with respect to any new engine or vessel, the first person who in good faith purchases such new engine or vessel for purposes other than resale.

United States. United States includes the customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

U.S.-directed production volume means the number of marine engine units, subject to this part, produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

Useful life means the period during which an engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as hours of use and years. It is the period during which a new engine is required to comply with all applicable emission standards. (Note: § 94.9(a) specifies minimum requirements for useful life values.)

Voluntary emission recall means a repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer to remedy any emission-related defect for which notification of engine or vessel owners has been provided.

§ 94.3 Abbreviations.

The abbreviations of this section apply to all subparts of this part and have the following meanings:

AECD—Auxiliary emission control device
API—American Petroleum Institute
ASTM—American Society for Testing and Materials
°C—Degrees celsius
CI—Compression ignition
CO—Carbon monoxide
CO$_2$—Carbon dioxide
disp.—volumetric displacement of an engine cylinder
EGR—Exhaust gas recirculation
EP—End point
EPA—Environmental Protection Agency
FEL—Family emission limit
ft—foot or feet
FTP—Federal Test Procedure
g—gram(s)
g/kW-hr—Grams per kilowatt hour
gal—U.S. gallon
h—hour(s)
HC—hydrocarbon
Hg—Mercury
hp—horsepower
ICI—Independent Commercial Importer
in—inch(es)
K—Kelvin
kg—kilogram(s)
km—kilometer(s)
kPa—kilopascal(s)
kW—kilowatt
m—meter(s)
max—maximum
mg—milligram(s)
min—minute
ml—milliliter(s)
mm—millimeter
NIST—National Institute for Standards and Testing
NMHC-Non-methane hydrocarbons
NTIS—National Technical Information Service
NO—nitric oxide
NO$_2$—nitrogen dioxide
NO$_X$—oxides of nitrogen
No.—number
O$_2$—oxygen
pct—percent
PM—particulate matter
PMM—post-manufacturer marinizer
ppm—parts per million by volume
ppmC—parts per million, carbon
rpm—revolutions per minute
s—second(s)
SAE—Society of Automotive Engineers
SEA—Selective Enforcement Auditing
SI—International system of units (i.e., metric)
THC—Total hydrocarbon
THCE—Total hydrocarbon equivalent
U.S.—United States
U.S.C.—United States Code
vs—versus
W—watt(s)
wt—weight

§ 94.4 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this part is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this part is confidential, a person or manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this part is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR part 2, subpart B.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

§ 94.5 Reference materials.

(a) The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part:

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. The table follows:

Document number and name	40 CFR part 94 reference
ASTM D86–97: "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure"	§ 94.108
ASTM D93–97: "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester"	§ 94.108
ASTM D129–95: "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)"	§ 94.108
ASTM D287–92: "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method)	§ 94.108
ASTM D445–97: "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)"	§ 94.108
ASTM D613–95: "Standard Test Method for Cetane Number of Diesel Fuel Oil"	§ 94.108
ASTM D1319–98: "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption"	§ 94.108
ASTM D2622–98: "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry"	§ 94.108
ASTM D5186–96: "Standard Test Method for "Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Tubine Fuels By Supercritical Fluid Chromatography".	§ 94.108
ASTM E29–93a: "Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications"	§§ 94.9, 94.305, 94.509

(2) *IMO material.* The following table sets forth material from the International Maritime Organization that has been incorporated by reference. The first column lists the name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR,U.K. The table follows:

Document number and name	40 CFR part 94 reference
Technical Code on Control of Emission of Nitrogen Oxides From Marine Diesel Engines, as adopted on September 26, 1997 by the International Maritime Organization in conference Resolution 2, Conference of the Parties to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto (reported in MP/Conf. 3/35, 22 October 1997).	§ 94.105

§ 94.6 Regulatory structure.

This section provides an overview of the regulatory structure of this part.

(a) The regulations of this part 94 are intended to control emissions from in-use marine engines.

(b) The engines for which the regulations of this part (i.e., 40 CFR part 94) apply are specified by § 94.1, and by the definitions of § 94.2. The point at which an engine or vessel becomes subject to the regulations of this part is determined by the definitions of new marine engine and new marine vessel in § 94.2. Subpart J of this part contains provisions exempting certain engines and vessels from the emission standards in this part under special circumstances.

(c) To comply with the requirements of this part, a manufacturer must demonstrate to EPA that the engine meets the applicable standards of §§ 94.7 and 94.8, and all other requirements of this part. The requirements of this certification process are described in subparts C and D of this part.

(d) Subpart B of this part specifies procedures and equipment to be used for conducting emission tests for the purpose of the regulations of this part.

(e) Subparts E, F, and H of this part specify requirements for manufacturers after certification; that is during production and use of the engines.

(f) Subpart I of this part contains requirements applicable to the importation of marine engines covered by the provisions of this part.

(g) Subpart L of this part describes prohibited acts and contains other enforcement provisions relating to marine engines and vessels covered by the provisions of this part.

(h) Unless specified otherwise, the provisions of this part apply to all marine engines and vessels subject to the emission standards of this part.

§ 94.7 General standards and requirements.

(a) Marine engines and vessels may not be equipped with a defeat device.

(b) An engine may not be equipped with an emission control system for the purpose of complying with emission standards if such a system will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(c) An engine with an emission control system may not emit any noxious or toxic substance which would not be emitted in the operation of the engine in the absence of such a system, except as specifically permitted by regulation.

(d) All engines subject to the emission standards of this part shall be equipped with a connection in the engine exhaust system that is located downstream of the engine and before any point at which the exhaust contacts water (or any other cooling/scrubbing medium) for the temporary attachment of gaseous and/or particulate emission sampling equipment. This connection shall be internally threaded with standard pipe threads of a size not larger than one-half inch, and shall be closed by a pipe-plug when not in use.

(e) All engines subject to the emission standards of this part shall broadcast on engine's controller area networks actual engine percent torque and actual engine speed.

§ 94.8 Exhaust emission standards.

(a) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY EXHAUST EMISSION STANDARDS (G/KW-HR)

Subcategory liters/cylinder	Tier	Model year [a]	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
Power ≥ 37 kW and disp. <0.9	Tier 2	2004	7.2	5.0	0.40
	Tier 3	2008	4.0	5.0	....
0.9 ≤ disp. <1.2	Tier 2	2004	7.2	5.0	0.30
	Tier 3	2008	4.0	5.0	
1.2 ≤ disp. <1.5	Tier 2	2004	7.2	3.5	0.20
	Tier 3	2008	4.0	3.5	
1.5 ≤ disp. <2.0	Tier 2	2004	7.2	3.5	0.20
	Tier 3	2008	4.0	3.5	
2.0 ≤ disp. <2.5	Tier 2	2004	7.2	3.5	0.20
	Tier 3	2008	4.0	3.5	....
2.5 ≤ disp. <5.0	Tier 2	2006	7.2	3.5	0.20
	Tier 3	2010	5.0	3.5	
5.0 ≤ disp. <20	Tier 2	2006	7.2	2.0	0.27
	Tier 3	2010	5.0	2.0	

[a] The model years listed indicate the model years for which the specified tier of standards take effect.

(b) Exhaust emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter (and smoke, as applicable) shall be measured using the procedures set forth in subpart B of this part.

(c) In lieu of the NO_X standards, THC+NO_X standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart D of this part. The manufacturer shall then set a family emission limit (FEL) which will serve as the standard for that engine family.

(d)(1) Naturally aspirated engines to which this subpart is applicable shall not discharge crankcase emissions into the ambient atmosphere, unless such crankcase emissions are permanently routed into the exhaust and included in all exhaust emission measurements.

(2) For engines using turbochargers, pumps, blowers, or superchargers for air induction, if the engine discharges crankcase emissions into the ambient atmosphere in use, these crankcase emissions shall be included in all exhaust emission measurements.

(e) Exhaust emissions from engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed 1.25 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106.

(f) The following paragraphs define the requirements for low-emitting Blue Sky Series engines.

(1) *Voluntary standards.* Engines may be designated "Blue Sky Series" engines through the 2007 model year by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing.

TABLE A–2.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated brake power (kW)	THC+NO_X	PM
power ≥ 37 kW disp. <0.9	4.0	0.24
0.9 ≤ disp. <1.2	4.0	0.18
1.2 ≤ disp. <2.5	4.0	0.12
2.5 ≤ disp. <5.0	5.0	0.12
5.0 ≤ disp. <20	5.0	0.16

(2) *Additional standards.* Blue Sky Series engines are subject to all provisions that would otherwise apply under this part.

(3) *Test procedures.* Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator.

(g) *Standards for alternative fuels.* The standards described in this section apply to compression-ignition engines, irrespective of fuel, with the following two exceptions:

(1) Engines fueled with natural gas shall comply with NMHC+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section; and

(2) Engines fueled with alcohol fuel shall comply with THCE+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section.

§ 94.9 Compliance with emission standards.

(a) The general standards and requirements in § 94.7 and the emission standards in § 94.8 apply to each new engine throughout its useful life period. The useful life is specified as hours and years, and ends when either of the values (hours or years) is exceeded.

(1) The minimum useful life in terms of hours is equal to 10,000 hours for Category 1 and 20,000 hours for Category 2. The minimum useful life in terms of years is 10 years.

(2) The manufacturer shall specify a longer useful life if the engine is designed to remain in service longer than the applicable minimum useful life. A manufacturer's recommended time to remanufacture/rebuild which is longer than the minimum useful life is one indicator of a longer design life.

(b) Certification is the process by which manufacturers apply for and obtain certificates of conformity from EPA, which allows the manufacturer to introduce into commerce new marine engines for sale or use in the U.S.

(1) Compliance with the applicable emission standards by an engine family shall be demonstrated by the certifying manufacturer before a certificate of conformity may be issued under § 94.208. Manufacturers shall demonstrate compliance using emission data, measured using the procedures specified in subpart B of this part, from a low hour engine. A development engine that is equivalent in design to the marine engines being certified may be used for Category 2 certification.

(2) The emission values to compare with the standards shall be the emission values of a low hour engine, or a development engine, adjusted by the deterioration factors developed in accordance with the provisions of § 94.219. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–93a (incorporated by reference at § 94.5), to the same number of significant figures as contained in the applicable standard.

(c) Upon request by the manufacturer, the Administrator may limit the applicability of exhaust emission requirements of § 94.8(e) as necessary for safety or to otherwise protect the engine.

§ 94.10 Warranty period.

Warranties imposed by § 94.1107 shall apply for a period of hours equal to 50 percent of the useful life in hours or a period of years equal to 50 percent of the useful life in years, whichever comes first.

§ 94.11 Requirements for rebuilding certified engines.

(a) The provisions of this section apply with respect to engines subject to the standards prescribed in § 94.8 and are applicable to the process of engine rebuilding (or rebuilding a portion of an engine or engine system). The process of engine rebuilding generally includes disassembly, replacement of multiple parts due to wear, and reassembly, and may also include the removal of the engine from the vessel and other acts associated with rebuilding an engine.

(b) When rebuilding an engine, portions of an engine, or an engine system, there must be a reasonable technical basis for knowing that the resultant engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications), and the model year(s) of the resulting engine configuration must be identified. A reasonable basis would exist if:

(1) Parts installed, whether the parts are new, used, or rebuilt, are such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the parts perform the same function with respect to emission control as the original parts; and

(2) Any parameter adjustment or design element change is made only:

(i) In accordance with the original engine manufacturer's instructions; or

(ii) Where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(c) When an engine is being rebuilt and remains installed or is reinstalled in the same vessel, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a certified configuration that is equivalent, from an emissions standpoint, to the engine being replaced.

(d) At time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the systems are installed to satisfy requirements in § 94.211 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engine is returned to service. Such signals may not be rendered inoperative during the rebuilding process.

(e) When conducting a rebuild without removing the engine from the vessel, or during the installation of a rebuilt engine, all critical emission-related components listed in Appendix I of this part not otherwise addressed by paragraphs (b) through (d) of this section must be checked and cleaned, adjusted, repaired, or replaced as necessary, following manufacturer recommended practices.

(f) Records shall be kept by parties conducting activities included in paragraphs (b) through (e) of this section. The records shall include at minimum the hours of operation at the time of rebuild, a listing of work performed on the engine, and emission-related control components including a listing of parts and components used, engine parameter adjustments, emission-related codes or signals responded to and reset, and work performed under paragraph (e) of this section.

(1) Parties may keep records in whatever format or system they choose as long as the records are understandable to an EPA enforcement officer or can be otherwise provided to an EPA enforcement officer in an understandable format when requested.

(2) Parties are not required to keep records of information that is not reasonably available through normal business practices including information on activities not conducted by themselves or information that they cannot reasonably access.

(3) Parties may keep records of their rebuilding practices for an engine family rather than on each individual engine rebuilt in cases where those rebuild practices are followed routinely.

(4) Records must be kept for a minimum of two years after the engine is rebuilt.

Subpart B—Test Procedures

§ 94.101 Applicability.

Provisions of this subpart apply for testing performed by the Administrator and for testing performed by manufacturers.

§ 94.102 General provisions.

(a) The test procedures specified in this subpart for marine engine testing are intended to produce emission measurements that are equivalent to emission measurements that would result from emission tests performed during in-use operation using the same engine configuration installed in a vessel.

(b) Test procedures otherwise allowed by the provisions of this subpart shall not be used where such procedures are not consistent with good engineering practice and the regulatory goal specified in paragraph (a) of this section.

(c) Alternate test procedures may be used if shown to yield equivalent results, and if approved in advance by the Administrator.

§ 94.103 Test procedures for Category 1 marine engines.

(a) Gaseous and particulate emissions shall be measured using the test procedures specified in 40 CFR part 89, except as otherwise specified in this subpart.

(b) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

§ 94.104 Test procedures for Category 2 marine engines.

(a) Gaseous and particulate emissions shall be measured using the test procedures specified in 40 CFR part 92, except as otherwise specified in this subpart.

(b)(1) The requirements of 40 CFR part 92 related to charge air temperatures, engine speed and load, and engine air inlet restriction pressures do not apply for marine engines.

(2) For marine engine testing, charge air temperatures, engine speed and load, and engine air inlet restriction pressures shall be representative of typical in-use marine engine conditions.

(c) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

§ 94.105 Test cycles.

(a) For the purpose of determining compliance with the emission standards of § 94.8 (a), (c), (f), and (g), propulsion engines that are used with (or intended to be used with) fixed-pitch propellers shall be tested using the test cycle described in Table B–1, which follows:

TABLE B–1.—DUTY CYCLE FOR PROPULSION ENGINES: FIXED-PITCH PROPELLER

Mode No.	Engine speed (1) (percent of rated speed)	Observed power (2) (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	91	75	5.0	0.50
3	80	50	5.0	0.15
4	63	25	5.0	0.15

(1) Engine speed: ± 2 percent of point.

(2) Power: Observed power with maximum fueling rate for operation at 100 percent point. Other points: ±2 percent of engine maximum value.

(b) For the purpose of determining compliance with the emission standards of § 94.8 (a), (c), (f), and (g), constant-speed propulsion engines that are used with (or intended to be used with) variable-pitch propellers shall be tested using the test cycle described in Table B–2, which follows:

TABLE B–2.—DUTY CYCLE FOR PROPULSION ENGINES: VARIABLE-PITCH PROPELLER

Mode No.	Engine speed (1) (percent of rated speed)	Observed power (2) (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	100	75	5.0	0.50
3	100	50	5.0	0.15
4	100	25	5.0	0.15

(1) Engine speed: ±2 percent of point.

(2) Power: Observed power with maximum fueling rate for operation at 100 percent point. Other points: ±2 percent of engine maximum value.

(c) For the purpose of determining compliance with the emission standards of § 94.8 (a), (c), (f), and (g), auxiliary engines shall be tested using the applicable test cycle described in 40 CFR part 89.

§ 94.106 Supplemental test procedures.

This section describes the test procedures for supplemental testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e). In general, the supplemental test procedures are the same as those otherwise specified by this subpart, except that they cover any speeds, loads, ambient conditions, and operating parameters that may be experienced in use. The test procedures specified by other sections in this subpart also apply to these tests, except as specified in this section.

(a) Notwithstanding other provisions of this subpart, testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e) may be conducted:

(1) At any speed and load (or combination of speeds and loads) within the applicable Not To Exceed Zone specified in paragraph (b) of this section;

(2) Without correction, at any ambient:

(i) Air temperature between 13°C and 35°C;

(ii) Water temperature (or equivalent) between 5°C and 32°C;

(iii) Humidity between 7.1 and 10.7 grams of moisture per kilogram of dry air; and

(3) With any continuous sampling period not less than 30 seconds in duration.

(b) The Not to Exceed Zone for marine propulsion engines that are used with (or intended to be used with):

(1) Fixed-pitch propellers as defined in Figure B–1;

(2) Variable-pitch propellers defined as any load greater than or equal to 25 percent of rated power, and any speed at which the engine operates in use.

(c)(1) Upon request by the manufacturer, the Administrator may specify a narrower Not to Exceed Zone for an engine family at the time of

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certification, provided that the narrower Not to Exceed Zone includes all speeds and loads at which the engines are expected to normally operate in use.

(2) The Administrator may specify, at the time of certification, a broader Not to Exceed Zone for an engine family containing engines used in planing vessels, provided that the broader Not to Exceed Zone includes only speeds and loads at which the engines are expected to normally operate in use.

(3) The Administrator may specify, at the time of certification, a broader Not to Exceed Zone for an engine family containing engines used in vessels with variable-pitch propellers, provided that the broader Not to Exceed Zone includes only speeds and loads at which the engines are expected to normally operate in use.

(d) Testing of engines over a transient test cycle shall be conducted using the dilute emission sampling and analytical procedures specified for diesel engines in 40 CFR Part 86, Subpart N.

(e) Notwithstanding other provisions of this subpart, testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e) may be conducted at any ambient air temperature or humidity outside the ranges specified in § 94.106(a)(2), provided that emission measurements are corrected to be equivalent to measurements within the ranges specified in § 94.106(a)(2). Correction of emission measurements made in accordance with paragraph (a)(3) of this section shall be made in accordance with good engineering practice. The measurements shall be corrected to be within the range using the minimum possible correction.

(f) Testing conducted under this section may include transient speed and load operation. Engine testing may not include transient operation that cannot be replicated by similar engines as installed on actual vessels in use.

(g) Testing conducted under this section may not include engine starting.

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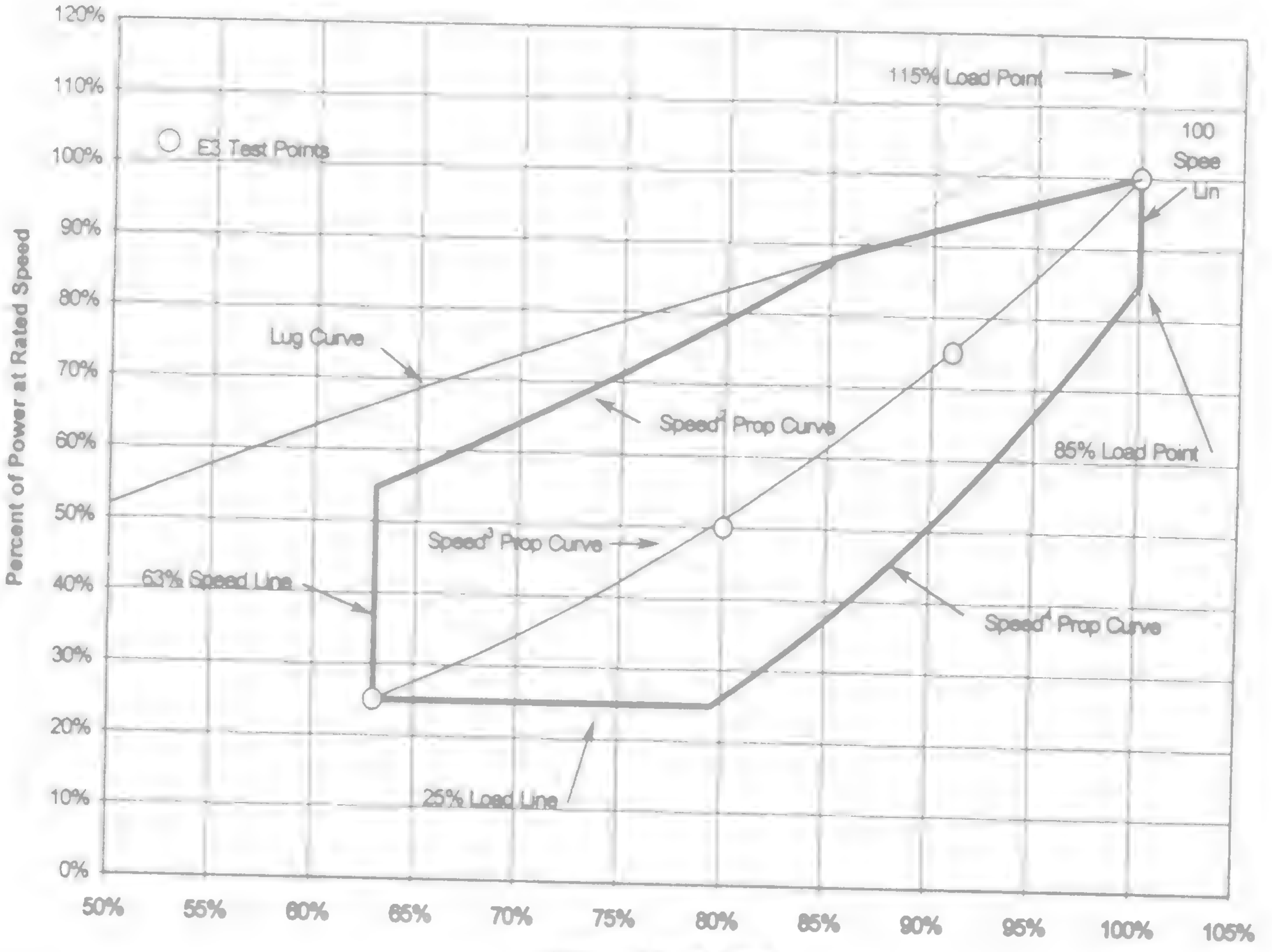
Figure B-1



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§ 94.107 Determination of rated speed.

This section specifies how to determine rated speed from a lug curve. This rated speed is the maximum test speed used in §§ 94.105 and 94.106.

(a) *Generation of lug curve.* Prior to beginning emission testing, generate maximum measured brakepower versus engine speed data points using the applicable method specified in 40 CFR 86.1332. These data points form the lug curve.

(b) *Normalization of lug curve.* (1) Identify the point (power and speed) on the lug curve at which maximum power occurs.

(2) Normalize the power values of the lug curve by dividing them by the maximum power value identified in

paragraph (b)(1) of this section, and multiplying the resulting values by 100.

(3) Normalize the engine speed values of the lug curve by dividing them by the speed at which maximum power occurs, which is identified in paragraph (b)(1) of this section, and multiplying the resulting values by 100.

(4) Maximum engine power is located on the normalized lug curve at 100 percent power and 100 percent speed.

(c) *Determination of rated speed.* Calculate the rated speed from the speedfactor analysis described in this paragraph (c).

(1) For a given combination of engine power and speed (i.e., a given power/speed point), the speedfactor is the normalized distance to the power/speed point from the zero power, zero speed point. The value of the speedfactor is defined as:

(2) Calculate speedfactors for the power/speed data points on the lug curve, and determine the maximum value.

(3) Rated speed is the speed at which the maximum value for the speedfactor occurs.

§ 94.108 Test fuels.

(a) *Petroleum diesel test fuel.* (1) The diesel fuels for testing marine engines designed to operate on petroleum diesel fuel shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide. The diesel fuel shall also meet the specifications (as determined using methods incorporated by reference at § 94.5) in Table B–3 of this section, or substantially equivalent specifications approved by the Administrator, as follows:

TABLE B–3.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure (ASTM) [1]	Value (type 2–D)
Cetane	D613–95	40–48
Distillation Range:		
IBP, °C	D86–97	171–204
10% point, °C	D86–97	204–238
50% point, °C	D86–97	243–282
90% point, °C	D86–97	293–332
EP, °C	D86–97	321–366
Gravity, API	D287–92	32–37
Total Sulfur, %mass	D129–95 or D2622–98	0.03—0.80
Hydrocarbon composition:		
Aromatics, %vol.	D1319–98 or D5186–96	10 (2)
Paraffins, Naphthenes, Olefins	D1319–98	(3)
Flashpoint, °C (minimum)	D93–97	54
Viscosity @ 38 °C, Centistokes	D445–97	2.0–3.2

[1] All ASTM procedures in this table have been incorporated by reference. See § 94.6
[2] Minimum.
[3] Remainder.

(2) Other diesel fuels may be used for testing provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in service; and

(iii) Use of a fuel listed under paragraph (a)(1) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(3) The specification of the fuel to be used under paragraphs (a)(1) and (a)(2) of this section shall be reported in the application for certification.

(b) *Other fuel types.* (1) For engines which are designed to be capable of using a type of fuel (or mixed fuel) other than petroleum diesel fuel (e.g., natural gas or methanol), and which are expected to use that type of fuel (or mixed fuel) in service, a commercially available fuel of that type shall be used for exhaust emission testing. The Administrator shall determine the specifications of the fuel to be used for testing, based on the engine design, the specifications of commercially available fuels, and the recommendation of the manufacturer.

(2) The specification of the fuel to be used under paragraph (b)(1) of this section shall be reported in the application for certification.

(c)(1) Particulate emission measurements from engines without exhaust aftertreatment obtained using a diesel fuel containing more than 0.40 weight percent sulfur may be adjusted to a sulfur content of 0.40 weight percent.

(2) Adjustments to the particulate measurement shall be made using the following equation:

$$PMadj=PM-[BSFC * 0.0917 * (FSF-0.0040)]$$

Where:

PMadj=adjusted measured PM level [g/Kw-hr]

PM=measured weighted PM level [g/Kw-hr]

BSFC=measured brake specific fuel consumption [G/Kw-hr]

FSF=fuel sulfur weight fraction

Subpart C—Certification Provisions

§ 94.201 Applicability.

The requirements of this subpart are applicable to manufacturers of engines subject to the standards of subpart A of this part.

§ 94.202 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.203 Application for certification.

(a) For each engine family that complies with all applicable standards and requirements, the manufacturer shall submit to the Administrator a completed application for a certificate of conformity.

(b) The application shall be approved and signed by the authorized representative of the manufacturer.

(c) The application shall be updated and corrected by amendment, where necessary, as provided for in § 94.210 to accurately reflect the manufacturer's production.

(d) Each application shall include the following information:

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(1)(i) A description of the basic engine design, including but not limited to, the engine family specifications, the provisions of which are contained in § 94.208;

(ii) A list of distinguishable configurations to be included in the engine family;

(2) An explanation of how the emission control system operates, including detailed descriptions of:

(i) All emission control system components;

(ii) The injection timing map or maps (i.e., degrees before or after top-dead-center), and any functional dependence of such timing on other operational parameters (e.g., engine coolant temperature or engine speed);

(iii) Each auxiliary emission control device (AECD); and

(iv) All fuel system components to be installed on any production or test engine(s);

(3) A description of the test engine;

(4) Special or alternate test procedures, if applicable;

(5) A description of the operating cycle and the period of operation necessary to accumulate service hours on the test engine and stabilize emission levels;

(6) A description of all adjustable operating parameters (e.g., injection timing and fuel rate), including the following:

(i) The nominal or recommended setting and the associated production tolerances;

(ii) The intended adjustable range and the physically adjustable range;

(iii) The limits or stops used to limit adjustable ranges;

(iv) Production tolerances of the limits or stops used to establish each physically adjustable range; and

(v) Information relating to the reason that the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are the most effective means possible of preventing adjustment of parameters to settings outside the manufacturer's specified adjustable ranges on in-use engines;

(7) For families participating in the averaging, banking, and trading program, the information specified in subpart D of this part;

(8) Projected U.S. directed production volume information for each configuration;

(9) A description of the test equipment and fuel proposed to be used;

(10) All test data obtained by the manufacturer on each test engine;

(11) The intended useful life period for the engine family, in accordance with § 94.9(a);

(12) The intended deterioration factors for the engine family, in accordance with § 94.218; and

(13) All information—including but not limited to message or parameter identification, scaling, limit, offset, and transfer function—required for EPA to interpret all messages and parameters broadcast on an engine's controller area network. (The manufacturer may reference publicly released controller area network standards where applicable. The format of this information shall be provided in a format similar to publicly released documents pertaining to controller area network standards.)

(14) An unconditional statement certifying that all engines included in the engine family comply with all requirements of this part and the Clean Air Act.

(15) A statement indicating whether the engine will be used in planing vessels or vessels with variable-pitch propellers.

(e) At the Administrator's request, the manufacturer shall supply such additional information as may be required to evaluate the application.

(f) (1) If the manufacturer submits some or all of the information specified in paragraph (d) of this section in advance of its full application for certification, the Administrator shall review the information and make the determinations required in § 94.208 (d) within 90 days of the manufacturer's submittal.

(2) The 90-day decision period is exclusive of any elapsed time during which EPA is waiting for additional information requested from a manufacturer regarding an adjustable parameter (the 90-day period resumes upon receipt of the manufacturer's response). For example, if EPA requests additional information 30 days after the manufacturer submits information under paragraph (f)(1) of this section, then the Administrator would make a determination within 60 days of the receipt of the requested information from the manufacturer.

(g)(1) The Administrator may modify the information submission requirements of paragraph (d) of this section, provided that all of the information specified therein is maintained by the manufacturer as required by § 94.215, and amended, updated, or corrected as necessary.

(2) For the purposes of this paragraph (g), § 94.215 includes all information specified in paragraph (d) of this section, whether or not such information is actually submitted to the Administrator for any particular model year.

(3) The Administrator may review a manufacturer's records at any time. At the Administrator's discretion, this review may take place either at the manufacturer's facility or at another facility designated by the Administrator.

§ 94.204 Designation of engine families.

This section specifies the procedure and requirements for grouping of engines into engine families.

(a) Manufacturers shall divide their engines into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group shall be defined as a separate engine family.

(b) For Category 1 marine engines, the following characteristics distinguish engine families:

(1) Fuel;

(2) Cooling method (including cooling medium);

(3) Method of air aspiration;

(4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap);

(5) Combustion chamber design;

(6) Bore;

(7) Stroke;

(8) Number of cylinders, (engines with aftertreatment devices only);

(9) Cylinder arrangement (engines with aftertreatment devices only); and

(10) Fuel system configuration

(c) For Category 2 marine engines, the following characteristics distinguish engine families:

(1) The combustion cycle (e.g., diesel cycle);

(2) The type of engine cooling employed (air-cooled or water-cooled), and procedure(s) employed to maintain engine temperature within desired limits (thermostat, on-off radiator fan(s), radiator shutters, etc.);

(3) The bore and stroke dimensions;

(4) The approximate intake and exhaust event timing and duration (valve or port);

(5) The location of the intake and exhaust valves (or ports);

(6) The size of the intake and exhaust valves (or ports);

(7) The overall injection, or as appropriate ignition, timing characteristics (i.e., the deviation of the timing curves from the optimal fuel economy timing curve must be similar in degree);

(8) The combustion chamber configuration and the surface-to-volume ratio of the combustion chamber when the piston is at top dead center position, using nominal combustion chamber dimensions;

(9) The location of the piston rings on the piston;

(10) The method of air aspiration (turbocharged, supercharged, naturally aspirated, Roots blown);

(11) The turbocharger or supercharger general performance characteristics (e.g., approximate boost pressure, approximate response time, approximate size relative to engine displacement);

(12) The type of air inlet cooler (air-to-air, air-to-liquid, approximate degree to which inlet air is cooled);

(13) The intake manifold induction port size and configuration;

(14) The type of fuel and fuel system configuration;

(15) The configuration of the fuel injectors and approximate injection pressure;

(16) The type of fuel injection system controls (i.e., mechanical or electronic);

(17) The type of smoke control system;

(18) The exhaust manifold port size and configuration; and

(19) The type of exhaust aftertreatment system (oxidation catalyst, particulate trap), and characteristics of the aftertreatment system (catalyst loading, converter size vs engine size).

(d) Upon request by the manufacturer, engines that are eligible to be included in the same engine family based on the criteria in paragraph (b) or (c) of this section may be divided into different engine families. This request must be accompanied by information the manufacturer believes supports the use of these different engine families.

(e) Upon request by the manufacturer, the Administrator may allow engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be grouped into a single engine family if the manufacturer demonstrates that the engines will have similar emission characteristics. This request must be accompanied by emission information supporting the appropriateness of such combined engine families.

§ 94.205 Prohibited controls, adjustable parameters.

(a) Any system installed on, or incorporated in, a new engine to enable such engine to conform to the standards contained in this part:

(1) Shall not in its operation or function cause significant (as determined by the Administrator) emission into the ambient air of any noxious or toxic substance that would not be emitted in the operation of such engine without such system, except as specifically permitted by regulation;

(2) Shall not in its operation, function or malfunction result in any unsafe condition endangering the engine, the ship, its operators, riders or property on a ship, or persons or property in close proximity to the engine; and

(3) Shall function during all in-use operation, except as otherwise allowed by this part.

(b) In specifying the adjustable range of each adjustable parameter on a new engine, the manufacturer, shall:

(1) Ensure that safe engine operating characteristics are available within that range, as required by section 202(a)(4) of the Clean Air Act, taking into consideration the production tolerances; and

(2) To the maximum extent practicable, limit the physical range of adjustability to that which is necessary for proper operation of the engine.

§ 94.206 Required information.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the information required by this section: *Provided*, that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of engines for which the required emission data are otherwise available.

(b) The manufacturer shall submit exhaust emission deterioration factors, with supporting data. The determination of the deterioration factors shall be conducted in accordance with good engineering practice to ensure that the engines covered by a certificate issued under § 94.208 will meet all of the emission standards in § 94.8 in use for the useful life of the engine.

(c) The manufacturer shall submit emission data on such engines tested in accordance with the applicable test procedures of subpart B of this part. These data shall include zero hour data, if generated. In lieu of providing the emission data required by paragraph (a) of this section, the Administrator may, upon request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other testing information) that the engine will conform with the applicable emission standards of § 94.8.

(d) The manufacturer shall submit a statement that the engines for which certification is requested conform to the requirements in § 94.7 and that the descriptions of tests performed to ascertain compliance with the general standards in § 94.7, and the data derived from such tests, are available to the Administrator upon request.

(e) The manufacturer shall submit a statement that the emission data engine used to demonstrate compliance with the applicable standards of this part is in all material respects as described in the manufacturer's application for certification; that it has been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification; and that on the basis of such tests, the engine family conforms to the requirements of this part. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test engine was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the engine does not meet the applicable standards. If the Administrator makes such a determination, he/she may withhold, suspend, or revoke the certificate of conformity under § 94.208 (c)(3)(i).

§ 94.207 Special test procedures.

(a) *Establishment of special test procedures by EPA.* The Administrator may, on the basis of written application by a manufacturer, establish special test procedures other than those set forth in this part, for any engine that the Administrator determines is not susceptible to satisfactory testing under the specified test procedures set forth in subpart B of this part.

(b) *Use of alternate test procedures by a manufacturer.* (1) A manufacturer may elect to use an alternate test procedure, provided that it is equivalent to the specified procedures with respect to the demonstration of compliance, its use is approved in advance by the Administrator, and the basis for the equivalence with the specified test procedures is fully described in the manufacturer's application.

(2) The Administrator may reject data generated under alternate test procedures if the data do not correlate with data generated under the specified procedures.

§ 94.208 Certification.

(a) If, after a review of the application for certification, test reports and data acquired from an engine or from a development data engine, and any other information required or obtained by EPA, the Administrator determines that the application is complete and that the engine family meets the requirements of the Act and this part, he/she will issue a certificate of conformity with respect to such engine family, except as provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family from the date of issuance by EPA until 31 December of the model year or calendar year for which it is issued and upon such terms and conditions as the Administrator deems necessary or appropriate to ensure that the production engines covered by the certificate will meet the requirements of the Act and of this part.

(b) [Reserved]

(c) (1) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificates were issued were satisfied or excused.

(2) The Administrator will determine whether the test data included in the application represents all engines of the engine family.

(3) Notwithstanding the fact that any engine(s) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of any certificate of conformity, or suspend or revoke any such certificate(s) which has (have) been issued with respect to any such engine(s) if:

(i) The manufacturer submits false or incomplete information in its application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which it submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such engine;

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 94.215 to any facility or portion thereof which contains any of the following:

(A) An engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing; or

(B) Any components used or considered for use in the construction, modification or buildup of any engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing for purposes of emissions certification; or

(C) Any production engine which is or will be claimed by the manufacturer to be covered by the certificate; or

(D) Any step in the construction of the engine; or

(E) Any records, documents, reports or histories required by this part to be kept concerning any of the items listed in paragraphs (c)(3)(iii)(A) through (D) of this section; or

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 94.215).

(4) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

(5) In any case in which certification of an engine is to be withheld, denied, revoked or suspended under paragraph (c)(3) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 94.215 in fact occurred, the manufacturer, if it wishes to contend that, even though the violation occurred, the engine in question was not involved in the violation to a degree that would warrant withholding, denial, revocation or suspension of certification under paragraph (c)(3) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any revocation, suspension, or voiding of certification under paragraph (c)(3) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 94.216; and

(ii) Extend no further than to forbid the introduction into commerce of engines previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct that makes the certification invalid *ab initio*.

(7) The manufacturer may request, within 30 days of receiving notification, that any determination made by the Administrator under paragraph (c)(3) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 94.216. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he/she will grant the request with respect to such issue.

(d) In approving an application for certification, the Administrator may specify:

(1) A broader range of adjustability than recommended by the manufacturer for those engine parameters which are subject to adjustment, if the Administrator determines that it will not be practical to keep the parameter adjusted within the recommended range in use;

(2) A longer useful life period, if the Administrator determines that the useful life of the engines in the engine family, as defined in § 94.2, is longer than the period specified by the manufacturer; and/or

(3) Larger deterioration factors, if the Administrator determines that the deterioration factors specified by the manufacturer do not meet the requirements of § 94.218.

(e) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, the manufacturer shall be provided with a hearing in accordance with § 94.216 with respect to such issue.

§ 94.209 Special provisions for post-manufacturer marinizers.

(a) *Eligibility requirements.* To be eligible to use the provisions of paragraph (b) of this section, the manufacturer shall demonstrate that it has met all the following requirements:

(1) The manufacturer must be a post-manufacturer marinizer as defined in § 94.2;

(2) The base engine used for modification shall have a Certificate of Conformity issued under 40 CFR part 89 or 40 CFR part 92 or the heavy-duty engine provisions of 40 CFR part 86; and (3) The certified emission levels (after application of deterioration factors) of the base engine shall be below the numerical levels of the otherwise applicable standards of this part for all pollutants.

(b) *Broader engine families.* (1) In lieu of the requirements of § 94.204, the manufacturer may group its engines into engine families that consist of engines that are within a single category of engines and have similar emission deterioration characteristics.

(2) All other provisions of this subpart shall apply to these engines using the engine family defined in (b)(1) of this section.

(c) *Hardship relief.* Post-manufacture marinizers may take any of the otherwise prohibited actions identified in § 94.1103(a)(1) if approved in advance by the Administrator, and subject to the following requirements:

(1) Application for relief must be submitted to the Engine Programs and Compliance Division of the EPA in writing prior to the earliest date in which the applying manufacturer would be in violation of § 94.1103. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) [Reserved]

(3) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(4) The conditions causing the impending violation must be such that the applying manufacturer will experience serious economic hardship if relief is not granted.

(5) The applying manufacturer must demonstrate that no other allowances under this part will be available to avoid the impending violation.

(6) Any relief granted must begin within one year after the implementation date of the standard applying to the engines for which relief is requested, and may not exceed one year in duration.

(7) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

(d) *Compliance date of standards.* Post-manufacture marinizers may elect to delay the compliance date of the standards in § 94.8 by one year, instead of using the provisions of paragraph (c) of this section. Post-manufacture marinizers wishing to take advantage of this provision must inform the Director of the Engine Programs and Compliance Division of their intent to do so in writing before the date that compliance with the standards would otherwise be mandatory.

§ 94.210 Amending the application and certificate of conformity.

(a) The manufacturer shall notify the Administrator when changes to information required to be described in the application for certification are to be made to a product line covered by a certificate of conformity. This notification shall include a request to amend the application or the existing certificate of conformity. Except as provided in paragraph (e) of this section, no manufacturer shall make said changes or produce said engines prior to receiving approval from EPA.

(b) A manufacturer's request to amend the application or the existing certificate of conformity shall include the following information:

(1) A full description of the change to be made in production, or of the engines to be added;

(2) Engineering evaluations or data showing that the engines as modified or added will comply with all applicable emission standards; and

(3) A determination whether the manufacturer's original test fleet selection is still appropriate, and if the original test fleet selection is determined not to be appropriate, test fleet selection(s) representing the engines changed or added which would have been required if the engines had been included in the original application for certification.

(c) The Administrator may require the manufacturer to perform tests on the engine representing the engine to be added or changed.

(d)(1) Based on the description of the amendment and data derived from such testing as the Administrator may require or conduct, the Administrator will determine whether the change or addition would still be covered by the certificate of conformity then in effect.

(2) If the Administrator determines that the change or new engine(s) meets the requirements of this part and the Act, the appropriate certificate of conformity shall be amended.

(3) If the Administrator determines that the changed engine(s) does not meet the requirements of this part and the Act, the certificate of conformity will not be amended. The Administrator shall provide a written explanation to the manufacturer of the decision not to amend the certificate. The manufacturer may request a hearing on a denial.

(e) A manufacturer may make changes in or additions to production engines concurrently with the notification to the Administrator, as required by paragraph (a) of this section, if the manufacturer complies with the following requirements:

(1) In addition to the information required in paragraph (b) of this section, the manufacturer shall supply supporting documentation, test data, and engineering evaluations as appropriate to demonstrate that all affected engines will still meet applicable emission standards.

(2) If, after a review, the Administrator determines additional testing is required, the manufacturer shall provide the required test data within 30 days or cease production of the affected engines.

(3) If the Administrator determines that the affected engines do not meet applicable requirements, the Administrator will notify the manufacturer to cease production of the affected engines and to recall and correct at no expense to the owner all affected engines previously produced.

(4) Election to produce engines under this paragraph will be deemed to be a consent to recall all engines that the Administrator determines do not meet applicable standards and to cause such nonconformity to be remedied at no expense to the owner.

§ 94.211 Emission-related maintenance instructions for purchasers.

(a) The manufacturer shall furnish or cause to be furnished to the ultimate purchaser of each new engine, subject to the standards prescribed in § 94.8, written instructions for the proper maintenance and use of the engine as are reasonable and necessary to assure the proper functioning of the emissions control system, consistent with the applicable provisions of paragraph (b) of this section.

(1) The maintenance and use instructions required by this section shall be clear and easily understandable.

(2) The maintenance instructions required by this section shall contain a general description of the documentation that would demonstrate that the ultimate purchaser or any subsequent owner had complied with the instructions.

(b)(1) The manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any engine repair establishment or individual.

(2) The instructions under paragraph (b)(1) of this section will not include any condition on the ultimate purchaser's or owner's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also will not directly or indirectly distinguish between service performed by any other service establishments with which such manufacturer has a commercial relationship and service performed by independent vessel or engine repair facilities with which such manufacturer has no commercial relationship.

(3) The prohibition of paragraph (b)(2) of this section may be waived by the Administrator if:

(i) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine, and

(ii) The Administrator finds that such a waiver is in the public interest.

(c) The manufacturer shall provide to the Administrator, no later than the time of the submission required by § 94.203, a copy of the emission-related maintenance instructions that the manufacturer proposes to supply to the ultimate purchaser or owner in accordance with this section. The Administrator will review such instructions to determine whether they are reasonable and necessary to ensure the proper functioning of the engine's emission control systems. If the Administrator determines that such instructions are not reasonable and necessary to ensure the proper functioning of the emission control systems, he/she may disapprove the application for certification or may require that the manufacturer modify the instructions.

(d) Any revision to the maintenance instructions which will affect emissions shall be supplied to the Administrator at least 30 days before being supplied to the ultimate purchaser or owner unless the Administrator consents to a lesser period of time, and is subject to the provisions of § 94.210.

(e) This paragraph (e) specifies emission-related scheduled maintenance for purposes of obtaining durability data for marine engines. The maintenance intervals specified in this paragraph are minimum intervals.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same or longer hours of use intervals as those specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the engine under paragraph (a) of this section. This maintenance schedule may be updated as necessary throughout the testing of the engine, provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test equipment or engine.

(2) Any emission-related maintenance which is performed on equipment, engines, subsystems, or components must be technologically necessary to ensure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the maintenance instructions provided to the purchasers under paragraph (a) of this section.

(i) The Administrator may require longer maintenance intervals than those listed in paragraphs (e)(3) and (e)(4) of this section where the listed intervals are not technologically necessary.

(ii) The Administrator may allow manufacturers to specify shorter maintenance intervals than those listed in paragraphs (e)(3) and (e)(4) of this section where technologically necessary for Category 2 engines.

(3) The adjustment, cleaning, repair, or replacement of items listed in paragraphs (e)(3)(i) through (e)(3)(iii) of this section shall occur at 1,500 hours of use and at 1,500-hour intervals thereafter.

(i) Exhaust gas recirculation system-related filters and coolers.

(ii) Positive crankcase ventilation valve.

(iii) Fuel injector tips (cleaning only).

(4) The adjustment, cleaning and repair of items in paragraphs (e)(4)(i) through (e)(4)(vii) of this section shall occur at 3,000 hours of use and at 3,000-hour intervals thereafter for engines rated under 130 kW, or at 4,500-hour intervals thereafter for nonroad compression-ignition engines rated at or above 130 kW.

(i) Fuel injectors.

(ii) Turbocharger.

(iii) Electronic engine control unit and its associated sensors and actuators.

(iv) Particulate trap or trap-oxidizer system (including related components).

(v) Exhaust gas recirculation system (including all related control valves and tubing), except as otherwise provided in paragraph (e)(3)(i) of this section.

(vi) Catalytic convertor.

(vii) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(f) Scheduled maintenance not related to emissions which is reasonable and technologically necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, lubrication of the exhaust manifold heat control valve, etc.) may be performed on durability vehicles at the least frequent intervals recommended by the manufacturer to the ultimate purchaser, (e.g., not the intervals recommended for severe service).

(g) Adjustment of engine idle speed on emission data engines may be performed once before the low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with advance approval of the Administrator.

(h) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and are:

(1) Used in conjunction with scheduled maintenance on such components; or

(2) Used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (e) of this section for emission data engines; or

(3) Specifically authorized by the Administrator.

(i) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 94.215.

(j)(1) The components listed in paragraphs (j)(1)(i) through (j)(1)(vi) of this section are defined as critical emission-related components.

(i) Catalytic convertor.

(ii) Electronic engine control unit and its associated sensors and actuators.

(iii) Exhaust gas recirculation system (including all related filters, coolers, control valves, and tubing).

(iv) Positive crankcase ventilation valve.

(v) Particulate trap or trap-oxidizer system.

(vi) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(2) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. The manufacturer must show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (j)(2)(i) through (j)(2)(vi) of this section will be accepted as having a reasonable likelihood of being performed in use.

(i) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical operation.

(ii) Survey data are submitted which adequately demonstrate to the Administrator with an 80 percent confidence level that 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(iii) A clearly displayed visible signal system approved by the Administrator is installed to alert the equipment operator that maintenance is due. A signal bearing the message "maintenance needed" or "check engine," or a similar message approved by the Administrator, shall be actuated at the appropriate usage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator. The system must not be designed to deactivate upon the end of the useful life of the engine or thereafter.

(iv) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (j)(2)(ii) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(v) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under paragraph (a) of this section.

(vi) The manufacturer uses any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(3) Visible signal systems used under paragraph (j)(2)(iii) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act.

§ 94.212 Labeling.

(a) *General requirements.* (1) Each new engine covered by a certificate of conformity under § 94.208 shall be labeled by the manufacturer in the manner described in this paragraph (b) of this section at the time of manufacture.

(2) Each new marine engine modified from a base engine by post-manufacturer marinizers in accordance with the provisions of § 94.209 (b) and covered by a certificate of conformity under § 94.208 shall be labeled by the PMM in the manner described in paragraph (b) of this section.

(b) *Engine labels.* (1) Engine labels meeting the specifications of paragraph (b)(2) of this section shall be applied by every manufacturer at the point of original manufacture.

(2)(i) Engine labels shall be permanent and legible and shall be affixed to the engine in a position in which it will be readily visible after installation of the engine in the vessel.

(ii) The label shall be attached to an engine part necessary for normal operation and not normally requiring replacement during the useful life of the engine.

(iii) The label shall be affixed by the manufacturer in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such engine.

(iv) The label may be made up of more than one piece, provided that all pieces are permanently attached to the same engine part.

(v) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Marine Engine Emission Control Information.

(B) Full corporate name and trademark of the manufacturer.

(C) The model year.

(D) The category and subcategory of marine engine.

(E) Engine family and configuration identification.

(F) A prominent unconditional statement of compliance with U.S. Environmental Protection Agency regulations which apply to marine engines designated by the parameters of paragraph (b)(2)(v) (A) through (E) of this section

(G) The useful life of the engine.

(H) The standards and/or FELs to which the engine was certified.

(I) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards, including but not limited to idle speeds(s), injection timing, valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer.

(c) The provisions of this section shall not prevent a manufacturer from also providing on the label any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vessel or engine.

§ 94.213 Submission of engine identification numbers.

(a) Upon request of the Administrator, the manufacturer of any engine covered by a certificate of conformity shall, within 30 days of receipt of such request, identify by engine identification number, the engines covered by the certificate of conformity.

(b) The manufacturer of any engines covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any engine identification coding system in sufficient detail to enable the Administrator to identify those engines which are covered by a certificate of conformity.

§ 94.214 Production engines.

Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production engines, as specified by the Administrator. The engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production engines available for sale or use under the certificate. These engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 94.215 Maintenance of records; submittal of information; right of entry.

(a) Any manufacturer subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) General records. The records required to be maintained by this paragraph (a) shall consist of:

(i) Identification and description of all certification engines for which testing is required under this subpart.

(ii) A description of all emission control systems which are installed on or incorporated in each certification engine.

(iii) A description of all procedures used to test each such certification engine.

(iv) A copy of all applications for certification, filed with the Administrator.

(2) Individual records. (i) A brief history of each engine used for certification under this subpart including:

(A) In the case where a current production engine is modified for use as a certification engine, a description of the process by which the engine was selected and of the modifications made. In the case where the certification engine is not derived from a current production engine, a general description of the buildup of the engine (e.g., whether experimental heads were cast and machined according to supplied drawings). In the cases in the previous two sentences, a description of the origin and selection process for fuel system components, ignition system components (as applicable), intake air pressurization and cooling system components, cylinders, pistons and piston rings, exhaust smoke control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification engine, with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, or any other devices or components as applicable, that can reasonably be expected to influence exhaust emissions will be representative of production engines and that either: all components and/or engine, construction processes, component inspection and selection techniques, and assembly techniques employed in constructing such engines are reasonably likely to be implemented for production engines; or that they are as close as practicable to planned construction and assembly process.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of hours accumulated on the engine.

(C) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(D) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(E) A brief description of any significant events affecting the engine during the period covered by the history and not described by an entry under one of the previous headings, including such extraordinary events as accidents involving the engine or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification engine and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of 8 years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to computer disks, etc., depending on the record retention procedures of the manufacturer: Provided, that in every case all the information contained in the hard copy shall be retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him/her the information that is required to be retained.

(6) EPA may void a certificate of conformity *ab initio* for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) The manufacturer of engines subject to any of the standards prescribed in this part shall submit to the Administrator, at the time of issuance by the manufacturer, copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such engine, relevant to the control of crankcase, or exhaust emissions issued by the manufacturer, for use by other manufacturers, assembly plants, distributors, dealers, owners and operators. Any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c) Any manufacturer participating in averaging, banking and trading program of subpart D of this part 94 must comply with the maintenance of records requirements of § 94.308.

(d)(1) Any manufacturer who has applied for certification of a new engine subject to certification testing under this subpart shall admit or cause to be admitted any EPA Enforcement Officer during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed;

(ii) Any facility where any engine which is being tested (or was tested, or is to be tested) is present;

(iii) Any facility where any construction process or assembly process used in the modification or buildup of such an engine into a certification engine is taking place or has taken place; or

(iv) Any facility where any record or other document relating to any of the activities listed in this paragraph (d)(1) is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities and testing facilities including, but not limited to, monitoring engine preconditioning, emissions tests, service accumulation, maintenance, and engine storage procedures, and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in subpart D of this part; and

(iii) To inspect and/or photograph any part or aspect of any such certification engine and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production engines, conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications applicable to those engines, as described in the application for certification for which a certificate of conformity has been issued, any manufacturer shall admit any EPA Enforcement Officer on presentation of credentials to:

(i) Any facility where any document, design or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production engines is located or carried on;

(ii) Any facility where any engines to be introduced into commerce are manufactured; and

(iii) Any facility where records specified this section are located.

(4) On admission to any such facility referred to in paragraph (d)(3) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any aspects of such manufacture and other procedures;

(ii) To inspect and make copies of any such records, documents or designs;

(iii) To inspect and photograph any part or aspect of any such engine(s) and any component used in the assembly thereof that are reasonably related to the purpose of his/her entry; and

(iv) To inspect and make copies of any records and documents specified in this section.

(5) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he/she may request to help him/her discharge any function listed in this part. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer applies to any facility involved in the manufacturing or assembling of engines, whether or not the manufacturer owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that an engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this section:

(i) "Presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(ii) Where component or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to engine manufacture, or assembly is being carried out in a facility.

(iv) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any engine which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer by written request for his appearance, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance.

(8) EPA may void a certificate of conformity ab initio for engines introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

§ 94.216 Hearing procedures.

(a)(1) After granting a request for a hearing under § 94.210 or § 94.208, the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(3) In the case of any hearing requested pursuant to § 94.208, the Administrator may in his/her discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he/she may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon his/her appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator under § 94.210 or § 94.208 together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer, upon the request of any party, or in his/her discretion, may arrange for a prehearing conference at a time and place specified by him/her to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

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(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by him/her.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 30 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision, the Administrator shall have all the powers which he/she would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

§ 94.217 Emission data engine selection.

(a) The manufacturer must select for testing, from each engine family, the engine configuration which is expected to be worst-case for exhaust emission compliance on in-use engines, considering all exhaust emission constituents and the range of installation options available to vessel builders.

(b) Each engine in the test fleet must be constructed to be representative of production engines.

(c) After review of the manufacturer's test fleet, the Administrator may select from the available fleet one additional test engine from each engine family.

(d) Each engine selected shall be tested according to the provisions of subpart B of this part.

(e) In lieu of testing an emission data engine selected under paragraph (a) of this section and submitting the resulting data, a manufacturer may, with Administrator approval, use emission data on a similar engine for which certification has previously been obtained or for which all applicable data required under this subpart have previously been submitted. These data must be submitted in the application for certification.

§ 94.218 Deterioration factor determination.

Manufacturers shall determine exhaust emission deterioration factors using good engineering judgement according to the provisions of this section. Every deterioration factor must be, in the Administrator's judgment, consistent with emissions increases observed in-use based on emission testing of similar engines. Deterioration factors that predict emission increases over the useful life of an engine that are significantly less than the emission increases over the useful life observed from in-use testing of similar engines shall not be used.

(a) A separate exhaust emission deterioration factor shall be established for each engine family and for each emission constituent applicable to that family.

(b) *Calculation procedures.* (1) For engines not utilizing aftertreatment technology (e.g., catalyst). For each applicable emission constituent, an additive deterioration factors shall be used; that is, a deterioration factor that when added to the low mileage emission rate equals the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this section.

(2) For engines utilizing aftertreatment technology (e.g., catalyst). For each applicable emission constituent, a multiplicative deterioration factors shall be used; that is deterioration factors that when multiplied by the low mileage emission rate equal the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this section.

(c) *Rounding.* (1) In the case of a multiplicative exhaust emission deterioration factor, the factor shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–93a (incorporated by reference at § 94.5).

(2) In the case of an additive exhaust emission deterioration factor, the factor shall be established to a minimum of two places to the right of the decimal in accordance with ASTM E 29–93a (incorporated by reference at § 94.5).

(d)(1) Except as allowed by paragraph (d)(2) of this section, the manufacturer shall determine the deterioration factors based on service accumulation and related testing, according to the manufacturer's procedures, and the provisions of §§ 94.219 and 94.220. The manufacturer shall determine the form and extent of this service accumulation, consistent with good engineering practice, and shall describe this process in the application for certification.

(2) *Alternatives to service accumulation and testing for the determination of a deterioration factor.* A written explanation of the appropriateness of using an alternative must be included in the application for certification.

(i) *Carryover and carryacross of durability emission data.* In lieu of testing an emission data or durability data engine selected under § 94.217 or § 94.219, and submitting the resulting data, a manufacturer may, with Administrator approval, use exhaust emission deterioration data on a similar engine for which certification to the same standard has previously been obtained or for which all applicable data required under this subpart have previously been submitted. These data must be submitted in the application for certification.

(ii) *Use of non-marine deterioration data.* In the case where a manufacturer produces a certified motor vehicle engine, locomotive engine, or other nonroad engine that is similar to the marine engine to be certified, deterioration data from the non-marine engine may be applied to the marine engine. This application of deterioration data from such an engine to a marine engine is subject to Administrator approval, and the determination of whether the engines are similar shall be based on good engineering judgment.

(iii) *Engineering analysis for established technologies.* In the case where an engine family uses technology which is well established, an analysis based on good engineering practices may be used in lieu of testing to determine a deterioration factor for that engine family. Engines using exhaust gas recirculation or aftertreatment are excluded from this provision. The manufacturer shall provide a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the deterioration factor is based, are available to the Administrator upon request.

§ 94.219 Durability data engine selection.

(a) The manufacturer shall select for durability testing, from each engine family, the engine configuration which is expected to generate the highest level of exhaust emission deterioration on engines in use, considering all exhaust emission constituents and the range of installation options available to vessel builders. The manufacturer shall use good engineering judgment in making this selection.

(b) In lieu of testing the engine selected in paragraph (a) of this section, the manufacturer may select, using good engineering judgement, an equivalent or worse-case engine configuration. Carryover data satisfying the provisions of § 94.220 may also be used in lieu of testing the configuration selected in paragraph (a) of this section.

(c) Durability data engines shall be built from subsystems and components that are representative of actual production engines.

§ 94.220 Service accumulation.

(a) Stabilized emission service accumulation for emission data engines.

(1) Each test emission data engine in the test fleet must be operated with all emission control systems operating properly for a period sufficient to stabilize emissions.

(2) A manufacturer may elect to consider as stabilized emission levels from emission data engines with 125 or fewer hours of service.

(b) Durability data engines shall accummulate service in a manner which will represent the emission levels from in-use engines over their full useful life, consistent with good engineering judgement.

(1) Components may be removed from the engine and aged separately.

(2) End of useful life emission levels and deterioration factors may be projected from durability data engines which have completed less than full useful life service accumulation, provided that the amount of service accumulation completed and projection procedures are determined using good engineering judgement.

(c) No maintenance, other than recommended lubrication and filter changes or maintenance otherwise allowed by this part, may be performed during service accumulation without the Administrator's approval.

(d) Service accumulation should be performed in a manner using good engineering judgment to ensure that emissions are representative of in-use engines.

(e) The manufacturer must maintain, and provide to the Administrator if requested, records stating the rationale for selecting the service accumulation period and records describing the method used to accumulate service hours on the test engine(s).

§ 94.221 Application of good engineering judgment.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this subpart, including but not limited to selections, categorizations, determinations, and applications of the requirements of the subpart.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment or is otherwise inconsistent with the requirements of this subpart.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void *ab initio* a certificate of conformity.

(2) If the Administrator determines that the manufacturer's decision is not covered by the provisions of paragraph (d)(1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the manufacturer of this concern and the basis of the concern.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer's response.

(ii) The Administrator shall make the final ruling after considering the information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer's decision was not made using good engineering judgment, he/she may reject that decision and apply the new ruling to future corresponding decisions as soon as practicable.

(e) The Administrator shall notify the manufacturer in writing regarding any decision reached under paragraph (d)(1) or (2) of this section. The Administrator shall include in this notification the basis for reaching the determination.

(f) Within 30 working days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on those determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data or other analysis in support of such objections. If, after review of the request and supporting data or analysis, the Administrator finds that the request raises a substantial factual issue, he/she shall provide the manufacturer a hearing in accordance with § 94.216 of this subpart with respect to such issue.

Subpart D—Certification Averaging, Banking, and Trading Provisions

§ 94.301 Applicability.

Marine engine families subject to the standards of subpart A of this part are eligible to participate in the certification averaging, banking, and trading program described in this subpart. The provisions of this subpart apply to manufacturers of new engines that are subject to the emission standards of § 94.8.

§ 94.302 Definitions.

The definitions of subpart A of this part apply to this subpart. The following definitions also apply.

Applicable standard means a standard that would have otherwise been applicable had the engine not been certified under this subpart to an FEL different than that standard.

Broker means any entity that facilitates a trade between a buyer and seller.

Buyer means the entity that receives credits as a result of trade or transfer.

Reserved credits means credits that have been generated but have not yet been reviewed by EPA or used to demonstrate compliance under the averaging provisions of this subpart.

Seller means the entity that provides credits during a trade.

§ 94.303 General provisions.

(a) Participation in the averaging, banking, and trading program is voluntary. A manufacturer may choose to involve some or all of its engine families in any or all aspects of the program.

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(b) An engine family is eligible to participate in the certification averaging, banking, and trading program for THC+NO_X and PM emissions if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. No averaging, banking, and trading program is available for meeting the CO standards of this part.

(c) Engines may not participate in the certification averaging, banking, and trading program if they are exported. Only engines certified under this part are eligible for inclusion in this certification averaging, banking, and trading program.

(d) Averaging involves the generation of credits by a manufacturer for use by that same manufacturer in the same calendar year. A manufacturer may use averaging during certification to offset an emission exceedance of an engine family caused by an FEL above the applicable emission standard, subject to the provisions of this subpart.

(e) Banking involves the generation of credits by a manufacturer in a given calendar year for use in a subsequent model year. A manufacturer may bank actual credits only after the end of the calendar year and after EPA has reviewed the manufacturer's end-of-year reports. During the calendar year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report. Credits declared for banking from the previous calendar year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(f) Trading involves the sale of banked credits for use in certification of new engines under this part. Only banked credits may be traded; reserved credits may not be traded.

§ 94.304 Compliance requirements.

(a) Manufacturers wishing to participate in certification averaging, banking and trading programs shall select a FEL for each engine family they wish to include. The level of the FEL shall be selected by the manufacturer, subject to the upper limits described in paragraph (m) of this section. An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the applicable THC+NO_X and PM emission standard for the family participating in the averaging, banking, and trading program.

(b) A manufacturer may certify one or more engine families at FELs above or below the applicable emission standard, provided the summation of the manufacturer's projected balance of all credit transactions in a given calendar year is greater than or equal to zero, as calculated for each family under § 94.305 and reported under § 94.309.

(c) Manufacturers certifying engine families with FELs exceeding the applicable emission standard shall obtain emission credits in amounts sufficient to address the shortfall. Credits may be obtained from averaging, banking, or trading, subject to the restrictions described in this subpart.

(d) Manufacturers certifying engine families with FELs below the applicable emission standard may generate emission credits to average, bank, or trade, or a combination thereof.

(e) Engine families may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(f) Credits may only be used for certification; they may not be used to remedy a violation of the FEL determined by production line or in-use testing. Credits may be used to allow subsequent production of engines for an engine family failing production line testing if the manufacturer elects to recertify to a higher FEL.

(g) [Reserved].

(h) If an FEL is changed after initial certification in any given model year, the manufacturer must conduct production line testing to verify that the emission levels are achieved.

(i) Manufacturers participating in the averaging, banking and trading program must demonstrate compliance with the applicable emission standards at the end of the model year. Manufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standard and the FEL for such engine family (ies) will be in violation of the conditions of the certificate of conformity for such engine family (ies). The certificates of conformity may be voided *ab initio* for those engine families.

(j) In the event of a negative credit balance resulting from a credit trade, both the buyer(s) and the seller(s) are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided *ab initio*.

(1) Where a buyer of credits is not responsible for causing the negative credit balance, it is only liable to supply additional credits equivalent to any amount of invalid credits that it used.

(2) Credit holders responsible for the credit shortfall may be subject to the requirements of § 94.309(g)(3).

(k) Averaging sets. Credits generated by engine families in one averaging set may not be used for compliance by engine families in any other averaging set. The averaging sets are defined as:

(1) Category 1 engines certified to the Tier 2 standards.

(2) Category 2 engines certified to the Tier 2 standards.

(3) Category 1 engines certified to the Tier 3 standards.

(4) Category 2 engines certified to the Tier 3 standards.

(l) Credit life shall be unlimited.

(m) Upper limits. The FELs for THC+NO_X and PM for new engines certified for participation in this averaging, banking and trading program may not exceed the following values:

(1) For Category 1 engines, the FEL may not exceed the levels contained in Table D–1.

TABLE D–1.—CATEGORY 1 UPPER LIMITS FOR FAMILY EMISSION LIMITS

Subcategory liters/cylinder	Tier	Model year*	THC+NO_X FEL g/kW-hr	PM FEL g/kW-hr
Power ≥ 37 kW disp. < 0.9	Tier 2	2004	11.5	1.2
	Tier 3	2008	7.5	1.2
0.9 ≥ disp. < 1.2	Tier 2	2004	11.5	1.2
	Tier 3	2008	7.5	1.2
1.2 ≥ disp. < 1.5	Tier 2	2004	10.5	0.54
	Tier 3	2008	7.5	0.54
1.5 ≥ disp. < 2.0	Tier 2	2004	10.5	0.54
	Tier 3	2008	7.5	0.54

TABLE D–1.—CATEGORY 1 UPPER LIMITS FOR FAMILY EMISSION LIMITS—Continued

Subcategory liters/cylinder	Tier	Model year*	THC+NO$_X$ FEL g/kW-hr	PM FEL g/kW-hr
2.0 ≥ disp. < 2.5	Tier 2	2006	10.5	0.54
	Tier 3	2008	7.5	0.54
2.5 ≥ disp. < 5.0	Tier 2	2008	10.5	0.54
	Tier 3	2010	7.5	0.54

* The model years listed indicate the model years for which the specified tier of limits take effect.

(2) For Category 2 engines, the FEL may not exceed the levels contained in Table D-2.

TABLE D–2.—CATEGORY 2 UPPER LIMITS FOR FAMILY EMISSION LIMITS

Tier	Model year*	THC+NO$_X$ FEL g/kW-hr	PM FEL g/kW-hr
Tier 2	2008	10.7	0.60
Tier 3	2010	7.5	0.60

*The model years listed indicate the model years for which the specified tier of limits take effect.

§ 94.305 Credit generation and use calculation.

(a) For each participating engine family, THC+NO$_X$ and PM emission credits (positive or negative) are to be calculated according to the equation in paragraph (b) of this section and rounded in accordance with ASTM E29–93a, to the nearest one-hundredth of a megagram (Mg). Consistent units are to be used throughout the calculation.

(b) Credits for each engine family are calculated as:

Emission credits = (Std—FEL) X (UL) X (Production) X (AvgPR) X (LF) X (10^{-6})

Where:

(i) Std=the applicable cycle-weighted marine engine THC+NO$_X$ and/or PM emission standard in grams per kilowatt-hour.

(ii) FEL = the family emission limit for the engine family in grams per kilowatt-hour. (The FEL may not exceed the limit established in § 94.304(m) for each pollutant.)

(iii) UL = the useful life in hours.

(iv) Production = the number of engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.

(v) AvgPR = average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.

(vi) LF = the load factor, dependent on whether the engine is intended for propulsion or auxiliary applications, as follows:

(A) 0.69 for propulsion engines,

(B) 0.51 for auxiliary engines.

§ 94.306 Certification.

(a) In the application for certification a manufacturer must:

(1) Declare its intent to include specific engine families in the averaging, banking, and/or trading programs. Separate declarations are required for each pollutant (THC+NO$_X$ and PM).

(2) Declare FELs for each engine family participating in certification averaging, banking, and/or trading.

(i) The FELs must be to the same number of significant digits as the emission standard.

(ii) In no case may the FEL exceed the upper limit prescribed in § 94.304(m).

(3) Conduct and submit detailed calculations of projected emission credits (positive or negative) based on quarterly production projections for each participating family and for each pollutant, using the applicable equation in § 94.305 and the applicable values of the terms in the equation for the specific family.

(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family) of the credits necessary to offset the credit deficit according to quarterly projected production.

(ii) If the engine family is projected to generate credits, state specifically where the quarterly projected credits will be applied (manufacturer/engine family or reserved).

(4) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's engine families participating in the averaging, banking, and trading program.

(b) Based on this information, each manufacturer's certification application must demonstrate:

(1) That at the end of model year production, each engine family has a net emissions credit balance equal to or greater than zero for any pollutant and program for which participation in certification under averaging, banking, and/or trading is being sought. The equation in section § 94.305 shall be used in this calculation for each engine family.

(2) That the manufacturer will obtain sufficient credits to be used to comply with the emission standard for any engine family with an FEL that exceeds the applicable emission standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, for each engine family involved the manufacturer must identify specifically the source of the credits being used (manufacturer/engine family). All such reports shall include all credits involved in certification averaging, banking, or trading.

(3) That in cases where credits are being generated/supplied, the use of such credits is specifically designated (manufacturer/engine family or reserved). All such reports shall include all credits involved in certification averaging, banking, or trading.

(c) Manufacturers must monitor projected versus actual production throughout the model year to ensure that compliance with emission standards is achieved at the end of the model year

(d) At the end of the model year, the manufacturer must provide the end-of-year reports required under § 94.309.

(1) Projected credits based on the information supplied in the certification application may be used to obtain a certificate of conformity. However, any such projected credits must be validated based on review of the end of model year reports and may be revoked at a later time based on follow-up audits or any other verification measure deemed appropriate by the Administrator.

(2) Compliance for engine families using averaging, banking, or trading will be determined at the end of the model

year. Manufacturers that have certified engine families with credit balances for $THC+NO_X$ and/or PM that do not equal or exceed zero shall be in violation of the conditions of the certificate of conformity for such engine families. The certificate of conformity may be voided *ab initio* for those engine families.

(e) *Other conditions of certification.* (1) All certificates issued are conditional upon compliance by the manufacturer with the provisions of this subpart both during and after the calendar year of production.

(2) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio.*

(3) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

§ 94.307 Labeling.

For all engines included in the certification averaging, banking, and trading program, the FEL to which the engine is certified must be included on the label required in § 94.212.

§ 94.308 Maintenance of records.

(a) The manufacturer of any engine that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such engine produced:

(1) EPA engine family and configuration;

(2) Engine identification number;

(3) Engine calendar year and build date;

(4) Rated power;

(5) Purchaser and destination or owner; and

(6) Assembly plant.

(b) The manufacturer of any engine family that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such family:

(1) Model year and EPA engine family;

(2) Family Emission Limit(s) (FEL);

(3) Rated power for each configuration;

(4) Projected applicable production/sales volume for the calendar year;

(5) Actual applicable production/sales volume for the calendar year; and

(6) Useful life.

(c) Any manufacturer producing an engine family participating in trading of credits must maintain the following records on a quarterly basis for each engine family in the trading program:

(1) The model year and engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 94.305;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

(d) The manufacturer must retain all records required to be maintained under this section for a period of 8 years from the due date for the end-of-calendar year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(e) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(f) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(g) EPA may void *ab initio* a certificate of conformity for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

§ 94.309 Reports.

(a) Manufacturers must submit the certification information as required under § 94.306, and end-of-year reports each year as part of their participation in certification averaging, banking, and trading programs.

(b) Quarterly reports. All entities involved in credit trades must submit quarterly reports. The reports shall include the source or recipient of the credits, the amount of credits involved plus remaining balances, details regarding the pollutant, and model year as well as the information prescribed in § 94.308(c). Copies of contracts related to credit trading must be included or supplied by the buyer, seller, and broker, as applicable.

(c) End-of-year reports must include the information prescribed in § 94.308(b). The report shall include a calculation of credit balances for each family to show that the summation of the manufacturer's use of credits results in a credit balance equal to or greater than zero. The report shall be consistent in detail with the information submitted under § 94.306 and show how credit surpluses were dispersed and how credit shortfalls were met on a family specific basis. The end-of-year report shall incorporate any information reflected in previous quarterly reports.

(d) The applicable production/sales volume for quarterly and end-of-year reports must be based on the location of either the point of first retail sale by the manufacturer or the point at which the engine is placed into service, whichever occurs first. This is called the final product purchase location.

(e) Each quarterly and end-of-year report submitted shall include a statement certifying to the accuracy and authenticity of the material reported therein.

(f) Requirements for submission. (1) Quarterly reports must be submitted within 90 days of the end of the calendar quarter to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403–J, 401 M St., SW, Washington, D.C. 20460.

(2) End-of-year reports must be submitted within 120 days of the end of the calendar year to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403–J, 401 M St., SW, Washington, D.C. 20460.

(3) Failure by a manufacturer participating in the averaging, banking, or trading program to submit any quarterly or end-of-year reports in the specified time for all engines is a violation of sections 203(a)(1) and 213 of the Clean Air Act for each engine.

(4) A manufacturer generating credits for banking only who fails to submit end-of-year reports in the applicable specified time period (120 days after the end of the calendar year) may not use or trade the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(g) Reporting errors. (1) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected 180-days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180-days shall be correctable if, as a result of the correction, the manufacturer's 's credits are reduced. Errors in the manufacturer's favor are not corrected if discovered after the 180-day correction period allowed.

(2) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report

previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be corrected by EPA.

(3) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero. These credits must be supplied at the ratio of 1.1 credits for each 1.0 credit needed. If sufficient credits are not available to bring the credit balance to zero for the family(ies) involved, EPA may void the certificate(s) for that family(ies) *ab initio*. In addition, all engines within an engine family for which there are insufficient credits will be considered to have violated the conditions of the certificate of conformity and therefore are not covered by that certificate.

(4) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits are restored for use by the manufacturer.

§ 94.310 Notice of opportunity for hearing.

Any voiding of the certificate under this subpart will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 94.216 and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

Subpart E—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program

§ 94.401 Applicability.

The requirements of this subpart of this part are applicable to manufacturers of engines subject to the provisions of subpart A of this part. The requirement to report emission-related defects affecting a given class or category of engines applies for eight years from the end of the year in which such engines were manufactured.

§ 94.402 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.403 Emission defect information report.

(a) A manufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects, (or based on other information) that a specific emission-related defect exists in 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale of the affected engines to an ultimate purchaser.

(b) Defect information reports required under paragraph (a) of this section must be submitted not more than 15 working days after the same emission-related defect is found to effect 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines. Information required by paragraph (c) of this section that is either not available within 15 working days or is significantly revised must be submitted as it becomes available.

(c) Except as provided in paragraph (b) of this section, each defect report must contain the following information in substantially the format outlined:

(1) The manufacturer's corporate name.

(2) A description of the defect.

(3) A description of each class or category of engines potentially affected by the defect including make, model, calendar year produced, purchaser and any other information as may be required to identify the engines affected.

(4) For each class or category of engines described in response to paragraph (c)(3) of this section, the following shall also be provided:

(i) The number of engines known or estimated to have the defect and an explanation of the means by which this number was determined.

(ii) The address of the plant(s) at which the potentially defective engines were produced.

(5) An evaluation of the emissions impact of the defect and a description of any operational or performance problems which a defective engine might exhibit.

(6) Available emissions data which relate to the defect.

(7) An indication of any anticipated follow-up by the manufacturer.

§ 94.404 Voluntary emissions recall reporting.

(a) When any manufacturer initiates a voluntary emissions recall campaign involving an engine, the manufacturer shall submit to EPA a report describing the manufacturer's voluntary emissions recall plan as prescribed by this section within 15 working days of the date owner notification was begun. The report shall contain the following:

(1) A description of each class or category of engines recalled including the number of engines to be recalled, the calendar year if applicable, the make, the model, and such other information as may be required to identify the engines recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments, or other changes to be made to correct the engines affected by the emission-related defect.

(3) A description of the method by which the manufacturer will notify engine owners.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's reasons for imposing any such condition, and a description of the proof to be required of an engine owner to demonstrate compliance with any such condition.

(5) A description of the procedure to be followed by engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor to remedy the defect, and the designation of facilities at which the defect can be remedied.

(6) If some or all the nonconforming engines are to be remedied by persons other than authorized warranty agents of the manufacturer, a description of the class of persons other than authorized warranty agents of the manufacturer who will remedy the defect.

(7) A copy of any written notification sent to engine owners.

(8) A description of the system by which the manufacturer will assure that an adequate supply of parts will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial plan to be shipped to initiate the campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.

(9) Three copies of all necessary instructions to be sent to those persons who are to perform the repair under the remedial plan.

(10) A description of the impact of the changes on fuel consumption, operation or performance, and safety of each class or category of engines to be recalled.

(11) A sample of any label to be applied to engines which participate in the voluntary recall campaign.

(b) Unless otherwise specified by the Administrator, the manufacturer shall report on the progress of the recall campaign by submitting subsequent reports for six consecutive quarters, or until proven that remedial action has been adequately taken on all affected engines, whichever occurs first, commencing with the quarter after the voluntary emissions recall campaign actually begins. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter. For each class or group of engine subject to the voluntary emissions recall campaign, the quarterly report shall contain the:

(1) Emission recall campaign number, if any, designated by the manufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of engines involved in the voluntary emissions recall campaign.

(4) Number of engines known or estimated to be affected by the emission-related defect and an explanation of the means by which this number was determined.

(5) Number of engines inspected pursuant to voluntary emission recall plan.

(6) Number of inspected engines found to be affected by the emissions-related defect.

(7) Number of engines actually receiving repair under the remedial plan.

(8) Number of engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrappage, or for other reasons (specify).

(9) Number of engines determined to be ineligible for remedial action due to a failure to properly maintain or use such engines.

(10) Three copies of any service bulletins which relate to the defect to be corrected and which have not previously been reported.

(11) Three copies of all communications transmitted to engine owners which relate to the defect to be corrected and which have not previously been submitted.

(c) If the manufacturer determines that any of the information requested in paragraph (b) of this section has changed or was incorrect, revised information and an explanatory note shall be submitted. Answers to paragraphs (b)(5), (6), (7), (8), and (9) of this section shall be cumulative totals.

(d) The manufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, the names and addresses of engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and (3) Who were determined not to qualify for such remedial action when eligibility is conditioned on proper maintenance or use.

(e) The records described in paragraph (d) of this section shall be made available to the Administrator upon request.

§ 94.405 Alternative report formats.

(a) Any manufacturer may submit a plan for making either of the reports required by §§ 94.403 and 94.404 on computer diskettes, magnetic tape or other machine readable format. The plan shall be accompanied by sufficient technical detail to allow a determination that data requirements of these sections will be met and that the data in such format will be usable by EPA.

(b) Upon approval by the Administrator of the reporting system, the manufacturer may use such system until otherwise notified by the Administrator.

§ 94.406 Reports filing: record retention.

(a) The reports required by §§ 94.403 and 94.404 shall be sent to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., S.W., Washington, D.C. 20460.

(b) The information gathered by the manufacturer to compile the reports required by §§ 94.403 and 94.404 shall be retained for not less than 8 years from the date of the manufacture of the engines and shall be made available to duly authorized officials of the EPA upon request.

§ 94.407 Responsibility under other legal provisions preserved.

The filing of any report under the provisions of this subpart shall not affect a manufacturer's responsibility to file reports or applications, obtain approval, or give notice under any provision of law.

§ 94.408 Disclaimer of production warranty applicability.

(a) The act of filing an Emission Defect Information Report pursuant to § 94.403 is inconclusive as to the existence of a defect subject to the warranty provided by section 207(a) of the Act.

(b) A manufacturer may include on each page of its Emission Defect Information Report a disclaimer stating that the filing of a Defect Information Report pursuant to these regulations is not conclusive as to the applicability of the Production Warranty provided by section 207(a) of the Act.

Subpart F—Manufacturer Production Line Testing Programs

§ 94.501 Applicability.

The requirements of this subpart of this part are applicable to manufacturers of engines subject to the provisions of Subpart A of this part.

§ 94.502 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.503 General requirements.

(a) Manufacturers shall test production line engines in accordance with sampling procedures specified in § 94.505 and the test procedures specified in § 94.506.

(b) The Administrator may waive some or all of the requirements of this subpart.

(c) The requirements of this subpart apply with respect to all applicable standards and FELs of subpart A of this part, including the supplemental standards of § 94.8(e).

§ 94.504 Right of entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this part, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any engine is to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any test conducted pursuant to a manufacturer's production line testing program or any procedure or activity connected with such test is or was performed;

(3) Any facility where any test engine is present; and

(4) Any facility where any record required under § 94.509 or other document relating to this subpart is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of engine manufacture, assembly, storage, testing and other procedures, and to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine test procedures or activities, including test engine selection, preparation and service accumulation,

emission test cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of an engine; and

(4) To inspect and photograph any part or aspect of any engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer to make arrangements with those in charge of a facility operated for the manufacturer benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for production line testing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, and served on the manufacturer, a manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities authorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed *ex parte* to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

§ 94.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer will begin to select engines from each engine family for production line testing. Each engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible. Engines selected shall cover the broadest range of production possible.

(1)(i) The required sample size for a Category 1 engine family is one percent of projected annual production for all engine families, provided that no engine tested fails to meet applicable emission standards. The required sample size is zero if a manufacturer's projected annual production for all engine families is less than 100.

(ii) The required sample size for a Category 2 engine family is one percent of projected annual production for all engine families, with a minimum sample size of one test per model year provided that no engine tested fails to meet applicable emission standards.

(2) Manufacturers may elect to test additional engines. All additional engines must be tested in accordance with the applicable test procedures of this part.

(3) The Administrator may reject any engines selected by the manufacturer if he or she determines that such engines are not representitive of actual production.

(b) The manufacturer must assemble the test engines using the same mass production process that will be used for engines to be introduced into commerce.

(c) No quality control, testing, or assembly procedures will be used on any test engine or any portion thereof, including parts and subassemblies, that have not been or will not be used during the production and assembly of all other engines of that family, except with the approval of the Administrator.

§ 94.506 Test procedures.

(a)(1) For engines subject to the provisions of this subpart, the prescribed test procedures are those procedures described in subpart B of this part, except as provided in this section.

(2) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those specified in paragraph (a)(1) of this section for any engine he/she determines is not susceptible to satisfactory testing using procedures specified in paragraph (a)(1) of this section.

(3) If test procedures other than those in subpart B were used in certification of the engine family being tested under this subpart (other than alternate test procedures necessary for testing of a development engine instead of a low hour engine under § 94.9), the manufacturer shall use the test procedures used in certification for production line testing.

(b)(1) The manufacturer may not adjust, repair, prepare, modify, or perform any emission test on any test engine unless this adjustment, repair, preparation, modification and/or test is documented in the manufacturer's engine assembly and inspection procedures and is actually performed by the manufacturer or unless this adjustment, repair, preparation, modification and/or test is required or permitted under this subpart or is approved in advance by the Administrator.

(2) Any adjustable engine parameter must be set to values or positions that are within the range specified in the approved application for certification .

(3) The Administrator may adjust or require to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification and production line testing, to any setting within the specified adjustable range of that parameter, as determined by the Administrator, prior to the performance of any test.

(c) Service Accumulation/Green Engine Factor. The manufacturer shall accumulate up to 300 hours of service on the engines to be tested. In lieu of conducting such service accumulation, the manufacturer may establish a Green Engine Factor for each regulated pollutant for each engine family to be used in calculating emissions test results. The manufacturer shall obtain the approval of the Administrator prior to using a Green Engine Factor.

(d) The manufacturer may not perform any maintenance on test engines after selection for testing.

(e) If an engine is shipped to a facility other than the production facility for production line testing, and an adjustment or repair is necessary because of such shipment, the engine manufacturer must perform the necessary adjustment or repair only after the initial test of the engine, except where the Administrator has determined that the test would be impossible to perform or would permanently damage the engine.

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(f) If an engine cannot complete the service accumulation (if applicable) or an emission test, because of a malfunction, the manufacturer may request that the Administrator authorize either the repair of that engine or its deletion from the test sequence.

(g) Retesting. If an engine manufacturer determines that any production line emission test of an engine is invalid, the engine must be retested in accordance with the requirements of this subpart. Emission results from all tests must be reported to EPA, including test results the manufacturer determines are invalid. The engine manufacturer must also include a detailed explanation of the reasons for invalidating any test in the quarterly report required in § 94.508(e). In the event a retest is performed, a request may be made to the Administrator, within ten days of the end of the production quarter, for permission to substitute the after-repair test results for the original test results. The Administrator will either affirm or deny the request by the engine manufacturer within ten working days from receipt of the request.

§ 94.507 Sequence of testing.

(a) If one or more engines fail a production line test, then the manufacturer must test two additional engines for each engine that fails.

(b) The two additional engines tested under paragraph (a) of this section shall be selected from either the next fifteen produced in that engine family, or from those engines produced in that engine family within 48 hours of the completion of the failed test.

§ 94.508 Calculation and reporting of test results.

(a) Manufacturers shall calculate initial test results using the applicable test procedure specified in § 94.506(a). These results must also include the Green Engine Factor, if applicable. The manufacturer shall round these results, in accordance with ASTM E29–93a (incorporated by reference at § 94.5), to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding in accordance with ASTM E29–93a (incorporated by reference at § 94.5) to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) Manufacturers shall calculate the final test results for each test engine by applying the appropriate deterioration factors, derived in the certification process for the engine family, to the final test results, and rounding in accordance with ASTM E 29–93a (incorporated by reference at § 94.5) to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(d) If, subsequent to an initial failure of a production line test, the average of the test results for the failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer must notify the Administrator within 2 working days of such noncompliance.

(e) Within 30 calendar days of the end of each quarter, each manufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) Total production and sample size for each engine family;

(3) The applicable standards and/or FELs against which each engine family was tested;

(4) A description of the test engines;

(5) For each test conducted:

(i) A description of the test engine, including:

(A) Configuration and engine family identification;

(B) Year, make, and build date;

(C) Engine identification number;

(D) Number of hours of service accumulated on engine prior to testing; and

(E) Description of Green Engine Factor; how it is determined and how it is applied;

(ii) Location(s) where service accumulation was conducted and description of accumulation procedure and schedule, if applicable;

(iii) Test number, date, test procedure used, initial test results before and after rounding, and final test results for all production line emission tests conducted, whether valid or invalid, and the reason for invalidation of any test results, if applicable;

(iv) A complete description of any adjustment, modification, repair, preparation, maintenance, and testing which was performed on the test engine, has not been reported pursuant to any other paragraph of this subpart, and will not be performed on other production engines;

(v) Any other information the Administrator may request relevant to the determination whether the new engines being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(6) For each failed engine as defined in § 94.510(a), a description of the remedy and test results for all retests as required by § 94.512(g);

(7) The date of the end of the engine manufacturer's model year production for each engine family tested; and

(8) The following signed statement and endorsement by an authorized representative of the manufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line testing program was conducted in complete conformance with all applicable regulations under 40 CFR part 94. No emission-related changes to production processes or quality control procedures for the engine family tested have been made during this production line testing program that affect engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

§ 94.509 Maintenance of records; submittal of information.

(a) The manufacturer for any new engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) General records. A description of all equipment used to test engines in accordance with § 94.503. The equipment requirements in subpart B of this part apply to tests performed under this subpart.

(2) Individual records. These records pertain to each production line test conducted pursuant to this subpart and include:

(i) The date, time, and location of each test;

(ii) The method by which the Green Engine Factor was calculated or the number of hours of service accumulated on the test engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the production line test;

(iv) A record and description of any adjustment, repair, preparation or modification performed on test engines, giving the date, associated time, justification, name(s) of the authorizing personnel, and names of all supervisory personnel responsible for the conduct of the action;

(v) If applicable, the date the engine was shipped from the assembly plant, associated storage facility or port facility, and the date the engine was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed directly by EPA), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, in accordance with the record requirements specified in subpart B of this part;

(vii) A brief description of any significant events during testing not otherwise described under this paragraph (a)(2) of this section, commencing with the test engine selection process and including such extraordinary events as engine damage during shipment.

(3) The manufacturer must establish, maintain and retain general records, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer must retain all records required to be maintained under this subpart for a period of eight (8) years after completion of all testing. Records may be retained as hard copy (i.e., on paper) or reduced to microfilm, floppy disk, or some other method of data storage, depending upon the manufacturer's record retention procedure; provided, that in every case, all the information contained in the hard copy is retained.

(c) The manufacturer must, upon request by the Administrator, submit the following information with regard to engine production:

(1) Projected production for each configuration within each engine family for which certification has been requested and/or approved.

(2) Number of engines, by configuration and assembly plant, scheduled for production.

(d) Nothing in this section limits the Administrator's discretion to require a manufacturer to establish, maintain, retain or submit to EPA information not specified by this section.

(e) All reports, submissions, notifications, and requests for approval made under this subpart must be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division 6403-J, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

(f) The manufacturer must electronically submit the results of its production line testing using an EPA information format.

§ 94.510 Compliance with criteria for production line testing.

(a) A failed engine is one whose final test results pursuant to § 94.508(c), for one or more of the applicable pollutants, exceed an applicable emission standard or FEL.

(b) An engine family is deemed to be in noncompliance, for purposes of this subpart, if at any time throughout the model year, the average of an initial failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL.

§ 94.511 [Reserved]

§ 94.512 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine that fails a production line test pursuant to § 94.510(a), effective from the time the testing of that engine is completed.

(b) The Administrator may suspend the certificate of conformity for an engine family which is in noncompliance pursuant to § 94.510(b), thirty days after the engine family is deemed to be in noncompliance.

(c) If the results of testing pursuant to the regulations in this subpart indicate that engines of a particular family produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that family for engines manufactured by the manufacturer at all other plants.

(d) The Administrator may suspend a certificate of conformity for any engine family in whole or in part if:

(1) The manufacturer fails to comply with any of the requirements of this subpart.

(2) The manufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer renders inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart.

(5) An EPA enforcement officer is unable to conduct activities authorized in § 94.504 for any reason.

(e) The Administrator shall notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part; a suspension or revocation is effective upon receipt of such notification or thirty days from the time an engine family is deemed to be in noncompliance under §§ 94.508(d), 94.510(a), or 94.510(b), whichever is earlier, except that the certificate is immediately suspended with respect to any failed engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine family when the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the remedy is one requiring a design change or changes to the engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed engine, as provided for in paragraph (a) of this section, the manufacturer must take the following actions before the certificate is reinstated for that failed engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the engine conforms to applicable standards or family emission limits by retesting if applicable, the engine in accordance with this part; and

(3) Submit a written report to the Administrator, after successful completion of testing on the failed engine, which contains a description of the remedy and test results for each engine in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines, describes the remedy, including a description of any quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing engines selected from normal production runs of that engine family. Such testing must comply with the provisions of this subpart. If the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for any engine actually determined to be in conformance with the applicable

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standards or family emission limits through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the change(s) in engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer, within five working days after receipt of the report in paragraph (h)(1) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the change or changes or whether additional testing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing engines selected from normal production runs of that engine family. When both of these requirements are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. If this subsequent testing reveals failing data the revocation remains in effect.

(j) At any time subsequent to an initial suspension of a certificate of conformity for a test engine pursuant to paragraph (a) of this section, but not later than 30 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), or (f) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraphs (a), (b), (c) and (d) of this section:

(1) Shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 94.513, 94.514, and 94.515 and

(2) Need not apply to engines no longer in the possession of the manufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or voids a certificate of conformity under paragraph § 94.215, and prior to the commencement of a hearing under § 94.513, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke, or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer to avoid storing non-test engines while conducting subsequent testing of the noncomplying family, a manufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer must commit to recall all engines of that family produced from the time the certificate is conditionally reinstated if the family fails subsequent testing and must commit to remedy any nonconformity at no expense to the owner.

§ 94.513 Request for public hearing.

(a) If the manufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 94.512(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 30 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division, Office of Mobile Sources and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer shall include in the request for a public hearing:

(1) A statement as to which configuration(s) within a family is to be the subject of the hearing;

(2) A concise statement of the issues to be raised by the manufacturer at the hearing, except that in the case of the hearing requested under § 94.512(j), the hearing is restricted to the following issues:

(i) Whether tests have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning);

(ii) Whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 94.512(c));

(3) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

§ 94.514 Administrative procedures for public hearing.

(a) The Presiding Officer shall be an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930).

(b) The Judicial Officer shall be an officer or employee of the Agency appointed as a Judicial Officer by the Administrator, pursuant to this section, who shall meet the qualifications and perform functions as follows:

(1) *Qualifications.* A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. The Judicial Officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart. The Judicial Officer shall be a graduate of an accredited law school and a member in good standing of a recognized Bar Association of any state or the District of Columbia.

(2) *Functions.* The Administrator may consult with the Judicial Officer or delegate all or part of the Administrator's authority to act in a given case under this section to a Judicial Officer, provided that this delegation does not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) For the purposes of this section, one or more Judicial Officers may be designated by the Administrator. As work requires, a Judicial Officer may be designated to act for the purposes of a particular case.

(d)(1) In the case of a hearing requested under § 94.512(j), when it clearly appears from the data and other information contained in the request for a hearing that no genuine and substantial question of fact or law exists with respect to the issues specified in § 94.513(c)(2), the Administrator may enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity.

(2) In the case of a hearing requested under § 94.513 to challenge a suspension of a certificate of conformity for the reason(s) specified in § 94.512(d), when it clearly appears from the data and other information contained in the request for the hearing that no genuine and substantial question of fact or law exists with respect to the issue of whether the refusal to comply with this subpart was caused by conditions and circumstances outside the control of the manufacturer, the Administrator may enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraph (d)(1) or (d)(2) of this section has the force and effect of a final decision of the Administrator, as issued pursuant to § 94.516.

(4) If the Administrator determines that a genuine and substantial question of fact or law does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, the Administrator shall grant the request for a hearing and publish a notice of public hearing in the **Federal Register** or by such other means as the Administrator finds appropriate to provide notice to the public.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section and § 94.513(c) must be filed with the Hearing Clerk of the Agency. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section and § 94.513(b). If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing referred to in paragraph (d)(4) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division 6403–J, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Computation of time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and federal legal holidays are included in computing the period allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or federal legal holiday, the period is extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his or her discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Hearing date.* To the extent possible hearings under § 94.513 will be scheduled to commence within 14 days of receipt of the request for a hearing.

§ 94.515 Hearing procedures.

The procedures provided in § 86.1014–84 (i) through (s) of this chapter apply for hearings requested pursuant to § 94.513 regarding suspension, revocation, or voiding of a certificate of conformity.

§ 94.516 Appeal of hearing decision.

The procedures provided in § 86.1014–84 (t) through (aa) of this chapter apply for appeals filed with respect to hearings held pursuant to § 94.515.

§ 94.517 Treatment of confidential information.

Except for information required by § 94.508(e)(2) and quarterly emission test results described in § 94.508(e), information submitted pursuant to this subpart shall be made available to the public by EPA notwithstanding any claim of confidentiality made by the submitter. The provisions for treatment of confidential information described in § 94.4 apply to the information required by § 94.508(e)(2) and quarterly emission test results described in § 94.508(e).

Subpart G [Reserved]

Subpart H—Recall Regulations

§ 94.701 Applicability.

The requirements of this subpart are applicable to all nonroad engines subject to the provisions of this part.

§ 94.702 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.703 Applicability of 40 CFR part 85, subpart S.

(a) Engines subject to provisions of this part are subject to recall regulations specified in part 85, subpart S of this chapter, except for the items set forth in this section.

(b) In § 85.1801, section 216 of the Clean Air Act applies, rather than section 214 of the Act.

(c) In § 85.1802(a), section 213 of the Act applies, rather than section 202 of the Act.

(d) In § 85.1803(a) and § 85.1805(a)(1) "family emission limits as defined in part 94 promulgated under section 213 of the Act" applies, rather than the reference to "family particulate emission limits as defined in part 86 promulgated under section 202 of the Act".

(e) Throughout the subpart references to "engines" apply rather than references to "vehicles or engines".

Subpart I—Importation of Nonconforming Engines

§ 94.801 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to importers of engines (and vessels containing engines) for which the Administrator has promulgated regulations under this part prescribing emission standards, that are offered for importation or imported into the United States, but which engines, at the time of importation or being offered for importation, are not covered by certificates of conformity issued under section 213 and section 206(a) of the Clean Air Act (that is, which are nonconforming engines as defined in § 94.2), and this part. Compliance with regulations under this subpart does not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for the importation of engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in U.S. Customs Service regulations (19 CFR Chapter I).

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§ 94.802 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.803 Admission.

A nonconforming engine offered for importation may be admitted into the United States pursuant to the provisions of this subpart. In order to obtain admission the importer must submit to the Administrator a written request for approval containing the following:

(a) Identification of the importer of the engine and the importer's address, telephone number, and taxpayer identification number;

(b) Identification of the engine's owner, the owner's address, telephone number, and taxpayer identification number;

(c) Identification of the engine including make, model, identification number, and original production year;

(d) Information indicating the provision in this subpart under which the engine is to be imported;

(e) Identification of the place(s) where the engine is to be stored until EPA approval of the importer's application to the Administrator for final admission;

(f) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder; and

(g) Such other information as is deemed necessary by the Administrator.

§ 94.804 Exemptions.

(a) Unless otherwise specified, any person may apply for the exemptions allowed by this section.

(b) Notwithstanding other requirements of this subpart, a nonconforming engine that qualifies for a temporary exemption under this paragraph may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for a temporary exemption from the Administrator shall contain the identification required in § 94.803 and information that demonstrates that the engines qualify for an exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond and/or exportation of the engine. The following temporary exemptions are permitted by this paragraph (b):

(1) *Exemption for repairs or alterations.* Upon written approval by EPA, a person may conditionally import under bond a nonconforming engine solely for purpose of repair(s) or alteration(s). The engine may not be operated in the United States other than for the sole purpose of repair or alteration or shipment to the point of repair or alteration and to the port of export. It may not be sold or leased in the United States and is to be exported upon completion of the repair(s) or alteration(s).

(2) *Testing exemption.* A nonconforming test engine may be conditionally imported by a person subject to the requirements of § 94.905. A test engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer, and subsequently granted by EPA, concerning the engine in accordance with § 94.905 for a subsequent one-year period.

(3) *Display exemptions.* (i) A nonconforming engine intended solely for display may be conditionally imported under bond subject to the requirements of § 94.906(b).

(ii) A display engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of an engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display engine may not be sold or leased in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(iii) A display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months.

(c) National security exemption. Notwithstanding any other requirement of this subpart, an engine may be permanently imported into the United States under the national security exemption found at § 94.908, if prior written approval for such permanent importation is obtained from the Administrator. A request for approval is to contain the identification information required in § 94.803 and information that demonstrates that the importer is entitled to the exemption.

(d) An application for exemption provided for in paragraphs (b) and (c) of this section shall be mailed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., SW., Washington, DC 20460, Attention: Imports.

§ 94.805 Prohibited acts; penalties.

(a) The importation of an engine (including an engine incorporated in an imported marine vessel) which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of an engine may not:

(1) Operate the engine in the United States; or

(2) Sell or lease or offer the engine for sale or lease.

(c) An engine conditionally admitted pursuant to § 94.804 and not otherwise permanently exempted or excluded by the end of the period of conditional admission, or within such additional time as the Administrator and the U.S. Customs Service may allow, is deemed to be unlawfully imported into the United States in violation of section 213(d) and section 203 of the Act, unless the engine has been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations by the end of the period of conditional admission. An engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to a civil penalty under section 205 of the Act and § 94.1106. In addition to the penalty provided in the Act and § 94.1106, where applicable, a person or entity who imports an engine under the exemption provisions of § 94.804 and, who fails to deliver the engine to the U.S. Customs Service by the end of the period of conditional admission is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

Subpart J—Exclusion and Exemption Provisions

§ 94.901 Purpose and applicability.

The provisions of this subpart of this part identify excluded engines (i.e., engines not covered by the Act) and allow for the exemption of engines from certain provisions of this part. The applicability of the exclusions is described in § 94.903, and the applicability of the exemption allowances is described in §§ 94.904 through 94.909.

§ 94.902 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.903 Exclusions.

(a) Upon written request with supporting documentation, EPA will make written determinations as to whether certain engines are excluded from applicability of this part. Any engines that are determined to be excluded are not subject to the regulations under this part. Requests to determine whether certain engines are excluded should be sent to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., SW., Washington, DC 20460.

(b) EPA will maintain a list of models of engines that have been determined to be excluded from coverage under this part. This list will be available to the public and may be obtained by writing to the address in paragraph (a) of this section.

(c) In addition to the engines excluded in paragraph (a) of this section, certain engines are not subject to the requirements and prohibitions of this part because they are excluded from the definitions of "marine engine" in § 94.2.

§ 94.904 Exemptions.

(a) Except as specified otherwise in this subpart, the provisions of §§ 94.904 through 94.911 exempt certain new engines from the standards, other requirements, and prohibitions of this part, except for the requirements of this subpart and the requirements of § 94.1104.

(b)(1) Any person may request a testing exemption subject to the provisions of § 94.905.

(2) Any engine manufacturer may request a national security exemption subject to the provisions of § 94.908.

(3) Engines manufactured for export purposes are exempt without application, subject to the provisions of § 94.909, except as otherwise specified by § 94.909.

(4) Manufacturer-owned engines are exempt without application, subject to the provisions of § 94.906 (a).

(5) Display engines are exempt without application, subject to the provisions of § 94.906 (b).

(6) Engines used solely for the purpose of competition are exempt, subject to the provisions of § 94.906 (c).

(7) Auxiliary engines used on foreign trade vessels are exempt, subject to the provisions of § 94.906 (d).

(8) Engines that are identical to engines that are covered by a certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92 are exempt, subject to the provisions of § 94.907.

§ 94.905 Testing exemption.

(a)(1) The Administrator may exempt from the standards and/or other requirements and prohibitions of this part new engines that are being used solely for the purpose of conducting a test program. Any person requesting an exemption for the purpose of conducting a test program must demonstrate the following:

(i) That the proposed test program has a purpose which constitutes an appropriate basis for an exemption in accordance this section;

(ii) That the proposed test program necessitates the granting of an exemption;

(iii) That the proposed test program exhibits reasonableness in scope; and

(iv) That the proposed test program exhibits a degree of oversight and control consonant with the purpose of the test program and EPA's monitoring requirements.

(2) Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four elements identified in paragraphs (a)(1)(i) through (iv) of this section.

(b) With respect to the purpose of the proposed test program, an appropriate purpose would be research, investigations, studies, demonstrations, technology development, or training, but not national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under § 94.1103. In appropriate circumstances, time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of engines. In this regard, required items of information include:

(1) An estimate of the program's duration; and

(2) The maximum number of engines involved.

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the testing;

(2) The location(s) of the testing;

(3) The time, work, or mileage duration of the testing;

(4) The ownership arrangement with regard to the engines involved in the testing;

(5) The intended final disposition of the engines;

(6) The manner in which the engine identification numbers will be identified, recorded, and made available; and (7) The means or procedure whereby test results will be recorded.

(f) A manufacturer of new engines may request a testing exemption to cover engines intended for use in test programs planned or anticipated over the course of a subsequent two-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the engines are used for purposes consistent with paragraph (a) of this section.

(g) For engines being used for the purpose of developing a fundamentally new emission control technology related either to an alternative fuel or an aftertreatment device, the Administrator may exempt the engine from some or all of the applicable standards of this part for the full useful life of the engine, subject to the provisions of paragraphs (a) through (f) of this section.

§ 94.906 Manufacturer-owned exemption, display exemption, competition exemption, and foreign trade vessel exemption.

(a) Any manufacturer-owned-owned engine, as defined by § 94.2, is exempt from § 94.1103, without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer must establish, maintain, and retain the following adequately organized and indexed information on each exempted engine:

(i) Engine identification number;

(ii) Use of the engine on exempt status; and

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(iii) Final disposition of any engine removed from exempt status.

(2) The manufacturer must provide right of entry and access to these records to EPA Enforcement Officers as outlined in § 94.208.

(3) The manufacturer must permanently affix a label to each engine on exempt status, unless the requirement is waived or an alternate procedure is approved by the Director, Engine Programs and Compliance Division. This label should:

(i) Be affixed in a readily visible portion of the engine;

(ii) Be attached in such a manner that cannot be removed without destruction or defacement;

(iii) State in the English language and in block letters and numerals of a color that contrasts with the background of the label, the following information:

(A) The label heading "Emission Control Information";

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement, engine family identification, and model year of engine; or person of office to be contacted for further information about the engine;

(D) The statement "This engine is exempt from the prohibitions of 40 CFR 94.1103."

(4) No provision of paragraph (a)(3) of this section prevents a manufacturer from including any other information it desires on the label.

(5) The engine is not used in revenue-generating service, or sold.

(b) Display exemption. An uncertified engine that is to be used solely for display purposes, and that will only be operated incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has been obtained for the engine, is exempt without request from the standards of this part.

(c) Competition exemption. The Administrator may exempt, upon request, engines that are used solely for the purpose of competition.

(d) Foreign trade exemption. (1) The Administrator may exempt, upon request of the vessel owner, auxiliary engines used on foreign trade vessels.

(2) Vessel owners requesting an exemption under this paragraph (d) must demonstrate to the Administrator that the vessel will spend less than 25 percent of its operating time within 320 nautical kilometers of U.S. territory.

(3) For the purpose of this paragraph (d), the term "vessel owner" includes any entities that have contracted to purchase a new marine vessel.

§ 94.907 Non-marine-specific engine exemption.

(a)(1) For manufacturers selling non-marine-specific engines to be used as propulsion engines in marine vessels, such engines are exempt, provided:

(i) The engines are covered by a certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92;

(ii) The certified emission levels (after application of deterioration factors) are below the numerical levels of the otherwise applicable standards of this part for all pollutants;

(iii) More engines are reasonably projected to be sold and used under the certificate for non-marine use than for use in marine vessels;

(iv) The engine is sold to an engine dresser for marization prior to being placed in a vessel;

(v) The Administrator has approved the exemption as specified in paragraph (d) of this section.

(2) For the purposes of this section "covered by a certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92" means that:

(i) The engine complies with all applicable requirements of either 40 CFR part 89 or 40 CFR part 92;

(ii) The fuel system of the engine has not been modified after the original manufacture of the engine is complete;

(iii) The engine cooling system of an installed engine meets the original manufacturer's specifications for certified engines;

(iv) No other changes are made to the engine that could reasonably be expected to adversely effect the emissions performance of the engine; and

(v) The original emissions label remains clearly visible on the engine after installation in the vessel.

(b) For manufacturers selling non-marine-specific engines to be used as auxiliary engines in marine vessels, such engines are exempt from the certification requirements of subpart C of this part and the production line testing requirements of subpart F of this part, provided that they comply with all of the requirements of paragraph (a) of this section other than the requirement of paragraph (a)(1)(iv) of this section. These engines are not exempt from the standards of subpart A of this part.

(c) Manufacturers of engines exempted under this section shall:

(1) Report annually to EPA the number of engines exempted under paragraph (a) of this section;

(2) Upon the Administrator's request, provide test data showing the emissions of the engine when it is operated over a typical marine engine cycle; and

(3) Notify purchasers that the engine a dressed non-marine specific engine (e.g., is a dressed locomotive engine) that is exempt from the requirements of this part 94.

(d)(1) Manufacturers seeking an exemption under this section shall notify the Administrator of such intent in their applications for certification under 40 CFR part 89 or 40 CFR part 92.

(2) The Administrator shall deny a non-marine-specific exemption in any case where he/she has evidence that approving such an exemption would be inappropriate because of adverse environmental or economic impacts.

§ 94.908 National security exemption.

(a)(1) Any marine engine, otherwise subject to this part, which is used in a vessel that exhibits substantial features ordinarily associated with military combat such as armor and/or permanently affixed weaponry and which will be owned and/or used by an agency of the federal government with responsibility for national defense, will be exempt from the regulations in this subpart for purposes of national security. No request for exemption is necessary.

(2) Manufacturers may request a national security exemption for any marine engine, otherwise subject to this part, which does not meet the conditions described in paragraph (a)(1) of this section. A manufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the federal government charged with responsibility for national defense.

(b) EPA will maintain a list of models of marine engines (and the vessels which use them) that have been granted a national security exemption under paragraph (a)(2) of this section. This list will be available to the public and may be obtained by writing to the following address: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, (6403–J) Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

§ 94.909 Export exemptions.

(a) A new engine intended solely for export, and so labeled or tagged on the outside of any container and on the engine, is subject to the provisions of § 94.1103, unless the importing country has new marine engine emission standards which differ from EPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards whatsoever is deemed to be a country having emission standards which differ from EPA standards.

(c) It is a condition of any exemption for the purpose of export under paragraph (a) of this section, that such exemption is void *ab initio* with respect to a new engine intended solely for export, where such engine is sold, or offered for sale, to an ultimate purchaser or otherwise distributed or introduced into commerce in the United States for purposes other than export.

§ 94.910 Granting of exemptions.

(a) If upon completion of the review of an exemption request made pursuant to § 94.905 or § 94.908, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption is to be prepared and submitted to the person requesting the exemption. The memorandum is to set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition causes the exemption to be void *ab initio* with respect to any engine. Consequently, the causing or the performing of an act prohibited under § 94.1103(a)(1) or (a)(3), other than in strict conformity with all terms and conditions of this exemption, renders the person to whom the exemption is granted, and any other person to whom the provisions of § 94.1103(a) are applicable, liable to suit under sections 204 and 205 of the Act.

§ 94.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., S.W., Washington, D.C. 20460.

Subpart L—General Enforcement Provisions and Prohibited Acts

§ 94.1101 Applicability.

The requirements of this subpart are applicable to all persons with respect to engines subject to the provisions of subpart A of this part.

§ 94.1102 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.1103 Prohibited acts.

(a) The following acts and the causing thereof are prohibited:

(1)(i)(A) In the case of a manufacturer of new engines, the sale, the offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the distribution in commerce of any new engine manufactured after December 31, 2003 (the effective date of applicable emission standards under this part), unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(B) The manufacture of an engine for the purpose of an act listed in paragraph (a)(1)(i)(A) of this section unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part prior to its introduction into commerce.

(ii) In the case of any person, except as provided in Subpart I of this part, the importation into the United States of any engine manufactured on or after the implementation date of the applicable emission limits for the relevant engine, unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part. (2)(i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this part.

(ii) For a person to fail or refuse to permit entry, testing, or inspection authorized under this part.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required by this part.

(iv) For a person to fail to establish or maintain records as required under this part. (3)(i) For a person to remove or render inoperative a device or element of design installed on or in a engine in compliance with regulations under this part, or to set any adjustable parameter to a setting outside of the range specified by the manufacturer, as approved in the application for certification by the Administrator.

(ii) For a person to manufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(iii) For a person to deviate from the provisions of § 94.11 when rebuilding an engine (or rebuilding a portion of an engine or engine system).

(4) For a manufacturer of a new engine subject to standards prescribed under this part:

(i) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new engine unless the manufacturer has complied with the requirements of § 94.1107.

(ii) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new engine unless all required labels and tags are affixed to the engine in accordance with § 94.212.

(iii) To fail or refuse to comply with the requirements of § 94.1108.

(iv) Except as provided in § 94.211, to provide directly or indirectly in any communication to the ultimate purchaser or a subsequent purchaser that the coverage of a warranty under the Act is conditioned upon use of a part, component, or system manufactured by the manufacturer or a person acting for the manufacturer or under its control, or conditioned upon service performed by such persons.

(v) To fail or refuse to comply with the terms and conditions of the warranty under § 94.1107.

(5) For a manufacturer of marine vessels to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce a new vessel containing an engine not covered by a certificate of conformity.

(6) For any person to install a recreational marine engine in a vessel that is manufactured on or after the implementation date of the applicable standards and that is not a recreational vessel.

(b) For the purposes of enforcement of this part, the following apply:

(1) Nothing in paragraph (a)(3) of this section is to be construed to require the use of any manufacturer's parts in maintaining or repairing a engine.

(2) Actions for the purpose of repair or replacement of a device or element of design or any other item are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure, the device or element is replaced upon completion of the

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procedure, and the action results in the proper functioning of the device or element of design.

(3) Where the Administrator determines that no engine produced by any manufacturer and is certified to the requirements of this part is available with the appropriate physical or performance characteristics to repower a vessel, the Administrator may allow a replacement engine to be produced without complying with all of the otherwise applicable requirements of this part. Such engine shall not be subject to the prohibitions of paragraph (a)(1) of this section, provided that:

(i) The engine requiring replacement is not certified or is certified to emission standards that are less stringent than those in effect when the replacement engine is built; and

(ii) The engine manufacturer or its agent takes ownership and possession of the engine being replaced in partial exchange for the replacement engine; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved by the Administrator:

THIS ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1 [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY; and

(iv) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(3), the term "engine manufacturer" shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part; and

(v) Where the replacement engine is intended to replace an engine that is certified to emission standards that are less stringent than those in effect when the replacement engine is built, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced; and

(vi) Engines sold pursuant to the provisions of this paragraph will neither generate nor use emission credits and will not be part of any accounting under the averaging, banking and trading program.

§ 94.1104 General enforcement provisions.

(a) *Information collection provisions.* (1)(i) Every manufacturer of new engines and other persons subject to the requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part or to otherwise carry out the provisions of this part, and must, upon request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records. The manufacturer shall comply in all respects with the requirements of subpart E of this part.

(ii) Every manufacturer or owner of engines exempted from the standards or requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require regarding the emissions of such engines.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section, and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or by a person whom the manufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new engine from § 94.1103 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security, or for other purposes allowed by subpart J of this part.

(c) *Importation provision.* (1) A new engine, offered for importation or imported by a person in violation of § 94.1103 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a engine is finally refused admission under this paragraph (c), the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or additional time as may be permitted pursuant to the regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new engine intended solely for export, and so labeled or tagged on the outside of the container if used and on the engine, shall be subject to the provisions of § 94.1103, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart A of this part, then the engine must comply with the standards of the country that is to receive the engine.

(e) *Recordkeeping.* Except where specified otherwise, records required by this part must be kept for eight (8) years.

§ 94.1105 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 94.1103(a).

(b) Actions to restrain violations of § 94.1103(a) must be brought by and in the name of the United States. In an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

§ 94.1106 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 94.1103(a)(1), (a)(4), (a)(5), or (a)(6), or a manufacturer or dealer who violates § 94.1103(a)(3) (i) or (iii) is subject to a civil penalty of not more than $25,000 for each violation unless modified by the Debt Collection Improvement Act and/or regulations issued there under.

(2) A person other than a manufacturer or dealer who violates § 94.1103(a)(3) (i) or (iii) or any person who violates § 94.1103(a)(3)(ii) is subject to a civil penalty of not more

than $2,500 for each violation unless modified by the Debt Collection Improvement Act and/or regulations issued thereunder.

(3) A violation with respect to § 94.1103(a)(1), (a)(3)(i), (a)(4), or (a)(5) constitutes a separate offense with respect to each engine.

(4) A violation with respect to § 94.1103(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 94.1103(a)(5) constitutes a separate offense.

(5) A person who violates § 94.1103(a)(2) or (a)(5) is subject to a civil penalty of not more than $25,000 per day of violation unless modified by the Debt Collection Improvement Act and/or regulations issued there under.

(b) *Civil actions.* The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph (b) may be brought in the district court of the United States for the district in which the defendant resides or has the Administrator's principal place of business, and the court has jurisdiction to assess a civil penalty.

(2) In determining the amount of a civil penalty to be assessed under this paragraph (b), the court is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) *Administrative assessment of certain penalties.* (1) *Administrative penalty authority.* In lieu of commencing a civil action under paragraph (b) of this section, the Administrator may assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is not subject to judicial review. Assessment of a civil penalty shall be by an order made on the record after opportunity for a hearing held in accordance with the procedures found at part 22 of this chapter. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) *Determining amount.* In determining the amount of any civil penalty assessed under this paragraph (c), the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) *Effect of administrator's action.* (i) Action by the Administrator under this paragraph (c) does not affect or limit the Administrator's authority to enforce any provisions of the Act; except that any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this paragraph (c), or for which the Administrator has issued a final order not subject to further judicial review and for which the violator has paid a penalty assessment under this paragraph shall not be the subject of a civil penalty action under paragraph (b) of this section.

(ii) No action by the Administrator under this paragraph (c) shall affect a person's obligation to comply with a section of this part.

(4) *Finality of order.* An order issued under this paragraph (c) is to become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (c)(5) of this section.

(5) *Judicial review.* A person against whom a civil penalty is assessed in accordance with this paragraph (c) may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where the person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. The person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court within 30 days a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court is not to set aside or remand any order issued in accordance with the requirements of this paragraph (c) unless substantial evidence does not exist in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court is not to impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) *Collection.* (i) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this part after the order making the assessment has become final or after a court in an action brought under paragraph (c)(5) of this section has entered a final judgment in favor of the Administrator, the Administrator shall request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the date of the final order or the date of final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty is not subject to review.

(ii) A person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in paragraph (c)(6)(i) of this section shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorney's fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty is an amount equal to ten percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

§ 94.1107 Warranty provisions.

(a) The manufacturer of each engine must warrant to the ultimate purchaser and each subsequent purchaser or owner that the engine is designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period (as determined under § 94.10).

(b) For the purposes of this section, the owner of any engine warranted under this part is responsible for the proper maintenance of the engine. Proper maintenance includes replacement and/or service, as needed, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices which were in general use with engines prior to 1999. For diesel engines, this would generally include replacement or cleaning of the fuel delivery and injection system.

§ 94.1108 In-use compliance provisions.

(a) Effective with respect to engines subject to the requirements of this part:

(1) If the Administrator determines that a substantial number of any class or category of engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life period (as defined under § 94.2), the Administrator shall immediately notify the manufacturer of such nonconformity and require the manufacturer to submit a plan for remedying the nonconformity of the engines with respect to which such notification is given.

(i) The manufacturer's plan shall provide that the nonconformity of any such engines which are properly used and maintained will be remedied at the expense of the manufacturer.

(ii) If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section.

(2) Any notification required to be given by the manufacturer under paragraph (a)(1) of this section with respect to any class or category of engines shall be given to ultimate purchasers, subsequent purchasers (if known), and dealers (as applicable) in such manner and containing such information as required in subparts E and H of this part.

(3)(i) The certifying manufacturer shall furnish with each new engine written instructions for the proper maintenance and use of the engine by the ultimate purchaser as required under § 94.211.

(ii) The instruction under paragraph (a)(3)(i) of this section must not include any condition on the ultimate purchaser's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also must not directly or indirectly distinguish between service performed by the franchised dealers of such manufacturer, or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent engine repair facilities with which such manufacturer has no commercial relationship.

(iii) The prohibition of paragraph (a)(3)(ii) of this section may be waived by the Administrator if:

(A) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine; and

(B) The Administrator finds that such a waiver is in the public interest.

(iv) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to the engine that the engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emission standards prescribed under section 213 of the Act. This label or tag shall also contain information relating to control of emissions as prescribed under § 94.212.

(b) The manufacturer bears all cost obligation any dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

Appendix I to Part 94—Emission Related Engine Parameters and Specifications

I. Basic Engine Parameters—Reciprocating Engines.
  1. Compression ratio.
  2. Type of air aspiration (natural, Roots blown, supercharged, turbocharged).
  3. Valves (intake and exhaust).
  a. Head diameter dimension.
  b. Valve lifter or actuator type and valve lash dimension.
  4. Camshaft timing.
  a. Valve opening—intake exhaust (degrees from TDC or BDC).
  b. Valve closing—intake exhaust (degrees from TDC or BDC).
  c. Valve overlap (degrees).
  5. Ports—two stroke engines (intake and/or exhaust).
  a. Flow area.
  b. Opening timing (degrees from TDC or BDC).
  c. Closing timing (degrees from TDC or BDC).
II. Intake Air System.
  1. Roots blower/supercharger/turbocharger calibration.
  2. Charge air cooling.
  a. Type (air-to-air; air-to-liquid).
  b. Type of liquid cooling (engine coolant, dedicated cooling system).
  c. Performance (charge air delivery temperature (°F) at rated power and one other power level under ambient conditions of 80°F and 110°F, and 3 minutes and 15 minutes after selecting rated power, and 3 minutes and 5 minutes after selecting other power level).
  3. Temperature control system calibration.
  4. Maximum allowable inlet air restriction.
III. Fuel System.
  1. General.
  a. Engine idle speed.
  2. Fuel injection—compression ignition engines.
  a. Control parameters and calibrations.
  b. Transient enrichment system calibration.
  c. Air-fuel flow calibration.
  d. Altitude compensation system calibration.
  e. Operating pressure(s).
  f. Injector timing calibration.
IV. Engine Cooling System.
  1. Thermostat calibration.
V. Exhaust System.
  1. Maximum allowable back pressure.
VI. Exhaust Emission Control System.
  1. Air injection system.
  a. Control parameters and calibrations.
  b. Pump flow rate.
  2. EGR system.
  a. Control parameters and calibrations.
  b. EGR valve flow calibration.
  3. Catalytic converter system.
  a. Active surface area.
  b. Volume of catalyst.
  c. Conversion efficiency.
  4. Backpressure.
VII. Crankcase Emission Control System.
  1. Control parameters and calibrations.
  2. Valve calibrations.
VIII. Auxiliary Emission Control Devices (AECD).
  1. Control parameters and calibrations.
  2. Component calibration(s).

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federal register

Friday
December 11, 1998

Part III

Department of Health and Human Services

Program Support Center

Privacy Act of 1974; Republication of System of Records; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Privacy Act of 1974; Republication of System Notices

AGENCY: Program Support Center (PSC), HHS.

ACTION: Notification of Republication of System Notices.

SUMMARY: In accordance with the requirements of the Privacy Act, PSC has reviewed and is republishing nine system notices. This includes the publication of one new system of records notice and the notices of the major alteration of four systems of records. By reorganization order dated September 25, 1995, the Secretary of HHS established the Program Support Center (PSC) as an Operating Division (OPDIV) of HHS. The PSC maintains nine systems of records.

DATES: The PSC invites interested persons to submit comments on the proposed internal and routine use(s) on or before January 19, 1999. The PSC has sent a Report of New System and a Report of Altered Systems to the Congress and to the Office of Management and Budget (OMB) on December 1, 1998. The new and the altered systems of records will be effective 40 days from the date submitted to OMB unless PSC receives comments which would result in a contrary determination.

ADDRESS: Address comments to the Privacy Act Officer, Program Support Center, 5600 Fishers Lane, Room 17A–08, Rockville, Maryland 20857. We will make comments received available for public inspection at the above address during normal business hours, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas Mortl, Room 17A–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The reorganization of September 25, 1995, transferred nine systems of records to PSC and created one new system of records. The PSC deleted one system of records. Listed below are the nine remaining systems and the proposed actions for each system. The PSC has reviewed and updated all of its system notices and is republishing the nine system notices in their entirety.

1. 09–40–0001—Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS. This system was transferred to PSC from the Office of the Assistant Secretary for Health (OASH). Its former number and title were 09–37–0002—PHS Commissioned Corps General Personnel Records, HHS/OASH/OSG. The review and update of this system notice resulted in the deletion of routine uses #4, #5, and #13. The information of #4 and #5 is now contained in the new payroll system 09–40–0006. The information of #13 was moved to the Record Access Procedures section.

2. 09–40–0002—Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS. This system was transferred to PSC from OASH. Its former number and title were 09–37–0003—PHS Commissioned Corps Medical Records, HHS/OASH/OSG. The review and update of this system notice resulted in the addition of a new routine use. The proposed new routine use (#6) will permit PSC to disclose to the Social Security Administration (SSA) information relating to the disability or death of a commissioned officer. The purpose of the disclosure is to determine Social Security benefits or other benefits which may be due to the officer or to the survivors of a deceased officer. The disclosures pursuant to this routine use are compatible with the stated purposes of the system and were a part of the Purpose section prior to the separation of SSA from HHS. The review and update of this system notice resulted in the deletion of routine uses #2, #5, and #9. The disclosures under routine use #2 were internal uses and, therefore, were moved to the Purpose section. The disclosures under routine use #5 are properly made under system 09–40–0001. The information under routine use #9 was moved to the Record Access Procedures section.

3. 09–40–0003—Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS. This system was transferred to PSC from OASH. Its former number and title were 09–37–0005—PHS Commissioned Corps Board Proceedings, HHS/OASH/OSG. The review and update of this system notice resulted in the deletion of routine use #8. This information was moved to the Record Access Procedures section.

4. 09–40–0004—Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS. This system was transferred to PSC from OASH. Its former number and title were 09–37–0006—PHS Commissioned Corps Grievance, Investigatory and Disciplinary files, HHS/OASH/OSG.

5. 09–40–0005—Public Health Service (PHS) Beneficiary-Contract Medical/Health Care Records, HHS/PSC/HRS. This system was transferred from the Health Resources and Services Administration (HRSA) to PSC. Its former number and title were: 09–15–0029—PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BPHC. The system will be administered by the Division of Commissioned Personnel/HRS. The PSC proposes to add one new routine use (#8) to the system. The proposed new routine use will permit PSC to use a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. The disclosures pursuant to this routine use are compatible with the stated purposes of the system.

6. 09–40–0006—Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS. This is a new system of records. Prior to the reorganization, commissioned corps payroll records were maintained in system 09–90–0017—Pay, Leave and Attendance Records, HHS/OS/ASPER. This system has now been transferred to HRS/PSC. The PSC decided to create a separate payroll record system for the Division of Commissioned Personnel (DCP), HRS. The DCP administers the comprehensive personnel management program for the PHS Commissioned Corps. The DCP is responsible for performing all personnel operations functions associated with the commissioned corps personnel system including pay administration. Since DCP serves as the central repository for all records reflecting the service and status of commissioned corps personnel, the responsibility for maintaining the DCP payroll record system should also rest with DCP. Authorities: The DCP administers this system under the following authorities: The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, "Numbering System for Federal Accounts Relating to Individual Persons"; E.O. 10450, "Security Requirements for Government Employment"; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS. Purpose(s): This system of records is

used to: (1) Determine eligibility for pay allowances, entitlements, privileges, and benefits; (2) determine the eligibility or entitlements of dependents and beneficiaries; (3) give legal force to personnel transactions and establish officer rights and obligations under pertinent laws and regulations; (4) provide information to HHS components seeking to collect an overdue debt owed to the Federal Government; (5) provide information to the Federal Parent Locator System (FPLS), the Office of Child Support Enforcement (OCSE), and the Administration for Children and Families, HHS, for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action in accordance with 42 USC 653; (6) provide information to OCSE to verify with the Social Security Administration the Social Security Numbers in connection with the operation of the FPLS by OCSE; (7) provide information to OCSE to release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return; and (8) upon the request of the officer, provide information to charities, financial organizations, insurance organizations or other companies for the purposes of contributing to charity, payment of organizational dues, or payment for an organizational benefit (such as insurance). Categories of Records: The system will contain the following records: Commissioned Officers' names, home addresses, SSN; documents relating to pay, benefits, leave, travel and allowances, dependent status, special pay files, retirement pay files; and related correspondence. Routine Use Disclosures: The proposed 12 routine uses are compatible with the stated purposes of the system. The PSC will disclose relevant information to third parties outside the Department as follows: Routine use 1: To a congressional office upon the written request of the record subject to obtain assistance from his/her congressional representative. Routine use 2: To the Department of Justice in case of litigation where HHS determines that such disclosure is relevant and necessary and would help in the effective representation of the governmental party. Routine use 3: To the Department of Treasury for all pay-related activities. Routine use 4: To State and local government taxing authorities where a record subject is or was subject to taxes. Routine use 5: To the Social Security Administration for all FICA-related activities. Routine use 6: To appropriate Federal, State, local, or international agencies, or foreign governments should PSC become aware of evidence of a potential violation of civil or criminal law. Routine use 7: To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Routine use 8: To OMB in connection with private relief legislation or for budgetary or management oversight purposes. Routine use 9: To respond to interrogatories in the prosecution of a divorce action or settlement. Routine use 10: To disclose information about the entitlements and benefits of a beneficiary of a deceased officer, retiree, or annuitant for the purpose of making disposition of the estate. Routine use 11: To the Equal Employment Opportunity Commission in connection with an investigation. Routine use 12: To authorized officials of other Federal agencies where commissioned officers are assigned.

7. 09–40–0010—Pay, Leave and Attendance Records, HHS/PSC/HRS. This system was transferred from the Office of the Secretary, HHS, to PSC. Its former number and title were: 09–90–0017—Pay, Leave and Attendance Records, HHS/OS/ASPER. The system will be administered by the Personnel and Pay Systems Division/HRS. The PSC proposes to expand the Purpose section and to add six new routine uses. Purpose(s): The proposed new purposes and uses of the records within HHS are: (1) Provide information to the Federal Parent Locator System (FPLS), Office of Child Support Enforcement (OCSE), HHS, for locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action in accordance with 42 USC 653. (2) Provide information to OCSE for release to the Social Security Administration for verifying Social Security Numbers. (3) Provide information to OCSE for release to the Department of Treasury for the purpose of administering the Earned Income Tax Credit Program, and verifying a claim with respect to employment in a tax return. (4) Provide information to the HHS Voluntary Leave Transfer Program websites. (5) Provide information to HHS components seeking to collect an overdue debt owed to the Federal Government. Routine Uses: The proposed six new routine uses permit PSC to make the following disclosures: (1) #19: To other Federal organizations to collect an overdue debt owed to the Federal Government. (2) #20: To publicly recognized charitable payroll deductions or when necessary to adjudicate a claim. (3) #21: To provide information regarding contributions to charities and/or financial organizations at the request of the employee. (4) #23: To respond to court orders when an employee is involved in garnishment proceedings. (5) #24: To thrift and savings institutions to adjudicate a claim or conduct analytical studies of benefits paid. (6) #25: To the Federal Thrift Savings plan to maintain employees' thrift accounts, loans or loan repayment records. The disclosures pursuant to these routine uses are compatible with the stated purposes of the system. In addition, former routine use #8 has been separated into four routine uses (#7, 8, 9, and 10) to provide greater clarity and specificity in regard to disclosures to those agencies.

8. 09–40–0011—Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/PSC/HRS. This system was transferred to PSC from OASH. Its former number and title were 09–37–0017—Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM.

9. 09–40–0012—Debt Management and Collection System, HHS/PSC/FMS, which was transferred from the Health Resources and Services Administration (HRSA) to PSC. Its former number and title were: 09–15–0045—Health Resources and Services Administration Loan Repayment/Debt Management Records

Systems, HHS/HRSA/OA. The system will be administered by the Division of Financial Operations/FMS. The Authorities section has been expanded to include the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) as amended. The PSC proposes to expand the Categories of Individuals section and to add four new routine uses. The HRSA used the system to collect debts owed to the Federal Government by students in the health professions and health professionals who had received various types of loans or grants for educational purposes. The PSC is using the system as a general debt collection system. Therefore, the Categories of Individuals section has been expanded to include all individuals owing monies to HHS Operating Divisions or other Federal entities for which PSC provides debt collection services; repayment of funds loaned to repatriates; repayment for services rendered such as Freedom of Information Act requests, queries

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associated with the National Practitioner Data Bank, and Health Care Integrity and Protection Data Bank queries; and payroll debts of current and separated HHS employees. The proposed four new routine uses permit PSC to make the following disclosures: Routine Use Disclosures: (1) #14: To the Treasury Department or to an agency operating a Debt Collection Center to collect past due amounts. (2) #15: To provide information to purchasers of a debt, if PSC decides to sell a debt, pursuant to 31 U.S.C. section 3711(I). (3) #16: PSC may publish or otherwise publicly disseminate information regarding the identity of a delinquent debtor and the existence of the debt, pursuant to 31 U.S.C. Section 3720(E). (4) #17: To a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. The disclosures pursuant to these routine uses are compatible with the stated purposes of the system.

Safeguards: The safeguards of all nine systems have been reviewed and expanded. The PSC has instituted extensive safeguards to protect both the automated and non-automated records. The PSC Systems Security Officer has to certify that the safeguards for the system are commensurate with the sensitivity and criticality of the records. The system notices describe: (1) The safeguards that are in effect to ensure that only authorized users have access to the records; (2) the physical security measures used to protect the records; (3) the procedural safeguards to ensure data integrity and prevent unauthorized access and disclosure; and (4) security guidelines for contractors, as applicable.

Deletion of System Notice: The PSC is deleting system of records 09–37–0008—PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OSG, which was transferred from OASH to PSC. This system of records contains records in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. The reason for the deletion is that only duplicate records may be maintained in such offices. Original records must immediately be transferred to DCP. To accommodate the maintenance of duplicate records, PSC has added the following statement to all commissioned corps system notices: "Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records."

Furthermore, PSC has updated the system notices and made editorial changes to improve their clarity and specificity.

The following system notices are written in the present rather than future tense to avoid the unnecessary expenditure of public funds to republish the notices after the new system and the major alterations become effective.

Dated: December 1, 1998.

Lynnda M. Regan,

Director, Program Support Center.

09–40–0001

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Division of Commissioned Personnel (DCP)/HRS/PSC, Room 4–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

PHS Health Data Center, GW Long Hansen's Disease Center, Carville, Louisiana 70721.

National Personnel Record Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, Missouri 63118.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Contact the Rockville, Maryland location before writing to other record sites.

Names and addresses of contractors given information under routine use 7 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are part of or who have some relationship with the PHS Commissioned Corps, including: Active duty commissioned officers, former commissioned officers, inactive reserve officers, retired commissioned officers, deceased commissioned officers, dependents and survivors of the above, former spouses of officers, and applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain:

1. Applications for appointment, references and other documents relating to qualifications or suitability for appointment and assignment.

2. Official Personnel Folders (OPF), for all officers who are, or were at one time, on active duty, which include: All documents related to the application and appointment process; effectiveness reports; career development and training records; documents relating to assignment, promotion, retention, separation and all other personnel actions; records of personnel actions relating to pay, travel and allowances (including overseas educational allowances for dependents); documentation of dependent status used to determine entitlement or eligibility for benefits and identification and privilege cards; applications and records of service action relating to the Commissioned Officer Student Training and Extern Programs (COSTEP) officers; survivor benefit elections; information supporting officer awards, honors and commendations; documentation supporting non-board terminations and reprimands issued after final administrative action; pay records and medical data after death of subject individual; and leave records.

3. Worksheets, internal forms, internal memoranda and other documents which result in, or contribute to, an action resulting in a record identified in 2. above.

4. Service Record cards (summarizing personnel actions).

5. Correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code [U.S.C.] 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, "Numbering System for Federal Accounts Relating to Individual Persons"; E.O. 10450, "Security Requirements for Government Employment"; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions (OPDIVs) and other organizations where commissioned officers are assigned, to:

1. Determine qualifications and suitability for appointment, selection, career development, training, promotions, assignments, mobilization, temporary duty, and other types of officer utilization.

2. Determine eligibility for pay, allowances, entitlements, privileges, and benefits.

3. Prepare the Commissioned Officer Roster and Promotion Seniority of the Public Health Service.

4. Determine the eligibility or entitlements of dependents and beneficiaries for benefits based on the service of a PHS commissioned officer.

5. Give legal force to personnel transactions and establish officer rights and obligations under the pertinent laws and regulations governing the commissioned corps personnel system.

6. Provide material for research by the Office of the Secretary, HHS, concerning the activities of health professionals.

7. Provide information to HHS components seeking to collect an overdue debt to the Federal Government, but only to the extent necessary to collect that overdue debt.

8. Provide information about professional qualifications, past performance and career interests of PHS officers to Department and Agency officials involved in the selection or assignment of an officer to a particular program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected.

4. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PHS becomes aware of evidence of a potential violation of civil or criminal law.

5. To disclose information to an individual who has been asked to provide a reference, to the extent necessary to clearly identify the individual to whom the reference will pertain, inform the source of the purpose(s) of the reference, and to identify the type of information requested from the source, where necessary to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit.

6. To disclose to any agency in the executive, legislative or judicial branch; the District of Columbia Government; a State or local government agency; a professional credentialing agency or a non-profit institution, in response to its request, or at the initiation of the PHS, information in connection with the hiring of an employee; the issuance of a license, grant or other benefit by the requesting agency; or the lawful statutory administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

8. To disclose information to the Department of State and officials of foreign governments for the issuance of passports, visas and other clearances before an active, retired or inactive officer is assigned to that country.

9. To disclose information to the Department of Labor, the Department of Veterans Affairs, Social Security Administration or other Federal agencies having special employee benefit programs; to a Federal, State, county or municipal agency; or to a publicly recognized charitable organization when necessary to adjudicate a claim under a benefit program, or to conduct analytical studies of benefits being paid under such programs, provided such disclosure is consistent with the purposes for which the information was originally collected.

10. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19, or for budgetary or management oversight purposes.

11. To respond to interrogatories in the prosecution of a divorce action or settlement for purposes stated in 10 U.S.C. 1408 ("The Former Spouses' Protection Act").

12. To disclose information about the entitlements and benefits of a beneficiary of a deceased officer, retiree, or annuitant for the purpose of making disposition of the estate.

13. To disclose information to the Department of Defense, United States Coast Guard or Federal Emergency Management Agency, to the extent necessary to facilitate participation of PHS employees in planning, training, and emergency operations in support of civil defense activities and to provide support in the event of a national emergency.

14. To disclose information to Government training facilities (Federal State, and local) and to non-Government training facilities (e.g., private vendors of training courses or programs, private schools), for training purposes such as crediting of work experience in the COSTEP, or verification of status or income.

15. To disclose information to the Defense Enrollment/Eligibility Reporting System, uniformed services medical treatment facilities and to the

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Department of Defense, Office of the Civilian Health and Medical Program of the Uniformed Services when the information is needed to verify the eligibility of an officer, his/her dependents, or a former spouse for medical benefits.

16. To disclose information to agencies or organizations established in medically underserved areas which apply to the National Health Service Corps for the assignment of commissioned officers to such agencies or organizations.

17. To disclose information to an officer assigned to Federal health care facilities or private sector (i.e., other than Federal, State, or local government) agencies, boards or commissions (e.g., the Joint Commission on Accreditation of Healthcare Organizations), to obtain accreditation or other approval rating but only to the extent that the information disclosed is relevant and necessary for that purpose.

18. To disclose to a private employer who is considering hiring a former officer information such as the officer's dates of employment, salary, job title and description, duty station and character and nature of separation.

19. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

20. To disclose to Federal and non-Federal agencies information allowing the consideration and selection of officers for honor awards made as a result of the individual's work as a commissioned officer, and to publicize those awards granted. This may include disclosure to other public and private organizations, including the news media, which grant or publicize officer awards and honors.

21. To disclose information to officials of the Selective Service System to allow crediting of active service performed by an individual with PHS so that the individual may be properly classified if draft laws once again become operative.

22. To disclose administrative and personnel information, including data elements reflected in the Officer Information Summary, to authorized officials in Federal agencies and other programs where commissioned officers are assigned such as the State Department; the Department of Defense; the Department of Justice, Bureau of Prisons and the Immigration and Naturalization Service; the Transportation Department, United States Coast Guard; the Environmental Protection Agency; the Department of the Interior, the United States Park Service; and the Commerce Department, National Oceanic and Atmospheric Administration.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche, electronic medium and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

(a) Automated Records. Access to and use of automated records is limited to: (1) Personnel employed in the PSC and the Office of the Surgeon General (OSG)/OS, (2) personnel employed in DCP, (3) authorized officials in HHS components and organizations where commissioned officers are assigned whose official duties require such access, and (4) authorized officials in other Federal agencies, such as those in routine use 22 above, where commissioned officers are assigned whose official duties require such access. Automated data is provided to Department personnel officials to update information contained in their personnel records and pay, leave and attendance systems. The Human Resources Service (HRS) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, HRS personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization without the written approval of the Director of DCP or to an official to whom this authority has been delegated.

b. Nonautomated records. Access to and use of nonautomated records is limited to departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the records. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, OSG and personnel officials where commissioned officers are employed. No access is permitted to organizations that do not have automated personnel record-keeping systems that comply with Privacy Act requirements.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 7 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time. Applicant files of individuals selected for appointment as commissioned officers become a part of the OPF. Applicant files of individuals not selected for appointment are maintained for one year after the application process has been completed and are then destroyed, unless an applicant requests that the file be held open for an additional year. The OPF is maintained for one year after an officer is separated from active duty, at which time such officer's OPF is transferred to a Federal Records Center for permanent storage. The OPF for inactive reserve officers is maintained at the PHS Health Data Center. When inactive officers change status, the OPF is returned to DCP.

The records of a deceased officer are maintained until one year after an individual's death and are then transferred to a Federal Record Center for permanent storage, unless a dependent of a deceased officer continues to receive benefits from PHS based upon the deceased's PHS service. When a dependent or beneficiary dies or becomes ineligible for further benefits based on a deceased officer's service, all records are maintained for one year in the event information is needed from the records to help settle an estate, and are then transferred to the Federal Records Center for permanent storage.

Service Records Cards, which list critical data with regard to the dates or all officers' appointments, reassignments, separations, retirements and deaths, are maintained permanently by the System Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may contact the DCP Privacy Act Coordinator for information about obtaining access to the records. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP Privacy Act Coordinator. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release records to authorized officials within DCP, HHS and other organizations where commissioned officers are assigned.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the office of the Privacy Act Coordinator, DCP.

3. Requests by mail. Written requests must be addressed to the System Manager or the DCP Privacy Act Coordinator at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers, applicants, persons providing references, dependents, former spouses of officers, governmental and private training facilities, health professional licensing and credentialing organizations, government officials and employees and from the records contained in the following systems: 09–40–0002, Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS; 09–40–0003, Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS; 09–40–0004, Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS; 09–40–0005, Public

Health Service (PHS) Commissioned Corps Beneficiary-Contract Medical/ Health Care Records, HHS/PSC/HRS; and 09–40–0006, Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0002

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Medical Affairs Branch (MAB), DCP/ HRS/PSC, Room 4C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

Records in this system are kept at the address shown above when the person to whom the record pertains has an active relationship with the PHS Commissioned Corps personnel system. When an officer ceases the active relationship with the commissioned corps, the records are combined with the Official Personnel Folder (OPF) in records system 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/ PSC/HRS, and transferred to the appropriate facility as outlined in 09–40–0001.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Names and addresses of contractors given information under routine use 4 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS commissioned officers (including active, inactive, terminated, retired and deceased officers), applicants to the commissioned corps, and dependents of officers seeking Defense Enrollment/ Eligibility Reporting System eligibility on the basis of incapacity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical files and records on individuals identified above; medical board records from Medical Review Boards and Appeals Boards, including board reports and supporting medical documentation; death case files and supporting documents; sick leave records; performance and behavior documentation of individuals as may relate to medical conditions; and correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) et seq.); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; E.O. 9397, "Numbering System for Federal Accounts Relating to Individual Persons"; E.O. 10450, "Security Requirements for Government Employment"; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions (OPDIVs) and other organizations where commissioned officers are assigned, to:

1. Evaluate applicants for appointment and officers for reassignment, reactivation and fitness for duty and suitability for retention on active duty.

2. Make determinations about the level of an officer's disability and entitlement to disability severance or retired pay.

3. Make determinations regarding EEO complaints or grievances filed by the officer, if the nature of the complaint suggests that pertinent evidence may be located in the medical record.

4. Make determinations about the level of a dependent's disabilities or incapacities which may make the dependent eligible for benefits from PHS.

5. Make budgetary estimates about the cost of disability severance and retired pay.

6. Prepare reports or provide statistical information relating to the medical status of officers.

7. Initiate or support disciplinary or other adverse actions by the Director, DCP, against applicants or officers for misconduct.

8. Support monitoring of compliance of officers with the requirements of their professional licensing or certifying authorities.

9. Make decisions about funding, use, access, location and quality of medical care and promote continuity of medical evaluation and treatment.

10. Monitor officer compliance with recommended treatment and with commissioned corps policies regarding sick leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to the Department of Veterans Affairs; Bureau of Prisons (Department of Justice); Coast Guard (Department of Transportation); Department of State; Department of Defense; NOAA (Department of Commerce); Agency for International Development, Environmental Protection Agency and other Federal agencies or civilian health care providers where commissioned officers are assigned or are receiving medical treatment or voluntary or directed evaluations to ensure continuity of evaluation and/or treatment, to assure medically appropriate assignments and duty limitations, to support disciplinary or other adverse actions and to assure compliance with sick leave policies.

2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. To promote continuity of care by supplying information to Government or civilian medical care facilities and/or practitioners who, under contract or as otherwise authorized or due to an emergency, provide treatment to officers and their dependents.

4. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards".

5. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof

where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected.

6. To provide information relating to the disability or death of officers to the Social Security Administration to determine the Social Security benefits or other benefits which may be available to the officer or to the survivors of deceased officers.

7. To provide information to Federal agencies such as the Department of Veterans Affairs and State Workers' Compensation offices to help adjudicate post-service claims for benefits.

8. Information regarding the commission of crimes or the reporting of occurrences of communicable diseases, tumors, child abuse, births, deaths, alcohol or drug abuse, etc., may be disclosed as required by health providers and facilities by State law or regulation of the department of health or other agency of the State or its subdivision in which the facility is located. Disclosures will be made to organizations as specified by the State law or regulation, such as births and deaths to the vital statistics agency and crimes to law enforcement agencies. Disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis, or treatment of alcohol or drug abuse is restricted under the provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records Regulation 42 CFR part 2, as authorized by 21 U.S.C. 1175 and 42 U.S.C. 290dd.2, as amended by Pub. L. 98–24 and 102–321.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, Conserve-a-files, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

a. Automated Records. Access to and use of automated records is limited to personnel employed in the MAB and certain employees of the Office of the Director, DCP. Selected information may be released to employees in DCP whose official duties require such access. The Human Resources Service (HRS) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, HRS personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization.

b. Nonautomated records. Access to and use of nonautomated records is limited to MAB, certain members of the Office of the Director, DCP, and departmental employees, such as EEO officials and members of Medical Review and Appeals Boards, whose official duties require such access to the information for purposes stated under routine uses or purposes. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals other than DCP employees must complete Privacy Act nondisclosure oaths and, except for Medical Board members, must submit written requests for access to these records showing the name and employing office of the requestor, the date on which the record is requested, and the purpose for reviewing the information in the record. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, Office of the Surgeon General and personnel officials where commissioned officers are employed. No access is permitted to automated records from remote terminal sites maintained by individuals or organizations outside of DCP.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of MAB, DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 4 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make

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no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

When an officer terminates his/her commission, records are incorporated into the OPF and transferred to a Federal Records Center in accordance with 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS, procedures. Medical records on nonselected applicants may be destroyed after two years. Records of retirees are incorporated into the OPF and disposed of in accordance with 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS procedures, unless the individual is on the temporary disability retirement list, in which case the file is maintained under the same conditions as an active duty officer's file until the individual is permanently retired, returned to active duty or terminated. Medical records of a dependent incapable of self support are maintained until the dependent is no longer eligible for benefits from PHS at which time the records are transferred to a Federal Records Center for permanent storage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may initially contact any DCP office or employee for information about obtaining access to the records. The DCP employees will inform each individual of the appropriate procedures to follow. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release automated records to the Medical Affairs Branch.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that s/he is duly authorized to review the record by either the individual or the individual's legal guardian. A parent, guardian or legal representative who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the office of the MAB, DCP.

3. Requests by mail. Written requests must be addressed to the System Manager or the Medical Affairs Branch at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers and other commissioned corps officials; applicants; private and Government physicians; hospitals and clinics rendering treatment; investigative reports, records contained in system 09–40–0001, Public Health Service (PHS) Commissioned Officer General Personnel Records, HHS/PSC/HRS; records from system 09–40–0005, Public Health Service (PHS) Beneficiary Contract Medical/Health Care Records, HHS/PSC/HRS; death certificates and reports of death and from survivors and executors of estates.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0003

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Commissioned Personnel (DCP), HRS/PSC, Room 4–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Names and addresses of contractors given information under routine use 4 can be obtained from the System

Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioned officers (including active, inactive, terminated, retired and deceased officers) and applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system consist of the following:

1. Appointment Board files consisting of applications, references, school transcripts, and other materials used in the appointment examination process.

2. Promotion Board files consisting of recommendations from PHS components and worksheets from previous promotion boards.

3. Officer Special Pay Review Board files consisting of Special Pay contracts, certification of eligibility by PHS components, information pertaining to disciplinary actions and related documents.

4. Assimilation Board files consisting of PHS component recommendations, information pertaining to disciplinary actions and related documents.

5. Three-Year File Review Board files consisting of recommendations from PHS components, information pertaining to disciplinary actions and related documents.

6. Chief Professional Officer Nominating Board files, consisting of recommendations from PHS programs and officials, curriculum vitae for officers under consideration, evaluation materials and other material used by the Board in its deliberations.

7. Flag Officer Billet Assignment Board and Flag Officer Nominations Board records consisting of recommendations from PHS programs and officials, curriculum vitae for officers under consideration, evaluation materials and other materials used by the Board in its deliberations.

8. Voluntary Retirement Board files consisting of recommendations from PHS components and worksheets.

9. Records from other Board processes instituted as part of the administration of the PHS Commissioned Corps personnel system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; E.O. 9397, "Numbering System for Federal Accounts Relating to Individual Persons"; E.O. 10450, "Security Requirements for Government Employment"; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions (OPDIVs) and other organizations where commissioned officers are assigned, to:

1. Recommend or decide on appropriate actions in the areas of commissioned corps personnel administration listed above.

2. Prepare the "PHS Commissioned Officer Roster and Promotion Seniority of the Public Health Service" which contains the names and status of officers on active duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To disclose pertinent information. to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PHS becomes aware of evidence of a potential violation of civil or criminal law.

4. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

5. To disclose information to the Department of Labor, the Department of Veterans Affairs, Social Security Administration or other Federal agencies having special employee benefit programs; to a Federal, State, county or municipal agency; or to a publicly recognized charitable organization when necessary to adjudicate a claim under a benefit program, or to conduct analytical studies of benefits being paid under such programs, provided such disclosure is consistent with the purposes for which the information was originally collected.

6. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19, or for budgetary or management oversight purposes.

7. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (e.g. private vendors of training courses or program, private schools) for training purposes, such as crediting of work experience in Commissioned Officer Student Training and Extern Program or verification of status or income.

8. To disclose to Federal and non-Federal agencies information allowing the consideration and selection of officers for honor awards made as a result of the individual's work as a commissioned officer, and to publicize those awards granted. This may include disclosure to other public and private organizations, including the news media, which grant or publicize officer awards and honors.

9. Disclosure may be made to State Boards of Medical Examiners and to equivalent State licensing boards of professional review actions which adversely affect the clinical privileges of health care professionals who either: (a)

are or were employed by the Federal Government; (b) provide or have provided health care service under a fee-for-service contract with the Federal Government; (c) provide or have provided health care services on behalf of the Federal Government as a volunteer or visiting fellow. Boards of Medical Examiners and equivalent State licensing boards are required by the Health Care Quality Improvement Act of 1986 and by the Medicare and Medicaid Patient and Program Protection Act of 1987 to report this information to the National Practitioner Data Bank.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

a. Automated Records. Access to and use of automated records is limited to DCP personnel involved in the specific Board process for which the information was collected. The Business Systems Engineering Division (BSED) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, BSED personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization.

b. Nonautomated records. Access to and use of nonautomated records is limited to DCP personnel involved in the specific Board process for which the information was collected, departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the records. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with combination locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, Office of the Surgeon General and personnel officials where commissioned officers are employed. No access is permitted to organizations that do not have automated personnel recordkeeping systems that comply with Privacy Act requirements.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 4 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

Files pertaining to all board proceedings are only incorporated into 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS to the extent required to provide sufficient documentation of an involuntary or adverse action. Special Pay Review Boards and board of inquiry records remain in this system as long as they are needed for administrative purposes, after which time they are destroyed by shredding. All promotion, assimilation and 3 year review board documentation is retained for a period of 5 years after which it is destroyed by shredding. Appointment board files are incorporated into 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS when the applicant comes onto active duty with the commissioned corps with the exception of the reference forms which are shredded after 5 years. If the applicant does not come onto active duty, the file is destroyed by shredding when the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may contact the DCP Privacy Act Coordinator for information about obtaining access to the records. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release records to authorized officials within DCP, HHS and other organizations where commissioned officers are assigned.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that s/he is duly authorized to review the record by either the individual or the individual's legal guardian. A parent, guardian or legal representative who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the office of the DCP employee who reviewed the record.

3. Requests by mail. Written requests must be addressed to the System Manager or the DCP Privacy Act Coordinator at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers or their service records; efficiency reports; persons providing references; reports of findings and recommendations made by Board members; supervisors; private and Government physicians; hospitals and clinics rendering treatment; licensure and professional credentialing organizations; investigative reports, law enforcement organizations; court records; death certificates and reports of death; survivors and executors of estates; and the records contained in the following systems: 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS; 09–40–0002, Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS; and 09–40–0004, Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0004

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Commissioned Personnel (DCP), HRS/PSC, Room 4–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857-0001 and offices and organizations to which an individual commissioned officer is assigned. The exact location of any record may be obtained by contacting the Director, DCP, at the location identified below.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS Commissioned Corps officers, including active duty, inactive, terminated, separated and deceased officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files concerning grievances filed by or against commissioned officers; investigative files, records related to disciplinary actions, records related to involuntary retirements and involuntary separations (non-board or pre-board actions) taken against commissioned officers; and correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for

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members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; E.O. 9397, "Numbering System for Federal Accounts Relating to Individual Persons"; E.O. 10450, "Security Requirements for Government Employment"; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions (OPDIVs) and other organizations where commissioned officers are assigned, to:

1. Investigate allegations of misconduct or marginal and substandard performance.

2. Process and decide grievances, involuntary retirements, involuntary separations, temporary grade reversions or disciplinary actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PHS becomes aware of evidence of a potential violation of civil or criminal law.

4. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

5. Disclosure may be made to State Boards of Medical Examiners and to equivalent State licensing boards of professional review actions which adversely affect the clinical privileges of health care professionals who either: (a) Are or were employed by the Federal Government; (b) provide or have provided health care services under a fee-for-service contract with the Federal Government; or (c) provide or have provided health care services on behalf of the Federal Government as a volunteer or visiting fellow. Boards of Medical Examiners and equivalent State licensing boards are required by the Health Care Quality Improvement Act of 1986 and by the Medicare and Medicaid Patient and Program Protection Act of 1987 to report this information to the National Practitioner Data Bank.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

a. Automated Records. Access to and use of automated records is limited to DCP personnel involved in the grievance or investigation for which the information was collected. The Human Resources Service (HRS) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, HRS personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization.

b. Nonautomated records. Access to and use of nonautomated records is limited to DCP personnel involved in the specific grievance or investigatory process for which the information was collected. These records may be copied and related to departmental officials involved in a decisionmaking capacity in a given case. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the records. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with combination locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all or which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, OSG and personnel officials where commissioned officers are employed. No access is permitted to organizations that do not have automated personnel record-keeping systems that comply with Privacy Act requirements.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

RETENTION AND DISPOSAL:

Grievance files are destroyed after two years or earlier if no longer needed for administrative purposes. Documentation which directly supports personnel actions affecting an individual is placed into the individual's Official Personnel Folder after a final, official decision has been made and/or the action has been effected, and is then treated in the same manner as other material in system 09–40–0001, "PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS." Investigatory records concerning cases in which no final decisions have been made, or which are ongoing over a period of time are kept indefinitely until a final decision is made. Records concerning cases which are closed or on which final action has been taken, but which are not essential to document or support the final action, are retained as long as they are needed for administrative purposes and are then destroyed by shredding.

SYSTEM MANAGER(S) AND 2ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may initially contact the DCP Privacy Act Coordinator for information about obtaining access to the record. Each individual seeking access will be required to verify his/her identity to the satisfaction of the Privacy Act Coordinator. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release records to authorized officials within DCP.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that s/he is duly authorized to review the record by either the individual or the individual's legal guardian. A parent, guardian or legal representative who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the record.

3. Requests by mail. Written requests must be addressed to the System Manger or the DCP Privacy Act Coordinator at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers or their service records; efficiency reports; persons providing references; reports of findings and recommendations made by the commissioned corps Board members; supervisors, private and Government physicians; hospitals and clinics rendering treatment; licensure and professional credentialing organizations; investigative reports; law enforcement organizations; court records; death certificates and reports of death; survivors and executors of estates; and records contained in the following systems: 90–40–0001, Public Health Service (PHS) Commissioned

Corps General Personnel Records, HHS/PSC/HRS; 09–40–0002, Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS; 09–40–0003, Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS; and 09–40–0006, Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0005

SYSTEM NAME:

Public Health Service (PHS) Beneficiary-Contract Medical/Health Care Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Medical Affairs Branch (MAB), Beneficiary Medical Programs Section, DCP/HRS/PSC, Room 4C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Names and addresses of contractors given information under routine use 8 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or were legally entitled to health care through the Public Health Service and who have received health care from health professionals or facilities under contract or agreement with the Department of Health and Human Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

May include any or all of the following: Diagnostic (laboratory/X-ray, etc.) and treatment data; sociological information; invoices for services; eligibility data including employment history; and uniformed services information (employing services, service numbers, duty station, home address, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 215 of the Public Health Service Act (42 U.S.C. 216) "Regulations" and section 326 of the Public Health Service Act (42 U.S.C. 253) "Medical Services to Coast Guard, National Oceanic and Atmospheric Administration and the Public Health Service."

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions and other organizations where commissioned officers are assigned, to:

1. Serve as the basis for payment for patient care and for continuity in the evaluation of the patient's condition and treatment.
2. Furnish documentary evidence of the course of the patient's medical evaluation and treatment to document communications between the responsible practitioner and any other health professionals contributing to the patient's care and treatment.
3. Verify patient eligibility.
4. Ensure quality assurance.
5. Monitor contract compliance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of these records and information from these records may be made to:

1. Medical laboratories and facilities and non-agency physicians in order to facilitate treatment and payment of bills. Recipients are required to maintain adequate safeguards with respect to such records.

2. The Department of Commerce to report results of examination and/or treatment of that agency's personnel.

3. The Department of Defense and the Department of Veterans Affairs to assist uniformed services, personnel, retirees and veterans to obtain medical care or benefits.

4. A Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, other issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. A congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

6. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her official capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

7. Information regarding the commission of crimes or the reporting of occurrences of communicable diseases, tumors, child abuse, births, deaths, alcohol or drug abuse, etc., may be disclosed as required by health providers and facilities by State law or regulation of the department of health or other agency of the State or its subdivision in which the facility is located. Disclosures will be made to organizations as specified by the State law or regulation, such as births and deaths to the vital statistics agency and crimes to law enforcement agencies. Disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis or treatment of alcohol or drug abuse is restricted under the provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records Regulation 42 CFR part 2, as authorized by 42 U.S.C. 290dd–2.

8. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and electronic data base.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

a. Automated Records. Access to and use of automated records is limited to departmental employees whose official duties require such access; supervisory, contracting officials who review the contractor's records annually; and doctors, dentists, nurses, allied health professionals and administrative staff in the contractor's office who are involved in patient care management.

b. Nonautomated records. Access to and use of nonautomated records is limited to departmental employees whose official duties require such access; contracting officials who review the contractor's records annually; and doctors, dentists, nurses, allied health professionals and administrative staff in the contractor's office. Access is also granted to individuals who have written permission to review the records when that permission has been obtained from the individual to whom the record pertains.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured behind locked inner office doors, in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 8 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

a. *Automated records.* Automated billing data are retained for a period of six years and three months after the closing of a file. The record is then destroyed.

b. *Nonautomated records.* Nonautomated records are retained in the MAB files until the contract is terminated or the payment action completed. The medical records are then forwarded to the MAB, DCP, and retained as indicated in 09–40–0002, "PHS Commissioned Corps Medical Records, HHS/PSC/HRS." Billing information is retained for three fiscal years, then purged and shredded. Patient care notes are retained in the chart until retirement, termination or inactivation. Once a chart is inactivated for over three years it is sent to storage at the Northeast Region Federal Records Center, Bayonne, New Jersey for 16 years. Destruction at that time is in accordance with standard practices of the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may initially contact any DCP office or employee for information about obtaining access to the records. The DCP employees will inform each individual of the appropriate procedures to follow. Individuals may also seek access to these records by initially contacting the duty station at which they believe the records are located. Individuals at the duty station will ascertain whether the records being sought are maintained at that location. If the records are not located at that duty station, the employee will instruct the individual as to where these records may be located. Each individual seeking access will be required to verify his/her identity to the satisfaction of the employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that s/he is duly authorized to review the record by either the individual or the individual's legal guardian. A parent, guardian or legal representative who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate employee who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the employee will provide them to the individual. The employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet

maintained in the Beneficiary Medical Program office.

3. Requests by mail. Written requests must be addressed to the System Manager at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is provided from Individuals, employers, other health care providers, families and social agencies, and 09–40–0002, Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0006

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Division of Commissioned Personnel (DCP)/HRS/PSC, Room 4–50, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

Records in this system are kept at the address shown above when the person to whom the record pertains has an active relationship with the PHS commissioned corps personnel system. When an officer ceases the active relationship with the commissioned corps, the records are combined with the Official Personnel Folder (OPF) in records system 09–40–0001, "PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS" and transferred to the appropriate facility as outlined in 09–40–0001, "PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS."

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Names and addresses of contractors given information under routine use 7 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are part of or who have some relationship with the PHS Commissioned Corps, including: Active duty commissioned officers; former commissioned officers; inactive reserve officers; retired commissioned officers; deceased commissioned officers; dependents and survivors of the above; former spouses of officers; and qualified applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain:

1. Documents related to pay, including payroll deductions, leave, allotments, charitable contributions and garnishments; travel and allowances (including overseas educational allowances for dependents); documentation of dependent status used to determine entitlement or eligibility for benefits; debt collections proceedings; survivor benefit elections and pay records; worksheets, internal forms, internal memoranda and other documents which result in, or contribute, to an action.

2. Special pay files containing special pay contracts, personnel orders and supporting documentation concerning special pay; worksheets, internal forms, internal memoranda and other documents which result in, or contribute, to an action.

3. Retirement pay files containing personnel orders and supporting documentation concerning retirement pay; worksheets, internal forms, internal memoranda and other documents which result in, or contribute to, an action.

4. Correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, "Numbering System for Federal Accounts Relating to Individual Persons"; E.O. 10450, "Security Requirements for Government Employment"; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions and other organizations where commissioned officers are assigned, to:

1. Determine eligibility for pay, allowances, entitlements, privileges, and benefits.

2. Determine the eligibility or entitlements of dependents and beneficiaries for benefits based on the service of a PHS commissioned officer.

3. Give legal force to personnel transactions and establish officer rights and obligations under the pertinent laws and regulations governing the commissioned corps personnel system.

4. Provide information to HHS components seeking to collect an overdue debt to the Federal government, but only to the extent necessary to collect that overdue debt.

5. Provide information to the National Directory of New Hires, the Federal Parent Locator System (FPLS), the Office of Child Support Enforcement (OCSE) and the Administration for Children and Families, HHS, for use in

locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action in accordance with 42 U.S.C. 653.

6. Provide information to the OCSE to verify with the Social Security Administration the Social Security numbers in connection with the operation of the FPLS by OCSE.

7. Provide information to the Office of Child Support Enforcement to release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

8. Upon the request of the officer, provide information to charities, financial organizations, insurance organizations or other companies for the purposes of contributing to charity, payment of organizational dues or payment for an organizational benefit (such as insurance).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. To the Department of Justice, a court or other tribunal, when (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To disclose information, such as, but not limited to, name, home address, Social Security Number, earned income, withholding status, and amount of taxes withheld, to the Department of Treasury for the following purposes: preparation and issuance of salary, retired pay, and annuity checks; issuance of U.S. savings bonds; recording income information; and collection of income taxes.

4. To disclose to State and local government agencies having taxing authority pertinent records relating to employees, retirees, and annuitants, including name, home address, Social Security Number, earned income, and amount of taxes withheld, when these agencies have entered into tax withholding agreements with the Secretary of Treasury, but only to those State and local taxing authorities for which a member, retiree, or annuitant is or was subject to tax, regardless of whether tax is or was withheld.

5. To disclose to the Social Security Administration pertinent records relating to employees, retirees, and annuitants, including name, home address, Social Security Number, earned income, and amount of taxes withheld.

6. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PSC becomes aware of evidence of a potential violation of civil or criminal law.

7. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

8. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19, or for budgetary or management oversight purposes.

9. To respond to interrogatories in the prosecution of a divorce action or settlement for purposes stated in 10 U.S.C. 1408 ("The Former Spouses" Protection Act").

10. To disclose information about the entitlements and benefits of a beneficiary of a deceased officer, retiree, or annuitant for the purpose of making disposition of the estate.

11. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

12. To disclose payroll information to authorized officials in Federal agencies where commissioned officers are assigned, such as the State Department; the Department of Defense; the Department of Justice, Bureau of Prisons and the Immigration and Naturalization Service; the Transportation Department; United States Coast Guard; the Environmental Protection Agency; the Department of the Interior, the United States Park Service; and the Commerce Department, National Oceanic and Atmospheric Administration.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche, electronic medium and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in shelves, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

Automated Records. Access to and use of automated records is limited to: (1) Personnel employed in the PSC and the Office of the Surgeon General (OSG)/OS; (2) personnel employed in DCP; (3) authorized officials in HHS components and organizations where commissioned officers are assigned whose official duties require such access; and (4) authorized officials in other Federal agencies, such as those in routine use 13 above, where commissioned officers are assigned whose official duties require such access. Automated data is provided to Department personnel officials to update information contained in their personnel records and pay, leave and attendance systems. The Human Resource Service (HRS) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, HRS personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization without the written approval of the Director of DCP or to an official to whom this authority has been delegated.

b. Nonautomated records. Access to and use of nonautomated records is limited to departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the records. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated record allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, OSG and personnel officials where commissioned officers are employed. No access is permitted to organizations that do not have automated personnel record-keeping systems that comply with Privacy Act requirements.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 7 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and stated in the contract.

RETENTION AND DISPOSAL:

When an officer is separated, records are incorporated into the OPF and transferred to a Federal Records Center in accordance with 09–40–0001, "PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS" procedures.

When an officer retires from the commissioned corps, a retirement payment file is generated and maintained in DCP. When the officer and/or annuitant dies, the file is retained in DCP for 3 years, then is incorporated into the OPF and transferred to a Federal Records Center in accordance to 09–40–0001, "PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS" procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may initially contact the DCP Privacy Act Coordinator for information about obtaining access to the records. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP Privacy Act Coordinator. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release records to authorized officials within DCP, HHS and other organizations where commissioned officers are assigned.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the office of the Privacy Act Coordinator, DCP.

3. Requests by mail. Written requests must be addressed to the System Manager or the DCP Privacy Act Coordinator at the address shown as the System Location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when

only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers, applicants, dependents, former spouses of officers, governmental and private training facilities, health professional licensing and credentialing organizations, government officials and employees and from the records contained in the following systems: 90–40–0001, Public Health Service (PHS) Commissioned Officer Personnel Records" HHS/PSC/HRS and 09–40–0010, Pay, Leave and Attendance Records, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0010

SYSTEM NAME:

Pay, Leave and Attendance Records, HHS/PSC/HRS.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

HRS, Personnel and Pay Systems Division, Silver Spring Centre, Room 1154, 8455 Colesville Road, Silver Spring, Maryland 20910.

FMS, Division of Information Systems and Technology, Room 17–66, 5600 Fishers Lane, Rockville, Maryland 20857.

NIH, Center for Information Technology, 9000 Rockville Pike, Bethesda, Maryland 20205.

Inactive records: Federal Retirement Record Center, Boyers, PA.

In addition, records are maintained by timekeepers and payroll liaisons. Contact the System Manager at the location identified below for specific locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees paid through the Department of Health and Human Services civilian payroll system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to pay, allowance and leave determinations made about each employee paid through the HHS civilian payroll system such as employee's name, date of birth, Social Security Number, home address; employing organization, pay plan and grade, hours worked, leave, timekeeper number, income taxes, withholdings and allotments, insurance, retirement, Thrift Savings Plan, voluntary leave transfer, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S. Code, Chapter 55—Pay Administration Title 5 U.S. Code, Chapter 63—Leave

PURPOSE(S):

Records in this system are used to:

1. Ensure that each employee in the payroll system receives proper pay and allowances.

2. Ensure that proper deductions and authorized allotments are made from employees' pay.

3. Ensure that employees are credited and charged with the proper amount of sick and annual leave.

4. Provide information to the Federal Parent Locator System (FPLS), the Office of Child Support Enforcement (OCSE), locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action in accordance with 42 U.S.C. 653.

5. Provide information to OCSE for release to the Social Security Administration for verifying Social Security Numbers in connection with the operation of the FPLS.

6. Provide information to OCSE for release to the Department of Treasury for purpose of administering the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

7. Provide information to the HHS Voluntary Leave Transfer Program websites for Departmentwide announcement and produce summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained and for related personnel management functions or pay studies, and other purposes compatible with the intent for which the record system was created.

8. Provide information to HHS components seeking to collect an overdue debt owed to the Federal Government, but only to the extent necessary to collect that overdue debt.

9. Provide Department management with information systems reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be used:

1. To prepare W–2 Forms to submit to the Internal Revenue Service and to disclose to State and local government agencies having taxing authority pertinent records relating to employees, including name, home address, earned income, and amount of taxes withheld.

2. To a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as routine uses to the appropriate agency, whether State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

4. When a contract between a component of the Department and a labor organization recognized under E.O. 11491 of 5 U.S.C. Chapter 71 provides that the agency will disclose personal records when relevant and necessary to the labor organization's duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

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5. To financial organizations designated to receive labor organizations or management association dues withheld from employees' pay, in order to account for the amounts withheld.

6. When the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

7. To disclose to the U.S. Office of Personnel Management that information that is relevant and necessary to carry out its role as the oversight agency responsible for promoting the effectiveness of personnel management and ensuring compliance with personnel laws and regulations.

8. To disclose to the Merit Systems Protection Board (including its Office of the Special Counsel) that information that is relevant and necessary to carry out its role as the oversight agency responsible for protecting the integrity of Federal merit systems and the rights of Federal employees working in the systems.

9. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, or other functions vested in the Commission.

10. To disclose to the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Service Impasses Panel) that information that is relevant and necessary to carry out its oversight role for the Federal service labor-management relations program.

11. To the Department of Labor to make compensation determination in connection with a claim filed by the employee for compensation on account of a job-connected injury or disease.

12. To respond to court orders for garnishments of an employee's pay for alimony or child support.

13. To the Department of Treasury to disclose information such as name, home address, Social Security Number, earned income, withholding status, and amount of taxes withheld for the following purposes: preparation and issuance of salary, retired pay, and annuity checks; issuance of U.S. Savings Bonds; recording of income information; and collection of income taxes.

14. To State officers of unemployment compensation in connection with claims filed by former HHS employees for unemployment compensation.

15. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

16. To the Department of Justice, a court or other tribunal when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

17. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PSC becomes aware of evidence of potential violation of civil or criminal law.

18. To disclose information for the purpose of conducting computer matching programs designed to reduce fraud, waste and abuse in Federal, State and local public assistance programs and operations.

19. To disclose information to other Federal organizations to collect an overdue debt owed to the Federal Government, but only to the extent necessary to collect that overdue debt.

20. To publicly recognized charitable organizations for payroll deductions or when necessary to adjudicate a claim.

21. Provide information to charities, financial organizations at the request of the employee for the purposes of facilitating an employee's request for direct deposit or contribution to a charity, starting or modifying a savings program, etc.

22. To a Federal agency in response to a written request from the agency head specifying the particular portion desired and the law enforcement activity for which the record is sought. The request for the record must be connected with the agency's auditing and investigative functions designed to reduce fraud, waste and abuse; it must be based on information which raises questions about an individual's eligibility for benefits or payments; and it must be made reasonably soon after the information is received.

23. To respond to court orders when an employee is involved in garnishment proceedings arising because an employee is involved in a personal debt collection action.

24. To thrift and savings institutions to adjudicate a claim under a program, or to conduct analytical studies of benefits being paid under such programs, provided such disclosure is consistent with the purpose for which the information was ordinarily collected.

25. To the Federal Thrift Savings Plan to maintain employees thrift accounts, loans or loan repayment records.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on disks, microfiche, electronic media, magnetic tapes and on websites. Nonautomated (hard-copy) files are kept in locked offices, and may be stored in locked shelves, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Records are maintained by pay period and are retrieved by name and/or Social Security Number and timekeeper number within each pay period.

SAFEGUARDS:

1. *Authorized Users*

Automated Records. Access to and use of automated records is limited to: (1) Personnel employed in the PSC and the HHS Operating Division personnel offices, (2) authorized officials in HHS components and organizations whose official duties require such access, and (3) authorized officials in other Federal agencies for whom the PSC is providing personnel and/or payrolling service.

Nonautomated records. Access to and use of nonautomated records is limited to departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the record. This written request is then placed into the record.

2. *Physical safeguards*

Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks.

Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are secured in filing cabinets inside secured office space which is locked at all times. Access to the office space requires a key card to enter and access is permitted only to authorized personnel.

3. *Procedural safeguards*

Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated record allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, and OPDIV personnel officials. No access is permitted to OPDIVs that do not have automated personnel recordkeeping systems that comply with Privacy Act requirements.

Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways. Official records may not be removed from the physical boundaries of PPSD. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier areas where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.*

A contractor who is given records under routine use 6 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and stated in the contract.

RETENTION AND DISPOSAL:

When an employee is separated leave records are incorporated into the Official Personnel Folder (OPF) maintained by the servicing personnel office (SPO) and payroll retirement information is transferred to the Federal Retirement Records Center in Boyers, PA. The OPF is forwarded to the new employing agency by the SPO. These procedures are in accordance with U.S. Office of Personnel Management policies and procedures.

When an employee retires or dies, the employee or his/her beneficiary receives a payment for his/her annual leave balance and the retirement information is transferred to the Federal Retirement Records Center in Boyers, PA. The SPO transfers the OPF to the Federal Records Center. These procedures are in accordance with U.S. Office of Personnel Management policies and procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel and Pay Systems Division, Human Resources Service, PSC, HHS, Suite 700, 8455 Colesville Road, Silver Spring, MD 20910.

NOTIFICATION PROCEDURES:

The same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. *General procedures.* A subject individual, or parent, or legal guardian of an incompetent individual, who appears in person at a specific location seeking access to or disclosure of records relating to him/her may initially contact his/her agency personnel office or payroll liaison for information about obtaining access to the records. Such individuals will be required to verify their identity to the satisfaction of the agency employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained.

2. *Requests by mail.* Written requests must be addressed to the System Manager or the appropriate Payroll Liaison Representative. A comparison will be made of that signature and the signature maintained in a file prior to release of the material request. Copies of the records to which access has been requested will be mailed to the individual.

3. *Requests by phone.* Unless positive identification of the caller can be established, telephone requests for access to records will not be honored.

4. *Accounting of disclosures.* An individual who is the subject of the records in this system may also request an accounting of all disclosures outside the Department, if any, that have been made from the individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is supplied directly by the individual, derived from information supplied by the individual, or supplied by timekeepers and other authorized officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION(S) OF THE ACT:

None.

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SYSTEM NAME:

Proceedings of the Board for Correction of PHS Commissioned Corps Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board for Correction of PHS Commissioned Corps Records, HHS/PSC/HRS, Room 17A–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; and Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409. Records also may be located at the contractor site. The names and addresses of contractors used by the Board for Correction can be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioned Officers of the PHS Commissioned Corps who appeal to the Board for Correction, former officers, their spouses and heirs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commissioned Officer case files consisting of requests for correction of alleged errors or injustices; administrative reports; case summaries; findings; conclusions; recommendations; Board for Correction decisions and related documents, including copies of records from other systems of records as specified under Record Source Categories below.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1552 "Correction of Military Records"; Public Health Service Act, 42 U.S.C. 213a(a)(12); Executive Order 9397, "Numbering System for Federal Accounts Relating to Individual Persons."

PURPOSE(S):

This system of records is used:

1. To process appeals from current or former Commissioned Officers, their spouses and heirs to determine the existence of alleged errors or injustices resulting from the administration of laws and regulations.
2. To review and adjudicate these appeals.
3. To disclose the decisions of the Board for Correction to the Division of Commissioned Personnel (DCP) for appropriate action. The DCP is not authorized to release copies of original Board for Correction records without approval by the System Manager.
4. To document all actions and activities of the Board for Correction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information:

1. To a congressional office from the record of any individual in response to an inquiry from the congressional office made at the written request of that individual.
2. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component thereof; or (b) Any HHS employee in his or her official capacity; or (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components; is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.
3. To appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when HHS becomes aware of evidence of a potential violation of civil or criminal law.
4. To private contractors who record and transcribe tapes of Board for Correction meetings. Contractors are required to comply with Privacy Act safeguards and the HHS Privacy Act Regulations with respect to such records. These safeguards are explained in the section entitled "Safeguards."
5. To properly identified attorneys of subject individuals or their personally designated representatives, to court-appointed representatives of mentally incompetent or otherwise legally handicapped subject individuals and to guardians to the extent necessary to assure attainment of rights or payment of benefits to which such individuals would be entitled.
6. To Federal, State or local government agencies (such as those concerned with disability compensation, health and human services, hospitals, and legal affairs) or to public interest organizations (such as the American Red Cross, the American Civil Liberties Union, Disabled American Veterans, and the Legal Aid Society) when the subject individual's request for correction will affect the individual's entitlement to rights or benefits, and when such agencies may have information which will assist the Board for Correction in clarifying that entitlement.
7. To authorized experts or consultants in a Federal agency or in the private sector if the Board for Correction has determined that it needs such opinions to arrive at an equitable decision concerning the subject individual's request; or to authorized officials in a Federal agency if required to facilitate equitable handling of a case, e.g., to an EEO official when a complaint is initiated by a PHS commissioned officer, to ensure that the same complaint has not already been decided through the Board for Correction process. All consultants, experts and Federal officials are required to comply with Privacy Act safeguards and the HHS Privacy Act Regulations with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, computerized records, disks and microfiche.

RETRIEVABILITY:

Last name and case number.

SAFEGUARDS:

1. *Authorized Users:* The System Manager and/or the Executive Secretary of the Board for Correction will control access to the data. Additional authorized personnel having access to the data are: (1) The Executive Director of the Board for Correction; (2) Designated clerical support staff in the offices of the System Manager and the Executive Secretary; (3) Board for Correction members on a need-to-know basis; and (4) Experts, consultants or private contractors when approved by the System Manager.

2. *Physical Safeguards:* Automated records. Automated records are stored on personal computers which require passwords for access, or on disks, and are located in offices with locks. During nonwork hours, all cabinets, storage facilities and offices are locked and the premises are patrolled regularly by building security forces. Nonautomated records. When records are not in use they are stored in filing cabinets with locks located in an inner office occupied during working hours and locked at all other times.

3. *Procedural Safeguards:* Authorized personnel are trained to comply with provisions of the Privacy Act and the HHS Privacy Act Regulations. Records are transmitted in sealed envelopes and are identified as confidential material. When copying records for authorized purposes, care is taken to ensure that no imperfect or extra pages are left in the copier room. These pages are disposed of by shredding.

4. *Contractor Guidelines:* Contractor compliance is assured through inclusion of privacy requirements in contract clauses, and through monitoring by contract and project officers. A contractor who is given records must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, caution employees about the confidentiality of the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractors are instructed to make no disclosure of the records except as authorized by the System Manager.

RETENTION AND DISPOSAL:

Original records are retained at the System Location either for one year after the Board for Correction's recommendation for favorable decision is upheld by the approving official, or for three years after the approval of the Board for Correction's recommendation for denial of an appeal, whichever applies to the final disposition of a case. The records are then transferred to the Washington National Records Center (WNRC) and are destroyed by the WNRC after 20 years.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director of the Board for Correction of PHS Commissioned Corps Records, Room 17–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURES:

Same as Access Procedures. The requester is required to specify reasonably the contents of the records being sought.

RECORD ACCESS PROCEDURES:

To determine whether information about themselves is contained in this system, the subject individual should contact the System Manager at the above address.

A subject individual who appears in person is required to provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, Social Security card, or discharge or separation papers).

An individual making a written inquiry is required to sign the request mailed to the System Manager. The signature given is compared with the signature on file prior to release of the material requested.

If the subject individual is represented by an attorney, other than the one shown on the application to the Board for Correction, it is necessary to have in the case file a dated letter signed by the subject individual giving the name of the attorney and stating that he/she has been authorized access to the case file. If the subject individual is represented by another person, it is necessary to have in the case file a dated letter signed by the individual giving the name of the representative and stating that he/she has been authorized access to the case file. In both instances, the person representing the subject individual would be required to present documentation identifying him/herself as being the person mentioned in the application or in a letter on file with the Board for Correction.

If the subject individual is judged to be mentally incompetent to handle his/her personal affairs, a court order should be issued to that effect. The person identifying him/herself as representing the subject individual in this circumstance is required to present a copy of the court order and to personally identify him/herself as being the person identified in the order.

If the subject individual is physically incapacitated, a medical statement certifying to the physical disability is required, signed and dated by a licensed physician. The person presenting this statement is required to personally identify him/herself and provide documentation of his/her relationship to the subject individual (e.g., marriage license, birth certificate, etc.).

If the subject individual is deceased, proof of death is required, signed and dated by the appropriate certifying agency of the Federal Government. The person presenting this document is required to personally identify him/herself and provide documentation of his/her relationship to the deceased (e.g., marriage license, birth certificate, etc.).

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on either the subject individual or the determination of his/her request, the requester (whether the subject individual, his/her personal representative, an attorney other than the one shown on the application to the Board for Correction, a court appointed representative, or a guardian) shall be asked to designate in writing a physician or other health professional who is willing to review the material and inform the requester of its contents, at the discretion of the health professional. The person designated to evaluate the medical information must provide proof that he/she is duly authorized by the requester to review the material.

An individual who is the subject of the records maintained in this records system may request an accounting of disclosures that have been made of his/her records, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, the requester shall contact the System Manager above, reasonably identify the records, specify the information being contested, and state the corrective action sought, with supporting documentation, to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are obtained from applicants; reports of findings and recommendations made by Board for Correction members; Board for Correction decisions; supervisors; private and Government physicians; hospitals and clinics rendering treatment; investigative reports; death certificates and reports of death; survivors and executors of estates; private and Government agency reports of service delivery, compensation, disability and legal opinions; and records contained in systems 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS; 09–40–0002, Public Health Service (PHS) Commissioned Officer Medical Records, HHS/PSC/HRS; 09–40–0003, Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS; 09–40–0004, Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS; 09–40–0005, Public Health Service (PHS) Beneficiary-Contract Medical/Health Care Records, HHS/PSC/HRS; and 09–40–0006, Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–40–0012

SYSTEM NAME:

Debt Management and Collection System, HHS/PSC/FMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Financial Operations, Financial Management Service, Program Support Center, Room 2B–40, Parklawn Building, 5600 Fishers Lane, Rockville, 20857.

Division of Accounting, Food and Drug Administration, Room 11–41, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of State Legislation and Repatriation, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447.

Division of Health Professions Support, Indian Health Service, Twinbrook Metro Plaza Building, Suite 100, 12300 Twinbrook Parkway, Rockville, MD 20850.

Division of Financial Management, Substance Abuse and Mental Health Services Administration, Room 16C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of Commissioned Personnel, Human Resources Service, Program Support Center, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Personnel and Pay Systems Division, Human Resources Service, Program Support Center, 8455 Colesville Road, Suite 700, Silver Spring, MD 20910.

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, Health Resources and Services Administration, 10th Floor, East/West Towers, 4350 East-West Highway, Bethesda, MD 20814.

Division of Accounting, Health Care Financing Administration, Room C3–09–17, 7500 Security Blvd., Baltimore, MD 21244.

Division of Financial Management, National Institutes of Health, Building 31, Room B1B63, 9000 Rockville Pike, Bethesda, MD 20892.

Financial Management Office, Centers for Disease Control and Prevention, Room 3149, 1600 Clifton Road, Atlanta, GA 30333.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

Names and addresses of contractors given information under routine use 17 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals owing monies to HHS Operating Divisions or other Federal entities for which PSC provides debt collection services.

2. Individuals owing monies include, but are not limited to, students and health care professionals who have received student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act, as amended, and who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs.

3. Repatriates owing repayment of funds loaned to them by the United States.

4. Individuals owing repayment for services rendered such as Freedom of Information Act requests and queries associated with the National Practitioner Data Bank, and Health Care Integrity and Protection Data Bank queries.

5. Current and separated HHS employees who have incurred payroll debts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include records such as: Name; taxpayer identification number and/or Social Security Number; address; amount of debt; rate of interest; account and repayment history and status; discipline/specialty; lending institutions; and invoice number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982 (Pub. L. 97–365), as amended; and Debt Collection Improvement Act of 1996 (Pub. L. 104–134), as amended.

PURPOSE(S):

The purpose of the system is:

1. To reduce the amount of outstanding debts owed to the Federal Government.

2. To protect the programmatic and financial integrity of Federal funds paid or awarded to individuals.

3. To be used by other components within HHS to facilitate debt management activities.

4. To be used for developing both regulatory and ad hoc management reports relating to debt collection activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed:

1. To a congressional office in response to an inquiry from the congressional office made at the written request of that individual.

2. To authorized persons employed at educational institutions where the recipient received a loan, scholarship, or grant. The purpose of this disclosure is to assist institutions in identifying delinquent borrowers and to enforce the conditions and terms of such loans, scholarships and grants.

3. To the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party of litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

4. To the General Accounting Office, the HHS Inspector General's Office, private auditing firms, and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

5. To a consumer reporting agency (credit bureau) to obtain a commercial credit report for the following purposes:

a. To establish creditworthiness of a loan/grant/scholarship/ traineeship applicant; and

b. To assess and verify the ability of a debtor to repay debts owed to the Federal Government.

Disclosures are limited to the individual's name, address, Social Security Number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the application or claim is being processed.

6. To debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be

limited to the debtor's name, address, Social Security Number, and other information necessary to identify him/her; the amount, status, and history of the claim; and the agency or program under which the claim arose.

7. To any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be limited to information necessary to identify the individual.

8. To the Defense Manpower Data Center, Department of Defense, to conduct matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or certain benefit payments resulting from Federal employment and are delinquent in their repayment of debts owed to the U.S. Government. The PSC will disclose this information in an effort to collect the debts by administrative or salary offset under the provisions of the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

9. To the United States Postal Service to conduct matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or certain benefit payments resulting from Federal employment and are delinquent in their repayment of debts owed to the U.S. Government. The PSC will disclose this information in an effort to collect the debts by administrative or salary offset, under the provisions of the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

10. To the following entities to help collect a debt owed:

a. To the Treasury Department or another Federal agency in order to effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to or held on behalf of the individual); and

b. To debt collection agents or contractors under 31 U.S.C. 3718 or under common law to help collect a past due amount or locate or recover debtors' assets.

11. The PSC will disclose from this system of records a delinquent debtor's name, address, Social Security Number, and other information necessary to identify him/her; the amount, status, and history of the claim; and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset;

b. To another Federal agency so that agency can effect an authorized administrative offset; i.e., withhold money payable to or held on behalf of debtors other than Federal employees; and

c. To the Department of Treasury, Internal Revenue Service to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

12. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute, rule, regulation, or order.

13. To the Department of the Treasury, Internal Revenue Service, as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible—either because the time period for collection under the statute of limitations has expired, or because the Government agrees to forgive or compromise the debt.

14. To the Treasury Department or to an agency operating a Debt Collection Center designated by the Treasury Department in order to collect past due amounts.

15. If PSC or an agency to which PSC provides debt collection services decides to sell a debt pursuant to 31 U.S.C. section 3711(I), a record from the system may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

16. Pursuant to 31 U.S.C. Section 3720E, or specific program regulations, PSC may publish or otherwise publicly disseminate information regarding the identity of a delinquent debtor and the existence of the debt.

17. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

SPECIAL DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HHS to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security Number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, ledgers, magnetic tapes, electronic media and diskettes.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, taxpayer identification number and account number.

SAFEGUARDS:

1. *Authorized Users:* Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing programs funded by Operating Divisions or agencies served by PSC.

2. *Physical Safeguards:* File folders, reports and other forms of data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonduty hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. *Procedural Safeguards:* All authorized users protect information from public view and from unauthorized personnel entering an office.

4. *Technical Safeguards:* PSC conducts regular reviews of computer access to the automated system by reviewing listings of employees who have access to the system via terminal entry. All personal computers having forte boards with modems are protected. Access is limited by use of IDs and passwords. PSC utilizes a Resource Access Control Facility program product which provides systems security, resource access control, auditability and accountability and administrative control.

Contractor Guidelines: A contractor who is given records under routine use 17 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and stated in the contract.

RETENTION AND DISPOSAL:

Records are retained by the responsible organizations listed under "System Location" until completion of the repayment of the debt. The records are then sent to the Federal Records Center for a retention period of six years and three months, and are subsequently disposed of in accordance with National Archives and Records Administration standard disposal practices.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Debt Management Branch,
Division of Financial Operations,
Financial Management Service, Program Support Center, Parklawn Building,
Room 2B40, 5600 Fishers Lane,
Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you, contact the System Manager at the above address.

Requests in person: A subject individual, or parent, or legal guardian of an incompetent individual, who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a fine. In addition, the following information is needed: (1) The name of the assistance program that he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

Requests by mail: Written requests must be addressed to the System Manager and must contain the name and address of the requester, his/her date of birth, and either his/her notarized signature to verify his/her identity, or a written certification that the requester is who he/she claims to be and understands that the known and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a fine. In addition, the following information is needed: The name of the assistance program that he/she participated in and, for student assistance programs, dates of enrollment in the program, and school(s) of attendance.

In addition, be informed that provision of the Social Security Number may assist in the verification of your identity as well as the identification of your record. Providing your Social Security Number is voluntary and you will not be refused access to your record for failure to disclose your Social Security Number.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system; Federal agencies, including but not limited to all Operating Divisions of the Department of Health and Human Services and the Department of the Treasury; credit reporting agencies; lending institutions; professional associations; schools of higher education; and Federal and State courts.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

[FR Doc. 98–32625 Filed 12–10–98; 8:45 am]

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federal register

Friday
December 11, 1998

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 105, 106, and 107
Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 105, 106, and 107

[Docket No. RSPA-98-3974]

RIN 2137-AD20

Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to President Clinton's mandate to Federal agencies to make communications with the public more understandable, RSPA is issuing this NPRM in which it proposes to revise and clarify the hazardous materials safety rulemaking and program procedures by:

- Putting them into plain language and making minor substantive changes.
- Creating a new part that will contain all defined terms used in RSPA's procedural regulations.
- Demonstrating clearer **Federal Register** and Code of Federal Regulations (CFR) formats.

DATES: Send your comments on or before February 9, 1999.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590-0001. You must identify the docket number RSPA-98-3974 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that RSPA has received your comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail to rspa.counsel@rspa.dot.gov. You may review public dockets containing comments to these proposed regulations in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Karin Christian, Office of the Chief Counsel, (202) 366-4400, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

1. Proposed Substantive Changes

RSPA ("we") proposes to revise all of parts 106 and 107, and to create a new part 105 that will eventually contain all definitions for terms used in Title 49, parts 106, 107 and 110, and perhaps parts 130 and 171 through 180. The proposed revisions respond to President Clinton's June 1, 1998 Executive Memorandum directing Federal agencies to make communications with the public more understandable. We propose to clarify existing requirements and make minor substantive changes which are explained in the following paragraphs. We will revise the remainder of subchapter A into plain language in a future rulemaking.

Part 105

We propose to create a new part 105 that will tell you how to obtain information from us about our procedural regulations and the Hazardous Materials Regulations (HMR). It will also explain subpoenas and service of documents. We also have revised mailing addresses throughout parts 105 and 106 to ensure that documents you send us reach the appropriate RSPA office in a timely manner.

Also, proposed part 105 would eventually contain all definitions that are now in various places throughout subchapter A and may eventually include the definitions now found throughout subchapters B and C. This change would let you go to a single location for all defined terms. Part 105 would also include some definitions found in section 5102 of Federal hazardous material transportation law, 49 U.S.C. 5101 et seq, that apply to terms used in the Hazardous Materials Regulations but do not appear in the regulations themselves. As a result of the present deficiency, you must refer to the statute to determine what particular words in the regulations mean.

At this time, proposed part 105 contains a limited number of definitions that have been rewritten into plain language. Many of these terms are also defined in 49 CFR parts 107 and 171. Consequently, the same term may be defined with different language in part 105 on the one hand and parts 107 and 171 on the other. Nevertheless, the plain language definitions in proposed part 105 are intended to have the same meaning as those in parts 107 and 171; we did not intend to make any substantive changes when we rewrote the proposed part 105 definitions into plain language.

Part 106

Proposed § 106.5 contains new information on our rulemaking process. Specifically, it states that we use informal rulemaking procedures under the Administrative Procedure Act. Furthermore, this section sets out the types of rulemaking documents we normally use to propose and adopt changes to our regulations.

Section 106.15 describes an advance notice of proposed rulemaking.

Section 106.20 describes a notice of proposed rulemaking.

Section 106.30 describes a final rule.

Section 106.35 describes an interim final rule.

Section 106.40 describes a direct final rule.

Section 106.70 proposes to allow commenters to electronically file their comments in a rulemaking proceeding. It also would allow us to reject paper and electronic comments that are frivolous, abusive, or repetitious.

Sections 106.80 through 106.95 talk about "public meetings" rather than "informal hearings." We are proposing this language change to more accurately reflect the nature of these public, information-gathering sessions.

Sections 106.115 through 106.140 propose to eliminate the current petition-for- reconsideration procedures in § 106.35 and § 106.38. Current § 106.35 requires that you file a petition for reconsideration of a rule with either RSPA's Associate Administrator for Hazardous Materials Safety or RSPA's Chief Counsel, depending on the subject matter of the regulation you are challenging. Current § 106.38 then allows you to appeal the decision of the Associate Administrator or the Chief Counsel by filing an appeal with RSPA's Administrator.

Only the Administrator has the authority, delegated from the Secretary of Transportation, to grant a petition for reconsideration that results in a new final rule. Therefore, petitions for reconsideration and appeals are currently processed through the Administrator. The proposed regulatory change avoids duplicative appeal procedures by limiting the process to action by the Administrator only.

Part 107

The substance of the procedural regulations in part 107, subpart A, has been captured in proposed parts 105 and 106. Consequently, with the exception of § 107.1—which would contain the definitions now found in

§ 107.3—we propose to remove the regulations currently contained in Part 107 subpart A.

2. Clearer Federal Register and CFR Formats

Plain language helps readers find requirements quickly and understand them easily. To do that, we have reorganized and reworded the parts using plain-language techniques not usually found in the **Federal Register** and CFR, such as these:

- Undesignated center headings cluster related sections within subparts.
- Short sections, paragraphs, sentences, and words speed up reading and enhance understanding.
- Sections as questions and answers focus sections better and combine to establish a rule.
- Personal pronouns reduce passive voice and draw readers into the writing.
- Tables display complex information in a simple, easy-to-read format.

In coordination with the Office of the Federal Register (OFR) and the National Partnership for Reinventing Government (NPR), RSPA is proposing changes in format that would make all regulations easier to read. The changes respond to the call in President Clinton's Executive Memorandum of June 1, 1998, for writing that uses "easy-to-read design features." RSPA intends to use these and other plain language techniques, as appropriate, in future rulemaking projects if the OFR approves them for general use. The public and all agencies are invited to comment on the proposed changes.

Staggering Paragraph Levels

OFR strongly recommends that agencies never use more than three levels of paragraphs (for example (a)(1)(i)), but distinguishing one level from another is hard because all paragraphs in the CFR start at the same distance from the left margin. To make relative importance stand out, we have drafted this proposed rule using the following format features:

- *Different paragraph levels start in different places.* You see the limit of three levels and proposed staggered indentations at § 106.45. Indenting first lines of three levels of paragraphs has virtually no effect on the length of the text.
- *Main paragraphs start at the margin.* This change would show that main paragraphs (those without numbers or letters) are at the highest level. See the first sentence in § 106.45.

Spacing Between Paragraphs

The dense formats of the **Federal Register** and CFR save on pages but hinder reading. Though section headings are framed by blank lines above and below them, there is no such relief to the fine print within a section, where users do their closest reading. To make navigation faster and easier, at least one commercial publisher of the Federal Acquisition Regulations has adopted two techniques that RSPA proposes here:

- *Blank half lines separate paragraphs.* The visual relief helps readers move around and spot things fast. Using this proposed rule document as an example, blank half lines add about one-half page in 10 (or an increase of about 5 percent). Agencies may be able to offset this space increase and resulting increases in publication costs by taking advantage of some economies of plain language.
- *All new paragraphs start on new lines.* Most paragraphs do start on new lines now, with this exception: when a paragraph consists of just a heading, the next paragraph starts beside it. The compression creates an occasional inconsistency that complicates reading. Imagine § 106.40(d)(1) starting next to "Withdrawing a direct final rule." The proposed change makes the placement of section designations entirely consistent. It lets readers devote more of their limited time to understanding the substance and less to compensating for the format's irregularities.

RSPA, OFR and NPR are interested in your views on the need for format changes in the **Federal Register** and CFR. Changes can be implemented over time, as new regulatory documents are published, but where? In the **Federal Register** alone? In the CFR as well? Within the **Federal Register**, should blank half lines between paragraphs be added to regulatory text alone or to preambles as well?

Identifying Defined Terms

RSPA proposes to list, at the beginning of each subpart, the defined terms that are used within the subpart and to refer the reader to the new part 105 definitions. This way, readers will know that RSPA has given a term a precise meaning and will know where to find it. This proposal leaves certain practices unchanged. In a definitions section, writers would still underline a term on its first appearance and OFR would still italicize the defined term. In such a section, writers would still have the option of ending a definition with a cross-reference to the term's first substantive use. Similarly, writers would still have the option of following the first substantive use of a defined term with a cross-reference back to the section that defines it.

Clarifying Table Format

This proposal illustrates the use of horizontal lines and plain language in a table format, and adopts other standard features of table design. For an example, see the table in § 106.110.

- *Tables use horizontal lines.* This is common practice in newspapers and magazines (stock market tables are an example). But tables in the **Federal Register** and CFR often have vertical lines between columns, separating closely related matter and blocking normal left-to-right reading. Under this proposal, if-then tables would appear with horizontal lines between rows and no vertical lines anywhere.
- *Column widths vary.* Currently, columns may be too wide or too narrow for the amount of text. This proposal would have column widths adjusted to fit the text in them.
- *Column headings start at left margins.* Currently, column headings which are centered do not contribute to the clean left margin that substitutes for a vertical line.
- *Column headings appear in boldface.* In plain text now, they do not stand out as they might. Agencies would continue to have the option of submitting tables in camera-ready form.
- *Tables use text font.* In the past, tables and text have appeared in different fonts, a visual inconsistency we propose to eliminate.

Centering Headings in the Federal Register

After clustering related sections into subparts, writers currently have the option of clustering them further under center headings. They draft these headings in initial caps, without number or letter designations, in both the text and tables of contents. You see the organizing power of center headings throughout parts 105 and 106.

Currently, undesignated center headings appear as intended in the CFR but not in the **Federal Register**. In the latter, center headings appear at the left margin and look like section headings without section numbers. The effect is confusing, especially for first-time readers. The proposed change would improve the placement and look of undesignated center headings in the **Federal Register** by making them appear centered as they do in the CFR.

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Using Bulleted Lists in Preamble Summaries

Currently, preamble summaries appear in running text only. But the information required there--what the rule does, why it is necessary, and the intended effect--lends itself to vertical listing with bullets. (See this preamble's summary.)

3. Regulatory Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget. RSPA will not prepare a regulatory impact analysis or a regulatory evaluation because this proposed rule has minimal economic impact. This determination may change as a result of public comment. This proposed rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

Executive Order 12612

RSPA has analyzed this proposed rule in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). RSPA has determined that this proposed rule does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13084

We do not believe that the revised regulations evolving from this NPRM will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), RSPA must consider whether a notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. This proposed rule clarifies and revises RSPA's general procedures and rulemaking procedures to assist the public to better understand our procedures. Therefore, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This proposed rule does not propose any new information collection requirements.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modifications to computer systems. Because this NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in this NPRM.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

Accordingly, RSPA proposes to amend 49 CFR chapter I, subchapter A, as follows:

1. Add part 105 to read as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

Subpart A—Definitions

Sec.

105.5 How does RSPA identify defined terms?

105.10 How does RSPA define the terms used in this subchapter?

Subpart B—General Procedures

105.15 Which defined terms are used in this subpart?

Obtaining Guidance and Public Information

105.20 Where can I get guidance and interpretations?

105.25 Where can I review public documents on file with RSPA?

105.30 Is information I submit to RSPA made available to the public?

Serving Documents

105.35 How may RSPA and others serve documents in RSPA proceedings?

105.40 How do I designate an agent to receive documents on my behalf if I am not a United States resident?

Subpoenas

105.45 What is involved in issuing a subpoena?

105.50 How are subpoenas served?

105.55 What if I do not want to obey a subpoena?

Authority: 49 U.S.C. 5101-5127.

Subpart A—Definitions

§ 105.5 How does RSPA identify defined terms?

This part contains the definitions for certain words and phrases used throughout this subchapter (49 CFR parts 105 through 110). At the beginning of each subpart, the Research and Special Programs Administration ("RSPA" or "we") will identify the defined terms that are used within the subpart -- by listing them -- and refer the reader to the definitions in this part. This way, readers will know that RSPA has given a term a precise meaning and will know where to look for it.

§ 105.10 How does RSPA define the terms used in this subchapter?

Terms used in this subchapter are defined as follows:

Approval means written consent, including a competent authority approval, from the Associate Administrator for Hazardous Materials Safety to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).

Competent Authority means a national agency that is responsible, under its national law, for the control or regulation of some aspect of hazardous materials (dangerous goods) transportation. Another term for competent authority is "appropriate authority" which is used in the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Associate Administrator for Hazardous Materials Safety is the United States Competent Authority for purposes of 49 CFR part 107.

Competent Authority Approval means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

(1) A specific regulation in subchapter A or C of this chapter.

(2) An exemption or approval issued under subchapter A or C of this chapter.

(3) A separate document issued to one or more persons by the Associate Administrator for Hazardous Materials Safety.

Exemption means a document issued by RSPA under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 through 5127 (e.g., Federal Highway Administration routing rules at 49 CFR part 397).

Federal hazardous material transportation law and *Federal hazmat law* mean 49 U.S.C. 5101 through 5127.

File or *Filed* means received by the appropriate RSPA or other designated office within the time specified in a regulation or rulemaking document.

Hazardous material means a substance or material that the Secretary of Transportation determines is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and designates as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

Hazardous materials regulations or *HMR* means the regulations at 49 CFR parts 171 through 180.

Indian tribe has the same meaning as it does under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b).

Person means an individual, firm, copartnership, corporation, company, association, or joint- stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) when it offers hazardous materials for transportation in commerce or transports hazardous materials to further a commercial enterprise. Person excludes the following:

(1) The United States Postal Service.

(2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties).

Political subdivision includes a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political body of a State; or a public corporation, board, or commission established under the laws of one or more States.

Preemption determination means an administrative decision by RSPA that Federal hazardous materials law does or does not void a specific State, political subdivision, or Indian tribe requirement.

Regulations issued under Federal hazmat law means regulations contained in this subchapter (49 CFR parts 105 through 110) and in subchapter C of this chapter (49 CFR parts 171 through 180).

State means:

(1) Any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary of Transportation.

(2) As used in 49 U.S.C. 5119 (uniformity of State registration and permitting forms and procedures), a State of the United States or the District of Columbia.

Transports or *Transportation* means movement of property, and any loading, unloading, or storage incidental to that movement.

Waiver of Preemption means a decision by RSPA to forego preemption of a non-Federal requirement (that is, to allow a State, political subdivision or Indian tribe requirement to remain in effect) that provides at least as much public protection as Federal hazmat law and the regulations issued under Federal hazmat law, and does not unreasonably burden commerce.

Subpart B—General Procedures

§ 105.15 Which defined terms are used in this subpart?

The following defined terms (see subpart A of this part) appear in this subpart: Approval; Exemption; Federal hazardous materials law; Hazardous materials; Hazardous materials regulations; Indian tribe; Preemption determination; State; Transportation; Waiver of preemption.

Obtaining Guidance and Public Information

§ 105.20 Where can I get guidance and interpretations?

(a) *Hazardous materials regulations.* You can get information and answers to your questions on compliance with the hazardous materials regulations (49 CFR parts 171 through 180) and interpretations of those regulations by contacting RSPA's Office of Hazardous Materials Safety as follows:

(1) Call the hazardous materials information line at 1-800-467-4922 (in the Washington, DC area call 202-366-4488). The line is staffed from 9:00 a.m. through 5:00 p.m. Eastern time, Monday through Friday except Federal holidays.

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After hours, you can leave a recorded message and your call will be returned by the next business day.

(2) Access the Office of Hazardous Materials Safety's home page via the Internet at http://hazmat.dot.gov.

(3) Send a letter, with your return address and a daytime telephone number, to:

Guidance and Interpretations
Attn: DHM-333
RSPA/U.S. Department of Transportation (USDOT)
Washington, DC 20590-0001.

(b) *Federal Hazmat law and preemption.* You can get information and answers to your questions on Federal hazardous materials transportation law, 49 U.S.C. 5101 through 5127, and Federal preemption of State, local, and Indian tribe hazardous material transportation requirements, by contacting RSPA's Office of the Chief Counsel as follows:

(1) Call the office of the Chief Counsel at (202) 366-4400 from 9:00 a.m. to 5:00 p.m. Eastern time, Monday through Friday except Federal holidays.

(2) Access the Office of the Chief Counsel's home page via the Internet at http://rspa- atty.dot.gov.

(3) Send a letter, with your return address and a daytime telephone number, to:

Office of the Chief Counsel
Attn: DCC-10
RSPA/USDOT
Washington, DC 20590-0001.

§ 105.25 Where can I review public documents on file with RSPA?

RSPA is required by statute to make certain documents and information available to the public. You can review and copy publicly available documents and information at the locations described in this section.

(a) *DOT Docket Management System.* Unless a particular document says otherwise, the following documents are available for public review and copying at the Department of Transportation's Docket Management System, Room PL 401, 400 7th Street, SW, Washington, DC 20590-0001, or for review and downloading through the Internet at http://dms.dot.gov:

(1) Rulemaking documents in proceedings started after February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and RSPA's decisions in response to appeals.

(2) Applications for exemption received by RSPA after February 1, 1997. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA after February 1, 1997. Also available are public comments, **Federal Register** notices, and RSPA's rulings, determinations, and orders issued in response to those applications.

(b) *Hazardous Materials Record Center.* Unless a particular document says otherwise, the following documents are available for public review and copying at RSPA's Hazardous Materials Record Center, USDOT, room 8421, 400 7th Street, SW, Washington, DC 20590-0001:

(1) Rulemaking documents in proceedings started before February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and RSPA's decisions in response to appeals.

(2) Applications for exemption received by RSPA before February 1, 1997. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA before February 1, 1997. Also available are public comments, **Federal Register** notices, and RSPA's rulings, determinations, and orders issued in response to those applications.

(4) Interpretations of RSPA's regulations.

(c) *Office of Hazardous Materials Safety.*

(1) Upon your written request, we will make the following documents and information available to you:

(i) Appeals under 49 CFR part 107 and RSPA's decisions issued in response to those appeals.

(ii) Records of compliance order proceedings and RSPA compliance orders.

(iii) Applications for approval, including supporting data, memoranda of any informal meetings with applicants, and decisions granting or denying approvals applications.

(iv) Other information about RSPA's hazardous materials program required by statute to be made available to the public for review and copying and any other information RSPA decides should be available to the public.

(2) Your written request to review documents should include the following:

(i) A detailed description of the documents you wish to review.

(ii) Your name, address, and telephone number.

(3) Send your written request to:

Request to Review Documents
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 105.30 Is information I submit to RSPA made available to the public?

When you submit information to RSPA during a rulemaking proceeding, as part of your application for exemption or approval, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential.

(a) *Asking for confidential treatment.* You may ask us to give confidential treatment to information you give to the agency by taking the following steps:

(1) Mark "confidential" on each page of the original document you would like to keep confidential.

(2) Send us, along with the original document, a second copy of the original document with the confidential information deleted.

(3) Explain why the information you are submitting is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552; it is information referred to in 18 U.S.C. 1905).

(b) *RSPA Decision.* RSPA will decide whether or not to treat your information as confidential. We will notify you, in writing, of a decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond.

Serving Documents

§ 105.35 How may RSPA and others serve documents in RSPA proceedings?

(a) *Service by RSPA.* We may serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If we serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) We may serve a person's authorized representative or agent by registered or certified mail, or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Publication in the **Federal Register**.

(b) *Service by others.* If you are required under this subchapter to serve a person with a document, serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If you serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) You may serve a person's authorized representative or agent by registered or certified mail, return receipt requested, or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Electronic service.

(i) In a proceeding under § 107.317 of this subchapter (an administrative law judge proceeding), you may electronically serve documents on us.

(ii) Serve documents electronically through the Internet at http://dms.dot.gov.

§ 105.40 How do I designate an agent to receive documents on my behalf if I am not a United States resident?

(a) *General requirement.* If you are not a resident of the United States but are required by this subchapter or subchapter C of this chapter to designate a permanent resident of the United States to act as your agent and receive documents on your behalf, you must prepare a designation and file it with us.

(b) *Agents.* An agent:

(1) May be an individual, a firm, or a domestic corporation.

(2) May represent any number of principals.

(3) May not reassign responsibilities under a designation to another person.

(c) *Preparing a designation.* Your designation must be written and dated, and it must contain the following information:

(1) The section in the HMR that requires you to file a designation.

(2) A certification that the designation is in the correct legal form required to make it valid and binding on you under the laws, corporate bylaws, or other requirements that apply to designations at the time and place you are making the designation.

(3) Your full legal name, the principal name of your business, and your mailing address.

(4) A statement that your designation will remain in effect until you withdraw or replace it.

(5) The legal name and mailing address of your agent.

(6) A declaration of acceptance signed by your agent.

(d) *Address.* Send your designation to:

Designation of Agent
Attn: DHM-333
RSPA/USDOT
Washington, D.C. 20590-0001.

(e) *Designations are binding.* You are bound by your designation of an agent, even if you did not follow all the requirements in this section, until we reject your designation.

Subpoenas

§ 105.45 What is involved in issuing a subpoena?

(a) *Subpoenas explained.* A subpoena is a document that may require you to attend a hearing or produce documents or other physical evidence in your possession or control. RSPA may issue a subpoena either on its initiative or at the request of someone participating in a hearing. Anyone who requests that RSPA issue a subpoena must show that the subpoena seeks information that will materially advance the hearing.

(b) *Attendance and mileage expenses.*

(1) If you receive a subpoena to attend a hearing under this part, you may receive money to cover attendance and mileage expenses. The attendance and mileage fees will be the same as those paid to a witness in a proceeding in the district courts of the United States.

(2) If RSPA issues a subpoena to you based upon a request, the requester must serve a copy of the original subpoena on you, as required in § 105.50. The requester must also include attendance and mileage fees with the subpoena unless they ask RSPA to pay the attendance and mileage fees because of demonstrated financial hardship.

(3) If RSPA issues a subpoena at the request of an officer or agency of the Federal government, the officer or agency is not required to include attendance and mileage fees when serving the subpoena. The officer or agency must pay the fees before you leave the hearing at which you testify.

§ 105.50 How are subpoenas served?

(a) *Personal service.* Anyone who is not an interested party and who is at least 18 years of age may serve you with a subpoena and fees by handing the subpoena and fees to you, by leaving them at your office with the individual in charge, or by leaving them at your house with someone who lives there and is capable of making sure that you receive them. If RSPA issues a subpoena to an entity, rather than an individual, personal service is made by delivering the subpoena and fees to the entity's registered agent for service of process or to any officer, director or agent in charge of any of the entity's offices.

(b) *Service by mail.* You may be served with a copy of a subpoena and fees by certified or registered mail at your last known address. Service of a subpoena and fees may also be made by registered or certified mail to your agent for service of process or any of your representatives at that person's last known address.

(c) *Other methods.* You may be served with a copy of a subpoena by any method where you receive actual notice of the subpoena and receive the fees before leaving the hearing at which you testify.

(d) *Filing after service.* After service is complete, the individual who served a copy of a subpoena and fees must file the original subpoena and a certificate of service with the RSPA official who is responsible for conducting the hearing.

§ 105.55 What if I do not want to obey a subpoena?

(a) *Quashing or modifying a subpoena.* If you receive a subpoena, you can ask RSPA to overturn ("quash") or modify the subpoena within 10 days after the subpoena is served on you. Your request must briefly explain the reasons you are asking for the subpoena to be quashed or modified. RSPA may then do the following:

(1) Deny your request.

(2) Quash or modify the subpoena.

(3) Grant your request on the condition that you satisfy certain specified requirements.

(b) *Failure to obey.* If you disobey a subpoena, RSPA may ask the Attorney General to seek help from the United States District Court for the appropriate District to compel you, after notice, to appear before RSPA and give testimony, produce subpoenaed documents, or produce physical evidence.

2. Revise part 106 to read as follows:

PART 106—RULEMAKING PROCEDURES

Subpart A—RSPA Rulemaking Documents

Sec.
106.5 Which defined terms are used in this subpart?
106.10 How does RSPA issue rules?
106.15 What is an advance notice of proposed rulemaking?
106.20 What is a notice of proposed rulemaking?
106.25 May RSPA change its regulations without first issuing an ANPRM or NPRM?
106.30 What is a final rule?
106.35 What is an interim final rule?
106.40 What is a direct final rule?
106.45 How can I track RSPA's rulemaking activities?

Subpart B—Participating in the Rulemaking Process.

106.50 Which defined terms are used in this subpart?
106.55 How may I participate in RSPA's rulemaking process?

Written Comments

106.60 Who may file comments?
106.65 What information must I put in my written comments?
106.70 Where and when do I file my comments?
106.75 May I ask for more time to file my comments?

Public Meetings and Other Proceedings

106.80 What takes place at a public meeting?
106.85 May I ask RSPA to hold a public meeting?
106.90 How will RSPA handle my request for a public meeting?
106.95 What other proceedings might I take part in?

Petitions for Rulemaking

106.100 May I ask RSPA to add, amend, or delete a regulation?
106.105 What information must I include in a petition for rulemaking?
106.110 How will RSPA handle my petition for rulemaking?

Appeals

106.115 May I appeal an action that RSPA has taken?
106.120 What information must I put in my appeal?
106.125 What is the deadline for filing my appeal?
106.130 Where do I file my appeal?
106.135 Will the filing of my appeal keep a final rule from becoming effective?
106.140 How will RSPA handle my appeal?

Authority: 49 U.S.C. 5101-5127.

Subpart A—RSPA Rulemaking Documents

§ 106.5 Which defined terms are used in this subpart?

The following defined terms (see part 105, subpart A, of this subchapter) appear in this subpart: File; Person; State.

§ 106.10 How does RSPA issue rules?

(a) RSPA ("we") uses informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) to add, amend, or delete regulations. To propose or adopt changes to a regulation, RSPA may issue one or more of the following documents. We publish the following rulemaking documents in the **Federal Register** unless we name and personally serve a copy of a rule on every person subject to it:

(1) An advance notice of proposed rulemaking.

(2) A notice of proposed rulemaking.

(3) A final rule.

(4) An interim final rule.

(5) A direct final rule.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

(1) The topic involved in the rulemaking document.

(2) RSPA's legal authority for issuing the rulemaking document.

(3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations).

(4) Whom to call if you have questions about the rulemaking document.

(5) The date, time, and place of any public meetings being held to discuss the rulemaking document.

(6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

§ 106.15 What is an advance notice of proposed rulemaking?

An advance notice of proposed rulemaking (ANPRM) tells the public that RSPA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

§ 106.20 What is a notice of proposed rulemaking?

A notice of proposed rulemaking (NPRM) proposes RSPA's specific regulatory changes for public comment and contains supporting information. It generally includes proposed regulatory text.

§ 106.25 May RSPA change its regulations without first issuing an ANPRM or NPRM?

RSPA may add, amend, or delete regulations without first issuing an ANPRM or NPRM in the following situations:

(a) We may go directly to a final rule or interim final rule if, for good cause, we find that a notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest. We must place that finding and a brief statement of the reasons for it in the final rule or interim final rule.

(b) We may issue a direct final rule (see § 106.40).

§ 106.30 What is a final rule?

A final rule sets out new regulatory requirements and their effective date. A final rule will also identify issues raised by commenters in response to the notice of proposed rulemaking and give the agency's response.

§ 106.35 What is an interim final rule?

An interim final rule sets out new regulatory requirements and their effective date. RSPA may issue an interim final rule without first issuing a notice of proposed rulemaking and accepting public comment if it finds, for good cause, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. RSPA will clearly set out this finding in the interim final rule. After receiving and reviewing public comments, as well as any other relevant documents, RSPA may revise the interim final rule and issue it as a final rule.

§ 106.40 What is a direct final rule?

A direct final rule makes regulatory changes and states that the regulatory changes will take effect on a specified date unless RSPA receives an adverse comment or notice of intent to file an adverse comment within the comment period -- generally 60 days after the direct final rule is published in the **Federal Register**.

(a) *Actions taken by direct final rule.* We may use direct final rulemaking procedures to issue rules that do any of the following:

(1) Make minor substantive changes to regulations.

(2) Incorporate by reference the latest edition of technical or industry standards.

(3) Extend compliance dates.

(4) Make noncontroversial changes to regulations. We must determine and publish a finding that use of direct final rulemaking, in this situation, is in the public interest and unlikely to result in adverse comment.

(b) *Adverse comment.* An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue, unless the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

(c) *Confirmation of effective date.* We will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes, if we have not received an adverse comment or notice of intent to file an adverse comment. The confirmation document tells the public the effective date of the rule--either the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later.

(d) *Withdrawing a direct final rule.*

(1) If we receive an adverse comment or notice of intent to file an adverse comment, we will publish a document in the **Federal Register** before the effective date of the direct final rule advising the public and withdrawing the direct final rule in whole or in part.

(2) If we withdraw a direct final rule because of an adverse comment, we may incorporate the adverse comment into a later direct final rule or may publish a notice of proposed rulemaking.

(e) *Appeal.* You may appeal RSPA's issuance of a direct final rule (see § 106.115) only if you have previously filed written comments (see § 106.60) to the direct final rule.

§ 106.45 How can I track RSPA's rulemaking activities?

The following identifying numbers allow you to track RSPA's rulemaking activities:

(a) *Docket number.* We assign an identifying number, called a docket number, to each rulemaking proceeding. Each rulemaking document that RSPA issues in a particular rulemaking proceeding will display the same docket number. This number allows you to do the following:

(1) Associate related documents that appear in the **Federal Register**.

(2) Search the DOT Docket Management System ("DMS") for information on particular rulemaking proceedings -- including notices of proposed rulemaking, public comments, petitions for rulemaking, appeals, records of additional rulemaking proceedings and final rules. There are two ways you can search the DMS:

(i) Visit the public docket room and review and copy any docketed materials during regular business hours. The DOT Docket Management System is located at the U.S. Department of Transportation, plaza level 401, 400 7th Street, SW, Washington, DC 20590-0001.

(ii) View and download docketed materials through the Internet at http://dms.dot.gov.

(b) *Regulation identifier number.* The Department of Transportation publishes a semiannual agenda of all current and projected Department of Transportation rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations which is published in the **Federal Register** in April and October of each year. The semiannual agenda tells the public about the Department's--including RSPA's --regulatory activities. The Department assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the **Federal Register** and makes it easy for you to track those rulemaking proceedings in both the **Federal Register** and the semiannual regulatory agenda itself.

Subpart B—Participating in the Rulemaking Process

§ 106.50 Which defined terms are used in this subpart?

The following defined terms (see part 105, subpart A, of this subchapter) appear in this subpart: File; Person; Political subdivision; State.

§ 106.55 How may I participate in RSPA's rulemaking process?

You may participate in RSPA's rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an advance notice of proposed rulemaking, notice of proposed rulemaking, interim final rule, or direct final rule.

(b) Ask that we hold a public meeting in any rulemaking proceeding, and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to add, amend, or delete a regulation.

(d) File an appeal that asks us to reexamine our decision to issue all or part of a final rule, interim final rule, or direct final rule.

Written Comments

§ 106.60 Who may file comments?

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including any State government agency, any political subdivision of a State, and any interested person invited by RSPA to participate in the rulemaking process.

§ 106.65 What information must I put in my written comments?

Your comments must be in English and must contain the following:

(a) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.

(b) Information, views, or arguments that follow the instructions for participation that appear in the rulemaking document on which you are commenting.

(c) All material that is relevant to any statement of fact in your comments.

(d) The document title and page number of any material that you reference in your comments.

§ 106.70 Where and when do I file my comments?

(a) Unless you are told to do otherwise in the rulemaking document

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on which you are commenting, send your comments to us in either of the following ways:

(1) By mail to:

Docket Management System
USDOT
Room PL 401
Washington, DC 20590-0001.

(2) Through the Internet to http://dms.dot.gov.

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on which you are commenting. We will consider late-filed comments to the extent possible.

(c) We may reject your paper or electronic comments if they are frivolous, abusive, or repetitious. We may reject comments you file electronically if you do not follow the electronic filing instructions at the DOT website.

§ 106.75 May I ask for more time to file my comments?

Yes. If RSPA grants your request, it is granted to all persons. We will notify the public of the extension by publishing a document in the **Federal Register**. If RSPA denies your request, RSPA will notify you of the denial. To ask for more time, you must do the following:

(a) File a request for extension at least ten days before the end of the comment period established in the rulemaking document.

(b) Show that you have good cause for the extension and that an extension is in the public interest.

(c) Include the docket number of the rulemaking document you are seeking additional time to comment on, clearly set out at the beginning of your request.

(d) Send your request to:

Request for Extension
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

Public Meetings and Other Proceedings

§ 106.80 What takes place at a public meeting?

A public meeting is a nonadversarial, fact-finding proceeding conducted by a RSPA representative. Generally, public meetings are announced in the **Federal Register**. Interested persons are invited to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting. Sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557) do not apply to public meetings under this part.

§ 106.85 May I ask RSPA to hold a public meeting?

If a rulemaking document does not provide for a public meeting, you may ask for one by filing a written request with RSPA no later than 20 days before the expiration of the comment period specified in the rulemaking document. Send your request for a public meeting to:

Request for Public Meeting
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 106.90 How will RSPA handle my request for a public meeting?

RSPA will review your request and, if you have shown good cause for a public meeting, will grant it and publish a notice of the meeting in the **Federal Register**.

§ 106.95 What other proceedings might I take part in?

During a rulemaking proceeding, RSPA may invite you to do the following:

(a) Participate in a conference at which minutes are taken.

(b) Make an oral presentation.

(c) Participate in any other public proceeding to ensure that RSPA makes informed decisions during the rulemaking process and to protect the public interest, including a negotiated rulemaking or work group led by a facilitator.

Petitions for Rulemaking

§ 106.100 May I ask RSPA to add, amend, or delete a regulation?

You may ask RSPA to add, amend, or delete a regulation by filing a petition for rulemaking as follows:

(a) For regulations in 49 CFR parts 110, 130, 171 through 180, submit the petition to:

Petition for Rulemaking
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

(b) For regulations in 49 CFR parts 105, 106, or 107, submit the petition to:

Office of the Chief Counsel
Attn: DCC-10
RSPA/USDOT
Washington, DC 20590-0001.

§ 106.105 What information must I include in a petition for rulemaking?

(a) You must include the following information in your petition for rulemaking:

(1) A summary of your proposed action and an explanation of its purpose.

(2) The language you propose for a new or amended rule, or the language you would delete from a current rule.

(3) An explanation of your interest in your proposed action and the interest of anyone you may represent.

(4) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(5) Any specific cases that support or demonstrate the need for your proposed action.

(b) If the impact of your proposed action is substantial, and data or other information about that impact are available to you, we may ask that you provide information about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law (Title 5, U.S.C.), of your proposed action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.)

(3) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(4) The record keeping and reporting burdens of your proposed action and whom they would affect.

(5) The effect of your proposed action on the quality of the natural and social environments.

§ 106.110 How will RSPA handle my petition for rulemaking?

We will review and respond to your petition for rulemaking as follows:

If your petition is ...	And if we determine that ...	Then ...
(a) Incomplete		we may return your petition with a written explanation
(b) Complete	your petition does not justify a rulemaking action	we will notify you in writing that we will not start a rulemaking proceeding
(c) Complete	your petition does justify a rulemaking action	we will notify you in writing that we will start a rulemaking proceeding

Appeals

§ 106.115 May I appeal an action that RSPA has taken?

You may appeal the following RSPA actions:

(a) Any regulation that RSPA issues under the rulemaking procedures in this part. However, you may appeal RSPA's issuance of a direct final rule only if you previously filed comments to the direct final rule (see § 106.40(e)).

(b) Any RSPA decision on a petition for rulemaking.

§ 106.120 What information must I put in my appeal?

(a) *Appeal of a regulation.* If you appeal RSPA's issuance of a regulation, your appeal must include the following:

(1) The docket number of the rulemaking you are concerned about, clearly set out at the beginning of your appeal.

(2) A brief statement of your concern about the regulation at issue.

(3) An explanation of why compliance with the regulation is not practical, reasonable, or in the public interest.

(4) If you want RSPA to consider more facts, the reason why you did not present those facts within the time given during the rulemaking process for public comment.

(b) *Appeal of a decision.* If you appeal RSPA's decision on a petition for rulemaking, you must include the following:

(1) The contested aspects of the decision.

(2) Any new arguments or information.

§ 106.125 What is the deadline for filing my appeal?

(a) *Appeal of a regulation.* If you appeal RSPA's issuance of a regulation, your appeal document must reach us no later than 30 days after the date RSPA published the regulation in the **Federal Register**. After that time, RSPA will consider your petition to be one for rulemaking under § 106.100.

(b) *Appeal of a decision.* If you appeal RSPA's decision on a petition for rulemaking, your appeal document must reach us no later than 30 days from the date RSPA served you with written notice of RSPA's decision.

§ 106.130 Where do I file my appeal?

Send your appeal to:

Appeal
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 106.135 Will the filing of my appeal keep a final rule from becoming effective?

No, unless RSPA provides otherwise.

§ 106.140 How will RSPA handle my appeal?

(a) *Appeal of a regulation.*

(1) We may consolidate your appeal with other appeals of the same rule.

(2) We may grant or deny your appeal, in whole or in part, without further rulemaking proceedings, unless granting your appeal would result in the issuance of a new final rule.

(3) If we decide to grant your appeal, we may schedule further proceedings and an opportunity to comment.

(4) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA published the rule at issue in the **Federal Register**. If we do not issue a decision on your appeal within the 90-day period, and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date. We will also publish a notice of the delay in the **Federal Register**.

(b) *Appeal of a decision.*

(1) We will not consider your appeal if it merely repeats arguments that RSPA has previously rejected.

(2) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA served you with written notice of its decision on your petition for rulemaking. If we do not issue a decision on your appeal within the 90-day period, and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127, 44701; Sec. 212-213, Pub. L. 104-121, 110 Stat. 857; 49 CFR 1.45, 1.53.

§§ 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, 107.14 [Removed]

§ 107.3 [Redesignated as § 107.1]

2. Part 107, subpart A, would be amended by revising the subpart heading; by removing §§ 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, 107.14; and by redesignating § 107.3 as § 107.1, to read as follows:

Subpart A—Definitions

Issued at Washington, DC on November 18, 1998, under authority delegated in 49 CFR part 106.

Judith S. Kaleta,

Chief Counsel.

[FR Doc. 98–31506; Filed 12–10–98; 8:45 am]

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23, 25 and 33
Airworthiness Standards; Bird Ingestion;
Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25 and 33

[Docket No. FAA–1998–4815; Notice No. 98–19]

RIN 2120–AF34

Airworthiness Standards; Bird Ingestion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend the FAA type certification standards for aircraft turbine engines with regard to bird ingestion. The proposed standards reflect recent analyses defining the actual bird threat encountered in service by turbine engines, and would harmonize the FAA bird ingestion standards with those being drafted by the Joint Aviation Authorities (JAA). The proposed changes would establish nearly uniform bird ingestion standards for aircraft turbine engines certified by the United States under FAA standards and by the JAA countries under JAA standards, thereby simplifying airworthiness approvals for import and export.

DATES: Comments to be submitted on or before March 11, 1999.

ADDRESSES: Comments on this document should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. FAA–1998–4815, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: "Docket No. FAA–1998–4815." Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7120; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as report summarizing each substantive public contact with FAA personnel on this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1998–4815." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (800)–322–2722 or (202)–267–5948.

Internet users may reach the FAA's webpage at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/su_docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

In 1976, the National Transportation Safety Board (NTSB), in response to an accident involving a wide-bodied aircraft that may have experienced multiple bird ingestion into the engines, issued Safety Recommendation A–76–64, recommending that the FAA, "amend 14 CFR 33.77 to increase the maximum number of birds in the various size categories required to be ingested into turbine engines with large inlets." Safety Recommendation A–76–64 also stated, "these increased numbers and sizes should be consistent with the birds ingested during service experience of these engines." In response to the recommendation, the FAA sponsored an industry wide study of the types, sizes, and quantities of birds that had been ingested into aircraft turbine engines of all sizes, and the resulting affects on engine performance. Subsequently, the FAA requested that the Aerospace Industries Association (AIA) analyze the data, and report back to the FAA. Based on the AIA report, the FAA determined the actions to be taken, as well as the disposition of the NTSB safety recommendation A–76–64. The FAA concluded that the regulations contained in (33.77 should be modified to increase the severity of the bird ingestion testing requirements regarding large, high bypass ratio engines. In addition, the FAA found that it should update the design and testing requirements for all engine sizes to reflect the actual numbers and bird sizes being ingested. This effort was adopted as a part 33 and Joint Aviation Regulations for engines (JAR–E) harmonization project and was selected as an Aviation Rulemaking Advisory Committee (ARAC) project.

Industry Study

The industry study consisted of FAA sponsored contracts which are summarized in FAA report number DOT/FAA/CT–84/13, dated September 1984. The AIA and the Association Europeenne Des Constructeurs De Material Aerospatial (AECMA), initially reviewed the historical bird threat and resulting impact to flight safety for a 20-year period through 1987. The data collected represented a cross-section of large, high bypass turbofan engines in service during that time period. After collection and review of the available data, an analysis was performed to characterize both the threat of bird ingestion (sizes, quantities and occurrence rates) and consequences. The results of this initial data analysis were presented to the FAA in AIA reports dated October 17, 1986, and November 10, 1988. The results of the analysis were compared to the historical design standards and certification bases for the family of engines comprised in the database. As a result of that analysis, the industry study group identified bird encounter threats more severe than were addressed in either engine design practices of the time, or in part 33. Subsequently, additional data was collected and analyzed for small and medium sized turbine engines which were not represented within the initial database. This data is contained within FAA Technical Center reports dated December 1990, December 1991, and July 1992.

In addition to the industry study and data analysis for large engines, industry also addressed the service experience of the small turbojet and turbofan engine designs. With the rapid expansion of the turbojet and turbofan engine powered business jet fleet in the late 1960's and early 1970's, a significant number of multiple engine power loss accidents occurred due to flocking bird ingestion. Careful review of these turbojet and turbofan engine events showed that the flight crews had often flown through very large flocks of birds with ingestion of many birds in each engine which resulted in multiple engine flameouts.

At the time, the FAA engaged in a discussion with engine manufacturers, and concluded that mechanical design changes alone would not alleviate the adverse affects of severe inlet blockage caused by massive flocking bird ingestions. The FAA and the manufacturers, then embarked upon a campaign to better inform the aviation community regarding bird hazards and necessary airport controls, and the accident rate due to bird ingestion decreased markedly. Additionally, the FAA amended part 33 effective October 31, 1974 (amendment 33–6), to require manufacturers to incorporate significant design improvements to address the typical flocking bird threat. The service experience of business jet engine designs that meet the standards of amendment of 33–6 indicates that resistance to bird ingestion induced damage has greatly improved over earlier service history.

Aviation Rulemaking Advisory Committee (ARAC) Project

The FAA is committed to undertaking and supporting the harmonization of part 33 with JAR–E. In August 1989, as a result of that commitment, the FAA Engine and Propeller Directorate participated in a meeting with the Joint Aviation Authorities (JAA), AIA, and AECMA. The purpose of the meeting was to establish a philosophy, guidelines, and a working relationship regarding the resolution of issues identified as needing to be harmonized, including some where new standards are needed. All parties agreed to work in a partnership to jointly address the harmonization effort task. This partnership was later expanded to include the airworthiness authority of Canada, Transport Canada.

This partnership identified seven items as the most critical to the initial harmonization effort. The proposed bird ingestion standards represent one item on the list of seven, and, therefore, represent a critical harmonization effort.

The bird ingestion standards proposal was selected as an ARAC project, and assigned to the Engine Harmonization Working Group (EHWG) of the Transport Airplane and Engine Issues Group (TAEIG) on December 11, 1992 (57 FR 58840). On April 9, 1997, the TAEIG recommended that the FAA proceed with the proposed rulemaking and associated advisory material even though one working group member disagreed with the proposal. This proposed NPRM reflects the ARAC recommendations on that rulemaking.

The basis for the development of this proposed rule is to (1) minimize the threat to aircraft from the historical bird threat to one or more engines; and (2) substantiate that the engine design provides at least a 1E–8 per aircraft cycle freedom from risk of a hazardous consequence to the aircraft due to the bird ingestion threat. For all bird ingestion threats, a hazardous consequence occurs when the resulting damage to the engine results in an unsafe condition specified in § 33.75; and in the specific case of small and medium birds, where insufficient power is retained to provide engine run-on capability to ensure a safe landing.

Medium bird ingestion criteria for small engines was established consistent with corresponding criteria for medium and large engines, which is freedom from multi-engine power loss events at a rate of 1E–8 per aircraft cycle. These criteria are based on the assumption that current standards for airport certification will be maintained, that the historical environment will not worsen, and that airport operators and pilots will maintain at least their current awareness of the bird ingestion threat.

The development of this proposal recognizes that each engine design must address the bird ingestion threat, without regard to the ingestion capability of previous designs as described in the service history database. Unless the proposal addresses the actual in-service bird ingestion threat, there can be no assurance that future designs would continue to exhibit acceptable capability.

The results of this data analysis are summarized as follows:

1. Dual engine power loss events with hazardous consequences (flocking birds of all sizes) have occurred at the rate of 3.2E–7 occurrences per aircraft cycle for large high-bypass ratio engines. This finding reflects service data for the 20-year period through 1987.
2. Multiple engine ingestion of flocking birds up to 2.5 lbs. has occurred at the rate of 1E–6 occurrences per aircraft cycle for large high-bypass ratio engines.
3. Single engine power loss events due to ingestion of birds smaller than the current § 33.77 standard has occurred at a rate of 1E–6 or greater per aircraft cycle for all large high-bypass ratio engines.
4. Single engine ingestion of a large bird (4–8 lb. based on inlet area) has occurred at a rate up to 3.1E–6 occurrences per aircraft cycle.
5. Dual engine ingestion of flocking birds up to 1.5 lbs. has occurred at a rate of 1E–8 occurrences per aircraft cycle for small engines.
6. Bird ingestion service difficulty issues relating to engine models not type certificated to the proposed requirements, can safely be addressed by continued airworthiness control programs.

This proposal recognizes the need to design a conservative test, while at the same time being representative of in-service combinations of critical ingestion parameters. Since testing for all possible combinations of events is impractical, a degree of conservatism was called for in a single test demonstration. That conservatism was incorporated into the proposed tests by selecting bird sizes or quantities, or both, among the most severe encountered within the 1E–8 service history, as well as requiring critical test parameters to be at worse case combination (speeds and aim points). It is therefore reasonable to accept a satisfactory test outcome which is conservative with respect to the various combinations of critical test parameters, and their demonstrated rate of occurrence in service.

An example of parametric rule consideration during regulatory tests is the question of multiple bird impacts to the same rotor blade. The likelihood of multiple impacts on one blade is dependent on the number of birds, the

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number of blades, and the exposed frontal area. The aircraft and engine manufacturers have stated that it is not always possible to achieve a uniform distribution of birds across the complete face of the engine in a single engine test. This situation could result in multiple birds striking the same blade, and may be viewed as unrepresentative and overly conservative based on probabilities appropriate to a random ingestion (averaged over a multiple ingestion event).

With respect to the flocking bird threat, this proposal considers the potential affects on the engine associated with the size and number of birds, and operating conditions of pertinent aircraft. For smaller flocking birds (0.5 to 1.5 lb.), greater quantities of birds may be ingested when compared to quantities associated with larger size flocking birds. The proposed tests would require the applicant to consider both the affects of bird size on the impact loading of the engine components, as well as the quantity ingested with potential multiple target locations being struck on the face of the engine. Additionally, the applicant would have to consider the potential affects of the ingestion and the resultant damage to the front face of the engine, as they affect the engine core and engine's run-on capability.

Analysis of the service record of engines with an inlet surface area larger than 2,000 square-inches over a 20-year period has led to the conclusion that some additional certification standards are required. The proposed standards are intended to reduce the risk of a dual engine power loss from current in-service rates. The improvement goal is approximately 1E–8 or better per aircraft departure. The data analysis has identified specific flocking bird threats up to approximately 8 lb. size (Canada goose). Therefore, it is the intent of this proposed rule to strengthen the engine airworthiness requirements by increasing the medium bird ingestion requirements from 1.5 to 2.5 lb. birds (representing the herring gull threat) and, by increasing the single large bird ingestion requirements, to address bird threats from 4 to 8 lb. (Canada goose). (The term "1E–8" is a standard scientific notation.)

The FAA recognizes that flocking birds larger than those specified in this proposed rule may be encountered. While available engine technology alone may not provide mitigation of this risk to approximately 1E–8 or better per aircraft departure, mitigation of this threat may be provided by compliance with the more severe requirements of this proposal. In addition, the introduction of aircraft that can be operated with up to a 50-percent power loss from each engine (large, twin engine, transport aircraft) and improved airport bird control methods and awareness will further address this very large bird threat. The data summary supporting this conclusion for medium to large high bypass engines (70 to 100 inch inlet diameter except as noted) is as follows:

Multiple engine ingestions of birds greater than 1.0 lb. = 2.1E–6*
Multiple engine ingestions of birds greater than 1.5 lb. = 1.4E–6*
Multiple engine ingestions of birds greater than 2.5 lb. = 1.4E–7**
Multiple engine ingestions of birds greater than 4.0 lb. = 8.8E–8**
Multiple engine ingestions of birds greater than 2.5 lb. = 9.5E–8***

*Data collection period 1970–1987
**Data collection period 1970–1995
***Data collection period 1970–1995 for 60 to 100 inch diameter inlets

The data also suggests that the number of birds likely to be ingested into all engines during a flock encounter was inversely proportional to the size of birds. These data were examined on an exceedence basis, and show that 95-percent of the time no more than the following quantities of birds would be ingested into all engines on an aircraft during a flock encounter. As an example, the following quantities of birds ingested for engines in the 6,000 square-inch class are as follows:

Weight of bird	Number of birds
1.0–1.5	3
1.5–2.5	3
2.5+	2

Considering the desire to evaluate multiple critical target locations on the face of the engine, this proposal selects a size of flocking bird that corresponds to a bird quantity of two or more birds. However, the FAA recognizes that there would be a residual risk of encounter of potentially larger bird sizes than specified in this proposed rule, and possibly greater quantities of birds than specified in this proposed rule. This proposal, however significantly increases the severity of the certification demonstration and provides a reduction in risk of a dual engine power loss due to flocking bird ingestion of any size and quantity.

In considering single large bird threats for sizes greater than that demonstrated under the medium flocking bird threat to multiple engines, the data analysis attempted to quantify exposure rates for birds weighing 4 lbs. and up as a function of inlet throat area. Data from a series of FAA Technical Center reports published between 1990 and 1992 were used, in addition to the original AIA studies.

The data showed that small and medium engine sizes up to an inlet throat area of 2,100 square-inches had a relatively constant threat from birds greater than 4 lbs. at approximately 5E–7 ingestions per aircraft departure. Reports from the manufacturers also showed that this size of engine was more likely to ingest only portions of large birds, due to the much higher probability that an ingested bird may not enter the inlet on the engine centerline and, therefore, would strike the inlet structure and be dismembered before reaching the engine rotor blades. This conclusion is further substantiated by the absence of reports of unsafe engine shutdown due to single large birds greater than 4 lbs. for engines in this size range.

For engines with inlets larger than 2,100 square-inches, the rate of exposure to single large birds tracked roughly with increasing inlet size. The exposure rate for birds larger than 4 lbs. for the large population of engines with inlet surface areas in the 2,100 to 6,000 square-inch range was 1.5E–6 ingestions per aircraft departure. Review of the revenue service data however showed that medium and large turbofans exposed to single large birds above 4 lbs. have demonstrated safe shutdown characteristics as defined under § 33.75 even with bird sizes up to 15 lbs. The rate of unsafe shutdown occurrences in accordance with § 33.75 criteria was approximately one event per 120 occurrences. This unsafe shutdown rate was attributed to the blade-out containment test requirements of § 33.94 constituting a more severe test relative to safe shutdown criteria for almost all engines.

The intent of this proposed rule is to establish the single large bird size as a function of inlet surface area greater than 2,100 square-inches at a level where the exposure to birds beyond that specified in this proposed rule would be in the range of 1E–6 to 1E–7 ingestions per aircraft departure. This coupled with the prior service history record of satisfactory shutdown experience when exposed to very large birds, provides a potential improvement for hazardous consequences to continued safe flight into the extremely remote range of probability, i.e., 1E–7 to 1E–9.

This proposed rule conservatively establishes the single, large bird requirement for engines with inlet surface areas in the 2,100 to 6,000 square-inch range at 6 lbs. where the average exposure to larger birds was 8E–7 ingestions per aircraft departure. For engines with inlet surface areas greater than 6,000 square-inches, the requirement was increased to 8 lbs. to maintain an equivalent margin of safety.

The selection of the 200-knot ingestion speed for the large bird test was based on consideration of impact loading on the engine front stage blading. It was determined that for most current turbine engine designs, conducting the test at 250-knots (maximum allowed airspeed below 10,000-feet altitude) would likely result in a relatively low blade impact vector, which results in less than maximum bird impact forces on the blade(s). Coupled with the specified bird mass variations with engine inlet size, the proposed rule would fix the ingestion speed at 200-knots, and would require applicants to perform an analysis to determine the critical spanwise target location for a particular engine application.

Large turbofan engines certified to the medium bird requirements of § 33.77, amendment 33–6, which requires bird velocities of 250-knots, sustained in-service blade fractures and loss of power for ingested bird weights less than those demonstrated for certification test. Second generation turbofan engines certified under § 33.77, amendment 33–10, used bird velocities which were equivalent to V_2 (takeoff safety speed) for the application aircraft (160 to 180-knots for the large transports). While the in-service record was significantly improved, these second generation engines were still experiencing blade fractures and power loss for bird weights less than the certification standard.

Engine ingestion parameters contributing to more than 50-percent power loss events were evaluated by AIA and AECMA. The most critical of the parameters evaluated which affected power loss were found to be bird weight, bird velocity, aiming point, and engine power setting. Each of these critical ingestion parameters have been evaluated in the proposed rule to determine the most severe conditions under which the medium bird test should be conducted.

The velocity to be used for the medium bird test was first established as the most critical velocity between V_1 (takeoff decision speed) and 250-knots indicated airspeed (KIAS) in order to cover the full range of takeoff and initial climb conditions that were considered to be potentially hazardous to the aircraft. In recognition of commuter and small business jet applications, the criterion was modified to reflect the fact that 250 KIAS was above the normal takeoff and climb speeds for this class of aircraft. A compromise criterion was chosen which required the medium bird ingestion velocity to be the most critical velocity between V_1 and the velocity reached at 1,500-feet above ground level (AGL).

Bird strike data for rotorcraft are not as comprehensive as that available for fixed wing aircraft, probably for a variety of reasons associated with reporting standards, forward speed, low altitude operations, and the extensive use of inlet protection or inherent installation shielding on rotorcraft. The following helicopter bird ingestion data was reviewed in support of this proposal: (France) Direction Generale de L'Aviation Civile (DGAC), 1983 through 1990; (United Kingdom) Civil Aviation Authority (CAA), 1976 through 1987, and 1989 through 1990; (U.S.A.) FAA, 1985 through 1990; (Canada) Transport Canada, 1981 through 1989; and International Civil Aviation Organization (ICAO), 1981 through 1989. The review showed reports of more than 600 bird strike events, but only four events were reported as engine ingestions, and none were multiple events. Many of the 600 events involved flocks of small birds making engine ingestion very probable. Since there are no reports of significant power loss or mechanical damage it can be assumed that these ingestions had no affect on the engine.

The FAA did not find any records of hazardous events or service difficulties associated with engine bird ingestion in multi-engine rotorcraft operation. To require a rotorcraft engine to demonstrate medium bird ingestion capability will impose an unnecessary burden upon the design while producing no measurable safety benefit. The FAA, therefore, proposes that engines intended for use in multi-engine rotorcraft need not show compliance with the medium bird ingestion requirements of this proposed rule.

With respect to the actual test day conditions when demonstrations are made, this proposal considers the variability of engine performance as a function of changing ambient conditions. For example, substantial variations in engine rotor speed may take place between test demonstrations performed on cold days versus testing on hot days. These variations in rotor speed could in turn lead to variations in resulting damage, engine power, and operating characteristics. Even with no variation in blade damage, significant variations in power or other characteristics could be expected for conditions considerably different than for the test demonstration. Therefore, the FAA proposes to allow the actual test day ambient conditions and engine pretest conditions to vary, permitting equal flexibility among applicants and avoid conduct of engine tests in unrepresentative conditions which could lead to cycle mismatches. However, each applicant must account for these potential variations by extrapolation to other conditions specified in the type design. From the standpoint of power and operating characteristics, the applicant must show that the engine condition following bird ingestion can be extrapolated to that specified in the type design. Therefore, the FAA determined that the sea level, hot day, corner point represents a worst case set of ambient conditions for which to substantiate bird ingestion capability for both single large and flocking birds. From the standpoint of potential limit exceedences, the applicant must consider the worst performing production engine that is allowed by the type design.

The current rules consider the possibility of imminent failure following a bird ingestion encounter producing damage. Considering this possibility, the proposed rule recognizes the need to provide a positive margin to demonstrate run-on capability and the ability for an engine to safely function throughout a conservative time for an emergency return to the airport of departure immediately following a bird ingestion event. This scenario includes a recognition that the most critical encounters typically occur during heavy weight takeoffs and may require dumping of fuel before returning to land. During this period, it may be necessary to operate damaged engines throughout their operating cycle, including a need to make a go-around due to debris or equipment on the runway. This proposed rule would require the applicant to demonstrate the engine's ability to operate satisfactorily during such circumstances. However, this proposal also recognizes that it is not possible to extend this demonstration to include all possible conditions occurring throughout a flight, particularly should the pilot decide to continue the flight to its originally intended destination. Lastly, considering the probable nature of bird ingestions, compliance with § 33.75 does not allow for circumstances which could lead to a hazardous failure as defined under that section. Therefore, seemingly normal operation of multiple damaged engines will not likely result in the failure of multiple engines within the same flight. For these reasons, there is no requirement within this proposed rule to further consider imminent failure after bird ingestion.

The EHWG also considered differences between part 33 and JAR-E with respect to the maximum emergency rating. The EHWG reached a consensus that there is no need to consider emergency ratings if it can be shown that the relative frequency of a bird ingestion event when using an emergency engine rating is less than 1E–8. Since part 33 does not define emergency ratings for turbofan engines, and the EHWG did not recommend that the FAA add that language, this proposal would not result in harmonizing part 33 with JAR-E in this regard.

Critical ingestion parameter tolerances were reviewed, and supporting arguments were made to justify the reasonableness of using a plus or minus 10-percent tolerance for variations within the test parameters. The application of this tolerance was discussed in the context of setting the engine speed and thrust parameters to test day takeoff conditions as described within this proposed rule. In contrast, the bird weight is controlled to "no less than" the weight specified within this proposed rule. The expectations of achieving the bird aim points and impact speed within plus or minus 10-percent or its equivalent regarding aim point was compared against the general collective test experience. A sensitivity analysis was conducted to evaluate the expected affect on thrust or power, should there be first stage blade damage, for variations in the following test parameters up to 10-percent: engine speed, bird speed, and target location. In general, these tolerances resulted in damage variations which produced approximately a 5-percent affect on thrust or power.

The EHWG determined that the current requirements of § 33.75 and JAR–E510 are not exactly the same, and, therefore, are not fully harmonized. The requirement of § 33.75 is restated in the proposed § 33.76 compliance criteria for the proposed medium and large bird ingestion tests. The bird ingestion requirements proposed by the JAA (Notice of Proposed Amendment (NPA–E–20)) includes a reference to JAR–E 510 for compliance criteria. However, the JAA compliance criteria is not the same as contained in this proposed rule. The FAA recognizes that full harmonization of § 33.75 and JAR–E 510 is still desirable, and will address this issue in future propulsion harmonization activities.

Disposition of Minority Position (as Stated in the NPA for the JAR on This Subject)

The JAA has expressed disagreement with a portion of this proposal, and is quoted as follows:

> The JAA expressed a dissenting opinion by requiring the new rules to include consideration of the threat which is created by flocking birds larger than 2.5 lb. The JAA proposed, in the draft new rules, the imposition of an additional requirement for each engine having an inlet area of 2100 square-inches or more. The applicant would be required to establish that when the fan assembly of such an engine is subjected to the ingestion of a single bird weighing at least 4 lb., under the same ingestion conditions as prescribed for the 6 lb. or 8 lb. bird ingestion test, the fan assembly retains sufficient integrity to demonstrate a total imbalance level less than 12 percent of the imbalance level corresponding to the loss of one complete fan blade airfoil.
>
> ### *The JAA Rationale*
>
> The stated aims of the draft new rules include reducing the risk of a dual engine power loss, the improvement goal being approximately 1E–8 or better per aircraft departure, and substantiation of that goal. The preamble also states that "unless the rule addresses the actual in-service bird threat, there can be no assurance that future designs would continue to exhibit acceptable capability". Allowing fan blades to be shown, during certification, as being less capable to withstand some sizes of birds than current in-service designs is not compatible with those stated aims.
>
> The draft new rules (without the addition proposed by JAA) retain the same acceptance criteria for single large bird ingestion standard as in the existing rules. Extensive damage leading either to an immediate shutdown or necessitating a shutdown after 15 seconds is permitted, the only limit to the severity of the damage to the fan being safe containment, safe loads and no fire. However, in practice there are very good reasons for the manufacturers to establish that, with respect to containment, loads, fire, etc., the damage is not more severe than occurs with a full fan blade release. That practice is recognized in the draft new rules by a provision for waiving a full engine test demonstration of compliance with the large bird ingestion standard if it can be demonstrated that compliance with the requirements for containment of a full fan blade is a more severe demonstration.
>
> Thus, because the minimum design allowed by the draft new rules is actually set primarily by the blade containment requirements, the large bird is allowed to cause extensive damage equivalent to that which results from the release of one entire fan blade. The increase of the weight of the large bird in the draft new rules, from 4 lb. to 6 lb. or 8 lb., will not improve the safety level if engines are designed to the minimum allowed by those new rules because it is a lower minimum that was demonstrated during certification of many, possibly most, of the current in-service engines. Further, it does not automatically follow that designing for a "safe" shutdown with a 6 lb. or 8 lb. bird results in a higher safety level than designing for a "safe" shutdown with a 4 lb. bird.
>
> The certification tests on most of the types of large engines currently in service demonstrated that the 4 lb. bird certification ingestion test did not result in extensive damage to their fan blades. Therefore, the service experience which is the basis for the aims of the draft new rules is derived mainly from engines which were better during certification than required by the existing rules and better than can be allowed under the draft new rules without the JAA proposed addition.
>
> The draft new rules require the large engines to retain a run-on and a 75 percent thrust capability when subjected to a multiple 2.5 lb. bird ingestion test but, as mentioned previously, the 6 lb. or 8 lb. bird ingestion is allowed to result in such extensive fan damage as to necessitate an immediate shutdown. In this case no information would then be available on the behavior of the fan in the event of a 4 lb. bird ingestion because the draft new rules do not address either medium (flocking) birds heavier than 2.5 lb. or large birds lighter than 6 lb. or 8 lb. The ingestion of a 4 lb. bird could, with some fan designs, also result in an immediate unavoidable engine shutdown.
>
> There is already an example of a new engine which complies with the draft new rules for 2.5 lb. and 8 lb. bird ingestion's but the 8 lb. bird was shown to cause extensive damage commensurate with an immediate unavoidable shutdown. It would not have been possible, from only that damage, to make any reasonable assessment of what damage would have resulted from a 4 lb. large bird certification test. Economic pressure could lead to an increased use of fan blades which are designed to the minimum allowed by the draft new rules because it provides an opportunity to reduce the weight of the fan blades, disc and containment ring.
>
> Allowing new fan designs to be less capable than current in-service designs to withstand the ingestion of a 4 lb. bird would not be a concern if the multi-engine ingestion threat did not include birds weighing up to, and more than, 4 lb. However, the service experience supporting the draft new rules shows that the multiple engine ingestion rate for birds larger than 2.5 lb. is greater than 1E–7. With current in-service engines these events have resulted in a marginally acceptable risk of multi-engine shutdown. If no certification data is available to show that new designs are equal to, or better than, current designs at withstanding those birds, it must be assumed that such encounters will result in unavoidable multi-engine shutdowns at a rate of roughly 1E–7 which is in excess of the declared aim of 1E–8. The JAA proposed additional requirement is intended to provide such certification data.
>
> All parties involved in the development of the draft new rules recognize that flocking birds larger than 2.5 lb. may be encountered and the JAA does not disagree totally with the position that mitigation of this risk to 1E–8 or better per airplane departure cannot be

economically provided entirely by available engine technology. However, the JAA believes that future engine fan technology must not be allowed to be less capable at mitigating that risk than current in-service engines.

Consequently the JAA concluded that the draft new rules are not achieving the stated aims by an amount that is more than necessary and not ensuring an achievable retention or improvement to the safety level by not ensuring that new fan designs are equal to, or better than, current designs at retaining their integrity when subjected to the ingestion of a 4 lb. bird under the conditions applicable to large bird ingestion requirements. The additional 4 lb. bird consideration proposed by JAA is intended to do no more than to provide some assurance of parity with current in-service fan designs, it is not intended to ensure a full run-on capability after the ingestion of a 4 lb. bird.

The FAA disagrees. The JAA position statement contains two major concerns: (1) That flocking birds larger than 2.5 lb. are a significant enough threat to require an evaluation for run-on capability; and (2) that this proposed rule may allow a lesser capable engine than those certified to the current rule with respect to medium flocking and single large bird ingestion.

With respect to JAA's first major concern, the FAA believes this proposed rule adequately addresses the flocking bird threat within the stated goal of this proposed rulemaking. That improvement goal is to reduce the risk of a dual engine power or thrust loss greater than 50-percent from current in-service rates to approximately 1E–8 or better per aircraft departure.

The worldwide bird ingestion threat database used for the medium and large engine portion of this proposed rulemaking includes substantial data from 1970 through 1995 and encompasses approximately 85-million aircraft flights. The database includes data for engine models with fan inlet diameters from 60 to 100 inches. This database shows the rate of multi-engine ingestions of birds larger than 2.5 lb. to be approximately 1E–7 per aircraft departure. The probability of a dual engine shutdown is predicted to be approximately 1E–8 per aircraft departure. This probability is based on the observed multi-engine ingestion rate and demonstrated rate of engine shutdown for ingestion of birds in this size range. These rates and probabilities are for engines certified to the current 1.5 lb. medium flocking and 4 lb. single large bird standards, which are less severe than this proposed rule.

The JAA position statement notes that the dual engine power loss and shutdown rate is marginally acceptable today. This proposed rule requires 2.5 lb. medium flocking birds and 6 to 8 lb. large single birds, depending on inlet size, both of which are more severe demonstrations, and which the FAA believes can only improve the overall worldwide fleet bird ingestion capability. This conclusion is also supported by the additional run-on evaluation requirements for the proposed medium bird test. Therefore, the FAA disagrees that additional run-on evaluation requirements for flocking birds larger than 2.5 lb. is necessary.

With respect to the JAA's second major concern for ingestion of medium flocking birds, the current marginally acceptable dual engine power loss rate relates primarily to engines certified to a 1.5 lb. bird ingestion requirement with 5 minutes of run-on. This proposed rule is for a 2.5 lb. bird with a 20 minute run-on evaluation requirement. This proposed rule represents a more severe design and test requirement than for engines certified to the current rule and should yield a more capable engine, not a less capable one. This requirement is supported by a test that is run to worst case conditions of fan speed, target location, number of birds, and new run-on evaluation requirements. The original review of historical data used in the development of this proposed rule showed that ingestion of single large birds greater than 2.5 lb. resulted in a significant engine power loss about 50-percent of the time, which was mostly due to mechanical damage to the fan. It is difficult to see how these earlier certified engines could have a greater ingestion capability than that demonstrated by a minimum engine that passes both the proposed 2.5 lb. medium flocking run-on and 6 to 8 lb. single large bird safe shutdown tests.

With respect to single large bird ingestion, the current marginally acceptable dual engine power loss rate relates primarily to engines certified to a 4 lb. single large bird safe shutdown requirement. With identical test criteria, an engine passing the proposed test will be at least as capable of a large bird safe shutdown as a current engine. Engine models that are tested using the proposed certification standards would have greater axial loads and greater local stresses on the impacted blades than for the 4 lb. requirement. Therefore, the blades must have greater capability with respect to a safe shutdown criteria. The FAA does not believe the proposed large bird ingestion criteria allows sufficient latitude such that an engine can pass the proposed 6 to 8 lb. test but not the current 4 lb. test. The proposal does not alter the current objective of a safe shutdown after a large bird ingestion.

The JAA also states that economic pressures could reduce the margin above the stated compliance criteria that engines may be designed for, and therefore result in less costly and less capable new designs of reduced margin when compared to engines currently in service. The FAA does not believe it is necessary to consider the margin above the certification standard with which any particular engine model demonstrates compliance, and that discussion of economic pressure has no place in objective evaluations of safety. The purpose of this proposed rule is to establish minimum certification requirements below which it is considered unsafe. Every engine meeting these proposed minimum requirements will be considered safe; either the regulatory criteria is appropriate, or it is not. Margin is not an issue when discussing properly chosen criteria. The FAA considers this proposed criteria as appropriate and, therefore, demonstrated margin above that criteria is not necessary. With respect to engines certified to the current 4 lb. single large bird ingestion safe shutdown test standard, some fan designs have exhibited blade fragmentation during the test while others have not. It is incorrect, however, to infer continued run-on capability simply from lack of fan blade fragmentation during the 15-second "hands-off" period of the large bird ingestion test. Secondary damage and operability affects of continued high power operation with mechanical or aerodynamic unbalance, or both, would have to be taken into consideration.

It is also true that currently certified designs which have experienced fan blade fragmentation in large bird ingestion tests have accumulated well over 50-million hours in revenue service with a satisfactory bird ingestion record. The fact that these engines continue to operate and produce greater than 50-percent thrust in a significant percentage of revenue service large bird ingestion events, may well be attributable more to the combination of ingestion conditions being less severe than the certification test, rather than to the robustness of the fan design. The FAA expects this same mixed result will continue to occur in the single large bird ingestion certification test. In addition, such mixed results relative to fan blade fragmentation are not significant relative to this proposed rulemaking's intent of improving the world fleet rate of dual engine power loss.

The FAA disagrees with the JAA statement that this proposed rule has a lower design minimum than the current rule. The FAA believes that this

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proposed rule significantly increases the certification standards for medium and large bird ingestion by increased severity of bird size, run-on, and target location. The test criteria of the current rule is less severe than that specified under this proposed rule, therefore, it cannot be described as providing a "greater margin" when compared to a marginally compliant engine under this proposed rule. Furthermore, no evidence has been offered to demonstrate that engines certified under the current rule would always have a margin for run-on following the ingestion of a 4 lb. flocking bird. Thus, the arguments of current versus proposed criteria are considered subjective and unproven as indicators of future performance in service.

Consequently, for the reasons stated above, the FAA has concluded that evaluation of run-on capability for birds or ingestions larger than 2.5 lb. is not necessary to meet this proposed rulemaking objective, and therefore the JAA proposal does not need to be incorporated into this proposed rule.

General Discussion of the Proposals

Sections 23.903(a)(2) and 25.903(a)(2)

The proposal revises parts 23 and 25 requirements associated with foreign object ingestion into turbine engines to be consistent with the proposed part 33 requirements.

Section 33.76

The proposed new (§ 33.76 would contain the new bird ingestion requirements. This proposal was developed by the engine harmonization working group, and contains substantial common language that will be reflected both in part 33 and JAR–E. Also, the proposed new section adopts the approximate metric equivalents for certain test parameters to further commonality between part 33 and JAR–E.

Section 33.77

The proposed revisions to (§ 33.77 would remove the bird ingestion standards now specified in (§ 33.77(a) and (§ 33.77(b). Paragraphs (a) and (b) would be held in reserve. Paragraphs (d) and (e) would be revised to eliminate any reference to paragraphs (a) and (b). The table in paragraph (e) would be revised to remove bird ingestion standards.

Paperwork Reduction Act

As there are no requirements for information collection associated with this proposed rule, no analysis of paperwork requirements is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Evaluation Summary

Four principal requirements pertain to the economic impacts of changes to the Federal regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. The order also requires federal agencies to assess whether a proposed rule is considered a "significant regulatory action." Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, the FAA has determined that this proposed rule would generate cost-savings that would exceed any costs, and is not "significant" as defined under section 3 (f) of Executive Order 12866 and DOT policies and procedures (44 FR 11034, February 26, 1979). In addition, under the Regulatory Flexibility Determination, the FAA certifies that this proposal would not have a significant impact on a substantial number of small entities. Furthermore, this proposal would not impose restraints on international trade. Finally, the FAA has determined that the proposal would not impose a federal mandate on state, local, or tribal governments, or the private sector of $100 million per year. These analyses, available in the docket, are summarized below.

Cost and Benefits

The FAA estimates that the proposed rule would add $250,000 to $500,000 to each new engine model's certification costs, depending on engine inlet area. These costs would be incurred primarily in two areas. First, additional analysis required to verify the affects of a large bird impact on the front of the engine could necessitate a component test costing $250,000. Second, the proposed rule would require additional analysis or testing on the full fan assembly for engines with inlet areas greater than 2,092 square-inches. Such testing would cost an additional approximately $250,000 for those engines.

In addition, the revised bird test weights could necessitate strengthening fan components, thereby affecting fan performance. The FAA estimates that reduced fan efficiency would result in a 0.2-percent increase in fuel consumption. On average, this would increase annual fuel costs by $4,770 per airplane.

Benefits associated with the proposed rule include: (1) benefits from averted fatalities and injuries, (2) benefits from averted property damage (primarily hull losses), and (3) benefits associated with reduced maintenance and repair costs. Based on historical accident information, the FAA estimates that the expected annual per-airplane benefit from averted airplane damage or loss is approximately $657. The expected annual per-airplane benefit from averted fatalities and injuries is $654 and $75, respectively.

The estimated value of maintenance/repair savings associated with the proposed rule is based on an analysis of the relationship between bird ingestion weight and the probability of damage. The FAA estimates that, on average, the proposed rule would save operators approximately $4,654 per airplane per year.

To compare the costs and benefits of the proposed rule, the evaluation considers a hypothetical representative engine certification. The engines are assumed to be installed on a notional twin-engine jet transport with a seating capacity of 161 (the average seating capacity of jet transports in commercial service in 1996). In addition, this analysis assumes that: (1) the discount rate is 7-percent, (2) incremental engine certification costs equal $250,000 in year 0 and $250,000 in year 1, (3) production of engines commences in year 2, (4) engines are installed in aircraft and enter service beginning in year 3, (5) each engine has a 15-year service life, and (6) 24 engines are produced per year for 10 years so that there are 240 total engines and 120 airplanes per certification. Under these assumptions, the expected discounted benefits of the proposed rule would exceed discounted costs by a factor of 1.11 ($4,333,000 to $3,906,000).

International Trade Impact Analysis

The proposed rule would have little or no affect on international trade for either U.S. firms marketing turbine engines in foreign markets or foreign firms marketing turbine engines in the U.S.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a preliminary analysis of all proposed rules to determine whether the rule will have a significant economic impact on a substantial number of small entities; if the determination is that it will, the agency must prepare an initial regulatory flexibility analysis (RFA).

However, if after a preliminary analysis for a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the Act provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required preliminary analysis of this proposal and determined that it will not have a significant economic impact on a substantial number of small entities. The following statement summarizes the basis for this determination. The proposed rule would apply only to newly designed turbine aircraft engines certificated in the future. Each new engine certification could affect two types of small entities.

First, the manufacturer would be required to perform additional analysis or testing to demonstrate that the proposed new bird ingestion requirements are met. There are currently nine turbine aircraft engine manufacturers with headquarters in the U.S. (this count includes subsidiaries of foreign entities and consortiums of domestic and/or foreign entities). Information available to the FAA at this time indicates that only one of these—a U.S. manufacturer of small turbine engines—has less than 1,500 employees and, therefore, qualifies as a small business under guidelines issued by the Small Business Administration.

It is difficult to estimate total costs to this single manufacturer because these costs are a function of the number of engines certificated. The manufacturer is not expected to conduct bird ingestion testing in the foreseeable future. In view of this uncertainty, this analysis focuses on per engine costs for both manufacturers and operators. The proposed rule is estimated to add about $250,000 for a small engine type as currently manufactured by the single small entity (these are one time costs per certification). The FAA estimates that the proposed rule would impose no manufacturing costs. In light of the fact that there is only one known small business manufacturing turbine aircraft engines, and that manufacturer is not expected to be affected by the proposed rule in the foreseeable future, this analysis will assume that manufacturing costs imposed by this proposed rule will be passed on to operators who purchase the new engines and analyze these costs on small operators.

Aircraft operators would incur slightly higher engine prices, plus pay increased operating or fuel costs due to the small decrease in engine efficiency described in the full regulatory evaluation. According to FAA data, there are about 3,000 air carriers having less than 1,500 employees—approximately 100 air carriers operating under part 121 (or both part 121 and part 135), and 2,900 air carriers operating under part 135.

Assuming conservatively that: (1) All incremental certification costs are passed on to the buyer/operator, (2) the manufacturer recovers incremental certification costs by applying a uniform price increase to 240 engines produced during a 10-year production run, and (3) that the discount rate is 7-percent; then the FAA estimates that average engine prices will increase by approximately $3,070 per larger engine and $1,587 per smaller engine. When these costs are amortized over the 15-year life of an engine (again, assuming a 7-percent discount rate), the incremental annualized cost per engine is approximately $315 and $163 for larger and smaller engines, respectively. Therefore, assuming a typical airplane has two engines, the incremental annualized cost for a large airplane is approximately $630 and the incremental annualized cost for a smaller airplane is approximately $326.

For larger engines, the rule will also increase annual airplane operating costs as a result of the proposed medium bird ingestion requirements (these requirements would have a negligible affect on smaller engines). On average, annual operating costs per large airplane, therefore, would increase by approximately $4,770. However, the reduction in average annualized maintenance costs associated with the more damage resistant engines that would be developed as a result of this proposed rule would almost completely offset incremental operating costs. These reduced maintenance costs are described more fully in the full regulatory evaluation.

Total annualized costs for operators of larger and smaller airplanes would therefore be approximately $630 and $326 per airplane, respectively. Consequently, the FAA makes an initial certification that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct affects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; and would not impose substantial direct compliance costs on States or local governments. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to require consultation with representatives of affected States and local governments.

In addition, the regulations proposed herein would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs on such communities. Therefore, in accordance with Executive Order 13084, it is determined that this proposal would not require consultation with representatives of affected Indian tribal governments.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation. In accordance with FAA Order 1050.1D, paragraph 32, the FAA has determined that there are no extraordinary circumstances warranting preparation of an environmental assessment for this proposed rule.

List of Subjects in 14 CFR Parts 23, 25 and 33

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 23, 25 and 33 of Title 14, Code of Federal Regulations as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Section 23.903 is amended by revising paragraph (a)(2) to read as follows:

§ 23.903 Engines.

(a) * * *

(2) Each turbine engine and its installation must comply with one of the following:

(i) Sections 33.76, 33.77 and 33.78 of this chapter in effect on (effective date of final rule), or as subsequently amended; or

(ii) Sections 33.77 and 33.78 of this chapter in effect on April 30, 1998, or as subsequently amended before (effective date of final rule); or

(iii) Section 33.77 of this chapter in effect on October 31, 1974, or as subsequently amended before April 30, 1998, unless that engine's foreign object ingestion service history has resulted in an unsafe condition; or

(iv) Be shown to have a foreign object ingestion service history in similar installation locations which has not resulted in any unsafe condition.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

4. Section 25.903 is amended by revising paragraph (a)(2) to read as follows:

§ 25.903 Engines.

(a) * * *

(2) Each turbine engine must comply with one of the following:

(i) Sections 33.76, 33.77 and 33.78 of this chapter in effect on (effective date of final rule), or as subsequently amended; or

(ii) Sections 33.77 and 33.78 of this chapter in effect on April 30, 1998, or as subsequently amended before (effective date of final rule); or

(iii) Comply with § 33.77 of this chapter in effect on October 31, 1974, or as subsequently amended prior to April 30, 1998, unless that engine's foreign object ingestion service history has resulted in an unsafe condition; or

(iv) Be shown to have a foreign object ingestion service history in similar installation locations which has not resulted in any unsafe condition.

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

5. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

6. Section 33.76 is added to read as follows:

§ 33.76 Bird ingestion.

(a) *General.* Compliance with paragraphs (b) and (c) of this section shall be in accordance with the following:

(1) All ingestion tests shall be conducted with the engine stabilized at no less than 100-percent takeoff power or thrust for test day ambient conditions prior to the ingestion. In addition, the demonstration of compliance must account for engine operation at sea level takeoff conditions on the hottest day that a minimum engine can achieve maximum rated takeoff thrust or power.

(2) The *engine inlet area* as used in this section to determine the bird quantity and weights will be established by the applicant and identified as a limitation on the inlet throat area in the installation instructions required under § 33.5.

(3) The impact to the front of the engine from the single large bird and the single largest medium bird which can enter the inlet must be evaluated. It must be shown that the associated components when struck under the conditions prescribed in paragraphs (b) or (c) of this section, as applicable, will not affect the engine to the extent that it cannot comply with the requirements of paragraphs (b)(3) and (c)(6) of this section.

(4) For an engine that incorporates an inlet protection device, compliance with this section shall be established with the device functioning. The engine approval will be endorsed to show that compliance with the requirements has been established with the device functioning.

(5) Objects that are accepted by the Administrator may be substituted for birds when conducting the bird ingestion tests required by paragraphs (b) and (c) of this section.

(6) If compliance with the requirements of this section is not established, the engine type certification documentation will show that the engine shall be limited to aircraft installations in which it is shown that a bird cannot strike the engine, or be ingested into the engine, or adversely restrict airflow into the engine.

(b) *Large birds.* Compliance with the large bird ingestion requirements shall be in accordance with the following:

(1) The large bird ingestion test shall be conducted using one bird of a weight determined from Table 1 aimed at the most critical exposed location on the first stage rotor blades and ingested at a bird speed of 200 knots for engines to be installed on airplanes, or the maximum airspeed for normal rotorcraft flight operations for engines to be installed on rotorcraft.

(2) Power lever movement is not permitted within 15 seconds following ingestion of the large bird.

(3) Ingestion of a single large bird tested under the conditions prescribed in this section may not cause the engine to:

(i) Catch fire;

(ii) Release hazardous fragments through the engine casing;

(iii) Generate loads greater than those ultimate loads specified under § 33.23(a); or

(iv) Lose the ability to be shut down.

(4) Compliance with the large bird ingestion test requirements of this paragraph may be waived if it can be demonstrated that the containment requirements of § 33.94(a) constitute a more severe demonstration than the requirements of this paragraph.

TABLE 1.—LARGE BIRD WEIGHT REQUIREMENTS

Engine inlet area (A) square-meters (square-inches)	Bird weight kg. (lb.)
1.35 (2,092)>A ...	1.85 (4.07) minimum, unless a smaller bird is determined to be a more severe demonstration.
1.35 (2,092)≤A<3.90 (6,045).	2.75 (6.05).
3.90 (6,045)≤A ...	3.65 (8.03).

(c) *Small and medium birds.* Compliance with the small and medium bird ingestion requirements shall be in accordance with the following:

(1) Analysis or component test, or both, acceptable to the Administrator, shall be conducted to determine the critical ingestion parameters affecting power loss and damage. Critical ingestion parameters shall include, but are not limited to, the affects of bird speed, critical target location, and first stage rotor speed. The critical bird ingestion speed should reflect the most critical condition within the range of airspeeds used for normal flight operations up to 1,500 feet above ground level, but not less than V_1 minimum for airplanes.

(2) Medium bird engine tests shall be conducted so as to simulate a flock encounter, and will use the bird weights and quantities specified in Table 2. When only one bird is specified, that bird will be aimed at the engine core primary flow path; the other critical locations on the engine face area must be addressed, as necessary, by appropriate tests or analysis, or both. When two or more birds are specified in Table 2, the largest of those birds must be aimed at the engine core primary flow path, and a second bird must be aimed at the most critical exposed location on the first stage rotor blades. Any remaining birds must be evenly distributed over the engine face area.

(3) In addition, except for rotorcraft engines, it must also be substantiated by appropriate tests or analysis or both, that when the full fan assembly is subjected to the ingestion of the quantity and weights of birds from Table 3, aimed at the fan assembly's most critical location outboard of the primary core flowpath, and in accordance with the applicable test conditions of this paragraph, that the engine can comply with the acceptance criteria of this paragraph.

(4) A small bird ingestion test is not required if the prescribed number of medium birds pass into the engine rotor blades during the medium bird test.

(5) Small bird ingestion tests shall be conducted so as to simulate a flock encounter using one 85 gram (0.187 lb.) bird for each 0.032 square-meter (49.6 square-inches) of inlet area, or fraction thereof, up to a maximum of 16 birds. The birds will be aimed so as to account for any critical exposed locations on the first stage rotor blades, with any remaining birds evenly distributed over the engine face area.

(6) Ingestion of small and medium birds tested under the conditions prescribed in this paragraph may not cause any of the following:

(i) More than a sustained 25-percent power or thrust loss;

(ii) The engine to be shut down during the required run-on demonstration prescribed in paragraphs (c)(7) or (c)(8) of this section;

(iii) The conditions defined in paragraph (b)(3) of this section.

(iv) Unacceptable deterioration of engine handling characteristics.

(7) Except for rotorcraft engines, the following test schedule shall be used:

(i) Ingestion so as to simulate a flock encounter, with approximately 1 second elapsed time from the moment of the first bird ingestion to the last.

(ii) Followed by 2 minutes without power lever movement after the ingestion.

(iii) Followed by 3 minutes at 75 percent of the test condition.

(iv) Followed by 6 minutes at 60 percent of the test condition.

(v) Followed by 6 minutes at 40 percent of the test condition.

(vi) Followed by 1 minute at approach idle.

(vii) Followed by 2 minutes at 75 percent of the test condition.

(viii) Followed by stabilizing at idle and engine shut down. The durations specified are times at the defined conditions with the power lever being moved between each condition in less than 10 seconds.

(8) For rotorcraft engines, the following test schedule shall be used:

(i) Ingestion so as to simulate a flock encounter within approximately 1 second elapsed time between the first ingestion and the last.

(ii) Followed by 3 minutes at 75 percent of the test condition.

(iii) Followed by 90 seconds at descent flight idle.

(iv) Followed by 30 seconds at 75 percent of the test condition.

(v) Followed by stabilizing at idle and engine shut down. The duration specified are times at the defined conditions with the power being changed between each condition in less than 10 seconds.

(9) Engines intended for use in multi-engine rotorcraft are not required to comply with the medium bird ingestion portion of this section, providing that the appropriate type certificate documentation is so endorsed.

(10) If any engine operating limit(s) is exceeded during the initial 2 minutes without power lever movement, as provided by paragraph (c)(7)(ii) of this section, then it shall be established that the limit exceedence will not result in an unsafe condition.

TABLE 2.—MEDIUM FLOCKING BIRD WEIGHT AND QUANTITY REQUIREMENTS

Engine inlet area (A) square-meters (square-inches)	Bird quantity	Bird weight kg. (lb.)
0.05 (77.5)> A	None	
.05 (77.5)≤ A < 0.10 (155)	1	0.35 (0.77).
0.10 (155)≤ A < 0.20 (310)	1	0.45 (0.99).
0.20 (310)≤ A < 0.40 (620)	2	0.45 (0.99).
0.40 (620)≤ A < 0.60 (930)	2	0.70 (1.54).
0.60 (930)≤ A < 1.00 (1,550)	3	0.70 (1.54).
1.00 (1,550)≤ A < 1.35 (2,092)	4	0.70 (1.54).
1.35 (2,092)≤ A < 1.70 (2,635)	1 Plus 3	1.15 (2.53). 0.70 (1.54).
1.70 (2,635)≤ A < 2.10 (3,255)	1 Plus 4	1.15 (2.53). 0.70 (1.54).
2.10 (3,255)≤ A < 2.50 (3,875)	1 Plus 5	1.15 (2.53). 0.70 (1.54).
2.50 (3,875)≤ A < 3.90 (6045)	1 Plus 6	1.15 (2.53) 0.70 (1.54).
3.90 (6045)≤ A < (6975)	3	1.15 (2.53)
4.50 (6975)≤ A	4	1.15 (2.53).

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TABLE 3.—ADDITIONAL INTEGRITY ASSESSMENT

Engine inlet area (A) square-meters (square-inches)	Bird quantity	Bird weight kg. (lb.)
1.35 (2,092)> A	None	
1.35 (2,092)≤ A 2.90 (4,495)	1	1.15 (2.53).
2.90 (4,495)≤ A < 3.90 (6,045)	2	1.15 (2.53).
3.90 (6,045)≤ A	1	1.15 (2.53).
	Plus 6	0.70 (1.54).

7. Section 33.77 is amended by removing and reserving paragraphs (a) and (b) and by revising paragraphs (d)(3) and (e) to read as follows:

§ 33.77 Foreign object ingestion.

* * * * *

(d) * * *

(3) The foreign object, or objects, stopped by the protective device will not obstruct the flow of induction air into the engine with a resultant sustained reduction in power or thrust greater than those values required by paragraph (c) of this section.

(e) Compliance with paragraph (c) of this section must be shown by engine test under the following ingestion conditions:

Foreign object	Test quantity	Speed of foreign object	Engine operation	Ingestion
Ice	Maximum accumulation on a typical inlet cowl and engine face resulting from a 2-minute delay in actuating anti-icing system, or a slab of ice which is comparable in weight or thickness for that size engine.	Sucked in	Maximum cruise	To simulate a continuous maximum icing encounter at 25 degrees Fahrenheit.

Issued in Washington, DC, on December 2, 1998.

Elizabeth Erickson,

Director, Aircraft Certification Service.

[FR Doc. 98–32734 Filed 12–10–98; 8:45 am]

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federal register

Friday
December 11, 1998

Part VI

Department of Agriculture

Rural Utilities Service

7 CFR Part 1780 and 1794
Environmental Policies and Procedures;
Final Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1780 and 1794

RIN 0572–AB33

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby revises its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS implementation of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on new Congressional mandates, changes in the electric industry, and RUS experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

The implementation of this rule has required that certain changes be made to 7 CFR part 1780 regarding environmental compliance. The amendments published in this document consist of those necessary to make the provisions of Part 1780 subject to the environmental requirements of this rule.

EFFECTIVE DATE: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Gary J. Morgan, Director, or Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250–1571. Telephone (202) 720–1784. E-mail address gmorgan@rus.usda.gov or lwolfe@rus.usda.gov.

This rule and the guidance bulletins described in this rule will be available on the Internet via the RUS home page at www.usda.gov/rus/.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in sec. 3 of the Executive Order.

In accordance with the Executive Order and the rule; (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retro-active effect will be given to the rule; and (3) administrative proceedings are required to be exhausted prior to initial litigation against the Department (7 U.S.C. 6912).

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The application for financial assistance under the RUS Electric and Telecommunications programs and the application for loans and grants under the RUS Water and Waste program are discretionary; regulatory requirements will, therefore, apply only to those entities which choose to apply for financial assistance or funding.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35,) under control number 0572–0117.

National Performance Review

This regulatory action is being taken as part of the National Performance Review to eliminate unnecessary regulations and improve those that remain in force.

Environmental Justice

This rule is subject to the requirements of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Implementation of these requirements will occur at the time of actions performed hereunder.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The programs described by this proposed rule are listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, 10.760, Water and Waste Disposal System for Rural Communities, 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This rule excludes the Electric and Telecommunications Programs from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled, "Department Program and Activities Excluded from Executive Order 12372," (50 FR 47034) determined that RUS loans and loan guarantees, and RTB bank loans, were not covered by Executive Order 12372. The Water and Waste Program is subject to the provisions of Executive Order 12372. Consultation will be completed at the time of actions performed hereunder.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

On March 13, 1984, the Rural Electrification Administration (predecessor of RUS) published 7 CFR Part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (49 FR 9544) covering the actions of the Electric and Telecommunications programs. Based on new congressional mandates, changes in the electric industry, and RUS experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

The existing 7 CFR part 1794 was designed to implement the requirements of NEPA and the CEQ regulations for RUS Electric and Telecommunications programs. As a result of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), the programs of the Rural Electrification Administration, were combined with the Water and Waste program from the former Farmers Home Administration (FmHA) into RUS. Most changes proposed to 7 CFR part 1794 result from the addition of the Water and Waste program to RUS.

For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of guidance bulletins. Three program specific bulletins are available which provide guidance in preparing the Environmental Report (ER) for proposed actions classified as categorical exclusions and proposed actions which require an Environmental Assessment (EA). Further information on these bulletins is provided in § 1794.7.

This final rule contains a variety of substantive and procedural changes from the provisions of the current rule. Some of these revisions are minor (§ 1794.4, Trivial Violations was deleted) or are merely intended to clarify existing RUS policies and procedures (§ 1794.6, Definitions, was added). Other revisions reflect changes in RUS implementation of the CEQ regulations as outlined below.

The relationship between RUS and its Electric and Telecommunications applicants has changed substantially since RUS issued the final rule in March of 1984. Changes that have occurred in the last 4 years have been particularly dramatic. Historically, RUS provided substantially all of its applicants' capital needs and established a lending relationship reflecting that dominant lending role. However, because of limited annual loan authorization levels, RUS no longer serves such a role. Moreover, in a 1993 amendment to section 306E of the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 936e), Congress required RUS to abandon its close hands-on control of its applicants and instead follow the practices of private market lenders. RUS has done so through the development of new forms of loan agreements and security instruments and the publication of 7 CFR Part 1717, subpart M, Operational Controls, which reduce or eliminate much of the oversight and control historically exercised by RUS over its Electric applicants.

Reflecting these changes and reforms, RUS has revised § 1794.3 of the rule. Environmental reviews will continue to be required in connection with the approval of financial assistance for applicants and the issuance of rules, regulations, and bulletins by RUS. However, no reviews will be required in connection with approvals provided by RUS pursuant to its loan contracts and security instruments with applicants such as approvals of lien accommodations or the use of general funds by applicants. These approvals are not major Federal actions significantly affecting the quality of the human environment.

Within subpart C of this rule, a classification system defines the level of environmental review required for RUS and applicant proposed actions. In Section 1794.20 RUS has clarified its position for determining circumstances under which an applicant's participation in a project results in a Federal action. Sections 1794.21 through 1794.25 of this subpart are further subdivided when appropriate to differentiate between actions being proposed by RUS and actions proposed by Electric, Telecommunications, and Water and Waste program applicants.

A number of classification changes have been made within subpart C of this rule. These reclassifications involve minor actions proposed by applicants which rarely, if ever, result in significant environmental impact or public interest. RUS believes this rule includes adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

RUS has modified the thresholds for acreage (facility sites), and capacity (generation facilities) within § 1794.22(a). In addition to modifying the thresholds for acreage and capacity, RUS has imposed different thresholds for construction of electric generating capacity at new sites versus existing sites within § 1794.23(c). Acreage and capacity threshold changes within § 1794.24, and a capacity threshold change within § 1794.25 reflect changes that have been made in §§ 1794.22(a), and 1794.23(c). No changes were made to the existing thresholds for transmission line length. Capacity thresholds have been eliminated for hydroelectric proposals in §§ 1794.22 and 1794.23. RUS will normally adopt the NEPA document prepared by the Federal licensing agency of hydroelectric projects in which RUS applicants participate.

The thresholds for proposed actions in the Water and Waste program are classified in §§ 1794.21(c) and 1794.22(b). Based on historical experience and a survey of the thresholds established by the Environmental Protection Agency which administers similar programs, RUS has eliminated the two tiered classification for EAs that is contained in 7 CFR Part 1940, Subpart G, the environmental regulation of the former FmHA, and adopted the more traditional classification scheme as outlined in 40 CFR 1508.9. Because RUS co-funds a significant portion of its projects with other Federal and state agencies, a more traditional classification and documentation scheme is thought to be more conducive to minimizing duplicative environmental review efforts.

RUS has modified its procedures in subparts D through G of this part. The EA will be the subject document of the notice of availability requirements in § 1794.42, where previously, the applicant's ER was the subject document. By this change, the notice requirements for all three programs will be consistent for both EA proposals and EA with scoping proposals. This change will encourage more public involvement by allowing public review of EA proposals prior to the issuance of a Finding of No Significant Impact (FONSI).

RUS has also changed its notice requirements for Electric program projects requiring scoping. The timing of RUS **Federal Register** notice for public scoping meetings in § 1794.52(b) has been reduced from 30 days to 14 days prior to the meeting. No appreciable benefit resulted from an earlier notice requirement. The existing regulation allows RUS to adopt the applicant's ER as its EA but requires RUS to prepare its own EA from the applicant's Environmental Analysis (EVAL) where a proposed action requires scoping. RUS has changed this requirement by allowing the EVAL to serve as its EA (see § 1794.53) consistent with 40 CFR § 1506.5(b).

RUS has modified its policy regarding the use of contractor prepared EISs. Under the existing regulation, RUS was required to use agency funds when an independent contractor was chosen by RUS to prepare the EIS. In accordance with the provisions of 7 CFR Part 1789, "Use of Consultants Funded by Applicants" and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996, the draft and final EIS may be prepared by a consultant selected by RUS and funded by the applicant. A new requirement, publication of a notice of availability by RUS and the applicant for a Record of Decision is established in § 1794.63.

Preparation of the Rulemaking

The proposed rule (7 CFR part 1794) was published in the **Federal Register** on November 24, 1997 (62 FR 62527). Public comment was invited for a 60-day period, ending on January 23, 1998.

Eighty-nine written comments were received representing 32 specific organizations and individuals. These included two Federal agencies, eight Federal agency state offices, one regional commission, two electric cooperative associations, and seventeen rural electric cooperatives. All comments were fully considered when revising the proposed rule for publication as a final rulemaking.

Every effort has been made to respond in detail in the preamble to every question raised or suggestion offered. Where commenters pointed out errors in spelling, syntax, and minor technical errors these errors were corrected and not mentioned further in the preamble. In addition, many commenters made similar suggestions or raised similar issues. In the interest of clarity, comments that were similar in nature were grouped and discussed in the most relevant section in the preamble. Some comments pointed out vague and unclear language. Clarifying and explanatory language was added to the rule and preamble as appropriate. The discussion under General Comments responds to general comments and clarification of misunderstandings as to RUS's intent. The statements under Comments on Specific Sections address the more significant comments received on particular provisions and how RUS responded to them.

General Comments

Several comments focused on the background discussion of the preamble to the proposed rule regarding the proposed renumbered § 1794.3, entitled "Actions requiring environmental review." The background discussion explained that, because of changes in law and reforms in the Electric and Telecommunications industry, RUS proposed to revise that section to reflect that RUS would no longer treat as Federal actions subject to environmental reviews, approvals provided by RUS pursuant to its loan contracts and security instruments. The preamble explained that these approvals are "ministerial" and not major Federal actions for the purposes of NEPA. The commenters, who uniformly supported the proposed revision, asked that RUS identify all approvals that would no longer be subject to environmental review or clarify that only the approval of loans and loan guarantees will require an environmental review.

Agency Response: The proposed revision to § 1794.3 deletes reference to "lien accommodations, and approvals provided pursuant to loan contracts and security instruments (e.g., approvals of the use of general funds)." In pertinent part, the revised section identifies as actions requiring environmental review, "the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs." In response to the comments, RUS has added a clarifying sentence to § 1794.3 stating that, "Approvals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purpose of this part and the provisions of this part shall not apply to the exercise of such approvals." RUS believes that, while it is principally the approvals of loans and loan guarantees to which environmental reviews attach, it is possible that other types of discretionary financial assistance could be available under the RUS program, which would trigger environmental reviews. Examples include lien subordinations under § 306 of the RE Act (7 U.S.C. 936). The regulatory text should not limit those actions requiring environmental review to the approval of loans and loan guarantees. Consequently, no other change has been made in response to the comments.

Ten commenters expressed concern about the two-tier classification that was created for "categorically excluded" proposals in §§ 1794.21 and 1794.22, which they believe is overly burdensome and confusing. They further believe that many of the size, voltage, distance, and acreage thresholds have been arbitrarily determined and need to be reevaluated.

Agency Response: RUS established the two-tier classification system for categorically excluded proposals specifically to reduce the burden on applicants without compromising the requirements of NEPA and the CEQ regulations. Categorically excluded proposals listed in § 1794.21 normally do not significantly impact the quality of the human environment. Therefore the submittal of an ER is not required. An ER is required for categorically excluded proposals listed in § 1794.22 to provide for circumstances in which a normally excluded action may have a significant impact (see 40 CFR 1508.4). Prior to issuing the proposed rule, RUS reevaluated the thresholds established in the existing regulation and determined that the revised thresholds included in the proposed rule represent a reasonable delineation consistent with 40 CFR 1508.4.

The commenters also questioned why an environmental report should be required for a proposal that is normally categorically excluded and recommend that where appropriate, proposals listed in § 1794.22 be incorporated into § 1794.21.

Agency Response: The changes proposed by these comments are not consistent with the definition of categorical exclusion in 40 CFR 1508.4. In order to ensure that a proposed action does not significantly affect the quality of the human environment, RUS must conduct an environmental review. The two-tiered classification system for Categorical Exclusions establishes the level of information that must be provided by the applicant for proposals listed in each tier. This information is necessary so RUS can identify extraordinary circumstances in which a normally excluded action may have significant environmental effects.

One commenter recommended incorporating language into § 1794.21 by which RUS could increase the level of environmental review for any categorically excluded project, which had a significant environmental effect. Other commenters point out that proposals in these two categories already must meet the requirements of § 1794.31. Therefore a safeguard already exists whereby RUS can evaluate each project and determine if further environmental review is appropriate.

Agency Response: This rule includes a requirement in § 1794.22(a) by which RUS reserves the right to request environmental documentation for proposals listed in § 1794.21(b) and (c) if significant environmental effects result from the implementation of the proposal. RUS believes that determining whether an ER should be prepared for all categorically excluded proposals on a case-by-case basis would be inconsistent with the CEQ regulations (40 CFR 1508.4) and would extend the RUS environmental review process.

Three commenters assert that the thresholds established to differentiate between projects that require an environmental assessment (EA) with and without scoping (§§ 1794.23 and 1794.24) were also arbitrarily determined and point out that a 1 MW increase in capacity can increase the level of review. The commenters recommend that all § 1794.24 proposals which normally require scoping be incorporated into § 1794.23 and that RUS adopt language allowing the agency to require scoping for projects which are expected to have significant impacts.

Agency Response: RUS has reevaluated the thresholds that were established in the existing regulation for proposed actions listed in §§ 1794.23 and 1794.24. The thresholds accurately delineate the difference between proposed actions which can be adequately reviewed with an EA and those actions which have a higher potential for needing an EIS. The latter required the preparation of an EVAL by the applicant. The EVAL will serve as the RUS EA, (40 CFR 1506.5(b)). Instead of establishing a single classification system for actions normally requiring an EA and determining the need for scoping on an individual basis, RUS agrees some flexibility is needed and has included a provision to modify or waive scoping requirements in § 1794.52 for actions that normally require an EA with scoping.

Two commenters expressed concern with the provisions of the proposed rule that allow the applicant or its consultant to prepare the environmental report (ER) which normally serves as RUS" EA for Water and Waste proposals. These commenters assert that there may be an appearance of a conflict of interest.

Agency Response: Agency responsibility is addressed in 40 CFR 1506.5. The CEQ regulations allow an agency to require an applicant to submit environmental information for possible use by that agency (40 CFR 1506.5(a)). The agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information provided by the applicant and accept responsible for its accuracy. RUS has developed guidance Bulletin 1794A–602 for that purpose. An agency can permit an applicant to prepare an EA provided the agency makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the EA (40 CFR 1506.5(b)).

One commenter recommends that the procedures defined in 7 CFR 1940–G under which RUS reviews information submitted by the applicant and completes the assessment should be used for Water and Waste proposals.

Agency Response: This rule provides for an agency-prepared EA. Section 1794.41 states that the ER will normally serve as the RUS EA. The decision of whether RUS uses the applicant's ER as its EA or prepares the EA from information provided in the ER will be made by the State Environmental Coordinator (SEC).

Another commenter noted that by not allowing RUS employees to complete EAs, the agency is limiting the ability of its employees to provide technical assistance to rural areas.

Agency Response: RUS does not agree with this statement. By improving the efficiency of document preparation, Rural Development staff will have more time to provide meaningful guidance and technical assistance to applicants.

Comments on Specific Sections

Background: One commenter requested clarification of paragraph 9 of the proposed rules Background section that discusses exempting from review approvals provided by RUS pursuant to its loan contracts and security instruments.

Agency Response: This comment is addressed in the response to the first general comment.

Section 1794.2: One commenter questioned whether the item (d) in this section correctly characterized the roles RUS and the applicant play under NEPA and the CEQ regulations. He asserts that the applicant should be responsible for the accuracy of the information contained in environmental documents and the agency should be responsible for compliance with appropriate regulations.

Agency Response: RUS agrees. The text of item (d) has been changed to clarify the role of the applicant. RUS is responsible for compliance with NEPA, including verifying the accuracy of the information it uses in its environmental review (40 CFR 1506.5). The applicant is responsible for compliance with all applicable RUS requirements.

Section 1794.3: Six commenters recommended that this section clearly state that the rule applies only to direct loans and loan guarantee approvals.

Agency Response: This comment is addressed in the response to the first general comment.

Section 1794.5 (now § 1794.4): Two commenters support the proposed format of placing metric units in parentheses following the non-metric equivalents which is the reverse of the current format. Another commenter questioned whether the change in metric system format would be contrary to the national effort to convert to the metric system and not in compliance with Executive Order 12770.

Agency Response: It has been RUS experience that the current format in which metric units are followed by the non-metric equivalents in parentheses has been impractical and has confused readers. This rule's provisions for the use of metric units comply with Executive Order 12770.

Section 1794.7 (now § 1794.6): One commenter suggested adding "the environment" to the definition of Emergency Situation to account for threats to the environment and including a definition of "multiplexing sites."

Agency Response: The words "or to the human environment" have been added to the end of the definition of Emergency Situation and a definition has been included in this section for multiplexing sites.

Another commenter suggested deleting the words "document and" from the definition of ER.

Agency Response: RUS recognizes that the amount of documentation that can be included in an ER can vary for the types of proposals listed in §§ 1794.22 and 1794.23 from a few pages to 100 pages or more. Since the word "document" does not add any significance to the definition of ER, the word has been deleted.

A third commenter thought that the terms ER, EA and Environmental Impact Assessment were confusing and needed further explanation.

Agency Response: RUS agrees and has reverted to the terminology used in the existing rule. RUS has in the past and proposes to continue to differentiate between the documentation submitted by the applicant for proposals that normally require an EA (§ 1794.23) and proposals that normally require an EA with scoping (§ 1794. 24) by titling the former an ER and the later an EVAL. The agency prepared document for proposals listed in §§ 1794.23 and 1794.24 is still titled an EA (40 CFR 1508.9).

One commenter requested that this section be modified so the ER and EA can be stand-alone documents and not a mandatory part of the Preliminary Engineering Report (PER) for Water and Waste proposals. This commenter asserts that such a restriction precludes the use of other resources to complete the preparation of the environmental documentation.

Agency Response: Although RUS intends for the ER to be submitted with the PER for Water and Waste proposals, there is no requirement that the ER be prepared exclusively by the engineering consultant that prepares the PER. The key issue is that environmental concerns be considered at the earliest planning stage of a proposal to ensure that environmental values are given appropriate consideration. The earliest planning stage of a proposal is the PER.

Section 1794.8 (now § 1794.7): Two commenters noted that RUS Bulletin 1780–26 already has been designated for guidance for another purpose.

Agency Response: The designations for the guidance documents referenced in this section have been corrected.

One commenter recommended that a standard format be developed for applicants to follow in the preparation of an ER or EA.

Agency Response: The appropriate bulletins referenced in this section will contain a standard format for preparing an ER; the applicant does not prepare an EA.

The same commenter further recommended that State Directors be able to issue supplements with less than approval by the Administrator.

Agency Response: State Directors have the ability to issue supplements. However, to ensure compliance with environmental laws and regulations and maintain uniformity with neighboring states and within a region, requires Administrator review and approval of supplements.

Six commenters urged RUS to consult with interested parties regarding the referenced electric and telecommunications guidance documents prior to taking final action on this rule.

Agency Response: RUS has considered all comments received on the current versions of Bulletins 1794A–600 and 1794A–601 in preparing the revisions to these two Bulletins. Both Bulletins will be made available to applicants via the Internet prior to the effective date of this final rule.

Two commenters believe that the referenced Water and Waste bulletin (RUS Bulletin 1794A–602) should be published for comment and one commenter requested a 60-day extension to the comment period on the proposed rule following the release of that draft bulletin.

Agency Response: RUS Bulletin 1794A–602 was reviewed by Rural Development staff prior to the effective date of this final rule. RUS does not agree that the comment period on the proposed rule should be extended subject to the release of the draft bulletin.

Section 1794.10: One commenter recommended replacing "under RUS direct guidance and supervision" with "with advise from RUS" instead.

Agency Response: The referenced language has been revised. RUS will assist applicants by outlining the types of information required and provide guidance and oversight in the development of the documentation (40 CFR 1506.5).

This commenter also recommended that the language in §§ 1794.10 and 1794.31(b) be consistent and refer to the SEC or neither.

Agency Response: The language in § 1794.10 applies to all three RUS programs. Therefore, a specific agency official is only identified in § 1794.31(b), which is specific to the Water and Waste program.

Section 1794.13: One commenter recommended that in (a)(3) all comments on Water and Waste proposals be sent directly to the RUS State Office instead of through the applicant.

Agency Response: Applicant notices must state that comments should be sent to the RUS appropriate office for Water and Waste proposals and to the Washington, DC, office for Electric and Telecommunications proposals. However, RUS recognizes that both verbal and written comments on a proposal are sometimes directed to the applicant. This subsection accounts for this possibility by requiring the applicant to submit comments to RUS.

Seven commenters were concerned that the requirement in § 1794.13(a)(4) making all environmental documents and documentation related to the proposed action available in specific locations was too broad and created an overly burdensome and onerous responsibility for the applicant. They recommended that RUS narrow the scope of information that the applicant is required to make available in a public setting and require the applicant to designate a contact person to respond to requests for additional and supporting information.

Agency Response: RUS agrees that the requirement making all environmental documents and documentation available in specific locations creates an overly burdensome and onerous responsibility for the applicant and does not enhance public participation in the environmental process. The language in § 1794.13(a)(4) has been revised. RUS will determine which project related environmental documents will be made available for review at locations convenient for the public. To ensure full public disclosure, a list of all documents not provided for public review will be included. Documents not provided will be available for inspection through a designated RUS or applicant contact person.

Two commenters requested that § 1794.13(a)(5) be expanded to note that public hearings are to be confined to the environmental aspects of a proposed action.

Agency Response: RUS believes that the purpose of the public hearings or meetings has been adequately identified in this section.

One commenter requested that RUS coordinate its meetings with meetings, hearings, and environmental reviews, which may be held and/or required by others.

Agency Response: RUS agrees with this comment and has revised § 1794.13(a)(5) to include coordination of its meetings with the requirements of other interested agencies and groups.

Six commenters questioned why RUS has established differing thresholds for publication of notices in the **Federal Register** with respect to the Electric and Telecommunications programs in § 1794.13(b) and the Water and Waste program in § 1794.13(c). They recommended that the language in § 1794.13(c) be consistent for all three programs.

Agency Response: RUS agrees and has decided to revise the language in §§ 1794.13(b) and 1794.42(b) thereby making the thresholds for publication of notices consistent for all three programs. RUS will provide interested agencies with notification of its FONSI determinations through direct mailings or, at its option, the **Federal Register**, when appropriate.

Section 1794.14: One commenter endorsed the flexibility provided in this section and recommended that this flexibility be more clearly stated. The commenter also suggested that the duties of a cooperating agency are unclear and a brief list should be included.

Agency Response: The duties of a cooperating agency are described in 40 CFR 1501.6 and are incorporated by reference.

Section 1794.17: One commenter questioned whether the mitigative measures would be discussed in the FONSI memo to the file in addition to the FONSI public notice. Two commenters noted that the provisions of (b)(3) appear to expand the responsibilities of field staff beyond that of development specialists. One commenter suggested that a better role for the agency would be to notify the appropriate regulatory agency to enforce the mitigative measures.

Agency Response: Mitigation measures shall be discussed in both the FONSI memo and public notice. The responsibilities of field staff have not been expanded. In the routine process of checking on-site conditions for compliance with relevant loan or grant provisions, it is appropriate for staff to document the applicant's compliance status with regard to mitigation measures that were agreed upon as part of the conditions for the loan/grant. If discrepancies are noted, the agency may need to notify the appropriate regulatory agency for action.

Section 1794.21(a): Six commenters recommended that in addition to defining "emergency situation" this section be expanded to account for such situations.

Agency Response: RUS has added action (4) to account for emergency situations.

Section 1794.21(b): One commenter questioned why a "detailed description" was required for 12 actions in this category when all actions in this category had to be sufficiently described. That commenter recommended this requirement be deleted.

Agency Response: RUS has determined through experience that the types of proposals contained in this section normally do not significantly affect the quality of the human environment. Thus the submission of an ER is not normally required. However, in order to waive the ER requirement for the 12 actions in this category so designated, the RUS reviewer must have a complete description of what is being proposed, how it will be constructed, and the setting in which the proposed project will be located. Evaluating these 12 actions on a case-by-case basis is more effective than uniformly requiring the mandatory submittal of an ER.

Another commenter was concerned that the submittal of an environmental document was not required for proposed actions described in § 1794.21(b) (4), (8), (14), (15) and (16), which could under certain circumstances provide a hazard to birds.

Agency Response: RUS agrees that under certain circumstances actions described in § 1794.21(b) (4), (8), (14), (15), and (16) could result in significant effects to the human environment, such as presenting a hazard to birds. The description of the facilities to be constructed that must be provided for these actions and others so noted in § 1794.21(b) is used by RUS to determine whether the current level of review is adequate or a higher level of review is warranted.

One commenter expressed concern over the provision in action § 1794.21(b)(18) which require the applicant obtain certification from the utility owner that the facilities to be purchased are in compliance with applicable environmental laws and regulations. This commenter believes that the normal environmental review process should be sufficient to identify and resolve issues that may be encountered.

Agency Response: RUS agrees that obtaining a certification of compliance for the purchase of existing facilities is not the appropriate form of documentation. Upon further review, RUS has determined that establishing two separate levels of review for the purchase of existing facilities, specifically action (18) in § 1794.21(b) and action (7) in § 1794.23(b), is not warranted. Both references to these actions have been deleted from the final rule and replaced by new action (11) in § 1794.22(a). Under the new requirement applicants will have the option of submitting an ER or the results of a facility environmental audit. A higher level of review may be required before RUS approves an applicant's purchase of facilities that are determined to be in violation of Federal, state, or local environmental laws or regulations.

One commenter recommended that the threshold for action described in § 1794.21(b)(21), standby diesel generators, be increased from 1 megawatt (MW) to 2 MW and also be utilized for load management purposes in addition to emergency power.

Agency Response: RUS does not agree. The purpose of this category is to exclude standby diesel generators that would be subject to limited use (i.e. emergency outages). Utilizing such facilities for load management purposes increases the hours of usage and thus increase potential effects to the quality of the human environment.

A commenter asserts that the action described in § 1794.21(b)(24) could create a major change in local air quality.

Agency Response: RUS agrees that wording describing action (24) could be misinterpreted and has added the following statement: "Repowering or uprating that results in an increased fuel consumption or the substitution of one fuel combustion technology with another is excluded from this classification." Because this action does not include an increase in fuel consumption, no change in local air quality is anticipated.

This commenter further recommended that the type of customer facilities covered in § 1794.21(b)(24) include commercial and agricultural.

Agency Response: RUS agrees to add commercial and agriculture facilities to item (24).

Section 1794.22: Three commenters noted that proposals identified in § 1794.22(a)(11) and § 1794.21(b)(20) which discuss facilities that will reduce the amount of pollutants released into the environment are redundant and the reference in § 1794.22 should be deleted.

Agency Response: RUS agrees that the requirements of § 1794.22(a)(11) and § 1794.21(b)(20) are redundant. Accordingly, action #11 in § 1794.22(a) of the proposed rule has been deleted.

One commenter asserted that proposals listed in § 1794.22(b)(3) and (4) have the potential to impact important resources but will be excluded from environmental review.

Agency Response: Applicants are required to prepare and submit an ER for all proposed actions listed in § 1794.22(b). RUS will review the ER to determine whether a normally categorically excluded action may have a significant environmental effect (40 CFR 1508.4).

One commenter suggested that § 1794.22(c) belongs in § 1794.23 which describes EA proposals.

Agency Response: Proposals listed in § 1794.22(c) were so designated to parallel the level of documentation required by the EPA in 40 CFR 6.505(c) for similar proposals. Agencies with similar programs are encouraged by CEQ to consult with each other to coordinate their procedures, especially for programs requesting similar information from applicants (40 CFR 1507.3(a)). RUS believes that these actions are correctly described in § 1794.22(c).

One commenter noted that § 1794.22(c)(1) and (2) only apply to discharges and need to be expanded to include water withdrawals.

Agency Response: RUS agrees and has expanded the discussion in § 1794.22(c) to clarify this issue.

Two commenters requested that "substantial increases" in § 1794.22 (c)(2) be defined and one commenter also questioned how this term applied to a new facility.

Agency Response: The term "substantial increases" has not been defined because its interpretation depends on local conditions and regulatory requirements. RUS agrees that this action should not include new facilities and has revised the language accordingly.

One commenter noted that § 1794.22 (c)(3) stipulates no greater than a 30 percent growth factor whereas § 1794.22 (b)(3) stipulates a modest growth potential and requests consistency within the rule.

Agency Response: The 30 percent growth factor is an established threshold, whereas the term "modest growth" applies to local conditions and regulatory requirements.

Another commenter asserts that the thresholds in § 1794.22(c)(3) need to be changed because it appears that a small system (20–30 EDU's) could be expanded up to 500 EDU's and still be a categorically excluded proposal.

Agency Response: RUS believes the capacity criteria as stated is sufficient for the purposes of classifying an action

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as a categorical exclusion. Two other provisions may be applicable to the commenter's point. First, the ER would provide sufficient information to determine if there are any extraordinary circumstances in which a normally categorically excluded action may have a significant environmental effect (see 40 CFR 1508.4). Second, under § 1794.22(b)(2), RUS could determine that the facility improvements are not modest in use, size, capacity, purpose, or location and would require an EA.

Section 1794.23: One commenter recommended that for consistency, this section be titled "Proposals normally requiring an EA without scoping."

Agency Response: RUS disagrees. Early public involvement may be appropriate for any level of environmental review and should not be explicitly dismissed by excluding scoping for certain thresholds.

Section 1794.31: One commenter stated that RUS should not be supervising or giving direct guidance to the applicant. He suggested modifying the wording in (b) to "with advice from RUS."

Agency Response: This issue is addressed in the response to the comment on § 1794.10.

Another commenter noted that the SEC would be unable to devote the time necessary to supervise all applicants.

Agency Response: High volume states have been provided additional environmental specialist positions in anticipation of the increased workload.

Section 1794.32: One commenter wanted clarification in (b) on the criteria used to determine when public notice would be required if important land resources are affected. Another commenter suggested that in (b) reference should be made to § 1794.7 or the RUS Bulletin 1794A–602.

Agency Response: RUS agrees with this suggestion and has referenced the two bulletins that provide guidance in preparing an ER.

Section 1794.33: One commenter noted that this section allows RUS to act on an application without any environmental review.

Agency Response: The commenter's interpretation of § 1794.33 is incorrect. RUS shall conduct an environmental review for all proposed actions covered by this section. Proposals listed in § 1794.21(b) and (c) normally require the submittal of a project description. Whereas, proposals listed in § 1794.22(a) and (b) normally require the submittal of an ER. RUS reserves the right to require additional environmental information on any proposal the agency believes may have significant effects on the quality of the human environment (§ 1794.30).

Section 1794.41: One commenter noted that the typical applicant would need assistance from their consulting engineer in preparing the ER, resulting in a fee increase to the applicant. If the SEC retains approval authority for the ER, another layer of review is added before the ER is accepted.

Agency Response: RUS anticipates that the applicant's engineer will prepare the ER at the same time that project planning is done. RUS further anticipates that any increase in the engineering fee should be modest since the engineer in most projects has been preparing the applicant's environmental information for the agency. The SEC should be the only agency approval official for the ER.

Section 1794.44: Two commenters noted that it appears RUS will take final action on proposals covered by this section without waiting for public input.

Agency Response: Actions listed in § 1794.23 are subject to public input when the EA is made available for review through applicant notice. Normally there is no provision for additional public input when RUS makes a FONSI determination for actions listed in § 1794.23.

These commenters also noted that draft RUS Bulletin 1794A–602 calls for a 15-day review period if significant comments are received on the draft EA.

Agency Response: The reference to the 15-day review period was inadvertently omitted from the proposed rule. Section 1794.44 has been modified to include an opportunity for the public to review the RUS FONSI determination if substantive comments are received on the EA.

Section 1794.51: One commenter noted that no mention is made in (a) where the applicant's notice will be published.

Agency Response: The commenter is correct that § 1794.51 does not state where the applicant's notice will be published. That information is provided in § 1794.13(a)(1) and (2).

Section 1794.61: Two commenters asserted that the cost of an EIS would be prohibitive for nearly all Water and Waste applicants which could result in even high priority projects being canceled due to the inability of the applicant to fund the EIS.

Agency Response: RUS agrees that an EIS can be an expensive document to prepare and has identified certain methods of funding an EIS in § 1794.61(a).

Section 1794.70: One commenter recommends that this section be expanded to allow the adoption of environmental documents prepared by state or local agencies or other parties in accordance with the provisions of § 1794.84 of the existing regulation.

Agency Response: The CEQ regulations in 40 CFR 1506.3 only permit a Federal agency to adopt documents prepared by or for another Federal Agency. In 40 CFR 1506.2, Federal agencies are required to cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements by jointly preparing EAs and EISs. RUS acknowledges that its policy on the incorporation of environmental documents prepared by others was omitted from the proposed rule. This omission has been corrected with the addition of § 1794.74.

One commenter suggested that RUS be more flexible in its adoption procedures and not duplicate another agency's public notice and comment period.

Agency Response: RUS believes that its decisions must be subject to public notification regardless of who prepares the environmental documentation. The preferred strategy to avoid duplication of effort would be for RUS to participate with other agencies in the preparation of the initial environmental documents as stated in § 1794.14.

This commenter also recommended that RUS accept environmental documents prepared by states under the State Revolving Fund (SRF) programs as its own documents or at a minimum adopt the subject documents.

Agency Response: RUS may adopt environmental documents prepared by state agencies administering SRF programs under the Clean Water Act (32 U.S.C. 1251) and the Safe Drinking Water Act (42 U.S.C. 300). Where appropriate, the State Director will enter into an agreement with appropriate state agencies to establish the necessary procedures.

Any environmental document accepted or prepared by RUS prior to the effective date of these regulations may be developed in accordance with RUS environmental requirements in effect at the time the document was accepted or prepared by RUS.

List of Subjects in 7 CFR Part 1780

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

Therefore RUS amends chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

Subpart B—Loan and Grant Application Processing

1. Section 1780.31 is amended by revising paragraph (e) to read as follows:

§ 1780.31 General.

* * * * *

(e) Starting with the earliest discussion with prospective applicants, the State Environmental Coordinator shall discuss with prospective applicants and be available for consultation during the application process the environmental review requirements for evaluating the potential environmental consequences of the project. Pursuant to 7 CFR part 1794 and guidance in RUS Bulletin 1794A–602, the environmental review requirements shall be performed by the applicant simultaneously and concurrently with the project's engineering planning and design. This should provide flexibility to consider reasonable alternatives to the project and development methods to mitigate identified adverse environmental effects. Mitigation measures necessary to avoid or minimize any adverse environmental effects must be integrated into project design.

2. Section 1780.33 is amended by revising paragraphs (c)(3), and (f) to read as follows:

§ 1780.33 Application requirements.

* * * * *

(c) * * *

(3) The State staff engineer will consult with the applicant's engineer as appropriate to resolve any questions concerning the PER. Written comments will be provided by the State staff engineer to the processing office to meet eligibility determination time lines.

* * * * *

(f) Environmental Report. For those actions listed in §§ 1794.22(b) and 1794.23(b), the applicant shall submit, in accordance with RUS Bulletin 1794A–602, two copies of the completed Environmental Report.

(1) Upon receipt of the Environmental Report, the processing office shall forward one copy of the report with comments and recommendation to the State Environmental Coordinator for review.

(2) The State Environmental Coordinator will consult with the applicant as appropriate to resolve any environmental concerns. Written comments will be provided by the State Environmental Coordinator to the processing office to meet eligibility determination time lines.

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3. Section 1780.39 is amended by revising paragraph (b) introductory text and removing and revising paragraph (h).

§ 1780.39 Application processing.

* * * * *

(b) Professional services and contracts related to the facility. Fees provided for in contracts or agreements shall be reasonable. The Agency shall consider fees to be reasonable if they are not in excess of those ordinarily charged by the profession as a whole for similar work when RUS financing is not involved. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, environmental review and documentation requirements, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Applicants should negotiate for procurement of professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation. Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to RUS concurrence.

* * * * *

4. Section 1780.41 is amended by revising paragraph (a)(8) to read as follows:

§ 1780.41 Loan or grant approval.

(a) * * *

(8) Completed environmental review documents including copies of public notices and appropriate proof of publication, if applicable; and

* * * * *

SUBPART C—PLANNING, DESIGN, BIDDING, CONTRACTING, CONSTRUCTING AND INSPECTIONS

5. Section 1780.55 is revised to read as follows:

§ 1780.55 Preliminary engineering reports.

Preliminary engineering reports and Environmental Reports. Preliminary engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental Reports must meet the policies and intent of the National Environmental Policy Act and RUS procedures. Guidelines for preparing Environmental Reports are available in RUS Bulletin 1794A–602.

6. Section 1780.57 is amended by revising paragraph (a) to read as follows:

§ 1780.57 Design policies.

* * * * *

(a) *Environmental review.* Facilities financed by the Agency must undergo an environmental impact analysis in accordance with the National Environmental Policy Act and RUS procedures. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental consequences of the proposed project. Facility design shall incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review.

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7. Part 1794 is revised to read as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

Subpart A—General

Sec.
1794.1 Purpose.
1794.2 Authority.
1794.3 Actions requiring environmental review.
1794.4 Metric units.
1794.5 Responsible officials.
1794.6 Definitions.
1794.7 Guidance.
1794.8–1794.9 [Reserved]

Subpart B—Implementation of the National Environmental Policy Act

1794.10 Applicant responsibilities.
1794.11 Apply NEPA early in the planning process.
1794.12 Consideration of alternatives.
1794.13 Public involvement.
1794.14 Interagency involvement and coordination.
1794.15 Limitations on actions during the NEPA process.
1794.16 Tiering.

1794.17 Mitigation.
1794.18–1794.19 [Reserved]

Subpart C—Classification of Proposals

1794.20 Control.
1794.21 Categorically excluded proposals without an ER.
1794.22 Categorically excluded proposals requiring an ER.
1794.23 Proposals normally requiring an EA.
1794.24 Proposals normally requiring an EA with scoping.
1794.25 Proposals normally requiring an EIS.
1794.26–1794.29 [Reserved]

Subpart D—Procedure for Categorical Exclusions

1794.30 General.
1794.31 Classification.
1794.32 Environmental report.
1794.33 Agency action.
1794.34–1794.39 [Reserved]

Subpart E—Procedure for Environmental Assessments

1794.40 General.
1794.41 Document requirements.
1794.42 Notice of availability.
1794.43 Agency finding.
1794.44 Timing of agency action.
1794.45–1794.49 [Reserved]

Subpart F—Procedure for Environmental Assessments With Scoping

1794.50 Normal sequence.
1794.51 Preparation for scoping.
1794.52 Scoping meetings.
1794.53 Environmental analysis.
1794.54 Agency determination.
1794.55–1794.59 [Reserved]

Subpart G—Procedure for Environmental Impact Statements

1794.60 Normal sequence.
1794.61 Environmental impact statement.
1794.62 Supplemental EIS.
1794.63 Record of decision.
1794.64 Timing of agency action.
1794.65–1794.69 [Reserved]

Subpart H—Adoption of Environmental Documents

1794.70 General.
1794.71 Adoption of an EA.
1794.72 Adoption of an EIS.
1794.73 Timing of agency action.
1794.74 Incorporation of environmental materials.
1794.75–1794.79 [Reserved]

Authority: 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

Subpart A—General

§ 1794.1 Purpose.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500 through 1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders (EO) that apply to RUS programs and administrative actions.

(b) The policies and procedures contained in this part are intended to help RUS officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. In assessing the potential environmental impacts of its actions, RUS will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision-makers with information on the issues that are truly significant to the action in question.

§ 1794.2 Authority.

(a) This part derives its authority from and is intended to be compliant with NEPA, CEQ Regulations for Implementing the Procedural Provisions of NEPA, and other RUS regulations.

(b) Where practicable, RUS will use NEPA analysis and documents and review procedures to integrate the requirements of related environmental statutes, regulations, and orders.

(c) This part integrates the requirements of NEPA with other planning and environmental review procedures required by law, or by RUS practice including but not limited to:

(1) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(2) The National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(3) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(4) E.O. 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 Comp., p. 154);

(5) E.O. 11514, Protection and Enhancement of Environmental Quality (3 CFR, 1970 Comp., p. 104);

(6) E.O. 11988, Floodplain Management (3 CFR, 1977 Comp., p. 117);

(7) E.O. 11990, Protection of Wetlands (3 CFR, 1977 Comp., p. 121); and

(8) E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (3 CFR, 1994 Comp., p. 859).

(d) Applicants are responsible for ensuring that proposed actions are in compliance with all appropriate RUS requirements. Environmental documents submitted by the applicant shall be prepared under the oversight and guidance of RUS. RUS will evaluate and be responsible for the accuracy of all information contained therein.

§ 1794.3 Actions requiring environmental review.

The provisions of this part apply to actions by RUS including the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs, the disposal of property held by RUS pursuant to such programs, and the issuance of new or revised rules, regulations, and bulletins. Approvals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purposes of this part and the provisions of this part shall not apply to the exercise of such approvals.

§ 1794.4 Metric units.

RUS normally will prepare environmental documents using non-metric equivalents with one of the following two options; metric units in parentheses immediately following the non-metric equivalents or a metric conversion table as an appendix. Environmental documents prepared by or for a RUS applicant should follow the same format.

§ 1794.5 Responsible officials.

The Administrator of RUS has the responsibility for Agency compliance with all environmental laws, regulations, and EOs that apply to RUS programs and administrative actions. Responsibility for ensuring environmental compliance for actions taken by RUS has been delegated as follows:

(a) *Electric and Telecommunications Programs.* The appropriate Assistant Administrator is responsible for ensuring compliance with this part for the respective programs.

(b) *Water and Waste Program.* The Assistant Administrator for this program is responsible for ensuring compliance with this part at the national level. The State Director is the responsible official for ensuring compliance with this part for actions taken at the State Office level.

§ 1794.6 Definitions.

The following definitions, as well as the definitions contained in 40 CFR part 1508 of the CEQ regulations, apply to the implementation of this part:

Applicant. The organization applying for financial assistance or other approval from either the Electric or Telecommunications programs or the organization applying for a loan or grant from the Water and Waste program.

Construction Work Plan (CWP). The document required by 7 CFR part 1710.

Emergency Situation. A natural disaster or system failure that may involve an immediate or imminent threat to public health, safety, or the human environment.

Environmental Analysis (EVAL). The document submitted by the applicant for proposed actions subject to compliance with § 1794.24 and under special circumstances § 1794.25.

Environmental Report (ER). The environmental documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 and 1794.23. An ER for the Water and Waste Program refers to the environmental review documentation normally included as part of the Preliminary Engineering Report.

Environmental review. Any one or all of the levels of environmental analysis described under subpart C of this part.

Equivalent Dwelling Unit (EDU). Level of water or waste service provided to a typical rural residential dwelling.

Important Land Resources. Defined pursuant to the U.S. Department of Agriculture's Departmental Regulation 9500–3, Land Use Policy, as important farmland, prime forestland, prime rangeland, wetlands, and floodplains. Copies of this Departmental Regulation are available from USDA, Rural Utilities Service, Washington, DC 20250.

Loan Design. Document required by 7 CFR part 1737.

Multiplexing Center. A field site where a telecommunications provider houses a device that combines individual subscriber circuits onto a single system for economical connection with a switching center. The combiner, or "multiplexer," may be mounted on a pole, on a concrete pad, or in a partial or full enclosure such as a shelter, or small building.

Natural Resource Management Guide. Inventory of natural resources, land uses, and environmental factors specified by Federal, State, and local authorities as deserving some degree of protection or special consideration. The guide describes the standards or types of protection that apply.

Preliminary Engineering Report (PER). Document required by 7 CFR part 1780 for Water and Waste Programs. A PER is prepared by an applicant's engineering consultant documenting a proposed action's preliminary engineering plan and design and the applicable environmental review activities as required in this part. Upon approval by RUS, the PER, or a portion thereof, shall serve as the RUS environmental document.

Supervisory Control and Data Acquisition System (SCADA). Electronic monitoring and control equipment installed at electric substations and switching stations.

Third party Consultant. A party selected by RUS to prepare the EIS for proposed actions described in § 1794.25 where the applicant initiating the proposal agrees to fund preparation of the document in accordance with the provisions of 7 CFR Part 1789, "Use of Consultants Funded by Borrowers" and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2204b(b)).

§ 1794.7 Guidance.

(a) *Electric and Telecommunications Programs.* For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1794A–600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)) and RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b) Telecommunications only and (c));. Copies of these bulletins are available upon request by contacting Rural Utilities Service, Publications Office, PDRA, Stop 1522; 1400 Independence Avenue, SW; Washington, DC 20250–1522.

(b) *Water and Waste Program.* RUS Bulletin 1794A–602 provides guidance in preparing the ER for proposed actions classified as CEs (§ 1794.22(b)) and EAs (§ 1794.23(b)). A copy of this bulletin is available upon request by contacting the appropriate State Director. State Directors may provide supplemental guidance to meet state and local laws and regulations and to provide for orderly application procedures and efficient service to applicants. State Directors shall obtain the Administrator's approval for all supplements to RUS Bulletin 1794A–602. Each State Office shall maintain an updated Natural Resource Management Guide and provide applicants with pertinent sections or a copy of the current edition thereof.

§§ 1794.8–1794.9 [Reserved]

Subpart B—Implementation of the National Environmental Policy Act

§ 1794.10 Applicant responsibilities.

As described in subpart C of this part, applicants shall prepare the applicable environmental documentation concurrent with a proposed action's engineering, planning, and design activities. RUS shall assist applicants by outlining the types of information required and shall provide guidance and oversight in the development of the documentation. Documentation shall not be considered complete until all public review periods, as applicable, have expired and RUS concurrence, as set forth in the appropriate decision document and associated public notice, has been issued.

§ 1794.11 Apply NEPA early in the planning process.

The environmental review process requires early coordination with and involvement of RUS. Applicants should consult with RUS at the earliest stages of planning for any proposal that may require RUS action. For proposed actions that normally require an EIS, applicants shall consult with RUS prior to obtaining the services of an environmental consultant.

§ 1794.12 Consideration of alternatives.

In determining what are reasonable alternatives, RUS considers a number of factors. These factors may include, but are not limited to, the proposed action's size and scope, state of the technology, economic considerations, legal and socioeconomic concerns, availability of resources, and the timeframe in which the identified need must be fulfilled.

§ 1794.13 Public involvement.

(a) In carrying out its responsibilities under NEPA, RUS shall make diligent efforts to involve the public in the environmental review process through public notices and public hearings and meetings.

(1) All public notices required by this part shall describe the nature, location, and extent of the proposed action and indicate the availability and location of additional information. They shall be published in newspaper(s) of general circulation within the proposed action's area of environmental impact and the county(s) in which the proposed action will take place or such other places as RUS determines.

(2) The number of editions in which the notices should be published will be specified in the Bulletins referenced in § 1794.7 or established on a project-by-project basis. Alternative forms of notice may also be necessary to ensure that residents located in the area affected by the proposed action are notified. The applicant should not publish notices for compliance with this part until so notified by RUS.

(3) A copy of all comments received by the applicant concerning environmental aspects of the proposed action shall be provided to RUS in a timely manner. RUS and applicants shall assess and consider public comments both individually and collectively. Responses to public comments will be appended to the applicable environmental document.

(4) RUS and applicants shall make available to the public those project related environmental documents that RUS determines will enhance public participation in the environmental process. These materials shall be placed in locations convenient for the public as determined by RUS in consultation with applicants. Included with the documentation shall be a list of other project-related information that shall be available for inspection through a designated RUS or applicant contact person.

(5) Public hearings or meetings shall be held at reasonable times and locations concerning environmental aspects of a proposed action in all cases where, in the opinion of RUS, the need for hearings or meetings is indicated in order to develop adequate information on the environmental implications of the proposed action. Public hearings or meetings conducted by RUS will be coordinated to the extent practicable with other meetings, hearings, and environmental reviews which may be held or required by other Federal, state and local agencies. Applicants shall, as necessary, participate in all RUS conducted public hearings or meeting.

(6) Scoping procedures, in accordance with 40 CFR 1501.7, are required for proposed actions normally requiring an EA with scoping (§ 1794.24) or an EIS (§ 1794.25). RUS may require scoping procedures to be followed for other proposed actions where appropriate to achieve the purposes of NEPA.

(b) The applicant shall have public notices described in this section published in a newspaper(s). Applicants shall obtain proof of publication from the newspaper(s) for inclusion into the applicable environmental document. Where the proposed action requires an EIS RUS shall, in addition to applicant published notices, publish notice in the **Federal Register**. In all cases, RUS may publish notices in the **Federal Register** as appropriate.

§ 1794.14 Interagency involvement and coordination.

In an attempt to reduce or eliminate duplication of effort with state or local procedures, RUS will, to the extent possible and in accordance with 40 CFR 1506.2, actively participate with any governmental agency to cooperatively or jointly prepare environmental documents so that one document will comply with all applicable laws. Where RUS has agreed to participate as a cooperating agency, in accordance with 40 CFR 1501.6, RUS may rely upon the lead agency's procedures for implementing NEPA procedures. In addition, RUS shall request that:

(a) The lead agency indicates that RUS is a cooperating agency in all NEPA-related notices published for the proposed action;

(b) The scope and content of the EA or EIS satisfies the statutory and regulatory requirements applicable to RUS; and

(c) The applicant shall inform RUS in a timely manner of its involvement in a proposed action where another Federal agency is preparing an environmental document so as to permit RUS to adequately fulfill its duties as a cooperating agency.

§ 1794.15 Limitations on actions during the NEPA process.

(a) *General.* Until RUS concludes its environmental review process, the applicant shall take no action concerning the proposed action which would have an adverse environmental impact or limit the choice of reasonable alternatives being considered in the environmental review process (40 CFR 1506.1).

(b) *Electric Program.* In determining which applicant activities related to a proposed action can proceed prior to completion of the environmental review process, RUS must determine, among other matters that:

(1) The activity shall not have an adverse environmental impact and shall not preclude the search for other alternatives. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed will not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (e.g. rail spur) or development of a related facility (e.g. opening a captive mine) normally will have an adverse environmental impact.

(2) Expenditures are minimal. To be minimal, the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Administrator, and must not compromise the objectivity of RUS environmental review. Not withstanding other considerations, expenditures equivalent to up to 10 percent of the proposed action's cost normally will not compromise RUS objectivity. Expenditures for the purpose of producing documentation required for RUS environmental review are excluded from this limitation.

§ 1794.16 Tiering.

It is the policy of RUS to prepare programmatic level analysis in order to tier an EIS and an EA where:

(a) It is practicable, and

(b) There will be a reduction of delay and paperwork, or where better decision making will be fostered (40 CFR 1502.20).

§ 1794.17 Mitigation.

(a) *General.* In addition to complying with the requirements of 40 CFR 1502.14(f), it is RUS policy that a discussion of mitigative measures essential to render the impacts of the proposed action not significant will be included in or referenced in the Finding of No Significant Impact (FONSI) and the Record of Decision (ROD).

(b) *Water and Waste Program.* (1) Mitigation measures which involve protective measures for environmental resources cited in this part or restrictions or limitations on real property located in the service areas of the proposed action shall be negotiated with applicants and any relevant regulatory agency so as to be enforceable. All mitigation measures incorporating land use issues shall recognize the rights and responsibilities of landholders in making private land use decisions and recognize the responsibility of governments in influencing how land may be used to meet public needs.

(2) Mitigation measures shall be included in the letter of conditions.

(3) RUS has the responsibility for the post approval construction or security inspections or monitoring to ensure that all mitigation measures included in the environmental documents have been implemented as specified in the letter of conditions.

§§ 1794.18–1794.19 [Reserved]

Subpart C—Classification of Proposals

§ 1794.20 Control.

Electric and Telecommunications Programs. For environmental review purposes, RUS has identified and established categories of proposed actions (§§ 1794.21 through 1794.25). An applicant may propose to participate with other parties in the ownership of a project where the applicant(s) does not have sufficient control to alter the development of the project. In such a case, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposed project prior to determining its classification. Where the applicant proposes to participate with other parties in the ownership of a proposed project and all applicants cumulatively own:

(a) Five percent or less of a project is not considered a Federal action subject to this part;

(b) Thirty-three and one-third percent or more of a project shall be treated in its usual category;

(c) More than five percent but less than 33⅓ percent of a project, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that RUS's action will be considered a Federal action subject to this part. Consideration shall be given to such factors as:

(1) Whether construction would be completed regardless of RUS financial assistance or approval;

(2) The stage of planning and construction;

(3) Total participation of the applicant;

(4) Participation percentage of each utility; and

(5) Managerial arrangements and contractual provisions.

§ 1794.21 Categorically excluded proposals without an ER.

(a) *General.* Certain types of actions taken by RUS do not normally require an ER. Proposed actions within this classification are:

(1) The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices;

(2) Procurement activities related to the operation of RUS;

(3) Personnel and administrative actions; and

(4) Repairs made because of an emergency situation to return to service damaged facilities of an applicant's system.

(b) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed in this paragraph (b) normally do not require the submission of an ER. These types of actions are subject to the requirements of § 1794.31. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. Detailed descriptions shall be provided for each proposal noted in this section. RUS normally requires additional information in addition to a description of what is being proposed, to ensure that proposals are properly classified. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in this section. Proposed actions within this classification are:

(1) Purchase of land where use shall remain unchanged, or the purchase of existing water rights where no associated construction is involved;

(2) Additional or substitute financial assistance for proposed actions which have previously received environmental review and approval from RUS, provided the scope of the proposal and environmental considerations have not changed;

(3) Rehabilitation or reconstruction of transportation facilities within existing rights-of-way (ROW) or generating facility sites. A description of the rehabilitation or reconstruction shall be provided to RUS;

(4) Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare). A description of the additions or changes and the area to be impacted by the expansion shall be provided to RUS;

(5) Internal modifications or equipment additions (*e.g.,* computer facilities, relocating interior walls) to structures or buildings;

(6) Internal or minor external changes to electric generating or fuel processing facilities and related support structures where there is negligible impact on the outside environment. A description of the changes shall be provided to RUS;

(7) Ordinary maintenance or replacement of equipment or small structures (*e.g.,* line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites);

(8) The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site. A description of the facilities to be constructed shall be provided to RUS;

(9) SCADA and energy management systems involving no new external construction;

(10) Testing or monitoring work (*e.g.,* soil or rock core sampling, monitoring wells, air monitoring);

(11) Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed;

(12) Construction of electric power lines within the fenced area of an existing substation, switching station, or within the boundaries of an electric generating facility site;

(13) Contracts for certain items of equipment which are part of a proposed action for which RUS is preparing an EA or EIS, and which meet the limitations on actions during the NEPA process as established in 40 CFR 1506.1(d) and contained in § 1794.15(b)(2);

(14) Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way. A description of the facilities to be constructed shall be provided to RUS;

(15) Phase or voltage conversions, reconductoring or upgrading of existing electric distribution lines, or telecommunication facilities. A description of the facilities to be constructed shall be provided to RUS;

(16) Construction of new power lines, substations, or telecommunications facilities on industrial or commercial sites, where the applicant has no control over the location of the new facilities. Related off-site facilities would be treated in their normal category. A description of the facilities to be constructed shall be provided to RUS;

(17) Participation by an applicant(s) in any proposed action where total applicant financial participation will be five percent or less;

(18) Construction of a battery energy storage system at an existing generating station or substation site. A description of the facilities to be constructed shall be provided to RUS.

(19) Additional bulk commodity storage (*e.g.,* coal, fuel oil, limestone) within existing generating station boundaries. A certification attesting to the current state of compliance of the existing facilities and a description of the facilities to be added shall be provided to RUS;

(20) Proposals designed to reduce the amount of pollutants released into the environment (e.g., precipitators, baghouse or scrubber installations, and coal washing equipment) which will have no other environmental impact outside the existing facility site. A description of the facilities to be constructed shall be provided to RUS;

(21) Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial or agricultural facility served by the applicant. A description of the facilities to be constructed shall be provided to RUS;

(22) Construction of onsite facilities designed for the transfer of ash, scrubber wastes, and other byproducts from coal-

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fired electric generating stations for recycling or storage at an existing coal mine (surface or underground). A description of the facilities to be constructed shall be provided to RUS;

(23) Changes or additions to an existing water well system, including new water supply wells and associated pipelines within the boundaries of an existing well field or generating station site. A description of the changes or additions shall be provided; and

(24) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station in order to improve the efficiency or the energy output of the facility. Repowering or uprating that results in increased fuel consumption or the substitution of one fuel combustion technology with another is excluded from this classification.

(c) *Water and Waste Program.* Applications for financial assistance for certain proposed actions do not normally require the submission of an ER. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. These types of actions are subject to the requirements of § 1794.31. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in this section. Proposed actions within this classification are:

(1) Management actions relating to invitation for bids, award of contracts, and the actual physical commencement of construction activities;

(2) Proposed actions that primarily involve the purchase and installation of office equipment or motorized vehicles;

(3) The award of financial assistance for technical assistance, planning purposes, environmental analysis, management studies, or feasibility studies; and

(4) Loan closing and servicing activities that do not alter the purpose, operation, location, or design of the proposal as originally approved, such as subordinations, amendments and revisions to approved actions, and the provision of additional financial assistance for cost overruns.

§ 1794.22 Categorically excluded proposals requiring an ER.

(a) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed in this section normally require the submission of an ER and are subject to the requirements of § 1794.32. Proposed actions within this classification are:

(1) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(i) Less that 69 kilovolts (kV);

(ii) Less than 230 kV if no more than 25 miles (40.2 kilometers) of line are involved; or

(iii) 230 kV or greater involving no more than three miles (4.8 kilometers) of line;

(2) Construction of buried and aerial telecommunications lines, cables, and related facilities;

(3) Construction of microwave facilities, SCADA, and energy management systems involving no more than five acres (2 hectares) of physical disturbance at any single site;

(4) Construction of cooperative or company headquarters, maintenance facilities, or other buildings involving no more than 10 acres (4 hectares) of physical disturbance or fenced property;

(5) Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same ROW. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction;

(6) Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(7) Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(8) Construction of diesel electric generating facilities of five megawatts (MW) (nameplate rating) or less either at an existing generation or substation sites. This category also applies to a diesel electric generating facility of five MW or less that is located at or adjacent to an existing landfill site and supplied with refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Additions to or the replacement of existing generating units at a hydroelectric facility or dam which result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

(10) Construction of new water supply wells and associated pipelines not located within the boundaries of an existing well field or generating station site; and

(11) Purchase of existing facilities or a portion thereof where use or operation will remain unchanged. The results of a facility environmental audit can be substituted for the ER.

(b) *Water and Waste Program.* For certain proposed actions, applications for financial assistance normally require the submittal of an ER as part of the PER. These types of actions are subject to the requirements of § 1794.32. Proposed actions within this classification are:

(1) Rehabilitation of existing facilities, functional replacement or rehabilitation of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities, including but not limited to, replacement of utilities such as water or sewer lines and appurtenances for existing users with modest or moderate growth potential, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements;

(2) Facility improvements to meet current needs with a modest change in use, size, capacity, purpose or location from the original facility. The proposed action must be designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts;

(3) Construction of new facilities that are designed to serve not more than 500 EDUs and with modest growth potential. The proposed action must be designed for predominantly residential use with other users being small-scale, commercial enterprises having limited secondary impacts;

(4) The extension, enlargement or construction of interceptors, collection, transmission or distribution lines within a one-mile (1.6-kilometer) limit from existing service areas estimated from any boundary listed as follows:

(i) The corporate limits of the community being served;

(ii) If there are developed areas immediately contiguous to the corporate limits of a community, the limits of these developed areas; or

(iii) If an unincorporated area is to be served, the limits of the developed areas;

(5) Installation of new water supply wells or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection;

(6) Actions described in § 1794.21(c)(4) which alter the purpose,

operation, location, or design of the proposed action as originally approved, and such alteration is equivalent in magnitude or type as described in paragraphs (b)(1) through (b)(5) of this section; and

(7) The lease or disposal of real property by RUS, which may result in a change in use of the real property in the reasonably foreseeable future and such change, is equivalent in magnitude or type as described in paragraphs (b)(1) through (b)(5).

(c) *Specialized criteria for not granting a CE for Water and Waste Projects.* An EA must be prepared if a proposed action normally classified as a CE meets any of the following:

(1) Will either create a new or relocate an existing discharge to or a withdrawal from surface or ground waters;

(2) Will result in substantial increases in the volume or the loading of pollutants from an existing discharge to receiving waters;

(3) Will cause a substantial increase in the volume of withdrawal from surface or ground waters at an existing site; or

(4) Would provide capacity to serve more than 500 EDUs or a 30 percent increase in the existing population whichever is larger.

§ 1794.23 Proposals normally requiring an EA.

RUS will normally prepare an EA for all proposed actions which are neither categorical exclusions (§§ 1794.21 and 1794.22) nor normally requiring an EIS (§ 1794.25). For certain actions within this class, scoping and document procedures contained in §§ 1794.50 through 1794.54 shall be followed (see § 1794.24). The following are proposed actions which normally require an EA and shall be subject to the requirements of §§ 1794.40 through 1794.44.

(a) *General.* Issuance or modification of RUS regulations concerning environmental matters.

(b) *Telecommunications and Water and Waste Programs.* An EA shall be prepared for applications for financial assistance for all proposed actions not specifically defined as a CE or otherwise specifically categorized by the Administrator on a case-by-case basis.

(c) *Electric Program.* Applications for financial assistance for certain proposed actions normally require the preparation of an EA. Proposed actions falling within this classification are:

(1) Construction of combustion turbine or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(2) Construction of combustion turbine or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facilities of 10 MW (nameplate rating) or less. All new associated facilities and related electric power lines shall be covered in the EA;

(4) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station where the existing fuel combustion technology of the affected unit(s) is substituted for another (*e.g.* coal or oil-fired boiler is converted to a fluidized bed boiler or replaced with a combustion turbine unit);

(5) Installation of new generating units at an existing hydroelectric facility or dam, or the replacement of existing generating units at a hydroelectric facility or dam which will result in a change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the EA;

(6) A new drilling operation or the expansion of a mining or drilling operation;

(7) Construction of cooperative headquarters, maintenance, and equipment storage facilities involving more than 10 acres (4 hectares) of physical disturbance or fenced property;

(8) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more involving more than three miles (4.8 kilometers) but not more than 25 miles (40 kilometers) of line;

(9) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 69 kV or more but less than 230 kV where more than 25 miles (40 kilometers) of power line are involved;

(10) The construction of substations or switching stations requiring greater than five acres (2 hectares) of new physical disturbance at a single site; and

(11) Construction of facilities designed for the transfer and storage of ash, scrubber wastes, and other byproducts from coal-fired electric generating stations that will be located beyond the existing facility site boundaries.

§ 1794.24 Proposals normally requiring an EA with scoping.

(a) *General.* Applications for financial assistance for certain proposed actions require the use of a scoping procedure in the development of the EA. These types of actions are subject to the requirements of §§ 1794.50 through 1794.54. RUS has the discretion to modify or waive the requirements listed in § 1794.52 for a proposed action in this category.

(b) *Electric Program.* Proposed actions falling within this classification are:

(1) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more where more than 25 miles (40 kilometers) of power line are involved;

(2) Construction of combustion turbines and diesel generators of more than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 10 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

(c) *Telecommunications and Water and Waste Programs.* There are no actions normally falling within this classification.

§ 1794.25 Proposals normally requiring an EIS.

Applications for financial assistance for certain proposed actions that may significantly affect the quality of the human environment shall require the preparation of an EIS.

(a) *Electric Program.* An EIS will normally be required in connection with proposed actions involving the following types of facilities:

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than diesel generators or combustion turbines. All new associated facilities and related electric power lines shall be covered in the EIS; and

(2) A new mining operation when the applicants have effective control (e.g., dedicated mine or purchase of a substantial portion of the mining equipment).

(b) Proposals listed above are subject to the requirements of §§ 1794.60, 1794.61, 1794.63, and 1794.64. Preparation of a supplemental draft or final EIS in accordance with 40 CFR 1502.9 shall be subject to the requirements of §§ 1794.62 and 1794.64.

(c) *Telecommunications and Water and Waste Programs.* No groups or sets of proposed actions normally require the preparation of an EIS. The environmental review process, as described in this part, shall be used to identify those proposed actions for which the preparation of an EIS is necessary. If an EIS is required, RUS shall proceed directly to its preparation. Prior completion of an EA is not mandatory.

§§ 1794.26–1794.29 [Reserved]

Subpart D—Procedure for Categorical Exclusions

§ 1794.30 General.

The procedures of this subpart which apply to proposed actions classified as CEs in §§ 1794.21 and 1794.22 provide RUS with information necessary to determine if the proposed action meets the criteria for a CE. Where, because of extraordinary circumstances, a normally categorically excluded action may have a significant effect on the quality of the human environment, RUS may require additional environmental documentation.

§ 1794.31 Classification.

(a) *Electric and Telecommunications Programs.* RUS will normally determine the proper environmental classification of projects based on its evaluation of the project description set forth in the construction work plan or loan design which the applicant is required to submit with its application for financial assistance. Each project must be sufficiently described to ensure its proper classification. RUS may require the applicant to provide additional information on a project where appropriate.

(b) *Water and Waste Program.* RUS will normally determine the proper environmental classification for projects based on its evaluation of the preliminary planning and design information.

§ 1794.32 Environmental report.

(a) For proposed actions listed in § 1794.21(b) and (c), the applicant is normally not required to submit an ER.

(b) For proposed actions listed in § 1794.22(a) and (b), the applicant shall normally submit an ER. Guidance in preparing the ER for Electric and Telecommunication proposals is contained in RUS Bulletin 1794A–600. Guidance in preparing the ER for Water and Waste proposals is contained in RUS Bulletin 1794A–602. The applicant may be required to publish public notices and provide evidence of such if the proposed action is located in, impacts, or converts important land resources.

§ 1794.33 Agency action.

RUS may act on an application for financial assistance upon determining, based on the review of documents as set forth in § 1794.32 and such additional information as RUS deems necessary, that the project is categorically excluded.

§§ 1794.34–1794.39 [Reserved]

Subpart E—Procedure for Environmental Assessments

§ 1794.40 General.

This subpart applies to proposed actions described in § 1794.23. Where appropriate to carry out the purposes of NEPA, RUS may impose, on a case-by-case basis, additional requirements associated with the preparation of an EA. If at any point in the preparation of an EA, RUS determines that the proposed action will have a significant effect on the quality of the human environment, the preparation of an EIS shall be required and the procedures in subpart G of this part shall be followed.

§ 1794.41 Document requirements.

Applicants will provide an ER in accordance with the appropriate guidance documents referenced in § 1794.7. After RUS has evaluated the ER and has determined the ER adequately addresses all applicable environmental issues, the ER will normally serve as RUS' EA. However, RUS reserves the right to prepare its own EA from the information provided in the ER. RUS will take responsibility for the scope and content of an EA.

§ 1794.42 Notice of availability.

Prior to RUS making a finding in accordance with § 1794.43 and upon RUS authorization and guidance, the applicant shall have a notice published which announces the availability of the EA and solicits public comments on the EA.

§ 1794.43 Agency finding.

(a) *General.* If RUS finds, based on an EA that the proposed action will not have a significant effect on the quality of the human environment, RUS will prepare a FONSI. Upon authorization of RUS, the applicant shall have a notice published which informs the public of the RUS finding and the availability of the EA and FONSI. The notice shall be prepared and published in accordance with RUS guidance.

(b) *Electric and Telecommunications Programs.* RUS shall have a notice published in the **Federal Register** that announces the availability of the EA and FONSI.

§ 1794.44 Timing of agency action.

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of the RUS and applicant notices that a FONSI has been made and any required review period has expired. When substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI determination. Final action shall not be taken until this review period has expired.

§§ 1794.45–1794.49 [Reserved]

Subpart F—Procedure for Environmental Assessments With Scoping

§ 1794.50 Normal sequence.

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with Scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed actions normally requiring an EIS through the point at which the Environmental Analysis (EVAL) is submitted (see § 1794.54). After the EVAL has been submitted, RUS will make a judgment to utilize the EVAL as its EA and issue a FONSI or prepare an EIS.

§ 1794.51 Preparation for scoping.

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS shall have its notice of intent to prepare an EA or EIS (§ 1794.13) published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

(b) As part of the early planning, the applicant should consult with appropriate Federal, state, and local agencies to inform them of the proposed action, identify permits and approvals which must be obtained, and administrative procedures which must be followed.

(c) Before formal scoping is initiated, RUS will require the applicant to submit an Alternative Evaluation Study and either a Siting Study (generation) or a Macro-Corridor Study (transmission lines).

(d) The applicant is encouraged to hold public information meetings in the general location of the proposed action and any reasonable alternatives when such applicant meetings will make the scoping process more meaningful. A written summary of the comments made at such meetings must be submitted to RUS as soon as practicable after the meetings.

§ 1794.52 Scoping meetings.

(a) Both RUS and the applicant shall have a notice published which announces a public scoping meeting is to be conducted, either in conjunction with the notice of intent or as a separate notice.

(b) The RUS notice shall be published in the **Federal Register** at least 14 days prior to the meeting(s). The applicant's notice shall be published in a newspaper at least 10 days prior to the meeting(s). Other forms of media may also be used by the applicant to notice the meetings.

(c) Where an environmental document is the subject of the hearing or meeting, that document will be made available to the public at least 10 days in advance of the meeting.

(d) The scoping meeting(s) will be held in the area of the proposed action at such place(s) as RUS determines will best afford an opportunity for public involvement. Any person or representative of an organization, or government body desiring to make a statement at the meeting may make such statement in writing or orally. The format of the meeting may be one of two styles. It can either be of the traditional style which features formal presentations followed by a comment period, or the open house style in which attendees are able to individually obtain information on topics or issues of interest within an established time period. A transcript will be made of the scoping meeting.

(e) As soon as practicable after the scoping meeting(s), RUS, as lead agency, shall determine the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. RUS will develop a proposed scope for further environmental study and review. RUS shall send a copy of this proposed scope to cooperating agencies and the applicant, and allow recipients 30 days to comment on the scope's adequacy and emphasis. After expiration of the 30-day period, RUS shall provide written guidance to the applicant concerning the scope of environmental study to be performed and information to be gathered.

§ 1794.53 Environmental analysis.

(a) After scoping procedures have been completed, RUS shall require the applicant to develop and submit an EVAL. The EVAL shall be prepared under the supervision and guidance of RUS staff and RUS shall evaluate and be responsible for the accuracy of all information contained therein.

(b) The EVAL will normally serve as the RUS EA. The EVAL can also serve as the basis for an EIS, and under such circumstances will be made an appendix to the EIS. After RUS has reviewed and found the EVAL to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the EVAL to satisfy the RUS distribution plan.

(c) The EVAL shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information. and shall be incorporated by summary or reference into the FONSI or ROD.

§ 1794.54 Agency determination.

Following the scoping process and the development of a satisfactory EA, RUS shall determine whether the proposed action is a major Federal action significantly affecting the quality of the human environment. If RUS determines the action is significant, RUS will continue with the procedures in subpart G of this part. If RUS determines the action is not significant, RUS will proceed in accordance with §§ 1794.42 through 1794.44.

§§ 1794.55–1794.59 [Reserved]

Subpart G—Procedure for Environmental Impact Statements

§ 1794.60 Normal sequence.

For proposed actions requiring an EIS (see § 1794.25), the NEPA process shall proceed in the same manner as for proposed actions requiring an EA with scoping through the point at which the scoping process is completed (see § 1794.52).

§ 1794.61 Environmental impact statement.

(a) *General.* An EIS shall be prepared in accordance with 40 CFR part 1502. Funding, in whole or in part, for an EIS can be obtained from any lawful source (*e.g.*, cooperative agreements developed in accordance with Section 759A, Federal Agricultural Improvement and Reform Act of 1996, Pub. L. 104–127 and 31 U.S.C. 6301). A third-party consultant selected by RUS and funded by the applicant (7 CFR part 1789) may prepare the EIS.

(1) After a draft or final EIS has been prepared, RUS and the applicant shall concurrently have a notice of availability for the document published. The time period allowed for review will be a minimum of 45 days for a draft EIS and 30 days for a final EIS. This period is measured from the date that the U.S. Environmental Protection Agency (EPA) publishes a notice in the **Federal Register** in accordance with 40 CFR 1506.10.

(2) In addition to circulation required by 40 CFR 1502.19, the draft and final EIS (or summaries thereof, at RUS discretion) shall be circulated to the appropriate state, regional, and metropolitan clearinghouses.

(3) Where a final EIS does not require substantial changes from the draft EIS, RUS may document required changes through errata sheets, insertion pages, and revised sections to be incorporated into the draft EIS. In such cases, RUS shall circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as its final EIS. RUS will not circulate the draft EIS again, although RUS will provide the draft EIS if requested within 30 days of publication of notice of availability of the final EIS.

(b) *Electric Program.* Where the applicant or its consultant has prepared an EVAL, RUS will develop its draft and final EIS from the EVAL. An EVAL will not be required if a third-party consultant prepares the draft and final EIS.

§ 1794.62 Supplemental EIS.

(a) A supplement to a draft or final EIS shall be prepared, circulated, and given notice by RUS and the applicant in the same manner (exclusive of scoping) as a draft and final EIS (see § 1794.61).

(b) Normally RUS and the applicant will have published notices of intent to prepare a supplement to a final EIS in those cases where a ROD has already been issued.

(c) RUS, at its discretion, may issue an information supplement to a final EIS where RUS determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). RUS and the applicant shall concurrently have a notice of availability published. The notice requirements shall be the same as for a final EIS and the information supplement shall be circulated in the same manner as a final EIS. RUS shall take no final action on any proposed modification discussed in the information supplement until 30 days after the RUS notice of availability or the applicant's notice is published, whichever occurs later.

§ 1794.63 Record of decision.

(a) Upon completion of the review period for a final EIS, RUS will have its ROD prepared in accordance with 40 CFR 1505.2.

(b) Separate RUS and applicant notices of availability shall be published concurrently. The notices shall summarize the RUS decision and announce the availability of the ROD. Copies of the ROD will be made available upon request from the point of contact identified in the notice.

§ 1794.64 Timing of agency action.

(a) RUS may take its final action or execute commitments on proposed actions requiring an EIS or Supplemental EIS at any time after the ROD has been published.

(b) For budgetary purposes some financial assistance may be approved conditionally with a stipulation that no funds shall be advanced until a ROD has been prepared.

§§ 1794.65–1794.69 [Reserved]

Subpart H—Adoption of Environmental Documents

§ 1794.70 General.

This subpart covers the adoption of environmental documents prepared by other Federal agencies. Where applicants participate in proposed actions for which an EA or EIS has been prepared by or for another Federal agency, RUS may adopt the existing EA or EIS in accordance with 40 CFR 1506.3.

§ 1794.71 Adoption of an EA.

RUS may adopt a Federal EA or EIS or a portion thereof as its EA. RUS shall make the EA available and assure that notice is provided in the same manner as if RUS had prepared the EA.

§ 1794.72 Adoption of an EIS.

(a) Where RUS determines that an existing Federal EIS requires additional information to meet the standards for an adequate statement for RUS proposed action, RUS may adopt all or a portion of the EIS as a part of its draft EIS. The circulation and notice provisions for a draft and final EIS (see § 1794.61) apply.

(b) If RUS was not a cooperating agency but determines that another Federal agency's EIS is adequate, RUS shall adopt that agency's EIS as its final EIS. RUS and the applicant shall have separate notices published advising of RUS adoption of the EIS and independent determination of its adequacy.

(c) If the adopted EIS is generally available and meets RUS standards, RUS shall have a public notice published informing the public of its action and availability of the EIS to interested parties upon request. If the adopted EIS is not generally available, RUS shall have a public notice published informing the public of its action and will circulate copies of the EIS in accordance with 40 CFR 1502.19 and 40 CFR 1506.3.

§ 1794.73 Timing of agency action.

Where RUS has adopted another agency's environmental documents, the timing of the action shall be subject to the same requirements as if RUS had prepared the required EA or EIS.

§ 1794.74 Incorporation of environmental materials.

RUS may incorporate into its environmental documents, environmental documents or portions thereof prepared by state, or local agencies or other parties for purposes other than compliance with the requirements of NEPA. RUS will circulate the incorporated documents as a part of its EA or draft and final EIS in the same manner as if prepared by RUS.

§ 1794.75–1794.79 [Reserved]

Dated: December 7, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–32882 Filed 12–10–98; 8:45 am]

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federal register

Friday
December 11, 1998

Part VII

Department of the Interior

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations and Environmental Assessment; Proposed Rule

Dungeness Crab Commercial Fishery Compensation Program Application Procedures; Notice

VOL 63
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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations and Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Reopen the public comment period for the Proposed Rule and Environmental Assessment.

SUMMARY: Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 ("the Act"), signed into law on October 21, 1998, establishes statutory requirements for the management of commercial fishing in Glacier Bay National Park. The congressional managers of this legislation directed the National Park Service (NPS) "to extend the public comment period on the pending regulations (62 FR 18547, April 16, 1997) until January 15, 1999, modify the draft regulations to conform to [section 123's] language and publish the changes in the final regulations." Accordingly, the public comment period on the Proposed Rule and Environmental Assessment (EA) for commercial fishing will remain open until January 15, 1999.

DATES: Comments on the proposed rule and EA will be accepted through January 15, 1999.

ADDRESSES: Comments on the proposed rule and EA should be submitted to the: Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. Comments on the proposed rule and EA may be made on the park's Web site at *http://www.nps.gov/glba*, or by phoning the park at (907) 697–2230.

FOR FURTHER INFORMATION CONTACT: Copies of the EA and the Executive Summary are available by writing to Glen Yankus, National Park Service Support Office, 2525 Gambell St., Anchorage, Alaska 99503, or calling (907) 257–2645. The EA Executive Summary, Proposed Rule, and Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 are also available on the park's Web site at *ttp://www.nps.gov/glba*.

SUPPLEMENTARY INFORMATION: Section 123 of the Act (Pub. L. 105–277) directs the secretary of the interior and the state of Alaska to develop a cooperative management plan for the regulation of commercial fisheries within the park consistent with protection of park values and purposes, a prohibition on new or expanded fisheries, and opportunities for study of marine resources. The law provides for the continuation of commercial fishing in the marine waters of Glacier Bay National Park outside Glacier Bay proper. The law limits commercial fisheries within Glacier Bay proper to Tanner crab, halibut and salmon, and limits participation in these commercial fisheries to the lifetimes of individual fishermen with a qualifying history. Areas in the upper reaches and inlets of Glacier Bay proper are closed to all commercial fishing or are limited to winter season king salmon trolling by grandfathered fishermen. Designated marine wilderness areas in the park are closed to commercial fishing. Compensation is provided for qualifying Dungeness crab fishermen displaced by closure of designated wilderness waters of the Beardslee Islands and Dundas Bay. The full text of Section 123 of the Act is provided at the end of Supplementary Information.

NPS will publish a final rule regarding commercial fishing in the marine waters of Glacier Bay National Park after the close of the public comment period, as directed by Congress. Section 123 determines by statute several aspects of the NPS's proposed rule, but leaves other aspects open for final rulemaking. For example, Section 123 establishes by statute the phase-out of commercial fishing in Glacier Bay proper proposed by the rule. However, whereas the proposed rule would have eliminated commercial fishing in the bay after a 15-year period, Section 123 allows qualifying fishermen to fish in the bay throughout their lifetimes. In deference to rulemaking, Section 123 leaves to the Secretary of the Interior the determination of the number and timeframe of years that will qualify individuals for the nontransferable lifetime permits. The proposed rule would have required a fisherman to have participated in a Glacier Bay-proper fishery for a minimum of six years during the period of 1987 through 1996 to qualify for the 15-year access permit contemplated by the proposed rule. The final rule will determine the appropriate eligibility requirement for the lifetime access permit mandated by the statute. NPS welcomes and encourages ideas on what are reasonable eligibility criteria for lifetime access to the commercial Tanner crab, halibut and salmon fisheries authorized in Glacier Bay proper by the Act. Are the eligibility criteria outlined in the proposed rule appropriate? Should a different number and timeframe of qualifying years (e.g., three out of a five-year period) be considered? Should the three fisheries have the same eligibility criteria, or are there differences among the fisheries that support different eligibility criteria for different fisheries?

NPS will implement the statutory requirements of Section 123 of the Act in a final rule. All issues raised by the proposed rule not explicitly resolved by Section 123 of the Act are still open for comment. For example, Section 123 of the Act directs the state of Alaska and the secretary of the interior to develop a cooperative management plan (see Section 123 (a)(1), at the end of SUPPLEMENTARY INFORMATION). The proposed rule also contemplated such a plan. As cooperative management is envisioned, the state would continue its role in management of commercial fisheries and NPS would contribute expertise in protection of park purposes and values; both state and federal agencies could jointly develop appropriate marine research projects. NPS seeks public comments and ideas on federal-state cooperative management to help federal and state officials begin their discussions. However, details of cooperative management will not be included in the final rulemaking because such details will be developed cooperatively with the state of Alaska.

The proposed rule (including the preamble) raises other issues not addressed by the Act, such as proposals to develop a Hoonah Tlingit cultural fishery and consider fisheries research opportunities. NPS acknowledges that some issues raised in the proposed rule may be more appropriately considered in development of a cooperative management plan with the state of Alaska. NPS will review all comments received to date on the proposed rule and EA and encourages additional comments in light of the new legislation. In addition to being published in the **Federal Register**, this notice is being mailed to all 1,300+ individuals who have already provided comment on the proposed rule. Consequently, all commenters have an opportunity to provide new or additional comments.

The full text of Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (Pub. L. 105–277) is provided below.[11]

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[11] Note: The text of section 123 is provided for the convenience of the reader. The official version of section 123 appears in Pub. L. 105–277, 112 Stat. 2681.

COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK

SEC. 123. (a) GENERAL—

(1) The Secretary of the Interior and the State of Alaska shall cooperate in the development of a management plan for the regulation of commercial fisheries in Glacier Bay National Park pursuant to existing State and Federal statutes and any applicable international conservation and management treaties. Such management plan shall provide for commercial fishing in the marine waters within Glacier Bay National Park outside of Glacier Bay Proper, and in the marine waters within Glacier Bay Proper as specified in paragraphs (a)(2) through (a)(5), and shall provide for the protection of park values and purposes, for the prohibition of any new or expanded fisheries, and for the opportunity for the study of marine resources.

(2) In the nonwilderness waters within Glacier Bay Proper, commercial fishing shall be limited, by means of non-transferable lifetime access permits, solely to individuals who—

(A) Hold a valid commercial fishing permit for a fishery in a geographic area that includes the nonwilderness waters within Glacier Bay Proper;

(B) Provide a sworn and notarized affidavit and other available corroborating documentation to the Secretary of the Interior sufficient to establish that such individual engaged in commercial fishing for halibut, Tanner crab, or salmon in Glacier Bay Proper during qualifying years which shall be established by the Secretary of the Interior within one year of the date of the enactment of this Act; and

(C) Fish only with—

(i) Longline gear for halibut;

(ii) Pot or ring nets for Tanner crab; or

(iii) Trolling gear for salmon.

(3) With respect to the individuals engaging in commercial fishing for Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the West Arm of Glacier Bay Proper (West Arm) north of 58 degrees, 50 minutes north latitude except for trolling for king salmon during the period from October 1 through April 30. The waters of Johns Hopkins Inlet, Tarr Inlet and Reid Inlet shall remain closed to all commercial fishing.

(4) With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the East Arm of Glacier Bay Proper (East Arm) north of a line drawn from Point Caroline, through the southern end of Garforth Island to the east side of the Muir Inlet, except that trolling for king salmon during the period from October 1 through April 30 shall be allowed south of a line drawn across Muir Inlet at the southernmost point of Adams Inlet.

(5) With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in Geikie Inlet.

(b) THE BEARDSLEE ISLANDS AND UPPER DUNDAS BAY.—Commercial fishing is prohibited in the designated wilderness waters within Glacier Bay National Park and Preserve, including the waters of the Beardslee Islands and Upper Dundas Bay. Any individual who—

(1) On or before February 1, 1999, provides a sworn and notarized affidavit and other available corroborating documentation to the Secretary of the Interior sufficient to establish that he or she has engaged in commercial fishing for Dungeness crab in the designated wilderness waters of the Beardslee Islands or Dundas Bay within Glacier Bay National Park pursuant to valid commercial fishing permit in at least six of the years during the period 1987 through 1996;

(2) At the time of receiving compensation based on the Secretary of the Interior's determination as described below—

(A) Agrees in writing not to engage in commercial fishing for Dungeness crab within Glacier Bay Proper;

(B) Relinquishes to the State of Alaska for the purposes of its retirement any commercial fishing permit for Dungeness crab for areas within Glacier Bay Proper;

(C) At the individual's option, relinquishes to the United States the Dungeness crab pots covered by the commercial fishing permit; and

(D) At the individual's option, relinquishes to the United States the fishing vessel used for Dungeness crab fishing in Glacier Bay Proper; and

(3) Holds a current valid commercial fishing permit that allows such individual to engage in commercial fishing for Dungeness crab in Glacier Bay National park, shall be eligible to receive from the United States compensation that is the greater of (i) $400,000, or (ii) an amount equal to the fair market value (as of the date of relinquishment) of the commercial fishing permit for Dungeness crab, of any Dungeness crab pots or other Dungeness crab gear, and of not more than one Dungeness crab fishing vessel, together with an amount equal to the present value of the foregone net income from commercial fishing for Dungeness crab for the period January 1, 1999 through December 31, 2004, based on the individual's net earnings from the Dungeness crab fishery during the period January 1, 1991 through December 31, 1996. Any individual seeking such compensation shall provide the consent necessary for the Secretary of the Interior to verify such net earnings in the fishery. The Secretary of the Interior's determination of the amount to be paid shall be completed and payment shall be made within six months from the date of the application by the individuals described in this subsection and shall constitute final agency action subject to review pursuant to the Administrative Procedures Act in the United States District Court for the District of Alaska.

(c) DEFINITION AND SAVINGS CLAUSE.—

(1) As used in this section, the term "Glacier Bay Proper" shall mean the marine waters within Glacier Bay, including coves and inlets, north of a line drawn from Point Gustavus to Point Carolus.

(2) Nothing in this section is intended to enlarge or diminish Federal or State title, jurisdiction, or authority with respect to the waters of the State of Alaska, the waters within the boundaries of Glacier Bay National Park, or the tidal or submerged lands under any provision of State or Federal law.

Dated: December 4, 1998.

John Quinley,

Acting Regional Director, Alaska.

[FR Doc. 98–32997 Filed 12–10–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Dungeness Crab Commercial Fishery Compensation Program Application Procedures

AGENCY: National Park Service, Interior.

ACTION: Glacier Bay National Park Dungeness crab commercial fishery compensation program application procedures.

SUMMARY: Section 123 (b) (1)—(3) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999Act ("the Act")(see **SUPPLEMENTARY INFORMATION** in the document extending the comment period on Glacier Bay National Park commercial fishing proposed rules published elsewhere in this issue of the **Federal Register**) authorizes compensation for qualifying fishermen with a history of commercial Dungeness crab fishing in designated wilderness waters of the Beardslee Islands or Dundas Bay in at least six of the years during the period of 1987 through 1996. This **Federal Register** notice serves to provide application instructions for individuals who believe they qualify for compensation as outlined by the Act. Applications must be provided to the Superintendent, Glacier Bay National Park and Preserve, on or before February 1, 1999.

DATES: Applications for the Dungeness crab commercial fishery compensation program will be accepted on or before February 1, 1999.

ADDRESSES: Applications for the Dungeness crab commercial fishery compensation program should be submitted to the Superintendent, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826

FOR FURTHER INFORMATION CONTACT: For information regarding the Dungeness crab commercial fishery compensation program, please contact Randy King, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Phone: (907) 697–2230.

SUPPLEMENTARY INFORMATION: The Act requires fishermen to provide certain information sufficient to determine their eligibility for compensation. Fishermen making application to NPS for compensation, as outlined by the Act, must provide the following information to the Superintendent: (1) Full name, mailing address, and a contact phone number. (2) A sworn and notarized personal affidavit attesting to the applicant's history of participation in the Beardslee Island or Dundas Bay wilderness water commercial fisheries for Dungeness crab for at least 6 of 10 years, during the period of 1987 through1996. (3) A copy of the fisherman's current state of Alaska Dungeness crab commercial fishing permit. (4) Any available corroborating information—including sworn and notarized affidavits of witnesses or documentation of commercial Dungeness crab landings from the Alaska Department of Fish and Game shellfish statistical units that include wilderness areas in the Beardslee Islands or Dundas Bay—that can assist in a determination of eligibility for compensation.

The superintendent will make a written determination on eligibility for compensation based on the information provided by the applicant. The superintendent will also make a written determination on the amount of compensation to be paid to an eligible applicant. The amount of compensation will depend on the compensation formula and options selected by the applicant and—as appropriate—the fair market values of the Dungeness crab commercial fishing permit and the fishing vessel and gear used in the fishery. The Act requires payment within six months from the date of application. If an application for compensation is denied, the superintendent will provide the reasons for the denial in writing. Any applicant adversely affected by the superintendent's determination may appeal to the regional director, Alaska region, within 60 days. Applicant's must substantiate the basis of their disagreement with the superintendent's determination. The regional director will provide opportunity for an informal oral hearing. After consideration of written materials and oral hearing, if any, and within a reasonable time, the regional director will affirm, reverse, or modify the superintendent's determination and set forth in writing the basis for the decision. A copy of the decision will be forwarded promptly to the applicant and will constitute final agency action.

Dated: December 4, 1998.

John Quinley,

Acting Regional Director, Alaska.

[FR Doc. 98–32998 Filed 12–10–98; 8:45 am]

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A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.

Herbert Hoover
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Dwight D. Eisenhower
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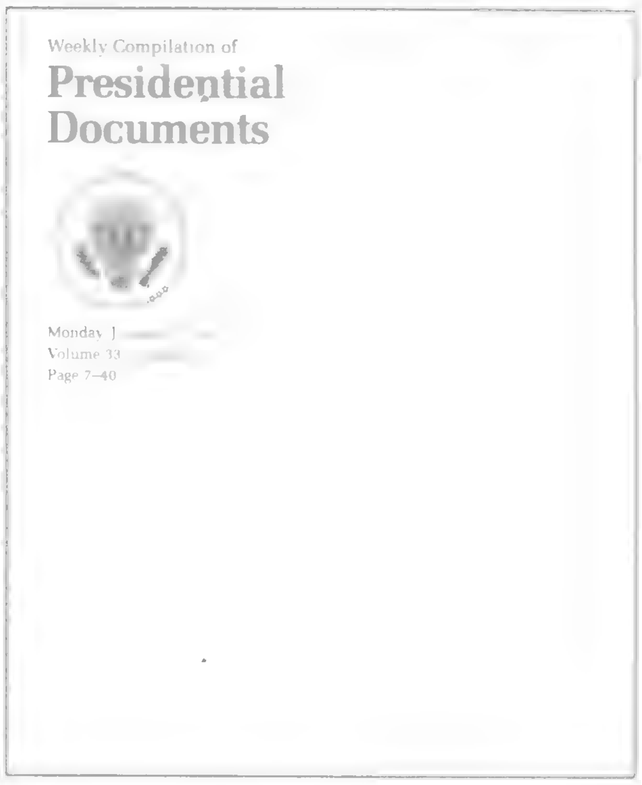
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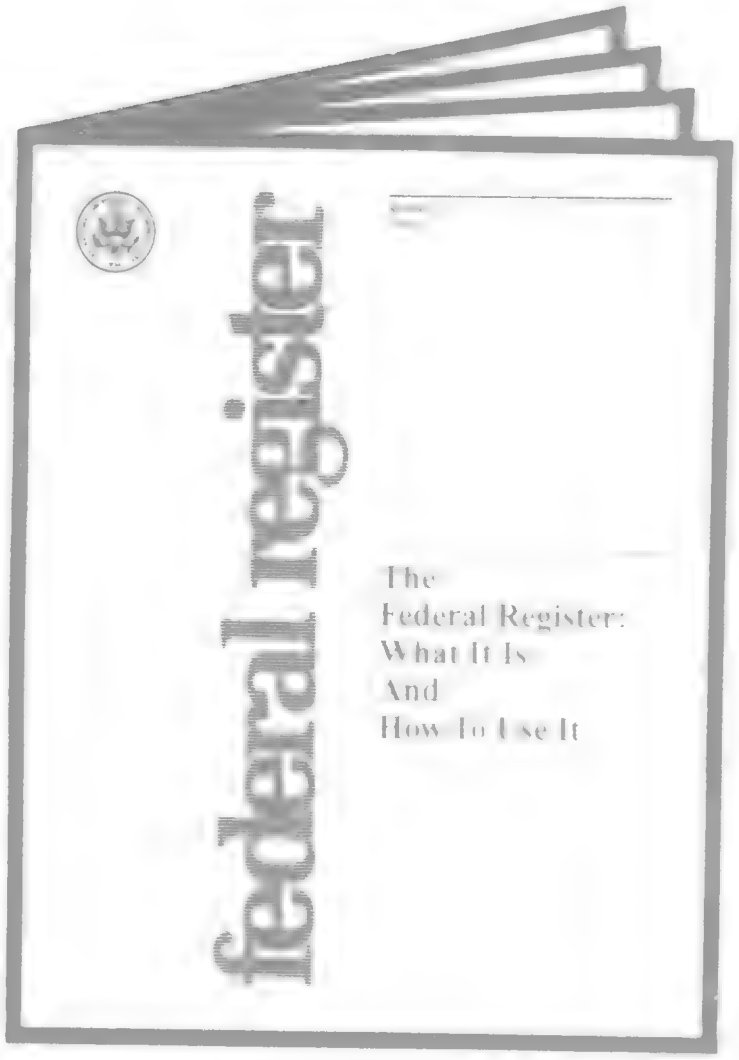
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**[Docket No. 9
39–10938; AD**

RIN 2120–AA

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Model 757–
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ACTION: Fin

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–311–AD; Amendment 39–10938; AD 98–25–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes Powered by Rolls-Royce RB211–535E4/E4B Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that requires repetitive inspections to detect cracking of the honeycomb core of the acoustic panels in the engine inlet, and repair, if necessary. This amendment also requires eventual replacement of the existing engine inlet with a new or serviceable inlet, which, when accomplished, terminates the repetitive inspections. This amendment is prompted by reports of cracking of the honeycomb core of the acoustic panels in the engine inlet, and incidents of pieces of the panels breaking off and being ingested into the engine. The actions specified by this AD are intended to detect and correct cracking of the honeycomb core of the acoustic panels in the engine inlet, which could result in reduced structural integrity of the engine inlet, and consequent engine shutdown or surge; or, in the event of a fan blade failure, separation of the inlet from the engine.

DATES: Effective January 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 19, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathrine H. Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes was published in the **Federal Register** on March 26, 1998 (63 FR 14652). That action proposed to require repetitive inspections to detect cracking of the acoustic panels in the engine inlet, and repair, if necessary. That action also proposed to require eventual replacement of the existing engine inlet with a new inlet, which, when accomplished, terminates the repetitive inspections.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter supports the proposed rule.

Request To Revise Description of Unsafe Condition

One commenter states that the cracking problem with acoustic panels could more accurately be described as cracking of the honeycomb core of the acoustic panels. The commenter also states that the two ingestion incidents referred to in the Summary and Discussion sections of the proposed AD were not confirmed to be caused by panel cracking. In addition, the commenter states that testing was unable to provide conclusive evidence that the cause of the panel cracking was a resonance of the honeycomb structure of the core of the acoustic panels coinciding with the passing frequency of the fan blades. The commenter states that the testing indicated that high sound pressure levels can potentially damage the acoustic panels. The commenter requests that the proposed AD be revised to reflect this information.

The FAA concurs partially. The FAA concurs with the commenter that cracking of the acoustic panels occurred in the honeycomb core and has revised the final rule to specifically state that the cracking occurred in the honeycomb core of the acoustic panels.

The FAA concurs with the commenter that the two ingestion incidents were not confirmed to be caused by panel cracking. However, the proposed AD does not state that the two ingestion events were caused by panel cracking; it states that there have been two reported incidents in which portions of the acoustic panels were ingested into the engine.

In addition, the FAA concurs partially with the commenter's information regarding the cause of the cracking. The cause of the honeycomb cracking stated in the proposed AD was determined by the engine manufacturer and is discussed in Rolls-Royce Service Bulletin RB.211–71–B480. After further discussion with the airplane manufacturer, the FAA now understands that the cause of the cracking is most likely a combination of the high sound pressure levels and a resonance of the honeycomb structure. This information does not change the effect of the cracking; therefore, no change to the rule is necessary.

Request To Withdraw the Proposed AD

One commenter, the manufacturer of the acoustic panels, states that the engine inlet has been designed to remain attached to the engine during a fan blade failure event even with a 90-degree sector of the intake barrel failed or missing. The commenter believes that, because the attachment of the inlet attachment ring to the inlet is through the inlet backing skin, it is unlikely that failures in the honeycomb core would cause separation of the inlet from the engine during a fan blade failure event, as suggested in the proposed AD.

Although no specific request is made by this commenter, the FAA infers that the commenter does not agree that an unsafe condition exists and requests that the proposed AD be withdrawn. The FAA does not concur. The FAA does not agree with the commenter's assessment. In the structural analysis of the engine inlet referenced by the commenter, the airplane manufacturer assumes that up to a 90-degree sector of the intake barrel is failed or missing. The analysis assumes that all or part of the damage may be caused by the fan blade failure itself. Additionally, the inlet backing skin is the main load path of the engine inlet, but the honeycomb core is still required to maintain integrity of the remaining structure. Therefore, failures in the honeycomb core increase the likelihood of separation of the inlet from the engine in the event of a fan blade failure. The FAA finds that no change to the final rule is necessary.

Request To Allow Replacement with Serviceable Engine Inlets

Two commenters request that the FAA allow operators to replace damaged engine inlets with serviceable inlets that incorporate improved acoustic panels. The commenters state that new hardware is not required, and that production capability does not exist to manufacture new engine inlets for all affected Boeing Model 757–200 series airplanes within the compliance time of the proposed AD. The FAA concurs with the commenters that new hardware is not required. The FAA has revised the final rule to allow replacement of an affected engine inlet with a "new or serviceable" engine inlet that incorporates improved acoustic panels.

Request To Reference Latest Service Information

One commenter requests that the FAA add a reference to Rolls-Royce Service Bulletin RB.211–71–B480, Revision 2, dated July 17, 1998, to the proposed AD. The FAA concurs. This revision specifies larger areas of damage that may be repaired than the areas specified by Rolls-Royce Service Bulletin RB.211–71–B480, Revision 1, dated August 15, 1997 (which is cited in the proposal as the appropriate source of service information for accomplishment of the inspection requirements of the AD). The FAA has revised paragraph (a) of the final rule to include Rolls-Royce Service Bulletin RB.211–71–B480, Revision 2, dated July 17, 1998, as an additional source of service information.

Request To Allow Engine Manufacturer to Approve Repairs

One commenter states that repair instructions for damaged areas larger than the acceptance criteria have already been approved by Rolls-Royce and are currently in service.

Although no specific request is made by this commenter, the FAA infers the commenter request that the FAA allow operators to contact the manufacturer for repair instructions for damaged areas larger than the acceptance criteria. (For findings of damage outside the acceptance criteria, this AD requires replacement of the engine inlet acoustic panels, rather than contacting Rolls-Royce.)

The FAA does not concur with this request, because to do so would be delegating its rulemaking authority to the engine manufacturer. Furthermore, operators with airplanes that have repairs other than those repairs contained in the service bulletins are required to either replace those engine inlets with new or serviceable engine inlets that incorporate improved acoustic panels, or to obtain approval of an alternative method of compliance for the repairs. "NOTE 1" of this AD clearly states the need for requesting approval of an alternative method of compliance if the parts have been modified, altered, or repaired so that the performance of the requirements of this AD is affected. Requests for approval of an alternative method of compliance can be made in accordance with the provisions of paragraph (c) of this AD and should include the substantiation data for the structural integrity of the repair. No change to the rule is necessary in this regard.

Changes to Cost Impact Information

The FAA has been advised by Boeing that only 5 airplanes operated in the U.S. are still equipped with unmodified engine inlets. Accordingly, the FAA has revised the cost impact information, below, to reflect this information.

Changes to Service Bulletin References

The final rule has been revised to reference two appendices and a supplement to certain service information cited in the AD, as listed below. These references were omitted inadvertently from the proposed AD.

—Rolls-Royce Service Bulletin RB.211–71–B480, Revision 1, dated August 15, 1997, including Appendix 1, Revision 1, dated August 15, 1997, and Appendix 2, dated November 10, 1995.

—Rolls-Royce Service Bulletin RB.211–71–9958, Revision 1, dated August 26, 1994, including Supplement, dated March 18, 1994.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 52 Model 757–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD.

Assuming both engines have inlets on which the improved acoustic panels have not been installed, it will take approximately 3 work hours per airplane (1.5 work hours per engine) to accomplish the required inspection, at an average labor rate is $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $4,320, or $180 per airplane, per inspection cycle.

Assuming both engines have inlets on which the improved acoustic panels have not been installed, it would take approximately 4 work hours per airplane (2 work hours per engine) to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the engine manufacturer at no cost to the operator. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $5,760, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that new or serviceable engine inlets have been installed on 19 U.S.-registered airplanes in accordance with the requirements of this AD. Therefore, the future economic cost impact of the required inspection on U.S. operators is now only $900, or $180 per airplane, per inspection cycle; and the future economic cost impact of the required modification on U.S. operators is now only $1,200, or $240 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–12 Boeing: Amendment 39–10938. Docket 97–NM–311–AD.

Applicability: Model 757–200 series airplanes equipped with Rolls-Royce RB211–535E4/E4B engines fitted with nose cowls having serial numbers 9001 through 9124 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the honeycomb core of the acoustic panels in the engine inlet, which could result in reduced structural integrity of the engine inlet, and consequent engine shutdown or surge; or in the event of a fan blade failure, separation of the inlet from the engine; accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a detailed inspection to detect cracking of the honeycomb core of the acoustic panels in the engine inlet, in accordance with Rolls-Royce Service Bulletin RB.211–71–B480, Revision 1, dated August 15, 1997, including Appendix 1, Revision 1, dated August 15, 1997, and Appendix 2, dated November 10, 1995; or Revision 2, including Appendices 1 and 2, both dated July 17, 1998.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 650 hours time-in-service.

(2) If any cracking is detected, accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii), as applicable.

(i) If cracking is within the acceptance standards provided in paragraph 2.A. of Appendix 1 of the service bulletin, repair within 350 hours time-in-service, in accordance with the service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 650 hours time-in-service.

(ii) If cracking is outside the acceptance standards provided in paragraph 2.A. of Appendix 1 of the service bulletin, prior to further flight, replace the engine inlet with a new or serviceable engine inlet that incorporates improved acoustic panels, in accordance with Rolls-Royce Service Bulletin RB.211–71–9909, Revision 1, dated May 26, 1995; and Rolls-Royce Service Bulletin RB.211–71–9958, Revision 1, dated August 26, 1994, including Supplement, dated March 18, 1994. No further action is required by this AD for that engine inlet.

(b) Within 18 months after the effective date of this AD, replace both existing engine inlets with new or serviceable inlets that incorporate improved acoustic panels, in accordance with Rolls-Royce Service Bulletin RB.211–71–9909, Revision 1, dated May 26, 1995, and Rolls-Royce Service Bulletin RB.211–71–9958, Revision 1, dated August 26, 1994, including Supplement, dated March 18, 1994. Accomplishment of such replacement constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with the following Rolls-Royce service bulletins, as applicable, which contain the following list of effective pages:

Service Bulletin Reference and Date	Page Number	Revision level Shown on Page	Date Shown on Page
RB.211–71–9909 Revision 1, May 26, 1995	1, 3	1	May 26, 1995
	2, 4, 5	Original	January 7, 1994.
RB.211–71–9958 Revision 1, August 26, 1998	1, 3	1	August 26, 1994
	2, 4, 5	Original	March 18, 1994.
Supplement			
	1	Original	March 18, 1994.
RB.211–71-B480 Revision 1, August 15, 1997	1–4	1	August 15, 1997.
Appendix 1			
	1, 4	Original	November 10, 1995

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Service Bulletin Reference and Date	Page Number	Revision level Shown on Page	Date Shown on Page
	2, 3	1	August 15, 1997.
	Appendix 2		
RB.211–71-B480 Revision 2, July 17, 1998	1–6	Original	November 10, 1995.
	1–3	2	July 17, 1998.
	4	1	August 15, 1997.
	Appendix 1		
	1	Original	November 10, 1995.
	2–4	2	July 17, 1998.
	Appendix 2		
	1, 3	2	July 17, 1998.
	2, 4–6	Original	November 10, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 19, 1999.

Issued in Renton, Washington, on December 3, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32793 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–227–AD; Amendment 39–10941; AD 98–25–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes. This amendment requires inspections to detect attachment failures of the 12 attachments located on the No. 4 banjo fitting/pylon carry-through cap, and to detect cracking of the forward and aft flanges and bolt holes of the No. 4 banjo fitting; repair, if necessary; and replacement of the 12 attachments with new or serviceable parts. Such replacement terminates the repetitive inspections. This amendment is prompted by a report indicating that attachment bolts on the forward and aft flanges of the No. 4 banjo fitting and the pylon carry-through cap failed due to fatigue cracking. The actions specified by this AD are intended to prevent such cracking, which could result in reduced controllability of the airplane during flight and ground operations.

DATES: Effective January 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 19 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John L. Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5229; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on September 17, 1998 (63 FR 49679). That action proposed to require inspections to detect attachment failures of the 12 attachments located on the No. 4 banjo fitting/pylon carry-through cap, and to detect cracking of the forward and aft flanges and bolt holes of the No. 4 banjo fitting; repair, if necessary; and replacement of the 12 attachments with new or serviceable parts. Such replacement would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 82 airplanes of the affected design in the worldwide fleet. The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 1 work hour per airplane to accomplish the required external visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the external visual inspection required by this AD on U.S. operators is estimated to be $1,860, or $60 per airplane, per inspection cycle.

The FAA estimates that it will take approximately 2 work hours per airplane to accomplish the required eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection required by this AD on U.S. operators is estimated to be $3,720, or $120 per airplane.

The FAA estimates that it will take approximately 6 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $18,910, or $610 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–15 McDonnell Douglas: Amendment 39–10941. Docket 96–NM–227–AD.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas Service Bulletin MD11–55–013, Revision 03, dated May 15, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment bolts on the forward and aft flanges of the No. 4 banjo fitting and the pylon carry-through cap due to fatigue cracking, and consequent reduced controllability of the airplane during flight and ground operation, accomplish the following:

(a) Within 1,500 landings after the effective date of this AD, perform an external visual inspection for attachment failures of the 12 attachments located on the No. 4 banjo fitting/pylon carry-through cap, in accordance with McDonnell Douglas Service Bulletin MD11–55–013, Revision 02, dated October 28, 1996; or Revision 03, dated May 15, 1998.

(1) If no failed attachment is found, repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the terminating action specified in paragraph (b) of this AD is accomplished.

(2) If any failed attachment is found, prior to further flight, accomplish the actions specified in paragraph (b) of this AD.

(b) Except as provided by paragraph (c) of this AD: Within 5 years after the effective date of this AD, perform an eddy inspection to detect cracking of the forward and aft flanges and bolt holes of the No. 4 banjo fitting, in accordance with McDonnell Douglas MD–11 Service Bulletin 55–13, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin MD11–55–013, Revision 02, dated October 28, 1996; or McDonnell Douglas Service Bulletin MD11–55–013, Revision 03, dated May 15, 1998.

(1) If no cracking is found, within 5 years after the effective date of this AD, replace the 12 attachments located on the No. 4 banjo fitting/pylon carry-through cap with new or serviceable attachments in accordance with Revision 03 of the service bulletin. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

(2) If any cracking is found, prior to further flight, repair the fitting, and replace the 12 attachments located on the No. 4 banjo fitting/pylon carry-through cap with new or serviceable attachments in accordance with Revision 03 of the service bulletin. Such replacement constitutes terminating for the repetitive inspections required by paragraph (a)(1) of this AD.

(c) For airplanes on which McDonnell Douglas MD–11 Service Bulletin 55–13, dated December 22, 1992, has been accomplished, and on which no failed attachment was found during the inspection required by paragraph (a) of this AD: The eddy current bolt hole inspection specified in paragraph (b) of this AD is not required provided that all 12 attachments have been replaced in accordance with the original issue of the service bulletin.

(d) If the service bulletin specifies that the manufacturer may be contacted for disposition of enlargement of holes beyond the specifications of the service bulletin, or for an evaluation for deferment of repairs: Those conditions shall be addressed in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with McDonnell Douglas MD–11 Service Bulletin 55–13, Revision 1, dated December 17, 1993; McDonnell Douglas Service Bulletin MD11–55–013, Revision 02, dated October 28, 1996; or McDonnell Douglas Service Bulletin MD11–55–013, Revision 03, dated May 15, 1998; as

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applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 19, 1999.

Issued in Renton, Washington, on December 4, 1998.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32811 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–06–AD; Amendment 39–10940; AD 98–25–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited, Bristol Engines Division and Rolls-Royce (1971) Limited, Bristol Engines Division Viper Series Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce Limited, Bristol Engines Division and Rolls-Royce (1971) Limited, Bristol Engines Division, Viper series turbojet engines, that requires a one-time visual inspection of the barometric flow control unit (BFCU) augmentor and bypass valve joint washer for joint washer integrity, and replacement, if necessary, with serviceable parts. This amendment is prompted by a report of a high pressure fuel leak at the BFCU augmentor and bypass valve assembly joint, washer interface. The actions specified by this AD are intended to prevent a high pressure fuel leak, which could result in an engine nacelle fire and damage to the aircraft.

DATES: Effective February 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Limited, Bristol Engines Division, Technical Publications Department CLS–4, P.O. Box 3, Filton, Bristol, BS34 7QE England; telephone 117–979-1234, fax 117–979–7575. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Bristol Engines Division, (R–R) Viper Mk. 521, 522, 526 and 601 series turbojet engines was published in the **Federal Register** on April 30, 1998 (63 FR 23688). That action proposed to require a one-time inspection of BFCU augmentor and bypass valve joint washer for joint washer integrity, and replacement, if necessary, with serviceable parts in accordance with R–R Alert Service Bulletins (ASBs) Nos. 73–A120, 73–A121, 73–A68, 73–A69, 73–A35, and 73–A36, dated November 1997.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 140 engines of the affected design in the worldwide fleet. The FAA estimates that 52 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–25–14 Rolls-Royce plc: Amendment 39–10940. Docket 98–ANE–06–AD.

Applicability: Rolls-Royce plc (R-R) Viper Mk. 521, 522, 526 and 601 series turbojet engines, installed on but not limited to Raytheon (formerly British Aerospace, Hawker Siddeley) Models BH.125 and DH.125 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a high pressure fuel leak, which could result in an engine nacelle fire and damage to the aircraft, accomplish the following:

(a) For R-R Viper Mk. 521, and 522 series engines, perform a one-time inspection of the barometric flow control unit (BFCU) augmentor and bypass valve joint washer for joint washer integrity, and replace, if necessary, with serviceable parts, in accordance with R-R Alert Service Bulletins (ASBs) Nos. 73–A120 and 73–A121, as applicable, dated November 1997, as follows:

(1) For engines with less than 200 hours time in service (TIS) since new, overhaul, or repair of the BFCU, inspect within 2 months, or 100 hours TIS after the effective date of this AD, whichever occurs first.

(2) For engines with 200 or more hours TIS since new, overhaul, or repair of the BFCU, inspect at the next engine removal after the effective date of this AD.

(b) For R-R Viper Mk. 526 series engines, perform a one-time inspection of the barometric flow control unit (BFCU) augmentor and bypass valve joint washer for joint washer integrity, and replace, if necessary, with serviceable parts, in accordance with R-R ASBs Nos. 73–A68 and 73–A69, as applicable, dated November 1997, as follows:

(1) For engines with less than 200 hours time in service (TIS) since new, overhaul, or repair of the BFCU, inspect within 2 months, or 100 hours TIS after the effective date of this AD, whichever occurs first.

(2) For engines with 200 or more hours TIS since new, overhaul, or repair of the BFCU, inspect at the next engine removal after the effective date of this AD.

(c) For R-R Viper Mk. 601 series engines, perform a one-time inspection of the BFCU augmentor and bypass valve joint washer for joint washer integrity, and replace, if necessary, with serviceable parts, in accordance with R-R ASBs Nos. 73–A35 and 73–A36, as applicable, dated November 1997, as follows:

(1) For engines with less than 200 hours TIS since new, overhaul, or repair of the BFCU, inspect within 2 months, or 100 hours TIS after the effective date of this AD, whichever occurs first.

(2) For engines with 200 or more hours TIS since new, overhaul, or repair of the BFCU, inspect at the next engine removal after the effective date of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following R-R ASBs:

Document No.	Pages	Date
73–A35 Total Pages: 6.	1–6	Nov. 1997.
73–A36 Total Pages: 6.	1–6	Nov. 1997.
73–A68 Total Pages: 6.	1–6	Nov. 1997.
73–A69 Total Pages: 6.	1–6	Nov. 1997.
73–A120 Total Pages: 6.	1–6	Nov. 1997.
73–A121 Total Pages: 6.	1–6	Nov. 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Limited, Bristol Engines Division, Technical Publications Department CLS–4, P.O. Box 3, Filton, Bristol, BS34 7QE England; telephone 117–979–1234, fax 117–979–7575. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 12, 1999.

Issued in Burlington, Massachusetts, on November 30, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–32800 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–5]

Establishment of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation of the Cincinnati/Northern Kentucky International Class C Airspace Area; KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the establishment of the Cincinnati/Northern Kentucky International Airport Class B airspace area, and revocation of the Cincinnati/Northern Kentucky International Airport Class C airspace area, until further notice. The FAA is taking this action to conduct an administrative review of the Cincinnati terminal airspace area.

DATES: The effective date of 0910 UTC, December 31, 1998, is delayed until further notice.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Airspace Docket No. 93–AWA–5, published in the **Federal Register** on November 30, 1998 (63 FR 65972), established the Cincinnati/Northern Kentucky International Airport Class B airspace area, and revoked the Cincinnati/Northern Kentucky International Airport Class C airspace area, and was orginally scheduled to be implemented on December 31, 1998. However, to allow additional time for an administrative review of the Cincinnati terminal airspace area, the FAA is delaying the effective date of the establishment of the Cincinnati/Northern Kentucky International Airport Class B airspace area, and revocation of the Cincinnati/Northern Kentucky International Class C airspace area, KY, Final Rule until further notice.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

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Delay of Effective Date

The effective date of the final rule, Airspace Docket 93–AWA–5, as published in the **Federal Register** on November 30, 1998 (63 FR 65972), is hereby delayed until further notice.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on December 7, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–33094 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 98N–0979]

Investigational New Drug Applications; Clinical Holds

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing investigational new drug applications (IND's) for human drug and biological products. This action amends the IND clinical hold requirements to state that the agency will respond in writing to a sponsor's request that a clinical hold be removed from an investigation within 30-calendar days of the agency's receipt of the request and the sponsor's complete response to the issue(s) that led to the clinical hold. FDA is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedure for notice-and-comment rulemaking to provide a procedural framework to finalize the rule in the event the agency receives significant adverse comments and withdraws this direct final rule.

DATES: This regulation is effective April 28, 1999. Submit written comments on or before March 1, 1999. If no timely significant adverse comments are received, the agency will publish a document in the **Federal Register** before March 29, 1999, confirming the effective date of the direct final rule. If timely significant adverse comments are received, the agency will publish a document of significant adverse comment in the **Federal Register** withdrawing this direct final rule before March 29, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, or

Rebecca A. Devine, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Introduction

On November 21, 1997, President Clinton signed into law the Modernization Act (Pub. L. 105–115). Section 117 of the Modernization Act amends the Federal Food, Drug, and Cosmetic Act (the act) by codifying in section 505(i) (21 U.S.C. 355(i)) several of the procedures and requirements governing the use of investigational new drugs that are already set forth in FDA's regulations (parts 50 and 312 (21 CFR parts 50 and 312)).

Section 505(i)(2) of the act, as amended by the Modernization Act, provides that if a sponsor of an IND that has been placed on clinical hold requests in writing that the clinical hold be removed and submits a complete response to the issue(s) identified in the clinical hold order, FDA is required to respond in writing to the sponsor within 30-calendar days of receipt of the complete response. This direct final rule amends § 312.42(e) to reflect this new statutory requirement and to clarify when a sponsor may resume an investigation after FDA issues a clinical hold order.

In the **Federal Register** of May 14, 1998 (63 FR 26809), FDA announced the availability of a guidance document entitled "Submitting and Reviewing Complete Responses to Clinical Holds." This guidance to industry describes how applicants should submit responses to clinical holds so that they may be identified as complete responses.

B. Background

The procedures and requirements governing the use of investigational new drugs, including the submission and review of IND's, are set forth in part 312. An investigational new drug is a new drug or biological drug that is used in a clinical investigation. A clinical investigation is an experiment in which a drug is administered or dispensed to, or used involving, one or more human subjects. An investigational new drug that meets the requirements of part 312 is exempt from the premarket approval requirements that are otherwise applicable, and may be shipped lawfully for the purpose of conducting clinical investigations of the drug.

Part 312 applies to all clinical investigations of products that are subject to section 505 of the act, or to the licensing provisions of section 351 of the Public Health Service Act (42 U.S.C. 262), with one principal exemption—certain clinical investigations of drugs that have received premarket approval and are lawfully marketed.

The person who takes responsibility for and initiates a clinical investigation of an investigational new drug is the IND sponsor. The sponsor may be an individual, a pharmaceutical company, a government agency, an academic institution, or other entity. The individual who actually conducts a clinical investigation and administers the investigational drug to patients is the investigator (the investigator may also be the sponsor). Responsibilities of a sponsor include: (1) Notifying FDA of any serious and unexpected adverse experience associated with the use of the drug; (2) selecting qualified investigators and overseeing the conduct of those investigators; (3) ensuring that the investigations are performed in accordance with the investigational plan and protocols contained in the IND; (4) providing investigators with an investigator's brochure; and (5) submitting an annual report to FDA.

A sponsor may not begin clinical testing with an investigational new drug until an IND is submitted to FDA and is in effect for that drug. The IND content and format requirements are set forth in § 312.23. An IND automatically becomes effective 30-calendar days after FDA receives the initial IND submission (or earlier upon FDA's notification), unless FDA informs the sponsor that the investigation may not proceed (i.e., a clinical hold is issued).

A clinical hold is an order that FDA issues to the sponsor to delay a proposed clinical investigation or to suspend an ongoing investigation. Section 505(i) of the act, as amended by the Modernization Act, verifies FDA's authority to issue a clinical hold and endorses FDA regulations that describe the grounds upon which a clinical hold may be issued. Under such regulations, codified in § 312.42, the basis for a clinical hold depends on the phase of the clinical study. FDA may place a proposed or ongoing Phase 1 investigation on clinical hold if it finds any of the following: (1) Unreasonable and significant risk of illness or injury; (2) unqualified clinical investigators; (3) a misleading, erroneous, or materially incomplete investigator brochure; or (4) insufficient information in the IND to assess the risks to subjects. A Phase 2 or Phase 3 study may be suspended for any of these reasons or, in addition, because it is deficient in design to meet its stated objectives. The clinical hold regulations specify additional grounds for placing a hold on a treatment IND or treatment protocol or any study not designed to be adequate and well-controlled (§ 312.42(b)(3) and (b)(4)). An investigation that has been placed on clinical hold may resume only after the deficiency that prompted the clinical hold is corrected by the sponsor and the hold has been released by FDA.

C. Description of the Direct Final Rule

Current § 312.42(e) describes when a clinical investigation may resume after a clinical hold has been imposed by FDA. An investigation may resume after the Division Director with responsibility for review of the IND notifies the sponsor that the investigation may proceed. This notification is usually made after the sponsor corrects the deficiency or deficiencies that resulted in the clinical hold. Resumption of an investigation may be authorized by telephone or other means of rapid communication. Under the current regulation, no timeframe is given within which FDA will notify the sponsor that an investigation may resume after the sponsor has submitted answers to the deficiencies that resulted in the clinical hold and has requested that FDA remove the clinical hold.

As explained previously, FDA is now required under section 505(i)(2) of the act to respond to a written request from a sponsor that a clinical hold be removed within 30-calendar days of receipt of the request and the sponsor's complete response to the issue(s) that led to the clinical hold. Therefore, FDA is amending § 312.42(e) to reflect this requirement. In requesting that the clinical hold be removed, the sponsor of the IND must address all of the clinical hold issues that the agency noted in the clinical hold order. FDA may notify the sponsor of its decision on the request to release the clinical hold by telephone or other means of rapid communication, but a written response will be issued within 30-calendar days of receipt of the sponsor's request and complete response to the issue(s) that led to the clinical hold. If FDA determines that the clinical hold will be maintained, the written response will state the reasons for such decision.

In addition, under current § 312.42(e), the terms of certain clinical holds may permit an investigation to resume without FDA's prior notification once the correction or modification that caused the clinical hold is made. FDA is deleting the first sentence of current § 312.42(e) because it does not accurately reflect the agency's practice in imposing a clinical hold. The types of concerns that FDA might raise with regard to a clinical investigation that could be remedied and implemented without prior agency notification do not require the imposition of a clinical hold. Such concerns are generally resolved through discussions between the sponsor and FDA. FDA generally imposes a clinical hold on an investigation if the deficiencies are such that the study's resumption would require prior approval by the agency. This revision will help eliminate any confusion regarding whether a clinical hold has been placed and the process of removing a clinical hold from an investigation and any inconsistent treatment of IND's by different units within FDA.

II. Direct Final Rulemaking

FDA has determined that this amendment to the agency's regulations governing IND's for human drug and biological products is suitable for a direct final rule. The actions taken should be noncontroversial and the agency does not anticipate receiving any significant adverse comments. This direct final rule amends § 312.42(e) to reflect section 117 of the Modernization Act and current agency practice in imposing a clinical hold.

If FDA does not receive significant adverse comment on or before March 1, 1999, the agency will publish a document in the **Federal Register** before March 29, 1999, confirming the effective date of the direct final rule. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule before March 29, 1999.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, which is identical to the direct final rule, that provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule and the agency will consider such comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule.

If a significant adverse comment applies to part of this rule and that part may be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a class of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impact

FDA has examined the impacts of this direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the

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economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on small entities. The agency has considered the effect that this rule will have on small entities, including small businesses, and certifies that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million (adjusted annually for inflation) in any 1 year. This rule will not result in an expenditure of $100 million or more on any governmental entity or the private sector, so no budgetary impact statement is required.

V. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Request for Comments

Interested persons may, on or before March 1, 1999, submit to the Dockets Management Branch (address above) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended to read as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

2. Section 312.42 is amended by revising paragraph (e) to read as follows:

§ 312.42 Clinical holds and requests for modification.

* * * * *

(e) *Resumption of clinical investigations.* An investigation may only resume after FDA (usually the Division Director, or the Director's designee, with responsibility for review of the IND) has notified the sponsor that the investigation may proceed. Resumption of the affected investigation(s) will be authorized when the sponsor corrects the deficiency(ies) previously cited or otherwise satisfies the agency that the investigation(s) can proceed. FDA may notify a sponsor of its determination regarding the clinical hold by telephone or other means of rapid communication. If a sponsor of an IND that has been placed on clinical hold requests in writing that the clinical hold be removed and submits a complete response to the issue(s) identified in the clinical hold order, FDA shall respond in writing to the sponsor within 30-calendar days of receipt of the request and the complete response. FDA's response will either remove or maintain the clinical hold, and will state the reasons for such determination. Notwithstanding the 30-calendar day response time, a sponsor may not proceed with a clinical trial on which a clinical hold has been imposed until the sponsor has been notified by FDA that the hold has been lifted.

* * * * *

Dated: December 4, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–33029 Filed 12–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8795]

RIN 1545–AT78

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance on the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of plan amendments, which provide for a significant reduction in the rate of future benefit accural, to participants in the plan and certain other parties.

DATES: Effective Date: December 14, 1998.

Applicability Dates: For dates of applicability of these regulations, see Effective Dates under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Diane S. Bloom at (202)622–6214 or Christine L. Keller at (202)622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3705(d)) under the control number 1545–1477. The collection of information in these final regulations is in § 1.411(d)–6. Responses to this collection of information are required in order to obtain a benefit. Specifically, this information is required for a taxpayer who wants to amend a qualified plan to significantly reduce the rate of future benefit accrual. This information will be used to notify participants, alternate payees and employee organizations of the amendment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The estimated average burden per recordkeeper varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated number of respondents: 3,000.

Estimated annual frequency of responses: Once.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 12, 1995, temporary regulations (TD 8631), under section 411 of the Internal Revenue Code, 26 U.S.C. 411, were filed, providing guidance on section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1054(h). The temporary regulations were published in the **Federal Register** on December 15, 1995 (60 FR 64320). A notice of proposed rulemaking (EE–34–95), cross-referencing the temporary regulations, was published in the **Federal Register** (60 FR 64401) on the same day.

After consideration of the comments received regarding the proposed regulations, the temporary regulations are replaced and the proposed regulations are adopted as revised by this Treasury decision.

Section 204(h) was added to ERISA by section 11006(a) of the Single-Employer Pension Plan Amendments Act of 1986 (Title XI of Pub. L. 99–272), and was amended by section 1879(u)(1) of the Tax Reform Act of 1986, Pub. L. 99–514. Pursuant to section 101(a) of the Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA (including section 204 of ERISA). Under section 104 of Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respect to parts 2 and 3 of subtitle B of title I of ERISA, but, in exercising such authority, is bound by the regulations issued by the Secretary of the Treasury.

In addition to the proposed and temporary regulations, prior guidance relating to the requirements of section 204(h) has been provided in Rev. Proc. 94–13 (1994–1 C.B. 566), Notice 90–73 (1990–2 C.B. 353), Notice 89–92 (1989–2 C.B. 410), Rev. Proc. 89–65 (1989–2 C.B. 786), Notice 88–131 (1988–2 C.B. 546), and Notice 87–21 (1987–1 C.B. 458).

Explanation of Provisions

Section 204(h) applies if a defined benefit plan or a money purchase pension or other individual account plan that is subject to the funding standards of section 302 of ERISA is amended to provide for a significant reduction in the rate of future benefit accrual. It requires the plan administrator to give written notice of the amendment to participants in the plan, to alternate payees, and to employee organizations representing participants in the plan (or to a person designated, in writing, to receive the notice on behalf of a participant, alternate payee, or employee organization). The notice must set forth the plan amendment and its effective date and must be provided after adoption of the amendment and not less than 15 days before the effective date of the amendment.

A plan amendment that is subject to the notice requirements of section 204(h) may also be subject to additional reporting and disclosure requirements under title I of ERISA, such as the requirement to provide a summary of material modifications. See sections 102(a) and 104(a) of ERISA, 29 U.S.C. 1022 and 1024, and the regulations thereunder for guidance on when a summary of material modifications must be provided. Section 204(h) notice must be provided at least 15 days before the effective date of an amendment significantly reducing the rate of future benefit accrual, even though a summary of material modifications describing the amendment is provided at a later date.

Summary of Comments

Commentators generally supported the basic rules in the proposed and temporary regulations, and the final regulations are substantially similar to the proposed and temporary regulations. However, a number of clarifications have been made in response to comments.

For example, changes have been made in the rules for cases in which there has been a failure to notify all affected participants in accordance with section 204(h). The proposed and temporary regulations provided that if a plan administrator fails to notify more than a de minimis percentage of affected participants, the plan administrator is considered to have complied with section 204(h) only with respect to those participants who were provided with section 204(h) notice. In response to comments, the final regulations have added a requirement that the plan administrator have acted in good faith in order for this relief to apply. Thus, where there is an intentional failure to give section 204(h) notice, the amendment will not be effective as to any participant.

In addition, the final regulations provide that the basic rule in Q&A–13 of the final regulations (that the amendment will not be effective with respect to participants or alternate payees who did not receive section 204(h) notice) applies unless the number of participants who were not provided with section 204(h) notice is de minimis and certain other conditions (described in Q&A–14 of the final regulations) are satisfied. Thus, the regulations clarify that, except for the limited circumstances set forth in Q&A–14 of the final regulations relating to certain de minimis failures to notify, the amendment will not be effective with respect to participants or alternate payees who did not receive notice in accordance with section 204(h).

At the suggestion of commentators, the final regulations also address the application of section 204(h) to a sale of a business, as well as its application to plan mergers and transfers of plan assets and liabilities. The final regulations add examples that apply the general principles established under the regulations to typical sales and merger transactions. In response to one commentator, an example has been added to illustrate that a plan merger can require notice under section 204(h).

In response to requests by commentators for additional guidance on the mechanics of providing section 204(h) notice, Q&A–11 has been added providing rules that can be relied on to calculate the 15-day notice period. These rules provide that when section 204(h) notice is delivered by first class mail, the notice is considered given as of the date of the United States postmark stamped on the cover in which the document is mailed.

Commentators also suggested that the rules under the temporary regulations concerning plan terminations needed to be expanded. The final regulations contain an example illustrating the application of section 204(h) to certain specific situations that arise when a defined benefit plan cannot be terminated on a proposed termination date because there is a failure to satisfy all of the requirements of title IV of ERISA for terminating the plan. The example provides, in part, that if all of the requirements of title IV are not satisfied accruals will still cease if an amendment has been adopted that ceases accruals as of a specified date and section 204(h) notice of that amendment, including a statement of its effective date, is given. Apart from this clarification, the rule under the temporary regulations concerning terminations under title IV remains unchanged.

The final regulations, like the proposed and temporary regulations, interpret section 204(h) as applying with respect to changes that affect the annual benefit commencing at normal retirement age. The statutory phrase "rate of future benefit accrual" implies, on its face, that section 204(h) is limited to changes in the accrued benefit. Nonetheless, one commentator suggested that the temporary regulations be changed to require section 204(h) notice when defined benefit plans are amended to significantly reduce or eliminate early retirement subsidies or optional forms of benefit. Most commentators, however, generally supported the basic standard of the regulations under which a reduction in the rate of future benefit accrual depends on whether the amendment affects the annual benefit commencing at normal retirement age. Some commentators also noted that the approach in the proposed and temporary regulations would ease plan administration. Accordingly, the final regulations retain the rule of the proposed and temporary regulations that, for purposes of section 204(h), an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age.

The final regulations clarify that the term "annual benefit commencing at normal retirement age" refers, in a defined benefit plan, to the benefit payable in the form in which the terms of the plan express the accrued benefit. In the case of a defined benefit plan that does not express the accrued benefit as an annual benefit, the final regulations provide that the term "annual benefit commencing at normal retirement age" refers to the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan under the principles of section 411(c)(3) (relating to actuarial adjustments to determine an employee's accrued benefit).

Some commentators also suggested that certain bright-line standards be established for some of the rules, including how to determine whether an amendment results in a significant reduction and what constitutes a de minimis percentage of participants for purposes of the rules relating to failure to provide notice to all participants and alternate payees. Because the wide variety of potential facts and circumstances make it difficult to adopt clear standards that are appropriate in all circumstances, the final regulations do not include such bright-line standards.

Effective Dates

The final regulations apply to amendments adopted on or after December 12, 1998. The final regulations provide that the rules set forth in the temporary regulations apply to determine whether section 204(h) and the final regulations are satisfied with respect to an amendment that is adopted before the effective date of the final regulations (and on or after the effective date of the temporary regulations).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the notice of proposed rulemaking preceding the regulations was issued prior to March 24, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Christine L. Keller. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by removing the entry for § 1.411(d)–6T and by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.411(d)–6 is issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. * * *

§ 1.411(d)–6T [Removed]

Par. 2. Section 1.411(d)–6T is removed.

Par. 3. Section 1.411(d)–6 is added to read as follows:

§ 1.411(d)–6 Section 204(h) notice.

Q–1: What are the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) (29 U.S.C 1054(h))?

A–1: (a) *Requirements of section 204(h).* Section 204(h) of ERISA ("section 204(h)") generally requires written notice of an amendment to certain plans that provides for a significant reduction in the rate of future benefit accrual. Section 204(h) generally requires the notice to be provided to plan participants, alternate payees, and employee organizations. The plan administrator must provide the notice after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections 102 and 104 of ERISA, and the regulations thereunder, for requirements relating to summary plan descriptions and summaries of material modifications.

Q–2: To which plans does section 204(h) apply?

A–2: Section 204(h) applies to defined benefit plans that are subject to part 2 of subtitle B of title I of ERISA and to individual account plans that are subject to both such part 2 and the funding standards of section 302 of ERISA. Accordingly, individual account plans that are not subject to the funding standards of section 302, such as profit-sharing and stock bonus plans, are not subject to section 204(h).

Q–3: What is "section 204(h) notice"?

A–3: "Section 204(h) notice" is notice that complies with section 204(h) and the rules in this section.

Q–4: For which amendments is section 204(h) notice required?

A–4: (a) *In general.* Section 204(h) notice is required for an amendment to a plan described in Q&A–2 of this section that provides for a significant reduction in the rate of future benefit accrual.

(b) *Delegation of authority to Commissioner.* The Commissioner of Internal Revenue may provide through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see § 601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) of this Q&A–4 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code of 1986, as amended (Code) (including requirements for tax qualification), ERISA, or other applicable federal law.

Q–5: What is an amendment that affects the rate of future benefit accrual for purposes of section 204(h)?

A–5: (a) *In general*—(1) *Defined benefit plans.* For purposes of section 204(h), an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age. For this purpose, the annual benefit commencing at normal retirement age is the benefit payable in the form in which the terms of the plan express the accrued benefit (or, in the case of a plan in which the accrued benefit is not expressed in the form of an annual benefit commencing at normal retirement age, the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan, as determined in accordance with the principles of section 411(c)(3) of the Code).

(2) *Individual account plans.* For purposes of section 204(h), an amendment to an individual account plan affects the rate of future benefit accrual only if it is reasonably expected to change the amounts allocated in the future to participants' accounts. Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(b) *Determination of rate of future benefit accrual.* In accordance with paragraph (a) of this Q&A–5, the rate of future benefit accrual is determined without regard to optional forms of benefit (other than the annual benefit described in paragraph (a) of this Q&A–5), early retirement benefits, or retirement-type subsidies, within the meaning of such terms as used in section 411(d)(6) of the Code (section 204(g) of ERISA). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in § 1.401(a)(4)–4(e).

(c) *Examples.* These examples illustrate the rules in this Q&A–5:

Example 1. A plan is amended with respect to future benefit accruals to eliminate a right to commencement of a benefit prior to normal retirement age. Because the amendment does not change the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Example 2. A plan is amended to modify the actuarial factors used in converting an annuity form of distribution to a single sum form of distribution. The use of these modified assumptions results in a lower single sum. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not change the rate of future benefit accrual for purposes of section 204(h).

Q–6: What plan provisions are taken into account in determining whether there has been a reduction in the rate of future benefit accrual?

A–6: (a) *Plan provisions taken into account.* All plan provisions that may affect the rate of future benefit accrual of participants or alternate payees must be taken into account in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual. Such provisions include, for example, the dollar amount or percentage of compensation on which benefit accruals are based; in the case of a plan using permitted disparity under section 401(l) of the Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l)); the definition of service or compensation taken into account in determining an employee's benefit accrual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in § 1.401(a)(4)–8(b)(3)(i)).

(b) *Plan provisions not taken into account.* Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. For example, provisions such as vesting schedules or optional forms of benefit (other than the annual benefit described in Q&A–5(a) of this section) are not taken into account.

(c) *Examples.* The following example illustrates the rules in this Q&A–6:

Example. A defined benefit plan provides a normal retirement benefit equal to 50% of final average compensation times a fraction (not in excess of one), the numerator of which equals the number of years of participation in the plan and the denominator of which is 20. A plan amendment that changes the numerator or denominator of that fraction must be taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

Q–7: What is the basic principle used in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h)?

A–7: Whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted. For a defined benefit plan this is done by comparing the amount of the annual benefit commencing at normal retirement age as determined under Q&A–5(a)(1) under the terms of the plan as amended, with the amount of the annual benefit commencing at normal retirement age as determined under Q&A–5(a)(1) under the terms of the plan prior to amendment. For an individual account plan, this is done in accordance with Q&A–5(a)(2) by comparing the amounts to be allocated in the future to participants' accounts under the terms of the plan as amended, with the amounts to be allocated in the future to participants' accounts under the terms of the plan prior to amendment.

Q–8: Are employees who have not yet become participants in a plan at the time an amendment to the plan is adopted taken into account in applying section 204(h) with respect to the amendment?

A–8: No. Employees who have not yet become participants in a plan at the

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time an amendment to the plan is adopted are not taken into account in applying section 204(h) with respect to the amendment. Thus, if section 204(h) notice is required with respect to an amendment, the plan administrator need not provide section 204(h) notice to such employees.

Q–9: If section 204(h) notice is required with respect to an amendment, must such notice be provided to participants or alternate payees whose rate of future benefit accrual is not reduced by the amendment?

A–9: (a) *In general.* A plan administrator need not provide section 204(h) notice to any participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to any alternate payee under an applicable qualified domestic relations order whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. A plan administrator need not provide section 204(h) notice to an employee organization unless the employee organization represents a participant to whom section 204(h) notice is required to be provided.

(b) *Facts and circumstances test.* Whether a participant or alternate payee is described in paragraph (a) of this Q&A–9 is determined based on all relevant facts and circumstances at the time the amendment is adopted.

(c) *Examples.* The following examples illustrate the rules in this Q&A–9:

Example 1. Plan A is amended to reduce significantly the rate of future benefit accrual of all current employees who are participants in the plan. It is reasonable to expect based on the facts and circumstances that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or that of former employees who are entitled to vested benefits. Accordingly, the plan administrator is not required to provide section 204(h) notice to such former employees.

Example 2. The facts are the same as in Example 1 except that Plan A also covers two groups of alternate payees. The alternate payees in the first group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit is determined at the time the former spouse begins receiving retirement benefits under the plan. The alternate payees in the second group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit was determined at the time the qualified domestic relations order was issued by the court. It is reasonable to expect that the benefits to be received by the second group of alternate payees will not be affected by any reduction in a former spouse's rate of future benefit accrual. Accordingly, the plan administrator is not required to provide section 204(h) notice to the alternate payees in the second group.

Example 3. Plan B covers hourly employees and salaried employees. Plan B provides the same rate of benefit accrual for both groups. The employer amends Plan B to reduce significantly the rate of future benefit accrual of the salaried employees only. At that time, it is reasonable to expect that only a small percentage of hourly employees will become salaried in the future. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are currently hourly employees.

Example 4. Plan C covers employees in Division M and employees in Division N. Plan C provides the same rate of benefit accrual for both groups. The employer amends Plan C to reduce significantly the rate of future benefit accrual of employees in Division M. At that time, it is reasonable to expect that in the future only a small percentage of employees in Division N will be transferred to Division M. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are employees in Division N.

Example 5. The facts are the same facts as in *Example 4*, except that at the time the amendment is adopted, it is expected that soon thereafter Division N will be merged into Division M in connection with a corporate reorganization (and the employees in Division N will become subject to the plan's amended benefit formula applicable to the employees in Division M). In this instance, the plan administrator must provide section 204(h) notice to the participants who are employees in Division M and to the participants who are employees in Division N.

Q–10: Does a notice fail to comply with section 204(h) if it contains a summary of the amendment and the effective date, without the text of the amendment itself?

A–10: No, the notice does not fail to comply with section 204(h) merely because the notice contains a summary of the amendment, rather than the text of the amendment, if the summary is written in a manner calculated to be understood by the average plan participant and contains the effective date. The summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment.

Q–11: How may section 204(h) notice be provided?

A–11: A plan administrator (including a person acting on behalf of the plan administrator such as the employer or plan trustee) may use any method reasonably calculated to ensure actual receipt of the section 204(h) notice. First class mail to the last known address of the party is an acceptable delivery method. Likewise, hand delivery is acceptable. Section 204(h) notice may be enclosed with or combined with other notice provided by the employer or plan administrator. For example, a notice of intent to terminate under title IV of ERISA or a notice to interested parties of the application for a determination letter may also serve as section 204(h) notice if it otherwise meets the requirements of this section.

Q–12: How may the 15-day notice requirement be satisfied?

A–12: (a) *Generally.* A section 204(h) notice is deemed to have been provided at least 15 days before the effective date of the amendment if it has been provided by the end of the 15th day before the effective date. When notice is delivered by first class mail, the notice is considered provided as of the date of the United States postmark stamped on the cover in which the document is mailed.

(b) *Example.* The following example illustrates the provisions of this Q&A–12:

Example. Plan A is amended to reduce significantly the rate of future benefit accruals effective December 1, 1999. The plan administrator causes section 204(h) notice to be mailed to all affected participants. The mailing is postmarked November 16, 1999. Accordingly, the section 204(h) notice is considered to be given not less than 15 days before the effective date of the plan amendment.

Q–13: If a plan administrator fails to provide section 204(h) notice to some participants or alternate payees, will the plan administrator be considered to have complied with section 204(h) with respect to participants and alternate payees who were provided with section 204(h) notice?

A–13: The plan administrator will be considered to have complied with section 204(h) with respect to a participant to whom section 204(h) notice is required to be provided if the participant and any employee organization representing the participant were provided with section 204(h) notice, and if the plan administrator has made a good faith effort to comply with the requirements of section 204(h). The plan administrator will be considered to have complied with section 204(h) with respect to an alternate payee to whom section 204(h) notice is required to be provided if the alternate payee was provided with section 204(h) notice, and if the plan administrator made a good faith effort to comply with the requirements of section 204(h). If these conditions are satisfied the amendment will become effective in accordance with its terms with respect to the participants and alternate payees to whom section 204(h) notice was provided. Except to the extent provided in Q&A–14, the amendment will not become effective with respect to those participants and alternate payees who were not provided with section 204(h) notice.

Q–14: Will a plan be considered to have complied with section 204(h) if the plan administrator provides section 204(h) notice to all but a de minimis percentage of participants and alternate payees to whom section 204(h) notice must be provided?

A–14: The plan will be considered to have complied with section 204(h) and the amendment will become effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required to be provided (including those who did not receive notice prior to discovery of the omission), if the plan administrator—

(a) Has made a good faith effort to comply with the requirements of section 204(h);

(b) Has provided section 204(h) notice to each employee organization that represents any participant to whom section 204(h) notice is required to be provided;

(c) Has failed to provide section 204(h) notice to no more than a de minimis percentage of participants and alternate payees to whom section 204(h) notice is required to be provided; and

(d) Provides section 204(h) notice to those participants and alternate payees promptly upon discovering the oversight.

Q–15: How does section 204(h) apply to the sale of a business?

A–15: (a) *Generally.* Whether section 204(h) notice is required in connection with the sale of a business depends on whether a plan amendment is adopted that significantly reduces the rate of future benefit accrual.

(b) *Examples.* The following examples illustrate the rules of this Q&A–15:

Example 1. Corporation Q maintains Plan A, a defined benefit plan that covers all employees of Corporation Q, including employees in its Division M. Plan A provides that participating employees cease to accrue benefits when they cease to be employees of Corporation Q. On January 1, 2000, Corporation Q sells all of the assets of Division M to Corporation R. Corporation R maintains Plan B, which covers all of the employees of Corporation R. Under the sale agreement, employees of Division M become employees of Corporation R on the date of the sale (and cease to be employees of Corporation Q), Corporation Q continues to maintain Plan A following the sale, and the employees of Division M become participants in Plan B. In this Example, no section 204(h) notice is required because no plan amendment was adopted that reduced the rate of future benefit accrual. The employees of Division M who become employees of Corporation R ceased to accrue benefits under Plan A because their employment with Corporation Q terminated.

Example 2. Subsidiary Y is a wholly owned subsidiary of Corporation S. Subsidiary Y maintains Plan C, a defined benefit plan that covers employees of Subsidiary Y. Corporation S sells all of the stock of Subsidiary Y to Corporation T. At the effective date of the sale of the stock of Subsidiary Y, in accordance with the sale agreement between Corporation S and Corporation T, Subsidiary Y amends Plan C so that all benefit accruals cease. In this Example, section 204(h) notice is required to be provided because Subsidiary Y adopted a plan amendment that significantly reduced the rate of future benefit accrual in Plan C.

Example 3. Corporation U maintains two plans: Plan D covers employees of Division N and Plan E covers the rest of the employees of Corporation U. Plan E provides a significantly lower rate of future benefit accrual than Plan D. Plan D is merged with Plan E, and all of the employees of Corporation U will accrue benefits under the merged plan in accordance with the benefit formula of former Plan E. In this Example, section 204(h) notice is required.

Example 4. Corporation V maintains several plans, including Plan F, which covers employees of Division P. Plan F provides that participating employees cease to accrue further benefits under the plan when they cease to be employees of Corporation V. Corporation V sells all of the assets of Division P to Corporation W, which maintains Plan G for its employees. Plan G provides a significantly lower rate of future benefit accrual than Plan F. Plan F is merged with Plan G as part of the sale, and employees of Division P who become employees of Corporation W will accrue benefits under the merged plan in accordance with the benefit formula of former Plan G. In this Example, no section 204(h) notice is required because no plan amendment was adopted that reduced the rate of future benefit accrual. Under the terms of Plan F as in effect prior to the merger, employees of Division P cease to accrue any further benefits under Plan F after the date of the sale because their employment with Corporation V terminated.

Q–16: How are amendments to cease accruals and terminate a plan treated under section 204(h)?

A–16: (a) *General rule*—(1) *Rule.* An amendment providing for the cessation of benefit accruals on a specified future date and for the termination of a plan is subject to section 204(h).

(2) *Example.* The following example illustrates the rule of paragraph (a)(1) of this Q&A–16:

Example. (i) An employer adopts an amendment that provides for the cessation of benefit accruals under a defined benefit plan on December 31, 2001, and for the termination of the plan pursuant to title IV of ERISA as of a proposed termination date that is also December 31, 2001. As part of the notice of intent to terminate required under title IV in order to terminate the plan, the plan administrator gives section 204(h) notice of the amendment ceasing accruals, which states that benefit accruals will cease "on December 31, 2001." However, because all the requirements of title IV for a plan termination are not satisfied, the plan cannot be terminated until a date that is later than December 31, 2001.

(ii) Nonetheless, because section 204(h) notice was given stating that the plan was amended to cease accruals on December 31, 2001, section 204(h) does not prevent the amendment to cease accruals from being effective on December 31, 2001. The result would be the same had the section 204(h) notice informed the participants that the plan was amended to provide for a proposed termination date of December 31, 2001, and to provide that "benefit accruals will cease on the proposed termination date whether or not the plan is terminated on that date." However, the cessation of accruals would not be effective on December 31, 2001, had the section 204(h) notice merely stated that benefit accruals would cease "on the termination date or on the proposed termination date.

(b) *Terminations in accordance with title IV of ERISA.* A plan that is terminated in accordance with title IV of ERISA is deemed to have satisfied section 204(h) not later than the termination date (or date of termination, as applicable) established under section 4048 of ERISA. Accordingly, section 204(h) would in no event require that any additional benefits accrue after the effective date of the termination.

(c) *Amendment effective before termination date of a plan subject to title IV of ERISA.* To the extent that an amendment providing for a significant reduction in the rate of future benefit accrual has an effective date that is earlier than the termination date (or date of termination, as applicable) established under section 4048 of ERISA, that amendment is subject to section 204(h). Accordingly, the plan administrator must provide section 204(h) notice (either separately or with or as part of the notice of intent to terminate) with respect to such an amendment.

Q–17: When does section 204(h) become effective?

A–17: (a) *Statutory effective date.* With respect to defined benefit plans, section 204(h) generally applies to plan amendments adopted on or after January 1, 1986. With respect to individual account plans, section 204(h) applies to plan amendments adopted on or after October 22, 1986.

(b) *Regulatory effective date*—(1) *General regulatory effective date.* This section is applicable for amendments adopted on or after December 12, 1998.

(2) *Special rule for amendments adopted under the temporary regulations.* Whether an amendment

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that is adopted on or after December 15, 1995 and before December 12, 1998 complies with section 204(h) is determined under the rules of § 1.411(d)–6T in effect prior to December 14, 1998 (See 1.411(d)–6T in 26 CFR Part 1 revised as of April 1, 1998).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, the table in paragraph (c) is amended by removing the entry for 1.411(d)6–T and by adding an entry in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.411(d)–6	1545–1447
* * * * *	

Approved: December 4, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–32925 Filed 12–11–98; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212–AA79

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums moves the final filing due date for premium declarations to October 15th for calendar year plans (so that it is the same as the extended Form 5500 due date) and makes parallel changes for non-calendar year plans.

EFFECTIVE DATE: February 12, 1999. The amendment applies to premium payment years beginning after 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Under the PBGC's regulation on Payment of Premiums (29 CFR Part 4007), final premium filings are generally due on the 15th day of the eighth full calendar month following the month in which the premium payment year begins (*e.g.*, for calendar year plans, September 15th). (Special rules apply to plans that change plan years and to new and newly-covered plans.) On April 10, 1992, the PBGC published in the **Federal Register** (at 57 FR 12666) a proposed amendment to its regulations that would (among other things) have deferred the final filing due date to the end of the ninth full calendar month of the premium payment year (*e.g.*, for calendar year plans, September 30th).

Seven commenters addressed this issue. Two indicated simple approval. The other five urged a further deferral, to the middle of the following month (*e.g.*, for calendar year plans, October 15th). The latter date is the due date (as often extended) for the Form 5500 and Schedule B thereto, on which the Alternative Calculation Method in the PBGC's regulation on Premium Rates (29 CFR part 4006) is based. Reasons given for the further deferral included the avoidance of confusion and administrative burdens caused by the premium form's not being coordinated with the Form 5500 and Schedule B, and the consistency and simplicity that would result if the filing due dates were coordinated.

The PBGC has concluded that the further deferral suggested by the commenters is appropriate, and that the method of computing the premium filing deadline for plans whose plan years do not begin on the first of a month should match the method for computing the Form 5500 filing deadline for such plans.

Accordingly, this final rule moves the final filing due date to the 15th day of the tenth full calendar month of the premium payment year, subject to the existing special rules for plans that change plan years and for new and newly-covered plans. Thus, the due date will now be October 15th for calendar year plans. For non-calendar-year plans with plan years beginning on the first day of the month, the extension is one month. For example, the final premium filing date for a July 1 plan moves from March 15 to April 15. A plan whose plan year begins on a date other than the first of a month gets a two-month extension from the due date under the old rule in order to parallel the Form 5500 due date. Thus, for example, a plan whose plan year begins on January 2d will now have until November 15 to file (compared to September 15 under the old rule).

Compliance With Rulemaking Guidelines; Economic Impact Analysis

This action has been reviewed by the Office of Management and Budget under Executive Order 12866 as an economically significant regulatory action. The Office of Management and Budget has determined that this action is a "major rule" as defined in 5 U.S.C. 804(2) for purposes of Congressional review of agency rulemaking under subtitle E of title II of the Small Business Regulatory Enforcement Fairness Act of 1996.

PBGC premium payments are included as receipts in the Federal budget. Moving the final premium due date will shift an estimated $350 million (representing primarily calendar year plans' final premium payments) from the end of fiscal year 1999 to the beginning of fiscal year 2000. Under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, OMB treats a rule with a Federal budget impact of over $100 million in one year as a major rule. Thus, the movement of the final premium filing date—which results only in deferral, not loss, of the approximately $350 million in premium payments that would otherwise be received on September 15—makes this a major rule.

The due date change will reduce the PBGC's interest income by about $2 million per year (one month of lost interest income on most plans' final premium payments), which represents less than one-quarter of one percent of the PBGC's annual premium revenue. Because the PBGC's lost interest income will be offset by an interest gain for premium payers, this extension creates a transfer from the PBGC to premium payers of approximately $2 million per year.

The rule, aimed at providing better customer service, will create benefits for premium payers in the form of reduced administrative burdens associated with PBGC premium filings. This is because plans will be able to prepare their final premium filings at the same time as their Form 5500 filings (including the Schedule B actuarial information). No alternative final due date would achieve this result more effectively or with less cost.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. The effect of this rule is simply to give most plan administrators one more month to file premium declarations and pay premiums than under the existing regulation. Premium payers that take advantage of the deferral will have the opportunity to get an additional month's investment earnings on the amount of their premium payments, and their service providers may charge less because the premium forms can be prepared at the same time as the Form 5500 filing. However, while the PBGC expects plans to realize administrative cost savings from this rule, it does not expect the economic impact to be significant for small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects in 29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4007 is amended as follows:

PART 4007—PAYMENT OF PREMIUMS

1. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. In § 4007.11, paragraph (a)(1) is amended by removing the words "the fifteenth day of the eighth full calendar month following the month in which the plan year began" and adding in their place the words "the fifteenth day of the tenth full calendar month following the end of the plan year preceding the premium payment year"; paragraph (a)(2)(ii) is amended by removing the words "the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins" and adding in their place the words "the fifteenth day of the tenth full calendar month following the end of the plan year preceding the premium payment year"; and paragraph (c)(1) is revised to read as follows:

§ 4007.11 Due dates.

* * * * *

(c) * * *

(1) The fifteenth day of the tenth full calendar month that began on or after the later of—

(i) The first day of the premium payment year; or

(ii) The day on which the plan became effective for benefit accruals for future service;

* * * * *

Issued in Washington, DC, this 7th day of December, 1998.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 98–33036 Filed 12–11–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 888g

Organizational and Representational Activities of Military Personnel

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; removal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 888g, Organizational and Representational Activities of Military Personnel. This rule is removed because it duplicates the information found in 32 CFR Part 143, DoD Policy on Organizations That Seek To Represent or Organize Members of the Armed Forces in Negotiation or Collective Bargaining.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lt Col James Moody, Headquarters, U.S. Air Force, AF/JAG, 1420 Air Force Pentagon, Washington, DC 20330–1420, (703) 614–5732.

SUPPLEMENTARY INFORMATION:

Authority: Section 8012, 70A Stat. 488 (10 U.S.C. 8012).

PART 888g—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 888g.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 98–33086 Filed 12–11–98; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–168]

RIN 2115–AE47

Drawbridge Operation Regulations: Fort Point Channel, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The District Commander, First Coast Guard District has issued a temporary deviation from the regulations listed under 33 CFR 117.599, governing the operation of the Northern Avenue Bridge, mile 0.0, across the Fort Point Channel in Boston. This deviation is being granted to allow repairs to the bridge fender system to commence continually without interruption. This deviation will allow the bridge owner, the City of Boston, to require a 24 hour advance notice for bridge openings, 7 a.m. to 8 p.m., daily, by calling (617) 635–7555. From 8 p.m. to 7 a.m., daily, the draw need not open for the passage of vessels. Vessels which can pass under the bridge without a bridge opening may do so at any time.

DATES: This deviation is effective from November 8, 1998 through January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Chief, Bridge Branch at (212) 668–7165.

SUPPLEMENTARY INFORMATION:

The City of Boston requested a temporary deviation from the operating regulations for the Northern Avenue Bridge mile 0.0, in order to conduct repairs to the bridge fender system. This work is essential for public safety. The existing bridge fender has deteriorated and must be replaced as soon as

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possible. Vessels that can pass under the bridge without an opening may do so at all times.

This deviation to the operating regulations will allow the City of Boston to open the bridge after a 24 hour advance notice is provided by calling (617) 635–7555. From 8 p.m. to 7 a.m., daily, the draw need not open for the passage of vessels. This deviation from the normal operating regulations is authorized under 33 CFR 117.35.

Dated: November 17, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 98–33076 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–98–171]

RIN 2115–AA97

Safety Zone: Explosive Load, Bath Iron Works, Bath, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone to close a portion of the Kennebec River to waterway traffic in a 400 foot radius around Bath Iron Works, Bath, ME, for an explosive load, from 6 a.m. November 25, 1998 through 12 p.m. December 23, 1998. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling and transportation of explosives. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 6 a.m. November 25, 1998 until 12 p.m. December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.D. Gafkjen, Chief of Response and Planning, Captain of the Port, Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after Federal Register publication. Due to the complex planning and coordination involved, final details for the closure were not provided to the Coast Guard until November 23, 1998, making it impossible to publish a NPRM or a final rule 30 days in advance. Publishing an NPRM and delaying its effective date would be contrary to public interest since this safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling of explosives.

Background and Purpose

The Explosive Load will occur from 6 a.m. November 25, 1998 until 12 p.m. to December 23, 1998. The safety zone covers the waters of the Kennebec River, Bath, ME, in a 400-foot radius around Bath Iron Works, Bath, ME. This safety zone is required to protect the maritime community from the hazards associated with the handling of explosives. Entry into this zone will be prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of the Kennebec River. Due to the limited duration of the safety zone, the fact that the safety zone will not restrict the entire channel of the Kennebec River, allowing traffic to continue without obstruction, and that advance maritime advisories will be made, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.e of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–CGD1–171 to read as follows:

§ 165.T01–CGD1–171 Explosive Load, Bath Iron Works, Bath, ME.

(a) *Location.* The safety zone covers the waters of the Kennebec River, Bath, ME, in a 400 foot radius around Bath Iron Works, Bath, ME.

(b) *Effective date.* The explosive load will occur from 6 a.m. November 25, 1998 until 12 p.m. December 23, 1998. The safety zone covers the waters of the Kennebec River, Bath, ME.

(c) *Regulations.* (1) The general regulations contained in 33 C.F.R. 165.23 apply.

(2) All persons shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed.

(3) In accordance with the general regulations in section 165.23 of this part, entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, ME.

Dated: November 24, 1998.

R.A. Nash,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 98–33080 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, and 402

[HCFA–6135–FC]

Medicare and Medicaid Program; Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule establishes procedures for imposing civil money penalties, assessments, and exclusions for certain violations of the Medicare and Medicaid programs. The regulations also provide for hearings and appeals when those penalties, assessments, and exclusions are imposed. These procedures are based on the procedures that the Office of the Inspector General has promulgated for the civil money penalties, assessments, and exclusions. These regulations are designed to protect program beneficiaries from unfit health care practitioners and to otherwise improve antifraud provisions under the Medicare and Medicaid Acts.

DATES: These regulations are effective on January 13, 1999. Comments must be received by February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Joel Cohen, (410) 786–3349

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–6135–FC, PO Box 26676, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850

Comments may also be submitted electronically to the following e-mail address: HCFA6135FC@hcfa.gov. For e-mail comment procedures, see the beginning of **SUPPLEMENTARY INFORMATION.** For further information on ordering copies of the **Federal Register** containing this document and on electronic access, see the beginning of **SUPPLEMENTARY INFORMATION.** Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

SUPPLEMENTARY INFORMATION:

E-Mail, Comments, Procedures, Availability of Copies, and Electronic Access

E-mail comments must include the full name and address of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–0047–P and the specific section or sections of the proposed rule. Both electronic and written comments received by the time and date indicated above will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890). Electronic and legible written comments will also be posted, along with this proposed rule, at the following web site: http://aspe.os.dhhs.gov/admnsimp/.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

In 1981, the Congress added section 1128A to the Social Security Act (the Act) (section 2105 of Pub.L. 97–35) to authorize the Secretary of Health and Human Services to impose civil money penalties and assessments on certain health care facilities, health care practitioners, and other suppliers under the Medicare and Medicaid programs. Civil money penalties and assessments provide an alternative enforcement tool for agencies to establish compliance with legal and program standards and are in addition to potential criminal proceedings.

Since 1981, the Congress has significantly increased both the number and the types of circumstances under which the Secretary may impose civil money penalties. Some of the civil money penalty authorities address fraud, misrepresentation, or falsification while others address noncompliance with programmatic or regulations requirements. The Secretary has delegated the authority for these provisions to either the Office of Inspector General (OIG) or HCFA (58 FR 52967, October 20, 1994). Under this delegation of authority, the OIG has the authority to impose civil money penalties and prosecute cases involving civil money penalties and assessments that were delegated to HCFA if HCFA and the OIG jointly determine it to be

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in the interest of economy, efficiency, or effective coordination of activities.

On October 31, 1994, the Social Security Amendments of 1994 (Pub. L. 103–432) were enacted. This law repealed several statutory provisions providing for civil money penalties and established additional civil money penalty provisions. On August 21, 1996, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) was enacted. This law provides for higher maximum civil money penalties ($10,000 instead of $2,000) for certain of the violations and also increased the assessments that can be imposed for those violations.

Most of the specific statutory provisions authorizing civil money penalties also permit the Secretary of Health and Human Services (or his or her designee) to impose an assessment in addition to the civil money penalty. An assessment is an additional monetary payment in lieu of damages sustained by HHS or a State agency. The maximum amount of the assessment varies according to the civil money penalty (from $1,000 to $25,000) and is not more than three times the amount claimed for each service upon which the civil money penalty was based. Also, for many statutory violations, the Secretary of Health and Human Services or his or her designee may exclude the individual or entity violating the statute from participating in a Federal health care program for certain specific periods of time. A Federal health care program is defined in section 1128B of the Act (42 U.S.C. 1320(a)–7b) as "any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of title 5, United States Code); or * * * any State health care program as defined in section 1128(h) of the Social Security Act."

The regulations currently governing civil money penalties, assessments, and civil money penalty-related exclusions are contained in 42 CFR part 1003. Procedures for hearings and appeals of civil money penalties, assessments, and exclusions are in 42 CFR part 1005.

II. Regulations Revisions

This final rule with comment period duplicates in substance 42 CFR part 1003 for most of the civil money penalties and related assessments that have been delegated to HCFA. Other rules concerning civil money penalties and assessment authorities that have been delegated to HCFA, such as those imposed for violations by long term care facilities and clinical laboratories, have already been codified in the Code of Federal Regulations. Civil money penalties and assessments that were added by the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33 (August 5, 1997) and that are delegated to HCFA in the future will be added to the Code of Federal Regulations through another **Federal Register** document, as will the specific rules concerning the exclusions that HCFA is authorized to impose.

Although we are not addressing the civil money penalties and assessments added by the BBA in this regulation, it is important to recognize the impact of the BBA on certain provisions of this regulation. Section 4507 of the BBA permits a physician or practitioner to enter into private contracts with Medicare beneficiaries for services furnished on or after January 1, 1998. If a physician or practitioner enters into a private contract, he or she has "opted out" of the Medicare program for two years for all covered items or services furnished to Medicare beneficiaries. A beneficiary who enters into a private contract agrees to waive the right to Medicare payment for services rendered by the physician or practitioner and to pay the physician or practitioner without regard to any limits that would otherwise apply to what the physician or practitioner could charge. We are clarifying here that physicians and practitioners who enter into valid private contracts will not be subject to civil money penalties and assessments under this regulation unless they knowingly and willfully violate the terms of the private agreement. In particular, physicians and practitioners will not be subject to penalties and assessments pursuant to section 1834(c)(4) of the Social Security Act, which provides for sanctions against physicians who charge in excess of the limiting charge, or section 1848(g)(4) of the Act, which imposes sanctions on physicians and practitioners who violate the mandatory submission of claims requirement of the statute.

The civil money penalties to which this rule pertains include those that apply to Medicare payments or billings as "assignment" violations; violations involving the failure to provide information or improperly providing information; violations of charge or service limits; and violations of Medigap and Medicare Select requirements.

This rule adds a new part to chapter IV of title 42 of the Code of Federal Regulations. This new part is part 402 and is entitled Civil Money Penalties, Assessments and Exclusions. We are dividing the part into three subparts for the present: Subpart A-General Requirements; Subpart B-Civil Money Penalties and Assessments; and Subpart C-Exclusions (which is reserved for future use).

Subpart A contains the statutory authorities for most of the civil money penalties, assessments, and exclusions that the Secretary has delegated to HCFA. The remainder of the subpart contains the general requirements and procedures that are common to the imposition of civil money penalties, assessments, and exclusions. These procedures are based on the OIG regulations in 42 CFR part 1003.

Under the Secretary's delegation, some authorities will be enforced by the Office of Inspector General, even though similar penalties, applicable under other statutes, are delegated to HCFA. For instance, two of the statutory citations that subject violators to potential sanctions (section 1842(p)(3)(A) and 1848(g)(1)(B)) authorize HCFA to impose various penalties for abusive practices involving bills or requests for payment that are *not* made on an assignment-related basis. We note that the OIG has the comparable authority under section 1128A of the Act to impose civil money penalties for those abusive practices in cases where payment is requested on an assignment-related basis. Although the OIG penalties are not listed in this section, we want to make clear that individuals involved in abusive billing practices are subject to penalties, whether or not the claim is submitted on an assignment-related basis.

Subpart B includes procedures specific to the imposition of civil money penalties and assessments. These rules are also based on those the OIG uses in 42 CFR part 1003.

Our regulations are based on those in part 1003 but are organized somewhat differently in order to be able to, in the future, include all our rules regarding exclusions in more detail. The organization will also make the regulations easier to understand and to find. The organizational changes are not substantive; they change neither the procedures nor the extent of the regulations' applicability.

Although the OIG regulations generally refer to the OIG as the government entity implementing a given function, our new regulations will refer to "HCFA or OIG" as the government agent.

Another purely technical departure from the OIG regulations is our inclusion of a description of all the statutory citations. HCFA is revising its rules to include a description of all pertinent statutory citations in a particular section, rather than using a long list of citations (by number only) in the "Authority" paragraph that currently appears in each part or subpart in title 42 of the Code of Federal Regulations. The descriptions, of course, also include the new authorities that are not in the existing OIG rules. We also make several editorial changes and clarifying changes designed to make the language clearer to the public.

The regulations provisions in this rule do not revise any procedures or rights currently available to any person on whom we may impose a civil money penalty, assessment, or exclusion. The procedures we will follow also remain the same.

III. Impact Analysis

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all health care providers and suppliers of services (except some individual physicians) are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As indicated above, the provisions in this final rule with comment period provide HCFA (and the OIG) with regulations to implement the statutory authorities to levy civil money penalties and assessments against providers and physicians and other suppliers of services. The civil money penalties to which this rule pertains include those that apply to Medicare payments or billings as "assignment" violations; violations involving the failure to provide information or the improper provision of information; violations of charge or service limits; and violations of Medigap and Medicare Select requirements. Most of these authorities rested solely with the OIG until October 1994; there are also a few new authorities, which are included in the new part 402. These new authorities do not materially expand or increase the overall impact of civil money penalty oversight activities. This final rule basically transfers the existing civil money penalty functional responsibility (along with the new authorities) for assuring compliance with programatic and/or regulations violations (versus fraud, misrepresentation, and falsification types of violations, which remain with the OIG) from the OIG to HCFA. It is expected that no significant economic impact will be imposed on a substantial number of small business entities as a result of this action.

For this reason, any new economic effect of these regulations should be minimal, affecting only those that have engaged in prohibited behavior contained in the authorities put in place on or after October 31, 1994; the economic effect of the already existing authorities is not new and is also minimal because of the relatively few violators involved. We believe the majority of the persons and entities subject to these regulations do not commit the violations discussed in these regulations. Those providers, physicians, and suppliers that are not currently in compliance with existing and new authorities will be subject to more vigorous enforcement of these provisions of the CMP oversight activity and may experience a significant economic impact as a result of such violations. However, the population subject to such actions is reasonably believed to be a very minor portion of the total population of providers, physicians and other suppliers. Moreover, small rural hospitals are not expected to be appreciably affected by this final rule. In addition, there are minimal costs and savings to the government.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble and will respond to the comments in the preamble to any subsequent **Federal Register** document.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

It would be contrary to the public interest to delay the publication of these rules pending completion of the usual notice and comment procedures. The delay would be contrary to the public interest because HCFA would not be able to utilize fully civil money penalties and assessments as tools to encourage compliance with certain provisions of the Medicare Act as the Congress intended. These provisions are designed to discourage entities from engaging in fraudulent and abusive behavior. According to the General Accounting Office's report, *Vulnerable Payers Lose Billions to Fraud and Abuse* (GAO/HRD–92–69), costs of health care fraud and abuse are estimated to be ten percent of our total health care spending. The Medicare trust funds and the public are significantly harmed by these abusive practices, and we find that further delaying the use of these sanctions pending the end of a public comment period would be contrary to the public's interest.

We also believe it is unnecessary to delay publication of these final rules pending completion of a notice and comment period. We are adopting the OIG's procedures and policies as our own and are not revising the rights of persons to whom the provisions pertain. Over the years, the Department of Health and Human Services has published the substance of the OIG's regulations in proposed rules that solicited comment and responded to those comments in final rules (55 FR 12205, April 2, 1990; 57 FR 3298, January 29, 1992). The procedures in this rule do not differ significantly from the OIG rules and we believe it is redundant to, in effect, propose rules that are already contained in the Code of Federal Regulations.

Finally, a delay of publication of the final rule is unnecessary because all of

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the specific civil money penalties are required by the current statute. Thus, the one significant addition to the OIG rules, the addition of the new authorities, is not discretionary and we would not be able to change these authorities in the regulations in response to public comment.

Accordingly, we find good cause for waiving the prior notice-and-comment procedure as unnecessary and contrary to the public interest.

List of Subjects in 42 CFR Part 402

Administrative practice and procedure, Health facilities, Health professions, Medicaid, Medicare, Penalties.

42 CFR chapter IV is amended as set forth below:

PART 400—[AMENDED]

A. Part 400 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.200 is amended by adding, in alphabetical order, a definition for "DAB" to read as follows:

§ 400.200 General definitions.

* * * * *

DAB stands for Departmental Appeals Board.

* * * * *

B. A new part 402 is added to read as follows:

PART 402—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS

Subpart A—General Provisions

Secs.
402.1 Basis and scope.
402.3 Definitions.
402.5 Right to a hearing before the final determination.
402.7 Notice of proposed determination.
402.9 Failure to request a hearing.
402.11 Notice to other agencies and other entities.
402.13 Penalty, assessment, and exclusion not exclusive.
402.15 Collateral estoppel.
402.17 Settlement.
402.19 Hearings and appeals.
402.21 Judicial review.

Subpart B—Penalties and Assessments

Secs.
402.105 Amount of penalty.
402.107 Amount of assessment.
402.109 Statistical sampling.
402.111 Factor consideration determinations regarding the amount of penalties and assessments.
402.113 When a penalty and assessment are collectible.
402.115 Collection of assessment and penalty.

Subpart C—Exclusions [Reserved]

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

§ 402.1 Basis and scope.

(a) *Basis.* This part is based on the sections of the Act that are specified in paragraph (c) of this section.

(b) *Scope.* This part—

(1) Provides for the imposition of civil money penalties, assessments, and exclusions against persons that violate the provisions of the Act specified in paragraph (c), (d), or (e) of this section; and

(2) Sets forth the appeal rights of persons subject to penalties, assessments, or exclusion and the procedures for reinstatement following exclusion.

(c) *Civil money penalties.* HCFA or OIG may impose civil money penalties against any person or other entity specified in paragraphs (c)(1) through (c)(30) of this section under the identified section of the Act. The authorities that also permit imposition of an assessment or exclusion are noted in the applicable paragraphs.

(1) Sections 1833(h)(5)(D) and 1842(j)(2)—Any person that knowingly and willfully, and on a repeated basis, bills for a clinical diagnostic laboratory test, other than on an assignment-related basis. This provision includes tests performed in a physician's office but excludes tests performed in a rural health clinic. (This violation may also include an assessment and cause exclusion.)

(2) Section 1833(i)(6)—Any person that knowingly and willfully presents, or causes to be presented, a bill or request for payment for an intraocular lens inserted during or after cataract surgery for which the Medicare payment rate includes the cost of acquiring the class of lens involved.

(3) Section 1833(q)(2)(B)—Any entity that knowingly and willfully fails to provide information about a referring physician, including the physician's name and unique physician identification number for the referring physician, when seeking payment on an unassigned basis. (This violation, if it occurs in repeated cases, may also cause an exclusion.)

(4) Sections 1834(a)(11)(A) and 1842(j)(2)—Any durable medical equipment supplier that knowingly and willfully charges for a covered service that is furnished on a rental basis after the rental payments may no longer be made (except for maintenance and servicing) as provided in section 1834(a)(7)(A). (This violation may also include an assessment and cause exclusion.)

(5) Sections 1834(a)(18)(B) and 1842(j)(2)—Any nonparticipating durable medical equipment supplier that knowingly and willfully, in violation of section 1834(a)(18)(A), fails to make a refund to Medicare beneficiaries for a covered service for which payment is precluded due to an unsolicited telephone contact from the supplier. (This violation may also include an assessment and cause exclusion.)

(6) Sections 1834(b)(5)(C) and 1842(j)(2)—Any nonparticipating physician or supplier that knowingly and willfully charges a Medicare beneficiary more than the limiting charge, as specified in section 1834(b)(5)(B), for radiologist services. (This violation may also include an assessment and cause exclusion.)

(7) Sections 1834(c)(4)(C) and 1842(j)(2)—Any nonparticipating physician or supplier that knowingly and willfully charges a Medicare beneficiary more than the limiting charge, as specified in section 1834(c)(4)(B), for mammography screening. (This violation may also include an assessment and cause exclusion.)

(8) Sections 1834(h)(3) and 1842(j)(2)—Any supplier of prosthetic devices, orthotics, and prosthetics that knowingly and willfully charges for a covered prosthetic device, orthotic, or prosthetic that is furnished on a rental basis after the rental payment may no longer be made (except for maintenance and servicing). (This violation may also include an assessment and cause exclusion.)

(9) Section 1834(j)(2)(A)(iii)—Any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully distributes a certificate of medical necessity in violation of section 1834(j)(2)(A)(i) or fails to provide the information required under section 1834(j)(2)(A)(ii).

(10) Sections 1834(j)(4) and 1842(j)(2)—

(i) Any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries for services billed other than on an assignment-related basis if—

(A) The supplier does not possess a Medicare supplier number;

(B) The service is denied in advance under section 1834(a)(15); or

(C) The service is determined not to be medically necessary or reasonable.

(ii) These violations may also include an assessment and cause exclusion.

(11) Sections 1842(b)(18)(B) and 1842(j)(2)—Any practitioner specified in section 1842(b)(18)(C) (physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers, and clinical psychologists) or other person that knowingly and willfully bills or collects for any services by the practitioners on other than an assignment-related basis. (This violation may also include an assessment and cause exclusion.)

(12) Sections 1842(k) and 1842(j)(2)—Any physician who knowingly and willfully presents, or causes to be presented, a claim or bill for an assistant at cataract surgery performed on or after March 1, 1987 for which payment may not be made because of section 1862(a)(15). (This violation may also include an assessment and cause exclusion.)

(13) Sections 1842(l)(3) and 1842(j)(2)—Any nonparticipating physician who does not accept payment on an assignment-related basis and who knowingly and willfully fails to refund on a timely basis any amounts collected for services that are not reasonable or medically necessary or are of poor quality, in accordance with section 1842(l)(1)(A). (This violation may also include an assessment and cause exclusion.)

(14) Sections 1842(m)(3) and 1842(j)(2)—(i) Any nonparticipating physician, who does not accept payment for an elective surgical procedure on an assignment-related basis and whose charge is at least $500, who knowingly and willfully fails to—

(A) Disclose the information required by section 1842(m)(1) concerning charges and coinsurance amounts; and

(B) Refund on a timely basis any amount collected for the procedure in excess of the charges recognized and approved by the Medicare program.

(ii) This violation may also include an assessment and cause exclusion.

(15) Sections 1842(n)(3) and 1842(j)(2)—Any physician who knowingly and willfully, in repeated cases, bills one or more beneficiaries, for purchased diagnostic tests, any amount other than the payment amount specified in section 1842(n)(1)(A) or section 1842(n)(1)(B). (This violation may also include an assessment and cause exclusion.)

(16) Section 1842(p)(3)(A)—Any physician who knowingly and willfully fails promptly to provide the appropriate diagnosis code or codes upon request by HCFA or a carrier on any request for payment or bill not submitted on an assignment-related basis for any service furnished by the physician. (This violation, if it occurs in repeated cases, may also cause exclusion.)

(17) Sections 1848(g)(1)(B) and 1842(j)(2)—

(i) Any nonparticipating physician, supplier, or other person that furnishes physicians' services and does not accept payment on an assignment-related basis, that—

(A) Knowingly and willfully bills or collects in excess of the limiting charge (as defined in section 1848(g)(2)) on a repeated basis; or

(B) Fails to make an adjustment or refund on a timely basis as required by section 1848(g)(1)(A)(iii) or (iv).

(ii) These violations may also include an assessment and cause exclusion.

(18) Section 1848(g)(3)(B) and 1842(j)(2)—Any person that knowingly and willfully bills for State plan approved physicians' services, as defined in section 1848(j)(3), on other than an assignment-related basis for a Medicare beneficiary who is also eligible for Medicaid (these individuals include qualified Medicare beneficiaries). This provision applies to services furnished on or after April 1, 1990. (This violation may also include an assessment and cause exclusion.)

(19) Section 1848(g)(4)(B)(ii), 1842(p)(3), and 1842(j)(2)(A)—

(i) Any physician, supplier, or other person (except any person that has been excluded from the Medicare program) that, for services furnished after September 1, 1990, knowingly and willfully—

(A) Fails to submit a claim on a standard claim form for services provided for which payment is made under Part B on a reasonable charge or fee schedule basis; or

(B) Imposes a charge for completing and submitting the standard claims form.

(ii) These violations, if they occur in repeated cases, may also cause exclusion.

(20) Section 1862(b)(5)(C)—Any employer (other than a Federal or other governmental agency) that, before October 1, 1998, willfully or repeatedly fails to provide timely and accurate information requested relating to an employee's group health insurance coverage.

(21) Section 1862(b)(6)(B)—Any entity that knowingly, willfully, and repeatedly—

(i) Fails to complete a claim form relating to the availability of other health benefit plans in accordance with section 1862(b)(6)(A); or

(ii) Provides inaccurate information relating to the availability of other health benefit plans on the claim form.

(22) Section 1877(g)(5)—Any person that fails to report information required by HHS under section 1877(f) concerning ownership, investment, and compensation arrangements. (This violation may also include an assessment and cause exclusion.)

(23) Sections 1879(h), 1834(a)(18), and 1842(j)(2)—

(i) Any durable medical equipment supplier, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries for services billed on an assignment-related basis if—

(A) The supplier did not possess a Medicare supplier number;

(B) The service is denied in advance under section 1834(a)(15) of the Act; or

(C) The service is determined not to be payable under section 1834(a)(17)(b) because of unsolicited telephone contacts.

(ii) These violations may also include an assessment and cause exclusion.

(24) Section 1882(a)(2)—Any person that issues a Medicare supplemental policy that has not been approved by the State regulatory program or does not meet Federal standards on and after the effective date in section 1882(p)(1)(C). (This violation may also include an assessment and cause exclusion.)

(25) Section 1882(p)(8)—Any person that sells or issues Medicare supplemental policies, on or after July 30, 1992, that fail to conform to the NAIC or Federal standards established under section 1882(p). (This violation may also include an assessment and cause exclusion.)

(26) Section 1882(p)(9)(C)—

(i) Any person that sells a Medicare supplemental policy and—

(A) Fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits; or

(B) Fails to provide the individual, before the sale of the policy, an outline of coverage describing the benefits provided by the policy.

(ii) These violations may also include an assessment and cause exclusion.

(27) Section 1882(q)(5)(C)—

(i) Any person that fails to—

(A) Suspend a Medicare supplemental policy at the policyholder's request, if the policyholder applies for and is determined eligible for medical assistance, and the policyholder provides notice within 90 days of the eligibility determination; or

(B) Automatically reinstate the policy as of the date of termination of medical assistance if the policyholder loses eligibility for medical assistance and the policyholder provides notice within 90 days of loss of eligibility.

(ii) These violations may also include an assessment and cause exclusion.

(28) Section 1882(r)(6)(A)—Any person that fails to provide refunds or credits as required by section 1882(r)(1)(B). (This violation may also include an assessment and cause exclusion.)

(29) Section 1882(s)(3)—

(i) Any issuer of a Medicare supplemental policy that—

(A) Does not waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods if the time periods were already satisfied under a preceding Medicare supplemental policy; or

(B) Denies a policy, conditions the issuance or effectiveness of the policy, or discriminates in the pricing of the policy based on health status or other criteria as specified in section 1882(s)(2)(A).

(ii) These violations may also include an assessment and cause exclusion.

(30) Section 1882(t)(2)—

(i) Any issuer of a Medicare supplemental policy that—

(A) Fails substantially to provide medically necessary services to enrollees seeking the services through the issuer's network of entities;

(B) Imposes premiums on enrollees in excess of the premiums approved by the State;

(C) Acts to expel an enrollee for reasons other than nonpayment of premiums; or

(D) Does not provide each enrollee at the time of enrollment with the specific information provided in section 1882(t)(1)(E)(i) or fails to obtain a written acknowledgment from the enrollee of receipt of the information (as required by section 1882(t)(1)(E)(ii)).

(ii) These violations may also include an assessment and cause exclusion.

(d) *Assessments.* HCFA or OIG may impose assessments in addition to civil money penalties for violations of the following statutory sections:

(1) Section 1833: Paragraph (h)(5)(D).

(2) Section 1834: Paragraphs (a)(11)(A), (a)(18)(B), (b)(5)(C), (c)(4)(C), (h)(3), and (j)(4).

(3) Section 1842: Paragraphs (k), (l)(3), (m)(3), and (n)(3).

(4) Section 1848: Paragraph (g)(1)(B).

(5) Section 1877: Paragraph (g)(5).

(6) Section 1879: Paragraph (h).

(7) Section 1882: Paragraphs (a)(2), (p)(8), (p)(9)(C), (q)(5)(C), (r)(6)(A), (s)(3), and (t)(2).

(e) *Exclusions.* (1) HCFA or OIG may exclude any person from participation in the Medicare program on the basis of any of the following violations of the statute:

(i) Section 1833: Paragraphs (h)(5)(D) and, in repeated cases, (q)(2)(B).

(ii) Section 1834: Paragraphs (a)(11)(A), (a)(18)(B), (b)(5)(C), (c)(4)(C), (h)(3), and (j)(4).

(iii) Section 1842: Paragraphs (b)(18)(B), (k), (l)(3), (m)(3), (n)(3), and, in repeated cases, (p)(3)(B).

(iv) Section 1848: Paragraphs (g)(1)(B), (g)(3)(B), and, in repeated cases, (g)(4)(B)(ii).

(v) Section 1877: Paragraph (g)(5).

(vi) Section 1879: Paragraph (h).

(vii) Section 1882: Paragraphs (a)(2), (p)(8), (p)(9)(C), (q)(5)(C), (r)(6)(A), (s)(3), and (t)(2).

(2) HCFA or OIG must exclude from participation in the Medicare program any of the following, under the identified section of the Act:

(i) Section 1834(a)(17)(C)—Any supplier of durable medical equipment and supplies that are covered under section 1834(a)(13) that knowingly contacts Medicare beneficiaries by telephone regarding the furnishing of covered services in violation of section 1834(a)(17)(A) and whose conduct establishes a pattern of prohibited contacts as described under section 1834(a)(17)(A).

(ii) Section 1834(h)(3)—Any supplier of prosthetic devices, orthotics, and prosthetics that knowingly contacts Medicare beneficiaries by telephone regarding the furnishing of prosthetic devices, orthotics, or prosthetics in the same manner as in the violation under section 1834(a)(17)(A) and whose conduct establishes a pattern of prohibited contacts in the same manner as described in section 1834(a)(17)(C).

(f) *Responsible persons.* (1) If HCFA or OIG determines that more than one person is responsible for any of the violations described in paragraph (c) or paragraph (d) of this section, it may impose a civil money penalty or a civil money penalty and assessment against any one of those persons or jointly and severally against two or more of those persons. However, the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person were responsible.

(2) A principal is liable for penalties and assessments for the actions of his or her agent acting within the scope of the agency.

(g) *Time limits.* Neither HCFA nor OIG initiates an action to impose a civil money penalty, assessment, or proceeding to exclude a person from participation in the Medicare program unless it begins the action within 6 years from the date on which the claim was presented, the request for payment was made, or the incident occurred.

§ 402.3 Definitions.

For purposes of this part:

Assessment means the amount described in § 402.107 and includes the plural of that term.

Assignment-related basis means that the claim submitted by a physician, supplier or other person is paid on the basis of an assignment, whereby the physician, supplier or other person agrees to accept the Medicare payment as payment in full for the services furnished to the beneficiary and is precluded from charging the beneficiary more than the deductible and coinsurance based upon the approved Medicare fee amount. Additional obligations, including obligations to make refunds in certain circumstances, are established at section 1842(b)(3) of the Act.

Claim means an application for payment for a service for which the Medicare or Medicaid program may pay.

Covered means that a service is described as reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. A service is not covered if it is specifically identified as excluded from Medicare Part B coverage or is not a defined Medicare Part B benefit.

Exclusion means the temporary or permanent barring of a person or other entity from participation in the Medicare or State health care program and that services furnished or ordered by that person are not paid for under either program.

General Counsel means the General Counsel of HHS or his or her designees.

Knowingly or *knowingly and willfully* means that a person, with respect to information—

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information; and

(4) No proof of specific intent is required.

Medicare supplemental policy means a policy guaranteeing that a health plan will pay a policyholder's coinsurance and deductible and will cover other limitations on payment imposed under title XVIII of the Act and will provide additional health plan or non-Medicare coverage for services up to a predefined benefit limit.

NAIC stands for the National Association of Insurance Commissioners.

Nonparticipating describes a physician, supplier, or other person (excluding any provider of services) that, at the time of furnishing the services to Medicare Part B beneficiaries, is not a participating physician or supplier.

Participating describes a physician or supplier (excluding any provider of services) that, before the beginning of any given year, enters into an agreement with HHS that provides that the physician or supplier will accept payment under the Medicare program on an assignment-related basis for all services furnished to Medicare Part B beneficiaries.

Penalty means the amount described in § 402.105 and includes the plural of that term.

Person means an individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

Physicians' services means the following Medicare covered professional services:

(1) Surgery, consultation, home, office and institutional calls, and other professional services performed by physicians.

(2) Services and supplies furnished "incident to" a physician's professional services.

(3) Outpatient physical and occupational therapy services.

(4) Diagnostic x-ray tests and other diagnostic tests (excluding clinical diagnostic laboratory tests).

(5) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians.

(6) Antigens prepared by a physician.

Radiologist service means radiology services performed only by, or under the direction of, a physician who is certified, or eligible to be certified, by the American Board of Radiology or for whom radiology services account for at least 50 percent of the total amount of charges made under part B of title XVIII of the Act.

Request for payment means an application submitted by a person to any person for payment for a service.

Respondent means the person upon which HCFA or OIG has imposed, or proposes to impose, a civil money penalty, assessment, or exclusion.

Service includes—

(1) Any item, device, medical supply, or service claimed to have been furnished to a patient and listed in an itemized claim for program payment; or

(2) In the case of a claim based on costs, any entry or omission in a cost report, books of account or other documents supporting the claim.

State includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Timely basis means that the adjustment to a bill or a refund is considered "on a timely basis" if the physician, supplier, or other person makes the adjustment or refund to the appropriate party no later than 30 days after the date the physician, supplier, or other person is notified by the Medicare Part B contractor of the violation and the requirement to refund any excess collections.

§ 402.5 Right to a hearing before the final determination.

HCFA or OIG does not make a determination adverse to any person under this part until the person has been given a written notice and opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

§ 402.7 Notice of proposed determination.

(a) If HCFA or OIG proposes a penalty and, as applicable, an assessment, or proposes to exclude a respondent from participation in Medicare in accordance with this part, it sends the respondent written notice of its intent by certified mail, return receipt requested. The notice includes the following information:

(1) Reference to the statutory basis or bases for the penalty, assessment, exclusion, or any combination, as applicable.

(2)(i) A description of the claims, requests for payment, or incidents with respect to which the penalty, assessment, and exclusion are proposed; or

(ii) If HCFA or OIG is relying upon statistical sampling to project the number and types of claims or requests for payment and the dollar amount, a description of the claims and requests for payment comprising the sample and a brief description of the statistical sampling technique HCFA or OIG used.

(3) The reason why the claims, requests for payment, or incidents are subject to a penalty and assessment.

(4) The amount of the proposed penalty and of any proposed assessment.

(5) Any mitigating or aggravating circumstances that HCFA or OIG considered when it determined the amount of the proposed penalty and any applicable assessment.

(6) Information concerning response to the notice, including—

(i) A specific statement of the respondent's right to a hearing; and

(ii) A statement that failure to request a hearing within 60 days renders the proposed determination final and permits the imposition of the proposed penalty and any assessment.

(iii) A statement that the debt may be collected through an administrative offset.

(7) In the case of a respondent that has an agreement under section 1866 of the Act, notice that imposition of an exclusion may result in termination of the provider's agreement in accordance with section 1866(b)(2)(C) of the Act.

§ 402.9 Failure to request a hearing.

(a) If the respondent does not request a hearing within 60 days of receipt of the notice of proposed determination specified in § 402.7, any civil money penalty, assessment, or exclusion becomes final and HCFA or OIG may impose the proposed penalty, assessment, or exclusion, or any less severe penalty, assessment, or suspension.

(b) HCFA or OIG notifies the respondent by certified mail, return receipt requested, of any penalty, assessment, or exclusion that has been imposed and of the means by which the respondent may satisfy the judgment.

(c) The respondent has no right to appeal a penalty, assessment, or exclusion for which he or she has not requested a hearing.

§ 402.11 Notice to other agencies and other entities.

(a) Whenever a penalty, assessment, or exclusion becomes final, HCFA or OIG notifies the following organizations and entities about the action and the reasons for it:

(1) The appropriate State or local medical or professional association.

(2) The appropriate peer review organization.

(3) As appropriate, the State agency responsible for the administration of each State health care program (Medicaid, the Maternal and Child Health Services Block Grant Program, and the Social Services Block Grant Program).

(4) The appropriate Medicare carrier or fiscal intermediary.

(5) The appropriate State or local licensing agency or organization (including the Medicare and Medicaid State survey agencies).

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(6) The long-term care ombudsman.

(b) For exclusions, HCFA or OIG also notifies the public and specifies the effective date.

§ 402.13 Penalty, assessment, and exclusion not exclusive.

Penalties, assessments, and exclusions imposed under this part are in addition to any other penalties prescribed by law.

§ 402.15 Collateral estoppel.

(a) When a final determination that the respondent presented or caused to be presented a claim or request for payment falling within the scope of § 402.1 has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent is bound by that determination in any proceeding under this part.

(b) A person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements is barred from denying the essential elements of the criminal offense if the proceedings under this part involve the same transactions.

§ 402.17 Settlement.

HCFA or OIG has exclusive authority to settle any issues or case, without the consent of the ALJ or the Secretary, at any time before a final decision by the Secretary. Thereafter, the General Counsel has the exclusive authority.

§ 402.19 Hearings and appeals.

The hearings and appeals procedures set forth in part 1005 of chapter V of this title are available to any person that receives an adverse determination under this part. For an appeal of a civil money penalty, assessment, or exclusion imposed under this part, either HCFA or OIG may represent the government in the hearing and appeals process.

§ 402.21 Judicial review.

After exhausting all available administrative remedies, a respondent may seek judicial review of a penalty, assessment, or exclusion that has become final. The respondent may seek review only with respect to a penalty, assessment, or exclusion with respect to which the respondent filed an exception under § 1005.21(c) of this title unless the court excuses the failure or neglect to urge the exception in accordance with section 1128A(e) of the Act because of extraordinary circumstances.

Subpart B—Civil Money Penalties and Assessments

§ 402.105 Amount of penalty.

(a) *$2,000.* Except as provided in paragraphs (b) through (f) of this section, HCFA or OIG may impose a penalty of not more than $2,000 for each service, bill, or refusal to issue a timely refund that is subject to a determination under this part and for each incident involving the knowing, willful, and repeated failure of an entity furnishing a service to submit a properly completed claim form or to include on the claim form accurate information regarding the availability of other health insurance benefit plans (§ 402.1(c)(21)).

(b) *$1,000.* HCFA or OIG may impose a penalty of not more than $1,000 for the following:

(1) Per certificate of medical necessity knowingly and willfully distributed to physicians on or after December 31, 1994 that—

(i) Contains information concerning the medical condition of the patient; or

(ii) Fails to include cost information.

(2) Per individual about whom information is requested, for willful or repeated failure of an employer to respond to an intermediary or carrier about coverage of an employee or spouse under the employer's group health plan (§ 402.1(c)(20)).

(c) *$5,000.* HCFA or OIG may impose a penalty of not more than $5,000 for each violation resulting from the following:

(1) The failure of a Medicare supplemental policy issuer, on a replacement policy, to waive any time periods applicable to pre-existing conditions, waiting periods, elimination periods, or probationary periods that were satisfied under a preceding policy (§ 402.1(c)(29)); and

(2) Any issuer of any Medicare supplemental policy denying a policy, conditioning the issuance or effectiveness of the policy, or discriminating in the pricing of the policy based on health status or other criteria as specified in section 1882(s)(2)(A). (§ 402.1(c)(29)).

(d) *$10,000.* (1) HCFA or OIG may impose a penalty of not more than $10,000 for each day that reporting entity ownership arrangements is late (§ 402.1(c)(22)).

(2) HCFA or OIG may impose a penalty of not more than $10,000 for the following violations that occur on or after January 1, 1997:

(i) Knowingly and willfully, and on a repeated basis, billing for a clinical diagnostic laboratory test, other than on an assignment-related basis (§ 402.1(c)(1)).

(ii) By any durable medical equipment supplier, knowingly and willfully charging for a covered service that is furnished on a rental basis after the rental payments may no longer be made (except for maintenance and servicing) as provided in section 1834(a)(7)(A) (§ 402.1(c)(4)).

(iii) By any durable medical equipment supplier, knowingly and willfully, in violation of section 1834(a)(18)(A), failing to make a refund to Medicare beneficiaries for a covered service for which payment is precluded due to an unsolicited telephone contact from the supplier (§ 402.1(c)(5)).

(iv) By any nonparticipating physician or supplier, knowingly and willfully charging a Medicare beneficiary more than the limiting charge, as specified in section 1834(b)(5)(B), for radiologist services (§ 402.1(c)(6)).

(v) By any nonparticipating physician or supplier, knowingly and willfully charging a Medicare beneficiary more than the limiting charge, as specified in section 1834(c)(3), for mammography screening (§ 402.1(c)(7)).

(vi) By any supplier of prosthetic devices, orthotics, and prosthetics, knowingly and willfully charging for a covered prosthetic device, orthotic, or prosthetic that is furnished on a rental basis after the rental payment may no longer be made (except for maintenance and servicing) (§ 401.2(c)(8)).

(vii) By any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, knowingly and willfully failing to make refunds in a timely manner to Medicare beneficiaries for services billed other than on an assigned-related basis if—

(A) The supplier does not possess a Medicare supplier number;

(B) The service is denied in advance; or

(C) The service is determined not to be medically necessary or reasonable (§ 402.1(c)(10)).

(viii) Knowingly and willfully billing or collecting for any services on other than an assignment-related basis for practitioners specified in section 1842(b)(18)(B) (§ 402.1(c)(11)).

(xix) By any physician, knowingly and willfully presenting, or causing to be presented, a claim or bill for an assistant at cataract surgery performed on or after March 1, 1987 for which payment may not be made because of section 1862(a)(15) (§ 402.1(c)(12)).

(x) By any nonparticipating physician who does not accept payment on an assignment-related basis, knowingly and willfully failing to refund on a timely basis any amounts collected for services that are not reasonable or medically necessary or are of poor quality, in accordance with section 1842(l)(1)(A) (§ 402.1(c)(13)).

(xi) By any nonparticipating physician, who does not accept payment for an elective surgical procedure on an assignment-related basis and whose charge is at least $500, knowingly and willfully failing to—

(A) Disclose the information required by section 1842(m)(1) concerning charges and coinsurance amounts; and

(B) Refund on a timely basis any amount collected for the procedure in excess of the charges recognized and approved by the Medicare program (§ 402.1(c)(14)).

(xii) By any physician, in repeated cases, knowingly and willfully billing one or more beneficiaries, for purchased diagnostic tests, any amount other than the payment amount specified in section 1842(n)(1)(A) or section 1842(n)(1)(B) (§ 402.1(c)(15)).

(xiii) By any nonparticipating physician, supplier, or other person that furnishes physicians' services and does not accept payment on an assignment-related basis—

(A) Knowingly and willfully billing or collecting in excess of the limiting charge (as defined in section 1843(g)(2)) on a repeated basis; or

(B) Failing to make an adjustment or refund on a timely basis as required by section 1848(g)(1)(A)(iii) or (iv) (§ 402.1(c)(17)).

(xiv) Knowingly and willfully billing for State plan approved physicians' services on other than an assignment-related basis for a Medicare beneficiary who is also eligible for Medicaid (§ 402.1(c)(18)).

(xv) By any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, knowingly and willfully failing to make refunds in a timely manner to Medicare beneficiaries for services billed on an assignment-related basis if—

(A) The supplier did not possess a Medicare supplier number;

(B) The service is denied in advance; or

(C) The service is determined not to be medically necessary or reasonable (§ 402.1(c)(23)).

(e) *$15,000.* HCFA or OIG may impose a penalty of not more than $15,000 if the seller of a Medicare supplemental policy is not the issuer, for each violation described in paragraphs (f)(2) and (f)(3) of this section (§ 402.1 (c)(25) and (c)(26)).

(f) *$25,000.* HCFA or OIG may impose a penalty of not more than $25,000 for each of the following violations:

(1) Issuance of a Medicare supplemental policy that has not been approved by an approved State regulatory program or does not meet Federal standards on and after the effective date in section 1882(p)(1)(C) of the Act (§ 402.1(c)(23)).

(2) Sale or issuance after July 30, 1992, of a Medicare supplemental policy that fails to conform with the NAIC or Federal standards established under section 1882(p) of the Act (§ 402.1(c)(25)).

(3) Failure to make the core group of basic benefits available for sale when selling other Medicare supplemental plans with additional benefits (§ 402.1(c)(26)).

(4) Failure to provide, before sale of a Medicare supplemental policy, an outline of coverage describing the benefits provided by the policy (§ 402.1(c)(26)).

(5) Failure of an issuer of a policy to suspend or reinstate a policy, based on the policy holder's request, during entitlement to or upon loss of eligibility for medical assistance (§ 402.1(c)(27)).

(6) Failure to provide refunds or credits for Medicare supplemental policies as required by section 1882(r)(1)(B) (§ 402.1(c)(28)).

(7) By an issuer of a Medicare supplemental policy—

(i) Substantial failure to provide medically necessary services to enrollees seeking the services through the issuer's network of entities;

(ii) Imposition of premiums on enrollees in excess of the premiums approved by the State;

(iii) Action to expel an enrollee for reasons other than nonpayment of premiums; or

(iv) Failure to provide each enrollee, at the time of enrollment, with the specific information provided in section 1882(t)(1)(E)(i) or failure to obtain a written acknowledgment from the enrollee of receipt of the information (as required by section 1882(t)(1)(E)(ii)) (section 1882(t)(2)).

§ 402.107 Amount of assessment.

A person subject to civil money penalties specified in § 402.1(c) may be subject, in addition, to an assessment. An assessment is a monetary payment in lieu of damages sustained by HHS or a State agency.

(a) The assessment may not be more than twice the amount claimed for each service that was a basis for the civil money penalty, except for the violations specified in paragraph (b) of this section that occur before January 1, 1997.

(b) For the violations specified in this paragraph occurring after January 1, 1997, the assessment may not be more than three times the amount claimed for each service that was the basis for a civil money penalty. The violations are the following:

(1) Knowingly and willfully billing, and on a repeated basis, for a clinical diagnostic laboratory test, other than on an assignment-related basis (§ 402.1(c)(1)).

(2) By any durable medical equipment supplier, knowingly and willfully charging for a covered service that is furnished on a rental basis after the rental payments may no longer be made (except for maintenance and servicing) as provided in section 1834(a)(7)(A) (§ 402.1(c)(4)).

(3) By any durable medical equipment supplier, knowingly and willfully failing, in violation of section 1834(a)(18)(A), to make a refund to Medicare beneficiaries for a covered service for which payment is precluded due to an unsolicited telephone contact from the supplier (§ 402.1(c)(5)).

(4) By any nonparticipating physician or supplier, knowingly and willfully charging a Medicare beneficiary more than the limiting charge, as specified in section 1834(b)(5)(B), for radiologist services (§ 402.1(c)(6)).

(5) By any nonparticipating physician or supplier, knowingly and willfully charging a Medicare beneficiary more than the limiting charge as specified in section 1834(c)(3), for mammography screening (§ 402.1(c)(7)).

(6) By any supplier of prosthetic devices, orthotics, and prosthetics, knowingly and willfully charging for a covered prosthetic device, orthotic, or prosthetic that is furnished on a rental basis after the rental payment may no longer be made (except for maintenance and servicing) (§ 401.2(c)(8)).

(7) By any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, knowingly and willfully failing to make refunds in a timely manner to Medicare beneficiaries for services billed other than on an assignment-related basis if—

(i) The supplier does not possess a Medicare supplier number;

(ii) The service is denied in advance; or

(iii) The service is determined not to be medically necessary or reasonable (§ 402.1(c)(10)).

(8) Knowingly and willfully billing or collecting for any services on other than an assignment-related basis for practitioners specified in section 1842(b)(18)(B) (§ 402.1(c)(11)).

(9) By any physician, knowingly and willfully presenting, or causing to be presented, a claim or bill for an assistant at cataract surgery performed on or after March 1, 1987 for which payment may not be made because of section 1862(a)(15) (§ 402.1(c)(12)).

(10) By any nonparticipating physician who does not accept payment on an assignment-related basis, knowingly and willfully failing to refund on a timely basis any amounts collected for services that are not reasonable or medically necessary or are of poor quality, in accordance with section 1842(l)(1)(A) (§ 402.1(c)(13)).

(11) By any nonparticipating physician, who does not accept payment for an elective surgical procedure on an assignment-related basis and whose charge is at least $500, knowingly and willfully failing to—

(i) Disclose the information required by section 1842(m)(1) concerning charges and coinsurance amounts; and

(ii) Refund on a timely basis any amount collected for the procedure in excess of the charges recognized and approved by the Medicare program (§ 402.1(c)(14)).

(12) By any physician, in repeated cases, knowingly and willfully billing one or more beneficiaries, for purchased diagnostic tests, any amount other than the payment amount specified in section 1842(n)(1)(A) or section 1842(n)(1)(B) (§ 402.1(c)(15)).

(13) By any nonparticipating physician, supplier, or other person that furnishes physicians' services and does not accept payment on an assignment-related basis—

(i) Knowingly and willfully billing or collecting in excess of the limiting charge (as defined in section 1843(g)(2)) on a repeated basis; or

(ii) Failing to make an adjustment or refund on a timely basis as required by section 1848(g)(1)(A) (iii) or (iv) (§ 402.1(c)(17)).

(14) Knowingly and willfully billing for State plan approved physicians' services on other than an assignment-related basis for a Medicare beneficiary who is also eligible for Medicaid (§ 402.1(c)(18)).

(15) By any supplier of durable medical equipment, including suppliers of prosthetic devices, prosthetics, orthotics, or supplies, knowingly and willfully failing to make refunds in a timely manner to Medicare beneficiaries for services billed on an assignment-related basis if—

(i) The supplier did not possess a Medicare supplier number;

(ii) The service is denied in advance; or

(iii) The service is determined not to be medically necessary or reasonable (§ 402.1(c)(23)).

§ 402.109 Statistical sampling.

(a) *Purpose.* HCFA or OIG may introduce the results of a statistical sampling study to show the number and amount of claims subject to sanction under this part that the respondent presented or caused to be presented.

(b) *Prima facie evidence.* The results of the statistical sampling study, if based upon an appropriate sampling and computed by valid statistical methods, constitute prima facie evidence of the number and amount of claims or requests for payment subject to sanction under § 402.1.

(c) *Burden of proof.* Once HCFA or OIG has made a prima facie case, the burden is on the respondent to produce evidence reasonably calculated to rebut the findings of the statistical sampling study. HCFA or OIG then has the opportunity to rebut this evidence.

§ 402.111 Factors considered in determinations regarding the amount of penalties and assessments.

(a) *Basic factors.* In determining the amount of any penalty or assessment, HCFA or OIG takes into account the following:

(1) The nature of the claim, request for payment, or information given and the circumstances under which it was presented or given.

(2) The degree of culpability, history of prior offenses, and financial condition of the person submitting the claim or request for payment or giving the information.

(3) The resources available to the person submitting the claim or request for payment or giving the information.

(4) Such other matters as justice may require.

(b) *Criteria to be considered.* As guidelines for taking into account the factors listed in paragraph (a) of this section, HCFA or OIG considers the following circumstances:

(1) *Aggravating circumstances of the incident.* An aggravating circumstance is any of the following:

(i) The services or incidents were of several types, occurring over a lengthy period of time.

(ii) There were many of these services or incidents or the nature and circumstances indicate a pattern of claims or requests for payment for these services or a pattern of incidents.

(iii) The amount claimed or requested for these services was substantial.

(iv) Before the incident or presentation of any claim or request for payment subject to imposition of a civil money penalty, the respondent was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services.

(v) There is proof that a respondent engaged in wrongful conduct, other than the specific conduct upon which liability is based, relating to government programs or in connection with the delivery of a health care service. (The statute of limitations governing civil money penalty proceedings does not apply to proof of other wrongful conduct as an aggravating circumstance.)

(2) *Mitigating circumstances.* The following circumstances are mitigating circumstances:

(i) All the services or incidents subject to a civil money penalty were few in number and of the same type, occurred within a short period of time, and the total amount claimed or requested for the services was less than $1,000.

(ii) The claim or request for payment for the service was the result of an unintentional and unrecognized error in the process of presenting claims or requesting payment and the respondent took corrective steps promptly after discovering the error.

(iii) Imposition of the penalty or assessment without reduction would jeopardize the ability of the respondent to continue as a health care provider.

(3) *Other matters as justice may require.* Other circumstances of an aggravating or mitigating nature are taken into account if, in the interests of justice, they require either a reduction of the penalty or assessment or an increase in order to ensure the achievement of the purposes of this part.

(c) *Effect of aggravating or mitigating circumstances.* In determining the amount of the penalty and assessment to be imposed for every service or incident subject to a determination under § 402.1(c)—

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment is set at an amount sufficiently below the maximum permitted by §§ 402.105(a) and 402.107 to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate

amount of the penalty and assessment is set at an amount at or sufficiently close to the maximum permitted by §§ 402.105(a) and 402.107 to reflect that fact.

(d)(1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed is not less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution, and administrative review of the case.

(3) Nothing in this section limits the authority of HCFA or OIG to settle any issue or case as provided by § 402.19 or to compromise any penalty and assessment as provided by § 402.115.

§ 402.113 When a penalty and assessment are collectible.

A civil money penalty and assessment become collectible after the earliest of the following:

(a) Sixty days after the respondent receives HCFA's or OIG's notice of proposed determination under § 402.7, if the respondent has not requested a hearing before an ALJ.

(b) Immediately after the respondent abandons or waives his or her appeal right at any administrative level.

(c) Thirty days after the respondent receives the ALJ's decision imposing a civil money penalty or assessment under § 1005.20(d) of this title, if the respondent has not requested a review before the DAB.

(d) If the DAB grants an extension of the period for requesting the DAB's review, the day after the extension expires if the respondent has not requested the review.

(e) Immediately after the ALJ's decision denying a request for a stay of the effective date under § 1005.22(b) of this title.

(f) If the ALJ grants a stay under § 1005.22(b) of this title, immediately after the judicial ruling is completed.

(g) Sixty days after the respondent receives the DAB's decision imposing a civil money penalty if the respondent has not requested a stay of the decision under § 1005.22(b) of this title.

§ 402.115 Collection of penalty or assessment.

(a) Once a determination by HHS has become final, HCFA is responsible for the collection of any penalty or assessment.

(b) The General Counsel may compromise a penalty or assessment imposed under this part, after consultation with HCFA or OIG, and the Federal government may recover the penalty or assessment in a civil action brought in the United States district court for the district where the claim was presented or where the respondent resides.

(c) The United States or a State agency may deduct the amount of a penalty and assessment when finally determined, or the amount agreed upon in compromise, from any sum then or later owing to the respondent.

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

Subpart C—Exclusions [Reserved]

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: July 7, 1998.

Nancy-Ann Min De Parle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–33010 Filed 12–11–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG–1998–4874]

Great lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Notice of annual review findings; request for comments.

SUMMARY: The Coast Guard conducted a review of Great Lakes pilotage rates. Based on the results of this review, the Coast Guard concluded that no changes were necessary to the Great Lakes pilotage rates for the 1998 navigation season. The Coast Guard is interested in comments on the 1998 Rate Review.

DATES: Comments must reach the Docket Management Facility on or before February 12, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1998–4874), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact John Bennett, Office of Great Lakes Pilotage, 400 7th Street SW., Suite 5421, Washington, DC 20590, (202) 366–8986. For questions on viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments on the findings presented in this notice. Persons submitting comments should include their names and addresses, identify this notice (USCG–1998–4874) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period.

Background and Purpose

On May 9, 1996, the Department of Transportation (DOT) published a final rule entitled "Great Lakes Pilotage Rate Methodology" in the **Federal Register** (61 FR 21081). This rule established the DOT's procedures and methodology for determining Great Lakes pilotage rates.

The regulations governing Great Lakes pilotage rates (46 CFR Part 404) require an annual review of the rates. This notice announces that the review of Great Lakes pilotage rates was completed. A copy of this review is available in the docket for inspection or copying where indicated under ADDRESSES or by contacting John Bennett at the address listed under FOR FURTHER INFORMATION CONTACT.

The review indicates 1998 pilotage rates to be within a reasonable range of their target.

Dated: December 7, 1998.

Jeffrey P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–33078 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–15–M

Proposed Rules

Federal Register
Vol. 63, No. 239
Monday, December 14, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1690

Miscellaneous Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed rule that explains the requirements for an acceptable power of attorney, where a participant assigns the authority to act in his or her behalf with respect to the participant's Thrift Savings Plan (TSP) account to another person.

DATES: Comments must be received on or before February 12, 1999.

ADDRESSES: Comments may be sent to Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff at (202) 942–1661.

SUPPLEMENTARY INFORMATION: The Board was established by Pub. L. 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401 through 8479), as amended by Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, and Pub. L. 99–558, the Federal Employees' Retirement System Technical Corrections Act of 1986, to administer the TSP for Federal employees. Regulations of the Board are contained in title 5 of the Code of Federal Regulations, chapter VI, parts 1600–1699.

Many sections under 5 CFR parts 1600–1699 require a TSP participant to sign a TSP form to effect certain transactions in his or her TSP account, including (but not limited to) withdrawals, loans, interfund transfers, and the designation of a beneficiary in the event of death. A participant may become unable to manage his or her own account for various reasons, however, such as incapacity or absence due to extended travel. In such circumstances, an attorney-in-fact may effect transactions in the TSP on behalf of the participant by signing the TSP form(s) as an agent of the participant. The current regulations do not explain the requirements for a valid power of attorney; thus, the proposed rule is necessary to clarify the Board's policy.

The proposed rule requires that, before an attorney-in-fact may sign a TSP form on behalf of a participant, the Board must receive and approve either a general power of attorney that authorizes the attorney-in-fact to act on behalf of the principal in the areas of personal property, finance, retirement, or business transactions; or a special power of attorney that specifically grants the attorney-in-fact the authority to effect transactions in the TSP on behalf of the participant. A valid power of attorney must be authenticated, attested, acknowledged, or certified before a notary public or other authorized official. When the Board receives a power of attorney, it will review it and advise the participant or attorney-in-fact whether it is valid for effecting transactions in the TSP.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will affect only TSP participants and beneficiaries.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

List of Subjects in 5 CFR Part 1690

Employee benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,
Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, part 1690 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

PART 1690—MISCELLANEOUS REGULATIONS

1. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

2. Section 1690.2 is added to read as follows:

§ 1690.2 Power of attorney.

This section applies to all regulations in this chapter that require a signature by the participant on a Thrift Savings Plan (TSP) form, where the participant desires to effect transactions through an agent (i.e., an attorney-in-fact). Before an attorney-in-fact may sign a TSP form on behalf of a participant, the Board must have approved either a general power of attorney which authorizes the attorney-in-fact to act on behalf of the participant with respect to the principal's personal property or in Federal Government retirement, financial, or business transactions; or a special power of attorney which authorizes the attorney-in-fact to effect transactions in the TSP on behalf of the participant. For a power of attorney to be acceptable to effect transactions in the TSP, it must be authenticated, attested, acknowledged, or certified before a notary public or other official authorized by law to administer oaths or affirmations. The Board will advise the person submitting a power of attorney whether it is valid to effect transactions in the TSP.

[FR Doc. 98–33024 Filed 12–11–98; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 441

[Docket No. 97–054R]

RIN 0583–AC26

Retained Water in Raw Meat and Poultry Products: Poultry Chilling Performance Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for the proposed rulemaking, "Retained Water in Raw Meat and Poultry Products: Poultry Chilling Performance Standards" (63 FR 48961, 9/11/98), in response to a request for additional time to submit comments. The comment period will reopen for 30 days.

DATES: Comments must be received on or before January 13, 1999.

ADDRESSES: Send one original and two copies of written comments to: FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700. Please refer to docket number 97–054P.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0699.

Done at Washington, DC, on December 8, 1998.

Thomas J. Billy,

Administrator, Food Safety and Inspection Service.

[FR Doc. 98–33047 Filed 12–11–98; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 32 and 40

RIN 3150–AE33

Distribution of Source and Byproduct Material: Licensing and Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing an advance notice of proposed rulemaking (ANPRM) that had presented preliminary plans for updating the licensing of source material and mill tailings. The contemplated rulemaking would have improved the control of source material and updated the applicable requirements to conform with the revised standards for protection against radiation. This ANPRM solicited comments and recommendations from interested parties on issues that were to be considered in the proposed rulemaking and a subsequent rulemaking, if needed. However, the comments received in response to this request did not provide any significant new information on the issues associated with the contemplated rulemaking. The NRC believes that additional information concerning the distribution of source material is needed before it is able to proceed with a rulemaking in this area. The NRC is performing the necessary research and evaluating additional sources of information to determine the best approach to address these issues in a proposed rulemaking. Therefore, pending completion of this research and the development of the required information, the ANPRM is being withdrawn.

ADDRESSES: The Commission paper, the staff requirement memoranda (SRM), and associated documents are available for public inspection, and copying for a fee, at the NRC Public Document Room located at 2120 L Street NW. (Lower Level), Washington, DC 20012–7082, telephone: (202) 634–3273.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6264, e-mail CRM@nrc.gov.

SUPPLEMENTARY INFORMATION: On October 28, 1992 (57 FR 48749), the Commission published an ANPRM that described contemplated amendments to the Commission's regulations governing the licensing of source material and mill tailings. The issues raised in the ANPRM concerned the possible need to update 10 CFR Part 40, particularly because of recent changes to 10 CFR Part 20, "Standards for Protection against Radiation." The ANPRM was issued to solicit comments from interested parties on issues that had been identified as candidates for consideration in rulemaking. The specific issues were—

(1) The level of control of source material being distributed for exempt use;

(2) The adequacy of the general license in 10 CFR 40.22;

(3) The usefulness of the general license in 10 CFR 40.25;

(4) The degree of specificity of the requirements for source material licensees; and

(5) The need for clarification or consistency of the mill tailings requirements in Appendix A to 10 CFR Part 40 with respect to NRC staff regulatory positions in this area.

The ANPRM also included a specific request for information on how the exemptions in 10 CFR Part 40 and the general license in § 40.22 are used. The questions raised in the ANPRM also included how the general license in § 40.25 could be made more useful; and the benefits of various structure and format options, such as the creation of additional parts or subparts to the requirements governing source material. A contractor report prepared to support the ANPRM, NUREG/CR–5881, "An Examination of Source Material Requirements Contained in 10 CFR Part 40" (October 1992), was also made available.

The comment period for the ANPRM closed on January 26, 1993. Fifteen comment letters were received. The commenters included the National Aeronautics and Space Administration, three States, and one public interest group. The remaining commenters were industry or industrial organizations, some of which were licensees, including four groups representing the mining and milling industry. The comments received were generally in favor of revising the requirements governing the licensing of source material and mill tailings. The comments, however, provided little additional information in response to the specific Commission requests.

The Commission was considering expanding the ANPRM to include the distribution of by-product material (10 CFR part 32). This contemplated rulemaking was presented in the NRC regulatory agenda as a result of this ANPRM (NUREG–0936).

After further progress is achieved in obtaining the needed information, the NRC will reconsider changes to 10 CFR Parts 32 and 40 with respect to exemptions and requirements for the distribution of byproduct and source material to exempt persons. The NRC will also consider appropriate actions in the other areas addressed in the ANPRM. In the interim, because the NRC is not yet prepared to determine the best approach to rulemaking, the ANPRM is being withdrawn.

Dated at Rockville, Maryland, this 7th day of December, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–32954 Filed 12–11–98; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 210 and 229

[Regulations J and CC; Docket No. R–1009]

Collection of Checks and Other Items by Federal Reserve Banks and Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; termination.

SUMMARY: In March 1998, the Board issued an advance notice of proposed rulemaking requesting comment on the benefits and drawbacks associated with its same-day settlement rule, which became effective in January 1994. The same-day settlement rule, which is part of Regulation CC, requires paying banks to settle in same-day funds for checks presented to them by private-sector banks by 8:00 a.m. local time at a location specified by the paying bank. The Board also requested comment on the implications of potential rule changes to reduce or eliminate the remaining legal disparities between Federal Reserve Banks and private-sector banks in the presentment and settlement of checks. The Board considered whether such changes would enhance the efficiency of the interbank check collection market, the check collection process, and the payments system as a whole. Based on its analysis of the comments received, the Board concluded that the costs associated with reducing the remaining legal disparities would outweigh any payments system efficiency gains. Therefore, the Board has decided not to propose any specific regulatory changes at this time to reduce these remaining legal disparities.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Associate Director (202/452–2789) or Jack K. Walton II, Manager, Check Payments Section (202/452–2660), Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Senior Counsel (202/452–3198), Legal Division. For the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

In 1987 Congress passed the Expedited Funds Availability Act (EFAA). That act gave the Board the responsibility to regulate "any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks" to carry out provisions of the act. (12 U.S.C. 4008(c)(1)) The Board issued Regulation CC, Availability of Funds and Collection of Checks, to carry out its responsibilities under the EFAA. (12 CFR part 229) In October 1992, the Board amended Regulation CC by adopting the same-day settlement rule, effective January 1994. (57 FR 46956, October 14, 1992) The same-day settlement rule requires a paying bank to settle on the day of presentment by Fedwire for checks presented by a private-sector collecting bank, without the imposition of presentment fees, if the checks are presented at a location designated by the paying bank by 8:00 a.m. local time.[1] (12 CFR 229.36(f))

The same-day settlement rule was designed to improve payments system efficiency by 1) enhancing competition between private-sector banks and Reserve Banks in the provision of check collection services, 2) encouraging agreements between presenting banks and paying banks that would reduce the cost of the check collection system, 3) reducing inefficient intermediation in the check collection process, and 4) encouraging the migration from checks to more efficient payment mechanisms. At the same time, the rule was designed to address the concerns of large check drawers and banks that their controlled disbursement arrangements and paying bank operations would not be unduly disrupted.

In March 1998, the Board issued an advance notice of proposed rulemaking requesting comment on the effect that the same-day settlement rule has had on the interbank check collection market, on the check collection process, and, more broadly, on the payments system. (63 FR 12700, March 16, 1998) The notice also requested comment on the benefits and drawbacks of reducing legal disparities between Federal Reserve Banks and private-sector collecting banks. These legal disparities include the rules governing presentment deadlines, presentment locations, reasonable delivery requirements, the control and timing of settlement, and the obligation to settle on a non-banking day.

The Board undertook this evaluation to consider whether reducing these disparities would enhance the efficiency of the interbank check collection market, the check collection process, and the payments system as a whole either directly, by expediting the collection and return of checks, or indirectly, by fostering competition. Improved competition among collecting banks that would likely result from a reduction in legal disparities and the efficiency gains derived from this competition were weighed against any increased costs to paying banks and their check-writing customers that could result from the changes. Consistent with its policy, the Board's evaluation of potential regulatory changes included an analysis of the competitive impact any changes might have on the ability of other service providers to compete with the Reserve Banks.[2] The following is a summary of the comments received and the Board's analysis of those comments.

II. Summary of Comments

The Board received a total of eighty-one comment letters in response to the March 1998 advance notice of proposed rulemaking. The following table shows the number of comments received by category of commenter:

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[1] The term "bank" as used in this notice and in Regulation CC includes a commercial bank, savings bank, savings and loan association, credit union, and U.S. agency or branch of a foreign bank. (12 CFR 229.2(e)) A "collecting bank" is a bank handling a check for collection, except the paying bank. A "correspondent bank" is an intermediary collecting bank that provides check collection services to other banks. A "presenting bank" is the collecting bank that presents a check to the paying bank. A "paying bank" generally is the bank by, at or through which a check is payable.

[2] The Board has established procedures for assessing the competitive impact of rule changes that may have a substantial impact on payments system participants. Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects. These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990. (55 FR 11648, March 29, 1990; FRRS 7–145.2)

Category of commenter	Number of responses
Depository institutions, bank holding companies, and associations representing depository institutions	45
Corporations and associations representing corporations	15
Clearinghouses	7
Check processors	6
Federal Reserve Banks	4
Money order companies	2
Other organizations	2
Total	81

Sixty-one commenters recommended not changing the rule governing the same-day settlement presentment deadline or reducing other legal disparities. Eight commenters recommended limited expansion of the same-day settlement rule. Six commenters suggested rescinding the existing rule, and six did not offer a specific opinion. Thirteen commenters stated that if the Board were to make any regulatory changes, particularly those that would require operational or programming changes, the changes should not take effect prior to mid-2000. Several commenters raised other regulatory issues as well as issues related to specific Reserve Bank services or policies that were not germane to the Board's March 1998 advance notice of proposed rulemaking.

Based on its analysis of the comments received, the Board has decided not to propose specific amendments to the same-day settlement rule or Regulation J at this time. The following sections summarize the comments received regarding current market practices, the presentment deadline, the timing and control of settlement, and other legal disparities and review the Board's conclusions based on its analysis of the comments.

A. Current Practices

The March 1998 notice asked commenters to provide information on what effect, if any, the same-day settlement rule has had on their operations since it was implemented in January 1994. In addition, the Board requested information on current practices that it could use to assess the need to modify the same-day settlement rule further. In total, sixty-eight commenters provided information on the current practices of businesses and banks, including changes made since the implementation of the same-day settlement rule.

Banks

Twenty-three out of twenty-five comments on the effect of the same-day settlement rule on check collection costs and availability stated that the rule had resulted in lower costs for collecting banks. Ten of those commenters also stated that they had experienced an improvement in funds availability due to the implementation of the same-day settlement rule. Several large collecting banks reported that their check collection costs were reduced not only by the elimination of presentment fees, but by using lower-priced check clearing services offered by correspondent banks.

Smaller banks commented that the same-day settlement rule benefited only large collecting banks by shifting funds transfer, staff, and adjustment costs for same-day settlement presentments to small paying banks. Community banks stated that they have benefited, in some cases, from receiving same-day settlement presentments earlier in the day than they receive Reserve Bank presentments. Receiving presentments earlier in the day provides the paying bank with more time to process the presentments, which lowers their processing costs. Most of these banks, however, also cited the cost of funds transfers for settlement as particularly burdensome.

Old Kent Financial Corporation noted that the Grand Rapids, Michigan, Clearing House disbanded as a result of the same-day settlement rule because members were able to present items directly without incurring the administrative and organizational expenses of maintaining a clearinghouse organization. Conversely, the five clearinghouses that provided information on their membership and clearing volume since 1993 stated that they had expanded their membership and clearing networks in response to the same-day settlement rule by providing transportation or settlement services.

Businesses

Of the thirty-eight commenters that commented on current business practices, none stated that the same-day settlement rule had influenced businesses' decisions to use controlled disbursement services. The Treasury Management Association (TMA) noted that 80 percent of businesses with annual sales over $100 million use controlled disbursement services. TMA as well as several businesses and banks noted that the primary benefit of controlled disbursement services was not the ability to generate float, but the ability to make investment and borrowing decisions early in the day based on knowledge of the value of that day's check presentments. Several large banks that provide cash management services as well as most businesses stated that they rely primarily or solely on the disbursement totals provided by their banks to determine their daily account balances because businesses tend to view internal forecasting as not sufficiently reliable. Three large cash management service providers and TMA reported that since the implementation of the same-day settlement rule, up to 55 percent of the value of their first presentment notification had shifted to their second presentment notification.[3] As a result, businesses that previously forecasted total daily presentments based on first presentment notifications have become more dependent on second presentment notifications to more accurately project daily presentments. Several banks and businesses indicated that maintaining an early morning presentment deadline also allows banks enough time to provide positive pay services, which help reduce losses from fraudulent check activity.[4]

None of the cash management service providers or businesses reported any plans to shift from checks to electronic payments as their primary method for disbursements, but a few noted that some businesses would consider expanding their use of electronic payments as services become more widely accepted and affordable. Technological investment and other startup costs were mentioned most often as the primary barriers to expanded use of electronic forms of payment.

B. Presentment Deadline Disparity

Under Regulation J, Reserve Banks can obtain same-day settlement for checks presented to a paying bank before its cut-off hour, generally 2:00 p.m. or later. (12 CFR 210.9(b)(1)) The same-day settlement rule for private-sector banks, however, requires that they make their presentments by 8:00 a.m. to ensure that they receive same-day settlement by Fedwire without being assessed presentment fees. The Board requested comment on the effect of the difference in presentment deadlines for Reserve Banks and private-sector collecting banks. The Board also requested comment on an extension of the presentment deadline if the presenting bank transmits the information contained in the magnetic ink character recognition (MICR) line of each check by some earlier time. Further, the Board requested comment on the Reserve Banks' noon presentment policy and the effect of allowing interest payments on demand deposit accounts.

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[3] Cash management banks typically provide corporations with a preliminary initial notification of the day's clearing totals by around 8:00 a.m. local time, which includes early direct presentments, on-us items, and the first Reserve Bank presentments. The second notification is typically made between 9:30 and 11:00 a.m. eastern time and includes the second Reserve Bank presentment from the high dollar group sort program and most same-day settlement presentments.

[4] Companies using positive pay services generally provide the paying bank with an electronic file containing information on all checks disbursed. The paying bank compares data on the file with data captured from the presented checks to identify exceptions that are examined for potential fraudulent check activity.

Presentment Deadline

Most commenters did not believe that the six-hour difference in presentment deadlines was a significant impediment to the ability of private-sector collecting banks to compete with the Reserve Banks. Several banks and processors noted that Reserve Banks typically make their check presentments to paying banks much earlier than the 2:00 p.m. cut-off hour. In addition, most large correspondent banks indicated that they are able to compete effectively with Reserve Banks by offering lower prices and, in some cases, better availability of funds.

Ten banks, two check processors, and one Federal Reserve Bank noted that a later same-day settlement presentment deadline would require paying banks to process incoming presentments during the time they currently use to process internal documents and outgoing checks. For example, commenters noted that shifting same-day settlement check volumes into a shorter processing window would cause paying banks to incur significant additional costs, including the cost of acquiring additional sorter capacity and increased staffing expense. Commenters also indicated that the shorter processing windows would likely result in higher check-fraud losses because paying banks would have less time to inspect presented checks properly and make return decisions regarding those checks. In addition, banks and processors that provide cash management services stated that later presentments would reduce their revenue from cash management services because daily clearing totals would be reported later in the day to businesses and, therefore, businesses would be less willing to pay for those services. All of the comments received from businesses stated that a later presentment deadline would severely diminish their ability to manage account balances efficiently because presentment totals would be reported to them later in the day.

Seventy-five percent of all commenters favored not changing the 8:00 a.m. same-day settlement presentment deadline primarily because the additional costs incurred by paying banks and businesses would outweigh benefits gained by collecting banks. Six commenters recommended that the same-day settlement rule be rescinded to allow paying banks to discourage private-sector presentments, regardless of the presentment deadline. Seven commenters favored expanding the same-day settlement rules by moving the deadline for private-sector presentments later in the day, with the recommended new deadline ranging from 9:00 a.m. to 2:00 p.m. First Union Bank and Firstar Bank conditioned their recommendation on preserving an 8:00 deadline for controlled disbursement checks, while First Tennessee Bank recommended the deadline only be extended if the presenting bank provided a MICR information transmission by 8:00 a.m. Several banks both for and against extending the same-day settlement presentment deadline suggested that a later deadline would improve funds availability by increasing the amount of processing time available to private-sector collecting banks, particularly for West Coast banks collecting checks drawn on East Coast banks. Those opposed to extending the deadline, however, believed that the availability improvements would not likely be of sufficient magnitude to justify additional transportation expenses for collecting banks or the increased operational costs to paying banks.

Six banks and one check processor with operations in the Midwest or West noted that moving the presentment deadline as little as thirty minutes later would result in a further shift of controlled disbursement accounts to banks in the eastern time zone. Being located in the eastern time zone gives controlled disbursement service providers an advantage in reporting disbursement totals to customers earlier in the day because it offers them time to make investment and funding decisions prior to the close of the European and U.S. financial markets. First Interstate Bank (Montana) and Bank of America proposed establishing a presentment deadline based on eastern time, rather than local time, to allow banks in the western part of the country to compete more effectively with banks in the eastern time zone in providing cash management services. In addition, four commenters recommended creating a special class of controlled disbursement routing numbers with an 8:00 a.m. presentment deadline and extending the presentment deadline for all other types of checks.

Because some collecting banks have been slow to take advantage of the same-day settlement rule, several commenters noted that they would prefer to leave the current same-day settlement rule unchanged. Maintaining the rule would allow the private sector to continue promoting other initiatives, such as the expansion of direct presentments through existing clearinghouses. A few commenters recommended moving the Reserve Banks' presentment deadline earlier, to match the private-sector same-day settlement presentment deadline, but several others noted that this would most likely force Reserve Banks to move deposit deadlines earlier, slowing the check collection process.

Later Presentment Deadline Conditioned on Earlier Transmission of MICR Information

Forty-seven commenters commented on conditioning the extension of the same-day settlement presentment deadline for paper checks on the transmission of check MICR information earlier in the day. Twenty-nine of those commenters opposed conditioning the extension of the presentment deadline on an earlier MICR transmission. Twelve commenters stated that the presentment deadline under the same-day settlement rule could be extended by the earlier provision of MICR information only if the rule contained detailed standards regarding the MICR transmission. Six commenters favored using MICR files to extend the presentment deadline as long as the private sector is allowed to set MICR transmission standards. The primary concern of those opposed to conditioning the extension of the presentment deadline on the earlier transmission of MICR information was the accuracy of the data contained in the MICR files. Three banks stated that they currently receive MICR files from presenting banks and noted that they occasionally find discrepancies between data contained in the electronic files and the associated checks. Other concerns included the investment required to send, receive, and process MICR files; potential communication network capacity issues at peak transmission times; and the need for additional warranties.

The commenters that currently receive MICR file transmissions under bilateral agreements stated that their existing agreements adequately cover relevant MICR file transmission issues and that regulation of these issues would likely be too general to address operational issues effectively. Several paying banks noted that if they wanted to maintain their current cash management reporting deadlines, they would be required to process MICR files from presenting banks that take advantage of the later deadline, even if paying banks determined that the investment required to process MICR information could not be recouped by efficiency gains. Several commenters suggested that it would be better to let market forces determine the acceptance of MICR files than to incorporate the use of MICR files in the same-day settlement rule as a condition for a later presentment deadline.

Noon Presentment Policy

Of the twenty-three comments received on the Reserve Banks' current noon presentment policy for city-zone endpoints, seventeen commenters stated that the policy does not need to be changed.[5] They said that the current policy adequately balances the Reserve Banks' ability to expedite the collection of city-zone checks with the desire of paying banks to receive their presentments earlier in the day. Four commenters suggested that the Reserve Banks make presentments earlier in the day and two suggested that the Reserve Banks could make their presentments later in the day.

Interest on Demand Deposits

Most banks that provide cash management services stated that controlled disbursement accounts would still be needed even if banks were permitted to pay interest on corporate demand deposits. Several banks indicated that they already compensate businesses through earnings credits and that they would not be able to pay rates high enough to keep larger businesses from seeking higher returns through alternative investments, although paying interest might help smaller businesses. TMA and Bank of America stated, however, that if banks paid market rates of interest on corporate demand deposits, the demand for controlled disbursement services would be significantly reduced, thus mitigating concerns about a later same-day settlement presentment deadline.

C. Timing and Control of Settlement

Under Regulation J, Reserve Banks have the right to settle for check presentments by debiting the Federal Reserve account of the paying bank or its correspondent settlement agent, a process often referred to as autocharge. (12 CFR 210.9(b)) The debit is posted during the day based on the time of presentment, as provided in the Reserve Banks' operating circulars. Under the same-day settlement rule in Regulation CC, however, the paying bank maintains control of the settlement through the initiation of a Fedwire funds transfer that does not have to be made until the close of Fedwire (6:30 p.m. eastern time). (12 CFR 229.36(f)(2)) Most commenters acknowledge that the regulations governing the timing and control of settlement favor Reserve Banks over private-sector collecting banks. None of the commenters, however, suggested an alternative that eliminated the disparity while maintaining a balance between the needs of both the paying and collecting banks to control some portion of the settlement process.

None of the commenters recommended changing the control of settlement. The primary concern with eliminating the Reserve Banks' ability to autocharge accounts was that paying banks would incur additional costs to transfer funds daily to the Reserve Banks. In addition, none of the paying banks indicated problems with the Reserve Banks' autocharge process. Moreover, most banks opposed giving private-sector presenting banks the ability to debit their Federal Reserve accounts directly. Smaller paying banks, in particular, stated that their ability to adjust the amount of their funds transfers for settlement was often their most effective method of resolving discrepancies in the presentment totals, even though funds transfers were also cited as a significant cost to paying banks under the same-day settlement rule.

While seven commenters suggested moving the settlement deadline under the same-day settlement rule for private-sector banks to earlier in the day, most commenters stated that the current timing of Reserve Bank settlements was appropriate. Several banks expressed concern that if Reserve Banks obtained settlement for their presentments later in the day, Reserve Banks would post credits to depositors' accounts later, thus increasing the likelihood of daylight overdrafts. Another concern cited by several collecting banks was that under the current same-day settlement rule, most funds transfers settling for same-day settlement presentments are received late in the day, making it difficult for collecting banks to manage account balances and reserve requirements. A few paying banks, however, noted that the later settlement deadline for private-sector banks provided paying banks time to process and reconcile presentments before settling. To help resolve issues regarding the timing and control of settlement, the regional check clearinghouses noted that they have incorporated same-day settlement presentments into their clearinghouse settlements.

D. Other Legal Disparities

In its March 1998 notice, the Board also requested comment on other legal disparities that exist between Reserve Banks and private-sector collecting banks. Specifically, the Board wanted to know if the difference in presentment location, reasonable delivery requirements, and the obligation to settle on a non-banking day hindered competition and innovation in the payments system. The Board also asked for comment on any other legal differences between Reserve Banks and private-sector collecting banks that limit the ability of private-sector banks and Reserve Banks to compete in the interbank check collection market.

Under the same-day settlement rule, paying banks have the right to designate the presentment location, with certain restrictions, and to impose reasonable delivery requirements for presentments received from private-sector presenting banks. (12 CFR 229.36(f)(1)) Regulation J, however, allows Reserve Banks to present checks at certain locations that may not be the same as the location designated by the paying bank under the same-day settlement rule. (12 CFR 210.7(b)) In addition, Regulation J does not give paying banks the right to impose delivery requirements on Reserve Banks. In practice, however, the Reserve Banks generally present checks at a location designated by the paying bank and generally comply with the paying bank's delivery requirements.

Most of the thirty-one commenters on the issues of presentment location and reasonable delivery requirements noted that Reserve Banks already generally comply with private-sector practices. Fourteen commenters noted that the current disparity in presentment location and delivery requirements does not result in any material competitive advantage. Further, they noted that if the Board were to make changes in this area, the Board should modify Regulation J to allow paying banks to designate the presentment location and reasonable delivery requirements for presentments by Reserve Banks. None of the commenters suggested eliminating the reasonable delivery requirements for private-sector presentments. Only four commenters noted that the current rules provide a material competitive advantage for the Reserve Banks and suggested that collecting banks be given the same legal rights for presentment location as Reserve Banks.

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[5] The Board adopted a policy in 1982 under which the Reserve Banks generally must present checks to paying banks located in Federal Reserve city availability zones by noon local time. (48 FR 79, January 3 1983) This noon presentment policy, which provided for later presentments to city banks than was previously the case, was part of a broader program to expedite the collection of checks by establishing significantly later deposit deadlines and associated later presentment times for checks drawn on city banks.

The settlement obligation of a paying bank that closes voluntarily on a business day differs based on whether the presenting bank is a Reserve Bank or a private-sector bank. Under Regulation J, the paying bank's obligation to settle with a Reserve Bank is triggered if the Reserve Bank "makes a cash item available to the paying bank on that day." (12 CFR 210.9(b)(3)) Under the same-day settlement rule, the paying bank's obligation to settle with a private-sector collecting bank is triggered only if the paying bank "receives presentment of a check" on a business day on which it is open. (12 CFR 229.36(f)(3)). Of the seventeen commenters that commented on this issue, none of the commenters believed that the difference between the rules for private-sector banks and Federal Reserve Banks had a material competitive effect.

Nine commenters raised as another legal disparity the way paying banks and private-sector presenting banks resolve discrepancies in the settlement amount for presentments. The Reserve Banks' Operating Circular 3, Collection of Cash Items and Returned Checks (paragraphs 12, 18, and 19), sets forth the terms under which Reserve Banks handle corrections, adjustments, and warranty claims. Although paying banks and private-sector presenting banks can establish bilateral or multilateral agreements addressing adjustment standards, the same-day settlement rule does not provide standards for private-sector banks lacking such agreements. Several commenters noted that the lack of detailed adjustment standards had occasionally made it difficult to resolve differences between collecting and paying banks in a timely manner. While a few commenters asked the Board to incorporate detailed standards in Regulation CC, several others recommended that industry groups continue to set these standards.

E. Analysis and Conclusions

The Board recognizes that certain legal disparities between Reserve Banks and private-sector collecting banks may affect the competitive position of participants in the check collection system. In evaluating potential reductions in the legal disparities between Reserve Banks and private-sector collecting banks, the Board recognizes that even removing the disparities discussed in its advance notice of proposed rulemaking would not result in a completely level playing field in the interbank check collection market. For example, the Reserve Banks enjoy an unsurpassable credit rating that makes them an attractive service provider in times of financial stress.[6]

Based on the comments received, the Board believes that regulatory changes to reduce legal disparities between Reserve Banks and private-sector collecting banks would yield only marginal benefits in terms of directly expediting the collection and return of checks. While the removal of these disparities may foster competition between Reserve Banks and private-sector collecting banks in the check collection market, neither the direct nor indirect benefits appear to be sufficient to offset the significant additional costs that such regulatory changes would impose on paying banks and their customers. Specifically, the Board has concluded that moving the presentment deadline later in the day for private-sector banks would impose significant costs on paying bank operations and those businesses that use controlled disbursement services. In addition, moving the Reserve Banks' presentment deadline earlier in the day would delay the collection of some checks, which would be inconsistent with one purpose of EFAA: to expedite the check collection and return system.

Further, the Board believes that eliminating the disparities between the Reserve Banks and private-sector banks as to the control and timing of settlement would also likely increase costs and reduce the efficiency in the check system. The Board notes that private-sector initiatives, such as the expansion of clearinghouse settlement services, have been able to mitigate the settlement disparities to some extent.

With respect to the control of settlement, the Board believes that the autocharge system used by the Reserve Banks provides an efficient settlement mechanism that has not created problems for paying banks and therefore should be retained. The Board recognizes that while banks generally are not concerned with the ability of Reserve Banks to charge paying banks' Federal Reserve accounts, banks are very concerned about the risks associated with extending this capability to private-sector banks.

With respect to the timing of settlement, providing for a later settlement of Reserve Bank presentments would similarly delay the ability of Reserve Banks to post credits for check deposits, thereby making intraday account management more difficult for many banks and potentially increasing their daylight overdraft charges. In addition, providing for an earlier settlement deadline for presentments by private-sector banks could materially increase the costs and risks to paying banks by reducing the time that they have to process and reconcile presentments before settling.

The Board has also concluded that the legal disparities in control of presentment location, delivery requirements, and settlement on a non-banking day do not materially affect the efficiency of or competition in the check collection system.

The implementation of the same-day settlement rule in 1994 has significantly reduced the legal disparities between private-sector collecting banks and Reserve Banks, thereby improving the competitive position of private-sector collecting banks. While some legal disparities related to the presentment and settlement of checks still exist, they are not as significant as those that existed prior to 1994. The Board believes that the costs associated with reducing the remaining legal disparities would outweigh any payments system efficiency gains. Therefore, based on its analysis of the comments received, the Board believes that changes to further reduce the legal disparities should not be made at this time.

By order of the Board of Governors of the Federal Reserve System, December 8, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33049 Filed 12–11–98; 8:45 am]

BILLING CODE 6210–01–P

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[6] Reserve Banks also labor, however, under constraints not imposed on their private-sector competitors, such as central bank concerns regarding the adequacy of payment services in the markets and cost recovery by major service category, as well as a level of public scrutiny of price and service level determinations not shared by the private sector.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Breeze Eastern Aerospace Rescue Hoists

AGENCY: Federal Aviation Administration, DOT.

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ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Breeze Eastern Aerospace rescue hoists. This proposal would require a one-time inspection of the mounting brackets for cracks, and, if necessary, replacement with serviceable parts. This proposal is prompted by reports of cracked mounting brackets. The actions specified by the proposed AD are intended to prevent mounting bracket cracks, which could result in mounting bracket failure and separation of the rescue hoist from the aircraft.

DATES: Comments must be received by February 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Breeze Eastern Aerospace, 700 Liberty Avenue, Union, NJ 07083; telephone (908) 686–4000, fax (908) 686–9292. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, NY 11581; telephone (516) 256–7512, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–37–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of mounting bracket cracks on certain Breeze Eastern Aerospace rescue hoists series BL–16600, excluding BL–16600–160. The investigation revealed that the cracks were found on the outside radius of these brackets, not along the length of the angle bracket, but in the radial direction, i.e., transverse to the length, compromising their structural integrity. Those cracks resulted from the bending/forming of the brackets during the manufacturing process. The manufacturing process has since been changed. No loss of the rescue hoist nor of rescues have occurred to date. Since the rescue hoist is tied to the airframe through those two support brackets only, their failure could result in the loss of the rescue hoist. This condition, if not corrected, could result in mounting bracket failure and separation of the rescue hoist from the aircraft.

The FAA has reviewed and approved the technical contents of Breeze Eastern Customer Advisory Bulletin CAB–100–56, dated November 11, 1997, that describes procedures for inspection of the mounting brackets for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of the mounting brackets for cracks, and, if necessary, replacement with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 300 hoists of the affected design in the worldwide fleet. The FAA estimates that 100 hoists installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per hoist to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $35 per hoist. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Breeze Eastern Aerospace: Docket No. 98–ANE–37–AD.

Applicability: Breeze Eastern Aerospace rescue hoists series BL–16600, excluding BL–16600–160. These hoists are installed on but not limited to Bell 206, Bell 407, Bell 222, Agusta A109, Eurocopter France AS332, McDonnell Douglas MD–500, and Sikorsky S–61 rotorcraft.

Note 1: This airworthiness directive (AD) applies to each hoist identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For hoists that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent mounting bracket cracks, which could result in mounting bracket failure and separation of the rescue hoist from the aircraft, accomplish the following:

(a) Prior tc the next usage of the rescue hoist after the effective date of this AD, perform a one-time inspection for mounting bracket cracks, and, if necessary, replace with serviceable parts, in accordance with Breeze Eastern Aerospace Advisory Bulletin CAB–100–56, dated November 11, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 7, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–33025 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–69–AD]

RIN 2120–AA64

Airworthiness Directives; CFE Company Model CFE738–1–1B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to CFE Company model CFE738–1–1B turbofan engines. This proposal would require a one-time dimensional inspection of the curvic coupling tooth profile of certain high pressure compressor (HPC) rotor components to check for machining mismatches in the curvic coupling, and, if necessary, replacement with serviceable parts. The actions specified by the proposed AD are intended to prevent failure of certain HPC rotor components, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by February 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-69-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFE Company, Data Distribution, M/S 64-03/2101–201, P. O. Box 52170, Phoenix, AZ 85072–2170; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE–69-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE–69-AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has determined that certain stage 4 and 5 high pressure compressor (HPC) blisks, the impeller aft shafts, and the impellers, installed on CFE Company model CFE738–1–1B turbofan engines, have machining mismatches in the curvic coupling tooth profiles, including under-minimum root fillet radii, tooth profile mismatch and gable mismatch. These machining mismatches, if present, may decrease the service life of these HPC parts. This condition, if not corrected, could result in failure of certain HPC rotor components, which could result in an uncontained engine failure and damage to the aircraft.

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The FAA has reviewed and approved the technical contents of CFE Company Alert Service Bulletin (ASB) No. CFE738-A72-8029, dated October 1, 1998, that describes procedures for dimensional inspections of curvic couplings on certain HPC rotor components.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time dimensional inspection of the curvic coupling tooth profile of certain HPC rotor components to check for machining mismatches in the curvic coupling, and, if necessary, replacement with serviceable parts. The actions would be required to be accomplished in accordance with the ASB described previously.

There are approximately 146 engines of the affected design in the worldwide fleet. The FAA estimates that 94 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 300 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $18,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,384,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CFE Company: Docket No. 98-ANE-69-AD.

Applicability: CFE Company Model CFE738-1-1B turbofan engines, serial numbers 105106 through 105251, installed on but not limited to the Dassault Aviation Falcon 2000 model aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain high pressure compressor (HPC) rotor components, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Perform a one-time dimensional inspection of the curvic coupling tooth profile of certain HPC components, as identified in the table below, for machining mismatches in the curvic coupling, prior to exceeding the specified number of cycles since new, as listed in the table below, in accordance with procedures described in CFE Company Alert Service Bulletin (ASB) CFE738-A72-8029, dated October 1, 1998:

Nomenclature	Part No.	Cycles since new
Stage 4 and 5 Blisk	6079T74P07	2,460
	6079T74P08	3,430
Impeller Shaft	6079T80P05	1,670
	6079T80P04	2,060
Impeller	6079T77P05	2,150
	6079T77P06	2,130

(b) Remove from service any component that is found with a machining mismatch, and replace with serviceable component. parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 7, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98-33026 Filed 12-11-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-42-AD]

RIN 2120-AA64

Airworthiness Directives; AlliedSignal Inc. (formerly Textron Lycoming) ALF502R-5 and ALF502R-3A Model Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. ALF502R-5 and ALF502R-3A model turbofan engines. This proposal would require incorporation of an improved fan core inlet anti-ice system. This proposal is prompted by reports of uncommanded reduction of engine thrust (rollback) and loss of thrust control in icing conditions. The actions specified by the proposed AD are intended to prevent ice accretion on the fan core inlet stator vane surfaces, which can result in engine rollback and loss of thrust control in icing conditions.

DATES: Comments must be received by February 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Engines, Inc., P.O. Box 5218, Phoenix, AZ 85072–2181, telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–42–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of uncommanded reduction of engine thrust (rollback), and loss of thrust control on AlliedSignal Inc. (formerly Textron Lycoming) ALF502R–5 model turbofan engines. 12 rollback events have been recorded to date, which all occurred in icing conditions at altitudes above 26,000 feet, and generally near areas of weather conditions that can be described as the anvil area of thunderstorm clouds. Seven events involved simultaneous rollbacks of multiple engines on the four-engine British Aerospace (BAe) 146 airplane.

The FAA Transport Airplane Directorate (TAD) issued Airworthiness Directive (AD) 94–07–09, effective on April 15, 1994, to require airplane altitude restrictions and operating procedures, to prevent engine rollbacks during flight in icing conditions. Following two additional rollback events during aircraft operation in icing conditions above 26,000 feet, the FAA TAD issued emergency AD 96–14–09 effective on July 2, 1997, to supersede AD 94–07–09. AD 96–14–09 carried over the earlier AD's altitude restrictions, and revised the Aircraft Flight Manual (AFM) airplane operating procedures.

The FAA Engine Certification Office (ECO) has reviewed the results of engine investigations, component icing tests, and in-flight engine icing tests of the present ALF502R–5 engine, which showed that accretion of ice may occur in the ALF502R–5 engine fan core inlet at stator vane surfaces, under specific icing conditions identified as ice crystals, which are likely to be encountered in weather occurring within the approved engine operating envelope. This ice accretion adversely restricts airflow to the engine core, causing rollback, progressing to further ice accretion and worsening rollback severity. This condition, if not corrected, can result in engine rollback and loss of thrust control.

The FAA ECO has reviewed the results of analyses, component tests, and in-flight engine testing of modifications of the ALF502R–5 engine, to incorporate an improved fan core inlet anti-ice system. These data show the engine modifications to be acceptable to prevent adverse ice accretion and engine rollback in icing conditions. The FAA ECO has reviewed and approved the technical contents of AlliedSignal Inc. Service Bulletin (SB) No. ALF/LF 72–1020, Revision 2, dated September 30, 1998, that describes procedures for installation of the improved fan core inlet anti-ice system. Installation of modified ALF502 engines onto BAe 146 aircraft also requires incorporation of two airframe modifications, contained in BAe Regional Aircraft SB 26–40–01601A, dated March 25, 1998, and SB 71–68–01581A, Revision 1, dated March 25, 1998.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require installation of an improved fan core inlet anti-ice system, at the next shop visit, but no later than December 31, 2002.

The compliance end date of not later than December 31, 2002, was determined based on safety analysis considering the projected ALF502R–5 engine fleet rollback rate and projected cumulative unmodified engine operating hours.

The requirement for compliance at next shop visit was determined based upon average engine hourly usage between shop visits, and the corresponding modification incorporation rate assumed by the safety analysis. The shop visit requirement, rather than a specific hourly usage, was intended to allow modifications to occur concurrently with periodic maintenance.

The actions would be required to be accomplished in accordance with the SBs described previously.

The FAA TAD is considering new rulemaking to allow BAe 146–100A, –200A and –300A aircraft, equipped with all four engines modified, to be excluded from the altitude restrictions and operating procedures of AD 96–14–09. To be considered for that exclusion, modifications of the aircraft associated with the engine modifications, changes to limitations placards, and revisions of the AFM, will be required to be accomplished on the aircraft in accordance with the previously mentioned BAe SBs, BAe SB 71–72–30473A, and certain FAA approved AFM revisions.

There are approximately 982 engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S.

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registry would be affected by this proposed AD, that it would take approximately 30 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $75,000 per engine. Based on these figures, the cost impact for incorporation of engine modifications required by the proposed AD on U.S. operators is estimated to be $7,680,000.

In addition to the above engine modifications, further aircraft modifications specified by BAe SB No. 71–68-01581A, and BAe SB No. 26–40–01601A, Revision 1, are required prior to installation of modified engines onto BAe 146 aircraft. The FAA estimates that 20 aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 33 work hours per aircraft to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,400 per aircraft. Based on these figures, the cost impact for incorporation of aircraft modifications required by the proposed AD on U.S. operators is estimated to be $87,600.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,767,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AlliedSignal Inc.: Docket No. 98-ANE–42-AD.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) ALF502R–5 and ALF502R–3A model turbofan engines, installed on but not limited to British Aerospace (BAe) 146100A, -200A and -300A series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded reduction of engine thrust and loss of thrust control in icing conditions, accomplish the following:

(a) At the next engine shop visit, but not later than December 31, 2002, install an improved fan core inlet anti-ice system in accordance with Accomplishment Instructions, Paragraphs 2.B. through 2.I.(1–4), of AlliedSignal Inc. Service Bulletin (SB) No. ALF/LF 72-1020, Revision 2, dated September 30, 1998. In order to install engines with the required modifications onto BAe 146–100A, -200A and -300A series aircraft, accomplish BAe Regional Aircraft SB No. 2640–01601A, dated March 25, 1998, and BAe Regional Aircraft SB No. 71–68–01581A, Revision 1, dated March 25, 1998.

(b) For the purpose of this AD, an engine shop visit is defined as maintenance that includes separation of either the fan module or the combustor turbine module from the remainder of the engine.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 7, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service

[FR Doc. 98–33027 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 98N–0979]

Investigational New Drug Applications; Clinical Holds; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing investigational new drug applications (IND's) for human drug and biological products. This proposed action would amend the IND clinical hold requirements to state that the agency will respond in writing to a sponsor's request that a clinical hold be removed from an investigation within 30-calendar days of the agency's receipt of the request and the sponsor's complete response to the issue(s) that led to the clinical hold. This proposed action is being taken in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). This proposed rule is a companion document to a direct final rule published elsewhere in this issue of the **Federal Register**. If FDA receives any significant adverse comment, the direct final rule will be withdrawn, and the comments will be considered in the development of a final rule using usual notice-and-comment rulemaking based on this proposed rule.

DATES: Comments must be received on or before March 1, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5417, or

Rebecca A. Devine, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, President Clinton signed into law the Modernization Act (Pub. L. 105–115). Section 117 of the Modernization Act amends the Federal Food, Drug, and Cosmetic Act (the act) by codifying in section 505(i) (21 U.S.C. 355(i)) several of the procedures and requirements governing the use of investigational new drugs that are already set forth in FDA regulations (parts 50 and 312 (21 CFR parts 50 and 312)).

Section 505(i)(2) of the act, as amended by the Modernization Act, provides that if a sponsor of an IND that has been placed on clinical hold requests in writing that the clinical hold be removed and submits a complete response to the issue(s) identified in the clinical hold order, FDA is required to respond in writing to the sponsor within 30-calendar days of receipt of the complete response. This proposed rule would amend § 312.42(e) to reflect this new statutory requirement and to clarify when a sponsor may resume an investigation after FDA issues a clinical hold order.

II. Additional Information

This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. The companion proposed rule and the direct final rule are identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule.

The amendments in this proposed rule are a direct result of the new provisions in section 505(i)(2) of the act. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this companion proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on April 28, 1999. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to respond to comments received regarding the rule and, if appropriate, the rule will be finalized under this companion proposed rule using usual notice-and-comment procedures.

For additional information, see the corresponding direct final rule published elsewhere in this issue of the **Federal Register**. All persons who wish to comment should review the detailed rationale for these amendments set out in the preamble discussion of the direct final rule. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impact

FDA has examined the impacts of this companion proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on small entities. The agency has considered the effect that this rule will have on small entities, including small businesses, and certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million (adjusted annually for inflation) in any 1 year. This proposed rule will not result in an expenditure of $100 million or more on any governmental entity or the private sector, so no budgetary impact statement is required.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Request for Comments

Interested persons may, on or before March 1, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 312 be amended to read as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

2. Section 312.42 is amended by revising paragraph (e) to read as follows:

§ 312.42 Clinical holds and requests for modification.

* * * * *

(e) *Resumption of clinical investigations.* An investigation may only resume after FDA (usually the Division Director, or the Director's designee, with responsibility for review of the IND) has notified the sponsor that the investigation may proceed. Resumption of the affected investigation(s) will be authorized when the sponsor corrects the deficiency(ies) previously cited or otherwise satisfies the agency that the investigation(s) can proceed. FDA may notify a sponsor of its determination regarding the clinical hold by telephone or other means of rapid communication. If a sponsor of an IND that has been placed on clinical hold requests in writing that the clinical hold be removed and submits a complete response to the issue(s) identified in the clinical hold order, FDA shall respond in writing to the sponsor within 30-calendar days of receipt of the request and the complete response. FDA's response will either remove or maintain the clinical hold, and will state the reasons for such determination. Notwithstanding the 30-calendar day response time, a sponsor may not proceed with a clinical trial on which a clinical hold has been imposed until the sponsor has been notified by FDA that the hold has been lifted.

* * * * *

Dated: December 4, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–33030 Filed 12–11–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6200–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Whittaker Superfund Site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Whittaker Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and U.S. EPA, in consultation with the State of Minnesota, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before January 13, 1999.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Minnesota Pollution Control Agency, 520 Lafayette Rd. North, St. Paul, Minnesota 55155–4194. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Gladys Beard, Associate Remedial Project Manager, Superfund Division (SR–6J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Don de Blasio (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4360.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Whittaker Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that U.S. EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate non-time Critical Removal Actions or Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Whittaker Site covers approximately 7.5 acres and is located in Hennepin County, Minnesota (5th Congressional District). The Whittaker Corporation acquired this Site from the American Petroleum Corporation in 1967. Whittaker operated the facility until 1980. The principal products produced at the Whittaker Site were industrial coatings and resins. Automotive product packaging was also a production activity which took place at this facility. One of the chemicals found in the storage tanks on-site was propylene glycol, commonly called antifreeze, which is thought to be one of the products packaged at this facility. Steel was also distributed from this facility. Chemicals were stored in approximately 28 aboveground tanks ranging in size from 2,000 to 200,000 gallons and 21 underground tanks ranging in size from 2,500 to 14,000 gallons. The tanks contained propylene glycol, styrene monomer, di-isobutyl ketone, methyl ethyl ketone, methyl isobutyl ketone, toluene, xylene, and other chemicals. A variety of wastes were generated as a result of the processes used at the Whittaker Site. These wastes included tank bottoms, paint sludge, old paints, off-specification paints and resins, and cleaning fluids.

On September 24, 1981, Minnesota Pollution Control Agency (MPCA) requested the Whittaker Corporation and Tool Tech Company to complete a Preliminary Remedial Investigation Phase I study. The Phase I report was submitted by Whittaker/Tool Tech Company to MPCA in January 1983. In response to a request from the MPCA, a groundwater investigation was initiated by the Whittaker Corporation in early 1983. Monitoring wells were installed as part of that groundwater investigation. Groundwater samples were analyzed and found to contain benzene, tetrahydrofuran, methyl isobutyl ketone, 1,1-dichloroethane, cis and trans 1,2-dichloroethylene and chlorobenzene, xylene, 1,1,2-trichloroethylene, cadmium, and chromium. The Whittaker Corporation completed site specific soil treatment and removal along with tank removal operations at the Whittaker Site in 1985.

Soil samples were collected/analyzed and ten monitoring wells were installed at the Site between 1983 and 1985. Specific response actions included during this period were:

- Removal of approximately 600 damaged drums and drum remnants with off-site disposal at a permitted Resource Conservation Recovery Act (RCRA) facility.
- Excavation of approximately 10,000 cubic yards of visibly contaminated soil.
- Physical separation of resins from soils resulting in the shipment of 12 truck loads of hazardous waste materials to an out-of-state permitted RCRA facility.
- Off-site incineration of 25 drums of recovered solvents.
- Excavation and thermal processing of soils on-site in an aggregate dryer.
- Landfarming of dried soils on-site to volatilize organics.
- Shipment of approximately 280 cubic yards of waste material off-site to a permitted RCRA facility.
- Installation of a groundwater pump and treat system using two air strippers in series.

A groundwater pump and treat system began operations on May 9,1985. The groundwater clean-up standards for the pump and treat system were based on the State issued Health Risk Limits (HRLs) for xylene, ethylbenzene, toluene and benzene.

The MPCA under state authority issued a Request for Response Action (RFRA) to the Whittaker Corporation on April 23, 1985. In response to the work completed at the Whittaker Site, the RFRA was amended on November 26, 1985. The amended RFRA requires Whittaker Corporation to perform the following actions under state authority:

1. Continue operation of the pump and ground water treatment system until specified groundwater clean-up levels are reached.
2. Continue monitoring the groundwater at and surrounding the Site for specific parameters listed in the amended RFRA. Submit written reports of the data collected to MPCA.
3. Initate a contingency plan in the event the system fails to achieve the groundwater clean-up levels.
4. Place notations on the property deed to notify purchasers of the existence of the amended RFRA and any resulting limitation on the use of the Whittaker Site, and
5. Follow the Site Closure plan spelled out in the RFRA.

The following are major submittals, approvals and actions taken by the Whittaker Corporation and the MPCA staff pursuant to the RFRA issued to the Whittaker Corporation on April 23, 1985, and as amended on November 26, 1985.

A Remedial Investigation Final Report (RI Final Report) was submitted by the Whittaker Corporation on June 14, 1985 and approved by the MPCA on July 5, 1985.

An Interim Response Action (IRA) Report was also submitted on June 14, 1985 and approved by the MPCA on July 5, 1985. The IRA report addressed the types and amounts of contaminated material removed from the Site; provided the hazardous waste manifests and shipping papers; described the follow-up restoration performed at the Site and adjacent property; provided details of areas excavated; described backfill techniques for backfill placed on the excavation; and provided an anticipated schedule for future Response Actions at the Site.

On July 30, 1985, the Whittaker Corporation submitted the following three reports:

1. An Alternatives Report,
2. A Detailed Analysis Report, and
3. A Response Action Implementation Report.

The MPCA approved all three reports on September 4, 1985.

The Alternatives Report evaluated various RA alternatives, the effectiveness of each alternative, the feasibility of each alternative and a recommendation to implement or drop from consideration each alternative. The Detailed Analysis Report provided a detailed description of the recommended alternatives; an environmental assessment for each of the recommended alternatives, and, a conceptual design of the recommended combination of alternatives. And finally, the Response Action Implementation Report spelled out the selected remedy, the pump and treat system, and how that remedy would be installed and operated. The MPCA approved the Response Action Implementation Report with the modification of including future monitoring of 1,1-dichloroethylene and trichloroethylene in monitoring well number 10.

As required by the amended RFRA, the Whittaker Corporation installed a groundwater pump and treat system which ran from 1985 until July 11, 1994. The Whittaker Corporation alleged the pump and treat system was pulling contaminated groundwater into the system from off-site areas. Based on this assumption, Whittaker Corporation unilaterally shut the system down. It has not been in operation since July 11, 1994. The RFRA also required annual groundwater monitoring and submission of an annual report documenting work completed during the previous year. Whittaker Corporation has not submitted an annual monitoring report since 1995, in violation of the RFRA. As a result, the MPCA requested the Whittaker Corporation to perform additional soil and groundwater sampling.

The MPCA completed an investigation of two areas immediately adjacent to the Whittaker Site in 1997, one north and one west of the Whittaker Site. MPCA's goal was to evaluate whether either of these two adjacent areas could be causing groundwater to become contaminated and drawn into the Whittaker Site pump and treat system as the Whittaker Corporation alleged. MPCA did not find any evidence to support that theory.

On July 9, 1997, MPCA staff were present during excavations of soil on adjacent land west of the Whittaker Site. The field investigation performed adjacent to the Site was performed by 3K Paper Company, the owner of the property, in response to the MPCA Voluntary Investigation and Cleanup program. MPCA staff did not observe any substantial soil contamination during the time the trenching was being done by the 3K Paper Company consultant.

In 1997, MPCA staff reviewed reports and documentation supplied by Applied Coatings Technology, Inc., the company owning the property bordering to the north of the Whittaker Site. Based upon an evaluation of the data provided in these reports, MPCA determined that the soil or groundwater contamination from the Applied Coatings Technology, Inc. site was not likely to be contributing to the groundwater contamination at the Whittaker Site.

In May 1998, the Whittaker Corporation hired a consultant to investigate the possibility of any remaining soil contamination at the Whittaker Site and to investigate the possibility of any ground water contamination at and downgradient of the Whittaker Site. The field investigation found that soil and groundwater contamination at and down-gradient of the Whittaker Site remains, but are at levels which no longer pose a threat to public health or the environment.

The long-term effectiveness of the final remedy was demonstrated through the soil and groundwater investigation completed in May 1998. The data gathered during this investigation confirmed that the soils and groundwater on-site and downgradient of the Whittaker site do not pose a threat to public health and the environment for the present and future land-use classifications assigned to this site.

Long-term operation and maintenance of the Whittaker Site are also not necessary since the soils and groundwater meet the cleanup standards identified in the state issued RFRA. Two five-year reviews have been completed by MPCA and submitted to the U.S. EPA for approval. The last one was done December 31, 1997. Because it has been determined that no hazardous substances remain at the Site above health-based levels, a five-year review will no longer be conducted at this Site.

U.S EPA, with concurrence from the State of Minnesota, has determined that all appropriate Fund-financed responses under CERCLA at the Whittaker Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, U.S. EPA proposes to delete the Site from the NPL.

Dated: December 1, 1998

Steve Rothblatt,

Acting Regional Administrator, Region V.

[FR Doc. 98–32889 Filed 12–11–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 62

[CC Docket No. 98–185; FCC 98–294]

1998 Biennial Regulatory Review—Repeal of Part 62 of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its 1998 biennial review of regulations pursuant to section 11 of the Communications Act of 1934, as amended (the Act),[1] the Commission initiated a Notice of Proposed Rule Making (NPRM) seeking comment on whether its rules governing interlocking directorates should be repealed. The Commission tentatively concludes that the rules should be repealed. The Commission also tentatively concludes that it should forbear from applying the provision of the Act that prohibits any person from holding the position of officer or director of more than one carrier subject to the Act without obtaining prior Commission authorization.

DATES: Comments must be received on or before December 14, 1998. Reply comments must be received on or before January 4, 1999.

ADDRESSES: Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, D.C. 20554, with a copy to Jennifer Myers Kashatus of the Common Carrier Bureau, 2025 M Street, N.W., Room 6120, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Myers Kashatus, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in CC Docket 98–195 [FCC 98–294], adopted on November 3, 1998, and released on November 17, 1998. The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036.

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[1] 47 U.S.C. 161.

Background

1. The Commission is initiating this proceeding as part of its 1998 biennial review of regulations pursuant to section 11 of the Act. Section 11 requires the Commission to conduct a biennial review, in every even-numbered year beginning in 1998, of "all regulations . . . that apply to the operations or activities of any provider of telecommunications service" and to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[2] Section 11 further requires the Commission to repeal or modify any regulation it determines is no longer necessary in the public interest.[3] The Commission tentatively concludes that its rules governing interlocking directorates,[4] which implement section 212 of the Act,[5] are no longer necessary to the public interest, and therefore should be repealed.[6] To the extent interlocking directorates could be used to inhibit competition in communications markets, the Commission believes other laws, particularly antitrust laws, adequately address the potential for harm. Accordingly, the Commission proposes to repeal the requirement that application be made to the Commission "to hold interlocking positions with more than one carrier subject to the Act where any carrier sought to be interlocked" is defined as a dominant carrier or a carrier not yet found to be non-dominant.[7] The Commission also proposes to repeal the reporting requirements set forth in its rules that require that all persons holding "interlocking positions on more than one carrier subject to the Act" such as those between non-dominant carriers, among others, report such interlocking position to the Commission within 30 days of assuming such position and that carriers report any change in status within 30 days of such change.[8] The Commission further proposes to repeal the requirement that certain carriers obtain authorization to hold interlocking directorates based on a finding of common ownership.[9] By these proposals, the Commission seeks to promote competition by eliminating unnecessary regulations that are no longer in the public interest.

2. Further, in the Telecommunications Act of 1996 ("1996 Act"), Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[10] Integral to achieving this goal, the 1996 Act requires the Commission to forbear from applying any provision of the Act, or any regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission makes certain specified findings with respect to such provisions or regulations.[11] In the NPRM, the Commission tentatively concludes that it should forbear from applying section 212 of the Act,[12] which prohibits any person from holding the position of officer or director of more than one carrier subject to the Act without obtaining prior Commission authorization.[13]

3. This is a permit-but-disclose rule making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.[14]

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA),[15] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this NPRM provided above on the first page. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[16] In addition, this NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[17]

5. *Need for, and Objectives of, the Proposed Action:* The Commission undertakes this examination of its rules governing interlocking directorates as part of its 1998 biennial review of regulations as required by the Act.[18] In addition, the Commission is issuing this NPRM to review its regulatory regime for interlocking directorates, and to determine whether in light of section 10 of the 1996 Act, the Commission should forbear from applying such requirements.

6. *Legal Basis:* The NPRM is adopted pursuant to sections 1, 4(i) and (j), and 11 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and 154(j), and 161.

7. *Description, potential impact, and number of small entities affected:* The Commission proposes to repeal its rules governing interlocking directorates. This includes eliminating the post-interlock filing requirement for non-dominant carriers, many of whom may be small entities. The Commission also proposes to forbear from enforcing section 212 of the Act. Forbearance from enforcing these rules will benefit small entities by reducing the regulatory burden to which small businesses would otherwise be subject.

8. To estimate the number of small entities that would benefit from this positive economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[19] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[20] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2)

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[2] 47 U.S.C. 161(a).

[3] 47 U.S.C. 161(b).

[4] 47 CFR 62.

[5] 47 U.S.C. 212.

[6] 47 U.S.C. 161.

[7] 47 CFR 62.1(a).

[8] 47 CFR 62.26.

[9] 47 CFR 62.12, 62.25.

[10] S. Conf. Rep. No. 104–230, 104th Cong. 1 (1996).

[11] *See* section 10, codified at 47 U.S.C. 160, is added to the Act through section 401 of the 1996 Act.

[12] 47 U.S.C. 212.

[13] *Id.* We note that this notice does not address the remainder of section 212, which makes it "unlawful for any officer or director of any carrier subject to this Act to receive for his own benefit directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of securities issued or to be issued by such carriers, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such carriers from any funds properly included in the capital account."

[14] 47 CFR 1.1206(a).

[15] 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[16] *See* 5 U.S.C. 603(a).

[17] *See id.*

[18] 47 U.S.C. 161.

[19] 5 U.S.C. 601(6).

[20] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**."

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is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[21] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[22] We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS).[23] According to data in the most recent report, there are 3,459 interstate carriers.[24] These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

10. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns." [25]

11. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[26] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." [27] Additionally, we note that the number of small entities affected by this proposed rule change as set forth in this NPRM is less than the total number of telephone companies as stated herein, because as discussed in the NPRM, the Commission already has decided to forbear from applying section 212 of the Act with regard to CMRS providers. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this NPRM.

12. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[28] According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[29] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules recommended for adoption in this NPRM.

13. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).[30] According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services.[31] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,371 small entity LECs or small incumbent LECs that may be affected by the decisions and rules recommended for adoption in this NPRM.

14. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies.[32] The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 143 companies reported that they were engaged in the provision of

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[21] 15 U.S.C. 632. *See, e.g., Brown Transport Truckload, Inc.* v. *Southern Wipers, Inc.,* 176 B.R. 82 (N.D. Ga. 1994).

[22] 13 CFR 121.201.

[23] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) ("Telecommunications Industry Revenue").

[25] *See* 13 CFR 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order,* 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

[26] United States Department of Commerce, Bureau of the Census, "1992 Census of Transportation", Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) ("1992 Census").

[27] 15 U.S.C. 632(a)(1).

[28] 1992 Census, *supra,* at Firm Size 1–123.

[29] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4813.

[30] See 47 CFR 64.601 *et seq.*

[31] Telecommunications Industry Revenue at Fig.

[32] 13 CFR 121.210, SIC Code 4813.

interexchange services.[33] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the decisions and rules recommended for adoption in this NPRM.

15. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 109 companies reported that they were engaged in the provision of competitive access services.[34] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the decisions and rules recommended for adoption in this NPRM.

16. *Pay Telephone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies except radiotelephone (wireless) companies.[35] The most reliable source of information regarding the number of pay telephone operators nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.[36] We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small pay telephone operators.

17. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 27 companies reported that they were engaged in the provision of operator services.[37] Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the decisions and rules recommended for adoption in this NPRM.

18. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies.[38] The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services.[39] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the decisions and rules recommended for adoption in this NPRM.

19. *Private Paging.* At present, there are approximately 24,000 Private Paging licenses. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. We estimate that the majority of private paging providers would qualify as small entities under the SBA definition. We note that private paging does not include common carrier paging, for which the Commission has adopted auction rules and has proposed to SBA a special small business size standard definition.

20. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[40] According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.[41] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules recommended for adoption in this NPRM.

21. *Recording, record keeping, and other compliance requirements:* No additional paperwork will be required by the proposals set forth in this proceeding. This proceeding proposes to eliminate filing requirements set forth for interlocking directorates in the Commission's rules.

22. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* The impact of this

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[33] Telecommunications Industry Revenue at Fig.

[34] [illegible]

[35] 13 CFR 121.201, SIC Code 4813.

[36] TRS Worksheet.

[37] Telecommunications Industry Revenue at Fig.

[38] 13 CFR 121.210, SIC Code 4813.

[39] Telecommunications Industry Revenue at Fig.

[40] 1992 Census at Firm Size 1–123.

[41] 13 CFR 121.201, SIC Code 4812.

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proceeding should be beneficial to small businesses because the proposals set out in this NPRM would reduce the reporting or recordkeeping requirements on all communications common carriers. In this NPRM, the Commission seeks comment on whether any level of regulation currently within its interlocking directorates rules should be retained. The Commission also seeks comment on whether we should forbear from section 212 of the Act. The Commission expects that this revision will benefit all entities subject to the rule, including small entities.

23. *Federal Rules that overlap, duplicate, or conflict with this rule:* No federal rules overlap, duplicate, or conflict with this rule directly. As described above, however, we expect that the Clayton Act will protect against certain types of conduct that would tend to decrease competition.

Comment Filing Procedures

24. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 14, 1998, and reply comments on or before January 4, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

25. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

26. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554, with a copy to Jennifer Myers Kashatus of the Common Carrier Bureau, 2025 M Street, N.W., Room 6120, Washington, D.C. 20554.

27. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Jennifer Myers Kashatus, Common Carrier Bureau, 2025 M Street, N.W., Room 6120, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (Docket No. 98–195), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label also should include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

28. Accordingly, *it is ordered* that pursuant to sections 1, 4, 10, 11, and 212 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 160, 161, and 212, a *Notice of Proposed Rule Making* is hereby *adopted.*

29. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for the Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 62

Antitrust, Communications Common carriers, radio, reporting and recordkeeping requirements, telegraph, and telephone.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–33115 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–219; RM–9390]

Radio Broadcasting Services; Sibley, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by 21st Century Radio Ventures, Inc., proposing the allotment of Channel 282A at Sibley, Iowa, as the community's second local FM transmission service. Channel 282A can be allotted to Sibley in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.3 kilometers (.8 miles) west to avoid a short-spacing to the licensed site of Station KUOO(FM), Channel 280C2, Spirit Lake, Iowa. The coordinates for Channel 282A at Sibley are North Latitude 43–24–14 and West Longitude 95–45–45.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: James L. Primm, President, 21st Century Radio Ventures, Inc., 530 Wilshire Blvd, Suite 301, Santa Monica, California 90401 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–219, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–33057 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–208, RM–9396]

Radio Broadcasting Services; Elk River & Princeton, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Milestone Radio, LLC, requesting the reallotment of Channel 291C2 from Princeton, Minnesota, to Elk River, Minnesota, and modification of the license for Station KLCI to specify Elk River as the community of license. The coordinates for Channel 291C2 at Elk River are 45–23–00 and 93–48–30. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 291C2 at Elk River or require the petitoner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 19, 1999, and reply comments on or before February 3, 1999.

ADDRESSES: Federa! Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Anne Thomas paxson, Borsari & Paxson, 2033 M Street, NW., Suite 630, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–208, adopted November 18, 1998, and released November 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–33058 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–220; RM–9399]

Radio Broadcasting Services; Sioux Rapids, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by ALALATEX proposing the allotment of Channel 252A at Sioux Rapids, Iowa, as the community's second local FM transmission service. Channel 252A can be allotted to Sioux Rapids in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction as petitioner's requested site. The coordinates for Channel 252A at Sioux Rapids are North Latitude 42–53–21 and West Longitude 95–08–53 .

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Jean Hill, ALALATEX, 6101 Bayou Road, Mobile, Alabama 36605 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–220, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–33056 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–214; RM–9353]

Radio Broadcasting Services; Rantoul, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by L. Topaz Enterprises, Inc., proposing the allotment of Channel 277A at Rantoul, Illinois, as the community's third local FM transmission service. Channel 277A can be allotted to Rantoul in compliance with the Commission's minimum distance separation requirements with a

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site restriction of 10.2 kilometers (6.3 miles) west to avoid as short-spacing to the licensed site of Station WKZS(FM), Channel 276A, Covington, Indiana. The coordinates for Channel 277A at Rantoul are North Latitude 40–19–10 and West Longitude 88–16–10.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Dale A. Ganske, President, L. Topaz Enterprises, Inc., 5546–3 Century Avenue, Middleton, Wisconsin 53562 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–214, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–33060 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–215; RM–9370]

Radio Broadcasting Services; Lennox, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ken Mills Agency proposing the allotment of Channel 256C3 at Lennox, South Dakota, as the community's first local aural transmission service. Channel 256C3 can be allotted to Lennox in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.0 kilometers (0.6 miles) west to avoid as short-spacing to the licensed site of Station KEEZ-FM, Channel 256C1, Mankato, Minnesota. The coordinates for Channel 256C3 at Lennox are North Latitude 43–21–24 and West Longitude 96–54–05.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Ernest T. Sanchez, Esq., 2000 L Street, NW., Suite 200, Washington, DC 20036 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–215, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–33059 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–98–218; RM–9388]

Radio Broadcasting Services; Peterstown, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Bible Radio Broadcasters proposing the allotment of Channel 244A at Peterstown, West Virginia, as the community's first local aural transmission service. Channel 244A can be allotted to Peterstown in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.3 miles) northeast to avoid a short-spacing to the licensed site of Station WXBQ–FM, Channel 245C, Bristol, Tennessee. The coordinates for Channel 244A at Peterstown are North Latitude 37–26–08 and West Longitude 80–46–07.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Jerrold Miller, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC. (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of

Proposed Rule Making, MM Docket No. 98–218, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–33061 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–217; RM–9382]

Radio Broadcasting Services; Gassaway, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain State Broadcasting proposing the allotment of Channel 253A at Gassaway, West Virginia, as the community's first local aural transmission service. Channel 253A can be allotted to Gassaway in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 253A at Gassaway are North Latitude 38–40–30 and West Longitude 80–46–30.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Jerrold Miller, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–217, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–33062 Filed 12–14–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–216; RM–9381]

Radio Broadcasting Services; Arnoldsburg, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountaineer Communications proposing the allotment of Channel 264A at Arnoldsburg, West Virginia, as its first local aural transmission service. Channel 264A can be allotted to Arnoldsburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) northeast to avoid a short-spacing to the licensed site of Station WJYP(FM), Channel 265A, South Charleston, West Virginia. The coordinates for Channel 264A at Arnoldsburg are North Latitude 38–49–00 and West Longitude 81–06–00.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Jerrold Miller, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–216, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 98–33064 Filed 12–11–98; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–213; RM–9352]

Radio Broadcasting Services; Clifton, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by STARadio Corporation proposing the allotment of Channel 297A at Clifton, Illinois, as the community's first local aural transmission service. Channel 297A can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5.0 miles) south to avoid a short-spacing to the licensed site of Station WZVN(FM), Channel 296A, Lowell, Indiana. The coordinates for Channel 297A at Clifton are North Latitude 40–52–00 and West Longitude 87–58–00.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Michael Ruger, Esq., Baker & Hostetler, LLP, 1050 Connecticut Ave NW., Suite 1100, Washington, DC 20036–5304 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–213, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 98–33063 Filed 12–11–98; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–203; FCC 98–304]

Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission initiates this *Notice of Proposed Rule Making* to seek comment on whether we should impose limits on activities undertaken by noncommercial educational ("NCE") television licensees on their DTV capacity. The request for clarification made by AAPTS/PBS raises significant issues regarding the service and funding opportunities made available to NCE stations as a result of the transition to digital transmission. We recognize the importance of this issue to the future of public television as it enters the digital age. Therefore, we believe it is appropriate to seek further comment on the AAPTS/PBS petition in order to establish a more complete record on the issues it raises.

EFFECTIVE DATES: Comments are due on or before January 28, 1999; reply comments are due on or before March 1, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW-A306, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C–1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to fain_t@al.eop.gov. Comments may also be filed by using the Commission's Electronic Comment Filing System (ECFS), via the Internet to http://www.fcc.gov.e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Jane Gross or Robert Somers, Policy and Rules Division, Mass Media Bureau (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 98–203, adopted November 19, 1998 and released November 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC, 20036. (202) 857–3800.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. In our *Fifth Report and Order*, 62 FR 26966 (May 16, 1997), in the digital television ("DTV") proceeding, we adopted rules implementing a transition to digital technology for all existing television broadcasters. Among other things, we established standards for license eligibility, a transition and construction schedule and a requirement that broadcasters continue to provide one free over-the-air television service in accordance with section 336 of the Telecommunications

Act of 1996 ("1996 Act"). We also adopted rules permitting DTV licensees, without distinguishing between commercial and noncommercial licensees, to use their DTV capacity to provide ancillary or supplementary services provided these services do not derogate the free digital television service.

2. In their Petition for Reconsideration of the *Fifth Report and Order*, the Association of America's Public Television Stations and the Public Broadcasting Service (AAPTS/PBS) requested clarification on the ability of public television stations to use excess capacity on DTV channels for commercial purposes. In opposing this request in part, Media Access Project and other public interest parties ("MAP"), jointly argued that, while public television stations should be able to provide some revenue-generating ancillary and supplementary services, these services must be consistent with the noncommercial nature of public television as set forth in section 399B of the Communications Act, the provision restricting advertising by these stations.

3. We initiate this *Notice of Proposed Rule Making* to seek comment on whether we should impose limits on remunerative activities undertaken by noncommercial educational ("NCE") television licensees on their DTV capacity. The request for clarification made by AAPTS/PBS raises significant issues regarding the service and funding opportunities made available to NCE stations as a result of the transition to digital transmission. We recognize the importance of this issue to the future of public television as it enters the digital age. Therefore, we believe it is appropriate to seek further comment on the AAPTS/PBS petition in order to establish a more complete record on the issues it raises.

4. In their Petition for Reconsideration AAPTS/PBS also requested that the Commission exempt public television licensees from any fee assessed in connection with use of digital spectrum for ancillary or supplementary services to the extent revenues from those services are used to support the licensee's mission-related activities. Section 336(e) of the 1996 Act requires DTV licensees receiving fees or certain other compensation for ancillary or supplementary services provided on the DTV spectrum to return a portion of that revenue to the public. The Commission was charged with establishing a means of assessing and collecting fees for those ancillary or supplementary services specified in the statute. In the *Notice of Proposed Rule Making*, 63 FR 460 (January 6, 1998), In the Matter of Fees for Ancillary or Supplementary Use of Digital Television Spectrum ("Fees Proceeding"), we sought comment on AAPTS/PBS's request. In the Fees Proceeding we determined that the request for such an exemption should be considered in this proceeding. We therefore seek additional comment on this issue in light of the comments received on this issue in the Fees Proceeding and the tentative proposals outlined below.

II. Background

5. *Ancillary or Supplementary Services on DTV Capacity.* The DTV standard we adopted will allow for the simultaneous transmission of multiple streams of programming, information, and other non-broadcast services. To enable licensees to take full advantage of the opportunities provided by digital technology, the 1996 Act provided that DTV licensees may use a portion of their new DTV capacity for ancillary or supplementary services.

6. Specifically, section 336 of the Communications Act authorizes the Commission to permit DTV licensees to offer ancillary or supplementary services on their DTV capacity as long as the provision of these services does not derogate any advanced television services the Commission may require and is "consistent with the public interest, convenience, and necessity." The statute does not distinguish between commercial and noncommercial DTV licensees, nor does the legislative history of section 336 draw any such distinction.

7. In the *Fifth Report and Order* in our DTV proceeding we adopted rules to allow broadcasters the flexibility to respond to the demands of their audience by providing ancillary or supplementary services, provided that these services do not derogate the mandated free, over-the-air program service. We found that this approach would serve the public interest by fostering the provision of innovative services to the public and by permitting the realization of the full possibilities of DTV. We recognized the benefit of permitting broadcasters the opportunity to develop additional revenue streams from innovative digital services. We also found that allowing such services contributes to efficient spectrum use and can expand and enhance the use of existing spectrum. At the same time, we noted our expectation that the fundamental use of the DTV licenses will be for the provision of free over-the-air television.

8. We clarified that "we will consider as ancillary or supplementary any service provided on the digital channel other than free, over-the-air video services." We noted that this approach is consistent with Commission precedent that has treated telecommunications services provided by an NTSC station other than the regular television program service as ancillary. We also did not impose a requirement that the ancillary or supplementary services provided by the broadcaster must be broadcast-related. We explained that such ancillary or supplementary services could include, but are not limited to, subscription television programming, computer software distribution, data transmissions, teletext, interactive services, and audio signals.

9. Section 336(e)(1) of the 1996 Act also requires that a fee be assessed upon any ancillary or supplementary services on DTV spectrum "for which the payment of a subscription fee is required in order to receive such services" or "for which the licensee directly or indirectly receives compensation from a third party in return for transmitting materials furnished by such third party." The Act specifically exempts from the fee any service which relies only upon "commercial advertisements used to support broadcasting for which a subscription fee is not required." In our Fees Proceeding we have adopted rules to implement this provision with respect to commercial DTV licensees.

10. *Noncommercial Educational Television.* Throughout the DTV proceeding, the Commission has acknowledged that noncommercial licensees will face unique problems in the transition to DTV. In the *Fifth Report and Order*, we recognized the high quality programming service noncommercial stations have provided to American viewers over the years and reaffirmed our commitment to noncommercial educational television service. We also observed that public broadcasters have been pioneers in experimenting with the capabilities of digital technology. We further noted our awareness of the unique financial difficulties faced by noncommercial stations and reiterated our view that these stations will need and warrant special relief to assist them in the transition to DTV. In this regard, for example, we applied a six-year construction period timetable to noncommercial stations, the longest permitted to any category of DTV applicant. We also found, however, that at that time it was premature to attempt to resolve the issue of what additional special treatment, if any, should be afforded to noncommercial broadcasters. We stated that we would

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consider these issues in our periodic reviews examining the progress of the DTV transition.

11. *AAPTS/PBS's Request for Clarification—Use of DTV Capacity.* In its Petition for Reconsideration of the *Fifth Report and Order*, AAPTS/PBS requested clarification on the ability of public television stations to use capacity on DTV channels for commercial purposes. As neither section 336 nor the Commission's DTV rules distinguishes between commercial and noncommercial stations, AAPTS/PBS argued that both are intended to allow public stations to offer ancillary or supplementary services for revenue-generating purposes.

12. AAPTS/PBS states that public television stations are exploring various revenue generating options such as: leasing capacity to other digital operators; joint ventures with commercial entities; and subscription channels for popular PBS programming. It emphasizes the importance of the revenue potential of these services in order to continue public television's commitment to providing a high quality noncommercial, educational broadcast service. AAPTS/PBS has noted that the multiple programming streams offered by the extra capacity of digital transmission will enable public broadcasters to extend the reach of their educational services. New expanded "multicast" programming channels planned by public television as a result of multicasting capabilities include: PBS's Ready-to-Learn service for children; K–12 instructional programming; college credit telecourses; workforce training; and local public affairs programming. AAPTS/PBS notes that many public stations are relying on the revenue from ancillary or supplementary services to help fund the construction of DTV facilities and the operation of both DTV and NTSC facilities. Such flexibility is crucial, it maintains, as federal and corporate funding have become increasingly difficult to obtain.

13. Specifically, AAPTS/PBS requests that the Commission clarify that § 73.621 of its rules, which requires public stations to provide a noncommercial service, is not applicable to ancillary or supplementary services provided on DTV capacity. It proposes that the Commission make clear that, as long as a public station provides one noncommercial broadcast service pursuant to § 73.621, it can use its additional DTV capacity as a source of revenue, subject only to the requirement of non-derogation in § 73.624.

14. AAPTS/PBS notes that its proposal to use its additional DTV capacity as a source of revenue is consistent with existing §§ 73.621(f) and (g), and 73.646(b) and (d) of the Commission's rules, which allow public television stations to use the vertical blanking interval ("VBI"), and auxiliary broadcast services for revenue generating activities. It argues that use of their DTV capacity as a source of revenue follows rationally from these provisions. Similarly, public television licensees seek the opportunity to use that portion of their DTV spectrum that is not necessary for their primary public television mission as a means of financing their DTV broadcast operations.

15. In opposing AAPTS/PBS's request in part, MAP requests that the Commission make clear that any leased or joint-venture programming undertaken by public television licensees that is advertiser-supported would violate the advertising ban of section 399B of the Act. MAP argues that AAPTS/PBS's request is unclear as to what specific programming would be offered or whether it would comport with the requirements of section 399B. For example, MAP specifies programming that it believes would violate the advertising ban as "programming that is predominantly utilized for the transmission of sales presentations or program length commercials, such as home shopping or infomercials, or that otherwise encourages or solicits the purchase of goods and services from commercial entities." MAP also argues that because section 336 of the Act does not *explicitly* permit noncommercial stations to broadcast advertisements on any ancillary or supplementary services, AAPTS/PBS's argument that section 336 extends to both commercial and noncommercial entities is possible only if the inconsistent requirements of section 399B were repealed. MAP notes that, while public television stations should be able to provide some revenue-generating ancillary services, these services must be consistent with the nature of noncommercial public television as set forth in that section.

16. In reply, AAPTS/PBS acknowledges that the advertisement ban of section 399B will apply to the primary noncommercial broadcast service, but argues that it should not extend to the provision of ancillary and supplementary services on DTV spectrum. AAPTS/PBS points out that section 399B was enacted by Congress in 1981 in an effort to reduce public television's dependence on federal appropriations. Although Congress was also concerned that public broadcasting's primary broadcasting service remain noncommercial, AAPTS/PBS notes that the balance Congress struck in section 399B was to allow such remunerative activities, provided that the public broadcast service remained noncommercial.

17. AAPTS/PBS also notes that previous Commission decisions have allowed noncommercial licensees to provide subsidiary communications services without regard to whether they include advertisements. AAPTS/PBS maintains that even if the section 399B advertising restrictions are found to apply to these services, the Commission has discretion under section 336(a)(2) to allow public TV licensees to include advertiser-supported services if it finds these services to be in the public interest. AAPTS/PBS urges an interpretation in which the advertising ban in section 399B would continue to apply to the primary noncommercial broadcast service, while any ancillary and supplementary use of DTV channels would be free from the restrictions of this section.

18. *AAPTS/PBS's Request for Exemption From Fees under section 336(e).* In its Petition for Reconsideration of the *Fifth Report and Order*, AAPTS/PBS requested that the Commission exempt public television licensees from any fee assessed in connection with revenue-generating use of the ancillary or supplementary services on their DTV spectrum "to the extent that revenues from those services are used to support the licensee's mission-related activities." We sought comment in the Fees Proceeding on whether noncommercial television licensees should be exempt from such fees or subject to a nominal fee where they offer ancillary and supplementary services as a source of funding for public television.

19. In its comments in the Fees Proceeding, AAPTS/PBS argues that public television stations should be exempt from such fees because the statutory purposes of section 336(e)(2) do not apply to services provided by public television licensees. AAPTS/PBS notes that if these revenues would be used to support noncommercial activities, there would be no need to "recover" a portion of the value of the spectrum for the public and that an exemption would not result in any "unjust enrichment". AAPTS/PBS also argues that, as public television stations are not auctioned, there is no equivalent amount that would have been received at auction. Further, AAPTS/PBS contends that such an exemption would be consistent with other Congressional

and regulatory policies, and that the Commission has concluded in other proceedings that the imposition of a fee on public broadcasting would dilute the financial support paid to public broadcasting by Congress.

20. MAP generally supports allowing public broadcasters to be exempt from such fees, but only if they do not provide advertiser-supported ancillary and supplementary services. MAP asserts that the statute makes no distinction between noncommercial and commercial licensees, either in their ability to provide advertiser-supported ancillary and supplementary services, or in their obligation to pay fees on such services. We have determined that AAPTS/PBS's request for such exemption should be considered in this proceeding. Accordingly, we seek additional comment on this issue in light of the comments received in the Fees Proceeding and the tentative proposals set forth in this Notice.

III. Request for Comments

21. *Noncommercial Educational Television.* Public broadcasting's mission has long been to provide quality educational and cultural programming to a wide and diverse audience. Noncommercial educational television stations have also been at the forefront of exploring innovative services and new technologies to accomplish this mission. These stations also appear poised to take full advantage of the opportunities made available by digital technology. We fully recognize the public interest benefits inherent in the services that may be offered by NCE licensees on the digital spectrum.

22. As we stated in the Fifth Report and Order, granting broadcasters the flexibility to offer the ancillary or supplementary services they choose will help them attract consumers to the service, which will, in turn, speed the transition to digital television. We stated that such flexibility will encourage entrepreneurship and innovation, will contribute to efficient spectrum use, and will expand and enhance use of existing spectrum. We seek comment on whether these same considerations apply to the NCE context.

23. Throughout the development of the public broadcasting system, both Congress and the Commission have continually balanced the desire to maintain the integrity of its noncommercial status with the fact that public television must have access to adequate funding in order to survive. Congress enacted the Public Broadcasting Act of 1967 in response to increasing public demand for the government to sponsor independent sources of broadcast programming as an alternative to commercial broadcasting. This legislation sought to promote the development of noncommercial, educational broadcasting stations and established the framework for today's public broadcasting system.

24. Public television has since flourished and developed from an experimental educational service into the valuable and unique programming service that exists today. The Commission has supported the goals of the public broadcasting system and promulgated rules to implement the public broadcasting provisions of the Communications Act. For example, in 1952, recognizing the important and unique role to be served by public television, the Commission reserved spectrum exclusively for the noncommercial broadcasting service.

25. We are consequently sympathetic to the relief requested in the AAPTS/PBS petition. The petition describes a range of revenue-generating ancillary or supplementary services that could help NCE stations flourish in a digital age. We seek comment on these new services and specifically on NCE stations' plans for using excess digital capacity. We note that the costs of converting to digital service will be considerable, and that many NCE stations rely on public funds to provide the build-out to DTV service. At the same time we are sensitive to the concerns raised by MAP that in permitting NCE stations flexibility in providing such services we must be consistent with section 399B and also not undermine their fundamental mission of providing a noncommercial educational broadcast service. To help us determine the limits, if any, on the remunerative activities of NCE licensees on their DTV capacity, we seek comment below on a number of issues.

26. *Noncommercial Educational Television: Funding Issues.* Many NCE stations have traditionally received most of their funding from federal, state and local government sources in addition to corporate and viewer contributions. In its request for clarification, AAPTS/PBS notes the uncertainty of continued federal financial support and the tightening of support from the corporate sector. We seek comment on such funding trends and on NCE licensees' specific funding needs to convert to digital and maintain a robust NCE television service. We also seek comment on the appropriate role of the Commission in ensuring that such funding needs are met.

27. *Ancillary or Supplementary Services.* In the *Fifth Report and Order,* we adopted rules implementing section 336 to allow broadcasters the flexibility to respond to the demands of their audience by providing ancillary or supplementary services, including subscription television, providing that these services do not derogate the mandated free, over-the-air program service. As an initial matter, we generally invite comment on AAPTS/PBS's request that we clarify that § 73.621 of our rules, which requires public stations to provide a noncommercial service, is not applicable to ancillary or supplementary services provided on DTV capacity. We also seek comment on whether such a clarification is consistent with the provisions of section 399B.

28. The Communications Act defines a "noncommercial educational broadcast station" and "public broadcast station," as "a noncommercial educational radio or television broadcast station which is owned and operated by a public agency or nonprofit private foundation, cooperation, or association" or "is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes." In 1981, Congress amended the Communications Act to give public broadcasters more flexibility to generate funds for their operations. As amended, section 399B of the Act permits public stations to provide facilities and services in exchange for remuneration as long as those uses do not interfere with the stations' provision of public telecommunications services. In addition, under § 73.621 of the Commission's rules, public television stations are required to furnish primarily an educational as well as a nonprofit and noncommercial broadcast service.

29. We have previously been called on to determine the extent to which public television stations can transmit subscription television ("STV") or other revenue-generating services on their analog channels consistent with the statutory and regulatory requirements we have just described. In particular, in 1984, the Commission considered amending its rules to permit public television stations to engage in subscription television operations. The Commission stated that it "clearly has the authority [under section 399B of the Act] in particular instances and under certain circumstances to permit STV operation by public television." But the Commission expressed sympathy with concerns expressed by some parties in that proceeding that such a rule change could result in public television service, then operating with analog technology, being "dominated" by STV. It therefore

concluded at the time that it should not generally authorize such operation through a rule change.

30. The Commission nonetheless recognized that STV operations can benefit public stations as a supplementary funding source. It consequently stated that it would permit individual public television stations to engage in STV operations on a waiver basis. The Commission has also given public television stations flexibility in their use of the analog channels in other ways. In particular, the Commission has ruled that noncommercial spectrum, like commercial spectrum, can be used for remunerative ancillary services such as data delivery or teletext provided by NTSC licensees on the vertical blanking interval (VBI) and the video portion of the analog signal in accordance with section 399B of the Act.

31. The AAPTS/PBS petition raises many of the same legal and policy questions raised by our previous consideration of requests to provide STV and other revenue-generating ancillary services on analog NCE channels. Unlike the previous requests, however, the AAPTS/PBS petition concerns *digital* television, which offers significant new challenges and opportunities to NCE stations. We are inclined to permit NCE stations to take advantage of these opportunities and offer innovative ancillary and supplementary services that are remunerative and consistent with their educational mission. We therefore seek comment on whether, and under what conditions, NCE licensees should be permitted to use their DTV capacity to offer ancillary or supplementary services, including STV, on a remunerative basis.

32. In particular, we seek comment on whether and how we should amend § 73.621 of our Rules, which requires NCE stations to provide a noncommercial service that "primarily" serves the educational needs of the community. For example, should we extend this requirement to ancillary or supplementary services provided by noncommercial licensees on their DTV capacity? Should we clarify that an NCE licensee's obligation to provide a primarily educational service applies to its entire DTV bitstream? Under this proposal, NCE stations would be permitted to provide ancillary or supplementary services, but still would be required to ensure that their overall digital bitstream was primarily devoted to serving the educational needs of the community. Should we clarify that the requirement to provide a primarily educational service applies only to the single, free-over-the-air broadcast service it is required to provide? We seek comment on these and any other options for amending § 73.621 in this regard.

33. We also seek comment on whether and how we can permit NCE stations to provide remunerative ancillary or supplementary services in a manner that does "not interfere with the provision of public telecommunications services" by such stations as required by section 399B of the Act. In particular, we seek comment on whether NCE DTV stations will have the capacity to provide ancillary or supplementary services without interfering with their ability to provide a primarily educational NCE service. We also seek comment on whether such ancillary or supplementary services can provide an important funding source that could facilitate the transition to DTV for NCE stations, and, more generally, enhance their primary mission of providing a robust noncommercial, educational broadcasting service.

34. We ask commenters specifically to address how the provision of ancillary or supplementary services would affect our noncommercial channel reservation policies, regulatory treatment of noncommercial licensees, and other government support for noncommercial stations. While we are inclined to give NCE stations some flexibility in offering remunerative ancillary or supplementary services, we will continue to expect these stations to adhere to their fundamental mission of providing a noncommercial, educational broadcast service, as required by § 73.621(a) of the Commission's rules. We therefore seek comment on whether parties believe our proposed amendment to § 73.621 should incorporate any particular safeguards regarding a public television station's use of its DTV capacity to provide remunerative services to ensure that its DTV license is primarily being used for a noncommercial educational broadcast service, and that the proceeds of such services are used to support its NCE programming. We also ask commenters to address whether the accounting procedures and funding restrictions outlined in section 399B should apply to the provision of ancillary or supplementary services by NCE licensees on DTV capacity.

35. We note that in addition to those restrictions imposed by provisions in the Communications Act and the Commission's rules, the commercial activities of NCE stations are also restricted by their status as nonprofit corporations, as well as by state and local government oversight. We seek comment on the scope of these existing limits and oversight and on the extent to which they help ensure that public television stations offering remunerative ancillary or supplementary services continue to serve their mission of providing a noncommercial educational broadcasting service?

36. *Advertising.* We also seek comment on how the advertising ban set forth in section 399B of the Communications Act implicates the provision of remunerative services by public DTV stations. Section 399B prohibits a public station from "making its facilities available to any person for the broadcasting of any advertisement." By its plain language, this section would appear to prohibit advertisements on any service that would constitute "broadcasting," while permitting a public DTV station to air advertisements on any "nonbroadcast" service. The term "broadcasting" is defined in the Communications Act as "the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations." The Commission further clarified the definition of "broadcasting" in its 1986 *Subscription Video* proceeding. In that decision the Commission determined that the term "broadcasting" as defined by the Communications Act "refers only to those signals which the sender intends to be received by the indeterminate public." We therefore found that "a necessary condition for the classification of a service as broadcasting is that the licensee's programming is available to all members of the public, without any special arrangements or equipment." Based on these criteria, the Commission ruled that subscription television does not constitute broadcasting.

37. Applying these factors to the issue before us, we tentatively conclude that while section 399B continues to apply to all video broadcast programming streams provided by public DTV stations, it does not apply to any subscription services they provide on their DTV channels since such services do not constitute "broadcasting." We seek comment on this view. We also seek comment on the extent to which section 399B applies to advertising carried on any other non-subscription ancillary or supplementary services carried by a public TV station. Finally, we ask parties to address AAPTS/PBS's argument that even if section 399B's advertising restrictions apply to some ancillary or supplementary services, the Commission has discretion under section 336(a)(2) of the Act to allow public TV licensees to include advertiser-supported services if it finds

these services to be in the public interest.

38. *Fees Under section 336.* In the Fees Proceeding we determined that the issue of whether ancillary or supplementary services offered by noncommercial licensees are subject to fees should be considered in this proceeding. We take this opportunity to seek additional comment in light of the comments received in the Fees Proceeding and the tentative proposals outlined above. In the event that we clarify that § 73.621 does not apply to ancillary or supplementary services provided by noncommercial licensees on their DTV capacity, we seek comment on whether noncommercial licensees should be exempt from DTV fees when they offer ancillary or supplementary services as a source of funding for their mission related activities.

39. AAPTS/PBS submitted comments in the Fees Proceeding arguing that there is no need to "recover" a portion of the value of the DTV spectrum for the public if the revenue is used to support noncommercial services that Congress has declared to be in the public interest. AAPTS/PBS also argues that exemption would not result in any "unjust enrichment" because these revenues would be used to support noncommercial activities, and that as public television stations are not auctioned, there is no equivalent amount that would have been received at auction. An exemption from fees would allow public television stations to dedicate greater resources to their mission. Indeed, this reasoning has prompted Congress and the Commission to exempt public television stations from other regulatory and filing fees. We seek comment generally on AAPTS/PBS's arguments to exempt noncommercial licensees from fees for remunerative ancillary or supplementary services offered on their excess digital capacity.

40. We particularly seek comment on whether such an exemption is consistent with section 336. Specifically, section 336(e)(1) draws no distinction between commercial and noncommercial stations in stating that the Commission "shall establish a program to assess and collect * * * an annual fee" from DTV licensees offering subscription-based ancillary or supplementary services. Can this provision, or the criteria for establishing the fee set forth in section 336(e)(2) be interpreted to permit an exemption from such fees for noncommercial licensees? If an exemption is inconsistent with the statute, would a nominal or reduced fee be consistent with the statute? We also ask parties to address MAP's argument that if we allow noncommercial licensees to include advertising in any ancillary or supplementary services, these licensees should pay a fee comparable to that imposed on commercial broadcasters.

IV. Administrative matters

41. To file paper copies formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW-A306; Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

42. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov.e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send am e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

43. *Initial Paperwork Reduction Act of 1995 Analysis.* This *Notice* explores the potential applicability to noncommercial broadcasters of a new fee assessment program which may contain an information collection requirement. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collection contained in the *NPRM* in the Fees Proceeding, *Notice of Proposed Rule Making* In the Matter of Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to section 336(e)(1) of the Telecommunications Act of 1996, MM Docket No. 97-247, 12 FCC Rcd 22821 (1997), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from the date of publication of this *Notice* in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C-1804, 445 12th Street, SW 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW, Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

44. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

45. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, but they must have a separate and distinct heading.

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designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, will send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

46. Accordingly, *it is ordered* that pursuant to authority contained in section 4(i), 303, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307 and 336, this Notice of Proposed Rulemaking is adopted.

47. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

48. *Additional Information*. For additional information on this proceeding, please contact Jane Gross or Robert Somers, Policy and Rules Division, Mass Media Bureau (202) 418–2130.

Initial Regulatory Flexibility Analysis

49. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present *Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided above in paragraph 46. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id*.

Need For and Objectives of the Proposed Rule Change

50. In the *Fifth Report and Order* the Commission adopted rules permitting broadcasters to offer feeable ancillary or supplementary use of digital television (DTV) capacity. In their Petition for Reconsideration, the Association of America's Public Television Stations and the Public Broadcasting Service (AAPTS/PBS) requested clarification on the ability of public television stations to use excess capacity on DTV channels for commercial purposes. Media Access Project and other public interest parties jointly opposed this request, arguing that while public television stations should be able to provide some revenue-generating ancillary and supplementary services, these services must be consistent with the noncommercial nature of public television as set forth in section 399B of the Communications Act, the provision restricting advertising by these stations. AAPTS/PBS also requested that the Commission exempt, to the extent feasible, public television licensees from any obligation to pay fees when they offer ancillary services on their DTV capacity as a source of funding for their public television operation.

51. The petition describes a range of revenue-generating ancillary or supplementary services that could help noncommercial educational ("NCE") stations flourish in a digital age. The *Notice* in this proceeding notes that the costs of converting to digital service will be considerable, and that many NCE stations rely on public funds to provide the build-out to DTV service. This *Notice* seeks comment on these new services and on whether, and under what conditions, NCE licensees should be permitted to use their DTV capacity to offer ancillary or supplementary services, including subscription television, on a remunerative basis. This *Notice* also seeks comment on whether and in what circumstances NCE stations should be subject to fees for these ancillary or supplementary services.

52. Legal Basis: Authority for the actions proposed in this *Notice* may be found in section 4(i), 303 and 336 of the Commissions Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307 and 336.

53. *Description and Estimate of the Number of Small Entities to Which the Rules Would Apply:* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity " as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." The RFA generally defines the term "small organization" to mean "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

54. The proposed rules and policies will apply to television broadcasting licensees, particularly those television stations licensed to operate on channels reserved as "noncommercial educational." Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. There were 1,509 television stations operating in the nation in 1992, of which 362 were noncommercial educational stations. That number has remained fairly constant as indicated by the approximately 1,583 operating television broadcasting stations in the nation as of August 31, 1998, of which 368 were noncommercial educational stations.

55. In addition to owners of operating television stations, any entity who seeks or desires to obtain a television broadcast license, particularly for a noncommercial educational station, may be affected by the proposals contained in this item. The number of entities that may seek to obtain a noncommercial educational television broadcast license is unknown.

56. We seek comment on these estimates and data regarding the number of small entities affected by the proposals in this *Notice*.

Reporting, Recordkeeping, and Other Compliance Requirements

57. The Commission is not proposing any new or modified reporting, recordkeeping, information collection, or compliance requirements in this proceeding.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

58. This *Notice* solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. This proposal may ultimately benefit all noncommercial educational television stations. We seek comment on the alternatives proposed in this *Notice* and on whether there is a significant economic impact on any class of small licensees or permittees as a result of any of our proposed approaches.

Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

59. The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

[FR Doc. 98–33007 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapters 73 and 74

[MM Docket No. 95–31; DA: 98–2489]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Pursuant to the joint request of National Public Radio, the Association of America's Public Television Stations, and the Corporation for Public Broadcasting, the Chief, Mass Media Bureau, acting under delegated authority, extends the comment and reply comment deadlines in the subject proceeding for forty-five days.

DATES: Comments are now due by January 28, 1999, and reply comments are due by March 15, 1999.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Mass Media Bureau, Audio Services Division (202) 418–2780.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order* in MM Docket No. 95–31, DA 98–2489, adopted and released December 3, 1998. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. The *Order* is also available on the Internet at the Commission's web site: http://www.fcc.gov.:

1. On October 21, 1998, the Commission released a Further *Notice of Proposed Rule Making ("Notice")* in this proceeding, which was published in the **Federal Register** at 63 FR 58358 (October 30, 1998). The *Notice* solicited comment on proposed changes to the process used to select among competing applicants for noncommercial educational broadcast stations, on reserved and non-reserved channels. The deadlines for filing comments and reply comments were set at December 14, 1998 and January 4, 1999, respectively.

2. On November 30, 1998, National Public Radio (NPR), the Association of America's Public Television Stations (APTS) and the Corporation for Public Broadcasting (CPB) filed a "Joint Motion for Extension of Time of Comment and Reply Comment Deadlines" seeking forty-five-day extensions of the comment and reply comment deadlines. They stated that they are in the process of evaluating the likely impact of the Commission's proposals on public broadcasters and of consulting with hundreds of potentially affected public television and public radio stations, but that they require additional time to complete a thorough analysis and to fully address complex issues. They state that 45 additional days are needed because of the upcoming holiday season when many public broadcasters, particularly university-owned stations, operate with minimal staffing.

3. We will grant the requested extension. Although the Commission has a policy of not routinely granting extensions of time for filing comments in rulemaking proceedings, this proceeding raises a number of complex issues concerning an entirely new process that will affect large numbers of applicants. A well-documented record will best enable an informed decision as to which options for selecting public broadcasters are most in the public interest. Additionally: (1) NPR, APTS, and CPB, through their substantial interaction with noncommercial educational broadcasters, are in a position to compile the views of many of the parties that will most directly be affected by any actions we take in this proceeding; (2) they have shown good cause why a forty-five-day extension will enable them to provide more well-informed comments; and (3) no party will be prejudiced by this extension. Rather, all may make good use of this added time to prepare and present well-supported comments on these important issues.

4. This action is taken pursuant to the authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and sections 204(b), 0.283, and 1.45 of the Commission's Rules.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.
Roy J. Stewart,
Chief, Mass Media Bureau.

[FR Doc. 98–33066 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

[FHWA Docket No. FHWA–97–2350; MC–96–28]

RIN 2125–AD93

Hours of Service of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to consider negotiated rulemaking process.

SUMMARY: The FHWA is announcing its intent to explore the feasibility of conducting a negotiated rulemaking to revise the drivers' hours-of-service rules and has hired two convenors for that purpose. Until that process is complete and a decision is made concerning negotiated rulemaking, the FHWA will continue to move forward with its traditional rulemaking process which began with the publication of an advance notice of proposed rulemaking in the **Federal Register** on November 5, 1996 (61 FR 57252).

FOR FURTHER INFORMATION CONTACT: Neill L. Thomas or David R. Miller, Office of Motor Carrier Research and Standards, (202) 366–4009, or Charles E. Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Availability

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the GPO's web page at: *http://www.access.gpo.gov/nara.*

Background

In a negotiated rulemaking, an agency invites interested parties that are likely to be affected by a regulation to work with each other and the agency on a negotiating committee to develop a consensus draft of a proposed rule. That proposed rule would then be published by the agency for public comment under customary regulatory procedures.

The FHWA believes cooperative problem solving should be given serious consideration. An agency must determine whether an appropriate advisory committee can be assembled that would fairly represent all affected interests and negotiate in good faith. The FHWA has, therefore, retained two convenors (Charles Pou, Jr. and Alana Knaster) to undertake the initial stage in the negotiated rulemaking process.

The neutral convenors will interview affected interests, including drivers, motor carriers, safety advocacy groups, enforcement officials, insurers, and others. The convenors will, among other things, examine the potential for adequate and balanced representation of these varied interests on an advisory committee that would be convened to negotiate the regulation. The convenors will then submit a written report of findings and recommendations to the agency. The convenors' report will provide a basis for the FHWA to decide whether to proceed with negotiated rulemaking, and, if so, to determine the scope of the issues the committee would be charged with addressing. In the alternative, the FHWA may decide to proceed with traditional informal rulemaking. Toward this latter end, the agency continues to consider and evaluate various options for revising the hours-of-service rules.

Any comments the FHWA may receive in reaction to this notice will be provided to the convenors and filed in the public docket.

Should the FHWA decide to proceed with a negotiated rulemaking process, the agency would follow the procedures set forth in the Negotiated Rulemaking Act of 1996, 5 U.S.C. 561 *et seq.* This would include the establishment of a negotiating committee under the Federal Advisory Committee Act (5 U.S.C. Appendix 2), and a **Federal Register** notice setting forth full particulars about the process and public participation.

Authority: 5 U.S.C. 561 *et seq.*; 49 U.S.C. 31136, 31502; and 49 CFR 1.48

Issued on: December 7, 1998.

Kenneth R. Wykle,

Federal Highway Administration Administrator.

[FR Doc. 98–32965 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by the National Mobility Equipment Dealers Association (NMEDA). NMEDA sought to extend the duration of the exclusion (now expired) of light trucks and vans (LTVs) "manufactured for operation by persons with disabilities" from the dynamic test requirements for manual seat belts and automatic restraints in the Federal occupant crash protection standard. The petition also sought to expand the exclusion to apply to all types of vehicles manufactured to be operated by individuals with disabilities.

The exclusion was established for businesses that either manufacture light trucks and vans designed to be operated by persons with disabilities or alter those vehicles before their first retail sale. In the absence of the exclusion, these businesses would have been required to certify that their vehicles met the dynamic and automatic crash protection requirements. The exclusion indirectly benefitted another group of businesses, ones that modify vehicles, after their first retail sale, so that they can be operated by persons with disabilities. In the absence of the exclusion, a statutory prohibition against making federally-required safety equipment inoperative would have prevented this second group of businesses from modifying or removing equipment required by the dynamic and automatic crash protection requirements.

The agency is denying the petition because the exclusion is no longer needed by the businesses that were subject to it. Data from a representative number of manufacturers and alterers of light trucks and vans for persons with disabilities demonstrate their ability to comply with the dynamic testing requirements.

In a separate but related notice, the agency has proposed a limited exemption from the make inoperative prohibition. The proposal addresses NMEDA's concerns to the extent that it would allow businesses to modify vehicles after the first retail sale in a manner that adversely affects the vehicle's compliance with specified safety standards so that persons with disabilities can drive or ride in them. Standard 208, Occupant Crash Protection, is one of those standards.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Lou Molino or Clarke Harper, Office of Crashworthiness Standards, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C., 20590. Telephone: (202) 366–2264. Facsimile (202) 493–2739.

For legal issues: Nicole Fradette, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 366–2992. Facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

The National Highway Traffic Safety Administration (NHTSA) issues Federal motor vehicle safety standards (Standards) that specify performance requirements that apply to new motor vehicles and items of motor vehicle equipment before their first sale for purposes other than resale. 49 USC § 30101, *et seq.* Vehicle and equipment manufacturers must certify that their products comply with all applicable Standards before they sell their products. For vehicles manufactured by two or more manufacturers, the final-stage manufacturer is ultimately responsible for certifying the vehicle.[1] If a completed, certified vehicle is modified before its first retail sale (other than by the addition, substitution, or removal of readily attachable components), the person making the modification is an alterer and is required to certify that, as altered, the vehicle continues to comply with all applicable Standards. 49 CFR Part 567.7.

Businesses that modify a vehicle after its first retail sale are not required to certify that the vehicle, as modified, continues to comply with the Standards. After the first retail sale, however, manufacturers, distributors, dealers[2] and motor vehicle repair businesses[3] are prohibited from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle in compliance with an applicable Standard. 49 U.S.C. § 30122. Violations of this prohibition are punishable by civil penalties of up to $1,100 per violation.[4]

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[1] A final-stage manufacturer is defined as a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle. 49 CFR Part 568.3.

A. Exclusion From Dynamic Test Requirements of FMVSS 208 for Manufacturers and Alterers of LTVs Designed To Be Driven by Persons With Disability

In 1993, in response to a petition from the Recreation Vehicle Industry Association (RVIA) and a letter from Braun Corporation (a manufacturer of vehicles for persons with disabilities), NHTSA amended Standard 208 to provide manufacturers (including alterers) of light trucks and vans (LTVs) "designed to be driven by persons with disabilities" the alternative of installing integrated lap and shoulder belts in lieu of complying with the dynamic testing requirement for manual seat belts and automatic restraints at outboard seating positions.[5] (58 FR 11975; March 2, 1993) NHTSA excluded these manufacturers because they were not then able to certify compliance with Standard 208's dynamic test requirements for manual seat belts and automatic restraints. In the notice establishing the exclusion, NHTSA explained that final stage manufacturers and alterers who produce these vehicles could not readily certify compliance with the dynamic test requirements for manual belts and automatic restraints by passing through the certification of the manufacturer of the incomplete or previously certified vehicle because of the types of modifications they made to these vehicles. (58 FR 11975; March 2, 1993) NHTSA concluded that because the final stage manufacturers and alterers of these vehicles were small businesses, they could not individually "take the alternative course of independently certifying compliance with the dynamic test requirements for these vehicles" at that particular time. (58 FR 11975; March 2, 1993) In the same notice, NHTSA declined to grant Ford Motor Company's request to extend the exclusion to passenger cars manufactured for drivers with disabilities because the request was beyond the scope of the rulemaking. However, the agency stated that it did not believe that an exclusion was needed for passenger cars because it did not know of any passenger cars that were being manufactured for drivers in wheelchairs that would need to be excluded from the dynamic testing requirements of Standard 208.

The agency specified in the final rule that the exclusion would expire September 1, 1997. As scheduled, the exclusion expired on that date, the same date on which requirements for air bags at both front outboard seating positions were statutorily-required to take effect.

In a September 23, 1997 letter to manufacturers and alterers of vehicles for operation by persons with disabilities, NHTSA noted that the exclusion had expired on September 1, 1997, and that trucks and multipurpose passenger vehicles manufactured for operation by persons with disabilities would now have to comply with the dynamic test and automatic crash protection requirements of Standard 208. NHTSA asked various sized manufacturers and alterers to provide the agency with any information pertaining to the tests performed to ensure that the vehicles complied with the performance requirements contained in Standard 208. NHTSA also asked respondents to describe any other actions they were taking that related to Standard 208.

In response to NHTSA's request, alterers and other manufacturers of vehicles for the disabled provided NHTSA with information that demonstrated their ability to certify compliance with the dynamic test and automatic crash protection requirements of Standard 208. According to the information submitted to the agency, manufacturers and alterers of vehicles for persons with disabilities are performing vehicle crash tests or using other engineering analysis to determine compliance with Standard 208's dynamic test and automatic crash protection requirements. Alterers and final stage manufacturers supplied NHTSA with the name of the organization who performed the Standard 208 compliance test, the date of the test, and the year, make and model of the vehicle that was tested. All of the vehicles that were tested met the requirements of Standard 208.[6]

B. Make Inoperative Prohibition and Vehicle Modifications for Persons With Disabilities

As noted above in the summary, while the exclusion from Standard 208 applied to manufacturers and alterers of LTVs designed to be driven by persons with disabilities, the exclusion indirectly benefitted another group of businesses, i.e., those who modify LTVs after the first retail sale to accommodate a driver with a disability. Although businesses that modify a vehicle after its first retail sale are not required to certify that the vehicle, as modified, continues to comply with the Standards, they are prohibited from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle in compliance with an applicable Standard. This means that businesses that modify vehicles, after their first retail sale, to accommodate persons with disabilities must ensure that their modifications do not violate the prohibition.

Under a long line of interpretations issued by the agency, modifications that make inoperative federally-required safety devices and have the effect of converting a vehicle from one vehicle class to another (e.g., from a hard-top to a convertible) do not, however, necessarily violate the "make inoperative" prohibition. Whether there is a violation in this circumstance depends on whether the vehicle, as converted into a new class of vehicle, has the safety devices that would have been required had the vehicle been originally manufactured as a vehicle in the new class instead of as a vehicle in the original class. For example, if a repair business converts a hard-top passenger car into a convertible passenger car after the vehicle's first retail sale, the business would not be regarded as having violated the make inoperative prohibition if the converted vehicle has all the safety features that would have been required had the vehicle originally been manufactured as a convertible passenger car.

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[2] Section 30102 defines "dealer" as "a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale."

[3] Section 30122(a) defines "motor vehicle repair business" as "a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment." NHTSA has interpreted this term to include businesses that service vehicles by adding features or components to or otherwise customizing those vehicles.

[4] The statute, however, allows the agency to prescribe regulations to exempt a person from the "make inoperative" provision if such an exemption is consistent with safety concerns. 49 U.S.C. § 30122(1).

[5] To qualify for this exclusion, a vehicle had to:

- Be a light truck or van manufactured before September 1, 1997,
- Incorporate a level change device (e.g., lift or ramp) for on loading or off loading an occupant in a wheelchair,
- Have an interior element of design intended to provide the vertical clearance necessary to permit a person in a wheelchair to move between the lift or ramp and the driver's position or to occupy that position (e.g., a raised roof or dropped floor), and
- Have either an adaptive control or special driver seating accommodation (e.g., an easily removable driver's seat for driving from a wheelchair, or a power seat base for those who transfer) to enable persons who have limited use of their arms or legs to operate the vehicle.

NHTSA amended the rule in 1994 to allow the installation of Type 2A belts (separate lap and shoulder belts) instead of Type 2 belts (integrated lap and shoulder belt) for the driver's seating position because a Type 2 belt cannot be positioned properly for some wheelchairs. (50 FR 25826; May 18, 1994)

[6] Most manufacturers and alterers have performed tests using a Hybrid III test dummy in the driver's seat. Further, at least one alterer also conducted a crash test with a dummy in a wheel chair. The vehicle met the requirements of Standard 208.

NHTSA applied this line of interpretation to LTVs modified after first retail sale for drivers with disabilities. It stated that if an LTV were modified so that it met the criteria in Standard 208 for an LTV "designed to be driven by persons with disabilities," there would be no violation of the "make inoperative" prohibition even if the modifications caused the vehicle to cease to comply with the dynamic test and automatic restraint requirements of the Standard. For example, a repair business could, without violating the make inoperative provision, convert an LTV into an "LTV designed to be operated by a person with a disability" by raising the vehicle's roof and installing a wheelchair lift, a power seat base, replacing the air bag equipped steering wheel with special adaptive control and Type 2A manual belts in the vehicle. As long as the vehicle met the requirements necessary to qualify for the exclusion, removal of the air bag would not violate the make inoperative prohibition.

II. NMEDA Petition

By petition dated July 18, 1997, NMEDA requested the agency to initiate rulemaking to extend the duration of the exclusion from Standard 208's dynamic test and automatic crash protection requirements for LTVs and to extend the exclusion to include all vehicles modified to be operated by individuals with disabilities. In support of its petition, NMEDA stated that its members,[7] the majority of whom modify vehicles after the first retail sale, and others modify thousands of passenger cars and light trucks every year to enable persons with disabilities to operate them. NMEDA explained that modifiers often install, for example:

- Wheelchair/scooter hoists,
- Hand controls, joysticks, horizontal steering controls, foot operated steering systems and reduced diameter steering wheels to allow persons with disabilities to drive,
- Transfer seats to assist a person with a disability to transfer from a wheelchair to the driver or passenger seat, and
- Power seat bases in vehicles.

According to the petition, many of these modifications compromise the vehicle's compliance with the dynamic testing requirements of Standard 208.[8] The petition stated that manufacturers and alterers are unable to certify compliance with these requirements by passing through the certification of the manufacturer of the incomplete or previously certified vehicle. In addition, the petition stated that because these manufacturers and alterers are small businesses, they cannot individually certify the vehicle's compliance with the dynamic test requirements.

The petition also explained that certain necessary modifications could not be made without removing or disabling one or more components of the automatic restraint system. For example, NMEDA explained that, in certain vehicles, the air bag sensor may have to be removed to accommodate the installation of a six-way power seat base. In other vehicles, the original steering wheel and the driver's side air bag may have to be replaced by a reduced diameter steering wheel.

The petition also stated that the air bag should be disabled if certain modifications, such as the addition of certain adaptive equipment, are made to the vehicle. The petition explained that persons with disabilities who must use adaptive equipment to drive, such as hand controls, are at risk of injury from a deploying air bag. The petition noted that the American Automobile Manufacturers Association (AAMA) had advised against placing certain equipment, such as steering devices, in the air bag deployment zone because of the potential risk of harm to the occupant. NMEDA also noted that research conducted at the University of Virginia (UVa) found that drivers using tri-pin steering devices could be injured by a deploying air bag.[9] The UVa study advised against installing steering devices that spanned the steering wheel and recommended sitting as far back as possible from the air bag. The petition explained that in certain cases the modifier has no choice but to place equipment in the air bag deployment zone because of the person's specific disability. In addition, the petition noted that some individuals' disabilities require them to sit close to the air bag. The petition stated that until there was sufficient evidence that air bags do not pose a risk to persons using adaptive driving equipment, "NHTSA should grant authority, via appropriate exclusion, to disable or remove air bags."

III. Denial of Petition

In the 1993 final rule establishing the exclusion, NHTSA stated that "the goal of providing all individuals with an equivalent level of occupant protection must be balanced with the goal of providing mobility for all Americans . . . [and] that the exclusion from the dynamic testing requirements should be no broader than necessary to accommodate the mobility needs of persons with disabilities." (58 FR 11975; March 2, 1993) At the time the agency established the exclusion, alterers and final stage manufacturers who were small businesses stated that they could not then comply with the certification requirements of Standard 208. NHTSA established the exclusion so that manufacturers and alterers could continue to produce these LTVs for use by persons with disabilities. As discussed above, the agency now has information that demonstrates that manufacturers and alterers of LTVs for persons with disabilities are now able to comply with Standard 208's dynamic testing requirements.

In response to the agency's September 23, 1997 letter, 16 manufacturers and alterers of vehicles for persons with disabilities explained that they were complying with Standard 208 in a variety of ways. The largest of these manufacturers and alterers (which produce from 200 to 1,600 vehicles per year) stated that they were performing crash tests to ensure compliance with Standard 208's dynamic and automatic crash protection requirements.[10] These manufacturers and alterers provided NHTSA with the name of the organization that performed the Standard 208 compliance test, the date of the test, and the year, make and model of the vehicle that was tested. All of the vehicles that were tested met the requirements of Standard 208. Two alterers (which produce between 20 and 65 vehicles per year) stated that they did not believe that their modifications affected the performance of the vehicle in such a way that the vehicle's original certification to Standard 208 was affected. They explained that they were, therefore, basing their certification on the original manufacturer's certification to Standard 208.

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[7] According to the petition, NMEDA's members include businesses that structurally modify large and small vans, those that manufacture separate components such as wheelchair lifts, ramps, hand-controls, and car-top wheelchair storage devices, those that install adaptive equipment and those that instruct the customer in its appropriate use.

[8] The agency notes that many of these modifications may also compromise the vehicle's compliance with other standards set out in 49 CFR Part 571.

[9] Petition for Rulemaking to Amend FMVSS 208 in Support of Persons With Disabilities, National Mobility Equipment Dealers Association at 7–9 (July 18, 1997).

The agency notes that the UVa study cited by NMEDA found that of all the steering control devices (SCD) tested, the tri-pin was the only SCD that showed the possibility of interacting with air bag deployment and needed further study. See Air Bag Interaction With and Injury Potential from Common Steering Control Devices; DOT–HS–808–580; Pilkey et al, University of Virginia for NHTSA; Nov. 1996. Additional research was conducted at the University of Virginia which revealed that tri-pins do not interact significantly with the deployment of the air bag. Air Bag Interaction With and Injury Potential from Common Steering Control Devices, Phase II, Final Report; Pilkey et al, University of Virginia for NHTSA; DTRS–57–93–C–00105; March 1998.

[10] Most manufacturers and alterers have performed tests using a Hybrid III test dummy in

NHTSA notes that NMEDA did not submit any information with its petition that demonstrated that alterers and manufacturers could not comply. The agency also notes that the RVIA, which originally petitioned the agency to establish the exclusion, did not ask the agency to extend the exclusion. Moreover, Braun, which also asked the agency to establish the exclusion and is a member of NMEDA, provided the agency with dates on which it tested its vehicles for compliance with Standard 208's dynamic test requirements. All of the vehicles passed.

The agency believes that not renewing the exclusion will enhance the safety of persons with disabilities while not adversely affecting their ability to obtain vehicles modified for their use. As of September 1, 1998, all LTVs are required to be equipped with air bags at both front outboard seating positions. NHTSA believes that persons who can transfer from a wheelchair to the original vehicle seat are much safer with an operational air bag in a vehicle that has been certified as meeting Standard 208's dynamic test requirements than in a vehicle that has not been required to certify to those requirements. In addition, the agency believes that persons driving while seated in a wheelchair can also benefit from an air bag, provided the original steering wheel remains in the vehicle and the person is seated an appropriate distance away from the air bag.

For these reasons, NHTSA is denying the petition.

IV. NPRM Proposing an Exemption From the Make Inoperative Prohibition

NHTSA recognizes that while businesses that either manufacture LTVs to be operated by persons with disabilities or alter those vehicles for that purpose before their first retail sale no longer need accommodation with respect to the dynamic test and automatic restraint requirements, manufacturers and alterers that modify vehicles for people with disabilities after the first retail sale of those vehicles do still need accommodation. Further, the agency is aware that many of the modifications made after the first retail sale compromise a vehicle's compliance not only with Standard 208, but with other Standards, such as Standard 207, Seating Systems, and Standard 204, Steering Control Rearward Displacement, as well.

Accordingly, in a separate but related notice (63 FR 51547; September 28, 1998), NHTSA has proposed an exemption from the make inoperative prohibition that would enable repair businesses and dealers to modify motor vehicles after the first retail sale to accommodate a person with a disability without violating the prohibition and making themselves liable for civil penalties. The exemption would permit modifications affecting safety features installed pursuant to some, but not all Standards. Among the included Standards is Standard 208. The agency believes a regulation exempting vehicles from the make inoperative prohibition would more effectively and directly address the needs of those who modify vehicles for people with disabilities than re-establishing and expanding the exclusion from Standard 208. The agency notes that the proposed rule would directly benefit the NMEDA members that modify vehicles after their first retail sale.

V. Petitioner's Concerns Over Adverse Interaction of Air Bags and Adaptive Steering Devices

As noted above, NMEDA raised a number of concerns with respect to air bags. NMEDA expressed concern over the risk air bags pose to individuals who use adaptive equipment to drive. NHTSA is aware that vehicle manufacturers have instructed modifiers not to place adaptive driving equipment, such as steering control devices, in the air bag deployment zone. The agency's own research indicates, however, that steering control devices, including tripins, do not interact significantly with the deployment of the air bag.[11] Spanner bars, however, pose a danger as they interfere with the proper deployment of the air bag and may be projected toward the occupant by the force of the deploying air bag.

NMEDA stated that the deactivation or removal of an air bag should be allowed in a number of circumstances. NMEDA stated that due to their particular disabilities, some drivers have no choice but to sit dangerously close to an air bag. The petitioner also explained that some of the modifications that are needed to allow a person with a disability to drive, such as the installation of horizontal steering, can only be performed by removing the driver's air bag.

Any person with a disability who believes that he or she is at risk of injury from an air bag because of their physical or medical condition may request an on-off switch by filling out an agency request form and submitting the form to the agency. If the agency approves the request, the agency will send the owner a letter authorizing the installation of a switch. (See Final Rule on Manual Cut-off Switches for Air Bags, 62 FR 62406; Nov. 21, 1997) Further, if a switch is not available from the vehicle manufacturer for the person's vehicle or if the modification requires removal or deactivation of the air bag, the person may submit a written request to the agency to have his or her air bag deactivated. In those cases where an air bag must be deactivated or removed to accommodate a person's disability, the agency will issue a letter authorizing the deactivation.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. After considering all relevant factors, the agency has decided to deny the petition.

Authority: 49 U.S.C. 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued: December 7, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–32908 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–59–P

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the driver's seat. Further, at least one alterer also conducted a crash test with a dummy in a wheel chair. The vehicle met the requirements of Standard 208.

[11] See footnote 9 above.

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Notices

Federal Register
Vol. 63, No. 239
Monday, December 14, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) to request extension of a currently approved information collection that requests information used by CCC and FSA to document or determine whether representatives or survivors of a producer are entitled to receive payments earned by a producer who dies, disappears, or is declared incompetent before receiving payments or other disbursements.

DATES: Comments on this notice must be received on or before February 12, 1999 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Contact Darin Coté, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, telephone (202)720–8129.

SUPPLEMENTARY INFORMATION:

Title: Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

OMB Control Number: 0560–0026.

Expiration Date: December 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Persons desiring to claim payment due a person who has died, disappeared, or has been declared incompetent must do so on Form FSA–325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent." This information is used by FSA county office employees to document the relationship of heirs or beneficiaries and determine the order of precedence for disbursing payments to survivors of the person who has died, disappeared, or been declared incompetent.

Information is obtained only when a producer under contract to receive a payment or disbursement dies, disappears, or is declared incompetent, and documentation is needed to determine if any survivors are entitled to receive such payments or disbursements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours (1/2 hour) per response.

Respondents: Individual producers.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,500 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Darin Coté, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, (202)720–8129.

Copies of information collection may be obtained from Darin Coté, at the above address.

OMB is required to make a decision concerning the collections(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on December 3, 1998.

James C. Kearney,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–33068 Filed 12–11–98; 8:45 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on Friday, January 29, 1999, at the Indiana Government Center South, Conference Room A, 402 W. Washington Street, Indianapolis, Indiana 46204. The purpose of the meeting is to gather information regarding "A Study of Decisions to Prosecute Homicides and Drug Offenses in Marion County, Indiana."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rule and regulations of the Commission.

Dated at Washington, DC, December 3, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–33012 Filed 12–11–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy; Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the first administrative review of the antidumping duty order on certain pasta from Italy. The period of review is January 19, 1996 through June 30, 1997. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–5288.

SUPPLEMENTARY INFORMATION: On August 28, 1997, the Department of Commerce (the Department) initiated this review covering the period January 19, 1996 through June 30, 1997. Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930 (the Act) the Department is extending the time limits for the final results to February 3, 1999. This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: December 7, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–33108 Filed 12–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120498B]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of foreign fishing applications.

SUMMARY: NMFS publishes for public review and comment summaries of applications submitted by the Government of Estonia and the Government of Lithuania requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 1999 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed here:

Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, (617) 231–0422;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904–6790, (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This notice concerns the receipt of an application from the Government of Estonia and the receipt of an application from the Government of Lithuania requesting authorization to conduct joint venture (JV) operations in 1999 in the Northwest Atlantic Ocean for Atlantic mackerel and Atlantic herring. The large stern trawler/processors JACOB HURT and SOELA are identified as the Estonian vessels that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations, and the large stern/trawler processors MAIRONIS and UTENA are identified as the Lithuanian vessels that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations.

While both applications also request authorization for the named vessels to directly harvest Atlantic mackerel and Atlantic herring, since no "Total Allowable Level of Foreign Fishing" is available for either of these species, no foreign vessels can be permitted to directly harvest Atlantic mackerel or Atlantic herring.

Dated: December 7, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–33114 Filed 12–11–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to transfer systems of records.

SUMMARY: The Office of the Secretary proposes to transfer two systems of records notices from its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

On October 1, 1998, the United States On-Site Inspection Agency (OSIA) was disestablished, and its mission and functions were consolidated into the Defense Threat Reduction Agency. Therefore, the Privacy Act systems of records known as DOSIA 01, entitled OSIA Treaty Inspection Manpower Management System (July 18, 1996, 61 FR 37447) and DUSDA 05, entitled Human Radiation Research Review (August 1, 1996, 61 FR 40201) are being transferred to the Defense Threat Reduction Agency.

DATES: This proposed action will be effective without further notice on January 13, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records

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notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 8, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

DOSIA 01

SYSTEM NAME:

OSIA Treaty Inspection Information Management System (July 18, 1996, 61 FR 37447).

Reason: The On-Site Inspection Agency (OSIA) was disestablished on October 1, 1998. This system of records and its notice are being transferred to the Defense Threat Reduction Agency. The notice will be identified as HDTRA 019, entitled 'Treaty Inspection Manpower Management System.'

DUSDA 05

SYSTEM NAME:

Human Radiation Research Review (August 1, 1996, 61 FR 40201).

Reason: The On-Site Inspection Agency (OSIA) was disestablished on October 1, 1998. This system of records and its notice are being transferred to the Defense Threat Reduction Agency. The notice will be identified as HDTRA 020, entitled 'Human Radiation Research Review.'

[FR Doc. 98–33041 Filed 12–11–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Privacy Act systems of records, republication.

SUMMARY: On October 1, 1998, the Defense Threat Reduction Agency was formed by the consolidation of selected elements of the Office of the Secretary of Defense Staff and the Defense Special Weapons Agency. As a result of this consolidation, two former Office of the Secretary of Defense Privacy Act systems of records notices (DOSIA 01, entitled OSIA Treaty Inspection Manpower Management System (July 18, 1996, 61 FR 37447) and DUSDA 05, entitled Human Radiation Research Review (August 1, 1996, 61 FR 40201)) were transferred to the Defense Threat Reduction Agency.

In addition, existing Defense Threat Reduction Agency notices are being republished to reflect name and administrative changes made to the notices because of the consolidation.

DATES: This proposed action will be effective without further notice on January 13, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Barker at (703) 810–4561.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed administrative amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 8, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE THREAT REDUCTION AGENCY

REQUESTING RECORDS

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required to locate and retrieve the record.

BLANKET ROUTINE USES

Certain 'blanket routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy.

LAW ENFORCEMENT ROUTINE USE

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

DISCLOSURE WHEN REQUESTING INFORMATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

DISCLOSURE OF REQUESTED INFORMATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

CONGRESSIONAL INQUIRIES ROUTINE USE

Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

PRIVATE RELIEF LEGISLATION ROUTINE USE

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS ROUTINE USE

A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES ROUTINE USE

Any information normally contained in IRS Form W–2 which is maintained in a record from a system of records maintained by this component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S. Code, Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Number 76–07.

DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT ROUTINE USE

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

DISCLOSURE TO MILITARY BANKING FACILITIES OVERSEAS ROUTINE USE

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

DISCLOSURE OF INFORMATION TO THE GENERAL SERVICES ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO THE MERIT SYSTEMS PROTECTION BOARD ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DOD investigation, and such other functions, promulgated in 5 U.S.C 1205 and 1206, or as may be authorized by law.

COUNTERINTELLIGENCE PURPOSES ROUTINE USE

A record from a system of records maintained by this component may be disclosed as a routine use outside the DOD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

HDTRA 001

SYSTEM NAME:

Employee Assistance Program.

SYSTEM LOCATION:

Office of Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Civilian Personnel Office, Building 20203A, Kirtland Air Force Base, Albuquerque, NM 87115–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees in appropriated and non-appropriated fund activities who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case records on employees which are maintained by counselors, supervisors, and civilian personnel offices, that consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, or emotional problems (referrals only).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Drug Abuse Prevention, Treatment, and Rehabilitation Act, as amended; Employee Assistance Program, 42 CFR Chapter I, Subchapter A; 5 U.S.C. 7904 and E.O. 9397 (SSN).

PURPOSE(S):

For use by the Drug and Alcohol Abuse Coordinator in referring individuals for counseling and by management officials for follow-up actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with provisions of 42 U.S.C. 290dd–2, the DTRA "Blanket

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Routine Uses'' do not apply to this system of records.

Records in this system may not be disclosed without the prior written consent of such patient, unless the disclosure would be:

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner; and

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper file folders.

RETRIEVABILITY:

Retrieved by the individuals Social Security Number.

SAFEGUARDS:

Buildings are protected by security guards and an intrusion alarm system. Records are maintained in locked security containers accessible only to personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are purged of identifying information within five years after termination of counseling or destroyed when they are no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166-7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

The letter should contain the full name, Social Security Number, and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

The letter should contain the full name, Social Security Number, and signature of the requester and the approximate period of time, by date, during which the case record was developed.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

Counselors, other officials, individuals or practitioners, and other agencies both in and outside of Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 002

SYSTEM NAME:

Employee Relations.

SYSTEM LOCATION:

Office of Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Civilian Personnel Office, Building 20203A, Kirtland Air Force Base, Albuquerque, NM 87115–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and former employees paid from appropriated funds serving under career, career-conditional, temporary and excepted service appointments on whom suitability, discipline, grievance, and appeal records exist.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents and information pertaining to discipline, grievances, and appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 7301; E.O. 11557; E.O. 11491; E.O. 12564 and E.O. 9397 (SSN).

PURPOSE(S):

For use by agency officials and employees in the performance of their official duties related to management of civilian employees and the processing, administration and adjudication of discipline, grievances, suitability and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Appeals examiners of the Merit Systems Protection Board to adjudicate appeals.

The Comptroller General or his authorized representatives and the Attorney General of the United States or his authorized representatives in connection with grievances, disciplinary actions, suitability, and appeals, and to Federal Labor Relations officials in the performance of official duties.

The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders.

RETRIEVABILITY:

Records at Defense Threat Reduction Agency are retrieved alphabetically by last name of individual. Records at Kirtland Air Force Base are filed by Social Security Number.

SAFEGUARDS:

Buildings are protected by security guards and an intrusion alarm system. Records are maintained in locked security containers in a locked room accessible only to personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are destroyed upon separation of the employee from the agency or in accordance with appropriate records disposal schedules.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 004

SYSTEM NAME:

Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records.

SYSTEM LOCATION:

Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian employees of the Department of Defense and other federal, state, and local government agencies, contractor personnel, and visitors from foreign countries, who participated in planned exercises.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; date of birth; service; grade/rank; specialty code; job series or profession; experience with radioactive materials such as classification as 'radiation worker;' use of film badge or other dosimetric device; respiratory protection equipment; training and actual work in anti-contamination clothing and respirators; awareness of radiation risks associated with exercises; previous radiation exposure; role in exercise; employer/organization mailing address and telephone; unit responsible for individuals radiation exposure records; time in exercise radiological control area; and external and internal radiation monitoring and/or dosimetry results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2013 and 2201 (Atomic Energy Act of 1954) and 10 CFR parts 10 and 20; 5 U.S.C. 7902 and 84 Stat. 1599 (Occupational Safety and Health Act of 1970) and 29 CFR subparts 1910.20 and 1910.96; E.O. 12196, as amended, February 26, 1980, (Occupational Safety and Health Programs for Federal Employees); and E.O. 9397 (SSN).

PURPOSE(S):

For use by agency officials and employees in determining and evaluating individual and exercise collective radiation doses and in reporting dosimetry results to individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Officials and employees of other government agencies, authorized government contractors, current or potential employers, national, state and local government organizations and foreign governments in the performance of official duties related to evaluating, reporting and documenting radiation dosimetry data.

Officials of government investigatory agencies in the performance of official duties relating to enforcement of Federal rules and regulations.

The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer printouts and in paper files folders.

RETRIEVABILITY:

Records may be retrieved by names, Social Security Number, service or organization, grade/rank, dosimeter number, or date and place of participation.

SAFEGUARDS:

Records and computer printouts are available only to authorized persons with an official need to know. The files are in a secure office area with limited access during duty hours. The office is locked during non-duty hours.

RETENTION AND DISPOSAL:

All records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Inquiry should contain full name and Social Security Number of the individual and applicable dates of participation, if available. Visits can be arranged with the system manager.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Inquiry should contain full name and Social Security Number of the individual and applicable dates of participation, if available. Visits can be arranged with the system manager.

Requests from current or potential employers must include a signed authorization from the individual.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

Information in this system of records was supplied directly by the individual;

or derived from information supplied by the individual; or supplied by a contractor or government dosimetry service; or developed by radiation measurements at the exercise site.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 005

SYSTEM NAME:

Manpower/Personnel Management System.

SYSTEM LOCATION:

Primary location: Office of Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Secondary locations: Office of Manpower and Personnel, Defense Threat Reduction Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Technology Security Directorate, Defense Threat Reduction Agency, 400 Army Navy Drive, Arlington, VA 22202–2884.

Defense Threat Reduction Agency, Albuquerque Operations, 1680 Texas Street, SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669 and Johnston Atoll.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, employed by DTRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains the following information on all personnel assigned to DTRA: Social Security Number; agency; employee name; birth date; veteran's preference; tenure group; service computation date; federal employees group life insurance; time and attendance, leave, and overtime approval forms; retirement code; nature of action code; effective date of action; position number; pay plan; occupation code; functional classification code; grade; step; pay basis; salary; supervisory position; location code/duty station; position occupied; work schedule; pay rate determinant; sex; citizen status; date entered present grade; date entered present step; separation date; reason for separation (quit code); cost center; academic discipline; career conditional appointment date (conversion to career); education level; degree date; purpose of training; type of training; source of training; special interest; direct cost; indirect cost; date of completion; on-duty hours; off-duty hours; JTD paragraph number; JTD line number; competitive level; military service retirement date; uniformed service; joint specialty officer; service position number; career status; officer evaluation report date (Army only); highest professional military education; rank; grade; status of incumbent in Personnel Reliability Program (PRP); date of latest PRP certification;' promotion sequence number; service commissioned (military); service pay grade (rank); Agency sub-element code; submitting office number; retired military code; bureau; unit identification code; program element code; civil function code; guard/reserve technician; appropriation code; active/inactive strength designation; work center code; projected vacancy date; targeted grade; position title; date of last equivalent increase; fair labor standards act designator; health benefits enrollment code; type and date of incentive award; civil service or other legal authority; date probationary period begins; performance rating; due date for future action; position tenure; leave category; personnel authorized; projected personnel requirement; special experience identifiers; additional duties; manpower track: facility; branch of service; date of rank; primary/Alternate specialty; control specialty; last OER/EER; total commissioned service date; total active service date; date of arrival; projected rotation date; security clearance; marital status; spouse's name; dependents; address (Number and street, city, state, Zip Code); phones (home and duty); handicap code; minority group designator; aggregate program element code; position indicator; academic degree requirements; directorate/department, division, branch, and section office titles; service authorization position number; physical profile; nature of action code No. 2; annuitant indicator; Vietnam veteran; entered present position; future action type; agency submitting element; submitting office code; merit pay designator; bargaining unit designator; old Social Security Number; course title host; tuition; Transportation Per Diem; hourly rate; training grade level; administrative cost; type of career training program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, 4103; Pub. L. 89–554, September 6, 1966; and E.O. 9397 (SSN).

PURPOSE(S):

For use by officials and employees of the Defense Threat Reduction Agency in the performance of their official duties related to the management of civilian and military employee programs and for preparation and publication of personnel rosters to facilitate communications/contact for official, or emergency purposes.

To compile and consolidate reports relating to manpower authorization/assigned strengths and to record personnel data and use that data to compile information as required by management officials within the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Representatives of the Merit Systems Protection Board on matters relating to the inspection, survey, audit or evaluation of the civilian programs or such other matters under the jurisdiction of that organization.

The Comptroller General or any of his authorized representatives in the course of performance of duties of the General Accounting Office relating to civilian programs.

Duly appointed Hearing Examiners or Arbitrators for the purpose of conducting hearings in connection with an employee grievance.

The "Blanket Routine Uses" published at beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, discs, computer printouts, and on punched cards. Manual records are stored in paper file folders and card file boxes.

RETRIEVABILITY:

Automated records are retrieved by employee name, Social Security Number or Position Service Number (PSN). Manual records are retrieved by employee's last name and PSN.

SAFEGUARDS:

The computer facility and data base are located in a restricted area accessible only to authorized personnel that are properly screened, cleared, and trained. Terminal users are within a restricted area. Use of these terminals are by authorized personnel who have a need to acquire data from the database. Terminal users are cleared, provided proper training and are assigned a password/code to retrieve data. Manual records and computer printouts are available only to authorized personnel having a need to know. Buildings are protected by security guards and/or an intrusion alarm system.

RETENTION AND DISPOSAL:

Computer magnetic tapes are permanent. Manpower's manual records are maintained indefinitely and all personnel manual records are kept until the employee departs. Monthly reports are destroyed at the end of each fiscal year; annual reports are retained in 5-year blocks, transferred to the Washington National Records Center, and offered to National Archives and Records Administration 20 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

The letter should contain the full name, Social Security Number, and signature of the requester and the approximate period of time, by date, during which the record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Written requests for information should contain the full name, Social Security Number, and signature of individual. For personal visits, the individual should provide military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

Information is extracted from military and civilian personnel records, Joint Manpower Program documents and voluntarily submitted by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 006

SYSTEM NAME:

Employees Occupational Health Programs.

SYSTEM LOCATION:

Office of Safety and Occupational Health, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, employed by the Defense Threat Reduction Agency (DTRA) and General Services Agency employees assigned to DTRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains a variety of records relating to an employee's participation in the DTRA Occupational Health Program. Information which may be included in this system are the employee's name, Social Security Number, date of birth, weight, height, blood pressure, medical history, blood type, nature of injury or complaint, type of treatment/medication received, immunizations, examination findings and laboratory findings, exposure to occupational hazards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901 et seq., Pub. L. 79–658; and E.O. 9397 (SSN).

PURPOSE(S):

For use by authorized medical personnel in providing any medical treatment or referral; to provide information to agency management officials pertaining to job-related injuries or potential hazardous conditions' and to provide information relative to claims or litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Office of Personnel Management, and the Federal Labor Relations Authority (including the General Counsel) in the Performance of official duties.

The Department of Labor in connection with claims for compensation.

The Department of Justice in connection with litigation relating to claims.

The Occupational Safety and Health Agency in connection with job-related injuries, illnesses, or hazardous condition.

The "Blanket Routine Uses" published at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper file folders in a locked file cabinet.

RETRIEVABILITY:

Records may be retrieved by the individual's name and Social Security Number.

SAFEGUARDS:

During the employment of the individual, medical records are maintained in files located in a secured room with access limited to those whose official duties require access. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Records are retained until the individual leaves the DTRA. Records are combined with the Official Personnel Folder which is forwarded to the Federal Personnel Records Center or to the new employing agency, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Safety and Occupational Health, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

The letter should contain the full name, Social Security Number and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Written requests for information should contain the full name, Social Security Number, and signature of the requester. For personal visits the individual should provide a military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

Information is supplied directly by the individual, or derived from information supplied by the individual, or supplied by the medical officer or nurse providing treatment or medication, or supplied by the individual's private physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 007

SYSTEM NAME:

Security Operations.

SYSTEM LOCATION:

Primary location: Security Office, Defense Threat Reduction Agency, 45045 Aviation Road, Dulles, VA 20166–7517.

Secondary locations: Security Office, Defense Threat Reduction Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Technology Security Directorate, Defense Threat Reduction Agency, 400 Army Navy Drive, Arlington, VA 22202-2884.

Albuquerque Operations, Defense Threat Reduction Agency, 1680 Texas Street, SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel assigned to, or employed by Defense Threat Reduction Agency (DTRA).

Other U.S. Government personnel, U.S. Government contractors, foreign government representatives, and visitors from foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; date and place of birth; height; weight; hair/eye color; citizenship; grade/rank; service; organization; security clearance; date of clearance; basis special accesses; courier authorization; continuous access roster expiration date; badge number; vehicle ID and sticker Number; special intelligence access; expiration date; agency; billet number; list of badges/passes issued; list of keys issued; conference title; conference duties; location; Department of Defense Form 398 "Statement of Personal History;" Reports of Investigation; visit requests; conference rosters; clearance and special access rosters; picture identification; and correspondence concerning adjudication/passing of clearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, Security Requirements for Government Employment, 27 April 1953, as amended by E.O.s 10491, 10531, 10548, 10558, 11605, and 11785; E.O. 12065, "National Security Information," 28 June 1978; Section 21 of the Internal Security Act of 1950 (Pub. L. 831); Section 145 of the Atomic Energy Act of 1954, as amended by Pub. L. 83–703, 42 U.S.C. 2185; and E.O. 9397 (SSN).

PURPOSE(S):

For use by officials and employees of the Defense Threat Reduction Agency and other DoD Components in the performance of their official duties related to determining the eligibility of individuals for access to classified information, access to buildings and facilities, or to conferences over which DTRA has security responsibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Officials and employees of Government contractors and other Government agencies in the performance of their official duties related to the screening and selection of individuals for security clearances and/or special authorizations, access to facilities or attendance at conferences.

The "Blanket Routine Uses" published at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, discs, computer printouts, and/or hard drives. Manual records are stored in paper file folders, card files and paper rosters.

RETRIEVABILITY:

Automated records are retrieved by individual's last name, Social Security Number, conference title, and by type of badge issued. Manual records are retrieved by individuals last name, Social Security Number, organization or subject file.

SAFEGUARDS:

The computer facility and terminals are located in restricted areas accessible only to authorized personnel. Manual records and computer printouts are available only to authorized persons with an official need to know. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Computer records on individuals are erased upon termination of an individual's affiliation with DTRA; personnel security files are destroyed within thirty days from the date of termination of an individual's employment, assignment or affiliation with DTRA. Manual records or conference attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Office, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Written requests for information should contain the full name, home address, Social Security Number, date and place of birth. For personal visits, the individual must be able to provide identification showing full name, date and place of birth, and their Social Security Number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

Information is extracted from military and civilian personnel records, investigative files, and voluntarily submitted by the individual. Other Government agencies, law enforcement officials and contractors may provide the same data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 318. For additional information contact the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

HDTRA 010

SYSTEM NAME:

Nuclear Test Participants.

SYSTEM LOCATION:

Nuclear Test Personnel Review Office, Special Weapons Technology, Defense Threat Reduction Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and DoD civilian participants of the U.S. nuclear testing programs, military occupation forces assigned to Hiroshima or Nagasaki from August 6, 1945 to July 1, 1946, and individuals who participated in the cleanup of Enewetak Atoll.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, grade, service number, Social Security Number, last known or current address, dates and extent of test participation, exposure data, unit of assignment, medical data, and documentation relative to administrative claims or civil litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Atomic Energy Act of 1954, 42 U.S.C. 2013, Tasking Memorandum from Office of the Secretary of Defense to the Director, Defense Nuclear Agency dated 28 Jan 78, Subject: DoD Personnel Participation in Atmospheric Nuclear Weapons Testing and Military Construction Appropriations Act of 1977 (Pub. L. 94–367), DNA OPLAN 600–77, Cleanup of Enewetak Atoll, and the Radiation Exposure Compensation Act (Pub. L. 100–426, as amended by Pub. L. 100–510); and E.O. 9397 (SSN).

PURPOSE(S):

For use by agency officials and employees, or authorized contractors, and other DoD components in the preparation of the histories of nuclear test programs; to conduct scientific studies or medical follow-up programs and to provide data or documentation relevant to the processing of administrative claims or litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

National Research Council and the Center for Disease Control, for the purpose of conducting epidemiological studies on the effects of ionizing radiation on participants of nuclear test programs.

Department of Labor and the Department of Justice for the purpose of processing claims by individuals who allege job-related disabilities as a result of participation in nuclear test programs and for litigation actions.

Department of Energy for the purpose of identifying DOE and DOE contractor personnel who were, or may be in the future, involved in nuclear test programs; and for use in processing claims or litigation actions.

Department of Veterans Affairs for the purpose of processing claims by individuals who allege service-connected disabilities as a result of participation in nuclear test programs and for litigation actions' and to conduct epidemiological studies on the effect of radiation on nuclear test participants.

Information may be released to individuals or their authorized representatives.

The "Blanket Routine Uses" published at the beginning of DTRA's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files folders, microfilm/fiche, computer magnetic tape disks, and printouts in secure computer facilities.

RETRIEVABILITY:

Name, Social Security Number, service number, or military ID number.

SAFEGUARDS:

Paper records are filed in folders, microfilm/fiche and computer printouts stored in area accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Magnetic tapes are stored in a vault in a controlled area within limited access facilities. Access to computer programs is controlled through software applications which require validation prior to use.

RETENTION AND DISPOSAL:

Records are retained for 75 years after termination of case.

SYSTEM MANAGER(S) AND ADDRESS:

NTPR Program Manager, Nuclear Test Personnel Review Office, Special Weapons Technology Directorate, Defense Threat Reduction Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

Retired Military Personnel records form the National Personnel Records Center, US DTRA Form 10 from individuals voluntarily contacting DTRA or other elements of DoD or other Government Agencies by phone or mail. DoD historical records, dosimetry records and records from the Department of Energy, Department of Veterans Affairs, the Social Security Administration, the Internal Revenue Service, and the Department of Health and Human Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 011

SYSTEM NAME:

Inspector General Investigation Files.

SYSTEM LOCATION:

Office of the Inspector General, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who is the subject of or a witness for an Inspector General investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains files on individual investigations including investigative reports and related documents generated during the course of or subsequent to an investigation.

Reports of investigation contain the authority for the investigation, matters investigated, narrative, documentary evidence, and transcripts of verbatim testimony or summaries thereof.

The system includes "Hotline" telephone logs, investigator work papers and memoranda and letter referrals to management or others, and a chronological listing for identification and location of files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4 App. 4(a)(1) and 6(a)(2); 10 U.S.C. 140; and E.O. 9397 (SSN).

PURPOSE(S):

To investigate the facts and circumstances surrounding allegations or problems reported to the OIG.

Open and closed case listings are used to manage investigations, to produce statistical reports, and to control various aspects of the investigative process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" set forth at the beginning of the DTRA's compilation of systems of records notices will apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer disks and log books.

RETRIEVABILITY:

Retrieved alphabetically by surname of individual, year, investigation number, hotline case number, referral number or investigative subject matter.

SAFEGUARDS:

Access is limited to the Inspector Generals staff, and, as delegated by the Commanding Officer, or Officer-in-Charge, on a need to know basis. Case records are maintained in locked security containers.

Automated records are controlled by limiting physical access to terminals and by the use of passwords. Work areas are sight controlled during normal duty hours. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Requests for assistance and/or complaints acted on by the Inspector General are retained at the agency for 2 years and subsequently destroyed as classified waste.

Computer disks are cleared, erased or destroyed when no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles VA 20166–7517.

Individual should provide their name, address, and proof of identity (photo identification for in person access or an unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individuals should provide their name, address, and proof of identity (photo identification for in person access or an unsworn declaration in accordance with 28 U.S.C. 1746 or a notarized statement may be required for identity verification).

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

From the individual, DTRA records and reports, DTRA employees, witnesses, informants, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 318. For additional information contact the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

HDTRA 012

SYSTEM NAME:

Carpooling Program.

SYSTEM LOCATION:

Primary location: Defense Threat Reduction Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Secondary locations:

Defense Threat Reduction Agency, 45045 Aviation Road, Dulles, VA 20166–7517.

Technology Security Directorate, Defense Threat Reduction Agency, 400 Army Navy Drive, Arlington, VA 22202-2884.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel assigned to, or employed by Defense Threat Reduction Agency, other U.S. Government personnel, and U.S. Government contractors who elect to participate in the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, home address and phone number, office phone number, working hours, map coordinate of home or nearby reference points, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Service Act of 1949, 63 Stat. 377, as amended.

PURPOSE(S):

To assist members and applicants in contacting one another and provide printout of individuals in the system to other participants who desire to arrange a carpool.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the states of Maryland, Virginia, and the District of Columbia for inclusion in their Ridesharing Programs.

The "Blanket Routine Uses" published at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes, disks, and paper printouts, and manual storage within self-help carpool locator board.

RETRIEVABILITY:

Information is accessed and retrieved by name and home address map grid for automated system. Information is manually accessed and retrieved from cards in map grids for locator board.

SAFEGUARDS:

All participants have access to the data. The computer terminals are located in restricted areas accessible only to authorized personnel. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Data is retained only on active participants; destroyed upon request or reassignment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Logistics and Engineering, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individuals should provide name, current address, and sufficient information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individuals should provide name, current address, and sufficient information to permit locating the record.

For personal visits, the individual should provide military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 014

SYSTEM NAME:

Student Records.

SYSTEM LOCATION:

Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any student attending the Defense Nuclear Weapons School.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student academic records consisting of course completion; locator information; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, 4103; and E.O. 9397 (SSN).

PURPOSE(S):

To determine applicant eligibility, as a record of attendance and training, completion or elimination, as a locator, and a source of statistical information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" published at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files and on computer media.

RETRIEVABILITY:

Information may be retrieved by name or Social Security Number.

SAFEGUARDS:

Records and computer printouts are available only to authorized persons with an official need to know. The files are in a secure office area with limited access during duty hours. The office is locked during non-duty hours.

RETENTION AND DISPOSAL:

Individual academic records are retained for 75 years. Records are maintained at the school for five years, then subsequently retired to the Federal Records Center, Fort Worth, TX for the remaining 70 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard SE, Kirtland Air Force Base, NM 87117–5669.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individuals should provide their name, Social Security Number, current address, and proof of identity (photo identification for in person access).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individuals should provide name, Social Security Number, current address, and sufficient information to permit locating the record.

For personal visits, the individual should provide military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 017

SYSTEM NAME:

Voluntary Leave Sharing Program Records.

SYSTEM LOCATION:

Office of Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Secondary locations: Office of Manpower and Personnel, Security Office, Defense Threat Reduction Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Technology Security Directorate, Defense Threat Reduction Agency, 400 Army Navy Drive, Arlington, VA 22202–2884.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave sharing program as either a donor or recipient of annual leave.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, brief description of the medical or personal hardship which qualifies the individual for inclusion in the leave transfer program, the status of the hardship, and a statement that selected data elements may be used in soliciting donations.

The file may also contain medical or physician certifications and DTRA approvals or denials.

Donor records include the individual's name, organization, office, telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours being transferred (or donated leave), and, in the case of the transfer program, the designated leave recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 6331 et seq (Leave); 10 U.S.C. 136; 5 CFR part 630; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in managing the DTRA Voluntary Leave Sharing Program. The recipient's name, and a brief description of the hardship, if authorized by the recipient, are published internally for solicitation purposes. The Social Security Number is obtained to ensure the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-related injury or illness; where the leave donor and leave recipient are employed by different Federal agencies, to the personnel and finance offices of the Federal agency involved to effectuate the leave transfer.

The "Blanket Routine Uses" set forth at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in the performance of their official duties. Records are stored in locked cabinets or rooms, and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Manpower and Personnel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written requests to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written requests to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individual should provide full name and Social Security Number.

CONTESTING RECORDS PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 018

SYSTEM NAME:

Travel Management Program.

SYSTEM LOCATION:

Primary location: Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Secondary location: Defense Threat Reduction Agency subordinate commands.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person, government or private, who travels on official business for the Defense Threat Reduction Agency or who submits a request for payments of a travel advance or travel claim to the Defense Special Weapons Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to official travel of individuals, including travel orders, per diem vouchers, transportation requests, travel itinerary, and supporting documentation. Records contain individual's name, Social Security Number, home address and telephone number, employing office name and telephone number, and electronic banking identification codes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2105, 5561, 5564, 5701–5708, 5721–5730, 5742; 50 U.S.C., app. 2160; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain an official travel record authorization and payment file system. Provides management information for control of travel expenditures, support documentation requirements, and provides reimbursement accounting for persons on official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" set forth at the beginning of DTRA's compilation of system of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Receipts for travel/lodging will be maintained in a central location in the Office of the Comptroller. Electronic data is maintained on a networked computer system with access safeguards. The Travel Manager software Plus Program being utilized is operated under a Department of Defense Pilot and is connected to the DTRA Local Area Network. This automated system includes forms generation, electronic document routing, electronic document approval, enforcement of agency defined limits, automated funds availability verification and electronic interface to mainframe accounting.

RETRIEVABILITY:

Files may be retrieved by name or Social Security Number of individual or by travel order number.

SAFEGUARDS:

Paper records are kept in filing cabinets and other storage places within these offices. Work areas are sight controlled during normal duty hours. Buildings are protected by security guards and an intrusion alarm system.

Access to computer records is controlled by a user identification and password system. Personnel having access are limited to those having a need-to-know who have been trained in handling Privacy Act information. Additionally physical access to video display terminals is under strict supervisory control, access to computer peripheral equipment is controlled, reports are issued that are used to monitor use of the system, output products and storage media is labeled to warn individuals that they contain personal information subject to the Privacy Act.

RETENTION AND DISPOSAL:

The automated record is retained 2 years following the final settlement of a travel claim. Records recorded on tapes or disks are disposed of by degaussing or erasing. A history hard copy file is maintained for 2 years and then retired to the Records Center. They are destroyed 7 years after retirement.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Logistics and Engineering, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

The individual should make reference to the office where assigned or affiliated, dates of travel and provide Social Security Number for positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

The individual should make reference to the office where assigned or affiliated, dates of travel and provide Social Security Number for positive identification.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

RECORD SOURCE CATEGORIES:

From the individual, the systems administrator, or the vendor of travel and related service. Supporting documentation is provided from the associated travel order, division, service providers and the Defense Finance and Accounting Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 019

SYSTEM NAME:

Treaty Inspection Information Management System.

SYSTEM LOCATION:

Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166-7517.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with the Defense Threat Reduction Agency, either by military assignment, civilian employment, or contractual support agreement. Individuals are weapons inspectors, linguists, mission schedulers/planners, personnel assistants/specialists, portal rotation specialists, operation technicians, passport managers, clerical staff, and database management specialists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes individual's name, Social Security Number, date of birth, city/state/country of birth, education, marital status, gender, race, civilian or military member, rank (if military), security clearance, years of federal service, occupational category, job organization and location, and emergency locator information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, 4103; Pub. L. 89–554 (September 6, 1966); and E.O 9397 (SSN).

PURPOSE(S):

To manage the Treaty Monitoring and Inspection activities, including personnel resources, manpower/billet management, passport status, mission scheduling and planning, inspection team composition, inspector and transport list management, inspector training, and inspection notification generation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" set forth at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and computer output products.

RETRIEVABILITY:

Records may be retrieved by name or Social Security Number.

SAFEGUARDS:

Records are stored in a computer system with extensive intrusion safeguards.

RETENTION AND DISPOSAL:

Records are maintained for as long as the individual is assigned to DTRA. Upon departure from DTRA, records concerning that individual are removed from the active file and retained in an inactive file for ten years. Information that has been held in the inactive file for ten years is deleted.

SYSTEM MANAGER(S) AND ADDRESS:

TIIMS System Administrator, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles VA 20166–7517.

The inquiry should include full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166-7517.

The inquiry must include full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166-7517.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, obtained from other personnel record sources, and from the individual's superiors and assignment personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDTRA 020

SYSTEM NAME:

Human Radiation Research Review.

SYSTEM LOCATION:

Radiation Experiments Command Center, Special Weapons Technology Directorate, 6801 Telegraph Road, Alexandria, VA 22310–3398.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were or may have been the subject of tests involving ionizing radiation or other human-subject experimentation; individuals who have inquired or provided information to the Department of Energy Helpline or the Department of Defense Human Radiation Experimentation Command Center concerning such testing.

Military and DoD civilian personnel who participated in atmospheric nuclear testing between 1945 and 1962 or the occupation of Hiroshima and Nagasaki are already included in the Defense Threat Reduction Agency Privacy Act system of records notice HDTRA 010, Nuclear Test Participants and are not part of this effort. However, inquiries referred from the Helpline that later are determined to fall within this category will be included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes an individual's name, Social Security Number or service number, last known or current address, occupational information, dates and extent of involvement in an experiment, exposure data, medical data, medical history of subject and relatives, and other documentation of exposure to ionizing radiation or other agents.

The system contains information abstracted from historical records, and information furnished to the Department of Defense, Department of Energy or other Federal Agencies by affected individuals or other interested parties.

Records include human radiation experimentation conducted from 1944 to the present. However, experiments conducted after May 20, 1974 (the date of issuance of the Department of Health, Education and Welfare Regulations for the Protection of Human Subjects, 45 CFR part 46), may be covered by other systems of records.

Common and routine medical practices, such as established diagnostic and treatment methods involving incidental exposures to ionizing radiation are not included within this system.

Examples of such methods are panorex radiographs for dental evaluations and thyroid scans for the evaluation and treatment of hypo/hyperthyroidism.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, E.O. 12891 (January 15, 1994), E.O. 9397 (SSN).

PURPOSE(S):

For use by agency officials and employees, or authorized contractors, and other DoD components in the preparation of the histories of human radiation experimentation; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the exposure of individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to officials and contract personnel of the Human Radiation Experimentation Interagency Working Group as well as other designated government agencies, for the purposes described above. These agencies are the National Aeronautics and Space Administration; Department of Justice; Department of Energy; Department of Health and Human Services; Department of Veterans Affair; the White House Advisory Committee; Central Intelligence Agency; and Office of Management and Budget.

The "Blanket Routine Uses" published at the beginning of DTRA's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm/fiche, computer magnetic tape disks, and printouts in secure computer facilities.

RETRIEVABILITY:

Records are retrieved by case number, name, study control number, Social Security Number, or service number.

SAFEGUARDS:

Access to or disclosure of information is limited to authorized personnel. Paper records filed in folders, microfilm/fiche and computer printouts are stored in areas accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Magnetic tapes are stored in a controlled area within limited access facilities. Access to computer programs is controlled through software applications that require validation prior to use.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the command center until all claims have been settled and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Radiation Experiments Command Center, Special Weapons Technology Directorate, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individual should provide full name, Social Security Number, or service number, and if known, case or study control number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

Individuals should provide full name, Social Security Number, or service number, and if known, case or study control number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information will be collected directly from individuals, as well as extracted from historical records to include personnel files and lists, training files, medical records, legal case files, radiation and other hazard exposure records, occupational and industrial accident records, employee insurance claims, organizational and institutional administrative files, and related sources. The specific types of records used are determined by the nature of an individual's exposure to radiation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–33042 Filed 12–11–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–03]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–03, with attached transmittal, policy justification, sensitivity of technology and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: December 8, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

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DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

30 NOV 1998
In reply refer to:
I-75111/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-03, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $742 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MS Davison

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to:
House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 555 million
Other	$ 187 million
TOTAL	$ 742 million

(iii) Description of Articles or Services Offered: Combined lease/sale arrangement of four KIDD Class Guided Missile Destroyers, 62,000 20mm cartridges, 4,800 5"/54 projectiles, 64 anti-submarine rockets, 320 MK 36 Super Rapid Bloom Offboard Chaff, 32 HARPOON missiles, 48 MK 46 MOD 5 torpedoes, ammunition, and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of one KIDD destroyer, "cold ship" transfer reactivations for three KIDD destroyers from the U.S. Navy, logistics support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Greece in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) Military Department: Navy (SAS, GFG, TCY, AFF, AFG, AFH, AFI)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 30 NOV 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - KIDD Class Guided Missile Destroyers

The Government of Greece has requested a possible combined lease/sale arrangement of four KIDD Class Guided Missile Destroyers, 62,000 20mm cartridges, 4,800 5"/54 projectiles, 64 anti-submarine rockets, 320 MK 36 Super Rapid Bloom Offboard Chaff, 32 HARPOON missiles, 48 MK 46 MOD 5 torpedoes, ammunition, and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of one KIDD destroyer, "cold ship" transfer reactivations for three KIDD destroyers from the U.S. Navy, logistics support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Greece in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $742 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and furthering NATO rationalization, standardization and interoperability.

Greece needs these frigates to continue its naval modernization program and enhance its air defense capability. Greece already has HARPOON missiles and anti-submarine rockets in its weapon inventory. Greece will use these missiles to augment its present missile inventory and enhance its anti-ship warfare capability. The missiles will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Greece, which already has missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be BAV, Alexandria, Virginia; Hughes Missile Systems Company, Tucson, Arizona; Boeing Corporation, St. Charles, Missouri; and Alliant Techsystems, Hopkins, Minnesota. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country for extended periods of time in support of this transfer.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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Transmittal No. 98-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The KIDD class guided missile destroyers contains sensitive state-of-the-art technology. Some of the hardware, publications, performance specifications, operational capability parameters, vulnerabilities to countermeasures, and software documentation are class Secret. However, the classified information that will be provided consists of only that necessary for the Government of Greece to operate, maintain, and repair the ships and their installed systems and related software. The proposed transfer provides equipment and services and technical information related to the following classified equipment and documentation:

a. The PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

b. AN/SYR-1 Communication Tracking Set: Unclassified hardware with Confidential software.

c. AN/SLQ-25A NIXIE Torpedo CM: Secret hardware, software, and documentation requiring sanitization.

d. AN/SLQ-32A(V)3 Improved ECM Set: Secret hardware. Due to USN requirements, this system must be removed and replaced with the basic AN/SLQ-32(V)2 system. Removal includes hardware, software, and technical manuals. When replaced with the basic AN/SLQ-32(V)2, the following release considerations apply: (1) hardware is Secret, (2) software is Confidential, (3) U.S. threat libraries are Secret and will not be released, and (4) technical manuals are Confidential and need to be sanitized.

e. MK 36 MOD 0 SRBOC Launching System: Confidential components with documentation requiring sanitization from Secret to Confidential.

f. AN/UYK-7(V) Computer CDS: Unclassified hardware. After sanitization, software and documentation will be Confidential.

g. MK 116 MOD 2 Underwater Fire Control System: Confidential hardware, software, and documentation requiring sanitization.

h. MK 14 MOD 5 Weapons Direction System: Secret hardware/documentation and Secret software requiring sanitizaiton.

i. MK 74 MOD 14 Fire Control System GUI: Secret hardware with Secret software/documentation requiring sanitization.

j. AN/SQQ-28(V)11 Sonar Signal Processing System: Confidential components and documentation requiring sanitization.

k. AN/SQR-17A(V) Amplifier, Radio: Confidential hardware. Secret software/documentation requiring sanitization which will downgrade classification to Confidential.

l. AN/SQS-53A EC-16: Unclassified hardware. Secret software/documentation requiring sanitization which will downgrade classification to Confidential.

m. AN/SQS-53A Sonar Set: Confidential components and documentation.

n. The Guidance Section Components of the HARPOON missile are classified Confidential including applicable technical and equipment documentation and manuals.

o. Anti-submarine Rocket (ASROC): Confidential components and documentation requiring sanitization.

p. MK 46 MOD 5 Torpedo: Secret components and documentation requiring sanitization.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar cr advance capabilities. For this reason, the U.S. threat libraries will not be released.

5. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

November 30, 1998

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Greece of Four KIDD-Class Guided Missile Destroyers, 62,000 20mm cartridges, 4,800 5"/54 projectiles, 64 anti-submarine rockets, 320 MK 36 Super Rapid Bloom Offboard Chaff, 32 HARPOON missiles, 48 MK 46 MOD 5 torpedoes, ammunition, and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of one KIDD destroyer, "cold ship" transfer reactivations for three KIDD destroyers from he U.S. Navy, logistics support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Greece in a "safe to steam" conditions with all shipboard and weapon systems operational, at an estimated cost of $742 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John Holum

John D. Holum
Acting Under Secretary of State
for Arms Control and International
Security Affairs and Director, U.S.
Arms Control and Disarmament Agency

[FR Doc 98–33044 Filed 12–11–98; 8:15 am]

BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Human Resources Strategy

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Human Resources Strategy will meet in open session on December 21–22, 1998 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology

on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Julie Evans at (703) 527–5410.

Dated: December 8, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–33043 Filed 12–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (estimated number of respondents times the proposed frequency of response per year times the estimated average hours per response.)

DATES: Comments must be filed on or before January 13, 1999. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Casselberry may be telephoned at (202) 426–1116, FAX (202) 426–1081, or e-mail at Jay.Casselberry@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–28, "Financial Reporting System."

2. Energy Information Administration; OMB No. 1905–0149; Revision of a Currently Approved Collection; Mandatory.

3. The Financial Reporting System, Form EIA–28, collects data used to analyze the energy industry's competitive environment as well as energy industry resource development, supply, distribution, and profitability issues. Survey results from major energy producers are published annually and are used by both public and private analysts. This request is only for a revision in the existing approval to modify the criteria used by EIA to select those energy companies that must report on Form EIA–28. No change is requested in the current expiration date of December 31, 1999, or in the information requested on Form EIA–28.

4. Businesses or other for-profit.

5. 14,550 hours (30 respondents reporting annually with an average estimated burden of 485 hours per response).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, December 8, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–33075 Filed 12–11–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–80–002]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 8, 1998.

Take notice that on December 3, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below, for effectiveness on November 2, 1998:

Substitute Second Revised Sheet No. 274
Substitute Second Revised Sheet No. 275

Granite State states that it filed the foregoing revised tariff sheets on November 16, 1998 among other original and revised tariff sheets to conform its nominating and related procedures to comply with the requirements of Order No. 587–H. It is further stated that the Commission's Staff advised Granite State that the foregoing tariff sheets were incorrectly paginated in the November 16, 1998 filing and the instant filing corrects the pagination.

Granite State states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33018 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–149–001]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 8, 1998.

Take notice that on December 2, 1998, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to become effective January 1, 1999:

Substitute First Revised Sheet No. 162A

Kentucky West states that the purpose of this filing is to correct a typographical error discovered in Section 28.4 of the General Terms and Conditions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33017 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–97–000]

KO Transmission Company; Notice of Application

December 8, 1998.

Take notice that on December 2, 1998, KO Transmission Company (Applicant), 139 East Fourth Street, Cincinnati, Ohio 45202, filed in Docket No. CP99–97–000 an application for a blanket certificate pursuant to Sections 7 of the Natural Gas Act, as amended, and Subpart F of the Regulations of the Federal Energy Regulatory Commission's (Commission) thereunder, for permission and approval to construct and operate certain eligible facilities under blanket authorization and to avail itself of the prior notice procedures set forth in Section 157.205 of the Commission's regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 15, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). and the regulations under the Natural Gas Act (18 CFR 157.10). All such protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application is no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33023 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2852–000–NY]

New York State Electronic & Gas Corporation; Notice of New York Electric & Gas Corporation's Request To Use Alternative Procedures in Filing a License Application

December 8, 1998.

On November 27, 1998, the existing licensee, New York State Electric & Gas Corporation (NYSEG), filed a request to use alternative procedures for submitting an application for non-power license for the existing Keuka Hydroelectric Project No. 2852. The project is located on Keuka Lake, Waneta Lake, Lamoka Lake, and Mud Creek, in Steuben and Schuyler Counties, New York.

The project consists of: (1) The 183-foot-long and 13-foot-high Bradford dam; (2) a 74,000-acre-foot reservoir comprising Waneta and Lamoka Lakes; (3) a 9,288-foot-long canal; (4) a 3,600-foot-long penstock; (5) an 835-foot-long penstock; (6) a powerhouse with a single 2,000-kw generating unit; and (7) appurtenant facilities. NYSEG has demonstrating that it has made an effort to contact all resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus exists that the use of alternative procedures is appropriate in this case.

NYSEG has submitted a communications protocol that is supported by most interested entities.

The purpose of this notice is to invited any additional comments on NYSEG's request to use the alternative procedures, pursuant to Section 4.34(i) of the Communication's regulations.[1] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This process differs from the traditional way the applicant prepares a license application because the prefiling consultation with agencies, Indian tribes, and NGOs is done concurrently with the environmental review process rather than waiting for the Commission staff to conduct its environmental review of the application after it is filed with the Commission. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

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[1] Order No. 596, Regulations for the licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

Applicant Prepared EA Process and Keuka Project Schedule

NYSEG has distributed an Information Package for the proposed project to state and federal resource agencies, and NGOs. NYSEG has met with the participants on September 19, 1998, October 20, 1998, and November 20, 1998 to discuss the alternative licensing process and potential issues by the participants. NYSEG has submitted a proposed schedule for the alternative licensing process that leads to the filing of a non-power license application by February 2001.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on NYSEG's proposal to use the alternative procedures to file an application for the Keuka Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading "Comments on the Alternative Procedures," and include the project name and number (Keuka Hydroelectric Project No. 2852).

For further information on this process, please contact William Guey-Lee of the Federal Energy Regulatory Commission at 202–219–2908 or E-mail at william.gueylee@fer.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33021 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–104–000]

Portland Natural Gas Transmission System; Notice of Application

December 8, 1998.

Take notice that on December 4, 1998, Portland Natural Gas Transmission System (PNGTS), One Harbor Place, Portsmouth, New Hampshire 03801, filed in Docket No. CP99–104–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of facilities in Newington, New Hampshire, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, PNGTS proposes to construct and own a short "T" on the pipeline, together with a valve and flange, near mile post 0.51 on the Newington lateral in Newington, New Hampshire. PNGTS states that Maritimes & Northeast Pipeline, L.L.C. (Maritimes) will operate the proposed facility which consists of a 4-inch pipe that extends three feet above ground, a 4-inch valve and a flange, and would be enclosed within a standard six-foot high and ten-foot square chain link fence. PNGTS says that the facility site would be located entirely on the Newington lateral permanent right of way and would be used for a future customer connection. PNGTS states that it expects to construct in the future a delivery tap in Newington, New Hampshire which would provide natural gas service directly to an industrial customer. Construction of the proposed "T" and valve during the lateral construction would facilitate, at minimal incremental costs, the ultimate construction of such a delivery tap. PNGTS contends that it is more efficient, less expensive, environmentally preferable, and safer to construct the proposed facilities during construction of the Joint Facilities Project rather than after the pipeline has been placed into operation. PNGTS states that the estimated cost of the project is $32,000. PNGTS also states that under the current projected work schedule, the pipeline crews will complete construction of the Newington lateral on or before January 1, 1999, therefore authorization is requested by that date.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for PNGTS to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33050 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–58–002]

Tennessee Gas Pipeline Company; Notice of Errata Filing

December 8, 1998.

Take notice that on December 4, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume 1, 2nd Sub Seventh Revised Sheet No. 314 with an effective date of November 2, 1998.

Tennessee states that the revised sheet is being filed to correct an inadvertent error in Tennessee's November 12, 1998 tariff filing in compliance with the Commission's Order issued October 28, 1998 in the above-referenced docket. Tennessee Gas Pipeline Company, 85 FERC ¶ 61,112 (1998). Tennessee further states that 2nd Sub Seventh Revised Sheet No. 314 deletes an incorrect reference to Version 1.2 of GISB Standard 1.3.22.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33019 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–112–025]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 8, 1998.

Take notice that on December 4, 1998, Tennessee gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following pro forma revised tariff sheets:

Pro Forma Revised Sheet Nos. 20, 21A, 22, 22A, 23, 23A, 23B, 23C, 24, 25, and 27

Tennessee states that the purpose of the filing is to comply with Ordering Paragraph (B) of the "Order On Initial Decision" issued by the Commission in Docket Nos. RP91–203–062 and RP92–132–062 on November 4, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33020 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

December 8, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2588–004.

c. *Date filed:* July 10, 1998.

d. *Applicant:* City of Kaukauna.

e. *Name of Project:* Little Chute Hydroelectric Project.

f. *Location:* On the Fox River in the Village of Combined Locks, Outagamie County, Wisconsin. The project uses the United States Army Corps of Engineer's Little Chute Dam. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Peter D. Prast, P.E., General Manager, Kaukauna Electric & Water Department, 777 Island Street, P.O. Box 1777, Kaukauna, Wisconsin 54130–7077, (920) 766–5721.

i. *FERC Contact:* Any questions on this notice should be addressed to Steve Kartalia, E-mail address, stephen.kartalia@ferc.fed.us, or telephone 202–219–2942.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the project:* The project consists of the following existing facilities: (1) an integral intake powerhouse, located at the right abutment of the United States Army Corps of Engineers' Little Chute Dam, containing three units with a total installed capacity of 3,300 kW; (2) connections to three 2.4/12–kV single phase transformers and a 12-kV transmission line 1.25 miles long; and (3) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: B1 and E1.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33022 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice

December 9, 1998.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 16, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

Matters To Be Considered: Agenda.

Note—Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro; 710th Meeting—December 16, 1998; Regular Meeting (10:00 a.m.)

CAH–1.
  DOCKET# P–5, 046, THE MONTANA POWER COMPANY
CAH–2.
  OMITTED
CAH–3.
  OMITTED
CAH–4.
  DOCKET# P–2390, 022, NORTHERN STATES POWER COMPANY
CAH–5.
  DOCKET# P–2513, 034, GREEN MOUNTAIN POWER CORPORATION
CAH–6.
  DOCKET# P–2696, 006, NIAGARA MOHAWK POWER CORPORATION
CAH–7.
  DOCKET# P–2842, 029, CITY OF IDAHO FALLS, IDAHO
  OTHER#S P–553, 066, CITY OF SEATTLE, WASHINGTON
  P–637, 015, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
  P–943, 068, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
  P–1417, 052, THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT
  P–1862, 041, CITY OF TACOMA, WASHINGTON
  P–2000, 019, NEW YORK POWER AUTHORITY
  P–2016, 033, CITY OF TACOMA, WASHINGTON
  P–2042, 009, PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON
  P–2101, 057, SACRAMENTO MUNICIPAL UTILITY DISTRICT
  P–2144, 020, CITY OF SEATTLE, WASHINGTON
  P–2145, 035, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON
  P–2149, 072, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON
  P–2216, 037, NEW YORK POWER AUTHORITY
  P–2685, 006, NEW YORK POWER AUTHORITY
  P–2705, 012, CITY OF SEATTLE, WASHINGTON
  P–2952, 061, CITY OF IDAHO FALLS, IDAHO
  P–2959, 076, CITY OF SEATTLE, WASHINGTON
  P–2997, 019, SOUTH SUTTER WATER DISTRICT
  P–6842, 097, CITIES OF ABERDEEN AND TACOMA, WASHINGTON
  P–10551, 069, CITY OF OSWEGO, WASHINGTON
CAH–8.
  DOCKET# P–5, 045, THE MONTANA POWER COMPANY
CAH–9.
  DOCKET# P–6641, 028, CITY OF MARION, KENTUCKY AND SMITHLAND HYDROELECTRIC PARTNERS
CAH–10.
  DOCKET# P–11475, 001, CENTRAL VERMONT PUBLIC SERVICE CORPORATION
CAH–11.
  DOCKET# P–96, 028, PACIFIC GAS AND ELECTRIC COMPANY
  OTHER#S P–137, 022, PACIFIC GAS AND ELECTRIC COMPANY
  P–184, 056, PACIFIC GAS AND ELECTRIC COMPANY
  P–233, 066, PACIFIC GAS AND ELECTRIC COMPANY
  P–619, 075, PACIFIC GAS AND ELECTRIC COMPANY
  P–803, 044, PACIFIC GAS AND ELECTRIC COMPANY
  P–1121, 045, PACIFIC GAS AND ELECTRIC COMPANY
  P–1333, 029, PACIFIC GAS AND ELECTRIC COMPANY
  P–1354, 021, PACIFIC GAS AND ELECTRIC COMPANY
  P–1962, 026, PACIFIC GAS AND ELECTRIC COMPANY
  P–1988, 023, PACIFIC GAS AND ELECTRIC COMPANY
  P–2105, 069, PACIFIC GAS AND ELECTRIC COMPANY

P–2107, 005, PACIFIC GAS AND ELECTRIC COMPANY
P–2130, 025, PACIFIC GAS AND ELECTRIC COMPANY
P–2310, 093, PACIFIC GAS AND ELECTRIC COMPANY

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–198, 000, CONSTELLATION ENERGY SOURCE, INC.
CAE–2.
DOCKET# ER98–4406, 000, NEW YORK STATE ELECTRIC & GAS CORPORATION AND AES NY, L.L.C.
CAE–3.
DOCKET# ER98–4648, 000, PJM INTERCONNECTION, L.L.C.
CAE–4.
DOCKET# ER99–414, 000, MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.
CAE–5.
DOCKET# ER98–4412, 000, CET MARKETING, L.P.
OTHER#S ER98–4423, 000, COGEN ENERGY TECHNOLOGIES, L.P.
CAE–6.
DOCKET# ER99–237, 000, ALLEGHENY POWER SERVICE CORPORATION, ON BEHALF OF MONONGAHELA POWER COMPANY, POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
CAE–7.
DOCKET# QF86–590, 007, COSO ENERGY DEVELOPERS (BLM FACILITY)
OTHER#S QF84–327, 005, COSO FINANCE PARTNERS (NAVY I FACILITY)
QF85–199, 005, VULCAN/BN GEOTHERMAL POWER COMPANY
QF86–591, 007, COSO POWER DEVELOPERS (NAVY II FACILITY)
QF86–647, 005, ELMORE, L.P.
QF86–727, 006, DEL RANCH, L.P.
QF86–930, 005, POWER RESOURCES, INC.
QF86–1043, 004, SALTON SEA POWER GENERATION, L.P. (SALTON SEA III FACILITY)
QF87–511, 005, SALTON SEA POWER GENERATION, L.P. (SALTON SEA I FACILITY)
QF88–543, 003, LEATHERS, L.P.
QF89–297, 004. SALTON SEA POWER GENERATION, L.P. (SALTON SEA II FACILITY)
QF89–299, 004, NORCON POWER PARTNERS, L.P.
QF90–114, 006, SARANAC POWER PARTNERS, L.P.
QF90–143, 003, YUMA COGENERATION ASSOCIATES
QF95–9, 002, SALTON SEA POWER GENERATION, L.P. (SALTON SEA IV FACILITY)
CAE–8.
DOCKET# ER98–4590, 000, PUBLIC SERVICE COMPANY OF COLORADO
CAE–9.
DOCKET# ER99–307, 000, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
OTHER#S ER99–353, 000, FIRSTENERGY OPERATING COMPANIES
CAE–10.
OMITTED
CAE–11.
DOCKET# ER99–361, 000, CONSUMER ENERGY COMPANY
CAE–12.
OMITTED
CAE–13.
DOCKET# ER97–3189, 005, PECO ENERGY COMPANY
CAE–14.
DOCKET# ER99–415, 000, COMMONWEALTH CHESAPEAKE COMPANY, L.L.C.
CAE–15.
DOCKET# ER95–836, 000, MAINE PUBLIC SERVICE COMPANY
CAE–16.
DOCKET# ER98–3594, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–17.
DOCKET# ER97–3189, 004, GPU SERVICE CORPORATION
CAE–18.
DOCKET# TX98–1, 000, CHICAGO HOUSING AUTHORITY
CAE–19.
DOCKET# TX98–4, 000, PRAIRIELAND ENERGY, INC.
CAE–20.
DOCKET# EC92–21, 000, ENTERGY SERVICES, INC. AND GULF STATES UTILITIES COMPANY
OTHER#S ER92–806, 004, ENTERGY SERVICES, INC.
CAE–21.
DOCKET# ER98–3760, 001, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–22.
DOCKET# OA97–573, 000, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S EL98–27, 000, DELMARVA POWER & LIGHT COMPANY
ER97–3189, 010, PJM INTERCONNECTION, L.L.C.
OA97–586, 000, DELMARVA POWER & LIGHT COMPANY
CAE–23.
DOCKET# ER97–3189, 007, PP&L, INC
OTHER#S EL98–25, 000, PP&L, INC.
ER97–4829, 000, PP&L, INC.
CAE–24.
DOCKET# EC98–63, 000, MIDAMERICAN ENERGY COMPANY AND MIDAMERICAN ENERGY HOLDINGS COMPANY
CAE–25.
DOCKET# OA97–262, 000, MISSOURI-KANSAS POWER POOL
OTHER#S ER97–1083, 000, MISSOURI-KANSAS POWER POOL
OA97–682, 000, MISSOURI-KANSAS POWER POOL
CAE–26.
DOCKET# ER97–3189, 001, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S ER97–3189, 003, DELMARVA POWER & LIGHT COMPANY
CAE–27. OMITTED
CAE–28. DOCKET# ER98–1438, 001, MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.
OTHER#S EC98–24, 001, THE CINCINNATI GAS & ELECTRIC COMPANY, COMMMONWEALTH EDISON COMPANY AND COMMOWEALTH EDISON COMPANY OF INDIANA, ET AL.
CAE–29.
DOCKET# EL98–34, 001, SOUTHERN CALIFORNIA EDISON COMPANY
CAE–30.
DOCKET# ER95–1295, 002, MARKET RESPONSIVE ENERGY, INC.
CAE–31.
DOCKET# TX93–4, 004, FLORIDA MUNICIPAL POWER AGENCY V. FLORIDA POWER & LIGHT COMPANY
OTHER#S EL93–51, 003, FLORIDA MUNICIPAL POWER AGENCY V FLORIDA POWER & LIGHT COMPANY
TX93–4, 005, FLORIDA MUNICIPAL POWER AGENCY V. FLORIDA POWER & LIGHT COMPANY
CAE–32.
DOCKET# OA97–25, 002, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OTHER#S EL98–40, 002, NORTHERN STATES POWER COMPANY (WISCONSIN) AND NORTHERN STATES POWER COMPANY (MINNESOTA)
ER98–1890, 002, NORTHERN STATES POWER COMPANY (WISCONSIN) AND NORTHERN STATES POWER COMPANY (MINNESOTA)
ER98–2060, 002, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OA97–606, 002, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
CAE–33.
DOCKET# ER98–542, 001, CENTRAL AND SOUTHWEST SERVICES, INC.
OTHER#S ER97–1238, 002, CSW POWER MARKETING, INC.
CAE–34.
DOCKET# EL95–60, 000, SMITHFIELD FOODS, INC. V. CAROLINA POWER & LIGHT COMPANY
CAE–35.
DOCKET# EL97–17, 000, RESALE POWER GROUP OF IOWA, INC. V. IES UTILITIES, INC.
CAE–36.
DOCKET# EL98–77, 000, EDISON SAULT ELECTRIC COMPANY V. CLOVERLAND ELECTRIC COMPANY
CAE–37.
DOCKET# EL98–74, 000, SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION V. ENTERGY SERVICES INC.
OTHER#S ER98–2910, 000, ENTERGY SERVICES, INC.
CAE–38.
DOCKET# EL94–5, 000, SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
OTHER#S EL96–40, 000, SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO

EL97–54, 000, SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–39.
DOCKET# EL97–35, 001, NIAGARA MOHAWK POWER CORPORATION
OTHER#S QF86–853, 002, STEVENS & THOMPSON PAPER COMPANY, INC.
CAE–40.
DOCKET# RM99–4, 000, FILING REQUIREMENTS UNDER PARTS 46 AND 131 FOR PERSONS HOLDING INTERLOCKING DIRECTORATES
CAE–41.
DOCKET# OA97–466, 003, ARIZONA PUBLIC SERVICE COMPANY
OTHER#S OA97–2, 002, NEVADA POWER COMPANY
OA97–97, 003, ATLANTIC CITY ELECTRIC COMPANY
OA97–121, 003, ORANGE & ROCKLAND UTILITIES INC.
OA97–127, 002, NEW ENGLAND POWER COMPANY, MASSACHUSETTS ELECTRIC COMPANY, NANTUCKET ELECTRIC COMPANY AND THE NARRAGANSETT ELECTRIC COMPANY, ET AL.
OA97–181, 002, GREEN MOUNTAIN POWER CORPORATION
OA97–196, 003, CENTRAL VERMONT PUBLIC SERVICE CORPORATION AND CONNECTICUT VALLEY ELECTRIC COMPANY, INC.
OA97–291, 002, PUBLIC SERVICE COMPANY OF COLORADO AND CHEYENNE LIGHT, FUEL & POWER COMPANY
OA97–312, 002, WESTERN RESOURCES INC.
OA97–399, 002, SAN DIEGO GAS & ELECTRIC COMPANY
OA97–402, 002, LOUISVILLE GAS & ELECTRIC COMPANY
OA97–406, 003, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OA97–418, 003, DAYTON POWER & LIGHT COMPANY
OA97–419, 003, CINERGY CORPORATION, CINCINNATI GAS & ELECTRIC COMPANY AND PSI ENERGY, INC.
OA97–422, 003, CENTRAL MAINE POWER COMPANY AND MAINE ELECTRIC POWER COMPANY
OA97–439, 005, VIRGINIA ELECTRIC AND POWER COMPANY
OA97–440, 003, PECO ENERGY COMPANY
OA97–444, 003, VERMONT ELECTRIC POWER COMPANY, INC
OA97–451, 003, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING, INC.
OA97–452, 003, ROCHESTER GAS & ELECTRIC CORPORATION
OA97–460, 002, KENTUCKY UTILITIES COMPANY
OA97–462, 003, CENTRAL MAINE POWER COMPANY AND MAINE ELECTRIC POWER COMPANY
OA97–467, 003, DELMARVA POWER & LIGHT COMPANY
OA97–485, 002, UGI UTILITIES, INC.
OA97–519, 002, BANGOR HYDRO-ELECTRIC COMPANY
OA97–596, 004, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING, INC.
OA97–597, 003, UNITED ILLUMINATING COMPANY
CAE–42.
DOCKET# OA97–117, 005, ALLEGHENY POWER SERVICE CORPORATION, MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OTHER#S OA97–117, 007, ALLEGHENY POWER SERVICE CORPORATION, MONOGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OA97–125, 006, CENTRAL HUDSON GAS & ELECTRIC CORPORATION
OA97–126, 006, ILLINOIS POWER COMPANY
OA97–158, 006, NIAGARA MOHAWK POWER CORPORATION
OA97–216, 006, WISCONSIN ELECTRIC POWER COMPANY
OA97–278, 006, NEW YORK STATE ELECTRIC & GAS CORPORATION
OA97–279, 006, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA97–284, 006, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–313, 006, MIDAMERICAN ENERGY COMPANY
OA97–408, 006, AMERICAN ELECTRIC ELECTRIC POWER SERVICE CORPORATION AND APPALACHIAN POWER COMPANY, ET AL.
OA97–429, 004, PUBLIC SERVICE ELECTRIC & GAS COMPANY
OA97–430, 006, EL PASO ELECTRIC COMPANY
OA97–431, 006, BOSTON EDISON COMPANY
OA97–445, 006, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–449, 006, PUGET SOUND ENERGY, INC.
OA97–459, 006, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.
CAE–43.
DOCKET# ER99–541, 000, WESTERN SYSTEM POWER POOL
CAE–44.
DOCKET# ER99–346, 000, PP&L, INC.

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP96–389, 003, COLUMBIA GULF TRANSMISSION COMPANY
CAG–2.
DOCKET# RP99–130, 000, EL PASO NATURAL GAS COMPANY
OTHER#S RP99–130, 001, EL PASO NATURAL GAS COMPANY
CAG–3.
DOCKET# RP99–131, 000, TEXAS GAS TRANSMISSION CORPORATION
CAG–4.
DOCKET# RP99–136, 000, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–5.
OMITTED
CAG–6.
DOCKET# RP99–97, 000, EL PASO NATURAL GAS COMPANY
CAG–7.
DOCKET# RP99–106, 000, TRANSCOLORADO GAS TRANSMISSION COMPANY
CAG–8.
DOCKET# RP99–150, 000, HIGH ISLAND OFFSHORE SYSTEM
CAG–9.
DOCKET# RP99–151, 000, NORTHWEST ALASKAN PIPELINE COMPANY
CAG–10.
DOCKET# RP99–154, 000, TRANSWESTERN PIPELINE COMPANY
CAG–11.
OMITTED
CAG–12.
DOCKET# SA98–64, 000, R. J. PATRICK OPERATING COMPANY
OTHER#S SA98–66, 000, R. J. PATRICK OPERATING COMPANY
CAG–13.
DOCKET# SA98–77, 000, BP EXPLORATION AND OIL, INC.
CAG–14.
DOCKET# CP88–391, 023, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP93–162, 008, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–15.
DOCKET# RP97–346, 017, EQUITRANS, L.P.
OTHER#S RP98–123, 004, EQUITRANS, L.P.
TM97–3–24, 005, EQUITRANS, L.P.
CAG–16.
DOCKET# RP98–407, 000, EL PASO NATURAL GAS COMPNY
CAG–17.
DOCKET# RP99–65, 001, KERN RIVER GAS TRANSMISSION COMPANY
CAG–18.
DOCKET# GP98–34, 000, BP EXPLORATION AND OIL, INC.
CAG–19.
DOCKET# RP99–38, 001, SOUTHERN NATURAL GAS COMPANY
OTHER#S RP99–42, 001, SOUTH GEORGIA NATURAL GAS COMPANY
RP99–43, 001, SEA ROBIN PIPELINE COMPANY
RP99–63, 001, DESTIN PIPELINE COMPANY, L.L.C.
CAG–20.
DOCKET# RP99–11, 002, WILLIAMS GAS PIPELINE CENTRAL, INC.
CAG–21.
DOCKET# RP98–408, 002, WYOMING INTERSTATE COMPANY, LTD.
OTHER#S RP98–412, 002, WYOMING INTERSTATE COMPANY, LTD.
CAG–22.
DOCKET# RP98–170, 001, TEXAS GAS TRANSMISSION CORPORATION
OTHER#S RP98–170, 002, TEXAS GAS TRANSMISSION CORPORATION
CAG–23.
DOCKET# RP98–381, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

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OTHER#S RP98–381, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–24.
DOCKET# RP97–373, 015, KOCH GATEWAY PIPELINE COMPANY
CAG–25.
DOCKET# RP98–341, 002, NORTHERN NATURAL GAS COMPANY
CAG–26.
DOCKET# CP93–736, 008, COLUMBIA GAS TRANSMISSION CORPORATAION AND COLUMBIA GULF TRANSMISSION COMPANY
CAG–27.
DOCKET# RP95–408, 024, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–28.
DOCKET# RP97–406, 019, CNG TRANSMISSION CORPORATION
CAG–29.
DOCKET# RP98–54, 016, COLORADO INTERSTATE GAS COMPANY
CAG–30.
OMITTED
CAG–31.
DOCKET# RP96–347, 015, NORTHERN NATURAL GAS COMPANY
CAG–32.
DOCKET# RP98–39, 013, NORTHERN NATURAL GAS COMPANY
CAG–33.
DOCKET# RP98–40, 015, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–34.
DOCKET# RP98–53, 016, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–35.
DOCKET# RP98–378, 002, TENNESSEE GAS PIPELINE COMPANY
CAG–36.
DOCKET# OR99–2, 000, LAKEHEAD PIPE LINE COMPANY, LIMITED PARTNERSHIP
CAG–37.
DOCKET# RS92–12, 014, WILLIAMS NATURAL GAS COMPANY
CAG–38.
DOCKET# RM96–1, 011, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
CAG–39.
DOCKET# RM96–1, 012, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
CAG–40.
DOCKET# MG98–12, 001, GULF STATES TRANSMISSION CORPORATION
CAG–41.
OMITTED
CAG–42.
DOCKET# CP98–94, 001, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–43.
OMITTED
CAG–44.
DOCKET# CP99–28, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–45.
OMITTED
CAG–46.
DOCKET# CP98–233, 000, TRANSWESTERN PIPELINE COMPANY
OTHER#S CP98–325, 000, KN INTERSTATE GAS TRANSMISSION COMPANY
CAG–47.
DOCKET# CP98–532, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–48.
DOCKET# CP98–791, 000, EQUITRANS L.P.
CAG–49.
DOCKET# CP98–229, 000, NORTHERN NATURAL GAS COMPANY
CAG–50.
DOCKET# CP98–538, 000, MIDWESTERN GAS TRANSMISSION COMPANY
CAG–51.
DOCKET# CP98–529, 000, PACIFIC INTERSTATE TRANSMISSION COMPANY
OTHER#S CP98–603, 000, NORTHWEST ALASKAN PIPELINE COMPANY
CP98–690, 000, PG&E TRANSMISSION, NORTHWEST CORPORATION, TRANSWESTERN PIPELINE COMPANY AND PACIFIC INTERSTATE TRANSMISSION COMPANY, ET AL.
CP98–738, 000, NORTHWEST PIPELINE CORPORATION
RP98–247, 000, NORTHWEST ALASKAN PIPELINE COMPANY
RP98–370, 000, NORTHWEST PIPELINE CORPORATION

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
DOCKET# ER98–3709, 000, MID-CONTINENTAL AREA POWER POOL ORDER ON RATE FILING.
E–2.
DOCKET# OA97–237, 000, NEW ENGLAND POWER POOL
OTHER#S ER97–1079, 000, NEW ENGLAND POWER POOL
ER97–3574, 000, NEW ENGLAND POWER POOL
ER97–4421, 000, NEW ENGLAND POWER POOL
ER98–499, 000, NEW ENGLAND POWER POOL
ER98–3568, 000, NEW ENGLAND POWER POOL
ER99–387, 000, NEW ENGLAND POWER POOL
OA97–608, 000, NEW ENGLAND POWER POOL, ORDER ON MARKET RULES PROPOSAL AND ON REQUEST TO TRANSACT AT MARKET-BASED RATES.
E–3.
DOCKET# EL98–52, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL, ORDER ON TRANSMISSION LOADING RELIEF PROCEDURES FOR CURTAILMENT OF INTER-CHANGE TRANSACTIONS IN THE EASTERN INTERCONNECTION.

Oil and Gas Agenda

I. PIPELINE RATE MATTERS
PR–1.
DOCKET# RP97–408, 005, TRAILBLAZER PIPELINE COMPANY
OTHER#S RP97–408, 000, TRAILBLAZER PIPELINE COMPANY
RP97–408, 004, TRAILBLAZER PIPELINE COMPANY, ORDER ON REHEARING AND INTERLOCUTORY APPEAL.
II. PIPELINE CERTIFICATE MATTERS
PC–1. OMITTED

David P. Boergers,
Secretary.

[FR Doc. 98–33170 Filed 12–10–98; 11:25 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Equal Employment Opportunity Commission

Coordination of Functions; Proposed Changes to Memorandum of Understanding

AGENCY: Equal Employment Opportunity Commission and Department of Labor.

ACTION: Proposed Notice.

SUMMARY: This document sets forth proposed substantive changes to the 1981 Memorandum of Understanding (MOU) between the Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP), published at 46 FR 7435, Jan. 23, 1981. Both agencies have responsibilities to enforce equal employment opportunity requirements that prohibit discrimination on the bases of race, color, religion, sex, or national origin. To further enhance coordination, promote efficiency, and avoid duplication and inconsistency in the operation of the program, EEOC and DOL are proposing to update the charge processing procedures found in paragraph "7" of the 1981 agreement. Modeled on the 1992 EEOC–OFCCP joint rule of processing disability complaints under Section 503 of the Rehabilitation Act (Section 503) and Title I of the Americans with Disabilities Act (ADA), the proposed revisions to paragraph 7 would authorize OFCCP to act as EEOC's agent to process and resolve the Title VII component of charges dual filed with OFCCP under Executive Order 11246, as amended, and Title VII of the Civil Rights Act of 1964, as amended. The agencies also propose adding a new paragraph to the MOU to address Title VII's confidentiality requirements. Minor changes to update other sections of the 1981 MOU, such as changes in the titles of agency officials, are not included in this document because they do not warrant publication of notice and comment.

DATES: To be assured of consideration, comments must be in writing and must be received on or before January 13, 1999.

ADDRESSES: Written comments should be submitted to: Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. See Supplementary Information section for information about submitting comments by facsimile machine.

Comments received will be available for public inspection in the EEOC Library, Room 6502, 1801 L Street, N.W., Washington, D.C. 20507, by appointment only. To schedule an appointment, call (202) 663–4630 (voice), (202) 663–4641 (TTY). Comments may be reviewed from 9 a.m. to 5 p.m. Monday through Friday except legal holidays, from December 19, 1998 until the EEOC and DOL adopt a final revised MOU. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel for Coordination, Equal Employment Opportunity Commission, (202) 663–4689 (voice), 202 663–7026 (TTY); or James I. Melvin, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Department of Labor, (202) 693–0102 (voice), 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION: The 1981 EEOC–OFCCP MOU sets forth complaint processing and information sharing procedures to coordinate enforcement under Executive Order 11246, as amended, and Title VII. The proposed changes to paragraph 7 of the 1981 EEOC–OFCCP MOU are intended to update the paragraph's charge processing provisions based on the EEOC–OFCCP joint rule, Procedures for Complaints/Charges of Employment Discrimination Based on Disability Filed Against Employers Holding Government Contracts or Subcontracts (joint ADA/503 rule), *see* 29 CFR part 1641 and 41 CFR part 60–742. Under that rule, OFCCP acts as EEOC's agent for the purpose of processing and resolving the ADA component of complaints dual filed with OFCCP under section 503 and the ADA. Drawing from this joint rule, the proposed revisions to paragraph 7 of the 1981 MOU would authorize OFCCP to act as EEOC's agent in processing and resolving the Title VII component of complaints retained by OFCCP that are dual filed under Title VII and Executive Order 11246, as amended. Thus, OFCCP would investigate, issue findings, and attempt voluntary conciliation for damages, as it is authorized to do with dual filed disability complaints/charges. The proposed revisions to paragraph 7 would not authorize OFCCP to litigate Title VII charges or to seek Title VII damages outside of the voluntary conciliation process.

These proposed changes to paragraph 7 would not alter the general division of labor between the two agencies as set forth in the 1981 MOU. OFCCP will continue to transmit dual filed charges of an individual nature to EEOC for processing, and will normally retain systemic or class dual filed complaints. EEOC may continue to request referral of systemic or class complaints in appropriate cases. The proposed paragraph 7 would add a new provision for OFCCP to request retention of individual complaints in appropriate cases. Like the other proposed changes, this provision is designed to further maximize efficiency and minimize duplication in the agencies' overlapping EEO enforcement activities.

The proposed paragraph 7 revisions and the new paragraph on confidentiality (to be numbered paragraph "8") are being published for notice and comment so that the final substantive revisions to the 1981 MOU will reflect maximum public involvement. Submitting Comments by Facsimile (FAX) Machine.

As a convenience to commentors, the Executive Secretariat of the Equal Employment Opportunity Commission will accept public comments transmitted by FAX. The telephone number of the FAX receiver is (202) 663–4114. Only public comments of six or fewer pages will be accepted via FAX transmittal in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice), (202) 663–4074 (TTY).

Alternative Formats of This Notice

Copies of this Notice are available in the following alternative formats: large print, braille, electronic file on computer disk, and audio tape. To receive a copy of the Notice in an alternative format, call (202) 663–4630 (voice), (202) 663–4399 (TTY).

(**Authority**: 42 U.S.C. 2000–4(g), 2000–12(a), 2000–14; E.O. 12067; E.O. 11246)

Ida L. Castro,

Chairwoman.

Equal Employment Opportunity Commission.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary, Employment Standards Administration.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

It is proposed that the 1981 MOU between EEOC and DOL be amended to update the charge processing procedures found in paragraph "7" and to add a new paragraph to address Title VII's confidentiality requirements, as follows:

7. Processing of Complaints Filed with OFCCP

(a) Dual-Filed Complaints/Charges—Complaints of employment discrimination filed with OFCCP under Executive Order 11246 will be considered charges simultaneously filed under Title VII whenever the complaints also fall within the jurisdiction of Title VII. For the purpose of determining the timeliness of such a charge, which will be considered dual filed under this paragraph, the date the matter was received by OFCCP shall be deemed to be the date it was received by EEOC.

(b) Systemic or Class Allegations—OFCCP will retain, investigate, and resolve allegations of discrimination of a systemic or class nature on the basis of race, color, religion, sex, or national origin, over which it has jurisdiction. OFCCP shall promptly notify EEOC's Director, Office of Field Programs, of OFCCP's receipt of complaints/charges that include such allegations, by forwarding a copy of the complaint/charge (and third party certificate, if any). In addition, OFCCP shall make available to EEOC, upon request, information obtained in the investigation and processing of such allegations, pursuant to paragraphs 1 and 6(b) herein. In appropriate cases, EEOC may request that it be referred systemic or class allegations under Title VII so as to avoid duplication and assure effective law enforcement.

(c) Individual Allegations—OFCCP will refer to the appropriate EEOC field office allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin in dual filed complaints/charges. In appropriate cases, OFCCP may request that it retain such allegations so as to avoid duplication and assure effective law enforcement.

(d) Appointment of OFCCP as EEOC's Agent—OFCCP will act as EEOC's agent for the purposes of receiving, investigating, and processing the Title VII component of complaints/charges that it retains under this paragraph. OFCCP shall investigate and process such dual filed complaints/charges as set forth in this subparagraph.

(1) Notice of Receipt of Complaint/Charge—

Within ten days of receipt of the complaint/charge, OFCCP shall notify the contractor/respondent that it has received a charge of employment discrimination under Executive Order 11246 and Title VII. This notification shall state the date, place, and circumstances of the alleged unlawful employment practice(s).

(2) Fair Employment Practice Agency Deferral Period—

Pursuant to work-sharing agreements between EEOC and state and local agencies designated as fair employment practice agencies, the deferral period for dual filed Title VII charges that OFCCP receives will be waived.

(3) Not Reasonable Cause Findings—

If the OFCCP investigation of a dual filed complaint/charge results in a not reasonable cause finding under Title VII, OFCCP will issue a Title VII dismissal and notice of right-to-sue. OFCCP will close the Title VII component of the complaint/charge and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(4) Reasonable Cause Findings—

(i) Successful Conciliation—If the OFCCP investigation of a dual filed complaint/charge results in a reasonable cause finding under Title VII, OFCCP will issue a reasonable cause finding under Title VII. OFCCP will attempt conciliation to obtain relief, consistent with EEOC's standards for remedies, for all aggrieved persons covered by the Title VII charge. If conciliation is successful, the conciliation agreement will state that the complainant/charging party agrees to waive the right to pursue the subject issues further under Title VII. OFCCP will close the Title VII component of the complaint/charge, and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(ii) Unsuccessful Conciliation—When conciliation is not successful, the Executive Order 11246 component of the complaint/charge will be considered for further OFCCP processing consistent with OFCCP's usual procedures. At the conclusion of OFCCP processing, OFCCP shall transmit the Title VII charge component to EEOC for any action EEOC deems appropriate. If EEOC declines to pursue further action, EEOC will close the Title VII charge and issue a notice of right-to-sue.

(5) Issuance of Notice of Right-to-Sue Upon Request—

Consistent with the Title VII procedures set forth at 29 C.F.R. 1601.28, after 180 days from the date the compliant/charge was filed, OFCCP shall promptly issue upon request a notice of right-to-sue on the Title VII component of a complaint/charge that it retains. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of the Title VII component of the complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of Title VII to further process the Title VII component of the complaint/charge.

(6) Subsequent Attempts to File an EEOC Charge Covering the Same Facts and Issues—If an individual who has already filed an OFCCP complaint/charge that is deemed dual filed under Title VII subsequently files a Title VII charge with EEOC covering the same facts and issues, EEOC will forward the charge to OFCCP for consolidated processing."

8. Confidentiality

(a) When EEOC provides information to OFCCP, then the confidentiality requirements of sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964 apply to that information. When OFCCP receives the same information from a source independent of EEOC, the preceding sentence does not preclude disclosure of the information received from the independent source.

(b) When OFCCP obtains information from its receipt, investigation, and processing of the Title VII component of a dual filed charge, it shall observe the confidentiality requirements of sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964 as would EEOC, except where OFCCP has the authority to obtain the same information under Executive Order 11246. When OFCCP creates documents that exclusively concern the Title VII component of a dual filed charge, it shall observe the above-referenced confidentiality requirements of Title VII.

(c) Questions concerning confidentiality under Title VII shall be directed to EEOC's Deputy Legal Counsel for Legal Services, Office of Legal Counsel.

(d) Questions concerning confidentiality under Executive Order 11246, as amended, or 38 U.S.C. 4212 (Section 402 of VEVRAA) shall be directed to OFCCP, Director, Division of Program Operations.

[FR Doc. 98–33067 Filed 12–11–98; 8:45 am]

BILLING CODE 4510–27–M; 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 2, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 12, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room C1804, 445 12th Street, SW, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0645.

Title: Antenna Registration—Part 17.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25,600.

Estimated Hours Per Response: 1.6 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure.

Cost to Respondents: $3,200,000.

Estimated Total Annual Burden: 40,965.

Needs and Uses: The requirement contained in Part 17 are necessary to implement a uniform registration process for owners of antenna structures. The information is used by the Commission during investigations related to air safety or radio frequency interference.

OMB Control No.: 3060–0520.

Title: Section 90.127, Submission and Filing of Applications.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 109,200.

Estimated Hours Per Response: .083 hours (5 minutes per response).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: N/A.

Estimated Total Annual Burden: 9,100 hours.

Needs and Uses: The requirement contained in Section 90.127 requires licensees to report the number of mobiles and pages when the license is modified or renewed. This information is used for frequency coordination and licensing.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–33008 Filed 12–11–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Tuesday, December 8, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and enforcement activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Julie L. Williams (Acting Comptroller of the Currency), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: December 9, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–33158 Filed 12–9–98; 4:25 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 28, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *James S. Wake, and Thomas H. Wake, III,* both of Seward, Nebraska; to acquire Jones National Corporation, and thereby indirectly acquire Jones National Bank & Trust Company of Seward, both of Seward, Nebraska.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *Robb Evans,* Bakersfield, California (Trustee); to acquire The San Francisco Company, San Francisco, California, and thereby indirectly acquire Bank of San Francisco, San Francisco, California.

2. *Eric D. Hovde,* Washington, D.C; to acquire West Coast Bancorp, and thereby indirectly acquire Sunwest Bank, both of Tustin, California.

Board of Governors of the Federal Reserve System, December 8, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–33039 Filed 12–11–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

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Locust Street, St. Louis, Missouri 63102–2034:

1. *McIlroy Family Limited Partnership*, Bowling Green, Missouri; to become a bank holding company by acquiring 33.55 percent of the voting shares of Community State Bank of Bowling Green, Bowling Green, Missouri.

2. *Union Planters Corporation*, Memphis, Tennessee, and its wholly owned subsidiary, Union Planters Holding Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of First & Farmers Bancshares, Inc., Somerset, Kentucky, and thereby indirectly acquire First & Farmers Bank of Somerset, Somerset, Kentucky, and Bank of Cumberland, Burkesville, Kentucky.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Adbanc, Inc.*, Ogallala, Nebraska; to acquire 100 percent of the voting shares of Indianola Agency, Inc., Indianola, Nebraska; and thereby indirectly acquire Bank of Indianola, Indianola, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Overton Financial Corporation*, Overton, Texas; and its wholly owned subsidiary, Overton Delaware Corporation, Dover, Delaware; to acquire an additional 0.95 percent, for a total of 33.07 percent of the voting shares of Longview Financial Corporation, Longview, Texas, and thereby indirectly acquire Longview Delaware Corp. Dover, Delaware, First State Bank, Van, Texas, and Longview Bank and Trust Company, Longview, Texas.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *Western Acquisition Partners, L.P., and Western Acquisitions, L.L.C.*, both of Washington, DC; to acquire up to 100 percent of the voting shares of West Coast Bancorp, and thereby indirectly acquire Sunwest Bank, both of Tustin, California.

Board of Governors of the Federal Reserve System, December 8, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–33040 Filed 12–11–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *The Bank of New York Company, Inc.*, New York, New York; to acquire BNY Capital Markets, Inc., New York, New York, and thereby engage in activities as a Specialist and Floor Broker on the Chicago Stock Exchange and the Philadelphia Stock Exchange as a result of the acquisition of certain business (long and short securities positions) of EVEREN Securities, Inc., Chicago, Illinois, pursuant to § 225.28(b)(7) of Regulation Y; *see The Bank of New York Company, Inc.*, 82 Fed. Res. Bull. 748 (1996) and 83 Fed. Res. Bull. 323 (1997), respectively. This activity will be conducted worldwide.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *The Banc Corporation*, Birmingham, Alabama; to acquire Emerald Coast Bank, Panama City Beach, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528: .

1. *Centura Bank, Inc.* Rocky Mount, North Carolina; to acquire First Coastal Bankshares, Inc., Virginia Beach, Virginia, and thereby indirectly acquire First Coastal Bank, Virginia Beach, Virginia, and thereby engage in operating a savings loan association pursuant to 222.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–33038 Filed 12–11–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket R–1014]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has decided to retain the current thirty-minute settlement period at the end of the Fedwire funds transfer operating day and not to implement restrictions on respondent bank transfers during the last fifteen minutes of the settlement period, from 6:15 p.m. to 6:30 p.m. eastern time.

FOR FURTHER INFORMATION CONTACT: Louise Roseman, Associate Director (202/452-2789), Jeff Stehm, Manager (202/452–2217), or Gina Sellitto, Financial Services Analyst (202/728-5848), Division of Reserve Bank Operations and Payment Systems. For the hearing impaired *only*: Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3749).

SUPPLEMENTARY INFORMATION:

I. Background

In October 1989, the Board requested comment on a proposal to segment the last half hour of the Fedwire funds transfer operating day, from 6:00 p.m. to 6:30 p.m. eastern time (all times stated are eastern time), into two settlement periods (54 FR 41681, October 11, 1989). The first fifteen minutes would be reserved for any bank-to-bank funds transfers, including transfers sent or received by depository institutions on behalf of respondent bank customers. The second fifteen minutes would be reserved for transfers sent or received by depository institutions for their own accounts. At that time, the Board did not adopt a segmented settlement period because of the concerns expressed by commenters and the lack of strong industry support (55 FR 18755, May 4, 1990). The Board, however, indicated that it would monitor developments with regard to reserve account management and determine whether segmenting the settlement period should be reconsidered at a later date.

In response to the Board's request for comment on a return to a system of lagged reserve requirements (62 FR 60671, November 10, 1997), the New York Clearing House Association (NYCHA) pointed out that several developments since 1990 make the banks' task of managing their reserve positions more difficult. These developments include (1) a significant reduction in reserve balances resulting from reductions in reserve requirements in 1990 and 1992 and the use of retail sweep accounts starting in 1994, and (2) a reduction in the pool of available buyers of federal funds due to consolidation in the banking industry.

In light of these developments, NYCHA noted that correspondents cannot know their reserve positions with certainty until Fedwire has closed because respondent banks are able to use the entire Fedwire settlement period from 6:00 p.m. to 6:30 p.m. to move funds into and out of accounts at their correspondent banks.[1] The unexpected receipt of funds for a respondent bank very late in the day could result in the correspondent bank having more reserves than planned, which may be difficult to invest late in the day without a significant rate concession. Likewise, a late-in-the-day request to pay out funds on behalf of a respondent bank may result in a reserve shortfall at the correspondent bank that may be difficult and costly for the correspondent to fund.

NYCHA also argues that unanticipated excess or deficit reserve positions create uncertainty and volatility in the federal funds rate. It believes that a segmented Fedwire funds transfer settlement period would allow each bank to calculate its reserve position with greater accuracy and facilitate a more efficient and orderly interbank funding market. NYCHA, therefore, requested that the Board reconsider a two-part settlement period, in which the last fifteen minutes of the Fedwire funds transfer operating day, from 6:15 p.m. to 6:30 p.m., are reserved exclusively for transfers sent by and received for a bank's own account.

The Board's decision on lagged reserves (63 FR 15069, March 30, 1998) indicated that it would continue to review the idea of a segmented settlement period and other ideas for reducing volatility in the federal funds market. As part of this review, the Board requested comment in June 1998 on the costs, benefits, and desirability of a segmented Fedwire settlement period (63 FR 31777, June 10, 1998). In its request for comment, the Board raised questions regarding (1) the potential benefits, costs, and drawbacks of restrictions on respondent transfers during the last fifteen minutes of the Fedwire operating day, including the effects on reserve account management, federal funds rate volatility, and respondent payment services, and (2) implementation alternatives and other operational considerations.

II. Summary of Comments

The Board received twenty-seven responses to its request for comment. About three-quarters of the commenters were commercial banks or bank holding companies. The number of commenters by type of organization were as follows:

Clearing House Associations	2
Commercial Banking Organizations	20
Consumer Payment System	1
Credit Union	1
Federal Reserve Banks	2
Trade Association	1
Total public comments	27

Twelve commenters supported the Board's adoption of a Fedwire segmented settlement period, including Bank of America, Bank of New York, Citibank, N.A., First Bank of San Luis Obispo, MBNA America Bank, N.A., NationsBank Corporation, NYCHA, The Peoples State Bank of Clyde, PFF Bank & Trust, Republic National Bank of New York, State Bank of Southern Utah, and Winnsboro State Bank & Trust Company. Ten commenters opposed the proposal, including Bank Boston, N.A., Bankers Clearing House, The Federal Reserve Bank of Atlanta, The Federal Reserve Bank of Richmond, Firstar Bank Milwaukee, N.A., First Chicago NBD Corporation, First Maryland Bancorp, State Street Bank and Trust, UMB Bank, and Wachovia Corporation. Five commenters neither supported nor opposed a Fedwire segmented settlement period but offered comments on certain aspects of the proposal, including Alcoa Tenn Federal Credit Union, Canyon Creek National Bank, Independent Bankers Association of America, Mellon Bank, N.A., and Visa U.S.A., Inc.

Given the mix of views expressed in the comments and the lack of an industry consensus, Board staff invited the commenters to participate in a discussion of the proposal in October 1998. The purpose of this discussion was to clarify the views and concerns of the commenters regarding late-day transfers and reserve account management. Although the discussion helped to clarify commenters' views, no new information was received that provided a compelling case for a segmented settlement period.

A. Effects of Late-Day Transfers on Correspondent Banks

Depository institutions hold balances at the Federal Reserve to meet reserve and clearing balance requirements and to facilitate their payment transactions. In the past, reserve and clearing balance requirements resulted in total required balances that were usually above the level needed for payment purposes. That is, the level of total required balances in relation to payment demands generally provided sufficient protection against overnight overdrafts in depository institutions' Federal Reserve accounts. In this environment, payment-related demand generally and late-day transfers more specifically did not usually have a significant influence on the overall demand for balances at the Federal Reserve and end-of-day reserve management requirements.

Regulatory reductions in reserve requirements and financial innovations such as retail sweep accounts have lowered required reserve balances during the 1990s. Although depository institutions have responded to lower required reserves by holding additional required clearing balances, the total required balances held by depository institutions at the Federal Reserve have dropped to historically low levels. In an environment of low required balances, payment-related demand for balances more frequently appears to exceed the demand for balances to meet total balance requirements. Payment-related demand is difficult to measure and to predict.[2] Consequently, uncertain

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[1] NYCHA members have indicated that their concerns relate primarily to late-in-the-day transfers on behalf of foreign respondent banks and that transfers on behalf of domestic respondent banks are generally not performed after 6:15 p.m.

[2] Cheryl L. Edwards, "Open Market Operations in the 1990s," *Federal Reserve Bulletin*, vol. 83 (November 1997), pp. 859–874; Gordon H. Sellon, Jr. and Stuart E. Weiner, "Monetary Policy Without Reserve Requirements: Analytical Issues," Federal Reserve Bank of Kansas City, *Economic Review* (Fourth Quarter 1996), pp. 5–24; James A. Clouse and Douglas W. Elmendorf, "Declining Required Reserves and the Volatility of the Federal Funds Rate," Working Paper (Board of Governors of the Federal Reserve System, June 1997); and Craig

Continued

payment-related demand coupled with low total required balances may lead to greater volatility in the federal funds rate, both during the day and across days.

On the other hand, the extent of the effect of declining required balances on the volatility of the funds rate is not clear. For example, the volatility of the funds rate since 1996 has not risen significantly (at least until recent weeks) despite declining total required balances and increasing payment flows. This result may be due, in part, to improvements by depository institutions in their information systems and their use of real-time balance information from the Federal Reserve to manage their Federal Reserve balances more closely during the day. In addition, the Federal Reserve, through its open market operations, has responded to days of heightened payment flows by supplying reserves more generously on those days.

Although volatility has not increased significantly, commenters noted that the late-day rate in the federal funds market can be quite volatile. First Chicago NBD Corporation (FCN), for example, pointed out that the federal funds market after 6:15 p.m. is not very efficient and indicated that unexpected late-day funding needs could cause large changes in the federal funds rate.

Other commenters noted that a sizable portion of federal funds transactions occur late in the day. They cited the Board's May 1998 Senior Financial Officer Survey, which indicated that on a typical day 16 percent of federal funds transactions are arranged and 18.3 percent of federal funds purchases are delivered after 6:00 p.m. On days characterized by especially volatile payment flows, these figures increase to 17 percent and 20.6 percent respectively. The survey also indicated that the shift toward later federal funds transactions might, in part, reflect the combined effects of low required reserve account balances and payment system risk policies such as daylight overdraft caps and charges for daylight overdraft credit. Some commenters supported this finding by indicating that foreign respondents draw down on their intraday credit lines with their U.S. correspondents early in the morning in order to provide intraday funding of their Federal Reserve accounts and avoid daylight overdraft charges or cap breaches. These funds are returned to the correspondent late in the day, potentially complicating the correspondent's ability to manage its reserve account position.

Those who supported the proposal argued that the benefits of a segmented settlement period for Fedwire outweighed any negative effects. The benefits cited by commenters included a more orderly settlement of reserve positions, reduced uncertainty in the management of reserve positions, and reduced volatility in the federal funds rate. UMB Bank and Wachovia, which both opposed the proposal, agreed that a segmented settlement period would facilitate reserve account management for most banks with active respondent customers. Mellon Bank, which was neutral on the proposal, indicated that large money center institutions with respondent customers that make late-day transfers would benefit from a Fedwire segmented settlement period. The commenters, however, did not quantify the frequency with which late-day respondent transfers occur, the cost of late-day reserve account management difficulties, or the number of depository institutions likely to be affected by any restrictions on late-day transfers.

With regard to operational issues related to implementation of a segmented settlement period, comments were also mixed. Of the supporters, four preferred the use of as-of adjustments, two preferred operational changes to Fedwire, and the remaining six institutions did not express a particular view.[3] In addition, of the institutions that either opposed the proposal or were neutral, one institution said, if adopted, the proposal should be implemented using as-of adjustments and three institutions preferred operational changes to Fedwire. Supporters of as-of adjustments indicated that their use would provide flexibility to permit payments that do not disadvantage the receiving bank to be accommodated at the discretion of the receiving bank. Commenters opposing the use of as-of adjustments, however, indicated that their use would result in the proposal being implemented unevenly, would not provide a sufficient deterrent to late-day transfers, and would be difficult to enforce. They further indicated that the as-of process does not eliminate the uncertainty of late-day payments because as-of adjustments are granted only after the fact and are neither automatically given nor necessarily beneficial.

Supporters of operational changes to Fedwire believed that such changes would be the most effective means of restricting respondent transfers. Although several other commenters agreed with the effectiveness of this approach, they did not support potentially costly operational changes to Fedwire and the internal systems of a large number of banks to accommodate the concerns of a limited number of money center banks. Commenters were also concerned about implementing any operational changes to Fedwire at a time when depository institutions are preparing for the century date change.

B. Effects on Respondents and Private Clearing Arrangements

Responses varied on the effects of late-day transfer restrictions on respondent institutions. In most cases, the commenters who supported the proposal believed that transfer restrictions on respondents would not significantly impede liquidity management, while the commenters who opposed the proposal believed that restrictions could hamper respondents' ability to manage their reserve positions.

NYCHA indicated that a significant portion of the activity that has caused difficulty for its members is attributable to respondents that maintain their own Federal Reserve accounts as well as accounts at correspondents. According to NYCHA, there is very little late-day transfer activity by banks that maintain reserve balances through pass-through correspondents. The Independent Bankers Association of America (IBAA) indicated that community banks typically execute their Fedwire funds transfers and their investment and reserve account management decisions much earlier than 6:00 p.m. Two other commenters said that their internal cut-off times for processing respondent customer transfers are prior to the close of the Fedwire funds transfer operating day.

In contrast, other commenters argued that late-day transfer restrictions could hamper respondents' ability to manage their reserve positions, especially if their current reserve management practices include late-day federal funds transactions with respondent banks or because respondents fund their balances at other banks through late-day transfers. These commenters preferred to have greater flexibility for moving funds late in the day. Firstar and Bank Boston said that they regularly send and

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Furfine, "Interbank Payments and the Daily Federal Funds Rate," Working Paper (Board of Governors of the Federal Reserve System, August 1998).

[3] A Fedwire segmented settlement period could be implemented by allowing the receiving institution the option to reverse an improperly sent transfer on the same day. If this was not possible prior to the final close of Fedwire, then on the following day the receiving bank could request that the Federal Reserve function an as-of adjustment to its reserve position and the reserve position of the sending bank. Under another approach, the Fedwire funds transfer system might be modified to incorporate a new type code and/or new edit criteria to detect and reject transfers sent on behalf of respondents after 6:15 p.m.

receive funds transfers on behalf of their respondent customers between 6:15 and 6:30 p.m. and that they believe the cost of implementation and the inconvenience to their respondent bank customers of a segmented settlement period outweigh the reserve management benefits. Mellon Bank also indicated that because respondent banks would have to meet an earlier funding deadline than would depository institutions that are direct Federal Reserve account holders, respondents would not be able to participate fully in the federal funds market, presumably making the market more illiquid and potentially more volatile.

In addition to these concerns, the Bankers Clearing House indicated that late-day transfer restrictions may create logistical and competitive problems for some West Coast clearing services. In particular, if a private clearing organization's settlement service has a limited ability to move final funds late in the day, it may not be able to compete effectively with similar Federal Reserve services. Similarly, Visa U.S.A., Inc. expressed concern that the VisaNet ACH settlement arrangement might be affected adversely if respondent transfers were limited during the last fifteen minutes of the Fedwire funds transfer operating day. Several of the VisaNet ACH settlement participants settle on behalf of respondent depository institutions.

III. Conclusion

The Board has decided not to adopt a Fedwire segmented settlement period. Although a segmented settlement period might provide an additional tool for reducing uncertainty in payment flows by some banks, the operations of other entities would be restricted. It is not clear that such an approach would significantly reduce uncertainty and volatility for the market as a whole. For example, respondent banks might react to late-day transfer restrictions by advancing the timing of their funds transfers to just prior to their Fedwire cutoff time. The possible effect of advancing the timing of respondent transfers might be an increase in market volatility during this earlier period, albeit possibly to a level somewhat less than that currently experienced very late in the day. Even if a segmented settlement period did not shift volatility earlier, it would likely result in a reduction of volatility only during the last fifteen minutes of the Fedwire operating day. A significant reduction in overall volatility as a result of a segmented settlement period, therefore, seems unlikely.

Moreover, only a limited number of institutions have indicated difficulties in managing their Federal Reserve positions because of late-day respondent transfers. To a large extent, these difficulties are a result of the businesses in which correspondent banks have chosen to engage, such as intraday credit lines and late-day respondent transfer processing. In the Board's view, affected correspondent banks should weigh the benefits of providing late-day payment services to their respondent customers against any reserve management difficulties that the provision of such services may cause. If a correspondent determines that late-day transfers are causing excessive reserve management difficulties, the Board believes that the correspondent can take steps on its own to mitigate these problems. Individual banks, for example, can impose internal cut-off times for sending and receiving respondent transfers that are earlier than the Fedwire deadlines.[4] Establishing earlier cut-off times for outgoing respondent transfers will prevent late-day, unanticipated funds outflows from a correspondent's Federal Reserve account. Likewise, earlier cut-off times for incoming respondent transfers, although incapable of preventing the inflow of funds from respondent banks, should encourage respondent banks to process their Fedwire payments earlier because transfers received after a correspondent's cut-off time can be credited to the respondent's account as of the next banking day. Many banks currently impose such internal cut-off times for processing customer wire transfers. Some banks, however, were concerned that if they were to impose earlier internal cut-off times for respondent transfers, they may lose these customers to other institutions that did not impose such deadlines. These banks indicated that the only uniform way to control late-day respondent transfers without creating competitive issues among correspondent banks was to impose Federal Reserve restrictions on respondent banks. The Board does not believe that such competitive issues warrant the imposition by the Federal Reserve of respondent transfer restrictions.

Finally, implementation of a segmented settlement period would involve potentially costly operational changes to Fedwire or the use of as-of adjustments to correct improperly sent transfers. Operational changes would not only affect the Federal Reserve, but also the internal systems of a large number of banks. Likewise, as-of adjustments would involve time-consuming exception processing and augment uncertainty in reserve projections.

IV. Analysis of Competitive Effects

The Board has established procedures for assessing the competitive effects of rule or policy changes that have a substantial impact on payment system participants.[5] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such differences. The Board's decision not to adopt a Fedwire segmented settlement period will not adversely affect the ability of other service providers to compete with the Federal Reserve in the provision of large-value electronic funds transfer services.

By order of the Board of Governors of the Federal Reserve System, December 8, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33048 Filed 12–11–98; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Federal Supply Service, Office of Transportation and Property Management, Property Management Division; Revision and Stocking Change of SF 123A, Transfer Order Surplus Personal Property (Continuation Sheet)

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/Federal Supply Service, Office of Transportation and Property Management, Property Management

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[4] State law allows depository institutions to establish fixed cut-off times for the processing of payment orders. Uniform Commercial Code (UCC) Article 4A Section 106(a) states that a receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders. Different cut-off times may apply to different senders or categories of payment orders. If a payment order is received after the appropriate cut-off time on a funds transfer business day, the receiving bank may treat the payment order as received at the opening of the next funds transfer business day.

[5] These procedures are described in the Board's policy statement, "The Federal Reserve in the Payments System," as revised in March 1990 (55 FR 11648, March 29, 1990).

Division has revised the SF 123A, Transfer Order Surplus Personal Property (Continuation Sheet) to make it a single sheet form instead of a 10 part form. Also because of low usage the form is authorized for local reproduction. You can obtain a camera copy in two ways:

On the internet. Address: http://www.gsa.gov/forms/forms.htm, or;

From Forms-X, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Dingle (703) 305–6190. This contact is for information about completing the form only.

DATES: Effective December 14, 1998.

Dated: December 4, 1998.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 98–33091 Filed 12–11–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Project

Evaluating the Effectiveness of Tailored Occupational Safety and Health Information on the World Wide Web: Increasing Knowledge and Changing Behavior of Residential Building Construction Contractors—New—The National Institute for Occupational Safety and Health (NIOSH)—Workers in the construction industry face higher than normal risks of fatal injury, nonfatal injury, and illness resulting from on-the-job exposures. According to the National Institute for Occupational Safety and Health (NIOSH), during the period from 1980 through 1992, construction had the highest number of deaths resulting from workplace injury—over 14,000 deaths, or more than 1,000 deaths per year. According to the Bureau of Labor Statistics (BLS) and the Center to Protect Workers' Rights (CPWR), construction had the highest number of deaths resulting from injury (1,039) and the third highest rate of fatal injury (13.9 deaths per 100,000 workers) in 1996.

The majority of construction companies are very small. According to Dun and Bradstreet, 96% of residential building contractors employ less than 15 workers on average; over 80% employ less than 5 workers. In general, small companies have insufficient resources to identify and apply risk and prevention information relevant to their operations. According to a recent study (conducted by NIOSH), lack of tailored, relevant, and timely occupational safety and health information is a major barrier identified by small construction contractors.

The goals of this investigation are to: 1) explore the effectiveness of tailored safety and health information that is developed based on the individual contractor's construction specialties and specific operations, as well as the contractor's psychosocial factors; and 2) explore the effectiveness of the Internet World Wide Web as a mechanism for delivering tailored safety and health information. Specifically, the goal of this data collection is to compare the effectiveness of tailored Internet messages (based on interactive Internet and computer-tailoring technologies), non-tailored Internet messages (based on current static, menu-driven, non-interactive models), tailored print messages delivered by direct mail, and non-tailored print messages delivered by direct mail in influencing changes in safety- and health-related knowledge, intentions, and behaviors. Messages will address two leading cases of injuries and illnesses in construction: falls and silicosis.

The data collected in this study will be used to further current understanding of tailoring safety and health information utilizing the Internet, and the relative effectiveness of this approach when compared to traditional and current mechanisms of communicating safety and health information. The data collected in this study will also be used to provide a basis for developing industry-specific occupational safety and health information systems that provide relevant timely risk and prevention information, especially to small business owners. The total cost to respondents is $3,300.00.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Residential Building Construction Contractors	250	2	.33	165

2. *The development and implementation of a theory-based health communications intervention to decrease silica dust exposure among masonry workers—New*—The National Institute of Occupational Safety and Health (NIOSH)—Construction is the most frequently recorded industry on death certificates with mention of silicosis. Overexposure to crystalline silica is well documented in the construction industry, especially in brick laying and masonry. According to 1993 BLS data, there are 136,139 (at 24,362 establishments) masonry and brick laying workers in the U.S. and according to a recent study, approximately 17,400 masonry and plastering workers are exposed to at least five times the NIOSH recommended exposure limit (REL for crystalline silica) and of these workers, an estimated 80 percent of them are

exposed to at least 10 times the NIOSH REL.

To effectively prevent silicosis, not only must control measures be improved, but workers must be persuaded to protect themselves and employers must be motivated to provide workers with proper engineering controls and training. Previous research has too often focused on the behaviors and attitudes of workers and not on employers. Since employers have a tremendous influence on the health of workers and since their motivations may differ from workers', it is important to focus on them as well. Well-designed and theory-driven communication interventions have the capacity to promote protective health behaviors. To develop messages that will have the greatest success at motivating workers to protect themselves and employers to protect their workers from silicosis, information on workers' and employers' beliefs, attitudes, and behaviors regarding silicosis must be determined. A recently completed pilot-study indicated a need to motivate employers to provide appropriate engineering controls and respiratory protection and a need to persuade workers to protect themselves.

The goal of this project is to develop a health communication intervention program targeting both masonry contractors and workers that will increase the use of engineering controls (specifically, wet-sawing) and respiratory protection. The aforementioned pilot study will serve as a foundation upon which the intervention will be developed. The effectiveness of the intervention will be evaluated using a pre-post test questionnaire.

The study results will provide a basis for intervention programs that masonry contractors can use to educate their workers regarding risk of exposure to silica dust on masonry work sites. The methodology could be applied to other construction procedures such as jack hammering, sand blasting, and similar dust producing procedures to produce similar intervention programs. Eventually we would hope, silica exposures among construction workers would decrease significantly. The total cost to respondents is $0.00.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Workers	200	2	0.33	132
Contractors	20	2	0.33	13.2
Total ...				145.2

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–33035 Filed 12–11–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0453]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices: Third-Party Review Program Under U.S./EC MRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by January 13, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices: Third-Party Review Program Under U.S./EC MRA (OMB Control Number 0910–0378—Extension)

The third-party program under the United States/European Community Mutual Recognition Agreement (U.S./EC MRA) is intended to implement that part of U.S./EC MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices. Under MRA, firms may apply to become designated as a U.S. Conformity Assessment Body (CAB). Firms who are designated will be qualified to conduct quality system evaluations for all classes of devices and product-type examinations and verifications for selected devices based on EC requirements under the voluntary third-party program authorized by MRA. Firms designated as EC CAB's could, in turn, conduct quality system evaluations for all classes of devices and premarket 510(k) evaluations for selected devices based on FDA requirements. Under the voluntary third-party program, reports of these evaluations would be submitted by EC CAB's to FDA. EC CAB's would also be required to maintain copies of their evaluation reports.

In the **Federal Register** of August 4, 1998 (63 FR 41573), the agency requested comments on the proposed collection of information. The agency received two comments.

One comment questioned why FDA chose 12 as the number of U.S. CAB's, when Europe already has 20. The agency's estimate is based on discussions with the National Institute of Science and Technology of the U.S. Department of Commerce and officials of other standards organizations as well as firms who have expressed interest directly to FDA. FDA still believes that 12 is the appropriate number.

The other comment questioned why FDA did not include all eligible class I and class II devices in the program. FDA did not include in the program three class I devices that are regulated by the Center for Biologics Evaluation and Research (CBER), because FDA determined that it would not be cost effective to train CBER employees in the program for only three devices. FDA included in the program the 97 class II devices for which guidance and/or

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recognized standards exist and which represent 60 percent of the 510(k)s we receive each year. If the program is successful, FDA will add additional devices, as appropriate.

FDA estimates the burden of this collection as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

Item	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Requests for designation as U.S. CAB	12	1	12	24	288
Premarket reports by EC CAB's	20	5	100	40	4,000
Quality system reports by EC CAB's	20	5	100	32	3,200
Total					7,488

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

TABLE 2.—Estimated Annual Recordkeeping Burden[1]

Item	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Records of evaluation of premarket submissions by EC CAB's	20	5	100	10	1,000
Records of evaluation of quality systems	20	5	100	10	1,000
Total					2,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

The burdens are explained as follows:

I. Reporting

A. Requests for Designation as U.S. CAB

Under this program, U.S. firms may apply for designation as a U.S. CAB. Such designation will enable that firm to perform third-party evaluations of U.S. products for export to EC. Likewise, European firms may apply to be designated as EC CAB's, which will enable them to perform third-party evaluations of products to be exported to the United States. The application for nomination as an EC CAB does not represent an information collection burden subject to the PRA because the designation procedure is an internal process which is required by, and administered by, European authorities. Only the application for designation as a U.S. CAB represents a paperwork burden under the PRA. The agency anticipates, based on discussions with the National Institute of Science and Technology of the U.S. Department of Commerce and officials of other standards organizations, as well as firms who have expressed interest directly to FDA, that approximately 12 applications for designation as U.S. CAB's will be received.

B. Premarket Reports

Under this program, EC CAB's will be able to perform third-party evaluations for certain products produced in Europe for export to the United States. EC CAB's would be required to submit reports of their evaluations to FDA. Based upon information gathered during the negotiation of U.S./EC MRA, the agency anticipates that European manufacturers will request third-party evaluation for approximately 100 medical device products annually. The agency further estimates, based on dialogue with EC officials, that 20 firms will be designated to act as EC CAB's.

C. Quality System Reports

Under this program, EC CAB's will be able to perform third-party evaluations of the quality systems established by manufacturers of European products produced for export to the United States. EC CAB's would be required to submit reports of their evaluations to FDA. Based upon information gathered during the negotiation of U.S./EC MRA, the agency anticipates that European manufacturers will request third-party evaluations for approximately 100 medical device products annually. The agency estimates that 20 EC CAB's will perform these evaluations.

II. Recordkeeping

As stated previously, firms designated as EC CAB's will be able to perform third-party evaluations of quality systems and premarket submissions for certain products produced for export to the United States. Such evaluation will be conducted consistent with FDA's regulatory requirements, and FDA will require the reviewers to keep, in their records, a copy of the report that they submit to FDA for each evaluation. The agency anticipates that 100 premarket reports and 100 quality system reports will be generated and required to be maintained by EC CAB's annually. Thus, the agency estimates that 100 records of evaluations of quality systems and premarket submissions will be retained by the designated EC CAB's. Based on experience with the Third-Party Review Pilot Program, which was announced in the **Federal Register** of April 3, 1996 (61 FR 14789), the agency anticipates that each recordkeeper will require no more than 2 hours of recordkeeping per review. The agency is estimating five reviews per respondent and a total of 10 hours per recordkeeper.

Dated: December 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–33054 Filed 12–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1063]

Announcement of a New Format for Export Certificates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a new format for export certificates. The new format features the use of several security measures in the paper used to print export certificates to deter falsification of or tampering with FDA-

issued export certificates. The new format may also help authenticate export certificates.

DATES: The agency will begin issuing export certificates using the new format after January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: Firms exporting products from the United States are often asked by foreign customers or foreign governments to supply a certification relating to products subject to the Federal Food, Drug, and Cosmetic Act (the act) and other FDA-administered acts. Certification is the process by which a formal or official attestation is made concerning a product's regulatory status or the system by which a commodity is manufactured. Certification does not show that FDA has "approved" the product for export; however, some certificates reflect that the product has been approved for marketing in the United States.

FDA currently issues several types of certificates. In brief, the principal certificates are:

1. Certificates to Foreign Government—used for products that may be legally marketed, sold, offered for sale, or distributed in the United States. For food products, these are commonly known as "certificates of free sale" or "certificates of export."

2. Certificates of Exportability—used for products that meet the requirements for export under section 801(e) or 802 of the act (21 U.S.C. 381(e) or 382)) but may not otherwise be marketed, sold, offered for sale, or distributed in the United States.

3. Certificates of a Pharmaceutical Product—used for pharmaceutical products and conform to the format in the World Health Organization's "Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce."

FDA's Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, Center for Devices and Radiological Health, Center for Food Safety and Applied Nutrition, and Center for Veterinary Medicine receive and process requests for export certificates for products subject to their respective authorities.

Recently, there has been an increasing demand for export certificates, as well as requests from foreign governments to authenticate certificates and instances where FDA has found counterfeit or falsified certificates. Consequently, to facilitate the issuance and tracking of export certificates, deter unscrupulous persons from making counterfeit or false certificates or otherwise tampering with export certificates, and to help foreign governments identify authentic, FDA-issued export certificates more readily, FDA has adopted a new format for its export certificates. The new format features the use of several security measures in the paper used for export certificates.

FDA will begin using the new format on certificates issued after January 1, 1999. The procedures for requesting and issuing export certificates, as well as the text of the certificates themselves, will remain unchanged.

However, FDA will not use the new format on European Union (EU) Export Health Certificates. These certificates are for fishery products intended for import into the EU and are not considered to be FDA certificates.

FDA is notifying foreign embassies and its counterpart government agencies of the new format and also advising them that otherwise valid export certificates issued before January 1, 1999, remain valid. Consequently, persons whose export certificates were issued before January 1, 1999, but expire after that date, should not need to replace those certificates.

Dated: December 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–33052 Filed 12–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1109]

Mercury Compounds in Drugs and Food; Request for Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data to identify food and drug products that contain intentionally introduced mercury compounds, e.g., mercurous chloride, mercuric chloride, phenylmercuric acetate, thimerosal. The agency is seeking both quantitative and qualitative information about the mercury compounds in these food and drug products. This request is part of the implementation of the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit data and information by March 15, 1999. Submit written general comments by March 15, 1999.

ADDRESSES: Submit written general comments on this call-for-data to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit information on human drug products to the Division of Over-the-Counter (OTC) Drug Products (HFD–560), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit information on veterinary drug products to the Division of Epidemiology and Surveillance (HFV–210), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit information on food products, including dietary supplements, to the Office of Special Nutritionals (HFS–456), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT:

For human drug products: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

For veterinary drug products: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6641.

For food and dietary supplement products: Sharon A. Ross, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5343.

SUPPLEMENTARY INFORMATION:

I. Background

FDAMA (Pub. L. 105–115) was enacted on November 21, 1997. Section 413 of FDAMA, entitled "Food and Drug Administration Study of Mercury Compounds in Drugs and Food," requires FDA to: (1) Compile a list of drugs and foods that contain intentionally introduced mercury compounds, and (2) provide a quantitative and qualitative analysis of the mercury compounds in this list. FDAMA requires the agency to compile the list and provide the analysis within 2 years after the date of its enactment. The statute does not differentiate

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whether the mercury compound is present in the products as an active or an inactive ingredient. Therefore, FDA is requesting data and information on any mercury compounds, present as active or as inactive ingredients, in any human or veterinary drug (prescription or OTC) product or any food product, including dietary supplements.

II. Mercury Compounds in Human Drug Products

There are several different types of mercury compounds that have been used in human drug products. Inorganic mercury salts used include mercurous chloride (calomel) and mercuric chloride (bichloride of mercury). Organic aryl mercury compounds used include phenylmercuric acetate and phenylmercuric nitrate. Some of these mercury compounds (e.g., phenylmercuric acetate and phenylmercuric nitrate) have been used as both active and inactive ingredients. Some mercury-containing drug products have been marketed by prescription and others have been marketed OTC only.

FDA has already evaluated the safety and effectiveness of many of the OTC uses of mercury compounds as part of its OTC drug review. Many mercury compounds used as active ingredients in OTC drug products have been found to be not generally recognized as safe (GRAS) and effective and are classified as new drugs. These mercury ingredients are listed in § 310.545(a) (21 CFR 310.545(a)) (see Table 1 of this document).

TABLE 1.—MERCURY INGREDIENTS LISTED IN 21 CFR 310.545(a)

Rulemaking and Ingredients	Paragraph
Dandruff/seborrheic dermatitis/psoriasis drug products (Docket No. 82N–0214)	310.545(a)(7)
Mercury oleate	
External analgesic drug products: Poison ivy/poison oak/poison sumac drug products (Docket No. 78N–301P)	310.545(a)(10)(vii)
Merbromin (mercurochrome)	
Mercuric chloride (bichloride of mercury, mercury chloride)	
Laxative drug products: Stimulant laxatives (Docket No. 78N–036L)	310.545(a)(12)(iv)
Calomel (mercurous chloride)	
Skin bleaching drug products (Docket No. 78N–0065)	310.545(a)(17)
Mercury, ammoniated	
Skin protectant drug products: Poison ivy/poison oak/poison sumac drug products (Docket No. 78N–021P)	310.545(a)(18)(vi)
Merbromin (mercurochrome)	
Mercuric chloride (bichloride of mercury, mercury chloride)	
Ophthalmic drug products: Anti-infective (Docket No. 80N–0145)	310.545(a)(21)(ii)
Mercuric oxide, yellow	
First aid antiseptic drug products (Docket No. 75N–183F)	310.545(a)(27)(i)
Ammoniated mercury	
Calomel (mercurous chloride)	
Merbromin (mercurochrome)	
Mercufenol chloride (ortho-chloromercuriphenol, ortho-hydroxyphenylmercuric chloride)	
Mercuric chloride (bichloride of mercury, mercury chloride)	
Mercuric oxide, yellow	
Mercuric salicylate	
Mercuric sulfide, red	
Mercury	
Mercury oleate	
Mercury sulfide	
Nitromersol	
Para-chloromercuriphenol	
Phenylmercuric nitrate	
Thimerosal	
Vitromersol	
Zyloxin	
Antimicrobial diaper rash drug products (Docket No. 75N–183D)	310.545(a)(27)(ii)
Para-chloromercuriphenol	
Any other ingredient containing mercury	
Vaginal contraceptive drug products (Docket No. 80N–0280)	310.545(a)(28)
Phenylmercuric acetate	
Phenylmercuric nitrate	
Any other ingredient containing mercury	

FDA has also considered mercury compounds as inactive ingredients in OTC ophthalmic drug products. Section 349.50(c)(3) of the final monograph for OTC ophthalmic drug products (21 CFR 349.50(c)(3)) states:

> *For ophthalmic drug products containing mercury compounds used as a preservative.* "This product contains (name and quantity of mercury-containing ingredient) as a preservative. Do not use this product if you are sensitive to" (select one of the following: "mercury" or "(insert name of mercury-containing ingredient) or any other ingredient containing mercury)."

The agency is aware that mercury compounds (e.g., phenylmercuric acetate and thimerosal) are used as a preservative in OTC nasal solution products and prescription ophthalmic drug products. Phenylmercuric nitrate is also present in some oral homeopathic drug products and may be present in other homeopathic drug products. Therefore, homeopathic drug products are included in this call-for-data.

III. Mercury Compounds in Veterinary Drug Products

Currently, there are no approved veterinary drug products that contain a mercury compound as an active ingredient. There is some limited use, however, of mercury compounds in veterinary drug products. These products are all unapproved OTC products for use in nonfood species. For instance, older text books may contain an indication for red mercuric iodide petrolatum as a compounded counterirritant. An aqueous formulation of red mercuric iodide is commercially marketed with that indication. Mercurochrome is currently marketed for treating bacterial diseases of ornamental fish. The potential exists for some limited use of mercury compounds as inactive ingredients, such as preservatives, particularly in unapproved products.

IV. Mercury Compounds in Food Products

The agency has limited information on the intentional addition of mercury-containing compounds to food products. Under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)), an ingredient used in food or as food must be an approved food additive or it must be GRAS for its intended food use. Currently, FDA has not approved any mercury-containing compounds as food additives and does not consider any mercury-containing compounds to be GRAS.

Substances that are "dietary ingredients" as defined in section 201(ff) of the act are exempt from the food additive provisions of the act under section 201(s)(6). Under the act, dietary supplement ingredients subject to section 201(ff) do not require FDA premarket scrutiny or approval. Additionally, ingredients subject to this section of the act do not need to be registered with FDA. Consequently, FDA has no listing of mercury-containing compounds that are used as dietary ingredients in dietary supplements.

The agency is aware that some categories of products marketed as dietary supplements in the United States may contain a source of added mercury. Products similar to those that are used as traditional medicines in other countries may sometimes be marketed as dietary supplements in the United States. For example, mercury-containing compounds are used in traditional Chinese medicines. The Chinese Herbal Materia Medica (Ref. 1) reports that cinnabar (mercuric sulfide; cinnabaris or zhu sha in Mandarin Chinese) and calomel (mercurous chloride; calomelas or qing fen in Mandarin Chinese) have been widely used as a sedative and detoxicant and to treat constipation and edema, respectively. The California Department of Health Services reported that 5 of 260 traditional Chinese medicines available in the retail marketplace, which they examined, listed cinnabar as an ingredient on the label (Ref. 2). In this study, 35 of 251 products that were screened for mercury content were found to contain significant quantities of mercury (Refs. 2 and 3). Additionally, the study showed that most of the products that contained significant quantities of mercury did not list mercury sources on the label. Therefore, it is not possible to determine whether the mercury in these products is intentionally added or is present as an unintended ingredient or contaminant. Other than this limited information, FDA is not aware of other uses of mercury in dietary supplements.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Bensky, D., A. Gamble, and T. Kaptchuk, *Chinese Herbal Medicine Materia Medica*, 8th Ed., Eastland Press, Inc., Seattle, pp. 573–574, 638–639, 1992.

2. Ko, R. J., and A. Au, *1997–1998 Compendium of Asian Patent Medicines*, California Department of Health Services, Food and Drug Branch, Sacramento, 1998.

3. Ko, R. J., "Adulterants in Asian Patent Medicines," *New England Journal of Medicine*, 339:847, 1998.

VI. Call-for-Data and Information

In order to prepare the list and provide the analysis required by section 413 of FDAMA, the agency is requesting all manufacturers of any food, including dietary supplement, and human or veterinary drug product (prescription or OTC) containing any intentionally introduced mercury compounds, whether used as an active or inactive ingredient, to provide FDA the following information for each product:

1. The commercial name of the product that contains the mercury compound;
2. The chemical name (USAN or established name, if one exists) of the mercury compound(s) present in the drug product; the Chemical Abstract Service (CAS) registry (Reg.) number (No.) and the CAS preferred chemical name of the mercury compound(s) present in the food or dietary supplement product;
3. The quantitative amount of the mercury compound present in the product. State as either quantity per dosage unit or per quantity of product (e.g., ounce or gram). State whether amount is calculated on a weight to weight (w/w) or weight to volume (w/v) basis, where applicable;
4. State the purpose of the mercury compound in the product. If an active ingredient, state the pharmacologic use(s) of the product. If an inactive ingredient, state the function (e.g., preservative);
5. Provide a copy of the product's labeling; and
6. Estimate the amount of the mercury compound used annually in manufacturing the product.

VII. Request for Data and Information

Affected manufacturers should, on or before March 15, 1999, submit the data and information requested in section VI of this document. Two copies of the data and information are to be submitted, except that individuals may submit one copy. Data and information should be addressed to the appropriate FDA centers (Drug Evaluation and Research, Veterinary Medicine, or Food Safety and Applied Nutrition) (addresses above). All submitted data and information on the quantitative amount of the mercury compound present in the product (unless the information appears in product labeling) and the amount of the mercury compound used annually in manufacturing the product will be handled as confidential by the agency under 21 CFR 20.61. General comments on this call-for-data should be addressed to the Dockets Management Branch (address above). General comments are to be identified with the docket number found in brackets in the heading of this document. Received general comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 7, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–33053 Filed 12–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1122]

GEO Specialty Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that GEO Specialty Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of

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dimethylolpropionic acid as a pigment dispersant for pigments used as components of food-contact articles.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4637) has been filed by GEO Specialty Chemicals, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3725 *Pigment dispersants* (21 CFR 178.3725) to provide for the safe use of dimethylolpropionic acid as a dispersant for pigments used as components of food-contact articles.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 1, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–33055 Filed 12-11-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Training on Electronic Records; Electronic Signatures; Video Teleconferences; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) (Office of External Affairs, Office of Regulatory Affairs, Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, and the Center for Devices and Radiological Health) is announcing the following meeting (video teleconferences) entitled "Industry Training on 21 CFR Part 11." The topics to be discussed are current good manufacturing practice electronic recordkeeping requirements, validation of electronic recordkeeping systems, and the answers to frequently asked questions on part 11 (21 CFR part 11).

Date and Time: The meeting will be held on Tuesday, January 12, 1999, 1 p.m. to 4 p.m. Registration information should be faxed to the contact person listed in Table 1 of this document by January 8, 1999.

Contact Person: Laura C. Woolf, Office of Communications, Training and Manufacturers Assistance (HFM–40), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–3840, FAX 301–827–3843, e-mail address "woolf@cber.fda.gov".

SUPPLEMENTARY INFORMATION: These video teleconferences are intended to inform the FDA regulated industries, and especially, small business about the requirements for electronic recordkeeping according to part 11 and to provide for a dialogue with FDA. These video teleconferences address the requirements of both the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) that mandates outreach activities by Government agencies directed to small businesses and section 406 (b) of The Food and Drug Administration Modernization Act of 1997 (Pub. L. No. 105–115) that calls for involvement of FDA with its stakeholders in cooperative activities to assure the quality of marketed products.

Location: The meeting (video teleconferences) will be held as follows:

TABLE 1.—PUBLIC MEETING (VIDEO TELECONFERENCES)

FDA Office/Region	Meeting Address	Time	Contact Person
Cincinnati District Office	6751 Steger Dr., Cincinnati, OH 45237	1 p.m. to 4 p.m., eastern standard time (e.s.t.)	Geraldine H. Cobb (HFR–MA430), Food and Drug Administration, 6751 Steger Dr., Cincinnati, OH 45237, 513–679–2700, ext. 100, FAX 513–679–2771
New Jersey District Office	10 Waterview Blvd., 3d Fl., Parsippany, NJ 07054	1 p.m. to 4 p.m., e.s.t.	Marie T. Falcone (HFR–SW17), Food and Drug Administration, 900 U.S. Customhouse, 2d & Chestnut Sts., Philadelphia, PA 19106, 215–597–4391, ext. 4003, FAX 215–597–5798
Chicago District Office	300 South Riverside Plaza, suite 500 South, Chicago, IL 60606	12 m. to 3 p.m., central standard time (c.s.t.)	Joe T. Petty (HFR–CE1), Food and Drug Administration, 20 North Michigan Ave., suite 510, Chicago, IL 60602, 312–353–9400, ext. 23, FAX 312–886–1682
Chicago-Central Region	20 North Michigan Ave., suite 510, Chicago, IL 60602	12 m. to 3 p.m., c.s.t.	Joe T. Petty (HFR–CE1), Food and Drug Administration, 20 North Michigan Ave., suite 510, Chicago, IL 60602, 312–353–9400, ext. 23, FAX 312–886–1682
Seattle District Office	22201 23d Dr. SE., Bothell, WA 98021	10 a.m to 1 p.m., Pacific standard time (P.s.t.)	Judy R. Keast (HFR–PA13), Food and Drug Administration, 1301 Clay St., suite 1180N, Oakland, CA 94612, 510–637–3960, ext.12, FAX 510–637–3976

TABLE 1.—PUBLIC MEETING (VIDEO TELECONFERENCES)—Continued

FDA Office/Region	Meeting Address	Time	Contact Person
San Francisco District Office	1431 Harbor Bay Pkwy., Alameda, CA 94502	10 a.m. to 1 p.m., P.s.t.	Judy R. Keast (HFR–PA13), Food and Drug Administration, 1301 Clay St., suite 1180N, Oakland, CA 94612, 510–637–3960, ext.12, FAX 510–637–3976
Los Angeles District Office	19900 MacArthur Blvd., suite 300, Irvine, CA 92715	10 a.m. to 1 p.m., P.s.t.	Judy R. Keast (HFR–PA13), Food and Drug Administration, 1301 Clay St., suite 1180N, Oakland, CA 94612, 510–637–3960, ext.12, FAX 510–637–3976
Dallas Southwest Regional Office	7920 Elmbrook, suite 102, Dallas, TX 75247	12 m. to 3 p.m., c.s.t.	Brenda C. Cox (HFR–SW17), Food and Drug Administration, 7920 Elmbrook, suite 102, Dallas, TX 75247, 214–655–8100, ext. 133, FAX 214–655–8114
Nashville District Office	297 Plus Park Blvd., Nashville, TN 37217	12 m. to 3 p.m., c.s.t.	Marie B. Clendening (HFR–SE300), Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5392, FAX 615–781–5383
Atlanta District Office	60 Eighth St. NE., Atlanta, GA 30309	1 p.m. to 4 p.m., e.s.t.	Barbara L. Ward-Groves (HFR–SE17), Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–4001, ext. 5256, FAX 404–347–4349
Atlanta District Raleigh Resident Post	ATCOM, 4920 South Alston Ave., Research Triangle Park, NC 27709	1 p.m. to 4 p.m., e.s.t.	Mary C. Lewis (HFR–SE1525), Food and Drug Administration, 310 New Bern Ave., rm. 370, Raleigh, NC 27611, 919–856–4456, FAX 919–856–4776
Denver District Office	6th and Kipling Sts., Bldg. 20, Denver, CO 80225	11 a.m. to 2 p.m., mountain standard time (m.s.t.)	Russell W. Gripp (HFR–SW240), Food and Drug Administration, 6th and Kipling Sts., Bldg. 20, Denver, CO 80225, 303–236–3047, FAX 303–236–3551
Kansas City District Office	11630 West 80th St., Lenexa, KS 66214	12 m. to 3 p.m., c.s.t	Ralph J. Gray (HFR–SW340), Food and Drug Administration, 11630 West 80th St., Lenexa, KS 66214, 913–752–2105, FAX 913–752–2111
Northeast Regional Office	850 Third Ave., Brooklyn, NY 11232	1 p.m. to 4 p.m., e.s.t.	Herman B. Janiger (HFR–NE145), Food and Drug Administration, 850 Third Ave., Brooklyn, NY, 11232, 718–340–7000, ext. 5043, FAX 718–340–7057
Buffalo District Office	300 Pearl St., suite 100, Buffalo, NY 14202	1 p.m. to 4 p.m., e.s.t	Diana D. Monaco (HFR–NE300), Food and Drug Administration, 300 Pearl St., suite 100, Buffalo, NY 14202, 716–551–4461, ext. 3118, FAX 716–551–3845
Winchester Engineering and Analytical Center	109 Holton St., Winchester, MA 01890	1 p.m. to 4 p.m., e.s.t	Paula B. Fairfield (HFR–NE245), Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180 781–279–1675, ext. 184, FAX 781–279–1687

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Registration: Fax registration information (including name, title, firm name, address, telephone, and fax number) by January 8, 1999, to the contact person listed in Table 1 of this document for the meeting location you wish to attend. There is no charge for attending these meeting. However, space is limited, so you should register early.

If you need special accommodations due to a disability, please contact the appropriate contact person at least 7 days in advance.

Dated: December 7, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–33051 Filed 12–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3432–N2]

Medicare Program; Establishment of the Medicare Coverage Advisory Committee and Request for Nominations for Members

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Medicare Coverage Advisory Committee that will advise the Secretary of Health and Human Services and the Administrator of the Health Care Financing Administration, as requested by the Secretary, whether medical items and services are reasonable and necessary under title XVIII of the Social Security Act. This notice requests nominations for members for the Committee.

This notice also announces the signing by the Secretary on November 24, 1998 of the charter establishing the Committee. This charter ends at close of business on November 23, 2000 unless renewed by the Secretary.

DATES: Nominations for members will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on January 29, 1999.

ADDRESSES: You may mail or deliver nominations for membership to the following address: Health Care Financing Administration, Attention: Richard Coyne, 7500 Security Boulevard, Mail Stop South Building 03–02–01, Baltimore, MD 21244.

A request for a copy of the Secretary's Charter for the Medicare Coverage Advisory Committee (MCAC) should be submitted to Maria Ellis, Office of Clinical Standards and Quality, Health Care Financing Administration, 7500 Security Boulevard, Mail Stop South Building 3–02–01, Baltimore, MD 21244, (410) 786–0309, or by e-mail to mellis@hcfa.gov.

FOR FURTHER INFORMATION CONTACT: Richard Coyne, (410) 786–4458.

SUPPLEMENTARY INFORMATION:

Background

The Medicare Coverage Advisory Committee (MCAC) is governed by provisions of Public Law 92–463 as amended (5 U.S.C. Appendix 2), which sets forth standards for the formulation and use of advisory committees.

The MCAC will consist of 120 appointed members from among authorities in clinical and administrative medicine, biologic and physical sciences, public health administration, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions.

The MCAC, functioning on a panel basis, will review and evaluate medical literature, review technical assessments, and examine data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare. The panels will work from an agenda provided by the MCAC that lists specific issues. The panels will develop technical advice to be reviewed and ratified by the MCAC to assist us in determining reasonable and necessary applications of medical services and technology.

We are requesting nominations for voting members to serve on panels of the MCAC. We have a special interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the advisory committee and, therefore, encourage nominations of qualified candidates from these groups.

All nominations and curricula vitae for the MCAC should be sent to Richard Coyne at the address above.

Criteria for Members:

Persons nominated for membership should have expertise in one or more of the following fields: clinical and administrative medicine, biologic and physical sciences, public health administration, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions.

We are also seeking nominations from consumer organizations. Representatives of a consumer organization must possess appropriate qualifications to understand and contribute to the MCAC's work.

Nominations must state that the nominee is willing to serve as a member of the MCAC and appears to have no conflict of interest that would preclude membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Members shall be invited to serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the MCAC by appropriate action before its termination. A member may serve after the expiration of the member's term until a successor has taken office.

Any interested person may nominate one or more qualified persons. Self-nominations will also be accepted.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 7, 1998

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–33011 Filed 12–11–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine

Date: January 25–27, 1999

Open: January 26, 1999, 9:00 am to 4:00 pm

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, Md 20894

Closed: January 26, 1999, 4:00 pm to 5:00 pm

Agenda: To review and evaluate grant applications

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, Md 20894

Open: January 27, 1999, 9:00 am to 11:35 am

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, Md 20894

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, Phs, Dhhs, Bldg 38, Room 2E17B, Bethesda, Md 20894

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee

Date: January 25, 1999

Closed: 1:30 pm to 3:00 pm

Agenda: To review and evaluate grant applications and/or proposals

Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, Md 20892

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, Phs, Dhhs, Bldg 38, Room 2E17B, Bethesda, Md 20894

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information

Date: January 26, 1999

Open: 7:45 am to 9:00 am

Agenda: Outreach and Public Information Items

Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, Md 20892

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, Phs, Dhhs, Bldg 38, Room 2E17B, Bethesda, Md 20894

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 7, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–33088 Filed 12–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 17, 1998

Time: 1:00 pm to 3:00 pm

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Martin Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 17, 1998

Time: 2:00 pm to 3:30 pm

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Anthony C. Chung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 17, 1998

Time: 3:00 pm to 5:00 pm

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–0692

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 17, 1998

Time: 12:00 pm to 1:00 pm

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Edmund Copeland, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–TMP–2

Date: December 18, 1998

Time: 1:00 pm to 2:00 pm

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, (301) 435–1146

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93,337; 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 8, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–33087 Filed 12–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program

The National Toxicology Program (NTP) and the National Institute of Environmental Health Sciences (NIEHS) announces the establishment of the NTP Center for the Evaluation of Risks to Human Reproduction; solicits nominations of chemicals and/or chemical mixtures to be evaluated by the Center; and requests suggestions for scientists to be added to an Expert Registry from which reviewers will be appointed to serve on ad hoc panels that will assess the reproductive and developmental toxicity of selected agents.

Background

There currently is no readily and publicly available, scientifically authoritative mechanism for the evaluation of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed. In the absence of uniform, authoritative, independent reviews, there is a lack of consistency in risk evaluations involving reproductive toxicants. The need for such evaluations of reproductive hazards is clear, especially evaluations that are readily available and understandable to the public. Although the etiology is largely unknown, an infertility rate of approximately 5–10 percent exists among couples who desire children, approximately 50 percent of pregnancies are not successfully completed, there is a birth defect rate of 3–5 percent, and a decline in human sperm counts over recent decades has been reported but not confirmed.

In line with the goal of the National Toxicology Program to provide toxicological evaluation on substances of public health concern, the Center is being established to provide a strictly scientifically-based, uniform assessment of the evidence for reproductive and developmental toxicity of man-made or naturally occurring chemicals or chemical mixtures. The reports produced through the Center will provide a timely, scientifically sound source of information to the public and the scientific communities on the reproductive risks of environmental agents. A special effort will be made to summarize these reports in terms that can be understood by these who are not scientifically trained.

NTP Center Operations

Nominations of chemicals to be evaluated through the Center are solicited from the public and scientific communities, including industry, Federal, state, and local governments, academia, environmental groups, citizens, and workers. All nominations will be considered and prioritized based on a preliminary evaluation which will include literature searches and review by the core committee described below. A listing of exposures under consideration for evaluation will be published in the **Federal Register**, the NTP newsletter, and through press advisories with the request for public review and comment.

The initial capacity for conducting assessments will be limited to 2–3 per year. Chemicals selected for evaluation will be reviewed by expert panels of approximately 10–15 scientists selected for their expertise in various aspects of reproductive toxicology and other relevant areas. These panels will develop reports addressing the reproductive health risks to the human population of a specific chemical or a chemical mixture. Panel meetings will be open to the public and will include the opportunity for public comment.

The goals of the individual assessments are to (1) interpret for and provide to the general public information about the strength of scientific evidence that a given exposure or exposure circumstance poses a hazard to reproduction and the health and welfare of children; (2) provide regulatory agencies with objective and scientifically credible assessments of reproductive/developmental health effects associated with exposure to specific chemicals or classes of chemicals, including descriptions of any uncertainties associated with the assessment of risks; and (3) identify knowledge gaps to help establish research and testing priorities.

The Executive Summary and the final report of the expert panel will be published in Environmental Health Perspectives and will be announced and disseminated widely. Each assessment will appear as well on the CERHR website, linked to the NIEHS and NTP websites.

Scientists representing NTP agencies and Sciences International, Inc., the contractor who will support the Center, will constitute a core committee which will provide the initial review for nominations, select the expert panel membership and establish the meeting agenda.

External Oversight

Oversight will be provided through the NTP Board of Scientific Counselors, a chartered peer review group of scientific experts primarily outside the government, who will provide advice on priorities, directions, and the adequacy of the process and will facilitate public input into the process. Center activities and priorities will be presented to the Board at least annually. All Board meetings will be held in open session and will include opportunity for public comment.

Public Input Solicited and Encouraged

The process includes opportunities for the public to (1) nominate chemicals for evaluation, (2) comment on nominations and the prioritizing and selecting of chemical nominations for evaluation, (3) comment on the evaluation of any particular chemical at the time of the expert panel meetings. The public is encouraged in this initial phase of the Center operations and on a continuing basis to nominate chemicals or chemical mixtures for review through the Center and/or suggest scientists to be added to an Expert Registry from which reviewers will be appointed to serve on ad hoc panels that will assess the reproductive and developmental toxicity of selected agents.

Nominations of chemicals or chemical mixtures should be accompanied by the reason for the nomination and, whenever possible, appropriate background information, data, or literature citations.

Suggestions for scientists to be added to the Expert Registry should be accompanied by a description of their expertise and a curriculum vitae.

All chemical nominations and suggestions for scientists to be added to the Expert Registry should be forwarded to: NTP Center for the Evaluation of Risks to Human Reproduction, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314.

The Center Program will be directed by Dr. Michael D. Shelby of the NIEHS, RTP, NC. Center support and scientific expertise will be provided through a contract with Sciences International, Inc. Alexandria, VA where Dr. John A. Moore is principal investigator on the project.

Dated: December 4, 1998.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 98–33089 Filed 12–11–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on 11 Agents, Substances, Mixtures and Exposure Circumstances Proposed for Listing in or Delisting from the Report on Carcinogens, Ninth Edition

Background

The National Toxicology Program (NTP) solicits final public comments on additional agents, substances, mixtures and exposure circumstances for listing in or delisting from the Report on Carcinogens, Ninth Edition. This Report is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and the Secretary, Department of Health and Human Services (HHS) delegates its preparation to the National Toxicology Program. Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (HHS), shall publish a report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decrease the risk to public health from exposure to these chemicals.

In 1998, 11 substances or exposure circumstances were reviewed for listing in or removal from the Ninth Report. This review included two Federal and one non-government, scientific peer reviews and public comment and review. The three scientific review committee evaluated all available data relevant to the criteria for inclusion or removal of candidate substances or exposure circumstances in the Report. The criteria used in the review process and the detailed description of the review procedures, including the steps in the current formal review process, can be obtained by contacting: Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Room 3217, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–2242, email: jameson@niehs.nih.gov. This information is also available on the NTP Home Page web site at http://ntp-server.niehs.nih.gov/

Public Comment Requested

The NTP will be making a final recommendation in 1999 for the 11 substances or exposure circumstances reviewed in 1998, for either listing in, delisting from, or changing the current listing from reasonably anticipated to be a human carcinogen to the known to be a human carcinogen category in the Ninth Report. These nominated substances or exposure circumstances are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and the recommendations from the three scientific peer reviews of the nominations.

Background documents provided to the review committees and the interested public are available upon request. The NTP will review the recommendations of each of the review committees and consider the public comments received throughout the process in making decisions regarding the NTP recommendations to the Secretary, DHHS, for listing or removal of the nominated substances and exposure circumstances in the Ninth Edition of the Report on Carcinogens. The NTP solicits final public comment to supplement any previously submitted comments or to provide comments for the first time on any substance or exposure circumstances in the following table. Comments will be accepted for a period of 60 days from the date of the publication of this announcement in the Federal Register. Comments or questions should be directed to Dr. C.W. Jameson at the address listed above.

Attachment

Dated: December 4, 1998.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY OF RG1,[1] RG2[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES REVIEWED IN 1998 FOR LISTING IN OR DELISTING FROM THE REPORT ON CARCINOGENS,[4] 9TH EDITION

Nomination/CAS No.	Primary uses or exposures	RG1 action	RG2 action	NTP board subcommittee action
Alcoholic Beverages	Consumption of alcoholic beverages.	RG1 recommended (6 yes votes to 1 no vote) listing as known to be a human carcinogen.	RG2 unanimously recommended (7 yes votes to 0 no votes) listing as known to be a human carcinogen.	The Subcommittee recommended (9 yes votes to 3 no votes with 1 abstention) listing as known to be a human carcinogen.
Boot and Shoe Manufacture and Repair.	Workers in the boot and shoe manufacture and repair industry.	RG1 recommended (5 yes votes to 1 no vote) that Boot and Shoe Manufacture and Repair in the United States be included in the RoC as having been reviewed but not formally listed, due to inadequate data.	RG2 recommended (6 yes votes to 1 no vote) that Boot and Shoe Manufacture and Repair in the United States be included in the RoC as having been reviewed but not formally listed, due to inadequate data.	The Subcommittee unanimously recommended (10 yes votes to 0 no votes) to defer action on this nomination because of the lack of exposure assessment information.
Diesel Exhaust Particulates	Diesel engine exhaust	RG1 defeated a motion to list as reasonably anticipated to be a human carcinogen (4 yes votes to 5 no votes). RG1 recommended (5 yes votes to 4 no votes) to list as known to be a human carcinogen.	RG2 recommended (6 yes votes to 1 no vote) to list as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended (9 yes votes to 0 no votes with 3 abstentions) to list as reasonably anticipated to be a human carcinogen.

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SUMMARY OF RG1,[1] RG2[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES REVIEWED IN 1998 FOR LISTING IN OR DELISTING FROM THE REPORT ON CARCINOGENS,[4] 9TH EDITION—Continued

Nomination/CAS No.	Primary uses or exposures	RG1 action	RG2 action	NTP board subcommittee action
Environmental Tobacco Smoke.	"Passive" inhalation of tobacco smoke from environmental sources.	RG1 recommended (7 yes votes to 0 no vote with 1 abstention) to list as known to be a human carcinogen.	RG2 recommended (5 yes votes to 2 no votes) to list as known to be a human carcinogen.	The Subcommittee unanimously recommended (13 yes votes to 0 no votes) listing as known to be a human carcinogen.
Ethyl Acrylate/140–88–5	Monomer used to produce polymers and copolymers for use in latex paints, textiles, etc.	RG1 recommended (7 yes votes to 2 no votes) to delist from RoC.	RG2 recommended (6 yes votes to 1 no vote) to delist from RoC.	The Subcommittee recommended (8 yes votes to 2 no votes with 2 abstentions) to delist from the RoC.
Ethylene Oxide/75–21–8	Industrial chemical used as an intermediate in the manufacture of other chemicals; e.g., ethylene glycol and is widely used in the health care industry as a sterilant.	RG1 recommended (6 yes votes to 1 no vote) to upgrade to a known human carcinogen.	RG2 unanimously recommended (7 yeas votes to 0 no votes) to upgrade to a known human carcinogen.	The Subcommittee recommended (6 yes votes to 5 no votes with 1 abstention) to upgrade to a known human carcinogen.
Isoprene/78–79–5	The monomeric unit of natural rubber and naturally occurring terpenes and steroids and widely used in the production of isoprene-butadiene copolymers.	RG1 unanimously recommended (6 yes votes to 0 no votes) to list as reasonably anticipated to be a human carcinogen.	RG2 recommended (6 yes votes to 0 no votes with 1 abstention) to list as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (13 yes votes to 0 no votes) to list as reasonably anticipated to be a human carcinogen.
Methyl-t-Butyl Ether/1634–04–4.	Used as an additive in unleaded gasoline in amounts up to 11%.	RG1 recommended (4 yes votes to 3 no votes) to list as reasonably anticipated to be a human carcinogen.	RG2 voted against motion to list as reasonably anticipated to be a human carcinogen (3 yes votes to 4 no votes).	The Subcommittee voted against motion to list as reasonably anticipated to be a human carcinogen (5 yes votes to 6 no votes with 1 abstention).
Nickel Compounds	Many industrial and commercial applications.	RG1 unanimously recommended (7 yes votes to 0 no votes) to upgrade to a known human carcinogen.	RG2 recommended (4 yes votes to 3 no votes with 1 abstention to upgrade to a known human carcinogen.	The Subcommittee unanimously recommended (12 yes votes to 0 no votes) to upgrade to a known human carcinogen.
Silica, Crystalline (Respirable Size)/7631–86–9.	Exposure from mining and quarrying of coal and other minerals, stone cutting, production of glass and ceramics and in occupations such as sandblasting, polishing and grinding.	RG1 unanimously recommended (9 yes votes to 0 no votes) to upgrade to a known human carcinogen.	RG2 recommended (5 yes votes to 2 no votes) to upgrade to a known human carcinogen.	The subcommittee recommended (11 yes votes to 1 no vote) to upgrade to a known human carcinogen.
2,3,7,8–TETRACHLORODIBENZO–P–DIOXIN (TCDD)/1746–01–6.	Not used commercially, found as a contaminant in the production of some pesticides and other commercial products.	RG1 unanimously recommended (10 yes votes to 0 no votes) to upgrade to a known human carcinogen.	RG2 unanimously recommended (8 yes votes to 0 no votes) to upgrade to a known human carcinogen.	The Subcommittee voted against motion to upgrade current listing to known human carcinogen. (5 yes votes to 7 no votes with 1 abstention).

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[1] The NIEHS Review Committee for the Report on Carcinogens (RG1).

[2] The NTP Executive Committee* Interagency Working Group for the Report on Carcinogens (RG2).

*Agencies represented on the NTP Executive Committee include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), National Center for Toxicological Research (NCTR), National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), Department of Health and Human Services (DHHS), National Institutes of Health (NIH), National Cancer Institute (NCI), National Library of Medicine (NLM), and National Institute of Environmental Health Sciences/NTP (NIEHS/NTP).

[3] The NTP Board of Scientific Counselor Report on Carcinogens Subcommittee (the External Peer Review Group)

[4] RoC–Report on Carcinogens.

[FR Doc. 98–3309
BILLING CODE 4140–

**DEPARTMENT
URBAN DEVEL**

[Docket No. FR–

**Notice of Propo
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AGENCY: Office
Secretary for Po
Research, HUD
ACTION: Notice.

SUMMARY: The p
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[FR Doc. 98–33090 Filed 12–11–98; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4351–N–11]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments are due February 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Robert A. Knight, Social Science Analyst, 451 7th Street, SW, Washington, DC 20410, telephone (202)–708–1060, Ext. 5893. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Knight.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey of Market Absorption of New Apartment Buildings.

Description of the need for the information and proposed use: The Survey of Market Absorption provides the data necessary to measure the rate at which new rental apartments and new condominium apartments are absorbed, that is, taken off the market, usually by being rented or sold, over the course of the first twelve months following completion of a building. The data are collected at quarterly intervals until the twelve months expire or until the units in a building are completely absorbed. The survey also provides estimates of certain characteristics, i.e., asking rent/price, number of bedrooms, of apartments being absorbed, which provides a basis for analyzing the degree to which new apartment construction is meeting the present and future needs of the public.

Members of affected public: Business firms (builders and rental agents).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 12,000 (maximum).

Frequency of response: four times (maximum).

Time per respondent: .3 hours.

Total hours: 3,600.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 12, United States Code, Section 1701Z, as amended.

Dated: December 2, 1998.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 98–33107 Filed 12–11–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Zanker Material Processing Facility, Santa Clara County, California

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability and receipt of application.

SUMMARY: Zanker Road Resource Management, Ltd. has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 3-year permit to Zanker Road Resource Management, Ltd. that would authorize take of the endangered salt marsh harvest mouse (*Reithrodontomys raviventris*) incidental to otherwise lawful activities. Such take would occur during reconstruction of an existing unengineered levee system surrounding a landfill site in Santa Clara County, California. Reconstruction of the levees will result in the temporary loss of approximately 0.83 acres of grassland habitat used by the salt marsh harvest mouse.

We request comments from the public on the permit application, which is available for review. The application includes a Habitat Conservation Plan (Plan). The Plan describes the proposed project and the measures that Zanker Road Resource Management, Ltd. would undertake to minimize and mitigate project impacts to the salt marsh harvest mouse.

We also request comments on our preliminary determination that the Plan qualifies as a "low-effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments should be received on or before January 13, 1999.

ADDRESSES: Send written comments to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments may be sent by facsimile to 916–979–2744.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Rinek or Mr. William Lehman, Fish and Wildlife Biologists, at the above address or call (916) 979–2129.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, Plan, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened,

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respectively. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Zanker Road Resource Management, Ltd. operates the 46-acre Zanker Material Processing Facility as a landfill for non-hazardous solid waste. The Regional Water Quality Control Board is requiring the replacement of the existing unengineered levees surrounding the site to provide protection during a 100-year flood event and tidal inundation. The site has been used since the 1950's for disposal of manufacturing waste from Owens Corning's local manufacturing operations. Approximately 28 acres in the northern portion of the parcel have been filled with solid waste, such as fiberglass, wood, construction debris, and paper. Unengineered levees (uncompacted levees installed without engineering design or oversight) and a low berm exist on the north, west, and southwest perimeters of the existing fill area. The eastern side of the site is bordered by a 10-foot high engineered (i.e., compacted) levee owned by the San Jose/Santa Clara Water Pollution Control Plant. The project site is located at the southern end of San Francisco Bay on Los Esteros Road in the Alviso district of San Jose. The land uses adjacent to the site include the San Francisco Bay National Wildlife Refuge to the north; the old Nine Par disposal site to the east; the San Jose/Santa Clara Water Pollution Control Plant, agricultural open space and offices to the south; and privately held marshland and residential portions of Alviso to the west.

In 1990, biologists surveyed the proposed project area for special-status wildlife and plant species that could be affected by the project. Based upon the surveys, the Service concluded that one federally listed species, the endangered salt marsh harvest mouse, has the potential to be impacted by the proposed project.

Zanker Road Resource Management, Ltd. has agreed to implement the following measures to minimize and mitigate impacts that may result from incidental take of the salt marsh harvest mouse: (1) implement a wetland mitigation plan (including the installation of a silt fence) using Best Management Practices to prevent sedimentation from entering adjacent wetlands; (2) ensure that a qualified biologist is present to monitor and oversee technical issues relative to compliance with the minimization, mitigation, and conservation measures for the project; (3) ensure that the reconstructed levees are topped with a 12-inch layer of clean earthfill, revegetated with a native grass seed mix, and that the levee slopes are planted with coyote bush; (4) ensure that a revegetation remediation plan intended to restore salt marsh harvest mouse habitat along the impacted levees is implemented following levee reconstruction, and succeeds within the 3-year life of the permit; and (5) ensure construction personnel receive worker awareness training.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan, which includes measures to minimize and mitigate impacts of the project on the salt marsh harvest mouse. An alternative to the taking of listed species under the Proposed Action is considered in the Plan. Under the No Action Alternative, no permit would be issued. However, taking no action to reconstruct the levees is not an acceptable alternative since the Regional Water Quality Control Board is requiring the reconstruction of the existing unengineered levees. Although two other options associated with operation of the landfill and levee reconstruction are discussed in the Plan, they were not considered as alternatives because each of these would result in the same level of levee reconstruction and take as the Proposed Action.

The Service has made a preliminary determination that the Zanker Road Resource Management, Ltd. Habitat Conservation Plan qualifies as a "low-effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). Determination of low-effect HCPs is based on the following three criteria: (1) implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in the Service's Environmental Action Statement, the Zanker Road Resource Management, Ltd. Plan qualifies as a "low-effect" plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the salt marsh harvest mouse and its habitat. The Service does not anticipate significant direct or cumulative effects to the salt marsh harvest mouse resulting from reconstruction of the existing unengineered levee system surrounding the project site.

2. Approval of the Plan would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to Zanker Road Resource Management, Ltd. for the incidental take of the salt marsh harvest mouse during the reconstruction of the existing unengineered levee system surrounding the project site. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: December 4, 1998.

Elizabeth H. Stevens,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 98–33033 Filed 12–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs; Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III Gaming Between the Kalispel Tribe of Indians and the State of Washington, which was executed on October 22, 1998.

DATES: This action is effective December 14, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066

Dated: December 4, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–33045 Filed 12–11–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1220–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Miles City District Resource Advisory Council will have a meeting Wednesday, January 13, 1999 in Billings, Montana on the campus of Montana State University—Billings, Education Building, Room 102. Agenda topics include travel management, implementation of Rangeland Health Standards and Guidelines, county road transfer, and threatened and endangered species management. The meeting starts at 9:00 a.m. and expected to adjourn about 3:30 p.m.

The meeting is open to the public and the public comment period is set for 12:30 p.m. on January 13. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City District, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: December 2, 1998.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 98–33013 Filed 12–11–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Meeting

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Thursday, January 14, 1999, at the Garfield County Courthouse in Glenwood Springs, Colorado.

DATES: Thursday, January 14, 1999

ADDRESSES: For further information, contact David Atkins, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3074.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on January 14, 1999, at the Garfield County Courthouse, County Commissioners Meeting Room, 109 8th Street, Glenwood Springs, Colorado. The meeting will start at 9 a.m. and include discussions of the roadless inventory review decisions and the proposed statewide recreation guidelines. In the afternoon, starting at 1 p.m., there will be a public forum to discuss the recreation guidelines.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: December 9, 1998.

David Atkins,

Acting District Manager, Craig and Grand Junction Districts.

[FR Doc. 98–33101 Filed 12–11–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–09–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in Montrose, Colorado.

DATES: The meeting will be held on Thursday, January 14, 1999.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov.

SUPPLEMENTARY INFORMATION: The January 14, 1999, meeting will begin at 9:00 a.m. in BLM's Southwest Center conference room at 2465 South Townsend, Montrose, Colorado. The agenda will include public comment at 9:30 a.m., followed by discussions on coal leasing in the North Fork Valley and BLM's grazing permit renewal process, and an update on BLM Colorado's recreation.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Southwest Center Manager.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the Internet at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: December 8, 1998.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 98–33102 Filed 12–11–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–4310–01; NMNM–99185/G–010–G9–0250]

A Direct Sale of Public Land to the Church of Spiritual Technology of Las Vegas, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) and at no less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

New Mexico Principal Meridian

T. 15 N., R. 22 E.,
Section 27, NW¼SE¼

The subject public land containing 40 acres, more or less will be sold to the Church of Spiritual Technology of Las Vegas, NM. The sale is the completion of an exchange agreement entered into with the Church of Spiritual Technology in 1992. The proposed sale is for surface rights only. The disposal is consistent with the Taos Resource Area Management Plan dated October 1988, state and local government programs, plans, and applicable regulations.

EFFECTIVE DATE: Interested parties may submit comments on the direct sale by January 28, 1999.

ADDRESS: Comments should be sent to the Taos Field Office Manager, BLM, 226 Cruz Alta Road, Taos, NM 87571.

FOR FURTHER INFORMATION CONTACT: Francina Martinez, BLM, Taos Field Office, 226 Cruz Alta Rd., Taos, NM 87571, or at (505) 758–8851.

SUPPLEMENTARY INFORMATION: The direct sale will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document or other document of conveyance is available for review at this BLM office.

Publication of this notice in the **Federal Register** will segregate the public land from appropriations under the public land laws including the mining laws but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent or other document of conveyance, 270 days from date of publication of this notice in the **Federal Register** or upon publication of Notice of Termination, which ever occurs first.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 4, 1998.

Alden Sievers,

Field Office Manager.

[FR Doc. 98–33014 Filed 12–11–98; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–1430–01;AZA–30820]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 605,350 acres of Federal lands and minerals to protect the native biodiversity and the ecological richness of the Shivwits Plateau area in northwestern Arizona. This notice segregates the lands described below for up to 2 years from location and entry under the general land laws, including the mining laws. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, Bureau of Land Management (350), 1849 C Street NW, Washington, D.C. 20240, 202–452–7779.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to temporarily protect the native biodiversity and the ecological richness of the Shivwits Plateau area while the lands are under study for a possible national monument designation. The mineralization of the area is known to contain uranium and copper. The proposal, if finalized, would withdraw the following described Federal lands and minerals from location and entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights.

GILA AND SALT RIVER MERIDIAN

	Acres
T. 31 N., R. 12 W.,	
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Subsurface)	640.64
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	640.32
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Subsurface)	639.92
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, and E½SW¼	639.92
T. 31 N., R 13 W.,	
Sec. 4, lot 4 (BLM and Grand Canyon National Park (GCNP))	39.75
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; (BLM and GCNP)	638.80
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	631.25
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	633.07

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 8, W½. (BLM and GCNP)	320.00
T. 32 N., R. 11 W.,	
Sec. 1, lots 1 to 4 inclusive, S½N½, and S½;	641.72
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	642.64
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	642.72
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	643.20
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	642.88
Sec. 6, lots 1 and 2, S½NE¼, and SE¼;	321.11
Sec. 6, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;	305.95
Sec. 7, lots 1 and 2, and E½NW¼; (Non-Federal Surface and Subsurface)	153.21
Sec. 7, lots 3 and 4, E½, and E½SW¼;	473.71
Secs. 8 and 9;	1280.00
Sec. 10, SE¼, N½NW¼, SE¼NW¼, and S½;	600.00
Sec. 10, SW¼NW¼; (Non-Federal Surface and Subsurface)	40.00
Secs. 11 to 16, inclusive;	3840.00
Sec. 17; (Non-Federal Subsurface)	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	626.68
Sec. 19, lots 1, 2, and 4, E½, and E½W½;	589.27
Sec. 19, lot 3;	36.45
Sec. 20;	640.00
Sec. 21; (Non-Federal Subsurface)	640.00
Secs. 22 to 24, inclusive	1920.00
T. 32 N., R. 12 W.,	
Sec. 1, lot 1 (Non-Federal Surface and Federal Subsurface)	39.99
Sec. 1, lots 2 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;	479.85
Sec. 1, E½SE¼, SE¼NE¼; (Non-Federal Surface and Subsurface)	120.00
Sec. 2, lots 1 to 4, inclusive, S½N½, SW¼, and S½SE¼;	558.88
Sec. 2, N½SE¼; (State Surface and Subsurface)	80.00
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	638.20
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	638.12
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Subsurface)	638.16
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	622.81
Sec. 7, lots 1 and 2, and E½NW¼;	151.87
Sec. 7, lots 3 and 4, E½, and E½SW¼; (Non-Federal Subsurface)	543.86
Secs. 8 to 16, inclusive;	5760.00
Sec. 17; (Non-Federal Subsurface)	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	624.52
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Subsurface)	625.97
Secs. 20 to 24;	3200.00
Sec. 25; (Non-Federal Subsurface)	640.00
Sec. 26;	640.00
Sec. 27; (Non-Federal Subsurface)	640.00
Sec. 28;	640.00
Sec. 29; (Non-Federal Subsurface)	640.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	625.68
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Subsurface)	625.12
Sec. 32;	640.00
Sec. 33; (Non-Federal Subsurface)	640.00
Sec. 34;	640.00
Sec. 35. (Non-Federal Subsurface)	640.00
T. 32 N., R. 13 W.,	
Sec. 1, lots 1 to 4, inclusive, S½, and S½N½; (Non-Federal Subsurface)	639.00
Sec. 2, lots 1 to 4, inclusive, S½, and S½N½;	637.92
Sec. 3, lots 1 to 4, inclusive, S½, and S½N½; (Non-Federal Subsurface)	638.64
Sec. 4, lots 1 to 4, S½, and S½N½;	539.08
Sec. 5, lots 1 to 4, inclusive, S½, and S½N½; (Non-Federal Subsurface)	638.80
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	623.61
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Subsurface)	625.36
Sec. 8;	640.00
Sec. 9; (Non-Federal Subsurface)	640.00
Sec. 10;	640.00
Sec. 11; (Non-Federal Subsurface)	640.00
Sec. 12;	640.00
Sec. 13; (Non-Federal Subsurface)	640.00
Sec. 14;	640.00
Sec. 15; (Non-Federal Subsurface)	640.00
Sec. 16;	640.00
Sec. 17; (Non-Federal Subsurface)	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	626.44
Sec. 19, lots 1 and 2, NE¼, and E½NW¼; (Non-Federal Subsurface)	313.73
Sec. 19, lots 3 and 4, SE¼, E½SW¼;	314.31
Sec. 20;	640.00

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 21; (Non-Federal Subsurface)	640.00
Sec. 22;	640.00
Sec. 23; (Non-Federal Subsurface)	640.00
Sec. 24;	640.00
Sec. 25; (Non-Federal Subsurface)	640.00
Sec. 26;	640.00
Sec. 27; (Non-Federal Subsurface)	640.00
Sec. 28;	640.00
Sec. 29; (Non-Federal Subsurface)	640.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½; (BLM and GCNP)	629.80
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; (BLM and GCNP)	630.72
Sec. 32; (BLM and GCNP)	640.00
Sec. 33; (BLM and GCNP)	640.00
Sec. 34;	640.00
Sec. 35; (Non-Federal Subsurface)	640.00
Sec. 36.	640.00
T. 32 N., R. 14 W.,	
Sec. 1, lots 1 to 4, inclusive, S½, and S½N½;	639.20
Sec. 2, lots 1 to 4, inclusive, S½, and S½N½;	638.84
Sec. 3, lots 1 to 4, inclusive, S½, and S½N½;	639.72
Sec. 4, lots 1 to 4, inclusive, S½, and S½N½;	639.04
Sec. 5, lots 1 to 4, inclusive, S½, and S½N½;	639.04
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	626.50
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	626.36
Secs. 8 to 17, inclusive; (secs. 16 and 17 partially within GCNP)	6400.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	626.20
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; (BLM and GCNP)	626.32
Secs. 22 to 26, inclusive, and Sec. 36. (BLM and GCNP)	3840.00
T. 33 N., R. 8 W.,	
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; (partially within GCNP)	643.32
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	635.39
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	634.12
Sec. 8; (partially within GCNP)	640.00
Sec. 17; (partially within GCNP)	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½	635.24
T. 33 N., R. 9 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	638.32
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	636.40
Sec. 3, lot 1; (Non-Federal Surface and Subsurface)	39.06
Sec. 3, lots 2 to 4, inclusive, S½N½, and S½; (Non-Federal Subsurface)	597.39
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	637.40
Sec. 5, lots 1 to 4, inclusive, S½N½, and S¼; (Non-Federal Subsurface)	633.84
Sec. 5, 4 acres within lot 1; (Non-Federal Surface and Subsurface)	4.00
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	636.66
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Subsurface)	637.04
Sec. 8;	640.00
Sec. 9; (Non-Federal Subsurface)	640.00
Sec. 10;	640.00
Sec. 11, E½SE¼NW¼, E½NE¼SW¼, W½SW¼SW¼, E½SE¼SW¼, SE¼, S½NE¼, NE¼NE¼, N½NW¼NE¼, SE¼NW¼NE¼, S½SE¼SW¼SW¼, and S½SW¼SE¼SW¼; (Non-Federal Subsurface)	400.00
Sec. 11, SW¼NE¼NE¼, N½NW¼, SW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, NW¼SW¼, NE¼SW¼SW¼, NW¼SE¼SW¼, N½SW¼SE¼SW¼, and N½SE¼SW¼SW¼; (Non-Federal Surface and Subsurface)	240.00
Secs. 12 to 17, inclusive	3840.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½.	637.84
T. 33 N., R. 10 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Subsurface)	641.00
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	640.44
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	638.84
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	638.68
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	639.20
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	636.77
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	638.12
Secs. 8 to 17, inclusive;	6400.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½.	638.84
T. 33 N., R. 11 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	638.88
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	637.88
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	637.28
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	637.80
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	639.52
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	636.12
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	639.08

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Secs. 8 to 15, inclusive;	5120.00
Sec. 16; (State Surface and Subsurface)	640.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	639.52
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	639.56
Sec. 20, E½, E½W½, W½NW¼, and SW¼SW¼;	600.00
Sec. 20, NW¼SW¼; (Non-Federal Surface and Subsurface)	40.00
Secs. 21 to 29, inclusive;	5760.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	639.64
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	639.96
Secs. 32 to 36, inclusive.	3200.00
T. 33 N., R.12 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Subsurface)	640.56
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	641.48
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	642.00
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	641.25
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Subsurface)	640.60
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	637.88
Sec. 7, lots 1 to 4, inclusive, and E½, E½W½; (Non-Federal Subsurface)	638.68
Sec. 8;	640.00
Sec. 9; (Non-Federal Surface and Subsurface)	640.00
Sec. 10, N½; (Non-Federal Surface and Subsurface)	320.00
Sec. 10, S½; (Non-Federal Surface and Federal Subsurface)	320.00
Secs. 11 to 14, inclusive;	2560.00
Sec. 15, E½; (Non-Federal Surface and Subsurface)	320.00
Sec. 15, W½; (Non-Federal Surface and Federal Subsurface)	320.00
Sec. 16; (State Surface and Subsurface)	640.00
Sec. 17; (Non-Federal Subsurface)	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	639.59
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Subsurface)	640.00
Sec. 20;	640.00
Sec. 21; (Non-Federal Surface and Subsurface)	640.00
Sec. 22; (Non-Federal Surface and Federal Subsurface)	640.00
Secs. 23 to 25, inclusive;	1920.00
Sec. 26, E½, E½NW¼, and NE¼SW¼;	440.00
Sec. 26, W½W½ and SE¼SW¼; (Non-Federal Surface and Subsurface)	200.00
Secs. 27 and 28; (Non-Federal Surface and Subsurface)	1280.00
Sec. 29; (Non-Federal Subsurface)	640.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	640.28
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Subsurface)	640.16
Sec. 32;	640.00
Sec. 33; (Non-Federal Subsurface)	640.00
Sec. 34, N½; (Non-Federal Surface and Subsurface)	320.00
Sec. 34, S½;	320.00
Sec. 35, N½; (Non-Federal Surface and Subsurface)	320.00
Sec. 35, S½;	320.00
Sec. 36. (State Surface and Subsurface)	640.00
T. 33 N., R. 13 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	641.12
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Subsurface)	641.76
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	640.64
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	639.44
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	639.08
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	636.23
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	637.72
Sec. 8;	640.00
Sec. 9; (Non-Federal Subsurface)	640.00
Sec. 10;	640.00
Sec. 11; (Non-Federal Subsurface)	640.00
Sec. 12;	640.00
Sec. 13; (Non-Federal Subsurface)	640.00
Sec. 14;	640.00
Sec. 15; (Non-Federal Subsurface)	640.00
Secs. 16 and 17;	1280.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	638.20
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	638.84
Sec. 20;	640.00
Sec. 21; (Non-Federal Subsurface)	640.00
Sec. 22;	640.00
Sec. 23; (Non-Federal Subsurface)	640.00
Sec. 24;	640.00
Sec. 25; (Non-Federal Subsurface)	640.00

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 26;	640.00
Sec. 27; (Non-Federal Subsurface)	640.00
Sec. 28;	640.00
Sec. 29; (Non-Federal Subsurface)	640.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	639.48
Sec. 31, lots 1 to 4, inclusive, E½, E½W½;	639.84
Sec. 32;	640.00
Sec. 33; (Non-Federal Subsurface)	640.00
Sec. 34;	640.00
Sec. 35; (Non-Federal Subsurface)	640.00
Sec. 36. 640.00.	
T. 33 N., R. 14 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	639.60
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	639.72
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	640.76
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	639.82
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	638.88
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	638.36
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	639.96
Secs. 8 to 17, inclusive;	6400.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	639.96
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	641.32
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	641.10
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	639.76
Secs. 32 to 35, inclusive;	2560.00
Sec. 36, SE¼SE¼; (State Surface and Subsurface)	40.00
Sec. 36, N½, N½S½, S½SW¼, and SW¼SE¼.	600.00
T. 33 N., R. 15 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	640.00
Sec. 2, lots 1 to 4, inclusive, S½NW¼, SE¼NE¼, and S½; (State Surface and Subsurface)	600.40
Sec. 2, SW¼NE¼;	40.00
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	640.20
Secs. 10 to 15, inclusive;	3840.00
Secs. 22 to 27, inclusive;	3840.00
Secs. 34 to 36, inclusive.	1920.00
T. 34 N., R. 7 W.,	
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	636.92
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	636.16
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	636.44
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	629.91
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	631.52
Sec. 8;	640.00
Sec. 9, E½NE¼, NW¼, NW¼SW¼, S½SW¼;	360.00
Sec. 9, W½NE¼, NE¼SW¼, and SE¼; (Non-Federal Surface and Federal Subsurface)	280.00
Sec. 10, E½W½, W½NW¼, and NW¼SW¼;	280.00
Sec. 10, SW¼SW¼; (Non-Federal Surface and Federal Subsurface)	40.00
Sec. 16; (State Surface and Subsurface)	640.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	631.52
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	631.64
Sec. 20, N½, SW¼, W½SE¼, and SE¼SE¼;	600.00
Sec. 20, NE¼SE¼; (Non-Federal Surface and Federal Subsurface)	40.00
Sec. 21, NE¼, E½NW¼, N½S½, SE¼SW¼, and SW¼SE¼; (Non-Federal Surface and Federal Subsurface)	480.00
Sec. 21, W½NW¼, SW¼SW¼, and SE¼SE¼;	160.00
Sec. 28, W½;	320.00
Sec. 29, W½ and W½E½;	459.90
Sec. 29, E½; (Non-Federal Surface and Federal Subsurface)	180.10
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	632.20
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	632.60
Sec. 32; (State Surface and Subsurface)	640.00
Sec. 33, W½;	315.00
Sec. 33, 5 acres within W½; (Non-Federal Surface and Federal Subsurface)	5.00
T. 34 N., R. 8 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	639.60
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	638.68
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	637.32
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	638.24
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	639.84
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	626.03
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	628.12
Secs. 8 to 14, inclusive;	4480.00

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 15, N½, N½S½, SE¼SW¼, and S½SE¼;	600.00
Sec. 15, SW¼SW¼; (Non-Federal Surface and Federal Subsurface)	40.00
Sec. 16, N½ and SW¼; (State Surface and State Subsurface)	480.00
Sec. 16, SE¼;	160.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	630.76
Sec. 19, lots 1 to 4, inclusive, NE¼NE¼, S½NE¼, E½W½, and SE¼;	593.08
Sec. 19, NW¼NE¼; (Non-Federal Surface and Subsurface)	40.00
Secs. 20 and 21;	1280.00
Sec. 22, E½, and SW¼SW¼;	360.00
Sec. 22, NW¼, N½SW¼, and SE¼SW¼; (Non-Federal Surface and Federal Subsurface)	280.00
Secs. 23 and 24;	1280.00
Sec. 29; (BLM and GCNP)	640.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	633.12
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	633.60
Sec. 32. (BLM and GCNP)	640.00
T 34 N., R. 9 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	639.04
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	640.28
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	642.32
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	641.64
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	639.92
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	634.16
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	635.20
Sec. 8;	640.00
Sec. 9, SE¼SE¼; (Non-Federal Surface and Subsurface)	40.00
Sec. 9, N½, N½S½, S½SW¼, and SW¼SE¼;	600.00
Secs. 10 to 17, inclusive;	5120.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	637.04
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	637.12
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	638.44
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Subsurface)	639.32
Sec. 32; (State Surface and Subsurface)	640.00
Sec. 33; (Non-Federal Subsurface)	640.00
Sec. 34 to 36, inclusive	1920.00
T 34 N., R. 10 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Surface and Federal Subsurface)	640.88
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface)	641.44
Sec. 3, lots 1 to 4, inclusive, and S½N½;	320.04
Sec. 3, S½; (Non-Federal Surface and Federal Subsurface)	320.00
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	639.32
Sec. 5, lots 1 to 3, inclusive, S½NE¼, SE¼NW¼, SE¼, E½SW¼, SW¼SW¼;	479.76
Sec. 5, lot 4, SW¼NW¼, and NW¼SW¼; (Non-Federal Surface and Federal Subsurface)	119.60
Sec. 6, lots 1 to 3, inclusive, S½NE¼, N½SE¼; (Non-Federal Surface and Federal Subsurface)	279.19
Sec. 6, lots 4 to 7, inclusive, SE¼NW¼, E½SW¼, and S½SE¼;	357.39
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	638.28
Secs. 8 and 9;	1240.00
Sec. 10, N½; (Non-Federal Surface and Federal Subsurface)	320.00
Sec. 10, S½;	320.00
Secs. 11 to 15, inclusive;	3200.00
Sec. 16; (State Surface and Subsurface)	640.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	638.36
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	639.36
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	638.96
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	636.68
Sec. 32; (State Surface and Subsurface)	640.00
Secs. 33 and 34;	1280.00
Sec. 35, NE¼NE¼; (Non-Federal Surface and Subsurface)	40.00
Sec. 35, SE¼NE¼, W½NE¼, NW¼, and S½; (Non-Federal Subsurface)	600.00
Sec. 36. (State Surface and Subsurface)	640.00
T. 34 N., R. 11 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	638.02
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	634.82
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	632.92
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	632.34
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	632.44
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;	627.62
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	635.36
Secs. 8 to 17, inclusive;	6400.00

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	634.98
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	634.50
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	634.66
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	634.04
Sec. 32, E½NE¼ and S½;	400.00
Sec. 32, W½NE¼ and NW¼; (State Surface and Subsurface)	240.00
Secs. 33 to 36, inclusive.	2560.00
T. 34 N., R. 12 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	631.40
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface)	630.52
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	630.88
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	629.08
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	627.80
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	614.78
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	627.12
Secs. 8 to 15, inclusive;	5120.00
Sec. 16; (State Surface and Subsurface)	640.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	629.08
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	630.56
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	632.36
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	635.24
Sec. 32; (Non-Federal Subsurface)	640.00
Secs. 33 to 35, inclusive;	1920.00
Sec. 36. (State Surface and Subsurface)	640.00
T. 34 N., R. 13 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	628.36
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface)	626.96
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	626.40
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	626.96
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	627.36
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	619.41
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	632.52
Secs. 8 to 15, inclusive;	5120.00
Sec. 16; (State Surface and Subsurface)	640.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	633.20
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	633.48
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	633.84
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	634.92
Secs. 32 to 36, inclusive.	3200.00
T. 34 N., R. 14 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	627.84
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	628.52
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	630.04
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	630.16
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	630.08
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	628.80
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	632.76
Secs. 8 to 17, inclusive;	6400.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	634.00
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	635.28
Sec. 20;	640.00
Sec. 21, lots 1 and 2, N½, SW¼, and W½SE¼;	633.50
Sec. 21, lot 37; (Non-Federal Surface and Subsurface)	6.50
Sec. 22, lot 37; (Non-Federal Surface and Subsurface)	14.16
Sec. 22, lots 1 and 2, N½, E½SW¼, and SE¼;	625.84
Secs. 23 to 29, inclusive;	4480
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	635.80
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	636.84
Sec. 32, SW¼SW¼; (State Surface and State Subsurface)	40.00
Sec. 32, N½, N½S½, SE¼SW¼, and S½SE¼;	600.00
Secs. 33 to 36, inclusive.	2560.00
T. 34 N., R. 15 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	631.32
Sec. 2, lots 1 to 3, inclusive, S½NE¼, SW¼, and SE¼SE¼;	392.50
Sec. 2, lot 4, S½NW¼, NW¼SE¼, SW¼SE¼; (State Surface and Subsurface)	237.42
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	627.28
Sec. 4, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	622.07

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	622.28
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	605.39
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	627.64
Secs. 8 to 17, inclusive;	6400.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	628.48
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	629.12
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	630.16
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	631.04
Secs. 32 to 36, inclusive.	3200.00
T. 35 N., R. 7 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	638.80
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	638.64
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	640.20
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	640.76
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	640.00
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	625.29
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	627.60
Secs. 8 to 17, inclusive;	6400.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	629.68
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	630.48
Secs. 20 to 24, inclusive;	3200.00
Sec. 27, NW¼NE¼ and N½NW¼;	120.00
Sec. 27, SW¼NE¼, S½NW¼, and N½SW¼; (Non-Federal Subsurface)	200.00
Sec. 28, N½NE¼, SE¼NE¼, NW¼, and N½SW¼;	360.00
Sec. 28, SE¼NE¼, S½SW¼, and SE¼; (Non-Federal Subsurface)	280.00
Sec. 29;	640.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	630.36
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	630.80
Sec. 32; (State Surface and Subsurface)	640.00
Sec. 33, NE¼NE¼, S½NE¼, SE¼NW¼, and S½;	480.00
Sec. 33, NW¼NE¼, N½NW¼, and SW¼NW¼; (Non-Federal Surface and Federal Subsurface)	160.00
T. 35 N., R. 8 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	639.52
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface)	640.08
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Surface and Federal Subsurface)	639.24
Sec. 4, lots 1 and 2, S½NE¼, and SE¼; (Non-Federal Surface and Federal Subsurface)	318.75
Sec. 4, lots 3 and 4, S½NW¼, and SW¼;	318.89
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	637.52
Sec. 6, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and SE¼;	474.40
Sec. 6, lots 5 to 7, inclusive, SE¼SW¼; (Non-Federal Surface and Federal Subsurface)	147.75
Sec. 7, lots 1 to 3, inclusive; (Non-Federal Surface and Federal Subsurface)	108.27
Sec. 7, lot 4, E½, and E½W½;	516.21
Sec. 8;	640.00
Sec. 9, E½; (Non-Federal Surface and Federal Subsurface)	320.00
Sec. 9, W½;	320.00
Sec. 10; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 11 to 13, inclusive;	1920.00
Sec. 14, N½, N½S½, S½SE¼, and E½SE¼SW¼;	580.00
Sec. 14, W½SE¼SW¼ and SW¼SW¼; (Non-Federal Surface and Subsurface)	60.00
Sec. 15, N½, N½S½, S½SW¼, and SW¼SE¼;	600.00
Sec. 15, SE¼SE¼; (Non-Federal Surface and Subsurface)	40.00
Secs. 16 and 17;	1280.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	625.24
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	624.96
Sec. 20, E½, NW¼, S½N½SW¼, and S½SW¼;	600.00
Sec. 20, N½N½SW¼; (Non-Federal Surface and Federal Subsurface)	40.00
Secs. 21 to 28, inclusive;	5120.00
Sec. 29, E½ and S½SW¼;	400.00
Sec. 29, NW¼ and N½SW¼; (Non-Federal Surface and Federal Subsurface)	240.00
Sec. 30, lots 1 and 2, NE¼, E½NW¼, and SE¼;	472.44
Sec. 30, lots 3 and 4, and E½SW¼; (Non-Federal Surface and Federal Subsurface)	152.92
Sec. 31, lots 1 and 2, and E½NW¼; (Non-Federal Surface and Federal Subsurface)	152.99
Sec. 31, lots 3 and 4, NE¼, E½SW¼, and SE¼;	472.65
Sec. 32, NW¼ and S½SW¼; (State Surface and Subsurface)	240.00
Sec. 32, NE¼, N½SE¼, and S½S½;	400.00
Secs. 33 to 36, inclusive.	2560.00
T. 35 N., R. 9 W.,	
Sec. 1, lots 1 to 4, inclusive;	159.68
Sec. 1, S½N½ and S½; (Non-Federal Surface and Federal Subsurface)	480.00
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface)	639.84
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	640.40

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	640.24
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	638.28
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	626.11
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	629.44
Secs. 8 to 11, inclusive;	2560.00
Sec. 12, N½, N½S½, and SE¼SW¼; (Non-Federal Surface and Federal Subsurface)	520.00
Sec. 12, SW¼SW¼ and S½SE¼;	120.00
Sec. 13, E½NE¼, NW¼NE¼, NW¼, NW¼SW¼, and S½S½;	480.00
Sec. 13, SW¼NE¼, NE¼SW¼, and N½SE¼; (Non-Federal Surface and Federal Subsurface)	160.00
Sec. 14;	640.00
Sec. 15, N½ and SW¼;	480.00
Sec. 15, SE¼; (Non-Federal Surface and Federal Subsurface)	160.00
Sec. 16; (State Surface and Subsurface)	640.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½W½, SW¼NE¼, and W½SE¼; (Non-Federal Surface and Federal Subsurface)	428.72
Sec. 18, N½NE¼ and SE¼NE¼;	120.00
Sec. 18, E½SE¼; (State Surface and Federal Subsurface)	80.00
Sec. 19, lots 1 to 4, inclusive, and NE¼SW¼; (Non-Federal Surface and Federal Subsurface)	190.76
Sec. 19, NE¼, E½NW¼, and N½SE¼; (State Surface and Federal Subsurface)	320.00
Sec. 19, SE¼SW¼ and S½SE¼;	120.00
Sec. 20, E½, E½W½, and SW¼SW¼;	520.00
Sec. 20, W½NW¼ and NW¼SW¼; (State Surface and Federal Subsurface)	120.00
Sec. 21;	640.00
Sec. 22, W½;	320.00
Sec. 22, E½; (Non-Federal Surface and Federal Subsurface)	320.00
Secs. 23 and 24;	1280.00
Sec. 25, N½;	320.00
Sec. 25, S½; (Non-Federal Surface and Federal Subsurface)	320.00
Sec. 26, N½, SW¼, and W½SE¼;	560.00
Sec. 26, E½SE¼; (Non-Federal Surface and Federal Subsurface)	80.00
Sec. 27, NE¼; (Non-Federal Surface and Federal Subsurface)	160.00
Sec. 27, NW¼ and S½;	480.00
Secs. 28 and 29;	1280.00
Sec. 30, lots 1 and 2; (Non-Federal Surface and Federal Subsurface)	76.46
Sec. 30, lots 3 and 4, E½, and E½W½;	556.42
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	633.88
Sec. 32; (State Surface and Subsurface)	640.00
Secs. 33 to 35, inclusive;	1920.00
Sec. 36, N½ and N½S½; (State Surface and Subsurface)	480.00
Sec. 36, S½S½;	160.00
T. 35 N., R. 10 W.,	
Sec. 1, lot 1 and SE¼NE¼;	80.06
Sec. 1, lots 2 to 4, inclusive, S½NW¼, SW¼NE¼, and S½; (Non-Federal Surface and Federal Subsurface)	560.00
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Surface and Federal Subsurface)	641.88
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½; (Non-Federal Surface and Federal Subsurface)	641.80
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	642.68
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface)	643.76
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; (Non-Federal Surface and Federal Subsurface)	634.80
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Surface and Federal Subsurface)	633.76
Sec. 8, N½;	320.00
Sec. 8, S½; (Non-Federal Surface and Federal Subsurface)	320.00
Sec. 9, N½ and SE¼;	480.00
Sec. 9, SW¼; (Non-Federal Surface and Federal Subsurface)	160.00
Sec. 10; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 11, NE¼, N½NW¼, and S½; (Non-Federal Surface and Federal Subsurface)	560.00
Sec. 11, S½NW¼;	80.00
Sec. 12; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 13; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 14; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 15, N½, E½SW¼, and SE¼; (Non-Federal Surface and Federal Subsurface)	560.00
Sec. 15, W½SW¼; (Non-Federal Surface and Subsurface)	80.00
Sec. 16; (State Surface and Subsurface)	640.00
Sec. 17, N½ and N½S½; (Non-Federal Surface and Federal Subsurface)	480.00
Sec. 17, S½S½; (State Surface and Federal Subsurface)	160.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½; (Non-Federal Surface and Federal Subsurface)	634.56
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½; (State Surface and Federal Subsurface)	635.36
Sec. 20; (State Surface and Federal Subsurface)	640.00
Sec. 21; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 22, N½, N½S½, and S½SE¼; (Non-Federal Surface and Federal Subsurface)	560.00
Sec. 22, S½SW¼; (Non-Federal Surface and Subsurface)	80.00
Sec. 23; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 23, part SE¼SE¼SE¼;	1.00

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 24; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 25, N½ and SW¼; (Non-Federal Surface and Federal Subsurface)	480.00
Sec. 25, SE¼;	160.00
Secs. 26 to 28, inclusive; (Non-Federal Surface and Federal Subsurface)	1920.00
Sec. 29, E½ and SW¼; (Non-Federal Surface and Federal Subsurface)	480.00
Sec. 29, NW¼; (State Surface and Federal Subsurface)	160.00
Sec. 30, lots 1 to 4, inclusive, E½W½ and E½NE¼;	396.04
Sec. 30, W½NE¼; (State Surface and Federal Subsurface)	80.00
Sec. 30, SE¼; (Non-Federal Surface and Federal Subsurface)	160.00
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	636.32
Sec. 32; (State Surface and Subsurface)	640.00
Sec. 33;	640.00
Sec. 34; (State Surface and Federal Subsurface)	640.00
Sec. 35; (Non-Federal Surface and Federal Subsurface)	640.00
Sec. 36. (State Surface and Subsurface)	640.00
T. 35 N., R. 11 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	641.04
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½; (State Surface and Subsurface)	641.94
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	642.24
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	641.76
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	641.08
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	629.76
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	626.24
Sec. 8 and 9;	1280.00
Sec. 10, N½, NE¼SW¼, S½SW¼, and SE¼;	600.00
Sec. 10, NW¼SW¼; (Non-Federal Surface and Subsurface)	40.00
Sec. 11;	640.00
Sec. 12, NE¼ and S½; (Non-Federal Surface and Federal Subsurface)	480.00
Sec. 12, NW¼;	160.00
Sec. 13 to 15, inclusive;	1920.00
Sec. 16; (Non-Federal Subsurface)	640.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	629.92
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	630.32
Sec. 20, N½, SW¼, NE¼SE¼, and S½SE¼;	600.00
Sec. 20, NW¼SE¼; (Non-Federal Surface and Subsurface)	40.00
Secs. 21 to 29, inclusive;	5760.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	631.44
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	631.96
Sec. 32; (State Surface and Subsurface)	640.00
Sec. 33, NE¼NE¼; (Non-Federal Surface and Subsurface)	40.00
Sec. 33, NW¼NE¼, S½NE¼, NW¼, and S½;	600.00
Secs. 34 and 35;	1280.00
Sec. 36. (State Surface and Subsurface)	640.00
T. 35 N., R. 12 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	640.76
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	641.20
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	641.88
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	643.20
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	642.04
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	625.45
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	624.02
Secs. 8 to 17, inclusive;	6400.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	624.56
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	624.50
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	625.20
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	626.20
Secs. 32 to 36, inclusive.	3200.00
T. 35 N., R. 13 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	640.16
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	641.00
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	641.36
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	639.68
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	638.32
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	621.58
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	624.96
Secs. 8 to 15, inclusive;	5120.00
Sec. 16, N½, SW¼, and NW¼SE¼;	520.00
Sec. 16, NE¼SE¼ and S½SE¼; (State Surface and Subsurface)	120.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	626.84

GILA AND SALT RIVER MERIDIAN—Continued

	Acres
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	628.84
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	630.08
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	630.88
Secs. 32 to 35, inclusive;	2560.00
Sec. 36, N½ and E½SE¼; (State Surface and Subsurface)	400.00
Sec. 36, SW¼ and W½SE¼.	240.00
T. 35 N., R 14 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	640.44
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	641.32
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	641.68
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	640.32
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	641.04
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	635.04
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	634.68
Secs. 8 to 17, inclusive;	6400.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	634.84
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	635.08
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	635.68
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;	635.92
Secs. 32 to 36, inclusive.	3200.00
T. 35 N., R. 15 W.,	
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;	646.64
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;	651.16
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;	651.68
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;	653.64
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;	657.76
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;	627.76
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;	612.76
Secs. 8 to 15, inclusive;	5120.00
Sec. 16, N½NE¼, SW¼NE¼, NW¼, and S½;	600.00
Sec. 16, SE¼NE¼; (State Surface and State Subsurface)	40.00
Sec. 17;	640.00
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;	614.16
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;	615.20
Secs. 20 to 29, inclusive;	6400.00
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;	616.86
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½:	618.44
Sec. 32 to 36, inclusive.	3200.00

The areas described aggregate 605,361.68 acres in Mohave County. All lands are federally owned surface and subsurface unless otherwise noted.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from location and entry under the general lands laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights, unless the proposal is canceled or unless the withdrawal is finalized prior to the end of the segregation period.

Existing uses of the segregated lands may be continued in accordance with their terms except for the location or relocation of mining claims during the pendency of the 2-year segregative period, including but not limited to livestock grazing, legal ingress and egress to any valid mining claims and patented claims that may exist, rights-of-way, access to non-Federal lands and interests in lands, current recreational uses, and commercial uses being conducted under special use permits.

Dated: December 9, 1998.

Ray Brady,

Manager, Lands and Realty Group.

[FR Doc. 98–33046 Filed 12–11–98; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 21, 1998 at 10:00 am.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. AA1921–127 (Review)(Elemental Sulphur from Canada)—briefing and vote.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: December 10, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–33221 Filed 12–10–98; 3:00 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1966–98]

Extension of Work Authorization for Certain Haitians Previously Granted Deferred Enforced Departure (DED)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Since December 23, 1997, the Immigration and Naturalization Service (Service) has granted an Employment Authorization Document (EAD) to Haitian nationals on the basis of Deferred Enforced Department (DED); those EADs bear an expiration date of December 22, 1998, and the notation "274A.12(A)(11)." By this notice, the Service is granting an automatic extension until December 22, 1999, of the validity of those EADs issued to Haitian DED beneficiaries. This action will provide ample opportunity for Haitian beneficiaries of DED to apply for adjustment of status to that of permanent resident pursuant to section 902 of the Haitian Refugee Immigration Fairness Act of 1998, allowing them to maintain their employment eligibility until they are able to apply for a new EAD in connection with their application for adjustment of status.

DATES: This notice is effective December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

What is the Purpose of Extending Employment Authorization to Certain Haitians?

On December 23, 1997, the President ordered the Attorney General to grant DED for 1 year to certain Haitian nationals. On October 21, 1998, the President signed into law the Fiscal Year 1999 Omnibus Appropriations Act, Public Law 105–277. Title IX of Pub. L. 105–277 contains the Hatitian Refugee Immigration Fairness Act of 1998 (HRIFA). Specifically, section 902 HRIFA allows certain Haitian nationals to adjust status to that of a lawful permanent resident. In order to provide ample opportunity for Haitian nationals covered by DED to file for a new Employment Authorization Document (EAD) based upon an application for adjustment of status under HRIFA, the Service is granting an automatic extension until December 22, 1999, of the validity of their EADs. This automatic extension is limited to those EAD cards which bear an expiration date of December 22, 1998, and were previously issued to DED Haitians pursuant to 8 CFR 274a.12(a)(11). Affected Haitians who will need work authorization after December 22, 1999, should file applications for adjustement of status and HRIFA-based employment authorization as soon as interim regulations implementing HRIFA are published to ensure continuous employment authorization.

Who is Eligible To Receive an Automatic Extension of Employment Authorization?

To be eligible for an automatic extension of employment authorization, and individual must be a national of Haiti who previously applied for and was granted employment authorization under the December 23, 1997, Presidential order mandating DED for Haitians.

How Will Qualified Individuals be Notified?

Individuals will be notified that their EAD has been automatically extended by:

(1) The **Federal Register** notice, and

(2) A letter mailed to the individual's last known address.

Does a Qualified Individual Have to Apply to the Service for an Extenstion of Employment Authorization?

No, the extension is automatic. A qualified individual will be notified of the extension by a letter, which will be mailed to the individuals' last known address on file with the Service.

What Should an Individual Do if They Have Lost Their DED-Related EAD?

An individual who has lost his or her DED-related EAD should submit an Application for Employment Authorization, Form I–765, with fee to the Texas Service Center to obtain a replacement card. Applications should be addressed as follows: United States Immigration and Naturalization Service, Texas Service Center, P.O. Box 851041, Mesquite, Texas 75185–1041.

Can an Applicant Who is Eligible for DED Under the December 23, 1997, Presidential Order Still Apply if He or She has not Already Done So?

Yes. As long as the individuals is eligible to apply for an EAD under the original grant of DED, he or she may apply for DED-related employment authorization provided that such an application is received by the Texas Service Center on or before December 22, 1998, the last day covered by the Presidential order. Applications for DED-related employment authorization received after December 22, 1998, will be rejected.

What Documents Should an Individual Show to His or Her Employer as Proof of Employment Authorization When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or re-verification, qualified Haitian nationals who have received an extension of employment authorization by virtue of this **Federal Register** notice can present to their employer their EAD as proof of valid employment authorization and identity. To minimize confusion over this extension at the time of hire or re-verification, qualified Haitian nationals may also present to their employer a copy of either this **Federal Register** notice regarding the extension of employment authorization to December 22, 1999, or the letter that will be mailed to the last known address of qualified Haitian nationals.

How can Employers Determine Which Employees Have an Additional Year of Employment Authorization?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until December 22, 1999, employers of DED Haitians whose employment authorization is automatically extended must accept an EAD card which:

(1) Bears an expiration date of December 22, 1998; and

(2) Contains the notation "274A.12(A)(11)" on the face of the card under "Provision of Law."

The EAD cards or extension stickers showing the automatic December 22, 1999, expiration date will not be issued. Qualified Haitian nationals will be sent a letter to their last known address. Employers should not request proof of Haitian citizenship or any other document if the documentation presented by the employee satisfied the I–9 requirements and appears to be genuine and to relate to the employee. This action by the Service through this notice of the **Federal Register** does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment. Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. Employers may call the Service's Office of Business Liaison employer hotline at 1–800–357–2099 to speak to a Service representative about this Notice.

Employers can also call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Employees or applicants can call the OSC Employee Hotline at 1–800–255–7688.

How Should Employers Fill-out the Form I–9?

To complete the Form I–9 at the time of hire or re-verification for an employee who presents an EAD card that has been automatically extended by this **Federal Register** notice, the employer should include or add the following information under Section 2 (List A) or Section 3 of the Form I–9, as appropriate:

(1) Record the document identification information of the EAD; and

(2) Record December 22, 1999 for the document expiration date.

If the employee presents the mailed letter or a copy of this **Federal Register** notice, the employer should note on Form I–9 his or her review of these documents.

What is the First Step in Obtaining Subsequent Employment Authorization?

The Service will soon issue an interim rule which implements section 902 of HRIFA by establishing procedures for certain nationals of Haiti who have been residing in the United States to apply for lawful permanent resident status in this country. Instructions for obtaining employment authorization based upon HRIFA will be included in these procedures. In accordance with HRIFA, the interim rule will allow eligible aliens to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad and will waive many of the usual requirements for this benefit.

Who is Eligible for Benefits Under HRIFA?

In order to be eligible for benefits under HRIFA, an applicant must be a national of Haiti who was present in the United States on December 31, 1995, and who was physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for adjustment of status is filed (not counting absences totaling 180 days or less). The applicant must fall within one of the five classes of persons described in section 902(b)(1) of HRIFA. Those five classes are:

(1) Haitian nationals who filed for asylum before December 31, 1995,

(2) Haitian nationals who were paroled into the United States prior to December 31, 1998, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest,

(3) Haitian national children who arrived in the United States without parents and have remained without parents in the United States since arrival,

(4) Haitian national children who became orphaned subsequent to arrival in the United States; and

(5) Haitian national children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since such abandonment.

For the last three of these classes, the applicant must have been a child at the time of his or her arrival in the United States and on December 31, 1995, but not necessarily at the time of his or her adjustment of status. In addition, the spouse, child, or unmarried son or daughter of an alien whose status is adjusted pursuant to HRIFA may be eligible to adjust under HRIFA themselves.

When do Beneficiaries of HRIFA Benefits Have To File an Application for New Work Authorization?

Once the HRIFA regulations are promulgated, HRIFA beneficiaries will not be under a deadline to file an application for a new Employment Authorization Document. However, the Service emphasizes that the adjudication of an employment authorization application and issuance of an EAD may take up to 90 days not including the round-trip mailing time. Incomplete applications will be returned requiring additional time. Therefore, Haitian DED grantees who apply for adjustment of status under HRIFA should file their work authorization applications as soon as possible in order to receive their HRIFA-based EADs before December 22, 1999, when this automatic extension of employment authorization expires.

Dated: December 9, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–33159 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

Entergy Gulf States, Inc. and Entergy Operations, Inc. (River Bend Station, Unit 1); Exemption

[Docket No. 50–458]

I

Entergy Operations, Incorporated[1] (the Licensee), is the holder of Facility Operating License No. NPF–47, which authorizes operation of the River Bend Station, Unit 1 (RBS) (the facility). The license provides, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission now or hereafter in effect.

The RBS, is a boiling-water nuclear reactor located approximately 2 miles east of the Mississippi River in West Feliciana Parish, Louisiana, approximately 2.7 miles southeast of St. Francisville, Louisiana and approximately 18 miles northwest of the city limits of Baton Rouge, Louisiana.

II

Section 70.24 of Title 10 of the *Code of Federal Regulations*, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

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[1] Entergy Operations, Incorporated is authorized to act as agent for Entergy Gulf States, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

III

The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at River Bend Station (RBS), and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Plant procedures do not permit more than 3 BWR fuel assemblies to be in storage or in transit between their associated shipping cask and dry storage rack at one time.
2. The k-effective of the fresh fuel storage racks filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water does not exceed 0.95, at a 95% probability, 95% confidence level.
3. If optimum moderation of fuel in the fresh fuel storage racks occurs when the fresh fuel storage racks are not flooded, the k-effective corresponding to this optimum moderation does not exceed 0.98, at a 95% probability, 95% confidence level.
4. The k-effective of spent fuel storage racks filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water does not exceed 0.95, at a 95% probability, 95% confidence level.
5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.
6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.
7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated May 15, 1997, Entergy Operations, Inc. (EOI) requested an exemption from the requirements of section 70.24(a) of Title 10 of the *Code of Federal Regulations*, "Criticality Accident Requirements," for the River Bend Station (RBS). On June 11, 1997, the NRC requested that RBS address the seven criteria published in Information Notice 97–77, "Exemptions from the Requirements of Section 70.24 of Title 10 of the Code of Federal Regulations' in order to continue with the exemption process.

On August 12, 1998, EOI superseded its original May 15, 1997, letter and requested an exemption from the criticality accident monitoring requirements stipulated in 10 CFR 70.24(a) specifically for the areas containing incore detectors (which are not in use) and unirradiated fuel while it is handled, used, or stored on site.

In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittal and has determined that, except for Criteria 1 and 3 discussed below, RBS meets the applicable criteria.

RBS does not restrict fuel movement and storage of fuel assemblies that are out of their associated shipping cask to 3 assemblies. However, based on the elevation and configuration of the area where the assemblies are placed before storage into the new or spent fuel racks, the possibility of flooding is highly improbable. In addition, administrative controls are provided to restrict the fire-fighting practices employed in the fuel building to prevent low-density optimum moderation conditions. Fire-fighting foam is not permitted in the area and hose stations are equipped with straight-stream nozzles while handling fuel in the fuel building or storing fuel in the new fuel vault so that the array will not be covered with mist. Therefore, the staff concludes that any array of fuel assemblies in storage or in transit while outside of their associated shipping cask will be safely subcritical under the most adverse moderation conditions feasible, and the exception to Criterion 1 is acceptable.

Although the RBS new fuel racks are designed to maintain k-effective less than 0.95 when either dry or completely flooded with water, the new fuel racks cannot meet the 0.98 k-effective limit under accident conditions of low-density optimum moderation (e.g., foam or mist). Therefore, solid, noncombustible, gasketed covers are provided over the new fuel vault to preclude the entrance of optimum moderation media. When these covers are removed for fuel handling, the fuel is covered by a fire retardant material to ensure that the storage array is not moderated by low-density moderation. As previously mentioned, administrative controls are also provided to prevent optimum moderation conditions in the new fuel vault so that the array will not be covered with mist. Therefore, the staff concludes that a k-effective greater than 0.98 will not be attained in the new fuel storage racks and the exception to Criterion 3 is acceptable.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur. The low probability of an inadvertent criticality constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 70.24 for the RBS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (63 FR 63755).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 2nd day of December 1998.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–33111 Filed 12–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing; North Atlantic Energy Service Corporation, et. al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of the interest held by Montaup Electric Company in Facility Operating License No. NPF–86 for the Seabrook

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Station, Unit No.1 (Seabrook Station), located in Rockingham County, New Hampshire, and considering issuance of a conforming amendment under 10 CFR 50.90.

Consent to the proposed transfer would authorize Little Bay Power Corporation (Little Bay) to possess the ownership interest in the Seabrook Station now held by Montaup Electric Company (Montaup). Little Bay is a wholly owned subsidiary of BayCorp Holdings, Ltd., which is the holding company that also owns Great Bay Power Corporation, an existing owner of the Seabrook Station. North Atlantic Energy Service Corporation, the sole licensed operator of the facility, would remain as the Managing Agent for the 11 Joint Owners of the facility and would continue to have exclusive responsibility for the management, operation and maintenance of the Seabrook Station. The license would be amended for administrative purposes to reflect the transfer of Montaup's ownership interest to Little Bay.

The proposed transfer does not involve a change in the rights, obligations, or interests of the other co-owners of the Seabrook Station.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, or any right thereunder, after notice to interested persons. Such approval is contingent upon the Commission's determination that the transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing, and petitions for leave to intervene, and written comments with regard to the transfer application, are discussed below.

By January 4, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request should address the factors that the Commission will also consider, in reviewing untimely requests, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 13, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the applications for consent to transfer Montaup's interest in the license and issuance of a conforming amendment submitted under cover of a letter dated September 29, 1998, from North Atlantic Energy Service Corporation which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 4th day of December, 1998.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–33109 Filed 12–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8084]

Rio Algom Mining Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Rio Algom Mining Corporation to revise a site-reclamation milestone in License No. SUA–1119 for the Lisbon, Utah, facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 23, 1998, a request from Rio Algom Mining Corporation (Rio Algom) to amend License Condition (LC) 55 A.(3) of Source Material License SUA–1119 for the Lisbon, Utah, facility. The license amendment request proposes to modify LC 55 A.(3) to change the completion date for placement of the final radon barrier on the pile. The date proposed by Rio Algom would extend completion of the final radon barrier by 18 years.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415–6629.

SUPPLEMENTARY INFORMATION: The portion of LC 55 A.(3) with the proposed change would read as follows:

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m^2 sec above background—December 31, 1999 for areas not covered by the evaporation ponds and by December 31, 2014 for the area under the avaporation ponds.

Rio Algom's request to amend LC 55 A.(3) of Source Material License SUA–1119, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Rio Algom Corporation, 6305 Waterford Blvd., Suite 325, Oklahoma City, Oklahoma 73118, Attention: William Paul Goranson; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 4th day of December 1998.

For the U.S. Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–33110 Filed 12–11–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Review of Information Collection: Year 2000 Compliance Survey

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. Year 2000 assessment survey is used to collect information from approximately 1300 international, national and local philanthropic and nonprofit organizations to be compiled in a report to the President's Council on Year 2000 Conversion. The report is due in December 1998. Each form takes approximately 60 minutes to complete. The annual estimated burden is 1300 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–8358, or E-mail to mbtoomey@opm.gov.

Comments on this proposal should be received within 3 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to:

Jennifer M. Hirschmann, Office of Extragovernmental Affairs, CFC Operations, US Office of Personnel Management 1900 "E" Street, NW, Room 5450, Washington, DC 20415
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–33194 Filed 12–10–98; 3:10 pm]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23591; No. 812–11328]

Dow Target Variable Fund LLC

December 8, 1998.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act").

APPLICANT: Dow Target Variable Fund LLC.

SUMMARY OF APPLICATION: Applicant seeks an order pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit Applicant's portfolios to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

FILING DATE: The application was filed on September 28, 1998 and amended on December 2, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 29, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should be received by the Commission by 5:30 p.m. on December 29, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for

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the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, One Financial Way, Cincinnati, Ohio 45242.

FOR FURTHER INFORMATION CONTACT: Susan M. Olson, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant is a registered, open-end management investment company (File No. 811–09019). It currently consists of twelve non-diversified portfolios, each named after a calendar month (January Portfolio, February Portfolio, etc.). Applicant was organized under the laws of Ohio as a limited liability company on September 21, 1998. Under Ohio law, a limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant ("Interest") represents an undivided interest in the stocks held in one of Applicant's portfolios.

2. The Interests are not offered directly to the public. The only direct owner of the Interests is The Ohio National Life Insurance Company ("Ohio National Life"), through its variable annuity separate accounts. Those of Ohio National Life's variable annuity owners who have contract values allocated to any of Applicant's portfolios have indirect beneficial rights in the Interests and have the right to instruct Ohio National Life with regard to how it votes the Interests that it holds in its variable annuity separate accounts.

3. Applicant's investment adviser is Ohio National Investments, Inc. (the "Adviser"). First Trust Advisors L.P. ("First Trust") is the sub-adviser to each of Applicant's portfolios.

4. Applicant states that each of its twelve portfolios consist of an investment portfolio of the common stocks of the ten companies in the Dow Jones Industrial Average (the "Dow") having the highest dividend yield as of the close of business of the last business day of the month preceding the month for which the portfolio is named (the "Stock Selection Date"). These ten companies are popularly known as the "Dogs of the Dow." Applicant states that on or about the first business day of the month for which a portfolio is named, First Trust will set the proportionate relationships among the ten stocks to be held in that portfolio for the next twelve months. At the end of a portfolio's twelfth month, the portfolio will be re-balanced with a new mix of ten Dogs of the Dow stocks.

5. Applicant states that the objective of each portfolio is to provide above-average total return through both capital appreciation and dividend income. The portfolios may or may not achieve that objective. Applicant states that the ten stocks held in any portfolio are not expected to reflect the entire index, and the prices of Interests are not intended to parallel or correlate with movements in the Dow. Applicant states that, generally, it will not be possible for all of the portfolios' funds to be invested in the prescribed mix of ten stocks at any time. Applicant states that the Adviser and First Trust will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate round lots of the Dogs of the Dow stocks.

6. The Dow consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the broader domestic stock market and of American industry. Applicant states that the Dow Jones & Company, Inc. is not affiliated with it and has not participated, and will not participate, in any way in the creation of the portfolios or the selection of the stocks purchased by the portfolios.

7. Applicant states that until the end of the initial month of a portfolio, Interests may be purchased by variable annuity separate accounts of Ohio National Life. After the initial month of a portfolio, no further Interests in that portfolio may be purchased until eleven months later. Interests may be redeemed at any time.

8. Applicant states that any purchase of Interests made after the initial business day of the month for which the portfolio is named, will duplicate, as nearly as is practicable, the original proportionate relationships of the ten stocks held by that portfolio. Because the prices of each of the ten stocks will change nearly every day, the ratio of the price of each to the total price of the entire group of ten will also change daily. However, Applicant states that the proportion of stocks held by that portfolio will not change materially as a result of the sales of additional Interests after the first business day of the month for which the portfolio is named.

9. Applicant states that it is not a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). Nonetheless, Applicant states that it does not pay federal income tax on its interest, dividend income or capital gains. As a limited liability company whose interests are sold only to Ohio National Life, Applicant states that it is disregarded as an entity for purposes of federal income taxation. Applicant states that Ohio National Life, through its variable annuity separate accounts, is treated as owning the assets of the portfolios directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Applicant states that under current tax law, interest, dividend income and capital gains of Applicant are not taxable to Applicant, and are not currently taxable to Ohio National Life or to contract owners, when left to accumulate within a variable annuity contract.

10. Section 817(h) of the Code provides that in order for a variable contract which is based on a segregated asset account to qualify as an annuity contract under the Code, the investments made by that account must be "adequately diversified" in accordance with Treasury regulations.

11. Applicant states that each portfolio must comply with the Section 817(h) diversification requirements. Therefore, Applicant states that the Adviser and First Trust may depart from the portfolio investment strategy, if necessary, in order to satisfy these Section 817(h) diversification requirements. Applicant represents that under all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each portfolio will be chosen solely according to the formula described above and will not be based on the research opinions or buy or sell recommendations of the Adviser or First Trust. Applicant represents that neither the Adviser nor First Trust has any discretion as to which common stocks are purchased. Applicant states that securities purchased for each portfolio may include securities of issuers in the Dow that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser. Rule 12d3–1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter or principal underwriter or their affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. Each of Applicant's portfolios undertakes to comply with all of the requirements of Rule 12d3–1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a securities related issuer.

2. Section 6(c) of the Act provides that the Commission by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant states that Section 12(d)(3) was intended: (a) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses; (b) to prevent potential conflicts of interest; (c) to eliminate certain reciprocal practices between investment companies and securities related businesses; and (d) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. A potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on the basis of investment merit. Applicant states that this concern does not arise in this situation. Applicant states that generally, neither the Applicant, the Adviser nor First Trust has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the Dow (which along with Dow Jones & Company, Inc., is unaffiliated with Applicant, the Adviser or First Trust). In addition, the stock must also qualify as one of the ten companies in the Dow that has the highest dividend yield as of the Stock Selection Date.

5. Applicant states that identical exemptive relief from Section 12(d)(3) has recently been granted to a management investment company for a structure which also involves investment options underlying variable annuities. In addition, Applicant states that Section 12(d)(3) relief has been granted to unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolio securities to the extent necessary to meet redemptions.

6. Applicant states that the Adviser and First Trust are obligated to follow the investment formula described above as nearly as practicable. Applicant states that, like prior applications for Section 12(d)(3) relief, securities purchased for each portfolio will be chosen with respect to the specified formula. Applicant states that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular portfolio would fail to be "adequately diversified" under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as an annuity contract under the Code. Applicant states that the likelihood of this exception arising is extremely remote. In such a situation, Applicant states that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant states that this limited discretion does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies and securities related businesses that Section 12(d)(3) is designed to prevent.

7. Applicant states that the liquidity of a portfolio is not a concern here since each common stock selected will be a component of the Dow, listed on the New York Stock Exchange, and among the most actively traded securities in the United States.

8. In addition, Applicant states that the effect of a portfolio's purchase of the stock of parents of broker-dealers would be *de minimis.* Applicant states that the common stocks of securities related issuers represented in the Dow are widely held with active markets and that potential purchases by a portfolio would represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

9. Another possible conflict of interest which has raised concern is where broker-dealers may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant states that because of the large market capitalization of the Dow issuers and the small portion of these issuers' common stock and trading volume that would be purchased by a portfolio, it is extremely unlikely that any device offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a portfolio would be invested in the broker-dealer or a parent thereof.

10. Finally, another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application, that no company whose stock is held in any portfolio, nor any affiliate of such a company, will act as broker or dealer for any portfolio in the purchase or sale of any security.

11. Applicant represents that the terms of the relief requested are consistent with the relief previously granted in similar applications. Applicant states that the terms of the relief requested are consistent with the standards set forth in Section 6(c) of the Act.

Applicant's Conditions

Applicant and each portfolio of Applicant agrees that any order granting the requested relief from Section 12(d)(3) shall be subject to the following conditions:

1. The common stock is included in the Dow as of the Stock Selection Date;

2. The common stock represents one of the ten companies in the Dow that have the highest dividend yield as of the Stock Selection Date;

3. As of close of business on the Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any portfolio's total assets, but

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in no event more than 10.5% of the value of the portfolio's total assets; and

4. No company whose stock is held in a portfolio, nor any affiliate thereof, will act as broker or dealer for any portfolio in the purchase or sale of any security for that portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that the order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33073 Filed 12–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26948]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

December 4, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) and any amendment is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by *December 28, 1998,* to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After *December 28, 1998,* the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation

(70–9383)

Ameren Corporation ("Ameren"), a registered holding company, located at 1901 Choteau Avenue, St. Louis, Missouri 63103, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and rules 42, 46 and 54 under the Act.

Ameren requests authority to implement a shareholder rights plan ("Plan") and to enter into a related Rights Agreement ("Agreement"). The Plan is intended, among other things, to given Ameren shareholders adequate time to assess a takeover bid without undue pressure. Under the Plan, the board of directors of Ameren ("Board") would declare a dividend distribution of one right ("Right") for each outstanding share of common stock, $.01 par value, of Ameren ("Common Stock") to shareholders of record at the close of business on a specified record date.

Terms of the Rights

Each Right issued to a registered holder of Common Stock would, after the Right becomes exercisable, entitle the holder to purchase from Ameren one 1/100th of a share of Series A Junior Participating Preferred Stock, $.01 par value ("Preferred Stock"), at a price to be determined by the Board, subject to adjustment ("Purchase Price"). Rights will not confer on the Rights holder any rights as a shareholder of Ameren shareholder until those Rights are exercised or exchanged, as described below. The Rights will expire at the close of business on October 9, 2008, unless earlier redeemed or exchanged by Ameren, as described below.

Until the earlier of two dates described below ("Distribution Date"), Rights will be evidenced only by the related Common Stock certificates and will be transferrable only in connection with the transfer of that Common Stock. One date occurs the tenth day following the date of a public announcement that any individual or entity ("Person") or group of affiliated or associated Person[1] acquired, or obtained the right to acquire, beneficial ownership of Common Stock aggregating fifteen percent or more of the then outstanding shares of Common Stock ("Acquiring Person"). The second date occurs on the tenth day (or such later date as the Board may determine prior to the time any Person or group of Persons becomes an Acquiring Person) after the date of commencement of, or announcement of an intention to commence, a tender offer or exchange offer the consummation of which would result in that Person or group of Persons becoming an Acquiring Person. After the Distribution Date, separate certificates evidencing the Rights will be mailed to those Rights holders who are Common Stock holders of record as of the close of business on the Distribution Date.

Exercise of Rights

In the event that a Person becomes an Acquiring Person, each holder of a Right will have the right to buy that number of shares of Common Stock (or, in certain circumstances, Preferred Stock, other Ameren securities or other assets) having a market value equal to two times the exercise price of Right. Under certain circumstances where Ameren is acquired in a business combination transaction with, or 50% or more of its assets or earning power is sold or transferred to, another company ("Acquiring Company"), exercise of a Right will entitle its holder to receive common stock or other equity of the Acquiring Company also having a value equal to twice the exercise price of the Right. Rights beneficially owned by any Acquiring Person will be null and void.

Redemption and Termination of Rights

At any time after a Person becomes an Acquiring Person and before the acquisition by such Person of 50% or more of outstanding Common Stock, the Board may exchange the Rights in whole or in part (other than Rights owned by an Acquiring Person which will have become void), at an exchange ratio or one share of Common Stock (or 1/100th of a share of Preferred Stock) per Right, subject to adjustment.[2] In addition, the Board may redeem all of the Rights at any time prior to a Person becoming an Acquiring Person, at a price of $.01 per Right, subject to adjustment ("Redemption Price"). If the Board orders the redemption of Rights or the exchange of Rights in whole, the only right of the holders of the Rights will be to receive the exchanged property or the Redemption Price, as the case may be.

Adjustments and Amendments

The Purchase Price, the number of shares of Preferred Stock covered by each Right and the number of Rights outstanding are subject to adjustment from time to time to prevent dilution. With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of a least 1% in such Purchase Price.

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[1] A Person would not include Ameren, any subsidiary of Ameren, an employee benefit plan of Ameren or of a subsidiary of Ameren ("Benefit Plan"), or any entity holding Common Stock for or in accordance with the terms of a Benefit Plan.

[2] The Rights may also be exchanged, under certain circumstances, for other Ameren securities or other assets.

In addition, the Board may, from time to time, amend the Rights Agreement without the consent of the holders of the Rights in order to correct or supplement any provision which may be defective or inconsistent with any other provisions, or to make any other provisions with respect to the Rights which Ameren may deem necessary and desirable. However, after the date that any Person becomes an Acquiring Person, the Rights Agreement may not be amended in any manner which would adversely affect the interests of the holders of the Rights. Ameren may at any time prior to a Person becoming an Acquiring Person amend the Rights Agreement to lower the fifteen percent threshold specified above for an Acquiring Person.

Terms of the Preferred Stock

The Preferred Stock will not be redeemable and will rank junior to all other series of any other class of Ameren's preferred stock with respect to the payment of dividends and the distribution of assets in liquidation. Each share of Preferred Stock will generally be entitled to receive quarterly dividends per share equal to the greater of $1.00 or 100 times the aggregate per share amount to any dividend declared on the Common Stock since the last quarterly dividend period, subject to certain adjustments. In the event of liquidation, the holders of the Preferred Stock generally will be entitled to receive an aggregate amount per share equal to 100 times the aggregate amount to be distributed per share to the holders of Common Stock, subject to certain adjustments.

In the event shares of Common Stock are exchanged for or changed into other property, each share of Preferred Stock generally will be similarly exchanged or changed at the same time into an amount per share equal to 100 times the aggregate amount of property into which or for which each share of Common Stock is changed or exchanged, subject to certain adjustments. In addition, each share of Preferred Stock generally will vote together with the common Stock and any other capital stock of Ameren having general voting rights and will be entitled to 100 votes, subject to certain adjustments. These dividends, liquidation and voting rights will be protected against dilution in the event that additional shares of Common Stock are issued in connection with a stock split or stock dividend or distribution.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33015 Filed 12–11–98; 8:45am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26950]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

December 8, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by *December 29, 1998,* to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After *December 29, 1998,* the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

C&T Enterprises, Inc., et al.

(70–9361)

Tri-County Rural Electric Cooperative, Inc. ("Tri-County"), 22 North Main Street, Box 256, Mansfield, Pennsylvania 16933–0448, a rural electric cooperative and a holding company exempt from all provisions of the Act, except section 9(a)(2), under section 3(a)(1),[1] and Claverack Rural Electric Cooperative, Inc. ("Claverack"), a rural electric cooperative not currently subject to the Act, and C&T Enterprises, Inc. ("C&T"), a corporation newly formed by Tri-County and Claverack and currently not subject to the Act, both located at Rural Route 2, Box 17, Wysox, Pennsylvania 18854, have filed an application requesting an order: (1) approving the acquisition ("Acquisition"), under sections 9(a)(2) and 10 of the Act, of the stock of Citizens' Electric Company ("Citizens") by C&T; and (2) granting Tri-County, Claverack and C&T, upon consummation of the Acquisition, an exemption under section 3(a)(1) of the Act from all of the provisions of the Act, except section 9(a)(2).

Tri-County is engaged in the distribution of electricity throughout a 4.484 square mile service area in seven counties in north-central Pennsylvania. As of December 31, 1997, Tri-County provided retail electric service to approximately 17,000 customers. Tri-County is not subject to utility regulation by any state or federal agency and is specifically exempted from any regulation by the Pennsylvania Public Utility Commission ("PA PUC") under the Pennsylvania Electric Cooperative Corporation Act.

Tri-County owns all of the stock of Wilderness Area Utilities, Inc. ("Wilderness"), which is a Pennsylvania public utility holding company exempt from all provisions of the Act, except section 9(a)(2), under section 3(a)(1) of the Act.[2] Wilderness has only one public utility subsidiary company, Wellsboro Electric Company ("Wellsboro"), which is a Pennsylvania investor-owned public utility. Wellsboro is engaged in the generation, transmission and distribution of electricity to approximately 5,500 customers in an approximately 266 square mile area in north-central Pennsylvania. Wellsboro is subject to regulation by the PAPUC. There are no other companies under Wilderness' holding company structure.

Claverack is engaged in the distribution of electricity throughout a service territory of approximately 1,820 square miles in an eight county region in north central and north eastern Pennsylvania. As of December 31, 1997, Claverack provided electric service to approximately 17,000 customers. Claverack is the sole shareholder of one subsidiary, Susquehanna Energy Plus, Inc. ("SEP"), which is a Pennsylvania corporation engaged in the property security business. Like Tri-County, Claverack is not subject to utility regulation by any state or federal agency and is specifically exempted from any regulation by the PA PUC under the Pennsylvania Electric Cooperative Corporation Act.

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[1] *Tri-County Rural Electric Cooperative, Inc.,* Holding Co. Act Release No. 26167 (Nov. 22, 1994).

[2] *Id.*

C&T is a Pennsylvania corporation incorporated on July 9, 1998. C&T was formed by Tri-County and Claverack specifically for the purpose of acquiring and holding shares of Citizens. The aggregate number of shares authorized by C&T is 100,000 shares of common stock, $100 par value per share. Tri-County and Claverack each own 1,000 shares of the common stock of C&T.

Citizens, an investor owned Pennsylvania public utility company, is principally engaged in the acquisition and distribution of electricity to approximately 6,300 customers in an approximately 55 square mile service territory in parts of two counties in central Pennsylvania.

For the fiscal year ended December 31, 1997, Tri-County's operating revenues, net margin and total assets were approximately $16 million, $740 thousand, and $47 million, respectively. For the fiscal year ended December 31, 1997, the operating revenues, net loss and total assets were: (1) For Wilderness, approximately $87 thousand, $285 thousand, and $12 million, respectively; and (2) for Wellsboro, approximately $6 million, $196 thousand, and $6 million, respectively.

For the fiscal year ended December 31, 1997, Claverack's operating revenues, net loss and total assets were approximately $18 million, $17 thousand, and $48 million, respectively.

For the fiscal year ended December 31, 1997, Citizens' operating revenues, net income and total assets were $9.3 million, $479,195, and $8.4 million, respectively.

On January 5, 1997, Wilderness and Citizens signed a Memorandum of Understanding ("MOU") regarding the purchase of Citizens' stock by means of a tender offer. Under the terms of the MOU, Wilderness submitted a tender offer of $79 per share for all of Citizens' outstanding shares of common stock, which offer expired on April 17, 1998. Citizens has 227 common stockholders holding 139,472 shares of common stock and no preferred stock. On July 20, 1998, after C&T was incorporated, Wilderness and Citizens entered into a Second Addendum to the Memorandum of Understanding ("Addendum") under which C&T assumed all of Wilderness' obligations under the MOU.

Following the Acquisition of Citizens, C&T will remain a subsidiary company of Tri-County and Claverack; however, C&T will become a public utility holding company by virtue of holding the common stock of Citizens. There will be no change in the ownership interests of Wilderness or Wellsboro as a result of the acquisition of Citizens. Tri-County will continue to hold all of Wilderness' outstanding common stock, and Wilderness will continue to hold all of the common and preferred stock of Wellsboro.

The applicants state that the Acquisition will produce benefits to the electric utility businesses of Tri-County, Claverack and Citizens. These benefits include: increased financial stability and strength; reductions in overall operating costs; efficiencies of operations; and integration of corporate and administrative functions.

Tri-County and Claverack have submitted an application with the PA PUC seeking regulatory approval to purchase the stock of Citizens. Neither Tri-County nor Claverack were required to make any required filings with the Antitrust Division of the United States Department of Justice or the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Other than the approval of the PA PUC and the Commission under the Act, no other regulatory approvals are deemed necessary for approval of the Acquisition.

Each of Tri-County, Claverack and C&T requests an order under section 3(a)(1) exempting it from all provisions of the Act, except section 9(a)(2), following consummation of the Acquisition. Further, each of Tri-County, Claverack and C&T states that it will be entitled to an exemption under section 3(a)(1) because each company, and each material public utility company subsidiary, will be predominantly intrastate in character and carry on its business substantially in Pennsylvania, the state in which each company and every material public utility company subsidiary are organized.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33069 Filed 12–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Sport-Haley, Inc., Common Stock, No Par Value; Warrants To Purchase Common Stock) File No. 1–12888

December 8, 1998.

Sport-Haley, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (collectively the "Securities") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Common Stock, No Par Value, of the Company has been listed for trading on the PCX since the Company's initial public offering on August 5, 1994. The Company's Warrants to Purchase Common Stock were listed for trading on the PCX from April 5, 1994, until September 20, 1994, when the Company exercised its option to redeem the Warrants.

From April 5, 1994, until December 14, 1994, the Company's Common Stock was quoted on the National Association of Securities Dealers Automated Quotations ("Nasdaq") SmallCap Market and since December 14, 1994, the Company's Common Stock has been quoted on the Nasdaq National Market System. The Company's Warrants were also listed on the Nasdaq SmallCap Market from April 5, 1994 until September 20, 1994, when they were redeemed.

The Board of Directors of the Company determined to voluntarily withdraw the Securities from listing and registration on the Exchange. In accordance with PCX Rule 3.4(b), the Company filed with the Exchange a copy of the resolutions adopted by the Board of Directors authorizing the voluntary withdrawal from listing and a letter setting forth the reasons for the proposed withdrawal and the facts in support thereof. If making the decision to withdraw the Securities, the Board of Directors was provided with four monthly reports of the trading volume which showed two or less transactions of 200 shares or less per month. The Board of Directors considered the extremely limited trading which occurs on the Exchange and the expense of the listing, as compared to the substantially greater volume of trading which occurs on the Nasdaq National Market System and the expense of the qualification. In view of the limited trading activity on the Exchange, the Board of Directors determined that any advantages of maintaining the listing did not justify the expense of remaining listed on the PCX.

By letter dated October 7, 1998, the Exchange informed the Company that its Equity Listings Committee had approved the Company's request to be removed from listing and registration.

This application relates solely to the voluntary withdrawal from listing of the Company's Securities from the PCX. The Company intends to continue its qualification and listing of the Securities on the Nasdaq National Market System and will continue to file reports under the Act, as amended.

Any interested person may, on or before December 30, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–33074 Filed 12–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 14, 1998.

A closed meeting will be held on Thursday, December 17, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, December 17, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: December 10, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–33183 Filed 12–10–98; 12:33 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40756; File No. SR–Amex–98–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to an Increase in Position and Exercise Limits for Narrow-Based Index Options

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 904C to increase position and exercise limits for narrow-based index options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to increase position and exercise limits for narrow-based index options traded on the Exchange.[3] Amex Rule 904C(c) provides three different position limits depending on index components' relative weightings in the index. Rule 905C establishes exercise limits for the corresponding options at the same levels. Currently, the limits are 9,000, 12,000 and 15,000 contracts on the same side of the market. Under the proposed changes the new limits will be 25,000, 35,000 and 45,000. The Exchange believes the proposed expansion of position and exercise limits for narrow-based indices is reasonable and appropriate considering position and exercise limits for over-the-counter conventional options overlying individual securities have recently been expanded and currently range from 13,500 to 75,000 contracts.[4] Further, the Exchange believes the proposed increase is consistent with the options exchanges' proposed increase in

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amex trades options on the following narrow-based indices: Airline, GoldBUGS, Biotechnology, Computer Hardware, Computer Technology, de Jager Year 2000, Disk Drive, Inter@ctive Week Internet, Morgan Stanley Commodity Related, Morgan Stanley Healthcare Payor, Morgan Stanley Healthcare Product, Morgan Stanley Healthcare Provider, Morgan Stanley High-Technology 35, Natural Gas, NatWest Energy, Networking, North American Telecommunications, Oil, Pharmaceutical, Securities Broker/Dealer and Tobacco.

[4] Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

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position and exercise limits for standardized equity options.[5]

The Amex believes that an increase in position and exercise limits is also appropriate because existing surveillance techniques at options exchanges adequately protect the integrity of the markets for the options that will be subject to these increased position and exercise limits. The Commission has stated that, "[p]osition limit rules were adopted by the options exchanges primarily to minimize manipulative potential and to prevent the accumulation of large options positions that, if exercised, might affect the price of the underlying stock."[6] To date, there have been no disciplinary actions involving manipulation in any narrow-based index product listed on the Exchange. The Exchange believes that its experience conducting surveillance of index options and program trading activity is sufficient to identify improper activity. Routine oversight inspections of Amex's regulatory programs by the Commission have not uncovered any inconsistencies or shortcomings in the manner in which index option surveillance is conducted. These procedures entail a daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both the options and underlying stock basket components.

Lastly, given the gradual, evolutionary approach that has been adopted by the Commission and the various options exchanges in increasing position and exercise limits, the Exchange believes that the proposed increases are reasonable and appropriate and would further accommodate the hedging needs of Exchange market makers, specialists, large investors and the facilitators of those investors who are restricted by the current levels.

Competition

The Commission has stated that, "limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market."[7] However, in today's market, the Exchange believes that position and exercise limits severely hamper Amex's ability to compete with the over the counter (OTC) markets. Investors who trade listed options on the Amex are placed at a serious disadvantage in comparison to the OTC market where index options are not subject to position and exercise limits. Member firms continue to express concern to the Exchange that position limits on Amex products are an impediment to their business and that they have no choice but to move their business to the OTC market where position limits are not an issue.

Financial requirements. The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in a narrow-based index option. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under paragraph (d)(2)(K) of Rule 462 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–39 and should be submitted by January 4, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33070 Filed 12–11–98; 8:45 am]

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[5] *See* Exchange Act Release Nos. 40159 (July 1, 1998), 63 FR 37151 (July 9, 1998); 40160 (July 1, 1998), 63 FR 37155 (July 9, 1998); 40400 (September 3, 1998), 63 FR 48777 (September 11, 1998).

[6] H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. at 41 (Comm. Print 1978).

[7] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[8] 15 U.S.C. 78f(b).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–40754; File No. SR-Amex-98-25)

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to Listing and Trading Stock Upside Note Securities on the Lehman Brothers European Stock Basket

December 7, 1998.

I. Introduction

On July 1, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Stock Upside Note Securities on the Lehman Brothers European Stock Basket. On July 31, 1998, and October 9, 1998, respectively, the Exchange submitted Amendments Nos. 1[3] and 2[4] to the proposed rule change to the Commission.

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on August 26, 1998.[5] No comments were received on the proposal. This order approves the proposal as amended.

II. Description of the Proposal

The Amex proposes to trade Stock Upside Note Securities ("SUNS") on the Lehman Brothers European Stock Basket ("Basket"), a new basket of stocks developed by Lehman Brothers Holdings, Inc. ("Lehman Brothers") based entirely on the shares of European companies. SUNS on the Basket are designed to allow investors to combine the protection of a portion of the principal amount of the SUNS with a potential additional payment based upon the performance of a portfolio of highly captalized European stocks. In particular, the proposed SUNS will provide at least 90% principal protection with the opportunity to participate in any upside appreciation of the Basket, subject to any cap on appreciation that may be included by the issuer.

Criteria Under Section 107A of the Amex Company Guide

Under section 107A of the *Amex Company Guide*, the Exchange may approve for listing and trading securities that can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures or warrants.[6] SUNS issues on the Basket will conform to the listing guidelines under Section 107A of the *Amex Company Guide*, which provide, among other things, that the issuer shall satisfy the earnings criteria set forth in Section 101[7] of the *Amex Company Guide* and have assets in excess of $100 million and stockholders' equity of at least $10 million. Where the issuer does not satisfy the earnings criteria set forth in Section 101 of the *Amex Company Guide*, the issuer must have assets in excess of $200 million and stockholders' equity of at least $10 million; or have assets in excess of $100 million and stockholders' equity of at least $20 million. Further, SUNS will have a minimum public distribution of 1,000,000 units with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders will be required. SUNS will have a principal amount/aggregate market value of not less than $4 million. In addition, Amex will apply the continued listing guidelines for the proposed SUNS as set forth in Sections 1001 through 1003 of the *Amex Company Guide*. In particular, Section 1003(b)(iii) regarding suspensions and delistings with respect to limited distribution and reduced market value bonds will apply to the SUNS.

The SUNS are non-convertible debt securities of Lehman Brothers and will conform to the above listing standards. Although the specific maturity date will not be established until immediately prior to the time of the offering, the SUNS will provide for maturity within a period of not less than two years and not more than seven years from the date of issue. The SUNS will provide for a single payment at maturity, and will bear no periodic payments of interest. The European Stock Basket SUNS will be denominated in U.S. dollars and will entitle the owner at maturity to receive an amount based on the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value," provided: (1) the amount payable at maturity will not be less than 90% of the principal amount of the SUNS; and (2) the issuer may place a cap on the maximum amount of be paid on the SUNS at maturity. Thus, holders of the SUNS may not receive the full amount of the appreciation of the Ending Average Portfolio Value over the Original Portfolio Value. For example, Lehman Brothers may place a cap on the amount to be received at maturity as a stated percentage of the issuance price, *e.g.*, 150% of the issuance price. Alternatively, a cap could be in the form of a participation rate whereby a holder of the SUNS would participate in a stated percentage of the total percentage change between the Ending Portfolio Value and the Original Portfolio Value, *e.g.*, 80% of the total appreciation of the European Stock Basket during the term of the SUNS. The Original Portfolio Value is the value of the European Stock Basket on the date on which the issuer prices the SUNS for the initial offering to the public. The Ending Average Portfolio Value is the average of the closing prices of the European Stock Basket securities for a ten-day period beginning on the twelfth trading day prior to maturity of the SUNS. The European Stock Basket SUNS will be cash-settled and will not give holders any right to receive any Basket security or any other ownership right or interest in such security even though the return on the investment is based on the value of the Basket.

The SUNS Basket and Components

The European Stock Basket will consist of not less than ten nor more than thirty stocks of highly capitalized European companies.[8] Each stock included in the Basket will meet the following criteria: (1) a market capitalization in excess of $75 million;

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Dervatives Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC dated July 30, 1998 ("Amendment No. 1").

[4] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivatives Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division; SEC, dated October 8, 1998 ("Amendment No. 2").

[5] Securities Exchange Act Release No. 40338 (August 19, 1998), 63 FR 45539.

[6] The Commission has previously approved the listing and trading of hybrid securities similar to SUNS based upon portfolios of securities or stock indices. *See e.g.*, Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994); 34692 (September 20, 1994), 59 FR 49267 (September 27, 1994); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) ("Term Notes Approval Orders").

[7] Section 101 of the *Amex Company Guide* requires issuers to have pre-tax earnings of at least $750,000 in the last fiscal year of two of the last three fiscal years.

[8] The Exchange represents that once a determination is made by Lehman Brothers as to which securities will be included in the Basket, the Exchange will provide a list of those securities to the Commission. This list will be provided prior to the commencement of trading of the SUNS on the Basket. *See* Amendment No. 2, *supra* note 4.

alternatively, the lowest weighted securities in the Basket that do not account for more than 10% of the weight of the Basket, may have a market capitalization of $50 million or greater; (2) the trading volume of each component in the Basket will be at least one million shares during each of the six months preceding the listing of the SUNS; alternatively, the lowest weighted securities in the Basket that do not account for more than 10% of the weight of the Basket, may have a volume of at least 500,000 shares during each of the six months preceding the listing of the SUNS; (3) the market price for each component stock used for the calculation of the Basket will be obtained from the stock's primary market; and (4) the market price for each component will be at least $5 for the majority of business days during the three calendar months preceding the listing of the SUNS.

Basket Calculation

The Basket will be calculated using the modified equal-dollar weighting methodology. Thus, prior to the issuance of the SUNS, Lehman Brothers will establish a weighting for each of the securities in the Basket. Specifically, each security included in the Basket will be assigned a multiplier so that the security represents the established percentage of the value of the entire Basket on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price, to be included in the calculation of the Basket. The weightings established for each security will assure that: (1) no single stock will represent more than 25% of the weight of the Basket; (2) the five highest weighted stocks will represent no more than 50% of the weight of the Basket; (3) foreign country securities that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 40% of the weight of the Basket; (4) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the Basket; and (5) stocks for which the primary market is in any two countries that are not subject to the comprehensive surveillance agreements do not represent 33% or more of the weight of the Basket.

The multiplier of each security of the Basket will generally remain unchanged except for adjustments that may be necessary as a result of stock splits or stock dividends.[9] There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect. If the issuer of a security included in the Basket no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, Lehman Brothers will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values.

If the issuer of a European Stock Basket security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Basket so long as a market price for such security is available. If such a market price is no longer available for a Basket security due to a liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the security will be zero in connection with calculating the daily Basket value and the Ending Average Portfolio Value, for so long as no such market price exists for that security. Lehman Brothers will not attempt to find a replacement stock, or to compensate in a manner other than what is set forth above, for the extinction of a security due to a bankruptcy or similar event.

The value of the Basket will be disseminated every 15 seconds from 9:30 a.m. until 4:00 p.m. each trading day by the Exchange. Such disseminated value will be calculated by the Amex or by an independent calculation agent appointed by Lehman Brothers. The Basket value will be calculated based on real-time prices during the hours the European markets overlap trading hours with the Exchange. After the close of the European markets, the Basket value will be calculated based on the last sale price of the component security. The Basket will be calculated using the last sale value for each component security from its primary market place. The exchange rate for each currency represented in the Basket will be from one of two sources: (i) the WM/Reuter closing value reported in London at about 12:00 (New York time) each trading day or (ii) the best bid and offer price posted by two or more contributing banks as provided by Bridge/Telesphere.[10] If the market place for any one of the securities constituting the European Stock Basket has not opened for trading on any given business day, the previous closing value will be used in the calculation. The Basket value, for any day, will equal the sum of the products of the most recently available market prices, expressed in U.S. dollars and the applicable multipliers for the Basket securities. Lehman Brothers will undertake to implement certain surveillance and compliance procedures with respect to the dissemination of the Basket value, requiring that the Basket value be announced only through public dissemination and restricting the access of the Lehman Brothers trading desk to the Basket value determined by the calculation agent until after public dissemination of that value.

Exchange Rules Applicable to SUNS

The Exchange's equity trading rules will apply to the trading of SUNS linked to the European Stock Basket. Those rules include Rule 411, which requires members to use due diligence to learn the essential facts relative to every customer and to every order or account accepted; and Rule 462 which requires the application of equity margin rules to the trading of indexed term notes. The Exchange will, prior to trading the proposed SUNS, distribute an Information Circular to the membership: (1) highlighting the essential features of the SUNS product including, but not limited to, if applicable, the less than 100% principal protection feature and the fact that the issuer has placed a cap on the amount to be paid on the SUNS at maturity; and (2) providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the SUNS and highlighting their special risks and characteristics. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, including those highlighted, and is financially able to bear the risks of the recommended transaction.

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[9] The Exchange represents that the independent calculation agent will be responsible for making any changes to the multiplier that become necessary due to a stock split or dividend. *See* Amendment No. 2, *supra* note 4.

[10] See Amendment No. 2, *supra* note 4.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[11] Specifically, the Commission believes that providing for exchange-trading of SUNS on the Basket[12] will offer a new and innovative means of participating in the market for highly capitalized European stocks. In particular, the Commission believes that SUNS on the Basket will permit investors to gain equity exposure in such companies, while, at the same time, limiting the downside risk of the original investment due to the principle guarantee feature.[13] Accordingly, for the same reasons as discussed in the Term Notes Approval Orders,[14] the Commission finds that the listing and trading of SUNS on the Basket is consistent with the Act.[15]

As with other derivative products similar to SUNS, SUNS on the Basket are not leveraged instruments; however, their price will still be derived from and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of SUNS on the Basket is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of SUNS is derivatively priced, based on the performance of a portfolio of securities, there are several issues regarding the trading of this type of product.

The Commission believes that the Exchange has adequately addressed these issues for several reasons. First, the Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to SUNS on the Basket. In particular, by imposing the hybrid listing standards, and the suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of SUNS on the Basket. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with SUNS on the Basket. In particular, the circular will highlight, among other things, that the SUNS on the Basket allow investors to participate in appreciation only to the extent that the Basket outperforms the initial Basket value based on the average of the closing prices of the European Stock Basket securities for a ten-day period beginning on the twelfth trading day prior to maturity of the SUNS and any cap on appreciation.

Second, SUNS on the Basket remain a non-leveraged product with the issuer guaranteeing no less than 90 percent of principal return.[16] The Commission realizes that the final payout on the SUNS on the Basket is dependent in part upon the individual credit of the issuer. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the *Amex Company Guide* which provides that only issuers satisfying substantial asset and equity requirements may issue securities such as SUNS.[17] In addition, the Exchange's hybrid listing standards further require that the proposed indexed term notes have at least $4 million in market value.[18] In any event, financial information regarding the issuer, in addition to information on the underlying securities, will be publicly available to investors.

Third, the component securities in the Basket are highly-capitalized, actively-traded European stocks. In addition, the components are all publicly traded on the home country's primary market. Accordingly, both the history and performance of these securities, as well as current pricing trends, should be readily available though a variety of public sources.

Further, the Commission notes that the value of the Basket will be disseminated on a real time basis at least once every 15 seconds throughout the trading day. As noted above, to the extent that European and U.S. market hours overlap, last sale prices on the primary market will be used to calculate the value of the Basket. The Commission believes that this information will be extremely useful and beneficial for investors in SUNS on the Basket.

Although the SUNS are denominated in U.S. dollars, as noted above, the Basket value will be derived from converting the value of each security from its home currency into U.S. dollars. The Exchange represents that the calculation agent will determine, prior to the listing of the SUNS on the Basket, which source it will use.[19] The currency conversion of the Basket will have a significant effect on both the intraday value of the Basket as well as the ultimate payout at settlement. Accordingly, the currency conversion methodology must be fair and accurate and applied in a consistent manner. In this regard, the Commission expects the Amex to carefully monitor and surveil the currency conversion method, as well as the prices of the foreign securities used in the conversion, to ensure the fairness and accuracy of valuing the Basket, especially at settlement.

Fourth, while the Commission has a systematic concern that a broker-dealer or a subsidiary providing a hedge for the issuer will incur position exposure, the Commission believes this concern is minimal given the size of the proposed SUNS issuance in relation to the net worth of the issuer.[20]

Finally, the Exchange's surveillance procedures will serve to deter as well as detect any potential manipulation. As discussed above, Amex represents that: (1) foreign country securities that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 40% of the weight of the Basket; (2) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the Basket; and (3) stocks for which the primary market is in any two countries that are not subject to the comprehensive surveillance agreements do not represent 33% or more of the weight of the Basket. Further, if the surveillance coverage should fall below certain levels, as discussed above, no new SUNS will be listed. The Commission believes that this should help to ensure that adequate surveillance mechanisms exist in the future.

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[11] 15 U.S.C. 78f(b)(5).

[12] The Commission notes that this approval order is limited to the SUNS product; separate Commission approval may be required for the Exchange to list and trade any other derivative product based on the Lehman Brothers European Stock Basket.

[13] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading of new products upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[14] *See* Term Notes Approval Orders, *supra* note 6.

[15] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] The Commission notes that the Amex may not list for trading SUNS with less than a 90% principal guarantee without first consulting with the Commission. For example, the Commission may determine that SUNS with less than a 90% principal guarantee should only be sold to customers meeting certain heightened account approval and suitability requirements.

[17] *See supra* note 7 and accompanying text.

[18] *See Amex Company Guide* § 107A.

[19] As noted above, the currency conversion will be from one of two sources: (i) the WM/Reuter closing value reported in London at about 12:00 (New York time) each trading day or (ii) the best bid and offer price posted by two or more contributing banks as provided by Bridge/Telesphere. The Commission expects that, once chosen, the calculation agent will not change the source it uses to convert currency values during the life of the SUNS on the Basket.

[20] *See* Term Notes Approval Orders, *supra* note 6.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 2, the Exchange indicates that: (1) either the Amex or an independent calculation agent will calculate the value of the Basket; (2) the calculation agent will, if necessary, determine the changes in the multipliers of the securities in the Basket; (3) the calculation agent will only use the Bridge/Telesphere source for currency conversion rates if it is able to obtain the bid and offer prices from two or more contributing banks for each currency; and (4) the Exchange will notify the Commission once Lehman Brothers determines which securities will be included in the Basket. The Commission does not believe that Amendment No. 2 raises any regulatory issues that were not addressed by the Term Notes Approval Orders. In addition, to the extent that the Basket has certain characteristics that differ from the previous Term Notes Approval Orders, the Commission believes that the Amex has adequately addressed those issues. In this regard, as to the use of Bridge/Telesphere for currency conversion rates, the Amendment will help to ensure that such source will only be used when there are a minimum number of bids and offers available. The Commission notes that this proposal was published for the full notice and comment period during which no comments were received. Accordingly, the Commission believes that good cause exists, consistent with Section 6(b)(5)[21] and Section 19(b)(2)[22] of the Act, to grant accelerated approval to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–98–25 and should be submitted by January 4, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Amex–98–25) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33072 Filed 12–11–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40755; File No. SR–NASD–98–90]

Self-Regulatory Organizations, Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to the Code of Procedure to Provide for the Office of Disciplinary Affairs of NASD Regulation, Inc. to Authorize all Enforcement Actions

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through it wholly-owned subsidiary NASD Regulation ("NASDR"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDR.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR proposes to amend Rules 9120 and 9211 of the NASD's Code of Procedure to enable the Office of Disciplinary Affairs of NASDR to authorize all disciplinary actions. Below is the text of the proposed rule change. Proposed new language is italicized, proposed deletions are in brackets.

* * * * *

9120. Definitions.

(a) through (d).

No change.

(e) "Department of Enforcement"

The term "Department of Enforcement" means the Department of Enforcement or its delegatee, the Department of Market Regulation[, except that the term excludes the Department of Market Regulation with respect to the action of:

(1) authorizing a complaint under Rule 9211;

(2) determining the terms of a letter of acceptance, waiver, and consent or the terms of a minor rule violation plan letter under Rule 9216;

(3) determining whether to contest an offer of settlement under Rule 9270; and

(4) authorizing the filing of an appeal under Rule 9311]. (f) through (u).

No change.

(v) "Office of Disciplinary Affairs"

The term "Office of Disciplinary Affairs" means the Office of Disciplinary Affairs for NASD Regulation.

(w) [v] "Panelist"

No change.

(x) [w] "Party"

No change.

(y)[x] "Primary District Committee"

No change.

(z)[y] "Respondent"

No change.

(aa)[z] "Review Subcommittee"

No change.

(bb)[aa] "Statutory Disqualification Committee"

No change.

(cc)[bb] "Subcommittee"

No change.

* * * * *

9200. DISCIPLINARY PROCEEDINGS

9210. Complaint and Answer

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[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Several non-substantive changes were provided by the NASDR in a telephone conversation between Eric Moss, Office of General Counsel, NASDR, and Joseph Corcoran, Division of Market Regulation, Commission, on December 7, 1998.

9211. Issuance of Complaint

(a) Complaint

(1) If the Department of Enforcement believes that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce, the Department of Enforcement may *request authorization from the Office of Disciplinary Affairs to issue* a complaint.

(2) the NASD Regulation Board and the NASD Board each shall have the authority to direct the *Office of Disciplinary Affairs* [Department of Enforcement] to authorize and *the Department of Enforcement to* issue a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it receive on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Case Authorization Unit ("CAU"), located in the Department of Enforcement ("Enforcement") of NASDR, authorized all disciplinary actions. The Office of Disciplinary Policy ("ODP"), which reports to the Office of the President of NASDR, is the primary reviewer of cases developed in the Washington, D.C. office and those involving "quality-of-market" issues. ODP also review and comments on all cases involving policy issues. The NASD is proposing amendment so that the Code of Procedure ("Code") that would provide for ODP to authorize all disciplinary actions. ODP would be renamed Office of Disciplinary Affairs ("ODA") to reflect its additional role as a case authorizer.

Under the existing structure, CAU and ODP have coordinated efforts, minimized areas of potential duplication, and worked well together during the first year of staff authorization of cases. There is, however, an overlap of functions between these two offices. To increase overall operating efficiency and to maintain the consistency and independence of the case authorization function, NASDR proposes to place the functions performed by ODP and CAU in one office. Under the proposed rule changes, all cases would be authorized by ODA, which would review the legal, policy and consistency issues presented by each case.

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is consistent with Sections 15A(b) (7) and (8) of the Act,[5] which mandate that the Association maintain a fair disciplinary process. The proposed rule change would provide for the same review of all Enforcement cases—whether developed in the districts or the Washington office.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–90 and should be submitted by December 29, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33071 Filed 12–11–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Edelweiss Holdings, Inc.; d/b/a Edelweiss Air d/b/a Rio Grande Air

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 98–12–5, Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should

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[4] U.S.C. 78o-3(b)(6).

[5] U.S.C. 78o-3 (b)(7), (b)(8).

[6] 17 CFR 200.30–3(a)(12).

not issue an order finding that Edelweiss Holdings, Inc. d/b/a Edelweiss Air d/b/a Rio Grande Air is fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier.

DATES: Persons wishing to file objections should do so no later than December 22, 1998.

ADDRESSES: Objections and answers to objections should be filed with the Air Carrier Fitness Division, X–56, Room 6401, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: December 8, 1998.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–33037 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4860]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DOT.

ACTION: Announcement of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the 1999 minimum random drug testing rate at 50 percent of covered crewmembers. Based on an evaluation of the 1997 Management Information System (MIS) data collection forms submitted by marine employers, we determined that random drug testing on covered crewmembers for the calendar year 1997 resulted in positive test results 1.59 percent of the time. Based on this percentage, we will maintain the minimum random drug testing rate at 50 percent of covered crewmembers for the calendar year 1999.

DATES: Effective January 1, 1999 through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Lieutenant Jennifer Williams, Project Manager, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, telephone 202–267–0686.

SUPPLEMENTARY INFORMATION: Coast Guard regulations in Title 46 Code of Federal Regulations (CFR) § 16.230 require marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels. All marine employers are required to collect and maintain a record of drug testing program data for each calendar year, January 1 to December 31. Marine employers must submit this data to the Coast Guard in an annual MIS report (Form CG–5573 found in Appendix B of Part 16). Marine employers may either submit their own MIS report or have a consortium or other employer representative submit the data in a consolidated MIS report. The chemical drug testing data is essential to analyze our current approach for deterring and detecting illegal drug abuse in the maritime industry.

Since 1997 MIS data indicates that the positive random testing rate is greater than one percent industry-wide (1.59 percent), the Coast Guard announces in accordance with 46 CFR 16.230(e), that the minimum random drug testing rate is set at 50 percent of covered employees for the period of January 1, 1999 through December 31, 1999.

MIS reports are due to the United States Coast Guard, Commandant (G–MOA), 2100 Second Street, SW, Washington, DC, 20593–0001, not later than March 15 of each calendar year. Each year we will publish a notice reporting the results of the previous calendar year's MIS data, and the minimum annual percentage rate for random drug testing for the next calendar year.

Dated: December 7, 1998.

J.P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–33079 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–24]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 4, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ______, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 8, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 26048.

Petitioner: National Test Pilot School.

Sections of the FAR Affected: 14 CFR 91.319(a)(1) and (2).

Description of Relief Sought/Disposition: To permit National Test Pilot School to operate aircraft that have experimental certificates to train flight test students who are pilots and flight engineers through the demonstration and practice of flight test techniques and to teach those students flight test data acquisition methods for compensation.

Grant, November 23, 1998, Exemption No. 5778D

Docket No.: 22690.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 61.57(c) and (d).
Description of Relief Sought/Disposition: To allow Boeing pilots employed as crewmembers to continue to use any type of Boeing airplane or a Level B, C, or D simulator to meet the recent takeoff and landing flight experience requirements

Grant, November 20, 1998, Exemption No. 6843

Docket No.: 29275.
Petitioner: Kodiak Expediting, Inc., dba Saltery Lake Lodge.
Sections of the FAR Affected: 14 CFR 61.133(b)(1).
Description of Relief Sought/Disposition: To permit Saltery Lake Lodge to conduct passenger-carrying operations on cross-country flights in excess of 50 nautical miles (nm) without Mr. Billy Franklin, owner, holding instrument rating in the same category and class of aircraft listed on your commercial pilot certificate.

Denial, November 20, 1998, Exemption No. 6842

Docket No.: 29166.
Petitioner: Roger Aviation Company.
Sections of the FAR Affected: 14 CFR 142.15(d).
Description of Relief Sought/Disposition: To permit Roger Aviation to apply for a part 142 certificate using a Frasca 242 flight training device (FTD) as its minimum flight training equipment without the FTD meeting the requirements of an advanced FTD.

Denial, November 18, 1998, Exemption No. 6841.

Docket No.: 29212.
Petitioner: Comair Aviation Academy.
Sections of the FAR Affected: 14 CFR 141.
Description of Relief Sought/Disposition: To permit Comair to allow its students to add a single-engine airplane rating to a commercial pilot certificate with a multiengine rating, or add a multiengine airplane rating to a commercial pilot certificate with single-engine rating, without accomplishing the flight-training requirements set forth in appendix D.

Denial, December 3, 1998, Exemption No. 6844

Docket No.: 25210.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 63.39(b)(1) and (2) and 121.425(a)(2)(i) and (ii).
Description of Relief Sought/Disposition: To permit member airlines of the Air Transport Association of America (ATA) and other qualifying part 121 certificate holders to meet the qualification requirements of 121.425(a)(2)(i) and (ii).

Grant, November 23, 1998, Exemption No. 4901F

[FR Doc. 98–33095 Filed 12–11–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on PFC Application 99–05–C–00–MFR To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rogue Valley International—Medford; Submitted by Jackson County, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use, the revenue from a PFC at Rogue Valley International—Medford under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 13, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, A.A.E., Airport Director, at the following address; Jackson County, Oregon, Rogue Valley International—Medford, 3650 Biddle Road, Medford, OR 97504.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Rogue Valley International—Medford under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 99–05–C–00–MFR to impose and use, the revenue from a PFC at Rogue Valley International—Medford, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 7, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson County, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 9, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: February 1, 2006.

Total estimated net PFC revenue: $1,583,000.

Brief description of proposed project(s): Runway Lighting; Airport Emergency Generator; Runway 14–32 Rehabilitation; and Security Access System (FAR Part 107).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Operations by air taxi/commercial operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance service, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25-mile radius of the airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Rogue Valley International—Medford.

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Issued in Renton, Washington on December 7, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–33096 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–01–C–00–PKB) to Impose and Use a Passenger Facility Charge (PFC) at Wood County Airport in Parkersburg, West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Wood County Airport in Parkersburg, West Virginia, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 13, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, 176 Airport Circle, Rm. 101, Beaver, WV 25813–9350.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Carolyn Strock, airport manager for the Wood County Airport Authority at the following address: P.O. Box 4089, Parkersburg, WV 26104–0089.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Wood County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, 176 Airports Circle, Beaver, West Virginia, 25813 (Tel. (304) 252–6216). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Wood County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 23, 1998, the FAA determined that the application to impose and use a PFC submitted by the Wood County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 1999.

The following is a brief overview of the application.

Application number: 99–01–C–00–PKB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1999.

Proposed change expiration date: December 1, 2002.

Total estimated PFC revenue: $305,491.

Brief description of proposed projects:

Rehabilitate Taxiway (H)
Rehabilitate Runway (3–21)
Rehabilitate Runway (10–28)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Under FAR Part 135—Charter Operators for hire to the general public and Unscheduled Part 121 Charter Operators for hire to the general public.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA regional Airports office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Wood County Airport Authority.

Thomas Felix,

Manager, Planning & Programming Branch, AEA–610, Eastern Region.

[FR Doc. 98–33097 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of random drug and alcohol testing rate.

SUMMARY: This notice announces the random testing rates for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION: Judy Meade, Director of the Office of Safety and Security (202) 366–2896 (telephone) and (202) 366–7951 (fax). Electronic access to this and other documents concerning FTA's drug and alcohol testing rules may be obtained through FTA's Transit Safety and Security Bulletin Board at 1–800–231–2061 or through the FTA World Wide Web home page at http://www.fta.dot.gov; both services are available seven days a week.

SUPPLEMENTARY INFORMATION: The Federal Transit Administration (FTA) required large transit employers to begin drug and alcohol testing "safety-sensitive" employees on January 1, 1995, and to report, annually by March 15 of each year beginning in 1996, the number of "safety-sensitive" employees who had a verified positive for the use of prohibited drugs, and the number of safety-sensitive employees who tested positive for the misuse of alcohol. Small employers started testing their "safety-sensitive" employees on January 1, 1996, and began reporting the same information as the large employers beginning on March 15, 1997. Employers are required annually to submit other data, not relevant here, in the same report; these data are available from the FTA as discussed below.

The rules established a random testing rate for prohibited drugs and the misuse of alcohol; specifically, the rules require that employers conduct random drug tests at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees for prohibited drug use and at least 25 percent for the misuse of alcohol. The rules provide that the drug random testing rate may be lowered to 25 percent if the "positive rate" for the entire transit industry is less than one percent for two consecutive years. Once lowered, it may be raised to 50 percent if the positive rate equals or exceeds one percent for any one year. ("Positive rate" means the number of positive results for random drug tests conducted under part 653 plus the number of refusals of random tests required by part 653, divided by the total number of random drug tests, plus the number of refusals of random tests required by part 653.)

Likewise, the alcohol rule provides that the random rate may be lowered to 10 percent if the "violation rate" for the entire transit industry is less than .5 percent for two consecutive years. It will remain at 25 percent if the "violation rate" is equal to or greater than .5 percent but less than one percent, and it will be raised to 50 percent if the "violation rate" is one percent or greater for any one year. ("Violation rate" means the number of covered employees found during random tests given under part 654 to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by part 654, divided by the total reported number of random alcohol tests conducted under part 654, plus the total number of refusals of random tests, required by part 654.)

FTA has received and analyzed the 1997 data from large and small transit employers. The "positive rate" for random drug tests was 1.21 percent and the "violation rate" for random alcohol tests was 0.14 percent; therefore, for 1999, transit employers will continue to be required to conduct random drug tests at a rate equivalent to at least 50 percent of the total number of their "safety-sensitive" employees for prohibited drugs. In 1998, the FTA lowered the random alcohol testing rate to 10 percent. Because the random alcohol violation rate was lower than .5 percent for two consecutive years (0.21 percent for 1996 and 0.19 percent for 1997), the random alcohol testing rate will remain at 10 percent for 1999.

FTA will be publishing in December a detailed report on the 1997 data collected from large and small employers. This report may be obtained from the Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, SW, Room 9301, Washington, DC 20590, (202) 366–2896.

Issued: December 8, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–33113 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice 98–12]

Safety Advisory; High Pressure Composite Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: RSPA is alerting persons who own, use or are responsible for the maintenance of composite cylinders to a hazard. Damage may occur when a composite cylinder comes in contact with strong cleaners or other strong corrosive agents. RSPA is aware of ruptures involving two DOT–E 8059 composite cylinders made with aluminum liners and wrapped with "S glass" fibers. The probable cause of both cylinder failures was stress-corrosion cracking of the fiberglass overwraps as a result of exposure to a strong corrosive agent.

FOR FURTHER INFORMATION CONTACT: Cheryl West Freeman, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, 20590–0001, Telephone (202) 366–4545.

SUPPLEMENTARY INFORMATION: RSPA investigated two failures involving self-contained breathing apparatus (SCBA) cylinders manufactured by EFI Corporation under exemption, DOT E–8059. The first failure occurred in March 1996 at the Humboldt (California) Fire Protection District. The second failure occurred this year at the Hawthorne (Florida) Volunteer Fire Department. Both cylinders failed while stored in fire trucks. Exponent-Failure Analysis Associates (FaAA) in Menlo Park, California, analyzed the cylinders. In its reports, FaAA concluded that the failures were caused by stress-corrosion cracking of the fiberglass wraps resulting from exposure to a strong corrosive agent. Fiberglass composite cylinders are particularly at risk for stress-corrosion cracking because the fibers are under constant tension due to the internal pressure. When the structural integrity of the overwrap is weakened, a catastrophic failure of a cylinder can occur that may result in serous injury or death.

Persons responsible for the care of composite cylinders should take measures to ensure that they do not come in contact with strong corrosive agents, that the cylinders are washed only with a mild soap and water solution, and that all recommendations of the cylinder manufacturer or distributor in regard to maintenance, requalification and use are carefully followed.

Issued in Washington, DC on December 8, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–33098 Filed 12–11–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4523; Notice 1]

Pipeline Safety: Request for System Integrity Inspection Pilot Program Applications

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of Request for Letters of Application.

SUMMARY: The Office of Pipeline Safety (OPS) is initiating a new program with interstate pipeline operators to evaluate an approach to improve the effectiveness of the inspection process. The System Integrity Inspection Pilot Program is designed to enhance the inspection practices currently in use by focusing on a broad set of pipeline integrity issues instead of conducting inspections only from a regulatory compliance perspective. OPS invites eligible pipeline operators to submit Letters of Application expressing interest in participating in the Pilot Program. This notice begins the solicitation process by specifying a deadline and address for Letters of Application and by providing guidance for operators interested in participating.

DATES: Letters of application will be accepted until February 12, 1999.

ADDRESSES: Interstate pipeline operators interested in participating in the System Integrity Inspection Pilot Program should send their letters of application to Richard B. Felder, Associate Administrator for Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Donald Moore (816) 426–2654 or any of the five OPS Regional Directors: William Gute (202) 366–4580, Frederick Joyner (405) 562–3530, Ivan Huntoon (816) 426–2654, Rodrick Seeley (713) 718–3746, or Christopher Hoidal (303) 231-5701.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Office of Pipeline Safety (OPS) is in the process of improving its regulatory programs to assure greater levels of safety, environmental protection, and service reliability. An important part of this effort is re-examining the approach OPS uses to conduct inspections of interstate pipeline operators and searching for more effective processes. Traditionally, OPS inspections have focused strongly on ensuring compliance with applicable pipeline safety regulations using a checklist approach. While this resource-intensive effort provides assurance that operators are complying with all regulatory requirements, it may not be the most effective approach to improving safety.

The System Integrity Inspection (SII) Pilot Program is designed to test whether a more broad-based examination of an operator's safety and pipeline integrity programs, including many areas not currently considered during a typical inspection, will result in improved performance. Instead of OPS or state inspectors conducting comprehensive compliance-based inspections, the SII Team, composed of OPS and active interstate agents, will work cooperatively with the operator to address the most significant pipeline system integrity issues, addressing areas that may not be explicitly or completely addressed by the regulations. To ensure continued regulatory compliance with parts 191, and 192 or 195, the SII Team will require participating operators to conduct comprehensive self-audits for compliance. To accept a company into the program, the SII Team must see evidence that the company has a formal self-audit process in place; that audits are being conducted, audit findings are being documented and communicated, corrective actions are being defined and implemented, and status is being tracked and communicated. During subsequent meetings with the company, the SII Team will conduct spot checks of self-audit records and perform field verifications to ensure that the company's Self-Audit Plan is being effectively implemented. This enhancement of current inspection practices is intended to result in improved communication and information sharing between operators and government, and focus resources on the most important risks to pipeline safety.

OPS believes this approach will improve the utilization of company, OPS, and state pipeline safety agency resources in addressing the most significant and potentially high impact safety, environmental, and regulatory issues. After three years, OPS will determine whether and in what form the SII approach should be incorporated into the Federal pipeline safety program on a permanent basis.

A. Goals

The SII Pilot Program has the following goals:

1. Enhance public safety and environmental protection by concentrating the deployment of operator and OPS inspection resources to areas of greatest safety and environmental risk, and by addressing issues of mutual concern and resolving problems under a consultative resolution process.

2. Provide OPS and active interstate agents with an enhanced understanding of the operator's entire system, including pipeline operation, maintenance, and emergency response programs. A more broad-based understanding of the operator's integrity issues enables OPS to better consider and review with the operator the range of available integrity enhancements.

3. Harmonize interpretation of regulations and safety concerns among OPS regions by utilizing an OPS team approach comprised of one inspector from each of the five OPS regions and one state representative from each involved state with an active interstate agent agreement.

4. Provide opportunity for pipeline operators to achieve a high level of recognition as industry leaders in pipeline safety.

5. Provide an opportunity for more efficient inspection planning and staff allocation for both operators and OPS, and provide operators with designated contact people for inspection coordination within OPS.

6. Assure operator compliance with parts 191, and 192 or 195 using an operator's Self-Audit Plan and OPS spot checks instead of standard OPS inspections. Early in the program, the SII Team and the company will address comprehensiveness and completeness of the company's Self-Audit Plan, and various means of monitoring and improving the Plan's effectiveness. The SII Team will periodically spot check to ensure that field data supports company records and that the Plan's implementation results in regulatory compliance.

B. Program Key Features

In order to achieve these goals, OPS has developed the SII Pilot Program described in this Notice. This new approach is based on a philosophy of open communication and mutual trust which compels OPS and the operator to move beyond the basic requirements of the regulations in a total effort to prevent pipeline accidents. Some of the key SII Pilot Program features are summarized below:

1. Participation in the SII Pilot Program is strictly voluntary. SII Pilot Program companies voluntarily enter the program to improve pipeline safety and integrity, and to share with OPS their analysis and plans for addressing the highest priority safety issues.

2. OPS will use a SII Team to manage and conduct the SII Pilot Program. The SII Team will usually be comprised of one inspector from each of the five OPS regions and one state representative from each involved state with an active interstate agent agreement. The SII Team and participating operators will work together to resolve any problems or regulatory issues that may arise during the Pilot Program.

3. OPS will provide the public the opportunity to comment on the appropriateness of companies OPS is considering for candidates for the SII program. OPS will publish a **Federal Register** notice of its intent to select an operator at least 60 days prior to issuing the operator a Letter of Acceptance. These notices will be posted on the SII Web Site to enable all interested parties to comment. OPS will also notify national organizations representing public, safety, and environmental interests of candidate companies under consideration. These national organizations would include, but not be limited to, the Environmental Defense Fund, the International Association of Fire Chiefs, the National League of Cities, the National Governors Association, and the National Association of Towns and Townships.

4. Participation in the SII Pilot Program does not diminish the operator's rights or responsibilities under the Federal Pipeline Safety Regulations. Pipeline operators participating in the SII program are still required to comply fully with all applicable regulatory requirements. Only the approach used to inspect operators will be modified.

5. The SII approach is structured around two basic operator plans. The operator's Self-Audit Plan (described in Exhibit A) focuses on assuring operator compliance with the applicable requirements in parts 191, and 192 or 195 of the Federal Pipeline Safety Regulations. The operator's System Integrity Plan (see Exhibit B) addresses the activities and programs the operator implements to monitor, maintain, and improve the integrity of the pipeline system, over and above those actions specified in the regulations. OPS recognizes that these two aspects of maintaining system integrity may be managed within a single program by some operators. They are described separately in this Notice to differentiate the OPS approach to addressing regulatory compliance versus exceeding compliance requirements through integrity-focused discussions with SII Pilot Program participants.

6. Companies participating in the SII Pilot Program must have clear and

established records of compliance with applicable pipeline safety regulations. In making this determination, the SII Team will review its records to determine if candidate companies have historically met requirements of applicable pipeline safety regulations and have demonstrated a willing attitude to respond to any OPS concerns. Operators should have addressed all safety and environmental protection actions prescribed by existing regulations and orders, including consent orders and commitments for corrective action made to OPS. OPS will also consult with other agencies about their knowledge of the company's safety and environmental compliance record. The determination will be a joint OPS Regional, OPS Headquarters, and SII Team decision.

7. If, during the course of the SII Pilot Program, any compliance concerns are identified, SII Pilot Program participants must take actions necessary to remedy the concern as soon as possible. This would include addressing any management system issues that might be the root cause of safety problems or contributor to repetitive concerns.

OPS expects that the operator will identify such noncompliance issues and conditions in its Self-Audit report, and identify the corrective actions taken to restore compliance, or the corrective action plan to address concerns that are still open. During the spot check and validation reviews, these findings will be reviewed and discussed with the SII Team. Such issues will be dealt with in a consultative interaction with both the company and the SII Team exchanging their perspectives to understand the true safety significance of the occurrence, the extent of the problem, and the effectiveness of the corrective action plan. This interaction will provide assurance that the corrective actions are appropriate, and effectively address any significant safety concerns that might have been present.

It is expected that operators in the SII Program can resolve safety and compliance issues without civil penalties, as long as the following conditions occur:

- The Self-Audit identifies noncompliance situations and the operator corrects the problem to the SII Team's satisfaction.
- System or organizational problems that lead to noncompliances are corrected.
- The operator's program prevents repetitive violations.

Only operators with good compliance histories and a willingness to partner with OPS will be considered for the SII Program. Should uncorrected compliance issues persist, the operator would be terminated from the program.

8. OPS expects SII Program participants to be on the leading edge of risk reduction and show continuous improvement in managing overall pipeline system integrity.

9. The SII Team may need to review on-site an operator's documents that may contain business sensitive or confidential information while it conducts inspections and reviews company compliance and integrity programs. OPS will explore access to this information through other means such as the operator's Intranet.

C. Operator Benefits

OPS expects the SII approach will offer substantial benefits to the operator as well as to OPS. Some of the important operator benefits include:

1. *Improved Coordination of Inspection Activities.* Reducing the number of inspections on an operator's system to spot checks of their self-audit process and integrity program validation inspections will simplify the coordination of inspection support from the company side. Furthermore, because there will be an identified point-of-contact with OPS, the logistics of inspection planning and support should also be simplified.

2. *Focus on Important Integrity Issues.* In addition to refocusing resources, the scope of inspections will shift from a comprehensive checklist of each regulatory requirement to an emphasis on the most important integrity issues. Both OPS, interstate agents, and the operator will be investing more efforts in addressing the most important safety issues, and less time looking at low safety impact and/or administrative compliance items, while still ensuring the operator is fully compliant with parts 191, and 192 or 195.

3. *Consultative Interaction with OPS.* OPS and participating interstate agents intend to work with the company to address and resolve important integrity issues on the operator's system. OPS believes the exchange of ideas and information on the most important integrity issues, and what can be done to address them will benefit both the operator and government. OPS will gain an improved understanding about key system integrity issues, including condition, leak history, and remedial activities. The participating companies will benefit from the broad national regulatory perspective that OPS will bring to discussions at the early stages of considering potential safety alternatives.

In the event that a noncompliance is discovered during the pilot program, OPS intends to work in a consultative fashion with the company to remedy the problem in the most effective and meaningful manner. It is expected that operators in the SII Program can resolve safety and compliance issues without civil penalties, as long as the conditions listed previously are satisfied.

4. *Consistent System-wide Feedback.* By using the multi-Region SII Team in conducting inspections, the SII approach will result in more consistent interpretation of compliance requirements and feedback to the operator. It will minimize opportunities for varying interpretations of regulatory requirements among OPS Regions.

5. *Support Improvements to Inspection Process.* By participating in the SII Pilot Program, companies will be afforded the opportunity to provide input to OPS in developing and refining an improved SII process. Participating operators will be directly involved in developing integrity-based inspection approaches that cost-effectively reduce risk.

II. SII Pilot Program Process

Through interactions with industry, its state pipeline safety representative partners, and its technical advisory committees, OPS has established a process to implement the SII Pilot Program. Through the steps shown in the accompanying figure, OPS seeks to produce the results that will demonstrate achievement of the program goals. Each of these steps is discussed in detail in subsequent sections of this Notice.

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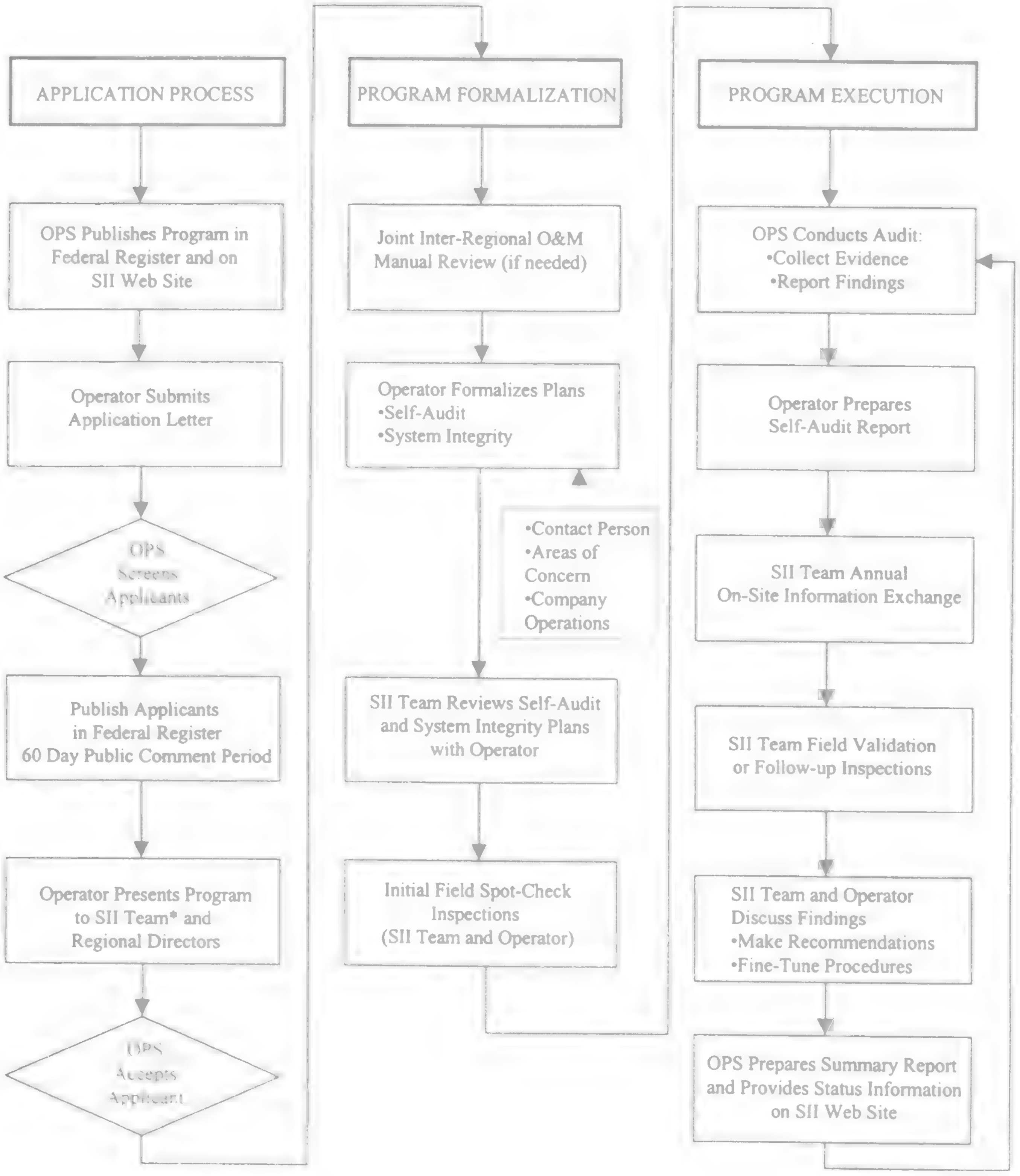
SII Pilot Program Process


APPLICATION PROCESS
OPS Publishes Program in Federal Register and on SII Web Site
Operator Submits Application Letter
OPS Screens Applicants
Publish Applicants in Federal Register 60 Day Public Comment Period
Operator Presents Program to SII Team* and Regional Directors
OPS Accepts Applicant
PROGRAM FORMALIZATION
Joint Inter-Regional O&M Manual Review (if needed)
Operator Formalizes Plans
•Self-Audit
•System Integrity
•Contact Person
•Areas of Concern
•Company Operations
SII Team Reviews Self-Audit and System Integrity Plans with Operator
Initial Field Spot-Check Inspections (SII Team and Operator)
PROGRAM EXECUTION
OPS Conducts Audit:
•Collect Evidence
•Report Findings
Operator Prepares Self-Audit Report
SII Team Annual On-Site Information Exchange
SII Team Field Validation or Follow-up Inspections
SII Team and Operator Discuss Findings
•Make Recommendations
•Fine-Tune Procedures
OPS Prepares Summary Report and Provides Status Information on SII Web Site

* SII Team is typically comprised of one inspector from each of the five OPS Regions and one state pipeline safety representative from each involved state with an active interstate agent agreement.

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III. Application Process

A. Criteria for Participation

OPS has established the several criteria that will be used to govern operator eligibility to participate in the SII Pilot Program. Operators interested in participating should have a:

- Clear and established compliance record as evidenced by a history of meeting regulatory requirements and responding to safety concerns raised by OPS;
- Existing, continuing, system-wide evaluation process directed towards safety and operational reliability;
- Commitment to information sharing to support decisions concerning system integrity;
- Defined organizational structure to resolve safety, environmental, and compliance issues;
- Management that emphasizes comprehensive two-way internal communications;
- History of cooperation and open communication with OPS; and
- Centralized record keeping location (preferred).

The pipeline system proposed for the SII Pilot Program must be an Interstate pipeline which falls under the requirements of 49 CFR part 191, and 49 CFR part 192 or 195. The operator must also propose a comprehensive well-defined pipeline system and provide a description of the system's elements and characteristics, including products shipped, size, and geographic location.

B. The Application

An operator will submit an Application Letter indicating its intent to participate in the SII Pilot Program. The Application Letter must include a statement signed by the president or senior company official attesting to their willingness to enter into a partnership with OPS and active interstate agents to meet the terms of the program.

The following information, at a minimum, shall be included in the application in order for the SII Team and OPS management staff to begin the screening process:

1. General Information:
   - Operator Name, Address, Contact Person (including title), Phone Number.
   - Pipeline System Description: Brief overall description; Total number of pipeline miles; States traversed; Commodity transported (Natural Gas, Refined Products, etc.).
2. Brief explanation of management commitment to pipeline system integrity.
3. Operator's commitment and willingness to share integrity program information such as described in Exhibit B and cooperate with OPS.
4. Brief Explanation of the operator's Self-Audit and System Integrity Programs (see Exhibits A and B).

The Application Letter shall be mailed to: Richard B. Felder, Associate Administrator for Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 7th Street, SW., Washington, DC 20590.

C. Screening Process

After receiving the Application Letters from interested companies, OPS will screen the companies to identify potential candidates for the SII Pilot Program. As part of the screening process, OPS will look for companies with a demonstrated commitment to system integrity. A company must present documentation of an existing system integrity process and evidence that it is willing to work with OPS in defining a program that achieves superior performance. Company openness and a willingness to work in partnership with OPS are important qualities in this regard. OPS will favor operators that have or intend to have a strong integrity management program as indicated by:

- A method of thorough assessment of system integrity so that improved safety is being achieved;
- A good opportunity to evaluate the SII approach as an inspection program alternative; and
- Distinguishing features, such as risk-based engineering evaluations, innovative and unique maintenance or replacement projects, or the use of new technologies for integrity monitoring that benefit the operator, OPS, industry and enhance public safety.

OPS will screen Application Letters to identify no more than five operators for selection into the SII Pilot Program. Five is the maximum number OPS can reasonably expect to evaluate and, if selected, to monitor.

The candidates who offer the best opportunity to test the SII Pilot Program under a broad range of conditions will be selected. A notice of the selection will be published in the **Federal Register** and on the web. OPS will receive comments on the selection for consideration during the presentation review process. In addition to the factors listed previously, several other considerations will go into evaluating the relative merit of operator proposals. OPS desires to include both gas and liquid pipeline systems in different geographical regions. In addition, OPS is looking for diversity in the system integrity program scope, tools, and processes from the operators selected to participate. OPS is also looking for operators that want to expand the scope of their integrity efforts over the three-year period. Expanding projects will add to the information base necessary to evaluate the SII Pilot Program. The need for diversity in the Pilot Program and the limit of five operators may result in some operators with good system integrity programs not being accepted into the SII Pilot Program.

D. Operator's Presentation

Operators that pass through the screening step will be invited to give more detailed presentations of their approach to the SII Team and OPS Regional Directors. This presentation will give the operator a chance to describe in more detail various aspects of its program, and allow OPS to better understand features that may be important to SII Program success. The presentation should:

- Discuss the historical performance of the company from a safety, environment, and regulatory perspective.
- Identify how maintenance and replacement projects are prioritized and factored into annual and long term plans;
- Describe the engineering evaluations conducted as part of the company's integrity program, including input sources used, documentation, and the relationship of any research activities to the company's program;
- Provide examples demonstrating the company's historical pro-active approach to safety (public and environmental), operational reliability and training; and
- Describe the company's current self-auditing program to ensure compliance with the pipeline safety regulations.

The presentation should adequately reflect and build upon the operator's Application Letter. The presentation should reflect the spirit of openness and mutual trust that is essential for success of the SII approach, and reinforce the operator's intent to become a full partner with the SII Team for the duration of the pilot program.

The operator can address these salient features by making an all-inclusive presentation that is attended by key company personnel from the engineering, operations, and maintenance departments. This will best exhibit the company's commitment to system integrity and to working with SII Team in the Pilot Program.

E. OPS Letter of Acceptance

OPS will consider information in the operator's presentation, as well as any public comment received, before

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approving the operator for participation in the SII Pilot Program. The Associate Administrator of OPS will issue a Letter of Acceptance to the official whose signature appears on the Application Letter. It is possible that OPS will employ a phased approach to the evaluation and acceptance of SII Pilot Program participants, resulting in operators entering into the Pilot Program at different times.

IV. Program Formalization and Execution

For the three-year duration of the pilot program, "standard OPS inspections" will be replaced with spot-checks and validation inspections. The duration, extent and comprehensiveness of these inspections will depend on the operator's performance in the past year. It is expected that OPS and the operator will work collaboratively to establish an inspection process that is appropriate and tailored for the operator's specific pipeline system and integrity program. The basic steps leading to this point are summarized below.

A. Program Formalization

Prior to beginning the SII Pilot Program with an operator, the SII Team will check to see if a Joint Inter-Regional Operations and Maintenance (O&M) Manual review has been recently performed. If an O&M Manual review has not been completed, then one will be scheduled, or performed as part of the SII Pilot Program Process.

As currently required, the operator must document all O&M Manual revisions and additions whenever they occur. These revisions and additions may be reviewed during the spot checks and validation reviews. A primary purpose of these annual validation reviews is to address and share information on new and significant safety and compliance issues. Hence, it is expected that how the operator complies with important, new regulatory requirements, particularly those where interpretations might vary, will be addressed during these sessions.

Upon conclusion of the O&M Manual inspection (if needed), the first SII Team/operator meeting will be conducted. During this session the SII Team and the operator will:

- Establish points of contact and protocols for communication and information sharing during the pilot project.

Note: Any construction inspections, response to local government or public complaints, and accident investigations would continue to be conducted in the routine manner with results shared with the SII Team.

- Discuss safety and integrity issues of concern to both the operator and OPS. These might include:
  —Current areas of emphasis in operator's integrity program;
  —OPS concerns from prior inspections;
  —Operator accident and leak history;
  —Appropriate data from the Federal Emergency Management Agency on natural disaster history that may affect the pipeline;
  —Oil Pollution Act Spill Response Plans and related issues for hazardous liquid operators;
  —Current industry-wide integrity issues and initiatives.
- Review company operations, system and local maps, and procedures, policies, or guidelines currently used to assure compliance with Federal Pipeline Safety Regulations.
- Discuss the company's record keeping system and interest in exploring other avenues for sharing information and records without compromising the confidentiality of sensitive, proprietary information. Establish protocols for information exchange.
- Review of Self-Audit Plan (see Exhibit A) and System Integrity Program (see Exhibit B).
- Establish how the self-audit spot checks and integrity program validation reviews will be conducted, including how any deficiencies or issues will be resolved.
- Identify all new construction or major rehabilitation projects planned for the upcoming year. While the SII Pilot Program scope includes construction activities, new construction inspections will be performed by the OPS Region. They will determine the appropriate level of inspection for the new construction projects. The OPS Regions will keep the SII Team and the company apprised of any issues they identify when inspecting new construction.
- Agree on a plan of action and time line for initiating the SII Pilot Program.

Either at this initial session or shortly thereafter, the SII Team will conduct the initial field spot check to validate and enhance the operator's System Integrity and Self-Audit Plans. In this review, emphasis will be placed on the operator's engineering evaluations and correlation with operating data and field observations. As part of this review process, the SII Team will review and discuss the effectiveness of the operator's assessment of integrity issues identified on the pipeline system.

B. Program Execution

This phase of the program will be conducted one year after the formalization and implementation of the Self-Audit and System Integrity Plans. The SII Team will conduct annual on-site sessions with each company to discuss program progress and integrity issues. During this visit, it is expected that information shared will be integrity-based and will go beyond the scope of the "minimum" Pipeline Safety Regulations. This session will include a review of the company's implementation and results of their Self-Audit and System Integrity Plans. Any mutually agreed adjustments to the Plans will also be reviewed.

SII team members will also perform spot checks in the field to verify compliance with the regulations and validate implementation of the operator's integrity program. A field validation plan will be jointly developed with the operator. The areas selected for the spot checks will be based on a number of factors including the operator's self-audit results, prior OPS inspection results, incident and leak information, and other system performance information. Other areas to be reviewed include locations on the system where integrity is especially crucial to the protection of the public and the environment, and to service reliability. The field inspections will also include examining any areas of concern identified by the SII Team, following up on any corrective actions that may have been defined to address compliance or integrity problems, and examining any new technological applications.

The SII Team will produce an annual Summary Report that summarizes the on-site information exchange meetings and field validation reviews. This report will include a synopsis of the key integrity issues and improvements discussed, performance measures, new or proposed program enhancements, lessons learned, and the status of compliance with the Self-Audit Plan. Any noncompliance conditions that have a significant safety impact or require long term corrective actions will be discussed in the Summary Report. OPS will make a general summary report, as well as periodic updates on each pilot, available to the public via the System Integrity web page at http://ops.dot.gov.

All compliance concerns will be discussed directly with the operator during the annual visit. As noted earlier, it is expected that the operator will have identified and corrected these items as a result of implementing its Self-Audit Plan. In the event new compliance issues are discovered by the SII Team during its spot check, or the SII Team has concerns with how the operator has addressed any compliance problem, every attempt will be made to resolve any outstanding issues in a consultative fashion.

Following resolution, compliance actions will be documented as follows:

1. All issues found as a result of the Operator's Self-Audit Plan will be reviewed with the operator. Significant safety implications and their corrective actions will be incorporated into the SII Team Summary Report.

2. Issues found as a result of the SII Team spot check inspections will also be reviewed with the operator and will be included in the Summary Report.

3. Concerns that have no safety implications will be monitored by OPS to assure issues are resolved and that information is distributed to appropriate personnel throughout the company to prevent recurrence.

As noted previously, it is expected that participants in the SII Pilot Program will be in a civil penalty-free environment as long as the following conditions are met:

- Operator's Self-Audit identifies noncompliance situations and the operator corrects the problem to the SII Team's satisfaction;
- System or organizational problems that lead to noncompliances are corrected; and
- Operator's program prevents repetitive noncompliance situations.

If these conditions are not satisfied, OPS will attempt to resolve the outstanding issues through a consultative interaction with the operator. If an issue that has significant safety implications cannot be resolved to the SII Team's and operator's satisfaction, the operator may appeal to the Associate Administrator for OPS. If the issue can not be mutually resolved at that point, the operator and/or OPS can terminate participation in the SII Pilot Program.

OPS reserves the right to issue a Corrective Action Order if the Associate Administrator for Pipeline Safety determines that a particular pipeline facility is hazardous to life, property, or the environment. (For example, after an accident, where a Corrective Action Order is issued requiring an inspection and/or testing program to assure pipeline integrity and to restore public confidence.)

V. Performance Measurement of the SII Program

The SII Team will evaluate the individual pilot projects annually, and will document the results in its post-inspection Summary Report to ascertain the effectiveness of the SII approach. In measuring performance of the Pilot Program, the following factors will be examined:

- Understanding of pipeline system-wide condition, including identifying potential risks and risk reduction opportunities to address the most significant risks;
- Familiarity with approaches, technologies, research activities, and processes available to identify and remedy potential safety problems;
- Use of safety approaches (e.g., risk assessment processes), and risk control and reduction activities commensurate with the level of risk;
- Integration and communication of system integrity-related information and improved practices throughout the company (e.g., systematically institutionalizing good ideas);
- Effectiveness of the Self-Audit Plan and its implementation in assuring compliance with the Federal Pipeline Safety Regulations (i.e., regulatory compliance is achieved and maintained; and newly identified noncompliance conditions are corrected and not repeated);
- Performance assessment, feedback, and results orientation of operators and OPS; and
- Visibility of company management commitment to safety.

At the conclusion of the three-year SII Pilot Program, OPS and participating operators hope to be able to answer the following questions through the performance measurement process:

1. What measures best capture the expected outcomes?
   - How has the organization demonstrated increased safety and environmental protection?
2. Are the selected system integrity activities having the intended effects?
   - Does actual experience confirm predictions?
3. How can the overall system integrity process be improved?
   - Given actual experience, does the organization need to change its decisions?
   - How should the risk assessment and risk control processes be updated to reflect new experience?
   - What modifications need to be done to improve the effectiveness and efficiency of the SII Pilot Program?
4. Do OPS and affected state agencies know more about the integrity of the pipeline system than it did when the operator entered the SII Pilot Program?
   - Has mutual confidence between OPS, the interstate agents, and the operators increased on system integrity issues?
5. Is the usage of Self-Audit Plans effective in assuring compliance with the Pipeline Safety Regulations?
   - Is regulatory compliance being achieved and maintained?
6. Has the SII approach enhanced the inspection process?
7. Have state and Federal resources been optimized to improve efficiency and consistency, and enhance protection of the public and the environment?

Exhibit A—Operator's Self-Audit Plan

Purpose

An operator participating in the SII Pilot Program must have a Self-Audit Plan. A participant's self-audit should establish the following:

- Baseline measurement to demonstrate compliance with CFR Parts 191 and 192 or 195.
- Target areas for corrective action.
- Corrective action follow-up.

The operator must implement the plan to assure the success of the SII Pilot Program. As described previously, the operator will perform and report the results of its self-audit annually. These results will be reviewed by the SII Team. This process will enable both the operator and the SII Team, to identify strengths and weaknesses of the company's Self-Audit Plan. It will also ensure that all operational, maintenance, inspection, etc., programs required to maintain compliance with the regulations are in compliance and operating satisfactorily. This review will also ensure that the program elements of the Self-Audit Plan are operating as initially agreed upon, and procedures are in place for a thorough follow-up of any accidents/incidents.

Features

The key parts of an effective Self-Audit Plan are Implementation and Operation, Checking and Corrective Action, and Management Review. The operator will use its existing Self-Audit Plan, or develop a plan that satisfactorily addresses the intent of the features identified below The SII Team will accept the Self-Audit Plan at the Pilot Program inception, and whenever new regulations or other factors require modification of the Plan.

Implementation and Operation

- Structure and Responsibility:
- Roles, responsibilities and authorities must be defined, documented and communicated.
- Resources essential to its implementation must be provided. Specific resources are human and technology.
- A company officer must appoint a management representative to: Ensure the Self-Audit Plan requirements previously established are implemented and maintained; and report on the performance of the Self-Audit Plan to management.
- Training, Awareness and Competence: The organization must:
- Identify training needs for personnel executing the self-audit to ensure delivery of uniform results; and
- Establish procedures to ensure employees are aware of: The importance of conformance with the SII Program; the significant actual or potential impacts of their activities; and the potential consequences of departures from the procedures.

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Checking and Corrective Action

The organization must:

- Establish documented procedures to monitor and measure characteristics of its facilities that can have an impact on its operations and compliance;
- Prepare a procedure to periodically evaluate compliance with the regulations;
- Establish procedures for defining responsibility and authority for handling, investigating and taking actions on nonconformance which must be reported to the SII Team as agreed upon;
- Record and implement changes resulting from corrective and preventive actions; and
- Schedule audits.based on the importance of the activity and the result of previous audits.

Management Review

Management must:

- Periodically review the self-audit procedures and documentation to ensure continuing suitability, adequacy and effectiveness;
- Evaluate the need for changes to policy, objectives and other elements as it relates to continuing progress to the plan; and
- Appraise the need for additional training and communications to remain in conformance and plan for personnel changes.

Documentation

The Self-Audit Plan must be conducted by implementing a structured process for documentation. The organization must establish and maintain information, in paper or electronic form, the description of core elements of the Self-Audit Plan.

Audit Cycle

In summary, the SII Pilot Program self-audit process is expected to proceed as follows:

1. Operator conducts the self-audit, collecting evidence and reporting findings;
2. Operator prepares the self-audit report;
3. Operator and SII Team discuss self-audit results during annual site information exchange;
4. SII Team conducts spot-inspection to validate the report;
5. SII Team evaluates self-audit, discusses findings with operator and makes recommendations for improvements. Operator fine tunes Self-Audit Plan as necessary;
6. Operator addresses recommendations and corrects mutually agreed on deficiencies; and
7. Operator begins next cycle.

Exhibit B—Operator's System Integrity Plan

The System Integrity Plan shall address key elements of pipeline system integrity issues that are not explicitly or completely addressed in the current pipeline safety regulations. This plan will enable both the operator and SII Team to cooperate and share information on strengths and weaknesses of the operator's pipeline system in a partnering, problem-solving, and consultative environment. Input to the System Integrity Plan typically includes data and information about the design and age of the pipe, external factors, operational and maintenance practices, operating history, test history, inspection findings, and the proximity and distribution of population, third party construction activities, environmentally sensitive areas, and unusually sensitive areas. The operator's System Integrity Plan should include the following:

- An ongoing system-wide engineering analysis,
- Feedback to management,
- Implementation of activities to address the most significant threats to integrity, and
- Continuous improvement.

Diligently applied, this plan should result in:

- A benchmark for evaluating the SII Program effectiveness,
- Evidence of a documented system integrity system,
- Documented and implemented integrity improvement ideas,
- Enhanced employee involvement, and
- Targeted training resulting in a better informed workforce.

Some examples of an operator's system integrity program key elements that may be included in the Plan are listed below:

A. SCADA

- Design parameters and limitations.
- Operational logistics.

B. Corrosion Control

- External.
- Internal.
- Atmospheric.

C. Operational Integrity

- Hydrostatic testing, close interval surveys, internal inspection, or other integrity assessments:

—How does the Operator determine where and when to apply these tools which are above the minimum Federal regulations?
—What determines the choice of a method?
—What determines the interval or frequency?
—Who reviews the summary?
—Are the reports used for long-term planning? How?

D. Pipeline Incidents and Accidents

- All leak/spill history (Reportable and Non-reportable).
- Repair reports.
- Operator errors.
- Equipment failure/malfunction.
- Natural causes (landslide, earthquake, flood, etc.).
- Third party damage.
- Near miss reporting.
- Abnormal operations.

Exhibit C—Spot Checks for Validation of Operator Self-Audit Plans

Some key areas will be randomly selected for field inspection by the SII Team at various points along the system considering operator self-audit exception data, system performance data, and accident/incident information. Other portions in the system that are crucial for public and environmental safety and operational reliability may also be reviewed. Some of the areas that could be covered in the validation check include the following:

- Pipe in, across, or over bridges, streams, national parks, wild and scenic rivers, cultural areas, populated areas, unusually sensitive areas (proposed USA's), large reservoirs and aquifers with water for human consumption, high hazard and high consequence areas (as identified in FEMA reports);
- Pipe at supports;
- Marginal cathodic potential readings;
- Patrolling records/ROW issues;
- SCADA system;
- Ongoing operation/maintenance activities;
- Pressure settings on regulator or relief valves;
- Internal inspection device operations and results;
- Close interval surveys;
- Rehabilitation projects, condition of rehabilitated pipe and coatings;
- Class location changes;
- Overpressure device settings;
- Maintenance Repair practices (lowering in-service lines, reduction in MAOP or MOP due to anomalies); and
- Pipe replacement practices.

Issued in Washington, DC, on December 8, 1998.

Richard B. Felder,

Associate Administrator, Office of Pipeline Safety.

[FR Doc. 98–33099 Filed 12–11–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held from Monday, January 25 throgh Wednesday, January 27, 1999, in Washington, DC. The purpose of the Advisory Committee on Minoirty Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene in room 230, VA Central Office (VACO) Building, 810 Vermont Avenue, NW, Washington, DC, from 8:00 A.M. to 5:00 P.M. On Monday, Janaury 25, the Committee will focus on implementation of the recommendations contained in its two previous annual reports. The Committee will also review reports of the four subcommittees. On Tuesday, Janaury 26, the Committee will review the status of the Roadmap to Excellence strategy of the Under Secretary for Benefits. The Committee will also finalize budgets for each subcommittee and schedule field visits for the coming year. On Wednesday, Janaury 27, the Committee will focus on VA's Office of Small and Disadvantaged Business Utilization (OSDBU) to assess effectiveness of VA's contracting initiatives to increase the number of contracts to minority and other disadvantaged veterans. These sessions will be open to the public. Those who wish to attend should contact Mr. Anthony T. Hawkins, Department of Veterans Affairs, at (202) 273–6708, prior to January 20, 1999. The Committee will accept written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (OOM), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: December 4, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–33083 Filed 12–11–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Wyndham Hotel, 1400 "M" Street NW, Washington, DC on January 12 through January 14, 1999. The session on January 12, 1999, is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on January 13 and January 14, 1999, are scheduled to begin at 8 a.m. and end at 5 p.m.

The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the January 12 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 13–14, 1999, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Pub. L. 92–463 as amended by Section 5(c) of Pub. L. 94–409. Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, at least five days before the meeting. For further information, call (202) 275–0023.

Dated: December 4, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–33082 Filed 12–11–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service; Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Pub. L. 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Embassy Suites, 9090 Southwest Freeway, Houston, TX, January 18 through January 20, 1999, from 8:00 a.m. until 5:00 p.m. each day. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

This meeting will be open to the public at the start of the January 18 session for approximately one-half hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact the Review Program Manager (124F), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C., at least five days before the meeting. For further information, call (202) 273–8287.

Dated: December 4, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–33084 Filed 12–11–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) hereby gives notice of the weighted average poverty threshold established for 1997 for one person (unrelated individual) as established by the Bureau of the Census. The amount is $8,183.

DATES: For VA determinations, the 1997 poverty threshold is effective September 9, 1998, the date on which it was established by the Bureau of the Census.

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FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 273–7218.

SUPPLEMENTARY INFORMATION: We published a final rule amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, 55 FR 31579. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. The provisions of 38 CFR 4.16(a) use the poverty threshold as a standard in defining marginal employment when considering total disability ratings for compensation based on unemployability of an individual. We stated we would publish subsequent poverty threshold figures as notices in the **Federal Register**.

The Bureau of the Census recently published the weighted average poverty thresholds for 1997. The threshold for one person (unrelated individual) is $8,183.

Dated: December 3, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 98–33085 Filed 12–11–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 239
Monday, December 14, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 10

Rules of Practice; Final Rules

Correction

In rule document 98–27983 beginning on page 55784 in the issue of Monday, October 19, 1998, make the following corrections:

§ 10.21 [Corrected]

1. On page 55791, in the second column, in § 10.21, in the third line, "hearings" should read "hearing".

§ 10.42 [Corrected]

2. On page 55793, in the first column, in § 10.42(b)(7), in the 13th line, before "proceeding" add "the".

3. On the same page, in the first column, in § 10.42(c)(1)(iii), in the sixth line, after "means", add "notes".

§ 10.66 [Corrected]

4. On the same page, in the third column, in § 10.66(b), in the third line from the bottom, "provision" should read "provisions"; and in the second line from the bottom, "requirements" should read "requirement".

§ 10.68 [Corrected]

5. On page 55794, in the second column, in § 10.68(c)(2), in the first line, "*Diposition*" should read "*Disposition*"; and in the 15th line, "offer" should read "order".

6. On the same page, in the third column, in § 10.68(f), in the sixth line, "commission" should read "Commission".

§ 10.84 [Corrected]

7. On the same page, in the third column, in § 10.84, the section heading is corrected by adding a period.

§ 10.102 [Corrected]

8. On page 55795, in the first column, in § 10.102(a)(1), in the seventh line, "should" should read "shall".

9. On the same page, in the first column, in § 10.102(a)(2), in the fifth line, "of within" should read "or within".

10. On the same page, in the first column, in § 10.102(b)(3), in the first line, "With" should read "Within".

§ 10.106 [Corrected]

11. On the same page, in the third column, in § 10.106(c), in the second line, after "by" add "the".

Subpart I to Part 10 [Corrected]

12. On the same page, in the third column, in Subpart I to Part 10, in the table of contents, add an additional line to the table of contents, which should read "10.114 Acceleration of establishment of restitution procedure.".

§ 10.111 [Corrected]

13. On page 55796, in the first column, in § 10.111, in the section heading, "proceeding" should read "procedure".

Appendix A to Part 10 [Corrected]

14. On the same page, in the second column, in Appendix A to Part 10, in the first paragraph, in the third line, "any" should read "an"; and in the fourth line, "proceedings" should read "proceeding".

15. On the same page, in the second column, in Appendix A to Part 10, in the second paragraph, in the third line, "Commission-Instituted" should read "Commission-instituted"; in the tenth line, "dependent" should read "defendant"; and in the fifth line from the bottom, "complaints" should read "complaint".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy and Regulatory Commission

[Docket No. RP99-161-000]

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 3, 1998.

Correction

In notice document 98–32694 appearing on page 67866, in the issue of Wednesday, December 9, 1998, make the following correction:

On page 67866, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Presidential Determination No. 99–5 of November 25, 1998

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Correction

In Presidential Determination No. 99–5 of November 25, 1998, in the issue of December 9, 1998, on page 68145, the title document number should read "Presidential Determination No. 99–5" instead of "Presidential Determination 98–5".

BILLING CODE 1505–01–D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants; Manufacture of Amino/Phenolic Resins; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–6173–3]

RIN 2060–AE36

National Emission Standards for Hazardous Air Pollutants; Manufacture of Amino/Phenolic Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed rule would reduce air emissions of hazardous air pollutants (HAP) from existing and new sources that manufacture amino or phenolic resins. The proposed rule would implement section 112 of the Clean Air Act Amendments of 1990 (Act) and is based on the Administrator's determination that amino/phenolic resin sources emit HAP identified on the EPA's list of 188 HAP.

The resins covered by the proposed rule use formaldehyde as a primary feedstock. The major HAP emitted by sources covered by the proposed rule include formaldehyde, methanol, phenol, xylene, and toluene. Beginning with the first year after sources are required to comply with the proposed rule, the EPA concludes that the proposed rule is estimated to reduce HAP emissions from existing sources by 356 megagrams per year (Mg/yr) from a baseline level of 644 Mg/yr. This is a 55 percent reduction.

The published list of source categories included the amino resins production source category and the phenolic resins production source category. These two products can broadly be classified as formaldehyde-based thermosetting resins. These two source categories are being combined into one source category (i.e., the amino/phenolic resins production source category) and are treated as a single source category for the purposes of this rulemaking.

DATES: *Comments:* Comments must be received on or before February 12, 1999. For information on submitting electronic comments see the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing: A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for the manufacture of Amino/Phenolic Resins. If anyone contacts the EPA requesting to speak at a public hearing by January 11, 1999, a public hearing will be held on January 28, 1999 beginning at 9:30 a.m.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102) Attention: Docket No. A–92–19, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to John Schaefer, USEPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–0296, fax (919) 541–3470 and e-mail: schaefer.john@EPAMAIL.EPA.GOV.

Comments and data may also be submitted electronically by following the instructions listed in **SUPPLEMENTARY INFORMATION**. No confidential business information (CBI) should be submitted through e-mail.

Public Hearing: Persons interested in attending the hearing should notify Ms. Maria Noell at (919) 541–5607, Organic Chemicals Group (MD–13) to verify that a hearing will occur. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

Request to Speak at Hearing: Persons wishing to present oral testimony must contact the EPA by January 11, 1999 by contacting Ms. Maria Noell; Organic Chemicals Group, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607.

Basis and Purpose Document: The basis and purpose document (BPD) may be obtained from the U.S. Environmental Protection Library (MD–35), Research Triangle Park, NC 27711, telephone (919) 541–2777. Please refer to "National Emissions Standards for Hazardous Air Pollutants for Source Category: Manufacture of Amino/Phenolic Resins—Background Information for Proposed Standards" for the BPD. This document may also be obtained electronically from the EPA's Technology Transfer Network (TNN) (see **SUPPLEMENTARY INFORMATION** for access information.)

Docket: A docket, No. A–92–19, containing information considered by the EPA in the development of the proposed standards for the Manufacture of Amino/Phenolic Resins, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). The proposed regulations, BPD, and other supporting information are available for inspection and copying. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standard, contact Mr. John Schaefer, US EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–0296.

SUPPLEMENTARY INFORMATION: *Regulated Entities:* Regulated categories and entities include:

Category	Examples of regulated entities
Manufacture of Amino/Phenolic Resins.	Amino/phenolic resins facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1400 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic comments and data can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in Wordperfect 5.1 file format or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–19. Electronic comments may be filed online at many Federal Depository Libraries.

This document, the proposed regulatory texts, and BPD are available in docket number A–92–19 or by request from the EPA's Air and Radiation Docket and Information Center. (see **ADDRESSES**) Electronic copies of this document may also be obtained from the EPA Technology Transfer Network (TTN) via the internet at the following address: http://www.epa.gov/ttn/oarpg. The EPA TTN is a free service, except for the normal long distance charges that apply.

The following outline is provided to aid in reading the preamble to the proposed NESHAP for the Manufacture of Amino/Phenolic Resins. The information presented in this preamble is organized as follows:

I. List of Source Categories
  A. Single Source Category
  B. Change of Source Category Name
  C. Industry Profile
II. Background
  A. Pollutants
  B. Development of the Standard
III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process
  A. Source of Authority for NESHAP Development
  B. Criteria for Development of NESHAP
IV. Summary of Proposed Standards
  A. Source Categories to be Regulated, Definition of Affected Source, and Definition of Amino/Phenolic Resin
  B. Relationship to Other Rules
  C. Pollutants to be Regulated
  D. Affected Emission Points
  E. Format of the Standards
  F. Summary of the Proposed Standards
  G. Compliance and Performance Test Provisions
  H. Monitoring Requirements
  I. Recordkeeping and Reporting Requirements
V. Rationale for Proposed Standards
  A. Selection of Hazardous Air Pollutants for Control
  B. Selection of Emission Points
  C. Determination of the Proposed Standards
  D. Selection of the Format of the Proposed Rule
  E. Selection of Compliance and Performance Test Provisions
  F. Selection of Parameter Monitoring Provisions
  G. Selection of Recordkeeping and Reporting Requirements
VI. Solicitation of Comments
VII. Summary Of Environmental, Energy, Cost, and Economic Impacts
  A. Facilities Affected by These NESHAP
  B. Primary Air Impacts
  C. Non-air Environmental Impacts
  D. Energy Impacts
  E. Cost Impacts
  F. Economic Impacts
VIII. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866 Review
  D. Regulatory Flexibility Act
  E. Unfunded Mandates
  F. Executive Order 12875
  G. National Technology Transfer and Advancement Act
  H. Executive Order 13045
  I. Executive Order 13084

Please note that in the rule which follows this preamble, §§ 63.1410, 63.1411, 63.1412, and 63.1416 are all reserved sections. This action was taken in order to maintain clarity and continuity in the rule if new sections need to be added to the rule at a later date.

I. List of Source Categories

A. Single Source Category

Section 112 of the Act requires that the EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) of the Act and work practice and equipment standards under section 112(h) of the Act for categories of sources that emit HAP. On July 16, 1992, the EPA published an initial list of major and area source categories to be regulated, (57 FR 31576), as required under section 112(c) of the Act. The amino resins production and phenolic resins production source categories were recorded separately on this initial list.

The EPA believes that it is technically feasible to regulate emissions from amino and phenolic resin manufacturing facilities by a single set of emission standards. As described in detail in Chapter 3 of the Basis and Purpose Document, the amino resins manufacturing process and the phenolic resins manufacturing process are very similar. At many facilities, the same process equipment is used to produce both amino and phenolic resins. For such facilities, complying with two different sets of standards would be difficult, if not impossible. In addition, the emission points for facilities manufacturing amino and phenolic resins are the same (reactor and non-reactor process vents, storage vessels, wastewater, and equipment leaks) and the resulting emission characteristics are very similar. Lastly, amino and phenolic manufacturing facilities use the same types of control devices to control HAP emissions from corresponding emission points; that is, there are no significant differences in the types of control technologies applicable to controlling emissions from amino and phenolic resins manufacturing processes. Another consideration in treating amino and phenolic resin facilities under a single set of standards is the cost involved in developing the standards and in complying with the standards. For the EPA, it is more efficient and less costly to develop a single standard than to develop separate standards for multiple source categories that have similar emission characteristics and applicable control technologies. A single set of standards will ensure that process equipment with comparable HAP emissions and control technologies are subject to consistent emission control requirements. In addition, compliance and enforcement activities will be more efficient and less costly.

In summary, the information obtained during the information gathering phase of the project demonstrated that the manufacturing processes, emission characteristics, and applicable control technologies for facilities in these two source categories are similar. Based on these factors, the EPA concluded that these two source categories are to be treated as a single source category for the purposes of this rulemaking. For purposes of this preamble and the proposed rule, the term amino/phenolic resin, and similar terms, will be used to indicate that the two source categories of amino resins and phenolic resins have been treated as a single source category for purposes of developing this rule.

B. Change of Source Category Name

Under today's action the EPA is proposing to revise the source category list published under section 112(c) of the Act to combine the Amino Resins Production and the Phenolic Resins Production source categories into a new category called "Amino/Phenolic Resins Production."

C. Industry Profile

Production methods used in the manufacture of amino/phenolic resins include both batch and continuous operations, although batch operations make up a majority of the process. The sizes of the major facilities range from 140 Mg/yr to 149,000 Mg/yr. Air emissions of HAP originate from breathing and withdrawal losses from storage vessels, venting of process vessels, leaks from piping and equipment used to transfer HAP (equipment leaks), and volatization of HAP from wastewater streams. HAP emitted from the amino/phenolic production processes include a range of compounds. Among the most prevalent are formaldehyde, methanol, and phenol. Detailed information describing the manufacturing processes and associated emissions can be found in the Basis and Purpose Document.

Over 56 companies at 99 facilities produce amino/phenolic products. An estimated 40 facilities are considered to be major sources according to the CAA criterion of having the potential to emit 10 tons per year of any HAP or 25 tons per year of combined HAP, based on 1992 emissions data. The proposed rule would apply to all major sources that manufacture amino/phenolic resins. Area sources would not be subject to the proposed rule.

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II. Background

A. Pollutants

The Act was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" [section 101(b)(1) of the Act]. The proposed rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the Act.

The HAP listed in section 112(b)(1) of the Act emitted by the amino/phenolic resin facilities covered by this proposed rule include formaldehyde, methanol, phenol, xylene, and toluene. Exposure to these compounds has been demonstrated to cause adverse health effects. The adverse health effects associated with the exposure to these specific HAP are discussed briefly in the following paragraphs. In general, these findings have only been shown with concentrations higher than those in the ambient air.

Formaldehyde, one of the HAP associated with this source category, has been classified as a probable human carcinogen of medium carcinogenic hazard based on sufficient animal and limited human evidence. In addition, short-term and long-term exposure to significant levels of formaldehyde may cause irritation of the eye, nose, throat, and, at higher levels, the respiratory tract in humans. Long-term exposures of animals have also resulted in damage to respiratory tract tissues. Although little information is available on developmental effects to humans, animal tests do not indicate effects on fetal development.

Short-term inhalation of large amounts of methanol by humans may cause headache, gastric disturbances, and visual disturbances leading to blindness. Effects on vision, gastrointestinal system and the nervous system have been reported in humans following significant long-term exposures. While no information is available on the reproductive or developmental effects of methanol in humans, birth defects have been observed in the offspring of rats exposed by inhalation to very high levels of methanol during pregnancy. Although no information is available on the carcinogenic effects of methanol in humans or animals, several tests of methanol's ability to damage genetic material have been negative. Because of a lack of information for humans and inadequate animal evidence, EPA does not consider methanol to be classifiable as a human carcinogen.

Short-term inhalation of high levels of phenol in air by humans may cause irritation of lungs, muscle tremors, loss of coordination, paralysis, and with several weeks of high exposure, severe heart, kidney, liver and lung damage. Chronic inhalation exposure to phenol in humans has been associated with liver injury, and muscle pain and weakness. Effects on fetal development have been observed in animals ingesting phenol during pregnancy. Studies in mice have reported that phenol applied to the skin causes skin cancer and, its application coincident with certain cancer-causing chemicals, increases their carcinogenic potency. Because of a lack of information for humans and inadequate animal evidence, EPA does not consider phenol to be classifiable as a human carcinogen.

Short-term inhalation of high levels of mixed xylenes in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Long-term inhalation of high levels of xylenes in humans may result in nervous system effects such as headaches, dizziness, fatigue, tremors, and incoordination. Other reported effects noted include labored breathing, heart palpitation, severe chest pain, abnormal heart functioning, and possible effects on the blood and kidneys. Developmental effects have been reported from xylene exposure via inhalation in animals. Because of a lack of information for humans and inadequate animal evidence, EPA does not consider xylenes to be classifiable as a human carcinogen.

Short-term inhalation of relatively high concentrations of toluene by humans may cause nervous system effects such as fatigue, sleepiness, headaches, and nausea, as well as, irregular heartbeat. Repeated exposure to high concentrations may cause additional nervous system effects, including incoordination, tremors, decreased brain size, involuntary eye movements, and may impair speech, hearing, and vision. Long-term exposure of toluene in humans has also been reported to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children whose mothers were exposed to high levels of toluene before birth may suffer nervous system dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may also increase the risk of spontaneous abortion. Because of a lack of information for humans and inadequate animal evidence, EPA does not consider toluene to be classifiable as a human carcinogen.

The EPA does not have the type of current detailed data on each of the amino/phenolic resin facilities covered by the proposed rule, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the organic HAP emitted from these facilities and potential for resultant health effects. Therefore, the EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the promulgated standard will substantially reduce emissions and exposures to the level achievable with maximum achievable control technology.

B. Development of the Standard

The alternatives considered in the development of the proposed rule, including those alternatives selected as standards for new and existing sources, are based on process and emissions data received from the existing facilities known by the EPA to be in operation.

Regulatory alternatives more stringent than the MACT floor were selected when they were judged to be achievable "taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements" [Section 112(d)(2) of the Act].

The proposed rule gives existing facilities 3 years from the effective date of the final rule to comply. This is the maximum amount allowed by Section 112(i)(3)(A) of the Act. Based on the number of existing facilities affected by the proposed rule, the EPA believes that required retrofits or other actions can be achieved in the timeframe allotted. New facilities will be required to comply with the rule upon start-up. The EPA sees no reason why new facilities would not be able to comply with the requirements of the rule upon start-up.

Included in the proposed rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that affected sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule.

The proposed rule is modeled after the Hazardous Organic NESHAP (HON) (40 CFR part 63, subparts F, G, and H) and the Polymers & Resins IV NESHAP. Because the proposed rule relies on the Polymers & Resins IV NESHAP for some regulatory language and the Polymers &

Resins IV NESHAP is currently under litigation with changes to the regulatory text expected to be part of the litigation outcome, corresponding changes may be made to this proposal at the appropriate time. In some instances, the proposed rule refers to the HON. In doing so, the proposed rule has benefited from the extensive public debate and participation experienced in the HON rulemaking. The EPA has also attempted to maintain consistency with existing regulations by either incorporating text from existing or forthcoming regulations or referencing the applicable sections, depending on which method would be least confusing for a given situation.

Representatives from other interested EPA offices and programs, including Regional offices, as well as state environmental agency personnel, participated in the regulatory development. These representatives were involved in the regulatory development process, and were given opportunities to review and comment on the proposed rule before proposal and promulgation. Therefore, the EPA believes that the implication to other EPA offices and programs and to state agencies has been adequately considered during the development of the proposed rule. In addition, the EPA has met with some members of industry concerning the proposed rule. Finally, industry, regulatory authorities, and environmental groups will have the opportunity to comment on the proposed rule and provide additional information during the public comment period following proposal.

The proposed rule will result in an organic HAP emission reduction of 356 Mg/yr for existing facilities. No emission reductions have been estimated for new facilities because the EPA does not anticipate that any new facilities will be built over the next 5 years. The emission reductions achieved by these standards will help to achieve the primary goal of the Clean Air Act, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."

III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Act gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list all known source categories and subcategories of "major sources" (defined below) that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes amino and phenolic resins.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as MACT. Consideration of control levels more stringent than the MACT floor (described below) must reflect consideration of the cost of achieving the emission reduction, any non-air quality, health, and environmental impacts, and energy requirements.

The MACT floor is the least stringent level allowed for MACT standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" [section 112(d)(3) of the Act]. Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources [section 112(d)(3) of the Act]. These two minimum levels of control define the MACT floor for new and existing sources.

Two interpretations have been evaluated by the EPA for representing the MACT floor for existing sources. One interpretation is that the MACT floor is represented by the worst performing source of the best performing 12 percent of the sources. The second interpretation is that the MACT floor is represented by the "average emission limitation achieved" by the best performing sources, where the "average" is based on a measure of central tendency, such as the arithmetic mean, median, or mode. This latter interpretation is referred to as the "higher floor interpretation." In a June 6, 1994 **Federal Register** notice (59 FR 29196), the EPA presented its interpretation of the statutory language concerning the MACT floor for existing sources. Based on a review of the statute, legislative history, and public comments, the EPA believes that the "higher floor interpretation" is a better reading of the statutory language. The determination of the MACT floor for existing sources under the proposed rule followed the "higher floor interpretation."

IV. Summary of Proposed Standards

A. Source Categories to be Regulated, Definition of Affected Source, and Definition of Amino/Phenolic Resin

The published list of source categories included the amino resins production source category and the phenolic resins production source category. These two products can broadly be classified as formaldehyde-based thermosetting resins. These two source categories are being combined into one source category and are treated as a single source category for the purposes of this rulemaking. The proposed rule would regulate organic HAP emissions from facilities in the amino/phenolic resin source category, provided that a facility is determined to be a major source. The proposed rule would regulate existing and new affected sources. For this proposed rule, an affected source is defined as each group of one or more amino/phenolic resin process units (APPU) that is located at a plant site that is a major source. An APPU is defined as follows:

> *Amino/Phenolic Resin Process Unit (APPU)* means a collection of equipment assembled and connected by hard-piping or ductwork used to process raw materials and to manufacture an amino/phenolic resin as its primary product. This collection of equipment includes process vents from process vessels; equipment identified in § 63.149; storage vessels, as determined in § 63.1400(g); and the equipment that is subject to the equipment leak provisions as specified in § 63.1415. Utilities, lines and equipment not containing process fluids, and other non-process lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not part of the amino/phenolic resin process unit. An amino/phenolic resin process unit consists of more than one unit operation.

In addition to the emission points and/ or equipment included in the definition of APPU, the affected source includes waste management units, maintenance wastewater, heat exchange systems, and equipment used to comply with the proposed rule, including control devices and recovery devices.

As described earlier in this preamble, the source categories of amino resins and phenolic resins have been combined into a single source category. To reflect this administrative action in the proposed rule, there are three definitions: amino/phenolic resin, amino resin, and phenolic resin. These definitions are presented below:

Amino/Phenolic Resin means one or both of the following types of resins:

(1) Amino resin, or

(2) Phenolic resin.

Amino resin means a resin produced through the reaction of formaldehyde, or a formaldehyde containing solution (e.g., aqueous formaldehyde), with compound(s) that contain the amino group; these compounds include melamine, urea, and urea derivatives.

Phenolic resin means a resin that is a condensation product of formaldehyde and phenol, or a formaldehyde substitute and/or a phenol substitute. Substitutes for formaldehyde include acetaldehyde or furfuraldehyde. Substitutes for phenol include other phenolic starting compounds such as cresol, xylenols, p-tert-butylphenol, p-phenylphenol, and nonylphenol.

B. Relationship to Other Rules

Affected sources subject to the proposed rule may also be subject to other existing rules. The relationship between this rule and three other rules is discussed below. See proposed § 63.1401(g)–(i).

Affected sources subject to the proposed rule may have storage vessels subject to the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR part 60, subpart Kb). For storage vessels subject to and complying with the NSPS, the proposed rule requires that such storage vessels remain in compliance with the NSPS because the NSPS level of control (i.e., 95%) is more stringent than the control level for the proposed rule (i.e., 50%). For storage vessels subject to the NSPS but that did not have to apply controls (e.g., the storage vessels stores an organic liquid but the vapor pressure of the stored material is below the applicability criteria), the proposed rule states that after the compliance date for the proposed rule, such storage vessels are only required to comply with the proposed rule and are no longer subject to subpart Kb.

Affected sources subject to the proposed rule may have cooling towers subject to the NESHAP for Industrial Cooling Towers (40 CFR part 63, subpart Q). There is no conflict between the requirements of subpart Q and the proposed rule. Subpart Q prohibits the use of certain chemicals in the cooling tower water, and the proposed rule implements a leak detection and repair program for organic HAP. Therefore, affected sources subject to both rules must comply with both rules.

Affected sources subject to the proposed rule may also be subject to the Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (SOCMI LDAR) (40 CFR part 60, subpart VV) and/or the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (HON NESHAP LDAR)(40 CFR part 63, subpart H). After the compliance date for the proposed rule, such affected sources are only required to comply with the proposed rule and are no longer subject to CFR part 60 subpart VV or to CFR part 63 subpart H. The proposed rule directly references the HON provisions contained in subpart H, and therefore is equivalent to the HON. The HON is more stringent than the subpart VV.

Another likely instance of interaction between the proposed rule and other rules is related to storage vessels already covered by the HON; this is likely to occur at amino/phenolic resin facilities that are collocated with formaldehyde plants subject to the HON. In such cases, a methanol storage vessel supplying methanol to the amino/phenolic resin facility is likely to be subject to the HON. The storage vessel assignment procedures in the proposed rule address such situations. If a storage vessel is already subject to another part 63 standard, that storage vessel is considered to be assigned to the process unit subject to the part 63 standard and is not subject to the proposed rule.

C. Pollutants To Be Regulated

Facilities in the amino/phenolic source category emit a variety of organic HAP. Among the most significant emissions of organic HAP are the following: formaldehyde, methanol, phenol, xylene, and toluene. The proposed rule would regulate emissions of these compounds, as well as a variety of other organic HAP that are emitted.

D. Affected Emission Points

Emissions from the following emission points are being covered by the proposed rule: storage vessels, continuous process vents, batch process vents, heat exchange systems, wastewater, and equipment leaks.

E. Format of the Standards

The Hazardous Organic NESHAP (HON) (subparts F, G, H, and I of 40 CFR part 63) is relied on heavily and provides the basis for selection of the proposed formats for the majority of emission points. For those emission points relying on the HON (i.e., storage vessels, continuous process vents, heat exchange systems, wastewater, and equipment leaks), the format of the proposed standards is the same as that found in the HON. The following paragraphs summarize the selected formats.

For storage vessels, the format of the proposed standards is dependent on the method selected to comply with the standards. If tank improvements (e.g., internal or external floating roofs with proper seals and fittings) are selected, the format is a combination of design, equipment, work practice, and operational standards. If a closed vent system and control device are selected, the format is a combination of design and equipment standards, and a percent reduction or outlet concentration. As an alternate standard, the proposed rule allows emissions from storage vessels to be vented to a control device continuously achieving an outlet concentration of 20 ppmv of organic HAP. In this case the format is an outlet concentration.

For continuous process vents, the format of the proposed standards is also dependent on the method selected to comply with the standards. If a control device other than a flare is used, the formats are a percent reduction or an outlet concentration. If a flare is selected, the format is a combination of equipment and operating specifications. Like storage vessels, the proposed rule allows compliance by venting emissions to a control device continuously achieving an outlet concentration of 20 ppmv of organic HAP.

For batch process vents the format depends on the type of batch process vent. For reactor batch process vents, a percent reduction and an emission limit were selected. The standard requires that emissions are reduced by a certain percent (i.e., 93 percent at existing affected sources and 95 percent at new affected sources) over the batch cycle. As an alternative, the standard allows a demonstration that emissions are limited to 0.017 kg of HAP per megagram of product at existing affected sources or 0.01 kg of HAP per megagram of product at new affected sources. For non-reactor batch process vents, the standard requires that emissions for the collection of non-reactor batch process vents within the affected source are reduced by 68 percent at existing affected sources and by 83 percent at new affected sources. Like continuous process vents, if a flare is selected, the format is a combination of equipment and operating specifications. Like storage vessels and continuous process vents, the proposed rule allows compliance by venting emissions to a control device continuously achieving an outlet concentration of 20 ppmv of organic HAP.

For heat exchange systems, a work practice standard is proposed. This standard requires a leak detection and repair program to detect and repair leaks of organic HAP into cooling tower water.

For wastewater streams requiring control, the proposed standards incorporate several formats: equipment, operational, work practice, and emission standards. The particular format selected depends on which portion of the wastewater stream is involved. For transport and handling equipment, the selected format is a combination of equipment standards and work practices. For the reduction of organic HAP from the wastewater stream itself, several alternative formats are included, including alternative numerical emission limit formats and equipment design and operation standard for a steam stripper. For vapor recovery and destruction devices other than flares, the format is a weight percent reduction. For flares, the format is a combination of equipment and operating specifications.

For equipment leaks, the proposed standards incorporate several formats: equipment, design, base performance levels (e.g., maximum allowable percent leaking valves), work practices, and operational practices. Different formats are necessary for different types of equipment because of the nature of the equipment, available control techniques, and applicability of the measurement method.

F. Summary of the Proposed Standards

Detailed information describing the approach used to determine MACT floors and the consideration of regulatory alternatives is presented in Section V of this preamble.

The proposed standards for new and existing affected sources are summarized in Table 1 and Table 2, respectively. The sections below present the proposed standards by emission point and present the alternative 20 ppmv of organic HAP emission limit.

1. Storage Vessels

The proposed standard for storage vessels at existing affected sources is 50 percent emission reduction for storage vessels meeting the following applicability criteria:

Aqueous formaldehyde: ≥10,000 gallons capacity with vapor pressure ≥0.47 psia

Non-aqueous formaldehyde: ≥10,160 gallons capacity with vapor pressure ≥2.45 psia; and ≥90,000 gallons capacity with vapor pressure ≥0.45 psia.

For storage vessels at new affected sources, the applicability criteria are the same but the control levels are different. For aqueous formaldehyde storage vessels, the control level is 50 percent, and for non-aqueous formaldehyde storage vessels, the control level is 95 percent.

2. Continuous Process Vents

The proposed standard for continuous process vents at new affected sources utilizes the MACT floor level of control and the HON process vent provisions to establish a two-tiered standard. For continuous process vents with total resource effectiveness values (TRE) greater than 1.0 but less than or equal to 1.2, 85 percent emission reduction is required (i.e., MACT floor). For continuous process vents with a TRE value of 1.0 or less, 98 percent emission reduction is required (i.e., HON). For process vents with a TRE value greater than 1.2, controls are not required. TRE values are determined using the TRE equations from the HON for a thermal incinerator with 70 percent heat recovery. As an alternative to the percent reduction, an owner or operator may demonstrate that the selected controls reduce the outlet concentration to 20 ppmv.

The proposed rule does not contain any requirements for the control of continuous process vents at existing affected sources.

TABLE 1.—PROPOSED STANDARDS FOR NEW AFFECTED SOURCES

Emission point	Applicability criteria	Standard
Storage Vessels	For aqueous formaldehyde vessels; vessels with capacities of 10,000 gallons or greater with vapor pressures of 0.47 psia or greater. For non-aqueous formaldehyde vessels; vessels with capacities of 10,160 gallons or greater with vapor pressures of 2.45 psia or greater *and* vessels with capacities of 90,000 gallons and greater with vapor pressures of 0.45 psia and greater.	50 percent control OR alternative standard of venting to a control device continuously achieving a 20 ppmv outlet concentration OR 95 percent control OR alternative standard of venting to a control device continuously achieving a 20 ppmv outlet concentration.
Continuous Process Vents	HON TRE value calculations; two levels of control.	85 percent control for vents with TRE greater than 1.0 but less than or equal to 1.2 and 98 percent control for vents with TRE equal to or less than 10.0 OR alternative standard of venting to a control device continously achieving a 20 ppmv outlet concentration.
Reactor Batch Process Vents	No applicability criteria, all reactor batch process vents are subject to control.	95 percent control over the batch cycle; or 0.01 kilogram of HAP per megagram of product; OR alternative standard of venting to a control device continuously achieving a 20 ppmv outlet concentration.
Non-Reactor Batch Process Vents	Facility-wide emissions from the collection of non-reactor batch process vents greater than or equal to 0.23 Mg.	83 percent control for the collection of non-reactor batch process vents within the affected source; OR alternative standard of venting to a control device continuously achieving a 20 ppmv outlet concentration.
Heat Exchange Systems	No applicability criteria ...	Monitor for leaks.
Wastewater	HON applicability criteria	HON control level.

TABLE 1.—PROPOSED STANDARDS FOR NEW AFFECTED SOURCES—Continued

Emission point	Applicability criteria	Standard
Equipment Leaks	HON applicability criteria [a]	HON leak detection and repair program.

[a] The HON has an exemption for equipment components in organic HAP service less than 300 hours per year.

TABLE 2.—PROPOSED STANDARDS FOR EXISTING AFFECTED SOURCES

Emission point	Applicability criteria	Standard
Storage Vessels	For aqueous formaldehyde vessels; vessels with capacities of 10,000 gallons or greater with vapor pressures of 0.47 psia or greater. For non-aqueous formaldehyde vessels; vessels with capacities of 10,160 gallons or greater with vapor pressures of 2.45 psia or greater *and* tanks with capacities of 90,000 gallons and greater with vapor pressures of 0.45 psia and greater.	50 percent control OR alternative standard of venting to a control device continuously achieving a 20 ppmv outlet concentration.
Continuous Process Vents	Not applicable	No standard selected.
Reactor Batch Process Vents	No applicability criteria, all reactor batch process vents are subject to control.	93 percent control over the batch cycle; OR 0.017 kilogram of HAP per megagram of product; OR alternative standard of venting to a control device continuously achieving a 20 ppmv outlet concentration.
Non-Reactor Batch Process Vents	Facility-wide emissions from non-reactor batch process vents greater than or equal to 0.23 Mg.	68 percent control for all non-reactor batch process vents within the affected source; OR alternative standard of venting to a control device continuously achieving a 20 ppmv outlet concentration.
Heat Exchange Systems	No applicability criteria	Monitor for leaks.
Wastewater	Not applicable	No standard selected.
Equipment Leaks	HON applicability criteria [a]	HON leak detection and repair program.

[a] The HON has an exemption for equipment components in organic HAP service less than 300 hours per year.

3. Batch Process Vents

Batch process vents are distinguished as reactor batch process vents or non-reactor batch process vents under the proposed standards, and are discussed separately in this section.

Reactor Batch Process Vents. The proposed standards for reactor batch process vents at new affected sources are 95 percent emission reduction with an alternative emission limit of 0.01 kilogram of HAP per megagram of product. The proposed standards for reactor batch process vents at existing affected sources are 93 percent emission reduction with an alternative emission limit of 0.017 kilogram of HAP per megagram of product. Because there are no applicability criteria for reactor batch process vents, all vents require control.

Non-Reactor Batch Process Vents. The proposed standard for non-reactor batch process vents at new affected sources is an overall emissions reduction of 83 percent from all non-reactor batch process vents within the affected source for affected sources with emissions from non-reactor batch process vents greater than or equal to 0.25 tpy. The proposed standard for existing affected sources is an overall emissions reduction of 68 percent for the collection of non-reactor batch process vents within the affected source for affected sources with emissions from the collection of non-reactor batch process vents greater than or equal to 0.23 Mg.

4. Heat Exchange Systems

A monitoring program to detect leaks from the process into the cooling water is the proposed standard for heat exchange systems at both new and existing affected sources. This monitoring program is the same as the HON program (40 CFR part 63, subpart F).

5. Wastewater Streams

The proposed standard for wastewater streams at new affected sources is the HON. No standard is being proposed for existing affected sources.

6. Equipment Leaks

The proposed standard for equipment leaks at new and existing affected sources is based on the HON (40 CFR part 63, subpart H). Aspects of the proposed standards that are not found in the HON are: (1) The option to group valves, (2) longer monitoring frequencies for facilities that demonstrate lower leak frequencies for valves and connectors, (3) delay of repair of equipment for which leaks have been detected is also allowed if the owner or operator determines that repair personnel would be exposed to an immediate danger if attempting to repair without a process shutdown, (4) closed-vent systems designed to operate at a pressure below atmospheric pressure may be used to comply, and (5) an actual annual production cutoff of 800 megagrams per year (i.e., affected sources that maintain actual annual production of amino/phenolic resins is equal to or less than 800 megagrams per year are exempt from the equipment leaks provisions).

7. Alternative Standard

As an alternative to the standards presented above for storage vessels, continuous process vents, reactor batch process vents, and non-reactor batch process vents, an owner or operator may choose to meet an alternative emission limit. Under the alternative emission limit, vent streams requiring control may be vented to a control device continuously achieving an outlet concentration of 20 ppmv of organic HAP. This alternative emission limit differs from the 20 ppmv alternatives that accompany the percent reduction requirements for storage vessels and continuous process vents in that a performance test specific to an individual emission point is not required. Instead, an initial demonstration that the control device continuously achieves an outlet concentration of 20 ppmv of organic HAP is required. Continuous compliance is demonstrated through continuous monitoring of the control device outlet concentration.

G. Compliance and Performance Test Provisions

Compliance and performance test provisions, to include group determination procedures, contained in the proposed rule are based on the HON, but there are several important exceptions. First, test methods are different because of the specific HAP emitted by amino/phenolic resin facilities. Second, the specific provisions for batch process vents are based on the provisions from the promulgated Group IV Polymers and Resins NESHAP (40 CFR part 63 Subpart JJJ).

Because of the specific HAP emitted by amino/phenolic resin facilities, the test methods specified in the HON are not completely adequate for the proposed rule. Specifically, formaldehyde is not adequately detected using either Method 18 or Method 25A of appendix A, 40 CFR part 60. Therefore, the following test methods have been added specifically for formaldehyde: Methods 316 and 320. Method 316 is a manual method that was proposed with the Mineral Wool NESHAP (62 FR 25370) and Method 320 is an FTIR-based method that was proposed with the Portland Cement NESHAP (63 FR 14181). Further, Method 18 does not always adequately detect methanol, and Method 308 has been included as an option for testing for methanol.

Under the proposed rule, owners or operators of control devices receiving 9.1 Mg/yr (10 tpy) or less of uncontrolled HAP emissions are not required to conduct a performance test and instead may perform a design evaluation to demonstrate compliance with the proposed rule.

Each type of emission point is discussed briefly in the paragraphs below.

1. Storage Vessels

The proposed standards for storage vessels refer directly to the HON storage vessel provisions. The group status of storage vessels is determined based on the storage vessel capacity and vapor pressure of the stored material. The proposed rule includes a table specifying storage vessels that are Group 1 and therefore require control. There is no requirement for an emissions test or engineering assessment to determine the group status of a storage vessel.

Compliance demonstration provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections.

2. Continuous Process Vents

The proposed standards for continuous process vents refer directly to the HON process vent provisions. Under the referenced provisions, an owner or operator is required to either calculate a TRE index value to determine whether each continuous process vent is a Group 1 or Group 2 vent, or the owner or operator can elect to comply with the continuous process vent control requirements without calculating the TRE index. The TRE index value is determined after the last recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations in the proposed rule.

Performance test provisions are included for Group 1 continuous process vents to verify that the control device achieves the required performance.

3. Batch Process Vents

There are no group determination procedures for reactor batch process vents because all reactor batch process vents are subject to control under the proposed rule. For non-reactor batch process vents, control is required for affected sources with 0.25 tons per year or more of uncontrolled emissions from the collection of non-reactor batch process vents within the affected source. Procedures for determining uncontrolled emissions from non-reactor batch process vents are included in the proposed rule. For those affected sources required to control non-reactor batch process vents, an owner or operator can choose to not control some non-reactor batch process vents, as long as emissions from the collection of non-reactor batch process vents are reduced by the specified percentage. Performance test provisions are included to verify the efficiency achieved by the control device.

Compliance is demonstrated by showing that for the batch cycle, if an individual reactor batch process vent is being controlled, or on an overall basis, if non-reactor batch process vents are being controlled, the specified percent reduction is achieved. To demonstrate this, an emissions profile must be developed that identifies each batch emission episode included in the batch process vent and characterizes emissions from each batch emission episode on a mass emitted per unit time basis. Using this emissions profile, the owner or operator must show that the periods of under-control and over-control of emissions balance and the batch cycle percent reduction or the overall percent reduction is achieved. The proposed rule contains procedures for estimating emissions from individual batch emission episodes, estimating control device efficiency, and for demonstrating that the required percent reduction is achieved.

Procedures for demonstrating compliance with the alternative kilogram of HAP per megagram of product emission limit are also included in the proposed rule.

4. Heat Exchange Systems

There are no performance test requirements for heat exchange systems. Compliance is demonstrated through the monitoring of cooling water to detect leaks in heat exchange systems. If a leak is detected, the heat exchange system must be repaired.

5. Wastewater

The proposed standards for wastewater refer directly to the HON wastewater provisions. For demonstrating compliance with the various requirements (i.e., group determinations, demonstrations of control device performance, or demonstrations of treatment processes), the proposed rule allows the owners or operators to either conduct performance tests or to document compliance using engineering calculations.

6. Equipment Leaks

The proposed standards for equipment leaks refer directly to the HON equipment leak provisions. The proposed rule retains the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A "leak" is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (the calibration gas) in air. The observed screening value may require adjustment for response factor relative to methane if the weighted response factor of the stream exceeds a specified multiplier. The proposed rule requires the use of Method 18 to determine the organic content of a process stream.

H. Monitoring Requirements

The proposed rule requires monitoring of HAP emissions and control and recovery device operating parameters. HAP emissions are

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monitored directly as part of complying with the kilogram of HAP emissions per megagram of product limits for reactor batch process vents or as part of the 20 ppmv alternative standard. Control device operating parameters are monitored as part of complying with the percent reduction requirements of the proposed rule.

Continuous parameter monitoring is required for control devices. Exceptions to this are that control devices controlling less than 1 ton per year of uncontrolled emissions are exempt from continuous monitoring but the owner or operator must conduct a daily or per batch demonstration that the control device is operating properly. Second, owners or operators of control devices serving storage vessels are not required to conduct parameter monitoring unless the owner or operator specifies continuous monitoring in the monitoring plan required by the referenced HON provisions. However, if a control device is used, the owners or operator must identify the appropriate monitoring procedures to be followed for compliance demonstration purposes. Further, if a control device serves both a storage vessel(s) and another emission point subject to the proposed rule, the control device is subject to continuous parameter monitoring if the other emission point is subject to continuous parameter monitoring.

Parameters must be monitored when emissions are vented to the control device. The proposed rule directly references the HON monitoring requirements for continuous process vents, storage vessels, and wastewater. However, there are general monitoring requirements specified in the proposed rule (e.g., establishment of parameter monitoring levels) that apply to all emission points.

The proposed rule identifies parameters to be monitored for most control devices expected to be used for emission points regulated by the proposed rule. Parameter monitoring levels are established based on design evaluation for control devices with uncontrolled emissions less than 10 tons per year. For all other control devices required to conduct continuous parameter monitoring, parameter monitoring levels are established based on a performance test, but can be supplemented by manufacturer's recommendations and/or an engineering assessment. If an owner or operator chooses to supplement results of the performance test using manufacturer's recommendations and/or engineering assessment, the established parameter monitoring level is subject to review and approval by the Administrator.

Parameter monitoring averages are determined based on all recorded values, except for values recorded under certain conditions, for example under conditions of start-up, shutdown, or malfunction. Parameter averages must be daily averages for control devices serving continuous process vents, waste management units, storage vessels (if required), or equipment leaks. Parameter averages may be either batch cycle daily averages or block averages for batch process vents. Parameter averages based on batch cycle daily averages cover a 24-hour period, based on the defined operating day, and may or may not cover multiple batch cycles for the batch process vent. A batch cycle daily average may also cover partial batch cycles, therefore the proposed rule requires that the information required to calculate parameter monitoring compliance for partial batch cycles be provided. Parameter averages based on block averages cover the complete batch cycle, regardless of the length of time for the batch cycle.

There are two types of violations under the proposed rule; violations of the operating limit and violations of the emission limit. Violations of the operating limit occur when not enough operating parameter monitoring data are available to constitute a valid day's worth of data or when the average is above the maximum or below the minimum established value. The proposed rule requires that 75 percent of the possible data points are recorded and are valid during a day. Violations of the emission limit occur when a control device fails to meet the 20 ppmv alternative standard allowed for continuous process vents, batch process vents, and storage vessels, or when a control device fails to meet the kilogram of HAP per megagram of product emission limits for batch process vents. There is one situation where an exceedance of an operating parameter is considered a violation of the emission limit. When the exit gas temperature monitoring data for a condenser shows an exceedance, it is considered a violation of the emission limit.

Provisions for alternate monitoring parameters are included in the proposed rule. An owner or operator must apply for approval to monitor an alternate parameter.

I. Recordkeeping and Reporting Requirements

The general recordkeeping and reporting requirements of this subpart are very similar to those found in the HON. The proposed rule also relies on the provisions of subpart A of 40 CFR part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule. Specific recordkeeping and reporting requirements for each type of emission point are also included in the proposed rule. The proposed rule references the recordkeeping and reporting requirements for continuous process vents, storage vessels, wastewater, and equipment leaks.

The proposed rule requires sources to keep records and submit reports of information necessary to document compliance. Records must be kept for 5 years. The following reports must be submitted to the Administrator as appropriate: (1) Precompliance Report, (2) Notification of Compliance Status, (3) Periodic Reports, and (4) Other Reports. The requirements for each of the four reports are summarized below. In addition, sources complying with the equipment leak requirements contained in subpart H must follow the recordkeeping and reporting requirements of subpart H.

1. Precompliance Report

The Precompliance Report would be due no later than 12 months prior to the compliance date. The Precompliance Report includes the following, as appropriate: compliance extension requests; requests to monitor alternative parameters; intent to use alternative controls; intent to use the alternative continuous monitoring and recordkeeping allowed by the rule; demonstration that the emissions estimation equations for batch process vents are not appropriate; and information related to establishing parameter monitoring levels, if required.

2. Notification of Compliance Status

The Notification of Compliance Status would be due 150 days after the affected source's compliance date. It includes the information necessary to demonstrate that compliance has been achieved for emission points required to apply controls by the proposed rule. Such information includes, but is not limited to, the results of any performance tests; one complete test report for each test method used for a particular kind of emission point; TRE determinations for continuous process vents; design analyses for storage vessels and wastewater emission points and for certain batch process vents; and monitored parameter levels for each emission point and supporting data for the designated level.

3. Periodic Reports

Generally, Periodic Reports would be submitted semiannually. However, there is an exception. The Administrator may request that the owner or operator submit quarterly reports for certain emission points that the Administrator identifies. After 1 year, semiannual reporting can be resumed, unless the Administrator requests continuation of quarterly reports.

Periodic Reports would include information required to be reported under the recordkeeping and reporting provisions for each emission point. For continuously monitored parameters, the data on those periods when the parameters are above the maximum or below the minimum established levels are included in the reports. Periodic Reports would also include results of any performance tests conducted during the reporting period and instances when required inspections revealed problems.

4. Other Reports

Other reports required under the proposed rule include: the notification of inspections required for storage vessels; reports of changes to the primary product for an APPU or process unit; reports of addition of one or more APPUs, addition of one or more emission points, or change in the group status of emission points.

V. Rationale for Proposed Standards

A. Selection of Hazardous Air Pollutants for Control

Of the 188 compounds listed, only a limited number are emitted from amino/phenolic resin facilities. Because the EPA judged that it was unnecessary to require facilities to test for all 188 HAP, a list of the specific HAP to be regulated in the proposed rule was developed. However, all 188 listed HAP must be considered in any major source determination under the General Provisions to 40 CFR part 63.

To select which HAP are to be regulated under the proposed NESHAP, the EPA evaluated the emissions data provided by the industry in the 1992 Information Collection Request. Based on this evaluation, the EPA is proposing that the following specific HAP be regulated under the proposed NESHAP: formaldehyde, methanol, phenol, xylenes (isomers and mixtures), toluene, o-Cresol, m-Cresol, p-Cresol, ethylene glycol, styrene, methyl ethyl ketone, ethyl benzene, naphthalene, cresol/cresylic acid (isomers and mixtures), glycol ethers, diethanolamine, aniline, methyl isobutyl ketone, acrylamide, biphenyl, and dimethyl formamide.

B. Selection of Emission Points

Emissions from the production of amino/phenolic resins were identified as occurring from storage vessels, continuous process vents, batch process vents, heat exchange systems, wastewater, and equipment leaks. Batch process vents are distinguished as being reactor batch process vents or non-reactor batch process vents. The EPA is proposing standards for all of these types of emission points in the proposed rule.

Non-reactor batch process vents include, but are not limited to, filter presses, batch drying operations, weigh tanks, holding tanks, distillation systems, and flaking belt operations. Many facilities did not report the presence of non-reactor batch process vents, but the EPA judged that all facilities had some number of these types of batch process vents. Because of the discrepancy within the gathered data, the EPA judged that including non-reactor batch process vents with reactor batch process vents in the development of the MACT floor could result in a level of control for non-reactor batch process vents that was not representative of the controls present at existing sources. A primary factor in making this judgment was the fact that only three of the best performing 5 facilities, in terms of reactor batch process vent control, reported non-reactor batch process vents.

In addition, because heat exchange systems have been identified as a potential source of emissions, the EPA judges that proposing a standard to cover this emission point is warranted. However, the EPA is not aware if any heat exchange systems exist in the amino/phenolic resin industry and would like to solicit comments from interested persons on this subject. The request for comment on heat exchange systems is discussed in Section VI of this preamble.

C. Determination of the Proposed Standards

The sections below present the rationale for determining MACT floors by emission point, regulatory alternatives beyond the MACT floor, alternative standards (Section C.7) and action taken to address predicted adverse economic impacts to small businesses (Section C.8). Heat exchange systems are not discussed in this section because no MACT floor determination was made. A more detailed explanation of the development of the proposed standards is set forth in the Basis and Purpose Document (BPD), which supplements this preamble and is available from the docket.

1. Storage Vessels

The MACT floor for existing sources for categories with 30 or more sources is based on "the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emission information)." (CAA section 112(d)(3)) Here, the "source" is the amino/phenolic resin facility. Because EPA has emissions information for 40 amino/phenolic resins facilities that are major sources, the best performing 12 percent of existing sources is represented by the best performing 5 facilities. The best performing 5 facilities were selected based on the same approach as used in developing the MACT floor for storage vessels under the HON. Applicability criteria and control levels for the MACT floor were also developed using the HON approach.

For existing sources, the HON approach determines whether or not there is control at the MACT floor by considering the overall control status of each facility independently, judging each facility as controlled or uncontrolled based on a predominance of controlled or uncontrolled storage vessels. For example, if 8 out of 10 storage vessels are controlled at a given facility, the overall control status of that facility is "controlled." Next, the HON approach looks at a predominance of the best performing 5 facilities. For example, if at least 3 out of the 5 facilities are considered "controlled," a MACT floor of control is considered to exist. Table 3 presents a summary of the number of uncontrolled and controlled storage vessels at each of the best performing 5 facilities and presents the HON approach finding that the existing source MACT floor is "controlled."

TABLE 3.—STORAGE VESSELS AT THE BEST PERFORMING 5 FACILITIES

No. tanks	Company	Location	Chemical	Vapor pressure (psia)	Size (gal)	Control	Control device efficiency percent	Emissions	
								Uncont. Mg/yr	Cont. Mg/yr
5 tks	Borden	Fayetteville, NC	aqueous formaldehyde	0.47	55,000	Scrubber	50	912	456
15 tks	Borden	Fayetteville, NC	aqueous formaldehyde	0.47	16,000	Scrubber	50	812	406

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TABLE 3.—STORAGE VESSELS AT THE BEST PERFORMING 5 FACILITIES—Continued

No. tanks	Company	Location	Chemical	Vapor pressure (psia)	Size (gal)	Control	Control device efficiency percent	Emissions	
								Uncont. Mg/yr	Cont. Mg/yr
2 tks	Borden ...	Fayetteville, NC	phenol	<0.01	25,000	None	0	260	260
1 tk ..	Borden ...	Fayetteville, NC	methanol distillate	1.63	30,000	None	0	73	73
1 tk ..	Borden ...	Fayetteville, NC	methanol distillate	1.63	20,000	None	0	49	49
1 tk ..	Borden ...	Fayetteville, NC	aqueous formaldehyde	0.47	10,000	Scrubber	50	33	16
8 tks	Borden ...	Louisville, KY	aqueous formaldehyde	0.47	20,000	Scrubber	50	704	352
2 tks	Borden ...	Louisville, KY	distillate	1.63	20,300	None	0	695	695
3 tks	Borden ...	Louisville, KY	phenol	<0.01	20,300	None	0	500	500
1 tk ...	Borden ...	Louisville, KY	ethylene glycol	<0.01	20,000	None	0	1	1
1 tk ...	Borden ...	Louisville, KY	toluene	0.71	4,500	None	0	1	1
1 tk ...	Cytec	Wallingford, CT ..	methanol distillate	1.63	20,000	None	0	2981	2981
1 tk ...	Cytec	Wallingford, CT ..	methanol distillate	1.63	11,600	None	0	2865	2865
1 tk ...	Cytec	Wallingford, CT ..	methanol distillate	1.63	15,000	None	0	2865	2865
1 tk ...	Cytec	Wallingford, CT ..	methanol	2.45	50,000	Scrubber	95	946	47
1 tk ...	Cytec	Wallingford, CT ..	methanol	2.45	50,000	Scrubber	95	946	47
1 tk ...	Cytec	Wallingford, CT ..	methanol wash	2.45	10,159	Scrubber	95	625	31
1 tk ...	Cytec	Wallingford, CT ..	recovered methanol	2.45	10,000	None	0	600	600
1 tk ...	Cytec	Wallingford, CT ..	methyl formcel	0.45	90,000	Scrubber	95	452	23
1 tk ...	Cytec	Wallingford, CT ..	methanol wash	2.45	10,159	Scrubber .	95	222	11
1 tk ...	Cytec	Wallingford, CT ..	xylene	<1.5	15,000	None	0	70	70
1 tk ...	Cytec	Wallingford, CT ..	aqueous formaldehyde .	0.15	90,000	Scrubber .	95	32	2
1 tk ...	Simpson Timber.	Portland, OR	aqueous formaldehyde .	0.47	47,972	Scrubber .	85	1420	213
1 tk	Simpson Timber.	Portland, OR .	methanol	1.93	80,926	None	-	280	280
1 tk	Simpson Timber.	Portland, OR .	phenol	<0.01	51,702	None		160	160

NOTE: The capacity values (size in gallons) apply separately to each storage vessel, while the uncontrolled and controlled emissions (lb/yr) apply collectively to the group of storage vessels for that specific facility.

The HON approach expresses applicability criteria in terms of vapor pressure and storage vessel capacity cutoffs. Once a finding of "controlled" is made for the MACT floor, vapor pressure and capacity cutoffs are developed that include those storage vessels at the baseline that are controlled and exclude storage vessels that are uncontrolled at the baseline. More than one set of vapor pressure and storage vessel capacity cutoffs may be developed, as was the case for the existing source MACT floor. The following applicability criteria were developed:

aqueous formaldehyde: ≥10,000 gallons capacity with vapor pressure ≥0.47 psia

Non-aqueous formaldehyde: ≥10,160 gallons capacity with vapor pressure ≥2.45 psia; and ≥90,000 gallons capacity with vapor pressure ≥0.45 psia.

Two sets of criteria were developed because the storage vessels in the best performing 5 facility data set naturally lend themselves to division based on the material stored (i.e., aqueous formaldehyde or other materials), and because the HON approach requires that storage vessels that are not controlled at the baseline be excluded by the applicability criteria.

The MACT floor is established based on the control levels at the baseline. Of the best performing 5 facilities, there are a total of 36 controlled storage vessels of which 6 are controlled to 95 percent, 1 is controlled to 85 percent, and 29 are controlled to 50 percent. The median and mode, which is 50 percent, was chosen to represent the MACT floor control level.

The MACT floor for new sources is set by the best controlled source. Using the HON approach for new sources, the best controlled source (here, the best controlled amino/phenolic resin facility) is identified based on the absolute number of storage vessels controlled.

The Borden, Fayetteville facility is the best controlled source based on absolute number of storage vessels controlled. However, the only controlled storage vessels are aqueous formaldehyde storage vessels and this leaves storage of other raw materials (i.e., non-aqueous formaldehyde) unaddressed. The Cytec, Wallingford facility is the next best controlled facility based on the absolute number of storage vessels controlled and includes other raw materials among the controlled vessels. The Borden, Fayetteville facility is the best controlled facility for aqueous formaldehyde storage vessels, and the Cytec, Wallingford facility is the best controlled facility for non-aqueous formaldehyde storage vessels. Therefore, separate floors were set for aqueous formaldehyde and non-aqueous formaldehyde storage vessels.

Like the process for existing sources, vapor pressure and capacity cutoffs were developed that include those storage vessels that are controlled at baseline and exclude storage vessels that are uncontrolled at baseline. The storage vessels at the Borden, Fayetteville facility were used to develop the aqueous formaldehyde criteria, and the storage vessels at the Cytec, Wallingford facility were used to develop the non-aqueous formaldehyde criteria. The following storage vessel applicability criteria were developed:

Aqueous formaldehyde: ≥ 10,000 gallons capacity with vapor pressure ≥ 0.47 psia.

Non-aqueous formaldehyde ≥ 10,160 gallons capacity with vapor pressure ≥ 2.45 psia; and ≥ 90,000 gallons capacity with vapor pressure ≥ 0.45 psia.

The applicability criteria for existing and new sources are coincidentally the same because of the large number of storage vessels at the Borden, Fayetteville facility.

The control level for the new source MACT floor is established based on the control levels at the best controlled facility. For aqueous formaldehyde storage vessels, the best controlled facility is the Borden, Fayetteville facility. For non-aqueous formaldehyde storage vessels, the best controlled facility is the Cytec, Wallingford facility.

The aqueous formaldehyde storage vessels at the Borden, Fayetteville facility are all controlled to 50 percent. Therefore, the MACT floor for aqueous formaldehyde storage vessels is 50 percent. At the Cytec, Wallingford facility some non-aqueous formaldehyde storage vessels are controlled and some are not controlled. The applicability criteria presented above separate the controlled tanks from the uncontrolled tanks. All of the controlled tanks are controlled to 95 percent. Therefore, the MACT floor for non-aqueous formaldehyde storage vessels is 95 percent.

2. Continuous Process Vents

The available data indicate that only three facilities had continuous process vents and only one of the three facilities had applied controls. The only continuous process vents identified by the available data were dryer vents.

The MACT floor for existing sources is set by the average performance achieved by the best performing 12 percent of existing sources. Here, the amino/phenolic resin facility is the "source." Because there are 40 amino/phenolic resin facilities in the source category for which EPA has emissions information, the best performing 12 percent of existing affected sources is represented by the best performing 5 facilities. Because only one facility was identified as controlling its continuous process vents, the MACT floor for existing sources is no control.

The MACT floor for new sources is set by the best controlled source. The best controlled amino/phenolic resin facility has a scrubber with an 85 percent control efficiency. Therefore, the MACT floor level of control is 85 percent for continuous process vents that meet the applicability criterion. The applicability criterion chosen to represent the specific continuous process vents that are controlled at the MACT floor is the HON total resource effectiveness (TRE) equation for a thermal incinerator with 70 percent heat recovery. This applicability criterion was selected because the HON process vent provisions were relied upon for part of the standard and using the same applicability criterion to define the MACT floor provides a consistent approach for the rule.

The expression of applicability criteria is limited to the TRE equation for a thermal incinerator with 70 percent heat recovery because there was only one set of vent stream data, which did not allow the EPA to evaluate a range of stream conditions that were controlled versus those that were not controlled. This TRE value of 1.2 was calculated using the vent stream data for the continuous process vents setting the 85 percent MACT floor.

3. Batch Process Vents

As indicated in Section IV, batch process vents were distinguished as reactor batch process vents or non-reactor batch process vents for the purposes of the proposed rule. Reactor and non-reactor batch process vents are discussed separately in this section.

Reactor Batch Process Vents

The MACT floor for existing sources is set by the average performance achieved by the best performing 12 percent of existing sources. Here, the "source" is the amino/phenolic resin facility. Because there are 40 amino/phenolic resin facilities in the source category for which EPA has emissions information, the best performing 12 percent of existing sources is represented by the best performing 5 facilities. Each of the best performing 5 facilities had applied secondary controls to each of their reactor batch process vents; this fact necessitates that the proposed rule require control of all reactor batch process vents with no applicability criteria. Table 4 presents the data for the best performing 5 facilities in terms of reactor batch process vent controls.

TABLE 4.—BEST PERFORMING FACILITIES FOR REACTOR BATCH PROCESS VENTS BASED ON APPLIED SECONDARY CONTROLS [a]

Facility	Type of resin	Production of methylated resins (N or percent)	Collocated with formaldehyde plant (Y/N)	Secondary controls	Emission factor (lb HAP/1000 lb production)
Ranbar	P	N	N	thermal incinerator (95 percent)	0.84
Georgia Pacific, Taylorsville, MS	A/P	N	Y	catalytic incinerator (95 percent)	0.01
Georgia Pacific, Port Wentworth, GA	A/P	5–10%	N	caustic treatment (93 percent)	0.017
Borden, Louisville, Ky	P	N	Y	scrubber (90 percent)	CBI [b]
Solutia, Addyston, OH	A	100%	N	scrubber (85 percent)	CBI [b]

[a] The data on this table is restricted to the 17 facilities that were contacted during the recent data gathering effort.

[b] CBI means Confidential Business Information.

The data set used for determining the MACT floor was limited to the 17 facilities for which the 1992 ICR responses indicated that secondary controls had been applied to reactor batch process vents. These facilities were contacted via telephone during 1997 and were asked a series of questions in order to clarify the data that were reported in the 1992 ICR responses. Some of the topics that were covered during the teleconferences included the presence and purpose of a primary condenser, emissions before and after the primary condenser, efficiency of the primary condenser and secondary control devices, whether the facility was collocated with a formaldehyde plant, and whether the facility produced methylated resins.

In considering the best performing 5 facilities based on applied secondary controls, the data were evaluated to determine if the collocation with formaldehyde plants or the production of methylated resins influenced the application of secondary controls, specifically the use of combustion devices. No patterns emerged. One combustion device is at a phenolic producer (Ranbar) that does not produce any methylated resins and is not collocated with a formaldehyde plant. The other combustion device is at an amino/phenolic producer (Georgia Pacific, Taylorsville) that does not produce any methylated resins and is collocated with a formaldehyde plant.

In addition, the data were evaluated for patterns of applied secondary controls versus the production capacity of facilities. Again, no patterns emerged. One combustion device is located at a 816 Mg/yr producer (Ranbar), and the other combustion device is located at a 69,853 Mg/yr producer (Georgia Pacific, Taylorsville). These production capacities are typical small and large facilities, respectively.

In conclusion, because of the good distribution of methylators and non-methylators, facilities collocated with formaldehyde plants and those not, and amino only, phenolic only, and amino/

phenolic producers within the best performing 5 facilities, the best performing 5 facilities were considered representative of the industry.

The EPA considered two options for the MACT floor. The options considered included selecting the percent reduction for the median facility or averaging the percent reduction values for the best performing 5 facilities, and then determining the alternate kilogram of HAP per megagram of product emission limit in a similar manner. The option selected uses the median facility for establishing the percent reduction and the alternate emission limit. The Georgia Pacific, Port Wentworth facility represents the median facility of the best performing 5. Using the percent reduction value and the emission factor for this facility, the MACT floor was selected as 93 percent emission reduction with an alternative emission limit of 0.017 kilogram of HAP per megagram of product.

The option of averaging the percent reductions for the best performing 5 facilities was not selected because providing the corresponding alternate emissions limit would require averaging the emissions factors for the best performing 5 facilities. Because the emission factor for Ranbar (0.84 kilogram of HAP per megagram of product) is much higher than would be expected for a facility with a combustion device, the EPA judged that this approach would not provide a reasonable alternative emissions limit.

The MACT floor for new sources is set by the best controlled source (here, the best controlled amino/phenolic resin facility). In selecting the best controlled facility, the Ranbar and Georgia Pacific, Taylorsville facilities were considered as equally controlled. Because the emission factor for the Ranbar facility is judged to be exceptionally high considering the reported secondary controls, the Georgia Pacific, Taylorsville facility was selected as the best controlled facility. Therefore, the MACT floor for reactor batch process vents at new affected sources was selected as 95 percent emission reduction with an alternative emission limit of 0.01 kilogram of HAP per megagram of product.

Non-Reactor Batch Process Vents

The MACT floor for existing sources is set by the average performance for the best performing 12 percent of existing sources. Here, the amino/phenolic resin facility is the "source." Because there are 40 amino/phenolic resin facilities in the source category for which EPA has emissions information, the best performing 12 percent of existing sources is represented by the best performing 5 facilities. The best performing 5 facilities were selected based on the overall emission reduction achieved by for non-reactor batch process vents by each facility. All of the best performing 5 facilities had applied controls to some of their non-reactor batch process vents, and 2 of the best performing 5 facilities had applied controls to all of their non-reactor batch process vents. This baseline control situation, and the limited data set available for the analysis, led the EPA to consider a single option for the development of existing source MACT floor based on achieving a specified emission reduction for the collection of non-reactor batch process vents within the affected source. Based on the data presented in Table 5, an average facility-wide emission reduction value was calculated as 68 percent.

TABLE 5.—BEST PERFORMING 5 FACILITIES FOR NON-REACTOR BATCH PROCESS VENTS BASED ON OVERALL PERCENT REDUCTION

Company	Location	Emission point	Emission point description	Uncont'd emis. (tpy)	Cont'd emis. (tpy)	Primary control device	Primary device eff.%	Second. control device	Second. device eff.%	Combined eff.%
Schenectady	Rotterdam Junction, NY.	E14	Weigh tank	0.247	0.247	None	NR	None.		
Schenectady	Rotterdam Junction, NY.	E5/E6	Separator Tank.	24.1	0.241	Condenser	NR	Scrubber	NR	99.5
Schenectady	Rotterdam Junction, NY.	E7	Hold Tank	25.2	0.252	Condenser	99	None	NR	NR
Schenectady	Rotterdam Junction, NY.	E4	Holding Tank	12.1	12.1	None		None.		
Schenectady	Rotterdam Junction, NY.	E15/E16	Mix Tank Unit	7.31	0.3654	Condenser	NR	Scrubber	NR	95
Schenectady	Rotterdam Junction, NY.	E20	Separator Unit	21.7	0.11	Condenser	NR	Scrubber		99.5
Schenectady	Rotterdam Junction, NY.	E19	Hold Tank	6.76	0.879	Condenser	87	None.		
Schenectady	Rotterdam Junction, NY.	E21	Recycle System.	0.182	0.182	None		None.		
Schenectady	Rotterdam Junction, NY.	E22/E23	Recycle Tank	2.31	0.0231	Condenser	99	None.		
Schenectady	Rotterdam Junction, NY.	E24	Flaking belt	5.67	2.84	Scrubber	NR	None.		
Overall Emission Reduction for non-reactor batch process vents is 83.7 percent										
Borden	Louisville, KY	E1A	Weigh Tank/ Fixed Roof.	0.25	0.12	Scrubber	90	None.		
Borden	Louisville, KY	E2A	Weigh Tank/ Fixed Roof.	0.5	0.05	Scrubber	90	None.		
Borden	Louisville, KY	E8	Recovery (phenol).	0.004	0.004	None		None.		

TABLE 5.—BEST PERFORMING 5 FACILITIES FOR NON-REACTOR BATCH PROCESS VENTS BASED ON OVERALL PERCENT REDUCTION—Continued

Company	Location	Emission point	Emission point description	Uncont'd emis. (tpy)	Cont'd emis. (tpy)	Primary control device	Primary device eff.%	Second. control device	Second. device eff %	Combined eff %
Borden	Louisville, KY	E11	Cooling & Flaking.	0.005	0.005	Scrubber	90	None.		
Overall Emission Reduction for non-reactor batch process vents is 77 percent										
Dynachem	Georgetown, IL.	E9	Weigh Tank	0.25	0.075	Scrubber	72	None		
Overall Emission Reduction for non-reactor batch process vents is 70 percent										
Solutia	Addyston, OH	E3	Methanol weigh tank.	0.81	0.81	Vapor balance	NR	None		
Solutia	Addyston, OH	E4	Formaldehyde weigh tank.	0.014	0.014	None		None		
Solutia	Addyston, OH	E7	Distillation Overhead Tank.	1.44	0.22	Scrubber	85	None.		
Solutia	Addyston, OH	E6	Distillation Feed Tank.	0.261	0.039	Scrubber	85	None		
Solutia	Addyston, OH	E8	Distillation Bottom Tank.	0.352	0.053	Scrubber	85	None.		
Overall Emission Reduction for non-reactor batch process vents is 60.5 percent										
Borden	Fayetteville, NC.	E2	Weigh Tank	0.084	0.042	Scrubber	50	None.		
Borden	Fayetteville, NC.	E2	Weigh Tank	0.264	0.132	Scrubber	50	None.		
Borden	Fayetteville, NC.	E2	Weigh Tank	0.209	0.1045	Scrubber	50	None.		
Overall Emission Reduction for non-reactor batch process vents is 50 percent										

Facility-wide uncontrolled emissions from non-reactor batch process vents were chosen as the applicability criteria, because it was the only available data, and because the EPA judged that the applicability criteria, like the control level, should be an overall value as opposed to an individual process vent specific value. The uncontrolled emissions cutoff of 0.23 Mg/yr (0.25 tpy) represents the smallest facility-wide uncontrolled emissions from non-reactor batch process vents for a facility in the best performing 5. The smallest value was selected to ensure that all the facilities included in setting the MACT floor would be represented by the applicability criteria.

Putting together the control level and applicability criteria, the MACT floor for non-reactor batch process vents at existing sources requires an overall emissions reduction of 68 percent for the collection of non-reactor batch process vents within the source for sources with uncontrolled emissions from the collection of non-reactor batch process vents greater than or equal to 0.23 Mg/yr (0.25 tpy).

The MACT floor for new sources is set by the best controlled source. Using the overall emission reduction for a facility approach, the best controlled facility achieves an overall emission reduction of 83.7 percent; this value was rounded down to 83 percent.

The CAAA states that existing source MACT can be less stringent than new source MACT. By implication, new source MACT cannot be less stringent than existing source MACT. Therefore, the uncontrolled facility-wide emissions cutoff of 0.23 Mg/yr (0.25 tpy) was used because the uncontrolled emissions at the best controlled facility are 96 Mg/yr (106 tpy). If the value of 96 Mg/yr (106 tpy) were used, the new source standard would be less stringent than the existing source standard. Therefore, the MACT floor for non-reactor batch process vents at new sources requires an overall emissions reduction of 83 percent from the collection of non-reactor batch process vents within the source for sources with uncontrolled emissions from the collection of non-reactor batch process vents greater than or equal to 0.23 Mg/yr (0.25 tpy).

4. Wastewater Streams

The MACT floor for existing and new sources is based on controls at baseline. No facilities that are major sources were identified as controlling their wastewater. Therefore, the MACT floor for existing and new sources is no control.

5. Equipment Leaks

The MACT floor for existing sources is set by the average performance for the best performing 12 percent of existing sources. Here, the amino/phenolic resin facility is the "source." Because there are 40 amino/phenolic resin facilities in the source category for which EPA has emissions information, the best performing 12 percent of existing sources is represented by the best performing 5 facilities. The only source identified as having a leak detection and repair (LDAR) program subject to local, State, or Federal regulations is Solutia's Springfield, MA, facility. A number of other facilities have been identified as having a maintenance-type LDAR program. These maintenance-type programs are likely to be less effective at reducing emissions than the LDAR program in place at the Solutia, Springfield facility. Unfortunately, no information is available to quantify the emission reduction being achieved from these maintenance-type programs. Therefore, the average of the best performing 5 facilities cannot be defined at this time, and the MACT floor for equipment leaks for existing sources is considered to be no control.

The MACT floor for new sources is set by the best controlled source (here, the

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best controlled amino/phenolic resins facility). As noted in the previous paragraph, only one affected source has been identified as having a LDAR program as the result of local, State, or Federal regulations, while others have a maintenance-type LDAR program. Therefore, the MACT floor for new affected sources is represented by the LDAR program at the Solutia, Springfield facility.

6. Regulatory Alternatives Beyond the MACT Floor

This section discusses the regulatory alternatives beyond the MACT floor that were evaluated for each of the six emission points where applicable.

The MACT floor for storage vessels at existing sources was identified as 50 percent. The MACT floor for storage vessels at new sources was identified as 50 percent for aqueous formaldehyde storage vessels and 95 percent for non-aqueous formaldehyde storage vessels. For those storage vessels with a 50 percent emission reduction MACT floor, the EPA judged that the incremental emission reductions and costs would result in an incremental cost effectiveness value that was unacceptable. This judgment was based on the small incremental emission reduction that would be achieved versus the large incremental cost in moving from a Scrubber to a combustion device. Although the change in percentage from 50 percent to 95 percent appears to be significant, the low level of HAP emitted from the storage vessels in this source category would yield a small incremental emission reduction being achieved.

The HON process vent provisions were evaluated as a regulatory alternative beyond the MACT floor for continuous process vents. Evaluation of the available data indicated that none of the continuous process vents for which data were available would meet the HON TRE applicability criteria of 1.0. For existing sources, the TRE values ranged from 4.4 to 93.2. For new sources, the TRE values range from 1.2 to 25.4.

Based on the calculated TRE values, it is very unlikely that any continuous process vents at an existing source would be caught by the HON TRE applicability criteria. As the TRE values show (i.e., 4.4 to 93.2), these types of continuous process vents are not cost-effective to control. Therefore, the HON process vent provisions were not selected as the regulatory alternative for existing sources.

While the TRE values show that none of the continuous process vents considered in the analysis would be caught by the HON TRE applicability for new sources, the EPA judged that if a new source were to have a continuous process vent within the cost-effectiveness accepted by the EPA (i.e., with a TRE of 1.0 or less), it should be controlled. Therefore, a two-tiered approach, utilizing the MACT floor level of control for some continuous process vents and the HON provisions for other continuous process vents, was chosen as the regulatory alternative for new affected sources. The HON provisions were included in the selected regulatory alternative because it has been proven through past analyses that the HON provisions are a cost effective approach for controlling continuous process vents. A two-tiered approach was used because the MACT floor is more stringent than the HON; the MACT floor controls continuous process vents that the HON would not control.

The proposed standard for continuous process vents at new sources utilizes the MACT floor level of control and the HON process vent provisions to establish a two-tiered standard. For continuous process vents with a TRE greater than 1.0 but less than 1.2, 85 percent emission reduction is required (i.e., MACT floor). For continuous process vents with a TRE value of 1.0 or less, 98 percent emission reduction is required (i.e., HON). For process vents with a TRE value greater than 1.2, controls are not required. TRE values are estimated using the TRE equations from the HON for a thermal incinerator with 70 percent heat recovery.

The proposed rule does not contain any requirements for the control of continuous process vents at existing sources.

Because the MACT floor level of control for reactor batch process vents at existing sources was based on scrubbers with 93 percent control, the next step was to consider combustion controls as a regulatory alternative beyond the MACT floor. However, this option was not chosen, because the EPA judged that the incremental emission reductions and costs would result in an incremental cost effectiveness value that was unacceptable. This judgment was based on the small incremental emission reduction that would be achieved in moving from 93% emission reduction to 95% or 98% emission reduction versus the large incremental cost in moving from a scrubber to a combustion device.

Not enough information on beyond the MACT floor options for non-reactor batch process vents was available to justify selecting a regulatory alternative beyond the MACT floor.

A monitoring program to detect leaks from the process into the cooling water was selected as the standard for heat exchange systems. This monitoring program is the same as the HON program (subpart F).

Because heat exchange systems have been identified as a potential source of emissions, the EPA judges that proposing a standard to cover this emission point is warranted. However, the EPA is not aware if any heat exchange systems exist in the amino/phenolic resin industry and would like to solicit comments from interested persons on this subject. The request for comment on heat exchange systems is discussed in Section VI of this preamble.

The HON was considered as a regulatory alternative for both existing and new sources for wastewater streams. To evaluate the HON as a regulatory alternative, the available stream data were compared to the HON applicability criteria. No wastewater streams were affected by the HON existing source or new source applicability criteria. It should be noted that there were very little data available for wastewater streams and that for those streams for which data were available, the data were partial (i.e., indicating either wastewater flow or HAP concentration, but not both). However, based on the data, it appeared unlikely that a wastewater stream would be covered by the HON applicability criteria.

The EPA conducted an analysis to determine if a wastewater stream that was covered at the limit of the applicability criteria (i.e., having just enough flow and just enough HAP concentration) would be cost effective to control. The results of this analysis were that cost effectiveness values ranged from $300 per ton of HAP removed to $41,100 per ton of HAP removed. Based on these results, the EPA judged that the HON would be an acceptable regulatory alternative. However, the best available data do not indicate that any wastewater streams at existing affected sources will definitely require control. Without an indication that imposition of the HON wastewater standards would achieve any amount of emission reductions at existing sources, the EPA did not find the cost of the applicability analysis and recordkeeping and reporting requirements, which would be experienced regardless of whether or not a wastewater stream required control, to be justified. Therefore, wastewater streams at existing sources are not required to be controlled.

However, the HON was chosen by the EPA as the standard for new sources.

The EPA believes that because new sources will already be required to characterize their emissions for the Title V permit application, the additional cost of the applicability analysis associated with the wastewater provisions would be acceptable given the potential for reducing emissions.

For equipment leaks at existing sources, two regulatory alternatives were identified—(1) 40 CFR part 60, subpart VV and (2) the HON LDAR program under 40 CFR part 63, subpart H. For new sources, the regulatory alternative evaluated was the application of the HON LDAR program, because the MACT floor is equivalent to the subpart program.

In conducting the regulatory analysis, there are several items that need to be identified to determine whether or not any of the regulatory alternatives are cost effective. First, component counts for each of the major sources need to be determined. Second, estimates of emissions and emission reductions need to be made. Third, the costs associated with the LDAR programs need to be estimated. The details of the methods used in the regulatory alternative analysis are presented in Chapter 6 of the Basis & Purpose Document.

Table 6 presents the results of the cost effectiveness analysis for both new and existing sources. As seen in Table 6, the average cost effectiveness of implementing the SOCMI Subpart VV LDAR program (i.e., a program equivalent to the MACT floor for new sources) from baseline at each of the amino/phenolic resin facilities is $4,207 per megagram of emission reduction. The average incremental cost effectiveness of implementing the HON LDAR program from baseline is $2,608 per megagram of emission reduction. The average incremental cost effectiveness of going from the SOCMI Subpart VV program to the HON program is $1,343 per megagram of emission reduction.

The EPA judged the cost effectiveness values associated with the HON LDAR program to be reasonable and, therefore, selected the HON LDAR program as the proposed standards for equipment leaks at both existing and new affected sources.

TABLE 6.—SUMMARY OF REGULATORY ANALYSIS FOR EQUIPMENT LEAKS

Item	SOCMI, subpart VV	HON
Emission Reduction from Baseline (Mg/yr)	52.6	119.0
Costs ($)	221,313	310,465
Cost Effectiveness ($/Mg)	4,207	2,608
Incremental Emission Reduction (Mg/yr)		66.4
Incremental Costs ($)		89,152
Incremental Cost Effectiveness ($/Mg)		1,343

7. Alternative Standard

The proposed rule would provide an alternative standard for storage vessels, continuous process vents, and batch process vents that are equipped with add-on control devices. The alternative standard requires that emissions from these types of emission points be vented to a control device that is continuously achieving an outlet concentration of 20 ppmv. For emissions points vented to such a control device, it is not necessary to calculate the percent reduction achieved by the control device. Any storage vessels, continuous process vents, or batch process vents not vented to such a control device are subject to the other control provisions in the proposed rule. All process vent and storage vessel emissions that are manifolded to a common control device are considered as one regulated entity under the alternative standard.

As determined during the development of the HON, 20 ppmv is the physical limit that a combustion device can be expected to achieve. For purposes of the proposed rule, setting an alternative standard that is equivalent to the level achieved through combustion is equivalent to or more stringent than the MACT floors and the selected standards for the proposed rule.

The alternative standard is included because the EPA believes that there will be a number of facilities and State regulators that will benefit from a regulatory alternative that encourages aggregating and treating emissions with a state-of-the-art common control device. The alternative standard included in the proposed rule can be applied to individual emission points that have emissions that are controlled with add-on control devices or to emission points that are manifolded together prior to treatment in an end-of-line control device (or series of devices).

8. Implementation of a 800 Megagram per Year Production Cutoff for Equipment Leaks

In response to the prediction by the economic impacts analysis that 5 facilities (3 small businesses) may experience a product line closure (see Section VII.F) based on implementing the standards described in Sections V.C.1 through V.C.6 of this preamble, the EPA reevaluated those areas where the selected standard was more stringent than the MACT floor (see Section V.C.6 of this preamble). The only emission point where the selected standard was more stringent than the MACT floor was equipment leaks. The EPA also evaluated those facilities predicted to experience adverse economic impacts. The EPA found that 4 of these facilities, including the 3 facilities owned by small businesses, had the lowest actual annual production of all 40 major sources expected to be subject to the proposed rule, and the range of production values for these 4 facilities was distinctive from the fifth facility predicted to experience a product line closure. When the requirement to comply with the equipment leak provisions was removed from the 4 facilities with the lowest production values, a revised economic impacts analysis showed that predicted product line closures were reduced from a product line closure at 5 facilities to only 2 facilities. These 2 facilities are comprised of 1 of the 4 facilities for which equipment leak costs were dropped and the fifth facility (i.e., the facility with production distinctive from the other 4 facilities). Further, the two facilities still predicted to experience a product line closure were not owned by small businesses. Based on the results above, the EPA implemented an actual annual production cutoff of 800 megagrams per year for the equipment leaks requirements.

The EPA took this action to mitigate adverse impacts to small businesses while staying within statutory requirements. The value of 800 megagrams per year was selected based on inspection of the data and a sensitivity analysis. First, based on inspection of the data, all 4 facilities reported actual annual production values less than 800 megagrams per year. Second, a sensitivity analysis showed that when equipment leak costs were removed for the "fifth facility," the economic analysis still predicted product line closure for this facility.

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D. Selection of the Format of the Proposed Rule

The proposed standards adopt the formats found in the HON for the following emission points: storage vessels, continuous process vents, wastewater, equipment leaks, and heat exchange systems. The **Federal Register** notice for the proposed HON (57 FR 62608; December 31, 1992) provides the rationale for the selection of the specific formats used in the final rule for the HON. Justification for use of a work practice standard for equipment leaks, as opposed to a numerical limit, is included in the HON rationale; such justification is required under Section 112(h) of the Clean Air Act Amendments. The EPA finds no reason for changing those formats and, therefore, has adopted the same formats for this proposed rule as have been promulgated for the HON.

For batch process vents, three formats were selected. For reactor batch process vents, the proposed rule requires that emissions are reduced by a certain percent (i.e., 93 percent at existing sources and 95 percent at new sources) over the batch cycle. As an alternative, the proposed rule allows a demonstration that emissions are limited to 0.017 kilogram of HAP per megagram of product at existing sources or 0.01 kilogram of HAP per megagram of product at new sources. For non-reactor batch process vents, the proposed rule requires that the emissions from the collection of non-reactor batch process vents within the affected source are reduced by 68 percent at existing sources and by 83 percent at new sources. For sources with 0.23 Mg/yr (0.25 tpy) or more of uncontrolled emissions from the collection of non-reactor batch process vents within the source.

For reactor batch process vents, the need to establish a format that considered the nature of batch process vent emissions and the limitations of control devices in achieving constant performance was a major factor in selecting the format of the standard. A percent reduction format is commonly used for process vents, as in the HON, however, requiring a constant emission reduction does not account for the emissions profile of a batch process vent. Therefore, as was done in the Batch Processes ACT, the selected format requires a percent reduction over the batch cycle. This allows the performance of a control device to fluctuate over the batch cycle. This format also allows an owner or operator to elect to control certain portions of the emissions and not control other portions. For example, if a batch process vent had a short period with a high emissions rate and longer periods with very low emissions rates, the selected format allows an owner or operator to over-control (i.e., achieve a percent reduction higher than that required in the standard) the short period of high emissions and not control or under-control the longer periods of low emissions.

As an alternative to demonstrating a percent reduction for the batch cycle, an emission limit expressed as kilogram of HAP per megagram of product was selected as an alternative format. The alternative emission limit is included to provide flexibility and to avoid requiring sources with inherently low emissions to apply secondary controls, thereby encouraging pollution prevention activities.

Similar to reactor batch process vents, establishing a format for non-reactor batch process vents required consideration of the nature of batch process vent emissions and the limitations of control devices in achieving constant performance. A primary factor in expressing the standard for non-reactor batch process vents as an overall emission reduction requirement was the limited data available to the EPA. As discussed earlier, the data available for the best performing 5 facilities that were used in developing the MACT floor included two facilities that had all their non-reactor batch process vents controlled, and this situation, coupled with the lack of stream-specific data, led the EPA to express the standard as an overall percent reduction for the collection of non-reactor batch process vents within an affected source.

E. Selection of Compliance and Performance Test Provisions

Compliance and performance test provisions for the proposed rule are based on the HON, referring readers directly to the HON provisions. Because the rationale for the referenced HON provisions has been presented in detail in the proposal and promulgation preambles to the HON, it is not repeated here. However, specific test methods to be used have changed, and the rationale for the selected test methods is discussed below.

Because of the specific HAP emitted by amino/phenolic resin facilities, the test methods specified in the HON are not completely adequate for the proposed rule. Specifically, formaldehyde is not adequately detected using either Method 18 or Method 25A of appendix A, 40 CFR part 60. Therefore, the following test methods have been added specifically for formaldehyde: Methods 316 and 320. Method 316 is a manual method that was proposed with the Mineral Wool NESHAP (62 FR 25370) and Method 320 is an FTIR-based method that was proposed with the Portland Cement NESHAP (63 FR 14181). Further, Method 18 does not always adequately detect methanol, and Method 308 has been included as an option for testing for methanol. The test methods identified above have been included in the proposed rule in order to ensure that compliance with the proposed rule can be accurately demonstrated. Without the formaldehyde specific test methods, a predominant HAP would not be detected during performance tests or estimation of emissions. While Method 18 is considered adequate for the measurement of methanol, more accurate measurements are possible with Method 308. Therefore, Method 308 has been included as an optional test method for methanol.

The proposed rule specifies procedures to be followed when conducting performance tests, referring to the General Provisions of Subpart A as appropriate. One modification to the General Provisions testing procedures is that the proposed rule requires that all tests be conducted under maximum representative operating conditions; this term is defined in the rule. The intent of maximum representative operating conditions is for the owner or operator, within a specified time period and without rearranging production schedules, to conduct the test under the maximum HAP loading that the control device would experience. For example, if a control device receives emissions from three batch process vents and two of them frequently vent to the control device at the same time, testing should be conducted when at least two of the batch process vents are venting to the control device, as opposed to when only one is venting.

Compliance with the batch process vent provisions is demonstrated by showing that for the batch cycle, if an individual reactor batch process vent is being controlled, or on an overall basis, if non-reactor batch process vents are being controlled, the specified percent reduction is achieved. To demonstrate this, an emissions profile must be developed that identifies each batch emission episode included in the batch process vent and characterizes emissions from each batch emission episode on a mass emitted per unit time basis. Using this emissions profile, the owner or operator must demonstrate that the periods of under-control and over-control of emissions balance, and the batch cycle percent reduction or the overall percent reduction is achieved.

The procedures for demonstrating compliance with the percent reduction requirements are largely based on the promulgated Group IV Polymers and Resins NESHAP. The intention of the procedures is to allow owners or operators to select the optimum scenario for controlling the batch process vent(s) at their facility and to provide flexibility for an owner or operator to consider the nature of batch process vent emissions and the limitations of control devices in achieving constant performance. The following are examples of how the compliance demonstration procedures for percent reduction would work, first, for an individual reactor batch process vent and, second, for the collection of non-reactor batch process vents within an affected source.

For an individual reactor batch process vent at an existing affected source, the proposed rule requires an owner or operator to reduce emissions by 93 percent for the batch cycle. For this example, a given reactor batch process vent has three batch emission episodes: charging, heating, and purging. Emissions from charging have a high flow rate and a high HAP concentration level. Emissions from heating have a very low flow rate and very low HAP concentration level. Emissions from purging have a moderate flow rate and moderate HAP concentration level. The owner or operator chooses to control the charging episode and the purging episode and to not control the heating episode. In this example, the two controlled batch emission episodes must be over-controlled to a level sufficient to offset not controlling the heating episode. In the final step of the compliance demonstration procedure (see § 63.1417(e)(5)(iii) of the proposed rule), emissions at the outlet of the control device are subtracted from the sum of emissions from the uncontrolled episode and emissions at the inlet of the control device. This value is divided by the sum of emissions from the uncontrolled episode and emissions at the inlet of the control device, and this quotient is multiplied by 100 and compared to the required 93 percent reduction requirement.

For the collection of non-reactor batch process vents at an affected source, a similar example can be described. In this example there are 10 non-reactor batch process vents, 7 with significant emissions and 3 with insignificant emissions. The owner or operator chooses to over-control (e.g., achieve 80 percent emission reduction instead of the required 68 percent) the 7 non-reactor batch process vents with significant emissions. Using the same equation as described above (see § 63.1417(e)(5)(iii) of the proposed rule), the owner or operator demonstrates that periods of under-control and over-control balance, and the specified percent reduction is achieved for the collection of non-reactor batch process vents.

For demonstrating compliance with the kilogram of HAP per megagram of product emission limits, the proposed rule requires that an owner or operator determine the monthly average emission rate (i.e., kilogram of HAP per megagram of product) each month and then calculate a rolling average to determine compliance with the emission limit. Estimates of emissions on a batch emission episode level are based on either direct measurement or other means specified in the proposed rule. Direct measurement is required when engineering assessment shows that 10 tons per year or more of HAP are emitted from an individual batch process vent. Once emissions have been characterized for a batch emission episode, monthly emissions are determined based on the number and type of batch emission episodes run during the month. Once emissions have been characterized for a batch emission episode using direct measurement or other means, the determined values can be used in estimating monthly emissions unless the owner or operator has reason to believe that the emissions estimate for a given batch emission episode is no longer valid.

For the first 12 months of operation, the rolling average is determined based on all the available monthly averages. Beginning after the thirteenth month of operation, the rolling average is a 12-month rolling average based on the individual monthly averages for the preceding 12 months.

F. Selection of Parameter Monitoring Provisions

1. Enhanced Monitoring

Section 114(a)(3) of the Act and § 70.6(c) of the operating permit rule (57 FR 32251; 40 CFR 70.6(c)) require the submission of "compliance certifications" from sources subject to the operating permit program. Section 114(a)(3) of the Act requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent.

2. Background

In general, the EPA recognizes two basic approaches to monitoring. One method is to establish monitoring as a direct measure of continuous compliance. Under this continuous compliance monitoring approach, an enforceable value of the monitored parameter is defined and measured. The Agency has adopted this approach in Part 63 standards, and is committed to following this approach whenever appropriate in future rulemakings. Another approach is to establish monitoring for the purpose of documenting continued operation of the control measures within ranges of specified indicators of performance (such as emissions, control device parameters, and process parameters) that are designed to provide a reasonable assurance of compliance with applicable requirements; indicating excursions from these ranges; and responding to the data so that excursions are corrected. This second approach is the basis of the Compliance Assurance Monitoring (CAM) rule, which applies to sources that are not currently subject to Part 63 standards.

When determining appropriate continuous compliance monitoring options, EPA considers the availability and feasibility of the following monitoring strategies in a "top-down" fashion: (1) Continuous emission monitoring systems (CEMS) for the actual HAP emitted, (2) CEMS for HAP surrogates (e.g., monitoring for the predominant HAP or total organic compounds as opposed to monitoring for all regulated HAP), (3) monitoring operating parameters, and (4) work practice standards. Thus, where available and feasible, the EPA specifies CEMS for the actual regulated compound(s) for continuous compliance monitoring. This option allows continuous compliance to be determined relative to the emission limit, just as short-term compliance is determined using a performance test. Where a CEMS for the regulated pollutant is not available or feasible, the EPA specifies monitoring a surrogate compound with a CEMS or monitoring an operating parameter that is critical to maintaining compliance performance. Only when these options are not feasible does EPA specify work practice standards as a means of ensuring continuous compliance.

When a Part 63 rule specifies a surrogate pollutant CEMS or parameter monitoring for demonstrating continuous compliance, the rule includes specific limitations and averaging times for these alternative

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situations. The surrogate pollutant or operating parameter limit becomes an enforceable limit for the rule. There is no requirement that an alternative limit, whether a surrogate pollutant or operational parameter, be statistically correlated with emissions or the compliance level of the regulated pollutant(s). The alternative limit is a separately enforceable requirement of the rule. The alternative limit is not secondary to the emission limit; rather, it is applied in lieu of a continuous emission limit obligation that would otherwise be measured with a CEMS.

To address the potential disparity between CEMS for the actual HAP emitted and CEMS for HAP surrogate or operating parameter monitoring, there are two types of violations—violations of the emission limit and violations of operating limits. Exceedances of CEMS for the actual HAP are considered violations of the emission limit. Exceedances of CEMS for HAP surrogate or operating parameter monitoring are considered violations of an operating limit. Specifically speaking to the proposed rule, where a source is using an FTIR instrument to monitor compliance with the 20 ppmv alternative standard, an exceedance is defined as a violation of the emission limit. Where a source is monitoring an operating parameter for a control device (e.g., pH of the scrubber liquid), an exceedance is defined as a violation of the operating limit. An exception is that because the exit gas temperature of a condenser is so closely correlated with emissions, an exceedance of the condenser temperature monitoring range is considered a violation of the emission limit.

3. Specific Monitoring Requirements of this Subpart

The proposed rule requires monitoring of HAP emissions and control and recovery device operating parameters. HAP emissions are monitored directly as part of complying with the kilogram of HAP emissions per megagram of product limits for reactor batch process vents or as part of the 20 ppmv alternative standard. Control device operating parameters are monitored as part of complying with the percent reduction requirements of the proposed rule.

Exceptions to the requirement to conduct continuous parameter monitoring are that control devices controlling less than 1 ton per year of uncontrolled emissions are exempt, but must conduct a daily or per batch demonstration that the control device is operating properly. The EPA judged that control devices receiving such small amounts of emissions did not warrant the expense and paperwork burden of establishing parameter monitoring levels and conducting continuous parameter monitoring. The compliance demonstration procedure is subject to review by the Administrator. Another exception is that owners or operators of control devices serving storage vessels are not required to conduct parameter monitoring unless the owner or operator specifies continuous monitoring in the monitoring plan required by the referenced HON provisions. However, if a control device is used, the owners or operator must identify the appropriate monitoring procedures to be followed for compliance demonstration purposes. Further, if a control device serves both a storage vessel(s) and another emission point subject to the proposed rule, the control device is subject to continuous parameter monitoring if the other emission point is subject to continuous parameter monitoring.

An owner or operator may apply to monitor alternate parameters. This provision has been included in previous rules and provides flexibility to the owner or operator who would like to monitor a parameter other than those identified in the rule.

Parameter monitoring levels are established based on design evaluation for control devices with uncontrolled emissions less than 10 tons per year; however, approval by the Administrator is required. The EPA judged that allowing a design evaluation for control devices receiving less than 10 tons per year of uncontrolled emissions was a reasonable balance between reducing burden and cost to the industry and protecting the environment. For all other control devices required to conduct continuous monitoring, parameter monitoring levels are established based on a performance test, but can be supplemented by manufacturer's recommendations and/or an engineering assessment. If the results of the performance test are supplemented by manufacturer's recommendations and/or engineering assessment, approval by the Administrator is required.

The proposed rule requires the affected source to record daily average values for most monitored parameters. The daily averaging period was selected because the purpose of monitoring data is to ensure proper operation and maintenance of the control device. Because it often takes from 12 to 24 hours to correct a problem, this averaging period was considered to best reflect operation and maintenance practices. This averaging period therefore gives the owner or operator a reasonable period of time to take action. If a shorter averaging period (for example 3 hours) was selected, affected sources would be likely to have multiple excursions caused by the same operational problem because it would not be possible to correct problems in one 3-hour period.

For batch process vents, parameter averages may be either batch cycle daily averages or block averages. Using the same rationale as presented above for daily averages, batch cycle daily averages and block averages are included as options in the proposed rule so that monitoring can reflect operation and maintenance practices. The block is defined by the owner or operator and can be no longer than the batch cycle for a batch process vent. Using a block average would allow an owner or operator with a batch cycle that exceeds 24 hours to calculate parameter monitoring averages for the entire batch cycle, which is likely the most reflective period for observing the performance and operation of the control device. For batch cycles that are shorter than 24 hours, the batch cycle daily average allows owners or operators the same benefits extended to control devices receiving emissions from continuous sources.

G. Selection of Recordkeeping and Reporting Requirements

The general recordkeeping and reporting requirements of this subpart are very similar to those found in the HON. The proposed rule also relies on the provisions of subpart A of part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule.

The proposed rule would require affected sources to submit the following reports: Precompliance Report; Notification of Compliance Status; Periodic Reports; and Other Reports. The purpose and contents of each of these reports are described in this section.

The wording of the proposed rule requires all draft reports to be submitted to the "Administrator". The term Administrator is defined in § 63.2 as "the Administrator of the United States Environmental Protection Agency or his or her authorized representative." Thus, the term Administrator may include either the Administrator of the EPA, an EPA regional office, a State agency, or other entity that has been delegated the authority to implement the proposed rule. In most cases, reports will be sent to State agencies. Addresses are provided in subpart A of part 63.

Records of reported information and other information necessary to document compliance with the regulation are generally required to be kept for 5 years. A few records pertaining to equipment design would be kept for the life of the equipment.

1. Precompliance Report

The Precompliance Report includes the following, as appropriate: compliance extension requests; requests to monitor alternative parameters; intent to use alternative controls; intent to use the alternative continuous monitoring and recordkeeping allowed by the rule; demonstration that the emissions estimation equations for batch process vents are not appropriate; and information related to establishing parameter monitoring levels, if required.

These types of information are required prior to the compliance date to allow sufficient review time for the Administrator. To avoid delays caused by a lack of response from the Administrator, some items are considered approved if the Administrator does not respond within a given period of time.

2. Notification of Compliance Status

The Notification of Compliance Status would be submitted 150 days after the affected source's compliance date. It contains the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests, design analyses, and demonstrations of compliance (e.g., demonstration that the overall percent reduction for non-reactor batch process vents has been achieved).

Affected sources with a large number of emission points are likely to be submitting results of multiple performance tests for each kind of emission point. For each test method used for a particular kind of emission point (e.g., a process vent), one complete test report would be submitted. For additional tests performed for the same kind of emission point using the same method, the results would be submitted, but a complete test report is not required. Results would include values needed to determine compliance (e.g., inlet and outlet concentrations, flowrates, percent reduction) as well as the values of monitored parameters averaged over the period of the test. The submission of one test report will allow the regulatory authority to verify that the affected source has followed the correct sampling and analytical procedures and has done calculations correctly. Complete test reports for other emission points may be kept at the plant rather than submitted. This reporting system was established to ensure that reviewing authorities have sufficient information to evaluate the monitoring and testing used to demonstrate compliance while minimizing the reporting burden.

Information demonstrating that the specified percent reduction is being achieved for the batch cycle, if an individual reactor batch process vent is being controlled, or on an overall basis, if non-reactor batch process vents are being controlled, is required. This information includes an emissions profile and a demonstration that the periods of under-control and over-control of emissions balance and the batch cycle percent reduction or the overall percent reduction is achieved.

Another type of information to be included in the Notification of Compliance Status is the specific level for each monitored parameter for each emission point, and the rationale for why this level indicates proper operation of the control device. If this information has already been provided in the operating permit, it does not need to be repeated in the Notification of Compliance Status. As an example, for a batch process vent controlled by a scrubber, the site-specific liquid flowrate into or out of the scrubber, or the pressure drop across the scrubber, that will ensure proper operation of the scrubber is required. For control devices receiving 10 tons per year or more of uncontrolled emissions (i.e., large control devices), the parameter monitoring data from the performance test that supports the calculated parameter monitoring levels is required to be included in the notification. Further, if the owner or operator had chosen to supplement the results of the performance test with manufacturer's recommendations and/or engineering assessment, the rationale to support the specified parameter levels is required. For control devices receiving less than 10 tons per year of uncontrolled emissions (i.e., small control devices), a design evaluation that supports the parameter monitoring levels is required to be included in the notification.

Finally, for control devices receiving less than 1 ton per year of uncontrolled emissions, the daily or per batch demonstration procedure that will be used to verify that the control device is operating properly is required.

3. Periodic Reports

Periodic Reports are required to ensure that the standards continue to be met and that control devices are operated and maintained properly. Generally, Periodic Reports would be submitted semiannually, however, quarterly reports must be submitted in some instances.

Periodic Reports specify periods when the values of monitored parameters are above the maximum or below the minimum established level specified in the Notification of Compliance Status or operating permit. For continuously monitored parameters, records must be kept of the parameter value recorded once every 15 minutes. If a parameter is monitored more frequently than once every 15 minutes, the 15-minute averages may be kept instead of the individual values. This requirement ensures that there will be enough monitoring values recorded to be representative of the monitoring period without requiring the affected source to retain additional data.

For some types of emission points and controls, periodic (e.g., monthly, quarterly, or annual) inspections or measurements are required instead of continuous monitoring. For control devices receiving less than 1 ton per year of uncontrolled emissions, continuous monitoring is not required. Instead, a daily demonstration that the control device is working is required. Records that such inspections, measurements, or demonstrations were done must be kept; but results are included in Periodic Reports only if a problem is found. This requirement is designed to minimize the recordkeeping and reporting burden of the proposed rule.

4. Other Reports

There are a very limited number of other reports. Where possible, the proposed rule is structured to allow information to be reported in the semiannual (or quarterly) Periodic Reports. However, in a few cases, it is necessary for the affected source to provide information to the regulatory authority shortly before or after a specific event. For example, notification prior to internal storage vessel inspections is required to allow the regulatory authority to have an observer present. Certain notifications and reports required by subpart A of part 63 must also be submitted.

5. Possible Alternative Recordkeeping Requirements

The proposed rule requires affected sources to keep readily accessible records of monitored parameters. For those control devices that must be monitored continuously, records which include at least one monitored value for every 15 minutes of operation are considered sufficient. These monitoring records must be maintained for 5 years. However, there are some existing monitoring systems that might not satisfy these requirements. To comply with the proposed rule, affected sources have the flexibility to request approval for the use of alternative recordkeeping systems under the proposed rule or under provisions of subpart A of part 63.

VI. Solicitation of Comments

The EPA welcomes comments from interested persons on any aspect of the proposed rule, and on any statement in the preamble or the referenced supporting documents. The proposed rule was developed on the basis of information available. The EPA is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. In order to receive proper consideration, documentation or data should be provided.

Comments are specifically requested on several aspects of the proposed rule. These topics, grouped under the headings "Batch Process Vents" and "Other Topics," are summarized below.

Batch Process Vents

Basis for the Percent Reduction for Batch Process Vent Standards

Industry representatives have expressed concern with the adequacy of the batch process vent emissions and control device efficiency data available to the EPA for this rulemaking, and they have also expressed concern with how the available data have been used in developing a standard for reactor batch process vents. The EPA is requesting comment on these concerns and data to address this issue.

Specific concerns with the data available to the EPA that have been expressed by industry representatives include the following. First, the data made available to the EPA through the 1992 Information Collection Request (ICR) responses are not based on emissions testing and are largely engineering estimates. It is the EPA's impression that emissions data provided in the 1992 ICR responses is sometimes an annualization of emissions from a single batch. Second, the basis for the control device efficiencies provided in the 1992 ICR responses are not described or qualified, and these data are also not based on testing and are largely engineering estimates. Industry representatives felt that many of the higher percent reduction levels reported in the 1992 ICR responses would not be achievable over an extended period of time and that the reported values were likely maximum efficiencies.

The primary concern expressed by the industry with how the data were used by the EPA in setting a standard for reactor batch process vents is that the available control device data, in large part, represent maximum efficiencies, and the EPA used those values to set a standard that must be averaged across the entire batch. More specifically, the owners of the facility which serves as the basis for the MACT floor for existing affected sources and subsequently the basis for the standard (Georgia Pacific) have stated that they cannot support the percent reduction value reported in the 1992 ICR response as being achievable by their facility. At the time the 1992 ICR response was prepared, no test data were available for this facility, and the reported data were based on engineering estimates.

Regarding the alternative emission limit (i.e., kg of HAP per Mg of product) that accompanies the percent reduction standard, industry representatives stated that emissions per batch can vary for different batches of product. Therefore, when annual emissions, based on emissions from a single batch, are used to determine the alternative emission limit, the basis for the alternative emission limits is questionable.

While hearing these concerns, the EPA judged that the rulemaking had to continue forward. The EPA used the best data available. It should be noted that this data was collected through Section 114 surveys and was used only after several rounds of clarifying questions to better understand the data and improve it whenever possible. The EPA is very interested in any better data that can be provided by the limited number of companies that have applied secondary controls and will give it full consideration in developing the final standard.

If further data is provided, the EPA requests specifics on the concerns and issues described above. The basis for compliance demonstration is presented in the preamble and the proposed rule. Data provided to address the concerns related to the percent reduction standard should express control device performance on the same basis that will be used for compliance demonstrations. For the alternative standard, emissions data provided by industry should account for the expected or typical annual production, thereby providing a more representative estimate of annual emissions. The source of data and the limitations on its use should be clearly described.

The EPA anticipates receiving data on this topic only from facilities operated by 9 companies that are identified in docket item number II–B–12, Docket Number A–92–19, as having applied secondary controls. Because this solicitation of data is directed at 9 companies, and not an entire industry, the requirements of the Paperwork Reduction Act do not apply.

Separate Treatment of Reactor and Non-Reactor Batch Process Vents

As defined in the proposed rule, reactor batch process vents are batch process vents originating from a reactor. Non-reactor batch process vents are batch process vents originating from a unit operation other than a reactor, and include, but are not limited to, batch process vents from filter presses, surge control vessels, bottoms receivers, weigh tanks, and distillation systems. All facilities reported the presence of reactor batch process vents. Although many facilities did not report the presence of non-reactor batch process vents, the EPA judged that all facilities had some number of these types of batch process vents because these unit operations are necessary to manufacture amino/phenolic resins. As described in Section V of this preamble, the EPA chose not to include non-reactor batch process vents with reactor batch process vents, primarily because development of a MACT floor regulating both types of batch process vents may not be representative of the control level at existing sources for non-reactor batch process vents.

The EPA is requesting comment on treating reactor and non-reactor batch process vents separately. Further, the EPA is requesting additional data concerning the presence, emissions, and control status of non-reactor batch process vents at amino/phenolic resin process units.

Use of FTIR and Method PS–15

The proposed rule provides an alternative emission limit for storage vessels, continuous process vents, reactor batch process vents, and non-reactor batch process vents that allow an owner or operator to vent these kinds of emissions points to a control device that continuously achieves an outlet concentration of 20 ppmv of organic HAP. The proposed rule requires that continuous compliance with this alternative emission limit be demonstrated through the use of an FTIR (Fourier Transform Infrared Spectroscopy) instrument and Method PS–15 of 40 CFR part 60, appendix B. The EPA is requesting comment on this compliance demonstration procedure.

Methanol Emissions From Amino/Phenolic Resin Production

A concern has been raised by industry related to the possibility that responses to the 1992 ICR did not include emissions of methanol originating from the use of aqueous formaldehyde. If emissions of methanol were not included, it is possible that the alternative emission limits that accompany the percent reduction standard for reactor batch process vents may not be representative of actual emissions. The EPA is requesting data on this issue.

Use of Solvent-Based and Non-Solvent-Based Alternative Emission Limits

The EPA considered proposing two alternative emission limits to accompany the percent reduction standards for reactor batch process vents, but, as explained in Section V of this preamble, the available data presented problems with this approach. The EPA is requesting comment on how the use of two alternative emission limits (i.e., one for solvent-based production and one for non-solvent-based production) could be implemented and is requesting the data required to implement such an approach.

Based on the available data, the EPA considered implementing the two emission limit concept by declaring an affected source to be a solvent-based producer or non-solvent-based producer based on the total mass of product. Under the approach that was considered, if more than 50 percent of the product is solvent-based, the affected source would be declared a solvent-based producer and would be required to meet the percent reduction standard or the solvent-based alternative emission limit. An alternative approach would be for an affected source to meet the solvent-based emission limit whenever it is producing a solvent-based resin and to meet the non-solvent-based emission limit for all other production.

The EPA is requesting non-confidential data (i.e., emissions and production data) that would allow the EPA to establish a solvent-based and non-solvent-based alternative emission limit. In regard to the alternative approach described above (i.e., meeting the solvent-based emission limit when producing solvent-based resins and meeting the non-solvent-based emission limit otherwise) the EPA is particularly interested in receiving data that would distinguish emissions from the production of solvent-based resins versus emissions from the production of non-solvent-based resins.

Other Topics

Definitions of Amino and Phenolic Resin

The EPA is requesting comment on the definitions included in the proposed rule for amino resin and for phenolic resin. [Note: while the proposed rule includes an administrative action to combine the amino and phenolic resin source categories into a single source category, the EPA believes that separate definitions for the two types of resins are required.] The EPA requests comments addressing whether or not products commonly considered by the industry to be amino or phenolic resins are included by the definitions and products commonly considered by the industry not to be amino or phenolic resins are excluded by the definitions.

Applicability Criteria Alternative for Storage Vessels

During the analysis of the MACT floor for storage vessels, the EPA considered an alternative approach for developing the applicability criteria (i.e., description of which storage vessels require control) based on the approach used to develop storage vessel applicability criteria under the Pesticides NESHAP. This alternative approach results in the same control level requirement of 50 percent emission reduction for storage vessels at existing affected sources. For storage vessels at new affected sources, the control level would increase to 95 percent emission reduction. For storage vessels at existing affected sources, the alternative approach uses an uncontrolled emissions cutoff for the applicability criteria, determined to be 812 Mg/yr. Therefore, storage vessels at existing affected sources with uncontrolled emissions of 812 Mg/yr or greater would be required to apply controls. For storage vessels at new affected sources, the alternative approach considers storage vessel capacity and uncontrolled emissions. For storage vessels at new affected sources, the alternative approach would require control for storage vessels with capacities of 10,150 gallons or greater with uncontrolled emissions of 222 lb/yr or greater.

The EPA is requesting comment on this alternative approach. The alternative approach and the results described above are documented in more detail in docket item II–B–13, available in Docket Number A–92–19.

Heat Exchange Systems

The EPA is requesting comment on the presence of heat exchange systems in this industry. The EPA has found heat exchange systems to be a potential source of emissions warranting controls. However, the EPA does not wish to regulate a type of equipment that is not present in the industry, and the EPA does not have adequate information to determine whether or not heat exchange systems are present at amino/phenolic resin process units.

VII. Summary of Environmental, Energy, Cost, and Economic Impacts

This section presents the air, non-air environmental (wastewater and solid waste), energy, cost, and economic impacts resulting from the control of organic HAP emissions under the proposed rule.

A. Facilities Affected by These NESHAP

The proposed rule would affect amino/phenolic resin facilities that are major sources in themselves, or that are located within a major source. Based on available information, 40 amino/phenolic resins facilities were judged to be major sources.

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. The current level of control was well understood because emissions and control data were collected on each facility included in the analysis. The estimation of impacts was determined for existing facilities only. Impacts for new facilities were not estimated because no new facilities are projected to be constructed.

The impacts for existing sources were estimated by applying the controls necessary to bring each facility into compliance with the proposed standards. For a facility or emission point within a facility already in compliance with the proposed standards, no impacts were estimated for that facility or emission point.

B. Primary Air Impacts

The proposed standards are estimated to reduce organic HAP emissions from all existing sources by 356 Mg/yr from a baseline level of 644 Mg/yr. This is a 55 percent reduction. Table 7 summarizes the organic HAP emission reductions for each of the emission points.

TABLE 7.—ORGANIC HAP EMISSION REDUCTIONS BY EMISSION POINT FOR EXISTING SOURCES

Emission point	Baseline emissions (Mg/yr)	Emissions after proposed rule (Mg/yr)	Emission reduction (Mg/yr)	Percent reduction (percent)
Reactor Batch Process Vents	202.4	20.0	182.4	90.1
Non-reactor Batch Process Vents	109.0	49.1	59.9	55.0
Continuous Process Vents	116.4	116.4	0	0
Storage Tanks	65.4	65.3	0.1	0.2
Wastewater	6.1	6.1	0	0
Equipment Leaks	144.6	30.6	114.0	78.8
Total	643.9	287.6	356.3	55.3

C. Non-air Environmental Impacts

The proposed standards are not expected to increase the generation of solid waste at any amino/phenolic resin facility.

The use of scrubbers to control emissions will increase water consumption as a result of evaporation and bleed-off. Bleed-off is the release of a small percentage of the recirculated scrubber water to control buildup or accumulation of scale, or other contaminates. Scrubbers designed to capture emissions from reactor and non-reactor batch process vents are small in size and should require less than 100 gallons of bleed-off per day per reactor.

Many of the HAP being controlled by scrubbers are water soluble, with very low evaporation rates once in water. Therefore, the EPA does not expect the HAP to be released from the scrubber wastewater at a point downstream from the scrubber.

In general, the EPA expects the adverse impact of the wastewater generated by the scrubbers to be small to negligible. First, the HAP contained in the wastewater from the scrubber are very susceptible to being eaten by the various bacteria found in wastewater treatment plants. Thus, for those facilities that send or will send the scrubber wastewater to a wastewater treatment facility, there should be minimal adverse impacts.

Some facilities may not be able to send their scrubber wastewater to a treatment facility. These facilities may be able to recycle all of the scrubber wastewater within the facility. From information gathered through site visits and telephone conversations with industry, the EPA determined that some facilities recycle wastewater containing the predominant HAP emitted by batch process vents (i.e., formaldehyde, methanol, and phenol). Three resin plants visited by the EPA collected and reused their wastewater. The recovered wastewater contains the raw materials used in the reactor process. Recycling wastewater into the resin manufacturing process reduces the quantities of raw materials required to be purchased, thus reducing costs. Based on telephone conversations with industry, one resin manufacturer uses a water pit to collect emissions from the reactor. Water is removed from the pit when the formaldehyde concentration reaches approximately three percent and is placed in a storage tank. The stored water is added to raw materials in the reactors to establish the proper viscosity at the beginning of a resin batch.

In summary, the EPA expects that affected facilities will be able to either send the scrubber wastewater to a treatment facility or recycle the scrubber wastewater back into the process. Therefore, the use of scrubbers will result in minimal, if any, adverse wastewater impacts.

D. Energy Impacts

Energy impacts include changes in energy use, typically increases, and secondary air impacts associated with increased energy use. Increases in energy use are associated with fuel for the operation of control equipment; in this case, the use of scrubbers to control reactor vents. Energy credits are attributable to the prevention of organic HAP emissions from equipment leaks. Secondary air impacts associated with increased energy use are the emission of particulates, sulfur dioxides (SO_X), and nitrogen oxide (NO_X). These secondary impacts are associated with power plants that would supply the increased energy demand. (For more information on the calculation of the estimated energy impacts, see the "Estimated Energy and Secondary Air Impacts" memorandum, Docket Item II–B–16.)

As noted above, energy use is expected to increase due to the use of scrubbers to control reactor vents which would be used to comply with the proposed rule. The use of scrubbers is estimated to increase energy use by approximately 2,340 barrels of oil per year for the 40 existing major sources. The emissions of secondary air pollutants from power plants supplying the power for this energy increase are estimated to be 3 Mg/yr of filterable particulate, 15 Mg/yr of SO_X, and 0.3 Mg/yr of NO_X.

At the same time, the prevention of organic HAP emissions from equipment leaks generates energy credits. These energy credits are expected to be relatively small and have not been estimated.

Energy impacts related to the control of storage vessels were estimated to be neglible (or zero) because many storage vessels would be controlled through the use of internal floating roofs, which do not have any associated energy impacts.

As stated above, the use of scrubbers results in an increase of oil consumption per year for the 40 major existing sources. The net increase will be smaller due to the energy credits generated by the control of equipment leak emissions. Given the relatively small energy impact projected from the control of batch process vents, the EPA has judged the energy impacts associated with the proposed rule to be acceptable.

E. Cost Impacts

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with the proposed standards. Average cost effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction. Table 8 presents the estimated capital and annual costs and average cost effectiveness by existing affected sources. There are no estimated cost impacts for new facilities, because no new facilities are expected to be constructed.

Under the proposed rule, it is estimated that total capital costs for existing sources would be $2,211,700 (1989 dollars), and total annual costs would be $2,502,800 (1989 dollars) per year. The use of 1989 dollars in estimating the costs associated with the proposed standards was done in order to be consistent with the cost effectiveness decisions reached for setting the HON standards, which form the basis for most of the standards being proposed for the amino/phenolic source category. The actual compliance cost impacts of the proposed rule may be less than presented because of the potential to use common control devices, to upgrade existing control devices, and to vent emissions streams into current control devices. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance costs would be reduced.

TABLE 8.—SUMMARY OF COST IMPACTS

Emission point	Total capital costs ($1,000)	Total annual costs ($1,000)	Average cost effectiveness ($/Mg)
Reactor and Non-reactor Batch Process Vents	1,687	1,279	5,280
Continuous Process Vents	0	0	NA
Storage Tanks	31.6	8.8	88,000
Wastewater	0	0	NA
Equipment Leaks	412.7	290.9	2,550
Monitoring, Recordkeeping, and Reporting, excluding equipment leaks	80	924.2	NA
Total*	2,211.7	2,502.8	7,024

*Totals may not sum due to rounding.

F. Economic Impacts

An economic impact analysis for the proposed rule estimated the impacts to affected businesses in the amino/phenolic resins source category. Prices for products from the 20 businesses that operate the 40 facilities affected by this rule are estimated to increase by 0.1 percent for amino resin businesses and 0.1 percent for phenolic resin businesses. Output for these products are estimated to decrease by less than 0.1 percent for amino resin businesses and less than 0.1 percent for phenolic resin businesses. Revenues for the entire amino/phenolic industry are estimated to increase by slightly less than 0.1 percent, and this is due to the expected increase in product prices resulting from the proposed rule that will be experienced by amino/phenolic resin producers that are not affected by this rule. The level of employment in these industries is estimated to fall by about 1 percent based on estimates to adversely affected businesses only. Potentially, two facilities are expected to incur closures of product lines from costs associated with this proposed rule.

A preliminary version of the economic impact analysis showed that 5 affected resin product lines, 3 of them owned by small businesses, may cease operations as a result of implementation of the proposed NESHAP. As discussed in Section V.C.8 of this preamble, upon receiving these results, the Agency reviewed the available cost, economic, and other data on these affected businesses and facilities in order to develop a less burdensome proposed rule. An approach utilizing an actual annual production cutoff of 800 megagrams per year was developed and analyzed. After removal of the equipment leak requirements for 4 of the 5 facilities originally predicted to cease operation, only 2 affected resin product lines were shown to potentially cease operations. Neither of these product lines were owned by small businesses. Therefore, the addition of this 800 megagram per year equipment leaks applicability cutoff leads to minimal adverse economic impacts associated with the proposed rule, and no significant economic impact on any small businesses.

The economic impact analysis shows that 2 affected resin product lines may cease operations as a result of implementation of the proposed NESHAP. The Agency considers these to be an overstatement of the likely impacts of the proposal NESHAP for the following reasons: (1) the resin product lines projected to close may be captive producers that are not subject to the closure criteria employed by the economic impact model; and (2) the resin product lines projected to close produce small volumes of output so that the baseline characterization of these lines may understate operating profits because they likely produce specialty resins with higher market prices than used in the economic impact model.

For more information, refer to the Economic Impact Analysis of the Proposed National Emission Standard for Hazardous Air Pollutants: Manufacture of Amino/Phenolic Resins (contained in the docket for this rule).

VIII. Administrative Requirements

A. Docket

The docket for the proposed rule is A–92–19. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A) of the Act).

This docket contains copies of the regulatory text, Basis and Purpose Document (BPD), BPD references, and technical memoranda documenting the information considered by the EPA in the development of the proposed rule. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1869.01) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency

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(2137); 401 M St., SW; Washington, DC 20460; by e-mail at farmer.sandy@epamail.epa.gov; or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

Certain records and reports are necessary to enable the Administrator to identify facilities subject to the standard and to ensure that the standard, which is based on maximum achievable control technology (MACT) specific to amino/phenolic resin facilities, is being achieved. The information will be used by Agency enforcement personnel to (1) identify new, modified, reconstructed, and existing facilities subject to the standards; and (2) ensure that compliance is being maintained and documented. Records and reports are necessary to enable the Agency to identify facilities that are not in compliance with the standards. Based on reported information, the EPA can decide which facilities should be inspected and which records or processes should be inspected at these facilities.

Amino/phenolic resin facilities would be required to submit the initial Notification of Compliance Status within 5 months of the compliance date of the standard. Records necessary to determine compliance would be compiled and periodic reports would be submitted on a semiannual basis.

All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in the Code of Federal Regulations, Title 40, Chapter 1, Part 2 Subpart B—Confidentiality of Business Information (see 40 CFR 2.201 *et seq.*; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979; 50 FR 51661, Dec. 18, 1985; 58 FR 461, Jan. 5, 1993; 58 FR 5061, Jan. 19, 1993; 58 FR 7189, Feb. 5, 1993).

The total annual reporting and recordkeeping burden for this collection averaged over the first 3 years is estimated to be $1,062,900 per year for the entire source category. The average burden, per respondent, is 806 hours per year with a one-time capital cost of $2,000. After the initial response, responses would be required semiannually. There are an estimated 40 respondents initially subject to the proposed collection requirements. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because the OMB is required to make a decision concerning the ICR between 30 and 60 days after December 14, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by January 13, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by EPA and OMB that this rule is not a "significant regulatory action" within the meaning of the Executive Order.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities for the following reasons: (1) There are only 8 small businesses among the 20 businesses affected by this rule that operate the 40 affected facilities; (2) a screening analysis indicates no affected small business is likely to incur an annual compliance cost of more than 1 percent as a percentage of sales; (3) price increases and resulting production decreases may occur for the small businesses' affected products after compliance is achieved but neither is expected to exceed 0.1 percent; and (4) no facilities or product lines owned by these small businesses are projected to be at risk of closure from compliance with this proposed rule. Therefore, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

For more information on the results given in this section, please refer to the Economic Impact Analysis of the Proposed National Emission Standard for Hazardous Air Pollutants: Manufacture of Amino/Phenolic Resins (contained in the docket for this rule).

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed rule, or any final rule for which a notice of proposed rulemaking was published, that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under Section 205, if a budgetary impact statement is required under section 202, the EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

The EPA has determined that this proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The EPA has also determined that this proposed rule does not significantly or uniquely impact small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking includes technical standards. Consequently, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

EPA searched for methods potentially equivalent to the methods required by this proposed rule, all of which are methods previously promulgated by EPA. The proposed rule includes methods that measure: (1) Determination of actual oxygen concentration (%O2d)(EPA Method 3B); (2) sampling site location (EPA Method 1 or 1A); (3) volumetric flow rate for batch emission episode (EPA Methods 2, 2A, 2C, or 2D); (4) gas analysis (EPA Method 3); (5) stack gas moisture (EPA Method 4); (6) concentration of formaldehyde (EPA Method 316 or 320); (7) concentration of all organic HAP other than formaldehyde (EPA Method 18); and (8) concentration of methanol (EPA Method 308 or 18). These EPA methods are found in Appendix A to part 60.

No potentially equivalent methods for the methods in the proposal were found in the NSSN database search. Therefore, the EPA proposes to use the methods listed above. EPA welcomes comment on this aspect of the proposed rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards and to explain why this regulation should provide for the use of these standards. Methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

H. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

I. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 30, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. It is proposed that part 63 be amended by adding subpart OOO to read as follows:

Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins

Sec.

63.1400 Applicability and designation of affected sources.
63.1401 Compliance schedule and relationship to existing applicable rules.
63.1402 Definitions.
63.1403 Emission standards.
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63.1407 Non-reactor batch process vents—standards.
63.1408 Batch process vents—recordkeeping provisions.
63.1409 Batch process vents—reporting provisions.
63.1410 [Reserved]
63.1411 [Reserved]
63.1412 [Reserved]
63.1413 Heat exchange systems provisions.
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63.1416 [Reserved]
63.1417 Test methods and compliance procedures.
63.1418 Monitoring requirements.
63.1419 General recordkeeping and reporting requirements.
Table 1 to Subpart OOO of Part 63—Applicability of General Provisions to Subpart OOO Affected Sources
Table 2 to Subpart OOO of Part 63—Group 1 Storage Vessels at Existing and New Affected Sources
Table 3 to Subpart OOO of Part 63—Known Organic Hazardous Air Pollutants (HAP) From the Manufacture of Amino/Phenolic Resins
Table 4 to Subpart OOO of Part 63—Batch Process Vent Monitoring Requirements
Table 5 to Subpart OOO of Part 63—Operating Parameter Levels
Table 6 to Subpart OOO of Part 63—Reports Required by This Subpart

Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins

§ 63.1400 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. Affected sources are described in paragraphs (a)(1) through (a)(4) of this section.

(1) An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(3) of this section, and new affected source is defined in paragraph (a)(4) of this section.

(2) Emission points and equipment. The affected source includes the emission points and equipment specified in paragraphs (a)(2)(i) through (a)(2)(iv) of this section that are associated with each group of amino/phenolic resin process units (APPU) making up an affected source.

(i) Each waste management unit.

(ii) Maintenance wastewater.

(iii) Each heat exchange system.

(iv) Equipment required by, or utilized as a method of compliance with, this subpart which may include control devices and recovery devices.

(3) An existing affected source is defined as each group of one or more APPU, that is not part of a new affected source, as defined in paragraph (a)(4) of this section, that is located at a plant site that is a major source.

(4) A new affected source is defined as something that meets the criteria of paragraph (a)(4)(i), (a)(4)(ii), or (a)(4)(iii) of this section. The situation described in paragraph (a)(4)(i) of this section is distinct from those situations described in paragraphs (a)(4)(ii) and (a)(4)(iii) of this section and from any situation described in paragraph (i)of this section.

(i) At a site previously without HAP emission points (i.e., a "greenfield" site), each group of one or more APPUs on which construction commenced after December 14, 1998 that are part of a major source;

(ii) An APPU meeting the criteria in paragraph (i)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (i)(2)(i) of this section.

(b) *APPUs without organic HAP.* The owner or operator of an APPU that is part of an affected source, as defined in paragraph (a) of this section, but that does not use or manufacture any organic HAP shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section. Such an APPU is not subject to any other provisions of this subpart and is not required to comply with the provisions of subpart A of this part.

(1) The owner or operator shall retain information, data, and analysis used to document the basis for the determination that the APPU does not use or manufacture any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, the owner or operator shall demonstrate that the APPU does not use any organic HAP.

(c) *Emission points not subject to the provisions of this subpart.* The affected source includes the emission points listed in paragraphs (c)(1) through (c)(9) of this section, but these emission points are not subject to the requirements of this subpart or to the provisions of subpart A of this part:

(1) Equipment that does not contain organic HAP and is located within an APPU that is part of an affected source;

(2) Stormwater from segregated sewers;

(3) Water from fire-fighting and deluge systems in segregated sewers;

(4) Spills;

(5) Water from safety showers;

(6) Water from testing of deluge systems;

(7) Water from testing of firefighting systems;

(8) Vessels and equipment storing and/or handling material that contain no organic HAP and/or organic HAP as impurities only; and

(9) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

(d) *Processes exempted from the affected source.* The processes specified in this paragraph (d) are exempted from the affected source: Research and development facilities.

(e) [Reserved]

(f) *Primary product determination and applicability.* The primary product of a process unit shall be determined according to the procedures specified in paragraphs (f)(1) through (f)(2) of this section. Paragraphs (f)(3) through (f)(4) of this section describe whether or not a process unit is subject to this subpart. Paragraphs (f)(5) through (f)(7) of this section discuss compliance for those APPUs operated as flexible operation units, as specified in paragraph (f)(2) of this section. For purpose of this paragraph (f), amino resins and phenolic resins shall be considered to be the same product. For purposes of this paragraph (f), the term "product," when discussing amino resins or phenolic resins, shall have the additional meaning of being either an amino resin, a phenolic resin, or both. Additionally, the term amino/phenolic resin, as defined in § 63.1402, shall have the same meaning: either an amino resin, a phenolic resin, or both.

(1) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(2) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (f)(2)(i) or (f)(2)(ii) of this section based on the anticipated operations for the 5 years following [date of publication of final rule] for existing affected sources and for the first 5 years after initial start-up for new affected sources.

(i) If the flexible operation unit will manufacture one product for the greatest operating time over the five year period, then that product shall represent the primary product of the flexible operation unit.

(ii) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest production on a mass basis over the five year period shall represent the primary product of the flexible operation unit.

(3) If the primary product of a process unit is an amino/phenolic resin, then said process unit is considered an APPU. Said APPU is either an affected source or part of an affected source comprised of other APPU subject to this subpart at the same plant site. The status of a process unit as an APPU and as an affected source or part of an affected source shall not change regardless of what products are produced in the future by said APPU, with the exception noted in paragraph (f)(3)(i) of this section.

(i) If a process unit terminates the production of all amino/phenolic resins and does not anticipate the production of any amino/phenolic resins in the future, the process unit is no longer an APPU, is no longer an affected source or part of an affected source, and is not subject to this subpart after notification is made as specified in paragraph (f)(3)(ii) of this section.

(ii) The owner or operator of a process unit that wishes to remove the APPU designation from the process unit, as specified in paragraph (f)(3)(i) of this section, shall notify the Administrator. This notification shall be accompanied by a rationale for why it is anticipated that no amino/phenolic resins will be produced in the process unit in the future.

(iii) If a process unit meeting the criteria of paragraph (f)(3)(i) of this section begins the production of an amino/phenolic resin in the future, the owner or operator shall use the procedures in paragraph (f)(4)(i) of this section to determine if the process unit is re-designated as an APPU.

(4) If the primary product of a process unit is not an amino/phenolic resin, then said process unit is not an APPU, nor is it an affected source, nor is it part of any affected source subject to this subpart. Said process unit is not subject to this subpart at any time, regardless of what product is being produced. The status of a process unit as not being an APPU, and therefore not an affected source nor part of an affected source subject to this subpart, shall not change regardless of what products are produced in the future by said process unit, with the exception noted in paragraph (f)(4)(i) of this section.

(i) If, at any time beginning [date 5 years after date of publication of final rule], the owner or operator determines that an amino/phenolic resin is the primary product for the process unit based on actual production data for any preceding consecutive five-year period, then the process unit shall be designated as an APPU. If said APPU is not subject to another subpart of this part 63, it is either an affected source or part of an affected source. Said APPU shall be subject to this subpart and shall comply with paragraph (f)(4)(ii) of this section. Beginning on [date 5 years after the date of publication of final rule] and each year thereafter on the anniversary of [date 5 years after the date of publication of final rule], the owner or operator shall evaluate production data for the preceding consecutive five-year period to determine if the primary product for the process unit is an amino/phenolic resin.

(ii) If a process unit meets the criteria of paragraph (f)(4)(i) of this section, the owner or operator shall notify the Administrator within 6 months of making this determination. The APPU, as the entire affected source or part of an affected source, shall be in compliance with the provisions of this subpart within 3 years from the date of such notification.

(5) Once the primary product of a process unit has been determined to be an amino/phenolic resin and if the process unit is an affected source or is part of an affected source as defined in paragraph (a) of this section, the owner or operator of the affected source shall comply with the provisions of this subpart. Owners or operators of flexible operation units shall comply with this subpart regardless of what product is being manufactured, except as specified in paragraph (f)(5)(iii) of this section. Owners or operators shall comply with the provisions of this subpart for continuous process vents, storage vessels, and emission points associated with wastewater as specified in either paragraph (f)(5)(i) or (f)(5)(ii) of this section. Owners or operators shall comply with the provisions of this subpart for reactor or non-reactor batch process vents at all time, regardless of what product is being produced.

(i) Each owner or operator shall determine the group status of each emission point that is part of said flexible operation unit based on emission point characteristics when the primary product is being manufactured. Based on this finding of group status, the owner or operator shall comply with this subpart for each emission point, as appropriate, at all times, regardless of what product is being produced.

(ii) Alternatively, each owner or operator shall comply with this subpart for individual emission points based on determinations of the group status of each emission point made when each product produced by the flexible operation unit is manufactured, regardless of whether said product is an amino/phenolic resin or not. (**Note:** Under this scenario it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being produced.)

(iii) Whenever a flexible operation unit manufactures a product in a way that meets the criteria of paragraph (b) of this section (i.e., does not use or manufacture any organic HAP), the owner or operator is only required to comply with either paragraph (b)(1) or (b)(2) of this section to demonstrate compliance for activities associated with the manufacture of said product. This subpart does not require compliance with the provisions of subpart A of this part for activities associated with the manufacture of a product that meets the criteria of paragraph (b) of this section.

(6) The determination of the primary product for a process unit, to include the determination of applicability of this subpart to process units that are designed and operated as flexible operation units, shall be reported in the Notification of Compliance Status required by § 63.1419(e)(5) when the primary product is determined to be an amino/phenolic resin. The Notification

of Compliance Status shall include the information specified in either paragraph (f)(6)(i) or (f)(6)(ii) of this section. If the primary product is determined to be something other than an amino/phenolic resin, the owner or operator shall either retain all information, data, and analyses used to document the basis for the determination that the primary product is not an amino/phenolic resin, or, when requested by the Administrator, demonstrate that the primary product for the process unit is something other than an amino/phenolic resin.

(i) If the APPU manufactures only an amino/phenolic resin, a statement of this fact.

(ii) If the APPU is designed and operated as a flexible operation unit, the information specified in paragraphs (f)(6)(ii)(A) through (f)(6)(ii)(C) of this section, as appropriate.

(A) Statement that amino/phenolic resin is the primary product.

(B) Information concerning operating time and/or production mass for each product that was used to make the determination of the primary product under paragraph (f)(2)(i) or (f)(2)(ii) of this section.

(C) Identification of which compliance option specified in paragraphs (f)(5)(i) and (f)(5)(ii) of this section has been selected by the owner or operator for continuous process vents, storage vessels, and emission points associated with wastewater.

(7) To demonstrate compliance with this subpart during those periods when an APPU operated as a flexible operation unit is producing a product that is not an amino/phenolic resin, the owner or operator shall comply with either paragraphs (f)(7)(i) through (f)(7)(ii) or paragraph (f)(7)(iii) of this section.

(i) Establish parameter monitoring levels, as specified in § 63.1418, for those emission points designated as Group 1 and for reactor and non-reactor batch process vents, as appropriate.

(ii) Submit the parameter monitoring levels developed under paragraph (f)(7)(i) of this section and the basis for them in the Notification of Compliance Status report as specified in § 63.1419(e)(5).

(iii) Demonstrate that the parameter monitoring levels established for the amino/phenolic resin are also appropriate for those periods when products other than the amino/phenolic resin are being produced. Material demonstrating this finding shall be submitted in the Notification of Compliance Status report as specified in § 63.1419(e)(5).

(g) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(7) of this section to determine to which process unit a storage vessel shall be assigned. Paragraph (g)(8) of this section specifies when an owner or operator is required to redetermine to which process unit a storage vessel is assigned.

(1) If a storage vessel is already subject to another subpart of this part 63 on [date of publication of final rule], said storage vessel shall be assigned to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall be assigned to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall be assigned to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., said process unit has the predominant use of the storage vessel).

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if one or more of those process units is an APPU subject to this subpart, the storage vessel shall be assigned to any of the said APPU.

(5) [Reserved]

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding [date of publication of final rule] or based on the expected utilization for the 5 years following [date of publication of final rule] for existing affected sources and based on the expected utilization for the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.1335(e)(5)(vi).

(7) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(7)(i) through (g)(7)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping both to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraphs (g)(3) through (g)(6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (g)(7)(i) of this section.

(8) If the storage vessel begins receiving material from (or sending material to) a process unit that was not included in the initial determination, or ceases to receive material from (or send material to) a process unit, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(h) [Reserved]

(i) *Changes or additions to plant sites.* The provisions of paragraphs (i)(1) through (i)(3) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (i)(4) of this section provides examples of what are and are not considered process changes for purposes of this paragraph (i). Paragraph (i)(5) of this section discusses reporting requirements.

(1) *Adding an APPU to a plant site.* The provisions of paragraphs (i)(1)(i) through (i)(1)(ii) of this section apply to owners or operators that add APPUs to a plant site.

(i) If an APPU is added to a plant site, said addition shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by [date of publication of final rule], whichever is later, if said addition meets the criteria specified in paragraphs (i)(1)(i)(A) through (i)(1)(i)(C) of this section:

(A) Said addition meets the definition of construction in § 63.2;

(B) Such construction commenced after December 14, 1998; and

(C) Said addition has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP.

(ii) If an APPU is added to a plant site, said addition shall be subject to the requirements for an existing affected source in this subpart upon initial start-up or by [date 3 years after date of publication of final rule], whichever is later, if said addition does not meet the criteria specified in paragraph (i)(1)(i) of this section and the plant site meets, or after the addition is completed will meet, the definition of major source.

(2) *Adding emission points or making process changes to existing affected sources.* The provisions of paragraphs (i)(2)(i) through (i)(2)(ii) of this section apply to owners or operators that add emission points or make process changes to an existing affected source.

(i) If any process change or addition is made to an existing affected source and said process change or addition meets the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section, said affected source shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by [date of publication of final rule], whichever is later.

(A) Said process change or addition meets the definition of reconstruction in § 63.2; and

(B) Such reconstruction commenced after December 14, 1998.

(ii) If any process change is made that results in one or more Group 1 emission points (i.e., either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or if any other emission point(s) is added to an existing affected source (i.e., Group 2 emission point(s), batch process vent(s), or equipment leak components subject to § 63.1415) and said process change or addition does not meet the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section, the resulting emission point(s) shall be subject to the requirements for an existing affected source in this subpart. Said emission point(s) shall be in compliance upon initial start-up or by the compliance date specified in § 63.1401, whichever is later.

(3) [Reserved.]

(4) *Determining what are and are not process changes.* For purposes of this paragraph (i), examples of process changes include, but are not limited to, changes in feedstock type, or catalyst type, or whenever there is a replacement, removal, or the addition of recovery equipment, or changes that increase production capacity. For purposes of this paragraph (i), process changes do not include: process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.1335(e)(5).

(5) *Reporting requirements for owners or operators that change or add to their plant site or affected source.* Owners or operators that change or add to their plant site or affected source, as discussed in paragraphs (i)(1) and (i)(2) of this section, shall submit a report as specified in § 63.1419(e)(7)(iv).

(j) *Applicability of this subpart during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (j)(1) through (j)(4) of this section shall be followed during periods of start-up, shutdown, malfunction, or non-operation of the affected source or any part thereof.

(1) The provisions set forth in this subpart and the provisions referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The emission limitations of this subpart shall not apply during periods of start-up, shutdown, or malfunction. However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this subpart during the start-up, shutdown, malfunction, or period of non-operation. For example, if there is an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with § 63.1404.

(2) The provisions set forth in subpart H of this part 63, as referred to in § 63.1415, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.1415 applies, or during periods of start-up, shutdown, malfunction, or process unit shutdown. During periods of start-up, shutdown, malfunction, or process unit shutdown, the owner or operator shall follow the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3).

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during periods of start-up, shutdown, or malfunction; or during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph (j)(3) does not apply if the item of equipment is malfunctioning. This paragraph (j)(3) also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof, the owner or operator shall provide documentation supporting such a claim in the operating permit application (or, where applicable, an application for revision of the operating permit) for that affected source. The permitting authority shall evaluate the supporting documentation and, in the operating permit, may provide for that equipment to be shut down during periods of start-up, shutdown, or malfunction only if such equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction, in the permitting authority's judgement, based on the information submitted.

(4) During start-ups, shutdowns, and when the requirements of this subpart do not apply pursuant to paragraphs (j)(1) through (j)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term "excess emissions" means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

§ 63.1401 Compliance schedule and relationship to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (c) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (l) of this section discuss the relationship of this subpart to subpart A of this part and to other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (m) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after December 14, 1998 shall be in compliance with this subpart upon initial start-up or [date of publication of final rule], whichever is later, as provided in § 63.6(b).

(c) Existing affected sources shall be in compliance with this subpart no later than 3 years after [date of publication of final rule], as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section.

(d) [Reserved.]

(e) Pursuant to Section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with Section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, except as provided in paragraph (e)(3) of this section. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i)(A), (B), and (D).

(2) The requirements in § 63.6(i)(8) through (i)(14) shall govern the review and approval of requests for extensions of compliance with this subpart.

(3) An owner or operator may submit a compliance extension request after the date specified in paragraph (e) of this section, provided that the need for the compliance extension arose after that date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information specified in paragraph (e)(1) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the circumstances necessitating a request for compliance extension under this paragraph (e)(3).

(f) Table 1 of this subpart specifies the provisions of subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(g) After the compliance dates specified in this section, a storage vessel that is assigned to an affected source subject to this subpart that is also subject to and complying with the provisions of 40 CFR part 60, subpart Kb, shall continue to comply with 40 CFR part 60, subpart Kb. After the compliance dates specified in this section, a storage vessel that is assigned to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart Kb, but the owner or operator has not been required to apply controls as part of complying with 40 CFR part 60, subpart Kb, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(h) Affected sources subject to this subpart that are also subject to the provisions of subpart Q of this part shall comply with both subparts.

(i) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart VV, or the provisions of subpart H of this part 63, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said source shall no longer be subject to 40 CFR part 60, subpart VV, or subpart H of this part 63, as appropriate.

(j) [Reserved.]

(k) [Reserved.]

(l) *Overlap with other regulations for monitoring, recordkeeping or reporting with respect to combustion devices, recovery devices, or recapture devices.* After the compliance dates specified in this subpart, if any combustion device, recovery device or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA, BB, or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA, BB, or CC, and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264, subpart AA, BB, or CC, that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping and reporting requirements of this subpart, or with the monitoring, recordkeeping and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph (l), which shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart. If the owner or operator elects to comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, the owner or operator shall report all information required by § 63.1419(e)(6). The owner or operator shall identify which option has been selected in the Notification of Compliance Status required by § 63.1419(e)(5).

(m) All terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), unless specified otherwise, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part 63 (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraph (m)(2)(i) or (m)(2)(ii) of this section, as appropriate:

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or (ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may

perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 63.1402 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in §§ 63.2, 63.101, 63.111, and 63.161 as specified after each term:

Act (§ 63.2)
Administrator (§ 63.2)
Annual average concentration (§ 63.111)
Annual average flow rate (§ 63.111)
Automated monitoring and recording system (§ 63.111)
Boiler (§ 63.111)
Bottoms receiver (§ 63.161)
By compound (§ 63.111)
By-product (§ 63.101)
Car-seal (§ 63.111)
Closed-vent system (§ 63.111)
Combustion device (§ 63.111)
Commenced (§ 63.2)
Compliance date (§ 63.2)
Connector (§ 63.161)
Construction (§ 63.2)
Continuous monitoring system (§ 63.2)
Distillation unit (§ 63.111)
Duct work (§ 63.161)
Emission standard (§ 63.2)
EPA (§ 63.2)
External floating roof (§ 63.111)
First attempt at repair (§ 63.111)
Flame zone (§ 63.111)
Floating roof (§ 63.111)
Flow indicator (§ 63.111)
Fuel gas (§ 63.101)
Fuel gas system (§ 63.101)
Hard-piping (§ 63.111)
Hazardous air pollutant (§ 63.2)
Impurity (§ 63.101)
In organic hazardous air pollutant service (§ 63.161)
Incinerator (§ 63.111)
Instrumentation system (§ 63.161)
Internal floating roof (§ 63.111)
Lesser quantity (§ 63.2)
Major source (§ 63.2)
Malfunction (§ 63.2)
Open-ended valve or line (§ 63.161)
Operating permit (§ 63.101)
Organic monitoring device (§ 63.111)
Owner or operator (§ 63.2)
Performance evaluation (§ 63.2)
Performance test (§ 63.2)
Permitting authority (§ 63.2)
Plant site (§ 63.101)
Potential to emit (§ 63.2)
Primary fuel (§ 63.111)
Process heater (§ 63.111)
Process unit shutdown (§ 63.161)
Process wastewater (§ 63.101)
Process wastewater stream (§ 63.111)
Reactor (§ 63.111)
Recapture device (§ 63.101)
Reconstruction (§ 63.2)
Routed to a process or route to a process (§ 63.161)
Run (§ 63.2)
Secondary fuel (§ 63.111)
Sensor (§ 63.161)
Specific gravity monitoring device (§ 63.111)
Start-up, shutdown, and malfunction plan (§ 63.101)
State (§ 63.2)
Surge control vessel (§ 63.161)
Temperature monitoring device (§ 63.111)
Test method (§ 63.2)
Total resource effectiveness (TRE) index value (§ 63.111)
Treatment process (§ 63.111)
Unit operation (§ 63.101)
Visible emission (§ 63.2)

(b) All other terms used in this subpart shall have the meaning given them in this section. If a term is defined in § 63.2, § 63.101, § 63.111, or § 63.161 and in this section, it shall have the meaning given in this section for purposes of this subpart.

Air pollution control device or Control device means equipment installed on a process vent, storage tank, wastewater treatment exhaust stack, or combination thereof that reduces the mass of HAP emitted to the air. The equipment may consist of an individual device or a series of devices. Examples include, but are not limited to, incinerators, carbon adsorption units, condensers, flares, boilers, process heaters, and gas absorbers. Process condensers are not considered air pollution control devices or control devices.

Affected source is defined in § 63.1400(a).

Amino resin means a resin produced through the reaction of formaldehyde, or a formaldehyde containing solution (e.g., aqueous formaldehyde), with compound(s) that contain the amino group; these compounds include melamine, urea, and urea derivatives.

Amino/phenolic resin means one or both of the following types of products:

(1) Amino resin; or

(2) Phenolic resin.

Amino/phenolic resin process unit (APPU) means a collection of equipment assembled and connected by hard-piping or ductwork used to process raw materials and to manufacture an amino/phenolic resin as its primary product. This collection of equipment includes process vents from process vessels; equipment identified in § 63.149; storage vessels, as determined in § 63.1400(g); and the equipment that is subject to the equipment leak provisions as specified in § 63.1415. Utilities, lines and equipment not containing process fluids, and other non-process lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not part of the amino/phenolic resin process unit. An amino/phenolic resin process unit consists of more than one unit operation.

Batch cycle means the operational step or steps, from start to finish, that occur as part of a batch unit operation.

Batch emission episode means a discrete emission venting episode associated with a single batch unit operation. Multiple batch emission episodes may occur from a single batch unit operation.

Batch mode means the discontinuous bulk movement of material through a unit operation. Mass, temperature, concentration, and other properties may vary with time. For a unit operation operated in a batch mode (i.e., batch unit operation), the addition of material and withdrawal of material do not typically occur simultaneously.

Batch process vent means a process vent from a batch unit operation within an affected source. Batch process vents are either reactor batch process vents or non-reactor batch process vents.

Batch unit operation means a unit operation operated in a batch mode.

Block means the time period that comprises a single batch cycle.

Continuous mode means the continuous movement of material through a unit operation. Mass, temperature, concentration, and other properties typically approach steady-state conditions. For a unit operation operated in a continuous mode (i.e., continuous unit operation), the simultaneous addition of raw material and withdrawal of product is typical.

Continuous process vent means a process vent from a continuous unit operation within an affected source. The total organic HAP weight percent is determined after the last recovery device, as described in § 63.115(a), and is determined as specified in § 63.115(c). Process vents that are serving as control devices are not subject to additional control requirements.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.1419(d) or § 63.1419(h).

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 1-hour or more frequent block average values.

Continuous unit operation means a unit operation operated in a continuous mode.

Controlled HAP emissions means the quantity of HAP discharged to the atmosphere from an air pollution control device.

Emission point means an individual continuous process vent, batch process vent, storage vessel, waste management unit, equipment leak, heat exchange system, or equipment subject to § 63.149.

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Equipment means, for the purposes of the provisions in § 63.1415 and the requirements in subpart H of this part that are referred to in § 63.1415, each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in organic hazardous air pollutant service; and any control devices or systems required by subpart H of this part. For purposes of this subpart, surge control vessels and bottom receivers are not equipment for purposes of regulating equipment leak emissions. Surge control vessels and bottoms receivers are regulated as non-reactor batch process vents, for the purposes of this subpart.

Equipment leak is defined in § 63.101, except that surge control vessels and bottoms receivers are not sources of equipment leak emissions for purposes of this subpart.

Existing affected source is defined in § 63.1400(a)(3).

Flexible operation unit means a process unit that manufactures different chemical products, polymers, or resins periodically by alternating raw materials or operating conditions. These units are also referred to as campaign plants or blocked operations.

Group 1 continuous process vent means a continuous process vent from a new affected source releasing a gaseous emission stream that has a total resource effectiveness index value, calculated according to the procedures in § 63.115 as qualified by § 63.1405(e), less than or equal to 1.2.

Group 1 storage vessel means a storage vessel at a new or existing affected source that meets the applicability criteria specified in Table 2 of this subpart.

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from a new affected source that meets the criteria for Group 1 status in § 63.132(c) and/or that meets the criteria for Group 1 status in § 63.132(d), with the exceptions listed in § 63.1414(h) for the purposes of this subpart (i.e., for organic HAP listed on Table 3 of this subpart that are also listed on Table 9 and Table 8 of subpart G of this part 63, as indicated on Table 3 of this subpart, as appropriate).

Group 2 continuous process vent means a continuous process vent that does not fall within the definition of a Group 1 continuous process vent.

Group 2 storage vessel means a storage vessel that does not fall within the definition of a Group 1 storage vessel.

Group 2 wastewater stream means any process wastewater stream that does not meet the definition of a Group 1 wastewater stream.

Heat exchange system means any cooling tower system or once-through cooling water system (e.g., river or pond water) designed and intended to operate to not allow contact between the cooling medium and process fluid or gases (i.e., a noncontact system). A heat exchange system can include more than one heat exchanger and can include recirculating or once-through cooling systems.

Highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

Initial start-up means the first time a new or reconstructed affected source begins production, or, for equipment added or changed as described in § 63.1400(i), the first time the equipment is put into operation. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups of an affected source or portion thereof following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation. Further, for purposes of § 63.1401 and § 63.1415, initial start-up does not include subsequent start-ups of affected sources or portions thereof following malfunctions or process unit shutdowns.

Large control device means a control device that controls emission points with total emissions of 10 tons of HAP per year or more before control.

Maintenance wastewater is defined in § 63.101, except that the term "amino/phenolic resin process unit" shall apply wherever the term "chemical manufacturing process unit" is used. Further, the generation of wastewater from the routine rinsing or washing of equipment in batch operation between batches is not maintenance wastewater for the purposes of this subpart.

Maximum representative operating conditions means, for purposes of testing or measurements required by § 63.1417, those conditions which reflect the highest HAP emissions reasonably expected to be vented to the control device or emitted to the atmosphere. For affected sources that produce the same product(s) using multiple recipes, the production of the highest-HAP recipe is reflective of maximum representative operating conditions.

Maximum true vapor pressure is defined in § 63.111, except that the terms "transfer" or "transferred" shall not apply for purposes of this subpart.

Multicomponent system means, as used in conjunction with batch process vents, a stream whose liquid and/or vapor contains more than one compound.

Net positive heating value means the difference between the heat value of the recovered chemical stream and the minimum heat value required to ensure a stable flame in the combustion device. This difference must have a positive value when used in the context of "recovering chemicals for fuel value" (e.g., in the definition of "recovery device" in this section).

New affected source is defined in § 63.1400(a)(4).

Non-reactor batch process vent means a batch process vent originating from a unit operation other than a reactor. Non-reactor batch process vents include, but are not limited to, batch process vents from filter presses, surge control vessels, bottoms receivers, weigh tanks, and distillation systems.

On-site or *On site* means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source or APPU to which the records pertain, or storage in central files elsewhere at the major source.

Operating day means the period defined by the owner or operator in the Notification of Compliance Status required by § 63.1419(e)(5). The operating day is the period for which daily average monitoring values and batch cycle daily average monitoring values are determined.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 3 of this subpart or any other chemical which is:

(1) Knowingly produced or introduced into the manufacturing process other than as an impurity; and

(2) Listed in Table 2 of subpart F of this part.

Phenolic resin means a resin that is a condensation product of formaldehyde and phenol, or a formaldehyde substitute and/or a phenol substitute. Substitutes for formaldehyde include acetaldehyde or furfuraldehyde. Substitutes for phenol include other phenolic starting compounds such as cresols, xylenols, p-tert-butylphenol, p-phenylphenol, and nonylphenol.

Primary product is defined in and determined by the procedures specified in § 63.1400(f). For the purposes of the procedures in § 63.1400(f), amino resins and phenolic resins shall be considered to be the same product.

Process condenser means a condenser whose primary purpose is to recover material as an integral part of a unit operation(s). The condenser must support a vapor-to-liquid phase change for periods of equipment operation that are at or above the boiling or bubble point of substance(s) at the liquid surface. Examples of process condensers include distillation condensers, reflux condensers, and condensers used in stripping or flashing operations. In a series of condensers, all condensers up to and including the first condenser with an exit gas temperature below the boiling or bubble point of the substance(s) at the liquid surface are considered to be process condensers. All condensers in line prior to a vacuum source are included in this definition.

Process unit means a collection of equipment assembled and connected by hardpiping or ductwork, used to process raw materials and to manufacture a product.

Process vent means a gaseous emission stream from a unit operation where the gaseous emission stream is discharged to the atmosphere either directly or after passing through one or more control, recovery, or recapture devices. Unit operations that may have process vents are condensers, distillation units, reactors, or other unit operations within the APPU. Emission streams that are undiluted and uncontrolled containing less than 20 ppmv organic HAP, as determined through process knowledge that no organic HAP are present in the emission stream or using an engineering assessment as discussed in § 63.1417(e)(3)(vi); test data using the test methods specified in § 63.1417(b); or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part, are not considered process vents. Process vents exclude relief valve discharges, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under § 63.1415. Process vents that are serving as control devices are not subject to additional control requirements.

Product means a resin, produced using the same monomers and varying in additives (e.g., initiators, terminators, etc.); catalysts; or in the relative proportions of monomers, that is manufactured by a process unit. With respect to resins, more than one recipe may be used to produce the same product. Product also means a chemical that is not a polymer, that is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Reactor batch process vent means a batch process vent originating from a reactor.

Recipe means a specific composition, from among the range of possible compositions that may occur within a product, as defined in this section. A recipe is determined by the proportions of monomers and, if present, other reactants and additives that are used to make the recipe. For example, a methylated amino resin and a non-methylated amino resin are both different recipes of the same product, amino resin.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for use; reuse; fuel value (i.e., net heating value); or for sale for use, reuse, or fuel value (i.e., net heating value). Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For the purposes of the monitoring, recordkeeping, or reporting requirements of this subpart, recapture devices are considered recovery devices.

Research and development facility means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

Residual is defined in § 63.111, except that when the definition in § 63.111 uses the term "Table 9 compounds," the term "organic HAP listed on Table 3 of this subpart that are also listed on Table 9 of subpart G of this part, as indicated on Table 3 of this subpart" shall apply for purposes of this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purposes of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of an affected source, an APPU(s) within an affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or the emptying or degassing of a storage vessel. For purposes of the wastewater provisions of § 63.1414, shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. For purposes of the batch process vent provisions in §§ 63.1406 and 63.1407, the cessation of equipment in batch operation is not a shutdown, unless the equipment undergoes maintenance, is replaced, or is repaired.

Small control device means a control device that controls emission points with total emissions less than 10 tons of HAP per year before control.

Start-up means the setting into operation of an affected source, an APPU(s) within an affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or a storage vessel after emptying and degassing. For both continuous and batch unit operations, start-up includes initial start-up and operation solely for testing equipment. For both continuous and batch unit operations, start-up does not include the recharging of equipment in batch operation. For continuous unit operations, start-up includes transitional conditions due to changes in product for flexible operation units. For batch unit operations, start-up does not include transitional conditions due to changes in product for flexible operation units.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do not vary significantly with time; minor fluctuations about constant mean values may occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP. Storage vessels do not include:

(1) vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) vessels with capacities smaller than 38 cubic meters;

(4) vessels and equipment storing and/or handling material that contains no organic HAP and/or organic HAP as impurities only;

(5) wastewater storage tanks;

(6) surge control vessels or bottoms receivers; and

(7) vessels and equipment storing and/or handling amino/phenolic resin.

Uncontrolled HAP emissions means a gaseous vent stream containing HAP which has exited the unit operation (or process condenser, if any), but which has not yet been introduced into an air pollution control device to reduce the mass of HAP in the vent stream. If the gaseous vent stream is not routed to an air pollution control device, uncontrolled emissions are those HAP emissions released to the atmosphere.

Vent stream, as used in reference to batch process vents, continuous process vents, storage vessels, waste management units, and in-process equipment subject to § 63.149, means the emissions from that emission point.

Waste management unit is defined in § 63.111, except that where the definition in § 63.111 uses the term "chemical manufacturing process unit," the term "APPU" shall apply for purposes of this subpart.

Wastewater is either a process wastewater or maintenance wastewater and means water that:

(1) Contains either:

(i) An annual average concentration of organic HAP listed on Table 3 of this subpart that are also listed on Table 9 of subpart G of this part 63, as indicated on Table 3 of this subpart, of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of organic HAP listed on Table 3 of this subpart that are also listed on Table 9 of subpart G of this part 63, as indicated on Table 3 of this subpart, of at least 10,000 parts per million by weight at any flow rate, and that;

(2) Is discarded from an APPU that is part of an affected source.

Wastewater stream means a stream that contains wastewater as defined in this section.

§ 63.1403 Emission standards.

Each owner or operator of an affected source subject to the provisions of this subpart shall control organic HAP emissions as specified in this subpart on and after the compliance dates specified in this section. Compliance with the emissions limits is demonstrated initially through the provisions of § 63.1417 (Test methods and compliance procedures) and continuously through the provisions of § 63.1418 (Monitoring requirements).

(a) Except as allowed under paragraph (b) of this section, the owner or operator of an affected source shall comply with the provisions in paragraphs (a)(1) through (a)(9) of this section, as appropriate. (**Note:** Sections 63.1410 through 63.1412 and § 63.1416 are reserved.):

(1) Section 63.1404 for storage vessels for new affected sources;

(2) Section 63.1405 for continuous process vents for new affected sources;

(3) Sections 63.1406 through 63.1409 for batch process vents for existing and new affected sources;

(4) Section 63.1413 for heat exchange systems for existing and new affected sources;

(5) Section 63.1414 for wastewater for new affected sources;

(6) Section 63.1415 for equipment leaks for existing and new affected sources, except as specified in paragraph (c) of this section;

(7) Section 63.1417 for test methods and compliance procedures;

(8) Section 63.1418 for monitoring requirements; and

(9) Section 63.1419 for general recordkeeping and reporting requirements.

(b) When emissions of different kinds (i.e., emissions from continuous process vents, batch process vents, storage vessels, process wastewater, and/or in-process equipment subject to § 63.149) are combined, and at least one of the vent streams would be required by this subpart to apply controls in the absence of combination with other vent streams, the owner or operator shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), combined vent streams containing one or more batch process vents and containing one or more continuous process vents for which control is required by the provisions of § 63.1405 may comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), the owner or operator of an affected source with combined vent streams containing one or more batch process vents but not containing one or more continuous process vents for which control is required by the provisions of § 63.1405 shall comply with paragraph (b)(3) of this section:

(1) Comply with the applicable requirements of this subpart for each kind of emission point in the vent stream as specified in paragraphs (a)(1) through (a)(5) of this section.

(2) Comply with the first set of requirements identified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section which applies to any individual vent stream that is included in the combined vent stream, where either that vent stream would be required by this subpart to apply controls in the absence of combination with other vent streams, or the owner or operator chooses to apply controls according to the provisions of this subpart appropriate to that vent stream for purposes of this paragraph. Compliance with the first applicable set of requirements identified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section constitutes compliance with all other requirements in paragraphs (b)(2)(i) through (b)(2)(iv) of this section applicable to other vent streams in the combined vent stream:

(i) The requirements of this subpart for Group 1 continuous process vents subject to § 63.1405, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 63.139, as specified in § 63.1414, for control devices used to control emissions from waste management units, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 63.139, as specified in § 63.1414, for closed vent systems for control of emissions from in-process equipment subject to § 63.149, as specified in § 63.1414, including applicable monitoring, recordkeeping, and reporting; or

(iv) The requirements of § 63.119(e), as specified in § 63.1404, for control of emissions from Group 1 storage vessels, including applicable monitoring, recordkeeping, and reporting.

(3) The owner or operator of an affected source with combined vent streams containing one or more batch process vents but not also containing one or more continuous process vents required to apply controls by the provisions of § 63.1405 shall comply with paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) The owner or operator of the affected source shall comply with

§ 63.1406 or § 63.1407, as appropriate, for the batch process vent(s).

(ii) The owner or operator of the affected source shall comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate, for the remaining vent streams.

(c) *Exception from equipment leaks.* Owners or operators of certain affected sources are not required to comply with the equipment leak provisions specified in § 63.1415, as specified in paragraphs (c)(1) through (c)(3) of this section.

(1) Affected sources with actual annual production of amino/phenolic resin equal to or less than 800 megagrams per year for the 12-month period preceeding December 14, 1998 publication of this proposed rule are exempt from the equipment leak provisions specified in § 63.1415, except as specified in paragraph (c)(3) of this section.

(2) Owners or operators using the exemption provided by this paragraph (c) shall comply with the following requirements:

(i) Submit a statement that includes the following information as part of the Notification of Compliance Status required by § 63.1419(e)(5): a statement that the exemption provided by this paragraph (c) is being utilized and a statement of the affected source's actual annual production of amino/phenolic resins for the 12-month period preceeding December 14, 1998.

(ii) Comply with the requirements of either paragraph (c)(2)(ii)(A) or (c)(2)(ii)(B) of this section.

(A) The owner or operator shall retain information, data, and analysis used to document the basis for using the exemption provided by this paragraph (c). Such information, data, and analysis shall be retained for the 12-month period preceeding December 14, 1998 and for each 12-month period the affected source is in operation and using the exemption provided by this paragraph (c). The beginning of each 12-month period shall be the anniversary of December 14, 1998.

(B) When requested by the Administrator, the owner or operator shall demonstrate that actual annual production is equal to or less than 800 megagrams per year of amino/phenolic resin for the 12-month period preceeding December 14, 1998 and for each 12-month period the affected source has been in operation and using the exemption provided by this paragraph (c). The beginning of each 12-month period shall be the anniversary of December 14, 1998.

(3) If an affected source using the exemption provided by this paragraph (c) has an actual annual production of amino/phenolic resins exceeding 800 megagrams per year for any 12-month period that begins on the anniversary of December 14, 1998 starting with the 12-month period following December 14, 1998, the owner or operator shall comply with the provisions of § 63.1415 for the life of the affected source (i.e., regardless of actual annual production thereafter) or until the affected source is no longer subject to the provisions of this subpart.

(d) *Opening of a safety device.* Opening of a safety device, as defined in § 63.1402, is allowed at any time conditions require it to be opened to avoid unsafe conditions.

§ 63.1404 Storage vessel provisions.

(a) For each storage vessel located at an existing or new affected source, the owner or operator shall comply with paragraph (b) of this section. As an alternative to complying with paragraph (b) of this section, an owner or operator may comply with paragraph (c) of this section. The compliance date for storage vessels at affected sources subject to the provisions of this section is specified in § 63.1401.

(b) For each Group 1 storage vessel assigned, according to the procedures in § 63.1400(g), to a new affected source, the owner or operator shall comply with the control requirements specified in paragraph (b)(1) of this section and with the requirements of subpart G of this part specified in paragraphs (b)(3) through (b)(6) of this section, with the differences noted in paragraphs (d)(1) through (d)(14) of this section for the purposes of this subpart, as appropriate. For each Group 1 storage vessel assigned, according to the procedures in § 63.1400(g), to an existing affected source, the owner or operator shall comply with the control requirements specified in paragraph (b)(2) of this section and with the requirements of subpart G of this part specified in paragraphs (b)(3) through (b)(6) of this section, with the differences noted in paragraphs (d)(1) through (d)(14) of this section for the purposes of this subpart, as appropriate:

(1) For storage vessels containing aqueous formaldehyde, reduce emissions of total organic HAP by 50 weight-percent using a closed vent system and control device or, alternatively, comply with § 63.119 G of this part. For storage vessels containing other organic HAP, reduce emissions of total organic HAP by 95 weight-percent using a closed vent system and control device or, alternatively, comply with § 63.119 of subpart G of this part;

(2) Reduce emissions of total organic HAP by 50 weight-percent using a closed vent system and control device or, alternatively, comply with § 63.119 of subpart G of this part;

(3) Section 63.120, Storage vessel provisions—procedures to determine compliance;

(4) Section 63.121, Storage vessel provisions—alternative means of emission limitation;

(5) Section 63.122, Storage vessel provisions—reporting;

(6) Section 63.123, Storage vessel provisions—recordkeeping.

(c) As an alternative standard, the owner or operator of an existing or new affected source may comply with the storage tank standards by routing storage tank vents to a control device achieving an outlet organic HAP concentration of 20 ppmv or less. Compliance with the outlet concentration shall be determined by the initial compliance procedures of § 63.1417(a)(6) and the continuous emission monitoring requirements of § 63.1418(i).

(d) The differences noted in paragraphs (d)(1) through (d)(14) of this section apply to owners or operators complying with certain provisions of subpart G of this part, as specified in paragraph (b) of this section.

(1) When the term "storage vessel" is used in §§ 63.119 through 63.123 of subpart G of this part, the definition of this term in § 63.1402 shall apply for the purposes of this subpart.

(2) When the term "Group 1 storage vessel" is used in §§ 63.119 through 63.123 of subpart G of this part, the definition of this term in § 63.1402 shall apply for the purposes of this subpart.

(3) When the term "Group 2 storage vessel" is used in §§ 63.119 through 63.123, the definition of this term in § 63.1402 shall apply for the purposes of this subpart.

(4) When December 31, 1992, is referred to in § 63.119, December 14, 1998 shall apply instead, for the purposes of this subpart.

(5) When April 22, 1994, is referred to in § 63.119, [publication date of the final rule] shall apply instead, for the purposes of this subpart.

(6) Each owner or operator referred to § 63.120 by paragraph (b) of this section, shall comply with this paragraph (d)(6) instead of § 63.120(d)(1)(ii) for the purposes of this subpart. If the control device used to comply with paragraph (b)(1) of this section is also used to comply with any of the requirements found in § 63.1405, § 63.1406, § 63.1407, or § 63.1414, the performance test required in or accepted by the applicable requirements of § 63.1405, § 63.1414, or § 63.1417 for batch process vents is acceptable for demonstrating

compliance with paragraph (b)(1) of this section for the purposes of this subpart. The owner or operator is not required to prepare a design evaluation for the control device as described in § 63.120(d)(1)(i), if the performance test meets the criteria specified in paragraphs (d)(6)(i) and (d)(6)(ii) of this section.

(i) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in paragraph (b)(1) of this section; and

(ii) The performance test is submitted as part of the Notification of Compliance Status required by § 63.1419(e)(5).

(7) When the term "operating range" is used in § 63.120(d)(3) of subpart G of this part, the term "level" shall apply instead, for the purposes of this subpart.

(8) When the determination of equivalence criteria in § 63.102(b) of subpart F of this part is referred to in § 63.121(a) of subpart G of this part, the provisions in § 63.6(g) of subpart A of this part shall apply for the purposes of this subpart.

(9) For purposes of this subpart, the monitoring plan required by § 63.120(d)(2) shall specify for which control devices the owner or operator has elected to follow the procedures for continuous monitoring specified in § 63.1418. For those control devices for which the owner or operator has elected to not follow the procedures for continuous monitoring specified in § 63.1418, the monitoring plan shall include a description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (e.g., when the liquid level in the storage vessel is being raised), as specified in § 63.120(d)(2)(i).

(10) For purposes of this subpart, the monitoring plan required by § 63.120(d)(2) shall be included in the Notification of Compliance Status required by § 63.1419(e)(5).

(11) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.120, 63.122, and 63.123, the Notification of Compliance Status requirements contained in § 63.1419(e)(5) shall apply for the purposes of this subpart.

(12) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120, 63.122, and 63.123, the Periodic Report requirements contained in § 63.1419(e)(6) shall apply for the purposes of this subpart.

(13) When other reports as required in § 63.152(d) are referred to in § 63.122, the reporting requirements contained in § 63.1419(e)(7) shall apply for the purposes of this subpart.

(14) When the Initial Notification requirements contained in § 63.151(b) are referred to in § 63.122, the owner or operator of an affected source subject to this subpart need not comply with the Initial Notification requirements contained in § 63.151(b) for the purposes of this subpart.

§ 63.1405 Continuous process vents provisions.

(a) For each continuous process vent located at a new affected source, the owner or operator shall comply with paragraph (b) of this section if the TRE value, as determined following the procedures specified in paragraph (e) of this section, is greater than 1.0 but less than or equal to 1.2. For each continuous process vent located at a new affected source, the owner or operator shall comply with paragraph (c) of this section if the TRE value, as determined following the procedures specified in paragraph (e) of this section, is less than or equal to 1.0. As an alternative to complying with paragraph (b) or (c) of this section, as appropriate, an owner or operator may comply with paragraph (f) of this section. Continuous process vents located at existing affected sources are not subject to the provisions of this section or any requirements of subpart A of this part. The compliance date for continuous process vents subject to the provisions of this section is specified in § 63.1401.

(b) Owners or operators required to comply with this paragraph (b) shall comply with the control requirements specified in paragraph (b)(1) of this section and with the requirements of subpart G of this part specified in paragraphs (b)(2) through (b)(6) of this section, with the differences noted in paragraphs (d)(1) through (d)(14) of this section for the purposes of this subpart, as appropriate:

(1) Reduce emissions of total organic HAP by 85 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3 percent oxygen. As an alternative, an owner or operator shall reduce emissions of organic HAP using a flare;

(2) Section 63.114, Process vent provisions—monitoring requirements;

(3) Section 63.115, Process vent provisions—methods and procedures for process vent group determination;

(4) Section 63.116, Process vent provisions—performance test methods and procedures to determine compliance;

(5) Section 63.117, Process vent provisions—reporting and recordkeeping requirements for group and TRE determinations and performance tests; and

(6) Section 63.118, Process vent provisions—periodic reporting and recordkeeping requirements.

(c) Owners or operators required to comply with this paragraph (c) shall comply with the requirements of subpart G of this part specified in paragraphs (c)(1) through (c)(6) of this section, with the differences noted in paragraphs (d)(1) through (d)(14) of this section for the purposes of this subpart:

(1) Section 63.113, Process vent provisions—reference control technology;

(2) Section 63.114, Process vent provisions—monitoring requirements;

(3) Section 63.115, Process vent provisions—methods and procedures for process vent group determination;

(4) Section 63.116, Process vent provisions—performance test methods and procedures to determine compliance;

(5) Section 63.117, Process vent provisions—reporting and recordkeeping requirements for group and TRE determinations and performance tests; and

(6) Section 63.118, Process vent provisions—periodic reporting and recordkeeping requirements.

(d) The differences noted in paragraphs (d)(1) through (d)(14) of this section apply to owners or operators complying with certain provisions of subpart G of this part, as specified in paragraph (b) or (c) of this section.

(1) When the term "process vent" is used in §§ 63.113 through 63.118, the term "continuous process vent," and the definition of this term in § 63.1402 shall apply for the purposes of this subpart.

(2) When the term "Group 1 process vent" is used in §§ 63.113 through 63.118, the term "Group 1 continuous process vent," and the definition of this term in § 63.1402 shall apply for the purposes of this subpart.

(3) When the term "Group 2 process vent" is used in §§ 63.113 through 63.118, the term "Group 2 continuous process vent," and the definition of this term in § 63.1402 shall apply for the purposes of this subpart.

(4) When December 31, 1992, is referred to in § 63.113, apply the date

December 14, 1998 for the purposes of this subpart.

(5) When § 63.151(f), alternative monitoring parameters, and § 63.152(e), submission of an operating permit, are referred to in §§ 63.114(c) and 63.117(e), § 63.1419(f), alternative monitoring parameters, and § 63.1419(e)(8), submission of an operating permit, respectively, shall apply for the purposes of this subpart.

(6) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.114 and 63.117, the Notification of Compliance Status requirements contained in § 63.1419(e)(5) shall apply for the purposes of this subpart.

(7) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.117 and 63.118, the Periodic Report requirements contained in § 63.1419(e)(6) shall apply for the purposes of this subpart.

(8) When the definition of excursion in § 63.152(c)(2)(ii)(A) is referred to in § 63.118(f)(2), the provisions in § 63.1418(j), (k), and (l) shall apply for the purposes of this subpart.

(9) When § 63.114(e) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator shall comply with the provisions of § 63.1418 for establishing the parameter monitoring level and shall comply with § 63.1419(e)(5) for purposes of reporting information related to establishment of the parameter monitoring level for purposes of this subpart. Further, the term "level" shall apply when the term "range" is used in §§ 63.114, 63.117, and 63.118.

(10) When reports of process changes are required under § 63.118(g), (h), (i), or (j), paragraphs (d)(10)(i) through (d)(10)(iv) of this section shall apply for the purposes of this subpart. In addition, for the purposes of this subpart, paragraph (d)(10)(v) of this section applies, and § 63.118(k) does not apply to owners or operators of affected sources.

(i) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent to become a Group 1 continuous process vent, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the Group 1 provisions in §§ 63.113 through 63.118 in accordance with § 63.1400(i)(2)(ii).

(ii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with a TRE greater than 4.0 to become a Group 2 continuous process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.1401.

(iii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with a flow rate less than 0.005 standard cubic meter per minute to become a Group 2 continuous process vent with a flow rate of 0.005 standard cubic meter per minute or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.1401.

(iv) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with an organic HAP concentration less than 50 parts per million by volume to become a Group 2 continuous process vent with an organic HAP concentration of 50 parts per million by volume or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.1401.

(v) The owner or operator is not required to submit a report of a process change if one of the conditions listed in paragraph (d)(10)(v)(A), (d)(10)(v)(B), (d)(10)(v)(C), or (d)(10)(v)(D) of this section is met:

(A) The process change does not meet the definition of a process change in § 63.115(e);

(B) The vent stream flow rate is recalculated according to § 63.115(e) and the recalculated value is less than 0.005 standard cubic meter per minute;

(C) The organic HAP concentration of the vent stream is recalculated according to § 63.115(e) and the recalculated value is less than 50 parts per million by volume; or

(D) The TRE index value is recalculated according to § 63.115(e) and the recalculated value is greater than 4.0.

(11) When the provisions of § 63.116(c)(3) and (c)(4) specify that Method 18, 40 CFR part 60, appendix A, shall be used, the methods specified in § 63.1417(b) shall be used for the purposes of this subpart.

(12) When § 63.118, periodic reporting and recordkeeping requirements, refers to § 63.152(f), the recordkeeping requirements in § 63.1419(d) shall apply for purposes of this subpart.

(13) When § 63.115(c)(3)(ii)(B) and (d)(2)(iv) and § 63.116(c)(3)(ii)(B) and (c)(4)(ii)(C) refer to Table 2 of subpart F of this part, the owner or operator shall only consider organic HAP listed on Table 3 of this subpart for purposes of this subpart.

(14) In § 63.116(a), instead of the reference to § 63.11(b), the requirements in § 63.1417(g) for flares shall apply.

(e) For purposes of this subpart, TRE values shall be calculated using the equations for a 70% heat recovery thermal incinerator, as specified in § 63.115(d)(3) and Table 1 of subpart G of this part.

(f) As an alternative standard, the owner or operator of a new affected source may comply with the continuous process vent standards by routing process vents to a control device achieving an outlet organic HAP concentration of 20 ppmv or less. Any continuous process vents that are not routed to this control device must be controlled in accordance with the provisions of paragraphs (b) or (c) of this section, as appropriate. Compliance with the outlet concentrations shall be determined by the initial compliance procedures described in § 63.1417(a)(6) and the continuous emission monitoring requirements described in § 63.1418(i).

§ 63.1406 Reactor batch process vents—standards.

(a) *Reactor batch process vents.* Owners or operators of reactor batch process vents located at new or existing affected sources shall comply with the requirements in paragraph (b) or (c) of this section, as appropriate. As an alternative to complying with paragraph (b) or (c) of this section, as appropriate, an owner or operator may comply with paragraph (d) of this section.

(b) *Reactor batch process vents located at new affected sources.* The owner or operator of a reactor batch process vent located at a new affected source shall comply with the

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requirements of either paragraph (b)(1), (b)(2), or (b)(3) of this section.

(1) For each reactor batch process vent, vent all emissions of organic HAP to a flare. The flare shall comply with the requirements of § 63.1417(g).

(2) For each reactor batch process vent, reduce organic HAP emissions for the batch cycle by 95 weight percent using a control device. Owners or operators may achieve compliance with this paragraph (b)(2) through the control of selected batch emission episodes or the control of portions of selected batch emission episodes. Documentation demonstrating how the 95 weight percent emission reduction is achieved for the batch cycle is required by §§ 63.1408(b)(2) and 63.1417(e)(5)(iii) and shall be submitted in the Notification of Compliance Status required by § 63.1419(e)(5).

(3) Organic HAP emissions from all reactor batch process vents within the affected source shall be no greater than 0.01 kilogram of HAP per megagram of product.

(c) *Reactor batch process vents located at existing affected sources.* The owner or operator of a reactor batch process vent located at an existing affected source shall comply with the requirements of either paragraph (c)(1), (c)(2), or (c)(3) of this section.

(1) For each reactor batch process vent, vent all emissions of organic HAP to a flare. The flare shall comply with the requirements of § 63.1417(g).

(2) For each reactor batch process vent, reduce organic HAP emissions for the batch cycle by 93 weight percent using a control device. Owners or operators may achieve compliance with this paragraph (c)(2) through the control of selected batch emission episodes or the control of portions of selected batch emission episodes. Documentation demonstrating how the 93 weight percent emission reduction is achieved for the batch cycle is required by §§ 63.1408(b)(2) and 63.1417(e)(5)(iii) and shall be submitted in the Notification of Compliance Status required by § 63.1419(e)(5).

(3) Organic HAP emissions from all reactor batch process vents within the affected source shall be no greater than 0.017 kilogram of HAP per megagram of product.

(d) As an alternative standard, the owner or operator of an existing or new affected source may comply with the requirements of paragraph (b) or (c) of this section by venting all emissions from a reactor batch process vent to a control device achieving an outlet organic HAP concentration of 20 ppmv or less. Any reactor batch process vents that are not vented to a control device meeting the conditions of this paragraph (d) must be controlled in accordance with the provisions of paragraphs (b) or (c) of this section. Compliance with the outlet concentrations shall be determined by the initial compliance procedures described in § 63.1417(a)(6) and the continuous emission monitoring requirements described in § 63.1418(i).

(e) If a boiler or process heater is used to comply with the requirements of paragraph (b) or (c) of this section, the reactor batch process vent shall be introduced into the flame zone of such a device.

§ 63.1407 Non-reactor batch process vents—standards.

(a) *Non-reactor batch process vents.* Owners or operators of non-reactor batch process vents located at new or existing affected sources with 0.23 megagrams per year (0.25 tons per year) of uncontrolled HAP emissions or greater from the collection of non-reactor batch process vents within the affected source shall comply with the requirements in paragraph (b) or (c) of this section, as appropriate. As an alternative to complying with paragraph (b) or (c) of this section, as appropriate, an owner or operator may comply with paragraph (d) of this section. Owners or operators shall determine uncontrolled HAP emissions from the collection of non-reactor batch process vents within the affected source as specified in paragraph (f) of this section.

(b) *Non-reactor batch process vents located at new affected sources.* The owner or operator of a non-reactor batch process vent located at a new affected source shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section.

(1) For the collection of non-reactor batch process vents within the affected source, vent all emissions of organic HAP to a flare. The flare shall comply with the requirements of § 63.1417(g).

(2) For the collection of non-reactor batch process vents within the affected source, reduce organic HAP emissions for the batch cycle by 83 weight percent using a control device. Owners or operators may achieve compliance with this paragraph (b)(2) through the control of selected non-reactor batch process vents or the control of portions of selected periods of emissions from all or selected non-reactor batch process vents. Documentation demonstrating how the 83 weight percent emission reduction is achieved is required by §§ 63.1408(b)(2) and 63.1417(e)(5)(iii) and shall be submitted in the Notification of Compliance Status required by § 63.1419(e)(5).

(c) *Non-reactor batch process vents located at existing affected sources.* The owner or operator of a non-reactor batch process vent located at an existing affected source shall comply with the requirements of either paragraph (c)(1) or (c)(2) of this section.

(1) For the collection of non-reactor batch process vents within the affected source, vent all emissions of organic HAP to a flare. The flare shall comply with the requirements of § 63.1417(g).

(2) For the collection of non-reactor batch process vents within the affected source, reduce organic HAP emissions for the batch cycle by 68 weight percent using a control device. Owners or operators may achieve compliance with this paragraph (c)(2) through the control of selected non-reactor batch process vents or the control of portions of selected periods of emissions from all or selected non-reactor batch process vents. Documentation demonstrating how the 68 weight percent emission reduction is achieved is required by §§ 63.1408(b)(2) and 63.1417(e)(5)(iii) and shall be submitted in the Notification of Compliance Status required by § 63.1419(e)(5).

(d) As an alternative standard, the owner or operator of an existing or new affected source may comply with the requirements of paragraph (b) or (c) of this section by venting all emissions from a non-reactor batch process vent to a control device achieving an outlet organic HAP concentration of 20 ppmv or less. Any reactor batch process vents that are not vented to a control device meeting the conditions of this paragraph (d) must be controlled in accordance with the provisions of paragraphs (b) or (c) of this section. Compliance with the outlet concentrations shall be determined by the initial compliance procedures described in § 63.1417(a)(6) and the continuous emission monitoring requirements described in § 63.1418(i).

(e) If a boiler or process heater is used to comply with paragraph (b) or (c) of this section, the reactor batch process vent shall be introduced into the flame zone of such a device.

(f) Owners or operators shall determine uncontrolled HAP emissions from the collection of non-reactor batch process vents within the affected source based on engineering assessment as described in § 63.1417(e)(3)(vi). If the owner or operator finds that uncontrolled HAP emissions from the collection of non-reactor batch process vents within the affected source are less than 0.23 megagrams per year (0.25 tons per year), the owner or operator shall keep records as specified in § 63.1408(a).

§ 63.1408 Batch process vents—recordkeeping provisions.

(a) *Records of non-reactor batch process vent emissions cutoff.* If the owner or operator finds that uncontrolled HAP emissions from the collection of non-reactor batch process vents within the affected source are less than 0.23 megagrams per year (0.25 tons per year), the owner or operator shall keep records as specified in paragraphs (a)(1) or (a)(2) of this section.

(1) Retain information, data, and analysis used to document the estimated emissions for the collection of non-reactor batch process vents within the affected source.

(2) When requested by the Administrator, demonstrate that emissions for the collection of non-reactor batch process vents within the affected source are less than 0.23 megagrams per year (0.25 tons per year).

(b) *Compliance demonstration records.* Each owner or operator of a batch process vent complying with § 63.1406 or § 63.1407 shall keep the following records, as applicable, readily accessible:

(1) If a batch process vent is in compliance with the alternative 20 ppmv limit specified in § 63.1406(d) or § 63.1407(d), results of the initial compliance demonstration specified in § 63.1417(a)(6).

(2) If a batch process vent is in compliance with the percent reduction requirements of § 63.1406 or § 63.1407, records documenting the batch cycle percent reduction or overall percent reduction, as appropriate, as specified in § 63.1417(e)(5)(iii).

(3) When using a flare to comply with § 63.1406 or § 63.1407:

(i) The flare design (i.e., steam-assisted, air-assisted or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.1417(g); and

(iii) Periods when all pilot flames were absent.

(4) The following information when using a control device to achieve compliance with the percent reduction requirement of § 63.1406 or § 63.1407:

(i) For an incinerator or non-combustion control device, the percent reduction of organic HAP achieved for emissions vented to the control device, as determined using the procedures specified in § 63.1417(e)(5);

(ii) For a boiler or process heater, a description of the location at which the vent stream is introduced into the boiler or process heater; and

(iii) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, the percent reduction of organic HAP achieved for emissions vented to the control device, as determined using the procedures specified in § 63.1417(e)(5).

(c) *Establishment of parameter monitoring level records.* For each parameter monitored according to § 63.1418(b) and Table 4 of this subpart, or for alternate parameters and/or parameters for alternate control devices monitored according to § 63.1419(f) as allowed under § 63.1418(g), maintain documentation showing the establishment of the level that indicates proper operation of the control device as required by § 63.1418(c) for parameters specified in § 63.1418(b) and as required by § 63.1419(f) for alternate parameters. An owner or operator may choose to monitor operating parameters for batch process vents on a batch cycle daily average basis or on a block average basis. The batch cycle daily average is based on parameter monitoring accomplished during the operating day (i.e., a 24-hour basis). The block average is based on the parameter monitoring accomplished during a single batch cycle. As specified in §§ 63.1402 and 63.1419(d)(3), the block shall be the period of time equal to the batch cycle. Said documentation shall include the following:

(1) Parameter monitoring data used to establish the level;

(2) Identification that the parameter monitoring level is associated with a batch cycle daily average or a block average; and

(3) A definition of the batch cycle or block, as appropriate.

(d) [Reserved]

(e) *Controlled batch process vent continuous compliance records.* Continuous compliance records shall be kept as specified in paragraphs (e)(1) through (e)(4), as appropriate.

(1) Each owner or operator of a batch process vent that uses a control device to comply with the percent reduction requirement of § 63.1406 or § 63.1407 shall keep the following records, as applicable, readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.1418(b) as applicable, and listed in Table 4 of this subpart, or specified by the Administrator in accordance with § 63.1419(f) as allowed under § 63.1418(g). Said records shall be kept as specified under § 63.1419(d), except as specified in paragraphs (e)(1)(i)(A) and (e)(1)(i)(B) of this section.

(A) For carbon adsorbers, the records specified in Table 4 of this subpart shall be maintained in place of continuous records.

(B) For flares, the records specified in Table 4 of this subpart shall be maintained in place of continuous records.

(ii) Records of the batch cycle daily average value or block average value of each continuously monitored parameter, as specified in § 63.1419(d).

(2) Each owner or operator of a batch process vent that uses a control device to comply with § 63.1406 or § 63.1407 shall keep the following records, as applicable, readily accessible:

(i) Hourly records of whether the flow indicator for bypass lines specified in § 63.1418(h) was operating and whether a diversion was detected at any time during the hour. Also, records of the times of all periods when the vent is diverted from the control device or the flow indicator specified in § 63.1418(h) is not operating.

(ii) Where a seal or closure mechanism is used to comply with § 63.1418(h), hourly records of whether a diversion was detected at any time are not required. The owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line damper or valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(iii) Records specifying the times and duration of periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments. In addition, records specifying any other periods of process or control device operation when monitors are not operating.

(3) Each owner or operator of a batch process vent in compliance with the alternative 20 ppmv limit, as specified in § 63.1406(d) or § 63.1407(d), shall keep the records of continuous emissions monitoring described in § 63.1418(i).

(4) Each owner or operator of a batch process vent in compliance with the kilogram of HAP per megagram of product emission limits, specified in § 63.1406(b)(3) or § 63.1406(c)(3), shall keep the following records, as applicable, readily accessible:

(i) If there is a violation of the emission limit, as specified in § 63.1418(m), the individual monthly average and all the data used to calculate the individual monthly average, for the month in which the violation occurs, and the rolling average monthly emission rate or the 12-month rolling average monthly emission rate, as appropriate.

(ii) If there is not a violation of the emission limit, as specified in § 63.1418(m), the rolling average monthly emission rate or the 12-month rolling average monthly emission rate, as appropriate.

§ 63.1409 Batch process vents—reporting provisions.

(a) The owner or operator of an affected source shall submit the information specified in § 63.1408 (b) and (c), as applicable, for batch process vents complying with § 63.1406 or § 63.1407, as part of the Notification of Compliance Status specified in § 63.1419(e)(5).

(b) If an owner or operator uses a control device other than those specified in § 63.1418(b) and listed in Table 4 of this subpart or requests approval to monitor a parameter other than those specified in § 63.1418(b) and listed in Table 4 of this subpart, the owner or operator shall submit a description of planned reporting and recordkeeping procedures, as specified in § 63.1419(f), as part of the Precompliance Report required under § 63.1419(e)(3). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report.

(c) Owners or operators complying with § 63.1418(h), shall comply with paragraph (c)(1) or (c)(2) of this section, as appropriate.

(1) Submit reports of the times of all periods recorded under § 63.1408(e)(2)(i) when the batch process vent is diverted from the control device through a bypass line, with the next Periodic Report.

(2) Submit reports of all occurrences recorded under § 63.1408(e)(2)(ii) in which the seal mechanism is broken, the bypass line damper or valve position has changed, or the key to unlock the bypass line damper or valve was checked out, with the next Periodic Report.

(d) Each owner or operator of a batch process vent in compliance with the kilogram of HAP per megagram of product emission limits, specified in § 63.1406 (b)(3) or (c)(3), shall submit the information specified in § 63.1408(e)(4)(i) in the next Periodic Report required in § 63.1419(e)(6) when a violation of the emission limit, as specified in § 63.1418(m) occurs.

§ 63.1410 [Reserved]

§ 63.1411 [Reserved]

§ 63.1412 [Reserved]

§ 63.1413 Heat exchange systems provisions.

(a) The owner or operator of an affected source shall comply with § 63.104, with the differences noted in paragraphs (b) through (e) of this section, for the purposes of this subpart. The compliance date for heat exchange systems subject to the provisions of this section is specified in § 63.1401.

(b) When the term "chemical manufacturing process unit" is used in § 63.104, the term "affected source" shall apply for purposes of this subpart. Further, when the phrase "a chemical manufacturing process unit meeting the conditions of § 63.100(b)(1) through (b)(3) of this subpart, except for chemical manufacturing units meeting the condition specified in § 63.100(c) of this subpart" is used in § 63.104(a), the term "an affected source" shall apply for purposes of this subpart.

(c) When § 63.104 refers to Table 4 of subpart F of this part or Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 3 of this subpart that are also listed on Table 4 of subpart F of this part or Table 9 of subpart G of this part, as indicated on Table 3 of this subpart for purposes of this subpart.

(d) When § 63.104(f)(1) specifies that the monitoring plan and records required by § 63.104(f)(1)(i) through (f)(1)(iv) shall be kept as specified in § 63.103(c), the provisions of § 63.1419(a) and (h) shall apply for purposes of this subpart.

(e) When § 63.104(f)(2) requires information to be reported in the Periodic Reports required by § 63.152(c), the owner or operator should instead report the information specified in § 63.104(f)(2) in the Periodic Reports required by § 63.1419(e)(6), for the purposes of this subpart.

§ 63.1414 Wastewater provisions.

(a) With the differences noted in paragraphs (b) through (s) of this section, the owner or operator of each new affected source shall comply with the requirements of subpart G of this part specified in paragraphs (a)(1) through (a)(15) of this section for each process wastewater stream originating at an affected source, and the requirements of subpart G of this part 63 specified in paragraph (a)(16) of this part for equipment that is subject to § 63.149. The owner or operator of each new affected source shall also comply with paragraph (t) of this section for the control of maintenance wastewater. The compliance date for process wastewater streams, equipment that is subject to § 63.149, and maintenance wastewater subject to the provisions of this section is specified in § 63.1401. Wastewater at existing affected sources is not subject to the provisions of this section or any requirements of subpart A of this part:

(1) Section 63.132, Process wastewater provisions—general;

(2) Section 63.133, Process wastewater provisions—wastewater tanks;

(3) Section 63.134, Process wastewater provisions—surface impoundments;

(4) Section 63.135, Process wastewater provisions—containers;

(5) Section 63.136, Process wastewater provisions—individual drain systems;

(6) Section 63.137, Process wastewater provisions—oil-water separators;

(7) Section 63.138, Process wastewater provisions—performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams;

(8) Section 63.139, Process wastewater provisions—control devices;

(9) Section 63.140, Process wastewater provisions—delay or repair;

(10) Section 63.143, Process wastewater provisions—inspections and monitoring of operations;

(11) Section 63.144, Process wastewater provisions—test methods and procedures for determining applicability and Group 1/Group 2 determinations;

(12) Seciton 63.145, Process wastewater provisions—test methods and procedures to determine compliance;

(13) Section 63.146, Process wastewater provisions—reporting;

(14) Section 63.147, Process wastewater provisions—recordkeeping;

(15) Section 63.148, Leak inspection provisions; and

(16) Section 63.149, Control requirements for certain liquid streams in open systems within a chemical manufacturing process unit.

(b) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(c) When the storage tank requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.149, §§ 63.120 through 63.123 are applicable, with the exception of the differences referred to in § 63.1404, for the purposes of this subpart. Further, the requirements of § 63.1404(b)(1) are applicable instead of the requirements of § 63.119, for purposes of this subpart.

(d) When § 63.146(a)(3) requires the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(g) or § 63.152(e), owners or operators requesting to monitor alternative parameters shall follow the procedures specified in § 63.1419(f) for the purposes of this subpart.

(e) When § 63.147(d) requires owners or operators to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), owners and operators shall instead keep records of the daily average value of each continuously monitored parameter as specified in § 63.1419(d) for the purposes of this subpart.

(f) When §§ 63.132 through 63.149 refer to a "new source," the term "new affected source," as defined in § 63.1400(a), shall apply for the purposes of this subpart.

(g) When § 63.132 (a) and (b) refer to the "applicable dates specified in § 63.100 of subpart F of this part," the compliance dates specified in § 63.1401 shall apply for the purposes of this subpart.

(h) When §§ 63.132 through 63.149 refer to Table 8 of subpart G of this part, the owners or operator shall only consider organic HAP listed on Table 3 of this subpart that are also listed on Table 8 of subpart G of this part, as indicated on Table 3 of this subpart, for purposes of this subpart. When §§ 63.132 through 63.149 refer to Table 9 or Table 36 of subpart G of this part, the owners or operator shall only consider organic HAP listed on Table 3 of this subpart that are also listed on Table 8 of subpart G of this part, as indicated on Table 3 of this subpart, for the purposes of this subpart. In addition, when §§ 63.132 through 63.149 refer to List 1, List 2, and/or List 3, as listed in Table 36 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 3 of this subpart that are also listed on Table 8 of subpart G of this part, as indicated on Table 3 of this subpart, for the purposes of this subpart.

(i) Whenever §§ 63.132 through 63.149 refer to a "chemical manufacturing process unit," owners or operators of affected sources shall apply the term "affected source," as defined in § 63.1400(a), for the purposes of this subpart. In addition, when §§ 63.132 through 63.149 refer to § 63.100(b), § 63.1400(a) shall apply for the purposes of this subpart.

(j) Whenever §§ 63.132 through 63.149 refer to a Group 1 wastewater stream or a Group 2 wastewater stream, the definitions of these terms contained in § 63.1402 shall apply for the purposes of this subpart.

(k) When § 63.149(d) refers to "§ 63.100(f) of subpart F", the phrase "§ 63.1400(d)" shall apply for the purposes of this subpart. In addition, where § 63.149(d) states "and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, or H of this part", the phrase "and the item of equipment is not otherwise exempt from controls by the provisions of subpart A, F, G, or H of this part, or this subpart" shall apply for the purposes of this subpart.

(l) When § 63.149(e)(1) and (e)(2) refer to "a chemical manufacturing process unit subject to the new source requirements of 40 CFR § 63.100(l)(1) or 40 CFR 63.100 (l)(2)," the phrase "a new affected source as described in 63.1400(a)," shall apply for the purposes of this subpart.

(m) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.138 and 63.146, the Notification of Compliance Status requirements contained in § 63.1419(e)(5) shall apply for the purposes of this subpart. In addition, when §§ 63.132 through 63.149 require that information be reported according to § 63.152(b) in the Notification of Compliance Status, the owner or operator of an affected source shall report the specified information in the Notification of Compliance Status required by § 63.1419(e)(5) for the purposes of this subpart.

(n) When the Periodic Report requirements contained in § 63.152(c) are referred to in § 63.146, the Periodic Report requirements contained in § 63.1419(e)(6) shall apply for the purposes of this subpart. In addition, when §§ 63.132 through 63.149 require that information be reported in the Periodic Reports required in § 63.152(c), the owner or operator of an affected source shall report the specified information in the Periodic Reports required in § 63.1419(e)(6) for the purposes of this subpart.

(o) When § 63.143(f) specifies that owners or operators shall establish the range that indicates proper operations of the treatment process or control device, the owner or operator shall instead comply with the requirements of § 63.1418 for establishing parameter level maximums/minimums for the purposes of this subpart.

(p) When §§ 63.146(b)(7) and 63.146(b)(8) require that "the information on parameter ranges specified in § 63.152(b)(2)" be reported in the Notification of Compliance Status, owner and operators of affected sources are instead required to report the information on parameter levels as specified in § 63.1335(e)(5)(ii) for the purposes of this subpart.

(q) [Reserved]

(r) When the provisions of § 63.139(c)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2) specify that Method 18, 40 CFR part 60, appendix A, shall be used, the methods specified in § 63.1417(b) shall be used for the purposes of this subpart.

(s) In § 63.145(j), instead of the reference to § 63.11(b), the requirements in § 63.1417(g) for flares shall apply.

(t) For each new affected source, the owner or operator shall comply with the requirements for maintenance wastewater in § 63.105, except that when § 63.105(a) refers to "organic HAPs," the definition of organic HAP in § 63.1402 shall apply for the purposes of this subpart.

§ 63.1415 Equipment leak provisions.

The owner or operator of each affected source shall comply with the requirements of subpart H of this part 63, with the differences noted in paragraphs (a) through (r) of this section, except as specified in § 63.1403(c).

(a) If specific items of equipment, comprising part of a process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any APPU within the affected source for all purposes under subpart H of this part, providing there is no delay in achieving the applicable compliance date.

(b) When the terms "equipment" and "equipment leak" are used in subpart H of this part, the definitions of these terms in § 63.1402 shall apply for the purposes of this subpart.

(c) The compliance date for the equipment leak provisions contained in this section is provided in § 63.1401. Whenever subpart H of this part refers to the compliance dates specified in § 63.100(k), the compliance dates listed in § 63.1401 shall instead apply, for the purposes of this subpart. In addition, whenever subpart H of this part refers to sources subject to subpart F of this part, the subpart H requirements shall instead apply to sources subject to this subpart, for the purposes of this subpart.

(d) In addition to complying with the requirements specified in § 63.167(b), the owner or operator shall put in place the cap, blind flange, plug, or second valve within 1 hour of cessation of operations requiring process fluid flow through the open-ended valve or line, or within 1 hour of cessation of maintenance or repair.

(e) In addition to the monitoring intervals specified in § 63.168(d), owners and operators may elect to monitor each valve in APPUs with less than 0.25 percent leaking valves once every 2 years.

(f) For purposes of this subpart, the requirements of this paragraph (f) apply instead of § 63.168(e). At affected sources to which this subpart applies, an owner or operator may choose to subdivide, or subgroup, the valves in the APPUs that comprise the affected source and apply the provisions of § 63.168(d) to each subgroup of valves, provided the overall performance of total valves in the affected source is less than 2 percent leaking valves, as detected according to § 63.168(b) and as calculated according to paragraphs (g)(1) and (g)(2) of this section. If the owner or operator elects to subgroup the valves in the affected source, then the provisions of paragraphs (g)(1) through (g)(7) of this section apply.

(g) *Subgrouping of Valves.* The owner or operator who elects to subgroup the valves in the affected source shall comply with the provisions of paragraphs (g)(1) through (g)(7) of this section.

(1) The initial assignment or subsequent reassignment of valves to subgroups within the affected source shall be governed by the provisions of paragraphs (g)(1)(i) through (g)(1)(iii) of this section.

(i) The owner or operator shall determine which valves are assigned to each subgroup. Valves with less than 1 year of monitoring data or valves not monitored within the last 12 months must be placed initially into the most frequently monitored subgroup until at least 1 year of monitoring data has been obtained.

(ii) Any valve or group of valves can be reassigned from a less frequently monitored subgroup to a more frequently monitored subgroup provided that the valves to be reassigned were monitored during the most recent monitoring period for the less frequently monitored subgroup. The monitoring results must be included with the less frequently monitored subgroup's monitoring event and associated next percent leaking valves calculation for that subgroup.

(iii) Any valve or group of valves can be reassigned from a more frequently monitored subgroup to a less frequently monitored subgroup provided that the valves to be reassigned have not leaked for the period of the less frequently monitored subgroup (e.g., for the last 12 months, if the valve or group of valves is to be reassigned to a subgroup being monitored annually). Nonrepairable valves may not be reassigned to a less frequently monitored subgroup.

(2) The owner or operator shall determine every 6 months if the overall performance of total valves in the affected source is less than 2 percent leaking valves and so indicate the performance in the next periodic report. If the overall performance of total valves in the affected source is 2 percent leaking valves or greater, the owner or operator shall revert to the program required in § 63.168(d). The overall performance of total valves in the affected source shall be calculated as a weighted average of the percent leaking valves of each subgroup according to Equation 1:

$$\%V_{LO} = \frac{\sum_{i=1}^{n} (\%V_{Li} \times V_i)}{\sum_{i=1}^{n} V_i} \qquad \text{[Eq. 1]}$$

Where:

$\%V_{LO}$ = overall performance of total valves in the affected source.

$\%V_{Li}$ = percent leaking valves in subgroup i, most recent value calculated according to the procedures in paragraphs (h)(1) and (h)(2) of this section.

V_i = number of valves in subgroup i.

n = number of subgroups.

(3) In addition to records required by § 63.181, the owner or operator shall maintain records specified in paragraphs (g)(3)(i) through (g)(3)(iv) of this section:

(i) Which valves are assigned to each subgroup;

(ii) Monitoring results and calculations made for each subgroup for each monitoring period;

(iii) Which valves are reassigned and when they were reassigned; and

(iv) The results of the semiannual overall performance calculation required in paragraph (g)(2) of this section.

(4) The owner or operator shall notify the Administrator no later than 30 days prior to the beginning of the next monitoring period of the decision to subgroup valves. The notification shall identify the participating APPUs and the valves assigned to each subgroup.

(5) In addition to the information required by § 63.182(d), the owner or operator shall submit in the periodic reports the information specified in paragraphs (g)(5)(i) and (g)(5)(ii) of this section:

(i) Valve reassignments occurring during the reporting period; and

(ii) Results of the semiannual overall performance calculation required by paragraph (g)(2) of this section:

(6) To determine the monitoring frequency for each subgroup, the calculation procedures of paragraph (h)(3) of this section shall be used.

(7) Except for the overall performance calculations required by paragraphs (f) and (g)(2) of this section, each subgroup shall be treated as if it were a APPU for the purposes of applying the provisions of this section.

(h)(1) Percent leaking valves for each APPU or subgroup shall be determined by Equation 2:

$$\%V_{LO} = \left[V_L / V_T\right] \times 100 \qquad \text{[Eq. 2]}$$

Where:

$\%V_L$ = percent leaking valves.

V_L = number of valves found leaking excluding nonrepairables as provided in paragraph (h)(3)(i) of this section.

V_T = total valves monitored, in a monitoring period excluding valves monitored as required by § 63.174(f)(3).

(2) When determining monitoring frequency for each APPU or subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two consecutive monitoring periods. When determining monitoring frequency for each APPU or subgroup subject to annual or biennial (once every 2 years) monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last three consecutive monitoring periods.

(3)(i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (h)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking calculation in a previous period) up to a maximum of 1 percent of the total number of valves in organic HAP service at a process may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in organic HAP service at a process, the number of nonrepairable valves exceeding 1 percent of the total number of valves in organic HAP service shall be included in the calculation of percent leaking valves.

(i) For purposes of this subpart, under § 63.171(a), delay of repair of equipment for which leaks have been detected is also allowed if the owner or operator determines that repair personnel would be exposed to an immediate danger if attempting to repair without a process unit shutdown. Repair of this equipment delayed for this reason shall also occur by the end of the next scheduled process unit shutdown.

(j) Under § 63.172, Closed-vent systems and control devices, owners or operators may, instead of complying with the provisions of § 63.172(f), design a closed-vent system to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gage or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the associated control device is operating.

(k) Under § 63.174(b), owners or operators shall use the monitoring intervals specified in paragraphs (k)(1) through (k)(5) of this section instead of the monitoring intervals specified in § 63.174(b)(3)(i) through (b)(3)(iv) for purposes of this subpart.

(1) Once per year (i.e., 12-month period), if the percent leaking connectors in the APPU was 0.5 percent or greater during the last required annual or biennial monitoring period.

(2) Once every 4 years, if the percent leaking connectors in the APPU was less than 0.5 percent, but equal to or greater than 0.25 percent, during the last required monitoring period. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first 2 years and the remainder of the connectors within the next 2 years.

(3) Once every 8 years, if the percent leaking connectors in the APPU was less than 0.25 percent during the last required monitoring period. An owner or operator shall monitor at least 50 percent of the connectors in the first 4 years and the remainder of the connectors within the next 4 years. If the percent leaking connectors in the first 4 years is equal to or greater than 0.35 percent, the monitoring program shall revert at that time to the monitoring frequency specified in paragraph (k)(2) of this section if the percent leaking connectors is equal to or greater than 0.35 percent but less than 0.5 percent, the monitoring frequency specified in paragraph (k)(4) of this section if the percent leaking connectors is equal to or greater than 0.5 percent but less than 1.0 percent, or the monitoring frequency specified in paragraph (k)(5) of this section if the percent leaking connectors is equal to or greater than 1.0 percent.

(4) The owner or operator shall increase the monitoring frequency to once every 2 years for the next monitoring period if leaking connectors comprise at least 0.5 percent but less than 1.0 percent of the connectors monitored within the 4 years specified in paragraph (k)(2) of this section or the first 4 years specified in paragraph (k)(3) of this section. At the end of that 2 year monitoring period, the owner or operator shall monitor once per year while the percent leaking connectors is greater than or equal to 0.5 percent; if the percent leaking connectors is less than 0.5 percent, the owner or operator may return to monitoring once every 4 years or, if appropriate, once every 8 years in accordance with paragraph (k)(3) of this section.

(5) If an owner or operator complying with the requirements of paragraph (k)(2) or (k)(3) of this section for a APPU determines that 1 percent or greater of the connectors are leaking, the owner or operator shall increase the monitoring frequency to one time per year. The owner or operator may again elect to use the provisions of paragraph (k)(2) or (k)(3) of this section after a monitoring period in which less than 0.5 percent of the connectors are determined to be leaking.

(l) When complying with § 63.174(c), days that the connectors are not in organic HAP service shall not be considered part of the 3 month period in § 63.174(e).

(m) In addition to the requirements of § 63.181(b), the owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup/shutdown/malfunction plan, required by § 63.1419(b)(1), for the source or may be part of a separate document that is maintained at the plant site. Reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(n) Owners and operators of an affected source subject to this subpart are not required to submit the Initial Notification required by §§ 63.182(a)(1) and 63.182(b).

(o) As specified in § 63.1419(e)(5), the Notification of Compliance Status required by paragraphs §§ 63.182(a)(2) and 63.182(c) shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.1401 for the equipment leak provisions.

(p) The required information specified by §§ 63.182(a)(3) and 63.182(d) (i.e., Periodic Reports) shall be submitted as part of the Periodic Reports required by § 63.1419(e)(6).

(q) In addition to the requirements of § 63.181(b)(1)(i), the owner or operator shall complete a list for each type of equipment no later than the completion of the initial survey required for that component. The list of identification numbers shall be updated, if needed, to incorporate equipment changes within 15 calendar days of the completion of each monitoring survey for the type of equipment component monitored.

(r) When the provisions of subpart H of this part 63 specify that Method 18, 40 CFR part 60, appendix A, shall be used, the methods specified in § 63.1417(b) shall be used for the purposes of this subpart.

§ 63.1416 [Reserved]

§ 63.1417 Test methods and compliance procedures.

(a) *General.* Except as specified in paragraph (a)(5) of this section, the procedures specified in paragraphs (c), (d), (e), and (f) of this section are required to demonstrate initial compliance with §§ 63.1404, 63.1405, 63.1406 and 63.1407, and § 63.1414, respectively. The provisions in paragraphs (a)(1) through (a)(4) of this section of this section also apply to design evaluations and performance tests that are specified in paragraphs (c), (d), (e), and (f) of this section. The provisions in paragraph (a)(6) of this section are used to demonstrate initial compliance with the alternative standards specified in §§ 63.1404(c), 63.1405(f), 63.1406(d), and 63.1407(d). The provisions of paragraph (a)(7) of this section specify testing requirements for condensers.

(1) *Small control devices and large control devices.* In meeting the requirements of this section, owners or operators are not required to conduct a performance test for a small control device. As specified in the appropriate paragraphs within this section, owners or operators shall either conduct a design evaluation following the procedures in paragraph (a)(2) of this section or, for batch process vents only, shall estimate emissions using the procedures in paragraph (e)(3) of this section. An owner or operator may choose to conduct a performance test for

a small control device and such a performance test shall follow the procedures specified in paragraph (c), (d), (e), or (f), as appropriate. Whenever a small control device becomes a large control device, the owner or operator shall conduct a performance test to verify continued compliance with this section. Notification that such a performance test is required, the site-specific test plan, and the results of the performance test shall be provided to the Administrator as specified in § 63.1419.

(2) *Design evaluation.* To demonstrate the organic HAP removal efficiency for a control device, a design evaluation must address the composition and organic HAP concentration of the vent stream(s) entering the control device. A design evaluation also must address other vent stream characteristics and control device operating parameters as specified in any one of paragraphs (a)(2)(i) through (a)(2)(vi) of this section, depending on the type of control device that is used. If the vent stream(s) is not the only inlet to the control device, the efficiency demonstration also must consider all other vapors, gases, and liquids, other than fuels, received by the control device.

(i) For a scrubber, the design evaluation shall consider the vent stream composition; constituent concentrations; liquid-to-vapor ratio; scrubbing liquid flow rate and concentration; temperature; and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation shall establish the design exhaust vent stream organic compound concentration level and will include the additional information in paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section for trays and a packed column scrubber:

(A) Type and total number of theoretical and actual trays; and

(B) Type and total surface area of packing for entire column, and for individual packed sections if column contains more than one packed section.

(ii) For a condenser, the design evaluation shall consider the vent stream flow rate, relative humidity, and temperature and shall establish the design outlet organic HAP compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. The temperature of the gas stream exiting the condenser must be measured and used to establish the outlet organic HAP concentration.

(iii) For a carbon adsorption system that regenerates the carbon bed directly onsite in the control device such as a fixed-bed adsorber, the design evaluation shall consider the vent stream flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon. For vacuum desorption, the pressure drop shall be included.

(iv) For a carbon adsorption system that does not regenerate the carbon bed directly onsite in the control device such as a carbon canister, the design evaluation shall consider the vent stream mass or volumetric flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(v) For an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760°C, the design evaluation must document that these conditions exist.

(vi) For a combustion control device that does not satisfy the criteria in paragraph (a)(2)(v) of this section, the design evaluation must address the following characteristics, depending on the type of control device:

(A) For a thermal vapor incinerator, the design evaluation must consider the autoignition temperature of the organic HAP, must consider the vent stream flow rate, and must establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design evaluation shall consider the vent stream flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design evaluation shall consider the vent stream flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(3) Performance testing shall be conducted in accordance with § 63.7(a)(1), (a)(3), (d), (e)(1), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(3)(i) through (a)(3)(iv) of this section. Data shall be reduced in accordance with the EPA approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301 of appendix A of this part. Sections 63.1404 through 63.1414 also contain specific testing requirements.

(i) Performance tests shall be conducted according to the provisions of § 63.7(e)(1) and (e)(2), except that performance tests shall be conducted at maximum representative operating conditions achievable during one of the time periods described in paragraph (a)(3)(i)(A) or (a)(3)(i)(B) of this section, without necessitating that the owner or operator make product in excess of demand:

(A) The 6-month period that ends on the date that the Notification of Compliance Status is due, according to § 63.1419(e)(5); or

(B) The 6-month period that begins 3 months before the performance test and ends 3 months after the performance test.

(ii) When § 63.7(g) references the Notification of Compliance Status requirements in § 63.9(h), the requirements in § 63.1419(e)(5) shall apply for purposes of this subpart.

(iii) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present during the test.

(iv) Performance tests shall be performed no later than 150 days after the compliance dates specified in this subpart (i.e., in time for the results to be included in the Notification of Compliance Status), rather than according to the time periods in § 63.7(a)(2) of subpart A.

(v) A site-specific test plan shall be submitted to the Administrator for approval prior to testing in accordance with §§ 63.7(c) and 63.1419(e)(7)(ii). The test plan shall include a description of the planned test and rationale for why the planned performance test will provide adequate and representative results for demonstrating the performance of the control device. If required, the test plan shall include an emission profile and rationale for why the selected test period is representative.

(4) *Percent oxygen correction for combustion control devices.* If the control device is a combustion device, total organic HAP concentrations must be corrected to 3 percent oxygen. The integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the actual oxygen concentration ($\%0_{2d}$). The samples shall be taken during the same time that the total organic HAP samples are taken. The concentration corrected to 3 percent oxygen (C_c) shall be computed using Equation 3 of this subpart:

$$C_c = C_m\left(\frac{17.9}{20.9-\%O_{2d}}\right) \qquad \text{[Eq. 3]}$$

Where:

C_c = concentration of total organic HAP corrected to 3 percent oxygen, dry basis, ppmv.

C_m = total concentration of TOC in vented gas stream, average of samples, dry basis, ppmv.

$\%0_{2d}$ = concentration of oxygen measured in vented gas stream, dry basis, percent by volume.

(5) *Exemptions from compliance demonstrations.* An owner or operator using any control device specified in paragraphs (a)(5)(i) through (a)(5)(iv) of this section is exempt from the initial compliance provisions in paragraphs (c), (d), (e), and (f) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iv) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(6) *Initial compliance with alternative standard.* Initial compliance with the alternative standards in §§ 63.1404(c), 63.1405(f), 63.1406(d), and 63.1407(d) is demonstrated when the outlet organic HAP concentration is 20 ppmv or less. To demonstrate initial compliance, the owner or operator shall be in compliance with the monitoring provisions in § 63.1418(i) on the initial compliance date.

(7) *Testing requirements for condensers.* For vent streams controlled using condensers, continuous direct measurement of condenser outlet gas temperature to be used in determining concentrations is allowed in lieu of concentration measurements.

(b) *Test methods.* When directed by any section of this subpart to conduct a performance test using the procedures specified in this paragraph (b), the owner or operator shall use the test methods specified in paragraphs (b)(1) through (b)(8) of this section. Otherwise, the owner or operator shall use the test methods specifically referred to by other sections of this subpart, or specifically referred to by sections of other subparts of this part referenced by sections of this subpart.

(1) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A, is used to determine gas stream volumetric flow rate.

(2) Determination of the average batch vent flow rate for a batch emission episode shall be made using the procedures specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

(i) The volumetric flow rate (FR_i) for a batch emission episode, in standard cubic meters per minute (scmm) at 20° C, shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(ii) The volumetric flow rate of a representative batch emission episode shall be measured every 15 minutes.

(iii) The average batch vent flow rate for a batch emission episode shall be calculated using Equation 4 of this subpart:

$$AFR_{episode} = \frac{\sum_{i=1} FR_i}{n} \qquad \text{[Eq. 4]}$$

Where:

$AFR_{episode}$ = Average batch vent flow rate for the batch emission episode, scmm.

FR_i = Flow rate for individual measurement i, scmm.

n = Number of flow rate measurements taken during the batch emission episode.

(3) EPA Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, is used for velocity and volumetric flow rates.

(4) EPA Method 3 of 40 CFR part 60, appendix A, is used for gas analysis.

(5) EPA Method 4 of 40 CFR, part 60, appendix A, is used for stack gas moisture.

(6) The methods specified in paragraphs (b)(6)(i) through (b)(6)(iii) of this section shall be used to determine the HAP concentration.

(i) Method 316 or Method 320 of 40 CFR part 60, appendix A, shall be used to determine the concentration of formaldehyde.

(ii) Method 18 of 40 CFR part 60, appendix A, shall be used to determine the concentration of all organic HAP other than formaldehyde.

(iii) Method 308 of 40 CFR part 60, appendix A, may be used as an alternative to Method 18 of 40 CFR part 60, appendix A, to determine the concentration of methanol.

(7) If an integrated sample is taken over the entire batch emission episode to determine the average batch vent concentration of total organic HAP, emissions shall be calculated using Equation 5 of this subpart:

$$E_{episode} = K\left[\sum_{j=1}(C_j)(M_j)\right] AFR(T_h) \qquad \text{[Eq. 5]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j = Average batch vent concentration of sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of sample organic HAP component j of the gas stream, gm/gm-mole.

AFR = Average batch vent flow rate of gas stream, dry basis, scmm.

T_h = Hours/episode.

n = Number of organic HAP in stream.

(8) If grab samples are taken to determine the average batch vent

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concentration of total organic HAP, emissions shall be calculated according to paragraphs (b)(8)(i) and (b)(8)(ii) of this section.

(i) For each measurement point, the emission rate shall be calculated using Equation 6 of this subpart:

$$E_{point} = K \left(\sum C_j M_j \right) FR \qquad \text{[Eq. 6]}$$

Where:

E_{point} = Emission rate for individual measurement point, kg/hr.
K = Constant, 2.494 x 10^{-6} (ppmv)-1 (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.
C_j = Concentration of sample organic HAP component j of the gas stream, dry basis, ppmv.
M_j = Molecular weight of sample organic HAP component j of the gas stream, gm/gm-mole.
FR = Flow rate of gas stream for the measurement point, dry basis, scmm.
n = Number of organic HAP in stream.

(ii) The emissions per batch emission episode shall be calculated using Equation 7 of this subpart:

$$E_{episode} = (DUR) \left(\frac{\sum_{i=1} E_i}{n} \right) \qquad \text{[Eq. 7]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.
DUR = Duration of the batch emission episode, hr/episode.
E_i = Emissions for measurement point i, kg/hr.
n = Number of measurements.

(c) *Initial compliance with storage tank provisions.* As specified in § 63.1404, initial compliance with the control requirements of § 63.1404 shall be demonstrated using the procedures specified in §§ 63.120 and 63.121, as appropriate. For owners or operators complying with § 63.1404(f), initial compliance with the alternative standard shall be demonstrated as specified in paragraph (a)(6) of this section.

(d) *Initial compliance with continuous process vent provisions.* As specified in § 63.1405, initial compliance with the control requirements of § 63.1405 shall be demonstrated using the procedures specified in § 63.116. For owners or operators complying with § 63.1405(f), initial compliance with the alternative standard shall be demonstrated as specified in paragraph (a)(6) of this section.

(e) *Initial compliance with batch process vent provisions.* An owner or operator of an affected source complying with the batch process vent standards in § 63.1406 or § 63.1407 shall demonstrate compliance using the procedures described in paragraphs (e)(1) through (e)(6) of this section.

(1) Except as provided in paragraph (a)(5) of this section, initial compliance with the batch process vent standards in § 63.1406 or § 63.1407 shall be demonstrated as specified in paragraphs (e)(1)(i) through (e)(1)(iii), as applicable.

(i) Initial compliance with the alternative standard specified in §§ 63.1406(d) and 63.1407(d) shall be demonstrated as specified in paragraph (a)(6) of this section.

(ii) Initial compliance with the kilogram of HAP per megagram of product emission limits in § 63.1406 shall be demonstrated using the procedures in paragraph (e)(2) of this section.

(iii) Initial compliance with the percent reduction requirements in § 63.1406 or § 63.1407 shall be demonstrated using the procedures in paragraph (e)(5) of this section.

(2) Each owner or operator shall determine continuous compliance with the kilogram of HAP per megagram of product emission limits specified in § 63.1406 by using the procedures in paragraphs (e)(2)(i) through (e)(2)(iii) of this section. For the first year, the owner or operator shall calculate a rolling average monthly emission rate each month based on the available data points (e.g., 5 data points after 5 months of operation). After the first year, a 12-month rolling average monthly emission rate shall be calculated each month based on the previous 12 monthly averages. Each month the average monthly emission rate shall be compared to the emission limit specified in § 63.1406. If the average monthly emission rate is greater than the specified emission limit, a violation of the emission limit has occurred, as described in § 63.1418(l).

(i) The monthly emission rate, kilograms of HAP per megagram of product, shall be determined at the end of each month using Equation 8 of this subpart:

$$ER = \frac{\sum_{i=1} E_i}{RP_M} \qquad \text{[Eq. 8]}$$

Where:

ER = Emission rate of organic HAP from reactor batch process vents, kg of HAP/Mg product.
E_i = Emission rate of organic HAP from reactor batch process vent i as determined using the procedures specified in paragraph (e)(2)(ii) of this section, kg/month.
RP_M = Amount of resin produced in one month as determined using the procedures specified in paragraph (e)(2)(iii) of this section, Mg/month.
n = Number of batch process vents.

(ii) The emission rate of organic HAP, in kilograms per batch cycle, from an individual batch process vent shall be determined based on either a performance test or design evaluation, as specified in paragraph (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section. The monthly emission rate of organic HAP, in kilograms per month, from an individual batch process vent shall be determined 0using Equation 9 of this subpart and the procedures specified in paragraph (e)(2)(ii)(C) of this section:

$$E_i = \sum_{i=1}^{n} (N_i)(E_{cycle_i}) \qquad \text{[Eq. 9]}$$

Where:

E_i = Monthly emissions from a batch process vent, kg/month.
N_i = Number of type i batch cycles performed monthly, cycles/month.
$E_{cycle\,i}$ = Emissions from the batch process vent associated with a single type i batch cycle, as determined using the procedures specified in either paragraph (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section, kg/batch cycle.
n = Number of different types of batch cycles that cause the emission of organic HAP from the batch process vent.

(A) For reactor batch process vents estimated through engineering assessment, as described in paragraph (e)(3)(vi) of this section, to emit less than 10 tons per year of uncontrolled emissions, the owner or operator may use either the procedures specified in paragraph (e)(3) of this section or engineering assessment to determine the emissions per batch cycle.

(B) For reactor batch process vents estimated through engineering assessment, as described in paragraph (e)(3)(vi) of this section, to emit 10 tons per year or greater of uncontrolled emissions, emissions shall be estimated using the procedures specified in paragraph (e)(3) of this section.

(C) Once emissions for a reactor batch process vent have been estimated as specified in either paragraph (e)(2)(ii)(A) or (e)(2)(ii)(B) of this section, the owner or operator may use the estimated emissions to determine E_i using Equation 9 of this subpart until the estimated emissions are no longer representative due to a process change or other reason known to the owner or operator.

(iii) The rate of resin produced, RP_M (Mg/month), shall be determined based on production records certified by the owner or operator to represent actual production for the month. A sample of the records selected by the owner or operator for this purpose shall be provided to the Administrator in the Precompliance Report, as specified in § 63.1419(e)(3).

(3) *Uncontrolled emissions.* Uncontrolled emissions for individual reactor batch process vents or individual non-reactor batch process vents shall be determined using the procedures specified in paragraphs (e)(3)(i) through (e)(3)(viii) of this section. To estimate emissions from a batch emissions episode, owners or operators may use either the emissions estimation equations in paragraphs (e)(3)(i) through (e)(3)(iv) of this section, or direct measurement as specified in paragraph (e)(3)(v) of this section. Engineering assessment may be used to estimate emissions from a batch emission episode only under the conditions described in paragraph (e)(3)(vi) of this section. In using the emissions estimation equations in paragraphs (e)(3)(i) through (e)(3)(iv) of this section, individual component vapor pressure and molecular weight may be obtained from standard references. Methods to determine individual HAP partial pressures in multicomponent systems are described in paragraph (e)(3)(ix) of this section. Other variables in the emissions estimation equations may be obtained through direct measurement, as defined in paragraph (e)(3)(v) of this section, through engineering assessment, as defined in paragraph (e)(3)(vi)(B) of this section, by process knowledge, or by any other appropriate means. Assumptions used in determining these variables must be documented. Once emissions for the batch emission episode have been determined using either the emissions estimation equations, direct measurement, or engineering assessment, emissions from a batch cycle shall be calculated in accordance with paragraph (e)(3)(vii) of this section, and annual emissions from the batch process vent shall be calculated in accordance with paragraph (e)(3)(viii) of this section.

(i) Organic HAP emissions from the purging of an empty vessel shall be calculated using Equation 10 of this subpart. Equation 10 of this subpart does not take into account evaporation of any residual liquid in the vessel:

$$E_{episode} = \frac{(V_{ves})(P)(MW_{wavg})}{RT}\left(1-0.37^{m}\right) \qquad \text{[Eq. 10]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.
V_{ves} = Volume of vessel, m^3.
P = Total organic HAP partial pressure, kPa.
MW_{wavg} = Weighted average molecular weight of organic HAP in vapor, determined in accordance with paragraph (e)(3)(iv)(A)(*4*) of this section, kg/kmol.
R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.
T = Temperature of vessel vapor space, K.
m = Number of volumes of purge gas used.

(ii) Organic HAP emissions from the purging of a filled vessel shall be calculated using Equation 11 of this subpart:

$$E_{episode} = \frac{(y)(V_{dr})(P^2)(MW_{wavg})}{RT\left(P-\sum_{i=1}^{n}P_i x_i\right)}(T_m) \qquad \text{[Eq. 11]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.
y = Saturated mole fraction of all organic HAP in vapor phase.
V_{dr} = Volumetric gas displacement rate, m^3/min.
P = Pressure in vessel vapor space, kPa.
MW_{wavg} = Weighted average molecular weight of organic HAP in vapor, determined in accordance with paragraph (e)(3)(iv)(A)(*4*) of this section, kg/kmol.
R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.
T = Temperature of vessel vapor space, K.
P_i = Vapor pressure of individual organic HAP i, kPa.
x_i = Mole fraction of organic HAP i in the liquid.
n = Number of organic HAP in stream.
T_m = Minutes/episode.

(iii) Emissions from vapor displacement due to transfer of material into or out of a vessel shall be calculated using Equation 12 of this subpart:

$$E_{episode} = \frac{(y)(V)(P)(MW_{wavg})}{RT} \qquad \text{[Eq. 12]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.
y = Saturated mole fraction of all organic HAP in vapor phase.
V = Volume of gas displaced from the vessel, m^3.
P = Pressure in vessel vapor space, kPa.
MW_{wavg} = Weighted average molecular weight of organic HAP in vapor, determined in accordance with paragraph (e)(3)(iv)(A)(*4*) of this section, kg/kmol.
R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.
T = Temperature of vessel vapor space, K.

(iv) Emissions caused by the heating of a vessel shall be calculated using the procedures in either paragraph (e)(3)(iv)(A), (e)(3)(iv)(B), or (e)(3)(iv)(C) of this section, as appropriate.

(A) If the final temperature to which the vessel contents is heated is lower than 50 K below the boiling point of the HAP in the vessel, then emissions shall be calculated using the equations in paragraphs (e)(3)(iv)(A)(*1*) through (e)(3)(iv)(A)(*4*) of this section.

(*1*) Emissions caused by heating of a vessel shall be calculated using Equation 13 of this subpart. The assumptions made for this calculation are atmospheric pressure of 760 millimeters of mercury (mm Hg) and the displaced gas is always saturated with volatile organic compounds (VOC) vapor in equilibrium with the liquid mixture:

$$E_{episode} = \left[\frac{\dfrac{\sum_{i=1}^{n}(P_i)_{T1}}{101.325-\sum_{i=1}^{n}(P_i)_{T1}} + \dfrac{\sum_{i=1}^{n}(P_i)_{T2}}{101.325-\sum_{i=1}^{n}(P_i)_{T2}}}{2} \right] * (\Delta\eta)\,(MW_{wavg,T1} + MW_{wavg,T2})/2 \qquad \text{[Eq. 13]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

$(P_i)_{T1}$, $(P_i)_{T2}$ = Partial pressure (kPa) of each organic HAP i in the vessel headspace at initial (T1) and final (T2) temperature.

n = Number of organic HAP in stream.

$\Delta\eta$ = Number of kilogram-moles (kg-moles) of gas displaced, determined in accordance with paragraph (e)(3)(iv)(A)(*2*) of this section.

101.325 = Constant, kPa.

$(MW_{WAVG,T1})$, $(MW_{WAVG,T2})$ = Weighted average molecular weight of total organic HAP in the displaced gas stream, determined in accordance with paragraph (e)(3)(iv)(A)(*4*) of this section, kg/kmol.

(*2*) The moles of gas displaced, $\Delta\eta$, is calculated using Equation 14 of this subpart:

$$\Delta\eta = \frac{V_{fs}}{R}\left(\frac{Pa_1}{T_1} - \frac{Pa_2}{T_2}\right) \qquad \text{[Eq. 14]}$$

Where:

$\Delta\eta$ = Number of kg-moles of gas displaced.

V_{fs} = Volume of free space in the vessel, m^3.

R = Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot K$.

Pa_1 = Initial noncondensible gas partial pressure in the vessel, kPa.

Pa_2 = Final noncondensible gas partial pressure, kPa.

T_1 = Initial temperature of vessel, K.

T_2 = Final temperature of vessel, K.

(*3*) The initial and final pressure of the noncondensible gas in the vessel shall be calculated using Equation 15 of this subpart:

$$Pa = 101.325 - \sum_{i=1}^{n}(p_i)_T \qquad \text{[Eq. 15]}$$

Where:

Pa = Initial or final partial pressure of noncondensible gas in the vessel headspace, kPa.

101.325 = Constant, kPa.

$(P_i)_T$ = Partial pressure of each organic HAP i in the vessel headspace, kPa, at the initial or final temperature (T1 or T2).

n = Number of organic HAP in stream.

(*4*) The weighted average molecular weight of organic HAP in the displaced gas, MW_{wavg}, shall be calculated using Equation 16 of this subpart:

$$MW_{wavg} = \frac{\sum_{i=1}^{n}(\text{mass of C})_i\ (\text{molecular weight of C})_i}{\sum_{i=1}^{n}(\text{mass of C})_i} \qquad \text{[Eq. 16]}$$

Where:

C = Organic HAP component.

n = Number of organic HAP components in stream.

(B) If the vessel contents are heated to a temperature greater than 50 K below the boiling point, then emissions from the heating of a vessel shall be calculated as the sum of the emissions calculated in accordance with paragraphs (e)(3)(iv)(B)(*1*) and (e)(3)(iv)(B)(*2*) of this section.

(*1*) For the interval from the initial temperature to the temperature 50 K below the boiling point, emissions shall be calculated using Equation 13 of this subpart, where T_2 is the temperature 50 K below the boiling point.

(*2*) For the interval from the temperature 50 K below the boiling point to the final temperature, emissions shall be calculated as the summation of emissions for each 5 K increment, where the emissions for each increment shall be calculated using Equation 13 of this subpart.

(*i*) If the final temperature of the heatup is at or lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature for the heatup, even if the last increment is less than 5 K.

(*ii*) If the final temperature of the heatup is higher than 5 K below the boiling point, the final temperature for the last increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(*iii*) If the vessel contents are heated to the boiling point and the vessel is not operating with a condenser, the final temperature for the final increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(C) If the vessel is operating with a condenser, and the vessel contents are heated to the boiling point, the process condenser, as defined in § 63.1402, is considered part of the process. Emissions shall be calculated as the sum of emissions calculated using Equation 13 of this subpart, which calculates emissions due to heating the vessel contents to the temperature of the gas existing the condenser, and emissions calculated using Equation 12 of this subpart, which calculates emissions due to the displacement of the remaining saturated noncondensible gas in the vessel. The final temperature in Equation 13 of this subpart shall be set equal to the exit gas temperature of the condenser. Equation 12 of this subpart shall be used as written below in Equation 17 of this subpart, using free space volume, and T is set equal to the condenser exit gas temperature:

$$E_{episode} = \frac{(y)(V_{fs})(P)(MW_{wavg})}{RT} \qquad [\text{Eq. } 17]$$

Where:

$E_{episode}$ = Emissions, kg/episode.
y = Saturated mole fraction of all organic HAP in vapor phase.
V_{fs} = Volume of the free space in the vessel, m^3.
P = Pressure in vessel vapor space, kPa.
MW_{wavg} = Weighted average molecular weight of organic HAP in vapor, determined in accordance with paragraph (e)(3)(iv)(A)(*4*) of this section, kg/kmol.
R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.
T = Temperature of condenser exit stream, K.

(v) The owner or operator may estimate annual emissions for a batch emission episode by direct measurement. The procedures specified in paragraph (b) of this section shall be used for direct measurement. If direct measurement is used, the owner or operator shall perform a test for the duration of a representative batch emission episode. Alternatively, the owner or operator may perform a test during only those periods of the batch emission episode for which the emission rate for the entire episode can be determined or for which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these alternative options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. The emission profile shall be included in the site-specific test plan required by § 63.1419(e)(7)(ii), as specified by paragraph (a)(3)(v) of this section. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used to develop the emission profile provided the results are still relevant to the current batch process vent conditions.

(vi) Engineering assessment may be used to estimate emissions from a batch emission episode, if the criteria in paragraph (e)(3)(vi)(A) of this section are met. Data or other information used to demonstrate that the criteria in paragraph (e)(3)(vi)(A) of this section have been met shall be reported as specified in paragraph (e)(3)(vi)(C) of this section. Paragraph (e)(3)(vi)(B) of this section defines engineering assessment, for the purposes of estimating emissions from a batch emissions episode. All data, assumptions, and procedures used in an engineering assessment shall be documented.

(A) If the criteria specified in paragraphs (e)(3)(vi)(A)(*1*), (e)(3)(vi)(A)(*2*), and (e)(3)(vi)(A)(*3*) of this section are met for a specific batch emission episode, the owner or operator may use engineering assessment, as described in paragraph (e)(3)(vi)(B) of this section, to estimate emissions from that batch emission episode, and the owner or operator is not required to use the emissions estimation equations described in paragraphs (e)(3)(i) through (e)(3)(iv) of this section to estimate emissions from that batch emission episode.

(*1*) Previous test data, where the measurement of organic HAP emissions was an outcome of the test, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (e)(3)(i) through (e)(3)(iv) of this section. Paragraphs (e)(3)(vi)(A)(*1*)(*i*) and (e)(3)(vi)(A)(*1*)(*ii*) of this section describe test data that will be acceptable under this paragraph (e)(3)(vi)(A)(*1*).

(*i*) Test data for the batch emission episode obtained during production of the product for which the demonstration is being made.

(*ii*) Test data obtained for a batch emission episode from another process train, where the test data were obtained during production of the product for which the demonstration is being made. Test data from another process train may be used only if the owner or operator can demonstrate that the data are representative of the batch emission episode for which the demonstration is being made, taking into account the nature, size, operating conditions, production rate, and sequence of process steps (e.g., reaction, distillation, etc.) of the equipment in the other process train.

(*2*) Previous test data obtained during the production of the product for which the demonstration is being made, for the batch emission episode with the highest organic HAP emissions on a mass basis, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (e)(3)(i) through (e)(3)(iv) of this section. If the criteria in this paragraph (e)(3)(vi)(A)(*2*) are met, then engineering assessment may be used for all batch emission episodes associated with that batch cycle for the batch unit operation.

(*3*) The owner or operator has requested and been granted approval to use engineering assessment to estimate emissions from a batch emissions episode. The request to use engineering assessment to estimate emissions from a batch emissions episode shall contain sufficient information and data to demonstrate to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode. The request to use engineering assessment to estimate emissions for a batch emissions episode shall be submitted in the Precompliance Report required under § 63.1419(e)(3).

(B) Engineering assessment includes, but is not limited to, the following:

(*1*) Previous test results, provided the tests are representative of current operating practices;

(*2*) Bench-scale or pilot-scale test data obtained under conditions representative of current process operating conditions;

(*3*) Flow rate or organic HAP emission rate specified or implied within a

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permit limit applicable to the batch process vent; and

(*4*) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*i*) Use of material balances;

(*ii*) Estimation of flow rate based on physical equipment design such as pump or blower capacities;

(*iii*) Estimation of organic HAP concentrations based on saturation conditions; and

(*iv*) Estimation of organic HAP concentrations based on grab samples of the liquid or vapor.

(C) Data or other information used to demonstrate that the criteria in paragraph (e)(3)(vi)(A) of this section have been met shall be reported as specified in paragraphs (e)(3)(vi)(C)(*1*) and (e)(3)(vi)(C)(*2*) of this section.

(*1*) Data or other information used to demonstrate that the criteria in paragraphs (e)(3)(vi)(A)(*1*) and (e)(3)(vi)(A)(*2*) of this section have been met shall be reported in the Notification of Compliance Status, as required in § 63.1419(e)(5).

(*2*) The request for approval to use engineering assessment to estimate emissions from a batch emissions episode as allowed under paragraph (e)(3)(vi)(A)(*3*) of this section, and sufficient data or other information for demonstrating to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode, shall be submitted with the Precompliance Report, as required in § 63.1419(e)(3).

(vii) For each batch process vent, the organic HAP emissions associated with a single batch cycle shall be calculated using Equation 18 of this subpart:

$$E_{cycle} = \sum_{i=1}^{n} E_{episode_i} \qquad [Eq.\ 18]$$

Where:

E_{cycle} = Emissions for an individual batch cycle, kg/batch cycle.

$E_{episode\ i}$ = Emissions from batch emission episode i, kg/episode.

n = Number of batch emission episodes for the batch cycle.

(viii) Annual organic HAP emissions from a batch process vent shall be calculated using Equation 19 of this subpart:

$$AE = \sum_{i=1}^{n} (N_i)(E_{cycle_i}) \qquad [Eq.\ 19]$$

Where:

AE = Annual emissions from a batch process vent, kg/yr.

N_i = Number of type i batch cycles performed annually, cycles/year.

$E_{cycle\ i}$ = Emissions from the batch process vent associated with a single type i batch cycle, as determined in paragraph (e)(3)(vii) of this section, kg/batch cycle.

n = Number of different types of batch cycles that cause the emission of organic HAP from the batch process vent.

(ix) Individual HAP partial pressures in multicomponent systems shall be determined using the appropriate method specified in paragraphs (e)(3)(ix)(A) through (e)(3)(ix)(C) of this section:

(A) If the components are miscible, use Raoult's law to calculate the partial pressures;

(B) If the solution is a dilute aqueous mixture, use Henry's law constants to calculate partial pressures;

(C) If Raoult's law or Henry's law are not appropriate or available, the owner or operator may use any of the options in paragraphs (e)(3)(ix)(C)(*1*), (e)(3)(ix)(C)(*2*), and (e)(3)(ix)(C)(*3*) of this section:

(*1*) Experimentally obtained activity coefficients, Henry's law constants, or solubility data;

(*2*) Models, such as group-contribution models, to predict activity coefficients; or

(*3*) Assume the components of the system behave independently and use the summation of all vapor pressures from the HAPs as the total HAP partial pressure.

(*4*) [Reserved]

(5) *Batch process vent testing and procedures for compliance with § 63.1406 or § 63.1407.* Owners or operators shall comply with the procedures specified in paragraph (e)(5)(i) or (e)(5)(ii) of this section in order to determine the control efficiency of the control device. Owners or operators using a small control device shall follow the procedures in paragraph (e)(5)(i) of this section. Owners or operators using a large control device shall follow the procedures in paragraph (e)(5)(ii) of this section. An owner or operator shall determine the percent reduction for the batch cycle for an individual reactor batch process vent when complying with § 63.1406, and shall determine the overall percent reduction for the collection of non-reactor batch process vents within the affected source when complying with § 63.1407, using the procedures specified in paragraph (e)(5)(iii) of this section. For purposes of this paragraph (e)(5), the term "batch emission episode" shall have the meaning "period of the batch emission episode selected for control," which may be the entire batch emission episode or may only be a portion of the batch emission episode.

(i) *Small control devices.* The control efficiency for a small control device shall be determined through the design evaluation procedures described in paragraphs (e)(5)(i)(A) through (e)(5)(i)(C) of this section or by conducting a performance test in accordance with paragraph (e)(5)(ii) of this section.

(A) *Design evaluation.* The design evaluation shall include documentation demonstrating the control device efficiency to be used in paragraph (e)(5)(iii) of this section for determining the percent reduction for the batch cycle for an individual reactor batch process vent when complying with § 63.1406 or the overall percent reduction for the collection of non-reactor batch process vents within the affected source when complying with § 63.1407. This documentation shall comply with the provisions in paragraph (a)(2) of this section. The design evaluation shall also include the value(s) and basis for the parameter monitoring level(s) required by § 63.1418. The design evaluation shall comply with either paragraph (e)(5)(i)(B) or (e)(5)(i)(C) of this section. Owners or operators shall comply with paragraph (e)(5)(i)(B) of this section when the control device efficiency to be used in paragraph (e)(5)(iii) of this section varies between batch emission episodes or varies within a batch emission episode. Paragraph (e)(5)(i)(C) of this section shall be complied with when an owner or operator chooses to demonstrate that the control device achieves the same or better efficiency for all emissions selected for control.

(B) The design evaluation shall address the control device efficiency for each batch emission episode that the owner or operator selects to control.

(C) The design evaluation shall demonstrate that the control device achieves the same or higher efficiency for all emissions that the owner or operator selects to control.

(ii) *Large control devices.* The control efficiency for a large control device shall be determined by conducting a performance test. Performance tests shall be conducted as specified in paragraph (e)(5)(ii)(A) or (e)(5)(ii)(B) of this section. An owner or operator may test some batch emission episodes following the procedures in paragraph (e)(5)(ii)(A) of this section and may test others following paragraph (e)(5)(ii)(B) of this section; the procedures in paragraphs (e)(5)(ii)(A) and (e)(5)(ii)(B) of this section are not exclusive of each other. Emissions per batch emission episode shall be determined as specified in paragraphs (e)(5)(ii)(C) and (e)(5)(ii)(D) of this section. The control efficiency of the control device shall be determined as specified in paragraphs (e)(5)(ii)(E) and (e)(5)(ii)(F) of this section.

(A) A performance test shall be performed for each batch emission episode, or portion thereof, in the batch cycle for an individual reactor batch process vent that the owner or operator selects to control as part of achieving the required percent reduction for the batch cycle specified in § 63.1406. A performance test shall be performed for each batch emission episode, or portion thereof, from each non-reactor batch process vent within the affected source that the owner or operator selects to control as part of achieving the overall percent reduction specified in § 63.1407. Performance tests shall be conducted using the procedures specified in paragraph (b) of this section and following the procedures in paragraphs (e)(5)(ii)(A)(*1*) through (e)(5)(ii)(A)(*4*) of this section.

(*1*) Only one test (i.e., only one run) is required for each batch emission episode selected by the owner or operator for control.

(*2*) Except as specified in paragraph (e)(5)(ii)(A)(*3*) of this section, the performance test shall be conducted over the entire period of emissions selected by the owner or operator for control.

(*3*) An owner or operator may choose to test only those periods of the batch emission episode during which the emission rate for the entire batch emission episode can be determined or during which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. The emission profile shall be included in the site-specific test plan required by § 63.1419(e)(7)(ii), as specified by paragraph (a)(3)(v) of this section. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used to develop the emission profile provided the results are still relevant to the current batch process vent conditions.

(*4*) When choosing sampling sites using the methods specified in paragraph (b)(1) of this section, inlet sampling sites shall be located as specified in paragraphs (e)(5)(ii)(A)(*4*)(*i*) and (e)(5)(ii)(A)(*4*)(*ii*) of this section. Outlet sampling sites shall be located at the outlet of the control device prior to release to the atmosphere.

(*i*) The control device inlet sampling site shall be located at the exit from the batch unit operation, after any process condensers and before any control device.

(*ii*) If a batch process vent is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP concentrations in all batch process vents and primary and secondary fuels introduced into the boiler or process heater.

(B) An owner or operator is not required to conduct a performance test for each batch emission episode if the owner or operator can demonstrate that control device efficiency determined from a performance test on a single batch emission episode is equivalent to or less than the control device efficiency that will be achieved for other batch emission episodes. Performance tests shall be conducted using the procedures specified in paragraph (b) of this section and as specified in paragraphs (e)(5)(ii)(B)(*1*) and (e)(5)(ii)(B)(*2*) of this section. Owners or operators complying with this paragraph (e)(5)(ii)(B) shall comply with paragraphs (e)(5)(ii)(B)(*3*) through (e)(5)(ii)(B)(*5*) of this section. An owner or operator using the procedures specified in this paragraph (e)(5)(ii)(B) is restricted to the control device efficiency demonstrated during the performance test for the purposes of paragraph (e)(5)(iii) of this section.

(*1*) A performance test shall be conducted for the batch emission episode for which the owner or operator demonstrates that performance of the control device will be of equivalent or greater efficiency for all other batch emission episodes. For purposes of this paragraph (e)(5)(ii)(B)(*1*), the phrase "all other batch emission episodes" is restricted to those batch emission episodes for which the owner or operator shall use the control device efficiency determined from the performance test for compliance demonstration purposes.

(*2*) The procedures specified in paragraphs (e)(5)(ii)(A)(*1*) through (e)(5)(ii)(A)(*4*) shall be followed.

(*3*) The owner or operator shall develop an emission profile for the emissions venting to the control device in order to demonstrate the representativeness of the planned test. The emission profile shall include HAP loading rate, expressed as mass per unit time, versus time for all batch emission episodes that could vent to the control device. The emission profile shall cover a period of time that is sufficient to include all batch emission episodes venting to the control device and shall consider production scheduling. The HAP emissions for batch emission episodes shall be calculated using the procedures specified in paragraph (e)(3) of this section. The HAP loading rates for batch emission episodes shall be calculated by dividing HAP emissions by the duration of the emission events. The emission profile shall be included in the site-specific test plan required by § 63.1419(e)(7)(ii), as specified by paragraph (a)(3)(v) of this section. Previous test results may be used to develop the emission profile provided the results are still relevant to the current batch process vent conditions.

(*4*) The concept provided by paragraph (e)(5)(ii)(B) of this section may be used multiple times to address different sets of batch emission episodes within a batch process vent.

(*5*) The concept provided by paragraph (e)(5)(ii)(B) of this section may be used to address a subset of the total batch emission episodes within a batch process vent.

(C) If an integrated sample is taken over the entire test period to determine average batch vent concentration of total organic HAP, emissions per batch emission episode shall be calculated using Equations 20 and 21 of this subpart:

$$E_{episode,inlet} = K\left[\sum_{j=1}^{n}\left(C_{j,inlet}\right)\left(M_j\right)\right]\left(AFR_{inlet}\right)\left(T_h\right) \qquad [\text{Eq. } 20]$$

$$E_{episode,outlet} = K\left[\sum_{j=1}^{n}\left(C_{j,outlet}\right)\left(M_j\right)\right]\left(AFR_{outlet}\right)\left(T_h\right) \qquad \text{[Eq. 21]}$$

Where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

K = Constant, 2.494 × 10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Average inlet or outlet concentration of sample organic HAP component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j = Molecular weight of sample organic HAP component j of the gas stream, gm/gm-mole.

AFR = Average inlet or outlet flow rate of gas stream for the batch emission episode, dry basis, scmm.

T_h = Hours/episode.

n = Number of organic HAP in stream.

(D) If grab samples are taken to determine average batch vent concentration of total organic HAP, emissions shall be calculated according to paragraphs (e)(5)(ii)(D)(*1*) and (e)(5)(ii)(D)(*2*) of this section.

(*1*) For each measurement point, the emission rates shall be calculated using Equations 22 and 23 of this subpart:

$$E_{point,inlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{inlet} \qquad \text{[Eq. 22]}$$

$$E_{point,outlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{outlet} \qquad \text{[Eq. 23]}$$

Where:

E_{point} = Inlet or outlet emission rate for the measurement point, kg/hr.

K = Constant, 2.494 x 10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j = Inlet or outlet concentration of sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of sample organic HAP component j of the gas stream, gm/gm-mole.

FR = Inlet or outlet flow rate of gas stream for the measurement point, dry basis, scmm.

n = Number of organic HAP in stream.

(*2*) The emissions per batch emission episode shall be calculated using Equations 24 and 25 of this subpart:

$$E_{episode,inlet} = (DUR)\left[\sum_{i=1}^{n}\frac{E_{point,inlet,i}}{n}\right] \qquad \text{[Eq. 24]}$$

$$E_{episode,outlet} = (DUR)\left[\sum_{i=1}^{n}\frac{E_{point,outlet,i}}{n}\right] \qquad \text{[Eq. 25]}$$

Where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

DUR = Duration of the batch emission episode, hr/episode.

$E_{point,\,i}$ = Inlet or outlet emissions for measurement point i, kg/hr.

n = Number of measurements.

(E) The control efficiency for the control device shall be calculated using Equation 26 of this subpart:

$$R = \frac{\sum_{i=1}^{n} E_{inlet,i} - \sum_{i=1}^{n} E_{outlet,i}}{\sum_{i=1}^{n} E_{inlet,i}}(100) \qquad \text{[Eq. 26]}$$

Where:

R = Control efficiency of control device, percent.

E_{inlet} = Mass rate of total organic HAP for batch emission episode i at the inlet to the control device as calculated under paragraph (e)(5)(ii)(C) or (e)(5)(ii)(D) of this section, kg/hr.

E_{outlet} = Mass rate of total organic HAP for batch emission episode i at the outlet of the control device, as calculated under paragraph (e)(5)(ii)(C) or (e)(5)(ii)(D) of this section, kg/hr.

n = Number of batch emission episodes in the batch cycle selected to be controlled.

(F) If the batch process vent entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP across the device shall be determined by comparing the total organic HAP in all combusted batch process vents and primary and secondary fuels with the total organic HAP exiting the combustion device, respectively.

(iii) The percent reduction for the batch cycle for an individual reactor batch process vent and the overall percent reduction for the collection of non-reactor batch process vents within the affected source shall be determined using Equation 27 of this subpart and the control device efficiencies specified in paragraphs (e)(5)(iii)(A) through (e)(5)(iii)(C) of this section. All information used to calculate the batch cycle percent reduction for an individual reactor batch process vent, including a definition of the batch cycle identifying all batch emission episodes, shall be recorded as specified in § 63.1408(b)(2). All information used to calculate the overall percent reduction for the collection of non-reactor batch process vents within the affected source, including a list of all batch emission episodes from the collection of non-reactor batch process vents within the affected source, shall be recorded as specified in § 63.1408(b)(2). This information shall include identification of those batch emission episodes, or portions thereof, selected for control. This information shall include estimates of uncontrolled emissions for those batch emission episodes, or portions thereof, that are not selected for control, determined as specified in paragraph (e)(5)(iii)(D) or (e)(5)(iii)(E) of this section:

$$PR = \frac{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,con} - (1 - R)\sum_{i=1}^{n} E_{inlet,con}}{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,con}} \qquad \text{[Eq. 27]}$$

Where:

PR = Percent reduction.

E_{unc} = Mass rate of total organic HAP for uncontrolled batch emission episode i, kg/hr.

$E_{inlet,\ con}$ = Mass rate of total organic HAP for controlled batch emission episode i at the inlet to the control device, kg/hr.

R = Control efficiency of control device as specified in paragraphs (e)(5)(iii)(A) through (e)(5)(iii)(C) of this section. The value of R may vary between batch emission episodes.

n = Number of uncontrolled batch emission episodes, controlled batch emission episodes, and control devices. The value of n is not necessarily the same for these three items.

(A) If a performance test is required by paragraph (e)(5)(ii) of this section, or if an owner or operator chooses to conduct a performance test using the procedures specified in paragraph (e)(5)(ii)(A) or (e)(5)(ii)(B) of this section, the control efficiency of the control device shall be as determined in paragraph (e)(5)(ii)(E) of this section.

(B) If a performance test is not required by paragraph (e)(5)(ii) of this section for a combustion control device, as specified in paragraph (a)(5) or (e)(6) of this section, the control efficiency shall be 98 percent. The control efficiency for a flare shall be 98 percent.

(C) If a performance test is not required by paragraph (e)(5) of this section, the control efficiency shall be based on the design evaluation specified in paragraph (e)(5)(i) of this section.

(D) For batch emission episodes estimated through engineering assessment, as described in paragraph (e)(3)(vi) of this section, to emit less than 10 tons per year of uncontrolled emissions, the owner or operator may use either the procedures specified in paragraph (e)(3) of this section or engineering assessment to determine the emissions per batch cycle.

(E) For batch emission episodes estimated through engineering assessment, as described in paragraph (e)(3)(vi) of this section, to emit 10 tons per year or greater of uncontrolled emissions, emissions shall be estimated using the procedures specified in paragraph (e)(3) of this section.

(6) An owner or operator is not required to conduct a performance test for the following:

(i) Any control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same Methods specified in this section and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. The results of the previous performance test shall be used to demonstrate compliance.

(ii) A condenser system that is equipped with a temperature sensor and recorder, such that the condenser exit gas temperature can be measured at 15-minute intervals when the condenser is functioning in cooling a vent stream. The condenser exit gas temperature shall be used to calculate removal efficiency of the condenser in demonstrating compliance.

(f) *Initial compliance with wastewater provisions.* As specified in § 63.1414, initial compliance with the control requirements of § 63.1414 shall be demonstrated using the procedures specified in §§ 63.143 and 63.145, as appropriate.

(g) Notwithstanding any other provision of this subpart, if an owner or operator uses a flare to comply with any of the requirements of this subpart, the owner or operator shall comply with paragraphs (g)(1) through (g)(3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP concentration. If a compliance demonstration has been conducted previously for a flare, using the techniques specified in paragraphs (g)(1) through (g)(3) of this section, that compliance demonstration may be used to satisfy the requirements of this paragraph if either no deliberate process changes have been made since the compliance demonstration, or the results of the compliance demonstration reliably demonstrate compliance despite process changes:

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4);

(2) Determine the net heating value of the gas being combusted, using the techniques specified in § 63.11(b)(6); and

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

§ 63.1418 Monitoring requirements.

(a) *General requirements.* Each owner or operator of an emission point located at an affected source that uses a control device to comply with the requirements of this subpart and has one or more parameter monitoring level requirements specified under this subpart, shall install the monitoring equipment specified in paragraph (b) of this section in order to demonstrate continued compliance with the provisions of this subpart. All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(1) This monitoring equipment shall be in operation at all times when emissions that the owner or operator has selected to control, as allowed under §§ 63.1406 and 63.1407, are vented to the control device and shall be in operation at all times when emissions that are required to be controlled, as required under §§ 63.1404, 63.1405, and 63.1414, are vented to the control device.

(2) Except as otherwise provided in this subpart, the owner or operator shall operate control devices such that the daily average, batch cycle daily average, or block average of monitored parameters, established as specified in paragraph (c) of this section, remains above the minimum level or below the maximum level, as appropriate. The option of conducting parameter monitoring for batch process vents on a batch cycle daily average basis or a block average basis is described in § 63.1408(c).

(3) As specified in § 63.1419(e)(5), all established parameter monitoring levels, along with their supporting documentation and the definition of an operating day or block, shall be approved as part of and incorporated into the Notification of Compliance Status. The definition of operating day or block shall specify the times at which an operating day or block begins and ends.

(4) Parameter monitoring levels may be based upon a prior performance test conducted for determining compliance with a regulation promulgated by EPA, and the owner or operator is not required to conduct a performance test, provided that the prior performance test was conducted using the same Methods specified in this subpart and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(5) For batch process vents complying with § 63.1417(e)(5), parameter monitoring levels established as specified in this section shall reflect the control efficiency determined to be required during the initial compliance demonstration so that the specified percent reduction from § 63.1406 or § 63.1407, as appropriate, is met.

(6) For control devices controlling less than 1 ton per year of uncontrolled HAP emissions, monitoring shall consist of a daily verification that the control device is operating properly. If the control device is used to control batch process vents alone or in combination with other emission points, the verification may be on a per batch cycle basis. This verification shall include, but not be limited to, a daily or per batch demonstration that the unit is working as designed. The procedure for this demonstration shall be submitted for review and approval as part of the Precompliance Report required by § 63.1419(e)(3).

(7) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subpart A, F, or G of this part.

(b) *Monitoring equipment.* The monitoring equipment specified in paragraphs (b)(1) through (b)(8) of this section shall be installed as specified in paragraph (a) of this section. The parameters to be monitored are specified in Table 4 of this subpart.

(1) Where a scrubber is used, the following monitoring equipment is required.

(i) A pH monitoring device equipped with a continuous recorder to monitor the pH of the scrubber effluent.

(ii) A flow measurement device equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.1419(a).

(2) Where an absorber is used, a scrubbing liquid temperature monitoring device and a specific gravity monitoring device are required, each equipped with a continuous recorder.

(3) Where a condenser is used, a condenser exit temperature (product side) monitoring device equipped with a continuous recorder is required.

(4) Where a carbon adsorber is used, an integrating regeneration steam flow or nitrogen flow, or the vacuum level monitoring device having an accuracy of ±10 percent of the flow rate or level, or better, capable of recording the total regeneration steam flow or nitrogen flow, or the vacuum level for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

(5) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(i) Where an incinerator other than a catalytic incinerator is used, the temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(6) Where a flare is used, a device (including but not limited to a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting the presence of a pilot flame is required.

(7) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, a temperature monitoring device in the firebox equipped with a continuous recorder is required. Any boiler or process heater in which all vent streams are introduced with the primary fuel or are used as the primary fuel is exempt from this requirement.

(8) As an alternate to paragraphs (b)(1) through (b)(7) of this section, the owner or operator may install an organic monitoring device equipped with a

continuous recorder. Said organic monitoring device shall meet the requirements of Performance Specification 8 or 9 of 40 CFR part 60, appendix B, and shall be installed, calibrated, and maintained according to § 63.6.

(c) *Establishment of parameter monitoring levels.* The owner or operator of a control device that has one or more parameter monitoring level requirements specified under this subpart, or specified under subparts referenced by this subpart, shall establish a maximum or minimum level, as denoted on Table 5 of this subpart, for each measured parameter using the procedures specified in paragraph (d) or (e) of this section and as specified in paragraph (c)(1) or (c)(2) of this section.

(1) *Small control devices.* Except as provided in paragraph (a)(6) of this section, for control devices controlling less than 10 tons per year of uncontrolled HAP emissions for which a performance test is not required, the parameter monitoring levels shall be set based on the design evaluation required in § 63.1417(a)(1). When setting the parameter monitoring level(s) based on the design evaluation, the owner or operator shall submit the information specified in § 63.1419(e)(3) for review and approval as part of the Precompliance Report.

(2) *Large control devices.* For control devices controlling 10 tons per year of uncontrolled HAP emissions or more, the parameter shall be established as specified in paragraph (d) or (e) of this section. When setting the parameter monitoring level(s) using the procedures specified in paragraph (e) of this section, the owner or operator shall submit the information specified in § 63.1419(e)(3) for review and approval as part of the Precompliance Report.

(d) *Establishment of parameter monitoring levels based on performance tests.* Level(s) established under this paragraph (d) shall be based on the parameter values measured during the performance test.

(1) [Reserved]

(2) *Emission points other than batch process vents.* During initial compliance testing, the appropriate parameter shall be continuously monitored during the required 1-hour test runs. The monitoring level(s) shall then be established as the average of the maximum (or minimum) point values from the three test runs. The average of the maximum values shall be used when establishing a maximum level, and the average of the minimum values shall be used when establishing a minimum level.

(3) *Batch process vents.* The monitoring level(s) shall be established using the procedures specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section.

(i) If more than one batch emission episode or more than one portion of a batch emission episode has been selected to be controlled, a single level for the batch cycle shall be calculated as follows:

(A) During initial compliance testing, the appropriate parameter shall be monitored continuously and recorded once every 15 minutes at all times when batch emission episodes, or portions thereof, selected to be controlled are vented to the control device. A minimum of three recorded values must be obtained for each batch emission episode, or portion thereof, regardless of the length of time emissions are occurring.

(B) The average monitored parameter value shall be calculated for each batch emission episode, or portion thereof, in the batch cycle selected to be controlled. The average shall be based on all values measured during the required performance test.

(C) If the level to be established is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values from each batch emission episode, or portion thereof, in the batch cycle selected to be controlled (i.e., identify the emission episode, or portion thereof, which requires the lowest parameter value in order to assure compliance; the average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle that are selected to be controlled).

(D) If the level to be established is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values from each batch emission episode, or portion thereof, in the batch cycle selected to be controlled (i.e., identify the emission episode, or portion thereof, which requires the highest parameter value in order to assure compliance; the average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle that are selected to be controlled).

(E) Alternatively, an average monitored parameter value shall be calculated for the entire batch cycle based on all values recorded during each batch emission episode, or portion thereof, selected to be controlled.

(ii) Instead of establishing a single level for the batch cycle, as described in paragraph (d)(3)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled. Each level shall be determined as specified in paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of this section.

(iii) The batch cycle shall be defined in the Notification of Compliance Status, as specified in § 63.1419(e)(5). Said definition shall include an identification of each batch emission episode. The definition of batch cycle shall also include the information required to determine parameter monitoring compliance for partial batch cycles (i.e., when part of a batch cycle is accomplished during two different operating days) for those parameters averaged on a batch cycle daily average basis.

(e) *Establishment of parameter monitoring levels based on performance tests, engineering assessments, and/or manufacturer's recommendations.* Parameter monitoring levels may be established based on the parameter values measured during the performance test supplemented by engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values.

(f) [Reserved]

(g) *Alternative monitoring parameters.* An owner or operator may request approval to monitor parameters other than those required by paragraph (b) of this section. The request shall be submitted according to the procedures specified in § 63.1419(f). Approval shall be requested if the owner or operator:

(1) Uses a control device other than those included in paragraph (b) of this section; or

(2) Uses one of the control devices included in paragraph (b) of this section, but seeks to monitor a parameter other than those specified in Table 4 of this subpart and paragraph (b) of this section.

(h) *Monitoring of bypass lines.* Owners or operators using a vent system that contains bypass lines that could divert emissions away from a control device used to comply with the provisions of this subpart shall comply with either paragraph (h)(1) or (h)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph (h):

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 63.1408(e)(3). The flow indicator shall be installed at the entrance to any bypass line that could divert emissions away from the control device and to the atmosphere; or

(2) Secure the bypass line damper or valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the damper or valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 63.1408(e)(4).

(i) *Monitoring for the alternative standards.* For control devices that are used to comply with the provisions of § 63.1404(c), § 63.1405(f), § 63.1406(d), or § 63.1407(d), the owner or operator shall monitor and record the outlet organic HAP concentration every 15 minutes during the period in which the device is functioning in achieving the HAP removal required by this subpart. Continuous monitoring of outlet organic HAP concentration shall be accomplished using an FTIR (Fourier Transform Infrared Spectroscopy) instrument following Method PS–15 of 40 CFR part 60, appendix B.

(j) *Exceedances of operating parameters.* An exceedance of an operating parameter is defined as one of the following:

(1) If the parameter, averaged over the operating day or block, is below a minimum value established during the initial compliance demonstration.

(2) If the parameter, averaged over the operating day or block, is above the maximum value established during the initial compliance demonstration.

(3) If all flames at the pilot light of a flare are absent or the monitor is not working.

(k) *Excursions.* Excursions are defined by either of the two cases listed in paragraph (k)(1) or (k)(2) of this section.

(1) When the period of control device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data, as defined in paragraph (k)(3) of this section, for at least 75 percent of the operating hours.

(2) When the period of control device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(3) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (k)(1) and (k)(2) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 63.1419(g)(3), monitoring data are insufficient to calculate a valid hour of data if there are less than four data measurements made during the hour.

(l) *Violations.* Exceedances of parameters monitored according to the provisions of paragraphs (b)(1), (b)(2), and (b)(4) through (b)(7) of this section or excursions as defined in paragraph (j) of this section constitute violations of the operating limit, except as specified in paragraph (l)(1) of this section. Exceedances of the condenser outlet gas temperature limit monitored according to the provisions of paragraph (b)(3) of this section or exceedances of the outlet concentrations monitored according to the provisions of paragraph (b)(8) of this section constitute violations of the emission limit, except as specified in paragraph (l)(1) of this section. Exceedances of the emission limit monitored according to the procedures specified in § 63.1417(e)(2) and paragraph (i) of this section constitute violations of the emission limit, except as specified in paragraph (l)(1) of this section. Exceedances of the outlet concentrations monitored according to the provisions of paragraph (i) of this section constitute violations of the emission limit, as specified in paragraphs (l)(1) and (l)(2) of this section.

(1) If the daily average value of a monitored parameter is above the maximum level or below the minimum level established, or if monitoring data cannot be collected during monitoring device calibration check or monitoring device malfunction, or if monitoring data are not collected during periods of start-up, shutdown, or malfunction, or if monitoring data are not collected during periods of nonoperation of the affected source or portion thereof (resulting in cessation of the emissions to which the monitoring applies), but the affected source is operated during the periods of start-up, shutdown, or malfunction in accordance with the affected source's Start-up, Shutdown, and Malfunction Plan, then the event shall not be considered a violation.

(2) Except as provided in paragraph (l)(1) of this section, exceedances of the 20 ppmv organic HAP outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device.

(m) *Monitoring for emission limits.* The owner or operator of any affected source complying with the kilogram of HAP per megagram of product emission limit specified in § 63.1406 shall demonstrate continuous compliance using the procedures specified in § 63.1417(e)(2). When the rolling average monthly emission rate or the 12-month rolling average monthly emission rate, as appropriate, exceeds the specified emission limit, a violation of the emission limit has occurred.

§ 63.1419 General recordkeeping and reporting requirements.

(a) *Data retention.* Unless otherwise specified in this subpart, each owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years, as specified in paragraph (a)(1) of this section, with the exception listed in paragraph (a)(2) of this section.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request. The remaining 4 and one-half years of records may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, CD–ROM, optical disc, magnetic tape, or microfiche.

(2) If an owner or operator submits copies of reports to the appropriate EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of those reports.

(b) *Requirements of subpart A of this part.* The owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in subpart A of this part as specified in Table 1 of this subpart. These requirements include, but are not limited to, the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in § 63.6(e)(3). This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air

pollution control equipment used to comply with this subpart. A provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart may be included in the start-up, shutdown, and malfunction plan only if the owner or operator can demonstrate that the monitoring system could be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. The affected source shall keep the start-up, shutdown, and malfunction plan on-site. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section. Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section.

(A) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or control devices or recovery devices or continuous monitoring systems used to comply with this subpart during which excess emissions (as defined in § 63.1400(j)(4)) occur.

(B) For each start-up, shutdown, or malfunction during which excess emissions (as defined in § 63.1400(j)(4)) occur, records that the procedures specified in the affected source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a control device to a backup control device (e.g., a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records shall be kept of whether the plan was followed. These records may take the form of a "checklist," or other form of recordkeeping that confirms conformance with the start-up shutdown, and malfunction plan for the event.

(C) Records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(B) of this section are not required if they pertain solely to Group 2 emission points.

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of being submitted on the schedule specified in § 63.10(d)(5)(i). Said reports shall include the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(B) of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 regarding construction and reconstruction, excluding the provisions specified in § 63.5(d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii).

(c) [Reserved]

(d) *Recordkeeping and documentation.* Owners or operators required to comply with § 63.1418 and, therefore, required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(7) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) or (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.1404(d)(9) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (d)(7) of this section apply. As described in § 63.1404(d)(9), certain storage vessels are not required to comply with § 63.1418 and, therefore, are not required to keep continuous records as specified in this paragraph (d). Owners and operators of such storage vessels shall keep records as specified in the monitoring plan required by § 63.1404(d)(9). Paragraphs (d)(8) and (d)(9) of this section specify documentation requirements.

(1) The monitoring system shall measure data values at least once every 15 minutes.

(2) The owner or operator shall record either each measured data value or average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) average instead of all measured values. Owners or operators of batch process vents shall record each measured data value; if values are measured more frequently than once per minute, a single value for each minute may be recorded instead of all measured values.

(3) Daily average, batch cycle daily average, or block average values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraphs (d)(6) and (d)(7) of this section. The option of conducting parameter monitoring for batch process vents on a batch cycle daily average basis or a block average basis is described in § 63.1408(c).

(i) The daily average value, batch cycle daily average, or block average shall be calculated as the average of all parameter values recorded during the operating day, or batch cycle, as appropriate, except as specified in paragraph (d)(7) of this section. For batch process vents, only parameter values recorded during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has chosen to control shall be used to calculate the average. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous for daily average values or batch cycle daily average values. The calculated average shall cover the entire period of the batch cycle for block average values. As specified in § 63.1418(d)(3)(iii), the owner or operator shall provide the information needed to calculate batch cycle daily averages for operating days that include partial batch cycles.

(ii) The operating day shall be the period the owner or operator specifies in the operating permit or the Notification of Compliance Status for purposes of determining daily average values or batch cycle daily average values of monitored parameters. The block shall be the entire period of the batch cycle, as specified by the owner or operator in the operating permit or the Notification of Compliance Status for purposes of determining block average values of monitored parameters.

(4) [Reserved]

(5) [Reserved]

(6) *Records required when all recorded values are within the established limits.* If all recorded values for a monitored parameter during an operating day or block are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average, or block average, for that operating day. For these operating days or blocks, the records required in paragraph (d)(2) of this section shall also be retained for 5 years.

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) through (d)(7)(v) of this section shall not

be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device or recovery device operation when monitors are not operating:

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions; and

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(8) For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks, and records documenting the maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or that are specified in other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(9) The owner or operator of an affected source granted a waiver under § 63.10(f) shall maintain any information demonstrating whether an affected source is meeting the requirements for a waiver of recordkeeping or reporting requirements.

(e) *Reporting and notification.* In addition to the reports and notifications required by subpart A of this part as specified in Table 1 of this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable. All reports required by this subpart, and the schedule for their submittal, are listed in Table 6 of this subpart.

(1) Owners and operators shall not be in violation of the reporting requirements of this paragraph (e) for failing to submit information required to be included in a specified report if the owner or operator meets the requirements in paragraphs (e)(1)(i) through (e)(1)(iii) of this section. Examples of circumstances where this paragraph (e)(1) may apply include information related to newly-added equipment or emission points, changes in the process, changes in equipment required or utilized for compliance with the requirements of this subpart, or changes in methods or equipment for monitoring, recordkeeping, or reporting:

(i) The information was not known in time for inclusion in the report specified by this subpart;

(ii) The owner or operator has been diligent in obtaining the information; and

(iii) The owner or operator submits a report according to the provisions of paragraphs (e)(1)(iii)(A) through (e)(1)(iii)(C) of this section.

(A) If this subpart expressly provides for supplements to the report in which the information is required, the owner or operator shall submit the information as a supplement to that report. The information shall be submitted no later than 60 days after it is obtained, unless otherwise specified in this subpart.

(B) If this subpart does not expressly provide for supplements, but the owner or operator must submit a request for revision of an operating permit pursuant to part 70 or part 71, due to circumstances to which the information pertains, the owner or operator shall submit the information with the request for revision to the operating permit.

(C) In any case not addressed by paragraph (e)(1)(iii)(A) or (e)(1)(iii)(B) of this section, the owner or operator shall submit the information with the first Periodic Report, as required by this subpart, which has a submission deadline at least 60 days after the information is obtained.

(2) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of an affected source, reports may be submitted on electronic media.

(3) *Precompliance Report.* Owners or operators of affected sources requesting an extension for compliance; or requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; requesting approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.1417(e)(3)(vi)(A)(*3*); or establishing parameter monitoring levels according to the procedures contained in § 63.1418(c)(1) or (e); or following the procedures in § 63.1417(e)(2) shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (e)(3)(viii) of this section, as appropriate. If required, supplements to the Precompliance Report shall be submitted as specified in paragraph (e)(3)(xi) of this section.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later than 12 months prior to the compliance date. Unless the Administrator objects to a request submitted in the Precompliance Report within 45 days after its receipt, the request shall be deemed approved. For new affected sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section. Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(3)(xi) of this section.

(ii) A request for an extension for compliance, as specified in § 63.1401(e), may be submitted in the Precompliance Report. The request for a compliance extension will include the data outlined in § 63.6(i)(6)(i)(A), (B), and (D), as required in § 63.1401(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted in the Precompliance Report if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G of this part or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the information requested in paragraph (e)(3)(iv)(A) or (e)(3)(iv)(B) of this section shall be submitted in the Precompliance Report:

(A) The owner or operator shall submit notification of the intent to use the provisions specified in paragraph (g) of this section; or

(B) The owner or operator shall submit a request for approval to use alternative continuous monitoring and recordkeeping provisions as specified in paragraph (g) of this section.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart in the Precompliance Report. Alternative controls must be deemed by the Administrator to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g).

(vi) If an owner or operator demonstrates that the emissions estimation equations contained in § 63.1417(e)(3) are inappropriate as specified in § 63.1417(e)(3)(vi)(A)(*3*), the information required by § 63.1417(e)(3)(vi)(C)(*2*) shall be submitted in the Precompliance Report.

(vii) If an owner or operator establishes parameter monitoring levels according to the procedures contained in § 63.1418(c)(1) or (e), the following information shall be submitted in the Precompliance Report:

(A) Identification of which procedures (i.e., § 63.1418(c)(1) or (e)) are to be used; and

(B) A description of how the parameter monitoring level is to be established. If the procedures in § 63.1418(e) are to be used, a description of how performance test data will be used shall be included.

(viii) If an owner or operator is complying with the emission limit specified in § 63.1406 following the procedures specified in § 63.1417(e)(2), the information specified in § 63.1417(e)(2)(iii) shall be submitted in the Precompliance Report.

(ix) [Reserved]

(x) [Reserved]

(xi) Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(3)(xi)(A) or (e)(3)(xi)(B) of this section. Unless the Administrator objects to a request submitted in a supplement to the Precompliance Report within 45 days after its receipt, the request shall be deemed approved.

(A) Supplements to the Precompliance Report may be submitted to clarify or modify information previously submitted.

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; alternative controls, as specified in paragraph (e)(3)(v) of this section; engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph (e)(3)(vi) of this section; or to establish parameter monitoring levels according to the procedures contained in § 63.1418(c)(1) or (e), as specified in paragraph (e)(3)(vii) of this section.

(4) [Reserved]

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted within 150 days after the compliance dates specified in § 63.1401. For equipment leaks subject to § 63.1415, the owner or operator shall submit the information required in § 63.182(c) in the Notification of Compliance Status. For all other emission points, the Notification of Compliance Status shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(vi) of this section.

(i) The results of any emission point group determinations, performance tests, design evaluations, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, and any other information, as appropriate, required to be included in the Notification of Compliance Status under § 63.1401(l); under § 63.122, as referred to in § 63.1404, and § 63.1404 for storage vessels; under § 63.117, as referred to in § 63.1405, for continuous process vents; under § 63.146, as referred to in § 63.1414, for process wastewater; and § 63.1409 for batch process vents. In addition, each owner or operator shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, group determinations, and estimates of emissions that are based on measurements, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other required information shall be submitted, but a complete test report is not required.

(B) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(ii) For each monitored parameter for which a maximum or minimum level is required to be established, the Notification of Compliance Status shall contain the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section, unless this information has been established and provided in the operating permit. Further, as described in § 63.1404(d)(9), for those storage vessels for which the monitoring plan required by § 63.1404(d)(9) specifies compliance with the provisions of § 63.1418, the owner or operator shall provide the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section for each monitored parameter, unless this information has been established and provided in the operating permit. For those storage vessels for which the monitoring plan required by § 63.1404(d)(9) does not require compliance with the provisions of § 63.1418, the owner or operator shall provide the information specified in § 63.120(d)(3) as part of the Notification of Compliance Status, unless this information has been established and provided in the operating permit.

(A) The required information shall include the specific maximum or minimum level of the monitored parameter(s) for each emission point.

(B) The required information shall include the rationale for the specific maximum or minimum level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the control device.

(C) The required information shall include a definition of the affected source's operating day, as specified in paragraph (d)(3)(ii) of this section, for purposes of determining daily average values or batch cycle daily average values of monitored parameters. The required information shall include a definition of the affected source's block(s), as specified in paragraph (d)(3)(ii) of this section, for purposes of determining block average values of monitored parameters.

(D) For batch process vents, the required information shall include a definition of each batch cycle that requires the control of one or more batch emission episodes during the cycle, as specified in § 63.1417(e)(5)(iii) and § 63.1418(d)(3)(iii).

(iii) The determination of applicability for flexible operation units as specified in § 63.1400(f)(6).

(iv) The parameter monitoring levels for flexible operation units, and the basis on which these levels were selected, or a demonstration that these levels are appropriate at all times, as specified in § 63.1400(f)(7).

(v) The results for each predominant use determination for storage vessels belonging to an affected source subject to this subpart that is made under § 63.1400(g)(6).

(vi) Notification that the owner or operator has elected to comply with paragraph (h) of this section.

(vii) Notification that an affected source is exempt from the equipment leak provisions of § 63.1415 according to the provisions of § 63.1403(c). Notification shall include the information specified in § 63.1403(c)(2)(i).

(viii) If any emission point is subject to this subpart and to other standards as specified in § 63.1401 and if the provisions of § 63.1401 of this subpart allow the owner or operator to choose which testing, monitoring, reporting, and recordkeeping provisions will be followed, then the Notification of Compliance Status shall indicate which rule's requirements will be followed for testing, monitoring, reporting, and recordkeeping.

(ix) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 63.132(g) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual sent to the treatment facility.

(6) *Periodic Reports.* For existing and new affected sources, each owner or operator shall submit Periodic Reports as specified in paragraph (e)(6)(i) of this section. In addition, for equipment leaks subject to § 63.1415, the owner or operator shall submit the information specified in § 63.182(d), and for heat exchange systems subject to § 63.1413, the owner or operator shall submit the information specified in § 63.104(f)(2). Section 63.1418 shall govern the use of monitoring data to determine compliance for emissions points required to apply controls by the provisions of this subpart, with the following exception: As discussed in § 63.1404(d)(9), for storage vessels to which the provisions of § 63.1418 do not apply as specified in the monitoring plan required by § 63.1404(d)(9), the owner or operator is required to comply with the requirements set out in the monitoring plan and monitoring records may be used to determine compliance.

(i) Except as specified in paragraph (e)(6)(xii) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or containing the information in paragraphs (e)(6)(iii) through (e)(6)(xi) of this section, as appropriate, shall be submitted semiannually no later than 60 days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due. Subsequent reports shall cover each preceding 6-month period.

(ii) If none of the compliance exceptions specified in paragraphs (e)(6)(iii) through (e)(6)(xi) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that the affected source was in compliance for the preceding 6-month period and no activities specified in paragraphs (e)(6)(iii) through (e)(6)(xi) of this section occurred during the preceding 6-month period.

(iii) For an owner or operator of an affected source complying with the provisions of §§ 63.1404 through 63.1414 for any emission point, Periodic Reports shall include:

(A) All information specified in § 63.122 for storage vessels; §§ 63.117 and 63.118 for continuous process vents; § 63.1409 for batch process vents; § 63.104 for heat exchange systems; and § 63.146 for process wastewater;

(B) The daily average values, batch cycle daily average values, or block average values of monitored parameters for exceedances of operating parameters, as specified in § 63.1418(j), and for excursions, as specified in § 63.1418(k). For excursions, as specified in § 63.1418(k), the duration of periods when monitoring data were not collected shall be specified;

(C) The periods when monitoring data were not collected shall be specified;

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (e)(6)(iii)(D)(*4*) of this section, as applicable:

(*1*) [Reserved]

(*2*) Notification if a process change is made such that the group status of any emission point changes from Group 2 to Group 1. The owner or operator is not required to submit a notification of a process change if that process change caused the group status of an emission point to change from Group 1 to Group 2. However, until the owner or operator notifies the Administrator that the group status of an emission point has changed from Group 1 to Group 2, the owner or operator is required to continue to comply with the Group 1 requirements for that emission point.

(*3*) Notification if one or more emission point(s) or one or more APPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*ii*) of this section:

(*i*) A description of the addition to the affected source;

(*ii*) Notification of the group status of the additional emission point, if appropriate, or notification of all emission points in the added APPU.

(*4*) For process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the treatment facility or transferee.

(E) The information in paragraph (b)(1)(ii) of this section for reports of start-up, shutdown, and malfunction.

(iv) [Reserved]

(v) If any performance tests are reported in a Periodic Report, the following information shall be included:

(A) One complete test report shall be submitted for each test method used for a particular kind of emission point tested. A complete test report shall contain the information specified in paragraph (e)(5)(i)(B) of this section.

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information required shall be submitted, but a complete test report is not required.

(vi) The Periodic Report shall include the results for each change made to a primary product determination for an amino/phenolic resin made under § 63.1400(f)(6).

(vii) The Periodic Report shall include the results for each change made to a predominant use determination for a storage vessel belonging to an affected source subject to this subpart that is made under § 63.1400(g)(6).

(viii) [Reserved]

(ix) The Periodic Report required by § 63.1415(p) may be submitted as part of the Periodic Report required by paragraph (e)(6) of this section.

(x) Notification that the owner or operator has elected to comply with paragraph (h) of this section.

(xi) Notification that the owner or operator has elected to not retain the daily average, batch cycle daily average, or block average values, as appropriate, as specified in paragraph (h)(2)(i) of this section.

(xii) The owner or operator of an affected source shall submit quarterly reports for particular emission points as specified in paragraphs (e)(6)(xii)(A) through (e)(6)(xii)(D) of this section.

(A) The owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point if the Administrator requests the owner or operator to submit quarterly reports for the emission point.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) through (e)(6)(xi) of this section applicable to the emission point for which quarterly reporting is required under paragraph (e)(6)(xii)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year, the owner or operator may return to semiannual reporting for the emission point unless the Administrator requests the owner or operator to continue to submit quarterly reports.

(7) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (e)(7)(v) of this section.

(i) For storage vessels, the notifications of inspections required by § 63.1404 shall be submitted as specified in § 63.122(h)(1) and (h)(2).

(ii) The site-specific test plan required by § 63.1417(a)(3)(v) shall be submitted no later than 90 days before the planned date for the performance test. Unless the Administrator requests changes to the site-specific test plan within 45 days after its receipt, the site-specific test plan shall be deemed approved.

(iii) When the conditions of § 63.1400(f)(3)(i) or (f)(4)(i) are met, reports of changes to the primary product for an APPU or process unit as required by § 63.1400(f)(3)(ii) or (f)(4)(ii), respectively, shall be submitted.

(iv) Owners or operators of APPU or emission points (other than equipment leak components subject to § 63.1415) that are subject to § 63.1400(i)(1) or (i)(2) shall submit a report as specified in paragraphs (e)(7)(iv)(A) and (B) of this section.

(A) Reports shall include:

(*1*) A description of the process change or addition, as appropriate;

(*2*) The planned start-up date and the appropriate compliance date, according to § 63.1400(i)(1) or (2); and

(*3*) Identification of the emission points (except equipment leak components subject to § 63.1415), and group status if applicable, specified in paragraphs (e)(7)(iv)(A)(*3*)(*i*) through (e)(7)(iv)(A)(*3*)(*iii*) of this section, as applicable.

(*i*) All the emission points in the added APPU as described in § 63.1400(i)(1).

(*ii*) All the emission points in an affected source designated as a new affected source under § 63.1400(i)(2)(i).

(*iii*) All the added or created emission points as described in § 63.1400(i)(2)(ii).

(*4*) If the owner or operator wishes to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, alternative controls, engineering assessment to estimate emissions from a batch emissions episode, or wishes to establish parameter monitoring levels according to the procedures contained in § 63.1418(c)(1) or (e), a Precompliance Report shall be submitted in accordance with paragraph (e)(7)(iv)(B) of this section.

(B) Reports shall be submitted as specified in paragraphs (e)(7)(iv)(B)(*1*) through (e)(7)(iv)(B)(*3*) of this section, as appropriate.

(*1*) Owners or operators of an added APPU subject to § 63.1400(i)(1) shall submit a report no later than 180 days prior to the compliance date for the APPU.

(*2*) Owners or operators of an affected source designated as a new affected source under § 63.1400(i)(2)(i) shall submit a report no later than 180 days prior to the compliance date for the affected source.

(*3*) Owners or operators of any emission point (other than equipment leak components subject to § 63.1415) subject to § 63.1400(i)(2)(ii) shall submit a report no later than 180 days prior to the compliance date for those emission points.

(v) The information specified in § 63.1417(a)(1) shall be submitted when a small control device becomes a large control device, as specified in paragraphs (e)(7)(v)(A) through (e)(7)(v)(B) of this section.

(A) Notification that a small control device has become a large control device and the site-specific test plan shall be submitted within 60 days of the date the small control device becomes a large control device. The site-specific test plan shall include the information specified in § 63.1417(a)(3)(v). Approval of the site-specific test plan shall follow paragraph (e)(7)(ii) of this section.

(B) Results of the performance test required by § 63.1417(a)(1) shall be submitted within 150 days of the date the small control device becomes a large control device.

(8) *Operating permit application.* An owner or operator who submits an operating permit application instead of a Precompliance Report shall submit the information specified in paragraph (e)(3) of this section, Precompliance Report, as applicable.

(f) *Alternative monitoring parameters.* The owner or operator who has been directed by any section of this subpart or any section of another subpart referenced by this subpart, that expressly referenced this paragraph (f) to set unique monitoring parameters, or who requests approval to monitor a different parameter than those specified in § 63.1404 for storage vessels, § 63.1405 for continuous process vents, § 63.1418 for batch process vents, or § 63.1414 for wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(3) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

(1) The required information shall include a description of the parameter(s) to be monitored to ensure the recovery device, control device, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit or percent reduction, and an explanation of the criteria used to select the parameter(s).

(2) The required information shall include a description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation, the schedule for this demonstration, and a statement that the owner or operator will establish a level for the monitored parameter as part of the Notification of Compliance Status report required in paragraph (e)(5) of this section, unless this information has already been included in the operating permit application.

(3) The required information shall include a description of the proposed monitoring, recordkeeping, and reporting system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section is met:

(i) If monitoring and recordkeeping is not continuous; or

(ii) If reports of daily average values will not be included in Periodic Reports when the monitored parameter value is above the maximum level or below the minimum level as established in the operating permit or the Notification of Compliance Status.

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the provisions specified in § 63.1405 for continuous process vents, § 63.1418 for batch process vents, or § 63.1414 for wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(3)(iv) of this section, if not already included in the operating permit application, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

(1) The provisions in § 63.8(f)(5)(i) shall govern the review and approval of requests.

(2) An owner or operator of an affected source that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and that does not generate continuous

records may request approval to use a nonautomated system with less frequent monitoring, in accordance with paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average (or batch cycle daily average) values shall be calculated from these hourly values and recorded.

(ii) The request shall contain:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the affected source does not have an automated monitoring and recording system;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control or recovery device operating conditions, considering typical variability of the specific process and control or recovery device operating parameter being monitored.

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every 15 minutes) but records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) The requested system shall be designed to:

(A) Measure the operating parameter value at least once every 15 minutes;

(B) Except for the monitoring of batch process vents, calculate hourly average values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident;

(E) Calculate daily average, batch cycle daily average, or block average values of the monitored operating parameter based on all measured data; and

(F) If the daily average is not an exceedance of the operating parameter, as defined in § 63.1418(j), the data for that operating day may be converted to hourly average values and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain:

(A) A description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained;

(B) The method for calculating daily averages and batch cycle daily averages; and

(C) A demonstration that the system meets all criteria in paragraph (g)(3)(i) of this section.

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f)(4).

(h) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements specified in paragraph (h)(1) or (h)(2) of this section as alternatives to the provisions specified in this subpart for storage vessels, continuous process vents, batch process vents, or wastewater. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section.

(1) The owner or operator may retain only the daily average, batch cycle daily average or block average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status as specified in paragraph (e)(5)(vi) of this section or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section as specified in paragraph (e)(6)(x) of this section.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than start-ups, shutdowns, or malfunctions (e.g., a temperature reading of −200° C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day or block constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day or block. and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (h)(1)(ii)(A) through (h)(1)(ii)(C) of this section. All instances in an operating day or block constitute a single occurrence:

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour average values; and

(C) The running average reflects a period of operation other than a start-up, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than start-ups, shutdowns, or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day or block constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm or other means, if the running average parameter value calculated under paragraph (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (h)(1) of this section, at the times specified in paragraphs (h)(1)(v)(A) through (h)(1)(v)(C). The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (h)(1)(vi)(D) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (h) of this section.

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description, as provided in paragraph (a) of this section, except as provided in paragraph (h)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to impair its ability to comply with the requirements of paragraph (h)(1) of this section.

(D) Owners and operators subject to paragraph (h)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current. The current description shall, at all times, be retained on-site or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain all superseded descriptions for at least 5 years after the date of their creation. Superseded descriptions shall be retained on-site (or accessible from a central location by computer or other means that provides access within 2 hours after a request) for at least 6 months after their creation. Thereafter, superseded descriptions may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (h)(1) of this section for a monitored parameter with respect to an item of equipment and a period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator is no longer required to record the daily average, batch cycle daily average, or block average value for any operating day when the daily average, batch cycle daily average, or block average value is less than the maximum or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring accomplished during the period prior to the compliance date was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average, batch cycle daily average, or block average values, the owner or operator shall notify the Administrator in the next Periodic Report as specified in paragraph (e)(6)(xi) of this section. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day or during any block after the owner or operator has ceased recording daily average, batch cycle daily average, or block average values as provided in paragraph (h)(2) of this section, there is an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average, batch cycle daily average, or block average value for each operating day and shall notify the Administrator in the next Periodic Report. The owner or operator shall continue to retain each daily average, batch cycle daily average, or block average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through (h)(1)(iv) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (h)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(iv) For purposes of paragraph (h) of this section, an excursion means that the daily average, batch cycle daily average, or block average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except that the daily average, batch cycle daily average, or block average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3).

TABLE 1 TO SUBPART OOO OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES

Reference	Applies to subpart OOO	Comment
63.1(a)(1)	Yes	§ 63.1402 specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes	63.1401(g) through (l) and § 63.160(b) identify those standards which overlap with the requirements of subparts OOO and H of this part and specify how compliance shall be achieved.
63.1(a)(4)	Yes	This subpart OOO (this table) specifies the applicability of each paragraph in subpart A of this part to this subpart OOO.
63.1(a)(5)	No	[Reserved].
63.1(a)(6)–63.1(a)(8)	Yes.	
63.1(a)(9)	No	[Reserved].
63.1(a)(10)	Yes.	
63.1(a)(11)	Yes.	
63.1(a)(12)–63.1(a)(14)	Yes.	
63.1(b)(1)	No	§ 63.1400(a) contains specific applicability criteria.
63.1(b)(2)	Yes.	
63.1(b)(3)	No	§ 63.1400(b) provides documentation requirements for APPUs not considered affected sources.
63.1(c)(1)	Yes	This subpart OOO (this table) specifies the applicability of each paragraph in subpart A of this part to this subpart OOO.
63.1(c)(2)	No	Area sources are not subject to this subpart OOO.
63.1(c)(3)	No	[Reserved].
63.1(c)(4)	Yes.	

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TABLE 1 TO SUBPART OOO OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES—Continued

Reference	Applies to subpart OOO	Comment
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications overridden by this table.
63.1(d)	No	[Reserved].
63.1(e)	Yes.	
63.2	Yes	§ 63.1402 specifies those subpart A definitions that apply to this subpart OOO.
63.3	Yes.	
63.4(a)(1)–63.4(a)(3)	Yes.	
63.4(a)(4)	No	[Reserved].
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except the terms "source" and "stationary source" should be interpreted as having the same meaning as "affected source."
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Except § 63.1400(i) defines when construction or reconstruction is subject to new source standards.
63.5(b)(2)	No	[Reserved].
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except that the Initial Notification and § 63.9(b) requirements do not apply.
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except that § 63.1400(i) defines when construction or reconstruction is subject to new source standards.
63.5(c)	No	Reserved.
63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and § 63.9(b)(5) do not apply.
63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	§§ 63.1419(e)(5) and 63.1415(a)(4) specify Notification of Compliance Status requirements.
63.5(d)(2)	No	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.1415 are exempt.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply.
63.6(a)	Yes.	
63.6(b)(1)	Yes.	
63.6(b)(2)	Yes.	
63.6(b)(3)	Yes.	
63.6(b)(4)	Yes.	
63.6(b)(5)	Yes.	
63.6(b)(6)	No	Reserved.
63.6(b)(7)	No.	
63.6(c)(1)	Yes	Except that § 63.1401 specifies the compliance date.
63.6(c)(2)	No.	
63.6(c)(3)	No	Reserved.
63.6(c)(4)	No	Reserved.
63.6(c)(5)	Yes.	
63.6(d)	No	Reserved.
63.6(e)	Yes	Except as otherwise specified in this table, § 63.6(e) does not apply to Group 2 emission points.[a]
63.6(e)(1)(i)	No	This is addressed by § 63.1400(j)(4).
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.1415), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(A)	No	This is addressed by § 63.1400(j)(4).
63.6(e)(3)(i)(B)	Yes.	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes.	

TABLE 1 TO SUBPART OOO OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES—Continued

Reference	Applies to subpart OOO	Comment
63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in §63.1419(b)(1).
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in §63.1419(b)(1).
63.6(e)(3)(v)	Yes.	
63.6(e)(3)(vi)	Yes.	
63.6(e)(3)(vii)	Yes.	
63.6(e)(3)(vii) (A)	Yes.	
63.6(e)(3)(vii) (B)	Yes	Except the plan shall provide for operation in compliance with §63.1400(j)(4).
63.6(e)(3)(vii) (C)	Yes.	
63.6(e)(3)(viii)	Yes.	
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except §63.7(c), as referred to in §63.6(f)(2)(iii)(D), does not apply, and except that §63.6(f)(2)(ii) does not apply to equipment leaks subject to §63.1415.
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	This subpart OOO does not require opacity and visible emission standards.
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	Yes.	
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in §§63.1401(e) and 63.1419(e)(3)(i) for all emission points except equipment leaks, which are covered under §63.182(a)(6)(i).
63.6(i)(4)(ii)	No.	
63.6(i)(5)—(14)	Yes.	
63.6(i)(15)	No	Reserved.
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§63.1419(e)(5) specifies the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
63.7(a)(3)	Yes.	
63.7(b)	No	§63.1417 specifies notification requirements.
63.7(c)	No.	
63.7(d)	Yes.	
63.7(e)(1)	Yes	Except that all performance tests shall be conducted at maximum representative operating conditions.
63.7(e)(2)	Yes.	
63.7(e)(3)	No	This subpart OOO specifies requirements.
63.7(e)(4)	Yes.	
63.7(f)	Yes	Except that §63.144(b)(5)(iiii)(A) and (B) shall apply for process wastewater. Also, if a site specific test plan is not required, the notification deadline in §63.7(f)(2)(i) shall be 60 days prior to the performance test, and in §63.7(f)(3), approval or disapproval of the alternative test method shall not be tied to the site specific test plan.
63.7(g)	Yes	Except that references to the Notification of Compliance Status report in §63.9(h) are replaced with the requirements in §63.1419(e)(5). In addition, equipment leaks subject to §63.1415 are not required to conduct performance tests.
63.7(h)	Yes	Except §63.7(h)(4)(ii) may not be applicable, if the site-specific test plan in §63.7(c)(2) is not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No	Reserved.
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	This subpart OOO specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)	Yes.	
63.8(c)(1)(i)	Yes.	

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TABLE 1 TO SUBPART OOO OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES—Continued

Reference	Applies to subpart OOO	Comment
63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with §63.1419(b)(1)(i)(B); for equipment leaks, comply with §63.181(g)(2)(iii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§63.1418 specifies monitoring frequency; not applicable to equipment leaks because §63.1415 does not require continuous monitoring systems.
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–63.8(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in §63.1419(f) or (g); not applicable to equipment leaks because §63.1415 (through reference to subpart H of this part) specifies acceptable alternative methods.
63.8(f)(4)(ii)	No	Contents of request are specified in §63.1419(f) or (g).
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	This subpart OOO does not require continuous emission monitors.
63.8(g)	No	Data reduction procedures specified in §63.1419(d) and (h); not applicable to equipment leaks.
63.9(a)	Yes.	
63.9(b)	No	This subpart OOO does not require an initial notification.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No	§63.1417 specifies notification deadline.
63.9(f)	No	This subpart OOO does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§63.1419(e)(5) specifies Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§63.1419(a) specifies record retention requirements.
63.10(b)(2)	No	This subpart OOO specifies recordkeeping requirements.
63.10(b)(3)	No	§63.1400(b) requires documentation of sources that are not affected sources.
63.10(c)	No	§63.1419 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No	§63.1419(e) specifies performance test reporting requirements; not applicable to equipment leaks.
63.10(d)(3)	No	This subpart OOO does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except that reports required by §63.10(d)(5)(i) may be submitted at the same time as Periodic Reports specified in §63.1419(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points.
63.10(e)	No	§63.1419 specifies reporting requirements.
63.10(f)	Yes.	
63.11	Yes.	
63.12	Yes.	
63.13–63.15	Yes.	

[a] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points.

TABLE 2 TO SUBPART OOO OF PART 63—GROUP 1 STORAGE VESSELS AT EXISTING AND NEW AFFECTED SOURCES

Stored material	Vessel capacity (m³)	Vapor pressure[a] (kPa)
Aqueous formaldehyde	capacity ≥ 37.85	≥ 3.24.
Materials other than aqueous formaldehyde	capacity ≥ 38.46	≥ 16.89.

TABLE 2 TO SUBPART OOO OF PART 63—GROUP 1 STORAGE VESSELS AT EXISTING AND NEW AFFECTED SOURCES—Continued

Stored material	Vessel capacity (m³)	Vapor pressure[a] (kPa)
	capacity ≥ 340.69	≥ 3.10.

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 3 TO SUBPART OOO OF PART 63—KNOWN ORGANIC HAZARDOUS AIR POLLUTANTS (HAP) FROM THE MANUFACTURE OF AMINO/PHENOLIC RESINS ORGANIC HAPCAS NUMBER

Organic HAP	CAS number	Table 4, subpart F HAP (Y/N)	Table 9, subpart G HAP (Y/N)	Table 8, subpart G HAP (Y/N)
Acrylamide	79–06–1	No	No	No.
Aniline	62–53–3	Yes	No	No.
Biphenyl	92–52–4	Yes	Yes	No.
Cresol and cresylic acid (mixed)	1319–77–3	Yes	No	No.
Cresol and cresylic acid (m-)	108–39–4	Yes	No	No.
Cresol and cresylic acid (o-)	95–48–7	Yes	No	No.
Cresol and cresylic acid (p-)	106–44–5	Yes	No	No.
Diethanolamine	111–42–2	No	No	No.
Dimethylformamide	68–12–2	No	No	No.
Ethylbenzene	100–41–4	Yes	Yes	Yes.
Ethylene glycol	107–21–1	No	No	No.
Formaldehyde	50–00–0	Yes	No	No.
Glycol ethers	0	No	No	No.
Methanol	67–56–1	Yes	Yes	No.
Methyl ethyl ketone	78–93–3	Yes	Yes	No.
Methyl isobutyl ketone	108–10–1	Yes	Yes	No.
Naphthalene	91–20–3	Yes	Yes	No
Phenol	108–95–2	Yes	No	No.
Styrene	100–42–5	Yes	Yes	No.
Toluene	108–88–3	No	Yes	Yes.
Xylenes (NOS)	1330–20–7	Yes	No	No.
Xylene (m-)	108–38–3	Yes	Yes	Yes.
Xylene (o-)	95–47–6	Yes	Yes	No.
Xylene (p-)	106–42–3	Yes	Yes	Yes.

CAS No. = Chemical Abstract Registry Number.

TABLE 4 TO SUBPART OOO OF PART 63—BATCH PROCESS VENT MONITORING REQUIREMENTS

Control device	Parameters to be monitored	Frequency/recordkeeping requirements
Scrubber[a]	pH of scrubber effluent, and	Continuous records as specified in § 63.1408(e)(1).[b]
	Scrubber liquid and gas flow rates	Continuous records as specified in § 63.1408(e)(1).[b]
Absorber[a]	Exit temperature of the absorbing liquid, and	Continuous records as specified in § 63.1408(e)(1).[b]
	Exit specific gravity for the absorbing liquid	Continuous records as specified in § 63.1408(e)(1).[b]
Condenser[a]	Exit (product side) temperature	Continuous records as specified in § 63.1408(e)(1).[b]
Carbon Adsorber[a]	Total regeneration stream mass flow during carbon bed regeneration cycle(s), and.	Record the total regeneration stream mass flow for each carbon bed regeneration cycle.
	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s).
Thermal Incinerator	Firebox temperature[c]	Continuous records as specified in § 63.1408(e)(1).[b]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed.	Continuous records as specified in § 63.1408(e)(1).[b]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch process vents or aggregate batch vent streams are *not* introduced with or used as the primary fuel.	Firebox temperature[c]	Continuous records as specified in § 63.1408(e)(1).[b]

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TABLE 4 TO SUBPART OOO OF PART 63—BATCH PROCESS VENT MONITORING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Frequency/recordkeeping requirements
Flare	Presence of a flame at the pilot light	Hourly records of whether the monitor was continuously operating during batch emission episodes, or portions thereof, selected for control and whether the pilot flame was continuously present during said periods.
All Control Devices	Presence of flow diverted to the atmosphere from the control device *or*.	Hourly records of whether the flow indicator was operating during batch emission episodes, or portions thereof, selected for control and whether flow was detected at any time during said periods as specified in § 63.1408(e)(3).
	Monthly inspections of sealed valves	Records that monthly inspections were performed as specified in § 63.1408(e)(4)(i).
Scrubber, Absorber, Condenser, and Carbon Adsorber (as an alternative to the requirements previously presented in this table).	Concentration level or reading indicated by an organic monitoring device at the outlet of the control device.	Continuous records as specified in § 63.1411(e)(1).[b]

[a] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.
[b] "Continuous records" is defined in § 63.111.
[c] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.

TABLE 5 TO SUBPART OOO OF PART 63—OPERATING PARAMETER LEVELS

Device	Parameters to be monitored	Established operating parameter(s)
Scrubber	pH of scrubber effluent; and scrubber liquid and gas flow rates.	Minimum pH; and minimum liquid/gas ratio
Absorber	Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid.	Minimum temperature; and minimum specific gravity
Condenser	Exit temperature	Maximum temperature
Carbon absorber	Total regeneration stream mass flow during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum mass flow; and maximum temperature
Thermal incinerator	Firebox temperature	Minimum temperature
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	Minimum upstream temperature; and minimum temperature difference across the catalyst bed
Boiler or process heater	Firebox temperature	Minimum temperature
Other devices (or as an alternate to the requirements previously presented in this table)[a].	HAP concentration level or reading at outlet of device.	Maximum HAP concentration or reading

[a] Concentration is measured instead of an operating parameter.

TABLE 6 TO SUBPART OOO OF PART 63—REPORTS REQUIRED BY THIS SUBPART

Reference	Description of report	Due date
§ 63.1419(b) and Subpart A of this part	Refer to Table 1 and Subpart A of this part	Refer to Subpart A of this part
63.1419(e)(3)	Precompliance Report	Existing affected sources—12 months prior to the compliance date. New affected sources—with application for approval of construction or reconstruction.
63.1419(e)(5)	Notification of Compliance Status	Within 150 days after the compliance date.
63.1419(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.1419(e)(6)(i) for the due date for the first report.
63.1419(e)(6)(xii)	Quarterly reports upon request of the Administrator.	No later than 60 days after the end of each quarter.
63.1419(e)(7)(i)	Storage Vessels Notification of Inspection	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.
63.1419(e)(7)(iii)	Notification of Change in the Primary Product	For Notification under § 63.1400(f)(3)(ii)—notification submittal date at the descretion of the owner or operator.[a]

TABLE 6 TO SUBPART OOO OF PART 63—REPORTS REQUIRED BY THIS SUBPART—Continued

Reference	Description of report	Due date
		For Notification under § 63.1400(f)(4)(ii)—within 6 months of making the determination.

[a] Note that the APPU remains subject to this subpart until the notification under § 63.1400(f)(3)(i) is made.

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Part III

Federal Communications Commission

47 CFR Part 0, et al.

Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services; Final Rule

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101

[WT Docket No. 98–20; WT Docket No. 96–188; RM–8677; FCC 98–234]

Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission consolidates its licensing rules into a single set of rules for all wireless radio services. The Commission establishes a streamlined set of rules that minimizes filing requirements; eliminates redundant, inconsistent, or unnecessary submission requirements; and assures ongoing collection of reliable licensing and ownership data. The intended effect is to facilitate the development and use of the universal licensing system in the wireless telecommunications services.

DATES: Effective February 12, 1999, except for §§ 90.683, 90.763, 101.61, 87.347, 101.701, 22.709(b)(2), 22.803(b)(2), 22.929(b)(2), 22.875(d)(5), 80.511, 80.21, 80.513, 80.605, 80.533, 87.215, 90.625, 80.33, 80.53, 80.469, and 22.105 which contain modified information collection requirements and will not become effective until approved by the Office of Management and Budget. The FCC will publish a document announcing the effective date of these sections in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr., Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–7240 or Susan Magnotti, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0871.

SUPPLEMENTARY INFORMATION: This Report and Order in WT Docket No. 98–20, WT Docket No. 96–188, and RM–8677 adopted September 17, 1998 and released October 21, 1998, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington DC 20036 (202) 857–3800. The document is also available via the internet at http://www.fcc.gov/Bureaus/Wireless/Orders/1998/index.html.

Synopsis of Report and Order

I. Introduction

In this Report and Order (*R&O*), the Commission consolidates, revises, and streamlines the rules governing application procedures for radio services licensed by the Wireless Telecommunications Bureau (WTB or Bureau). This *R&O* will facilitate the Commission's ongoing development of Universal Licensing System (ULS), an integrated database and automated processing system to support electronic filing of applications, collection of licensing information, and public access to such information for all wireless services licensed by the Bureau. The Commission is replacing eleven separate WTB licensing databases with a new integrated licensing system and database. ULS will support full electronic filing of all licensing-related applications and other filings associated with such applications (*e.g.*, amendments and modifications, waiver requests, and applications for transfer and assignment of licenses). The Commission consolidates the wireless radio services licensing rules in a single section of part 1, to the extent practicable.

In addition, ULS will make licensing information both more accessible and more usable by Commission staff in carrying out our regulatory responsibilities. Similarly, ULS will enhance the availability of licensing information to the public, which will have on-line access to ULS by dialing into the Commission's wide area network (WAN) and using any World Wide Web (WWW) browser. License applicants will be charged normal filing fees for filing applications under ULS, but will save time and resources by filing electronically. For other uses of ULS, *e.g.*, persons performing research, the Commission will charge for on-line access. These charges will be limited to the amount necessary solely to recover the Commission's costs of maintaining ULS, including the cost of protecting the security of the system from outside tampering.

ULS will provide greater access to persons with disabilities. ULS will incorporate several features that will enable persons with disabilities to use the electronic filing and public access functions. The technical support hotline will have Text Telephone capabilities for the hearing impaired. ULS will allow sight impaired individuals access to Interactive Voice Response Technology, which will allow applicants to determine the status of pending license applications through a touch tone telephone.

II. Discussion

A. Electronic Filing and New Forms

1. Consolidation of Application Forms

Background. Presently there are over 40 different forms used in the WTB application and licensing process. The Commission replaces them with four new forms that have been developed specifically for ULS: FCC Forms 601, 602, 603, and 605.

Discussion. These forms are: (1) FCC Form 601 (Long-form Application for Authorization) will replace the Form 600, and will be used by the majority of applicants to file initial license applications, as well as filings for modification, renewal, special temporary authority, or other routine applications. (2) FCC Form 602 (Wireless Telecommunications Bureau Ownership Form) will be used to submit initial and updated ownership information for those wireless radio services that require the submission of such information. (3) FCC Form 603 (Application for Assignment of Authorization) will be used for requesting approval of assignment of licenses and transfers of control of licensees, including partitioning and disaggregation requests. (4) FCC Short Form 605 (Short-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted, and General Mobile Radio Services, as well as for Commercial Radio Operator Licenses) will be used as a short-form application for applicants who are not presently required to submit extensive technical data to receive a license.

The Commission eliminates the separate long-form filing requirement for winning bidders after the completion of an auction. Parties can routinely file a single application to authorize all licenses won at auction. The Commission will continue to use the auction short-form application (FCC Form 175) and the antenna registration form (FCC Form 854).

2. Mandatory Electronic Filing

Background. ULS has the capability to accept electronically filed applications in all wireless radio services. The Commission's has consistently encouraged electronic filing. With the advent of ULS, the Commission will have the ability to accept electronic filing of all forms used for wireless radio services.

Discussion. The Commission will require mandatory electronic filing for all services that are licensed by auction.

This approach is consistent with our prior decision in the *Part 1 Third Report and Order* to require electronic filing for FCC Form 175 applications filed prior to auction and for FCC Form 601 applications filed after the auction by winning bidders. This decision will expand mandatory electronic filing to include other types of applications in auctionable wireless services, including transfer and assignment applications, renewals, license modifications, waiver requests, and notifications. Mandatory electronic filing will apply to licensees in services subject to auction even if the particular license was not acquired by auction, *e.g.*, cellular and paging licensees who obtained their licenses by lottery must file license-related applications and notifications electronically when these mandatory filing requirements take effect. Mandatory electronic filing also applies to common carrier services which are not subject to auction because they operate on shared spectrum (*e.g.*, CMRS licenses operating on shared 929 MHz paging channels or Business Radio frequencies below 800 MHz). Common carriers generally have the resources and technical capacity to support electronic filing.

We will not impose the mandatory filing requirements adopted in this order for services that are subject to licensing by auction and for common carrier services subject to auction until (1) July 1, 1999, or (2) six months after application processing in ULS begins for that service, whichever is later. The Wireless Bureau will continue to release service-specific public notices announcing the relevant commencement date for the processing of applications in ULS. This transition period will provide a reasonable time for wireless services applicants and licensees to make the transition to electronic filing.

Manual filing will continue to be an option for applicants and licensees in the following categories: (1) The Part 90 Private Land Mobile Radio services for shared spectrum, spectrum in the public safety pool below 746 MHz, and spectrum in the public safety allocation above 746 MHz (however, Commission-certified frequency coordinators must file electronically; *see* the following paragraph); (2) the Part 97 Amateur Radio Service (however, Volunteer Examination Coordinators must file electronically; *see* the following paragraph); (3) the Part 95 General Mobile Radio Service and Personal Radio Service (excluding 218–219 MHz Service licenses); (4) the Part 80 Maritime Services (excluding the VHF 156–162 MHz Public Coast Stations); (5) the Part 87 Aviation Services; (6) Part 13 Commercial Radio Operators; and (7) Part 101 licensees who are also members of any of the foregoing classes. This decision could be subject to future modification. We may extend mandatory electronic filing to any wireless service where we find that electronic filing is both operationally feasible and cost-effective for licensees and applicants in that service. Adoption of mandatory electronic filing requirements for such services will not require further notice and comment, but we will provide at least six months public notice before such a requirement will take effect.

The Commission also notes that in a number of the above services, wireless applications must be coordinated prior to being filed and are often filed by the frequency coordinator on the applicant's behalf. Therefore, where frequency coordinators or other Commission-certified entities such as Amateur Radio volunteer examiner-coordinators (VECs) must file such applications must be filed electronically. Electronic filing by coordinators will also provide an alternative for wireless services applicants and licensees who are reluctant to file electronically themselves, and will increase the Commission's processing efficiency because a large percentage of applications will be filed by frequency coordinators.

The Commission recognizes that some applicants may not have access to computers with the hardware and capability to use the software necessary to submit their applications electronically, particularly since electronic filing will be accomplished by dial-in procedures and not over the Internet. We will maintain computers at our Washington, D.C., offices for the public to use to perform research and file forms or pleadings electronically.

3. Copy and Microfiche Requirements

Discussion. The Commission eliminates the current copy and microfiche requirements. Whether applications or pleadings are filed electronically or manually, all information will be available online to interested parties. After implementation of ULS, any data that is filed manually will be entered or scanned as necessary.

4. Filing of Pleadings Associated with Applications

Discussion. The Commission will allow electronic filing of pleadings regarding wireless radio service applications. ULS has the ability to allow interested parties to file pleadings electronically, including petitions to deny, petitions for reconsideration, applications for review, comments and subsequently filed pleadings related to such filings. ULS allows waiver requests to be filed electronically on FCC Forms 601, 603 or 605. Parties submitting pleadings via ULS must serve paper copies on all interested parties.

5. Letter Requests

Background. The Commission's rules currently permit licensees in some wireless services to request certain actions by letter instead of with a formal application filing. Each year WTB receives thousands of letter requests which must be processed manually. In addition, section 308(a) of the Communications Act of 1934, as amended (Communications Act) states that formal applications are not required during national emergencies or under other exceptional circumstances (Special Situations), 47 U.S.C. 308(a). This provision is not to be confused with the filing of requests for special temporary authority under section 309(f) of the Communications Act, 47 U.S.C. 309(f).

Discussion. The Commission eliminates letter filings for applications, modifications, renewals, amendments, extensions, cancellations, special temporary authorizations, and name and address changes, except for the Special Situations set forth in section 308(a) of the Communications Act. The forms are widely available to the public on the FGC's web page, via toll free telephone number, and through a fax-on-demand service, and their use will be far less burdensome for the public than drafting a letter request. Using a form instead of a letter will also enable Commission staff to handle requests more quickly and accurately. The Commission also notes that even if manually filed the ULS form is more likely than a letter to be sent directly to the appropriate Bureau and division for processing. Licensees may still request special temporary authority by telephone or FAX for emergencies or natural disasters. There will be no fees for use of the forms for non-feeable requests, such as an address change.

B. Standardization of Practices and Procedures for WTB Applications and Authorizations

1. Overview—Consolidation of Procedural Rules in Part 1

Background. In the past, the Commission has adopted service-specific rules and procedures for processing applications in each wireless service, which are for the most part set

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forth in separate rule parts pertaining to each service.

Discussion. The Commission consolidates the existing procedural rules for the wireless radio services into unified rules, located in part 1, that will be tailored to the new ULS database. Moreover, the Commission proposes to eliminate unnecessary or outdated procedural rules and conform inconsistent procedures to the extent feasible. The Commission notes that adopting a single set of procedural rules tailored to ULS will also make the licensing process more efficient and user-friendly. For example, applicants seeking multiple licenses in the same service or in more than one service will be able to submit basic licensee information (*e.g.*, name, address, ownership information) only once, and ULS can automatically incorporate this information into all subsequent applications associated with the same applicant.

2. Standardization of Major and Minor Filing Rules

Background. Under current WTB rules, the standards for distinguishing between major and minor filings, particularly amendments to applications and modifications of licenses, have been addressed on a service-specific basis. The distinction between major and minor filings has significant procedural consequences in the application process, because a major amendment to an application causes the application to be considered newly filed, while a minor amendment generally has no impact on the filing date. A major amendment may be subject to an additional public notice period (where public notice is required) or deemed untimely filed if the new filing date falls outside a filing window. Major modifications are subject to the same public notice requirements as initial applications, and typically require prior Commission approval even where public notice is not required. Minor modifications, by contrast, do not trigger public notice obligations and often do not require prior Commission approval.

Discussion. The Commission hereby adopts a single rule in part 1 that defines categories of major and minor changes for purposes of defining whether an amendment to an application or a request for license modification is major or minor. The Commission does not revise the types of applications which require public notice or frequency coordination. Some differentiation between services remains necessary based on whether they are licensed on a geographic area basis or a site-specific basis, provided it complies with the basic operational and technical rules applicable to the service. Therefore, the Commission has adopted a rule that accounts for the differences in geographic licensing and site-by-site licensing.

We define certain actions as major changes for all wireless services, regardless of whether the service is licensed geographically or on a site-specific basis. We also clarify our consolidated rule to maintain consistency with our current service-specific rules for major and minor changes. Such major changes include initial and renewal applications, *non-pro forma* transfers and assignments (include partitioning and disaggregation requests), applications that have significant environmental effect, applications requiring frequency coordination, and applications requesting an additional frequency or a frequency block that is not currently licensed to the applicant. Most site-based mobile services (*e.g.*, paging, SMR) licensees may make changes to internal sites without Commission notice or approval provided that they do not expand the service area or interference contour of the system as a whole. Any request requiring frequency coordination will be considered a major modification including both CMRS and PMRS systems.

With respect to fixed point-to-point, point-to-multipoint, and multipoint-to-multipoint services licensed on a site-specific basis, we adopt additional criteria for distinguishing major and minor changes that are based on the distinctive technical characteristics of these wireless services. We will treat multiple minor modifications as major if the cumulative effect of these modifications would be a major change to the system. We will require microwave licensees filing minor modifications to certify on Form 601 that the minor modifications do not give rise to a cumulative major modification.

We will allow licensees to implement all minor changes, as defined in the consolidated rule, without prior Commission approval. Licensees must notify the Commission within thirty days of implementing the change. We define as minor changes all amendments to applications and license modifications that are not specifically defined in our rule as major. These minor changes include but are not limited to: (1) Any *pro forma* transfer or assignment; (2) any name change not involving a change in ownership or control of the license; (3) changes to administrative information, *e.g.*, address, telephone number, or contact person; or (4) conversion of multiple site-specific licenses into a single wide-area license, where there is no change in the licensee's composite interference contour or service area. Prior approval continues to be required for *pro forma* assignments and transfers that are not subject to the Commission's forbearance policy, and for conversion of multiple site-specific licenses into a single wide-area license.

3. Submission of Ownership Information

Background. The existing service-specific rules contain varying requirements for submission of ownership information by wireless applicants and licensees. In the *Part 1 Third Report and Order*, the Commission required all applicants for licenses or for consent to assignment or transfer of licenses in auctionable services to provide specific ownership information with either their short-form (FCC Form 175) or long-form application (FCC Form 601). *See* 47 CFR 1.2112(a).

Discussion. ULS provides an opportunity to streamline the Commission's ownership disclosure requirements. The Commission adopts a consolidated rule governing all submissions of ownership information by wireless applicants and licensees. The Commission will use the new Form 602 as the common form on which all wireless applicants and licensees, subject to competitive bidding, submit required ownership information. Common carrier licenses are subject to auction under section 309(j) of the Act where mutual exclusivity exists. Common carrier licensees, including CMRS licensees operating on shared spectrum, who acquired their licenses by lottery or by other means besides auction are subject to these ownership reporting requirements when they apply for assignment, transfer, or renewal of a license. Entities applying for an initial license, renewal of license, and *non-pro forma* assignment or transfer of control, would file FCC Form 602 simultaneously with the relevant license application (FCC Form 175, 601, and 603). An applicant would need to submit only a single FCC Form 602 in connection with multiple applications and could reference the same information in all future applications without refiling the form. Licensees would also use FCC Form 602 to provide amended or updated ownership information when they reported the consummation of a *pro forma* assignment of license or transfer of control on FCC Form 603.

The Commission eliminates all duplicative and inconsistent reporting requirements in service-specific rule parts that deal with auctionable services, *e.g*, the reporting requirements in part 22. The Commission may require different or more specific ownership information where circumstances warrant; *e.g.*, applicants seeking small business eligibility for auction purposes must typically file more detailed information regarding ownership and financial structure.

The Commission concludes that there is no need to extend ownership reporting requirements (FCC Form 602) to applicants and licensees of governmental entities or to applicants and licensees in private, non-auctionable services. The completion of FCC Form 602 is also deemed unnecessary for the Amateur or General Mobile Radio Services or for Commercial Radio Operators, because these services are essentially personal in nature.

4. Frequency Coordination of Amendment and Modification Applications

Background. In services requiring frequency coordination in parts 90 and 101 there are differing rules pertaining to coordination for amendments and modifications that involve substantial engineering changes to applications. Section 90.175 of the Commission's rules identifies numerous changes that do not require frequency coordination. However, section 101.103(d) of the rules requires all applicants seeking to amend applications or modify their authorizations to obtain a new frequency coordination.

Discussion. The Commission amends section 101.103 by requiring frequency coordination only for those applicants and licensees filing amendments and modifications that involve changes to technical parameters that are classified as major. Licensees making minor changes to technical parameters would only be required to notify the Commission, as well as its frequency coordinator of the minor change.

5. Returns and Dismissals of Incomplete or Defective Applications

Background. Currently, incomplete or incorrectly filed applications are returned and/or dismissed in accordance with service-specific rules. ULS will reduce filing errors by assisting applicants who file electronically to fill in all required information. ULS will interactively check that required elements of applications are completed and prompt applicants to correct errors. The Commission anticipates that this system, in combination with the consolidated rules proposed herein, will result in a higher percentage of grantable applications and help to ensure the integrity of the data in the licensing database.

Discussion. The Commission conforms its filing rules for all wireless radio services applicants so that batch, interactive, and, where applicable, manual filers will be subject to the same requirements and procedures for defective or incomplete applications. Interactively filed applications will be screened in real time by the ULS system; therefore, errors will be unlikely but may occur in some instances where erroneous information is entered. In the case of batch and manually filed applications, incomplete or erroneous filings will not be detected until after the application is filed.

We adopt a consolidated rule in Part 1 governing the filing of incomplete or otherwise defective applications in all wireless services. Under the consolidated rule, as under existing rules, the Commission has the discretion to return applications for correction of minor filing errors, but it also has the authority to dismiss any incomplete or defective application without prejudice. The Commission will automatically dismiss any application that is defective because the applicant failed to sign the application, failed to pay the required filing fee, or filed outside of the applicable filing window. To ensure equivalent treatment of electronically batch-filed or manually filed applications that are unsigned, untimely, or not fee-compliant, such applications will be automatically dismissed by ULS after they are initially entered into the system. The Commission will remove those sections of the rules that provided for return and correction of applications with errors.

The Commission will also dismiss batch-filed and manually filed applications with other types of defects that are automatically screened by ULS when an application is interactively filed, *e.g.*, missing technical data or technical parameters that are inconsistent with the rules (where no waiver request is filed). Such dismissal will be without prejudice to the right of the applicant to refile, provided the relevant application window remains open. While we will generally dismiss defective or incomplete applications, we retain the discretion to return an application for correction if circumstances warrant. In such cases, we will return the application to the applicant. The applicant will then have thirty days from the date the notification is sent to file an amended application correcting the defect. We also delete those service-specific rules that provided a longer period for applicants to submit corrections.

When an application is returned for correction, the Commission will hold the application for the designated period so that a corrected application may be filed. If the applicant files a timely corrected application, it will ordinarily be processed as a minor amendment in accordance with the Commission's rules. Thus, it will have no effect on the initial filing date of the application or the applicant's filing priority. If, however, the amendment made by the applicant is not a simple correction but constitutes a major amendment to the application, it will be governed by the rules and procedures applicable to major amendments, *i.e.*, it will be treated as a new application with a new filing date. Finally, if the applicant fails to submit an amended application within the period specified in the notification, the application will be subject to dismissal for failure to prosecute.

The Commission also defined how ULS will handle confidential attachments. To ensure that these attachments are kept confidential in ULS, the Commission adopts the following security measures: (1) Any attachment designated as confidential will not be accessible from publicly available query utilities; and (2) a special user name and password will be required for Commission employees to view confidential attachments. To provide the same treatment under ULS as under the current system, the Commission proposes that if the request for confidential treatment is denied, the applicant would be informed and the attachments in question be deleted from the ULS database.

6. Discontinuation of "Reinstatement" Applications

Background. Presently, licensees in the Private Land Mobile Services and Fixed Microwave Radio Services who do not file a timely renewal application are given a 30-day period following the expiration of their licenses in which to request reinstatement. *See* 47 CFR 1.926(c). This practice is inconsistent with other wireless radio service licensing rules where reinstatement is not permitted. *See, e.g.*, 47 CFR 22.145.

Discussion. The Commission will provide pre-expiration letters of reminder to all wireless radio services licensees by regular mail. The Commission thereby eliminates the reinstatement period in those services that currently allow reinstatement applications. This change does not affect the five-year grace period within

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which holders of Commercial Radio Operator licenses may renew expired licenses without retaking the required examination. *See* 47 CFR 13.13(b). Specifically, the Commission will send letters of reminder to all wireless radio service licensees, both site-specific and geographic area licensees, 90 days before the expiration of their licenses. Under the newly adopted rules: (1) Licensees will receive notification that their licenses are about to expire and, therefore, should be responsible for submitting timely renewal applications; and (2) interactive electronic filing will make it easier for all licensees to timely file renewal applications. In addition, Commission forms are widely available to the public on the FCC's web page, http://www.fcc.gov/formpage.html; via toll free telephone number, 1–800–418–3676; through fax-on-demand service, (202) 418–0177; and via a toll free TTY number, 202–418–7238. We will not implement this decision to eliminate reinstatement applications for any wireless service until (1) July 1, 1999, or (2) six months after the commencement of application processing in ULS for that service, whichever is later. This transition period will provide a reasonable time for applicants and licensees to familiarize themselves with this procedure.

Although a license expires automatically on the date specified on the individual license, ULS will not show a license expiration as final until approximately thirty days after the renewal deadline. After the license expiration the previous licensee may file a new application for use of those frequencies subject to any service specific rules. Once that thirty-day period has elapsed, or the prior holder of the license files a new application for that spectrum, the license will then be available for the Commission to reassign by competitive bidding or other means according to the rules of the particular service.

7. Construction and Coverage Verification

Background. In all wireless radio services, licensees are subject to construction and, in some instances, coverage requirements, and are subject to automatic license cancellation if these requirements are not met. Different procedures have evolved in different services for verifying whether licensees have in fact met these requirements.

Discussion. Licensees may also construction notifications electronically using FCC Form 601. The Commission will send each licensee via regular mail a reminder letter 90 days before the applicable construction or coverage deadline. Licensees would then verify that they have met these requirements by updating their FCC Form 601 already on file with ULS. The Commission notes that the notification procedure proposed is not intended to replace the basic construction and coverage requirements. Thus, even if a licensee does not receive a reminder letter, it remains obligated to meet its construction and coverage benchmarks and cannot site the lack of notification as an excuse for non-compliance.

The Commission will require notifications filed by wireless radio services licensees, subject to competitive bidding, to be filed electronically. Licensees, exempt from mandatory electronic filing, must file their notifications manually on Form 601. If a licensee does not file the required notification of completion of construction or satisfaction of the coverage requirements, ULS will send a letter advising the licensee of the termination of the authorization. ULS will then generate a public notice announcing the termination, which would be deemed final 30 days after the public notice date.

The Commission hereby requires wireless radio licensees to certify compliance with construction requirements relating to modification applications that involve additional frequencies. The Commission also requires fixed microwave licenses awarded on a site-by-site basis to certify compliance with construction requirements for additional or increased service area coverage (*e.g.*, a new station, a change in antenna height or EIRP). In addition, the Commission amends section 101.63 of the rules, 47 CFR 101.63, to require fixed microwave licensees to file a further modification application if they fail to construct a granted modification.

We will not implement this decision on construction notification for any wireless service until (1) July 1, 1999, or (2) six months after the commencement of application processing in ULS for that service, whichever is later. This transition period will provide a reasonable time for applicants and licensees to familiarize themselves with this procedure.

8. Assignments of Authorization and Transfers of Control

Background. The Communications Act requires the Commission to approve assignments of licenses and transfers of control of licensees. *See* 47 U.S.C. 310(d). In the wireless radio services, the Commission currently process applications for proposed assignments and transfers of control in two ways. Following the approval of the assignment or transfer, the licensee must then file a notification with the Commission that the transaction has been consummated, at which point the Bureau amends its licensing database. We note that we recently exercised our forbearance authority for certain *pro forma* transfers of control and assignments or licenses involving telecommunications service providers licensed by the Wireless Telecommunications Bureau.

Discussion. The Commission hereby consolidates the transfer and assignment rules for all wireless services in part 1, and eliminates inconsistencies between the procedures that currently govern CMRS and microwave licenses. First, the Commission proposes to replace the multiple existing forms for transfers and assignments in the various services with FCC Form 603 for assignment of licenses and transfers of control. *See* proposed rule 47 CFR 1.948.

The Commission hereby conforms the rules with respect to post-transaction notification that a Commission-approved transfer or assignment has been consummated. The Commission will require post-consummation notification prior to changing the database to reflect the grant. *See* proposed rule 47 CFR 1.948. With the advent of ULS, the post-consummation notification process for all wireless licensees should be efficient and simple. Using the electronic filing capabilities of the system, licensees will provide such notification by accessing their previously filed Form 603 associated with a transaction and entering updated information regarding its consummation. The Commission will require post-consummation notification under ULS using procedures similar to those currently applicable to CMRS transfers and assignments. The Commission also concludes that these notification procedures should be reinstated for transfers and assignments of microwave licenses since the burden of filing such notifications will be substantially reduced.

In the case of *pro forma* transfers and assignments involving telecommunications carriers licensees will provide the required post-consummation notification on the FCC Form 603. Applicants will also file FCC Form 603 to request an extension of time for the consummation of a transaction.

9. Change to North American Datum 83 Coordinate Data

Background. To perform its licensing role, WTB requires that certain applicants submit coordinate data with their applications. In these rules, applicants are required to submit coordinate data using the 1927 North American Datum (NAD27) geographical survey. A more recent North American Datum (NAD83) was completed in 1983, which provides updated coordinate data. NAD83 was adopted as the official coordinate system for the United States in 1989.

Discussion. The Commission concludes that use of NAD83 would conform best with current Federal Aviation Administration regulations which require the use of NAD83 data. All wireless radio services application processing rules requiring the submission of site coordinate data are revised to require that all applicants and licensees use NAD83 datum for sites located in the coterminous United States and Alaska. Additionally, the Commission hereby requires site coordinate data for sites in areas such as Hawaii, Puerto Rico, the South Pacific Islands, etc., be submitted using WGS84. Adoption of this proposal would conform the rules with those of the FAA.

10. Use of Taxpayer Identification Numbers

Background. In 1996, Congress enacted the Debt Collection Improvement Act as part of an effort to increase collection from private entities of delinquent government debts. *See* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law No. 104–34, Chapter 10, 110 Stat 1321, 1321–1358 (1996) (DCIA). As a result of DCIA, the Commission and executive agencies are required to monitor and provide information about their regulatees to the U.S. Treasury. This provision includes a requirement that the Commission collect Taxpayer Identifying Numbers (TIN) and share them with the U.S. Treasury to ensure that the Commission does not refund monies to entities that have an outstanding debt with the federal government. TINs are 9-digit identifiers required of all individuals and employers to identify their tax accounts. Individuals use their Social Security Number as their TIN. Therefore, for the purposes of this *R&O*, the term "Taxpayer Identification Number" shall mean "Social Security Number" for individuals. Employers use their Employer Identification Number (EIN) as their TIN. TINs are an integral part of the DCIA system and are necessary for the collection of delinquent debt owed to federal agencies. The TIN matches payment requests with delinquent information. As a result, federal agencies have been required to share the TINs of payment recipients since April 26, 1996, the effective date of DCIA. The DCIA requires that agencies obtain the TIN from any person or entity doing business with the agency.

Discussion. The Commission concludes that all applicants and licensees, including attributable interest holders must submit a TIN as a prerequisite for using ULS and the Bureau should use TINs as the unique identifier for such parties. Parties submitting manually filed applications must supply their TIN on their application form because all such applications will be placed on ULS and a TIN is necessary to track these applications. Parties filing applications using ULS must complete Form 606 to register their TIN. Members of the public do not need to register a TIN to search the ULS database.

Therefore, for the purposes of implementing the ULS system, based upon the foregoing discussion and applicable statutes and regulations, the requirement for the TIN will operate as follows: first, all applicants for licenses and all licensees must register their TIN with this Commission through ULS; second, the real party in interest and/or the entity having actual or de facto control of any applicant or licensee, however such control may be manifested or styled, must supply its TIN; applicants and licensees who must identify officers, directors, and holders of ownership interests in the license of 10 percent or greater pursuant to section 1.2112(a) must supply the TINs of such officers, directors, and interest holders. *See* 47 CFR 1.2112.

The Commission will take a number of steps to prevent the TINs submitted from being misappropriated. First, TINs will not be available to the public. Applicants and licensees are cautioned to provide TINs only in the appropriate space on the form—and *not* on attachments. Second, only a small number of Commission employees would have access to TIN information in conjunction with their work. Finally, a Privacy Act submission will be published in the **Federal Register** to obtain the requisite public and Congressional comment and OMB approval prior to implementation of ULS.

C. Collection of Licensing and Technical Data

1. Overview

Background. The Commission identifies certain existing data collection requirements and licensing requirements that no longer serve a useful purpose or that can be further streamlined. The Commission realizes that technical data is needed in certain situations (*e.g.*, for coordination between adjacent geographic areas, for enforcement purposes, or to improve our overall management of the spectrum) and that some licensees may be required to submit more detailed information than previously required.

Discussion. To standardize the information required of those services licensed by geographic service area and in order to allow consistent treatment of licenses in similar situations, the Commission removes certain reporting requirements. The Commission removes the site notification requirement from Part 101 for LMDS geographic licenses, as well as from the Part 90 rules pertaining to auctioned 220 MHz and 800 MHz geographic licenses. Geographic area licenses are instead required to maintain site information as part of their station records.

The Commission continues to require all licenses to comply with existing procedures for environmental, quiet zone, and FAA approval of specific antenna sites where required by service rules. The Commission delegates to the Wireless Bureau authority, once ULS is implemented, to consider additional information collection requirements that can be eliminated.

2. Use of Notification or Certification in Lieu of Informational Filings

Discussion. The Commission replaces many data or other informational filing requirements with either certification or notification, where appropriate. An example of a new certification requirement in lieu of an information filing requirement can be found in proposed section 101.701, which requires common carrier fixed microwave licensees to certify that substantial non-private use is being made of facilities used to relay broadcast television signals. The Commission changes some informational filings to notification. An example of a new notification requirement in lieu of an informational filing is in proposed section 101.305, where non-dominant common carriers planning to discontinue service must give electronic notification of discontinuance to the Commission. The use of the notification and certification processes will substantially reduce the administrative burdens on the Commission and the filing burdens on applicants and licensees.

3. Public Mobile Radio Service Data Requirements

Background. Under part 22 of the Commission's rules, applicants for certain Public Mobile Radio Service licenses are required to file antenna model, manufacturer, and type with the Commission. *See* 47 CFR 22.529(b)(2). Unserved area applicants in the Cellular Radiotelephone Service are required to submit paper copies of (1) an application cover; (2) transmittal sheet; (3) table of contents; and (4) numerous engineering exhibits.

Discussion. The Commission finds that the collection of technical antenna information requirements for certain Public Mobile Radio Service applicants and licensees is unnecessary and that certain paper exhibits are no longer needed from unserved area applicants in the Cellular Radiotelephone Service. The Commission eliminates these requirements, but continues to require licensees to maintain the information as part of their station records and to provide it to licensees and applicants upon request. Unserved cellular area applicants will continue to provide maps. *See* 47 CFR 22.959.

4. Fixed Microwave Service Data Requirements

Discussion. Effective August 1996, the Commission consolidated all regulations concerning fixed microwave services from parts 21 and 94 of the Commission's rules into a single consolidated part 101, eliminating and combining a number of rules. Fixed microwave service applicants are required to file the following four items of technical information: type acceptance number, line loss, channel capacity, and baseband signal type for each application. *See* 47 CFR 101.21. The Commission finds that this information is unnecessary for licensing purposes and eliminates these requirements. The Commission does not eliminate other technical information requirements, including those associated with DEMS nodal stations applications and the identification of transmitter sites.

5. Maritime and Aviation Services Data Requirements

Discussion. Presently, applicants for certain types of station licenses in the Maritime and Aviation radio services are required to submit written showings with their applications in order to provide specific information concerning eligibility, to verify frequency coordination, or to show that the U.S. Coast Guard or Federal Aviation Administration approves of the operation of the proposed station. The Commission eliminates various rules which currently require applicants to attach the types of showings and coordination statements described above. Instead, applicants and licensees must certify that certain information is correct or that appropriate coordination has taken place in lieu of these written showings. In cases where applications involve safety of life at sea or in air navigation, the Commission reserves the right to contact applicants to obtain additional information where such action serves the public interest. The Commission eliminates the prohibition against assigning ship and aircraft station licenses, so long as applicants provide updated information concerning the stations in question upon application for assignment.

Section 87.305 requires flight test station applications to include a statement from a frequency advisory committee, including detailed technical information to be specified at the time of licensing. The Commission continues to require this independent frequency coordinator statement for flight test station applicants.

6. Commercial Radio Operator License Data Requirements

Discussion. Commission-licensed Commercial Radio Operators serve as radio officers aboard U.S. vessels, repair and maintain maritime or aviation radio equipment, and use international maritime and aviation frequencies to communicate with foreign stations. In order to obtain a license, an applicant must contact a Commission-certified examination manager, pass one or more written tests, obtain a proof of passing certificate (PPC) from the examination manager, and provide the original PPC to the Commission upon application for a license. *See* 47 CFR 13.9. In order to further the goal of electronic automation while best serving the public interest, the Commission allows applicants to use the current procedure for first filings, renewals, and modification applications. For a new license, the applicant must file Form 605 and mail the PPC to the processing office in Gettysburg, Pennsylvania. For renewals, the applicant need only file Form 605, since no attachment is required. With respect to PPC verification by COLE Managers, the current procedures will remain intact.

The Commission will implement changes to the Temporary Operator Permit section in Schedule "D" of Form 605 in a future version of the form. In addition, the Commission will consider in a future proceeding whether there are more efficient methods of verifying PPCs other than manual submissions. However, the Commission is not mandating electronic filing for Commercial Radio Operators at this time.

7. Amateur Radio Services

Background. The United States has reciprocal arrangements with 65 countries to allow amateur operators to operate their stations temporarily in the other country. The Commission currently grants annually some 2,000 reciprocal permits for alien amateur licensee (FCC Form 610–AL) to amateur operators from those countries. The visitor must obtain the application form (FCC Form 610–A)—which is often difficult to do in a foreign country—and file it with the Commission. No standards are required of these applicants other than possession of the license document issued by their country of citizenship. There is no fee. The FCC-issued permit simply confirms that the holder of the permit also holds a license from his or her home country. No permit is required for Canadian amateur operators who visit the United States because they are authorized to operate by rule. *See* CFR 97.5(c)(2), 97.7(b).

Discussion. The Commission concludes that the license from any foreign country with which the United States has reciprocity would stand as the proof that the foreign operator is qualified for the reciprocal operating authority, and authorizes all reciprocal operation by rule. This decision incorporates and resolves an existing rulemaking, WTB Docket No. 96–188, on the implementation of two pending international reciprocal operating arrangements—the European Conference of Postal and Telecommunications Administrations (CEPT) radio-amateur license, and the Inter-American Convention on an International Amateur Radio Permit (CITEL). No citizen of the United States, regardless of any other citizenship held, is eligible under this authorization procedure, and continues to have to acquire an FCC-issued amateur operator license by passing the requisite examinations.

The Commission sets the operation privileges granted and the station identification requirements; discusses the requirements of Commission-authorized amateur operator U.S. citizens who wish to operate in a member country; and establishes a framework for the International Amateur Radio Union to issue, with coordination from the Department of State, the necessary International Amateur Radio Permit for United States citizens to operate amateur stations in CITEL countries. The Commission also eliminates the one-year term for an alien reciprocal permit.

Currently, the Commission processes annually some 1,500 applications for new, renewed, and modified amateur service club, military recreation, and radio amateur civil emergency service ("RACES") station grants. ULS provides an opportunity to utilize the electronic batch filing services provided by the private sector. The Commission adopts its plan to use the services of any organization meeting the minimum requirements of section 4(g)(3)(B) of the Communications Act that completes a pilot electronic autogrant batch filing project similar to that completed by the 16 volunteer-examiner coordinators ("VECs"). These eligible private sector entities are required to provide these services on a volunteer, uncompensated and unreimbursed basis. In response to commenters' suggestions, the Commission also adopts changes to the amateur service application form, FCC Form 605, to incorporate the Physician's Certification of Disability.

8. General Mobile Radio Service

Background. The GMRS is a land mobile radio service for short-distance two-way communications. It is used to facilitate the personal or business activities of licensees and their immediate family members. All 23 GMRS channels are shared and no frequency coordination is required.

Discussion. The Commission streamlines the GMRS rules to collect the minimum amount of information necessary to serve the Commission's regulatory purpose and to eliminate those rules that are hortatory, unenforceable, or redundant. The Commission authorizes stations to transmit on any authorized channel from any geographical location when the FCC regulates communication, required licensees to submit only basic contact information, and removed or relocated rules pertaining to antenna requirements, permissible communications, and management of GMRS systems. The Commission retains the limit on the use of the 467 MHz channels for transmissions through repeaters.

III. Conclusion

In this proceeding, the Commission consolidates the licensing rules into a single set of rules for all wireless radio services. The Commission establishes a streamlined set of rules that minimizes filing requirements as much as possible; eliminates redundant, inconsistent, or unnecessary submission requirements; and assures ongoing collection of reliable licensing and ownership data. These consolidated rules will eliminate duplication and inconsistencies that exist in the rules and will make it easier for applicants to determine our application requirements by referencing a single set of licensing rules. Such consolidation will allow ULS to function more efficiently and provide licensing information to members of the public. The Commission also believes that ULS will shorten application filing times for applicants, make the most recent data available.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rule Making,* 63 FR 12013, Mar. 12, 1998, in WT Docket No. 98–20. The Commission sought written public comment on the proposals in the *Notice of Proposed Rule Making,* including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") in the *Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 ("CWAAA"), Public Law No. 104–121, 110 Stat. 847 (1996). The Commission received one comment on the IRFA.

A. Need for and objectives of this Report and Order. In this rulemaking, the Commission consolidates, revises, and streamlines its rules governing license application procedures for radio services licensed by the Wireless Telecommunications Bureau (WTB or Bureau). These rule changes will enable WTB to fully implement the Universal Licensing System (ULS), the Commission's new automated licensing system and integrated database for wireless services. The Commission also adopts new consolidated application forms to enable all wireless licensees and applicants to file applications electronically using the ULS. Finally, we establish procedures to ensure a smooth transition from our pre-existing licensing processes to the processes developed for ULS.

B. Summary of significant issues raised by public comments in response to the Initial Regulatory Flexibility Analysis (IRFA). SBT was the only entity to comment directly on our IRFA. It contends we did not assess the impact our proposed rules would have on the following groups: law firms, engineers, consultants, application preparation services and computer repair service firms. These groups typically act as intermediaries for applicants, and are not directly impacted by our rules. In the ULS Notice, we identified the nature of wireless services that may be affected by the proposed rules. Moreover, we specifically identified proposals in the *ULS Notice* intended to minimize the possible significant economic impact of our rules on small entities. Those groups identified by SBT are encompassed within our estimates of affected entities, as they work on behalf of the actual applicants. In addition, SBT has made racial, constitutional, and equity arguments over the effects of mandatory electronic filing. These arguments have been rendered moot since we decided to forego such a requirement until the ULS is fully tested and operational in all services.

Mandatory Electronic Filing: We will require mandatory electronic filing for all services that are licensed by auction. However, we will not impose mandatory filing for any wireless service until (1) July 1, 1999, or (2) six months after application processing in ULS begins for that service, whichever is later. Some commenters urge the Commission to exempt certain services or classes of users from mandatory electronic filing. As discussed, *supra,* we agree that licensees in many services consist primarily of individuals, small businesses, or public agencies that may lack resources to convert quickly to electronic filing. Therefore, manual filing will continue to be an option for applicants and licensees in the following categories: (1) The Part 90 Private Land Mobile Radio services for shared spectrum, spectrum in the public safety pool below 746 MHz, and spectrum in the public safety allocation above 746 MHz (however, Commission-certified frequency coordinators must file electronically); (2) the Part 97 Amateur Radio Service (however, Volunteer Examination Coordinators must file electronically); (3) the Part 95 General Mobile Radio Service and Personal Radio Service (excluding 218–219 MHz licenses); (4) the Part 80 Maritime Services (excluding the VHF 156–162 MHz Public Coast Stations); (5) the Part 87 Aviation Services; (6) Part 13 Commercial Radio Operators; and (7) Part 101 licensees who are also members of any of the foregoing classes. We note, however, that this decision could be subject to future modification.

Pleadings Associated with Applications: As discussed, *supra,* we agree with FCBA's concern that some entities may not have computers and the appropriate software to electronically file pleadings. Electronic filing of pleadings in ULS will be optional, not mandatory.

Letter Requests: In the *ULS Notice*, we sought comment on whether the public interest would be better served by requiring ULS forms be used rather than accepting letter requests. SBT contends letter requests should continue to be an option, especially for those representing themselves. However, we conclude that in order to have a universal licensing system, we must require standardized data fields and have access to the correct and complete data to enter into those fields. Letter requests simply do not provide information in a format that is suitable for ULS. We have taken this action to simplify the process for licensees, reduce time-consuming, resource-intensive review by FCC staff to determine the purpose of STAs and letter requests, and increase the public's assess to information.

On-line Charges: In the ULS Notice, we stated that a online charge will be applied to those using the ULS to retrieve licensing or mapping information, and that such charges will be limited to the recovery of maintenance costs. License applicants will not be subject to an on-line charge, but will continue to be responsible for normal filing fees. SBT asks that we ensure that such costs are not prohibitive for small business. The determination of any online fees will be addressed in a separate proceeding which will take into consideration the effect of such a charge on small business.

ULS Accessibility: SBT also contends that the Commission's web and FTP sites are often not available during the weekends, when small businesses are most likely to access these services. We disagree. Although the sites are sometimes taken down to add new features or to address technical problems, this is done for only a brief time when usage is generally the lowest. For the most part, the public has uninterrupted access to our electronic services 24 hours a day, all year round. As more features are built into the system, applicants and licensees will be able to conduct virtually all of their Commission-related business from their home computers.

C. Description and estimate of the number of small entities to which rules will apply. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. *See* 5 U.S.C. 603(b)(3); 604(a)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *See* 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. *See* 5 U.S.C. 601(3). Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. 632.

The rule changes will affect all small businesses filing new wireless radio service license applications or modifying or renewing an existing license. The Commission estimates the following number of small entities may be affected by the rule changes:

1. Cellular Radiotelephone Service

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. *See* 13 CFR. 121.201. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1000 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of this FRFA that nearly all of the current cellular licensees are small entities, as that term is defined by the SBA.

The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November, 1997, there are 804 companies reporting that they engage in cellular or PCS service. It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this FRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

2. Broadband and Narrowband PCS

Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. *See* 47 CFR 24.720(b)(1). This definition of "small entity" in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this FRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

3. 220 MHz Radio Services

The Commission is currently auctioning licenses in the 220–222 MHz band. The license blocks include five licenses in each of the 172 Economic Areas (EAs) and three EA-like areas; five licenses in six Economic Area groupings (EAGs); and three Nationwide licenses, comprising the same territory as all of the EAG combined. A small business for this auction is defined as an entity with average annual gross revenues of not more than $15 million for the preceding three years; and very small business is a firm with average annual gross revenues of not more than $3 million for the preceding three years. *See* 47 CFR 90.1021. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this FRFA the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

4. Paging

The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 "paging and other mobile" carriers reporting that they engage in these services. Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

5. Air-Ground Radiotelephone Service

The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service. *See* 47 CFR 22.99. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

6. Specialized Mobile Radio (SMR)

The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. This regulation defining "small entity" in the context of 900 MHz SMR has been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this FRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

7. Private Land Mobile Radio Services (PLMR)

PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. The Commission has not developed a definition of small entities specifically applicable to PLMR licensees due to the vast array of PLMR users. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. *See* 13 CFR. 121.201. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Any entity engaged in a commercial activity is eligible to hold a PLMR license, therefore these proposed rules could potentially impact every small business in the United States.

8. Aviation and Marine Radio Service

Small entities in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of the evaluations and conclusions in this FRFA, the Commission estimates that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA.

9. Offshore Radiotelephone Service

This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this FRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

10. General Wireless Communication Service

This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission sought and obtained SBA approval of a refined definition of "small business" for GWCS. According to this definition, a small business is

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any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than $40 million. *See* 47 CFR 26.4. The Commission will offer 875 geographic area licenses, based on Economic Areas, for GWCS. In estimating the number of small entities that may participate in the GWCS auction, the Commission anticipates that the makeup of current wireless services licensees is representative of future auction winning bidders.

11. Fixed Microwave Services

Microwave services includes common carrier fixed, (*see* 47 CFR 101 *et seq.*) private operational fixed, and broadcast auxiliary radio services (*see* 47 CFR 74.1 *et seq.*). At present, there are 22,015 common carrier fixed licensees and approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity with less than 1,500 persons. The Commission estimates that for purposes of this FRFA all of the Fixed Microwave licensees (excluding broadcast auxiliary radio licensees) would qualify as small entities under the SBA definition for radiotelephone communications.

12. Commercial Radio Operators (Restricted and Commercial)

There are several types of commercial radio operator licenses. Individual licensees are tested by Commercial Operator License Examination Managers (COLEMs). COLEMs file the applications on behalf of the licensee. The Commission has not developed a definition for a small business or small organization that is applicable for COLEMs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *" *See* 5 U.S.C. 601(4). The Commission's rules do not specify the nature of the entity that may act as a COLEM. However, all of the COLEM organizations would appear to meet the RFA definition for small organizations.

13. Amateur Radio Services

Amateur Radio service licensees are coordinated by Volunteer Examiner Coordinators (VECs). The Commission has not developed a definition for a small business or small organization that is applicable for VECs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *" *See* 5 U.S.C. 601(4). The Commission's rules do not specify the nature of the entity that may act as a VEC. All of the sixteen VEC organizations would appear to meet the RFA definition for small organizations.

14. Personal Radio Services

Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS). *See* 47 CFR 95.401 through 95.428; 47 CFR 95.1 through 95.181; 47 CFR 95.201 through 95.225; 47 CFR 95.191 through 95.194. To the extent any of these licensees may be small entities under the SBA definition, the Commission is unable at this time to estimate the exact number.

15. Public Safety Radio Services and Governmental Entities

Public Safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. *See* 47 CFR 90.15 through 90.27. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small business. *See* 5 U.S.C. 601(5). There are approximately 37,566 governmental entities with populations of less than 50,000. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. *See* 5 U.S.C. 601(5). The definition of a small governmental entity is one with a population of less than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000; however, this number includes 38,978 counties, cities, and towns and of those, 37,566 or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 96 percent or 81,600 are small entities that may be affected by our rules.

16. Rural Radiotelephone Service

The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. *See* 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). *See* 47 CFR 22.757; 22.729. The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

17. Marine Coast Service

On December 3, 1998, the Commission plans to auction Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of this auction, the Commission defines a "small" business as an entity that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed $15 million dollars. A "very small" business is one that, together with controlling interests and affiliates, have average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

18. Wireless Communications Services (WCS)

WCS is a wireless service, which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. There were seven winning bidders who qualified as very small business entities and one small business entity in the WCS auction. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected include these eight entities.

D. Description of the projected reporting, recordkeeping, and other compliance requirements. All wireless radio services will be subject to processing through the ULS rules. Under these rules, all new wireless radio services license applications will be processed through ULS using one or more of the new forms. In addition, any modification to an existing license will also use the new forms and will be entered and processed in the ULS. Other notifications that are required by the final rules, as outlined in the *R&O*, will also be filed with the new standard forms and processed through ULS. As noted, we expect that once the ULS is implemented the overall compliance burdens associated with these forms will be reduced.

Under the final rules, each applicant or licensee must submit the appropriate application form depending on the purpose of the application. Electronic filing through the ULS should be easier for applicants than the current system. The ULS will prompt the applicant for the necessary information and will provide interactive error messages if information is not filed correctly. The system will allow the applicant to correct their applications prior to submitting them, saving time and processing steps for the FCC and the applicants. The Commission notes that electronic filing will require a modem equipped computer to file interactively through the FCC private wide area network, which may be burdensome for some filers.

The ULS was designed to identify each individual licensee by their taxpayer identification number (TIN) assigned to the entity or individual (social security number will be used in the case of an individual filing for a license). The TIN is required by licensees pursuant to the Debt Collection Improvement Act of 1996. All existing licensees will be required to identify all of their call signs and their TIN. The system will assign a unique sequential identification number to each entity or individual. This number will be used instead of the TIN for public queries to the ULS database. Uniquely identifying entities and associating their license records to the entity will eliminate the data collection requirement for modifications and new license applications that are filed electronically through the ULS.

E. Steps taken to minimize significant economic impact on small entities, and significant alternatives considered: As noted in the *R&O*, the development of the ULS will greatly reduce the cost of preparing wireless applications and pleadings, while increasing the speed of the licensing process. We expect that these changes will benefit all, including small entities.

1. Electronic Filing and Consolidated Application Forms. In services that do not require extensive technical data, such as Amateur, Maritime, Aviation, Commercial Operators, and GMRS, the Commission implements a quick form to minimize the economic impact on small entities in these services. In addition, the forms have been developed to ensure that applicants are not required to duplicate information that has been already filed with the Commission. The Commission has also eliminated the current copy and microfiche requirements for electronically filed applications.

2. Auction Long-Form Application Submissions. The Commission allows winning bidders to file a single long-form application to cover all markets. Elimination of separate filing requirements will lift the administrative burden to small businesses of having to file separate long-form applications for each license won in the auction.

3. Filings of Pleadings. The Commission permits, but does not require, pleadings to be filed electronically. Manually filed pleadings will be scanned so that all pleadings will be easily accessible to the public. Electronic filing through the ULS should be easier for applicants than the current system because the ULS will prompt the applicant for the necessary information and will provide interactive error messages if information is not filed correctly. ULS will allow the applicant to correct their applications prior to submitting them. This system will allow all interested parties, including small entities, easy access to pleadings that are filed in connection with applications and licenses.

4. Standardization of Major and Minor Filing Rules. The Commission consolidates major and minor filing standards to both amendments of pending applications and to modifications of existing licenses. The current fragmented system is confusing for applicants and licensees, including small entities, because they are required to keep track of different procedures for different radio services. Licensees, especially small entities, will find it easier and more convenient to have all standards in one place in the rules.

5. Filing of Multiple Modifications. The Commission adopts a unified approach to the filing of multiple modification applications: if a modification application is pending regarding a given station parameter, and the licensee decides to elaborate upon or change that request with an additional request to modify the same or a related parameter, the document filed to effect that change will be automatically deemed an amendment to the modification, rather than a separate modification application. This will prevent applicants from filing conflicting modification requests and will prevent the Commission from erroneously granting or dismissing modification applications because they were processed out of sequence.

6. Construction Notification Requirements. The Commission will send notifications to licensees by ULS and mail before their construction or coverage deadlines. Notifications of construction or coverage would be accepted either electronically or manually. If a licensee fails to file the required notification of completion of construction or satisfaction of the coverage or substantial service requirements, the ULS would send a letter terminating the authorization.

7. Ownership Requirements. The Commission will require submission of ownership information from commercial mobile radio services (CMRS) licensees. Applicants and licensees will submit ownership information on FCC Form 602 when filing an initial application, a renewal application, an assignment of authorization, or a transfer of control. Private mobile radio services (PMRS) licensees, while subject to some alien ownership restrictions—*i.e.*, licenses may not be granted to or held by a foreign government or a representative of a foreign government (*see* 47 U.S.C. 310(a))—are not subject to most of the restrictions placed on CMRS licensees. Accordingly, PMRS and private fixed microwave licensees have not previously been required to submit detailed ownership information. The Commission will require PMRS licensees to certify their status with respect to foreign government ownership or ownership by a representative of a foreign government each time they submit a Form 601.

F. Report to Congress. The Commission shall send a copy of the Order, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). A copy of the Order and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Act (PRA)

Paperwork Reduction Act Analysis

Dates: Written comments by the public on the modified information collections are due January 13, 1999. Written comments must be submitted by OMB on the proposed information collections on or before February 12, 1999.

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Address: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov (comments filed to Judy Boley after December 3, 1998, should be submitted to Federal Communications Commission, Room C1804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov); and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

Further Information: For additional information concerning the information collections contained in this *R&O* contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

Supplementary Information: This *R&O* modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under PRA. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and OMB to take this opportunity to comment on the modified information collections contained in this *R&O*. OMB notification of action is due January 13, 1999. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of an existing collection.

Respondents: Individuals or households; business and other for-profit.

Number of Respondents: 240,320.

Estimated Time Per Response: 30 minutes to 1.25 hours.

Total Annual Burden: 210,280.

Frequency of Response: On occasion.

Total Annual Estimated Cost: $48,364,400. The Commission estimates approximately 50% of the respondents will hire a consultant to prepare this information. Consultant costs are included in this estimate.

Needs and Uses: Form 601 will be used as the general application (long form) for market based licensing and site-by-site licensing in the Wireless Telecommunications Services. The purpose of this revision is to include changes as a result of comments provided during the public comment period for the ULS NPRM (WT Docket No. 98–20; FCC 98–25) and to specify an option available to applicants in the 700 MHz band (Public Safety item WT Docket 96–86; FCC 98–191). In addition, we seek to clarify that FCC Form 601 filed following the issuance of an emergency Special Temporary Authorization (STA) as a result of phone or facsimile request requires an attachment (exhibit) describing the background of the emergency request. The data collected will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed and to update the database and provide for proper use of the frequency spectrum.

Major revisions to the 601 Main Form include adding questions to: (1) collect the number of feeable waiver requests; (2) indicate if attachments are being filed with the application; (3) provide for optional questions regarding race, ethnicity and gender and (4) adding and re-wording certification statements. The form also revised to delete question under AFee Status@ pertaining to NCE Broadcast exemption.

This long-form application is a consolidated application form and will be utilized with the Universal Licensing System (ULS) currently under development. This form comprises a main form containing administrative data and a series of Schedules used to identify technical information.

Many of the form schedules are also being revised. Schedule F is being revised to add a question for respondent to indicate number of new SIDs, if applicable, and a channel block indicated is also being added. Schedule G is being revised to collect information required for international coordination. Schedule H is being revised to add a frequency coordination question and a question for the respondents to specify antenna registration.

Schedule I being revised to add items for APack Name@ and an SMSA identified for DEMS. Also, the information regarding station class has been moved to Supplement 1. Additionally, a question for respondents to identify if multiple minor mods or amendments exceed the threshold for major modification was added, as well as a question for frequency coordination. Schedule I Supplement 1 is being revised to include quiet zone question and Supplement 2 is being revised to add MAS/DEMS subtypes and a Path Code Identifier.

Schedule K is being revised to add a new item for slow growth and the ability for notification of lower and upper frequency. Schedule L is being revised to add the ability for extension of lower and upper frequency.

The data collected on this form includes Taxpayer Identification Number for the applicant. This number will not be displayed to the public.

This consolidated form will eventually replace existing forms used by Wireless Telecommunications Bureau, such as FCC 313, 313R, 402, 402R, 405, 405A, 406, 415, 464, 464A, 489, 494, 503, 452R, 574, 574R, 600 and 701. As the Commission implements FCC 601 in phases for the various radio services and use of the Form 601 becomes mandatory after a transition period, other form burdens will be amended as necessary to reflect the obsolescence of the old forms.

This collection includes a Third Party requirement that certain applicants obtain frequency coordination. There is no additional time burden placed on the respondent for this requirement, however, it adds an extra Astep@ to the application filing requirements. Applicants forward their applications via the non-profit private sector frequency coordinators designated by type of radio service. The frequency coordinator then forwards the application and application remittance to the FCC. We estimate that 40% of the respondents (96,128) are affected by this requirement.

OMB Approval Number: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC 602.

Type of Review: Revision of an existing collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 3,000.

Estimated Time Per Response: 30 minutes to 2 hours. The Commission estimate that 50% of the respondents will hire an outside consultant to prepare the information.

Total Annual Burden: 3,750 hours.

Frequency of Response: On Occasion.

Total Annual Estimated Costs: $604,000. This cost includes an estimate that 50% of the respondents will hire an outside consultant at $200 per hour to prepare the information. It also includes $2.50 per respondent in postal fees for applicants filing manually.

Needs and Uses: This form is required to be filed by applicants who have acquired their license by participation in an FCC auction or who are applying for a license in a service which is subject to Part 1, Subpart Q of the Commission's Rules, or by common carrier licensees whether or not the service was originally subject to auction, under the following circumstances: (1) Applicants for a new license or authorization who do not have a current FCC Form 602 on file with the FCC; (2) Applicants filing to renew an existing license if there is no current FCC Form 602 on file with the FCC; (3) Applicants for a transfer of control of a license or assignment of authorization who do not have a current FCC Form 602 on file with the FCC; (4) Applicants who are going to participate in an FCC auction and do not have a current FCC Form 602 on file.

The purpose for the information collection is to obtain the identity of the applicant and to elicit information required by Section 1.2112 of the Commission's rules regarding: (1) Persons or entities holding a 10% or greater direct or indirect ownership interest in the applicant; (2) All affiliates of the applicant pursuant to Section 1.211; (3) All general partners in any general partnership in the applicant's chain of ownership, and; (4) All the members of any limited liability corporation in applicant's chain of ownership.

FCC 602 consists of a Main Form and associated schedules for technical information. Filers will use multiple copies of Form 602 as needed to list each direct and indirect owner and associated information. The data will be used by the FCC to determine whether the applicant is legally, technically and financially qualified to be licensed. The data collected on this form includes Taxpayer Identification Numbers for the Applicant/Licensee, any Related FCC Regulated Businesses of the Applicant/Licensee, Disclosable Interest Holders and any Related FCC Regulated Businesses of Disclosable Interest Holders. These numbers will not be displayed to the public.

The current Form 602 was designed for use by auctionable services only and this revision accommodates use by all Wireless Telecommunications Services. The use of FCC Form 602 will replace FCC Form 430 for Wireless services. We intend to allow a transition period after which FCC Form 430 will be discontinued for use by Wireless services.

The previous OMB submission for this form identified the number of respondents as 10,000 which includes all Wireless services. Therefore, there is no change in the number of respondents, only re-design of the form to accommodate the various services. The FCC Form 602 has also been completely revised in order to collect ownership information in a format where the relationships between various entities is readily apparent. The currently approved version of the Form 602 simply collects a list of attributable owners. In accordance with our rules, the new form collects this information along with the business relationship (attributable owner, indirect owner, etc.) which is essential for regulating the commercial use of the spectrum.

OMB Approval Number: 3060–0800.

Title: FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control.

Form No.: FCC 603.

Type of Review: Revision to an existing collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 32,151.

Estimated Time Per Response: 30 minutes to 1.75 hours. The Commission estimate that 50% of the respondents will hire an outside consultant to prepare the information.

Total Annual Burden: 36,171 hours.

Total Estimated Annual Costs: $7,114,000. This cost includes an estimate that 50% of the respondents will hire an outside consultant at $200 per hour to prepare the information. It also includes a $45 filing fee per respondent and $2.50 in postal fees for applicants filing manually.

Frequency of Response: On occasion.

Needs and Uses: This collection of information incorporates a previously approved OMB collection of 3060–0797. Collection 3060–0797 is eliminated.

Form 603 is a multi-purpose form used to apply for approval of assignment or transfer of control of licenses in the Wireless Radio Services. The data collected on this form is used by the FCC to determine whether the public interest would be served by approval of the requested assignment or transfer. This form is also used to notify the Commission of consummated assignments and transfers of wireless licenses that have previously been consented to by the Commission or for which notification but not prior consent is required. This form is used by applicants/licensees in the Public Mobile Services, Personal Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Fixed Microwave Services, Maritime Services (excluding ships), and Aviation Services (excluding aircraft).

The purpose of this form is to obtain information sufficient to identify the parties to the proposed assignment or transfer, establish the parties basic eligibility and qualifications, classify the filing, and determine the nature of the proposed service. Various technical schedules are required along with the main form applicable to Auctioned Services, Partitioning and Disaggregation, Undefined Geographical Area Partitioning, Notification of Consummation or Request for Extension of Time for Consummation.

The data collected on this form includes the Taxpayer Identification Numbers of the Licensee/Assignor, Transferor and the Assignee/Transferee. These numbers will not be displayed to the public. This form will eventually replace FCC Forms 490, 702, 703, 704 and 1046. After an initial transition period for use of the Form 603, the other forms will no longer be used.

The revised 603 is a consolidated form which now incorporates the information previously required on FCC Form 604 "Applications for Transfer of Control for Auctionable Services". Consolidating these forms required adding a number of questions regarding the following: related applications; transfer of control; determination if application is subject to streamlined processing under forbearance; waivers; attachments to the application; pending transfers or assignments not on the form 603; Sub Group Identification Numbers; and Assignor/Transferor Race, Ethnicity, gender; identification of partial assignments. There were also revisions to the certifications included on the form.

The number of respondents and burden hours have increased due to combining a previously approved collection (3060–0797) with this one.

OMB Approval Number: 3060–0795.

Title: ULS TIN Registration and FCC Form 606.

Form No.: FCC 606.

Type of Review: Revision to an Existing Collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 411,000.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 411,000 hours.

Frequency of Response: On Occasion.

Total Annual Estimated Costs: The Commission estimates respondents will incur no cost to provide this information.

Needs and Uses: The Wireless Telecommunications Bureau is currently developing a Universal Licensing System (ULS) with gradual implementation by radio service. This Universal Licensing System will eventually replace 11 separate licensing databases and provide for universal licensing forms and data collection for the many services that the Wireless Bureau provides.

The Universal Licensing System is driven by applicants Taxpayer Identification Number, which could be a Social Security Number or an Employer Identification Number. Existing licensees are required to provide WTB with their Taxpayer Identification Number and list of call signs in order to populate ULS and establish a unique sequential number for each licensee. A licensee may have multiple licenses under different names and addresses all covered under the same TIN number. A single entities licenses could be in various names, radio services and addresses.

During this period of collecting existing entities Taxpayer Identification Numbers and the process of linking the licenses for each entity, problems were encountered with various organizations responsible for only a certain portion of the entities total radio authorization. Therefore, it was necessary for the FCC to establish "Sub-TINs". Entities must obtain a Sub-Group Identification Number (SGIN) from the FCC in instances where the applicant or licensee does not have a unique TIN because it is a sub-group or department of the entity identified by the TIN (e.g., a governmental entity or academic institution) and therefore shares the TIN with other subgroups or departments of the same entity. The SGIN allows each sub-group to track the licenses it holds.

The Commission is revising this collection to in response to comments received on the ULS NPRM. Entities using and registering their TINS requested the Commission add the SGIN. Most of the SGIN's will be filed via FCC Form 601. However, there may be instances of where FCC 606 filers need to provide SGINs. The estimated number of respondents and burden remains the same.

The Taxpayer Identification Number or the SGIN will not be displayed to the public.

The Wireless Bureau strongly encourages submission of this information electronically and has developed an interactive electronic application for this purpose, FCC Form 606. A series of public notices have been issued to collect this information by radio service.

The information collected in the application will be used to populate the Universal Licensing System and to assign a unique identifier to each licensee for interaction with the ULS. Assignment of the unique identifier will be automatically generated by the system. This information will also be used to match records in the licensing database to the Collection System records to validate payment for applications and for Debt Collection purposes.

OMB Approval Number: 3060–XXXX.

Title: Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure Requirements.

Form No.: N/A.

Type of Review: New collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 8,255 Recordkeepers. In addition to the recordkeeping requirements some of the respondents may be required to coordinate various actions with Third Parties. The total number of responses is 11,242.

Estimated Time Per Response: 30 minutes.

Total Annual Burden: 5,624 hours.

Frequency of Response: On Occasion.

Total Annual Estimated Costs: No Additional Costs.

Needs and Uses: ULS establishes a streamlined set of rules that minimizes filing requirements; eliminates redundant, inconsistent, or unnecessary submission requirements; and assures ongoing collection of reliable licensing and ownership data. The recordkeeping and third party disclosure requirements contained in this collection are a result of the eliminate of a number of filing requirements. The ULS forms contain a number of certifications, which eliminated for a number of previous filing requirements. However, applicants must maintain records to document compliance with the requirements. In some instance applicants may also be required to coordinate activities with third parties prior to submitting applications.

V. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 47 CFR Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules are *Amended* as set forth in the rule changes.

It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

It is further ordered that pursuant to section 5(c) of the Communications Act of 1934 (*see* 47 U.S.C. 155(c)), the Chief, Wireless Telecommunications Bureau, *is granted delegated authority* to develop, implement, modify rules and procedures for the Universal Licensing System to the extent stated herein.

It is further ordered that Petition for Rule Making RM–8677 is granted as indicated herein and WT Docket No. 96–188 is *terminated.*

List of Subjects in 47 CFR Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Final Rules

Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of Chapter 1 of Title 47 of the Code of Federal Regulations (CFR) are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.121 is amended by revising paragraph (b) to read as follows:

§ 0.121 Location of field installations.

* * * * *

(b) Protected field offices are located at the following geographical coordinates (coordinates are referenced to North American Datum 1983 (NAD83)):

Allegan, Michigan
42°36′20.1″ N. Latitude
85°57′20.1″ W. Longitude

Anchorage, Alaska
61°09′41.0″ N. Latitude
150°00′03.0″ W. Longitude

Belfast, Maine

	44°26′42.3″ N. Latitude	69°04′56.1″ W. Longitude
Canandaigua, New York	42°54′48.2″ N. Latitude	77°15′57.9″ W. Longitude
Douglas, Arizona	31°30′02.3″ N. Latitude	109°39′14.3″ W. Longitude
Ferndale, Washington	48°57′20.4″ N. Latitude	122°33′17.6″ W. Longitude
Grand Island, Nebraska	40°55′21.0″ N. Latitude	98°25′43.2″ W. Longitude
Kingsville, Texas	27°26′30.1″ N. Latitude	97°53′01.0″ W. Longitude
Laurel, Maryland	39°09′54.4″ N. Latitude	76°49′15.9″ W. Longitude
Livermore, California	37°43′29.7″ N. Latitude	121°45′15.8″ W. Longitude
Powder Springs, Georgia	33°51′44.4″ N. Latitude	84°43′25.8″ W. Longitude
Sabana Seca, Puerto Rico	18°27′15.8″ N. Latitude	66°13′35.6″ W. Longitude
Santa Isabel, Puerto Rico	18°00′18.9″ N. Latitude	66°22′30.6″ W. Longitude
Vero Beach, Florida	27°36′22.1″ N. Latitude	80°38′05.2″ W. Longitude
Waipahu, Hawaii	21°22′33.6″ N. Latitude	157°59′44.1″ W. Longitude

3. Section 0.401 is amended by adding paragraph (b)(3) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(b) * * *

(3) Alternatively, applications and other filings may be sent electronically via the Universal Licensing System (ULS).

4. Section 0.408 is amended by adding entries for FCC 601, FCC 602, FCC 603, and FCC 605 to the end of the table in paragraph (b) to read as follows:

§ 0.408 OMB control numbers and expiration dates assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

3060–0798.	FCC 601	XXXX
3060–0799.	FCC 602	XXXX
3060–0800.	FCC 603	XXXX
3060–0850.	FCC 605	10/31/01

* * * * *

5. Section 0.453 is amended by removing and reserving paragraph (g)(1) and revising introductory text of paragraph (h) and paragraph (h)(1) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(g) * * *

(1) * * * [Reserved]

(2) * * *

(h) *The Wireless Telecommunications Bureau Reference Room.* The following documents, files and records are available.

(1) *The Wireless Telecommunications Bureau Reference Room*—Gettysburg. Commercial radio operator application files and all authorizations in the Wireless Radio Services and files relating thereto, which includes Land Mobile, Microwave, Aviation Ground and Marine Coast applications. All of these materials are available in the Commission's offices in Gettysburg, Pennsylvania. See § 0.457(f)(3). This reference room also contains station files containing applications and related materials for Remote Pickup, Aural STL/ICR, TV Auxiliary, and Low Power Auxiliary Stations in the Mass Media services. This reference room also contains station files containing applications and related materials for the Point-to-Point Microwave (including the Local Television Transmission Service) and Digital Electronic Message (DEMS) services in the Common Carrier services. Cards summarizing the historical record of applications and dispositions of the Broadcast Auxiliary service through May 1982 are available for inspection as well.

* * * * *

6. Section 0.482 is revised to read as follows:

§ 0.482 Application for waiver of wireless radio service rules.

All requests for waiver of the rules (*see* § 1.925) governing the Wireless Radio Services (*see* § 1.907) that require a fee (*see* § 1.1102) shall be submitted via the Universal Licensing System or to the Mellon Bank, Pittsburgh, Pennsylvania at the address set forth in § 1.1102. Waiver requests that do not require a fee should be submitted via the Universal Licensing System or to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245. Waiver requests attached to applications must be submitted in accordance with § 0.401(b) or § 0.401(c) of the rules.

7. Section 0.491 is revised to read as follows:

§ 0.491 Application for exemption from compulsory ship radio requirements.

Applications for exemption filed under the provisions of §§ 352(b) or 383 of the Communications Act; Regulation 4, chapter I of the Safety Convention; Regulation 5, chapter IV of the Safety Convention; or Article IX of the Great Lakes Agreement, must be filed as a waiver request using the procedures specified in § 0.482 of this part. Emergency requests must be filed via the Universal Licensing System or at the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW–B204, Washington, DC 20554.

PART 1—PRACTICE AND PROCEDURE

8. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303, and 309(j) unless otherwise noted.

9. Section 1.4 is amended by adding a sentence to the end of paragraph (f) to read as follows:

§ 1.4 Computation of time.

* * * * *

(f) * * * Applications, attachments and pleadings filed electronically in the Universal Licensing System (ULS) pursuant to § 1.913(b) or § 1.939(b) must be received before midnight on the filing date.

* * * * *

10. Section 1.41 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.41 Informal requests for Commission action.

* * * In application and licensing matters pertaining to the Wireless Radio Services, as defined in § 1.904 of this part, such requests may also be sent electronically, via the ULS.

11. Section 1.45 is amended by adding a sentence to the end of the introductory paragraph, and revising paragraphs (a), (b) and (c) to read as follows:

§ 1.45 Pleadings; filing periods.

* * * Pleadings associated with licenses, applications, waivers and other documents in the Wireless Radio Services may be filed via the ULS.

(a) *Petitions.* Petitions to deny may be filed pursuant to § 1.939 of this part.

(b) *Oppositions.* Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed.

(c) *Replies.* The person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired. The reply shall be limited to matters raised in the oppositions, and the response to all such matters shall be set forth in a single pleading; separate replies to individual oppositions shall not be filed.

* * * * *

12. Section 1.49 is amended by revising the first sentence of paragraph (e) to read as follows:

§ 1.49 Specifications as to pleadings and documents.

* * * * *

(e) Petitions, pleadings, and other documents associated with licensing matters in the Wireless Radio Services may be filed electronically in ULS. * * *

* * * * *

13. Section 1.50 is revised to read as follows:

§ 1.50 Specifications as to briefs.

The Commission's preference is for briefs that are either typewritten, prepared by other mechanical processing methods, or, in the case of matters in the Wireless Radio Services, composed electronically and sent via ULS. Printed briefs will be accepted only if specifically requested by the Commission. Typewritten, mechanically produced, or electronically transmitted briefs must conform to all of the applicable specifications for pleadings and documents set forth in § 1.49.

14. Section 1.51 is amended by adding new paragraphs (f), (g), and (h) to read as follows:

§ 1.51 Number of copies of pleadings, briefs and other papers.

* * * * *

(f) For application and licensing matters involving the Wireless Radio Services, pleadings, briefs or other documents may be filed electronically in ULS, or if filed manually, one original and one copy of a pleading, brief or other document must be filed.

(g) Participants that file pleadings, briefs or other documents electronically in ULS need only submit one copy, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments. (see § 1.49)

(h) Pleadings, briefs or other documents filed electronically in ULS by a party represented by an attorney shall include the name, street address, and telephone number of at least one attorney of record. Parties not represented by an attorney that file electronically in ULS shall provide their name, street address, and telephone number.

15. Section 1.52 is amended by revising the third and fourth sentences to read as follows:

§ 1.52 Subscription and verification.

* * * Either the original document, the electronic reproduction of such original document containing the facsimile signature of the attorney or represented party, or, in the case of matters in the Wireless Radio Services, an electronic filing via ULS is acceptable for filing. If a facsimile or electronic reproduction of such original document is filed, the signatory shall retain the original until the Commission's decision is final and no longer subject to judicial review. * * *

16. Section 1.83 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 1.83 Applications for radio operator licenses.

* * * * *

(b) * * * This bulletin is available from the Commission's Forms Distribution Center by calling 1–800–418-FORM (3676).

§ 1.84 [Removed]

17. Section 1.84 is removed.

18. Section 1.85 is revised to read as follows:

§ 1.85 Suspension of operator licenses.

Whenever grounds exist for suspension of an operator license, as provided in § 303(m) of the Communications Act, the Chief of the Wireless Telecommunications Bureau, with respect to amateur and commercial radio operator licenses, may issue an order suspending the operator license. No order of suspension of any operator's license shall take effect until 15 days' notice in writing of the cause for the proposed suspension has been given to the operator licensee, who may make written application to the Commission at any time within the said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Wireless Telecommunications Bureau and said suspension shall be held in abeyance until the conclusion of the hearing. Upon the conclusion of said hearing, the Commission may affirm, modify, or revoke said order of suspension. If the license is ordered suspended, the operator shall send his operator license to the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, in Washington, DC, on or before the effective date of the order, or, if the effective date has passed at the time notice is received, the license shall be sent to the Commission forthwith.

19. Section 1.106 is amended by adding a new paragraph (o) to read as follows:

§ 1.106 Petitions for reconsideration.

* * * * *

(o) Petitions for reconsideration of licensing actions, as well as oppositions and replies thereto, that are filed with respect to the Wireless Radio Services, may be filed electronically via ULS.

20. Section 1.821 is revised to read as follows:

§ 1.821 Scope.

The provisions of §§ 1.822 and 1.824 of this part apply as indicated to those applications for permits, licenses or authorizations in the Multichannel Multipoint Distribution Service for which action may be taken by the Mass Media Bureau pursuant to delegated authority.

§ 1.823 [Removed]

21. Section 1.823 is removed.

§ 1.825 [Removed]

22. Section 1.825 is removed.

23. Subpart F of Part 1is revised to read as follows:

Subpart F—Wireless Telecommunications Services, Applications and Proceedings

Scope and Authority

Sec.

1.901 Basis and purpose.
1.902 Scope.
1.903 Authorization required.
1.907 Definitions.

Application Requirements and Procedures

1.911 Station files.
1.913 Application forms: electronic and manual filing.
1.915 General application requirements.
1.917 Who may sign applications.
1.919 Ownership information.
1.923 Content of applications.
1.924 Quiet zones.
1.925 Waivers.
1.926 Application processing; initial procedures.
1.927 Amendment of applications.
1.929 Classification of filings as major or minor.
1.931 Application for special temporary authority.
1.933 Public notices.
1.934 Defective applications and dismissal.
1.935 Agreements to dismiss applications, amendments or pleadings.

1.937 Repetitious or conflicting applications.
1.939 Petitions to deny.
1.945 License grants.
1.946 Construction and coverage requirements.
1.947 Modification of licenses.
1.948 Assignment of authorization or transfer of control, notification of consummation.
1.949 Application for renewal of license.
1.951 Duty to respond to official communications.
1.955 Termination of authorizations.
1.956 Settlement conferences.
1.957 Procedure with respect to amateur radio operator licenses.

Reports to be Filed with the Commission

1.981 Reports, annual and semi-annual.

Subpart F—Wireless Telecommunications Services Applications and Proceedings

24. § 1.901 is revised to read as follows:

§ 1.901 Basis and purpose.

These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C 151 *et seq.* The purpose of these rules is to establish the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in this part and in Parts 13, 20, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of this chapter.

25. Sections 1.902, 1.903 and 1.907 are added to read as follows:

§ 1.902 Scope.

In case of any conflict between the rules set forth in this subpart and the rules set forth in Parts 13, 20, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of Title 47, Chapter I of the Code of Federal Regulations, the rules in Part 1 shall govern.

§ 1.903 Authorization required.

(a) *General rule.* Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part, except as specified in paragraph (b) of this section.

(b) *Restrictions.* The holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. Authorizations may be granted upon proper application, provided that the Commission finds that the applicant is qualified in regard to citizenship, character, financial, technical and other criteria, and that the public interest, convenience and necessity will be served. *See* §§ 301, 308, and 309, 310 of this chapter.

(c) *Subscribers.* Authority for subscribers to operate mobile or fixed stations in the Wireless Radio Services, except for certain stations in the Rural Radiotelephone Service and the Air-Ground Radiotelephone Service, is included in the authorization held by the licensee providing service to them. Subscribers are not required to apply for, and the Commission does not accept, applications from subscribers for individual mobile or fixed station authorizations in the Wireless Radio Services, except as follows: individual authorizations are required to operate general aviation airborne mobile stations in the Air-Ground Radiotelephone Service. *See* § 22.82 of this chapter. Individual authorizations are required to operate rural subscriber stations in the Rural Radiotelephone Service, except as provided in § 22.703 of this chapter. Individual authorizations are required for end users of certain Specialized Mobile Radio Systems as provided in § 90.655 of this chapter. In addition, certain ships and aircraft are required to be individually licensed under Parts 80 and 87 of this chapter. *See* §§ 80.13, 87.18 of this chapter.

§ 1.907 Definitions.

Antenna structure. The term antenna structure includes the radiating and receiving elements, its supporting structures, towers, and all appurtenances mounted thereon.

Application. A request on a standard form for a station license as defined in § 3(b) of the Communications Act, signed in accordance with § 1.917 of this part, or a similar request to amend a pending application or to modify or renew an authorization. The term also encompasses requests to assign rights granted by the authorization or to transfer control of entities holding authorizations.

Auctionable license. A Wireless Radio Service license identified in § 1.2102 of this part for which competitive bidding is used to select from among mutually exclusive applications.

Auctionable license application. A Wireless Radio Service license application identified in § 1.2102 of this part for which competitive bidding is used if the application is subject to mutually exclusive applications.

Authorization. A written instrument or oral statement issued by the FCC conveying authority to operate, for a specified term, to a station in the Wireless Telecommunications Services.

Authorized bandwidth. The maximum bandwidth permitted to be used by a station as specified in the station license. *See* § 2.202 of this chapter.

Authorized power. The maximum power a station is permitted to use. This power is specified by the Commission in the station's authorization or rules.

Control station. A fixed station, the transmissions of which are used to control automatically the emissions or operations of a radio station, or a remote base station transmitter.

Effective radiated power (ERP). The product of the power supplied to the antenna multiplied by the gain of the antenna referenced to a half-wave dipole.

Equivalent Isotopically Radiated Power (EIRP). The product of the power supplied to the antenna multiplied by the antenna gain referenced to an isotropic antenna.

Fixed station. A station operating at a fixed location.

Harmful interference. Interference that endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communications service operating in accordance with the Radio Regulations.

Mobile relay station. A fixed transmitter used to facilitate the transmission of communications between mobile units.

Mobile station. A radio communication station capable of being moved and which ordinarily does move.

Non-auctionable license. A Wireless Radio Service license identified in § 1.2102 of this part for which competitive bidding is not used to select from among mutually exclusive applications.

Non-auctionable license application. A Wireless Radio Service license application for which § 1.2102 of this part precludes the use of competitive bidding if the application is subject to mutually exclusive applications.

Private Wireless Services. Wireless Radio Services authorized by parts 80, 87, 90, 95, 97, and 101 that are not Wireless Telecommunications Services, as defined in this part.

Radio station. A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radio communications service.

Receipt date. The date an electronic or paper application is received at the appropriate location at the Commission or Mellon Bank. Amendments to pending applications may result in the assignment of a new receipt date in accordance with § 1.927 of this part.

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Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

Wireless Radio Services. All radio services authorized in parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of this chapter, whether commercial or private in nature.

Wireless Telecommunications Services. Wireless Radio Services, whether fixed or mobile, that meet the definition of "telecommunications service" as defined by 47 U.S.C. 153, as amended, and are therefore subject to regulation on a common carrier basis. Wireless Telecommunications Services include all radio services authorized by parts 20, 22, 24, 26, and 27 of this chapter. In addition, Wireless Telecommunications Services include Public Coast Stations authorized by part 80 of this chapter, Commercial Mobile Radio Services authorized by part 90 of this chapter, and common carrier fixed microwave services, Local Television Transmission Service (LTTS), Local Multipoint Distribution Service (LMDS), and Digital Electronic Message Service (DEMS), authorized by part 101 of this chapter.

26. Section 1.911 is revised to read as follows:

§ 1.911 Station files.

Applications, notifications, correspondence, electronic filings and other material, and copies of authorizations, comprising technical, legal, and administrative data relating to each station in the Wireless Radio Services are maintained by the Commission in ULS. These files constitute the official records for these stations and supersede any other records, database or lists from the Commission or other sources.

§ 1.912 [Removed]

27. Section 1.912 is removed.

28. Section 1.913 is revised to read as follows:

§ 1.913 Application forms; electronic and manual filing.

(a) *Application forms.* Applicants and licensees in the Wireless Radio Services shall use the following forms and associated schedules for all applications:

(1) *FCC Form 601, Application for Authorization in the Wireless Radio Services.* FCC Form 601 and associated schedules is used to apply for initial authorizations, modifications to existing authorizations, amendments to pending applications, renewals of station authorizations, developmental authorizations, special temporary authority, notifications, requests for extension of time, and administrative updates.

(2) *FCC Form 602, Wireless Radio Services Ownership Form.* FCC Form 602 is used by applicants and licensees in auctionable services to provide and update ownership information as required by §§ 1.919, 1.948, 1.2112(a) of this part, and any other section that requires the submission of such information.

(3) *FCC Form 603, Application for Assignment of Authorization or Transfer of Control.* FCC Form 603 is used to apply for Commission consent to assignments of existing authorizations, to apply for Commission consent to the transfer of control of entities holding authorizations, to notify the Commission of the consummation of assignments or transfers, and to request extensions of time for consummation of assignments or transfers. It is also used to apply for Commission consent to partial assignments of authorizations, including partitioning and disaggregation.

(4) *FCC Form 605, Quick-form Application for Authorization for Wireless Radio Services.* FCC Form 605 is used to apply for Amateur, Ship, Aircraft, and General Mobile Radio Service (GMRS) authorizations, as well as Commercial Radio Operator Licenses.

(b) *Electronic filing.* Except as specified in paragraph (d) of this section or elsewhere in this chapter, all applications and other filings using FCC Forms 601 through 605 or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS. For each Wireless Radio Service that is subject to mandatory electronic filing, this subparagraph is effective on (1) July 1, 1999, or (2) six months after the Commission begins use of ULS to process applications in the service, whichever is later. The Commission will announce by public notice the deployment date of each service in ULS.

(1) Attachments to applications should be uploaded along with the electronically filed application whenever possible. The files, other than the ASCII table of contents, should be in Adobe Acrobat Portable Document Format (PDF) whenever possible.

(2) Any associated documents (see § 1.211(a) of this part) submitted with an application must be uploaded as attachments to the application whenever possible. The attachment should be uploaded via ULS in Adobe Acrobat Portable Document Format (PDF) whenever possible.

(c) *Auctioned license applications.* Auctioned license applications, as defined in § 1.907 of this part, shall also comply with the requirements of subpart Q of this part and the applicable Commission orders and public notices issued with respect to each auction for a particular service and spectrum.

(d) *Manual filing.* (1) ULS Forms 601, 603 and 605 may be filed manually or electronically by applicants and licensees in the following services:

(i) The part 90 Private Land Mobile Radio services for shared spectrum, spectrum in the public safety pool below 746 MHz, and spectrum in the public safety allocation above 746 MHz, except those filed by Commission-certified frequency coordinators;

(ii) The part 97 Amateur Radio Service, except those filed by Volunteer Examination Coordinators;

(iii) The part 95 General Mobile Radio Service and Personal Radio Service (excluding 218–219 MHz service);

(iv) The part 80 Maritime Services (excluding the VHF 156–162 MHz Public Coast Stations);

(v) The part 87 Aviation Services;

(vi) Part 13 Commercial Radio Operators; and

(vii) Part 101 licensees who are also members of any of the groups listed in paragraph (d)(1)(i) through (d)(1)(vi) of this section.

(2) Manually filed applications must be submitted to the Commission at the appropriate address with the appropriate filing fee. The addresses for filing and the fee amounts for particular applications are listed in Subpart G of this part, and in the appropriate fee filing guide for each service available from the Commission's Forms Distribution Center by calling 1–800–418-FORM (3676).

(3) Manually filed applications requiring fees as set forth at Subpart G, of this part must be filed in accordance with § 0.401(b).

(4) Manually filed applications that do not require fees must be addressed and sent to Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245.

(5) Standard forms may be reproduced and the copies used in accordance with the provisions of § 0.409 of this chapter.

(6) Attachments to manually filed applications may be filed on a standard 3.5 magnetic diskette formatted to be readable by high density floppy drives operating under MS-DOS (version 3.X or later compatible versions). Each diskette submitted must contain an ASCII text

file listing each filename and a brief description of the contents of each file and format for each document on the diskette. The files on the diskette, other than the table of contents, should be in Adobe Acrobat Portable Document Format (PDF) whenever possible. All diskettes submitted must be legibly labelled referencing the application and its filing date.

(e) *Applications requiring prior coordination.* Parties filing applications that require frequency coordination shall, prior to filing, complete all applicable frequency coordination requirements in service-specific rules contained within this chapter. After appropriate frequency coordination, such applications may be electronically filed via ULS or, if filed manually, must be forwarded to the appropriate address with the appropriate filing fee (if applicable) in accordance with subparagraph (d). Applications filed by the frequency coordinator on behalf of the applicant must be filed electronically.

(f) *Applications for Amateur licenses.* Each candidate for an amateur radio operator license which requires the applicant to pass one or more examination elements must present the administering Volunteer Examiners (VE) with all information required by the rules prior to the examination. The VEs may collect the information required by these rules in any manner of their choosing, including creating their own forms. Upon completion of the examination, the administering VEs will immediately grade the test papers and will then issue a certificate for successful completion of an amateur radio operator examination (CSCE) if the applicant is successful. The VEs will send all necessary information regarding a candidate to the Volunteer-Examiner Coordinator (VEC) coordinating the examination session. Applications filed with the Commission by VECs must be filed electronically via ULS. All other applications for amateur service licenses may be submitted manually to FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245, or may be electronically filed via ULS. Feeable requests for vanity call signs must be filed in accordance with § 0.401 of this chapter or electronically filed via ULS.

§ 1.914 [Removed]

29. Section 1.914 is removed.

30. Section 1.915 is added to read as follows:

§ 1.915 General application requirements.

(a) *General requirement.* Except as provided in paragraph (b) of this section, for all Wireless Radio Services, station licenses, as defined in section 308(a) of the Communications Act, as amended, operator licenses, modifications or renewals of licenses, assignments or transfers of control of station licenses or any rights thereunder, and waiver requests associated with any of the foregoing shall be granted only upon an application filed pursuant to §§ 1.913 through 1.917 of this part.

(b)(1) *Exception for emergency filings.* The Commission may grant station licenses, or modifications or renewals thereof, without the filing of a formal application in the following cases:

(i) an emergency found by the Commission to involve danger to life or property or to be due to damage to equipment;

(ii) a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged, when such action is necessary for the national defense or security or otherwise in furtherance of the war effort; or

(iii) an emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedures.

(2) No such authorization shall be granted for or continue in effect beyond the period of the emergency or war requiring it. The procedures to be followed for emergency requests submitted under this subparagraph are the same as for seeking special temporary authority under § 1.931 of this part. After the end of the period of emergency, the party must submit its request by filing the appropriate FCC form in accordance with paragraph (a) of this section.

§ 1.916 [Removed]

31. Section 1.916 is removed.

32. Section 1.917 is added to read as follows:

§ 1.917 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments, and related statements of fact required by the Commission must be signed as follows (either electronically or manually, *see* paragraph (d) of this section): (1) By the applicant, if the applicant is an individual; (2) by one of the partners if the applicant is a partnership; (3) by an officer, director, or duly authorized employee, if the applicant is a corporation; (4) by a member who is an officer, if the applicant is an unincorporated association; or (5) by the trustee if the applicant is an amateur radio service club. Applications, amendments, and related statements of fact filed on behalf of eligible government entities such as states and territories of the United States, their political subdivisions, the District of Columbia, and units of local government, including unincorporated municipalities, must be signed by a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or absence from the United States, or by applicant's designated vessel master when a temporary permit is requested for a vessel. The attorney shall, when applicable, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's or master's belief only (rather than knowledge), the attorney or master shall separately set forth the reasons for believing that such statements are true. Only the original of applications, amendments, and related statements of fact need be signed.

(c) Applications, amendments, and related statements of fact need not be signed under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, 18 U.S.C. 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to 312(a)(1) of the Communications Act of 1934, as amended.

(d) "Signed," as used in this section, means, for manually filed applications only, an original hand-written signature or, for electronically filed applications only, an electronic signature. An electronic signature shall consist of the name of the applicant transmitted electronically via ULS and entered on the application as a signature.

§ 1.918 [Removed]

33. Section 1.918 is removed:

34. Section 1.919 is added to read as follows:

§ 1.919 Ownership information.

(a) Applicants or licensees in Wireless Radio Services that are subject to the ownership reporting requirements of § 1.2112(a) of this part shall use FCC Form 602 to provide all ownership information required by this chapter.

(b) Any applicant or licensee that is subject to the ownership reporting requirements of § 1.2112(a) of this part shall file an FCC Form 602, or file an updated form if the ownership

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information on a previously filed FCC Form 602 is not current, at the time it submits:

(1) An initial application for authorization (FCC Form 601);

(2) An application for license renewal (FCC Form 601);

(3) An application for assignment of authorization or transfer of control (FCC Form 603); or

(4) A notification of consummation of a *pro forma* assignment of authorization or transfer of control (FCC Form 603) under the Commission's forbearance procedures (see § 1.948(c) of this part).

(c) A single FCC Form 602 may be associated with multiple applications filed by the same applicant or licensee. If an applicant or licensee already has a current FCC Form 602 on file when it files an initial application, renewal application, application for assignment or transfer of control, or notification of a *pro forma* assignment or transfer, it may certify that it has a current FCC Form 602 on file.

(d) No filing fee is required to submit or update FCC Form 602.

(e) Applicants or licensees in Wireless Radio Services that are not subject to the ownership reporting requirements of § 1.2112(a) of this part are not required to file FCC Form 602. However, such applicants and licensees may be required by the rules applicable to such services to disclose the real party (or parties) in interest to the application, including (as required) a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant or licensee.

§ 1.921 [Removed]

35. Section 1.921 is removed.

§ 1.922 [Removed]

36. Section 1.922 is removed.

37. Section 1.923 is revised to read as follows:

§ 1.923 Content of applications.

(a) *General.* Applications must contain all information requested on the applicable form and any additional information required by the rules in this chapter and any rules pertaining to the specific service for which the application is filed.

(b) *Reference to material on file.* Questions on application forms that call for specific technical data, or that can be answered yes or no or with another short answer, must be answered on the form. Otherwise, if documents, exhibits, or other lengthy showings already on file with the FCC contain information required in an application, the application may incorporate such information by reference, provided that:

(1) The referenced information has been filed in ULS or, if manually filed outside of ULS, the information comprises more than one "8½ × 11" page.

(2) The referenced information is current and accurate in all material respects; and

(3) The application states specifically where the referenced information can actually be found, including:

(i) The station call sign or application file number and its location if the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, if the reference is to a docketed proceeding.

(c) *Antenna locations.* Applications for stations at fixed locations must describe each transmitting antenna site by its geographical coordinates and also by its street address, or by reference to a nearby landmark. Geographical coordinates, referenced to NAD83, must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude.

(d) *Antenna structure registration.* Owners of certain antenna structures must notify the Federal Aviation Administration and register with the Commission as required by Part 17 of this chapter. Applications proposing the use of one or more new or existing antenna structures must contain the FCC Antenna Registration Number(s) of each structure for which registration is required. If registration is not required, the applicant must provide information in its application sufficient for the Commission to verify this fact.

(e) *Environmental concerns.* Each applicant is required to indicate at the time its application is filed whether or not a Commission grant of the application may have a significant environmental effect, as defined by § 1.1307 of this chapter. If answered affirmatively, an Environmental Assessment, required by § 1.1311 of this chapter, must be filed with the application and environmental review by the Commission must be completed prior to construction.

(f) *International coordination.* Channel assignments and/or usage under this part are subject to the applicable provisions and requirements of treaties and other international agreements between the United States government and the governments of Canada and Mexico.

(g) *Quiet zones.* Each applicant is required to comply with the "Quiet Zone" rule (see § 1.924).

(h) *Taxpayer Identification Number (TINs).* Wireless applicants and licensees, including all attributable owners of auctionable licenses as defined by § 1.2112 of this part, are required to provide their Taxpayer Identification Numbers (TINS) (as defined in 26 U.S.C. 6109) to the Commission, pursuant to the Debt Collection Improvement Act of 1996 (DCIA). Under the DCIA, the FCC may use an applicant or licensee's TIN for purposes of collecting and reporting to the Department of the Treasury any delinquent amounts arising out of such person's relationship with the Government. The Commission will not publicly disclose applicant or licensee TINs unless authorized by law, but will assign a "public identification number" to each applicant or licensee registering a TIN. This public identification number will be used for agency purposes other than debt collection.

38. Section 1.924 is revised to read as follows:

§ 1.924 Quiet zones.

Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference. The areas involved and procedures required are as follows:

(a) *NRAO, NRRO.* The requirements of this paragraph are intended to minimize possible interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia.

(1) Applicants and licensees planning to construct and operate a new or modified station at a permanent fixed location within the area bounded by N 39° 15′ 0.4″ on the north, W 78° 29′ 59.0″ on the east, N 37° 30′ 0.4″ on the south, and W 80° 29′ 59.2″ on the west must notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, West Virginia 24944, in writing, of the technical details of the proposed operation. The notification must include the geographical coordinates of the antenna location, the antenna height, antenna directivity (if any), the channel, the emission type and power.

(2) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (a)(1) of this section should be sent at the same time. The application must state the date that notification in accordance with paragraph (a)(1) of this section was

made. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated.

(3) If an objection is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the FCC will, after consideration of the record, take whatever action is deemed appropriate.

(b) *Table Mountain.* The requirements of this paragraph are intended to minimize possible interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado.

(1) Licensees and applicants planning to construct and operate a new or modified station at a permanent fixed location in the vicinity of Boulder County, Colorado are advised to give consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from interference. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07′49.9″ North Latitude, 105°14′42.0″ West Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the values given in the following table:

FIELD STRENGTH LIMITS FOR TABLE MOUNTAIN[1]

Frequency range	Field strength (mV/m)	Power flux density (dBW/m^2)
Below 540 kHz	10	−65.8
540 to 1600 kHz	20	−59.8
1.6 to 470 MHz	10	65.8
470 to 890 MHz	30	56.2
890 and above	1	85.8

[1] Note: Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7 omega (120π Ω).

(2) Advance consultation is recommended, particularly for applicants that have no reliable data to indicate whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities. In general, coordination is recommended for:

(i) Stations located within 2.4 kilometers (1.5 miles) of the Table Mountain Radio Receiving Zone;

(ii) Stations located within 4.8 kilometers (3 miles) transmitting with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations located with 16 kilometers (10 miles) transmitting with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Radio Receiving Zone;

(iv) Stations located within 80 kilometers (50 miles) transmitting with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(3) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services NOAAR/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filing their applications with the FCC.

(4) The FCC will not screen applications to determine whether advance consultation has taken place. However, such consultation may avoid the filing of objections from the Department of Commerce or institution of proceedings to modify the authorizations of stations that radiate signals with a field strength or power flux density at the site in excess of those specified herein.

(c) *Federal Communications Commission protected field offices.* The requirements of this paragraph are intended to minimize possible interference to FCC monitoring activities.

(1) Licensees and applicants planning to construct and operate a new or modified station at a permanent fixed location in the vicinity of an FCC protected field office are advised to give consideration, prior to filing applications, to the need to avoid interfering with the monitoring activities of that office. FCC protected field offices are listed in § 0.121 of this chapter.

(2) Applications for stations (except mobile stations) that could produce on any channel a direct wave fundamental field strength of greater than 10 mV/m (−65.8 dBW/m^2 power flux density assuming a free space characteristic impedance of 120π Ω) in the authorized bandwidth at the protected field office may be examined to determine the potential for interference with monitoring activities. After consideration of the effects of the predicted field strength of the proposed station, including the cumulative effects of the signal from the proposed station with other ambient radio field strength levels at the protected field office, the FCC may add a condition restricting radiation toward the protected field office to the station authorization.

(3) In the event that the calculated field strength exceeds 10 mV/m at the protected field office site, or if there is any question whether field strength levels might exceed that level, advance consultation with the FCC to discuss possible measures to avoid interference to monitoring activities should be considered. Prospective applicants may communicate with: Chief, Compliance and Information Bureau, Federal Communications Commission, Washington, DC 20554.

(4) Advance consultation is recommended for applicants that have no reliable data to indicate whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities. In general, coordination is recommended for:

(i) Stations located within 2.4 kilometers (1.5 miles) of the protected field office;

(ii) Stations located within 4.8 kilometers (3 miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the protected field offices.

(iii) Stations located within 16 kilometers (10 miles) with 1 kw or more average ERP in the primary plane of polarization in the azimuthal direction of the protected field office;

(iv) Stations located within 80 kilometers (50 miles) with 25 kw or more average ERP in the primary plane of polarization in the azimuthal direction of the protected field office;

(v) Advance coordination for stations transmitting on channels above 1000 MHz is recommended only if the proposed station is in the vicinity of a protected field office designated as a satellite monitoring facility in § 0.121 of this chapter.

(vi) The FCC will not screen applications to determine whether advance consultation has taken place. However, such consultation may serve to avoid the need for later modification of the authorizations of stations that interfere with monitoring activities at protected field offices.

(d) *Notification to the Arecibo Observatory.* The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning to construct and operate a new station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a modification of any existing station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(1) In the Amateur radio service:

(i) The provisions of paragraph (d) of this section do not apply to repeaters that transmit on the 1.2 cm or shorter wavelength bands; and

(ii) The coordination provision of paragraph (d) of this section does not apply to repeaters that are located 16 km or more from the Arecibo observatory.

(2) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (d) of this section should be sent the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (d) of this section was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (d) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification by an applicant within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification.

(3) If an objection to any planned service operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

(e) *Government satellite earth stations.* (1) To minimize or avoid harmful interference to Government Satellite Earth Stations located in the Denver, Colorado and Washington, DC areas, any application for a new station license to operate in the 17.8–19.7 GHz band (except for low power operations governed by § 101.147(r)(10) of this chapter), or for modification of an existing station license in this band which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the areas defined by the following rectangles or circles:

Denver, CO Area

Rectangle 1:
1°30′00″ N. Lat. on the north
103°10′00″ W. Long. on the east
38°30′00″ N. Lat. on the south
106°30′00″ W. Long. on the west
Rectangle 2:
38°30′00″ N. Lat. on the north
105°00′00″ W. Long. on the east
37°30′00″ N. Lat. on the south
105°50′00″ W. Long. on the west
Rectangle 3:
40°08′00″ N. Lat. on the north
107°00′00″ W. Long. on the east
39°56′00″ N. Lat. on the south
107°15′00″ W. Long. on the west

Washington, DC Area

Rectangle
38°40′00″ N. Lat. on the north
78°50′00″ W. Long. on the east
38°10′00″ N. Lat. on the south
79°20′00″ W. Long. on the west; or

(2) Within a radius of 178 km of 38°48′00″ N. Lat./78°52′00″ W. Long.

(3) In addition, no application seeking authority to operate in the 17.8–19.7 GHz band will be accepted for filing if the proposed station is located within 20 km (or within 55 km if the application is for an outdoor low power operation pursuant to § 101.147(r)(10) of this chapter) of the following coordinated:

Denver, CO area: 39°43′00″ N. Lat./104°46′00″ W. Long.
Washington, DC area: 38°48′00″ N. Lat./76°52′00″ W. Long.

(f) *420–450 MHz band.* (1) In the band 420–450 MHz, applicants should not expect to be accommodated if their area of service is within 160 kilometers (100 miles) of the following locations:

(i) 45°45′00.2″ N., 70°31′58.3″ W.,
(ii) 64°17′00.0 N., 149°10′00.0 W.,
(iii) 48°43′00.0″ N., 97°54′01.4″ W.;

Note: Paragraph(f)(ii) is referenced to NAD27.

(2) within 200 kilometers (124 miles) of the following locations:

(i) 32°38′00.5″ N., 83°34′ 59.7″ W.,
(ii) 31°25′ 00.6″ N., 100°24′01.3″ W.;

(3) within 240 kilometers (150 miles) of the following location:

(i) 39°07′59.6″ N., 121°26′03.9″ W.;

(4) within 320 kilometers (200 miles) of the following locations:

(i) 28°21′01.0″ N., 80°42′59.2″ W.,
(ii) 30°30′00.7″ N., 86°29′59.8″ W.,
(iii) 43°08′59.6″ N., 119°11′03.8″ W.;

(5) or in the following locations:

(i) The state of Arizona,
(ii) The state of Florida,
(iii) Portions of California and Nevada south of 37°10′ N.,
(iv) And portions of Texas and New Mexico bounded by 31°45′ N., 34° 30′ N., 104°00′ W., and 107° 30′ W.

Note to § 1.924: Unless otherwise noted, all coordinates cited in this section are specified in terms of the North American Datum of 1983 (NAD 83).

39. Section 1.925 is revised to read as follows:

§ 1.925 Waivers.

(a) *Waiver requests generally.* The Commission may waive specific requirements of the rules on its own motion or upon request. The fees for such waiver requests are set forth in § 1.1102 of this part.

(b) *Procedure and format for filing waiver requests.* (1) Requests for waiver of rules associated with licenses or applications in the Wireless Radio Services must be filed on FCC Form 601, 603, or 605.

(2) Requests for waiver must contain a complete explanation as to why the waiver is desired. If the information necessary to support a waiver request is already on file, the applicant may cross-reference the specific filing where the information may be found.

(3) The Commission may grant a request for waiver if it is shown that:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

(4) Applicants requiring expedited processing of their request for waiver shall clearly caption their request for waiver with the words "WAIVER—EXPEDITED ACTION REQUESTED."

(c) *Action on Waiver Requests.*

(i) The Commission, in its discretion, may give public notice of the filing of a waiver request and seek comment from the public or affected parties.

(ii) Denial of a rule waiver request associated with an application renders that application defective unless it contains an alternative proposal that fully complies with the rules, in which event, the application will be processed using the alternative proposal as if the waiver had not been requested. Applications rendered defective may be dismissed without prejudice.

40. Section 1.926 is revised to read as follows:

§ 1.926 Application processing; initial procedures.

Applications are assigned file numbers and service codes in order to facilitate processing. Assignment of a file number to an application is for administrative convenience and does not constitute a determination that the application is acceptable for filing. Purpose and service codes appear on the Commission forms.

41. Sections 1.927 and 1.929 are added to read as follows:

§ 1.927 Amendment of applications.

(a) Pending applications may be amended as a matter of right if they have not been designated for hearing or listed in a Public Notice as accepted for filing, except as provided in paragraphs (b) through (e) of this section. Applicants may be required by service-specific rules to obtain a new frequency coordination to amend technical parameters on applications.

(b) Applicants for an initial license in auctionable services may amend such applications only in accordance with Subpart Q of this part.

(c) Amendments to non-auction applications that are applied for under Part 101 or that resolve mutual exclusivity may be filed at any time, subject to the requirements of § 1.945 of this part.

(d) Any amendment to an application for modification must be consistent with, and must not conflict with, any other application for modification regarding that same station.

(e) Amendments to applications designated for hearing may be allowed by the presiding officer or, when a proceeding is stayed or otherwise pending before the full Commission, may be allowed by the Commission for good cause shown. In such instances, a written petition demonstrating good cause must be submitted and served upon the parties of record.

(f) Amendments to applications are also subject to the service-specific rules in applicable parts of this chapter.

(g) Where an amendment to an application specifies a substantial change in beneficial ownership or control (*de jure* or de facto) of an applicant, the applicant must provide an exhibit with the amendment application containing an affirmative, factual showing as set forth in § 1.948(h)(2).

(h) Where an amendment to an application constitutes a major change, as defined in § 1.929, the amendment shall be treated as a new application for determination of filing date, public notice, and petition to deny purposes.

(i) If a petition to deny or other informal objection has been filed, a copy of any amendment (or other filing) must be served on the petitioner. If the FCC has issued a public notice stating that the application appears to be mutually exclusive with another application (or applications), a copy of any amendment (or other filing) must be served on any such mutually exclusive applicant (or applicants).

§ 1.929 Classification of filings as major or minor.

Applications and amendments to applications for stations in the wireless radio services are classified as major or minor (see § 1.947). Categories of major and minor filings are listed in § 309 of the Communications Act of 1934.

(a) For all stations in all Wireless Radio Services, whether licensed geographically or on a site-specific basis, the following actions are classified as major:

(1) Application for initial authorization;

(2) Any substantial change in ownership or control, including requests for partitioning and disaggregation;

(3) Application for renewal of authorization;

(4) Application or amendment requesting authorization for a facility that would have a significant environmental effect, as defined by §§ 1.1301 through 1.1319 of the rules;

(5) Application or amendment requiring frequency coordination pursuant to the Commission's rules or international treaty or agreement;

(6) Application or amendment requesting to add a frequency or frequency block for which the applicant is not currently authorized, excluding removing a frequency.

(b) In the Cellular Radiotelephone Service:

(1) Request an authorization or an amendment to a pending application that would expand the cellular geographic service area (COSA) of an existing cellular system or, in the case of an amendment, as previously proposed in an application, except during the applicable five-year build-out period, if any;

(2) Request that a COSA boundary or portion of a COSA boundary be determined using an alternative method; or,

(3) Request an authorization for facilities that would produce a *de minimis* service area boundary extension into unserved area in an adjacent market.

(c) In addition to those changes listed in subparagraph (a) above, the following are major changes applicable to stations licensed to provide base-to-mobile, mobile-to-base, mobile-to-mobile on a site-specific basis:

(1) In the Paging and Radiotelephone Service, Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service (SMR), any change that would increase or expand the applicant's existing composite interference contour.

(2) In the 900 MHz SMR and 220 MHz Service, any change that would increase or expand the applicant's service area as defined in the rule parts governing the particular radio service.

(3) In the Paging and Radiotelephone Service, Rural Radiotelephone Service, Offshore Radiotelephone Service, and Specialized Mobile Radio Service:

(i) Request an authorization or an amendment to a pending application that would establish for the filer a new fixed transmission path;

(ii) Request an authorization or an amendment to a pending application for a fixed station (i.e., control, repeater, central office, rural subscriber, or inter-office station) that would increase the effective radiated power, antenna height above average terrain in any azimuth, or relocate an existing transmitter;

(4) In the Private Land Mobile Radio Services (PLMRS):

(i) Change in frequency;

(ii) Change in the type of emission;

(iii) Change in effective radiated power from that authorized;

(iv) Change in antenna height from that authorized;

(v) Change in the authorized location or number of base stations, fixed, control or, for systems operating on non-exclusive assignments in the 470–512 MHz, 800 MHz or 900 MHz bands, a change in the number of mobile transmitters, or a change in the area of mobile operations from that authorized;

(vi) Change in the class of a land station, including changing from multiple licensed to cooperative use, and from shared to unshared use.

(d) In addition to those filings listed in paragraph (a) of this section, the following are major actions that apply to stations licensed to provide fixed point-to-point, point-to-multipoint, or multipoint-to-point, communications on a site-specific basis, or fixed or mobile communications on an area-specific basis under part 101 of this chapter:

(1) Any change in transmit antenna location by more than 5 seconds in latitude or longitude for fixed point-to-point facilities (*e.g.*, a 5 second change in latitude, longitude, or both would be minor); any change in coordinates of the center of operation or increase in radius of a circular area of operation, or any expansion in any direction in the latitude or longitude limits of a rectangular area of operation, or any change in any other kind of area operation;

(2) Any increase in frequency tolerance;

(3) Any increase in bandwidth;

(4) Any change in emission type;

(5) Any increase in EIRP greater than 3 dB;

(6) Any increase in transmit antenna height (above mean sea level) more than 3 meters;

(7) Any increase in transmit antenna beamwidth;

(8) Any change in transmit antenna polarization;

(9) Any change in transmit antenna azimuth greater than 1 degree; or,

(10) Any change which together with all minor modifications or amendments since the last major modification or amendment produces a cumulative effect exceeding any of the above major criteria.

(e) In addition to those filings listed in paragraph (a) of this section, the following are major actions that apply to stations licensed to provide service in the Air-ground Radiotelephone Service:

(1) Request an authorization to relocate an existing General Aviation ground station; or,

(2) Request the first authorization for a new Commercial Aviation ground station at a location other than those listed in § 22.859 of this chapter.

(f) In addition to those changes listed in paragraph (a), the following are major changes that apply to stations licensed in the industrial radiopositioning stations for which frequencies are assigned on an exclusive basis, Maritime and Aviation services, except Maritime Public Coast VHF (CMRS), Ship and Aircraft stations:

(1) Any change in antenna azimuth;

(2) Any change in beamwidth;

(3) Any change in antenna location;

(4) Any change in emission type;

(5) Any increase in antenna height;

(6) Any increase in authorized power;

(7) Any increase in emission bandwidth.

(g) In addition to those changes listed in paragraph (a), any change requiring international coordination in the Maritime Public Coast VHF (CMRS) Service is major.

(h) In addition to those changes listed in paragraph (a) of this section, the following are major changes that apply to ship stations:

(1) Any request for additional equipment;

(2) A change in ship category;

(3) A request for assignment of a Maritime Mobile Service Identity (MMSI) number; or

(4) A request to increase the number of ships on an existing fleet license.

(i) In addition to those changes listed in paragraph (a) of this section, the following are major changes that apply to aircraft stations:

(1) A request to increase the number of aircraft on an existing fleet license; or

(2) A request to change the type of aircraft (private or air carrier).

(j) In addition to those changes listed in paragraph (a) of this section, the following are major changes that apply to amateur licenses:

(1) An upgrade of an existing license; or

(2) A change of call sign.

(k) Any change not specifically listed above as major is considered minor (*see* § 1.947(b). This includes but is not limited to:

(1) Any pro forma assignment or transfer of control;

(2) Any name change not involving change in ownership or control of the license;

(3) Any address and/or telephone number changes;

(4) Any changes in contact person;

(5) Any change to vessel name on a ship station license;

(6) Any change to a site-specific license, except a PLMRS license under part 90, or a license under part 101, where the licensee's interference contours are not extended and co-channel separation criteria are met, except those modifications defined in paragraph (c)(2) of this section; or

(7) Any conversion of multiple site-specific licenses into a single wide-area license, except a PLMRS license under part 90 or a license under part 101 of this chapter, where there is no change in the licensee's composite interference contour or service area as defined in paragraph (c)(2) of this section.

42. Section 1.931 is revised to read as follows:

§ 1.931 Application for special temporary authority.

(a) *Wireless Telecommunications Services.* (1) In circumstances requiring immediate or temporary use of station in the Wireless Telecommunications Services, carriers may request special temporary authority (STA) to operate new or modified equipment. Such requests must be filed electronically using FCC Form 601 and must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. Such requests should be filed in time to be received by the Commission at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. Requests received less than 10 days prior to the desired date of operation may be given expedited consideration only if compelling reasons are given for the delay in submitting the request. Otherwise, such late-filed requests are considered in turn, but action might not be taken prior to the desired date of operation. Requests for STA must be accompanied by the proper filing fee.

(2) Grant without Public Notice. STA may be granted without being listed in a Public Notice, or prior to 30 days after such listing, if:

(i) The STA is to be valid for 30 days or less and the applicant does not plan to file an application for regular authorization of the subject operation;

(ii) The STA is to be valid for 60 days or less, pending the filing of an application for regular authorization of the subject operation;

(iii) The STA is to allow interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(iv) The STA is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(3) Limit on STA term. The Commission may grant STA for a period not to exceed 180 days under the provisions of section 309(f) of the Communications Act of 1934, as amended, (47 U.S.C. 309(f)) if extraordinary circumstances so require, and pending the filing of an application for regular operation. The Commission may grant extensions of STA for a

period of 180 days, but the applicant must show that extraordinary circumstances warrant such an extension.

(b) *Private Wireless Services.* (1) A licensee of, or an applicant for, a station in the Private Wireless Services may request STA not to exceed 180 days for (A) operation of a new station or (B) operation of a licensed station in a manner which is beyond the scope of that authorized by the existing license. *See* §§ 1.962(b)(5) and (f). Where the applicant, seeking a waiver of the 180 day limit, requests STA to operate as a private mobile radio service provider for a period exceeding 180 days, evidence of frequency coordination is required. Requests for shorter periods do not require coordination and, if granted, will be authorized on a secondary, non-interference basis.

(2) STA may be granted in the following circumstances:

(i) In emergency situations;

(ii) To permit restoration or relocation of existing facilities to continue communication service;

(iii) To conduct tests to determine necessary data for the preparation of an application for regular authorization;

(iv) For a temporary, non-recurring service where a regular authorization is not appropriate;

(v) In other situations involving circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest.

(3) The nature of the circumstance which, in the opinion of the applicant justifies issuance of STA, must be fully described in the request. Applications for STA must be filed at least 10 days prior to the proposed operation. Applications filed less than 10 days prior to the proposed operation date will be accepted only upon a showing of good cause.

(4) The Commission may grant extensions of STA for a period of 180 days, but the applicant must show that extraordinary circumstances warrant such an extension.

(5) In special situations defined in § 1.915(b)(1), a request for STA may be made by telephone or telegraph provided a properly signed application is filed within 10 days of such request.

(6) An applicant for an Aircraft Radio Station License may operate the radio station pending issuance of an Aircraft Radio Station License by the Commission for a period of 90 days under temporary operating authority, evidenced by a properly executed certification made on FCC Form 605.

(7) Unless the Commission otherwise prescribes, a person who has been granted an operator license of Novice, Technician, Technician Plus, General, or Advanced class and who has properly submitted to the administering VEs an application document for an operator license of a higher class, and who holds a CSCE indicating that he/she has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

(8) An applicant for a Ship Radio station license may operate the radio station pending issuance of the ship station authorization by the Commission for a period of 90 days, under a temporary operating authority, evidenced by a properly executed certification made on FCC Form 605.

(9) An applicant for a station license in the Industrial/Business pool (other than an applicant who seeks to provide commercial mobile radio service as defined in Part 20 of this chapter) utilizing an already authorized facility may operate the station for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 601, after filing an application for a station license together with evidence of frequency coordination, if required, with the Commission. The temporary operation of stations, other than mobile stations, within the Canadian coordination zone will be limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 20 feet (6.1 meters) above average terrain.

(10) An applicant for a radio station license under Part 90, Subpart S, of this chapter (other than an applicant who seeks to provide commercial mobile radio service as defined in part 20 of this chapter) to utilize an already existing Specialized Mobile Radio System (SMR) facility or to utilize an already licensed transmitter may operate the radio station for a period of up to 180 days, under a temporary permit. Such request must be evidenced by a properly executed certification of FCC Form 601 after the filing of an application for station license, provided that the antenna employed by the control station is a maximum of 20 feet (6.1 meters) above a man-made structure (other than an antenna tower) to which it is affixed.

(11) An applicant for an itinerant station license, an applicant for a new private land mobile radio station license in the frequency bands below 470 MHz and in the one-way paging 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) or an applicant seeking to modify or acquire through assignment or transfer an existing station below 470 MHz or in the one-way paging 929–930 MHz band may operate the proposed station during the pendency of its application for a period of up to 180 days under a conditional permit. Conditional operations may commence upon the filing of a properly completed application that complies with § 90.127 if the application, when frequency coordination is required, is accompanied by evidence of frequency coordination in accordance with § 90.175 of this chapter. Operation under such a permit is evidenced by the properly executed Form 601 with certifications that satisfy the requirements of § 90.159(b).

(12) An applicant for a General Mobile Radio Service system license, sharing a multiple-licensed or cooperative shared base station used as a mobile relay station, may operate the system for a period of 180 days, under a Temporary Permit, evidenced by a properly executed certification made on FCC Form 605.

43. Section 1.933 is revised to read as follows:

§ 1.933 Public notices.

(a) *Generally.* Periodically, the Commission issues Public Notices in the Wireless Radio Services listing information of public significance. Categories of Public Notice listings are as follows:

(1) *Accepted for filing.* Acceptance for filing of applications and major amendments thereto.

(2) *Actions.* Commission actions on pending applications previously listed as accepted for filing.

(3) *Environmental considerations.* Special environmental considerations as required by Part 1 of this chapter.

(4) *Informative listings.* Information that the Commission, in its discretion, believes to be of public significance. Such listings do not create any rights to file petitions to deny or other pleadings.

(b) *Accepted for filing public notices.* The Commission will issue at regular intervals public notices listing applications that have been received by the Commission in a condition acceptable for filing, or which have been returned to an applicant for correction. Any application that has been listed in a public notice as acceptable for filing and is (1) subject to a major amendment, or (2) has been returned as defective or incomplete and resubmitted to the

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Commission, shall be listed in a subsequent public notice. Acceptance for filing shall not preclude the subsequent dismissal of an application as defective.

(c) *Public notice prior to grant.* Applications for authorizations, major modifications, major amendments to applications, and substantial assignment or transfer applications for the following categories of stations and services shall be placed on Public Notice as accepted for filing prior to grant:

(1) Wireless Telecommunications Services.

(2) Industrial radiopositioning stations for which frequencies are assigned on an exclusive basis.

(3) Aeronautical enroute stations.

(4) Aeronautical advisory stations.

(5) Airport control tower stations.

(6) Aeronautical fixed stations.

(7) Alaska public fixed stations.

(d) *No public notice prior to grant.* The following types of applications, notices, and other filings need not be placed on Public Notice as accepted for filing prior to grant:

(1) Applications or notifications concerning minor modifications to authorizations or minor amendments to applications.

(2) Applications or notifications concerning non-substantial (*pro forma*) assignments and transfers.

(3) Consent to an involuntary assignment or transfer under section 310(b) of the Communications Act.

(4) Applications for licenses under section 319(c) of the Communications Act.

(5) Requests for extensions of time to complete construction of authorized facilities.

(6) Requests for special temporary authorization not to exceed 30 days where the applicant does not contemplate the filing of an application for regular operation, or not to exceed 60 days pending or after the filing of an application for regular operation.

(7) Requests for emergency authorizations under section 308(a) of the Communications Act.

(8) Any application for temporary authorization under section 101.31(a) of this chapter.

(9) Any application for authorization in the Private Wireless Services.

44. Section 1.934 is revised to read as follows:

§ 1.934 Defective applications and dismissal.

(a) *Dismissal of applications.* The Commission may dismiss any application in the Wireless Radio Services at the request of the applicant; if the application is mutually exclusive with another application that is selected or granted in accordance with the rules in this part; for failure to prosecute or if the application is found to be defective; if the requested spectrum is not available; or if the application is untimely filed. Such dismissal may be "without prejudice," meaning that the Commission may accept from the applicant another application for the same purpose at a later time, provided that the application is otherwise timely. Dismissal "with prejudice" means that the Commission will not accept another application from the applicant for the same purpose for a period of one year. Unless otherwise provided in this part, a dismissed application will not be returned to the applicant.

(1) *Dismissal at request of applicant.* Any applicant may request that its application be withdrawn or dismissed. A request for the withdrawal of an application after it has been listed on Public Notice as tentatively accepted for filing is considered to be a request for dismissal of that application without prejudice.

(i) If the applicant requests dismissal of its application with prejudice, the Commission will dismiss that application with prejudice.

(ii) If the applicant requests dismissal of its application without prejudice, the Commission will dismiss that application without prejudice, unless:

(A) It has been designated for comparative hearing; or

(B) It is an application for which the applicant submitted the winning bid in a competitive bidding process.

(2) If an applicant who is a winning bidder for a license in a competitive bidding process requests dismissal of its short-form or long-form application, the Commission will dismiss that application with prejudice. The applicant will also be subject to default payments under Subpart Q of this part.

(3) An applicant who requests dismissal of its application after that application has been designated for comparative hearing may submit a written petition requesting that the dismissal be without prejudice. Such petition must demonstrate good cause and be served upon all parties of record. The Commission may grant such petition and dismiss the application without prejudice or deny the petition and dismiss the application with prejudice.

(b) *Dismissal of mutually exclusive applications not granted.* The Commission may dismiss mutually exclusive applications:

(1) For which the applicant did not submit the winning bid in a competitive bidding process; or

(2) That receive comparative consideration in a hearing but are not granted by order of the presiding officer.

(c) *Dismissal for failure to prosecute.* The Commission may dismiss applications for failure of the applicant to prosecute or for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal will generally be without prejudice if the failure to prosecute or respond occurred prior to designation of the application for comparative hearing, but may be with prejudice in cases of non-compliance with § 1.945 of this part. Dismissal will generally be with prejudice if the failure to prosecute or respond occurred after designation of the application for comparative hearing. The Commission may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

(d) *Dismissal as defective.* The Commission may dismiss without prejudice an application that it finds to be defective. An application is defective if:

(1) It is unsigned or incomplete with respect to required answers to questions, informational showings, or other matters of a formal character;

(2) It requests an authorization that would not comply with one or more of the Commission's rules and does not contain a request for waiver of these rule(s), or in the event the Commission denies such a waiver request, does not contain an alternative proposal that fully complies with the rules; or

(3) The appropriate filing fee has not been paid.

(e) *Dismissal because spectrum not available.* The Commission may dismiss applications that request spectrum which is unavailable because:

(1) It is not allocated for assignment in the specific service requested;

(2) It was previously assigned to another licensee on an exclusive basis or cannot be assigned to the applicant without causing harmful interference; or

(3) Reasonable efforts have been made to coordinate the proposed facility with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received.

(f) *Dismissal as untimely.* The Commission may dismiss without prejudice applications that are premature or late filed, including applications filed prior to the opening date or after the closing date of a filing window, or after the cut-off date for a mutually exclusive application filing group.

45. Sections 1.935, 1.937, 1.939, 1.945, 1.946, 1.947, 1.948, 1.949 are added to read as follows:

§ 1.935 Agreements to dismiss applications, amendments or pleadings.

Parties that have filed applications that are mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application(s), specific frequencies on the application or an amendment thereto, must obtain the approval of the Commission. Parties that have filed or threatened to file a petition to deny, informal objection or other pleading against an application and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the Commission.

(a) The party withdrawing or requesting dismissal of its application (or specific frequencies on the application), petition to deny, informal objection or other pleading or refraining from filing a pleading must submit to the Commission a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading.

(b) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(2) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(c) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission.

(d) For the purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) Each application, petition to deny, informal objection or other pleading is deemed to be pending before the Commission from the time the petition to deny is filed with the Commission until such time as an order or correspondence of the Commission granting, denying or dismissing it is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(4) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(e) Notwithstanding the provisions of this section, any payments made or received in exchange for withdrawing a short-form application for a Commission authorization awarded through competitive bidding shall be subject to the restrictions set forth in § 1.2105(c) of this chapter.

§ 1.937 Repetitious or conflicting applications.

(a) Where the Commission has, for any reason, dismissed an application for a new station or for any modification of services or facilities with prejudice, or revoked the license for a radio station in the Wireless Radio Services, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) If an applicant has been afforded an opportunity for a hearing with respect to an application for a new station or an enlargement of service area, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application for service of the same type to the same area by that applicant, or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the original application, until after the lapse of 12 months from the effective date of final Commission action on the original application.

(c) If an appeal has been taken from the action of the Commission denying a particular application, a like application for service of the same type to the same area, in whole or in part, filed by that applicant or by its successor or assignee, or on behalf or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

(d) While an application is pending, any subsequent inconsistent or conflicting application submitted by, on behalf of, or for the benefit of the same applicant, its successor or assignee will not be accepted for filing.

§ 1.939 Petitions to deny.

(a) *Who may file.* Any party in interest may file with the Commission a petition to deny any application listed in a Public Notice as accepted for filing, whether as filed originally or upon major amendment as defined in § 1.929 of this part.

(1) For auctionable license applications, petitions to deny and related pleadings are governed by the procedures set forth in § 1.2108 of this part.

(2) Petitions to deny for non-auctionable applications that are subject to petitions under § 309(d) of the Communications Act must comply with the provisions of this section and must be filed no later than 30 days after the date of the Public Notice listing the application or major amendment to the application as accepted for filing.

(b) *Filing of petitions.* Petitions to deny and related pleadings may be filed electronically via ULS. Manually filed petitions to deny must be filed with the Office of the Secretary, 1919 M Street, NW., Washington, DC 20554. Attachments to manually filed applications may be filed on a standard 31/4" magnetic diskette formatted to be readable by high density floppy drives operating under MS–DOS (version 3.X or later compatible versions). Each diskette submitted must contain an ASCII text file listing each filename and a brief description of the contents of each file on the diskette. The files on the diskette, other than the table of contents, should be in Adobe Acrobat Portable Document Format (PDF) whenever possible. Petitions to deny and related pleadings must reference the file number of the pending application that is the subject of the petition.

(c) *Service.* A petitioner shall serve a copy of its petition to deny on the applicant and on all other interested parties pursuant to § 1.47. Oppositions and replies shall be served on the petitioner and all other interested parties.

(d) *Content.* A petition to deny must contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.

(e) *Petitions to deny amended applications.* Petitions to deny a major amendment to an application may raise only matters directly related to the major amendment that could not have been raised in connection with the application as originally filed. This paragraph does not apply to petitioners who gain standing because of the major amendment.

(f) *Oppositions and replies.* The applicant and any other interested party may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof. Time for filing of oppositions and replies is governed by § 1.45 of this part for non-auctionable services and § 1.2108 of this part for auctionable services.

(g) *Dismissal of petition.* The Commission may dismiss any petition to deny that does not comply with the requirements of this section if the issues raised become moot, or if the petitioner or his/her attorney fails to appear at a settlement conference pursuant to § 1.956 of this part. The reasons for the dismissal will be stated in the dismissal letter or order. When a petition to deny is dismissed, any related responsive pleadings are also dismissed

(h) *Grant of petitioned application.* If a petition to deny has been filed and the Commission grants the application, the Commission will dismiss or deny the petition by issuing a concise statement of the reason(s) for dismissing or denying the petition, disposing of all substantive issues raised in the petition.

§ 1.945 License grants.

(a) *License grants—auctionable license applications.* Procedures for grant of licenses that are subject to competitive bidding under section 309(j) of the Communications Act are set forth in §§ 1.2108 and 1.2109 of this part.

(b) *License grants—non-auctionable license applications.* No application that is not subject to competitive bidding under § 309(j) of the Communications Act will be granted by the Commission prior to the 31st day following the issuance of a Public Notice of the acceptance for filing of such application or of any substantial amendment thereof, unless the application is not subject to § 309(b) of the Communications Act.

(c) *Grant without hearing.* In the case of both auctionable license applications and non-mutually exclusive non-auctionable license applications, the Commission will grant the application without a hearing if it is proper upon its face and if the Commission finds from an examination of such application and supporting data, any pleading filed, or other matters which it may officially notice, that:

(1) There are no substantial and material questions of fact;

(2) The applicant is legally, technically, financially, and otherwise qualified;

(3) A grant of the application would not involve modification, revocation, or non-renewal of any other existing license;

(4) A grant of the application would not preclude the grant of any mutually exclusive application; and

(5) A grant of the application would serve the public interest, convenience, and necessity.

(d) *Grant of petitioned applications.* The FCC may grant, without a formal hearing, an application against which petition(s) to deny have been filed. If any petition(s) to deny are pending (i.e. have not been dismissed or withdrawn by the petitioner) when an application is granted, the FCC will deny the petition(s) and issue a concise statement of the reason(s) for the denial, disposing of all substantive issues raised in the petitions.

(e) *Partial and conditional grants.* The FCC may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type. When the FCC does this, it will inform the applicant of the reasons therefor. Such partial or conditional grants are final unless the FCC revises its action in response to a petition for reconsideration. Such petitions for reconsideration must be filed by the applicant within thirty days after the date of the letter or order stating the reasons for the partial or conditional grant, and must reject the partial or conditional grant and return the instrument of authorization.

(f) *Designation for hearing.* If the Commission is unable to make the findings prescribed in subparagraph (c), it will formally designate the application for hearing on the grounds or reasons then obtaining and will notify the applicant and all other known parties in interest of such action.

(1) Orders designating applications for hearing will specify with particularity the matters in issue.

(2) Parties in interest, if any, who are not notified by the Commission of its action in designating a particular application for hearing may acquire the status of a party to the proceeding by filing a petition for intervention showing the basis of their interest not more than 30 days after publication in the **Federal Register** of the hearing issues or any substantial amendment thereto.

(3) The applicant and all other parties in interest shall be permitted to participate in any hearing subsequently held upon such applications. Hearings may be conducted by the Commission or by the Chief of the Wireless Telecommunications Bureau, or, in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge. The burden of proceeding with the introduction of

evidence and burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission or the Chief of the Wireless Telecommunications Bureau.

§ 1.946 Construction and coverage requirements.

(a) *Construction and commencement of service requirements.* For each of the Wireless Radio Services, requirements for construction and commencement of service or commencement of operations are set forth in the rule part governing the specific service. For purposes of this section, the period between the date of grant of an authorization and the date of required commencement of service or operations is referred to as the construction period.

(b) *Coverage and substantial service requirements.* In certain Wireless Radio Services, licensees must comply with geographic coverage requirements or substantial service requirements within a specified time period. These requirements are set forth in the rule part governing each specific service. For purposes of this section, the period between the date of grant of an authorization and the date that a particular degree of coverage or substantial service is required is referred to as the coverage period.

(c) *Termination of authorizations.* If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically, without specific Commission action, on the date the construction or coverage period expires.

(d) *Licensee notification of compliance.* A licensee who commences service or operations within the construction period or meets its coverage or substantial service obligations within the coverage period must notify the Commission by filing FCC Form 601. The notification must be filed with the Commission within 15 days of the expiration of the applicable construction or coverage period. Where the authorization is site-specific, if service or operations have begun using some, but not all, of the authorized transmitters, the notification must show to which specific transmitters it applies.

(e) *Requests for extension of time.* Licensees may request to extend a construction period or coverage period by filing FCC Form 601. The request must be filed before the expiration of the construction or coverage period.

(1) An extension request may be granted if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.

(2) Extension requests will not be granted for failure to meet a construction or coverage deadline due to delays caused by a failure to obtain financing, to obtain an antenna site, or to order equipment in a timely manner. If the licensee orders equipment within 90 days of its initial license grant, a presumption of diligence is established.

(3) Extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization. The Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.

(4) The filing of an extension request does not automatically extend the construction or coverage period unless the request is based on involuntary loss of site or other circumstances beyond the licensee's control, in which case the construction period is automatically extended pending disposition of the extension request.

(5) A request for extension of time to construct a particular transmitter or other facility does not extend the construction period for other transmitters and facilities under the same authorization.

§ 1.947 Modification of licenses.

(a) All major modifications, as defined in § 1.929 of this part, require prior Commission approval. Applications for major modifications also shall be treated as new applications for determination of filing date, Public Notice, and petition to deny purposes.

(b) Licensees may make minor modifications to station authorizations, as defined in § 1.929 of this part (other than *pro forma* transfers and assignments), as a matter of right without prior Commission approval, but must notify the Commission by filing FCC Form 601 within thirty (30) days of implementing any such changes.

(c) Multiple pending modification applications requesting changes to the same or related technical parameters on an authorization are not permitted. If a modification application is pending, any additional changes to the same or related technical parameters may be requested only in an amendment to the pending modification application.

(d) Any proposed modification that requires a fee as set forth at part 1, subpart G, of this chapter must be filed in accordance with § 1.913.

§ 1.948 Assignment of authorization or transfer of control, notification of consummation.

(a) *General.* Except as provided in this section, authorizations in the Wireless Radio Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or the control of a licensee holding such authorizations may be transferred, only upon application to and approval by the Commission.

(b) *Limitations on transfers and assignments.* (1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(3) Designated Entities, as defined in § 1.2110(a) of this part, must comply with §§ 1.2110 and 1.2111 of this part when seeking to assign or transfer control of an authorization.

(4) Stations must meet all applicable requirements regarding transfers and assignments contained in the rules pertaining to the specific service in which the station is licensed.

(5) Licenses, permits, and authorizations for stations in the Amateur, Ship, Aircraft, Commercial Operator and Personal Radio Services (except 218–219 MHz Service) may not be assigned or transferred, unless otherwise stated.

(c) *Application required.* In the case of an assignment of authorization or transfer of control, the assignor must file an application for approval of the assignment on FCC Form 603. If the assignee or transferee is subject to the ownership reporting requirements of § 1.2112(a), the assignee or transferee must also file an updated FCC Form 602 or certify that a current FCC Form 602 is on file.

(1) In the case of a non-substantial (*pro forma*) transfer or assignment involving a telecommunications carrier, as defined in § 153(44) of the Communications Act, filing of the Form 603 and Commission approval in advance of the proposed transaction is not required, provided that:

(i) the affected license is not subject to unjust enrichment provisions under subpart Q of this part;

(ii) the transfer or assignment does not involve a proxy contest; and

(iii) the transferee or assignee provides notice of the transaction by filing FCC Form 603 within 30 days of its completion, and provides any necessary updates of ownership information on FCC Form 602.

(2) In the case of an involuntary assignment or transfer, FCC Form 603 must be filed no later than 30 days after the event causing the involuntary assignment or transfer.

(d) *Notification of consummation.* In all Wireless Radio Services, licensees are required to notify the Commission of consummation of an approved transfer or assignment on FCC Form 603. The assignee or transferee must notify the Commission by providing the date of completion of the assignment or transfer on FCC Form 603. For transfers and assignments that require prior Commission approval, the transaction must be consummated and notice provided to the Commission within 60 days of public notice of approval, unless a request for an extension of time to consummate is filed on FCC Form 603 prior to the expiration of this 60-day period. For transfers and assignments that do not require prior Commission approval, notice of completion of the transaction must be provided on FCC Form 603 within 30 days of completion, along with any necessary updates of ownership information on FCC Form 602.

(e) *Partial assignment of authorization.* If the authorization for some, but not all, of the facilities of a radio station in the Wireless Radio Services is assigned to another party, voluntarily or involuntarily, such action is a partial assignment of authorization. To request Commission approval of a partial assignment of authorization, the assignor must notify the Commission on FCC Form 603 of the facilities that will be deleted from its authorization upon consummation of the assignment.

(f) *Partitioning and disaggregation.* Where a licensee proposes to partition or disaggregate a portion of its authorization to another party, the application will be treated as a request for partial assignment of authorization. The assignor must notify the Commission on FCC Form 603 of the geographic area or spectrum that will be deleted from its authorization upon consummation of the assignment.

(g) *Involuntary transfer and assignment.* In the event of the death or legal disability of a permittee or licensee, a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee, the Commission shall be notified promptly of the occurrence of such death or legal disability. Within 30 days after the occurrence of such death or legal disability (except in the case of a ship or amateur station), an application shall be filed for consent to involuntary assignment of such permit or license, or for involuntary transfer of control of such corporation, to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved. The procedures and forms to be used are the same procedures and forms as those specified in paragraph (b) of this section. In the case of Ship, aircraft, Commercial Operator, Amateur, and Personal Radio Services (except for 218–219 MHz Service) involuntary assignment of licenses will not be granted; such licenses shall be surrendered for cancellation upon the death or legal disability of the licensee. Amateur station call signs assigned to the station of a deceased licensee shall be available for reassignment pursuant to § 97.19 of this chapter.

(h) *Disclosure requirements.* Applicants for transfer or assignment of licenses in auctionable services must comply with the disclosure requirements of §§ 1.2111 and 1.2112 of this part.

(i) *Trafficking.* Applications for approval of assignment or transfer may be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations.

(1) Trafficking consists of obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own private use.

(2) The Commission may require submission of an affirmative, factual showing, supported by affidavit of persons with personal knowledge thereof, to demonstrate that the assignor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization. This showing may include, for example, a demonstration that the proposed assignment is due to changed circumstances (described in detail) affecting the licensee after the grant of the authorization, or that the proposed assignment is incidental to a sale of other facilities or a merger of interests.

§ 1.949 Application for renewal of license.

(a) Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration. Renewal applications must be filed on the same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605. Additional renewal requirements applicable to specific services are set forth in the subparts governing those services.

(b) Licensees with multiple authorizations in the same service may request a common day and month on which such authorizations expire for renewal purposes. License terms may be shortened by up to one year but will not be extended to accommodate the applicant's selection.

46. Section 1.951 is revised to read as follows:

§ 1.951 Duty to respond to official communications.

Licensees or applicants in the Wireless Radio Services receiving official notice of an apparent or actual violation of a federal statute, international agreement, Executive Order, or regulation pertaining to communications shall respond in writing within 10 days to the office of the FCC originating the notice, unless otherwise specified. Responses to official communications must be complete and self-contained without reference to other communications unless copies of such other communications are attached to the response. Licensees or applicants may respond via ULS.

§ 1.952 [Removed]

47. Section 1.952 is removed.

§ 1.953 [Removed]

48. Section 1.953 is removed.

49. Section 1.955 is revised to read as follows:

§ 1.955 Termination of authorizations.

(a) Authorizations in general remain valid until terminated in accordance with this section, except that the Commission may revoke an authorization pursuant to section 312 of the Communications Act of 1934, as amended. *See* 47 U.S.C. 312.

(1) *Expiration.* Authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed. *See* § 1.948 of this part. No authorization granted under the provisions of this part shall be for a term longer than ten years. *See* 47 U.S.C 307(c).

(2) *Failure to meet construction or coverage requirements.* Authorizations automatically terminate, without specific Commission action, if the licensee fails to meet applicable

construction or coverage requirements. *See* § 1.948(c) of this part.

(3) *Service discontinued.* Authorizations automatically terminate, without specific Commission action, if service is permanently discontinued. The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section. A licensee who discontinues operations shall notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation.

(b) Special temporary authority (STA) automatically terminates without specific Commission action upon failure to comply with the terms and conditions therein, or at the end of the period specified therein, unless a timely request for an extension of the STA term is filed in accordance with § 1.931 of this part. If a timely filed request for extension of the STA term is dismissed or denied, the STA automatically terminates, without specific Commission action, on the day after the applicant or the applicant's attorney is notified of the Commission's action dismissing or denying the request for extension.

(c) Authorizations submitted by licensees for cancellation terminate when the Commission gives Public Notice of such action.

50. Section 1.956 is added to read as follows:

§ 1.956 Settlement conferences.

Parties are encouraged to use alternative dispute resolution procedures to settle disputes. *See* subpart E of this part. In any contested proceeding, the Commission, in its discretion, may direct the parties or their attorneys to appear before it for a conference.

(a) The purposes of such conferences are:

(1) To obtain admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(2) To consider the necessity for or desirability of amendments to the pleadings, or of additional pleadings or evidentiary submissions;

(3) To consider simplification or narrowing of the issues;

(4) To encourage settlement of the matters in controversy by agreement between the parties; and

(5) To consider other matters that may aid in the resolution of the contested proceeding.

(b) Conferences are scheduled by the Commission at a time and place it may designate, to be conducted in person or by telephone conference call.

(c) The failure of any party or attorney, following reasonable notice, to appear at a scheduled conference will be deemed a failure to prosecute, subjecting that party's application or petition to dismissal by the Commission.

51. Section 1.957 is added to read as follows:

§ 1.957 Procedure with respect to amateur radio operator license.

Each candidate for an amateur radio license which requires the applicant to pass one or more examination elements must present the Volunteer Examiners (VEs) with a properly completed FCC Form 605 prior to the examination. Upon completion of the examination, the VEs will grade the test papers. If the applicant is successful, the VEs will forward the candidate's application to a Volunteer-Examiner Coordinator (VEC). The VEs will then issue a certificate for sucessful completion of an amateur radio operator examination. The VEC will forward the application to the Commission's Gettysburg, Pennsylvania, facility.

§ 1.958 [Removed]

52. Section 1.958 is removed.

§ 1.959 [Removed]

53. Section 1.959 is removed.

§ 1.961 [Removed]

54. Section 1.961 is removed.

§ 1.962 [Removed]

55. Section 1.962 is removed.

§ 1.971 [Removed]

56. Section 1.971 is removed.

§ 1.972 [Removed]

57. Section 1.972 is removed.

§ 1.973 [Removed]

58. Section 1.973 is removed.

59. Section 1.981 is revised to read as follows:

§ 1.981 Reports, annual and semiannual.

(a) Licensees of stations authorized for developmental operation shall submit a report on the results of the developmental program. The report shall be filed with and made a part of each application for renewal of authorization. The report shall be filed at the Commission's offices in Washington, DC or alternatively may be sent to the commission electronically via the ULS.

(b) The report shall include comprehensive and detailed information on the following:

(1) The final objective.

(2) Results of operation to date.

(3) Analysis of the results obtained.

(4) Copies of any published reports.

(5) Need for continuation of the program.

(6) Number of hours of operation on each frequency.

(c) Where required by the particular service rules, licensees who have entered into agreements with other persons for the cooperative use of radio station facilities must submit annually an audited financial statement reflecting the nonprofit cost-sharing nature of the arrangement to the Commission's offices in Washington, DC or alternatively may be sent to the Commission electronically via the ULS, no later than three months after the close of the licensee's fiscal year.

60. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to § 1.1152 for the appropriate regulatory fee that must be paid for this service.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. Payment of electronically filed application.	159	(1)	(1)	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
2. Land Transportation:				
a. New	601 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-profit	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

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Action	FCC Form No.	Fee amount	Payment type code	Address
d. Assignment	603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
3. Industrial/Business Pool:				
a. New	601 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-profit, CMRS.	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment	603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
4. Other Industrial:				
a. New	601 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-profit	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment	603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
5. GMRS:				
a. New	605 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	605 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification	605 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
6. 800 MHz:				
a. New	601 & 159	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-profit, CMRS.	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment	603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
7. 900 MHz:				
a. New	601 & 159	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-profit, CMRS.	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment	603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
8. BUS, OI, LT, PS/SE, 470–512, 800,900,220,220 NAT, Renewal Non-profit, CMRS	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
9. 218–219 MHz Service Renewal Non-profit.	601 & 159	45	PAIM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
10. BUS, OI, LT Renewal	601 & 159	45	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
11. 470–512,800,900,220 Renewal.	601 & 159	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
12. 220 Nationwide Renewal	601 & 159	45	PALT*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
13. 218–219 MHz Service Renewal.	601 & 159	45	PAIR	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
14. Microwave:				
a. New	601 & 159	200	PEOR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Non-profit	601 & 159	200	PEOM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Assignment	601 & 159 603 & 159	200	PEOM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Microwave Renewal	601 & 159	200	PEOR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
e. Microwave Renewal Non-profit.	601 & 159	200	PEOM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
15. Ground:				
a. New	601 & 159	90	PBVR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
b. Modification, Non-profit	601 & 159	90	PBVM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Assignment	603 & 159	90	PBVM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Ground Renewal Non-profit.	601 & 159	90	PBVM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
e. Ground Renewal	601 & 159	90	PBVR *	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
16 Coast:				
a. New	601 & 159	90	PBMR *	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Non-profit, CMRS.	601 & 159	90	PBMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Assignment	603 & 159	90	PBMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Coast Renewal Non-profit, CMRS.	601 & 159	90	PBMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
e. Coast Renewal	601 & 159	90	PBMR *	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
17. Ship:				
a. New	605 & 159	45	PASR *	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Non-profit	605 & 159	45	PASM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Ship Renewal Non-profit	605 & 159	45	PASM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
d. Ship Renewal	605 & 159	45	PASR *	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
18 Aircraft:				
a. New	605 & 159	45	PAAR *	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Non-profit	605 & 159	45	PAAM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Aircraft Renewal Non-profit.	605 & 159	45	PAAM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
d. Aircraft Renewal	605 & 159	45	PAAM *	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
19. Public Safety Pool:				
a. New, Modification	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Assignment	603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Renewal	601 & 159 603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
20 Restricted Permit	605 & 159	45	PARR	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
21 Waiver:				
a. Rule Waiver	601 & 159 605 & 159 Corres & 159	135	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Exemption from Ship Station Radio Requirements.	605 & 159	135	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
22. Correspondence Finders Preference.	Corres & 159	135	PDXM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
23. STA (Common Carrier) Domestic Public Fixed Pt. to Pt. & Local TV Trans.	601 & 159 Corres & 159	90	CEPM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
24. STA (Common Carrier) Domestic Public Fixed Digital Electronic Message.	601 & 159 Corres & 159	90	CELM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
25. STA (BAPS)	601 & 159 Corres & 159	130	MGA	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
26. STA (218–219 MHz Service).	601 & 159 Corres & 159	45	PAIM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
27. STA (Coast)	601 & 159 Corres & 159	130	PCMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
28. STA (Ground)	601 & 159 Corres & 159	130	PCVM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
29. STA (Private Operational Fixed Microwave).	601 & 159 Corres & 159	45	PAOM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
30. STA (Land Mobile)	601 & 159 Corres & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
31. STA (GMRS)	605 & 159 ..... Corres & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
32. Duplicate	601 & 159 ..... 605 & 159	45	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
33. Hearing	Corres & 159	8,640	PFHM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
34. Wait List	Corres & 159	45	PAWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
35. Transfer of Control	603 & 159	45	PATM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
36. Billing	Invoice	Various	Various	Federal Communications Commission, Billings, P.O. Box 358325, Pittsburgh, PA 15251–5325.
37. 220 MHz:				
a. New ..	601 & 159	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159 .	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-profit, CMRS.	601 & 159 .	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment	603 & 159 .	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
38. 218–219 MHz Service:				
a. New	601 & 159 .	45	PAIR ..	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159 .	45	PAIR ..	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-Profit	601 & 159 .	45	PAIM ..	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
39. Common Carrier Point-To-Point and Local TV Trans.:				
a. New	601 & 159 ..	200	CJPR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification	601 & 159 ..	200	CJPM .	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Renewal	601 & 159 ..	200	CJPR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
d. Ext. Construction	601 & 159 ..	75	CCPM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment	603 & 159 ..	75	CCPM .	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Transfer of Control	603 & 159 ..	75	CCPM .	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Additional Stations	601 & 159 ..	45	CAPM .	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Waiver of Prior Construction Authorization.	601 & 159 ...	90	CEPM .	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130
40. Common Carrier Digital Electronic Message:				
a. New	601 & 159	200	CJLR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification	601 & 159	200	CJLM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Renewal	601 & 159 .	200	CJLR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245
d. Ext. Construction	601 & 159 .	75	CCLM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment	603 & 159 .	75	CCLM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Transfer of Control ...	603 & 159 .	75	CCLM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Additional Stations ...	601 & 159 .	45	CALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Construction Waiver	601 & 159 .	90	CELM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
41. Mass Media Broadcast Auxiliary:				
a. New, Modification	601 & 159 .	110	MEA	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159 .	45	MAA	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
42. Commercial Renewal	605 & 159 ..	45	PACS	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.

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43. 470–512:				
a. New	601 & 159	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159	45	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-profit, CMRS.	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment	603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
44. 220 Nationwide:				
a. New	601 & 159	45	PALT*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	601 & 159	45	PALT*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
c. Modification, Non-Profit, CMRS.	601 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment	603 & 159	45	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
45. Domestic Public Land Mobile Stations (including Base, Dispatch, Control & Repeater Stations):				
a. New or Additional Facility (per transmitter).	601 & 159	295	CMD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modifications (per transmitter).	601 & 159	295	CMD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Fill in Transmitters (per transmitter).	601 & 159	295	CMD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Major Amendment to a Pending Application (per transmitter).	601 & 159	295	CMD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment or Transfer:				
(i) First Call Sign on Application.	603 & 159	295	CMD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign.	603 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Partial Assignment (per call sign).	603 & 159	295	CMD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal (per call sign)	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
h. Minor Modification (per transmitter).	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130 ,Pittsburgh, PA 15251–5130.
i. Special Temporary Authority (per frequency/per location).	601 & 159 Corres. & 159	260	CLD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Extension of Time to Construct (per application).	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Notice of Completion of Construction (per application).	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Auxiliary Test Station (per transmitter).	601 & 159	260	CLD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
m. Subsidiary Communications Service (per request).	601 &159	130	CFD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Combining Call Signs (per call sign).	601 & 159	260	CLD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
o. 900 MHZ Nationwide Paging:				
(i) Renewal—Network Organizer.	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(ii) Renewal—Network Operator (per operator/per city).	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
p. Air-Ground Individual License (per station):				
(i) Initial License	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Renewal of License.	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(iii) Modification of License.	601 & 159	45	CAD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

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Action	FCC Form No.	Fee amount	Payment type code	Address
46. Cellular Systems:				
a. New or Additional Facility.	601 & 159	295	CMC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modification	601 & 159	295	CMC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Minor Modification	601 & 159	80	CDC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment or Transfer	603 & 159	295	CMC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Partial Assignment	603 & 159	295	CMC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Renewal	601 & 159	45	CAC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
g. Extension of Time to Complete Construction.	601 & 159	45	CAC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Special Temporary Authority.	601 & 159	260	CLC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Combining Cellular Geographic Service Areas.	601 & 159	65	CBC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
47. Rural Radio (includes Central Office, Interoffice, or Relay Facilities):				
a. New or Additional Facility.	601 & 159	135	CGRR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modification (per transmitter).	601 & 159	135	CGRM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Major Amendment to Pending Application (per transmitter).	601 & 159	135	CGRM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Minor Modification (per transmitter).	601 & 159	45	CARM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment or Transfer:				
(i) First Call Sign	603 & 159	135	CGRM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign.	603 & 159	45	CARM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Assignment or Transfer:.				
(i) Partial Assignment	603 & 159	135	CGRM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal	601 & 159	45	CARR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
h. Extension of Time to Construct (per application).	601 & 159	45	CARM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Notice of Completion of Construction (per application).	601 & 159	45	CARM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Special Temporary Authority (per transmitter).	601 & 159 Corres. & 159	260	CLRM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Combining Call Signs (per call sign).	601 & 159	260	CLRM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Auxiliary Test Station (per transmitter).	601 & 159	260	CLRM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
48. Offshore Radio Service (Mobile, Subscriber, and Central Stations):				
a. New or Additional Facility (per transmitter).	601 & 159	135	CGF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modification (per transmitter).	601 & 159	135	CGF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Fill In Transmitters (per transmitter).	601 & 159	135	CGF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Major Amendment to a Pending Application (per transmitter).	601 & 159	135	CGF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Minor Modification (per transmitter).	601 & 159	45	CAF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Assignment or Transfer:				
(i) First Call Sign	603 & 159	135	CGF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign.	603 & 159	45	CAF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Partial Assignment (per Call Sign).	603 & 159	135	CGF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
g. Renewal (per Call Sign)	601 & 159	45	CAF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
h. Extension of Time to Construct (per application).	601 & 159	45	CAF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Notice of Completion of Construction (per application).	601 & 159	45	CAF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Special Temporary Authority (per transmitter).	601 & 159 Corres. & 159	260	CLF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Combining Call Signs (per Call Sign).	601 & 159	260	CLF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Auxiliary Test Station (per transmitter).	601 & 159	260	CLF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

* Rural Radio Services pay both regulatory and application fees upfront for the entire license term. This applies to new applications, additional facilities and renewals. *See* Assessment of Collection of regulatory Fees for Fiscal Year 1998, Report and Order, 63 FR 35847 (1998) (rel. June 16, 1998).

[1] Refer to specific radio service and purpose in this table.

61. Section 1.1111 is amended by revising the first sentence in paragraph (b) and adding paragraph (c) to read as follows:

§ 1.1111 Filing locations.

* * * * *

(b) Except as provided for in paragraph (c) of this section, all materials must be submitted as one package. * * *

(c) Fees for applications and other filings pertaining to the Wireless Radio Services that are submitted electronically via ULS may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the application file number (assigned by the ULS electronic filing system on FCC Form 159) and submit such number with the payment in order for the Commission to verify that the payment was made. Manual payments must be received no later than ten (10) days after receipt of the application on ULS or the application will be dismissed.

62. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz, Base Station & SMRS) (47 CFR, Part 90):		
(a) 800 MHz New (FCC 601)	$12.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) 800 MHz Renewal (FCC 601)	12.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(c) 900 MHz New (FCC 601)	12.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(d) 900 MHz Renewal (FCC 601)	12.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(e) 470–512,800,900, 220 MHz, 200 MHz Nationwide Renewal (FCC 601).	12.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(f) 220 MHz New (FCC 601)	12.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(g) 220 MHz Renewal (FCC 601)	12.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(h) 470–512 MHz New (FCC 601)	12.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(i) 470–512 MHz Renewal (FCC 601)	12.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(j) 220 MHz Nationwide New (FCC 601)	12.00	FCC, P.O. Box 358130, Pittsburgh PA 15251–5130.
(k) 220 MHz Nationwide Renewal (FCC 601)	12.00	FCC, P.O. Box 358245. Pittsburgh PA 15251–5245.
2. Microwave (47 CFR Part 101):		
(a) Microwave New (FCC 601)	12.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Microwave Renewal (FCC 601)	12.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
3. Shared Use Services:		
(a) Land Transportation (LT) New (FCC 601)	6.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Land Transportation (LT) Renewal (FCC 601)	6.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(c) Business (Bus.) New (FCC 601)	6.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(d) Business (Bus.) Renewal (FCC 601)	6.00	FCC, P.O. Box 35245 Pittsburgh, PA 15251–5245.
(e) Other Industrial (OI) New (FCC 601)	6.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(f) Other Industrial (OI) Renewal (FCC 601)	6.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(g) General Mobile Radio Service (GMRS) New (FCC 605)	6.00	FCC, P.O. Box 358130, New Pittsburgh, PA 15251–5130.
(h) General Mobile Radio Service (GMRS) Renewal (FCC 605).	6.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(i) Business, Other Industrial, Land Transportation, GMRS Renewal (FCC 601/FCC 605).	6.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(j) Ground New (FCC 601)	6.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(k) Ground Renewal (FCC 601)	6.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(l) Coast New (FCC 601)	6.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(m) Coast Renewal (FCC 601)	6.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(n) Ship New (FCC 605)	6.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(o) Ship Renewal (FCC 605)	6.00	FCC, P.O. Box 358245, (FCC 605) Pittsburgh, PA 15251–5245.
(p) Aircraft New (FCC 605)	6.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.

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Exclusive use services (per license)	Fee amount	Address
(q) Aircraft Renewal (FCC 605)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245
4. Amateur Vanity Call Signs	1.30	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130
5. CMRS Mobile Services (per unit)	.29	FCC, P.O. Box 358835, Pittsburgh, PA 15251–5835
6. CMRS Messaging Services (per unit)	.04	FCC, P.O. Box 358835, Pittsburgh, PA 15251–5835

Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § [illegible] of this chapter.

63. Section 1.2003 is amended by adding entries for FCC Form 601, FCC Form 602, FCC Form 603, and FCC Form 605 in numerical order to read as follows:

§ 1.2003 Applications affected.

* * * * *

FCC 601 FCC Application for Wireless Telecommunications Bureau Radio Service Authorization;

FCC 602 FCC Ownership Disclosure Information for the Wireless Telecommunications Services;

FCC 603 FCC Wireless Telecommunications Bureau Application for Assignment of Authorization and Transfer of Control;

FCC 605 Quick Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

* * * * *

64. Section 1.2107 is amended by adding paragraph (e) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(e) An applicant must also submit FCC Form 602 (*see* § 1.919 of this chapter) with its long form application (FCC Form 601).

65. Section 1.2111 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 1.2111 Assignment or transfer of control: unjust enrichment.

(a) * * * Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the local consideration that the applicant would receive in return for the transfer or assignment of its license (*see* § 1.948 of this chapter). * * *

* * * * *

PART 13—COMMERCIAL RADIO OPERATORS

66. The authority citation for part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, and 303, unless otherwise noted.

67. Section 13.5 is revised to read as follows:

§ 13.5 Licensed commercial radio operator required.

Rules that require FCC station licensees to have certain transmitter operation, maintenance, and repair duties performed by a commercial radio operator are contained in parts 23, 80, and 87 of this chapter.

68. Section 13.9 is amended by redesignating paragraphs (d) through (f) as (e) through (g), adding a new paragraph (d), revising paragraphs (b) and (c) and revising the introductory text of the newly redesignated paragraph (f) to read as follows:

§ 13.9 Eligibility and application for new license or endorsement.

* * * * *

(b)(1) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Ship Radar Endorsement, Six Months Service Endorsement, GMDSS Radio Operator's License, GMDSS Radio Maintainer's License and GMDSS Radio Operator/Maintainer must be filed on FCC Form 605 in accordance with § 1.913 of this chapter.

(2) Each application for a Restricted Radiotelephone Operator Permit or a Restricted Radiotelephone Operator Permit-Limited Use must be filed on FCC Form 605 in accordance with § 1.913 of this chapter.

(c) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Ship Radar Enforcement, GMDSS Radio Operator's License, GMDSS Radio Maintainer's, or GMDSS Radio Operator/Maintainer License must be accompanied by the required fee, if any, and submitted in accordance with § 1.913 of this chapter. The application must include an original PPC(s) from a COLEM(s) showing that the applicant has passed the necessary examinations element(s) within the previous 365 days when the applicant files the application. If a COLEM files the application electronically on behalf of the applicant an original PPC(s) is not required. However, the COLEM must keep the PPC(s) on file for a period of 1 year.

(d) An applicant will be given credit for an examination element as specified below:

(1) An unexpired (or within the grace period) FCC-issued commercial radio operator license: The written examination and telegraphy Element(s) required to obtain the license held; and

(2) An unexpired (or within the grace period) FCC-issued Amateur Extra-Class operator license: Telegraphy Elements 1 and 2.

* * * * *

(f) Each application for a new six months service endorsement must be submitted in accordance with § 1.913 of this chapter. The application must include documentation showing that:

* * * * *

69. Section 13.13 is amended by removing paragraphs (d), (e), and (f) and redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising paragraphs (a), (b), and (c) to read as follows:

§ 13.13 Application for a renewed or modified license.

(a) Each application to renew a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Marine Radio Operator Permit, GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License must be made on FCC Form 605. The application must be accompanied by the appropriate fee and submitted in accordance with § 1.913 of this chapter.

(b) If a license expires, application for renewal may be made during a grace period of five years after the expiration date without having to retake the required examinations. The application must be accompanied by the required fee and submitted in accordance with § 1.913 of this chapter. During the grace period, the expired license is not valid. A license renewed during the grace period will be effective as of the date of the renewal. Licensees who fail to renew their license within the grace period must apply for a new license and take the required examination(s).

(c) Each application involving a change in operator class must be filed on FCC Form 605. Each application for a commercial operator license involving a change in operator class must be accompanied by the required fee, if any, and submitted in accordance with § 1.913 of this chapter. The application must include an original PPC(s) from a COLEM(s) showing that the applicant has passed the necessary examinations element(s) within the previous 365 days when the applicant files the application. If a COLEM files the application electronically on behalf of the applicant an original PPC(s) is not required. However, the COLEM must keep the PPC(s) on file for a period of 1 year.

(d) An applicant will be given credit for an examination element as specified below:

(1) An unexpired (or within the grace period) FCC-issued commercial radio operator license: The written examination and telegraphy Element(s) required to obtain the license held; and

(2) An unexpired (or within the grace period) FCC-issued Amateur Extra-Class operator license: Telegraphy Elements 1 and 2.

* * * * *

70. Section 13.17 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 13.17 Replacement license.

* * * * *

(b) Each application for a replacement General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, must be made on FCC Form 605 * * *

(c) Each application for a replacement Restricted Radiotelephone Operator Permit must be on FCC Form 605.

(d) Each application for a replacement Restricted Radiotelephone Operator Permit-Limited Use must be on FCC Form 605.

* * * * *

PART 22—PUBLIC MOBILE SERVICES

71. The authority citation for part 22 continues to read as follows:

Authority: Secs. 4, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 309 and 332, unless otherwise noted.

72. Section 22.99 is amended by removing the definitions of "Archival quality microfiche", Assignment of authorization," "Authorization," and "Transfer of control," and by adding a new definition for "Universal Licensing System" to read as follows:

§ 22.99 Definitions.

* * * * *

Universal licensing system. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

* * * * *

§ 22.101 [Removed]

73. Section 22.101 is removed.

§ 22.103 [Removed]

74. Section 22.103 is removed.

§ 22.105 [Removed]

75. Section 22.105 is removed.

§ 22.106 [Removed]

76. Section 22.106 is removed.

§ 22.108 [Removed]

77. Section 22.108 is removed.

§ 22.115 [Removed]

78. Section 22.115 is removed.

§ 22.117 [Removed]

79. Section 22.117 is removed.

§ 22.119 [Removed]

80. Section 22.119 is removed.

§ 22.120 [Removed]

81. Section 22.120 is removed.

§ 22.121 [Removed]

82. Section 22.121 is removed.

§ 22.122 [Removed]

83. Section 22.122 is removed.

§ 22.123 [Removed]

84. Section 22.123 is removed.

§ 22.124 [Removed]

85. Section 22.124 is removed.

§ 22.125 [Removed]

86. Section 22.125 is removed.

§ 22.127 [Removed]

87. Section 22.127 is removed.

§ 22.128 [Removed]

88. Section 22.128 is removed.

§ 22.129 [Removed]

89. Section 22.129 is removed.

§ 22.130 [Removed]

90. Section 22.130 is removed.

91. Section 22.131 is amended by revising paragraphs (b) introductory text, (b)(1), (c) introductory text, (c)(1), (c)(2), and removing paragraph (d)(3) to read as follows:

§ 22.131 Procedures for mutually exclusive applications.

* * * * *

(b) *Filing groups.* Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The Commission may dismiss as defective (pursuant to § 1.945 of this chapter) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (c)(3) of this section. A filing group is one of the following types:

(1) *Renewal filing group.* A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications (*see* § 1.935 of this chapter).

* * * * *

(c) *Procedures.* Generally, the Commission may grant one application in a filing group of mutually exclusive applications and dismiss the other application(s) in the filing that are excluded by that grant, pursuant to § 1.945 of this chapter.

(1) *Selection methods.* In selecting the application to grant, the Commission will use competitive bidding.

(2) *Dismissal of applications.* The Commission may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 1.945 of this chapter, either before or after employing selection procedures.

* * * * *

§ 22.132 [Removed]

92. Section 22.132 is removed.

§ 22.135 [Removed]

93. Section 22.135 is removed.

§ 22.137 [Removed]

94. Section 22.137 is removed.

§ 22.139 [Removed]

95. Section 22.139 is removed.

§ 22.142 [Removed]

96. Section 22.142 is removed.

§ 22.144 [Removed]

97. Section 22.144 is removed.

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§ 22.145 [Removed]

98. Section 22.145 is removed.

99. Section 22.150 is amended by revising the first sentence in paragraph (d) introductory text to read as follows:

§ 22.150 Standard pre-filing technical coordination procedure.

* * * * *

(d) The 30-day period begins on the date the notification is submitted to the Commission via the ULS. * * *

* * * * *

§ 22.163 [Removed]

100. Section 22.163 is removed.

101. Section 22.165 is amended by revising paragraphs (b) and (e) to read as follows:

§ 22.165 Additional transmitters for existing systems.

* * * * *

(b) *Antenna structure registration.* Certain antenna structures must be registered with the Commission prior to construction or alteration. Registration requirements are contained in part 17 of this chapter.

* * * * *

(e) *Cellular radiotelephone service.* During the five-year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the market, except that the service area boundaries may extend beyond the market boundary into the area that is part of the COSA or is already encompassed by the service area boundaries of previously authorized facilities. After the five-year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the COSA. Licensees must notify the Commission (FCC Form 601) of any transmitters added under this section that cause a change in the COSA boundary. The notification must include full size and reduced maps, and supporting engineering, as described in § 22.953(a)(5)(i) through (iii). If the addition of transmitters involves a contract service area boundary (SAB) extension (see § 22.912), the notification must include a statement as to whether the five-year build-out period for the system on the relevant channel block in the market into which the SAB extends has elapsed and whether the SAB extends into any unserved area in the market. The notification must be made electronically via the ULS, or delivered to the filing place (see § 1.913 of this chapter) no later than 15 days after the addition is made.

* * * * *

§ 22.213 [Removed]

102. Section 22.213 is removed.

103. Section 22.221 is amended by revising paragraph (b) to read as follows:

§ 22.221 Eligibility for partitioned licenses.

* * * * *

(b) Each party to an agreement to partition the license must file a long-form application (FCC Form 601) for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MTA or Economic Area (EA) filed by the auction winner.

* * * * *

§ 22.315 [Removed]

104. Section 22.315 is removed.

105. Section 22.317 is amended by revising the first sentence to read as follows:

§ 22.317 Discontinuance of station operation.

If the operation of a Public Mobile Services station is permanently discontinued, the licensee shall send authorization for cancellation by electronic filing via the ULS on FCC Form 601. * * *

106. Section 22.323 is amended by revising paragraph (d) to read as follows:

§ 22.323 Incidental communications services.

* * * * *

(d) The licensee notifies the Commission using FCC Form 601 before providing the incidental services. This notification must include a complete description of the incidental services.

107. Section 22.352 is amended by revising paragraph (c)(6) to read as follows:

§ 22.352 Protection from interference.

* * * * *

(c) * * *

(6) *Facilities for which the Commission is not notified.* No protection is provided against interference to the service of any additional or modified transmitter operating pursuant to §§ 1.929 or 22.165, unless and until the licensee modifies its authorization using FCC Form 601.

* * * * *

§ 22.369 [Removed]

108. Section 22.369 is removed.

109. Section 22.411 is amended by revising paragraph (d)(1) to read as follows:

§ 22.411 Developmental authorization of 43 MHz paging transmitters.

* * * * *

(d) * * *

(1) After the two-year developmental period, provided that broadcast TV interference complaints have been resolved by the carrier in a satisfactory manner. Licensees that hold a developmental authorization for a 43 MHz paging station and wish to request a regular authorization must file an application using FCC Form 601 via the ULS prior to the expiration of the developmental period.

* * * * *

110. Section 22.413 is amended by revising paragraph (b)(1) to read as follows:

§ 22.413 Developmental authorization of 72–76 MHz fixed transmitters.

* * * * *

(b) * * *

(1) After six months of operation under developmental authorization, and provided that broadcast TV interference complaints have been resolved by the carrier in a satisfactory manner. Licensees that hold a developmental authorization for a 72–76 MHz fixed station and wish to request a regular authorization must file an application using FCC Form 601 via the ULS prior to the expiration of the developmental authorization.

* * * * *

111. Section 22.415 is amended by revising paragraph (b)(1) to read as follows:

§ 22.415 Developmental authorization of 928–960 MHz fixed transmitters.

* * * * *

(b) * * *

(1) After one year of operation under developmental authorization, and provided that no interference has been caused. Licensees that hold a developmental authorization and wish to request a regular authorization must file an application using FCC Form 601 prior to the expiration of the developmental authorization.

* * * * *

112. Section 22.417 is amended by revising paragraph (b)(1) to read as follows:

§ 22.417 Developmental authorization of meteor burst systems.

* * * * *

(b) * * *

(1) After six months of operation under developmental authorization, and provided that no interference has been caused to other operations. Licensees that hold a developmental authorization to use meteor burst propagation modes to provide rural radiotelephone service and wish to request a regular authorization must file an application

using FCC Form 601 prior to the expiration of the developmental authorization.

* * * * *

113. Section 22.503 is amended by revising paragraph (k) to read as follows:

§ 22.503 Paging geographic area authorizations.

* * * * *

(k) Failure by a paging geographic area licensee to meet either of the coverage requirements in paragraphs (k)(1) and (k)(2) of this section, or alternatively, the substantial service requirement in paragraph (k)(3) of this section, may result in automatic termination or non-renewal of a paging geographic area license. For the purpose of this paragraph, to "cover" area means to include geographic area within the composite of the service contour(s) determined by the methods of §§ 22.537 or 22.567, as appropriate for the particular channel involved. Licensees may determine the population of geographic areas included within their service contours using either the 1990 census or the 2000 census, but not both.

(1) No later than three years after the initial grant of a paging geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover one third of the population in the paging geographic area. The licensee must notify the FCC (FCC Form 601), no later than 15 days after the end of the three-year-period, either that it has satisfied this requirement or that it plans to satisfy the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

(2) No later than five years after the initial grant of a paging geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover two-thirds of the population in the paging geographic area. The licensee must notify the FCC (FCC Form 601), no later than 15 days after the end of the five-year-period, either that it has satisfied this requirement or that it has satisfied the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

(3) As an alternative to the coverage requirements of paragraphs (k)(1) and (k)(2) of this section, the paging geographic area licensee may demonstrate that, no later than five years after the initial grant of its paging geographic area authorization, it provides substantial service to the paging geographic area. "Substantial service" means service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.

114. Section 22.507 is amended by revising paragraph (c) to read as follows:

§ 22.507 Number of transmitters per station.

* * * * *

(c) *Consolidation of separate stations.* The Commission may consolidate separately authorized stations upon request by the licensee by using FCC Form 601, if appropriate under paragraph (a) of this section.

* * * * *

115. Section 22.529 is amended by revising the first sentence of paragraph (a), the first sentence of the introductory text of paragraph (b), and paragraph (b)(1), and revising (b)(3), (b)(3)(i) and (b)(3)(iii) to read as follows:

§ 22.529 Application requirements for the Paging and Radiotelephone Service.

* * * * *

(a) *Administrative information.* The following information, associated with Form 601, is required as indicated. * * *

* * * * *

(b) *Technical data.* The following data, associated with FCC Form 601, are required as indicated for each application. * * *

(1) For each transmitting antenna site to be added, deleted or modified, the following are required: an indication of the desired database action, the Commission location number, if any, the street address or other description of the transmitting antenna site, the city, county and state, the geographic coordinates (latitude and longitude), correct to ±1 second, of the transmitting antenna site (NAD83), and in the case of a proposed relocation of a transmitting antenna, the Commission location number and geographic coordinates, correct to ±1 second, of the transmitting antenna site (NAD83) to which the geographic coordinates of the current location are referenced.

(2) * * *

(3) The height (in meters) above average terrain of the center of radiation of the antenna, the beamwidth of the main lobe of the horizontal radiation pattern of the electric field of the antenna, the height (in meters) to the tip of the antenna above ground level, a polar plot of the horizontal gain pattern of the antenna, the antenna gain in the maximum lobe and the electric field polarization of the wave emitted by the antenna when installed as proposed.

(i) The center frequency of the requested channel, the transmitter classification (e.g. base, fixed mobile), the designator for any non-standard emission type to be used, including bandwidth and modulation type, and the maximum effective radiated power.

(ii) * * *

(iii) For each transmitter proposed to transmit on a channel reserved for point-to-multipoint operation involving transmission to four or more points of communications (i.e. base transmitters), the following is required for each point of communication: an indication of the desired database action, the location (city or town, state), and the geographical coordinates (latitude and longitude, NAD 83).

116. Section 22.531 is amended by revising paragraph (c) to read as follows:

§ 22.531 Channels for paging operation.

* * * * *

(c) Upon application using FCC Form 601, common carriers may be authorized to provide one-way paging service using the leased subcarrier facilities of broadcast stations licensed under part 73 of this chapter.

* * * * *

117. Section 22.539 is amended by revising the introductory text to read as follows:

§ 22.539 Additional channel policies.

The rules in this subsection govern the processing of applications for a paging channel when the applicant has applied for or been granted an authorization for other paging channels in the same geographic area. This section applies to applications proposing to use the channels listed in § 22.531, excluding the nationwide network paging channels and broadcast station subcarriers, or the channels listed in § 22.561, where the application proposes to use those channels to provide paging service only. The general policy of the Commission is to assign one paging channel in an area to a carrier per application cycle. That is, a carrier must apply for one paging channel, receive the authorization, construct the station, provide service to the subscribers, and notify the Commission of commencement of service to subscribers by using FCC Form 601 before applying for an additional paging channel in that area. This notification must be sent by electronic filing via the ULS.

* * * * *

118. Section 22.577 is amended by revising the first sentence of paragraph (b) and paragraph (d) to read as follows:

§ 22.577 Dispatch service.

* * * * *

(b) *Notification.* Licensees must notify the Commission by filing FCC Form 601 whenever a dispatch transmitter is installed pursuant to paragraph (a) of this section. * * *

* * * * *

(d) Dispatch transmitters requiring authorization. A dispatch transmitter that does not meet all of the requirements of paragraph (a) of this section may be installed only upon the grant of an application for authorization by electronically filing FCC Form 601.

* * * * *

119. Section 22.625 is amended by revising paragraph (b)(1) to read as follows:

§ 22.625 Transmitter locations.

* * * * *

(b) * * *

(1) *Control transmitter locations.* Control transmitter locations must be within 80 kilometers (50 miles) of the designated locations in this paragraph.

Urban area	N. latitude	W. longitude
Boston, MA	42°21′24.4″	71°03′22.2″
Chicago, IL	41°52′28.1″	87°38′22.2″
Cleveland, OH	41°29′51.2″	81°41′49.5″
Dallas, TX	32°47′09.5″	96°47′38.0″
Detroit, MI	42°19′48.1″	83°02′56.7″
Houston, TX	29°45′26.8″	95°21′37.8″
Los Angeles, CA	34°03′15.0″	18°14′31.3″
Miami, FL	25°46′38.6″	80°11′31.2″
New York, NY	40°45′6.4″	73°59′37.5″
Philadelphia, PA	39°56′58.4″	75°09′19.6″
Pittsburgh, PA	40°26′19.2″	79°59′59.2″
San Francisco-Oakland, CA	37°46′38.7″	122°24′43.9″
Washington, DC	38°53′51.4″	77°00′31.9″

Note: Coordinates are referenced to North American Datum 1983 (NAD 83).

* * * * *

120. Section 22.627 is amended by revising paragraph (b)(1)(i) and (b)(2) to read as follows:

§ 22.627 Effective radiated power limits.

* * * * *

(b) * * *

(1) * * *

(i) The protected TV station locations are as follows (all coordinates are referenced to North American Datum 1983 (NAD83)):

Control transmitter frequency range	Protected TV station location
470–476 MHz	Jacksonville, IL, 39°45′52.2″ N. Lat. 90°30′29.5″ W. Long. Mt. Pleasant, MI, 43°34′24.1″ N. Lat. 84°46′21.1″ W. Long
476–482 MHz	Oxford, OH, 39°30′26.2″ N. Lat. 84°44′ 8.8″ W. Long.
482–488 MHz	Washington, DC, 38°57′ 17.4″ N. Lat. 77°00′ 15.9″ W. Long
488–494 MHz	Champaign, IL, 40°04′11.1″ N. Lat. 87° 54′45.1″ W. Long
494–500 MHz	Madison, WI, 43°03′01.0″ N. Lat. 89°29′ 15.4″ W. Long.
500–506 MHz	Parkersburg, WV, 39°20′50.3″ N. Lat. 81°33′ 55.5″ W. Long
506–512 MHz	Fort Wayne, IN, 41°05′35.2″ N. Lat. 85°10′ 41.9″ W. Long
	Lancaster, PA, 40°15′45.3″ N. Lat. 76°27′ 47.9″ W. Long.
	South Bend, IN, 41°36′26.2″ N. Lat. 86°27′ 48.1″ W. Long.
	Philadelphia, PA, 40°02′30.4″ N. Lat. 75°14′ 22.6″ W. Long.
	None.
	Johnstown, PA, 40°19′47.3″ N. Lat. 78°53′ 44.1″ W. Long.
	Washington, DC, 38°57′49.4″ N. Lat. 77°06′ 16.9″ W. Long
	Waterbury, CT, 41°31′2.3″ N. Lat. 73°00′ 58.4″ W. Long

* * * * *

(2) *Adjacent channel protection.* The ERP of control transmitters must not exceed the limits in Table E–7. The limits depend upon the height above average terrain of the control transmitter antenna and the distance between the control transmitter and the nearest protected TV station location listed in this paragraph. The protected TV station locations are as follows (all coordinates are referenced to North American Datum 1983 (NAD83)):

Control transmitter frequency range	Protected TV station location	TV channel
470–476 MHz	Hanover, NH, 43°42′30.3″ N. Lat. 72°09′14.3″ W. Long	(15)
	Madison, WI, 43°03′01.0″ N. Lat. 89°29′15.4″ W. Long.	(15)
	Champaign, IL, 40°04′11.1″ N. Lat. 87°54′45.1″ W. Long.	(15)
	San Diego, CA, 32°41′48.2″ N. Lat. 116°56′13.1″ W. Long.	(15)
	Lancaster, PA, 40°15′45.3″ N. Lat. 76°27′47.9″ W. Long.	(15)
	Parkersburg, WV, 39°20′50.3″ N. Lat. 81°33′55.5″ W. Long.	(15)
476–482 MHz	South Bend, IN, 41°36′26.2″ N. Lat. 86°27′48.1″ W. Long.	(15)
	Pittsburgh, PA, 40°26′46.2″ N. Lat. 79°57′50.2″ W. Long.	(16)
	Mt. Pleasant, MI, 43°34′24.1″ N. Lat. 84°46′21.1″ W. Long.	(16)
	Scranton, PA, 41°10′58.3″ N. Lat. 75°52′19.7″ W. Long.	(14)
482–488 MHz	Hanover, NH, 43°42′30.3″ N. Lat. 72°09′14.3″ W. Long.	(16)
	Fort Wayne, IN, 41°05′35.2″ N. Lat. 85°10′41.9″ W. Long.	(15)
488–494 MHz	Salisbury, MD, 38°24′15.4″ N. Lat. 75°34′43.7″ W. Long.	(15)
		(16)

Control transmitter frequency range	Protected TV station location	TV channel
494–500 MHz	Philadelphia, PA, 40°02′30.4″ N. Lat. 75°14′22.6″ W. Long.	(17)
500–506 MHz	Washington, DC, 38°57′17.4″ N. Lat. 77°00′15.9″ W. Long.	(20)
506–512 MHz	Harrisburg, PA, 40°20′44.3″ N. Lat. 76°52′07.9″ W. Long.	(21)

* * * * *

121. Section 22.657 is amended by revising paragraphs (a), (d), (e)(1), and (f) to read as follows:

§ 22.657 Transmitter locations.

* * * * *

(a) *Base transmitter locations.* Base transmitter locations must be within 80 kilometers (50 miles) of the designated locations in this paragraph. Mobile transmitters must not be operated at locations more than 129 kilometers (80 miles) from the designated locations in this paragraph. Note: All coordinates are referenced to North American Datum 1983 (NAD83).

Urban area	N. latitude	W. longitude
Houston, TX	29°45′26.8″	95°21′37.8″
New York, NY–NE NJ	40°45′06.4″	73°59′37.5″

* * * * *

(d) Adjacent channel protection from mobile transmitters. Base transmitter locations must be at least 145 kilometers (90 miles) from the applicable protected TV station locations specified in this paragraph. This requirement is intended to provide a 0 dB minimum desired to undesired signal strength ratio at the Grade B contour of an adjacent channel TV station. Note: All coordinates are referenced to North American Datum 1983 (NAD83).

Control transmitter frequency range	Protected TV station location	TV channel
470–476 MHz	Lancaster. PA. 40°15′45.3″ N. Lat. 76°27′47.9″ W. Long.	(15)
476–482 MHz	Scranton, PA, 41°10′58.3″ N. Lat. 75°52′19.7″ W. Long.	(16)

(e) * * *

(1) The protected TV station locations are as follows (all coordinates are referenced to North American Datum 1983 (NAD83)):

Control transmitter frequency range	Protected TV station location
470–476 MHz	Washington, DC, 38°57′17.4″ N. Lat. 77°00′15.9″ W. Long.
476–482 MHz	Lancaster, PA, 40°15′45.3″ N. Lat. 76°27′47.9″ W. Long.

* * * * *

(f) *Co-channel protection from base transmitters with high antennas.* This paragraph applies only to base transmitter locations in the New York-Northeastern New Jersey urban area that utilize an antenna height of more than 152 meters (500 feet) above average terrain. The distance between the location of such a base transmitter and the applicable protected TV station location specified in this paragraph must equal or exceed the sum of the distance from the base transmitter location to the radio horizon in the direction of the specified location and 89 kilometers (55 miles—representing the distance from the main transmitter location of the TV station to its Grade B contour in the direction of the base transmitter). The distance to the radio horizon is calculated as follows:

$$d = \sqrt{17 \times h}$$

Where d is the distance to the radio horizon in kilometers h is the height of the antenna center of radiation above ground level in meters

Note: All coordinates are referenced to North American Datum 1983 (NAD83)):

Control transmitter frequency range	Protected TV station location
470–476 MHz	Washington, DC, 38°57′17.4″ N. Lat. 77°00′15.9″ W. Long.
476–482 MHz	Lancaster, PA, 40°15′45.3″ N. Lat. 76°27′47.9″ W. Long.

* * * * *

Section 22.659 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 22.659 Effective radiated power limits.

* * * * *

(b) * * *

(1) The protected TV station locations are as follows (all coordinates are referenced to North American Datum 1983 (NAD83)):

Control transmitter frequency range	Protected TV station location
470–476 MHz	Washington, DC, 38°57′17.4″ N. Lat. 77°00′15.9″ W. Long.
476–482 MHz	Lancaster, PA, 40°15′45.3″ N. Lat. 76°27′47.9″ W. Long.

* * * * *

(c) * * *

(1) The protected TV station locations are as follows (all coordinates are referenced to North American Datum 1983 (NAD83)):

Control transmitter frequency range	Protected TV station location	TV channel
470–476 MHz	Hanover, NH, 43°42′30.3″ N. Lat. 72°09′14.3″ W. Long	(15)
476–482 MHz	Lancaster, PA, 40°15′45.3″ N. Lat. 76°27′47.9″ W. Long	(15)
482–488 MHz	Scranton, PA, 41°10′58.3″ N. Lat. 75°52′19.7″ W. Long Hanover, NH, 43°42′30.3″ N. Lat. 72°09′14.3″ W. Long	(16) (15)

Note: Coordinates are referenced to North American Datum 1983 (NAD83).

* * * * *

123. Section 22.709 is amended by revising the introductory text, and revising paragraphs (b) introductory text, (b)(1) and (b)(2) to read as follows:

§ 22.709 Rural radiotelephone service application requirements.

In addition to information required by Subparts B and D of this part, FCC Form 601 applications for authorization to operate a station in the Rural Radiotelephone Service must contain the applicable supplementary information described in this section.

* * * * *

(b) *Technical information required.* For each transmitter in the Rural Radiotelephone Service, the following information is required by FCC Form 601:

(1) Location description: city; county; state; geographic coordinates correct to ±1 second, the datum used (NAD83), site elevation above mean sea level, proximity to adjacent market boundaries and international borders;

(2) Antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8 cardinal radials, antenna gain in the maximum lobe, the beamwidth of the maximum lobe of the antenna, a polar plot of the horizontal gain pattern of the antenna, the electric field polarization of the wave emitted by the antenna when installed as proposed;

* * * * *

124. Section 22.803 is amended by revising the introductory text, and the introductory text of paragraphs (a) and (b), and (b)(1) and (b)(2) to read as follows:

§ 22.803 Air-ground application requirements.

In addition to information required by Subparts B and D of this part, FCC Form 601 applications for authorization to operate an air-ground station or system in the Air-ground Radiotelephone Service must contain the applicable supplementary information described in this section.

(a) *Administrative information.* The following information is required by FCC Form 601.

* * * * *

(b) *Technical information required.* For each transmitter in the Rural Radiotelephone Service, the following information is required by FCC Form 601:

(1) Location description: city; county; state; geographic coordinates correct to ±1 second, the datum used (NAD83), site elevation above mean sea level, proximity to adjacent market boundaries and international borders;

(2) Antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8 cardinal radials, antenna gain in the maximum lobe, the beamwidth of the maximum lobe of the antenna, a polar plot of the horizontal gain pattern of the antenna, the electric field polarization of the wave emitted by the antenna when installed as proposed;

(3) * * *

§ 22.821 [Removed]

125. Section 22.821 is removed.

126. Section 22.859 is amended by revising the introductory paragraph and table to read as follows:

§ 22.859 Geographical channel block layout.

Except as provided in paragraphs (a) and (b) of this section, ground station locations must be within 1.61 kilometers (one mile) of the locations listed in this paragraph. The channel block allotted for each location must be used to provide service to airborne mobile stations in flight and may be used to provide service to airborne mobile stations on ground.

Note: All coordinates are referenced to North American Datum 1983 (NAD83).

Location	N. latitude	W. longitude	Channel block
Alaska:			
Anchorage	61°11′04.0″	149°54′49.9″	8
Cordova	60°32′58.0″	145°43′07.1″	5
Ketchikan	55°21′18.7″	131°42′39.1″	5
Juneau	58°21′16.8″	134°34′36.4″	4
Sitka	57°03′28.7″	135°22′07.4″	7
Yakutat	59°30′28.2″	142°30′06.3	8
Alabama:			
Birmingham	33°23′24.4″	86°39′58.9″	2
Arizona:			
Phoenix	33°35′39.1″	112°05′14.5″	4

Location	N. latitude	W. longitude	Channel block
Winslow	35°01′17.1″	110°43′04.5″	6
Arkansas:			
Pine Bluff	34°10′56.4″	91°56′18.5″	8
California:			
Blythe	33°36′39.1″	114°42′26.9″	10
Eureka	40°42′58.5″	124°12′13.2″	8
Los Angeles	33°56′45.0″	118°23′06.3″	4
Oakland	37°51′11.7″	122°12′33.9″	1
San Francisco	37°41′14.8″	122°26′04.9″	6
Visalia	36°19′35.8″	119°23′25.4″	7
Colorado:			
Colorado Springs	38°44′39.0″	104°51′47.9″	8
Denver	139°46′45.0″	104°50′50.9″	1
Hayden	40°29′03.9″	107°13′10.2″	6
Florida:			
Miami	25°48′28.4″	80°16′29.2″	4
Orlando	28°26′54.0″	81°21′59.3″	2
Tallahassee	30°24′02.7″	84°21′17.6″	7
Georgia:			
Atlanta	33°39′05.4″	84°25′53.7″	5
St. Simon Island	31°09′22.8″	81°23′13.3″	6
Hawaii:			
Mauna Kapu	21°24′12.6″	158°05′52.1″	[illegible]
Idaho:			
Blackfoot	43°11′33.7″	112°0′59.9″	8
Caldwell	43°38′44.6″	116°38′47.5″	10
Illinois:			
Chicago	41°46′49.1″	87°45′20.2″	3
Kewanee	41°12′05.1″	89°57′33.4″	5
Schiller Park	41°57′18.1″	87°52′57.2″	2
Indiana:			
Fort Wayne	40°59′16.2″	85°11′30.9″	7
Iowa:			
Des Moines	41°31′58.0″	93°38′54.8″	1
Kansas:			
Garden City	37°59′35.1″	100°54′05.6″	3
Wichita	37°37′24.1″	97°27′16.2″	7
Kentucky:			
Fairdale	38°04′48.2″	85°47′32.9″	[illegible]
Louisiana:			
Kenner	30°00′44.7″	90°13′30.3″	3
Shreveport	32°27′09.6″	93°49′38.7″	5
Massachusetts:			
Boston	42°23′15.4″	71°01′01.2″	7
Michigan:			
Bellville	42°12′17.1″	83°2908.8	8
Flint	42°58′21.1″	83°44′21.8″	9
Sault Saint Marie	46°28′45.1″	84°21′31.1″	6
Minnesota:			
Bloomington	44°51′29.9″	93°13′19.8″	[illegible]
Mississippi:			
Meridian	32°19′10.5″	88°41′33.2″	[illegible]
Missouri:			
Kansas City	30°18′37.8″	94°41′07.7″	6
St Louis	38°42′45.2″	90°19′19.4″	4
Springfield	37°14′28.2″	93°22′54.7″	9
Montana:			
Lewistown	47°02′55.9′	109°27′29.7″	5
Miles City	46°25′30.0″	105°52′32.0″	8
Missoula	47°01′04.7″	114°00′44.4″	3
Nebraska:			
Grand Island	40°58′00.0″	98°19′12.2″	2
Ogallala	41°07′11.0″	101°45′38.6″	4
Nevada:			
Las Vegas	36°05′34.9″	115°10′28.0″	1
Reno	39°25′12.7″	119°55′55.7″	3
Tonopah	38°03′42.8″	117°13′27.3″	9
Winnemucca	41°00′38.6″	117°46′01.5″	4
New Mexico:			

Location	N. latitude	W. longitude	Channel block
Alamogordo	32°54′46.3″	105°56′43.0″	8
Albuquerque	35°03′05.2″	106°37′15.1″	10
Aztec	36°48′42.0″	107°53′50.3″	9
Clayton	36°27′29.1″	103°11′17.8″	5
New Jersey:			
Woodbury	39°50′01.4″	75°09′19.7″	3
New York:			
E. Elmhurst	40°46′21.4″	73°52′40.5″	1
Schuyler	43°09′09.3″	75°07′48.6″	2
Staten Island	40°36′05.4″	74°06′33.5″	9
North Carolina			
Greensboro	36°05′54.7″	70°56′39.9″	9
Wilmington	34°16′10.6″	77°54′23.0″	3
North Dakota:			
Dickinson	46°51′05.0″	102°47′36.6″	7
Ohio:			
Pataskala	40°04′38.2″	82°41′56.6″	1
Oklahoma:			
Warner	35°29′31.4″	95°18′25.9″	4
Woodward	36°24′42.1″	99°28′51.4″	
Oregon:			
Albany	44°38′23.4″	123°03′40.4″	5
Klamath Falls	42°06′29.5″	121°38′04.0″	2
Pendleton	45°35′44.5″	118°31′05.9″	7
Pennsylvania:			
Coraopolis	40°30′33.2″	80°13′26.2″	4
New Cumberland	40°11′30.3″	76°52′00.9″	4
South Carolina:			
Charleston	32°54′10.6″	80°01′19.3″	4
South Dakota:			
Aberdeen	45°27′20.9″	98°25′27.3″	6
Rapid City	44°02′36.0″	103°03′37.6″	5
Tennessee:			
Elizabethton	36°26′04.4″	82°08′05.5″	7
Memphis	35°01′44.3″	89°56′15.3″	10
Nashville	36°08′44.2″	86°41′31.0″	3
Texas:			
Austin	30°16′37.7″	97°49′35.0″	2
Bedford	21°50′19.5″	07°08′04.0″	1
Houston	29°54′37.8″	95°24′39.8″	9
Lubbock	33°37′06.3″	101°52′15.6″	7
Monahans	31°34′58.5″	102°54′19.6″	8
Utah:			
Abajo Peak	37°50′21.0″	109°27′44.4″	7
Delta	39°23′14.8″	112°30′46.8″	2
Escalante	37°45′19.0″	111°52′29.7″	5
Green River	38°57′53.9″	110°13′42.5″	3
Salt Lake City	40°39′10.8″	112°12′08.8″	1
Virginia:			
Arlington	38°52′55.4″	77°06′16.9″	6
Washington:			
Seattle	47°26′07.4″	122°17′39.4″	4
Cheney	47°33′13.6″	117°43′38.8″	1
West Virginia:			
Charleston	38°19′47.4″	81°39′35.4″	2
Wisconsin:			
Stevens Point	44°33′05.9″	89°25′27.4″	8
Wyoming:			
Riverton	43°03′36.9″	108°27′25.4″	9

Section 22.873 is amended by revising paragraphs (a) and (b) to read as follows:

§ 22.873 Construction period for commercial aviation air-ground systems.

* * * * *

(a) *Stage I.* At least 25 ground stations must be constructed and operational within 3 years. Licensees must notify the Commission by using FCC Form 601 as soon as this requirement is met.

* * *

(b) *Stage II.* At least 50 ground stations must be constructed and operational within 5 years. Nationwide service to subscribers must commence within 5 years. Licensees must notify the Commission by using FCC Form 601 as soon as this requirement is met.

§ 22.875 [Amended]

128. Section 22.875 is amended by removing paragraph (d)(7).

129. Section 22.907 is amended by revising paragraph (b) to read as follows:

§ 22.907 Coordination of channel usage.

* * * * *

(b) If technical problems are addressed by an agreement or operating agreement between the licensees that would result in a reduction of quality or capacity of either system, the licensees must notify the Commission by updating FCC Form 601.

130. Section 22.911 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(b) *Alternative CGSA determination.* If a carrier believes that the method described in paragraph (a) of this section produces a CGSA that departs significantly (±20% in the service area of any cell) from the geographic area where reliable cellular service is actually provided, the carrier may submit, as an exhibit to an application for modification of the CGSA using FCC Form 601, a depiction of what the carrier believes the CGSA should be. * * *

* * * * *

131. Section 22.929 is revised to read as follows:

§ 22.929 Application requirements for the Cellular Radiotelephone Service.

In addition to information required by subparts B and D of this part, FCC Form 601 applications for authorization in the Cellular Radiotelephone Service must contain the applicable supplementary information described in this section.

(a) *Administrative information.* The following information is required either by FCC Form 601, or as an exhibit:

(1) Location description; city; county; state; geographical coordinates correct to ± 1 second, the datum used (NAD 83), site elevation above mean sea level, proximity to adjacent market boundaries and international borders;

(2) Antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8 cardinal radials, antenna gain in the maximum lobe, the beamwidth of the maximum lobe of the antenna, a polar plot of the horizontal gain pattern of the antenna, the electric field polarization of the wave emitted by the antenna when installed as proposed:

(3) The channel block requested, the maximum effective radiated power, the effective radiated power in each of the cardinal radial directions.

(b) If the application involves a service area boundary (SAB) extension (§ 22.912 of this chapter), the licensee must provide a statement as described in § 22.953.

(c) *Maps.* If the application proposes a change in the CGSA, it must include full size and reduced maps, and supporting engineering, as described in § 22.953 (a)(1) through (a)(3).

132. Section 22.935 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 22.935 Procedures for comparative renewal proceedings.

* * * * *

(a) If one or more of the applications competing with an application for renewal of a cellular authorization are filed, the renewal applicant must file with the Commission its original renewal expectancy showing electronically via the ULS. * * *

* * * * *

133. Section 22.936 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 22.936 Dismissal of applications in cellular renewal proceedings.

* * * * *

(a) If a competing applicant seeks to dismiss its application prior to the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal of its application. This request for approval of the dismissal of its application must be submitted and must also include a copy of any agreement related to the withdrawal or dismissal, and an affidavit setting forth: * * *

* * * * *

134. Section 22.941 is amended by revising the first sentence in paragraph (b) and paragraph (c) to read as follows:

§ 22.941 System identification numbers.

* * * * *

(b) Licensees must notify the Commission using FCC Form 601, if their cellular systems transmit SIDs assigned to other cellular systems. * * *

(c) Licensees may request that an additional (previously unassigned) SID be assigned to their system by filing an application for minor modification of station on FCC Form 601.

§ 22.944 [Removed]

135. Section 22.944 is removed.

136. Section 22.946 is amended by removing the introductory text and paragraph (b), by revising paragraph (a) and redesignating paragraph (a)(1) as paragraph (b) to read as follows:

§ 22.946 Service commencement and construction periods for cellular systems.

(a) *Commencement of service.* New cellular systems must be at least partially constructed and begin providing cellular service to subscribers within the service commencement periods specified in Table H–1 of this section. Service commencement periods begin on the date of grant of the initial authorization, and are not extended by the grant of subsequent authorizations for the cellular system (such as for major modifications). The licensee must notify the FCC (FCC Form 601) no later than 15 days after the requirements of this section are met (*see* § 1.946).

* * * * *

137. Section 22.947 is amended by revising the first sentence in paragraph (b) introductory text to read as follows:

§ 22.947 Service commencement and construction periods for cellular systems.

* * * * *

(b) *Partitioned markets.* During the five-year build-out period, the licensee of the first cellular system on each channel block in each market may enter into contracts with eligible parties, allowing such parties to apply by using FCC Form 601 for a new cellular system in that channel block within the market. * * *

* * * * *

138. Section 22.953 is amended by revising paragraphs (a) and (b) and adding paragraph (c) so that the section now reads as follows:

§ 22.953 Content and form of applications.

* * * * *

(a) Applications for authority to operate a cellular system in an unserved area must include the following information in addition to the requirements specified in §§ 1.919, 1.923 and 1.924. The following exhibits must be set off by tabs and numbered as follows:

(1) *Exhibit I—full-size map.* The scale of the full-size map must be 1:500,000, regardless of whether any different scale is used for the reduced map required in Exhibit II. The map must have a legend, a distance scale and correctly labeled latitude and longitude lines. The map must be clear and legible. The map must accurately show the cell sites (transmitting antenna locations), the entire CGSA, any extension of the

composite service area boundary beyond the CGSA (*see* § 22.911) and the relevant portions of the cellular market boundary.

(2) *Exhibit II—reduced map.* This map must be a proportional reduction, to 8½ × 11 inches, of the full-size map required for Exhibit I, unless it proves to be impractical to depict the entire cellular market by reducing the full-size map. In such instance, an 8½ x 11 inch map of a different scale may be substituted, provided that the required features of the full-size map are clearly depicted and labeled.

(3) *Exhibit III—engineering.* This exhibit must contain the data and methodology used to calculate the CGSA and service area boundary.

(4) *Exhibit IV—channel plan.* This exhibit must show which specific channels (or groups) are to be used at each cell site. Any necessary table for converting channel numbers to center frequencies must be provided.

(5) *Exhibit V—ownership information.* This exhibit must contain the information required by § 1.919. Additionally, individual applicants must disclose, in this exhibit, all interests (including those less than 10%) in publicly traded corporation(s) that have applications which are mutually exclusive with the individual's application.

(6) *Exhibit VI—service proposal.* This exhibit must describe the services proposed for subscribers and roamers, including the proposed method for handling complaints.

(7) *Exhibit VII—cellular design.* This exhibit must show that the proposed system design complies with cellular system design concepts, and must describe the method proposed to expand the system in a coordinated fashion as necessary to address changing demand for cellular service.

(8) *Exhibit VIII—blocking level.* This exhibit must disclose the blocking probability or other criteria to be used to determine whether it is necessary to take measures to increase system capacity to maintain service quality.

(9) *Exhibit IX—start-up expenses.* This exhibit must disclose in detail the projected cost of construction and other initial expenses of the proposed system, and how the applicant intends to meet these expenses and the costs of operation for the first year.

(10) *Exhibit X—interconnection arrangements.* This exhibit is required for applicants that provide public landline message telephone service in any portion of the proposed CGSA. This exhibit must describe exactly how the proposed system would interconnect with the landline network. The description must be of sufficient detail to enable a competitor to connect with the landline system in exactly the same manner, if the competitor so chooses.

(b) *Existing systems—major modifications.* Licensees making major modifications pursuant to § 1.929(h) must file FCC Form 601 and need only contain the exhibits required by paragraphs (a)(1) through (a)(3) of this section.

(c) *Existing systems—minor modifications.* Licensees making minor modifications pursuant to § 1.929(h)—in which the modification causes a change in the CGSA boundary (including the removal of a transmitter or transmitters)—must notify the FCC (using FCC Form 601) and include full-sized maps, reduced maps, and supporting engineering exhibits as described in paragraphs (a)(1)–(3) of this section. If the modification involves a contract SAB extension, it must include a statement as to whether the five-year build-out for the system on the relevant channel block in the market into which the SAB extends has elapsed, and as to whether the SAB extends into any unserved area in that market.

§ 22.966 [Removed]

139. Section 22.966 is removed.

PART 24—PERSONAL COMMUNICATIONS SERVICES

140. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332.

141. Section 24.2 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 24.2 Other applicable rule parts.

* * * * *

(b) * * * Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

* * * * *

142. Section 24.5 is amended by adding the following definition to read as follows:

§ 24.5 Terms and definitions.

* * * * *

Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

* * * * *

143. Section 24.11 is amended by revising paragraph (a) to read as follows:

§ 24.11 Initial authorization.

(a) An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired.

* * * * *

§ 24.18 [Removed]

144. Section 24.18 is removed.

145. Section 24.202 is amended by revising the last sentence of the introductory paragraph to read as follows:

§ 24.202 Service areas.

* * * The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology's Technical Information Center, 2000 M Street, NW, Washington, DC 20554.

* * * * *

146. Section 24.307 is revised to read as follows:

§ 24.307 Long-form applications.

Winning bidders will be required to submit long-form applications on FCC Form 601, as modified, within ten business days after being notified that they are the winning bidder. Applications on FCC Form 601 shall be submitted pursuant to the procedures set forth in Subpart G of this Part and § 1.2107 (c) and (d) of this chapter and any associated public notices. Only auction winners will be eligible to file applications on FCC Form 601 for initial narrowband PCS licenses in the event of mutual exclusivity between applicants filing Form 175. An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired.

§ 24.405 [Removed]

147. Section 24.405 is removed.

§ 24.406 [Removed]

148. Section 24.406 is removed.

§ 24.409 [Removed]

149. Section 24.409 is removed.

§ 24.411 [Removed]

150. Section 24.411 is removed.

§ 24.413 [Removed]

151. Section 24.413 is removed.

§ 24.419 [Removed]

152. Section 24.419 is removed.

§ 24.420 [Removed]

153. Section 24.420 is removed.

§ 24.421 [Removed]

154. Section 24.421 is removed.

§ 24.422 [Removed]

155. Section 24.422 is removed.

§ 24.423 [Removed]

156. Section 24.423 is removed.

§ 24.425 [Removed]

157. Section 24.425 is removed.

§ 24.426 [Removed]

158. Section 24.426 is removed.

§ 24.427 [Removed]

159. Section 24.427 is removed.

§ 24.428 [Removed]

160. Section 24.428 is removed.

§ 24.429 [Removed]

161. Section 24.429 is removed.

§ 24.432 [Removed]

162. Section 24.432 is removed.

§ 24.439 [Removed]

163. Section 24.439 is removed.

§ 24.443 [Removed]

164. Section 24.443 is removed.

§ 24.444 [Removed]

165—166. Section 24.444 is removed.

167. Section 24.714 is amended by revising paragraph (b)(1) to read as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum.

* * * * *

(b) * * *

(1) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

* * * * *

§ 24.803 [Removed]

168. Section 24.803 is removed.

§ 24.805 [Removed]

169. Section 24.805 is removed.

§ 24.806 [Removed]

170. Section 24.806 is removed.

§ 24.809 [Removed]

171. Section 24.809 is removed.

§ 24.811 [Removed]

172. Section 24.811 is removed.

§ 24.813 [Removed]

173. Section 24.813 is removed.

§ 24.819 [Removed]

174. Section 24.819 is removed.

§ 24.820 [Removed]

175. Section 24.820 is removed.

§ 24.821 [Removed]

176. Section 24.821 is removed.

§ 24.822 [Removed]

177. Section 24.822 is removed.

§ 24.823 [Removed]

178. Section 24.823 is removed.

§ 24.825 [Removed]

179. Section 24.825 is removed.

§ 24.826 [Removed]

180. Section 24.826 is removed.

§ 24.827 [Removed]

181. Section 24.827 is removed.

§ 24.828 [Removed]

182. Section 24.828 is removed.

§ 24.829 [Removed]

183. Section 24.829 is removed.

§ 24.832 [Removed]

184. Section 24.832 is removed.

185. Section 24.839 is amended by removing paragraphs (a), (b) and (c) and redesignating paragraphs (d) and (e) as (a) and (b) to read as follows:

§ 24.839 Transfer of control or assignment of license.

(a) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F. No assignment or transfer of control of a license for frequency Block C or frequency Block F will be granted unless:

(1) The application for assignment or transfer of control is filed after five years from the date of the initial license grant; or

(2) The proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 of this part at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709 of this part;

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 of this part and the proposed assignee meets the eligibility criteria set forth in § 24.709 of this part;

(4) The application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action, or, in the event of death or disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph; or

(5) The assignment or transfer of control is pro forma.

(b) If the assignment or transfer of control of a license is approved, the assignee or transferee is subject to the original construction requirement of § 24.203 of this part.

§ 24.844 [Removed]

Section 24.844 is removed.

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICES

187. The authority citation for part 26 continues to read as follows:

Authority: 47 U.S.C. Secs. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

188. Section 26.2 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 26.2 Other applicable rule parts.

* * * * *

(b) * * * Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

* * * * *

189. Section 26.4 is amended by adding the following definition to read as follows:

§ 26.4 Terms and definitions.

* * * * *

Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

* * * * *

190. Section 26.11 is amended by revising paragraph (a) to read as follows:

§ 26.11 Initial authorization.

(a) An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired.

* * * * *

191. Section 26.104 is amended by revising paragraph (e) to read as follows:

§ 26.104 Construction requirements.

* * * * *

(e) The licensee must notify the FCC electronically by using FCC Form 601 via the ULS, no later than by the end of the five-and ten-year periods,

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respectively, that it has met the applicable service requirements. If the licensee fails to respond within the allotted time, then the authorization will automatically terminate.

192. Section 26.207 is revised to read as follows:

§ 26.207 Long-form applications.

Winning bidders will be required to submit a long-form application on FCC form 601 within ten business days after being notified that they are the winning bidder. A single application for all winning markets must be filed. Applications on FCC Form 601 shall be submitted pursuant to the procedures set forth in Subpart G of this Part and § 1.2107(c) and (d) of this chapter and any associated Public Notices. Only auction winners will be eligible to file applications on FCC Form 601 for initial GWCS licenses in the event of mutual exclusivity between applicants filing Form 175.

193. Section 26.209 is amended by revising paragraph (b)(2) to read as follows:

§ 26.209 Eligibility for partitioned licenses.

* * * * *

(b) * * *

(2) Each rural telephone company that is a party to an agreement to partition the license shall file, either electronically via the ULS or with a paper form, a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the Economic Area filed by the auction winner.

* * * * *

§ 26.303 [Removed]

194. Section 26.303 is removed.

§ 26.304 [Removed]

195. Section 26.304 is removed.

§ 26.305 [Removed]

196. Section 26.305 is removed.

§ 26.306 [Removed]

197. Section 26.306 is removed.

§ 26.307 [Removed]

198. Section 26.307 is removed.

§ 26.310 [Removed]

199. Section 26.310 is removed.

§ 26.311 [Removed]

200. Section 26.311 is removed.

§ 26.312 [Removed]

201. Section 26.312 is removed.

§ 26.313 [Removed]

202. Section 26.313 is removed.

§ 26.314 [Removed]

203. Section 26.314 is removed.

§ 26.315 [Removed]

204. Section 26.315 is removed.

§ 26.316 [Removed]

205. Section 26.316 is removed.

§ 26.317 [Removed]

206. Section 26.317 is removed.

§ 26.318 [Removed]

207. Section 26.318 is removed.

§ 26.319 [Removed]

208. Section 26.319 is removed.

§ 26.320 [Removed]

209. Section 26.320 is removed.

§ 26.322 [Removed]

210. Section 26.322 is removed.

211. Section 26.323 is amended by revising paragraph (a) to read as follows:

§ 26.323 Post-auction divestitures.

* * * * *

(a) The GWCS applicant shall submit electronically via the ULS, a signed statement with its long-form application (FCC Form 601) stating that sufficient properties will be divested within ninety days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the GWCS spectrum aggregation limits within 90 days of grant of the license.

* * * * *

§ 26.324 [Removed]

212. Section 26.324 is removed.

§ 26.325 [Removed]

213. Section 26.325 is removed.

§ 26.326 [Removed]

214. Section 26.326 is removed.

PART 27—WIRELESS COMMUNICATIONS SERVICES

215. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

216. Section 27.3 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 27.3 Other applicable rule parts.

* * * * *

(b) * * * Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

* * * * *

217. Section 27.4 is amended by adding the following definition to read as follows:

§ 27.4 Terms and definitions.

* * * * *

Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

* * * * *

218. Section 27.11 is amended by revising paragraph (a) to read as follows:

§ 27.11 Initial authorization.

(a) An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired.

* * * * *

219. Section 27.15 is amended by revising paragraph (b)(1) to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

* * * * *

(b) *Technical Standards*—(1) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to section 1.948 and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

* * * * *

§ 27.59 [Removed]

220. Section 27.59 is removed.

§ 27.61 [Removed]

221. Section 27.61 is removed.

§ 27.62 [Removed]

222. Section 27.62 is removed.

§ 27.207 [Removed]

223. Section 27.207 is removed.

§ 27.301 [Removed]

224. Section 27.301 is removed.

§ 27.303 [Removed]

225. Section 27.303 is removed.

§ 27.304 [Removed]

226. Section 27.304 is removed.

§ 27.306 [Removed]

227. Section 27.306 is removed.

§ 27.307 [Removed]

228. Section 27.307 is removed.

§ 27.310 [Removed]

229. Section 27.310 is removed.

§ 27.311 [Removed]

230. Section 27.311 is removed.

§ 27.312 [Removed]

231. Section 27.312 is removed.

§ 27.313 [Removed]

232. Section 27.313 is removed.

§ 27.314 [Removed]

233. Section 27.314 is removed.

§ 27.315 [Removed]

234. Section 27.315 is removed.

§ 27.316 [Removed]

235. Section 27.316 is removed.

§ 27.317 [Removed]

236. Section 27.317 is removed.

§ 27.319 [Removed]

237. Section 27.319 is removed.

§ 27.320 [Removed]

238. Section 27.320 is removed.

§ 27.322 [Removed]

239. Section 27.322 is removed.

§ 27.324 [Removed]

240. Section 27.324 is removed.

§ 27.325 [Removed]

241. Section 27.325 is removed.

PART 80—STATIONS IN THE MARITIME SERVICES

242. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, and 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

243. Section 80.3 is amended by revising paragraph (k) to read as follows:

§ 80.3 Other applicable rule parts of this chapter.

* * * * *

(k) *Part 101.* This part contains rules concerning the private microwave service relating to point-to-point communication requirements.

§ 80.19 [Removed]

244. Section 80.19 is removed.

245. Section 80.21 is amended by revising the introductory text, removing paragraphs (a) (b), and (f) and redesignating paragraphs (c), (d), and (e) as (a), (b), and (c) respectively, and revising redesignated paragraph (c) to read as follows:

§ 80.21 Supplemental information required.

Applications must contain supplementary information as indicated in this section. Other supplemental information may be required by other rule sections of this part concerning particular maritime services.

(a) * * *

(c) A new station on a vessel not located in the United States must not be documented or otherwise registered by any foreign authority. The foreign authorities where the vessel is located will not or cannot license the vessel radio equipment and can not object to the licensing of the equipment by the United States. An applicant must provide verification of these facts upon request by the Commission.

§ 80.23 [Removed]

246. Section 80.23 is removed.

247. Section 80.25 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.25 License term.

(a) Licenses for ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, or renewal.

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of five years from the date of original issuance or renewal, except that licenses for VHF public coast stations will normally be issued for a term of ten years from the date of original issuance or renewal.

* * * * *

§ 80.29 [Removed]

248. Section 80.29 is removed.

249. Section 80.31 is revised to read as follows:

§ 80.31 Cancellation of license.

Wireless telecommunications carriers subject to this part must comply with the discontinuance of service provisions of part 63 of this chapter.

250. Section 80.33 is amended by revising the introductory text of paragraphs (b) and (c) to read as follows:

§ 80.33 Developmental license.

(b) *Showing required.* Each application for a developmental license must be accompanied by the following showing:

* * * * *

(c) *Statement of understanding.* The showing must state that the applicant agrees that any developmental license issued will be accepted with the express understanding that it is subject to change in any of its terms or to cancellation in its entirety at any time, upon reasonable notice but without a hearing, if, in the opinion of the Commission, circumstances should so require.

* * * * *

251. Section 80.45 is revised to read as follows:

§ 80.45 Frequencies.

For applications other than ship stations, the applicant must propose frequencies and ensure that those requested frequencies are consistent with the applicant's eligibility, the proposed class of station operation, and the frequencies available for assignment as contained in subpart H of this part.

252. Section 80.49 is revised to read as follows:

§ 80.49 Construction and regional service requirements.

(a) *Public coast stations.* (1) Each VHF public coast station geographic area licensee must notify the Commission of substantial service within its region or service area (subpart P) within five years of the initial license grant, and again within ten years of the initial license grant in accordance with § 1.946 of this chapter. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. For site-based VHF public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, the licensee must notify the Commission in accordance with § 1.946 of this chapter that the station or frequencies authorized have been placed in operation within twelve months from the date of the grant.

(2) For LF, MF, HF, and AMTS band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, the licensee must notify the Commission in accordance with § 1.946 of this chapter that the station or frequencies authorized have been placed in operation within eight months from the date of the grant.

(b) *Public fixed stations.* When a new license has been issued or additional operating frequencies have been authorized, the licensee must notify the Commission in accordance with § 1.946 of this chapter that the station or frequencies authorized have been placed in operation within twelve months from the date of the grant.

§ 80.51 [Amended]

253. Section 80.51 is amended by removing and reserving paragraph (a).

254. Section 80.53 is revised to read as follows:

§ 80.53 Application for a portable ship station license.

The Commission may grant a license permitting operation of a portable ship station aboard different vessels of the United States.

§ 80.56 [Removed]

255. Section 80.56 is removed.

256. Section 80.57 is amended by revising paragraph (b)(6) and the first sentence of paragraph (c)(6) to read as follows:

§ 80.57 Canada/U.S.A. channeling arrangements for VHF maritime public correspondence.

* * * * *

(b) * * *

(6) Inland waters of western Washington and British Columbia bounded by 46°59′59.3″ north latitude on the south, the Canada/U.S.A. Coordination Zone Line B on the south, and to the west by 124°40′4.7″ west latitude at the west entrance to the Strait of Juan de Fuca.

Note: All coordinates are referenced to North American Datum 1983 (NAD83).

* * * * *

(c) * * *

(6) To keep the ERP and antenna elevations at a minimum and to limit coverage to the desired areas, an informal application may be filed for special temporary authority in accordance with §§ 1.41 and 1.931 of this chapter to conduct a field survey to obtain necessary data for informal application. * * *

* * * * *

257. Section 80.59 is amended by revising paragraph (c) to read as follows:

§ 80.59 Compulsory ship inspections.

* * * * *

(c) *Application for exemption.* (1) Applications for exemption from the radio provisions of part II or III of title III of the Communications Act, the Safety Convention, or the Great Lakes Radio Agreement, or for modification or renewal of an exemption previously granted must be filed as a waiver request using FCC Form 605. Waiver requests must include the following information:

(i) Name of ship;
(ii) Call sign of ship;
(iii) Official number of ship;
(iv) Gross tonnage of ship;
(v) The radio station requirements from which the exemption is requested:
(A) Radiotelephone (VHF/MF);
(B) Radiotelegraph; and/or
(C) Radio direction finding apparatus;
(vi) File number of any previously granted exemption;
(vii) Detailed description of the voyages for which the exemption is requested, including:
(A) Maximum distance from nearest land in nautical miles;
(B) Maximum distance between two consecutive ports in nautical miles; and
(C) Names of all ports of call and an indication of whether travel will include a foreign port;
(viii) Reasons for the exemption:
(A) Size of vessel;
(B) Variety of radio equipment on board;
(C) Limited routes; and/or
(D) Conditions of voyages;
(ix) A copy of the U.S. Coast Guard Certificate of Inspection an indication of whether the vessel is certified as a Passenger or Cargo ship (for passenger ships, list the number of passengers the ship is licensed to carry); and
(x) Type and quantity of radio equipment on board, including:
(A) VHF Radio Installation (indicate if GMDSS approved);
(B) Single Side-Band (SSB) (indicate the band of operation, MF or HF and indicate if GMDSS approved);
(C) Category 1, 406 MHz EPIRB (GMDSS approved);
(D) NAVTEX Receiver (GMDSS approved);
(E) Survival Craft VHF (GMDSS approved);
(F) 9 GHz Radar Transponder (GMDSS approved);
(G) Ship Earth Station;
(H) 500 kHz Distress Frequency Watch Receiver;
(I) 2182 Radiotelephone Auto Alarm;
(J) Reserve Power Supply (capability); and
(K) Any other equipment.

(2) Feeable applications for exemption must be filed with Mellon Bank, Pittsburgh, Pennsylvania at the address set forth in § 1.1102. Waiver requests that do not require a fee should be submitted via the Universal Licensing System or to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245. Emergency requests must be filed with the Federal Communications Commission, Office of the Secretary, 1919 M Street, NW., room 222, Washington, DC 20554.

Note: With emergency requests, do not send the fee, you will be billed.

* * * * *

258. Section 80.469 is amended by revising paragraph (c) to read as follows:

§ 80.469 Maritime mobile repeater stations in Alaska.

* * * * *

(c) Maritime mobile repeater stations may not be authorized in cases where operational fixed frequencies can be employed.

* * * * *

259. Section 80.511 is amended by revising paragraph (c) to read as follows:

§ 80.511 Assignment limitations.

* * * * *

(c) An applicant for an additional frequency based on congestion of the assigned frequency may be asked by the Commission to show that for any four periods of five consecutive days each, in the preceding six months, the assigned frequency was in use at least twenty-five percent of the time during three hours of daily peak activity.

260. Section 80.513 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 80.513 Frequency coordination.

* * * * *

(c)(1) In lieu of the field study, the applicant may acquire a statement from a frequency coordinating committee. The applicant must certify on the application concerning the recommendations of the coordinating committee. * * *

* * * * *

261. Section 80.514 is amended by revising the introductory text to read as follows:

§ 80.514 Marine VHF frequency coordinating committee(s).

This section contains the names of organizations that have been recognized by the Commission to serve as marine VHF frequency coordinating committees for their respective areas.

* * * * *

262. Section 80.553 is amended by revising the undesignated introductory paragraph to read as follows:

§ 80.553 Supplemental eligibility requirements.

An applicant for an operational fixed station must certify that:

* * * * *

263. Section 80.605 is amended by revising paragraphs (a), (c)(9), and the last sentence of paragraph (d) to read as follows:

§ 80.605 U.S. Coast Guard coordination.

(a) Radionavigation coast stations operated to provide information to aid in the movement of any ship are private aids to navigation. Before submitting an application for a radionavigation station, an applicant must obtain written permission from the cognizant Coast Guard District Commander at the area in which the device will be located.

The Commission may request an applicant to provide documentation as to this fact. Note: Surveillance radar coast stations do not require U.S. Coast Guard approval.

* * * * *

(c) * * *

(9) The maximum station e.i.r.p. if it would exceed 5 watts. The Commission may request an applicant to provide a copy of the request and the U.S. Coast Guard approval.

* * * * *

(d) * * * The Commission may request an applicant to provide a copy of the request and the U.S. Coast Guard approval.

PART 87—AVIATION SERVICES

264. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 307(e), unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

265. Section 87.17 is revised to read as follows:

§ 87.17 Scope.

Part 1 of the Commission's rules contains the general rules of practice and procedure applicable to proceedings before the Commission and for the filing of applications for radio station licenses in the aviation services. Specific guidance for each type of radio service license in aviation services is set forth in this part.

§ 87.21 [Removed]

266. Section 87.21 is removed.

§ 87.23 [Removed]

267. Section 87.23 is removed.

268. Section 87.25 is amended by removing undesignated introductory text and revising paragraph (b) to read as follows:

§ 87.25 Filing of applications.

* * * * *

(b) An application must be filed with the Commission in accordance with part 1, subpart F of this chapter. Applications requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

269. Section 87.27 is amended by revising paragraphs (a) and (b) to read as follows:

§ 87.27 License term.

(a) Licenses for aircraft stations will normally be issued for a term of ten years from the date of original issuance, or renewal.

(b) Licenses other than aircraft stations in the aviation services will normally be issued for a term of five years from the date of original issuance, or renewal.

* * * * *

§ 87.31 [Removed]

270. Section 87.31 is removed.

§ 87.33 [Removed]

271. Section 87.33 is removed.

272.Section 87.35 is revised to read as follows:

§ 87.35 Cancellation of license.

When a station permanently discontinues operation the station license must be canceled in accordance with the procedures set forth in part 1 of this chapter.

273. Section 87.37 is amended by revising introductory text in paragraph (a) to read as follows:

§ 87.37 Developmental license.

* * * * *

(a) *Showing required.* Each application for a developmental license must be accompanied by the following showing:

* * * * *

274. Section 87.45 is revised to read as follows:

§ 87.45 Time in which station is placed in operation.

This section applies only to unicom stations and radionavigation land stations, excluding radionavigation land test stations. When a new license has been issued or additional operating frequencies have been authorized, the station or frequencies must be placed in operation no later than eight months from the date of grant. The licensee must notify the Commission in accordance with § 1.946 of this chapter that the station or frequencies have been placed in operation.

§ 87.51 [Amended]

275. Section 87.51 is amended by removing and reserving paragraph (a).

§ 87.79 [Removed]

276. Section 87.79 is removed.

§ 87.137 [Amended]

277. Section 87.137 is amended by removing paragraph (d).

278. Section 87.187 is amended by revising paragraphs (bb) and (cc) to read as follows:

§ 87.187 Frequencies.

* * * * *

(bb) The frequencies 121.950 MHz, 122.850 MHz and 127.050 [1] MHz are authorized for air-to-air use for aircraft up to and including 3 km (10,000 ft) mean sea level in the vicinity of Grand Canyon National Park in Arizona within the area bounded by the following coordinates (all coordinates are referenced to North American Datum 1983 (NAD83)):

36–27–59.9 N. Lat; 112–47–2.7 W. Long.
36–27–59.9 N. Lat; 112–48–2.7 W. Long.
35–50–00.0 N. Lat; 112–48–2.7 W. Long.
35–43–00.0 N. Lat; 112–47–2.7 W. Long.

(cc) The frequency 120.650 MHz [2] is authorized for air-to-air use for aircraft up to and including 3 km (10,000 ft) mean sea level within the area bounded by the following coordinates (all coordinates are referenced to North American Datum 1983 (NAD83)):

35–59–44.9 N. Lat; 114–51–48.0 W. Long.
36–09–29.9 N. Lat; 114–50–3.0 W. Long.
36–09–29.9 N. Lat; 114–02–57.9 W. Long.
35–54–45.0 N. Lat; 113–48–47.8 W. Long.

279. Section 87.215 is amended by revising the last sentence of paragraph (d) to read as follows:

§ 87.215 Supplemental eligibility.

* * * * *

(d) * * * Each applicant must certify upon application that either notice has been given and include the date of notification, or notice is not required because the applicant owns the airport and there are no organizations that should be notified.

280. Section 87.239 is revised to read as follows:

§ 87.239 Supplemental eligibility.

Each applicant for a multicom may be required to demonstrate why such a station is necessary, based on the scope of service defined above.

281. Section 87.301 is amended by revising paragraph (b) to read as follows:

§ 87.301 Supplemental eligibility.

* * * * *

(b) Each application must include a certification sufficient to establish the applicant's eligibility under the criteria in paragraph (a) of this section.

282. Section 87.307 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 87.307 Cooperative use of facilities.

* * * * *

---

[1] Until further notice this frequency is available for air-to-air use as described in the Grand Canyon vicinity. Availability is a result of the FAA's assignment of this frequency. If the FAA reassigns this frequency the Commission may require air-to-air use to cease.

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(d) Applicants for an additional flight test land station at an airport where such a station is already authorized may be required to submit a factual showing to include the following:

* * * * *

283. Section 87.321 is revised to read as follows:

§ 87.321 Supplemental eligibility.

Each applicant must certify as to its eligibility under the scope of service described above.

284. Section 87.323 is amended by revising the third sentence of paragraph (b) to read as follows:

§ 87.323 Frequencies.

* * * * *

(b) * * * The application must specify the FAA Region notified and the date notified. * * *

* * * * *

285. Section 87.347 is amended by revising paragraphs (b)(1), (b)(2), (b)(3) and (c) to read as follows:

§ 87.347 Supplemental eligibility.

* * * * *

(b) * * *

(1) Have a need to routinely operate a ground vehicle on the airport movement area;

(2) Maintain a list of the vehicle(s) in which the station is to be located;

(3) Certify on the application that either the applicant is the airport owner or operator, or a state or local government aeronautical agency, or that the airport owner or operator has granted permission to operate the vehicle(s) on the airport movement area.

(c) An applicant for an aeronautical utility station requesting authority to transmit on the local control (tower) frequency or on the control tower remote communications outlet (RCO) frequency must certify that the Air Traffic Manager of the airport control tower approves the requested use of the tower or RCO frequency.

286. Section 87.419 is amended by revising paragraph (b) to read as follows:

§ 87.419 Supplemental eligibility.

* * * * *

(b) Each applicant must notify the appropriate FAA Regional Office prior to submitting an application to the Commission.

287. Section 87.421 is amended by revising paragraph (b) to read as follows:

§ 87.421 Frequencies.

* * * * *

(b) Frequencies in the bands 200.0–285.0 and 325.0–405.0 kHz will normally be assigned only to control towers and RCOs authorized to operate on at least one VHF frequency. The Commission may assign frequencies in these bands to entities that do not provide VHF service in cases where granting such an application will not adversely affect life and property in the air.

* * * * *

288. Section 87.423 is revised to read as follows:

§ 87.423 Hours of operation.

The control tower must render a communications service 24 hours a day unless the Commission determines, in coordination with the NTIA IRAC, that reduced hours of service will not adversely affect life and property in the air.

289. Section 87.447 is amended by revising the introductory paragraph to read as follows:

§ 87.447 Supplemental eligibility.

An applicant for an operational fixed station must certify that:

* * * * *

§ 87.473 [Amended]

290. Section 87.473 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b) respectively.

291. Section 87.475 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 87.475 Frequencies.

(a) * * * Each application must include the FAA Regional Office notified and date of notification.

* * * * *

292. Section 87.481 is amended by revising the introductory text in paragraph (a) and paragraph (a)(4) to read as follows:

§ 87.481 Unattended operation of domestic radiobeacon stations.

(a) Radiobeacons may be licensed for unattended operation. An applicant must comply with the following:

* * * * *

(4) A properly authorized person must be able to reach the transmitter and disable it in a reasonable amount of time, so as not to adversely affect life or property in the air;

* * * * *

293 Section. 87.527 is amended by revising paragraph (b) to read as follows:

§ 87.527 Supplemental eligibility.

* * * * *

(b) Eligibility for an automatic weather observation station or an automatic terminal information station is limited to the owner or operator of an airport or to a person who has entered into a written agreement with the owner or operator for exclusive rights to operate and maintain the station. A copy of the agreement must be kept with the station's records.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

294. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309, and 332, unless otherwise noted.

295. Section 90.5 is amended by revising paragraphs (b), (i)(1) and (m) to read as follows:

§ 90.5 Other applicable rule parts.

* * * * *

(b) Part 1 of this chapter includes rules of practice and procedure for the filing of applications for stations to operate in the Wireless Telecommunications Services, adjudicatory proceedings including hearing proceedings, and rulemaking proceedings; procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental processing requirements that, if applicable, must be complied with prior to initiating construction.

* * * * *

(i) * * *

(1) Industrial/business pool.

* * * * *

(m) Part 101 governs the operation of fixed microwave services.

296. Section 90.7 is amended by revising the last sentence of the definition for "EA-based or EA license" and adding new definitions for a "Mutually exclusive application" and "Universal Licensing System (ULS)" to read as follows:

§ 90.7 Definitions.

* * * * *

EA-based or EA License. * * * The EA Listings and the EA Map are available for public inspection at the Wireless Telecommunications Bureau public reference room, Room 5608, 2025 M St., NW, Washington, DC 20554.

* * * * *

Mutually exclusive application. Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under Commission rules governing the services involved.

* * * * *

Universal Licensing System (ULS). The consolidated database, application filing system and processing system for all Wireless Telecommunications Services. The ULS offers Wireless Telecommunications Bureau (WTB) applicants and the general public electronic filing of all applications requests, and full public access to all WTB licensing data.

* * * * *

297. Section 90.22 is revised to read as follows:

§ 90.22 Paging operations.

Paging operations may be authorized in this service only on frequencies assigned under the provisions of §§ 90.20(d) (10), (13), (60), and (72). Paging operations on other frequencies authorized before August 15, 1974, may be continued only if they do not cause harmful interference to regular operations on the same frequencies. Such paging operations may be renewed indefinitely on a secondary basis to regular operations, except within 125 kilometers (75 mi.) of the following urbanized areas (coordinates are referenced to North American Datum 1983 (NAD83)):

Urbanized area	North latitude	West longitude
New York, NY-Northeastern NJ	40–45–06.4	73–59–37.5
Los Angeles-Long Beach, CA	34–03–15.0	118–14–31.3
Chicago, IL	41–52–28.1	87–38–22.2
Philadelphia, PA–NJ	39–56–58.4	75–09–19.6
Detroit, MI	42–19–48.1	83–02–56.7
San Francisco-Oakland, CA	37–46–38.7	122–24–43.9
Boston, MA	42–21–24.4	71–03–23.2
Washington, DC–MD–VA	38–53–51.4	77–00–31.9
Cleveland, OH	41–29–51.2	81–41–49.5
St Louis, MO–IL	38–37–45.2	90–12–22.4
Pittsburgh, PA	40–26–19.2	79–59–59.2
Minneapolis-St Paul, MN	44–58–56.9	93–15–43.8
Houston, TX	29–45–26.8	95–21–37.8
Baltimore, MD	39–17–26.4	76–36–43.9
Dallas, TX	32–47–09.5	96–47–38.0
Milwaukee, WI	43–02–19.0	87–54–15.3
Seattle-Everett, WA	47–36–31.4	122–20–16.5
Miami, FL	25–46–38.4	80–11–31.2
San Diego, CA	32–42–53.2	117–09–24.1
Atlanta, GA	33–45–10.4	84–23–36.7
Cincinnati, OH–KY	39–06–7.2	84–30–34.8
Kansas City, MO–KS	39–04–56.0	94–35–20.8
Buffalo, NY	42–52–52.2	78–52–20.1
Denver, CO	39–44–58.0	104–59–23.9

§ 90.35 [Amended]

298. Section 90.35 is amended by revising paragraph (c)(61)(iv) to read as follows:

* * * * *

(c) * * *

(61) * * *

(iv) The airports and their respective reference coordinates are (coordinates are referenced to North American Datum 1983 (NAD83)):

City and airport	Reference coordinates	
	N. latitude	W. longitude
Akron, OH:		
Akron-Canton Regional (CAK)	40°55′01.2″	81°26′29.4″
Albany-Troy-Schenectady, NY:		
Albany County (ALB)	42°44′53.3″	73°48′10.4″
Albuquerque, NM:		
Albuquerque International (ABQ)	35°02′30.2″	106°36′25.1″
Allentown-Bethlehem, PA:		
Allentown-Bethlehem-Easton (ABE)	40°39′11.4″	75°26′23.7″
Anchorage, AK:		
Anchorage International (ANC)	61°10′28.0″	149°59′46.0″
Atlanta, GA:		
Atlanta International (ATL)	33°38′25.4″	84°25′36.7″
Dekalb-Peachtree (PDK)	33°52′30.4″	84°18′07.7″
Fulton County (FTY)	33°46′45.4″	84°31′16.8″
Baltimore, MD:		
Baltimore-Washington Int'l (BWI)	39°10′30.4″	76°40′08.9″
Birmingham, AL:		
Birmingham Municipal (BHM)	33°33′50.4″	86°45′16.0″
Boston, MA:		
Logan International (BOS)	42°21′51.4″	71°00′19.2″
Bridgeport, CT:		
Sikorsky Memorial (BDR)	41°09′49.4″	73°07′33.4″
Buffalo, NY:		

City and airport	Reference coordinates	
	N. latitude	W. longitude
Greater Buffalo Int'l (BUF)	42°56′26.2″	78°43′56.1″
Canton, OH:		
Akron-Canton Regional (CAK)	40°55′01.2″	81°26′29.4″
Charlotte, NC:		
Charlotte-Douglas Int'l (CLT)	35°12′52.5″	80°56′36.3″
Chattanooga, TN:		
Lovell (CHA)	35°02′07.3″	85°12′14.8″
Chicago, IL-Northwest, IN:		
Chicago-Wheeling-Palwaukee (PWK)	42°06′48.1″	87°54′03.2″
Meigs (CGX)	41°51′32.1″	87°36′28.2″
Michiana Regional (SBN)	41°42′18.2″	86°18′59.0″
Midway (MDW)	41°47′10.1″	87°45′08.2″
O'Hare International (ORD)	41°58′48.1″	87°54′16.2″
West Chicago-Dupage (DPE)	41°54′52.1″	88°14′47.3″
Cincinnati, OH:		
Greater Cincinnati Int'l (CVG)	39°14′59.2″	84°25′07.8″
Lunken (LUK)	39°06′12.2″	84°23′13.8″
Cleveland, OH:		
Burke Lakefront (BKL)	41°31′03.2″	81°41′00.5″
Cuyahoga County (CGF)	41°33′54.2″	81°29′10.4″
Hopkins International (CLE)	41°24′38.2″	81°50′57.5″
Columbus, OH:		
Port Columbus Int'l (CMH)	39°59′42.2″	82°53′10.6″
Dallas, TX:		
Addison (ADS)	32°58′06.4″	96°50′11.0″
Dallas-Ft. Worth Regional (DFW)	32°53′45.5″	97°02′11.0″
Dallas-Love Field (DAL)	32°50′49.5″	96°51′06.0″
Red Bird (RBD)	32°40′49.5″	96°52′03.0″
Davenport, IA (Rock Island, Moline, IL):		
Davenport Municipal (DVN)	41°36′42.1″	90°35′21.5″
Quad City (MLI)	41°26′56.1″	90°30′35.5″
Dayton, OH:		
Dayton International (DAY)	39°54′04.2″	84°13′11.8″
Denver, CO:		
Centennial (APA)	39°34′19.0″	104°50′55.9″
Colorado Springs Municipal (COS)	38°48′31.0″	104°42′36.9″
Denver-Jeffco (BJC)	39°54′28.0″	105°26′55.0″
Stapleton International (DEN)	39°46′22.0″	104°52′39.9″
Des Moines, IA:		
Des Moines Municipal (DSM)	41°32′06.0″	93°39′38.8″
Detroit, MI:		
Detroit City (DET)	42°24′33.1″	83°00′35.7″
Detroit Metro-Wayne County (DTW)	42°12′55.1″	83°20′54.8″
Oakland-Pontiac (PTK)	42°39′54.1″	83°25′04.8″
Willow Run (YIP)	42°14′16.1″	83°31′49.8″
El Paso, TX:		
El Paso International (ELP)	31°48′24.4″	106°22′39.9″
Flint, MI:		
Bishop (FNT)	42°57′56.1″	83°44′36.8″
Ft. Lauderdale-Hollywood, FL:		
Ft. Lauderdale Executive (FXE)	26°11′50.3″	80°10′14.2″
Ft. Lauderdale-Hollywd Int'l (FLL)	26°04′20.3″	80°09′12.2″
Ft. Worth, TX:		
Meacham (FTW)	32°49′09.5″	97°21′42.1″
Fresno, CA:		
Chandler Downtown (FCH)	36°43′55.8″	119°49′11.5″
Fresno Air Terminal (FAT)	36°46′35.8″	119°43′05.5″
Grand Rapids, MI:		
Kent County Int'l (GRR)	42°52′57.1″	85°31′26.1″
Hana, HI:		
Hana (HNN)	20°47′44.5″	156°00′51.9″
Harrisburg, PA:		
Capital City (CXY)	40°13′01.3″	76°51′04.9″
Harrisburg Int'l (MDT)	40°11′36.3″	76°45′47.9″
Hartford, CT (Windsor Locks):		
Bradley Int'l (BDL)	41°56′20.3″	72°40′59.3″
Hartford-Brainard (HFD)	41°44′10.4″	72°39′00.3″
Hilo, HI:		
General Lyman Field (ITO)	19°43′13.1″	155°02′55.0″
Honolulu, HI:		
Honolulu International (HNL)	21°19′08.6″	157°55′17.1″
Houston, TX:		

City and airport	Reference coordinates	
	N. latitude	W. longitude
W.P. Hobby (HOU)	29°38′43.8″	95°16′43.8″
D.W. Hooks Memorial (DWH)	30°03′50.8″	95°33′11.8″
Houston Intercontinental (IAH)	29°58′55.8″	95°20′45.8″
Indianapolis, IN:		
Indianapolis Int'l (IND)	39°43′32.2″	86°17′02.0″
Jacksonville, FL:		
Craig Municipal (CRG)	30°20′10.9″	81°30′52.3″
Jacksonville Int'l (JAX)	30°29′33.9″	81°41′23.4″
Kahului, HI:		
Kahului (OGG)	20°53′55.4″	156°25′48.9″
Kailula-Kona, HI:		
Ke-Ahole (KOA)	19°43′57.3″	156°24′56.0″
Kameula, HI:		
Waimea-Kohala (MUE)	20°00′05.0″	155°40′05.0″
Kansas City, MO-KS:		
Fairfax Municipal (KCK)	39°08′50.0″	94°56′14.9″
Kansas City Int'l (MCI)	39°17′57.0″	94°43′04.9″
Kansas City Municipal Dntn (MKC)	39°07′24.0″	94°35′33.8″
Richard-Gebaur (GBW)	38°50′37.0″	94°33′37.8″
Kauna Kakai, HI:		
Molokai (MKK)	21°09′10.7″	157°54′57.1″
Las Vegas, NV:		
McCarran Int'l (LAS)	36°04′57.9″	115°09′16.0″
Lihue, HI:		
Lihue (LIH)	21°58′30.7″	159°20′29.9″
Los Angeles, CA:		
Burbank-Glendale-Pasadena (BUR)	34°21′02.0″	118°21′30.3″
Catalina (AVX)	33°24′20.1″	118°24′53.3″
Long Beach-Daugherty Field (LGB)	33°49′03.1″	118°09′06.2″
Los Angeles Int'l (LAX)	33°56′33.0″	118°24′29.3″
Ontario Int'l (ONT)	34°03′22.0″	117°36′14.2″
Santa Ana-John Wayne-Orange County (SNA)	33°40′32.1″	117°52′05.2″
Louisville, KY:		
Standiford Field (SDF)	38°10′40.3″	85°44′10.9″
Memphis, TN:		
Memphis Int'l (MEM)	35°02′59.3″	89°58′43.3″
Miami, FL:		
Miami Int'l (MIA)	25°47′35.4″	80°17′25.2″
Opa Locka (OPF)	25°54′26.3″	80°16′49.2″
Tamiami (TMB)	25°38′52.4″	80°25′58.2″
Milwaukee, WI:		
General Mitchell (MKE)	42°56′49.1″	87°53′49.3″
Minneapolis-St. Paul, MN:		
Minneapolis-St. Paul (MSP)	44°53′02.9″	93°12′54.8″
Mobile, AL:		
Bates Field (MOB)	30°41′23.7″	88°14′31.0″
Nashville, TN:		
Nashville Metropolitan (BNA)	36°07′37.2″	86°40′53.0″
New Haven, CT:		
Tweed-New Haven Municipal (HVN)	41°15′50.3″	72°53′13.4″
Neworleans, LA:		
Lakefront (NEW)	30°02′33.7″	90°01′41.3″
New Orleans Int'l (MSY)	29°59′34.7″	90°15′23.3″
Newport News-Hampton, VA:		
Patrick Henry Int'l (PHF)	37°07′54.5″	76°29′34.8″
New York-Northeast, NJ:		
Farmingdale Republic (FRG)	40°43′43.4″	73°24′48.4″
JFK International (JFK)	40°38′25.4″	73°46′40.5″
LaGuardia (LGA)	40°46′38.4″	73°52′25.5″
Long Island-McArthur (ISP)	40°47′44.4″	73°05′58.4″
Morristown Municipal (NJ) (MMU)	40°47′57.4″	74°24′53.5″
Newark Int'l (FWR)	40°41′35.4″	74°10′05.5″
Teterboro (NJ) (TEB)	40°51′00.4″	74°03′39.5″
Norfolk-Portsmouth, VA:		
Norfolk Int'l (ORF)	36°53′40.5″	76°12′04.8″
Oklahoma City, OK:		
Wiley Post (DWA)	35°32′03.2″	97°38′49.2″
Will Rogers World (OKC)	35°23′35.2″	97°36′03.1″
Omaha, NE:		
Eppley Airfield (OMA)	41°18′04.0″	95°53′ 37.0″
Orlando, FL:		
Orlando Executive (ORL)	28°32′44.0″	81°19′58.2″

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City and airport	Reference coordinates	
	N. latitude	W. longitude
Orlando Int'l (MCO)	28°25′55.0″	81°19′28.2″
Philadelphia, PA–NJ:		
Northeast Philadelphia (PNE)	40°04′55.4″	75°00′38.6″
Philadelphia Int'l (PHC)	39°52′13.4″	75°14′41.7″
Phoenix, AZ:		
Phoenix-Sky Harbor Int'l (PHX)	33°26′10.2″	112°00′34.5″
Scottsdale Municipal (SDC)	33°37′22.2″	111°54′7.5″
Pittsburgh, PA:		
Allegheny County (AGC)	40°21′16.3″	79°55′48.2″
Greater Pittsburgh Int'l (PIT)	40°29′30.2″	80°13′54.2″
Portland, OR:		
Portland-Hillsboro (HIO)	45°32′25.4″	122°56′59.4″
Portland International (PDX)	45°35′19.4″	122°35′51.3″
Portland-Treutdale (TTD)	45°32′57.4″	122°24′04.3″
Providence-Pawtucket, RI—MA:		
North Central State (SFZ)	41°55′15.4″	71°29′28.2″
T.F. Green State (PVD)	41°43′31.4″	71°25′39.2″
Reno, NV:		
Reno International (RNO)	39°29′51.7″	119°46′07.7″
Richmond, VA:		
Byrd International (RIC)	37°30′18.5″	77°19′10.9″
Rochester, NY:		
Rochester-Monroe County (ROC)	43°07′08.2″	77°40′1.0″
Sacramento, CA:		
Sacramento Executive (SAC)	38°30′44.7″	121°29′6.8″
Sacramento Metropolitan (SMF)	38°41′43.7″	121°36′04.9″
St. Louis, MO—IL:		
Spirit of St. Louis (SUS)	38°39′36.2″	90°38′43.5″
St. Louis-Lambert Int'l (STC)	38°44′51.2″	90°21′39.4″
St. Petersburg, FL:		
Albert Whitted Municipal (SPG)	27°45′54.1″	82°37′38.4″
Clearwater Int'l (PIE)	27°54′39.1″	82°41′15.4″
Salt Lake City, UT:		
Salt Lake City Int'l (SLC)	40°47′12.8″	111°58′07.8″
San Antonio, TX:		
San Antonio Int'l (SAT)	29°32′00.8″	98°28′11.1″
San Bernardino, CA:		
Ontario Int'l (ONT)	34°03′22.0″	117°36′14.2″
San Diego, CA:		
Lindbergh Int'l (SAN)	32°44′01.2″	117°11′15.1″
San Francisco-Oakland, CA:		
Metropolitan Oakland Int'l (OAK)	37°43′16.7″	122°13′14.9″
San Francisco Int'l (SFO)	37°37′07.8″	122°22′29.9″
San Jose, CA:		
San Jose Int'l (SJC)	37°21′40.8″	121°55′41.8″
Scranton, PA:		
Wilkes-Barre Scranton Int'l (AVP)	41°20′20.3″	75°43′25.7″
Seattle, WA:		
King County Int'l (BFI)	47°31′48.4″	122°18′07.4″
Seattle-Tacoma Int'l (SEA)	47°26′56.4″	122°18′33.4″
Shreveport, LA:		
Shreveport Downtown (DTN)	32°32′23.5″	93°44′40.6″
Shreveport Regional (SHV)	32°26′48.6″	93°49′30.7″
South Bend, IN:		
Michiana Regional (SBW)	41°42′18.2″	86°18′59.0″
Spokane, WA:		
Grant County (MWH)	47°12′27.5″	119°19′12.1″
Spokane Int'l (GEG)	47°37′11.6″	117°32′01.8″
Springfield, MA:		
Barnes Municipal (BAF)	42°09′28.3″	72°42′56.3″
Westover Field (CEF)	42°11′52.3″	72°31′48.3″
Syracuse, NY:		
Syracuse-Hancock Int'l (SYR)	43°06′44.2″	76°06′30.7″
Tacoma, WA:		
Tacoma Narrows (TIW)	47°16′04.4″	122°34′41.5″
Tampa, FL:		
Tampa Int'l (TPA)	27°58′32.1″	82°31′59.3″
Toledo, OH:		
Toledo Express (TOL)	41°35′15.2″	83°48′18.8″
Trenton, NJ-PA:		
Mercer County (TTN)	40°16′38.4″	74°48′48.6″
Tucson, AZ:		

City and airport	Reference coordinates	
	N. latitude	W. longitude
Tucson Int'l (TUS)	32°07′06.3″	110°56′37.3″
Tulsa, OK:		
R.L. Jones, Jr. (RVS)	36°02′18.3″	95°59′06.0″
Tulsa Int'l (TUL)	36°11′54.3″	95°53′17.0″
Washington, DC:		
Dulles International (IAD)	38°56′39.4″	77°27′25.0″
National (DCA)	38°51′07.4″	77°02′15.9″
Wichita, KS:		
Mid-Continent (ICT)	37°39′00.1″	97°25′59.2″
Wilkes-Barre, PA:		
Wilkes-Barre-Scranton (AVP)	41°20′20.3″	75°43′25.7″
Wilmington, DE:		
Gr. Wilm.-New Castle City (ILG)	39°40′42.4″	75°36′23.7″
Worcester, MA:		
Worcester Municipal (ORH)	42°16′02.3″	71°52′32.3″
Youngstown-Warren, OH-PA:		
Youngstown Municipal (YNG)	41°15′32.2″	80°40′33.3″

* * * * *

299. Section 90.111 is revised to read as follows:

§ 90.111 Scope.

This subpart supplements Title 47, chapter 1, subpart F of the Code of Federal Regulations which establishes the requirements and conditions under which commercial and private radio stations may be licensed and used in the Wireless Telecommunications Services. The provisions of this subpart contain additional pertinent information for current and prospective licensees specific to the services governed by this part 90.

§ 90.113 [Removed]

300. Section 90.113 is removed.

§ 90.117 [Removed]

301. Section 90.117 is removed.

302. Section 90.119 is revised to read as follows:

§ 90.119 Application requirements.

(a) Part 1, Subpart F of this chapter contains the application filing procedures for the Wireless Telecommunications Services, including applications for new base, fixed, or mobile station authorizations governed by this part.

(b) If the control station(s) will operate on the same frequency as the mobile station, and if the height of the control station(s) antenna(s) will not exceed 6.1 meters (20 feet) above ground or an existing man-made structure (other than an antenna structure), there is no limit on the number of such stations which may be authorized. Appropriate items on FCC Form 601 shall be completed showing the frequency, the station class, the total number of control stations, the emission, and the output power of the highest powered control station. Applicants in the 470–512 MHz band must furnish the relevant information for all control stations.

§ 90.123 [Removed]

303. Section 90.123 is removed.

§ 90.125 [Removed]

304. Section 90.125 is removed.

305. Section 90.127 is revised to read as follows:

§ 90.127 Submission and filing of applications.

(a) Applications should be filed in accordance with part 1, subpart F of this chapter.

(b) Each application shall limit its request for authorized mobile transmitters and paging receivers to:

(1) Mobile transmitters and paging receivers that will be installed and operated immediately after authorization issuance.

(2) Mobile transmitters and paging receivers for which purchase orders have already been signed and which will be in use within eight months of the authorization date.

(c) All applications for modification of license and renewal of license must include the number of mobile transmitters and paging receivers in use on the licensed facilities.

306. Section 90.129 is amended by revising the introductory paragraph and removing and reserving paragraphs (c) and (e) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

Each application under this part that is received by the Commission, through the application process outlined in part 1, subpart F, must be accompanied by the applicable information listed below:

* * * * *

(c) [Reserved]

* * * * *

(e) [Reserved]

* * * * *

§ 90.131 [Removed]

307. Section 90.131 is removed.

308. Section 90.135 is revised to read as follows:

§ 90.135 Modification of license.

(a) In addition to those changes listed in § 1.929(k) of this chapter and in accordance with § 1.947 of this chapter the following modifications may be made to an existing authorization without prior Commission approval:

(1) Change in the number and location of station control points or of control stations operating below 470 or above 800 MHz meeting the requirements of § 90.119(b) of this part.

(2) Change in the number of mobile units operated by Radiolocation Service licensees.

(b) Unless specifically exempted in § 90.175 of this part, licensees must submit a Form 601 application for modification to the applicable frequency coordinator for any change listed in § 1.929(c)(4) of this chapter.

309. Section 90.137 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 90.137 Applications for operation at temporary locations.

(a) An application for authority to operate a base or a fixed transmitter at temporary locations shall be filed in accordance with § 1.931 of this chapter and the following:

* * * * *

§ 90.139 [Removed]

310. Section 90.139 is removed.

§ 90.141 [Removed]

311. Section 90.141 is removed.

§ 90.143 [Removed]

312. Section 90.143 is removed.

§ 90.145 [Removed]

313. Section 90.145 is removed.

§ 90.147 [Removed]

314. Section 90.147 is removed.

315. Section 90.149 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed five (5) years from the date of the original issuance, modification, or renewal, except that the license term for stations licensed as commercial mobile radio service on 220–222 MHz, 929–930 MHz paging, Industrial/Business Pool, and SMR frequencies shall be ten (10) years.

(b) [Reserved]

* * * * *

§ 90.151 [Removed]

316. Section 90.151 is removed.

§ 90.153 [Removed]

317. Section 90.153 is removed.

318. Section 90.155 is amended by revising paragraph (d) to read as follows:

§ 90.155 Time in which station must be placed in operation.

* * * * *

(d) Multilateration LMS EA-licensees, authorized in accordance with § 90.353 of this part, must construct and place in operation a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to one-third of the EA's population within five years of initial license grant, and two-thirds of the population within ten years. In demonstrating compliance with the construction and coverage requirements, the Commission will allow licensees to individually determine an appropriate field strength for reliable service, taking into account the technologies employed in their system design and other relevant technical factors. At the five and ten year benchmarks, licensees will be required to file a map and FCC Form 601 showing compliance with the coverage requirements (*see* § 1.946).

* * * * *

319. Section 90.157 is revised to read as follows:

§ 90.157 Discontinuance of station operation.

A station license shall cancel automatically upon permanent discontinuance of operations. Unless stated otherwise in this part or in a station authorization, for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.

320. Section 90.159 is amended by revising paragraphs (a), (c), (d) and the introductory text of paragraph (b) to read as follows:

§ 90.159 Temporary and conditional permits.

(a) An applicant for a license under this part (other than a commercial mobile radio license) utilizing an already licensed facility may operate the radio station(s) for a period of up to one hundred eighty (180) days after submitting a Form 601 application for a station license in accordance with § 90.127 of this part, provided that all the antennas employed by control stations are 6.1 meters (20 feet) or less above ground or 6.1 meters (20 feet) or less above a man-made structure other than an antenna tower to which it is affixed. When required by § 90.175 of this part, applications must be accompanied by evidence of frequency coordination. The temporary operation of stations, other than mobile stations within the Canadian coordination zone is limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 6.1 meters (20 ft) above average terrain.

(b) An applicant proposing to operate a new land mobile radio station or modify an existing station below 470 MHz or in the one-way paging 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) that is required to submit a frequency recommendation pursuant to paragraphs (b) through (h) of § 90.175 of this part may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with § 90.127 of this part if the application is accompanied by evidence of frequency coordination in accordance with § 90.175 of this part and provided that the following conditions are satisfied:

* * * * *

(c) An applicant proposing to operate an itinerant station or an applicant seeking the assignment of authorization or transfer of control of a license for an existing station below 470 MHz or in the 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) may operate the proposed station during the pendency of the application for a period not to exceed one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with § 90.127 of this part. Conditional authority ceases immediately if the application is dismissed by the Commission. All other categories of applications listed in § 90.175(i) of this part that do not require evidence of frequency coordination are excluded from the provisions of this section.

(d) Conditional authorization does not prejudice any action the Commission may take on the subject application. Conditional authority is accepted with the express understanding that such authority may be modified or canceled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. Consistent with § 90.175(g) of this part, the applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application. Authority reverts back to the original licensee if an assignee or transferee's conditional authority is canceled.

* * * * *

§ 90.159 [Amended]

321. The note following § 90.159 is revised to read as follows:

Note: The following rules (§ 90.165 through § 90.169) govern applications, licensing, and operation of radio facilities in the 220–222 MHz (subpart T), Business Radio (subpart D), 929–930 MHz Paging (subpart P), and Specialized Mobile Radio (subpart S) services that are used to provide commercial mobile radio services (see §§ 20.3 and 20.9 of this chapter). Compliance with the rules relating to applications and licensing of facilities on paging-only channels in the Business Radio Service (see § 90.75(c)(10)) and 929–930 MHz paging channels (see § 90.494(a),(b)) is not required prior to August 10, 1996. Compliance with § 90.168 is also not required prior to August 10, 1996 for reclassified commercial mobile radio service providers who are to be regulated as private carriers until August 10, 1996 as provided in the Second Report and Order in GN Docket No. 93–252, 9 FCC Rcd 2348 (1994), paras. 280–284. The licensing and operation of radio facilities in the 220–222 MHz (subpart T), Business Radio (subpart D), 929–930 MHz Paging (subpart P), and Specialized Mobile Radio (subpart S) services that are used to provide commercial mobile radio services are also subject to rules elsewhere in this part that apply generally to Private Land Mobile Radio Services. In the case of any conflict between rules set forth in §§ 90.165 through 90.169 and other rules in this part, §§ 90.165 through 90.169 apply. 14–23. New §§ 90.165 through 90.169 are added to subpart G to read as follows:

§§ 90.160 through 90.164 [Removed]

322. Sections 90.160 through 90.164 are removed.

323. Section 90.165 is amended by revising the introductory paragraph, and the introductory text of paragraphs (b) and (c) and paragraphs (b)(1) and (c)(2) and by removing paragraph (d)(3) to read as follows:

§ 90.165 Procedures for mutually exclusive applications.

Mutually exclusive commercial mobile radio service applications are processed in accordance with part 1 of this chapter and with the rules in this section, except for mutually exclusive applications for licenses in the 220–222 MHz service and the 929–930 MHz Paging service, which are processed in accordance with the rules in subpart P and subpart T of this part.

* * * * *

(b) *Filing groups.* Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The Commission may dismiss as defective (pursuant to § 1.934 of this chapter) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (c)(3) of this section. A filing group is one of the following types:

(1) *Renewal filing group.* A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications (see section 1.949 of this chapter).

* * * * *

(c) *Procedures.* Generally, the Commission may grant one application in a filing group of mutually exclusive applications and dismiss the other application(s) in the filing group that are excluded by the grant, pursuant to § 1.935 of this chapter.

* * * * *

(2) *Dismissal of applications.* The Commission may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 1.934 of this chapter, either before or after employing selection procedures.

* * * * *

§ 90.166 [Removed]

324. Section 90.166 is removed.

325. Section 90.167 is revised to read as follows:

§ 90.167 Time in which a station must commence service; notification requirement.

Pursuant to § 1.946 of this chapter, unless otherwise specified in this part, all 220–222 MHz, private carrier paging, Industrial/Business Pool, and SMR licensees must commence service within twelve (12) months from the date of grant or the authorization cancels automatically.

326. Section 90.175 is amended by revising the introductory paragraph and paragraphs (b), (e) and (f) to read as follows:

§ 90.175 Frequency coordination requirements.

Except for applications listed in paragraph (i) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in § 1.929(c) of this part, or for operation at temporary locations in accordance with § 90.137 of this part, must include evidence of frequency coordination as set forth below.

* * * * *

(b) *For frequencies between 25 and 470 MHz:* A recommendation of the most appropriate frequency is required from an applicable frequency coordinator, as specified in §§ 90.20(c)(2) and 90.35(b)(2) of this part. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to minimize potential interference.

* * * * *

(e) *For frequencies between 470 and 512 MHz, 806–824/851–869 MHz, and 896–901/935–940 MHz:* A recommendation of the specific frequencies that are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service, frequency pool, or category of user involved is required from an applicable frequency coordinator.

(f) *For frequencies in the 929–930 MHz band:* A recommendation of the most appropriate frequency is required from an applicable frequency coordinator.

* * * * *

§ 90.177 [Removed]

327. Section 90.177 is removed.

328. Section 90.187 is amended by revising paragraph (a) to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 MHz.

(a) Applicants for trunked systems operating on frequencies between 150 and 512 MHz (except 220–222 MHz) must indicate on their applications (class of station code, instructions for FCC Form 601) that their system will be trunked. Licensees of stations that are not trunked, may trunk their systems only after modifying their license (see § 1.927 of this chapter).

* * * * *

§ 90.237 [Amended]

329. Section 90.237 is amended by removing and reserving paragraph (b).

330. Section 90.241 is amended by revising paragraph (c)(7) to read as follows:

§ 90.241 Radio call box operations.

* * * * *

(c) * * *

(7) Each application for a call box system must contain information on the nonvoice transmitting equipment, including the character structure, bit rate, modulating tone frequencies, identification codes, and the method of modulation (i.e., frequency shift, tone shift, or tone phase shift).

* * * * *

331. Section 90.273 is amended by revising paragraph (c) to read as follows:

§ 90.273 Availability and use of frequencies in the 421–430 MHz band.

* * * * *

(c) Base or control stations shall be located within 48 km (30 miles) of the center of Buffalo or 80 km (50 miles) of the center of Detroit. In Cleveland, base or control stations will be allowed at locations north of line A that are within 48 km (30 miles) of the city center. In addition, low power (2 watts or less) base stations may locate within 80 km (50 miles) of the center of Buffalo. The following coordinates shall be used for the centers of these areas (coordinates are referenced to North American Datum 1983 (NAD83)):

Buffalo, NY.	42° 52′ 52.2″ North latitude. 78° 52′ 20.1″ West longitude.
Cleveland, OH.	41° 29′ 51.2″ North latitude. 81° 41′ 49.5″ West longitude.
Detroit, MI.	42° 19′ 48.1″ North latitude. 83° 02′ 56.7″ West longitude.

* * * * *

332. Section 90.303 is revised to read as follows:

§ 90.303 Availability of frequencies.

Frequencies in the band 470–512 MHz are available for assignment in the urbanized areas listed below. The specific frequencies available are listed in § 90.311 of this part. Note: Coordinates are referenced to North American Datum 1983 (NAD83)

Urbanized area	Geographic center		Channel	Frequencies (megahertz)
	North latitude	West longitude		
Boston, MA	42° 21′ 24.4″	71° 03′ 23.2″	14 16	470–476 482–488
Chicago, IL[3]	41° 52′ 28.1″	87° 38′ 22.2″	14 15	470–476 476–482
Cleveland, OH[4]	41° 29′ 51.2″	81° 41′ 49.5″	14 16	470–476 482–488
Dallas/Fort Worth, TX	32° 47′ 09.5″	96° 47′ 38.0″	16	482–488
Detroit, MI[5]	42° 19′ 48.1″	83° 02′ 56.7″	15 16	476–482 482–488
Houston, TX	29° 45′ 26.8″	95° 21′ 37.8″	17	488–494
Los Angeles, CA[6]	34° 03′ 15.0″	118° 14′ 31.3″	14 20	470–476 506–512
Miami, FL	25° 46′ 38.4″	80° 11′ 31.2″	14	470–476
New York/N.E. NJ	40° 45′ 06.4″	73° 59′ 37.5″	14 15	470–476 476–482
Philadelphia, PA	39° 56′ 58.4″	75° 09′ 19.6″	19 20	500–506 506–512
Pittsburgh, PA	40° 26′ 19.2″	79° 59′ 59.2″	14 18	470–476 494–500
San Francisco/Oakland, CA	37° 46′ 38.7″	122° 24′ 43.9″	16 17	482–488 488–494
Wash., DC/MD/VA	38° 53′ 51.4″	77° 00′ 31.9″	17 18	488–494 494–500

[3] In the Chicago, IL urbanized area, channel 15 frequencies may be used for paging operations in addition to low power base/mobile usages, where applicable protection requirements for ultrahigh frequency television stations are met.

[4] Channels 14 and 15 are not available in Cleveland, OH until further order from the Commission.

[5] Channels 15 and 16 are not available in Detroit, MI, until further order from the Commission.

[6] Channel 16 is available in Los Angeles for use by public safety users.

333. Section 90.350 is revised to read as follows:

§ 90.350 Scope.

The Intelligent Transportation Systems Radio Service is for the purpose of integrating radio-based technologies into the nation's transportation infrastructure and to develop and implement the nation's intelligent transportation systems. It includes the Location and Monitoring Service (LMS). Rules as to eligibility for licensing, frequencies available, and any special requirements for services in the Intelligent Transportation Systems Radio Service are set forth in this Subpart. Application procedures are governed by part 1, subpart F of this chapter.

334. Section 90.365 is amended by revising paragraphs (a)(1) and (b), removing paragraph (d)(1)(ii), and redesignating paragraph (d)(1)(iii) as paragraph (d)(1)(ii) and revising paragraph (d)(2) to read as follows:

§ 90.365 Eligibility for partitioned licenses.

(a) *Eligibility.* (1) Party seeking approval for partitioning and disaggregation shall request an authorization pursuant to § 1.948 of this chapter.

* * * * *

(b) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

* * * * *

(d) * * *

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate spectrum must certify in FCC Form 601 which of the parties will be responsible for meeting the five-year and ten-year construction requirements for the particular market.

335. Section 90.437 is amended by revising paragraph (c) and removing paragraph (d) to read as follows:

§ 90.437 Posting station licenses.

* * * * *

(c) An applicant operating under temporary authority in accordance with § 90.159 must post an executed copy of FCC Form 601 at every control point of the system or an address or location where the current executed copy may be found.

336. Section 90.477 is amended by revising paragraph (a) introductory text and paragraph (d)(3) to read as follows:

§ 90.477 Interconnected systems.

(a) Applicants for new land stations to be interconnected with the public switched telephone network must indicate on their applications (class of station code) that their stations will be interconnected. Licensees of land stations that are not interconnected may interconnect their stations with the public switched telephone network only after modifying their license. *See* § 1.929 of this chapter. In all cases a detailed description of how interconnection is accomplished must be maintained by licensees as part of their station records. See § 90.433 of this part.

* * * * *

(d) * * *

(3) For licensees in the Industrial/Business Pool and those licensees who establish eligibility pursuant to § 90.20(a)(2) of this part, except for §§ 90.20(a)(2)(i) and 90.20(a)(2)(ii) of this part and medical emergency systems in the 450–470 MHz band, interconnection will be permitted only where the base station site or sites proposed stations are located 120 km (75 mi.) or more from the designated centers of the urbanized areas listed

below. If these licensees seek to connect within 120 km (75 mi.) of the 25 cities, they must obtain the consent of all co-channel licensees located both within 120 km (75 mi.) of the center of the city; and within 120 km (75 mi.) of the interconnected base station transmitter. The consensual agreements among the co-channel licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consented to the use of interconnection. If a licensee has agreed to the use of interconnection on the channel, but later decides against the use of interconnection, the licensee may request that the co-channel licensees reconsider the use of interconnection. If the licensee is unable to reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed to the use of interconnection and the new licensee does not agree, the new licensee may request that the co-channel licensees reconsider the use of interconnection. If the new licensee cannot reach an agreement with co-channel licensees it may request that the Commission reassign it to another channel.

Note: Coordinates are referenced to North American Datum 1983 (NAD83).

Urban area	North latitude	West longitude
New York, New York-Northeastern New Jersey	40° 45′ 06.4″	73° 59′ 37.5″
Los Angeles-Long Beach, California	34° 03′ 15.0″	118° 14′ 31.3″
Chicago, Illinois-Northwestern Indiana	41° 52′ 28.1″	87° 38′ 22.2″
Philadelphia, Pennsylvania/New Jersey	39° 56′ 58.4″	75° 09′ 19.6″
Detroit, Michigan	42° 19′ 48.1″	83° 02′ 56.7″
San Francisco-Oakland, California	37° 46′ 38.7″	122° 24′ 43.9″
Boston, Massachusetts	42° 21′ 24.4″	71° 03′ 23.2″
Washington, DC/Maryland/Virginia	38° 53′ 51.4″	77° 00′ 31.9″
Cleveland, Ohio	41° 29′ 51.2″	81° 41′ 49.5″
St Louis, Missouri/Illinois	38° 37′ 45.2″	90° 12′ 22.4″
Pittsburgh, Pennsylvania	40° 26′ 19.2″	79° 59′ 59.2″
Minneapolis-St. Paul, Minnesota	44° 58′ 56.9″	93° 15′ 43.8″
Houston, Texas	29° 45′ 26.8″	95° 21′ 37.8″
Baltimore, Maryland	39° 17′ 26.4″	76° 36′ 43.9″
Dallas-Fort Worth, Texas	32° 47′ 09.5″	96° 47′ 38.0″
Milwaukee, Wisconsin	43° 02′ 19.0″	87° 54′ 15.3″
Seattle-Everett, Washington	47° 36′ 31.4″	122° 20′ 16.5″
Miami, Florida	25° 46′ 38.4″	80° 11′ 31.2″
San Diego, California	32° 42′ 53.2″	117° 09′ 24.1″
Atlanta, Georgia	33° 45′ 10.4″	84° 23′ 36.7″
Cincinnati, Ohio/Kentucky	39° 06′ 07.2″	84° 30′ 34.8″
Kansas City, Missouri/Kansas	39° 04′ 56.0″	94° 35′ 20.8″
Buffalo, New York	42° 52′ 52.2″	78° 52′ 20.1″
Denver, Colorado	39° 44′ 58.0″	104° 59′ 23.9″
San Jose, California	37° 20′ 15.8″	121° 53′ 27.8″

* * * * *

337. Section 90.501 is revised to read as follows:

§ 90.501 Scope.

This subpart supplements part 1, subpart F of this chapter by describing further requirements for the filing of applications for developmental licenses. It includes special requirements related to developmental operation, restrictions on operations, and special reports required when the development operation is to seek operational data or techniques directed toward the extension of that service.

338. Section 90.601 is revised to read as follows:

§ 90.601 Scope.

This subpart sets out the regulations governing the licensing and operations of all systems operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands. It includes eligibility requirements, and operational and technical standards for stations licensed in these bands. It also supplements the rules regarding application procedures contained in Part 1, Subpart F of this chapter. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands.

339. Section 90.605 is revised to read as follows:

§ 90.605 Forms to be used.

Applications for conventional and trunked radio facilities must be prepared on FCC Form 601 and must be submitted or filed in accordance with § 90.127 and part 1, subpart F of this chapter.

340. Section 90.607 is revised by amending paragraphs (b)(1) and (c)(1), and by removing and reserving paragraph (d) to read as follows:

§ 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.

* * * * *

(b) * * *

(1) List all radio systems licensed to them or proposed by them within 64 km (40 mi.) from the location of the base station transmitter site of the facility for which they have applied.

* * * * *

(c) * * *

(1) List all radio systems licensed to them within 64 km (40 mi.) from the location of the base station transmitter site of the facility for which they have applied;

* * * * *

(d) [Reserved]

* * * * *

§ 90.609 [Amended]

341. Section 90.609 is amended by removing and reserving paragraph (a).

§ 90.611 [Removed]

342. Section 90.611 is removed.

343. Section 90.619 is amended by revising the last sentence of paragraph (d)(5) to read as follows:

VOL
63
ISS
2
3
9
DE
14
1998
UMI

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

* * * * *

(d) * * *

(5) * * * U.S. stations must protect Canadian stations operating on channels 121 through 230 within an area of 30 km radius from the center city coordinates (referenced to North American Datum 1983 (NAD83)) of London, Ontario (42° 59′ 00.1″ N, 81° 13′ 59.5″ W).

* * * * *

344. Section 90.621 is amended by revising the first two columns of Table 1 and paragraphs (b)(3), (e)(5) and (f)(1), and adding a note before Table 1 of this section to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) * * *

TABLE 1.—CO-CHANNEL SEPARATIONS BETWEEN COMMON ANTENNA SITES IN THE STATE OF CALIFORNIA NORTH OF 35° NORTH LATITUDE AND WEST OF 118° WEST LONGITUDE

[Note: Coordinates are referenced to North American Datum 1983 (NAD83)]

North latitude	West longitude	* * *
38° 03′ 39.7″	122° 36′ 20.9″	* * *
37° 55′ 43.7″	122° 35′ 14.9″	* * *
37° 50′ 56.7″	122° 29′ 59.9″	* * *
37° 52′ 53.7″	121° 55′ 08.9″	* * *
37° 51′ 11.7″	122° 12′ 33.9″	* * *
37° 52′ 57.7″	122° 13′ 14.9″	* * *
37° 50′ 59.7″	122° 11′ 33.9″	* * *
37° 43′ 32.8″	122° 24′ 55.9″	* * *
37° 41′ 20.8″	122° 26′ 11.9″	* * *
37° 24′ 38.8″	122° 18′ 23.9″	* * *
37° 19′ 12.8″	122° 08′ 36.9″	* * *
37° 10′ 36.8″	121° 54′ 27.8″	* * *
37° 07′ 08.8″	121° 50′ 01.8″	* * *
37° 06′ 39.8″	121° 50′ 32.8″	* * *
36° 31′ 44.9″	121° 36′ 27.8″	* * *
37° 29′ 14.8″	121° 52′ 06.8″	* * *
40° 15′ 45.6″	122° 05′ 41.0″	* * *
39° 51′ 49.6″	121° 41′ 23.9″	* * *
39° 12′ 16.6″	121° 49′ 05.9″	* * *
39° 08′ 00.6″	121° 06′ 01.8″	* * *
38° 52′ 14.6″	121° 07′ 42.8″	* * *
38° 24′ 19.7″	122° 06′ 33.9″	* * *
38° 01′ 14.7″	120° 35′ 09.7″	* * *
37° 30′ 30.8″	121° 22′ 29.8″	* * *
37° 32′ 31.8″	120° 03′ 48.6″	* * *
37° 04′ 09.8″	119° 25′ 42.5″	* * *
36° 44′ 37.8″	119° 17′ 02.4″	* * *
36° 18′ 09.8″	120° 24′ 06.6″	* * *
36° 17′ 06.8″	118° 50′ 22.3″	* * *
35° 38′ 28.8″	118° 47′ 11.3″	* * *
35° 33′ 08.8″	118° 49′ 23.3″	* * *
35° 17′ 16.9″	119° 30′ 58.4″	* * *
35° 17′ 26.9″	119° 45′ 51.5″	* * *
35° 16′ 50.9″	119° 44′ 55.5″	* * *

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 169 km (105 mi). Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks D through V that have received the consent of all affected parties to utilize an 18 dBμ V/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

Note: Coordinates are referenced to North American Datum 1983 (NAD83).

Site name	North latitude	West longitude
Mount Constitution	48° 40′ 47.4″	122° 50′ 28.7″
Lyman Mountain	48° 35′ 41.4″	122° 09′ 39.6″
Cultus Mountain	48° 25′ 30.4″	122° 08′ 58.5″
Gunsite Ridge	48° 03′ 22.4″	121° 51′ 41.5″
Gold Mountain	47° 32′ 51.3″	122° 46′ 56.5″
Buck Mountain	47° 47′ 05.3″	122° 59′ 34.6″
Cougar Mountain	47° 32′ 39.4″	122° 06′ 34.4″
Squak Mountain	47° 30′ 14.4″	122° 03′ 34.4″
Tiger Mountain	47° 30′ 13.4″	121° 58′ 32.4″
Devils Mountain	48° 21′ 52.4″	122° 16′ 06.6″
McDonald Mountain	47° 20′ 11.3″	122° 51′ 30.5″
Maynard Hill	48° 00′ 58.3″	122° 55′ 35.6″
North Mountain	47° 19′ 07.3″	123° 20′ 48.6″
Green Mountain	47° 33′ 40.3″	122° 48′ 31.5″
Capitol Peak	46° 58′ 21.3″	123° 08′ 21.5″
Rattlesnake Mountain	47° 28′ 09.4″	121° 49′ 17.4″
Three Sisters Mountain	47° 07′ 19.4″	121° 53′ 34.4″
Grass Mountain	47° 12′ 14.4″	121° 47′ 42.4″
Spar Pole Hill	47° 02′ 51.4″	122° 08′ 39.4″

* * * * *

(e) * * *

(5) The frequency coordinator must certify that frequencies are not available in the applicant's own category, and coordination is required from the applicable out-of-category coordinator.

* * * * *

(f) * * *

(1) The frequency coordinator must certify that frequencies are not available in the applicant's own category, and coordination is required from the applicable out-of-category coordinator.

* * * * *

345. Section 90.625 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 90.625 Other criteria to be applied in assigning channels for use in conventional systems of communication.

(a) Where an applicant certifies on its application that a channel will be loaded to 70 mobile stations, that channel will be made available to that applicant for its exclusive use in the area in which it proposes to operate. * * *

* * * * *

346. Section 90.629 is amended by revising the second sentence of paragraph (c) of this section to read as follows:

§ 90.629 Extended implementation period.

* * * * *

(c) * * * Licensees must notify the Commission annually, using FCC Form 601, that they are in compliance with their yearly station construction commitments, but may request amendment to these commitments at the time they file their annual certification. * * *

* * * * *

347. Section 90.631 is amended by revising the fifth sentence of paragraph (d) and revising paragraph (f) of this section to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(d) * * * The coordinates for the centers of these areas are those referenced in § 90.635, except that the coordinates (referenced to North American Datum 1983 (NAD83)) for Tampa-St. Petersburg are latitude 28° 00′ 01.1″ N, longitude 82° 26′ 59.3″ W. * * *

* * * * *

(f) If a station is not placed in permanent operation, in accordance with the technical parameters of the station authorization, within one year, except as provided in § 90.629, its license cancels automatically. For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation. An SMR licensee with facilities that have discontinued operations for 90 continuous days is presumed to have permanently discontinued operations, unless the licensee notifies the Commission otherwise, using FCC Form 601, prior to the end of the 90 day period and provides a date on which operation will resume, which date must not be in excess of 30 additional days.

* * * * *

348. Section 90.635 is amended by revising Table 1 to read as follows:

§ 90.635 Limitations on power and antenna height.

* * * * *

TABLE 1.—URBANIZED AREAS

[Note: Coordinates are referenced to North American Datum 1983 (NAD83)]

Urban area	Geographic center	
	North latitude	West longitude
Akron, Ohio	41° 05′ 00.2″	81° 30′ 43.4″
Albany-Schenectady-Troy, New York	42° 39′ 01.3″	73° 44′ 59.4″
Atlanta, Georgia	33° 45′ 10.4″	84° 23′ 36.7″
Baltimore, Maryland	39° 17′ 26.4″	76° 36′ 43.9″
Birmingham, Alabama	33° 31′ 01.4″	86° 48′ 36.0″
Boston, Massachusetts	42° 21′ 24.4″	71° 03′ 23.2″
Buffalo, New York	42° 52′ 52.2″	78° 52′ 20.1″
Chicago, Illinois	41° 52′ 28.1″	87° 38′ 22.2″
Cincinnati, Ohio	39° 06′ 07.2″	84° 30′ 34.8″
Cleveland, Ohio	41° 29′ 51.2″	81° 41′ 49.5″
Columbus, Ohio	39° 57′ 47.2″	83° 00′ 16.7″
Dallas, Texas	32° 47′ 09.5″	96° 47′ 38.0″
Dayton, Ohio	39° 45′ 32.2″	84° 11′ 42.8″
Denver, Colorado	39° 44′ 58.0″	104° 59′ 23.9″
Detroit, Michigan	42° 19′ 48.1″	83° 02′ 56.7″
Fort Lauderdale-Hollywood, Florida	26° 07′ 31.3″	80° 08′ 59.2″
Fort Worth, Texas	32° 44′ 55.5″	97° 19′ 45.1″
Houston, Texas	29° 45′ 26.8″	95° 21′ 37.8″
Indianapolis, Indiana	39° 46′ 07.2″	86° 09′ 46.0″
Jacksonville, Florida	30° 19′ 44.9″	81° 39′ 41.3″
Kansas City, Missouri/Kansas	39° 04′ 56.0″	94° 35′ 20.8″
Los Angeles-Long Beach, California	34° 03′ 15.0″	118° 14′ 31.3″
Louisville, Kentucky/Indiana	38° 14′ 47.3″	85° 45′ 48.9″
Memphis, Tennessee/Mississippi	35° 08′ 46.3″	90° 03′ 13.3″
Miami, Florida	25° 46′ 38.4″	80° 11′ 31.2″
Milwaukee, Wisconsin	43° 02′ 19.0″	87° 54′ 15.3″
Minneapolis-St. Paul, Minnesota	44° 58′ 56.9″	93° 15′ 43.8″
New York, New York-Northeastern New Jersey	40° 45′ 06.4″	73° 59′ 37.5″
New Orleans, Louisiana	29° 56′ 53.7″	90° 04′ 10.3″
Norfolk-Portsmouth, Virginia	36° 51′ 10.5″	76° 17′ 19.8″
Oklahoma City, Oklahoma	35° 28′ 26.2″	97° 31′ 05.1″
Omaha, Nebraska/Iowa	41° 15′ 42.0″	95° 56′ 15.1″
Philadelphia, Pennsylvania/New Jersey	39° 56′ 58.4″	75° 09′ 19.6″
Phoenix, Arizona	33° 27′ 12.2″	112° 04′ 30.5″
Pittsburgh, Pennsylvania	40° 26′ 19.2″	79° 59′ 59.2″
Portland, Oregon/Washington	45° 31′ 05.4″	122° 40′ 39.3″
Providence-Pawtucket-Warwick, RI/MA	41° 49′ 32.4″	71° 24′ 39.2″
Rochester, New York	43° 09′ 41.2″	77° 36′ 20.0″
Sacramento, California	38° 34′ 56.7″	121° 29′ 44.8″
Saint Louis, Missouri/Illinois	38° 37′ 45.2″	90° 12′ 22.4″

TABLE 1.—URBANIZED AREAS—Continued

[Note: Coordinates are referenced to North American Datum 1983 (NAD83)]

Urban area	Geographic center	
	North latitude	West longitude
Saint Petersburg, Florida	27° 46′ 19.1″	82° 38′ 18.4″
San Antonio, Texas	29° 25′ 37.8″	98° 29′ 07.1″
San Bernardino-Riverside, California	34° 06′ 30.0″	117° 17′ 31.2″
San Jose, California	37° 20′ 15.8″	121° 53′ 27.8″
San Francisco-Oakland, California	37° 46′ 38.7″	122° 24′ 43.9″
San Diego, California	32° 42′ 53.2″	117° 09′ 24.1″
Seattle, Washington	47° 36′ 31.4″	122° 20′ 16.5″
Springfield-Chicopee-Holyoke, MA/CT	42° 06′ 21.3″	72° 35′ 30.3″
Toledo, Ohio/Michigan	41° 39′ 14.2″	83° 32′ 38.8″
Washington, DC/Maryland/Virginia	38° 53′ 51.4″	77° 00′ 31.9″

* * * * *

349. Section 90.645 is amended by revising the third sentences of paragraphs (g) and (h) to read as follows:

§ 90.645 Permissible operations.

* * * * *

(g) * * * Notification of such proposed exchanges shall be made to the appropriate frequency coordinator(s) and to the Commission by filing an application for license modification.

(h) * * * Notification of such proposed exchanges shall be made to the appropriate frequency coordinator(s) and to the Commission by filing an application for license modification.

* * * * *

350. Section 90.651 is revised to read as follows:

§ 90.651 Supplemental reports required of licensees authorized under this subpart.

Licensees of conventional systems must notify the Commission in accordance with § 1.946 of this chapter of the number of mobile units placed in operation within their construction period.

351. Section 90.655 is amended by revising the first sentence to read as follows:

§ 90.655 Special licensing requirements for Specialized Mobile Radio systems.

End users of conventional or trunked Specialized Mobile Radio systems that have control stations that require FAA clearance, as specified in §§ 17.7 through 17.17 of this chapter, or that may have a significant environmental effect, as defined by § 1.1307, or that are located in a "quiet zone", as defined by § 1.924 of this chapter must be individually licensed for such control stations prior to construction or operation. * * *

§ 90.657 [Removed]

352. Section 90.657 is removed.

353. Section 90.658 is amended by revising paragraph (a) of this section to read as follows:

§ 90.658 Loading data required for base station licensees of trunked Specialized Mobile Radio systems to acquire additional channels or to renew trunked systems licensed before June 1, 1993.

(a) A base station licensee of a trunked system applying for its first renewal in a waiting list area for a system licensed before June 1, 1993 must identify, using FCC Form 601, the number of mobiles and control stations loaded on its system as calculated in paragraph (b) of this section.

* * * * *

§ 90.659 [Removed]

354. Section 90.659 is removed.

355. Section 90.683 is amended by revising paragraph (a)(4) and removing and reserving paragraph (a)(5) of this section to read as follows:

§ 90.683 EA-based SMR system operations.

(a) * * *

(4) Upon request by an incumbent licensee or the Commission, the EA licensees shall furnish the technical parameters, location and coordinates of the completion of the addition, removal, relocation or modification of any of its facilities within the EA. The EA licensee must provide such information within ten (10) days of receiving a written request.

(5) [Reserved]

* * * * *

356. Section 90.687 is amended by revising the first sentence to read as follows:

§ 90.687 Special provisions regarding assignments and transfers of authorizations for incumbent SMR licensees in the 816–821/861–866 MHz band.

An SMR license initially authorized on any of the channels listed in Table 4A of § 90.617 of this part may transfer or assign its channel(s) to another entity subject to the provisions of § 1.948 of this chapter and § 90.609(b) of this part. * * *

357. Section 90.693 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.693 Grandfathering provisions for incumbent licensees.

* * * * *

(b) Spectrum Blocks A through V. An incumbent licensee's service area shall be defined by its originally-licensed 40 dBμV/m field strength contour and its interference contour shall be defined as its originally-licensed 22 dBMUV/m field strength contour. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 22 dBμV/m field strength contour without prior notification to the Commission so long as their original 22 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6) of this part.

(c) Special Provisions for Spectrum Blocks D through V. Incumbent licensees that have received the consent of all affected parties to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and its interference contour shall be defined as their originally-licensed 18 dBMUV/m field strength contour. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§ 90.621(b)(4) through 90.621(b)(6) of this part.

(d) * * *

358. Section 90.701 is amended by revising paragraph (a) to read as follows:

§ 90.701 Scope.

(a) Frequencies in the 220–222 MHz band are available for land mobile and fixed use for both Government and non-Government operations. This subpart supplements part 1, subpart F of this chapter which establishes the requirements and conditions under which commercial and private radio stations may be licensed in the Wireless Telecommunications Services. The provisions of this subpart contain additional pertinent information for current and prospective licensees specific to the 220–222 MHz band.

* * * * *

359. Section 90.705 is revised to read as follows:

§ 90.705 Forms to be used.

Phase II applications for EA, Regional, or Nationwide radio facilities under this subpart must be prepared in accordance with §§ 90.1009 and 90.1013 of this part. Phase II applications for radio facilities operating on public safety/mutual aid channels (Channels 161 through 170) or emergency medical channels (Channels 181 through 185) under this subpart must be prepared on FCC Form 601 and submitted or filed in accordance with § 1.913 of this chapter.

360. Section 90.711 is amended by revising paragraph (a) introductory text and removing paragraph (a)(5) to read as follows:

§ 90.711 Processing of Phase II applications.

(a) Phase II applications for authorizations on Channels 166 through 170 and Channels 181 through 185 will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for these frequencies in the same geographic area, and insufficient frequencies are available to grant all applications (i.e., if all applications were granted, violation of the station separation provisions of § 90.723(k) of this part would result), these applications will be considered mutually exclusive.

* * * * *

361. Section 90.733 is amended by revising paragraph (h)(2) to read as follows:

§ 90.733 Permissible operations.

* * * * *

(h) * * *

(2) Operate only at temporary locations in accordance with the provisions of § 1.931 of this chapter;

* * * * *

362. Section 90.737 is amended by revising paragraphs (d) and (e) to read as follows:

§ 90.737 Supplemental reports required of Phase I licenses.

* * * * *

(d) Except for licensees of nationwide systems, all licensees must report whether construction of the facility has been completed in accordance with § 1.947 of this chapter.

(e) All reports must be filed in accordance with § 1.913 of this chapter.

363. Section 90.741 is revised to read as follows:

§ 90.741 Urban areas for Phase I nationwide systems.

Licensees of Phase I nationwide systems must construct base stations, or fixed stations transmitting on frequencies in the 220–221 MHz band, in a minimum of 28 of the urban areas listed in the following Table within ten years of initial license grant. A base station, or fixed station, is considered to be within one of the listed urban areas if it is within 60 kilometers (37.3 miles) of the specified coordinates (coordinates are referenced to North American Datum 1983 (NAD83)).

TABLE

Urban area	North latitude	West longitude
New York, New York-Northeastern New Jersey	40° 45′ 06.4″	73° 59′ 37.5″
Los Angeles-Long Beach, California	34° 03′ 15.0″	118° 14′ 31.3″
Chicago, Illinois-Northwestern Indiana	41° 52′ 28.1″	87° 38′ 22.2″
Philadelphia, Pennsylvania/New Jersey	39° 56′ 58.4″	75° 09′ 19.6″
Detroit, Michigan	42° 19′ 48.1″	83° 02′ 56.7″
Boston, Massachusetts	42° 21′ 24.4″	71° 03′ 23.2″
San Francisco-Oakland, California	37° 46′ 38.7″	122° 24′ 43.9″
Washington, DC/Maryland/Virginia	38° 53′ 51.4″	77° 00′ 31.9″
Dallas-Fort Worth, Texas	32° 47′ 09.5″	96° 47′ 38.0″
Houston, Texas	29° 45′ 26.8″	95° 21′ 37.8″
St Louis, Missouri/Illinois	38° 37′ 45.2″	90° 12′ 22.4″
Miami, Florida	25° 46′ 38.4″	80° 11′ 31.2″
Pittsburgh, Pennsylvania	40° 26′ 19.2″	79° 59′ 59.2″
Baltimore, Maryland	39° 17′ 26.4″	76° 36′ 43.9″
Minneapolis-St Paul, Minnesota	44° 58′ 56.9″	93° 15′ 43.8″
Cleveland, Ohio	41° 29′ 51.2″	81° 41′ 49.5″
Atlanta, Georgia	33° 45′ 10.4″	84° 23′ 36.7″
San Diego, California	32° 42′ 53.2″	117° 09′ 24.1″
Denver, Colorado	39° 44′ 58.0″	104° 59′ 23.9″
Seattle-Everett, Washington	47° 36′ 31.4″	122° 20′ 16.5″
Milwaukee, Wisconsin	43° 02′ 19.0″	87° 54′ 15.3″
Tampa, Florida	27° 56′ 59.1″	82° 27′ 24.3″
Cincinnati, Ohio/Kentucky	39° 06′ 07.2″	84° 30′ 34.8″
Kansas City, Missouri/Kansas	39° 04′ 56.0″	94° 35′ 20.8″
Buffalo, New York	42° 52′ 52.2″	78° 52′ 20.1″
Phoenix, Arizona	33° 27′ 12.2″	112° 04′ 30.5″
San Jose, California	37° 20′ 15.8″	121° 53′ 27.8″
Indianapolis, Indiana	39° 46′ 07.2″	86° 09′ 46.0″
New Orleans, Louisiana	29° 56′ 53.7″	90° 04′ 10.3″
Portland, Oregon/Washington	45° 31′ 05.4″	122° 40′ 39.3″
Columbus, Ohio	39° 57′ 47.2″	83° 00′ 16.7″
Hartford, Connecticut	41° 46′ 12.4″	72° 40′ 47.3″
San Antonio, Texas	29° 25′ 37.8″	98° 29′ 07.1″

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TABLE—Continued

Urban area	North latitude	West longitude
Rochester, New York	43° 09′ 41.2″	77° 36′ 20.0″
Sacramento, California	38° 34′ 56.7″	121° 29′ 44.8″
Memphis, Tennessee/Arkansas/Mississippi	35° 08′ 46.3″	90° 03′ 13.3″
Louisville, Kentucky/Indiana	38° 14′ 47.3″	85° 45′ 48.9″
Providence-Pawtucket-Warwick, RI/MA	41° 49′ 32.4″	71° 24′ 39.2″
Salt Lake City, Utah	40° 45′ 22.8″	111° 53′ 28.8″
Dayton, Ohio	39° 45′ 32.2″	84° 11′ 42.8″
Birmingham, Alabama	33° 31′ 01.4″	86° 48′ 36.0″
Bridgeport, Connecticut	41° 10′ 49.3″	73° 11′ 20.4″
Norfolk-Portsmouth, Virginia	36° 51′ 10.5″	76° 17′ 19.8″
Albany-Schenectady-Troy, New York	42° 39′ 01.3″	73° 44′ 59.4″
Oklahoma City, Oklahoma	35° 28′ 26.2″	97° 31′ 05.1″
Nashville-Davidson, Tennessee	36° 09′ 33.2″	86° 46′ 55.0″
Toledo, Ohio/Michigan	41° 39′ 14.2″	83° 32′ 38.8″
New Haven, Connecticut	41° 18′ 25.3″	72° 55′ 28.4″
Honolulu, Hawaii	21° 18′ 48.6″	157° 51′ 50.1″
Jacksonville, Florida	30° 19′ 44.9″	81° 39′ 41.3″
Akron, Ohio	41° 05′ 00.2″	81° 30′ 43.4″
Syracuse, New York	43° 03′ 04.2″	76° 09′ 12.7″
Worcester, Massachusetts	42° 15′ 37.3″	71° 48′ 15.3″
Tulsa, Oklahoma	36° 09′ 12.3″	95° 59′ 35.0″
Allentown-Bethlehem-Easton, PA/NJ	40° 36′ 11.4″	75° 28′ 04.7″
Richmond, Virginia	37° 32′ 15.5″	77° 26′ 07.9″
Orlando, Florida	28° 32′ 43.0″	81° 22′ 37.3″
Charlotte, North Carolina	35° 13′ 44.5″	80° 50′ 44.3″
Springfield-Chicopee-Holyoke, MA/CT	42° 06′ 21.3″	72° 35′ 30.3″
Grand Rapids, Michigan	42° 58′ 03.1″	85° 40′ 13.1″
Omaha, Nebraska/Iowa	41° 15′ 42.0″	95° 56′ 15.1″
Youngstown-Warren, Ohio	41° 05′ 57.2″	80° 39′ 01.3″
Greenville, South Carolina	34° 50′ 50.4″	82° 24′ 00.4″
Flint, Michigan	43° 00′ 50.1″	83° 41′ 32.8″
Wilmington, Delaware/New Jersey/Maryland	39° 44′ 46.4″	75° 32′ 49.7″
Raleigh-Durham/North Carolina	35° 46′ 38.5″	78° 38′ 20.0″
West Palm Beach, Florida	26° 42′ 37.2″	80° 03′ 06.1″
Oxnard-Simi Valley-Ventura, California	34° 12′ 00.0″	119° 11′ 03.4″
Fresno, California	36° 44′ 11.8″	119° 47′ 14.5″
Austin, Texas	30° 16′ 09.8″	97° 44′ 38.0″
Tucson, Arizona	32° 13′ 15.3″	110° 58′ 10.3″
Lansing, Michigan	42° 44′ 01.1″	84° 33′ 14.9″
Knoxville, Tennessee	35° 57′ 39.3″	83° 55′ 06.7″
Baton Rouge, Louisiana	30° 26′ 58.7″	91° 11′ 00.4″
El Paso, Texas	31° 45′ 36.4″	106° 29′ 13.0″
Tacoma, Washington	47° 14′ 58.4″	122° 26′ 19.4″
Mobile, Alabama	30° 41′ 36.7″	88° 02′ 33.0″
Harrisburg, Pennsylvania	40° 15′ 43.3″	76° 52′ 57.9″
Albuquerque, New Mexico	35° 05 ′01.2″	106° 39′ 07.1″
Canton, Ohio	40° 47′ 50.2″	81° 22′ 36.4″
Chattanooga, Tennessee/Georgia	35° 02′ 41.3″	85° 18′ 31.8″
Wichita, Kansas	37° 41′ 30.1″	97° 20′ 17.2″
Charleston, South Carolina	32° 46′ 35.6″	79° 55′ 52.3″
San Juan, Puerto Rico	18° 27′ 52.8″	66° 06′ 58.6″
Little Rock-North Little Rock, Arkansas	34° 44′ 42.3″	92° 16′ 37.5″
Las Vegas, Nevada	36° 10′ 19.9″	115° 08′ 40.0″
Columbia, South Carolina	34° 00′ 02.6″	81° 01′ 59.3″
Fort Wayne, Indiana	41° 04′ 21.2″	85° 08′ 25.9″
Bakersfield, California	35° 22′ 30.9″	119° 01′ 19.4″
Davenport-Rock Island-Moline, IA/IL	41° 31′ 00.1″	90° 35′ 00.5″
Shreveport, Louisiana	32° 30′ 46.5″	93° 44′ 58.6″
Des Moines, Iowa	41° 35′ 14.0″	93° 37′ 00.8″
Peoria, Illinois	40° 41′ 42.1″	89° 35′ 33.4″
Newport News-Hampton, Virginia	36° 59′ 30.5″	76° 25′ 58.8″
Jackson, Mississippi	32° 17′ 56.5″	90° 11′ 06.3″
Augusta, Georgia/South Carolina	33° 28′ 20.5″	81° 57′ 59.4″
Spokane, Washington	47° 39′ 31.6″	117° 25′ 36.8″
Corpus Christi, Texas	27° 47′ 52.1″	97° 23′ 46.0″
Madison, Wisconsin	43° 04′ 23.0″	89° 22′ 55.4″
Colorado Springs, Colorado	38° 50′ 07.0″	104° 49′ 17.9″

Note: The geographic coordinates are originally from the Department of Commerce publication of 1947: "Air-line Distances Between Cities in the United States" and from data supplied by the National Geodetic Survey and converted to the reference system of North American Datum 1983 using the National Geodetic Survey's NADCON program. The coordinates are determined by using the first city mentioned as the center of the urban area.

364. Section 90.751 is revised to read as follows:

§ 90.751 Minor modifications of Phase I, non-nationwide licenses.

Phase I non-nationwide licensees will be given an opportunity to seek modification of their license to relocate their initially authorized base station, i.e., locate their base station at a site other than its initially authorized location. The conditions under which modifications will be granted and the procedures for applying for license modifications are described in §§ 90.753, 90.757 and 1.929 of this chapter. For CMRS licensees, these modifications will be treated as minor modifications in accordance with § 1.929 of this chapter.

365. Section 90.753 is amended by revising paragraphs (d) and (e) to read as follows:

§ 90.753 Conditions of license modification.

* * * * *

(d) The application for a Phase I non-nationwide licensee proposing a base station modification resulting in less than 120 km separation from a co-channel licensee's initially authorized base station will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a statement submitted concurrently with the licensee's application submission on FCC Form 601.

(e) The application of a Phase I non-nationwide licensee proposing a base station modification resulting in at least a 120 km separation from each co-channel licensee's initially authorized base station but more than one-half the distance over 120 km toward any co-channel licensee's initially authorized base station will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a statement submitted concurrently with the licensee's submission on FCC Form 601.

§ 90.755 [Removed]

366. Section 90.755 is removed.

367. Section 90.763 is amended by revising paragraph (b)(4) to read as follows:

§ 90.763 EA, regional and nationwide system operations.

* * * * *

(b) * * *

(4) Upon request by a licensee or the Commission, an EA or regional licensee shall furnish the technical parameters, location and coordinates of the completion of the addition, removal, relocation or modification of any of its facilities within the EA or region. The EA or regional licensee must provide such information within ten (10) days of receiving written notification.

* * * * *

368. Section 90.767 is amended by revising paragraph (c) to read as follows:

§ 90.767 Construction and implementation of EA and Regional licenses.

* * * * *

(c) Licensees must notify the Commission in accordance with § 1.946 of this chapter of compliance with the Construction requirements of paragraphs (a) and (b) of this section.

* * * * *

369. Section 90.769 is amended by revising paragraph (c) to read as follows:

§ 90.769 Construction and implementation of nationwide licenses.

* * * * *

(c) Licensees must notify the Commission in accordance with § 1.946 of this chapter of compliance with the Construction requirements of paragraphs (a) and (b) of this section.

* * * * *

370. Section 90.911 is amended by revising the third sentence and removing the fourth sentence of paragraph (b)(1) to read as follows:

§ 90.911 Partitioned licenses and disaggregated spectrum.

* * * * *

(b) * * *

(1) * * * The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). * * *

* * * * *

371. Section 90.1013 is revised to read as follows:

§ 90.1013 Long-form application (FCC Form 601).

Each successful bidder for a 220 MHz geographic area license must submit a long-form application (FCC Form 601) in accordance with part 1, subpart F of this chapter within ten (10) business days after being notified by Public Notice that it is the winning bidder. Regardless of the number of markets won, winning bidders will only be required to file a single application. Applications for 220 MHz geographic area licenses on FCC Form 601 must be submitted in accordance with § 1.2107 of this chapter, all applicable procedures set forth in the rules in this part, and any applicable Public Notices that the Commission may issue in connection with an auction. After an auction, the Commission will not accept long-form applications for 220 MHz geographic area licenses from anyone other than the auction winners and parties seeking partitioned licenses pursuant to agreements with auction winners under § 90.1019 of this part.

372. Section 90.1019 is amended by revising the section heading, revising paragraphs (a), (b), and (c); by removing paragraph (d) and revising and redesignating paragraph (e) as paragraph (d) to read as follows:

§ 90.1019 Eligibility for partitioned licenses.

(a) *Eligibility.* Parties seeking approval for partitioning and disaggregation shall request authorization for partial assignment of a license pursuant to § 1.948 of this chapter. The Commission will consider applications that propose combinations of partitioning and disaggregation.

(1) Phase I non-nationwide licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum after constructing their systems and placing their in operation or commencing service in accordance with the provisions in § 90.725(f) of this part.

(2) Phase I nationwide licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum after constructing at least 40 percent of the geographic areas designated in their applications in accordance with the provisions in § 90.725(a) of this part.

(3) Phase II licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(4) Phase I and Phase II licensees authorized to operate on Channels 161 through 170 or Channels 181 through 185 are not eligible to partition their geographic service area or disaggregate their licensed spectrum.

(b) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC-recognized service area or county lines are utilized, applicants need only list the specific area(s) through use of FCC

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designations or county names that constitute the partitioned area.

(c) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term.

(d) *Construction requirements.* (1) Requirements for partitioning. Parties seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction requirements set forth in §§ 90.767 or 90.769 of this part, as applicable, for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet its five-year construction requirement and will meet the ten-year construction requirement, as set forth in §§ 90.767 or 90.769 of this part, as applicable, for the entire license area. In that case, the partitionee must only satisfy the requirements for "substantial service," as set forth in § 90.743(a)(1) of this part, for the partitioned license area by the end of the original ten-year license term of the licensee.

(iii) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned license without further Commission action (*see* § 1.946).

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate spectrum must certify in FCC Form 601 which of the parties will be responsible for meeting the five-year and ten-year construction requirements for the particular market as set forth in §§ 90.767 or 90.769 of this part, as applicable.

373. Section 90.1023 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 90.1023 Certifications, disclosures, records maintenance and audits.

* * * * *

(b) *Long-Form Applications: Certifications and Disclosure.* In addition to the requirements in § 90.1013, each applicant submitting a long-form application (FCC Form 601) for a 220 MHz service geographic area license and qualifying as a small business or very small business shall, in an exhibit to its long-form application:

* * * * *

PART 95—PERSONAL RADIO SERVICES

374. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154 and 303.

375. All undesignated center headings in Subpart A-General Mobile Radio Service (GMRS) are removed.

376. Section 95.5 is revised to read as follows:

§ 95.5 License eligibility.

An *individual* (one man or one woman) is eligible to obtain, renew and have modified a GMRS system license if that individual is 18 years of age or older and is not a representative of a foreign government. A *non-individual* (an entity other than an individual) is ineligible to obtain a new GMRS system license or to make a major modification to an existing GMRS system license. Certain non-individuals are eligible to renew existing GMRS system licenses.

377. Section 95.7 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 95.7 Channel sharing.

(b) * * * Further, the use of any frequency at a given geographical location may be denied when, in the judgment of the FCC, its use in that location is not in the public interest; the use of any channel or channel pair may be restricted as to specified geographical areas, maximum power, or other operating conditions.

378. Section 95.21 is revised to read as follows:

§ 95.21 GMRS system description.

A *GMRS system* is one or more transmitting units used by station operators to communicate messages. A GMRS system is comprised of:

(a) One or more station operators;

(b) One mobile station consisting of one or more mobile units (see § 95.23 of this part);

(c) One or more land stations (optional);

(d) Paging receivers (optional); and

(e) Fixed stations (optional).

379. Section 95.23 is amended by revising paragraph (b) and removing paragraph (d) to read as follows:

§ 95.23 Mobile station description.

* * * * *

(b) A mobile station unit may transmit from any point within or over any areas where radio services are regulated by the FCC *except* where additional considerations apply.

* * * * *

380. Section 95.25 is amended by revising the introductory text of paragraph (a), and revising paragraphs (d)(2)(i) and (f), and removing and reserving paragraph (c) to read as follows:

§ 95.25 Land station description.

(a) A *land station* is a unit which transmits from a specific address as determined by the licensee.

* * * * *

(c) [Reserved]

(d) * * *

(2) * * *

(i) South of Line A or west of Line C; or

* * * * *

(f) Each base station and each control station with an antenna height greater than 6.1 meters (20 feet) must be separately identified on Form 605. *See* §§ 95.25 (d) and (e) and 95.51 of this part.

381. Section 95.29 is amended by revising paragraph (a) and introductory text of paragraph (e), revising paragraphs (b) and (e)(2), and removing and reserving paragraphs (c) and (d) to read as follows:

§ 95.29 Channels available.

(a) For a base station, fixed station, mobile station, or repeater station (a GMRS station that simultaneously retransmits the transmission of another GMRS station on a different channel or channels), the licensee of the GMRS system must select the transmitting channels or channel pairs for the stations in the GMRS system from the following 462 MHz channels:

462.5500, 462.5750, 462.6000, 462.6250, 462.6500, 462.6750, 462.7000 and 462.7250.

(b) For a mobile station, control station, or fixed station operated in the duplex mode, the following 467 MHz channels may be used only to transmit communications through a repeater station and for remotely controlling a repeater station. The licensee of the GMRS system must select the transmitting channels or channel pairs for the stations operated in the duplex mode, from the following 467 MHz channels:

467.5500, 467.5750, 467.6000, 467.6250, 467.6500, 467.6750, 467.7000 and 467.7250.

(c) [Reserved]

(d) [Reserved]

(e) Mobile stations in a GMRS system licensed to an individual are authorized to transmit on the 462.6750 MHz/467.6750 MHz channel pair with the following limitations:

* * * * *

(2) The frequency 467.675 MHz may be used only for the purposes of accessing and communicating through a repeater station transmitting on 462.675 MHz.

* * * * *

§ 95.31 [Removed]

382. Section 95.31 is removed.

§ 95.33 [Amended]

383. Section 95.33 is amended by removing paragraph (b).

§ 95.35 [Removed]

384. Section 95.35 is removed.

§ 95.37 [Removed]

385. Section 95.37 is removed.

§ 95.39 [Removed]

386. Section 95.39 is removed.

§§ 95.41 through 95.43 [Removed]

387. Sections 95.41 through 95.43 are removed.

388. Section 95.45 is revised to read as follows:

§ 95.45 Considerations on Department of Defense land and in other circumstances.

(a) The Department of Defense may impose additional restrictions on a station transmitting on its land. (Before placing a station at such a point, a licensee should consult with the commanding officer in charge of the land.)

(b) Additional restrictions may apply when a land station in a GMRS system is located near FCC field offices, near United States borders, in quiet zones, or when it may have a significant impact upon the environment. *See* §§ 1.923 and 1.924 of this chapter.

§ 95.47 [Removed]

389. Section 95.47 is removed.

§ 95.49 [Removed]

390. Section 95.49 is removed.

391. Section 95.51 is revised to read as follows:

§ 95.51 Antenna height.

(a) Certain antenna structures used in a GMRS system and that are more than 60.96 m (200 ft) in height, or are located near or at a public-use airport must be notified to the FAA and registered with the Commission as required by part 17 of this chapter.

(b) The antenna for a small base station or for a small control station must not be more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted.

§ 95.53 [Removed]

392. Section 95.53 is removed.

§ 95.55 [Removed]

393. Section 95.55 is removed.

§ 95.57 [Removed]

394. Section 95.57 is removed.

§ 95.59 [Removed]

395. Section 95.59 is removed.

§ 95.61 [Removed]

396. Section 95.61 is removed.

§§ 95.71 through 95.73 [Removed]

397. Sections 95.71 through 95.73 are removed.

§ 95.75 [Removed]

398. Section 95.75 is removed.

§ 95.77 [Removed]

399. Section 95.77 is removed.

§ 95.79 [Removed]

400. Section 95.79 is removed.

§ 95.83 [Removed]

401. Section 95.83 is removed.

§ 95.85 [Removed]

402. Section 95.85 is removed.

§ 95.87 [Removed]

403. Section 95.87 is removed.

§ 95.89 [Removed]

404. Section 95.89 is removed.

405. Section 95.101 is amended by revising paragraph (a) to read as follows:

§ 95.101 What the license authorizes.

(a) A GMRS license authorizes a GMRS station to transmit messages to other GMRS stations at any geographical location within or over the territorial limits of any area where radio services are regulated by the FCC. These points are listed in Appendix A.

* * * * *

406. Section 95.103 is revised to read as follows:

§ 95.103 Licensee duties.

The licensee is responsible for the proper operation of the GMRS system at all times. The licensee is also responsible for the appointment of a station operator.

407. Section 95.105 is revised to read as follows:

§ 95.105 License term.

A license for a GMRS system is usually issued for a 5-year term.

§ 95.107 [Removed]

408. Section 95.107 is removed.

§ 95.109 [Removed]

409. Section 95.109 is removed.

§ 95.111 [Removed]

410. Section 95.111 is removed.

§ 95.113 [Removed]

411. Section 95.113 is removed.

412. Section 95.115 is amended by revising the second sentence to read as follows:

§ 95.115 Station inspection.

* * * If an authorized FCC representative requests to inspect the GMRS system records, the licensee must make them available.

413. Section 95.117 is revised to read as follows:

§ 95.117 Where to contact the FCC.

Additional GMRS information may be obtained from any of the following sources:

(a) FCC National Call Center at 1–888–225–5322.

(b) FCC World Wide Web homepage: http://www.fcc.gov/wtb/prs.

(c) In writing, to the FCC, Attention: GMRS, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

414. Section 95.119 is amended by revising the introductory text in paragraph (a) and by revising paragraphs (b) and (d) to read as follows:

§ 95.119 Station identification.

(a) Except as provided in paragraph (e), every GMRS station must transmit a station identification:

* * * * *

(b) The station identification is the call sign assigned to the GMRS station or system.

* * * * *

(d) The station identification must be transmitted in:

(1) Voice in the English language; or

(2) International Morse code telegraphy.

* * * * *

§ 95.121 [Removed]

415. Section 95.121 is removed.

§ 95.123 [Removed]

416. Section 95.123 is removed.

§ 95.125 [Removed]

417. Section 95.125 is removed.

§ 95.127 [Removed]

418. Section 95.127 is removed.

419. Section 95.129 is revised to read as follows:

§ 95.129 Station equipment.

Every station in a GMRS system must use transmitters the FCC has certificated for use in the GMRS. Write to any FCC Field Office to find out if a particular transmitter has been certificated for the GMRS. All station equipment in a GMRS system must comply with the technical rules in Part 95.

§ 95.131 [Removed]

420. Section 95.131 is removed.

§ 95.133 [Removed]

421. Section 95.133 is removed.

422. Section 95.135 is amended by removing and reserving paragraph (b) and revising paragraph (d) to read as follows:

§ 95.135 Maximum authorized transmitting power.

* * * * *

(d) A fixed station must transmit with no more than 15 watts output power.

* * * * *

§ 95.137 [Removed]

423. Section 95.137 is removed.

424. Section 95.139 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

425. Section 95.171 is revised to read as follows:

§ 95.171 Station operator duties.

When a GMRS station is transmitting, it must have a station operator. The station operator must be at the control point for that station. The same person may be the operator for more than one station at the same time. The station operator communicates messages and controls the station. The station operator must also cooperate in *sharing* each channel with station operators of other stations.

§ 95.173 [Removed]

426. Section 95.173 is removed.

§ 95.175 [Removed]

427. Section 95.175 is removed.

§ 95.177 [Removed]

428. Section 95.177 is removed.

429. Section 95.179 is amended by revising the introductory text of paragraphs (a) and (b), revising paragraph (b)(1), and removing paragraph (f) to read as follows:

§ 95.179 Individuals who may be station operators.

(a) An individual GMRS system licensee may permit immediate family members to be station operators in his or her GMRS system. Immediate family members are the:

* * * * *

(b) Only the following persons may be permitted to operate under the authority of a GMRS system licensed to a non-individual:

If the GMRS system licensee is:	These persons may be station operators:
(i) A partnership	Licensee's partners and employees.
(ii) A corporation	Licensee's officers, directors, members and employees.
(iii) An association.	Licensee's members and employees.
(iv) A governmental unit.	Licensee's employees.

* * * * *

430. Section 95.181 is amended by removing paragraphs (i) and (j) and revising paragraph (f) and to read as follows:

§ 95.181 Permissible communications.

* * * * *

(f) A station operator may communicate tone messages for purposes of identification or transmitter control in a control link.

* * * * *

431. Section 95.183 is added to read as follows:

§ 95.183 Prohibited communications.

(a) A station operator must not communicate:

(1) Messages for hire, whether the remuneration received is direct or indirect;

(2) Messages in connection with any activity which is against Federal, State, or local law;

(3) False or deceptive messages;

(4) Coded messages or messages with hidden meanings ("10 codes" are permissible);

(5) Intentional interference;

(6) Music, whistling, sound effects or material to amuse or entertain;

(7) Obscene, profane or indecent words, language or meaning;

(8) Advertisements or offers for the sale of goods or services;

(9) Advertisements for a political candidate or political campaign (messages about the campaign business may be communicated);

(10) International distress signals, such as the word "Mayday" (except when on a ship, aircraft or other vehicle in immediate danger to ask for help);

(11) Programs (live or delayed) intended for radio or television station broadcast;

(12) Messages which are both conveyed by a wireline control link and transmitted by a GMRS station;

(13) Messages (except emergency messages) to any station in the Amateur Radio Service, to any unauthorized station, or to any foreign station;

(14) Continuous or uninterrupted transmissions, except for communications involving the immediate safety of life or property;

(15) Messages for public address systems.

(b) A station operator in a GMRS system licensed to a telephone answering service must not transmit any communications to customers of the telephone answering service.

432. Appendix A to subpart A of part 95 is revised to read as follows:

Appendix A to Subpart A to Part 95—Locations Where GMRS Is Regulated by the FCC

In ITU Region 2, the GMRS is regulated by the Commission within the territorial limits of the 50 United States, District of Columbia, Caribbean Insular areas (Commonwealth of Puerto Rico, United States Virgin Islands (50 islets and cays) and Navassa Island), and Johnston Island (Islets East, Johnston, North and Sand) and Midway Island (Islets Eastern and Sand) in the Pacific Insular areas.

In ITU Region 3, the GMRS is regulated by the Commission within the Pacific Insular territorial limits of American Samoa (seven islands), Baker Island, Commonwealth of Northern Mariana Islands, Guam Island, Howland Island, Jarvis Island, Kingman Reef, Palmyra Island (more than 50 islets), and Wake Island (Islets Peale, Wake and Wilkes).

Appendix B to Subpart A [Removed]

433. Appendix B to subpart A of part 95 is removed.

§ 95.192 [Amended]

434. Section 95.192 is amended by removing and reserving paragraphs (b) and (c).

435. Section 95.217 is amended by revising paragraph (b) to read as follows:

§ 95.217 (R/C Rule 17) May I operate my R/C station transmitter by remote control?

* * * * *

(b) You may operate an R/C transmitter by wireline remote control if you obtain specific approval in writing from the FCC. To obtain FCC approval, you must show why you need to operate your station by wireline remote control. If you receive FCC approval, you must keep the approval as part of your station records. *See* R/C Rule 24, § 95.224.

* * * * *

436. Section 95.225 is revised to read as follows:

§ 95.225 (R/C Rule 25) How do I contact the FCC?

(a) FCC National Call Center at 1–888–225–5322.

(b) FCC World Wide Web homepage: http://www.fcc.gov.

(c) In writing, to FCC, Attention: R/C, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

437. Section 95.419 is amended by revising paragraph (b) to read as follows:

§ 95.419 (CB Rule 19) May I operate my CB station transmitter by remote control?

* * * * *

(b) You may operate a CB transmitter by wireline remote control if you obtain specific approval in writing from the FCC. To obtain FCC approval, you must show why you need to operate your station by wireline remote control. If you receive FCC approval, you must keep the approval as part of your station records. *See* CB Rule 27, § 95.427.

* * * * *

438. Section 95.428 is revised to read as follows:

§ 95.428 (CB Rule 28) How do I contact the FCC?

(a) FCC National Call Center at 1–888–225–5322.

(b) FCC World Wide Web homepage: http://www.fcc.gov.

(c) In writing, to FCC, Attention: CB, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

439. Section 95.801 is revised to read as follows:

§ 95.801 Scope.

This subpart sets out the regulations governing the licensing and operation of an Interactive Video and Data Service (218–219 MHz Service) system. This subpart supplements Part 1, Subpart F, which establishes the requirements and conditions under which commercial and private radio stations may be licensed and used in the Wireless Telecommunications Services. The provisions of this subpart contain additional pertinent information for current and prospective licensees specific to the services governed by this Part 95.

440. Section 95.811 is amended by revising paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 95.811 License requirements.

(a) Each 218–219 MHz Service system must be licensed in accordance with Part 1, Subpart F of this chapter.

(b) * * * All other CTSs must be individually licensed to the system licensee in accordance with Part 1, Subpart F of this chapter.

* * * * *

441. Section 95.815 is revised to read as follows:

§ 95.815 License application.

(a) In addition to the requirements of Part 1, Subpart F of this chapter, each application for an 218–219 MHz Service system license must include a plan showing how the applicant intends to minimize co-channel interference and interference to adjacent channel users and a showing that the proposed system will provide coverage (39 dBu) to at least 50 percent of the population (1990 census) or land area within the service area.

(b) In addition to the requirements of Part 1, Subpart F of this chapter, each request by an 218–219 MHz Service system licensee to add, delete, or modify an individually licensed CTS (the CTS antenna exceeds 6.1 m (20 feet) (*see* § 95.811(b) of this part)) must include a description of the system after the proposed addition, deletion, or. modifications, including the population in the service area, the number of component CTSs, and an explanation of how the system will satisfy the service requirements specified in § 95.831 of this part.

442. Section 95.816 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 95.816 Competitive bidding proceedings.

* * * * *

(c) * * *

(2) * * *

(ii) Applicants must submit a long-form application (FCC Form 601) within ten (10) business days after being notified that it is the winning bidder for a license. *See* § 1.2107(c) and (d) of this chapter.

* * * * *

§ 95.817 [Removed]

443. Section 95.817 is removed.

444. Section 95.819 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 95.819 License transferability.

* * * * *

(c) Once the five year construction benchmark has been met, licensees of 218–219 MHz Service systems that were not acquired through competitive bidding may transfer, sell, assign, or give the 218–219 MHz Service system licenses together with all of its component CTS licenses to any other entity in accordance with the provisions of § 1.948.* * *

§ 95.821 [Removed]

445. Section 95.821 is removed.

§ 95.833 [Amended]

446. Section 95.833 is amended by removing the second sentence of the introductory text of paragraph (b).

§§ 95.839 through 95.841 [Removed]

447. Sections 95.839 through 95.841 are removed.

PART 97—AMATEUR RADIO SERVICE

448. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154 and 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

449. Section 97.3 is amended by removing the numbers in front of each defined term in the definitions and inserting new definitions for CEPT radio-amateur license, IARP, and ULS (Universal Licensing System) to read as follows:

§ 97.3 Definitions

CEPT radio-amateur license. A license issued by a country belonging to the European Conference of Postal and Telecommunications Administrations (CEPT) that has adopted Recommendation T/R 61–01 (Nice 1985, revised in Paris 1992 and by correspondence August 1992).

IARP. International Amateur Radio Permit. A document issued pursuant to the terms of the Inter-American Convention on an International Amateur Radio Permit by a country signatory to that Convention, other than the United States. Montrouis, Haiti. AG/doc.3216/95.

ULS (Universal Licensing System). The consolidated database, application filing system and processing system for all Wireless Telecommunications Services.

450. Section 97.5 is amended by revising the introductory text of paragraph (a) and paragraphs (b), (c) and (d) and adding paragraph (e) to read as follows:

§ 97.5 Station license grant required.

(a) The station apparatus must be under the physical control of a person named in an amateur station license grant on the ULS consolidated license database or a person authorized for alien reciprocal operation by § 97.107 of this part, before the station may transmit on any amateur service frequency from any place that is:

* * * * *

(b) The types of station license grants are:

(1) An operator/primary station license grant. One, but only one, operator/primary station license grant may be held by any one person. The primary station license is granted together with the amateur operator license. Except for a representative of a foreign government, any person who qualifies by examination is eligible to apply for an operator/primary station license grant.

(2) A club station license grant. A club station license grant may be held only by the person who is the license trustee designated by an officer of the club. The trustee must be a person who holds an Amateur Extra, Advanced, General, Technician Plus, or Technician operator license grant. The club must be composed of at least four persons and must have a name, a document of organization, management, and a primary purpose devoted to amateur service activities consistent with this part.

(3) A military recreation station license grant. A military recreation station license grant may be held only by the person who is the license custodian designated by the official in charge of the United States military recreational premises where the station is situated. The person must not be a representative of a foreign government. The person need not hold an amateur operator license grant.

(4) A RACES station license grant. A RACES station license grant may be held only by the person who is the license custodian designated by the official responsible for the governmental agency served by that civil defense organization. The custodian must be the civil defense official responsible for coordination of all civil defense activities in the area concerned. The custodian must not be a representative of a foreign government. The custodian need not hold an amateur operator license grant.

(c) The person named in the station license grant or who is authorized for alien reciprocal operation by § 97.107 of this Part may use, in accordance with the applicable rules of this Part, the

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transmitting apparatus under the physical control of the person at places where the amateur service is regulated by the FCC.

(d) A CEPT radio-amateur license is issued to the person by the country of which the person is a citizen. The person must not:

(1) Be a resident alien or citizen of the United States, regardless of any other citizenship also held;

(2) Hold an FCC-issued amateur operator license nor reciprocal permit for alien amateur licensee;

(3) Be a prior amateur service licensee whose FCC-issued license was revoked, suspended for less than the balance of the license term and the suspension is still in effect, suspended for the balance of the license term and relicensing has not taken place, or surrendered for cancellation following notice of revocation, suspension or monetary forfeiture proceedings; or

(4) Be the subject of a cease and desist order that relates to amateur service operation and which is still in effect.

(e) An IARP is issued to the person by the country of which the person is a citizen. The person must not:

(1) Be a resident alien or citizen of the United States, regardless of any other citizenship also held;

(2) Hold an FCC-issued amateur operator license nor reciprocal permit for alien amateur licensee;

(3) Be a prior amateur service licensee whose FCC-issued license was revoked, suspended for less than the balance of the license term and the suspension is still in effect, suspended for the balance of the license term and relicensing has not taken place, or surrendered for cancellation following notice of revocation, suspension or monetary forfeiture proceedings; or

(4) Be the subject of a cease and desist order that relates to amateur service operation and which is still in effect.

451. Section 97.7 is revised to read as follows:

§ 97.7 Control operation required.

When transmitting, each amateur station must have a control operator. The control operator must be a person:

(a) For whom an amateur operator/primary station license grant appears on the ULS consolidated licensee database, or

(b) Who is authorized for alien reciprocal operation by § 97.107 of this part.

452. Section 97.9 is revised to read as follows:

§ 97.9 Operator license grant.

(a) The classes of amateur operator license grants are: Novice, Technician, Technician Plus (until such licenses expire, a Technical Class license granted before February 14, 1991, is considered a Technician Plus Class license), General, Advanced, and Amateur Extra. The person named in the operator license grant is authorized to be the control operator of an amateur station with the privileges authorized to the operator class specified on the license grant.

(b) The person named in an operator license grant of Novice, Technician, Technician Plus, General or Advanced Class, who has properly submitted to the administering VEs, a FCC Form 605 document requesting examination for an operator license grant of a higher class, and who holds a CSCE indicating that the person has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until a final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

453. Section 97.13 is amended by revising paragraph (a) and the last sentence of paragraphs (b) and (c)(2) to read as follows:

§ 97.13 Restrictions on station location.

(a) Before placing an amateur station on land of environmental importance or that is significant in American history, architecture or culture, the licensee may be required to take certain actions prescribed by §§ 1.1305–1.1319 of this chapter.

(b) * * * Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.

(c) * * *

(2) * * * Further information on evaluating compliance with these limits can be found in the OET Bulletin Number 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields."

454. Section 97.15 is revised to read as follows:

§ 97.15 Station antenna structures.

Owners of certain antenna structures more than 60.96 meters (200 feet) above ground level at the site or located near or at a public use airport must notify the Federal Aviation Administration and register with the Commission as required by Part 17 of this chapter.

455. Section 97.17 is revised to read as follows:

§ 97.17 Application for new license grant.

(a) Any qualified person is eligible to apply for a new operator/primary station, club station or military recreation station license grant. No new license grant will be issued for a RACES station.

(b) Each application for a new amateur service license grant must be filed with the FCC as follows:

(1) Each candidate for an amateur radio operator license which requires the applicant to pass one or more examination elements must present the administering VEs with all information required by the rules prior to the examination. The VEs may collect the information required by these rules in any manner of their choosing, including creating their own forms. Upon completion of the examination, the administering VEs will immediately grade the test papers and will then issue a certificate for successful completion of an amateur radio operator examination (CSCE) if the applicant is successful. The VEs will send all necessary information regarding the candidate to the Volunteer-Examiner Coordinator (VEC) coordinating the examination session. Applications filed with the Commission by VECs must be filed in an electronic batch file.

(2) For a new club or military recreation station license grant, each applicant must present all information required by the rules to an amateur radio organization having tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 that provides voluntary, uncompensated and unreimbursed services in providing club and military recreation station call signs ("*Club Station Call Sign Administrator*") who must submit the information to the FCC in an electronic batch file. The Club Station Call Sign Administrator may collect the information required by these rules in any manner of their choosing, including creating their own forms. The Club Station Call Sign Administrator must retain the applicants information for at least 15 months and make it available to the FCC upon request. The FCC will issue public announcements listing the qualified organizations that have completed a pilot autogrant batch filing project and are authorized to serve as a Club Station Call Sign Administrator.

(c) No person shall obtain or attempt to obtain, or assist another person to obtain, or attempt to obtain, an amateur service license grant by fraudulent means.

(d) One unique call sign will be shown on the license grant of each new primary, club and military recreation station. The call sign will be selected by the sequential call sign system.

456. Section 97.19 is amended by revising paragraphs (a), (b), (c) and (d)(1) to read as follows:

§ 97.19 Application for a vanity call sign.

(a) The person named in an operator/primary station license grant or in a club station license grant is eligible to make application for modification of the license grant, or the renewal thereof, to show a call sign selected by the vanity call sign system. RACES and military recreation stations are not eligible for a vanity call sign.

(b) Each application for a modification of an operator/primary or club station license grant, or the renewal thereof, to show a call sign selected by the vanity call sign system must be filed in accordance with § 1.913 of this chapter.

(c) Unassigned call signs are available to the vanity call sign system with the following exceptions:

(1) A call sign shown on an expired license grant is not available to the vanity call sign system for 2 years following the expiration of the license.

(2) A call sign shown on a surrendered, revoked, set aside, canceled, or voided license grant is not available to the vanity call sign system for 2 years following the date such action is taken.

(3) Except for an applicant who is the spouse, child, grandchild, stepchild, parent, grandparent, stepparent, brother, sister, stepbrother, stepsister, aunt, uncle, niece, nephew, or in-law, and except for an applicant who is a club station license trustee acting with the written consent of at least one relative, as listed above, of a person now deceased, the call sign shown on the license of person now deceased is not available to the vanity call sign system for 2 years following the person's death, or for 2 years following the expiration of the license grant, whichever is sooner.

(d) * * *

(1) The applicant must request that the call sign shown on the license grant be vacated and provide a list of up to 25 call signs in order of preference.

* * * * *

457. Section 97.21 is revised to read as follows:

§ 97.21 Application for a modified or renewed license grant.

(a) A person holding a valid amateur station license grant:

(1) Must apply to the FCC for a modification of the license grant as necessary to show the correct mailing address, licensee name, club name, license trustee name or license custodian name in accordance with § 1.913 of this chapter. For a club, military recreation or RACES station license grant, it must be presented in document form to a Club Station Call Sign Administrator who must submit the information thereon to the FCC in an electronic batch file. The Club Station Call Sign Administrator must retain the collected information for at least 15 months and make it available to the FCC upon request.

(2) May apply to the FCC for a modification of the operator/primary station license grant to show a higher operator class. Applicants must present the administering VEs with all information required by the rules prior to the examination. The VEs may collect the information required by these rules in any manner of their choosing, including creating their own forms. Upon completion of the examination, the administering VEs will immediately grade the test papers and will then issue a certificate for successful completion of an amateur radio operator examination (CSCE) if the applicant is successful. The VEs will send all necessary information regarding the candidate to the Volunteer-Examiner Coordinator (VEC) coordinating the examination session. Applications filed with the Commission by VECs must be filed in an electronic batch file.

(3) May apply to the FCC for renewal of the license grant for another term in accordance with § 1.913 of this chapter.

(i) For a station license grant showing a call sign obtained through the vanity call sign system, the application must be filed in accordance with § 97.19 of this Part in order to have the vanity call sign reassigned to the station.

(ii) For a primary station license grant showing a call sign obtained through the sequential call sign system, and for a primary station license grant showing a call sign obtained through the vanity call sign system but whose grantee does not want to have the vanity call sign reassigned to the station, the application must be filed with the FCC in accordance with § 1.913 of this chapter. When the application has been received by the FCC on or before the license expiration date, the license operating authority is continued until the final disposition of the application.

(iii) For a RACES station license grant, for a club station or military recreation station license grant showing a call sign obtained through the sequential call sign system, and for a club or military recreation station license grant showing a call sign obtained through the vanity call sign system but whose grantee does not want to have the vanity call sign reassigned to the station, the application must be presented in document form to a Club Station Call Sign Administrator who must submit the information thereon to the FCC in an electronic batch file. The Club Station Call Sign Administrator must retain the collected information for at least 15 months and make it available to the FCC upon request.

(b) A person whose amateur station license grant has expired may apply to the FCC for renewal of the license grant for another term during a 2 year filing grace period. The application must be received at the address specified above prior to the end of the grace period. Unless and until the license grant is renewed, no privileges in this Part are conferred.

(c) A call sign obtained under the sequential or vanity call sign system will be reassigned to the station upon renewal or modification of a station license.

458. Section 97.23 is revised to read as follows:

§ 97.23 Mailing address.

Each license grant must show the grantee's correct name and mailing address. The mailing address must be in an area where the amateur service is regulated by the FCC and where the grantee can receive mail delivery by the United States Postal Service. Revocation of the station license or suspension of the operator license may result when correspondence from the FCC is returned as undeliverable because the grantee failed to provide the correct mailing address.

459. Section 97.25 is revised to read as follows:

§ 97.25 License term.

An amateur service license is normally granted for a 10-year term.

460. Section 97.27 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 97.27 FCC modification of station license grant.

(a) The FCC may modify a station license grant, either for a limited time or for the duration of the term thereof, if it determines:

* * * * *

461. Section 97.29 is revised to read as follows:

§ 97.29 Replacement license grant document.

Each grantee whose amateur station license grant document is lost, mutilated or destroyed may apply to the FCC for a replacement in accordance with § 1.913 of this chapter.

462. Section 97.107 is revised to read as follows:

§ 97.107 Reciprocal operating authority.

A non-citizen of the United States ("alien") holding an amateur service

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authorization granted by the alien's government is authorized to be the control operator of an amateur station located at places where the amateur service is regulated by the FCC, provided there is in effect a multilateral or bilateral reciprocal operating arrangement, to which the United States and the alien's government are parties, for amateur service operation on a reciprocal basis. The FCC will issue public announcements listing the countries with which the United States has such an arrangement. No citizen of the United States or person holding an FCC amateur operator/primary station license grant is eligible for the reciprocal operating authority granted by this section. The privileges granted to a control operator under this authorization are:

(a) For an amateur service license granted by the Government of Canada:

(1) The terms of the *Convention Between the United States and Canada* (TIAS No. 2508) *Relating to the Operation by Citizens of Either Country of Certain Radio Equipment or Stations in the Other Country;*

(2) The operating terms and conditions of the amateur service license issued by the Government of Canada; and

(3) The applicable rules of this part, but not to exceed the control operator privileges of an FCC-granted Amateur Extra Class operator license.

(b) For an amateur service license granted by any country, other than Canada, with which the United States has a multilateral or bilateral agreement:

(1) The terms of the agreement between the alien's government and the United States;

(2) The operating terms and conditions of the amateur service license granted by the alien's government;

(3) The applicable rules of this part, but not to exceed the control operator privileges of an FCC-granted Amateur Extra Class operator license; and

(c) At any time the FCC may, in its discretion, modify, suspend or cancel the reciprocal operating authority granted to any person by this section.

463. Section 97.119 is amended by revising paragraph (g) to read as follows:

§ 97.119 Station identification.

* * * * *

(g) When the station is transmitting under the authority of § 97.107 of this part, an indicator consisting of the appropriate letter-numeral designating the station location must be included before the call sign that was issued to the station by the country granting the license. For an amateur service license granted by the Government of Canada, however, the indicator must be included after the call sign. At least once during each intercommunication, the identification announcement must include the geographical location as nearly as possible by city and state, commonwealth or possession.

464. Section 97.201 is amended by revising paragraph (a) to read as follows:

§ 97.201 Auxiliary station.

(a) Any amateur station licensed to a holder of a Technician, Technician Plus, General, Advanced or Amateur Extra Class operator license may be an auxiliary station. A holder of a Technician, Technician Plus, General, Advanced or Amateur Extra Class operator license may be the control operator of an auxiliary station, subject to the privileges of the class of operator license held.

* * * * *

465. Section 97.203 is amended by revising paragraph (a) to read as follows:

§ 97.203 Beacon station.

(a) Any amateur station licensed to a holder of a Technician, Technician Plus, General, Advanced or Amateur Extra Class operator license may be a beacon. A holder of a Technician, Technician Plus, General, Advanced or Amateur Extra Class operator license may be the control operator of a beacon, subject to the privileges of the class of operator license held.

* * * * *

§ 97.205 [Amended]

466. Section 97.205 is amended by removing and reserving paragraph (f) and removing paragraph (h).

467. Section 97.207 is amended by revising the introductory text of paragraph (g) and paragraphs (h) and (i) to read as follows:

§ 97.207 Space station.

* * * * *

(g) The license grantee of each space station must make two written pre-space station notifications to the International Bureau, FCC, Washington, DC 20554. Each notification must be in accord with the provisions of Articles 11 and 13 of the Radio Regulations.

* * * * *

(h) The license grantee of each space station must make a written in-space station notification to the International Bureau no later than 7 days following initiation of space station transmissions. The notification must update the information contained in the pre-space notification.

(i) The license grantee of each space station must make a written post-space station notification to the International Bureau no later than 3 months after termination of the space station transmissions. When the termination is ordered by the FCC, notification is required no later than 24 hours after termination.

20. Section 97.301 is amended by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) For a station having a control operator who has been granted a Technician, Technician Plus, General, Advanced, or Amateur Extra Class operator license or who holds a CEPT radio-amateur license or IARP of any class:

* * * * *

(b) For a station having a control operator who has been granted an Amateur Extra Class operator license or who holds a CEPT radio-amateur license Class 1 license or Class 1 IARP:

* * * * *

468. Section 97.505 is amended by revising paragraph (a)(10) to read as follows:

§ 97.505 Element credit.

(a) * * *

(10) An unexpired (or expired but within the grace period for renewal) FCC-granted Novice, Technician Plus (including a Technician Class operator license granted before February 14, 1991), General, or Advanced Class operator license document, and a FCC Form 605 document containing:

* * * * *

469. Section 97.509 is amended by revising paragraph (i) to read as follows:

§ 97.509 Administering VE requirements.

* * * * *

(i) When the examinee is credited for all examination elements required for the operator license sought, 3 VEs must certify that the examinee is qualified for the license grant and that the VEs have complied with these administering VE requirements. The certifying VEs are jointly and individually accountable for the proper administration of each examination element reported. The certifying VEs may delegate to other qualified VEs their authority, but not their accountability, to administer individual elements of an examination.

* * * * *

470. Section 97.519 is amended by revising paragraph (b) introductory text and paragraphs(b)(1), (b)(2) and (b)(3) to read as follows:

§ 97.519 Coordinating examination sessions.

* * * * *

(b) At the completion of each examination session, the coordinating VEC must collect applicant information and tests results from the administering VEs. Within 10 days of collection, the coordinating VEC must:

(1) Screen collected information;

(2) Resolve all discrepancies and verify that the VE's certifications are properly completed; and

(3) For qualified examinees, forward electronically all required data to the FCC. All data forwarded must be retained for at least 15 months and must be made available to the FCC upon request.

PART 101—FIXED MICROWAVE SERVICES

471. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

472. Section 101.1 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) respectfully and adding a new paragraph (a) to read as follows:

§ 101.1 Scope and authority.

(a) Part 1 of the Commission's rules contains the general rules of practice and procedure applicable to proceedings before the Commission and for the filing of applications for radio station licenses in the fixed microwave services.

* * * * *

473. Section 101.3 is amended by adding a definition for "Universal Licensing System" (ULS) to read as follows:

§ 101.3 Definitions.

Universal Licensing System (ULS). The consolidated database, application filing system and processing system for all Wireless Telecommunications Services. The ULS offers Wireless Telecommunications Bureau (WTB) applicants and the general public electronic filing of all applications requests, and full public access to all WTB licensing data.

474. Section 101.5 is amended by removing and reserving paragraphs (a) and (c) and revising paragraph (b) to read as follows:

§ 101.5 Station authorization required.

(a) [Reserved]

(b) A separate application form must be filed electronically via ULS for each Digital Electronic Message Service (DEMS) Nodal Station. No license is required for a DEMS User Station. Authority for a DEMS Nodal Station licensee to serve a specific number of user stations to be licensed in the name of the carrier must be requested on FCC Form 601 filed for the DEMS Nodal Station.

(c) [Reserved]

* * * * *

§ 101.9 [Removed]

475. Section 101.9 is removed.

§ 101.11 [Removed]

476. Section 101.11 is removed.

§ 101.13 [Removed]

477. Section 101.13 is removed.

§ 101.15 [Removed]

478. Section 101.15 is removed.

§ 101.19 [Removed]

479. Section 101.19 is removed.

480. Section 101.21 is amended by removing and reserving paragraphs (a), (c) and (d) and revising paragraphs (b), (e) and (g) to read as follows:

§ 101.21 Technical content of applications.

* * * * *

(a) [Reserved]

(b) Each application for a developmental authorization must be accompanied by pertinent supplemental information as required by § 101.411 of this part in addition to such information as may be specifically required by this section.

(c) [Reserved]

(d) [Reserved]

(e) Each application in the Private Operational Fixed Point-to-Point Microwave Service and the Common Carrier Fixed Point-to-Point Microwave Service must include the following information:

Applicant's name and address.

Transmitting station name.

Transmitting station coordinates.

Frequencies and polarizations to be added, changed or deleted.

Transmitting equipment, its stability, effective isotropic radiated power, emission designator, and type of modulation (digital).

Transmitting antenna(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.

Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.

Receiving station name.

Receiving station coordinates.

Receiving antenna(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.

Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.

Path azimuth and distance.

Note: The position location of antenna sites shall be determined to an accuracy of no less than ±1 second in the horizontal dimensions (latitude and longitude) and ±1 meter in the vertical dimension (ground elevation) with respect to the National Spacial Reference System.

* * * * *

(g) Each application in the Local Multipoint Distribution Service must contain all technical information required by FCC Form 601 and any other applicable form or associated Public Notices and by any applicable rules in this part.

481. Section 101.23 is revised to read as follows:

§ 101.23 Waiver of rules.

Waiver of these rules may be granted upon application or on the Commission's own motion in accordance with § 1.925 of this chapter.

§ 101.25 [Removed]

482. Section 101.25 is removed.

§ 101.27 [Removed]

483. Section 101.27 is removed.

§ 101.29 [Removed]

484. Section 101.29 is removed.

485. Section 101.31 is amended by revising the section heading, by removing paragraphs (a), (c) and (d), redesignating paragraphs (b) and (e) as paragraphs (a) and (b) respectfully, and revising newly redesignated paragraphs (a)(1)(i), (a)(2), (a)(3)(vii), (a)(6), and (b)(1)(v), and the introductory text of newly redesignated paragraph (a)(3), and the first sentence of newly redesignated paragraph (b)(3), and adding a Note to the chart in newly redesignated paragraph (b)(1)(vi) to read as follows:

§ 101.31 Temporary and conditional authorizations.

* * * * *

(1) * * *

(i) When a fixed station, authorized to operate at temporary locations, is to remain at a single location for more than 6 months, an application for a station authorization designating that single location as the permanent location shall be filed at least 90 days prior to the expiration of the 6 month period;

* * * * *

(2) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form 601. Blanket applications may be submitted for the required number of transmitters.

(3) Except for operations in the 17.8–19.7 GHz band, the licensee of stations which are authorized pursuant to the

provisions of paragraph (a) of this section shall notify the Commission at least five (5) days prior to installation of the facilities stating:

* * * * *

(vii) A notification shall include compliance with the provisions of §§ 101.21(e) and 101.21(f) when operations are to be conducted in the area of other terrestrial microwave stations or within the coordination distance contours of a fixed earth station; and

* * * * *

(6) Operations in the 17.8–19.7 GHz band are prohibited in the areas defined in § 1.924 of this chapter. Operations proposed in the areas defined in § 1.924 of this chapter may not commence without prior specific notification to, and authorization from, the Commission. Such notification will contain the information specified in paragraph (a)(3) of this section.

(b) * * *

(1) * * *

(v) The station site does not lie within 56.3 kilometers of any international border, within a radio "Quiet Zone" identified in § 1.924 of this chapter or, if operated on frequencies in the 17.8–19.7 GHz band, within any of the areas identified in § 1.924 of this chapter;

(vi) * * *

Note: Coordinates are referenced to North American Datum 1983 (NAD83).

* * * * *

(3) A conditional authorization pursuant to paragraphs (b)(1) and (b)(2) of this section is evidenced by retaining the original executed conditional licensing Certification Form with the station records. * * *

* * * * *

§ 101.33 [Removed]

486. Section 101.33 is removed.

§ 101.35 [Removed]

487. Section 101.35 is removed.

§ 101.37 [Removed]

488. Section 101.37 is removed.

§ 101.39 [Removed]

489. Section 101.39 is removed.

§ 101.41 [Removed]

490. Section 101.41 is removed.

§ 101.43 [Removed]

491. Section 101.43 is removed.

492. Section 101.45 is amended by revising the introductory text of paragraph (b), paragraph (d), the introductory text of paragraph (f) and paragraphs (f)(1), (f)(2) and (f)(4) and removing paragraph (h) to read as follows:

§ 101.45 Mutually exclusive applications.

* * * * *

(b) A common carrier application, except in the Local Multipoint Distribution Service, will be entitled to comparative consideration with one or more conflicting applications only if:

* * * * *

(d) Private operational fixed point-to-point microwave applications for authorization under this part will be entitled to comparative consideration with one or more conflicting applications in accordance with the provisions of § 1.227(b)(4) of this chapter.

* * * * *

(f) For purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 1.929 of this chapter), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 101.51 of this part), and the Commission or the presiding officer accepts the amendment pursuant to § 1.927 of this chapter;

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing or by comparative evaluation pursuant to § 101.51 provided that the amendment does not create new or additional frequency conflicts;

* * * * *

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 1.935 of this chapter whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration;

* * * * *

§ 101.47 [Removed]

493. Section 101.47 is removed.

494. Section 101.51 is amended by revising paragraph (a)(3) to read as follows:

§ 101.51 Comparative evaluation of mutually exclusive applications.

(a) * * *

(3) The Commission determines, initially or at any time during the procedure outline in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of fact, presented (Other than those relating to the comparative merits of the applications) which would preclude a grant under § 1.915 of this chapter.

* * * * *

§ 101.53 [Removed]

495. Section 101.53 is removed.

§ 101.55 [Amended]

496. Section 101.55 is amended by removing and reserving paragraph (b).

497. Section 101.56 is amended by revising the third sentence and removing the fourth sentence of paragraph (a)(2)(ii) and removing paragraph (a)(3) to read as follows:

§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.

(a) * * *

(2) * * *

(ii) * * * If geographic coordinate points are used, they must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). * * *

* * * * *

§ 101.57 [Removed]

498. Section 101.57 is removed.

§ 101.59 [Removed]

499. Section 101.59 is removed.

500. Section 101.61 is revised to read as follows:

§ 101.61 Certain modifications not requiring prior authorization in the Local Multipoint Distribution Service.

In the Local Multipoint Distribution Service (LMDS) licensees may add, remove, or relocate facilities within the area authorized by the license without prior authorization. Upon request by an incumbent licensee or the Commission, an LMDS licensee shall furnish the technical parameters, location and coordinates of the completion of the addition, removal, relocation or modification of any of its facilities within the BTA. The LMDS licensee must provide such information within ten (10) days of receiving a written request.

501. Section 101.63 is amended by revising paragraphs (b), (d) and (e) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

* * * * *

(b) Failure to timely begin operation means the authorization cancels automatically.

* * * * *

(d) Requests for extension of time may be granted upon a showing of good cause pursuant to § 1.946(e) of this chapter.

(e) Construction of any authorized facility or frequency must be completed by the date specified in the license as pursuant to § 1.946 of this chapter.

502. Section 101.65 is revised to read as follows:

§ 101.65 Forfeiture and termination of station authorizations.

(a) In addition to the provisions of § 1.955 of this chapter, a license will be automatically forfeited in whole or in part without further notice to the licensee upon the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) Pursuant to § 1.955 of this chapter, if a station licensed under this part discontinues operation on a permanent basis, the licensee must cancel the license. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued. *See* § 101.305 for additional rules regarding temporary and permanent discontinuation of service.

503. Section 101.103 is amended by revising the second sentence of paragraph (d)(1) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(d) * * *

(1) * * * Coordination must be completed prior to filing an application for regular authorization, or a major amendment to a pending application, or any major modification to a license. * * *

* * * * *

504. Section 101.105 is amended by revising the first sentence of the introductory text of paragraph (c)(3) to read as follows:

§ 101.105 Interference protection criteria.

* * * * *

(c) * * *

(3) Applicants for frequencies listed in § 101.147(b)(1) of this part must make the following showings that protection criteria have been met over the entire service area of existing systems. * * *

* * * * *

§ 101.121 [Removed]

505. Section 101.121 is removed.

§ 101.123 [Removed]

506. Section 101.123 is removed.

§ 101.127 [Removed]

507. Section 101.127 is removed.

§ 101.129 [Amended]

508. Section 101.129 is amended by removing and reserving paragraph (b).

509. Section 101.205 is amended by revising paragraph (a) and (c) to read as follows:

§ 101.205 Operation during emergency.

* * * * *

(a) That as soon as possible after the beginning of such emergency use, notice be sent to the Commission stating the nature of the emergency and the use to which the station is being put;

* * * * *

(c) That the Commission must be notified immediately when such special use of the station is terminated;

* * * * *

510. Section 101.305 is amended by revising paragraphs (a), (b), (c), and (d)(1) to read as follows:

§ 101.305 Discontinuance, reduction, or impairment of service.

(a) If the public communication service provided by a station in the Common Carrier Radio Services and the Local Multipoint Distribution Service is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee must promptly notify the Commission. In every such case, the licensee must furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof must be given Commission.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station license is terminated; except that station licenses in the Local Multipoint Distribution Service are not terminated if the discontinuance is a result of a change of status by the licensee from common carrier to non-common carrier pursuant to § 1.929 of this chapter.

(c) Any licensee not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or part of a community must notify the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station license is automatically terminated; except that station licenses in the Local Multipoint Distribution Service are not terminated if the discontinuance is a result of a change of status by the licensee from non-common carrier to common carrier pursuant to § 1.929 of this chapter.

(d) * * *

(1) Cancel the station license (or licenses); or

* * * * *

511. Section 101.413 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 101.413 Developmental report required.

(a) Upon completion of the program of research and development, or, in any event, upon the expiration of the instrument of station authorization under which such investigations were permitted, or at such times during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the developmental program, the licensee must submit a comprehensive report on the following items, in the order designated:

* * * * *

512. Section 101.503 is amended by revising the last sentence to read as follows:

§ 101.503 Digital Electronic Message Service Nodal Stations.

* * * Any increase in that number must be applied for pursuant to § 1.913 of this chapter.

513. Section 101.701 is amended by revising paragraph (c) to read as follows:

§ 101.701 Eligibility.

* * * * *

(c) Applications for stations or frequencies that will be used primarily to relay broadcast television signals must include a certification that at least fifty percent of the customers (or points of service) on the microwave system involved, including those served through an interconnecting carrier(s), receiving applicant's service, will not be related or affiliated in any degree with the applicant, and that the proposed usage by such customers, in terms of hours of use and channels delivered, must constitute at least fifty percent of the usage of the applicant's microwave service. Applications that do not contain these certifications will be returned as unacceptable for filing.

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514. Section 101.705 is revised to read as follows:

§ 101.705 Special showing for renewal of common carrier station facilities using frequency diversity.

Any application for renewal of license, for a term commencing January 1, 1975, or after, involving facilities utilizing frequency diversity must contain a statement showing compliance with § 101.103(c) or the exceptions recognized in paragraph 141 of the "First Report and Order" in Docket No. 18920 (29 FCC 2d 870). (This document is available at: Federal Communications Commission, Library (Room 639), 1919 M Street, NW., Washington, DC.) If not in compliance, a complete statement with the reasons therefore must be submitted.

515. Section 101.815 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 101.815 Stations at temporary fixed locations.

(a) * * *

(2) When a fixed station authorized to operate at temporary locations is installed and it subsequently becomes necessary for the station to operate from such location for more than six months, an application for a station authorization to specify the permanent location must be filed at least thirty days prior to the expiration of the six month period.

* * * * *

(b) Applications for authorizations to operate stations at temporary locations under the provisions of this section may be made upon FCC Form 601. Blanket applications may be submitted for the required number of transmitters.

* * * * *

516. Section 101.817 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 101.817 Notification of station operation at temporary locations.

(a) The licensee of stations authorized pursuant to § 101.813 must notify the Commission prior to each period of operation. This notification must include:

* * * * *

517. Section 101.1009 is amended by revising paragraphs (a)(1)(iii) and (b) to read as follows:

§ 101.1009 System operations.

(a) * * *

(1) * * *

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

* * * * *

(b) Whenever a licensee constructs or makes system changes as described in paragraph (a) of this section, the licensee is required to notify the Commission within 30 days of the change under § 1.947 of this chapter and include a statement of the technical parameters of the changed station.

§ 101.1015 [Removed]

518. Section 101.1015 is removed.

519. Section 101.1017 is amended by revising paragraphs (a), (b)(2), and (c)(2) to read as follows:

§ 101.1017 Requesting regulatory status.

(a) *Initial applications.* An applicant will specify on FCC Form 601 if it is requesting authorization to provide services on a common carrier basis, a non-common carrier basis, or on both a common carrier and non-common carrier basis.

(b) * * *

(2) Amendments to change, or add to, the carrier status in a pending application are minor amendments pursuant to § 1.927 of this chapter.

(c) * * *

(2) Applications to change, or add to, the carrier status in a license are modifications not requiring prior Commission authorization filed under § 1.927 of this chapter. If the change results in the discontinuance, reduction, or impairment of an existing service, the licensee is also governed by § 101.305(b) or (c) and submits the application under § 1.927 of this chapter in conformance with the time frames and requirements of §§ 101.305 (b) or (c).

§ 101.1106 [Removed]

520. Section 101.1106 is removed.

[FR Doc. 98–32801 Filed 12–11–98; 8:45 am]

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Monday
December 14, 1998

Part IV

Department of Education

Office of Educational Research and Improvement (OERI), National Research Institutes' Field-Initiated Studies (FIS) Research Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.305T]

Office of Educational Research and Improvement (OERI) National Research Institutes' Field-Initiated Studies (FIS) Research Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: The Field-Initiated Studies Program awards grants to conduct education research in which topics and methods of study are generated by investigators.

Eligible Applicants: Eligible applicants are institutions of higher education; State and local education agencies; public and private organizations, institutions, and agencies; and individuals.

Applications Available: December 29, 1998. Application packages will be available by mail and, electronically, on the World Wide Web at the following site:

http://www.ed.gov/offices/OERI/FIS/

Deadline for Receipt of Applications: February 19, 1999.

Note: All applications must be received on or before February 19, 1999. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

Tentative Award Date: May 31, 1999.

Available Funds: $9.6 million.

Estimated Range of Awards: In the past awards have ranged from $450,000 to $1,000,000 per award for a three-year project. The length of projects and the size of awards will be commensurate with the nature and scope of the work proposed.

Budget Period: 12 months.

Project Periods: 1 to 3 years.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85 and 86 (part 86 applies to IHEs only); and (b) the regulations in 34 CFR part 700.

SUPPLEMENTARY INFORMATION: The Field-Initiated Studies Grant Program is highly competitive. In its last competition, OERI funded about 1 award for every 20 eligible applications. In general, peer reviewers find that strong applications for FIS grants clearly address each of the applicable selection criteria.

Strong applications make a reasoned and compelling case for the national significance of the problems or issues that will be the subject of the proposed research. The design of the work to be carried out should be complete and clearly delineated, incorporating sound research methods and appropriate statistical techniques. The personnel descriptions included in the application should make it apparent that the project director, principal investigator and other key personnel possess training and experience commensurate with their duties.

The project period of the grant may be from one to three years. In the past, the total amount of the grant for the entire project period has ranged from $450,000 to $1,000,000. In the application, the project period should be divided into 12-month budget periods. Each 12-month budget should be clearly delineated and justified in terms of the proposed activities.

Collaboration

The Secretary encourages collaboration in the conduct of research. For example, major research universities and institutions may collaborate with historically underrepresented institutions, such as Historically Black Colleges and Universities, Hispanic-Serving Institutions, and Tribal Colleges and Universities.

FOR FURTHER INFORMATION OR APPLICATIONS: To request an application or to obtain further information about the FIS competition write to the Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 604, Washington, DC 20208, or contact Veda Bright at (202) 219–1935 or by e-mail: veda__bright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 6031(c)(2)(B)

Dated: December 8, 1998.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 98–33092 Filed 12–11–98; 8:45 am]

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Part V

Department of Education

Fund for the Improvement of Education: Partnerships in Character Education Pilot Projects; Inviting Applications for New Awards for Fiscal Years (FY) 1999 and 2000; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.215V]

Fund for the Improvement of Education: Partnerships in Character Education Pilot Projects; Notice Inviting Applications for New Awards for Fiscal Years (FY) 1999 and 2000

Purpose of Program: The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to support pilot projects that design and implement character education programs as a way to address the broader FIE objectives.

Eligible Applicants: Only State educational agencies, in partnership with one or more local educational agencies, may apply for grants under this program. A State educational agency means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law (20 U.S.C. 8801(28) and 34 CFR 77.1(c)).

Applications Available: 12/17/98.

Deadline for Transmittal of Application: 2/12/99.

Deadline for Intergovernmental Review: 4/13/99.

Available Funds: Up to $4,000,000.

Estimated Range of Awards: $100,000–$1,000,000.

Estimated Number of Awards: Up to 10.

Maximum Award: The Secretary will not consider an application that proposes a budget for the entire project period exceeding a total of $1,000,000.

Budget Period: 12 months.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR parts 98, 99, and 299.

Supplementary Information: It is the Department's intent to fund two cycles of awards from this competition. The first cycle of awards will be made from FY 1999 funds. If applications of high quality remain unfunded, additional awards will be made in the second cycle in FY 2000, pending availability of FY 2000 funds.

The statute governing the Partnerships in Character Education Pilot Projects program limits the total amount awarded to any State to $1,000,000 and the funding period to five years, of which not more than one year may be used for planning and program design. Each applicant, operating within these parameters, may, in designing character education activities, determine the combination of funds and time that is most appropriate. For example, one applicant may request $500,000 per year for two years, another may request $100,000 for the first year, $400,000 for the second and third years, and $100,000 for the fourth year, and a third may request $200,000 per year for five years.

In preparing an application, each applicant should take special care to provide a timeline and a narrative that explains the costs requested for each budget period.

Under the Character Education program, State educational agencies provide technical and professional assistance to local educational agencies in the development and implementation of curriculum materials, teacher training, and other activities related to character education. Applicants must propose projects designed to develop character education programs that incorporate the following elements of character:

(a) Caring.
(b) Civic virtue and citizenship.
(c) Justice and fairness.
(d) Respect.
(e) Responsibility.
(f) Trustworthiness.
(g) Any other elements deemed appropriate by the members of the partnership.

Other program requirements are described in the application package.

For Applications or Information Contact: To request an application: *Facsimile machine:* 202–219–2053; *Voice Mail:* 202–219–2116; *E-Mail:* Judy_Collins@ed.gov; or *Mail:* OERI/FIE Application, 555 New Jersey Avenue, NW., Washington, DC 20208–5645. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8003.

Dated: December 9, 1998.

C. Kent McGuire,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 98–33093 Filed 12–11–98; 8:45 am]

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A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.

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CFR CHECKLIST

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A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

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